

Decision No. 83202**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of Fred Schram and Wilma Schram,
 doing business under the firm
 name and style of RAYMOND WATER
 WORKS; and JOSEPH C. SMYTH and
 VIC KLEIWER, for an Order
 authorizing the sale of the
 water system to JOSEPH C. SMYTH
 and VIC KLEIWER.

Application No. 54134
 (Filed June 27, 1973; amended
 September 19, 1973)

O P I N I O N

Fred Schram and Wilma Schram (sellers), doing business as Raymond Water Works, request authority to sell and transfer the public utility water system they operate in the unincorporated town of Raymond, Madera County, pursuant to authorization granted by Decision No. 60140 in Application No. 41982, to Joseph C. Smyth and Victor D. Kliever (purchasers), a joint venture partnership.

Notice of the application was published in the Commission's Daily Calendar on June 29, 1973. No protests have been received.

Sellers, among others, were named respondents in Case No. 9283, a Commission investigation into the ownership, status, operations, service, and records, among other things, of Raymond Water Works. Sellers cite Decision No. 80133 dated June 7, 1972 in Case No. 9283 as the reason for their desire to be relieved of public utility responsibility. In said decision the Commission found that there had been several transfers of the water system and real property underlying the system (Findings 1 through 11), all of which are void under Section 851 of the Public Utilities Code since they were made without authorization from this Commission.

The Commission also found that Fred and Wilma Schram have not been directly engaged in the operation, management, or control of Raymond Water Works since the summer of 1967, and that Maurice E. Smith, president and principal management representative of Raymond Heights Water Company, had assumed responsibility for the operation of Raymond Water Works (Findings 12 through 16).

With respect to the sanitation, service, and maintenance of Raymond Water Works the Commission found (Findings 17 through 26) that the system is not adequate for the protection of the health and safety of the system's users and is not dependable for the delivery of potable water (Finding 19). Findings 22, 23, 24, 25, and 26 contain recommendations of the staff for the improvement of the water system. These recommendations will be incorporated in the order herein.

The Commission also found that annual reports as required by Sections 581, 582, and 584 of the Public Utilities Code and General Order No. 104-A were not filed for the years 1967, 1968, 1969, and 1970. A check of the Commission's files reveals that annual reports for the years 1971 and 1972 have not been filed. Decision No. 60140 states that the original cost of the water system is unknown to the applicants.

Purchasers are a joint venture partnership and are desirous of obtaining Raymond Water Works as part of a plan to acquire several water systems in the eastern Madera County area and to improve service therein by combining for efficiency the operation and maintenance thereof. Purchasers are familiar with the existing water rates and tariffs of the utility and will charge customers in accord therewith. Purchasers have been operating the water system subsequent to the issuance of Decision No. 80133.

Joseph C. Smyth is a registered engineer of the State of California, doing business as Joseph C. Smyth and Associates with offices located in Oakhurst. Victor D. Kliever is a businessman

and resident land developer in eastern Madera County. Smyth's financial statement (Exhibit 3 to amended application) shows that he has a net worth of \$209,218 as of July 31, 1973. Victor D. Kliever's financial statement (also Exhibit 3) shows that he has a net worth of \$342,327 as of August 31, 1973.

Sellers and purchasers have entered into an Agreement of Sale of Raymond Water Works, subject to the approval of this Commission, which was executed on May 10, 1974 for the sale of all the water production facilities, including pumps, wells, and transmission and distribution facilities of every kind comprising the water system, which includes, without limiting the generality of the foregoing, all operating and customer account records, maps and drawings, equipment, supplies, materials, and such lands used in connection with the operation of said water system. The full and total purchase price of the system, wells, and lands is \$1.00, which is acknowledged as received. A full description of the properties to be transferred is appended to the Agreement, including a copy of the approved parcel map. Said Agreement was filed on May 13, 1974 and will be received as Exhibit 1.

After consideration, the Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment. The proposed transfer is not adverse to the public interest. A public hearing is not necessary. We conclude that the application should be granted subject to the conditions of the following order. Both sellers and purchasers will be required to give notice of completion of the transfer to the Commission.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

Joseph C. Smyth and Victor D. Kliever are placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate

fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before September 1, 1974, Fred Schram and Wilma Schram may sell and transfer the water system and other assets referred to in the application to Joseph C. Smyth and Victor D. Kliewer.
2. As a condition of this grant of authority, purchasers shall assume the public utility obligations of sellers within the area served by the water system being transferred.
3. Within ten days after completion of the transfer, purchasers shall notify the Commission, in writing, of the date of the transfer and of the assumption of the obligations set forth in paragraph 2 of this order.
4. Purchasers shall either file a statement adopting the tariffs of sellers now on file with this Commission or refile under their own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.
5. On or before the date of actual transfer, sellers shall refund all customers' deposits for the establishment of credit and advances for construction, if any, which are due and payable as of the date of transfer. All unrefunded deposits and advances, if any, shall be transferred to purchasers who shall be responsible for their refund when due.

6. On or before the date of actual transfer, sellers and/or Maurice E. Smith shall deliver to purchasers, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

7. On or before the end of the third month after the date of actual transfer, purchasers shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.

8. Within ten days after the completion of the transfer, sellers and/or Maurice E. Smith shall notify the Commission, in writing, of the date of transfer, of the refunding of the deposits, and of the date upon which purchasers shall have assumed operation of the water system. A true copy of the instruments of transfer shall be attached to the notification.

9. Upon compliance with all of the terms and conditions of this order, sellers shall be relieved of their public utility obligations in connection with the water system transferred.

10. Upon assumption of the public utility obligations resulting from the transfer authorized, purchasers shall implement our order to Raymond Water Works contained in Ordering Paragraph I(1), (2), and (3) of Decision No. 80133 as follows:

- (1) Seal forthwith the wells, storage tanks and water system of Raymond Water Works so as to prevent the intrusion from animals and of foreign matter into the water supply and install a self-chlorinating system and perform maintenance and make all repairs sufficient to make the system safe and sanitary for those using the system, in accordance with the recommendations of the Madera County Department of Health.

- (2) File with this Commission within sixty days after the effective date of this order a certificate by the Madera County Department of Health that sufficient maintenance and repairs to the system have been made so that the system is safe and sanitary and is in compliance with the requirements of the Madera County Department of Health so as to provide safe and potable drinking water to the users of the Raymond Water Works.
- (3) Submit to this Commission within sixty days from the effective date of this order, a plan and schedule for augmentation of sources of water supply and storage facilities for the water supply with automatic chlorination and for the installation of meters for the flat rate customers of Raymond Water Works.

11. Purchasers shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time shall prescribe.

The Secretary is directed to cause personal service of Decision No. 80133 to be made on Joseph C. Smyth and Victor D. Kliewer.

There being no opposition to the application and in view of the fact that purchasers are presently operating the water system to be transferred, no good reason appears for withholding the effective date of the authority granted for the twenty-day period provided by the rules; accordingly, the effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th
day of JULY, 1974.

Vernon L. Stephens
President
William Squares Jr.

[Signature]
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.