ALJ/DBJ/ra

Decision 87 10 074 OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BIG BASIN WATER CO., INC., to sell and BIG BASIN ASSOCIATES, a California Limited Partnership to buy, the water system run by BIG BASIN WATER CO., INC. in Santa Cruz County, State of California.	Application 86-04-021 (Filed April 9, 1986)
In the Matter of the Application of Kermit J. McGranahan and Mahlon D. McPherson, doing business as BIG BASIN WATER COMPANY, U157W, Transferor, for authorization to sell and transfer, and of BIG BASIN WATER COMPANY, INC., a corporation, Transferee, to purchase and acquire the public utility water system of Transferor in Santa Cruz County; and of BIG BASIN WATER COMPANY, INC. to issue shares of stock.	Application 86-04-059 (Filed April 29, 1986)
In the Matter of the Application of BIG BASIN WATER COMPANY, INC., for authority to borrow funds under the Safe drinking Water Bond Act, and to add a surcharge to water rates to repay the principal and interest on such a loan.	Application 86-10-071 (Filed October 21, 1986)
William Aragona, Jr., Walter M. Carlson, Howard F. Carroll, John B. DeNault, Thomas D. Jackson, Donald T. Splain, Henry M. Stanley, Ben B. White Complainants, vs. Big Basin Water Company, Inc., Defendant.	Case 86-03-029 (Filed March 17, 1986)

November 5, 1987.

DEC. NO. 87-10-074, A.86-04-021 et al

SPLIT FEE: SEE ORDER, ITEMS 14 and 15.

ALSO SEE LAST SENTENCE ON PAGE 44. (Order)

"EXCEPT FOR ORDERING PARAGRAPHS 14 and 15, THIS ORDER BECOMES EFFECTIVE 30 DAYS FROM TODAY."

SIGNED OCTOBER 28, 1987.

THIS DECISION WAS MAILED ON NOVEMBER 5, 1987, FEE IS UNPAID, PER ALJ JARVIS. WHEN FEE IS PAID, ALL PARTIES ON SERVICE LIST WILL HAVE TO BE NOTIFIED.

Vaughan, Paul & Lyons, by John G. Lyons and Dennis J. Kehoe, Attorneys at Law, for Big Basin Water Company and Big Basin Water Company, Inc., applicant in A.86-04-059, A.86-10-071, and A.86-04-021 and defendant in C.86-03-029.
William D. Nugent, for Big Basin Associates, applicant in A.86-04-021 and interested party in A.86-10-071 and A.86-04-059.
Ray Amrhein, Attorney at Law, and Walter M. Carlson, for Big Basin Water Committee, complainant and interested party in applications.
Daniel C. Peterson, for Environmental Health Division, County of Santa Cruz, and Richard McMillan and Clifford L. Bowen, for the State of California, Department of Health Services, interested parties.
Kathleen Kiernan-Harrington, Attorney at Law, for the Water Utilities Branch.

O P I N I O N

Application (A.) 86-04-059 is one in which Kermit J. McGranahan (McGranahan) and Mahlon D. McPherson (McPherson), partners, doing business as Big Basin Water Company (Utility) seek authority to transfer Utility to Big Basin Water Company, Inc., a corporation (Corporation). McGranahan, McPherson and their families own all of the outstanding shares of Corporation. The application requests that the authority be granted nunc pro tunc to March 11, 1985, the day the shares were issued purportedly for Utility's assets.

A.86-04-021 is based on the premise that Corporation owns or will own Utility. It seeks authority for Corporation to transfer Utility to Big Basin Associates, a California limited partnership (Associates).

A.86-10-071 also assumes Corporation owns or will own Utility. It seeks authority to enter into a contract with the

State Department of Water Resources (DWR) for a $1,126,840 loan under the Safe Drinking Water Bond Act (SDWBA).

Case (C.) 86-03-029 is a complaint against Utility by six individuals representing the Big Basin Water Committee (BBWC). The complaint alleges that Utility: (1) Has failed to comply with formal orders of the State Department of Health Services (DHS). (2) Is unable to maintain mandated water quality standards in serving its customers on a consistent basis. (3) Has failed to properly maintain the system and allowed it to deteriorate. (4) Has failed to perform in accordance with a memorandum dated February, 1986, between it and BBWC. (5) Has failed to use revenue from timber sales on watershed lands to support Utility's operations. BBWC seeks an order requiring Utility to remedy the complained of matters.

Because of interrelated subject matter the four proceedings were consolidated for hearing. A duly noticed public hearing was held by Administrative Law Judge Donald B. Jarvis in Santa Cruz on January 6, 7, 8, 1987. These matters were submitted subject to the filing of briefs and transcript which have been received. After the hearing, BBWC filed a request for Finding of Eligibility for Compensation to which a response was filed.

I. Material Issues

The material issues presented in these consolidated matters are: (1) Is assessor's Parcel 083-251-71 (Parcel 71) necessary or useful to Utility in the performance of its duties to the public? (2) Should the Commission authorize McGranahan and McPherson to transfer Utility to Corporation if the property transferred does not include Parcel 71? (3) Should Associates be authorized to acquire Utility in a transaction which does not include the transfer of Parcel 71 or in any other transaction? (4) Should the Commission authorize Utility to enter into a contract

with DWR for a SDWBA? (5) Has Utility violated any provision of law or any rule or order of the Commission? (6) If violations have occurred, what relief, if any, should be granted BBWC? (7) Is BBWC eligible for compensation?

II. Statement of Facts

Utility provides public utility water service to 500 customers in an unincorporated area of Santa Cruz County. It also conducts operations as a sewer system corporation under the name of Big Basin Sanitation Company (Sanitation Company) to serve 22 customers in a small tract within Utility's service area.

Utility was formed by Harold G. Hilton who caused the incorporation of Big Basin Water Company, a corporation which is now defunct. The now defunct corporation was granted a certificate of public convenience and necessity to operate as a water corporation and to issue stock in D.36071 in A.24996, dated December 29, 1942. Parcel 71 was included in the authorized service area.

In 1959, Hilton was the sole remaining director of the now defunct corporation. On August 28 1959, Hilton and others sold Utility and other non-utility holdings to McGranahan and McPherson. The agreement provided for the payment of $350,000 for the non-utility property. It also provided that:

> "The total purchase price of said water company and lands incident thereto, said lands incident to said water company being outlined in red on Exhibit B attached hereto and made a part hereof, shall be the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS ($160,000.00) lawful money of the United States of America, ..."

Parcel 71 was included in the area outlined in red on Exhibit B attached to the agreement. This transfer was never submitted to or approved by the Commission.

After McGranahan and McPherson acquired Utility they conducted its operations under a corporation called Basin Way Water Company, which is now defunct. In D.74990 in A.50665, dated November 26, 1960, the Commission authorized Basin Way Water Company to sell Utility and related assets to McGranahan and McPherson as copartners.

On October 10, 1975, a subdivision known as Galleon Unit I was added to Utility's service area. At that time Galleon Properties, Inc. (Galleon) conveyed certain improvements to Utility, which included Galleon Wells No. 1 and 2, a 325,000-gallon tank, pumps, lift stations, etc. The conveyance provided for a 59-year option for Galleon to repurchase the contributed water system under certain conditions. The conveyance and option for repurchase was executed for Galleon by W. D. Nugent (Nugent) the General Partner of Associates.

D.85934 dated June 8, 1976 prohibited Utility from using water from wells contributed by Galleon to serve areas outside of Galleon Heights Subdivision Unit 1, pending the granting of licenses to appropriate water by the State Water Resources Control Board (SWRCB).

In 1976 and 1977 some of Utility's customers became concerned about the adequacy and quality of its water supply. The concerns stemmed from instances in which DHS had required Utility to publish warnings that its water had failed quality tests, the drought which occurred at that time and a contract between Utility and Galleon which gave Galleon priority over existing customers.

On March 2, 1979, some of its customers filed a complaint against Utility - C.10725. The complaint was consolidated for hearing with A.60139, in which Utility sought authority to enter into water contracts with Galleon and others. The matters went to hearing. During the hearing the parties entered into a stipulation, which was adopted by the Commission and became the basis for the order in D.93732 dated November 1, 1981. The

stipulation occasioned the dismissal of C.10725. The stipulation included the following items:

1. The parties to the stipulation were Utility, the Commission staff (Staff), Galleon, Nagilluc, Inc. (Nagilluc), the Big Basin Water Protective Association and DHS.

2. Galleon was the developer of the Culligan Unit 6A condominium units and the unconstructed Galleon Units 2 and 3. Nagilluc was the developer of the unconstructed Culligan Unit 7.

3. Utility had not committed itself to supply water to the new Galleon and Nagilluc units because of a DHS order restraining the issuance of a "will serve" commitment. Without such commitment the county would not permit construction of new homes or the occupation of newly constructed but vacant homes. Several agencies felt Utility had not shown water supply or water storage capacity adequate to serve even its present customers.

4. To resolve the problem, Galleon contributed the Galleon No. 4 well and associated easements, etc., to Utility, which agreed to make certain improvements at Jameson and Corvin Springs before August 1, 1981, and to provide DHS with data to permit evaluation of the reliable production of its sources of supply. Utility agreed to annex Galleon units 2 and 3 to its service area. DHS agreed to issue a revised water use permit. Galleon and Nagilluc also agreed to reduce the planned number of units to be constructed, to provide additional sources or to do a combination of both.

5. Utility was required to produce data to DHS including records of production metering for each spring and each well, monitoring data for the usage of each source in hours per week, influent turbidity, and finished water turbidity.

In April 1981, McGranahan and McPherson asked some of the principals of BBWC if a way could be found for the customers to acquire Utility. Nothing came of the suggestion at that time. Proposition 28 in 1984 enabled the enactment of the SDWBA. In December 1984, BBWC called a meeting which was held on January 8, 1985, to discuss whether the provisions of the SDWEA could be utilized to solve the problems of Utility. In the course of the meeting it was suggested that the customers seek to acquire Utility and efforts were begun to explore this possibility.

On March 2, 1985, DHS directed Utility to complete four items in order to bring its system in compliance with health standards.

On September 12, 1985, McGranahan and McPherson entered into an option agreement with BBWC in which they agreed to sell Utility to BBWC for $250,000. The utility property specified to be transferred under the option included Parcel 71. BBWC filed an application for a SDWBA loan. The loan was to be used to finance the purchase of and to improve the system. In the course of applying for the SDWBA loan, BBWC was advised that DWR preferred to deal with corporate entities. BBWC then caused the formation of a wholly owned corporation called Sequoia Glen Water Service (Sequoia Glen), which took over the processing of the loan application and would have been the entity to which Utility would have been transferred if the option had been exercised.

As indicated, Utility also operates Sanitation Company. It is subject to regulation by the State Water Resources Control Board (SWRCB) which issues Waste Discharge Orders dealing with the discharge of wastewater from treatment plants. Since 1983, Sanitation Company has been in violation of waste discharge orders, the most recent of which was Order No. 8564, dated May 10, 1985. BBWC decided that if it acquired Utility and also had to acquire Sanitation Company it would not have the resources to bring Sanitation Company in compliance with the outstanding waste

discharge orders. BBWC unsuccessfully sought modification of the option. The option was not exercised and lapsed on December 11, 1985.

McGranahan, who is 76 years old, and McPherson, who is 84 years old, desire to sell Utility and rid themselves of public utility obligations. In February 1986, after BBWC failed to exercise the option, McGranahan and McPherson contacted Nugent and asked him if he were interested in buying Utility. Nugent testified that:

> "I then told them, 'I don't know if I can develop a formula for getting it and putting an opportunity to buy this water company together. However, let me go home and talk it over with my family. And let me see if I can come up with some methodology.'
>
> "I went home and I put my wife and my two sons and myself in a room and represented to them just what was going on; that McGranahan had asked if I could put together the purchasing of the water company. My wife's response was, 'God. Don't start this all over again. Carlson and McMillan will make your life absolutely hell for the next ten years, just as they've done for the past 15 years.'"
>
> * * *
>
> "But it did provide one thing that was interesting to me--that interested me. It was a way for me to continue to earn a living in this community and it was a way to serve--to continue to what I felt was to serve the people with my experience and my ability.
>
> "But I still had the problem of operating capital and acquisition money. I called several business associates that I had been with and I said, 'Look guys, do you want to invest in the water company?' They said, 'Bill, you're crazy. Nobody wants to invest in that water company. Specifically one with the history of Big Basin.'

> "I said, 'Suppose we can purchase the 612 acres separately and put that in another limited partnership, would you then be willing to put up the operating capital and acquisition money, realizing that you probably will never earn a profit on your investment in the water company, but maybe you will eventually reach 11 percent? But whatever the rate is fixed, that's what you'll get. If it's 11 percent--and that varies. Sometimes it's 8 percent.'
>
> "They said, 'Come down and show us what your program is.' And I said, 'The most we could hope for out of this 612 acres is that in another four years it can be logged again. We may derive some revenue from that. And it has the ultimate potential that it could possibly be divided into 40-acre parcels.'
>
> "They said, 'All right. On that basis, if we can own the 612 acres separately, we can expect a 50 percent return on our invested capital.'
>
> "By that, I mean half of the 11 percent. Because my thing was to take half." (RT 364-66.)

This was the genesis for the transaction for which approval is sought in A.86-04-021.

The complaint, C.86-03-029 was filed on March 17, 1986. The application for authority to transfer Utility from Corporation to Associates, A.86-04-021, was filed on April 9, 1986. When McGranahan and McPherson realized that the assets of Utility had not been transferred from their copartnership by the purported transaction of March 11, 1985, they filed A.86-04-059 on April 29, 1986, seeking authority for such transfer. The application requesting authority to enter into a SDWBA loan contract, A.86-10-071 was filed on October 21, 1986.

III. Positions of the Parties

A. A.86-04-059

McGranahan and McPherson contend that they should be allowed to transfer Utility to Corporation. They argue this will facilitate the SDWBA loan and the proposed sale to Associates. They argue that the attempted transfer on March 11, 1985, was due to ignorance of the requirement of prior authorization by the Commission. Associates support this position.

The Commission's Evaluation and Compliance Division, Water Utilities Branch (Branch), BBWC and DHS oppose the granting of the application unless the property transferred to corporation includes Parcel 71. They contend that Parcel 71 is utility property which is watershed property that is used and useful in the operations of Utility.

McGranahan and McPherson rejoin that they never dedicated Parcel 71 to public utility use and they need not transfer it to Corporation.

B. A.86-04-021

Since Parcel 71 is not included in the proposed transfer to associates, the parties take positions similar to the ones taken on A.86-04-059. In addition, Nugent, the general partner of Associates, indicates that if Parcel 71 cannot be acquired as nonutility property there is no financial incentive for Associates to acquire Utility. Branch also opposes granting the application because Nugent refuses to disclose the names of the limited partners of Associates.

C. A.86-10-071

All parties agree that a SDWBA loan is the only means, under present circumstances, by which funds can be provided for Utility to improve the system and furnish adequate and potable water to its customers. The real issue is whether the resolution of A.86-04-059 permits Corporation to be the appropriate entity to

enter into the loan contract with DWR. BBWC also questions the method of applying the surcharge to service the loan.

D. C.86-03-029

BBWC contends that Utility has failed to carry out improvements provided for in the stipulation provided for in D.93732, has failed to comply with orders of DHS, does not provide safe quality water and has allowed the system to deteriorate.

Utility argues that some improvements provided for in the stipulation were made. Others became unnecessary because they were based on the assumption that many more customers would be served by Utility. The additional customers never materialized because proposed subdivisions failed to receive authorization. Utility also asserts that other contemplated or acquired improvements could not be made because it did not have the money.

BBWC responds that money would have been available if Utility had applied timber harvest revenues from Parcel 71 toward utility purposes and sought timely increases in rates.

E. Compensation

BBWC contends that it meets the tests for compensation set forth in Rules 76.5 et seq. It seeks compensation in the amount of $16,511.50.

Utility contends that none of the items used as a basis for requesting compensation come within the tests set forth in Rules 76.54 et seq. and the request should be denied.

IV. Discussion

A. Parcel 71

The status of Parcel 71 is a pivotal issue in these proceedings. It is relevant to whether A.86-04-021 and A.86-04-059 should be granted.

Utility contends that the fact Parcel 71 was owned and conveyed to McGranahan and McPherson by a water company many years

ago does not make it Utility property. It is argued that McGranahan testified that he and his partners never intended Parcel 71 to be part of Utility when they acquired it. Thus, Parcel 71 was never dedicated to the public use and the Commission has no jurisdiction over the use or sale of the parcel.

Utility's argument has no merit. We need not dwell on the cases which analyze what constitutes evidence of dedication because the record is clear that the original Big Basin Water company, now defunct, had dedicated Parcel 71 to the public use. As indicated, Parcel 71 was included in the "water company and lands incident thereto" sold to McGranahan and McPherson in 1959 for $160,000. If at that time they harbored a secret, unarticulated intent not to keep Parcel 71 as utility property this could not change the character of the property.[1] Only a finding by the Commission that property dedicated to the public use was no longer necessary or useful for utility purposes would permit unfettered use or disposition of the property. To permit after dedication, an owner or subsequent owner of utility property to unilaterally "undedicate" the property would be destructive of regulation. It is contrary to law.

The record also indicates that on at least two occasions Utility treated Parcel 71 as dedicated utility property. In its request for a general rate increase in 1977, the Commission included the taxes paid on Parcel 71 as a reimbursable item. Parcel 71 accounted for $4,818 of $5,724 total property taxes paid by Utility for 1976-77. Also, Parcel 71 was included in the

---

1 There is also a question of whether, under real property and contract law, McGranahan and McPherson are estopped from challenging the description of the nature of the property which they acquired in an agreement in which they freely entered as parties. Since we rest our findings on regulatory law it is not necessary to pursue this point.

property to be transferred under the option to BBWC, which was never exercised.

Having determined that Parcel 71 is dedicated to the public use we turn to the question of whether it presently is necessary or useful for Utility in the performance of its duties to the public.[2]

Utility argues that many water companies do not own the land which comprises their watershed. Thus it is not necessary to find that watershed land is necessary or useful to the service provided by Utility.

The question of whether specific property is necessary or useful is one of fact to be determined by the evidence presented in each proceeding.

Commingled with the arguments on whether Parcel 71 is necessary or useful to Utility are ones dealing with the assertion that watershed lands can be severed from a utility and protected by deed restrictions. These arguments do not go to the question of whether property is necessary or useful. They relate to the question of whether the Commission should exercise its jurisdiction and discretion under PU Code § 851 and authorize the transfer of necessary and useful property from a utility for nonutility purposes with restrictions to protect and continue the necessary or useful features to the service provided by the utility. Questions relating to deed restrictions will be considered in the discussion of the relevant applications.

Is Parcel 71 necessary or useful to the service provided by Utility? A senior sanitary engineer for DHS testified that:

> "The Department considers this parcel APN 083-251-71, to be an integral part of the water

---

2 Some of the reported cases and the parties use the terms "used and useful". PU Code § 851 uses the language "necessary or useful." Consideration of issues and findings will be made in accordance with the statutory language.

> system. This parcel is within the current service area of [Utility]... This parcel of land is the watershed that directly contributes to all the spring sources. Spring sources are upstream from the diversions and are in Assessor's Parcel No. 083-251-071. Any activity on this watershed land will effect the water quality and quantity at the BBWC [Utility] diversions. Currently, the watershed has been relatively undisturbed and is in a natural condition producing relatively good raw water quality." (Exh. 16, p. 1.)

The sanitary engineer testified that DHS considered Parcel 71 an "integral part" of Utility and that the water supply permit was issued on that basis to Utility.

He further testified that:

> "If conditions change with regard to the watershed, the Department is obliged to re-evaluate the conditions of the permit with respect to the treatment processes provided. It may be necessary to require increased treatment and reliability in view of loss of control of the watershed. The Department considers that the control of the watershed is a more reliable situation than the construction and generation of high-technology water treatment facilities. For this reason, the Department recommends against the transfer of ownership without the inclusion of APN 083-251-71." (Exh. 16, pp. 1-2.)

The evidence also indicates that Utility obtained water rights from SWRCB in Decision 1482, dated June 15, 1978. Parcel 71, the watershed, was encompassed in the decision granting the water rights.

The overwhelming weight of the evidence compels the finding that Parcel 71 is necessary and useful to the service provided by Utility.

B. A.86-04-059

A.86-04-059 is the one in which McGranahan and McPherson seek authority to transfer Utility to Corporation. Ordinarily, an

application to change the form of ownership of a water company from a partnership to a corporation in which the partners own all of the stock is a routine one which often receives ex parte treatment. A.86-04-059 is not routine because it seeks to exclude Parcel 71 from the assets to be transferred.

It has been determined that Parcel 71 is dedicated to the public use and is necessary and useful to the service provided by Utility.

Utility argues that the Commission should approve the application because the watershed use of Parcel 71 can be protected by deed restriction. Furthermore, if Parcel 71 is not excluded in the transfer to Corporation it would frustrate the transaction for which authority is sought in A.86-04-021.

The question of deed restrictions was not litigated during the hearings. Utility's position at that time was that Parcel 71 was not Utility property and that the watershed thereon would be protected by county zoning and timber harvesting regulations. The proposal for deed restrictions was presented in Utility's opening brief. This came about as a result of the events next described.

At the conclusion of the hearing the Presiding ALJ stated:

> "We now come to the end of the hearings on the merits. There are some observations that I wish to make--and I do not wish to make any specifics in these observations--and leave to the parties the possibility that during the time we have scheduled for transcripts and briefing that perhaps ingenuity of counsel on all sides, and appearances who may not be counsel, can perhaps address the problem in a way that is mutually satisfactory, which is a lot better than having me come down with some sort of resolution that may not be acceptable to anybody."

* * *

"A critical issue is the question as to whether or not Parcel 71 is part of the useful property of the utility.

"I express no opinion at this point as to how we will decide on the evidence because there's a lot of things in evidence.

"Mr. Nugent has testified that the only way in which he could put together the financing to take over the utility was to separate the two parcels--there's more than two parcels--but to separate 71 from the rest of the utility.

"Now, the main objection to severing 71 from the utility has to do with protection of watershed. And there are various arguments about that, as to whether or not the zoning ordinances adequately protect [it].... And I won't comment on that.

"But if the matter has to be decided on the law, these are the issues that are involved.

"If there are cogent reasons locally--obviously, there's background here. Perhaps, fortunately, I haven't been involved in this background.

"If there are cogent reasons for transfer of the system, aside from how I have to apply the law in this matter on a given record, it may very well be that if there were some ingenuity of counsel during the briefing period--I'm not going to enlarge this--as to a satisfactory way upon which the parties might agree to the division of 71 from the rest of the property, in order to protect the watershed aspect of it, then a stipulation might be entered into as to how this might be done. And I would be prepared after the hearing to receive such a stipulation within the time limit of the preparation of transcript and briefing.

"Now, there being no stipulation to that effect--and I'm not trying to lean on anybody to make such stipulation--I'm going to have to decide it on the record as it exists and as briefed." (RT 418-21.)

Based on the ALJ's remarks, the parties attempted to arrive at a stipulation with respect to Parcel 71, but were unsuccessful. It appears that in the course of the discussions deed restrictions were proposed by Utility and Associates but were rejected by Branch, DHS and BBWC.

Utility argues that deed restrictions are an appropriate way to protect watershed property and allow such property to be transferred for otherwise nonutility use. It cites Angwin Water Co. (1973) 75 CPUC 292, in support of this proposition. Branch contends that Angwin is distinguishable from the present facts in that the watershed land there involved was never used exclusively for public utility purposes. Furthermore, Branch asserts that the specific deed restrictions proposed by Utility do not adequately protect the watershed or its customers.

Clearly, Angwin does not support the proposition that whenever a utility desires to sell or transfer watershed lands which it owns for nonutility use it must be permitted to do so if the watershed lands are protected by deed restrictions.

In Angwin the Commission stated that:

> "There is no evidence that the watershed was ever used exclusively for public utility purposes. The record indicates that, also to the contrary, it has been continuously used for general purposes. There does not appear to be any basis now to require that fee title of the land be conveyed to the utility. (Del Mar Water, Light, & Power Co. v. Eshleman (1914) 167 Cal 666, 679-680; Allen v R.R. Comm. (1918) 179 CL 68,89.) All that is reasonably required is that the watershed be kept available for its historic purpose to provide runoff to the reservoirs.
>
> "We are persuaded that applicants' proposal that the watershed be protected by suitable deed restrictions is reasonable, and we will not require conveyance of the watershed lands, in fee, to Silverado lakes. Nor will we accept the condition that the proposed covenant running with the land be subject to

> modification with the approval of the Commission, the Department of Public Health, or any other governmental agency. The use of the lands as a watershed should be secure and should not, from time to time, be the subject of proceedings before various governmental bodies, to the consternation of the customers of the utility." (75 CPUC at p. 301.)

Parcel 71 has always been used exclusively for watershed purposes, with some logging, which is consistent with these purposes. Angwin is distinguishable from the facts here presented.

We turn to the question of whether the Commission should authorize the transfer of Utility without Parcel 71 with the specific deed restrictions proposed by Utility.

The record clearly shows that we are dealing with a utility which has been beset with water quality and supply problems over a period of many years. In the circumstances, the Commission's duty is to protect the water supply for the benefit of Utility's customers.

The proposed deed restrictions are attached to Utility's Opening Brief. These restrictions are flawed in the following respects:

1. Utility propose a "Quitclaim Deed Re: Covenants Running with the Land" executed by McGranahan and McPherson be recorded against Parcel 71 to assure protection of the watershed. Since it has been determined that Parcel 71 belongs to Utility, McGranahan and McPherson would have to in fact own Parcel 71 before they could quitclaim any rights over that land.

2. The proposed covenant allows for no residential development on Parcel 71 until Utility's spring sources are completely replaced by well sources. The covenant calls for a test of a new well source "immediately" upon completion of construction. An "immediate" test of a new well may not be definitive as to that well's capability and reliability. Several well tests over a period of time would be a

better alternative. Furthermore, spring sources currently are a proven supply of water for Utility. It can be implied from the proposed covenant that the proposed purchasers of Utility hope to switch the company to well sources so that residential development can occur on Parcel 71, the critical watershed for the existing spring sources. There is evidence that it is improbable that an adequate ground water supply could be found in that area.

3. After the new well sources are certified as satisfying current government requirements, the proposed covenant allows Utility to convey the interests created by the covenant in Parcel 71 to the fee title owner of Parcel 1 "without further regulatory approval". This provision is in violation of Public Utilities Code § 851 which requires that the utility obtain Commission approval before disposing of any useful utility property. The proposed covenant admits that the utility has some interest in Parcel 71. Therefore, before disposing of the rights the proposed covenant gives the utility over Parcel 71, the utility would have to once again come before the Commission for approval.

The proposed deed restrictions do not adequately protect the rights of Utility's customers and should not be approved.

There are reasons why McGranahan and McPherson might wish to transfer Utility to Corporation even if Parcel 71 is required to be included. A.86-10-071, the SDWBA loan application was filed by Corporation. It appears that such a loan is the only way monies can be obtained to improve the system so it will provide adequate service. Failure to pursue such a loan could put the parties at risk in proceedings before this Commission, the DHS and SWRCB.

Rather then deny A.86-04-059, the Commission will approve the transfer of Utility to Corporation with the express condition that Parcel 71 be included in the assets transferred.

C. A.86-04-021

This application seeks authority for the transfer of Utility from Corporation to Associates.

Branch contends that before the transfer can be authorized Associates should be required to divulge the names of the limited partners.

The proposed general partner, Nugent refused to provide the information regarding his limited partners who will own 50% of the Utility stock. At the hearing, Nugent divulged financial information regarding himself, stating that he thought Branch knew his own assets were insignificant. His reasoning for not divulging the names of his limited partners was that they would back out of the deal if they were subjected to any publicity.

The people of California have a right to know who owns their public utilities. In the case of a limited partnership it is important to know the identity of the limited partners to determine:

1. Whether they are passive investors interested in potential income from a utility or developers who are interested in expanding the utility to serve future development, which might, on occasion, conflict with the interests of existing customers.

2. Whether they have the capacity, beyond their limited initial investment to provide additional capital if the need later arises.

The Commission has the authority to require applicants to furnish such information. (Rule 15(c).) It has not hesitated to require the disclosure of self-proclaimed confidential information in connection with the consideration of applications to transfer utilities or their property. (Raymond L. Smith, D.86-12-051 in A.86-08-041, slip decision, Findings 15, 16.)

We need not dwell on the disclosure issue because the point next considered is determinative.

Nugent testified that the proposed transfer and acquisition of Utility is dependent on Parcel 71 being acquired as nonutility property so a profit could be made on that portion of the transaction. The same reasons which caused us to refuse to allow Parcel 71 to be transferred as nonutility property in A.86-04-059 are applicable here. Since no related matters turn on this application, it should be denied.

D. A.86-10-071

This application seeks authority for Corporation to execute a SDWBA loan contract with DWR.

Corporation proposes to borrow $1,126,840 to finance improvements in Utility. It proposes to increase water rates by approximately 71%, to produce $6,309 a month, by means of a surcharge on water bills. The 71% surcharge would result in an increase of approximately $11.15 per month for the average residential customer with a 5/8"x3/4" meter or 3/4" service. Water rates of customers with larger meters would be increased proportionately in relationship to the capacity of their meters.

As indicated, all parties favor the granting of the application. The only issue raised in connection with the application is the proposed ratespread on the surcharge.

One customer, who owns a timber farm, testified that he presently has a 2" meter which he uses for fire protection and domestic water use. His main line which goes into the forest is 2" and he has 5 fire hydrants at 500' intervals. A 5/8" meter is sufficient for his domestic needs. The proposed surcharge rate schedule would cost him approximately $1,070 per year, causing him to go to a 5/8" meter. This would diminish local fire protection. BBWC also expressed concern about the surcharge on larger meters.

A Commission Financial Examiner IV was called as a witness by Branch. He testified that:

"The policy of computing the surcharge, based upon the capacity of the meter size or the ability for that particular customer to receive water when they turn on their system, or the size of the water service, is directly involved with the whole nature of those loans, basically, that have been made to small water systems.

"A number of the small water systems are geographically located in a remote areas of California. Some of them are inhabited on a year-round basis. But some of them are inhabited as a recreational or resort area.

"Now, basically, this program was designed to help those systems. And it was to improve and make plant improvements that were going to affect every user, whether they use the water or had the ability to use it only when they were there as vacationers or when they rented their facilities to their tenants ...

"So the policy was set to use--if the system was metered, to use the capacity of the meter as a gauge in which to charge the money that it would be repaying; the principal [and] interest."

* * *

"Substantially, most of the customers of Big Basin are resident users, if not all. But 23 of them have a one-inch meter. And in checking with Mary Haber, the administrative person for the company, I find some or many of these one-inch meters are for the common area of the condos.

"Now, this one-inch requirement is that they're going to be using more water or typically using water on a frequent basis or a demand basis where they want to have a one-inch flow. The four, two inch meters that exist, she identified as large lot holders."

* * *

"So I think that we don't have an unusual system in Big Basin.

> "I think from just the economics of the area on a broad basis, the people in the units that are using the larger services can financially afford to use the computation that I've recommended. And I think that would be fair to everybody involved that we not change and make an exception, as policies in a regulatory body have set. Once you have an exception, then the next resorter we talk to, they're going to be using the exception when they don't have all the information that possibly applies.
>
> "So when you're talking about 23, one-inch meters for common areas, that is not unreasonable that they pay a higher proportion in the share of the plant improvement program." (RT 408-10.)

The Commission is of the opinion that under the facts presented no good reason has been shown to deviate from the policy of calculating SDWBA loan surcharges, where a system is metered, on the capacity of the meter.

The financial examiner also recommended that Corporation adopt a service fee to be levied against owners of vacant or undeveloped lots when they are connected to the system. Monies collected would be applied to the repayment of the loan. This proposal is reasonable and will be adopted.

A.86-10-071 will be granted. We note, however, that unless Corporation acquires Utility in accordance with the conditioned approval granted in A.86-04-059, it will not be able to contract for the loan.

E. C.86-03-029

The matters alleged in the complaint deal with Utility's failure to maintain water quality standards on a consistent basis, failure to maintain the system thereby endangering the water supply, failure to follow DHS orders and failure to follow the stipulation approved in D.93732.

To the extent any of the alleged violations have been established in this record any meaningful order issued by this

Commission, to be enforceable, would have to be based on Utility having the financial ability to carry out the order.

BBWC's argument that Utility should have filed timely applications for rate increases over the years may be correct, but it does not lead to a fund presently in existence which could be used to carry out the mandates of a Commission order. We note however, the pendency of A.86-10-030, an application by Utility for an increase in rates which has been held in abeyance pending the adjudication of these matters.

Assuming arguendo, that monies derived from timber harvesting on Parcel 71 should be accounted for, and applied to finance the requirements of a Commission order, this would not materially help the situation. The record indicates that the amount of timber harvest revenue for Parcel 71 was not more than 15% of the total timber harvest revenues received by McGranahan and McPherson in connection with overall harvesting. There were no revenues from 1960 to 1979. From 1980 to 1986 there was a total of $144,175 received of which a maximum of $21,626 could be allocable to Parcel 71, if there are existing monies which can be reached. The pending rate proceeding, A.86-10-030 would appear to be a better forum in which to resolve this issue.

The most sensible and practical solution to the problems raised by the complaint would be to put in place the improvements contemplated by the SDWBA loan. We shall, at this time, grant no relief on the complaint. To order specific items of repair or construction could conflict with the overall plans for rehabilitating and improving the system. However, we will retain continuing jurisdiction over the complaint. If the authority to execute the SDWBA loan contract is not exercised, BBWC may request further hearings in seeking an appropriate order.

F. Compensation

BBWC contends that is entitled to an award of $16,511.50 for compensation under Rules 76.53 et seq. Analysis of the request indicates that it does not meet the requirements for an award.

The request for compensation was filed after the hearing. The Request for Finding of Eligibility for Compensation makes two allegations on the question of hardship: (1) BBWC has received no grants. (2) It borrowed $14,350 from 107 customers and Boulder Creek Country Club which were expended in the unsuccessful attempt to purchase Utility. There is no showing about the economic circumstances of the BBWC and whether its members would suffer hardship if they contributed money for its operations and activities. Two of the three witnesses who testified for BBWC had the following background: (1) Former treasurer of the Farmers Insurance Group, presently vice-chairman of the board of Twentieth Century Insurance Company and public accountant. (2) Retired staff member of the Bank of America who had worked in the bank's foreign department and in its securities division.

BBWC states:

> "The COMMITTEE has received no grant funds from any source. Its operations have been carried out with funds obtained on loan from 107 customers and from the Boulder Creek Gold and Country Club, which is also a customer of the water company. The loans were obtained in anticipation of repayment through obtaining a State Loan under the 1984 Safe Drinking Water Bond Law for purchase if the water company and for rehabilitation of the water system.
>
> "Efforts to buy the company fell through and the State Loan was transferred to the company for execution, thus depriving the COMMITTEE of any way to repay the loans. This request is made to seek the funds needed to repay the loans.
>
> "The finances of the COMMITTEE have been as follows:

Loans from 107 customers	$11,250
Loans from Boulder Creek Country Club	3,100
Total	$14,350"

None of these consolidated proceedings involve in any way the purchase of the water system by BBWC. The purpose for which those funds were obtained by BBWC has nothing to do with these matters. Therefore, the monies lent have not contributed in any way to a result to be reached by the Commission in these proceedings, let alone a "substantial contribution" in a matter that may influence or affect a rate as contemplated by Rule 76.52(g) and Rule 76.51. Furthermore, the record indicates that the BBWC application for a SDWBA loan was not transferred to Corporation, which filed its own application. A finding of hardship cannot be based on these facts.

BBWC seeks compensation for the following:

"1. Conduct of an opinion poll to determine the customers' priority ranking of options for taking over the water company.

"2. Negotiation of an option for purchase of the company.

"3. Formation of Sequoia Glen Water Service Inc. to handle customer ownership and operation of the water system.

"4. Preparation and submission of a loan request under the 1984 Safe Drinking Water Bond Law to repair and improve the system, using the Sequoia Glen Water System as the corporate vehicle for the loan application.

"5. Preparation of a plan to fix up a small sewer system embedded in the company for transfer to Santa Cruz County, in order to satisfy Order 85-64 of the Regional Water Quality Control Board.

"6. Working with the State Department of Health Services to obtain a permit for

operation of the water system in the name of the Sequoia Glen Water Service, Inc.

"7. Analysis of the facilities and operation of the water and sewer systems by field trips and meetings with the local manager.

"8. Preparation and filing of a complaint against the Big Basin Water Company (Docket 86-03-029) on March 15, 1986.

"9. Review of Applications 86-04-021 and 86-04-059 and the preparation of comments thereon for distribution to all parties.

"10. Review of Application 86-10-071 and the preparation of comments thereon for distribution to all interested parties.

"11. Research into the history of ownership of the lands and facilities of the water company, with special reference to the watershed lands and to leading prior decision by the PUC.

"12. Development of relevant history of the water company's compliance with State Health Orders.

"13. Consultation with Santa Cruz County agencies on matters relating to operation of the water company, its sewer system, and its timbering of water company property.

"14. Preparation and distribution to all of the water system customers a total of six Newsletters to keep them informed on key issues and on progress toward system improvements.

"15. Preparation of testimony for the PUC hearing on January 6, 7, and 8, 1987 in Santa Cruz.

"16. Participation in the PUC hearings accompanied by the COMMITTEE counsel."

Assuming arguendo, that a finding of hardship could be made, none of these items qualify for compensation for the reasons which follow.

Conducting an opinion poll regarding options for taking over Utility contributed nothing whatsoever to the present proceedings since none of the applications is the result of any effort of BBWC. The negotiation of an option for purchase of Utility has no bearing on these proceedings inasmuch as that option lapsed. The formation of Sequoia Glen is immaterial to these proceedings inasmuch as that corporation is not an applicant in these proceedings and has had no role whatsoever in these proceedings. The preparation and submission of SDWBA loan request which came to nought cannot be said to contribute in any way to modification of a rate or establishment of a rule that may influence a rate, as contemplated by Rule 76.51.

The plan prepared by BBWC to fix up a Utility is not being used by applicants who have devised a different method of bringing the sewer system up to required standards. Obtaining a permit for operation of the utility by Sequoia Glen was of no benefit whatsoever to the public inasmuch as it is not an application for authorization to acquire the water system. Analysis of facilities and field trips by the BBWC was of no benefit whatsoever. It submitted no exhibits or expert testimony regarding operation of the water system.

The mere filing of a complaint does not help qualify the BBWC to receive compensation for a substantial contribution within the contemplation of Rule 76.52(g), nor does the mere distribution of comments regarding the applications qualify BBWC under Rule 76-52(g).

Review of A.86-10-071 for the increase in rates required by the SDWBA loan does not qualify the BBWC for compensation. BBWC made no substantial contribution regarding that application.

Research into the history of ownership of lands was performed by Branch and the results are found in the Exhibit No. 6. BBWC brought forth no information which the Branch did not produce.

Development of history of the water company's compliance or noncompliance with DHS orders had a bearing on the complaint, but made no substantial contribution toward modifying a rate or establishing a fact or rule that may influence a rate, as required by Rule 76.52(a). Consultation with Santa Cruz County authorities had no bearing on modifying a rate or establishing a fact or rule that may influence a rate, especially where, as in these proceedings, the BBWC produced no evidence in that respect.

Distribution of newsletters is no contribution toward establishing a fact or rule that many influence a rate, nor is preparation of testimony for the hearings justification for compensation since BBWC presented no evidence to establish any fact or rule that may influence a rate. And, participation with counsel in itself does not justify compensation where none of the other criterion has been met.

An award of compensation to BBWC is not appropriate under the facts presented and none will be granted.

Comments

The administrative law judge filed his proposed decision in this proceeding on September 25, 1987. Corporation filed comments to the proposed decision on October 14, 1987.

The comments call attention to a typographical error relating to the number of shares of stock proposed to be issued. This error, along with others we have discovered, is corrected in this decision.

The other, and primary point raised by the comments is that the basis for calculating fees and fee required under PU Code § 1904.1 is incorrect. The controversy is over the value of the property being transferred for the stock.

Exhibit 13 was introduced in evidence by Corporation. On page 3, Corporation's valuation expert stated the following:

> The total utility plant, net plant and book value based on original cost as of December 31, 1986 is calculated from the figures developed in this exhibit as follows:

Utility Plant		
Land	$65,000	
Other Equity Plant	109,850	
Contributed Plant	91,392	
Total Utility Plant		$266,742
Depreciation Reserve		115,491
Net Plant		$151,251
Less:Contributed Plant		50,618
Book Value		$100,633

These figures do not include Parcel 71 and contributed plant.

However, the following tabulation appears at page 4 of the exhibit.

> The total original cost of all water system contributed plant and the depreciated value of this plant are summarized in the following tabulation.

	Contributed Plant		
	From D.74990	1982 Addn's	Totals
Original Cost	$91,392	734.628	826,020
Balance			
As of 12/31/82	59,202	734,628	793,830
1983 Accruals	2,146	14,693 *	
1984 Accruals	2,146	14,693 *	
1985 Accruals	2,146	14,693 *	
1986 Accruals	2,146	14,693 *	
As of 12/31/86	50,618	675,856	726,474

* At 2.0% (50 year life).

It was the figure from this tabulation which was used by the administrative law judge as the base figure for the calculation.

Corporation contends that the base figure for calculating the value of the stock should exclude contributed plant because it is excluded from rate base for rate making purposes. While this is true, contributed plant creates an element of value in other situations. For example, in just compensation proceedings the condemnee often asserts this as an element of value. In Case (C.) 9902 (Water Main Extension Rule (1982) 7 CPUC 2D 778) the Commission entered Conclusion of Law 1, which held that:

> "1. The question of the proper compensation to be awarded for contributed plant to be acquired by a public agency through condemnation should be decided on a case-by-case basis and should not be ruled upon in this proceeding." (7 CPUC 2d at p. 797.)

Contributed plant may be an element in whether a premium over rate base is found in a just compensation proceeding.

Since contributed plant may have value for purposes other than rate making the administrative law judge properly included it in the base figure for calculating the value of the property being transferred for the issuance of stock. He also properly included the value of Parcel 71. In the circumstances the fee provided for under PU Code § 1904.1 was properly calculated and Ordering Paragraph 14 will not be changed.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Utility provides public utility water service to approximately 500 customers in an unincorporated area of Santa Cruz County. It also conducts operations as a sewer system corporation under the name of Big Basin Sanitation Company (Sanitation Company) to serve 22 customers in a small tract within Utility's service area.

2. Utility was formed by Harold G. Hilton who caused the incorporation of Big Basin Water company, a corporation which is

now defunct. The now defunct corporation was granted a certificate of public convenience and necessity to operate as a water corporation and to issue stock in D.36071 in A.24996, dated December 29, 1942. Parcel 71 was included in the authorized service area.

3. In 1959, Hilton was the sole remaining director of the now defunct corporation. On August 28, 1959, Hilton and others sold Utility and other nonutility holdings to McGranahan and McPherson. The agreement provided for the payment of $350,000 for the nonutility property. It also provided that:

> "The total purchase price of said water company and lands incident thereto, said lands incident to said water company being outlined in red on Exhibit B attached hereto and made a part hereof, shall be the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS ($160,000.00) lawful money of the United States of America, ..."

Parcel 71 was included in the area outlined in red on Exhibit B attached to the agreement. This transfer was never submitted to or approved by the Commission.

4. After McGranahan and McPherson acquired Utility they conducted its operation under a corporation called Basin Way Water Company, which is now defunct. In D.74990 in A.50665, dated November 26, 1960, the Commission authorized Basin Way Water Company to sell Utility and related assets to McGranahan and McPherson as copartners.

5. On October 10, 1975, a subdivision known as Galleon Unit I was added to Utility's service area. At that time Galleon Properties, Inc. (Galleon) conveyed certain improvements to Utility, which included Galleon Wells No. 1 and 2, a 325,000-gallon tank, pumps, lift stations, etc. The conveyance provided for a 59-year option for Galleon to repurchase the contributed water system under certain conditions. The conveyance and option for repurchase was executed for Galleon by W. D. Nugent (Nugent) the General Partner of Associates.

D.85934 dated June 8, 1976 prohibited Utility from using water from wells contributed by Galleon to serve areas outside of Galleon Heights Subdivision Unit 1, pending the granting of licenses to appropriate water from the SWRCB.

6. In 1976 and 1977 some of Utility's customers became concerned about the adequacy and quality of its water supply. The concerns stemmed from instances in which DHS had required Utility to publish warnings that its water had failed quality tests, the drought which occurred at that time and a contract between Utility and Galleon which gave Galleon priority over existing customers.

7. On March 2, 1979, some of Utility's customers filed a complaint against Utility-C.10725. The complaint was consolidated for hearing with A.60139 in which Utility sought authority to enter into water contracts with Galleon and others. The matters went to hearing. During the hearing the parties entered into a stipulation, which was adopted by the Commission and became the basis for the order in D.93732 dated November 13, 1981. The stipulation included the following items:

(1) The parties to the stipulation were Utility, the Commission staff (Staff), Galleon, Nagilluc, Inc. (Nagilluc), the Big Basin Water Protective Association and DHS.

(2) Galleon was the developer of the Culligan Unit 6a condominium units and the unconstructed "Galleon Units 2 and 3." Nagilluc was the developer of the unconstructed Culligan Unit 7.

(3) Utility had not committed itself to supply water to the New Galleon and Nagilluc units because of a DHS order restraining the issuance of a "will serve" commitment. Without such commitment the county would not permit construction of new homes or the occupation of newly constructed but vacant homes. Several agencies felt Utility had not shown water supply or water storage capacity adequate to serve even its present customers.

(4) To resolve the problem, Galleon contributed the Galleon No. 4 well and associated easements, etc., to Utility, which agreed to make certain improvements at Jameson and Corvin Springs before August 1, 1981, and to provide DHS with data to permit evaluation of the reliable production of its sources of supply. Utility agreed to annex Galleon units 2 and 3 to its service area. DHS agreed to issue a revised water use permit. Galleon and Nagilluc also agreed to reduce the planned number of units to be constructed, to provide additional sources or to do a combination of both.

(5) Utility was required to produce data to DHS including records of production metering for each spring and each well, monitoring data for the usage of each source in hours per week, influent turbidity, and finished water turbidity.

8. In April 1981, McGranahan and McPherson asked some of the principals of BBWC if a way could be found for the customers to acquire Utility. Nothing came of the suggestion at that time. Proposition 28 in 1984 enabled the enactment of the SDWBA. In December 1984, BBWC called a meeting which was held on January 8, 1985, to discuss whether the provisions of the SDWBA could be utilized to solve the problems of Utility. In the course of the meeting it was suggested that the customers seek to acquire Utility and efforts were begun to explore this possibility.

9. On March 2, 1985, DHS directed Utility to complete four items in order to bring its system in compliance with health standards.

10. On September 12, 1985, McGranahan and McPherson entered into an option agreement with BBWC in which they agreed to sell Utility to BBWC for $250,000. The Utility property specified to be transferred under the option included Parcel 71. BBWC filed an application for a SDWBA loan. The loan was to be used to finance the purchase of and to improve the system. In the course of

applying for the SDWBA loan, BBWC was advised that DWR preferred to deal with corporate entities. BBWC then caused the formation of a wholly owned corporation called Sequoia Glen Water Service (Sequoia Glen), which took over the processing of the loan application and would have been the entity to which Utility would have been transferred if the option had been exercised.

11. Utility also operates Sanitation Company. It is subject to regulation by the SWRCB which issues Waste Discharge Orders dealing with the discharge of wastewater from treatment plants. Since 1983, Sanitation Company has been in violation of waste discharge orders, the most recent of which was order No. 8564, dated May 10, 1985. BBWC decided that if it acquired Utility and also had to acquire Sanitation Company it would not have the resources to bring sanitation company in compliance with the outstanding waste discharge orders. BBWC unsuccessfully sought modification of the option. The option was not exercised and lapsed on December 11, 1985.

12. McGranahan, who is 76 years old and McPherson, who is 84 years old desire to sell Utility and rid themselves of public utility obligations. In February 1986, after BBWC failed to exercise the option, McGranahan and McPherson contacted Nugent and asked him if he were interested in buying Utility. Thereafter, Nugent caused the formation of Associates which entered into the transaction which is the subject of A.86-04-021.

13. Parcel 71 was dedicated to the public use by the now defunct Big Basin Water Company formed by Harold G. Hilton.

14. Parcel 71 is the watershed that directly contributes to all of Utility's spring sources of water.

15. The water supply permit issued by DHS to Utility was issued on the basis that Parcel 71 was an integral part of Utility.

16. The water rights obtained by Utility from SWRCB in Decision 482, dated June 15, 1978, were based upon the fact that Parcel 71, the watershed, was part of Utility.

17. Parcel 71 is a watershed for Utility. It is necessary and useful to the service provided to Utility.

18. It is not reasonable to approve a transfer of Utility from McGranahan and McPherson to Corporation without the transfer of Parcel 71.

19. It is reasonable to require that as a condition of transfer of Utility from McGranahan and McPherson to Corporation that Parcel 71 be included as part of the property and assets transferred.

20. The proposed deed restrictions offered by Utility to provide for the transfer of Utility from McGranahan and McPherson to Corporation are not reasonable.

21. If McGranahan and McPherson ratify or re-execute the transfer of Utility to Corporation for the issuance of 112,764 shares of Corporation's capital stock, it is necessary for the Commission to issue a certificate of authorizing the issuance of these shares and the payment by Corporation of the fee required by P.U. Code § 1904.1.

For the purpose of determining this fee and not for ratemaking or any other purpose, the value of the amount of stock issued should be deemed to be $860,874. Since A.86-04-059 does not allege the value of the stock, the amount it computed as follows: Exhibit 13, introduced in evidence by Corporation, indicates the value of the assets to be transferred, on an original cost basis is $726,474. This does not include Parcel 71. The record indicates that taxes paid on Parcel 71 indicated that it represented 84% of the real property. The original cost of the property in 1959 was $160,000. Eighty-four percent of that amount is $134,400.

22. The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

23. The proposed transfer of Utility from Corporation to Associates is based on an agreement which calls for the transfer of Parcel 71 to Associates as nonutility property and is not reasonable.

24. Corporation has applied for a SDWBA loan of $1,126,840.

25. Some customers have requested the option of making a one-time, up-front cash payment in lieu of monthly rate surcharge payments. It is reasonable to provide the option of a one-time cash payment for corporation's customers.

26. In accordance with DWR requirements the surcharge and any overcollections must be deposited with a fiscal agent to accumulate reserve of two semiannual loan payments over a 10-year period. Also, any customer up-front cash payments will be deposited with the fiscal agent. Earnings on funds deposited with the fiscal agent, net of charges for the fiscal agent's services, will be added to the fund. Net earnings of the fund will be used, together with rate surcharge amounts and any up-front cash payments collected from customers, to meet the semiannual loan payments.

27. It is reasonable for the commission to review the manner in which the fund is invested and to direct that a different fiscal agent acceptable to DWR be selected if appropriate.

28. The amount of the surcharge to repay principal, interest, and necessary reserve on the loan should be in direct proportion to the capacity of each customer's meter or service connection. If no customer up-front cash payments are made the following surcharge would produce approximately $6,309 per month, requiring a 71% increase in water rates or approximately $11.15 per month for each residential customer.

29. If the actual construction costs of the water system improvements exceed the presently estimated costs, and if the utility is authorized to increase the amount of the SDWBA loan to cover such additional costs, it may be necessary to adjust both the up-front cash payment and the monthly surcharge accordingly.

30. Estimated monthly surcharges are as follows:

Size of Service or Meter	Monthly Surcharge
5/8"x3/4" meter	$11.15
3/4" flat rate	11.15
1" meter	27.90
2" meter	89.20

31. To ensure adequate accountability of SDWBA loan construction funds advanced by DWR to the utility, it is reasonable to require that such funds should be deposited by Corporation in a separate bank account and that all disbursements of such loan funds should pass through this bank account.

32. It is reasonable to require that the SDWBA loan repayment surcharge be separately identified on customers' bills.

33. The Utility plant financed through the surcharge and up-front cash payments should be permanently excluded from rate base for ratemaking purposes and the depreciation on this plant should be recorded in memorandum accounts for income tax purposes only.

34. It is reasonable to require that: (1) Corporation establish a balancing account to be credited with revenue collected through the surcharge, any up-front cash payments, and with the interest earned on funds deposited with the fiscal agent. (2) Surcharge and up-front cash payment revenues be deposited with the fiscal agent within 30 days after collection. (3) The balancing account be charged with payments of principal and interest on the loan, and for services of the fiscal agent. (4) The surcharge be adjusted periodically to reflect changes in the number of connections and resulting overages and shortages in the balancing account.

35. It is reasonable to establish a service fee, based upon the current surcharge, payable at the time of connection for vacant or undeveloped lots.

36. The following maximum service fees are reasonable: $669 for a 5/8"x3/4" meter; $1,674 for a 1" meter. These fees represent

a 5-year accumulation of the SDWBA surcharge. A higher amount would discourage development of property and be counter productive.

37. The proposed water system improvements are needed to produce a healthful, reliable water supply.

38. The proposed borrowing is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the loan authorized by the decision is reasonably required for purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

39. The increases in rates and charges authorized by this decision are justified and are reasonable; and the present rates and charges, insofar as they differ from those prescribed by this decision, are, for the future, unjust and unreasonable.

40. Any violations established by BBWC with respect to C.86-03-029, will be remedied by the improvements contemplated by the SDWBA loan. To order specific items of repair or construction at this time might be duplicative or conflict with the overall plan for rehabilitating and improving the system.

41. If the authority to execute a SDWBA loan contract is not exercised within 10 months after the effective date of this order BBWC should be afforded the opportunity to request further hearings in C.86-03-029 to seek an appropriate order.

42. The evidence of record and the showing made by BBWC does not justify an award of compensation under rules 76-53 et seq.

Conclusions of Law

1. Having found that Parcel 71 is dedicated to the public interest and is necessary and useful to the service provided by Utility, A.86-04-059 should be granted only on the express condition that Parcel 71 be included in the assets and property of Utility transferred from McGranahan and McPherson to Corporation.

2. Under PU Code § 853 the Commission has jurisdiction to exempt transactions which would otherwise be void under PU Code §§ 851 and 852, where the exemption would be in the public interest.

(Investigation of Golconda Utilities Co. (1968) 68 CPUC 296, 300.) The Commission does not have similar jurisdiction with respect to PU Code § 854. The authority granted in A.86-04-059 cannot be granted nunc pro tunc. The parties should be required to ratify or re-execute the transaction of March 11, 1985, which purported to transfer Utility from McGranahan and McPherson to Corporation and issue stock therefor.

3. A.86-04-021 should be denied.

4. Corporation should be authorized to enter into a loan contract, as found reasonable herein, with DWR and to execute the requisite note and security instruments in connection with the loan.

5. Corporation should be authorized to establish the surcharge, set forth in Appendix A, as soon as the loan has been approved by DWR, to enable it to repay the SDWBA loan.

6. Corporation should be authorized to permit customers receiving service on the date SDWBA loan is approved to make up-front cash payments in lieu of the surcharge in amounts approved by the Commission.

7. Corporation should be authorized to establish the service fees set forth in Finding 34.

8. BBWC should be granted no relief in the complaint at this time. The Commission should retain continuing jurisdiction over C.86-03-029. If the authority to execute a SDWBA loan is not exercised within 10 months after the effective date of this order BBWC should be afforded the opportunity to request further hearings in C.86-03-029 and request an appropriate order.

9. BBWC is not entitled to an award of compensation herein.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order Kermit J. McGranahan (McGranahan) and Mahlon D. McPherson (McPherson) may ratify or re-execute the transaction set forth in A.86-04-059 and transfer the property and assets which they operate as a public utility water system under the name of Big Basin Water Company (Utility) to Big Basin Water Company, Inc., a corporation (Corporation). This authority is granted on the express condition that the property transferred to Corporation include Assessors Parcel (AP) 83-251-71 and the following property:

Land:

a. APN 083-251-70 - 90 acres more or less;
b. APN 086-571-06 - China Grade Water Tank;
c. APN 086-351-06 - Rancho Dia Pump Station;
d. APN 086-561-08 - Rancho Dia Water Tank;
e. APN 083-251-02 - 20.2 acres more or less;
f. APN 083-251-69 - 6.9 acres more or less;
g. APN 083-251-21 - Sewer Effluent;
h. APN 083-251-41 - Force Main Sewer;
i. APN 083-293-01 - Corvin Sewer Plant;
j. APN 083-251-14 - Designated Water Parcel on that map of Galleon Heights Subdivision No. 1, Tract No. 580, recorded in Map Book 62, Page 17, Santa Cruz County Records.
k. APN 086-431-03 - Between Jamison Reservoir and main (15,000 sq. ft.)
l. That lease commonly known as the Anello Lease with respect to a caretaker's home wherein Seller is the lessee and Nagilluc, Inc., a California corporation, is the lessor.

Sources of Supply:

a. Galleon Well Number 1, Diameter: 6", Depth: 300'.

b. Galleon Well Number 2, Diameter: 6", Depth: 350".

c. Galleon Well Number 4, Diameter: 8", Depth 300".

Other Sources of supply: Water rights to Forest Spring, Corvin Spring, and the Jamison springs which were granted to Big Basin Water Co., Inc., by the California State Water Resources Control Board in their Decision No. 1482, dated June 15, 1978.

Water Treatment Equipment: Hare Filter Plant.

Reservoirs and Tanks Number: Six (6) with a total capacity of 2,500,000± gallons.

Water Mains: 88,500±.

Services: 452 installed, 48 available for installation.

Fire Hydrants: Sixty (60)

Buildings: Three (3) housing Hare Filter Plant, Galleon Lift Station and Galleon Pump Station.

Office Furniture and/or Equipment: If any.

2. A.86-04-021 is denied.

3. Corporation is authorized to borrow $1,126,840 from the State of California, Department of Water Resources (DWR), to execute the proposed loan contract and to use the proceeds for the purposes specified in A.86-10-071.

4. Upon approval of the SDWBA loan, corporation is authorized to file the rate schedule attached to this order as Appendix A. Such filing shall comply with General Order 96-A. The effective date of the rate schedule shall be five days after the date of the filing.

5. Corporation shall establish and maintain a separate balancing account in which shall be recorded all billed surcharge revenue and one-time, up-front cash payments and interest earned on deposits made to the fiscal agent. The balancing account shall be reduced by payment of principal and interest to DWR and by any charges for services of the fiscal agent. A separate statement

pertaining to the surcharge shall appear on each customer's water bill issued by Corporation.

6. As a condition of the rate increase granted, Corporation shall be responsible for refunding or applying on behalf of its customers any surplus accrued in the balancing account when ordered by the Commission.

7. Plant financed through the SDWBA loan shall be permanently excluded from rate base for ratemaking purposes.

8. To assure repayment of the loan, Corporation shall deposit all rate surcharge and up-front cash payment revenue collected with the fiscal agent approved by DWR. Such deposits shall be made within 30 days after the surcharge and up-front cash payment moneys are collected from customers.

9. Corporation shall file with the Commission a copy of the loan contract with DWR, and a copy of the agreement with the fiscal agent, within 30 days after these documents have been executed.

10. Corporation shall establish and maintain a separate bank account to ensure adequate accountability for deposits and disbursements of SDWBA loan construction funds advanced by DWR to the utility.

11. Corporation shall notify all its current customers within 10 days after the date of approval of the SDWBA loan by DWR of the option of either making the rate surcharge payment or up-front cash payment, and that upon payment of the up-front amount that they are relieved of any further payments to help retire the utility's SDWBA loan obligation. Any customer up-front cash payment shall be due within 30 days after corporation files the revised rate schedules with the commission per General Order 96-A. The up-front cash payment shall apply only to those customers on hookup with Corporation at the time the loan is approved.

12. Big Basin Water Committee (BBWC) is granted no relief at this time in C.86-03-029. The Commission retains continuing jurisdiction over C.86-03-029. If the authority to execute a SDWBA loan contract granted in A.86-10-071 is not exercised within 10 months after the effective date of this order, BBWC may request further hearings in C.86-03-029

13. BBWC's request for an award of compensation in any of these consolidated matters is denied.

14. The authority to issue stock granted by Ordering Paragraph 1 of this order will become effective when the issuer pays $1,722 set by PU Code § 1904.1.

15. The authority to issue an evidence of indebtedness granted by Ordering Paragraph 3 of this order will become effective when the issuer pays $2,127 set by PU Code § 1904(b).

16. The authority granted in Ordering Paragraphs 1 and 3 of this order shall expire unless it is exercised before December 31, 1988.

Except for Ordering Paragraphs 14 and 15, this order becomes effective 30 days from today.

Dated October 28, 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

APPENDIX A
Page 1

Schedule No. 3

SERVICE SURCHARGE

APPLICABILITY

Applicable to all water service.

TERRITORY

Big Basin and vicinity, Santa Cruz County.

RATES

	Per Connection Per Month	
Service Surcharge:		
For 5/8 x 3/4-inch meter	$ 11.15	(N)
3/4-inch meter	16.75	|
1-inch meter	27.90	|
1-1/2-inch meter	55.75	|
2-inch meter	89.20	|
3-inch meter	167.25	(N)
For 3/4-inch flat rate	$ 11.15	(N)

This surcharge is in addition to the regular monthly metered water bill. The total monthly surcharge must be identified on each bill. This surcharge is specifically for the repayment of the California Safe Drinking Water Bond Act loan as authorized by Decision ~~87 10 074~~.

SPECIAL CONDITIONS

1. Those customers who prefer to make the one time, up front cash payment shall be required to pay:

For 5/8 x 3/4-inch meter	$ 1,987.00	(N)
3/4-inch meter	2,981.00	|
1-inch meter	4,968.00	|
1-1/2-inch meter	9,937.00	|
2-inch meter	15,899.00	|
3-inch meter	29,811.00	(N)
For 3/4-inch flat rate	$ 1,987.00	(N)

Schedule No. 3

SERVICE SURCHARGE

SPECIAL CONDITIONS (Continued)

2. A service connection fee to provide for reduction of the SDWBA loan surcharges is chargeable to customers requesting service to undeveloped lots within the service area as it existed on _____.

3. The service connection fee shall be the accumulated total of the monthly surcharge provided for in Schedule 3, as applied to the property being furnished water service on _____ to the date of connection.

4. The maximum service connection fee shall be:

For 5/8 x 3/4-inch meter.....	$ 669.00	(N)
3/4-inch meter.....	1,005.00	|
1-inch meter.....	1,674.00	|
1-1/2-inch meter.....	3,345.00	|
2-inch meter.....	5,352.00	|
3-inch meter.....	10,035.00	(N)
For 3/4-inch flat rate.....	$ 669.00	(N)

5. The service connection fee shall be due and payable upon connection of water service to the lot. The surcharges authorized by the Commission, as contained in the utility's filed tariffs, will apply thereafter.

6. The monthly surcharge established by the Public Utilities Commission in Decision 87-10-074 is subject to periodic adjustment. The calculation of the accumulated surcharges shall take into account such periodic adjustments.

(END OF APPENDIX A)

Research into the history of ownership of lands was performed by Branch and the results are found in the Exhibit No. 6. BBWC brought forth no information which the Branch did not produce.

Development of history of the water company's compliance or noncompliance with DHS orders had a bearing on the complaint, but made no substantial contribution toward modifying a rate or establishing a fact or rule that may influence a rate, as required by Rule 76.52(a). Consultation with Santa Cruz County authorities had no bearing on modifying a rate or establishing a fact or rule that may influence a rate, especially where, as in these proceedings, the BBWC produced no evidence in that respect.

Distribution of newsletters is no contribution toward establishing a fact or rule that many influence a rate, nor is preparation of testimony for the hearings justification for compensation since BBWC presented no evidence to establish any fact or rule that may influence a rate. And, participation with counsel in itself does not justify compensation where none of the other criterion has been met.

An award of compensation to BBWC is not appropriate under the facts presented and none will be granted.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Utility provides public utility water service to approximately 500 customers in an unincorporated area of Santa Cruz County. It also conducts operations as a sewer system corporation under the name of Big Basin Sanitation Company (Sanitation Company) to serve 22 customers in a small tract within Utility's service area.

2. Utility was formed by Harold G. Hilton who caused the incorporation of Big Basin Water company, a corporation which is now defunct. The now defunct corporation was granted a certificate of public convenience and necessity to operate as a water

corporation and to issue stock in D.36071 in A.24996, dated December 29, 1942. Parcel 71 was included in the authorized service area.

3. In 1959, Hilton was the sole remaining director of the now defunct corporation. On August 28, 1959, Hilton and others sold Utility and other nonutility holdings to McGranahan and McPherson. The agreement provided for the payment of $350,000 for the nonutility property. It also provided that:

> "The total purchase price of said water company and lands incident thereto, said lands incident to said water company being outlined in red on Exhibit B attached hereto and made a part hereof, shall be the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS ($160,000.00) lawful money of the United States of America, ..."

Parcel 71 was included in the area outlined in red on Exhibit B attached to the agreement. This transfer was never submitted to or approved by the Commission.

4. After McGranahan and McPherson acquired Utility they conducted its operation under a corporation called Basin Way Water Company, which is now defunct. In D.74990 in A.50665, dated November 26, 1960, the Commission authorized Basin Way Water Company to sell Utility and related assets to McGranahan and McPherson as copartners.

5. On October 10, 1975, a subdivision known as Galleon Unit I was added to Utility's service area. At that time Galleon Properties, Inc. (Galleon) conveyed certain improvements to Utility, which included Galleon Wells No. 1 and 2, a 325,000-gallon tank, pumps, lift stations, etc. The conveyance provided for a 59-year option for Galleon to repurchase the contributed water system under certain conditions. The conveyance and option for repurchase was executed for Galleon by W. D. Nugent (Nugent) the General Partner of Associates.

D.85934 dated June 8, 1976 prohibited Utility from using water from wells contributed by Galleon to serve areas outside of

Galleon Heights Subdivision Unit 1, pending the granting of licenses to appropriate water from the SWRCB.

6. In 1976 and 1977 some of Utility's customers became concerned about the adequacy and quality of its water supply. The concerns stemmed from instances in which DHS had required Utility to publish warnings that its water had failed quality tests, the drought which occurred at that time and a contract between Utility and Galleon which gave Galleon priority over existing customers.

7. On March 2, 1979, some of Utility's customers filed a complaint against Utility-C.10725. The complaint was consolidated for hearing with A.60139 in which Utility sought authority to enter into water contracts with Galleon and others. The matters went to hearing. During the hearing the parties entered into a stipulation, which was adopted by the Commission and became the basis for the order in D.93732 dated November 13, 1981. The stipulation included the following items:

(1) The parties to the stipulation were Utility, the Commission staff (Staff), Galleon, Nagilluc, Inc. (Nagilluc), the Big Basin Water Protective Association and DHS.

(2) Galleon was the developer of the Culligan Unit 6a condominium units and the unconstructed "Galleon Units 2 and 3." Nagilluc was the developer of the unconstructed Culligan Unit 7.

(3) Utility had not committed itself to supply water to the New Galleon and Nagilluc units because of a DHS order restraining the issuance of a "will serve" commitment. Without such commitment the county would not permit construction of new homes or the occupation of newly constructed but vacant homes. Several agencies felt Utility had not shown water supply or water storage capacity adequate to serve even its present customers.

(4) To resolve the problem, Galleon contributed the Galleon No. 4 well and

associated easements, etc., to Utility, which agreed to make certain improvements at Jameson and Corvin Springs before August 1, 1981, and to provide DHS with data to permit evaluation of the reliable production of its sources of supply. Utility agreed to annex Galleon units 2 and 3 to its service area. DHS agreed to issue a revised water use permit. Galleon and Nagilluc also agreed to reduce the planned number of units to be constructed, to provide additional sources or to do a combination of both.

(5) Utility was required to produce data to DHS including records of production metering for each spring and each well, monitoring data for the usage of each source in hours per week, influent turbidity, and finished water turbidity.

8. In April 1981, McGranahan and McPherson asked some of the principals of BBWC if a way could be found for the customers to acquire Utility. Nothing came of the suggestion at that time. Proposition 28 in 1984 enabled the enactment of the SDWBA. In December 1984, BBWC called a meeting which was held on January 8, 1985, to discuss whether the provisions of the SDWBA could be utilized to solve the problems of Utility. In the course of the meeting it was suggested that the customers seek to acquire Utility and efforts were begun to explore this possibility.

9. On March 2, 1985, DHS directed Utility to complete four items in order to bring its system in compliance with health standards.

10. On September 12, 1985, McGranahan and McPherson entered into an option ageement with BBWC in which they agreed to sell Utility to BBWC for $250,000. The Utility property specified to be transferred under the option included Parcel 71. BBWC filed an application for a SDWBA loan. The loan was to be used to finance the purchase of and to improve the system. In the Course or applying for the SDWBA loan, BBWC was advised that DWR preferred to

deal with corporate entitites. BBWC then caused the formation of a wholly owned corporation called Sequoia Glen Water Service (Sequoia Glen), which took over the processing of the loan application and would have been the entity to which Utility would have been transferred if the option had been exercised.

11. Utility also operates Sanitation Company. It is subject to regulation by the SWRCB which issues Waste Discharge Orders dealing with the discharge of wastewater from treatment plants. Since 1983, Sanitation Company has been in violation of waste discharge orders, the most recent of which was order No. 8564, dated May 10, 1985. BBWC decided that if it acquired Utility and also had to acquire Sanitation Company it would not have the resources to bring sanitation company in compliance with the outstanding waste discharge orders. BBWC unsuccessfully sought modification of the option. The option was not exercised and lapsed on December 11, 1985.

12. McGranahan, who is 76 years old and McPherson, who is 84 years old desire to sell Utility and rid themselves of public utility obligations. In February 1986, after BBWC failed to exercise the option, McGranahan and McPherson contacted Nugent and asked him if he were interested in buying Utility. Thereafter, Nugent caused the formation of Associates which entered into the transaction which is the subject of A.86-04-021.

13. Parcel 71 was dedicated to the public use by the now defunct Big Basin Water Company formed by Harold G. Hilton.

14. Parcel 71 is the watershed that directly contributes to all of Utility's spring sources of water.

15. The water supply permit issued by DHS to Utility was issued on the basis that Parcel 71 was an integral part of Utility.

16. The water rights obtained by Utility from SWRCB in Decision 482, dated June 13, 1978, were based upon the fact that Parcel 71, the watershed, was part of Utility.

17. Parcel 71 is a watershed for Utility. It is necessary and useful to the service provided to Utility.

18. It is not reasonable to approve a transfer of Utility from McGranahan and McPherson to Corporation without the transfer of Parcel 71.

19. It is reasonable to require that as a condition of transfer of Utility from McGranahan and McPherson to Corporation that Parcel 71 be included as part of the property and assets transferred.

20. The proposed deed restrictions offered by Utility to provide for the transfer of Utility from McGranahan and McPherson to Corporation are not reasonable.

21. If McGranahan and McPherson ratify or re-execute the transfer of Utility to Corporation for the issuance of 112,746 shares of Corporation's capital stock, it is necessary for the Commission to issue a certificate of authorizing the issuance of these shares and the payment by Corporation of the fee required by P.U. Code § 1904.1.

For the purpose of determining this fee and not for ratemaking or any other purpose, the value of the amount of stock issued should be deemed to be $860,874. Since A.86-04-059 does not allege the value of the stock, the amount it computed as follows: Exhibit 13, introduced in evidence by Corporation, indicates the value of the assets to be transferred, on an original cost basis is $726,474. This does not include Parcel 71. The record indicates that taxes paid on Parcel 71 indicated that it represented 84% of the real property. The original cost of the property in 1959 was $160,000. Eighty-four percent of that amount is $134,400.

22. The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

23. The proposed transfer of Utility from Corporation to Associates is based on an agreement which calls for the transfer of Parcel 71 to Associates as nonutility property and is not reasonable.

24. Corporation has applied for a SDWBA loan of $1,126,840.

25. Some customers have requested the option of making a one-time, up-front cash payment in lieu of monthly rate surcharge payments. It is reasonable to provide the option of a one-time cash payment for corporation's customers.

26. In accordance with DWR requirements the surcharge and any overcollections must be deposited with a fiscal agent to accumulate reserve of two semiannual loan payments over a 10-year period. Also, any customer up-front cash payments will be deposited with the fiscal agent. Earnings on funds deposited with the fiscal agent, net of charges for the fiscal agent's services, will be added to the fund. Net earnings of the fund will be used, together with rate surcharge amounts and any up-front cash payments collected from customers, to meet the semiannual loan payments.

27. It is reasonable for the commission to review the manner in which the fund is invested and to direct that a different fiscal agent acceptable to DWR be selected if appropriate.

28. The amount of the surcharge to repay principal, interest, and necessary reserve on the loan should be in direct proportion to the capacity of each customer's meter or service connection. If no customer up-front cash payments are made the following surcharge would produce approximately $6,309 per month, requiring a 71% increase in water rates or approximately $11.15 per month for each residential customer.

29. If the actual construction costs of the water system improvements exceed the presently estimated costs, and if the utility is authorized to increase the amount of the SDWBA loan to cover such additional costs, it may be necessary to adjust both the up-front cash payment and the monthly surcharge accordingly.

30. Estimated monthly surcharges are as follows:

Size of Service or Meter	Monthly Surcharge
5/8"x3/4" meter	$11.15
3/4" flat rate	11.15
1" meter	27.90
2" meter	89.20

31. To ensure adequate accountability of SDWBA loan construction funds advanced by DWR to the utility, it is reasonable to require that such funds should be deposited by Corporation in a separate bank account and that all disbursements of such loan funds should pass through this bank account.

32. It is reasonable to require that the SDWBA loan repayment surcharge be separately identified on customers' bills.

33. The Utility plant financed through the surcharge and up-front cash payments should be permanently excluded from rate base for ratemaking purposes and the depreciation on this plant should be recorded in memorandum accounts for income tax purposes only.

34. It is reasonable to require that: (1) Corporation establish a balancing account to be credited with revenue collected through the surcharge, any up-front cash payments, and with the interest earned on funds deposited with the fiscal agent. (2) Surcharge and up-front cash payment revenues be deposited with the fiscal agent within 30 days after collection. (3) The balancing account be charged with payments of principal and interest on the loan, and for services of the fiscal agent. (4) The surcharge be adjusted periodically to reflect changes in the number of connections and resulting overages and shortages in the balancing account.

35. It is reasonable to establish a service fee, based upon the current surcharge, payable at the time of connection for vacant or undeveloped lots.

36. The following maximum service fees are reasonable: $669 for a 5/8"x3/4" meter; $1,674 for a 1" meter. These fees represent

a 5-year accumulation of the SDWBA surcharge. A higher amount would discourage development of property and be counter productive.

37. The proposed water system improvements are needed to produce a healthful, reliable water supply.

38. The proposed borrowing is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the loan authorized by the decision is reasonably required for purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

39. The increases in rates and charges authorized by this decision are justified and are reasonable; and the present rates and charges, insofar as they differ from those prescribed by this decision, are, for the future, unjust and unreasonable.

40. Any violations established by BBWC with respect to C.86-03-029, will be remedied by the improvements contemplated by the SDWBA loan. To order specific items of repair or construction at this time might be duplicative or conflict with the overall plan for rehabilitating and improving the system.

41. If the authority to execute a SDWBA loan contract is not exercised within 10 months after the effective date of this order BBWC should be afforded the opportunity to request further hearings in C.86-03-029 to seek an appropriate order.

42. The evidence of record and the showing made by BBWC does not justify an award of compensation under rules 76-53 et seq.

Conclusions of Law

1. Having found that Parcel 71 is dedicated to the public interest and is necessary and useful to the service provided by Utility, A.86-04-059 should be granted only on the express condition that Parcel 71 be included in the assets and property of Utility transferred from McGranahan and McPherson to Corporation.

2. Under PU Code § 853 the Commission has jurisdiction to exempt transactions which would otherwise be void under PU Code §§ 851 and 852, where the exemption would be in the public interest.

(Investigation of Golconda Utilities Co. (1968) 68 CPUC 296, 300.) The Commission does not have similar jurisdiction with respect to PU Code § 854. The authority granted in A.86-04-059 cannot be granted nunc pro tunc. The parties should be required to ratify or re-execute the transaction of March 11, 1985, which purported to transfer Utility from McGranahan and McPherson to Corporation and issue stock therefor.

3. A.86-04-021 should be denied.

4. Corporation should be authorized to enter into a loan contract, as found reasonable herein, with DWR and to execute the requisite note and security instruments in connection with the loan.

5. Corporation should be authorized to establish the surcharge, set forth in Appendix A, as soon as the loan has been approved by DWR, to enable it to repay the SDWBA loan.

6. Corporation should be authorized to permit customers receiving service on the date SDWBA loan is approved to make up-front cash payments in lieu of the surcharge in amounts approved by the Commission.

7. Corporation should be authorized to establish the service fees set forth in Finding 34.

8. BBWC should be granted no relief in the complaint at this time. The Commission should retain continuing jurisdiction over C.86-03-029. If the authority to execute a SDWBA loan is not exercised within 10 months after the effective date of this order BBWC should be afforded the opportunity to request further hearings in C.86-03-029 and request an appropriate order.

9. BBWC is not entitled to an award of compensation herein.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order Kermit J. McGranahan (McGranahan) and Mahlon D. McPherson (McPherson) may ratify or re-execute the transaction set forth in A.86-04-059 and transfer the property and assets which they operate as a public utility water system under the name of Big Basin Water Company (Utility) to Big Basin Water Company, Inc., a corporation (Corporation). This authority is granted on the express condition that the property transferred to Corporation include Assessors Parcel (AP) 83-251-71 and the following property:

Land:

a. APN 083-251-70 - 90 acres more or less;
b. APN 086-571-06 - China Grade Water Tank;
c. APN 086-351-06 - Rancho Dia Pump Station;
d. APN 086-561-08 - Rancho Dia Water Tank;
e. APN 083-251-02 - 20.2 acres more or less;
f. APN 083-251-69 - 6.9 acres more or less;
g. APN 083-251-21 - Sewer Effluent;
h. APN 083-251-41 - Force Main Sewer;
i. APN 083-293-01 - Corvin Sewer Plant;
j. APN 083-251-14 - Designated Water Parcel on that map of Galleon Heights Subdivision No. 1, Tract No. 580, recorded in Map Book 62, Page 17, Santa Cruz County Records.
k. APN 086-431-03 - Between Jamison Reservoir and main (15,000 sq. ft.)
l. That lease commonly known as the Anello Lease with respect to a caretaker's home wherein Seller is the lessee and Nagilluc, Inc., a California corporation, is the lessor.

Sources of Supply:

a. Galleon Well Number 1, Diameter: 6", Depth: 300'.

b. Galleon Well Number 2, Diameter: 6", Depth: 350".

c. Galleon Well Number 4, Diameter: 8", Depth 300".

Other Sources of supply: Water rights to Forest Spring, Corvin Spring, and the Jamison springs which were granted to Big Basin Water Co., Inc., by the California State Water Resources Control Board in their Decision No. 1482, dated June 15, 1978.

Water Treatment Equipment: Hare Filter Plant.

Reservoirs and Tanks Number: Six (6) with a total capacity of 2,500± gallons.

Water Mains: 88,500±.

Services: 452 installed, 48 available for installation.

Fire Hydrants: Sixty (60)

Buildings: Three (3) housing Hare Filter Plant, Galleon Lift Station and Galleon Pump Station.

Office Furniture and/or Equipment: If any.

2. A.86-04-021 is denied.

3. Corporation is authorized to borrow $1,126,840 from the State of California, Department of Water Resources (DWR), to execute the proposed loan contract and to use the proceeds for the purposes specified in A.86-10-071.

4. Upon approval of the SDWBA loan, corporation is authorized to file the rate schedule attached to this order as Appendix A. Such filing shall comply with General Order 96-A. The effective date of the rate schedule shall be five days after the date of the filing.

5. Corporation shall establish and maintain a separate balancing account in which shall be recorded all billed surcharge revenue and one-time, up-front cash payments and interest earned on deposits made to the fiscal agent. The balancing account shall be reduced by payment of principal and interest to DWR and by any charges for services of the fiscal agent. A separate statement

pertaining to the surcharge shall appear on each customer's water bill issued by Corporation.

6. As a condition of the rate increase granted, Corporation shall be responsible for refunding or applying on behalf of its customers any surplus accrued in the balancing account when ordered by the Commission.

7. Plant financed through the SDWBA loan shall be permanently excluded from rate base for ratemaking purposes.

8. To assure repayment of the loan, Corporation shall deposit all rate surcharge and up-front cash payment revenue collected with the fiscal agent approved by DWR. Such deposits shall be made within 30 days after the surcharge and up-front cash payment moneys are collected from customers.

9. Corporation shall file with the Commission a copy of the loan contract with DWR, and a copy of the agreement with the fiscal agent, within 30 days after these documents have been executed.

10. Corporation shall establish and maintain a separate bank account to ensure adequate accountability for deposits and disbursements of SDWBA loan construction funds advanced by DWR to the utility.

11. Corporation shall notify all its current customers within 10 days after the date of approval of the SDWBA loan by DWR of the option of either making the rate surcharge payment or up-front cash payment, and that upon payment of the up-front amount that they are relieved of any further payments to help retire the utility's SDWBA loan obligation. Any customer up-front cash payment shall be due within 30 days after corporation files the revised rate schedules with the commission per General Order 96-A. The up-front cash payment shall apply only to those customers on hookup with Corporation at the time the loan is approved.

12. Big Basin Water Committee (BBWC) is granted no relief at this time in C.86-03-029. The Commission retains continuing jurisdiction over C.86-03-029. If the authority to execute a SDWBA loan contract granted in A.86-10-071 is not exercised within 10 months after the effective date of this order, BBWC may request further hearings in C.86-03-029

13. BBWC's request for an award of compensation in any of these consolidated matters is denied.

14. The authority to issue stock granted by Ordering Paragraph 1 of this order will become effective when the issuer pays $1,722 set by PU Code § 1904.1.

15. The authority to issue an evidence of indebtedness granted by Ordering Paragraph 3 of this order will become effective when the issuer pays $2,127 set by PUC Code § 1904(b).

16. The authority granted in Ordering Paragraphs 1 and 3 of this order shall expire unless it is exercised before December 31, 1988.

Except for Ordering Paragraphs 14 and 15, this order becomes effective 30 days from today.

Dated _____, at San Francisco, California.

12. Big Basin Water Committee (BBWC) is granted no relief at this time in C.86-03-029. The Commission retains continuing jurisdiction over C.86-03-029. If the authority to execute a SDWBA loan contract granted in A.86-10-071 is not exercised within 10 months after the effective date of this order, BBWC may request further hearings in C.86-03-029.

13. BBWC's request for an award of compensation in any of these consolidated matters is denied.

14. The authority to issue stock granted by Ordering Paragraph 1 of this order will become effective when the issuer pays $1,722 set by PU Code § 1904.1.

15. The authority to issue an evidence of indebtedness granted by Ordering Paragraph 3 of this order will become effective when the issuer pays $2,127 set by PUC Code § 1904(b).

16. The authority granted in Ordering Paragraphs 1 and 3 of this order shall expire unless it is exercised before December 31, 1988.

Except for Ordering Paragraphs 14 and 15, this order becomes effective 30 days from today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

APPENDIX A
Page 1

Schedule No. 3

SERVICE SURCHARGE

APPLICABILITY

Applicable to all water metered service.

TERRITORY

Big Basin and vicinity, Santa Cruz County.

RATES

	Per Connection Per Month	
Service Surcharge:		
For 5/8 x 3/4-inch meter	$ 11.15	(N)
3/4-inch meter	16.75	|
1-inch meter	27.90	|
1-1/2-inch meter	55.75	|
2-inch meter	89.20	|
3-inch meter	167.25	(N)
For 3/4-inch flat rate	$ 11.15	(N)

This surcharge is in addition to the regular monthly metered water bill. The total monthly surcharge must be identified on each bill. This surcharge is specifically for the repayment of the California Safe Drinking Water Bond Act loan as authorized by Decision _____.

SPECIAL CONDITIONS

1. Those customers who prefer to make the one time, up front cash payment shall be required to pay:

For 5/8 x 3/4-inch meter	$ 1,987.00	(N)
3/4-inch meter	2,981.00	|
1-inch meter	4,968.00	|
1-1/2-inch meter	9,937.00	|
2-inch meter	15,899.00	|
3-inch meter	29,811.00	(N)
For 3/4-inch flat rate	$ 1,987.00	(N)