

(Mailed 3/24/88)

Decision SS 03 052

MAR 23 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
YERBA BUENA WATER COMPANY, a public)
utility corporation, for a certifi-)
cate of public convenience and)
necessity to extend its service to)
additional customers in Ventura)
County, and for authority to change)
the corporate stock ownership.)
U-0323-W)

Application 87-08-048
(Filed August 27, 1987)

OPINION

In its application, Yerba Buena Water Company, a California corporation, seeks authority under Public Utilities Code Section 1001 to have the restriction imposed on it by Decision (D.) 84-10-045 be lifted to allow it to provide water service to a 71.2-acre, 194-space recreational vehicle (RV) park, including a 4.3-acre commercial zone, and an 8-lot, 9.4-acre residential area, contiguous to its present service area. It requests specific financing of the facilities needed to serve the expanded service area; to establish a private fire service rate; and to permit a transfer of the 26,000 outstanding shares of its common stock from Robert M. Berry to John A. DeFalco and Neil N. Werb, for a consideration of \$440,000. Applicant also planned to fund the cost of improvements to improve the reliability of the entire system.

DeFalco is the owner of Mobile Modular Development, Inc. The firm has designed and built mobile home parks, custom residences, and commercial buildings throughout the United States. DeFalco holds a general building contractor's license. Werb is an attorney at law.

The Commission staff (staff) reviewed the application and sought information from applicant and its engineer, including information on environmental impacts related to the application. A

staff member prepared a memorandum dated November 17, 1987 (Exhibit 1). Another staff member prepared a report dated December 14, 1987 (Exhibit 2). Those documents, which were furnished to applicant, were received in evidence.

Exhibit 1 states that applicant advised staff that it was preparing an environmental impact report (EIR) for Ventura County (County) and it would furnish a copy of the EIR to staff. But applicant did not file a timely application with County for the proposed RV tract. Consequently the memorandum contains a recommendation for dismissal of the application without prejudice because the Commission would not have an adequate environmental record for decision and could not meet the constraints of the Permit Streamlining Act. The report also states that the Commission would be a responsible agency under the California Environmental Quality Act (CEQA) with respect to the EIR for the proposed territorial expansion.

Exhibit 2 states that since the proposed financing of water system improvements, the proposed fire protection tariff, and concerns raised by local interests are related to the EIR information not furnished, the staff report would focus on the proposed utility stock sale and transfer of ownership.

At the end of 1986, applicant provided water service to 53 residences and 4 commercial establishments through individual meters, 206 condominium units through 151 meters, Camp Joan Meir (a 7.9-acre crippled children's camp) through one meter, and Camp Hess Kramer through three meters. The service area is located in portions of Sections 26 and 27, Township 1 South, Range 20 West, San Bernardino Base and Meridian, in Ventura County. Most of the customers live in a narrow coastal strip between the Pacific Coast Highway (PCH) and the ocean. Applicant also serves a small development on the north side of the PCH served from a 210,000-gallon tank. Camp Hess Kramer extends about a mile north of the

PCH, west of Yerba Buena Road. The northerly portion of that camp is near applicant's well site location.

The system contains two storage tanks, a 45,000-gallon concrete tank and a 210,000-gallon steel tank; two wells with capacities of 450 gallons per minute (gpm) and a standby well of 40 gpm; about 17,600 lineal feet of 4-, 6-, and 8-inch steel and asbestos cement water mains. The utility produces all of its water from those two wells. The staff was concerned that the system was overly dependent on production from one well. Furthermore, applicant does not have any standby emergency connections from any other water purveyors or districts. Its customers are served by gravity flow from the two reservoirs at pressures ranging from 37 to 75 pounds per square inch.

Decision (D.) 77385 authorized applicant to provide temporary service to three customers outside of its service area subject to termination upon evidence of water shortage. The three customers served are Camp Joan Meir,¹ a service station which had been converted into a real estate office, and a restaurant. The properties of the three temporary customers are adjacent to applicant's present service. Staff recommends that if the application is dismissed and applicant reapplies for an extension of its service area, it should specifically request that the three temporary services be made permanent. Exhibit 2 also indicates that Camp Hess Kramer may be boosting water to an area outside of applicant's service area.

¹ D.76191 had previously authorized applicant to provide temporary service to Camp Joan Meir.

Prior Transfer

D.91427 authorized Harvey Knox to sell 26,000 outstanding shares of applicant's stock to six buyers in the following amounts:

<u>Buyers</u>	<u>Shares</u>
Robert M. Berry	8,667
Roy Marquardt	8,666
Howard P. House	4,815
Lawrence J. Cashion	1,284
James B. Tarver	1,284
Victor J. Sprauer	<u>1,284</u>
Total	26,000

Exhibit 2 states:

1. Staff found no evidence the Commission was notified of the transfer of all of the shares to Berry. Furthermore, staff takes no position on whether the change of control requires Commission authorization under Public Utilities (PU) Code Section 854.²
2. The new buyers propose to purchase the utility system for \$440,000 with a down payment of \$140,000 and a \$300,000 note payable at a rate of \$3,042.80 per month including interest at 9% per annum. The unpaid balance is due in five years.
3. The new buyers acknowledge that the utility's depreciated rate base would be the Commission's basis for ratemaking and that cost paid for the system in excess of rate base would not be considered in setting rates.

2 "854. No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the commission. Any such acquisition or control without such prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this State shall aid or abet any violation of this section."

4. The new buyers do not propose to raise rates to finance the water facilities needed for the new development. The buyers advised staff that they have eight residential lots with choice sea views which could be sold at a profit.
5. DeFalco's financial statement states that he had a net worth of \$8.4 million as of January 1, 1987, including a net worth in excess of \$7,300,000 for his ownership of Mobile Modular Development, Inc., a Nevada corporation, the developer of the proposed RV tract. Werb's financial statement states that his net worth was in excess of \$1 million as of July 13, 1987, including a 40% ownership in certain undeveloped land and ownership of stock with Mobile Modular Development, Inc. valued at \$75,000.
6. Buyers propose to retain the services of Berry to operate and maintain the system and to retain applicant's existing consultants, including a geologist familiar with the local basin.
7. Applicant states it has no refundable customer deposits in its accounts. Applicant's 1986 annual report to the Commission shows a balance of customer advances of \$2,178. Applicant states it has paid off the remaining balances in that account.
8. Applicant has fully paid its 1986 utility user's fee.
9. Applicant's original notice was sent to the California Coast Commission (CCC), South Central Region, and to the Ventura County Board of Supervisors, Department of Health Services, and Bureau of Fire Protection. County advised staff that applicant would require a coastal permit before the proposed project could proceed. CCC stated that the new project falls within the scope of the Ventura coastal plan and would require an EIR upon which CCC would comment. Subsequently applicant sent

notice of the filing of its application to its customers.

10. In response to the customer notice, staff received eight customer letters expressing concerns about: (a) vehicular traffic, adverse effects on property values, noise and litter, the possibility of vagrants being attracted to the area which, in turn, would affect public security; (b) worsen local traffic problems; (c) possible dangers of landslides in the Tongareva Tract related to the new construction; (d) financing of improvements by existing customers; and (e) future water rate increases due to the expansion of the service area and to the proposed fire protection system. However, none of the customers protested the sale of the utility to the proposed buyers.
11. Staff concludes that the new buyers are qualified to own, finance, maintain, and operate the system in a manner which would assure that customers receive proper water service. Staff recommends:
 - a. Continuation of the Commission's practice of using rate base, not purchase price, in setting rates.
 - b. Ex parte approval of the sale and transfer of the stock absent any opposition to the proposed stock sale.
 - c. The existing moratorium on service area expansion should be continued absent specific approval from the Commission; in any future certificate filing, applicant should request that the three customers receiving temporary service be made permanent customers.
 - d. The new owners retain the services of a licensed water operator.
 - e. Applicant's present owners should be ordered to pay the utility user's fee for 1987 and 1988 through the date of transfer.

By letter dated December 31, 1987, supplemented on January 20, 1987 (Exhibit 3), Berry stipulates to the staff recommendations in Exhibit 2. The three other requests relating to certification of the new project, financing of improvements, and establishment of a private fire protection tariff were withdrawn. Applicant will prepare and submit a future application to expand its service area to serve the proposed RV tract, commercial, or residential area and to coordinate its proposal with Ventura County and the Commission's environmental staff.

Berry states the six purchasers of applicant's stock "...were land owners who had land contiguous to the certified water service area of the utility. The purchase was made with the understanding with the seller (Harvey Knox) and the Commission that we were purchasing the Company based upon the existing water service area, with no guarantee that any of the land would be approved by the PUC for addition to the certified water service area. We were able in 1984 to add 24 acres of land by Decision No. 84-10-045 to the water service area.

"Our purchase price was \$210,000 with \$30,000 principal downpayment, with a note to the seller of \$180,000 payable \$30,000 annually plus interest at 10% per annum beginning in 1981.

"Mr. Marquardt owned 1/3 of the stock and he ran the operations of the utility for a short time in 1980, but due to poor health I took over the operations in November 1980, and I am still running the utility today. Mr. Marquardt's health continued to fail so in 1981 at his request I purchased his 8,666 shares. This purchase gave me two-thirds ownership in the utility. Mr. Marquardt passed away shortly thereafter.

"The other four shareholders were all in their late seventies and retired from other professions, and since they were not interested in keeping their investments in the utility I purchased their stock in 1982. This gave me 100 percent ownership of the utility and the

obligations of paying the \$30,000 annual payments plus interest to the seller plus my obligations in the purchase of the stock from the former shareholders. The transfer of the shares to me was filed in the utility's annual report to the PUC, and in the annual report to the Secretary of State, 'Statement of Domestic Stock Corporation.'

"John A. Defalco and Neil N. Werb, Esquire are purchasing the 26,000 shares of the water company based upon the existing certified water service area as restricted by the moratorium on service area expansion mentioned in the Water Branch's report. They have a similar goal to that which I had when I purchased the utility in early 1980, which is to expand the service area so that their land which is adjacent to the present service area may be properly developed and served. Both parties now understand that this would have to be accomplished by another separate filing before the Commission."

A copy of Berry's letter was approved by Werb and DeFalco on January 14, 1988. In an addendum dated January 20, 1988, Werb and DeFalco state that they understand and agree that the \$440,000 purchase price of the Yerba Buena Water Company's utility system is over 10 times the first year rate base of \$38,000 and that California Public Utilities Commission will not permit a rate of return on the purchase price of the utility in excess of the depreciated rate base value of the system.

By letter dated February 3, 1988 (Exhibit 4), buyers state that each of them will obtain 13,000 shares of applicant's stock in the proposed transfer of ownership. A letter dated January 6, 1988, reproduced as Attachment A to this decision, states in part, "This letter is a request for approval by the Public Utilities Commission for the prior transfer of shares of the Capital Stock of the Yerba Buena Water Company, a California Corporation to Robert M. Berry and Eileen E. Berry, husband and wife, a 1/3 shareholder with 8,667 shares" from the other proposed

shareholders listed in D.91427. The Berrys paid \$58,277.61 and assumed loan obligations of \$99,167 for the 17,333 shares of stock held by the other five shareholders for a total of \$157,441.06.

By letter dated February 1, 1988 (Exhibit 5), Ventura County states:

"We have reviewed the P.U.C. staff report dated December 14, 1987, and concur with their recommendation to deny the proposed expansion, at least until studies of the ground water system showing adequate permanent supplies are conducted by a qualified engineer or geologist. Even after such studies demonstrate an adequate permanent domestic water supply for existing users and the proposed R.V. expansion, the R.V. expansion should be legally assigned a lower priority for water service in the event of a future ground water shortage."

That priority system is inconsistent with applicant's tariff for apportioning water in the event of a shortage.

Discussion

The Commission requires further information, not now available, before consideration of any expansion of applicant's service area. Since Berry, DeFalco, and Werb concur with the staff recommendation to withdraw the portion of the application related to the proposed expansion of the service area and the related issues of financing of the improvements and establishment of a private fire protection tariff, no hearing on those issues is necessary. We will dismiss that portion of the application without prejudice.

Although Berry's acquisition of Marquardt's stock was in violation of PU Code Section 854, his assumption of operational control and of ownership of the company was not adverse to the public interest. The rationale for the prospective purchasers to pay an amount far in excess of the indicated rate base was established in Exhibit 3. DeFalco and Werb wish to later expand applicant's service area to provide water service to their RV and

residential development. The buyers have the resources necessary to purchase applicant's stock and to continue applicant's operations. Applicant's 1986 income statement shows an operating loss of \$12,924.

We will authorize the transfer of all of applicant's stock to Berry and the subsequent transfer of 13,000 shares of applicant's stock to DeFalco and 13,000 shares to Werb. The latter transfer should conform to the stock purchase agreement (Exhibit E attached to the application).

Applicant has the burden of satisfying both County and the Commission that adequate groundwater resources exist to serve existing proposed service area.

In a future application, applicant should address the question of reclassifying the three temporary services as permanent services. Furthermore, applicant should clarify whether or not water is being boosted to serve areas outside of its service area. If water is being served outside its service area, applicant should develop a proposal related to such service.

Since the stock transfer does not alter the corporate status of applicant, applicant remains responsible for payment of utility user's fees to the Commission. The apportionment of user fee costs rests with buyers and seller.

The staff recommendation (contingent on the transfer) that the new owners retain the services of a licensed water operator is a desirable goal but the staff did not demonstrate that there are any service problems requiring the Commission to order applicant to comply with that recommendation.

Findings of Fact

1. Berry, DeFalco, and Werb concur with the staff recommendation for dismissal of the portion of the application related to expansion of applicant's service area and the related issues of financing of improvements and establishment of a private fire protection tariff.

2. Applicant is a California corporation operating as a public utility water company subject to the jurisdiction of this Commission.

3. The funding for payment of the purchase loan payments requires the private resources of buyers.

4. The transfer of control of applicant and purchase of applicant's stock from the other partners to Berry would not be adverse to the public interest.

5. The subsequent transfer of stock and control of applicant from Berry to DeFalco and Werb would not be adverse to the public interest.

6. There is no known opposition to the transfer of control of applicant.

Conclusions of Law

1. A public hearing is not necessary.

2. The transfer of ownership of all of applicant's stock and control of applicant from the six partners designated in D.91427 to Berry should be authorized.

3. The transfer of ownership of applicant's stock and control of applicant from Berry to DeFalco and Werb is not adverse to the public interest and should be authorized. The apportionment of applicant's shares of stock should be 13,000 shares to DeFalco and 13,000 shares to Werb.

4. A special payment of applicant utility user's fees for the period in 1988 through the date of transfer is not necessary because applicant's corporate status remains unchanged with the transfers authorized.

5. The order that follows should be made effective on the date of signature to permit Berry to lawfully control applicant's operations and for the subsequent transfer allowing DeFalco and Werb to lawfully assume control of the operations of applicant.

6. The premium paid for the stock of applicant should be amortized below the line over the life of the loan agreement in accordance with the Uniform System of Accounts.

ORDER

IT IS ORDERED that:

1. Robert M. Berry (Berry) may acquire all of the issued and outstanding capital stock of Yerba Buena Water Company (applicant) from five of the six partners authorized to acquire that stock in Decision (D.) 91427.

2. Berry is authorized to transfer 13,000 shares of the common stock of applicant to John DeFalco (DeFalco) and 13,000 shares of the common stock to Neil N. Werb (Werb) pursuant to the stock purchase agreement (Exhibit E attached to the application).

3. In the first transfer, Berry may control Yerba Buena Water Company. In the subsequent transfer, DeFalco and Werb may control applicant. Within 30 days after today, Berry, DeFalco, and Werb shall file reports informing the Commission whether or not the transfers of control authorized herein have been completed.

4. The premium paid for the stock of applicant shall be amortized below the line over the life of the loan agreement in accordance with the Uniform System of Accounts.

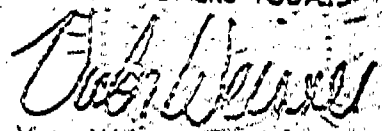
5. Applicant's requests for expansion of its service area, financing improvements, and establishment of a private fire protection tariff are dismissed without prejudice.

6. The application is granted as set forth above.
This order is effective today.
Dated MAR 23 1988, 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 Weiss, Executive Director

ATTACHMENT A
Page 1

YERBA BUENA WATER COMPANY
21188 HAWTHORNE BOULEVARD * TORRANCE, CA 90503 * (213) 542-8483

January 6, 1988

Honorable Jerry J. Levander
Administrative Law Judge
California Public Utilities Commission
107 South Broadway Street
Los Angeles, CA 90012

Reference: Application No. 87-08-048

Dear Honorable Jerry Levander:

This letter is a request for approval by the Public Utilities Commission for the prior transfer of shares of the Capital Stock of the Yerba Buena Water Company, a California Corporation to Robert M. Berry and Eileen E. Berry, husband and wife, a 1/3 shareholder with 8,667 shares, from the following shareholders:

1. Roy E. Marquardt 8,666 shares were transferred as per "Stock Assignment", a copy attached hereto.
 - a. \$17,556.50 purchase price of shares, plus assuming \$54,167.00 obligation on \$180,000.00 note to Seller (Harvey Knox) payable over 5 years. \$71,723.50 total cost of above 8,666 shares to Robert M. Berry and Eileen E. Berry.
2. Lawrence J. Cashion, 1,284 shares were transferred August 4, 1982. See copy of Stock Assignment attached hereto.
 - a. \$5,203.04 purchase price of shares, plus assuming \$8,125.00 obligation on \$180,000.00 note to Seller (Harvey Knox) payable over 5 years. \$13,328.04 total cost of above 1,284 shares to Robert M. Berry and Eileen E. Berry.
3. Victor J. Sprauer, 1,284 shares were transferred August 4, 1982. See copy of Stock Assignment attached hereto.
 - a. \$5,203.04 purchase price of shares, plus assuming \$8,125.00 obligation on \$180,000.00 note to Seller (Harvey Knox) payable over 5 years. \$13,328.04 total cost of above 1,284 shares to Robert M. Berry and Eileen E. Berry.
4. The Tarver Family Trust, (James B. Tarver), 1,284 shares were transferred June 27, 1983. See copy of Stock Assignment attached hereto.
 - a. \$6,381.48 purchase price of shares, plus assuming \$6,250.00 obligation on \$180,000.00 note to Seller (Harvey Knox) payable over 4 years. \$12,631.48 total cost of above 1,284 shares to Robert M. Berry and Eileen E. Berry.
5. Howard P. House, 4,815 shares were transferred June 27, 1983. See copy of Stock Assignment attached hereto.
 - a. \$23,930.55 purchase price of shares, plus assuming \$22,500.00 obligation on \$180,000.00 note to Seller (Harvey Knox) payable over 4 years. \$46,430.55 total cost of above 4,815 shares to Robert M. Berry and Eileen E. Berry.

ATTACHMENT A
Page 2

Honorable Jerry J. Levander
January 6, 1988
Page Two

\$157,441.61 is the total cost to Robert M. Berry and Eileen E. Berry for 17,333 shares of the Yerba Buena Water Company. (\$58,277.61 purchase price from the above shareholders plus \$99,167.00 obligations on \$180,000.00 to seller Harvey Knox)

\$91,500.00 is the cost of 8,667 shares purchased from seller Harvey Knox by Robert M. Berry and Eileen E. Berry.

\$248,941.61 is the total cost to Robert M. Berry and Eileen E. Berry for 26,000 shares of Yerba Buena Water Company Stock.

The purchase of the shares from the other shareholders was very important to us in order to protect our investment in the Yerba Buena Water Company and to insure the water plant was properly maintained to provide good domestic water service to the customers.

Sincerely,



Robert M. Berry
President, Yerba Buena Water Company

Approved:


Robert M. Berry
Eileen E. Berry

ATTACHMENT A
Page 3

STOCK ASSIGNMENTS SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to:

ROBERT M. BERRY 8,666 shares of the Capital Stock of the Yerba Buena Water Company standing in Roy E. Marquardt's name on the books of said Corporation and represented by Certificate No. 6. Said shares are held by Harvey Knox as security for the unpaid balance of that certain promissory note, dated April 30, 1980 in the face amount of \$180,000.

DATED 10/30/82

ROY E. MARQUARDT

By Mary Kiener
Mary Kiener, Conservator

ATTACHMENT A
Page 4

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sell, assign and transfer unto:

Robert M. Berry and Eileen E. Berry, 1,284 shares of the Capital Stock of the Yerba Buena Water Company standing in Lawrence J. Cashion & Dorothy B. Cashion names on the books of said Corporation represented by certificate No. 8. Said shares are held by Harvey Knox as security for the unpaid balance of the certain promissory note, dated April 30, 1980 in the face amount of \$ 180,000. Robert M. Berry and Eileen E. Berry are to assume the obligation of the Cashions on the above note. Robert M. Berry and Eileen E. Berry names are to be placed on the books of said Corporation represented by certificate No. 8.

Dated Aug 11 1982

Lawrence J. Cashion
Lawrence J. Cashion

Dorothy B. Cashion
Dorothy B. Cashion

ATTACHMENT A
Page 5

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

Robert M. Berry and Eileen E. Berry, 1284 shares of the Capital Stock of the Yerba Buena Water Company standing in Victor J. Sprauer name on the books of said Corporation represented by certificate No. 10. Said shares are held by Harvey Knox as security for the unpaid balance of the certain promissory note, dated April 30, 1980 in the face amount of \$ 180,000. Robert M. Berry and Eileen E. Berry are to assume the obligation of Victor J. Sprauer on the above note. Robert M. Berry and Eileen E. Berry names are to be placed on the books of said Corporation represented by certificate No. 10.

Dated 8-4-82

Victor J. Sprauer
Victor J. Sprauer

ATTACHMENT A
Page 6

STOCK ASSIGNMENTS SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to:

ROBERT M. BERRY and EILEEN E. BERRY 1,284 shares of the Capital Stock of the Yerba Buena Water Company standing in the name of the Tarver Family Trust on the books of said Corporation, represented by Certificate No. 9. Robert M. Berry and Eileen E. Berry's names are to be placed on the books of said Corporation represented by said Certificate No. 9.

DATED 6/22/83

THE TARVER FAMILY TRUST

By James Bank Tarver, Co-Trustee

By Elizabeth Margaret Tarver, Co-Trustee

ATTACHMENT A
Page 7

STOCK ASSIGNMENTS SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to:

ROBERT M. BERRY and EILEEN E. BERRY, 4,515 shares of the Capital Stock of the Yuma Buena Vista Company standing in the name of HOWARD P. HOUSE on the books of said Corporation, represented by Certificate No. 7. Said shares are held by HARVEY KNOX as security for the unpaid balance of that certain promissory note, dated April 30, 1960 in the face amount of \$150,000. ROBERT M. BERRY is to assume the obligation of the Tarver Family Trust on the above note. ROBERT M. BERRY and EILEEN E. BERRY's names are to be placed on the books of said Corporation represented by said Certificate No. 7.

DATED June 27, 1983

HOWARD P. HOUSE

Howard P. House
HOWARD P. HOUSE
Trustee