

ORIGINAL

Decision 89 07 012 JUL 6 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Harvey West, on behalf of all the )  
partners of Graeagle Water Company, )  
a partnership, to transfer Graeagle )  
Water Company's system to Graeagle )  
Water Company, Inc., a California )  
Corporation, and to issue 33,746 )  
shares of its no-par value capital )  
stock (par value fixed at \$5.00). )

Application 88-12-057  
(Filed December 30, 1988)

U-53-U )

O P I N I O N

Graeagle Water Company, a partnership, is a public utility providing water service to approximately 650 customers in the Graeagle area of Plumas County. It received a certificate of public convenience and necessity to operate a public utility water system by Decision (D.) 61400 and D.63364, dated January 24, 1961 and March 6, 1962, respectively, in Application 42423. The partners and their share of interest in the partnership are as follows:

Harvey West and Shirley West	1/3
Robert West and Marjorie West	1/3
Daniel West and Leah West	1/6
Children and/or children's spouses of Robert West	1/6

Graeagle Water Company, Inc. is a California corporation in good standing incorporated on July 1, 1988. At the present time it has no assets or liabilities.

Applicants request authority to transfer all of the existing assets and liabilities of the partnership, including the certificate of public convenience and necessity, to the corporation. They also request authority for the corporation to issue 33,746 shares of common stock with a stated value of \$5.00

per share. These shares will be issued to the partners in the same proportion as their interest in the partnership.

The properties to be transferred and the related obligations to be assumed by the corporation, including current trade obligations, customer deposit obligations, and refund and other contractual obligations of the partnership as of the time of the transfer, constitute the sole consideration for the issuance of the shares. The present book value of the assets to be transferred in exchange for the stock equals or exceeds the par value of that stock. The number of shares to be issued was determined by dividing the utility's capital as of July 1, 1988 by \$5.00 per share.

A statement of assets and liabilities included with the application shows that as of June 30, 1988 the partnership had assets of \$600,575.87 and liabilities, including contributions in aid of construction, of \$431,845.92. A pro forma statement of assets and liabilities for the corporation shows total assets of \$600,575.92, liabilities of \$431,845.92, and capital stock of \$168,730.00.

Applicants state that their basic objective in filing the application is to permit applicant Harvey West and all the partners to incorporate the utility "in order to more clearly delineate the assets and operations of the utility and to provide the limited liability of a corporation." They state further that management of the utility will continue in the same capacity after incorporation, that because the corporation has elected to be taxed as a partnership there will be no effect on rates, and that there will be no effect on rate base.

The Water Utilities Branch (Branch) of the Commission Advisory and Compliance Division reviewed the application and recommends that it be granted ex parte. Branch notes that by D.88-10-056 in the utility's most recent general rate proceeding, we directed the utility to record easements of land used for

utility plant and transmission lines and file copies thereof with the Commission. Branch recommends application of this requirement to the corporation, and that the utility be required to transfer all used and useful utility properties to the corporation.

We conclude that the proposed transfer and issuance of securities are in the public interest and should be authorized as provided in the following order. Since there will be continuity in management of the system as well as its ownership, there should be continuity of service with no effect on ratepayers. To coordinate compliance with our order in D.88-10-056 and this order, we will adopt the Branch recommendation that the utility record and file copies of easements by making the fulfillment of that requirement a condition of the granting of this authority.

Findings of Fact

1. Graeagle Water Company, a partnership, is a certificated public utility providing water service to approximately 650 customers in the Graeagle area of Plumas County.

2. The partners and their share of interest in the partnership are as follows:

Harvey West and Shirley West	1/3
Robert West and Marjorie West	1/3
Daniel West and Leah West	1/6
Children and/or children's spouses of Robert West	1/6

3. Graeagle Water Company, Inc. is a California corporation in good standing incorporated on July 1, 1988. It presently has no assets or liabilities.

4. Applicants request authority to transfer all of the existing assets and liabilities of the partnership, including the certificate of public convenience and necessity, to the corporation.

5. Applicants request authority for the corporation to issue 33,746 shares of common stock with a stated value of \$5.00 per share.

6. The shares of common stock will be issued to the partners in the same proportion as their interest in the partnership.

7. The properties to be transferred and the related obligations to be assumed by the corporation, including current trade obligations, customer deposit obligations, and refund and other contractual obligations of the partnership as of the time of the transfer, constitute the sole consideration for the issuance of the shares.

8. The present book value of the assets to be transferred in exchange for the stock equals or exceeds the par value of that stock.

9. As of June 30, 1988 the partnership had assets of \$600,575.87 and liabilities, including contributions in aid of construction, of \$431,845.92.

10. A pro forma statement of assets and liabilities for the corporation shows total assets of \$600,575.92, liabilities of \$431,845.92, and capital stock of \$168,730.00.

11. Management of the utility will continue in the same capacity after incorporation.

12. The proposed transactions will not affect rates or rate base.

13. The transfer of assets to the corporation is merely a change in the form of ownership not affecting the operation or beneficial ownership of the utility system.

14. By D.88-10-056 we directed the utility to record easements of land used for utility plant and transmission lines and file copies thereof with the Commission.

15. 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.

16. The proposed transfer and security issues are in the public interest and should be authorized as provided in the following order.

17. There are no protests to the granting of this application.

18. A public hearing in this matter is not necessary.

Conclusions of Law

1. The application should be granted with conditions.

2. The transfer of the utility system of Graeagle Water Company, a partnership, to Graeagle Water Company, Inc., should be authorized.

3. As a condition of granting authorization to transfer the system, applicants should be required to fulfill the requirements of D.88-10-056 to record easements and file copies with the Commission.

4. The corporation should be authorized to issue 33,746 shares of common stock with a stated value of \$5.00 per share.

5. The authorization to transfer the system is not a finding of the value of the rights and properties to be transferred

6. The number of shares outstanding, the total stated value of the shares, and the dividends paid do not determine allowable return on plant investment. The authorization to issue stocks is not a finding of the value of the utility's stock or property, nor does it indicate the amounts to be included in ratesetting proceedings.

7. The order should be made effective on the date of issuance because the public interest would best be served by having the transactions take place expeditiously.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Harvey West, on behalf of all the partners of Graeagle Water Company (the partners), may transfer the water system designated in the application, which shall include all used and useful utility properties, to Graeagle Water Company, Inc. (the corporation). This authority will be effective when the utility has recorded easements and submitted a report to the Commission in accordance with Ordering Paragraph 5 of Decision 88-10-056.

2. As a condition of this grant of authority, the corporation shall assume the public utility obligations of the partners, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers.

3. Within 10 days after the transfer the corporation shall submit an original and four copies of the following to the Commission Advisory and Compliance Division, with a transmittal letter stating the proceeding and decision numbers:

- a. A statement of the date of transfer and the date the requirements of paragraph 2 were completed.
- b. Copies of documents showing transfer of assets to the corporation, including bills of sale for personal property and recorded deeds for real property associated with utility plant and water rights.

The Director of the Commission Advisory and Compliance Division shall send the original and one copy of the items submitted to the Docket Office for filing.

4. The corporation shall either file a statement adopting the partners' tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.

5. Before the transfer occurs, the partners shall deliver to the corporation, and the corporation shall keep, all records of the construction and operation of the water system.

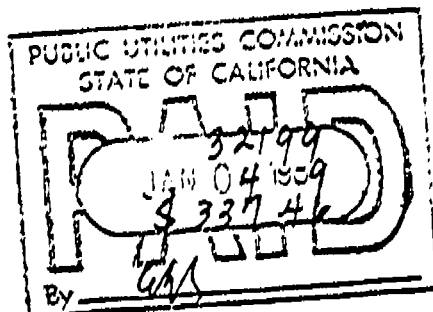
6. When this order has been complied with, the partners shall have no further obligations in connection with this water system.

7. The corporation may issue up to 33,746 shares of common stock with a stated value of \$5.00 per share. This authority will become effective when the issuer pays \$337.46, set by Public Utilities Code § 1904.1.

8. The authority granted by this order shall expire on July 31, 1990 if it has not been exercised by that date.

In all other respects this order is effective today.

Dated JUL 6 1989, at San Francisco, California.



G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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

  
Victor Weiszer, Executive Director

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Harvey West, on behalf of all the partners of Graeagle Water Company (the partners), may transfer the water system designated in the application, which shall include all used and useful utility properties, to Graeagle Water Company, Inc. (the corporation). This authority will be effective when the utility has recorded easements and submitted a report to the Commission in accordance with Ordering Paragraph 5 of Decision 88-10-056.
2. As a condition of this grant of authority, the corporation shall assume the public utility obligations of the partners, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers.
3. Within 10 days after the transfer the corporation shall write the Commission, stating the date of transfer and the date the requirements of paragraph 2 were completed.
4. The corporation shall either file a statement adopting the partners' tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.
5. Before the transfer occurs, the partners shall deliver to the corporation, and the corporation shall keep, all records of the construction and operation of the water system.
6. When this order has been complied with, the partners shall have no further obligations in connection with this water system.
7. The corporation may issue up to 33,746 shares of common stock with a stated value of \$5.00 per share. This authority will become effective when the issuer pays \$337.46, set by Public Utilities Code § 1904.1.



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Dated \_\_\_\_\_, at San Francisco, California.