

Decision 89 12 032 DEC 1 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WARRING WATER SERVICE,)	
INC. to sell and PIRU MUTUAL WATER)	Application 88-10-042
COMPANY to buy a portion of the water)	(Filed October 24, 1988)
system in Ventura County.)	

Lagerlof, Senecal, Drescher & Swift, by William F. Kruse, Attorney at Law, for Warring Water Service, Inc.; and Overton, Lyman & Prince, by Donald H. Ford, Attorney at Law, for Piru Mutual Water Company; applicants.

Frederick J. Gientke, for United Water Conservation District, interested party.

Ida M. Passamonti, Attorney at Law, and Dan Paige, for the Commission Advisory and Compliance Division.

O P I N I O N

This is an application in which Piru Mutual Water Company (Piru) seeks authority to acquire a portion of the public utility water system owned by Warring Water Service, Inc. (Warring).

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in Los Angeles on August 29, 1989, and the proceeding was submitted on that date.

Material Issues

The material issues presented in this proceeding are:

(1) Should the sale be authorized and (2) If the sale is authorized, should any conditions be required?

Discussion

Warring provides water service to 360 residential and commercial customers in and around the unincorporated Town of Piru in Ventura County. In addition, it operates a pumped irrigation system which provides untreated well water to a single 35 acre farm and orchard. Warring also operates a river irrigation system which

provides water from Piru Creek to 525 acres of farmland. None of the systems is interconnected. The river irrigation system is the subject of this application.

Prior to the hearing the parties differed on the following matters: The Commission's Advisory and Compliance Division (CACD) contended that a portion of the \$142,680 gain on sale of the river irrigation system, amounting to \$17,620, be set aside for fixed-cost reimbursement for the benefit of Warring's ratepayers. CACD argued that the reimbursement is appropriate because while most of Warring's expenses associated with the river irrigation system will vanish when the system is sold, certain fixed costs will remain. The amount set aside for fixed cost reimbursement would compensate the remaining ratepayers for carrying this cost in the future. Furthermore, Warring's overall rate of return is a slight loss, while its rate of return on the river irrigation service is 23.4%. Without the river irrigation system, the condition of the company would be much worse and would show a significant loss.

Warring claims that it owns the right to divert up to approximately 4,100 acre feet per year from Piru Creek. The application requests approval of the transfer of the Warring's river irrigation system pursuant to a contract which transfers 2,000 acre feet per year of water rights. CACD contends that during the past five years the maximum quantity of water diverted from Piru Creek by Warring was 1,439 acre feet per year and this amount is the maximum that Warring can transfer. Based on CACD's contention, the United Water Conservation District (United) contends that the water rights owned by Warring for diversion from Piru Creek do not exceed 1,439 acre feet per year.

During the hearing, Warring stipulated to various CACD recommendations, including the set aside for fixed costs from the gain on sale.

One consideration in determining whether a utility should be authorized to sell and transfer a portion of its plant is the effect this would have on the remaining customers. The stipulation provides a mechanism to protect the remaining customers and should be adopted.

All of the parties joined in stipulating that the Commission could make the following Finding of Fact:

"Warring Water Service Co. claims that it owns the right to divert up to approximately 4100 acre feet per year from Piru Creek. The present Application requests approval of the transfer of the river irrigation system of Warring Water pursuant to a contract which transfers 2000 acre feet per year of water rights. Staff contends that during the past five years the maximum quantity of water diverted from Piru Creek by Warring Water was 1439 acre feet per year, and staff contends this amount is the maximum that Warring Water can transfer.

"Based on staff's contention that the maximum amount diverted has been 1439 acre feet per year within the past five years, the United Water Conservation District contends that the water rights owned by Warring Water Service Co. for diversion from Piru Creek does not exceed 1439 acre feet per year.

"It is not necessary for the Commission to determine the actual amount of water rights owned by Warring Water Service Co., to authorize the transfer of the irrigation system and the water rights owned by Warring Water Service Co. to divert water from Piru Creek as they may exist or as they may be adjudicated to exist in the future, up to 2000 acre feet per year."

It is well settled that "an order of this Commission authorizing the sale and transfer of public utility properties does not confer upon the vendor title to property which he may not own at the time. Our order authorizes the sale and transfer of such an interest as the vendor may have in the property." (F. M. and A. A.



CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED**

TO ASSURE

LEGIBILITY

Guess (1930) 35 CRC 141, 143.) The Commission is not the appropriate forum to determine the extent of Warring's water rights in Piru Creek. The stipulation protects the rights of all parties on this issue and should be adopted.

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

Findings of Fact

1. Warring operates a public utility water system in Ventura County pursuant to authority granted in Decision 72269 in Application 49013, dated April 11, 1967.

Warring provides water service to 360 residential and commercial customers in and around the unincorporated Town of Piru in Ventura County. In addition, it operates a pumped irrigation system which provides untreated well water to a single 35 acre farm and orchard. Warring also operates a river irrigation system which provides water from Piru Creek to 525 acres of farmland. None of the systems is interconnected.

The river irrigation system includes diversion works in Piru Creek, approximately 16,000 feet of mains, one meter, and various channeling structures and slide gates. It has ten service connections.

2. Piru is a mutual water company not subject to the jurisdiction of the Commission. Piru was recently incorporated by the nine customers who currently receive service from the river irrigation system. Piru will issue stock among its members to raise \$250,000 to cover its operations and the proposed transaction.

3. Warring and Piru have entered into an agreement under which Warring would sell and transfer the river irrigation system to Piru for \$175,000 in cash. The original cost, less depreciation, of the river irrigation system is \$18,920.

Warring desires to sell the river irrigation system so it can concentrate its efforts on the domestic portion of its system.

Piru's shareholders desire to purchase the river irrigation system so they can assure and control their supply of irrigation water.

4. The stipulations between Warring and CACD including the one dealing with the treatment of gain on sale, were made on the record in accordance with Rule 51.6(c) and conform to Rule 51.1. They are reasonable in the light of the whole record, consistent with law, and in the public interest and should be approved by the Commission.

5. The stipulation entered into by all parties of record dealing with Warring's claim to water rights was made on the record in accordance with Rule 51.6(c) and conforms to Rule 51.1. It is reasonable in the light of the whole record, consistent with law, and in the public interest and should be approved by the Commission.

6. It is reasonable to include in the ensuing order a provision requiring Warring to set aside from the gain on sale in the transaction \$17,620 as a credit to the accumulated depreciation account as reimbursement for fixed costs which will be shifted to the remaining ratepayers as a result of the transaction.

7. Warring claims that it owns the right to divert up to approximately 4,100 acre feet per year from Piru Creek. The present application requests approval of the transfer of the river irrigation system of Warring pursuant to a contract which transfers 2,000 acre feet per year of water rights. CACD contends that during the past five years the maximum quantity of water diverted from Piru Creek by Warring was 1,439 acre feet per year, and further contends this amount is the maximum that Warring can transfer.

Based on CACD's contention that the maximum amount diverted has been 1,439 acre feet per year within the past five years, United contends that the water rights owned by Warring for diversion from Piru Creek does not exceed 1,439 acre feet per year.

It is not necessary for the Commission to determine the actual amount of water rights owned by Warring, to authorize the transfer of the irrigation system and the water rights owned by Warring to divert water from Piru Creek as they may exist or as they may be adjudicated to exist in the future, up to 2,000 acre feet per year.

8. Warring does not hold any main extension advances or customer deposits to establish credit.

9. Piru has the ability, including financial ability, to acquire the river irrigation system owned by Warring and continue its operations.

10. The proposed transfer of Warring's water irrigation system to Piru is not adverse to the public interest.

11. Public Utilities (PU) Code § 431 directs the Commission to fix an annual fee to be paid to the Commission by each regulated water and sewer system and that fee for 1988 has been set at 1.5% of all water and sewer revenues collected by each water and sewer utility for the year. It is reasonable to require the payment of such fees as may be owing as a condition of transfer.

12. Because the public interest would best be served by having the sale and transfer of control and assets take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. The proposed transfer should be authorized on the express condition that Warring set aside from the gain on sale in the transaction \$17,620 as a credit to the accumulated depreciation account as reimbursement for fixed costs which will be shifted to the remaining ratepayers as a result of the transaction.

2. The Commission is not making a determination on the issue of water rights claimed by Warring in Piru Creek.

3. The proposed transfer should be authorized on the express condition that all fees due the Commission pursuant to PU Code § 431 be paid to the date of transfer.

4. The application should be granted as hereafter provided.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order Warring Water Service, Inc. (Warring) may sell and transfer the river irrigation system portion of its public utility water system to Piru Mutual Water Company (Piru) in accordance with the terms set forth in the application except as herein modified.

2. As a condition of the grant of authority contained in Ordering Paragraph 1, Warring shall:

- a. Retain the rights-of-way and easements presently held by Warring for the use of its river irrigation system for possible use as future well sites or pipelines. Warring should grant only non-exclusive easements to Piru so that both entities can have use of the rights-of-way. All agreements, deeds, and other instruments executed between Warring and Piru Water Company shall be revised to conform with this condition.
- b. Divide the proceeds from the gain on the sale from the transfer herein authorized as follows: \$17,620 shall be set aside as a credit to the accumulated depreciation account of Warring as reimbursement for fixed costs which will be shifted to the remaining ratepayers. The balance of the gain shall be distributed to the benefit of Warring's owners and stockholders.

Warring shall show in all future annual reports to the Commission the above \$17,620 credit to accumulated depreciation. The amount should be shown with an explanation under other credits

in the appropriate accumulated depreciation schedule. If the sale is completed prior to December 31, 1989 a prorated amount should be shown in the report filed for that year.

- c. Pay to the Commission before the transfer becomes effective all fees due under PU Code § 431 to the date of transfer of the river irrigation system.

3. On or after the effective date of sale and transfer, Warring shall bill and collect from its river irrigation customers all amounts due pursuant to its filed tariffs for service up to that date.

4. Within 30 days of the sale and transfer of the assets of Warring's river irrigation system to Piru, Warring shall notify the Commission in writing of that fact and within such period shall file with the Commission a true copy of each instrument by which such transaction has been accomplished including an inventory of assets transferred.

5. Warring shall file revised tariff schedules pursuant to General Order No. 96-A reflecting the withdrawal of its measured river irrigation service.

6. This decision does not adjudicate the water rights to which Warring or Piru may be entitled from Piru Creek.

7. Within 90 days after actual transfer Warring shall file in proper form, an annual report on the operations of the river irrigation system from the first day of the current year through date of transfer.

8. Upon compliance with all of the conditions of this order, including the payment of all fees due under PU Code § 431 to the date of transfer, Warring shall stand relieved of its public utility obligations with respect to the river irrigation system and may discontinue service concurrent with the commencement of service by Piru as contemplated in the agreement between the parties.

9. The authority granted in Ordering Paragraph 1 shall expire on December 31, 1990 if it has not been exercised by that date.

This order is effective today.

Dated DEC 1 8 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.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

DB