

Decision 90 10 008 OCT 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Jensen Water Company for authority)
to change its ownership.)

Application 89-06-024
(Filed June 16, 1989)

ORIGINAL

Bruce C. Atkins, Attorney at Law, for
Ralph Sandberg and Florence Sandberg,
and Chester O. Newman, for L. Dee
Tallent, applicants.

Izetta Jackson, Attorney at Law, and
Willem R. Van Lier, for the Commission
Advisory and Compliance Division,
Water Utilities Branch.

P. F. Merrin, Jr., for the State of
California, Department of Health Services,
interested party.

INTERIM OPINION

This is an application in which L. Dee Tallent (Tallent) seeks authority to transfer control of Jensen Water Company (Jensen) and certain utility property to Ralph W. Sandberg and Florence A. Sandberg (Sandbergs).

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Palm Springs on April 19, 1990. The proceeding was submitted subject to the filing of transcript, a late-filed exhibit, and a response to the late-filed exhibit. A response was filed on June 6, 1990, and corrected response submitted on June 11, 1990 and the matter was submitted on that date. The ALJ filed his proposed decision on September 7, 1990. No comments to the proposed decision were filed.

Discussion

The Commission Advisory and Compliance Division, Water Utilities Branch (Water Branch) prepared a report on the application which was mailed to the parties on January 17, 1990. The report raised a concern about the possibility of the

transaction being for speculative purposes and made two recommendations:

1. Jensen's spring water source, one-million gallon storage tank, and associated facilities be dedicated to public use.
2. The portion of the purchase price which is allocated to the items in Recommendation 1 be included in rate base and the corresponding expense in the purchased water account be deleted. The applicants disagreed with the Water Branch's report and the matter was calendared for hearing.

At the hearing, the evidence indicated that after Tallent and the Sandbergs entered into the agreement for the transfer of control of Jensen, the Sandbergs were approached by a company which sells bottled water about the possible purchase of a controlling interest in Jensen by the bottled water company. No agreement was executed. No plan to sell any acquired interest is pending. Each of the Sandbergs testified that if the application were granted, they would not sell any interest in Jensen to anyone who might divert its water to persons outside of its service area. Additionally, it is noted that any future transfer of control of Jensen or the sale or diversion of any of its water supply would be subject to the jurisdiction of the Commission.

During the course of the hearing, the applicants stipulated to the Water Branch recommendations, except for one detail. Not all of the land owned by Jensen or to be transferred to it is used or useful for utility operations. Therefore, it is proper to require a description of the dedicated utility property over which control is sought to be transferred. A survey by a licensed land surveyor or registered civil engineer was proposed by counsel for Water Branch and acquiesced to by counsel for the Sandbergs. Counsel for Tallent contended that an adequate description or map of the utility's property could be prepared without incurring the costs of a survey. The ALJ ruled that the

matter would be submitted subject to counsel for Tallent filing a late-filed exhibit which would contain a map in sufficient detail to clearly indicate all of the utility's plant or system. An opportunity for the parties to file comments to the late-filed exhibit was provided.

On May 14, 1990, counsel for Tallent filed late-filed Exhibit 5, which is a map intended to describe Jensen's plant or system. On June 6 and 11, 1990, Water Branch filed comments which contend that the map does not adequately describe the utility's plant or system.

Examination of the map indicates that it does not have the specificity or detail which adequately describes Jensen's plant or system which is dedicated to public use. Lack of a proper description may cause future litigation and poses an impediment to the Commission in the performance of its regulatory duties. In the circumstances, the applicants will be given the opportunity to provide a survey which is acceptable to the Commission of the utility's plant or system or file a stipulation dedicating the entire one-half section involved to public utility use. If they fail to do so, authority to transfer control will be denied.

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

Findings of Fact

1. Jensen is a California corporation which owns and operates a water corporation as defined in Public Utilities Code § 241. It received a certificate of public convenience and necessity to operate its water system in Decision (D.) 66945 in Application (A.) 45711 dated March 17, 1964 which was supplemented by D.67500. Originally, Tallent owned all of Jensen's outstanding capital stock.

2. Jensen's service area is located south of Interstate Highway 10, in Cabazon, which is about 17 miles west of Palm Springs. It includes the following:

- a. Cabazon Estate No. 2, a subdivision of a portion of the NE 1/4 Section 22 and the NW 1/4 of Section 23, Township 3 South, Range 2 East San Bernardino Base & Meridian, Riverside County, California, in the City of Cabazon.
- b. Cabazon Estate No. 3.
- c. Desert Highlands Tract.
- d. Casino lot.
- e. Greenblatt well site.
- f. Tentative Tract No. 3190, all of which is at or below but not above the 1,575-foot elevation, in the City of Cabazon, Riverside County.

Jensen has approximately 371 active service connections. Most of its customers live in low-cost housing and mobile homes.

Jensen's acknowledged sources of water supply consist of two wells: Well No. 1 and Greenblatt Well, which are located in the northeastern portion of the service area. Both wells have production meters. Well No. 1 is equipped with a 40 horsepower (hp) submersible pump and motor and has a pumping capacity of 405 gallons per minute (gpm). Well No. 1 was drilled in 1962 to a depth of 500 feet with an 8-inch steel casing. The static water level at this well is approximately 285 feet and the pumping water level is approximately 287 feet. The Greenblatt Well is also equipped with a 40 hp submersible pump and motor with a 325 gpm pumping capacity. The Greenblatt Well was drilled in 1957 to a depth of 500 feet and has an 8-inch casing.

In 1969, Tallent improved a spring water source on land he owned which he alleges was for his personal use and not as part of Jensen. The spring water quality is better than the wells. Its natural elevation eliminates boosting by pumps thereby saving electric power. From the completion of the spring improvement, spring water, supplemented by well water as needed, has been the

primary source of Jensen's water supply. Tallent has been compensated for the spring water by inclusion of a purchased water account in Jensen's expenses.

Resolution W-3360, dated May 13, 1987, stated in its Findings (Nos. 7 and 8) that Jensen shall protect the spring source and associated facilities for the benefit of its customers and that Tallent shall not dispose of the land or facilities of the spring source separate from the utility until the Commission has decided the issue of their dedication to public use. Tallent, in a letter dated April 8, 1987 to the Water Branch, reaffirmed his commitment that Jensen would never dispose of the one-million gallon tank, water supply, and facilities which are used to furnish water to Jensen's customers separately unless all or controlling interest in the utility were included in the sale.

The spring water supply system consists of a one-million gallon steel tank, which is the only operative water supply tank in Jensen's service area; two Culligan filters; a 13,000-gallon solids settling tank; a hypochlorinator; a cathodic protection; a 3-inch meter and 2,200 feet of 3-inch transmission pipeline. The spring is on a 1/2 Section (320 acres) of rocky terrain land described as South 1/2 of Section 23, Township 3 South, Range 2 East, San Bernardino Base Line & Meridian which includes riparian rights. The water from the wells is pumped, after chlorination and filtering, into the one-million gallon steel tank from which it is fed into Jensen's distribution system. The water pressure varies between 60-90 pounds per square-inch gauge. The existing water pipelines consist of approximately 2,720 feet of 8-inch steel main, 160 feet of 5-inch steel main, 17,400 feet of 4-inch, and 2,200 feet of 3-inch steel mains for a total of approximately 22,480 feet of mains. The service lines are 3/4-inch and 2-inch. There are 68 public fire hydrants in the service area.

3. On October 29, 1986, Tallent and the Sandbergs entered into an agreement under which Tallent sold the Sandbergs 48% of the stock of Jensen and a 48% interest in the 1/2 Section upon which the spring is located for \$130,000. No Commission approval was required for that transaction. The agreement also provided that, subject to Commission approval, Tallent would transfer the remaining 52% of Jensen's stock and 52% interest in the 1/2 Section upon which the spring is located for \$70,000. The parties seek herein approval to consummate the remainder of the agreement.

4. The Sandbergs have managed and operated Jensen under Tallent's direction for approximately three years. The Sandbergs have each received a "Water Treatment Operator, Grade 2" certificate from the Department of Health Services which qualify them to operate the water system. The Sandbergs have done a reasonable job in running the water system.

5. As of December 30, 1988, the Sandbergs had a net worth of \$432,000, which included \$94,000 in cash. Their personal annual income was \$20,880.

6. The Sandbergs have the ability, including financial ability, to acquire control of Jensen and continue its operations.

7. After the Sandbergs acquired a 48% interest in Jensen and the spring site and were moving forward with this application to acquire control, they were approached by a company which sells bottled water. The bottled water company inquired about the possible purchase by it of a controlling interest in Jensen. Nothing came of the inquiry. The Sandbergs have no present plans to resell the controlling interest in Jensen which they seek to acquire herein. The Sandbergs have stated that they will not sell any interest in Jensen to anyone who might divert its water to persons outside Jensen's service area.

8. The proposed transfer of control of Jensen from Tallent to the Sandbergs is not adverse to the public interest, provided certain conditions are required in connection with the transfer.

9. The spring water source, one-million gallon storage tank, and associated facilities, are necessary and useful for the operations of Jensen. It is reasonable to require as a condition of transfer of control that these facilities be clearly dedicated to the public use and that an appropriate description of Jensen's utility plant, including the spring water source, one-million gallon storage tank, and associated facilities be filed with the Commission.

10. Late-filed Exhibit 5, which was filed by counsel for Tallent on May 14, 1990, does not adequately describe Jensen's plant or system. The map does not have the specificity or detail which clearly describes Jensen's plant or system which is dedicated to public use. Lack of a proper description may cause future litigation and poses an impediment to the Commission in the performance of its regulatory duties.

11. It is reasonable to provide the applicants with an opportunity to file an appropriate description of Jensen's plant or system. It is reasonable to require that such description be either (a) a survey acceptable to the Water Branch by a licensed land surveyor or registered civil engineer, or (b) a stipulation filed by applicants that all of the land, including riparian rights, described as the South 1/2 of Section 23, Township 3 South, Range 2 East, San Bernardino Base Line & Meridian is dedicated to the public use.

12. It is reasonable to require that the \$126,600 of the \$200,000 purchase price allocated for the spring, one-million gallon tank, and associated facilities be included in rate base and the corresponding expense under the purchased water account be removed. The proration of the \$126,600 between the spring source and the water tank may be divided equally and each should be assigned a 50-year life to be effective at the close of the transaction and upon approval by the Commission.

Conclusions of Law

1. The Sandbergs should be authorized to acquire control of Jensen through the purchase of additional stock and the spring water source, one-million gallon storage tank, and associated facilities subject to specified conditions.

2. The applicants should be required to file a statement acknowledging that the spring water source, one-million gallon storage tank, and associated facilities are dedicated to the public use.

3. The applicants should be required to file an appropriate description, acceptable to the Water Branch, of Jensen's plant or system which includes the spring water source, one million-gallon storage tank, and associated facilities.

4. Jensen should be required to include in rate base the \$126,600 allocated in the purchase price for the spring, one-million gallon storage tank, and associated facilities and remove the corresponding expense under the purchased water account. The \$126,600 may be prorated between the spring water source and the one-million gallon storage tank and each should be assigned a 50-year life effective upon the close of the transaction and approval of the Commission.

INTERIM ORDER

IT IS ORDERED that:

1. Ralph W. Sandberg and Florence A. Sandberg (Sandbergs) may acquire control of Jensen Water Company (Jensen) and certain utility property through the purchase of shares and property from L. Dee Tallent (Tallent) in accordance with the terms of the application, subject to the following express conditions:

- a. Within 60 days after the effective date of this order, applicants shall file with the Commission a statement acknowledging that the spring water source, one-million gallon storage tank, and associated facilities are dedicated to the public use.

b. Within 6 months after the effective date of this order, applicants shall file an appropriate description, acceptable to the Commission's Water Utilities Branch, of Jensen's plant or system which includes the spring water source, one-million gallon storage tank, and associated facilities. This requirement may be satisfied by either of the following:

- (1) The filing of a stipulation by applicants that all of the land, including riparian rights, described as the South 1/2 of Section 23, Township 3 South, Range 2 East, San Bernardino Base Line & Meridian is dedicated to the public use.
- (2) A survey by a licensed land surveyor or registered civil engineer of all of Jensen's plant or system. The survey shall include the following:
 - (a) The one-million gallon water tank including the site: The site (Area #1) consists of approximately one acre of land on which the existing tank is located and one acre of land for future tank construction. The western boundary of the tank site is approximately 310 feet long, parallel with the west boundary of Section 23 and approximately 50 feet west of the tank. The northern boundary of the tank site is approximately 281 feet long and located approximately 35 feet north of the tank. The other sides are parallel to their respective opposite sides.
 - (b) A centerline to be established at the 3" pipe extending from the tank to the lower catch basin, then from the catch basin up the centerline of the stream to the south boundary of Section 23.

Area #2 then to be established with each boundary parallel to and at a distance 50 feet from the centerline.

- (c) All access roads and trails located and easements provided.
- (d) The large transmission main extending from the Jensen's service area to the tank shall be located and a 30-foot easement provided.

2. Upon consummation of the transaction authorized in Ordering Paragraph 1, Jensen shall include in rate base the \$126,600 allocated in the purchase price for the spring water source, one-million gallon storage tank, and associated facilities and remove the corresponding expense under the purchased water account. The \$126,600 may be prorated between the spring water source and the one-million storage tank and should be effective on the close of the transaction and approval of the Commission.

3. The authority granted in this order shall expire on June 30, 1991, unless it is exercised by that date.

This order is effective today.

Dated OCT 12 1990, at San Francisco, California.

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

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

Neal J. Sullivan
NEAL J. SULLIVAN, Executive Director
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