

Mailed

SEP. 3. 1992

Decision 92-09-008 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of DINO BOZZETO, doing business as )  
LOS GUILICOS WATER WORKS (U-412-W), )  
and LAWRENCE AND MELANIE BLUM, for )  
an order authorizing the former to )  
sell and the latter to acquire the )  
water service and related facilities )  
of LOS GUILICOS WATER WORKS in )  
Kenwood, Sonoma County. )

Application 90-12-005  
(Filed December 5, 1990)

O P I N I O N

Statement of Facts

In the valley between the Sonoma and Maacama mountains in Sonoma County, there are numerous natural warm mineral springs. These have been sought out by those seeking the soothing healing waters since before the Spanish days in California. One such spring is located 2-1/2 miles southwest of Kenwood in Glen Ellen Township on Warm Springs Road alongside Sonoma Creek in the Los Guilicos Springs tract of land. A popular place to relax, play, and picnic; initially, the parcel of land on which the spring is located was developed as the Guilicos Warm Springs Resort. In 1923, better to serve the resort, the owners sank a well to contain the artesian spring. A large redwood swimming pool was constructed on the adjacent bank above the creek and the well was used to supply warm mineral water to the pool.

Later, on lots located adjacent to the resort, across Sonoma Creek and to the south, a few vacation type cabins were built. Having no water source other than expensive individual wells or the creek, beginning in 1928 a few of these cabins were permitted as an accommodation to obtain water from the resort's well. Later a nominal charge was made. By 1946, when the then owner of the resort, Mrs. Mabel Miller, sold the resort and the

small water supply system (known as Los Guilicos Water Works) to Mr. and Mrs. Harold Morton, the water works had a 500-gallon storage tank in a small tank housing erected next to the resort's well which tank provided pressure for water being delivered by the resort's well to both the resort's grounds and to the 11 vacation cabins then included as customers of the fledgling water company.

Over the 33 years after 1946, substantial changes were made by Morton apart from renaming the resort to "Morton's Warm Springs Resort." Morton replaced the aged redwood swimming pools by three individual concrete pools in 1954, 1955, and 1959, respectively, located adjacent to each other and to the resort's well. The well supplied water to these pools. Then, unable to maintain any sort of pressure to the resort's fountains and grounds' sprinkler system, and to the water works' customers, Morton later added a 16,000-gallon storage tank on a hill on the rear part of the approximate 20-acre resort, thereby providing pressure for all requirements of the resort and the water works' customers outside of the resort. The tank has a relay which activates a pump at the well, and 3-inch lines lead up to the tank and back.

Morton also owned additional land to the east across Warm Springs Road from the resort and sold lots, offering water from his Los Guilicos Water Works as an inducement, and installing distribution mains to deliver the water. By 1979 there were in all approximately 20 cabins, all metered, purchasing domestic water from the water works. By then some of the cabins were reconstructed to afford all year-round use.

In 1979 Morton sold his resort and Los Guilicos Water Works to Dino Bozzetto who added customers to the water works so that at present there are 21 metered connections with two additional units served off one meter. In 1986 Bozzetto attempted to raise rates. This prompted some customers to file a complaint with the Commission, leading to Decision 88-01-015 (Stanley Burns

et al. v. Dino Bozzetto dba Los Guilicos Water Works (1988) 27 CPUC2d 279). This decision found the water system to be a public utility. Immediately thereafter Los Guilicos Water Works filed an advice letter to increase rates, and by Resolution No. W-3443 issued April 26, 1989, the Commission authorized a rate increase.

On November 17, 1990, Bozzetto, in his own name and as "Mineral Springs, Inc." (the corporate identity Bozzetto assumed on October 20, 1985, and by which latter name he operated both the resort and Los Guilicos Water Works), entered a commercial purchase agreement with Lawrence and Melanie Blum to sell "that certain real property commonly known as Morton's Warm Springs Resort." Under paragraph 9 entitled "Los Guilicos Water Works" of that purchase agreement, it is stated that "Buyer is aware that the subject property supplies water to a twenty-one (21) subscriber Public Utilities Commission regulated water company..." The sale price for the entire package, the resort with its facilities, and the customer water system, was \$1,600,000. Of this total, \$64,000 (4%) is attributable to Los Guilicos Water Works.

Pursuant to Public Utilities (PU) Code §§ 851 through 854, the parties seek Commission authorization for the sale and transfer of the small public utility segment of the package. The parties state an original cost of \$24,253 for the water plant in service with a depreciation reserve of \$14,616. This is supported by a copy of the Los Guilicos Water Works 1988 Annual Report which, under Schedule B - Water Plant in Service, reflects Acct. 317 - "Other water source plant" of \$24,253, and under Schedule C - Reserve for Depreciation of Utility Plant, a total of \$14,104. The result is a net book cost of \$9,637. The buyer accepts that water rates for his domestic residential customers will be based on this depreciated original cost rather than on the sale price. The buyer further states that he has over 18 years as the owner-operator of various professional businesses, and furnishes a personal financial statement to reflect a substantial net worth.

The Commission's Water Utilities Branch (Branch) conducted an investigation of the proposed sale and transfer and prepared a report on the application. Branch's investigation found Los Guilicos Water Works to be well-maintained and properly operated, albeit with only one water source. Staff accepts the \$9,637 net book value stated in the application as of December 31, 1990 as being reasonable. Staff also accepts that the buyer's financial statement indicates his ability to pay for and invest in Los Guilicos Water Works. An informal staff meeting with the buyer and the customer reflected no opposition to the acquisition. The buyer also agreed to the rates ordered by the Commission in Resolution No. W-3443. Formal notice of the captioned application appeared on the Commission's Daily Calendar of December 7, 1990. No protests have been received. The buyer has cooperated fully with the administrative law judge (ALJ) in furnishing additional information as requested.

Discussion

The design of PU Code §§ 851-854 is to prevent the impairment of the public service of a utility by its transfer or the transfer of its facilities and interests into the hands of parties incapable of rendering adequate service at reasonable rates or upon terms which would produce the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 C.R.C. 520). Accordingly, no sale of property burdened with a public use is legal, or of any validity whatever, except the authority to make such sale is first given by the Commission (Henderson v. Oroville-Wyandotte Irr. Dist. (1931) 213 C.514).

In the present circumstance, by having induced land sales for residential purposes by offering and thereafter providing and charging for water to those lots, the owner of this Warm Springs Resort, operating in this business aspect as Los Guilicos Water Works, was determined to be a water corporation as defined in PU

Code § 241 and subject to the jurisdiction of this Commission (Burns v Los Guilicos, supra). Therefore, the present application.

The purchaser has presented ample evidence of his financial ability to operate both the resort and the water distribution system, and his success in previous business ventures indicates a high probability of success in operating this system. An unannounced visit by the ALJ on a day the resort was closed found maintenance work in full progress with a careful attention to detail. The purchaser has agreed to retain the rate structure last ordered by Resolution No. W-3443, and has accepted and complied with various requirements therein, and will also record the plant investment figures Branch estimated to be applicable, in its annual reports, and will adopt the seller's tariffs. The utility has been well-maintained and properly operated since Blum assumed responsibility. The transfer and sale appear to be in the public interest (see Appendix A map).

One additional matter requires clarification. The Branch report speaks of Los Guilicos Water Works' facilities as consisting of a well, pump, a 16,000-gallon storage tank, and a distribution system consisting of 4-inch and under steel mains. As the report further notes, the principal investment by the buyer is the resort (96%), and the water system (4%) is tagged onto this sale. The resort with its artesian well existed long before the residential usage and sales outside the resort area came into being. By a combination of inducements tied to lot sales and diversion in the more recent past of a small portion (approximately 10%) of the flow from the resort's overall well production to the external residential customers for domestic use, a public use has attached to this 10% portion of the flow from the resort's well. It is this 10% portion of the flow that has been dedicated to the public's use, not the full production, much less the well itself.

Similarly, the 16,000-gallon storage tank and much of the distribution system are used to serve the resort's picnic areas,

restrooms, dressing rooms, and extensive grounds' sprinkler system, as well as the external 21 metered residences outside the resort grounds. Separate pumps serve the pools and the storage tank. The share of water attributable to the utility is determined by the total amount of water used by the metered residences plus 10% assumed as unaccounted for water. The buyer reports that there are no additional lots outside the resort's 20-acre grounds available for sale to expand the 21 residential home utility service area, and that he intends no growth or expansion of Los Guilicos Water Works. The proportionate share of the storage tank, pumps, and mains dedicated to the utility can be determined by subtracting the metered customers' use from the total well production. However, in no way are the resort or its facilities a customer of Los Guilicos Water Works.

Findings of Fact

1. Today, known as Morton's Warm Springs Resort, a natural warm mineral springs resort, including an artesian well as an integral part of the resort, has been in operation since 1887.
2. Los Guilicos Water Works, developed in more recent years, and a minor appendage to the resort, is a public utility water system today serving 21 metered customers outside the periphery of the resort.
3. The resort and water works are owned by Dino Bozzetto who has sold the resort to the Blums, and the parties by this application seek Commission authorization to sell and transfer the water works, under Commission jurisdiction, to the Blums.
4. The water works consists of a dedicated right to public use of 10% of the flow of water obtainable from the resort's artesian well, and a similar limited share right to a 16,000-gallon storage tank, pumps, and a water distribution system.
5. There is no known opposition to the proposed sale and transfer of the water works.

6. It can be seen with reasonable certainty that the sale and transfer to the Blums present no significant adverse impact on the environment.

7. Upon completion of the sale and transfer, and payment to the Commission of the collected Public Utilities Commission Reimbursement fees, Bozzetto can be relieved of his public utility obligations to provide water service to the 21 customers in Los Guillicos Water Works' service area.

8. The sale and transfer are in the public interest.

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

Conclusions of Law

1. A public hearing is not necessary.
2. The sale and transfer should be authorized.
3. Upon completion of the sale and transfer and payment of the collected Public Utilities Reimbursement fees, Bozzetto should be relieved of his public utility water obligations in the Los Guillicos Water Works' service area.

ORDER

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Dino Bozzetto, doing business as Los Guillicos Water Works, may sell and transfer to Lawrence and Melanie Blum the water system set forth in the application and its attachments, and as modified in this order's Discussion.
2. Within 10 days of the actual transfer, Bozzetto shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.

3. Los Guilicos Water Works will enter, as of December 31, 1990, Total Plant in Service \$24,253, Depreciation Reserve \$14,616, and Rate Base \$9,637 to represent plant investment in its books of account and in the Annual Report it files with the Commission.

4. Los Guilicos Water Works will adopt a service charge of \$183 per year and a quantity charge of \$3.16 per 1,000 gallons as provided by Resolution No. W-3443 with appropriate tariff filings to reflect the requirement.

5. Should Los Guilicos Water Works expand and the total number of customers exceed 50, the utility must obtain an additional source of supply to the interest held in the Morton's Warm Springs well source.

6. Bozzetto shall make remittance to the Commission of the Public Utilities Commission Reimbursement fees collected to the date of sale and transfer.

7. Upon completion of the sale and transfer authorized by this Commission order, and upon payment to the Commission of the collected Public Utilities Commission Reimbursement fees to the date of the sale and transfer, Bozzetto shall stand relieved of his public utility water service obligation in the Los Guilicos Water Works' service territory.

This order is effective today.

Dated September 2, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
NORMAN D. SHUMWAY  
Commissioners

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

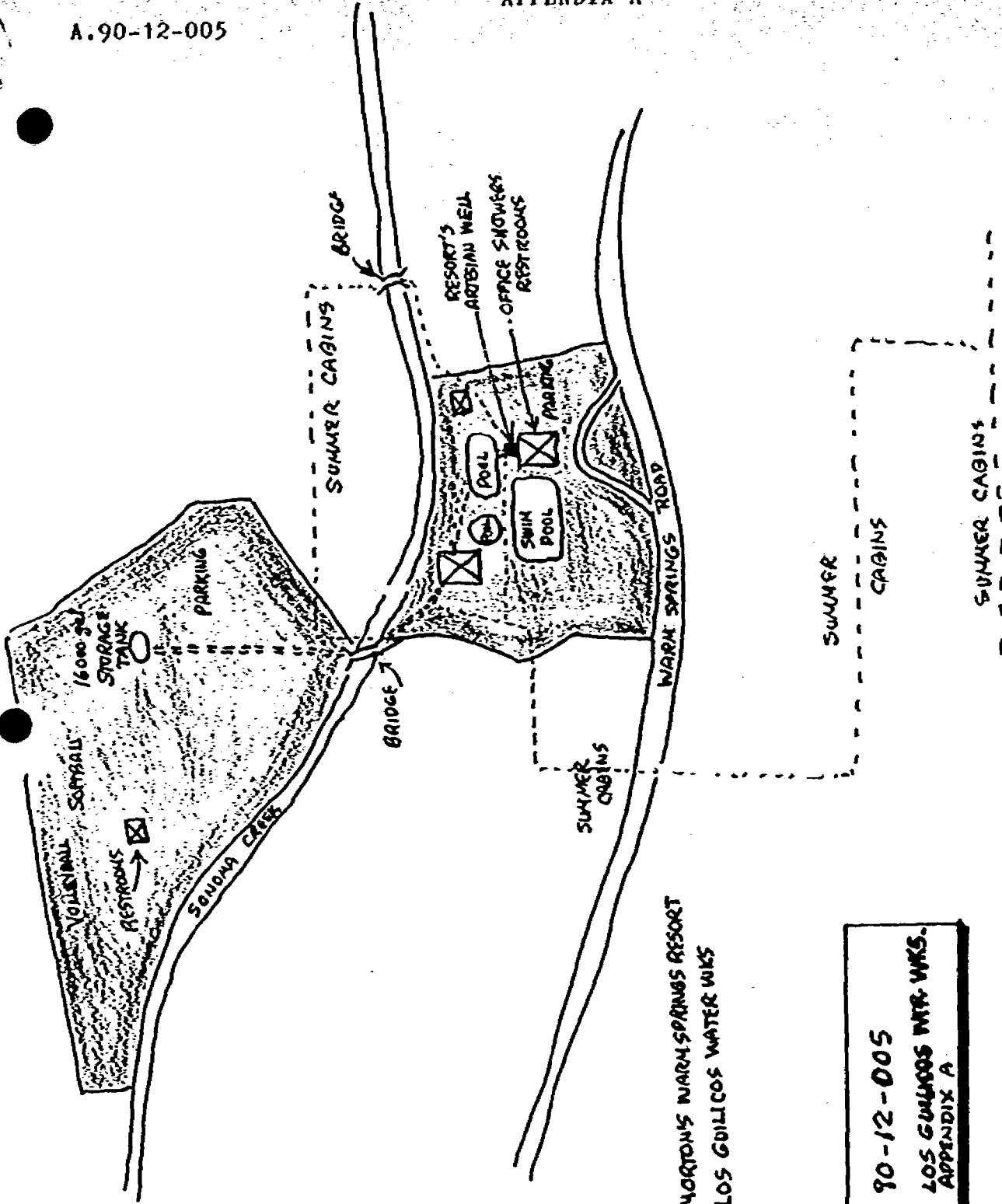
Commissioner Patricia M. Eckert,  
being necessarily absent, did  
not participate.


  
NEAL J. SHULMAN, Executive Director



A.90-12-005

APPENDIX A




 MORTON'S WARM SPRINGS RESORT  
 --- LOS GUILICOS WATER WKS

A. 90-12-005  
 SALE LOS GUILICOS WATER WKS.  
 APPENDIX A