

ORIGINAL

'82 02 079 FEB 17 1982

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HENRY LAZARE)
and JEANNE LAZARE, doing)
business as the JACUMBA WATER)
COMPANY, for an order approving)
sale of all assets.)

Application 60857
(Filed August 28, 1981)

O P I N I O N

Henry LaZare and Jeanne LaZare (LaZare), doing business as Jacumba Water Company, seek authority to sell and Jacumba Associates (Associates), a California general partnership,^{1/} seeks authority to buy the Jacumba Water Company.

As of December 31, 1980 the water system served 151 service connections, with a net plant value of \$45,703. As of June 30, 1981 Associates had total assets of \$1,377,218. For the period January 1 to June 30, 1981, the water system reportedly had revenues of \$7,585, expenses of \$11,262 (including depreciation, excluding income tax effects), for a net loss of \$3,677. Considering this net loss in operations, Associates is reminded of the Commission's Regulatory Lag Plan, adopted by Resolution M-4705 in 1979, which permits Class D water utilities to obtain rate relief by the less complex means of advice letter procedure.

LaZare and Associates completed the sale of the water system in 1979 and Associates took possession and operated the system from August 1, 1979, under the term of sale agreement, Attachment A to the application. The purchase price of \$50,000 was paid in full in August 1979.

^{1/} The partners, as of August 20, 1981, are listed in Appendix A attached.

Wallace R. Peck, attorney for applicants, by letter dated November 4, 1981, has furnished supplemental information describing the real property involved. The letter is received as Exhibit 1. The property transferred includes the system facilities listed in Schedule O of the 1980 annual report to the Commission of Jacumba Water System, as well as approximately three acres on which a storage tank is located, 40 acres on which one well is sited, and another 40 acres on which two wells are located. The above real property is stated to be an integral part of the water system and has been and is now being used for utility purposes.

The parties state that at the time of sale they were not aware of the requirement of Public Utilities (PU) Code § 851 which makes void any sale of utility property that has not been authorized by Commission order. The parties now ask for an exemption under PU Code § 853 from the provisions of PU Code § 851 and approval of the transfer of the assets of the water system or, in the alternative, approval of the sale, effective on or after the Commission's order for the sum of \$50,000 which has already been paid by Associates to LaZare.

Little will be served by ordering the August 1979 sale void and authorizing another valid sale to take place at some time in the future. Neither party nor the public was adversely affected by the improper sale in 1979. For this case and in these particular circumstances under PU Code § 853, we will waive the requirements of PU Code § 851 and approve the transfer which took place in 1979.

Service

Engineers of the Commission's Hydraulic Branch conducted an investigation of the water system and discovered some deterioration in the distribution mains. They also found that in the approximate 2-1/2 years that Associates have operated the system they have made no plant replacements. The staff negotiated commitment from Associates

to replace a minimum of 250 feet of distribution main each year for the next five years.

The staff summarized its work in a file memorandum dated December 18, 1981. That document is identified and received as Exhibit 2. Associates submitted a letter dated December 14, 1981, committing it to replace 250 feet distribution main each year for the next five years. This letter is identified and received as Exhibit 3.

The company's 1980 annual report shows some 24,000 feet of distribution pipe. Replacement of 250 feet of this pipe per year must be considered less than the minimum required for the maintenance of good service in the long run, and Associates is placed on notice that after further investigation, the Commission may direct Associates to initiate a more comprehensive main replacement program.

Findings of Fact

1. Public hearing in this matter is not necessary.
2. Transfer of the water system from Lazare to Associates is in the public interest.
3. The water system was transferred in August 1979, contrary to the requirements of PU Code § 851.
4. To void the transfer of August 1979 is not in the public interest.
5. Associates have agreed to replace 250 feet of distribution main per year for the next five years.

Conclusions of Law

1. PU Code § 853 permits the Commission to exempt a public utility from the provisions of § 851.
2. The transfer, in August 1979, of the water system should be approved.
3. LaZare should be released from their public utility obligations and Associates should assume that obligation.

4. Associates should be ordered to replace a minimum of 250 feet of distribution main each year for the next five years.

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. This authorization is not a finding of the value of the rights and properties to be transferred. Associates is placed on notice that rates will be based on the depreciated original cost of the plant excluding contributed plant and not on the purchase price.

O R D E R

IT IS ORDERED that:

1. The transfer of the Jacumba Water System, effected August 1, 1979, from Henry LaZare and Jeanne LaZare (sellers) to a partnership consisting of the persons listed in Appendix A, which partnership is doing business as Jacumba Associates (buyer), is approved.

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

3. Within 10 days after the effective date of this order buyer shall write the Commission, stating the date the requirements of paragraph 2 were completed.

4. Buyer shall either file a statement adopting sellers' 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. Buyer shall replace a minimum of 250 feet of distribution main each year, beginning with the year 1982 and continuing through 1986. The work shall be performed in accordance with the

Commission's General Order Series 103. A report shall be filed with the Commission by December 31, 1982 and for each of the following four years describing the main replacement work performed each year, including lineal feet, pipe size, and dollar expenditure.

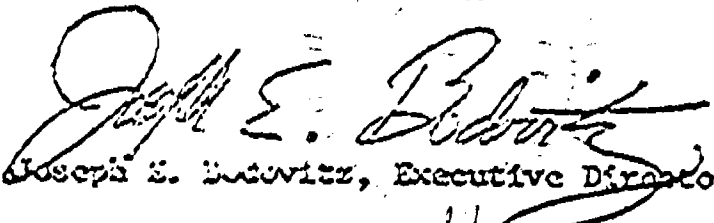
6. When this order has been complied with, sellers shall have no further obligations in connection with this water system.

This order becomes effective 30 days from today.

Dated FEB 17 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Sutovitz, Executive Director

APPENDIX A

Jacumba Associates - Partners

<u>Name</u>	<u>Address</u>
Bill Baras	2255 Camino del Rio South San Diego, CA 92108
J. David Dominelli	P.O. Box 2428, La Jolla, CA 92037
Charles August Dunn, Jr. and Sharon Gail Dunn, Co-Trustees U.T.D., May 5, 1981	15812 Via de Alba Rancho Santa Fe, CA 92067
ECM Enterprises, a partnership, Alvin F. Emig Richard Campbell Alfred E. Monahan Alfred E. O'Brien	3511 Camino del Rio South Suite 210, San Diego, CA 92108
Louis A. Sitta	8008 Girard, #170, La Jolla, CA 92037
Morris Slayen	4635 Alabama, San Diego, CA 92116
Jack Felson	2451 State Street, San Diego, CA 92101
Arthur Spitzer	3036 Colina Verde, Jamul, CA 92036
Walter Kuetzing	1011 North Crescent Drive Beverly Hills, CA 90210
Jacumba Associates, a partnership John McGuane	328 Forward St., La Jolla, CA 92037
Donald Gillespie	314 Park Way, Chula Vista, CA 92010
	804 Halecrest Dr., Chula Vista, CA 92010

(End of Appendix A)