

ORIGINALDecision 83 04 070 APR 20 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of POMONA VALLEY WATER)
 COMPANY and of the COUNTY OF SAN)
 BERNARDINO PUBLIC FACILITIES COR-)
 PORATION for an order authorizing) Application 83-03-18
 transfer of all of POMONA VALLEY) (Filed March 7, 1983)
 WATER COMPANY'S utility property)
 to the COUNTY OF SAN BERNARDINO)
 PUBLIC FACILITIES CORPORATION.)

O P I N I O N

Pomona Valley Water Company (seller) and the County of San Bernardino Public Facilities Corporation (purchaser) by Application 83-03-18 request authority under Public Utilities (PU) Code Section 851 for seller to sell and transfer all of its water system located in and near the City of Chino in San Bernardino County to purchaser and to be relieved of its public utility obligations. Purchaser is a California, nonprofit, public benefit corporation formed with the express approval of the Board of Supervisors of the County of San Bernardino. Applicants further request that this application be granted ex parte. Purchaser alleges that the purchase price to be paid is from the proceeds of the sale of certain bonds and that it contemplates closing this transaction on or before May 2, 1983, and therefore requests that the authority be timely.

Notice of the filing of the application appeared in the Commission's Daily Calendar on March 11, 1983. Purchaser's intention to acquire and San Bernardino County's intention to operate the water system have received much publicity in local newspapers, both as a specific action and as part of a recently adopted Chino Hills Specific Plan which includes this contemplated purchase. No protests have been received by the Commission.

Seller alleges that the book cost of the properties for which authorization to transfer is requested is \$9,097,960 and referenced data filed with Application 82-09-43 indicate a net plant investment of \$4,649,531 as of January 1, 1983. The sale price is \$7,850,000 with purchaser assuming responsibility for seller's outstanding main extension contracts. The water system to be transferred includes approximately 6,900 water services and other properties and includes 3,151 acre-feet of currently allowed water pumping rights in the adjudicated Chino Basin. Terms are for the purchase price to be paid in full by a good, valid, and negotiable bank cashier's check at or immediately following the closing.

Purchaser alleges that facilities purchased will subsequently be leased to San Bernardino County which will maintain and operate the water system. San Bernardino County has declared publicly and by way of resolution its intention, if necessary, to acquire such water system by exercise of the power of eminent domain. Purchaser further alleges that in order to obtain the water system and to effect and accomplish San Bernardino County's intention to operate and maintain a municipal water system within its boundaries, purchaser is desirous of acquiring and intends to so acquire all of the assets comprising the water system.

The date of closing is given as on or before May 2, 1983, unless a later date is agreed to in writing by both parties. Seller agrees that prior to the closing date, it will have returned to depositors any and all service deposits held.

Seller intends to enter into an acquisition agreement, included as Exhibit B attached to the application, with purchaser and with the County of San Bernardino under threat of condemnation to avoid extensive litigation and its costs. No useful purpose would be served by requiring the County of San Bernardino to institute eminent domain proceedings to acquire the water system properties.

Purchaser alleges that the County of San Bernardino intends to increase rates soon after acquisition of the facilities. However, purchaser also alleges that the increase contemplated is significantly less than the increase which seller has requested and has proposed to the Commission in its Notice of Intent dated December 21, 1982. This increase requested by seller and the San Bernardino County's intention of increasing rates by a lesser amount have also been publicized in local newspapers. Again, no protests have been received by the Commission.

Applicants further request that the Commission in its order declare that San Bernardino County and purchaser, in performing the functions described here, are not subject to Commission regulation. As stated in the proposed acquisition agreement, purchaser is a California, nonprofit, public benefit corporation which has been formed with the express approval of the Board of Supervisors of the County of San Bernardino with one of its purposes being the sale of the bonds to finance the purchase and to purchase the water system of seller. The water system will then be leased to

and operated by San Bernardino County with the condition that title to the water system vest in the County of San Bernardino at the end of the leasehold period. From the description it can be seen that purchaser, in this instance, is acting as only a financing vehicle to allow San Bernardino County to operate and maintain a municipal water system within its boundaries. PU Code Section 2701 relates specifically to water companies and does not include a municipal corporation within its scope. Therefore, neither purchaser nor San Bernardino County, in performing the functions described here, is subject to Commission regulation.

After consideration the Commission finds that the proposed sale and transfer would not be adverse to the public interest. The application should be granted. A public hearing is not necessary.

In order to permit the parties to meet the planned May 2, 1983 closing date we find that an emergency exists sufficient to justify issuance of this order without notice on the public agenda under PU Code Section 308.

The authorization granted should not be construed as a finding of the value of the rights and properties authorized to be transferred.

Findings of Fact

1. The proposed transfer would not be adverse to the public interest.
2. The authorization granted shall not be construed as a finding of value of the rights and properties authorized to be transferred.
3. Upon consummation of the sale and transfer, seller shall be relieved of its obligation to provide public utility water service.

4. San Bernardino County and purchaser, in performing the functions described here, are not subject to Commission regulation.

5. It can be seen with certainty that there is no possibility that this transfer will have a significant effect on the environment.

6. A public hearing is not necessary.

Conclusion of Law

The Commission concludes that this application should be granted in accordance with the ensuing order. Due to the immediate need of this authority by purchaser and the County of San Bernardino, the effective date of this order should be today.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1983 Pomona Valley Water Company (seller) may transfer the water system referred to in the application to the County of San Bernardino Public Facilities Corporation (purchaser), according to the terms in the application.

2. On or before the date of transfer seller is authorized to execute and enter into an acquisition agreement with purchaser and the County of San Bernardino in substantially the same form as Exhibit B attached to the application.

3. On or before the date of actual transfer seller shall refund any customer credit deposits which are subject to refund.

4. As a condition of this grant of authority, purchaser shall assume responsibility for refund of all of seller's main extension advances in accordance with the terms of each main extension contract.

5. Within 10 days after the completion of the transfer, seller shall notify the Commission, in writing, of the date of transfer, of the refunding of the deposits, and of the day upon which San Bernardino County, by leasehold from purchaser, shall have assumed operation of the water system. A true copy of the instrument of transfer shall be attached to the notification.

6. Neither San Bernardino County nor purchaser, in performing the functions described here, is subject to Commission regulation.

7. When the authorized transfer is complete and conditions of this order are fulfilled, seller shall be relieved of its public utility obligations for the transferred system.

This order is effective today.

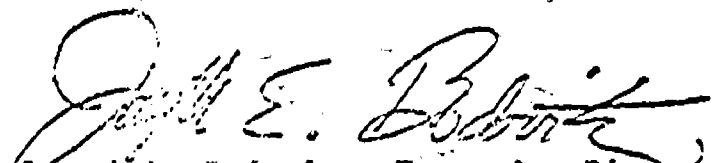
Dated APR 20 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
DONALD VIAL
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

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


Joseph Z. Bolovitz, Executive Director



and operated by San Bernardino County with the condition that title to the water system vest in the County of San Bernardino at the end of the leasehold period. From the description it can be seen that purchaser, in this instance, is acting as only a financing vehicle to allow San Bernardino County to operate and maintain a municipal water system within its boundaries. PU Code Section 2701 relates specifically to water companies and does not include a municipal corporation within its scope. Therefore, neither purchaser nor San Bernardino County, in performing the functions described here, is subject to Commission regulation.

After consideration the Commission finds that the proposed sale and transfer would not be adverse to the public interest. The application should be granted. A public hearing is not necessary.

In order to permit the parties to meet the planned May 2, 1983 closing date, *we find that an emergency is sufficient to justify such use of this order without notice on the public agenda under PU Code § 301.* and as there appears to be no need for delay, the effective date of this order should be today.

The authorization granted should not be construed as a finding of the value of the rights and properties authorized to be transferred.

Findings of Fact

1. The proposed transfer would not be adverse to the public interest.
2. The authorization granted shall not be construed as a finding of value of the rights and properties authorized to be transferred.
3. Upon consummation of the sale and transfer, seller shall be relieved of its obligation to provide public utility water service.