

ORIGINAL

Decision 83 95 010 MAY 4 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Keefner Enterprises, Inc., a)
 California corporation, by)
 authority of P.U.C. Code #851,)
 et seq., requests authorization)
 to transfer the assets and)
 liabilities of the public utility)
 water facilities of Keefner)
 Enterprise, Inc. to a new)
 corporation to be known as:)
 Apple Valley Water Resources)
 Co., Inc.)

Application 82-09-15
 (Filed September 13, 1982;
 amended December 10, 1982)

O P I N I O N

In the amended application Keefner Enterprises, Inc. (KEI) seeks Commission authorization to transfer the assets and liabilities of its two public utility water systems to a new corporation, Apple Valley Water Resources Co., Inc. (AVWR). KEI's Youngtowne Water Company (Youngtowne) system would be designated as AVWR-East and the former Aztec Water Company, Inc. (Aztec) system operated by KEI as Apple Valley Water Resources West would be designated as AVWR-West. AVWR proposes to keep separate accounting records for the two systems for ratemaking purposes.

The application states Eugene F. Keefner and his wife, Cecile Keefner, are the sole owners of KEI and AVWR.^{1/} The

^{1/} E. F. Keefner was listed as the owner of 100% of AVWR's stock in 1981 annual reports filed by AVWR for the two utility systems. The refilings of these annual reports in KEI's name list E. F. Keefner as the owner of 100% of KEI's stock.

amended application states that the Keefners will continue to subsidize the day-to-day operations of the two water systems. The application also states that Keefner Engineering (a separate corporation, not a holding of KEI) is providing needed utility funds (see application, page 8) because KEI was unable to provide financial support for utility operations due to its 1981 losses. The application states that the Keefners personally guaranteed bank loans and provided funds needed to operate and maintain the two water systems and to purchase a new pump. AVWR has filed applications with the State of California Department of Health Services to obtain Safe Drinking Water Bond funds to fund water system improvements.

The application alleges that the transfers would permit KEI to avoid comingling funds from its utilities' operations with funds from its nonutility operations and would permit the sale of KEI to potential buyers not desiring to own water utilities.^{2/}

Background to Filing of Application

Decision (D.) 82-06-015 dated June 2, 1982 in Case 10864 ✓ states that Eugene F. Keefner created AVWR and carried out the unlawful transfer and/or reorganization of KEI. We concluded that Keefner has employed a variety of dilatory acts and/or illegal acts to avoid complying with Commission orders. We ordered (a) KEI to comply with D.93480, as modified in D.82-06-015, and (b) the filing of an application by KEI and AVWR to transfer control of the Aztec system operations and/or assets to AVWR or to file documentation showing a reconveyance of title of water

^{2/} If AVWR is owned by KEI (see page 4 of application), a sale or transfer of KEI, or of KEI's utility holdings, without Commission approval would result in an unauthorized transfer of ownership and/or control of public utility water systems.

system assets to KEI by AVWR. We put AVWR on notice that it would be required to comply with D.93480, as modified in D.82-06-015, if the Commission approved the transfer of the Aztec system to AVWR and put Keefner, the alter ego of KEI and AVWR, on notice that the transfer would not relieve him from his personal responsibility for compliance with D.82-06-015.

Compliance With D.82-06-015

The amendment states that KEI (a) has increased the water pressure in the higher portions of the Aztec system and has repaired leaks in the system; (b) is negotiating with Apple Valley Ranchos Water Company (Ranchos) for a standby water supply to be provided through an intersystem connection; (c) expects to arrive at a workable agreement with Ranchos soon;^{3/} and (d) will install an additional booster pump at the outlet of its storage tank after completion of the interconnection with Ranchos. This pump will be equipped with automatic controls to permit use of the Ranchos' connection as a second source of supply for the system. If necessary, KEI will modify its existing booster pump installation on the eastern border of Tract 5746 to comply with the requirements of General Order (GO) 103. The application states that after these improvements have been completed, the County Department of Health Services has indicated that it will recommend lifting the County building moratorium within the Aztec system service area.

KEI further alleges that (a) completion of the above-mentioned improvements will permit it to serve its existing customers and a reasonable number of new customers at pressures

^{3/} The amendment was filed on December 10, 1982. As of March 9 1983, the Commission had not been advised that an agreement had been reached.

meeting the requirements of GO 103 and that the system would meet applicable fire-flow requirements; (b) after the County building moratorium is lifted, it will comply with the notice requirements contained in D.82-06-015 to permit prospective customers to arrange for installation of service connections and meters to supply water to their properties; (c) the improvements would cost approximately \$10,000; (d) on approval of the application AVWR will file an application requesting authorization to issue shares of stock^{4/} for the existing assets of the utility plus the improvement costs; (e) on September 30, 1977 KEI issued a note of \$42,500 to the Nepomucenos payable at the rate of \$400 per month, including interest payments calculated at an annual rate of 8.5%, with the balance due on September 30, 1992; and (f) the remaining principal balance on the note was \$35,000 on November 30, 1982.

AVWR requests Commission authorization to assume the remaining indebtedness on the note.

Background on Youngtowne

By D.87781 dated August 30, 1977 in Application 56828, KEI, a California corporation, was authorized to (a) purchase the Youngtowne system in San Bernardino County (County) from Benjamin Nepomuceno and Lourdes Nepomuceno;^{5/} (b) issue a promissory note of up to \$45,000 to the Nepomucenos; (c) acquire the Nepomucenos' water corporation certificate of public convenience and necessity; and (d) file tariffs.

KEI was ordered to provide no service outside of Tract 6182, except to sell water to the Apple Valley View Mutual Water Company (Mutual). KEI's sales to Mutual were restricted

^{4/} AVWR is authorized to issue 100,000 shares of no par stock.

^{5/} The Nepomucenos acquired the system in a receivership proceeding.

to the amount needed to supply 40 Mutual customers. In addition, KEI was ordered to "attempt to secure an additional source of water supply which meets the requirements of the State Department of Health so that it will have two sources of water" and to transmit progress reports to the Commission's Hydraulic Branch on June 30 and December 31 of each year on its actions to secure the additional water supply.

KEI's 1981 annual report to the Commission shows only one source of supply for the Youngtowne system. KEI has not filed the required progress reports.

The California Department of Real Estate advised the Commission of further contemplated development within Tract 6182. The need for an alternate water supply increases with any expansion of service from the Youngtowne system.

Modification of Long-term Debt Agreement

The Nepomucenos have no objection to the proposed transfer. Appendix B attached to the amendment is a partially executed agreement designed to protect the interests of the Nepomucenos if the transfer is approved. Fully executed copies of the agreement (Exhibit 1) were subsequently received by the Commission. Paragraph 2 of the agreement substitutes the name Apple Valley Water Resources Co. (East) for Youngtowne in the note but does not modify other terms of the agreement. The agreement also states that prior payments on the note have been made by Eugene F. Keefner, Cecile Keefner, KEI, or AVWR.

Apple Valley Water Resources Co., Inc. should be substituted for Apple Valley Water Resources Co. (East) in paragraph 2 of the agreement.

Financial Statements

The following table, based on Appendix A attached to the amendment, shows a pro forma AVWR balance sheet based on recorded amounts on KEI's books as of December 31, 1981 and adjustments reflecting the addition of \$10,000 for system improvements. The total assets, capital surplus, and total equity and liabilities shown in the application have been reduced by \$32,308 to reflect a water plant acquisition adjustment. KEI and/or AVWR purchased the assets of the Aztec system from County for less than depreciated plant costs. The net asset value of purchased depreciable plant assets should be amortized over the remaining life of that plant.

Balance Sheet
(December 31, 1981)

<u>Assets</u>	<u>West</u>	<u>Adjusted to Show Improvements West</u>	<u>East</u>	<u>Adjusted to Show Improvements Both Systems</u>
Water Plant in Service	\$ 90,036	\$100,036	\$ 62,970	\$163,006
Reserve for Depreciation	54,140	54,140	36,339	90,479
Water Plant Less Reserve	35,896	45,896	26,631	72,527
Water Plant Acquisition Adj.	(32,308)	(32,308)		(32,308)
Cash	1,588	1,588	272	1,860
Other Current Assets	336	336	6	342
Total Assets	37,820	47,820	26,909	74,729
Adjusted Total Assets	5,512	15,512	26,909	42,421
<u>Equity & Liabilities</u>				
Capital Stock				
Earned Surplus	13,655	13,655	(22,009)	(8,354)
Capital Surplus		10,000		10,000
Capital Surplus Adjustment	(32,308)	(32,308)		(32,308)
Long-Term Debt			31,431	31,431
Current Liabilities	24,165	24,165	17,487	41,652
Tot. Equity & Liab.	37,820	47,820	26,909	74,729
Adjusted Tot. Equity & Liabilities	5,512	15,512	26,909	42,421

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KEI's recorded 1981 utility annual reports show losses of \$12,374 for the Aztec system and \$15,479 for the Youngtowne system. We have not evaluated the reasonableness of those amounts for ratemaking purposes. These losses demonstrate the need for continued backing by the systems' owners at this time.

Further Discussion

It would not be adverse to the public interest to authorize the transfer conditioned upon the personal guarantee of the Keefners to provide necessary funds to the utilities. The separation of utility functions from KEI operations is desirable. As noted above, if KEI holds title to the utilities, another application would be needed to sell KEI.

The execution of an agreement between Ranchos and KEI and/or AVWR and construction of the above-described facilities are the first steps needed to bring the system into compliance with D.82-06-015. Compliance with Ordering Paragraph 2 of D.93480, as modified by D.82-06-015, is overdue. That delay, in turn, prevents the lifting of the building moratorium and the supplying of water service to potential customers desiring service from the Aztec system. In addition, KEI has not complied with the requirements for reporting on its efforts to secure another source of supply for the Youngtowne system. Appendix A, attached to this decision, contains the ordering paragraphs relevant to this discussion. If an agreement is not executed

within 30 days after the effective date of this order, KEI or AVWR should obtain another potable source of water supply or commence construction of a new well within 60 days after the effective date of this order. An application to issue stock may be filed after complying with Ordering Paragraph 2 of D.93480 as modified by D.82-06-015.

Findings of Fact

1. KEI is a California corporation operating two public utility water companies subject to the jurisdiction of this Commission. KEI also conducts nonutility operations. KEI acquired its utilities under authorizations granted in D.87781 and in D.87841.

2. KEI is owned by Eugene F. Keefner and Cecile Keefner.

3. AVWR is a California corporation owned by Eugene F. Keefner and Cecile Keefner.

4. The Nepomucenos, holders of a note secured by assets of the Youngtowne system, have no objection to the proposed transfer.

5. KEI has delayed in complying with Ordering Paragraph 2 of D.93480, as modified by D.82-06-015. That delay prevents the lifting of the building moratorium and the supplying of water service to potential customers desiring service from the Aztec system.

6. KEI has not filed the required progress reports on its efforts to secure an additional source of water supply for the Youngtowne system ordered in D.87781.

7. There is no known opposition to this application and no reason to delay authorization of the authority requested.

Conclusions of Law

1. A public hearing is not necessary.
2. The transfer is not adverse to the interests of the Nepomucenos if the word "(East)" on line 3 of paragraph 2 of the agreement between KEI and the Nepomucenos is changed to ",Inc.".
3. The following order should be effective on the date of signature to permit AVWR to lawfully control the operations of both utility water systems.
4. The transfer of water utility assets of KEI to AVWR conditioned on the personal guarantee of the Keefners to provide necessary funds to the utilities is not adverse to the public interest.
5. The books of KEI and/or AVWR should be modified in conformity with the balance sheet adjustments for the Aztec system described in this decision.
6. KEI and/or AVWR should promptly complete its negotiations with Ranchos to obtain another source of supply from Ranchos within 30 days from the effective date of this order, to complete the improvements it proposes to use for that supply, and to comply with the requirements of GO 103.
7. If the Ranchos' supply is unavailable, KEI or AVWR should obtain another potable source of water supply or commence construction of a new well within 60 days after the effective date of this order.

8. If a source of supply is unobtainable from Ranchos, KEI and/or AVWR should modify its improvement plan filed in compliance with Ordering Paragraph 1 of D.82-06-015 within 45 days from the effective date of this order.

9. KEI and/or AVWR should file progress reports on efforts being made to secure another source of supply for the Youngtowne system as required by Ordering Paragraph 11 of D.87781.

10. KEI should file annual reports for its water system operations up to the date of transfer within 30 days after the date of transfer.

The authorization granted is for the purpose of this proceeding only and is not to be construed as a finding of the value of the utility assets or capital of KEI.

O R D E R

IT IS ORDERED that:

1. Keefner Enterprises, Inc., (KEI), a California corporation, is authorized to transfer its public utility water system assets and liabilities to Apple Valley Resources Co., Inc. (AVWR), a California corporation, conditioned on the personal guarantee by the Keefner's to provide necessary funds to the utilities.

2. AVWR shall file a modified agreement with Benjamin M. Nepomuceno and Lourdes Nepomuceno making the correction described in Conclusion 2.

3. The books of KEI and AVWR shall be modified in conformity with the balance sheet adjustments for the Aztec Water Company, Inc. system described above.

4. KEI and/or AVWR shall promptly complete its negotiations with Apple Valley Ranchos Water Company (Ranchos) to obtain another source of supply from Ranchos to complete the improvements it proposes to use for that supply, and to comply with the requirements of General Order 103. ✓

5. If the Ranchos' supply is unavailable, KEI or AVWR shall obtain another potable source of water supply or commence construction of a new well within 60 days after the effective date of this order.

6. If a source of supply is unobtainable from Ranchos, KEI and/or AVWR shall modify its improvement plan filed in compliance with Ordering Paragraph 1 of D.82-06-015 within 45 days after the effective date of this order.

7. KEI and/or AVWR shall file progress reports on efforts being made to secure another source of supply for the Youngtowne Water Company system as required by Ordering Paragraph 11 of D.87781.

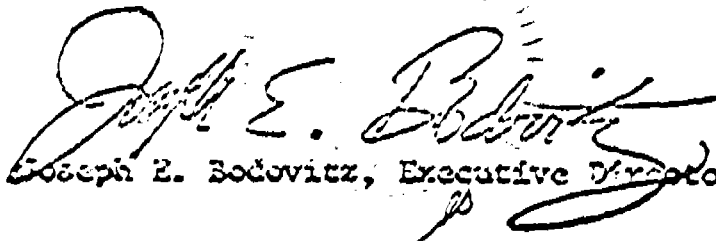
8. KEI shall file annual reports for its water system operations up to the date of transfer within 30 days after the date of transfer.

This order is effective today.

Dated MAY 4 1983 , at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director

APPENDIX A
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Ordering Paragraphs 2 and 3 of D.93480 state:

"2. Defendant shall include the following requirements in its improvement plan:

"a. Defendant shall secure a water supply meeting the quality and quantity requirements of the County Department of Environmental Health Services (HD) by contracting with another utility, by purchasing a well, or by commencing construction of a new well within 60 days after the effective date of this order.

"b. Defendant shall complete additions to water supply, booster capacity, and storage within 180 days after the effective date of this order.

"c. Defendant shall complete any other improvements within 30 months after the effective date of this order.

"3. Within 70 days after the effective date of this order defendant shall file a copy of its improvement plan with HD, reapply for a water supply permit, and request that the County lift the building moratorium in its service area."

D.82-06-015 changed the effective date for compliance with those ordering paragraphs to June 2, 1982. D.82-06-015 modified Ordering Paragraph 4 of D.93480 as follows:

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"2. Ordering Paragraph 4 of D.93480 is revised as follows:

"Within 10 days after the building moratorium is lifted, defendant shall mail notice of the fact to its customers, complainants, and to any other person who had asked for water service to a lot within defendant's service area. The notice shall state that those persons may contact defendant to arrange for a meter and service connection. Defendant shall concurrently mail a copy of the notice and a list of the persons served to the Commission's Hydraulic Branch. Defendant shall publish notice of the lifting of the building moratorium in a local newspaper of general circulation and shall mail a certified copy of the published notice to the Commission within 25 days after the lifting of the building moratorium."

Ordering Paragraph 11 of D.87781 states:

"11. Keefner Enterprises, Inc. shall attempt to secure an additional source of water supply which meets the requirements of the State Department of Health so that it will have two sources of water. Keefner Enterprises, Inc. shall transmit to the Commission's Hydraulic Branch progress reports on its actions to secure the additional water supply on June 30 and December 31 of each year, pending further order of the Commission."

(END OF APPENDIX A)



amended application states that the Keefners will continue to subsidize the day-to-day operations of the two water systems. The application also states that Keefner Engineering (a separate corporation, not a holding of KEI) is providing needed utility funds (see application, page 8) because KEI was unable to provide financial support for utility operations due to its 1981 losses. The application states that the Keefners personally guaranteed bank loans and provided funds needed to operate and maintain the two water systems and to purchase a new pump. AVWR has filed applications with the State of California Department of Health Services to obtain Safe Drinking Water Bond funds to fund water system improvements.

The application alleges that the transfers would permit KEI to avoid comingling funds from its utilities' operations with funds from its nonutility operations and would permit the sale of KEI to potential buyers not desiring to own water utilities.^{2/}

Background to Filing of Application

Decision (D.) 82-06-015 dated June 2, 1982 in Case 10804^{7/6} states that Eugene F. Keefner created AVWR and carried out the unlawful transfer and/or reorganization of KEI. We concluded that Keefner has employed a variety of dilatory acts and/or illegal acts to avoid complying with Commission orders. We ordered (a) KEI to comply with D.93480, as modified in D.82-06-015, and (b) the filing of an application by KEI and AVWR to transfer control of the Aztec system operations and/or assets to AVWR or to file documentation showing a reconveyance of title of water

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^{2/} If AVWR is owned by KEI (see page 4 of application), a sale or transfer of KEI, or of KEI's utility holdings, without Commission approval would result in an unauthorized transfer of ownership and/or control of public utility water systems.

8. If a source of supply is unobtainable from Ranchos, KEI and/or AVWR should modify its improvement plan filed in compliance with Ordering Paragraph 1 of D.82-06-015 within 45 days from the effective date of this order.

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10. KEI should file annual reports for its water system operations up to the date of transfer within 30 days after the date of transfer.

The authorization granted is for the purpose of this proceeding only and is not to be construed as a finding of the value of the utility assets or capital of KEI.

O R D E R

IT IS ORDERED that:

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California corporation. *Conditioned on the personal guarantee by the Keefners to provide necessary funds to the utilities.*

2. AVWR shall file a modified agreement with Benjamin M. Nepomuceno and Lourdes Nepomuceno making the correction described in Conclusion 2.

3. The books of KEI and AVWR shall be modified in conformity with the balance sheet adjustments for the Aztec Water Company, Inc. system described above.

4. KEI and/or AVWR shall promptly complete its negotiations with Apple Valley Ranchos Water Company (Ranchos) to obtain another source of supply from Ranchos ~~within 30 days after the effective date of this order.~~ to complete the improvements it proposes to use for that supply, and to comply with the requirements of General Order 103.

5. If the Ranchos' supply is unavailable, KEI or AVWR shall obtain another potable source of water supply or commence construction of a new well within 60 days after the effective date of this order.

6. If a source of supply is unobtainable from Ranchos, KEI and/or AVWR shall modify its improvement plan filed in compliance with Ordering Paragraph 1 of D.82-06-015 within 45 days after the effective date of this order.

7. KEI and/or AVWR shall file progress reports on efforts being made to secure another source of supply for the Youngtowne Water Company system as required by Ordering Paragraph 11 of D.87781.