

ORIGINALDecision 83 OS 047 AUG 17 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of NATIONAL BULK CARRIERS, INC., a corporation, and CALIFORNIA WATER SERVICE COMPANY, a corporation, for an order authorizing (1) the sale and transfer to California Water Service Company of the Westlake Water System and certificates of public convenience and necessity of Westlake Water Company, a division of National Bulk Carriers, Inc., (2) the discontinuance of service by Westlake Water Company in the territory now served by it, (3) the commencement of service in said territory by California Water Service Company at the then-effective rates of Westlake Water Company, (4) the amendment of certain extension agreements heretofore executed by Westlake Water Company, and, (5) California Water Service Company to succeed to and exercise rights of Westlake Water Company under a certain agreement with The Prudential Insurance Company of America.

Application 83-05-09
(Filed May 5, 1983)

INTERIM OPINIONStatement of Facts

In 1963 American-Hawaiian Steamship Company (American-Hawaiian), a New Jersey corporation qualified to do business in California, acquired 12,000 acres of land in Ventura and Los Angeles Counties. 8,200 of these acres were in southern Ventura County, and for these American-Hawaiian formulated a 20-year development plan, proposing development through a number of joint ventures with various development companies. However, the area lacked sufficient local water resources. Accordingly, American-Hawaiian caused the formation of the Russell Valley Metropolitan Water District (Russell) to import

water purchased from and delivered through the facilities of the Calleguas Municipal Water District, a member agency of the Metropolitan Water District of Southern California.¹

Then, in 1966 American-Hawaiian organized and incorporated Westlake Water Company (Westlake) as a California corporation, proposing it as the vehicle to supply public utility water service within the 8,200-acre development area in Ventura County owned by American-Hawaiian. Its service area was to be coextensive with Russell's, with Russell to be the wholesaler. By Decision (D.) 75375 issued February 25, 1969 in Application (A.) 50070, this Commission granted Westlake a certificate of public convenience and necessity, but initially restricted its service area to approximately 1,300 acres. Authorized and/or contiguous expansions have since enlarged it to encompass in excess of 6,000 acres of American-Hawaiian lands.

In the hearing of A.50070 it was asserted that American-Hawaiian would purchase Westlake's stock. However, in 1969, prior to authorization or issuance of stock, American-Hawaiian and The Prudential Insurance Company of America (Prudential), a New Jersey corporation, formed a partnership known as Westlake Village (Village) to subdevelop lands owned by both American-Hawaiian and Prudential. Subsequently Village purchased Westlake's stock. Westlake began operations as a public utility on April 1, 1969.

¹ American-Hawaiian was the parent of both Russell and Westlake, all being part of its land development project. By this arrangement future water users would pay for their water from Westlake and also Westlake's operating expenses, depreciation, and rate of return, as well as pay the operating expenses and plant costs of Russell, which were superimposed on top of Westlake. In 1968, with only 16 registered voters in the Russell district, 14 qualified voters voted to commit all future property buyers in the district to pay off over a 30-year period a \$3 million bond issue, plus interest. Most of the \$3 million was used to construct Russell's feeder and transmission system.

In 1971, as the consequence of extensive development - which resulted in concerns over financial solvency arising from future obligations as the balance in the Customer Advances account approached 50% of the capital structure - Westlake sought and, by D-79566 dated January 11, 1972, was authorized to deviate from its Main Extension Rule when its Customer Advances account approached 50%. Westlake's deviation authorized the utility to transfer amounts due as refunds to its Capital Surplus account whenever owners of refund contracts certified their willingness to forego cash refunds and accept a financial interest in the utility. Future backup water plant installed was to be financed by extension contracts providing for refunds to be based on a percentage of revenues. The decision also provided that the utility thereafter could enter into main extension contracts only with the Village or its affiliates, and that such contracts were transferable only with Commission authorization.

In 1973 American-Hawaiian and Prudential dissolved their partnership, and the ownership of Village (and therefore of Westlake) devolved back 100% to American-Hawaiian. All the main extension contracts made by Village with Westlake were also transferred to American-Hawaiian.

This reacquisition of full control by American-Hawaiian was affirmed by the Commission in D.84335 dated April 15, 1975. Since development of the certificated service area would involve entities other than American-Hawaiian and its affiliates, the Commission authorized the utility to again enter into main extension contracts under its Main Extension Rule with nonaffiliated developers until its outstanding advance contract balance reached 70% of its total capital, provided American-Hawaiian guaranteed to supply all Westlake's cash flow deficiencies or was relieved of the obligation by Commission order. In addition, Westlake was authorized to enter into an agreement with American-Hawaiian and/or Prudential whereby the developer would provide Westlake with the funds to cover all costs of special facilities specified in Westlake's master plan.

Such agreements were required to be filed with the Commission and recorded in Ventura County. The agreement was to require provision for refunds to be determined upon the basis of residential lot equivalents to be served by the special facilities, with payments to be in accordance with Sections C.2.a. and C.2.c. of the Main Extension Rule.²

By 1980 National Bulk Holdings, Inc. (NBE), a closely held Delaware corporation qualified to do business in California, wholly owned American-Hawaiian. By D.93852 dated December 15, 1981 in A.61101, NBE obtained authorization from this Commission to change its corporate structure by liquidating and merging into NBE both American-Hawaiian and Westlake.³ NBE was authorized to operate Westlake thereafter as a division of NBE under the fictitious business name "Westlake Water Company." NBE assumed and agreed to perform all obligations and liabilities of Westlake, including all main extension agreement obligations.

² At least one such special facilities financing agreement, one between Prudential and Westlake, was signed in April 1976, filed with the Commission, and recorded in Ventura County's Official Records on May 10, 1976.

³ On December 17, 1981 NBE filed with the State of Delaware a certificate of ownership and merger merging Westlake into NBE.

At the present time the Westlake System, located today wholly within the City of Thousand Oaks, provides metered water to approximately 4,300 customers by means of 321,600 feet of 4-inch through 24-inch mains, and serves 546 fire hydrants. However, its parent, now known as National Bulk Carriers, Inc. (Bulk Carriers),⁴ desires to withdraw from the public utility water business. Accordingly, on April 7, 1983 Bulk Carriers entered into an agreement with California Water Service Company (Cal-Water) whereby, subject to Commission authorization, Bulk Carriers will sell and transfer the Westlake System to Cal-Water. Cal-Water, a California corporation, operating through 20 local districts and maintaining its principal place of business in the City of San Jose, is engaged in the business of supplying and distributing water for domestic and industrial purposes to over 300,000 customers in communities within the State of California.

By this application Bulk Carriers and Cal-Water seek an ex parte order of the Commission authorizing the sale and transfer of Westlake. Upon acquiring the utility Cal-Water intends to continue to furnish water service in the territory served by the Westlake System at the then-effective Westlake rates and in accordance with the then-effective Westlake rules. Concurrent with consummation of the sale and transfer, Bulk Carriers seeks to be relieved of its public water utility obligations within the Westlake service territory.

⁴ In 1982 NBE changed its name to Bulk Carriers. On February 22, 1982 Bulk Carriers filed the requisite Amended Statement and Designation by Foreign Corporation with the office of the California Secretary of State.

The purchase agreement provides for a cash purchase price of \$2,524,756,⁵ subject to adjustments covering the period between December 3, 1982 and the closing date, for (1) additions, betterments, and extensions, less retirements, together with expenditures by Bulk Carriers for construction work in progress at closing date which add to plant in service and construction work in progress accounts, (2) changes in materials and supplies, (3) changes in customer deposits, advances for construction, and contributions-in-aid-of-construction accounts, and (4) depreciation. Cal-Water will assume all obligations with respect to refundable deposits made by customers to guarantee payment of bills. Real and personal property taxes and assessments for the current fiscal year and rents shall be prorated as of the closing date. The purchase agreement provided that if the Commission had not authorized the sale and transfer, and consummation did not occur on or before June 30, 1983, either party had the right to terminate the agreement without liability. This deadline has passed. Neither party has exercised its termination right. Indeed, the parties have agreed to an August 31, 1983 extension date.

Under the purchase agreement, Westlake would be authorized to enter into agreements with the owners of existing extension agreements to provide that refunds accruing after the acquisition by Cal-Water would be paid in cash by Cal-Water rather than be credited to Surplus (as provided under D.79566 supra). Further, Cal-Water would succeed to all rights, duties, and obligations held by Westlake under Westlake's April 15, 1976 agreement with Prudential (See footnote 2, supra).

⁵ The depreciated historical cost as of December 31, 1982 of the properties to be conveyed, less customer deposits, advances for construction, and other deferred credits and contributions, is \$2,199,756. Therefore, Cal-Water will be paying a premium of \$325,000 for the utility.

For the 12-month period ending December 31, 1982, Westlake, on total water revenues of \$1,507,237, and interest revenue of \$271,972, derived a net income after taxes of \$413,172. Notice of the application appeared in the Commission's Daily Calendar of May 6, 1983. In addition, notice of the agreement to sell was mailed on May 5, 1983 to all customers of Westlake. No protest has been received.⁶

Discussion

Public Utilities Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system or property useful in the performance of its public duty without first obtaining authorization to do so from this Commission. The purpose of this provision is to prevent impairment of the public service which would result were a utility's property to be transferred into the hands of a party incapable of performing an adequate service at reasonable rates (Southern Cal. Mt. Wtr. Co. (1912) 1 CRC 520). Thus, the Commission's concern is whether a proposed transfer will be injurious to the rights of the public. If not, the owner may be authorized to make the transfer (Hanlon v Eshleman (1915) 169 C 200, 146 P 656). An environmental impact report is not required for transfer of a water utility certificate (Anguin Wtr. Co. (1973) 75 CPUC 292).

Given the present situation, with Bulk Carriers, the distant parent corporation, desirous of withdrawing from public utility water service in this area, it would be beneficial to the public interest to have Westlake taken over by a well-managed,

⁶ However, on June 15, 1983, an engineer of the City of Thousand Oaks' utility department telephoned Administrative Law Judge John Weiss to ask for information on progress of the application. He related that the city months past had made an offer to Bulk Carriers, higher than Cal-Water's current offer, but that Bulk Carriers wanted cash, not city bonds, and nothing further had transpired. He was unsure if the city might want to take any present position on the application.

well-financed California water public utility. Cal-Water is such a company. The largest investor-owned water utility in California, Cal-Water is financially sound, well-experienced in the management and operation of water utilities, and has qualified staff to perform all corporate functions while it retains Westlake's present staff for local operations. The existing rate structure will be retained, and it appears that transfer of ownership will have no noticeable effect on service.

The parties to the agreement assert that the \$2,524,756 purchase price is fair, just, and reasonable. It was determined by a formula which used the December 31, 1982 account balances for assets and liabilities, plus a \$325,000 premium. The computation follows:

Assets

Acct. No. 100 - Utility Plant and Equipment	\$8,092,311
Less Acct. No. 250 - Depreciation Reserve	<u>888,829</u>
	\$7,203,482
Acct. No. 131 - Materials & Supplies	<u>10,487</u>
	\$7,213,969

Less Liabilities

Acct. No. 227 - Customer's Deposits	\$ 5,200	
Acct. No. 241 - Advances for Construction	2,380,880	
Acct. No. 242 - Other Deferred Credits	1,223,707	
Acct. No. 265 - Contribution	<u>1,404,426</u>	<u>(5,014,213)</u>

Add - Premium		\$2,199,756
		<u>325,000</u>
Purchase Price		\$2,524,756

Under the purchase agreement Cal-Water will assume responsibility for these liabilities. However, as of December 31, 1982, \$319,118 of the refund obligations in Account 241 (Advances for Construction) were part of the obligations incurred under provisions of those joint ventures which advanced funds for construction of in-tract facilities as authorized by D.79566. As these particular refunds accrue, it would be inappropriate and impossible, after the sale and transfer, that the accrued amounts should continue to be credited to Surplus.

Accordingly Westlake should be authorized to enter into agreements with each of the ten contract holders to provide that, after acquisition by Cal-Water, all these refunds, when they accrue, shall be paid in cash by Cal-Water. (A list of these particular contracts is set forth in Appendix A.)

Cal-Water should also be authorized to exercise, once the acquisition is accomplished, all those rights, duties, and obligations, presently exercised by Westlake, which arose under the April 15, 1976 Westlake-Prudential agreement pertaining to advances of funds from developers to cover the cost of special facilities specified in the Westlake master plan (see footnote 2 supra)

Incidental to the sale and transfer transaction is the fact that the purchase price agreed upon between Bulk Carriers and Cal-Water includes an increment of \$325,000 over the net book or depreciated rate base value of the assets to be sold and transferred. The presence of this \$325,000 increment raises the issue of whether the premium on sale over net book value should go entirely to Bulk Carriers, or to Westlake's ratepayers, or in some proportion be split between them. The application would give the premium to Bulk Carriers.

In a recent decision involving this issue,⁷ the Commission, while authorizing the sale and transfer to proceed, deferred disposition of the premium over net book value issue pending opportunity for briefing on the issue in still another proceeding pending before us.⁸ The parties to this proceeding have indicated their particular interest in closing this sale and transfer as quickly as possible. Their agreement, initially contemplating June 30, 1983, or a date sooner, as the date for closing, has been extended to August 31, 1983. We appreciate their concerns. Accordingly we will proceed in this proceeding as we did in D.83-06-096, authorizing the sale and transfer to proceed immediately but reserving disposition and accounting of the \$325,000 premium over net book value pending resolution of that general issue after briefing in A.83-04-37⁹ We will make this interim order effective immediately.

In that no protest has been received as provided under Rule 8.1 of our Rules of Practice and Procedure, a public hearing is not necessary, and we will proceed ex parte.

Findings of Fact

1. By authority granted by the Commission in D.75375 issued February 25, 1969 in A.50070, Westlake, a California corporation, today wholly owned by Bulk Carriers, a Delaware corporation, provides public utility water service in parts of the City of Thousand Oaks.

2. Bulk Carriers desires to sell its Westlake water purveyor business and to be relieved of its water public utility obligations derived from Westlake.

⁷ D.83-06-096, PG&E's sale of certain streetlight facilities to the City of Arcata (See A.83-06-11).

⁸ A.83-04-37, PG&E's sale of various electrical facilities to the City of Redding.

⁹ Both Bulk Carriers and Cal-Water, along with others, have been specifically invited to assist the Commission in its consideration in the A.83-04-37 proceeding of that general issue by filing amicus briefs.

3. Cal-Water, a well-run and well-financed California corporation, authorized by this Commission to provide public utility water service in numerous areas of California, desires to purchase and operate Westlake.

4. The purchase price proposed to be paid, \$2,524,756, is based upon December 31, 1982 account balances of the assets and liabilities of Westlake to be transferred, plus a \$325,000 premium over net book value.

5. It is appropriate and reasonable that, after the sale and transfer, Westlake be authorized to make agreements with holders of joint venture contracts who advanced funds for construction of in-tract facilities as authorized by D.79566, to provide that as refunds under these existing contracts accrue, they be paid in cash by Cal-Water, rather than be recredited to Surplus.

6. It is reasonable, once the acquisition is accomplished, that those rights, duties, and obligations presently exercisable by Westlake, which arose under the April 15, 1976 Westlake-Prudential agreement pertaining to advances from developers to cover costs of special facilities specified in the Westlake master plan, devolve upon Cal-Water.

7. When the Commission is advised of the consummation of the sale and transfer, the certificate of public convenience and necessity presently held by Westlake should be transferred to Cal-Water.

8. Cal-Water should place in trust or escrow an amount equal to the \$325,000 premium in the sale price over net book value, so that the monies will be available for disposition as directed by the Commission when its final order is issued.

9. Upon consummation of the sale and transfer, and upon compliance with the final order of the Commission relating to disposition of the \$325,000 premium in the sale price over net book value held in escrow, Westlake and its parent corporation, Bulk Carriers, should be relieved of their public utility water service

obligations in the territory in the County of Ventura served by Westlake.

10. Authorizing Bulk Carriers and Cal-Water to carry out terms of the sales agreement, to the extent authorized herein, would not be adverse to the public interest.

11. A public hearing is not necessary.

Conclusions of Law

1. The purchase price contained in the agreement between Bulk Carriers and Cal-Water, including the premium over net book value, is fair, just, and reasonable.

2. The proposed sale and transfer should be authorized subject to the conditions set forth in the following order.

INTERIM ORDER

IT IS ORDERED that:

1. National Bulk Carriers, Inc. (Bulk Carriers), after the effective date of this interim order, but within one year of this effective date, may sell and transfer to California Water Service Company (Cal-Water) the water system, certificate of public convenience and necessity, and public utility properties of Westlake Water Company (Westlake) in accordance with the terms and conditions of their agreement contained in their application and the conditions set forth in this order; and Cal-Water may commence furnishing public utility water services to each customer within the Westlake service territory at the then-effective rates and in accordance with the then-effective rules of Westlake.

2. Cal-Water, upon signing of the instrument or instruments of sale and transfer, shall deposit in escrow with a suitable bank, trust company, or other agent approved by the Commission's Executive Director, the amount of \$325,000 representing the premium over net book value contained in the sale price, to be disbursed in a manner to be stated and approved by final order of this Commission applicable to this proceeding.

3. Within ten days after the date of actual sale and transfer Cal-Water shall submit written notification to the Commission's Executive Director of the consummation, the date of transfer, and the date upon which Cal-Water shall have assumed operation of the water system authorized herein to be transferred. A true copy of the instrument or instruments of transfer shall be attached to the written notification.

4. Upon the signing of the transfer instrument or instruments, Westlake shall be authorized to enter into agreement with the other party to each extension agreement heretofore executed by Westlake, and listed in Appendix A to this opinion and order, under which each such other party shall agree that all refunds accruing thereafter after acquisition of the Westlake System by Cal-Water shall be made by the latter payable in cash.

5. After acquisition of the Westlake System by Cal-Water, Cal-Water shall be authorized to exercise all rights, duties, and obligations heretofore held by Westlake under provisions of that agreement between Westlake and The Prudential Insurance Company of America dated April 15, 1976, and authorized by this Commission in D.84335.

6. Upon completion of the above conditions of this interim order, as evidenced by a final order to that effect in this proceeding, Westlake and its parent Bulk Carriers shall stand relieved of all their public utility water service obligations in the territory served by the transferred system, and Westlake's certificate of public convenience and necessity will be transferred to Cal-Water.

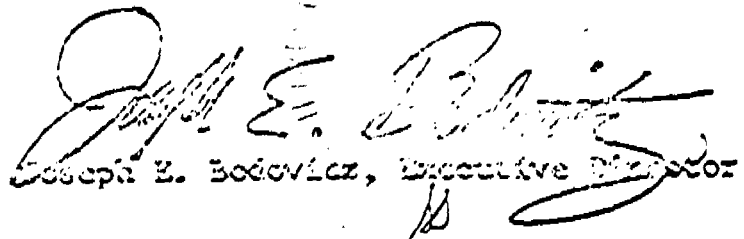
This order is effective today.

Dated AUG 17 1983 , at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. SAGLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

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


Joseph E. Bodovick, Executive Director

APPENDIX A

Westlake Water Company
Main Extension Contracts
In-Tract Facilities
Joint Venture Agreements

<u>Account No.</u>	<u>Contract Issued to</u>	<u>Contract Amount</u>	<u>Amount Refunded</u>	<u>Balance 12/31/82</u>
0241 003 016	Lakeview Develop Co.	\$151,699	\$111,914	\$ 39,785
0241 003 017	American-Hawaiian	103,419	54,995	48,424
0241 003 032	Westlake Automotive Co.	70,300	23,710	46,589
0241 003 047	American-Hawaiian	100,299	67,175	33,124
0241 003 059	Westlake Hills	77,793	77,634	159
0241 003 105	American-Hawaiian	31,326	28,658	2,668
0241 003 117	American-Hawaiian	34,696	29,537	5,160
0241 003 139	American-Hawaiian	48,630	-	48,630
0241 003 163	American-Hawaiian	6,829	2,104	4,725
0241 003 301	Hawaiian-TW	<u>112,144</u>	<u>22,290</u>	<u>89,854</u>
		\$737,135	\$418,017	\$319,118

(END OF APPENDIX A)