

Decision 83 10 CC3 OCT 5 - 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of L. M. BRUMMETT and)
G. B. ALDRED dba AERIAL ACRES WATER)
SYSTEM, and AERIAL ACRES WATER)
COMPANY, INC., a nonprofit mutual)
water corporation, for an order)
authorizing (1) the transfer (for)
no consideration) to Aerial Acres)
Water Company, Inc. of the water)
system, (2) the discontinuance of)
service by L. M. Brummett and G. B.)
Aldred and relief of all their)
public utility obligations in)
connection with the water system)
transferred, (3) the commencement)
of service in said territory by)
Aerial Acres Water Company, Inc.,)
a nonprofit mutual corporation (not)
a public utility, PUC Section 2705).)

Application 83-01-21
(Filed January 14, 1983)

O P I N I O N

Summary

This decision authorizes the requested transfer of the Aerial Acres Water System from L. M. Brummett and G. B. Aldred (Owners) to Aerial Acres Water Company, Inc., a mutual water company (Mutual). Upon completion of the transfer, Owners are relieved from their obligations to provide public utility water service in their existing service area. Owners are required to pay a 1½% user fee on water revenues received in 1983 up to the date of transfer.

Background

By Decision (D.) 77161 dated May 5, 1970 in Application (A.) 51410, John and Irene McLain were authorized to provide water service within Tract 2055 in Kern County. An operating water system, constructed in a portion of the 320-acre tract, had been transferred to the McLains without authorization of the Commission. Acting under Public Utilities Code Section 853,^{1/} the Commission exempted the utility system transfer from the provisions of Section 851. Otherwise, the transfer would have been void. In that proceeding the Commission indicated that voiding the transfer could produce legal complications without producing any tangible benefit to the public interests involved. However, the Commission did not issue a certificate of public convenience and necessity to the McLains. The McLains were authorized to serve not more than 80 customers until an additional supply capable of providing 300 gallons per minute (gpm) to the system was in operation. The Commission ordered installation of a booster pump and storage to provide a minimum flow to the system of 240 gpm for four hours.

By D.82286 dated January 3, 1974 in A.54067, Owners were authorized to purchase the system from the McLains serving an area of 102.5 acres of land.

A Commission staff report, prepared June 29, 1983, served on applicants and received as Exhibit 1, states that the Kern County Health Department restricted the number of service connections on the system due to the lack of a sufficient water supply for the system. There are 94 parcels in the existing 102.5-acre service area. Mutual is authorized to issue shares to each landowner in the service area. It issued 77 shares. However, Mutual cannot issue the remaining shares until it completes the following improvements:

^{1/} All code section citations are from the PU Code.

- a. Repair or replace an existing 22,000-gallon steel tank.
- b. Install an additional 20,000-gallon tank.

At staff's request, a questionnaire (Exhibit B to Exhibit 1) was mailed to every water system customer and land-owner within the utility's service area to elicit responses concerning the requested transfer to Mutual and issuance of shares, at \$25 per share, appurtenant to the land. Responses were received on 64 of the 94 questionnaires mailed. The responses supported the transfer. There was no opposition to the transfer.

The utility's 1982 annual report shows no refundable deposits or outstanding liabilities. Owners propose to convey the system to Mutual without cost.

Without the required Commission approval Mutual began operating the system in December 1982. Mutual's only paid employee is Nancy Seamont, its executive secretary. She receives \$100 per month. Aldred has voluntarily continued to operate and maintain the system for Mutual but he wishes to reduce such activities.

Staff recommends that:

- a. The transfer be authorized without hearing.
- b. Owners sign a statement conveying the net water system revenues they received from January 1, 1983 until the date of transfer to Mutual.
- c. Owners file an annual report for their water system operations up to the date of transfer and pay the required 1½% of gross revenue user fee to the Commission.

Discussion

In 1982 Owners reported gross revenues of \$11,818 and net income, exclusive of income taxes, of \$1,199. A staff engineer notes that Owners' 1982 income statement contains no company payroll expense or vehicle expense. He concludes that the system would have operated at a loss if a reasonable allowance for these items was recorded.

The system is uneconomic when operated as a public utility. It cannot generate funds needed for needed major repairs and improvements. Mutual would have the ability to assess members to provide needed funds.

On December 2, 1982 Owners recorded a quitclaim deed for the system's well lot parcel to Mutual. Since this decision authorizes the transfer of all system assets from Owners to Mutual, there would not be any public benefit from our exercise of the provisions of Section 851 to void any utility property transfer to Mutual. That exercise would require reconveyance of the property to Owners and the subsequent reconveyance to Mutual. Consequently, we will, on our own motion, exercise the power granted us by the provisions of Section 853 and exempt any utility system transfers from Owners to Mutual to validate the utility property transfer.

The affected customers and landowners support the proposed transfer. The transfer should be authorized. If Owners hold any refundable customer deposits, they should be refunded or transferred to Mutual.

The staff recommendation requiring the filing of an annual report by Owners for the portion of 1983 ending on the date of transfer and for the payment of a 1½% user fee to the Commission will be adopted. Staff has not provided a basis for requiring Owners to release to Mutual all net revenues for 1983

up to the date of transfer. The latter recommendation will not be adopted.

Findings of Fact

1. Owners request authorization to transfer their water system to Mutual for no consideration and to be relieved of their public utility water system obligations. Mutual will serve all of Owners' water customers.

2. Out of a total of 94 water system customers and owners of land in the water system service area, 64 support the proposed transfer. There were no protests.

3. Mutual has issued shares of its stock to 77 customers and landowners in the water system service area for \$25 per share. It proposes to issue shares to the remaining landowners. These shares cannot be issued prior to completion of certain system improvements.

4. There are no prospects of Owners operating the water system as an economically viable utility.

5. Mutual may assess its members for funds needed for system repairs and improvements.

6. Owners conveyed water system utility plant to Mutual without Commission authorization. Mutual has operated the system without Commission authorization. The application of Section 851 to void the transfer of the water system to Mutual is not necessarily in the public interest.

7. Mutual proposes to initially adopt Owners' rates for water service.

Conclusions of Law

1. The proposed transfer would not be adverse to the public interest. It should be authorized.

2. The purported transfer of water utility property to Mutual should be exempted from the provisions of Section 851 and held to be not void.

3. Owners should refund any refundable customer deposits they hold or transfer them to Mutual.

4. Owners should pay a 1½% user fee to the Commission for revenues received from January 1, 1983 to the date of transfer.

5. Upon consummation of the transfer, Owners should be relieved of their public utility obligations.

6. A public hearing is not necessary.

7. The order should be made effective today to permit operation of the system by an entity capable of raising funds needed for system repairs and improvements.

O R D E R

IT IS ORDERED that L. M. Brummett and G. B. Aldred are authorized to discontinue water service in the water system service area they were authorized to serve in Decision 82286 after compliance with the following requirements:

- a. Conveyance of their water system and water operations to Aerial Acres Water Company, Inc. (Mutual).
- b. Refund any refundable customer deposits or transfer them to Mutual.

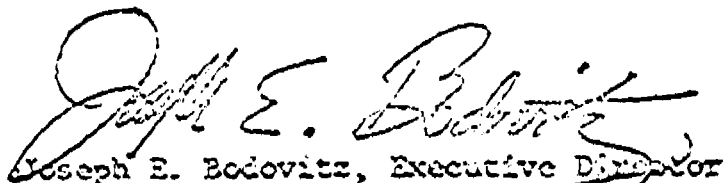
- c. Pay a 1½% user fee to the Commission for 1983 operations prior to the date of transfer
- d. File a 1983 annual report up to the date of transfer.

This order is effective today.

Dated OCT 5 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. CREW
DONALD FIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director