

ORIGINAL

Decision No. 87582 July 12, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 C. WESLEY BIRD AND JENNIE C. BIRD, )  
 husband and wife, for authority to )  
 sell to JOHN J. KASER and OLIVE M. )  
 KASER, husband and wife, all of their )  
 right, title and interest in the water )  
 system now owned by C. WESLEY BIRD and )  
 JENNIE C. BIRD, and known as the )  
 HACIENDA HEIGHTS WATER SYSTEM, in the )  
 City of Fresno, State of California, )  
 and to transfer certificate of public )  
 convenience and necessity. )

Application No. 52477  
(Filed March 3, 1971)

ORDER DENYING PETITION FOR  
 REHEARING, SETTING ASIDE  
 DECISION NO. 79613, AND  
 GRANTING THE APPLICATION

On March 3, 1971 C. Wesley Bird and Jennie C. Bird filed Application No. 52477 requesting authority to sell to John J. Kaser and Olive M. Kaser a water system in the city of Fresno known as the Hacienda Heights Water System. On January 18, 1972, by Decision No. 79613, the Commission dismissed the application for lack of prosecution. On February 5, 1972 the Kasers filed a petition for rehearing. No action was taken on this petition because of a pending court proceeding in which one Francis H. Ferraro was seeking to have the Birds ordered to transfer the water system to him. The staff advises us that a final judgment in that court proceeding has been issued granting to Mr. Ferraro money damages rather than requiring the Birds to transfer the water system. Mr. and Mrs. Kaser hold record title and have been operating the system since 1972.

Although the acquisition of the water system by the Kasers without approval of this Commission is void under Section 854 of the Public Utilities Code, the fact remains that the Kasers hold record title and have been operating the system for almost five years. Mr. Ferraro, originally a protestant, has had his day in court with the result that there is no longer a question of the Birds' ability to grant title to the Kasers. Moreover, Mr. Ferraro has advised the staff that he no longer has any objection to the Commission's approving the sale and transfer of the certificate to the Kasers.

It would benefit the customers of the utility and clarify the position of all parties if the Commission would recognize the de facto ownership and operation of the system by the Kasers by issuing an ex parte order rescinding Decision No. 79613 and authorizing the transfer of the water system as requested in Application No. 52477. We will deny the petition for rehearing because a hearing is not necessary to grant the relief requested in the application, with which all parties now agree. The Commission finds that the transfer of the Hacienda Heights Water System from C. Wesley Bird and Jennie C. Bird to John J. Kaser and Olive M. Kaser is in the public interest. A public hearing is not necessary.

John J. Kaser and Olive M. Kaser are placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

IT IS ORDERED that:

1. The petition for rehearing of Decision No. 79613 is denied.
2. Decision No. 79613 is set aside.
3. The sale and transfer of the Hacienda Heights Water System from C. Wesley Bird and Jennie C. Bird to John J. Kaser and Olive M. Kaser is authorized and approved.
4. As a condition of this grant of authority, purchasers shall assume the public utility obligations of sellers within the area served by the water system being transferred and shall assume liability for refunds, if any, of all existing customer deposits and advances pertaining to the water system being transferred. Purchasers shall send notice of the assumption of liability for refunds to all customers affected.
5. Within ten days after the effective date of this order purchasers shall notify the Commission, in writing, of the date of completion of the transfer and of the assumption of the obligations set forth in paragraph 4 of this order.
6. Purchasers shall either file a statement adopting the tariffs of sellers now on file with this Commission or refile under their own names those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.
7. Sellers shall deliver to purchasers, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

8. Upon compliance with all of the terms and conditions of this order, sellers shall be relieved of their public utility obligations in connection with the water system transferred.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day of JULY, 1977.

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President  
William Lyons J.  
Leon L. Spingarn  
Richard P. Howell

Commissioner CLAIRE T. DEDRICK did not participate in the disposition of this proceeding.

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Commissioners