

Decision No. 89054 JUL 11 1978

ORIGINAL

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 JAMES H. KITCHEN AND)
BERNICE K. KITCHEN, husband and)
wife, as joint tenants, 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 WESMILTON WATER)
SYSTEM, and the ANOOSH-VAN WATER)
SYSTEM, in the County of Fresno,)
State of California, and to transfer)
certificate of public convenience)
and necessity.)

Application No. 56436
(Petition filed April 6, 1978)

O P I N I O N

Decision No. 86238, issued August 10, 1976, approved the transfer of the Anoosh-Van Water System and the Wesmilton Water System, owned by C. Wesley Bird and Jennie C. Bird (sellers), to James H. Kitchen and Bernice K. Kitchen (buyers). Subsequent to the decision, buyers and sellers had a falling out which resulted in court action and certain petitions to the Commission. As the result of the petitions, buyers were enjoined from interfering with the operations of the two systems for a period of nine months (Decision No. 86985 dated February 15, 1977 and effective for nine months). A lapse in the authorized transfer period has been averted by two orders by the Commission authorizing an extension to the transfer period. The herein petition by buyers dated April 5, 1978 requests an order declaring completion of transfer of only the Anoosh-Van Water System (not Wesmilton Water System) which is still subject to dispute and approval of its transfer. Because of the falling out between the parties, the transfer was accomplished in a slightly

different manner than was anticipated in the application. The transfer was also modified from that originally authorized because of the supplemental action by buyers in trading off two inferior well sites serving the Anoosh-Van Water System for a vastly superior well site in order to improve the system's service. Buyers also request the Commission issue an order extending the dedicated service area of the Anoosh-Van Water System.

Completion and Approval of the
Transfer of Anoosh-Van Water System

Buyers represent that they have met all the conditions set forth in Decision No. 86238 to effect the transfer of public utility responsibility from sellers to buyers and have attached to their petition copies of various documents purporting to evidence the transfer to buyers of the facilities of the water system.

Instead of the direct transfer of the Anoosh-Van Water System from sellers to buyers as contemplated by the application, the sellers utilized a power of attorney whereby Trend Homes, Inc., a California corporation, was given a power of attorney by the sellers and all right, title, and interest in the property of the Anoosh-Van Water System, for the purpose of acting on the sellers' behalf in completing the transfer to the originally intended buyers. By reason of the use of the power of attorney, a copy of which is attached to the petition, there was a compliance with the transfer authorized by Decision No. 86238, although an intermediary was employed.

The Commission finds that the transfer of the Anoosh-Van Water System from sellers to buyers as authorized by Decision No. 86238 has been completed; that buyers are the operators of the Anoosh-Van Water System and that sellers are no longer the operators of the Anoosh-Van Water System; that the manner of transfer of the water system through the use of a third party did not in substance change the nature of the transaction approved by Decision No. 86238; and that the supplemental actions by buyers in trading two inferior well sites for a superior well site will improve the system's service.

The Commission concludes that buyers should be declared to be a public utility water corporation in relation to the Anoosh-Van Water System and are responsible as such as a public utility; that sellers should be declared to be relieved of their public utility responsibility in relation to the Anoosh-Van Water System; that the supplemental action of buyers in trading well sites should be approved; and that the transfer of the water system as effected should be approved. The Commission further concludes that Decision No. 86985 lapsed November 15, 1977 and is no longer of any force or effect.

The buyers in the petition filed April 15, 1978 proposed to petition for an extension of service territory into an area now served by the Calwa County Water District. The Docket Office refused to accept the petition unless that request was deleted, which it was. The Administrative Law Judge has explained to the buyers that upon issuance of this order the issue of extending service territory should be pursued in a new proceeding. We place the buyers on notice that after the effective date of this order they may apply to change the utility's service territory.

Findings

1. The transfer of the Anoosh-Van Water System from the sellers to the buyers as authorized by Decision No. 86238 has been completed.

2. Although an intermediary designated by sellers and operating under the sellers' power of attorney was utilized to facilitate the transfer to the Kitchens, the transaction was in basic conformance with the requirements of Decision No. 86238.

3. The exchange of well sites by buyers was reasonable and in the public interest and should be approved.

Conclusion

The transfer of the Anoosh-Van Water System from the sellers to the buyers should be approved and declared final.

O R D E R

IT IS ORDERED that:

1. The transfer of the Anoosh-Van Water System from C. Wesley Bird and Jennie C. Bird to James H. Kitchen and Bernice K. Kitchen in the manner recited in latter's petition dated April 5, 1978 is authorized and approved.
2. James H. Kitchen and Bernice K. Kitchen, doing business as Anoosh-Van Water System, are a public utility water corporation.
3. C. Wesley Bird and Jennie C. Bird are relieved of their public utility responsibility in relation to the Anoosh-Van Water System.
4. The actions of James H. Kitchen and Bernice K. Kitchen, doing business as Anoosh-Van Water System, in trading well sites as recited in their petition of April 5, 1978 are authorized and approved.

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

Dated at San Francisco, California, this 11th day of JULY, 1978.

Robert B. ...
President

Richard P. ...
Clair J. ...
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.