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Decision No. 89266 AUG 22 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the joint Application of LUIS S. KING, dba PINE MOUNTAIN WATER COMPANY to sell, and, GERALD WEDEL to purchase, the water system known as the PINE MOUNTAIN WATER COMPANY.

Application No. 57439
(Filed July 12, 1977)

John P. Moran, Attorney at Law, and
Shan King, for Pine Mountain Water
Company, applicant.
Curtis M. Spott, Attorney at Law, for
Pine Mountain Ranch Property Owners
Association, protestant.
Steven Weissman, Attorney at Law, and
Thomas J. Silva, for the Commission
staff.

O P I N I O N

Luis S. King (King), dba Pine Mountain Water Company (the water system), requests authority to sell, and Gerald Wedel (Wedel) requests authority to purchase the water system for \$25,000 payable, \$5,000 down, and the balance represented by an 8 percent interest-bearing promissory note payable in monthly installments of \$200. The application was opposed by the Pine Mountain Ranch Property Owners Association (the Association). Hearing on the matter was held before Administrative Law Judge William S. Pilling on March 7 and 8, 1978, and the matter was submitted on April 19, 1978.

The water system provides service to 19 customers in the area known as Pine Mountain Ranch and 24 customers in the area known as Rainbow Ranch, both areas being in Tulare County.

King and Nancy C. Johnson (Johnson), as partners, were granted a certificate to construct the water system in 1966. In May 1969, King and Johnson entered into a dissolution of partnership agreement whereby the parties were to dispose of various partnership assets which included the water system. King apparently thought he had conveyed his interest in the water system to Johnson for, during a conference between a member of the Commission staff and King and Johnson in December 1972, King denied having any interest in the system, and Johnson agreed to file certain delinquent reports (see Decision No. 82179). Johnson also stated that she would prepare an application with the Commission to seek approval of the transfer of King's interest in the water system to her, but no such application was filed. Sometime in 1973, Johnson left the State and has not returned since. Upon hearing of Johnson's leaving, King took over the operation of the water system. At the hearing, King's attorney placed in evidence a letter, dated February 16, 1978 from Johnson in the State of Washington, stating that to the extent of any interest she may have in the water system, King has her authority to act for the partnership. King stated that he desires to part with the water system because he feels he can no longer operate it alone.

The sole functional source of water for the water system is identified as Well No. 1 which supplies a 64,000-gallon galvanized, bolted steel tank and a 2,500-gallon hydropneumatic tank. Well No. 1 is located on Manter Meadow, both tanks are located on a ridge at an elevation high above Well No. 1. These items are all located on Pine Mountain Ranch. The system's distribution facilities were designed in accordance with General Order No. 103 by a licensed civil engineer. The 2,500-gallon hydropneumatic tank, located above the 64,000-gallon tank, serves only the five highest lots in Pine Mountain Ranch. In Decision No. 82179 dated November 27, 1973, the Commission restricted the water system's service to the 156 developed lots in Units Nos. 1 and 2 of the Pine Mountain subdivision

and to its presently certificated service area in Rainbow Ranch. Water outages occur during time of peak demand with the present system. The water system had an operating loss of \$3,400 in 1976 and a \$5,000 loss in 1977. King testified that as of January 1, 1977 the value of the water plant in service was \$20,870 after deducting \$19,885 for depreciation. The majority of residents at Rainbow Ranch are permanent residents while those in Pine Mountain Ranch are primarily weekend and summer residents.

Wedel, the buyer, is president of, and owns a majority of, Pine Flat Water Company, a nearby public utility water corporation. He has real estate holdings which he intends to develop within the service area of the water system. His major business since 1966 has been the ownership and operation of a water-well drilling company and of a pump installation company that presently employs 16 persons in the drilling operation. Wedel estimated that as of May 1, 1977 he and his wife had a net worth of \$898,908 based on tangible assets being carried on his books at their fair market value at that time, or a net worth of \$534,122 on that date based on tangible assets being carried on his books at cost less depreciation. Wedel stated that he was willing to assume the obligation in the amount of approximately \$9,000 to refund payments owed by King under a main extension agreement of the water system.

Four customers of the water system appeared in support of the transfer.

The agreement for the sale of the water system and the note covering the balance of the purchase price was executed by Wedel and King on August 19, 1976. King stated that an application was filed a little later with the Commission requesting approval of the transfer, but that it became lost and so the herein application was filed. Sometime after the execution of the sales agreement and note, Wedel gravitated into tending to the water system. He paid some back taxes on the water system property (apparently under prearrangement since the note was only for \$17,170) and during 1977 he made \$5,000 worth of improvements to the water system. Since late 1977, Wedel has assigned one of the employees of the Pine Flat Water Company to devote part of

his time as an employee of the water system to do the day-to-day work on it. Wedel testified that the money he put into the water system was a stop-gap measure to preserve the assets of the water system until transfer and that if the transfer is approved he is willing to advance monies to improve the water system. The agreement of sale makes the transfer subject to the approval of the Commission and requires King to quitclaim real property owned by the water system to Wedel. No evidence was presented that such deeds were ever made up or delivered to Wedel.

The Association was formed to control the architecture in Pine Mountain Ranch, and it claims representation of the owners of 50 percent of the lots and 77 percent of the homesites in Pine Mountain Ranch. It has no members who are owners of property in Rainbow Ranch. The Association alleges that transfer of the water system is not in the public interest and would adversely ^a affect the future of the water service now being provided protestants; that transfer of the water system as requested would create a potential for further expansion of the water system which the Commission and its staff might not be actively able to regulate and control; and that Wedel does not have the present ability, either financial or otherwise, to operate the water system in a manner acceptable to the users or to the Commission. The Association requests that the Commission grant the Association control of the water system. The Association would like to establish a water district and take over the water system and, until such time as the district is formed, requests that King retain ownership of, and responsibility for, the system and be ordered to bring the water system up to all Commission general order standards for water systems. The Association presented a witness, who was a customer of the water system, a permanent resident of Pine Mountain Ranch, and who had donated part of his time to the repair and maintenance of the water system for several years before King entered into a contract to sell to Wedel. Between June of 1977 and February of 1978, the witnesses noted and made photographs of certain parts of the water system which had fallen into disrepair and which took an

inordinately long time to repair due, principally, to the failure of the operator to make timely detection of the need to make repairs. The witness stated that starting in December 1976 he was billed for water service in the name of Wedel, rather than in the name of King, as had previously been the case.

A former employee of the Commission, with 23 years' experience as a utilities engineer in the Hydraulic Branch of the Commission and presently an engineering consultant, testified on behalf of the Association that in his opinion it would be better for King to retain control and operation of the water system rather than giving it to Wedel; that there had not been made a sufficient investigation of Wedel's financial capabilities for running the water system; and that the proposed transfer could jeopardize the service of Pine Mountain Water Company. ✓

The Commission staff recommends that the transfer be approved because, among other reasons, the staff considers Wedel financially and operationally capable of operating the water system and is a superior alternative to having the water system under King's control. The staff witness noted that the water system's tariff book shows that Wedel filed tariff sheets on December 24, 1976 as owner of the water system.

Findings

1. King and Johnson have dissolved their business partnership, and Johnson has taken up residence outside of California.
2. One of the assets of the partnership is the public utility water system which King, with Johnson's approval, desires to dispose of because King feels he can no longer operate it.
3. Under the present system, the available water supply is insufficient to meet peak water needs of existing customers.

4. King and Wedel have entered into a written agreement whereby King has agreed to sell the water system to Wedel for \$25,000, \$5,000 down, and the balance (less certain advancements made by Wedel) evidenced by an 8 percent interest-bearing promissory note for \$17,170 payable at the rate of \$200 per month. ✓

5. Wedel is financially able to operate the water system.

6. Wedel is operationally capable of running the water system. ✓

7. Wedel owns property, within the water system's service area, which he intends to develop and sell. ✓

8. Wedel has evidenced his intentions of devoting his serious efforts to operate the water system by his advancement of \$5,000 for the maintenance and repair of the system and the furnishing of a part-time employee to keep the system in operation. ✓

9. Wedel is a superior alternative to having the water system under the control and operation of a lifeless partnership. ✓

10. Approval of the transfer should be conditioned on Wedel's assuming, in writing, any refund payments owed under any main extension agreements entered into in connection with the water system. ✓

11. While Wedel was shown to have had something to do with the operation of the water system beginning around December 1976 which may have bordered on the unlawful assumption of control of the water system, his actions under the circumstances spoke more of his being a caretaker of the water system, rather than the ultimate controller of it. ✓

12. The issuance of the note in part payment of the purchase price of the water system is reasonably required to accomplish the sales transaction and the property paid for by the note is not reasonably chargeable to operating expenses or to income. ✓

Conclusions

1. The proposed transfer will not be adverse to the public interest.
2. The application should be granted subject to the conditions set forth in the ordering paragraphs herein.

O R D E R

IT IS ORDERED that:

1. On or before December 29, 1978, Luis S. King may sell and transfer the water system referred to in the application to Gerald Wedel.
2. As a condition of this grant of authority, purchaser shall assume the public utility obligations of seller within the area served by the water system being transferred and shall assume liability for refunds of all existing customer deposits and advances pertaining to the water system being transferred. Purchaser shall send notice of the assumption of liability for refunds to all customers affected.
3. Purchaser shall make no new connections until such time as it can demonstrate a sufficient water supply to provide for additional customers without adversely affecting service to existing customers. Purchaser shall exempt therefrom all applicants for service having a building permit issued prior to August 25, 1978.
4. Within ten days after completion of the transfer purchaser shall notify the Commission, in writing, of the date of completion and of the assumption of the obligations set forth in paragraph 2 of this order.
5. Purchaser shall either file a statement adopting the tariffs of seller now on file with this Commission or refile under his own name 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.
6. On or before the date of actual transfer, seller shall deliver to purchaser, 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.

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

8. On or after the effective date of this order and on or before December 29, 1978, for the purposes specified in this proceeding, Gerald Wedel may issue an evidence of indebtedness in the principal amount not exceeding \$17,170.87. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$50.

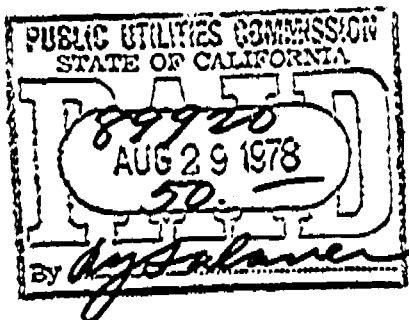
9. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

Except as provided in Ordering Paragraph 8, the effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 22nd day of AUGUST, 1978.

Robert B. Berman
President
William J. Jones
Vernon L. Sturgeon

Commissioners



Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dodrick, being necessarily absent, did not participate in the disposition of this proceeding.