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ORIGINAL

Decision No. 89675 NOV 28 1978

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 systems now owned by C. Wesley)
 Bird and Mrs. 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)
 Certificates of public convenience)
 and necessity.)

Application No. 56436
 (Petition for Extension of Time
 filed by buyers
 on November 13, 1978)

ORDER FURTHER EXTENDING TIME

In Decision No. 86238, effective August 30, 1976, the Commission conditionally authorized C. Wesley Bird and Jennie C. Bird (sellers) to transfer the involved water systems to James H. Kitchen and Bernice K. Kitchen (buyers) not later than December 1, 1976.

In Decision No. 86772 issued December 21, 1976 we extended the time for completion of the transfer to December 1, 1977 due to the fact that certain differences arose between buyers and sellers. In Decision No. 88156 issued November 29, 1977 we further extended the time for completion of the transfer to December 1, 1978 so as not to prejudice the rights of any of the parties to the lawsuit regarding the contract covering the proposed transfer which is pending between the parties.

By letter dated November 7, 1978 which was received by the Commission and filed as of November 13, 1978, from the attorney for buyers James H. Kitchen and Bernice K. Kitchen said parties request that our approval of the proposed transaction be further extended to

December 1, 1979. As justification for such extension buyers in such letter state as follows:

"On October 30, 1978, the Superior Court of Fresno County, California, after two days of trial ruled that the Kitchens (Buyers) are the owners of the Wesmilton Water System. However, so as to facilitate a smooth transition in taking over the operation of the water system the court has indicated that it will take further testimony regarding accounting, etc. The date for this testimony has been set for December 8, 1978. As soon as possible thereafter, with some cooperation from the Sellers, I would anticipate total compliance with the Order set forth in Decision No. 86238.

"Because of the delay we have experienced in getting this matter to trial it is necessary to request a further extension of time for one year from December 1, 1978, as well as for the foregoing reasons and for the reasons the Commission has issued its previous Orders extending time in this matter (Decision Nos. 86772 and 88156)."

Seller C. Wesley Bird, by letter dated November 13, 1978 received by the Commission and filed as of November 15, 1978, objects to any further extension of time for the following reasons:

"I am requesting, as the owner and operator of the Wesmilton Water System, that you do not renew the permission to sell my properties to James H. Kitchen and his wife, which permission expires on December 1, 1978, according to Decision No. 88156, dated November 29, 1977.

"I have protested the Commission's disregard of my rights in this matter to no avail. It is time that the Commission observe common legal practices: vis., the seller requested permission to sell and it is he alone who can request an extension or cancellation of that permission.

"I have another buyer standing ready and willing to buy at today's prices. Mr. Kitchen does not own the water system, nor does he have operating rights. He has, and the court confirmed this, deeds for which he has paid nothing. So a sale was never made. The court has yet to put in writing its decision

of October 30, 1978, referred to in a recent letter by Mr. Charles W. Brewer, atty. for the Kitchens. The court did not rule that the Kitchens own the property. It ruled that the Kitchens must pay for the property in order to own it. No payment has been made. The Kitchens as buyers can not ask for an extension of permission to sell which was granted to the sellers. I am asking, therefore, that their request be denied and that the permission to sell granted to me, C. Wesley Bird, be allowed to lapse on December 1, 1978."

So as not to prejudice the rights of any of the parties to the lawsuit which may result from our withdrawal of approval of the transaction, we will further extend the period of time in which the transaction may be completed to December 1, 1979.

The effective date of this order will be the date hereof because the previous extension of time expires on December 1, 1978.

IT IS ORDERED that Paragraph 1 of the Order in Decision No. 86238, issued on August 10, 1976 and effective on August 30, 1976, is further revised to read:

"1. On or before December 1, 1979, C. Wesley Bird and Jennie C. Bird may sell and transfer to James H. Kitchen and Bernice K. Kitchen the property referred to in this proceeding in accordance with the agreement attached to the application as Exhibit D."

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th day of NOVEMBER, 1979.

Robert Batnisch
President
William S. ...
...

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

Commissioners

Commissioner CLAIRE T. DEDRICK

Present but not participating.