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Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sierra Highlands )  
Water Company for an order auth- )  
orizing Sierra to transfer and )  
assign its property to Lake Don )  
Pedro Community Services District. )  
\_\_\_\_\_ )

Application No. 59951  
(Filed September 19, 1980)

O P I N I O N

Sierra Highlands Water Company (Sierra) and Lake Don Pedro Community Services District (District) seek Commission approval, pursuant to Section 851, Public Utilities Code, to transfer the utility's system to District. The transfer is essentially a donation, with the District becoming responsible to provide an ongoing service to Sierra's customers.

Sierra now provides public utility water service to an area which includes Units 2 and 3 of the Lake Don Pedro Subdivision in Tuolumne County, and Units 1-M, 2-M, and 3-M of the Lake Don Pedro Subdivision in Mariposa County. Sierra's service area also includes former Units 4-M, 5-M, and 6-M of the subdivision in Mariposa County, which were reverted to acreage on September 24, 1971. Sierra's certificate of public convenience and necessity was issued by the Commission in its Decision No. 74677 dated September 11, 1968. Its original service area was Lake Don Pedro Unit 2 in Tuolumne County.

Subsequent Commission Decisions Nos. 75296 (issued February 4, 1969), 75374 (issued February 25, 1969), and 75936 (issued July 15, 1969) extended Sierra's service area to Unit 3 in Tuolumne County and to Unit 1-M in Mariposa County. Sierra's service area was further extended by Commission Resolutions W-1187 (adopted October 21, 1969), W-1202 and W-1203 (adopted January 6, 1970), and W-1236 (adopted in April 28, 1970) to cover Units 2-M and 3-M and the former units now reverted to acreage, Units 4-M, 5-M, and 6-M.

District has the authority to provide water service to those units of the Lake Don Pedro Subdivisions which are now served by Sierra. In addition, it will create a zone of benefit to provide sewer service to approximately 153 sewer lots in Lake Don Pedro Subdivision Unit 3-M and certain other properties. The properties to be included in the zone of benefit are now served by Sewer Zone No. 1 of Mariposa County Service Area Don Pedro 1-M. ✓

Sierra has 5,500 shares of stock outstanding. 5,300 of those shares are now owned by Boise Cascade Home & Land Corporation (Boise), the original developer of Lake Don Pedro. Thad C. Binkley owns 100 shares and the remaining 100 shares are owned by Hartley R. Appleton. The shares of stock now owned by Boise were formerly held under a voting trust agreement, which was lawfully terminated in 1976.

District is organized under the California Community Services District Law (Government Code Sections 61000 et seq.) to provide operations in Mariposa and Tuolumne Counties, California.

Background

In 1973, a settlement agreement was signed and approved by the United States District Court in a class action lawsuit against Boise and others, McCubbrey, et al. v Boise Cascade Home & Land Corporation, et al., No. C-72-470 RFP, U.S. Dist. Ct. Northern District, Calif., concerning defendants' land developments in California, including Lake Don Pedro. One of the provisions of the settlement obligates Boise to subsidize Sierra's operating losses through December 31, 1981. If the transfer of property is consummated, Sierra's right to receive this subsidy will be transferred to District. Following the class action settlement, Boise sold its entire remaining inventory of unsold Lake Don Pedro lots to other developers.

In May 1978, a Water Planning Feasibility Committee was formed by the Board of Directors of the Lake Don Pedro Owners' Association (Association) to investigate the feasibility of transferring Sierra's water system to local ownership. The Association is a nonprofit corporation whose members are owners of lots in the Lake Don Pedro subdivision. The committee recommended formation of a community services district to provide water service. Thereafter, members of the Association circulated petitions requesting the formation of District. An agreement of transfer was negotiated with Sierra and its majority shareholder, Boise, which is the subject of this application.

In February 1980 the Mariposa County Local Agency Formation Commission recommended approval of the formation of District on condition that District would create the zone of benefit for sewer service referred to above. After that, public hearings were held before the Boards of Supervisors in Mariposa County and in Tuolumne County. At the conclusion of these hearings, both counties voted in favor of district formation and ordered a special election to be called to complete the formation proceedings. That election was held August 5, 1980 and formation was approved.

The Water Planning Feasibility Committee hired a qualified engineer experienced in rate studies. He predicted that even after the subsidy is exhausted, District, with nominal rate increases, standby charges, and fire system charges, will be able to provide water service and still maintain reasonable cash reserves.

The contract among Sierra, Boise, and District provides generally:

1. Following the Commission's approval, Sierra will assign, transfer, and convey to District substantially all its assets including Sierra's real property, its tangible personal property, its operating permits, records, materials and supplies, and many of its accounts receivable.
2. An escrow will be established and title insurance furnished to insure that District will receive acceptable title and that all other conditions precedent to the transfer have been satisfied. These conditions include approval by the Commission, proof of completion of district formation, consent by the Merced Irrigation District to the assignment of Sierra's water supply contract to District, and acceptable title to the real property to be conveyed.

3. The following contracts are to be assigned by Sierra to District and fully performed by District thereafter:
  - a. The March 26, 1968 agreement between Merced Irrigation District and Pacific Cascade Land Co., Inc. (Pacific), vesting certain surplus water rights (5,000 acre-feet per year) with the Merced Irrigation District to Pacific, as amended, which agreement has been assigned to Sierra.
  - b. The May 9, 1960 agreement between Sierra and Solomon, et al., transferring certain surplus water rights (160 acre-feet) to Sierra and obligating Sierra to provide certain water service to the Solomon property.
  - c. The October 9, 1969 agreement between Sierra and Boise for water service to the Lake Don Pedro Golf Course, as amended, which agreement has been assigned to TCE, Inc.
  - d. The October 27, 1973 agreement between Sierra and the Lake Don Pedro Owners Association for use of Lake Gregoris.
4. In general, except for service commitments and other matters specifically set forth in the contract, District is not to assume Sierra's liabilities, specifically any liability arising out of the line extension agreements signed by Sierra and Boise or its predecessors in interest.
5. District will assume and perform Sierra's service obligations. The contract provides for District to operate and maintain the water system, to "provide water service to all lands and customers within Sierra's present service area" and subject to certain conditions respecting connection charges and other details, to "provide water service at any time in the future, upon demand, to each and every lot owner in Units 1, 2, and 3 of the Lake Don Pedro subdivision in Mariposa County and to Units 2 and 3 of said subdivision in Tuolumne County".

6. District and its engineer are given access to Sierra's water facilities for inspection purposes. Sierra's facilities are to be transferred to District without a warranty of their existing condition.
7. A subsidy is to be paid to District by Boise until December 31, 1981. The subsidy is derived from the McCubbrey settlement referred to above. The amount of the subsidy is the same as the amount that would have been paid if Sierra continued to own and operate the water system during the subsidy period. Advances will be made by Boise against the subsidy at the time of the transfer and, if necessary, at the end of every calendar quarter during the subsidy period.

We have received a communication from a person who would become a water customer when and if he builds on and occupies his lot in the subdivision. He claims to represent others similarly situated. The communication describes a three-way dispute among those consumers he represents, those who have built on their lots, and the original subdivider, Boise.

He apparently believes that customers may have rights to an additional subsidy from Boise. He has also challenged the validity of the elections which created District and filled the seats on its governing body.

Finally, he has claimed that District may not, as a matter of law, be able to levy standby charges and that it may therefore have to charge higher rates than anticipated.

None of these disputes present issues of law or fact which should be resolved by this Commission. The potential customer apparently recognizes this, since he has not expressly requested that we deny or disapprove the application or even convene a hearing in this matter.

The potential customer has asked for a delay in our consideration of the transfer so that he may pursue his claims with the Attorney General, or the Supreme Court, or unnamed others. He has not, however, shown that he has any reasonable hope of obtaining relief, nor has he shown that our approval of the transfer could complicate or frustrate any possible litigation in another forum.

For these reasons, the communication does not conform to Rule 8.1 or to Rule 8.4(b) and (c), which generally require that a protest state grounds for denial or modification of an application. We also note that the potential customer failed to serve the communication without further delay.

Therefore, even though Sierra and District have both expressly sought evidentiary hearings to consider these problems, their requests should be denied as no public hearing is necessary.

#### Findings of Fact

1. There has been no showing that prompt action by the Commission will adversely affect other litigation concerning Boise's obligations to water customers and potential water customers.

2. No reason has been shown to deny the application.

3. The proposed transfer will not be adverse to the public interest.

Conclusions of Law

1. The communication, referred to above, raises no disputed issues of law or fact within the scope for the Commission's jurisdiction.

2. The application should be considered, without further delay.

3. No public hearing is necessary.

4. The application should be granted.

5. Sierra should be relieved of its obligations as a public utility, once its system is transferred and District has assumed the responsibility of providing water service throughout Sierra's service area.

O R D E R

IT IS ORDERED that:

1. On or before April 1, 1981, Sierra Highlands Water Company may sell and transfer the water system and other assets referred to in the application to Lake Don Pedro Community Services District according to the terms and conditions attached to the application.

2. On or before the date of actual transfer seller shall refund all customers' deposits for the establishment of credit, if any, which are subject to refund.



3. As a condition of this grant of authority seller shall assume all liability for refunds of main extension advances, if any.

4. Within ten days after the completion of the transfer seller shall notify the Commission, in writing, of the date of transfer, of the refunding of the deposits, and of the date upon which purchaser shall have assumed operation of the water system. A true copy of the instruments of transfer shall be attached to the notification.

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

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

Dated JAN 21 1981, at San Francisco, California.

*I abstain.*

*John E. Bryan*

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 President

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