

SEP 8 1995

Decision 95-09-032 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Raymond D. McCart and Pearl B. McCart doing business as the Lucchesi Water Company to transfer all rights, title, and interest in the Lucchesi Water System in Napa, California, to the City of Napa, Napa County.

ORIGINAL

OPINION

Statement of Facts The Lucchesi Water System (System) was constructed by John Baur early this century to serve a small subdivision Baur was developing in an area then approximately 1/2 mile east of the center of the City of Napa (City), in Napa County. In 1911, Maria Marti purchased the water system and in 1920 sold it to F. Lucchesi.

Upon Lucchesi's death, an undivided half interest was bequeathed to Maria Scaruffi who in due time in turn bequeathed her interest to Louis Scaruffi and Anne George. The other undivided half interest passed from Lucchesi's wife Gina to Fernanda Podesta Halloran and Dante Podesta who in turn relinquished their interest to Louis Scaruffi and Anne George.

In 1964, by Decision 67083 in Application 46052, Louis Scaruffi and Anne George were authorized to sell and transfer the water system to Raymond D. McCart and Pearl B. McCart. The decision also ex post facto authorized the previous transfers. The system then provided metered water service to 55 customers in the subdivision.

Today, the system, bounded by Highway 121 (The Silverado Trail), Spring Street, East Street, and First Street, is situated as an island entirely surrounded by the City. It serves 57 metered

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 customers. The system consists of two wells, two storage tanks (of  
 9,000 gallons total capacity), and 2,200 feet of 2-inch mains, has  
 no fire hydrants, and is near the end of its useful life, being in  
 need of substantial improvements to bring it to General Order 103  
 standards. By 1990 the wells were no longer able to supply  
 sufficient water, and increasingly the system has relied upon  
 purchases from the surrounding City system to meet its needs.

McCart, the owner, retired in 1986 and lives on his  
 pension and social security. He is aged and lacks the funds needed  
 to supplement operating costs or to upgrade the water system.

Years ago he decided he wanted out of the water business but was  
 unable to find a buyer for the small system. In the summer of  
 1989, he asked the city to acquire the system and to incorporate it  
 into the city's system. With failing wells it was inevitable that  
 it become part of the city's system. The city required McCart to  
 provide a preliminary engineering study and cost analysis to  
 determine the viability of a transfer, and McCart engaged the firm

of Terrance E. Lowell & Associates, Inc. (Lowell) to begin the  
 study. Initially, the city wanted McCart to advance in excess of  
 \$20,000 for the Lowell study and for city staff work. However,  
 after McCart had advanced part of this amount, depleting his  
 savings reserves, he notified the city that alternate plans to fund  
 the work would have to be found, and that he was preparing an  
 application to this Commission to abandon the system if no other  
 option was forthcoming.

The city had determined that the most effective option  
 for a takeover and upgrade would be the formation of a benefit  
 assessment district to fund the improvements required were the city  
 to acquire the system. Proceeding under provisions of the  
 Municipal Improvement Act of 1913 and its amendments, the city used  
 the Lowell study to meet with property owners in the proposed  
 assessment district to explain the need and approximate costs to  
 connect to the city system. It is asserted that 60% of the

property owners indicated a desire to proceed. On September 13, 1994, the City Council by Resolution 94-206 directed the City Engineer to make and file a report. Following noticed public hearings on October 11, 1994 and November 1, 1994, the City Council on November 1, 1994, by a 3 to 2 vote, overruled the minority, no protests, written and oral, and finding that the public interest, convenience, and necessity required the acquisition and improvements together with creation of a district, ordered the acquisition and improvements be made, the district be formed, and confirmed the assessments.

Known as the Berna Avenue Area Water Assessment District, the project assessment will total \$408,029.<sup>1</sup> Individual assessments to each of the 56 property owners involved range from \$594.47 to \$14,276.52. Included are the service tap to the main, standard one-inch service line, meter service box, double check valve and box, design and construction engineering, City plan check and inspection fees, and contingency costs. Parcel No. 45-141-26, a 60-foot by 60-foot parcel, the site of the existing Lucchesi tanks, pumps, etc., will be given to the City in exchange for the City not charging the City connection and meter set fee on one of the parcel. The existing Lucchesi system will be disconnected, plugged, and abandoned with removal of tanks, pumps, etc.

The components of this \$408,029 cost are:

Berna Avenue Water Lines	\$101,754
Berna Avenue Water Services	44,780
Silverado Trail Water Services	6,633
First and Spring Streets Water Services	37,045
Lucchesi System Removal	23,815
City's Connection and Meter Set Fee	91,770
Berna Avenue Pavement Overlay	15,945
Formation of District Costs	49,287
Financing the District Costs	34,000
PUC Coordination Costs	3,000
<b>Total</b>	<b>\$408,029</b>

After acquisition the City will apply its own water service charges. There are no customer deposits, main extension advances, or refunds due. By the present application the McCartis and the City seek an ex parte order authorizing conversion of the System to a municipally owned and operated system, and that the McCartis be relieved of their public utility responsibilities related to the Lucchesi Water Company. Announcement of the filing made March 6, 1995 appeared in the Commission's Daily Calendar of March 7, 1995. In addition, customers were by letter informed of the application and offered opportunity to comment. No responses or protests have been received.

**Discussion** This application is filed to comply with the requirements of Public Utilities Code § 851 that no public utility other than a common carrier by railroad may dispose of the whole or any part of its system necessary or useful in the performance of its duties to the public without first having secured from the Commission an order authorizing it to do so. This is because it is the function of the Commission to protect the public interest to prevent impairment of the public service that might result by a transfer into the hands of parties incapable of rendering adequate service at reasonable rates or upon terms which would produce the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520).

But in these proceedings we do not have the usual private party transfer. A city is the acquiring party entity, and where a municipality is the acquiring party, our considerations are somewhat different. Since the rates to be charged by a municipally owned utility must be fair, reasonable, just, and nondiscriminatory (American Microsystems, Inc. v. City of Santa Clara (1982) 137 CA 3d 1037, 1041) and the City presently owns, operates and maintains a treatment and distribution system serving 68,000 people, the transfer involves no risk to the ratepayers going with the

Individual Assessment will total \$408,020.  
TOTAL

transfer of the Lucchesi System at the end of its useful life and its water supply rapidly failing, the transfer to the City, new with attendant reconstruction of the distribution system to serve City-supplied water only, is inevitable. While the cost of the required assessment district to the property owners is high, there really is no alternative if there is to be a reliable and safe water supply. Accordingly, the Commission approves the transfer of all rights, title, and interest in the Lucchesi System to the City.

Under these circumstances, we still retain jurisdiction to formally relieve the McCartys of their public utility responsibilities with respect to the service for the area being transferred to the City. The McCartys will be required to make a remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected up to the date the transfer is formally consummated. Upon consummation of the transfer and payment to the Commission of those fees, the McCartys will be relieved of their public utility water service obligations.

**Findings of Fact**

1. The Lucchesi Water Company provides public utility water service to a residential area bounded by Highway 121, Spring, East, and First Streets in the City.

2. The Lucchesi Water System, almost 100 years old, has reached the end of its useful service, and today depends increasingly upon water furnished by the City water system.

3. To finance the construction of a water system to replace the worn out Lucchesi System is beyond the resources of the present owners, and there have been no buyers interested in acquiring the Lucchesi System.

4. The City is willing to take over the service obligations presently held by the McCartys provided a system is constructed to serve the Lucchesi service area, replacing the Lucchesi System, and that such new system meets the City's standards.

5. The City has proposed, and a majority of the property owners in the Lucchesi System service area have agreed to the formation of an assessment district as provided in the Municipal Improvement Act of 1913 to fund the new water facilities. The benefit assessment district will encompass all parcels presently served by the Lucchesi System for a period of 10 years.

6. The City is an experienced and financially sound water purveyor.

7. The City after acquisition will apply its own rates and charges for water service.

8. Before the McCart's can be relieved of their public utility service obligations, they must make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of transfer.

9. A transfer of the service obligation to the City will be in the public interest, and presents no significant impact on the environment.

10. There is no known opposition to the proposed transfer.

11. In order to effectuate transfer and a start to the replacement of the Lucchesi System as soon as possible, the order that follows should be made effective immediately.

Conclusions of Law

1. A public hearing is not necessary.
2. The transfer should be authorized.

Upon completion of the transfer and payment to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of the transfer, the McCart's can be relieved of their public utility service obligations relative to the Lucchesi Water Company and its service territory.

The City is presently held by the McCart's provided a system is constructed to serve the Lucchesi service area, replacing the Lucchesi System, and that such new system meets the City's standards.

O R D E R

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Raymond D. McCart and Pearl B. McCart (the McCarts), doing business as the Lucchesi Water Company, may transfer all rights, title, and interest in the Lucchesi Water System to the City of Napa.

2. Within 10 days of the actual transfer, the McCarts shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instruments effecting the transfer shall be attached to the written notification.

3. The McCarts shall pay to the Commission before the transfer becomes effective all fees due under Public Utilities Code § 431.

4. Upon completion of the transfer and compliance with Ordering Paragraph 3, the McCarts shall stand relieved of their public utility service obligations in the Lucchesi Water Company service area in Napa.

5. The authority granted in Ordering Paragraph 1 shall expire 6 months after the effective date of this order if it has not been exercised by that date.

This order is effective today.

Dated September 7, 1995, at Los Angeles, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

*Wesley Franklin*  
Acting Executive Director