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Decision 97-08-067 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. J. Villalobos, et al.,  
Complainants,  
vs.  
Grand Oaks Water Company,  
Defendant.

**ORIGINAL**  
Case 97-01-003  
(Filed January 2, 1997)

Order to Show Cause why Grand Oaks  
Water Company's owners Brit O. Smith  
and Phillip L. Shirley, should not  
be fined for failure to comply with  
Commission order.

I.97-06-037  
(Filed June 25, 1997)

Carlos J. Villalobos, for complainants.  
Philip L. Shirley and Brit O. Smith, for  
defendant.  
Terry Witthoft, for Antelope Valley Water  
Company, interested party.  
Daniel R. Paige, for the Water Division.

INTERIM EMERGENCY ORDER GRANTING AUTHORITY TO  
OPERATE THE WATER SYSTEM OF GRAND OAKS WATER COMPANY

Summary of Decision

This emergency order grants Dominguez Water Company  
(Dominguez) authority to operate the water system of Grand Oaks  
Water Company (U-290W) (Grand Oaks).

Introduction

Grand Oaks was granted a certificate of public  
convenience and necessity by Decision (D.) 62519 on April 16, 1963.  
Grand Oaks provides water service in Grand Oaks Estates near  
Tehachapi.

On June 20, 1990, the Commission issued D.90-06-052 in Application (A.) 89-11-005 which authorized Brit O. Smith and Phillip L. Shirley to purchase Grand Oaks. The decision ordered Grand Oaks not to serve additional customers without an order from the Commission authorizing such an expansion. At the time of acquisition of Grand Oaks by Brit O. Smith and Phillip Shirley, Grand Oaks was serving 38 customers.

On January 2, 1997, C. J. Villalobos et al. (complainants) filed a complaint (Case (C.) 97-01-003) against Grand Oaks contending that the quality of service provided by Grand Oaks was below normal standards. Specifically, complainants stated that flow rate, quality, and pressure of water provided by Grand Oaks were unacceptable to them.

In response to the complaint, Administrative Law Judge (ALJ) Sheldon Rosenthal conducted a mediation meeting in Tehachapi which was attended by complainants and Phillip L. Shirley. While Brit O. Smith did not attend the mediation meeting, he informed ALJ Rosenthal, by a letter dated January 22, 1997, that he no longer was an owner of Grand Oaks.

ALJ Rosenthal's effort at mediation was unsuccessful. Accordingly, the matter was set for an evidentiary hearing in Tehachapi on March 19, 1997 before ALJ Garde.

During the evidentiary hearing, it became evident that Grand Oaks not only needed system improvements immediately, but that Grand Oaks was also in violation of several orders of the California Department of Health Services (DHS). DHS has imposed fines in excess of \$6,000 on Grand Oaks which Grand Oaks has not paid.

Phillip L. Shirley agreed to make the needed improvements within 30 days and to provide the needed water samples to DHS for testing.

The ALJ directed the Water Division project manager, Daniel Paige, to prepare and present, at a subsequent hearing, a

report on the progress of system improvements that Phillip L. Shirley agreed to put in place.

A second evidentiary hearing was held on May 8, 1997, in Tehachapi at which Daniel Page testified that other than fixing a few minor leaks, Grand Oaks has not made any of the agreed-upon improvements to the system. Daniel Paige also testified that Grand Oaks had added four more customers in violation of D.90-06-052. Daniel Paige recommended that Grand Oaks be fined pursuant to Public Utilities Code § 2107 for violating this Commission order.

Based on the evidence provided at the two evidentiary hearings, the Commission issued an order (I.97-06-037) requiring the owners of Grand Oaks to show cause why they should not be fined for these violations.

A third evidentiary hearing consolidating C.97-01-003 and I.97-06-037 was held in Tehachapi on July 24, 1997, during which Brit O. Smith and Dominguez filed appearances. Phillip L. Shirley did not attend the hearing.<sup>1</sup>

Based on the testimony provided during the third evidentiary hearing, it became evident that water pressure in the system is inadequate to allow several customers to flush their toilets and that Phillip L. Shirley has neglected to maintain the system. It also became evident that there is an immediate need to take corrective steps to improve the system by finding a qualified operator for the system.

Dominguez agreed to buy the Grand Oaks' system. However, because the acquisition process cannot be completed immediately, Dominguez has agreed to operate the system through a contract with the owners of Grand Oaks if the Commission grants it the authority to do so.

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<sup>1</sup> According to Brit O. Smith's statement, Phillip L. Shirley was unable to attend the hearing due a breakdown of his vehicle.

In his testimony, co-owner, Brit O. Smith requested that the Commission not impose any fines on the owners of Grand Oaks and stated that he is willing to sell the system to Dominguez for a nominal charge of \$1.00. In addition, Brit O. Smith agreed to enter into a contract with Dominguez allowing Dominguez to operate the Grand Oaks' system. Brit O. Smith stated that he will be able to convince Phillip L. Shirley to sign the contract for the operation of the system by Dominguez and to agree to sell the system to Dominguez.

Discussion

Based on the testimony received, it is evident that there is an immediate need to take corrective steps to alleviate the service problems faced by Grand Oaks' customers. The owners of Grand Oaks are either unwilling or unable to operate the system. It appears that for all practical purposes the owners of Grand Oaks have abandoned the system.

There is an immediate need to find a qualified operator for the system. Dominguez is a Class A water company in good standing with the Commission. It is qualified and willing to operate the system. We will authorize Dominguez to operate the Grand Oaks water system.

We believe that customers' best interest will be served if Dominguez eventually buys the system from Grand Oaks. Accordingly, we direct the owners of Grand Oaks and Dominguez to file an application for the transfer of ownership of Grand Oaks within 90 day of the effective date of this order.

The abysmal service conditions described by customers at the July 24th hearing support the need for immediate Commission action to allow Dominguez to operate the system. The Commission's next business meeting is August 1, 1997, and the August 1 agenda was posted on July 22, two days prior to the July 24th hearing. Therefore, this order meets the criterion that allows the

Commission to consider this item pursuant to Government Code § 11125.3(a)(2) which provides that:

"Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125."

Findings of Fact

1. Grand Oaks' customers are not receiving adequate water service to satisfy their basic needs.
2. The owners of Grand Oaks are either unwilling or unable to operate the system in a satisfactory manner.
3. There is an immediate need to find a qualified operator for the system; this need came to the Commission's attention during hearings on July 24, 1997, two days after the posting of the August 1, 1997 Commission agenda.
4. Dominguez has agreed to operate Grand Oaks' system through a contract with the owners.
5. Dominguez is qualified to operate the system.

Conclusions of Law

1. Dominguez should be authorized to operate the water system of Grand Oaks through a contract with the owners of Grand Oaks.
2. Although notice of this matter did not appear on the August 1, 1997 agenda, posted on July 22, 1997, the Commission may take action on this item pursuant to Government Code § 11125.3(a)(2) based upon its determination that there exists a need to take immediate action, and that the need for further action came to the attention of the Commission on July 24, 1997.
3. This order should be made effective immediately to allow Dominguez to assume the operation of the system at once.

INTERIM ORDER

IT IS ORDERED that Dominguez Water Company is authorized to operate the water system of Grand Oaks Water Company (Grand Oaks) through a contract with the owners of Grand Oaks.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON  
Président

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners