

DWA/RSK/JB5/jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION W-4864
January 13, 2011

R E S O L U T I O N

**(RES. W-4864), YERMO WATER COMPANY. ORDER AUTHORIZING
TRANSFER OF ALL ASSETS OF YERMO WATER COMPANY FROM
DONALD R. WALKER TO YERMO COMMUNITY SERVICES DISTRICT.**

By Advice Letter (AL) No. 9, filed on May 18, 2010.

SUMMARY

By Advice Letter No. 9, filed on May 18, ~~2009~~,2010, Yermo Water Company (Yermo Water) and Yermo Community Service District (District) request Commission authorization pursuant to Public Utilities Code § 851 to transfer Yermo Water from Donald R. Walker, the current owner, to the District.

Pursuant to Public Utilities Code § 851, we find that the sale of Yermo Water to the District to be in the public interest and is approved.

BACKGROUND

Yermo Water Company

Yermo Water serves approximately 300 metered customers. Yermo Water is a consolidation of three Commission-certificated water utilities located ten miles east of Barstow in San Bernardino County near and within the Township of Yermo. The utilities consisted of Yermo Water, Marine Water Company, and Hel-Bro Water Company. All three utilities came under common ownership pursuant to Commission Decisions 71016 and 71017 in 1966. Yermo Water was authorized to consolidate the three utilities into Yermo Water's Certificate of Public Convenience and Necessity pursuant to Res. W-3139 in 1983. The Marine Water and Hel-Bro systems are interconnected. The Yermo Water system is not interconnected with the other two systems. Yermo Water is a corporation owned by Donald R. Walker. It is headquartered in Florida.

Commission Investigation of Yermo Water

In April 2008, the Commission opened an investigation (I.08-04-032) into the operations and practices of Yermo Water and its owner, Donald R. Walker. The investigation resulted in the Commission issuing D.09-05-022 in May 2009. There the Commission concluded that: 1) Donald Walker and Yermo Water consistently violated and remain in violation of Commission and California Department of Public Health (CDPH) orders; 2) Yermo Water is unable or unwilling to adequately serve its ratepayers; and 3) Yermo Water's inability to adequately serve its ratepayers has a potential adverse effect on public health. (See D.09-05-022, Conclusions of Law Nos. 1 through 3.) Based on these conclusions, the Commission's Legal Division was authorized to file with the Superior Court of San Bernardino County a petition to appoint a receiver to assume possession and operate the water system of Yermo Water. (D.09-05-022, Ordering Paragraph No. 1.)

Before petitioning the Superior Court for the appointment of a receiver for Yermo Water, the Commission's Legal Division and the Division of Water and Audits (DWA) worked to facilitate a voluntary transaction for the purchase and sale of Yermo Water. This resulted in a March 23, 2010 Agreement of Purchase and Sale and Joint Escrow Instructions (Agreement) for the sale of Yermo Water to the District.

Yermo Community Services District

The District is a special district formed in 1962 pursuant to Government Code § 61000, et seq. The District has an elected body of five individual directors who oversee the governmental issues related to the Yermo community and specifically to operation and management of the empowered authorities pursuant to §§61001-61009 of the Government Code. The District has established powers as prescribed in § 61100 of the Government Code over parks and recreation, street lighting, and fire protection. The District received the added authority to supply water for beneficial use from the San Bernardino County Local Area Formation Commission on August 20, 2009.

Purchase and Sale Agreement

The Agreement attached to AL 9 details the terms and conditions for the purchase and sale of Yermo Water. The District is proposing to acquire the entirety of Yermo Water and all of its assets clear of any fines, penalties, liens, encumbrances, liability and/or other debts (together Debts). A list of the assets is shown in Exhibit B to the Agreement and is included in AL 9.

All Debts of Yermo Water are to be satisfied prior to the transaction closing. The Agreement explicitly states that all Debts of Yermo Water are the sole responsibility of the seller, Donald Walker. In the event that all Debts of Yermo Water are not satisfied at the time the transaction closes, an amount of money carved out of the purchase price sufficient to pay the Debts will be deposited in an impound account for a period of one year. At the end of the one-year anniversary, such funds shall be released from the impound account in a manner directed by the District which will be used to satisfy any outstanding Debts with any remaining Debts monies going to Donald Walker.

The purchase price is \$259,000. Funding for the purchase price comes from a \$150,000 grant secured from the San Bernardino County Board of Supervisors and a \$150,000 grant secured from the Mojave Water Agency.

District's Financial Status

AL 9 includes a copy of the audited financial statements of the District for the year ended June 30, 2009. AL 9 also includes a budget and financial analysis for the first year operation of the water system by the District. The financial analysis indicates that the existing rates approved by the Commission in Res. W-4782 in September 2009 provide adequate revenue to operate and cover normal costs associated with that operation. The District proposes to initially maintain existing Commission-approved rates. The first-year capital improvement program of \$51,000 to upgrade storage tanks, service lines and meters is intended to address the most critical deferred maintenance issues. The deferred maintenance projects are shown in an analysis done by High Desert Underground, Inc. for the District in Attachment F to AL 9. The projects are proposed to be funded out of \$41,000 in grant proceeds and \$10,000 in retained earnings.

The District states that once the purchase and sale of all the assets of Yermo Water is approved by the Commission, the District will initiate the process of securing grants and low-interest loans from the United States Department of Agriculture (USDA) for replacement of the aging infrastructure. The District indicates it will qualify for major infrastructure grants or low-interest loans under the USDA's low-income and below 3000-user guidelines.

District's Technical and Managerial Capabilities

The District has retained the services of High Desert Underground, Inc. to provide qualified, trained, and adequately experienced personnel to manage, operate, and maintain the Yermo Water facilities and at the same time train District personnel to meet all necessary certification requirements. High Desert Underground, Inc. will be

responsible for monitoring and recording operations for water quality purposes, as well as monitoring the water quality testing that will be done by Geo Monitoring.

The District, through its General Manager, will provide oversight and management of District personnel who will be responsible for meter reading, customer service, billing, collections, accounting, and administrative functions.

CEQA

The District requests that the Commission find that this transaction is exempt from review under the California Environmental Quality Act (CEQA).¹

NOTICE AND PROTESTS

In compliance with General Order 96-B, Section 4.3, copies of AL 9 were served on the service list for Yermo Water. Pursuant to General Order 96-B, Section 4.2, a Notice of AL 9 describing the proposed sale of Yermo Water to the District was sent to all customers of Yermo Water. DWA received no protests or comments to AL 9.

DISCUSSION

The request to transfer all of the assets of Yermo Water to the District resolves the concerns we expressed in D.09-05-022 with the current ownership of Yermo Water, its inability to adequately serve ratepayers, and the potential adverse effect this could have on public health.

Transferring all of the assets of Yermo Water, and thus the regulatory oversight, to the District is consistent with the principle of ~~subsidiarity~~subsidiarty where decisions are made as closely as possible to the citizens (ratepayers in this case) through government oversight at a more immediate or local level. Transferring ownership of Yermo Water to the District has the potential to provide more effective operations and responsive ~~regulatory~~ oversight of the water system than currently exists with the existing owner and the Commission.

¹ Public Resources Code Sections 21000 et seq.

AL 9 includes the attached District Financial Statements and the budget and financial analysis for the first-year operation of Yermo Water by the District. This material

indicates that the District has sufficient financial resources to operate and to attend to deferred maintenance issues in the short term. In the long term the District may qualify for grants or low-interest loans from the United States Department of Agriculture to assist in the replacement of the aged infrastructure.

In addition, AL 9 provides a description of the technical capabilities that will be brought to bear by the retention of High Desert Underground, [Inc.](#) to address Yermo Water's operational and maintenance issues.² The District will provide the managerial oversight for the work of High Desert Underground, [Inc.](#) as well as that of its own staff for various functions, including meter reading, customer service, billing and collections, accounting, and administrative functions associated with compliance reporting with regulatory agencies. The District's description of the technical resources and managerial capabilities that will be available for the management and operation of the water system represents a significant advancement over what has existed under the current ownership.

We find that the District possesses sufficient financial, managerial, and technical qualifications to operate Yermo Water. We further conclude that the transfer of ownership of Yermo Water to the District is in the public interest. The District should notify the Commission when the Agreement for Purchase and Sale for Yermo Water has closed. At that time, Yermo Water will no longer be a certificated utility under Sections 241 and 2701 of the Public Utilities Code and Yermo Water should be relieved of its public utility obligation, and its Certificate of Public Convenience and Necessity should be revoked. The presently effective tariffs of Yermo Water should also be cancelled at that time.

CEQA

The Commission is responsible for making the determination of whether environmental review is required under CEQA. The Commission's authorization of a change of ownership could result in changes to facility operations that have the potential to result in environmental impacts. In this case, the District indicates that Yermo Water will continue to be operated as authorized in its Certificate of Public Convenience and Necessity.

² High Desert Underground, [Inc.](#) is a full service water purveyor and qualified to operate and manage the Yermo Water system pursuant to California Department of Public Health.

The ongoing operation of the utility, including the District's proposed deferred maintenance on storage tanks, service lines and meters, are categorically exempt from CEQA review. (See CEQA Guidelines §15301(b).) Therefore, the Commission is not required to conduct environmental review of the sale of Yermo Water to the District.

COMMENTS

This is an uncontested matter that grants the relief requested. Pursuant to Public Utilities Code § 311(g)(2), this Resolution was not circulated for public comment.

FINDINGS AND CONCLUSIONS

1. Advice Letter No. 9 was filed May 18, 2010 requesting Commission authorization for the sale of Yermo Water Company to the Yermo Community Services District.
2. Yermo Water Company is a Commission-jurisdictional utility owned by Donald R. Walker that is headquartered in Florida.
3. The Yermo Community Services District is a special district formed in 1962 pursuant to Government Code § 61000, et seq.
4. The Yermo Community Services District received the authority to supply water for beneficial use from the San Bernardino County Local Area Formation Commission on August 20, 2009.
5. The Commission in Decision 09-05-022 in May 2009 concluded that: 1) Donald Walker and Yermo Water consistently violated and remain in violation of Commission and CDPH orders; 2) Yermo Water is unable or unwilling to adequately serve its ratepayers; and 3) Yermo Water's inability to adequately serve its ratepayers has a potential adverse effect on public health.
6. The Commission's Legal Division was authorized in Decision 09-05-022 to file with the Superior Court of San Bernardino County a petition to appoint a receiver to assume possession and operate the water system of Yermo Water.
7. The Commission's Legal Division and the Division of Water and Audits worked to facilitate a voluntary transaction for the purchase and sale of Yermo Water Company.
8. Donald R. Walker and the Yermo Community Services District entered into an Agreement of Purchase and Sale and Joint Escrow Instructions for the purchase and sale of Yermo Water Company on March 23, 2010.
9. No protests to Advice Letter No. 9 were received.

10. The Yermo Community Services District has received grants of \$150,000 from the San Bernardino County Board of Supervisors and \$150,000 from the Mojave Water Agency to fund the acquisition and a portion of the first-year capital acquisition projects.

Agency to fund the acquisition and a portion of the first-year capital improvement projects.

11. The Agreement of Purchase and Sale (Agreement) provides the terms and conditions for the purchase and sale of Yermo Water Company, including the purchase price of \$259,000. The Agreement states that the Yermo Community
~~11. The Agreement of Purchase and Sale (Agreement) provides the terms and conditions for the purchase and sale of Yermo Water Company, including the purchase price of \$259,000. The Agreement states that the Yermo Community~~
Services District is proposing to acquire the entirety of Yermo Water Company and all of its assets clear of any fines, penalties, liens, encumbrances, liability and/or other debts. The Agreement states Donald R. Walker is responsible for any fines, penalties, liens, encumbrances, liability and/or other debts of Yermo Water Company.
12. The Yermo Community Services District provided audited financial statements for the year ended June 30, 2009 and a budget and financial analysis for the first year operation of the water system under Commission authorized rates to show that the Yermo Community Services District has the financial capability to own and operate the Yermo Water Company.
13. The Yermo Community Services District has retained the services of High Desert Underground, Inc. to provide qualified, trained, and adequately experienced personnel to manage, operate, and maintain the Yermo Water Company facilities and at the same time train District personnel to meet all necessary certification requirements.
14. The Yermo Community Services District, through its General Manager, will provide oversight and management of District personnel who will be responsible for meter reading, customer service, billing, collections, accounting, and administrative functions.
15. The Yermo Community Services District possesses sufficient financial, managerial and technical qualification to operate Yermo Water Company.
16. The Yermo Community Services District should notify the Commission when the purchase and sale transaction for Yermo Water Company has closed.

17. At that time the Agreement of Purchase and Sale closes, Yermo Water Company will no longer be a certificated utility under Sections 241 and 2701 of the Public Utilities Code.
18. Yermo Water Company should be relieved of its public utility obligation, and its Certificate of Public Convenience and Necessity should be revoked at the time the sale transaction closes. The presently effective tariffs of Yermo Water should be cancelled at that time.

19. Environmental review is not required for this transaction because the sale of Yermo Water Company will not result in a change of operations of the utility. The

~~19.~~ ~~Environmental review is not required for this transaction because the sale of Yermo Water Company will not result in a change of operations of the utility. The~~ ongoing operations of the utility, including the District's proposed deferred maintenance on storage tanks, service lines and meters, are categorically exempt from CEQA review pursuant to CEQA Guidelines §15301(b).

~~20.~~20. The sale of Yermo Water Company is in the public interest and should be approved.

THEREFORE IT IS ORDERED THAT:

1. The sale of Yermo Water Company to the Yermo Community Services District is approved.
2. Within five (5) days of the closing of the purchase and sale transaction for Yermo Water Company, the Yermo Community Services District shall notify the Commission of the date that the transaction closes by sending a letter to the Executive Director with a copy to the Director of the Division of Water and Audits.
- ~~3.~~3. Yermo Water Company shall be relieved of its public utility obligation effective on the closing of the transaction with the Yermo Community Services District, and Yermo Water Company's Certificate of Public Convenience and Necessity shall be revoked at that time.
3. ~~4.~~ The presently effective tariffs for Yermo Water Company shall be cancelled effective the date the purchase and sale transaction for Yermo Water Company closes.

~~5.4.~~ This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on January 13, 2011; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Document comparison by Workshare Professional on Thursday, January 13, 2011
8:14:29 AM

Input:	
Document 1 ID	PowerDocs://CPUC01/440112/1
Description	CPUC01-#440112-v1-Agenda_Res._W-4864_Yermo_Water_Company_[Sale_and_Transfer]
Document 2 ID	PowerDocs://CPUC01/441282/1
Description	CPUC01-#441282-v1-Agenda_Resolution_W-4864_Yermo_Water_Company_(Transfer_Assets)
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	20
Deletions	12
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	40