

WATER/KPC/FLC/SNR/PTL/RKN/jlj

Decision 06-10-039 October 19, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of California Water Service Company doing business as Court appointed receiver of Land of Promise Water System for Commission authorization for transferring the control of Land of Promise Water System from California Water Service Company to the Land of Promise Mutual Water Association in Kern County, California.

Application 06-03-008  
(Filed March 7, 2006)

**O P I N I O N**

**1. Summary**

Pursuant to Public Utilities Code §§ 851-854, this decision grants authority to California Water Service Company (CWS), the court-appointed receiver, to transfer the control of Land of Promise Water System to the newly formed Land of Promise Mutual Water Association to own, operate, and manage the Land of Promise Water System. Land of Promise Water System is a small water company servicing 62 connections five miles northeast of the community of Rosemond, in Kern County. The Commission's Water Division (Division) has investigated the proposed transfer and recommends approval. This proceeding is closed.

**2. Background**

In 1963, Harold J. Morck, owning approximately 130 acres of land, recorded a subdivision dedicated to purely residential use and to be known as "Land of Promise." Using an existing well on his property and another well on

land within the same tract owned by Aaron Smoot, Morck began installing a water system designed to serve this Land of Promise subdivision.

Morck proceeded to sell lots ranging from 1/2 acre to 10 acres in size, using a Real Estate Sale Agreement subject to an Addendum Declaration of Restrictions containing covenants and easements stated to be an "important and integral part" of the agreement. These addenda stated that Morck and Smoot had given their two wells and a pump to parcel purchasers for their use, and that the water use and rights to water shall never be separated from any parcel; that buyers and the seller had "Equal, Pro-rata Rights and Interests," and must as Mutual "Pro-Rata" owner-operators assume operating and maintenance responsibilities for the system, including jointly paying costs. In 1969, Morck applied to the State Department of Health Services (DHS) for a water supply permit, representing that the small system was for the exclusive use of tract lot owners. On August 14, 1970, a Temporary Water Supply Permit was issued.

On August 6, 1971, Morck suffered a stroke, and until his death in 1974 was substantially incapacitated, leaving operation of the system to his wife. A system inspection by the Kern County Environmental Health (KCEH) on August 13, 1971 found Morck's operations to be in violation of his permit. In late 1973, an ad hoc committee representing some of the lot owners was formed to determine what could or should be done about the water system; the consensus being that a mutual water company should be formed. In 1991, Mrs. Morck became ill, and her person and estate were placed in conservatorship by Kern County Superior Court. Her niece, Janet G. Brown, was appointed Conservator.

In 1992, Brown took over control, operation, and management of the water system and in August 1993 unilaterally established new rates and increased various fees. Fifteen customers subsequently filed a complaint (C.95-03-047, March 1, 1995) alleging improper overcharging.

The Land of Promise Water System was determined to be a public water utility subject to regulation by the Public Utilities Commission by Decision (D.) 95-11-027, November 8, 1995. From approximately July 1996 through September 1997 Brown was non-responsive to the DHS, and unable or unwilling to provide adequate service to the customers. The DHS twice cited the Land of Promise Water System during this period for significant violations of health and safety regulations. Brown did not respond to the citations. In September, 1997 Brown contracted with Antelope Valley Water Company (AVWC) to take over all operational aspects of the system except for customer billing and payment of debt. On February 26, 1999 AVWC notified Brown that it was terminating its operation of the system effective March 31, 1999 due to nonpayment of \$10,393 for operating the system.

Superior Court of the State of California, Kern County, in Order Number 238465 NFT, dated March 30, 1999, appointed Dominguez Water Company (Dominguez) as a receiver to manage Land of Promise Water System. The DHS made the determination required by Health and Safety Code Section 116665 that the Land of Promise Water System was unable or unwilling to adequately service its customers, had been non-responsive to the DHS, and effectively abandoned the system on March 31, 1999.

CWS purchased the Dominguez Water Company and assumed receivership of the Land of Promise Water System.

The customers reviewed the service options suggested by Self-Help Enterprises including abandoning the community water system for individual wells, private for profit ownership, public entity formation, annexation to an existing public district, and private not-for-profit water company and decided to form a mutual water company to take over the operation of the water system.

Customers pooled funds and formed the Land of Promise Mutual Water Association (the Mutual) on July 27, 2000. An application was filed with the DHS in September 2000 to take over the water system. Throughout 2005, the Land of Promise Mutual Board of Directors held meetings to research and update members about the acquisition of the water system. On October 18, 2005 a membership meeting was held with 37 members representing over 58% of the water users. Recommendations of the Mutual Board of Directors, and testimony from the DHS and Self-Help Enterprises were presented to the members. The members unanimously voted to takeover the system from the receiver.

The Mutual, with the help of the State Attorney General's Office through Roy Liebman, CWS, and Self-Help Enterprises submitted this Application for Transfer of the Land of Promise Water System.

### **3. Discussion**

Dominguez was acquired by CWS after the Kern County Superior Court appointed Dominguez as receiver to the Land of Promise Water System. Since acquiring Dominguez, CWS has operated the Land of Promise Water System. Property owners, after forming a mutual to take over the operation of the water system, filed an application with DHS.

The Mutual is a California corporation invested with the powers and duties as the Constitution and statutes of California and the bylaws of the Mutual provide. The Mutual was organized solely for owning and administrating water facilities, water rights, and the distribution of water in accordance with its bylaws. Pursuant to the bylaws of the Mutual, all current water system customers are equitable owners, which entitle them to the distribution of water by the corporation.

Prior to issuance of a water system distribution permit, DHS must review the technical, managerial, and financial capacity of the water purveyor. The Mutual has submitted an application to DHS. The application included an offer by Golden Empire Water Company to operate the water system. Hiring an independent operator such as Golden Empire Water Company is common practice by mutual water companies and acceptable to DHS.

In accordance with its permit process, DHS may not issue a water system distribution permit until the Mutual owns the system. Once a permit is issued any previously issued permit is immediately cancelled, which cancels the DHS permit that the water system is currently operating under. DHS has not expressed any concern with the Mutual's technical, managerial, and financial capacity. DHS has reviewed the application and indicates that it awaits the transfer of ownership prior to issuance of a permit.

The board of the Mutual has met routinely and actively discussed the administration and operation of the water system. The members of the Mutual have voted to take over ownership of the water system. CWS, the court-appointed receiver does not wish to operate the water system permanently and has requested to terminate receivership. A court-appointed receiver is not intended to be a long-term operator of a water system. Based on the above, the transfer of the water system is in the best interest of the customers.

On February 4, 2006, the Mutual filed this application requesting the Commission to transfer the water system to the Mutual. The application conformed to Standard Practice U-24-W, "Sale and Transfer of a Water System or Sewer System". The Application complies with the Commission's applicable Rules of Practice and Procedure. No hearings are required as the application is complete and no protests have been filed.

#### **4. Uncontested Matter**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

#### **5. Assignment of Proceeding**

Kevin Coughlan is the assigned Examiner in this proceeding.

#### **Findings of Fact**

1. In 1963, Harold J. Morck developed 130 acres of land in Kern County and recorded it as a "Land of Promise" subdivision dedicated to residential use.
2. Using the existing wells in the development, Morck developed a water distribution system to serve the customers in Land of Promise.
3. In 1969, Morck applied to the State Department of Health Services for a water supply permit and on August 14, 1970, a Temporary Water Supply Permit was issued.
4. On August 6, 1971, Morck suffered a stroke and died in 1974 and his wife took over the operation of the water system.
5. On August 13, 1971, Kern County Environmental Health found Land of Promise to be in violation of its permit.
6. In 1991, Mrs. Morck became ill, and the estate was placed under a Conservator by the Superior Court.
7. In 1993, the Conservator, Janet G. Brown, unilaterally increased water rates.
8. In September 1997, Brown contracted with Antelope Valley Water Company to operate Land of Promise Water System.

9. On February 26, 1999, Antelope Valley Water Company terminated the contract with the Land of Promise Water System for nonpayment of charges.

10. On March 30, 1999, the court appointed Dominguez Water Company as a receiver for Land of Promise Water System.

11. On March 31, 1999, Department of Health Services made determination that Brown had abandoned the Land of Promise Water System.

12. California Water Service Company purchased the Dominguez Water Company and assumed receivership of Land of Promise Water System.

13. After reviewing all the options available for operating the water system, customers formed Land of Promise Mutual Water Association.

14. On October 18, 2005, Land of Promise Mutual Water Association members held a meeting and unanimously approved the takeover of the system from the receiver, California Water Service Company.

15. Land of Promise Mutual Water Association, with the help of the State Attorney General's office, filed an application for transfer of the Land of Promise Water System to the Land of Promise Mutual Water Association.

### **Conclusions of Law**

1. CWS is operating the Land of Promise Water System under receivership.

2. The Land of Promise Mutual Water Association has applied to DHS to operate the water system.

3. Upon completion of the acquisition, the current receiver of Land of Promise Water System should be relieved of public utility water duties and obligations for the Land of Promise Water System.

4. This order should be made effective immediately so as to permit prompt consummation of the transfer.

**O R D E R**

**IT IS ORDERED that:**

1. Land of Promise Mutual Water Association is authorized to acquire Land of Promise Water System from the receiver, California Water Service Company.
2. California Water Service Company shall provide a copy of the completed transfer document to Water Division.
3. The application is granted as set forth above.
4. Application 06-03-008 is closed.

This order is effective today.

Dated October 19, 2006, at Fresno, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.