

Decision \_\_\_\_\_

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

Application of Mar Vista Water Company to sell and Trout Gulch Mutual Water Company to buy the water system located near the community of Aptos, Santa Cruz County.

Application 07-12-005  
(Filed December 21, 2007)

**OPINION**

**Summary**

Mar Vista Water Company filed an application seeking Commission authorization to sell and transfer ownership of the Mar Vista Water Company (MVWC) to the Trout Gulch Mutual Water Company (TGMWC). The Commission’s Division of Water and Audits (Division) has investigated the proposed transfer and recommends approval. The application is granted.

**Background**

MVWC is a California water system engaged in the business of selling water to 186 customers of which 80 are metered in the Forest Glen Subdivision near the community of Aptos in Santa Cruz County.

The water system is comprised of a small lot (containing the Norman well and tank), two groundwater wells: Nos. 1 (Norman Ranch Well and No. 2 (Meadow Ranch Well) both 18-inch diameter and both 420 feet deep, two 60,000-gallon storage tanks, two pumps: No.1 Norman pump (20 hp) and No. 2 Meadow Ranch pump (15 hp), and distribution pipelines consisting of 24,311 feet of mains.

### **Sales Agreement**

The transfer agreement was signed on December 18, 2007 by and between the MVWC, and its owner-shareholder Jimmy H. Smith, and the TGMWC.

The original cost of property being transferred is \$281,182.00 and the depreciation reserve as of December 31, 2006 is \$67,704 resulting in a net book cost of \$213,478.00. The total purchase price to be paid by the TGMWC for the water system is \$295,860.00 – after a credit to the future customers of \$104,140.00 as full and final satisfaction of any amounts owed to current customers.

MVWC desires that the ownership and operation of the water systems and assets be transferred to TGMWC. TGMWC is agreeable to the transfer of ownership and operation of the water systems on the terms and conditions set forth in the agreement. Conditions of the agreement include transfer of all easements, license agreements and/or leases necessary for the legal operation of the water company.

The Division has examined the sales agreement. The Division believes that the customers of MVWC will be adequately served under the new ownership.

### **Ratepayer Indifference**

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility. The ratepayer indifference concept is one that states

that any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer. For example, the ratepayer should not be subject to increased rates or reduced service as the result of a change of ownership.

Using the ratepayer indifference test to assess the sale of the water system from MVWC to the TGMWC, the Division evaluated several key metrics including (1) the impact of purchase price on ratebase, (2) service quality, and (3) continuity of service.

### **Purchase Price**

The proposed purchased price of \$295,860.00 is appropriate for a system that the owners desire to dissolve the company. The Division reviewed the application and Commission adopted resolutions and annual reports filed with the Commission.

Public Utilities Code § 2720 requires the Commission to use the fair market standard in establishing the rate base for an acquired water system:

(a) The commission shall use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation. This standard shall be used for ratesetting.

(1) For purposes of this section, "public water system" shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, "fair market value" shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the

acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852.

The buyer is paying \$82,382.00 more than the original cost of net depreciation and contributions. Buyer states he understands that rates will be based upon the depreciated cost of the plant, excluding contributed plant, and not on the purchase price. In a letter to the Commission dated December 18, 2007, TGMWC stated: "Given the current median price of a home in Aptos is well over \$900,000, paying a premium of \$450 per customer for a water supply (0.05% of home resale values) appears to be a rational investment."

The Division believes that the purchased price of \$295,860.00 meets the fair value doctrine of the depreciated assets of the water system, it is what a willing buyer wants to pay and a willing seller wants to accept. The Code of Civil Procedure §1263.320 states: (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge

of all the uses and purposes for which the property is reasonably adaptable and available.

TGMWC's financial net worth statement is not required since the buyer is a Mutual Water Corporation.

#### **Service Quality**

TGMWC has contracted with John Ekizian, Manager of California Environmental Consulting to operate the water system. The company has experience in: Water Quality Monitoring Plans, Water System Financing and Budgeting Plans, Water System Operation Plans, Manuals and Schematics, Filing Annual Water System Reports as well as supervisory oversight in the creation and improvement of wells. TGMWC has produced evidence of Mr. Ekizian's Grade D2 Water Distribution Operator License and Grade 2 Water Treatment Operator License, both issued by the California Department of Public Health.

#### **Service Continuity**

The owners of MVWC desire to dispose of the water system and the TGMWC agrees to acquire the system. The sales agreement with the TGMWC ensures an orderly water system ownership transition and thereby offers continued water service by responsible and experienced new owner, and greatly reduces the chance of the water system being abandoned. The application does not indicate whether the approval of change of ownership has been granted by the Department of Public Health.

#### **Division of Water and Audits' Conclusions**

The sale of the MVWC water system from the owners to the TGMWC is desired by both parties. The owners of MVWC want to dissolve the water utility. The TGMWC will provide the staff and the resources to operate MVWC.

The Division recommends:

- (1) That the joint application, A.07-12-005, be accepted and approved with no further hearings, pleadings, or filings necessary.
- (2) That the sale agreement between Mar Vista Water Company and Trout Gulch Mutual Water Company for a purchase price of \$295,860.00 be authorized.
- (3) That the Trout Gulch Mutual Water Company be authorized to purchase all of the assets and assume the obligations of the Mar Vista Water Company pursuant to the purchase agreement.
- (4) That Mar Vista Water Company's owner, Jimmy H. Smith is granted authorization to withdraw from providing water utility service to customers of Mar Vista Water Company.
- (5) That the Trout Gulch Mutual Water Company obtains change of ownership approval from the Department of Public Health if not already acquired.

#### **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.

#### **Assignment of Proceeding**

Rami Kahlon is the assigned Examiner.

#### **Findings of Fact**

1. The sale of Mar Vista Water Company from Jimmy H. Smith to the Trout Gulch Mutual Water Company is desired by all parties.

2. Mar Vista Water Company's owner Jimmy H. Smith requests authority to transfer ownership of the Mar Vista Water Company.
3. Mar Vista Water Company's owner Jimmy H. Smith wants to dissolve the water utility.
4. The Trout Gulch Mutual Water Company agrees to buy Mar Vista Water Company.
5. The Trout Gulch Mutual Water Company will have the staff and resources to operate Mar Vista Water Company.
6. Ratepayers will be better off from the transfer because the Trout Gulch Mutual Water Company is managed by the ratepayers themselves and they can save management overhead.
7. The Commission's Division of Water and Audits has determined that the purchase price of the system for \$295,860.00 is the fair market value, as required by Public Utilities Code §2720.
8. The Trout Gulch Mutual Water Company must obtain change of ownership approval from the Department of Public Health.

### **Conclusions of Law**

1. Transfer of ownership of the Mar Vista Water Company meets the test of ratepayer indifference in that customers will be unaffected or better off in terms of service, water quality, and continuity of service.
2. Pursuant to California Health and Safety Code, a change in ownership of a public water system shall, and a change in regulatory jurisdiction may, require application for a new operating permit from the Department of Public Health.
3. This is an uncontested matter in which the decision grants the relief requested.

**O R D E R**

**IT IS ORDERED** that:

1. The application of Mar Vista Water Company's owner Jimmy H. Smith to sell and convey the Mar Vista Water Company to the Trout Gulch Mutual Water Company is granted.
2. Mar Vista Water Company shall remit to the Commission's Fiscal Office all of the Commission's Users Fees collected to the date of transfer of ownership of the water system.
3. The Trout Gulch Mutual Water Company is directed to comply with §116525(a) of the Health and Safety Code, enforced by the Department of Public Health which states: "No person shall operate a public water system unless he or she first submits an application to the department and receives a permit as provided in this chapter. A change in ownership of a public water system shall require the submission of a new application."
4. Upon approval of the Department of Public Health, the Trout Gulch Mutual Water Company is authorized to acquire ownership of and assume water utility service to the customers of Mar Vista Water Company.
5. Applicants within 10 days of the transfer of ownership shall notify the Director of the Water and Audits Division in writing that the transfer has taken place, attaching copies of the transfer document.
6. Upon transfer of ownership, Jimmy H. Smith shall be relieved of public utility responsibility for the operation of the Mar Vista Water Company.
7. Application 07-12-005 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.