

Decision 10-02-015 February 25, 2010

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

In the Matter of the Application of Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC, LandSource Holding Company, LLC, and Valencia Water Company (U342W) for Authority for Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC and LandSource Holding Company, LLC, to Acquire Indirect Control Over Valencia Water Company.

Application 09-10-024  
(Filed October 19, 2009)

**DECISION APPROVING A TRANSFER OF INDIRECT CONTROL OF VALENCIA WATER COMPANY**

**1. Summary**

This decision authorizes Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC, and LandSource Holding Company, LLC to acquire indirect control of Valencia Water Company in connection with a Chapter 11 reorganization of Newhall Land Development, LLC, and 20 of its related entities.

**2. Jurisdiction**

This application seeking a transfer of indirect control over Valencia Water Company (Valencia) is subject to Pub. Util. Code § 854.<sup>1</sup> The Commission

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise stated.

previously approved a transfer of indirect control over Valencia in Decision (D.) 07-09-026 (the 2007 Decision). Section 854 requires Commission approval for a transfer of control of a utility. There are several subsections of § 854 that must be considered in determining whether the proposed transfer of control of Valencia is in the public interest.

### **2.1. Section 854(a)**

Section 854(a) requires Commission approval before any person or corporation merges, acquires, or controls any public utility organized and doing business in this state. The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to this section.

The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.<sup>2</sup> The Commission may also consider if the transaction will serve the public interest. When necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.<sup>3</sup>

### **2.2. Section 854(b) and (c)**

The additional criteria needed for authority to transfer control of a utility set forth in subsections (b) and (c) are not applicable in this instance because those subsections do not pertain to water corporations such as Valencia. Those subsections pertain only to electric, gas, and telephone utilities having gross annual California revenues in excess of \$500 million.

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<sup>2</sup> See Decision (D.) 00-06-079, 7 CPUC3d 101 at 107.

<sup>3</sup> See D.02-12-068, *slip op.*, at 11.

### **2.3. Section 854(d)**

Section 854(d) requires that when reviewing a merger, acquisition, or control proposal, the Commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal. With no party submitting alternative proposals, § 854(d) is not applicable in this proceeding.

### **3. Primary Entities**

The primary entities discussed in this decision are: (1) Valencia, (2) Newhall Land and Farming Company, a limited partnership (Newhall Land and Farming), (3) LandSource Holding Company, LLC (LandSource Holding), (4) Newhall Land Development, LLC (Newhall Development), (5) Newhall Intermediary Holding Company, LLC (Newhall Intermediary), and (6) Newhall Holding Company, LLC (Newhall Holding). The relationships of these entities amongst themselves are depicted in Appendix A to this decision and are summarized in the following paragraphs.

#### **3.1. Valencia**

Valencia, a California corporation, was and continues to be wholly owned by Newhall Land and Farming. Valencia is a Class A water company which provides service to approximately 30,000 connections serving some 100,000 people in the Santa Clarita Valley north of Los Angeles County under the Commission's corporate identification number U342W. Its net revenues for the eight-month period ended August 31, 2009 were approximately \$13.5 million and its earnings for that time period were approximately \$1.4 million. Its principal place of business is at 24631 Avenue Rockefeller, Valencia, California.

### **3.2. Newhall Land and Farming**

Newhall Land and Farming, a California limited partnership owned and continues to own a 100% interest in Valencia. Its principal place of business is at Valencia, California. According to the application, Newhall Land and Farming was and continues to be 99% owned by LandSource Holding and 1% by NWHL GP LLC.

### **3.3. LandSource Holding**

LandSource Holding, a Delaware limited liability company qualified to transact business in California, is wholly owned by Newhall Development.<sup>4</sup> Its principal place of business is at Valencia, California. According to the application, LandSource Holding has been part of the ownership structure since the transaction authorized in the 2007 Decision was consummated. However, although the 2007 application sought authority for LandSource Holding to acquire indirect control over Valencia, the 2007 Decision did not specifically authorize LandSource Holding to acquire such control. Accordingly, the current application seeks express authority for LandSource Holding to exercise indirect control over Valencia.<sup>5</sup> LandSource Holding held and continues to hold a 100% ownership interest in Valencia through a 100% ownership interest in Newhall Land and Farming and in NWHL GP LLC.

### **3.4. Newhall Development**

Newhall Development, then known as LandSource Communities Development LLC, was authorized by the 2007 Decision to hold a

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<sup>4</sup> Newhall Development was formerly known as LandSource Communities Development LLC. Application at 2.

<sup>5</sup> Application at 3, fn. 2.

100% ownership interest in Valencia through 100% ownership interests in Newhall Land and Farming and in NWHL GP LLC. Pursuant to a Chapter 11 plan of reorganization approved by the bankruptcy court and discussed in further detail below, an 82.31% majority ownership interest in Newhall Development is now owned by Newhall Intermediary. Minority ownership interest of 14.53% is held by Lennar Homes of California, Inc., 2.48% by Five Point Communities Management, Inc. and 0.68% by Emile Haddad. Newhall Development, is a Delaware limited liability company qualified to transact business in California, and its principal place of business is at Valencia, California.

Newhall Development owned and continues to own a 100% interest in Valencia through its 100% ownership of LandSource Holding, which, in turn, had and continues to have 100% ownership interests in Newhall Land and Farming and in NWHL GP LLC.

### **3.5. Newhall Intermediary**

Newhall Intermediary, a Delaware limited liability company qualified to transact business in California, was created for purposes of implementing the transactions contemplated by a Reorganization Plan (Plan) and for facilitating investment in the restructured entities.<sup>6</sup> An 85.72% majority ownership interest in Newhall Intermediary is held by Newhall Holding and a 14.28% minority ownership interest by Lender Group 1, consisting of numerous investment companies and debtors.<sup>7</sup>

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<sup>6</sup> *In re LandSource Communities Development, LLC, et al*, Case No. 08-11111 (KJC), United States Bankruptcy Court, District of Delaware.

<sup>7</sup> Application at 2 and Appendix 8, Note 1.

Newhall Intermediary will hold an 82.31% ownership interest in Valencia through its 82.31% ownership interest in Newhall Development which, in turn, holds a 100% ownership interest in LandSource Holding, which, in turn, holds 100% ownership interests in NWHL GP LLC and in Newhall Land and Farming.

### **3.6. Newhall Holding**

Newhall Holding, a Delaware limited liability company qualified to transact business in California, was created for purposes of implementing the transactions contemplated by the Plan and carrying forward the land development and related businesses formerly pursued by Newhall Development, Newhall Land and Farming, and affiliated companies. Its principal place of business is at Valencia, California. Newhall Holding is owned 100% by Lender Group 2, consisting of more than 100 investment companies, none of which owns more than a 20% interest in Newhall Holding.<sup>8</sup>

Newhall Holding will own a 70.56% majority ownership interest in Valencia through its 85.72% ownership interest in Newhall Intermediary which, in turn, holds an 82.31% ownership interest in Newhall Development which, in turn, holds a 100% ownership interest in LandSource Holding which, in turn, holds 100% ownership interests in NWHL GP LLC and in Newhall Land and Farming.

## **4. Reason for Transfer of Indirect Control**

This request for a change in indirect control of Valencia is the result of Newhall Development and 20 of its affiliated entities, including LandSource Holding and Newhall Land and Farming, June 8, 2008 filing for bankruptcy

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<sup>8</sup> Application at 8.

protection under Chapter 11 of the United States Bankruptcy Code. The Chapter 11 filing indirectly impacted Valencia because Newhall Development wholly owns LandSource Holding, which, directly or indirectly, wholly owns Newhall Land and Farming, which in turn, wholly owns Valencia.

Contributing factors to that Chapter 11 filing were the sudden collapse of California's real estate markets in 2007 and 2008, substantial decline in the value of the debtors' assets as a result of that collapse, and claims from more than 100 creditors.<sup>9</sup>

After negotiations among debtors, creditors and potential new investors the Plan was finalized and presented to the Bankruptcy Court for approval. Applicants stated that many of the myriad terms of the Plan were not finalized until just days before the Bankruptcy Court held a hearing on an Implementation Motion and approved the Plan on July 24, 2009 which became effective on July 31, 2009. A copy of the Plan is attached to the Application as Appendix 1.

## **5. Proposed Transaction**

Pursuant to the Plan, Newhall Holding and Newhall Intermediary seek authority to acquire indirect control of Valencia through their controlling ownership interests in Newhall Development.

The change in indirect control of Valencia begins with the ownership and control of Newhall Development from a 50% voting control shared equally by Lennar Corporation and LNR Property Corporation authorized by D.04-01-051, and the remaining 50% voting control by MW Housing Partners III LP authorized by the 2007 Decision to 82.31% ownership by Newhall Intermediary,

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<sup>9</sup> Application at 7.

which in turn, is owned 85.72% by Newhall Holding. A flow chart depicting the proposed indirect ownership in Valencia is set forth in Appendix A to this decision.

This change in control reduces Lennar Corporation's ownership interest in Newhall Development from 25% to approximately 17% and eliminates the ownership interest in Newhall Development by LNR Property Corporation and MW Housing Partners III LP. There will be no change in the ownership interest of Valencia by Newhall Land and Farming, LandSource Holding, or Newhall Development.

## **6. Protests**

Protests were filed by Protestants Santa Clarita Organization for Planning the Environment (SCOPE) and Friends of the Santa Clara River (The Friends). Although neither party requested hearings, both requested that the public interest and the interest of Valencia's customers be protected from approval of any change in ownership of Valencia. Customer protection issues raised by Protestants were: (1) ownership information; (2) Commission authority prior to transfer of indirect control; (3) affiliated interest rules; and (4) financial wherewithal. As addressed in the following four sections, these issues do not provide reasons for us to deny the application.

### **6.1. Ownership Information**

Protestants took issue with Applicants not disclosing financial statements, management operating statements, and individual owners of the upstream holding companies involved in the overall indirect control of Valencia. Absent such disclosure, Protestants contend that the financial wherewithal and contractual commitment to provide for water quality improvements and remediation facilities by Valencia is not known, and that the ladder of holding

companies acquiring Valencia is not known. Protestants further contend that the lack of additional ownership disclosures of the layers of holding companies will not enable us to ensure that water company assets are not used for purposes other than those designated as proper for Valencia.

Applicants have provided Valencia's most recent financial statements.<sup>10</sup> Financial statements of the holding companies acquiring an indirect control of Valencia are not needed in this instance. This request for ownership information of entities having and seeking an indirect ownership interest of Valencia is not new. As we previously concluded in the 2007 Decision and D.05-08-017, regardless of the operating arrangements among the upstream owners of Valencia, the Commission retains complete authority over Valencia's public utility operations, including its rates, as well as substantial power to do all things necessary and convenient in the exercise of its jurisdiction. While the owners may have their agreements, the Commission has final authority over any public utility effects in California. Therefore, the requested additional ownership information issue is not necessary.

## **6.2. Commission Authority Prior to Transfer of Indirect Control**

The Friends object to what they believe is a transfer of indirect control of Valencia prior to obtaining Commission authority as required by § 854.

Although the Plan expressed a view that a § 854 application would not be required for authorization of changes in the indirect ownership of Valencia, the Plan provides that, if the Commission determines that the effectiveness of the Plan is an acquisition or change in control subject to its approval under § 854(a),

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<sup>10</sup> Application, Appendix 7.

Newhall Holding and Newhall Intermediary are precluded from asserting operational control of Valencia until an application pursuant to § 854(a) has been filed and the Commission has issued a final decision on the application.<sup>11</sup>

Subsequent to the July 31, 2009 effective date of the Plan, Valencia's regulatory counsel opined to Applicants that an application seeking authority to change indirect control of Valencia was required pursuant to § 854(a) and filed the application before us. In their reply to the protest, Applicants state that the two new entities created under the Plan, Newhall Intermediary and Newhall Holding, have in fact refrained from exercising operational control over Valencia pending this decision.<sup>12</sup> We conclude that no change in indirect control of Valencia has yet occurred. Approval of that transfer of indirect control is the subject of this decision.

### **6.3. Conditions of Approval and Affiliated Interest Transaction Rules**

SCOPE and The Friends also protested the application to ensure that previous conditions imposed by the Commission on Valencia and its affiliates are included in any approval of this application.

Applicants have already stated in their application that they are committed to complying with all of the conditions of approval and the affiliated interest transaction rules imposed on Valencia and its affiliates as a condition of approval of granting prior changes of indirect control of Valencia pursuant to D.04-01-051, as modified by D.05-08-017 and the 2007 Decision.<sup>13</sup> To further

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<sup>11</sup> Exhibit A to Application, Paragraph T, Article VIII at 55.

<sup>12</sup> Reply to Protests, December 3, 2009 at 12.

<sup>13</sup> Application at 12.

ensure compliance by the entities that this decision authorizes to exercise indirect control, we will require each of those entities to file written notice of their agreement, evidenced by a duly authenticated resolution of their respective Boards of Directors, Board of Managers, or the equivalent authority, to the Conditions of Approval of Transfer of Control and the Affiliated Interest Transaction Rules set forth in Appendices B and C to this decision. Furthermore, we put applicants on notice that the Affiliated Interest Transaction Rules are subject to modification in the Commission's Rulemaking 09-04-012 opened on April 23, 2009 to develop standard rules for the use of regulated assets for non-tariff services of water utilities.

#### **6.4. Financial Wherewithal**

The Friends expressed concern about Valencia having "financial wherewithal" to ensure protection of ratepayers and the public with respect to financial and health concerns relating to ammonium perchlorate in the local groundwater basin. This is because even though the Castaic Lake Water Agency (CLWA) has continually promised that ammonium perchlorate remediation facilities will be operating "next year" since 2003, those facilities are still not completed.<sup>14</sup>

Applicants emphasized in their response to the protests that Valencia is not CLWA. CLWA is a local wholesale water agency that provides water to Valencia, a retail water purveyor that has been working cooperatively with CLWA and other retail purveyors to achieve remediation of the perchlorate problem and financial compensation for related costs. In that regard, Valencia

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<sup>14</sup> The Friends Protest at 4.

replaced a perchlorate-contaminated well in 2005. In that same year, Valencia installed wellhead treatment at a second affected well in 2005 with funds provided by parties responsible for the contamination.<sup>15</sup>

CLWA, Valencia, and other retail purveyors achieved a settlement of litigation in 2007 with the responsible parties providing long-term funding for remediation and compensation. The ratemaking treatment of those funds applicable to Valencia will be considered as part of Valencia's January 2010 General Rate Case (GRC) filing.<sup>16</sup>

The existence of contaminants in the water of Valencia's customers is of great concern to the Commission. However, this proceeding seeking authority to transfer indirect control of Valencia is not the appropriate place to address water contaminants. Protestants should consider raising their contaminants issue in Valencia's 2010 GRC.

By this decision, as in prior transfer of indirect ownership interest proceedings of Valencia, we are imposing financial conditions to help ensure that Valencia has adequate financing. Hence, the financial wherewithal issue has been sufficiently addressed. These conditions are found in the Conditions of Approval of Transfer of Control and Affiliate Interest Transaction Rules attached to this decision as Appendices B and C, respectively. Among the more important financial conditions are: (1) owners, direct and indirect, of Newhall Land and Farming shall ensure that Valencia has adequate capital to fulfill all of its public utility service obligations; (2) the transfer of control may not adversely affect

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<sup>15</sup> Reply to Protests, December 3, 2009, at 13 and 14.

<sup>16</sup> *Id.*

Valencia policies with respect to service to customers, employees, operations, financing, accounting; capitalization, rates, depreciation, maintenance, or other matters relating to the public interest or utility operations; (3) none of the outstanding debt owed and recorded as liabilities on the regulated books of Valencia may be adversely affected by the transfer of control; and (4) debt of Valencia's affiliated companies shall not be issued or guaranteed by Valencia without prior approval by the Commission.

## **7. Public Interest**

Pursuant to § 854(a), we consider whether this proposed transaction is in the public interest.

For the following reasons, we conclude that the proposed transfer of indirect control over Valencia is not adverse to the public interest and that it is reasonable to grant this § 854(a) application. First, Valencia will continue to operate as it has in the past, using the same name, operating authority, and existing tariffs. Second, Valencia will continue to possess the technical, managerial, and financial resources necessary to provide its authorized services. Third, the Commission's affiliated transaction rules and conditions will remain in effect. Fourth, employee policies will not be changed and all collective bargaining agreements will be honored. We therefore approve the requested transfer of indirect control over Valencia.

## **8. Environmental Assessment**

The transfer of indirect control over Valencia proposed by Applicants constitutes a "project" under California Environmental Quality Act (CEQA), Public Resources Code §§ 21000 *et seq.* Since it can be seen with certainty that no significant effect on the environment could result from our granting the authorization, the proposed project itself qualifies for an exemption from CEQA

pursuant to § 15061(b)(3) of the CEQA Guidelines. No further Commission environmental review is required.

### **9. Categorization and Need for Hearing**

In Resolution ALJ 176-3243, dated October 29, 2009, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that no hearings are needed. This application was noticed in the Commission's October 22, 2009 Daily Calendar. Although protests were filed by SCOPE and The Friends, there is no disputed issue of material fact to resolve in evidentiary hearings. We affirm our initial determination that no hearing is necessary. However, all parties should be afforded an opportunity to review and comment on the proposed decision granting the requested change of indirect control of Valencia.

### **10. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening and reply comments were filed jointly by Newhall Holding, New Hall Intermediary, LandSource Holding, and Valencia in support of the Proposed Decision on January 25, 2010 and February 1, 2010. Opening comments were filed jointly by SCOPE and The Friends on January 25, 2010.

No new issues were raised by the comments but we have made changes to clarify the ownership structure and responsibility of the acquiring companies throughout the decision. In addition, we specify steps the Applicants must take to complete the transaction.

## **11. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Applicants seek authority for Newhall Holding, Newhall Intermediary, and LandSource Holding to acquire an indirect ownership interest and control of Valencia pursuant to a Chapter 11 Reorganization Plan.

2. Under the revised ownership structure, Lennar Corporation's ownership interest in Newhall Development is reduced from 25% to approximately 17% and the ownership interests in Newhall Development of LNR Property Corporation and MW Housing Partners III LP, are eliminated.

3. Under the revised ownership structure, Newhall Holding has a controlling interest in Newhall Intermediary and Newhall Intermediary has a controlling interest in Newhall Development.

4. Newhall Development, LandSource Holding, and NWHL GP LLC will continue to have the same indirect ownership interests in Valencia as they do at present.

5. Although the 2007 application sought authority for LandSource Holding to acquire indirect control over Valencia, the 2007 Decision did not specifically authorize LandSource Holding to acquire such control.

6. According to applicants, LandSource Holding has been part of the ownership structure since the transaction authorized in the 2007 Decision was consummated.

7. Valencia will continue to be wholly owned by Newhall Land and Farming and will continue to provide its authorized services.

8. Protests to the application were filed by SCOPE and The Friends.

9. Protestants did not request hearings be held in this matter.

10. After the transfer of indirect control is completed, Valencia will continue to be the operating public utility providing water utility service under the Commission's jurisdiction in the areas where it is authorized to do so.

11. Customers will not notice the indirect change of control of Valencia.

12. Valencia will continue to operate as it has in the past using the same name, operating authority, and existing tariffs.

13. Valencia will continue to possess the technical, managerial, and financial resources necessary to provide its authorized services.

14. The Plan of Reorganization approved by the Bankruptcy Court provides that, if the Commission determines that the effectiveness of the Plan is an acquisition or change in control subject to its approval under § 854(a), Newhall Holding and Newhall Intermediary are precluded from asserting operational control of Valencia until an application pursuant to § 854(a) has been filed and the Commission has issued a final decision on the application.

15. Applicants state that the two new entities created under the Plan, Newhall Intermediary and Newhall Holding, have in fact refrained from exercising operational control over Valencia pending this decision.

16. No new construction is being proposed in this application.

### **Conclusions of Law**

1. This is a ratesetting proceeding.

2. Pursuant to § 854, the Commission has broad authority to approve or deny applications for transfers of utility ownership or control. Implicit in this authority is the right to place reasonable conditions upon the transferor or transferee, should the need for conditions arise.

3. The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.

4. A hearing is not necessary in this proceeding.

5. The additional ownership information sought by protestants is not needed to decide this application, as previously determined in D.05-08-017 and the 2007 Decision.

6. A change of control over Valencia has yet to occur.

7. The Commission has complete authority over any and all Valencia service territory expansions.

8. All Conditions of Approval of Transfer of Control and Affiliated Interest Transaction Rules imposed on Valencia and its affiliates by D.07-09-026 should continue to apply.

9. To further ensure compliance with these Conditions of Approval of Transfer of Control and Affiliated Interest Transaction Rules, the entities authorized to exercise indirect control over Valencia by this decision should expressly agree to these Conditions and Rules before the transfer of control authorized by this decision becomes effective.

10. The Conditions of Approval of Transfer of Control contain provisions sufficient to address the issue of financial wherewithal, including the condition that the owners, direct and indirect, of Newhall Land and Farming shall ensure that Valencia has adequate capital to fulfill all of its public utility service obligations.

11. The protests to this application do not provide sufficient reason to deny the application.

12. The requested acquisition and transfer of control is a project that qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA Guidelines.

13. This application should be approved because it is not adverse to the public interest.

## **O R D E R**

**IT IS ORDERED** that:

1. Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC, and LandSource Holding Company, LLC are authorized to acquire indirect ownership and control over Valencia Water Company subject to the conditions set forth in the Conditions of Approval of Transfer of Control and the Affiliated Interest Transaction Rules set forth in Appendices B and C to this decision, respectively and subject to the condition contained in Ordering Paragraph 2.

2. The authority granted by Ordering Paragraph 1 shall not be effective until Newhall Holding Company, LLC, Newhall Intermediary Holding Company, LLC, LandSource Holding Company, LLC, and Valencia Water Company each file written notice of their agreement, evidenced by a duly authenticated resolution of their respective Boards of Directors, Board of Managers, or the equivalent authority, to the Conditions of Approval of Transfer of Control and the Affiliated Interest Transaction Rules set forth in Appendices B and C to this decision, respectively.

3. Within 30 days after the change of control authorized herein has taken place, Valencia Water Company shall file a compliance Advice Letter pursuant to General Order 96-B demonstrating that the change of control has occurred in the

manner authorized. A copy of that advice letter shall be placed in the formal file of Application 09-10-024.

4. The corporate identification number U342W assigned to Valencia Water Company shall continue to be used by Valencia Water Company in all future filings with the Commission and in the titles of other pleadings filed in existing and future proceedings.

5. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

6. Application 09-10-024 is closed.

This order is effective today.

Dated February 25, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners