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WATER/RSK/SRW/jrb

Decision 08-07-034 July 31, 2008

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

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| In the Matter of the Application of Del Oro Water Company, Inc. (U-61-W) for a Certificate of Public Convenience and Necessity to Acquire River Island Water Co., Tulare County and to Establish Rates for Service. | Application 08-04-035 (Filed April 28, 2008) |

# DECISION GRANTING THE APPLICATION OF DEL ORO WATER COMPANY, INC. TO ACQUIRE RIVER ISLAND WATER COMPANY

## Summary

Del Oro Water Company, Inc. (Del Oro) filed an application for a Certificate of Public Convenience and Necessity to acquire River Island Water Company (River Island), and to establish rates for service. The Commission's Division of Water and Audits (Division) has investigated this request and recommends approval.

## Background

River Island, a Class D (U-270-W) investor-owned utility, is a California water system engaged in the business of selling water to 337 metered water customers and 15 metered irrigation customers in River Island and surrounding areas comprised of 600 lots approximately three miles southwest of Springville, Tulare County, California.

The water system is comprised of one inactive and 17 hard rock wells ranging from 19 gallons per minute (GPM) to 55 GPM, five storage tanks with a total storage of 492,000 gallons and distribution pipelines consisting of 63,672 feet.

**Sales Agreement**

The purchase and sale of assets agreement was signed on April 10, 2008, between Del Oro and River Island.

The original cost of property being transferred is $2,037,074, depreciation reserve is $285,640, advances for construction are $760,562, contributions in aid of construction are $245,160, and cash on hand is $20,400 as of December 31, 2007, resulting in a net book cost of $766,112. The purchase price to be paid for the water system is $760,000. Del Oro is purchasing five acres of land from Montgomery Drilling Co. for $70,000 to accommodate installation of a Surface Water Treatment Plants and Del Oro is paying $13,030 for engineering services performed for the plant. An issue of water rights between River Island and the State Water Control Board is not yet resolved. The issue relates to River Island wells nos. 30, 31, and 32 located on property owned by River Island Country Club. Mr. Michael H. Laughlin, representing River Island and Montgomery Drilling Company, stated in a letter dated June 7, 2008, that Montgomery Drilling Company, owners of River Island, assume responsibility for all costs related to the resolution of water rights for wells nos. 31, 32, and 33 including any possible litigation that may occur.

River Island desires that the ownership and operation of the water system and assets be transferred to Del Oro. Del Oro is agreeable to the transfer of ownership and operation of the water system 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.

**Ratepayer Indifference**

The Commission applies a test of ratepayer indifference when evaluating the sale of a public utility. The ratepayer indifference concept 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 this test to assess the sale of the water system from River Island to Del Oro, the Division evaluated several key metrics including (1) the impact of purchase price on rate base, (2) service quality, and (3) continuity of service. These metrics are discussed below.

**Purchase Price**

The total proposed purchase price is $843,030 which consists of $760,000 for the existing system, $70,000 for the five acre site of a proposed Surface Water Treatment Plant, and engineering costs of $13,030 for the proposed plant.

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 rate setting.
> (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 rate setting 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 $6,112 less than the original cost of plant and cash on hand less net depreciation and contributions. The impact of the purchase price on rate base is a reduction of $6,112. The Division believes that the purchase price of $760,000 meets the fair market value standard. This price is what a willing buyer wants to pay and a willing seller wants to accept. For example, 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. The Division believes that the purchase of the five acre parcel for $70,000 and the engineering costs of $13,030 for a Surface Water Treatment Plant also meet the criteria of "what a willing buyer wants to pay and a willing seller wants to accept."

**Service Quality**

River Island has contracted with Del Oro to operate the water system, effective May 1, 2008, and continuing until the earlier of (1) June 1, 2009, or (2) the closing date of the sales agreement. Del Oro is a public utility water company under the jurisdiction of the California Public Utilities Commission and operates eleven California water districts with approximately 7,400 customers. Del Oro plans to operate River Island as one of its water districts and has the required staff. All field personnel are appropriately licensed depending on the operational requirements of the system.

**Service Continuity**

River Island desires to dispose of the water system and Del Oro agrees to acquire the water system. The sales agreement with Del Oro ensures an orderly water system ownership transition and thereby offers continued water service by a responsible and experienced new owner. Del Oro requests to charge the current rates of River Island to River Island District. The application states that the water supply permit is to be issued by the California Department of Public Health.

**Division of Water and Audits' Conclusions**

The sale of River Island water system from the owners to Del Oro is desired by both parties. The owners of River Island desire to dispose of the water utility. Del Oro has the needed staff and the resources to operate River Island.

The Division recommends:

(1) That Application 08-04-035 be accepted and approved with no further hearings, pleadings, or filings necessary.

(2) That the sales agreement between River Island and Del Oro for a total purchase price of $843,030 be approved.

(3) That Del Oro be authorized to purchase all of the assets and assume the obligations of River Island pursuant to the purchase agreement.

(4) That River Island be granted authorization to withdraw from providing water utility service to customers of River Island.

(5) That Del Oro obtain change of ownership approval from the California 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 River Island to Del Oro is desired by all parties.
2. River Island requests authority to transfer ownership of River Island.
3. Del Oro agrees to buy River Island.
4. Del Oro has the staff and resources to operate River Island.
5. Del Oro has requested to adopt the current tariff rates of River Island.
6. Del Oro has the financial net worth and sufficient liquid assets to own and operate the water system.
7. The sale will not have any net consequences that would cause the ratepayer to prefer the seller to the buyer.
8. The Division of Water and Audits has determined that the purchase price of $843,030 is fair market value, as required by Public Utilities Code §2720.
9. Del Oro must obtain change of ownership approval from the California Department of Public Health.
10. Del Oro is not responsible for any costs, including possible litigation costs, regarding water rights under negotiations for wells nos. 31, 32, and 33 located on property owned by River Island Country Club.

**Conclusions of Law**

1. Transfer of ownership of River Island meets the test of ratepayer indifference.
2. Pursuant to the California Health and Safety Code, a change in ownership of a public water system requires 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.
4. This order should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The application of Del Oro Water Company, Inc. to acquire River Island Water Company is granted.

2. River Island 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. Del Oro Water Company, Inc. is directed to comply with §116525(a) of the Health and Safety Code, enforced by the California Department of Public Health.

4. Upon approval of the California Department of Public Health, Del Oro Water Company, Inc. is authorized to acquire ownership of and assume water utility service to the customers of River Island Water Company.

5. Del Oro Water Company, Inc. shall adopt the current tariff rates of River Island Water Company for the River Island District.

6. Applicant within 10 days of the transfer of ownership shall notify the Director of the Division of Water and Audits in writing that the transfer has taken place, attaching copies of the transfer document.

7. Upon transfer of ownership, River Island Water Company shall be relieved of public utility responsibility for the operation of River Island Water Company.

8. Application 08-04-035 is closed.

This order is effective today.

Dated July 31, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG

TIMOTHY ALAN SIMON
Commissioners