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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION W-4914
May 10, 2012

R E S O L U T I O N

(RES. W-4914), YERMO WATER COMPANY (YERMO WATER). ORDER RESCINDING RESOLUTION (RES.) W-4864 AND AUTHORIZING AND DIRECTING THE COMMISSION'S LEGAL DIVISION TO COMMENCE PROCEEDINGS IN THE SUPERIOR COURT OF SAN BERNARDINO COUNTY FOR APPOINTMENT OF RECEIVER TO TAKE POSSESSION OF AND OPERATE YERMO WATER COMPANY PURSUANT TO PUBLIC UTILITIES CODE SECTION 855.

SUMMARY

This Resolution rescinds Res.W-4864 (issued on January 14, 2011) in which the California Public Utilities Commission (Commission) approved the sale of Yermo Water Company (Yermo Water) to the Yermo Community Services District (District) and orders the Commission's Legal Division (Legal Division) to immediately commence proceedings in the Superior Court of San Bernardino County for the appointment of a receiver to assume possession of and operate Yermo Water. The purpose of this Resolution is to revisit this matter given that the contemplated transaction between Yermo Water and the District has not been executed within a reasonable time frame, and there has been no showing that the significant problems chronicled in Decision (D.) 09-05-022 regarding the operation of Yermo Water have been remedied. Accordingly, this Resolution confirms that the appointment of a receiver is necessary.

BACKGROUND

Yermo Water serves approximately 246 customers.¹ Yermo Water is a consolidation of three Commission-certificated water utilities located ten miles east of Barstow in San Bernardino County near or within the Township of Yermo.² These utilities consisted of

¹ 2011 Annual Report of Yermo Water Company, March 26, 2012, at 5.

² D.09-05-022, at 2.

Yermo Water, Marine Water Company (Marine) and Hel-Bro Water Company (Hel-Bro).³ In 1966, the owners of Yermo Water acquired Marine and Hel-Bro pursuant to Commission Decisions 71016 and 71017.⁴ In 1983, Yermo Water was authorized to consolidate Marine and Hel-Bro into Yermo Water's certificate of public convenience and necessity pursuant to Res. W-3139.⁵ The water systems of Marine and Hel-Bro are interconnected.⁶ The initial water system of Yermo Water is not interconnected with the other two water systems.⁷ Donald Walker is the sole owner of Yermo Water.⁸

On April 24, 2008, the California Public Utilities Commission (Commission) opened Investigation (I.) 08-04-032 to examine the operations and practices of Yermo Water and its owner, Mr. Walker. As explained in the Order Instituting Investigation, "[s]ince 1993, [Yermo Water and Mr. Walker] have been of concern to the Commission and the California Department of Public Health ('CDPH')." ⁹ More specifically, the Commission instituted the investigation to protect Yermo Water's customers from the "continuing hazards" caused by the "negligent operation" of the water utility and to address the unwillingness or inability of Yermo Water and Mr. Walker to comply with the rules and regulations of the Commission and the CDPH.¹⁰

The investigation resulted in the Commission issuing Decision (D.) 09-05-022 on May 7, 2009. In D.09-05-022, the Commission concluded, among other things, that Yermo Water and Mr. Walker had consistently violated and were, at the time of the decision, in violation of Commission and CDPH orders, that they were unable or unwilling to adequately serve Yermo Water's ratepayers, and that the inadequate level of service provided by Yermo Water "has a potential adverse effect on public health."¹¹ Consequently, pursuant to California Public Utilities Code Section 855, the Commission authorized and directed the Legal Division to commence proceedings in the Superior

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 3.

⁹ I.08-04-032 at 1.

¹⁰ *Id.* at 2.

¹¹ D.09-05-022, at 26, Conclusions of Law 1-3.

Court of San Bernardino County for the appointment of a receiver to take possession of and operate Yermo Water.¹²

However, before petitioning the Superior Court of San Bernardino County for the appointment of a receiver, the Legal Division and the Division of Water and Audits (DWA) attempted to facilitate a voluntary transaction for the purchase and sale of Yermo Water to the District.¹³ This effort culminated in an agreement dated March 23, 2010 for the purchase and sale of Yermo Water to the District (Agreement). The Agreement was submitted for the Commission's approval in an advice letter filing on May 18, 2010.¹⁴ On January 13, 2011, the Commission adopted Resolution W-4864 approving the sale of Yermo Water to the District.¹⁵

Over two years have elapsed since the Agreement was entered into and the transaction has not been executed; Mr. Walker remains the owner of Yermo Water. Further, nearly three years have elapsed since the Commission issued D.09-05-022. During the interim, *i.e.*, since May 7, 2009, the Commission has not received any evidence or information confirming that the significant problems chronicled in D.09-05-022 regarding Yermo Water have been remedied.

DISCUSSION

As noted, more than two years have elapsed since the Agreement to sell Yermo Water to the District was entered into. Further, no evidence exists that the significant problems chronicled in D.09-05-022 regarding the operation of Yermo Water have been remedied. Thus, in order to protect public health and safety we find it necessary to rescind Res. W-4864 approving the sale of Yermo Water to the District, and, once again, authorize and direct the Legal Division to commence proceedings in the Superior Court

¹² *Id.* at 27, Ordering Paragraph 1.

¹³ California Public Utilities Commission Resolution W-4864, January 13, 2011, at 2 (referred to below as "Resolution W-4864").

¹⁴ Advice Letter No. 9, Yermo Community Services District, dated May 14, 2010 and filed May 18, 2010 (including the Agreement for the Purchase and Sale and Joint Escrow Instructions between Yermo Water Company and the Yermo Community Services District (Agreement) as Attachment B) (referred to below as "Advice Letter No. 9").

¹⁵ Resolution W-4864, *supra* note 13, at 8, Ordering Paragraph 1 (by reference to Advice Letter No. 9 and the attached Agreement, Resolution W-4864 approved the sale of Yermo Water Company to the Yermo Community Services District). Resolution W-4864 was adopted by the Commission on January 13, 2011 and issued on January 14, 2011.

of San Bernardino County for the appointment of a receiver to take possession of and operate Yermo Water.

It is important to note that it still may be appropriate for the District to acquire Yermo Water. Our rescission of Res. W-4864 should not be understood as disapproval of the contemplated transaction. Instead, rescission of Res. W-4864 simply acknowledges that this voluntary transaction has not been executed within a reasonable time frame, and thus, it is necessary to seek the appointment of a receiver to achieve an effective, expeditious and fair resolution of this matter for the ratepayers of Yermo Water.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to parties for comments, on April 6, 2012, which provided for a 30 day public review period prior to the Commission voting on this matter on May 10, 2012. Yermo Water submitted comments in the form of a petition signed by a large number of customers¹⁶ that states,

I am a customer of the Yermo Water Company, who is Satisfied with the Progress that the Yermo Water Company has been making to date. The efforts they have been putting forth have made a difference in the Over All operations of the water company. As well as My Personal Opinion regarding the Yermo Water Company. The Service that is provided to me as a customer of Yermo Water Company, has improved noticeably, in the passed 18 Months. With this as well as the Yermo Water Company's Pledge to continued future improvements of the system, I am **IN FAVOR** [sic] of the Yermo Water Company remaining under its present Ownership. Understanding that it has taken some time to resolve certain issues, but the issues have been, are currently, and will continue to be resolved. **I DO NOT** agree, that the Yermo Water Company would be able to be operated more efficiently if it were to be under authority of a

¹⁶ As noted, in its 2011 Annual Report Yermo Water states that it currently has 246 metered customers. The petition contains approximately 211 customer signatures. However, in many instances, multiple customers who reside at a single address signed the petition. Thus, the total number of metered service connections represented by the petition is less than 211.

Receivership, or the Yermo Community Services District. By my signing this petition I am stating my approval and support of the present and current method of operations (As well as the Future Plans) of the Yermo Water Company. Any reservations or concerns that I may have, I have entered them below my signature on this Petition.

We have considered the petition submitted by Yermo Water and have determined that although it expresses general support for the water utility and opposes the appointment of a receiver, it fails to provide confirmation that the specific problems chronicled in D.09-05-022 regarding Yermo Water have been remedied, *e.g.*, Yermo Water's "pervasive and persistent" violations of Commission and CDPH orders.¹⁷ In D.09-05-022 we concluded that because of the water utility's track record of violating Commission and CDPH orders and Mr. Walker's "limited water business experience and knowledge," *i.e.*, he neither has a civil engineering background nor a certified state water operator's license, Mr. Walker and Yermo Water "are unable or unwilling to adequately serve Yermo's ratepayers."¹⁸ The petition's vague statements that the service provided by the water utility has recently improved do not change our conclusion regarding the ability of Mr. Walker and Yermo Water to adequately operate the water system.

Further, while the petition may be an indicator of customer satisfaction, it fails to address the specific problems identified by Yermo Water's customers in the past, *e.g.*, poor water quality, water outages, malodorous and bad tasting water, lack of water pressure, and distribution system leaks.¹⁹ And the petition recognizes that problems remain, explaining, "it has taken some time to resolve certain issues, but the issues have been, are currently, *and will continue to be* resolved." (emphasis added).

Moreover, the petition misstates the purpose of the appointment of a receiver in this case: "that the Yermo Water Company would be able to be operated more efficiently if it were to be under authority of a Receivership." By contrast, here a receiver is sought to take possession of and operate Yermo Water with the ultimate goal of identifying a suitable buyer with relevant expertise, or, alternatively, working to facilitate the municipalization of the water utility, meaning working to facilitate its acquisition by a

¹⁷ D.09-05-022, at 21.

¹⁸ *Id.* at 20-21.

¹⁹ *Id.* at 18-19 (*citing* I.08-04-032 at 7).

local government entity. Notably, if the water system was municipalized it would no longer be under the regulatory jurisdiction of the Commission.

Finally, we are confused and concerned by the petition's reference to Yermo Water's future plans for improving the water system, *e.g.*, "Yermo Water Company's Pledge to continued future improvements of the system," as an identified basis for the customers' expression of support. We are confused because Mr. Walker has consistently stated his intent to sell the water utility²⁰ and, in fact, has recently informed Commission staff that he is actively attempting to do so now. Thus, we are concerned that customers may have signed the petition, at least in part, in reliance on incorrect or false information.

Because the petition submitted by Yermo Water fails to provide confirmation that the specific problems chronicled in D.09-05-022 regarding Yermo Water have been remedied, including the water quality and service problems identified by customers in the past, we rely on the existing evidentiary record in adopting the findings and conclusions set forth below.

FINDINGS AND CONCLUSIONS

1. The Commission opened I.08-04-032 on April 24, 2008 to examine the operations and practices of Yermo Water and its owner, Mr. Walker.
2. Decision 09-05-022 was issued to conclude I.08-04-032 on May 7, 2009.
3. In D.09-05-022 the Commission concluded that: Yermo Water and Mr. Walker had consistently violated, and were, at the time of the decision, in violation of Commission and CDPH orders; Yermo Water is unable or unwilling to adequately serve its ratepayers; and the inadequate level of service provided by Yermo Water "has a potential adverse effect on public health."
4. In D.09-05-022 the Commission authorized and directed the Legal Division to commence proceedings in the Superior Court of San Bernardino County for the appointment of a receiver to assume possession of and operate Yermo Water.
5. Following the issuance of D.09-05-022, the Legal Division and DWA attempted to facilitate a voluntary transaction for the purchase and sale of Yermo Water to the District.

²⁰ *Id.* at 21 (*citing* Reporter's Transcript from Evidentiary Hearing, November 4, 2008, I.08-04-032, Volume 1, at 39) (explaining that although Mr. Walker and Yermo Water have been trying to sell the water utility "for the past ten years they have been unsuccessful in finding a buyer.").

6. Mr. Walker and the District entered into an agreement for the purchase and sale of Yermo Water on March 23, 2010.
7. Advice Letter No. 9, filed May 18, 2010, requested Commission authorization for the sale of Yermo Water to the District.
8. Resolution W-4864 approved the sale of Yermo Water to the District on January 13, 2011.
9. As of May 10, 2012, the agreement between Mr. Walker and the District has not been executed.
10. No evidence exists that the significant problems chronicled in D.09-05-022 regarding the operation of Yermo Water have been remedied.
11. Nothing in this Resolution prevents the future sale of Yermo Water to the District.

THEREFORE IT IS ORDERED THAT:

1. Resolution W-4864, adopted by the Commission on January 13, 2011, is rescinded effective today.
2. The Commission's Legal Division shall file immediately with the Superior Court of San Bernardino County a petition for the appointment of a receiver to assume possession of and operate the water system of the Yermo Water Company.
3. 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 May 10, 2012; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners