

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 6, 2012

Draft Resolution W-4914
Agenda ID #11215

TO: All Interested Persons

Enclosed is draft Resolution W-4914 of the Division of Water and Audits (DWA) to rescind Resolution W-4864 that approved of the sale of Yermo Water Company. This resolution also authorizes and directs the Commission's Legal Division to commence proceedings in the Superior Court of San Bernardino County for appointment of a Receiver to take possession of and operate Yermo Water Company pursuant to Public Utilities Code Section 855. Draft Resolution W-4914 will be on the Commission's May 10, 2012 Agenda. The Commission may act then on this resolution or it may postpone action until later.

When the Commission acts on a draft resolution, the Commission may adopt all or part of the draft resolution, as written, or amend or modify the draft resolution; or the Commission may set the draft resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on draft Resolution W-4914. An original of the comments, with a certificate of service, should be submitted to:

Division of Water and Audits, Third Floor
Attention: James Boothe
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Division of Water and Audits, Third Floor
Attention: Rami Kahlon
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Interested persons must serve a written or electronic copy of their comments on the utility on the same date that the comments are submitted to the Division of Water and Audits. Interested persons may submit comments on or before May 1, 2012.

Comments should focus on factual, legal, or technical errors or policy issues in the draft resolution.

Persons interested in receiving comments submitted to the Division of Water and Audits may write to James Boothe, email him at jb5@cpuc.ca.gov, or telephone him at (415) 703-1748.

/s/ RAMI S. KAHLON
Rami S. Kahlon, Director
Division of Water and Audits

Enclosures: Draft Resolution W-4914
Certificate of Service
Service List

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIADIVISION OF WATER AND AUDITS
Water and Sewer Advisory BranchRESOLUTION 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 150 customers.¹ Yermo Water is a consolidation of three Commission-certificated water utilities located ten miles east of Barstow in San

¹ In recent discussions with Commission staff the owner of Yermo Water Company, Donald Walker, stated that the utility currently has approximately 150 active service connections.

Bernardino County near or within the Township of Yermo.² These utilities consisted of 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

² D.09-05-022, at 2.

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.

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 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

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

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.

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 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, and will be placed on the Commission's agenda no earlier than 30 days from today.

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.
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:

PAUL CLANON
Executive Director

CERTIFICATE OF SERVICE

I certify that I have by electronic mail and mail this day served a true copy of draft Resolution W-4914 on all parties in these filings or their attorneys as shown on the attached list.

Dated April 6, 2012, at San Francisco, California.

_____/s/ JOSIE L. JONES

Josie L. Jones

Parties should notify the Division of Water and Audits, Third Floor, Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number of the service list on which your name appears.

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