



County of Santa Cruz

0055

OFFICE OF THE COUNTY COUNSEL

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November 8, 1999

Agenda: Nov. 16, 1999

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

**Re: County of Santa Cruz, County Service Area 54 v. Mountain Charlie
Waterworks, Inc., et al. Case # 133807**

Dear Members of the Board:

This is to submit for the Board's approval a proposed settlement in the above-entitled matter. Your Board, in closed session on August 24, 1999, authorized the settlement of the above entitled eminent domain action by way of stipulated judgement for the amount of \$140,000.00, payable in installments. The proposed settlement has been accepted by the owner of the water system. Attached hereto is the proposed Stipulation for Judgment which has been reviewed and approved by the customers and residents of County Service Area 54. The first installment payment in the amount of \$70,000 will require your Board to reallocate the existing CSA 54 funds, specifically, to transfer \$20,500 from interest and principle, long term debt, to system acquisition and to transfer \$4400 from DPW services to system acquisition.

Upon acquisition of the water system, the current court appointed receiver will continue to operate the water system on an interim basis. County Counsel will bring to your Board in the near future a proposed CSA 54 ordinance setting water charges and an operating agreement for the operation of the water system.


IT IS RECOMMENDED that the Board authorize County Counsel to execute the Stipulation for Judgment on behalf of CSA 54 in the total amount of \$140,000 to acquire

the Mountain Charlie Waterworks, Inc. water system, and authorize the County Auditor-Controller to issue the installment checks totaling that amount as directed by County Counsel.


It is further recommended that your Board approve the transfer of \$20,500 from CSA 54 long term debt, interest and principle, to CSA 54 system acquisition, and transfer \$4400 from CSA 54 DPW services to CSA 54 system acquisition.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL

By 
Harry A. Oberhelman III
Assistant County Counsel

RECOMMENDED:


SUSAN A. MAURIELLO
County Administrative Officer

cc: Public Works, Auditor-Controller
Auditor
Environmental Health Services

Enclosure

11/8

0057

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Attorneys for COUNTY OF SANTA CRUZ,
COUNTY SERVICE AREA 54

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

COUNTY OF SANTA CRUZ,
COUNTY SERVICE AREA 54

Plaintiffs,

v.

MOUNTAIN CHARLIE WATERWORKS,
INC., et. al.

Defendants.

No. 133807

STIPULATION TO
ENTER JUDGMENT; JUDGMENT

Plaintiff County of Santa Cruz acting for and on behalf of County Service Area 54, and Defendants, Mountain Charlie Waterworks, Inc.(hereinafter referred to as MCWW), Wester Sweet, Margaret Pierce (hereinafter referred to as "defendants"), acting through their respective attorneys of record stipulate that this case has been settled pursuant to Code of Civil Procedure section 664.6 and stipulate that judgment in this case may be entered as follows:

1) Defendants shall transfer to Plaintiff in "as is" condition, without warranty, and free and clear of all liens and encumbrances, excepting the existing receivership proceeding in Santa Cruz Superior Court entitled **County of Santa Cruz, et. al., v. Mountain Charlie Waterworks, Inc., et al.**, case No. CV 130326, title to the MCWW water distribution system as described and itemized in that Bill of Sale, attached and incorporated herein by this reference as Exhibit A , including, but not limited to, all storage and pressure tanks; mains and pipelines; valves; pumps;

1 wells; water meters; hydrants; services; electric power poles, meters, and controls; buildings;
2 accounts receivable; water sale and transmission agreements; Mt. Charlie Bank Accounts and
3 cash held by Receiver Christopher Ashworth; Department of Water Resources Loan Agreements;
4 Mountain Mutual Water Works membership; water notes; access roads; and water system
5 records created by or in the possession of the court appointed receivers. The property to be
6 transferred shall also include those water rights owned by MCWW to take water from Miller
7 Creek and Mt. Charlie Creek, identified as water rights held under Department of Water
8 Resources Control Board Division of Water Rights, License # 10861 and 11026, and application
9 numbers 24570 and 28114.

10 2) Defendants shall convey to Plaintiff all easements and other interests owned for the
11 water distribution system facilities, whether held under a grant or easement deed, by prescriptive
12 easement or otherwise. Defendants shall convey to Plaintiff title to all described, non
13 prescriptive easements by means of the grant deeds, attached and incorporated as a group herein
14 by this reference as Exhibit B, along with an appropriate resolution by MCWW authorizing the
15 transfer of these easements and other interests.

16 3) Defendants shall convey to Plaintiff title to all non specifically described, non
17 prescriptive easements and all prescriptive easements by means of the quitclaim deeds, attached
18 and incorporated as a group herein by this reference as Exhibit C, along with an appropriate
19 resolution by MCWW authorizing the transfer of these easements and other interests.

20 4) The property to be conveyed to Plaintiff shall not include the fee interest to that 5-
21 acre parcel located on Old Japanese Road and identified as APN: 093-261-48. Plaintiff agrees
22 to authorize, free of CSA 54 imposed connection fees, a water connection to this parcel
23 notwithstanding the existing County of Santa Cruz, Health Officer moratorium on new water
24 connections, dated 1987, at such time as a building permit for this parcel is sought from the
25 Santa Cruz County Planning Department; provided however, that the County of Santa Cruz,
26 Health Officer, reserves the right to impose new water connection moratoria within the County
27 Service Area 54 service area in the event that water quality or supply conditions develop within
28 the service area such as to threaten the ability to supply adequate and clean water to the water

1 users. Defendants shall convey to Plaintiff an non-exclusive easement for the water distribution
2 improvements located on the 5-acre parcel identified as APN: 093-261-48, by means of a grant
3 deed which is attached hereto and incorporated herein as Exhibit D, along with the appropriate
4 resolution by MCWW authorizing the grant of this easement. The water distribution
5 improvements include storage tank sites with pads, water valves and mains, pumps, electric poles
6 and controls, and water diversion facilities necessary to exercise the water rights referenced in
7 Paragraph 1, herein. The easement shall include the right of access for maintenance, repair and
8 replacement. A survey of said easement shall be undertaken by a duly licensed surveyor or civil
9 engineer at Plaintiffs sole expense. Defendants agree to execute a revised easement deed
10 containing the surveyed description when the same has been prepared. Defendants' obligation
11 to execute the revised easement deed shall be a condition precedent to any further payments of
12 compensation under paragraph 6 herein. Plaintiff agrees that the property, including real property
13 easements, prescriptive and non-prescriptive, transferred herein shall be removed as a real
14 property tax assessment against MCWW effective as of the date of transfer of the property
15 described herein.

16 5) Defendants shall execute all necessary documents needed to assign to Plaintiff
17 Defendants' rights and obligations under the California Department of Water Resources, Safe
18 Drinking Act Loan Contract No. E5 1407, including all rights to any loan repayment funds and
19 accounts.

20 6) Plaintiff shall pay to Defendants the sum of \$140,000 payable as follows:

21 a. An initial installment of \$70,000 to be exchanged for the bill of sale
22 described in Paragraph 1 above, and deeds conveying easements as described in
23 Paragraphs 2, 3 and 4 herein, and the assignment of contract rights described in
24 Paragraph 5, and the certificate described in Paragraph 12 herein. This initial
25 exchange shall take place on or before November. 15, 1999, or within ten days
26 after entry of judgement, which ever later occurs.

27 b. The balance of \$70,000 to be paid in seven (7) annual installments
28 commencing on January 1, 2000, of \$10,000 plus accrued simple interest on the

1 outstanding balance at the rate of 7.5% accruing from the date of court approval
2 of the judgement.

3 c. Plaintiff may elect to pay the outstanding balance including accrued
4 interest at any time with no prepayment penalty.

5 d. Payment of all sums herein shall be made payable to and in the name
6 of Wester Sweet. Defendants designate Wester Sweet on behalf of all defendants
7 herein as the payee under this judgement. Wester Sweet shall be responsible for
8 distribution to the defendants herein as appropriate. Payment to and in the name
9 of Wester Sweet shall discharge all obligations herein for payment to defendants.
10 Wester Sweet agrees to notify Plaintiff in writing of any change in his mailing
11 address. In the event that Wester Sweet fails to keep the Plaintiff apprised of his
12 address and Plaintiff is thus unable to make any of the payments called for herein,
13 no interest shall accrue beyond the date that such payment was due.

14 7) Each party shall bear their own litigation costs and expenses, including attorney's
15 fees, expert witness fees, filing and deposition fees incurred in this action, with the exception that
16 Plaintiff shall pay one day of Superior Court jury fees and one day of Superior court reporter's
17 fees for trial proceedings conducted on July 26, 1999.

18 8) Defendants' cross complaint in this action, shall be dismissed with prejudice, each
19 party to bear their own costs and expenses, including attorney's fees.

20 9) Defendants, and each of them, shall consent in writing to the California Public
21 Utilities Commission to the conveyance of the property described in this judgement, as necessary.

22 10) Defendant Ted Pierce Jr. did not answer or otherwise respond to the complaint for
23 inverse condemnation and did not appear for trial, and the court entered judgement in favor of
24 Plaintiff and against Ted Pierce Jr. Defendants Wester Sweet, Margaret Pierce and MCWW
25 shall hold harmless and indemnify Plaintiff from and against any claim brought by Ted Pierce
26 Jr. arising out of the transfer of the property herein, including any ownership interests claimed
27 by Ted Pierce Jr. in the property transferred.

28 11) The receipt of the compensation as set forth in this judgement by defendants is

1 deemed to compensate defendants for all claims for just compensation in this action, including,
2 but not limited to, claims for severance damages, goodwill, pre-condemnation damages,
3 relocation payments, going concern, potential service area expansion, catastrophic reimbursement
4 rights, and potential future income, any claim defendants may have against the County of Santa
5 Cruz or any court appointed receiver arising out of the receivership proceeding entitled **County**
6 **of Santa Cruz, et al. v. Mountain Charlie Waterworks, Inc., et al**, Santa Cruz County Superior
7 Court No. CV 130326.

8 12) MCWW shall adopt and execute the appropriate certificate acknowledging that
9 MCWW has approved the sale of all the assets to be conveyed by this judgement.

10 13) a. Plaintiff and defendants, for themselves, their successors, and assigns, their
11 predecessors, heirs and executors, their past and present officers, directors, agents, employees
12 and attorneys, and each of them, shall hereby forever release and discharge the other parties,
13 including the County of Santa Cruz, their successors, and assigns, their predecessors, heirs and
14 executors, their past and present officers, directors, agents, employees and attorneys, and each
15 of them, from any and all causes of action, damages, claims, demands and costs of whatsoever
16 kind or nature in law or equity which any party has had, or now has against any other, arising
17 directly or indirectly out of or in any way connected with the property transferred herein or the
18 operation of the property transferred herein.

19 b. Each party hereto shall indemnify and hold harmless all other parties hereto
20 against any loss, cost, claim, damage or liability arising out of or in any way related to the
21 property transferred herein or the operation of the property transferred herein brought by any
22 other party hereto or by any third party. This indemnification and defense obligation shall
23 include, but is not limited to, indemnifying and holding harmless CSA 54 and the County of
24 Santa Cruz from and against any claims, cost, damages or liability (1) brought by Ted Pierce Jr.
25 in connection with the property transferred herein, and (2) brought by any creditor of defendants
26 arising out of the operation, at any time prior to May 1995, of the property transferred herein.

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28 //

WESTER SWEET
President
Mt Charlie Waterworks, Inc.

Date

WESTER SWEET

Date

MARGARET PIERCE

Date

COUNTY OF SANTA CRUZ on behalf of
of COUNTY SERVICE AREA 54

JUDGEMENT ON STIPULATION

Plaintiff County of Santa Cruz acting for and on behalf of County Service Area 54, and Mountain Charlie Waterworks, Inc. (hereinafter MCWW), Wester Sweet and Margaret Pierce, and each of them (hereafter referred to as "defendants"), acting through their respective attorneys of record, having stipulated that judgement may be entered in this case, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED **AND** DECREED AS FOLLOWS:

1) Defendants shall transfer to Plaintiff free and clear of all liens and encumbrances, excepting the existing receivership proceeding entitled **County of Santa Cruz, et al. v. Mountain Charlie Waterworks, Inc., et al** Santa Cruz Superior Court Case Number CV 130326, title to the MCWW water distribution system as described and itemized in that Bill of Sale, attached and incorporated herein by this reference as Exhibit A, including, but not limited to, all storage and pressure tanks; valves; mains and pipelines; pumps; wells; water meters; hydrants; services; buildings; electric power poles, meters, and controls; account receivables; water sale and transmission agreements; Mt. Charlie Bank Accounts and cash held by Receiver Christopher Ashworth; Department of Water Resources Loan Agreements; Mountain Mutual Water Works membership; water notes; access roads; and water system records created by or in the possession of the court appointed receivers. The property to be transferred shall also

1 include those water rights owned by MCWW to take water from Miller Creek and Mt. Charlie
2 Creek, identified as water rights held under Department of Water Resources Control Board,
3 Division of Water Rights, License # 10861 and 11026, and application numbers 24570 and
4 28114.

5 2) Defendants, shall convey to Plaintiff all easements and other interests owned for
6 the water distribution system facilities, whether held under a grant or easement deed, by
7 prescriptive easement or otherwise. Defendants shall convey to Plaintiff title to all described,
8 non prescriptive easements by means of the grant deeds, attached and incorporated as a group
9 herein by this reference as Exhibit B, along with an appropriate resolution by MCWW
10 authorizing the transfer of these easements and other interests.

11 3) Defendants shall convey to Plaintiff title to all non specifically described, non
12 prescriptive easements and all prescriptive easements by means of the quitclaim deeds, attached
13 and incorporated as a group herein by this reference as Exhibit C, along with an appropriate
14 resolution by MCWW authorizing the transfer of these easements and other interests.

15 4) The property to be conveyed shall not include the fee interest to that 5-acre parcel
16 located on Old Japanese Road and identified as APN: 093-26 1-48. Plaintiff shall authorize, free
17 of CSA 54 imposed connection fees, a water connection to this parcel notwithstanding the
18 existing County of Santa Cruz, Health Officer moratorium on new water connections, dated 1987,
19 at such time as a building permit for this parcel is sought from the Santa Cruz County Planning
20 Department; provided however, that the County of Santa Cruz, Health Officer, retains the right
21 to impose new water connection moratoria within the County Service Area 54 service area in the
22 event that water quality or supply conditions develop within the service area such as to threaten
23 the ability to supply adequate and clean water to the water users. Defendants shall convey to
24 Plaintiff an non-exclusive easement for the water distribution improvements located on the 5-acre
25 parcel identified as APN: 093-261-48, by means of a grant deed which is attached hereto and
26 incorporated herein as Exhibit D, along with the appropriate resolution by MCWW authorizing
27 the grant of this easement. The water distribution improvements include a storage tank site with
28 pad, water valves and mains, pumps, electric poles and controls, and water diversion facilities

COUNTY OF SANTA CRUZ
REQUEST FOR TRANSFER OR REVISION
OF BUDGET APPROPRIATIONS AND/OR FUNDS

0067

Department: PUBLIC WORKS

Date: 11/09/99

TO: Board of Supervisors / County Administrative Officer / District Board

I hereby request your approval of the following transfer of budget appropriations and/or funds in the fiscal year ending June 30, 19

AUDITORS USE ONLY			
DOCUMENT #	AMOUNT	L/N	T/C HASH
JE 6, , , ,	II 1,4918.00:00	06, , ,	1,29

BATCH #	
DATE	Keyed By:

	T/C	INDEX	SUBJECT	USER CODE	AMOUNT	ACCOUNT DESCRIPTION *
T R A N S F E R	0,2,1	6,2,5,2,2,6	6,6,1,0	, , , , ,	1,85,0,0:0,0	Structures & Improve
	II	6,2,5,2,2,6	6,6,1,0	, , , , ,	,,20,0,0:0,0	Structures & Improve
	II	6,2,5,2,2,6	6,6,1,0	, , , , ,	,,44,0,0:0,0	Structures & Improve
	I, ,	I, , , , ,	, , , , ,	, , , , ,	I, , I, , I	
	0,2,2	6,2,5,2,2,6	4,8,7,5	, , , , ,	1,85,0,0:0,0	Interest
	, ,	6,2,5,2,2,6	4,8,1,0	, , , , ,	,,20,0,0:0,0	Principal
	,,4,4,6,2,5,2,2,6	3,5,9,0	, , , , I	PI		W

Explanation: To Transfer funds from work authorization, 54708, 54077 and 52702.
To pay for acquisition of Mt. Charlie Water Works (54704)

Name CAROL D KELLY

DIRECTOR
Title OF ADMIN SERVICES

Auditor-Controller's Action: I hereby certify that unencumbered balance(s) is/are available in the appropriations/funds and in the amounts indicated above.

Auditor-Controller, by Carol D Kelly, Deputy Date 11/10/99

County Administrative Officer's Action: Recommended to Board || Approved || Not Recommended or Approved

County Administrative Officer [Signature] Date 11/9/99

State of California } As the Clerk of the Board of Supervisors of the County of Santa Cruz, I do hereby certify that the foregoing request for
County of Santa Cruz } ss. transfer was approved by said Board of Supervisors as recommended by the County Administrative Officer by an order
duly entered in the minutes of said Board on

_____, 19____ By _____, Deputy Clerk

(A-C) *Desc : _____ # _____ - Budget Transfer

Distribution: BRD. NAME AGENDA DATE ITEM NO.
White-Board of Supervisors Green-County Administrative Officer Goldenrod-Departmental Control Copy
Yellow-Auditor-Controller Pink-Originating Department

A-C Review		

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