

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UP 345

In the Matter of

CLINE BUTTE WATER, LLC,

Application for the Sale, Transfer, or Merger  
of a Water Utility to SouthWest Water  
Company.

ORDER

DISPOSITION: APPLICATION APPROVED

**I. INTRODUCTION**

Oregon Resorts, LLC (Resorts) filed this application for approval of its sale of the assets of Cline Butte Water, LLC (Cline Butte) to SouthWest Water Company (SouthWest). Cline Butte provides water service to about 1600 customers located at the Eagle Crest Resort near Redmond, Oregon, and is a subsidiary of Cline Butte Utilities, which is owned by Oregon Resorts.<sup>1</sup>

Following testimony filed by Oregon Resorts and SouthWest, the parties met in settlement conferences and were able to reach a settlement on all issues. The parties subsequently filed their stipulation, together with supporting testimony and exhibits. The stipulation is attached as Appendix A.<sup>2</sup>

**II. BACKGROUND**

Oregon Resorts owns and manages resort areas and assets in Oregon. Among these are hotels, sports centers, golf courses, and residential land within the Eagle Crest Resort and Brasada Ranch. Oregon Resorts also owns regulated and non-regulated utility entities in Oregon that serve resort properties affiliated with Oregon Resorts.

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<sup>1</sup> Oregon Resorts also owns Cline Butte Environmental, LLC, which provides wastewater services at Eagle Crest. Earlier in this proceeding, The Ridge at Eagle Crest Owners Association (RECOA) filed a petition to intervene in this proceeding. SouthWest and Oregon Resorts filed motions seeking to prevent or limit RECOA's participation, but those motions were denied. Subsequently, RECOA withdrew its intervention.

<sup>2</sup> As requested by the parties, the application, the stipulation, the testimony in support of the stipulation, as well as the earlier testimony filed by Oregon Resorts and SouthWest is all received into evidence.

Oregon Resorts seeks to sell assets to Cline Butte to divest itself of operations and assets that fall outside of its core business area. Oregon Resorts views the sale to SouthWest as an opportunity to divest itself of all utility interests through a single transaction, while ensuring that its non-utility assets continue to receive safe, reliable water service from a professional water company.

SouthWest currently serves over half a million residential and business customers in five states: Alabama, California, Oklahoma, South Carolina, and Texas. SouthWest has been in the water and wastewater businesses since the early 1990s. SouthWest has annual revenues of \$143.6 million and its systems have a net book value in excess of \$367 million.

SouthWest is owned by an open-ended, perpetual life investment fund with a long-term hold investment strategy. That investment strategy emphasizes mature entities and low volatility. SouthWest has a BBB rating with Standard and Poor's rating agency with positive outlook and has access to capital to finance its current operations and future capital expenditures.

Under the proposed transaction, Suburban Water Systems (Suburban), a business unit of SouthWest located in California, will provide general management to Cline Butte. SouthWest believes that Suburban's management will complement the experience of Cline Butte's local employees and ensure that customers are served safe, reliable, and high-quality water service.

### III. STIPULATION

The stipulating parties—Staff, Oregon Resorts, and SouthWest—agree that the sale of the utility property will not harm customers and recommend Commission approval of the application as soon as practicable. For purposes of the stipulation the acquired company is designated as New Cline Butte Water (NCBW).

In their testimony and the stipulation, the parties address each of these primary considerations: (1) fitness of the buyer; (2) financial arrangements, and (3) operational plans.

Regarding the fitness of the buyer, the parties state that SouthWest has a long history of effectively owning and operating water systems and is advantageously equipped to acquire NCBW from an operations standpoint. Suburban has a strong executive leadership team with years of experience operating regulated water utilities and impressive levels of industry expertise and experience, including certifications in relevant fields such as engineering, water treatment, and water distribution.

Regarding the financial arrangements relating to the purchase, the parties note that the stipulation provides that the new entity—NCBW—will not file a general rate case prior to twenty-three months of the closing of the acquisition, and will not seek to increase any of its rates, charges, or fees prior to its first rate case filing. The parties also state that SouthWest's commitment that it will not file a general rate case prior to twenty-three months from closing ensures also that costs incurred by Oregon Resorts will not be used as the basis for rates.

The parties also note that SouthWest has agreed that NCBW also will not seek rate recovery related to any potential acquisition adjustment due to the purchase. The parties explain that SouthWest's commitment to not request an acquisition adjustment related to the purchase means that customers will not be held accountable for the difference between the purchase price and original cost, less accumulated depreciation, accumulated amortization, and contributions in aid of construction.

The stipulation also contains provisions to address Cline Butte's status as an affiliated company within the SouthWest corporate framework. NCBW agrees to file affiliated interest applications within 90 days of closing and commits that it will not seek rate recovery for more than \$125,300 annually for affiliated interest costs charged by SouthWest and Suburban in its first general rate case. In addition, the stipulation further provides structural and procedural safeguards to insure that NCBW customers do not bear costs directly and solely associated with operations outside the State of Oregon.

Further, SouthWest has agreed to maintain NCBW as a separate legal entity with adequate capital to meet its service obligations and with no higher cost of capital than would have prevailed without the acquisition ("ring-fencing."). The ring-fencing provisions ensure that NCBW is viewed as a stand-alone utility, rather than as a division of SouthWest. Thus, the cost of capital will not increase on account of the sale, and NCBW will not guarantee the debt of SouthWest or its affiliates.

With regard to operational plans, the parties explain that the stipulation contains terms that assure that the service to customers will not be impaired by the change in ownership. They note that SouthWest has agreed to preserve the customers' access to local employees. In addition, SouthWest will provide access to on-line bill payment capability as well as access to Suburban's call center within one year of closing.

#### IV. DISCUSSION

##### A. Legal Standard

Oregon Resorts filed its application for approval of its sale on Cline Butte to SouthWest under ORS 757.480, which provides that a public utility may not "sell, lease, assign or otherwise dispose of" its property without first obtaining our approval, and in accordance with OAR 860-036-2120, which implements the statute.

Neither the statute nor our rules specify the legal standard to be applied in evaluating a proposed transaction. We have concluded, however, that a "no harm" standard can be inferred by an examination of the varying statutory provisions governing the transfer and sale of utility property. In Order No. 01-778, we examined ORS 757.511 which governs energy utility mergers, and concluded that its text and context requires a finding that the proposed transaction will result in "net benefits" to customers.<sup>3</sup> We further noted, however, that the

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<sup>3</sup> *In the Matter of a Legal Standard for Approval of Mergers*, Docket No. UM 1011, Order No. 01-778 (Sept 4, 2001).

remainder of the statutory scheme—including ORS 757.480 governing the sale of water utility property—expresses no standard and “has been read to require a no harm standard, or contains a ‘not contrary to the public interest’ standard.”<sup>4</sup> Accordingly, we apply a “no harm” standard in approving water utility transfer applications.<sup>5</sup>

## **B. Resolution**

We find that the stipulating parties have established that SouthWest’s acquisition of NCBW will not harm customers and conclude that the stipulation should be adopted.

As noted above, Oregon Resorts views the sale to SouthWest as an opportunity to divest itself of all utility interests through a single transaction, while ensuring that its non-utility assets continue to receive safe, reliable water service from a professional water company. Thus, because the seller will remain engaged with the buyer, it is in Oregon Resorts’ interest to be sure that SouthWest is well qualified, financially and operationally, to take over the utility. With its substantial experience and resources, we find that SouthWest is a qualified buyer.

We also find the stipulation contains terms to help ensure that the financial considerations are structured to prevent harm to customers. These provisions include the protection from any change in rates on account of the transaction as well as the “ring-fencing” that assures that NCBW’s customers are financially indifferent to the utility’s status as an affiliated company within the SouthWest corporate structure. The terms of the stipulation assure transparency in future rate setting proceedings.

Finally, we note that the stipulation promises operational benefits to the customers, including on-line bill payment capability as well as access to Suburban’s call center. From the customer perspective, that improved customer service is the only difference they are likely to observe from the change in ownership.

The stipulation should be adopted and the application should be approved.

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<sup>4</sup> *Id.* at 10.

<sup>5</sup> *See, e.g.,* Order Nos. 16-033 (Jan 26, 2016) and 16-329 (Aug 30, 2016).


**V. ORDER**

IT IS ORDERED that the stipulation between the Staff of the Oregon Public Utility Commission; Oregon Resorts, LLC; and SouthWest Water Company, addressing the sale of the assets of Cline Butte Water, LLC, is adopted.

Made, entered, and effective                     **MAY 01 2017**                    .

  
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**Lisa D. Hardie**  
Chair

  
\_\_\_\_\_  
**Steven M. Bloom**  
Commissioner

  
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**Megan W. Decker**  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UP 345

Oregon Resorts, LLC's Application for  
Approval of the Sale of Cline Butte Water,  
LLC, to SouthWest Water Company.

## STIPULATION

## I. Parties

The parties in UP 345, Staff of the Oregon Public Utility Commission (the "Commission") ("Staff"), SouthWest Water Company ("SouthWest"), and Oregon Resorts, LLC ("Oregon Resorts" or "Seller") (together the "Stipulating Parties") agree to the following terms regarding Oregon Resort's application ("Application") to sell all assets of Cline Butte Water ("CBW") to SouthWest. For purposes of this Stipulation the acquired company will be designated New Cline Butte Water ("NCBW").

## II. Background

On October 21, 2016, Oregon Resorts submitted to the Commission its Application to sell all assets of CBW to SouthWest. CBW is a subsidiary of Cline Butte Utilities, LLC ("CBU"), which is owned by Oregon Resorts. Cline Butte Environmental, LLC ("CBE"), which provides wastewater services, is also owned by CBU. The day-to-day operations of NCBW will be managed locally by current employees. General management and customer service support will be provided to Cline Butte by Suburban Water Systems ("Suburban"), a subsidiary of SouthWest. Suburban's main office is located in southern California, making it geographically situated to be best able to accommodate the general management and customer service functions for NCBW.

1 Per Oregon Revised Statute ("ORS") 757.061, CBW is regulated by the Commission for  
2 rates and service, but CBE is unregulated. The Application was filed pursuant to ORS  
3 757.480 and in accordance with Oregon Administrative Rules ("OAR") 860-036-0710. The  
4 Application requests approval of the Asset Purchase Agreement agreed to and signed on  
5 September 27, 2016, by Oregon Resorts and SouthWest. The case was docketed as a  
6 contested case after the Ridge at Eagle Crest Owners Association ("RECOA") intervened.  
7 RECOA has withdrawn its intervention, and supports Commission approval of the  
8 Application. SouthWest and Oregon Resorts submitted pre-filed written testimony on March  
9 3, 2017, and the Stipulating Parties held in-person and teleconference settlement conferences.  
10 Staff conducted discovery prior and subsequent to the filing of testimony.

### 11 III. Stipulation

#### 12 1.

13 The Stipulating Parties agree that the Commission should approve the Application. The  
14 Commission approves the sale of water utilities under ORS 757.480(5) applying a no harm  
15 standard. The Application, in conjunction with the terms in this Stipulation, meets the  
16 requirements of ORS 757.480 and OAR 860-036-2120 and this Application will result in no  
17 harm to CBW's customers.

#### 18 2.

19 The Stipulating Parties agree that the Commission should enter into evidence, without  
20 requiring any party to lay foundation for its admission, the Application, this Stipulation,  
21 SouthWest's written testimony marked as SouthWest/100; Oregon Resorts' written  
22 testimony marked as Oregon Resorts/100; and the joint written testimony and exhibits  
23 marked as Stipulating Parties/100-102.

1 3.

2 The Stipulating Parties agree that time is of the essence in this transaction, and the  
3 Stipulating Parties will make good faith efforts to seek approval from the Commission as  
4 soon as practicable.

5 4.

6 The Stipulating Parties agree that the Commission should approve the Application as  
7 soon as practicable.

8 5.

9 SouthWest agrees that NCBW will not file a general rate case prior to twenty-three  
10 months of the closing of the acquisition. NCBW will not file to increase any of its rates,  
11 charges, or fees prior to its first general rate case filing.

12 6.

13 The Commission reserves the right to review for reasonableness all financial aspects of  
14 the purchase being approved in UP 345 in any rate proceeding or earnings review.

15 7.

16 SouthWest agrees NCBW will not seek rate recovery related to any potential acquisition  
17 adjustment due to its purchase of CBW. The Stipulating Parties understand the term  
18 "acquisition adjustment" to be defined by NARUC's published 1996 Uniform System of  
19 Accounts for Class A Water Utilities, account 114 - Utility Plant Acquisition Adjustments  
20 and that any amounts booked to account 114 - Utility Plant Acquisition Adjustment will be  
21 amortized and excluded from cost of service. The Stipulating Parties agree that SouthWest  
22 will use the accounting instructions prescribed in Section 21 Utility Plant - Purchased to  
23 record the acquisition.



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8.

Oregon Resorts agree that, prior to Closing, Oregon Resorts will provide the following:

- a. CBW's ending balance sheet as of 12/31/16;
- b. CBW's annual income statement for 2016 and its related depreciation and CIAC schedules; and
- c. CBW's Schedules L and M from its 2016 Federal Income Tax Return.

9.

The Stipulating Parties agree that OPUC approval of this application does not imply that the CBW assets not reviewed in a prior CBW rate proceeding are deemed prudent by approval of this transaction, however Commission approval does imply that any such assets will be subject to evaluation in the next general rate case or other similar proceeding.

10.

SouthWest agrees NCBW will file affiliated interest applications under ORS 757.495 and OAR 860-036-2210 within 90 days of closing for any transactions involving affiliates.

11.

SouthWest agrees NCBW will not seek rate recovery for more than \$125,300 annually for affiliated interest costs charged by SouthWest and Suburban to NCBW in the first general rate case or similar proceeding filed by NCBW.

12.

SouthWest agrees to provide the Commission with access to all books and records of SouthWest and Suburban that pertain to affiliated transactions that pertain to NCBW between SouthWest and NCBW, Suburban and NCBW, or Suburban and SouthWest.

13.

1 SouthWest agrees that NCBW will comply with OARs 860-036-2200, 2210 and 2230  
2 when recording affiliate transactions on its books and records.

3 14.

4 SouthWest will maintain the following structural and procedural safeguards to ensure that  
5 NCBW customers do not bear costs directly and solely associated with operations outside of  
6 the state of Oregon:

- 7 a. SouthWest will maintain an accounting structure that will distinguish the  
8 operations in Oregon utilizing a distinct company code and utility-specific cost  
9 centers.
- 10 b. Costs that are incurred and recorded to the Oregon cost centers will be reviewed  
11 for inclusion by employees at the appropriate level.
- 12 c. Accountants will perform detailed review procedures during the monthly closing  
13 process for the appropriateness of costs recorded in the Oregon operations.
- 14 d. SouthWest corporate functions cost will be tracked in corporate cost centers and  
15 reviewed and approved to ensure that amounts do not represent a direct cost of  
16 any operation.

17 15.

18 SouthWest agrees that NCBW and its parent shall be separate legal entities.

19 16,

20 SouthWest agrees that NCBW shall maintain separate financial statements showing its  
21 assets and liabilities on a stand-alone basis and may be included in the consolidated financial  
22 statements of its parent for financial reporting purposes.

23 17.

1 SouthWest agrees that NCBW books and records shall be available in accordance with  
2 the applicable uniform system of accounts or, as appropriate, generally accepted accounting  
3 principles.

4 18.

5 NCBW shall not issue, secure or guarantee the debt of any other SW Merger Acquisition  
6 Corp Company.

7 19.

8 SouthWest agrees that NCBW shall not make any short-term loans to any other SW  
9 Merger Acquisition Corp companies, except on terms that are substantially similar to those  
10 that would be available on an arms-length basis with unrelated third parties.

11 20.

12 SouthWest agrees that NCBW shall maintain its assets and liabilities, and books and  
13 records relating thereto, in such a manner that ascertaining or identifying its individual assets  
14 and liabilities as separate and distinct from those of its parent will not entail significant costs  
15 or difficulty.

16 21.

17 SouthWest shall ensure that NCBW has adequate capital to fulfill all of its public utility  
18 service obligations.

19 22.

20 SouthWest commits NCBW will not advocate for a higher cost of capital than would  
21 have prevailed for CBW absent SouthWest ownership.

22 23.

23 SouthWest agrees that NCBW will exclude transaction costs from rates.

1 24.

2 SouthWest agrees that NCBW customers will enjoy the same access to local employees  
3 currently enjoyed by CBW customers.

4 25.

5 SouthWest agrees that NCBW customers will have access to on-line bill payment  
6 capabilities within one year after closing.

7 26.

8 SouthWest agrees that NCBW customers will have access to Suburban's call center  
9 within one year after closing.

10 27.

11 The Stipulating Parties have negotiated this agreement in good faith and recommend that  
12 the Commission adopt this Stipulation in its entirety. The Stipulating Parties have negotiated  
13 this Stipulation as an integrated document. Accordingly, if the Commission rejects all or any  
14 material portion of this Stipulation, each Stipulating Party reserves the right, upon written  
15 notice to the Commission and all Stipulating Parties to this proceeding within five (5) days of  
16 the date of the Commission's order, to withdraw from the Stipulation and request an  
17 opportunity for the presentation of additional evidence and argument.

18 28.

19 This Stipulation will be offered into the record in this proceeding as evidence. The  
20 Stipulating Parties agree to support this Stipulation throughout this proceeding and in any  
21 appeal, and provide witnesses to support this Stipulation (if specifically required by the  
22 Commission), and recommend that the Commission issue an order adopting the agreements  
23 within. By entering into this Stipulation, no Stipulating Party shall be deemed to have

1 approved, admitted, or consented to the facts, principles, methods, or theories employed by  
2 any other Stipulating Party in arriving at the terms of this Stipulation.

3 29.

4 This Stipulation may be signed in any number of counterparts, each of which will be an  
5 original for all purposes, but all of which taken together will constitute one and the same  
6 agreement.

7 30.

8 The Stipulating Parties understand that this Stipulation is not binding on the Commission  
9 in ruling on this Application and does not foreclose the Commission from addressing other  
10 issues.

11  
12 Dated this 12 day of April 2017.

13  
14 Kaylee Klen  
15 FOR SOMMER MOSER  
16 STAFF

17 Michael D. J...  
18 SOUTHWEST WATER

19 [Signature]

20  
21 OREGON RESORTS