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C O M M I T T E E M E E T I N G

before

ASSEMBLY COUNTY GOVERNMENT AND REGIONAL AUTHORITIES COMMITTEE

ASSEMBLY BILL NO. 4365

(Concerns the ownership of water supply utilities, and would specifically prohibit water supply utilities from being corporately related to companies which are in the real estate business)

October 26, 1989
Freeholder Meeting Room
Court Plaza South
Hackensack, New Jersey

MEMBER OF COMMITTEE PRESENT:

Assemblyman John E. Rooney, Chairman

ALSO PRESENT:

Assemblywoman Elizabeth Randall, District 39
Assemblyman William "Pat" Schuber, District 38

Cindy A. Lombardi
Office of Legislative Services
Aide, Assembly County Government and
Regional Authorities Committee

* * * * *

Meeting Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

New Jersey State Library

JOHN E. ROONEY
Chairman
J. Edward Kline
Vice Chairman

THOMAS J. DUCH
GEORGE HUDAK



**New Jersey State Legislature
ASSEMBLY COUNTY GOVERNMENT
AND
REGIONAL AUTHORITIES COMMITTEE**

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
(609) 292-1596

October 19, 1989

NOTICE OF COMMITTEE MEETING WITH PUBLIC DISCUSSION

Cindy A. Lombardi, Aide to the Assembly County
Government and Regional Authorities Committee
(609) 292-1596

The Assembly County Government and Regional Authorities Committee will conduct a committee meeting on Thursday, October 26, 1989 from 3:00 p.m. to 7:00 p.m. in the Freeholder Meeting Room, Room 301E, Court Plaza South, 21 Main Street, Hackensack, New Jersey.

The subject of the committee meeting will be Assembly Bill No. 4365, which concerns the ownership of water supply utilities. The committee will accept public discussion on this bill, which would specifically prohibit water supply utilities from being corporately related to companies which are in the real estate business.

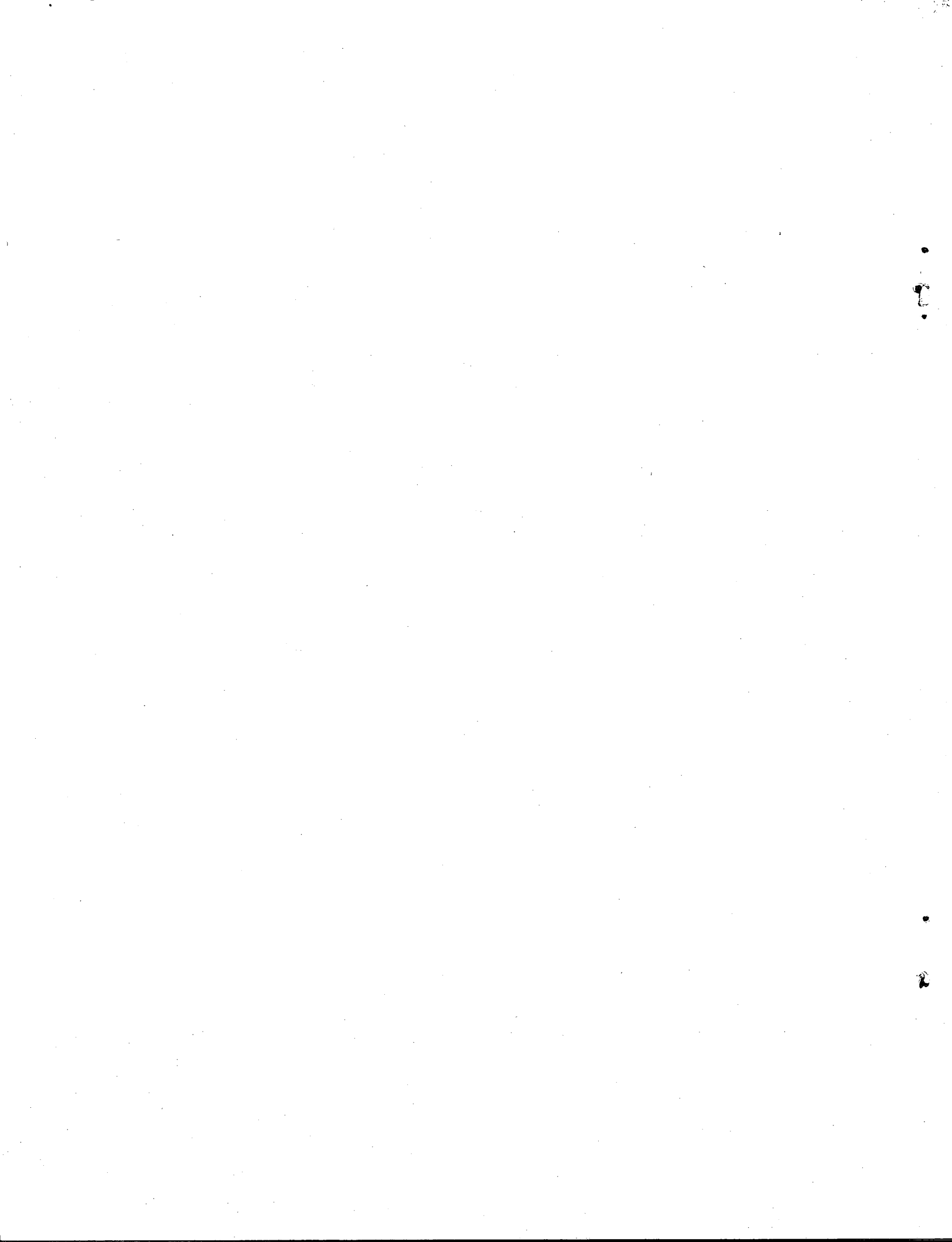
Persons wishing to testify should contact Cindy Lombardi, Committee Aide, at (609) 292-1596. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

DIRECTIONS:

From the Garden State Parkway (North)

Exit the Parkway at interchange 160 (Passaic Street). Make a right onto Passaic Street and proceed approximately 4 or 5 miles through Maywood and Rochelle Park, and into Hackensack. Make a right onto Summit Avenue. Make a left at the third light (Essex Street). Essex Street intersects with Main Street (a "T" intersection). You will see the court house straight ahead at this intersection. To the left of the court house is the Court Plaza South office building. Parking should be available under the building.

Issued 10/19/89



2 a water utility operating in this State shall not merge another
corporation or corporations into itself, nor merge itself, or itself
4 and any subsidiary corporation into another corporation if the
other or subsidiary corporation is, or is part of, or associated
with, a real estate enterprise.

6 b. A non-complying water utility shall take appropriate action
to divest itself of any association with a real estate enterprise.

8 c. The Board of Public Utilities shall, pursuant to the
"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.), take appropriate action to revoke the license, certificate of
public convenience and necessity, permit, franchise, or other
12 approval necessary to operate in this State of a non-complying
water utility, petition pursuant to section 4 of this act for the
14 appointment of a conservator for the non-complying water
utility, and transfer that license, certificate of public
16 convenience and necessity, permit, franchise, or other approval
to the conservator appointed.

18 d. The board may delay for up to one year the revocation and
petition if it determines that a non-complying water utility is, or
20 will be, taking appropriate action to comply with this section
within a reasonable amount of time.

22 4. a. A conservator may be appointed pursuant to section 5 of
this act to assume the operation, maintenance, or improvement,
24 or any combination thereof, of a non-complying water utility if
the board makes a written finding of deficiency that: (1) the
26 public utility is associated with another corporation in violation
of subsection a. of section 3 of this act; and (2) the public utility
28 has not made a good faith attempt to comply with the provisions
of subsection b. of section 3 of this act.

30 b. Upon making a written finding pursuant to section 4 of this
act, the board shall transmit a written notification of deficiency
32 to the non-complying water utility. This notification of
deficiency shall set forth in detail a proposed schedule for the
34 compliance with the provisions of this act.

36 c. Within 30 days of receipt of a notification of deficiency
pursuant to subsection b. of this section, the non-complying
water utility shall prepare and submit to the board, for review
38 and approval, a compliance schedule and financial plan for the
severing of any association in violation of section 3 of this act

ASSEMBLY, No. 4365

STATE OF NEW JERSEY

INTRODUCED MARCH 2, 1989

By Assemblymen ROONEY, ROMA, Schuber, Mazur,
Duch, Baer, Gill, and Kern

1 AN ACT concerning the ownership of water supply public utilities
2 and supplementing chapter 19 of Title 48 of the Revised
3 Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. The Legislature finds and declares that in an effort to
8 foster efficiency in the delivery of public utilities, government
9 has granted certain protections to corporations which engage in
10 this delivery; that recent developments in the public utility
11 industry, notably the establishment of large holding companies
12 owning public utilities as well as non-utility businesses, have the
13 potential to change the manner in which the industry operates
14 and which have not been subject to careful public examination;
15 that the potential for conflicts of interest arising from these new
16 corporate relationships is too great to permit these relationships
17 to continue; and that it is necessary to require that public
18 utilities disassociate themselves from certain non-utility
19 companies while the Board of Public Utilities prepares an analysis
20 of, and makes recommendations concerning, the regulation of
21 these relationships.

22 2. As used in this act:

23 "Non-complying water utility" means a water utility which is a
24 subsidiary of a real estate enterprise, has been merged with a
25 subsidiary real estate enterprise, or is part of, or associated with,
26 a holding company which also owns a real estate enterprise.

27 "Real estate enterprise" means any individual, sole
28 proprietorship, partnership, business, association, or corporation,
29 the principal function of which is the buying, selling, or
30 development of real estate.

31 "Water utility" means a public utility which owns or operates a
32 public water system as defined in section 3 of P.L.1977, c.224
(C.58:12A-3).

33 3. a. Notwithstanding the provisions of chapter 10 of Title
34 14A of the New Jersey Statutes or any other law to the contrary,

2 with another corporation. Within 15 days of receipt of a
3 compliance schedule and plan submitted pursuant to this
4 subsection, the board shall either approve the schedule and plan
5 or notify the non-complying water utility of the changes
6 necessary for approval. If the board notifies a non-complying
7 water utility that changes in the schedule and plan are necessary
8 to receive the board's approval, the non-complying water utility
9 shall have 15 days in which to resubmit the amended compliance
10 schedule and financial plan to the board.

11 d. If a non-complying water utility does not submit a
12 compliance schedule and plan to the board pursuant to the
13 provisions of subsection c. of this section, or does not make any
14 required amendments thereto when required by the board
15 pursuant to the provisions of subsection c. of this section, or fails
16 to execute the compliance schedule and financial plan, the board
17 shall adopt the compliance schedule and financial plan on behalf
18 of the non-complying water utility, and shall petition the
19 Superior Court for appointment of a conservator to implement
20 the compliance schedule and financial plan, and to otherwise
21 assume the operation, maintenance, or improvement, or any
22 combination thereof, of the public water system pursuant to the
23 provisions of this act.

24 5. a. The provisions of any other law, rule or regulation to the
25 contrary notwithstanding, one year after the effective date of
26 this act and upon petition by the board a conservator may be
27 appointed by the Superior Court to assume the operation,
28 maintenance, or improvement, or any combination thereof, of any
29 non-complying water utility.

30 b. The Superior Court may proceed in a conservatorship action
31 in a summary manner or otherwise and shall have the power to
32 appoint and remove one or more conservators and to enjoin the
33 non-complying water utility from exercising any of its privileges,
34 from collecting or receiving any charges or rates, and from
35 paying out, selling, assigning or transferring any of its property to
36 other than a conservator, except as the court may otherwise
37 order.

38 c. Any conservator appointed by the court shall be qualified by
39 experience and training to assume the operation, maintenance, or
40 improvement, or any combination thereof, of the non-complying

water utility for which the appointment is made.

2 d. Every conservator shall, before assuming the duties of
conservator, execute and file a bond for the faithful performance
4 of the duties thereof, payable to the board, and with any surety,
for an amount and in a form the appointing court shall prescribe.

6 e. When more than one conservator is appointed pursuant to
this section, the provisions of this act applicable to one
8 conservator shall be applicable to all; the debts and property of
the non-complying water utility may be collected and received by
10 any of them; and the powers and rights conferred upon them shall
be exercised by a majority of them.

12 f. A conservator appointed by the court pursuant to this act
shall have the authority, with the approval of the board, to
14 increase the rates or charges imposed for the service provided by
the non-complying water utility in an amount necessary to pay
16 for all costs associated with the appointment and implementation
of a conservatorship pursuant to this act, including, but not
18 necessarily limited to, the cost of implementing the compliance
schedule approved by the board, and the cost of the services
20 provided by the conservator.

g. Any person employed by the non-complying water utility for
22 which a conservator has been appointed pursuant to this act who
is serving under tenure or permanent civil service status shall
24 retain all tenure rights and may continue in the employment of
the non-complying water utility; except that all employees of the
26 non-complying water utility shall perform only those duties
prescribed or delegated by the conservator.

28 6. A conservatorship established pursuant to this act shall
continue for a period of not less than one year. At any time
30 thereafter the water utility may petition the appointing court to
terminate the conservatorship and return control of the public
32 water system to the water utility. The court shall terminate the
conservatorship, and return control of the public water system to
34 a water utility only after the board holds a public hearing on the
petition at a location within the area served by the public water
36 system, and makes a written finding that the water utility has
provided all assurances deemed necessary by the board that the
38 deficiency is corrected and the water utility is in compliance
with the provisions of this act.

2 7. a. The board shall undertake a study concerning the types
3 of business relationships and associations that public utilities are
4 authorized to, or not prohibited from, entering with other
5 corporations which have the potential to create conflicts of
6 interest among related corporations.

7 b. Within two years of the effective date of this act, the board
8 shall submit to the Governor and the Legislature a report
9 detailing the findings of the study and recommend legislative and
10 administrative actions necessary to further curb potential
11 conflicts of interest consistent with the study.

12 8. The board may, pursuant to the provisions of the
13 "Administrative Procedure Act," adopt rules and regulations
14 necessary to carry out the provisions of this act.

15 9. This act shall take effect immediately.

16 STATEMENT

17
18 This bill would prohibit public utilities operating public water
19 systems from being associated with other corporations which are
20 principally engaged in the buying, selling, or development of real
21 estate. The bill would also require that public utilities operating
22 public water systems and associated with companies that are
23 principally engaged in the buying, selling, or development of real
24 estate, sever their relationship with those companies. The
25 underlying assumption is that there are too many opportunities
26 for potential conflicts of interest among the related companies,
27 especially with respect to the selling of land by the public utility
28 to the real estate company.

29 The bill would also authorize the Board of Public Utilities to
30 take action against a water utility which did not take reasonable
31 action to divest itself from any association with a real estate
32 company. This action could include the petitioning of the
33 Superior Court to appoint a conservator of the public utility to
34 carry out the divestiture, and to operate the public utility until
35 such time as the public utility conforms with the provisions of the
36 bill.

37 Finally, the bill directs the Board of Public Utilities to
38 undertake a study of the different corporate associations which

may lead to similar conflicts of interest, and recommend
2 appropriate legislative and administrative actions to prevent
them.

4

6 PUBLIC UTILITIES

Corporations

8

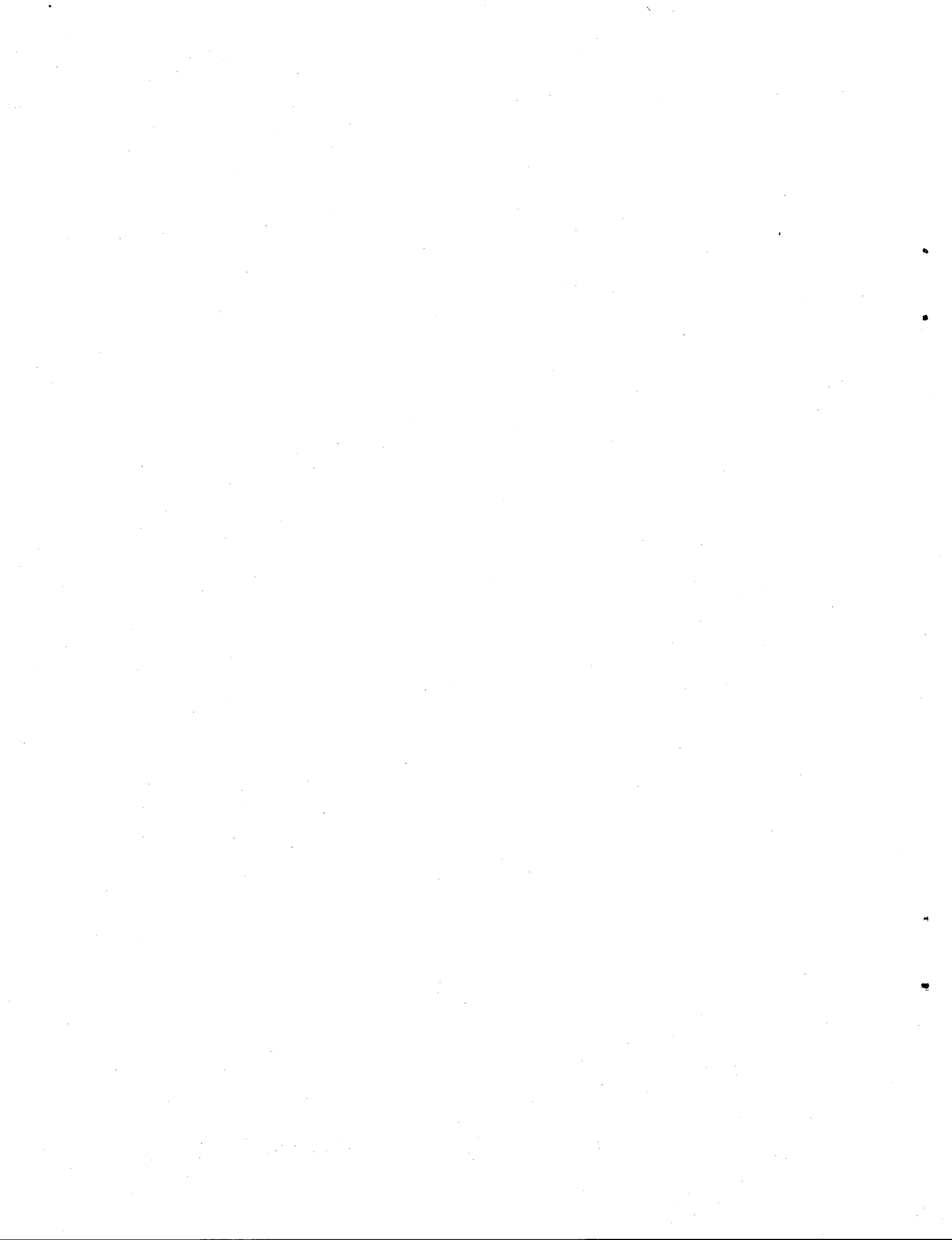
10 Prohibits water supply public utilities from being corporately
related to companies in real estate business.

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mjz: 1-25



ASSEMBLYMAN JOHN E. ROONEY (Chairman): I think we will get started. Unfortunately, we don't have our full Committee yet. We have had word from Lisa Randall. She is on her way. Also, we have heard from Assemblyman Roma, who is a co-sponsor of this bill. I believe he is attending a wake this afternoon. He will try to get over as soon as he can.

Having said that, I spoke to the Democrat staff last week -- their aide down in Trenton -- and Tom Duch and George Hudak. I was hoping to have them here. I hope they may still appear. They have been on some of the other hearings and have been very helpful. So perhaps they may show up.

But we want to get started. We are almost an hour late. We appreciate everyone coming. I will just say that this is the Assembly County Government and Regional Authorities Committee. This is a hearing to take additional testimony on A-4365, which is a bill sponsored by myself and Assemblyman Roma. It deals with prohibiting public utilities from operating public water systems and being associated with other corporations which are principally engaged in the buying, selling, or development of real estate. This legislation has had two previous hearings, with much discussion. We have sent notifications to certain other officials who are involved in the transfer of lands, particularly the Hackensack water transfer to Rivervale Realty, which is the focus of the legislation, although they are not alone in what could occur as a result of these transfers.

We have visited the BPU records on this, the Public Advocate's records, DEP records, and we are trying to ascertain the reasons behind these transfers of watershed lands in 1983 and 1984.

Having said that, I would like to introduce, to my right, Assemblyman Schuber, who is with us. I will throw the floor open to Assemblyman Schuber at this time.

ASSEMBLYMAN SCHUBER: John, I have nothing to add to your comments. Obviously, our concern has been from the beginning, the issue of the preservation of a decreasing amount of open space. Obviously in this particular area, the watershed areas of Bergen County become of utmost importance to us. This is a topic that we have looked at as a result of investigating that. We discussed the whole area and philosophy of whether a public utility should be in the business of the transferring of real property to other entities. I think that is really the subject matter of the discussion tonight, and of the continuing discussion.

I look forward to the testimony of the witnesses, which will enlighten us on this matter one way or the other.

ASSEMBLYMAN ROONEY: Thank you, Pat. As I started to say also, we sent invitations to various previous members and current members of the Board, and also employees of the Board. We have received three replies, including a verbal reply I had this morning. Commissioner Curran called on Monday -- that is former Commissioner Curran -- and said that she received our invitation last week. She said she was not available for a meeting at this time. Commissioner Barbour, I believe, is sick. Former Commissioner Hynes, I saw this morning. He said he could not attend. I also notified him that we intend to get to the bottom of the transfers.

We need that testimony. We need to find out the basis for these transfers and some of the reasons behind them, and perhaps some alternatives to overturning them, or doing something to change some of the direction of that development today.

Having said that, what I intend to do, after this hearing, if these people do not show, I will request subpoena power for these Commissioners and employees, because I believe the testimony is absolutely necessary. I have no hesitation in doing that. We have a vehicle for doing it within the

Legislature -- within either house of the Legislature -- and I will use that. I know I have the Committee's support on this. I discussed it with them prior to this date, because we were afraid that we would not get the valuable testimony that we need. So we are seeking, and will seek, subpoena power for this Committee.

One other person was former Freeholder and Executive Director of the BPU at that time, Mr. Calabrese. There seem to be memos in the files indicating that the first formal record of any requests for these transfers of land occurred at a lunch that he and one of the officers of the Hackensack Water Company had. One is a memo that we found in the files at the BPU, and we have requested additional follow-up information.

We have Lonna Hooks here today, Chief of Staff of the BPU, who will give us some additional information, because there seems to be something about executive privilege at the BPU, and some files have not been made available to us. So I would like, again, to request any information -- any and all information -- pertaining to these transfers. That is one of the paths we are pursuing.

I believe it is critical to the development, and to the environment of Bergen County, that we look very closely at what happened in the original 700-acre transfer, and also the 300 acres that are now under question in the so-called Evergreen plan.

At this point, I believe Assemblywoman Randall has arrived. She will be out here shortly.

At this point, I would like to ask Lonna Hooks to come up to testify.

L O N N A H O O K S: I would like to say, good afternoon, Chairman Rooney. Good afternoon, Assemblyman Schuber. I am Lonna Hooks. I have been Chief of Staff for just about three days here. This is one of my first official duties, thank you. To my right here is Paul Giancaterino, who is one of our

engineers at the Board. He has worked closely on the particular Hackensack transfers for about the last three years.

P A U L G I A N C A T E R I N O: Eight.

MS. HOOKS: Eight years. Paul has been at the Board much longer than I have. Commissioner Barbour and Commissioner Whitman had previous commitments, although they both tried to rearrange them to be here. Up until almost lunchtime, they were trying to do that. Paul and I are here to try to provide you with as much information as we can. As I indicated earlier, I am aware of the situation with the documents that some of your aides reviewed. We had directed staff to provide you with them. I am just learning today that they hadn't. I would be happy to sit down with any of your aides, Assemblyman Rooney, to try to clear up that situation.

ASSEMBLYMAN ROONEY: One of the questions that has come up, is the original transfers that occurred. We were looking at some of the December 17 transfers, but there is another transfer that goes back further than that. From what I have heard -- and I can't find it in any documentation, and we spoke about this prior to the meeting -- the reason that the BPU allowed this transfer -- actually allowed the formation of United Water Resources, was that the Hackensack Water Company would then transfer this to Rivervale Realty. The land would then be developed in an environmentally sound manner.

I have heard that through testimony at these hearings and through the hearings on the moratorium -- the hearings that Assemblyman Schuber held in Oradell. Nowhere do I find any of that in a written record of what occurred. But what I do find, is that back on August 27, 1963 -- and this is an order of the Board of Public Utilities approving a sale-- It talks about lands in Emerson, and possibly lands dealing with the golf course. One of the statements in here is: "The land is to be conveyed subject to a restriction that is to be used only as part of a golf club, and for no other purpose whatsoever."

Also: "Its use for golf club purposes is to be carried on in a manner that will not cause contamination or pollution of the Oradell Reservoir." Part of the land to be conveyed is owned by the Pascack Land Company, a wholly owned subsidiary of the petitioner.

This was in a previous transfer in 1963, and it does not now follow with the land transfers that occurred in 1983 and 1984. We would like to know when the Board of Public Utilities lost this foresight of protecting our watershed properties. We have many questions as to how this was done; why it was done. We also have some other questions as to how it can be undone.

MS. HOOKS: Let me just begin: I don't think there was ever a point in time when the Board lost sight, if you will, of trying to ensure adequate watershed at this particular reservoir. All of the orders -- from the most recent 1988 order back to the 1963 order -- take into consideration studies and whatnot to ensure that the ratepayers are going to be protected and that there is going to be a safe and adequate service rendered from this facility.

The most recent transfers, as a matter of fact, were based upon independent studies of one of the most foremost consultants, Havens and Emerson. I did not find, in my review of all the orders, as you have done, the follow-up that you see, but I did see the continued consideration of the protection of the watershed.

Paul, do you want to--

MR. GIANCATERINO: I was not at the Board in 1963, and I am not aware of the conditions of that sale or where those properties were located. So I really couldn't comment on why that was included at that time.

ASSEMBLYMAN ROONEY: This is part of the golf course property, as far as I can tell. You know, I am not an engineer, but it looks like it is part of the 300 acres in

Emerson that are now in question under the Evergreen formula. We see an effort by the Board to be conscious of the environment. We don't see that in any of the 1983-1984 transfers. That is why we have tried to get the Commissioners and the Executive Director at that time. We also sent notice to the Public Advocate's Office. So these are the things that we are looking at.

MS. HOOKS: Chairman Rooney, I think what you're doing is absolutely on point by trying to get other oral clarifications on this. But, if you will-- I think that if you look at the '88, the '83, and the '84 orders, you will see that the Board did request that lengthy studies be done. What are not enunciated in the order are some of the specific scientific rationales and some of the other specific studies and component parts of those studies. That is the link that I think is missing here. The studies themselves were cited, and not those component parts that were very long and very involved with environmental impact studies.

So I don't think there was ever a time when the Board lost sight of the concerns you are talking about. I think you are very correct in trying to seek background clarification as to what those individuals who were previously at the Board relied on within those very detailed environmental impact studies.

ASSEMBLYMAN ROONEY: The problem I see, is that the only studies that were done were studies that were commissioned by the Water Company of Havens and Emerson. I don't see anything from DEP that they ever participated in any of these studies whatsoever.

So, really, where was the advocate for the public? We know that we had an advocate for the Water Company, because the water testing firm that Havens and Emerson own is now a part of the Hackensack Water Company.

MS. HOOKS: The Board did consult the DEP all throughout these transfers. If you will note in the latest order, the Board consulted the DEP on the water quality protection standards. That was one of the reasons that the Board deferred to the new law, because there was not significant clarification given at that time. I think Paul was there during a lot of those consultations. I have seen certain letters and whatnot that requested the clarification and were confirmations of certain consultations.

ASSEMBLYMAN ROONEY: Paul, do you want to respond as far as what DEP gave as input, because as far as I know, all it said was that there were no standards on watershed protection. The only standard was "whatever comes out of the tap."

MR. GIANCATERINO: I think in 1983-1984, on the 700 acres, you are correct. I believe in the golf course -- the 1988 issue -- they did have somewhat more to say. There were recommendations from them.

ASSEMBLYMAN ROONEY: Basically what you are saying is, DEP had no input on this transfer in 1983-1984, except to say, "Whatever comes out of the tap and tests clean, is clean." If it comes out with a lot of chemicals, as long as they are not deemed harmful chemicals nobody is going to complain.

MR. GIANCATERINO: I believe there is a letter in the record. I don't have the letter in front of me.

ASSEMBLYMAN ROONEY: I don't either. That's my problem, because a lot of the information that we requested is still not available.

MS. HOOKS: We would like to help you to rectify that situation. Paul and I would be glad to sit down with you.

ASSEMBLYMAN ROONEY: All right. I would like to see the total story. We are trying to get to the bottom of this situation.

The other thing we have to ask a question on is the transfers -- and I would prefer to defer to my legal colleague

on the right -- as to the intent of the BPU as far as the subdivisions and the site plans, because there is some question about the challenge to the transfers of the properties.

Pat, can you elucidate a little bit better than I can on that, because, again, this is from a legal standpoint?

ASSEMBLYMAN SCHUBER: Which issue?

ASSEMBLYMAN ROONEY: On this one with the two years versus the six years.

MR. GIANCATERINO: Excuse me, Mr. Chairman?

ASSEMBLYMAN ROONEY: Yes?

MR. GIANCATERINO: Can you give me the docket number of the 1963 sale? Do you have it there?

ASSEMBLYMAN ROONEY: Docket No. 638-509.

MR. GIANCATERINO: Thank you.

ASSEMBLYMAN ROONEY: The section that I am questioning-- Maybe I will be able to--

ASSEMBLYMAN SCHUBER: On the report here, you're talking about where the approvals are subject to adjustment.

ASSEMBLYMAN ROONEY: Yeah, that's the adjustments, right.

ASSEMBLYMAN SCHUBER: As I understand it, the Board's order on the property is subject to -- states that it is subject to the approval-- "Shall be also subject to any adjustments necessary to reflect the final survey lines. The description is drawn after completion of the survey by which to delineate the precise bounds of the excess properties identified by Havens and Emerson" -- on page 3.

ASSEMBLYMAN ROONEY: The next to the last paragraph.

ASSEMBLYMAN SCHUBER: "These adjustments shall be filed with the Board as the survey results are completed for review as to conformity with the Havens and Emerson, Inc. report." Do you have that part there?

MS. HOOKS: Yes.

ASSEMBLYMAN SCHUBER: Okay. It is our understanding that those approvals -- that those adjustments and delineations have not been met yet. Is that correct?

MS. HOOKS: Some of them have, and some of them haven't. In the Board's very latest order -- the 12/14/88 order -- that was the reason that some of those lands were held in the moratorium -- the lands where there was no absolute final delineation.

ASSEMBLYMAN SCHUBER: Delineation?

MS. HOOKS: Yes. Those are the lands that are being held pending determination by the Watershed Review Board.

ASSEMBLYMAN SCHUBER: I assume we are talking about the golf course land. Is that correct? (no response) The original 700 acres, though, that were subject to--

MS. HOOKS: Oh, I'm sorry. With regard to the original 700 acres, there was a broad buffer zone that was outlined and was just subject to some minor meets and bounds clarifications that staff and the company had outlined and were just, I guess, firming up in the technical -- what would you say? -- survey, firming up the final survey boundaries for the precise meets and bounds charting of the deeds. Paul was very involved in that particular exercise.

ASSEMBLYMAN SCHUBER: Mr. Chairman, if I might-- Are those adjustments-- Have those delineations been made for the 700 acres?

MR. GIANCATERINO: No, they have not been made for all 700 acres.

ASSEMBLYMAN SCHUBER: Do you know how much of it has not been delineated?

MR. GIANCATERINO: Not really. I think the majority have been. I have not made a specific calculation, and, if you are talking in terms of acreage, if you are talking in terms of the number of parcels, I know we haven't gotten them all. I do know that.

ASSEMBLYMAN SCHUBER: Mr. Chairman, if I might-- When were these delineations made?

MR. GIANCATERINO: The process, Mr. Assemblyman, is, we had maps that were done by Havens and Emerson as part of their report.

ASSEMBLYMAN SCHUBER: Right.

MR. GIANCATERINO: Those maps were basically taken off of municipal tax maps. Municipal tax maps are not always 100% accurate--

ASSEMBLYMAN SCHUBER: Correct.

MR. GIANCATERINO: --in terms of acreage, in terms of boundaries. That was part of what this order contemplated; that a surveyor would go into the field and would put down in the field exactly where these boundaries were, and the line that Havens and Emerson had put on the tax map, where that was going to fall in the field. And he was going to prepare what is commonly called the "meets and bounds" description.

ASSEMBLYMAN SCHUBER: Correct.

MR. GIANCATERINO: That was the survey process, as far as I understand it.

ASSEMBLYMAN SCHUBER: What we are asking is, how much of that was done?

MR. GIANCATERINO: They have submitted quite a few maps. I have not taken a tally of how many maps I have, as opposed to how many I am supposed to get.

ASSEMBLYMAN SCHUBER: I appreciate that, but if you were to hazard a guess as to how much, would you say 60% or 75%?

MR. GIANCATERINO: I would think 75%.

ASSEMBLYMAN SCHUBER: And when did you get these?

MR. GIANCATERINO: I would say most of them I have gotten in the past two years.

ASSEMBLYMAN SCHUBER: In the past two years?

MR. GIANCATERINO: I am just going from memory, but I think it has been over the past two years that I began receiving these maps. I would have to check my records.

ASSEMBLYMAN SCHUBER: I appreciate that; I understand that. I think this order is from 1984. Is that correct? (no response) The order delineating this is 1984. I was just trying to figure out, if most of these have been coming in in the last two years-- That is almost, what, a two- to three-year lag since the order where nothing happened?

MS. HOOKS: Assemblyman, are you trying to determine, or seek some kind of clarification as to why there was such a long wait before the final meets and bounds description?

ASSEMBLYMAN SCHUBER: Well, among other things, yes.

MS. HOOKS: Okay.

ASSEMBLYMAN ROONEY: May I just interject one thing? Let's put the whole thing right up-front. Right up-front is, the public has two years to challenge any action. There is a condition of six years also, in the law. Two years to challenge any such action. If nothing occurs within that two years to tell us what kind of development, how is the public to know what to challenge? That is what we are looking at. If we wait three to four years, they have already gone beyond the period that the public has to challenge this particular transfer. That is where we are going from here, and that is why I want to know the dates specifically.

MS. HOOKS: Oh.

ASSEMBLYMAN ROONEY: I believe that anything that is done should be two years from the date they file their plans on the application.

MR. GIANCATERINO: Mr. Chairman, I can't give you the date without my files here, but I can say that you are talking about land surveys, which entailed hiring surveyors. With the number of properties that were involved, this is partially the reason for the time lag.

ASSEMBLYMAN ROONEY: But we have to go back to the original reason why the Hackensack Water Company was allowed to do this. It was supposedly on the basis of developing the land

in an environmentally sound manner. I have heard this so many times. I want to see it in writing where this was done, and I want to now compare that with what is actually happening. It is not an environmentally sound development. That is what we are looking at. We are looking at the worst possible development that we could possibly imagine in this area.

MS. HOOKS: Well, as I said at the onset, we would be happy to try and give you-- We would be happy to provide you with the specific dates of all the information you are requesting. We would have to do that with you. The file is voluminous. Okay? That is the reason. There was no way to bring those types of things with us today.

ASSEMBLYMAN ROONEY: Well, Mr. Gusto has been down here several times. He said that initially, the file drawers were empty, but they suddenly started appearing and he still does not have the information.

MS. HOOKS: Staff is allowed to-- Mr. Chairman, the reason why the numbers, or the volumes of the files at the Board may appear to be a different size at different times, is because staff is working on those files ongoing. Those are the certified records that staff goes back to to deal with issues that are arising in a particular case.

ASSEMBLYMAN ROONEY: Since we don't have the witnesses we will need, we are obviously going to have another hearing on this. I intend to use that subpoena power, so we will get those people here. At that time, may I have your assurance that we will have all memos, internal and external, available to this Committee for our use in these hearings?

MS. HOOKS: I cannot give you a blanket assurance about certain internal memos. I think what you are referring to are some of the situations that came up with some of the attorney/client privilege memoranda.

ASSEMBLYMAN ROONEY: All right. There is an executive rule by the Board of Public Utilities based on McClain v. College Hospital, S99-346. Under this rule, the Board only allows the correspondence from outside sources to be reviewed. However, how can this Assembly Committee know what went on, if we don't have this information? I don't feel that we are an outside agency. We are a part of State government, as is the BPU. So I believe there should be an exception to any of this McClain v. College Hospital ruling.

MS. HOOKS: Chairman Rooney, we would be happy to sit down-- As I said to you at the beginning, we would be happy to sit down with you and your aides and Mr. Duch, to work with you to try to provide you with as much information as we can to help you to facilitate this process. Okay?

ASSEMBLYMAN ROONEY: All right. Some of the other issues that the BPU has to answer for are the prices of the transferred land. We have found, in our previous testimony, that in the \$10.4 million that I believe the 700 acres were sold for, the ratepayer was supposed to get back \$5.2 million. Unfortunately, I don't have another witness, who is a member of the Real Estate Commission of the State of New Jersey. He was supposed to testify that you cannot collect a commission unless you are a licensed Realtor or real estate agent in this State. Yet we found at our last hearing, that out of that \$10 million, \$5 million should have gone to the ratepayer, but only \$2 million went to the ratepayer. Three million dollars was set aside as commissions and taxes.

We have gone through the audits. Again, Mr. Gusto is a CPA and has done all of the auditing of these records. No taxes have been paid and no commissions have been paid, and how could they be collected if you are not a licensed real estate broker in this State? So, these are some things that we are concerned with. I know that reasonable costs were supposed to be set aside, but I need some answers from the BPU as to why

the public only got 20%, when they were supposed to get 50% by this order. That is one of the other questions I have serious, serious concerns over.

I could go on with other questions as to the values of the land. We are finding that the average value of the \$10.4 million transfers was \$15,000 an acre. In 1977, these people acquired land under threat of condemnation at \$38,000 an acre, then transferred to themselves at \$12,000 per acre. This we find totally unacceptable.

The PUC in New York State is investigating the Hackensack Water Company's affiliated company, Spring Valley Water, for similar types of financial manipulation. There was a plot of land that they sold to themselves for \$3.2 million. Three months later, they sold it for \$1.8 million. Now, I don't believe that this Assembly Committee should be doing this. I believe the BPU or the Attorney General of the State of New Jersey should be doing it, the same as the PUC--

MS. HOOKS: Chairman Rooney, we are aware of that, and we have all of those records. We are following that.

ASSEMBLYMAN ROONEY: Well, I requested the Attorney General to come and monitor and, unless someone raises a hand to say that they are from the Attorney General's Office, I don't see them either. I intend to present them with one hell of a lot of transcript and testimony. If it comes down to it, I will join a class action suit.

MS. HOOKS: The Board's Attorney General-- They are very closely monitoring this entire situation with us. That brings me-- I don't want to cry our financial and staffing woes, but I am certain you are well aware.

ASSEMBLYMAN ROONEY: I have a lot less than you do, as far as financial ability on staff, and Mr. Gusto can tell you that from experience.

MR. GUSTO (Staff Aide to Assemblyman Rooney): One correction, Mr. Chairman. Mr. Gusto is not a CPA. He is a Registered Public Accountant.

ASSEMBLYMAN ROONEY: Oh, a RPA, excuse me. The concerns we have are many. They deal with all of the aspects of these transfers. It probably wouldn't have been so bad if Hackensack hadn't -- or if Rivervale Realty hadn't acted as probably the greediest developer we have ever seen. If they had done something in an environmentally sound manner, this may not be occurring. If they had shown us that they were concerned with the environment, this Committee wouldn't be necessary. But what they have shown us is that they are not trustworthy.

So, we're asking that the BPU revisit this as we are, and try to help with the Committee reports and try to do the right thing to possibly retrieve some of this land. According to-- I will give credit where credit is due. Mr. Contillo is sitting in the audience. He brought up an issue that-- Where is that? (Chairman looks through his papers) Under 4055D-55, Selling Before Approval, Penalty Suits by Municipalities, "Any action can be brought within two years of the date of the recording of the instrument or the transfer, sale, or conveyance of land, or within six years if unrecorded."

We find that there are faulty recordings of these deeds. We believe that could be an unrecorded deed, and there may be time, under the six-year provision, from the 1984 dates of these transfers. I intend to pursue this, along with Mr. Contillo, if he would like to join us. I have no problems working in a bipartisan fashion, in order to do what is right for Bergen County. I would like to see some of the agencies that had some hand in this-- I don't want to go any further on that. I think I'll leave it there.

Pat, do you have any questions?

ASSEMBLYMAN SCHUBER: No further questions. I am just concerned that we get all the proper documentation from the Board that pertains to this, including the internal memos, which I really think should be-- There is no reason they shouldn't be part of the public record.

ASSEMBLYMAN ROONEY: I find it very difficult to believe that the BPU and the Public Advocate could go along with an assessment on this land at \$15,000 an acre, when anyone in his right mind, especially someone who is within five miles of the property, in one case-- This land was worth probably in excess of \$150,000 per acre. Those are the real numbers. If they were preserving a good portion of it, I would say, "Fine." Maybe that might have been a good deal. But they are not preserving anything. They are taking the maximum density that they can possibly get anywhere they have gone. We are going to follow-up with them and try to prevent some of this.

I hope we will be working together. I personally would like to see this ended once and for all, but it seems to be an ongoing soap opera. We keep finding more and more evidence and more and more soap opera scenarios. We will discuss that off the record.

MS. HOOKS: All right.

ASSEMBLYMAN ROONEY: Thank you for your help.

MS. HOOKS: Thank you. Thank you, Assemblywoman Randall.

ASSEMBLYMAN ROONEY: We will now have Janet Schwartz, from the League of Women Voters of Northern Valley. How are you? Long time no see.

JANET SCHWARTZ: Yes. It's nice to see you.

My name is Janet Schwartz. I am here as a representative of the League of Women Voters of Northern Valley, which includes the following communities: Old Tappan, Closter, Norwood, Cresskill, Harrington Park, Alpine, Demarest, Dumont, Northvale, Rockleigh, and Haworth.

We support Assembly Bill No. 4365, because we believe there is a conflict of interest when a company is both in the business of supplying water and selling real estate for development. We believe that the primary function of a water purveyor should be to maintain water quality. There is

abundant scientific evidence that undeveloped land plays a significant role in filtering out pollutants carried by storm runoff before they get into the water supply.

According to the Havens and Emerson Report, which was commissioned by the Hackensack Water Company, the EPA recommends that in order to control pollutants from storm runoff, the maximum land area should be kept in a natural, undisturbed state. This is particularly important in our area, where our watershed and service area are virtually the same, and approximately 94% of our drinking water comes from watershed runoff.

In addition, the New Jersey DEP has stated -- also in the Havens and Emerson Report -- that water purveyors should attempt to obtain as much land as possible to protect their water supply. The Havens and Emerson Report stated that the area of protective land presently owned by the Hackensack Water Company is generally less than average compared to 40 existing reservoirs. And, in fact, the report recommends that the company consider purchasing approximately 800 acres of land adjacent to the reservoirs now in private hands.

It is the position of the Northern Valley League of Women Voters that maintaining the maximum amount of land possible to protect our water supply is not compatible with the aims of a real estate division, whose primary goal is the selling of land.

Thank you.

ASSEMBLYMAN ROONEY: Thank you. I'm glad we agree.

Is there anyone else wishing to testify at this time?
(affirmative response) Bergen SWAN, Greg Gage.

G R E G O R Y G A G E: Yes, I'll say a few things just for the record. I have been before this Committee before. I am Gregory Gage, Bergen SWAN.

I testified at length before, but there are a few things that I would like to bring to your attention here. One

thing is, the Havens and Emerson Report, which was mentioned before-- It should be clarified in the testimony that it was the first time they had ever done a report of this type, as far as evaluating the watershed buffer lands. That was not their specialty, and this was the first time that they had done this. Also, in that report, it talks about a lot of different things, among them how it is necessary to have further reports on this. This should not be the sole document, and it was. I brought that out before.

It also mentions that you are supposed to have a good working relationship with the towns and communities in which these lands are located. Recently, in the last couple of months, there has been a situation in River Vale which concerns me and shows, I believe, Rivervale Realty's true colors. In the town of River Vale, they have essentially gone before the Planning Board and the Zoning Board for permission to change the zoning on some land they own. They want to have it upgraded to high density housing.

In this case, they have presented their evidence to the River Vale Planning Board, and as part of their testimony it was requested of them that the town be able to hire independent consultants to check the reports that Rivervale Realty was bringing forth. As it turned out, I was present, as you were, John, at a meeting in which the lawyers closed presenting their case, and essentially asked for a vote. There was, you know, a little back and forth among the Planning Board trying to figure out, "Well, when do we get our chance to have our environmental experts-- You know, you promised this. You promised archaeological studies. When do we get our chance to do this?" Rivervale Realty said, "We would like you to vote," and, you know, there was talk back and forth.

It ended up essentially with the town of River Vale asking that Rivervale Realty leave; that the hearing was closed, because they were being bullied into a vote that they

did not want to take. You're not talking about just any land here. You're talking about very environmentally sensitive land, and that is what is important here.

If you were supposed to have a good working relationship with the towns -- and that is important as far as developing these lands -- bullying the towns into making decisions is not the way to go.

The following month, they followed up that beautiful evening of work on their part with a lawsuit against the town of River Vale, essentially saying that, "No, since you are not going to give us the zoning change, as we have requested, we will sue you and upgrade the zoning so that we can build what we want to build on these lands." So here you have a town which is trying, to the best of its abilities, to maintain the land, or at least have proper reports done and environmental experts consulted. They are trying the best they can, and it is not easy for those boards. I have been before a lot of them. And here is a case where they were trying to-- And here comes Rivervale Realty riding in and slapping a lawsuit on them because they were not doing that.

One of the things it says in that Havens and Emerson Report is that, in practically all cases, the present zoning should be maintained. And if you have an environmentally sensitive-- Rivervale Realty -- why are they doing this, forcing zoning changes on environmentally sensitive land? Worst of all, where was the Hackensack Water Company, which you would think if they had, you know-- If they were essentially protecting the watershed lands and had allowed the transfer to an environmental company pursuant to the Havens and Emerson Report, why were they not there in that same room, saying, "No, you shouldn't change the zoning here; the report said you shouldn't"? Where were they then?

That is one of the reasons why I think your legislation is very important, because of the conflict of

interest between these two companies. Time after time I think where the Hackensack Water Company should be going out and being an advocate for the water, they are not there. In the case in Emerson, when Rivervale Realty had a zoning change from a conservation zone to commercial and high density housing, which even included using a 250-foot buffer when they were only allowed to transfer from 500 feet out-- They were essentially taking land that belonged to the Water Company still, you know. In that case, again you did not have the Water Company in complaining, saying, "Don't change the zoning," saying, "You shouldn't build on our land," or anything of the sort.

So, you know, there are some very important questions right there that need to be addressed, and I think your legislation does a lot toward that.

As far as the savings to the ratepayers and the whole chronology, all these things happened at the same time. We were all worried about rates in the early '80s, and somehow the environment took a second seat to that. If the main reason for disposing of excess lands was to cut the rate base because the public should not be burdened with excess rates, well, the whole-- From everything I found out, the money that we saved when they transferred the lands was two cents on every \$50 of our bill. So, we royally got ripped off on that. If we lost all of those lands for that price and for those reasons, there is something wrong.

When I have been down at the Board of Public Utilities looking at some of the files that we have requested and have not yet received, one of the documents that I came across was from the Public Advocate's Office, which, you know, was stating their position on-- This was a letter from 1987, I believe, that addressed more toward the golf course and their transfer, but it was bringing up the same issue that surrounds the transfers of the 700 acres in 1983-1984. Basically -- and again this deals with the conflict of interest here -- we have,

through the Board of Public Utilities, allowed them to set up this conflict. There is nothing at this time that stops the Hackensack Water Company, on an ongoing basis, from saying: "That land over there we need for water purposes. We can move to condemn it," or the threat of condemnation acquired this land. Hold onto it for a few years, pay the taxes, the maintenance costs, the costs of the land. Have that passed on to the ratepayers over, let's say, a 20-year period, and then 20 years from now determine that it is no longer needed and pass it to Rivervale Realty.

As it stands right now, there is nothing to stop that from happening again, again, and again. It has happened once to us already. It was a big mistake and, you know, we have to do what is in the best public interest here; that is, getting that land back.

The Havens and Emerson Report-- Every report I have seen, and the environmental experts I talk to, say, "Building on this land is going to cause further water degradation." We cannot allow that here. We've got to do everything we can to get these lands back to the rightful owners -- the people who paid for them over the years.

Thank you.

ASSEMBLYMAN ROONEY: Thank you, Greg. Are there any questions for Greg? (no response)

Assemblywoman Randall, would you like to say something to the group, because we are getting down to-- No one showed up.

ASSEMBLYWOMAN RANDALL: Yes, so I understand. Despite your letters of request as Chairman of this Committee, the people who were invited chose not to attend. I am a little bit surprised, because the individuals-- Normally I know them, and they would ordinarily come to something like this. And yet I find it surprising that they would have as much notice as they did and choose not to appear, which is disturbing.

I think the only thing that leaves you with, Mr. Chairman, is, where do you go from here? Obviously, there are some statements which I guess you want to put on the record.

ASSEMBLYMAN ROONEY: We have already discussed subpoenas.

ASSEMBLYWOMAN RANDALL: You have? All right. I clearly think it is an appropriate-- I don't vote lightly for such resolutions to invoke subpoena power, but in a case like this I think it is evident that that is justified. Thank you.

ASSEMBLYMAN ROONEY: Thank you. There is one other item that I direct to the Board of Public Utilities: What we are looking for is all of the information, internal and external, which we have already gone over; but specifically also, this environmentally sound development of the property, where the references occur in your paperwork.

There is also another item that is part of the original draft of Order 8312-1096. It was almost like a P.S. "Commissioner Hynes, joining with his colleagues in signing the Order above, adds this concurring opinion to emphasize the Board's authority and responsibility to monitor the transactions of United Water Resources, Inc. with respect to the land which was the subject of this Order.

"While agreeing that the terms of the Order are reasonable" -- which I disagree with -- "and the amount credited to ratepayers by the Board fully resolves all claims to gain arising from the disposition of the property" -- which I also disagree with -- "he believes that periodic evaluations--" This I agree with: "He believes that periodic evaluations of the terms of transactions involving the land covered by this Order should be conducted by the Board's staff."

Now, that was right on the order. I don't see anything that shows that this occurred. So if we can have what you have monitored and what you found -- and I would specifically direct you to these appraisals and the properties -- at the next hearing--

MS. HOOKS: We will definitely try to locate those documents. But let me just say, this case is one of the most active cases at the Board. It is one of the things that Mr. Giancaterino works on on a weekly basis.

ASSEMBLYMAN ROONEY: Also, Mr. Gage's testimony regarding the Havens and Emerson Report-- They admit in their own report that they have never done this before. This we found threaded throughout the testimony at the moratorium hearings and also this hearing. How we can base anything on a report of a company which never had any experience in this, is beyond my wildest fantasy.

What has occurred here-- I have likened it in the past to Peter Minuit and his deal with the Indians. That was just paltry compared to what this represents. This is a major ripoff of the ratepayers of Bergen County; an absolute ripoff. How it occurred under the nose of the BPU, the Public Advocate, and the DEP, just boggles the mind. It is a total breakdown in government.

MS. HOOKS: Mr. Chairman, again let me say that we intend to sit down and try to hold in-depth discussions with your staff to try and provide you with everything you need, to illustrate for you that the Board has tried to exercise all manner of diligence in this area, and to also help you with the areas you are trying to illuminate now.

ASSEMBLYMAN ROONEY: All right. We appreciate that. Also, we have testified with the Watershed Commission, right here in this room, as a matter of fact, that we do not agree with the Evergreen formula. That Evergreen formula is another ripoff of the taxpayers. The Board of Public Utilities should demand that the Hackensack Water Company turn that property over to either the State or the county, at the price that it is assessed -- that it gave in its assessment. I have asked at moratorium hearings -- and the testimony is on record-- I asked Mr. Capece from the Water Company if he felt it was a

fair appraisal. I guess you were there, you're shaking your head. (Ms. Hooks nods affirmatively)

Mr. Capece said, "Oh, yes, it was a fair appraisal." I said, "Well, then, how about having the right of first refusal for either the municipality, the county, or the State?" and he wouldn't do that. Why is it that even Mr. Capece knows that it is fair for the Hackensack Water Company to buy it at that price, but not to sell it at that price to us? That is a perfect indication of the ripoff, and the magnitude of this ripoff. I hope the BPU's eyes are open wider this time around than they were the first time, because the 300 acres we can still save. The 700 acres-- I'm hoping that we can save part of them. I hope you will read the testimony we have about what these people have done to us on these 700 acres. It boggles the mind. I think I might even write a book about, "Follow the Money," because that seems to be the trail we found here.

I'll leave it at that. Does anyone else wish to testify at this time? (no response) I think we have to leave the record open until whatever time we advertised. Is that--

MS. LOMBARDI (Committee Aide): Yes. There may well be--

M R. K E M L Y: May I make a statement?

ASSEMBLYMAN ROONEY: Yes, sir.

MR. KEMLY: Give me pure water, or give me death.

ASSEMBLYMAN ROONEY: And if you don't get pure water, you might get death.

MR. KEMLY: If they pollute my water, I'll take them with me. I'm kidding.

ASSEMBLYMAN ROONEY: I heard your testimony at the watershed hearings. May we have your name for the record?

MR. KEMLY: My name is Kemly, K-E-M-L-Y.

ASSEMBLYMAN ROONEY: Kemly, Mr. Kemly.

MR. KEMLY: The only one in Bergen County.

ASSEMBLYMAN ROONEY: Okay. Is there anyone else who wishes to testify at this time? (no response) We probably have to leave the record open.

MS. LOMBARDI: I think we should.

ASSEMBLYMAN ROONEY: What we will do is leave a notice that the meeting will be continued. What I intend to do is-- The first session we are back after the election -- whatever date it is, the first session that is posted in Trenton -- we are going to call the next hearing, and we will have subpoenas for the people who did not attend today. We want that testimony. We want to find out why.

So, we are going to continue this hearing until that date. Any additional testimony-- We will be here for some time. If anyone comes, we will let them know that they can file written testimony at this time, or they can be heard at the next regular hearing.

Thank you for coming. I apologize for those who didn't come.

(MEETING CONCLUDED)

APPENDIX



AGENDA DATE: 11/1/84

17 DEC 84



PROPERTY OF
NEW JERSEY STATE BOARD
State of New Jersey

NOV 2 1984

185 W. State St.
Trenton, N.J.

BOARD OF PUBLIC UTILITIES

1100 RAYMOND BLVD.
NEWARK, NEW JERSEY 07102

LEGAL

IN THE MATTER OF THE PETITION OF)
THE HACKENSACK WATER COMPANY)
FOR APPROVAL OF THE TRANSFER OF)
REAL PROPERTY)

DECISION AND ORDER

DOCKET NO. 8312-1096

(SERVICE LIST ATTACHED)

BY THE BOARD:

On January 12, 1983, the Board issued its Final Decision and Order in Docket No. 815-447 wherein the Hackensack Water Company (Company, Hackensack) was directed, in part, "to submit to the Board a detailed report on the justification of all protective land" held by the Company and reflected in rate base. This directive was issued with a view toward the eventual removal from rate base of that property owned by the Company no longer used and useful for the maintenance of water quality.

At the direction of the Board, the Company contracted with Havens and Emerson, Inc., Consulting Engineers, for the conduct of an independent study of the Company's protective lands. Said study, titled "Report on Watershed Management," was filed with the Board on August, 1983, and concluded that the Company possesses 717.91 acres of land no longer needed for the protection of its watershed or the maintenance of water quality. Accordingly, in Docket No. 837-622, decided on December 8, 1983, the Board adopted the stipulation of the parties which provided, in part, that this excess acreage be removed from the Company's rate base as of October 1, 1983.

On December 8, 1983, the matter now before the Board was initiated through the filing by the Company of a petition requesting approval for the transfer of the excess land to a non-utility subsidiary of Hackensack's parent corporation, United Water Resources, Inc. This petition also requested that the Board resolve the question of the entitlement of the ratepayers to any portion of the gain potentially realizable on the fair market value of this property as of the date of its removal from rate base which shall be considered to be October 1, 1983, for purposes of this proceeding.

Having carefully reviewed the petition and the report of Havens and Emerson, Inc., and having considered the recommendations of our Staff and the independent appraiser retained by the Board, we are of the opinion, and so find, that the subject property remains unnecessary for the protection of the Company's water system. As such, we believe that the proposed transfer will avoid both the possibility of any future costs to ratepayers and the application of regulatory resources in connection with this property.

While there is no existing case law in New Jersey on the issue concerning the proper treatment, for ratemaking purposes, of appreciated value derived from the transfer of non-depreciable property no longer used or useful in providing utility service, the Board has reviewed the available and pertinent decisions rendered in other jurisdictions. We note that the various decisions of the courts and utility commissions differ as to whether it is the utility's ratepayers or shareholders who ultimately benefit from such an appreciation in value.

The authority and jurisdiction of the Board is derived from the provisions of N.J.S.A. 48:2-1, et seq. It is well settled that, by this delegation of authority, the Legislature intended this Board to have the widest range of regulatory power over public utilities including the necessary broad discretion by which to exercise that authority. Public Service Coordinated Transport v. State, 5 N.J. 196 (1950); Bergen County v. Department of Public Utilities, 117 N.J. Super 304, (App. Div., 1971). Accordingly, the Board cannot and should not be bound by any one particular methodology. Rather, the Board must be free to use its discretion and to call upon its expertise in an attempt to balance the needs of ratepayers and shareholders. See also, In re Jersey Central Power and Light Company, 85 N.J. 520 (1981); In the Matter of Hackensack Water Company, Final Decision and Order, Docket No. 815-447 (January 12, 1983).

Based upon the foregoing and the particular facts of the instant matter, it is the considered opinion of this Board that the Company's ratepayers are equitably entitled to a fair share of the gain potentially realizable on the fair market value of the subject property in return for their contribution toward the cost of maintaining this property during the period in which it was included in rate base. Toward this end, we determine a 50% sharing of the potential net gain on the fair market value of the subject property, as of the date of its removal from rate base, to be a fair and equitable sharing between the Company's ratepayers and the shareholders of its parent corporation. We believe that such a distribution will adequately compensate the ratepayers for their past contributions towards the maintenance of the property and will allow the Company its fair share commensurate with the risks borne by its shareholders, thereby satisfying the claims of said shareholders.

In order that the net gain which is to be shared equally by the ratepayers and shareholders may be calculated, the following definitions will be in effect.

The gain in value will be derived by deducting the appropriate costs from the fair market value of the property. For purposes of this Order, "costs" is defined as the sum of the original book value of all the property approved for transfer, plus expense allowances, which shall be limited to:

1. Real estate taxes accruing on the subject property from October 1, 1983, the date of its removal from rate base, until the date of this Order;
2. Reasonable professional fees incurred solely in connection with this petition, including fees of the Company and Board appointed appraisers, engineering fees (Havens and Emerson, Inc. and the reviewing engineering expert who will review the Havens and Emerson, Inc. report) and legal fees of the attorneys for the Company and for the Department of the Public Advocate. No allowances shall be made for surveyors' fees, or for any fees incurred in connection with any property approved for transfer after the date of this Order;
3. The amount payable as a Realty Transfer Tax (N.J.S.A. 48:15-5 et seq.) on a non-exempt transfer of real estate having a fair market value equal to the property approved for transfer; and
4. An amount equal to 5% of the fair market value of the subject property as an allowance for those standard fees and other expenses generally incurred in the realization of the fair market value.

The net gain, upon which the 50% sharing will be made, will then be derived by deducting the applicable tax allowance from the gain. Said tax allowance shall be the sum of the Federal Income Tax payable (at 1984 rates) and the New Jersey Corporate Business Tax payable by a domestic corporation, without further adjustment, on the taxable portion of the gain.

The fair market value of the subject property shall be established through appraisals being prepared to MAI standards by William J. Stack, II, on behalf of the Company, and Richard G. Pietrowitz, of Alexander Summer Company, who has been retained as the Board's independent appraiser in this matter. These appraisals shall be completed within 60 days of this Order. The appraisers shall notify Staff upon the completion of the appraisals which are to be simultaneously submitted to the Board.

In the event that the appraised values of the subject property as set out in the two appraisals are the same, that amount shall be conclusive as to fair market value. In the event that the appraised values are not in total agreement, and if the higher appraised value does not exceed the lower appraised value by more than 20%, the average of the two appraisal shall constitute the fair market value. Should there be a greater differential, the Board, comparing the two appraisal reports, shall determine an appropriate fair market value.

The share of the net gain calculated pursuant to the foregoing methodology and attributable to the Company's ratepayers, shall be allocated to the benefit of said ratepayers in a manner to be determined in the Company's next filed base rate proceeding. The manner of this allocation shall include carrying charges calculated at the Company's present authorized rate of return and accruing as of the date of this Order, and shall be amortized over a five year period payable in equal annual amounts. This being consistent with the Board's determination that the ratepayers are to receive a fair sharing of the potential net gain on the fair market value of the subject property.

In addition, if in any year the Company's actual operating revenues, before inclusion of the above referenced credit, fall below a level necessary to maintain capital investment in the Company, the Company may petition the Board for deferral of all or part of the credit for such year.

It is the considered opinion of this Board that the foregoing represents a reasonable means by which to ascertain the fair market value of the subject property and will provide a fair and generous benefit to the ratepayers which shall be realized within a short period of time.

We would also note that the conclusions set out hereinabove, were reached only after a thorough review of the applicability, in this matter, of the Board's regulations pertaining to bidding and advertising. N.J.A.C. 14:1-6.10. The purpose of these regulatory provisions is to ensure that a utility will receive the fair market value for any property which it may sell. As the matter now before the Board does not entail the sale of property, we are in agreement with the Board appointed appraiser that the bidding and advertising regulations are not appropriate and should be waived in this proceeding. It is the opinion of the Board that the utilization of professional appraisals represents a reasonable alternative to bidding and advertising for purposes of determining the fair market value of the subject property in this matter.


Accordingly, the Board, pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-6.10, **HEREBY APPROVES** the request of the Hackensack Water Company to transfer 717.91 acres of real property no longer used or useful for the provision of utility service, to a non-utility subsidiary of United Water Resources, Inc., subject to the terms and conditions set out hereinabove. This approval shall also be subject to any adjustment necessary to reflect the final survey lines and descriptions drawn after completion of a survey by which to delineate the precise bounds of the excess property as identified by Havens & Emerson, Inc. These adjustments shall be filed with the Board as the survey results are completed, for review as to conformity with the Havens & Emerson, Inc. report.

For informational purposes only, the Hackensack Water Company shall provide the Board full access to any books and records of the United Water Resources, Inc. or its subsidiaries which pertain to any issue or transaction affecting or relating to Hackensack Water Company and which may be deemed relevant by the Board, including all matters dealt with in this docket.

And it is FURTHER ORDERED that the shared amount credited to the ratepayers under the terms of this Order shall be in full and final resolution and settlement of all claims to gain arising from the disposition of the property approved for transfer. The terms of this Order shall be binding in all subsequent proceedings before the Board, notwithstanding the occurrence of circumstances in which the Company's parent, United Water Resources, Inc., or its non-utility subsidiary designated as transferee, realize gains or incur expenses and costs which are greater or less than those allowed under the terms of this Order. Ratemaking consideration shall be consistent with the terms of this Order.

DATED: December 17, 1984

BOARD OF PUBLIC UTILITIES
BY:


BARBARA A. CURRAN
PRESIDENT


GEORGE A. BARBOUR
COMMISSIONER


EDWARD H. HYNES
COMMISSIONER

ATTEST:


MICHAEL KESZLER
ACTING SECRETARY

Commissioner Hynes, joining with his colleagues in signing the Order above, adds this concurring opinion to emphasize the Board's authority and responsibility to monitor the transactions of United Water Resources, Inc. with respect to the land which was the subject of this Order.

While agreeing that the terms of the Order are reasonable and the amount credited to ratepayers by the Board fully resolves all claims to gain arising from the disposition of the property, he believes that periodic evaluations of the terms of transactions involving the land covered by this Order should be conducted by the Board's staff. In his opinion, such evaluations are necessary to determine whether the appraisal methodology selected by the Board in this proceeding is appropriate for future conveyances of property by utilities under the Board's jurisdiction for which waiver of the Board's advertising and bid regulations (N.J.A.C. 14:1-6.10) is sought.

DATED: December 17, 1984

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HACKENSACK WATER COMPANY

Docket No. 8312-1096

SERVICE LIST

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