

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of assets)	DOCKET NO. 910604-SU
from Springs Environmental Systems, Inc.)	
to Bonita Springs Water Systems, Inc. and)	ORDER NO. 24921
cancellation of Certificate No. 375-S in)	
Lee County.)	ISSUED: 8/16/91
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL McK. WILSON

ORDER APPROVING TRANSFER, EXEMPTING BONITA SPRINGS
 WATER SYSTEMS, INC. FROM COMMISSION REGULATION,
 AND CLOSING DOCKET

BY THE COMMISSION:

Background

On May 20, 1991, an application was filed with this Commission for the transfer of assets from Springs Environmental Systems, Inc. (Springs Environmental) to Bonita Springs Water Systems, Inc. (Bonita Springs). The application, as filed, was deficient. The additional information needed to process the application was filed on June 25, 1991. The closing of the sale to Bonita Springs is scheduled to occur on July 31, 1991.

Bonita Springs is a not-for-profit corporation established June 7, 1970. Order No. 5223, issued on September 21, 1971, found the Bonita Springs's water system to be exempt from Commission regulation, pursuant to Section 367.021(2), Florida Statutes. Bonita Springs is in the process of developing a regional wastewater treatment and disposal system. Upon completion, Bonita Springs contemplates providing service to areas served by approximately 60 small wastewater treatment plants, which will be taken off line as a result.

Application for Transfer

The application for transfer is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. The application included evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(1) (o), Florida Administrative Code.

DOCUMENT NUMBER-DATE

00320 AUG 16 1991

SC-RECORDS/REPORTING

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 2

Proof of notice of the application, as prescribed by Rule 25-30.030, Florida Administrative Code, was provided with the application. No objections to the notice have been received and the time for filing such has expired.

Bonita Springs has been in existence for over 20 years, and provides water service to approximately 13,000 residential and general service water customers in its service territory in Lee County. In 1970, Bonita Springs was franchised by the Board of County Commissioners of Lee County to provide water and wastewater service in southwest Lee County. Bonita Springs was financed by the Farmers Home Administration in the past. The current wastewater development and the acquisition of Springs Environmental is being financed by Industrial Development Revenue Bonds (Bonds).

According to the contract for sale, customer deposits will be transferred to Bonita Springs at closing. Springs Environmental has paid regulatory assessment fees for 1990. However, Springs Environmental has not paid regulatory assessment fees for the period of time from January 1, 1991 to the date of closing.

From our review of the application, we find that the transfer is in the public interest and it is hereby approved. The territory being transferred is described in Attachment A of this Order, which by reference is incorporated herein. Springs Environmental is directed to return Certificate 375-S, to this Commission. Certificate 375-S shall remain active until Springs Environmental pays the appropriate regulatory assessment fees for 1991. Upon payment of the fees, Certificate No. 375-S will be cancelled.

Exemption

As discussed previously, Bonita Springs' water system was exempted from Commission regulation by Order No. 5223, issued September 21, 1971. Bonita Springs filed an affidavit, stating that it is a not-for-profit corporation, that it provides service only to its members, and that it has a franchise with Lee County. According to Bonita Springs' By-Laws, each member of the Corporation is entitled to only one vote upon each matter submitted to a vote. Further, Bonita Springs' Articles of Incorporation indicate that service is available to non-members if there is excess capacity. Sale of excess capacity to non-members would negate the exemption. However, the actual practice of Bonita Springs is to provide service only to members and Bonita Springs has agreed to amend its By-Laws to reflect that it will provide

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 3

service only to its members. Bonita Springs is directed to file a copy of the amendment with the Commission within 30 days of its finalization.

Based on the foregoing, we find that Bonita Springs' provision of wastewater service is exempt from Commission regulation, pursuant to Section 367.022(7), Florida Statutes. Further, we find that the circumstances have not changed since Order No. 5223 was issued in September, 1971, and Bonita Springs' water system continues to be exempt from Commission regulation, pursuant to Section 367.022(7), Florida Statutes. However, Bonita Springs, or its successor in interest, is directed to inform this Commission of any change in circumstances or method of operation within 30 days of such change so that we may review the matter to determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of assets from Springs Environmental Systems, Inc., 3451 Bonita Bay Boulevard, S. W., Suite 202, Bonita Springs, Florida 33923, to Bonita Springs Water System, Inc., 11860 East Terry Street, Bonita Springs, Florida 33923, is hereby approved. It is further

ORDERED that Certificate No. 375-S shall remain active until Springs Environmental pays the appropriate regulatory assessment fees for 1991. Springs Environmental shall return Certificate No. 375-S to this Commission within 30 days of the date of this Order for cancellation upon payment of the regulatory assessment fees. It is further

ORDERED that Bonita Springs Water System, Inc. is exempt from Commission regulation of its water and wastewater systems, pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that Bonita Springs Water System, Inc., shall file a copy of the amendment to its By-Laws as discussed in the body of this Order. It is further

ORDERED that should there be any change in the circumstances or method of operation, Bonita Springs Water System, Inc., or its successor in interest, shall inform this Commission within 30 days of such change. It is further

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 4

ORDERED that Docket No. 910604-SU is hereby closed.

By ORDER of the Florida Public Service Commission, this 16th
day of AUGUST, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ORDER NO. 24921
 DOCKET NO. 910604-SU
 Page 5

ATTACHMENT A

Springs Environmental Systems, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Sections 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32 and 33, Township 47 South, Range 25 East, Lee County, Florida:

SECTION 07

Government Lot 4 and the South 1/2 of Government Lot 3, in Section 7, Township 47 South, Range 25 East,

and

N 1/2 of Government Lot 3, Section 7, Township 47 South, Range 25 East, Lee County, Florida.

and

South half of Government Lot 2, Section 7, Township 47 S, Range 25 E, Lee County, Florida, less: Begin at SE corner of U.S. Lot 2, North 210 feet, West 16 chains 66 links, South 210 feet, East 16 chains, 56 links to Point of Beginning; Begin 660 feet North of SE corner of U.S. Lot 2, West 14 chains 50 links, South 198 feet, East 14 chains 13 links, North to Point of Beginning; Begin 210 feet North 3 deg. 58 min. West and 1099.6 feet South 87 deg. 15 min. West of the SE corner of U.S. Lot 2, North 5 deg. 46 min. West 202 feet, North 78 deg. East 216 feet South 6 deg. 46 min. East 202 feet, South 87 deg. 15 min. West 216 feet to Point of Beginning; Begin 660 feet North 3 deg. 58 min. West and 957 feet South 78 deg. 15 min. West of the SE corner of U.S. Lot 2, South 87 deg. 15 min. West of the SE corner of U.S. Lot 2, South 87 deg. 15 min. West 247.5 feet, South 11 deg. 8 min. West 199.5 feet, North 87 deg. 15 min. East 247.5 feet, North 11 deg. 8 min. West 199.5 feet to Point of Beginning, Less existing right-of-way.

SECTION 08

That portion of said section lying South of the Southerly R-O-W of Coconut Road, LESS AND except; Commence at the Southeast corner of Section 8, Township 47 South, Range 25 East, Lee County, Florida; thence run N 89°-47'-54" W along the South line of said Section 8

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 6

for 1828.65 feet to the East side of Spring Creek Road; thence run N 0°-14'-49" W along the East side of Spring Creek Road, 35 feet from the centerline, for 343.52 feet to a concrete monument and the Point of Beginning; thence N 89°-49'51" E 435.65 feet to a concrete monument; thence N 0°-14'49" W 498.81 feet to a concrete monument on the South line of those lands as described in O.R. Book 428, page 341, Lee County Public Records, Lee County, Florida; thence along said South line, N 89°-59'-14" E 100.35 feet to a concrete monument; thence along the East line of those lands as described in said O.R. Book 428, page 341, N 0°-14'-49" W 465.00 feet to a concrete monument on the North line of the South half of the Southeast one-quarter (SE 1/4) of said Section 8; thence along said North line, South 89°-59'-14" West 536.00 feet to the east line of Spring Creek Road; thence along said east line, South 0°-14'-49" East 965.00 feet to the Point of Beginning.

SECTION 09

That portion of the South 1/2 of said section lying South of the Southerly R-O-W Coconut Road and West of the Westerly R-O-W of U.S. Highway 41.

SECTION 16 The North 1/2 of the Northwest 1/4 of said section.

SECTION 17

The North 1/2 of the North 1/2 of the North 1/2 of Section 17, Township 47 South, Range 25 East lying west of Spring Creek Road.

SECTION 18

The North 1/2 of the North 1/2 of the North 1/2 of Section 18, Township 47 South, Range 25 East lying east of Estero Bay.

SECTION 19

The South 1/2 of said section lying East of Estero Bay.

SECTION 20

The Southwest 1/4 of said Section, and that portion of the East 1/2 of said section lying South of Spring Creek.

SECTION 21

The East 1/2 and that portion of the Southwest 1/4 of said section lying South of Spring Creek; and the East 1/2 of the Southwest 1/4 of said section lying North of Spring Creek LESS AND EXCEPT the East 600 feet thereof and ALSO LESS the Northwest 1/4 of said section.

ORDER NO. 24921
 DOCKET NO. 910604-SU
 Page 7

All that part of Section 21, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows; Commencing at the northeast corner of said Section 21; thence along the north line of said Section 21, South 89°-16'-45" West 550.97 feet;

thence leaving said north line of Section 21 South 20°-54'-14" East 2704.06 feet;

thence South 88°-52'-14" West 375.78 feet to a point on the east line of said Section 21;

thence along said east line of Section 21, South 0°-51'39" East 52.20 feet to the POINT OF BEGINNING of the parcel herein described;

thence continuing along said east line of Section 21, South 0°-51'-39" East 1193.24 feet;

thence northwesterly 108.95 feet long the arc of a non-tangential circular curve concave to the northeast, having a radius of 350.00 feet, through a central angle of 17°-50'-09" and being subtended by a chord which bears North 27°-17'50" West 108.51 feet;

thence North 18°-22'-46" West 212.18 feet;

thence northwesterly 697.70 feet along the arc of a tangential circular curve concave to the southwest, having a radius of 650.00 feet, through a central angle of 61°-30'-00" and being subtended by a chord which bears North 49°-07'-46" West 664.68 feet;

thence North 79°-52'-46" West 138.42 feet;

thence northwesterly 128.28 feet along the arc of a tangential circular curve concave to the northeast, having a radius of 350.00 feet, through a central angle of 21°-00'-00" and being subtended by a chord which bears North 69°-22'-46" West 127.56 feet;

thence North 58°-52'-46" West 290.13 feet;

thence North 0°-07'-14" East 271.62 feet;

thence North 88°-52'-14" East 1086.29 feet;

thence South 19°-52'-46" East 55.13 feet to said east line of Section 21 and the Point of Beginning of the parcel herein described;

subject to easements and restrictions of record;

containing 14.86 acres more or less;

bearings are based on Florida State Plane Coordinate System West Zone, as the north line of the northeast 1/4 of Section 21, being North 89°-16'-45" East.

SECTION 22

All of said section lying South and East of the Seaboard Coastline Railroad.

All that part of Section 22, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows; Commencing at the northwest corner of said Section 22;

ORDER NO. 24921
 DOCKET NO. 910604-SU
 Page 8

thence along the north line of Section 21, Township 47 South, Range 25 East, South 89°-16'-45" West 550.97 feet;
 thence leaving said north line of Section 21 South 20°-54'-14" East 2704.06 feet;
 thence South 88°-52'-14" West 393.76 feet;
 thence South 19°-52'-46" East 55.13 feet to a point on the west line of said Section 22 and the POINT OF BEGINNING of the parcel herein described;

thence leaving said west line of Section 22, continuing South 19°-52'-46" East 642.20 feet;
 thence South 19°-52'-46" East 472.67 feet;
 thence South 24°-52'-14" West 335.00 feet;
 thence North 60°-52'-46" West 123.89 feet;
 thence northwesterly 150.67 feet along the arc of a tangential circular curve concave to the northeast, having a radius of 350.00 feet, through a central angle of 24°-39'-51" and being subtended by a chord which bears North 48°-32'-50" West 149.50 feet to a point on said curve and a point on the west line of said Section 22;
 thence leaving said curve along said west line of Section 22, North 0°-51'-39" West 1193.24 feet to the Point of Beginning of the parcel herein described;

subject to easements and restrictions of record;
 containing 6.07 acres more or less;
 bearings are based on Florida State Plan Coordinate System West Zone, as the north line of the northeast 1/4 of Section 21, being North 89°-16'-45" East.

SECTION 28

All of that section lying West of U.S. 41 (State Road 45).

Tract No. 5 -

From the Southeast corner of Section 28, Township 47 South, Range 25 East, run N 00°58'00" W along the east line of Section 28 for 1339.45 feet to the point of beginning. From said point of beginning run S 88°51'10" W for 1244.54 feet to the easterly right of way line of U.S. Route 41 (State Route #45) New Alignment; thence run N 00°27'03" W along the said east right of way line for 866.15 feet; thence run N 88°51'10" E for 1236.74 feet to the east line of said Section 28; thence run S 00°58'00" E along the east line of Section 28 for 866.09 feet to the point of beginning.

Tract No. 6 -

A tract or parcel of land lying and being in Section 28, Township 47 South, Range 25 East, Lee County, Florida. Said tract or parcel being more particularly described as follows: Commencing at the southeast corner of said Section 28, run N 0°58'00" W along the east line of said Section 28 for 30.00 feet to the intersection of said east line and the northerly right of way line of Terry Street

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 9

and the point of beginning. From said point of beginning continue N 0°58'00" W along the east line of said Section 28 for 1309.45 feet; thence S 88°51'10" W for 1244.54 feet to a point on the easterly right of way line of U.S. 41 (State Road 45), new alignment; thence S 0°27'03" E along said easterly right of way line for 95.14 feet to a point of curvature; thence run southeasterly along said easterly right of way line along the arc of a curve to the left of radius 11359.16 feet (chord distance - 862.84 feet, chord bearing - S 2°37'39" E) for 863.04 feet to a point of tangency; thence S 4°48'15" E along said easterly right of way line for 352.48 feet to an intersection with the northerly right of way line of said Terry Street; thence N 88°51'10" E along said northerly right of way line for 1196.80 feet to the point of beginning.

LESS AND EXCEPT the following described property:

All that part of Section 28, Township 47 South, Range 25 East, Lee County, Florida and being more particularly described as follows: commence at the Southeast corner of Section 28, thence along the East line of said Section 28, North 00°36'57" W 30.00 feet to the intersection of said East line with the North right-of-way line of Terry Street, thence along said North right-of-way line South 89°12'15" West 936.66 feet to the point of beginning of the parcel herein described; thence continue along said North right-of-way line of Terry Street South 89°12'15" W 260.41 feet to the East right-of-way line of U.S. 41 (Tamiami Trail), thence along said right-of-way line North 04°27'10" W 20.04 feet, thence leaving said right-of-way line North 89°12'15" E 261.69 feet; thence South 00°47'45" E 20.00 to the said Northerly right-of-way line of Terry Street and the point of beginning of the parcel herein described.

SECTION 29

All of said section lying East of Estero Bay.

SECTION 30

All of said section lying East of Estero Bay.

ORDER NO. 24921
DOCKET NO. 910604-SU
Page 10

SECTION 31

That portion of said section lying East of Fish Trap Bay, South of Estero Bay, and North of the Imperial River.

SECTION 32

That portion of the West 1/2 of said section lying North of the Imperial River, and the Northeast 1/4 of said section.

and

Lots 20, 21, 22, 23 and tip of land adjacent to and immediately east of Lot 23, all in the FISH BOWL portion of STANTONS SUBDIVISION-UNRECORDED, in Section 32, Township 47 South, Range 25 East, Lee County, Florida.

and

A lot or parcel of land lying and being in Section 32, Township 47 South, Range 25 East, Lee County, Florida described as follows:

Beginning at the Junction of the North line of the Imperial River and the East line of said Section 32; thence West along the North side of the Imperial River 300 feet to an iron pin at the junction of the Imperial River and Turtle Bay; thence Northeasterly 300 feet along the shoreline of Tarpon Bay to an iron pin on the East line of said Section 32; thence South 175 feet, more or less to the Point of Beginning.

SECTION 33

That portion of said section lying North of the Imperial River and West of U.S. 41 (State Road 45), LESS AND EXCEPT that portion of the East 1/2 lying South of the North 1,320 feet; and the East 1/2 of the West 1/2 lying South of the North 1,320 feet of said section.