

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for Transfer)
of Majority Organizational Control)
of Crystal River Utilities, Inc.)
in Alachua County, Florida to)
AquaSource Utility, Inc.)

DOCKET NO. 981508

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RECORDS AND
REPORTING
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NOTICE OF FILING

Applicants hereby notice the filing of the Stock Purchase Agreement between Crystal River Utilities, Inc. and AquaSource Utility, Inc. in the above-referenced docket.

Respectfully submitted on this 10th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: *Martin S. Friedman*
MARTIN S. FRIEDMAN

aqua\crystal\filing.not

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[Signature]
FPSC BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

"*Closing*" shall mean the Disbursement of escrowed Purchase Price and the consummation of the transactions contemplated by this Agreement.

"*Contract*" shall mean any agreement, contract, obligation, promise, or undertaking (whether written or oral and whether express or implied) that is legally binding.

"*Closing Date*" shall have the meaning set out in Paragraph 2.3 below.

"*Company*" shall have the meaning set out in the Recitals.

"*Company Stock*" shall have the meaning set out in the Recitals.

"*Disbursement*" shall mean disbursement of the escrowed Purchase Price.

"*Encumbrance*" shall mean any charge, claim, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

"*Environmental, Health, and Safety Laws*" means all laws of federal, state, and local governments (and all agencies thereof) concerning pollution or protection of the environment, public health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants or chemical, industrial, hazardous, or toxic materials or waste into ambient air, surface water, ground water, or lands or otherwise.

"*Escrow Agent*" Graham, Clark, Jones, Builder, Pratt & Marks, Attorneys At Law, 369 North New York Avenue, 3rd Floor, Winter Park, Florida 32789.

"*Financial Statements*" shall mean the consolidated balance sheet and statement of income for the Company for the most recent period, all in conformity with general accepted accounting principles applied on a consistent basis.

"Knowledge", an individual will be deemed to have "Knowledge" of a particular fact or other matter if such individual has actual awareness of such fact or matter, or an individual could be expected to discover or otherwise become aware of such fact or other matter in the course of managing the Company and running the Business.

"Liability" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including liability for Taxes.

"Net Working Capital" means the sum of the total current assets of the Company comprising of (a) cash held by the Company as of the opening of business on the Closing Date, (b) all receivables of the Company as of the opening of business on the Closing Date; (c) prepayments made by the Company in the ordinary course of business relating to any period following the opening of business on the Closing Date, (d) other current assets of the Company as of the opening of business on the Closing Date, minus (i) the value of all current payables and other current liabilities of the Companies as of the opening of business on the Closing, and Date [and (ii) any amount of any debt of the Company in excess of \$100 as of the opening of business on the Closing Date

"Ordinary Course of Business" means taken in the ordinary course of normal day-to-day operations of the Business consistent with past custom and practice.

"Parties" has the meaning set forth above.

"Purchase Price" has the meaning set forth in Section III below.

"Seller" shall have the meaning set forth above

"Tax" means any federal, state, or local income, or gross receipts, license, payroll, employment, severance, unemployment, disability, real property, personal property, sales, use, transfer, or

other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

Section II - Sale and Transfer of Stock: Closing

2.1 **Purchase and Sale of Stock:** Subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from the Seller and the Seller agrees to sell, transfer, assign, and deliver to the Buyer, the Company Stock free and clear of any Encumbrances on the Closing Date against receipt by Seller of the Purchase Price.

2.2 **Purchase Price:** In consideration for the sale of the Company Stock, the Buyer agrees to pay Seller Four Hundred Seventy Five Thousand (\$475,000) Dollars (the "Purchase Price") subject to the following adjustments:

- (i) All Taxes shall be provided as of the Closing Date and the Purchase Price shall be adjusted to account for any Taxes
- (ii) The Purchase Price shall be further adjusted ninety (90) days after the Closing Date to reflect any adjustments that may be required as a result of any unknown assets or liabilities that become known during that period. This adjustment may require a refund by the Seller of a portion of the Purchase Price paid at the Closing or an increase in the Purchase Price paid by the Buyer to the Seller.
- (iii) If the actual Net Working Capital on the Closing Date varies from the Net Working Capital based upon a Balance Sheet of the Company as of 9/30, 1998, then the Purchase Price payable hereunder shall be reduced by any deficit amount and the Seller shall pay such amount to Buyer within ninety (90) days after the Closing Date. This Purchase Price payable hereunder shall be increased by any excess amount and Buyer shall pay such amount to the Seller (or his designee) within ninety (90) days after the Closing Date. The foregoing adjustment shall be determined in accordance with Section 2.2(iv).

- (iv) Within sixty (60) days after the Closing Date, the Seller shall cause the preparation and delivery to Buyer of a statement of Net Working Capital as of 12-1 1998 of the Company (the "Statement"). The Statement shall be prepared in accordance with generally accepted accounting principles. Buyer shall have up until sixty (30) days after receipt of the Statement during which to notify Seller of any items in the Statement the accuracy and fairness of which it disputes. If Buyer shall have failed to notify the Seller within such period of any dispute with respect to the Statement, then the Statement shall be conclusively considered true and correct. If Buyer disputes any items of the Statement, Buyer and Seller shall attempt to resolve the disputed items. If such disputed items are not resolved within sixty (60) days after receipt by Buyer of the Statement, Buyer and Seller shall promptly instruct a nationally recognized independent firm of accountants agreed to by the Parties to resolve such disputed items. The decision of such firm shall be binding upon the Parties, and the fees and expenses of such firm shall be borne one-half by the Seller and one-half by the Buyer. Furthermore, the account's receivable amount may be adjusted up to \$5,000 to account for uncollectable accounts. Within this sixty (60) day period, Buyer will exercise reasonable efforts in the collection of outstanding accounts receivables including the use of a collection agency if deemed necessary.

- (v) Escrow Agent shall retain ten percent (10%) of the Purchase Price for ninety (90) days after the Closing Date to satisfy any adjustment required hereunder. At the end of said ninety (90) day period, any funds remaining will be distributed to the Seller.

2.3 The Closing: The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at Buyer's principal place of business located at 16810 Barker Springs, Suite B-215, Houston, Texas, after the conditions to close set forth in this Agreement have been satisfied or waived, however such conditions shall have been completed on or before

Section III - Representations and Warranties of the Seller

3.1 Except as set forth in the attached Disclosure Schedule (Exhibit "A"), the Seller represents and warrants that:

- (i) it has all the requisite power and authority to enter into this Agreement;
- (ii) the Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida;
- (iii) the authorized capital stock of the Company consists of _____ shares of common stock, \$_____ per value, of which _____ shares are issued and outstanding, duly authorized, validly issued, fully paid and nonassessable, and were not issued in violation of any preemptive or other rights, and there are no outstanding options, convertible securities, rights, warrants, calls, or agreements relating to any capital stock of the Company;
- (iv) this Agreement and its consummation will not conflict with or result in a breach of the Company's bylaws, charter, or any agreement, judgment, order, or government permit, or will result in the creation of a lien, or require consent from a third party or any governmental entity except as set forth in Section IX hereof;
- (v) the Buyer has been provided with the most recent Financial Statements (Exhibit "B") for the Company, and that they have been maintained in accordance with generally accepted accounting principles and there are no undisclosed Liabilities associated with the Company;
- (vi) to the Knowledge of the Seller and the Company, there are no violations of any Environmental, Health, and Safety Law;

- (vii) the Company has good and marketable title to all real property purported to be owned in fee and good and merchantable title to all personal property free and clear of all Encumbrances;
- (viii) there are no actions, claims, suits, or proceedings to which the Company is a party pending or to Knowledge of Seller and the Company, threatened, that may have any effect on the Company;
- (ix) the Company is not, and upon consummation of the transactions contemplated hereby will not be, in default under any Contract;
- (x) the Company does not maintain, sponsor, participate in or contribute to, and is not required to contribute to, and has no obligation under any employee benefit plans;
- (xi) all returns of Taxes, information, and other reports required to be filed in any jurisdiction by the Company have been timely filed and all such returns are true and correct in all material respects;
- (xii) the representations and warranties of Seller contained in this Agreement, and all other documents and information furnished to Buyer, are complete and accurate and do not and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made, and to be made, not misleading;
- (xiii) all Assets of the Company are set forth in Exhibit C;
- (xiv) the Company is not obligated under any Contract that can not be terminated with thirty (30) days' notice without penalty;

- (xv) the accounts receivable of the Company as reflected on the Financial Statements are collectable and represent valid obligations arising from the operations of the Company; and
- (xvi) since the date of the Balance Sheet contained in the Financial Statements there has not been any material adverse change in the business, operations, properties, prospects, Assets, or any condition of the Company, and no event has occurred or condition exists that may result in such a material adverse change.

Section IV - Representations and Warranties of the Buyer

4.1 Buyer represents and warrants to Seller that:

- (i) Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas;
- (ii) this Agreement constitutes a legally binding and enforceable obligation of the Buyer enforceable against the Buyer in accordance with its terms;
- (iii) Buyer is acquiring the stock for its own account and not with a view to its distribution or resale within the meaning of the Securities Act; and
- (iv) there are no proceedings or other actions commenced against the Buyer that may prevent or delay the closing of the transactions contemplated hereby.

Section V - Agreements Through Closing

5.1 The Buyer's obligation to consummate the transactions contemplated by this Agreement are subject to the following conditions:

- (i) the representations and warranties of Seller will be accurate at and as of the Closing Date as though such representations and warranties had been made as of such date;
- (ii) all statutory requirements for the valid consummation of the transactions contemplated herein shall have been fulfilled and all governmental consents, approvals or authorizations necessary for the valid consummation of the transactions contemplated herein shall have been obtained; however such requirements may be waived at Buyer's sole discretion.
- (iii) no action or suit shall have been commenced and no statute, rule, regulation, or order shall have been enacted or proposed that reasonably may be expected to prohibit Buyer's ownership of the Company or render the Buyer unable to purchase the Company, make the sale of the Company illegal, or impose material limitations on the ability of the Buyer to exercise full rights of ownership of the Company;
- (iv) at Buyer's discretion and expense, the completion of a Phase I Report regarding the facilities of the Company and, if recommended, the completion of a Phase II Report, each performed pursuant to ASTM Protocol, and the contents of each such report being to the reasonable satisfaction of Buyer; and
- (v) Buyer shall have completed to its satisfaction a due diligence review of the Business being acquired;
- (vi) Seller shall assist Buyer in obtaining contract rights for the operation of the Magnolia Manor Water Works utility;

- (iii) any cleanup or remediation requirement or liability respecting a release or threatened release of any hazardous substances to the extent that those hazardous substances are present at any present or former properties of the Company on or before the Closing Date.

Limited to the amount of the Purchase Price, Seller shall reimburse Buyer, its officers, directors, shareholders, employees, agents, and/or assigns, in aggregate, for any actual loss or expenses that may incur as a result of Seller's indemnification.

Section VIII - Covenants

8.1 Seller and Buyer agree as follows:

- (A) Non-Competition. During the two (2) year period following the Closing, the Seller shall not directly or indirectly compete with the Buyer in Buyer's operation of the Business or with the Buyer in the water and/or wastewater utility business in general in the State of Florida except for existing real estate properties currently being served by internal and/or wastewater facilities owned by current shareholders, their companies, or other entities. Specifically, these excluded water and/or wastewater systems are located within the following properties: Fox Park Mill, Lake at the Woods Mill, Pine Lake Mill, S. Ocean Ave. Tavern Trail
- (B) Operations. Seller agrees to provide reasonable assistance to the Buyer in the administration and operation of the Business for a period of ninety (90) days after the Closing.

Section IX - Public Service Commission Approval

9.1 The parties acknowledge and agree that the Florida Public Service Commission (the "FPSC") has the power and jurisdiction to approve or disapprove the transactions contemplated by this Agreement. Notwithstanding anything to the contrary set forth herein, the parties agree that the review or approval by the FPSC of this Agreement or the transactions contemplated

hereby is not a condition to any party's obligations to close or to consummate the transactions contemplated by this Agreement. Should the FPSC disapprove this transfer, then the parties shall be put back into their respective positions prior to the execution of this Agreement.

9.2 The Buyer (i) promptly and at its sole cost and expense shall apply for all necessary approvals and authorization required from the FPSC, and (ii) agrees to use its reasonable best efforts, at its sole cost and expense, to obtain such approvals and authorizations from the FPSC.

Section X - General Provisions

10.1 Expenses: The Parties to this Agreement shall be responsible for his or its own expenses incurred in connection with this Agreement including any broker's fees. In the event the Seller is required to travel outside the Orlando, Florida area for purposes of FPSC approvals and/or authorizations, Buyer will reimburse travel and lodging expenses associated with such activities.

10.2 Further Assistance: Seller shall execute and deliver without additional expense to the Buyer such additional documents as are reasonably necessary to transfer the Business to the Buyer.

10.3 Governing Law: This Agreement supercedes all previous agreements and understandings between the Parties and shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Florida.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which is effective as of the date first written above.

Buyer

Seller(s)

AquaSource Utility, Inc.

By: [Signature]

Name: RICHARD J. BOWLES

Printed Name: _____

Title: V. PRES.

Printed Name: _____

EXHIBIT "A"

Disclosure Schedule

[to be provided]

1) Selker has no knowledge of any cleanup or remediation requirement or liability respecting a release or threatened release of any hazardous substances to the extent that those hazardous substances are present at any present or former properties of the Company on or before the Closing Date.

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RICHARD BOWLES

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EXHIBIT "B"

Financial Statements

[to be provided]

LINDA M. ELERICK & CO.
CERTIFIED PUBLIC ACCOUNTANTS

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INDEPENDENT ACCOUNTANTS' COMPILATION REPORT

Crystal River Utilities, Inc.
Longwood, Florida

We have compiled the accompanying balance sheet of Crystal River Utilities, Inc. (an S-Corporation) as of September 30, 1998 and the related statement of income and retained earnings for the nine months then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statement of cash flows ordinarily required by generally accepted accounting principles. If the omitted disclosures and statement of cash flows were included in the financial statements, they might influence the user's conclusions about the corporation's financial position and results of operations. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Linda M. Elerick & Co.
Certified Public Accountants

October 19, 1998
Orlando, Florida

CRYSTAL RIVER UTILITIES, INC.

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CRYSTAL RIVER UTILITIES, INC.
Longwood, Florida

Financial Statements
(Compiled)

For the nine months ended
September 30, 1998

CRYSTAL RIVER UTILITIES, INC.

Balance Sheet

September 30, 1998

Assets

Current assets:

Cash	\$ 16,217
Accounts receivable	<u>15,657</u>

Total current assets

\$ 32,574

Property and equipment:

Land	9,842
Meters	31,893
Other plant and equipment	78,368
Pumping and water equipment	12,656
Reservoirs	14,304
T & D mains	105,173
Structures and improvements	20,190
Walls	<u>1,488</u>
	373,914
Less accumulated depreciation	<u>59,398</u>

Net property and equipment

214,519

Other assets:

Computer software, net of amortization	344
Utility deposits	<u>1,505</u>

Total other assets

1,849

Total assets

\$ 248,942

See accountants' compilation report.

Liabilities and Stockholders' Equity

Current liabilities:

Current maturities of long-term debt	\$ 10,046	
Accounts payable	9,264	
Customer deposits	<u>8,826</u>	
Total current liabilities		\$ 28,206

Long-term liabilities:

Long-term debt, less current maturities	<u>194,101</u>	
Total long-term liabilities		<u>194,101</u>
Total liabilities		<u>222,307</u>

Stockholders' equity:

Common stock	20	
Additional paid-in-capital	51,880	
Stockholder distributions	(2,436)	
Retained earnings	<u>(22,822)</u>	
Total stockholders' equity		<u>26,632</u>
Total liabilities and stockholders' equity		<u>\$ 248,942</u>

CRYSTAL RIVER UTILITIES, INC.
Statement of Income and Retained Earnings
For the nine months ended September 30, 1998

Sales	<u>\$ 229,081</u>
General and administrative expenses:	
Accounting and legal	5,150
Amortization	442
Auto expense	2,247
Auto lease	6,201
Bank charges	880
Chemicals	3,794
Contract labor	79,740
Depreciation	15,724
Insurance	8,563
Management fees	17,152
Miscellaneous	900
Office expense	1,706
Postage	1,440
Purchased power	7,878
Purchased water	48,751
Receivership	1,667
Sludge removal	630
Taxes and licenses	15,494
Telephone	<u>3,982</u>
	<u>222,451</u>
Income from operations	6,632
Interest income	46
Interest expense	<u>(11,282)</u>
Net income (loss)	(4,705)
Retained earnings - beginning of year	<u>(18,124)</u>
Retained earnings - end of year	<u>\$ (22,829)</u>

See accountants' compilation report.

EXHIBIT "C"
Assets of the Company

Water Systems:

1. Castle Lake - one primary and one backup well, one 1,000 gallon ground storage tank, one hypochlorinator, fence enclosure and carport cover. Treatment plant on fee simple owned land.
2. Haines Creek - one primary well, two 1,000 gallon ground storage tanks, one hypochlorinator. Treatment plant located on ground lease. Backup ground storage tank located in third party owned garage with agreement for access and maintenance (see attached lease).
3. Lake Osborne - consecutive system supplied by Lake Worth Utility through one bulk meter. All lines located in public ROW or private utility easements.
4. Magnolia Manor - receivership (see attached contract). Treatment plant located in a block building with one well, one 1,000 gallon ground storage tank and one hypochlorinator. Land is owned by a Mr. David Mitchell with no ground lease or provision for unified ownership.
5. Kenwood North - one primary well, one 3,300 gallon ground storage tank, one hypochlorinator and wooden fence enclosure. Treatment plant on fee simple owned land.
6. West Citrus - one primary well, one 930 gallon ground storage tank, one hypochlorinator and fence enclosure. Treatment plant on fee simple owned land.
7. Meadows - one primary and one backup well, two 500 gallon ground storage tanks, one wooden storage building, one hypochlorinator. Treatment plant on fee simple owned land.
8. Pine Valley - one primary well, one 3,000 gallon ground storage tank, one hypochlorinator, fence enclosure and wooden storage building. Treatment plant on fee simple owned land.
9. Ravenswood - one primary well, one 3,000 gallon ground storage tank, one hypochlorinator, one wooden storage building on fee simple owned land.
10. Rosalie Oaks - one primary well, one 3,000 gallon ground storage tank, one hypochlorinator, one wooden storage building and fence enclosure on fee simple owned land.
11. Woods - one primary well, two 1,500 gallon ground storage tanks, one concrete aerator and sand filter, one wooden storage building and fence enclosure on fee simple owned land.

Wastewater Systems:

1. Woods - 0.015 MGD annual average Type III extended aeration domestic wastewater treatment facility consisting of three aeration tanks, clarifier, chlorine contact chamber and digester, two cell rapid rate restricted access Part IV infiltration basins of approximately 27,720 SF total bottom area. Treatment plant on fee simple owned land.
2. Rosalie Oaks - 0.015 MGD design capacity Type III extended aeration domestic wastewater treatment facility consisting of six aeration tanks, clarifier, chlorine contact chamber and digester, two rapid rate access infiltration basins of approximately 33,000 SF total bottom area. Treatment plant on fee simple owned land.