

ORIGINAL

# OPEN MEETING



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## MEMORANDUM

Arizona Corporation Commission

DOCKETED

JAN 11 2013

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2013 JAN 11 P 4:18

DOCKET CONTROL

TO: THE COMMISSION

FROM: Utilities Division

DATE: January 11, 2013

DOCKETED BY *IM*

RE: SABROSA WATER COMPANY – APPLICATION FOR APPROVAL OF A RATE INCREASE (DOCKET NO. W-02111A-11-0272); APPLICATION FOR APPROVAL OF FINANCING (DOCKET NO. W-02111A-11-0340); AND APPLICATION FOR APPROVAL OF FINANCING (DOCKET NO. W-02111A-11-0435)

### I. Introduction

On July 7, 2011, Sabrosa Water Company (“SWC” or “Company”) filed an Application for General Rate Increase docketed as Docket No. W-02111A-11-0272. On September 9, 2011, SWC filed an Application for approval of financing for the purpose of constructing arsenic treatment facilities. On December 6, 2011, SWC filed an Application for approval of financing for the purpose of deepening the Company’s well, which had gone dry. The Company continued to provide water service to its customers utilizing hauled water. However, all of the customers of the Company have now obtained alternate water service and no customers remain. The Company’s well has been capped. The Interim Manager has filed a request that seeks Commission approval to sell SWC’s remaining assets in order to pay SWC’s outstanding debts.

### II. Background

SWC has a significant history of violations and non-compliance before the Commission and has demonstrated an inability to provide a consistent source and quality of water at a reasonable price.

#### A. Violations and Non-compliance

In Docket Nos. U-2111-91-044 and U-2111-91-097, the Company filed for a rate increase and for approval of financing. In that proceeding, both Staff and the Hearing Division experienced difficulty obtaining information from the Company, despite numerous efforts to contact the Company. The Company sought a continuance of the hearing, which was denied, and the hearing was held on November 20 and December 4, 1992. The Company failed to appear. The Commission granted Staff’s recommended rate decrease and further found that the Company was not in compliance with the regulations of the Maricopa County Health Department, had delinquent property taxes of \$137,594 and had a tax lien for property taxes owed since 1976 which had resulted in a tax lien sale.

The Commission ordered the Company to meet its property tax expenses, make improvements of \$1,380 to bring it into compliance with County Health regulations, and to begin keeping its books in accordance with the National Association of Regulatory Utility Commissioners (NARUC) System of Accounts. The Commission denied the Company's financing application, noting that the Company had already obtained financing and encumbered Company assets without Commission approval. In its order dated December 19, 1991, the Commission stated: "The Staff Report, the testimony presented at the hearing and the Procedural History outlined above indicate a total lack of commitment by the Company to operate in a manner consistent with the best interests of itself and its customers. The Company has further demonstrated this by its conduct in ignoring the Commission's requests for information, orders and attempts to contact it regarding its own applications and requirements under the law. During the application process, the Company consistently provided inaccurate and incomplete information...."

Due to the Company's failure to comply with that order, the Commission issued a Complaint and Order to Show Cause in Docket No. U-2111-92-080. The Company failed to appear for the hearing thereon. Based upon the evidence presented, the Commission determined that the Company had violated Arizona laws, Commission rules and Commission orders, including: threatening to disconnect customers unless they paid additional unauthorized monthly charges, failure to provide water service to some property owners in its certificated area, encumbering utility assets without Commission approval, failure to pay property taxes, failure to provide water which met water quality standards, failure to properly read meters, improper billing practices, failure to maintain a known place of business, failure to refund deposits, failure to make plant improvements as ordered, and failure to provide required notice to customers. The Commission ordered remedial action and imposed administrative penalties and fines in the amount of \$58,000. The matter was then referred to the Arizona Attorney General's Office, which filed a Maricopa County Superior Court action to enforce that order in Case No. CV1997-022196. Judgment of \$58,000 was entered on August 12, 1998, according to the Court's website.

In April 2000, Commission Staff learned from the Maricopa County Department of Energy Management ("MCDEM") that most of the Company's customers were without water. This led to the filing of a Complaint and Order to Show Cause in Docket No. W-02111A-00-0286, seeking appointment of an interim manager. The Commission determined that numerous violations continued to occur and that water quality and shortages resulted. The Commission authorized the employment of an interim manager to operate and manage the Company and bring it into compliance. The Commission further imposed a penalty on both the Company and Mr. Keith Morris, owner, in the amount of \$5000, plus \$1,000 per day until the Company was brought into compliance or the utility and/or its assets were sold to a Commission approved third party.

This order was referred to the Arizona Attorney General's Office and a second Superior Court lawsuit was brought against the Company and Mr. Morris and his wife in Case No. CV2008-005016. That case resulted in the entry of a judgment in the amount of \$246,973.89.

On April 24, 2002, the Complaint seeking cancellation of the Company's CC&N was filed in Docket No. W-02111A02-0301. Citing numerous violations and the preceding events, the Commission did cancel the CC&N, while affirming the continuation of the penalties ordered in Decision No. 63163, Docket No. W-02111A-00-0286, until the transfer of the Company's assets to a Commission acceptable entity.

SWC was formerly an Arizona Corporation owned and operated by Keith J. Morris. However, the Corporation was dissolved by the Commission's Corporations Division in 2002, for failure to file its annual report. As part of a personal bankruptcy case before the U.S. Bankruptcy Court in the District of Arizona, Mr. Morris entered into an agreement to transfer to Gale Long, all of his interest in the Company, subject to the approval of the Commission. There is no evidence that this transaction actually took place, nor has the Commission ever approved such a transfer. However, since that time, Mr. Morris has not participated in the operation of the Company. In fact, Commission Staff has been unable to locate Mr. Morris for several years, despite efforts to do so. Since 2000, the Company has been operated by an interim manager.

#### B. Inability to Provide Adequate Water Service

For more than a decade, SWC has struggled to provide water to its customers. The Commission recognized the difficulties faced by the Company in a 2002 decision, Decision No. 65041. There the Commission found that the SWC system was "plagued by undersized piping, line breaks, and equipment failures." Moreover, the Commission determined that the Company would be unlikely to develop another well due to the high levels of arsenic in the groundwater where the Company is located, further noting that the Company had already abandoned five wells. The only new source of water would be through an interconnection with another source.

These difficulties have persisted throughout the decade following Decision No. 65061. Staff Reported in its Memoranda filed in Docket Nos. W-02111A-11-0272, W-02111A-11-0340 and W-02111A-11-0435 that there are major deficiencies in Operation and Maintenance and in water quality. Water production remains an issue and the Company has been required to rely on water hauling to meet its demand.

#### III. Current Status of Company

The Company sought to address water production and quality issues by filing its rate and financing applications in an effort to continue to provide water service to customers. As the cases progressed several obstacles arose which reduced, if not eliminated, the Company's viability. In the fall of 2011, the Company's remaining well stopped producing water and the Company began to rely on hauling water almost exclusively, which was extremely costly. Initially, the Company sought to increase its rates and finance the deepening of its only potentially viable well and to construct an arsenic treatment plant to meet new arsenic standards.

Nearly from the outset, there was concern that these efforts might be futile. A moratorium limiting the customers to 72 had been issued in July 2002 and remains in place. Since that time the number of customers served by the Company has declined, from 72 connections in 2002, to

64 in 2005, to 51 in 2006, and to 32 by the filing of the rate application in 2012. This decline was not the result of a decrease in population, but was due to the unreliability of the water supply: those customers who terminated service did so due to having obtained an alternative source of water, usually having dug their own wells. During the pendency of this case, customer numbers fell to 28, and, ultimately to zero. With the cost of deepening the well at \$13,000 and constructing the arsenic treatment plant at \$136,252, there was concern that, if customer numbers continued to decline, revenues would be insufficient to meet the debt incurred.

Moreover, there was concern that deepening the well would not increase water production and that the costs of the improvements or the alternative of continuing to rely on hauled water would be so costly that the remaining 32 customers would discontinue service and locate other sources of water. When the Company learned that it would be unable to obtain a Water Infrastructure Finance Authority (WIFA) loan, it appeared that the only means of continuing to provide water would be through water hauling. Even that solution was problematic, as Staff had determined during its site visit in the rate case that SWC was experiencing water loss of 46%. Staff and the Interim Manager concluded that, given this water loss, SWC would cease distribution of water to the residences of the customers. Instead, the Company would haul water to be stored in its tank and provide that water to its customers at that location. The 28 remaining customers then terminated service.

With the disconnection of all customers, SWC is not currently operating or providing water. The wells have been capped by pouring cement down them. However, the equipment of the Company, including two fifty gallon pressure tanks, a 5,000 gallon storage tank, a booster pump and some piping remain in place. There will no longer be any maintenance or repair to these items. Without that, the property will deteriorate and will create not merely an eyesore but a real risk to the health and safety of Arizona citizens. Abandoned storage tanks may continue to contain contaminated water, a breeding ground for bacteria. Pumps and tanks are also an attractive nuisance, creating a danger for children, in particular, as they are likely to be drawn to play on the deteriorating and dangerous equipment.

#### IV. The Interim Manager's Role

As noted, the original owner of SWC abandoned the Company after a Complaint and Order to Show cause was filed in 2000. An interim manager was appointed in 2000, and in 2002 the Company's CC&N was cancelled and its corporate status revoked. The current interim manager, Granite Springs Water Company, operated by Don Bohler, was appointed in 2009. As it had since the appointment of the first interim manager, SWC continued to operate at a loss. In order to continue to provide water to customers, Mr. Bohler contracted with Mega Water and incurred other debt, related primarily to the cost of hauling water. The outstanding balance for water (hauled in order to provide water service to SWC's customers) is \$6,600.00

In addition, the interim manager was to be compensated for his services. Due to the Company's financial condition, the required payments were not made and the interim manager is owed a total of \$58,640.02. On December 21, 2012, Mr. Bohler requested permission to

remove certain Company equipment, sell it as scrap, and use the proceeds to pay outstanding amounts due to the interim manager.

Pursuant to the Interim Management Agreement with Granite Springs Water Company and Mr. Bohler, Granite Springs was authorized to utilize funds and payments received from customers of SWC, to pay management fees and the operating debts of SWC, but was not liable for such debts if revenues were insufficient to pay the same. The interim manager was also authorized to perform all duties normally attendant with the operation and maintenance of a water Company, including, but not limited to, paying and prioritizing bills in the manner on which a reasonably prudent water Company would do. This includes disposal of assets of the Company.

### **Staff's Recommendations**

SWC is now a defunct water company. It has no customers. It has no owner. It has no source of water. Its system is deteriorated. The remaining equipment of the Company is not only no longer used or useful, it actually creates a risk to the public health and safety of Arizonans. Its removal would benefit the public interest.

Interim managers such as Granite Springs Water Company and Mr. Bohler serve a public need and are highly valued by this Commission and by Arizona's citizens. They enable customers to continue to receive water service where they otherwise might not, and they promote public safety. It is contrary to those interests to cause an interim manager to suffer financial loss due to its sometimes heroic efforts on behalf of the public.

In a case such as this, it is a benefit to the public to authorize the interim manager to remove and sell the remaining equipment of SWC and to utilize those proceeds thereof to pay the debts of the Company, including the obligations to the interim manager as stated herein.



for

Steven M. Ota  
Director  
Utilities Division

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
BOB BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner

IN THE MATTER OF THE SABROSA  
WATER COMPANY FOR APPROVAL OF  
A RATE INCREASE.

DOCKET NO. W-02111A-11-0272

IN THE MATTER OF THE APPLICATION  
OF SABROSA WATER COMPANY FOR  
APPROVAL OF FINANCING.

DOCKET NO. W-02111A-11-0340

IN THE MATTER OF THE APPLICATION  
OF SABROSA WATER COMPANY FOR  
APPROVAL OF FINANCING FOR  
DEEPENING ZORRILLO WELL.

DOCKET NO. W-02111A-11-0435

DECISION NO. \_\_\_\_\_

**ORDER**

Open Meeting  
January 30, 2013  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

**FINDINGS OF FACT**

1. On July 7, 2011, Sabrosa Water Company ("SWC" or "Company") filed an Application for General Rate Increase docketed as Docket No. W-02111A-11-0272. On September 9, 2011, SWC filed an Application for approval of financing for the purpose of constructing arsenic treatment facilities.

2. On December 6, 2011, SWC filed an Application for approval of financing for the purpose of deepening the Company's well, which had gone dry. The Company continued to provide water service to its customers utilizing hauled water.

1           3.       All of the customers of the Company have now obtained alternate water service and  
2 no customers remain. The Company's well has been capped.

3           4.       The Interim Manager has filed a request that seeks Commission approval to sell  
4 SWC's remaining assets in order to pay SWC's outstanding debts.

5           5.       SWC has a significant history of violations and non-compliance before the  
6 Commission and has demonstrated an inability to provide a consistent source and quality of water  
7 at a reasonable price.

8           6.       In Docket Nos. U-2111-91-044 and U-2111-91-097, the Company filed for a rate  
9 increase and for approval of financing. In that proceeding, both Staff and the Hearing Division  
10 experienced difficulty obtaining information from the Company, despite numerous efforts to  
11 contact the Company. The Company sought a continuance of the hearing, which was denied, and  
12 the hearing was held on November 20 and December 4, 1992. The Company failed to appear.

13          7.       In that Docket the Commission granted Staff's recommended rate decrease and  
14 further found that the Company was not in compliance with the regulations of the Maricopa  
15 County Health Department, had delinquent property taxes of \$137,594 and had a tax lien for  
16 property taxes owed since 1976 which had resulted in a tax lien sale.

17          8.       The Commission further ordered the Company to meet its property tax expenses,  
18 make improvements of \$1,380 to bring it into compliance with County Health regulations, and  
19 begin keeping its books in accordance with the National Association of Regulatory Utility  
20 Commissioners (NARUC) System of Accounts.

21          9.       The Commission denied the Company's financing application, noting that the  
22 Company had already obtained financing and encumbered Company assets without Commission  
23 approval. In its order dated December 19, 1991, the Commission stated: "The Staff Report, the  
24 testimony presented at the hearing and the Procedural History outlined above indicate a total lack  
25 of commitment by the Company to operate in a manner consistent with the best interests of itself  
26 and its customers. The Company has further demonstrated this by its conduct in ignoring the  
27 Commission's requests for information, orders and attempts to contact it regarding its own  
28

1 applications and requirements under the law. During the application process, the Company  
2 consistently provided inaccurate and incomplete information....”

3 10. Due to the Company’s failure to comply with that order, the Commission issued a  
4 Complaint and Order to Show Cause in Docket No. U-2111-92-080.

5 11. The Company failed to appear for the hearing in Docket No. U-2111-92-080.  
6 Based upon the evidence presented, the Commission determined that the Company had violated  
7 Arizona laws, Commission rules and Commission orders, including: threatening to disconnect  
8 customers unless they paid additional unauthorized monthly charges, failure to provide water  
9 service to some property owners in its certificated area, encumbering utility assets without  
10 Commission approval, failure to pay property taxes, failure to provide water which met water  
11 quality standards, failure to properly read meters, improper billing practices, failure to maintain a  
12 known place of business, failure to refund deposits, failure to make plant improvements as  
13 ordered, and failure to provide required notice to customers.

14 12. The Commission ordered remedial action and imposed administrative penalties and  
15 fines in the amount of \$58,000. The matter was then referred to the Arizona Attorney General’s  
16 Office, which filed a Maricopa County Superior Court action to enforce that order in Case No.  
17 CV1997-022196. Judgment of \$58,000 was entered on August 12, 1998, according to the Court’s  
18 website.

19 13. In April 2000, Commission Staff learned from the Maricopa County Department of  
20 Energy Management (“MCDEM”) that most of the Company’s customers were without water.  
21 This led to the filing of a Complaint and Order to Show Cause in, seeking appointment of an  
22 interim manager.

23 14. In that Docket the Commission determined that numerous violations continued to  
24 occur and that water quality and shortages resulted.

25 15. The Commission authorized the employment of an interim manager to operate and  
26 manage the Company and bring it into compliance.

27  
28

1           16.     The Commission further imposed a penalty on both the Company and Mr. Keith  
2 Morris, owner, in the amount of \$5000, plus \$1,000 per day until the Company was brought into  
3 compliance or the utility and/or its assets were sold to a Commission approved third party.

4           17.     This order in Docket No. W-02111A-00-0286 was referred to the Arizona Attorney  
5 General's Office and a second Superior Court lawsuit was brought against the Company and Mr.  
6 Morris and his wife in Case No. CV2008-005016. That case resulted in the entry of a judgment in  
7 the amount of \$246,973.89.

8           18.     On April 24, 2002, the Complaint seeking cancellation of the Company's CC&N  
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10 the Commission did cancel the CC&N, while affirming the continuation of the penalties ordered in  
11 Decision No. 63163, Docket No. W-02111A-00-0286, until the transfer of the Company's assets to  
12 a Commission acceptable entity.

13           19.     SWC was formerly an Arizona Corporation owned and operated by Keith J. Morris.  
14 However, the Corporation was dissolved by the Commission's Corporations Division in 2002, for  
15 failure to file its annual report.

16           20.     As part of a personal bankruptcy case before the U.S. Bankruptcy Court in the  
17 District of Arizona, Mr. Morris entered into an agreement to transfer to Gale Long, all of his  
18 interest in the Company, subject to the approval of the Commission. There is no evidence that this  
19 transaction actually took place, nor has the Commission ever approved such a transfer.

20           21.     Since that time, Mr. Morris has not participated in the operation of the Company. In  
21 fact, Commission Staff has been unable to located Mr. Morris for several years, despite efforts to  
22 do so. Since 2000, the Company has been operated by an interim manager.

23           22.     For more than a decade, SWC has struggled to provide water to its customers.

24           23.     The Commission recognized the difficulties faced by the Company in a 2002  
25 decision, Decision No. 65041. There the Commission found that the SWC system was "plagued by  
26 undersized piping, line breaks, and equipment failures."

27           24.     The Commission also determined that the Company would be unlikely to develop  
28 another well due to the high levels of arsenic in the groundwater where the Company is located,

1 further noting that the Company had already abandoned five wells. The only new source of water  
2 would be through an interconnection with another source.

3 25. These difficulties have persisted throughout the decade following Decision No.  
4 65061.

5 26. Staff Reported in its Memoranda filed in Docket Nos. W-02111A-11-0272, W-  
6 02111A-11-0340 and W-02111A-11-0435 that there are major deficiencies in Operation and  
7 Maintenance and in water quality.

8 27. Water production remains an issue and the Company has been required to rely on  
9 water hauling to meet its demand.

10 28. The Company sought to address water production and quality issues by filing the  
11 above-stated rate and financing applications in an effort to continue to provide water service to  
12 customers.

13 29. As the cases progressed several obstacles arose which reduced, if not eliminated,  
14 the Company's viability. In the fall of 2011, the Company's remaining well stopped producing  
15 water and the Company began to rely on hauling water almost exclusively, which was extremely  
16 costly. Initially, the Company sought to increase its rates and finance the deepening of its only  
17 potentially viable well and to construct an arsenic treatment plant to meet new arsenic standards.

18 30. Nearly from the outset of these pending cases, there was concern that these efforts  
19 might be futile. A moratorium limiting the customers to 72 had been issued in July 2002 and  
20 remains in place. Since that time the number of customers served by the Company has declined,  
21 from 72 connections in 2002, to 64 in 2005, to 51 in 2006, and to 32 by the filing of the rate  
22 application in 2012.

23 31. This decline was not the result of a decrease in population, but was due to the  
24 unreliability of the water supply: those customers who terminated service did so due to having  
25 obtained an alternative source of water, usually having dug their own wells.

26 32. During the pendency of this case, customer numbers fell to 28, and, ultimately to  
27 zero. With the cost of deepening the well at \$13,000 and constructing the arsenic treatment plant  
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1 at \$136,252, there was concern that, if customer numbers continued to decline, revenues would be  
2 insufficient to meet the debt incurred.

3 33. Moreover, there was concern that deepening the well would not increase water  
4 production and that the costs of the improvements or the alternative of continuing to rely on hauled  
5 water would be so costly that the remaining 32 customers would discontinue service and locate  
6 other sources of water.

7 34. When the Company learned that it would be unable to obtain a Water Infrastructure  
8 Finance Authority (WIFA) loan, it appeared that the only means of continuing to provide water  
9 would be through water hauling. Even that solution was problematic, as Staff had determined  
10 during its site visit in the rate case that SWC was experiencing water loss of 46%.

11 35. Staff and the Interim Manger concluded that, given this water loss, SWC would  
12 cease distribution of water to the residences of the customers. Instead, the Company would haul  
13 water to be stored in its tank and provide that water to its customers at that location. The 28  
14 remaining customers then terminated service.

15 36. With the disconnection of all customers, SWC is not currently operating or  
16 providing water. The wells have been capped by pouring cement down them. However, the  
17 equipment of the Company, including two fifty gallon pressure tanks, a 5,000 gallon storage tank,  
18 a booster pump and some piping remain in place.

19 37. There will no longer be any maintenance or repair to these items. Without that, the  
20 property will deteriorate and will create not merely an eyesore but a real risk to the health and  
21 safety of Arizona citizens.

22 38. Abandoned storage tanks may continue to contain contaminated water, a breeding  
23 ground for bacteria. Pumps and tanks are also an attractive nuisance, creating a danger for  
24 children, in particular, as they are likely to be drawn to play on the deteriorating and dangerous  
25 equipment.

26 39. The original owner of SWC abandoned the Company after a Complaint and Order  
27 to Show cause was filed in 2000.

28

1           40.     An interim manager was appointed in 2000, and in 2002 the Company's CC&N  
2 was cancelled and its corporate status revoked.

3           41.     The current interim manager, Granite Springs Water Company, operated by Don  
4 Bohlier, was appointed in 2009.

5           42.     As it had since the appointment of the first interim manager, SWC continued to  
6 operate at a loss. In order to continue to provide water to customers, Mr. Bohlier contracted with  
7 Mega Water and incurred other debt, related primarily to the cost of hauling water. The  
8 outstanding balance for water (hailed in order to provide water service to SWC's customers) is  
9 \$6,600.00.

10          43.     In addition, the interim manager was to be compensated for his services. Due to the  
11 Company's financial condition, the required payments were not made and the interim manager is  
12 owed a total of \$58,640.02.

13          44.     On December 21, 2012, Mr. Bohlier requested permission to remove certain  
14 Company equipment, sell it as scrap, and use the proceeds to pay outstanding amounts due to the  
15 interim manager.

16          45.     Pursuant to the Interim Management Agreement with Granite Springs Water  
17 Company and Mr. Bohlier, Granite Springs was authorized to utilize funds and payments received  
18 from customers of SWC to pay management fees and the operating debts of SWC, but was not  
19 liable for such debts if revenues were insufficient to pay the same.

20          46.     The interim manager was also authorized to perform all duties normally attendant  
21 with the operation and maintenance of a water Company, including, but not limited to, paying and  
22 prioritizing bills in the manner on which a reasonably prudent water Company would do. This  
23 includes disposal of assets of the Company.

24          47.     SWC is now a defunct water company: it has no customers. It has no owner. It  
25 has no source of water. Its system is deteriorated. The remaining equipment of the Company is  
26 not only no longer used or useful, it actually creates a risk to the public health and safety of  
27 Arizonans. Its removal would benefit the public interest.

28





1 SERVICE LIST FOR:

SABROSA WATER COMPANY, INC.

2 DOCKET NOS.

W-02111A-11-0272, 1-02111A-11-0340 AND  
W-02111A-11-0435

3 Don Bohlier, Interim Manager  
4 SABROSA WATER COMPANY  
5 303 East Gurley Street, PMB 445  
6 Prescott, AZ 86301

7 Mr. Steven M. Olea  
8 Director, Utilities Division  
9 Arizona Corporation Commission  
10 1200 West Washington Street  
11 Phoenix, AZ 85007

12 Ms. Janice M. Alward  
13 Chief Counsel, Legal Division  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, AZ 85007

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