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UTILITIES COMMISSION

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472 W. WASHINGTON
BOISE, IDAHO 83702-5918

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
BRIAN WATER CORPORATION FOR) CASE NO. BRN-W-12-01
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WATER SERVICE.) COMMENTS OF THE
) COMMISSION STAFF
)
)**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32539 on April 25, 2012, in Case No. BRN-W-12-01, submits the following comments.

BACKGROUND

On January 20, 2012, Brian Water Corporation (“Brian Water” or “Company”) filed an Application requesting authority to increase rates to fund the preparation and execution of a plan to remedy nitrate contamination problems identified by the Idaho Department of Environmental Quality (IDEQ) at the Company's primary water supply well. The Application requested that the base rate for Brian Water be raised from \$17.50 to \$30.00 per month with an effective date of March 1, 2012. After filing its original Application, the Company later amended its Application by requesting that its base rate be raised by \$12.50 per month, with an effective date of April

2012, and again by requesting a \$22.50 increase in the monthly base rate with an effective date of May 1, 2012.

STAFF ANALYSIS

On March 30, 2012, subsequent to filing its Application in this case, Brian Water was issued an Amended Consent Order by the Idaho Department of Environmental Quality (IDEQ). The Amended Consent Order is included as Attachment 1. In pertinent part, the Amended Consent Order requires the following:

- a) No later than June 1, 2012, the owner of Brian Water shall complete one of the following nitrate mitigation plans within the specified timeframes:
 - i. Enter into a contract with a professional engineer to evaluate various treatment options to mitigate nitrate and provide written documentation to the IDEQ.
 - ii. Enter into an agreement with an existing public water system for interconnection and service, with a signed letter of agreement between the owner of Brian Water and an existing public water system for interconnection and service.
- b) No later than June 15, 2012, the owner of Brian Water and the engineer shall schedule and attend a nitrate treatment pre-design meeting with IDEQ.
- c) No later than December 15, 2012, the owner of Brian Water shall submit to IDEQ a Preliminary Engineering Report (PER) that explains how the water system will comply with the Consent Order. The PER will include identification of available alternatives to meet the nitrate maximum contaminant level (MCL) and treatment requirements, and a proposed project implementation schedule for the recommendation(s) selected.

It is Staff's understanding that the Company's requested increase in rates is intended to generate enough additional revenue to pay for an engineering study to develop an appropriate nitrate mitigation plan, implement the plan, and drill a new well if necessary. Staff believes it would be premature to consider any increase in rates for nitrate mitigation when a plan for compliance has yet to be developed. Staff would expect the Preliminary Engineering Report to

identify alternatives for compliance, and include cost estimates for each alternative.¹ Only then will a reasonable estimate be available on which to base recommendations for a general increase in the Company's base rates.

As part of its Amended Application, Brian Water includes a letter of agreement from a licensed professional engineering firm to complete the engineering study. The cost for completing the engineering study is \$4,000, per the letter of agreement. As noted above, Brian Water has until December 15, 2012 to complete its Preliminary Engineering Report.

Past audits of Brian Water have demonstrated to Staff that without additional revenue, the Company does not have adequate funds to pay for the Preliminary Engineering Report. Consequently, Staff recommends that the Commission approve a surcharge sufficient to generate enough revenue to fund the cost of the Preliminary Engineering Report. Staff recommends a surcharge of \$15 monthly for a period of six months, coinciding with the deadline for the Preliminary Engineering Report. With 45 customers, the surcharge should generate approximately \$4,000 in six months.

Following the six-month surcharge period and upon completion of the Preliminary Engineering Report, additional review will be required to evaluate whether an ongoing surcharge will be necessary. At that time, Brian Water and IDEQ will likely be in a position to agree on acceptable nitrate mitigation measures and cost estimates that could serve as the basis for determining an appropriate surcharge level.

Customer Notice and Press Release

The Company's Application included a copy of a letter dated January 18, 2012, that was sent to customers. The letter does not meet the requirements for Customer Notice as required by the Commission's Rules of Procedure, Rule 125, IDAPA 31.01.01. The letter stated that the Company was going to apply for a rate increase and included the amount requested but did not include the percentage of increase requested, nor did it include information regarding where the customer could review the application or how to contact the Commission. The Company did not issue a press release as required.

¹ Staff understands that the IDEQ's Consent Order may not necessarily require that the cost of the mitigation plan be specifically included in the Preliminary Engineering Report. If this is the case, Staff recommends that various cost elements of the Nitrate Mitigation Plan be included in the Preliminary Engineering Report for further review by the Commission.

A meeting between the Company and the customers regarding the current issues, including the need for additional revenue, was held on February 11, 2012. Approximately 25 people attended, representing approximately 12 separate households. Also, the Company sent a brief summary of the meeting to all customers in its next billing notice.

On April 25, 2012, the Commission issued Order No. 32539, which included a Notice of Modified Procedure and a Notice of Comment Deadline. The Commission issued a Press Release regarding this case on May 4, 2012. No customer comments have been received to date.

Although the Company did not strictly comply with the Commission's requirements, the issues in this case have been brought to the attention of customers, and interested customers had the opportunity to discuss this case with the Company and make any concerns they might have known to the Commission. Under these circumstances, Staff believes that no sanctions are warranted in this case, but the Company will need to comply with Procedural Rule 125 in any future filings with the Commission.

STAFF RECOMMENDATION

Staff recommends a surcharge of \$15 monthly, for a period of six months, beginning June 1, 2012 with the conditions listed below. Staff recommends that the need for an ongoing surcharge be further analyzed following completion of the Preliminary Engineering Report as required by IDEQ.

Staff believes the following conditions should be imposed if a surcharge is approved:

1. All Surcharge funds shall be deposited in a separate account. The surcharge funds shall not be comingled with the operating funds of Brian Water Corporation or the personal funds of Mr. Tony Bowar, the Company owner.
2. All payments from this separate account shall be made by properly identified checks. No counter checks shall be drawn on this account.
3. The separate account shall include the identifier - Surcharge Account. This identification should also appear on the deposit slips and checks.
4. Proper documentation shall be retained for audit purposes. This shall include, copies of monthly bank statements showing deposits, cleared checks and the amount of each check. Also, the Company shall retain copies of current customer lists, meter reading

lists, all contracts and any other item necessary to demonstrate the nature and amount of the payment or transaction.

5. The Surcharge account, including all payments, collections and deposits shall be subject, upon one week notice, to random audits by Staff of the Idaho Public Utilities Commission.
6. The Surcharge account shall have priority in deposits from collections. All amounts collected from customers shall have the surcharge amount deducted from collections and deposited within one week of collection, prior to making deposits in any other account.
7. The amount of the surcharge shall be listed on customer bills as a single line item clearly identified as the surcharge and the amount of the surcharge.
8. Mr. Bowar and/or Brian Water Corporation shall be responsible for all taxes resulting from this surcharge.
9. These funds may be considered Contributions in Aid of Construction. Consequently, normally capitalized expenditures will be reduced by the contribution for purposes of calculating depreciation expense, accumulated depreciation and rate base, for future ratemaking purposes.

Staff recommends that the Commission direct the Company to comply with Commission Rule 125, in future cases.

Respectfully submitted this 16th day of May 2012.



Neil Price
Deputy Attorney General

Technical Staff: John Nobbs
Gerry Galinato
Chris Hecht

i:umisc:comments/brnw12.1npjngdcwh comments



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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1410 North Hillon • Boise, Idaho 83706 • (208) 973-0602

IDAHO PUBLIC
UTILITIES COMMISSION

C.L. "Butch" Otter, Governor
Curt Fransen, Director

APR 02 2012

**CERTIFIED MAIL:
RETURN RECEIPT REQUESTED**

Tony Bowar
Brian Water Corporation
5120 Overland Road, Suite C, #228
Boise, ID 83705

Subject: Executed Amended Consent Order for Brian Water Corporation, PWS #ID4010017,

Enclosed is a fully executed copy of the Amended Consent Order (ACO) signed by Idaho Department of Environmental Quality's Director, Curt Fransen. The staff at the Boise regional office will be tracking compliance with the deadlines set forth in the CO. Please send required communications to:

Brandon Lowder, Regional Drinking Water Supervisor
Department of Environmental Quality
Boise Regional Office
1445 North Orchard
Boise, ID 83706

Thank you for working with the Department to resolve these issues.

Sincerely,

Barry N. Burnell
Water Quality Division Administrator

BNB:jt

Enclosure

c: Lisa Carlson, Deputy Attorney General
Jerri Henry, Drinking Water Rules and Enforcement Lead
Brandon Lowder, Regional Drinking Water Supervisor
Richard Lee, Boise Regional Office
Trim File

Attachment A
Case No. BRN-W-12-01
Staff Comments
05/16/12 Page 1 of 7

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

In the matter of:) AMENDED CONSENT ORDER
) Idaho Code § 39-108
Brian Water Corporation)

1. Pursuant to the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130, the Idaho Department of Environmental Quality (Department) enters into this Amended Consent Order with the Brian Water Corporation, (Brian Water), which operates a community public water system (System), PWS# ID4010017, which serves forty-six (46) connections and approximately one hundred forty (140) persons on a daily basis in Ada County, Idaho.

2. The owner of Brian Water entered into a Consent Order with the Department on April 27, 2011 to address compliance with the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08. This Amended Consent Order updates and replaces the April 27, 2011 Consent Order and describes 1) the terms and conditions of the Consent Order that have been met; 2) the terms and conditions of the Consent Order that have not been met, and; 3) an agreed upon revised schedule to bring the System into compliance with IDAPA 58.01.08.

3. The owner of Brian Water successfully completed 6.d. of the April 27, 2011 Consent Order. According to the Idaho Bureau of Occupational Licenses, the operator of Brian Water is a properly licensed drinking water operator.

4. The owner of Brian Water has been unable to fully comply with Subsection 6.c. of the Consent Order. Annual drinking water fees are required to be submitted to the Department no later than October 1, each fiscal year, in accordance with IDAPA 58.01.08.010. Annual fees are considered delinquent as of November 1 each fiscal year. According to Department records, annual drinking water fees have been submitted for fiscal years 2009 and 2010 as required. The owner of Brian Water has not submitted the required annual drinking water fees for the 2011 fiscal year, and is therefore delinquent.

The owner of Brian Water has not been able to comply with Subsection 6.e., and subsequent Subsections related to nitrate mitigation within the timelines established therein.

5. Samples taken from the System continue to exceed the nitrate Maximum Contaminant Level (MCL) of 10 milligrams per liter (mg/L), as specified in 40 CFR §141.62, and incorporated by reference in the Idaho Rules for Public Drinking Water Systems (Rules), IDAPA 58.01.08.050. Compliance with the MCL is specified in 40 CFR §141.23(h), and is incorporated by reference in the Rules, IDAPA 58.01.08.100. Brian Water is out of compliance with the nitrate MCL.

6. A second compliance conference was held with Tony Bowar, owner of Brian Water, and the Department on January 17, 2012 to discuss treatment options and entering into an Amended Consent Order.

Brian Water Corporation
Amended Consent Order

7. The owner of Brian Water hereby agrees to perform the following actions in the time periods set forth in order to achieve compliance with Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08:

a. Public Notice. The owner of Brian Water shall continue to provide quarterly public notices concerning exceedances of the MCL for nitrate and the health effects related to these exceedances, in accordance with IDAPA 58.01.08.150, to each residence on the System by mail or hand delivery. Quarterly public notification shall continue until such time as the Department notifies the owner of Brian Water in writing that quarterly notices are no longer required.

The owner of Brian Water shall provide the Department with proof of each quarterly notification via the Department's supplied notification form and a copy of each quarterly notification within ten (10) days of completion in accordance with IDAPA 58.01.08.150.

b. Sampling. The owner of Brian Water shall continue to submit quarterly water samples from the System for nitrate analysis by a certified laboratory. All sample results shall be submitted to the Department. The owner of Brian Water shall continue quarterly sampling until such time as the Department notifies the owner of Brian Water in writing that quarterly sampling is no longer required. The owner of Brian Water shall continue to submit all drinking water samples for all required parameters according to the schedule that has been established by the Department.

c. Annual Fees. No later than May 1, 2012, Brian Water shall submit the 2011 annual fee of two hundred and thirty dollars (\$230.00) to the Department.

Payment shall be submitted to:

Department of Environmental Quality
Financial Management
1410 North Hilton
Boise, Idaho 83706

d. Nitrate Mitigation. No later than June 1, 2012, the owner of Brian Water shall complete one of the following nitrate mitigation plans within the specified timeframes:

i. Enter into a contract with a professional engineer, licensed in the state of Idaho, to evaluate various treatment options to mitigate nitrate, and provide written documentation to the Department stating as such.

ii. Enter into an agreement with an existing public water system for interconnection and service, with a signed letter of agreement between the

Brian Water Corporation
Amended Consent Order

owner of Brian Water and an existing public water system for interconnection and service in accordance with IDAPA 58.01.08. The letter must also indicate a completion date which is subject to Department approval.

e. If the owner of Brian Water elects to hire an engineer as per Paragraph 7.d.i., then the owner of Brian Water shall complete the following actions within the specified timeframes:

i. No later than June 15, 2012, the owner of Brian Water and the engineer shall schedule and attend a nitrate treatment pre-design meeting with the Department.

ii. No later than December 15, 2012, the owner of Brian Water shall submit to the Department a Preliminary Engineering Report per IDAPA 58.01.08.503, that explains how the System will be brought into compliance with IDAPA 58.01.08. The Preliminary Engineering Report shall delineate the steps that the owner of Brian Water will take to obtain full compliance with IDAPA 58.01.08, including, but not limited to, the following:

a. Identification of available alternatives to meet the nitrate MCL and treatment requirements.

b. A proposed project implementation schedule for the recommendation(s) selected under the provisions of Paragraph 7.e.ii. The schedule shall include: plans and specifications, preparation of bidding documents, supervision of bid openings and bid awards, pre-construction meetings, construction schedules, construction inspection, and record drawings.

iii. The Department shall review, comment on, and/or approve the Preliminary Engineering Report as specified in Paragraph 8 of this Consent Order. The Department will advise the owner of Brian Water and their engineer that a Final Engineering Report may be submitted for approval.

iv. The conditions and completion dates in the Department approval letter for the Final Engineering Report, including the work plan described in Paragraph 7.e.ii of this Consent Order shall be incorporated by reference into this Consent Order and shall be enforceable as provided by applicable law.

v. Within 30 days of completion of the items described in the project implementation schedule of the Final Engineering Report incorporated by reference in Paragraph 7.e.iv, the owner of Brian Water shall submit

Brian Water Corporation
Amended Consent Order

record plans and specifications to the Department in accordance with Idaho Code §39-118 and IDAPA 58.01.08.504.09.

vi. The owner of Brian Water shall ensure project implementation and completion in accordance with the implementation schedule established in the Department-approved Final Engineering Report.

f. If the owner of Brian Water selects the option for interconnection with an existing public water system as per Paragraph 7.d.ii., then the owner of Brian Water shall submit to the Department for approval, no later than December 15, 2012, a letter from that public water system stating that they will be able to provide services to the System and the proposed date of interconnection. The owner of Brian Water shall ensure interconnection and service is completed in accordance with the signed letter of agreement and the Department-approved completion date.

g. No later than August 1, 2013 the Brian Water System shall achieve full compliance with the requirements of the nitrate MCL as specified in 40 CFR §141.23(h), and incorporated by reference in the Rules, IDAPA 58.01.08.050.

h. If any event occurs that causes, or may cause, delay in the achievement of any requirement of this Consent Order, then the owner of Brian Water shall notify the Department in writing within ten (10) days of the date the owner of Brian Water knew, or should have known, of the delay. Any notice under this paragraph shall describe in detail the anticipated length of the delay, all anticipated consequences of the delay, measures taken by the owner of Brian Water to prevent or minimize the delay, and a timetable by which those measures shall be implemented. The owner of Brian Water will utilize all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay or anticipated delay in achieving any requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the owner of Brian Water, then the Department may grant an extension for a period of time agreeable to both the owner of Brian Water and the Department.

8. Department Submittal Review Process. Unless otherwise set forth specifically herein, the following document submittal and review process (Submittal Review Process) shall be followed regarding submittals required by this Consent Order. This process shall be followed until the Department approves the document or the document review time frame has expired.

a. Within forty-two (42) calendar days of receipt of the owner of Brian Water's submittal, the Department shall 1) notify the owner of Brian Water in writing the document is approved; 2) notify the owner of Brian Water in writing of any deficiencies in the document; or, 3) notify the owner of Brian Water of the Department's extension of the Department's review and comment period. If the Department notifies the owner of Brian Water of deficiencies in the document, the

Brian Water Corporation
Amended Consent Order

owner of Brian Water shall submit a revised document to resolve those deficiencies within thirty (30) calendar days of receipt of the Department's notice.

b. The Submittal Review Process shall be repeated until the Department notifies the owner of Brian Water the document is approved. However, the submittal must meet the Department's approval within sixty (60) days from the due date for the first submittal of the document, unless the Department provides the owner of Brian Water with a written extension of the sixty (60) day time frame. The owner of Brian Water's failure to obtain Department approval of a submittal within such time frames shall constitute a violation of this Consent Order.

c. Once the Department approves these documents, they shall be incorporated herein and enforceable as a part of this Consent Order.

9. All communications required of the owner of Brian Water by this Consent Order shall be addressed to:

Brandon Lowder, Drinking Water Compliance Supervisor
Department of Environmental Quality
Boise Regional Office
1445 North Orchard
Boise, ID 83706

10. All notices, reports and submittals required of the Department by this Consent Order shall be addressed to:

Tony Bowar
Brian Water Corporation
5120 Overland Road, Suite C, #228
Boise, ID 83705

11. This Consent Order shall not in any way relieve the owner of Brian Water from any obligation to comply with any provision of the Idaho Rules for Public Drinking Water Systems, or any applicable local, state, or federal laws.

12. The owner of Brian Water recognizes that failure to comply with the terms in this Consent Order may result in district court action seeking specific performance of this Consent Order; assessment of costs and expenses; available penalties under Idaho Code §39-108; restraining orders; injunctions; attorney fees; and other relief available by statute or rule as the court considers to be just and reasonable under the circumstances.

13. This Consent Order shall remain in full force and effect until the Department acknowledges in writing that the Consent Order is terminated and that the owner of Brian Water has fulfilled all requirements of this Consent Order.

Brian Water Corporation
Amended Consent Order

14. This Consent Order shall bind the owner of Brian Water, its successors and assigns, until terminated in writing by the Department.

15. Each undersigned representative to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order, and to execute and legally bind such party to this document.

16. The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Environmental Quality.

DATED this 12 day of March, 2012.

By: Tony Bowar
Tony Bowar, Owner
Brian Water Corporation

DATED this 30 day of March, 2012.

for By: Jim Fransen
Cur. A. Fransen, Director
Department of Environmental Quality

Brian Water Corporation
Amended Consent Order

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 16TH DAY OF MAY 2012, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. BRN-W-12-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

TONY BOWAR
BRIAN WATER CORP
STE C #228
5120 OVERLAND RD
BOISE ID 83705



SECRETARY

CERTIFICATE OF SERVICE