

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF BRIAN WATER CORPORATION FOR) CASE NO. BRN-W-12-02
AUTHORITY TO INCREASE ITS RATES)
AND CHARGES FOR WATER SERVICE) ORDER NO. 32784
)

On December 7, 2012, Brian Water Corporation (“Brian Water” or “Company”) filed an Application (Letter) requesting authority to institute a temporary surcharge.

TRANSFER OF OWNERSHIP

On February 7, 2013, the Commission received a copy of a transfer agreement and quit claim deed conveying ownership of the Company from the grantor, Mr. Tony Bowar, to the Brian Subdivision Water Users Association (“BSWUA”). On March 26, 2013, the Commission received a letter from Richard Juengling, Registered Agent for BSWUA, acknowledging the transfer of ownership and asserting that the BSWUA “is a not-for-profit corporation established solely for the purpose of operating the water system.” BSWUA states that the “homeowners in the subdivision came together as an organization to find solutions to the water contamination issue” presented some time ago by IDEQ to Mr. Bowar. BSWUA believed that “the only way for us to move forward was to acquire the system.” BSWUA requested that the Commission cancel Brian Water’s existing CPCN.

STAFF RECOMMENDATION

Staff evaluated the transfer agreement and related documents. Staff also spoke with Mr. Juengling regarding the purchase and verified that full legal and operational control of the water system has been assumed by BSWUA. BSWUA is a not-for-profit corporation registered with the Idaho Secretary of State and organized solely for the delivery of water service to the homeowners “at cost.” Thus, pursuant to *Idaho Code* § 61-104, Staff believes that the BSWUA does not qualify as a public utility subject to the Commission’s jurisdiction. Staff recommended that the Commission terminate Brian Water’s pending Application and cancel the Company’s existing CPCN.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Brian Water, a water utility, and the issues presented in Case No. BRN-W-12-02 pursuant to Idaho Code, Title 61, and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

COMMISSION FINDINGS AND DECISION

The Commission has reviewed the record in this proceeding, including documents relating to the transfer of ownership, and finds that Brian Water's pending Application is no longer valid. The Commission finds that a legal transfer of the Brian Water's water system has been duly conveyed to the BSWUA, a not-for-profit corporation exclusively owned and operated by property owners residing in the Brian subdivision development. The Commission finds that the BSWUA falls outside of the Commission's jurisdiction and is not subject to regulation. *See Idaho Code* §§ 61-104 and 61-125. Accordingly, Brian Water's pending Application, BRN-W-12-02, shall be dismissed and the Company's existing Certificate of Public Convenience and Necessity ("CPCN") is cancelled.

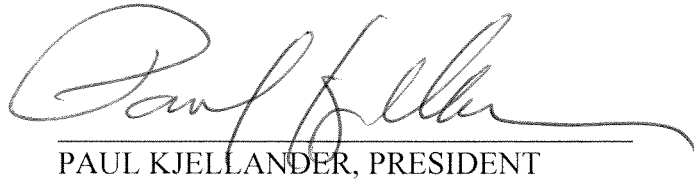
ORDER

IT IS HEREBY ORDERED that the Application of Brian Water Corporation, BRN-W-12-02, requesting authority to institute a temporary surcharge is dismissed.

IT IS FURTHER ORDERED that the Company's existing CPCN is cancelled.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

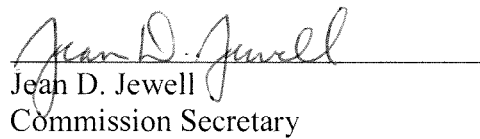
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 9th
day of April 2013.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

O:BRN-W-12-02_np