DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

BOB SMITH

ROSE SCHULTE

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:NOVEMBER 21, 1997

RE:HAPPY VALLEY WATER SYSTEM (POST FALLS, IDAHO)

CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 328

On September 22, 1997, the Commission in Order No. 27142 (attached) asserted formal regulatory jurisdiction over the Happy Valley Water system and issued Certificate of Public Con­veni­ence and Necessity No. 328 to Mr. John Smick dba Happy Valley Water System, a public water utility, for the following described existing service territory: an approximate 1/2 square mile area located approximately 3 miles West of US Highway 95 in Kootenai County, Idaho, on the North side of Hayden Avenue between Huetter Road and Meyers Road, said area including all of the South 1/2 of Section 17, Township 51 North, Range 1 West, Boise-Meridian.  Reference Idaho Code §§ 61-526, 61-528; IDAPA 31.01.01.111.

The Commission in its Order established rates and charges and required the Company to file tariff sheets.  The Commission also required the Company to adopt and implement the Commission’s Consumer Relations Rules, the Commission’s Utility Customer Information Rules, and an accounting system consistent with the information required by the Commission’s annual report for small water companies.  The Company was further required to inform its customers of the Commission approved rates and policies.  Finally, the Commission required the Company to make written petition or application to the Commission prior to any proposed change in ownership of the system.

It has come to the attention of the Commission Staff that the Happy Valley Water System has purportedly been sold and reconveyed from John Smick to Zeke Davis.  (See attached correspondence).  Mr. Davis is of the mistaken belief that if he does not charge or collect for water service that he cannot be regulated by the Commission.  The Company rejects the Commission’s jurisdiction and has failed to comply with the Commission’s Order and directions.  Reference Idaho Code 61-406.  The customers have been offered an ultimatum—i.e., pay $5,000 to Mr. Davis by November 30, 1997 or be disconnected.  (See attached letter).

Staff recommends that the Commission initiate an immediate investigation into the Happy Valley Water System, its service and operations, and direct the Company during the course of the investigation to comply with Commission Orders and to continue providing water service to its customers.  Staff further recommends that the Commission direct the Company, Mr. John Smick and Zeke Davis, to show cause in hearing before the Commission why the Company should not be held to be in willful violation of Commission Orders for its acts and omissions and subject to an assessed civil penalty of $2,000 per day for each and every violation, (Reference Idaho Code, Title 61, Chapter 7, Public Utilities Law—Enforcement, Penalties and Interpretation); and why the Commission should not proceed against its officers, agents or employees to determine whether they should be held criminally liable for wilful acts and omissions and subject to fine and imprisonment.  Reference Idaho Code 61-709.

Commission Decision

How does the Commission wish to proceed?  Order, Show Cause, etc.?

Does the Commission wish to direct Staff to explore the possibility of future receivership and/or injunction?

Scott Woodbury

vld/M:hpv.sw