(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF IVAN DUNNICK FOR A REQUESTED TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 328 (HAPPY VALLEY WATER SYSTEM). | )  )  )  )  )  )  )  ) | CASE NO. HVW-W-98-1  NOTICE OF APPLICATION  NOTICE OF MODIFIED         PROCEDURE  NOTICE OF SHOW CAUSE         HEARING  ORDER NO.  27447 |

On March 17, 1998, Ivan Dunnick, agent for Jon and Richard Dunnick, filed an Application with the Idaho Public Utilities Commission (Commission) in Case No. HVW-W-98-1 requesting a transfer of Certificate of Public Convenience and Necessity No. 328.  Reference IDAPA 31.01.01.052.  Mr. Dunnick represents that as a result of an assignment, default and contractual remedies perfected pursuant to terms of the August 29, 1996, Earl H. Reamy, Jr.—Coyote Coeur d’Alene Corp. (Lawrence W. (Zeke) Davis) sales contract, ownership of the Happy Valley Water System (HVW) was on February 24, 1998, transferred to Mr. Dunnick’s sons, Jon and Richard.  Mr. Dunnick’s Application is accompanied by copies of related documents filed with the Kootenai County Recorder’s Office in Coeur d’Alene, Idaho and is augmented by the supporting affidavit of Michael B. McFarland, a Coeur d’Alene attorney who provides his legal opinion regarding chain of title and ownership of the Happy Valley Water System.

The Commission’s counsel on March 16, 1997, attended a meeting of HVW customers, the Dunnick’s, and a representative from the State Division of Environmental Quality.  It is reported that Mr. Dunnick in addition to filing the aforementioned documentation with the Kootenai County Recorder’s Office has asserted ownership rights in the Happy Valley Water System by providing customers with a letter indicating the change in ownership, by changing the locks on the pumphouse, by reading the meters and by changing the water system’s electric service account name.  Based on recent Staff conversations with Mr. Zeke Davis and a review of recent letters from Mr. Davis to HVW customers, however, Staff represents to the Commission that Mr. Davis maintains that he is still the owner of Happy Valley Water System.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. HVW-W-98-1 and has considered the related reports of its counsel and Commission Staff.  We find that the documentation and affidavit filed in this case present prima facie evidence of a change in ownership of the Happy Valley Water System and present reasonable grounds to suspend the HVW management and operation rights of Mr. Davis and to appoint Mr. Dunnick as interim operator and manager of the Happy Valley Water System.  We note that any dispute regarding ownership of the water system is a matter for the courts and not this Commission.  Should Mr. Davis clearly assert any rights of ownership in this proceeding, we will require that title be resolved by judicial quiet title action.

Pending final determination and order regarding transfer of the Certificate for the Happy Valley Water System, the Commission finds it reasonable that all payments for water service provided after March 1, 1998, to be made to Mr. Dunnick.  Because of possible disputed ownership, the developed record of which is unclear, we find it reasonable to require that Mr. Dunnick secure and post a bond in the amount of $10,000.  Mr. Dunnick is further required to consult with and maintain accounting records and provide periodic reports in a manner deemed appropriate by Commission Staff.  As interim operator/manager, Mr. Dunnick is authorized to read meters, to issue billing statements, to pay operating expenses for the Happy Valley Water System and to maintain and repair the HVW Water System, but is not authorized to commit to any upgrade investment without prior Application and Commission approval.

The Commission further finds reasonable that any undisputed amounts owing for HVW water service prior to March 1, 1998, be paid to Zeke Davis.  The Commission authorized rates and charges for the Happy Valley Water System were established on September 22, 1997, in Order No. 27142.  Any billings disputed by customers are to be reported to the Commission’s Consumer Division for processing in the normal fashion.  Pending final Order in this case, no termination of service for non-payment is permitted without prior Commission authorization.

YOU ARE HEREBY NOTIFIED that a show cause hearing is scheduled for 3:30 P.M. APRIL 21, 1998, AT THE COMMISSION HEARING ROOM, 472 WEST WASHINGTON, BOISE, IDAHO at which time Coyote Coeur d’Alene Corp and Lawrence W. (Zeke) Davis and/or any other interested party will be provided the opportunity to appear and show cause (if any) why the requested transfer of Certificate of Public Convenience and Necessity No. 328 should not occur.

YOU ARE FURTHER NOTIFIED that the Commission having reviewed the filings of record in Case No. HVW-W-98-1 has preliminarily determined that the public interest may not require a formal hearing to consider the issues presented and that the issues raised regarding the proposed  transfer of Certificate may be processed under Modified Procedure, i.e., by written submission rather than by hearing.  Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204.

YOU ARE FURTHER NOTIFIED that the deadline for filing written comments or protests with respect to the proposed transfer of Certificate No. 328 and the Commission’s use of Modified Procedure in Case No. HVW-W-98-1 is Friday, April 17, 1998.  Persons desiring hearing a must specifically request a hearing in their written protests or comments.

YOU ARE FURTHER NOTIFIED that if no written protests or comments are received within the deadline, the Commission will consider the matter on its merits and may enter its Order without a formal hearing.  If comments or protests are filed within the deadline, the Commission will consider them and in its discretion may set the matter for hearing and may decide the matter and issue its Order on the basis of the written positions before it.  Reference IDAPA 31.01.01.204.

YOU ARE FURTHER NOTIFIED that written comments concerning Case No. HVW-W-98-1 should be mailed to the Commission at the following address:

COMMISSION SECRETARY

IDAHO PUBLIC UTILITIES COMMISSION

PO BOX 83720

BOISE, IDAHO  83720-0074

Street Address for Express Mail:

472 W WASHINGTON ST

BOISE, IDAHO  83702-5983

All comments should contain the case caption and case number shown on the first page of this document.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction and authority over the Happy Valley Water System, a water utility, and the issues raised in this case pursuant to Title 61 of the Idaho Code and the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.

O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the management and operation rights of Coyote Coeur d’Alene Corp. and Mr. Lawrence W. (Zeke) Davis in the Happy Valley Water System are suspended.  Reference Certificate No. 328.

IT IS FURTHER ORDERED and the Commission does hereby appoint Mr. Ivan Dunnick under the conditions and in the manner set forth above as interim operator and manager of the Happy Valley Water System.

IT IS FURTHER ORDERED that customer payments for water service provided by the Happy Valley Water System be made in the manner set forth above.

IT IS FURTHER ORDERED and the Commission does hereby adopt the foregoing schedule for Show Cause Hearing and Modified Procedure in Case No. HVW-W-98-1.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of April 1998.

DENNIS S. HANSEN, PRESIDENT

RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Rebecca Smith-Pitman

Assistant Commission Secretary

vld/O:HVW-W-98-1.sw

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

April 3, 1998