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:MARCH 20, 1998

RE:CASE NO. HVW-W-98-1

HAPPY VALLEY WATER SYSTEM

CHANGE OF OWNERSHIP

On March 17, 1998, Ivan Dunnick, agent for Jon and Richard Dunnick, filed an Application (attached) 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 original August 29, 1996, Earl H. Reamy, Jr.—Coyote Coeur d’Alene Corp.  (Lawrence W. 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.

Staff Analysis and Recommendation

Staff’s counsel has reviewed the documentation filed by Mr. Dunnick and discussed the underlying contract and change in ownership with Mr. Dunnick’s attorney, Michael B. McFarland.  Staff’s counsel on March 16, 1997, attended a meeting of HVW customers, the Dunnicks, and a representative from Idaho H&W—DEQ.  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 of ownership (attached), 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 conversations with Zeke Davis and a review of recent letters from Mr. Davis to HVW customers however, Staff represents that Mr. Davis believes that he is still owner of the Happy Valley Water System.

Staff notes that Mr. Davis’s relationship with this Commission and with HVW customers has been somewhat contentious and non-constructive.  Staff suggests that the documentation filed by Mr. Dunnick presents reasonable grounds to suspend the Certificate of Mr. Davis and immediately appoint Mr. Dunnick as interim operator and manager of the Happy Valley Water System.  Staff recommends that Mr. Dunnick’s Application be noticed and that the case be initially processed pursuant to Modified Procedure, with certified delivery of notice being made to Earl Reamy, Zeke Davis and John Smick.  Staff acknowledges that any dispute regarding ownership of the water system is a matter for the courts and not this Commission.

Staff recommends that the Commission direct that all payments for water service after March 1, 1998, be made to Mr. Dunnick, and that Mr. Dunnick be required to maintain accounting records in a manner deemed appropriate by Commission Staff.  Staff recommends that Mr. Dunnick pending final Order in this case be authorized to maintain and repair the water system, but not be permitted to commit to any upgrade investment (e.g., looping; cross-couples; isolation valves) without prior application and Commission approval.  Staff recommends that amounts owing for water service prior to March 1, 1998, if undisputed, be paid to Zeke Davis.  Staff recommends that any disputed billings by customers be reported to Commission Consumer Staff for processing in the normal fashion.

Commission Decision

How does the Commission wish to process this Application?  Modified Procedure?  Suspension of the Certificate of Zeke Davis?  Appointment of interim operator/manager?  Direction regarding water service billing?  Direction regarding upgrade investment?

Scott Woodbury

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