

Preston N. Carter (ISB No. 8462)
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
prestoncarter@givenspursley.com
14751990_2.docx [13988-3]

RECEIVED

2019 JUL 30 PM 3:42

IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Gem State Water Company, LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPROVAL
OF ACQUISITION OF THE ASSETS OF
DIAMOND BAR ESTATES, L.L.C.
AND BAR CIRCLE "S" WATER, INC.;
FOR TRANSFER OF CERTIFICATES
OF PUBLIC CONVENIENCE AND
NECESSITY OF DIAMOND BAR
ESTATES, L.L.C. (NO. 413) AND BAR
CIRCLE "S" WATER, INC. (NO. 296);
AND REQUEST FOR MODIFIED
PROCEDURE

Case No. BCS-W-19-01/DIA-W-19-01

GEM STATE WATER COMPANY, LLC'S
REPLY COMMENTS

Gem State Water Company, LLC ("Gem State Water," "Company" or "Buyer") files the following response to comments filed by the Commission Staff on July 23, 2019 ("Staff Comments") regarding Gem State Water's application to acquire the assets of Diamond Bar Estates, LLC ("Diamond Bar") and Bar Circle "S" Water, Inc. ("Bar Circle S").

INTRODUCTION

Gem State Water appreciates Staff's investigation, particularly Staff's willingness to work with Gem State Water and Mr. Turnipseed (or "Seller") to obtain and evaluate information and documentation regarding the water systems. The Company recognizes and supports Staff's overall recommendation to approve both acquisitions.

Staff did express some concerns in the Staff Comments. Small water company acquisitions often present difficult issues, including less-than-ideal documentation of system assets and personal assets being used relative to utility business. Diamond Bar and Bar Circle S are no exception. Gem State Water addresses Staff's particular concerns in more detail below.

REPLY COMMENTS

1. Redundant source

Gem State Water recognizes that public water systems generally require a redundant source of ground water, as a matter of rule and of sound practice.¹ Mr. Turnipseed's personal well currently serves as the redundant source for Diamond Bar. Mr. Turnipseed primarily uses this well for his own purposes. Despite Gem State Water's best efforts, he would not sell the well. As Mr. Turnipseed's well is a personally-owned asset, Gem State Water is not aware of any mechanism to force a conveyance.²

Even if Mr. Turnipseed did agree to sell his personal well to Gem State Water, it is not an ideal redundant source. As noted in the Staff Comments (page 5), Mr. Turnipseed's personal well is located within 430 feet of the land on which the Hayden Area Regional Sewer Board applies its sewage. The 430 feet is less than half the 1,000-foot buffer recommended in DEQ

¹ As Staff notes, Idaho Department of Environmental Quality's ("IDEQ") current rules require a redundant source of groundwater. *See* IDAPA 58.01.08.501.17. This rule applies only to "[n]ew community water systems" and was adopted in 2009. Diamond Bar became a public water system in the mid-1990s and, therefore, is not technically subject to this rule. However, the preceding rule requires a redundant ground water source for community water systems constructed after July 1, 1985. IDAPA 16.01.08.550.o (1996), *available at* <https://adminrules.idaho.gov/rules/1996/16/0108.pdf>. The requirement for Diamond Bar to have a redundant source comes from this previous rule, not the current one.

The Company raises this issue only to note that IDEQ does not interpret its rules as having retroactive effect, and it is therefore not necessarily an easy task to determine which rules do and do not apply to aspects of water systems that were constructed decades ago.

² Mr. Turnipseed presumably would refuse to sell his personal well to *any* potential purchaser. If his refusal to sell the well is a barrier to acquisition, the less-than-ideal redundant source would stand in the way of resolving the overall system needs.

guidance.³ The well is used primarily for Mr. Turnipseed’s personal purposes and is located on property owned by Mr. Turnipseed. And, while the well technically meets the IDEQ rules it is subject to,⁴ in IDEQ’s view, “[a]cquiring a redundant source that meets all DEQ’s rules would be in the best interest of public health.” IDEQ Supplemental Comments (filed July 18, 2019).

In light of the circumstances—a seller that is unwilling to convey a less-than-optimal redundant source—Gem State Water entered into a one-year agreement and easement that satisfies DEQ rules while allowing Gem State Water time to engage in a planning process to identify system needs, including options for a redundant source. During this planning process, Gem State Water intends to identify and evaluate long-term solutions that meet regulatory requirements and are in the best interest of public health.

Gem State Water does not know at this time the range of options or the best long-term solution. The Company recognizes that, as a regulated utility, it must prove that costs were prudently incurred in order to recover the costs in rates. Gem State Water will have the prudence requirement in mind when evaluating solutions. However, the prudence of a cost cannot be determined until the cost, the underlying rationale, alternate solutions, and other circumstances are known. Gem State Water does not, at this time, request that the Commission determine that costs associated with a new redundant source are recoverable. That determination would not be appropriate until the costs are incurred and surrounding circumstances are known.

The opposite also is true—at this time, a blanket determination should not be made now that costs that may be incurred in the future related to a new secondary source are categorically

³ IDEQ, 2015 Drinking Water Supply Report at p. 2, attached to the original IDEQ Comments (filed June 10, 2019).

⁴ As noted in IDEQ’s supplemental comments, because the well serving as the redundant source was constructed in the 1960s, it is not subject to the rule requiring that redundant sources be on a dedicated well lot. While IDEQ recognizes that it cannot enforce this rule as to the current well, in IDEQ’s view a redundant source “the meets all IDEQ’s rules would be in the interest of public health.” DEQ Supplemental Comment (filed July 18, 2019).

imprudent. Gem State Water respectfully requests that the Commission not predetermine that any costs associated with a redundant source should be excluded from rates. Instead, Gem State Water respectfully requests that the Commission make a prudency determination when the Company fully presents the issue in an appropriate rate proceeding. At that time, the costs, rationale, and other surrounding circumstances will be known and can be addressed.

2. Assets being acquired

Staff expressed concerns that Schedule 1.1(a) to the Asset Purchase Agreement (“Agreement”) does not list all the assets that would be required to operate the Diamond Bar and Bar Circle S systems. Staff Comments at 5, 8. However, Staff recognizes that Section 1.1 of the Agreement contains a “catch all” that includes transfer of all required assets. Conversations with Gem State Water and Mr. Turnipseed also confirmed, in Staff’s view, a mutual understanding that all required utility assets are being transferred.

Gem State Water understands Staff’s concerns. However, Section 1.1 of the Agreement is the operative provision. It requires that Seller deliver to Buyer all assets that relate to, or are held for use in connection with, the water supply and distribution business. Schedule 1.1(a) is intended to identify assets that are necessary to operate the utility, but is not intended as an item-by-item list of all utility assets. In Gem State Water’s experience, this structure is common, if not standard, in these types of acquisitions. The redundant well is not captured by Section 1.1 of the Agreement, or listed in Schedule 1.1(a) to the Agreement, because it is not an asset of the Seller, Diamond Bar.

Gem State Water agrees that, in an ideal world, each small water company would have an exhaustive, easily accessible list of all assets used in connection with its water supply and distribution system. That is not always the case. Gem State Water appreciates Staff’s diligence in identifying the assets and confirming the Company’s and Mr. Turnipseed’s understanding that all

required assets are indeed conveyed under the Agreement. Gem State Water is confident that all the assets required to run the systems adequately and reliably are covered in the Agreement, including sufficient water rights and easements.

3. Other comments

Staff notes that Gem State Water stated in the Application its intent to provide notice to customers. Staff Comments at 9. Gem State Water will provide direct notice to customers of the acquisition through a separate mailing, a message on bills, or a bill insert.

Staff notes that Diamond Bar and Bar Circle S have separate Commission-approved Tariffs, and that Staff will work with the Company if it wishes to create a single combined tariff. Staff Comments at 9. At this time, Gem State Water does not intend to create a unified tariff, but it will work with Staff to make any changes to the tariffs required by the acquisition. Regarding other documents, Gem State Water appreciates Staff's offer to work with the Company to revise these documents, and the Company agrees that three months is a reasonable timeframe.

CONCLUSION

Gem State Water appreciates the time and effort Staff expended to conduct an investigation and compile comments in this case. Again, Gem State Water agrees and supports Staff's recommendation to approve the acquisitions. Gem State Water respectfully requests that a prudence determination regarding costs associated with any new redundant source take place in an appropriate rate proceeding, not at this time. Accordingly, Gem State Water respectfully requests that the Commission approve the acquisitions without the condition that costs associated with a redundant source be excluded from rates.

DATED: July 30, 2019.

GIVENS PURSLEY LLP



Preston N. Carter
Givens Pursley LLP
Attorneys for Gem State Water Company, LLC

CERTIFICATE OF SERVICE

I certify that on July 30, 2019, a true and correct copy of GEM STATE WATER COMPANY, LLC'S REPLY COMMENTS was served upon all parties of record in this proceeding via the manner indicated below:

Commission Staff

Diane Hanian, Commission Secretary
Idaho Public Utilities Commission
472 W. Washington Street
Boise, ID 83702
Diane.holt@puc.idaho.gov

Hand Delivery
(Original and 7 copies)

Edward Jewell
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington Street (83702)
P.O. Box 83720
Boise, ID 83720-0074
Edward.Jewell@puc.idaho.gov

Electronic Mail



Preston N. Carter