

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION) CASE NO. BCS-W-19-01/
OF GEM STATE WATER COMPANY FOR) DIA-W-19-01
APPROVAL OF ACQUISITION OF THE)
ASSETS AND TRANSFER OF THE CPCN'S)
OF DIAMOND BAR ESTATES AND BAR)
CIRCLE S WATER) ORDER NO. 34416**

On April 29, 2019, Gem State Water Company, LLC (“Gem State Water” or “Company”) filed an Application seeking approval of the Company’s acquisition of the assets of Diamond Bar Estates, L.L.C. (“Diamond Bar”) and Bar Circle “S” Water, Inc. (“Bar Circle”) and the transfer of each company’s certificate of public convenience and necessity (“CPCN”) to Gem State Water (collectively, “Application”).

On May 31, 2019, the Commission issued a Notice of Application and Notice of Modified Procedure. Order No. 34347.

The Commission received comments from the Idaho Department of Environmental Quality (“DEQ”), Commission Staff, and reply comments from Gem State Water.

Now, having reviewed the record, the Commission approves the Application of Gem State Water.

THE APPLICATION

Gem State Water seeks approval of the asset purchase agreement (“Asset Purchase Agreement”) it signed with Diamond Bar, Bar Circle, and Bar Circle “S” Ranch, Inc. (“Bar Circle Ranch”). Diamond Bar is a regulated water utility that serves approximately 46 customers under CPCN No. 413. Application at 4. Bar Circle is a regulated water utility that serves approximately 218 residential customers and one commercial customer under CPCN No. 296. *Id.* Diamond Bar and Bar Circle both serve customers in or near Kootenai County, Idaho. *Id.*

As part of the transaction, Gem State Water is also purchasing the assets of Bar Circle Ranch, an unregulated company that owns real property and easements on which some utility assets are located. *Id.* Before the transaction, Diamond Bar, Bar Circle, and Bar Circle Ranch were owned by Robert Turnipseed and Clara Turnipseed (“the Turnipseeds”) through different ownership structures. After filing its Application, Gem State Water contracted with the Turnipseeds for one-year of use and access to what was formerly Diamond Bar’s emergency

backup well, which is privately owned by the Turnipseeds and was not included in the Asset Purchase Agreement. Gem State Water Production Response 15.

Gem State Water is a wholly-owned subsidiary, by and through its parent companies, of Northwest Natural Holding Company. The latter company was created during a corporate reorganization of Northwest Natural Gas Company and its affiliates. Northwest Natural Gas Company is a 160-year old natural gas utility serving customers in the Pacific Northwest. *Id.* at 2. Gem State Water is not requesting any changes to rates, rate structure, or other charges in this Application and states that any future changes will be based on prudently incurred capital expenditures and other accepted ratemaking principles. *Id.* at 4.

THE COMMENTS

a) DEQ Comments.

When DEQ filed its first set of comments, Gem State Water had not yet reached the one-year agreement with the Turnipseeds for access to the backup well. DEQ stated that the Diamond Bar system was subject to DEQ's groundwater source redundancy rule ("Redundant Source Requirement") and therefore a backup well would be required under DEQ's rules. DEQ also noted that the backup well must satisfy DEQ's requirement for a dedicated well lot ("Well Lot Requirement"), if the well were to be transferred. DEQ noted that the backup well is located approximately 430 feet from a recycled water irrigation site operated by the Hayden Area Regional Sewer Board ("HARSB"). Current DEQ guidance recommends a 1,000 foot buffer between such activities and public-use wells. However, because of the direction of ground water flow between the sites and monitoring data collected from the backup well, DEQ stated that the current backup well site location was considered acceptable relative to the location of the recycled water irrigation site. DEQ Comments at 2.

DEQ filed supplemental comments on July 18, 2019 stating that the one-year agreement reached by Gem State Water and the Turnipseeds satisfies DEQ's Redundant Source Requirement while the one-year agreement is in effect. DEQ also clarified that the backup well was constructed before the Well Lot Requirement was in effect, and therefore the backup well is not subject to the Well Lot Requirement. However, DEQ stated that acquiring a redundant source that satisfies all DEQ's current rules and guidance would be in the best interest of public health. *See* DEQ Supplemental Comments at 1.

b) Commission Staff Comments.

Commission Staff filed comments recommending the Commission approve the Application. Staff analyzed the transaction using *Idaho Code* § 61-328 as a guide and therefore looked at: 1) whether the transaction would follow the public interest, 2) whether the cost of and rates for supplying service would be increased because of the transaction, and 3) whether the transferee has the bona fide intent and financial ability to operate and maintain the system in the public service.

Staff noted that small water companies are often owned by individuals without a succession plan for when the owner can no longer fulfill the requirements of being a regulated public utility. Staff noted that the purchase of such systems by experienced owners and operators of regulated public utility infrastructure can benefit the public. However, Staff raised concerns that the Asset Purchase Agreement did not include all assets necessary to operate the system post-transaction and, therefore, the transaction may cause additional system costs that would not otherwise have been incurred.

Staff recommended that the Commission not allow costs incurred by Gem State Water to construct a backup well to be included in base rates in a future rate case. Staff noted that Diamond Bar was allowed to include operation and maintenance costs for the backup well in base rates in Diamond Bar's last rate case, DIA-W-15-01, and stated its concern that customers may have to pay twice for a backup well. Staff noted that the transaction price should reflect the assets included in the transaction, and if Gem State Water did not purchase all assets necessary to operate the system, ratepayers should not be required to pay again for Gem State Water to acquire those assets. Staff noted that Diamond Bar's main well has a history of malfunctioning, and therefore access to an acceptable backup well is critical to maintain adequate service. Staff also expressed concern that irrigation water right 95-10067 was not included in the transaction and that easements to operate and maintain the systems were not included in the assets transferred in the Asset Purchase Agreement.

THE REPLY COMMENTS

Gem State Water stated that despite its best efforts, it could not persuade the Turnipseeds to sell the backup well, which is primarily used by the Turnipseeds for personal purposes. Gem State Water Reply Comments at 2. Gem State Water also acknowledged the issues with the backup well, and indicated that it contracted with the Turnipseeds for one-year of access

to the backup well to give the Company time to assess its options for a backup water source while complying with the DEQ's Redundant Source Requirement. *Id.* Gem State Water requested that the Commission not predetermine in this case whether costs to procure a redundant source were prudently incurred or not, and to make that determination when the Company files a rate case. At that time, the Commission will better understand the costs associated with procuring a backup water source and the rationale for selecting a redundant source option.

Regarding whether sufficient assets were transferred in the Asset Purchase Agreement to operate the system post-transaction, Gem State Water stated that it "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." Gem State Water Reply Comments at 5. Gem State Water notes that Section 1.1 of the Asset Purchase Agreement requires the Seller to "deliver to Buyer all assets that relate to, or are held for use in connection with, the water supply and distribution business." *Id.* at 5. However, Gem State Water also notes that certain assets, such as the backup well, are owned personally by the Turnipseeds, and therefore are not included in the transaction.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter and the issues in this case under Title 61 of the Idaho Code. Specifically, the Commission regulates "public utilities," including "water corporations" that serve the public or some portion thereof for compensation. *See Idaho Code* §§ 61-125, -129, and -501. The Commission has an established practice of evaluating the transfer of water systems under the criteria found in *Idaho Code* § 61-328. Diamond Bar and Bar Circle are privately held water companies and public utilities as defined in these laws. Having reviewed the record, we approve the Application.

Gem State Water will provide organizational support, access to capital, and economies of scale for the systems it purchases. It is in the public interest for an experienced owner and operator of public utility infrastructure to purchase these systems. Gem State Water has demonstrated the financial ability and bona fide intent to operate the system in the public service. Northwest Natural Holdings, of which Gem State Water is a wholly-owned subsidiary, has a \$400 million revolving line of credit, 2018 Net Income of \$64.6 million, 2018 cash flow of \$9.2 million, an A1 credit rating from Moody's, and an AA- credit rating from Standard and Poor's. Staff Comments at 7. The bona fide intent to operate the system in the public service is demonstrated by Gem State Water's plans to develop a water master plan upon approval and closing of the

transaction, and the Company's strategic plan to purchase and operate multiple small water companies in the region.

The cost of and rates for supplying service will not increase because of the transaction. Any future rate increases will be the result of prudent expenditures to improve the respective systems. The backup well's proximity to the HARSB site is a concern regardless of who owns and operates Diamond Bar. As DEQ indicates, public health would be best served through a backup well that meets the DEQ's current requirements. The one-year agreement with the Turnipseeds to use and access the backup well while the Company develops and implements a water master plan is a reasonable step toward finding a long term solution. The Company asserts that all assets required to run the systems adequately and reliably are included in the transaction. If the Company's confidence ultimately proves misplaced in this regard, we are confident that the Company has the financial ability to purchase the required assets. The prudence of the costs incurred to acquire assets to operate the system post-transaction will be determined when we have the benefit of a full record at the next rate case for these systems.

ORDER

IT IS HEREBY ORDERED that the Application of Gem State Water is approved.

IT IS FURTHER ORDERED that CPCN No. 413 of Diamond Bar and CPCN No. 296 of Bar Circle are transferred to Gem State Water.

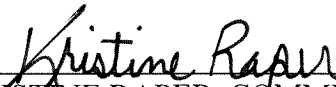
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition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

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of August 2019.

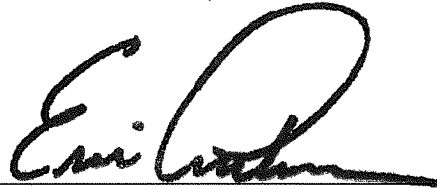
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PAUL KJELLANDER, PRESIDENT

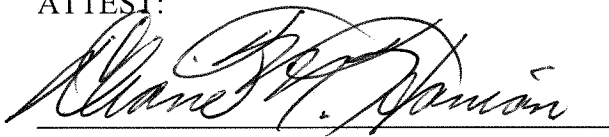


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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