

DECISION MEMORANDUM

**TO: COMMISSIONER ANDERSON
COMMISSIONER HAMMOND
COMMISSIONER LODGE
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: TRAVIS CULBERTSON
ADAM TRIPLETT, DEPUTY ATTORNEY GENERAL**

DATE: MAY 7, 2024

**SUBJECT: INVESTIGATION INTO DRY CREEK WATER COMPANY, LLC,
OWNER OF A WATER SUPPLY AND DISTRIBUTION SYSTEM**

Dry Creek Water Company, LLC (“Company”), is a private water utility located northwest of Boise. The Company provides water to the Dry Creek Ranch Homeowners Association (“HOA”) that in turn distributes water to the homes that have been constructed at Dry Creek Ranch. As of December 2023, 381 connections are being served. When fully built out, the system is projected to serve approximately 1,800 connections. The Company is not currently regulated by the Idaho Public Utilities Commission (“Commission”) and does not possess a Certificate of Public Convenience and Necessity. Based on Commission Staff’s (“Staff”) review of complaints filed informally, and information provided by the Company, Staff believes that a formal investigation is necessary to review whether the Company is operating as a public utility that should be regulated by the Commission. Staff recommends that the Commission open a docket initiating a formal investigation to review if the Company should be regulated, and if so, recommend further action to comply with applicable laws.

BACKGROUND

The Company owns and operates a water system that serves residents in the Dry Creek Ranch development. Dry Creek Ranch plans to expand via additional phases of development, thereby connecting additional users to the system. The Company claims to serve only one

customer—the HOA.¹ There is an existing contractual agreement between the two entities. The Company provides water to the HOA for a fee and the HOA in turn delivers water to homes in the HOA and charges each connection for its usage.

PROCEDURAL BACKGROUND

In 2021, Staff received complaints from members of the HOA regarding their water bills increasing. While reviewing these complaints, Staff conducted an informal investigation into the Company.

On November 17, 2022, Staff sent a letter to the Company requesting additional information about its ownership and structure. Over the course of 16 months, Staff and Company exchanged information and Staff reviewed the Company’s financial information.

On April 11, 2024, Staff sent a letter to the Company stating that Staff may request the Commission to open a formal docket to review if the Company is subject to the Commission’s regulatory jurisdiction.

STAFF RECOMMENDATION

Based on the available information, Staff believes there is evidence to merit a formal investigation seeking to review whether the Company is operating as a public utility subject to the Commission’s regulatory jurisdiction. An investigation would include data requests to the Company, and requests to examine Company records, concluding in a recommendation to the Commission for further action, if any, when the investigation is complete.

COMMISSION DECISION

Does the Commission wish to open an investigation to review if Dry Creek Water Company, LLC should be regulated by the Commission and direct Staff to submit a recommendation after the review is complete?



Adam Triplett
Deputy Attorney General

¹ In a letter to Staff dated December 5, 2022, the Company, stated that it; “provides water to a single customer, Dry Creek Ranch Homeowner’s Association (HOA).”



Idaho Public Utilities Commission

P.O. Box 83720, Boise, ID 83720-0074

Brad Little, Governor

Eric Anderson, President
John R. Hammond, Jr., Commissioner
Edward Lodge., Commissioner

April 11, 2024

Dry Creek Water Company
923 S Bridgeway Place
Eagle Idaho 83616

Dear Dry Creek Water Company,

This letter is in response to Mr. Hunter's letter dated March 14, 2024, inquiring about the Idaho Public Utilities Commission Staff's review of Dry Creek Water Company, LLC ("Dry Creek" or "Company") regulatory status. I would like to thank you for providing the necessary financial information to assist in the review. In its letter to Staff dated November 20, 2023, Dry Creek asserts that it should not be regulated because it is a public utility that is *organized and operated* for service at cost. To support this assertion, Dry Creek provided financial information indicating that it currently operates at a loss.

During staff review, they learned that the company elects to use a different depreciation method than the Commission uses for every other regulated entity. The Company uses bonus depreciation, which is a tax benefit that should be returned to customers over the depreciable life of the asset. The use of bonus depreciation does not mean that the Company is truly operating at a loss.

Instead, the Company is taking the full benefit in the first year. Under regulatory accounting, the cost of a fixed asset (less its salvage value and any removal costs) is capitalized and systematically depreciated over its useful life. Any difference between GAAP depreciation expense and bonus depreciation expense is recorded on the Company's Balance Sheet as a liability and is used to offset the value of the asset, which in turn reduces the value of the asset for ratemaking purposes.

Having completed its review, staff will request the Commission open a formal docket to determine if the Company is subject to the Commission's regulatory jurisdiction; if the rates Dry Creek charges for water are fair, just, and reasonable; and to direct the Company to file for a Certificate of Public Convenience and Necessity.

Information for small water companies, including how to apply for a Certificate of Public Convenience and Necessity can be found at: <https://puc.idaho.gov/Page/Standard/25>

And information on the Commission's Rules of Procedure can be found at:
<https://adminrules.idaho.gov/rules/current/31/310101.pdf>

Please reach out to the Commission Secretary if you have any questions at
secretary@puc.idaho.gov.

Thank you again for your assistance in this matter.

A handwritten signature in black ink, appearing to read 'MBR', with a long horizontal flourish extending to the right.

Maria Barratt-Riley
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