

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**INVESTIGATION INTO DRY CREEK ) CASE NO. DRY-W-24-01**  
**WATER COMPANY, LLC, OWNER OF A )**  
**WATER SUPPLY AND DISTRIBUTION )**  
**SYSTEM ) ORDER NO. 36382**  
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On May 24, 2024, the Commission issued Order No. 36195, which opened a formal investigation into whether Dry Creek Water Company, LLC (“Company”) is operating as a public utility subject to Commission regulation. In the same order, the Commission set public comment and Company reply deadlines. Staff filed comments, recommending that the Commission exercise regulatory jurisdiction over the Company.

On July 17, 2024, the Commission granted the Company the first of multiple extensions of its reply comment deadline to engage in settlement negotiations with Staff.<sup>1</sup> Order No. 36268. Over the next few months, the Company and Staff worked to resolve this case.

On September 23, 2024, Staff and the Company (hereinafter “Parties”) filed a joint motion to approve the settlement that they had entered. A copy of the settlement was attached to the motion as Exhibit A (“Proposed Settlement”).

On October 16, 2024, the Commission issued an Order noticing the Proposed Settlement and establishing a single deadline for all interested entities to file comments. Order No. 36361. Staff and the Company each filed comments in support of the Proposed Settlement.

Having reviewed the record in this case, including the Proposed Settlement, we now issue this Final Order approving the Proposed Settlement, as filed.

**BACKGROUND**

The Company is an Idaho limited liability company that owns a water distribution system located northwest of Boise. The Company provides water to the Dry Creek Ranch community and, as of December 2023, serves 381 connections. When fully built out, the system is projected to serve significantly more connections. The Company is not currently regulated by the Commission and does not possess a Certificate of Public Convenience and Necessity (“CPCN”). Commission Staff (“Staff”) recommended that the Commission formally investigate

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<sup>1</sup> The Company filed reply comments on June 26, 2024. However, in granting the Company’s first request to extend its reply comment deadline, the Commission deemed those comments preliminary and authorized the Company to file supplementary reply comments.

the Company to determine whether it is operating as a public utility that should be regulated and, if so, take further action to ensure compliance with applicable law.

### **THE PROPOSED SETTLEMENT**

The Parties agree that the Company will amend its corporate papers to serve homeowners directly and apply for a CPCN so that it becomes formally regulated on January 1, 2025. To accomplish this, the Company agreed to stop “serving” the Dry Creek Ranch Homeowners Association (“HOA”). That is, the Company agreed to stop selling water to the HOA for redistribution to its constituent homeowners. Instead, the Company will begin directly serving and billing homeowners by November 8, 2024. By the same date, the Company will also work with Staff to submit the documents and other information reasonably necessary to obtain a CPCN that will be effective January 1, 2025.

### **STAFF COMMENTS**

Staff asserted that the Proposed Settlement is fair, just, reasonable, and in the public interest. Staff believed that slightly delaying formal regulation of the Company serves the public interest as it will allow the Company to restructure, review its contractual obligations, and update its billing processes to ensure it can properly bill homeowners directly. Staff reviewed the Company’s financial records, contracts, water rights, lending documents, and infrastructure investments. Despite recommending certain specific expense adjustments for a future rate case, Staff believed the Company’s current rates are fair, just, and reasonable. Accordingly, Staff recommended the Commission approve the Proposed Settlement as filed.

Further, Staff believed deferring regulation until January 1, 2025, is reasonable and serves the public interest. This delay will allow the Company to amend its corporate papers, adjust billing practices, simplify taxation issues, and reduce litigation risks. Moreover, Staff believes delaying the issuance of a CPCN will not prejudice customers. Staff has evaluated the Company’s rates and believes them to be fair, just, and reasonable, and the Company agrees that it will not raise its rates until it is issued a CPCN.

### **COMPANY COMMENTS**

Despite its continuing assertion that it is not currently subject to Commission regulation, the Company agreed to modify its operating structure as described in the Proposed Settlement to make its regulatory status certain. The Company described some of the events and actions that contributed to this decision. For essentially the same reasons as Staff, the Company believed that the Proposed Settlement is fair, just, reasonable, and in the public interest.

Accordingly, the Company requested that the Commission approve the Proposed Settlement as filed.

### **DISCUSSION AND FINDINGS**

The Commission's process for considering settlements is set forth in its Rules of Procedure 271-277, IDAPA 31.01.01.271-277. When a settlement is presented to the Commission, it "will prescribe the procedures appropriate to the nature of the settlement to consider the settlement." IDAPA 31.01.01.274. Here, the Commission issued Order No. 36361 establishing a comment deadline for the Parties and the public to comment on the Proposed Settlement. IDAPA 31.01.01.274. Proponents of a proposed settlement must show "that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy." IDAPA 31.01.01.275. Finally, the Commission is not bound by settlement agreements. IDAPA 31.01.01.276. Instead, the Commission "will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy." *Id.*

Under our statutory authority, we have reviewed the record in this case, including the Proposed Settlement, Staff comments, and the Company's comments. Based on that review, we find that (notwithstanding evidence in the record that might support the immediate exercise of Commission jurisdiction) the Company will be operating as a public utility on January 1, 2025, after complying with the terms of the Proposed Settlement. Since the Company first came to the attention of Staff, it has provided water service to homeowners in the Dry Creek Ranch community. Initiating formal regulation of the Company on January 1, 2025, will provide the Company the time necessary to reorganize, revise its contracts, and update its billing processes to serve homeowners directly as contemplated by the Proposed Settlement. We believe this operating structure will both better serve customers and facilitate more efficient regulatory oversight of the Company and the water service it provides. Accordingly, we find that allowing the Company to voluntarily assume this structure serves the public interest.

We further find that postponing formal regulation of the Company will not leave customers vulnerable to unwarranted rate increases. Staff has reviewed the Company's service rates and believes them to be fair, just, and reasonable. The Company has agreed not to raise its rates until after it receives a CPCN and is regulated by the Commission. This eliminates the risk that customers might be subject to an unjustified rate increase before the Company becomes regulated.

We appreciate the Parties working together to deliver a Proposed Settlement that balances the need to promptly clarify the Company's regulatory status against the interests of the Company and its customers. The Company's voluntary compliance with the terms of the Proposed Settlement will increase the likelihood of a smooth transition to regulation, which can benefit both the Company and its customers. This benefit can be conferred at a reduced risk to customers as the Company has agreed to refrain from raising rates until it becomes regulate. Accordingly, we find the Proposed Settlement to be fair, just, reasonable, and in the public interest.

However, because the Proposed Settlement contemplates future actions by the Company leading to issuance of a CPCN, we will retain jurisdiction over this case. This will allow us to both ensure compliance with the Proposed Settlement and facilitate issuance of a CPCN to the Company on January 1, 2025. After the Company submits the required documents and other information as contemplated by the Proposed Settlement, we shall enter a final order issuing the Company a CPCN, effective January 1, 2025.

**ORDER**

IT IS HEREBY ORDERED that the Proposed Settlement is approved, without modification.

THIS IS AN INTERLOCUTORY ORDER, not a final and appealable order of the Commission. The period to seek reconsideration will not begin until a final order issues.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 1<sup>st</sup> day of November 2024.

  
ERIC ANDERSON, PRESIDENT

  
JOHN R. HAMMOND JR., COMMISSIONER

  
EDWARD LODGE, COMMISSIONER

ATTEST:

  
Monica Barros-Sanchez  
Commission Secretary

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