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Division of Public Utilities

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Director, Division of Public Utilities

May 25, 2006

MEMORANDUM

TO: Public Service Commission of Utah

FROM: Division of Public Utilities
Constance B. White, Director
Kent Evans, Manager, Customer Service and Water Section
Bruce Scott Moio, Technical Consultant

RE: In the Matter of the Investigation of the Water System Operations of Bridge Hollow Water Association for Certification as a Public Utility or Exemption as a Mutual Water Company; Docket No. 04-2437-01

RECOMMENDATION:

There are multiple complex corporate formation issues involving issuance of more shares of stock than authorized and general corporate governance issues. The Assistant Attorney General supporting the Division has advised us that, consistent with prior court cases, these issues are outside the jurisdiction of the Commission. Until these matters are resolved in the appropriate court, the Division is unable to provide a recommendation.

Alternatively, since there has been no showing that the criteria for exemption as a mutual water company has been met, the Commission could issue a certificate of public convenience and necessity, and perhaps advise the interested parties that additional relief is best sought in an appropriate court. Perhaps the Commission should suspend these proceedings and docket pending resolution of these issues.

STATUS:

The purpose of this memorandum is to update the Commission on the Division's investigation results to date in the open Docket No. 04-2437-01. The issues to date center around the number of authorized voting shares and corporate governance.

DETAILS:

Mr. Duane Fluckinger is the current Director of Bridge Hollow Water Association and is actively managing the daily operations; he is also a resident of the Bridge Hollow Subdivision. The Tebbs family apparently took over the assets of the predecessor developer of the Bridge Hollow subdivision who took out bankruptcy, and formerly controlled and operated the water company for several years before the Association began actively managing daily operations. The Tebbs family is also involved in attempting to develop an area known as Surrey Ridge, just above Bridge Hollow. At this time the Division believes this area has no approval for any development and the attempt to develop this area goes back several years.

Mr. Lee Brown, an intervener, has filed a Petition for Hearing and Final Order in this matter. This filing chronologically memorializes the entire history of this matter. There are unresolved issues and discrepancies involving authorization and issuance of stock shares and corporate governance. These are matters that Division believes cannot be resolved within Commission jurisdiction. The Division is unable to make any recommendation until these corporate issues are resolved in the appropriate court.