

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of DANNY STEVENS, )  
dba SHADOW MOUNTAIN ESTATES for a Certificate )  
of Convenience and Necessity to Operate as a Public )  
Utility Service or for an Exemption from PSC Regulation )

DOCKET NO. 01-2370-01

INTERIM ORDER

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ISSUED: December 6, 2001

SYNOPSIS

In order to facilitate action toward bringing Applicant's water system into a workable and legal condition, the Commission issued a conditional certificate and suspended action on an order to show cause.

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By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the sixteenth day of August, 2001, at the Community Center, Central Valley, Sevier County, Utah, before A. Robert Thurman, Administrative Law Judge. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the matter, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Danny Stevens (Stevens), Applicant/Respondent herein, is a natural person owning and operating a proprietorship known as "Shadow Mountain Estates," a real estate development enterprise owning and marketing a subdivision located in Sevier County, Utah, served by a water system built by Stevens.
2. Stevens originated the project approximately 1985 by filing a plat and selling four lots. His initial intention was to market the project as a "dry" subdivision, leaving it up to his buyers to acquire water rights and well permits and to install their own water systems.
3. Stevens original plan proved infeasible as the drilling of so many wells was legally protested and blocked. Stevens then decided to build a water system to serve the project. Having been advised by Sevier County authorities that four connections would not constitute a public system needing governmental approval, he proceeded, although the system was meant to serve eventually up to 30 connections. The system was constructed in 1988.
4. The system at present serves approximately 16 connections. All monthly charges are being collected, and expenses being paid, by the Shadow Mountain Estates Homeowners Association (HOA), a separate entity. The system itself remains the property of Stevens.
5. The system has an unapproved rating from the Utah Division of Drinking Water (DDW). Plans have not been submitted for approval, either prior to construction or as built. A DDW survey discloses that there is a septic tank percolation field within the system source well's zone 2, rendering the system ineligible for approval.
6. Stevens asserts he owns sufficient water rights to provide full service to 30 connections. However, testimony from several homeowners puts that claim into question, since he may have conveyed some water rights to individual lot

buyers. There is apparently also controversy as to the ownership of the source well, which is located on the property of one of the lot owners.

7. Stevens claims the source and storage capacity is sufficient to provide culinary service, as set forth in DDW regulations, for 30 connections, although the storage capacity is insufficient to provide fire flow.

8. Although Stevens has discussed with local health department officials measures to correct the system's deficiencies, no concrete plan of action has emerged. Stevens' financial ability to undertake such measures is questionable.

9. Since the system is unapproved, lot owners are unable to get building permits, nor are they able sell or re-finance their property owing to ineligibility for VA and FHA financing which deters most buyers and lenders.

10. Stevens' records are so meager and incomplete that the system costs are unascertainable as is the total lot income.

### DISCUSSION

This situation presents a case study in how *not* to undertake real estate development. The project was badly planned and underfinanced and the result is that both he and his buyers face severe financial repercussions. It appears to us the buyers may well have valid causes of action against him, and since he has operated a proprietorship, *all* his assets are liable for claims based on water company problems. We doubt, however, that even with all Stevens' assets thrown into the mix, there are sufficient resources available to do what is necessary.

There are so many problems outstanding with this project it is difficult to know where to begin. However, it seems to us the first step is to establish definitely what assets are available. To this end, it is totally unacceptable that the system continue as part of a proprietorship. To do so would subject the water system, which should be dedicated to public utility service, to execution to satisfy claims of Stevens' other creditors. There is also a severe problem of commingling water company and personal assets.

Accordingly, Stevens should be ordered to immediately incorporate the water company and transfer to it, at a minimum, the current physical system, all water rights to serve the system, and sufficient operating capital to finance ongoing system operation.

Concomitantly, the controversies over water rights ownership and well ownership need to be resolved. We strongly suggest that the parties settle these matters quickly and voluntarily. For the lot owners making adverse claims, to resist settlement is adverse to their own interests as well as those of fellow lot owners. To force the matters to litigation will only waste scarce resources. To put it bluntly, any solution of all the problems connected with this project will require the utmost cooperation and good will among all the parties, Stevens and the homeowners.

Finally, a workable plan has to be made for qualifying the system for DDW approved status. Whether this entails drilling a new well (which would, incidentally resolve the well ownership issue) or some other measure, we cannot know at this time. But Stevens and local health department officials need to quit sparring and get down to some serious planning.

This proceeding has two branches -- the certificate application and whether Stevens should be fined for operating an unauthorized public utility sine 1988. Since each day of illegal operation is a separate offense, subject to a minimum fine of \$500, it is obvious we could easily bankrupt him. We have no interest in doing so. We want to make the system viable and make the homeowners' property salable and financeable. Nevertheless, should Stevens prove recalcitrant in meeting his responsibilities, we stand ready to impose sanctions. On a cautionary note, Stevens is in considerable legal jeopardy and we suggest in the strongest terms that he consult competent legal counsel regarding complying with our Order below.

### CONCLUSIONS OF LAW

Following incorporation, a new entity holding the water system should be granted a certificate. Proceedings in the Order to Show Cause should be suspended pending Stevens' compliance with the following interim Order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. DANNY STEVENS form a corporation within 45 days of the date of this Order to hold and operate all assets of his water system, including the physical system (source, storage, and distribution assets), water rights, and sufficient operating capital to continue normal operations. All said assets shall be transferred to the corporation upon its formation. Failure to comply will result in the convening of further proceedings with a view to imposing sanctions for the failure, as well as past delinquencies.
2. Upon the formation of said corporation, the Commission shall deem this Application as pertaining to said corporation and issue a certificate to the same. Alternatively, if DANNY STEVENS and the homeowners can find, or create, a special water improvement district to assume ownership of the system, the Commission will deem that acceptable.
3. DANNY STEVENS, within 60 days of the date of this Order, file a written report with the Commission detailing his efforts, and results thereof, to settle outstanding disputes over water rights and well ownership. Failure to make good-faith efforts to effect such settlement shall result in the convening of further proceedings as outlined in the first ordering paragraph above.
4. DANNY STEVENS, within 60 days of the date of this Order file with the Commission a written report detailing plans, and the timetable and financing sources for implementing the same, for qualifying the system for DDW approved status. Said report must include a letter from cognizant governmental officials stating that said plans are acceptable and if implemented will result in DDW approved status. Failure to comply in good faith with the terms of this paragraph will result in the convening of further proceedings as outlined in the first ordering paragraph above.
5. Following Commission review of the written reports required above, the Commission will make such further Order or convene such further proceedings as appear necessary or convenient in the premises.

Dated at Salt Lake City, Utah, this 6th day of December, 2001.

/s/ A. Robert Thurman  
Administrative Law Judge

Approved and Confirmed this 6th day of December, 2001, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

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