

1 for Appointment of Receiver of Public Water System, the Declaration of Derek Pell with
2 Exhibits A through L attached thereto, and the Declaration of Sierra McWilliams.

3 **II. FINDINGS OF FACT**

4 Having considered the evidence and argument of counsel, the Court finds that:

5 2.1 The Kapowsin water system (water system) was constructed in 1912 and is
6 owned by the Kapowsin Water District (District), a Title 57 water district formed in 1999. The
7 water system consists of a spring collected near railroad tracks owned by Tacoma Rail, a
8 transmission line approximately one-mile long, and a 10,000-gallon raw water tank. Water is
9 pumped through a filtration plant to a 30,000-gallon finished water tank, which is then pumped
10 to the distribution system. The water system provides domestic water service to 39 residential
11 connections. It serves a population of approximately 70 residents in the community of Kapowsin,
12 and is a “public water system” within the meaning of RCW 70.119A.020(12) and
13 RCW 70.119.020(11). The system is a “Group A” community public water system as defined in
14 WAC 246-290-020 and RCW 70.119.020(8).

15 2.2 The owner of the system and any authorized agent of the owner are “purveyors”
16 within the meaning of RCW 70.119A.020(13) and WAC 246-290-010(206) and as such, are
17 responsible for complying with the State Board of Health regulations concerning Group A public
18 water systems, WAC 246-290. The owner of the system is responsible for complying with
19 certified operator requirements under RCW 70.119 and WAC 246-292. Anyone operating the
20 system is also a “purveyor.” RCW 70.119A.020(13); WAC 246-290-010(206).

21 2.3 Valley Water District (VWD) has been providing satellite management services
22 for the water system since late 2014 in accordance with RCW 70.119A.060 and
23 RCW 70.116.134. VWD and the District originally intended VWD to acquire ownership of the
24 water system. In January 2015, Health entered into an interagency agreement with VWD to
25 evaluate the costs associated with a transfer of ownership from the District to VWD. The VWD
26 conducted a “Kapowsin Water District Water System Analysis” and submitted it to the

1 Department in February 2016. The report identified \$912,830 in improvements necessary for
2 VWD to take on ownership of the water system. Neither VWD nor the District had funds for
3 these repairs.

4 2.4 In approximately March 2017, the transmission line that carried water from the
5 spring providing the system's water broke, completely stopping the provision of water to the
6 water system's customers. Lack of easements and as-built engineering drawing, together with
7 new wetlands created by recently constructed beaver dams, made locating the transmission main
8 leak infeasible. Replacing the line is estimated to cost approximately \$250,000.

9 2.5 The District could not afford to replace the transmission line. Under contract,
10 VWD began transporting water by truck from a Rainier View Water Company hydrant to the
11 water system's 30,000-gallon storage tank. Transporting water by truck costs VWD
12 approximately \$4,200 per month. Health discourages long-term truck transportation of water,
13 due to greater risk of water contamination but it was the only feasible option for the water system
14 at that time.

15 2.6 On October 17, 2017, VWD finally determined that they could no longer continue
16 their contract with the District.

17 2.7 The District is in a state of failing governance. Only two of the three elected
18 commissioner seats on the District Board are filled. Both current commissioners have indicated they
19 wish to step down from their positions. The District has not elected or appointed new
20 commissioners.

21 2.8 The District has limited money for water system repairs and does not have the funds
22 to either replace the broken water transmission line or continue transporting water by truck. The
23 District has no funds and owes approximately \$85,000 in delinquent bills to VWD.

24 2.9 The District's lack of ability to ensure safe and adequate quantity and quality of
25 water in a reliable manner at all times indicates the need for the appointment of a permanent receiver
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1 to manage and operate the water system in accordance with public water system laws and
2 regulations, in order to protect the health of the water system customers.

3 2.10 Under RCW 43.70.195, the county government for the county in which the water
4 system is located must act as the receiver if no other receiver is willing or able to act as a receiver.
5 Health has attempted to identify willing receivers, and none could be found.

6 2.11 Health believes that Pierce County would be the most appropriate and viable
7 receiver for the water system. Pierce County is a large public entity with managerial and financial
8 experience and resources. Pierce County has the capacity to contract with certified water
9 operators.

10 III. CONCLUSIONS OF LAW

11 3.1 These alleged facts present a danger to the water system customers through the loss
12 of water to the water system and the lack of management. This indicates the need for the
13 appointment of a receiver to manage and operate the water system in accordance with public water
14 system laws and regulations in order to protect the health of the water system customers. The
15 District does not have the financial means to repair the broken transmission line. Failure to fix this
16 problem limits the District's ability to provide safe and reliable drinking water.

17 3.2 Receivership will bring professional expertise and resources to manage the water
18 system. The transfer of responsibility would solve a number of problems for the water system,
19 including:

20 3.2.1 Uninterrupted truck transport of water until the water system may be
21 repaired or otherwise remedied;

22 3.2.2 Having a certified operator in responsible charge of the daily operation of
23 the water system;

24 3.2.3 Maintaining the water treatment system;

25 3.2.4 Obtaining funding for repairs required to maintain adequate service;

26 3.2.5 Proper monitoring and water quality sampling; and

1 3.2.6 Providing safe and reliable drinking water every day to the Kapowsin
2 water system customers.

3 3.3 If Pierce County is not appointed as the receiver of the water system, the water
4 system customers would be left with no dependable water source, no certified operator, and no
5 management experienced in system and finance management. Failure to grant Health's Motion
6 would leave the water system customers without safe and reliable drinking water.

7 **IV. ORDER**

8 On the basis of the foregoing findings, conclusions and applicable law, the Court being
9 fully advised in the premises, IT IS ORDERED THAT

10 4.1 Pierce County is hereby appointed as permanent receiver of the Kapowsin water
11 system to:

12 4.1.1 Act in the best interests of the Kapowsin water system customers;

13 4.1.2 Have full and unimpeded access to the Kapowsin water system, including
14 all infrastructure and records;

15 4.1.3 Gain custody and control of all of the personal and real property necessary
16 and incidental to the operation and maintenance of the water system and the provision of water
17 service to the water system customers, as well as all rights to appropriate and use water for utility
18 purposes, and to use the Kapowsin water system's right-of-ways and property to deliver water for
19 treatment and distribution purposes;

20 4.1.4 Take the water system free and clear of any and all liabilities and
21 encumbrances of Kapowsin Water District; *Kapowsin water system's debt to VWD*

22 4.1.5 Manage any loans or grants for the Kapowsin water system during the
23 period of receivership; *is not affected by this order;*

24 4.1.6 Impose reasonable assessments on the water systems' customers to recover
25 expenditures for improvements necessary for public health and safety, as well as for daily operation
26 and maintenance of the water system;

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1 4.1.7 Impose rates and charges that are uniform and nondiscriminatory as to each
2 class of service and as to customers receiving a like service or as otherwise authorized by law;

3 4.1.8 All fees for water service charged to the water system's customers be paid
4 into an account to be established by the receiver for the purpose of reasonably compensating the
5 receiver for its services and to pay for such costs and to effect such improvements as are necessary
6 to operate the systems in compliance with RCW 70.119A, RCW 70.119, WAC 246-290 and
7 WAC 246-292; and

8 4.1.9 Provide an accounting from time to time as the court may require.

9 4.2 The requirements of a bond are waived in this matter, pursuant to
10 RCW 43.70.195(4) and RCW 4.96.050.

11 4.3 The County reports to the Court, at an appropriate time, its recommendations for the
12 water system's future ownership and operation and that the Court order the receiver, in conjunction
13 with the appropriate entities, to submit a plan for disposition of the system no later than 12 months
14 after its appointment.

15 4.4 The Respondent and anyone acting at its direction, under it, on its behalf, or in
16 cooperation with it, are enjoined from assaulting, threatening, harassing, intimidating, or otherwise
17 interfering with the activities of the receiver whether or not those activities are undertaken in the
18 administration of the receiver's official duties.

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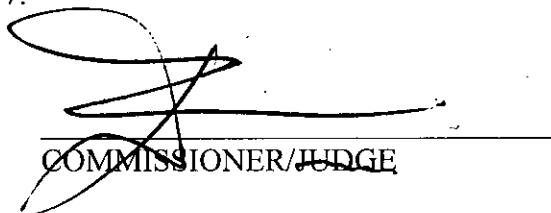
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1 4.5 The Respondent and anyone acting at its direction, under it, on its behalf, or in
2 cooperation with it, are enjoined from damaging, destroying, or otherwise interfering with the
3 operation of the Kapowsin water system.

4 4.6 Violation of this Order by the Respondent may result in contempt.

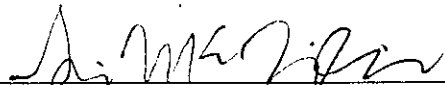
5 DATED this 29 day of November 2017.


COMMISSIONER/JUDGE

8 Presented by:

9 ROBERT W. FERGUSON
10 Attorney General


FILED
IN COUNTY CLERK'S OFFICE

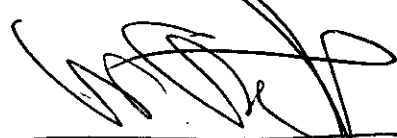

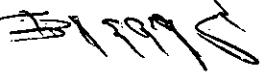
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12 SIERRA MCWILLIAMS, WSBA #48544
13 Assistant Attorney General
Attorneys for State of Washington
Department of Health

NOV 29 2017

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

15 Approved as to form:

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