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7 **STATE OF WASHINGTON**
8 **PIERCE COUNTY SUPERIOR COURT**

9 WASHINGTON STATE DEPARTMENT OF
10 HEALTH,

11 Petitioner,

12 v.

13 KAPOWSIN WATER DISTRICT, Owner,
14 KAPOWSIN WATER SYSTEM,

Respondent.

NO. 17-2-12992-1

ORDER APPOINTING AN
EX PARTE TEMPORARY
RECEIVER *EXCEED CAP*

SHORTEN TIME.

15 **I. HEARING**

16 1.1 Hearing. THIS MATTER came before the Court on the below inscribed
17 date, on Motion of the Petitioner State of Washington Department of Health.

18 1.2 Appearances. Petitioner Washington State Department of Health appeared by
19 and through its attorney, Assistant Attorney General, SIERRA MCWILLIAMS. Pierce County
20 did / did not appear by and through its attorney JOHN SALMON. Kapowsin Water District
21 (District) did / did not appear.

22 1.3 Purpose. To determine if an *ex parte* temporary receiver should be
23 appointed for the Kapowsin Water System (water system); pending a full evidentiary hearing.

24 1.4 Evidence. The court considered the evidence presented, including the
25 Motion and Memorandum in Support of Ex Parte Appointment of Temporary Receiver, Petition
26

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

14 2.2 The owner of the system and any authorized agent of the owner are “purveyors”
15 within the meaning of RCW 70.119A.020(13) and WAC 246-290-010(206) and as such, are
16 responsible for complying with the State Board of Health regulations concerning Group A public
17 water systems, WAC 246-290. The owner of the system is responsible for complying with
18 certified operator requirements under RCW 70.119 and WAC 246-292. Anyone operating the
19 system is also a “purveyor.” RCW 70.119A.020(13); WAC 246-290-010(206).

20 2.3 Valley Water District (VWD) has been providing satellite management services
21 for the water system since late 2014 in accordance with RCW 70.119A.060 and
22 RCW 70.116.134. VWD and the District originally intended VWD to acquire ownership of the
23 water system. In January 2015, Health entered into an interagency agreement with VWD to
24 evaluate the costs associated with a transfer of ownership from the District to VWD. The VWD
25 conducted a “Kapowsin Water District Water System Analysis” and submitted it to the
26 Department in February 2016. The report identified \$912,830 in improvements necessary for

1 VWD to take on ownership of the water system. Neither VWD nor the District had funds for
2 these repairs.

3 2.4 In approximately March 2017, the transmission line that carried water from the
4 spring providing the system's water broke, completely stopping the provision of water to the
5 water system's customers. Lack of easements and as-built engineering drawing, together with
6 new wetlands created by recently constructed beaver dams, made locating the transmission main
7 leak infeasible. The cost of replacing the line was estimated to be approximately \$250,000.

8 2.5 The District could not afford to replace the transmission line. Under contract,
9 VWD began transporting water by truck from a Rainier View Water Company hydrant to the
10 water system's 30,000-gallon storage tank. Transporting water by truck costs VWD
11 approximately \$4,200 per month. Health discourages long-term truck transportation of water,
12 due to greater risk of water contamination but it was the only feasible option for the water system
13 at that time.

14 2.6 On October 17, 2017, VWD finally determined that they could no longer continue
15 their contract with the District. VWD will stop operating the water system and transporting water
16 by truck effective November 17, 2017, and the water system customers will no longer have
17 access to water.

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

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

25 2.9 The District's lack of ability to ensure safe and adequate quantity and quality of
26 water in a reliable manner at all times indicates the need for the appointment of a permanent receiver

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 made an effort 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. CONCLUSION

11 3.1 These alleged facts present an immediate danger to the water system customers
12 through the loss of water to the water system, and the lack of management. This indicates the need
13 for the appointment of a receiver to manage and operate the water system in accordance with public
14 water system laws and regulations, in order to protect the health of the water system customers.

15 3.2 Receivership will bring professional expertise to manage the water system. The
16 transfer of responsibility would solve a number of problems for the water system, including:

17 3.2.1 Uninterrupted truck transport of water until the water system may be
18 repaired or otherwise remedied;

19 3.2.2 Having a certified operator in responsible charge of the daily operation of
20 the water system;

21 3.2.3 Maintaining the water treatment system;

22 3.2.4 Obtaining funding for repairs required to maintain adequate service;

23 3.2.5 Proper monitoring and water quality sampling; and

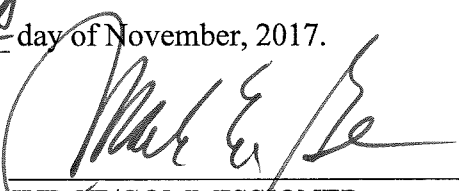
24 3.2.6 Providing safe and reliable drinking water every day to the Kapowsin
25 water system customers.

1 4.2 The requirements of a bond are waived in this matter under
2 RCW 43.70.195(4) and RCW 4.96.050. The Secretary of Health shall indemnify, defend, and hold
3 harmless the temporary receiver for all acts taken in good faith to operate the water system in
4 compliance with the court's orders and state law.

5 4.3 Violation of these terms will allow the Department to bring a contempt motion
6 against defendant under RCW 7.21, requesting imposition of monetary fines, jail confinement,
7 attorneys' fees, costs, and other sanctions aimed at forcing compliance. Any person, with
8 knowledge of this temporary restraining order, who assists the Defendant in any violation of this
9 order or damaging, destroying, or otherwise interfering with the operation of the water system may
10 also be held in contempt of court.

11 4.4 Expiration: This temporary receivership order shall expire on
12 11-29-17, 2017 when a full receivership hearing will be held in this Court.

13 DONE IN OPEN COURT this 13th day of November, 2017.




14
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16 JUDGE/COMMISSIONER
Pierce County Superior Court

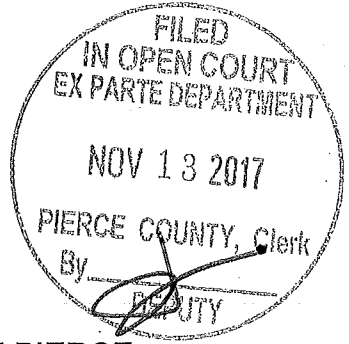
MARK L. GELMAN
COURT COMMISSIONER

17 Presented by:

18 ROBERT W. FERGUSON
19 Attorney General

20
21 
22 SIERRA MCWILLIAMS, WSBA #48544
23 Assistant Attorney General
Attorneys for State of Washington
Department of Health

24 Copy Received
25 J. E. III
26 John Salmon WSBA 20812



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

WASHINGTON STATE DEPARTMENT OF HEALTH,

Plaintiff(s)

vs.

KAPOWSIN WATER DISTRICT,
Defendant(s)

Cause No: 17-2-12992-1

NOTE FOR COMMISSIONERS CALENDAR (NTC)

EXCEED CAP SHORTEN TIME

TO THE CLERK OF THE SUPERIOR COURT AND TO:

Name: ATTY JOHN SALMON / KAPOWSIN WATER DISTRICT

Phone:

Address:

Attorney for: Petitioner Respondent

City/State/Zip:

Please take notice that an issue of law in this case will be heard on the date and the time shown below:
Pierce County Superior Court, County-City Building: 930 Tacoma Ave S – Tacoma, WA 98402

COURT DATE: NOVEMBER 29, 2017 AT ROOM 100 AT 9:00 AM

- Adequate Cause Parenting Plan Reconsideration – Comm _____
- Child Support Review Special Set – Comm _____
- Contempt Temporary Order Other APPOINT RECEIVER

PARTY SETTING HEARING MUST CONFIRM BY CALLING 253-798-6697 BY NOON; TWO (2) COURT WORKING DAYS PRIOR TO HEARING OR HEARING WILL BE CANCELLED AND NOT HEARD BY ANY JUDICIAL OFFICER UNTIL THE CASE IS RESCHEDULED FOR A HEARING.

Working Copies must be delivered to Commissioner Services – Room 140 by noon, two (2) court days prior to the hearing.

Check the TV monitors on the 1st or 2nd floor lobby to locate your courtroom number.

- (MO) Show Cause/Family Law, Confirmation Required** (MON - THU at 9 AM as posted)
- (OE) Supplemental Proceedings** (MON – FRI AT 1:30 PM Room 100)
- (UD) Unlawful Detainer** (MON – FRI AT 1:30 PM Room 100)
- (GD) Probate/Guardianship/Minor Settlement** (MON – FRI AT 1:30 PM in Room 100)
- (FC) Paternity** (MON/TUE/THUR AT 1:30 PM in Room 407)

Date: 11/13/2017

Signed: MARK L GELMAN

Name: ATTY SIERRA MCWILLIAMS

COURT COMMISSIONER

Address:

Phone:

City/State/Zip:

Attorney for: Petitioner Respondent

*****THE ABOVE INFORMATION MUST BE COMPLETED AND SIGNED*****