

THE STATE OF NEW HAMPSHIRE

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June 26, 2008

Debra Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-7319



RE: DE 07-105 – Determination of Whether Lakes Region Water Company Should be Placed in Receivership Pursuant to RSA 374:47

Dear Ms. Howland:

I am writing in response to the Report of the June 24, 2008 Monitoring Docket Technical Session (quarterly meeting) filed June 24, 2008 by Staff. The purpose of this letter is to supplement Staff’s Report in order to ensure that new information that the OCA received at the quarterly meeting is in the record. We also wish to formally notify the Staff, parties and the Commission of the OCA’s concerns about the Company’s conduct since the May 8, 2008 final hearing in this docket. Our comments are organized according to the order of issues listed in Staff’s Report, except for the last two sections: “Other Issues Discussed” and “Request for Additional Oversight.”

The OCA is deeply concerned about Lakes Region Water Company’s failure to comply with the Settlement Agreement that the Company and Staff proposed to the Commission at a hearing on May 8, 2008; a situation which we only learned of at the quarterly meeting on June 24th. We are also concerned that the Company is not filing documents in this docket to apprise the Commission and parties of changes in dates that the Company committed to in order to comply with Letters of Deficiency issued by the Department of Environmental Services (DES), and to ensure that certain Lakes Region customers have access to safe and adequate water supplies.



NHPUC JUN26'08 PM 4:14

As you know, this docket was opened upon Staff's recommendation to investigate whether Lakes Region should be taken into receivership by the Commission. This exceptional action of the Staff and the Commission resulted from incidents ranging from customer complaints of lack of water service, to several Letters of Deficiency and Administrative Orders issued by DES, as well as the serious incident in Tamworth involving the illegal use of a well that is known to be contaminated by uranium. After several technical sessions and discussions, the parties worked to develop a plan for the Company to address several outstanding projects that have been impacting some customers' access to safe and adequate water in their homes. As a result of those discussions, Staff and the Company entered into a Settlement Agreement that, while not providing final resolution of the wide range of serious issues in the case, appeared to put the Company on track to resolve, in a timely manner, long-standing problems and make changes necessary to ensure that it would operate properly as a public utility. Approval of the Settlement Agreement is still pending before the Commission. For this reason, we wish to bring to the Commission's attention new information, and changes to the Settlement Agreement of which we have just been made aware.

1. Staff Report

Issue #1 Paradise Shores – Suissevale Water Supply

The OCA was surprised to learn that the new storage tank constructed to serve customers in the Paradise Shores system will not be in service by the deadline agreed to between Staff and the Company in the Settlement Agreement now pending Commission approval. On June 23, 2008, the Company notified DES of this development and set an in-service date of the new tank for July 3, three days after the deadline in the pending Settlement Agreement. *See* Email of Bruce Lewis of Lewis Engineering, on behalf of the Company, to Stephen Roy and Jim Gill of DES, dated June 23, 2008 (attached). This email was provided to the parties by the DES at the quarterly meeting.

The OCA also learned during the meeting that Lakes Region has received a new Letter of Deficiency (LOD) issued to Lakes Region for the Paradise Shores system, which the OCA only learned about at the quarterly meeting, again from the DES. *See* DES LOD #DWGB08-033 dated May 23, 2008 (attached). This new LOD relates to the "Green Well," and amends an LOD issued on March 5, 2008 (of which the OCA was also unaware. According to this LOD, the Green Well is connected and in use despite the fact that it has not been approved for use as a source for the system. Although DES has set deadlines for the Company's compliance concerning the Green Well, the Company has requested extensions of these deadlines from DES. *See* Email of Bruce Lewis of Lewis Engineering, on behalf of the Company, to Stephen Roy and Jim Gill of DES, dated June 23, 2008 (attached).

Staff's report does not include all of the details associated with the Company's intended use of an off-site well personally owned by the shareholders of the Company, Thomas Mason, Sr. and Barbara Mason. Although Staff's Report states, "On Sunday [June 29, 2008] and continuing for the next 2 to 3 days, Lakes Region will *fill* the tank with *potable* water," (emphasis added) the

Company stated in the technical session that the tank will be filled half way with approximately 165,000 gallons of water. The Company also stated that the quality of the water had not been tested by DES. DES staff stated that the agency has approved the use of this well once in the past for emergency purposes, but this well has not been approved as a long-term source for this system. The OCA also inquired as to whether the Company would be paying Mr. and Mrs. Mason Sr. for the water from their well, and Mr. Tom Mason, Jr. stated that the Company would not be paying for the water.

Staff's Report mentions the presence of representatives of Property Owners Association of Suissevale, Inc. (POASI). It should also be noted that POASI indicated their strong request to the Company that they not have water quantity problems during the July 4th week for the fourth year in a row.

The OCA is very concerned about the Company's apparent lack of understanding that it may not unilaterally and informally modify the terms of an agreement pending before the Commission and that it must keep all of the parties in this open docket apprised of developments associated with its failures to abide by such terms, including new LODs relating to systems at issue in this docket. The OCA believes that notice of any changes related to the work schedule at Paradise Shores should be provided to the Commission and to the parties in this case, especially when such changes modify the proposed Settlement Agreement pending before the Commission.

Issue #2 Hidden Valley

The OCA wishes to supplement Staff's Report and report to the Commission that Lakes Region has also failed to meet the deadlines associated with the Hidden Valley system, which we also only learned of at the quarterly meeting. As with Paradise Shores, Hidden Valley is discussed in the Settlement Agreement and was also covered during the hearing on May 8th. In addition, a detailed schedule for Hidden Valley, prepared by Lewis Engineering, was included as an attachment to the Settlement Agreement. The attachment also included a copy of a letter to DES dated March 21, 2008, which provided information related to an outstanding Administrative Order (WD 07-029) for the Hidden Valley System. The schedule calls for specific tasks to be completed on certain dates.

During the technical session, DES confirmed that the Company is currently behind schedule in complying with the Administrative Order. The OCA learned at the quarterly meeting that the Company has requested extensions of the deadlines associated with the Hidden Valley system. *See* Email of Bruce Lewis of Lewis Engineering, on behalf of the Company, to Stephen Roy and Jim Gill of DES, dated June 23, 2008 (attached). However, no specific proposed dates appear in the email.

Although Staff's Report mentions the presence of a representative of Hidden Valley Property Owner's Association (HVPOA) at the quarterly meeting, it should also be noted that HVPOA reiterated its desire to have projects in its system completed as quickly as possible, due to the on-going nature of problems in the past.

Again, the OCA is concerned about the Company's failures to communicate the developments with the Hidden Valley system to the Commission and all of the parties in this open docket. Of particular concern are those developments that relate to deadlines committed to in the Settlement Agreement now pending before the Commission.

Lastly, Staff's Report states, "the mains are largely not the source of leaks in Hidden Valley." This is the Company's assertion, and to our knowledge has not been substantiated by the parties or Staff.

Issue #3 Work Program on Other Systems

The DES provided a helpful spreadsheet at the meeting detailing outstanding work on each of the Company's systems. During this discussion, the OCA learned of another new Letter of Deficiency for the White Mountain Resort system in Thornton. This LOD was issued on February 15, 2008 due to violations of DES rules discovered during a sanitary survey in October 2006. The LOD required the Company to take certain actions by June 1 and June 13, 2008, which the Company has failed to do. The DES had to explain to the Company that it must explain in writing to the DES why it can not meet those deadlines, and request more time. If the Company fails to do so, DES will then issue an Administrative Order.

Issue #4 Staff Issues

Staff notes that "Lakes Region has not had a chance to have official, sit-down bi-weekly meetings as envisioned in the settlement agreement." The Staff Report fails to state explicitly that the Company did not notify the Commission and the parties of this failure to abide by the terms of the pending Settlement Agreement as soon it was known. Staff's Report states that the Company "will try to meet this requirement." This is unacceptable to the OCA. The Company committed to these management meetings in response to serious concerns about its management practices. In the OCA's view, if it is not able to abide by this commitment, it must seek relief formally from the Commission due to the seriousness of the issues in the docket.

Similarly, Staff reports that Company personnel have been holding "impromptu meetings." This simply does not suffice for the management of a public utility in the OCA's view.

Issue #5 Corrosion Control

We believe that a date should be set for compliance with this item.

Issue #6 One Call Now System

During the May 8th hearing the Company stated that it expected to have this system in place within a month but at the quarterly meeting it reported delays. To discourage further back-sliding, the OCA would like the Company to keep the parties and the Commission updated on the status of this project, and to provide a proposed date for implementation.

Issue #8 Metering

Though there was a discussion at the quarterly meeting about Puc 603.3 being “effectively waived” by virtue of the fact that it has not been enforced, the OCA is not aware that the Company has requested such a waiver as required by Puc 201.05. This issue was raised in Docket No. DW 05-137, and also in DW 07-078, and it is our understanding that some customers have an expectation that they will receive meters. Staff reports that Lakes Region “does not believe there would be much of a difference in customer rates between a flat rate and metered rate.” The OCA does not believe that this opinion held by the Company is a sufficient basis to fail to meet their obligations under Puc 603.03. We agree with comments made at the technical session that these are rate design issues that should be addressed separately from this docket. We urge the Commission to address these issues as soon as possible.

2. Other Information Discussed

Staff also asked questions about data responses provided in the new Lakes Region Financing docket, DW 08-070, relating to Hidden Valley. Specifically, Staff inquired about certain dates provided that now appear to be past due. It appears to the OCA that the June 23, 2008 email to DES requesting changes in schedules now may also impact the financing docket. It is our expectation that the Company will update this information as required by Puc 203.09(k).

DES staff raised the issue that Tom Mason, Sr. is still listed as the operator of Lakes Region’s systems, both regulated systems and those that the Company operates under contract to private systems. If he is not the operator, the Company must notify DES that he is no longer serving in that capacity.

3. Request for Additional Oversight

In sum, the OCA continues to have grave concerns as to whether Lakes Region has the managerial, technical and financial capability to manage a regulated water system. We understand that as a monitoring docket this presents an opportunity for the parties to monitor the Company’s progress, but we are concerned that they are not making sufficient progress.

We heard at the quarterly meeting that the representatives of Paradise Shores and Hidden Valley believe that Tom Mason, Jr. has made improvements to the management of the system, but the Company still has significant work to do, both substantively and in terms of communications with regulators. We understand the challenges that the Company faces, but we are concerned that the Company has not put the resources in place to complete the many tasks required of the Company; Tom Mason, Jr. as much as admitted this at the meeting, stating that he

has been working seven days a week on projects, and that he has been behind in “paperwork.” For a company that was just granted a conditional reprieve from receivership (if the Commission approves the Settlement Agreement), the OCA expects much more.

In addition, the OCA recognizes the unique complexity of water cases that involve both DES and PUC regulation. However, the Company simply must make a better effort to communicate with the Commission and the parties in this docket, and must realize that when it proposes a schedule or makes a commitment, it is expected to follow through or formally request an extension. The OCA is very concerned that the Company believes that it may unilaterally and informally modify the terms of an agreement pending before the Commission, and that it is not required to keep the Commission and all of the parties in this open docket informed of its failure to abide by such terms.

This case has reached a point at which it is increasingly difficult for the OCA to participate in a meaningful way on behalf of Lakes Region’s residential customers. Without timely access to information, and in the face of a company that misses important deadlines without notice, the OCA’s advocacy efforts are significantly compromised. Although this letter to submitted to the Commission, the OCA hopes that this letter impresses upon the Company the seriousness of the issues in this case and our belief that the Company must provide all information related to this case to all of the parties as quickly as possible. Although the OCA prefers a cooperative approach to resolving the Company’s many serious issues, we will take all necessary steps to ensure that Lakes Region meets its obligations to provide safe and adequate service to its customers, including but not limited to seeking penalties against the Company and its agents for ongoing violations and the continuing failure to fulfill its commitments.

Finally, we would like to reiterate our request at the May 8, 2008 hearing in which we asked the Commission to require the Company to provide new LODs (or Administrative Orders) issued by DES to the parties, as well as all communications related to complying with existing and future LODs. Parties to this docket must be apprised of these matters in a timely matter in order to effectively participate.

We thank the Commission for its consideration of this letter.

Respectfully,



Meredith A. Hatfield
Consumer Advocate

Roy, Stephen

From: Bruce Lewis [lewis.h2o@comcast.net]
Sent: Monday, June 23, 2008 4:34 PM
To: Roy, Stephen; Gill, Jim
Cc: 'Tom Carol Mason'; 'Tom Carol Mason'; 'Fred E. Bickford'; neil.lewis.h2o@comcast.net; 'Perrin T. Prescott'
Subject: Updates on Paradise Shores and Hidden Valley CWS's

Greetings:

As discussed, the following will provide an update for your review and further distribution at your discretion. We have been continuing to work with the Lakes Region Water Company on necessary improvements associated with both the Paradise Shores (Balmoral) community water system, and also the Hidden Valley community water system (CWS).

The following in pertinent:

Paradise Shores (LOD) update:

- The 75 gpm well has been step tested and has had a report prepared by Hydro-Source. The conclusion was that this well is suitable at 75 gpm. LRWSC will be including this well in a general well field test in the next 60 - 90 days.
- There are three other wells in this well field that will also be tested, but initially the Green Well, which has no record of permitting is having a preliminary well siting report prepared by Hydro-Source. Due to numerous ongoing system improvements, primarily the new tank and tank transmission main being completed and placed in service, we are requesting an extension from June 30 to July 30 for the well siting report to be completed and submitted. This will also move the other Amended LOD 08-033 items to each move ahead by 30 days.
- LRWC will also be evaluating the capacity of the existing Green and Yellow Wells, which are in this same well field as the 75 gpm well. This will determine whether or not additional maintenance work (cleaning / deepening) should be undertaken prior to the well field being tested. This work should be completed by September 1, allowing for summer time well use without interruption of service from these wells.
- LRWC will research its records to try and determine when the Green Well was drilled and placed in service. This is important to determine whether or not the well is a pre-1998 well, or a post-1998 well, relative to how well field capacity will be totaled.
- LRWC will also be evaluating the Shangri-La Well, which is now reported to have a 200' radius available. This is a pre-1998 well, and could potentially be developed up to a maximum capacity of 40 gpm, depending on the well itself.
- The plan is to have a consensus well field capacity, with all 3 wells being tested (minimum 5 day test), by September 30. The Green Well will be required to have a full SDWA test completed,

but SOC's will be waived, as they have recently been tested in this well. During the well field testing, other wells in the vicinity of the new water tank will be monitored to determine the amount of cross fracturing between these sources, if needed.

- The exiting 60 gpm well in the vicinity of the tank that was used last summer as an emergency back up will be set up for use, if needed. NHDES will allow the use, only if needed. LRWC will be responsible to call NHDES and seek this well's use this summer, only as needed.
- The new water tank and transmission main are planned to be in service by July 3. The tank is being partially filled and disinfected. Please note that the METERED rate of filling is mandated by NHDES, and shall be less than 57,600 gpd, with daily meter readings being taken. NHDES will also observe partial filling and verify meter setting and reading. Well used to fill water will have a water quality test, and the tank is being disinfected with chlorine. The disinfecting water will be discharged through the new fire hydrant at the end of the transmission main, near the connection point with the existing system. This will disinfect the transmission main, and the water used to fill the tank will not be used, as mandated by NHDES. A groundwater discharge permit will be applied for and approved by NHDES.

Hidden Valley (AO) update:

- Work is progressing smoothly at Hidden Valley. We are respectfully planning to revise the scheduled completion dates on a few of the items in the overall AO schedule, as the amount of work being done by LRWC at this system and the Balmoral system have made it necessary to move some of the time lines forward.
- The 48 hour pumping test at the Lower Shores well is being scheduled, and will be run ASAP. An approved well seal and internal sleeve have to be installed in this well prior to the setting of the well pump. NHDES has mandated that the sleeve must extend a minimum of 50' into bedrock. This well has to be made available for use, as soon as practical.
- The pressure reducing valve vault is being schedule to be installed in the next 2 weeks.
- The controls and lower shores well pump, with temporary (summer – fall) service piping and an outside electrical / control backboard is being scheduled to be installed in the next 2 - 3 weeks.
- The upper pump house with Blue well and storage is supplying water as needed to the upper are. The Lower Shores well is supplying water to the lower elevation areas, and the Well 5 at the end of Aspen Drive is supplying water to the Valley Road area. It is reported by LRWC that the overall system operation over the past number of weeks has been stable under this operating scenario.
- The water company reports that they have been monitoring water use at each of the three water supply locations, and that all meters are working properly.

After distribution and review, please feel free to contact our office with any questions or comments.

Respectfully Submitted on behalf of the Lakes Region Water Company,



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

COPY

May 23, 2008

AMENDED
LETTER OF DEFICIENCY# DWGB 08-033
Certified Mail# 7007 3020 0000 5327 2949

Thomas Mason, Jr. and Sr.
Lakes Region Water Company
420 Gov. Wentworth Highway
PO Box 389
Moultonborough, NH 03254

By Fax and US Mail

Subject: Moultonborough - Public Water System: Paradise Shores (EPA #1612010)

Dear Mr. Mason:

Letter of Deficiency ("LOD") #DWGB 08-033 was originally issued to you by the Department of Environmental Services ("DES") on March 5, 2008. In general terms, the LOD was issued to address DES' concerns about the ability of the Paradise Shores water system's source capacity to meet present and future water demands. A copy of the original LOD is enclosed for your reference.

Subsequent to the issuance of the original LOD, DES has learned that an additional, apparently-unapproved well (the so-called "Green Well") is connected to the water system and in use. DES recognizes that a water shortage would likely result if this unapproved source was disconnected from the system. Therefore, DES will allow continued use of this source **provided** a complete water quality analysis of the well, as set forth below, demonstrates that the well itself meets regulatory standards, or will meet such standards in a DES-approved blend. DES also recognizes that the evaluation of the system's sources, due by the end of this month, may require additional time in light of the need to include the Green Well in the evaluation.

DES acknowledges that requested actions #1 and #2 of the original LOD have been completed. Thus, the remaining requested actions and deadlines contained in the original are hereby amended, and additional requested actions are added, as follows:

3. **By June 6, 2008**, submit water samples from the Green Well to the State Laboratory or a state-certified laboratory for a complete Safe Drinking Water Analysis (Bacteria, Nitrate, IOC, VOC, SOC, and Radiologicals); and
4. **By June 30, 2008**, submit to DES a preliminary well siting application for the Green Well, the pumping test portion of the application shall include an evaluation of the capacity of the two existing and approved sources at the water system, one of which was recently reamed and deepened; and

5. **By July 31, 2008**, submit to DES a final well siting report for the Green Well and evaluation of the system's existing sources that are planned for long-term use and that do not currently have an established safe yield determined in accordance with the well siting standards; and
6. **By August 31, 2008**, submit to DES a preliminary well siting application for new source(s) of water for the water system, based on the results of the water demand assessment (Item No. 2) and the capacity evaluation of existing sources (Item No. 5); and
7. **By August 31, 2009**, submit to DES a final well siting report for new source(s) of water for the water system.

In all other respects, the original Letter of Deficiency remains in effect.

In the event compliance is not achieved within these time periods, DES may take further enforcement action, including issuing an order requiring the deficiencies to be corrected, initiating an administrative fine proceeding, and/or referring the matter to the NH Department of Justice for imposition of appropriate penalties.

Please send all correspondence made in connection with this letter to DES as follows:

Stephen Roy
Department of Environmental Services
Drinking Water and Groundwater Bureau
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-0656

Please contact Steve Roy at (603) 271-3918 or by e-mail at stephen.roy@des.nh.gov, if you have any questions regarding the well approval process or requirements.

Sincerely,

COPY
for

Sarah Pillsbury, P.G., Administrator
Drinking Water and Groundwater Bureau

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- cc: DES Legal Unit
Town of Moultonborough Health Officer
NH Public Utilities Commission
Douglas Patch, Esq. (representing Suissevale)
File (2)
- ec: Steve Roy, DES/DWGB
EPA, Region 1