

June 22 2020 12:14 PM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-12992-1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

WASHINGTON STATE DEPARTMENT
OF HEALTH,

Petitioner,

v.

KAPOWSIN WATER DISTRICT, Owner,
KAPOWSIN WATER SYSTEM,

Respondent.

NO. 17-2-12992-1

REPORT TO THE COURT AND
MOTION FOR CONTINUANCE

Receiver Pierce County (County) through its attorney JOHN SALMON, Deputy Prosecuting Attorney, and Petitioner Washington State Department of Health (DOH), through its attorneys, ROBERT W. FERGUSON, Attorney General, and SIERRA MCWILLIAMS, Assistant Attorney General, jointly present the following report to the court on the progress in remediating the Kapowsin Water System, and Motion for Continuance of the June 26, 2020 review hearing date in this matter.

I. BACKGROUND

On November 29, 2017, DOH petitioned under RCW 43.70.195 for the appointment of a general receiver for Kapowsin Water System (Water System), and the court entered an order appointing Pierce County as the receiver of the Water System. Per RCW 43.70.195(6), DOH, in conjunction with Pierce County, is required to submit a plan to the court for disposition of a

1 water system in receivership within twelve (12) months. This matter comes before the court for
2 a review hearing on June 26, 2020.

3 II. REPORT

4 The original plan for the disposition of this system was a transfer of ownership to Valley
5 Water District, which has been operating the Water System under contract. Valley Water District
6 indicated an interest in acquiring ownership of the Water System if improvements could be made
7 to its infrastructure. *See* Petition for Appointment of Receiver of Public Water System (Petition)
8 ¶ 4.7.

9 The County repaired the broken surface water transmission line to the Water System,
10 which is now providing water to consumers without the need to transport drinking water by
11 truck. Truck transport of water for the system is concerning to the DOH due to the attendant
12 health concerns, costs to the consumers of transport, and danger of the water supply being
13 interrupted. *See* Petition at 4.

14 During the twelve (12) months since the last report to the court, the County has continued
15 to operate the Water System in compliance with state law, while also taking steps to improve the
16 Water System sufficiently for a new owner to be willing to take it over. *See* Declaration of
17 Katherine Brooks and Attachment A *Id.* The county has taken the following steps since
18 receivership began in December 2017 to remediate the Water System in order to transfer it to a
19 new owner:

20 1. Made significant repairs and improvements, including repairing the broken water
21 transmission line, building a new water quality sampling station, fixing a broken hydrant,
22 upgrading electrical and other components of the infrastructure, and completing all corrective
23 action items listed in the DOH Sanitary Survey that occurred on September 30, 2019.

24 2. Completed work on design and bid package for the new groundwater well and
25 received approval from the DOH to begin construction.

1 The parties respectfully request the court issue an order continuing the hearing until the
2 end of September 2020. No party will suffer prejudice from granting additional time that will
3 also assist the parties in resolving the outstanding matters.

4 DATED this 22nd day of June 2020.

5 ROBERT W. FERGUSON
6 Attorney General

7 /s/ Sierra McWilliams
8 SIERRA MCWILLIAMS, WSBA #48544
9 Assistant Attorney General
10 Attorneys for State of Washington
11 Washington State Department of Health
12 (360) 586-5107

11 MARK LINDQUIST
12 Pierce County Prosecutor

13 /s/ John Salmon
14 JOHN SALMON, WSBA #20812
15 Deputy Prosecuting Attorney
16 Attorneys for Pierce County
17 PH: 253-798-7783 / FAX: 253-798-6713

1 **PROOF OF SERVICE**

2 I, ESTHER M. JONES, certify that I caused a copy of *Report to the Court and Motion*
3 *for Continuance* to be served on all parties or their counsel of record by US Mail Postage
4 Prepaid via Consolidated Mail Service on the date below to:

5 Jeff Scott, Commissioner
6 Kapowsin Water District
7 29212 15 8th Avenue NE
8 Graham, WA 98338

Tricia Hodge, Commissioner
Kapowsin Water District
29720 156th Avenue E
Graham, WA 98338

8 William A. Linton
9 Rosemary A. Larson
10 Inslee, Best, Doezie & Ryder, P.S.
11 10900 NE 4th Street, Suite 1500
12 Bellevue, WA 98004

13 Courtesy copy to:

14 wlinton@insleebest.com
15 rlarson@insleebest.com

16 Working copy to:

17 The Honorable Elizabeth P. Martin
18 Pierce County Superior Court
19 930 Tacoma Avenue S, Room 334
20 Tacoma, WA 98402

21 Original filed electronically with:

22 Pierce County Superior Court

23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct.

25 DATED this 22nd day of June, 2020, at Olympia, Washington.

26 /s/ Esther M. Jones

ESTHER M. JONES
Legal Assistant

1
2
3
4
5
6
7 **STATE OF WASHINGTON**
8 **DEPARTMENT OF HEALTH**
ADJUDICATIVE SERVICE UNIT

9 In the Matter of:

NO. 17-2-12992-1

10 WASHINGTON STATE
11 DEPARTMENT OF HEALTH,

PROPOSED ORDER

12 Petitioner,

13 v.

14 KAPOWSIN WATER DISTRICT,
15 Owner, KAPOWSIN WATER SYSTEM,

Respondent

16 **I. HEARING**

17 1.1 Hearing. THIS MATTER came before the Court on June 26, 2020.

18 1.2 Appearances. Petitioner Washington State Department of Health appeared
19 through its attorney, SIERRA MCWILLIAMS, Assistant Attorney General; Receiver Pierce
20 County appeared through its attorney, JOHN SALMON.

21 1.3 Evidence. The Court has reviews the parties' Report to the Court and
22 Motion for Continuance, and Attachments to the Report. The Court has also heard and
23 considered the arguments of counsel, if any.

24 ///

25 ///

26 ///

1 **II. FINDINGS OF FACT**

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

3 2.1 On November 29, 2017, the Secretary of Health petitioned the Court to place
4 Kapowsin Water System in receivership and appoint the County as receiver.

5 2.2. Since November 2017, all parties have worked to repair the physical and
6 financial state of the water system.

7 2.3 Pierce County is currently preparing for transfer to a permanent owner.

8 2.4 If Pierce County does not continue as the receiver of the water system, the
9 water system customers will be left with no certified operator and no management
10 experienced in system and finance management. No owner has yet been identified who is
11 willing to take over the water system during its current ongoing improvement projects and the
12 associated financing applications.

13 **III. ORDER**

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

16 3.1 Pierce County will continue as the receiver of Kapowsin Water System, with
17 all powers of general receivership outline in the original Order Appointing a Permanent
18 Receiver, as well as in subsequent orders.

19 3.2 The hearing in this matter is continued to _____, 2020.

20 DONE IN OPEN COURT this ____ day of June, 2020.

21 _____
22 JUDGE/COMMISSIONER
23 Pierce County Superior Court

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

ROBERT W. FERGUSON
Attorney General

/s/ Sierra McWilliams
SIERRA MCWILLIAMS, WSBA No. 48544
Assistant Attorney General
Agriculture and Health Division
Attorneys for Respondent State of Washington
Department of Health
360-586-5107

MARK LINDQUIST
Pierce County Prosecutor

/s/ John Salmon
JOHN SALMON, WSBA No. 20812
Deputy Prosecuting Attorney
Attorneys for Pierce County

1 **PROOF OF SERVICE**

2 I, ESTHER M. JONES, certify that I caused a copy of *this Proposed Order* to be served
3 on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail
4 Service on the date below to:

5 Jeff Scott, Commissioner
6 Kapowsin Water District
7 29212 15 8th Avenue NE
8 Graham, WA 98338

Tricia Hodge, Commissioner
Kapowsin Water District
29720 156th Avenue E
Graham, WA 98338

8 William A. Linton
9 Rosemary A. Larson
10 Inslee, Best, Doezie & Ryder, P.S.
11 10900 NE 4th Street, Suite 1500
12 Bellevue, WA 98004

13 Courtesy copy to:

14 wlinton@insleebest.com
15 rlarson@insleebest.com

16 Working copy to:

17 The Honorable Elizabeth P. Martin
18 Pierce County Superior Court
19 930 Tacoma Avenue S, Room 334
20 Tacoma, WA 98402

21 Original filed electronically with:

22 Pierce County Superior Court

23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct.

25 DATED this 22nd day of June, 2020, at Olympia, Washington.

26 /s/ Esther M. Jones

ESTHER M. JONES
Legal Assistant