

Decision No. C14-0755

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0698W

IN THE MATTER OF THE APPLICATION OF PROSPECT MOUNTAIN WATER COMPANY, INC., AND NORTH WELD COUNTY WATER DISTRICT FOR APPROVAL OF TRANSFER OF ASSETS.

**DECISION: (1) GRANTING REQUEST FOR
ALTERNATIVE FORM OF NOTICE;
(2) SHORTENING INTERVENTION AND NOTICE
PERIOD; AND (3) REQUIRING FILING OF
PERMANENT AGREEMENT WITH THE TOWN OF
ESTES PARK OR UPDATE REGARDING ITS STATUS**

Mailed Date: July 2, 2014

Adopted Date: July 2, 2014

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. On June 25, 2014, Prospect Mountain Water Company, Inc. (Prospect Mountain or Company) and the North Weld County Water District (NWCWD), a Colorado special district, filed a Joint Application for approval of the transfer of 40 Colorado-Big Thompson (C-BT) water rights (Joint Application). Prospect Mountain presently owns the 40 C-BT units subject to the Commission's jurisdiction. Prospect Mountain requests specific approvals, authorizations, and rule waivers in order to implement Commission decisions issued in Proceeding No. 13A-0291W.

2. In Proceeding No. 13A-0291W, Prospect Mountain sought Commission approval to sell the C-BT units and to distribute the proceeds. The Commission directed the Company to

file a separate application and ordered how the sale proceeds will be distributed.¹ The Company filed the instant application intending to comply with these Commission directives.

3. Prospect Mountain states it entered into an agreement dated May 23, 2014, for the purchase of the C-BT units with the NWCWD. That agreement is attached as Exhibit H to the Joint Application. This transaction is conditioned upon final Commission approval. In the Joint Application, Prospect Mountain proposed distribution of gross proceeds, legal expenses directly related to the transaction, tax consulting services, engineering study, repayment of the Bank of Estes Park loan, the Capital Improvement Fund surcharge, and the customer refund plan.

4. Prospect Mountain also seeks a waiver of Rule 5002(d) of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 *Code of Colorado Regulations* 723-5, which requires a publication of notice in a newspaper of general circulation. Instead, Prospect Mountain proposes to mail to its customers by first class mail a notice attached as Exhibit G to the Joint Application. Prospect Mountain requests a finding that this proposed customer notice meets Commission Rules and § 40-3-104, C.R.S., or constitutes an appropriate alternative form of notice pursuant to § 40-3-104(1)(c)(I)(D), C.R.S.

5. Finally, Prospect Mountain requests that the Commission shorten the time within which the Commission will provide notice of the Joint Application to 7 days; the intervention period to 10 days; and the period within which to determine completeness to 15 days. Prospect Mountain states the contemplated agreement with the NWCWD requires completion of all of the contingency approvals for closing by August 31, 2014, which in turn requires a Commission decision granting the Joint Application no later than July 18, 2014.

¹Decision Nos. R13-1226, ¶¶ 151-152; C13-1495, ¶ 11; C14-0091, ¶¶ 7-15.

B. Discussion

6. The Joint Application is available for public inspection at the Commission office located at 1560 Broadway, Suite 250, Denver, Colorado 80202, between 8:00 a.m. and 5:00 p.m., excluding weekends and state holidays. **This Decision is the Notice that the Application has been filed.**

7. We find good cause to grant the request for waiver of Rule 5002(d). Given the relatively small customer base, we waive the requirement of publication in a newspaper of general circulation. We also find the proposed notice attached as Exhibit G to the Joint Application is reasonable and thus grant Prospect Mountain's request for an alternative form of notice pursuant to § 40-3-104(1)(c)(I)(D), C.R.S.

8. We order Prospect Mountain to mail this notice to all of its customers by first class mail immediately (if this has not been done already) and file an affidavit stating the date of this mailing on or before **July 14, 2014**. We also will mail a copy of this Decision to David Britton, Ken Lindeman, Paula Burr, and Austin Condon, Prospect Mountain's customers who intervened in Proceeding No. 13A-0291W.

9. We also find the request for shortened notice and intervention period is reasonable given the circumstances of this case. We therefore find good cause to shorten the notice and intervention period to **July 14, 2014**.

10. Finally, in Proceeding No. 13A-0291W the Commission found that selling C-BT water rights before entering into a final agreement with the Town of Estes Park (Estes Park) may place Prospect Mountain's customers at risk of not having a sufficient water supply.² We therefore require the Company to file the permanent agreement with Estes Park or explain

² Decision No. C13-1495, ¶ 14.

fully why the permanent agreement has not been completed and provide a definitive timetable for its completion on or before **July 14, 2014**.

II. ORDER

A. The Commission Orders That:

1. The request for waiver of Rule 5002(d), 4 *Code of Colorado Regulations* (CCR) 723-5 contained in the Joint Application for approval of the transfer of 40 Colorado-Big Thompson water rights (Joint Application) filed on June 25, 2014, by Applicants Prospect Mountain Water Company, Inc. (Prospect Mountain) and the North Weld County Water District is granted.

2. The request for alternative form of notice contained in the Joint Application is granted. Prospect Mountain shall mail the notice attached as Exhibit G to the Joint Application to all of its customers by first class mail immediately. Prospect Mountain shall file an affidavit showing the date this mailing has been done on or before **July 14, 2014**.

3. Prospect Mountain shall file the permanent agreement with the Town of Estes Park or explain fully why the permanent agreement has not been completed and provide a definitive timetable for its completion on or before **July 14, 2014**.

4. Any person desiring to intervene or participate as a party in this proceeding, shall file a petition for leave to intervene on or before **July 14, 2014**. All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Rules of Practice and Procedure, 4 CCR 723-1 and this Decision.

5. If it desires to intervene in this proceeding, Staff of the Commission must file a notice of intervention on or before **July 14, 2014**.

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

7. At the time of this Decision establishing notice, the Commission has not yet deemed this Application to be complete pursuant to § 40-6-109.5, C.R.S.

8. The Commission may consider the Application without a formal hearing if no notice of intervention as of right or motion to permissively intervene is timely filed, or no notice of intervention as of right or motion to permissively intervene requests a hearing or contests or opposes the Application.

9. If a hearing is required in this matter, the Commission will notify the parties of the hearing date, time, and location. The Applicants must appear at the hearing, if one is set, and present evidence in support of its Application. Other parties may appear and present evidence in support of their position.

10. If a party does not meet the requirements of this Decision and the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may dismiss or strike the intervention upon motion filed by any other party, or upon the Commission's own motion, unless good cause for failure to meet the requirements is shown.

11. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 2, 2014.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners