

May 25, 2022

VAN BUREN WATER DISTRICT  
Request for Approval of Abandonment of  
Service

STAFF RECOMMENDATION

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**NOTE:**      **This Staff Recommendation contains the recommendation of the Commission Staff. This Staff Recommendation is not a Commission Order, nor does it constitute Commission action. Interested persons may file comments or exceptions to this Staff Recommendation on or before 4:00 p.m., Friday, July 8, 2022.**

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## **I.      SUMMARY**

Commission Staff supports the September 13, 2021 request for abandonment of service filed by the Van Buren Water District (the District), with certain conditions described below. Provided the District complies with the listed conditions, and the Commission receives no objections from affected property owners, Staff recommends that the Commission approve the District's request.

## **II.     BACKGROUND**

Over 20 years ago, the District changed its drinking water source from a public reservoir located along St. Mary's Road in Van Buren to a new groundwater system of drilled wells located along the St. John River over three miles away from the reservoir and St. Mary's Road. According to the District, this change in source of supply was mandated by state drinking water standards.

As a result, approximately seven customers—some seasonal and some year-round—located along St. Mary’s Road, who had been served directly from the reservoir, now found themselves over three miles from the District’s new source of supply.<sup>1</sup> In grappling with the question of how to, or if the District could, continue to serve the St. Mary’s Road customers, the District contacted the Commission’s Staff for guidance. In early 1991, Ray Hammond, a Senior Utility Engineer at the Commission responded to the District with an informal letter outlining four possible resolutions to the District’s dilemma.

One alternative was for the District to attempt to secure authorization from the relevant authorities to continue to serve the St. Mary’s Road customers with untreated water from the reservoir. Mr. Hammond did not think this effort would be successful. Another alternative would be for the District to serve the St. Mary’s Road customers from the new source of supply. A third alternative would be to negotiate a written agreement with each St. Mary’s Road customer whereby the customer would agree to discontinue receiving service from the District in exchange for a District-installed drilled well should such a well provide acceptable quality water. The fourth alternative would be a District petition to the Commission for complete abandonment of service to the St. Mary’s Road customers. Mr. Hammond noted that in the case of an abandonment the Commission could require the District to provide or contribute to a replacement water

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<sup>1</sup> The District’s initial filing states that there are five customers, however, as discussed below, when the District provided contact information for the affected property owners, the District provided information for seven affected properties on St. Mary’s Road.

supply for the abandoned customers. Ultimately, Mr. Hammond recommended that the District serve the St. Mary's Road customers from the new source of supply.

According to the District, it quickly dispensed with the first two options. In the District's view, continuing to provide water from the reservoir could have long-term supply issues and, in any event, providing untreated water would be unlikely to pass muster with the State's Drinking Water Program. As between the two remaining options, the District chose to proceed with drilling wells for customers as opposed to seeking Commission approval for abandonment of service. The District considered the well drilling option to be the least burdensome option for the St. Mary's Road customers.

Accordingly, the District appears to have entered into agreements with the St. Mary's Road customers to drill wells—either individual wells or, for properties located close together, a common, shared well—in exchange for the customers agreeing to no longer receive water service from the District. The District also apparently agreed to pay the cost of electric power for the pumps in each well, and to activate and deactivate the wells for the seasonal customers.<sup>2</sup>

This state of affairs continued for the next twenty-odd years until September 13, 2021, when the District filed with the Commission a request to cease maintaining,

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<sup>2</sup> The Commission is using the term “apparently” in the sentences above because the wells exist and the District has been paying the electric bill; however, the District cannot locate any written and signed agreements between the District and any St. Mary's Road customer.

electrifying, and, for the seasonal customers, activating and deactivating the wells. This would likely constitute an abandonment of service under 35-A M.R.S. § 1104, and the District's petition requests just that.

Following receipt of the District's request, the Presiding Officers scheduled a case conference for October 7, 2021 to discuss the District's request with District representatives. Commission Staff's primary concern expressed during the case conference was whether the District had contacted the current owners of the St. Mary's Road properties and, if so, what the owners' opinions were on the matter.

The District stated that, save for a conversation with one owner who was in the process of selling their property, the District had not had a conversation with the affected owners, but had reached out to the owners by mail. The District also stated that it has not received any responses. Accordingly, the District did not, and does not, know whether the current property owners agree with the District's proposed plan of action. Commission Staff then offered to perform outreach to the affected customers if the District would provide contact information.

The District subsequently provided contact information for the St. Mary's Road owners, and the Commission sent certified letters<sup>3</sup> to each of the addresses provided by

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<sup>3</sup> The letters provided notice of this proceeding, a brief description of the District's request, and a copy of the District's initial filing, as well as multiple ways for the owners to easily contact the Commission: instructions on accessing the Commission's Case Management System, an email address for the Commission ([Maine.PUC@maine.gov](mailto:Maine.PUC@maine.gov)),

the District.<sup>4</sup> To date, the Commission has not received any responses to the letters, and none of the owners have filed anything in this Docket, contacted the Commission in any manner, nor added themselves to the notification list for this Docket.<sup>5</sup>

### III. LEGAL STANDARD

Title 35-A M.R.S. § 1104(1) states that “[n]o public utility may abandon all or part of its plant, property or system necessary or useful in the performance of its duties to the public, or discontinue the service which it is providing to the public by the use of such facilities, without first securing the [C]ommission's approval.” Further, 35-A M.R.S. § 1104(2) states that the Commission, in granting approval under Section 1104 may “may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest.” Should the utility proceed with the abandonment, the utility is deemed by law “to have waived all objections to the terms, conditions or requirements imposed by the [C]ommission in that regard.” *Id.*

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the Commission's telephone and fax numbers, and the Commission's physical and mailing addresses.

<sup>4</sup> In some instances, the District provided multiple addresses for a given owner, often the address on St. Mary's Road and another mailing address.

<sup>5</sup> The Post Office returned some of the letters unopened because the St. Mary's Road address for the particular customer was not a mailing address. The Commission did, however, receive return receipts from four of the seven owners.

#### IV. DISCUSSION AND DECISION

This case presents the Commission with a dilemma. On the one hand, it would be unusual for the Commission to impose upon property owners a cost that they have heretofore not had to bear without either the utility or the Commission first obtaining the express consent—or at the very least the input—of those property owners. Tempering this unusual situation is the fact that both the District and the Commission have attempted to contact the owners, and in the case of four of the seven properties the Commission has evidence that the owners received notice of the District's intentions, without any response from the owners.

On the other hand, the District is correct that it makes sense for the District's ratepayers as a whole to not continue to subsidize the seven St. Mary's Road properties that, arguably, have not been customers of the District for over 20 years. Nor have these former customers provided any revenue to the District for that same lengthy period of time.

Ultimately, given the substantial benefit conferred upon the St. Mary's Road property owners and the lost revenue to the District, Staff recommends that the Commission find that the District has more than adequately compensated the property owners for their loss of District service back in 1991. Thus, based on the record in this case, Staff recommends that the Commission find that the District has shown that good cause exists for no longer subsidizing the wells that are privately owned by the

residents of St. Mary's Road and, thus, Staff recommends that the Commission authorize the District to abandon service to those properties. However, Staff's recommendation is contingent upon the District satisfying certain conditions as set forth below.

To fully safeguard the interests of the St. Mary's Road property owners, Staff recommends that the Commission's authorization to abandon service be conditional on further action by the District and Commission review of any input from affected property owners, as detailed below. Should the District choose to proceed with the abandonment of service it must first (1) certify under penalty of perjury that it hand-delivered a copy of the Staff Recommendation to each affected property on or before **Friday, June 8, 2022**, and left a copy of the Staff Recommendation at the property if the District could not provide the Staff Recommendation personally to a resident;<sup>6</sup> (2) certify under penalty of perjury that, on or before **Friday, June 17, 2022**, it made at least two other attempts to contact the affected property owners by mail, email, or telephone regarding the Staff Recommendation in this matter and to arrange for the delivery of a copy of the Staff Recommendation;<sup>7</sup> (3) certify under penalty of perjury that, on or before **Friday, June 17, 2022**, it published notice of the Staff Recommendation in this matter on its website (if the District has a website) or the website for the Town of Van Buren (if the District does not have a website) and provided notice through any social

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<sup>6</sup> If the District hand-delivers the Staff Recommendation directly into the hands of a resident or owner of an affected property, it need not make the mail, email, or telephone contact attempts in condition number 2.

<sup>7</sup> If the District makes positive contact with a resident or owner of an affected property on the first contact attempt, it need not make the second attempt.

media accounts managed by the District or the Town of Van Buren. Notices must include the Commission's contact email ([Maine.PUC@maine.gov](mailto:Maine.PUC@maine.gov)), telephone number ((207) 287-3831), and mailing address (18 State House Station, Augusta, ME 04333-0018), as well as the July 8, 2022 comments and exceptions deadline provided below; and (4) file the above-referenced certifications in this Docket on or before **Friday, July 1, 2022**.

Upon notice or receipt of the Staff Recommendation, affected property owners may provide comments or exceptions to the Staff Recommendation. Comments or Exceptions must be received on or before **4:00 p.m., Friday, July 8, 2022**. Affected property owners may contact the Commission using the contact information described above to get further instructions and assistance in providing comments or exceptions on the Staff Recommendation and the District's request to abandon service.

## **V. CONCLUSION**

Upon receipt of the District's compliance filings, and in the absence of any objection from the affected property owners, Commission Staff will recommend that the Commission approve the District's abandonment request. Should the Commission receive objections from the affected property owners, Staff will recommend that the Commission engage in further process to resolve this matter.

Dated at Hallowell, Maine this Twenty-Fifth Day of May, 2022

Respectfully Submitted,

/s/ Jody McColman

/s/ Amy Mills

Presiding Officers

David Braley  
Lucretia Smith  
Stephani Morancie  
Jason Marco

Commission Staff