

MINISTRY OF ENVIRONMENT

INFORMATION NOTE

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I. PREPARED FOR: James S. Mattison, Assistant Deputy Minister for Information

II. ISSUE:

Information in support of a submission to Cabinet pursuant to Section (88) of the *Utilities Commission Act* (UCA) recommending consent for the Deputy Comptroller of Water Rights to issue an order exempting Misty Ridge Community Water Co. Ltd. (Misty Ridge) from regulation.

III. BACKGROUND:

Section 1 of the *Water Utility Act* (WUA) defines a water utility as a person who owns or operates in BC, equipment or facilities for diverting, developing, pumping, impounding, distributing or furnishing water to 5 or more persons, or to a corporation for compensation. Water utilities are created where development requires a community water system to be installed and there is no local authority to provide water service. The subdivision approval process normally requires that a developer obtain a Certificate of Public Convenience and Necessity (CPCN) from the Comptroller of Water Rights ("the Comptroller") prior to the Provincial Approving Officer allowing the proposed subdivision to be registered.

Water utilities in BC are regulated by the Comptroller pursuant to the provisions of the WUA and UCA.

A water system was constructed to serve sixteen homes on four proposed 10 acre strata lots on Seedtree Road, in East Sooke. At the time of registration of the subdivision one of the strata properties (four building sites) opted to constructed their own water system. The three remaining strata lots with twelve building site were created by the registration of Strata Plans VIS4531, VIS4534 and VIS5105, Section 87, Sooke Land District. A Statutory Right of Way (SRW), EM078108, was registered August 14, 1998, granting Seedtree Water Utility Co. Ltd. (Seedtree) access to operate and maintain the water system.

In January 2000, the developer and President of Seedtree applied for a CPCN to operate the water system to serve the twelve strata lots. Seedtree subsequently changed its name to Misty Ridge Community Water Co. Ltd. (Misty Ridge). A revised CPCN application was submitted by Misty Ridge in November 2003. Subsequently, Misty Ridge requested that their CPCN application be placed on hold as they stated that they did not want to be a water utility.

The Deputy Comptroller's Decision No. 2009, dated Nov. 29, 2004, determined that Misty Ridge is by definition a water utility under the provisions of the WUA. In that decision the Deputy comptroller determined that with respect to the structure of the company and the Statutory Right of Way Agreement that was in place, the users had the ability to protect their own interests.

IV. DISCUSSION:

The *Water Utility Act* applies the provisions of the *Utilities Commission Act* to water utilities. Section 88(3) of the UCA states that:

The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act, other than part 2, or may limit or vary the application of this Act, other than Part 2.

In many public utility sectors, including the water sector, the business of providing a utility service is considered to be a natural monopoly, where one supplier can generally provide the service more cost-efficiently than two or more. While a natural monopoly situation can result in lower average costs for customers, it can also result in the monopolist maximizing its own profits at the expense of customers if not regulated.

Therefore, privately owned water utilities are regulated by the Comptroller of Water Rights under the provisions of the WUA and UCA to ensure that they provide a safe and adequate water supply for a fair and reasonable price. Private utilities are usually created in rural areas to provide water service where no local water authority exists. A land developer would normally be required to obtain a CPCN as a requirement for receiving subdivision approval. The Comptroller, upon being satisfied that a utility is necessary for public convenience and necessity to provide adequate and safe water service at just and reasonable rates, will issue a CPCN. Prospective property purchasers can then be satisfied that the water system has been approved and that a regulatory authority exists to set rates and monitor the service being provided.

In this case the subdivision approval authority did not require the developer of the subdivision and water system to obtain a CPCN in order to get subdivision approval. Similarly, the building permitting authority did not require a CPCN prior to issuing building and occupancy permits. When Seedtree applied for a CPCN in January 2000, the substandard water system was in place, the strata lots had been registered and eight houses had been built.

It should be noted that the Vancouver Island Health Authority, the agency responsible for regulating the safety of the supply by community water systems, issued an operating permit to Misty Ridge.

The CPCN application by Misty Ridge proposed an arrangement where the water system would be operated by the users with an organizational structure provided by the SRW and a Water Trust agreement. Ten of the twelve strata lots owners accepted the form of organization that provided them with the ability to each have a voice in the conducting of the affairs of the water system including the setting of rates by voting their shares in Misty Ridge. The two dissenting users / strata lots owners retain the right to become share holders in the water company and have the

opportunity to participate on the same basis as the other users. Whether Misty Ridge is the owner of the water system with its shares held by the strata lot owners or whether it is a bare land trustee of the water system owned by the strata lot owners, the concept is that the water system would be owned and operated by the users.

The position of the two dissenting users with respect to exempting the Utility from regulation is that it should not be considered unless Misty Ridge makes system improvements and meets all of the provisions that would normally be required in obtaining a CPCN. If Misty Ridge were to comply with those requirements a substantial capital investment would be required. As the only source of revenue available to Misty Ridge is from its users no information was put forward by the dissenting users on how improvements to the water system would be financed. Given that the water system is providing service that the health authority finds to be safe, the users collectively can determine if they wish to pay for system improvements. The Deputy Comptroller decided that ordering Misty Ridge to make improvements that would normally be required for obtaining a CPCN was not warranted, nor enforceable at this juncture.

Since in this case a CPCN was not required as a condition of subdivision, building or occupancy approval, and since the organizational structure allows the users to have a voice in the affairs of the Utility, including the setting of rates, and the Vancouver Island Health Authority has jurisdiction over the safety of the water supply, the Deputy Comptroller considers it advisable that Misty Ridge be exempt from Part 3 of the UCA. (i.e. most regulatory matters including the filing of a water tariff, annual reporting and maintaining reserve funds). However, in considering the importance of water service and that there is no viable option for a user to obtain an alternative source of supply, the Deputy Comptroller deems that a limited regulatory oversight is warranted where users would have the opportunity to request the investigation and determination of a complaint under Part 6 of the UCA.

V. MINISTRY POSITION:

Pursuant to Section 88 (3) of the Utilities Commission Act, by way of an Order-in-Council, approval be given to the Comptroller to issue an Order exempting Misty Ridge Community Water Co. Ltd. from Part of 3 of the *Utilities Commission Act*.

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Speaking Notes

Re : Request for an OIC to exempt Misty Ridge Community Water Co. Ltd., (Misty Ridge) a private water utility, from regulation under Part 3 of the Utilities Commission Act (UCA).

- Misty Ridge is a water utility as defined by the Water Utility Act.
- The Comptroller of Water Rights , pursuant to the Water the Utility Act regulates water utilities under the provisions of the Utilities Commission Act .
- Water utilities are regulated to ensure that they provide a safe and adequate water supply at fair and equitable prices to their customers.
- Part 3 of the UCA requires water utilities to file a water tariff setting out the terms and conditions of service at prescribed rates, the filing of annual reports on the financial and physical status of the water system and may require the maintenance of various reserve funds.
- Where the Comptroller is satisfied that the interests of the customers of a water utility are protected and/or where the customers have the ability to protect their own interests with respect to a safe and adequate supply of water for a fair price, he may consider exempting a water utility from regulation pursuant to section 88(3) of the UCA.
- There is a Statutory Right of Way (SRW) in place that sets out the provisions for receiving water service at a rate that provides for the recovery of the cost of operating and maintaining the water system.
- By virtue of the SRW the owner(s) of each lot receiving water service have the right to a share in Misty Ridge the Utility company. Currently ten of the twelve lot owners on the water system are shareholders in Misty Ridge.
- The Comptroller deems it advisable to exempt the Utility from Part 3 of the Utilities Commission Act on the basis that the persons receiving service have a means of protecting their own interests by becoming shareholders and exercising their rights in Misty Ridge.