

**AGENDA COVER MEMORANDUM**

**Agenda Date: December 17, 2003**

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**DATE:** December 3, 2003  
**TO:** Board of County Commissioners  
**DEPARTMENT:** Management Services  
**PRESENTED BY:** Jeff Turk, Property Management Officer

**SUBJECT: BOARD DIRECTION: IN THE MATTER OF PROVIDING DIRECTION TO STAFF FOR DISPOSITION OF AN OPERATING DOMESTIC WATER SYSTEM ACQUIRED THROUGH TAX FORECLOSURE**

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1. **PROPOSED MOTION: NO MOTION IS PROPOSED**
2. **ISSUE/PROBLEM:** The county has acquired through tax foreclosure real property formerly owned by the Seavy Loop Water Co (A.C. Woolsey, principal). The Seavy Loop Water Co. is the supplier of domestic water to 40 homes in a subdivision off of Seavy Loop Road. In addition to the real property, it appears the foreclosure included the equipment used for distribution of water – pumps, pipes, etc. The former owner remains in possession of the property and continues to operate the system.

The Seavy Loop Water Company has been under investigation by the Public Utility Commission (PUC) due to customer complaints of poor customer and water service. PUC staff has documented several inadequacies in these areas. PUC staff's recommendation was to levy civil fines on the operator. An alternative noted by PUC staff was for the PUC to declare the system abandoned and contract with a third party to run the system. Upon learning of the tax foreclosure, the PUC would like the county to lease the property to a management company for the purpose of operating the system.

Board direction is requested for having the county take actual possession of the property without disruption to water service.

### 3. DISCUSSION:

#### 3.1 Background

The Seavy Loop Water Co. is a private, for profit business. The business is not registered with the Secretary of State's office and it is assumed it is a sole proprietorship. There was \$1,700 in delinquent taxes owing at the time of foreclosure.

Initially, it was not clear if the tax foreclosure included the machinery, equipment and distribution system. As a utility, these items had been centrally assessed by the State and the county's Department of Assessment and Taxation had two tax accounts for the property – one for the real property and one for the machinery and equipment (which was assessed as personal property). At some point, the State discontinued centrally assessing the equipment and A&T merged the personal property account into the real property account.

Property Management staff attempted to contact Seavy Loop Water Company to discuss selling the property back to it. The company did not respond. Staff then contacted the local office of the State's drinking water program to see if they had any information on the company. They informed county staff that the company was under investigation by the PUC.

Ensuing discussion with the PUC revealed that the water company was in the process of being investigated for not responding to customer inquires, not answering their phone or having a message system (required by PUC regulation) and deficiencies in the water system with respect to water pressure and overall system maintenance. Seavy Loop Water Company also did not respond to numerous contact attempts by the PUC.

County staff discussions with the PUC focused on a remedy of the situation. One of the remedies available to the PUC is to declare a water system abandoned and then contract with a management firm to operate the system (the PUC does not acquire ownership of the system or real property). The PUC had identified a management firm to operate the Seavy Loop system in the event that course of action was pursued. County staff proposed that the county transfer ownership of the property to the PUC who could then contract with the management firm to operate the system. PUC staff was not in favor of this (or leasing the property from the county) as they were of the opinion that the PUC had no authority to own a utility.

Discussions then involved the county entering into a lease agreement for the property with the management firm. The management firm identified by the PUC was Ravin, LLC. Ravin was included in the discussions and is agreeable to leasing the property from the county. Ravin also expressed interest in purchasing the property however, the property is not eligible for private sale at this time per statute and must first be offered at a Sheriff's

auction. In conjunction with a lease agreement, the county would expedite offering the property at a Sheriff's sale.

County staff has also asked the PUC to consider having the PUC enter into a contract agreement with Ravin to operate the water system with the county then leasing the property to Ravin. This may be advantageous as the PUC has greater expertise with system operations, would have a direct relationship with Ravin and would allow the county to simplify its lease agreement with Ravin as language particular to operating the system in conformance with PUC standards would not be required. The PUC has yet to respond to this proposal.

Ravin currently operates two water systems in Lane County under contract with the PUC (one in the Veneta area and one in the Florence area).

The water customers have expressed to the PUC that they are not interested in forming a water district.

### 3.2 Analysis

Seavy Loop Water Company is still in possession of the property and operating the system. It is unknown if Seavy Loop is aware of the tax foreclosure. Foreclosure notices sent by registered mail to the address on record were returned and Seavy Loop has not acknowledged contact attempts.

Of primary concern to the PUC is that water service not be disrupted. When the county takes actual possession of the property it will need to ensure water service will continue. The county does not have the expertise in operating a water system. Having an agreement in place with a company with such expertise will ensure minimal, if any, disruption in service. The PUC will, upon an agreement between the county and an operator, issue an order that the system has been abandoned, notify the Seavy Loop Water Company of the order and notify the customers of the new operator.

It is anticipated that any agreement between the county and an operator will be for minimal compensation and be short term as the county would work towards offering the property for sale as soon as possible. One issue discussed with Ravin, LLC and the PUC was the need and cost for capital improvements to the system. Ravin has estimated that \$3,000 - \$5,000 of immediate improvements may be necessary to increase water pressure and perform other needed maintenance. One solution discussed would be for the county to reimburse Ravin upon a sale of the property to someone other than Ravin. It is also possible that the system can continue operating as is if a sale could transpire in 60-90 days.

### 3.3 Alternatives/Options

- A. Have the PUC declare the system abandoned with the PUC contracting with Ravin, LLC to operate the system. The county would enter into a short term lease for the property with Ravin. The county and the PUC could also enter into an intergovernmental agreement noting respective responsibilities. The PUC would notify the former operator and customers of the change. Having the PUC contract to operate the system, vs. the county doing it, would add a layer of insulation for the county concerning any liability issues that may arise.
- B. Enter into a lease agreement with Ravin, LLC. The agreement would lease all of the foreclosed property with a provision that it continues to operate as a water system. Upon such an agreement, the PUC will issue an order declaring the system abandoned, notify the former owner and notify the system's customers of the change in operation. In conjunction with the agreement, the county will prepare to offer the property at a Sheriff's sale as soon as possible.
- C. The county could continue to try and establish contact with the Seavy Loop Water Company for the purpose of negotiating a sale back to the former owner pursuant to ORS 275.180. This would require a willingness by the former owner to repurchase the property. A sale to the former owner would remove the county from any further involvement with the property. A sale to the former owner would return the property to an operator who has been found deficient by the PUC in operating the water system and would be facing civil fines or other corrective measures by the PUC.
- D. The county could refrain from taking any action and allow the situation to continue. It is not known at this point if the PUC would continue its actions against the former operator or declare the water system abandoned and contract for its management. It is also unclear what the county's liability would be with respect to PUC actions and obligations to the water system.
- E. The county could attempt to operate the system until such time it could be sold. This would require the county to maintain the system, bill customers, respond to customers and operate a water system pursuant to PUC regulations. Resources to do this would need to be identified.

### 3.4 Recommendation

It is recommended that the county pursue a course of action as noted in alternative A. This would require cooperation from the PUC to contract with Ravin, LLC to operate the system. The PUC has not yet responded to this proposal.

Alternative B should be pursued in the event the PUC is not agreeable to Alternative A.

### 3.5 Timing

Should the recommended course of action be approved, staff will negotiate an agreement with Ravin, LLC and the PUC with the PUC issuing its abandonment order and notifying customers of the change.

4. **IMPLEMENTATION/FOLLOW-UP:** It is anticipated that any agreement will be within the parameters for execution by the CAO without a formal Board Order. Any agreement will be reviewed by County Counsel prior to execution.
5. **ATTACHMENTS:**  
Tax map noting subject property and properties being serviced by the water system.

