

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 16, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Walden, Hillier, Kaproth)  
Office of the General Counsel (Klancke)

**RE:** Docket No. 100334-WU – Notice of abandonment of water system by San Sebastian Water, LLC in Brevard County, FL.

*Handwritten initials and signatures:* JAP, DHA, KK, JS, ALCM, CRES, [Signature]

**AGENDA:** 09/28/10 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\100334.RCM.DOC

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 10 SEP 16 AM 10:47  
 COMMISSIONER  
 CLERK

### Case Background

San Sebastian Water, LLC (San Sebastian or Utility) is a Class C water utility serving approximately 45 customers in the San Sebastian Woods neighborhood, located in Brevard County. Septic tanks are used for wastewater disposal. The area is in the St. Johns River Water Management District and is considered a water use caution area.

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The Commission approved the transfer of majority organizational control of this system in 2001.<sup>1</sup> At the end of 2009, there were 45 connections to the water system. Some of the homes in the subdivision have private wells and are not connected to the water system.

The Utility gave notice on June 7, 2010 of its intent to abandon the water system. Brevard County petitioned the Circuit Court to appoint the County as receiver so as to continue water service to the county residents in the subdivision. The Court appointed the County as receiver on July 23, 2010.

Regulatory assessment fees (RAFs) have been paid for 2009. The amount accrued for 2010 is not due until March 31, 2011.

The purpose of this recommendation is for the Commission to acknowledge the notice of abandonment, acknowledge the appointment of the County as the Receiver for the Utility, and to cancel the Utility's certificate. Pursuant to Section 367.022(2), Florida Statutes (F.S.), utility systems owned, managed, or controlled by governmental authorities are exempt from Commission regulation.

The Commission has jurisdiction pursuant to Section 367.165, F.S.

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<sup>1</sup> Order No. PSC-01-0426-FOF-WU, issued on February 22, 2001, in Docket No. 001145-WU, In re: Application for transfer of majority organizational control of San Sebastian Utilities, Inc., holder of Certificate No. 439-W in Brevard County, and name change on certificate, to San Sebastian Water, LLC.

Discussion of Issues

**Issue 1:** Should the Commission acknowledge the notice of abandonment of San Sebastian Water, LLC?

**Recommendation:** Yes. The Commission should acknowledge the Utility's notice pursuant to Section 367.165, Florida Statutes. (Walden, Klancke)

**Staff Analysis:** Section 367.165, F.S., requires 60 days' notice be given to the County or Counties in which the Utility is located and to the Commission, prior to the abandonment of a utility. By letter dated June 7, 2010, and filed with the Commission on June 18, 2010, Mr. Mike Coffey, Manager of San Sebastian, gave the County and this Commission 60 days' notice of the owner's intent to abandon the utility water facilities as of August 6, 2010.

Located near the Town of Micco in Brevard County, the Utility provides water service to approximately 44 residential connections and one general service connection in the San Sebastian Woods subdivision. According to the 1984 certificate order, the Utility projected to serve a total of 225 connections at buildout.<sup>2</sup>

In discussing abandonment with the PSC staff, Mr. Coffey indicated that the owner was no longer interested in infusing capital into the system and that there were some operational issues, including one well out of service. The Florida Department of Environmental Protection (FDEP), has indicated to staff that there are issues with lead and copper sampling and that the second well, installed in 2009, has not been formally approved by the FDEP. Test results for lead and copper exceeded allowable limits and resampling is needed. To date, there has been no FDEP proceeding initiated against San Sebastian, although FDEP has provided suggestions to the Utility and the County as to the steps necessary to resolve the issues.

In response to the abandonment notice dated June 7, 2010, Brevard County was appointed receiver for this utility, effective July 23, 2010.<sup>3</sup> The County has been operating the system since that date.

Based on all the above, staff recommends that the Commission acknowledge the Utility's notice of abandonment pursuant to Section 367.165, F.S., and recognize Brevard County as the acting receiver.

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<sup>2</sup> Order No. 13816, issued October 29, 1984, in Docket No. 840189-WU, In re: Application of San Sebastian Utilities, Inc. for a water certificate in Brevard County.

<sup>3</sup> Order Appointing Receiver, Case No. 05-2010-CA-038775, In re: the Petition of Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida to Appoint Receiver for San Sebastian Water, LLC Water Utility (Fla.18<sup>th</sup> Cir. Ct. July 23, 2010)

**Issue 2:** Should the Commission acknowledge the appointment of Brevard County as the receiver for the Utility and cancel Certificate No. 439-W?

**Recommendation:** Yes. The Commission should acknowledge the appointment of Brevard County as the receiver for the Utility and cancel Certificate No. 439-W. (Walden, Hillier, Kaproth, Klancke)

**Staff Analysis:** By Order dated July 23, 2010, the Circuit Court acknowledged Brevard County's petition to appoint a receiver; the County was appointed as receiver of the Utility in Case No.: 05-2010-CA-038775 by the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida. Section 367.165(2), F.S., requires the County to petition the circuit court for the appointment of a receiver. Such receiver can be the County or any other person or entity such as a homeowners association. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property. The County has accepted that responsibility and began operating the water system effective July 23, 2010.

The Circuit Court's order gave the County responsibility and authority for operating, maintaining, and improving the system; to apply for permits and interact with state agencies involving system operation; to collect charges for service; to pay expenses; to arrange for transfer of ownership, subject to court approval; to dissolve or dispose of the assets of the system to the extent that the system is no longer physically or economically viable as a water supply entity; to do all things reasonably required to operate and maintain the system as a viable water supply system; and to file a semi-annual report regarding the financial and operating status of the system with the court.

Pursuant to Rule 25-30.090(3), Florida Administrative Code, within ten days of the appointment of the receiver by the circuit court, the receiver shall request from the Commission a copy of the Utility's tariff and most recent annual report. A copy of the Utility's tariff and annual report have been sent to the County.

Pursuant to Section 367.022(2), F.S., utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation. On July 23, 2010, Brevard County, a governmental authority, was appointed receiver for this utility. It should be noted that cancellation of the utility's certificate does not relieve the Utility's obligation regarding the outstanding RAFs for 2010. RAFs were paid for 2009 and based upon the Utility's 2009 annual report, the RAFs through July 23, 2010 are estimated to be \$386. Payment of the RAFs, based on actual revenues through July 23, 2010, are due March 31, 2011.

Staff therefore recommends that the Commission acknowledge the appointment of Brevard County as the receiver for the Utility and cancel Certificate No. 439-W.

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**Issue 3:** Should this docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 2, the certificate has been cancelled, there are no outstanding issues to be addressed, and the docket can be closed. (Klancke)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 2, the certificate has been cancelled, there are no outstanding issues to be addressed, and the docket can be closed.