

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Middlefork)
Water Company and Nodaway County Public)
Water Supply District Number One for an Order)
Authorizing the Sale, Transfer and Assignment)
Of Certain Water Production Assets to Nodaway)
County Public Water Supply District Number)
One and in Connection therewith Certain Other)
Related Transactions)

File No. WM-2021-0003

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its Staff Recommendation, states the following:

1. On July 2, 2020, Middlefork Water Company (“Middlefork”) and Nodaway County Public Water Supply District Number One (“District”) (together, “Joint Applicants”), filed an application for an order authorizing the sale, transfer and assignment of certain water production assets to the District.

2. On August 5, 2020, the Commission issued its *Order Directing Notice and Filing*, which set an intervention deadline of September 4, 2020, and ordered Staff to file a pleading stating when it anticipates filing its recommendation in this matter on the same date.

3. As of the time of this filing, no parties have filed to intervene in this matter. Further, Staff has completed its review of the Joint Applicants’ request, and recommends that the Commission approve the transfer of assets.

4. Pursuant to Section 393.190 RSMo, no water or sewer corporation shall sell or transfer its assets without having first secured authorization from the Commission.

5. As explained in the Staff Memorandum, attached hereto as Appendix A, Staff reviewed the Company's request. Based upon this review, Staff determined that the proposed sale and transfer of assets from Middlefork to the District is not detrimental to the public interest. Staff recommends that the Commission authorize the transfer of assets contemplated by the Joint Applicants' request, with the following conditions:

- a. Require Middlefork to notify the Commission of closing on the water assets with the District within five (5) days after such closing;
- b. Authorize Middlefork to cease providing service immediately after the District closes on the assets;
- c. If closing on Middlefork's assets does not take place within thirty (30) days following the effective date of the Commission's order, require Middlefork to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Middlefork determines that the transfer of the assets will not occur;
- d. If Middlefork determines that a transfer of the assets will not occur, require Middlefork to notify the Commission of such;
- e. After receiving notice of closing, cancel the respective CCN and tariff authorizing Middlefork to provide water service.

WHEREFORE, Staff recommends that the Commission approve the proposed transfer of assets; and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

Mark Johnson

Deputy Counsel

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Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 4th day of September, 2020.

/s/ Mark Johnson

MEMORANDUM

TO: Missouri Public Service Commission
Official File Case No. WM-2021-0003

FROM: Jarrod J. Robertson – Water and Sewer Department

/s/ Jarrod J. Robertson / 09-04-20 /s/ Mark Johnson / 09-04-20
Case Manager / Date Staff Counsel / Date

SUBJECT: Staff’s Recommendation to Approve Transfer of Assets, and Cancellation of Certificate of Convenience and Necessity

DATE: September 4, 2020

CASE BACKGROUND

On July 2, 2020, Middlefork Water Company (Middlefork or the Company) and Nodaway County Public Water Supply District Number One (District) filed a *Joint Application* (Application) with the Missouri Public Service Commission (Commission), seeking authority from the Commission for Middlefork to transfer its water utility assets to the District. Middlefork also seeks to cancel its Certificate of Convenience and Necessity (CCN) after the transfer of assets is accomplished, thereby relieving it of its obligation to provide water service.

The Commission issued its *Order Directing Notice and Filing* on August 5, 2020, directing the Commission’s Data Center to send a copy of the order to the county clerk and county commission of Nodaway, Worth, and Gentry Counties, and the Commission’s Public Information Officer to make notice of this order available to the members of the General Assembly representing Nodaway, Worth, and Gentry Counties, and to the media serving those counties. The Commission also directed any interested person wishing to intervene in this case to do so no later than September 4, 2020, and for the Staff of the Missouri Public Service Commission (Staff) to file a pleading stating when it anticipates filing its recommendation in this matter by the same date. As of the date of this filing, no party has applied to intervene.

BACKGROUND OF THE MIDDLEFORK UTILITY SYSTEM AND THE DISTRICT WATER UTILITY

Middlefork obtained a CCN on March 31, 1992, from the Commission in Case No. WA-92-65, authorizing it to provide wholesale water services to two (2) customers, the cities of Stanberry and Grant City.

Middlefork operates a surface water treatment plant in Gentry County, located near the town of Gentry. Middlefork’s water treatment plant draws its water from Stanberry Lake, also known as Lake Elizabeth, which is owned and controlled by Middlefork. The raw water intake utilizes a submersible pump capable of pumping 500 gallons per minute (gpm). The plant, with a treatment capacity of 700 gpm, produces an average of 291,950 gallons per day (gpd). Storage of treated water occurs onsite in a 340,000 gallon concrete clearwell (a partially buried rectangular tank

constructed of cast-in-place reinforced concrete). The water is then pumped from the clearwell to the two wholesale customers.

The District is a public water supply district organized under the provisions of Chapter 247, RSMo, which has been in existence since 1974. The District is a political subdivision of the State of Missouri and is controlled and operated by a duly elected Board of Directors; it is not subject to the jurisdiction of the Commission. The District has over 1,700 miles of water mains, 8-10 storage facilities, is currently the permanent water supplier to all of Nodaway County and parts of both Worth and Gentry Counties, and serves approximately 2,700 customers overall, as well as several small cities and towns on a wholesale basis.

As Middlefork's two wholesale customers are at present solely reliant upon Middlefork for water service, agreements negotiated between Grant City, Stanberry (the Cities) and the District, which will take place upon closing of the transactions contemplated under the Asset Purchase Agreement (APA), will provide full secondary water supplies to the Cities at rates the Cities have approved.

STAFF'S INVESTIGATION

Staff reviewed the Application and attachments including the APA. Staff is familiar with the Middlefork's system operations.

The District, as previously mentioned, is a political subdivision of the State of Missouri, organized under the provisions of Chapter 247, RSMo, and controlled by an elected Board of Directors. It is the duty of this publicly elected Board to control the operations of the District, as well as address any customer issues and oversee any potential changes to future rates. While not subject to the jurisdiction of the Commission, the District is subject to oversight of the Board of Directors, as well as adhering to Department of Natural Resources (DNR) and United States Environmental Protection Agency (EPA) regulations. According to DNR, there have been no violations over the last five (5) years for the District. The District has nearly \$2,000,000 in available cash for use in their operations and has an additional \$30,000,000 in available bonding capacity, in order to address any long-term improvements and/or expansion plans. In addition to the former qualifications, the District also examined the costs associated with the past five (5) years of production as though the District, a public entity, was running the plant, with an allowance for an increase of 15-20%. This examination determined the District could operate with the same initial rates as Middlefork currently charges.

Pursuant to the APA,¹ the assets to be transferred include the fifty-two and five hundredths (52.05) acres of real property on which the buildings, pre-sed basin, dam, and other assets and improvements used in the production, treatment and distribution of water are owned by the Company; all furniture fixtures, equipment, machinery, tools, office equipment supplies, computer, telephones and other tangible personal property located on the Real Property at closing, and all permits which are held by the Company and required for the conduct of the business as

¹ See Appendix 1 to the *Joint Application*.

currently conducted or for the ownership and use of the Purchased Assets, to the extent assignable; all of the Company's rights under assignable warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets or any liabilities of the Company; all originals, or where not available, copies, of books and records of the Company, including, without limitation, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, and other records and data pertaining to the Business in the Company's possession (including all correspondence with any Government Entity); the following phone number associated with the Business, 660-448-2111, and all goodwill and the going concern of the Business will also be transferred.

RATE IMPACT

Middlefork currently provides water service to the Cities at the rate of \$3.25/1,000Gal.

These rates have been in effect since January 1, 2019.

The District has entered into agreements with the Cities to continue to provide them with water at the current rate of \$3.25/1,000Gal, which will be fixed for one year. At the end of that year, the water rates will be adjusted based on actual water production costs for future years, without any profit margin included in the rates charged to the cities by the District's duly elected Board of Directors. The Cities and the District have also negotiated arrangements whereby the District will initially finance the costs associated with establishing a redundant water supply to the cities, which will be repaid by the cities via a surcharge paid to the District over a time at acceptable rates, as determined by the District's publicly elected Board of Directors.

CUSTOMER NOTICE

Middlefork, the District, and the Cities (the wholesale customers) negotiated a series of agreements over a 6-8 month period allowing transfer of Middlefork's water production assets to the District, with water supply from the District owned plant continuing to the Cities for 20 years. Additionally, the City of Parnell (a wholesale customer of Grant City) and the District have signed a use and maintenance agreement allowing the District to operate a transmission main and use that main to transport water freely to Grant City. Based upon the above actions, from Staff's perspective adequate notice of the transaction has been provided to the relevant customer groups.

OTHER ISSUES

Middlefork is in good standing with the Secretary of State.

Middlefork has no delinquencies with regard to filing its annual reports through calendar year 2019, as documented on the Commission's Electronic Filing and Information System (EFIS).

Middlefork is current on its annual assessment quarterly payments through the second quarter of the fiscal year, 2020.

STAFF'S RECOMMENDATIONS AND CONCLUSIONS

It is Staff's position that this sale and transfer of assets will result in very little direct impact to customers, as rates and operations will be substantially unchanged, and based on the previously outlined qualifications, the District is capable of providing service.

While the District is not subject to the jurisdiction of the Commission, the District is led by a Board of Directors elected by the customers, who oversee and control the operations of the District, and preside over any customer issues.

Staff, based on its review as described herein, takes the position that the proposed sale and transfer of assets from the Company to the District is not detrimental to the public interest, and therefore recommends approval with the conditions as outlined herein. Staff also recommends that following the completed transfers of assets, the Commission cancel the CCN applying to the Company, and cancel the tariff currently in effect for the Company to provide water service.

STAFF'S RECOMMENDATIONS

Based upon the above, Staff recommends that the Commission:

1. Approve the transfer of any and all water utility assets controlled by the Company, as requested;
2. Require the Company to notify the Commission of closing on the water assets with the District within five (5) days after such closing;
3. Authorize the Company to cease providing service immediately after closing on the assets;
4. If closing on the Company's assets does not take place within thirty (30) days following the effective date of the Commission's order, require the Company to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until the Company determines that the transfer of the assets will not occur;
5. If the Company determines that a transfer of the assets will not occur, require the Company to notify the Commission of such;
6. After the above notice of transfer of assets to the District is received from the Company, cancel the CCN applying to the Company and the current tariff on file for the Company.

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OF THE STATE OF MISSOURI

In the Matter of the Application of)	
Middlefork Water Company and Nodaway)	Case No. WM-2021-0003
County Public Water Supply District)	
Number One for an Order Authorizing the)	
Sale, Transfer and Assignment of Certain)	
Water Production Assets to Nodaway)	
County Public Water Supply District)	
Number One and in Connection therewith)	
Certain Other Related Transactions)	

AFFIDAVIT OF JARROD R. ROBERTSON

STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

COME NOW JARROD R. ROBERTSON and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiants sayeth not.

/s/ Jarrod R. Robertson
JARROD R. ROBERTSON