

J. Craig Smith (4143)
 Daniel J. McDonald (7935)
 Kathryn J. Steffey (10245)
 SMITH HARTVIGSEN, PLLC
 215 South State Street, Suite 600
 Salt Lake City, Utah 84111
 Telephone: (801) 413-1600
 Facsimile: (801) 413-1620
Attorneys for Applicant/Complainant

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

BEAR HOLLOW RESTORATION, LLC,

Applicant/Complainant,

v.

LEON H. SAUNDERS; LANDMARK
 PLAZA ASSOCIATES; PARLEY’S
 CREEK, LTD.; PARLEY’S LANE, LTD.;
 PARLEY’S PARK; STUART A.
 KNOWLES; TRILOGY LIMITED, L.P.;
 TRILOGY ASSET MANAGEMENT, INC.;
 LAND & WATER RESOURCES, INC.;
 LAWRENCE R. KNOWLES
 IRREVOCABLE TRUST; LEON H.
 SAUNDERS, STUART A. KNOWLES and
 TRILOGY LIMITED, L.P. dba SK
 RESOURCES, a Utah general partnership
 and/or joint venture; SUMMIT WATER
 DISTRIBUTION COMPANY, a Utah
 corporation,

Respondents.

**COMPLAINT AND
 REQUEST FOR AGENCY ACTION**

Docket No. _____

Pursuant to Utah Code Ann. §§ 54-7-9(1)(b) and 63G-4-201, and Utah Admin. Code R746-100-3.A and R746-331-1.A, Bear Hollow Restoration, LLC hereby complains and requests agency action against the Respondents as follows:

PARTIES

1. Applicant/Complainant Bear Hollow Restoration, LLC (“**Bear Hollow**”) is a Utah limited liability company and a “Class A” shareholder of Respondent Summit Water Distribution Company.

2. Respondent Summit Water Distribution Company (“**SWDC**”) is a privately-owned mutual water service corporation organized and registered under the laws of Utah as a non-profit corporation.

3. Respondent Leon H. Saunders is the founder of SWDC and, according to records available to Applicant/Complainant, its single largest Class A shareholder, its President, and a member of its board of directors.

4. Upon information and belief, Respondent Landmark Plaza Associates is or was a Utah limited partnership owned and/or controlled by Respondent Leon H. Saunders and is a Class A shareholder of SWDC.

5. Upon information and belief, Respondent Parley’s Creek, Ltd. is a Utah limited partnership owned and/or controlled by Respondent Leon H. Saunders and is a Class A shareholder of SWDC.

6. Upon information and belief, Respondent Parley’s Lane, Ltd. is a Utah limited partnership owned and/or controlled by Respondent Leon H. Saunders and is a Class A shareholder of SWDC.

7. Upon information and belief, Respondent Parley's Park is a Utah limited partnership owned and/or controlled by Respondent Leon H. Saunders and is a Class A shareholder of SWDC.

8. Respondents Landmark Plaza Associates, Parley's Creek, Ltd., Parley's Lane, Ltd., and Parley's Park are hereinafter collectively referred to as the "**Saunders Entities.**"

9. Respondent Stuart A. Knowles is a Class A shareholder and director of SWDC and, upon information and belief, is an officer of and/or owns a controlling interest in Trilogy Limited, L.P.

10. Upon information and belief, Trilogy Limited, L.P. is a Georgia limited partnership owned and/or controlled by Respondent Stuart A. Knowles and is a Class A shareholder of SWDC.

11. Respondent Trilogy Asset Management, Inc. is a Georgia "for profit" corporation that, upon information and belief, is owned and/or controlled by Stuart A. Knowles, who serves as its CEO and CFO. Trilogy Asset Management, Inc. is the general partner of Trilogy Limited, L.P.

12. Land & Water Resources, Inc. is a California corporation and a Class A shareholder of SWDC that is owned and/or controlled by Stuart A. Knowles. Land & Water Resources, Inc. was merged with Trilogy Limited, L.P. on or about December 31, 2007.

13. Respondent Lawrence R. Knowles Irrevocable Trust is a Class A shareholder of SWDC and, upon information and belief, is controlled or managed by Stuart A. Knowles.

14. Respondents Trilogy Limited, L.P., Trilogy Asset Management, Inc., Land & Water Resources, Inc., and Lawrence R. Knowles Irrevocable Trust are hereinafter collectively referred to as the "**Knowles Entities.**"

15. Respondent SK Resources is, upon information and belief, a Utah general partnership and/or joint venture between and among Leon H. Saunders, Stuart A. Knowles, and/or Trilogy Limited, L.P.

16. Respondents each, independently and collectively, constitute a “public utility” and/or a “water corporation” as those terms are defined in Utah Code Ann. § 54-2-1(16)(a), (29).

17. SWDC, Saunders, Knowles, the Saunders and Knowles Entities, and SK Resources are, individually and collectively, a “person” as that term is defined in Utah Code Ann. § 54-2-2.

JURISDICTION

18. Jurisdiction over this action is properly held by the Public Service Commission (“**Commission**”) pursuant to Utah Code Ann. §§ 54-1-2.5, 54-4-1, 54-7-9, and 63G-4-201, *et seq.*

19. This action is brought pursuant to Utah Admin. Code R746-100-3.A. and R746-331-1.A.

I.

RESPONDENTS SHOULD BE REGULATED BY THE COMMISSION

20. SWDC was incorporated on or about March 15, 1979, as a privately held mutual water company for the stated purpose of providing water service in unincorporated western Summit County, Utah.

21. Since its inception, SWDC has provided or attempted to provide and fulfill the essential public use and purpose of providing water and water service for culinary, domestic, residential, commercial, and recreational uses in western Summit County, Utah. The culinary

water distribution system owned and operated by SWDC and controlled by the Respondents is a “water system” as defined in Utah Code section 54-2-1(30)(a).

22. SWDC and Respondents are operating a “public utility” as defined in Utah Code section 54-2-1(16)(a) and are engaged in the development, establishment, operation, and maintenance of public water service facilities in western Summit County, Utah, including water rights, source, storage, treatment and distribution systems, facilities, and equipment.

23. Utah Administrative Code R746-331-1 provides that a mutual water company may be exempt from Commission regulation if:

the Commission finds that the entity is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous.

Utah Admin. Code R746-331-1.C

24. A finding by the Commission that a mutual water company is exempt from Commission jurisdiction and regulation is not final and can be revoked:

Issuance of the finding shall not preclude another Commission inquiry at a later time if changed circumstances or later-discovered facts warrant another inquiry.

Id.

A.

Respondents Are Not Operating as a Non-Profit Corporation

25. SWDC is a non-profit organization in form only. In substance, SWDC and Respondents operate a vast, for-profit enterprise controlled and orchestrated by Saunders and Knowles and/or the Saunders Entities and Knowles Entities.

26. According to the October 25, 2002 SWDC shareholders list attached hereto as **Exhibit A**,¹ Saunders and/or the Saunders Entities own 42.5% of all Class A shares of SWDC and 27.5% of all outstanding shares. Knowles and the Knowles Entities own 37.6% of all Class A shares and 24.4% of all outstanding shares. Together, Saunders and Knowles own and/or control 80.1% of all Class A shares and 51.9% of all outstanding shares.

27. Saunders, Knowles, and/or Trilogy Limited, acting through SK Resources, have engaged in the pattern and practice of selling their Class A shares for profit.

28. For example, on or about December 27, 1993, Saunders and Knowles entered into a Purchase Agreement to sell 289 Class A shares to Double M Investments, Ltd. for \$1,300,500.00. (See **Exhibit E** attached hereto.)

29. On or about October 11, 1995, SK Resources entered into a Share Purchase Agreement with Thomas Hulbert and/or Park City Hotel Partners, LLC for the sale of 13 Class A shares at a purchase price of \$12,500.00 per share, for an aggregate purchase price of \$162,500.00. (See **Exhibit F** attached hereto.)

¹ It should be noted that, in an attempt to resolve its dispute with SWDC regarding SWDC's refusal to allow Bear Hollow to sell or transfer its shares of stock, Bear Hollow requested, pursuant to the Revised Nonprofit Corporation Act, the opportunity to inspect certain corporate records relating to SWDC's history and policy of transferring shares, including a list of all current shareholders. (See Letter from J. Craig Smith to Van J. Martin, dated June 15, 2009, attached hereto as **Exhibit B**.) However, SWDC has refused to produce the requested records, claiming that Bear Hollow's records request is "inappropriate" because it does not relate to Bear Hollow's interest as a SWDC shareholder, which SWDC restricts to only "receiv[ing] water delivery through its ownership of stock in the company." (See Letter from Lara Swensen to J. Craig Smith, attached hereto as **Exhibit C**.)

Although Bear Hollow subsequently explained that its interest as a SWDC shareholder includes its right to "sell and/or lease its shares" and that its records request relates to such an interest, (see Letter from J. Craig Smith to Lara Swensen, dated August 6, 2009, attached hereto as **Exhibit D**), SWDC has refused to produce the requested records for inspection. Consequently, despite its status as a shareholder of SWDC, Bear Hollow has been unable to review or receive a copy of the current SWDC shareholder list. As such, Bear Hollow must refer to and attach to this Complaint the 2002 Shareholder List, which is the most recent list that Bear Hollow has been able to obtain.

30. On or about December 11, 1997, SK Resources entered into a Share Purchase Agreement with ASC Utah, Inc., dba The Canyons to sell 4 Class A shares at \$4,800.00 per share. (See **Exhibit G** attached hereto.)

31. On or about June 2, 1998, SK Resources entered into a Water Purchase Agreement with Bear Hollow Village, LLC to sell 260 Class A shares for \$8,000.00 per share, for an aggregate purchase price of \$2,080,000.00. (See **Exhibit H** attached hereto.)

32. On or about June 21, 1999, SK Resources entered into a Share Purchase Agreement with Red Barn, LLC to sell 23 Class A shares for \$15,000.00 per share, for an aggregate purchase price of \$345,000.00. (See **Exhibit I** attached hereto.)

33. On or about June 22, 1999, SK Resources entered into a Share Purchase Agreement with Fieldstone Partners, LLC to sell 30.5 Class A shares at \$15,000.00 per share, for an aggregate purchase price of \$457,500.00. (See **Exhibit J** attached hereto.)

34. On or about July 19, 2000, SK Resources entered into a Water Purchase Agreement with Westgate Development, Ltd. to sell up to 100 Class A shares for \$15,000.00 per share. (See **Exhibit K** attached hereto.)

35. On or about August 10, 2000, SK Resources entered into a Water Purchase Agreement with Private Residence Club Associates, LLC to sell up to 63 Class A shares at 15,000.00 per share, for a total purchase price of \$945,000.00. (See **Exhibit L** attached hereto.)

36. On or about August 15, 2000, SK Resources entered into a Water Purchase Agreement with Eagles Dance Development Co., LLC to sell 17 Class A shares at \$15,000.00 per share, for an aggregate purchase price of \$255,000.00. (See **Exhibit M** attached hereto.)

37. On or about August 30, 2001, SK Resources entered into a Water Purchase Agreement with Canyons Estates Homeowners Association, Inc. to sell 7.56 Class A shares at

\$15,000.00 per share for an aggregate purchase price of \$113,400.00. (See **Exhibit N** attached hereto.)

38. On or about August 8, 2002, SK Resources entered into a Water Purchase Agreement with Park City Presbyterian Church to sell 4 Class A shares for \$15,000.00 per share, for a total purchase price of \$60,000.00. (See **Exhibit O** attached hereto.)

39. Upon information and belief, from August 2002 through the present, Saunders, Knowles, Trilogy Limited, and/or SK Resources have entered into additional water purchase agreements with other consumers to sell Class A shares of SWDC for profit and continue to actively seek consumers to purchase SWDC Class A shares.

40. For example, upon information and belief, Trilogy Asset Management, Inc., a “for profit” corporation (see **Exhibit P** attached hereto), owns the domain name “summitcountywater.com” and appears to be advertising water for sale over the internet (see **Exhibit Q** attached hereto).

41. Upon information and belief, once Saunders and Knowles and/or the Saunders and Knowles Entities sell their Class A shares, they use their control over SWDC to issue new Class A shares to themselves so that Saunders and Knowles and/or the Saunders and Knowles Entities always maintain control of SWDC and can profit from the sale of Class A shares.

42. For example, as of August 2, 2002, when the Division of Public Utilities (“DPU”) issued its written memorandum to the Public Service Commission recommending that SWDC remain exempt from Commission regulation, the DPU reported that only approximately 5,000 Class A shares had been issued. (See **Exhibit R** at 3, attached hereto.)

43. However, as of October 25, 2002, less than three months after the DPU issued its written memorandum, Saunders owned or controlled 4,146.272 Class A shares and Knowles

owned or controlled 3,672,942 Class A shares, which represented more than 80% of all outstanding Class A shares and more than 50% of all outstanding shares, regardless of class.

(Exhibit A.)

44. Consequently, it appears that immediately after the DPU made its recommendation to the Commission that SWDC not be regulated, based, in part, on the assumptions that only 5,000 Class A shares had been issued and that it would take unlikely collusion between Class A shareholders to warrant regulation, SWDC immediately issued at least 2,819 more Class A shares to Saunders and Knowles and/or the Saunders and Knowles Entities so that Saunders and Knowles and/or the Saunders and Knowles Entities could, once again, manipulate and dominate SWDC.

45. In addition to Respondents' operation as a "for profit" enterprise by, *inter alia*, manipulation of SWDC Class A shares so that Saunders and Knowles and/or the Saunders and Knowles Entities always maintain control of SWDC and can profit from the sale of Class A shares, SWDC also does not operate in a way that legitimately qualifies it for non-profit status under the Internal Revenue Code.

46. While SWDC has maintained that it is entitled to tax-exempt status as a non-profit corporation under Section 501(c)(12) of the Internal Revenue Code, it is actually not operating as a non-profit organization under federal rules and guidelines.

47. For example, Part V-A of IRS Form 990 asks whether "any officers, directors, trustees, or key employees listed in Form 990 receive compensation from any other organizations, whether tax exempt or taxable, that are related to the organization."

48. Although Saunders and Knowles are directors of SWDC and have received millions of dollars from and through SK Resources, which is clearly related to SWDC, SWDC

has consistently and repeatedly failed to report the compensation paid to either Saunders or Knowles from the sale of their shares.

49. Upon information and belief, SWDC and Respondents have consistently and repeatedly failed to do so because it would jeopardize SWDC's tax-exempt and non-profit status.

B.

The Respondents Do Not Own or Otherwise Adequately Control the Assets Necessary to Furnish Culinary Water Service to SWDC Shareholders

50. Since the early 1980s, the Snyderville Basin, which is located in the western end of Summit County, experienced phenomenal growth both from resort developments and as a suburb of Salt Lake City.

51. As the Snyderville Basin grew, water to sustain that growth became a very real concern and a very valuable commodity.

52. Originally, there was no governmental entity outside the corporate limits of Park City to provide culinary water service, and growth was sustained through a number of small, private water companies.

53. During the past 15 years, however, many of these small water companies have become part of Mountain Regional Water Special Service District ("Mountain Regional"), which was created by Summit County.

54. Another large segment of the Snyderville Basin receives water from SWDC.

55. Park City and Mountain Regional are governmental entities with powers of eminent domain and the ability to own water rights approved for municipal use, a use designation that allows all other beneficial uses.

56. In contrast, SWDC is a private water company that must specifically designate the uses to which it applies its water rights and is limited and bound by those specific designated uses.

57. **Exhibit S** is a map of the distribution areas of the various water service providers for the Snyderville Basin.

58. Bear Hollow has reviewed the following sources to determine the existing water holdings of SWDC and whether SWDC owns or otherwise adequately controls the water assets necessary to furnish culinary water service to its shareholders: (1) Division of Water Rights records for water rights owned by SWDC; (2) technical publications related to the water source capacity in the Snyderville Basin; (3) available corporate records for SWDC; (4) concurrency reports submitted to Summit County for water providers in the Basin; (5) litigation documents from cases related to water service in the Snyderville Basin; and (6) miscellaneous other documents related to water in the Snyderville Basin.

59. Based upon Bear Hollow's extensive review and analysis, it appears that SWDC does not own or otherwise adequately control the water assets necessary to furnish culinary water service to all its shareholders.

60. For example, although SWDC's Articles of Incorporation provide that shares shall be issued at the rate of one share per acre foot of water, SWDC has admitted to the DPU and elsewhere that a share of stock is worth delivery of only .76 acre feet of water.

61. SWDC's water rights are of three basic kinds: (1) water rights based on contracts with the Weber Basin Water Conservancy District ("Weber Basin"); (2) water rights based on shares of Davis and Weber Counties Canal Company ("D&WCCC") stock; and (3) other water rights, including decreed rights and those approved by the Utah State Engineer.

62. The total number of acre-feet of water available to SWDC based on Weber Basin Contracts is 906 acre-feet.

63. The total number of acre-feet of water available to SWDC based on its ownership of D&WCCC stock is approximately 4,829 acre feet.

64. In addition to the water rights that SWDC holds under its shares in D&WCCC, it also has the right to receive an additional 5,000 acre feet of water from East Canyon Reservoir pursuant to a lease it has with D&WCCC, but this leased water is only accessible to SWDC users upon completion of a pipeline from East Canyon Reservoir to SWDC's water treatment plant near Jeremy Ranch.

65. SWDC owns approximately 1,773.677 acre feet of decreed and State Engineer-approved water rights which are approved for use in the Snyderville Basin.

66. SWDC owns approximately 998 acre feet of other decreed and State Engineer-approved waters which are *not* approved for use in the Snyderville Basin.

67. Even when including the water rights that are not approved for diversion in the Snyderville Basin and the 5,000 acre feet of water that is non-usable until the East Canyon Pipeline is completed, the total acre feet of water legally available to SWDC is just 13,506.677 acre feet.

68. Consequently, even though more than 15,000 shares of SWDC stock have been issued at the rate of one share per acre foot of water, at best, SWDC only has the right to deliver a maximum of 13,506.677 acre feet of water, leaving a *minimum* of approximately 1,500 shares at risk of having no right to receive water.

69. If the 998 acre feet of water that is not approved for use in the Snyderville Basin and the unusable East Canyon Pipeline-dependent 5,000 acre feet are excluded from the

calculation of presently available water, SWDC only has 7,508.677 acre feet of water that is currently usable.²

70. Additionally, 2,190 acre feet of D&WCCC water can only be taken when the flow in East Canyon Creek is more than 6 cubic feet per second, which typically only occurs during the spring runoff. This further reduces the available water to as little as 5,318.677 acre feet, which would support just more than 1/3 of the 15,000+ shares issued to SWDC shareholders.

71. In short, a *minimum* of approximately 1,500 to 10,000 SWDC shares are at risk of having no right to receive water at any given time.

72. A summary containing tables of SWDC's water rights is attached hereto as **Exhibit T**.

73. SWDC simply does not own or otherwise adequately control the water assets necessary to furnish culinary water service to its members, including water sources and plant, and, therefore, should not be exempt from PSC regulation.

C.

There is Not Complete Commonality of Interest Among Shareholders

74. SWDC's voting control is not distributed in a way that each shareholder of SWDC enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous.

75. SWDC's Amended and Restated Articles of Incorporation, attached hereto as **Exhibit U**, authorize the issuance of up to 35,000 shares of stock, divided into four classes: up to 5,000 shares of Class A (development) stock; up to 15,000 shares of Class B (water use) stock;

² Consequently, of the 15,000+ shares issued, approximately 8,000 are not backed by water and are unusable. This just happens to coincide with the number of Class A shares held by Saunders and Knowles, suggesting that SWDC is being used as a mechanism to allow Saunders and Knowles to speculate in water.

up to 4,000 shares of Class C (irrigation) stock; and up to 1,000 shares of Class D (snowmaking) stock.

76. Class A (development) shares are issued to developers upon conveyance to SWDC of sufficient water rights and source site. Upon the sale of a lot from a developer to a customer, a Class A (development) share is convertible to a Class B (use) share appurtenant to and inseparable from the lot.

77. Class A (development) shares represent a proportionate but specific *interest* in the corporation's domestic and culinary water, including the contributed source site, source, and source capacity, *but no interest whatsoever* in the corporation's water distribution works, e.g., water diversion facilities, pipelines, water storage facilities, appurtenant works, etc., and do not entitle the holder thereof to water delivery.

78. Because Class A (development) shares do not entitle the holder thereof to water delivery, Class A (development) shareholders, by and large, are not and cannot be consumers—at least until their Class A shares are converted to Class B shares.

79. In this manner, non-consumers may be, and are, members of SWDC.

80. Like Class A (development) shares, Class B (use) shares represent an actual proportionate ownership interest in the water rights of the corporation, but, unlike Class A (development) shares (that have no interest whatsoever in diversion, distribution, and storage facilities), Class B (use) shares also represent a corresponding interest in the diverting facilities, distribution works, and water storage facilities and entitle the Class B (use) shareholder to delivery of culinary water.

81. In spite of their differing interests in delivery of water and SWDC system facilities, Class A (development) and Class B (use) shares have equal voting rights with each

share being entitled to one vote, while Class C (irrigation) and Class D (snowmaking) shares have no voting rights.

82. Class A shares are generally non-assessable, except (1) as needed to maintain the developer's specifically contributed water rights in good standing, and (2) special assessments or contract charges associated with the developer's contributed water rights.

83. In contrast, Class B (use), Class C (irrigation), and Class D (snowmaking) shares each are fully assessable for the provision of water service and maintenance and operation of the water treatment, storage, and distribution systems and facilities.

84. Assessments for water use, as well as all assessments for other purposes, are levied by the Board of Directors, who are elected by *all* voting shareholders, which are Class A (development) shareholders and Class B (use) shareholders.

85. As of May, 2001, SWDC had issued 10,235 Class A (development) shares (84%) and only 1,878 Class B (use) shares (16%).

86. As of October 25, 2002, SWDC had issued 15,066.39 total shares, with 9,758.13 shares comprising Class A (development) shares (64%), and the remaining 5,308.76 shares comprising Class B (use), Class C (irrigation), and Class D (snowmaking) shares (36%).

87. At that time, Saunders and/or the Saunders Entities owned 4,146.272 Class A (development) shares, and Knowles and/or the Knowles Entities owned 3,672.942 Class A (development) shares. Together, Mr. Saunders and Mr. Knowles, and their related entities, collectively owned approximately 80% of the Class A (development) shares and 52% of SWDC's total issued and outstanding shares.

88. Consequently, it would require the agreement of only Saunders and Knowles to outvote the interests of the Class B shareholders.

89. Knowles is the Secretary, CEO, and CFO of Trilogy Asset Management, Inc., the General Partner of Trilogy Limited, L.P.

90. Saunders and Knowles (through Trilogy Limited, L.P.), are collectively doing business and holding themselves out as “S-K Water Resources” or “SK Resources,” which is known to be selling SWDC Class A (development) shares for substantial sums.

91. SK Resources is not, and has not been at any time, registered with the Utah Department of Commerce, Division of Corporations and Commercial Code, and it is not a non-profit organization. Neither are Saunders, Knowles, and the Saunders and Knowles Entities.

92. Saunders and Knowles, Class A (development) shareholders who collectively held over 52% of all issued stock in 2002 but are now engaged in selling such shares at a substantial premium, do not enjoy a complete commonality of interest with all Class B (use) shareholders.

93. Because of their minority shareholder status, Class B (use) shareholders, which are SWDC’s rate-paying consumer-members, do not have it in their power to elect other directors, which are elected by a simple majority vote, and demand necessary changes or control the rate-making process.

94. In 2001, SWDC’s officers and directors comprised the following:

| | |
|---------------------|--------------------|
| President | Leon H. Saunders |
| Vice President | Roger J. Sanders |
| Secretary/Treasurer | Van Martin |
| Director | Jerry W. Dearinger |
| Director | Lawrence Knowles |
| Director | Lynn Nelson |

95. In 2004, 2005, and 2006, SWDC’s officers and directors comprised the following:

| | |
|---------------------|--------------------|
| President | Leon H. Saunders |
| Vice President | Jerry W. Dearinger |
| Secretary/Treasurer | Van Martin |

| | |
|----------|--------------------|
| Director | Jerry W. Dearinger |
| Director | Leon H. Saunders |
| Director | Stuart Knowles |
| Director | Lynn Nelson |
| Director | Tim Vetter |
| Director | Roger J. Sanders |

96. As of May, 2009, SWDC's Board of Directors comprises the following:

| | |
|----------|--------------------|
| Director | Leon H. Saunders |
| Director | Van J. Martin |
| Director | Jerry W. Dearinger |
| Director | Stuart A. Knowles |
| Director | Lynn Nelson |
| Director | Robert Valentine |
| Director | Tim Vetter |

97. From 2001 to 2009, the makeup of SWDC's officers and directors has changed very little, with its officers and directors, as Class A (development) shareholders, generally controlling a majority of all SWDC shares.

98. From 2001 to 2009, only one of the officers and directors (Leon Saunders, President) was a Class B (use) shareholder (of only 1.5 shares) according to the 2002 share distribution, but he also owned and was a principal of entities that owned collectively over 4,000 Class A (development) shares. Of the other directors and officers, Lynn Nelson also owned 55.5 Class A (development) shares, and Stuart A. Knowles, either individually or through entities that he owned or controlled, including Trilogy Limited, L.P., owned or controlled over 3,600 Class A (development) shares.

99. It cannot be said of SWDC that "the owner is both the seller and buyer" because Class A (development) shareholders, although owners, do not and cannot buy or receive water service.

100. Class A (development) shares, although having equal voting rights with Class B (use) shares, have no responsibility to bear the costs of operation of SWDC's water treatment, storage, and distribution systems and facilities.

101. Additionally, non-voting shareholders holding assessable Class C (irrigation) shares do not enjoy a commonality of interest with voting shareholders holding non-assessable Class A shares or with shareholders holding assessable Class B shares because they do not have *any* voting rights.

102. Non-voting shareholders holding assessable Class D (snowmaking) shares do not enjoy a commonality of interest with voting shareholders holding non-assessable Class A shares or with shareholders holding assessable Class B shares because they do not have *any* voting rights.

103. Shareholders holding Class C (irrigation) shares, as non-voting shares, have absolutely no control over the rate-setting process for the rates and assessments they must pay.

104. Shareholders holding Class D (snowmaking) shares, as non-voting shares, have absolutely no control over the rate-setting process for the rates and assessments they must pay.

105. The conflict of interest between owner-vendor and consumer-vendee inherent in public utility companies is not lacking in SWDC, nor are the consumer and producer interests one and the same.

106. Class A (development) shareholders, whose shares are non-assessable and are not entitled to the delivery or use of any water, do not have the same interest as the other Class B (use), Class C (irrigation), or Class D (snowmaking) shareholders in maintaining just and reasonable rates and assessments for the delivery and use of water.

107. The voting control of Saunders and Knowles and/or the Saunders and Knowles Entities is such that there is not complete commonality of interest between and among even the Class A shareholders. Therefore, SWDC is not and cannot be a self-regulating enterprise.

WHEREFORE, Bear Hollow respectfully requests the agency action set forth hereinafter in its Request(s) for Agency Action.

II.

RESPONDENTS' PRACTICES VIOLATE UTAH CODE ANN. § 54-3-8

108. Utah Code Ann. § 54-3-8(1) provides that a public utility may not, “as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage; and ... establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service.”

109. On June 2, 1998, Bear Hollow Village, LLC (“**BHV**”) purchased 260 Class A (development) shares from Trilogy Limited, L.P. and Leon H. Saunders, collectively doing business as “S-K Water Resources,” in anticipation of developing approximately 175 acres in Summit County, Utah (the “**Development**”).

110. BHV paid S-K Water Resources \$8,000 per share for an aggregate purchase price of \$2,080,000.

111. Saunders and Knowles, the Saunders and Knowles Entities, and/or SK Resources used their ownership and control over SWDC to require BHV to sign a Development Agreement with SWDC by which the 260 Class A (development) shares purchased by BHV were required to be appurtenant to the Development and inseparable from the Development property without the written consent of SWDC, even though the shares owned and/or controlled by SK Resources

and/or its constituent members were not, themselves, subject to any type of appurtenancy limitation or restriction.

112. Complainant Bear Hollow is the successor-in-interest to BHV.

113. As the Development neared completion, Bear Hollow discovered that it had more shares than it needed to service the Development.

114. In March 2009, Bear Hollow entered into a Water Share Purchase and Option Agreement with a third party buyer (“Buyer”) by which the Buyer purchased one (1) share of Bear Hollow’s 21.59 excess Class A (development) shares. The Buyer and Bear Hollow agreed to work with SWDC to remove any place of use restrictions associated with the 21.59 Class A (development) shares, including the share purchased by the Buyer, and if the Buyer and Bear Hollow succeeded in resolving the place of use issue, the Buyer would purchase the remaining 20.59 shares from Bear Hollow.

115. Bear Hollow contacted SWDC and requested that SWDC transfer the one Class A (development) share purchased by the Buyer, but SWDC informed Bear Hollow that SWDC would not transfer the share to the Buyer.

116. Bear Hollow then met with the SWDC Board of Directors at SWDC’s May 2009 meeting and petitioned the Board to transfer to the Buyer the one Class A (development) share purchased by the Buyer.

117. The Board denied the request and asserted that it would not authorize or endorse the transfer of the share to the Buyer.

118. Saunders and Knowles, the Saunders and Knowles Entities, and/or SK Resources’ manipulation of SWDC’s rules, regulations, and practices prohibiting or refusing the transfer of the Class A (development) share to the Buyer is discriminatory against Bear Hollow and the

Buyer; subjects Bear Hollow and the Buyer to prejudice or disadvantage; and establishes unreasonable differences as to service or facilities, or in any other respect, as between localities or as between classes of service, in violation of Utah Code Ann. § 54-3-8.

119. Saunders and Knowles, the Saunders and Knowles Entities, and/or SK Resources' manipulation of SWDC's rules, regulations, and practices prohibiting or refusing the transfer of the Class A (development) share to the Buyer arbitrarily and unreasonably results in the creation of at least two classes of Class A shares—extremely valuable and fungible shares owned by Saunders and Knowles and/or the Saunders and Knowles Entities, which are readily marketable and not tethered to any particular piece of land within the Snyderville Basin, and worthless and unusable shares owned by parties such as Bear Hollow, which cannot be sold because they *are* tethered to a particular piece of land that does not need them.

120. SWDC's rules, regulations, and practices prohibiting or refusing the transfer of the Class A (development) share to the Buyer where such share represents excess and unnecessary water for land to which it is deemed appurtenant violates this State's policy to encourage the beneficial use of water and arbitrarily and unreasonably contradicts the intent of SWDC's Articles of Incorporation, art. III, by not "promot[ing] the general interest and welfare of the shareholders" and not making such water available for the "use and benefit of the shareholders of the corporation."

121. Respondents' discriminatory conduct in refusing to allow Bear Hollow to alienate its shares violates SWDC's Articles of Incorporation, which do not expressly allow Class A (development) shares to be appurtenant to and inseparable from a particular property or area (*see* Ex. U, art. XIII).

122. Even though Section 54-3-8 prohibits a public utility from “mak[ing] or grant[ing] any preference or advantage to any person, or subject[ing] any person to any prejudice or disadvantage,” Saunders and Knowles and/or the Saunders and Knowles entities, acting through SK Resources and through their manipulation and control of SWDC, have created an enterprise whereby they have not only profited tremendously by the commoditization of their Class A shares but have also done so by prejudicing or disadvantaging the shares and rights of others, such as Bear Hollow, so as to stifle the ability of Bear Hollow and others to compete with them in providing Class A shares to the consuming public.

WHEREFORE, Bear Hollow respectfully requests the agency action set forth hereinafter in its Request(s) for Agency Action.

III.

RESPONDENTS’ PRACTICES VIOLATE UTAH CODE ANN. § 54-3-1

123. Utah Code Ann. § 54-3-1 provides that “[a]ll charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable.”

124. Saunders and Knowles, the Saunders and Knowles Entities, and/or SK Resources, with the help of SWDC, are marketing a valuable public resource—water—by selling Class A shares at whatever prices they dictate.

125. The charges for Class A shares are arbitrary and unreasonable due to the fact that Saunders and Knowles, the Saunders and Knowles Entities, and/or SK Resources, with the help of SWDC, are maintaining a monopoly or near-monopoly on the purchase of Class A shares *and* the conversion of Class A shares to Class B shares.

WHEREFORE, Bear Hollow respectfully requests the agency action set forth hereinafter in its Request(s) for Agency Action.

REQUEST FOR AGENCY ACTION – SWDC

126. Bear Hollow incorporates the foregoing allegations as though fully set forth herein.

127. Based upon the foregoing, Bear Hollow respectfully requests that the Commission commence a Commission inquiry as to whether SWDC qualifies for exemption from Commission regulation pursuant to Utah Administrative Rule R746-331-1.

128. Bear Hollow requests that SWDC's exemption be revoked for one or more of the following reasons:

(1) SWDC is not operating as non-profit corporation, in good standing with the Division of Corporations;

(2) SWDC does not own or otherwise adequately control the assets necessary to furnish culinary water service to its members, including water sources and plant; or

(3) SWDC's voting control is *not* distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous.

129. Bear Hollow requests an order from the Commission that, prior to charging rates and collecting fees for utility service, SWDC must first file with the Commission a tariff and schedules showing all rates, tolls, rentals, charges, assessments, and classifications to be enforced or collected.

130. Bear Hollow requests an order from the Commission that SWDC be required to file with the Commission service area maps with clearly defined boundaries of SWDC's service area for the benefit of SWDC, its customers, and other water utilities.

131. Bear Hollow requests that the Commission determine, ascertain, and fix just and reasonable rules, regulations, and practices to be imposed on and observed by SWDC for the transfer of Class A (development) shares, including just and reasonable rates for the transfer of Class A shares.

132. Bear Hollow further requests that the Commission initiate all other necessary and proper proceedings to assert Commission jurisdiction and regulation over SWDC, as the Commission, in its discretion, deems necessary.

REQUEST FOR AGENCY ACTION – ALL OTHER RESPONDENTS

133. Bear Hollow incorporates the foregoing allegations as though fully set forth herein.

134. Based upon the foregoing, Bear Hollow respectfully requests that the Commission commence a Commission inquiry as to whether all the other Respondents, including, but not limited to, Saunders, Knowles, the Saunders and Knowles Entities, and SK Resources should be regulated as a public utility or qualify for exemption from Commission regulation pursuant to Utah Administrative Rule R746-331-1.

135. Bear Hollow requests an order from the Commission finding that the other Respondents, particularly SK Resources, are public utilities subject to Commission regulation because Respondents—particularly Saunders, Knowles, and SK Resources—are providing culinary water to consumers but none of the Respondents is operating as a non-profit corporation, in good standing with the Division of Corporations.

136. Bear Hollow requests an order from the Commission that, prior to charging rates and collecting fees for providing Class A shares and wholesale water to consumers, Respondents

must first file with the Commission a tariff and schedules showing all rates, tolls, rentals, charges, assessments, and classifications to be enforced or collected.

137. Bear Hollow requests an order from the Commission that Respondents be required to file with the Commission service area maps with clearly defined boundaries of their service area for the benefit of their customers and other water utilities.

138. Bear Hollow requests that the Commission investigate the rules, regulations, and practices of Respondents pursuant to Utah Code Ann. §§ 54-4-4, 54-4-7, and 54-4-18, and determine, ascertain, and fix just and reasonable rules, regulations, and practices to be imposed on and observed by them.

139. Bear Hollow requests that the Commission determine, ascertain, and fix just and reasonable rules, regulations, and practices to be imposed on and observed by the other Respondents for the transfer of Class A (development) shares, including just and reasonable rates for the transfer of Class A shares.

140. Bear Hollow further requests that the Commission initiate all other necessary and proper proceedings to assert Commission jurisdiction and regulation over the other Respondents, as the Commission, in its discretion, deems necessary.

Respectfully submitted this ____ day of September, 2009.

SMITH HARTVIGSEN, PLLC

J. Craig Smith
Daniel J. McDonald
Kathryn J. Steffey
*Attorneys for Applicant/Complainant
Bear Hollow Restoration, LLC*

Address of Applicant/Complainant:

308 East 4500 South, Suite 200
Murray, Utah 84107

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of September, 2009, I caused a true and correct copy of the foregoing **COMPLAINT AND REQUEST FOR AGENCY ACTION** to be mailed via U.S. mail and Certified Mail to the following:

Van J. Martin, Registered Agent
Summit Water Distribution Company
6400 N Pace Frontage Road #A
Park City, UT 84098

Leon H. Saunders
1899 Longview Drive
Salt Lake City, Utah 84124

Landmark Plaza Associates
c/o Michael J. Milner, Registered Agent
1557 E. Waterbury Drive
Salt Lake City, Utah 84121

Landmark Plaza Associates
c/o Leon H. Hy Saunders, Partner
1899 Longview Drive
Salt Lake City, Utah 84124

Parley's Creek, Ltd.
c/o Lora Romney, Registered Agent
52 East 700 South
Kaysville, Utah 84037

Parley's Creek, Ltd.
c/o Leon H. Saunders, Partner
2505 W. White Pine Lane
Park City, Utah 84060

Parley's Lane, Ltd.
c/o Lora Romney, Registered Agent
52 East 700 South
Kaysville, Utah 84037

Parley's Lane, Ltd.
c/o Leon H. Saunders, Partner
2505 W. White Pine Lane
Park City, Utah 84060

Parley's Park
c/o Leon H. Saunders, Partner
2505 W. White Pine Lane
Park City, Utah 84060

Stuart A. Knowles
550 Hartz Avenue, Suite 200
Danville, CA 94526

Trilogy Limited, L.P.
c/o Stuart A. Knowles, California Registered Agent
550 Hartz Avenue, Suite 200
Danville, CA 94526

Trilogy Limited, L.P.
c/o William B. Shearer, Jr., P.C., Georgia Registered Agent
1201 West Peachtree Street NW 14th Floor
Atlanta, GA 30309

Land & Water Resources, Inc.
c/o Trilogy Limited, L.P., its successor by merger
Attn: Stuart A. Knowles, California Registered Agent
550 Hartz Avenue, Suite 200
Danville, CA 94526

Land & Water Resources, Inc.
c/o Trilogy Limited, L.P., its successor by merger
Attn: William B. Shearer, Jr., P.C., Georgia Registered Agent
1201 West Peachtree Street NW 14th Floor
Atlanta, GA 30309

Trilogy Asset Management, Inc.
c/o William B. Shearer, Jr., P.C., Registered Agent
1201 West Peachtree Street NW 14th Floor
Atlanta, GA 30309

Trilogy Asset Management, Inc.
c/o Stuart A. Knowles, CEO
550 Hartz Avenue, Suite 200
Danville, CA 94526

Lawrence R. Knowles Irrevocable Trust
c/o Stuart A. Knowles, CEO
550 Hartz Avenue, Suite 200
Danville, CA 94526

SK Resources
44 West Broadway, Suite 2003S
Salt Lake City, Utah 84101

