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-Via Hand Delivery-

Julie Orchard, Secretary
Utah Public Service Commission
Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84114

Re: Hi-Country Estates Homeowners Association's Water System

Dear Ms. Orchard,

This firm represents Hi-Country Estates Homeowners Association ("Association") which, among other things, serves culinary water to about ninety active customers, most of whom belong to the Association. This letter notifies the Utah Public Service Commission about some recent developments regarding the Association water system so that the Commission can assess whether the Association's exemption from regulation by the Commission should be reevaluated. The Association is desirous of following all applicable court and Commission rulings and orders. A brief recitation of the water service history by the Association is helpful to understanding the recently changed circumstances facing the Association.

The Association consists of more than one hundred roughly five-acre lots in the southwestern portion of the Salt Lake Valley. Up until 1994, the Foothills Water Company ("Foothills") served water to the Association members under Certificate of Convenience and Necessity ("CCN") No. 2151. In 1994, as a result of a ruling in a lawsuit among the Association, Foothills Water Company, and the family of J. Rodney Dansie that quieted title to the water system in the Association, the Commission canceled Foothill's CCN No. 2151 and issued CCN No. 2737 to the Association. (See a copy of the Order attached as **Exhibit A.**)

When Foothills first approached the Commission in 1985, one of the major issues impacting the tariff was whether the ongoing costs of a Well Lease and Water Line Extension Agreement (the "Well Lease") between Foothills' operator Gerald Bagley and Jesse Dansie could be charged to the customers. In a March 17, 1986 Report and Order in Case No. 85-2010-01, the Commission determined after a five-day evidentiary hearing that Foothills' costs of complying with the Well Lease could not be charged to the customers of Foothills but should be the responsibility of Bagley personally. The Report and Order indicated that Foothills was to charge Dansie the "actual cost of any water provided to him, his family or his other connections,

and for Mr. Dansie to seek reimbursement for same from Bagley.” (Report and Order at 14.) (A copy of the Order is attached as **Exhibit B**.)

Accordingly, the Association offered to provide water to the Dansies on the terms provided in the 1986 Order attached. The Dansies refused to take water under the terms of the Commission’s 1986 Order. The portion of Foothills’ water system that was outside of the Association boundaries was thereafter severed from the Association’s system. In 1996, after the two systems were separated, the Commission determined that because the Association was a nonprofit company that served only its members and a few others at rates equal to its members, the Association was exempt from regulation by the Commission. (Report and Order, Docket No. 95-2195-03, dated February 5, 1996.) Thus, since 1996, the Association has operated under this exemption.

Although the issue of title to the water system and water rights was determined in the 1990s, the litigation between the Dansies and the Association has continued on issues related to the Well Lease. Earlier this year, the Court of Appeals issued a second amended opinion, and the Supreme Court has decided not to review that decision. As a result of this most recent decision, the Dansies have sent a demand to the Association for water service under the Well Lease. (See attached e-mail from Rodney Dansie as **Exhibit C**.) While there continues to be disagreement about what the Well Lease requires, the Association recognizes that it has certain obligations under the Well Lease to the Dansies. Indeed, the Association has repeatedly indicated a willingness to the Dansies to allow reconnection of the two systems, so long as the proper government approvals are in place before reconnection, and so long as the Dansies pay the costs of reconnection as required by district court.

As should be fairly obvious, if water is provided by the Association under the Well Lease as demanded by Mr. Dansie, rates for other customers will need to be raised to account for that preference. Ultimately, the Association would like to ensure its compliance both with the court rulings in its case with the Dansies and with generally applicable law, including the Public Utilities Code. Specifically, the Association is concerned about Utah Code section 54-3-8’s requirement that “a public utility may not: (a) as to rates . . . grant any preference or advantage to any person.” Furthermore, the Commission’s recent rulings, in other matters, raise a question as to whether the Association should now be regulated as a public utility. Although the Association is a nonprofit corporation that provides water to its members, it also provides water to nonmember connections outside its boundaries who have no say or vote in the rates charged by the Association. These connections currently pay rates equivalent to those paid by members, but they do not have any voting rights within the Association or any representation on the Association Board which sets rates for the culinary water served. The Dansies now seek water service both inside and outside the Association boundaries that would not be charged the same rates as other water customers.

Accordingly, the Association is sending this letter to disclose material changes that could affect its status as an exempt water company. The Association is seeking guidance from the Commission as to whether or not it can serve water to some customers at a preferential rate. The

Association is willing to cooperate with the Commission and the Division of Public Utilities to determine the Commission's jurisdiction under the circumstances outlined in this letter.

If you have any questions, please do not hesitate to contact us.

Sincerely yours,
SMITH HARTVIGSEN, PLLC

J. Craig Smith
Matthew E. Jensen

Cc: Hi-Country Legal Committee (via e-mail)
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