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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of Hi-Country Estates  
Homeowners Association's Request for  
Reassessment of the Commission's  
Jurisdiction

Response of Hi-Country Estates  
HOA to Division of Public  
Utilities' Corrected  
Recommendation

Docket No. 11-2195-01

June 22, 2012

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Hi-Country Estates Homeowners Association (“**Hi-Country**”), by and through its counsel of record, hereby submits the following Response of Hi-Country to Division of Public Utilities’ Corrected Recommendation.

**Background**

On December 23, 2011, Hi-Country submitted a letter to the Public Service Commission (the “**Commission**” or “**PSC**”) requesting that the Commission assess whether the exemption from regulation granted in the February 5, 1996 Report and Order in PSC Docket number 95-2195-03 should remain effective. A copy of Hi-Country’s December 23, 2011 letter is attached as **Exhibit A**. As a result of the Hi-Country letter, the Commission ordered the Division of Public Utilities (the “**Division**” or “**DPU**”) to investigate Hi-Country and make a recommendation to the PSC as to whether to revoke Hi-Country’s letter of exemption. On May 17, 2012, the Division submitted a Memorandum to the Commission recommending that the Commission “revoke the Hi-Country . . . Letter of Exemption . . . and order [Hi-Country] to re-apply to reinstate the Certificate of Public Convenience of Necessity.” The Division issued a Corrected Recommendation on June 15, 2012, with essentially the same recommendation.

On Friday, June 15, 2012, the Commission held a hearing for Hi-Country “to show cause, if any, why they should not have their Letter of Exemption revoked and Certificate of Public Convenience and Necessity reinstated.” Hi-Country appeared and did not object to revocation of its Letter of Exemption. Hi-Country, the Division, and Mr. Rodney Dansie submitted evidence at the hearing, and the matter was taken under advisement. The Commission requested certain information and documents from the Parties. There was no discussion as to whether the original deadlines and procedure outlined in the Notice of Scheduling Order would remain in effect.

Therefore, this document sets forth Hi-Country’s Response to the Division’s Corrected Recommendation and provides the Commission with the additional documents requested at the June 15th hearing.

### **Concurrence with Division Recommendation**

Hi-Country does not contest the Commission’s jurisdiction over it, and Hi-Country does not object to the course of action recommended by the Division. Specifically, Hi-Country agrees that its Letter of Exemption should be revoked, and its Certificate of Convenience and Necessity should be reinstated. The evidence at the June 15, 2012 hearing was that Hi-Country is serving members of the general public who are not members of Hi-Country, and those members of the general public desire the safeguards and protections afforded by Commission jurisdiction and regulation. In addition to the reasoning contained in the Division’s Corrected Recommendation, Hi-Country has received demands from Mr. Dansie for water service under a Well Lease Agreement that predates Hi-Country’s Letter of Exemption and was not approved by the Commission. Mr. Dansie’s demand seeks numerous connections without charge to nonmembers of Hi-Country and seeks delivery of millions of gallons of water annually at no charge. Such water service would constitute additional service of water to the public. Thus, for the reasons discussed the Division’s Corrected Recommendation and as described in this Response, Hi-Country is a public utility under Utah Code section 54-2-1 and should be subject to regulation by the Commission.

### **Additional Requested Documents and Clarification**

In addition to the evidence and argument submitted at the June 15<sup>th</sup> hearing, Hi-Country submits with this Response additional documents requested by the Commission or relevant to its inquiry. First, **Exhibit B** contains a reduced size copy of Hi-Country Exhibit 1 submitted at the hearing. This was previously provided to the court reporter in attendance at the hearing. Second, **Exhibit C** contains a map of the service area as it was approved under Certificate of Convenience and Necessity 2737 (this same boundary was the approved boundary for Foothills Water Company under Certificate 2151). The map also shows some additional lands currently served by Hi-Country that are outside the historic service area. Some of these are based on contracts previously approved by the Commission while others are to members of Hi-Country. The Hi-Country service area will likely need to be amended to include these areas if Certificate 2737 is reinstated. Third, **Exhibit D** contains a copy of the 1977 Well Lease Agreement between Gerald H. Bagley and Jesse H. Dansie together with the 1985 Amendment to that Well Lease Agreement. Utah Courts have determined that the Well Lease Agreement is binding to some extent on Hi-Country. Finally, **Exhibit E** contains a Right of Way to the Beagleys together with the recorded documents before and after that document.

Mr. Dansie attempted to submit the Right of Way at the hearing as an exhibit with an assertion that a document entitled Agreement (which addressed rights of Beagley to become members of Hi-Country) was attached to that recorded document. The recorded documents establish that no such Agreement was attached, and to the knowledge of Hi-Country the Agreement was never recorded, was superseded by later agreements or court orders, and is not binding on the Beagleys and their successors.

**Conclusion**

Hi-Country agrees with the Division's assessment that Hi-Country's Letter of Exemption should be revoked and that Certificate of Convenience and Necessity 2737 should be reinstated.

**DATED** this \_\_\_\_\_ day of June, 2012.

**SMITH HARTVIGSEN, PLLC**

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J. CRAIG SMITH  
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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Response of Hi-Country Estates HOA to Division of Public Utilities' Corrected Recommendation** was served on the following on June \_\_\_\_, 2012 as follows:

Via U.S. mail and email to:

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