

J. Rodney Dansie

From: "J. Rodney Dansie"
Date: Tuesday, September 18, 2012 11:34 PM
To: "J. Rodney Dansie"
Subject: Reply to Memorandum in opposition and objection to J. Rodney Dansies 8/30/2012 request to review the 1996 order and 11 other issues raised in the request

To: Utah Public Service Commission
 160 East 300 South 4th floor
 Salt Lake City, Utah 84113

2012 SEP 20 P 2:17

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RECEIVED

J. Rodney Dansie hereby submits the following Memorandum in Opposition and Objection to Mr. Smith (Hi-Country's) Memorandum in Opposition to J. Rodney Dansie's 8-30-2012 request.

Intro

1. J. Rodney Dansie has filed in good faith and based on facts in the attached Exhibits and records of the DUP, and 3rd district court decisions and court of appeals decisions and P. S. C. orders since 1994 and 1996 information and facts and data that is very important to the Docket 11-2195-01 and the utility law and conditions that the Commission should have and consider in reaching any decisions and orders regarding Hi-Country Estates Homer Owners Association / Hi-Country water Co. It is important for the commission to have all of the information and facts regarding any matters they are asked to make rulings and findings and orders that effect users of services that may be provided by a Utility.

2. To be approved as a utility to provide service to the Public requires that the utility must act in good faith and on a factual and legal basis and have all sides if the issues presented in hearings before the commission before the commission can make orders that up hold the requirements of title 54. No request that helps in furthering the obligations of the P. S. C. should be Stricken or Denied because it us burdensome to the utility to provide the information to the commission to assist the commission in make a fair and just order under the rules of title 54.

3. After functioning outside the PSC Jurisdiction for over 16 years (AND POSSIBLY ILLEGALLY) HI-COUNTRY wants to now have PSC Jurisdiction to (Try) to avoid the obligations of the Well Lease with obligations to the Dansies. NOTHING HAS CHANGED IN THE SIXTEEN YEARS .
 SEE EXHIBIT # 1 - 14 PAGES OF INFORMATION AND DATA BEFORE DISTRICT COURT WHY HI-COUNTRY SHOULD BE REQUIRED TO MEET THE OBLIGATIONS OF THE COURT ORDERS OF DISTRICT COURT AND THE UTAH STATE COURT OF APPEALS.

4. The request to review the contents of the 1994 and 1996 should NOT be stricken since the request has been made in good faith and are prior rulings of the PSC regarding the very issues are back before the commission and should be part of the record to determine if they were followed and both orders have bearing on the membership issue and ownership of assets that are requested by the Applicant to used to provide service to the Public or Just the members as has always been the case. SEE EXHIBIT 2 Docket No 94-2195-012 Report and Order Certificate 2737

Page 2 of the Finding of Fact Paragraph 5 "Applicant stands ready to serve water users outside the service area at its rates (IF SUCH USERS WISH TO JOIN THE ASSOCIATION. NAMELY BEAGLEY ACRES AND SOUTH OQUIRRH. THEONLY PARTS OF THE SYSTEM NOT NOW OWNED BY THE APPLICANT ARE LATERALS TO SERVE TWO SMALL CONTIGUOUS AREAS, NAMELY BEAGLEY ACRES AND SOUTH OQUIRRH) SEE EXHIBIT 2.

5. MEMBERSHIP REQUIREMENTS IS WHAT THE WHOLE ISSUE BEFORE THE COMMISSION IS ABOUT. IF THE SERVICE IS TO ONLY MEMBERS THERE IS NO (SERVICE TO THE PUBLIC IN GENERAL AND jurisdiction BY THE P. S. C. THE 1996 AND 1994 ORDERS OF THE PSC OF VERY IMPORTANT AND A FULL AUDIT OF THOSE ORDERS ARE NEEDED AND

9/18/2012

REQUIRED TO SEE IF THE ORDERS WERE AUDITED PROPERLY THE THE DPU AT THE TIME OF THE ORDERS AND AUDITS BY THE DUP. THE LETTER OF EXEMPTION NO 0057 AND THE QUESTIONER IT WAS BASED ON MUST BE REVIEWED TO SEE WHAT IT HAD TO SAY ABOUT MEMBERS AND HOW IT WAS ANSWERED BY HI-COUNTRY ESTATES TO OBTAIN ITS LETTER OF EXEMPTION. THESE REQUESTS ARE MADE IN GOOD FAITH AND BASED ON ORDERS AND DECISIONS OF BOTH THE P. S. C. AND DPU AND ARE PART OF THE RECORD AND THE BASIS OF ANY ORDERS MADE BACK IN 1994 AND 1996.

6. Investigation of the Past 16 years of HI-Country HOA/ Water company rates are very definitely Warranted and necessary to determine if the Rates and charges of the (Defector) Uncertified utility rates were just and proper Since NO rate analysis was ever make for the Utility and the excessive charged to the customers may very well have been excessive and warrant refunds to the rate payers (UNCERTIFIED UTILITIES CAN BE REQUIRED TO MAKE REFUNDS IF THE COMMISSION BASED ON AUDITS FIND THE RATES WERE EXCESSIVE.) THIS REQUEST IS MAKE IN GOOF FAITH AND BASED ON FACTS IN COMMISSION ORDERS AND THE APPLICANT SHOULD BE AUDITED FOR THE 16 YEARS AS REQUESTED.

7. There questions regarding the ownership of areas referenced in the Applicants application and maps for providing service to the Public. The applicant should be required to provide proof of the ownership of the areas in which service is to be provided to. SEE EXHIBIT # 3 COPYS OF THE QUITE ORDERS OF THE DISTRICT AND COURT OF APPEALS ARE LIMITED TO HI-COUNTRY ESTATES PHASE 1 PLATTED SUBDIVISION (APPLICANT HAS AN OBLIGATION TO PROVIDE PROOF OF OWNERSHIP OF ALL EASEMENTS, LINES AND FACILITIES THEY WILL USE TO PROVIDE SERVICE TO THE PUBLIC. THE COMMISSION SHOULD REQUIRE PROOF OF OWNERSHIP PRIOR TO GRANTING OF AN APPLICANT THE CERTIFICATE TO PROVIDE SERVICE TO THAT AREA. THIS A GOOD FAITH REQUEST BASED ON QUITE TITLE ORDERS ISSUES TO HI-COUNTRY FROM THE DISTRICT COURT AND BASED ON THESE ORDERS THERE IS AREAS THAT IS NOT OWNED BY THE APPLICANT AND THESE DEFICIENCIES MUST BE CORRECTED BY the commission immediately.

8. J. Rodney Dansie is hereby requesting that all of the requirements in EXHIBIT #4 BE AUDITED AND REVIEWED TO ASSURE FULL COMPLIANCE REGARDING 1. MEMBERSHIP AS REQUIRED IN THE 1994 ORDER AND 2. OWNERSHIP OF ALL LINES, EASEMENTS AND ETC AND FACILITIES TO PROVIDE SERVICE BE OWNED BY THE APPLICANT HI-COUNTRY HOA/HI-COUNTRY WATER CO. THIS REQUEST IF A GOOD FAITH REQUEST AND BASED ON ORDERS OF THE COMMISSION AND DISTRICT COURT AND AUDITS OF THE DUP.

9. THE REQUEST OF THE RESULTS OF THE AUDIT OF THE DUP FOR MEMBERSHIP AND OTHER ISSUES ARE REASONABLE AND MADE IN GOOD FAITH BASED ON DATA , RECORDS AND ORDERS OF THE COMMISSION AND SHOULD BE COMPLETED AS REQUESTED BY MR. DANSIE .

10 Investigation OF THE PAST 16 YEARS OF HI-COUNTRY RATES IS WARTED AND SHOULD BE COMPLETED AS REQUESTED SINCE RATES WERE NEVER REVIEWED BY THE P. S. C. FROM INCEPTION OF THE CERTIFICATION . THE EXCESSIVE RATES AND CHARGES HAVE RESULTED IN HUNDREDS OF THOUSANDS OF DOLLARS OF OVERCHARGES ABOVE RATES A REGULATED UTILITY WOULD HAVE CHARGED WITH P. S. C. OVERSIGHT AND REGULATION. (SEE MINUTES OF HOA REGARDING LOANS TO PAY MR. SMITHS FIRMS LEGAL FEES.)

CONCLUSION

MR. DANSIE'S REQUEST AND FILINGS SHOULD NOT BE STRICKEN OR DENIED AND WERE ALL FILED BASED ON GOOD DATA AND ORDERS AND COURT DECISIONS AND IN GOOD FAITH TO PROMOTE THE FAIRNESS REQUIRED BY INVESTIGATIONS AND HEARINGS CONDUCTED BY THE PUBLIC SERVICE COMMISSION FOR A DEFECTOR UTILITY THAT HAS OPERATED FOR THE PAST 16 YEARS WITHOUT THE REQUIRED OVERSIGHT OF THE P. S. C. AND RATE REFUNDS MAY BE IN ORDER FOR ALL CUSTOMERS OF HI-COUNTRY ESTATES. THE ILLEGAL LOANS TO PAY MR. SMITHS LEGAL FEES SHOULD BE REFUNDED TO THE RATE PAYERS. MR. DANSIE SHOULD BE AWARDED LEGAL COSTS FOR BRINGING THESE FACTS TO THE ATTENTION OF THE STATE REGULATORY AGENCY P. S. C. OF UTAH.

DATED THIS 19TH DAY OF SEPTEMBER, 2012

J. RODNEY DANSIE,

J. Rodney Dansie

9/18/2012

Memorandum in opposition & objections to
MR. Smith's memo in opposition to J. Rodney Dansie
8-30-2012 Request

CERTIFICATE OF

SERVICE

20th September

I HEREBY CERTIFY THAT ON THE 30 DAY OF AUGUST 2012 A TRUE AND CORRECT COPY OF THE FOREGOING (~~REQUEST TO REVIEW THE 1996 ORDER OF THE COMMISSION AND ALL OTHER ISSUES IN THE LETTER OF REQUEST~~) WAS SERVED UPON THE FOLLOWING AS INDICATED BELOW :

BY ELECTRONIC MAIL:

JJ.CRAIG SMITH (jcsmith@smithlawonline.com)
Smith Hartvigsen PLLC

Patrica Schmid(pschmid@utah.gov)
Office of The Attorney General

Shauna Bevegnu-Springer (sbenegn@utah.gov)

vis u.s. mail to
Dennis Miller -Legal Assistant
(dennis_miller@utah.gov)
Division of Public Utilities
Heber M. Wells Building 4th floor
160 East 300South, Box 146751
Salt Lake City, Utah 84114-6751

Public Service Commission
160 East 300 South
Heber M. Wells Building 4 th floor
Salt Lake City, Utah 84114-6751

J. Rodney

Dansie _____

~~8/30/2012~~

9/20/12

Dennis Miller (dennismiller@utah.gov)
dpudatarequest@utah.gov

J. Rodney Dansie _____

Exhibit # 1

Response to Opposition
Memorandum of Hi Country
Estates & Notice
to Submit

8-27-12

J. THOMAS BOWEN #0396
 925 Executive Park Drive, Suite B
 Murray, Utah 84117-3545
 Telephone (801) 566-5298
*Attorney for Foothills Water Company,
 J. Rodney Dansie, The Dansie Family Trust,
 Boyd W. Dansie, Richard P. Dansie, Joyce M.
 Taylor, and Bonnie R. Parkin*

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
 STATE OF UTAH, WEST JORDAN DEPARTMENT

HI-COUNTRY ESTATES HOMEOWNERS
 ASSOCIATION, a Utah Corporation,

Plaintiff,

v.

BAGLEY & COMPANY, et al.,

Defendants.

**RESPONSE TO OPPOSITION
 MEMORANDUM OF HI-COUNTRY
 ESTATES**

Case No. 020107452 (previous Case
 No. 850901464)
 Judge: Andrew Stone

FOOTHILLS WATER COMPANY, a Utah
 Corporation; J. RODNEY DANSIE; THE
 DANSIE FAMILY TRUST; BOYD W. DANSIE;
 RICHARD P. DANSIE; JOYCE M. TAYLOR;
 and BONNIE R. PARKIN,

Defendants and
 Counterclaimants,

v.

HI-COUNTRY ESTATES HOMEOWNERS
 ASSOCIATION, a Utah Corporation,

Counterclaim Defendants.

The Dansies respond to the Memorandum in Opposition of Hi-Country Estates Homeowners Association (Hi-Country) as follows hereinafter:

I. PSC Jurisdiction

After functioning outside of the PSC jurisdiction for over sixteen years and upon learning of the Court of Appeals' latest pronouncement in this matter,¹ Hi-Country sent a letter to the PSC requesting an "assessment" of whether it was within the PSC's jurisdiction.² In truth, Hi-Country's action was an attempt to avoid the effect of the Court's ruling that "the Dansies are, *going forward*, entitled to their contractual rights to free water and free hook-ups unless the PSC *intervenes and determines otherwise*." (*Hi-Country IX*, ¶ 14, emphasis added) Indeed, Exhibit B of Hi-Country's errata sheet states in the PSC's Conclusions of Law that Hi-Country presented evidence that it was "serving non-members," and that it agreed to PSC jurisdiction.³ Hi-Country has also freely admitted that it requested PSC regulation.⁴ The only plausible explanation for Hi-Country's zeal to return to PSC jurisdiction is that it is seeking to avoid the plain language of a 40 year old agreement that has been upheld by the trial court, the Court of Appeals, and the Utah Supreme Court granting

¹*Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2011 UT App. 252 ¶ 14 (hereinafter "Hi-Country IX").

²*Hi-Country Memorandum in Opposition*, p.5; hereafter, "Hi-Country Brief."

³*PCS Hearing and Order*, p. 7.

⁴*Notice of Meeting and Special Assessment of Hi-Country Estates Homeowners Association*, August 16, 2012, refers to the proceedings before the PSC as "our application to be regulated by the Public Service Commission."

the Dansies free water and hook-ups. To say that it was merely "requesting an assessment" is disingenuous.

II. The issue is not moot.

Hi-Country mischaracterizes the appellate court's opinion. Its claim that "the Court of Appeals expressly disavowed the possibility that its opinion was to be prospectively applied"⁵ ignores the clear language of the opinion. The Court stated that the Dansies *going forward* were entitled to their contractual rights to free water and free hook-ups. The term "going forward" clearly contemplates that the Court's opinion will be prospectively applied and that the Dansies are entitled to free water and hook-ups under the agreement, but that it was not rendering an opinion regarding any future claims for a breach of the Well Lease.

Hi-Country also misinterprets the Court's opinion relating to PSC intervention. The Court held that the Dansies were entitled to their contractual rights "unless the PSC *intervenes and determines otherwise*." Hi-Country argues that the term "intervene" is synonymous with asserting jurisdiction over Hi-Country.⁶ Such an interpretation is incorrect. The term "intervene"⁷ means that the PSC must take action to stop or modify the Well Lease or appear in the dispute between Hi-Country and the Dansies. Further, the opinion requires the PSC to "determine otherwise" that the

⁵*Hi-Country Brief* at 5-6.

⁶*Hi-Country Brief* at 7-8.

⁷Merriam-Webster Dictionary: *intervene*: to come in or between by way of hindrance or modification; to become a third party to a legal proceeding begun by others for the protection of an alleged interest.

Dansies are not entitled to their contractual rights to free water and free hook-ups under the Well Lease. The PSC has merely decided that Hi-Country, not the Dansies, is now subject to PSC jurisdiction.⁸ In any event, neither of the conditions cited by the Court of Appeals has been met. The PSC has not intervened in this matter and has not determined that the Well Lease is other than as written. If that time ever comes, then at that point the actions of the PSC may have a bearing on this case. At the present time, they do not.⁹ Hi-Country's assertion that the matter is moot simply because it has voluntarily submitted itself to the jurisdiction of the PSC is erroneous. As such, all of the cases cited by Hi-Country are inapposite under the facts of this case.

III. Judge Bryan's Final Judgment must be read in light of the Court of Appeals' decision.

Judge Bryan's "final judgment" has been subjected to much scrutiny by counsel and by the courts. The Dansies concede that the Court of Appeals affirmed Judge Bryan "in all respects," but that affirmance was explained by the Court in ¶14 of the Hi-Country IX opinion. The Court there expressly stated that its affirmance of the final judgment was limited to its historical context, and that it was not an adjudication of the rights of the parties or the enforceability of the Well Lease going forward. The Court reiterated that in spite of its affirmation of the final judgment, the effect of its ruling was that the Dansies were entitled to their contractual rights to free water and free hook-ups.

⁸The Dansies submit that they are not subject to PSC jurisdiction under any circumstances.

⁹PSC Hearing and Order, p.8. "Any issues pertaining to rates will be addressed in a separate proceeding if and when [Hi-Country] files for a rate change" (Emphasis added).

In order to avoid, in the future, the very dispute that is ensuing now, the Dansies requested that the Court simply enter an order clarifying Judge Roth's previous order. Although Judge Roth felt compelled to uphold the final judgment based upon the Court's 2008 opinion, he found the language to be very confusing and recognized that there was a conflict between the Court of Appeals' upholding Judge Bryan, in all respects, and the language in the body of its opinion stating that the Dansies were entitled to free water and free hook-ups.¹⁰ The Court of Appeals has now clarified the intent of its 2008 opinion and particularly §3 of Judge Bryan's final judgment. Thus, the order sought by the Dansies from this Court is proper at this juncture.

IV. Attorney Fees

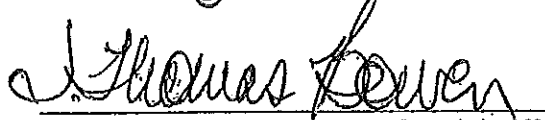
Hi-Country's request for attorney fees should be denied. Hi-Country asserts that the Dansies should pay attorney fees because they failed to disclose to the Court that the PSC had already asserted jurisdiction over Hi-Country. Obviously, the PSC has not asserted jurisdiction in this case. It has decided, at the request of Hi-Country, that Hi-Country is subject to its jurisdiction, but it certainly has not made any determination that it has jurisdiction in this matter. When, and if, that happens, it will assuredly be disclosed to the Court; but the current action of the PSC has no bearing on the present issues in this case.

¹⁰Judge Roth did not have the benefit of the clarification from the Court of Appeals when he signed his order. But he took the extraordinary steps of writing much of the order by hand and expressing his concern from the bench about the ambiguity of the 2008 opinion. Hi-Country IX has now addressed Judge Roth's concerns and explained that the 2008 opinion was not intended to impact the clear language of the Well Lease or affect the rights of the Dansies to receive free water and hook-ups.

CONCLUSION

The order that the Dansies have submitted to the Court quotes verbatim from the 2011 opinion of the Utah Court of Appeals. The proposed order accurately reflects the possibility that sometime in the future the PSC may intervene in the contract dispute which has been the subject of years of litigation. Thus far the PSC has not intervened, and whether it will in the future is speculation. The opinion of the Court of Appeals clearly states that it is perspective in nature and that going forward from the entry of the opinion, the Dansies are entitled to free water and free hook-ups. Hi-Country is attempting to use PSC jurisdiction as a shield to relieve it from the obligations of a contract which it assumed many years ago. Hi-Country was more than happy to avoid PSC jurisdiction until the Court of Appeals ruled as it did, and Hi-Country saw a way to escape from its contractual duties. The request for attorney fees meets none of the standards that have been articulated by the appellate courts for an award.¹¹ The request for fees should be denied, and the request for the entry of an order implementing the precise language of the Court of Appeals should be granted.

DATED this 27th day of August, 2012.



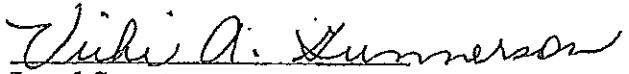
J. Thomas Bowen, Attorney for Plaintiff

¹¹See *Gallegos v. Lloyd*, 2008 UT App. 40 ¶8, 178 P.3rd 922.

CERTIFICATE OF MAILING

I hereby certify that on this 27th day of August, 2012, I caused to be mailed, a true and correct copy of the foregoing **RESPONSE TO OPPOSITION MEMORANDUM OF HI-COUNTRY ESTATES** by placing the same in United States Mail, first class, postage prepaid to the following:

J. Craig Smith
Smith Hartvigsen, PLLC
175 S. Main St., Suite 300
Salt Lake City, Utah 84111


Legal Secretary

The following matter is now ready to be decided by the Court.


TYPE OF PLEADING: Motion for Entry of an Order Implementing Court of Appeals' Decision

DATE OF FILING: July 26, 2012

OTHER RELEVANT PLEADINGS:

- 1) Memorandum in Support of Motion for Entry of an Order, July 26, 2012
- 2) Memorandum in Opposition to Motion for Entry of an Order Implementing Court of Appeals' Decision, August 17, 2012
- 3) Response to Opposition Memorandum of Hi-Country Estates, August 27, 2012

DATED this 27th day of August, 2012.

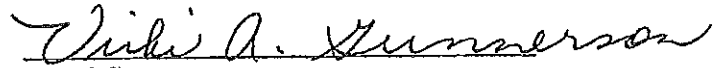


J. Thomas Bowen, Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 27th day of August, 2012, I caused to be mailed a true and correct copy of the foregoing **NOTICE TO SUBMIT** by placing the same in United States Mail, first class, postage prepaid to the following:

J. Craig Smith
Smith Hartvigsen, PLLC
175 S. Main St., Suite 300
Salt Lake City, Utah 84111


Legal Secretary

J. THOMAS BOWEN #0396
 925 Executive Park Drive, Suite B
 Murray, Utah 84117-3545
 Telephone (801) 566-5298
*Attorney for Foothills Water Company,
 J. Rodney Dansie, The Dansie Family Trust,
 Boyd W. Dansie, Richard P. Dansie, Joyce M.
 Taylor, and Bonnie R. Parkin*

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
 STATE OF UTAH, WEST JORDAN DEPARTMENT

HI-COUNTRY ESTATES HOMEOWNERS
 ASSOCIATION, a Utah Corporation,

Plaintiff,

v.

BAGLEY & COMPANY, et al.,

Defendants.

[PROPOSED] ORDER

Case No. 020107452
 Judge: Andrew Stone

FOOTHILLS WATER COMPANY, a Utah
 Corporation; J. RODNEY DANSIE; THE
 DANSIE FAMILY TRUST; BOYD W. DANSIE;
 RICHARD P. DANSIE; JOYCE M. TAYLOR;
 and BONNIE R. PARKIN,

Defendants and
 Counterclaimants,

v.

HI-COUNTRY ESTATES HOMEOWNERS
 ASSOCIATION, a Utah Corporation,

Counterclaim Defendants.

Based upon the 2008 and 2011 opinions of the Utah Court of Appeals¹ in this matter, IT IS ORDERED that the Dansies are, going forward, entitled to their contractual right under the Well Lease Agreement to free water and free hook-ups unless the PSC intervenes and determines otherwise.

DATED this ___ day of September, 2012.

By the Court:

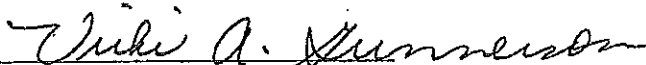
Andrew Stone, District Judge

¹*Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2008 UT App 105, 182 P.3d 417; *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2011 UT App 252, *cert denied*, 268 P.3d 192 (UTAH 2011).

CERTIFICATE OF MAILING

I hereby certify that on this 27th day of August, 2012, I caused to be mailed, a true and correct copy of the foregoing [PROPOSED] ORDER by placing the same in United States Mail, first class, postage prepaid to the following:

J. Craig Smith
Smith Hartvigsen, PLLC
175 S. Main St., Suite 300
Salt Lake City, Utah 84111


Legal Secretary

1994 Report of

Order-

94-2195-01

3-23-1994

EXHIBIT

2

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handwritten:
3/23
3599
LS

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application
for a Certificate of Convenience
and Necessity of HI-COUNTRY ES-
TATES HOMEOWNERS ASSOCIATION and
Concomitant Decertification of
FOOTHILLS WATER COMPANY
Applicant

DOCKET NO. 94-2195-01

REPORT AND ORDER

Certificate No. 2737

ISSUED: March 23, 1994

SYNOPSIS

Applicant possessing adequate assets to serve the area heretofore served by Foothills Water Company, and Foothills Water Company no longer possessing adequate plant to serve said area, and the fitness of Foothills Water Company being otherwise questionable, we grant the application.

Appearances:

Larry W. Keller	For Applicant
Laurie Noda, Assistant As- sistant Attorney General	" Division of Public Util- ities, Utah Department of Commerce
J. Rodney Dansie	" Foothills Water Company

By the Commission:

PROCEDURAL HISTORY

This matter came on regularly for hearing the tenth day of March, 1994, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, 160 East 300 South, Salt Lake City, Utah. Owing to irregularities in notice, further proceedings were conducted March 17, 1994. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

DOCKET NO. 94-2195-01

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FINDINGS OF FACT

1. Hi-Country Estates Homeowners Association (hereafter "Applicant") is a nonprofit corporation organized under the laws of Utah and in good standing therewith.
2. Foothills Water Company (hereafter "Foothills") is a water corporation certificated by this Commission.
3. Owing to the present status of certain litigation, Applicant holds title to most of the plant (water rights, storage and distribution lines) formerly owned by Foothills. The only parts of the system not now owned by Applicant are a storage tank (hereafter "the upper tank") and laterals to serve two small contiguous areas, namely Beagley Acres and South Oquirrh.
4. It is feasible to serve the area without the upper tank and the laterals. Applicant stands ready, willing and able to replace those assets if no accommodation can be reached with the owners thereof.
5. Applicant stands ready to serve water users outside the service area at its tariffed rates if such users wish to join the association.
6. Without the plant formerly owned by Foothills, it is not feasible for Foothills to continue to serve the area. Foothills does not have the financial resources to replace its former assets.
7. There are appeals pending from the quiet title order in favor of Applicant; however, any reversal is entirely speculative, and since no stay has been entered, there is

DOCKET NO. 94-2195-01

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no legal impediment to the application.

CONCLUSIONS OF LAW

We take administrative notice of the long history of Foothill's violations of our Orders and conflicts with many of its customers, as well as the intractable and ongoing conflict of interest of its ownership. Given this long history, and Foothill's present inability to muster the resources to serve, it is clearly in the public interest to decertify Foothills and transfer the responsibility for service to Applicant.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- >> Certificate of Convenience No. 2151 issued to Foothills Water Company, be, and it is, canceled and annulled, effective the date of this Order; said Company may bill for service rendered during March, 1994, to the effective date of this Order.
- >> Foothills Water Company's manager, J. Rodney Dansie immediately cease and desist from acting in any manner to operate the system or to interfere with the operation of the system by the certificate holder named hereafter.
- >> Certificate of Convenience and Necessity No. 2737 be, and it is, issued to Hi-Country Estates Homeowners Association as follows:

To operate as water corporation serving the following described service area: Beginning at the Northeast corner of the Southwest quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian (SLBM), and running thence West to the Northwest corner of the Southwest quarter of the Southwest.

DOCKET NO. 94-2195-01

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quarter of said Section 33; thence South to the Northeast corner of Section 5, Township 4 South, Range 2 West, SLBM; thence West to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 5; thence South to the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 5; thence West to the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 5; thence South to the Southwest corner of said Section 5; thence East to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 5; thence North to the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 5; thence East to the center of Section 5; thence South to the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 5; thence East to the Southeast corner of the Northeast quarter of the Southeast quarter of said Section 5; thence South to the Southwest corner of Lot 103, Hi-Country Estates Subdivision; thence Southeasterly to the Southeast corner of said Lot 103; thence Northeasterly along the East property lines of Lots 103 and 102, Hi-Country Estates Subdivision to the west line of the Southeast quarter of the Southwest quarter of Section 4, Township 4 South, Range 2 West, SLBM; thence South to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 4; thence East to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 4; thence North to the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 4; thence West to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 4; thence North to the North quarter corner of said Section 4; thence East to the Southeast corner of Lot 1A, Hi-Country Estates Subdivision; thence North to the South boundary of Hi-Country Road; thence Easterly along the South boundary of Hi-Country Road to the South boundary of

DOCKET NO. 94-2195-01

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Utah State Highway U-111; thence Northwesterly along the South boundary of said highway to the North line of the Southeast quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, SLBM; thence West to the point of beginning.

- >> The decertification and certification ordered above are subject to further order of the Commission and reversal in the event that title to the assets necessary to operate the system is affected by subsequent action in the courts.
- >> To obviate questions relating to fire protection, Hi-Country Estates Homeowners Association will file with the Commission, commencing May 1, 1994, monthly reports of the progress of efforts to bring the system into compliance with requirements of the Salt Lake Fire Marshall.
- >> Rates are provisionally set to equal those allowed Foothills Water Company in the Commission's last rate Order; the Division of Public Utilities shall undertake an immediate review of said rates to determine if they are just and reasonable for Hi-Country Estates Homeowners Association, and report to the Commission no later than June 1, 1994.
- >> Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 23rd day of March,

1994.

/s/ A. Robert Thurman
Administrative Law Judge

Quite Title Orders

EXHIBIT

3

~~4~~

FILED IN CLERK'S OFFICE
Salt Lake County Utah

FEB 11 1994

By _____ 3rd Dist Court
County Clerk

LARRY R. KELLER, #1785
KELLER & LUNDGREN, L.C.
Attorney for Plaintiff and
Counterclaim Defendants
257 Towers, Suite 340
257 East 200 South - 10
Salt Lake City, Utah 84111
Telephone: (801) 532-7282

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

-----ooOoo-----

HI-COUNTRY ESTATES
HOMEOWNERS ASSOCIATION,
a Utah corporation,

Plaintiff,

:
:
: QUIET TITLE ORDER ISSUED
TO HI-COUNTRY ESTATES
HOMEOWNERS ASSOCIATION

vs.

BAGLEY & COMPANY, a Utah
corporation, et al.,

Defendant.

:
:
:
: Case No. 850901464CV
Judge Pat B. Brian

FOOTHILLS WATER COMPANY,
a Utah corporation,

Counterclaimant,

vs.

HI-COUNTRY ESTATES
HOMEOWNERS ASSOCIATION,
a Utah corporation, et al.,

Counterclaim
Defendants.

-----ooOoo-----

EXHIBIT

2

The above-entitled matter has come before the Court pursuant to Remittitur issued by the Utah Court of Appeals in its Case No. 920450-CA dated January 18, 1994.

Pursuant to the remand of the Utah Court of Appeals, the Court hereby and herein issues its Quiet Title Order in favor of Hi-Country Estates Homeowners Association with no contingencies whatsoever to the following real and personal property:

1. Hi-Country Estates Homeowners Association is adjudged to be the sole and exclusive owner of all right, title and interest, without exception, to the water rights, water lines, water tank, water lots, existing appurtenant easements and rights-of-way, and all other appurtenances and fixtures thereto located within Hi-Country Estates Subdivision Phase I as more specifically described below, and title is hereby quieted in the name of Hi-Country Estates Homeowners Association to said real and personal property.

2. Specifically, real and personal property to which title is quieted by this Order is specifically described as follows:

(a) All water lines, fixtures and appurtenances thereto within the boundaries of Hi-Country Estates Subdivision Phase I, as described on the official subdivision plat thereof recorded in the office of the Recorder of Salt Lake County, State of Utah.

(b) The water right on file with the Utah State Engineer's Office, Water Rights Division, described as Application No. 33130 (59-1608), without any contingency whatsoever.

gim
2/10/94

(c) The "water tank lots" located within the subdivision, described as:

Water Tank Parcel (Lot 81/104)

Beginning at the Northwest corner of Lot 104, Hi-Country Estates Subdivision, said point is also South 2372.38 feet and West 5299.51 feet from the Northeast corner of Section 5, Township 4 South, Range 2 West, Salt Lake Base and Meridian, and running thence South 72°00'00" East 355.26 feet to a point on a curve to the right, the center of which is South 47°26'29" East 1359.00 feet; thence Northeasterly along the arc of said curve 57.91 feet through a central angle of 2°26'29"; thence North 72°00'00" West 397.95 feet; thence South 0°33'50" East 55.0 feet to the point of beginning. Contains 19,654.06 square feet or 0.4512 acres.

Water Tank Parcel (Lot 67)

Beginning at the Northeast corner of Lot 67, Hi-Country Estates Subdivision, said point is also North 89°42'24" West along the section line 1028.38 feet and South 50°00'00" East 784.22 feet from the Northeast corner of Section 5, Township 4 South, Range 2 East, Salt Lake Base and Meridian; and running thence Southwesterly 67.73 feet along the arc of a curve to the right through a central angle of 4°47'28", the radius point of which is North 80°00'00" West 810.00 feet; thence North 50°00'00" West 231.38 feet; thence North 40°00'00" East 60.00 feet; thence South 50°00'00" East 200.00 feet to the point of beginning. Contains 12,973.56 square feet or 0.2978 acres.

(d) The 300,000 gallon water tank located on Water Tank Parcel Lot 67 as described in (c) above.

(e) All easements previously enjoyed by Foothills Water Company for access and maintenance purposes to the components of the water system and water lines specifically described herein and located within the boundaries of Hi-Country Estates Subdivision Phase I.

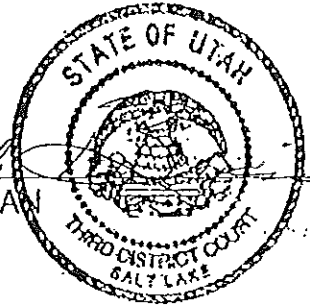
3. Title of the aforementioned real and personal property which is quieted and awarded in the name of the Hi-Country Estates Homeowners Association has no contingencies whatsoever, and shall apply to Bagley & Company, a Utah corporation; J. Rodney Dansie; Gerald Bagley; Hi-Country Estates, Inc., a dissolved Utah corporation; Hi-Country Estates Second; Keith Spencer; Charles E. Lewton; Foothills Water Company, a Utah corporation; and all unknown persons whatsoever claiming an interest in Hi-Country Estates Subdivision.

DATED this 11 day of February 1994.

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: 2/11/94
Shirley Spivey
DEPUTY COURT CLERK

Pat B. Brian
HON. PAT B. BRIAN



Approved as to form:

Val R. Antczak
VAL R. ANT CZAK,
Attorney for Defendants
J. Rodney Dansie and
Foothills Water Company

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, first class postage prepaid, on this 9th day of February 1994, to:

Val R. Antczak
PARSONS, BEHLE & LATIMER
Attorneys for J. Rodney Dansie and
Foothills Water Company
P.O. Box 11898
Salt Lake City, Utah 84147-0898

Ralph J. Marsh
BACKMAN, CLARK & MARSH
Attorneys for Defendants Bagley & Company
68 South Main, #800
Salt Lake City, Utah 84101

Allen Dipota

FILED DISTRICT COURT
Third Judicial District

JUL 8 1997

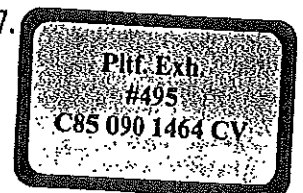
By B. Young

LARRY R. KELLER, #1785
KELLER & LUNDGREN, L.C.
Attorney for Plaintiff and
Counterclaim Defendants
257 Towers, Suite 340
257 East 200 South - 10
Salt Lake City, Utah 84111
Telephone: (801) 532-7282

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HI-COUNTRY ESTATES	:	
HOMEOWNERS ASSOCIATION,	:	
a Utah corporation,	:	SECOND QUIET TITLE ORDER
	:	ISSUED TO HI-COUNTRY ESTATES
Plaintiff,	:	HOMEOWNERS ASSOCIATION
vs.	:	
BAGLEY & COMPANY, a Utah	:	
corporation, et al.,	:	
	:	Case No. 85 090 1464 CV
Defendant.	:	Judge Pat B. Brian
<hr/>		
FOOTHILLS WATER COMPANY,	:	
a Utah corporation,	:	
	:	
Counterclaimant,	:	
vs.	:	
	:	
HI-COUNTRY ESTATES	:	
HOMEOWNERS ASSOCIATION,	:	
a Utah corporation, et al.,	:	
	:	
Counterclaim Defendants.	:	

The above-entitled matter has come before the Court pursuant to Remittitur issued
by the Utah Court of Appeals in its Case No. 920450-CA dated March 21, 1997.



Pursuant to the remand of the Utah Court of Appeals, the Court hereby and herein issues its Quiet Title Order in favor of Hi-Country Estates Homeowners Association with no contingencies whatsoever to the following real and personal property:

1. Hi-Country Estates Homeowners Association is adjudged to be the sole and exclusive owner of all right, title and interest, without exception, to the water rights, water lines, water tank, water lots, existing appurtenant easements and rights-of-way, and all other appurtenances and fixtures thereto located within Hi-Country Estates Subdivision Phase I as more specifically described below, and title is hereby quieted in the name of Hi-Country Estates Homeowners Association to said real and personal property.

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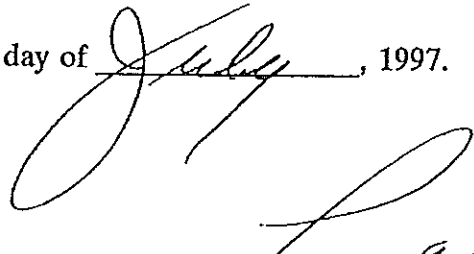
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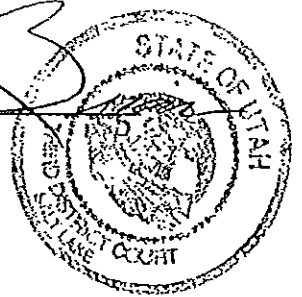
(e) All easements previously enjoyed by Foothills Water Company for access and maintenance purposes to the components of the water system and water lines specifically described herein and located within the boundaries of Hi-Country Estates Subdivision Phase I.

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DATED this 8 day of July, 1997.



HON. PAT B. BRIAN



Approved as to form:

VAL R. ANTCZAK,
Attorney for Defendants
J. Rodney Dansie and
Foothills Water Company

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: July 8, 1997

Berki Young
DEPUTY COURT CLERK



Exhibit # ~~4~~

Request to Review 1996
Order of the Commission regarding
the Cancellation of Certificates
2.737 & 11 other issues

J. Rodney Dansie

From: "J. Rodney Dansie" [REDACTED]
Date: Thursday, August 30, 2012 9:06 PM
To: "Public Service Commission" <psc@utah.gov>; "J. Craig Smith" <jcsmith@smithlawonline.com>; "Patricia Schmid" <pschmid@utah.gov>; "Shauna Benvegnu-springer" <sbenvegn@utah.gov>; "J. Rodney Dansie" [REDACTED]; "Dennis Miller" <dennismiller@utah.gov>
Subject: request to review 1996 Exemption and order of the public service commission cancelling Certificate # 2737 and conditions of service to existing customers.

To: Utah Public Service Commission
160 East 300 South 4th floor
Salt Lake City, Utah 84111

Ted Boyer, Chairman Public Service Commission of Utah

Ric Campbell, Commissioner

Ron Allen Commissioner

Gary L. Widerburg, Commission Secretary Utah Public Service Commission

RE: Request to review the 1996 order of the commission regarding the cancelling of Certificate of # 2737 Hi-

Country Estates Homeowner's Phase one company, and accompanying requirements that the HOA continue to provide service to its existing customers (PROVIDED THAT THEY BECOME MEMBERS OF THE COMPANY).

I HERE BY MAKE THE REQUEST THAT THE COMMISSION CONDUCT A FULL REVIEW OF THAT ORDER AND ITS CONDITIONS FOR CONTINUING TO PROVIDE SERVICE TO THE EXISTING CUSTOMERS "PROVIDED THEY BECOME MEMBERS OF THE COMPANY" IT WAS ORDERED THAT THE ORDER BE DELAYED 60 DAYS FOR THE DUP TO CONDUCT AND AUDIT OF THE BOOKS AND RECORDS (WHICH SHOULD HAVE INCLUDED THE MEMBERSHIP REQUIREMENTS) AS PER THE COMMISSIONS ORDER.

2. Was the audit ordered by the commission completed by the DPU and Did the Utility fully comply with the order requiring that all existing customers be come members of the company providing water service HI-Country Water/ HI-Country HOA.

3. If the Utility/ Company did not comply with the commissions order and requirements regarding membership of all customers receiving water service, it appears the HI-Country Water/ HOA has been operating as Illegal (Defector) utility for the past 16 years and may be subject to fines, and punishment by the commission for failing to comply with the commissions order granting exemption and cancelling certificate # 2737.

4. The Charges and fees charged by the Association may be subject to review and audit to determine if the rates were fair and just and met the requirements of Utah Code 54 governing a utility providing water service to the Public in General without commission authorization.

5. The surplus of funds in the water company and loans on legal fee payments to the HOA raise questions and may warrant a full audit and refunds if the rates were excessive and funds spend for items not allowed by a public utility.

6. This is a very important issue and needs to be fully investigated and answers provided by the commission to all of the customers/members of the Hi-Country Water/ HI-Country Estates HOA. Refunds should be ordered if the rates were excessive or if funds were expended on items not allowed in normal rates cases by a utility or Defector or Illegal utility without commission approval.

7. Hi-Country has spent hundreds of thousands on legal fees and law firms like Mr. Smiths firm and should not be excused base on not understand its legal requirements as a Defector Utility and the punishment that goes along with violating commission orders.

8. The Court has upheld the well lease obligations to the Dansie's and the HOA/Water company has failed to provide the obligations under the agreement and orders of the Court of appeals even after man requests and demands from the Dansie's. There are no stays of the order of the court of appeals and its time that the Corporation Hi-Country Estates begin providing the obligations of the well lease as ordered by the Court of Appeals (Copys of the orders were provided as exhibits in the June 15, 2012 hearings and accepted as exhibits by the ALJ.

9. It is here by requested and motioned that the PSC require that the Utility Hi-Country as a utility begin providing water and following the orders, and opinions of the court of appeals. The Commission should order the utility to begin providing the water as per the order of the Court of Appeals order.

10. The P. S. C. should exempt the well lease agreement and its obligations to the Dansie's from any future Rate Hearings or Cases that may become before the commission since the Ownership issues and well lease agreement issues have been decided by District Court and Sustained by the latest Court of Appeals decision . The ownership and validity of the well lease have been decided by district court and are beyond the jurisdiction of the PSC. There are no stays of the Court of Appeals orders and the P. S. C. has taken jurisdiction of H- Country Estates HOA/ Water Co however they have not (Not determined Other wise) as is in the court of appeals order. This request is to get the water and obligations to the Dansies flowing or the utility ordered to take action to meet the obligations of the well lease agreement.

11 There is one other matter that the commission should review and address and that is ownership of HI-Country HoA faculties used to provide water service to the public and its customers. There needs to a review of ownership orders, agreements and easement agreements to provide service beyond Hi-Country Estates Phase 1 foundries based on ownership of pipelines and easements and facilities to provide service and for tax valuations of the water utility assets used to provide service to its customers.

This letter and request is being made to the Public Service Commission on this 30, day of august 2012

CERTIFICATE OF

SERVICE

I HERE BY CERTIFY THAT ON THE 30 DAY OF AUGUST 2012 A TRUE AND CORRECT COPY OF THE FOREGOING (REQUEST TO REVIEW THE 1996 ORDER OF THE COMMISSION AND 11 OTHER ISSUES IN THE LETTER OF REQUEST) WAS SERVED UPON THE FOLLOWING AS INDICATED BELOW :

BY ELECTRONIC MAIL:

Jj.CRAIG SMITH (jcsmith@smithlawonline.com)
Smith Hartvigsen PLLC

Patrica Schmid(pschmid@utah.gov)
Office of The Attorney General

Shauna Bevegnu-Springer (sbenegn@utah.gov)

vis u.s. mail to
Dennis Miller -Legal Assistant
(dennis_miller@utah.gov)
Division of Public Utilities
Heber M. Wells Building 4th floor
160 East 300South, Box 146751
Salt Lake City, Utah 84114-6751

Public Service Commission
160 East 300 South
Heber M. Wells Building 4 th floor
Salt Lake City, Utah 84114-6751

J. Rodney

Dansie _____

8/30/2012

Dennis Miller (dennismiller@utah.gov)
dputatarequest@utah.gov

J. Rodney Dansie 