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

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a Utah Corporation Plaintiff, vs. BAGLEY & COMPANY, et al., Defendants	**MEMORANDUM IN OPPOSITION TO MOTION FOR ENTRY OF AN ORDER IMPLEMENTING COURT OF APPEALS' DECISION** Case No. 0201007452 Previous Case No. 850901464 Judge Andrew Stone
FOOTHILLS WATER COMPANY, a Utah Corporation, J. RODNEY DANSIE, THE DANSIE FAMILY TRUST, RICHARD P. DANSIE, BOYD W. DANSIE, JOYCE M. TAYLOR and BONNIE R. PARKIN, Counterclaimants, vs. HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a Utah Corporation, et al., Counterclaim Defendants.	

Plaintiff and Counterclaim Defendant Hi-Country Estates Homeowners Association ("**Hi-Country**"), through counsel, submits the following Memorandum in Opposition to the Dansies' Motion for Entry of an Order Implementing Court of Appeals' Decision filed by Foothills Water Company, J. Rodney Dansie, Dansie Family Trust, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor, and Bonnie R. Parkin (collectively, the "**Dansies**").

INTRODUCTION

Despite repeated statements from the Court of Appeals that neither its 2008 Opinion nor its 2011 Opinion "adjudicate[d] the rights of the parties or the enforceability of the Well Lease going forward," the Dansies now seek, based exclusively on those same opinions, an "order for this Court to enforce" the Well Lease going forward. Issuing such an order would run directly contrary to the decision of the Court of Appeals and would improperly extend this case that has already lasted decades. Furthermore, the portion of the 2011 Opinion that the Dansies seek to transform into prospective relief is expressly conditioned on the Utah Public Service Commission ("**PSC**") not asserting jurisdiction over Hi-Country. But the Dansies fail to disclose to the Court that the PSC has already asserted such jurisdiction. Thus, the Dansies request for an order is not only contrary to the express language of the 2011 Opinion, but is also moot. The Dansies motion should therefore be denied and Hi-Country should be awarded reasonable attorneys' fees incurred in responding to this motion.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

This case has been before this Court since 1985, and a central item of dispute during that time has been the effect of the 1977 Well Lease Agreement (the "**Well Lease**"), which provided

Dansie Well No. 1 as the primary source of water to Association members during the term of the lease. On March 17, 1986, after five days of hearings, the Utah Public Service Commission ("**PSC**") entered an order concluding that the Well Lease was "grossly unreasonable, requiring not only substantial monthly payments, but also showering virtually limitless benefits on [the Dansies]." The PSC then "prohibit[ed] the [Well Lease] from affecting the rates paid by [the Association members]," *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023 (Utah 1995), and indicated that that Dansies could continue to "obtain their water from [Dansie] Well No. 1" as long as they paid "the actual cost of any water provided to [them]." In 1994, because the Dansies refused to pay the actual costs of receiving water as required by the PSC Order, Hi-Country disconnected its water system from Dansie Well #1 and the remainder of the Dansies' water system.

As a result of the disconnection from the Dansies' water system, Hi-Country provided water to only its members and a limited number of others at rates equivalent to member rates. Consequently, on February 5, 1996, the PSC granted Hi-Country an exemption from rate regulation. On August 8, 1997, the Dansies filed their Amended Counterclaims, which sought damages for breach of the Well Lease and sought specific performance of the Well Lease going forward. In February 2005, the parties stipulated to, and the trial court certified for trial, all remaining issues in this longstanding dispute over the Well Lease. Following a trial, the trial court entered its Final Judgment on January 5, 2006 (a copy of the Final Judgment is attached to this memorandum as Exhibit A). In the Final Judgment, the trial court held that "[t]he Dansies are entitled to receive water from Dansie well No. 1 through the Associations' Water System in accordance with the Well Lease only upon payment of the pro rata costs of transporting water

through the Association's Water System." Additionally, the trial court held that the Dansies had "the right to receive 55 additional water connections from the Association, but only if the Dansies pay the Association for those connections at the Association's usual charge for each such connection."

Both parties appealed the Final Judgment, and on March 27, 2008, the Court of Appeals issued its opinion. *Hi-Country VI*, 2008 UT App 105, 182 P.3d 417. *Hi-Country VI* purported to "affirm the trial court on all issues," *id.* ¶ 24, but contained language in a footnote that arguably suggested that the requirements under the Final Judgment that the Dansies pay for water received was no longer in effect. After remittitur, the Dansies filed a Motion to Modify Final Judgment with this Court. The Dansies argued that, based upon footnote 2 of *Hi-Country VI*, the trial court should significantly modify the findings and conclusions of the Final Judgment to remove any requirement that the Dansies pay their share of the costs of water delivery.

This Court denied the Dansies' motion to modify the Final Judgment, holding that that there was "no ambiguity whatsoever" that *Hi-Country VI* had affirmed the Final Judgment on all issues and that the Dansies' request "would result in a very different trial court order than the one the Court of Appeals affirmed." This Court concluded that it did not have the authority "to interpret the opinion so broadly in the face of the unequivocal affirmance."

On appeal from the refusal to modify the Final Judgment, the Utah Court of Appeals issued *Hi-Country IX*. 2011 UT App 252, 262 P.3d 1188.[1] *Hi-Country IX* affirmed this Court's decision refusing to modify the Final Judgment, indicated that the Court was correct in viewing

[1] *Hi-Country IX* followed two successive Petitions for Rehearing based on earlier versions of the opinions. Thus, *Hi-Country VII*, 2010 UT App 86U, and *Hi-Country VIII*, 2011 UT App 24, were superseded by *Hi-Country IX*.

Hi-Country VI as a "complete affirmance," and included no instructions to this Court on remand. *Hi-Country IX* provided, however, that the Dansies' were entitled to their plain language rights under the Well Lease unless the PSC intervened. After *Hi-Country IX* issued and certiorari review was denied, Hi-Country sent a letter to the PSC requesting an assessment on whether Hi-Country was within PSC jurisdiction. Following an investigation by the Department of Public Utilities and a proceeding before an administrative law judge, a proceeding in which Rod Dansie and Hi-Country both participated, the PSC issued a ruling revoking Hi-Country's exemption and again asserting jurisdiction. A copy of the Report and Order is attached as Exhibit B to this Memorandum.

ANALYSIS

The order proposed by the Dansies is both unnecessary and improper because it contradicts the express intent of *Hi-Country IX* and fails to recognize the current status of the Well Lease given PSC intervention. The Dansies' expressed purposes for seeking this order are (1) so that the "file in this matter . . . clearly reflect[s] the present status of the dispute between the parties," and (2) to provide them with an "order for this Court to enforce if the Association refuses their demand that free water be provided." (Dansies Memo. 4.) Neither of these purposes are valid reasons for entering the order: a cursory review of the docket in this matter shows that the *Hi-Country IX* decision is already part of the file in this matter, and the second purpose actually directly conflicts with the *Hi-Country IX* decision. Ultimately, as further discussed below, the Court should refuse to enter the requested order for two primary reasons: first, the Court of Appeals expressly disavowed any possibility that its opinion was to be

prospectively applied; and second, the acknowledged exception to the Dansies' rights under the Well Lease agreement, namely the jurisdiction of the PSC, has already occurred.

I. The Dansies Are Seeking a Prospective Order, but the Court of Appeals Expressly Rejected that Its Opinion Grants Prospective Relief.

The Dansies' memorandum seeks an order to enforce against Hi-Country. In other words, they want an order of specific performance on the Well Lease Agreement. But such a ruling runs contrary to *Hi-Country IX* because that opinion specifically disavows any intent to provide prospective relief to the parties, and such an order would be an improper reversal of the Final Judgment's dismissal of Dansies' claim for specific performance.

On at least three occasions, *Hi-Country IX* states that neither it nor *Hi-Country VI* attempts to provide future relief to the parties. Specifically, in paragraph 10, the opinion states that it "made no attempt to resolve future issues that might arise between the parties, including future claims of damages against [Hi-Country] for future breaches of the Well Lease." *Hi-Country IX*, 2011 UT App 252, ¶ 10. The Court of Appeals further stated that its opinions "made no effort to adjudicate the rights of the parties or the enforceability of the Well Lease going forward." *Id.* Finally, in considering the Petition for Rehearing, the Court of Appeals again reaffirmed that its decision was "limited to its historical context and not as 'adjudicat[ing] the rights of the parties or the enforceability of the Well Lease going forward.'" *Id.* ¶ 14. Thus, Dansies' attempt by this motion to obtain a prospective order is in direct contradiction with the thrice-expressed intent of the Court of Appeals.

The Court of Appeals' refusal to grant prospective relief is consistent with the Final Judgment and the earlier complete affirmance of that judgment. Indeed, the substance and goal of the present motion, although bearing a different name, is no different that the Dansies' Motion

to Modify Final Judgment that was filed almost four years and multiple appellate decisions ago. The Dansies sought an order of specific performance as part of their amended counterclaim, but the Final Judgment dismissed the relevant causes of action after trial. (Final Judgment at 6 (dismissing the first and third causes of action of the Dansies' counterclaim for specific performance as "no cause of action").) *Hi-Country VI* affirmed that dismissal. *Hi-Country VI*, 2008 UT App 105, ¶¶ 1, 24; *Hi-Country IX*, 2011 UT App 252, ¶¶ 4, 9. Nothing in *Hi-Country IX* can be read to disturb that dismissal. Thus, just as this Court correctly ruled that it had no authority to grant the Motion to Modify Final Judgment, it likewise lacks authority to grant the present motion. Specifically, the law of the case doctrine prevents this Court from disturbing the Final Judgment's affirmed dismissal of the Dansies' claims for specific performance. *See Hi-Country XI*, 2011 UT App 252 ¶¶ 5–6 (concluding that under the mandate rule, the trial court "lacks authority to modify the final judgment" that was affirmed on appeal). The Court should therefore decline to enter the Dansies' proposed order as improper under the mandate rule.

II. The Issue of What Rights the Dansies Have under the Well Lease Is Moot Because the PSC Has Already Asserted Jurisdiction over Hi-Country

Even if *Hi-Country IX* could be read as allowing some sort of prospective order in the Dansies' favor, any such relief would be contingent on the PSC not asserting jurisdiction over Hi-Country. Because the PSC has already asserted jurisdiction over Hi-Country, issuing the order proposed by the Dansies would have no effect and is therefore a moot issue. *Hi-Country IX* was careful to acknowledge the role of the PSC in this case. Specifically, in paragraph 10, the opinion states that "so long as the PSC does not exercise jurisdiction over the water system, the rights of the parties are as set forth by the plain language of the Well Lease," and in paragraph 14, the opinion acknowledges the Dansies rights "unless the PSC intervenes and determines

otherwise." Thus, there is no question that Dansies' rights under the Well Lease give way to the PSC if it asserts jurisdiction.

The Dansies claim that Hi-Country has ignored their requests for water, but a parallel proceeding before the PSC illustrates that Hi-Country has taken seriously its legal obligations.[2] Shortly after the Supreme Court declined certiorari review of *Hi-Country IX*, Hi-Country contacted the PSC to assess whether Hi-Country still qualified for an exemption from regulation. PSC Report and Order at 3. After discovery, the Division of Public Utilities recommended that the exemption be canceled and Hi-Country again be subject to the jurisdiction of the PSC. *Id.* The PSC, after a hearing in which Rod Dansie participated, issued its Report and Order on July 12, 2012. The Report and Order cancelled Hi-Country's letter of exemption and reinstated its certificate of convenience and necessity. Thus, Hi-Country has been adjudicated a public utility subject to the jurisdiction of the PSC.[3]

Because the PSC has already intervened and asserted jurisdiction over Hi-Country, the issue presented in this motion is moot. An issue is moot "if during the pendency of the [action] circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect." *Angilau v. Winder*, 2011 UT 13, ¶ 15, 248 P.3d 975 (internal

[2] Hi-Country's obligation under the Well Lease is only one aspect of the complicated legal framework governing Hi-Country's water system. As Hi-Country has communicated to the Dansies on a number of occasions, Hi-Country must comply with Division of Drinking Water regulations and the Public Utility Code. Hi-Country has requested information from the Dansies about their water system to allow for compliance with Drinking Water regulations, but no such information has ever been provided. Furthermore, the Dansies demands often do not conform to the plain meaning of the Well Lease. For example, the Dansies have repeatedly demanded free water delivery to lot 43, but the Well Lease, by its plain language, does not benefit that lot.

[3] As a public utility, Hi-Country is subject to the obligations and prohibitions outlined in the Public Utility Code, including the obligation to obtain approval of the PSC of its schedule of rates (i.e., tariff), Utah Code Ann. § 54-3-2, the obligation to deliver water only in accordance with their approved tariff, *id.* § 54-3-7, and the prohibition against granting any person a preferential rate, *id.* § 54-3-8. Because of the inherent conflict between these provisions and the Dansies' desired water deliveries, the Court of Appeals was careful to recognize that Hi-Country's obligations under the Well Lease would change if the PSC asserted jurisdiction.

quotation marks omitted). Indeed, on its face, the Dansies' requested relief would be of "no legal effect" because the expressed condition for superseding the proposed order—"unless the PSC intervenes"—has already been satisfied. Stated another way, the law does not require a vain act, and entering the Dansies' proposed order would be such an act. Accordingly, even if the Court had authority to enter a prospective order inconsistent with its affirmed Final Judgment, doing so would be futile where the PSC has already asserted jurisdiction.

CONCLUSION

This Court should deny the Dansies' Motion for Entry of an Order Implementing Court of Appeals' Decision because such an order is contrary to *Hi-Country IX* and is improper given the already-established jurisdiction of the PSC over the Hi-Country water system. Furthermore, because the request runs directly contrary to *Hi-Country IX* and because the Dansies failed to disclose to the Court that the PSC has already asserted jurisdiction in this matter, Hi-Country requests an award of reasonable attorney fees in responding to this motion.

DATED this 16th day of August, 2012.

J. Craig Smith
Matthew E. Jensen
Attorneys for Hi-Country Estates HOA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of August, 2012, I served a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO MOTION FOR ENTRY OF AN ORDER IMPLEMENTING COURT OF APPEALS' DECISION** by causing the same to be mailed, via United States first class mail, postage pre-paid, to the following:

J. Thomas Bowen, Esq.
925 Executive Park Drive, Suite B
Murray, Utah 84117-3545

DiAnn Calacino

FAX# 801-530-6512.
attn: Shauna Springer Docket # 11-2195-01

Notice of Meeting and Special Assessment

The August Quarterly Meeting scheduled for August 6 was cancelled by Herriman City on very short notice. They decided about three hours before our scheduled meeting to use the room for a meeting place for emergency operations for the Pinyon Fire. Immediate notice was provided to all those for whom we had email addresses, but we did not have an effective way to notify others on such short notice. Herriman said they would post a notice as well. We cannot reasonably reschedule this meeting with adequate notice to all homeowners. The next quarterly meeting will remain as scheduled for 7:00 pm on Monday, November 12, 2012 at the Herriman City Hall.

A previous notice described the need for a special assessment. That assessment was to be discussed and explained at the August meeting. However, the assessment is not subject to a vote under Article VII of the Bylaws because it is necessary to conduct the business determined at previous meetings. The Board of Directors has determined that a special assessment of $400 per lot is needed to repay funds borrowed from the Water Company accounts to pay ongoing and some unanticipated legal bills. This will be about the same as the special assessments made in 2011. Without this money the HOA will run out of funds for other needs such as utilities and snow removal before the end of the year. The $400 assessment may either be paid as a lump sum or as monthly payments of $100 per month due at the end of September, October, November, and December. An invoice will accompany this notice.

Most of the legal costs have been related to water issues including the litigation over the Well Lease Agreement and our application to be regulated by the Public Service Commission. These costs were significantly increased because Mr. Dansie chose to contest the PSC application rather than cooperate fully as stated in the well lease agreement. Lesser amounts have been spent in finalizing agreements with Kennecott for power to the upper tanks, and with Herriman City for operation of the water system.

Although the courts have declared the well lease agreement to be valid, they provided little clarity to its interpretation, but acknowledged the authority of the PSC if we were brought back under their jurisdiction. Regulation by the PSC is needed to provide for an open forum for those affected by our water rates and to provide clarity to the full implementation of the well lease agreement because Mr. Dansie continues to make demands that are not in accordance with the well lease agreement. The PSC has revoked our letter of exemption and we are now being regulated by the PSC. However, Mr. Dansie has filed a request for rehearing on that matter as well. Even without having to respond to that request, we would have additional immediate expenses to get an initial tariff approved. Subsequent applications will address the costs to replace meters and add chlorination to our system but those actions are on hold until properly presented to the PSC.

The annual assessment for next year will be five percent more than 2012. The Board is reviewing the actual costs of garbage collection and may adjust those rates to match actual costs. Costs were reduced significantly for part of this year by having the special dumpster for cardboard and metal. However, that dumpster has been removed because it was abused by some users, and that will increase the cost of handling garbage. The Board hopes to get the special dumpster back once video surveillance of the area is fully operational and we can identify abusers. Violators will then be billed the full cost of disposal of unacceptable materials in either dumpster rather than continuing to have these expenses paid by the Homeowners.

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Hi-Country Estates Homeowners Association's Request for Reassessment of the Commission's Jurisdiction	DOCKET NO. 11-2195-01 REPORT AND ORDER

ISSUED: July 12, 2012

SYNOPSIS

The Commission enters this Order revoking the Company's Letter of Exemption and reinstating Certificate of Public Convenience and Necessity No. 2737.

By The Commission:

CANCELLATION OF HEARING AND SCHEDULING ORDER

Notice is hereby given that the hearing previously scheduled in this matter for Wednesday, August 8, 2012, beginning at 10:00 am, is hereby cancelled. In addition, the scheduling order, issued on March 21, 2012, is hereby stricken.

ORDER REVOKING LETTER OF EXEMPTION AND REINSTATING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 2737

I. BACKGROUND

On March 23, 1994, the Commission issued Certificate of Public Convenience and Necessity No. 2737 ("CPCN") to Hi-Country Estates Homeowners Association in Docket No. 94-2195-01. See Report and Order, dated March 23, 1994.[1] Approximately two years later, on February 5, 1996, the Commission entered an order in Docket No. 95-2195-03

[1] Up until 1994, Foothills Water Company served water to Hi-Country Estate Homeowners Association members under Certificate of Public Convenience and Necessity No. 2151. Foothill Water Company received its CPCN in 1985. See Report and Order, issued August 8, 1985. Due to legal action, quieting title to the water system in favor of Hi-Country Estate Homeowners Association, the Commission cancelled CPCN No. 2151 and issued CPCN No. 2737. See Report and Order, dated March 23, 1994. The 1994 Order sets forth the service area for CPCN No. 2737 in a lengthy metes and bounds description. See id. at 3-5.

cancelling, effective 60 days hence, CPCN No. 2737, issued to Hi-Country Estate Homeowners Association Phase I Water Company ("Company"). See Report and Order, dated February 5, 1996 at 2. The Commission set forth these findings of fact in support of its order:

> 1. [The Company] is organized as a nonprofit corporation providing service to its members.
>
> 2. [The Company] serves a limited number of nonmembers pursuant to specific contracts; however, it does not offer its service to the public generally.

Id. at 1-2. Based on these findings, the Commission concluded, "the Company is outside our jurisdiction as established under [Utah Code Ann.] § 54-2-[1](29); consequently, [the Company's] Certificate of [Public] Convenience and Necessity should be canceled." Id. at 2. Thereafter, on May 14, 1996, the Commission issued Letter of Exemption No. 0057 to the Company. See Letter of Exemption No. 0057, dated May 14, 1996.

Between 1996 and present, litigation ensued between the Company and J. Rodney Dansie ("Mr. Dansie"), an intervenor in this docket, over a water well agreement.[2] On January 27, 2011, the Utah Court of Appeals issued a memorandum decision in *Hi-Country Estates Homeowners Ass'n v. Bagley & Co., 2011 UT App. 252* (memorandum decision), which was subsequently amended on July 29, 2011, see id. (amended memorandum decision). The Court held that Mr. Dansie and other Dansie family members "are, going forward, entitled to their contractual rights to free water and free hook-ups unless the PSC intervenes and determines otherwise." Id. at ¶ 14 (emphasis added). Thereafter, the Utah Supreme Court denied certiorari on November 28, 2011. See 268 P.3d 192 (Utah 2011).

On December 23, 2011, the Company filed a letter requesting the Commission consider whether its CPCN should be reinstated. The Commission thereafter issued an action request to the Division of Public Utilities ("Division") to review the request filed by the Company. See Action Request, dated January 5, 2012. On January 31, 2012, the Division filed a recommendation with the Commission to hold a scheduling conference. See Division Memo, filed January 31, 2012. A scheduling conference was held on March 20, 2012 by the Administrative Law Judge for the Commission, see Notice of Scheduling Conference, issued March 6, 2012, and a scheduling order issued on March 21, 2012. See Notice of Scheduling Order, issued March 21, 2012. The scheduling order set May 21, 2012 as the due date for the Division's Report. See id.

On May 21, 2012, the Division filed a memorandum recommending the Commission revoke the letter of exemption and reinstate the CPCN based on an investigation completed by the Division.[3] The Division's investigation consisted of data requests to the Company and a site visit. The Division reported the Company has 132 customers/connections comprising 33 standby connections, 92 water connections and 6 connections in process. Of the 132 customers/connections, there are 123 customers who are members and have membership/stockholder and voting rights in the Company. The remaining nine (9) customers do not have membership in the Company and do not have voting rights. Seven of the nine customers have expressed that they neither have nor want membership in the Company. Two of

[2] The water well agreement is not at issue in this docket.
[3] The Division filed a revised memo on June 15, 2011. To avoid confusion, the information contained here is from the Division's revised memo.

the nine do not pay HOA dues to the Company, only water charges. The remaining two connections have requested water access.[4]

Based on the information contained in the Division's May 21, 2011 filing, a duly noticed order to show cause hearing was held on June 15, 2012. The order to show cause hearing was limited to the issue of whether the Company's letter of exemption should be revoked and its CPCN reinstated. See Order to Show Cause and Notice of Hearing at 2, issued June 6, 2012.

II. APPLICABLE LAW

The Commission is "vested with the power and jurisdiction to supervise and regulate every public utility in the state...." Utah Code Ann. § 54-4-1 (2010). Under Utah Code Ann. § 54-2-1(16), a "[p]ublic utility includes every . . . water corporation . . . [unless otherwise excepted], where the service is performed for, or the commodity delivered to, the public generally...." Id. § 54-2-1(16)(a) (internal quotations omitted). Likewise, under Utah Code Ann. § 54-2-1(29), a "[w]ater corporation includes every corporation and person . . . owning, controlling, operating, or managing any water system for public service within the state." Id. § 54-2-1(29) (internal quotations omitted).

III. FINDINGS OF FACT

1. On June 15, 2012, the Commission held a duly noticed Order to Show Cause hearing in this docket. See Order to Show Cause and Notice of Hearing, issued June 6, 2012.

2. At the Order to Show Cause hearing, J. Craig Smith appeared on behalf of the Company. Transcript of Hearing at 5, lines 24-25. Assistant attorney general Patricia Schmid

[4] Mr. Dansie has requested these connections. See id. at 2.

appeared on behalf of the Division, along with utility analyst Shauna Benvegnu-Springer ("Ms. Springer") and assistant attorney general Justin Jetter. See id. at 6, lines 2-6. Intervenor J. Rodney Dansie ("Mr. Dansie") appeared *pro se*. See id. at lines 9-10; see also id. at 7, lines 9-12.

3. The Administrative Law Judge took administrative notice of the Division's recommendation filed May 21, 2012. See Transcript of Hearing at 8, lines 15-22.

4. Ms. Springer testified that the Division recommends the Commission revoke the Company's letter of exemption and reinstate its CPCN, based on an investigation completed by the Division. Ms. Springer testified that the Division's investigation showed that the Company is serving both members and non-members, thus it is acting as a public utility under state law.

5. Randy Crane ("Mr. Crane") and Stephen Olschewski ("Mr. Olschewski") testified on behalf of the Company.

6. Mr. Crane is the Company's vice president and a director. See id. at 27, lines 6-7; see also id. at 60, lines 21-24. He testified that several customers are provided water for a fee but they are not members of the Company. See id. at 33, lines 22-25, and id. at 34, lines 1-5 (referring to "the Beagleys" and "the Olschewskis"), id. at lines 16-23 (referring to "the DeHaans"), id. at 36, lines 7-9 (referring to "the BLM"), id. at lines 12-15. Mr. Crane further testified that he agreed with the declarations (see paragraph 9 below) and the Division's conclusion that the Company is offering service to the general public. See id. at 38, lines 19-20 (agreeing with declarations); see also at 39, lines 8-11 (agreeing Company is serving the public generally).

7. Mr. Olschewski receives water from the Company, but he is not a member and does not have voting rights. See id. at 107, lines 24-25, and id. at 108, line 1. See also id. at 109, lines 11, 21-23. Mr. Olschewski is in favor of the Commission exercising jurisdiction over the Company. See id. at 110, lines 6-20. Mr. Olschewski's testimony was uncontroverted. See id. at 163, lines 5-6 ("[Mr. Dansie]: I don't know whether [Mr. Olschewski] [is] a member of the Association.").

8. The Company also submitted signed declarations of Jonathan Beagley, Larry Beagley, Greg DeHaan, Daniel Olschewski, Helmut Olschewski, and Stephen Olschewski (collectively, the "Declarants"). See HOA Exhibit No. 3. The Declarants certified that each receives water from the Company, but none is a member of the association and none has voting rights. See id.

9. Mr. Dansie testified on his own behalf. Mr. Dansie's main concern was that the Company is trying to circumvent its obligations under the water well agreement by coming before the Commission. See Transcript of Hearing at 153, lines 1-4. See also id. at 164, lines 22-25; id. 165, line 1, and id. at 187, lines 13-19. On cross examination, Mr. Dansie agreed that it was up to the Commission to decide whether to assert jurisdiction over the Company. See id. at 160, lines 5-16. A copy of the Utah Court of Appeals amended memorandum decision in *Hi-Country Estates Homeowners Ass'n v. Bagley & Co., 2011 UT App. 252*, was entered into evidence as Dansie Exhibit No. 3. See id. at lines 19-25.[5]

[5] Dansie Exhibits No. 4 and No. 5 were also admitted. A copy of the "Second Quiet Title Order Issued to Hi-Country Estate Homeowners Association" in Case No. 85 090 1464 CV was admitted as Dansie Exhibit No. 4, and a copy of the "Final Judgment" in Case No. 020107452 was admitted as Dansie Exhibit No. 5. At Mr. Dansie's request, the Administrative Law Judge granted Mr. Dansie the opportunity to submit a copy of a recorded document he purported would show that certain declarants were members, provided that he obtain a "certified copy" of the document from the county recorder and that he file it with the Commission. See Transcript of Hearing at

10. After the hearing, Mr. Dansie filed several documents with the Commission on July 2, 2012. See Letter to Commission, from Mr. Dansie (June 22, 2012), filed July 2, 2012; Letters to the Commission, from Mr. Dansie (June 25, 2012), filed July 2, 2012 (collectively, "Mr. Dansie's post-hearing filings"). The Company filed an objection to these documents on July 5, 2012. See Objection to J. Rodney Dansie Response to DPU Recommendation, to J. Rodney Dansie Correspondence dated 6/22/2012, 6/25/2012, and to Dansie's Response to Hi-Country Estates HOA, filed July 5, 2012.

IV. CONCLUSIONS OF LAW

The Company presented evidence showing that it is serving members and non-members.[6] In addition, the Company agrees it is subject to Commission jurisdiction because it is serving the public generally. We therefore reinstate the CPCN.

ORDER

In light of the foregoing testimony, Division recommendation, and comments, the Commission hereby ORDERS:

1. The Division's letter of exemption, dated May 14, 1996, issued to Hi-Country Estate Homeowners Association Phase 1, is hereby cancelled.

2. Certificate of Public Convenience and Necessity No. 2737, issued to Hi-Country Estates Homeowners Association Phase 1 Company, is hereby reinstated. The Company shall comply with all requirements set forth in the CPCN.

191, line 25; see also id. at 192, lines 1-12. More than adequate time has passed since the hearing and Mr. Dansie has filed no such document with the Commission.

[6] Mr. Dansie's post-hearing filings are considered to the extent relevant.

3. The Scheduling Order, issued March 6, 2012, is hereby stricken and the hearing scheduled for August 8, 2012, at 10:00 a.m. in Room 451, Heber M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah, is cancelled. In addition, the scheduling order, issued on March 21, 2012, is stricken.

4. Any issues pertaining to rates will be addressed in a separate proceeding if and when the Company files for a rate change.

DATED at Salt Lake City, Utah this 12th day of July, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 12th day of July, 2012, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#231284

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2012, a true and correct copy of the foregoing, was served upon the following as indicated below:

By U.S. Mail:

J. Rodney Dansie
7198 West 13090 South
Herriman, UT 84096

By E-Mail:

J. Craig Smith (jcsmith@smithlawonline.com)
Matthew E. Jensen (mjensen@smithlawonline.com)
Smith Hartvigsen PLLC

Patricia Schmid (pschmid@utah.gov)
Office of the Attorney General

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

_____
Administrative Assistant

Tom Bowen Fax 801-566-5902

Notice of Meeting and Special Assessment

The August Quarterly Meeting scheduled for August 6 was cancelled by Herriman City on very short notice. They decided about three hours before our scheduled meeting to use the room for a meeting place for emergency operations for the Pinyon Fire. Immediate notice was provided to all those for whom we had email addresses, but we did not have an effective way to notify others on such short notice. Herriman said they would post a notice as well. We cannot reasonably reschedule this meeting with adequate notice to all homeowners. The next quarterly meeting will remain as scheduled for 7:00 pm on Monday, November 12, 2012 at the Herriman City Hall.

A previous notice described the need for a special assessment. That assessment was to be discussed and explained at the August meeting. However, the assessment is not subject to a vote under Article VII of the Bylaws because it is necessary to conduct the business determined at previous meetings. The Board of Directors has determined that a special assessment of $400 per lot is needed to repay funds borrowed from the Water Company accounts to pay ongoing and some unanticipated legal bills. This will be about the same as the special assessments made in 2011. Without this money the HOA will run out of funds for other needs such as utilities and snow removal before the end of the year. The $400 assessment may either be paid as a lump sum or as monthly payments of $100 per month due at the end of September, October, November, and December. An invoice will accompany this notice.

Most of the legal costs have been related to water issues including the litigation over the Well Lease Agreement and our application to be regulated by the Public Service Commission. These costs were significantly increased because Mr. Dansie chose to contest the PSC application rather than cooperate fully as stated in the well lease agreement. Lesser amounts have been spent in finalizing agreements with Kennecott for power to the upper tanks, and with Herriman City for operation of the water system.

Although the courts have declared the well lease agreement to be valid, they provided little clarity to its interpretation, but acknowledged the authority of the PSC if we were brought back under their jurisdiction. Regulation by the PSC is needed to provide for an open forum for those affected by our water rates and to provide clarity to the full implementation of the well lease agreement because Mr. Dansie continues to make demands that are not in accordance with the well lease agreement. The PSC has revoked our letter of exemption and we are now being regulated by the PSC. However, Mr. Dansie has filed a request for rehearing on that matter as well. Even without having to respond to that request, we would have additional immediate expenses to get an initial tariff approved. Subsequent applications will address the costs to replace meters and add chlorination to our system but those actions are on hold until properly presented to the PSC.

The annual assessment for next year will be five percent more than 2012. The Board is reviewing the actual costs of garbage collection and may adjust those rates to match actual costs. Costs were reduced significantly for part of this year by having the special dumpster for cardboard and metal. However, that dumpster has been removed because it was abused by some users, and that will increase the cost of handling garbage. The Board hopes to get the special dumpster back once video surveillance of the area is fully operational and we can identify abusers. Violators will then be billed the full cost of disposal of unacceptable materials in either dumpster rather than continuing to have these expenses paid by the Homeowners.

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