

DIRECT TESTIMONY

OF

**RODNEY J. DANSIE
INTERVENOR**

JANUARY 30, 2014

DOCKET No. 13-2195-02

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SECTION I – INTRODUCTION

Please state your name and address.

Rodney Dansie. I live at 7198 West 13090 South, Herriman, Utah.

Please state your relationship with the “Company”, Hi-Country Estates Homeowners Association.

I am a shareholder in Hi-Country Estates and a customer of Hi-Country Estates.

Please state the purpose of your direct testimony.

I will be providing testimony with respect to my involvement with the Company as a shareholder and customer. Specifically, I have an agreement --- Well Lease Agreement --- with Hi-Country Estates that prohibits them from charging me the proposed charge of \$3.85/1000 gallons. I firmly believe that the Company is prohibited from charging me this rate and as further outlined in the Utah Court of Appeals’ 2011 decision affirming my contractual rights under the Well Lease Agreement. I have the right to receive water from the Company under the terms of the Well Lease Agreement and am not subject to the proposed rate increase.

SECTION II – HISTORY OF WELL LEASE AGREEMENT

Please give a brief history of the Well Lease Agreement with the Company.

The Well Lease Agreement “Agreement,” executed April 7, 1977, and subsequent 1985 amendment (collectively, the “Well Lease Agreement”), was entered into by and between my father Jesse H. Dansie and Gerald H. Bagley. A copy of the Well Lease Agreement is attached as Exhibit “A”. A copy of the Amendment is attached as Exhibit “B”. Under the terms of the Well Lease Agreement, the Dansies allowed water from their well to be used a as source of water

1 supply. More specifically, the Dansie Well was to be used to facilitate development of Hi-
2 Country Estates. In exchange for use of the well, the Well Lease Agreement provides:

3 Dansie shall have the right to receive up to five (5) residential hook-ups on to the
4 water system on the Dansie property for members of his immediate family
5 ***without any payment of hook-up fees*** and shall further have the right to receive
6 ***up to 12 million (12,000,000) gallons of water per year*** from the combined water
7 system ***at no cost*** for culinary and yard irrigation use on the Dansie property
8 described herein plus Lot 51 of Hi-Country Estates.
9

10 **What is the effect of the Well Lease Agreement?**

11 The Well Lease Agreement, and amendment (attached as Exhibit “B”) give the Dansies
12 the right to receive water on the specified properties at no cost. The Well Lease Agreement has
13 been found to be valid and enforceable between the parties by Utah Courts. *See, e.g. Hi-Country*
14 *Estates Homeowners Assoc. v. Bagley & Co.*, 2008 UT App 105, ¶ 24 (“We affirm the trial
15 court’s holding that the Well Lease is an enforceable contract, being neither void as against
16 public policy nor unconscionable.”) The Agreement governs the fees that I am required to pay
17 and is binding on the successors in interest to the Well Lease Agreement, Exhibit “B”, at 7.

18 **How was water delivered to the Hi-Country Estates subdivision following execution of the**
19 **Well Lease Agreement?**

20 Following the amendment to the Well Lease Agreement in 1985, water was delivered to
21 the subdivision by the Foothills Water Company, which I operated. The Foothills Water
22 Company was a private water company regulated by the Utah Public Service Commission under
23 a Certificate of Convenience and Necessity (“CCN”), Number 2151. Subsequent to the time that
24 the Well Lease Agreement was executed, a legal dispute arose among the Hi-Country Estates
25 Homeowners Association, the family of J. Rodney Dansie and Foothills Water Company relating
26 to the water system. That dispute ended in a court order quieting title in the water system to Hi-
27 Country Estates Homeowners Association. That quiet-title action did not effect the terms and

1 conditions of the Well Lease Agreement. Hi-Country Estates Homeowners Association received
2 ownership of the water system along with all of the rights and obligations attendant to that
3 system. Following the quiet-title action, Hi-Country Estates Homeowners Association operated
4 the company as a regulated utility under CCN No. 2737 until 1996 when it was issued a Letter of
5 Exemption. From that time until the present action, the water system was operated as non-profit
6 mutual association. Nothing in those prior PSC cases altered the terms of the Well Lease
7 Agreement or Dansies' right to receive the benefits of the agreement.

8 **Please state your relationship to Jesse H. Dansie along with your interest to the benefits of**
9 **the Well Lease Agreement.**

10 Jesse H. Dansie is my father. Along with my siblings, we are the successors-in-interest to
11 his interest in the Well Lease Agreement. My father passed away on March 8, 1987. *See* Dansie
12 Family Trust, attached hereto as Exhibit "C" and death certificates of Jesse and Ruth Dansie,
13 attached hereto as Exhibit "D".

14 **What has been Hi-Country Estates Homeowners Association's position with respect to the**
15 **Well Lease Agreement following the quiet-title action?**

16 The Homeowners Association disputed the validity of the Well Lease Agreement. In
17 particular, the Association was unhappy with the requirement of the Agreement that provided the
18 Dansies with water at no cost. This issue has been subject to substantial litigation leading to
19 numerous court decisions regarding the validity and enforceability of those provisions of the
20 Agreement. That litigation history has included cases before the District Court, Utah Court of
21 Appeals, and Utah Supreme Court. The authoritative decision on those cases is the 2008 order of
22 the Utah Court of Appeals holding "that the Well Lease agreement is an enforceable contract,

1 being neither void as against public policy nor unconscionable.” See *Hi-Country Estates*
2 *Homeowners Assoc. v. Bagley & Co.*, 2008 UT App 105.

3 **Does that most recent court order differ with previous findings made by the PSC during**
4 **periods in which it asserted jurisdiction over the water company?**

5 Yes. Prior to the findings of the Utah courts upholding the validity of the lease and ruling
6 that it is not unconscionable or void, the PSC previously concluded in findings issued in 1986
7 and again in 1992 Report and Order that the Water Lease Agreement was invalid and put an
8 undue burden on rate payers. Those findings conflict with the ultimate decision of the Courts
9 upholding the validity of the Lease. As a result, those PSC findings should have no bearing on
10 the instant rate case. As determined by the Courts, the Dansies are entitled to receive the benefit
11 of the bargain under the validated Well Lease Agreement. This means that the Dansies are
12 entitled to receive water under the terms of the Well Lease Agreement at no cost. The impact of
13 that obligation forms a pre-existing obligation of the water company and should fall in the same
14 category as any other obligations or pre-existing agreements.

15 **Do the Homeowners Association’s corporate documents preclude agreements like the Well**
16 **Lease Agreement?**

17 No. In the 1997 Tariff for Water Service for Hi-Country Estates Homeowners
18 Association, the document provides that “[t]his Tariff pertains only to customers of Hi-Country
19 Estates Phase I Water Company within the boundaries of Hi-Country Estates Phase I, Bagley
20 Acres, South Oquirrh subdivisions, and *customers under special contract.*” Attached hereto as
21 Exhibit “E”. This provision anticipates that there will be customers whose terms of delivery are
22 set by separate agreement, or “special contract,” not the general terms of the Tariff. The Well
23 Lease Agreement is one such contract.

1 **Should the validity of the Well Lease Agreement form part of the Tariff case?**

2 No. The validity and enforceability of the Lease Agreement is not in question. The
3 Courts with jurisdiction through its previous rulings have affirmed the validity of the Well Lease
4 Agreement and upheld its enforceability. As a result, the Dansie Family is entitled to the
5 benefits of the Well Lease Agreement. Allowing the Association's arguments that the prior
6 findings of the PSC with respect to the Well Lease Agreement should be given effect over the
7 judgments of the Court would undermine the extensive prior litigation and conflict with the
8 principles of *res judicata*.

9 **Have you made demands for water to be delivered under the Water Lease Agreement?**

10 Yes. I have made several demands for water supply consistent with the Water Lease
11 Agreement. With the exception of a brief period of water delivery in 2008 to Lots 41 and 53 of
12 the subdivision, those demands have largely gone unheeded. Hi-Country has improperly
13 disconnected Well No. 1 from the water system and I have requested that the systems be re-
14 connected pursuant to Utah Division of Drinking Water regulations. Obviously, any issues with
15 respect to water quality would be addressed by the Division of Drinking Water and complied
16 with by the parties. Under the terms of the Agreement, Hi-Country is obligated to pay the costs
17 of reconnection.

18 **Does enforcement of the Well Lease Agreement unfairly impact the Association and its rate**
19 **payers?**

20 No. The obligations of the Well Lease Agreement, as validated by the Court, are no
21 different than the other obligations of the water company that are assumed in the rate case.
22 There is no question that the Dansies performed all of their obligations under the Well Lease
23 Agreement. The fact that the performance of the Association's obligations under that same

1 Agreement comes at a cost does not alter the fact that the Dansies are entitled to those benefits.
2 The development and contribution of the Danie Well No. 1 also came at a cost. Moreover, the
3 costs associated with the Lease Agreement are no different than those production costs borne by
4 with the company. *e.g.* electrical costs, water contract charges, etc.

5 **Are there any other issues of concern in the Tariff case?**

6 Under the terms of the Well Lease Agreement, there is a question relating to the service
7 area. The proposed boundaries for the water company service area exclude the back 80 acres
8 owned by the Dansies and adjacent to Hi-Country. Under the terms of the Well Lease
9 Agreement, Hi-Country is obligated to deliver water to that property. Accordingly, it should be
10 included in the Tariff. Water was previously provided to that area by Foothills Water Company.
11 In addition, the Well Lease Agreement provides that Hi-Country is liable to the Dansies for legal
12 costs and fees associated with Public Service Commission proceedings. Those costs are owed to
13 the Dansies and should be included in the rate case. The costs are determined at the conclusion
14 of this action. Finally, the Dansies have a claim under the Well Lease Agreement to damages for
15 accrued water for non-compliance with the Agreement. The Dansies request water be supplied
16 that makes up for the water not delivered under the terms of the Well Lease Agreement for each
17 of the years allowed by law.

18