

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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 In the Matter of: the)
 Investigation of the Water) Docket No. 04-243-01
 System Operations of Bridge)
 Hollow Water Association) TRANSCRIPT OF
 for Certification as a) PROCEEDINGS
 Public Utility or Exemption)
 as a Mutual Water Company)
)

January 22, 2007 * 9:30 a.m.

Location: Public Service Commission
 160 East 300 South, Hearing Room 451
 Salt Lake City, Utah

Steve Goodwill,
 Administrative Law Judge

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1 JUDGE GOODWILL: This is a Public Service
2 Commission hearing in the matter of the Investigation
3 of the Water System Operations of Bridge Hollow Water
4 Association for Certification as a Public Utility or
5 Exemption as a Mutual Water Company.

6 Public Service Commission Docket Number
7 04-2437-01.

8 I am Steve Goodwill, the Administrative
9 Law Judge for the Commission. And I have been
10 assigned by the Commission to hear this matter.

11 Notice of this hearing was issued by the
12 Commission on the 22nd of December, 2006.

13 At this time, I would like to go ahead and
14 take appearances. And we'll go ahead and start with
15 the Division.

16 MS. SCHMID: Good morning.

17 Patricia E. Schmid, with the Attorney
18 General's Office, for the Division of Public
19 Utilities.

20 JUDGE GOODWILL: For Bridge Hollow? Do we
21 have a representative from Bridge Hollow?

22 MR. BROWN: I don't believe Lorin Barker
23 is here yet.

24 MR. FLUCKIGER: Counsel is supposed to be
25 here --

26

1 MS. SCHMID: Perhaps we could wait just a
2 couple more minutes.

3 JUDGE GOODWILL: Yes. Why don't we go off
4 the record for a few minutes and give them an
5 opportunity to arrive.

6 (Break taken at 9:31 to 9:32 a.m.)

7 JUDGE GOODWILL: All right. I believe we
8 have Bridge Hollow's representative here now.

9 Sir, if you'd go ahead and make your
10 appearance.

11 MR. BARKER: Lorin Barker, for Bridge
12 Hollow Homeowners Association.

13 JUDGE GOODWILL: Mr. Brown?

14 MR. BROWN: Lee R. Brown and Sheila Brown,
15 pro se interveners, lot 30, Bridge Hollow Homeowners
16 Association and a shareholder in the Bridge Hollow
17 Water Association.

18 JUDGE GOODWILL: All right. And also at
19 the table is another representative.

20 Sir?

21 MR. FITTS: Yes. Stan Fitts, with Strong
22 & Hanni, on behalf of the BACT and Tebbs parties.

23 JUDGE GOODWILL: Who is the other party
24 besides Tebbs, sir?

25 MR. FITTS: BACT.

26

1 JUDGE GOODWILL: Thank you.

2 And could you please spell your last name,
3 sir?

4 MR. FITTS: Yes. F-I-T-T-S.

5 JUDGE GOODWILL: Thank you.

6 Well, we're here primarily today to look
7 at the issue as to whether or not Bridge Hollow
8 should be regulated by the Commission. And if so,
9 what rate should be set.

10 We'll give the parties a chance to discuss
11 other issues as we deem appropriate throughout the
12 process. But we'll start with that.

13 For that, I'll turn to Ms. Schmid.

14 MS. SCHMID: Thank you.

15 The Division would like to call Mr. Bruce
16 Moio as a witness.

17 Could Mr. Moio please be sworn?

18 JUDGE GOODWILL: Sure.

19 If you'll stand and raise your right hand.

20

21

BRUCE MOIO,

22 called as a witness, being first duly sworn,

23 was examined and testified as follows:

24

25 JUDGE GOODWILL: Thanks. Please be

26

1 seated.

2 BY MS. SCHMID:

3 Q. Good morning, Mr. Moio.

4 A. Good morning.

5 Q. Could you please state your full name and
6 business address.

7 A. Bruce Scott Moio. 160 East 300 South,
8 Salt Lake City.

9 Q. By whom are you employed and in what
10 capacity?

11 A. I am employed by the Department of
12 Commerce, the Division of Public Utilities, as a
13 technical consultant.

14 Q. Have you been involved on behalf of the
15 Division concerning Bridge Hollow Water Company?

16 A. Yes.

17 Q. Could you please briefly summarize that
18 involvement.

19 A. Well, the company was approached in order
20 to apply for exemption. And my involvement was to
21 assess and analyze that situation.

22 Q. As part of your review, you've had an
23 opportunity to review the financials provided by
24 Bridge Hollow and related documents?

25 A. Yes.

26

1 Q. In conjunction with your involvement in
2 this docket, did you prepare a memorandum, dated May
3 25th, 2006, which has been marked for identification
4 DPU Exhibit 1?

5 A. Yes.

6 Q. And which has been provided to counsel for
7 the parties, the Administrative Law Judge and the
8 reporter.

9 Have you also prepared a memorandum marked
10 for identification as DPU Exhibit 2, which is dated
11 January 18th, 2007?

12 A. Yes.

13 MS. SCHMID: The Division would like to
14 move the admission of DPU exhibits marked for
15 identification 1 and 2?

16 JUDGE GOODWILL: Is there any objection to
17 the admission of these exhibits?

18 MR. FITTS: No.

19 JUDGE GOODWILL: Okay. They are admitted.

20 (DPU EXHIBIT-1 AND DPU-EXHIBIT 2 WERE
21 MARKED AND ADMITTED.)

22 MS. SCHMID: Thank you.

23 Q. (By Ms. Schmid) Mr. Moio, do you have a
24 summary of the recommendation contained in the
25 January 18, 2007 memorandum and any updates?

26

1 A. Yes. I do.

2 Q. Please provide.

3 A. In 2004, the company filed for exemption
4 from DCS regulation. Upon my review and analysis of
5 the company at that time, I found the company to be
6 well run by its users. The company has adequate
7 water rights to serve its users. The company is in
8 good standing with Division of Corporations. And the
9 system has an approved rating by the Division of
10 Drinking Water.

11 However, the DPU could not recommend
12 exemption because of ongoing issues regarding stock
13 issuance, stock voting rights and control of assets.

14 After several technical conferences and
15 meetings with all parties, the issues were not
16 resolved. The Attorney General, supporting the DPU,
17 has advised that consistent with prior court cases,
18 these issues are outside the jurisdiction of the
19 Commission.

20 A water company cannot serve the public
21 without either an exemption from DCS regulation or a
22 Certificate of Public Convenience and Necessity.
23 Therefore, at this time, the DPU recommends the
24 Commission issue Bridge Hollow Water Association a
25 certificate.

26

1 The DPU further recommends that the
2 current rates be adopted as interim rates. These
3 rates are as follows: \$1,500 per connection, \$165
4 per quarter for all water users, and \$120 per quarter
5 for all stand-by customers.

6 Although these rates do not seem to
7 provide a reasonable rate of return, with these rates
8 the company has been able to meet its needs and
9 maintain running the system for its users.

10 Late Friday, the DPU received certain
11 information from Mr. Fluckiger addressing rates for
12 an unimproved area affected by Bridge Hollow. These
13 rates were not in the financials previously received
14 by the Division and appear to have never been
15 collected. Thus, this information was not taken into
16 account in the Division's recommendation. At this
17 point, the Division is recommending the interim rates
18 and will explore further the information provided
19 Friday.

20 The DPU would like to add that the
21 company, specifically Mr. Duane Fluckiger, have been
22 very cooperative and patient with the DPU in this
23 process and is doing a good job running the system
24 despite the unresolved issues.

25 Q. Thank you.

26

1 MS. SCHMID: Mr. Moio is now available for
2 questions.

3 JUDGE GOODWILL: Mr. Barker, any questions
4 of Mr. Moio?

5 MR. BARKER: I don't believe so.

6 I don't have the information he got
7 Friday. If I could get a copy of that, that would be
8 helpful.

9 MS. SCHMID: We'll make that available.

10 JUDGE GOODWILL: Okay. Mr. Brown, any
11 questions?

12 MR. BROWN: Not at this time. I would
13 like to possibly ask him some questions later.

14 JUDGE GOODWILL: Okay. Mr. Fitts?

15 MR. FITTS: No questions. But along with
16 Mr. Barker, I don't have a copy of the information
17 that was provided to Mr. Moio.

18 JUDGE GOODWILL: We'll get that for you.

19 Mr. Moio, you mentioned during your
20 summary \$165 per quarter fee for water use. In the
21 memorandum that's now been marked as Exhibit 2 and
22 admitted, that was listed as 160.

23 Is it, in fact, 165?

24 MR. MOIO: It is 165. That is a typo.

25 The 165 was the number used in the
26

1 analysis.

2 JUDGE GOODWILL: And I take that's just a
3 flat water usage few, unlike tiered rates and so
4 forth?

5 MR. MOIO: Correct. Correct.

6 JUDGE GOODWILL: Just regarding the matter
7 of the certificate for Bridge Hollow, I take it,
8 given the years that the company has been in
9 operation, it's your understanding that the company
10 possesses all required permits, franchise, et cetera?

11 MR. MOIO: That's my understanding.

12 JUDGE GOODWILL: And there is no other
13 utility service providing culinary water service to
14 the area served by Bridge Hollow?

15 MR. MOIO: There is a water company
16 nearby, but they would be unable to provide water to
17 the Bridge Hollow users. They wouldn't have
18 capacity. That would be Wanship.

19 JUDGE GOODWILL: Okay. I'm not sure in
20 any of the documentation that I received throughout
21 this docket that we have a good description, physical
22 description, of the area served by the water company.

23 Could you just, for the record, state to
24 the best of your ability its location, by city area
25 or otherwise, or point to me if we have anything

26

1 better.

2 MR. MOIO: The only thing that I was
3 provided was a plat map of the lots in the area.

4 JUDGE GOODWILL: Okay. Why don't we --
5 now it's my understanding that it's in Summit County;
6 is that correct?

7 MR. MOIO: Yes.

8 JUDGE GOODWILL: And I'm sure we can turn
9 to somebody from the company or otherwise in the
10 hearing to get a better description. But if you've
11 got a plat map, why don't we make that available as
12 an exhibit as well. If we could get some copies and
13 when you're ready, go ahead and we'll look to make
14 that a DPU exhibit.

15 MR. MOIO: Thank you.

16 JUDGE GOODWILL: And I guess, finally, the
17 Division is recommending that the current rates, the
18 water user rates, stand-by fee, connection fee, be
19 approved on an interim basis.

20 Is that, in the Division's mind, interim
21 until the ownership issues are resolved in some other
22 forum; is that what you mean?

23 MR. MOIO: Yes.

24 JUDGE GOODWILL: And these are the only
25 three rates that the company currently charges, other

26

1 than the ones you said you became aware of on Friday?

2 MR. MOIO: Yes.

3 JUDGE GOODWILL: All right. Anything
4 further, Ms. Schmid?

5 MS. SCHMID: Nothing from the Division.

6 JUDGE GOODWILL: Okay. I'll turn to Mr.
7 Barker.

8 Any evidence or witnesses you would like
9 to provide?

10 MR. BARKER: No. I don't believe so.

11 JUDGE GOODWILL: I would like to, for the
12 record, maybe we can do so through Mr. Fluckiger,
13 just get a better understanding of the location of
14 the water company, a description, either by
15 subdivision, city, et cetera. Just so that we have
16 that on the record.

17 I'm not sure that that's been provided in
18 some of the documentation that I have received. I'm
19 sure it might be somewhere, but if we could just do
20 that.

21 MR. BARKER: Duane could probably help
22 with that.

23 JUDGE GOODWILL: Sir, if you'll just
24 please stand and raise your right hand. I'll swear
25 you in and then I'll get that information from you.

26

1 DUANE FLUCKIGER,
2 called as a witness, being first duly sworn,
3 was examined and testified as follows:
4

5 JUDGE GOODWILL: Okay. Mr. Barker, if you
6 don't mind, I'll just ask him a few questions?

7 MR. BARKER: That's fine.

8 JUDGE GOODWILL: Mr. Fluckiger, if you'll
9 just please state your name and position with the
10 company and so forth for the record.

11 THE WITNESS: My name is Duane Fluckiger.
12 I'm a resident of the Bridge Hollow subdivision in
13 Summit County that we're talking about.

14 JUDGE GOODWILL: And your position with
15 the water company is?

16 THE WITNESS: Bridge Hollow Water
17 Association. I'm the president at the present time
18 of that association.

19 JUDGE GOODWILL: Well, to some degree
20 you've just answered my question.

21 The Bridge Hollow Water Association serves
22 the Bridge Hollow subdivision?

23 THE WITNESS: Yes, sir. The Bridge Hollow
24 Water Association serves water to the Bridge Hollow
25 subdivision, which is located in Summit County, right
26

1 off SR -- Highway SR 32, right close to exit 155 of
2 I-80.

3 JUDGE GOODWILL: Okay. Thanks.

4 THE WITNESS: I believe it's I-80.

5 JUDGE GOODWILL: And the Water Association
6 does not serve any areas outside of that subdivision?

7 THE WITNESS: There is three lots that are
8 within a block of Bridge Hollow, and there are three
9 connected lots within one block of the Bridge Hollow
10 subdivision that is being served by the Bridge Hollow
11 Water Association.

12 JUDGE GOODWILL: Great. Thank you very
13 much.

14 Please go ahead and be seated.

15 Does anybody have any questions for Mr.
16 Fluckiger based on my questions?

17 MR. FITTS: Yes.

18 JUDGE GOODWILL: Mr. Fitts, go ahead.

19 BY MR. FITTS:

20 Q. You made reference to the three lots
21 outside.

22 Is Deer Haven, Lot Number 1, one of those
23 lots that is not connected but it's intended to be
24 served by the Water Association?

25 A. No, sir. Deer Haven Lot 1 is within the
26

1 boundaries of the Bridge Hollow subdivision.

2 Q. And that's included in the lots that you
3 were referring to as being serviced by the Water
4 Association?

5 A. Yes, sir.

6 Q. Thank you.

7 One other question, if I might.

8 I'm looking at your letter of
9 January 19th, 2007 that was just provided to us.
10 This is the information you provided the Commission
11 last Friday. You make reference to lots in the
12 Surrey Ridge subdivision.

13 Are those also intended to be serviced by
14 the Water Association?

15 A. No, sir. There is no lots inside the
16 Surrey Ridge subdivision. It's one 1,000 acre piece
17 of ground, undeveloped and unrecorded right now.

18 Q. So it's your understanding -- well, it's
19 your testimony that no lots at all have been approved
20 yet for the Surrey Ridge subdivision?

21 A. That is correct.

22 Q. But the Surrey Ridge property that you're
23 talking about, that is intended to be serviced by the
24 Water Association; is that correct? Once it's
25 approved and developed.

26

1 It's within the service area; is that
2 correct?

3 A. Only if it's voted in. Right now it is
4 not. No.

5 JUDGE GOODWILL: Mr. Barker?

6 MR. BARKER: I think that's part of the
7 dispute. I mean, it was, at least initially when the
8 organizational documents were set up, intended to be
9 serviced. Part of what the conflict has been is, did
10 the Surrey Ridge successors and interests do
11 everything they were supposed to do. And if they
12 didn't, are they entitled to still be in that water
13 system. I think that's part of the issue.

14 But initially it was.

15 MR. FITTS: Okay. That's what I was
16 getting at. That is part of that dispute that
17 hopefully we're getting very close to resolving.
18 It's my understanding that that's outside the
19 jurisdiction and scope of this hearing today. So
20 I'll conclude my questioning at that.

21 JUDGE GOODWILL: All right. Mr. Moio,
22 what's the Division's understanding with respect to
23 the service territory that's been discussed here? Is
24 the Division recommending, for instance, that the
25 interim rates be established and a certificate be

26

1 issued just for the Bridge Hollow subdivision and
2 those three additional lots that Mr. Fluckiger
3 referred to? Or would it include Surrey Ridge at
4 this time?

5 MR. MOIO: The Division's recommendation
6 just includes those current users.

7 JUDGE GOODWILL: Okay.

8 MR. MOIO: And those current lots within
9 Bridge Hollow.

10 It does not include Surrey Ridge.

11 JUDGE GOODWILL: And do you have the plat
12 map that you earlier discussed?

13 MR. MOIO: Yes.

14 JUDGE GOODWILL: Do we have copies of that
15 available?

16 MS. SCHMID: May I circulate this?

17 JUDGE GOODWILL: Sure.

18 MS. SCHMID: Judge Goodwill, would you
19 like the Division to seek admission of this?

20 JUDGE GOODWILL: Yeah. I'll go ahead and
21 mark it for identification as DPU Exhibit 3.

22 And I'll just briefly describe it. It
23 appears to be a plat map of the Bridge Hollow
24 subdivision.

25 Mr. Fluckiger, do you have a copy of this?

26

1 MR. FLUCKIGER: Yes, sir.

2 JUDGE GOODWILL: It's my understanding
3 then, based on your testimony, that the service
4 territory at issue here today would be that that's
5 displayed on this plat map, plus three additional
6 lots that are nearby or adjacent to this plat, to
7 what's platted here?

8 MR. BARKER: This may not have Deer Haven
9 on it.

10 MR. FLUCKIGER: If you look in the corner,
11 there is a note that says, "Deer Haven 1 through 6."

12 JUDGE GOODWILL: Down in the bottom
13 right-hand corner?

14 MR. FLUCKIGER: Yes. That is also part of
15 this same subdivision, which makes up a total of 40
16 lots.

17 JUDGE GOODWILL: Okay. Plus the three
18 additional lots you mentioned earlier?

19 MR. FLUCKIGER: That is correct.

20 JUDGE GOODWILL: And where would they be
21 located in reference to what's shown here?

22 MR. FLUCKIGER: Okay. You go down to
23 where it says, "Entrance, Highway 32."

24 JUDGE GOODWILL: That's at the top of the
25 plat?

26

1 MR. FLUCKIGER: That's at the top.

2 If you go within -- approximately -- just
3 off about where the entrance is and go straight
4 towards the edge of the paper, they're just across
5 that road, really close to the road. There is three
6 there.

7 JUDGE GOODWILL: Across what's marked
8 "Highway Alternate 32," you mean?

9 MR. FLUCKIGER: That is correct. Just go
10 across the highway -- if you extend that line on the
11 highway, just go right across there, there is three
12 lots there.

13 JUDGE GOODWILL: Thank you. That's
14 helpful.

15 Is there any objection to the admission of
16 DPU Exhibit 3 into evidence?

17 (No verbal response.)

18 JUDGE GOODWILL: Okay. We'll go ahead and
19 admit it.

20 (DPU EXHIBIT-3 WAS MARKED AND ADMITTED.)

21 MR. FITTS: If I might, in connection with
22 this, it might be helpful to have this January 19th
23 letter also admitted as an exhibit. I know the
24 Commission is going to be considering that
25 information, but I think it does bear -- shed some
26

1 light on Exhibit Number 3 with respect to what maybe
2 considered within the service area. And it also
3 pertains to the rates that we're talking about today.

4 MS. SCHMID: I would comment that I
5 believe that this was explained more by Mr. Fluckiger
6 and it must be considered in that context. And also
7 in the context of information provided by Mr. Moio.

8 But the letter itself states what it
9 states.

10 JUDGE GOODWILL: Is there any objection to
11 the admission of the letter?

12 MS. SCHMID: No.

13 JUDGE GOODWILL: I'm not sure if everybody
14 has copies of that letter at this point? January
15 19th letter?

16 MR. BROWN: Patricia handed them out.

17 MR. FITTS: And we do submit it and
18 request it be admitted with the understanding of the
19 explanation from Mr. Fluckiger and the comments he
20 made in that respect. We understand that as well.

21 JUDGE GOODWILL: All right. And since Mr.
22 Fitts is offering it, we'll just mark it as Tebbs
23 Exhibit 1 for identification.

24 And is there any objection then to its
25 admission?

26

1 (No verbal response.)

2 JUDGE GOODWILL: Okay. We'll go ahead and
3 admit it as such.

4 (TEBBS EXHIBIT-1 WAS MARKED AND ADMITTED.)

5 JUDGE GOODWILL: Ms. Schmid, anything
6 further from the Division?

7 MS. SCHMID: Nothing from the Division.

8 JUDGE GOODWILL: Okay. And Mr. Barker,
9 you had nothing that you wanted to admit.

10 Mr. Brown?

11 MR. BROWN: I'm an intervener. The others
12 are principals. Have they had an opportunity? I
13 would like to hear what they have to say first.

14 JUDGE GOODWILL: Right. I apologize.

15 Mr. Fitts, do you have any evidence or
16 testimony you would like to provide?

17 MR. FITTS: We have nothing further. And
18 we're in agreement with the recommendation as set
19 forth on the first page of Exhibit Number 2.

20 JUDGE GOODWILL: Thanks.

21 Mr. Brown, any evidence or testimony that
22 you would like to provide this morning?

23 MR. BROWN: Yes. I do.

24 JUDGE GOODWILL: In the form of you
25 testifying; is that what you would like to do?

26

1 MR. BROWN: I would like to make some
2 opening remarks. You may consider that testimony, if
3 you would like.

4 JUDGE GOODWILL: Why don't we do that.

5 If you'll just please stand and raise your
6 right hand, I'll go ahead and swear you in.

7

8 LEE R. BROWN,

9 called as a witness, being first duly sworn,
10 was examined and testified as follows:

11

12 JUDGE GOODWILL: Thank you.

13 Go ahead, sir.

14 MR. BROWN: This is my wife, Sheila, here,
15 the other intervening party.

16 Lee R. and Sheila Brown appear today as
17 pro se interveners representing their interests and
18 those of similarly situated lot owners of Bridge
19 Hollow Homeowners Association and shareholders of
20 Bridge Hollow Water Association. We submitted the
21 Petition for Hearing and Final Order on May 20th,
22 2006 requesting this proceeding.

23 The petition outlines the procedural
24 history and factual background of conflicts between
25 the shareholders up to that day. These conflicts, as

26

1 documented by correspondence, has resulted in the
2 recent DPU recommendation that Bridge Hollow Water
3 Association be issued a Certificate of Convenience
4 and Necessity because, as the DPU thus stated in
5 their January 18th, 2007 memorandum, "the unclear
6 status of the control of assets and voting rights."

7 My wife and I filed the petition 22 months
8 after the DPU filed their Order to Show Cause why
9 Bridge Hollow Water Association should not be
10 regulated as a utility. The petition is
11 approximately 280 pages. And today, nearly eight
12 months since it was filed, no party to this
13 proceeding has filed a rebuttal or challenged its
14 authenticity.

15 I respectfully request that our Petition
16 for Hearing and Final Order, filed May 20th, 2006, be
17 made part of the permanent record of this proceeding.
18 Granting this request will allow me to avoid reading
19 the entire document into the record. All parties to
20 this proceeding have been given copies of this
21 petition.

22 Up to this time, we believe it is the most
23 complete and accurate account of the issues before
24 the Commission. We ask that you read it carefully
25 and consider our remarks, conclusions and

26

1 recommendation when deliberating the outcome of this
2 hearing today.

3 I would like to read the summation of that
4 document now as a point of reference for beginning
5 the hearing today.

6 "On July 27th, 2004, the Division of
7 Public Utilities filed its petition with the
8 Commission for an Order to Show Cause why Bridge
9 Hollow Water Association should not be fined \$2,000
10 per day for each day that the company has operated as
11 a private water utility, delivering culinary water to
12 customers without Commission authority required by
13 statute, and why its named officers, John Tebbs and
14 Duane Fluckiger, should not face the criminal
15 sanctions provided by statute in Public Service
16 Commission Docket Number 04-2437-01. This proceeding
17 has uncovered serious ongoing and existing problems
18 with Bridge Hollow Water Association that the
19 Commission must now address.

20 "1. Bridge Hollow Water Association has
21 been dominated and controlled by developers that have
22 operated the Water Association in their own interests
23 rather than the interest of shareholders, as required
24 in the Articles of Incorporation, dated November
25 14th, 1994.

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1 "2. The developers have issued more stock
2 shares, estimated to be 83, than water rights owned,
3 74-acre feet. Both Article V, of the Articles of
4 Incorporation, and Article 4.2 of the bylaws require
5 that stock be issued on the basis of one acre foot of
6 water right per one share of stock. The developers,
7 Surrey Ridge, issued themselves shares of stock in
8 1994 with knowledge that the \$150,000 consideration
9 for water service connection and funds required to
10 develop the water system was still owing. Tebbs
11 denies they owe the remaining \$150,000, but has
12 failed to bring forth evidence of payment that they
13 claim they have in the records, as per their February
14 19th, 2003 letter to Bridge Hollow Water Association
15 officers. The \$150,000 is still owed today, as
16 evidenced by the record and affidavits of former
17 Bridge Hollow Water Association and Bridge Hollow
18 Homeowners Association officers."

19 These documents are contained as exhibits
20 in this petition.

21 "These are continuing violations of the
22 Articles of Incorporation. Specifically, Article V:
23 Shares, states in part, 'The corporation shall be
24 owned by its shareholders. The corporation is not a
25 public utility and is not prepared, able or legally
26

1 empowered to serve persons other than its
2 shareholders. The number of shares shall not be
3 fixed, but the aggregate number of shares of stock,
4 which the corporation shall have authority to issue,
5 shall be limited to one share for each acre foot of
6 water rights owned by the corporation.' Furthermore,
7 it states, 'Stock in the corporation shall be issued
8 to the persons entitled to receive stock upon payment
9 of all connection fees, assessments and other charges
10 as established by the bylaws and regulations of the
11 corporation.' Later, the Article states, 'The owner
12 of each share of stock is entitled to one vote for
13 each share of stock he or she owns on all matters
14 presented to shareholders for approval.'"

15 And I want to emphasize, "'No vote will be
16 accepted on shares that are delinquent on any
17 assessment.' Articles 3.7 through 3.10 of the bylaws
18 require that voting be conducted on the basis of
19 validity of shareholder rights. Legitimate and valid
20 voting is not possible until Bridge Hollow Water
21 Association corrects the chaos and confusion related
22 to the shareholder stock ownership. This can best be
23 accomplished by having the current Bridge Hollow
24 Water Association Board of Directors adopt and
25 implement the new Articles of Incorporation and

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1 bylaws adopted at the most recent shareholders'
2 meeting."

3 That was the shareholders' meeting
4 conducted October 29th, 2005.

5 "The Board also voted to reissue
6 shareholder stock certificates in this matter. These
7 corrective actions are currently on hold due to
8 threats by Tebbs, the developer. Correcting the
9 stock records of this association is the single most
10 important matter for the Commission to address.

11 "3. The recorded history of the developer
12 and the Bridge Hollow Water Association members
13 clearly shows that the developers successfully
14 increased the burden on shareholders, while avoiding
15 their responsibilities to complete the construction
16 of the water system for over three years. Desperate
17 lot owners were required to renegotiate terms of the
18 development agreement and enter into an agreement
19 November 11th, 1997 that required shareholders to pay
20 unnecessary costs originally intended for the
21 developers.

22 "Note: This is a continuing dispute as to
23 whether the Tebbs-controlled Bridge Hollow Water
24 Association Board at that time accepted a well that
25 did not meet the requirements of 85 GPM and adequate
26

1 water for a minimum of 74 residential connections.

2 "Duane Fluckiger sent his representative
3 to contact Aqua Engineering to inquire into the tests
4 conducted on the Bridge Hollow Water Association
5 well. The informal report that is attached created
6 deep concerns that the well cannot provide water to
7 more than 24 lots. Indications are that the well
8 cannot support an additional 24 lots proposed by
9 Tebbs, unless the current residents were restricted
10 to one half acre foot of water for indoor use only."

11 You can reference off of the October 27th,
12 2005 Bridge Hollow Water notes by David Lyman.

13 MR. FITTS: Your Honor, if I might -- and
14 I apologize for interrupting. But I believe we have
15 an objection to the course that this is going.

16 It's my understanding that the scope of
17 this hearing -- that all of this is way beyond the
18 scope of this hearing and the jurisdiction of the
19 Commission. It deals with matters that we would have
20 to be here for days on an evidentiary hearing to deal
21 with. And that these are matters that the State, and
22 we agree, are matters to be resolved in the courts or
23 through a settlement, which we believe we are on the
24 verge of completing.

25 It might be helpful if we have some
26

1 direction as to what is and is not the scope of this.
2 If we're going to be dealing with these issues, which
3 we believed were outside the scope of the
4 Commission's jurisdiction, and I'm not sure that is
5 what we anticipated addressing today. And we
6 understand that that's been in the petition. It's
7 part of the docket. But it's our understanding that
8 those are outside of the scope of what we're doing
9 here today.

10 MR. BROWN: Judge, I would just like to
11 comment.

12 The Division of Public Utilities has
13 already determined that Bridge Hollow Water
14 Association meets nearly all of the requirements to
15 be an exempt Mutual Water Association, with the
16 exception of the confusion of problems dealing with
17 the issuance of stock and voter rights.

18 My petition, and portions of that petition
19 that I am reading right now, go directly to that
20 issue.

21 MR. FITTS: And I might be able to clarify
22 that.

23 The one issue that it comes down to, it
24 appears, with the Commission's concerns is on having
25 a total commonality in voting. And we are in
26

1 complete agreement to have total commonality through
2 having a revision to the bylaws where each individual
3 or entity owner, regardless of the number of shares
4 or lots, would have just one vote. We're in
5 agreement with that.

6 This history of how many gallons per
7 minute and what prior development agreements were, we
8 don't really have the developer who originated this
9 here as a party. It seems we're going to get into a
10 real quagmire here that we didn't anticipate would be
11 part of the scope of this, it being outside the
12 jurisdiction of the Commission, in determining the
13 contractual rights and adjudicating those issues of
14 stock ownership and those types of things.

15 But as far as this proceeding is
16 concerned, we are in agreement, at least my clients
17 are in agreement, to have a revision to the bylaws
18 that provides that total commonality, one vote for
19 each owner of shares, and including all affiliated or
20 related or controlled entities. There would only be
21 one vote, regardless of how many shares were owned or
22 how many lots owned.

23 MR. BROWN: Judge, may I respond?

24 JUDGE GOODWILL: Sure. And then we'll
25 give Ms. Schmid an opportunity as well.

26

1 MR. BROWN: I would like to point out once
2 again, I'm not asking you to resolve any contractual
3 disputes between the developers or the developer's
4 successors. I'm merely asking the parties to listen
5 to that portion of the petition, which was filed over
6 eight months ago, no objections have been made to
7 this petition or the facts that are there, part of my
8 opening remarks, in order to set the stage for
9 questioning. And the focus of which, my
10 presentation, is to look at the Division's
11 recommendation that this mutual water company should
12 be given Certificate of Public Necessity and
13 Convenience and whether or not that is the correct
14 decision given the facts pertaining to this case.

15 So I would like to complete my
16 presentation. It's not too much longer. And then
17 move forward with questioning of the witnesses.

18 MR. FITTS: And we would simply lodge an
19 objection to all of this statement and petition in
20 its entirety as being outside the scope of the issues
21 and the jurisdiction of the Commission. It deals
22 with contractual issues, whether or not parties are
23 or are not delinquent, whether or not payments have
24 been made, contractual issues. And we would simply
25 object to the statement in its entirety.

26

1 MS. SCHMID: The Division does not have a
2 problem with Mr. Brown finishing his opening
3 statement. But the Division would like to note that
4 the Public Service Commission is a creature of --
5 created by the Legislature. And has only the power
6 that was delegated to it through that creation. The
7 jurisdiction of the Commission is limited to what is
8 uniquely within the scope of public utility
9 regulation. That frequently has been construed by
10 the courts. There is a long line of cases with
11 convoluted and complex facts where the parties
12 involved are High Country Estates, Homeowners
13 Association and & Company, in which the limited
14 jurisdiction of the Commission was discussed at
15 length. Certain decisions in this line have been
16 changed and altered, but the guidance that the
17 Supreme Court gives, I think, is pertinent to the
18 limitation of jurisdiction.

19 The Division is prepared to go forward
20 with that in more detail at an appropriate time.

21 The Division would also like to note that
22 Mr. Brown -- what I heard Mr. Brown say is that no
23 one has responded to his petition. The Division, in
24 its admitted DPU Exhibit 1, did respond to that and
25 did address jurisdictional concerns.

26

1 Thank you.

2 JUDGE GOODWILL: Mr. Brown, I guess just
3 to clarify the record, first of all I'll just note
4 that the summation you've been reading began on page
5 ten of your petition that was filed on April 27th,
6 2006. And I believe you were up to about page 14
7 when Mr. Fitts objected.

8 I'll note also that your petition
9 concludes by requesting that the Commission conduct a
10 hearing and direct Bridge Hollow Water Association to
11 complete the required tasks for exemption. So it's
12 my understanding that that was what you sought in
13 filing this petition and its associated exhibits.

14 You just mentioned, though, in response to
15 Mr. Fitts, that you are not seeking the Commission
16 determination of essentially the ownership issues
17 that are at issue or have been at issue or put before
18 the Commission these past two plus years. And in
19 considering Mr. Fitts' objection, I'm just curious as
20 to -- I'm still not sure where you are going, I
21 guess, today here in the hearing, what you would like
22 to present and what you would like the Commission to
23 do.

24 If you could just state that, it might
25 help me.

26

1 MR. BROWN: The petition was filed eight
2 months ago and the recommendation of this petition,
3 Request for Final Order and Hearing, was that to
4 understand the confusion that has existed within this
5 company -- and I've just tried to outline briefly
6 some of the confusion, the conflicts between the
7 parties -- that has led the Division of Public
8 Utilities to come to the conclusion that today, their
9 analysis today of this company, is that it's a well
10 run little company with the exception of the fact
11 that there are problems with the issuance of stock
12 and voting rights. And if that's the reason that the
13 DPU is willing to not exempt this little water
14 company, mutual water company, from regulation, I
15 think that this proceeding has to consider those
16 facts and determine if the Division of Public
17 Utilities' recommendation is justified. Or if there
18 is an opportunity for this company, as it exists
19 today and perhaps facts that the Division of Public
20 Utilities is unaware of, would convince them to
21 change their recommendation. And I would hope to do
22 that today.

23 And I would hope to set the stage for my
24 presentation by just merely going back and describing
25 the problems that resulted in the stock issuance
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1 concerns and voting right concerns that the Division
2 of Public Utilities has determined are the
3 difficulties they have with allowing this company to
4 continue to be exempt.

5 And if I'm allowed to proceed, I will do
6 that.

7 JUDGE GOODWILL: So you are not
8 challenging the Division's recommendation that the
9 company be regulated?

10 MR. BROWN: In fact, given the outcome --
11 I came to this hearing as an intervening party with
12 the idea that I would be open to what was discussed
13 and what facts were brought to evidence here with the
14 idea that I may support the DPU's recommendation.

15 Eight months ago I was convinced that this
16 water company, if given an opportunity, may very well
17 be able to reach the standards that the Division has
18 set for exemption. However, if they are unwilling to
19 do that, and that's what we are here to determine,
20 then perhaps they should be regulated in order to
21 protect all of the shareholders and customers of this
22 company.

23 JUDGE GOODWILL: I guess I keep coming
24 back to the fundamental question, though, of are you
25 here today to seek a Commission determination as to
26

1 who owns the water company?

2 MR. BROWN: No.

3 JUDGE GOODWILL: Okay.

4 MR. BROWN: As the Division of Public
5 Utilities' indicated, they feel like that's outside
6 their purview and I accept that.

7 JUDGE GOODWILL: So your intent in reading
8 this summary and putting it before the Commission is
9 simply to have on record your view of the history
10 that has brought us here?

11 MR. BROWN: Yes. And that's why I ask
12 that the entire Request for Petition be accepted on
13 this record. If a formal request is that it be
14 submitted as an exhibit, then that would be my
15 request, that the entire petition and the facts that
16 are outlined here, which are simply documents between
17 the parties that has resulted in the impression on
18 the part of the Division of Public Utilities that
19 stock ownership is confusing and voting rights are
20 confusing, and if those things were corrected, as I
21 understand the Division's reasoning in their
22 January 18th paper, they would probably find this
23 water company eligible for exemption from regulation.
24 But haven't had an opportunity to put that question
25 to the Division's witness, which I intend to do

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1 later, after I get through my opening statement.

2 JUDGE GOODWILL: Okay. Mr. Fitts, you
3 look like you were wanting to say something?

4 MR. FITTS: Well, in response to that,
5 your Honor, our view is that much of what we've been
6 hearing goes to who owns the water company and the
7 shares and how many shares. It's our view that we're
8 in agreement with the recommendation that the
9 company -- that the Water Association be regulated.
10 We have no problem with moving forward and exploring
11 the possibility of an exemption. And our
12 understanding is the only issue that remains with
13 respect to an exemption is whether or not we can find
14 a solution to have total commonality among the
15 distribution of the voting rights.

16 The wrong number of ownership of shares,
17 the wrong number of stock held by particular
18 individuals, those things really are not all that
19 relevant to resolving that issue. The issue is how
20 are the voting rights distributed. And again, our
21 view, and we proposed this from my clients, is there
22 be total commonality in the form of one vote per
23 individual shareholder or group of affiliated
24 companies regardless of the number of lots and
25 regardless of the number of shares held. We believe

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1 that's the simple solution to this.

2 And our concern in having -- I think we
3 can all stipulate there has been a lot of dispute as
4 to ownership issues and whether or not various
5 parties have reached contracts. But our view is that
6 all of that is totally irrelevant to the issue of
7 whether or not there is, in fact, total commonality
8 of distribution of voting rights now. And if not,
9 leave that to the Water Association to be able to
10 resolve and be regulated until such time as that is
11 resolved. And we have no objection to the regulation
12 of the Water Association. But we do object to having
13 a long diatribe here and extensive evidentiary
14 handling of issues that really are irrelevant to that
15 particular issue of whether or not there should be
16 regulation now and whether or not the parties can
17 move forward to distribute the voting rights or
18 resolve those voting issues to be able to comply and
19 satisfy an Application for Exemption.

20 Our position is we're willing to agree to
21 an amendment to the bylaws that would give that total
22 commonality. And if there is an issue to be
23 addressed further, that would be the issue is whether
24 or not the remaining parties are willing to agree to
25 that commonality of interest. Because that appears

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1 to be the only real issue is whether or not we can
2 achieve that in order to have -- to qualify for an
3 exemption.

4 JUDGE GOODWILL: Okay. What I would like
5 to do is -- Mr. Brown, you may go ahead and conclude
6 your summary.

7 To the extent that's required for
8 proceedings here today, however, I am going to go
9 ahead and deny the request that you laid out in your
10 petition as it does appear that it is a separate
11 issue.

12 And the one we're here today to discuss is
13 whether or not the company should be regulated as it
14 currently stands. Now that does not mean that at
15 some later date -- you're not prohibited from
16 renewing your petition or the company is not
17 prohibited from ever coming back and seeking
18 exemption from regulation as a result of today's
19 hearing. It simply means that to clear things up
20 procedurally with respect to this docket, we will not
21 be entertaining any argument or evidence that would
22 go toward requiring the company to do anything to
23 complete any exempt status, if you will, or to
24 qualify for any exempt status. I do think that goes
25 to issues of ownership of the company, which are
26

1 outside of the Commission's jurisdiction. That I
2 agree with the Division and that is how we will
3 proceed.

4 However, I certainly want to give you the
5 opportunity to finish your summary and present any
6 evidence you feel relevant to the issue of regulation
7 of this company as it stands. And I understand that
8 may well go into your view of the current ownership
9 status of this company. I think that's fine. We may
10 or may not need to address that as you go through
11 your evidence on issues of relevancy.

12 But for now, please continue.

13 Well, let's go off the record for a
14 moment.

15 (Break taken at 10:23 to 10:29 a.m.)

16 JUDGE GOODWILL: Back on the record.

17 I apologize for the interruption, Mr.
18 Brown. Please continue.

19 MR. BROWN: Not exactly sure where my
20 place was, but I'm going to start on the same page.

21 "Note: There is a continuing dispute as
22 to whether the Tebbs-controlled Bridge Hollow Water
23 Association Board accepted a well that did not meet
24 the requirements of 85 GPM and adequate water for a
25 minimum of 74 residential connections. Duane

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1 Fluckiger sent his representative to contact Aqua
2 Engineering to inquire into the tests conducted on
3 the Bridge Hollow Water Association well. The
4 informal report that is attached created deep
5 concerns that the well cannot provide water for more
6 than 24 lots. Indications are that the well cannot
7 support an additional 24 lots proposed by Tebbs,
8 unless the current residents were restricted to one
9 half acre foot of water for indoor use only. This
10 report resulted in Duane Fluckiger filing his first
11 set of data request for Tebbs that Tebbs as refused
12 to answer."

13 Let me note that the answer to that was
14 forthcoming as a result of technical conferences with
15 the Division of Public Utilities.

16 "4. The facts reveal there are incomplete
17 and incorrect records of shares of stock ownership.
18 Stock certificates are improperly issued to persons
19 outside the service area, to non-lot owners and to
20 former lot owners in violation of the Articles of
21 Incorporation and bylaws. Reference answers to
22 Brown's data request by both Tebbs and Fluckiger.
23 Some current lot owners have not been issued their
24 share of stock because of the confusion existing over
25 what stock is current and available to be issued with
26

1 the lot purchase.

2 "5. The Articles of Incorporation and
3 bylaws require uniformity in assessments and rates
4 among shareholders. However, on December 18th, 1998,
5 the Tebbs-dominated Board gave Tebbs a reduction in
6 the original established uniform water assessment
7 that had existed for four years. They reduced their
8 original assessment from \$120 per month, per lot to
9 \$40 per month, per lot. Thus transferring the burden
10 of financing the operation and maintenance to the
11 shareholders. The original assessment had been
12 established since December 1994 and considered to be
13 the uniform assessment for shareholders that were
14 either connected or unconnected to the water system."

15 Reference the December 1994 Bridge Hollow
16 Association Board minutes and the December 1998
17 Bridge Hollow Board minutes in Exhibit 16 of this
18 petition.

19 "Tebbs created their own category, titled
20 "Undeveloped." Such action was not in the authority
21 of the Tebbs-controlled Board. While Article X of
22 the Articles of Incorporation allow the Board to set
23 rates, Article XI, Assessments, states in part, 'All
24 shares shall be assessed to meet their proportionate
25 share of annual fixed costs of the operation and

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1 maintenance of the water system. Shares actually
2 receiving water service from the corporation may be
3 assessed to pay both their proportionate share of the
4 fixed costs, plus the variable costs of operation and
5 maintenance related to water consumption.' The
6 assessment for variable costs may take the form of a
7 uniform assessment of periodic water charges based on
8 water usage as determined by meters where such
9 combination as the directors may determine from time
10 to time.

11 "Article 7.3 of the bylaws states in part,
12 'The amount of the assessment or fixed costs or costs
13 independent of the amount of water actually used
14 shall be uniform for all outstanding shares of stock
15 of the association.'

16 "Article 7.4, Special Assessments, states
17 in part, 'Any such special assessment must be
18 approved by the shareholders at a meeting of the
19 shareholders called for such purpose in the manner
20 and with the appropriate notice as specified in the
21 bylaws.'

22 "My research reveals that Bridge Hollow
23 Water Association, to qualify for a letter of
24 exemption, must make application to DPU, must be in
25 good standing with the Division of Corporations, must
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1 have an approved rating from the Division of Drinking
2 Water and must be run by members as a non-profit
3 corporation that can supply water only to its members
4 who must own a lot in Bridge Hollow or Surrey Ridge
5 subdivisions. The company must have sufficient water
6 rights for the needs of its shareholders and the
7 ability to deliver same. No member should be able to
8 control the company. And finally, a commonality of
9 interest shall exist."

10 At that time, I had requested that the
11 Bridge Hollow Water Association be allowed the
12 opportunity to meet these qualifications. Depending
13 upon the outcome of the information that we received
14 in the hearing today, I may in fact change my request
15 to support the Division of Public Utilities'
16 recommendation that Bridge Hollow Water Association
17 be given a Certificate of Public Convenience and
18 Necessity.

19 Little new evidence has been brought forth
20 to date since this petition was filed as a result of
21 the various technical conferences between the
22 parties, except for one critical piece of information
23 that had been withheld by the Surrey Ridge owners and
24 former board members of Bridge Hollow Water
25 Association. It was recently revealed that the

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1 85-gallon-per-minute well that Surrey Ridge was
2 obligated to drill and deliver as per the '94
3 Development Agreement between the parties was not
4 provided as per the agreement and the well only flows
5 40 gallons per minute. This was confirmed when
6 counsel for Tebbs released the October 9th, 2003 memo
7 from Macro Engineering (ph) on August 28th, 2006 as
8 committed in a previous technical conference which
9 was overseen by the Division of Public Utilities.

10 My personal recent conversations with
11 professional water engineers reveals that there is a
12 simple formula: .62 gallons per minute equals one
13 acre foot of water per year. Thus, a
14 40-gallons-per-minute well will provide only 24.8
15 acre feet per year. This is in keeping with
16 Exhibit 15 of our petition, which was the letter that
17 Duane Fluckiger's representative wrote with regard to
18 his visit with Craig Neeley, professional engineer
19 for Aqua Engineering, documenting Mr. Neeley's
20 conclusion that the well was only capable of
21 providing one acre foot per year for the current 24
22 lots in Bridge Hollow.

23 This creates a problem for Bridge Hollow
24 Homeowners Association and Surrey Ridge, and
25 certainly Bridge Hollow Water Association who has 43

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1 lots currently and Surrey Ridge, who is attempting to
2 create yet more. The facts are that Surrey Ridge and
3 Bridge Hollow created Bridge Hollow Water
4 Association. There is clear evidence on the record
5 that Surrey Ridge has not kept its commitments under
6 the '94 Development Agreement and the Articles of
7 Incorporation and bylaws.

8 JUDGE GOODWILL: Just a minute, Mr. Brown.
9 Mr. Fitts has an objection.

10 MR. FITTS: We're, again, getting into --
11 my concern is we have no problem listening to this as
12 a statement of Mr. Brown's position. Our concern is,
13 in the interest of time and the Commission's time,
14 whether or not we're going to be prejudiced by not
15 spending the rest of the day and perhaps another day,
16 tomorrow or whenever the Commission has time, to
17 rebut all this from an evidentiary standpoint.

18 It's our view that these issues again of
19 performance of the well and breach of contract and
20 ownership of the company and those types of issues
21 are not issues that are going to be determined today
22 and resolved today. It's outside the scope of this
23 hearing.

24 With that objection -- if that's the
25 position, and I believe that's what your Honor has

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1 already determined, I would just like to renew that
2 objection and make it clear that we are reserving all
3 rights at a future time in the appropriate forum to
4 rebut and address these items, much of which we are
5 in sharp dispute on.

6 JUDGE GOODWILL: Understood. Thank you.

7 Mr. Brown?

8 MR. BROWN: I was just going to complete
9 my statement. It would take me less time to read my
10 statement than the objections we're hearing.

11 JUDGE GOODWILL: I'll go ahead and allow
12 you to finish your statement, again with the
13 understanding that I've already determined the
14 Commission will not, in this proceeding, address the
15 ownership issues regarding Bridge Hollow except to
16 the extent that is necessary to do so to determine if
17 they may not be eligible for an exemption.

18 MR. FITTS: Your Honor -- I apologize --
19 does that also include that you won't be making any
20 determination as to whether either party has breached
21 any contracts and the performance of the well and
22 those related issues?

23 JUDGE GOODWILL: That is correct.

24 My interest -- and I'll just lay it out.

25 My interest in hearing from Mr. Brown right now is

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1 also with respect to some of the comments he's made
2 regarding the wells. And my interest would be
3 whether or not Bridge Hollow has sufficient water to
4 serve the service territory that's being discussed
5 here today.

6 Go ahead.

7 MR. BROWN: Then I would just like to say
8 that unfortunately, as a result of the research that
9 I've done and the facts that have come to light
10 recently, it appears as though there is a real
11 problem with the ability to deliver more than 24 lots
12 worth of water from a water company that right now
13 has identified 43 lots and a developer that wants to
14 add at least 40 more, depending upon which kind you
15 talk to.

16 But anyway, let me finish. And I think
17 it'll become a little clearer as I move through my
18 presentation and my questions of the witnesses that
19 will be brought forth that there may be a way out of
20 this.

21 Also, the current rates and fees for
22 service are not authorized under these documents.
23 "These documents" being the '94 Development Agreement
24 and the Articles of Incorporation and bylaws. We
25 also take exemption to the DPU recommended rates as
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1 they are not reflective of payments being made now or
2 in the past.

3 I'll withdraw that statement now given the
4 DPU's statement earlier in this proceeding that it
5 misstated the rates of \$165 rather than \$160 for
6 current rates was correct.

7 JUDGE GOODWILL: You are not challenging
8 the interim rates proposed by the Division?

9 MR. BROWN: Well, I need to have a little
10 more understanding of their logic and how they got
11 there. I would like to do that in my
12 cross-examination of Mr. Moio.

13 We hope to convince the DPU and the DSU
14 that the current Bridge Hollow Water Association is
15 capable of taking corrective actions and operating as
16 a Mutual Water Association. If they do not, we will
17 support the DPU recommendations that the PSC issue a
18 Certificate of Public Convenience and Necessity
19 subject to assessment of more appropriate rates.

20 If the current Board of Directors follow
21 through and administer the Amended Articles of
22 Incorporation and bylaws as authorized on October
23 29th, 2005, at the annual meeting of shareholders,
24 the confusion over shareholder interests and voting
25 rights can be corrected. The current Board of
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1 Directors must also follow through and eliminate the
2 discrimination in assessments between water rights of
3 Surrey Ridge and Bridge Hollow Development, as
4 required in Section 6 of the 1994 Development
5 Agreement, and ensure that the amount of the
6 assessment for fixed costs or costs independent of
7 the amount of water actually used shall be uniform
8 for all outstanding shares of stock of the
9 Association.

10 As per Article 7.3 of the current Articles
11 of Incorporation, the act of reducing the annual
12 assessment from 120 to 40 per quarter for the SRR
13 lots, Surrey Ridge lots, by the Tebbs-dominated
14 Board, December 18th, 1998, was a violation of
15 Article 7.3 and was not authorized, as no action to
16 amend the requirements of Article 7.3 was taken, as
17 required by Article II, 2.1 Amendments, that requires
18 "These bylaws may be altered, amended or repealed and
19 new bylaws adopted by the affirmative vote of the
20 majority of the shares represented at the meeting and
21 entitled to vote in any meeting of shareholders
22 called for such purpose or at any annual
23 shareholders' meeting."

24 That concludes my opening remarks.

25 Thank you.

26

1 JUDGE GOODWILL: All right. We do have a
2 little bit of a difficulty, Mr. Brown, given your
3 status as a pro se intervener and trying to
4 differentiate, if you will, between statements that a
5 lawyer might make in an opening statement as an
6 argument, and evidence to be considered by the
7 Commission. And I just want to make clear that -- I
8 wanted to make sure you got your opening statement on
9 the record to the extent that -- well, the Commission
10 will certainly have an opportunity to review
11 everything you said and determine what is relevant to
12 the issues before it here, which is whether or not
13 the company should -- the Bridge Hollow Water
14 Association should be regulated. And if so, what the
15 rates should be.

16 That having been said, I'll turn first to
17 the Division -- and you'll still have an opportunity
18 to present additional evidence and question
19 witnesses, sir. But based on that rather lengthy
20 statement, I wanted to give the other parties an
21 opportunity to question -- give you any questions
22 they might have regarding that statement.

23 Yes, Mr. Barker?

24 MR. BARKER: I should just add I think Lee
25 -- I understand the objections and the various
26

1 disputed facts. The Homeowners Association, I think,
2 would agree, though, with what Lee has submitted and
3 would want that on the record and would agree with
4 his statement. That's not to say there is not some
5 opportunities for settlement and we've got some -- on
6 those issues we have something we haven't been able
7 to discuss because we just got it late Friday. But I
8 think we should go on the record as the Homeowners
9 Association and say we would support that being in
10 the record and we agree with Mr. Brown's
11 characterization of the background.

12 MR. FITTS: And we would just renew our
13 objection on the grounds of relevancy and also
14 reserve our rights fully to have those issues
15 regarding ownership, voting rights, violation
16 agreements, performance of the wells, all of those
17 issues that have been discussed by Mr. Brown reserved
18 to be addressed without prejudice to us and in the
19 proper forum.

20 JUDGE GOODWILL: I think it's safe to say
21 that if the Commission were to disagree with my view
22 of these current proceedings as limited to the issue
23 of issuing a certificate then we would have to come
24 back to hearing. And all parties would have an
25 opportunity to present sufficient evidence and

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1 cross-examination and so forth regarding the specific
2 issue of who owns what and how that affects the
3 operation and regulation of the company.

4 MS. SCHMID: And although perhaps it's
5 rather superfluous at this point, may the Division
6 say something?

7 JUDGE GOODWILL: Sure.

8 MS. SCHMID: The Division believes that
9 the corporate governance issues addressed by Mr.
10 Brown in his opening statement are outside the scope
11 of Commission jurisdiction. To the extent that
12 anything he has said is taken as evidence, the
13 Division would need the ability to cross-examine him
14 on that. And the Division believes that that is
15 beyond the scope of the hearing today, except so far
16 as his statement concerning sufficiency of the well.

17 The Division has an e-mail from the Utah
18 Division of Drinking Water addressing that
19 sufficiency. If this e-mail needs to be
20 authenticated, I do not know if the Drinking Water
21 employee is available to authenticate it. But it was
22 sent to Mr. Moio. And we could put that evidence on
23 the record. That evidence would show that the water
24 well is sufficient to supply over -- slightly over 64
25 shareholders one acre foot each at its current

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1 production rate.

2 JUDGE GOODWILL: You do have a copy of
3 that e-mail you can provide?

4 MS. SCHMID: I have a copy that we can
5 provide to all the parties. It has a couple of
6 handwritten notes that were done by Mr. Moio. So it
7 is not a pristine copy. But the type is as sent by
8 the sender.

9 JUDGE GOODWILL: Why don't we do that.
10 If you can make some copies and we'll pass
11 it out and then address it further.

12 MS. SCHMID: Thank you very much.

13 JUDGE GOODWILL: Based on that, Ms.
14 Schmid, do you have any questions then of Mr. Brown
15 at this point?

16 MS. SCHMID: The Division does not at this
17 point. Again, reflecting the Division's
18 understanding that the issue today is -- the issue
19 before the Commission today addresses solely the
20 issuance of a certificate because the criteria for
21 exemption has not been met.

22 JUDGE GOODWILL: And just to be clear,
23 yes, that's what I have ruled and that's the position
24 I have taken with respect to this hearing.

25 Mr. Barker, do you have any questions for
26

1 Mr. Brown?

2 MR. BARKER: No. I don't believe so.

3 JUDGE GOODWILL: Mr. Fitts?

4 MR. FITTS: No, your Honor.

5 JUDGE GOODWILL: Mr. Brown, do you have
6 further evidence or testimony you would like to
7 provide?

8 MR. BROWN: Yes.

9 Could I ask for a point of clarification?

10 JUDGE GOODWILL: Sure.

11 MR. BROWN: I earlier asked that this
12 Petition for Hearing and Final Order be made part of
13 this record. And not being an attorney, I just
14 wanted to know if my request that when you consider
15 whether or not Bridge Hollow Water Association will
16 be issued a Certificate of Public Convenience and
17 Necessity, you will read this document, the
18 attachments and take those portions of it that go to
19 the issue of the Division's recommendation that the
20 company could be eligible for exemption, except for
21 the unclear status of the control of assets and the
22 voting rights, be part of your determination?

23 JUDGE GOODWILL: Let me say one thing
24 first and then I'll turn to the attorneys for the
25 other parties.

26

1 For the record, to be clear, I have
2 throughout these proceedings reviewed this petition
3 and attached exhibits exhaustively. And it's on that
4 basis, along with other information gained, technical
5 conferences, et cetera, that I agree with Division's
6 position that the ownership of the water company is
7 at this point unclear, undetermined and outside of
8 the competency of this Commission to determine.

9 Having said that, that's a separate issue
10 from whether or not your petition and exhibits should
11 be entered into evidence. And I'll give the
12 attorneys an opportunity to speak to that as well.

13 MS. SCHMID: The Division has no objection
14 to it being admitted as an exhibit. However, the
15 Division would like to, again, reiterate its belief,
16 as confirmed by the Administrative Law Judge,
17 concerning the narrow scope of this hearing. What is
18 before the Commission now is the status of the water
19 company as it speaks, not what could be done to make
20 it exempt. And any actions addressing or ordering
21 the water company to take actions to do that, I
22 believe are more corporate governance and not within
23 the Commission's jurisdiction.

24 Thank you.

25 MR. FITTS: And our response to that would
26

1 be that we had no prior notice that there was an
2 intent to have that exhibit, that document, offered
3 as an evidentiary exhibit. Our same objections that
4 we've made earlier would apply. And we renew those
5 with respect to this particular document. The
6 remainder of the document that has not been read
7 today deals with specific factual matters that are
8 for the most part, as I can tell, hearsay and also
9 irrelevant to the narrow scope of this hearing.

10 And on that basis, we object to it being
11 admitted as an exhibit.

12 JUDGE GOODWILL: Anything from the Company
13 on this?

14 MR. BARKER: I think we would like it to
15 be admitted. I think it ought to be part of the
16 record. It's the basis of what we've been doing for
17 the last number of months really.

18 JUDGE GOODWILL: Mr. Brown, any response
19 to the objection of Mr. Fitts?

20 MR. BROWN: I would just like to point out
21 that all the parties in this room have had eight
22 months to review this, criticize it, object to it and
23 no one has taken the opportunity to do that.

24 MR. BARKER: It's part of the documents.

25 MR. BROWN: The Division, in their letter,
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1 dated May 25th, refers to recommendations, indicate,
2 and I quote, "Mr. Lee Brown, an intervener, has filed
3 a Petition for Hearing and Final Order in this
4 matter. This filing chronologically memorializes the
5 entire history of this matter. There are unresolved
6 issues and discrepancies involving authorization and
7 issuance of stock and shares and corporate
8 governance. These are matters the Division believes
9 cannot be resolved with Commission jurisdiction. The
10 Division is unable to make any recommendations until
11 these corporate issues are resolved in the
12 appropriate court."

13 This document should be submitted as
14 Intervener's Exhibit 1. No one has objected to the
15 facts presented in this in the eight months since it
16 was originally distributed to everyone. And I
17 believe the court has the herewithal to determine
18 what's appropriate within this petition and what
19 isn't for this proceeding.

20 JUDGE GOODWILL: Mr. Brown, do you have a
21 copy that you are able to provide to the court
22 reporter?

23 MR. BROWN: Yes. At the conclusion I can
24 give the court reporter a copy.

25 JUDGE GOODWILL: Okay. What we'll do is
26

1 we'll mark that copy as Intervener Exhibit 1 for
2 identification.

3 (INTERVENER EXHIBIT-1 WAS MARKED FOR
4 IDENTIFICATION.)

5 JUDGE GOODWILL: I'll first note, Mr.
6 Brown, just to make sure you understand that your
7 petition and associated exhibits are, in fact, a
8 matter of administrative record of this proceeding,
9 having been filed in the docket of this proceeding.
10 Again, that's somewhat different as to whether or not
11 they are admitted into evidence for consideration by
12 the Commission in reaching a determination in this
13 matter.

14 With respect to Mr. Fitts' objection,
15 having reviewed the petition and the associated
16 exhibits, I do not believe that they are relevant to
17 the Commission's limited determination today of
18 whether or not Bridge Hollow should be issued a
19 certificate. And if so, what rate should be set for
20 Bridge Hollow as a regulated utility. Therefore, we
21 will not admit the petition and its exhibits.

22 Again, I'll simply repeat for the record
23 that a large portion of the petition you have already
24 read into the record as part of your opening
25 statement and testimony here today.

26

1 With that, you are free to offer any
2 additional evidence or testimony that you would like
3 to.

4 MR. BROWN: I would like to take this
5 opportunity to cross-examine Mr. Moio, the witness
6 for the Division.

7 MS. SCHMID: Could the Division have just
8 one moment, please?

9 JUDGE GOODWILL: Certainly.

10 During this pause, Mr. Brown, I did want
11 to make sure you understand that if there are, in
12 fact, specific exhibits to the petition that we were
13 just discussing that you feel are relevant to the
14 issues, particularly as you brought up the issue
15 whether or not Bridge Hollow currently has enough
16 water to serve its proposed territory, you are
17 certainly free to bring those individual exhibits to
18 my attention. And I would encourage you to do so.
19 That is an issue I am very much interested in.

20 But I am not aware specifically within
21 these documents that such an exhibit exists. That
22 was part of my reason to deny as a whole your request
23 that they be admitted into evidence.

24 MR. BROWN: Exhibit 15, if I could.

25 MS. SCHMID: And Division counsel is
26

1 ready.

2 Thank you very much.

3 JUDGE GOODWILL: We can turn to Exhibit 15
4 first.

5 MR. BROWN: Exhibit 15 of the petition.
6 This is the letter by Mr. David Lyman outlining his
7 visit with Craig Neeley.

8 JUDGE GOODWILL: My copy is not numbered
9 by exhibit. So while I've got the exhibits here, I
10 don't have them numbered 1 through whatever number it
11 is.

12 MR. BROWN: Somebody must have made yours
13 because I spent a lot of money numbering all the
14 exhibits on all of the copies that were required for
15 filing.

16 JUDGE GOODWILL: The one I have before me,
17 which is out of the docket, does not have that. So
18 if you could lead me to that by describing some of
19 the exhibits surrounding it.

20 MR. MOIO: Near the very end.

21 MR. BROWN: It's about the second or third
22 exhibit from the end. Starts, "Bridge Hollow Water
23 notes. Visit at Aqua Engineering." It's in about,
24 oh, eight pages. It's those two pages.

25 MS. SCHMID: Mr. Brown, is that the letter

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1 dated October 27th, 2005?

2 MR. BROWN: Yes.

3 JUDGE GOODWILL: Let's go off the record
4 for just one second.

5 (Discussion held off the record.)

6 JUDGE GOODWILL: Back on the record.

7 While we were on a short recess, we did
8 have some discussion off the record concerning some
9 additional documents that Mr. Brown would like to
10 seek admission into evidence. And so we've had some
11 copies made.

12 Mr. Brown, have those been provided now to
13 all parties?

14 MR. BROWN: No.

15 JUDGE GOODWILL: Could we go ahead and do
16 that, please.

17 MR. BROWN: The first document will be the
18 October 27th, 2005 document, entitled "Bridge Hollow
19 Water Notes." It's also contained in the
20 intervener's Petition for Hearing and Final Order.
21 It is seen as Exhibit 15.

22 We'll pass that out.

23 JUDGE GOODWILL: We'll go ahead and mark
24 that as Intervener Exhibit 2 for identification.

25 (INTERVENER EXHIBIT-2 WAS MARKED FOR
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1 IDENTIFICATION.)

2 JUDGE GOODWILL: I'll note this is a
3 two-page document that Mr. Brown is offering for
4 admission as Intervener Exhibit 2 for identification.

5 Is there any objection to its admission?

6 MR. FITTS: We just saw this. Can we have
7 a moment to take a look at it?

8 JUDGE GOODWILL: Sure.

9 MR. BROWN: We could be passing out this
10 other exhibit.

11 JUDGE GOODWILL: Why don't we do that.

12 MR. BROWN: This is an e-mail from Michael
13 Roberts, dated August 28th, 2006. An attachment,
14 facsimile cover letter. And subsequent -- looks like
15 an e-mail from Craig at Aqua Engineering to John
16 Fleming. And an attached October 9th, 2003 letter
17 titled, "Bridge Hollow II, Summit County, Utah."

18 And I would submit this as Intervener
19 Exhibit 3.

20 JUDGE GOODWILL: Yes. We'll mark it as
21 such. And I'll note it's a total of six pages.

22 (INTERVENER EXHIBIT-3 WAS MARKED FOR
23 IDENTIFICATION.)

24 MR. FITTS: I've had a chance to look at
25 both of these exhibits.

26

1 I think with respect to Intervener's
2 Exhibit 3, we have no objection.

3 With respect the Intervener's Exhibit 2,
4 we don't know who prepared this. It appears it
5 relates to relate Exhibit 3, Intervener's Exhibit 3.
6 Doesn't appear to add anything to it other than the
7 second page. We don't know who is writing this, but
8 apparently had personal feelings with respect to the
9 Tebbs and appears to be potentially inflammatory or
10 irrelevant matters discussed there.

11 So with respect to Exhibit 2, we would
12 object on the basis of relevancy.

13 MS. SCHMID: With regard to these
14 exhibits, with regard to Intervener Exhibit 2, the
15 Division notes that the title of the document is
16 "Bridge Hollow Water Notes." That it does not appear
17 to be -- I can't tell exactly what it is. And Mr.
18 Neeley and Mr. Hovey, I believe, are not here to
19 authenticate it or to answer any questions.

20 So with that, although I know the
21 Commission frequently has a liberal standard of
22 relevance and, to some extent authentication, I would
23 just like the Division's discomfort with this to be
24 noted. Particularly with regard to authentication
25 because I don't know really to whom it was sent or
26

1 things like that.

2 With regard to Exhibit 3, I see that it
3 was -- much of it was either from the Tebbs group or
4 to the Tebbs group. So they are available for
5 authentication. So the Division does not have
6 concerns with regard to the admittance of Exhibit 3,
7 Intervener Exhibit 3.

8 JUDGE GOODWILL: Anything further
9 regarding Intervener Exhibit 3?

10 All right. Then there being no objection,
11 we'll go ahead and admit that one.

12 (INTERVENER EXHIBIT 3 WAS ADMITTED.)

13 JUDGE GOODWILL: With respect to
14 Intervener Exhibit 2, Mr. Brown, I do have some
15 questions regarding the proper foundation for this
16 document.

17 Where did you obtain this document?

18 MR. BROWN: I can wait and not submit them
19 until such time as I have a witness on the stand and
20 can have it properly identified, it's source and
21 relevancy.

22 JUDGE GOODWILL: Okay. We'll hold off on
23 that one then.

24 MR. BROWN: Okay.

25 JUDGE GOODWILL: Good. Having dealt with
26

1 those documents for now, I believe you were about to
2 ask Mr. Moio some questions.

3 MR. BROWN: Yes. I would like to at this
4 time cross-examine Mr. Moio.

5 MR. FITTS: As a matter of clarification,
6 we were given this e-mail to Mr. Moio. I believe
7 that was offered. And if so, we would offer it if
8 the State hasn't.

9 JUDGE GOODWILL: Thank you for bringing
10 that to my attention. I neglected to deal with it.

11 We had discussed this e-mail that was in
12 the Division's possession while we were off the
13 record. And it had been provided to me during the
14 break.

15 Ms. Schmid, did you intend to offer that
16 into evidence?

17 MS. SCHMID: At this point, sure. That, I
18 believe, would be DPU Exhibit 4. And again, we note
19 that it was received by Mr. Moio from the Utah
20 engineer working with the Division of Drinking Water.
21 It was received in the ordinary course of business.
22 I would like to offer it at this time.

23 And I believe that copies have been
24 distributed to everyone.

25 JUDGE GOODWILL: I'll not that it's a
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1 two-page document.

2 Are there any objections to its admission?

3 MR. BARKER: I would just note that I
4 think it's about the same thing as the other exhibit.
5 And I hope we'll admit that later on as well, that
6 Mr. Brown already raised.

7 MS. SCHMID: And the Division would also
8 like to note that there are some handwritten words at
9 the top, "Engineer for Div. Drinking Water," and some
10 little bracket things. Those were added by Mr. Moio.

11 The Division would also like to note that
12 Mr. Birkes is available at some point if we need to
13 have him to authenticate this. But, again, it was
14 received in the ordinary course of business.

15 JUDGE GOODWILL: Is that an objection, Mr.
16 Barker?

17 MR. BARKER: I don't think an objection.
18 I think it's just an observation regarding the other
19 document as well.

20 JUDGE GOODWILL: Okay. There being no
21 objection, we'll go ahead and admit this as DPU
22 Exhibit 4.

23 (DPU EXHIBIT-4 WAS MARKED AND ADMITTED.)

24 JUDGE GOODWILL: I'm sorry, Mr. Brown.
25 Now go ahead.

26

1 (Bruce Moio was recalled as a witness.)

2 BY MR. BROWN:

3 Q. Mr. Moio, in this investigation into the
4 water system operations at Bridge Hollow Water
5 Association for certification as a public utility or
6 exemption as a mutual water company, the DPU has
7 recommended in its January 18th, 2007 memorandum that
8 the Commission issue a Certificate of Public
9 Convenience and Necessity to Bridge Hollow Water
10 Association and approve the interim rates as
11 explained in this memorandum.

12 Please explain what a Certificate of
13 Public Convenience and Necessity is?

14 A. I believe it puts the water utility
15 company under the regulation of the Public Service
16 Commission, to follow rules set forth in Utah Title
17 54.

18 Q. Exactly what is it? Are we going to
19 receive like a certificate, a diploma? Is it going
20 to have guidelines?

21 A. You'll receive the Commission's final
22 order. You will receive a copy of Title 54.

23 Q. I guess this is a document that would be
24 -- we would be required to hang on our wall at Bridge
25 Hollow Water Association? Exactly what is it?

26

1 MS. SCHMID: Maybe if I were permitted.

2 I believe that it is -- the Commission's
3 order serves as a certificate and authority to
4 operate. To my knowledge, and subject to Mr. Moio's
5 input, I don't believe that a separate document, like
6 business license or anything, is issued by the
7 Commission.

8 THE WITNESS: That is correct.

9 Q. (By Mr. Brown) Why did you find it
10 necessary to issue a Certificate of Public
11 Convenience and Necessity or recommend that a
12 certificate be issued?

13 A. Because the water company currently does
14 not fall under the exemption.

15 Q. And would you explain why it doesn't fall
16 under the exemption?

17 A. Because of the unresolved rules that we've
18 discussed here today, unresolved issues.

19 Q. And as you studied the issues that have
20 been presented to you, would you expand on that?
21 Exactly what wasn't happening? What needs to happen
22 in order for you to allow them to continue to operate
23 as an exempt mutual water company?

24 A. I believe that's all clearly stated in my
25 memo, Exhibit Number 2. Once the stock issuance,

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1 stock voting rights and the ownership of assets is
2 clarified, then the DPU would be in a better position
3 to possibly recommend exemption.

4 Q. So in your opinion, basically this little
5 mutual water company, if it can clear up the issue of
6 who owns the stock or who controls the stock and who
7 has voting rights, you would be willing to revisit
8 the recommendation and possibly exempt them from
9 certification; is that correct?

10 A. The Department of Public Utilities is
11 always willing to revisit exempting a regulated
12 company.

13 Q. Are you willing to look at that in today's
14 hearing, revisit your determination, recommendation?

15 MS. SCHMID: I believe that the --
16 objection to the question.

17 I believe that to the extent that the
18 issues have been narrowed in this proceeding, a
19 revisit is not appropriate at this time. And again,
20 the issues pertain more to corporate governance,
21 things that are outside the Commission's control and
22 jurisdiction. They are internal matters of the water
23 company with regard to commonality of interest.

24 Once they are resolved, should they be
25 resolved, and an application is made setting forth

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1 the commonality of interest requirement and
2 satisfaction of that requirement, the Division would
3 be pleased to look at the changed facts and
4 circumstances.

5 JUDGE GOODWILL: Mr. Brown, I'm sorry to
6 interrupt you.

7 I'll go ahead and weigh in since it is for
8 the Commission to determine what it is going to look
9 at in these proceedings.

10 The Division's memorandum which has been
11 entered into evidence, in conjunction with Mr. Moio's
12 testimony, indicates that one of the issues involved
13 here is whether or not there is a commonality of
14 interest in the ownership of this company. And it
15 appears that the Division is stating that they cannot
16 determine that at this time because of the ownership
17 issues.

18 If you have some evidence that you would
19 like to bring forward that you believe demonstrates a
20 commonality of interest and therefore would go toward
21 whether or not the company should be exempted, the
22 Commission would certainly like to see or hear that
23 evidence. So it's not a matter of coming back
24 another day.

25 The Commission, as with the Division, is
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1 always willing to revisit these issues in another
2 proceeding. But if you have that information today,
3 I would certainly like to hear it.

4 MR. BROWN: Well, I was trying to explore
5 Mr. Moio's analysis that there wasn't a commonality
6 of interest. In fact, counsel for Real Corp, BACT,
7 Tebbs, et cetera, has objected to the Petition for
8 Hearing and Final Order that I had submitted as
9 Exhibit 1. To my knowledge, there is no other
10 evidence on the record as to disputed ownership,
11 problems with voting rights than are contained in the
12 extensive document that I presented. I was just
13 trying to determine if Mr. Moio had other evidence
14 than what was contained within my petition that he
15 considered in coming to his conclusion that this
16 water company is screwed up. They've got stock
17 ownership problems and they have voting share
18 problems that prevent him from recommending that this
19 company be exempt from regulation.

20 Q. (By Mr. Brown) So to that end, I would
21 like to ask you --

22 JUDGE GOODWILL: We have one --

23 Q. (By Mr. Brown) -- have information other
24 than what is contained in my Exhibit 1 that drew you
25 to this conclusion?

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1 JUDGE GOODWILL: Before Mr. Moio answers
2 that, I think Mr. Fitts has an objection.

3 MR. FITTS: We have an objection. And
4 also to clarify that we are not objecting to the
5 State's recommendation. We are in agreement with the
6 State's recommendation of regulation and the rates
7 stated in that recommendation.

8 And in addition to that, on the issue of
9 commonality of interest, on behalf of my clients, we
10 are in agreement that there should be. And I've
11 stated previously how we believe that could be
12 accomplished, which is in line with the rules and law
13 governing what is or is not commonality of interest
14 within a company.

15 We believe that regardless of the
16 resolution of the issues that Mr. Brown has raised
17 today regarding ownership of stock and ownership of
18 shares, it really gets down to whether or not there
19 is one vote for each individual owner, regardless of
20 the number of water shares and lots. And we are in
21 agreement that that is what should be done for
22 commonality of interest. That was proposed to the
23 other parties of the Water Association last week and
24 was rejected.

25 Based upon that, we believe that as it
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1 stand right now, that that would support that there
2 is not a commonality of interest at this point,
3 though we believe that that can be -- will be
4 resolved very quickly based on a written proposal
5 that has been exchanged between the parties. And as
6 I understand it, is -- in deference to Mr. Barker, he
7 has a great number of people that need to be
8 consulted to have that resolved. But all of that is
9 something that we believe will not be resolved today.

10 JUDGE GOODWILL: Mr. Brown, go ahead and
11 repeat your question.

12 Q. (By Mr. Brown) Mr. Moio, when you came to
13 the conclusion that the company could be eligible for
14 exemption except for the unclear status of the
15 control of assets and voting rights, did you come to
16 this conclusion based on evidence other than the
17 evidence that is a part and parcel of my Exhibit 1,
18 the Petition for Hearing and Final Order?

19 A. I came to that conclusion because there
20 was no evidence to show me that this company did have
21 a commonality of interest and did meet the
22 requirements for exemption. If they do not meet the
23 requirements for exemption, then they need to be
24 certified.

25 Q. What are the obligations and
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1 responsibilities of a utility to whom a Certificate
2 of Public Convenience and Necessity is issued? In
3 other words, what new responsibilities and duties
4 will Bridge Hollow Water Association be asked to
5 accept as a regulated public utility?

6 A. First of all, they will have to file an
7 annual report with the Division once a year. They
8 will have to abide by the depreciation schedules that
9 are set forth in Title 54. And they will have to pay
10 an annual regulatory fee.

11 Other than that, what they are doing now,
12 they will continue to serve the water users, make
13 sure the water is tested annually. That's it.

14 Q. What happens if the utility fails to meet
15 its new responsibilities and obligations?

16 A. I believe then we would be brought before
17 this Judge again to hear those issues and why the
18 company was unable to fulfill its obligations.

19 Q. And what if they simply don't want to?

20 MS. SCHMID: Objection. That's
21 speculative.

22 MR. BROWN: The objection is what?

23 MS. SCHMID: The objection is that you --
24 the question is speculative. And it does not need to
25 be addressed by the witness at this time.

26

1 MR. BROWN: What I'm after, as a member of
2 Bridge Hollow Water Association and a shareholder, is
3 to determine what are the risks and benefits of
4 public regulation once you issue a Certificate of
5 Public Convenience and Necessity.

6 MS. SCHMID: And I believe that's already
7 been addressed.

8 MR. BROWN: And my question is simple,
9 what happens if the utility fails to meet its
10 obligations?

11 MS. SCHMID: That has been asked and
12 answered.

13 The next question I believe is utterly
14 speculative.

15 MR. BROWN: So it's undetermined? Is that
16 your answer? They would come back before the Judge
17 and it's undetermined what the outcome would be?

18 MS. SCHMID: There are lots of things,
19 what ifs, could be, should be and we could spend all
20 day exploring those. You've already asked a question
21 concerning the extent of the Commission's power over
22 the company. And that's already been asked and
23 answered.

24 JUDGE GOODWILL: Let me do this. Mr.
25 Brown, I believe your question goes to can a utility
26

1 be punished and what might that punishment be for
2 failing to abide by its responsibilities as a
3 utility. Again, as a pro se intervener, I know I'm
4 interjecting, but I would simply point you to Title
5 54 and some of the provisions contained therein,
6 Section 7-25 and the subsections that follow
7 regarding the Commission's authority to levy fines,
8 et cetera, for utilities and officers thereof that
9 fail to abide by Commission orders and statutes, et
10 cetera.

11 MS. SCHMID: And the Division would like
12 to note that that was contained in its memorandum
13 admitted as DPU Exhibit 2, on page 2. The DPU notes
14 through Utah Code 54.73 and 54.725, the Commission
15 has the authority to subpoena individuals or fine
16 individuals not cooperating. And that leads to the
17 general section on fines and penalties.

18 JUDGE GOODWILL: So if that doesn't
19 address your question --

20 MR. BROWN: No. That clarifies it. Thank
21 you.

22 Q. (By Mr. Brown) Will the Public Service
23 Commission determine who will receive water service
24 under the Certificate of Public Convenience and
25 Necessity? In other words, give the water company a

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1 metes and bounds description of who it is that they
2 are now required to serve as a public utility?

3 A. Normally there is a specified service area
4 or territory with each certificate that's issued.

5 Q. And that would be forthcoming from the
6 Public Service Commission? They will determine --
7 they will supply a map of who will receive service?
8 Is that your understanding, Mr. Moio?

9 A. I don't believe they will supply a map.
10 But it will be in their report and final order what
11 the service territory encompasses.

12 Q. So it is up to the Commission to determine
13 what is the service area and they will define that in
14 the final order.

15 Is that your understanding?

16 A. It's my understanding that the service
17 territory and who is going to be served is those
18 existing customers that are being served at this
19 time.

20 Q. If Bridge Hollow Water Association refuses
21 to provide service to a person or persons, what is
22 their course of action against the utility that is
23 under the regulation of the Public Service
24 Commission?

25 A. What normally happens is they will file a
26

1 formal complaint through the Public Utilities
2 Division and it will filter through to the Public
3 Service Commission and may or may not end up in a
4 hearing.

5 Q. In fact, that's pretty much what happens
6 if you are a electric utility or a gas utility and
7 you've got a grievance with the utility; isn't that
8 correct?

9 A. I believe so.

10 Q. Thank you.

11 If Bridge Hollow Water were to implement
12 the amendments to their Articles of Incorporation and
13 bylaws as adopted October 29th, 2005, would you have
14 recommended that they be exempt from regulation?

15 To refresh your memory, I have a copy of
16 Exhibit 4, from Duane Fluckiger, answers to Brown's
17 second set of data requests.

18 MS. SCHMID: Again, I think that while it
19 perhaps is relevant, I don't know to what extent Mr.
20 Moio feels comfortable in answering that at this
21 time. I think that -- again, we have discussed and
22 Mr. Moio has presented evidence and there are
23 statutes and cases addressing commonality of
24 interest. And whether or not these would meet that,
25 since they weren't adopted, I'm not sure to what

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1 extent we need to address that.

2 MR. FITTS: We would also --

3 MR. BROWN: Let me finish.

4 JUDGE GOODWILL: One moment. Let Mr.
5 Fitts go and then we'll come back to you.

6 MR. FITTS: I object to the
7 characterization of that as being something that "may
8 have actually been adopted." That goes to one of the
9 issues in the corporate governance dispute as to
10 whether it was or wasn't adopted and attempts to have
11 my clients forfeit their shares. And I believe it's
12 outside the scope of what we're talking about. Goes
13 to something that's speculative, has not yet happened
14 and has not yet been adopted to be able to be
15 considered for exemption purposes.

16 JUDGE GOODWILL: Mr. Brown, I think if you
17 could rephrase your questioning in terms of if Bridge
18 Hollow were to take such actions, how would the
19 Division view those actions with respect to any
20 request for exemption. I think that's maybe what
21 you're getting at.

22 But with respect to any disputed bylaws,
23 if you will, that aren't before the Division for
24 actual determination, I don't think we'll go there.

25 Q. (By Mr. Brown) My question is -- Mr. Moio

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1 is an expert witness on behalf of the Division of
2 Public Utilities. He has made a recommendation that
3 this water company could have been exempted had they
4 cleared up -- let me quote him again -- "be eligible
5 for exemption except for the unclear status of the
6 control of assets and the voting rights."

7 Exhibit Number 4, to Duane Fluckiger's
8 answers to Brown's second set of data requests,
9 essentially outlined clarification as to who should
10 be given shares, who is eligible to have shares. And
11 it proposed that the shares be canceled and reissued
12 in accordance with these standards. In the Water
13 Association shareholders meeting, the majority of --
14 vast majority of the shareholders who were deemed to
15 be eligible to vote accepted this.

16 Mr. Moio, being the expert for the
17 Division, is being asked, if this were implemented,
18 would this have resolved the problems that he faced
19 in authorizing exemptions. And I haven't been able
20 to give this to him, have him read it and give me an
21 answer. And I would like one. Because he is the
22 person who is going to make that recommendation to
23 the Commission.

24 MS. SCHMID: And Mr. Moio will be making a
25 recommendation based on facts as they exist at that
26

1 time. Certainly if Mr. Brown would like to give us a
2 copy, we could take a look at it. However, again,
3 these are corporate governance issues whether or not
4 it was adopted. The standard has been discussed.
5 Again, mutuality of interest, which has been
6 determined through Commission decisions to be one
7 party, one vote and things like that.

8 So I'm not -- I'm afraid you're trying to
9 resolve this corporate governance issue here. And
10 you are a very, very smart man -- you are. You are
11 the only person I know who has appeared before the
12 Trade Commission and won. You are very, very smart.
13 And we're just having a dispute on the proper scope
14 of this hearing. And I believe that the
15 Administrative Law Judge has already ruled.

16 MR. BROWN: Absolutely. I agree with you.
17 The scope of this hearing is, should -- we can go
18 back and read it again -- should Bridge Hollow Water
19 Association be certified as a public utility or
20 exempted as a mutual water company.

21 Bruce has made a recommendation that he
22 feels but for the unclear status of the control of
23 assets and voting rights, he could have recommended
24 that they be exempt.

25 My question is very simple. You have a
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1 majority of the shareholders who were deemed to be
2 eligible voters in the October 29th, 2005 meeting, it
3 is a part of this hearing, it was Exhibit 4 of Duane
4 Fluckiger's answers to the second data requests from
5 Brown that basically stated what --

6 MR. FITTS: Your Honor, he is requesting
7 the witness --

8 MR. BROWN: Hey, can I talk over you then?
9 Can I talk over you?

10 JUDGE GOODWILL: Settle down. Everybody
11 please be quiet.

12 I understand the objection, Mr. Fitts. I
13 understand the question, Mr. Brown.

14 I am willing to allow you to ask Mr. Moio
15 if Bridge Hollow were to take such and such an
16 action, would that affect any request for exemption
17 or make any request for exemption anymore likely to
18 be approved.

19 And I think if you rephrase your question,
20 you can certainly get to where you want to go. It
21 sounds to me that there are -- that you are trying to
22 put something before Mr. Moio that is not in evidence
23 and have him make a determination on facts that he
24 has not considered up to this point.

25 MR. BROWN: If I may, your Honor?

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1 JUDGE GOODWILL: Go ahead.

2 MR. BROWN: It was in evidence. This was
3 the Exhibit 4 to Duane Fluckiger's answers to the
4 second set of data requests from Brown. It was
5 submitted back in December 2005.

6 JUDGE GOODWILL: Yes, sir. That is
7 actually --

8 MR. BROWN: Everyone has had a copy of
9 this for well over a year.

10 JUDGE GOODWILL: But it is not actually in
11 evidence at this point.

12 MR. BROWN: Okay. And I was going to ask
13 him to look at this.

14 I previously asked if he had looked at the
15 petition and the exhibits and what he had considered
16 in coming up with his recommendation to not exempt
17 this utility. And at this point in time, I am merely
18 asking if this utility were to implement the actions
19 that they took -- not the utility, but the Water
20 Company -- that they took on October 29th, 2005,
21 would his decision have been different.

22 JUDGE GOODWILL: Let me ask the parties,
23 is there a dispute as to whether or not the actions
24 that are taken as contained in this document in 2005
25 were actually legally taken by the Water Company? Is

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1 that where we're going with this?

2 MR. FITTS: That is a dispute, your Honor.

3 I might be able to help with this. I
4 believe the question was answered by Ms. Schmid when
5 she said that -- when she indicated commonality of
6 interest means one party, one vote. And really, what
7 the question is if we are to give Mr. Moio this
8 document is whether or not if it was legally adopted
9 and if it is a valid document, we're asking him to
10 make a legal conclusion as to whether it provides one
11 party one vote, as Ms. Schmid said. And it seems to
12 me that that's something he would have to consult
13 with counsel for the Division.

14 I think, Ms. Schmid, in listening to the
15 exchange, and I apologize for objecting when I have,
16 but I'm just trying to address our interests, but it
17 gets back to what I was thinking one party, one vote
18 and that's what Ms. Schmid has been talking about.
19 And this document, I've seen it, does not talk about
20 one party, one vote. That seems like that would be a
21 question for legal counsel for the Division to make a
22 review and legal analysis of. But it does go to the
23 dispute of corporate governance.

24 JUDGE GOODWILL: With the understanding
25 that -- of that dispute, I think it's a fair question
26

1 to ask Mr. Moio his opinion or whether he would be
2 able to render an opinion if the company were to take
3 certain actions.

4 If you can step through those actions, Mr.
5 Brown, and ask Mr. Moio if he's able to give you an
6 opinion, I think we can get somewhere.

7 MS. SCHMID: Can Mr. Moio have a copy of
8 it to refresh his memory first and then Mr. Brown
9 could then walk through it?

10 JUDGE GOODWILL: Sure.

11 MR. BROWN: I've highlighted the changes
12 to the articles and bylaws that were adopted by that
13 group so that he can quickly look at it.

14 JUDGE GOODWILL: And again, let me just
15 make clear, the fact that this appears to be a
16 disputed matter and a matter that this Commission
17 would not be competent to adjudicate as to whether
18 these actions were appropriately taken by the water
19 company, we are not here then to determine that based
20 on this purported action the company is or is not
21 exempt from regulation. We are going beyond the
22 bounds then of a strict certificate hearing. But I
23 do want to give you the opportunity, Mr. Brown, to
24 hear the answers, perhaps for your edification and
25 those of the company, to determine what actions might

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1 be relevant in seeking an exemption at some later
2 date if that is necessary or desired.

3 With that in mind, we'll give Mr. Moio an
4 opportunity to answer, if he does have an opinion.

5 But I do want to, on the record, step
6 through those actions so that it's clear for everyone
7 and not just him referring to a piece of paper the
8 Commission hasn't seen.

9 Go ahead, Mr. Brown.

10 Q. (By Mr. Brown) Mr. Moio, you've now
11 reviewed the Bridge Hollow Water Association proposed
12 changes to the Articles of Incorporation and bylaws
13 that Mr. Fluckiger, in his answers to Brown's second
14 data request, indicates were adopted by those members
15 who were considered to have authority to vote.

16 And the question I have for you is, if
17 these changes to the Articles of Incorporation and
18 bylaws were adopted and enforced, would this clear up
19 the problems you have with the unclear status of the
20 control of assets and voting rights?

21 JUDGE GOODWILL: Mr. Brown, would you
22 please state what those proposed changes are that you
23 are referring to?

24 MR. BROWN: Yes. They are contained in
25 the letter to the Bridge Hollow Water Association

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1 shareholders. A letter dated October 17th, 2005.

2 Goes on to say, "As a result of the
3 investigation by the State of Utah, Division of
4 Public Utilities, it has come to our attention that
5 we have not followed the Articles of Incorporation
6 and bylaws of Bridge Hollow Water Association when
7 issuing stock certificates. It is now necessary to
8 change the Articles of Incorporation and bylaws to
9 reflect more accurately our past practices. Attached
10 are changes, in parentheses, to both documents that
11 are proposed to correct the inconsistent practices
12 and strengthen the intent of the Articles of
13 Incorporation.

14 "Our Articles of Incorporation and
15 proposed changes under Article V, Shares, states the
16 following." And I'll read the article as it is
17 proposed to be changed.

18 "The corporation shall be owned by its
19 shareholders. The corporation is not a public
20 utility and is not prepared, able or legally
21 empowered to serve persons other than its
22 shareholders. The number of shares shall not be
23 fixed, but the aggregate number of shares of stock
24 which the corporation shall have authority to issue
25 shall be limited to one share for each acre foot of
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1 water rights per building lot within the service area
2 owned by the corporation. Ownership of stock in the
3 corporation shall be limited to the owners of real
4 property within the service area of the corporation
5 as recorded at the County Recorder's Office, in
6 Summit County, Utah. The service area shall be
7 established and may be amended from time to time by
8 the majority vote of shareholders of record. Lots
9 located within the service area without a share of
10 stock are not entitled to water service unless and
11 until a share of stock is acquired. Only one
12 connection shall be allowed for each share of stock.
13 The stock in the corporation shall be issued to the
14 persons entitled to receive stock. Issuance of stock
15 is contingent upon persons owning recorded building
16 lots within the service area of the corporation. One
17 share of Bridge Hollow Water Association stock shall
18 be issued for each recorded lot as established by the
19 bylaws and regulations of the corporation. The stock
20 shall be issued subject to providing proof of lot
21 ownership as recorded at the County Recorder's
22 Office, of Summit County, Utah. Water shares shall
23 be canceled when lots are sold and new shares will be
24 issued when proof of ownership is provided to the
25 Bridge Hollow Water Association Board with a request
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1 to issue a new stock certificate. Until issued, the
2 stock is deemed treasury stock and shall not be
3 entitled to vote nor be subject to assessment.
4 Shareholders shall not have preemptive rights to
5 acquire unissued shares of the stock of the
6 corporation. The owner of each share of stock is
7 entitled to one vote for each share of stock he or
8 she owns on all matters presented to shareholders for
9 approval. No vote will be accepted on shares that
10 are delinquent on any assessment. In the event that
11 any share is owned by multiple parties, only one vote
12 will be accepted from that share and the person
13 appearing at any shareholder meeting will be presumed
14 to be voting for all owners with proper authority.
15 If there are more than one owner present and they
16 disagree on the manner in which their vote shall be
17 cast, no vote will be accepted. But the share will
18 be counted for purposes of determining quorum."

19 In addition, Article 4.1, Service Area,
20 and Article 8.1, Qualification, Transfer of the
21 bylaws, is proposed to be changed in order to avoid
22 conflict with the changed Article V of the
23 corporation.

24 They shall read as follows: "4.1, Service
25 Area. Ownership of stock in the association shall be
26

1 limited to the owners of real property within the
2 service area of the Association. The service area
3 shall be set by a majority vote of shareholders of
4 record. The service area is currently defined as the
5 34 lots contained in Bridge Hollow subdivision, six
6 lots in Deer Haven subdivision and the Surrey Ridge
7 Ranch Bridge Hollow development that has not been
8 approved as a subdivision and as such is eligible for
9 stock when the lots are recorded at the County
10 Recorder's Office, in Summit County, Utah. One lot
11 at 2615 South State Road 32, one lot at 2655 South
12 State Road 32, one lot at 2685 Rock Port Road.

13 "Article 8.1, Qualifications, Transfers.
14 Shares of stock in the Association shall only be
15 issued to persons or entities who are owners of
16 building lots as recorded at the Recorder's Office at
17 Summit County, Utah within the service area for the
18 Association."

19 Q. (By Mr. Brown) It was a long time ago,
20 but if you can give me an answer as to whether or not
21 these were adopted you would have been able to avoid
22 the unclear status of the control of assets and
23 voting rights that you ran into, given the evidence
24 that you had been presented earlier?

25 A. The proposed amendment to the bylaws
26

1 appears to clarify the stock voting issue. However,
2 it doesn't seem to address the issue of the water
3 company assets, which would still be an issue that
4 needed to be clarified.

5 Q. Thank you.

6 Mr. Moio, are you open to reconsidering
7 the interim rates you have recommended in this
8 proceeding?

9 A. If there is documentation in evidence that
10 I have not seen previously pertaining to the
11 calculation.

12 Keep in mind these rates are just interim.

13 Q. "Interim" meaning what? Until what?

14 A. Until some of these issue are resolved and
15 until the company comes forward with some more
16 information or a need to increase its rates.

17 Q. So in affect, after being issued a
18 Certificate of Public Necessity and Convenience, the
19 utility could immediately file for new rates?

20 A. That is correct.

21 Q. Mr. Moio, if the Bridge Hollow Water
22 Association Board collected on the 40 lots in Surrey
23 Ridge that are now paying 40 that previously were
24 paying 120 prior to 1998, that would greatly reduce
25 the shortfall in revenues you identified in your
26

1 analysis; wouldn't it?

2 A. I did not see anything in the financial
3 statements showing me that any money was collected
4 for Surrey Ridge. Nor do I believe there is any
5 infrastructure in that area.

6 Q. Now the question more appropriately is, if
7 you collected an additional \$80 a quarter on each of
8 those 40 lots, the way it was being collected prior
9 to 1998, that would increase the revenue stream to
10 the point that you would not have a net loss as
11 determined in your Exhibit Number 1.1, and nearly as
12 great as the \$22,098 that you show; isn't that
13 correct?

14 A. Actually, the -- I don't remember what the
15 exhibit number is, but it says \$40 per lot, per
16 quarter for unconnected lots at Surrey Ridge.

17 And the shortfall is \$40,000. So it would
18 make a little bit of a difference, but there would
19 still be quite a bit of a shortfall.

20 Q. I was looking at the net profit and loss
21 statement on Exhibit Number 1.1.

22 A. Rates are not determined by the income
23 statement.

24 Q. I would like you, Mr. Moio, to look at DPU
25 Exhibit Number 4, the e-mail from Bill Birkes to

26

1 Bruce Moio.

2 A. Okay.

3 Q. Second paragraph: "If the well ran
4 continuously 24/7, 365 days a year at the firm yield
5 number of 40 gallons per minute, established by the
6 1995 pump test, it would produce 21.024 million
7 gallons, assuming the aquifer can furnish that. This
8 number divided by 325,851.4 gallons per acre foot
9 would provide slightly over 64 shareholders of one
10 acre foot each."

11 You heard my previous testimony that
12 .62 gallons per minute will equal one acre foot of
13 water, which is 24.8 acre feet.

14 And if you also look at Intervener Exhibit
15 Number 3, which is an e-mail from Michael Roberts,
16 with a fax cover page from Bonneville Builders. If
17 you turn to page 2 of that, it says, "From
18 Craign@AquaEng.com to JBFleming. Subject: Surrey
19 Ridge Well Memo and Pump Test Results."

20 It says, "John, I faxed my '03 memo to
21 Bonneville Builders, along with the 24-hour pump test
22 results. The flow was 65 to 70 GPM and it must be
23 reduced one-third. So I gave the well a rating of 40
24 GPM, which agrees with the DWR rating. This memo was
25 not available in digital format."

26

1 Do you have an opinion as to why Mr.
2 Birkes feels that a well of 40 GPM can deliver water
3 to 64 shareholders and Mr. Neeley and myself say that
4 40 GPM will only supply 24 lot owners?

5 A. I can't speak for Mr. Birkes. But if you
6 go further down in DPU Exhibit Number 4, Mr. Birkes
7 does address the test that was done by Aqua
8 Engineering. And he seems to infer that this test
9 somehow can be manipulated.

10 MS. SCHMID: And again, the Division notes
11 that Mr. Birkes has stated he could be available at a
12 future time if we get into water engineering.

13 MR. BROWN: I think that's all the
14 questions I have for Mr. Moio at this time.

15 JUDGE GOODWILL: Ms. Schmid, any redirect?

16 MS. SCHMID: Just one moment, please.

17 Just one or two.

18 BY MS. SCHMID:

19 Q. Mr. Moio, with regard to the information
20 Mr. Brown read into the record about a shareholders
21 meeting and voting changes in which the water company
22 also stated that it wasn't a public utility, is it
23 your understanding that only the Commission can
24 determine if an entity is a public utility or not?

25 A. That is my understanding.

26

1 Q. And is it also --

2 MS. SCHMID: That's it. Thank you.

3 JUDGE GOODWILL: Mr. Brown, anything
4 further?

5 MR. BROWN: Yes.

6 BY MR. BROWN:

7 Q. Mr. Moio, in your position with the
8 Division of Public Utilities, what is your purpose?
9 Do you serve as staff for the Commission in making
10 recommendations, doing investigations? Exactly what
11 is your relationship to the Commission?

12 MS. SCHMID: I don't know if -- that is
13 set forth in Title 54 with specificity and precision.
14 So he is -- so to that extent, he is not -- the
15 Public Service Commission has a separate staff of
16 quote, unquote. And I would prefer -- I would prefer
17 that the statute be the source of best information on
18 that.

19 MR. BROWN: Okay. I guess my confusion
20 comes from the fact that the notice to Bridge Hollow
21 Water Association as to -- notice to them as to why
22 they can provide -- to provide proof as to why they
23 should not be regulated as a public utility came from
24 the Division of Public Utilities, rather than the
25 Commission. The recommendation that we received a
26

1 Certificate of Public Convenience and Necessity has
2 come from the Division. And therefore, it appears as
3 though, since we've not seen any Commission staff in
4 this investigation for the last two and a half years,
5 that the DPU serves a significant role in making the
6 recommendations that the Commission should adopt.

7 And the question was, do you essentially
8 serve as staff. As I understand it, Ms. Schmid, your
9 answer is no. That you don't serve as Commission
10 staff.

11 But you serve as an investigative body
12 that makes recommendations to the Commission?

13 MS. SCHMID: Yes. There is a distinction
14 between the Commission staff and the Division set
15 forth in the statute.

16 MR. BROWN: And you have your own ability
17 to fine persons who fail to provide information in
18 your investigation?

19 MS. SCHMID: The Division can make a
20 recommendation.

21 The decision whether or not to levy fines
22 rests with the Commission.

23 MR. BROWN: Okay.

24 JUDGE GOODWILL: Mr. Barker or Mr. Fitts,
25 any questions of Mr. Moio?

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1 MR. BARKER: I do.

2 BY MR. BARKER:

3 Q. Mr. Moio, you mentioned -- and I want to
4 clarify. You mentioned earlier that the certificate
5 would cover a specific area?

6 A. Correct.

7 Q. And what is -- I just want to clarify.

8 I understand the area that it covers is
9 the current Bridge Hollow subdivision and then these
10 other three lots that Mr. Brown mentioned earlier?

11 A. Including Deer Haven, yes.

12 Q. Is that correct; that is the
13 recommendation?

14 A. Yes.

15 Q. Okay. Secondly, what was the -- you
16 mentioned how you concluded it didn't meet the
17 requirements to be exempt. And you and Mr. Brown
18 went back and forth on that a little bit.

19 What did you review? Did you review the
20 bylaws and Articles or did you just look at the
21 submission of Mr. Brown or did you go do an
22 independent evaluation of the books and records of
23 the corporation?

24 A. Yes. I went and did an independent
25 evaluation and also looked at the service area and

26

1 the system. And I looked at current corporate bylaws
2 and Articles. And I also looked at Mr. Brown's
3 submitted documents.

4 Q. Okay. And when you reviewed the proposed
5 or the adopted -- I know that's a subject of dispute
6 -- bylaws you just reviewed a minute ago, that
7 amendment to the bylaws, I didn't understand. You
8 said it seems to take care of the voting, but it
9 didn't take care of the assets. I'm not sure what
10 you meant by that.

11 Could you clarify that?

12 A. Sure. It's my understanding at some point
13 over this two and a half year period that it's been
14 expressed that the ownership of the well is not
15 clear.

16 Q. I thought the ownership of the well was in
17 the water company. Does that -- are you thinking
18 differently than me on that?

19 A. Yes. I've heard differently. That
20 sometimes it is and sometimes it isn't.

21 Q. Okay. Is that all you meant by that,
22 though?

23 A. Yes.

24 Q. So other than the ownership of the well,
25 which I don't think is an issue, but maybe it is, one
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1 that I'm not aware of, that would take care -- that
2 amendment -- and not to say that's the only way to
3 skin that cat, there is other ways to deal with that
4 -- but that would have taken care of the commonality
5 issue?

6 A. It would appear.

7 Q. Okay. I say this -- I understand this is
8 more for clarification if we can resolve this. I
9 think that's why I am tracking this down.

10 Back on the exhibit, the fax from Michael
11 Roberts that you talked about a minute ago that
12 contains -- I'm sorry, the one from Bill Birkes to
13 you.

14 A. Yes.

15 Q. It says in there --

16 JUDGE GOODWILL: DPU Exhibit 4.

17 Q. (By Mr. Barker) Yes. DPU Exhibit 4.

18 It says in there, and Mr. Brown quoted
19 this language, "If the well ran continuously 24/7,
20 365 days a year."

21 Is that -- that's not commonly done? Or
22 can it be done?

23 I would think that wears a well out pretty
24 fast.

25 A. Again, I'm not an engineer and I can't

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1 speak for Mr. Birkes.

2 Q. Okay. In your experience, do you run
3 wells that often or that constant?

4 A. No. In my experience, you do not.

5 Q. Okay. And then his provision --
6 parenthetical, "assuming the aquifer can furnish
7 that."

8 You don't know if the aquifer can furnish
9 that or not?

10 A. I don't know if there -- I have not been
11 notified of any aquifer testing.

12 Q. Okay. I think Duane may have some
13 evidence on that later on.

14 So you don't know -- you have no idea or
15 you think it can't furnish it?

16 A. I can't speculate.

17 Q. You don't know. Okay.

18 In your -- I got my exhibits all mixed up
19 here. Some are numbered and some aren't.

20 In DPU Exhibit Number 2, when you outlined
21 the rates, this is the current rates is your
22 understanding; right?

23 A. That is my understanding.

24 Q. Okay. It doesn't -- I don't know if it
25 has in the rates that the Surrey Ridge undeveloped

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1 lots or the Surrey Ridge developer, however you want
2 to characterize that, is paying? Did you leave that
3 out of your calculation intentionally?

4 A. With the documentation that's been
5 provided to me, I did not see any payments or
6 anything being charged to Surrey Ridge.

7 Q. Okay. So that is not in here and you
8 didn't envision doing that?

9 A. Correct.

10 Q. Okay. Now the question in setting these
11 rates -- I mean, the reason for this water company
12 not being able to be exempt is because of the
13 ownership of the Surrey Ridge owner; is that correct?

14 A. Can you restate that?

15 Q. The reason this was not eligible for an
16 exemption is because of these -- all of the shares
17 that were owned by the developer; namely the Surrey
18 Ridge owner?

19 MS. SCHMID: Are you asking if that's the
20 only issue? I'm confused.

21 Q. (By Mr. Barker) Yeah. If the bylaws --
22 that's what the bylaws fixed. Then I think that's
23 the problem with there not being any commonality is
24 because we had a number of shares that were owned by
25 a developer that wasn't a hooked-up user.

26

1 A. One of the reasons that exemption is not
2 being recommended is because there is no commonality
3 of interest.

4 Q. Okay. Yet they have kept that control and
5 now -- well --

6 MS. SCHMID: Pardon. Who is they?

7 MR. BARKER: That developer. The Tebbs
8 group. BACT.

9 MR. FITTS: And I object to the
10 characterization of them as the developer. Because
11 they were not, in fact, the developer.

12 MR. BARKER: I'll say the successor
13 developer.

14 MR. FITTS: They are a successor developer
15 to the extent of Surrey Ridge, but not as to Bridge
16 Hollow.

17 MR. BARKER: That's fine. Thank you for
18 that clarification.

19 Q. (By Mr. Barker) Since they changed --
20 well, did you look at -- they were paying an amount
21 equal to, I believe, the stand-by fee prior to the
22 meeting in -- can you help me with when they changed
23 the rates?

24 MR. BROWN: December 1998.

25 Q. (By Mr. Barker) Before December 1998,

26

1 I'll say the Tebbs Group, they were paying, I
2 believe, the \$120 a month stand-by fee; is that your
3 understanding?

4 A. That's in the documentation. Yes.

5 Q. Okay. And there is a question on whether
6 that was within the bylaws to let them change that.

7 Did you consider any assessment for them
8 for that change that was against the bylaws? Did you
9 look at violations of the bylaws in your
10 investigation?

11 A. What I looked at in my analysis was 2005
12 as the test year and only 2005.

13 MR. BARKER: When was that change made
14 again?

15 MR. BROWN: I'm sorry. I wasn't
16 listening.

17 MR. BARKER: When was the change in the
18 rates made that you just told me?

19 MR. BROWN: December of '98 in a Board
20 meeting.

21 They were originally, in December 1994,
22 165 and 120. And they remained that until
23 December 1998.

24 And this is all contained in the exhibits
25 in the petition.

26

1 Q. (By Mr. Barker) So you didn't look at the
2 '98 rates then; is that what you're saying, Mr. Moio?

3 A. I looked at all the documentation
4 submitted. But in my analysis to decide what the
5 interim rates should be, I only looked at 2005.

6 Q. Okay. Would it be relevant to look at
7 what they were paying before and is there not --
8 should they not be paying something since they own
9 half of the shares up until arguably today? I guess
10 that's the whole question.

11 Isn't there some assessment that would be
12 appropriate for them?

13 A. It's my understanding when determining
14 rates that a test year is chosen. And the numbers
15 from that test year are used for the analysis.

16 Q. Is that something that would be -- you
17 would be inviting or at least welcome further
18 evidence on and you would take into consideration as
19 you come up with final rates, rather than just
20 interim rates?

21 A. I couldn't speculate, but I can tell you
22 in general, for water companies, dry lots are usually
23 not charged anything because there is no
24 infrastructure there.

25 Q. Okay. Even where the control of the
26

1 company rests with the developer still?

2 A. Again, that's something I can't answer.

3 Q. Okay. And then I guess last, I understand
4 they're not in the service area now, so I understand
5 the point that perhaps they shouldn't be assessed
6 now.

7 But do you ever -- would the Department
8 look at a past due assessment and look at helping --
9 assisting or collecting that for this utility that
10 may now be a public regulated utility?

11 MS. SCHMID: Again, I think that with
12 regard to past due amounts, that's more of a
13 contractual matter that is best resolved in another
14 forum. And we've already beat that horse.

15 Q. (By Mr. Barker) The reason I think that's
16 relevant, though, is that's -- it's the past. What's
17 happened financially in the past, to some degree, is
18 relevant to what the rates ought to be in the future.

19 Is that correct?

20 A. Actually, the rates are determined by what
21 would be a fair rate of return for the company and
22 reasonable for the users.

23 Q. But if they had a bunch of money in the
24 bank, doesn't that change your analysis at all?

25 A. If they had a bunch of money in the bank,
26

1 that would increase their assets, which they get to
2 earn a rate of return on.

3 Q. So it would reduce their future rates or
4 would not?

5 A. It would actually increase.

6 Q. Having more money in the bank would
7 increase?

8 A. Having more assets, they get a rate of
9 return on the assets. The larger the assets, the
10 greater the return.

11 Q. I would like to run my finances
12 differently.

13 Even if it's cash. That's interesting.

14 A. Cash is a current asset.

15 Q. Well, that's helpful in figuring out where
16 we go from here. I believe those are -- well, I guess
17 one question I need clarification for.

18 Does the Department ever look at
19 collecting past due rates and do an evaluation on
20 whether they should have been made, whether rates
21 were changed inappropriately and dig back in and look
22 at potentially collecting past due rates?

23 MS. SCHMID: I think that may be more of a
24 legal question with regard to retroactive rate
25 making, which we don't generally do.

26

1 MR. BARKER: You leave that for the
2 parties to fight out?

3 MS. SCHMID: Yes.

4 MR. BARKER: I believe that's all my
5 questions, your Honor.

6 JUDGE GOODWILL: Mr. Fitts?

7 MR. FITTS: Thank you.

8 BY MR. FITTS:

9 Q. Mr. Moio, a question or two.

10 And again, this is for clarification to
11 perhaps assist us in resolving some things.

12 Will you take a look at Tebbs Exhibit
13 Number 4, Mr. Fluckiger's January 19th, 2006 letter.

14 MS. SCHMID: Pardon me. I think that's
15 Tebbs Exhibit 1.

16 Q. (By Mr. Fitts) Yes. Thank you.

17 In reference to Surrey Ridge, it makes
18 reference to the 40 unconnected lots.

19 Is it your understanding, based on your
20 investigation, that there have not been any lots
21 actually approved for the Surrey Ridge subdivision?

22 A. That's my understanding.

23 Q. Okay. With respect to defining service
24 area, how is Surrey Ridge -- assuming Surrey Ridge
25 owns water shares -- or the owners of Surrey Ridge

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1 owns water shares, how does that play into the
2 Division's determination in the definition of the
3 service area?

4 A. It's my understanding that Surrey Ridge is
5 part of the Bridge Hollow subdivision. However,
6 currently it is an unimproved area.

7 Q. So when you say Bridge Hollow subdivision
8 is the definition of the service area, you are
9 including the Surrey Ridge property in that?

10 A. Yes.

11 Q. And just to make clear, the proposed
12 Certificate of Necessity would include within the
13 service area that it covers the Surrey Ridge
14 property; is that correct?

15 A. Well, the Surrey Ridge property is
16 unimproved and there is no infrastructure at this
17 time.

18 Q. But it would be part of the service area
19 once lots are approved within that property; is that
20 correct?

21 A. If a certificate is issued and lots are
22 approved, then I believe Bridge Hollow would have to
23 come to the Commission to amend their certificate to
24 serve those lots.

25 Q. But the ownership would not change, water
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1 shares and the right to be within the service area is
2 not changed by the Certificate of Convenience?

3 A. I believe that's correct.

4 Q. Okay. So as far as you understand,
5 whatever rights the owners of Surrey Ridge have to
6 water shares and included within its service area are
7 not affected by the Certificate of Public
8 Convenience?

9 A. I believe so. You are correct.

10 MS. SCHMID: Again, that's for that other
11 forum.

12 Q. (By Mr. Fitts) Right. And once that's
13 resolved, when those lots are approved and those
14 issues are resolved, then those lots, as approved, in
15 Surrey Ridge would become as a matter of course part
16 of the service area that we're talking about; is that
17 correct?

18 A. Well, again, they would have to amend.
19 And we would have to decide or analyze if the system
20 could hold more lots.

21 Q. It wouldn't, as far as the Division's
22 concerned, change the ownership or the rights of
23 those shares contractually between the parties?

24 MS. SCHMID: To the extent that that's not
25 a legal conclusion, Mr. Moio can answer.

26

1 THE WITNESS: That's correct.

2 JUDGE GOODWILL: Is that all, Mr. Fitts?

3 MR. FITTS: Yes. Thank you.

4 JUDGE GOODWILL: You may have understood
5 those answers, but I'm not sure if I did. So I'm
6 going to go back over a few of those things.
7 Starting specifically with the service area or
8 territory.

9 Let's look at DPU Exhibit 3, the plat map
10 for Bridge Hollow.

11 And Mr. Fluckiger, I would encourage you
12 -- I'm going to ask Mr. Moio, but to the extent that
13 you can clarify or dispute anything that he says with
14 respect to my questions, I would encourage you to go
15 ahead and speak up. And I just remind you that you
16 are still under oath. So I don't have a problem at
17 all if you just say, "Wait. That's not right." I
18 want to make sure we get this right.

19 Mr. Moio, the plat map that's shown in DPU
20 Exhibit 3, does that display Surrey Ridge at all?

21 THE WITNESS: No. I believe it would be
22 the bottom of the page. That's my understanding.

23 JUDGE GOODWILL: And it's the Division's
24 recommendation that Surrey Ridge be included in any
25 certificate -- certificated service area that the

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1 Commission would approve?

2 MS. SCHMID: Could we have just one
3 moment?

4 JUDGE GOODWILL: Sure.

5 THE WITNESS: Okay. I believe that the
6 Surrey Ridge area would be considered in the service
7 area, but not as a ready-to-serve -- not in a
8 ready-to-serve position.

9 MR. FLUCKIGER: Your Honor?

10 JUDGE GOODWILL: Yes, Mr. Fluckiger.

11 MR. FLUCKIGER: I think before I could be
12 willing to accept that as the Board of Directors or
13 on behalf of the shareholders, I would have to find
14 where that would be somewhere other than just us
15 talking about it today. Because I have seen no proof
16 of anything in our Articles or our bylaws whereby
17 Surrey Ridge is in our service area.

18 MR. FITTS: Your Honor, I would just point
19 out --

20 MR. FLUCKIGER: I just want to see it.

21 MR. FITTS: Perhaps that's a complication
22 we have.

23 We do have a letter from Mr. Fluckiger
24 from last Friday talking about rates that should be
25 charged. And it does specifically reference and

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1 include Surrey Ridge in the service area.

2 But all of this -- I think Mr. Barker
3 would agree -- gets back to this issue of ownership
4 of shares and contractual disputes between the
5 parties and agreements between the parties. And the
6 Division's conclusion may be subject to how those
7 issues are resolved.

8 MR. BARKER: Is it correct when he says
9 that the water company or someone would have to come
10 back here to get service?

11 THE WITNESS: Correct.

12 MR. BARKER: For Surrey Ridge? So to say
13 they are included in it, that doesn't mean they can
14 hook up. They've got to come up and they've got to
15 see an adequacy of water. That would be a primary
16 issue; correct?

17 THE WITNESS: Correct.

18 MR. BARKER: Because I don't think the
19 Homeowners Association -- and I think Duane would
20 acknowledge this. I think Duane is speaking more of
21 adequacy of water, whether they can hook up.

22 I don't think anybody in the Homeowners
23 Association would say they are not defined within a
24 service group. There is a question of whether they
25 met the obligation to get water, though. And that's

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1 subject of the dispute, that there is not agreement
2 on.

3 Duane, does that make sense to you?

4 MR. FLUCKIGER: Yes.

5 MR. FITTS: Could I ask a question in
6 follow up at the appropriate time?

7 JUDGE GOODWILL: Go ahead.

8 BY MR. FITTS:

9 Q. Is there -- in terms of determining how
10 much water needs to be provided, is there -- what is
11 the minimum that the State would look to per lot?

12 A. The State minimum for domestic culinary
13 water is .25 acre feet.

14 Q. Thank you. And that is what the Division
15 would be looking at in approving extending the -- or
16 connections in that subsequent determination hearing
17 as to whether the Surrey Ridge lots could be
18 connected, that that would be the standard that would
19 have to be met would be the .25?

20 A. Depending on what's in the Articles of
21 Incorporation.

22 MR. BARKER: Okay. So private standards
23 could apply as well?

24 THE WITNESS: Absolutely.

25 MR. FLUCKIGER: Question.

26

1 Bruce, would that handle the fire
2 suppression?

3 We've heard a bit different from the fire
4 marshals and so on in the area.

5 THE WITNESS: Again, I'm not an engineer
6 and I couldn't comment.

7 JUDGE GOODWILL: Mr. Fluckiger, the rates
8 that are set out in Tebbs Exhibit 1, your letter to
9 Mr. Moio of January 19th, it's my understanding that
10 Bridge Hollow is currently charging those rates?
11 Twenty-six connected lots at \$165 a quarter?

12 MR. FLUCKIGER: Yes. Except the variances
13 as far as the \$40 for Surrey Ridge unconnected lots.
14 They have been paying for the excess water, which is
15 about \$5,400, which falls short. The \$40 would be a
16 \$6,400 per year. They've been paying about 5,400.
17 And the reason that's been done is because anything
18 we've ever done with them, they've refused basically
19 to pay on maintenance and so on. We've had a time
20 collecting. So all we've done at this point is
21 charge them for overage of water, which is
22 approximately 30-something shares that we've been
23 purchasing from Weber Basin. But we're only allowed
24 74 acre feet of water and that's all we have
25 purchased.

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1 So all of these things fall within the
2 dispute that's been going on for the last nine years.
3 Who owns what? Who pays what? How does it handle?

4 However, we, as a Board of Directors of
5 the Bridge Hollow Water Association, elected never to
6 let the water fall short of our 40 shares by
7 purchasing it from Weber County. We don't have the
8 money in our organization to pay for those extra
9 shares. So Tebbs did not want us to cancel them. So
10 we've been letting them pay for that overage. It
11 comes close to the \$40. And we have sent them bills
12 starting over a year ago for the \$120 per lot, which
13 they have been giving -- we've got interest on it.
14 It's about \$289,000 that we keep sending them bills
15 for and no response, as to the water that goes back
16 to the Articles back to 1998, when the rates were
17 changed by a Board of Directors, rather than a
18 general membership meeting.

19 So it's just very cloudy on most issues.

20 JUDGE GOODWILL: Mr. Moio, if the
21 Commission were to adopt the Division's
22 recommendation, including the interim rates
23 recommended in DPU Exhibit 2, I believe it was your
24 testimony to the affect that Bridge Hollow would not
25 therefore be authorized to continue collecting this

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1 money on the 40 Surrey Ridge lots?

2 THE WITNESS: Again, in the financial
3 statements that were given to me, I have no evidence
4 of money being collected for the Surrey Ridge lots.
5 I have the income statements right here and it only
6 shows between \$20,000 and \$24,000 per year for water
7 dues, which would only include the 42 lots.

8 So my analysis is assuming that there is
9 no money coming in from the Surrey Ridge lots, which
10 there are no lots.

11 JUDGE GOODWILL: And it's your testimony
12 that -- let me step back a second, back to service
13 territory.

14 Would the service territory, as you
15 recommend it, be the currently connected 43 lots or
16 some other number that includes the quote, dry lots,
17 at Surrey Ridge?

18 THE WITNESS: It would include the 43
19 lots, current lots, the Surrey Ridge area for
20 potential connections in the future.

21 JUDGE GOODWILL: And your testimony is
22 there are no lots? I keep using that term.

23 THE WITNESS: Yeah. Because there are no
24 lots there.

25 MR. BROWN: Your Honor, I would like to
26

1 just make an observation.

2 Mr. Fluckiger's remarks, he has not been
3 sworn in. I don't know how testimony from the peanut
4 gallery back there is going to count.

5 JUDGE GOODWILL: It's my recollection that
6 I had sworn Mr. Fluckiger in earlier this morning.

7 MR. BROWN: Sorry for the interruption.

8 JUDGE GOODWILL: That's all right. Thank
9 you for pointing that out.

10 MR. BROWN: There is just one other thing,
11 If I could ask a question of Mr. Moio?

12 JUDGE GOODWILL: Let me think if I was
13 done.

14 MR. BROWN: It might clear the matter up,
15 though, with regard to the information he was given.

16 JUDGE GOODWILL: Let me kind of go around
17 the room.

18 So Mr. Moio, is it an adequate description
19 of the proposed service territory for Bridge Hollow,
20 the 43 currently served lots, plus the area that's
21 been commonly referred to as Surrey Ridge?

22 THE WITNESS: I believe so. Yes.

23 JUDGE GOODWILL: Mr. Fluckiger, is that
24 your understanding of the service territory of Bridge
25 Hollow? Is it your understanding of the Division's
26

1 recommendation and would you concur in that
2 description?

3 MR. FLUCKIGER: I'm not sure. I'm not
4 sure.

5 JUDGE GOODWILL: Would you seek a
6 different service territory, a differently defined
7 service territory for Bridge Hollow?

8 MR. BARKER: I think for purposes of a
9 certificate, we would right now.

10 JUDGE GOODWILL: And what would that be?

11 MR. BARKER: Well, I think it would be the
12 43 lots.

13 JUDGE GOODWILL: Limited to the 43 lots.

14 MR. BARKER: And let them come in.

15 It may be distinction without a
16 difference. As long as they have to come in to get
17 hooked -- to get water, then -- you know, I don't
18 know. To say they're not in the service district or
19 to say they're in the service district and have to
20 come in to get in it later on. That's what's a
21 little confusing to me.

22 MR. FITTS: And my view is that Surrey
23 Ridge would be included within the service area. But
24 when the infrastructure is added, that would have to
25 be approved as that's done. And that would be the

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1 process we would go through is going through that
2 approval process of having that infrastructure added
3 to the already-existing service area.

4 JUDGE GOODWILL: Well, that's my confusion
5 because it seems to me that typically the water
6 company comes forward and says, "This is the area we
7 propose to serve."

8 And as the representative here of the
9 water company, I look to Mr. Fluckiger and say what
10 area do you propose to serve if you are certificated?

11 MR. FLUCKIGER: Maybe because I'm not sure
12 and I would rather not -- I don't know is because I
13 keep going back to our developer's agreement, which
14 outlines some of those items and those service areas.
15 And according to the Tebbs Group, I've got letters
16 stating that they feel that that agreement is null
17 and void. If that agreement is null and void, there
18 is things in there that talk about a service area.

19 So I'm not sure.

20 JUDGE GOODWILL: Mr. Moio, is there any
21 reason, with respect to service of customers, that
22 the Surrey Ridge area would currently need to be
23 included in any service area for Bridge Hollow Water?

24 THE WITNESS: No. And the Division would
25 welcome an interim service territory to include the

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1 43 lots and waiting for an amendment to that
2 territory in the future.

3 MR. BARKER: I think that's what the
4 Homeowners Association would feel is appropriate.

5 MR. FITTS: And I think we would prefer,
6 because of our efforts to resolve the issue, I would
7 point to Mr. Fluckiger's January 19th letter where he
8 does include Surrey Ridge. I know he is unsure
9 today. But as of Friday, he appeared to be very
10 clear that Surrey Ridge was included.

11 I think to avoid more difficulty in
12 resolving the issues between the parties, it may be a
13 distinction without a difference, but I think that
14 Surrey Ridge ought to be included, as we previously
15 heard Mr. Moio testify, in the service area with the
16 understanding that when the infrastructure is added,
17 that there is a process that needs to be dealt with
18 in doing that.

19 I believe if that's the case, that would
20 greatly enhance the parties -- it will avoid adding
21 more difficulty to the party's efforts to resolve the
22 corporate governance issues that we're very close to
23 resolving.

24 JUDGE GOODWILL: Mr. Moio, if Surrey Ridge
25 is included in the service area, wouldn't Bridge
26

1 Hollow Water have an obligation to construct a
2 ready-to-serve system for that entire area?

3 THE WITNESS: I don't believe so because
4 there is not improved lots in that area. And a
5 developer that's going to improve lots for that area
6 would have to put in infrastructure and recoup his
7 costs through the sale of those lots.

8 JUDGE GOODWILL: So it would not be the
9 Division's position that simply by not on its own
10 extending the system into Surrey Ridge, that the
11 company were somehow in violation of its obligations
12 as a water utility?

13 THE WITNESS: I believe so.

14 MR. FLUCKIGER: Your Honor, to make it
15 clear on my part against Mr. Fitts, this is only
16 water rates. He indicated that I was -- I had
17 indicated by this letter that I was including Surrey
18 Ridge into the service area. I'm only stating water
19 rates. Nothing more on the service area. This
20 letter has nothing to do with service area. It
21 states right on there water rates only.

22 MR. FITTS: And I didn't mean to
23 misconstrue that, but it appears fairly obvious from
24 Mr. Fluckiger's testimony that they have been billing
25 Surrey Ridge owners relative to the Surrey Ridge

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1 property. And he's proposing rates for Surrey Ridge.
2 And there would be no basis to do that if it's not in
3 the service area.

4 It appears that can be resolved now,
5 including Surrey Ridge in the service area. And at
6 that point, when Surrey Ridge is developed and lots
7 are approved, at that point we need to address those
8 other issues. And at that point in time, I'm very
9 hopeful all these other corporate governance issues
10 will be resolved and it's a more streamlined process.

11 JUDGE GOODWILL: I don't have anymore
12 questions.

13 Does anybody have anything further of Mr.
14 Moio at this time?

15 Mr. Brown, I'm sorry. I wanted to ask a
16 few more questions. But you had something for Mr.
17 Moio.

18 MR. BROWN: I was merely trying to point
19 out to the parties that in Mr. Fluckiger's second
20 data requests to Brown specifically addresses -- I
21 think Mr. Moio perhaps had forgotten that this
22 information had been given to him. His testimony
23 earlier was that he had no evidence on the record as
24 to the charges being made on the undeveloped
25 property.

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1 And in fact, in the December 2nd, 2005
2 letter, response by Mr. Fluckiger, addressed to Bruce
3 Scott Moio, State of Utah, Division of Commerce, he
4 goes on to answer question number one: "Has Surrey
5 Ridge lots and/or water shares been assessed the same
6 dollar amounts as Bridge Hollow Homeowners
7 Association lot owners for fees and other expenses?"

8 Answer by Mr. Fluckiger: "No.

9 "If not, why?

10 "Bridge Hollow Water Association Board of
11 Directors in the beginning, on December 30, 1994,
12 established a rate of 1) \$660 per share, per year for
13 connected lots, 2) \$480 per share, per year for
14 non-connected lots. Reference Exhibit 1. These fees
15 remained in place until the Board of Directors, which
16 became dominated by the majority of the Tebbs family,
17 requested and changed the established rates as
18 follows: 1) developed lots currently hooked up to
19 system \$165 per share, per quarter; 2) developed lots
20 currently not hooked up to the system \$120 per share,
21 per quarter; 3) undeveloped property \$40 per share,
22 per quarter. Reference Exhibit 2.

23 >Note: Tebbs family reduced their fees by
24 two-thirds as they are the only undeveloped lots.

25 Current shareholders are now alleging the Tebbs

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1 family, successors to Surrey Ridge, have illegally
2 controlled the Board at the Bridge Hollow Water
3 Association as they never paid the \$215,000 to Bridge
4 Hollow Development, predecessors of Bridge Hollow
5 Homeowners Association. And therefore, should never
6 have been issued stock in Bridge Hollow Water
7 Association, as per paragraph 3 of the Articles of
8 Incorporation.

9 "Furthermore, the shareholders are
10 alleging the Board of Directors' actions by the Tebbs
11 family to give themselves reduced fees is a violation
12 of Article 7.3 and 7.4 of the bylaws, and a violation
13 of paragraph number 6 of the 1994 Development
14 Agreement between the parties. Reference Exhibit
15 Number 3, pages 3 through 4 of Bridge Hollow Water
16 Association minutes of annual shareholders meeting,
17 October 29th, 2005."

18 I merely read this to remind Mr. Moio
19 that, in fact, this information was available on the
20 record, the 165 for connected lots, the 120 for
21 developed lots not hooked to the system and the \$40
22 per share for undeveloped property. Apparently it
23 was overlooked.

24 MR. MOIO: I appreciate Mr. Brown reading
25 that. However, that was not overlooked.

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1 And when the Division goes out to analyze
2 for a rate case, they audit the current books and
3 records, which are the financial statements of the
4 company. And in the 2005 current income statement
5 balance sheets and bank deposit reports, the Surrey
6 Ridge income is not reported there.

7 MR. BROWN: Thank you. Appreciate that
8 clarification.

9 JUDGE GOODWILL: Let's go off the record
10 for just a second.

11 (Discussion held off the record.)

12 JUDGE GOODWILL: We're back on the record.

13 While we were off the record, I engaged in
14 some discussion with all of the parties present
15 regarding some of the issues that have been the
16 subject of testimony and the Division's
17 recommendation here today, specifically service
18 territory concerns, how State statute might -- what
19 affect State statute might have on utility operations
20 depending upon the specific service territory that
21 the Commission might adopt in these proceedings.

22 Also discussed the possibility of
23 continuing this matter while the parties continue to
24 negotiate some sort of settlement of the ongoing
25 ownership issues. And I indicated that parties would

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1 be free to make such a motion on the record when we
2 reconvened.

3 I think that's an adequate summary of our
4 discussion off the record.

5 With that, I will turn back to Mr. Brown
6 for continuation of his presentation of evidence.

7 Mr. Brown, you did indicate just before we
8 came back on the record that you did not intend to
9 engage in any cross-examination of Mr. Fluckiger.

10 Did you have any examination of any other
11 witnesses or any other presentation of evidence which
12 you wanted to make, other than in the form of a
13 closing statement?

14 MR. BROWN: In light of your comments with
15 regard to the determination of the service area for
16 Bridge Hollow Water Association, I would like to
17 state for the record that we, as interveners, and
18 having discussed with several of the other lot
19 owners, feel that we are not in favor of a
20 continuance of this proceeding. We feel like a final
21 order in this matter is long overdue.

22 We recommend that the service area of
23 Bridge Hollow Water Association be only that area
24 that currently has water delivery system assets,
25 which is the area I believe identified in DPU

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1 Exhibit 3, which includes the Deer Haven 1 through 6
2 lots.

3 I'm a little concerned that there are some
4 obligations perhaps to serve three lot owners that
5 are outside of even this map that were identified in
6 the revised Articles of Incorporation in the 10/29/05
7 amendment that the shareholders of record who were
8 deemed to be eligible to vote had authorized, but not
9 implemented. And those three individuals perhaps are
10 going to have to be considered as well in the service
11 area.

12 But we feel that Bridge Hollow Water
13 Association is currently underfunded, as per Mr.
14 Moio's analysis. The water delivery system is
15 currently inadequate to deliver the water. That is
16 the evidence that we most recently discovered. And I
17 would go to the exhibits pertaining to Aqua
18 Engineering's analysis that are on this record. And
19 we feel to expand this service area larger would do a
20 great disservice to the customers, the shareholders
21 and the Water Association in total.

22 If the Public Service Commission accepts
23 the DPU recommendation to regulate Bridge Hollow
24 Water Association as a public utility at the interim
25 rates, which we now believe are recommended at \$165
26

1 per quarter, per lot for the 26 connected lots, and
2 \$120 per quarter, per lot for the 16 unconnected
3 lots, and Surrey Ridge is eliminated from the service
4 area, we would go along with the Division of Public
5 Utility's recommendation, that it be regulated as a
6 public utility with the service area outlined in that
7 manner.

8 If the service area is determined by the
9 Public Service Commission to include Surrey Ridge,
10 then the interveners oppose the interim rate
11 structure proposed by the DPU, because it does not
12 take into account the underfunding of the Water
13 Association, its inability to deliver water even to
14 its current recommended service area, and it ignores
15 a number of contractual issues and arguments between
16 the parties that go to whether or not the people are
17 eligible for service through contracts that they have
18 done with one another.

19 With that, it would be our hope that the
20 Public Service Commission would rule that Bridge
21 Hollow Water Association be regulated as a public
22 utility with the service area to only include that
23 area that currently has water delivery system assets
24 and at the interim rates thus outlined.

25 Thank you.

26

1 JUDGE GOODWILL: Mr. Fitts, you indicated
2 off the record as well that you had a few documents
3 you wanted to offer into evidence?

4 MR. FITTS: Yes.

5 These will be Tebbs Exhibits 2 and 3.

6 Tebbs Exhibit 2 is a copy of the 1994
7 Development Agreement, which addresses the formation
8 of the Bridge Hollow Water Association by the Bridge
9 Hollow Homeowners Association and the Surrey Ridge
10 Development.

11 Tebbs Number 2 is the July 12th, 1994
12 Development Agreement.

13 Tebbs Number 3 is the November 7th, 1997
14 agreement that -- both these agreements have been
15 referenced.

16 And we would offer these into evidence at
17 this time.

18 JUDGE GOODWILL: We'll go ahead and mark
19 them for identification as Tebbs Number 2, that being
20 the Development Agreement, dated the July 12th, 1994.
21 And Tebbs Number 3 for identification, being the
22 agreement dated November 7th, 1997.

23 (TEBBS EXHIBIT-2 AND EXHIBIT-3 WERE MARKED
24 FOR IDENTIFICATION.)

25 JUDGE GOODWILL: Any objections to the
26

1 admission of these into evidence?

2 MR. BROWN: I would like to make an
3 objection or an observation that the Development
4 Agreement, Tebbs Number 2, is not a copy of the
5 complete agreement as it appears in our Petition for
6 Hearing. There is an amendment that should be
7 attached to this, signed by Mr. Gary Jense, who is a
8 representative for Surrey Ridge.

9 And I'll just note for the record that
10 this is not a complete copy of that agreement.

11 MR. FITTS: I'm not sure what those other
12 documents are.

13 MR. BROWN: If we want, I can go pull them
14 out?

15 JUDGE GOODWILL: Are they one of the
16 attachments to your petition, Mr. Brown?

17 MR. BROWN: In my petition, yes. That
18 would be the third exhibit in.

19 And attached to this document agreement is
20 a guarantee signed by Mr. Jense. It is also signed
21 July 12th, 1994.

22 It's my understanding that it was, in
23 fact, a part of the agreement.

24 MS. SCHMID: Pardon me. Isn't there also
25 an exhibit A?

26

1 MR. BROWN: Exhibit 3 of the petition.

2 MS. SCHMID: No. Isn't there --

3 MR. BARKER: You mean on the '97

4 agreement?

5 MR. BROWN: On the '94 agreement.

6 MR. MOIO: Yes. On the '94 agreement,

7 after the guarantee, there is an Exhibit A.

8 MR. BROWN: Yes, sir.

9 MS. SCHMID: And I don't see that.

10 MR. BROWN: You've got a tabbed copy, too.

11 MS. SCHMID: I have a tabbed copy, yeah.

12 I don't see that with yours.

13 But we do have a copy of the Development

14 Agreement, dated July 12th, that has an Exhibit A to

15 it. Maybe I just missed it. There is an Exhibit A

16 that has a property description it looks like.

17 MR. BROWN: That's also attached? I don't

18 have that either.

19 MS. SCHMID: Okay. And we're looking at a

20 copy that looks like it's been recorded at the --

21 somewhere, probably Summit County Recorder's,

22 BK01094, PG0006 through PG00015. And it's Recorded

23 Document Number 00492361.

24 But it does not state where it was

25 recorded or if indeed that is a Recorder's stamp.

26

1 But it looks like it to me from my experience.

2 JUDGE GOODWILL: Mr. Brown, was the
3 agreement, dated November 7th, 1997, was that also an
4 exhibit to your petition?

5 MR. BROWN: Yes. That would be located --

6 MS. SCHMID: The Division could offer the
7 services of Paul Hicken, who has been ever so helpful
8 in making copies, to make copies of these additional
9 two pages, if so desired.

10 JUDGE GOODWILL: I'm just a little
11 confused in that earlier, on your objection, Mr.
12 Fitts, we did not admit these documents when they
13 were offered?

14 MR. FITTS: These weren't addressed -- and
15 maybe I can address that.

16 My concern is these issues get back to the
17 intertwining of the issues when we're talking about
18 the service area. And I wasn't aware that that issue
19 as to what the service area should or should not be
20 was an issue that was in dispute between the parties
21 because of these development agreements. It hasn't
22 been part of the discussions I've been part of.

23 And that is why at this time we're
24 offering these. But at the same time, we're also
25 suggesting a continuance on the service area issues

26

1 because there are a number of documents that bear
2 upon that. It's also intertwined with these
3 corporate governance and contractual issues as to
4 what was and was not part of the service area. We
5 have the development agreement that very clearly
6 talks about Bridge Hollow Water service area
7 including Surrey Ridge. We have these other
8 agreements. All throughout the entire history of
9 this, Surrey Ridge has always been contemplated to be
10 part of the service area of the Bridge Hollow Water
11 Association.

12 The bylaws talk about, that we would also
13 admit into evidence if this is an issue that the
14 Commission is willing to rule upon now, that talks
15 about -- that has a specific section dealing with
16 what the service area is. It talks about the service
17 area being that area where shareholders and Water
18 Association-owned property, which is Bridge Hollow
19 and Surrey Ridge. There is also minutes of the first
20 annual shareholders meeting where the owner of Surrey
21 Ridge is acknowledged to have -- Gary Jense -- was
22 acknowledged to have 41 shares. All of that bears on
23 what the scope of the service area is. It's always
24 been understood that Surrey Ridge is part of the
25 service area.

26

1 And to the extent that that -- we would
2 object to -- our objection is based upon the fact
3 that resolution of these issues is largely dependant
4 upon the judicial adjudication of whether or not --
5 what these contractual rights and obligations are
6 between the parties. And that's where the problem
7 lies. And we understand the issue of the service
8 area being an important issue, but this is quite
9 frankly, from our view point, this is something
10 that's come about in the process of this in trying to
11 define what needs to be done in order for the
12 Commission to regulate the company.

13 So our objection previously to the
14 documentation -- and you didn't talk about these
15 specific documents -- but generally Mr. Brown's
16 submission of the petition as a whole, because it
17 does go to those corporate governance and
18 contractual, breech of contract, alleged breech of
19 contract issues that the parties need to resolve.

20 The difficulty we're faced with here is
21 that absent a continuance, which we are asking for,
22 to allow the parties to resolve those issues, there
23 is necessarily an overlap into that issue of what is
24 the service area. That that depends upon the
25 resolution of these issues.

26

1 So we're just offering these, not for
2 those issues as to whether anyone has breached a
3 contract, but just to indicate that Surrey Ridge was
4 always contemplated to be part of the service area of
5 the Bridge Hollow Water Association. And that's the
6 limited purpose of offering these documents at this
7 time.

8 And it's our feeling, though, that the
9 service area is so inextricably intertwined with
10 those other issues, that it falls in line with the
11 Commission's -- or the Division's recommendation of
12 only some kind of interim regulation and certificate.
13 I think we've discussed how that might be resolved in
14 terms of including Surrey Ridge on an interim basis
15 and having that subject to further review after the
16 other issues are adjudicated in the proper forum.
17 And that's what we're trying to do here. If those
18 issues are left open for a further date, which
19 appears to make sense, then we can address those in
20 further detail then. And hopefully they would be
21 muted by agreement or other resolution of ownership
22 issues.

23 JUDGE GOODWILL: What I am inclined to do,
24 given that there appear to be a couple of pages
25 missing here and there from the discussions amongst
26

1 the parties from Tebbs 2 and Tebbs 3, and that those
2 documents appear to be contained in a more complete
3 version in the exhibits to Mr. Brown's petition,
4 which we discussed earlier in these proceedings, what
5 I am inclined to do is to admit those documents from
6 Mr. Brown's petition.

7 MS. SCHMID: Pardon me, your Honor. There
8 is also in Mr. Brown's petition, the document -- the
9 Development Agreement, dated July 12th, '94, is
10 missing an Exhibit A, which the Division has a copy
11 of. And it also appears to be missing an Exhibit B,
12 referenced in the Development Agreement.

13 So it doesn't appear anyone really has a
14 complete copy.

15 JUDGE GOODWILL: Nobody has an Exhibit B,
16 I take it?

17 MS. SCHMID: No.

18 JUDGE GOODWILL: Thanks for pointing that
19 out, Ms. Schmid.

20 And Mr. Fitts, I understand your argument
21 or your statement concerning the relevance of these
22 documents and the limited purpose for which you are
23 seeking their admission. And I will reiterate that
24 the Commission does not intend to delve deeper into
25 the ownership issues, specifically things you
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1 mentioned, such as contracts, purported breeches of
2 contracts and those sorts of things. But given that
3 we are contemplating admitting the Development
4 Agreement from '94 and the agreement from '97, out of
5 an abundance of caution and fairness, I'm wondering
6 whether we should just revisit the issue of all of
7 the exhibits submitted by Mr. Brown with his
8 petition. Again, with the understanding that they
9 can be used for whatever purpose this Commission
10 deems necessary, but the focus would certainly be on
11 the limited question of whether or not this company
12 should be regulated. And if so, what rates should
13 apply. Not necessarily encompassing what service
14 territory should be included within the company's
15 boundaries.

16 That's my inclination is to say, okay,
17 let's go ahead and let it all in. That's typically
18 the Commission's position with respect to evidence
19 anyway. We do try to cast a wide net and then let
20 the Commission determine what is relevant and the
21 weight that evidence should be given based on the
22 issue before it.

23 I'll give the parties a chance to weigh in
24 on that, if you would like.

25 MS. SCHMID: The Division would have no
26

1 objection to the entrance of the Brown exhibits, if
2 you want to call them that, under those
3 circumstances.

4 MR. BROWN: We find that acceptable.

5 MR. FITTS: I believe that's acceptable
6 given the limited scope of the admission into
7 evidence.

8 If I can have a minute to see what all of
9 those exhibits are?

10 JUDGE GOODWILL: To see if you
11 specifically object to any document?

12 MR. FITTS: Primarily to see if there is
13 anything that should be supplemented.

14 My understanding is that the -- and maybe
15 we can ask this quickly now; if that's all right, if
16 the bylaws are part of that and if the minutes of the
17 first annual shareholders are part of those exhibits
18 as well?

19 JUDGE GOODWILL: Mr. Brown, I don't have a
20 copy in front of me, are the bylaws -- I take it you
21 mean the current bylaws, Mr. Fitts?

22 MR. FITTS: My understanding is that there
23 has only been one issue of bylaws.

24 MR. BROWN: Are they part of my petition,
25 your Honor?

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1 JUDGE GOODWILL: Yes.

2 MR. BROWN: Yes.

3 MR. FITTS: And the minutes of the first
4 annual shareholders?

5 MR. BROWN: I believe they are. Yes.

6 MR. FITTS: If that's the case, then we
7 waive our objection only to have those documents
8 admitted for the limited purpose that we discussed
9 previously.

10 If the minutes aren't in there, then we
11 would like to have those offered.

12 MR. BROWN: I can't say with certainty
13 those minutes are in there.

14 Let's have them added to this.

15 JUDGE GOODWILL: We'll have them marked
16 and we'll deal with their admission.

17 What I will do then is we had marked your
18 petition and exhibits, Mr. Brown, as Intervener
19 Exhibit 1 for identification. We had previously
20 chosen not to admit those. However, we will now
21 admit them into evidence as we have just discussed.

22 (INTERVENER EXHIBIT-1 WAS ADMITTED.)

23 JUDGE GOODWILL: Along with that, I
24 believe there is an Exhibit A that the Division has
25 to the 1994 Development Agreement?

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1 MS. SCHMID: Yes. Yes.

2 JUDGE GOODWILL: Could we mark that as DPU
3 Exhibit 5 for identification.

4 Is there any objection to its admission,
5 the Exhibit A to the 1994 Development Agreement
6 marked as DPU Exhibit 5?

7 (No verbal response.)

8 JUDGE GOODWILL: Okay. We'll admit it as
9 such.

10 (DPU EXHIBIT-5 WAS MARKED AND ADMITTED.)

11 MS. SCHMID: Would you also like the
12 guarantee that was a part of the Development
13 Agreement?

14 Oh, I believe that's in Intervener 1.
15 Okay.

16 JUDGE GOODWILL: Okay. Because of the
17 admission of Intervener 1, we have marked Tebbs 2 and
18 3, but see no need to admit those.

19 And we now have Tebbs 4, the minutes?

20 MR. FITTS: If they are not included.

21 JUDGE GOODWILL: I think it's easier if we
22 admit them. We'll mark them as Tebbs Exhibit 4.

23 And I take it the parties haven't -- do we
24 need to take a minute for the parties to review
25 minutes or are the parties satisfied they have seen
26

1 the previously and they don't have any objection?

2 Why don't we make copies and we'll deal
3 with their admission in a minute.

4 (TEBBS EXHIBIT-4 WAS MARKED FOR
5 IDENTIFICATION.)

6 JUDGE GOODWILL: Mr. Fitts, anything
7 further?

8 MR. FITTS: The one stipulation I have,
9 and I can have a witness testify to it, it has been
10 established that Gary Jense was the prior owner of
11 the Surrey Ridge property, the property that's now
12 known as Surrey Ridge. I would offer that as a
13 stipulation.

14 If there is an objection to that, then I
15 would be happy to have somebody put under oath and
16 testify to that.

17 JUDGE GOODWILL: Any objection to the
18 stipulation of that fact?

19 MS. SCHMID: No objection.

20 JUDGE GOODWILL: Okay. Mr. Fitts, you
21 did, I believe, move for a continuance.

22 I will give the parties an opportunity to
23 speak to that.

24 From the Division?

25 MS. SCHMID: The Division objects to a
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1 continuance being granted in this matter. The
2 parties have been seeking a resolution of this matter
3 for many years. We have heard that resolution has
4 been close in the past; however, it has not been
5 forthcoming.

6 At the current time, we believe that there
7 is sufficient evidence on the record to show that
8 Bridge Hollow Water Company does not qualify for an
9 exemption from Commission regulation and that it
10 should be issued a Certificate of Public Convenience
11 and Necessity at this time. A continuance would not
12 be in furtherance of the public interest.

13 JUDGE GOODWILL: And I've heard Mr.
14 Brown's position on the continuance.

15 Mr. Barker?

16 MR. BARKER: My clients would not want a
17 continuance either.

18 I want to point out, I don't believe that
19 needs to stop negotiations anyway. I believe we're
20 prepared to move forward. If we can still negotiate,
21 we can negotiate.

22 JUDGE GOODWILL: We'll take that matter of
23 continuance under advisement and either issue an
24 order on that or issue our interim order regarding
25 the matter before us.

26

1 Anything further, Mr. Fitts?

2 MR. FITTS: No.

3 JUDGE GOODWILL: Mr. Barker? Evidence?
4 Testimony?

5 MR. BARKER: No. At this point I just
6 want to underscore, if you include them in the
7 service district and you take out the money that
8 they've been contributing, there is some real
9 financial issues that that raises. And I just wanted
10 to underscore that. Seems to me they can't be in
11 there if they are not contributing.

12 MR. FITTS: In our total summation of this
13 thing, we don't object to regulation or the proposed
14 rate schedule. We believe the documentation clearly
15 reflects that Surrey Ridge is and always has been
16 contemplated to be within the service area, but
17 recognize -- and we have been making those payments.

18 We are happy to stipulate that the rate
19 schedule include the amount that we've been paying
20 annually for the undeveloped property of Surrey
21 Ridge. Mr. Fluckiger indicated what that was and we
22 would stipulate that that be made part of the rate
23 schedule, that we continue paying what we have been
24 paying in order to maintain the status quo, including
25 Surrey Ridge within the service area and continue to

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1 pay the rates that we've been paying.

2 JUDGE GOODWILL: What would be the
3 Division's position on that?

4 MS. SCHMID: The Division's position would
5 be that if the Surrey Ridge group wanted to pay, that
6 could be appropriate and the interim rates could
7 reflect that. Again, as I said before, we do not
8 believe that Bridge Hollow Water Association meets
9 the criteria for exemption. So a Certificate of
10 Public Convenience and Necessity is appropriate.

11 With regard to the service territory, the
12 Division, as clarified further by Mr. Moio's
13 testimony, believes it's appropriate to include
14 Surrey Ridge, Deer Haven and the three lots across
15 the road as was discussed earlier. But the Division
16 also believes that the certificate could be
17 conditioned with Surrey Ridge seeking approval to
18 hook up and perhaps an acknowledgment that normally
19 dry lots -- improvements to dry lots are recovered by
20 the developer through the sale of lots.

21 So in essence, to some extent we're
22 proposing what could be construed as an interim
23 service area.

24 JUDGE GOODWILL: Specifically with respect
25 to the payments that Surrey Ridge has been making to

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1 the water company?

2 MS. SCHMID: Again, the Division does not
3 have any evidence, as I understand it, to show that
4 those payments have been received. So that issue
5 aside as to whether or not there was anything due and
6 owing, if Surrey Ridge wanted to propose a rate for
7 its unconnected dry lots, although often dry lots
8 aren't assessed a rate, a voluntary contribution
9 certainly would not be turned down by the Division --
10 sorry voluntary contribution to the water system
11 would not be objected to by the Division.

12 That sounded bad. I'm sorry.

13 JUDGE GOODWILL: Mr. Fluckiger?

14 MR. FLUCKIGER: Your Honor, I believe that
15 we need to really go back and look at the CCNRs.

16 JUDGE GOODWILL: Which are?

17 MR. FLUCKIGER: The CCNRs of the Bridge
18 Hollow Water Association.

19 It very clearly states in there that all
20 users are assessed the same amount. A Board of
21 Directors, that was controlled by the Tebbs family,
22 made a motion, which passed, at a 1998 meeting to
23 reduce from 120 to \$40 per lot. That is in clear
24 violation of all the other rate users. It's an
25 unfair situation for the other rate users that are

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1 inside the Bridge Hollow area, that is not connected
2 to the water, that has a dry lot, for them to pay 120
3 per quarter and for Surrey Ridge to own 40 shares of
4 water and not pay nothing. Or hardly nothing. And
5 when I say they pay hardly nothing, they have only
6 maintained the cost of the water that is owned by the
7 Bridge Hollow Water Association for this stand-by
8 interim, trying to work through all of these issues.
9 Because if we let that water go, it is probably not
10 going to get anymore water through Weber Basin.
11 They've cut the water off.

12 So in the event that it's ruled that they
13 do pay nothing, that means that shareholders in the
14 Bridge Hollow Water Association would be paying to
15 maintain water for an end user that's not paying
16 anything nor is even possibly in the service area.
17 That would have to be somewhat of a very unfair
18 situation to put that burden on 40 other lot owners
19 to do something like that.

20 Therefore, I believe you need to go --
21 they need to go back, look at the bylaws that is part
22 of this water company. And if they are in the
23 service area, they are entitled to pay the same
24 amount of money that the people in Bridge Hollow with
25 a dry lot is paying. Otherwise, there is not going

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1 to be enough money for this operation to exist. And
2 if they are included in the service area, they should
3 bring their account current, which is about \$108,000
4 plus interest for the time that the Tebbs family
5 reduced their water rate to favor themselves.

6 MR. FITTS: If I can respond just briefly
7 to that.

8 There is a distinction between a dry,
9 developed lot and undeveloped property. And this is
10 an unusual situation.

11 We're not proposing we pay nothing. Most
12 of what Mr. Fluckiger has to say goes to past
13 disagreements between the parties, which is not the
14 subject of what we're doing here. But we are not
15 proposing to pay nothing as part of the service area.
16 I think we agree fully with what the State has
17 proposed, the Division has proposed.

18 I believe Mr. Fluckiger indicated what is
19 currently being paid and billed to Surrey Ridge
20 owners is \$5,600 a year. And on the interim rate
21 schedule, we would stipulate to that amount.

22 MR. BARKER: It is contrary to the bylaws,
23 though.

24 MR. FITTS: Those are those past issues
25 and we understand there is a dispute as to that. And

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1 that needs to be resolved.

2 But I understand what the Commission's and
3 the Division's approach is, they are not going
4 retroactively on this. We are trying to figure out
5 what a reasonable rate is from this point forward.
6 And determine what that is. And all of this interim
7 determination is all going to be largely subject to
8 how these other disputes are resolved through
9 settlement or through litigation in the District
10 Court.

11 MR. FLUCKIGER: Your Honor, in all due
12 respect, it is not in the past. Either we abide by
13 the bylaws, which is there, or why would we not abide
14 by part of the bylaws and some of the bylaws. And
15 this is what has been happening with these two
16 corporations or companies to say over the past ten
17 years with the agreement. People abide by the parts
18 that they want. The bylaws are the bylaws. I don't
19 believe you can ignore them or anybody can. You
20 can't pick and choose the parts that you want to put
21 in there.

22 And I believe if you read those bylaws, it
23 very, very clearly states that the rates are uniform.

24 MR. BROWN: Your Honor, I'm going to have
25 to withdraw my offer to not cross-examine Mr.

26

1 Fluckiger if we're going to get into what is the
2 appropriate rate for Surrey Ridge to pay if they are
3 placed in the service area of the public utility.
4 Simply stated, there is a big disagreement about
5 whether or not they are paying a fair share. There
6 is no agreement between the parties with regard to
7 dry lots versus other lots. There is a whole bunch
8 of new evidence here that can be explored if we want
9 to get into that.

10 My recommendation was simply, and I'll go
11 back over that, and that was we would agree to not
12 having a continuance and having the service area be
13 Bridge Hollow Water Association and only that area
14 that currently has water delivery system assets.
15 Bridge Hollow Water Association is underfunded and
16 the water delivery system is inadequate even for its
17 current needs, let alone the additional Surrey Ridge
18 lots.

19 If it is the Public Service Commission's
20 decision, we would then be willing to accept the
21 rates that the DPU has recommended, which we
22 understand to be 165 for connected and 120 for
23 unconnected. And there would be no issue as to
24 Surrey Ridge.

25 Surrey Ridge obviously has other
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1 contractual, alleged contractual, obligations to
2 Bridge Hollow Development and to the water company,
3 Bridge Hollow Water Association, which they can deal
4 with during this period of time to determine whether
5 or not they will be serviced in the future. But if
6 the service area -- and I want to emphasize this --
7 if the service area is determined to include Surrey
8 Ridge, then we oppose the interim rate structure that
9 the Division is proposing. Because it totally
10 ignores what's going on. It ignores the fact that
11 Mr. Fluckiger has and is attempting to collect the
12 full rate, \$120 per lot, that Surrey Ridge had been
13 required to pay from 1994, when the Development
14 Agreement was done, until the Tebbs interests, who
15 controlled the Board at the time in December 1998,
16 changed the rate to \$40 for undeveloped lots. The
17 fact of the matter was it was done illegally. It's
18 contrary to the Articles of Incorporation which
19 require that such moves that deal with equity of
20 these fees be brought to a full membership vote of
21 the Water Association.

22 And I outlined that pretty clearly in the
23 Petition for Hearing, which is now admitted. And so
24 if we're going to get into this and argue about
25 whether or not Surrey Ridge is in or out, then maybe
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1 I need to put Duane Fluckiger on and we'll go for
2 another hour or so and go over all of these things.

3 MS. SCHMID: In which case, your Honor, I
4 respectfully request, seeing as it is 17 past 2:00
5 and we have not yet taken a lunch break, that we take
6 a lunch break of approximately one hour before that
7 commences.

8 MR. FITTS: If I might interject one
9 thought.

10 I'm not meaning to say that these are
11 issues that aren't presently existing as disputes
12 between the parties. My understanding of the
13 Division's approach to rate structures is to what the
14 current conditions are. And that, as Mr. Moio
15 indicated earlier in response to Mr. Barker's
16 questioning, that past disputes over rates and what
17 should or should have been paid are issues for the
18 parties to fight between themselves. So I don't see
19 the need to go forward with further testimony.

20 If that's the case, we'll have to call
21 witnesses to address these past meetings where rates
22 were changed and whether they were changed. These
23 are all issues that really are irrelevant to the
24 approach that the Division must take now in
25 determining from this point forward what the

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1 reasonable rate structure should be without regard to
2 going retroactively, as Ms. Schmid said. There are
3 very few instances. That would be an extraordinary
4 measure for the Commission to do under these
5 circumstances. And it wouldn't apply to this
6 particular case.

7 MR. BROWN: Your Honor, if I could
8 comment.

9 We are talking about what's happening
10 today.

11 JUDGE GOODWILL: Mr. Brown, I would like
12 -- exactly. I would like to get some sense of what
13 you would intend to cross-examine Mr. Fluckiger
14 about?

15 MR. BROWN: Well, I have documents here
16 that show that Mr. Fluckiger has served the Real Corp
17 real estate group with bills currently, as of
18 January 17th of this year.

19 MR. FITTS: Those are for past due
20 amounts, your Honor.

21 MR. BROWN: For past due amounts and for
22 current amounts.

23 And the Bridge Hollow Water Association
24 has taken the position that these people owe \$120 a
25 quarter and that they owe money on the money that has
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1 been due them since December of 1998, and that there
2 is interest owing on that amount. As well as the
3 \$215,000 for consideration in connection fee in the
4 1994 Development Agreement that has gone unpaid for
5 that period of time. And they've refused to provide
6 any evidence that it's ever been paid.

7 So if we're going to get into is Surrey
8 Ridge in or is Surrey Ridge out; and if they are,
9 what should they pay, and the Division's
10 recommendation, as I understand it, is that they are
11 in an undeveloped lot, they should only have to pay
12 \$40, then, yeah, I object to that. Then I would like
13 to put on all sorts of testimony and documents that
14 show that the Bridge Hollow Water Association
15 disagrees with that and are currently, in their
16 unregulated state, attempting to collect it.

17 JUDGE GOODWILL: Okay. I understand.

18 Let's take ten minutes. No kidding.
19 Let's be back at 2:30 and I'll see where we go from
20 there.

21 As a clean up matter, the document
22 entitles Exhibit 2, Minutes of the First Annual
23 Shareholders Meeting," we'll mark this as Tebbs
24 Exhibit 4.

25 And was there any objection to its
26

1 admission? Do parties need time to look at it?

2 MS. SCHMID: None from the Division.

3 JUDGE GOODWILL: Okay. We'll go ahead and
4 admit it, Tebbs Exhibit 4.

5 (TEBBS EXHIBIT-4 WAS ADMITTED.)

6 JUDGE GOODWILL: Let's come back at 2:30.

7 (Break taken at 2:20 to 2:37 p.m.)

8 JUDGE GOODWILL: Okay. I think where we
9 left things was that Mr. Brown indicated he may need
10 to cross-examine Mr. Fluckiger and Ms. Schmid said if
11 we're going to do that, let's please have a lunch
12 break.

13 I think at this point we need to let any
14 cross-examination go forward that Mr. Brown indicates
15 he needs, of course subject to objection as we go
16 along. But given that, if we want a lunch break, I
17 guess we should take one.

18 I don't know. You know, I can envision
19 how this is going. We are going to end up into
20 tomorrow or some other date. But I'm happy to either
21 press on or take some sort of a break.

22 MS. SCHMID: Your Honor, I respectfully
23 renew my respect for a break. Perhaps it doesn't
24 need to be an entire hour.

25 JUDGE GOODWILL: Well, let's go ahead and

26

1 break till 3:30 and we'll come back and see how
2 far -- I'll split the difference and say 3:15.

3 (Lunch break taken at 2:38 to 3:16 p.m.)

4 JUDGE GOODWILL: Let's go back on the
5 record.

6 I don't think we have any unfinished
7 business, other than to turn to Mr. Brown, who
8 indicated he wanted to cross-examine Mr. Fluckiger.

9 My only comment on that, I know there is a
10 lot of history here between the parties. I will seek
11 to limit further testimony, questioning and so forth
12 strictly to the issues which appear to be before us.
13 And I know they all can come back to the ownership
14 issue, but I'm not going to litigate here who owes
15 what to whom, how much money, well performances or
16 other issues that have been brought up today.

17 I think it's important that we keep
18 focused on if the Commission were to set rates,
19 interim or otherwise, what would be fair and
20 reasonable in those rates.

21 I'll also simply point out for everybody's
22 information, my understanding that if interim rates
23 are set, those can be adjusted retroactively, for
24 lack of a better term. There are true-up mechanisms
25 to make the utility whole if interim rates are later

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1 determined to have been inadequate.

2 MR. BARKER: On these minutes, is now an
3 appropriate time to comment on those?

4 JUDGE GOODWILL: Oh, sure.

5 MR. BARKER: I hadn't reviewed those
6 before.

7 JUDGE GOODWILL: Let's do that.

8 MR. BARKER: I just wanted to point out a
9 couple of things in here.

10 There is a question and answer format in
11 there from Dan Newton. Dan Newton and Gary Jense, I
12 believe, were probably running the meeting. They
13 were the two founders of this. But on the last page,
14 page 3, there is a question from Sherri Berntsen,
15 under paragraph number 5, about halfway down: "What
16 if the well fails?"

17 Answer, from Dan Newton presumably,
18 "Surrey Ridge Ranch, SRR, is responsible to find the
19 water necessary to supply the whole system with
20 water."

21 Then if you go down to paragraph 6,
22 "Question: Rod Burtenshaw," about halfway down in
23 paragraph 6, "You, as developers, will purchase the
24 land for the new well?" That's asked as a question.

25 "Answer: Surrey Ridge Ranch will purchase
26

1 the land for the while.

2 "Question: Mike Richards - Will Surrey
3 Ridge Ranch pay assessments?

4 "Answer: Yes. Surrey Ridge Ranch will
5 pay the same assessments," and I guess this is the
6 key phrase, "Surrey Ridge Ranch will pay the same
7 assessments as everyone else as determined by the
8 Board of Directors."

9 And that's how the bylaws were drafted,
10 that they would all pay the same. And that just
11 underscores our argument that that was against the
12 bylaws to ever change that.

13 JUDGE GOODWILL: Understood. Thanks.

14 Mr. Brown.

15 MR. BARKER: Duane, you want to come up
16 here.

17 JUDGE GOODWILL: Are you ready to question
18 Mr. Fluckiger?

19 MR. BROWN: Yes.

20 JUDGE GOODWILL: Why don't you come on up
21 here and sit so everybody can see you.

22 Have a seat. Thanks.

23 (Duane Fluckiger was recalled as a
24 witness.)

25 BY MR. BROWN:

26

1 Q. Please state your name, address and title
2 as it pertains to Bridge Hollow Water Association?

3 A. Duane Fluckiger. I'm the President of the
4 Bridge Hollow Water Association.

5 Q. How long have you been the president?

6 A. Four years or so.

7 Q. How long have you been a shareholder?

8 A. Since 1978. Maybe '77.

9 Q. How long have you known the principals of
10 Surrey Ridge Ranch?

11 A. Approximately 1998.

12 Q. As President and as a shareholder Bridge
13 Hollow Water Association, do you have knowledge that
14 the well has ever ran dry?

15 MR. FITTS: Objection.

16 THE WITNESS: Yes.

17 MR. FITTS: This goes back to what your
18 Honor indicated earlier about limiting the scope.
19 We're not going into -- we're talking about what are
20 the reasonable rates as opposed to wells functioning
21 and past history. That's something for another
22 forum.

23 MR. BROWN: Actually, your Honor, what I'm
24 angling for here is the ability of Bridge Hollow
25 Water Association to serve the service area. In what
26

1 I thought was going to be my closing remarks earlier,
2 I said that we would be willing to not ask for a
3 continuance and ask that you consider identifying the
4 service area as that area that currently has water
5 service assets, deliverability assets.

6 My question to Mr. Fluckiger goes to the
7 ability of the water company, which the Division has
8 said should be regulated as a public utility, to
9 deliver its water service to the people that might be
10 considered in the service area.

11 JUDGE GOODWILL: And that's fine.

12 Go ahead.

13 Would you just repeat your answer?

14 THE WITNESS: The answer is yes. The well
15 has run dry.

16 Q. (By Mr. Brown) Would you explain when
17 that occurred and basically how it occurred?

18 A. Occurred approximately late '94, probably
19 early '95. As they were cleaning the well and the
20 well houses, there was a mistake made and the bypass
21 to the -- Wanship Mutual Water Association bypass was
22 left open. Therefore, our well pumped continuous,
23 24/7, for day and a half, no more than two days. And
24 we pumped our well dry, our aquifer dry.

25 Q. Basically the well running 24/7 for a day
26

1 and a half pumped the aquifer dry in roughly '95; is
2 that correct?

3 A. Yes, sir. Late '94, early '95.

4 Q. In front of you you have Intervener
5 Exhibit Number 2 and Intervener Exhibit Number 3.
6 Both of those documents pertain to -- I believe
7 Intervener Exhibit Number 2 is a report from a fellow
8 by the name of Dennis Lyman?

9 A. Dave Lyman.

10 Q. Dave Lyman. Could you tell me who Dave
11 Lyman is?

12 A. Dave Lyman is an employee of mine and a
13 representative of mine who does this kind of work.
14 And I had him go out to meet with Craig Neeley from
15 Aqua Engineering and get the facts as best as he
16 could to the well because we were denied the test
17 results that Aqua Engineering did. And we were
18 trying to get information verbally of what we could
19 from Craig Neeley and the engineer that was doing the
20 testing.

21 Because we knew that there were problems
22 prior because -- the man's name was Chet. We would
23 go down and check on him several different times
24 during this two-day period. The tests were somewhat
25 inconclusive because there was power failures, they

26

1 flooded our well house, different things of this
2 nature.

3 Q. This is in 2003?

4 A. Yes.

5 But the inconclusive was that the engineer
6 told us that they could not stabilize this to pump
7 what -- it wasn't stabilizing. I'm not sure about
8 all the other technical stuff. It wouldn't
9 stabilize.

10 Q. In that Exhibit Number 2, Item 5, would
11 you read that.

12 A. "The current well is capable of providing
13 approximately one acre foot of water for the current
14 24 lots in Bridge Hollow."

15 Q. Did that surprise you when you got that
16 information?

17 A. No, sir. Because that's what we were told
18 earlier.

19 Q. By who?

20 A. By the engineer that was running the test
21 results from the well. And we got to be kind of
22 friends. And he was giving us a fair amount of
23 information.

24 Q. How many homes are currently hooked up to
25 the system in Bridge Hollow?

26

1 A. I believe there is 26, 27. 26 possibly
2 right now at this point.

3 Q. And there is how many on stand-by that can
4 hook up at any time they want?

5 A. About 16 or 17.

6 Q. What do you intend to do about those 16 or
7 17 when they hook up?

8 A. Well, I reckon someone is going to have to
9 re-drill a well.

10 Q. Let's go to Intervener Exhibit Number 3.
11 Turn to, I believe, the third page in. There is a
12 highlighted portion there. Comments by Mr. Neeley.

13 If you can read those.

14 A. You want me to read this?

15 Q. Yes. That portion that's highlighted.
16 The top of that page.

17 A. It says, "John, I faxed my '03 memo to
18 Bonneville Builders, along with the 24-hour pump
19 results. The flow was 65 to 70 GPM and must be
20 reduced one-third. So I gave the well a rating of 40
21 GPM, which agrees with the DWR rating. The memo was
22 not available in digital format. Craig."

23 Q. Apparently, at least in Mr. Neeley's
24 opinion, DWR also feels that it's only a 40 GPM well;
25 is that correct?

26

1 A. According to this document.

2 Q. Okay.

3 MS. SCHMID: And pardon me. Did you say 4
4 or 40 GPM?

5 THE WITNESS: 40.

6 Q. (By Mr. Brown) What steps -- you have
7 before you your answers to Brown's second set of data
8 requests, dated December 2nd, 2005?

9 A. Yes.

10 Q. You've also heard previously the Division
11 of Public Utilities' recommendation that interim
12 rates going forward will be \$165 and \$120. And at
13 this point in time, there is at least some confusion
14 at this hearing as to whether or not the undeveloped
15 property should be charged anything at all, as I
16 understand the conversation coming from the DPU.

17 Would you please read the question and
18 your answer to that Question Number 1 for purposes of
19 refreshing people's memory as to what was happening
20 on December 2nd, 2005.

21 A. "Has Surrey Ridge lots and/or water shares
22 been assessed the same dollar amount as Bridge Hollow
23 Homeowners Association lot owners for fees and other
24 expenses?"

25 "No.

26

1 "If not, why?

2 "Bridge Hollow Water Association Board of
3 Directors in the beginning on December 30th, 1994,
4 established a rate of 1) \$660 per share per connected
5 lots, \$480 per share for non-connected lots," which
6 is we were following the bylaws as far as making
7 these decisions for unconnected lots.

8 Bills were also sent to Surrey Ridge
9 Ranch, which had been ignored. No payment made.

10 Q. Go ahead.

11 A. You want me to read more?

12 Q. Finish reading the rest of your answer.

13 JUDGE GOODWILL: A little more slowly.

14 A. I was just trying to hurry, your Honor.
15 It's getting close to 5:00.

16 "These fees remain in place until the
17 Board of Directors, which became dominated by a
18 majority of the Tebbs family, requested a change and
19 changed the established rates as follows: Developed
20 lots hooked up, \$165 per share, per quarter;
21 developed lots currently hooked up, \$120 per share,
22 per quarter; undeveloped lots, \$40 per share, per
23 quarter."

24 Q. Also, would you read the question and
25 answer to Item Number 4.

26

1 A. "Please provide a copy of each of the
2 water shares of Bridge Hollow Water Association that
3 has been issued.

4 "The Bridge Hollow Water Association does
5 not have copies of all water shares. Copies of its
6 shares have been requested from homeowners. To date,
7 we have not received most of the copies and don't
8 expect to receive them as records are lost or
9 incomplete."

10 Q. It's been about a year, have you been able
11 to get the Bridge Hollow Water Association water
12 shares problem corrected?

13 A. No. We've been given records, but they
14 are incorrect. They are not correct. Transfers have
15 not been done. Stock issuance or lots have been
16 sold. They are in the wrong names.

17 Q. How do you run the company?

18 A. I do the best I can. And this is very
19 incomplete.

20 First of all, we was only supposed to have
21 74 shares issues. There is 84 shares issued at
22 present. I don't know how to deal with that. We
23 only have the right to issue 74. Period. Unless
24 somebody wants to start changing the Articles of
25 Incorporation and the bylaws.

26

1 Q. At issue in this hearing is whether or not
2 to include Surrey Ridge Ranch in the service area.

3 Do you have an opinion on that, as to
4 whether or not they should be included or not, given
5 the current state of affairs at Bridge Hollow Water
6 Association?

7 A. I don't see how they could be included.
8 There is not enough water. There is not enough
9 stock. There is not enough anything. They are not
10 paying their bills.

11 The Developer's Agreement -- John Tebbs
12 sent back letters saying that this Developer's
13 Agreement is null and void. We're not going to
14 accept it. This is not something we're going to deal
15 with.

16 So no. I don't know. I don't know. I
17 wouldn't vote for it.

18 Q. I have received it just the other day, a
19 copy of what was represented to me by your secretary,
20 Donna, as attempts to collect overdue amounts.

21 Would you review that and tell me if those
22 bills, in fact, were sent?

23 MR. FITTS: We would object. I don't know
24 what this document is. We haven't seen it. And it's
25 also going back to collection issues and the breach
26

1 of contract dispute between the parties.

2 JUDGE GOODWILL: Mr. Brown, would you
3 please show those to Mr. Fitts for his review.

4 MS. SCHMID: The Division would like to
5 see them also.

6 JUDGE GOODWILL: And to Ms. Schmid.

7 MR. BROWN: If we can get a copy made, I
8 would like to submit it as Intervener Exhibit 4.

9 JUDGE GOODWILL: Well, we need to deal
10 with Mr. Fitts' objection as well.

11 I'm curious as to how these would be
12 relevant to the issues before us?

13 MR. BROWN: They are relevant to the issue
14 of service area and who should be included and who
15 shouldn't.

16 As indicated earlier, I strongly believe
17 that the group that should be included are those
18 people receiving service. The problem of collecting
19 from people who are not receiving service has been an
20 ongoing problem for a number of years, even at
21 reduced amounts. Agreements between the parties and
22 collections for that, performance on contract, on the
23 delivery of the well and water system are problems.

24 And what I'm trying to point out is that
25 the current Bridge Hollow Water Association is

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1 attempting to correct these deficiencies by
2 continuing to attempt to collect the amounts that
3 they feel like they are owed under these agreements,
4 the very same agreements, that Surrey Ridge's counsel
5 has submitted to this Commission to indicate that
6 they have an interest in Bridge Hollow Water
7 Association. And that they have a right to be
8 included in the service area. Well, if those
9 documents can be submitted to the Public Service
10 Commission for that purpose, then those documents are
11 also subject to criticism for their inability to live
12 up to those agreements. Because if they are going to
13 be submitted as evidence that they should be served,
14 we should also be exploring the fact that they
15 haven't kept their commitments under those
16 agreements.

17 JUDGE GOODWILL: I'm going to ask you to
18 move on to a different line of questioning. I don't
19 see that as relevant to the issues before us.
20 Particularly with respect to the nonpayment of bills.
21 That might, at some point, necessitate a termination
22 of service. But certainly doesn't mean people aren't
23 included within a service territory.

24 MR. FITTS: If I might add to the
25 objection, the document that was offered has nothing

26

1 to do with the water company. It has to do with the
2 Homeowners Association and alleged billings going
3 back to 2003 for snow removal on roadways and road
4 maintenance and an entry gate and a bus stop and
5 other issues that have nothing to do with the water
6 service area.

7 THE WITNESS: Mr. Fitts, you also have a
8 connection fee in there that has not been paid to the
9 Water Company. Also you have water fees that are in
10 there not paid to the Water Company.

11 So two of those documents pertain to
12 Bridge Hollow Water Association.

13 MR. FITTS: What I am saying is that there
14 are a number of those issues that do not. And it
15 goes back to the heart of other disputes.

16 JUDGE GOODWILL: Mr. Brown, you may
17 continue with your questioning.

18 Q. (By Mr. Brown) Mr. Fluckiger, do you
19 believe that Bridge Hollow Water Association is
20 capable of operating its mutual water company as
21 initially contemplated by the Development Agreement
22 and the Articles of Incorporation and bylaws?

23 A. Absolutely. Yes. We're doing just fine.
24 Short of money, but we're doing fine.

25 Q. Do you believe you will be able to operate
26

1 as a public utility?

2 A. Depends on --

3 Q. If the service area is defined as Bridge
4 Hollow subdivision and the six lots at Deer Haven?

5 A. Depends on if they can find a new Board of
6 Directors, I reckon.

7 MR. BARKER: Do you think you can
8 financially handle the expenses, I think is the
9 question, given the reduction in what Tebbs is
10 paying?

11 THE WITNESS: Probably.

12 The only hesitancy is that we have had two
13 \$16,000 charges come up in the last two years. We
14 were able to cover those. And if we were to get
15 another large cost like that coming up in the near
16 future, we would have to go to special assessment.

17 Also, it's been advised by Aqua
18 Engineering that we should spend \$50,000 on the well
19 and purge it and clean the screens because the well
20 did not operate for almost two years after it was
21 drilled before they put it into service. And we have
22 complications with iron and things in the well. They
23 are recommending that we need to clean that and do
24 some fixing at an estimated cost of 50 grand. So I
25 don't know where that would come from.

26

1 MR. BARKER: So it's going to stretch your
2 financial situation; is that fair?

3 THE WITNESS: Without a doubt. No more
4 coffee breaks.

5 MR. BROWN: I think that will conclude my
6 questioning of Mr. Fluckiger.

7 Thank you.

8 JUDGE GOODWILL: Ms. Schmid, do you have
9 any questions?

10 MS. SCHMID: I do not.

11 JUDGE GOODWILL: Mr. Fitts.

12 MR. FITTS: Yes.

13 BY MR. FITTS:

14 Q. Mr. Fluckiger, if I understand correctly,
15 if the Surrey Ridge property is included as part of
16 the service area and they were to pay something
17 towards the finances of the company, as of right now,
18 with that property being undeveloped, that would put
19 the company in a better financial position, receiving
20 more revenues and essentially not putting anything
21 out, at least for right now; isn't that true?

22 A. If there was no demand on water, any money
23 funded by anybody would be helpful. Yes.

24 Q. And you made reference to a denial of Aqua
25 Engineering or some engineering report. Do you

26

1 recall stating that, that you sent your man out to
2 find out what the facts were because you had been
3 denied access to a report?

4 A. That's correct.

5 Q. Isn't it true that the Water Association
6 had been offered the opportunity to share in the
7 costs of that report and the Water Company said no
8 and refused to share in the costs of that report?

9 A. That is exactly correct. We did not order
10 that report. We did not need that report. That
11 report was ordered by Tebbs to find out if, in fact,
12 there was enough water to support his subdivision.
13 And why would we, as shareholders, who are barely
14 making it, pay for that? No. Nobody wanted to.

15 Q. And you understand that the parties who
16 ordered that report and ended up having to pay for
17 it, had some concern about providing a report for
18 free without having some financial contribution
19 towards the report; you understood that concern?

20 A. Oh, I understood. Bridge Hollow Water
21 Association owns that well, not Tebbs. And that
22 report should have been given to us.

23 Q. Thank you. I think you've answered my
24 question.

25 A. Okay.

26

1 Q. You are not an engineer; are you?

2 A. No, sir.

3 Q. And you are not required -- whatever you
4 know about what the well's capacity is and those
5 types of thing, what might be necessary to increase
6 its capacity, those are things you would have to look
7 to an engineer to establish; is that right?

8 A. That's correct.

9 Q. And you would need further studies beyond
10 what you have now to really pin that down with some
11 precision; wouldn't you?

12 A. The study we have is pretty indepth.

13 Q. You earlier indicated that was a
14 preliminary report that gives some concerns; is that
15 right?

16 A. No. If I did, then I'm not saying
17 preliminary. That report I heard cost -- I heard
18 figures of \$40,000. I think that was a pretty
19 indepth report.

20 And that was for one thing: Is there
21 enough water for two subdivisions.

22 Q. Now let me ask you about the rates.

23 Do you recall being present at a meeting
24 in December of 1998, is that when the rates were
25 changed?

26

1 A. Yes, sir. Board of Directors meeting.

2 Q. And you were present at that meeting?

3 A. No. I wasn't President -- I was at that
4 meeting. Yes.

5 MR. FITTS: Your Honor, I have minutes of
6 a meeting of December 18th. In fairness to the
7 witness, I don't have copies of this. I'm happy to
8 show it to everybody quickly.

9 THE WITNESS: I don't need to see it. I
10 know exactly what it is.

11 Q. (By Mr. Fitts) You are aware of the
12 minutes of December 18th, 1998?

13 A. Yes, sir.

14 Q. You've seen those minutes?

15 A. Yes, sir.

16 Q. You've reviewed them?

17 A. Yes, sir.

18 Q. Do you dispute those minutes?

19 A. Nope.

20 Q. So you agree that the rate structure that
21 added a category for undeveloped property at \$40 per
22 share, per quarter was approved at that meeting; is
23 that correct?

24 A. That's correct.

25 Q. And that motion was made and you seconded

26

1 that motion?

2 A. That is correct.

3 Q. All right. Thank you.

4 Were you also present in a meeting with
5 the shareholders where the shareholders were made
6 aware of this and that there was no opposition to
7 that?

8 A. Yes.

9 Q. Okay. That did, in fact, happen with all
10 of the shareholders of the Water Association?

11 A. Was not a quorum. There was only a few
12 people there.

13 As far as the meeting I was to, that was
14 in the very beginning when I first barely come up
15 there.

16 How I got on the Board was I was asked to
17 be on the Board by Rod Burtenshaw. I was also told
18 by Rod Burtenshaw that it didn't matter. They have
19 control. Just go along with what we do. Rod
20 Burtenshaw has -- that's the -- we had no say.

21 Q. You also understood that these rates had
22 actually been independently developed by Rod
23 Burtenshaw himself. He had gone out and done a study
24 and he had gone out to see what other water
25 associations were doing and he's the one that came up

26

1 with these rate changes.

2 Isn't that correct?

3 A. Can I see that rate change then?

4 Q. Sure.

5 A. Because there is two different rate
6 changes it could be talking about.

7 There are two different rate changes that
8 were talked about. One was a metered rate change and
9 one was this change here.

10 No. I don't remember any of that
11 conversation. What I do remember is I was at a Board
12 meeting with three Tebbs family, Rod Burtenshaw and
13 myself. We were -- we could have done whatever we
14 did. I raised my hands being with Rod because I
15 didn't know anything. I was asked to be on a board.
16 I didn't know anybody. And I guess -- you know what,
17 I did not have the knowledge. I was not given
18 knowledge of really what was going on at that point.

19 Q. Rod didn't tell you where these rates came
20 from?

21 A. No, sir.

22 Q. You have no recollection of that?

23 A. No, sir.

24 Q. So as far as you know, these rates may
25 have been generated by Rod himself?

26

1 A. Could have been.

2 Q. You have no reason to oppose that?

3 A. At that point, I never had a set of
4 bylaws, never had a set of Articles, until things
5 started going wrong and I decided to start looking
6 into and getting knowledgeable of this company.

7 Q. You also recognize that there is a
8 difference between a developed lot that's not hooked
9 up and undeveloped property? There is a difference,
10 a significant difference; isn't there?

11 A. No, sir. I don't see how you figure.

12 Q. Let me ask you specifically about the lots
13 in Bridge Hollow that are developed lots, platted
14 lots, that aren't hooked up.

15 Each of those is an approved subdivided
16 lot that someone can build on; is that correct?

17 A. That's correct.

18 Q. Now I would like to ask you about the
19 Surrey Ridge property.

20 As we sit here today, there are no
21 approved lots that anyone could build on yet; are
22 there?

23 A. Nope.

24 Q. So that's different than the developed
25 lots that haven't been hooked up in Bridge Hollow;

26

1 isn't it?

2 A. That's correct. Except we're overlooking
3 one issue.

4 Q. Well, my question is, is there a
5 difference between the status of those two
6 properties?

7 And that's my question.

8 A. Yes. There is. And the link between that
9 is there was told to be 40 shares that was voting
10 shares. And if there are 40 voting shares, then they
11 become the same and you pay the same if they are
12 voting.

13 Q. And I'm asking just about what the present
14 state of affairs are. I know that there is a
15 disagreement as to these agreements, and that's not
16 what I'm asking about today. I'm not trying to get
17 into those issues and trying to avoid those issues
18 because that's a subject of another forum.

19 What I would like to ask you is, as we sit
20 here today, there are not 40 lots, there are nine
21 lots, there are no number of lots that have been
22 approved for development in the Surrey Ridge
23 subdivision; is there? As far as you know, are there
24 any approved, developable lots yet in Surrey Ridge?

25 A. No. If you want 40 shares, if you want to
26

1 vote them, you need to act the same as that.

2 My mama taught me, you can't have your
3 cake and eat it, too. And this is what's happening.
4 They want the shares, they want the vote, but they
5 don't want to pay for them. That's not according to
6 our bylaws.

7 Q. I appreciate your view point on that.

8 A. That's not according to the bylaws.

9 Q. And I'm trying to limit my questions just
10 to the status of the different properties, rather
11 than getting into the issues of interpretation of the
12 bylaws and agreements between the parties. And
13 that'll speed this up. I know you are anxious to
14 leave. And I'm trying to focus what we're talking
15 about here.

16 So as far as you know today, the Surrey
17 Ridge property may never be approved for any more
18 than just one lot; isn't that true?

19 A. That's untrue. They can get approved
20 right now for nine lots. As of today. Right this
21 minute.

22 Q. Beyond that, it's pure speculation; isn't
23 it?

24 A. Beyond that it is --

25 Q. It's speculative?

26

1 A. It is before the Planning Commission and
2 it's up to the Summit County planners.

3 Q. So as it stands right now, there may not
4 be any more than nine lots in Surrey Ridge; is that
5 correct? Is that your understanding?

6 A. That is correct. However they are
7 approving many undeveloped areas in much larger --
8 they are breaking them down --

9 Q. Those are different parcels, different
10 projects, different conditions; right?

11 A. They are doing them on a daily basis.

12 Q. But as far as we know right now, that's my
13 question, we can speculate, but nobody here really
14 knows whether or not there will ever be more than
15 nine lots approved for Surrey Ridge; isn't that
16 right?

17 A. That's right. The possibility is good,
18 though.

19 Q. So we would have to speculate as to that
20 because we don't know?

21 A. Don't have to speculate.

22 MR. FITTS: I believe that's all I have.

23 MS. SCHMID: If I may. I have a couple of
24 questions.

25 BY MS. SCHMID:

26

1 Q. Is it true that there currently are not
2 any water lines running up to the Surrey Ridge
3 acreage? Or are there water lines that go up there
4 and through the Surrey Ridge acreage?

5 A. Our water lines run to the edge of their
6 property.

7 Q. But not on it?

8 A. Not on it.

9 Q. Thank you.

10 And isn't it true that being a Water
11 President takes a lot of hard work and we all should
12 be thankful for your efforts because it doesn't sound
13 like it's a lot of fun?

14 A. It's not any fun at all.

15 Q. Thank you.

16 JUDGE GOODWILL: Mr. Fluckiger, I have
17 just a couple of questions.

18 You indicated that one of your concerns
19 with including Surrey Ridge in the certificated area,
20 the service territory of Bridge Hollow, is a lack of
21 water?

22 THE WITNESS: Yes, sir.

23 JUDGE GOODWILL: Do you -- I just want to
24 make sure that I'm clear on your earlier testimony.

25 Do you believe Bridge Hollow currently has
26

1 enough water to serve its current customers within
2 Bridge Hollow?

3 THE WITNESS: No, sir. Not enough water.
4 No, sir.

5 We have 43 shareholders and we know we
6 don't have that amount at what everybody has been
7 told what they bought when they bought that acreage.
8 We hear people talking about SIUs. We have 20 acres
9 up there. People want to put trees in. They want to
10 build a pond. They want to do some of these things.
11 All of a sudden, I don't know who is going to want to
12 come along and say, "You got these 20 acres, you are
13 in the mountains. You can't plant trees. You can't
14 plant grass. You can't put your kids out on there."

15 Where are our kids going to go? There is
16 no park. There is no recreation area. There is no
17 common areas up there. What are we going to do if
18 they take our water and only give us inside use only.

19 My house is 17,000 square feet with six --
20 eight -- well, I probably got more than that. I
21 probably got 10, 12 bathrooms. I mean, why did I go
22 up there? I went up there. I paid a lot of money.
23 I can't get along on a quarter acre foot of water.

24 JUDGE GOODWILL: And that's what you mean
25 by "inside use only," if it were limited to a quarter
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1 acre foot?

2 THE WITNESS: Yes. And not only that,
3 what am I going to do with a two and a half million
4 dollar home if I try to sell it? I don't know -- I
5 think there will be some -- I don't want to sell my
6 home for nothing. One day I'll have to sell it. Our
7 values will not be there if we cannot furnish water
8 for some outside use. And nobody has ever used that
9 water outside. Nobody.

10 JUDGE GOODWILL: Now, turning to the
11 Surrey Ridge issue.

12 If the Commission were to include Surrey
13 Ridge in the service territory of Bridge Hollow, but
14 require Bridge Hollow to come back to the Commission
15 for approval before any service expansion into Surrey
16 Ridge can occur, would that alleviate some of your
17 concerns with respect to water?

18 THE WITNESS: No, sir. And I'll tell you
19 why.

20 I've been there for nine years. And the
21 day I came onboard, about a year after, it become
22 very, very clear that we had very -- a very drastic
23 problem with the Tebbs and Surrey Ridge. They won't
24 live up to the agreement, which they don't want to
25 talk about, the roads and so on and maintenance. In

26

1 the agreement that you have in your testimony here,
2 they are supposed to do a well, they are supposed to
3 do these things. It just isn't going to happen. Not
4 unless they sell it to someone else who is going to
5 live up to their agreements.

6 JUDGE GOODWILL: I guess my question is,
7 if the current Bridge Hollow water system is ordered
8 to remain as it is with no expansion, without
9 Commission approval, meaning no water could be
10 shipped into the Surrey Ridge area, then even if
11 Surrey Ridge were now included in the service
12 territory, that wouldn't put you at any more risk for
13 additional water needs until such time as the
14 Commission said, "Expand your system;" isn't that
15 right?

16 I know it's a long question.

17 THE WITNESS: No. I understand what you
18 are saying.

19 And yes, on one hand, yes, it wouldn't do
20 anything. But why include in an area where first of
21 all they won't upgrade their system, they won't even
22 honor their contracts. And second of all, I can't
23 possibly believe with the well that we have, drilled
24 on the edge of an aquifer, because they didn't get
25 the center of the aquifer, how in the world could

26

1 that well support those subdivisions?

2 I mean, I believe the engineering people
3 will tell you that unless we drill a new well there,
4 it's not going to support any more than what we've
5 got. We're going to be lucky to support us. Why
6 would we want to expand our service area if we can't
7 take care of our water?

8 JUDGE GOODWILL: But you understand that
9 if the service area did not include Surrey Ridge,
10 Bridge Hollow Water could not charge Surrey Ridge any
11 rates or fees for water service?

12 THE WITNESS: That's really not a problem.
13 I'd just as soon get on without it and just pay our
14 own fees. They are not paying any fees. We're
15 holding some water for them. They've only paid the
16 extra. They have not paid us any amount of money,
17 not even for the maintenance of the roads or nothing.
18 And we've lived this far.

19 Prior, when I first come onboard around
20 '78, we always had assessments from the Tebbs family
21 for putting this in or fixing this well. I don't
22 believe that we've had one assessment period since
23 we've taken over. We've made it to this point.

24 JUDGE GOODWILL: So the Water Association
25 would be satisfied, in essence, losing the \$5,400 a

26

1 year it currently receives from Surrey Ridge if
2 Surrey Ridge were not included in the service area?

3 THE WITNESS: We don't get any benefit of
4 the \$5,400. We pass that money on to the Weber Basin
5 and protect the water, being nice to the Tebbs
6 family. We get no value from that 5,400.

7 JUDGE GOODWILL: Those water rights that
8 you maintain with that \$5,400, that doesn't go at all
9 towards the current service being provided within
10 Bridge Hollow?

11 THE WITNESS: No, sir. We only need 43
12 acre feet of water per shares. We are paying for 74.
13 We are protecting them.

14 JUDGE GOODWILL: Any questions of Mr.
15 Fluckiger?

16 MR. FITTS: Just one.

17 BY MR. FITTS:

18 Q. You indicated that the current water lines
19 infrastructure goes right to the edge of the Surrey
20 Ridge property; is that pretty?

21 A. That's correct.

22 Q. Is there a line that goes up and dead ends
23 at the Surrey Ridge property line?

24 A. Water lines run all around Bridge Hollow.
25 So somewhere, wherever our roads are. So I don't

26

1 think it dead ends, but it's somewhere where they can
2 cut into it or something.

3 Q. My question is, do you know if there is a
4 spur off of your present system that was intended to
5 be connected up to Surrey Ridge?

6 A. I don't believe that they ever put in that
7 spur. I think all they did was --

8 Q. Do you know for sure; that's my question?

9 A. -- they run water lines around our
10 property.

11 Q. So you don't know for sure whether it's
12 there or not?

13 A. No. I don't.

14 MR. FITTS: That's it.

15 MR. BARKER: I had a question.

16 BY MR. BARKER:

17 Q. Other than protecting your investment in
18 our home up there, you don't get anything for all
19 your efforts?

20 A. Yeah. A big headache.

21 Q. And then secondly, at the meeting where
22 the rate was changed, who had the majority of shares
23 at that time?

24 A. The Tebbs family.

25 Q. So who elected you then?

26

1 A. I wasn't elected. I was appointed to the
2 Board.

3 Q. By?

4 A. Rod Burtenshaw. He says, "We'll just put
5 you on the Board."

6 Q. The Tebbs were looking for other people to
7 be on there or something?

8 A. Yeah. They needed someone other than --
9 to my knowledge, it's only --

10 Q. But the Water Company was clearly under
11 control of the Tebbs family at that time? They had
12 the majority of shares; is that what you're saying?

13 A. They always had more people at those Board
14 meetings than we had.

15 MR. BARKER: That's all.

16 JUDGE GOODWILL: Anything further?

17 MS. SCHMID: Nothing more from the
18 Division.

19 THE WITNESS: And besides that, I love my
20 subdivision. I'll fight for it.

21 JUDGE GOODWILL: Thanks.

22 Mr. Brown, any other witnesses?

23 MR. BROWN: No, sir.

24 JUDGE GOODWILL: Anything from the
25 Division?

26

1 MS. SCHMID: Nothing more from the
2 Division.

3 JUDGE GOODWILL: Mr. Barker?

4 MR. BARKER: No.

5 JUDGE GOODWILL: Mr. Fitts.

6 MR. FITTS: Yes, your Honor. I believe
7 it'll be brief.

8 I call John Fleming.

9 JUDGE GOODWILL: Just to make it easier,
10 Mr. Fleming, why don't you come up here. And I'll
11 swear you in.

12

13

JOHN FLEMING,

14

called as a witness, being first duly sworn,

15

was examined and testified as follows:

16

17

JUDGE GOODWILL: Mr. Fitts.

18

BY MR. FITTS:

19

Q. Could you state your name and address for

20

the record, please.

21

A. John Fleming. 2877 Lucky John Drive, Park

22

City, Utah.

23

Q. What is your involvement with the -- what

24

has been your experience and involvement with the

25

owners of the Surrey Ridge property and the Bridge

26

1 Hollow Water Association issues?

2 A. I am an independent contractor, but I work
3 as an advisor, a consultant, to the Tebbs family on
4 the Surrey Ridge property.

5 Q. And in that capacity, did you have the
6 opportunity to have some pretty indepth understanding
7 as to the water issues, water engineering issues, and
8 those types of things?

9 A. I think so. As much as anybody.

10 Q. How would you characterize the level of
11 your understanding of what those water issues are in
12 terms of adequacy of the water system?

13 How would you characterize that, based on
14 the level of experience that you've had?

15 A. The adequacy of the current well system?

16 Q. Well, first, how would you characterize
17 the level of your understanding and knowledge about
18 what's going on with the water system and its
19 capacity?

20 A. I think I have a thorough understanding of
21 that.

22 Q. All right. Because earlier you said "as
23 much as anybody?"

24 A. As much as anyone else. That's for sure.

25 Q. Based on that history and your experience
26

1 and your investigations and talking with people and
2 all of that put together, are you able to -- could
3 you address the issue we've been talking about as to
4 the capability of the system to address the needs of
5 all of the shareholders' needs in the Bridge Hollow
6 Water Association?

7 A. Yeah. The -- in reading the documentation
8 and reading the bylaws and the Articles of
9 Incorporation, there is a statement --

10 Q. And I want to limit your response, because
11 of our prior objections, to the capacity of the well
12 and what it's able to do in terms of the number of
13 hook ups and the number of lots it could service. I
14 would like you to limit your answer to that.

15 A. Okay. The Tebbs were concerned about the
16 productivity of the well, the yield of the well,
17 particularly in light of the fact that at one point
18 we were contemplating -- the Tebbs were contemplating
19 a subdivision of up to 36 lots. So we, Surrey Ridge
20 subdivision, like the Bridge Hollow subdivision, was
21 interested in getting an acre foot of water. Even
22 though that's a pretty high number for up there.
23 Nobody actually uses an acre foot of water. But it
24 is a -- in the documents --

25 JUDGE GOODWILL: I'm sorry.

26

1 Mr. Brown?

2 MR. BROWN: What's the foundation of that?

3 Have you done a water study? Do you know

4 individually that each lot owner does not have the

5 use of -- do you have personal knowledge --

6 THE WITNESS: Yes. I do have the records.

7 MR. BROWN: -- that each person up there

8 does not use one acre foot --

9 THE WITNESS: Yes.

10 MR. BROWN: -- including Mr. Fluckiger?

11 THE WITNESS: Yes.

12 MR. FITTS: Thank you.

13 Those were my follow-up questions to that.

14 Q. (By Mr. Fitts) And who is the highest
15 water user up there?

16 A. I think Hook. The Hook family.

17 Q. And what is the level of that usage?

18 A. I think that was in excess of an acre
19 foot.

20 Q. And the rest of them, on average, what is
21 the use?

22 A. On average, .66 acre feet.

23 Q. Now, if Surrey Ridge were to go forward
24 and there were actual developable lots approved, and
25 let's say, first, that there were nine lots approved,

26

1 would the Bridge Hollow water system be sufficient to
2 service the Bridge Hollow lots and those additional
3 nine Surrey Ridge lots?

4 A. Yeah. As I understand it, yes.

5 The water -- the well produces about --
6 the well was tested at 60 gallons a minute in 1995,
7 or 60, 60-plus. There is actually testimony from the
8 water engineers that it was in excess of 100. But at
9 that time -- in fact, the fellow that did the well
10 test, which was Rod Mund, of Water Well Systems, who
11 dug the well, testified that it yielded -- at that
12 time was yielding 90 gallons a minute. However, the
13 State looked at the pump test that was done.
14 Discounted that pump test -- which was about 60 to 65
15 gallons a minute. Discounted for what they call a
16 safety margin by one-third. So they said, "well,
17 they went on record in 1995 as having a 40 gallon and
18 then a production."

19 Forty gallons a minute is not the same
20 thing as 40 acre feet, which is a confusion here.
21 Forty gallons a minute, as was shown in Mr. Moio's
22 e-mail from the water rights engineers, translates
23 into 64 -- according to the State's data, and they do
24 this everyday, that's what they do -- translates into
25 64 acre feet of water annually.

26

1 Q. Let me stop you there.

2 And that's after this one-third discount?

3 A. After the one-third discount.

4 Q. For a safety factor?

5 A. That's right.

6 Q. So there is actually much more water
7 according to the State's study that is needed for 64
8 hook ups in actuality?

9 A. Well, the State is saying that this is
10 adequate -- if everybody -- that 40 gallons a minute
11 translates into 64 acre feet of water a year. And
12 they do that -- well, it's in the memo.

13 Q. With the one-third safety factor?

14 A. With the one-third safety factor. That's
15 right.

16 Q. Let me ask you, if Surrey Ridge is
17 approved for nine developed lots, based on what you
18 know of the capacity of the water system, what level
19 of service could the system provide to each of the
20 Bridge Hollow lots and the nine Surrey Ridge lots?

21 A. In excess of an acre foot.

22 That's only 49 lots, plus the -- well,
23 there is Stembridge and -- I don't know if Stembridge
24 is on another water system as well. I'm not sure
25 what he's using.

26

1 Q. Let's say there was -- how many lots --
2 and I don't know if you've done this calculation, but
3 approximately how many lots could be developed in
4 Surrey Ridge based on the capacity of the system now
5 and still provide an acre foot of water? Would that
6 be 15 or 20?

7 A. Well, if Bridge Hollow was built out to
8 40, that leaves 24 lots, or 24 acre feet of water
9 available, according to the State's calculations.
10 And those are fairly conservative calculations.

11 Q. So based on the current capacity of the
12 Bridge Hollow water system, if Surrey Ridge's
13 development had 24 lots approved, then the system
14 could provide one acre foot of water each to all of
15 the Bridge Hollow lots and the 24 Surrey Ridge lots?

16 A. According to the State's water rights
17 engineers, yes.

18 MR. FITTS: I believe that's all I have.

19 JUDGE GOODWILL: I'll turn to the Division
20 first.

21 MS. SCHMID: Thank you.

22 I have just a couple of questions.

23 BY MS. SCHMID:

24 Q. Mr. Fleming, are you a licensed,
25 professional engineer?

26

1 A. No.

2 Q. Thank you.

3 MS. SCHMID: That's all I have.

4 JUDGE GOODWILL: Mr. Barker?

5 BY MR. BARKER:

6 Q. Some of the calculations you were going
7 through assume a 24/7, 365 day and also an assumption
8 that the aquifer stays up; correct?

9 A. Yeah.

10 Q. But as we've heard, you normally wouldn't
11 do that?

12 A. You normally wouldn't do that.

13 Q. So I don't know how that translates, but
14 those calculations you give us assume those things;
15 right?

16 A. Yes. That's how the State makes its
17 calculations on availability.

18 Q. Okay.

19 A. And they know that nobody is going to run
20 that thing 24/7.

21 Q. Okay. And they're assuming the aquifer
22 holds up, which apparently it didn't once because the
23 well dried up?

24 A. When it was run 24/7.

25 Q. Just for a day and a half; right? You

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1 were aware of the well drying up?

2 A. I heard that.

3 Q. After a day and a half, two days?

4 A. Yeah. But not many wells, aquifers, hold
5 up under that -- it's really not that the aquifer
6 dries up, it's that it doesn't recharge quickly.

7 Q. It has to recharge quickly. I guess it
8 depends on the size of the aquifer to some degree?

9 A. Yeah. To some degree. It really depends
10 on the design of the well.

11 Q. I mean, if everybody used like the Hook
12 family, which they would have the right to do
13 purportedly, and their sales documents say that, it
14 wouldn't handle what you say; correct? If everybody
15 used like the Hooks used, you mentioned they were the
16 largest user, and they were over an acre foot; right?

17 A. Uh-huh (affirmative).

18 Q. If everyone used that or near that level,
19 it would not have capacity to service the area, you
20 wouldn't be able to do what you described, have
21 another 20 lots?

22 A. According to the State's water rights
23 engineers, it would. That's what that memo says.
24 That's what the calculations are.

25 Q. It also assumes 24/7, 365 --

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1 A. You don't run it 24/7. You don't burn it
2 all night.

3 Q. I'm just saying that's what it says.

4 A. That's what the calculations also say.
5 They say there is a given use pattern.

6 Q. I don't want to argue. I don't know. I'm
7 not an engineer either. You are not either.

8 A. No. That's why I was just reading what
9 the engineer said.

10 MR. BARKER: Well, I think I'm done.

11 JUDGE GOODWILL: Mr. Brown.

12 BY MR. BROWN:

13 Q. Mr. Fleming, since you are familiar with
14 the documents, I am going to hand you Tebbs Exhibit
15 Number 2, Development Agreement, dated July 12th,
16 1994. And ask you to read paragraph 8, that first
17 sentence of the paragraph that's underlined.

18 A. "Bridge Hollow Development and Surrey
19 Ridge agree and understand that adequate water rights
20 must be obtained to service the Bridge Hollow Water
21 Association. 'Adequate' for the purpose of this
22 agreement shall be defined as one acre foot of water
23 per residential connection."

24 Q. Thank you.

25 Is it your testimony today that Surrey
26

1 Ridge has the right to unilaterally change that
2 agreement, that for purposes of this agreement that
3 adequate water rights are no longer one acre foot of
4 water?

5 MR. FITTS: Objection. Calls for a legal
6 conclusion. He's asking for a legal interpretation
7 as to what the right is.

8 And now we're getting off the issue into
9 the dispute between the parties.

10 MS. SCHMID: The contractual corporate
11 governance matters.

12 MR. BROWN: Mr. Fleming brought this up.
13 He's the one that's testified that these people can
14 all do well on less than one acre foot of water.

15 My point goes to the fact that you people
16 have submitted this as an exhibit. It's a contract
17 between the parties. He works for one of the
18 parties.

19 Q. (By Mr. Brown) Is it his testimony today
20 that they have the right to unilaterally change what
21 was determined, in paragraph 8 of this agreement, to
22 be adequate water rights?

23 The answer is a simple "yes" or "no."

24 JUDGE GOODWILL: First of all, I don't
25 believe it was Mr. Fleming's testimony that everyone

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1 can do just fine on less than an acre foot. I don't
2 want that characterization to stand.

3 But beyond that, I think it's fair, Mr.
4 Brown, to ask Mr. Fleming if that's what he and his
5 employers intend to seek is one acre foot or less.

6 I don't want Mr. Fleming to get drawn into
7 drawing any legal conclusions about the agreement
8 itself. I'm not sure that Mr. Fleming has testified
9 to this point about people living on less than one
10 acre foot, other than what is the average currently
11 being used up there.

12 Maybe if you could just rephrase your
13 question.

14 MR. FITTS: And my concern, your Honor, is
15 I've been careful to tailor Mr. Fleming's testimony
16 just to those issues as to capacity, without getting
17 into the legal arguments and disputes between the
18 parties. And that's what I'm hoping to avoid here.

19 Part of what Mr. Fleming has to say as to
20 what the owners of Surrey Ridge intend to do or what
21 they are claiming to do is really something that is
22 not at issue in this action. And I think it would be
23 prejudicial to us to have to address these issues
24 that are not really part of this and when they should
25 be part of another forum. I have a serious concern

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1 about him having to answer those types of questions
2 without that really being noticed as an issue before
3 this Commission when we ought to have an opportunity
4 to prepare for that issue adequately. And he is
5 under oath and I have a concern about having him --
6 using this as a forum for discovery in matters that
7 should be addressed in the District Court.

8 MR. BROWN: And my point is, either his
9 testimony needs to be stricken or I have the right to
10 question him as to his opinions that people can do
11 well on .25 acre feet of water.

12 Wasn't that his testimony?

13 MR. FITTS: He has not testified to that.
14 He has not even got into that issue, what people can
15 do well on.

16 We have only asked him -- I've asked him
17 with respect to whether or not you had an acre foot
18 of water for so many lots. I have not asked him
19 about whether or not someone should do well with less
20 than an acre foot and I have not asked him -- and he
21 has not opined as to whether anyone should do without
22 less than an acre foot of water. I've been careful
23 not to get into that because that's the subject of
24 the other dispute. It should not be addressed here
25 today. We have not asked him about that. He has not
26

1 testified to that. And this is beyond the scope of
2 what would normally be cross-examination.

3 Q. (By Mr. Brown) What is your intent in
4 testifying today, Mr. Fleming? What is the point you
5 are trying to make?

6 A. I was asked to come up and comment about
7 the productivity of the well. I was speaking to the
8 State's engineers' comments.

9 That was my intent to do what I was asked
10 to do.

11 Q. So is it your testimony that it's not your
12 intent to -- or your employer's intent with your
13 testimony today -- to argue that you are no longer
14 bound by the Development Agreement, paragraph 8, that
15 you just read?

16 MR. FITTS: Object. That goes beyond --

17 JUDGE GOODWILL: Mr. Brown, I do think
18 that goes well beyond the scope of the direct
19 examination of the witness.

20 MR. BARKER: Let me just try this.

21 Is it the intent of your employer to
22 provide one acre foot to all people who are serviced
23 by the Bridge Hollow Water Association?

24 MR. FITTS: If he can speak to that.

25 That's a subject of the dispute.

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1 MR. BARKER: Well, I guess we can ask
2 Tebbs.

3 MR. FITTS: Well, that's a part of the
4 dispute and we don't intend to get into that today.

5 MR. BARKER: That's the heart and soul of
6 what we're --

7 MR. FITTS: Well, we've asked what it can
8 provide. And the concern was -- they're taking the
9 position that it needs an acre foot. We've just
10 talked about -- all he's talked about is whether or
11 not there is an acre foot.

12 We've made no mention about doing with
13 less than an acre foot.

14 MR. BARKER: He's saying there is an acre
15 foot.

16 MR. FITTS: And that is why the issue of
17 whether someone should do with less than an acre foot
18 is not part of what we're dealing with.

19 MR. BARKER: That's not what we're asking.
20 We're asking if it's the intent of his employer to
21 provide an acre foot of water.

22 MR. FITTS: And I don't see that that's an
23 issue either. Because that gets into what the
24 obligations may otherwise be.

25 We're just addressing the issues of the
26

1 concern that was raised. Whether or not there is
2 one --

3 MR. BARKER: Leads to capacity.

4 MR. FITTS: -- that's a different issue.

5 JUDGE GOODWILL: If I spoke to intent, and
6 I may well have, I misspoke.

7 I think the issue is, is there sufficient
8 water now for the operation of the company, and to
9 include Surrey Ridge if it were included within the
10 service territory.

11 I think whatever power the Tebbs or others
12 may have in supplying water, and I don't know what
13 that is, whatever their intent might be in the future
14 is not relevant to whether or not there is currently
15 sufficient water there. And that would be a matter
16 to be brought before the Commission at a later date
17 if water supplies were somehow changed and therefore
18 inadequate.

19 Q. (By Mr. Brown) Mr. Fleming, I'm going to
20 hand you Article V, Shares.

21 MS. SCHMID: Mr. Brown, could you identify
22 where that is so we can follow along.

23 MR. BROWN: This is Exhibit 7, of Brown's
24 Petition for Hearing and Final Order.

25 JUDGE GOODWILL: And what is it?
26

1 MR. BROWN: Exhibit 7.

2 JUDGE GOODWILL: And what is it? How is
3 it identified?

4 MR. BROWN: It is Brown's Petition for
5 Hearing and Final Order. And it is Exhibit 7. And
6 the document is "Articles of Incorporation of Bridge
7 Hollow Water Association, an Accessible Stock
8 Non-Profit Corporation."

9 JUDGE GOODWILL: Thank you.

10 Q. (By Mr. Brown) I am going to direct Mr.
11 Fleming to read the very first sentence of Article V,
12 Shares.

13 A. "The corporation shall be owned by it's
14 shareholders. The corporation is not a public
15 utility and is not prepared, able or legally
16 empowered to serve persons other than its
17 shareholders."

18 Q. Go ahead and read the second sentence.

19 A. "The number of shares shall not be fixed,
20 but the aggregate number of shares of stock, which
21 the corporation shall have ability to issue, shall be
22 limited to one share for each acre foot of water
23 rights owned by the corporation."

24 Q. Thank you.

25 Now I would like to direct your attention

26

1 to the bylaws. In particular, Article IV, Service
2 Area, 4.2 Issuance of Shares. And that document is
3 located just beyond the Articles of Incorporation we
4 were speaking of.

5 Would you please read the first sentence
6 there.

7 MR. FITTS: And your Honor, while he's
8 looking, I have a potential objection. But I won't
9 object with the understanding that this is just
10 limited solely to the issues that your Honor has
11 previously indicated is the limitation on the scope
12 of this hearing. And that it's not for the purpose
13 of determining the other corporate governance and
14 contractual issues between the parties.

15 JUDGE GOODWILL: And I'm not sure what the
16 question will be. But we can deal with that when we
17 get to the question.

18 MR. FITTS: Your Honor, if I might have
19 that continuing objection in the interest of time.
20 And the Commission can deal with what it wants within
21 the scope of what is determined to be.

22 JUDGE GOODWILL: Sure.

23 Q. (By Mr. Brown) Go ahead and read that.

24 A. Sure.

25 "Shares of stocks in the Association may
26

1 be issued to the owners of real property within the
2 service area of the Association on the basis of one
3 share for each one acre foot per year of water rights
4 conveyed to the Association."

5 Q. Thank you.

6 MR. BROWN: I don't have any further
7 questions for Mr. Fleming at this time.

8 Thank you.

9 JUDGE GOODWILL: Division?

10 MS. SCHMID: Nothing more from the
11 Division.

12 MR. BARKER: Nothing.

13 JUDGE GOODWILL: Anymore redirect, Mr.
14 Fitts?

15 MR. FITTS: Just one follow up, if I
16 might.

17 BY MR. FITTS:

18 Q. You were asked about the 24/7 issue and
19 the running of the well. And you indicated that
20 people don't run wells that long as a practical
21 matter; is that right?

22 A. That's correct.

23 Q. And is it your understanding, from the
24 information you've seen, the State's study of that,
25 based on running the well 24/7, also compensates for

26

1 that somehow because of the one-third safety factor?

2 A. Yeah. The one-third safety factor is not
3 the same compensation. There is a compensation
4 that's built into the formula based on what typical
5 usage is for a water well system. The one-third
6 safety factor is just in case there is a drought or
7 something like that. They've discounted the
8 productivity of that well by one-third.

9 Q. So there are two compensations actually.
10 One is the one-third compensation factor. And then
11 there is also the compensation factor based on
12 reasonable and ordinary usage that is built into the
13 24/7 calculation; is that correct?

14 A. That's correct. And this is illustrated
15 in the operation of this particular well because
16 we've run this well, or Bridge Hollow runs the well,
17 at about 65 gallons a minute. That's how the pumps
18 are set. At 65 gallons a minute. So that is its
19 current yield. Obviously it's not 40 gallons a
20 minute. It's running at 65 when it's on, but it's
21 only on periodically.

22 And that was -- that was -- that same
23 yield was corroborated -- the State's yield was
24 corroborated in the test that Aqua did -- Aqua
25 Engineering did with Craig Neeley. And I was present

26

1 for most of that testing period. And I can tell you
2 there were technical difficulties in getting really
3 what we considered to be solid readings. But we were
4 able to develop a pump curve that looked a lot like
5 the original pump curve that Rob Mund and Water Well
6 Services did in 1995. It was very close. It was
7 almost identical. Therefore, we stopped the well --
8 we stopped that test before there was actually a
9 yield determination made.

10 And I think Aqua Engineering's letter to
11 Bridge Hollow says that they did not conclusively
12 establish a yield. And we stopped the test because
13 we were paying for the test. And I reported to Tebbs
14 that the yield curve was virtually the same. It
15 wasn't -- we didn't expect to find anything
16 different. It was expensive because we were running
17 into two weeks on this thing. So we pulled up short.
18 It looked like we were going to get the same yield
19 results. And that, in fact, we do have the data.
20 And the State could look at that data and come up
21 with the very same conclusion that they came up with
22 in 1995, that is that there is a yield available
23 right now of 64 acre feet, using the safety factor
24 and the 24/7 discount.

25 JUDGE GOODWILL: Were you done, Mr. Fitts?

26

1 MR. FITTS: Yes.

2 JUDGE GOODWILL: Mr. Barker.

3 MR. BARKER: Yeah. I just wanted to point
4 out that John Fleming is not an engineer and not an
5 expert and is speaking as though he is to some
6 degree. And it's not any different than Duane --
7 we've got expert evidence here all over the board on
8 this. And I want it to be clear that John is not an
9 expert. Mr. Fleming is not an expert. And his
10 opinion is vastly different, I think, than Duane and
11 other people.

12 He is also not on the scene running the
13 Water Company, I believe.

14 You don't run the water company; is that
15 correct?

16 THE WITNESS: No. I've been on the scene,
17 but I don't get to run it.

18 MR. BARKER: On and off the scene.

19 I just wanted to put that on the record.

20 JUDGE GOODWILL: Mr. Fitts.

21 BY MR. FITTS:

22 Q. But, John, is the information you've
23 testified to today based on your personal
24 conversations and communications with the engineers
25 and the people that know and have done these studies

26

1 and you are studying all the documentation in this
2 matter?

3 A. Yeah. Mr. Birkes, who gave the opinion to
4 Mr. Moio, I met with Mr. Birkes back in 19 -- well,
5 when we did the first test. I think that was in,
6 what, 2003 or 2004.

7 Q. So your testimony is --

8 A. So I met with Birkes and got the same
9 information back then. I got the pump curves and
10 everything from the Division of Water Rights. So I
11 used his expertise.

12 Then I went out with Aqua Engineering and
13 developed a similar pump test. Got the same results.
14 Now those results are again corroborated by an
15 expert.

16 So this isn't my expertise here. I'm
17 repeating what I've seen in writing.

18 Q. And that's what I want to make clear. You
19 are not testifying as to what you've generated is
20 your own opinion, you are simply relaying what you've
21 learned from the engineers that have done these
22 actual tests?

23 A. Yes.

24 MR. FITTS: Thank you.

25 JUDGE GOODWILL: Any further questions of
26

1 Mr. Fleming?

2 (No verbal response.)

3 JUDGE GOODWILL: Okay. Thank you, sir.

4 MS. SCHMID: I actually, if I might, have
5 a -- Mr. Moio misspoke concerning the minimum acre
6 foot requirement of the State. And if I might ask
7 him just a question or two to correct it?

8 JUDGE GOODWILL: So we are done with Mr.
9 Fleming?

10 MS. SCHMID: We are done with Mr. Fleming.
11 And I don't know when is an appropriate
12 time.

13 JUDGE GOODWILL: Let's just see -- Mr.
14 Fitts was in the middle of his evidence. Let's just
15 see if he has another witness.

16 MS. SCHMID: I'm sorry.

17 JUDGE GOODWILL: That's okay. That's
18 okay.

19 MR. FITTS: One more brief witness. John
20 Tebbs.

21 JUDGE GOODWILL: Okay. Mr. Tebbs, if you
22 would please step forward and raise your right hand
23 and we'll swear you in.

24

25 JOHN TEBBS,

26

1 called as a witness, being first duly sworn,
2 was examined and testified as follows:

3

4 JUDGE GOODWILL: Thanks. Please be
5 seated.

6 BY MR. FITTS:

7 Q. Could you state your name and address for
8 the record, please.

9 A. John Tebbs. 3642 Bountiful Boulevard,
10 Bountiful.

11 Q. John, what's your relationship with the --
12 are you a principal in the owners of the Surrey Ridge
13 property?

14 A. I'm an agent for BACT.

15 Q. A managerial agent?

16 JUDGE GOODWILL: I'm sorry. I didn't mean
17 to interrupt.

18 But BACT has been mentioned a few times.
19 What does that stand for?

20 THE WITNESS: Actually, the letters are
21 filed just like that. It's a limited partnership.

22 JUDGE GOODWILL: Okay. Thank you.

23 Q. (By Mr. Fitts) And are you a managerial
24 agent of that entity, the owner of Surrey Ridge?

25 A. No. I'm simply just an agent.

26

1 Q. Are you involved with the management of
2 the company?

3 A. Yeah. As asked.

4 Q. With respect to the -- well, let me just
5 focus this in.

6 You've been asked -- or others have been
7 asked about the rate change that the Tebbs family, or
8 the purported owners, of Surrey Ridge made sometime
9 in the past with respect to how Surrey Ridge and that
10 property would be -- what rates it would pay to the
11 Bridge Hollow Water Association? You heard that?
12 You've been here today; right?

13 A. Yes.

14 Q. Could you relay your recollection of what
15 occurred with respect to those rate changes?

16 A. Well, at the time, I believe it was in the
17 fall of '98, we held a Board of Directors meeting,
18 which Duane has spoken to. And Rod Burtenshaw was
19 there, myself and my father, Clem Tebbs. It was held
20 in our office there. And I believe we were
21 discussing rather than just take a two-tiered rate,
22 because there really are three conditions. There is
23 the approved lot with a house on it. There is a lot
24 that's been approved, that's subdivided, has a
25 connection. And there is the dry lots that we've

26

1 been talking about. So we thought we better define a
2 three-tiered system, rather than a two.

3 Q. Because previously the undeveloped
4 property wasn't really addressed, and so the purpose
5 -- Mr. Burtenshaw wanted to address that issue?

6 A. I believe that's due to the Development
7 Agreement. When it was formed, it was contemplated
8 that both developments would be built at the same
9 time.

10 Q. And that didn't occur?

11 A. That didn't occur.

12 Q. And I just want to limit your testimony to
13 the rates that were there and what those rates were,
14 without getting into the disputes between the parties
15 contractually or otherwise.

16 The rates that were discussed in that
17 December 18, 1988 Board meeting, where did they come
18 from? Who originally proposed those rates?

19 A. Well, the two rates were already set, the
20 two-tiered, which I think was 160 or 165.

21 Q. Who proposed making a change in the rates?
22 Was that Mr. Burtenshaw?

23 A. It was actually just adding the third
24 tier.

25 Q. Okay. To add that tier?

26

1 A. I believe it was Rod. But it made a lot
2 of sense because, again, the dry lots had not been
3 addressed in that rate structure.

4 Q. And did he represent that he had done a
5 study and had gone out and seen what other water
6 associations were doing?

7 A. That I can't remember exactly.

8 Q. Was there another time when the rates came
9 up or were discussed in the context of a shareholder
10 meeting?

11 A. Yes. The two rate change -- and by the
12 way, in that first scenario, when it went from the
13 two-tiered to the three-tiered, it was a very
14 friendly meeting. Everybody was agreeable. Duane
15 did second the motion. It just made sense.

16 Q. Was there any objection to it?

17 A. No.

18 Q. Are you aware of any shareholder that made
19 an objection to it, until other disputes arose
20 between the parties?

21 A. No. All the meetings were concluded
22 friendly. And it was common sense.

23 Q. So when I talk about objections, to the
24 rates themselves and how they were structured?

25 A. Not that I remember.

26

1 Q. Now let me ask you about the second
2 meeting where rates were discussed and what was voted
3 on in terms of what a reasonable rate would be for
4 the Water Association?

5 A. We had, prior to an annual meeting --
6 again, at the time Rod Burtenshaw was the President
7 of the Water Association. He had called us at some
8 point in time prior just to notify -- I'm sure Duane
9 got a call as well. I can't remember if we met as a
10 Board or not. Oftentimes we would meet as a Board
11 before the meeting. But he was concerned about --
12 especially Duane and Hook's -- usage. It was just
13 off the charts. If everyone else was here
14 (indicating), but they were up here (indicating).
15 Putting an undo or unfair share of wear on the pumps
16 and the piping and the equipment.

17 And he said, "I've noticed that Red Hawk
18 and similar developments, similar in nature, in terms
19 of acreage, usage, type of development." He had
20 taken these comparisons and come back to us and
21 suggested that we have kind of an accelerated curve,
22 that as your usage goes up, there is a premium price
23 that goes up with it to discourage water usage at a
24 very high rate.

25 Q. And that was all at the insistence of Mr.

26

1 Burtenshaw?

2 A. Yes. Rod Burtenshaw was doing the
3 studies. And --

4 Q. Is he an employee or an agent or otherwise
5 somehow controlled by the owners of Surrey Ridge?

6 A. No. No. He's just a member that lives up
7 there. He had been involved in the development
8 actually quite heavily for several years there.

9 Q. When was this second review of the rates?

10 A. I can't remember if it was that year or
11 the year after.

12 Q. So 1998 or 1999?

13 A. Right in that range.

14 Q. Was that presented to all the shareholders
15 of the Water Association?

16 A. Yes. I remember specifically we were in
17 the Wanship fire station. And we were sitting on the
18 west side of the room and a vote was cast.

19 Q. Who presented this proposed rate
20 structure? Was it Mr. Burtenshaw?

21 A. Rod did. Yeah. And we supported it.
22 Again, it made sense. We were also concerned about
23 the time we hooked onto the system, because of Duane
24 and the Hooks, they were running such a heavy usage
25 and there was no incentive to keep it down.

26

1 Q. We don't have the minutes here, at least I
2 don't, but do you recall any dissenting vote?

3 A. I do not. No.

4 But all of the meetings that I was in
5 attendance to, there was cookies on the table and
6 they were very friendly. We were all in agreement.

7 Q. Mr. Burtenshaw ran the meeting?

8 A. As the President would. Uh-huh
9 (affirmative).

10 Q. Was there any -- did anyone voice any
11 objection that the rates that were discussed at that
12 time were unreasonable? That you recall?

13 A. Trying to think how good my mind is. I do
14 -- the feeling I had from the meeting is there were
15 some questions. I do remember some questions being
16 asked. But again, it was one of these things that it
17 was common sense. I don't think people wanted the
18 pumps running heavy for one or two individuals. They
19 wanted some kind of restriction.

20 Q. Were the rates that were discussed at that
21 point in time in line with the rates that the
22 Division is recommending today, 165 per quarter, per
23 hooked up lot, and 120 for --

24 A. Well, the rates I was just speaking of are
25 the premium rates for excessive usage.

26

1 Q. Were the other rates addressed as well?
2 Were they reviewed?

3 A. May have been in the same meeting. May
4 have been in a separate meeting.

5 Q. But the rates we are talking about today
6 were approved in a membership meeting with all of the
7 shareholders?

8 A. The three-tiered rates or the accelerated?

9 Q. Well, the rates that the Division has
10 recommended, the 165 per developed lot with a
11 connection, and the 120 or 140, whatever it is the
12 Division recommended, for developed lots that aren't
13 hooked up.

14 Were the rates being discussed then in
15 line with what is being recommended today?

16 A. The three-tiered rate?

17 Q. Right.

18 A. Because right now, my understanding --

19 Q. There is a two-tiered rate --

20 A. So the third tier being the \$40, of
21 course, would be different. But I believe those
22 numbers are within \$5.

23 MS. SCHMID: And if I might interject. In
24 the field of water regulation, the term "tier" often
25 refers to quantities of usage, gallons of usage. So

26

1 it might be easier if we talked about classifications
2 or grades.

3 Just so if we all get hit by a truck, it's
4 easier for those who survive to understand.

5 Q. (By Mr. Fitts) My question is simply
6 this, were those rates presented to the shareholders
7 of the Water Association and were they approved by
8 the shareholders?

9 A. For sure they were at the Board of
10 Directors meeting. And I'm pretty sure they were in
11 the general meeting.

12 Q. And in the general meeting with the
13 shareholders, you don't recall any opposition or
14 vote, affirmative vote, against that rate structure;
15 do you?

16 A. If there was, it was minor. At the
17 meetings I was at, I'm not remembering any meeting
18 where there was much of an opposition. We were
19 unified as a Water Association.

20 MR. FITTS: Thank you.

21 JUDGE GOODWILL: Ms. Schmid?

22 MS. SCHMID: No questions.

23 MR. FLUCKIGER: Your Honor, they are
24 talking about this tiered rate, has that been put in
25 -- has that been put into evidence? Has a copy of
26

1 that been put into evidence, as long as we're talking
2 about tiered rates?

3 JUDGE GOODWILL: Three classifications, to
4 use Ms. Schmid's verbiage?

5 MR. FLUCKIGER: No. The excessive water
6 usage tiered rates?

7 JUDGE GOODWILL: Well, that was certainly
8 a question I had based on Mr. Tebbs testimony. I
9 wasn't aware there were additional rates out there
10 being charged by the Water Company.

11 MR. FLUCKIGER: I have a copy of that
12 here. They did put in a tiered rate. It was done at
13 a meeting. They talked about it at an annual
14 meeting. They could not get the votes on it. They
15 could have done this at a Board of Directors meeting.

16 But I ran some calculations on this and if
17 40 people were to use an acre foot of water, it would
18 have produced \$250,000-plus to the corporation. We
19 thought that was way excessive as far as a profit
20 margin goes. That would put our water rates at about
21 \$6,000 per user to use about 300 gallons per year.

22 I researched that for months and could
23 never find any rates near that.

24 JUDGE GOODWILL: Okay. Now let me just
25 ask you because the point of clarification I need is,

26

1 what rates are currently being charged by the Water
2 Company? The rates as proposed by the Division?

3 MR. FLUCKIGER: That's correct.

4 JUDGE GOODWILL: Not those graduated rates
5 that you've been referring to and Mr. Tebbs referred
6 to?

7 MR. FLUCKIGER: No, sir.

8 MR. FITTS: I appreciate that, your Honor.
9 I should have followed up with that. And maybe I can
10 clarify that more.

11 Q. (By Mr. Fitts) That higher premium rate,
12 that was not adopted; is that correct?

13 A. It was adopted. Duane wouldn't pay it.
14 He was the biggest violator. But the others, when
15 they went over that, they were paying it. And Duane
16 -- I can't remember if you finally eventually paid it
17 down the road. I know you didn't like it. But like
18 I said, it was just him and Hooks were the ones that
19 were really up there.

20 MR. FLUCKIGER: Could we get this put into
21 evidence then if we're going to talk about the tiered
22 rates so they can find out just what they were?

23 JUDGE GOODWILL: I don't see it as
24 particularly relevant if it's not at issue today.
25 Those rates aren't currently being charged and the --

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1 there has been no proposal that the Commission
2 approve such rates.

3 MR. FLUCKIGER: That is correct. It
4 probably would only show an unfairness of a large
5 amount of water trying to be -- money trying to be
6 collected.

7 JUDGE GOODWILL: I think that's probably
8 for another time, sir. If you would hold onto that.

9 Ms. Schmid, did you have any questions?

10 MS. SCHMID: I do not.

11 JUDGE GOODWILL: Mr. Barker?

12 MR. BARKER: Yeah. I have a few.

13 BY MR. BARKER:

14 Q. Who asked Rod Burtenshaw to be on the
15 Board?

16 A. When?

17 Q. When he was first put on the Board and
18 made the President.

19 A. He was the -- trying to think. I think he
20 was the president before we became involved. I think
21 when Gary Jense was involved, it seems to me Rod was.

22 Q. I don't recall that.

23 A. I'm a little fuzzy too, to be honest with
24 you. But we got to know Rod. I mean, I don't know
25 him aside from the Water Company.

26

1 Q. Was he elected by the Board? Was he
2 elected by you and your family essentially?

3 A. My memory is he was on the Board prior to
4 us getting involved.

5 Q. You had a majority of the Board?

6 A. We did. He's an architect and I liked his
7 knowledge of the water systems and I liked his
8 architectural mind. And he was willing to do it. So
9 I think we probably did request him to stay on.

10 Q. So you elected him on the Board.

11 And who benefited -- does anyone own
12 undeveloped shares? Who benefitted from that rate
13 change? Just the Surrey Ridge/Tebbs Group?

14 A. The three classification rate change?

15 Q. Yeah.

16 A. Well, I think we're the only ones with the
17 dry lots, unplatted lots. So yeah. I think we were
18 the ones that benefitted from that.

19 Q. And if the Board -- if someone would have
20 objected, either Duane or Rod, that would have been,
21 I guess, you could have done that anyway because you
22 owned the majority of the shares and could have
23 changed the Board of Directors and the officers; is
24 that correct?

25 A. I will say this, there was never any
26

1 malicious intent to take advantage of anybody.

2 Q. No. I don't mean that. I'm just saying
3 you had the power to do that notwithstanding --

4 A. I guess we did.

5 MR. FITTS: I am going to object to this
6 line of questioning.

7 I believe I was trying to tailor the
8 direct to what are reasonable rates and whether the
9 reasonable rates are in line with --

10 JUDGE GOODWILL: I think to the extent
11 that Mr. Tebbs was involved in the approval, we can
12 go ahead.

13 MR. BARKER: That's all I'm trying to get
14 to. There was a conflict of interest there.

15 THE WITNESS: Could you restate your
16 question.

17 Q. (By Mr. Barker) I'm saying that you
18 could -- that I believe, under the -- under how you
19 interpreted the corporate rights you had as a Board
20 and as a majority shareholder, even if they hadn't
21 voted for that, you could have had someone there who
22 voted for it?

23 You didn't need Rod and Duane to do that.
24 You could have done it yourself without them?

25 A. I guess we could have. But you knew Rod

26

1 as well as me. And there was never any undue
2 influence put upon him.

3 Q. No. You didn't need him is all I'm
4 saying?

5 A. Well, I disagree. We did need him. He
6 had an understanding and knowledge of --

7 JUDGE GOODWILL: One at a time, please.

8 THE WITNESS: We did need him. He had
9 knowledge and understanding that went well beyond us.

10 Q. (By Mr. Barker) You didn't need him to
11 get that rate change through, though?

12 A. Had we -- I guess that's true.

13 Q. And Duane said that when he said they
14 could do whatever they wanted to do essentially.

15 What was your basis -- I mean, we've
16 looked at the bylaws and it seems to not to be
17 allowed in the bylaws to make that change. Did you
18 review them at the time? What was your basis to make
19 that change in light of what the bylaws say? Or did
20 you not read the bylaws?

21 Are you familiar with the provisions?

22 MR. FITTS: My concern is that we're
23 getting into these corporate governance issues and
24 beyond the issue of whether or not the rates that
25 were in fact approved are reasonable rates are not.

26

1 We are getting into the legality of things that are
2 corporate governance, which is beyond what I was
3 asking about.

4 We've established that Mr. Tebbs was
5 involved and that's what gives him an opportunity to
6 be able to speak to whether or not other people
7 objected to these rates. The direct was not whether
8 or not he had a right to make the change or how the
9 change should or shouldn't have been done. It was
10 simply as to whether or not anyone voiced any
11 objection as to whether or not these were reasonable
12 rates or not. That's simply the point.

13 These other issues go to whether or not
14 anything was done improperly.

15 MS. SCHMID: And again, the Division also
16 objects to this line of questioning, believing it is
17 beyond the scope of this hearing. Because it is
18 venturing, in the Division's opinion, into the
19 corporate governance and the contractual issues
20 before the parties that the Division does not believe
21 consistent with the Administrative Law Judge's
22 comments today as properly before the Commission at
23 this time.

24 MR. BARKER: Can I address that?

25 I don't understand how that has already
26

1 not been opened. Counsel opened up the meeting and
2 what happened at the meeting and the basis for the
3 meeting. And even got into whether there was a
4 shareholders meeting. And now I'm trying to find out
5 the facts behind that, which I think are very
6 relevant. And the basis for that. And they are
7 saying that's all of a sudden not the subject of the
8 inquiry.

9 I don't know how they can ask the
10 questions they ask and not have these questions be
11 relevant.

12 MR. FITTS: The inquiry was simply whether
13 there was any real objection to these rates as being
14 reasonable.

15 MR. BARKER: You went over the whole
16 history of the meeting, I believe.

17 MR. FITTS: I didn't ask for who voted. I
18 hadn't gotten into what the bylaws do or don't allow.
19 I've been careful to stay away from that.

20 MR. BARKER: The bylaws speak for
21 themselves.

22 JUDGE GOODWILL: If we can move on, I
23 think we should.

24 Q. (By Mr. Barker) Just one other question
25 then.

26

1 In the shareholder meeting Duane had said
2 -- Mr. Fluckiger has said there was not a quorum
3 present at that meeting. Is that your understanding?

4 He said there were very few people there
5 and there was not a quorum present at that meeting?

6 A. You mean a quantity of shareholders to
7 form a quorum?

8 Q. Yeah.

9 A. I don't remember.

10 What I do remember is little to no
11 opposition. And I guess they could have expressed
12 it --

13 Q. But you don't know whether there was a
14 quorum present or not, whether it was a valid meeting
15 or not?

16 A. I do remember --

17 MR. FITTS: I have a question. Which
18 meeting are you talking about?

19 MR. BARKER: The shareholder meeting that
20 you referenced. Again, I didn't bring this up.

21 THE WITNESS: You mean the accelerated or
22 the three classifications?

23 Q. (By Mr. Barker) No. I'm not even talking
24 about the usage rates. I'm talking about the
25 classifications.

26

1 MS. SCHMID: Was this in 1998?

2 THE BARKER: The 1998 -- there was an
3 action taken December '98 by the Board. Presumably
4 then it was a shareholder meeting. Duane said there
5 was not a quorum. There were very few people
6 present.

7 Q. (By Mr. Barker) I'm asking if that was a
8 correct statement; was there a quorum at that
9 meeting?

10 A. I guess my memory is not good enough to
11 remember that.

12 What I do remember, because it was
13 consistent, there was little to no opposition.

14 Q. Do you know how many people were there?

15 A. I don't remember.

16 MR. BARKER: That's all.

17 JUDGE GOODWILL: Anything further of this
18 witness?

19 MR. BROWN: Yes.

20 JUDGE GOODWILL: Mr. Brown.

21 BY MR. BROWN:

22 Q. Mr. Tebbs, who is BACT?

23 A. I think what is a BACT. It's a limited
24 partnership.

25 Q. What is it?

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1 A. It's a limited partnership.

2 Q. Who belongs to it?

3 A. What do you mean "who belongs to it"?

4 Q. Who are the members?

5 A. I don't know that I can answer that. I'm
6 not a member of BACT.

7 Q. I notice in the correspondence between the
8 parties the name of the company, BACT, comes up
9 periodically. In fact, in answering some of the data
10 requests, it refers to BACT as owner of Bridge Hollow
11 Water Association assets.

12 And I was wondering who BACT was? Are you
13 a principal of that corporation?

14 A. I've already answered that.

15 Q. Who is Real Corp?

16 A. Real Corp is an S corporation.

17 Q. Are you a member of that or any of your
18 family?

19 A. At a point in time, I was the president of
20 Real Corp.

21 Q. Who is Bonneville Builders?

22 A. It's a general contractor.

23 Q. Are you a member of that corporation as
24 well? Do you have interests in it?

25 A. It's not a corporation. It's a limited
26

1 liability company. And I am a member.

2 Q. So you have interests in Bonneville
3 Builders, BACT, Real Corp.

4 What about the Tebbs Family Trust?

5 A. You misstated. I am not a member or have
6 any ownership in BACT.

7 Q. Does any member of your family?

8 MR. FITTS: Same objection. I'm not sure
9 where this goes towards the reasonableness of rates.

10 JUDGE GOODWILL: Can you address that, Mr.
11 Brown? Where are you headed?

12 MR. BROWN: My point here is the Tebbs
13 family members have routinely answered questions or
14 corresponded with parties under various entity names,
15 either BACT, Real Corp, the Tebbs Family Trust,
16 Bonneville Builders. And I'm trying to understand
17 exactly who Bridge Hollow Water Association is
18 dealing with and what their interests are.

19 MR. FITTS: I think that goes beyond the
20 scope of what we've done on direct. And if this is
21 an issue that needed to come up, it should have come
22 up earlier.

23 In the interest of time, I believe all
24 that's irrelevant to the issue Mr. Tebbs is
25 testifying to. I believe we're really going to be

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1 getting into corporate governance issues and disputes
2 between the parties. And I believe this is just an
3 avenue for discovery for another forum.

4 MR. BARKER: But who are the parties and
5 interests is very relevant, though.

6 MR. FITTS: He's been asking about what
7 are his personal ownership interests and who are the
8 owners of the property.

9 MS. SCHMID: Perhaps that's gained at
10 getting an understanding of the witness' familiarity
11 with the entities and transactions at hand.

12 MR. FITTS: And we can provide
13 documentation showing -- I mean, my understanding
14 there is a somewhat complex ownership structure. And
15 we would be happy to provide all of that to the
16 extent it's relevant. And if the Commission gets to
17 the point where it wants to know exactly who the
18 owners are and what interests and how things are
19 certificated, we would be more than happy to do that
20 and provide that information. And we can do it
21 within a matter of days.

22 MR. BROWN: I believe it's very relevant
23 because Bridge Hollow Homeowners Association is the
24 successor Bridge Hollow Development. My question is,
25 who is the successor to Surrey Ridge Ranch. The --

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1 JUDGE GOODWILL: Well, if that's your
2 question, let's see if Mr. Tebbs can answer it.

3 Q. (By Mr. Brown) Who is the successor to
4 Surrey Ridge Ranch?

5 A. Who owns the property?

6 Q. Yes.

7 A. BACT, LP.

8 Q. Earlier documents indicated that Real Corp
9 was issued stock.

10 Was Real Corp the original owner of Surrey
11 Ridge Ranch prior to BACT?

12 A. Parts of it.

13 Q. Do you know Gary Jense, a principal of
14 Surrey Ridge Ranch?

15 A. I knew him. He's passed away.

16 Q. Pardon?

17 A. He's passed away. And I did know him.

18 Q. How did you know him? When did you first
19 meet him? How did you become familiar with Surrey
20 Ridge Ranch?

21 JUDGE GOODWILL: Mr. Brown, I do need to
22 ask how this is relevant to the issue of rates?

23 And I have to be honest, I've lost track
24 how much of any of this is relevant to the issue of
25 the third classification, which is the \$40 that would

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1 apply to Surrey Ridge.

2 MR. BROWN: Mr. Tebbs has been put on the
3 stand to testify that he has expert testimony and
4 knowledge of the history of Bridge Hollow Water
5 Association. And that he has personal knowledge that
6 the rate change that occurred in 1998 was done in his
7 views.

8 And I was trying to determine his
9 background, his experience, exactly where he gained
10 this knowledge and his participation when they first
11 began membership in Surrey Ridge and Bridge Hollow
12 Water Association so as to determine his
13 qualifications to make these statements.

14 JUDGE GOODWILL: I think it's -- Mr. Tebbs
15 has testified as to his recollection concerning how
16 the rates were set.

17 Whether or not he was right or not in
18 setting those rates or insisting in setting those
19 rates, I think goes to a different proceeding and not
20 this one.

21 If you have any questions regarding his
22 testimony and the setting of those rates, feel free
23 to ask them. But I don't think we need to go farther
24 back and litigate whether or not the rates were
25 properly set at that time.

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1 MR. BROWN: Okay.

2 Q. (By Mr. Brown) Mr. Tebbs, who owns -- of
3 the interests that you represent -- who owns the
4 shares of stock that you claim to own at this time?

5 MR. FITTS: I don't believe he's testified
6 he claims to own any shares. Same problem. He's
7 testified he was simply present at meetings.

8 JUDGE GOODWILL: Does go well beyond the
9 scope of the direct examination, Mr. Brown.

10 If you would ask your next question,
11 please.

12 Q. (By Mr. Brown) Mr. Tebbs, in front of you
13 is Tebbs Exhibit Number 4. Shows shareholder, Gary
14 Jense. Number of shares, 41.

15 Is it your testimony that you or some of
16 -- one or more of your corporations now controls
17 those shares of stock?

18 A. Ask that question again.

19 Q. You have before you Tebbs Exhibit Number
20 4, which are the minutes of the first annual
21 shareholders meeting. It says that shareholder Gary
22 Jense was there with a number of shares, 41, in
23 person.

24 A. Okay.

25 Q. Question is, are you here today because
26

1 you or one of the corporations that you have interest
2 in, or more, currently own the shares of stock listed
3 there?

4 A. I do not have ownership in Surrey Ridge.
5 So how can I testify to that?

6 Q. What standing do you have to come and give
7 us advice on your role as an officer, what occurred
8 at prior Board meetings and things of that nature if
9 you have not owned the stock?

10 A. I believe I've answered that.

11 MR. FITTS: And I'll object. Same
12 objection as before, your Honor.

13 His standing is he was present at the
14 meetings. That's all we asked him about.

15 MR. BROWN: Does this mean he doesn't own
16 any shares and he happens to be at the meetings?
17 What does it mean?

18 JUDGE GOODWILL: His answer was that he
19 doesn't own any shares.

20 Q. (By Mr. Brown) The other question was,
21 does any of corporate interests own these shares of
22 stock?

23 A. My corporate interests?

24 Q. Any of your family members have corporate
25 interests that own the stock?

26

1 MS. SCHMID: Or limited partnership or --

2 Q. (By Mr. Brown) I don't -- I don't care.

3 Who owns the 41 shares that Gary Jense was
4 voting? Who owns the 41 shares that John Fleming
5 shows up at the annual meetings and claims to have
6 the authority to vote?

7 A. BACT.

8 Q. Who are the principals of BACT?

9 A. I'm not really sure. And I'm being
10 honest. You would need to ask them yourself.

11 MR. BROWN: Okay. I don't think I have
12 anything further of Mr. Tebbs at this time.

13 JUDGE GOODWILL: Thank you.

14 MS. SCHMID: The Division does.

15 BY MS. SCHMID:

16 Q. Am I correct in recalling that you said
17 you were an agent for BACT?

18 A. Yes.

19 Q. Then you say that you do not know who the
20 principals are of BACT?

21 A. I don't. I've never seen the Articles of
22 Incorporation or Articles of Organization for BACT.
23 So I don't.

24 Q. From whom do you get your direction to
25 fulfill your role as an agent for BACT?

26

1 A. From my father, Clem Tebbs.

2 MS. SCHMID: Thank you.

3 JUDGE GOODWILL: Anything further of Mr.
4 Tebbs?

5 (No verbal response.)

6 JUDGE GOODWILL: Thank you, sir.

7 Anything further, Mr. Fitts?

8 MR. FITTS: No, your Honor. Thank you.

9 (Bruce Moio was again recalled as a
10 witness.)

11 JUDGE GOODWILL: Let me step back about
12 three hours and re-ask a question, Mr. Moio, because
13 I honestly just don't remember and I should have
14 written it down.

15 The Division's recommendation as contained
16 in DPU Exhibit 2 has essentially three rates being
17 recommended, water user rates, stand-by fee,
18 connection fee?

19 MR. MOIO: Correct.

20 JUDGE GOODWILL: Since that time, the
21 Division has received the letter from Mr. Fluckiger,
22 dated January 19th, 2007, which references the \$40
23 per quarter, per lot fee for Surrey Ridge.

24 What is the Division's recommendation with
25 regard to that fee?

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1 MR. MOIO: That's a difficult one to
2 answer because a normal stand-by fee for a lot
3 assumes that there is a ready-to-serve situation for
4 that lot. Surrey Ridge has no lots and no lines to
5 any potential lots, as far as we know. So it would
6 be difficult to call that a stand-by fee. I'm not
7 sure what -- how to address that.

8 JUDGE GOODWILL: And is it the Division's
9 position that such a fee would only be addressed if
10 Surrey Ridge were to be included in the service
11 territory of Bridge Hollow Water Association? If
12 Surrey Ridge were not in that service territory,
13 would the Division address any rates for Surrey Ridge
14 at this time?

15 MR. MOIO: If it was not in the territory,
16 no.

17 JUDGE GOODWILL: So your hesitation in how
18 to characterize this fee is only an issue if Surrey
19 Ridge is included in the Bridge Hollow service
20 territory?

21 MR. MOIO: Yes.

22 JUDGE GOODWILL: Any questions of Mr. Moio
23 based on my questioning?

24 MR. BROWN: No, sir.

25 MS. SCHMID: I have one question that
26

1 flows from your questions. And then I have our
2 little clean up.

3 Would now be appropriate?

4 JUDGE GOODWILL: Please do. Thank you.

5 BY MS. SCHMID:

6 Q. But despite the dry lot, ready-to-serve
7 issue, did I understand that it was the Division's
8 position that if Surrey Ridge made a voluntary
9 contribution to rates, the Division would have no
10 objection to that?

11 A. That's correct.

12 Q. And then for my follow-up question.

13 Mr. Moio, turning to what was marked as, I
14 believe, DPU Exhibit 4, the e-mail exchange between
15 you and Mr. Birkes of the Division of Drinking Water.
16 I believe that you earlier testified that the minimum
17 acre foot required by the State was .25.

18 Is it indeed .45 that the State requires?

19 A. That is correct. It is .45 or 146,000
20 gallons per year.

21 MS. SCHMID: Thank you.

22 JUDGE GOODWILL: Mr. Moio, is that a
23 Division of Drinking Water requirement?

24 MR. MOIO: Yes.

25 JUDGE GOODWILL: And is the procedure such
26

1 that the Division confers with the Division of
2 Drinking Water and is told in the typical case "yes"
3 or "no," a water utility has sufficient water?

4 MR. MOIO: Yes.

5 JUDGE GOODWILL: That's not a
6 determination you make on your own?

7 MR. MOIO: No. That's correct.

8 JUDGE GOODWILL: And in this case, the
9 Division has been told by the Division of Drinking
10 Water there is sufficient water for the 64 shares; is
11 that what this e-mail says?

12 MR. MOIO: Correct. To summarize that
13 e-mail, there would be enough for one acre per year
14 for 64 lots.

15 JUDGE GOODWILL: And that's what the
16 Division, in part, has based its recommendation in
17 this matter on?

18 MR. MOIO: Correct.

19 JUDGE GOODWILL: Thanks.

20 Any questioning of Mr. Moio based on my
21 questioning or Ms. Schmid's questioning?

22 MR. BARKER: She said "voluntary." It
23 wouldn't be voluntary; right?

24 JUDGE GOODWILL: Well, it depends what the
25 Commission does, I guess. If the Commission orders a

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1 rate or not.

2 MR. FITTS: And to be included within the
3 service area, we are prepared to pay a reasonable
4 rate. But at this time, the prospect of developable
5 lots is unknown whether it will ever exceed nine
6 lots. But my understanding at this time is it's
7 being treated as one lot.

8 JUDGE GOODWILL: Anything further that we
9 need to take up on this matter this afternoon? We've
10 been going a long time, but because of that I don't
11 want to let something slide, another witness, another
12 piece of evidence, something that we didn't get to
13 that one of the parties had raised earlier?

14 (No verbal response.)

15 JUDGE GOODWILL: Okay. With that, I thank
16 you all for your patience. I've tried to get in as
17 much as we can today, within the bounds of
18 reasonableness.

19 We will take this matter under advisement
20 and issue our decision in due course.

21 Thank you.

22 MS. SCHMID: Thank you.

23 MR. FITTS: Thank you, Judge.

24 MR. BARKER: Thank you.

25 MR. BROWN: Thank you.

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(Matter concluded at 5:03 p.m.)

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REPORTER'S HEARING CERTIFICATE

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STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Kelly Fine-Jensen, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said proceeding was taken down by me in stenotype on January 22, 2007, at the place therein named, and was thereafter transcribed, and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 30th day of January, 2007.

Kelly Fine-Jensen, RPR
Notary Public
Residing in Salt Lake County