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January 4, 2006

Bruce Scott Moio  
Utility Analyst  
Division of Public Utilities  
160 East 300 South  
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DIVISION OF  
PUBLIC UTILITIES  
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Dear Mr. Moio,

**Re: Wilkinson Cottonwood Mutual Water Company**

As you are aware, for a number of years, Wilkinson Water Company was owned by the Wilkinson family and functioned as a fully regulated for-profit water company. When Gardner Cottonwood Creek, LLC purchased land from the Wilkinson family members and obtained an interest in the water company, they determined to make changes in the operation of the Company. For-profit water companies have a distinct disadvantage of not having accessibility to low interest loans from the Utah Board of Water Resources among other disadvantages. Consequently, the first change was to reorganize Wilkinson Water Company as Wilkinson Cottonwood Mutual Water Company ("WCMWC"). While it is hoped that eventually a governmental entity will be able to take over WCMWC, until that time the plan is to operate the company as a non-profit mutual water company and hopefully qualify for exemption from regulation by the Utah Public Service Commission. Accordingly, Amended and Restated Articles of Incorporation were filed on January 5, 2005. A copy of these Articles, along with WCMWC's Bylaws, are enclosed with this letter as Exhibit A and B respectively.

At the same time, recognizing that changes needed to be made in the Tariff, WCMWC also initiated a rate proceeding. The purpose of pursuing both a new tariff and an exemption is that, prior to issuing the shares of stock to each of the persons being served by the Company, a number of problems were uncovered and needed to be addressed. Several of these problems related to questions regarding title to water rights being used by WCMWC to serve its customers. Additionally, the storage tanks used to serve existing customers were found to be old, leaking, and in need of replacement. While most have now been addressed, tiered rate structure is necessary to fully resolve the problems. Hopefully, in the near future, WCMWC will be able to finalize the conversion to non-profit status by issuing shares to all those who have connections.

However, in the event that the completion of the conversion is delayed further, it is necessary that the new Tariff be approved and implemented so that the Company can have sufficient income to operate.

The purpose of this letter is to acquaint you with the new structural safeguards designed to comply with rule R746-331-1 of the Utah Administrative Code and qualify WCMWC as exempt from regulation. We believe these safeguards, as discussed more fully below, will qualify WCMWC for an exemption pursuant to rule R746-331-1 of the Utah Administrative Code. However, before I address the application of rule R746-331-1, I would first like to provide a brief overview of WCMWC's organization and structure.

WCMWC has four classes of shares: Class A shares represent culinary water rights; Class B shares represent secondary water rights; Class C shares represent the shares issued to the Wilkinson Family and Gardner Cottonwood Creek, LLC prior to the filing of WCMWC's Amended and Restated Articles of Incorporation; and Class D shares are development shares, which may subsequently be converted into Class A or B shares. With certain enumerated exceptions, Class A, B, and C shares are each entitled to vote on decisions committed to the members; however, Class D shares are non-voting.

Although only Class A and B shares are assessable, the rates and assessments charged to Class A and B shareholders are not determined by any other class of shares. Rather, pursuant to Article X of the Amended and Restated Articles of Incorporation, the rates and assessments charged to Class A shares are determined by the Culinary Rate Board, which consists of 1 member appointed by the Board of Directors and 4 members elected by Class A shareholders. Similarly, the rates and assessments charged to Class B shares are determined by the Secondary Rate Board, which also consists of 1 member appointed by the Board of Directors and 4 members elected by Class B shareholders. According to Article VIII of the Amended and Restated Articles of Incorporation, neither class may be assessed the costs of expanding WCMWC's water distribution system except to the extent that such expansion is calculated to benefit the then-existing members.

It is owing to this unique structure that WCMWC's members enjoy a complete commonality of interests, as consumers, such that rate regulation would be superfluous. Rule R746-331-1 of the Utah Administrative Code provides that an exemption will be issued if the

*Commission finds that the entity is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous.*

Utah Admin. Code R746-331-1 (2005).

WCMWC satisfies each of the requirements of rule R746-331-1. First, WCMWC is a non-profit corporation in good standing with the Division of Corporations. Second, as provided in its Amended and Restated Articles of Incorporation, WCMWC “hold[s] title for and on behalf of its members to all” of the assets necessary to furnish culinary water service to its members. Lastly, because WCMWC’s unique structure ensures that the voting control of the entity is distributed in such a manner so that each member enjoys a complete commonality of interest, rate regulation by the Commission is indeed superfluous.

The conclusion that WCMWC should be granted an exemption from rate regulation is supported by a recommendation issued by the Division of Public Utilities (the “Division”) on August 2, 2002, concerning Summit Water Distribution Company. A copy of that recommendation is enclosed. In that recommendation, the Division concluded that Summit Water’s exemption from rate regulation should continue. This conclusion was based on multiple factors, including the fact that the company’s “rules and by-laws provide sufficient limitations on the actions which can be taken by the company effecting rates or service to Class B [individual water users] shareholders that the potential for Class B shareholders to be harmed by the voting rights of Class A [developer] shareholders is minimized,” *Division Recommendation* at 3, and the fact that the Company’s “rules assure that no expansion costs are passed on to the Class B [individual water users] shareholders and that all facilities and water rights used in providing culinary water are owned and controlled by SWDC.” *Id.* at 4.

WCMWC’s rules and by-laws similarly provide restrictions and limitations such that the interests of the culinary and secondary water shares are amply protected and rate regulation is superfluous. Indeed, because the Class A and B shareholders are each entitled to elect 4 out of the 5 members constituting their respective Rate Boards, each class has virtually exclusive control over the rates and assessments charged to their shares and the possibility that either class will be harmed by another is substantially minimized.

Additionally, pursuant to Article VIII of the Amended and Restated Articles of Incorporation, the Division can be assured that no expansion costs will be passed on to Class A and B shareholders unless the expansion is calculated to benefit the then-existing members. All costs attributable to the expansion of a water system to serve new connections shall be paid solely by Class D members.

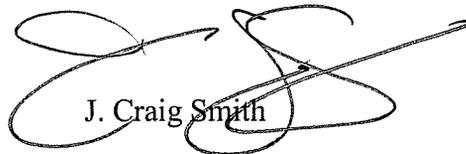
Lastly, although Class A and B shareholders are restricted from participating in the election of the Board of Directors, this does not jeopardize the interests of Class A and B shareholders because Class A, B, and C shareholders all “have an equal interest in ensuring that [WCMWC] maintains a safe and adequate water system.” *Id.* at 3. Specifically, because Class C is comprised of the Wilkinson Family, who are individual water users, and Gardner Cottonwood Creek, LLC, a development company that “depend[s] on the water system to make their developments attractive to potential lot buyers,” *id.*, each Class A, B, and C shareholder enjoys a commonality of interest in

ensuring that the water system is maintained safely, adequately, and efficiently so that water can be provided at reasonable rates.

Because the several safeguards provided by WCMWC's Amended and Restated Articles of Incorporation ensure that the voting control of WCMWC is distributed in such a way so that each member enjoys a complete commonality of interest in ensuring a safely and adequately maintained water system, any rate regulation by the Commission would be superfluous. As such, I respectfully request on behalf of WCMWC that the Division recommend that WCMWC be granted an exemption pursuant to rule R746-331-1 of the Utah Administrative Code concurrent with the finalizing of the non-profit conversion by issuing stock to each person connected.

It is my understanding that a meeting is scheduled for 9:00 a.m. on Wednesday, January 18, 2006, to discuss these matters. I will look forward to our meeting. If I can provide any further information prior to our meeting that you would find helpful, please do not hesitate to contact me or Kathryn Steffey.

Yours truly,  
**SMITH HARTVIGSEN, PLLC.**



J. Craig Smith

cc: Rulon Gardner  
Dan Gardner  
Patricia Schmid, Assistant Attorney General  
Kathryn Steffey, Smith Hartvigsen  
Jeffrey Appel, Esq.