- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH –

In the Matter of the Request of Dammeron Valley Water Works to Add a Conservation Rate to Its Tariff	DOCKET NO. 07-2025-T01 OBJECTION IN THE MATTER OF THE REQUEST OF DAMMERON VALLEY WATER WORKS TO ADD A CONSERVATION RATE TO ITS TARIFF

Barbara G. Hjelle, owner of Lot 34 of the Meadows subdivision of Dammeron Valley, Utah, and owner of Utah State Water Right No. 81-2167, hereby objects to the Request of Dammeron Valley Water Works (DVWW). I also request to participate in the March 25 hearing by telephonic connection at 435-673-3617.

1. I own Lot 34 (5.22 acres) of the Meadows subdivision of Dammeron Valley, Utah and am thereby a member of the Dammeron Valley Landowners' Association (DVLA). I am also a past member of the Board of Trustees of the DVLA. The Meadows subdivision is one of the earliest, if not the earliest, subdivision in Dammeron Valley.

2. Ownership of Lot 34 entitles me to use water from the DVWW system, and includes two domestic tappings (1.8 ac-ft/yr).

3. Ownership of Utah Water Right No. 81-2167 entitles me to use 1 ac-ft/yr for irrigation via the DVWW system. This water right was conveyed from Dammeron Corporation, with the following restriction:

> Water Rights conveyed by this deed are restricted to use for irrigation purposes only, and may not be sold or transferred outside of the Dammeron Valley Subdivisions, Washington County, Utah.

4. DVWW's Request (note 2) purports to grant DVWW the power to require owners of irrigation shares to <u>involuntarily</u> discontinue irrigating if required to do so by DVWW. Note 2 further asserts without factual or legal foundation that irrigation water is "our drought insurance as well as a buffer when emergencies occur in the system." As a matter of law, DVWW cannot use my Utah water right for other people or for other purposes, without my consent.

5. Neither DVWW nor this Commission has the jurisdiction or legal authority in this manner to involuntarily restrict, infringe upon, impair or subordinate an owner's right to use of her Utah State Water Right.

6. In addition, this proposal is potentially deceptive and misleading insofar as it is couched as a voluntary conservation rate tariff, but seeks in a reduced type size "Note", to authorize the involuntary restriction of the use of irrigation rights.

7. I strongly object to the Request insofar as it seeks to authorize DVWW to restrict or subordinate my use of this Utah State Water Right.

8. Both I and other owners of similar Utah State water rights in Dammeron Valley were previously solicited and encouraged by DVVW and Mr. Brooks Pace to convey their water rights to DVWW, in exchange for shares in DVWW (see attached copies of solicitation letters). I have not consented to such a conveyance, but I understand that other owners have done so.

9. These solicitation letters induced owners to convey their water rights to DVWW based on various representations:

- "You are not giving up anything. In fact your rights will be more secure and less apt to suffer from outside regulation . . . " ;
- "We have been encouraged by the Division of Water Rights to offer Certificates of Irrigation Rights rather than deeding the Water Rights. All future irrigation shares will be issued by Certificates which will give the holder the same rights to cheap irrigation water as before, but save him the paperwork of keeping his rights current.";
- "It will save you responding to the Division of Water Rights in the future when they question whether you are beneficially using your water. Failure to respond to them could cause a loss of the water right.";
- "Dammeron Valley Water Works will not be able to protect or assist in transfer of rights in the future if they are not held by a Certificate that we have issued.";
- "You will be mailed a Certificate verifying your right to the same amount of water you deed back to DVWW.";
- "We'll … maintain your right with the Division of Water Rights…."

10. Based on these representations by DVWW, I believe it is highly unlikely that owners who conveyed their Utah water rights in exchange for DVWW certificates understood or expected that by doing so DVWW would then be able to involuntarily restrict their irrigation water use. I further believe that had these owners understood this, they probably would not have agreed to surrender their Utah State water rights.

11. I am further concerned that the Request is a disguised effort by DVWW to induce landowners in preexisting subdivisions to convert to a "Conservation" tariff, mistakenly believing that they will be helping to conserve overall water use and preserve water resources in Dammeron Valley, but the actual effect will be to forever reduce (by 50%) preexisting owners' water entitlement without meaningful compensation, thereby facilitating further new subdivision development and more, not less, overall water use.

12. The existing tariff for irrigation water is not reasonable. First, persons owning irrigation

water rights (or who have turned those rights in for "water certificates") and five (5) acre lots with two domestic tappings are forced to delay usage at the irrigation rate until the full amount of both domestic tappings has been used each month. The irrigation wheeling rate should begin after one domestic tapping is used each month, unless and until the lot is subdivided. The higher domestic rate for the second tapping could be reinstated in a given month only after one domestic tapping has been consumed in that month and the entire annual irrigation right has been consumed.

13. Furthermore, at the last tariff change, the holders of irrigation water rights were required to pay the "penalty" rate of $2.00/1000 gallons for any usage above 40,000 gallons of "irrigation water" in any month. There is no rational basis for jumping from $0.25/1000 to $2.00/1000 as a wheeling charge to deliver water the company does not own and that was originally sold by the developer for the explicit purpose of irrigation usage. This limitation to 40,000 gallons per month at the irrigation rate is particularly unfair under the current tariff. Realistically, an owner's need and demand for irrigation water is not evenly distributed over the eight month irrigation season. This burden of an excessive tariff charge for irrigation use above 40,000 gallons in any month arbitrarily puts an unfair burden on those who hold irrigation water rights or certificates. The higher domestic tariff should not apply to irrigation rights until the annual irrigation entitlement has been fully consumed, regardless of how much is used in any given month, subject only to reasonable limitations directly based on peak system capacity limitations. The DVWW is asserting that it may offer extra water at its discretion at the irrigation rate when it deems fire hazards call for such measures and has done so in the past. Clearly the system can supply irrigation water at this rate for more usage than the tariff allows. Owners of irrigation rights should not be forced to forego the use of their rights at a fair rate in exchange for a discretionary grant from the DVWW. In my case, in particular, where my lot borders upon heavily forested public lands, it is critical that I have the fair use of my irrigation water at a reasonable rate during the hot summer months when fire hazards are greatest. A fair and reasonable wheeling charge for irrigation water should be established.

14. Under HB 51 passed in the 2008 legislative session, the DVWW is protected from forfeiture and has no need to spread the usage among customers to ensure that water is used to maintain beneficial use.

15. The water rights picture as between DVWW and Dammeron Corporation is very complex. There are multiple water rights owned by these two entities and some change applications filed with the state engineer are joint applications. A thorough and transparent investigation and disclosure should be made to discover whether water is being used through the DVWW system by Dammeron Corporation or its principals that is not being properly paid or accounted for and to learn whether other users are unfairly subsidizing any such use. An accounting should be made of all the water that is being delivered through the system and the water rights applicable thereto.

16. A full evaluation of the existing uses of the DVWW system and review of the entire tariff and the documents supporting the existing tariff should be made, also because to the extent that existing users are paying for the costs of water or capital facilities, the Dammeron Corporation may be unfairly profiting from the sale of new lots as well as through the use or protection of Dammeron Corporation assets through the water company. It is my understanding that the cost of making water available is always considered to be included in the value of the lot, given that the lot would have little or no value for residential purposes without water service. A thorough investigation should be made to ensure that tax write-offs have not occurred that would result in double benefits to the developer for the cost of construction of the water system. An evaluation of impact fee collections for connection of new lots to the system should be addressed so that a complete picture of allocation of costs and benefits is revealed. A complete overview of charges for all components of the water system should be made available to existing water customers for their review.

17. In "In the Matter of the Formal Complaint of Douglas J. Markham and Andrea Gasporra vs. Dammeron Valley Water Works", DOCKET NO. 07-2025-01, the Division of Public Utilities stated that "We found many examples of under billing and over billing at the first tier level, the irrigation level, and the overage level." No notice has been given to customers that they may have overpaid. This issue should also be resolved with notice to all customers prior to any change in the DVWW tariff.

18. Finally, I would request the Commission to consider a local hearing in this matter before a final determination is made.

RESPECTFULLY SUBMITTED

DATED: March 20, 2008

/s/ Barbara G. Hjelle_________________

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