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Attorneys for Respondents Leon H. Saunders; Landmark Plaza Associates; Parley's Creek, Ltd.; Parley's Lane, Ltd.; Parley's Park; Stuart A. Knowles; Trilogy Limited, L.P.; Trilogy Asset Management, Inc.; Land & Water Resources, Inc.; Lawrence R. Knowles Irrevocable Trust; Leon H. Saunders, Stuart A. Knowles, and Trilogy Limited, L.P., dba SK Resources.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Bear Hollow Restoration, LLC,

Applicant/Complainant,

vs.

Leon H. Saunders, et al.,

Respondents.

MOTION TO DISMISS BEAR HOLLOW RESTORATION, LLC'S COMPLAINT AND REQUEST FOR AGENCY ACTION

Docket No. 09-015-01

Respondents Leon H. Saunders; Landmark Plaza Associates; Parley's Creek, Ltd.; Parley's Lane, Ltd.; Parley's Park; Stuart A. Knowles; Trilogy Limited, L.P.; Trilogy Asset Management, Inc.; Land & Water Resources, Inc.; Lawrence R. Knowles Irrevocable Trust; Leon H. Saunders, Stuart A. Knowles, and Trilogy Limited, L.P., dba SK Resources (collectively "the Individual Shareholders") hereby file this Motion to Dismiss Bear Hollow Restoration, LLC's ("Petitioner") Complaint and Request for Agency Action.¹

¹ The Individual Shareholders understand that Summit Water Distribution Co. has filed or will be filing a motion to dismiss. The Individual Shareholders hereby join in that motion.

This Commission lacks jurisdiction over the Individual Shareholders. Those shareholders are not a “public utility” as is required by Utah Code section 54-4-1 for the Commission to have jurisdiction. Rather, the Individual Shareholders were named in this action solely because “they are “Class A shareholder[s] of S[ummit Water].” [See Complaint ¶¶ 3-7, 9-13]. However, Summit Water is not a public utility, and even if it were, ownership in that company is insufficient to establish that the Individual Shareholders themselves qualify as a public utility. Indeed, the long-standing and uniform rule of law is that the Individual Shareholders do not constitute a public utility simply by virtue of their shareholder interest in Summit Water. Rather, Petitioner must establish that the Individual Shareholders each own or operate a water system for public use. Petitioner’s Complaint does not allege that much, and there is absolutely no evidence that such is the case.

Furthermore, even if the Individual Shareholders’ interests in Summit Water were sufficient to establish their ownership or control of a water system, there is no basis for determining those shareholders operate that system for “the public generally.” Utah Code Ann. § 54-2-1(15)(a) (defining “[p]ublic utility.”). Accordingly, the Commission has no jurisdiction over these Individual Defendants.

For these reasons, which are further explained in the Memorandum in Support of this Motion filed concurrently herewith, Petitioner’s Complaint against the Individual Shareholders should be dismissed.

DATED this 12th day of October, 2009.

HATCH, JAMES & DODGE, PC

By: /s/ Brent O. Hatch
Brent O. Hatch
Mitchell A. Stephens

Attorneys for the Individual Shareholders

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2009, I did cause to be sent, in the manner indicated below, a true and correct copy of the foregoing **MOTION TO DISMISS BEAR HOLLOW RESTORATION, LLC'S COMPLAINT AND REQUEST FOR AGENCY ACTION** to the following:

Public Service Commission (Via Electronic Mail and Hand Delivery)
Heber M. Wells Building
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

J. Craig Smith (Via U.S. Mail)
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/s/ Brent O. Hatch