

J. Rodney Dansie

From: "J. Rodney Dansie" <roddansie@msn.com>
Date: Wednesday, August 29, 2012 8:02 PM
To: <wduncan@utah.gov>; "Shauna Benvegnu-springer" <sbenvegn@utah.gov>; "Patricia Schmid" <pschmid@utah.gov>
Subject: informal meeting regarding Hi-Country docket # 11-2195-01

Mr. Duncan thanks for your phone call regarding my request to Patricia Schmid regarding some legal and policy matters of the division regarding docket # 11-2198-01. The purpose would be to discuss the following issues with the intent to find resolutions to some of the issues or become aware of the divisions policies and opinions regarding the matters. The following issues would be discussed to determine the divisions feelings and policies and opinions on the matters. I am hopeful for a meeting by September 11, 2012 or very soon there after as we can meet.

1. I would like to know the Divisions feelings regarding the 1996 letter prepared by the Division requesting that Hi-Country be granted a letter of exemption from regulation and the 1996 order of the PSC. granting the Exemption from regulation based on the condition that any customers being served become members of the water company to continue to receive service. Apparently the Hic-Water Co./ Association failed to completed the full requirements of the order and have operated as a Defector Utility for the past 12 years. (Please provide copies of the letters and orders and why this was not corrected on the follow up audits by the Division before the Certificate was finally cancelled by order of the P. S. C.

2, Has the Hi-Country water company/ Association been operating as a Illegal/ Defector Utility for the past 12 years? If so is it reasonable to perform an audit of the water company records for the past 12 years to determine if the rates are justified and reasonable and are refunds due to customers since money has used for other purposes than operations the water company / loans to the HOA for legal fees ets and expenses or items that are not allowed by a regulated utility.? These issues are of concern based on the current actions of the PSC and orders reinstating the certificate to operate as a utility when in fact the company has continued to be a utility (Defector) for 12 years.? The water company has boosted about surplus of funds of over \$100,000 each year at meetings. The Rates should be reviewed based on these concerns? and surplus funds that were collected by a (defector utility) and refunds may be due to the customers.

3. The issue of ownership of the water system, water rights, and lines and facilities is also in question since all of the customers appear to have paid for and have ownership rights to the facilities based on quiet TITLE ORDERS OF THE COURT, DEEDS AND GRANTS OF EASEMENTS AND FEES CHARGED AND LETTERS REGARDING OWNERSHIP OF THE WATER SYSTEM FACILITIES IN 1. BEAGLEY SUBDIVISION 2. South Oquirrh subdivision 3. lots 101 and 102 which were part of phase 2 subdivision and the 4 people being promised service on the west properties located beyond the Subdivision plat. I Would like to discussed these issues with the division and have the documents regarding ownership of tanks, lines easements and water rights used by the (Proposed Utility) to provide service to its customers. This ownership issue is very important to any actions, service and being able to provide service service to the public in general. The utility should be able to provide ownership orders, deeds, agreements to all facilities, lines, tanks and items used to provide service as a utility. These documents are necessary for tax purposes of the utility and to determine the

8/29/2012

value of utility assets for Property tax purposes as a utility. (Copys of all of the documents should be made available for review and if any are not available , data requests to the utility should be make to get the information.)

4. I would like to discuss and have records produced by the Utility regarding any amounts the utility claims are un paid and the letters by the BOD of Hi-Country reversing the charges, late fees etc charged to each of lots 51 and 43 since 1994 and 1996 and what is really correct regarding this issues and if refunds are due base on rates charged and fees and late fees for standby for these lots (an the effect of the well lease agreement 1977 and 1985 and the court of appeals order of July 29 2009. Copy of any service agreements for these lots and when the connection fees for these two lots (To Foot Hill Water Company) and how this is being handled by the current water utility HCountry/water /HOA.

5. I would like to discuss the request for water to these two lots and letter from the Division of Drinking water indications that service can be provided as soon as the utility chooses to re-connect the meters which were illegally removed about two and half years ago. (If they are a defector utility SHOULD THEY BE RE-CONNECTED NOW.) what was the status of the utility 2.5 years ago when the water service was terminated with out notice.

6. It may be important to discuss with the division how the water owned under the well lease agreement would be delivered to its members (Dansie Stock Mutual Water Co.) and that water would not be provided to the public in general as has been alleged by Hi-CountryWater/ HOA/ Regulated utility.

7. Since the Well Lease agreement is A contract with HI-Country HOA- Now a regulated utility it seems that the water should be provided as required by the court decisions and the latest decision of the Utah Court of appeals July 29 2009 stating going forward that the Hi-Country Utility should deliver the water as per the plain language of the well lease agreement. (See court of appeals orders submitted to the Division and the PSC. in the June 15, 2012 hearings and are part of the record.) Also provisions should be made to provide the water owed at a rated of 12 million gallons per year since Feburary 5, 1996 for a total 12.5 years times 12 million or a total of approximately 150, million gallons of water owed to the Dansie's under the well lease agreement. a large of numbers of requests and demands have made for the Hi-Country HOA corporations to provide the water as owed to the Dansies based on the plain language and court decisions of Utah Court of Appeals. In 2008 The HOA started to provide the water at lot 51 and 43 while arrangements were being made to get the lines reconnected to the other areas and then the HOA illegally and without notice terminated the water service and failed to re-connect and provide the water under the well lease agreement.

8. Dansies would like to discuss with the Division, staff and legal counsel there position regarding a stipulation (exempting the well lease agreement from any Rate Case hearings etc that the HOA may file in the future since the well lease is a contract and goes with the Water System and the obligations must be provided as per the court orders of the Court of Appeals and the Plain language of the well lease. We believe that the well lease should not be an issues in any rate hearing since it is an obligation that runs with the water system and its quite title order which has been up held by

all of the courts in the state of Utah including the Supreme Court. We would like to know and discuss the policy and legal position of the division on the well lease exempting the well lease contract and its obligations from any rate cases the utility corporation may file for and request. The ownership case and lease agreement obligations were decided by district court and upheld by the appeals court including the supreme court and are beyond the authority of the Public Service Commission other than ordering the the Court of appeals decision be followed and implemented a corporate obligation of the utility.

9. Dansies are willing to discuss ways of meeting the obligations of the utility (HOA) and if need be separating out lot 51 and 43 from the area where water would be provided and Dansies may be able to take the water under the lease agreement in order to keep the service area of HI-Country HOA (The Utility) separate from Dansie Water Stock Mutual Company service area and from the area of South West Water Improvement District since a utility can not provide service to an area that is a city, town or improvement district service area.

10. Dansies are willing to discuss ways that the obligations of HI-Country HOA can be met at the lowest possible cost to the customers. The answer may be purchasing water from Herriman City or any other source that the Utility (HOA) may choose such as the lease of a well on lot 51 to HI-Country HOA (utility) to provide a second source of water and meet its obligations to the Dansie's under the well lease agreement and have a lower cost of water from another well within its boundaries. This is just an option for discussion if there is a desire to evaluate the discussion by the division of public utilities in looking at providing water to the utility customers and meet the utilities legal obligations under the well lease and orders of the Court of appeals. Hi-Country (the Utility) has an obligation to look at all ways to provide the water service to its customers and not just have Herriman City Water run or operate the water system without competitive bids and cost analysis to meet all of its service and rate analysis obligations. This has not been done by the utility and no analysis by the division has been made and it will be necessary soon.

11. Mr. Smith (HOA) managers, legal counsel and operators of the association have not been willing to enter in these types of discussions in the past. This may be an opportunity for the Division of Utilities to do some analysis and help determine how the water service costs and legal obligations of the HOA (Utility) can be accomplished with the best interests of the customers and water users in mind by looking at new ways to accomplish the duties and legal obligations of the Utility.

12. There may be other ways to reach operating agreements where by both the HOA (Utility) under the guidance of the Division can meet its legal obligations under the well lease agreement regarding reconnections of the Hi-Country HOA/ Hi-Country Water (the utility) and the Dansie Water Company where both of these organizations can meet their service duties and the HOA LEGAL REQUIREMENTS OF THE WELL LEASE AGREEMENT.

PLEASE REVIEW THE ABOVE INFORMATION AND ADDITIONAL DOCUMENTS AGREEMENTS, ORDERS OF THE COURT OF APPEALS AND OWNERSHIP ISSUES AND THE LEGAL REQUIREMENTS OF THE (HOA) UTILITY AND UTILITY LAW THAT MAY BE APPLICABLE AND LETS TRY AND HAVE A MEETING WITH THE DIVISION STAFF AND DEPT HEADS AND LEGAL COUNSEL AND LOOK FOR ANSWERS TO THE ABOVE QUESTIONS. Time is of essence regarding these possible discussions and collection of data requests that may be necessary to answer to the questions raised.

THANKS J. Rodney Dansie 801-254-4364

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THANKS J. Rodney Dansie 801-254-4364

Based upon the 2008 and 2011 opinions of the Utah Court of Appeals¹ in this matter, IT IS ORDERED that the Dansies are, going forward, entitled to their contractual right under the Well Lease Agreement to free water and free hook-ups unless the PSC intervenes and determines otherwise.

DATED this ____ day of September, 2012.

By the Court:


Andrew Stone, District Judge

¹*Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2008 UT App 105, 182 P.3d 417; *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 2011 UT App 252, cert denied, 268 P.3d 192 (UTAH 2011).

CERTIFICATE OF MAILING

I hereby certify that on this 27th day of August, 2012, I caused to be mailed, a true and correct copy of the foregoing [PROPOSED] ORDER by placing the same in United States Mail, first class, postage prepaid to the following:


J. Craig Smith
Smith Hartvigsen, PLLC
175 S. Main St., Suite 300
Salt Lake City, Utah 84111


Legal Secretary

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