Exhibit 1

2607748

Recorded MAR 22 1974 at 1148 M
Request of SECURITY TITLE COMPANY
Fee Paid, JERADEAN MARTIN
Recorder, Salt Lake County, Utah
$3.00 By [illegible] Deputy

PROTECTIVE COVENANTS FOR HI-COUNTRY ESTATES

Located in Salt Lake County, State of Utah,

Phase I, as shown by Plat recorded on the 17th day of January, 1972, Reference: Book "KK" of Plats, Pages 56, 57, 58 and 59.

KNOW ALL MEN BY THESE PRESENTS:

That the said owners of the heretofore described property, hereby subject said property to the following covenants, restrictions and conditions; and the acceptance of any deed or conveyance thereof by the grantee or grantees therein, and their, and each of their heirs, executors, administrators, successors, and assigns, shall constitute their covenant and agreement with the undersigned, and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to said covenants, restrictions and conditions, as follows, to-wit:

SECURITY TITLE CO. Check

ARTICLE I

GENERAL RESTRICTIONS

1. Land Use and Building Type: The heretofore described property shall be designated as a single family residential lot, except that each lot may be divided one (1) time with the approval of the architectural control committee, and in accordance with Salt Lake County Zoning Regulations.

A single family residence is a dwelling for one family alone, within which no person may be lodged for hire at any time, provided that reasonable quarters may be built and maintained in connection therewith for the use and occupancy of servants or guests of said family and that such quarters may be built and maintained as a part of the detached accessory building or buildings on the same lot, provided said accessory buildings be not at any time rented or let to persons outside the family and that they may be occupied and used

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EVERETT E. DAHL
ATTORNEY AT LAW
720 EAST CENTER STREET
(SUITE 2)
MIDVALE, UTAH 84047

EXHIBIT

only by persons who are employed by members of or are guests of said family.

No other buildings shall be erected, altered, placed, or permitted to remain on any lot, other than one barn to be used in stabling horses and a private garage for not more than three (3) cars.

2. Architectural Control: No building shall be erected, placed or altered on any lot nor any lot divided without the approval by the architectural control committee and compliance with the provisions of Section 6, Article II, of these covenants. No fence, wall, swimming pool or other construction shall be erected, placed or altered on any lot without approval of the architectural control committee.

3. Building Location: No building shall be located on any lot nearer to the front line than fifty (50) feet therefrom, measured to the foundation of such building; nor nearer than fifty (50) feet to the rear lot line; nor nearer than fifty (50) feet to a side lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purposes of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps, or open porches, to encroach upon another lot.

4. Easement: Easements for installation and maintenance of utilities and drainage facilities and roads are reserved as shown by the plat, labeled Exhibit "B", and attached to these covenants. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for these improvements for which a public authority or utility company is responsible.

There is reserved to electric power, gas, water and other public utilities the right to construct, maintain and operate along, upon and across

HC5

all present street, easements and roadways on said property.

5. Nuisances: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. Temporary and Other Structures: No structures of a temporary nature, trailer, basement house, tent, shack, garage, barn or other out-building shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality workmanship and materials.

7. Signs: No billboard of any character shall be erected, posted, painted or displayed upon or about any of said property. No sign shall be erected or displayed upon or about said property unless and until the form and design of said sign has been submitted to and approved by the architectural control committee. No "For Sale" signs shall be displayed upon or about said property without approval of the architectural control committee.

8. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

9. Livestock-Poultry Agriculture: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets and horses may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No animal may be kept which

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constitutes an annoyance or nuisance to the area. All animals shall be restricted to their owner's property.

10. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and no rubbish, trash, papers, junk or debris shall be burned upon any lot.

11. Water Supply: Whenever a residence is constructed on said property and there is a culinary water line available to serve said residence by being located in an adjoining street or road, the said property owner shall connect to and utilize the water services of said line. No other water supply system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of both the State Health Department and State Water Engineer.

12. Trees: No cutting of trees shall be permitted on the premises at any time, except for the sole purpose of making land available for improvements.

13. Landscaping: No landscaping shall be begun on said property nor planting of trees take place until the plans and specifications therefor have first been approved in writing by the architectural supervising committee.

14. Diligence in Building: When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and it must be completed within a reasonable length of time.

RECORDED AT REQUEST OF

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ARTICLE II

DURATION, ENFORCEMENT, AMENDMENT

1. Duration of Restrictions: All of the conditions, covenants and reservations set forth in this declaration of restrictions shall continue and remain in full force and effect at all times against said property in Exhibit "B" and the owners thereof, subject to the right of change or modification provided for in Sections 2 and 3 of this Article, until twenty-five (25) years, and shall as then in force be continued for a period of twenty (20) years, and thereafter for successive periods of twenty (20) years each without limitation unless, within six (6) months prior to 1992 or within the six months prior to the expiration of any successive twenty year period thereafter, a written agreement executed by the then record owners of more than three-fourths (3/4) in area of said property, exclusive of streets, parks and open spaces, be placed on record in the office of the County Recorder of Salt Lake County, by the terms of which agreement any of said conditions or covenants are changed, modified or extinguished in whole or in part as to all or any part of the property originally subject thereto, in the manner and to the extent therein provided. In the event that any such written agreement of change or modification be duly executed and recorded, the original conditions and covenants, as therein modified shall continue in force for successive periods of twenty (20) years each unless and until further changed, modified or extinguished in the manner herein provided for, by mutual written agreement with not less than seventy per cent (70%) of the then owners of record title of said property (including the mortgagees under record mortgages and the trustees under recorded deeds of trust), duly executed and placed of record in the office of the County Recorder of Salt Lake County, Utah, provided, however, that no change of modification shall be made without the written consent duly executed and recorded of

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the owners of record of not less than two-third (2/3) in area of all lands which are a part of said property and which are held in private ownership within five hundred (500) feet in any direction from any direction from the exterior boundaries of the property concerning which a change of modification is sought to be made.

2. Enforcement: Each and all of said conditions, covenants and reservations is and are for the benefit of each owner of land (or any interest therein) in said property and they and each there of shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Grantor. Each Grantee of the Grantor of any part or portion of said property by acceptance of a deed incorporating the substance of this declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner the said restrictions, conditions and covenants shall be covenants running with the land and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings by any such owner of other lots or parcels in said property, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and for value; provided, however, that any subsequent owner of said property shall be bound by the conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. Violation Constitutes Nuisance: Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by Grantor or its successors in interest and/or by any

RECORDED AT REQUEST OF

lot owner; and such remedy shall be deemed cumulative and not exclusive.

4. Construction and validity of Restrictions: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason, becomes unenforceable no other condition, covenant, or reservation or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

5. Right to Enforce: The provisions contained in this declaration shall bind and inure to the benefits of and be enforceable by Grantor, by the owner or owners of any portion of said property, their and each of their legal representatives, heirs, successors and assigns, and failure by Grantor or any property owner, or their legal representatives, heirs, successors or assigns to enforce any of said restrictions, conditions, covenants, or reservations shall in no event be deemed a waiver of the right to do so thereafter.

6. Architectural Committee: The architectural committee which is vested with the powers described herein shall consist of three (3) persons appointed by the Grantor. Prior to the commencement of any excavations, construction or remodeling or adding to any structure, theretofore completed, there shall first be filed with the architectural committee two complete sets of building plans and specifications therefor, together with a block or plot plan indicating the exact part of the building site the improvements will cover and said work shall not commence unless the architectural committee

shall endorse said plans as being in compliance with these covenants and are otherwise approved by the committee. The second set of said plans shall be filed as a permanent record with the architectural control committee. In the event said committee fails to approve or disapprove in writing said plans within fifteen (15) days after their submission, then said approval shall not be required. When all lots in said tract have been sold by Grantor, said plans and specifications shall be approved by an architectural committee approved by a majority of owners of lots in the property herein described and only owners of said lots shall be priviledged to vote for said architectural committee. The Grantor shall have the right to appoint members of thearchitectural committee until such time as all lots in the tract have been sold by the Grantor.

7. Assignment of Powers: Any and all rights and powers of the Grantor herein contained may be delegated, transferred or assigned. Wherever the term "Grantor" is used herein, it includes assigns or successor in interest of the Grantor.

8. Invalidity: It is expressly agreed that in the event any covenant or condition or restriction herelubefore contained, or any portion thereof is held invalid or void, such invalidity or voidness shall in no way affect any valid covenant, condition or restriction.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of June, 1970.

HI-COUNTRY ESTATES

By D. Keith Spencer

STATE OF UTAH)
:ss.
County of Salt Lake)

I hereby certify that on the 15 day of June, 1970, D. KEITH SPENCER,

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personally appeared before me, who being by me first duly sworn, declared that he is the person who signed the foregoing instrument and duly acknowledged to me that he executed the same.

NOTARY PUBLIC

My commission expires:

Sept 3, 1973

Residing at:

Aldan, Pa.

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Exhibit 2

Michael O. Leavitt
Governor

State of Utah

PUBLIC SERVICE COMMISSION OF UTAH

Heber M. Wells Building
160 East 300 South, 4th Floor
P.O. Box 45585
Salt Lake City, Utah 84145
(801) 530-6716

COPY

Commissioners
Stephen F. Mecham
Chairman
Constance B. White
Clark D. Jones

Douglas C.W. Kirk
Executive Staff Director
David L. Stott
Legal Counsel
Julie Orchard
Commission Secretary

May 14, 1996

LETTER OF EXEMPTION NO. 0057

DEAR KARL SMITH

The Utah Public Service Commission has received a Recommendation from the Division of Public Utilities that HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION should be issued a Certificate of Exemption from regulation by the Public Service Commission. This recommendation was made and Letter of Exemption NO. 0057 is issued to you based upon your responses to the Questionnaire for New Water Systems.

You are under a continuing obligation to update your responses within 30 days of any change. Furthermore, you are advised that issuance of this letter does not alter the authority of the Commission to inspect and audit HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION to verify the validity of your responses at any time. You should understand that the letter is revocable at such time as your responses are determined to be invalid. Please refer to this letter number in any future correspondence with either the Commission or the Division.

Sincerely,

Julie Orchard

Julie Orchard
Commission Secretary

fw/JO

cc: Dan Pagnes
Public Utilities

EXHIBIT
2

Exhibit 3

RECYCLED ® 80000 SERIES 30°. P C W

WELL LEASE AND WATER LINE EXTENSION AGREEMENT

THIS AGREEMENT made and entered into this 7th day of April, 1977, by and between JESSE H. DANSIE, hereinafter referred to as "Dansie", and GERALD H. BAGLEY, hereinafter referred to as "Bagley",

W I T N E S S E T H :

WHEREAS, Dansie is the owner of property located in Sections 33, 34 and 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and is also the owner of water rights evidenced by Certificate No. 8212 Application No. 26451, and the rights to water therefrom and a water distribution system located on such property; and

WHEREAS, Bagley is the owner of property located in Section 33, Township 3 South, Range 2 West, and Sections 1, 2, 4, 5, and 11, Township 4 South, Range 2 West Salt Lake Base and Meridian, and is also the owner of a water distribution system located on part of the property owned by him; and

WHEREAS, Dansie and Bagley desire to connect their water systems and make use of the Dansie well and water for their mutual benefit, upon the terms and conditions provided herein;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter provided, the parties hereto agree as follows:

A. WELL LEASE

1. Dansie hereby leases to Bagley the well located South 758 Feet and East 1350 Feet from the West quarter corner of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, identified by Certificate No. 26451 issued by the Utah State Engineer's Office, hereinafter referred to as "Dansie Well No. 1", including the equipment for operation of such well and the rights to all of the water therefrom, for a period of ten (10) years from the date of this Agreement.

EXHIBIT 3

2. Bagley shall pay to Dansie Five Thousand One Hundred Dollars ($5,100.00) the receipt of which is hereby acknowledged, and as rental for such lease, Bagley shall pay to Dansie $300.00 each month during the first five years of this lease commencing April 10, 1977, provided the monthly rental shall be increased to $600.00 per month at such time as thirty (30) additional hook-ups are installed on the Hi-Country Water Company Distribution System operated by Bagley. As of the date of this Agreement, there are 28 hook-ups, such hook-ups being detailed in Exhibit #1.

3. Commencing April 10, 1982, the monthly rental payments shall be increased to $600.00 per month unless they have already been increased to that amount pursuant to Paragraph 2 above.

4. Bagley shall have the right to renew this Well Lease on terms to be agreed to by Bagley and Dansie at the termination of this Lease on April 10, 1987.

5. Bagley agrees to provide and install a seal around the well pipe of Dansie Well No. 1 as required to meet the Utah State Division of Health standards and to install a new pump on the well within the first five (5) years of this lease and shall be responsible for all maintenance of Dansie Well No. 1 during the term of this lease.

6. Bagley agrees to pay all pumping costs, repairs, and maintenance of said well for the period of this Agreement. Bagley agrees to maintain the said well, and electric motor in good operating condition. Any changes or modifications to said well, motor and pumping equipment shall be paid for by Bagley and will become the property of Dansie at the termination of this Agreement.

7. The existing pump, electric motor and transformers will remain the property of Dansie and will be delivered to Dansie if removed from said well. Any new equipment to be installed in said well such as an electric motor, pumps and transformers and

piping shall become the property of Dansie and shall be free and clear of any mortgages, liens or encumbrances at the termination of this Agreement.

8. Bagley agrees for himself, his successors, and assigns to be responsible for and to indemnify Dansie, his successors and assigns, against any and all liability, losses and damages, of any nature whatever, and charges and expenses, including court costs and attorneys' fees that Dansie may sustain or be put to and which arise out of the operations, rights and obligations of Bagley pursuant to this Agreement whether such liability, loss, damage charges or expenses are the result of the actions or ommissions of Bagley, his employees, agents or otherwise.

9. Dansie does not warrant that the water from Dansie Well No. 1 does now or at any time during the term of this Agreement, and any extension thereof, will meet any standards for culinary water as required by the Utah State Division of Health. However, a letter of approval of the water by the Utah State Board of Health is attached (Exhibit #2) and the requirements are set forth in said letter.

B. EXTENSION NO. 1

1. Within one year from the date hereof, Dansie shall with his equipment perform all labor required to excavate for and install a 6-inch P.V.C. Class 200 pipeline connecting the Dansie Well No. 1 to the existing Hi-Country Water Company water system owned by Bagley at a point in Lot #9 as referenced by the map in Exhibit #1. Bagley shall purchase and furnish all permits, pipe, materials and supplies required for this connection and shall obtain an easement across Lot #9 at his expense.

2. Dansie shall own the line upon completion of the work and Bagley shall be able to use said line during the term of this Agreement. Bagley shall have a right to enter the property upon which the pipeline and connection is located for the purpose

of installing, maintaining and using the water line to be installed thereon pursuant to Paragraph B (1) above. Bagley hereby grants and conveys to Dansie an easement and right-of-way over and across property in the Hi-Country Estate Subdivision for the same purpose. Dansie shall have a right to take water from the line at points that may serve the property along the line of Extension No. 1. Dansie shall own and Bagley will be responsible for maintenance of the extension during the life of this Agreement.

C. EXTENSION NO. 2

1. Within one year from the date hereof, Dansie shall, with his equipment and at his expense, perform all labor required to excavate for and install a 6-inch P.V.C. Class 200 pipeline connecting the Hi-Country Estates Water Company water system, from its most Easterly point at approximately 7350 West and 13300 South in Salt Lake County, to the Dansie water line at approximately 7200 West and 13300 South, including a pressure-reducing valve at the point of connection with the Hi-Country Estates Water Company system at 7350 West 13300 South. Dansie shall purchase and furnish all pipe, materials and supplies required for this connection.

2. Dansie shall obtain and provide all easements and permits and pay all fees required for this connection and extension, except as for such line that may be on property of Hi-Country Homeowners Association or Bagley.

3. Dansie shall own and be responsible for all maintenance of this Extension No. 2.

4. Bagley shall have the right, at all times during the term of this Agreement or any extension thereof, to run water from the Hi-Country Estates Water Company system through the Dansie water system and Extension No. 1 and No. 2 and No. 3 to property owned by Bagley in Sections 1, 2, and 11, Township 4 South, Range 1 West, Salt Lake Base and Meridian.

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D. EXTENSION NO. 3

1. Within one year from the date hereof, Dansie shall, with his equipment perform all labor required to excavate for and install a 6-inch P.V.C. Class 200 pipeline connecting to the Dansie water system at 6800 West and 13000 South in Salt Lake County and extending along 6800 West to 13400 South. Bagley shall purchase and furnish all permits, pipe, materials and supplies required for this connection and extension.

2. Dansie shall own and Bagley shall be responsible for all maintenance of this Extension No. 3 during the life of this Agreement.

E. OTHER WELLS AND HOOK-UPS

1. Dansie shall have the right, at his expense, to connect any additional wells owned by him, located in Section 33, 34 and 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian identified by Certificate No. _____ issued by the Utah State Engineers Office, hereinafter referred to as "Dansie Wells" and by change application No. 9-8635 (59-3879) issued by the Utah State Engineers Office, hereinafter referred to as "Dansie Well No. 3," to the water system owned by Dansie, including Extension No. 2, and to commingle the water from these wells with that in the system from other sources so long as the water from such wells at all times meet all standards for culinary water required by the Utah State Division of Health.

2. Dansie shall have the right to receive up to five (5) residential hook-ups onto the water system on the Dansie property for members of his immediate family without any payment of hook-up fees and shall further have the right to receive reasonable amounts of water from the system through these five (5) hook-ups for culinalry and yard irrigation at no cost.

3. Dansie shall further have the right to receive up to fifty (50) residential hook-ups onto the water system on the Dansie property for which no hook-up fees will be charged. Water service

charges shall be charged to the recipients thereof of which Dansie shall receive fifty percent (50%) of the water service billings paid by those recipients in consideration for Dansie's maintenance of his part of the water system.

4. Dansie shall receive not less than $4,000.00 or One Hundred percent (100%) of all of the hook-up fees to the water system on the Leon property located between the Hi-Country Estates property in Sections 33, Township 3 South, Range 2 West, and the Dansie property in Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian and shall receive fifty percent (50%) of the revenues from water service charges to such property.

5. Dansie shall have the right to use for any purposes and at no cost, any excess water from the Hi-Country Estates Water Company system Well No. 1, not required or being used by Bagley or customers of the Hi-Country Estates Water Company. Any power or other costs of pumping such excess water shall be paid by Dansie.

F. MISCELLANEOUS

1. It is understood that Bagley intends to use the entire water system formed by the extensions and connections provided for herein, including the present systems owned by Bagley and Dansie, for the purpose of providing water to users in the area covered by this system or which can be reached by extensions and connections to this system, that Bagley intends to charge hook-up and water service fees to water users, that Bagley is entitled to all such fees and other charges except as otherwise provided in this Agreement, and that Bagley is responsible for all costs of other extensions and connections except as otherwise provided in this Agreement.

2. Dansie agrees that Bagley may form a water company, using such entity or form of organization as Bagley desires, and may convey all his rights to the water system referred to in this Agreement and assign his interest in this Agreement to any such

entity or organization. Bagley will be personally responsible for lease terms and conditions if assignee fails to meet the terms and conditions of the lease. No assignment, conveyance or sublease shall release Bagley from liabilities and obligation under this Agreement.

3. Dansie further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and Dansie shall cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission. Bagley agrees to pay all costs incurred in obtaining such approval, including but not limited to, legal and engineering fees.

4. Bagley and Dansie each agree to execute and deliver any additional documents and/or easements which may be necessary to carry out the provisions and intent of this Agreement.

5. Non-payment of any monthly installment will, at the option of Dansie, automatically terminate this Agreement. All remaining lease payments, in the event of termination for non-payment of any monthly installment, shall become immediately due and payable to Dansie. If it becomes necessary for Dansie to sue for the liquidated damages (remaining lease payments), Bagley shall pay attorneys' fees and costs incurred by Dansie.

6. Dansie shall have first right of refusal to purchase the entire Hi-Country water system if it is to be sold or assigned to a third party.

7. Bagley, and his assigns or successors, agree to supply water to the Dansie property as provided for in this Agreement and for such time beyond the expiration or termination of this Agreement as water is supplied to any of the Hi-Country properties or that the lines and water system referred to in this Agreement are in existence and water is being supplied from another source such as Salt Lake County Conservancy District. Such water as is provided subsequent

to the expiration or termination of this Agreement shall be made available upon the same terms, conditions and rates as are set forth in this Agreement.

DATED this 7th day of April, 1977.

JESSIE H. DANSIE

GERALD H. BAGLEY

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Exhibit 4

AMENDMENT TO WELL LEASE AND WATER LINE EXTENSION AGREEMENT

This Amendment made and entered into this 3rd day of July, 1985, by and between Jesse H. Dansie, hereinafter referred to as "Dansie," and Gerald H. Bagley, hereinafter referred to as "Bagley."

W I T N E S S E T H

WHEREAS, Dansie and Bagley, on April 7, 1977, entered into a Well Lease and Water Line Extension Agreement (hereinafter "Well Lease Agreement"); and

WHEREAS, Dansie and Bagley are concerned about possible ambiguities in Paragraph E. 2. of the Well Lease Agreement; and

WHEREAS, the Hi-Country Estates Homeowners Association has filed a lawsuit based in part on interpretation of the Well Lease Agreement; and

WHEREAS, Bagley is delinquent in the payment of his monthly rental payments, but desires to continue the Well Lease Agreement;

NOW, THEREFORE, in consideration of $10.00 (Ten) and other good and valuable consideration, the sufficiency of which is hereby admitted, Dansie and Bagley agree as follows:

1. Paragraph E. 2. of the April 7, 1977 Well Lease Agreement is amended to read as follows:

> 2. Dansie shall have the right to receive up to five (5) residential hook-ups on to the water system on the Dansie property for

members of his immediate family without any payment of hook-up fees and shall further have the right to receive up to 12 million (12,000,000) gallons of water per year from the combined water system at no cost for culinary and yard irrigation use on the Dansie property described herein plus Lot 51 of Hi-Country Estates. Any meters required at any time by any person or entity for metering of Dansie's water shall be purchased and installed by Bagley at no cost to Dansie. Any use of water for the fighting of fires, or losses caused by breaks or line ruptures shall not be charged against the 12,000,000 gallons to which Dansie is otherwise entitled.

2. Paragraph E.5. of the April 7, 1977 Well Lease Agreement is amended to read as follows:

5. Dansie shall have the right to use for any purpose and at no cost, any excess water from the High Country Estates Water Company System Well No. 1, not required or being used by Bagley or customers of the High County Estates Water Company. Dansie shall pay only the incremental pumping power costs associated with producing such excess water.

3. All other provisions of the Well Lease Agreement shall remain in full force and effect.

4. Nothing herein shall relieve Bagley from the obligation to make the monthly payments now delinquent or to become due under the Well Lease Agreement.

4. This Amendment and the Well Lease Agreement as amended herewith, shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

IN WITNESS WHEREOF, each of the parties has caused this Amendment to be executed the day and year first above written.

JESSIE H. DANSIE

GERALD H. BAGLEY

6985C

Exhibit 5

DOCKETED

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of FOOTHILLS WATER COMPANY, INC. for a Certificate of Convenience and Necessity to Operate as a Public Utility.	CASE NO. 85-2010-01 REPORT AND ORDER

ISSUED: March 17, 1986

Appearances:

Brian W. Burnett Assistant Attorney General	For	Division of Public Utilities Department of Business Regulation, State of Utah, Intervenor
Val R. Antczak	"	Foothills Water Company, Inc., Applicant
Stephen R. Randle	"	Hi-Country Estates Home Owners' Association, Protestant

By the Commission:

Pursuant to notice duly served, this matter came on for general rate hearing on January 22, 23, 24, 27 and 28, 1986, before Kent Walgren, Administrative Law Judge for the Utah Public Service Commission. Applicant, Foothills Water Company, Inc. ("Foothills") filed its original Application on June 7, 1985. Hearings were held on July 8, 1985 and July 23, 1985, at which time some evidence was offered and received. On August 6, 1985 the Commission entered its Order granting Applicant a Certificate of Convenience and Necessity and sanctioning interim rates in accordance with a stipulation between the Applicant and the homeowners of Hi-Country Estates. On August 16, 1985 Applicant filed its Amended Application, praying that the Commission

001078

EXHIBIT 5

approve a basic water rate of $152.00 per month per customer, plus an additional amount for usage over 27,000 gallons per month. On August 28, 1985 additional evidence was offered and received, on the basis of which the Commission (see Second Interim Report and Order issued September 6, 1985) set interim rates (subject to refund) of $27.50 per month for the first 5,000 gallons and $1.50 per 1,000 gallons over 5,000 and a standby fee of $10.00 per month for lot owners unconnected to the water system.

In its September 6, 1985 Report and Order the Commission, having concluded that it may not be able to set just and reasonable rates without asserting jurisdiction over Jesse Dansie, the supplier (pursuant to a lease) of the water to Hi-Country Estates, ordered Mr. Dansie to appear on September 16, 1985 and show cause why he should not be made a party to this proceeding. On account of ever mounting legal fees and representations by counsel that negotiations for the sale of the water company were underway that might remove the Commission's jurisdiction, a final ruling on that issue was deferred. Although a sale of Foothills' shares to Rod Dansie, son of Jesse Dansie, was consummated, Commission Jurisdiction was not affected. On January 21, 1986, just prior to the general rate hearing, the parties, having apparently concluded that the Commission could set just and reasonable rates without asserting personal jurisdiction over Jesse Dansie, moved that the show cause be quashed which motion the Administrative Law Judge took under advisement.

The Administrative Law Judge, having been fully advised in the premises, now makes and enters the following recommended Findings of Fact, Conclusions of Law, and Report and Order based thereon:

FINDINGS OF FACT

1. Applicant is a corporation organized and existing under the laws of the state of Utah; Applicant was incorporated in June, 1985. On August 8, 1985 Applicant was granted Certificate of Convenience and Necessity No. 2151 and interim rates were set by this Commission. The interim rates were modified by the Commission's Second Interim Report and Order issued September 6, 1985.

2. Protestant, Hi-Country Estates Home Owners' Association ("Homeowners") is a Utah non-profit corporation consisting of the homeowners of Hi-Country Estates subdivision, Phase I, located a few miles southwest of Herriman, Salt Lake County, Utah.

3. Applicant is a water corporation, proposing to provide culinary water to a residential area in the southwest corner of Salt Lake County. Applicant's proposed service area (see Exhibit 16) includes all of the Hi-Country Estates subdivision, Phase I, plus three areas (approximately one-sixteenth section each) along the western border of the platted subdivision and referred to as the "Tank 2 area", the "South Oquirrh area"

and the "Bagley area" (see Exhibit 17). The proposed service area differs slightly from that approved by the Commission when Applicant was granted its certificate.

4. Applicant's service area consists of 63 active customers and 54 standby customers. In addition, the well and facilities which supply water to Applicant also supply water to thirteen (13) hook-ups outside the service area to the southeast, referred to hereafter as the "Dansie hook-ups" or "Dansie properties."

5. Applicant's ownership of water company assets is contested by the Homeowners and is the subject of a lawsuit currently pending in the Third Judicial District Court of Salt Lake County (Civil No. C85-6748).

6. Hi-Country Estates subdivision, Phase I ("Subdivision"), was initially developed in about 1970 by a limited partnership consisting of general partners Gerald H. Bagley ("Bagley"), Charles Lewton ("Lewton") and Harold Glazier ("Glazier") and a few additional limited partners. Subdivision Public Report #325, issued by the Real Estate Division of the Utah Department of Business Regulation on June 8, 1970 (Exhibit 69), states that as of that date the plat had not been recorded. The Public Report, which was to be delivered to prospective lot purchasers, also states:

> WATER: Water will be supplied by the Salt Lake County Water Conservancy District... Costs of installation to be borne by subdivider.

The Report further notes that the Salt Lake County Water Conservancy District ("Conservancy District") has not yet annexed the property and that before it does certain facilities will have to be constructed.

7. On August 16, 1970, a limited partnership consisting of Bagley, Lewton and Glazier, entered into an agreement (Exhibit 42) with Jesse Dansie and his wife, Ruth, pursuant to which the Dansies leased to the partnership a well and water rights (evidenced by Certificate #0217, application #26451) to 1.19 cfs (cubic feet per second). The water was to be used by the partnership to supply water to its "subdivision(s) developed and being developed in the area..." The term of the lease was five (5) years, during which time the partnership was to pay the Dansies $300 per month, or a total of $18,000. In addition, the partnership was to maintain the well, provide the Dansies one (1) connection at actual cost and the Dansies were to be allowed to use the water at any time it was not being used by the developers, for which the Dansies were to pay the costs of pumping. The partnership also had an option to extend the lease an additional five (5) years for $600 per month. The well referred to in this lease can produce approximately 480 gallons per minute and is located a few hundred feet north of the subdivision boundary on property owned by Jesse Dansie. It is referred to hereafter as "Well No. 1".

8. In March, 1971, Bush & Gudgell, registered professional engineers, prepared specifications for the construction of the Hi-Country Estates Water System, Phase I (see Exhibit 66);

the following month the Conservancy District was formally petitioned (but apparently never acted affirmatively) to annex the Subdivision. In or about 1972, the Subdivision plat was approved and recorded and construction began on some homes.

9. On April 1, 1974 (the photocopy of Exhibit 50 appears to read 1971, but the last page of Exhibit "A" of Exhibit 51 gives the date April 1, 1974) a renewable five-year lease was executed between Hi-Country Estates (a corporation and a general partner of the developer partnership) and Roy Glazier, the owner of Lot 51, for the lease of an existing deep well (hereafter "Glazier Well") which would provide water for the Subdivision. The terms were $300 per month for the first five years and $400 per month for the next five years. In addition, Glazier would be permitted to withdraw seven (7) gallons per minute from April 1 to October 1 at no cost, the lessee being required to pay the pumping costs and maintenance. A letter from the Utah State Department of Health to Hi-Country Estates, dated June 3, 1974, approves the Glazier Well for 72 residential connections, "based on a supply of 80 gallons per minute... as certified by Call Engineering, Inc."

10. Although Bagley was involved in the initial development of the Subdivision, sometime about 1972 he withdrew from the limited partnership. Then, in May of 1974 he personally repurchased the development from the developer partnership. The Agreement (Exhibit 51) memorializes the sale of sixteen (16)

unsold lots, the rights in the Glazier Well lease, the obligations under the Dansie well Agreement and "All right, title and interest in and to the water system and equipment serving Mi-Country Estates."

11. On April 7, 1977, Jesse Dansie, as lessor, and Bagley, as lessee entered into a "Well Lease and Water Line Extension Agreement" (hereafter "Well Lease Agreement") for Well No. 1, the same well upon which the 1970 lease had been executed (see paragraph 7, supra). Under this ten-year lease (which expires in April, 1987), in return for the use of the well and water therefrom, Bagley agreed to the following:

a. To pay $5,100 plus $300 per month for the first five years and $600 per month for the next five years.

b. To provide Jesse Dansie with five free residential hook-ups to members of his immediate family, including reasonable amounts of culinary and irrigation water, presumably at no cost. These hook-ups were for Jesse Dansie's children who were building or planning to build homes just east of the Subdivision.

c. To provide Jesse Dansie with fifty (50) free residential hook-ups. These would be charged water fees by Bagley, who would pay 50 percent of any amounts collected to Jesse Dansie.

d. That Jesse Dansie be allowed to use any excess water not being used by Bagley for only the costs of pumping.

e. To indemnify and pay Dansie's court costs and attorney's fees "of any nature whatever" which arise out of the Well Lease Agreement. No comparable provision was made for Bagley's indemnification or the recovery of his legal fees should he prevail.

f. That Jesse Dansie be provided water on these same terms for as long as the Subdivision water system is in existence (even after the expiration or termination of the agreement).

In addition, the Well Lease Agreement provided for the construction of three water line extensions, all to be completed within one year:

Extension No. 1: From Well No. 1 to the lines of the existing Hi-Country Water Company system (along the north Subdivision boundary). Jesse Dansie was to dig the trench and Bagley was to provide pipes and all other materials and easements. Extension No. 1 was to be maintained by Bagley and owned by Jessee Dansie. Dansie would also have the right to take water from any part of the extension to serve his own property.

Extension No. 2: From the most easterly point of the Subdivision to the Dansie water line at approximately 7200 West and 13300 South (all outside of the Subdivision). Dansie was to pay for, maintain and own this extension, but Bagley was to be permitted to run water from the Subdivision system through this line, to property he owned approximately three (3) miles east of the Subdivision, which he hoped to develop to be known as "The Foothills."

Extension No. 3. Dansie was to install, pay for and own an extension from his own water system at 6800 West and 13000 South extending along 6800 West to 13400 South. This extension would terminate at the northwest corner of Section 7 (T4S, R1E), in which Bagley owned the property just referred to. Bagley was to maintain this extension during the term of the Agreement.

Subsequently, on July 3, 1985, the Well Lease Agreement was amended to define the "reasonable" amount of water to be provided at no cost to the five (5) Dansie immediate family hook-ups as 12,000,000 gallons per year, to provide in addition free water to Lot 51 of the Subdivision, apparently now owned by one of the Dansies, and to specify that the pumping fees for any excess water used by the Dansies be restricted to incremental pumping power costs, rather than shared power costs for pumping.

12. In 1980, the Subdivision water company was transferred from Bagley to another limited partnership, Jordan Acres ("Jordan Acres"), of which Bagley was a general partner. On June 7, 1985, the day the initial Application was filed with this Commission, the water company assets were transferred from Jordan Acres to Foothills, in return for all of Foothills' outstanding shares. On October 31, 1985 all of the stock and assets of Foothills were transferred from Bagley to Rod Dansie. Dansie, who had been watermaster of the Subdivision water system for a number of years, took control of Foothills in partial satisfaction of $80,447.43 he claimed from Bagley for unpaid bills for labor and materials furnished to the water system.

13. Between 1970 and 1981, the residents of the Subdivision were charged $100 per year for water. In February, 1981, Bagley summarily raised the yearly water rate to $400. The residents balked, tempers flared, and in 1985 Bagley was finally forced to seek Commission sanction of rates.

14. From about 1972 until August 8, 1985, when Applicant was granted its Certificate of Convenience and Necessity, it acted illegally as an uncertificated public utility. The record is clear that Bagley and his partners knew from the beginning that unless they were annexed by the Conservancy District they would be subject to Commission jurisdiction. In a letter, dated May 27, 1970 (Exhibit 68), from Lewton to the Conservancy District, Lewton notes that "we do not intend to become a water utility company..." In the April 7, 1977 Well Lease Agreement between Bagley and Jesse Dansie, paragraph F.3. states:

> 3. Dansie further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and Dansie shall cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission. Bagley agrees to pay all costs incurred in obtaining such approval, including, but not limited to, legal and engineering fees.

Despite Bagley's awareness that he was subject to Commission jurisdiction, the records of the Commission show no contact by him prior to June of 1985.

WELL LEASE AGREEMENT

15. Of the various problems involved in setting the just and reasonable rates mandated by U.C.A. Section 54-3-1, the Well Lease Agreement described in paragraph 11 above is the most troublesome. The Commission finds that it is unreasonable to expect Foothills to support the entire burden of the Well Lease Agreement. This Agreement, insofar as it relates strictly to benefits received by Foothills (without taking into account the benefits Bagley may have perceived in view of his future development plans) is grossly unreasonable, requiring not only substantial monthly payments, but also showering virtually limitless benefits on Jesse Dansie and the members of his immediate family. There is some evidence on the record to indicate that both Bagley and Jesse Dansie had future development plans in mind (perhaps even in some form of partnership) and that the Well Lease Agreement was entered into on both sides primarily with that in mind and only secondarily to provide water to the residents of the Subdivision. We find that the Division's estimate of the actual value of the Well Lease of $368 per month or $4,416 per year (Exhibit 58), is reasonably accurate.

Yet the benefits which Jesse Dansie stands to receive, in addition to the $600 monthly lease payments, are substantial:

a. 50 free hook-ups. Value: $37,500 ($750 x 50).

b. Five free residential hook-ups. Value: $3,750 ($750 x 5).

c. 12,000,000 gallons of free water per year. (We note that this is nearly as much as the entire projected yearly consumption by the 63 active customers of the Subdivision.) Using Applicant's figures for annual power costs to Foothills customers for the main pump only ($11,497.84 (see Exhibit 53), plus incremental pumping costs for the additional 12,000,000 gallons ($2,540.95 see Exhibit 85, p. 3), the total cost of power is $14,038.79* per year, of which 44 percent (see Exhibit 62--Allocation Factor Based on Usage), or $6,177.07, is attributable to the Dansies. When the chemical costs attributable to the Dansies of $176 are added (see Exhibit 85, p. 3), the total estimated value of the free water is $6,353.06 per year.

Since the Well Lease Agreement purports to require Bagley to provide water on these same terms "for such time beyond the expiration or termination of this Agreement as water is supplied to any of the Hi-Country properties or that the lines and water system referred to in this Agreement are in existence...", if one assumes, for example, that the system installed in 1972 has a 40-year useful life (see Exhibit 24) and that the costs of power and chemicals remain the same, the potential value of the 12,000,000 gallons of free water alone from 1977, the year

* The July 3, 1985 Amendment to the Well Lease Agreement (Exhibit 10) which defines the "reasonable" free water for the Dansies as 12,000,000 gallons and specifies that the power costs for excess water shall be figured incrementally rather than proportionately lacks meaningful consideration and is, to the extent relevant to our inquiry, invalid.

the lease was executed, to the year 2012, is $222,357.36. While no one can blame Mr. Dansie for desiring to provide free water to his children in virtual perpetuity, this Commission would be abrogating its statutory duty were it to impose such a burden on Foothills' present and future customers.

d. Although it is difficult to arrive at precise dollar values for the rights to the excess water and for the indemnification rights and rights to legal fees, it is undeniable that these have some value.

Thus, the total potential liability under the Well Lease Agreement is in excess of $263,607. We find that it would be unjust and unreasonable to expect Foothills' 63 active customers to support the entire burden of the Well Lease Agreement. We further find that payment of the $600 monthly Lease payment by Foothills will adequately cover the value of the benefit Foothills is receiving under the Lease and that the remaining burdens of the Lease should be Bagley's personal obligation. Paragraph F.2. of the Well Lease Agreement makes Bagley personally responsible to fulfill the terms and conditions of the Lease, whether or not a water company is created to which Bagley conveys or assigns the Well Lease Agreement. Under paragraph F.3. of the Lease, Jesse Dansie agrees that Bagley may apply to the Public Service Commission for a certificate and Dansie agrees to "cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission." As part of Mr. Dansie's cooperation with the

Commission, it is reasonable to expect him to look to Foothills for the $600 monthly lease payment and to Bagley personally for any remaining obligations under the Well Lease Agreement.

At the hearing, Rod Dansie offered some testimony as to his father's intentions with respect to the Well Lease Agreement in the event the Commission were to require the Dansies to pay for the water obtained from Well No. 1. He indicated that the Dansies own numerous other wells and water rights in the area and that they would likely disconnect themselves from the Foothills system and obtain their water elsewhere.

It is, of course, up to Jesse Dansie where he procures his water. The Commission has no objection to the Dansies continuing to obtain their water from Well No. 1, provided the actual pro-rata (not incremental) costs for power, chlorination and water testing involved in delivering that water are paid for by someone other than the customers in Applicant's service area. We find that it is reasonable for Foothills to bill Jesse Dansie for the actual cost of any water provided to him, his family or his other connections, and for Mr. Dansie to seek reimbursement for same from Bagley.

RATE BASE

16. The amount of rate base to be allowed the Applicant is contested. Applicant (Rev. Exhibit 33) claims a rate base of $142,200.56, the capital expenses for improvements acquired since 1975 that remain used and useful. The Division recommends $7,059.73, the cost of the six-inch meter installed in December,

1985 to measure the amount of water being consumed by the Dansies. The Division claims that since there is a dispute as to the ownership of Foothills assets, no additional rate base should be allowed (see Exhibits 17, 40 and 67). The Homeowners, claiming ownership of all assets of the water system, argue that Applicant's rate base should be zero.

17. We find that all improvements to Foothills prior to 1981 are not includeable in rate base because:

a. Bagley was selling lots at a profit until 1976 (see Exhibit 25).

b. The improvements made between 1977 and 1980 were to have been provided by Bagley as part of the original system. For improvements made from 1981-1985, we find as follows:

1981: The pressure valve by lot #16 and the new air and vacuum valve and check valve on booster station are allowable in rate base (see Rev. Exhibit 23). Total allowed: $2,611.93.

1982: The new controls for tank #2 and new relay on booster station are allowable in rate base (see Rev. Exhibit 23). Total allowed: $1,116.47.

1983: No costs allowable for rate base. The 75 H.P. motor becomes Jesse Dansie's property by the terms of the Well Lease Agreement. Insofar as the replacement of the 600-foot section of main is concerned, we find that Applicant failed to demonstrate that the costs involved in making that repair were

just and reasonable and that there is a valid dispute as to the ownership of the main. In addition, Bagley would have been responsible to assure that the main was in good condition before the system would have been accepted by the Conservancy District.

d. 1984: No improvements.

e. 1985: The replacement of booster pump, starter control panel, new tank overflow control valves, six-inch metering station and 1½-inch metering station are allowable in rate base. The check valve for the deep well is not allowable because it becomes Jesse Dansie's property by the terms of the Well Lease Agreement. Total allowed: $12,606.59.

Thus, Applicant's total allowable rate base is $16,334.99.

RATE OF RETURN

18. The parties stipulated, and the Commission finds, that 12 percent is a reasonable rate of return.

EXPENSES

19. The Commission notes that Bagley's management of Foothills and its predecessors has been less than commendable and finds there is cause for concluding the utility will be more competently managed in the future. Given the expected improvements, and ambiguities in the costs of providing service in the past, the Division's projected test year ending December 31, 1986 seems reasonable. U.C.A. Section 54-4-4(3), however, limits future test periods to 12 months from the date of filing (amended

filing date: August 16, 1985); we will thus have to adopt a test year ending December 31, 1985 (see Rev. Exhibit 20) and make attritional adjustments to reflect future conditions. The Homeowners generally supported the Division's recommendations in this area.

a. Accounting and Administrative: Applicant is requesting $10,200; the Division and Homeowners recommend $3,000. Applicant intends to hire an accountant at $18.00 per hour; the Division contends that a computer accounting service is adequate. Applicant's figure includes the cost of office rental and $150-$200 per month for a secretary. The Division's witness testified that Rod Dansie should run the water company out of his home at no charge to the users. We find that the Division's and Applicant's figure of $3,000 is reasonable, with the following adjustments:

(i) Applicant is entitled to be reimbursed for the reasonable costs of office space (either in Rod Dansie's home or elsewhere) sufficient to hold a desk, file cabinet and telephone. We find that $50 per month ($600 per year) is reasonable.

(ii) The Division assumed that the time required to read meters would be two hours per month; Rod Dansie testified it takes four--five hours. We find that four hours per month for meter reading is reasonable and that $17.20 per hour (the hourly wage paid to Conservancy District employees) is more reasonable than the $20 per hour proposed by Applicant. We thus

adjust the Division's recommended figure upward $34.40 per month or $412.80 per year. Total allowed: $4,012.80.

b. Insurance: The parties agreed, and we find, that $2,500 per year is reasonable.

c. Water lease payment: $7,200 (see paragraph 15, supra).

d. Utilities:

Main Pump. Our allowed expenses in this category are based upon the following assumptions:

(i) The Dansies will obtain their water elsewhere (if they elect to receive it from Well #1, since the water company will collect their pro rata pumping costs, the power costs for the utility will be slightly reduced, given UP&L's rate structure).

(ii) The customers will use a total of 13,000,000 gallons during 1986, of which five percent will be lost to leakage or theft.

(iii) The main pump delivers 260 gallons per minute.

(iv) The kilowatt demand of the pump is 66kW (see Exhibit 31).

(v) For every gallon of water used in the low-use months (January-May, October-December) 4.64 gallons of water are used during the high-use months (June-September) (see Exhibit 53).

(vi) For two of the high use months, because of breaks or fires, the main pump will operate on Schedule 6, rather than Schedule 3.

(vii) Electric Service Schedule 35, the Monthly Energy Charge Adjustment which is incorporated into both Schedules 3 and 6 (of which we take official notice and which will result in a relatively small adjustment upward) imposes an additional charge of $.00406 per kWh.

Thus, an average of 489,458 gallons per month will be pumped during the low-use months and 2,271,084 gallons per month during the high-use months, requiring the pump to operate 31.4 hours during the low-use months and 145.6 hours during the high-use months.

Under UP&L's Schedule No. 3, we calculate the monthly bills as follows:

(i) Low-Use Months: Customer Service Charge ($55.39), plus Demand Charge (66 kW x $3.75 per kW = $247.50), plus Energy Charge (2072 kWh x $.04087 = $84.68) plus Energy Charge Adjustment (2072 kWh x $.00406 = $8.41). Total monthly charge: $395.98.

(ii) High-Use Months:

(a) Schedule 3: Customer Service Charge ($55.39), plus Demand Charge (66 kW x $3.75 per kW = $247.50), plus Energy Charge (9610 kWh x $.04087 = $392.76) plus Energy Charge Adjustment (9610 kWh x $.00406 = $39.02). Total monthly charge: $734.67.

(b) Schedule 6: Customer Service Charge ($28.66), plus Demand Charge ([66 kW minus 5 kW] x $9.18 per kW = $559.98), plus Energy Charge ([500 kWh x .131755 = $65.88] plus [9110 kWh x .058169 = $529.92] = $595.80), plus Energy Charge Adjustment (9610 kWh x $.00406 = $39.02). Total monthly charge: $1,223.46.

Total for eight low-use months: 8 months x $395.98 = $3,167.84; total for two high-use months on Schedule 3: 2 x $734.67 = $1,469.34; total for two high-use months on Schedule 6: 2 x $1,223.46 = $2,446.92.

Total allowed for main pump: $7,084.10.

Booster Pump: Our allowed expenses in this category are based upon the following assumptions:

(i) Kilowatt demand of the booster pump is 23 kW (see Exhibit 41).

(ii) Homeowner demand will drop from 17,000,000 gallons in 1985 to 13,000,000 gallons in 1986 (76.5 percent of 1985).

(iii) Since the booster pump consumed 39,088 kWh in 1985, it will consume approximately 29,126 kWh in 1986.

(iv) For every gallon of water used in the low-use months, 4.64 gallons of water are used during the high-use months; thus, the booster pump will use 1097 kWh per month in low-use months and 5088 kWh per month in high-use months.

(v) For two of the four high-use months, because of fires or other emergencies, two booster pumps will be

required, resulting in a change from small customer to large customer status.

Using UP&L's Schedule No. 6, we calculate the monthly bills as follows:

(i) Low-Use Months: Customer Service Charge ($4.05), plus Demand Charge (18 kW x $6.45 per kW = $116.10), plus Energy Charge ([500 kWh x $.092602 = $46.30] plus [597 kWh x $.040887 = $24.41] = $70.71), plus Energy Charge Adjustment (1097 kWh x $.00406 = $4.45). Total monthly charge: $195.31.

(ii) High-Use Months:

(a) Small customers: Customer Service Charge ($4.05), plus Demand Charge (116.10), plus Energy Charge ([500 kWh x $.092602 = $46.30] plus [4588 kWh x $.040887 = $187.59] = $233.89) plus Energy Charge Adjustment (5088 kWh x $.00406 = $20.66). Total monthly charge: $374.70.

(b) Large customers: Customer Service Charge ($28.66), plus Demand Charge (18 kW x $9.18 per kW = $165.24), plus Energy Charge ([500 kWh x $.131755 = $65.88] plus [4588 kWh x $.058169 = $266.88] = $332.76), plus Energy Charge Adjustment (5088 kWh x $.00406 = $20.66). Total monthly charge: $547.32.

Total for eight low-use months: 8 months x $195.31 = $1,562.48; total for two high-use small customer months: 2 x $374.70 = $749.40; total for two high use large customer months: 2 x $547.32 = $1,094.64.

Total allowed for booster pump: $3,406.52.

Utilities total for both pumps: $10,490.62.

e. Telephone: $600.00 per year.

f. Directors' Fees: $600.00 per year, of which $300 per year is allocated for directors' insurance.

g. Legal Expenses: $3,000. Although there was some evidence offered indicating that Applicant's legal fees may exceed $10,000, we find that the majority of these fees would not have been incurred if Foothills had been certificated in 1972. We thus accept the Division's recommendation that $3,000 is reasonable (the Homeowners recommended no legal fees be granted). We further find that this amount should be capitalized over three years and thus allow $1,000 for 1986.

h. Repairs and Maintenance: In this category, the Division recommends $21,600 and the Applicant $22,872. The Homeowners sponsored no exhibit in this area. The Division's figure is based on the reasonable cost of repairs and maintenance for other water utilities of approximately the same size; Applicant's figure is based upon Foothills' average cost of repairs and maintenance for the past four years. We find that Applicant's method, which uses past data of the utility under consideration, is mostly likely to yield accurate figures for 1986. We find further that the $22,872 figure should be reduced by the difference between the $20 per hour paid during 1985 for repairs and maintenance and the $17.70 per hour we are allowing for 1986. Since 620 hours were billed for repair and maintenance from December 1, 1984 through November 30, 1985 (see Exhibit 56), the difference between the hourly rates ($2.30 per hour x 620 hours), $1,736, should be deducted. Total allowed: $21,136.

Applicant submitted proposed capital expenditures for 1986 totalling $16,094 (see Exhibits 32, 33, and 34). These proposed expenditures are accounted for in lines 3, 4, and 8 of (division) Exhibit 57. The Division recommended that Nos. 1, 3, 4, 5 and 6 of Exhibit 57 be allowed, but reduced as follows: No. 1: $7,000; No. 3: $1,900; No. 4: $3,234.71; No. 5: $1,000; No. 6: $1,000. Total: $9,100. Jon Strawn, a Division witness, testified that the total $9,100 could be paid for out of the Division's recommended $21,600 Repair and Maintenance expense.] We note that in order to qualify for the reduced power rates allowed by the Commission, Applicant will incur some costs to set up the deep well pump for Schedule 3 operation. Since some capital costs (labor and perhaps materials also) have apparently been included in the past Repair and Maintenance figures (upon which we have based 1986 allowed expenses in this category), Applicant should be able to set up the deep well pump for Schedule 3 operation without exceeding the amount we have allowed for Repairs and Maintenance. Proposed capital improvements are not Repair and Maintenance expenses. If allowed (the Commission will be disinclined to allow capital expenditures for which Applicant does not obtain competing bids) they are to be included in rate base at some future date.

i. Chemicals: We find that the $400 per year recommended by the Division is reasonable.

j. Water Testing: We find that the $1,200 per year recommended by the Division is reasonable.

k. Uncollectible Accounts: We find that the $4,200 per year recommended by the Division is reasonable. This figure assumes collection of only 50 percent of standby fees.

l. Property Taxes: Title to the real property claimed by the utility is contested. Since the property valuation and tax notices are sent to the Homeowners (see Exhibit 40), who have historically paid these taxes and have agreed to continue paying them, we allow Applicant no expense in this category. At such time as a court of competent jurisdiction may quiet title to the real property in the Applicant, a reasonable expense in this category will be allowed.

m. Depreciation: We find it reasonable to allow depreciation only on assets included in rate base (see paragraph 17, supra). Using Applicant's (Revised Exhibit 24) and the Division's (Exhibit 83) depreciation schedules, we allow the following:

(i) 1981 assets: $2,622.93 x 5% = $131.15.

(ii) 1982 assets: $1,116.47 x 10% = $111.65.

(iii) 1983 assets: none.

(iv) 1984 assets: none.

(v) 1985 assets:

(a) Booster pump: $2,735.35 x 20% = $547.

(b) Starter control panel: $2,128.16 x 10% = $212.82.

(c) New tank overflow control valves, 6-inch metering station and 11-inch metering station: $7,743.08 x 5% = $387.15. Total depreciation: $1,389.77.

n. Regulatory Fee: The Division recommended, and we find, that $150 per year is reasonable.

Thus, Applicant's total allowed expenses are $54,879.19. [Applicant also claimed an interest expense of $4,680 (see Second Revised Exhibit 32). This is a below-the-line expense and not allowed.]

TAXES

70. The return to which Applicant is entitled is equal to rate base times rate of return, or $16,334.99 x .112 = $1,960. The taxes on this amount are as follows:

a. Utah State Corporate Franchise Tax (five percent or $100 minimum): $100.

b. Federal Income Tax (15 percent): $294.

Total taxes allowed: $394.00

TOTAL AMOUNT TO BE GENERATED BY RATES

71. The total amount needed to be generated by rates: Expenses: $54,879.19; Return: $1,960.20; Taxes: $394.00. Total $57,233.39.

REVENUES

22. Standby Fees: In both the Timber Lakes Water case and the Silver Springs Water case (Nos. 87-076-01 and 85-570-01, respectively), the Commission found that $9.00 per month was a reasonable standby fee. We find that $9.00 per month is also a reasonable standby for Foothills' customers. Since the standby fee was set at $10.00 per month in the Commission's Interim Order, Applicant shall credit $1.00 per month to standby customers who have paid the $10.00 amount during the interim period. The standby charges will thus generate $9.00 per month x 12 months x 54 customers = $5,832.

23. Other Charges: We find that the following charges are reasonable:

a. Connection Fee: $750.00.

b. Turn-On Service: $50.00.

c. Account Transfer Charge: $25.00

d. Reconnection Fee: $50.00.

e. Service Deposit: $100.00 (under the conditions set forth in Exhibit 30). These charges should generate the following income during 1986: Connection Fees: One at $750.00; Reconnection and Turn-on Fees: $200.00. Total revenues: $950.00.

24. Water Sales: According to the best available records, the Homeowners consumed approximately 16,000,000 gallons of water during 1985 (see Exhibit 59). The Division estimates

that the Homeowners will consume the same amount of water in 1986 (see Exhibits 61 and 63). Applicant estimates that the Homeowners will consume 12,358,000 gallons during 1986 (Exhibit 95). Although no price elasticity analysis was performed, the Commission is aware that as the price for a commodity increases the demand for that commodity is likely to fall. We find it probable that the increased costs of water will result in reduced consumption by the Homeowners and find that approximately 13,000,000 gallons will be consumed during 1986. The sale of the 13,000,000 gallons must generate $50,451.39.

RATE STRUCTURE

25. In its Second Interim Order, the Commission established a demand/commodity rate structure in which all customers paid $27.50 for the first 5,000 gallons and $1.50 per 1,000 gallons thereafter. In the rate hearing, the Division recommended that the first block be increased to 10,000 gallons (see Exhibit 63). Norman Sims, President of the Homeowners' Association, however, testified that the 10,000 block was too large and recommended the 5,000 minimum be retained. We find that the 5,000 minimum is reasonable and will tend to encourage conservation. We find also that both the demand and commodity charges will have to be increased over the interim rates in order to generate the required $50,451.39 and find that a rate of $37.50 for the first 5,000 gallons and $1.40 for every 1,000 gallons thereafter is reasonable and will generate $50,400.40.

MISCELLANEOUS

26. Pursuant to the Stipulation (Exhibit 1, as amended on the record), certain monies were collected by Dean Becker, attorney for the Homeowners, and placed in his trust account. To date, the Division has been unable to obtain from Mr. Becker an exact accounting of the amounts collected and disbursed from his trust account. It is reasonable for Mr. Becker to provide the Commission with a detailed accounting of all monies collected and disbursed on behalf of Foothills and its customers.

27. The Commission finds that it is reasonable and necessary for it to review and approve any proposed future lease or sale agreements for the provision of water to Applicant's service area.

28. The Commission finds that the Revenues, Expenses and Rate Structure set forth in Appendix A (made a part thereof by reference) are just and reasonable.

CONCLUSIONS OF LAW

1. In Utah Department of Business Regulation v. Public Service Commission, 614 P.2d 1242 (1980), the Utah Supreme Court stated the general rule as to burden of proof is hearing before the Commission:

> In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant; to prove the contrary. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The company must support its application by way of substantial evidence...

And in cases where the weight of the evidence indicates the developer knew it was subject to Commission jurisdiction and neglected or refused to seek Commission sanction of rates, that burden to justify rates by substantial evidence "rests heavily" indeed. An uncertificated public utility which enters into unreasonable contracts, or makes expenditures which the Commission has no opportunity to review, does so at the risk of not being able to recover those expenses in rates. Before allowing the recovery of such expenses, the utility must clearly demonstrate by substantial evidence that the obligations and expenditures are reasonable and justified.

This policy applies whether or not utility company assets have been transferred from one legal entity to another, even in arm's length transactions in which there is no imputation of impropriety, when to do otherwise would penalize utility ratepayers or defeat regulatory policy. See Colorado Interstate Gas Company v. Federal Power Commission, 324 US 581, 58 PUR(NS) 65, 82-83 (1945); Cities Service Gas Company v. Federal Power Commission, 424 F.2d 411, 87 PUR3d 60 (10th Cir. 1969); Tennessee Public Service Commission v. Nashville Gas Co., 551 SW2d 315, 10 PUR4th 66 (Tenn. 1977); Re HWT Utilities, Inc., 53 PUR4th 508 (PSC Ind. 1983); Re Southern California Lumber Transport, 26 PUR3d 291 (Cal PUC 1958); Re John R. Pervatel, et al., dba Northern New Mexico Gas Company, 19 PUR3d 71 (PSCNM 1957).

In cases (such as the instant one) where a public utility is created by a developer incidental to the subdivision

and sale of land, the Commission has stated its policy with respect to capital expenditures to be included in rate base:

> ...it is the policy of the Commission to allow no return on investment by water companies unless such companies can meet the burden of showing that the investment made was not recovered in the sale of lots or in any other fashion. Dammeron Valley Water Company (Case No. 84-061-01, issued January 17, 1985 at p.7).

It is the generally accepted rule that contributions in aid of construction should be excluded from rate base (see citations at PUR3d, Valuation, Sections 248, 250). Where a developer fails to demonstrate that an investment in a water utility was not recovered in the sale of lots, that investment is deemed to be a contribution in aid of construction and excludable from rate base. In a 1981 case, the Maryland Public Service Commission held:

> In determining the rate base of a water and sewer company that offered service only to a real estate developer and whose stock was solely owned by the real estate developer, the commission found that the real estate developer had recovered through the sale of the development's lots substantially most of his investment in the sewer company; furthermore, to say that the investor had recovered via the sale of lots substantially most of the investment in plant was analogous to finding that customers had made significant contributions in aid of construction, and that such payments were customer-supplied capital. Re Crestview Services, Inc., 72 Md PSC 129, Case No. 7474, Order No. 65118, Feb. 5, 1981.

See also Re Northern Illinois Water Corp. (1959) 26 PUR3d 497; Re Green-Fields Water Co. (1964) 53 PUR3d 670; North Carolina ex rel. Utilities Commission v. Heater Utilities, Inc. (1975) 288 SC

457, 17 PUR4th 548, 719 SE2d 56; Re Princess Anne Utilities Corp. (1969) 81 PUR3d 201; Re Kaanapali Water Corp., 678 P2d 584 (Hawaii, 1984).

If a developer agrees to provide a specified water system, one meeting the standards of the Salt Lake County Water Conservancy District, the Commission may properly exclude from rate base the cost of installing the system promised if the utility does not sustain its burden of demonstrating the cost of the system was not recovered in lot sales.

3. The Commission's authority over contracts entered into between public utilities and other parties derives from four sources:

a. The Commission's General Jurisdiction. U.C.A. Section 54-3-1 mandates that the Commission assure that charges made...by any public utility...for any product...shall be just and reasonable. Section 54-4-1 vests the Commission with:

> power and jurisdiction to supervise and regulate every public utility...to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.

The Utah Supreme Court recently construed the general powers of the Commission in Kearns-Tribune Corporation v. Public Service Commission (No. 19200, filed May 1, 1984):

> ...Any activities of a utility that actually affect its rate structure would necessarily be subject to some degree to the PSC's broad supervisory powers in relation to rates. The question, then, is whether the activity the

> Commission is attempting to regulate is closely connected to its supervision of the utility's rates and whether the manner of the regulation is reasonably related to the legitimate legislative purpose of rate control for the protection of the consumer.

Although the Court in the Kearns-Tribune case held that the Commission did not have the power to regulate utility conduct which was peripheral to the setting of rates (tagline requirements), in the instant case jurisdiction over the Well Lease Agreement is directly related to setting just and reasonable rates.

In Garkane Power Association v. Public Service Commission, 681 P.2d 1207 (1984), the Utah Supreme Court discussed the Commission's jurisdiction over contracts entered into by public utilities:

> There can be no doubt that not every contract entered into by a public utility is subject to the jurisdiction of the PSC. Many contracts for the purchase of supplies and equipment, and other contracts dealing with the ordinary conduct of a business, are contracts that could be litigated only in a district court not before the PSC. However, this dispute is clearly one that involves the validity of electric rates...

In a separate opinion, Justice Durham (concurring and dissenting) went on to state:

> There is no question that the PSC has the authority to investigate, interpret and even alter contracts. That question was settled in an early series of cases brought just after the enactment of Utah's Public Utility Act. In each case, the Public Utility Commission (PUC) found a contract, executed before the institution of the PUC, in

> violation of a subsequently filed rate. This Court upheld the PUC's alteration of the contracts, holding that the regulation of public utility rates was an exercise of the state's police power and was not an unconstitutional impairment of contractual obligations. (See cases cited)

Justice Durham went on to quote with approval from Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 379 (1923), where the United States Supreme Court stated:

> The power to fix rates...is for the public welfare, to which private contracts must yield...(at 383)

We conclude that the Commission has the authority under Section 54-4-1 to interpret and apply the Well Lease Agreement as set forth in its Findings and that such interpretation and application are reasonable.

b. The Commission's Authority Under U.C.A. Section 54-4-4. This section grants the Commission authority to investigate and modify unjust, unreasonable, discriminatory or preferential rates, fares, rules, regulations, practices or contracts of a public utility. This section is generally understood to apply to contracts (tariffs) between a utility and its customers and we therefore conclude that it is not applicable to our present inquiry.

c. The Commission's Authority Under U.C.A. Section 54-4-26. This section grants the Commission authority to require a public utility to obtain Commission approval before entering into any contract requiring a utility expenditure and withhold approval of the contract if the Commission finds it is not

"proposed in good faith for the economic benefit of such public utility." Although the Commission has in Rule A67-05-95 of the Administrative Rules of the state of Utah (General Order 95) restricted the application of Section 54-5-26 to specific situations, we conclude that since Applicant was a de facto public utility since 1972, it was subject to the Commission's powers under this section. Since the failure of Applicant to become certified made it impossible for the Commission to become aware of the terms of the Well Lease Agreement before it was executed, the Commission concludes it has the power to review that contract and withhold its approval now. We conclude that the Well Lease Agreement was not proposed in good faith for the economic benefit of Foothills and that the Commission is empowered to interpret and apply the Well Lease Agreement as set forth in its Findings and that such interpretation and application are reasonable.

d. The Definition of the Term "Public Utility" Under Section 54-2-1(30)(c). This subsection, as amended in 1985, states:

> (c) If any person or corporation performs any service for or delivers any commodity to any public utility as defined in this section, each person or corporation is considered to be a public utility and is subject to the jurisdiction and regulation of the commission and this title.

Although Jesse Dansie, as the supplier of the water to Foothills clearly falls within the purview of this subsection, and could be declared a public utility by this Commission (and would have been, were it deemed necessary), we conclude that such a

determination is unnecessary in view of the Commission's jurisdiction over the Well Lease Agreement under sections 54-5-1 and 54-4-26 as set forth above.

4. The Commission does not have the power to settle disputes as to ownership of utility property. It is the general rule that assets not owned by a public utility cannot be included in rate base; where title to utility property is disputed the courts are divided. See, e.g., Re Consumers Co., PUR1923A, 418 (Idaho, 1923); Re Capital City Water Co., PUR1925D, 41 (Mo. 1925); Re Hillcrest Water Co., 5 Ann. Rep. Ohio PUC 57 (Ohio 1917); Frackville Taxpayers' Assoc. v. Frackville Sewage Co., 7 PUR(NS) 515 (Pa., 1934).

5. The $3,000 allowed Applicant for attorney's fees should be capitalized over a period of three years.

6. Applicant is entitled to an increase in its rates and charges in order to collect total revenues in the amount of $57,769. The rates and charges set forth in the Findings of Fact and Appendix A are just and reasonable, do not reflect inflationary expectations, and are the minimum necessary to enable Applicant to render adequate service and meet current and expected demand.

Based upon the foregoing, the Administrative Law Judge now recommends the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Applicant be, and the same hereby is, authorized to publish its tariff

rporating the rates and charges as set forth in the Findings of Fact and Appendix A, which is attached hereto and incorporated by reference.

IT IS FURTHER ORDERED that Dean H. Becker, Attorney, file with this Commission, within thirty (30) days of the issuance of this Order, an exact accounting of all amounts collected and disbursed from his trust account or any other accounts on behalf of Foothills or its customers.

IT IS FURTHER ORDERED that Foothills obtain approval from this Commission before entering into any future lease or sales agreements for the provision of water to Foothills' service area or any amendment to or assignment of any lease or sales eement that is now in force and effect.

IT IS FURTHER ORDERED that the legal description of Applicant's service area shall be as follows:

BEGINNING at Northeast corner of the Southwest quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and running thence:

A. West to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 33;

B. South to the Northeast corner of Section 5, Township 4 South, Range 2 West, Salt Lake Base and Meridian;

C. West to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 5;

D. South to the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 5;

E. West to the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 5;

F. South to the Southwest corner of said Section 5;

G. East to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 5;

H. North to the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 5;

I. East to the center of said Section 5;

J. South to the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 5;

K. East to the Southeast corner of the Northeast quarter of the Southeast quarter of said Section 5;

L. South to the Southwest corner of Lot 103, Hi-Country Estates Subdivision;

M. Southeasterly to the Southeast corner of said Lot 103;

N. Northeasterly along East property line of Lots 103 and 102, Hi-Country Estates Subdivision; to the West line of the Southeast quarter of the Southwest quarter of Section 4, T4S, R2W;

O. South to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 4;

P. East to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 4;

Q. North to the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 4;

R. West to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 4;

S. North to the North quarter corner of said Section 4;

T. East to the Southeast corner of Lot 1A, Hi-Country Estates Subdivision;

U. North to the South boundary of Hi-Country Road;

V. Easterly along the South boundary of Hi-Country Road to the South boundary of Highway U-111;

W. Northwesterly along South boundary of Highway U-111 to the North line of the Southeast quarter of the Southwest quarter of Section 33 T3S, R2W;

X. West to the point of beginning.

IT IS FURTHER ORDERED that Applicant be, and the same hereby is, authorized to publish its new tariff effective on one day's notice to the public and Commission;

IT IS FURTHER ORDERED that this Order be, and the same hereby is, effective on issuance.

DATED at Salt Lake City, Utah, this 17th day of March, 1986.

/s/Kent Walgren
Administrative Law Judge

Approved and confirmed this 17th day of March, 1986, as the Report and Order of the Commission.

/s/ Brent H. Cameron, Chairman

/s/ James M. Byrne, Commissioner

(SEAL)

/s/ Brian T. Stewart, Commissioner

Attest:

/s/ Georgia B. Peterson
Executive Secretary

IT IS FURTHER ORDERED that Applicant be, and the same hereby is, authorized to publish its new tariff effective on one day's notice to the public and Commission;

IT IS FURTHER ORDERED that this Order be, and the same hereby is, effective on issuance.

DATED at Salt Lake City, Utah, this 17th day of March, 1986.

Kent Walgren
Administrative Law Judge

Approved and confirmed this 17th day of March, 1986, as the Report and Order of the Commission.

Brent H. Cameron, Chairman

James M. Byrne, Commissioner

Brian T. Stewart, Commissioner

Attest:

Georgia B. Peterson
Executive Secretary

APPENDIX A
FOOTHILLS WATER COMPANY
REVENUES AND EXPENSES

OPERATING REVENUES	
Standby Charges ($9.00/mo. x 12 mo. x 54 standbys)	$ 5,832.00
Demand Charge ($37.50/mo x 12 mo. x 63 customers)	28,350.00
Water Charge (9,220,000 gal. x $2.40/1,000 gal.)	22,128.00
Connection Fees	750.00
Turn-on and Reconnection Fees	200.00
TOTAL INCOME	$57,260.00
OPERATING EXPENSES	
Accounting and Administration	$ 4,017.80
Insurance	2,500.00
Water Lease	7,200.00
Utilities	10,490.62
Telephone	600.00
Directors' Fees	600.00
Legal Expenses	1,000.00
Repairs and Maintenance	21,136.00
Chemicals	400.00
Water Testing	1,200.00
Uncollectable Accounts	4,200.00
Property Taxes	0
Depreciation	1,389.77
Regulatory Fee	150.00
TOTAL EXPENSES	$54,879.19
Utah State Corporate Franchise Tax	$ 100.00
Federal Income Tax	294.00
Return on Rate Base	1,960.20
TOTAL NEEDED TO BE GENERATED	$57,233.39

Exhibit 6

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation Into the Reasonableness of the Rates and Charges of FOOTHILL WATER COMPANY, Respondent	DOCKET NO. 91-2010-01 REPORT AND ORDER

ISSUED: April 9, 1992

SYNOPSIS

On the complaint of unjustly high rates, the Commission reviewed the rates of Respondent, a certificated water corporation. The Commission found that, notwithstanding an order of the Utah Third District Court, the Commission had authority to reform a well lease disadvantageous to the utility and to value the utility's rate base for rate-making purposes. The Commission ordered the utility to cooperate with an intervenor to bring into being an alternative water source, and to contract with the intervenor for the use of that source. The Commission refused to allow projected test year expense adjustments for changes not known and measurable during the test year, and not occurring before entry of the Order. The Commission further disallowed attorney's fees incurred in defending Respondent's claim to ownership of the system, and redounding to the benefit of Respondent's sole shareholder. The Commission sets new rates, affording Respondent a certain amount of rate relief, for the interim before the new water source can be brought on line, and permanent rates thereafter.

Appearances:

Laurie Noda, Assistant Attorney General	For	Division of Public Utilities, Utah Department of Commerce, Complainant
Val R. Antczak	"	Foothill Water Company, Respondent
Larry R. Keller	"	Hi-Country Estates Homeowners Association, Intervenor

By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the thirtieth day of January, 1992,

EXHIBIT 6

before A. Robert Thurman, Administrative Law Judge for the Commission, at the Commission Offices, 160 East 300 South, Salt Lake City, Utah. Evidence was offered and received, and thereafter memoranda of law were submitted. The Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

INTRODUCTION

Foothills Water Company (hereafter "Respondent") is a certificated water corporation operating a system located in the southwest part of Salt Lake County, west of the community of Herriman. At present it serves 52 connected customers, and 72 "standby" customers, i.e., owners of undeveloped lots within the service area. We have party and subject-matter jurisdiction.

For the most part, the issues raised in this matter are mixed legal and factual, not lending themselves readily (at least with any degree of intelligibility) to separate discussion of the factual and legal aspects. Accordingly, this report will be cast in the form of an extended opinion, rather than divided formally into separate Finding and Conclusion sections.

MAJOR ISSUES

The positions of the parties and the rulings of the Commission are based on a 12-month test year extending from January 1 through December 31, 1991. The positions are summarized in Appendices A through C, annexed hereto and incorporated herein by this reference. The summary for the Division of Public Utilities, Utah Department of Commerce (hereafter "Complainant"), is taken from

Hearing Exhibit 1, the prefiled testimony of Kenneth R. Colby, specifically Exhibit DPU/KRC2 thereto. The summary for Respondent is taken from Hearing Exhibit 5, page 5, which, we understand, represents Respondent's final position on all disputed issues.[1] Appendices A through C also contain the Commission's projected revenue requirement Findings. In comparing the two positions, some care must be exercised, since there is not always a one-to-one correspondence in account numbers used, and Complainant has combined some of the accounts employed by Respondent, which we have also done in our determinations.

The parties disagree regarding numerous expenses claimed by Respondent as costs of service, as well as the amount of the rate base on which Respondent is entitled to a reasonable return. There also are differences on the appropriate rate design for future rates. The test year income does not appear to be at issue, nor does the appropriate rate of return to be applied.

Many of the expense discrepancies between the parties' filings arise because of a difference as to the appropriate test year. It should be pointed out that both the Complainant and Respondent started with a 10-month historical test year with projections for the last two months predicated on the historical data from the first 10 months. From there, the Respondent proposes to incorporate certain expense increases projected beyond the test year,

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[1] In cases where Respondent does not list an item on the exhibit, we assume no amount is claimed. In cases where Complainant lists no amount (primarily income items) for an amount listed by Respondent, we assume Complainant acquiesces.

whereas Complainant proposes to use only the historical test year, with no adjustments for increases not incurred during the test year.

Chapter R746-407, Utah Administrative Code (UAC), a Commission rule (hereafter "Annualization Rule"), comports substantially with Complainant's position. In general, we will not incorporate projected expense changes for an historical test year unless the change is known and measurable and occurs prior to the entry of a final rate-setting order.

Of the disputed expense items, many are relatively small, but three are substantial, to wit: the total compensation paid to Respondent's sole shareholder, president, and watermaster, Mr. J. Rodney Dansie (hereafter "J. R. Dansie"); water acquisition and pumping costs; and costs of outside consultants, including legal, accounting, and engineering.

I. WATER ACQUISITION AND PUMPING COSTS

By far the thorniest issue presented in this case is that of the costs of acquiring water for the system and associated production costs, primarily power for pumping. Respondent claims total costs of $14,670, including some projected pumping cost increases. (Lines 17, 19, and 21, Exhibit A annexed hereto and incorporated herein by this reference.)

A. Present Water Source

At present, Respondent's sole source of water is a well (hereafter "the Dansie Well") owned by an entity known as the "Dansie Family Trust" (hereafter "the Trust"), successor in interest to Jesse Dansie, with whom Respondent's predecessor in interest, one Gerald H.

Bagley, entered into a well lease April 7, 1977. J. R. Dansie owns a 30% beneficial interest in the Trust.

Under the terms of the lease, and a subsequent amendment, the lessee was obligated to pay $600 monthly and to allow the lessor to transport through the system annually, at no charge, a maximum of 12,000,000 gallons of water. For a system serving 52 customers, the lease payments themselves, amounting to $7,200 annually, are not trifling. When one adds the pumping costs for 12,000,000 gallons annually, which amount almost to half the lease payments,[2] it is obvious the lease is a major financial burden on the ratepayers.

B. Present Lease Status

By its terms, the lease was for ten years. There was no automatic renewal, but the lessee was given the option of renewing on "terms to be agreed to by [lessee and lessor] at the termination of this lease . . ." (Hearing Exhibit 2, Prefiled Testimony of Jon A. Strawn, Exhibit 2.4) According to the testimony of J. R. Dansie (Transcript, at 200), there has been no formal renewal of the lease, but Respondent and the Trust have been honoring its terms, on a month-to-month basis, for almost five years, since the expiration,

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[2]For the test year, total system usage was 25.6 million gallons. (Hearing Exhibit 6) The customers used 8.7 million gallons. (Id.) The Trust was charged for the costs associated with pumping 4.9 million gallons, the excess over the "free" 12 million gallons. By calculation, in round numbers, the customers used 34% of the water, 47% of system usage went to meet the free transportation obligation, and the trust paid the pumping costs associated with 19% of system usage. Total pumping costs were just under $7,500. (Appendix A, Id.) Allocating the "free" usage to the total pumping costs, the customers were saddled with an additional annual cost of approximately $3,500, rendering lease costs in excess of $10,000. If the lease cost is divided solely among the connected customers, it approximates $16 per month, not a negligible water bill in and of itself.

April 7, 1987. There appears to have been no attempt to negotiate more favorable terms.

In our Order of March 17, 1986, the last rate case involving this utility, we expressed strongly our disapprobation of the terms of the lease and our determination to reform it on terms more favorable to Respondent. (Report and Order, Docket No. 85-3010-01, PSCU 1986, at 12-13) We are empowered to do so. (Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 379 (1923); Garkane Power Association v. Public Service Commission, 681 P.2d 1207 (Utah 1984))[3] We intended that Respondent's liability under the lease be limited to payment of $600 per month, and that any costs associated with providing surplus water to the Trust be the obligation of the Trust or the original lessee, Gerald Bagley. (Report and Order, supra, at 13)

Unfortunately, none of the ordering paragraphs compelled the reformation in so many words, but we believe our intent was nevertheless clear, since only $7,200 was allowed as expense for the lease.

In any event, we did order explicitly that Respondent seek our approval for any new lease. This Respondent has failed to do, even though it acknowledges having adhered to the same terms the Commission found unreasonable--and this on a precarious, month-to-month basis. Respondent argues we should overlook the failure to obey our Order, since the arrangement has existed since the original lease expired in 1987.

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[3]The legal justification for our reforming the contract was discussed extensively in our 1986 Report and Order, supra, at 31-34 and we do not propose to rehash it here.

The short answer is that the Commission, as a governmental agency, is not subject to the equitable defenses of laches or estoppel. Even if those concepts were applicable, there is no showing that Respondent or the Trust have, in any way, changed their positions in reliance on Commission non-action; and even if there were such a showing, making the case for the application of the concepts more compelling, we cannot accept that the ratepayers should pay for the Commission's alleged dilatoriness.

Our position is not changed by the entry of an Order by the Utah Third District Court that the obligation to move the 12,000,000 gallons annually through the system, at no cost, is a virtually perpetual "encumbrance" on Respondent. The Court may have felt compelled to enforce the terms of the contract as written, but, as noted above, we do not deem ourselves under any such constraint. For rate-making purposes, we may disallow the associated pumping costs as valid utility expenses, and we most emphatically should do so.

C. Alternative Solutions

To resolve the lease issue, we could order Respondent to negotiate a more favorable new lease with the Trust and to submit the same for our approval. This does not look promising, since J. R. Dansie himself owns a beneficial interest in the Trust and is related to the other beneficiaries. Even if J. R. Dansie were to negotiate a new lease on better terms, the suspicion would no doubt linger among ratepayers that still better terms were achievable. To be blunt, J. R. Dansie, in dealing with the Trust, has an irreconcilable conflict of interest.

We could also compel the Trust to submit itself to our jurisdiction under § 54-2-1(19)(c), UCA 1953, as amended. We could doubtless assure the reasonableness of any new lease if we did so, but the effort would entail more delay and legal expense. Moreover, the Trust could, at this time, evade our jurisdiction simply by refusing to enter into a new lease. The course does not recommend itself unless there is no other option.

There appears to be another option. The Hi-Country Estates Homeowners Association (hereafter "Intervenor") has been developing its own well (hereafter "the Homeowners' Well") and stands ready to lease the same to Respondent for the nominal sum of $12 per year, and to absorb all pumping costs to serve the present customers. (Testimony of Kenneth Norton, Transcript, at 131-143) At a stroke this would reduce Respondent's expenses by almost $10,000 per year.

D. Objections to Use of Homeowners' Well

Before Respondent could avail itself of the Intervenor's offer, certain legal, financial, and technical issues would need resolution.

First, ownership of the water right represented by Application No. 30130 (hereafter "the water right") is now the subject of litigation between Respondent and Intervenor. To use the Homeowners' Well, the point of diversion would need to be changed to the Homeowners' Well. The record indicates that, with both Respondent and Intervenor sponsoring the change application, the change could be effected within a short time.

The change would not affect either claimant's position as to title to the water right. The lease could specifically incorpo-

rate provisions not to jeopardize Respondent's interests, if any, in the water right.

Second, Respondent has cast doubts on the Intervenor's financial capacity to finance and operate the well. We resolve those doubts in favor of the Intervenor. We do not perceive financing as an obstacle.

Finally, the Homeowners' Well needs further completion work in the form of cementing in and installation of a pump and equipment. The Intervenor proposes to use a 15 horsepower pump, rather than the 75 horsepower pump Respondent uses presently.

Respondent's engineering expert expressed doubts that the Homeowner's Well's production and pumping capacity would be sufficient to provide adequate peak service demand and fire protection in the service area. (Testimony of Seth Schick, Transcript, at 102-158) He also noted that there may be some question whether the well could sustain its tested capacity over a long period. (Id.)

Obviously, changing the water source would entail risks. We are satisfied, however, that the capacity designed into the system would meet legal requirements for usage and fire protection. (See Rebuttal Testimony of Jon Strawn, Transcript, at 263-282) The only real risk is the Well's being able to sustain production. That is a risk with any well--even the Dansie Well.

Against the risks we must balance the prospective benefits. Those are substantial. First, as noted above, Respondent's expenses would immediately be reduced almost $10,000. In a system with as few customers as Respondent, that is no small consideration. Second, it would, once and for all, remove the conflict of interest of J. R.

Dansie. Whatever other points of friction might remain between the customers and him, one of the most important would have been removed.

Given the prospective benefits, we think the risks are worth running. If the Homeowners' Well does prove to be an inadequate source, we can then reconsider a new lease with the Trust, or, if the title litigation between Respondent and Intervenor has been resolved, there may be the possibility of joining the Salt Lake Water Conservancy District.

E. Conclusion on Water Source

Respondent should be ordered to join in the point of diversion change application for the water right and to enter into a well lease with Intervenor for an annual rental of $12 as soon as the Homeowners' Well has received necessary approvals and is on line. In the interim, in the absence of evidence as to the reasonable market value of the water provided to Respondent for its customers,[4] payments to the Trust should be limited to $600 per month, and pumping costs for any water transported for the Trust should be billed to the Trust.

II. J. R. DANSIE'S COMPENSATION

Respondent claims as expenses a salary to J. R. Dansie in the amount of $8,400, with associated payroll tax and insurance expense, (Appendix A, Lines 13 and 14) contract repair and maintenance services rendered by J. R. Dansie in the amount of $26,147, (Appendix A, Line 30) and office rental, with J. R. Dansie as

[4]There was such evidence presented in the 1986 case, and the Administrative Law Judge found $368 per month to be a reasonable water charge. For other reasons, he recommended that the monthly charge remain at $600. We cannot, of course, apply his finding in this case.

landlord, in the amount of $2,400. (Appendix A, Line 31) The claim also incorporates a projected increase in the amount of contract repair and maintenance services. All told, claimed expenses benefitting J. R. Dansie directly amount to $36,947.[5]

The Division of Public Utilities, Utah Department of Commerce (hereafter "the Complainant"), proposes to shift the $8,400 salary from the officers' salary account to the Administration and Accounting account. This is consistent with the testimony of J. R. Dansie to the effect that the account was originally established to compensate his wife for performing Respondent's bookkeeping, a function J. R. Dansie has assumed himself. We agree with Complainant.

The Complainant also recommends disallowance of the projected portion of repair and maintenance contract services. In conformance with the Annualization Rule, we agree.

As a further adjustment, the Complainant proposes that $10,057 of the claimed contractual services performed by J. R. Dansie actually fall in the category of administration and accounting. Since $8,400 is already allowed for such services, the $10,057 is a

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[5]Spread among 52 connected customers, these benefits amount to $59.21 per customer per month. Taking administrative notice of the filed tariffs of all certificated water utilities in the state, if we allowed all the claimed expenses, these items alone would render Respondent's rates the highest in the state by a considerable margin.

J. R. Dansie argues that owing to income deficiency, he has never actually received the full compensation claimed. That alters the case at best slightly, since, according to Respondent's accountant, the unpaid amounts are carried as indebtedness on Respondent's books, with all the legal consequences that entails.

duplication and should be disallowed. (Hearing Exhibit 1, Prefiled Testimony, Kenneth R. Colby, p. 7) We agree with Complainant.[5]

The real estate rental account includes rental of a storage tank used by the system, amounting to $1,800 annually (Testimony of Scott Wilkey, Transcript at 61), and office rental in J. R. Dansie's home amounting to $2,400 annually. On the rationale that three other businesses are conducted out of the same office, and, therefore, Respondent should only have to pay 25% of the annual rent, the Complainant recommends an adjustment of $1,800.

J. R. Dansie testified that the businesses in question are dormant and no activity on their behalf has been conducted, or is contemplated, out of the office. In the absence of evidence to the contrary, we must accept J. R. Dansie's testimony and accept the filing of Respondent.

III. LEGAL, ACCOUNTING, AND ENGINEERING EXPENSE

Assessing the legal, accounting, and consulting expenses is complicated by the fact that for the past several years, there has been ongoing litigation between Respondent and the Intervenor over ownership of the water system and the water right. The District Court's order in the matter is considerably less than a model of clarity; apparently, though, ownership was resolved in favor of the Intervenor here, but subject to a claim of unjust enrichment amounting to $98,500.

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[5]This leaves J. R. Dansie's basic compensation package at $20,588 annually, approximating the grade 8 midpoint salary for a comparable position with the Salt Lake County Water Conservancy District (Hearing Exhibit 12), and, at an hourly rate of $17.20 for the contract work, substantially better than water masters employed by other privately-owned water utilities, some considerably larger than Respondent. (See Hearing Exhibit 13.)

Rather than pay the claim, the Intervenor here has taken an appeal, which is now pending. In the absence of the payment, the District Court entered an order quieting title in Respondent.

No small portion of the legal, and possibly the accounting and consulting expense, claimed by Respondent, has been in connection with that litigation. Unfortunately, Respondent has not kept track of legal costs for the litigation. (Testimony of Scott Wilkey, Transcript at 58, 83)

A. Legal Expense

Respondent claims legal expense in the amount of $21,500. (Appendix A, line 27) In assessing the allowability of these expenses, we cannot overlook the fact that Respondent is, for most purposes, the alter ego of J. R. Dansie. As the sole owner of the company, it was his interest being protected in the litigation--certainly not that of the ratepayers who opposed him. The issue was ownership, not a claim by or against Respondent relating to its operations. We believe there is a significant difference.

To allow Respondent to recover in rates the attorney's fees accrued in connection with the title dispute would, in effect, allow its alter ego, J. R. Dansie, to recover his attorney fees in the litigation, something the District Court did not allow.

It follows we can only allow reasonable legal costs incurred in connection with this rate proceeding. In the 1986 order, we allowed legal costs of $1,000 annually, on the basis that $3,000 was a reasonable attorney's fee in connection with that case, to be amortized over three years.

We do not believe the present proceeding required or received as extensive preparation as the 1986 case. Certainly there were fewer hearing days and less extensive discovery. It follows that, even allowing for inflation, we think $3,000 is an adequate fee for this proceeding. Again, to avoid over-recovery, we think the expense should be amortized over three years. Accordingly, we agree with Complainant that legal fees should be allowed in the amount of $1,000 annually.

B. Accounting Costs

Respondent seeks $3,000 for accounting services. That includes, apparently, $1,000 for services rendered in this proceeding and $2,000 for regular accounting services rendered annually in connection with tax and regulatory filings. In its filing, Complainant apparently recommends disallowing all the amount representing rate case preparation; but in his prefiled testimony, Respondent's auditor apparently accepts the $2,000 figure as a fair estimate of the customary accounting expense and recommends amortizing the rate case costs over three years. (Hearing Exhibit 1, Prefiled testimony, Kenneth R. Colby, at 6) If we understand the proposal, that would make the appropriate amount $2,333. That is the figure we adopt.

C. Engineering Costs

Complainant recommends disallowance of all Respondent's claimed engineering expense ($4,000) on the basis no such expense was incurred during the test year. (Hearing Exhibit 1, Prefiled testimony, Kenneth R. Colby, at 5-6) While there have been vague references (at various stages of this proceeding) to contemplated

system renovation and improvements, presumably entailing engineering costs, nothing concrete was entered in the record.

From all that appears, the expense was incurred primarily for preparation of this case in the form of the testimony of Respondent's expert, Mr. Seth Schick. Of the claimed amount, at most $1,581 accrued during the test year. (Hearing Exhibit 5, page 1) On that basis, we believe it should be treated the same as legal and accounting expense. The expense should be amortized over three years in an annual amount of $527.

IV. OTHER EXPENSES

We shall consider the other disputed expenses in the order in which they appear on Appendix A.

A. Payroll Taxes and Insurance

Complainant computes its payroll taxes and insurance amount on J. R. Dansie's $8,400 salary for accounting and administrative work. Respondent wishes to shift J. R. Dansie's status in performing repair and maintenance from that of independent contractor to that of employee, which would entail increased payroll expenses. The stated rationale is that the Federal Internal Revenue Service will likely require the reclassification at some point, and Respondent will then be liable for back taxes and penalties. (Testimony of Scott Wilkey, Transcript, at 20-21) In the absence of more convincing evidence that the reclassification is necessary, we are unwilling to allow the increased expense. We adopt Complainant's figure.

B. Purchased Water

For the interim between the entry of this Order and the time the Homeowners' Well can be brought on line, rates should be

based on annual historical power costs in the amount of $7,479. (Hearing Exhibit 5, Page 1, Account Numbers 6151000 and 6153000, YTD Total)

C. Chemicals

Complainant based its recommendation on historical data including test year usage. Based on this analysis, we believe the amount recommended by Complainant is adequate.

D. Office Materials and Supplies

Complainant recommends a $900 adjustment downward in this account. Since Respondent offered nothing to contradict this adjustment, we adopt the same.

E. Contract Service, Repair and Maintenance

Complainant recommends a $1,492 downward adjustment in outside repair and maintenance on the basis that only expenditures of $1,008 could be verified during the test year. Respondent offered nothing to contradict this, and we adopt Complainant's figure.

F. Equipment Rental

Based on test year data, Complainant recommends $6,000 for this item. No justification for Respondent's higher figure was presented, and we accept Complainant's.

G. Insurance Expense

Complainant's figure of $3,942 for insurance expense is based on test year data. Respondent's claimed amount of $5,000 is based on the intent to increase liability coverage and to buy director's insurance for J. R. Dansie. On the latter proposal, Complainant opines that director's coverage should come out of J. R. Dansie's director's fee. We agree.

No change in this item was known or measurable during the test year. Moreover, in the absence of some vestige of risk analysis to support the need for increased coverage, we are unwilling to increase this expense item. We adopt Complainant's figure.

H. Regulatory Expense

Complainant's figure of $133 is based on test year data; Respondent presented nothing to contradict the figure, and we adopt the same.

I. Miscellaneous Expense, Telephone

Complainant recommends halving the Respondent's claimed telephone expense. The recommendation is based on audit data showing a considerable number of personal long distance calls being charged to Respondent. Respondent presented nothing to contradict the auditor's conclusion, and we adopt Complainant's figure of $360.

J. Depreciation Expense

The discrepancy in the parties' positions on depreciation is explained by a difference in the claimed rate base. We will discuss that issue in a separate section below. Suffice it to say here that we accept Complainant's depreciation figure.

K. Amortization Expense, Tank Repair

Complainant recommends disallowing this item since the tank is no longer owned by Respondent, the tank having been lost in a Small Business Administration (SBA) lien foreclosure sale. We agree.

L. Utah Franchise Tax

We accept Respondent's figure in regard to the applicable Utah franchise tax.

V. RATE BASE

Respondent has adopted as its claimed rate base the $98,500 figure entered by the Third District Court as the amount owed Respondent by the Intervenor. The Complainant's computation is based on the Rate Base allowed in our 1986 Order as modified by additions and accrued depreciation since.

Jurisdiction to establish the value of rate base for rate-making purposes is within the exclusive jurisdiction of the Commission. (§ 54-7-21, UCA 1953, as amended) We established a base value, at exhaustive length, in the 1986 Order. We see no reason to depart from that valuation, and we adopt the Complainant's figure.

Since Respondent's capital structure is 100% equity, and the parties are agreed that 12% is a reasonable rate of return, we accept Complainant's figure of $2,101 as a just and reasonable return on rate base.

VI. RATE DESIGN

In designing its recommended rates, Complainant includes revenue from customers located outside the service area who have been, up to this time, served by the water taken by the Trust under the Well Lease. Complainant proposes to impose the same demand and commodity charges on those recipients as on the customers in the service area.

We are unable to accede to this proposal. It is one thing to reform the lease so that Respondent is not disadvantaged in providing the water transportation called for in the lease; it is quite another to impose charges over and above variable costs for the movement. That was not the import of our 1986 Order, and we think it

would be clearly unfair at this late date to add to the demand we made then.

Respondent, in its proposed rate design, undertakes to shift a greater portion of the fixed cost burden to the standby customers. There are two problems with that proposal, one theoretical, the other practical.

The theoretical problem is that, historically, standby fees have been imposed to help defray the return on rate base, not fixed costs in general, since it is the capital outlay, in the form of a functioning system, which enhances the value of unconnected lots, which enhancement is the benefit conferred on standby customers. (Rebuttal Testimony of Jon Strawn, Transcript, at 281)

The practical problem is that standby customer resistance to payment is likely to increase with substantial standby fee increases. It could also have a depressing effect on the value of the lots, which could, indirectly, discourage further construction in the service area. On the whole, we believe the present standby fee should not be increased.

We conclude, accordingly, that the rate design should basically stay the same as we ordered in 1986, with the modifications for the revenue deficiency shown in Appendix C, annexed hereto and incorporated by this reference. Rate design is complicated by the fact there will be an interim before the Homeowners' Well can be brought on line, and lease and pumping costs will be incurred during that period. Accordingly, we adopt interim rates, shown in Appendix D, annexed hereto and incorporated herein by this reference,

incorporating those costs,[7] on the understanding that as soon as the Commission is notified that the Homeowners' Well is available for service, permanent rates, shown on Appendix E, annexed hereto and incorporated herein by this reference, will go into effect. Respondent should be ordered to cooperate fully and promptly with Intervenor to bring the Homeowners' Well into service with minimum delay.

CONCLUSION

Neither the utility nor the ratepayers are likely to be pleased with the result of this proceeding. We have pared severely the claimed expenses of Respondent, and yet even the permanent rates are substantially more than those of the next highest utility we regulate.

The perceptive reader will have noted that, with the Dansie lease and pumping costs backed out, almost all the remaining costs are fixed--reduction is extremely difficult and in most instances impossible. No small part of the problem is having to support a full-time watermaster. So long as the utility is investor-owned, we see no way to avoid that.

We believe the result of this proceeding should convince all concerned that, with the present customer base, the utility is not viable as an investor-owned enterprise. Respondent lost 12 customers after the last increase, which was nowhere nearly as large as the one which will result from this proceeding. If there is a similar occurrence after this, Respondent may be left in the

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[7] The pumping costs allowed include only the connected customers' pro rata share for the test year.

untenable position of trying to charge more than its customers can pay.

The high rates may well have the further deleterious result of severely lowering the value of the undeveloped lots and discouraging their owners from either building or finding buyers interested in building. That in turn makes finding a buyer for Respondent's system extremely unlikely. A vicious cycle, with severe financial losses for everyone, is entirely possible.

The Commission is strongly of the opinion that, rather than waste more time and money on litigation, the parties should seek an accommodation; J. R. Dansie should remember that the value of property is what a buyer is willing to pay--clearly, so far as the homeowners are concerned, that is not $98,500. By the same token, the homeowners should not expect to acquire the property for nothing.

If the parties continue their present course, there may well be ruin for all.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

>> FOOTHILL WATER COMPANY bill for, and collect, variable costs, including power for pumping and treatment costs, associated with transporting water through the system for an entity known as the DANSIE FAMILY TRUST, whether such transportation is furnished under the color of a well lease or otherwise;

>> FOOTHILL WATER COMPANY forthwith join the HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION in a joint application for a change in the diversion point for the water right repre-

sented by application no. 32130, said diversion point to be the site of a well already drilled by said homeowners' association;

>> As soon as said change is effected, and the aforesaid well has been fully completed, equipped, and has received all necessary governmental approvals, FOOTHILL WATER COMPANY shall, before the beginning of the next billing cycle and thereafter, enter into a well lease with the HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION for the sum of $12 per year, with said homeowners' association to defray all pumping costs associated with providing service to the connected customers within the service area; and for purposes of pending litigation, said lease may incorporate provisions to protect each party's ownership claim to the aforesaid water right;

>> Pending the execution of the aforesaid lease, FOOTHILL WATER COMPANY be, and it hereby is, authorized to publish, on one day's notice, its tariff implementing interim rates as set forth in Appendix D to this Report and Order;

>> Upon the execution of the aforesaid lease, the aforesaid interim rates shall no longer be valid, and FOOTHILL WATER COMPANY shall forthwith publish its tariffs implementing permanent rates as set forth in Appendix E to this Report and Order;

>> Any person aggrieved by this Order may petition the Commission for review within 30 days of the date of this

Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 9th day of April, 1992.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 9th day of April, 1992, as the Report and Order of the Public Service Commission of Utah.

/s/ James M. Byrne, Chairman

(SEAL)

/s/ Stephen C. Hewlett, Commissioner
Pro Tempore

Attest:

/s/ Julie Orchard
Commission Secretary

Appendix A

FOOTHILLS WATER COMPANY Operating Statements

Test Year and Commission Projected Coming Year

Line No.	Foothills Acct No.	NARUC Acct	Description	Foothills Filing	CPU Filing	Comm'n Test Yr Accepted	Comm'n Adjustm't	Comm'n Pro Forma
			REVENUES					
1	4611000	461.1	Metered Sales to Customers	$36,189	$36,189	$36,189	$7,963	$44,152
2	4741000	474.1	Standby Fees	7,875	7,875	7,875		7,875
3	4742000	474.2	Late Payment Fees	1,140	1,140	1,140		1,140
4	4743000	474.3	Interest Charges	596	596	596		596
5	4744000		Turn-on Fees	0	0	0		0
6	4745000		Reconnect Fees	0	0	0		0
7	4746000		Customer Account Charge	0	0	0		0
8	4748000	474.8	Connection Fees	1,500	1,500	1,500		1,500
9	4749000		Returned Check Fees	0	0	0		0
10	4750000		Dansie Power Charge	300	300	300		300
11	4751000		Damage Feeder Reimbursement	0	0	0		0
12			TOTAL REVENUES	$47,600	$47,600	$47,600		$55,563
			OPERATING EXPENSES					
13	601100		Officers Salary, A. Dansie	$8,400	0	0		0
14	601200		Payroll Taxes & Insurance	4,937	0	0		0
15		603.0	Administration & Acctg	0	8,400	8,400		8,400
16		604.0	Payroll Taxes & Ins.	0	1,065	1,065		1,065
17	6100000	610.0	Purchased H2O, Dansie Lease	7,200	12	12		12
18		615.0	Purchased Power	0	0	0		0
19	6151000		Purch Power, Well #1	5,782	0	0		0
20	6152000		Purch Power, Well #2	0	0	0		0
21	6153000		Purch Power, Booster Pump	729	0	668		668
22	6180000	618.0	Chemicals	1,575	500	500		500
23	6201000	620.1	Materl & Supply, H2O Sys	6,000	6,000	6,000		6,000
24	6202000	620.2	Materl & Supply, Office	1,900	900	900		900
25	6301000	630.1	Contract Svc, Engineering	4,000	0	527		527
26	6302000	630.2	Contract Svc, Accounting	3,000	2,000	2,333		2,333
27	6303000	630.3	Contract Svc, Legal	21,500	1,000	1,000		1,000
28	6304000	630.4	K Svc, Repair & Mtnce	2,500	1,008	1,008		1,008
29	6305000	630.5	K Svc, Water Quality	300	300	300		300
30	6306000	630.6	K Svc, R. Dansie	25,147	12,168	12,168		12,168
31	6401000	640.1	Rental, Bldg., Real Estate	4,200	2,400	4,200		4,200
32	6402000	640.2	Rental, Equipment	7,340	6,000	6,000		6,000
33	6500000	650.0	Transportation Expense	1,208	1,200	1,200		1,200
34	6550000	655.0	Insurance Expense	5,000	2,942	2,942		2,942
35	6660000	666.0	Regulatory Expense	300	138	138		138
36	6700000	670.0	Bad Debt Expense	0	0	0		0
37	6751000	675.2	Misc. Expense, Telephone	720	360	360		360
38	6752000	675.1	Misc. Exp., Director Fees	600	600	600		600
39	6753000	675.3	Misc. Expense, Other	150	150	150		150
40	6754000	675.4	Misc. Expense, Collections	100	100	100		100
41	4030000	403.0	Depreciation Expense	5,037	1,630	1,630		1,630
42	4040000	404.0	Amortization Expense, Tank Repair	243	0	0		0
43	4080000	408.0	Taxes Other Than Income Tax	650	650	650		650
44			TOTAL OPERATING EXPENSE	$121,998	$49,913	$52,561		$62,961
			OTHER INCOME & DEDUCTIONS					
			Misc. Nonoperating Expense	$0	0	0		0
45	4260000	426.0	Interest Expense	0	0	0		0
46		427.0	Total Taxable Income	($74,398)	($2,313)	($5,361)		$2,602
47			INCOME TAXES					
			State Franchise Tax	$100	$68	$100	$0	$100
48	4091000	409	Federal Taxable Income	($74,498)	($2,381)	$5,461		$2,472
49			Federal Income Tax	$0	$0	$0	$371	$371
50		408.2	OPERATING INCOME (LOSS)	($74,498)	($2,381)	$5,461		$2,101

Appendix B
FOOTHILL WATER COMPANY/Return on Rate Base
Test Year and Commission Projected Coming Year

Description	Foothills Filing	DPU Filing	Comm'n Finding
Plant In Service, Year Begin	$98,500	$24,438	$24,438
Plant In Service, Year End	$98,500	$24,438	$24,438
Plant In Service, Average	$98,500	$24,438	$24,438
Accum. Depreciation, Year Begin	$0	$12,872	$12,872
Accum. Depreciation, Year End	$2,264	$14,492	$14,492
Accum. Depreciation, Average	$1,132	$13,682	$13,682
Net Utility Plant, Year Begin	$98,500	$11,566	$11,566
Net Utility Plant, Year End	$96,236	$9,946	$9,946
Net Utility Plant, Average	$97,368	$10,756	$10,756
Cash Working Capital	$0	$6,756	$6,756
Total Rate Base	$97,368	$17,512	$17,512
Rate of Return	12%	12%	12%
Return	$11,684	$2,101	$2,101

Appendix C

FOOTHILLS WATER COMPANY Revenue Deficiency or Excess

Test Year and Commission Projected Coming Year

Description	Foothills Filing	DPU Filing	Comm'n Test Yr Accepted	Comm'n Pro Forma
Total Operating Expense	$121,998	$49,613	$52,961	$52,961
Interest Expense	0	0	0	0
Federal & State Tax Expense	100	58	100	501
Return on Rate Base	11,684	2,101	2,101	2,101
Additional Revenue to cover taxes of return			401	
Total Revenue Requirement	$133,782	$51,772	$55,563	$55,563
Less Total Revenue	$47,600	$47,600	$47,600	$55,563
GROSS DEFICIENCY/(EXCESS)	$86,182	$4,172	$7,963	0

Appendix D
FOOTHILL WATER COMPANY
Calculation, Interim Rates

Description	
Total Revenue Requirement (includes Dansie Lease & Pumping Costs)	$65,068.15
Less annual standby fees ($9 per lot)	7,875.00
Connection Fees, 0 @ $750	1,500.00
Late Payment Fees (lower than 5/yr average)	1,140.00
Interest Charges (lower than 5/yr average)	596.00
Net to be met by connected users	$53,957.15
Usage > 5 kgal, 5,264 kgal @ 1.40/kgal	$7,369.60
Net to comprise basic demand charge	$46,587.55
Divide by 12 Months	$3,882.30
Divide by 52 users for individual base rate	$74.66

AUTHORIZED INTERIM RATES

Standby Fees per Month Per Lot:	$9.00
Demand Charge Including 5,000 gals/month	$74.66
Overage Charge per 1,000 gals	$1.40
Connection Fee per lot	$750.00
Turn on and reconnect fees	$200.00

52 Customer's Annual Cost In Using Dansie Well	Annual Gal	52 Cust
Dansie Well Meter*	25,600,000	
52 Cust. Meters	8,700,000	
Ratio	0.33984	
Well Lease	$7,200	$7,200
Power Cost	$6,782	$2,305
Total 52 Cust Pump Cost		$9,504.62

The PUMPING NUMBERS come from Exibit 6

Appendix E
FOOTHILL WATER COMPANY
Calculation, Permanent Rates

Description	
Total Revenue Requirement (excludes Dansie Lease & Pumping Costs)	$55,563.33
Less annual standby fees ($9 per lot)	7,875.00
Connection Fees, 0 @ $750	1,500.00
Late Payment Fees (lower than 5yr average)	1,140.00
Interest Charges (lower than 5yr average)	596.00
Net to be met by connected users	$44,452.33
Usage > 5 kgal, 5,264 kgal @ $1.40/kgal	7,370
Net to comprise basic demand charge	$37,082.73
Divide by 12 Months	$3,090.23
Divide by 52 users for individual base rate	$59.43

AUTHORIZED PERMANENT RATES

Standby Fees per Month Per Lot:	9.00
Demand Charge Including 5,000 gals/month	$59.43
Overage Charge per 1,000 gals	1.40
Connection Fee per lot	750.00
Turn on and reconnect fees	200.00

Exhibit 7

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation Into the Reasonableness of the Rates and Charges of FOOTHILLS WATER COMPANY.	DOCKET NO. 91-2010-01 ORDER ON REHEARING

ISSUED: November 30, 1992

BY THE COMMISSION:

On May 18, 1992, the Commission issued an order granting petitions for reconsideration of the Commission's April 9, 1992 Order filed by the Division of Public Utilities ("Division"), Hi-Country Homeowner's Association ("Homeowners") and Foothills Water Company ("Foothills" or the "Company"). After a preliminary hearing on June 2, 1992, the Commission issued an order on June 4, 1992, setting forth the following issues and instructions for the parties on rehearing:

1- Availability of alternative water source. Foothills has raised the issue of whether the Homeowners' well is indeed available to provide water to the utility. Homeowners' counsel has agreed that this is an issue. Foothills' water source is, therefore, uncertain at present. The Commission will require evidence from the record, and in supplement to the record, as to the certainty of the Homeowners' well being available as a

water source for Foothills. If the Commission determines that the availability of the Homeowners' well is not reasonably assured, further testimony on water sources and market value of water will be required at a future hearing.

2- Delivery of water to the Dansie Trust. Both the Homeowners and the Division have raised the issue of the use of the Foothills system for delivery of water to the Dansie trust, and the appropriate cost recovery for such use. The Commission will require evidence from the record as to the utilization of the Foothills system for storage and transport of Dansie Trust water by Foothills.

3- Determination and allocation of the fixed and variable costs of using the water system. The Division and the Homeowners have raised the issue of what are the appropriate fixed and variable costs for Foothills and what portion of these costs should be allocated to storage and transportation customers of Foothills. The Commission will take testimony from the record on these costs and the allocation of costs fixed and variable that should be utilized. In so doing, the Commission will not reopen the record for new test year cost figures, but will only take testimony regarding allocating established costs between Foothills and Dansie Trust customers.

4- Costs of regulating water levels. The Division has raised the issue of the time and expenses charged to Foothills related to controlling the water levels in the storage tanks. This issue is also related to

whether telemetry facilities to accomplish this purpose are in place or in rates. The Commission will take testimony from the record on these issues.

5- Evidentiary basis for Appendix E. Foothills has raised the issue of whether Appendix E contains numbers with an evidentiary basis. The Commission will consider further argument or testimony on this issue.

In paragraphs 1, 3, and 5 of its petition for review, Foothills has raised issues relative to the Commission's statement of its authority in its April 9, 1992 Order. The Commission will deal with these issues in its Order on rehearing. No further argument on these issues is necessary.

Hearings were held on these issues on June 12, and from September 2 through September 4, 1992. Since the close of the record in this matter, Messrs. Maxfield and Stroh have filed requests for rehearing. Both of these gentlemen are lot owners in the Hi-Country Estates subdivision and earlier filed requests to intervene in the case. Both petitions for intervention were denied as being untimely and meritless and the Commission finds nothing in the requests for rehearing which would be a basis for reconsideration of its earlier disposition. Having considered the testimony presented on rehearing, as well as the record in the original proceeding in this matter, the Commission now deals with these issues on rehearing by issuing the following Findings, Conclusions and Order based thereon.

FINDINGS AND CONCLUSIONS

In this Order the Commission will deal specifically with the foregoing, enumerated issues. However, there are certain related issues which must first be addressed for context. These issues are the water right and water lease agreement and the Company's affiliate dealings.

I. WATER LEASE AGREEMENT AND WATER RIGHT

In March, 1986, this Commission issued an Order based on five days of evidentiary hearings inquiring into Foothills' petition for certification as a public utility. That Order is a part of the record in this proceeding. The Commission there found, among other things, that the water lease agreement dated April 7, 1977, which was a renewal and revision of an earlier agreement between Gerald Bagley as lessee and Jessie Dansie as lessor, and was amended again on July 3, 1985, was "grossly unreasonable" because it provided the Dansie family with an annual lease payment of $7200, the free production, storage and transmission of a minimum 12,000,000 gallons of water per annum, and other benefits, when in fact a reasonably accurate estimation of the value of the lease was $368.00 per month.

The Commission also found that the lessee, Bagley, who was one of the developers of the residential area served by Foothills, was knowingly in violation of the law requiring regulation of public service entities, that the lease had not been entered into in good faith for the benefit of utility ratepayers and that the Commission had been denied any opportunity to review the lease because the developer had operated illegally for some thirteen years as a de facto public utility without applying for certification.

The 1986 Order allowed the Company to continue to supply water to the Dansie family conditioned upon payment of the cost of delivery by someone other than the customers in Foothills' service area. The Order also specifically required that Foothills bring any subsequent lease to the Commission for approval. Although the subject lease expired in 1987 and Foothills elected to renew the lease on a month-to-month basis, it is a matter of record that Foothills has never sought Commission approval of the terms of that lease. We note that the month-to-month continuation of the lease leaves ratepayers in the precarious position of having an uncertain water source, since the Lessor Dansie Trust may cancel the lease at any point.

In addition to and in support of the finding in the 1986 Order, testimony on this record is persuasive that the terms of the lease, the $7200 annual lease payment and the free production, storage and transmission of 12,000,000 gallons of water, which is now closer to 17,000,000 gallons by actual usage, are unjust and unreasonable. That testimony, which is discussed elsewhere in this Order, indicates that Foothills now has available to it a source of water at a proposed lease cost of $12.00 per year, which it did not have in 1986. Given that alternative, the Commission finds that all costs of the water lease agreement, which exceed the costs of the alternative source, are unreasonable and must be carried by Foothills, if Foothills decides to continue the lease.

The Commission understands Mr. J.R. Dansie's desire to benefit himself and the Dansie family based upon promises, express or implied, from one of the developers, Gerald Bagley. Mr. Bagley

apparently conveyed Foothills' stock to Mr. Dansie to satisfy the developer's indebtedness to Dansie, despite the fact that Bagley and the other developers full well knew that lot owners had contributed the capital costs of the Company's water system and water right 59-1608 through lot purchases and were entitled to those assets. We do not minimize the fact that Bagley, and not Mr. Dansie, is the culprit in this matter. The problem for Mr. Dansie is that the vehicle through which Bagley attempted to repay Mr. Dansie is a public utility with all of the service and trust obligations that go with public utility status.

Foothills argues in this case that Orders issued by the Third District Court in Case No. 850901464 CV, Judge Pat Brian presiding, are binding upon this Commission. We have no quarrel with that argument as it relates to ownership and contractual issues. However, where those Orders purport to usurp this Commission's clear and exclusive jurisdiction over utility ratebase and utility asset disposition and valuation, we disagree emphatically.

On October 31, 1990, the District Court concluded that the well lease agreement was a "fully binding encumbrance" on the Foothills water system. The terms of the lease require Foothills to deliver annually in perpetuity to the Dansie Trust a minimum of 12,000,000 gallons free of charge. While the Court may be correct that the lease is binding upon Foothills' water system (although it would appear to us that the obligation is coterminous with the lease itself), it is the Commission which must decide whether the financial burden of that lease may be passed along to ratepayers and we have decided that it may not.

With regard to ownership, on October 28, 1989, the District Court ruled that the Homeowners were the legal owners "of the disputed water system, which includes the water rights, the water lots, the water tanks, and the water lines" and then ordered and subsequently held an evidentiary hearing to "establish the amount of reimbursement due to Defendants Bagley & Company and/or Foothills Water Company for the reasonable value of improvements made by Defendant Bagley & Company.

Following that evidentiary hearing, however, the Court found on October 31, 1990 that the value of the "entire water system, the improvements made thereon from 1974 to 1985 and the water right" had a combined net value of $98,500.00 and that the Homeowners would be unjustly enriched unless they reimbursed Foothills that amount. In other words, the Court went from evaluating improvements to evaluating the entire system and imposed payment for the whole system upon the Homeowners.

The Commission does not take issue with the Court's first ruling that the Homeowners owned the system; it is entirely consistent with evidentiary findings of this Commission to the effect that the Homeowners paid for a water system with the purchase of lots and, it seems to us, the ruling lies clearly within the Court's jurisdiction.

However, there are three substantial problems with the Court's second ruling. First, it is clearly and unmistakably the Commission's duty to determine the value of utility assets. Second, utilities are "reimbursed" for their capital investments in utility ratebase not by order of a court but, rather, through rates deter-

mined by this Commission which include a depreciation expense and a rate of return. In fact it would appear that the Homeowners informed the Court that the Commission had exclusive valuation authority and had already exercised it, but the Court chose to ignore that fact.

The third problem is that the Court proceeded to evaluate not only the improvements made by Foothills to the system (which, again, the Commission had already evaluated and had placed in ratebase for the utility), but the entire system itself and the water right and required that the Homeowners (ratepayers) pay the Court-established value of those assets by a date certain or forfeit their ownership rights entirely to Foothills, the stock of which is held by the Dansie family. When the customers balked at having to pay twice for the same thing, the Court decreed that the utility assets belonged exclusively to Foothills.

To say the least, that ruling has made more complicated and vexing a problem which has already caused this Commission and other state agencies over a period of years to expend time and budget in gross disproportion to the size of Foothills Water Company with its 45 customers. The Commission understands that the matter has been appealed and would presume and hope that the Court of Appeals will deal with it appropriately.

Nonetheless, as between ratepayer and utility, we are not concerned with who holds bare legal title to the water system and the water right. Public utilities generally hold legal title to assets used to provide their customers' utility services, even where there has been a ratepayer contribution to capital costs. However, public utility companies have a special trust relationship with ratepayers

and must operate in a manner calculated to give ratepayers the most favorable rate reasonably possible. The utility may not deal with utility assets to the detriment of ratepayers. To the extent Foothills had paid the capital costs of its assets or made capital improvements, it is entitled to reimbursement of expense and a return on investment. However, the Commission has determined that Foothills' ratepayers contributed the capital costs of water right 59-1608 and the water system through the purchase of lots from the developers. Therefore, those assets cannot be included in the Company's rate base regardless of who holds bare legal title to them. All of the investments made by Foothills in the system which are used and useful in providing utility service are presently in rate base and, therefore, Foothills has been and continues to be lawfully compensated.

A much more troubling aspect of this case is that evidence on this record clearly shows that Foothills has substantially mortgaged water right 59-1608 to family members of its operating officer, Mr. J.R. Dansie, as evidenced by an Application to Segregate a Water Right filed August 25, 1992 with the State Engineer and made a part of the record in this case. Despite the fact that this action could substantially impact the rates of the utility, Foothills never sought Commission approval for a determination of public interest. As was made clear in the Wexpro case (Committee of Consumer Services v. Public Service Commission, 595 P.2d 871, Utah 1979), ratepayers have an equitable interest in utility assets, the capital cost of which they have contributed, and those assets may not be alienated from the utility without approval of the Commission based upon a

showing of public interest and payment of commensurate benefits to ratepayers.

We note, however, that the financial status of Foothills is far different from that of Mountain Fuel Supply Company and any recovery or payment of benefits to the ratepayers of Foothills, in the event a valuable utility asset is lost, may well be theoretical only.

More importantly, we find that the mortgaging of the water right puts ratepayers at risk of the permanent loss of reasonably priced and reliable water service and is, therefore, on its face contrary to the public interest. Pursuant to our authority over the rates, practices and all business of public utilities related to rates, (see e.g. 54-4-4 and 54-4-1), we will direct Foothills to cease and desist from further mortgaging of that asset, to take action forthwith to eliminate all claims against that asset, and return the segregated portion of water rights 59-1608 to the full control of Foothills Water Co. Should Foothills proceed to alienate the water right, we will levy appropriately heavy penalties against the Company and its operating officer and take injunctive action, if necessary, to set aside the transfer.

II. AFFILIATE RELATIONS

For ratemaking purposes, expenses are added to a return on capital to determine a utility's revenue requirement. Any transaction which affects the capital or expenses of a public utility is subject to regulatory scrutiny. Where the utility transacts business with an affiliate, this scrutiny must be even more exacting because of the absence of arms-length bargaining.

Since both the utility and the affiliate are under common ownership or control, the door is open to cross-subsidization. The controlling entity and the affiliate may improperly benefit if their association with the utility unduly increases the revenue requirement of the utility, since the revenue requirement is recovered from the utility's customers.

To protect utility customers from this sort of harm regulators have adopted policies governing affiliation. For example, the regulators may only permit the transfer of assets from the utility to the affiliate at the higher of market price or book value, or the transfer from an affiliate to the utility at the lower of market or book. Where this has not occurred, a rate case adjustment will be made.

In the present Docket, Foothills' business relationships are beset with conflicts of interest. The Company, which is run by Mr. J.R. Dansie, maintains a water lease arrangement (discussed herein-above) with the Dansie Trust, of which Mr. Dansie is a beneficiary. From time to time, Mr. Dansie employs relatives or employees of an affiliate company to perform services for the utility. The Company rents a water storage tank from a relative. The Company rents office space from relatives. The Company rents earthmoving equipment from a relative. A conflict of interest is present in each instance. No competitive bidding process has been employed and there is no evidence that market alternatives were sought. There is no ready valuation standard, compounding the difficulty of judging the cost-of-service implications of these arrangements. The Commission now turns to the ratemaking consequences of these observations.

As has been discussed hereinabove, approval of the water lease agreement has neither been sought nor granted (Strawn testimony, Tr. 539, 540) and the lease is continued month-to-month. Testimony on the record shows that the Dansie Trust can cancel the lease one month to the next, though doing so would deprive the utility of its present water source.

As discussed hereinabove, the terms of this lease unreasonably benefit the Trust, in which Mr. Dansie has a one-fifth interest, (Tr. 602), at the expense of ratepayers. Given this, and Mr. Dansie's failure to secure Commission permission to continue the lease arrangement, if a different water source were available under terms and conditions more favorable to ratepayers, the Commission should be compelled to base rates on its use, i.e., the alternative source would establish water costs for revenue requirement. This would put an end to an obvious conflict of interest.

In the present case an alternative water source does exist as discussed herein. It is the well owned and developed by the Homeowners themselves and offered to the Company. In effect, this well becomes the market test of the appropriate cost of water to the Company. It is a substantially cheaper source of water and one which the Company can rely upon as its principal source of water.

For minor repairs, Mr. Dansie sometimes hires, at an hourly wage or under contract, brothers Boyd and Richard. (Tr. 460) Mr. Dansie indicated he has a contracting company (J.R. Dansie Contracting) and occasionally uses its employees at an hourly rate of $17.20. (Tr. 461) The problem with this and similar arrangements between the Company and Mr. Dansie's relatives is the lack of any incentive to

pay market rates for the labor services acquired. Moreover, the Division is unable to audit such charges (Tr. 624) and lacks a means of determining reasonableness. Thus, what is booked is passed on to customers as recoverable cost, should the Commission permit it. With respect to labor cost, the Company faces no incentive to operate efficiently. One way around this is to require Mr. Dansie to obtain bids from independent sources and to select the one most favorable. On this basis Mr. Dansie might even be able to show that hiring relatives confers some benefit--special expertise, below market rates, more timely delivery of services-- on the utility and its customers. The record shows none of this, however. Thus, in place of an evidentiary basis for evaluating the labor component of cost of service, the record in this Docket merely records the costs that have been booked and leaves unanswered the question of reasonableness.

Mr. Dansie pays $175 per month to Paul Evans, who owns the tank and the property on which it is located. (Tr. 462) Mr. Evans is Mr. Dansie's father-in-law (Tr. 480). The tank lease was negotiated by Mr. Evans and the directors and manager of Foothills Water Company. (Tr. 483) The Commission finds no basis on this record by which an independent determination of a reasonable storage tank rental rate can be reached. There is neither a cost-of-service calculation to be done or a market standard to be employed. However, again the Commission is willing to permit the rental to be recovered in rates based upon Mr. Dansie's testimony.

Mr. Dansie rents the Company office from the Dansie Trust for $150 per month. (Tr. 462) It does not appear that the rental fee

is inappropriate, and the Commission will allow inclusion of the amount in revenue requirement.

Mr. Dansie has rented a back hoe from Richard Dansie as well as from the Dansie Trust. He asserted that the rental rate paid was less than market, by which the record shows he meant the rate he would have had to pay an unidentified Riverton company. (Tr. 463) The Commission will not adjust the amount of this rental because of testimony indicating the equipment was acquired at a below market rate. The Commission finds the back hoe rental reasonable and permits the amount to be recovered in rates for water service.

Directors of Foothills are Boyd, Rodney, and Adrian Dansie, who are each paid $200 per year. (Tr. 464 and 465) Again, this amount does not appear to be unreasonable and will be allowed.

Mr. Antczak (Tr. 608 and 609) admonishes the Commission to be careful not to wring all the incentives for ownership out of this Company, and not to second guess the numerous decisions that daily must be made to keep it running. Indecisiveness, he says, may hurt such a Company and its customers more. These are fair points, and the Commission will consider them. Mr. Dansie has testified that these affiliate costs are reasonable and we have only his testimony on this point. Our option is to discount all amounts for which there is no independent verification of reasonableness. However, the Commission is willing to give Mr. Dansie the benefit of doubt in this case and will allow affiliate costs to be included in rates with a strong suggestion that the Company strive to eliminate the affiliate or conflict of interest problems identified herein, unless sufficient showing of benefit to ratepayers can be made. The Commission further

concludes that the Company should work cooperatively with the Division to propose a timely means of doing so.

III. SPECIFIC ISSUES ON REHEARING

1. Water Source to be incorporated in rates

In our April 9, 1992 Order we determined that the Homeowners' well was the most economical source of water for Foothills Water Company. In the rehearing proceeding, the Homeowners confirmed that they have redrilled their well to 466 feet (DUP RH JAS 2.11 and HO RH 8), had the well flow tested for 24 hours at approximately 95 gallons/minute (HO-RH-8), performed the VOC test, and stand ready to provide water to the customers of Foothills Water Company. In addition the Homeowners have stated that they will provide the pump and power necessary for service and in addition will provide the pressure sensitive equipment necessary to turn the pump off and on as required by the water level in the lower tank and the equipment necessary to chlorinate the water delivered to the system.

As discussed hereinabove, Foothills holds bare legal title to the water right necessary for service from the Homeowners' well and with the cooperation of Foothills and the Homeowners, a new point of diversion for this water right could be obtained at the Homeowners' well (three points of diversion already exist).

The Commission reaffirms its Finding contained in our April 9th order that just and reasonable rates should be based on the cost of the Homeowners' well water source.

2. Dansie Trust use of Foothills System

The Commission has reviewed the record in this case and the Orders of the District Court. We have discussed hereinabove that

the obligation affirmed by the Court to provide, transport, or store water for the Dansie Trust remains solely that of Foothills and not of its customers. We, therefore, reaffirm that the cost and expenses of providing such service will not be included in determining the rates for the customers of Foothills Water Company.

3. Appropriate costs and allocation of these costs

The Commission received additional testimony from Witness Strawn for the Division and Witness Wilkey for Foothills on the issue of the proper allocation of costs between the Foothills' ratepayers and the other user of the system, the Dansie Trust. Allocation of costs is not an exact science and requires judgment as to the appropriate cost versus cost-causation relationships. In the traditional regulatory literature (Bonbright, NARUC Cost Allocation Manual) costs are treated in a three-step process: functionalization, classification, and allocation. Functionalization is the assignment of costs into the functional categories of production, transmission, or distribution. Classification is the assignment of costs by usage, or peak usage. Allocation is the assignment of costs to customer groupings. In this proceeding the Company and the Division utilized a similar process of first classifying costs as utility, customer, commodity, or plant related and then allocating costs to the utility (customers of the Utility) or the Dansie Trust (for its use of the system). Both Witness Strawn and Witness Wilkey indicated that the records of Foothills Water Company were inadequate to determine cost versus cost-causation relationships. Both witnesses indicated that much personal judgment was involved. Mr. Wilkey deferred this judgment to Mr. Dansie.

The Commission has general knowledge and understanding of the Foothills' system and its operation, but has no way of independently determining a method of classification and allocation.

Mr. Strawn classified several cost categories related to maintenance activities as 1/2 plant and 1/2 commodity and others as 1/4 plant and 3/4 commodity and then allocated them to the utility or Dansie Trust according to his utilization assessment (plant) or volumetric usage (commodity). Mr. Wilkey classified these categories as .9 plant and .1 commodity and then allocated plant costs .9 to the utility and commodity costs on a volumetric basis like Mr. Strawn.

The Commission finds that the classification and allocation provided by Mr. Strawn is the most reasonable and corresponds most closely with its understanding of the system and therefore adopts it for determining rates. Appendix B to this order incorporates the method and format of Mr. Strawn for classifying and allocating costs.

4. Water Level Control Costs

As previously indicated, the Homeowners have stated that they will provide the telemetry and chlorination equipment and supplies. The Division testified that this will reduce the required supplies, time, and transportation expense necessary to operate the system. The Commission therefore finds that chemical expenses should be eliminated and contract services and transportation should be reduced as recommended by the Division.

5. Appendix E Numbers (April 9, 1992 Order)

The Commission has reviewed the record and has not been able to find sufficient basis for the connection fees, late payment fees, and interest charges utilized in Appendix E of our April 9, 1992

Order. We therefore find that these items should be reduced to zero in calculating the rates for Foothills Water Company.

6. Other Issues

a. In paragraph 1 of its Petition for Review, Foothills raised the issue of management prerogative in its choice of water supply. The Commission has determined in this order that just and reasonable rates ought to be based on the least expensive source of water available to the utility. If the utility wishes to use another more expensive source, it may do so. However rates will be based on the least expensive source.

b. In paragraph 3 of its Petition for Review Foothills indicated that the Commission exceeded its authority when it ordered the utility to bill and collect variable costs from the Dansie Trust. The Commission has dealt with this issue in item 2 above.

c. In paragraph 5 of its Petition for Review, Foothills asserts that the Commission's Order is arbitrary and capricious and beyond the Commissions' jurisdiction where it contains statements about the "alter ego" relationship of Foothills Water Company with Mr. J.R. Dansie. The Commission will hereby strike such references from its April 9, 1992 Order. The Commission meant only to indicate that economic benefits to Foothills are benefits to Mr. Dansie.

IV. RATES ON REHEARING

Based on the results of this rehearing Order, the Commission has calculated the rates provided in Appendix C. These rates will be placed in effect for the next month following notification of the

Commission by the Homeowners that all culinary water tests have been approved and their well is ready for connection to the Foothills system.

This rehearing Order also sets rates for the period from June 15, 1992 (when rehearing interim rates went into effect), until such time as the Homeowners well is ready for connection to the system. These rates are provided in Appendix D.

For the period from June 15, 1992 until the November bills, Foothills is entitled to recover from ratepayers the difference between the June 15, 1992 rates, $37.50, and the Appendix D rates, $45.97. This totals $38.11 per customer and may be collected as a surcharge on rates of $12.70 per month, for a three month period, November 1992 to January 1993.

Based on the foregoing Discussion and Findings of Fact the Commission hereby issues the following

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. FOOTHILLS WATER COMPANY take action to eliminate claims against Water Right No 59-1608 which it has previously pledged or given to family members.

2. FOOTHILLS WATER COMPANY file tariffs with the Commission implementing rates based on Appendix D of this Order until the Homeowners well is ready for connection at which time the Company shall file tariffs consistent with Appendix C.

3. Any person aggrieved by this Order shall request reconsideration within 30 days of its issuance. A failure to seek reconsideration will terminate rights of appeal.

DATED at Salt Lake City, Utah, this 30th day of November, 1992.

/s/ James M. Byrne, Commissioner

(SEAL)

/s/ Stephen C. Hewlett, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

APPENDIX A

FOOTHILLS WATER COMPANY/OPERATING STATEMENTS

DOCKET NO. 91-2010-01

Commission April Proforma, PSC Adjustments & Rehearing Findings

Ln	FERC		Commission's April Pro Forma	Commission Adjustments	Commission Rehearing Order
		Operating Revenue			
1.	461.1	Metered Sales to Res Customers	$44,152	(19,033)	$25,119
2.	474.1	Standby Fees Collected	7,875	657	$8,532
3.	474.2	Late Payment Fees	1,140	(1,140)	$0
4.	474.3	Interest Charges	596	(596)	$0
5.	474.4	Turn-on Fees	0	0	$0
6.	474.5	Reconnect Fees	0	0	$0
7.	474.6	Customer Account Charges	0	0	$0
8.	474.8	Connection Fees	1,500	(1,500)	$0
9.	474.9	Returned Check Fees	0	0	$0
10.	475.0	Dansie Power Charge	300	(300)	$0
11.	475.1	Damage Repair Reimbursement	0	0	$0
		Total Operating Revenue	$55,563	($21,912)	$33,651
		Operating Expenses			
12.	601.1	Officer's Salary	0	0	$0
13.	603.0	Administration & Accounting	8,400	0	$8,400
14.	604.0	Payroll Taxes & Insurance	1,085	0	$1,085
15.	610.0	Water Lease	12	0	$12
16.	615.0	Purchased Power	0	0	$0
17.	615.3	Purchased Power, Booster Pump	688	0	$688
18.	618.0	Chemicals	600	(600)	$0
19.	620.1	Material & Supplies - Water System	6,000	0	$6,000
20.	620.2	Office Supplies, Postage	900	0	$900
21.	630.1	Contractual Services - Engineering	527	0	$527
22.	630.2	Contractual Services - Accounting	2,333	0	$2,333
23.	630.3	Legal Expense	1,000	0	$1,000
24.	630.4	Contractual Services - R & M, General	1,008	0	$1,008
25.	630.5	Contractual Services - Water Quality	300	0	$300
26.	630.6	Contractual Services - R & M, R. Dansie	12,168	(8,084)	$8,084
27.	640.1	Rental of Bldg. & Real Property	4,200	0	$4,200
28.	640.2	Equipment Rental	6,000	0	$6,000
29.	650.0	Transportation Expense	1,200	(400)	$800
30.	655.0	Insurance Expense	2,542	0	$2,542
31.	665.0	Regulatory Commission Expense	138	0	$138
32.	670.0	Bad Debt Expense	0	0	$0
33.	675.1	Miscellaneous Expenses - Directors Fees	600	0	$600
34.	675.2	Miscellaneous Expenses - Telephone	360	0	$360
35.	675.3	Miscellaneous Expenses - Other	150	0	$150
36.	675.4	Miscellaneous Expenses - Collections	100	0	$100
37.	403.0	Depreciation Expense	1620	0	$1,620
38.	408.0	Taxes Other Than Income Tax	650	0	$650
		Total Operating Expenses	$52,961	($7,084)	$45,877
	427.0	Total Taxable Income	$2,602		
		Income Taxes			
		Utah Franchise Tax	$130		
	409.1	Federal Taxable Income	$2,472		
		Federal Income Tax	$371		
		Total Tax Expense	$501		
	408.2	Operating Income/Loss	$2,101		

APPENDIX B
FOOTHILLS WATER COMPANY
COST ALLOCATION

DOCKET NO. 91-2010-01

Line No	FERC Account		Comm'n Reasoning Order		Customer Costs (N) UTILITY (U) 45/46 X	Customer Costs (N) DANSIE TRUS 1/46 X	Water Plant Related Costs (P) UTILITY (.5+.333x.5)X	Water Plant Related Costs (P) DANSIE TRUS (.667x.5) X	Commodity Rel'd Costs (C) UTIUTY 1/3 X	Commodity Rel'd Costs (C) DAN'E TRUST 2/3 X	UTIUTY EXP. TOTAL
		OPERATING EXPENSES									0
		Officers Salary, A. Dansie	0								0
13.		Payroll Taxes & Insurance	0								8,217
14.		Administration and Accnig	8,400	N	8,217	183					1,042
15.	603.0	Payroll taxes and insurance	1,065	N	1,042	23					12
16.	604.0	Purchased H2O, Homeowners	12	U	12						0
17.	610.0	Purchased Power	0								0
18.	615.0	Purch Power, Well #1	0								0
19.		Purch Power, Well #2	0								888
20		Purch Power, Booster Pump	888	U	888						0
21.		Chemicals	0								3,000
22.	618.0	Maint & Supply, H2O Sys	6,000	1/2P,1/2C			2,000	1,000	1,000	2,000	880
23.	620.1	Maint & Supply, Office	900	N	880	20					351
24.	620.2	Contract Svc, Engineering	527	P			351	176			2,282
25.	630.1	Contract Svc, Accounting	2,333	N	2,282	51					878
26.	630.2	Contract Svc, Legal	1,000	N	878	22					304
27.	630.3	K Svc, Repair & M'tn'ce	1,008	1/2P,1/2C			336	168	168	336	200
28.	630.4	K Svc, Water Quality	300	P			200	100			2,535
29.	630.5	K Svc, R. Dansie	6,084	1/4P,3/4C			1,014	507	1,521	3,042	3,454
30.	630.6	Rental, Bldg., Real Estate	4,200	1/2H,1/2P	2,054	46	1,407	700			2,500
31.	640.1	Rental, Equipment	6,000	1/4P,3/4C			1,000	500	1,500	3,000	333
32.	640.2	Transportation Expense	800	1/4P,3/4C			133	67	200	400	1,981
33.	650.0	Insurance Expense	2,942	P			1,981	981			138
34.	655.0	Regulatory Expense	138	U	138						0
35.	655.0	Bad Debt Expense	0								382
36.	670.0	Misc. Expense, Telephone	388	N	382	6					600
37.	675.2	Misc. Exp., Director Fees	600	U	600						150
38.	675.1	Misc. Expense, Other	150	U	150						100
39.	675.3	Misc. expense, Collections	100	U	100						1,080
40.	675.4	Depreciation Expense	1,820	P			1,080	540			0
41.	403.0	Amortization Expense, Tank Repa	0								433
42.	404.0	Taxes Other Than Income Taxes	650	P			433	217			
43.	408.0	TOTAL OPERATING EXPENSE	348,877		17,494	351	9,909	4,950	4,389	8,778	531,799
44.		OTHER INCOME & DEDUCTIONS									0
		Misc. Non-operating Expense	0		0	0	0	0	0	0	0
		Interest Expense	0		0	0	0	0	0	0	
45.	426.0	TOTAL EXPENSE	348,877		17,494	351	9,909	4,950	4,389	8,778	531,799
	427.0	Total Taxable Income	2902								
		INCOME TAXES									
		Utah Franchis Tax	130	P			87	43			87
	409.1	Federal Taxable Income	2472								371
		Federal Income Tax	371	U	371						1,401
		Return	2,101	P			1,401	700			
		TOTALS	347,978		17,865	5351	11,397	5,693	4,389	8,778	533,681
		TOTAL REVENUE REQUIREMENT									

* CLASSIFICATION CODES:

U: [U]tility-specific costs (none allocated to Dansie Trust).
N: Costs which vary according to the [N]umber of customers.
C: Cost assoc'ed with day-to-day [C]ommodity (water) produc'n, & allocated in proportion to usage.
P: Costs associated with [P]lant access, with "sub-assignment" allocated in proportion to usage.
1/2P,1/2C: Half the costs are class'ed as Plant, half as Commod.

1. TELEMETRY & CLORINATION SYS. INSTAL'D BY HOM'NERS INST'D OF FOOTHILLS.
2. DEPREC'N EXPENSE (LINE 41), TAXES (LINE 43), & RETURN REMAIN THE SAME AS IN THE APRIL 9TH ORDER.
3. LINE 17 AND LINE 18 ARE REDUCED TO REFLECT USAGE OF HOMEOWNER'S WELL.
4. LINE 30 AND LINE 33 IS RED'D TO REFLECT RED'D O&M IF TELEMETRY SYSTEM IS INSTALLED.
5. 46 CUSTOMERS (INSTEAD OF 52 ARE USED UPON WHICH TO BASE RATES.

APPENDIX C
FOOTHILLS WATER COMPANY
CALCULATION OF RATES

DOCKET NO. 91-2010-01

TOTAL REVENUE REQUIREMENT	$33,651
LESS ANNUAL STANDBY FEES($9 PER LOT & 79 CUST)	($8,532)
NET TO BE MET BY CONNECTED CUSTOMERS	$25,119
LESS USAGE > 5 KGAL, 5,264 KGAL @ $1.40/KGAL	($7,370)
NET TO COMPRISE BASIC DEMAND CHARGE	$17,750
DIVIDED BY 12 MONTHS	$1,479
DIVIDED BY 45 USERS FOR INDIVIDUAL BASE RATES	$32.87

AUTHORIZED PERMANENT RATES	
STANDBY FEES PER MONTH PER LOT	$9
DEMAND CHARGE INCLUDING 5,000 GALS/MONTH	$32.87
OVERAGE CHARGE PER 1,000 GALS	$1.40
CONNECTION FEE PER LOT	$750
TURN ON AND RECONNECT FEES	$200

APPENDIX D
FOOTHILLS WATER COMPANY
CALCULATION OF INTERIM RATES

DOCKET NO. 91-2010-01

PROJECTED INTERIM EXPENSES	Comm'n Rehearing Order		Customer Costs(N) UTIL'(U) 45/46 X	Customer Costs(N) DAN'TRU 1/46 X	Plant Costs(P) UTILITY 0	Plant Costs(P) DAN'TRU 0	Commodity Costs(C) UTILITY 1/3 X	Commodity Costs(C) DAN' TRUS 2/3 X	TOTAL	
Officers Salary, A. Danse	0								8,217	8400
Payroll Taxes & Insurance	0								1,042	1065
Administration and Accntg	8400	N	8,217	183					7,200	7200
Payroll taxes and insurance	1065	N	1,042	23					0	0
Purchased H2O, Dansie Lease	7200	U	7,200						2,281	6782
Purchased Power							2,281	4,521	0	0
Purch Power, Well #1	6,782	C							873	888
Purch Power, Well #2	0								200	600
Purch Power, Booster Pump	888	N	873	15			200	400	3,000	9,000
Chemicals	600	C			2,000	1,000	1,000	2,000	880	900
Maint & Supply, H2O Sys	9,000	1/2P,1/2C							351	327
Maint & Supply, Office	900	N	880	20	351	178			2,282	2233
Contract Svc, Engineering	527	P							978	1000
Contract Svc, Accounting	2,333	N	2,282	51					594	1008
Contract Svc, Legal	1,000	N	978	22					200	300
K Svc, Repair & M'ten'ce	1,008	1/2P,1/2C			338	168	188	338	5,070	12188
K Svc, Water Quality	300	P			200	100			3,454	4200
K Svc, R. Danse	12,188	1/4P,3/4C			2,028	1,014	3,042	6,084	2,566	6000
Rental, Bldg., Real Estate	4,200	1/2N,1/2P	2,054	48	1,400	700			560	1200
Rental, Equipment	6,000	1/4P,3/4C			1,000	500	1,500	3,000	1,981	2942
Transportation Expense	1200	1/4P,3/4C			200	100	300	600	138	138
Insurance Expense	2,942	P			1,961	981			0	0
Regulatory Expense	138	U	138						352	360
Bad Debt Expense	0								800	600
Misc. Expense, Telephone	360	N	352	8					150	150
Misc. Exp., Director Fees	600	U	600						100	100
Misc. Expense, Other	150	U	150						1,080	1620
Misc. expense, Collections	100	U	100						0	0
Depreciation Expense	1,620	P			1,080	540			433	650
Amortization Expense, Tank Repair	0									
Taxes Other Than Income Taxes	650	P			433	217				
TOTAL OPERATING EXPENSE	366,931		24,888	388	10,990	5,495	8,471	16,941	$44,128	$66,931
OTHER INCOME & DEDUCTIONS										
Misc. Non-operating Expense										
Interest Expense										
TOTAL EXPENSE	366,931		24,888	388	10,990	5,495	8,471	16,941	$44,128	$66,931
Total Taxable Income	2802									
INCOME TAXES										
Utah Franchise Tax	$130	F			87	43			87	$130
Federal Taxable Income	$2,472								371	$371
Federal Income Tax	$371	U	371							
TOTAL TAX	$501								1,401	$2,101
OPERATING INCOME/(LOSS)	$2,101	P			1,401	700			$46,987	$69,333
TOTAL REVENUE REQUIREMENT	$69,333		25,039	388	12,477	6,238	8,471	16,941		

TOTAL REVENUE REQUIREMENT	$46,987
LESS ANNUAL STANDBY FEES(39 PER LOT & 79 CUST)	($9,532)
NET TO BE MET BY CONNECTED CUSTOMERS	$37,455
LESS USAGE > 9 KGAL 5,284 KGAL @ $2.40/KGAL	($12,634)
NET TO COMPRISE BASIC DEMAND CHARGE	$24,821
DIVIDED BY 12 MONTHS	$2,068
DIVIDED BY 46 USERS FOR INDIVIDUAL BASE RATES	$44.97

AUTHORIZED INTERIM RATES	
STANDBY FEES PER MONTH PER LOT	$9
DEMAND CHARGE INCLUDING 9,000 GALS/M	$43.97
OVERAGE CHARGE PER 1,000 GALS	$2.40
CONNECTION FEE PER LOT	$750
TURN ON AND RECONNECT FEES	$200

Exhibit 8

Douglas J. Parry, #2531
Dale F. Gardiner, #1147
PARRY ANDERSON & GARDINER
60 East South Temple, Suite 1200
Salt Lake City, Utah 84111
Telephone: (801) 521-3434
Fax: (801) 521-3484

Attorneys for Plaintiff/Counterclaim Defendants

IN THE THIRD JUDICIAL COURT, IN AND FOR SALT LAKE COUNTY
WEST JORDAN DEPARTMENT, STATE OF UTAH

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a Utah Corporation, Plaintiff, v. BAGLEY & COMPANY, et al., Defendants.	FINAL JUDGMENT Case No. 020107452 (Previous Case No. 850901464) Honorable PAT B. BRIAN
FOOTHILLS WATER COMPANY, a Utah Corporation, Counter-claimant, v. HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a Utah Corporation, Counter-defendants.	

The above-entitled matter came before the Court, the Honorable Pat B. Brian presiding, for trial on January 24-27, and February 1-2, and 16, 2005. Hi-Country Estates Homeowners Association (the "Association"), appeared through counsel, Douglas J. Parry and Dale F. Gardiner

001764

EXHIBIT
8

of PARRY ANDERSON & GARDINER. The Dansie Family Trust, whose beneficiaries are J. Rodney Dansie, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor, and Bonnie R. Padkin (collectively, the "Dansies") appeared through counsel, Michael M. Later of ROOKER, LATER & RAWLINGS. Foothills Water Company and J. Rodney Dansie, individually, appeared through counsel, Val Antczak of PARSONS BEHLE & LATIMER.

The Dansies, Foothills Water Company, and J. Rodney Dansie, individually, filed an *Amended Counterclaim of J. Rodney Dansie, the Dansie Family Trust, the Dansie Family Group and Foothills Water Company* (the "Counterclaim"). The parties to the Counterclaim were referred to at trial, and are sometimes referred to collectively herein, as the "Plaintiffs," as the context may require.

At trial, the parties stipulated, and the Court certified, that the only issues remaining for trial were:

1. Is the Well Lease void as against public policy?
2. Did the Dansies agree to pay the cost of chlorination, pumping, testing and transportation "costs" (pro rata, actual or incremental) of transporting their water through the Homeowners' Water System?
3. If the Dansies did agree, what are the "costs" associated with transporting the water?
4. If the Dansies agreed to pay the "costs" of transporting the water, what "damages" did the Dansies sustain because the Homeowners refused/failed to transport water?

See Issues Certified For Trial, filed February 1, 2005.

The Court enquired of the parties on numerous occasions whether there were any remaining factual issues for trial, it being the Court's intention to resolve the entire matter at this trial. The parties represented to the Court that the foregoing issues were the *only issues* remaining for trial.

Upon conclusion of the trial, the Court took the matter under advisement and ordered the parties to simultaneously file blind post-trial memoranda. The Association and the Dansies subsequently filed their post-trial memoranda on March 25, 2005. No post-trial memorandum was submitted by J. Rodney Dansie, individually, or by Foothills Water Company.

After considering the testimony and exhibits presented at trial, the binding case history, the memoranda filed by the Association and the Dansies, and the applicable law, the Court issued its Memorandum Decision, Findings of Fact and Conclusions of Law on May 31, 2005. Based upon the Court's May 31, 2005, Decision, the Court now enters the following Judgment and Order.

JUDGMENT AND ORDER

1. The Well Lease is not void as against public policy. Specifically, the Well Lease is not void based on Utah Code Ann. §§ 54-3-8(1) and 54-3-1, the PSC's 1986 Order, or the unconscionability doctrine. The Well Lease is a valid and binding encumbrance on the Association's Water System. *See Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023, (Utah 1995); *see also Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 928 P.2d 1047 (Utah Ct. App. 1996); May 17, 2001 *Memorandum Decision.*

2. The PSC has the power to construe contracts affecting rate-making. *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023 (Utah 1995). The 1986 PSC

Order prohibits the Well Lease from affecting the rates paid by the customers, *i.e.*, the Association members. *Id.* at 1023.

3. Under the Well Lease, the Dansies are entitled to receive 12 million gallons of water per year, or such larger amount as the excess capacity of the Association's Water System will permit, only upon payment of their pro rata share of the Association's costs for power, chlorination, and water testing. Furthermore, all water transported outside of Hi-Country Estates is subject to a "fair use" transportation fee. *See May 17, 2001 Memorandum Decision*, p. 5. *See also October 31, 1990 Order* at 2. Further, under the Well Lease, the Dansies are provided a right of first refusal to purchase the Association's Water System and the right to receive 55 additional water connections from the Association, but only if the Dansies pay the Association for those connections at the Association's usual charge for each such connection.

4. The Association offered on several occasions to supply water to the Dansies if the Dansies would pay the same rate as other customers. The Dansies refused to do so. *See November 5, 2001 Memorandum Decision and Order*, p. 2.

5. In March 1994, the Association was forced to discontinue supplying water to the Dansies in order to comply with the 1986 PSC Order. *See November 5, 2001 Memorandum Decision and Order*, p. 2. Any damages suffered by the Dansies in not receiving the water they are entitled to under the Well Lease are not attributable to the Association. *Id.* p. 5.

6. The Dansies are entitled to receive water from Dansie Well No. 1 through the Association's Water System in accordance with the Well Lease only upon payment of the *pro rata* costs of transporting the water through the Association's Water System. *See Memorandum Decision*

Re: Hi-Country Estates Motion for Partial Summary Judgment Re: Damages for Costs of Transporting Water and Reimbursement for Water Lines, dated May 20, 2003.

7. The Dansies did not agree at any time to pay the costs of transporting water from Dansie Well No. 1 through the Association's Water System. Accordingly, the Association did not breach the Well Lease by disconnecting Dansie Well No. 1 from the Association's Water System.

8. The appropriate measure of costs for transportation of water from Dansie Well No. 1 through the Association's Water System is a *pro rata* share of the Association's costs for transporting the water.

9. *Pro rata* transportation costs are calculated by taking the Association's costs of operating the Association's entire Water System, subtracting the costs incurred by the Association to produce and treat the water from the Association's well, and dividing that remaining amount by the number of gallons transported through the Association's Water System.

10. Based on this methodology, a reasonable *pro rata* transportation fee as of the time of trial is $3.19 per thousand gallons of water.

11. The Dansies have refused to pay any transportation fee for transporting water from Dansie Well No. 1 through the Association's Water System.

12. The Dansies failed to prove any damages proximately caused by the separation of the two water systems. The Dansies further failed to mitigate any other alleged damages.

13. Accordingly, the Dansies have not sustained any damages attributable to the Association as a result of the Association's separation of the two water systems.

14. In its *Memorandum Decision* dated July 26, 2000, the Court reaffirmed its award of $15,080.18 in favor of Foothills Water Company for reimbursement of taxes paid by Foothills Water Company and further awarded Foothills Water Company pre-judgment interest in the sum of $20,986.58 on that award.

Based upon the foregoing, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The First Cause of Action of the Counterclaim, "Breach of Covenant Running with the Property to Provide Reasonable Amounts of Water for Dansie Family Members (Specific Performance)" is hereby DISMISSED, no cause of action. The Dansies are entitled to receive water from the Association's Water System only upon payment of the Dansies' *pro rata* share of the Association's costs of power, chlorination, water testing and transportation.

2. The Second Cause of Action of the Counterclaim, "Breach of Covenant Running with the Property to Provide Reasonable Amounts of Water for Dansie Family Members (Damages)" is hereby DISMISSED, no cause of action.

3. The Third Cause of Action of the Counterclaim, "Violation of Easement to Allow Water to be Transported Through the Water System From the Dansie Wells (Specific Performance)" is hereby DISMISSED, no cause of action. The Dansies are entitled to receive water from Dansie Well No. 1 and/or other Dansie wells through the Association's Water System only upon payment of the *pro rata* costs of transporting the Dansies' water through the Association's Water System, as determined by the operator of the Association's Water System (currently the Jordan Valley Water Conservancy District), using the methodology set forth above. The Dansies may connect lines from

Dansie wells to the Association's Water System only if those wells have a valid certification of acceptable water quality for each well from the State of Utah, Department of Environmental Quality, Division of Drinking Water. All water testing, monitoring, metering and billing shall be administered by the operator of the Association's Water System, currently the Jordan Valley Water Conservancy District. The Dansies are responsible for payment of all fees and costs associated with the certification and maintenance of acceptable water quality of the Dansie wells, including but not limited to Dansie Well No. 1. Finally, the Dansies must pay any costs incurred to reconnect the Dansie water system to the Association's Water System so that the Dansies' service will not be subsidized by the existing customers of the Association's Water System.

4. The Fourth Cause of Action of the Counterclaim, "Award of Attorneys' Fees" is hereby DISMISSED. Plaintiffs are not entitled to any attorneys' fees.

5. All of Plaintiffs' claims are hereby DISMISSED, with prejudice and on the merits.

6. Judgment in the sum of $15,080.18 is entered in favor of Foothills Water Company for reimbursement of taxes paid by Foothills Water Company, together with prejudgment interest in the sum of $20,986.58 as of July 26, 2000, together with post-judgment interest accruing at the judgment rate.

DATED this 5 day of January, 2005.

BY THE COURT

PAT BRIAN
District Court Judge

STATE OF UTAH 3RD DISTRICT COURT WEST JORDAN

District Court Judge

Approved as to Form:

PARRY ANDERSON & GARDINER

By: _____
Douglas J. Parry
Attorneys for Hi-Country Estates Homeowners Association

MICHAEL M. LATER

_____
Attorney for Dansie Family Trust, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor and Bonnie R. Parkin

PARSONS BEHLE & LATIMER

By: _____
Angie Nelson
Attorneys for Foothills Water Company and J. Rodney Dansie, Individually

Approved as to Form:

PARRY ANDERSON & GARDINER

By: _____
Douglas J. Parry
Attorneys for Hi-Country Estates Homeowners Association

MICHAEL M. LATER

_____
Attorney for Dansie Family Trust, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor and Bonnie R. Parkin

PARSONS BEHLE & LATIMER

By: _____
Angie Nelson
Attorneys for Foothills Water Company and J. Rodney Dansie, Individually

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December 2005, I served the foregoing FINAL JUDGMENT by transmitting a true and correct copy thereof via e-mail transmission to the following:

Angie Nelson
PARSONS BEHLE & LATIMER
ANelson@parsonsbehle.com

Michael M. Later
michaellater@yahoo.com

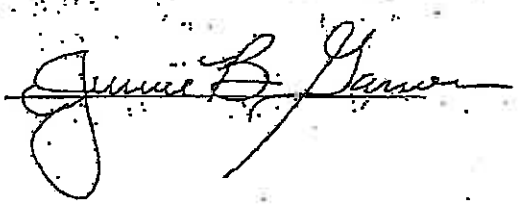

Exhibit 9

State of Utah
GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

February 8, 2011

Bradley Barlocker
35 Shaggy Mountain Drive
Herriman, Utah 84065

Dear Mr. Barlocker:

Subject: Hi Country Estates Phase I Water Company Correspondence

The purpose of this letter is to clarify correspondence between Randy Crane, former President of the Hi Country Estates Phase I Water Company (Hi Country) and the Division of Drinking Water (DDW). For your reference I have attached both letters: the first letter, dated July 28, 2008 (the July letter), from Randy Crane to DDW and the second letter, dated August 20, 2008 (the August letter), which is my response to the first letter.

This letter is also being written at the request of Rodney Dansie, of the Dansie Water Company. This letter will only address the DDW requirements as they relate to the responsibilities of Hi Country to comply with DDW's Rules. This letter will not address any issues regarding contract disputes between Hi Country and Rodney Dansie as such issues are appropriately decided in courts of law.

In the July letter, Mr. Crane requested of Bob Hart, a staff engineer within the DDW, that he report on DDW's requirements for some specific connections including the location and pipe size of those connections (please see the July letter for the detailed request). In a phone conversation on February 1, 2011, involving Rodney Dansie and me, Mr. Dansie asked that I comment on connections for lots 51 and 43 within Hi Country's distribution system. At the time of our phone conversation I assumed that Mr. Dansie was talking about a typical ¾ inch residential connection. However, my assumption does not agree with the connection sizing mentioned in the July letter. Consequently, I will attempt to address both connection sizes in this letter.

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If each of the connections for lots 51 and 43 consist of a single ¾ inch residential connection, no plan approval by DDW is required. In the July letter, Mr. Crane represents that two 6-inch connections are proposed for lot 51. Connections of this size could significantly affect the water system's ability to provide adequate flow and pressure to all its customers. Consequently, the DDW will require plans be submitted to the Division for any connection involving pipe sizes above 1-inch or multiple connections to a single lot.

Regarding plan submission, review and approval, a new rule has been promulgated in March of 2010 known as the Hydraulic Modeling Rule. This rule requires that a hydraulic model be performed on the existing system and the proposed expansion. The engineer preparing the plans needs to take into account, in the expansion design, any deficiencies noted in the model results and certify that the system expansion design will comply with DDW's quantity and pressure requirements. It is my understanding that a graduate level engineering student group will be preparing a base hydraulic model of your system and their effort should provide valuable insights as you proceed with discussions with Mr. Dansie.

If you have any questions concerning this correspondence, please feel free to call or write.

Sincerely,

Kenneth H. Bousfield, P.E.
Director

KHB

cc: Royal Delegee, Env. Director, Salt Lake Valley Health Dept., 788 E. Woodoak Lane, #104, Murray, UT 84107
J. Craig Smith, Smith/Hartvigsen PLLC, Walker Center, 175 S. Main St., #300, Salt Lake City, UT 84111
Rodney Dansie, 7198 West 13090 South, Herriman, UT 84065
Bob Hart, Division of Drinking Water

HiCountry Estates Phase I Water Company
124 Hi Country Road
Herriman, Utah 84096

RECEIVED
JUL 3 1 2008
Drinking Water

28 July 2008

Mr. Bob Hart
Engineering Section
Utah Division of Drinking Water
PO Box 144830
Salt Lake City, Utah 84114-4830

Dear Mr. Hart:

The Appellate Court has upheld the District Court finding that the Well Lease Agreement between Rod Dansie/Dansie Water/Foothill Water Company. (DWC) and Hi-Country Estates Phase I Water Co. (HCI) is a valid contract; while both parties are currently appealing the various findings to the Utah Supreme Court, HCI, in an effort to be proactive, is in the process of establishing the requirements that will be applicable in the event that the HCI and DWC are required to be connected.

HCI current serves one commercial/government customer – the BLM Wild Horse Center, and eighty-five (85) residential customers – with a potential of one hundred and twenty-five (125) residential customers. HCI's primary water source is one well that produces approximately 100 gpm and an emergency second source that can also supply approximately 100 gpm. Due to the system design, only one source can be energized at one time. The system has three storage tanks in service; the upper two tanks have a capacity of 50,000 gallons each. They are located west of Hi Country Estates lot 81 and serve approximately 60 customers including the BLM Wild Horse Center; the lower tank is a 300,000 gallon tank located between Hi Country Estates lots 66 and 67. This tank supplies water to the remaining customers and to the pump station that supplies water to the upper tanks. The HCI system also supplies water for fire protection. The HCI well delivers 90% to 100% of its capacity during the summer months. The attached map can be used to locate the identified connection locations. Additional definition will be supplied as required.

It is unknown to HCI how many customers DWC currently serves; however, under the current interpretation of the Well Lease Agreement, HCI is required to provide the following:

- 5 residential connections for the Dansie family use
- 50 residential connections for the DWC use
- 12,000,000 gallons of water per year in perpetuity

DWC has requested the following connections to be made to support the above requirements:

- Two 6" connections located at Hi Country Estates Phase I lot 51
- One 12" connection to be located at Hi Country Estates Phase I lot 1
- One 10" connection to be located at Hi Country Estates Phase I lot 9
- One 8" connection to be located at Hi Country Estates Phase I lot 107.

These connections existed prior to Hi Country Estates Phase I assuming control of the water system in 1994; they were severed by order of the District Court at that time.

It is assumed that DWC plans on using the above connections in the following ways:

- The two 6" connections located at Hi Country Estates Phase lot 51 are for potential connections to the two existing wells located at that location, though DWC has repeatedly stated that these connections are for surface irrigation only as he, Rod Dansie, spokesman for the Dansie Family, has an orchard located here.
- The one 12" connection located at Hi Country Estates Phase I lot 1 is for water supply to the Dansie properties located outside of Hi Country Estates Phase I boundaries that they are currently trying to develop.
- One 10" connection located in Hi Country Estates Phase I lot 9 would provide a second connection to the pipe line to which the 12" connections would be made.
- The one 12" connection located in Hi Country Estates Phase I lot 1 and one 10" connection located at Hi Country Estates Phase I lot 9 could also be used to transport water to the HCI's 300,000 tank from Dansie well number 1 located north of Hi Country Estates Phase I lot 9.
- The 8" connection located at Hi Country Estates Phase I lot 107 would provide service to Dansie owned undeveloped property located southwest of Hi Country Estates Phase I lot 107.

If the above connections are made:

- HCI needs (by order of the Third District Court) to ensure that the current customer base is not impacted and/or put at risk.
- In the event co-mingling water from any one of the Dansie's wells with HCI water that the water being supplied by Dansies must meet the minimum requirements for culinary use.
- That any connection to the HCI system must meet all state regulatory requirements.

In order to mitigate the above concerns, HCI is requesting a definitive set of requirements to be established for the connection of the two water systems and the potential co-mingling of water supply by the various wells.

Sincerely,

Hi Country Estates Phase I Water Company

Randy L. Crane, President

State of Utah
JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Department of
Environmental Quality

Richard W. Sprott
Executive Director

DIVISION OF DRINKING WATER
Kenneth H. Bousfield, P.E.
Director

Drinking Water Board
Amie Erickson, Ed.D., *Chair*
Myron Bateman, *Vice-Chair*
Ken Bassett
Daniel Fleming
Jay Franson, P.E.
Helen Graber, Ph.D.
Paul Hansen, P.E.
Penn Rue
Richard W. Sprott
David K. Stevens, Ph.D.
Ron Thompson
Kenneth H. Bousfield, P.E.,
Executive Secretary

August 20, 2008

Randy L. Crane, President
Hi-Country Estates Phase I Water Company
124 Hi Country Road
Herriman, Utah 84096

Dear Mr. Crane:

Subject: Process for Additional Connections to Water System - System #18147

On July 31, 2008, the Division of Drinking Water (the Division) received your letter regarding the on-going litigation between Hi-Country Estates Phase I Water Company (HCI, Water System #18147) and Dansie Water Company (DWC, Water System #18009). The letter indicates that HCI may be required to provide connections to property owned by the Dansie family, under a well lease agreement that was entered into in 1977. Under the well lease agreement, a Dansie well was to supply water to a predecessor of HCI. You requested information concerning the requirements that would be made by the Division of Drinking Water for the connection of the two water systems and the potential co-mingling of water supply by the various wells.

First, under *R309-500* "Facility Design and Operation: Plan Review, Operation and Maintenance Requirements" of *Utah's Administrative Rules for Public Drinking Water Systems*, your water system would be required to file with the Division a project notification form, along with plans and specification, for the connections. The plans and specifications submitted should be final and complete enough for the actual construction of the proposed project. The plans and specifications must be stamped and signed by a registered professional engineer licensed to practice in the State of Utah. The Division will have one of its engineers review the plans and specifications for compliance with state drinking water rules, and if acceptable, the Division would issue a plan approval letter for the proposed project. No actual construction of the project should take place before the plan approval letter has been received by the water system.

Second, under *R309-510*, "Minimum Sizing Requirements," during the plan review, the Division will do a physical capacity assessment of the water infrastructure to determine that existing water sources, storage tanks, distribution system, and other equipment are adequate to support the proposed project. As part of this process, the potential water demand would need to be determined for each water line extension. The number of residential connections, amount of outside home watering, irrigation, and other water uses, which would be allowed for each water

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line extension, would be required to be submitted to the Division. The Division would probably request that the project engineer substantiate with calculations, or a computer model, that the proposed waterline sizes are adequate to provide the necessary pressures for each water line extension, per *R309-105-9*, "Minimum Pressure:"

- no less than 20 psi during fire flow and fire demand experienced during peak day demand;
- no less than 30 psi during peak instantaneous demand; and,
- no less than 40 psi during peak day demand;

The Division can not issue a plan approval letter for the project until it has been demonstrated that water source, storage, and distribution capacity are adequate to supply sufficient water and pressure to the present customers of the water system, and any new customers that line extensions would serve.

Finally, under *R309-515*, "Source Development," any groundwater well, spring, or other water source that supplies water to a public drinking water system, must be a source approved by the Division. The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in *R309-200*, "Monitoring and Water Quality: Drinking Water Standards," are met. In addition, under *R309-600*, "Source Protection: Drinking Water Source Protection For Ground-Water Sources," all wells and springs, that supply water to a public drinking water system, must have a source protection plan, or a preliminary evaluation report, that the Division has concurred with. For reference, the "Well Approval Checklist," which outlines the necessary requirements to get approval for a new well, is attached to this letter. If you have any questions, please contact Bob Hart at (801) 536-0054 or Ying-Ying Macauley, Engineering Section Manager, at (801) 536-4188.

Sincerely,

DRINKING WATER BOARD

Kenneth H. Bousfield, P.E.
Executive Secretary

RH:
Enclosure – Well Approval Checklist
cc: Royal Delegge, Env. Director, Salt Lake County Health Dept., 788 E. Woodoak Lane, #104, Murray, UT 84107
Bob Hart, DDW
Utdc: WaterEngineer\Bhart\wp\Hi-Country Estates 1.doc

DIVISION OF DRINKING WATER
Checklist for New Public Drinking Water Wells

System Name:_____ System Number:_____

Well Name & Description:_____

1. Approval to Drill the Well

- ☐ Project Notification Form
- ☐ Preliminary Evaluation Report (PER) concurrence
- ☐ Well drilling specifications and plans
- ☐ Valid Start Card or authorization to drill letter from the Division of Water Rights

2. Approval to Equip the Well

- ☐ Project Notification Form
- ☐ Certification of well seal
- ☐ Well driller's report (well log)
- ☐ Aquifer drawdown test results (step drawdown test & constant-rate test) for well yield determination
- ☐ Chemical analyses of the well water
- ☐ Plans and specifications for equipping the well
  - ☐ Pump information (e.g., pump specifications, curve & operating point)
  - ☐ Well head discharge piping
  - ☐ Well house design

3. Operating Permit to Introduce the Well Water

- ☐ Documentation of valid water right(s)
- ☐ Design engineer's statement of conformance with approval conditions
- ☐ Design engineer's statement of conformance with the Rule for any deviation from the plan approval or plan review exemption
- ☐ Evidence of O&M manual delivery
- ☐ As-built drawings
- ☐ Recorded land use agreements or documentation that the requirements for coverage under the City/County source protection ordinance have been met
- ☐ Satisfactory bacteriological results

Exhibit 10

Kennecott Utah Copper Corporation
P.O. Box 6001
Magna, Utah 84044-6001
(801) 569-7128

Kelly L. Payne, P.G.
Principal Advisor, Closure & Remediation

Kennecott Utah Copper
A member of the RIO TINTO Group

March 20, 2007

Mr. Rod Dansie
Dansie Water Company
7198 W 13090 S
Herriman UT 84065

System #18009
"Kennecott letter"

RECEIVED
MAR 22 2007
DEQ
Environmental Response & Remediation

Dear Mr. Dansie:

Kennecott Utah Copper has provided bottled drinking water to customers of the Dansie Water Company since 1999. As you are no doubt aware, this water has been provided because the levels of sulfate and total dissolved solids in the Dansie Water Company well have slightly exceeded State of Utah water quality standards due to historic mining and irrigation activities.

Kennecott monitors the Dansie Water Company well on quarterly basis and is pleased to report that levels of sulfate and total dissolved solids have met state drinking water standards for more than one year. A summary of results from your well, which Kennecott has designated as W22, are attached.

Based on these results, **Kennecott is terminating water bottled water deliveries to customers of the Dansie Water Company effective March 22, 2007.**

Bottled water coolers that have been provided by Kennecott to most customers of Dansie Water Company may be retained by the customer or returned to Mt. Olympus Waters.

If you have any questions about this arrangement, I would be glad to discuss.

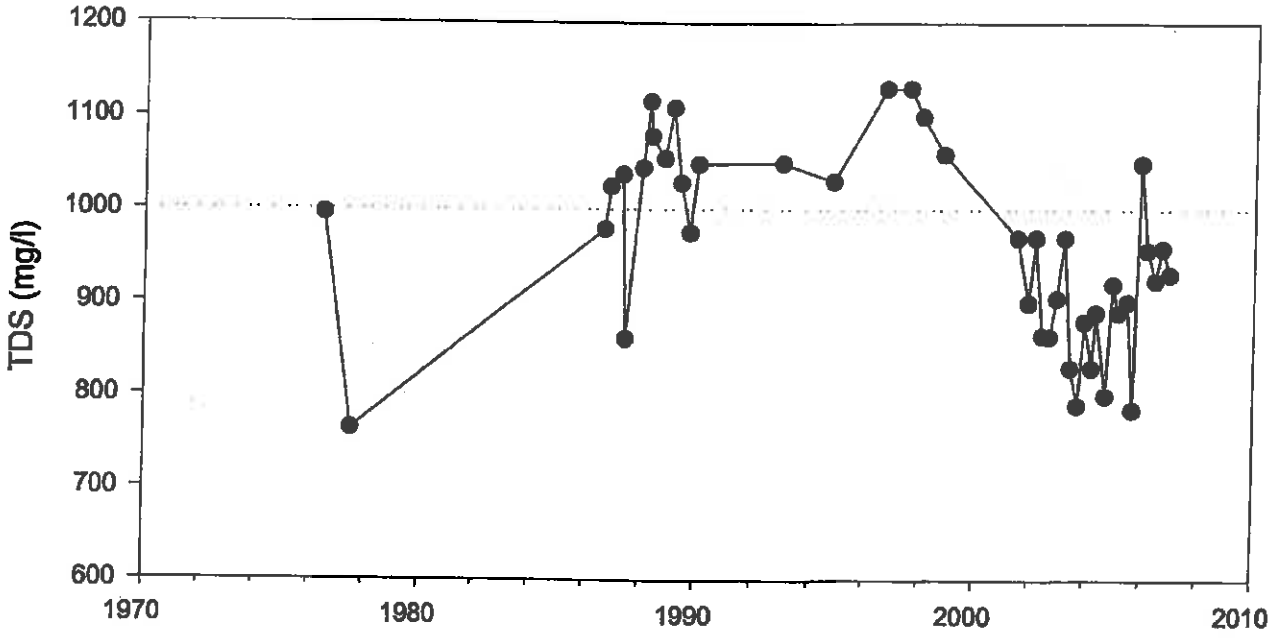
Sincerely,

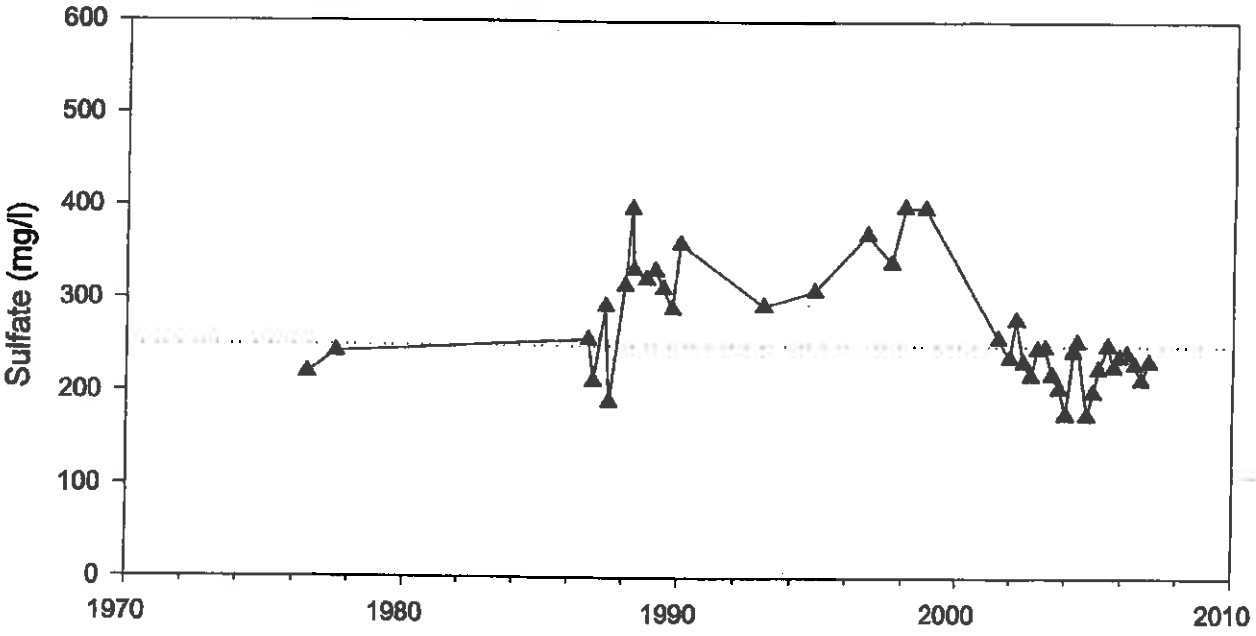
Kelly Payne

Kelly L. Payne, P.G.
Principal Advisor, Closure & Remediation

cc: Rebecca Thomas, United States Environmental Protection Agency
Doug Bacon, Utah Department of Environmental Quality

EXHIBIT
10


TDS (mg/l)
1200
1100
1000
900
800
700
600
1970
1980
1990
2000
2010


Sulfate (mg/l)
600
500
400
300
200
100
0
1970
1980
1990
2000
2010

WELL ID	DATE	mg/L TOT	mg/L TOT	mg/L DIS	ug/L TOT	ug/L DIS	ug/L TOT	mg/L as CaCO3 TOT	ug/L DIS	ug/L TOT	ug/L DIS	ug/L TOT	ug/L DIS	ug/L TOT	mg/L DIS	mg/L TOT	ug/L DIS	ug/L TOT	mg/L TOT	micro mho/c TOT	ug/L DIS	ug/L TOT	ug/L TOT	ug/L TOT	mg/L TOT	ug/L DIS	ug/L TOT	mg/L as CaCO3 TOT
W22	7/8/76	220	996	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	1130	NA	NA	NA	20	NA	NA	70	NA
W22	7/15/77	243	764	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
W22	8/6/81	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
W22	9/24/86	257	979	NA	NA	<100	400	NA	4	4	300	300	<5	<5	NA	160	11	11	181	1480	<10	<10	30	70	NA	100	1340	NA
W22	12/2/86	212	1025	<10	40	<100	<100	NA	4	10	300	300	<5	<5	NA	170	5	5	178	1600	<10	<10	30	40	NA	20	90	NA
W22	5/12/87	293	1038	<10	<10	<100	<100	NA	4	4	300	300	<5	<5	NA	160	6	5	174	1530	<10	<10	10	40	NA	40	150	NA
W22	8/30/87	190	861	<10	<10	<100	<100	NA	4	4	120	120	<5	<5	NA	133	4	4	174	1200	<10	<10	10	20	NA	10	70	NA
W22	1/22/88	315	1045	<10	<10	<100	<100	NA	NA	NA	90	100	<5	<5	NA	266	5	15	173	1550	<10	<10	530	750	NA	390	660	NA
W22	4/21/88	398	1116	<10	<10	<100	<100	NA	4	4	90	100	<5	<5	NA	172	5	5	165	1500	<10	<10	110	130	NA	10	370	NA
W22	5/17/88	332	1079	<10	<10	<100	<100	NA	4	4	160	480	<5	<5	NA	195	5	5	177	1580	<10	20	30	30	NA	50	90	NA
W22	11/4/88	322	1055	<10	<10	NA	NA	NA	4	4	80	70	<5	<5	NA	170	5	5	166	1600	<10	<10	10	20	NA	10	70	NA
W22	2/28/89	331	1108	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	206	217	NA	NA	174	1650	NA	NA	NA	NA	NA	NA	NA	NA
W22	6/14/89	312	1029	<10	<10	<100	<100	NA	6	4	30	40	<5	<5	NA	184	10	10	162	1420	<10	<10	10	40	NA	10	10	NA
W22	10/12/89	290	975	<10	<10	<100	<100	NA	4	14	20	20	<5	<5	NA	154	10	10	157	1500	<10	<10	10	10	NA	10	32	NA
W22	1/23/90	380	1049	<10	<10	<100	<100	NA	10	12	60	70	<5	<5	NA	197	5	5	189	1590	<10	<10	30	30	NA	10	70	NA
W22	1/7/93	293	1050	<1	<1	6	19	NA	4	4	79	78	NA	NA	NA	191	<1	<1	142	1600	<2	<2	20	520	<0.2	30	30	NA
W22	10/31/94	309	1031	<1	<1	NA	NA	278	<5	<5	80	80	<2	<2	NA	205	2	2	146	1730	<10	<10	20	100	<0.2	<300	<300	713
W22	9/19/96	370	1130	<1	<1	NA	NA	276	<5	<5	80	80	<2	<2	NA	212	2	2	148	1800	<10	<10	<20	<20	<0.2	<300	<300	782
W22	8/5/97	396	1130	<1	<1	NA	NA	290	<5	<5	55	71	<2	<2	NA	191	<1	<1	153	1450	<10	<10	<20	<20	<0.2	<300	<300	742
W22	1/22/98	399	1100	<1	<1	5	6	296	<5	<5	84	84	<2	<2	NA	220	<1	<1	148	1460	<10	<10	<20	<20	<0.2	<300	<300	NA
W22	7/13/01	258	970	<1	<1	NA	NA	288	<5	<5	50	52	NA	NA	NA	228	<1	<1	153	1447	<10	<10	<20	<20	<0.2	<300	<300	NA
W22	12/14/01	237	900	NA	NA	NA	NA	371	<5	NA	NA	NA	NA	NA	NA	183	<1	<1	150	1396	<10	<10	<20	<20	<0.2	<300	<300	NA
W22	3/8/02	278	970	NA	NA	NA	NA	280	<5	NA	NA	NA	NA	NA	NA	178	<1	NA	147	1319	NA	NA	<20	NA	NA	NA	NA	NA
W22	6/14/02	232	885	NA	NA	<15	NA	272	5	NA	NA	NA	NA	NA	NA	213	<1	NA	158	1479	NA	NA	<20	NA	NA	NA	NA	NA
W22	9/19/02	218	864	NA	NA	189	NA	257	<5	NA	NA	NA	NA	NA	NA	162	<1	NA	150	1181	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	12/20/02	247	905	NA	NA	<15	NA	286	<5	NA	NA	NA	NA	NA	NA	178	<1	NA	146	NA	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	3/28/03	248	970	NA	NA	17	NA	281	5	NA	NA	NA	NA	NA	NA	137	<1	NA	152	1267	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	6/27/03	219	830	NA	NA	67	NA	266	<5	NA	NA	NA	NA	NA	NA	189	<1	NA	153	1325	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	9/29/03	204	790	NA	NA	<15	NA	261	10	NA	NA	NA	NA	NA	NA	187	<1	NA	149	1168	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	12/24/03	176	880	NA	NA	<15	NA	264	8	NA	NA	NA	NA	NA	NA	158	<1	NA	149	1230	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	3/30/04	244	830	NA	NA	<15	NA	276	5	NA	NA	NA	NA	NA	NA	179	<1	NA	146	1284	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	5/21/04	264	890	NA	NA	37	NA	283	<5	NA	NA	NA	NA	NA	NA	184	<1	NA	148	1269	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	9/28/04	175	800	NA	NA	<15	<15	266	<5	NA	NA	NA	NA	NA	NA	195	<1	NA	146	1322	<10	NA	<20	NA	<0.2	<20	NA	NA
W22	12/21/04	200	920	NA	NA	<20	<20	275	<5	<5	NA	NA	NA	NA	NA	162	<1	<1	141	1186	<10	<10	<20	<20	<0.2	<20	<20	NA
W22	3/3/05	225	890	NA	NA	<20	25	276	<5	<5	NA	NA	NA	NA	NA	175	<1	<1	143	1246	<10	<10	<20	<20	0.3	<20	<20	NA
W22	6/29/05	260	901	NA	NA	NA	NA	301	<5	<5	NA	NA	NA	NA	NA	184	<1	<1	150	1310	<10	<10	<20	<20	<0.2	<20	552	NA
W22	9/15/05	227	785	NA	NA	NA	NA	272	<5	NA	NA	NA	NA	NA	NA	191	<1	<1	148	1390	NA	NA	<20	<20	NA	NA	NA	NA
W22	11/29/05	238	1050	NA	NA	NA	NA	284	<5	<5	NA	NA	NA	NA	NA	170	<1	NA	160	1267	NA	NA	<20	NA	NA	NA	NA	618
W22	3/3/06	242	957	NA	NA	<20	<20	286	<5	<5	NA	NA	NA	NA	NA	170	<1	<1	159	1341	NA	NA	<20	<20	NA	NA	NA	622
W22	6/20/06	230	924	<1	<1	<20	<20	293	<5	<5	NA	58	NA	NA	NA	179	<1	<1	156	1404	<10	<10	<20	<20	NA	<20	48	657
W22	9/16/06	213	959	NA	<1	<20	<20	279	<5	<5	NA	64	NA	NA	NA	182	<1	<1	160	1256	<10	<10	<20	<20	NA	<20	20	606
W22	12/28/06	233	931	NA	<1	<20	<20	286	<5	<5	NA	62	NA	NA	NA	187	<1	<1	159	1260	14	17	<20	<20	NA	<20	46	685

NA=Not Analyzed

mercury potassium magnesium manganese (Sec 50) sodium nickel nitrite (1) nitrate (10) lead (15) (sec 6.5-8.5) zinc (Sec 500)

WELL ID	DATE	mg/L	ug/L	mg/L	mg/L	mg/L	mg/L	ug/L	ug/L	mg/L	mg/L	ug/L	ug/L	mg/L	mg/L	ug/L	ug/L	Std. Unit	ug/L	ug/L	ug/L	ug/L	Degrees C	mg/L	ug/L	ug/L
		TOT	TOT	DIS	TOT	DIS	TOT	DIS	TOT	DIS	TOT	DIS	TOT	TOT	TOT	DIS	TOT	TOT	DIS	TOT	DIS	TOT	TOT	TOT	DIS	TOT
W22	7/6/76	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	7.6	NA	NA	NA	NA	NA	NA	NA	NA
W22	7/15/77	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
W22	8/6/81	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
W22	9/24/86	NA	<0.1	NA	6	52	52	20	80	NA	47	10	30	0.02	1.66	<10	<10	6.9	NA	NA	NA	NA	NA	NA	250	390
W22	12/2/86	NA	<0.1	NA	NA	NA	61	<10	<10	NA	48	30	40	0.02	1.45	<10	<10	7.2	NA	NA	NA	NA	14	NA	40	40
W22	5/12/87	135	NA	NA	4.6	NA	55	<10	<10	NA	49	10	30	NA	NA	<5	<5	7.2	NA	NA	NA	NA	20	NA	40	70
W22	6/30/87	240	NA	NA	5.1	NA	41	<10	<10	NA	56	20	20	NA	NA	4	12	7.3	NA	NA	NA	NA	18	NA	130	140
W22	1/22/88	255	<0.1	NA	4.93	NA	59.5	<10	<10	NA	56	10	20	0.02	2.6	9	134	7.16	NA	NA	NA	NA	19	NA	40	110
W22	4/21/88	300	<0.1	NA	5.3	NA	83	20	70	NA	83	10	40	0.01	2	5	7	7.07	NA	NA	NA	NA	16	NA	30	70
W22	5/17/88	310	<0.1	NA	5.2	NA	80	<10	<10	NA	49	10	10	0.02	2.6	<5	<5	7.1	NA	NA	NA	NA	18	NA	10	10
W22	11/4/88	290	<0.1	NA	5	NA	58	<10	<10	NA	47	20	30	0.02	1.85	<5	<5	7.23	NA	NA	NA	NA	17	NA	20	50
W22	2/28/89	262	NA	3.1	3	60	66	NA	NA	45	48	NA	NA	NA	NA	NA	NA	7.19	NA	NA	NA	NA	18	NA	NA	NA
W22	6/14/89	268	<0.1	NA	4.7	NA	54	<10	<10	NA	45	20	310	0.02	1.7	10	10	7.07	NA	NA	NA	NA	19	NA	20	60
W22	10/12/89	252	<0.1	NA	4.8	NA	49	<10	<10	NA	47	50	70	0.04	1.44	<5	8	7.35	NA	NA	NA	NA	18	NA	20	20
W22	1/23/90	265	<0.1	NA	4.7	NA	59	<10	20	NA	47	40	50	0.02	1.78	<5	5	7	NA	NA	NA	NA	15	NA	30	30
W22	1/7/93	280	<0.1	NA	5	NA	51	NA	NA	NA	49	8	9	0.04	1.7	NA	NA	7.1	NA	NA	NA	NA	12	NA	22	24
W22	10/31/94	270	<0.2	NA	5	NA	63	<10	<10	NA	56	30	30	0.05	NA	<5	<5	7.08	NA	NA	NA	NA	14	1	10	10
W22	9/19/96	NA	<0.2	NA	4.8	NA	64	<10	<10	NA	50	30	30	0.05	2.2	<5	<5	7.39	NA	NA	NA	NA	14.5	3	10	10
W22	8/5/97	NA	<0.2	NA	1.6	NA	55	<10	<10	NA	47	40	40	0.05	2	<5	<5	6.73	NA	NA	NA	NA	15	3	10	10
W22	1/22/98	NA	NA	NA	4.8	NA	62	<10	<10	NA	50	40	40	0.05	2.2	<5	<5	7.36	NA	NA	2	2	15.5	1.8	10	10
W22	10/29/98	NA	NA	NA	4.8	NA	63	<10	<10	NA	51	40	40	0.05	2.5	<5	<5	7	NA	NA	NA	NA	NA	3	10	10
W22	7/13/01	NA	<0.2	NA	4.6	NA	53	<10	20	NA	48	40	40	0.05	1.9	<5	<5	7.09	NA	NA	NA	NA	15	3	7	23
W22	12/14/01	NA	NA	NA	4.5	NA	55	NA	NA	NA	48	NA	NA	NA	NA	<5	NA	7.09	NA	NA	NA	NA	14	<3	<10	NA
W22	3/8/02	NA	NA	NA	5.4	NA	60	NA	NA	NA	56	NA	NA	NA	NA	<5	NA	7.06	NA	NA	NA	NA	16	<3	<10	NA
W22	6/14/02	NA	NA	NA	4.5	NA	52	<10	NA	NA	50	<40	NA	NA	NA	<5	NA	7.04	NA	NA	NA	NA	15	<3	10	NA
W22	9/19/02	NA	NA	NA	4.8	NA	53	31	NA	NA	51	<40	NA	NA	NA	<5	NA	NA	NA	NA	NA	NA	NA	<3	18	NA
W22	12/20/02	NA	NA	NA	5.3	NA	57	<10	NA	NA	55	<40	NA	NA	NA	<5	NA	7.28	NA	NA	NA	NA	13	<3	11	NA
W22	3/28/03	NA	NA	NA	5.2	NA	56	<10	NA	NA	51	<40	NA	NA	NA	<5	NA	7.18	2	NA	NA	NA	12	<3	34	NA
W22	6/27/03	NA	NA	NA	4.2	NA	45.7	<10	NA	NA	42	<40	NA	NA	NA	<5	NA	6.93	2	NA	NA	NA	13	<3	<10	NA
W22	9/29/03	NA	NA	NA	4.2	NA	45	<10	NA	NA	44	<40	NA	NA	NA	<5	NA	7.15	<2	NA	NA	NA	15	3	<10	NA
W22	12/24/03	NA	NA	NA	5	NA	52	<10	NA	NA	53	<40	NA	NA	NA	<5	NA	7.02	3	NA	NA	NA	13	<3	<10	NA
W22	3/30/04	NA	NA	NA	5.1	NA	54	<10	NA	NA	52	<40	NA	NA	NA	<5	NA	7.06	3	NA	NA	NA	14	<3	<10	NA
W22	5/21/04	NA	NA	NA	4.8	NA	55	<10	NA	NA	50	<40	NA	NA	NA	<5	NA	7.15	5	NA	NA	NA	15	<3	<10	NA
W22	9/28/04	NA	NA	NA	4	NA	42	<10	<10	NA	42	<40	<40	NA	NA	<5	<5	7	2	3	NA	NA	14	<3	<10	<10
W22	12/21/04	NA	NA	NA	4.7	NA	53	<10	<10	NA	53	<40	<40	NA	NA	<5	<5	7.05	2	2	NA	NA	12	<3	<10	<10
W22	3/3/05	NA	NA	NA	4.5	NA	50	<10	<10	NA	46	<40	<40	NA	NA	<5	<5	7.03	4	4	NA	NA	8	<3	26	53
W22	6/29/05	NA	NA	NA	4.3	NA	50	NA	NA	NA	48	NA	NA	NA	NA	<5	<5	7.11	2	3	NA	NA	15	<3	<10	27
W22	9/15/05	NA	NA	NA	4.3	NA	47	NA	NA	NA	44	NA	NA	NA	NA	<5	NA	6.87	<2	NA	NA	NA	15	<3	<10	NA
W22	11/29/05	NA	NA	NA	4.3	NA	48	NA	NA	NA	46	NA	NA	NA	NA	<5	<5	7.09	3	3	NA	NA	12	<3	29	45
W22	3/3/06	NA	NA	NA	4.5	NA	51	<10	<10	NA	48	<40	<40	NA	NA	<5	<5	7.17	<2	2	NA	NA	13	NA	20	27
W22	6/20/06	NA	NA	NA	4.3	NA	49	<10	<10	NA	47	<40	<40	NA	NA	<5	<5	6.84	2	2	NA	NA	14	<3	<10	<10
W22	9/15/06	NA	NA	NA	4.1	NA	49	<10	<10	NA	48	<40	<40	NA	NA	<5	<5	7.02	<2	<2	NA	NA	14	<3	<10	<10
W22	12/26/06	NA	NA	NA	4.8	NA	53	<10	<10	NA	50	<40	<40	NA	NA	<5	<5	7.17	2	2	NA	NA	20	<3	26	54

NA=Not Analyzed

Exhibit 11

Bob Hart - Dansie Water Company

System # 18009
File # 8778

From: Bob Hart
To: John Oakeson
Subject: Dansie Water Company
CC: Ken Bousfield; Patti Fauver; Ying-Ying Macauley

John,

Rod Dansie called last Thursday on the letter he received from the Division concerning the significant deficiency the Dansie Water Company has with inadequate storage. Ying-Ying and I called him back, and left a voice message. This morning, he called me back to get a better understanding. He explained that their system only has eleven connections with two storage tanks providing 75,000 gallons storage and a well that will produce 300 gpm. He felt they had gotten along for years with this setup and questioned the need to change at this point in time. He asked wether this system was grandfather in as is.

I explained to Rod that under the Groundwater Rule, systems were required to fix significant deficiencies. The issue with his system is that it does have fire hydrants, and must be able to provide water at 1000 gpm for two hours for fire suppression. Boyd Johnson from the Unified Fire Authority, the local fire authority, confirmed that they were requiring the system to provide fire flows and duration per the International Fire Code adopted by the State of Utah. Boyd had met with Rod previously to explain that the Dansie Water Company could not provide fire water for the duration required. Consequently, the County will not issued any building permits for the Dansie property until this is resolved.

I explained that the Division of Drinking Water has not grand fathered old system in regards to fire flow. He asked if his system could just live with the 40 IPS points. I explained that under the requirements of the Groundwater Rule, that the Division would be required to move forward with enforcement action if a system did not move forward to correct their significant deficiencies.

He indicated that he understood the issue and would pursue possible options to come into compliance. We talked about possible options such as enlarging their storage, having the City of Herriman providing water for fire suppression, and installing a backup connection from the City of Herriman. He asked if there was any financial assistance available. I told him he would need to talk to Ken Wilde to discuss possible funding options.

Bob

EXHIBIT
tabbies
11

Exhibit 12

Utah Department of Environmental Quality
Division of Drinking Water

Public Water System IPS Report

UTAH18009 DANSIE WATER COMPANY

Run Date: 07/19/2011 08:17 am

PWS ID: UTAH18009 **Name:** DANSIE WATER COMPANY

Legal Contact DANSIE WATER COMPANY
JESSE RODNEY DANSIE

Address: 7196 W 13080 S
HERRIMAN, UT 84065

Phone Number: 801-254-4364

City Served (Area):

County: SALT LAKE COUNTY

Rating: Approved
Rating Date: 12/18/1998
Activity Status: Active

-Mussard 7/19/2011

System Type: Community
Activity Status Cd: Active
Population: 50

Last Inv Update: 04/27/2010
Last Sanly Srv Dt: 07/07/2010
Surveyor: SHAWN GONZALES
Oper Period: 1/1 to 12/31

Gal/Day Gal/Min
Avg Daily Prod:
Total Dsgn Cap:
Total Emerg Cap:

-Mussard 7/20/2011

Total IPS Points: 92 **Rating Date:** 12/18/1998 **Rating:** Approved

Admin & Physical Facilities:	92
*** Quality & Monitoring Violations:**	0
Operator Certification:	0

all resolved except V033 Resolved as per Shawn Gonzales Survey & Red Iron Public Telkef to Rod 7/21/2011

* Total Admin & Physical Facilities demerit points may not agree with the detail section. The detail section shows all 'open' physical deficiencies; the Total Admin & Physical Facilities value adjusts for duplicate deficiencies

Physical Facility, Administrative, & Source Protection Deficiencies from Site Visits

Facility Code	Description	Activity Status	Severity	Date Determined	Point Not Effective	Point Effective
M001	CURRENT EMERGENCY RESPONSE PROGRAM		REC	11/13/2007		-10
M003	CCC-LACKS LOCAL AUTHORITY SYSTEM LACKS LOCAL AUTHORITY TO ENFORCE A CROSS CONNECTION CONTROL PROGRAM		MIN	12/6/2000		10
M006	CCC-LACKS WRITTEN RECORDS		MIN	7/7/2010		10
M007	CCC-LACKS ON-GOING ENFORCEMENT PLAN SYSTEM LACKS AN ON-GOING ENFORCEMENT ACTIVITY PLAN FOR CROSS CONNECTION CONTROL PROGRAM		MIN	12/6/2000		10
V004	STORAGE FACILITY INADEQUATE LADDERS OR RAILINGS THIS SAME RESERVOIR (RESERVOIR 01) NEEDS TO HAVE A PROTECTIVE RAILING INSTALLED		MIN	12/6/2000		2

Resolve as per Shawn Gonzales 2010 Survey

Resolve as per verification from Dansie

Resolve other issues Electronic

Resolve

Scanned: ☐
Date: _____
Person: _____
File Name: [illegible]

EXHIBIT 12

Utah Department of Environmental Quality
Division of Drinking Water

Public Water System IPS Report

UTAH18009 DANSIE WATER COMPANY

Run Date: 07/19/2011 08:17 am

Physical Facility, Administrative, & Source Protection Deficiencies from Site Visits

Facility Code	Description	Activity Status	Severity	Date Determined	Point Not Effective	Point Effective
V005	STORAGE FACILITY VENT NOT TURNED DOWN					
ST002	*CYLINDER TANK*	A	MIN	11/13/2007		2
V006	STORAGE FACILITY VENT NOT 24-36 IN. ABOVE SURFACE					
ST002	*CYLINDER TANK*	A	MIN	11/13/2007		2
V009	STORAGE FACILITY ACCESS LACKS PROPER GASKET					
	RESERVOIR 01 (VERTICAL) ACCESS COVERS NEEDS TO BE GASKETED		MIN	12/6/2000		3
V010	STORAGE FACILITY LACKS PROPER SHOEBOX ACCESS					
	RESERVOIR 01 (VERTICAL) ACCESS COVERS NEED TO BE CONVERTED TO SHOEBOX TYPE LID RATHER THAN THE BOLT DOWN COVER WITH ONE BOLT IN USE -YES ANSWER ON 07 SURVEY R WILLIAMS(SLVHD) SHOULD GET PICTURES- PTK		MIN	12/6/2000		3
V019	STORAGE FACILITY INTERIOR PEELING OR CRACKED					
	THE PAINT ON THE HORIZONTAL TANK IS PEELING AND THERE IS ONLY A PRIMER ON THE VERTICAL TANK		MIN	6/18/2003		0
V029	STORAGE FACILITY IS NOT SECURE					
	RESERVOIR 01 (VERTICAL) ACCESS COVERS NEEDS LOCK 07 SURVEY NOTES HATCHES BOLTED-PTK		SIG	12/6/2000		20
V033	SYSTEM LACKS 40% OF REQUIRED STORAGE CAPACITY					
	Exception Denied		SIG	7/7/2010		40

Total Admin & Physical Facility Deficiency: 92

Operator Certification Points

	Distribution	*Treatment*	
Level Required	SS		
Highest Certificate on Record	SS		
Points	0	0	*Total Points* 0

Utah Division of Drinking Water
IPS Deficiency Correction Notice

Fax# 801-536-4211 7/29/11

Water System Name DANSIE Water Co

Water System ID #UTAH 18009

Instructions

Please use this form to report the correction of sanitary survey deficiencies identified on your IPS report. List the individual facility ID (where applicable), deficiency code, how deficiency was corrected and the date of the correction below. You may attach a copy of your IPS report with the date of the correction noted on the report. Pictures of corrections or a brief description of the corrections are encouraged. Include the name of the facility and the correction date on any documentation you provide.

Facility ID / Description Code	How Deficiency Was Corrected	Date Corrected
M001	provide copy of emergency Response	5-1-10
M003	Water Has by Rams to S.L. County [illegible]	6-1-10
M006	Provide copy of written Result / cross connection ok	6-1-10
M007	Bylaws & Operator & Water-main [illegible]	6-1-10
V004	Storage Facility Netting + Rock in Place	6-1-10
V005	Vent was turned + [illegible] by S.L.Co.	6-1-10
V005	Storage vent was turned down	6-1-10
V006	storage tank vent 24 to 30 Inches	6-1-10
V009	Gasket on lid was Replaced Rubber Gasket	6-1-10
V010	Storage Facility has Shoe-Box lid	6-1-10
V019	[illegible] Exterior was cracking [illegible] Repair	6-1-08
V029	[illegible] locks & HAS Security Fence + [illegible]	6-1-1

I certify that the information submitted with this report is true and accurate.

J.R. DANSIE DANSIE Water Co [signature] 7.29.11

Print Name Signature Date

Corrections listed on attached IPS report: Supportive documentation attached: * See Last 3 yr. Inspection Report

DDW Approval [signature] 8/2/2011

* Data Base was Full of error & all were corrected on 07 - DDD Inspection with S.L.C. and [illegible] shown.

Page____of____

Scanned: ☐
Date:
Person:
File Name: [illegible]

Dansie water co #18009 - 7-29-11

Item V-033 storage capacity

I have dis cuss this item with yi yi Mullen Bob Hart & John Oaklson

I do not agree with you rules or the reason for your issue. However I will be discussing the issue with

(1) Michael Greenon - United Fire Authority Chief

(2) Bob Johnson U.F.A. - Enforcement Chief

(3) this water system is located between Herriman city & Hi-Country Estates water system & Both water companys have multiple hydrants with 2000 ft & some 500 feet that have storage that is in excess of the 120,000 gallon.

(4) Dansie water board of directors [illegible] will & look at a [illegible] potential solution & will communicate with Bob Hart & Bob Johnson regarding our findings -

If question please contact Dansie water co. contact person

J. Rodney Dansie @ 801-254-4330 or E-mail roddansie@msn.com

John Oakeson - Dansie Water Company Storage Deficiency (System #18009, File #08778)

From: Ying-Ying Macauley
To: Bob Hart; J.J. Trusselli; John Oakeson
Date: 7/21/2011 2:22 PM
Subject: Dansie Water Company Storage Deficiency (System #18009, File #08778)

John, J.J.,

Bob investigated the storage situation in Dansie Water Company. Here is the note I entered into CASPER today. Basically, Bob's assessment is the storage deficiency exists and the IPS points should stay. Would this e-mail suffice what you need?

"7/21/2011 I received a voice message from Rod Dansie (801-254-4364) today requesting re-evaluation of this system's storage capacity requirement and associated IPS points, and possible exception to rule. Bob Hart left a message with Rod today stating that this system's distribution system has fire hydrants and the existing 70,000-gallon storage does not meet the duration required by the fire authority (per Boyd Johnson of Unified Fire Authority) - 1000 gpm for 2 hours."

YY

Exhibit 13

Deseret News

Concerning the Cornerstone Project

By Boyd Dansie

Published: Tuesday, Jan. 18, 2011 12:00 a.m. MST

Six months ago, Kennecott Utah Copper announced its future mining plan Cornerstone Project. The plan would require changes in their mining operation to extend the life of the Bingham Canyon mine beyond 2028.

To implement this plan, Kennecott must update its environmental permits. These permits deal with air, land and water. Before issuing new future permits for the "Cornerstone Project," I would ask the Utah Department of Environmental Quality and the Department of Natural Resources Division of Oil, Gas and Mining to look at why the existing permits have not been able to control the toxic waste materials of lead and arsenic left behind in the mine dumps.

In the past, Combined Metals Reduction Company purchased by Kennecott and others, have mined the Butterfield Canyon drainage area, both underground and on the surface. This mining activity has created large mining dumps with toxic waste materials, including lead and arsenic, which have been left behind in the dumps. Through storms and normal winter activities, this waste material has entered the Butterfield Creek, left the canyon and has been deposited on the farmland and around homes in the drainage area.

These incidents have happened over the last 50 years. During the last 10 years, the people using the Butterfield Creek water have become aware of the toxic nature of the mine waste dumps. The mining company has cleaned up its land of mining waste, which was waste that was deposited from underground and surface mining. However, toxic waste from existing surface mining dumps continues to move down the canyon during many storms. The mining company has not cleaned the mining waste from the lower drainage areas or the flat neighboring lands.

I own part interest in my grandfather's farm with other family members. During my lifetime, there have been numerous storm events that have brought large amounts of mine waste materials down the canyon in Butterfield Creek. This material has settled out on the farm ground and around my house as the water went into the ground leaving yellow mine waste material that contains different level amounts of lead and arsenic with each storm.

I am writing to ask for help in controlling the new "Cornerstone Project" mining activity in the Butterfield Canyon drainage area. I have become aware of the health problems associated with mine waste materials, such as lead and arsenic. I have changed farming practices and tried to keep irrigation water away from my home during storm events.

The most recent depositing of mine waste happened in 2007. The amounts of materials in the water have been less since the canyon was cleaned up and waste ditches were constructed to stop this activity, but mine waste materials still continue to come down Butterfield Creek to lower lands during storms.

Our family has talked with many Kennecott representatives about purchasing land in the Butterfield Canyon drainage area, making land trades or about cleaning up mine waste material from farm and yard areas. The Kennecott representatives have come and gone. New representatives have appeared through time, small ponds areas have been cleaned on the farm by Kennecott, but we have not been able to convince Kennecott to enlarge its buffer zone around the Butterfield Canyon drainage area to prevent potential health problems.

Realizing that Kennecott has spent more than a reported half billion dollars over the past decade to reclaim its land that was impacted by historic mining, one would think a small cleanup project or a larger buffer zone should become part of its Cornerstone Project, helping to prevent potential land and health problems.

Boyd Dansie is a farmer in the Butterfield Canyon drainage area, adjacent to Kennecott Utah Copper.

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Exhibit 14

2005

State of Utah
JON M HUNTSMAN JR
Governor

GARY HERBERT
Lieutenant Governor

Department of
Environmental Quality

William J Sinclair
Acting Executive Director

DIVISION OF DRINKING WATER
Kenneth H Bousfield P E
Director

May 11, 2009

J Dansie
Dansie Water Company
7198 W 13090 S
Herriman, Utah 84065

Dear Mr Dansie

Subject Notice of Increased Radionuclide Monitoring

Our records indicate that the following source has a Gross Alpha result over the Maximum Contaminant Level (MCL) WS001, Dansie Well The MCL for Gross Alpha is 15pCi/L and the February 20, 2008 result for this source was 15 8pCi/L This result requires increased sampling of the entire Radionuclide group in accordance with Section R309-205-7(1)(c)(v) of the Rules As a result of this the sampling frequency for Radionuclides at your WS001, Dansie Well is now quarterly It will remain quarterly until at least four quarterly samples are reported and the running annual average of those results is less than the MCL (less than 15pCi/L)

When you take these four quarterly samples for the Radionuclide group you must request that the lab analyze for Gross Alpha Radium-226 Radium-228 and Uranium (as part of the initial sampling requirements for the Radionuclide group in section R309-205-7(1)(b) of the rules) In order to determine compliance with the Radionuclide group we need individual results for all four of those contaminants Please clearly identify with the laboratory that the Radionuclide samples for this requirement are for your WS001, Dansie Well

An updated monitoring schedule for your system has been enclosed We will expect you to become current with the increased sampling for Radionuclides by September 30 2009 If you have any questions, please contact Rachael Cassady at 801-536-4467 or rcassady@utah gov

Sincerely,

Patti Fauver

Patti Fauver
Rules Program Manager

RC
Enclosures
cc Salt Lake County Utah Public Health Department

DDW-2009-010484
Document Date 05/11/2009

EXHIBIT
14

150 North 1950 West Salt Lake City UT
Mailing Address P O Box 144830 Salt Lake City UT 84114 4830
Telephone (801) 536 4200 Fax (801 536 4211 T D D (801) 536 4414
www deq utah gov
Printed on 100% recycled paper

Utah Department of Environmental Quality
Division of Drinking Water

Monitoring Schedule

Run Date 5/7/2009

PWS ID UTAH18009 **Name** DANSIE WATER COMPANY

Legal Contact DANSIE WATER COMPANY
J RODNEY DANSIE

Rating Approved
Rating Date 12/16/96

Address 7198 W 13090 S
HERRIMAN UT 84065

Phone Number 801 254 4364

City Served (Area)

County SALT LAKE COUNTY

					Gal/Day	Gal/Min
System Type	Community	**Last Inv Update**	2/22/08	**Avg Daily Prod**	0	0
Activity Status Cd	Active	**Last Snty Srv Dt**	11/13/2007	**Total Dsgn Cap**	0	0
Population	50	**Oper Period**	1/1 to 12/31	**Total Emerg Cap**	0	0

Total Coliform Rule Monitoring

Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start	Seasonal End	Analyte Code	Analyte Name
1	Routine	Monthly	9/1/2007		1/1	12/31	3100	COLIFORM TOTAL (TCR)

Non-TCR Individual Analyte Requirements

Facility ID	Facility Name	Analyte Code	Analyte Name	Sample Count	Sample Type	Sample Frequency	Last Sample	Next Sample Between	
DS001	DISTRIBUTION SYSTEM								
			Lead & Copper	5	Routine	3 Years	12/31/2007	01/01/2008	12/31/2010
WS001	DANSIE WELL								
		1094	ASBESTOS	1	Routine	9 Years	05/03/2007	01/01/2011	12/31/2019
		4000	GROSS ALPHA INCL	1	Routine	Quarter	02/20/2008	07/01/2009	9/30/2009
		4020	RADIUM 226	1	Routine	Quarter	02/20/2008	07/01/2009	9/30/2009
		4030	RADIUM 228	1	Routine	Quarter	02/20/2008	10/01/2008	09/30/2009
		4006	URANIUM COMBINE	1	Routine	Quarter	02/20/2008	07/01/2009	9/30/2009
		1040	NITRATE	1	Routine	Year	03/02/2009	01/01/2010	12/31/2010
			Inorg & Metals	1	Routine	9 Years	01/29/2003	01/01/2011	12/31/2019
			Sulfate	1	Routine	9 Years	05/17/2004	01/01/2011	12/31/2019
			Pesticides	1	Routine	3 Years	05/03/2007	01/01/2008	12/31/2010
			Volatile Organics	1	Routine	3 Years	05/19/2005	01/01/2008	12/31/2010

Utah Department of Environmental Quality
Division of Drinking Water

Monitoring Schedule

Run Date 5/7/2009

Utah Division of Drinking Water Contact List

Div Director's Off
Division Director
BOUSFIELD KEN 801 536 4207

Admin Services
Section Manager
JOHNSON KATE 801 536 4206

Construction Assist
Section Manager
WILDE KENNETH E 801 536 0048

Engineering
Section Manager

Field Services
Section Manager
DYCHES D KIM 801 536 4202

Rules
Section Manager
FAUVER PATTI J 801 536 4196

Exhibit 15

Possible contamination in Butterfield Creek

Posted on: 6:07 pm, September 15, 2013, by Carly Figueroa (http://fox13now.com/author/kstucarlyfigueroa/)

BUTTERFIELD CREEK, Utah — Rod Dansie is a director for the Herriman Irrigation Company; he's lived near Butterfield Creek most of his life and has seen the many positives Kennecott has brought to the area, but he said it hasn't all been positive.

"Events like this end up causing the people that live in the community a lot of problems with heavy metals coming down onto their lands and causing health hazards," Dansie said.

Friday afternoon, Dansie noticed the retention ponds at the Kennecott copper mine had been breached and were overflowing onto public and private property, including Butterfield Creek.

"All the rainwater and snow water come down that, and it's used on farms and gardens and by the people of Herriman," he said.

Rio Tinto Environment Manager Kelly Payne said site rainfall monitors indicated the area received about 3.5 inches in a two-hour period Friday.

"That's a very significant amount of rainfall and exceeds our design criteria for our sedimentation collection system," Payne said.

Payne confirmed the waste ponds overflowed into Butterfield Canyon Friday, but she said anytime a significant storm occurs Kennecott inspects the basins.

"Times in the past we have known the sediment that comes off our waste dumps can contain slightly elevated concentrations of lead relative to a residential standard, so we are doing sampling," Payne said. "We've got crews out as I speak now."

Kennecott said until the waste is tested they can't confirm whether it's hazardous.

But they said they'll be working with any impacted landowners. For landowners like Rod Dansie, that leaves little comfort in the short term.

Exhibit 16

April 16, 2010

J. Rodney Dansie
7198 West6 13090 Sout6h
Herriman, Utah 84096
801-254-4364

Mr. Noel Williams, President
Hi-Country Estates Homers Association
98 Canyon Circle
Herriman, Utah 84096

RE: REQUEST AND DEMAND FOR FULL PERFORMANCE OF ALL OBLIGNATIONS AND REQUIREMENTS OF THE 1977 WELL LEASE AND WATER LINE EXTENSION AND THE 1985 AMMENDMENT ACCORDING TO ITS PLAIN WORDS OF THE LEASE AS UPHELD AGAIN BY THE UTAH COURT OF APPEALS IN ITS APRIL 15, 2010 MEMORANDUMDECISION CASE NO 20090433-CA.

Dear Mr. Williams, President and all Directors and Water Company Officers

Based on the Court of appeals again affirming the well lease agreement it time to get the water meters back in lot 43 and 51 and make all of the other connections so that the water due under the lease agreement since 1996 can be provided as per order of the court.

Since we are going to the Spring and Summer season and we will be immediately needing the water due under the lease agreement. Please take the necessary action to get the reconnections made and the water flowing as required by the lease agreement.

We will be happy to meet with the President and Directors and your attorney so that the required arrangements can be made to begin receiving the 12 millions gallons per year starting in 1996 and the other obligations of the lease agreement.

It should be very easy to begin providing the 12 million gallons per year by just installing the meters and performing the necessary connections to provide the water required by the well lease.

We would appreciate your prompt cooperation to get the water flowing as per the lease agreement.

Please feel free to contact J. Rodney Dansie so a meeting can be set up with the Dansies and Hi-Country Directors and officers to accomplish and implement the ruling of the Utah State Court of Appeals regarding the well lease agreement. Time is of Essence and your cooperation would be appreciated

Should you have any questions regarding this request and demand for full performance of the well lease agreement of 1977 and the 1985 amendment to the well lease and water line extension agreement please contact J. Rodney Dansie at 801-254-4364.

Sincerely,

J. Rodney Dansie

J. Rodney Dansie

Copy of the Utah State Court of appeals memorandum decision enclosed

Exhibit 17

May 2, 2010

J. Rodney Dansie
7198 West 13090 South
Herriman, Utah 84096
801-254-4364

Mr. Noel Williams, President
Hi-Country Estates Homers Association
98 Canyon Circle
Herriman, Utah 84096

SECOND REQUEST AND DEMAND FOR PERFORMANCE OF ALL OBLIGATIONS AND REQUIREMENTS AS ORDERED BY THE UTAH STATE COURT OF APPEALS ON APRIL 15,2010

RE: REQUEST AND DEMAND FOR FULL PERFORMANCE OF ALL OBLIGNATIONS AND REQUIREMENTS OF THE 1977 WELL LEASE AND WATER LINE EXTENSION AND THE 1985 AMMENDMENT ACCORDING TO ITS PLAIN WORDS OF THE LEASE AS UPHELD AGAIN BY THE UTAH COURT OF APPEALS IN ITS APRIL 15, 2010 MEMORANDUMDECISION CASE NO 20090433-CA.

Dear Mr. Williams, President and all Directors and Water Company Officers

Based on the Court of appeals again affirming the well lease agreement it time to get the water meters back in lot 43 and 51 and make all of the other connections so that the water due under the lease agreement since 1996 can be provided as per order of the court.

Since we are going to the Summer season and we will be immediately needing the water due under the lease agreement. Please take the necessary action to get the reconnections made and the water flowing as required by the lease agreement.

We will be happy to meet with the President and Directors and your attorney so that the required arrangements can be made to begin receiving the 12 millions gallons per year starting in 1996 and the other obligations of the lease agreement.

Sizable damages have already been incurred and are continuing to accrue due to the Hi-Country H. O.A. President, and Directors choosing to not follow the orders and decisions of the Utah Court of Appeals and the Plain language of the well lease agreement. Failure to follow the decisions of the Utah Court of Appeals in its Memorandum Decision of April 15, 2010 and its earlier decisions regarding the well lease and obligations will result in more costs and damages and will not be in the interest to the Hi-Country Home

EXHIBIT 17

Association members and may result in the President and Directors being held personally liable for the continuing damages by not meeting the obligations that the court has imposed on the Homeowners association and its water system.

Again, It should be very easy to begin providing the 12 million gallons per year by just re-installing the meters or removing the locks on the meters and performing the necessary connections to provide the water required by the plain language of the 1977 well lease and the 1985 amendment of the lease agreement.

We would appreciate your prompt cooperation to get the water flowing as per the lease agreement and orders of the Utah State Court of Appeals decision of April 15, 2010 and its earlier decisions regarding the obligations of the H. O. A. under the 1977 and 1985 well lease and its amendment.

Please feel free to contact J. Rodney Dansie so a meeting can be set up with the Dansies and Hi-Country Directors and officers to accomplish and implement the rulings of the Utah State Court of Appeals regarding the well lease agreement. Time is of Essence and your cooperation would be appreciated

Should you have any questions regarding this request and demand for full performance of the well lease agreement of 1977 and the 1985 amendment to the well lease and water line extension agreement please contact J. Rodney Dansie at 801-254-4364.

Sincerely,

J. Rodney Dansie

J. Rodney Dansie

Copy of the Utah State Court of appeals memorandum decision was sent to you with the First Request and Demand for obligations due under the well lease.

Exhibit 18

November 13, 2020

RECEIVED
NOV 16 2010
SMITH HARTVIGSEN

Mr. J. Craig Smith /Matthew E. Jensen

Walker center

175 South Main Street Suite 300

Salt Lake City, Utah 84111

Dear Mr. Smith:

Thanks for your letter of November 11, 2010. There is no settlement agreement and never was one. We did discuss at the meeting with Rep. Patrick Painter and others at a meeting several months ago some concepts that might lead to a settlement agreement. However, you and the Hi-Country people and directors who requested the meeting cancelled a few days before the meeting. I am sorry that you and the association directors who requested the meeting were unable to attend and discuss possible ideas for a settlement That being said The Dansies are very much interested in getting the water flowing that they are entitled to under the well lease agreement which has been upheld by the Utah Court of Appeals. We would welcome a meeting with you and the Board of Directors to discuss how the terms of the lease agreement could be fulfilled and if Dansies could help in doing this by making available one of its wells located in Hi-Country Estates from which the water obligations of Hi-Country Estates could be pumped from. This would require some discussions with you and the Board of Directors as to how this type of arrangement could be reached.

The terms of the existing well lease and its plain language would be the basis for discussions in reaching an agreement where by a Dansie well located on lot 51 could be used to produce the water obligations under the well lease and Utah Court of Appeals decision.

With Regard to the Division of Drinking approval, The Hi-Country water system was approved from its inception with service going to the Dansie Water System and there would be some approvals and work to be done to implement any new water sources. The original system approval was part of the Division approval and operated as a joint system from 1977 until 1994 at which time Hi-Country Estates Directors severed the lines. There would be some required approvals for a new water source and reconnections of the lines and those plans could and would be prepared for and approved by the Division of Drinking water. The Utah Rural Water Association has offered its support and expertise as well as Jordan Valley Water Conseverancy District the current operator of the water system has people to help with these types services and is fully aware of the requirements to re-connect the severed pipes. Mr. Richard Bay, General Manager of the District attended the meeting and discussions regarding ideas to get the water flowing to the Dansies under the terms of the well lease and court rulings.

We would welcome your efforts and those of The Hi-Country Estates Board of Directors and its engineers and it water operator Jordan Valley Conservancy District and Rural Water Association in suggesting how we can get the water flowing to the Dansies that is owed under the well lease agreement since 1996.

EXHIBIT
tabbies
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Your written response will be appreciated on or before December 15, 2010 regarding how Hi-County Estates Home Owners Association plans to fulfill its obligations under the 1977 Well lease and water line extension that has been upheld by the Utah State Court of appeals.

Dansies are willing to meet and discuss how they may be able to assist Hi-Country Estates in getting the water flowing and meeting it obligations to the Dansies under the plain language of the Well Lease agreement and Rulings of the Utah Court of Appeals.

We realize that the Court of Appeals is still considering some issues on H-Country Estates Petition for re-Hearing. However, some meetings and discussions on how to get the water flowing to the Dansies would be appreciated as there may still be unanswered issues that require discussion and negations once the Utah Courts of Appeals completes it ruling on the Petition for rehearing.

We look forward to your reply.

Best regards,

J. Rodney Dansie