

J. Craig Smith (4143)
jcsmith@shutah.law
Kathryn J. Steffey (10245)
ksteffey@shutah.law
Donald N. Lundwall (14705)
dlundwall@shutah.law
SMITH HARTVIGSEN, PLLC
257 East 200 South, Suite 500
Salt Lake City, Utah 84111
Telephone: (801) 413-1600

Attorneys for Applicants/Complainants David Burwen, Susan Burwen, and Venture Development Group, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

DAVID BURWEN, an individual, SUSAN
BURWEN, an individual, and VENTURE
DEVELOPMENT GROUP, LLC, a Utah
limited liability company,

Applicants/Complainants,

v.

PINEVIEW WEST WATER COMPANY, a
Utah public water utility,

Respondent.

**FORMAL COMPLAINT AND
REQUEST FOR AGENCY ACTION**

Docket No. _____

Pursuant to Utah Code Ann. §§ 54-7-9(1)(b) and 63G-4-201(1)(b),
Applicants/Complainants David Burwen, Susan Burwen, and Venture Development Group, LLC
hereby formally complain and request agency action against Respondent Pineview West Water
Company as follows:¹

¹ An Informal Complaint was filed on October 15, 2021. However, the Informal Complaint did not resolve the issue of service to the Snowberry Inn. Thus, this Formal Complaint is properly filed before the Commission. *See* Utah

PARTIES

1. Applicants/Complainants David and Susan Burwen are husband and wife who are residents of California and are members and owners of Venture Development Group, LLC, which in turn owns the Snowberry Inn Bed & Breakfast (“**Snowberry Inn**”) located near the Town of Eden, Weber County, Utah. Mr. & Mrs. Burwen and Venture Development Group, LLC are collectively referred to herein as the “**Burwens**.” The Burwens are customers of Pineview West Water Company, which serves the Snowberry Inn.

2. Respondent Pineview West Water Company (“**PWWC**”) is a Utah non-profit corporation with its principal place of business in Eden, Weber County, Utah. Pursuant to Utah Code Ann. § 54-2-1(22)(a) and (38), PWWC is a “public utility” and/or “water corporation” subject to regulation by the Utah Public Service Commission (“**Commission**”). PWWC is also a “person” as that term is defined in Utah Code Ann. § 54-2-2.

JURISDICTION OF THE COMMISSION

3. Jurisdiction over this action is properly held by the Commission pursuant to Utah Code Ann. §§ 54-4-1 and 54-7-9.

4. Pursuant to Utah Code Ann. § 54-4-18, the Commission is authorized to “ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all . . . water corporations.”

5. This action is brought pursuant to Utah Code Ann. §§ 54-1-1, 54-1-2.5, 54-7-9(1)(b), 63G-4-201(1)(b), and Utah Admin. Code R746-1-104(2).

Admin. Code R746-1-201 (“A person who files a complaint with the Commission shall demonstrate: (1) the person has attempted to work with the utility to resolve the complaint; (2) the Division has reviewed the complaint and determined that the person has exhausted the Division’s informal complaint resolution process; and (3) the complaint has been served on the public utility, pursuant to R746-1-203(1)(f).”).

GENERAL ALLEGATIONS

PWWC's Public Utility Status and Duties to Customers

6. On September 30, 2004, the Commission issued Certificate of Public Convenience and Necessity No. 2438 (Docket No. 04-2438-01) ("**Certificate No. 2438**") to PWWC,² which allows PWWC to serve water to the public as a regulated "public utility" and "water corporation" under Title 54 of the Utah Code. PWWC continues to serve the public under Certificate No. 2438 to this very day.

7. On October 12, 2004, the Commission issued a "**Clarifying Order**" regarding PWWC's "certificated service area" ("**Certificated Service Area**") as a public water utility. (A true and correct copy of the Clarifying Order is attached hereto as **Exhibit A** and herein incorporated by this reference.)

8. The Clarifying Order indicated that the Certificated Service Area encompassed "the Radford Hills and Pineview West No. 1 subdivisions located in Weber County, Utah" (the "**Subdivisions**"). (See Ex. A.)

9. As an authorized public utility under Title 54 of the Utah Code, PWWC is legally required to "furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable." Utah Code Ann. § 54-3-1.

² See <https://pscdocs.utah.gov/water/waterorders/40607.pdf>.

10. “**Regulation F**” of PWWC’s current Tariff (“**Tariff No. 3**”) addresses the termination of water service to PWWC customers. (A true and correct copy of Tariff No. 3 is attached hereto as **Exhibit B** and herein incorporated by this reference.) Nothing in Regulation F allows PWWC to terminate service to an existing customer at the mere whim and pleasure of PWWC. (*See* Ex. B.)

11. Under Regulation F, PWWC water service to a customer may only be terminated for the following reasons: (1) “Non-payment of a delinquent account”; (2) “Non-payment of a deposit when required”; (3) “Failure to comply with the terms of a deferred payment agreement or Utah Public Service Commission order”; (4) “Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment”; (5) “Subterfuge or deliberately furnishing false information”; or (6) “Failure to provide access to the meter during the regular route visit to the premises following proper notification and an opportunity to make arrangements.” (*See id.*)

12. Notably, the reasons for termination of service listed in Regulation F are the very same reasons Utah Administrative Code R746-200-7(C) allows for termination of service to existing customers of public utilities. (A true and correct copy of Utah Administrative Code R746-200-7(C) is attached hereto as **Exhibit C** and herein incorporated by this reference.)

13. Neither Regulation F nor Utah Administrative Code R746-200-7(C) allows PWWC to terminate water service to an existing customer for reasons other than those listed therein. (*See* Ex.’s B and C.)

14. Thus, PWWC is legally obligated to maintain and continue water service to its existing customer Snowberry Inn when the Snowberry Inn (a) is not delinquent in making

payments or (b) otherwise liable or at fault for the other specified grounds or “reasons” legitimately authorizing termination of service under Regulation F and Utah Administrative Code R746-200-7(C).

PWWC Culinary Water Service to Customers Outside of the Subdivisions

15. In or about 2007, PWWC began to serve culinary water (“**Culinary Water Service**”) to the public outside of the Subdivisions, including service to customers Snowberry Inn, Roger B. and Kimberly L. Arave (“**Araves**”), Janet Southwick (“**Southwick**”), and the Pineview Yacht Club (“**Yacht Club**”). (Map images showing the location of the Snowberry Inn, the Araves, Southwick, and the Yacht Club are attached hereto as **Exhibit D** and herein incorporated by this reference.)

16. At that time, the Snowberry Inn and the other new customers outside of the Subdivisions were treated by PWWC to be within the Certificated Service Area.

17. Despite providing Culinary Water Service to areas outside of the Subdivisions, which service has continued for more than a decade, PWWC has never updated its Certificated Service Area map to match the true area PWWC currently serves and all customers it serves—including customers outside of the Subdivisions—even though PWWC has updated its Tariff twice since it began serving customers outside of the Subdivisions.

18. On November 20, 2008, PWWC filed a Request for Approval of a Special Assessment and Rate Increase (“**2008 Rate Increase Request**”).³

19. On June 25, 2009, the Utah Division of Public Utilities (“**Division**”) issued a recommendation (“**Division Recommendation**”) to approve the 2008 Rate Increase Request and

³ See <https://psc.utah.gov/2016/07/08/docket-no-08-2438-01/>.

a proposed new Tariff (“**Proposed Tariff No. 2**”) for PWWC. (A true and correct copy of the Division Recommendation is attached hereto as **Exhibit E** and herein incorporated by this reference.)

20. Significantly, the Division Recommendation found that PWWC’s Certificated Service Area had expanded beyond the Subdivisions and included, among other customers, the Snowberry Inn:

[PWWC’s] operations are in Weber County, near Ogden City, Utah, and include 58-metered customers with an additional 54 standby customers. **The service area includes** Pineview West, Radford Hills, Arave, Southwick, **Snowberry Inn**, the Pineview Yacht Club, HOA clubhouse and related landscaping, and Crimson Ridge.

(*See* Ex. E (emphasis added).) Thus, as noted by the Division Recommendation, the Certificated Service Area was expanded to include the Snowberry Inn and other then-existing customers of PWWC.

21. The expansion of the Certificated Service Area simply recognized the true and actual service area of PWWC, and PWWC did not object to the expansion. Instead, PWWC accepted the Division Recommendation, including the finding that the Snowberry Inn and other customers outside of the Subdivisions were within the expanded service area of PWWC (“**Expanded Service Area**”).⁴

22. In Proposed Tariff No. 2, PWWC explicitly acknowledged before the Commission that its customer base included “non-shareholder customers.” (*See* copy of Proposed Tariff No. 2,

⁴ *See id.*

attached here to as **Exhibit F** and herein incorporated by this reference (“I still need to talk to our **non-shareholder customers** to discuss proposed rates with them.”) (emphasis added).)

23. Presumably, such “non-shareholder customers” included the Snowberry Inn, the Araves, Southwick, and the Yacht Club.

24. Based in part on the Division Recommendation, on July 15, 2009, the Commission issued a Report and Order (“**Approval Order**”) approving the proposed July 1, 2009, Tariff (“**Tariff No. 2**”). (A true and correct copy of the Approval Order is attached hereto as **Exhibit G** and herein incorporated by this reference.)

25. Significantly, the Approval Order acknowledged that PWWC’s Expanded Service Area included the Snowberry Inn:

[PWWC] operates in Weber County, near Ogden City. It includes 58-metered customers with an additional 54 standby customers. [PWWC] serves Pineview West, Radford Hills, Arave, Southwick, **Snowberry Inn**, the Pineview Yacht Club, HOA clubhouse and grounds, and Crimson Ridge subdivision.

(See Ex. G (emphasis added).)

26. Tariff No. 2 makes no mention of either the Certificated Service Area, the Expanded Service Area, or customers outside of its Certificated Service Area; nor is a map of the Certificated or Expanded Service Area attached to Tariff No. 2.⁵ (A true and correct copy of Tariff No. 2 is attached hereto as **Exhibit H** and herein incorporated by this reference.)

27. The only possible reference to customers outside of the Subdivisions in Tariff No. 2 is the provision title “Non-shareholder contract rates.” (See Ex. H.)

⁵ See <https://psc.utah.gov/2016/07/08/docket-no-09-2438-01/> (Pineview Water Tariff and Rate Filing).

PWWC's Culinary Water Service to Snowberry Inn

28. Prior to receiving service from PWWC, the Snowberry Inn obtained all culinary water from its own well located on the Snowberry Inn property ("**Snowberry Well**").

29. Annually, the Snowberry Inn uses approximately 1.1 acre-feet or 358,436 gallons of culinary water. After beginning to receive water from PWWC, approximately 0.4 acre-feet or 130,340 gallons per year was and continues to be provided by PWWC; the remaining balance of water was and continues to be diverted from the Snowberry Well. On a monthly basis, the Snowberry Inn's use of water from PWWC is within Tier 2 (8,001 to 16,000 gals), paying \$50 to \$76 per month under Tariff No. 3.

30. Thus, PWWC provides approximately the same amount of water annually to the Snowberry Inn as it does to many of its customers within the Certificated Service Area.

Snowberry Inn, Arave, and Southwick Dispute with PWWC

31. PWWC began voluntarily serving water to the Araves, Southwick, and the Snowberry Inn in 2007 when what is known as PWWC Well #4 ("**Well #4**") was put into operation and service.

32. Prior to receiving such service from PWWC, the Snowberry Inn, the Araves, and Southwick all received culinary water from private wells.

33. Well #4 is located approximately 1200 feet from the Araves' own well (which well was shared by the Araves and Southwick) ("**Arave Well**") and approximately 550 feet from the Snowberry Well, and both the Arave Well and the Snowberry Well are hydrologically connected and located within Well #4's cone of depression.

34. Water is continually drawn away from the Snowberry Well toward Well #4 by Well #4's cone of depression. When the level in the Snowberry Well is drawn down by about 60 feet (115 feet below the Arave Well casing top), water flows toward Well #4 in such quantities that the aquifer does not recharge fast enough for the Snowberry Well to service the Snowberry Inn.

35. Consequently, due to its hydrological connection to Well #4, the Snowberry Well often struggles to produce even a minimal yield of diverted groundwater when PWWC is pumping Well #4 and during the month or more when the aquifer is recovering after Well #4 ceases its seasonal operation.

36. Prior to PWWC's operation of Well #4, neither the Arave Well nor the Snowberry Well ever had any trouble diverting water.

37. Recognizing that Well #4 was adversely impacting both the Arave and Snowberry Wells, PWWC agreed to connect the Araves, Southwick, and the Snowberry Inn to its culinary water system. In return for such connections, the Araves, Southwick, and the Snowberry Inn initially agreed to pay a flat rate of \$20.00 per month.

38. Based on PWWC agreement and representation that it would provide water to the Snowberry Inn, the Burwens hired and paid a contractor \$7,704.00 to hook up ("**Hook-Up Cost**") the Snowberry Inn to PWWC's water distribution system. (A true and correct copy of the invoice documentation for the Hook-Up Cost is attached hereto as **Exhibit I.**)

39. After years of providing water to the Snowberry Inn, in June 2010, PWWC sent the Burwens a draft "Water Right Lease and Water Service Agreement" for the Snowberry Inn ("**PWWC Water Agreement**") under which PWWC proposed to continue Culinary Water

Service to the Snowberry Inn. (A true and correct copy of the April 14, 2011, draft of the PWWC Water Agreement is attached hereto as **Exhibit J.**)

40. Unfortunately, PWWC did not disclose that both the Division and the Commission had, only two years earlier, recognized the Snowberry Inn as being within PWWC's Certificated Service Area. Nor did PWWC disclose that the Snowberry Inn, as a customer within the Certificated Service Area of PWWC, was entitled to service under Tariff No. 2 and required no special Service Agreement that other customers were not required to execute.

41. After attempting in vain to negotiate the terms of the PWWC Water Agreement, a stalemate occurred, and no such agreement was ever reached between the Burwens and PWWC.

42. By letter dated November 15, 2013, PWWC sent the Burwens' legal counsel a Notice of Discontinuance ("**Notice of Discontinuance**"). (A true and correct copy of the Notice of Discontinuance is attached hereto as **Exhibit K** and herein incorporated by this reference.) However, the Burwens did not receive the notice until early December 2013.

43. The Notice of Discontinuance stated that PWWC had "elected to cease providing water to [the Snowberry Inn]" and that such water service would terminate "as of January 1, 2014." (*See Ex. K.*)

44. Without Culinary Water Service from PWWC, the Snowberry Inn would no longer be able to function as a bed and breakfast and would be forced to close and go out of business.

45. Additionally, the value of the Snowberry Inn property would be significantly reduced, given that any prospective buyer of the property would not have adequate water for any personal or commercial use of the Snowberry Inn.

46. Moreover, the Snowberry Inn had no other alternative for Culinary Water Service because there are no other water utilities, public or private, which could serve the Snowberry Inn.

47. Facing the loss of Culinary Water Service in mere days, the Burwens, the Araves, and Southwick chose to file suit in December 2013 against PWWC in the Second Judicial District Court for Weber County, Utah (“**District Court**”), alleging Well #4 interfered with the Arave Well and the Snowberry Well.

48. Despite the lawsuit, which was focused solely on prosecuting claims of interference, negligence, and nuisance against PWWC’s operation of Well #4 relative to the Snowberry and Arave Wells, the Commission nonetheless has exclusive jurisdiction over the matters raised in this Complaint as they concern PWWC’s ability to terminate service to a customer of a public utility.

49. The District Court ruled in favor of the Burwens, the Araves, and Southwick. (True and correct copies of the District Court’s Memorandum Decision, Final Judgment, and Amended Final Judgment (collectively “**Judgment**”) are attached hereto as **Exhibit L, Exhibit M, and Exhibit N**, respectively.)

50. PWWC appealed the Judgment to the Utah Supreme Court, which ultimately resulted in an opinion entitled *Arave v Pineview West Water Company*, 2020 UT 67, 477 P.3d 1239 (Utah 2020).

51. Like the District Court’s Judgment, the Utah Supreme Court’s Opinion did not address the continuation of PWWC’s Culinary Water Service to the Snowberry Inn, the Araves, and Southwick. *See id.*

52. Throughout the entire litigation, PWWC continued to provide Culinary Water Service to the Snowberry Inn, the Araves, and Southwick. During this entire period, the Burwens have fully paid each and every invoice received from PWWC for Culinary Water Service and stand ready to continue to do so.

PWWC's Recognition of the Need to Modify its Certificated Service Area

53. On December 12, 2019, PWWC, acting through its President Peter Turner, sent an email to the Commission and Division declaring its intent to request a rate review (“**Notice of Intent to Request a Rate Review**”). (A true and correct copy of the Notice of Intent to Request a Rate Review is attached hereto as **Exhibit O** and herein incorporated by this reference.)

54. Significantly, the Notice of Intent to Request a Rate Review stated: “Primarily we are requesting: . . . Modification of our recognized [Certificated] [S]ervice [A]rea to reflect actual fact. The existing one is very old. It was created when the plat maps included other phases of development, now defunct, and additional water sources that were never built.” (*See Ex. O.*) The Notice of Intent to Request a Rate Review caused the opening of Docket No. 19-2438-01 at the Commission.⁶

55. Modifying the Certificated Service Area was certainly necessary given the fact that PWWC had never updated its service area map (“**Service Area Map**”) to accurately reflect PWWC’s expanded service to customers like the Snowberry Inn who reside outside of the Subdivisions.

⁶ *See* <https://psc.utah.gov/2019/12/13/docket-no-19-2438-01/>.

56. On April 24, 2020, PWWC filed a “Request for Approval of a Conservation Rate Increase” (“**Rate Increase Request**”) with the Commission.⁷ Attached as Exhibit 12 to the Rate Increase Request was a “**Rate Review Notice**” addressed to the shareholders of PWWC.⁸ While the Snowberry Inn was a customer of PWWC at the time, the Burwens were not shareholders of PWWC and therefore did not receive the Rate Review Notice or any other notice of the proceedings in Docket No. 19-2438-01.

57. On November 20, 2020, a Settlement Stipulation was filed in Docket No. 19-2438-01.⁹ However, nothing in the attached Settlement Stipulation or the attached Revised Pineview Tariff¹⁰ mentioned any change to the Certificated Service Area, other than an attached Service Area Map that excluded certain customers of PWWC, including the Snowberry Inn, the Araves, Southwick, and the Yacht Club. (A true and correct copy of the Service Area Map is attached hereto as **Exhibit P** and herein incorporated by this reference.)

58. On December 3, 2020, the Araves, fearing loss of service, sent an email to the Commission (the “**Arave Public Comment**”) pointing out that, although customers of PWWC, they had never received any notice of Docket No. 19-2438-01. The Araves also informed the Commission of the ongoing litigation with PWWC. (A true and correct copy of the Arave Public Comment is attached hereto as **Exhibit Q** and herein incorporated by this reference.)

⁷ See *id.*

⁸ See *id.*

⁹ See *id.* (“DPU Attachment 1” of Unopposed Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled).

¹⁰ See *id.* (“DPU Attachment 2” of Unopposed Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled).

59. Subsequently, and acting without the aid of legal counsel, the Araves filed a formal complaint (“**Arave Formal Complaint**”) against PWWC.¹¹

60. On January 12, 2021, PWWC filed an Answer to the Arave Formal Complaint, stating in part:

The Araves are not members of and own no interest in [PWWC].^[12] They own their own culinary well and water rights for the provision of culinary and irrigation water for their residence. They do not own and have not paid for fire-flow or other storage facilities.^[13] They have been provided with water from [PWWC’s] wells and water rights at contract rates under [PWWC’s] 2009 tariff [i.e., Tariff No. 2] while their well interference claims against [PWWC] are being litigated.¹⁴

61. On January 25, 2021, the Commission approved the Settlement Stipulation and associated Tariff No. 3, which became effective on February 1, 2021, and currently remains in effect.¹⁵

62. Neither the Division’s Unopposed Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled¹⁶ nor the Commission’s Order Approving Stipulation and Associated Tariff Changes¹⁷ addressed any change or modification to PWWC’s Certificated Service Area in recommending and approving Tariff No. 3, other than the attached Service Area

¹¹ See <https://psc.utah.gov/2020/12/21/docket-no-20-2438-01/>.

¹² It should be noted by the Commission that nothing in any Tariff of PWWC addresses ownership of PWWC.

¹³ It should also be noted by the Commission that no Tariff of PWWC addresses this subject.

¹⁴ See <https://pscdocs.utah.gov/water/20docs/20243801/316973PWWCoAnswr1-12-2021.pdf>.

¹⁵ See <https://psc.utah.gov/2019/12/13/docket-no-19-2438-01/>.

¹⁶ See <https://pscdocs.utah.gov/water/19docs/19243801/316476UnpsdMtnAprvStlmntAgrmntHldHrngsSchdl11-20-2020.pdf>.

¹⁷ See <https://pscdocs.utah.gov/water/19docs/19243801/31706819243801oasaatc1-25-2021.pdf>.

Map excluding the location of certain customers outside of the Subdivisions, including the Snowberry Inn. (*See Ex. P.*)

Renewed PWWC Threat to Discontinue Service to the Snowberry Inn

63. The Burwens formerly paid the prescribed rate for PWWC water under Tariff No. 2 and currently pay the prescribed rate for PWWC water under Tariff No. 3.

64. PWWC has renewed its threat to disconnect the Snowberry Inn from PWWC's culinary water system.

65. According to filings with the Commission, PWWC has sufficient water rights to serve the Snowberry Inn.

66. PWWC also has the capacity to continue Culinary Water Service to the Snowberry Inn.

67. Since being recognized as a public water utility subject to Commission regulation, there has not been a single reported instance in which PWWC did not have the ability to serve all its customers, including the Snowberry Inn.

68. No new infrastructure is needed for PWWC to continue serving the Snowberry Inn, as such infrastructure was already installed when PWWC initially began providing Culinary Water Service to the Snowberry Inn over a decade ago.

69. Continuing to serve the Snowberry Inn will not engender any adverse impact on PWWC's water-service rates.

70. Continuing to serve the Snowberry Inn is not detrimental to any other customers of PWWC.

71. No other water utilities, public or private, exist nearby to provide Culinary Water Service to the Snowberry Inn.

72. Consequently, given PWWC's continued operation of Well #4, the Burwens have no other viable alternative to Culinary Water Service except through PWWC.

73. Continuation of PWWC water to the Snowberry Inn is absolutely crucial to the maintenance, operation, and success of the Snowberry Inn.

74. Since PWWC began using Well #4, the Snowberry Well has become unreliable and insufficient to serve the needs of the Snowberry Inn. While the Snowberry Inn continues to use the Snowberry Well when it can, it is required to rely on service from PWWC to meet its water needs.

75. Over the past forty-one months, the Snowberry Inn has purchased an average of 5,805 gallons (0.018 acre-feet) per month from PWWC while diverting an average of 18,095 gallons (0.056 acre-feet) per month from the Snowberry Well.

76. Most recently, despite lowering the Snowberry Well's pump 20 feet and restricting it to only 6.6 gallons per minute, the Snowberry Well is unable to keep up with demand. The Snowberry Inn's reliance on PWWC water has thus increased.

77. PWWC contends that it has no obligation or duty to provide Culinary Water Service to the Snowberry Inn because the Snowberry Inn falls outside of the Subdivisions.

78. Nevertheless, PWWC has recently agreed to permanently provide Culinary Water Service to the Araves, Southwick, and the Yacht Club, even though the Araves, Southwick, and the Yacht Club are all outside of the Subdivisions. (*See* copy of Release and Settlement Agreement

(“**Settlement Agreement**”), attached hereto as **Exhibit R** herein incorporated by this reference; *see also* Ex.’s A, D, E, F, G, H, O, and P.)

79. PWWC’s stated reason for failure to update its Certificated Service Area to include all customers, including the Snowberry Inn, is so that PWWC may exclude certain customers including the Snowberry Inn on the basis that such customers are not what PWWC considers to be “owners.”

80. For example, when the Araves—another customer of PWWC similarly situated to the Snowberry Inn and also located outside of the Subdivisions—filed a Formal Complaint with the Commission on December 21, 2020, PWWC filed an Answer which stated in part: “The Araves are not members of and own no interest in the Company. They own their own culinary well and water rights for the provision of culinary and irrigation water for their residence. They do not own and have not paid for fire-flow or other storage facilities. They have been provided with water from the Company’s wells and water rights at contract rates under the Company’s 2009 tariff while their well interference claims against the Company are being litigated.” (*See* copy of Answer at 2, attached hereto as **Exhibit S** and herein incorporated by this reference.)

81. However, despite the statements made by PWWC to the Commission regarding the Araves, within a few months of its Answer, PWWC entered into a Settlement Agreement to permanently serve the Araves and Southwick even though the Araves and Southwick are not “owners” of PWWC and “have not paid for fire-flow or other storage facilities.” (*See* Ex.’s R and S.)

82. Despite repeated requests by the Burwens for PWWC to continue providing Culinary Water Service to the Snowberry Inn, PWWC has repeatedly stated (a) its belief that it

has no obligation to serve the Snowberry Inn and (b) its intention to discontinue Culinary Water Service to the Snowberry Inn upon completion of the ongoing water rights dispute between PWWC and the Burwens.

83. Upon information and belief, the reason for PWWC's intention to discontinue Culinary Water Service to the Snowberry Inn is based solely on animus towards the Burwens as the perceived ring leaders of the very costly lawsuit against PWWC and not for any proper or legally justified purpose.

The Burwens' Informal Complaint Against PWWC Before the Division

84. Given the settlement impasse between the Burwens and PWWC and fearing loss of Culinary Water Service from PWWC, the Burwens filed an informal complaint ("**Informal Complaint**") against PWWC with the Division. (A copy of the Informal Complaint is attached hereto as **Exhibit T.**)

85. On October 29, 2021, PWWC filed a response ("**Response**") to the Informal Complaint. (A copy of the Response is attached hereto **Exhibit U** and herein incorporated by this reference.)

86. In its Response, PWWC contends that "PWWC's resources are very limited" and that PWWC "is not in a position to continue service" to the Snowberry Inn. (*See Ex. U.*)

87. Contrary to this contention, the Response failed to acknowledge that the total amount of water that the Snowberry Inn receives from PWWC is roughly the same quantity of water annually provided to PWWC customers within the Subdivisions. Additionally, the Response failed to candidly acknowledge that PWWC has never struggled to provide Culinary Water Service

to the Snowberry Inn during the more than ten-year period in which such service has been provided and maintained by PWWC.

88. The Response also argues that “[t]he question of whether the service area revision in the new PWWC tariff and the revision of the associated service area map has been raised and has been ruled on, without appeal.” (*See id.*)

89. Contrary to this argument, the Commission’s order dismissing the Arave Formal Complaint (“**Order of Dismissal**”) did not formally, procedurally, or jurisdictionally resolve any issue regarding the exclusion of non-shareholder customers from PWWC’s proposed Service Area Map under Tariff No. 3. Indeed, the Commission merely ruled that “[b]ecause the PSC has no jurisdiction over the underlying dispute between PWWC and Complainant [i.e., the Araves], and given Complainant’s sole request was for the PSC to delay an order that was issued January 25, 2021, there is no longer a basis for the Complaint and the PSC dismisses it accordingly.” (A copy of the Order of Dismissal is attached hereto as **Exhibit V.**) (*See also* Ex. Q (plainly indicating that the Araves were specifically requesting the Commission to postpone its “approval/decision” on PWWC’s proposed “rate increase . . . until we can come to a reasonable settlement with PWWC”).)

90. The Response references PWWC’s “pre-filed testimony” regarding proposed Tariff No. 3 in which PWWC Vice President John Durig (“**Vice President Durig**”) declared before the Commission that PWWC was “not seeking to change the service area for Pineview West Water Company at this time.” (*See* Ex. U; *see also* copy of PSC Testimony of John Durig, attached hereto as **Exhibit W**, and herein incorporated by this reference.)

91. Importantly, Vice President Durig failed to explicitly disclose to the Commission that PWWC was in fact seeking to change its recognized Expanded Service Area by excluding

customers, like the Snowberry Inn, from the proposed Service Area Map under Tariff No. 3. (*See* Ex. W.) As the Response candidly notes: “In anticipation of that ruling, PWWC included with Tariff No. 3 a map of its service area no longer including [the Snowberry Inn], *effectively restoring* the service area in that respect to the area described before it was extended” to include customers outside of the Subdivisions. (*See* Ex. U (emphasis added)).

92. Lastly, the Response claims that the Informal Complaint represents “an expensive effort to bully PWWC into solving [the Snowberry Inn’s] water supply needs,” that the Snowberry Inn “can solve its own problems,”¹⁸ and that “PWWC should not be required to serve” the Snowberry Inn.” (*See id.*)

93. Again, the Response fails to forthrightly acknowledge PWWC’s irremissible legal duty to continue Culinary Water Service to an existing customer in circumstances where none of the specified grounds authorizing termination of service to a PWWC customer under Regulation F or Utah Administrative Code R746-200-7(C) can be properly invoked against such customer. (*See* Ex.’s B and C.)

94. Ultimately, the Response fails to candidly acknowledge that the Burwens and the Snowberry Inn are existing non-shareholder customers with recognized and protected rights to continued service under Tariff No. 3 and Utah law. (*See* Ex. U.)

**FIRST CAUSE OF ACTION
(Violation of Utah Code Ann. § 54-3-1)**

95. The Burwens incorporate the foregoing allegations as though fully set forth herein.

¹⁸ Ironically, it is solely because of PWWC’s actions that Snowberry Inn’s well has ceased to produce the water necessary for the Inn’s operations.

96. As an existing customer under Tariff No. 3, the Burwens and the Snowberry Inn cannot be cast aside by PWWC according to PWWC's whim and pleasure. (*See* Ex.'s B and C.)

97. Notwithstanding PWWC's contention that it only has an obligation to serve "owners" within the Subdivisions, PWWC, as a regulated public utility and water corporation, is required to serve all existing customers (including those non-shareholder customers who reside outside of the Subdivisions), not owners. (*See id.*) In fact, the vast majority of all who are served by utilities regulated by the Commission are not owners of the utilities regulated but are merely customers with no ownership interest in the utility.

98. A fundamental reason for Commission regulation of public utilities is that all existing customers of regulated public utilities, such as Rocky Mountain Power and Dominion Gas, have no ownership or voice in the operation of such utilities or the service rates that are charged.

99. All existing customers of public utilities and water corporations, not just owners, are entitled to the rights, benefits, and protections set forth in Title 54 of the Utah Code. *See* Utah Code Ann. § 54-3-1.

100. Notwithstanding the fact that (a) the Division specifically found in 2009 that the Snowberry Inn was within the Certificated Service Area of PWWC and (b) the Commission issued its Approval Order of Tariff No. 2 based on such finding (*see* Ex.'s E and G), PWWC has unjustifiably failed to update its Service Area Map to include all customers served by PWWC, including all non-shareholder customers residing outside of the Subdivisions. (*See* Ex.'s D and P.)

101. PWWC's failure, however, does not diminish the rights and protections under Title 54 of the Utah Code afforded to existing customers who reside outside of the Subdivisions.

102. For example, Utah Code Ann. § 54-3-1 requires in relevant part: "Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its **patrons**, employees and the public, and as will be in all respects adequate, efficient, just and reasonable" (emphasis added).

103. Utah Code Ann. § 54-3-1 further declares:

The [definitional] scope of . . . 'just and reasonable' may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities, or services, and means of encouraging conservation of resources and energy.

104. Given (a) the relative proximity of the Araves, Southwick, and the Yacht Club to the Snowberry Inn (*see* Ex. D) and (b) the Burwens' willingness to continue paying the prescribed rate for PWWC water under Tariff No. 3, it would be unjust and unreasonable to allow PWWC to selectively and discriminately decide to continue serving the Araves, Southwick, and the Yacht Club (*see* Ex. R) while simultaneously refusing to continue Culinary Water Service to the Snowberry Inn.

105. Discontinuance of Culinary Water Service to customer Snowberry Inn would also threaten public health and safety as it would deprive the Snowberry Inn of necessary water for fire protection and suppression.

106. Accordingly, if PWWC discontinued Culinary Water Service to customer Snowberry Inn, it would be both unjust and unreasonable in violation of Utah Code Ann. § 54-3-

1.

SECOND CAUSE OF ACTION
(Violation of Utah Code Ann. § 54-3-8)

107. The Burwens incorporate the foregoing allegations as though fully set forth herein.

108. Under Utah Code Ann. § 54-3-8(1)(a), a “public utility” may not “make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage” as to service.

109. Given the proximity of the Araves, Southwick, and the Yacht Club to the Snowberry Inn, all four are similarly situated as existing PWWC customers that are non-owners. (*See Ex. D.*)

110. The Araves, Southwick, the Yacht Club, and the Snowberry Inn are all located outside of the Subdivisions. (*See Ex.’s D and P.*)

111. Consequently, discontinuing Culinary Water Service to the Snowberry Inn, while continuing to serve the Araves, Southwick, and the Yacht Club would unlawfully grant a preference or advantage to the Araves, Southwick, and the Yacht Club while prejudicing and disadvantaging the Burwens in violation of Utah Code Ann. § 54-3-8(1)(a).

THIRD CAUSE OF ACTION
(Any Change to PWWC’s Expanded Service Area is Null and Void, as Such Change Would Violate Regulation F, Utah Law, and the Constitutions of the United States and Utah)

112. The Burwens incorporate the foregoing allegations as though fully set forth herein.

113. On June 25, 2009, the Division formally found that PWWC’s Expanded Service Area included the Snowberry Inn. (*See Ex. E.*)

114. On July 15, 2009, the Commission acknowledged that PWWC’s Expanded Service Area included the Snowberry Inn. (*See Ex. G.*)

115. No intervening action or Order by the Commission has removed the Snowberry Inn from the Expanded Service Area of PWWC.¹⁹ However, the current Service Area Map under Tariff No. 3 excludes the Snowberry Inn and all other customers located outside of the Subdivisions. (*See* Ex.'s D and P.)

116. For several independently valid reasons, the Service Area Map in Docket No. 19-2438-01 should not be construed or have the legal effect of modifying PWWC's Expanded Service Area.

117. First, PWWC President Peter Turner candidly acknowledged before the Commission the need to modify PWWC's Certificated Service Area to conform the Service Area Map to the actual area that PWWC serves, which includes the Snowberry Inn and other non-shareholder customers outside of the Subdivisions. (*See* Ex. O ("Primarily we are requesting: . . . Modification of our recognized [Certificated] [S]ervice [A]rea to reflect actual fact. The existing one is very old. It was created when the plat maps included other phases of development, now defunct, and additional water sources that were never built.")) The "actual fact" included service to the Snowberry Inn and other customers outside of the Subdivisions.

118. Second, other than the Service Area Map itself, (*see* Ex. P), none of the proceedings before the Commission in Docket No. 19-2438-01 addressed a modification of the Expanded Service Area.²⁰

119. Third, a modification of the Expanded Service Area that removed the Snowberry Inn without the consent of the Burwens would violate Title 54 of the Utah Code, specifically Utah

¹⁹ *See* <https://pscdocs.utah.gov/water/19docs/19243801/31706819243801oasaatc1-25-2021.pdf>; *see also* Ex.'s G and W.

²⁰ *See* <https://psc.utah.gov/2019/12/13/docket-no-19-2438-01/>.

Code Ann. §§ 54-3-1, 54-3-3, and 54-4-1, as well as Regulation F and Utah Administrative Code R746-200-7(C). (*See* Ex.'s B and C.)

120. Fourth, due to the Snowberry Inn's location outside of the Subdivisions (*see* Ex.'s D and P), the Burwens never received the required notice of the proceedings in Docket No. 19-2438-01, thereby depriving the Burwens of their right to participate in the "rate increase" proceedings which is a deprivation of the Burwens' right to due process as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the Utah Constitution, as well as Section 54-3-3 of the Utah Code.

REQUEST FOR AGENCY ACTION

WHEREFORE, the Burwens respectfully assert the following requests for Agency Action by the Commission:

1. The Burwens request a Temporary Order prohibiting PWWC from discontinuing Culinary Water Service to the Burwens and the Snowberry Inn during the formal inquiry by the Commission and the pendency of this matter before the Commission.

2. The Burwens request the Commission initiate a formal inquiry as to whether PWWC may lawfully discontinue Culinary Water Service to the Burwens and the Snowberry Inn.

3. Pursuant to the foregoing inquiry, the Burwens request the Commission enter an Order permanently prohibiting PWWC from discontinuing Culinary Water Service to the Burwens and the Snowberry Inn based on one or more of the following reasons:

- a. PWWC is not operating under good standing with the Utah Division of Corporations.

- b. PWWC's voting control is not distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous.
- c. The Burwens and the Snowberry Inn are an existing non-shareholder PWWC customer with recognized and protected rights to continued service under Tariff No. 3 and Utah law.
- d. None of the specified grounds authorizing termination of service to a PWWC customer under Regulation F or Utah Administrative Code R746-200-7(C) can be properly invoked against the Burwens and the Snowberry Inn.

4. The Burwens request the Commission enter an Order requiring PWWC to file an updated Service Area Map consistent with the Division Recommendation and Approval Order showing the inclusion of the Snowberry Inn within the Expanded Service Area's boundaries.

5. Pursuant to Utah Code Ann. §§ 54-4-4, 54-4-7, and 54-4-18, the Burwens request the Commission initiate a formal investigation into PWWC's rules, regulations, and practices for the purpose of determining, ascertaining, and fixing just and reasonable rules, regulations, and practices to be imposed upon and observed by PWWC.

6. The Burwens request the Commission enter an Order declaring that the Service Area Map attached to Tariff No. 3 be revised to include the Snowberry Inn as well as other customers of PWWC which are not included on the Service Area Map.

7. Finally, the Burwens request the initiation of all other necessary and proper proceedings for the Commission to exercise complete jurisdiction and control over PWWC, as the Commission sees fit pursuant to its regulatory authority and discretion.

RESPECTFULLY SUBMITTED this 9th day of February 2022.

SMITH HARTVIGSEN, PLLC

/s/ J. Craig Smith

J. Craig Smith

Kathryn J. Steffey

Donald N. Lundwall

Attorneys for Applicants/Complainants

Applicants/Complainants' Address:

c/o J. Craig Smith, Kathryn J. Steffey, and Donald N. Lundwall

SMITH HARTVIGSEN, PLLC

257 East 200 South, Suite 500

Salt Lake City, Utah 84111

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I caused a true and correct copy of the foregoing **FORMAL COMPLAINT AND REQUEST FOR AGENCY ACTION** to be served upon the following via email:

Edwin C. Barnes
ecb@clydesnow.com
Emily E. Lewis
eel@clydesnow.com
CLYDE SNOW & SESSIONS
201 South Main Street, #2200
Salt Lake City, Utah 84111-2216
Attorneys for Pineview West Water Company

SMITH HARTVIGSEN, PLLC

/s/ Donald N. Lundwall
Donald N. Lundwall

EXHIBIT A

Clarifying Order

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application for a Certificate of)	<u>DOCKET NO. 04-2438-01</u>
Convenience and Necessity for PINEVIEW WEST)	
WATER COMPANY for Culinary and Secondary)	<u>CLARIFYING ORDER</u>
Water Services)	

ISSUED: October 12, 2004

By the Commission:

It has come to the attention of the Commission that our Order of September 30, 2004, by referencing the description included in the Application, may not adequately describe Pineview West Water Company’s certificated service area, which is the Radford Hills and Pineview West No. 1 subdivisions located in Weber County, Utah.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

This Clarifying Order shall be retroactive to the date of issuance of said Order, September 30, 2004.

DATED at Salt Lake City, Utah, this 12th day of October, 2004.

/s/ Ric Campbell, Chairman
/s/ Constance B. White, Commissioner
/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

Tariff No. 3

PINEVIEW WEST WATER COMPANY
A Shareholder Owned Non-Profit Corporation

RATES AND FEES SCHEDULE
AND
RULES AND REGULATIONS

TARIFF NO. 3

Effective Date: February 1, 2021

Docket Number: 19-2438-01

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WATER SERVICE RATE AND FEE SCHEDULE

Applicable in entire service area to water service for culinary purpose at one point of delivery.

Rates as herein set forth shall apply to each customer unit. A consumer unit is defined as a single unit dwelling or any store service station, cafe, factory, shop, processing plant, or other establishment or concern that might apply for culinary water service for domestic purposes.

The following culinary water rates apply:

Description	Charges
Monthly Water Rates	
First 8,000 gallons (included in Base Rates)	\$70 per month
Usage per 1,000 gallons per month:	
Tier 1 (0 to 8,000 gals)	\$0.00
Tier 2 (8,001 to 16,000 gals)	\$6.50
Tier 3 (16,001 to 24,000 gals)	\$13.00
Tier 4 (24,001 to 32,000 gals)	\$19.50
Tier 5 (> 32,000 gals)	\$29.50
Fees and Other Charges	
Standby Fees *	\$336 per year or \$84 per quarter
Disconnect fees	\$120 per occurrence
Re-connect fees	\$120 per occurrence
First time service connection	\$4,200
¾"-Line meter connection fee (in addition to)	\$275
1"-Line meter connection fee (in addition to)	\$465
1 ½"-Line meter connection fee (in addition to)	\$655
Interest rate on bills past due by 30 days or more	18% per annum (1.5% per month)
Filing Lien	\$150 each
Releasing Lien	\$150 each
Fee for unwarranted service call **	Actual cost

* Applies to lots where service mains are in place and where water service is available, but no water service has been connected, and no water service is used; or where the Company has disconnected water service at the request of the customer; or involuntarily by the Company after proper notice to the customer.

** The Company is responsible for issues involving infrastructure up to and including the meter. Problems, e.g., leaks or frozen pipes, beyond the meter on the customer's side, are the customer's responsibility. The customer must pay the actual costs of the service call, including parts and labor.

Effective Date: February 1, 2021

Docket Number: 19-2438-01

RULES AND REGULATIONS

1. **Connections:** No unauthorized person shall tap any water main or distribution pipe of the Company or insert therein any corporation cock, stop cock, or any other fixture or appliance or alter or disturb any service pipe, corporation stop, curb stop, gate valve, hydrant, water meter or any other attachment, being part of the waterworks system and attached thereto. No person shall install any water service pipe or connect or disconnect any such service pipe with or from the mains or distribution pipes of the said waterworks system, nor with or from any other service pipe now or hereafter connected with said system, nor make any repairs, additions to, or alterations of any such service pipe, tap, stop cock, or any other fixture or attachments connected with any such service pipe, without first obtaining a permit from the Company. All materials used and the installation thereof in the conveyance of Company water shall comply with the Utah Department of Environmental Quality standards and specifications.
2. **Application for Permit:** A permit shall be obtained from the Company before any service connection can be made to any part of the waterworks system or before any work performed can be performed upon old or new connections. Such permit shall be issued only upon written application on forms obtainable from the Company. Applicants for water service shall furnish, lay and install at their own expense, all that portion of the service not provided by the Company, subject, however, to the supervision and inspection of the Company.
3. **Metering of Service:** All water delivered by the Company to its customers shall be metered through water meters. Meters may be checked, inspected, or adjusted at the discretion of the Company, and shall not be opened or adjusted except by authorized representatives of the Company. Only authorized representatives of the Company shall open meter boxes to turn water service on or off except in case of emergency or when the Company gives special permission.
4. **Meter Adjustments:** If a meter fails to register at any time, the water delivered during such a period shall be billed at the rate for the average water usage of the preceding three months. In the event a meter is found to be recording at less than 97 percent (97%) or more than 103 percent (103%) of actual, the Company may make such adjustments to the customer's previous bill as are just and fair under the circumstances.
5. **Service Connections:** Any person desiring to obtain water service from the Company shall make an application to the Company in writing. As a condition of application approval, an applicant shall pay the Turn-on Fee. Additionally, as a condition of receiving water service, a customer shall pay the Connection Fee for all first time water connections. The Connection Fee includes a meter, meter box, a cover, and a valved service line to the property line, all of which shall remain the sole and exclusive property of the Company. The meter and meter box will be located as directed by the Company. Any excavation and installation shall be made by the Company from the main line in the street to three (3) feet beyond the meter. The Connection charges shall apply to all new connections.

6. **Service Line:** A service line is defined as all water system facilities installed between the customer unit and the meter. All service line materials and installation shall be provided and paid for by the applicant, except that the meter, meter box, and meter cover shall, in all instances, be installed and owned by the Company. The customer will provide a shut-off valve in a location accessible to the water company on each service line. The shut-off valve(s) shall be separate from the water meter box. Installation of a service line shall be inspected and approved by the Company before the service line trench is backfilled.
7. **Water Use Restriction:** The owner or occupant of any building or premises entitled to the use of water from the Company shall not supply water to any other building or premises without the written permission of the Company. The owner or occupant may not use any water from the Company that is not metered.
8. **Service Turn-on and Turn-off:** Only authorized representatives of the Company shall turn water service on or off at the meter box, except in case of an emergency or when special permission is granted by the Company. Service may be turned off by the Company when so requested by the customer when the customer fails to abide by these regulations, or as permitted by Utah Administrative Code R746-200-7, Termination of Service. Whenever the water is turned off at any premises, it shall not be turned on again until the customer pays all delinquent balances owing, late charges, and reconnection fees, as shown in the rate schedule.
9. **Disruption Liability:** The Company shall use reasonable diligence to provide continuous water service to its customers and shall make a reasonable effort to furnish all customers with a clean, pure supply of water that meets applicable State and Federal water guidelines. The Company shall not be held liable for damages to any customer or water user by reason of any stoppage or interruption of water service caused by a scarcity of water, accidents to works, water main alterations, additions or repairs, acts of God, acts of third persons, government interference, or other unavoidable causes beyond the Company's control.
10. **Damage to Facilities:** Costs of any damage resulting from the negligence and/or failure of the owner, agent, or tenant to properly protect the water meter or service line related to a service connection, or other facilities of the Company installed upon premises supplied with water, including but not limited to public or private snow removal, vandalism, fire, freezing, or construction work, shall be assessed against such customer, owner, applicant, agent or tenant. No customer or person shall tamper with or remove the meter, or interfere with the reading thereof.
11. **Reading of Meters:** If the meters are inaccessible to read, for example, during winter months, customers shall be billed at the minimum usage amount. The actual winter usage, should it exceed the minimum usage amount during the winter months, shall be billed in total on the first billing, which shows the first-meter reading taken in the calendar year.
12. **Billing and Payments:** The Company shall use a billing cycle with an interval between regular periodic billing statements of not greater than three (3) months. The Company may change the billing cycle to less than three months with a thirty (30) day notice to its customers. Bills covering the charges will be issued and shall be due within thirty (30) days

after being issued. If any customer neglects or refuses to pay a water service bill or any other obligation due to the Company within thirty (30) days from the date of issuance, the Company's employees shall have the right to go upon the premises and do such work as may be necessary to disconnect the water service. The established tariff charge for disconnect/re-connect and if applicable, filing/releasing liens shall be paid. The Company may contract with a third party to handle all bills, billings, and customer payments. The Company will notify the customers of such an arrangement.

13. **Discontinuance of Service:** Any customer wishing to discontinue service shall notify the Company at least three (3) days in advance so that the meter can be read for a final billing. Such a final bill shall be due and payable upon receipt.
14. **Regulated Usage:** Whenever the Company shall determine that the amount of water available to its distribution system has diminished to such a volume that, unless restricted, the public health, safety, and general welfare is likely to be endangered, the Company may prescribe rules and regulations to conserve the water supply during such emergency. Such rules and regulations may include, but shall not be limited to, the restriction to certain hours (or total prohibition) of the use of water for outdoor watering.

All new customers requiring culinary water for irrigation shall have a separate shut-off valve for the irrigation system accessible to the water company and subject to the Service Line requirements in regulation number 3.

15. **Changes and Amendments:** The Company reserves the right to change, amend or add to these Rules and Regulations as experience may show it to be necessary and as such amendments or changes are approved by the Utah Public Service Commission.
16. **Credit Deposit:** The Company may, at its option, and in lieu of established credit, require a deposit of \$70.00 from the customer to assure payment of bills. This deposit may be refunded when credit has been established. Deposits held over three (3) months shall earn interest at the then established bank saving rate of the Company's banking institution. Interest will be credited to the customer's account.
17. **Backflow Prevention:** All applicants requesting connection to or customers connected to the water system shall provide, at their sole expense, any and all back-flow prevention/protection device(s) deemed necessary by the Company and to comply with the regulations and rules of the Utah Department of Environmental Quality to protect the water quality of the water system from a potential back-flow incidence. Maintenance, repair, and any required proof of certification of inspection costs are the customer's responsibility. Proof of inspection certifications must be submitted to the Company upon its request. The Company will order the inspection and bill the customer for the service if the customer fails to perform the required testing or submit the testing certification in a timely manner or within one month.

18. **Capital Reserve Accounting Requirements:** A Capital Reserve Account, targeted to equal the annual depreciation expense and yearly amortization of the contribution in aid of construction of the Company's water system assets and equipment, shall be established, subject to the following:
- a. All designated capital reserve fees generated from rates shall be deposited into the Capital Reserve Account. Any excess fees collected from overage rates, after deducting for any variable expenses shall be deposited in the Capital Reserve Account.
 - b. All Capital Reserve Account funds shall be deposited in a restricted bank account, such as a separate escrow account, within sixty (60) days from receipt of such payment.
 - c. Withdrawals from the Capital Reserve Account shall be made primarily for capital replacements and improvements.
 - i. If the Company has financial obligations from expenses that are a necessary cost of doing business but do not necessarily qualify as a capital replacement or improvement, the Company can use funds from the Capital Reserve Account until it files for its next rate increase, subject to the provisions in 18(e) and 18(g)(iii).
 - d. In accordance with Utah Administrative Rule R746-401, expenditures in excess of five percent (5%) of total Utility Plant in Service shall require the Company to file a report with the Commission, at least thirty (30) days before the purchase or acquisition of the asset or project, and to obtain written Commission approval before transacting such acquisitions.
 - e. Upon request by the Commission or the Division, the Company shall also provide a separate accounting of the Capital Reserve Account consisting of monthly bank statements encompassing the entire calendar year showing a series of deposits made within sixty (60) days from the receipt of rate payments for each billing cycle and withdrawals that meet requirements 18(a), (b), and (c) above. Such detailed accounting, including copies of bank statements and possibly other sensitive information, shall be marked as "confidential."
 - f. The balance in the Capital Reserve Account shall be clearly identifiable in the financial statements.
 - g. In identifying a qualifying expenditure for replacement or improvements that may be made from the Capital Reserve Account, the Company shall consider the following guidelines:
 - i. Capital improvements are typically high-cost items with long service lives, including, but not limited to, the distribution pipe main lines, storage reservoirs, wells, and surface water intakes. Expenditures that qualify as capital expenditures are those that extend the life of an asset, enhance its original value with better quality materials or system upgrades, or replace such assets.
 - ii. Capital improvements do not include minor expenses such as repair clamps, inventory parts, and fittings, spare pieces of pipe kept to facilitate repairs, small

tools, maintenance supplies such as paint or grease, service contracts, and other day-to-day supplies. Expenses for these items are properly classified as “operating and maintenance” expenses.

- iii. Additionally, it is not appropriate to use Capital Reserve Account funds received from existing customers for system expansion, that is, to extend main lines to serve new areas or new customers or to install new services. Funds for the expansion of the system should come from new development, impact fees, connection fees, assessments, or other sources so that those benefiting from the improvement contribute the funds for its construction.
 - h. In the event any payment from a customer is a partial payment of any given billed invoice by the Company, that payment shall be used first to cover the fixed and variable expenses, and then to cover the Capital Reserve Fee. A reconciliation, clearly indicating the circumstances surrounding those instances when the Capital Reserve Account was not fully funded, shall be provided by the Company with the detailed ‘annual accounting’ of the Capital Reserve Account.
 - i. Interest accruing on funds held in the Capital Reserve Account shall become a part of the Capital Reserve Account and can only be used in accordance with this paragraph, 16.
19. **Special Assessments:** The Company reserves the right to levy special assessments as necessary to pay for or reimburse the Company for expenses attributed to emergency or necessary waterworks system improvements, maintenance, or repairs, subject to all necessary approvals of such special assessments by the Public Service Commission.
20. **Facility Extension Policy**
- a. **Definition:** An extension is any continuation of, or branch from, the nearest available existing water distribution line of the Company, including any increase of capacity of an existing line and/or existing supply and/or existing storage to meet the customer’s requirements.
 - b. **Costs:** The total cost of extensions, including engineering, labor, and materials, shall be paid by the applicants or as agreed upon between the applicant and the Company as decided by the Company at the Company’s sole discretion for such extensions. If, because of the extension and the addition of applicants as customers, additional water rights, pumps, storage, or other water plant must be acquired, the Company may require the applicants to pay these costs. Where more than one customer is involved in an extension, the costs shall be pro-rated on the basis of the street frontage distances involved or upon such other basis as may be mutually agreed by the applicants. Sufficient valves, pressure reducing devices, fire hydrants, and any other infrastructure installation mandated by the Company and/or the Utah Department of Environmental Quality must be designed to be included and installed with every installation.

- c. **Construction Standards:** The minimum standards of the Company shall be met, which standards shall also comply with the standards of the Utah State Division of Drinking Water. The Company shall designate pipe sizes. The pipeline shall be installed only along dedicated streets, highways, or within utility easements, unless otherwise approved in writing by the Company.
- d. **Ownership:** Completed facilities and water rights shall be owned, operated, and maintained by the Company, including and through meters, as detailed in the Tariff Rules and Regulations. The Company shall then bear the ongoing costs of normal operation and maintenance of the supply, storage, and delivery infrastructure of the extension to the Company's system.
- e. **Temporary Service:** A permit shall be obtained from the Company before any temporary service connection can be made to any part of the waterworks system or before any work can be performed upon old or new connections. The customer will pay the total cost for the installation and removal of any service extension of a temporary nature. Such costs will be estimated and paid before work is begun on the extension. All work shall comply with the Company's rules and regulations and meet the minimum standards of the Utah Department of Environmental Quality.

REGULATION A

STATEMENT OF UTILITY CUSTOMER RIGHTS AND RESPONSIBILITIES

The Utah Public Service Commission has established rules about utility/consumer/ company relationships. These rules cover payment of bills, late charges, security deposits, handling complaints, service disconnection, and other matters. These rules assure customers of certain rights and outline customer responsibilities.

A1. Customer Rights: The Company will:

- Provide service if you are a qualified applicant.
- Offer you at least one 12-month deferred payment plan if you have a financial emergency, at the Company's discretion.
- Let you pay a security deposit in three installments if one is required.
- Follow specific procedures for service disconnection, which include providing you notice postmarked at least ten days before service is disconnected.
- Continue service for a reasonable time if you provide a physician's statement that a medical emergency exists in your home, subject to Utah Administrative Rule R746-200.
- Give you written information about Utah Public Service Commission rules and your rights and responsibilities as a customer under those rules.

A2. Customer Responsibilities: You, the customer, will:

- Use services safely and pay for them promptly.
- Contact the Company when you have a problem with payment, service, safety, billing, or customer service.
- Notify the Company about billing or other errors.
- Contact the Company when you anticipate a payment problem to attempt to develop a payment plan.
- Notify the Company when you are moving to another residence.
- Notify the Company about stopping service in your name or about stopping service altogether.
- Permit access for meter readers and other essential Company personnel and equipment.

To contact the Company, call the telephone number shown on your utility bill.

If you have a problem, call the Company first. If you cannot resolve the issue, you may obtain an informal review of the dispute by calling the Utah State Division of Public Utilities Complaint Office at the following telephone number: (801) 530-7622 in Salt Lake City or (800) 874-0904 Toll-Free Statewide.

REGULATION B

DEPOSITS AND GUARANTEES

- B1. **Security Deposits:** A security deposit may be required of customers, without discrimination, to assure payment of bills.
- B2. **Installments:** When a security deposit is required, the customer shall have the right to pay the deposit in three equal monthly installments if the first installment is paid when the deposit is required.
- B3. **Return of Deposits:** The deposit paid, plus accrued interest is eligible for return to the customer after the customer has paid the bill on time for twelve consecutive months. Deposits shall earn interest at the then established bank saving rate of the Company's banking institution.

These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.

Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.

REGULATION C

ELIGIBILITY FOR SERVICE

- C1. **Eligibility for Service:** Residential water service is conditioned upon payment of deposits, where required, and upon payment of any outstanding debts for past utility service, which is owed by the applicant to the Company. Service may also be denied when unsafe conditions exist, when the applicant has furnished false information to get water service, or when the applicant/customer has tampered with Company-owned equipment, such as meters and lines. An applicant is ineligible for service if, at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the Company's service, whether the service was received at the applicant's present address or another address.
- C2. **Shared Meter or Appliance:** In rental property where one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the Company, the Company will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly, and such an applicant has knowledge of the account responsibility.

These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.

Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.

REGULATION D

BILLING

- D1. **Billing Cycle:** The Company shall use a billing cycle with an interval between regular periodic billing statements of not greater than two months unless a different billing cycle is approved by the Public Service Commission.
- D2. **Meter Reading:** If a meter reader cannot gain access to a meter to make an actual reading, the Company shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include but are not limited to, scheduling of a meter reading at other than regular business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If, after two regular route visits access has not been achieved, the Company will notify the customer that arrangements need to be made to have the meter read as a condition of continuing service.
- D3. **Periodic Billing Statement:** Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, the Company shall mail or deliver an accurate bill to the account holder for each billing cycle, at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:
- a. Previous outstanding balance in the account at the beginning of the current billing cycle;
 - b. Amount of current service charges debited to the account during the current billing cycle;
 - c. Amount of payments made to the account during the current billing cycle;
 - d. Amount of credits other than payments to the account during the current billing cycle;
 - e. Amount of late payment charges debited to the account during the current billing cycle;
 - f. Closing date of the current billing cycle and the outstanding balance due in the account on that date;
 - g. A listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;
 - h. A statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment; and
 - i. The following notice: "If you have any questions about this bill, please call the Company."
- D4. **Late Charge:** The Company shall charge a late fee at the amount consistent with this Tariff for each billing period where there exists a prior balance owing on a customer's account by following the procedures set forth in Regulation F, Termination of Residential Service.
- D5. **Statement Due Date:** Bills covering charges shall be due on the first of the month after the date the current bill was prepared. An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

- D6. **Disputed Bill:** In disputing a periodic billing statement, a customer shall first try to resolve the issue by discussion with the Company's personnel. The Company's personnel shall investigate the disputed issue and shall attempt to resolve that issue by negotiation. If the negotiation does not resolve the dispute, the account holder may obtain an informal review by contacting the Division of Public Utilities and a formal review with the Utah Public Service Commission. While an account holder is proceeding with either an informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.
- D7. **Unpaid Bills:** When transferring unpaid bills from inactive or past accounts to active or current accounts, the following limitations shall apply:
- a. The Company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.
 - b. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.
 - c. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.

Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.

REGULATION E

DEFERRED PAYMENT

- E1. **Right to Deferred Payment Agreement:** A customer who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a Deferred Payment Agreement unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential water service, in which case the use of a Deferred Payment Agreement is at the Company's discretion. The terms of a Deferred Payment Agreement shall be set forth in a written agreement entered into by both the Company and the customer. A copy of the Deferred Payment Agreement shall be provided to the customer.
- E2. **Deferred Payment Agreement:** An applicant or customer shall have the right to a Deferred Payment Agreement, consisting of twelve months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the twelve months and if the customer agrees to pay the initial monthly installment. The customer shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a Deferred Payment Agreement at any time during the term of the agreement. The customer also has the option, when negotiating a Deferred Payment Agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the Deferred Payment Agreement. If a finance charge is assessed, the Deferred Payment Agreement shall contain notice of the charge.

E3. Payment Options:

If the Company has a budget billing or equal payment plan available, it shall offer the customer the option of:

- a. Agreeing to pay monthly bills for future residential water service as they become due, plus the monthly deferred payment installment, or
- b. Agreeing to pay a budget billing or equal payment plan amount set by the Company for future residential water service plus the monthly deferred payment installment.

If the Company does not have budget billing or equal payment plans available:

- a. When negotiating a deferred payment agreement, the customer shall agree to pay the monthly bills for future residential water service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

Breach: If a customer breaches a condition or term of a Deferred Payment Agreement, the Company may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to the termination rules, subject to the right of the customer to seek review of the alleged breach by the Utah Public Service Commission, and the customer shall not have the right to a renewal of the Deferred Payment Agreement. Renewal of the Deferred Payment Agreement after the breach shall be at the Company's discretion.

These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.

Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.

REGULATION F

TERMINATION OF RESIDENTIAL SERVICE

- F1. **Delinquent Account:** A delinquent account is a water service bill which has remained unpaid beyond the statement due date.
- F2. **Notice:** When an account is a delinquent account, the Company, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. See F8 below for the information that must be provided to the account holder.
- F3. **Investigation and Negotiation:** When the customer responds to a late notice or reminder notice the Company will investigate disputed issues and try to resolve the issues by negotiation. During this investigation and negotiation, no other action shall be taken to disconnect the residential utility service if the customer pays the undisputed portion of the account.
- F4. **Reasons for Termination of Service:**
- a. Residential utility service may be terminated for the following reasons:
 - i. Non-payment of a delinquent account;
 - ii. Non-payment of a deposit when required;
 - iii. Failure to comply with the terms of a deferred payment agreement or a Utah Public Service Commission order;
 - iv. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;
 - v. Subterfuge or deliberately furnishing false information; or
 - vi. Failure to provide access to the meter during the regular route visit to the premises following proper notification and an opportunity to make arrangements.
 - b. The following shall be insufficient grounds for termination of service:
 - i. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;
 - ii. The cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the Company's service, whether the service was received at the current account holder's present address or another address;
 - iii. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;
 - iv. Failure to pay an amount in bona fide dispute before the Commission;
 - v. Payment delinquency for third party services billed by the Company, unless prior approval is obtained from the Utah Public Service Commission; and
 - vi. Complaints filed with either or both the Company or regulatory agencies.

F5. Restrictions upon Termination of Service During Serious Illness:

If a public utility receives a serious illness or infirmity statement:

- a. The public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;
- b. The public utility is not required to provide the continuation or restoration more than two times to an individual customer or residence during the same calendar year; and
- c. The account holder is liable for the cost of residential utility service during the period of continued or restored service.

F6. Restrictions upon Termination of Service to Residences with Life-Supporting Equipment:

- a. After receiving a life-supporting equipment statement, the public utility:
 - i. Shall mark and identify applicable meter boxes where the life-supporting equipment is used;
 - ii. May not terminate service to the residence unless the public utility has complied with (R746-200- 7.D.2); and
 - iii. May request annual verification from the licensed medical provider of the life-supporting equipment.
- b. A public utility may terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification, if:
 - i. The account is in default;
 - ii. The public utility has offered a deferred payment agreement; or allow the customer one month to enter into a deferred payment agreement that may last up to 12 months;
 - iii. After complying with R746-200-7.D.2.b.ii, the public utility has provided to the customer a written notice of proposed termination of service that:
 - A. Clearly and plainly informs the customer of the customer's rights under R746-200-7.D.2 and of the customer's right to an expedited complaint hearing under R746-200-8.E and
 - B. Complies with R746-200-7.G.1
 - iv. The public utility has provided to the customer a 48 hour notice of termination of utility service that complies with R746-200-7.G.2; and
 - v. The public utility has complied with all other applicable provisions of R746-200-7.
- c. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

- F7. **Termination of Service without Notice:** The Company may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the Company. The Company shall immediately try to notify the customer of the termination of service and the reasons therefor.
- F8. **Notice of Proposed Termination of Service:** At least ten calendar days before a proposed termination of residential utility service, the Company shall give written notice of disconnection for non-payment to the customer. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:
- a. Statement of customer Rights and Responsibilities under existing state law and Utah Public Service Commission rules;
 - b. The Utah Public Service Commission-approved policy on termination of service for the Company;
 - c. The availability of deferred payment agreements and sources of possible financial assistance, including but not limited to State and Federal energy assistance programs;
 - d. Informal and formal procedures to dispute bills and to appeal adverse decisions, including the Utah Public Service Commission's address and telephone number;
 - e. Specific steps, printed in a conspicuous fashion that may be taken by the customer to avoid termination of service;
 - f. The date on which payment arrangements must be made to avoid termination of service; and
 - g. A conspicuous statement, in Spanish, that the notice is a termination of service notice and that the Company has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.
- F9. **Personal Notification:** At least 48 hours before termination of service is scheduled, the Company will make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone, or by a personal visit to the residence. If personal notification has not been made either directly by the Company or by the customer in response to a mailed notice, the Company will leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service. If termination of service is not accomplished within fifteen business days following the 48-hour notice, the Company will follow the same procedures for another 48-hour notice.

- F10. **Third-Party Notification:** The Company will send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs if the third party resides within its service area. The Company shall inform its customers of the third-party notification procedure at the time of application for service and at least once each year.
- F11. **Rental Property:** In rental property situations where the tenant is not the account holder, and that fact is known to the Company, the Company will post a notice of proposed termination of service on the premises in a conspicuous place and will make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice will contain the information specified above. This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If non-payment is the basis for the termination of service, the Company will also advise the tenants that they may continue to receive utility service for an additional thirty days by paying the charges due for the 30-day period just past.
- F12. **Termination Hours:** Upon expiration of the notice of proposed termination of service, the Company may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the Company's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.
- F13. **Customer-Requested Termination of Service:** The customer shall advise the Company at least three days in advance of the day on which they want service disconnected to their residence. The Company will disconnect the service within four working days of the requested disconnect date. The customer will not be liable for the services rendered to or at the address or location after the four days unless access to the meter has been delayed by the customer.
- F14. **Non-Occupants:** A customer who is not an occupant at the residence for which termination of service is requested shall advise the Company at least 10 days in advance of the day on which they want service disconnected and sign an affidavit that they are not requesting termination of service as a means of evicting his/her tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon, the disconnection may occur within four days of the requested disconnection date.
- F15. **Restrictions upon Termination of Service Practices:** The Company will not use termination of service practices other than those set forth in the rules (R746-200) by the Public Service Commission. The Company shall have the right to use or pursue legal methods to ensure collections of obligations due to it.

- F16. **Reconnection of Discontinued Service:** The Company will have personnel available 24 hours each day to re-connect utility service. Service will be re-connected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service, which may include payment of reconnection charges and compliance with deferred payment agreement terms.

These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.

Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.

REGULATION G

INFORMAL REVIEW, MEDIATION, AND FORMAL REVIEW

- G1. **Informal Review:** A customer who is unable to resolve a dispute with the Company concerning a matter subject to Utah Public Service Commission jurisdiction may obtain an informal review of the dispute by a designated employee within the Division of Public Utilities. The procedures for informal review shall be as set forth in Utah Administrative Rule R746-200-8.
- G2. **Mediation:** If the Company or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute, as set forth in Utah Administrative Rule R746-200-8.
- G3. **Formal Review:** The Utah Public Service Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

These regulations are included as part of the tariff because they are the ones most inquired about by both water companies and water customers. They are NOT all inclusive but included here to be used as a ready and convenient reference.

Remember: Laws and Rules change over time. Please refer to the complete regulations and rules applicable to all regulated water utilities. They can be found in Utah Code Title 54 and Utah Administrative Rules Section 746.

SERVICE AREA MAP



Effective Date: February 1, 2021

Docket Number: 19-2438-01

EXHIBIT C

Utah Administrative Code

R746-200-7(c)

Utah Administrative Code

Public Service Commission (Titles R746-R747)

Title R746. Administration.

Rule R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.

U.A.C. R746-200-7

Formerly cited as UT ADC R746-200

R746-200-7. Termination of Service.

Currentness

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

- a. who holds a current and active medical license under Utah Code Title 58; and
- b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule.

2. "Life-supporting equipment" means life-supporting medical equipment:

- a. with normal operation that requires continuation of public utility service; and
- b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

- a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and
- b. including:
 - i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;
 - ii. the account holder's name and address;

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

- a. A statement that the account is a delinquent account and should be paid promptly;
- b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if the account holder has a question concerning the account;
- c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service--

1. Residential utility service may be terminated for the following reasons:

- a. Nonpayment of a delinquent account;
- b. Nonpayment of a deposit when required;
- c. Failure to comply with the terms of a deferred payment agreement or Commission order;
- d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;
- e. Subterfuge or deliberately furnishing false information; or
- f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

- a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;
- b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;
- c. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;
- d. Failure to pay an amount in bona fide dispute before the Commission;
- e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service--Medical Reasons--

1. Serious Illness or Infirmary. If a public utility receives a serious illness or infirmity statement:

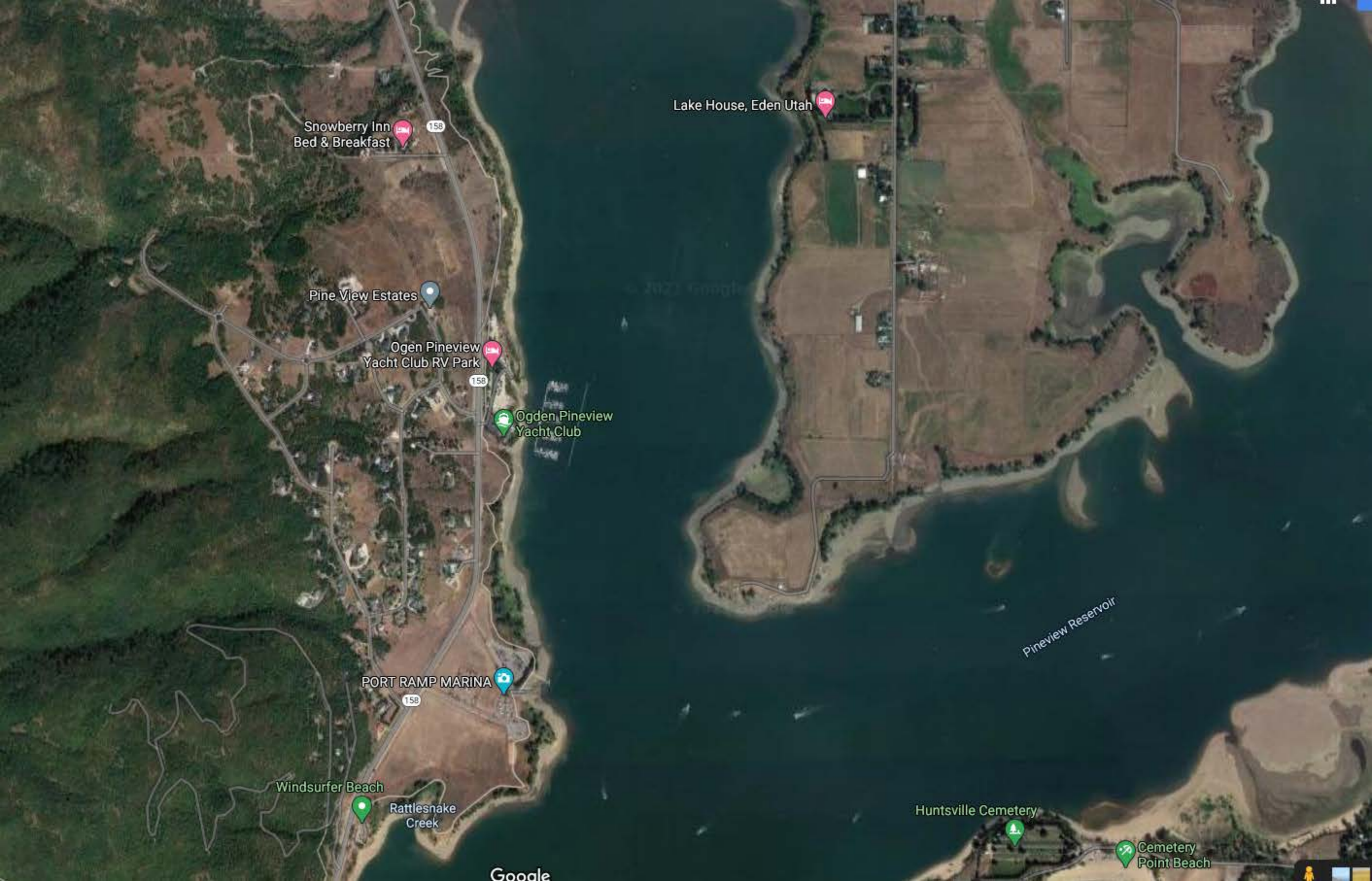
- a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;
- b. the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and
- c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

- a. After receiving a life-supporting equipment statement, the public utility:
 - i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;

EXHIBIT D

Map Images Showing the Location of the
Snowberry Inn, the Araves, Southwick,
and the Yacht Club



Snowberry Inn
Bed & Breakfast

158

Lake House, Eden Utah

Pine View Estates

Ogden Pineview
Yacht Club RV Park

158

Ogden Pineview
Yacht Club

PORT RAMP MARINA

158

Windsurfer Beach

Rattlesnake
Creek

Pineview Reservoir

Huntsville Cemetery

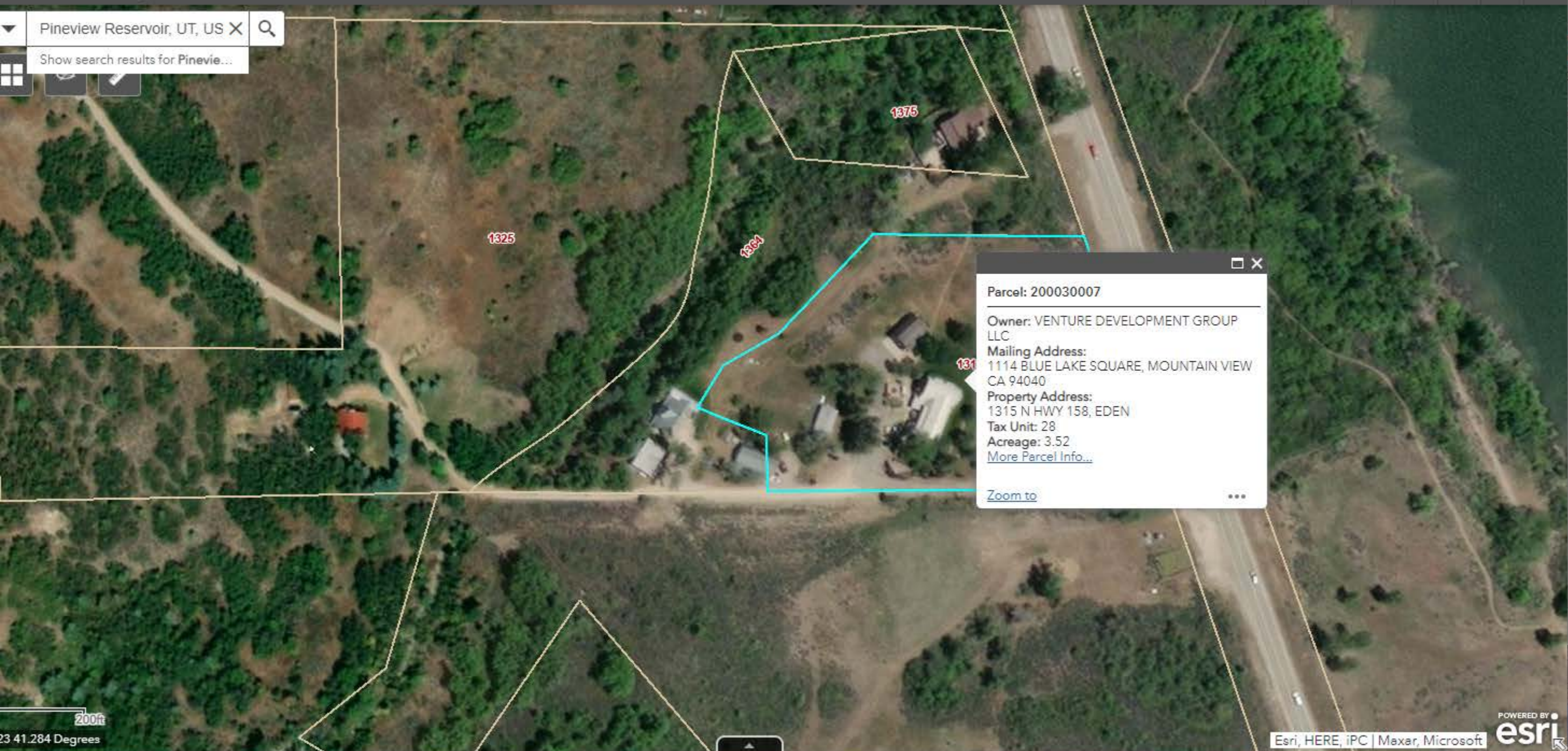
Cemetery
Point Beach

Google

▼ Pineview Reservoir, UT, US X



Show search results for Pinevie...



Parcel: 200030007

Owner: VENTURE DEVELOPMENT GROUP
LLCMailing Address:
1114 BLUE LAKE SQUARE, MOUNTAIN VIEW
CA 94040Property Address:
1315 N HWY 158, EDEN

Tax Unit: 28

Acreage: 3.52

[More Parcel Info...](#)[Zoom to](#)

200ft

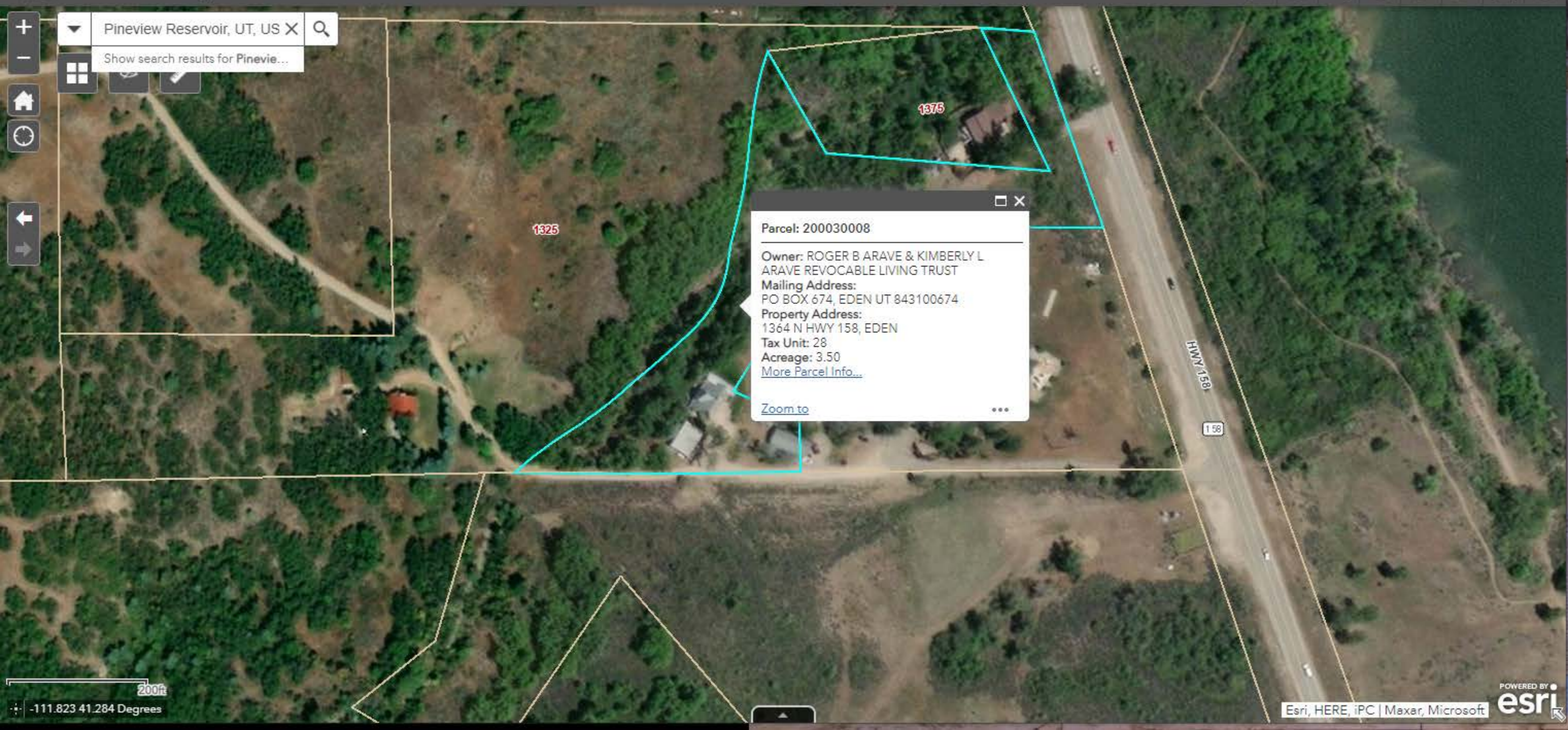
23 41.284 Degrees

Esri, HERE, IPC | Maxar, Microsoft



Pineview Reservoir, UT, US X

Show search results for Pinevie...



Parcel: 200030008

Owner: ROGER B ARAVE & KIMBERLY L ARAVE REVOCABLE LIVING TRUST

Mailing Address:
PO BOX 674, EDEN UT 843100674

Property Address:
1364 N HWY 158, EDEN

Tax Unit: 28

Acreage: 3.50

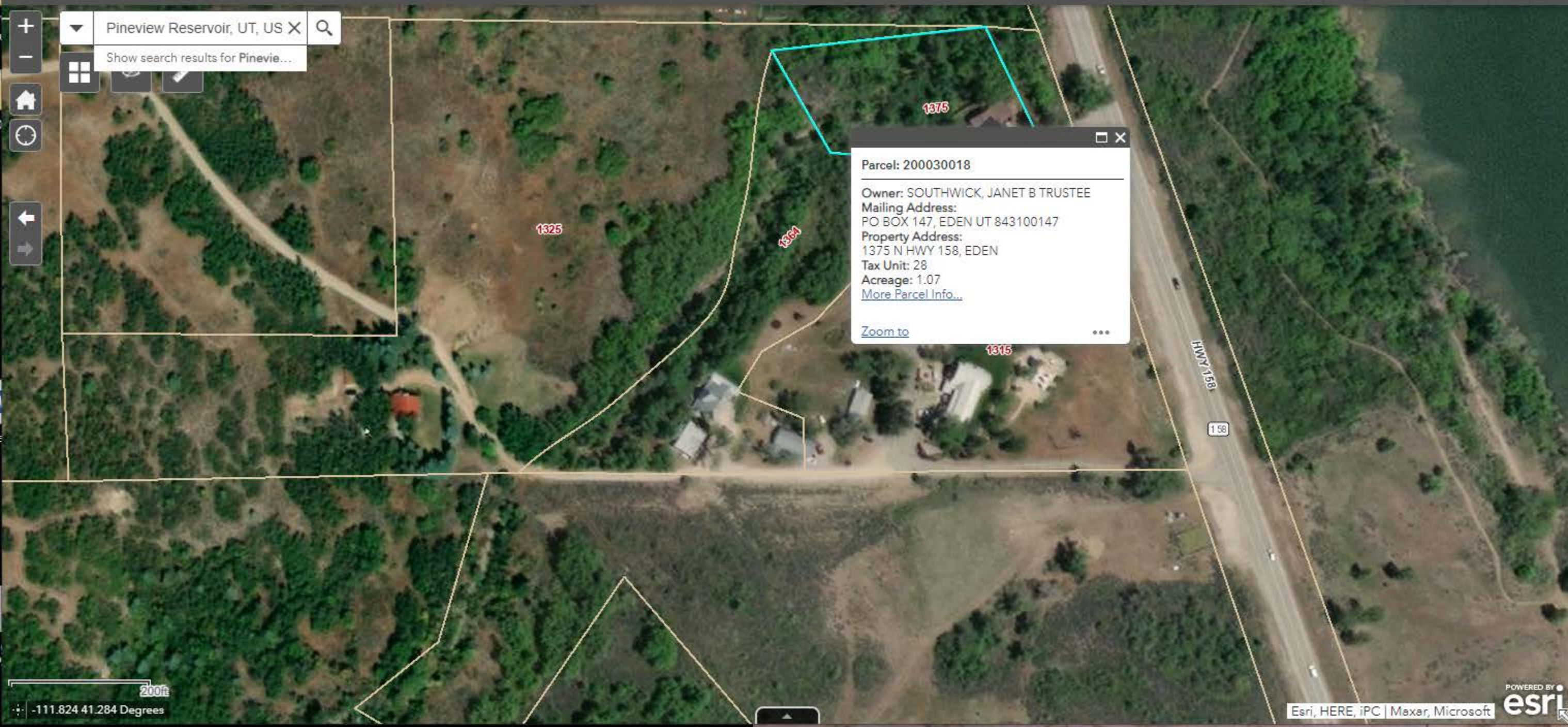
[More Parcel Info...](#)

[Zoom to](#)



▼ Pineview Reservoir, UT, US X

Show search results for Pinevie...



Parcel: 200030018

Owner: SOUTHWICK, JANET B TRUSTEE

Mailing Address:
PO BOX 147, EDEN UT 843100147

Property Address:
1375 N HWY 158, EDEN

Tax Unit: 28

Acreage: 1.07

[More Parcel Info...](#)

[Zoom to](#)



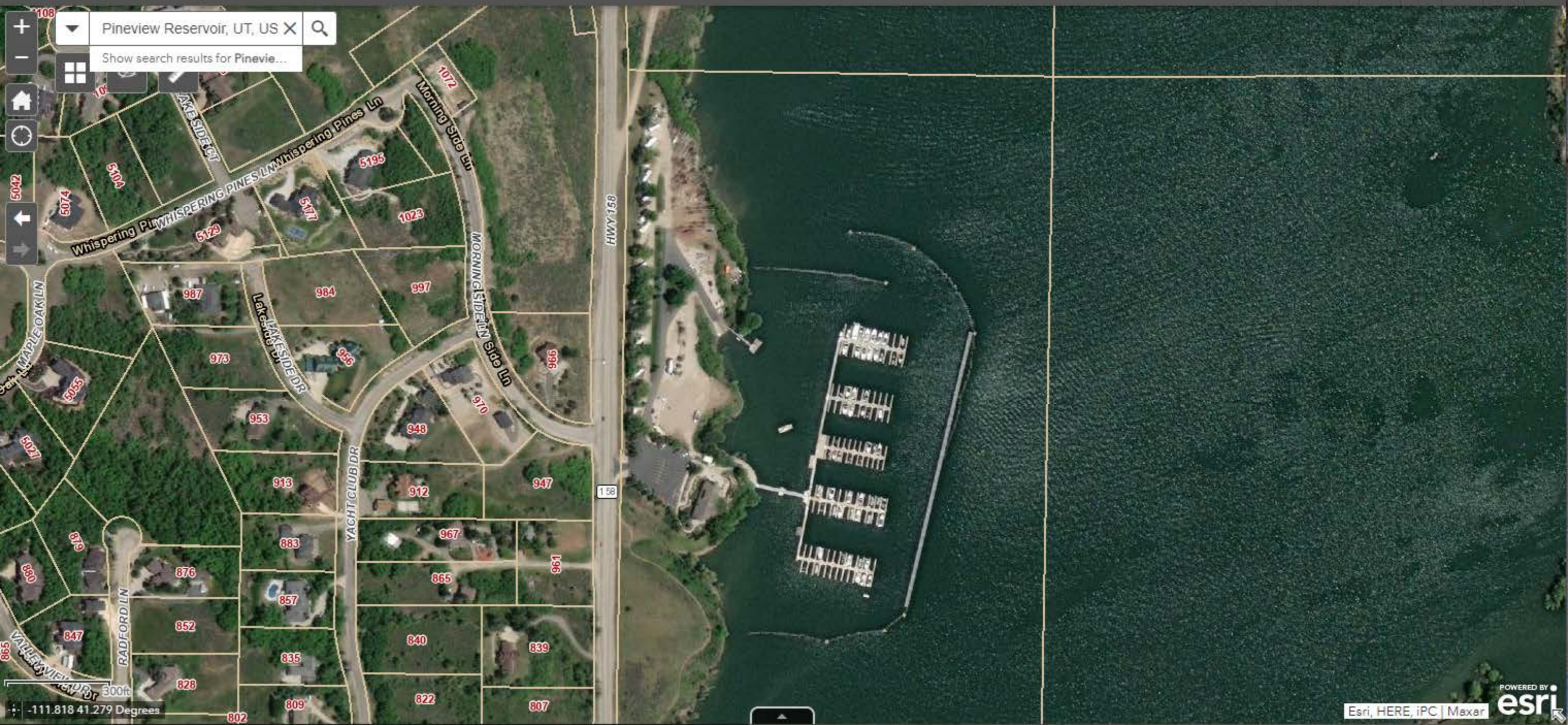
200ft

-111.824 41.284 Degrees



Pineview Reservoir, UT, US X

Show search results for Pinevie...



-111.818 41.279 Degrees

EXHIBIT E

Division Recommendation to Approve
PWWC's 2008 Rate Increase Request
and Proposed Tariff No. 2



JON HUNTSMAN Jr.
Governor
GARY HERBERT
Lieutenant Governor

State of Utah

Department of Commerce

Division of Public Utilities

FRANCINE GIANI
Executive Director

THAD LEVAR
Deputy Director

PHILIP J. POWLICK
Director, Division of Public Utilities

--== MEMORANDUM ==--

TO: PUBLIC SERVICE COMMISSION OF UTAH

FROM: DIVISION OF PUBLIC UTILITIES
Philip J. Powlick, Division Director
Bill Duncan, Manager, Telecom & Water Section
Mark Long, Utility Analyst
Shauna Benvegna-Springer, Utility Analyst
Kasi Boede, Intern

DATE: June 25, 2009

SUBJECT: In the Matter of the Request of Pineview West Water Company for Approval of a Rate Increase

RE: Docket No. 09-2438-01

RECOMMENDATION: APPROVE DIVISION RECOMMENDATION

The Division of Public Utilities (DPU or the "Division") has completed a compliance audit and rate case analysis of Pineview West Water Company ("Pineview" or the "Water Company").

For years, Pineview's expenses have far exceeded its revenues, resulting in on-going subsidies by the developer. Even with operations subsidized by the developer there were sizeable amounts owed to several vendors, needed repairs and replacement of key components to the water system and no financial reserves. In order to pay off the most pressing of those debts, a special assessment was recommended by the Division and ordered by the Commission on February 4, 2009. In the meantime, the ownership of the Water Company was transferred to the ratepayers.

While the special assessment paid off many of Pineview's past obligations, the Division now recommends that the Commission also approve a rate increase to assist in ensuring that Pineview's normal operating expenses will be covered by its revenues and it can start building a financial reserve to avoid another special assessment or financial mishap in the near future.

INTRODUCTION:

Pineview West Water Company filed a Request for Approval of a Rate Increase and Special Assessment on November 20, 2008. Some of the information needed for the rate increase was not available, but since the information needed for the special assessment was available, the Commission ordered the bifurcation of the rate increase and special assessment. This resulted in expediting the special assessment to allow Pineview to meet its most pressing past-due obligations, and to maintain service to ratepayers until the requested rate increase could be reviewed by the Commission.

A brief summary of the special assessment approved by the Commission, Docket No. 08-2438-01, is as follows:

1. Total amount of special assessment approved for \$37,613.99;
2. Special assessment of \$648.52 for each ratepayer;
3. For each ratepayer, one-half, or \$324.26, of the special assessment of \$648.52 shall be due and payable on or before February 2, 2009. The remainder of the assessment shall be paid in six, equal, monthly payments beginning March 1, 2009.

4. The amount of the special assessment for all connections belonging to Titan shall be credited against the amount the Water Company owes Titan, not to exceed \$4,500.

COMPANY BACKGROUND:

Pineview's operations are in Weber County, near Ogden City, Utah, and include 58-metered customers with an additional 54 standby customers. The service area includes Pineview West, Radford Hills, Arave, Southwick, Snowberry Inn, the Pineview Yacht Club, HOA clubhouse and related landscaping, and Crimson Ridge. All areas are largely developed with the exception of Crimson Ridge.

The Certificate of Public Convenience and Necessity (CPCN) Number 2438 was issued on September 30, 2004 with a service area approved for up to 133 connections and the corresponding tariff was implemented. The president of Pineview at this time was Edward E. Radford. The Water Company has operated since 1971 as a non-profit corporation. In 2004, Mr. Radford expanded the water system from 58 approved connections to 133 approved connections to accommodate anticipated growth. Mr. Radford, who also lived on site, ran the Water Company and did many of the repairs and the maintenance himself and at his own expense, thus keeping the rates artificially low.

In 2006 Titan Development, owned by Nathan Brockbank, purchased Pineview West Water Company in a related land acquisition. Because Mr. Radford was no longer subsidizing

Pineview through his donated labor and expertise, Titan Development soon found that the expenses for repairs, replacement and general maintenance for the Water Company far exceeded the revenues. As a result, to keep Pineview operational, Titan Development also subsidized the Water Company.

On or about December 4, 2008, Mr. Brockbank formally announced his and Titan Development's departure from Pineview. A special shareholder meeting was held on March 23, 2009 at which time the shareholder Board was voted in unanimously by proxy and by attendance vote. Mr. Radford dedicated 21 shares to the majority vote. Mr. Brockbank voted all his shares for the four members to be installed. The new Board Officers voted in are Peter Turner, President; Brian Burrows, Vice President; Velma Reeder, Vice President/Treasurer and Kevin Forbes as an advisor. The new Board immediately changed all ownership documents, vendor account information and legal registration to reflect the new Board. Mr. Brockbank also handed over the bank account to the new Board and a new account was opened.

ANALYSIS:

The Division reviewed annual reports submitted by the Water Company for the years ending December 31, 2004 through December 31, 2008. The Water Company willingly provided information to the Division for analysis, such as water utilization records, plant and equipment records, revenue, purchase and expense records, and full disclosure and explanation for various transactions. The Division met with Water Company representatives, and spoke on several more occasions to discuss its water rate design. The Division has found the Water Company to be

cooperative in supplying data and other information. The Water Company is currently in compliance with all of its reporting requirements to the Division.

Test Year

The Division used the calendar year 2008 as the test year.

Adjustments to the Test Year:

Amounts were adjusted based on an annual connection increase of 5%, or three (3) connections. See DPU Exhibit 1.3 for additional details.

Revenue Adjustments:

Revenues were adjusted largely to cover the fixed and variable costs. See DPU Exhibit 1.2 for specific line item adjustments and detailed explanations.

Operating Expense Adjustments

Operating expenses were adjusted based on historical trends, prior year amounts and future anticipated needs. See DPU Exhibit 1.2 for specific line item adjustments and detailed explanations.

Rate Base Adjustments:

Amounts per the annual reports indicated a total rate base of \$754,508. The Division's analysis determined that a majority of the assets listed under the '*Utility Plant in Service*' were

incorrectly reported as depreciable assets purchased by the Water Company when they were actually donated to the Water Company and should have been reported as Contribution in Aid of Construction (CIAC). After the Division made the adjustments to correct the accumulated depreciation and CIAC, the correct rate base is \$52,498.

In general, the return that the Water Company is entitled to should be the product of the rate base multiplied by the rate of return. The rate base amount is primarily made up of the '*Utility Plant in Service*' less the accumulated depreciation and CIAC. The rate of return is intended to pay the annual interest cost of debt capital and to provide a fair rate of return to the owner or shareholders. Changing either of these components will result in higher or lower levels of dollar return. In Pineview's case, because it reports no debt and operates as a mutual non-profit organization it has zero debt capital to repay and pays zero returns to shareholders because it has voluntarily opted not to seek a profit. Due to the proceeding two factors, Pineview's recommended rate of return is 0%, therefore, the reduction in rate base was inconsequential in calculating the rates because the product of two amounts, when one amount is zero, is zero. [(\$0 debt capital plus \$0 return on investment) times \$52,498 rate base = \$0]

For a complete and detailed analysis of Division adjustments to the rate base please refer to DPU Exhibit 1.5.

Debts

Pineview's current position is that it has no legally binding debt; therefore, the rates were calculated under this assumption. If Pineview does have debt, the rate of return will be incorrect,

although this will have only a minimal affect on the rates because the rate base is so small. More significantly, however, the loan payments will increase the fixed expenses, which will in turn cause the recommended rates to be much too low.

As previously mentioned as part of the background of Pineview, Titan Development and Mr. Brockbank (personally) subsidized the operation of Pineview during the time they ran Pineview. Mr. Brockbank has consistently stated to the Division that the funds used to subsidize Pineview were a loan. These funds are recorded in the general ledger as '*Operating Expenses Advanced*' (refer to Exhibit 1.8 for an excerpt of the general ledger showing the entries for '*Operating Expenses Advanced*') and shows a balance of \$59,532. Of this \$59,532, the general ledger lists personal loans of \$13,150 from Mr. Brockbank. To date, Mr. Brockbank has only provided documentation for two loans made during 2008. The first loan is for \$6,000 and another for \$2,500 of which \$4,000 has been repaid to Mr. Brockbank, leaving a balance due of \$4,500. Pineview in the form of three (3) \$1,500 checks paid the repayment of the \$4,500 to Mr. Brockbank ordered in the aforementioned special assessment to Mr. Brockbank. The checks were issued on February 25, February 26 and March 11, 2009 with check numbers 3136, 3164 and 3171, respectively. The Division has not received any additional documentation or renewed claims beyond the \$4,500 from Mr. Brockbank or Titan Development. The remaining '*Operating Expenses Advanced*' balance on the books is \$55,032 (\$8,650.00 + \$19,447.58 + \$17,101.61 + \$ 9,832.50). The general ledger entries appear to indicate that the remaining amounts totaling \$55,032 were for new development and infrastructure.

Pineview Board members state that Mr. Brockbank represented in a meeting of the Pineview's shareholders that the funds paid by Titan Construction and Mr. Brockbank on behalf of Pineview were a contribution and did not have to be repaid. In the reply to the second data request, dated May 4, 2009, to the Division's request of: "Interest rates on all notes payable and any other obligations" was received from Pineview's new President, Peter Turner who made the following notation:

"We do not have any notes payable.

Once their request for the Water Company to be exempt from PSC oversight was voted down by the shareholders in 2008 Titan Construction and Mr. Brockbank listed the monies they donated to the Water Company for 2006 and 2007 as debt.

We are not aware of any legal agreements between them and the Water Company.

Their claim was retroactive. This Board does not recognize it as valid debt.

Monies loaned to the Water Company by Mr. Brockbank in 2008, and agreed to as such, have been repaid."

Based on the general ledger entries and Mr. Turner's statement, and in the absence of additional documentation or evidence, the Division believes that the new development and infrastructure should be borne by Titan Development and not the ratepayers of the Water Company. Titan Development had a stake in keeping the Water Company operational in order to sell and develop the property served by the Water Company and therefore subsidized the Water Company at its own expense.

A similar issue also arises regarding the \$9,827 legal fees owned to Smith Hartvigsen for work done in 2007 and 2008. Water Company Board members state that the legal work was done on behalf of Mr. Brockbank for his own personal interest and not that of the Water Company.

General ledger entries indicate that the legal work was done for “NEW water account #6212.”

The Commission Rule R746-330-6, states that there is a rebuttable presumption that the value of original utility plant and assets has been recovered in the sale of lots in a development to be served by a developer-owned water or sewer utility. Again, in the absence of additional documentation, the Division believes that the ratepayers should not bear the legal expenses incurred not benefitting the Water Company.

DIVISION RECOMMENDATIONS:

Rates

Rates and Rate Language Changes:			
<i>(Table One)</i>			
Description	Current Tariff	Requested by Pineview	Recommended by Division
First 7,500 gallons	\$15.00 per month	\$30.00 per month	\$55.00 per month
Usage per 1,000 gallons over 7,500	\$2.50 per 1,000 gallons	\$7.50 per 1,000 gallons	\$5.00 per 1,000 gallons
Unmetered lots	\$15.00 per month flat rate	\$30.00 per month	\$55.00 per month
Lots temporarily without meters	\$15.00 per month	\$30.00 per month	\$55.00 per month
Standby Fees (Applies to all lots where the service mains are in place and where service is available, but no water service has been connected and no water service is used. Any unpaid standby fees for a particular lot, including those fees incurred by a prior owner, along with accumulated interest, must be paid in full before water service will be provided.	\$50.00 per year	\$180.00 per year	\$240.00 per year

Disconnect fees		\$100.00	\$100.00
Re-connect fees		\$100.00	\$100.00
First time service connection fee (One time charge, to be paid in full before water service will be provided.)	\$3,500.00	\$3,500.00	\$3,500.00
¾"-Line meter connection fee	none	\$300.00	\$200.00
1"-Line meter connection fee	none	\$500.00	\$300.00
1 ½"-Line meter connection fee	none	\$700.00	\$500.00
Interest rate on bills past due by 30 days or more	none	18% per annum or 1.5% per month	18% per annum or 1.5% per month
Fee for unwarranted service call: (Unwarranted service call defined as a service call that is determined to be customer responsibility.)	none	\$50.00/hr above actual cost	Actual cost
Non-shareholder contract rates	none	\$30.00 per month	\$55.00 per month

The above rate schedule has the following rate changes and additions.

1. First 7,500 gallons

The original minimum gallons usage and rate was the first 6,000 gallons used was at a monthly rate of \$15.00. The minimum gallons usage and rate is now the first 7,500 gallons used at a monthly rate of \$55.00. The minimum billing rate has increased due to the high fixed costs, see DPU Exhibit 1.2, and the small number of connections (currently 58 and projected to be 61) to spread the fixed costs.

2. Usage per 1,000 gallons over
7,500

The utilization overage amount has increased from \$2.50 per 1,000 gallons to \$5.00 per 1,000 gallons. The projected utilization overages are calculated to cover the projected variable costs, see DPU Exhibit 1.2.

3. Unmetered lots

The unmetered lots, or 'contract sales' was originally \$15.00 per month and are now set at the same minimum billing rate of \$55.00.

4. Lots temporarily without meters

Same as #3. above.

5. Standby Fees

Standby fees have increased from \$50.00 per year to \$240.00 per year. The increased amount is the annual depreciation and amortization of CIAC of the Water Company's '*Utility Plant in Service*' account divided by the numbers of water users and those on standby. See DPU Exhibit 1.7, Row 29, Column A for the calculation of the \$240.

6. Disconnect fees

This is a new fee and is set at \$100.00.

7. Re-connect fees

This is a new fee and is set at \$100.00.

8. First time service connection fee

This is a one-time charge to new customers for initiation of water service where no service previously existed by physically tapping the water main and installing the line to the customer's property boundary. The service connection fee is intended to recover the costs, both material and labor, that the Water Company must spend in providing first-time service. With that said, it should be noted that the service mains have already been installed to each lot's property line by the original developer, Ed Radford. The service connection fee will also cover the cost of conveying water rights from the developer to the Water Company and in turn, the Water Company will issue the accompanying water share(s) to the shareholders. The transactions for Pineview are 1) the receipt of the service connection fee and 2) the remittance to the developer, and 3) the cost of the meter installation, which is addressed immediately below. Mr. Radford, at the time of selling the unimproved lots, put in the sales contract between himself and the purchaser that the connection fees must be paid to Mr. Radford. In the past, the Water Company has collected the fees and reimbursed them to Mr. Radford. The Division recommends that Pineview and Mr. Radford come to a mutually agreeable arrangement in the collection of the connection fees and payment to Mr. Radford.

9. ¾"-Line meter connection fee

Pineview requested a ¾"-line meter connection fee of \$300.00. The Division contacted the certified water operator for Pineview and requested the costs to purchase and install a ¾"-line meter. The cost to purchase and install a ¾"-line meter is \$200.00. A meter connection fee of \$200.00 will allow Pineview to recover its costs, and therefore should be set at \$200.00 for a ¾"-line meter connection.

10. 1"-Line meter connection fee

Pineview requested a 1"-line meter connection fee of \$500.00. The Division contacted the certified water operator for Pineview and requested the costs to purchase and install a 1"-line meter. The cost to purchase and install a 1"-line meter is \$300.00. A meter connection fee of \$300.00 will allow Pineview to recover its costs, and therefore should be set at \$300.00 for a 1"-line meter connection.

11. 1½"-Line meter connection fee

Pineview requested a 1½"-line meter connection fee of \$700.00. The Division contacted the certified water operator for Pineview and requested the costs to purchase and install a 1½"-line meter. The cost to purchase and install a 1½"-line meter is \$500.00. A meter connection fee of \$500.00 will allow Pineview to recover its costs, and therefore should be set at \$500.00 for a 1½"-line meter connection.

12. Fee for unwarranted service call

If during the course of a service call it is determined that the repair is the customer's responsibility, i.e. repair needed on the customer's side of the meter, then the customer is responsible for reimbursing Pineview for all expenses incurred on the customer's behalf. Pineview initially requested that it be reimbursed at \$50.00 per hour above actual costs. Pineview should be able to cover its costs, but since Pineview is a non-profit organization and documentation was not submitted to support the \$50.00 per hour, the Division does not recommend that the Water Company receive the additional \$50.00 per hour.

13. Non-shareholder contract rates

These rates are properly set at the minimum billing rates for shareholders.

In addition to the rate changes and additions, the Division worked with Pineview in changing or expanding the descriptions for clarification purposes.

CUSTOMER IMPACT

Below, the Division has shown the impact to sample customers based on varying water usage amounts due to the rate increase. A percentage of change from current to recommended rates for Customer 1 is 325.33%, Customer 2 is 253.25%, and Customer 3 is 229.22%, respectively.

Sample Rates for Current Three-Month Billing Cycle * (Table 2)				
Customer	Usage in Gallons	Current Minimum Rate	Current Overage Billing	Current Total Bill
A	22,500	\$45.00	\$11.25	\$56.25
B	60,000	\$45.00	\$105.00	\$150.00
C	135,000	\$45.00	\$292.50	\$337.50

Sample Rates and % Change for Recommended Three-Month Billing Cycle * (Table 2a)					
Customer	Usage in Gallons	Proposed Minimum Rate	Proposed Overage Billing	Proposed Total Bill	% Increase
A	22,500	\$165.00	\$0.00	\$165.00	293.33%
B	60,000	\$165.00	\$196.88	\$352.50	235.00%
C	135,000	\$165.00	\$590.63	\$727.50	215.56%

* Please note, for comparative purposes, all above amounts are stated in three-month billing cycles to match Pineview's three-month billing cycle.

In the past, the Division has recommended an increase of this percentage to be phased in over a period of time. Unfortunately, in this situation, the Water Company's cash flow needs are greater than other small water systems, and the fixed expenses for this system are spread over a smaller number of connections than other small water systems. Typically, the developer would retain and subsidize the water system until the water system is developed completely and all lots are sold. The Division discussed the large increase with the board members of the Water Company and the board members recognized the need for the tariff increases in order to maintain a sound and viable water system. The Division recognizes that this is a large increase and will have a big impact on the ratepayers, but without a developer subsidizing the Water Company, as

in the past, and keeping prices artificially low, the Water Company must now fund its expenses and establish a minimum financial reserve through its revenues.

RESERVES:

The Division is concerned about the Water Company's lack of financial reserves. Parts of Pineview's infrastructure are over 30 years old and will be in need of replacement or repair in the near future. Pineview currently has no reserves set aside for these replacements or repairs.

Reserves are a necessary part of a sound financial management plan for an on-going effective water system. The combined amounts of the annual depreciation and the annual amortization of contribution in aid of construction are a sound financial measurement in calculating the minimum level of reserves that should be set aside each year and allowed to accumulate or used as the need arises. Therefore, the Division recommends that each year the Water Company place the annual total depreciation and amortization of contribution in aid of construction amount into a reserve account; i.e. for 2009, the amount would be \$27,496. (See Exhibit 1.4, line 29, column P)

CONCLUSION:

To cover expenses and set aside the recommended minimum financial reserve amount the Division recommends that:

1. minimum rate be set at \$55.00 per month for the first 7,500 gallons be approved;
2. usage per 1,000 gallons over 7,500 is billed at \$5.00 per 1,000 gallons be approved;

3. standby fees set at \$240 per year
be approved ;
4. disconnect and re-connect fees set
at \$100 per incident be approved ;
5. first time connection charge
remains \$3,500 (one-time charge per connection) be approved ;
6. $\frac{3}{4}$ "-line meter connection fee set at \$200 (one-time
charge per connection) be approved;
7. 1"-line meter connection fee set at \$300 (one-time
charge per connection) be approved;
8. 1 $\frac{1}{2}$ "-line meter connection fee set at \$500 (one-
time charge per connection) be approved;
9. interest rate on bills past due by 30 days or more set
at 18% per annum or 1.5% per year be approved;
10. fee for unwarranted service call billed at the same
amount incurred by the Water Company be approved;
11. all other rates and terminology contained in Table 1
be approved.
12. overages shall be measured and billed every three (3) months be approved;
13. billing periods set at three (3)
month increments, with winter months, the billing may include only the minimum billing
amounts. The first reading of the meters after the winter months shall include the

overage billings for the prior period(s) plus the current overage and minimum billings be approved.

EXHIBIT F

Proposed Tariff No. 2

Peter Turner

From: Peter Turner [peter@turnerdesignusa.com]
Sent: Monday, April 13, 2009 6:54 AM
To: Shauna Benvegnu-Springer
Cc: 'peggyt@relia.net'; Brian Burrows; Kevin Forbes; Kevin Forbes (knforbes@digis.net); Velma Reeder
Subject: Pineview West Tariffs and Rates
Attachments: Water Company Rate Increase v3.xls

Shauna,

We have worked out a proposed new tariff structure and associated rates. The intent is to match our projected expenses and still be able to put some funds into a contingency account to cover unexpected expenses and build a reserve to upgrade or repair our infrastructure as it ages. However we had to temper that a bit to not shock the shareholders with too much of a change in their water bill. We are still proposing a doubling of the base culinary rate from \$15/month to \$30 and increasing basic secondary rates from \$150/year to \$200/year.

We are expanding our list of tariffs with the primary intent of covering costs associated with our activities. Right now we cannot cover expenses for such items as disconnect for unpaid water bills. Since new homes are so large requiring much larger than the "traditional" 3/4 inch meters and lines we are adding new rates for that increased demand on capacity. We also want to impose a \$2500 first-time connection fee to help build up our capital upgrade fund for the infrastructure related to those lots that historically have paid almost nothing.

I still need to talk to our non-shareholder customers to discuss proposed rates with them.

On the expense side of things I estimated expenses based on bills from last year that I received during the 4th quarter. I tried to project what expenses we could expect with a focus on only covering expenses truly related to supplying water to shareholders. We are going to scrutinize expenses very thoroughly to insure we do not subsidize development. I did expense and income projections for several years out and then at a build out scenario just to get a feel for how we would look way in the future. I will be interested to see how my expense projections compare to yours.

Can I get a copy of your audit findings and recommendations to the Commission?

We plan to do one system capital upgrade, a telemetry monitoring and reservoir balancing system, that will be financed with a Division of Drinking Water loan. If we cannot get the loan or if we have extraordinary expenses in the next few years we will need to do another special assessment. Our secondary water system also needs a pricey upgrade to the infrastructure to lower our regular expenses and improve service but I think we will have to just put that off until we can prove some stability with the water company finances.

We are also adding a line item for regular outside accounting services and expenses to reimburse the board members and others providing services to the company beginning next year. These types of expenses tended to be covered on a volunteer basis in the past.

I have attached a spreadsheet with all this data. Not being an accountant it may be a bit confusing. But the rate structure is there on the Income sheet and I copied it into the email body below. Please call if you have any questions.

What should we do next?

Tariff and Rate Structure

Shareholder Culinary 3/4" (monthly)	
first 7500 gallons/month (25% higher amount)	\$30
each 1000 over 7500 gallons/month	\$7.50
Shareholder Culinary 1" (monthly)	
first 7500 gallons/month	\$40
each 1000 over 7500 gallons/month	\$10.00
Shareholder Culinary 1 1/4" (monthly)	
first 7500 gallons/month	\$45
each 1000 over 7500 gallons/month	\$11.25
Shareholder Culinary 1 1/2" (monthly)	
first 7500 gallons/month	\$50
each 1000 over 7500 gallons/month	\$12.50
Secondary (annual)	
1/4 acre	\$200
1/2 acre	\$400
Standby vacant lot (annual)	\$150
Un-metered lots (monthly)	\$30
Disconnect Fee	\$100
Re-connect Fee	\$100
First time connection fee	\$2,500
Meter Fee 3/4"	\$300
Meter Fee 1"	\$500
Meter Fee 1 1/2"	\$700
Interest on past due bills	18%
Fee for unwarranted service call	\$50 above actual same as shareholder
Non-shareholder Contract Rates	shareholder

Best Regards,

Peter Turner
President, Pineview West Water Company
828 Radford Lane
Eden, Utah 84310
wired 801.745.9241
cell 801.675.1711
peter@turnerdesignusa.com

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2009 JUN 22 A 10: 35

"v3" First Submission

	2008	2009 (proposed)	2010 (proposed)	2011 (proposed)	2012 (proposed)	Buildout (projected)
No of culinary users	58	62	66	70	74	156
Rate (monthly)	\$15	\$30	\$30	\$30	\$30	\$30
annual income subtotal	\$14,940	\$30,960	\$32,400	\$33,840	\$35,280	\$119,160
No of shareholders w/o meters	2	13	15	10	5	0
Rate (monthly)	\$15	\$30	\$30	\$30	\$30	\$30
annual income subtotal	\$360	\$4,680	\$5,400	\$3,600	\$1,800	\$0
No on Standby (vacant lots)	2	4	4	4	3	0
Rate (annual)	\$50	\$150	\$150	\$150	\$150	\$150
Standby income subtotal	\$100	\$600	\$600	\$600	\$450	\$0
Secondary user count	43	45	46	48	50	121
Secondary income subtotal	\$6,375	\$10,600	\$10,800	\$11,200	\$11,600	\$25,800
Connection Fee		\$0	\$11,200	\$11,200	\$11,200	\$0
Income Total	\$21,775	\$46,840	\$60,400	\$60,440	\$60,330	\$144,960

RECEIVED
DIVISION OF
PUBLIC UTILITIES

2009 JUN 22 A 10:35

Tariff and Rate Structure

Shareholder Culinary 3/4" (monthly)						
first 7500 gallons/month (25% higher amount)	\$15	\$30	\$30	\$30	\$30	\$30
each 1000 over 7500 gallons/month	\$2.50	\$7.50	\$7.50	\$7.50	\$7.50	\$7.50
Shareholder Culinary 1" (monthly)						
first 7500 gallons/month		\$40	\$40	\$40	\$40	\$40
each 1000 over 7500 gallons/month		\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Shareholder Culinary 1 1/4" (monthly)						
first 7500 gallons/month		\$45	\$45	\$45	\$45	\$45
each 1000 over 7500 gallons/month		\$11.25	\$11.25	\$11.25	\$11.25	\$11.25
Shareholder Culinary 1 1/2" (monthly)						
first 7500 gallons/month		\$50	\$50	\$50	\$50	\$50
each 1000 over 7500 gallons/month		\$12.50	\$12.50	\$12.50	\$12.50	\$12.50
Secondary (annual)						
1/4 acre	\$125	\$200	\$200	\$200	\$200	\$200
1/2 acre	\$250	\$400	\$400	\$400	\$400	\$400
Standby vacant lot (annual)	\$50	\$150	\$150	\$150	\$150	\$150
Un-metered lots (monthly)	\$15	\$30	\$30	\$30	\$30	\$30
Disconnect Fee		\$100	\$100	\$100	\$100	\$100
Re-connect Fee		\$100	\$100	\$100	\$100	\$100
First time connection fee		\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Meter Fee 3/4"		\$300	\$300	\$300	\$300	\$300
Meter Fee 1"		\$500	\$500	\$500	\$500	\$500
Meter Fee 1 1/2"		\$700	\$700	\$700	\$700	\$700
Interest on past due bills		18%	18%	18%	18%	18%
Fee for unwarranted service call		\$50 above actual	\$50 above actual	\$50 above actual	\$50 above actual	\$50 above actual
Non-shareholder Contract Rates		same as shareholder				

Expenses	2008	2009	2010	2011	2012	Buildout	Notes
Weber Basin	\$2,965	\$2,965	\$2,965	\$2,965	\$2,965	\$6,000	expect to be stable for next 5 years
Rocky Mtn Power	\$7,000	\$6,000	\$6,600	\$6,930	\$7,277	\$10,000	expect 10% increase over 2008 in two years
S&S Operator	\$3,600	\$6,000	\$6,000	\$6,000	\$7,200	\$12,000	raise to \$500/month in 2009, \$600/month in 2012
Ogden City Water	\$7,000	\$4,000	\$4,400	\$4,840	\$5,324	\$6,000	lower amount in 2009 if well #2 replaced and telemetry installed, 10% increase beginning 2011
Testing	\$900	\$1,000	\$1,000	\$1,000	\$1,200	\$2,000	
Insurance	\$2,900	\$3,190	\$3,509	\$3,860	\$4,246	\$5,000	
Secretarial Fees	\$0	\$2,400	\$2,400	\$2,400	\$2,400	\$3,600	
Meter Readings		\$405	\$405	\$405	\$405	\$600	
Secondary Water On and Off		\$540	\$540	\$540	\$540	\$750	
Secondary Daily Maintenance		\$4,500	\$2,250	\$2,250	\$2,250	\$2,250	
Connecting Meters		\$300	\$1,200	\$1,200	\$1,200	\$0	
Service Telemetry System Loan			\$5,000	\$5,000	\$5,000		
Board Services Fees	\$0	\$0	\$4,800	\$4,800	\$4,800	\$7,200	
Legal Fees	\$6,000	\$2,000	\$1,000	\$1,000	\$1,000	\$1,500	
Accounting	\$195	\$2,400	\$2,400	\$2,400	\$2,400	\$6,000	
Maintenance, regular (reduced secondary maint)	\$5,000	\$5,000	\$3,000	\$3,300	\$3,630	\$20,000	
Contingency Fund	\$0	\$6,000	\$10,000	\$10,000	\$10,000	\$10,000	
Misc office supplies, computers, etc	\$500	\$500	\$500	\$500	\$500	\$500	
Total before Capital Improvement	\$36,060	\$47,200	\$57,969	\$59,390	\$62,337	\$93,400	
Capital Improvement Reserves							
Distribution Mains	\$6,400	\$6,400	\$6,400	\$6,400	\$6,400	\$15,000	
Reservoirs and Standpipes	\$5,872	\$5,872	\$10,000	\$10,000	\$10,000	\$15,000	
Pumping Equipment	\$2,404	\$2,404	\$2,404	\$7,404	\$7,404	\$15,000	
Wells and Springs	\$12,369	\$12,369	\$12,369	\$12,369	\$12,369	\$15,000	
Capital Improvements	\$27,045	\$27,045	\$31,173	\$36,173	\$36,173	\$60,000	
Expenses Total	\$63,105	\$74,245	\$89,142	\$95,563	\$98,510	\$153,400	

Planned Capital Improvements

Culinary wireless telemetry system	25000
Secondary Pressure Relief	25000

* 4 pumps replaced every 5 years at \$10,000 each

	2009	2010	2011	2012	Buildout (projected)
Income	\$46,840	\$60,400	\$60,440	\$60,330	\$144,960
Cash Expenses including Contingency Funds (None in 2008)	\$47,200	\$57,969	\$59,390	\$62,337	\$93,400
Annual Cash Balance if Contingency Fund is Spent	-\$360	\$2,431	\$1,050	-\$2,007	\$51,560
Annual Cash Balance if Contingency Fund is Not Spent	\$5,640	\$12,431	\$11,050	\$7,993	\$61,560
Capital Expense balance, if Contingency Fund unused	\$6,000	\$16,000	\$26,000	\$33,993	

"v5" Adjusted Final Submission

	2008	2009 (proposed)	2010 (proposed)	2011 (proposed)	2012 (proposed)	Buildout (projected)
No of culinary users	58	61	63	65	67	156
Rate (monthly)	\$15	\$30	\$30	\$35	\$35	\$35
annual income subtotal	\$14,940	\$30,600	\$31,320	\$37,380	\$38,220	\$139,020
No of shareholders w/o meters	2	13	15	10	5	0
Rate (monthly)	\$15	\$30	\$30	\$30	\$30	\$30
annual income subtotal	\$360	\$4,680	\$5,400	\$3,600	\$1,800	\$0
No on Standby (vacant lots)	2	4	4	4	3	0
Rate (annual)	\$50	\$180	\$180	\$180	\$180	\$180
Standby income subtotal	\$100	\$720	\$720	\$720	\$540	\$0
Secondary user count	43	45	46	48	50	121
Secondary income subtotal	\$6,375	\$10,600	\$10,800	\$14,000	\$14,500	\$32,250
Connection Fee		\$0	\$7,600	\$7,600	\$7,600	\$0
Income Total	\$21,775	\$46,600	\$55,840	\$63,300	\$62,660	\$171,270

Tariff and Rate Structure

Shareholder Culinary 3/4" (monthly)						
first 7500 gallons/month (25% higher amount)	\$15	\$30	\$30	\$35	\$35	\$35
each 1000 over 7500 gallons/month	\$2.50	\$7.50	\$7.50	\$8.75	\$8.75	\$8.75
Secondary (annual)						
1/4 acre	\$125	\$200	\$200	\$250	\$250	\$250
1/2 acre	\$250	\$400	\$400	\$500	\$500	\$500
Standby vacant lot (annual)	\$50	\$180	\$180	\$180	\$180	\$180
Un-metered lots (monthly)	\$15	\$30	\$30	\$30	\$30	\$30
Disconnect Fee		\$100	\$100	\$100	\$100	\$100
Re-connect Fee		\$100	\$100	\$100	\$100	\$100
First time connection fee (culinary and secondary)		\$3,500	\$3,500	\$3,500	\$3,500	\$3,500
Meter Fee 3/4"		\$300	\$300	\$300	\$300	\$300
Meter Fee 1"		\$500	\$500	\$500	\$500	\$500
Meter Fee 1 1/2"		\$700	\$700	\$700	\$700	\$700
Interest on past due bills		18%	18%	18%	18%	18%
Fee for unwarranted service call		\$50/hr above actual	\$50/hr above actual	\$50/hr above actual	\$50/hr above actual	\$50/hr above actual
Non-shareholder Contract Rates		same as shareholder				

Expenses	2009	2010	2011	2012	Buildout	Notes
Weber Basin	\$2,965	\$2,965	\$2,965	\$2,965	\$6,000	expect to be stable for next 5 years
Rocky Mtn Power	\$6,000	\$6,600	\$6,930	\$7,277	\$10,000	expect 10% Increase over 2008 in two years
S&S Operator	\$6,000	\$6,000	\$6,000	\$7,200	\$12,000	raise to \$500/month in 2009, \$800/month in 2012
Ogden City Water	\$4,000	\$4,400	\$4,840	\$5,324	\$6,000	lower amount in 2009 if well #2 replaced and telemetry installed, 10% increase beginning 2011
Testing	\$1,000	\$1,000	\$1,000	\$1,200	\$2,000	
Insurance	\$3,190	\$3,509	\$3,860	\$4,246	\$5,000	
Secretarial Fees	\$2,400	\$2,400	\$2,400	\$2,400	\$3,600	
Meter Readings	\$405	\$405	\$405	\$405	\$600	
Secondary Water On and Off	\$540	\$540	\$540	\$540	\$750	
Secondary Daily Maintenance	\$4,500	\$2,250	\$2,250	\$2,250	\$2,250	
Connecting Meters	\$300	\$600	\$600	\$600	\$0	
Service Telemetry System Loan		\$5,000	\$5,000	\$5,000		
Board Services Fees	\$0	\$4,800	\$4,800	\$4,800	\$7,200	
Legal Fees	\$2,000	\$1,000	\$1,000	\$1,000	\$1,500	
Accounting/Audits	\$200	\$200	\$200	\$200	\$500	
Maintenance, regular (reduced secondary maint)	\$5,000	\$3,000	\$3,300	\$3,630	\$20,000	
Contingency Fund	\$6,000	\$10,000	\$10,000	\$10,000	\$10,000	
Misc office supplies, computers, etc	\$500	\$500	\$500	\$500	\$500	
Regulatory Commission Expense	\$52	\$52	\$52	\$52	\$52	
Membership Fees	\$150	\$150	\$150	\$150	\$150	
Office (Postage and Supplies)	\$300	\$300	\$300	\$300	\$300	
Bank Fees	\$25	\$25	\$25	\$25	\$25	
Bad Debt Expense	\$900	\$900	\$900	\$900	\$900	
Accounting/Billing Services	\$2,400	\$2,400	\$4,800	\$4,800	\$6,000	
Total before Capital Improvement	\$48,827	\$58,996	\$62,817	\$65,764	\$95,327	
Capital Improvement Reserves						
Distribution Mains	\$6,400	\$6,400	\$6,400	\$6,400	\$15,000	
Reservoirs and Standpipes	\$5,872	\$10,000	\$10,000	\$10,000	\$15,000	
Pumping Equipment	\$2,404	\$2,404	\$7,404	\$7,404	\$15,000	
Wells and Springs	\$12,369	\$12,369	\$12,369	\$12,369	\$15,000	
Capital Improvements	\$27,045	\$31,173	\$36,173	\$36,173	\$60,000	
Expenses Total	\$75,872	\$90,169	\$98,990	\$101,937	\$155,327	

Planned Capital Improvements

Culinary wireless telemetry system	\$25,000
Secondary Pressure Relief	\$25,000

* 4 pumps replaced every 5 years at \$10,000 each

	2009	2010	2011	2012	Buildout (projected)
Income	\$46,600	\$55,840	\$63,300	\$62,660	\$171,270
Cash Expenses including Contingency Funds (None in 2008)	\$48,827	\$58,996	\$62,817	\$65,764	\$95,327
Annual Cash Balance if Contingency Fund is Spent	-\$2,227	-\$3,156	\$483	-\$3,104	\$75,943
Annual Cash Balance if Contingency Fund is Not Spent	\$3,773	\$6,844	\$10,483	\$6,896	\$85,943
Capital Expense balance, if Contingency Fund unused	\$6,000	\$12,844	\$22,844	\$29,740	

EXHIBIT G

Report and Order Approving Proposed
Tariff No. 2

In Docket No. 08-2438-01, the Commission approved a special assessment for \$37,613.99 to satisfy pressing, past-due obligations of the Company, including paying off past-due obligations to Ogden City, who threatened termination of service for the Company. The details of that special assessment are contained in the Report and Order approving it in Docket No. 08-2438-01. That docket was bifurcated to provide for this rate increase request. The Division of Public Utilities (Division) has completed a compliance audit and rate case analysis of

the Company and submitted its findings and recommendation on June 25, 2009.

The Company operates in Weber County, near Ogden City. It includes 58 metered customers with an additional 54 standby customers. The Company serves Pineview West, Radford Hills, Arave, Southwick, Snowberry Inn, the Pineview Yacht Club, HOA clubhouse and grounds, and Crimson Ridge subdivision. Most of the areas, except Crimson Ridge, are mostly developed. At the time the Company was issued its certificate in 2004, Edward Radford was president of the Company. He had operated the Company since 1971. Mr. Radford lived on site, and made many of the repairs, improvements, and other maintenance himself, and provided the services and upgrades at his own expense, keeping rates artificially low.

The Division stated that, like many other small rural water companies, the Company's expenses have far exceeded its revenues for several years, with consecutive developers subsidizing expenses. In 2006, Titan Development (owned by Nathan Brockbank) purchased the Company in a related land acquisition. Because Mr. Radford had been keeping expenses artificially low because of his donated labor, expertise, and repairs, Titan Development soon realized that costs for repairs, replacements, and general maintenance for the Company greatly exceeded its revenues. Titan soon began subsidizing the Company's expenses. In fact, Mr. Brockbank placed some of the Company's expenses on his personal credit card. On December 4, 2008, Titan and Mr. Brockbank turned over the ownership of the Company to a new board of directors.

In preparing its recommendation, the Division reviewed the Company's annual reports for years from December 31, 2004 through December 31, 2008. The Division also reviewed

“water utilization records, plant and equipment records, revenue, purchase and expenses records, and full disclosure and explanation for various transactions.” The Division also “met with Water Company representatives, and spoke on several more occasions to discuss its water rate design.”

The Division’s recommendations are summarized in the table below:

Rates and Rate Language Changes			
Description	Current tariff	Requested by Pineview	Recommended by Division
First 7,500 gallons	\$15 per month	\$30 per month	\$55 per month
Usage per 1,000 gallons over 7,500	\$2.50 per 1,000 gallons	\$7.50 per 1,000 gallons	\$5.00 per 1,000 gallons
Unmetered lots	\$15 per month flat rate	\$30 per month	\$55 per month
Lost temporarily without meters	\$15 per month	\$30 per month	\$55 per month
Standby Fees	\$50 per year	\$180 per year	\$240 per year
Disconnect fees		\$100	\$100
Re-connect fees		\$100	\$100
First time service connection fee	\$3,500	\$3,500	\$3,500
3/4"-line meter connection fee	none	\$300	\$200
1"-line meter connection fee	none	\$500	\$300
1 1/2"-line meter connection fee	none	\$700	\$500
Interest rate on bills past due by 30 days or more	none	18% per annum or 1.5% per month	18% per annum or 1.5% per month
Fee for unwarranted service call	none	\$50/hr above actual costs	Actual cost
Non-shareholder contract rates	none	\$30 per month	\$55 per month

Division recommendation, p. 9-10.

The Division additionally used these rate changes to analyze their impact on sample customers, as detailed below:

Sample Customer	Usage in Gallons	Current minimum rate	Current overage billing	Current total bill
A	22,500	\$45	\$11.25	\$56.25
B	60,000	\$45	\$105	\$150
C	135,000	\$45	\$292.50	\$337.50

Based on these rates, a percentage change from current to recommended rates for Customer A is 325.33%, Customer B is 253.25% and Customer C is 229.22%. The Division, in their recommendation and at the hearing, noted the dramatic increase in rates and stated that normally they recommend that such dramatic increases be implemented in phases. However, the Division explained why they recommended that such increases be implemented in one change:

In the past, the Division has recommended an increase of this percentage to be phased in over a period of time. Unfortunately, in this situation, the Water Company's cash flow needs are greater than other small water systems, and the fixed expenses for this system are spread over a smaller number of connections than other small water systems. Typically, the developer would retain and subsidize the water system until the water system is developed completely and all lots are sold. The Division discussed the large increase with the board members of the Water Company and the board members recognized the need for the tariff increases in order to maintain a sound and viable water system. The Division recognizes that this is a large increase and will have a big impact on the ratepayers, but without a developer subsidizing the Water Company, as in the past, and keeping prices artificially low, the Water Company must now fund its expenses and establish a minimum financial reserve through its revenues.

Division recommendation, p.15.

Ultimately, the Division recommended the rate increases and changes as detailed in their recommendation and as recited previously in this Order.

Mr. Brent Moss testified. He stated that he had some concerns about the percentage increase in the rates. He stated that he understood the need for the increase, but did not want the

increase to “set a precedent” for future rate increases, i.e. that any future rate case would increase rates from 200 to 300%. The Division responded that any future rate request, and resultant rate increase, would be analyzed on its own merits, and that there was no automatic percentage increase for rate cases.

Ms. Anderson also testified. She stated that, counter to the Company’s board representations and the Division’s recommendations that the Company had no debt, it did. The debt was owed to Titan and Mr. Brockbank. She said that Titan had made loans to the Company of \$55,032 for new development and infrastructure and that he had incurred \$9,827 in legal fees on the Company’s behalf. The Division did deal with these “loans” in their recommendation. The Division, however, stated that there was a lack of documentation for these loans and that absent any such documentation, showing that there was in fact a contract for loans from Titan or Mr. Brockbank to the Company, that the ratepayers should not be made to bear those costs. Regardless, the Division stated that any dispute regarding such loans was properly a matter for the new Company and Titan Development and that any dispute should be resolved between the two through negotiation, or through litigation. Ms. Anderson brought some documentation to the hearing, but the Division stated that the documentation was still properly raised in negotiations or litigation. The Division did state, however, that if and when those debts are established, the Company could properly move for another rate increase seeking inclusion of those debts in calculating the return due the Company. Ms. Anderson stated that Titan and Mr. Brockbank would resolve the issues outside of these proceedings.

Based on the findings provided by the Division in their recommendation, the Exhibits submitted by the Division at the hearing, and testimony presented at the hearing, the

Commission finds that the rate increase is just and reasonable, and is in the public interest and should be approved. Therefore the Commission orders as follows:

ORDER

1. The Company's request to increase rates, as recommended and detailed by the Division, is approved;
2. Such rate increase shall be effective July 1, 2009;
3. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah this 15TH day of July, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 15th day of July, 2009 as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s//Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#62847

EXHIBIT H

Tariff No. 2

**PINEVIEW WEST WATER COMPANY
A Shareholder Owned Non-Profit Corporation**

**RATE SCHEDULES
AND
RULES AND REGULATIONS**

TARIFF NO. 2

Effective: July 01, 2009

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WATER SERVICE RATE SCHEDULE

Applicability

Applicable in entire service area to water service for culinary purpose at one point of delivery.

Rates as herein set forth shall apply to each customer unit. A consumer unit is defined as a single unit dwelling or any store service station, cafe, factory, shop, processing plant, or other establishment or concern that might apply for culinary water service for domestic purposes.

The following culinary water rates apply.

Description	Charges
First 7,500 gallons (minimum rate)	\$55 per month
Usage per 1,000 gallons over 7,500 gallons	\$5 per 1,000 gallons per month
Standby Fees	\$240 per year
Lots temporarily without meters	\$55 per month
Unmetered lots	\$55 per month
Disconnect fees	\$100 per occurrence
Re-connect fees	\$100 per occurrence
First time service connection	\$3,500
¾"-Line meter connection fee	\$200
1"-Line meter connection fee	\$300
1 ½"-Line meter connection fee	\$500
Interest rate on bills past due by 30 days or more	18% per annum or 1.5% per month
Fee for unwarranted service call:	Actual cost
Non-shareholder contract rates	\$55 per month

RULES AND REGULATIONS

1. **Connections:** No unauthorized person shall tap any water main or distribution pipe of the Company or insert therein any corporation cock, stop cock or any other fixture or appliance or alter or disturb any service pipe, corporation stop, curb stop, gate valve, hydrant, water meter or any other attachment, being part of the waterworks system and attached thereto. No person shall install any water service pipe or connect or disconnect any such service pipe with or from the mains or distribution pipes of said waterworks system, nor with or from any other service pipe now or hereafter connected with said system, nor make any repairs, additions to, or alterations of any such service pipe, tap, stop cock, or any other fixture or attachments connected with any such service pipe, without first obtaining a permit from the Company.
2. **Application for Permit:** Before any service connection shall be made to any part of the waterworks system, or any work performed upon old or new connections, a permit shall be obtained from the Company. Such permit shall be issued upon written application on forms obtainable from the Company. Applicants for water service shall furnish, lay and install at their own expense, all that portion of the service not provided the Company, subject however, to the supervision and inspection of the Company.
3. **Metering of Service:** All water delivered by the Company to its customers shall be metered through water meters. Meters may be checked, inspected, or adjusted at the discretion of the Company, and shall not be opened or adjusted except by authorized representatives of the Company. Only authorized representatives of the Company shall open meter boxes to turn on or off water except in case of emergency or when special permission is given by the Company.
4. **Meter Adjustments:** If the meter fails to register at any time, the water delivered during such a period shall be billed at the minimum rate. In the event a meter is found to be recording at less than 97 percent or more than 103 percent of actual, the Company may make such adjustments to the customer's previous bill as are just and fair under the circumstances.
5. **Service Connections:** Any person desiring to obtain a supply of water from the Company shall make application in writing. The service connection charges shown in this tariff include a meter, meter box, a cover, and a valved service line to the property line. The meter and meter box will be located as directed by the Company. All materials furnished by the Company shall remain its sole and exclusive property. Excavation and installation shall be made by the Company from the main line connection in the road to 3 feet beyond the meter.
6. **Service Line:** All service line materials and installation shall be provided by the applicant. Installation shall be inspected and approved by the Company before the service line trench is backfilled. A shut-off valve shall be provided by the applicant on each service line, in an accessible location separate from the water meter box.
7. **Water Use Restriction:** The owner or occupant of any building on premises entitled to the use of water from the Company shall not supply water to any other building or premise without written permission of the Company.

RULES AND REGULATIONS (cont'd.)

8. **Service Turn-on and Turn-off:** Only authorized representatives of the Company shall turn on or off water at the meter box except in case of an emergency or when special permission is granted by the Company. Service may be turned off by the Company when so requested by the applicant or when the applicant fails to abide by these regulations. Whenever the water is turned off at any premises, it shall not be turned on again until the customer pays all delinquent balances owing, late charges, and reconnection charges as shown in the rate schedule.
9. **Disruption Liability:** The Company shall use reasonable diligence to provide continuous water service to its customers, and shall make a reasonable effort to furnish them with clean, pure supply of water, but the Company shall not be held liable for damages to any water user by reason of any stoppage or interruption of his water supply caused by scarcity of water, accidents to works, water main alterations, additions or repairs, acts of God or other unavoidable causes.
10. **Damage to Facilities:** Costs of any damage resulting from the failure of the owner, agent or tenant to properly protect the water meter or other facilities of the Company installed upon premises supplied with water, shall be assessed against such owner, agent or tenant. Water consumers shall not tamper with or remove the meter, or interfere with the reading thereof.
11. **Reading of Meters:** All meters shall be read by the Company as early in the spring and as late in the fall as shall be practical and quarterly during the period in between. Projected meter reading dates are April 1, July 1, October 1, and late fall if practical and possible. The monthly charges for the period between the last meter reading in the fall and the first meter reading in the spring shall be estimated based upon previous consumption and shall be adjusted on the bill for the first meter reading in the spring. The monthly charges during the remaining billing periods shall be based upon meter readings, except as provided for in the "Meter Adjustments" section herein above.
12. **Billings and Payments:** Bills covering the charges shall be rendered **every three (3) months and shall be due (15) days** after being rendered. If any customer neglects or refuses to pay a water service bill or any other obligation due to the Company within **thirty (30) days** from the date of said bill, the Company's employees shall have the right to go upon the premises and do such work as may be necessary to disconnect the water service. Before the service is renewed the delinquent bill or bills shall be paid in full, or payment arrangements satisfactory to the Company shall be made, and the established tariff charge for reconnection shall be paid.
13. **Discontinuance of Service:** Any customer wishing to discontinue service shall notify the Company so that the meter can be read for a final billing. Such final bill shall be due and payable upon receipt.
14. **Regulated Usage:** Whenever the Company shall determine that the amount of water available to its distribution system has diminished to such a volume that, unless restricted, the public health, safety and general welfare is likely to be endangered, it may prescribe rules and regulations to conserve the water supply during such emergency. Such rules and regulations may include, but shall not be limited to, the restriction to certain hours (or total prohibition) of the use of water for outdoor watering.

RULES AND REGULATIONS (cont'd.)

15. **Changes and Amendments:** The right is reserved to amend or add to these Rules and Regulations as experience may show it to be necessary and as such amendments or additions are approved by the Public Service Commission of Utah.
16. **Credit Deposit:** The Company may at its option, and in lieu of established credit, require a deposit from the customer to assure payment of bills; such deposits shall be a minimum of **30 days** or **\$ 25.00**. This deposit may be refunded when credit has been established. Deposits held over **3 months** shall earn interest from the Company at the rate of **2%** per annum, beginning with the first day of deposit. Interest will be credited to the customer's account.

FACILITY EXTENSION POLICY

1. **Definition:** An extension is any continuation of or branch from, the nearest available existing line of the Company, including any increase of capacity of an existing line to meet the Customers' requirements.
2. **Costs:** The total cost of extensions including engineering, labor, and materials shall be paid by the applicants. If because of the extension and the additional water customers, additional water rights, pumps, storage, or other water plant must be acquired, the Company may require the applicants to pay these costs. Where more than one customer is involved in an extension the costs shall be pro-rated on the basis of the street frontage distances involved or upon such other basis as may be mutually agreed by the applicants. Sufficient valves and fire hydrants must be included with every installation.
3. **Construction Standards.** Minimum standards of the Company shall be met, which standards shall also comply with the standards of the Utah State Division of Drinking Water. Pipe sizes shall never be smaller than 4" (four inches) in diameter. The pipeline shall be installed only along dedicated streets and highways.
4. **Water Storage and Supply:** Except as provided for in paragraph 2 herein above, all costs for providing increased water supply and storage shall be paid by the Company. This cost shall include the installation and operation of pumps as required for proper pressure regulation of the system.
5. **Ownership:** Completed facilities and water rights shall be owned, operated, and maintained by the Company, including and through meters as detailed in the Tariff Rules and Regulations.
6. **Temporary Service:** The Customer will pay the total cost for the installation and removal of any extension for service to a venture of a temporary or speculative nature. Such costs will be estimated and paid before work is begun on the extension.

Effective: July 01, 2009

EXHIBIT I

Invoice Documentation for Snowberry
Inn Hook-Up Cost

Snowberry Costs due to PWWC Interference through April 2016

Snowberry water hook up to PWWC service--Bailey
Construction

10/11/07	5350
11/14/2007	<u>2354</u>

7,704.00 Includes 7% overhead

Problems caused by Calcium in PWWC Water

Water heater Maintenance--Dohrers

7/2/11	488.96
3/8/12	<u>647.74</u>

Subtotal 1,136.70

Plumbing Maintenance--Dohrers

4/17/13	\$166.95
10/2/13	<u>\$224.95</u>

Sub-Total 391.90

Install Water Softener

12/11/13	2000
1/9/14	2000

4,000.00

Cleaning out system from calcium Deposits form
PWWC Water

875.36

Replace water heater clogged with Calcium

3/10/14	954.00
---------	--------

Replace Shower Heads clogged with Calcium

2/17/14	403.34
---------	--------

Flush plumbing line to get rid of Calcium

2/17/14	638.19
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Well monitoring - Paul Anderson

5/7/13	975.00
6/5/13	1,127.50
8/15/13	383.50
11/4/13	2,073.88
1/9/14	2,426.90
5/19/14	1,136.75
10/8/14	314.75
8/15/15	718.50
12/10/15	2,177.57
5/10/16	561.00
5/10/16	<u>413.31</u>

Subtotal 12,308.66



R. E. BAILEY CONSTRUCTION INC.

4423 NORTH 3800 EAST

P O BOX 90

EDEN, UT 84310

Invoice

DATE	INVOICE #
10/11/2007	01-749

BILL TO
SNOWBERRY INN 1315 N HIGHWAY 158 EDEN, UT 84310

DESCRIPTION	AMOUNT
Billing for 2nd draw for new garage	
# 8 Grub & excavate for footings	100.00
# 9 footings concrete	551.00
# 10 Footings labor	100.00
# 12 Foundation concrete	350.00
# 19 Concrete for garage floor	1,400.00
# 20 Garage labor	700.00
# 21 Exterior concrete	450.00
# 30 Framing Labor	10,000.00
# 46 Dumpster & clean up	300.00
# 47 Asphalt drive & misc. patching	3,000.00
Change order items	
#15 Back fill & compact	450.00
# 16 Imported fill (5 @ \$225.00 per load)	1,125.00
New culinary water connection line (estimated to be \$ 8500.00)	5,000.00
<u>7% Profit</u>	1,646.82
See attached breakdown sheet. Thank you for your business.	Total \$25,172.82

0202-3523
10/15/07

ARAVE00100

FROM : R E BAILEY

FAX NO. : 801 745 0363

Nov. 15 2007 01:50AM P2

R. E. BAILEY CONSTRUCTION INC.

4423 NORTH 3800 EAST
P O BOX 90
EDEN, UT 84310

Invoice

DATE	INVOICE #
11/14/2007	01-762

BILL TO
SNOWBERRY INN 1315 N HIGHWAY 158 EDEN, UT 84310

DESCRIPTION	AMOUNT
Billing for 3rd draw for new garage	
# 7 Drain box	
# 25 Sewer lateral	
# 26 Electrical trenching & conduit	2,200.00
# 27 Gas pipe trenching	2,100.00
# 30 Framing Labor	1,200.00
# 31 Metal roof (deposit for order)	400.00
# 46 Clean up & dumpster	13,000.00
# 47 Asphalt drive & misc. patching	3,800.00
Change Order Items	300.00
	3,860.00
New culinary water connection line (final)	
Design & Engineering fee's for upstairs	2,200.00
7 % Profit	620.00
	2,077.60
10202-3527	
11/19/07	
Thank you for your business.	
Total	\$31,757.60

ARAVE00101

EXHIBIT J

April 14, 2011 Draft PWWC Water
Agreement

WATER RIGHT LEASE AND WATER SERVICE AGREEMENT
By and Between
Pineview West Water Company and Snowberry Inn

THIS WATER RIGHT LEASE AND WATER SERVICE AGREEMENT

(“Agreement”) is made and entered into as of the ____ day of _____, 2011, by and between **Pineview West Water Company**, a Utah corporation (“Pineview West”), and **Snowberry Inn**, a Utah _____ (“Snowberry”). The parties to this Agreement are hereinafter sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Snowberry is the owner of a certain groundwater right of record at the Utah Division of Water Rights, identified as Water Right No. 35-1220 (the “Snowberry Right”), pursuant to which Snowberry is entitled to divert and utilize water from a certain culinary water well as described in the Water Right (the “Snowberry Well”), for the domestic use of one family as defined in the Water Rights; and

WHEREAS, Pineview West has been duly organized for the purpose of owning, operating, maintaining and administering a culinary water distribution system, including Water Right No. 35-7263 and certain wells, pipelines and related facilities and equipment (the “Pineview System”), for the purpose of providing culinary water service to its shareholders and customers, subject to regulation by the Public Service Commission of Utah (“PSC”); and

WHEREAS, subsequent to the development of the Snowberry Well, Pineview West drilled a certain culinary water well identified as Well No. 4 (“Well No. 4”), in the general proximity of the Snowberry Well, and it is the position of Snowberry that the diversion and use of water by Pineview West from Well No. 4 potentially adversely interferes with the Snowberry Well and Snowberry’s ability to divert and use water therefrom; and

WHEREAS, Pineview West does not admit that there is any interference between the Snowberry Well and Well No. 4; however, in order to avoid a dispute between the Parties over the question of well interference, Snowberry is willing to lease the Snowberry right to Pineview West and Pineview West willing to lease the Snowberry Right from Snowberry and provide culinary water service to Snowberry through the Pineview System, subject to and in conformance with the terms and provisions of this Agreement.

NOW THEREFORE, and in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

A. WATER RIGHT LEASE

1. Lease of Snowberry Right. Snowberry hereby leases the Snowberry Right to Pineview West, it being the understanding and agreement of the Parties that water under the Snowberry Right shall be diverted by Pineview West from any one or combination of culinary water wells within the Pineview System, including Well No. 4. Title to the underlying

Snowberry Right shall remain vested in Snowberry subject to the terms and provisions of this Agreement.

2. Condition Precedent to the Lease. The Parties hereby acknowledge that as of the date of execution of this Agreement, in order for water under the Snowberry Right to be diverted from the Pineview West wells and utilized within the Pineview System for distribution to Snowberry as provided herein, that a permanent change application (the “Change Application”) may need to be filed with the Division of Water Rights and be approved by the State Engineer to authorize such use of water under the Snowberry Right. In connection with the Change Application:

(a) Snowberry shall be responsible for preparing, filing and pursuing the final approval of the Change Application as necessary, including the defense of any appeal of the State Engineer’s memorandum decision regarding the same. Snowberry shall pay all costs and expenses, including attorney’s fees, engineering fees, expert witness fees and other consultant’s fees and charges, incurred by Snowberry in connection with the preparation and filing of the Change Application and those incurred in connection with all administrative proceedings involving the State Engineer’s consideration of the Change Application, including proceedings relating to any request for reconsideration and any appeal of the State Engineer’s decision approving or rejecting the Change Application. Snowberry shall have the absolute and sole discretion to determine whether and to what extent it shall pursue or defend any request for reconsideration, or any appeal.

(b) Snowberry shall fully cooperate in connection with all administrative, judicial and other proceedings involving the Change Application.

(c) Snowberry shall provide Pineview West with copies of any Change Application, and all non-privileged correspondence, pleadings, and other documents generated in connection with any proceedings relating to a Change Application, and Snowberry shall keep Pineview West fully advised with respect to all matters involving the Change Application.

3. Consideration for the Lease. As consideration for the lease of the Snowberry Right hereunder, Pineview West shall pay Snowberry a lease payment in the amount of \$35.00 per month (the “Lease Payment”), due and payable as billed by Pineview West. Payment of the Lease Payment by Pineview West to Snowberry shall be expressly subject to current payment by Snowberry to Pineview West of all amounts due and owing for water service provided by Pineview West to Snowberry as provided in Section B. 2. herein.

B. WATER SERVICE

1. Water Service. For the price and on the terms and conditions hereinafter set forth, Pineview West shall provide culinary water service to Snowberry.

(a) The water delivered to Snowberry hereunder shall be used by Snowberry only in connection with the water use requirements of the Snowberry Inn.

(b) Snowberry shall have no right to sell, rent or otherwise dispose of the water delivered for Snowberry’s use by Pineview West hereunder.

(c) No water right in favor of the Snowberry is created by this Agreement. The rights acquired by the Snowberry hereunder are contractual in nature, and are expressly subject to the terms hereof.

2. Water Rates.

(a) Metered Usage; Quarterly Readings. All water usage by Snowberry will be metered and billed quarterly, based upon the average monthly meter readings over the quarter.

(b) Billing Plans. Water billings shall be based upon the following usage plans:

(1) Standard Water Usage Plan. Snowberry shall be obligated to pay for water service provided by Pineview West at the following rates currently approved by the PSC:

Current Base Rate: \$55.00/month for the first 7,500 gallons per month

Current Overage Rate: \$5.00 per 1,000 gallons over and above 7,500 gallons per month

(c) Payment. All payments shall be due and payable, as billed, payable to Pineview West Water Company, at its office currently located at 787 N Highway 162, Eden UT 84310, or as indicated on invoices.

(d) Rate Adjustments. Water rates charged for water service may be adjusted from time-to-time by Pineview West subject to prior application to and approval by the PSC. In the event a rate adjustment is approved by the PSC, the rates set forth in Standard Water Usage Plan and the Secondary Water Usage Plan set forth above, will be renegotiated between the Parties and the current rates set forth herein shall apply unless and until the new terms are agreed-upon by the Parties.

(e) Special Assessments. Special assessments which may be levied from time-to-time against Pineview West shareholders shall not apply as to Snowberry, except and only to the extent that the special assessment covers any part of the Pineview System infrastructure that directly supplies water to Snowberry, which shall include, generally, Well No. 3 and Pineview West's upper reservoir.

(f) Remedies in the Event of Non-payment. In the event Snowberry shall fail to make any payment hereunder when due, Pineview West may, at its sole discretion, pursue cumulatively or separately any of the following remedies:

(1) charge interest at the rate of eighteen percent (18%) per annum, or as approved by the PSC, from the date of delinquency until the delinquent amount is paid in full;

(2) refuse the delivery of water hereunder until the principal payment, together with accrued interest as provided herein, is made;

(3) charge disconnect and reconnect fees as approved by the PSC to refuse and allow water delivery in the event of non-payment in the same manner as other shareholders and contract water users of Pineview West;

(4) exercise any and all other remedies available to it at law or in equity, to enforce collection of the payment due, including, without limitation, an action for specific performance.

3. Delivery of Water. Water shall be delivered by Pineview West to the Snowberry at the existing point of connection with the Pineview System through the existing Snowberry service line.

4. Use of the Snowberry Well. Snowberry shall have the express right, at its sole discretion, at any time and from time-to-time during the term hereof, to divert and use water from the Snowberry Well as a means of supplementing and/or replacing the water to be served by Pineview West, without payment of any disconnect or reconnect fees, and Pineview West's obligation to provide water service hereunder shall be correspondingly reduced and/or alleviated during any such period. Snowberry shall make written or email notification to the President and Treasurer of the period of non-use of Pineview West water prior to the event so billing can be adjusted accordingly.

5. Works and Facilities.

(a) Snowberry, at its sole cost and expense, shall be obligated to provide, construct and install all works and facilities of any type or kind extending from the point of connection with the Pineview System to the Snowberry Inn, as shall be necessary to receive delivery of water service from Pineview West hereunder and to accommodate the use of Pineview West water in connection with the Snowberry Inn. Pineview West shall have no obligation, whatsoever, to provide any such works and facilities.

(b) Pineview West, at its sole cost and expense, shall be obligated to provide, construct and install all works and facilities of any type or kind, as necessary to provide water service up to the point of delivery to Snowberry, and Snowberry shall have no obligation, whatsoever, to provide any such works and facilities.

6. Availability of Water.

(a) The obligation of the Pineview West to provide water service hereunder shall at all times be and remain subject to shortage resulting from drought, hostile diversion, prior superior claims, any order or directive of the State Engineer or other local, state or federal agency, acts of God, and all other such conditions, events and causes beyond the control of the Pineview West. Snowberry acknowledges and agrees that in the event of a water shortage resulting from conditions, events and causes beyond the control of the Pineview West, Pineview West's Board of Directors shall have the right to allocate the available water supply among all of Pineview West's shareholders and contract holders, including Snowberry. Pineview West will give preference in allocating the available water supply to domestic and municipal supply requirements.

(b) No liability shall accrue against the Pineview West, or any of its officers, employees, agents or consultants, for any loss, damage or claim, of whatsoever kind or nature, whether direct or indirect, resulting from or arising out of the conditions, events and causes described in Section 6(a) herein.

C. GENERAL PROVISIONS

1. Term of Agreement. This Agreement shall remain in force and effect until terminated as provided below.

2. Termination.

(a) This Agreement shall automatically terminate, without notice, at the sole discretion of Pineview West, in the event of the following:

(1) If Snowberry files any claim involving Pineview West, of whatsoever kind or nature, pertaining to Pineview West's ownership and operation of Well No. 4;

(2) If there is any change in current use of the Snowberry Inn;

(3) If any officer, representative or agent of Snowberry, without prior authorization from Pineview West, tampers with any facility in connection with the Pineview System, including, without limitation, the water meter serving Snowberry.

(4) If there is any event of non-payment as provided in Section B. 2. (f);

(5) If Pineview West decides, in its sole discretion, not to operate Well No. 4 for a full calendar year, subject to the obligation of Pineview West to provide at least 30 days' advance written notice of its intent to terminate use of said well and the planned termination date.

(b) Snowberry may terminate this Agreement, at any time, without cause, subject to 30 days' prior written notice to Pineview West, but only if Snowberry is then current in all payments due and owing to Pineview West.

3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

4. Attorney's Fees. In the event that this Agreement or any provision hereof shall be enforced by an attorney retained by a Party hereto, whether by suit or otherwise, the fees and costs of such attorney shall be paid by the Party who breaches or defaults hereunder, including fees and costs incurred upon appeal or in bankruptcy court.

5. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

6. Entire Agreement. This Agreement constitutes the entire understanding and agreement by and between the Parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

7. Assignment. This Agreement runs personally to Snowberry and shall not be deemed to run with the land owned by Snowberry. Neither this Agreement nor any interest herein shall be assignable by Snowberry to any third party without the express, prior written consent of Pineview West.

8. Rules and Regulations. Snowberry shall be subject to all rules and regulations now existing or hereinafter promulgated by Pineview West which are determined by Pineview West to be applicable to the Snowberry's use of water pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed as of the day and year first above written.

PINEVIEW WEST WATER COMPANY

By: _____
Its: President

SNOWBERRY INN

By: _____
Its:

EXHIBIT K

Notice of Discontinuance

ClydeSnow
ATTORNEYS AT LAW
CLYDE SNOW & SESSIONS
A PROFESSIONAL CORPORATION

ONE UTAH CENTER • THIRTEENTH FLOOR
201 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111-2216
TEL 801.322.2516 • FAX 801.521.6280
www.clydesnow.com

EDWIN C. BARNES
801.322.2516
ecb@clydesnow.com

November 15, 2013

Bryce C. Bryner, Esq.
Advantage Law
922 West Baxter Drive, Suite 100
South Jordan, Utah 84095

Re: Snowberry Inn

Dear Bryce:

Some time ago you were in contact with us about proposed lease arrangements with the Pineview West Water Company for the Snowberry Inn, near the Pineview Reservoir. I write you as I assume you may still have an attorney/client relationship with the Snowberry Inn. If not, please let me know and I will contact the Inn directly.

At any rate, Pineview West Water Company has previously provided water to the Snowberry Inn based on a claim that there may be some interference between the Snowberry well and a well operated by Pineview West. We have conducted studies this past summer and found that there is no significant hydrological connection between the Snowberry well and the Pineview West well. For this reason, Pineview West has elected to cease providing water to Snowberry and suggests that Snowberry rely instead upon its own water rights and its own well.

We propose to terminate water service as of January 1, 2014. Please let me know if you have any questions.

Very truly yours,

CLYDE SNOW & SESSIONS



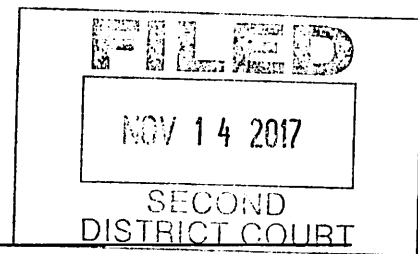
Edwin C. Barnes

ECB:dh

cc: Pineview West Water Company

EXHIBIT L

Memorandum Decision



**IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
OGDEN DEPARTMENT, STATE OF UTAH**

Roger B Arave and Kimberly L
Arave, Janet Southwick,
Trustee, and Venture
Development Group, LLC, a
Utah limited liability company,
Plaintiffs,

vs.

Pineview West Water
Company, a Utah corporation,
Defendant.

**MEMORANDUM
DECISION**

Civil No. 130907544
Judge Ernie W Jones

This action was tried to the bench August 18, 19, and 29, with closing arguments on September 25, 2017. Plaintiffs were represented by David C. Wright. Defendants were represented by Edwin C. Barnes and Emily E. Lewis. The parties also filed trial briefs. The court heard testimony from the witnesses, including expert witnesses from both sides, and has reviewed the trial exhibits. The court also heard argument from counsel. After the close of the evidence, the court asked the parties to submit proposed findings of fact and conclusions of law. Having listened to the testimony, reviewed the evidence, and applying the law concerning water right interference and negligence, the court makes the

following findings of fact and conclusions of law pursuant to Rule 52(a) of the Utah Rules of Civil Procedure:

FINDINGS OF FACT

A. The parties

1. Plaintiffs Roger B. Arave and Kimberly L. Arave, individuals and husband and wife (referred to jointly as “Araves”), are joint tenant owners and residents of a single family residential real property located in Weber County, with a street address of 1364 North Highway 158, Eden, Utah.

2. Plaintiff Janet Southwick, Trustee, (sometimes referred to herein as “Southwick”), is the sole owner and resident of certain single family residential real property located in Weber County, with a street address of 1375 North Highway 158, Eden, Utah.

3. Venture Development Group, LLC (“Venture”), owns certain improved real property located in Weber County, with a street address of 1315 North Highway 158, Eden, Utah, which property is operated as a commercial bed-and-breakfast known as the Snowberry Inn (“SI”). The Inn includes nine bedrooms and bathrooms and two kitchens. SI also serves as the year-round residence for the Inn operator, Andrea Burk.

4. Defendant Pineview West Water Company (“PWWC” or “Pineview”) is a private, Utah non-profit corporation with its principal place of business in Eden, Weber County, Utah. PWWC is regulated by the Public Service Commission. It

operates multiple wells and other sources for its culinary and secondary (irrigation) water delivery purposes.

B. The parties' wells

5. Three wells are at issue:

a. Plaintiffs Arave and Southwick share the Arave well, which was drilled in 1963 (and cleaned out in 2013).

b. Venture Development owns the rights in the well operated by Snowberry Inn, a bed and breakfast establishment near the Araves ("SI well"), drilled in 2001.¹

i. The SI well operates with a cistern, which is a tank with a functional capacity of between approximately 300 gallons and 500 gallons.

ii. The cistern contains level sensors. When the cistern drops below a certain level, it triggers the SI well pump to turn on.

iii. The pump runs until a sensor signals that the cistern is full, which then turns off the pump.

iv. Water is then pumped again, with a separate pump, into the Inn, where it is held in two tanks, which then distribute the water throughout the Inn.

¹ The current SI Well is a newer well. The original was drilled in 1960 and then replaced in 2001

v. Although the original Venture water right did not allow irrigation use, the Inn irrigated approximately 4600 square feet of lawn and garden around the structure.

vi. The SI well pump is rated at 25 gallons per minute.

vii. The SI and Arave wells are in hydrological communication.

viii. The SI well pump was rated at 25 gallons per minute when installed in 2001. The same pump is presently in the well.

ix. The SI well, which replaced a previous well drilled in 1960, was drilled into both the unconsolidated and bedrock aquifers, while the old well was completed in just the unconsolidated aquifer.

c. The third well is PWWC's #4 Well ("PWWC #4," or just "#4"), drilled in 2004.

i. The #4 is approximately 700 feet from the Arave well and approximately 460 feet from the SI well.

ii. The Arave and SI Wells are approximately 200 feet apart.

iii. PWWC #4 is used solely for secondary irrigation water.

iv. The current #4 pump is rated at 100 gallons per minute.

C. The parties' water rights

6. Roger and Kimberly Arave own appurtenant water right 35-1483, which allows them to divert from their well .015 cfs (approximately 6.7 gallons per minute) for the needs of one home and two livestock.²

7. Janet Southwick owns appurtenant water right 35-6733 (E1349) allowing her to divert from the Arave well up to 1 acre-foot ("af") to irrigate .25 acres and for the indoor domestic needs of one home.

8. Prior to its shutdown and use as a monitoring well, the Arave well was the sole source of culinary and secondary water for Araves and Southwick.

9. Venture Development owns the property and building where Snowberry Inn operates. It owns two appurtenant water rights that were diverted from the SI Well on its property:

a. Water right 35-1220 allows SI to divert .45 af, at the rate of .015 cubic feet per second ("cfs"), for single family domestic use.

b. Water right 35-13204 (E5647), acquired in March 2017, allows diversion up to 2 af to irrigate .25 acres and 1.25 af of commercial use at the Inn.

² "The standard unit of measurement of the flow of water shall be the discharge of one cubic foot per second of time, which shall be known as a second-foot; and the standard unit of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to 43,560 cubic feet." Utah Code §73-1-2. In these findings and conclusions, cubic feet per second is abbreviated as "cfs," and acre-foot is abbreviated as "af."

10. PWWC owns (among others) water right 35-11891 (E4625), allowing it to divert 90 af annually for irrigation of 21.66 acres and the indoor domestic requirements of 55 families ("PWWC Right").

a. In 2006, PWWC received State Engineer approval to divert this water right from any combination of five wells, including #4.

b. That approval is, as all such approvals are under the law of prior appropriation, "subject to prior rights."

11. PWWC right 35-7263 was modified by change application a27794, approved in 2013, allowing PWWC to divert 78 af at .33 cfs from the same five wells as E4625 (35-11891).³

12. PWWC can pump its water from any one, or any combination, of the five wells.

13. The parties' relative water right priorities are as follows:

a. Venture (SI) is October 10, 1960.

b. Arave is October 14, 1963.

c. Southwick is August 25, 1978.

d. PWWC #4 is October 14, 2005.

14. Thus, all of plaintiffs' rights are senior to PWWC's Well #4 rights.

³ The "E" designation included with the Southwick, SI, and PWWC rights indicates simply that an exchange of water was approved. See Utah Code §73-3-20. The exchanges themselves are not at issue.

D. The local aquifers

15. There are two relevant local aquifers, an unconsolidated or alluvial aquifer, which consists mostly of sand, gravel, and cobble, and a consolidated rock aquifer, known as the Norwood Tuff.

16. Permeability is a measure of the ability of a porous material, such as rock or an unconsolidated material, to allow fluids to pass through it.

17. The unconsolidated aquifer has much higher permeability than the Norwood, which has generally poor permeability.

18. The Norwood can be fractured, which increases its permeability. The area around the three wells at issue likely contains fracturing, but the intensity and extent of fracturing are not determined.

19. There has not been a general decline in groundwater levels in the regional basin in which these aquifers are located. There are, however, seasonal fluctuations, with lower water levels in the late summer and early autumn, followed by increasing water levels during recharge in the winter and spring.

20. Aquifer recharge depends primarily on the amount of water withdrawn by well pumping and how quickly the aquifer begins to recharge with winter precipitation.

E. The effect of well pumping

21. Well pumping is a cause of seasonal discharge of water from an aquifer and consequent groundwater decline in a given aquifer.

22. When a well is drilled for production purposes, such as the three wells in this case, its casing is perforated at one or more depths. Water enters the well from the surrounding aquifer through these perforations, which supplies water to any pumps in the wells, when turned on.

23. Water flows from high pressure to low pressure or, in other words, from high head to low head.

24. When a well is pumped, the water level drops and a point of low pressure is created at the depth of the perforations in the well casing, which is at its maximum at the location of the pump itself. This has the effect of causing the water in the aquifer to draw down, flowing toward the pump or lower pressure.

25. The pumping thus creates a zone of low pressure, resulting in a cone of depression, usefully described as follows in *Bingham v. Roosevelt City*, 2010 UT 37, ¶3, 235 P.3d 730:

The underground area of reduced soil saturation is in the shape of an inverted cone, with the point of the cone extending downward toward the point at which the water is extracted. Accordingly, the depth of the water table will be most significantly impacted at the point of extraction, but even as one moves away from this point, the water table will be lower than it otherwise might be. Therefore, the effects on the water table are apparent even on parcels of land that are not immediately adjacent to the wells.

26. A cone of depression creates a “radius of influence,” a zone that is measured from the well outward and represents an area within a given aquifer that is dewatered due to well pumping.

27. An illustration of a simple cone of depression and a radius of influence is depicted below. This drawing is for illustrative purposes only and is not intended to depict any particular cone of depression from any well in this case. (*Cf.* Pltf. Trial Exhibit 52).

28. The shape and reach of a cone of depression depends on several factors, such as the nature, depth, and permeability of the surrounding aquifer(s).

29. The Arave Well is 187 feet deep. Its perforations are from 140 to 170 feet deep, entirely in the Norwood Tuff.

30. The original SI well, drilled in 1960 and replaced in 2001, was 120 feet deep. When it was abandoned, its static water level was at 55 feet from the top of the well casing. That well was drilled into the unconsolidated aquifer.

31. The current SI Well is 133 feet deep. Its perforations are from 105 to 125 feet deep, and are in both the unconsolidated aquifer and the Norwood Tuff. When drilled, its static water level was at 54 feet from the top of the well casing, which is one foot higher in water level than the original well.

32. The SI well likely gets the majority of its water from the unconsolidated aquifer but is hydrologically connected to the Norwood Tuff aquifer. The new well had a specific capacity during the initial pump test, much higher than the old well, which was exclusively completed in unconsolidated deposits.

33. PWWC #4 is 738 feet deep. It has four perforated zones. Zone 1 is from 58 to 98 feet deep, which zone is divided between the unconsolidated aquifer and the

Norwood Tuff. Zone 2 is from 208 to 228 feet deep. Zone 3 is from 408 to 448 feet deep, and Zone 4 is 648 to 738 feet deep. Zones 2-4 are entirely within the Norwood Tuff.

34. Both the Arave and SI wells lie within the cone of depression and the radius of influence created by pumping PWWC #4.

35. When #4 was first pump-tested, interference with the Arave well, expressed as a drop in the water level sufficient to leave the pump in the Arave well without water, was quickly noted by the Araves, and the test was stopped.

36. Later, after #4 was turned on again, the interference returned, first at the Arave well and later at the SI Well.

37. PWWC put well #4 well into operation, and the effect on the Arave well was again noticed within a short time. The Arave well was unable to produce any water when #4 was pumped. Because of this interference, PWWC connected the Araves to the PWWC culinary system in 2007.

38. The SI well also began to struggle to produce water in September, 2007. Because the SI well could not fill the cistern, the SI operators, the Dohrers, were forced to use a hose to connect to the Arave home and fill the Inn cistern with PWWC water obtained from the Arave connection.

39. Later, in 2007, the Inn was also connected to the PWWC system because its well could no longer meet its water needs.

40. The Araves, Southwick, and SI originally were offered and accepted an arrangement with PWWC under which they would pay a flat rate of \$20.00 per month for PWWC culinary water. Later, in 2012, PWWC unilaterally increased that amount to PWWC's standard tariff rates, which plaintiffs have paid each year since.

41. The Araves have paid \$7,003 to PWWC for water service. Southwick has paid \$4,782. Venture has paid \$19,839.

42. PWWC #4 is turned on typically around July 1 of each year and is pumped through the remainder of the irrigation season, ending in late summer/early fall.

43. Once hooked up to PWWC's water system, the Araves removed the pump from their well and have used the well as a monitoring well to document the impact of pumping #4 for several years.

44. The use of the Arave well as a monitoring well has facilitated the parties' ability to gather data concerning the effect of PWWC #4. Had the Araves attempted to pump at the same time that PWWC #4 was pumped, the data would have been more difficult to interpret.

45. The fact that the Arave Well has not been pumped has allowed good data collection to determine the impact of PWWC #4.

46. The Arave Well is a very good surrogate for PWWC #4, meaning that it reacts quickly and accurately to pumping in the #4.

47. Prior to the introduction of PWWC #4, neither the Araves (including Southwick) nor SI had any well or water availability or well pumping issues or problems in their current wells. The Arave and SI wells produced water year-round to satisfy the Arave, Southwick, and SI (Venture Dev.) water rights and uses.

48. In March of 2017, Venture Development acquired 2 acre-feet of additional water by virtue of an approved Exchange with Weber Basin Water Conservancy District. This additional water is approved for irrigation of .25 acres and year-round commercial purposes for the Inn.

49. Prior to acquiring its additional 2 af under water right 35-13204 (E5647), SI used in a typical year more water than permitted by its original water right, and it used that water for irrigating its lawn and garden even though the water right is not authorized for irrigation uses.

50. During the three years prior to trial, SI used approximately .33 af of its total .45 acre foot right (prior to the Exchange (E5647)) in the months before PWWC #4 was turned on.

51. The prior SI operators, the Dohrers, kept a record of well use versus PWWC culinary water use. Patrick Dohrer explained how he alternated between using SI well water and PWWC culinary water after SI was connected to the PWWC culinary system by turning certain valves inside the Inn.

52. The Dohrer SI well versus PWWC water use record was not perfectly kept. It showed no SI well use during a time in approximately late August to early September 2014 when the SI well was actually being used. That well use during that period is depicted on plaintiffs' Exhibits 26 and 27.

53. PWWC also kept a record of its #4 well use, but that record also was not entirely accurate.

54. These errors in record keeping by the Dohrers and by PWWC were inadvertent. No bad faith or improper motive is found in connection with those errors.⁴

55. Andrea Burk took over SI operations in 2014. She explained how she understood that valve system to work, but her understanding was incorrect. She did not understand how that valve system worked until it was shown to her during the trial.

56. When PWWC #4 starts pumping the Arave well head begins to fall within hours. When the elevation of the Arave well head falls below the elevation of the SI well head, some water moves downward and away from the SI well unconsolidated aquifer toward the lower elevation of head now present in the

⁴ For example, it is clear that the SI well was pumped during the late August to early September 2014 time frame because plaintiffs' expert, Paul Anderson, collected SI pumping head (i.e. water elevation) data during that period, which data is depicted on plaintiffs' Exhibits 26 and 27. There was no way to collect such data unless the SI well was being pumped.

Norwood Tuff, essentially draining some of the water away from the unconsolidated aquifer and causing the head in the SI well to drop.

57. As PWWC #4 continues to pump, it continues to draw down the level of the Arave well due to the deepening and widening cone of depression, created by pumping this deeper and higher volume well. The SI well clearly lies within this deep and wide cone of depression; hence, water moves from higher head in the SI well's aquifers to the lower head created by the #4 deepening cone in the Norwood Tuff. The result is that the SI well head drops, and the well struggles to produce even a minimal yield.

58. In the winter-late spring of each year, the head in the Arave well is consistently higher in elevation (as shown on Plaintiffs Exhibit 27) than the SI well.

a. Water moves from high to low head, indicating that water monitored in the Norwood Tuff, at the Arave well, is moving upward toward the water monitored in the SI well, which is perforated in both the unconsolidated and Norwood Tuff aquifers.

b. When this head relationship between the Arave and SI exists, there is no problem for the SI well to quickly fill and re-fill the Inn's cistern as demonstrated in Plaintiffs Exhibits 26 and 27.

c. It is when this Arave – SI head level reverses—when the normally higher Arave head drops below the normally lower SI head—that the SI well is most noticeably affected. Its water level drops dramatically at that point.

59. PWWC #4's interference with the SI well is illustrated in plaintiffs' Exhibit 23.

The graphs on that exhibit show that in December the SI well recovers quickly, filling the cistern within fifteen minutes. During August, when PWWC #4 is pumping, the SI well struggles for hours to fill the cistern.

60. The Arave and SI wells coexisted without interfering with each other.

61. After PWWC #4 stops pumping, recovery time for the water levels in the Arave and SI wells depends on the factors described above—how much #4 pumps and how quickly the aquifer is recharged.

62. The PWWC right is evidenced by an underlying Bureau of Reclamation water right, 35-7397, which has a 1930 priority.

63. In 2006, PWWC obtained approval to move the point of diversion of its water right to a complex of five wells, including #4, subject to prior rights.

64. The PWWC water delivered to plaintiffs after PWWC connected them to its system caused damage in the form of hard water deposits and build-up, requiring certain repairs and maintenance by each of the plaintiffs.

65. The Araves pump was damaged due to PWWC interference.

F. Damages

66. Araves incurred damages proximately caused by reason of PWWC's pumping of its well #4 in the form of (a) fees paid to PWWC for the water connection to PWWC's system necessitated by PWWC's interference with the Arave well, in the amount of \$7,003; (b) the cost of a new pump and associated accessories estimated at \$4,500.

67. Southwick incurred damages proximately caused by reason of PWWC's pumping of its well #4 in the form of (a) fees paid to PWWC for the water connection to PWWC's system necessitated by PWWC's interference with the Arave well, in the amount of \$4,782, (b) expenses incurred by reason of the hard water problems and related issues in the amount of \$1,000, for total damages in the amount of \$5,782.⁵

68. Venture incurred damages proximately caused by reason of PWWC's pumping of its well #4 in the form of (a) fees paid to PWWC for the water connection to PWWC's system necessitated by PWWC's interference with the SI well, in the amount of \$19,839; expenses incurred by reason of the hard water problems and related issues in the amount of \$8,399, for total damages in the amount of \$28,238.

69. Patrick and Sherrie Dohrer operated SI from August 2005 to approximately August 2014, and during that time incurred certain costs and expenses caused

⁵ Southwick also lost several trees and a garden due to the inability to irrigate after connection to the PWWC system. No value was placed on these items, however.

by or related to interference with the SI well. Those expenses total \$10,538.83, and are identified in plaintiffs' Exhibit 1. Dohrers assigned the claim for those expenses to Venture on May 31, 2016. That figure is included in the foregoing Venture damages calculation.

70. All of the parties' water uses are for beneficial purposes.

CONCLUSIONS OF LAW

1. The court has personal jurisdiction over the parties.
2. The court has subject matter jurisdiction pursuant to Utah Code §78A-5-102(1).
3. Venue is proper pursuant to Utah Code §78B-3-301 inasmuch as the real property and water rights at issue in this matter are located in Weber County, Utah.

A. Water Right Interference

4. A determination of interference is a mixed question of fact and law. See *Wayment v. Howard*, 2006 UT 56, ¶9, 144 P.3d 1147. The court "must first find facts regarding the claim of interference and then determine whether those facts are within the ambit of interference as applied to the water right at issue." *Id.*
5. Water is public property, "subject to all existing rights to the use thereof." Utah Code §73-1-1(1).
6. Beneficial use is the basis, measure, and limit of a water right. Utah Code §73-1-3.

7. The law of prior appropriation means that senior water rights have priority over junior rights. Prior appropriation applies always and everywhere to protect senior rights. “[S]enior water right holders are entitled to their full water right before junior water right holders are entitled to any water.” *Heal Utah v. Kane Cnty. etc.*, 2016 UT App 153, ¶6, 378 P.3d 1246).

8. Water rights are real property. Utah Code §57-1-1(3)(“Real property” or “real estate” means any right, title, estate, or interest in land . . . and all water rights . . .”).

9. No one may diminish, obstruct or interfere with the approved water rights of another. See *North v. Marsh*, 504 P.2d 1378, 1379 and n.2 (Utah 1973).

10. Interference means to obstruct or hinder. See *Black’s Law Dictionary* 831-32 (8th ed. 2004). Specifically, in Utah water law, “obstructing or hindering the quantity or quality of an existing water right constitutes interference.” *Wayment*, 2006 UT 56, ¶ 13 (citations omitted). See also *Bingham*, 2010 UT 37, ¶48.

11. “Because underground waters cannot be observed nor measured with precision, but must be determined on the basis of geology, physics and hydrology, there are greater difficulties involved in their allocation and regulation than with respect to surface waters.” *Wayman v. Murray City*, 458 P.2d 861, 863 (Utah 1969).

12. A water right consists of several constituent elements, which when taken together define a right to the use of water. Those elements include (i) quantity,

either or both in terms of volume (measured in acre-feet) and flow rate (measured in cubic feet per second), (ii) purpose of use, (iii) place of use, (iv) point of diversion, (v) time during which the water may be used, (vi) the source from which the water is diverted (either above or below ground), and (vii) priority date. See, e.g., Utah Code §73-3-17(1).

13. A water right also includes an appropriator's right to continue use of the "existing and historical method of diverting the water." *Wayment*, 2006 UT 56,

¶13. Here, plaintiffs' water rights are diverted solely by means of their wells.

14. Protection of a senior right extends to the source. "No one can interfere with the source of supply of [a water right], regardless of how far it may be from the place of use, and whether it flows on the surface or underground, in such a manner as will diminish the quantity or injuriously affect the quality of the water of these established rights." *Little Cottonwood Water Co. v. Sandy City*, 258 P.2d 440, 443 (Utah 1953).⁶

15. The timing of water right use is protected. When implementing a change in the use of water, as PWWC did here when it moved water rights to its #4 well, it

⁶ See also *Justesen v. Olsen*, 40 P.2d 802, 805 (Utah 1935) ("From the beginning of our history, when a man went upon a stream of water, diverted it, and applied it to a beneficial use, his right to the use of that stream was recognized as being prior and superior to the rights of all subsequent appropriators to the extent of the reasonable necessities of the ... first appropriation. During the progress of our development, as new conditions presented themselves from time to time our courts have consistently enforced this right of priority and protected appropriators not only as against all subsequent claimants taking water from the body of the stream, but as against all persons interfering with its source.").

must ensure that senior rights are not harmed. “This requires that the vested rights of the lower users shall not be impaired by such changes either by reducing the flow of water... or by changing the time of such flow to the[] detriment [of senior rights].” *East Bench Irr. Co. v. Deseret Irr. Co.*, 271 P.2d 449, 453 (Utah 1954).⁷

16. Plaintiffs’ water rights are essential to their properties. The Araves and Southwick live there and, until being interfered with, depended on their water rights and the Arave well as the sole source of their culinary and secondary water.

17. The SI well and water rights also add significant value to Venture’s property.

18. Without water, land loses tremendous, sometimes all, value. See, e.g., *Sanpete America v. Willardsen*, 2011 UT 48, ¶40, 269 P.3d 118, and cases cited (discussing water’s importance to land value).

19. This action concerns groundwater and local well interference. The “rule of reasonableness” governs groundwater interference. *Wayman*, 458 P.2d at 866.

20. Plaintiffs’ and PWWC’s respective water rights should be addressed under this “rule of reasonableness” to balance plaintiffs’ senior water rights with PWWC’s junior rights.

⁷ See also *Logan, Hyde Park, etc. v. Logan City*, 269 P. 776, 778 (Utah 1928)(city “perpetually” enjoined from “operating its diverting works and power plant as to impound, obstruct, or impede in any manner the free and natural flow of the water of the river to which the [senior appropriators were] entitled . . .”).

21. This requires analysis of the circumstances: the quantity of water available, the average annual recharge in the basin, the existing rights, and their priorities.

Wayman, 458 P.2d at 865.

22. All water users are required where necessary to “employ reasonable and efficient means in taking their own waters in relation to others to the end that wastage of water is avoided and that the greatest amount of available water is put to beneficial use.” *Wayman*, 458 P.2d at 865.

23. *Wayman* means essentially that, when rights clash, the court invokes reason so that, as far as possible, water is developed for beneficial use.⁸

24. PWWC’s #4 rights are junior in priority to plaintiffs’ rights.

25. Between appropriators, the one first in time is first in rights. Utah Code §73-3-1(5)(a).

26. Accordingly, “senior water right holders are entitled to their full water right before junior water right holders are entitled to any water.” *Heal Utah v. Kane Cnty. Water Conserv. Dist.*, 2016 UT App 153, ¶¶6, 378 P.3d 1246 (citation omitted).

27. No junior appropriator may interfere, directly or indirectly, with senior rights.

Rasmussen v. Moroni Irr. Co., 189 P. 572, 577 (Utah 1920)(“The first appropriator

⁸ The “inquiry regarding interference focuses on actual interference in the quantity or quality of water to which the prior appropriator is entitled.” *Salt Lake City v. Silver Fork Pipeline Corp.*, 2000 UT 3, ¶ 28 n.10, 5 P.3d 1206, abrogated on other grounds by *Otter Creek Reservoir Co. v. New Escalante Irrigation Co.*, 2009 UT 16, ¶¶ 11-13, 203 P.3d 1015.

on the stream ... acquires a prior right to the use of all those waters, and no subsequent appropriator may interfere either directly or indirectly with the rights of the prior appropriator.”).⁹

28. Plaintiffs’ means and method of diverting their water are reasonable. Their wells are the only possible method for diverting the water under their rights. Those wells functioned without problem until PWWC #4 was drilled.

29. The PWWC change of its junior water rights to well #4, as all such changes are, was approved “subject to prior rights.” Utah Code §73-3-17(6).

30. The priority of the underlying right survives the change unless it interferes with other rights. *Hague v. Nephi Irr. Co.*, 52 P. 765, 769 (Utah 1898)(“When water has been lawfully appropriated the priority acquired is not lost by changing the use for which was first appropriated and applied, or the place at which it was first employed, provided that the alterations made are not injurious to the rights acquired by others prior to the change.”)

31. PWWC’s pumping of its well #4 interferes with the Arave well, thus interfering with the senior Arave water rights.

⁹ Moroni Irr. continues: “If ... the appellant may cut off one of the sources of supply... any other landowner and water user may cut off another source of supply, and so on until all the sources of supply which pass underneath the surface of the soil are cut off, and thus the lower and prior appropriator would be left without any, or at least only a meager, supply of water in the low-water season. This may not legally be done.” 189 P. at 577.

32. PWWC's pumping of its well #4 interferes with the Arave well, thus interfering with the senior Southwick water rights.

33. PWWC's pumping of its well #4 interferes with the SI well, thus interfering with the senior Venture water rights.

34. PWWC's interference consists of dewatering the aquifers that are the source of supply for the Arave and SI wells, thus obstructing and hindering the quantity of water available to the Arave and SI wells, first by depriving the Arave well of virtually all water, and by obstructing the SI well's ability to produce water.

35. Because that change in PWWC's point of diversion interferes with the senior Arave, Southwick, and Venture Development rights, the original priority of the PWWC rights is lost.

36. The PWWC #4, Arave and SI wells cannot co-exist under these circumstances.

B. Negligence

37. PWWC owes each plaintiff a duty of reasonable care to others foreseeably harmed by the method PWWC uses to obtain its water. *See Bingham*, 2010 UT 37, ¶¶65 (City owed "a duty of reasonable care to landowners who will foreseeably be harmed" by the method the city used to obtain its water.").

38. PWWC breached that duty when it located, drilled, and used its #4 well in a manner that interferes with plaintiffs' wells.

39. Such interference was foreseeable given the close proximity to plaintiffs' wells, the much larger capacity of PWWC #4, and its depth and perforated zones in the aquifers used by the Arave and SI wells.

40. The harm to plaintiffs' wells is proximately caused by PWWC's pumping of its well #4.

41. Plaintiffs have been damaged by reason of PWWC's negligence as identified above.

C. Plaintiffs' water use is not a defense to local well interference.

42. The fact that, historically, SI (or any other plaintiff) has or may have used more water than permitted by its water right is not a defense to local well interference. Neither is it a defense that SI used water for irrigation when it did not then have an irrigation right.

43. The amount of water used under an approved water right, and the manner in which it is used, is a matter between the State (the Utah Division of Water Rights and the Utah State Engineer) and the water user. Utah Code §73-3-17(1)(b). The State Engineer has enforcement powers to remedy such matters.

44. Even if SI used water only within its water right limit, and even if used only for indoor, domestic purposes for a single family, PWWC's pumping of its #4 well would still interfere with Venture's water right because it interferes with both the source, by dewatering the aquifer from which Venture's senior right is drawn, and the SI well, thus interfering with Venture's means and method of diversion. The

interference would be the same even if SI used less than its full water right because the interference affects the SI (and Arave) well's ability to produce water as needed on a year-round basis.

45. Use of water pursuant to a water right is regulated by the Utah State Engineer, who has enforcement powers pursuant to Utah Code §73-2-25 if water is used without the right to do so, or beyond an existing right.¹⁰

46. Furthermore, if a senior water right user exceeds the limit of its right, thus taking more water from a source than is authorized, then a junior water right user on the same source (whether on the surface or underground) could have an interference claim because the excess water used by the senior user should be available to satisfy junior rights. PWWC brought no such claim.

D. Remedies

47. The PWWC #4, Arave, and SI wells cannot coexist under PWWC's current pumping routine.

a. Pumping in #4 first depletes the water in the Arave well, causing its water level to drop below the SI water level, which reverses the pressure gradient, in turn causing the SI well level to drop.

b. Accordingly, PWWC's pumping of #4 must either be stopped or curtailed sufficiently to permit the Arave and SI wells to function.

¹⁰ "[T]he state engineer may commence an enforcement action ... if [he] finds that a person ... is diverting, impounding or using water in violation of an existing water right" Utah Code §73-2-25(2)(a).

c. Under *Wayman*'s rule of reasonableness, the court must try to find a remedy that allows PWWC to use as much water as it can without interfering with the Arave and SI wells.

d. PWWC owns other wells authorized for use under the same approval that permitted it to pump water from #4.

e. PWWC is ordered to stop pumping #4 and use one or more of its other wells to satisfy its irrigation demand.

f. The court retains jurisdiction for the limited purpose of determining whether it can be shown that PWWC #4 can be pumped at a lesser rate so as not to interfere with the Arave and SI wells, and specifically to prevent the Arave head from dropping below the SI head. If so, then PWWC #4 may continue to function under those circumstances.

i. If PWWC #4 can be pumped at a level or rate that does not interfere with the Arave and SI wells, then PWWC shall install a flow meter pursuant to Utah Code §73-5-4. That meter shall be accessible by the state engineer pursuant to §73-5-4(2). PWWC shall further report its pumping data to the state engineer in a manner acceptable to the state engineer, and such pumping data shall be provided to plaintiffs on a weekly basis while #4 is pumped.

ii. If PWWC #4 cannot be pumped at a level or rate that does not interfere with the Arave and SI wells, the court may order that PWWC

provide replacement water pursuant to Utah Code §73-3-23 at PWWC's sole expense. *See Current Creek Irr. Co. v. Andrews*, 344 P.2d 528, 531 (Utah 1959)("[Junior appropriators] can appropriate water to a beneficial use from the underground basin if it is available but they must replace the flow of the wells and springs at the prior appropriator's place of diversion solely at their own cost.").

iii. Should PWWC shift any of its well pumping to any one or more of its other approved wells, those wells must be pump tested first to determine whether there is any impact to or interference with either the Arave or SI wells.

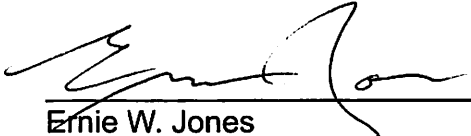
48. PWWC is ordered to pay damages as follows: Araves \$11,503, Southwick \$5,782, and Venture Development \$28,238, plus post-judgment interest on each of these amounts at the statutory rate pursuant to Utah Code §15-1-4.

49. As the prevailing parties, plaintiffs are entitled to their costs pursuant to Rule 54(d) of the Utah Rules of Civil Procedure in an amount to be set forth in a Verified Memorandum of Costs.

E. Judgment

Pursuant to Rule 52(a)(1), a separate judgment consistent with this Memorandum Decision will be entered. Plaintiff will prepare the judgment and submit it to the court for signature.

Dated this 14 day of November, 2017.


Ernie W. Jones
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on the 14~~th~~ day of November 2017, I sent a true and correct copy of the foregoing decision to counsel as follows:

John H Mabey, Jr, David C Wright, Melinda L Hill
Mabey Wright & James, PLLC
Attorneys for Plaintiffs
175 South Main Suite 1330
Salt Lake City UT 84111

Edwin C Barnes, Emily E Lewis, Jonathan S Clyde
Clyde Snow & Sessions
Attorneys for Defendants
201 South Main Street 13th Floor
Salt Lake City UT 84111-2216


Judicial Assistant

EXHIBIT M

Final Judgment



John H. Mabey, Jr. – 4625
David C. Wright – 5566
MABEY WRIGHT & JAMES, PLLC
175 South Main, #1330
Salt Lake City, Utah 84111
Telephone: 801-359-3663
Facsimile: 801-359-3673
Email: jmabey@mwjlaw.com
dwright@mwjlaw.com

Counsel for Plaintiffs

STATE OF UTAH
IN THE SECOND DISTRICT COURT OF WEBER COUNTY

ROGER B. ARAVE and KIMBERLY L. ARAVE, JANET SOUTHWICK, Trustee, and VENTURE DEVELOPMENT GROUP, LLC, a Utah limited liability company; Plaintiffs, vs. PINEVIEW WEST WATER COMPANY, a Utah corporation, Defendant.	FINAL JUDGMENT Case No. 130907544 Judge Ernest W. Jones
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This action was tried to the bench August 18, 19, and 29, with closing arguments on September 25, 2017. Plaintiffs were represented by David C. Wright. Defendants were represented by Edwin C. Barnes and Emily E. Lewis. The parties also filed trial briefs. The court heard testimony from the witnesses, including expert witnesses from both sides, and has reviewed the trial exhibits. The court also heard argument from counsel. After the close of the evidence, the court asked the parties to submit proposed findings of fact and conclusions of law,

which they did on September 21, 2017. The court entered its Memorandum Decision on November 14, 2017, instructing plaintiffs to prepare a separate judgment pursuant to Rule 52(a)(1) to be entered under Rule 58A.

Consistent with the court's Memorandum Decision, the court enters this Final Judgment as follows:

1. Judgment is hereby entered in favor of plaintiffs, and each of them, and against Pineview West Water Company ("PWWC"), on plaintiffs' First Claim for Relief for common law interference with water rights.
 - a. PWWC is ordered to stop pumping its Well #4 (State of Utah Well Identification No. 28707) and use one or more of its other wells to satisfy its irrigation demand.
 - b. The court retains jurisdiction for the limited purpose of determining whether it can be shown that PWWC #4 can be pumped at a lesser rate so as not to interfere with plaintiffs' wells (State of Utah Well Identification Nos. 11238 (Arave Well) and 11242 (Venture Development Well), and specifically to prevent the Arave head from dropping below the SI head. If so, then PWWC #4 may continue to function under those circumstances.
 - i. If PWWC #4 can be pumped at a level or rate that does not interfere with plaintiffs' wells, then PWWC shall install a flow meter pursuant to Utah Code §73-5-4. That meter shall be accessible by the state engineer pursuant to §73-5-4(2). PWWC shall further report its pumping data to the state engineer in a manner acceptable to the state engineer, and such pumping data shall be provided to plaintiffs on a weekly basis while #4 is

pumped.

ii.If PWWC #4 cannot be pumped at a level or rate that does not interfere with plaintiffs' wells, the court may order that PWWC provide replacement water pursuant to Utah Code §73-3-23 at PWWC's sole expense.

iii.Should PWWC shift any of its well pumping to any one or more of its other approved wells (including but not limited to Well Identification Nos. 11248, 11249, 427479), those wells must be pump tested first to determine whether there is any impact to or interference with either the Arave or Venture Development wells.

2. Judgment is hereby entered in favor of plaintiffs, and each of them, and against PWWC, on plaintiffs' Second Claim for Relief for negligence.
3. Damages against PWWC are awarded on plaintiffs' First and Second Claims as follows:
 - a. Roger and Kimberly Arave: \$11,503, plus post-judgment interest at the statutory rate pursuant to Utah Code §15-1-4.
 - b. Janet Southwick, Trustee: \$5,782, plus post-judgment interest at the statutory rate pursuant to Utah Code §15-1-4.
 - c. Venture Development Group, LLC: \$28,238, plus post-judgment interest at the statutory rate pursuant to Utah Code §15-1-4.
4. As prevailing parties, plaintiffs are entitled to their costs pursuant to Rule 54(d) of the Utah Rules of Civil Procedure in an amount to be set forth in a Verified Memorandum of Costs.

5. The court's limited retention of jurisdiction in aid of this Judgment in ¶1.b. does not affect its finality. All of the claims and the parties' respective rights have been determined. Accordingly, there is no just reason for delay of entry of this Final Judgment as to all of the claims and all of the parties.

-----***End of Judgment***-----

Court's e-signature at top of first page

Approved as to Form:

Edwin C. Barnes (e-signature w/ permission)

Edwin C. Barnes

Emily E. Lewis

Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on December 19, 2017, the foregoing Final Judgment was served via E-Filing system to the following:

Edwin C. Barnes – ecb@clydesnow.com

Emily E. Lewis – eel@clydesnow.com

Clyde Snow & Sessions

201 South Main Street, 13th Floor

Salt Lake City, Utah 84111-2216

David C. Wright

EXHIBIT N

Amended Final Judgment



John H. Mabey, Jr. – 4625
David C. Wright – 5566
MABEY WRIGHT & JAMES, PLLC
175 South Main, #1330
Salt Lake City, Utah 84111
Telephone: 801-359-3663
Facsimile: 801-359-3673
Email: jmabey@mwjlaw.com
dwright@mwjlaw.com

Counsel for Plaintiffs

STATE OF UTAH
IN THE SECOND DISTRICT COURT OF WEBER COUNTY

ROGER B. ARAVE and KIMBERLY L.
ARAVE, JANET SOUTHWICK, Trustee,
and VENTURE DEVELOPMENT GROUP,
LLC, a Utah limited liability company;

Plaintiffs,

vs.

PINEVIEW WEST WATER COMPANY, a
Utah corporation,

Defendant.

AMENDED FINAL JUDGMENT

Case No. 130907544

Judge Ernest W. Jones

This action was tried to the bench August 18, 19, and 29, with closing arguments on September 25, 2017. Plaintiffs were represented by David C. Wright. Defendants were represented by Edwin C. Barnes and Emily E. Lewis. The parties also filed trial briefs. The court heard testimony from the witnesses, including expert witnesses from both sides, and has reviewed the trial exhibits. The court also heard argument from counsel. After the close of the evidence, the court asked the parties to submit proposed findings of fact and conclusions of law,

which they did on September 21, 2017. The court entered its Memorandum Decision on November 14, 2017, instructing plaintiffs to prepare a separate judgment pursuant to Rule 52(a)(1) to be entered under Rule 58A.

Consistent with the court's Memorandum Decision, the court amends paragraph 4 of its Final Judgment as follows:

As prevailing parties, plaintiffs are awarded costs in the amount of \$2,059.96 pursuant to Rule 54(d) of the Utah Rules of Civil Procedure.

-----*End of Judgment*-----
Court's e-signature at top of first page

Approved as to Form:

Edwin C. Barnes (e-signature w/ permission)
Edwin C. Barnes
Emily E. Lewis
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on January 8, 2017, the foregoing Amended Final Judgment was served via E-Filing system to the following:

Edwin C. Barnes – ecb@clydesnow.com
Emily E. Lewis – eel@clydesnow.com
Clyde Snow & Sessions
201 South Main Street, 13th Floor
Salt Lake City, Utah 84111-2216

David C. Wright

EXHIBIT O

Notice of Intent to Request a Rate
Review



PublicService Commission <psc@utah.gov>

Planned Request For a Rate Review

1 message

Peter Turner <pwwceden@gmail.com>

Thu, Dec 12, 2019 at 12:26 PM

To: psc@utah.gov

Cc: Mark Long <mlong@utah.gov>, John Durig <johndurig@yahoo.com>, Dan Norton <Jackandan@hotmail.com>, Susan Allen <susan@buxtonmasonry.com>

Pineview West Water Company (2438) of Eden, UT is planning to request a rate review. We hope to have all needed data by the end of Dec 2019 and to file shortly thereafter.

Primarily we are requesting:

1. A conservation rate increase to encourage users to conserve culinary water against irrigation abuse.
2. Minor increase to cover needed expenses such as electronic telemetry meters.
3. Increase in the connection fees to cover the realistic impact of future home building and its impact on our water supply and infrastructure.
4. Modification of our recognized service area to reflect actual fact. The existing one is very old. It was created when the plat maps included other phases of development, now defunct, and additional water sources that were never built.

I have been in discussions with Mark Long about our plans.

Peter

Peter Turner, President
Pineview West Water Company
Eden, Utah
801.675.1711
pwwceden@gmail.com

EXHIBIT P

Service Area Map

SERVICE AREA MAP



Effective Date: February 1, 2021

Docket Number: 19-2438-01

EXHIBIT Q

Arave Public Comment



PublicService Commission <psc@utah.gov>

public comments docket#19-2438-01

1 message

kim arave <araveclan@gmail.com>

Thu, Dec 3, 2020 at 10:40 AM

To: PSC@utah.gov

Dear Sirs, I am writing with concerns about PWWC's hearing for water rate increase that has been in process since 12/2019. Myself and our neighbor, The Snowberry Inn, have been customers of PWWC since about 2007 when our private wells lost water when PWWC began use of one of their wells (#4), and we were connected to PWWC out of necessity for water delivery. We have been in litigation with PWWC for about 6 years, won our case for interference and negligence in local court in 2016. PWWC appealed to Utah Supreme Court, and after waiting nearly 2 years for a decision, received a preliminary decision from the USC on 10/15/20; they agreed with negligence on PWWC's part. Our attorney David Wright has requested a reasonable settlement decision/agreement from PWWC's attorney, Ted Barnes, but has not had a response. My fear is that Peter Turner (PWWC president) is avoiding/postponing settlement until after the PSC approves his requested rate increase. Though we are PWWC customers and have paid quarterly fees in a timely manner, we were not notified of the hearings and just learned of the on-going hearings on 11/14/20. We are not included in the documents presented to PSC as PWWC customers and are not included in the service area map that Peter Turner presented to PSC. I believe this is misleading to the PSC and our litigation should have an impact on your decision. We request that your approval/decision for rate increase is postponed until we can come to a reasonable settlement with PWWC. We don't feel that we (Arave and Snowberry) should be held to the same rates, assessment fees or overage fees as the other PWWC customers due to our extenuating circumstances, and PWWC's negligence in the use of well #4. Thank you for your consideration in postponing your decision. Kim Arave

 **Attach SUPREME COURT OF THE STATE OF UTAH**
Arave v Pineview West Water
Company20201015.pdf 138K

EXHIBIT R

Release and Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("**Agreement**") is made and entered into as of the ____ day of May, 2021 ("**Effective Date**") by and between Roger B. and Kimberly L. Arave (the "**Araves**"), Janet Southwick ("**Southwick**"), and the Pineview West Water Company, a Utah corporation ("**Pineview West**"), collectively "**Parties.**"

RECITALS

- A. The Araves and Southwick have properties in the Ogden Valley near Pineview Reservoir. The Araves hold water right No. 35-1483 and Southwick holds water right No. 35-6733 (collectively, the "**Arave and Southwick Rights**") under which they have historically diverted water to meet their needs from a well located on the Arave property (the "**Arave Well**").
- B. Pineview West is a small, member-owned water company that serves approximately 70 homes located near the Arave and Southwick properties.
- C. In 2004, Pineview West's prior developer drilled a well in the vicinity of the Arave Well for seasonal irrigation use ("**Well 4**"). Arave and Southwick claimed that the testing and later operation of Well 4 affected the water level in the Arave Well and interfered with their water rights. As an initial response to their claims, the Arave and Southwick properties were connected to the Pineview West water system.
- D. Several years later Arave, Southwick and an entity that is not a party to this Settlement Agreement sued Pineview West in the Second District Court, Civil No. 130907544, alleging interference with water rights, negligence, and damages (the "**Lawsuit**"). After a bench trial, the court found in favor of the Araves and Southwick. Pineview West appealed that decision to the Utah Supreme Court, which reversed the interference finding and much of the damage award and remanded the case to the District Court for reconsideration of the negligence and the remaining portions of the damage award.
- E. Rather than further addressing these claims in the District Court, the Parties now desire to amicably settle all claims and potential claims between them on the terms set forth below.

TERMS

1. Water Service. The Araves and Southwick and their successors and assigns may remain connected to the Pineview West water system on a year-around basis and will pay for the water they receive for their two homes on the same basis and at the same rates as the members of Pineview West. The Araves and Southwick may choose at any time to redevelop the Arave Well, rely on the Arave and Southwick Rights and the Arave Well, in which case they will permanently discontinue receiving water service from Pineview West.

2. Financial Consideration. Pineview West will pay to the Araves and Southwick, collectively, the sum of Five Thousand Dollars (\$5,000.00), with no admission of fault or responsibility.
3. Water Rights. The Araves and Southwick will not use the Arave and Southwick Water Rights or the Arave Well, and will not allow others to use the Arave Well, while they are receiving water from Pineview West under this Agreement. Arave and Southwick maintain the right to sell the Arave and Southwick Water Rights
4. Dismissal of Claims. Upon execution of this Agreement and payment of the financial consideration stated above, the Parties will cause all claims made against Pineview West by the Araves and Southwick in the Lawsuit to be dismissed with prejudice, leaving in the Lawsuit only the claims of and defenses asserted against the non-settling party.
5. Release. In consideration of the terms set forth in this agreement, the Parties for themselves and their agents, heirs, successors and assigns, hereby fully and completely release and discharge each other from any and all claims, demands, obligations, damages, losses, costs, expenses, and liabilities of every kind and nature, whether known or unknown, that are related to, arise from, or are in any way connected with the siting and operation of Well 4, including, but not limited to, the claims of water right interference, negligence, damages and attorney fees that were or could have been alleged in the Lawsuit.
6. Further Assurances. The Parties agree to execute such additional documents and to do and refrain from doing such acts as may be necessary to complete the terms and intent of this Agreement.
7. Successors and Assigns. This Agreement shall be binding on the Parties and their agents, heirs, successors and assigns.
8. Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement. E-mailed signatures shall be treated as if they were originals.
9. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and may only be modified by a subsequent writing duly executed by the Parties.

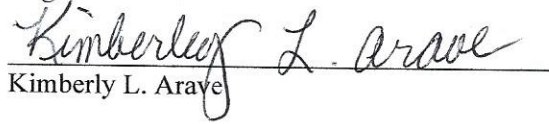
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

[Parties' signatures follow on the next page]

ARAVES:

A handwritten signature in cursive script, appearing to read "Roger B. Arave", written over a horizontal line.

Roger B. Arave

A handwritten signature in cursive script, appearing to read "Kimberly L. Arave", written over a horizontal line.

Kimberly L. Arave

SOUTHWICK:

Janet Southwick

PINEVIEW WEST:

By _____

Its _____

EXHIBIT S

PWWC Answer to Arave Formal
Complaint

Edwin C. Barnes (0217)
Emily E. Lewis (13281)
CLYDE SNOW & SESSIONS
One Utah Center, Thirteenth Floor
201 S. Main Street
Salt Lake City, UT 84111-2216
Telephone (801) 322-2516
Fax (801) 521-6280
ecb@clydesnow.com
eel@clydesnow.com

Attorneys for Pineview West Water Company

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of Robert and Kim Arave against Pineview West Water Company,	DOCKET NO. 20-2438-01 ANSWER TO FORMAL COMPLAINT
--	--

The Pineview West Water Company (Company) hereby responds to the December 21, 2020 Formal Complaint (Complaint) that was filed against the Company by Roger and Kimberly Arave (Araves), and notes that the substance of the Complaint is identical to that raised in the Informal Complaint, No. C20-0241 (Informal Complaint), that was filed by the Araves on December 3, 2020 and resolved by the Commission on December 11, 2020. The Complaint should be summarily resolved on the same basis.

The Complaint asks that the Commission delay action in the Company's pending rate case for an indefinite period pending resolution of litigation about claimed interference between the Araves' and the Company's water wells. That case, Civil No. 130907544 pending in the Second District Court, was filed in 2013. The trial court found that there was interference between the wells, but the Utah Supreme Court, in an opinion handed down on October 15, 2020, 2020 UT 67, reversed the trial court, finding that the Araves had not proven interference, and remanded the case to the trial court for further proceedings.

The Complaint should be dismissed because the issues raised in the trial court litigation do not bear on the Company's rates or its costs of service, and the Araves have offered no new information that would call into question the Company's rates or costs of service.

The Araves are not members of and own no interest in the Company. They own their own culinary well and water rights for the provision of culinary and irrigation water for their residence. They do not own and have not paid for fire-flow or other storage facilities. They have been provided with water from the Company's wells and water rights at contract rates under the Company's 2009 tariff while their well interference claims against the Company are being litigated. That tariff specifically required the Company to charge the Araves and other contract customers the same rates that it charges to the Company's members. That tariff requirement made sense because the Company's cost of service to the Araves is as high, if not higher, than the cost of serving the Company's members. The Araves have not furnished any data to suggest that it costs the Company less to provide water to them. Neither does such data exist.

The Company did not directly notify the Araves of the pending rate case for the simple reason that they are not members of and have no ownership interest in the Company. Unlike the Company's members, the Araves have never invested in the Company's diversion, storage, or distribution facilities; they have simply purchased water at the contract rates set in the tariff approved by the Commission. Nevertheless, all of the filings in this and all rate cases are public documents, available to all.

As noted, the issues raised in the nearly eight-year-old state court case referenced by the Araves have no bearing on the pending rate case. The matters are not related and a resolution of one matter does not depend on the outcome of the other. This rate case was filed almost a year

before the Supreme Court ruled on the Company's successful appeal, and the Commission's schedule for the case was set before the Supreme Court overturned the trial court's decision that the Company had interfered with Arave's water well.¹

The Company has been working under an 11-year-old tariff that badly needs to be updated. The rate increase was requested to address increased costs of service. (Perhaps not coincidentally, the requested rates coincide quite closely to the increase in the cost of living over that long period.) The rate filing affects all who receive water from the Company, and there is no basis for any suggestion that it was targeted at the Araves. As noted, the cost of providing water to the Araves is not lower than the cost born by the Company's members.

There is, in short, no reason that the Public Service Commission should delay its decision in the rate case until some uncertain future time when the well interference claims may finally be resolved. Neither is there any factual basis for assigning the Araves a different or lower rate tier, or to excuse them from paying the same overage fees, special and other assessments that are paid by the Company's members.

The Complaint should be dismissed for those reasons.

DATED this 12th day of January, 2021.

CLYDE SNOW & SESSIONS

/s/ Edwin C. Barnes

Edwin C. Barnes

Emily E. Lewis

Attorneys for Pineview West Water Company

¹ The Complaint was filed directly by the Araves, though they list David Wright as their attorney. Mr. Wright represents Arave with respect to the pending litigation but has not entered an appearance for the Araves, nor has he communicated with counsel for the Company with respect to the Company's rate case. The Company suspects that Mr. Wright may not be aware of the Complaint. Nevertheless, as a matter of precaution and courtesy, copies of this Answer will also be served on Mr. Wright.

CERTIFICATE OF SERVICE

I CERTIFY that on the 12th day of January, 2021, a true and correct copy of the foregoing was delivered to the following as indicated below:

By Email:

Roger and Kim Arave (araveclan@gmail.com)

David Wright (dwright@utahwater.com)

Peter Turner (pwwceden@gmail.com)
Pineview West Water Company

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.com)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

/s/ Marilyn Christensen _____

EXHIBIT T

Snowberry Inn Informal Complaint
Against PWWC



J. CRAIG SMITH
jcsmith@SHutah.law

DONALD N. LUNDWALL
dlundwall@SHutah.law

October 15, 2021

Marilee Wright
Manager, Customer Service
Utah Division of Public Utilities
P.O. Box 146751
Salt Lake City, UT 84114

Via Certified Mail
No.70180680000029902857

Re: Snowberry Inn Informal Customer Complaint Against Pineview West Water Company

Dear Ms. Wright,

This firm represents David and Susan Burwen, the owners of Venture Development Group, LLC (“**Venture**”), which in turn owns the Snowberry Inn, a bed & breakfast served by regulated public utility Pineview West Water Company (“**PWWC**”) since 2007. On behalf of our clients, we respectfully submit this Informal Complaint (“**Complaint**”) against PWWC.

PWWC has prompted this Complaint by its stated intent to discontinue service to the Snowberry Inn because it asserts the Inn is not a customer entitled to continuing service. Venture asks that PWWC be required to recognize the Snowberry Inn as an ongoing customer entitled to continuing service under PWWC’s current Tariff.

A Brief History of PWWC Service to Snowberry Inn

On September 30, 2004, the Public Service Commission (“**Commission**”) issued a Certificate of Public Convenience and Necessity (Docket No. 04-2438-01, the “**Certificate**”) to PWWC,¹ authorizing PWWC to serve water to the public as a regulated public utility and water corporation.

On October 12, 2004, the Commission issued a “**Clarifying Order**” specifying that PWWC’s certificated service area (“**Certificated Service Area**”) as a public water utility encompassed “the Radford Hills and Pineview West No. 1 subdivisions located in Weber County, Utah” (the “**Subdivisions**”). (A copy of the Clarifying Order is attached as **Exhibit A**.)

PWWC’s service to the Snowberry Inn and others located outside of the Subdivisions began in 2007 after a new PWWC Well (“**Well #4**”) showed signs of potential interference with private wells in the area. At that time, the Snowberry Inn, the residences of Mr. & Mrs. Arave

¹ See <https://pscdocs.utah.gov/water/waterorders/40607.pdf>.

(“**Araves**”) and Mrs. Southwick, and a business known as the Pineview Yacht Club (“**Yacht Club**”) all received culinary water from private wells. To avoid the consequences of interference with the private wells, Nate Brockbank, then President of PWWC, extended and connected the PWWC system to these homes and businesses. This service has continued without interruption to this day.

Inclusion of Snowberry Inn and Others in Certificated Service Area

Service to these new customers, including the Snowberry Inn, was soon recognized and incorporated into the Certificated Service Area of PWWC. On November 20, 2008, PWWC filed a Request for Approval of a Rate Increase and Special Assessment.² On June 25, 2009, the Utah Division of Public Utilities (“**Division**”) recommended approval of the rate increase and a new Tariff for PWWC (the “**Division Recommendation**,” a copy of the relevant portion is attached as **Exhibit B**.) Significantly, the Division Recommendation includes a finding that PWWC’s Certificated Service Area extends beyond the Subdivisions and includes the Snowberry Inn:

[PWWC’s] operations are in Weber County, near Ogden City, Utah, and include 58-metered customers with an additional 54 standby customers. **The service area includes Pineview West, Radford Hills, Arave, Southwick, Snowberry Inn, the Pineview Yacht Club, HOA clubhouse and related landscaping, and Crimson Ridge.**

(See Ex. B at 3 (emphasis added).)

Based on the Division Recommendation, on July 15, 2009, the Commission issued a Report and Order (“**Commission Order**”) approving the July 1, 2009, Tariff (“**Tariff No. 2**”). (A copy of the Commission Order is attached as **Exhibit C**.) The Commission Order also acknowledges that PWWC’s Certificated Service Area includes the Snowberry Inn:

[PWWC] operates in Weber County, near Ogden City. It includes 58-metered customers with an additional 54 standby customers. **[PWWC] serves Pineview West, Radford Hills, Arave, Southwick, Snowberry Inn, the Pineview Yacht Club, HOA clubhouse and grounds, and Crimson Ridge subdivision.**

(See Ex. C at 2 (emphasis added).)

Origin of the Dispute Leading to Informal Complaint

In 2011, PWWC sought to differentiate its service to the Snowberry Inn from its service to the vast majority of its other customers through a “Water Right Lease and Water Service Agreement” (“**Service Agreement**,” a copy of which is attached as **Exhibit D**.) PWWC informed Venture that, for the Snowberry Inn to continue to receive service, it must sign the Service Agreement. PWWC did not disclose that both the Division and the Commission had, only two

² See <https://psc.utah.gov/2016/07/08/docket-no-08-2438-01/>.

years earlier, recognized the Snowberry Inn as being within PWWC's Certificated Service Area. Nor did PWWC disclose that the Snowberry Inn, as a customer within the Certificated Service Area of PWWC, was entitled to service under Tariff No. 2 and required no special Service Agreement that other customers were not required to execute.

The Service Agreement PWWC demanded that Venture execute did not conform to the approved Tariff No. 2 and included rates and service provisions Tariff No. 2 did not authorize. After attempting, in vain, to negotiate the terms of the Service Agreement, a stalemate occurred and no special Service Agreement was ever executed.

Then, on November 15, 2013, PWWC informed Venture that water service to the Snowberry Inn would be terminated on January 1, 2014 (the "**Termination Notice**," a copy of which is attached as **Exhibit E**.) This started a long chain of events that ultimately led to this Informal Complaint.

Since PWWC began using Well #4, the Snowberry Inn's well has become unreliable and insufficient to serve the needs of the Inn. While the Snowberry Inn continues to use its well, it also relies on service from PWWC. Over the past forty-one months, the Snowberry Inn has purchased an average of 5,805 gallons (0.018 acre-feet) per month from PWWC while diverting an average of 18,095 gallons (0.056 acre-feet) per month from its own well. Most recently, despite lowering its pump 20 feet and restricting it to only 6.6 gallons per minute, the Snowberry Inn well is unable to keep up with demand. The Inn's reliance on PWWC water has thus increased. The Snowberry Inn has, moreover, no alternative for Culinary Water Service: there are no other water utilities available, public or private, which can serve the Snowberry Inn.

In December 2013, after receipt of the Termination Notice, and facing the prospect of insufficient water, the Burwens, the Araves, and Ms. Southwick filed suit against PWWC in the Second Judicial District Court for Weber County ("**District Court**"), asserting that PWWC's Well #4 interfered with their wells. As a regulated public utility and water corporation, the issue of continued water service by PWWC lies exclusively within the jurisdiction of the Commission³ and was therefore not a part of the 2013 litigation. As a result, neither the District Court, nor later the Utah Supreme Court, addressed the rights of the Snowberry Inn to receive water service from PWWC under PWWC's approved Tariff.⁴ After remand from the Utah Supreme Court to the District Court, PWWC agreed to continue providing service to the Araves and Ms. Southwick but not to the Snowberry Inn. PWWC recently reaffirmed its determination to terminate service to the Snowberry Inn when the lawsuit is over.

³ See Utah Code Ann. § 54-4-1.

⁴ Although the parties agreed that PWWC would not discontinue their service while the litigation is pending (it still is), PWWC has filed a Motion to Dismiss. The motion is likewise currently pending.

PWWC's Recent Efforts to Remove Snowberry Inn from its Certificated Service Area

On December 12, 2019, PWWC's President, Peter Turner, informed both the Commission and the Division that PWWC intended to request a rate review ("**Notice of Intent to Request a Rate Review**," a copy of which is attached as **Exhibit F**.) Significantly, the Notice of Intent to Request a Rate Review states: "Primarily we are requesting: . . . Modification of our recognized [Certificated] [S]ervice [A]rea to reflect actual fact. The existing one is very old. It was created when the plat maps included other phases of development, now defunct, and additional water sources that were never built." (See Ex. F.) Expansion of the Certificated Service Area was certainly necessary since PWWC had not updated following the 2004 Clarifying Order showing only the Subdivisions, to conform to the 2009 expansion of the Certificated Service Area.

On April 24, 2020, PWWC filed a "Request for Approval of a Conservation Rate Increase" with the Commission.⁵ Attached as Exhibit 12 to such Request was a "Rate Review Notice" dated December 31, 2019, addressed to the shareholders of PWWC. Despite the Snowberry Inn's being a customer of PWWC, it received neither the Rate Review Notice nor any other notice of the proceedings in Docket No. 19-2438-01.

However, by April 24, 2020, PWWC's plan to modify its Certificated Service Area had apparently changed. According to written testimony from John Durig, Vice President of PWWC, dated May 21, 2020, attached as **Exhibit G**, PWWC had "82 connected customers and 37 standby customers," a number that presumably includes the Snowberry Inn, the Araves, Ms. Southwick, and the Yacht Club. Mr. Durig also testified: "**We are not seeking to change the service area for Pineview West Water Company at this time.**" (See Ex. G at 3.)

Thus, it is not surprising that there is no further mention of the service area or any revisions to the service area until what is now Tariff No. 3 was later submitted, which on the very last page includes a "**Service Area Map**" (attached as **Exhibit H**). This is the first and only service area map submitted by PWWC. The Service Area Map shows the original service area of the two Subdivisions back in 2004 and does not include the Snowberry Inn and others served under the approval for Tariff No. 2 in 2009. There is no explanation accompanying the Service Area Map. Nor does the Map itself indicate that it differs from the 2009 Certificated Service Area.

Although, the Service Area Map excludes the Snowberry Inn, the Araves, Ms. Southwick, and the Yacht Club, and does not conform with the Certificated Service Area established in 2009, it would take a close comparison of the Division Recommendation and Commission Order by someone with actual knowledge that the Snowberry Inn, and several other customers, are not located within the area depicted on the Map, which is not labeled, to discover that the Map excludes existing customers, including the Snowberry Inn, which had specifically been included in the 2009 Division Recommendation and Commission Order. Not surprisingly, this subtle and unidentified attempt to reduce the service area was apparently not noticed by the Division or the Commission.

⁵ See <https://psc.utah.gov/2019/12/13/docket-no-19-2438-01/>.

This is particularly understandable in light of the testimony of PWWC that it was not seeking any change in its service area.

Accordingly, neither the Division's unopposed motion to approve the stipulated settlement agreement regarding Tariff No. 3⁶ nor the Commission's Order approving Tariff No. 3⁷ address or sanction any change to or modification of PWWC's Certificated Service Area. On January 25, 2021, the Commission approved Tariff No. 3, which Tariff became effective on February 1, 2021.⁸

PWWC's Agreement to Continue to Serve the Araves, Ms. Southwick, and Yacht Club

On December 3, 2020, the Araves, fearing loss of service, sent an email to the Commission (the "**Arave Public Comment**," attached as **Exhibit K**) pointing out that, although customers of PWWC, they had never received any notice of Docket No. 19-2438-01.⁹ The Araves also informed the Commission of the ongoing litigation with PWWC. Subsequently thereafter, and acting without the aid of legal counsel, the Araves filed a Formal Complaint which was later dismissed.¹⁰

On January 12, 2021, however, PWWC filed an Answer to the Arave Formal Complaint, stating in part:

The Araves are not members of and own no interest in [PWWC].¹¹ They own their own culinary well and water rights for the provision of culinary and irrigation water for their residence. They do not own and have not paid for fire-flow or other storage facilities.¹² They have been provided with water from [PWWC's] wells and water rights at contract rates under [PWWC's] 2009 tariff [i.e., Tariff No. 2] while their well interference claims against [PWWC] are being litigated.¹³

However, despite the 2021 revised Service Area Map (*see* Ex. H) and its Answer to the Araves' Formal Complaint, PWWC has recently agreed to provide continuing service to the Araves. In fact, PWWC has entered into a Stipulation, confirmed by the Order of the District Court, that it will continue to provide water to the Araves, Ms. Southwick, and the Yacht Club,

⁶ See Unopposed Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled, attached as **Exhibit I**.

⁷ See Order Approving Stipulation and Associated Tariff Changes, attached as **Exhibit J**.

⁸ See <https://pscdocs.utah.gov/water/19docs/19243801/31706819243801oasaatc1-25-2021.pdf>.

⁹ See Ex. K; *see also* <https://psc.utah.gov/2019/12/13/docket-no-19-2438-01/>.

¹⁰ See <https://psc.utah.gov/2020/12/21/docket-no-20-2438-01/>.

¹¹ It should be noted by the Division that nothing in any Tariff of PWWC addresses ownership of PWWC.

¹² It should also be noted by the Division that no Tariff of PWWC addresses this subject.

¹³ See PWWC Answer to Formal Complaint at 2, attached as **Exhibit L**.

despite the fact that the Araves—and, presumably, the others as well—are not “owners” of PWWC, “have not paid for fire-flow or other storage facilities,” and are not within the revised Service Area Map. (See Ex. J; *see also* Release and Settlement Agreement, attached as Exhibit M; Stipulated Motion to Dismiss with Prejudice, attached as **Exhibit N**; Order Granting Stipulated Motion to Dismiss with Prejudice, attached as **Exhibit O**.) Only the Snowberry Inn remains under threat of service termination at the conclusion of litigation in the District Court.

Request for Relief

PWWC is both a “public utility” and a “water corporation” under Utah Code Ann. § 54-2-1(22)(a) & (38). As such, PWWC is legally required to “furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable.” Utah Code § 54-3-1.

Also, Regulation F of Tariff No. 3 addresses the termination of service by PWWC. Nothing in Regulation F provides for the termination of service to a customer at the whim of PWWC. None of the grounds set forth in Regulation F which allow for termination of service are present. The Snowberry Inn timely pays each and every monthly billing from PWWC. Accordingly, the Snowberry Inn is entitled to acknowledgement by PWWC that; (a) the Snowberry Inn is a continuing customer within PWWC’s Certificated Service Area, and (b) PWWC may not unilaterally terminate service to the Snowberry Inn so long as the Inn continues to pay the approved rates under Tariff No. 3.

If the Division is unable to resolve this Complaint, customer Venture requests Mediation be held pursuant to Regulation G of Tariff No. 3 and Utah Admin. Code R746-200-8, prior to further formal proceedings.

Thank you for the opportunity to submit this Informal Complaint. Please contact the undersigned if further information would be helpful or if you have any questions.

Respectfully submitted,
SMITH HARTVIGSEN, PLLC



J. Craig Smith
Donald N. Lundwall

cc: David & Susan Burwen
Edwin C. “Ted” Barnes, Counsel for PWWC
Gary Widerburg, Utah Public Service Commission
Chris Parker, Director of Utah Division of Public Utilities
Patricia Schmid, Assistant Attorney General

EXHIBIT U

PWWC Response to Snowberry Inn
Informal Complaint



ATTORNEYS AT LAW
CLYDE SNOW & SESSIONS
A PROFESSIONAL CORPORATION

ONE UTAH CENTER
201 SOUTH MAIN STREET, SUITE 2200
SALT LAKE CITY, UTAH 84111-2216
TEL & FAX 801.322.2516
clydesnow.com

STEVEN E. CLYDE
EDWIN C. BARNES
NEIL A. KAPLAN^o
D. BRENT ROSE
J. SCOTT HUNTER
DEAN C. ANDREASEN
ANNELI R. SMITH
WALTER A. ROMNEY, JR.
MATTHEW A. STEWARD
CHRISTOPHER B. SNOW^o⁺
WAYNE Z. BENNETT
BRIAN A. LEBRECHT⁺
TIMOTHY R. PACK
JAMES W. ANDERSON
DIANA L. TELFER
SHANNON K. ZOLLINGER
EMILY E. LEWIS^{tt}
KEITH M. WOODWELL
SHAUNDA L. MCNEILL⁺

JONATHAN S. CLYDE=
VICTORIA B. FINLINSON
LAURA D. JOHNSON
TAYMOUR B. SEMNANI
TRENTON L. LOWE
KATHERINE E. PEPIN
MICHAEL W. WADSWORTH
BRIAN D. TUTTLE ^o

OF COUNSEL:
RODNEY G. SNOW
CLARK W. SESSIONS⁺
THOMAS A. BRADY
T. EDWARD CUNDICK^o
REAGAN L.B. DESMOND⁺⁺
PETER STIRBA
JAKE TAYLOR⁺
NATHAN B. WILCOX

EDWARD W. CLYDE (1917-1991)

⁺ SENIOR COUNSEL
^o ALSO ADMITTED IN CALIFORNIA
^o ALSO ADMITTED IN DISTRICT OF COLUMBIA
⁺ ALSO ADMITTED IN FLORIDA
^o ALSO ADMITTED IN NEW YORK
⁺ ALSO ADMITTED IN OREGON
^o ALSO ADMITTED IN TEXAS
^{tt} ALSO ADMITTED IN WYOMING

October 29, 2021

Via Email
marmartinez@utah.gov

Marialie Wright
Manager, Customer Service
Utah Division of Public Utilities
P.O. Box 146751
Salt Lake City, UT 84114

Re: Snowberry Inn Informal Complaint Against Pineview West Water Company

Dear Ms. Wright,

The Pineview West Water Company ("PWWC") has asked us to respond to the complaint filed by Venture Development Group, LLC ("Venture") which owns the commercial enterprise called the Snowberry Inn located near, but not in, the community of single-family homes that PWWC was formed to serve. I previously wrote to you on December 11, 2020, about a similar claim (No. C20-0241) raised in an informal complaint to the Division of Public Utilities that was resolved on December 11, 2020. I also filed an Answer to a formal complaint (No. 20-2438-01) filed by the same parties on December 21, 2020, that was dismissed on February 2, 2021. These dismissed complaints raised and resolved issues similar to those raised here. This letter is PWWC's response to the Informal Customer Complaint filed by Venture on October 15, 2021.

The Parties

PWWC is a small mutual water company that was formed to serve and is owned by its residential members and not the public generally. It was formed by an early developer of the subdivisions that it serves, and he apparently filed with the Public Service Commission (Commission) because he maintained controlling ownership of the company. That changed in approximately 2008 when he relinquished control and ownership devolved completely to the

subdivision lot owners. PWWC has limited water and financial resources and, especially in these times of drought, struggles to meet its obligations to its member/owners.

Snowberry Inn, owned by Venture, is a 10-unit commercial enterprise. It has its own well and water rights, water rights that are sufficient to supply all of its needs. Venture owns a small, single-family water right that is senior to PWWC's water rights, and Venture obtained and owns an additional commercial water right in 2017 that is junior to all of PWWC's water rights. Venture's well was purchased by Venture when it acquired the Snowberry Inn property and the well serviced the property adequately for many years based only on the single-family right. The well is not very deep and is not efficiently equipped, and apparently cannot produce all of the water authorized by Venture's more recently acquired 2017 commercial water right. The present complaint represents the latest in a series of claims made by Venture, including a lawsuit that was filed in 2013 where Venture is now represented by its third set of attorneys, in an expensive effort to bully PWWC into solving Venture's water supply needs instead of improving its own well so it can provide the water to which Venture is entitled under its water rights.

PWWC's Service Area

Venture's current complaint is that it was not included in the service area described in PWWC's current, approved tariff. Venture wants the Commission to ignore the service area map that was recently published and approved as a part of Tariff 3, and revert back to a prior map that included Venture's inn pending determination of Venture's water right interference claim. That claim has since been decided against Venture by the Utah Supreme Court. (A copy of the Supreme Court's opinion, No. 20180067, is attached as Exhibit A.) Since the interference claim has been dismissed, and where Venture owns a well and sufficient water rights to support its commercial venture, there is no necessity for PWWC to stretch its limited resources to provide a redundant water supply to Venture.

PWWC's initial service area map confirms that it was formed with the intention of serving only the two residential subdivisions located in Weber County, Utah. In approximately 2007, the then-developer added a seasonal irrigation well (Well No. 4) to its system. First two individuals, and later Venture, claimed that the periodic operation of Well No. 4 interfered with their water rights. As an accommodation, the then-developer extended PWWC's water lines first to the two individuals and later to Venture, even though they were not within the then-defined service area. Venture and the individuals initially paid for the water they took at a rate much lower than that set by the tariff.

PWWC's service area was temporarily expanded in 2009 as a convenience to Venture and the individuals to support service while they pursued their claims of water right interference. These parties insisted on paying less for their water than the rates in the tariff set by the Commission. With the developer gone and the PWWC system owned and operated by its residential customers, PWWC insisted that they begin pay the same rates as the members of the

PWWC, thereby ending PWWC's subsidy. Venture and the individuals responded by filing a lawsuit in the Second District Court (Civil Number 130907544) claiming that operation of PWWC's Well No. 4 interfered with their water rights by affecting the level of water in the water table from which their wells (and the wells of many others) drew water. They also began paying for the water they took at the same rates as PWWC's members.

The lawsuit was not tried until 2017 when, following a full trial, and adopting an erroneous theory of law advocated by Venture, the district court found actionable interference and negligence in the operation of PWWC's well No. 4. The district court ordered PWWC to continue providing water service to Venture while the lawsuit was pending in order to replace the water Venture claimed it could not obtain due to interference. PWWC objected but has complied with that order. The district court's ruling was immediately appealed to the Utah Supreme Court which, on October 15, 2020, reversed the trial court's finding of interference as a matter of law, ruling that Venture had not proven interference, and sent the negligence claim back to the district court to determine whether that damage claim could possibly survive since the negligence finding was based solely upon the finding of interference.

PWWC's recent rate case was filed while the Supreme Court had PWWC's appeal under consideration. As noted by Venture, PWWC's initial intent, and its pre-filed testimony, did not indicate a desire to alter the service area "at this time". (Exhibit G to Venture's Complaint.) At that time, of course, the trial court's interference finding and order to continue water service was the law of the case, pending a decision by the Utah Supreme Court. However, Venture has *always* been aware that PWWC disputed the interference claim and that it did not want to provide water to Venture. That has been an issue between the parties since before the lawsuit was filed. After the Supreme Court ruled, it was clear as a matter of law that there was and had been no actionable interference and thus PWWC had no obligation to furnish replacement water to Venture. In anticipation of that ruling, PWWC included with Tariff No. 3 a map of its service area no longer including Venture's land, effectively restoring the service area in that respect to the area described before it was extended while Venture pursued its interference claim.

Venture complains that the change in the service area was obtained surreptitiously and should be disregarded. That is plainly *not* the case. As noted by Venture on page 4 of its Complaint, this "map was the first and only service area map submitted by PWWC"; indeed, PWWC's map appears multiple times in the Commission's files. It was filed on October 16, 2020, with Mark Long's Direct Testimony as Page T3 to DPU Exhibit 3B to "Pineview Recommended Tariff (Redline)," with a redline title, indicating that the map had been changed. It was thus made a public record and obvious to any and all who were interested in the matter.

PWWC's customers were notified of its filing, as confirmed by the November 12, 2020 Unopposed Motion to Suspend Testimony Dates while Retaining Hearing Dates as Scheduled: "The Division is also authorized to represent that in its October 19, 2020 billing, Pineview provided its customers notice of the anticipated Settlement Agreement and the scheduled

hearings.” Another redline copy of the service area map was filed with the Commission as Attachment 3 to the Division’s November 20, 2020, Unopposed Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled.

While constructive notice of the revised service area map was given to all by these public documents and the notice of the pending proceedings, the change in the service area map was obvious and did not go unnoticed. The Araves, co-plaintiffs with Venture in the Second District Court action who were represented by the same lawyer, confirmed their awareness of the proposed change when they filed a public comment with the Public Service Commission on December 3, 2020. (Copy attached as Exhibit B). There, they confirmed their awareness of the pending rate case and that noted that their property was “*not included* in the service area map that Peter Turner presented to PSC.” (Emphasis added.) The Arave’s comment was treated as an informal complaint by the Division of Public Utilities, and was resolved by the Division on December 11, 2020, without further action.

The Araves raised their concerns again in a more formal complaint dated December 21, 2020, Docket Number 20-2438-01, again complaining that their property was not included in the map of PWWC’s service area. (Copy attached as Exhibit C.) The Araves again demonstrated that they were aware of the reversion to the original PWWC boundaries proposed in the new Tariff, and that any who was interested in the rate case could also have been aware. PWWC responded to the formal complaint on January 12, 2021. On that same date, the Division, now aware of the Araves’ specific concerns about the service area map, filed an Action Request Response stating that the Division “has no recommendation regarding this docket.” The Araves’ complaint was dismissed by the Commission on February 2, 2021. In its Order, copy attached as Exhibit D, the Commission acknowledged Mrs. Arave’s complaint that “PWWC did not include her property in the PWWC boundaries even though her residence ‘is connected’ to PWWC.” The Commission then rehearsed the course of filings and notices and public comments and, again noting that the dispute about interference and continuing water service is pending in the courts, dismissed the Araves’ complaint, leaving the service map as proposed by PWWC and the Division. Notably, the Commission’s February 2, 2021, Order dismissing the Arave’s complaint concluded with a Notice of Opportunity for Agency Review or Rehearing, advising the Araves of their right to seek review or rehearing within specific time frames. They took no further action and the Order thus became final. PWWC later agreed on terms for the voluntary continuation of service to the Araves, whose residential needs are similar to those of its other members.

By order of the Commission entered January 25, 2021 (copy attached as Exhibit E), the PWWC tariff and service area map became effective on February 1, 2021, two months after the Araves highlighted the proposed change in the service area. Venture was represented by the same attorney as the Araves at the time and likely had actual, in addition to constructive, notice of the changed map. The temporary service area that had been in effect while the interference claims were pending was no longer necessary because, as the Supreme Court confirmed, there

was no actionable interference with their water rights. As with the Order that concluded the Araves' Complaint, the Commission's January 25, 2021, Order that approved the new tariff included a Notice of Opportunity for Agency Review or Rehearing. Neither Venture nor the Araves sought review or rehearing, and the Order and new tariff (including the restated service area) became final. The issues now raised by Venture have already been decided and its Complaint is moot and untimely.

PWWC's resources are very limited, particularly in these times of drought, and it is not in a position to continue service to a 10-unit commercial enterprise that owns sufficient water rights and its own well, but would rather spend money on lawyers trying to foist its internal problems onto PWWC than employ its funds to deepen or replace its well to increase its water supply so it can utilize the water rights that it owns. The question of whether the service area revision in the new PWWC tariff and the revision of the associated service area map has been raised and has been ruled on, without appeal. Venture's commercial enterprise lies outside of that area.

As the Public Service Commission previously found, this dispute should be resolved in the courts, where Venture chose to fight it eight years ago. The courts have since declared that PWWC does not interfere with Venture's water rights as a matter of law and, thus, PWWC has no obligation to provide replacement water. The case remains pending in the courts at this point only to decide whether the negligence claim can continue following the dismissal of the interference claim on which it was based. Even if the negligence claim persists, that is only a claim for money damages. Those questions, including whether PWWC is obligated to continue sharing its limited resources with Venture are, as noted by the Commission, matters for the court to decide.

PWWC is a private company that was formed to serve residential lots in two subdivisions. It is member-owned and, with the exception of two connections which it agreed to serve by contract and not compulsion, exists to serve only its residence members. It was never intended to serve the public generally. Its service area was extended while the water rights interference claim worked its way through the courts. That issue has been decided and there is no longer any justification for the Commission to require PWWC to provide water service to a 10-unit commercial enterprise that has its own well and water rights.

Conclusion

The lawsuit and the ongoing claims against PWWC have caused great hardship, both in terms of the impact on PWWC's limited water resources and the burden of attorneys' fees PWWC has had to spend in defense of Venture's groundless claims. Venture can solve its own problems and should not be allowed to foist onto this small residential water company, when it already owns the water rights and an approved diversion point for a well that could supply its needs.

PWWC therefore requests that the informal complaint be dismissed. There is no need for further involvement by the Public Service Commission in this matter, whether by mediation or otherwise.¹ Continued water service would be a convenience for Venture, but it is certainly not a necessity. PWWC should not be required to serve a 10-unit inn located outside of its current, approved service area.

Very Truly Yours,



Edwin C. Barnes

cc: Pineview West Water Company
J. Craig Smith, Counsel for David & Susan Burwen
Donald N. Lundwall, Counsel for David & Susan Burwen
Gary Widerburg, Utah Public Service Commission
Chris Parker, Director of Utah Division of Public Utilities
Patricia Schmid, Assistant Attorney General

¹ Venture attempts to invoke Regulation G of Tariff 3 in support of that request, ignoring the fact that questions about the change in PWWC's service area have already been raised to and addressed by the Public Service Commission. Similarly, its effort to claim the benefit of the termination procedures in Regulation F fails. The Venture termination process is a matter for the court where Venture filed its suit. Further, even if Regulation F could be argued to apply outside of PWWC's service area, it would apply by its express terms only to the termination of **residential** service, not commercial enterprises.

EXHIBIT V

Order Dismissing Arave Formal
Complaint

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of Roger and Kim Arave against Pineview West Water Company	<u>DOCKET NO. 20-2438-01</u> <u>ORDER DISMISSING COMPLAINT</u>
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ISSUED: February 2, 2021

BACKGROUND

On December 21, 2020, Roger and Kim Arave (“Complainant”) filed a complaint (“Complaint”) with the Public Service Commission (PSC) against Pineview West Water Company (PWWC). Complainant alleges that she was not notified of PWWC’s request for a rate increase (“PWWC general rate case”), and that she has been involved in a lawsuit against PWWC since 2012. Complainant alleges that PWWC did not include her property in the PWWC boundaries even though her residence “is connected” to PWWC and has paid water fees since 2007. Complainant consequently requests that the PSC delay its decision in the PWWC general rate case.

On December 22, 2020, the PSC issued a Notice of Filing and Comment Period. On January 12, 2021, PWWC filed its answer recommending the PSC dismiss the Complaint (“Answer”). PWWC indicates Complainant is not a member of and owns no interest in PWWC. PWWC explains Complainant owns her own culinary well and water rights to culinary and irrigation water for her residence.¹ PWWC further explains it is providing water to Complainant from PWWC’s wells at contract rates under PWWC’s 2009 tariff while Complainant’s interference claims against PWWC are litigated.² PWWC also states that “[u]nlike [PWWC’s]

¹ Answer, at 2.

² *Id.*

members, [Complainant] ha[s] never invested in [PWWC's] diversion, storage, or distribution facilities; [Complainant] ha[s] simply purchased water at the contract rates set in the tariff approved by the [PSC].³ PWWC then states that the filings are public and are available to the public.

FINDINGS, CONCLUSIONS, AND ORDER

PWWC provided initial notice of its intent to file the PWWC general rate case December 12, 2019. PWWC subsequently worked with the Division of Public Utilities to complete its filing which was deemed complete as of May 31, 2020. For instance, PWWC submitted a copy of the December 31, 2019 notice it sent to PWWC's shareholders informing them of PWWC's request and explaining the reasoning for, a rate increase, filed with the PSC April 24, 2020 as PWWC Exhibit 12. The PSC issued a notice of telephonic scheduling conference for the PWWC general rate case to the general public June 1, 2020. Testimony and pleadings were filed in June 2020, October 2020, and November 2020. Complainant filed its public comments in the PWWC general rate case December 3, 2020, and filed this Complaint December 21, 2020, reiterating its public comments in the PWWC general rate case.

Utah Code Ann. § 54-7-12(3)(a) requires the PSC to issue its orders in all general rate case filings (including the PWWC general rate case) for public utilities within 240 days of a complete filing. In addition, the PSC has no jurisdiction over the dispute between Complainant and PWWC. The PSC issued its order in the PWWC general rate case January 25, 2021. Because the PSC has no jurisdiction over the underlying dispute between PWWC and Complainant, and

³ *Id.*

DOCKET NO. 20-2438-01

- 3 -

given Complainant's sole request was for the PSC to delay an order that was issued January 25, 2021, there is no longer a basis for the Complaint and the PSC dismisses it accordingly.

DATED at Salt Lake City, Utah, February 2, 2021.

/s/ Yvonne R. Hogle
Presiding Officer

Approved and confirmed February 2, 2021 as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#317219

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 2, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Roger and Kim Arave (araveclan@gmail.com)

Peter Turner (pwwceden@gmail.com)
Pineview West Water Company

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Administrative Assistant

EXHIBIT W

Testimony of John Durig

The Case for Pineview West Water Company Rate Increase Before the Public Service Commission of Utah

Docket No. 19-2438-01

In the matter of the Application of Pineview West Water Company for approval of a rate increase.

**Testimony of John Durig, Vice President of Pineview West Water Company,
May 21, 2020:**

History

The original water company built by Ed Radford, the developer of Radford Hills and subsequently run by Nate Brockbank the developer of Crimson Ridge, was turned over as an insolvent and nearly bankrupt business with an incomplete infrastructure to the home owners/shareholders in 2009. Nate Brockbank went bankrupt and turned the company over to the shareholders in 2009. The company has been run by a handful of volunteers led by Peter Turner who has filled the role of President since 2009. Running this business has involved not only the typical requirements of monitoring, invoicing and maintenance but also significant upgrades in automation, computer monitoring, negotiation with Ogden City Water for supply and attempting to educate and control shareholders concerning the availability, cost and impact of spikes in demand. The degree of engineering skills, business acumen required to keep the system running and above water cannot be overstated. The President and none of the volunteers have been compensated with the exception of actual purchased items for maintenance, expenses and occasionally a small hourly rate of \$20 to \$45 per hour. Small stipends have been paid to some board members over the last few years. The importance of this quick review is that in order to be a sustainable business there must be some compensation for the guidance and actual work performed by the Board members. The reason it is so critical is that if Peter Turner, and to a lesser degree the other board members, no longer choose to volunteer, PWWC would be required to hire an outside person to run the company at an expense we are currently not in a position to pay. Part of the funds from an increase will be to fund compensation for operational activities and time for four board Members (\$20,000 in total 2020).

Current Supply Situation

Culinary water comes from two sources. The first, Ogden City Water provides untreated water to Pineview under a renegotiated contract (there were two wildly disparate and conflicting contracts at the time control was passed to the shareholders, none favorable to PWWC). The contract stipulates supply of up to 14.6 million gallons annually with a tiered rate structure increasing cost for each 2 million gallon draw. As soon as the next tier is reached, a charge for

the next 2 million gallons is required, even if it is just 1 gallon into the next tier. Additionally, there is a daily maximum of 40,000 gallons per day.

The second source is from 2 culinary wells. Combined they can produce 6 million gallons per year under ideal conditions. Trying to balance spikes in demand (especially when culinary water is used for irrigation by a small number of customers), limiting cost by minimizing demand for Ogden City Water and insuring adequate pressure for fire suppression (by keeping our tank full) frequently puts sufficient demand on the pumps that efficiency declines. The pumping rates for these two wells has ranged from 10-15 gpm in after the initial drawdown in the well casing.

Our total capacity for 119 lots at build out is 173,109 gal per year, 14,425 per month and 474 gallons per day.

The variation in monthly usage ranges are shown with attached graphs and Excel spreadsheet data. Looking at these figures at a monthly rate provides a better picture of the challenges of managing water supply in a fair and equitable manner. While daily rates are not available from meter readings for all homes, when water levels fell precipitously this last spring, a leak was suspected. It turned out that one home was using in excess of 3500 gallons and up to 6000 gallons per day. A small leak was repaired in a sprinkler system but water consumption actually went up as temperatures increased. Board members read the meter daily for a while and one day usage reached 9000 gallons. Repeated discussions with the owner yielded no change in water usage.

Challenges Facing PWWC to Provide Equitable Treatment of Shareholders

In attempts to control water usage at a reasonable level, the Board has instituted a requirement, in the form of a letter to new homes requiring their signature agreeing to comply with the Crimson Ridge HOA requirements for landscaping. All homeowners should receive this from the HOA upon purchase of the land or beginning the building process. The Crimson Ridge HOA is responsible for approving landscape plans. Radford Hills does not have an HOA but there are only (insert number) buildable in Radford Hills. Crimson Ridge has 19 remaining buildable lots. Unfortunately, PWWC has no control over the decisions the HOA makes nor does it have any power of enforcement. In fact, plans were approved by the HOA for one home that used an average of 100,000 per month, primarily for irrigation. Even if an original homeowner agrees and follows the HOA guidelines, there is no way to prevent a subsequent owner from putting in 20,000 sq ft of Kentucky bluegrass.

Our second means of attempting to maintain reasonable water consumption is that a certificate of occupancy must include a sign off concerning water supply. At that time, discussions are held with the homeowner, compliance with HOA restrictions are requested and an attempt to educate them concerning conservation and the effects overuse creates for the water system infrastructure and availability. Again, this is an event over which we have no control. In fact, we have one situation where the Crimson Ridge HOA approved a landscape plan that is

egregiously outside the standards required. When the HOA was challenged, the response was, "I thought we had plenty of water from Ogden". No corrective action was taken by the HOA. This same home received a Certificate of Occupancy without the required signature from PWWC. Weber County was challenged, they had no explanation. Clearly the system has failed the shareholders of PWWC.

At this time we see no other means of providing equitable treatment of shareholders than to request a significant rate change to induce conservancy above normal and reasonable water consumption levels. Higher rates would at least increase income to offset the additional burden and wear and tear on our infrastructure if they did not successfully encourage conservation.

Rate History

Our most recent rate increase was in 2009. Since then, purchased water from Ogden City rates have increased and based on growth in the area, the need for purchased water has dramatically increased. Therefore, the cost of delivering water overall has increased. Most of the increase occurs during summer months when culinary water is being used for outside irrigation by customers not on the secondary system. We need a conservation rate increase to help cover the extra expenses and to encourage water conservation.

Number of Customers

We currently have 82 connected customers and 37 standby customers. Full build out is 119 connections. At the current water usage rate and full build out, we will not have an adequate supply of water unless water conservation is practiced in the summer.

Additional Required Investment

In order to ensure that an escalating conservation rate captures the spikes caused by use for irrigation, we will need to begin a monthly billing rather than a quarterly billing. That will require that all existing homes without a remote reading capability will have to be installed with the same. The cost for this is approximately \$28,000.

Rate Increase

We need a conservation rate increase to help cover the higher cost purchased water expenses and to encourage water conservation as well as to cover the additional expenses of radio-transmitted water meters. In addition, our infrastructure is aging and will need constant maintenance. Chart listing all rates, charges and fees is attached as Exhibit A.

Service Area

We are not seeking to change the service area for Pineview West Water Company at this time.