

Complaint Report

Complaint Number: C21-0160

Customer Information

Customer Name: Snowberry Inn (David & Susan Burwen)

Account Number:

Other Contact Info: J. Craig Smith

Phone Number:

Email Address:

Service: 1315 Ut-158
Address: Eden, UT 84310

Complaint Information

Company Name: Pineview West Water Company

Date Received: 10/18/2021

Date Resolved: 10/29/2021

Type of Call: Complaint

Complaint Type: Shut Off or Notice

Complaint Received By: Maria Martinez

Utility Company Analyst:

Gone Formal: NO

Complaint Description:

See attached Informal Complaint with Exhibits. -MW

Complaint Response:

10-20-2021

Talked to Mr. Turner today and he informed me that their Attorney will respond to the complaint but may not be able to get it done within five business days. He requested for an extension.

Maria

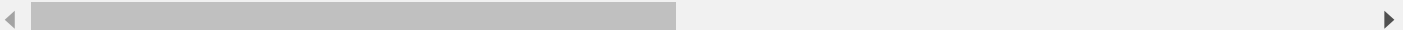
10-20-2021

Received a call from PWWC's Attorney asking for an extension until next Friday, the 29th.

Maria

10-29-2021

See attached document with Exhibits -MW





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 A

- 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



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

EXHIBIT C

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 D

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 E

ClydeSnow
ATTORNEYS AT LAW
CLYDE SNOW & SESSIONS
A PROFESSIONAL CORPORATION

ONE UTAH CENTER • THIRTEENTH FLOOR
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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 F



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 G

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.

EXHIBIT H

SERVICE AREA MAP



Effective Date: February 1, 2021

Docket Number: 19-2438-01

EXHIBIT I

PATRICIA E. SCHMID (#4908)
JUSTIN C. JETTER (#13257)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
IN THE MATTER OF PINEVIEW WEST WATER COMPANY’S REQUEST FOR APPROVAL OF A CONSERVATION RATE INCREASE	Docket No. 19-2438-01 Unopposed Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled

Pursuant to R746-1-301 of the Public Service Commission of Utah’s (Commission) rules, the Division of Public Utilities (Division) files this unopposed “Motion to Approve Settlement Agreement and to Hold Hearings as Scheduled” (Motion). The Division is authorized to represent that Pineview West Water Company (Pineview) supports this Motion. There are no intervenors in this docket.

The Division and Pineview have engaged in fruitful settlement discussions resulting in the execution of a Settlement Agreement, appended hereto as Attachment 1. A clean copy and a redlined copy of the revised Pineview Tariff are appended hereto as Attachment 2 and Attachment 3, respectively.

The Division requests that the Commission approve this Motion and hold the hearing and the public witness hearing both as scheduled on December 15, 2020 to consider the Settlement Agreement. The Division and Pineview will provide witnesses at the hearing supporting approval of the Settlement Agreement. Pineview will provide its customers notice of the Settlement Agreement and the scheduled hearings.

Respectfully submitted this 20th day of November 2020.

Patricia E Schmid
Patricia E. Schmid
Attorney for the Utah Division
of Public Utilities

EXHIBIT J

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Request of Pineview West Water Company for Approval of a Conservation Rate Increase	<u>DOCKET NO. 19-2438-01</u> <u>ORDER APPROVING STIPULATION</u> <u>AND ASSOCIATED TARIFF</u> <u>CHANGES</u>
--	--

ISSUED: January 25, 2021

BACKGROUND

On April 24, 2020, Pineview West Water Company (“Pineview”) filed with the Public Service Commission (PSC) an application for approval of a rate change (“Application”).

On April 29, 2020, the Division of Public Utilities (DPU) filed comments indicating the Application was missing certain information required for water companies’ general rate case filings under Utah Administrative Code Rule R746-700-50 (“GRC Complete Filing Rule”). DPU thus recommended the PSC deem the Application as being incomplete. On May 19, 2020, the PSC issued an order finding that the Application was incomplete.

On May 29, 2020, DPU filed a memorandum indicating that it had reviewed additional documentation submitted by Pineview to support the Application, and determined that Pineview had filed all of the information required under the GRC Complete Filing Rule. On June 8, 2020, the PSC issued a Scheduling Order, Notice of Hearing, and Notice of Public Witness Hearing setting a schedule.

On June 4, 2020, Pineview filed testimony and exhibits in support of the Application. Pineview states it has not increased rates since 2009 and its proposed increase is necessary to purchase water from Ogden City. Pineview asserts that water has become increasingly expensive over the years, and that it has experienced increased water usage by many of its customers.

Pineview explains that, consequently, its costs of delivering water overall have increased.

Pineview also explains that most of the increased usage occurs during summer months when culinary water is being used for outside irrigation by customers not on the secondary system.

Pineview asserts it needs conservation rates to help cover the extra expenses and encourage water conservation.

On October 16, 2020, DPU filed the direct testimony and exhibits of Mr. Mark Long. Mr. Long explains that a capital reserve account is “primarily used for the repair and replacement of infrastructure ... [and] is funded from two sources.” Mark Long direct testimony, at 6. He explains that it is funded through (1) base rates and (2) from amounts billed in conservation tiers over and above the incremental variable cost of providing service. *Id.* Mr. Long states that it has been over 11 years since Pineview sought a rate increase, and that he was involved in the last rate case. Mr. Long further states that DPU has closely monitored Pineview for several years and “could not be more complimentary of its leadership and sound business practices. [Pineview] has used its capital reserve account to its advantage and despite now needing a rate increase, appears to be financially sound.” *Id.*, at 12. After going through a thorough review of Pineview’s existing rates in his testimony, Mr. Long then concludes that “the current rates and rate structure no longer cover fixed costs and do not have an effective conservation rate with an increasing tiered rate structure (increasing block unit) as mandated in Utah Code [Ann. §] 73-10-32.5(1).” He further concludes that the rates and rate structure no longer result in just and reasonable rates and are no longer in the public interest. *Id.*, at 13.

On November 12, 2020, DPU filed a Motion to Suspend Testimony Dates while Retaining Hearing Dates as Scheduled, which was granted by the PSC on November 16, 2020. On November 20, 2020, DPU filed a settlement stipulation (“Settlement”), proposed tariff sheets, and a motion to approve the Settlement and to hold the hearings as scheduled. DPU explained that Pineview and DPU had engaged in fruitful settlement discussions and had reached an agreement that led to the Settlement. On December 3 and 14, 2020, the PSC received written comments from two Pineview customers who opposed the proposed conservation rates. Specifically, the December 3, 2020 comments informed the PSC of a pending dispute in civil court with Pineview over water issues. Ms. Arave explained that she was not notified of the general rate case filing, and requests the PSC postpone its decision in this docket until a final decision is rendered in said pending dispute.¹

On December 15, 2020, the PSC held an evidentiary hearing and a public witness hearing. During the evidentiary hearing, DPU and Pineview testified that the Settlement is just, reasonable, and in the public interest. Subsequently, during the public witness hearing, two witnesses entered public comments recommending the PSC reject either the increase in the basic service charge, or the new proposed conservation rates.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Under the Settlement, the parties agreed that effective February 1, 2021 and subject to the PSC’s approval, Pineview’s rates and terms of service would be those listed in the Settlement

¹ On December 21, 2020, Mr. and Mrs. Arave filed a formal complaint against Pineview in a separate docket, Docket No. 20-2438-01, asserting the same issues Ms. Arave asserted in her December 3, 2020 public comments. The PSC issued a Notice of Filing and Comment Period in that case, and received comments from Pineview responding to the Arave’s complaint. The PSC will issue an order in that docket after it issues this order.

and the accompanying tariff sheets. Utah Code Ann. § 54-7-1 encourages settlements of matters before the PSC at any stage of the proceedings. Under Utah Code Ann. § 54-7-1(2)(a), the PSC may approve a settlement proposal if it finds the settlement proposal to be in the public interest. In addition, the PSC may adopt a settlement stipulation if the PSC finds, based on the evidence of record, that the proposal is just and reasonable in result.²

The PSC acknowledges the public comments requesting the PSC reject the increase in base rates and the proposed conservation rates, including the comments from Ms. Arave notifying the PSC of the ongoing dispute between the Araves and Pineview. However, the dispute has no bearing in this docket. Based on the Utah Supreme Court decision that was appended to the December 3, 2020 public comments, the ongoing dispute involves water well rights over which the PSC has no jurisdiction. In addition, the PSC is required to act on this Application within 240 days of the date the Application is deemed to be a “complete filing,” consistent with Utah Code Ann. § 54-7-12(3)(a).

The PSC finds the evidence supports (a) the base rate increase as being necessary to finance needed capital improvements and (b) the conservation rates necessary to compensate Pineview for the tiered water usage charges it incurs from Ogden City when its customers’ water usage requires additional tiered purchases from Ogden City. The PSC also finds the evidence supports Pineview’s need for future capital expenditures to support the functional operation of its water treatment and delivery systems. The PSC further finds the proposed rates are not designed to generate a windfall, and note that the revenues cannot be used for non-utility purposes.

² See Utah Code Ann. § 54-7-1(3)(d)(i)(A)-(B).

ORDER

Based on the record, including the parties' testimony at hearing, and the Settlement, we find and conclude that the Settlement and the associated tariff sheets, are just, reasonable, and in the public interest. Thus we approve the Settlement, and the associated tariff sheets, filed November 20, 2020. We also approve the associated rate increase, effective February 1, 2021.

DATED at Salt Lake City, Utah, January 25, 2021.

/s/ Yvonne R. Hogle
Administrative Law Judge

Approved and confirmed January 25, 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#317068

EXHIBIT K



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 L

Edwin C. Barnes (0217)
Emily E. Lewis (13281)
CLYDE SNOW & SESSIONS
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Salt Lake City, UT 84111-2216
Telephone (801) 322-2516
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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 M

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.

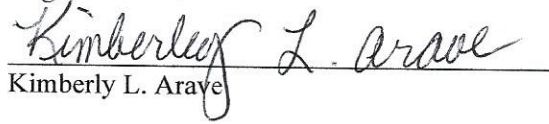
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

[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 N

Edwin C. Barnes (0217)
ecb@clydesnow.com
Emily E. Lewis (13281)
eel@clydesnow.com
CLYDE SNOW & SESSIONS
201 South Main Street, 13th Floor
Salt Lake City, Utah 84111-2216
Phone: 801-322-2516

Attorneys for Pineview West Water Company

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
WEBER COUNTY, STATE OF UTAH

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

Plaintiffs,

v.

PINEVIEW WEST WATER COMPANY, a
Utah corporation,

Defendant.

**STIPULATED MOTION TO DISMISS
WITH PREJUDICE**

Civil No. 130907544

Judge Cristina Ortega

Pursuant to Rule 41(a)(2) of the Utah Rules of Civil Procedure, Defendant Pineview West Water Company (“Pineview”), Plaintiffs Roger B. Arave and Kimberly L. Arave (the “Araves”), and Plaintiff Janet Southwick (“Southwick”) (collectively, the “Parties”), by and through their respective counsel of record, hereby stipulate and agree to dismiss with prejudice all claims made against Pineview by the Araves and Southwick, the Parties to bear their own attorneys’ fees and costs.

Plaintiff Venture Development Group, LLC (“Venture”) is not a party to this Stipulation, and, thus, this Stipulated Motion has no effect on the claims of and defenses asserted against Venture.

A proposed order is submitted herewith.

DATED this 20th day of May 2021.

CLYDE SNOW & SESSIONS

/s/ Edwin C. Barnes

Edwin C. Barnes

Emily E. Lewis

Attorneys for Defendant

MABEY WRIGHT & JAMES

/s/ Jonathan R. Schutz (signed with permission)

David C. Wright

Jonathan R. Schutz

Attorneys for Plaintiffs Araves and Southwick

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May 2021, I caused the foregoing document to be electronically filed with the Court, which in turn caused service upon the following e-filer:

David C. Wright
Jonathan R. Schutz
MABEY WRIGHT & JAMES
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jschutz@mwjlaw.com
*Attorneys for Plaintiffs Araves and Southwick,
& Plaintiff Venture Development Group, LLC*

/s/ Kari Peck

EXHIBIT O



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Attorneys for Pineview West Water Company

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
WEBER COUNTY, STATE OF UTAH

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

Plaintiffs,

v.

PINEVIEW WEST WATER COMPANY,
a Utah corporation,

Defendant.

**ORDER GRANTING STIPULATED
MOTION TO DISMISS WITH
PREJUDICE**

Civil No. 130907544

Judge Cristina Ortega

Based upon the Stipulated Motion to Dismiss filed by Defendant Pineview West Water Company (“Pineview”), Plaintiffs Roger B. Arave and Kimberly L. Arave (the “Araves”), and Plaintiff Janet Southwick (“Southwick”), and good cause appearing, IT IS HEREBY ORDERED that all claims made against Pineview by the Araves and Southwick are dismissed with prejudice. The parties shall bear their own attorney’s fees and costs incurred herein.

IT IS FURTHER ORDERED that this Order shall have no effect on the claims of and

defenses asserted against the remaining plaintiff, Venture Development Group, LLC.

****ENTERED BY THE COURT ON THE DATE AND AS INDICATED BY THE
COURT'S SEAL AT THE TOP OF THE FIRST PAGE****

Approved as to form:

MABEY WRIGHT & JAMES

/s/ Jonathan R. Schutz (*signed with permission*)

David C. Wright
Jonathan R. Schutz

Attorneys for Plaintiffs Araves and Southwick_

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2021, I caused the foregoing document to be electronically filed with the Court, which in turn caused service upon the following e-filer:

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*Attorneys for Plaintiffs Araves and Southwick,
& Plaintiff Venture Development Group, LLC*

/s/ Kari Peck



ATTORNEYS AT LAW
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CHRISTOPHER B. SNOW^o⁺
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BRIAN A. LEBRECHT⁺
TIMOTHY R. PACK
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DIANA L. TELFER
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SHAUNDA L. MCNEILL⁺

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KATHERINE E. PEPIN
MICHAEL W. WADSWORTH
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OF COUNSEL:
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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 A

2020 UT 67

IN THE
SUPREME COURT OF THE STATE OF UTAH

ROGER B. ARAVE AND KIMBERLY L. ARAVE; JANET SOUTHWICK,
TRUSTEE; VENTURE DEVELOPMENT GROUP, LLC,
Appellees,

v.

PINEVIEW WEST WATER COMPANY,
Appellant.

No. 20180067

Heard November 13, 2018

Filed October 15, 2020

On Direct Appeal

Second District, Ogden
The Honorable Ernie W. Jones
No. 130907544

Attorneys:

John H. Mabey, Jr., David C. Wright, Salt Lake City, for appellees
Edwin C. Barnes, Timothy R. Pack, Emily E. Lewis, Salt Lake City,
for appellants

JUSTICE PETERSEN authored the opinion of the Court, in which
CHIEF JUSTICE DURRANT, ASSOCIATE CHIEF JUSTICE LEE,
JUSTICE HIMONAS, and JUSTICE PEARCE joined.

JUSTICE PETERSEN, opinion of the Court:

INTRODUCTION

¶1 Roger B. and Kimberly L. Arave, Janet Southwick, and the owners of the Snowberry Inn bed-and-breakfast (collectively, Plaintiffs) each have decades-old water rights that allow them to meet their own water needs. They divert their water through the use of two wells. Pineview West Water Company has a much larger, junior water right that allows it to supply water to seventy single-family homes and irrigate over twenty acres of land.

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Pineview operates five wells that are much deeper and stronger than those of the Plaintiffs. The Plaintiffs claim that Pineview has interfered with their water rights because when one of Pineview's wells operates (Well 4), it lowers the water table and puts the available water beyond the reach of their pumps. After a bench trial, the district court found in favor of the Plaintiffs on their claims of interference and negligence.

¶2 Pineview appeals, raising the following issues. With regard to the Plaintiffs' interference claims, Pineview asserts the Plaintiffs did not establish interference because they did not prove that they were unable to obtain some amount of their respective water rights and that their means and methods of diversion were reasonable. Pineview asserts that the Plaintiffs' negligence claim should fail because they did not bring it against the proper parties. And finally, Pineview argues that even if the Plaintiffs properly prevailed on their interference and negligence claims, the district court incorrectly calculated damages.

¶3 We reverse the district court's determination that Pineview interfered with the Plaintiffs' wells. We do not disturb the court's ruling on negligence. However, we remand that claim to permit the district court to consider whether it survives the dismissal of the Plaintiffs' interference claims and to make additional findings, if necessary. We vacate a portion of the Plaintiffs' damages award. And we remand the district court's calculation of the remaining damages and imposition of forward-looking remedies for the court to determine if and how they are impacted by the dismissal of the Plaintiffs' interference claims.

BACKGROUND¹

The Parties

¶4 Roger B. and Kimberly L. Arave are joint owners and residents of a single-family residential property. They own a water right with a priority date of 1963. The Araves' water right allows them to divert 0.45 acre-feet² of water annually at a flow

¹ "On appeal from a bench trial, we view and recite the evidence in the light most favorable to the [district] court's findings." *Utah State Tax Comm'n v. See's Candies, Inc.*, 2018 UT 57, ¶ 5 n.2, 435 P.3d 147 (citation omitted).

² The acre-foot is "the standard unit of measurement of the volume of water," which is "the amount of water upon an acre
(Continued . . .)

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rate of 6.7 gallons per minute to supply water for single-family domestic use³ and two livestock units.

¶5 Janet Southwick, as trustee, is the sole owner and resident of a single-family residential property. She owns a water right with a priority date of 1978. Southwick's water right allows her to divert one acre-foot of water annually to irrigate 0.25 acres of land and supply water for single-family domestic use.

¶6 The Araves and Southwick share the Arave Well as the sole diversion point for their year-round water rights. The Arave Well was drilled in 1963 to a depth of 187 feet with perforations from 140 to 170 feet. The perforations are entirely in an aquifer called the Norwood Tuff.⁴

¶7 Venture Development Group, a limited liability company, is the sole owner of a residential property that operates a commercial bed-and-breakfast known as the Snowberry Inn. It includes nine bedrooms, nine bathrooms, two kitchens, and serves as the year-round residence of the Inn's operator. Venture owns two water rights with priority dates of 1960 and 2017. Venture's original water right allows it to divert 0.45 acre-feet of water annually at a flow rate of 6.7 gallons per minute to supply water for single-family domestic use. However, Venture had been using more water than it had lawfully appropriated, and it was using the water in ways that were not permitted under its original water right. So in 2017, it applied to appropriate additional water. Its new water right, acquired pursuant to a change application,

covered one foot deep, equivalent to 43,560 cubic feet." UTAH CODE § 73-1-2.

³ One domestic unit permits a water right holder to divert 0.45 acre-feet of water to meet the indoor supply needs of five people.

⁴ There are two local aquifers relevant to this case: the Norwood Tuff and an area of unconsolidated material that lies on top of it. While the Norwood Tuff is a consolidated bedrock aquifer, the unconsolidated material consists predominantly of sand, gravel, and cobble. The unconsolidated material generally has greater permeability than the Norwood Tuff, meaning that fluid is able to pass through it more easily. But the area of the Norwood Tuff surrounding the three wells is likely fractured, which increases its permeability. The intensity and extent of the fracturing are unknown.

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allows Venture to divert an additional 3.25 acre-feet of water for irrigation and commercial use at the Snowberry Inn.

¶8 Venture diverts water year-round from the Snowberry Well, which was drilled in 2001 to a depth of 133 feet. Its perforations are from 105 to 125 feet and span both the Norwood Tuff and the unconsolidated material on top of it. The well likely gets the majority of its water from the more permeable unconsolidated material, but it is hydrologically connected to the Norwood Tuff. The Snowberry Well is equipped with a pump that has the capacity to pump twenty-five gallons per minute. The pump transfers water into a cistern, which then pumps water into the Snowberry Inn. The cistern is equipped with sensors that turn the pump on when the water level inside the cistern drops below a certain point and then signal the pump to turn off when the cistern is full.

¶9 While the Plaintiffs use their water rights to meet their own domestic and business needs, Pineview is a small water company that owns and operates five wells, including the one at issue here – Well 4. Pineview’s water rights are almost thirty-three times larger than the Plaintiffs’ rights combined,⁵ and it supplies water to seventy single-family homes and irrigates over twenty acres of land. But its rights are junior to all of the Plaintiffs’ rights except the latest one that Venture acquired. Its earliest right, modified by a change application, has a 2003 priority date. The state engineer’s approval stated that modification was “subject to prior rights.” In 2013, the state engineer approved a new change application, allowing Pineview to divert additional water. Pineview may divert its water from any combination of the five wells.

¶10 Well 4 is located approximately 700 feet from the Arave Well and approximately 460 feet from the Snowberry Well. It was drilled in 2004 to a depth of 738 feet with four perforated zones from 58 to 98 feet, 208 to 228 feet, 408 to 448 feet, and 648 to 738 feet. Well 4 draws water from both aquifers, but most of its water

⁵ Pineview’s 2003 water right allows it to divert 90 acre-feet of water annually to irrigate 21.66 acres of land and supply water to fifty-five single-family domestic units. Its 2013 water right allows it to appropriate an additional 78 acre-feet of water annually.

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likely comes from the Norwood Tuff. Well 4 is equipped with a pump that has the capacity to pump 100 gallons per minute.

The Dispute

¶11 When Well 4 was tested for the first time in 2004, it affected the Arave Well almost immediately. Within hours, the Arave Well was unable to pump any water and began sucking air, resulting in silt damage to the Araves' and Southwick's property. So the test was cut short. The Arave Well recovered within a day or two following that initial test. But a subsequent test produced the same result.

¶12 Nevertheless, Pineview later began regularly pumping Well 4 during irrigation season, from early July until September. When Well 4 was operating, the Arave Well was once again unable to produce water. Eventually, the Snowberry Well had trouble as well. It had traditionally been able to fill its cistern within fifteen minutes. But with Well 4 operating, the Snowberry Well struggled for hours to complete the same task.

¶13 In the beginning, the parties resolved this problem amongst themselves. Pineview agreed to connect the Plaintiffs to its water supply and provide them with culinary water for a flat rate of \$20 per month. Once the Araves and Southwick began using Pineview's water, the Araves removed the pump from the Arave Well and no longer used it to obtain water. Instead, they used it as a monitoring well to gather data regarding the impact of Well 4 on the water level.

¶14 Several years later, Pineview sought to increase the Plaintiffs' fees to match those paid by its other water users. The parties tried to reach an agreement regarding new fees, but those negotiations broke down and this suit followed.

¶15 The Plaintiffs sued Pineview, asserting causes of action for interference with water rights, negligence, and nuisance.⁶ In their complaint, they sought injunctive relief, damages, and attorney fees.

⁶ During the final day of trial, the district court asked whether nuisance was actually a claim in this case. Although the Plaintiffs argued that it was, the court's findings of fact and conclusions of law do not address this claim. And it is not before us on appeal.

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The Final Amended Judgment

¶16 Following a four-day bench trial during which the district court heard expert testimony from both sides, the court ruled in favor of the Plaintiffs on their interference and negligence claims. In support of the verdict, the district court entered findings of fact and conclusions of law.

¶17 The district court found that neither the Arave Well nor the Snowberry Well had ever experienced difficulty diverting water before Well 4 began pumping. But when Well 4 was in operation, the court found that it created a cone of depression that encompassed both the Arave and Snowberry Wells. The district court explained that a cone of depression is an “underground area of reduced soil saturation [that] 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. . . . [T]he depth of the water table will be most significantly impacted at the point of extraction” (Quoting *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶ 3, 235 P.3d 730.) The actual shape of a cone of depression varies depending on the nature, depth, and permeability of the surrounding aquifer.

¶18 The district court noted that the Arave Well is a “very good surrogate” for Well 4 because it reacts “quickly and accurately” when Well 4 is operating. But the impact on the Snowberry Well is more complex. The district court found that the Arave Well is hydrologically connected to the Snowberry Well. When Well 4 operates, it immediately draws down the water level of the Arave Well. When the elevation of the Arave Well head falls below that of the Snowberry Well, water is drawn away from the Snowberry Well. As a result, the Snowberry Well “struggles to produce even a minimal yield.” Recovery time for both wells varies based on several factors.

¶19 The district court concluded that Pineview was liable for interference with the Plaintiffs’ water rights and negligence. The court acknowledged that an aquifer’s water level is influenced by various factors, including seasonal fluctuations and the amount of water withdrawn by pumping wells. And it found that there had not been a general decline in the groundwater levels where the wells are located.

¶20 But the district court ultimately concluded that pumping Well 4 dewatered the aquifer to such a degree that it temporarily reduced the level of water available to the Plaintiffs’ wells. In particular, when Well 4 was pumping, it deprived the Arave Well

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of “virtually all water” and obstructed the Snowberry Well’s ability to produce water. After determining that the Plaintiffs’ means and methods of diverting water were reasonable, the court concluded that Pineview should bear the costs associated with rectifying the interference.

¶21 The district court also found that before expanding its water right in 2017, Venture had used more than its allotted share of water, thereby violating the terms and limitations of its original water right. But the court rejected Pineview’s argument that this should bar Venture’s ability to prevail on an interference claim. Instead, the district court noted that the state engineer may remedy any such violations by commencing an action under the relevant statutory provision.

¶22 As to negligence, the district court ruled that Pineview was negligent in locating, drilling, and using Well 4 in a manner that interfered with the Arave and Snowberry Wells. According to the court, harm to the Plaintiffs was foreseeable because Well 4 is located near the Plaintiffs’ wells, it draws water from the same aquifers that the Plaintiffs use, and it operates at a much larger capacity.

¶23 As a forward-looking remedy, the district court ordered Pineview to stop pumping Well 4 unless and until it could demonstrate that Well 4 could operate without interfering with the Arave and Snowberry Wells. The court retained jurisdiction to determine whether the wells could coexist and to fashion an appropriate remedy based on the outcome of that determination. In the event that interference proved unavoidable, the district court stated that it may order Pineview to provide replacement water to the Plaintiffs at Pineview’s sole expense.

¶24 The court also awarded compensatory damages. It ordered Pineview to refund all of the fees that the Plaintiffs had previously paid for water service. It also included the cost of a new pump and associated accessories for the Arave Well as well as costs that Southwick and Venture had incurred due to hard water damage to their property. In sum, the district court awarded \$11,503 to the Araves; \$5,782 to Southwick; and \$28,238 to Venture, along with post-judgment interest at the statutory rate. The Plaintiffs, as prevailing parties, were also entitled to \$2,059.96 in costs.

¶25 Pineview appealed. We have jurisdiction pursuant to Utah Code section 78A-3-102(3)(j).

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STANDARD OF REVIEW

¶26 A determination of interference with a water right is a mixed question of law and fact. *See Wayment v. Howard*, 2006 UT 56, ¶ 9, 144 P.3d 1147. When reviewing mixed questions, “we typically grant some level of deference to the district court’s application of law to the facts.” *Id.* The level of deference afforded varies based on the issue being reviewed. *Searle v. Milburn Irr. Co.*, 2006 UT 16, ¶ 16, 133 P.3d 382. Here, “because the issue of interference is extremely fact dependent, we grant broad deference to the district court.” *Wayment*, 2006 UT 56, ¶ 9. The same is true of a determination of negligence. “[A] negligence finding is a classic finding that, while mixed, calls for deference to the lower court.” *In re Adoption of Baby B.*, 2012 UT 35, ¶ 43, 308 P.3d 382.

ANALYSIS

¶27 Water has been characterized as the “very life blood” of Utah. *Fairfield Irr. Co. v. White*, 416 P.2d 641, 644 (Utah 1966). Recognizing water’s importance as a vital resource in our arid state, Utah statutory and case law have been crafted to maintain the flexibility necessary to meet changing circumstances and promote optimal beneficial use of our water supply. *See id.* at 644–45; *see also Wayman v. Murray City Corp.*, 458 P.2d 861, 863–65 (Utah 1969). But our statutory law also protects appropriators of water in order of seniority. *See* UTAH CODE § 73-3-1(5)(a). The balance between protecting senior appropriators and maximizing the beneficial use of water has led to several rules of water law that can sometimes seem to be in tension with one another.

¶28 We begin by identifying those rules. We then explain how they combine to establish the elements of a *prima facie* case for interference with a water right. Finally, we determine whether the district court’s findings sufficiently support its determination of interference.

I. INTERFERENCE

¶29 “All waters in this state, whether above or under the ground, are . . . the property of the public, subject to all existing rights to the use thereof.” UTAH CODE § 73-1-1(1). A person seeking to acquire the right to use the state’s unappropriated waters must apply for and receive approval from the state engineer. *See id.* § 73-3-2(1)(a).

¶30 Appropriators are prioritized according to the dates of their respective water rights. *See id.* § 73-3-21.1(2)(a). In practice,

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this means that except in times of a temporary water shortage emergency, “each appropriator is entitled to receive the appropriator’s whole supply before any subsequent appropriator has any right.” *Id.* § 73-3-21.1(2)(a); *see also id.* § 73-3-1(5)(a) (“Between appropriators, the one first in time is first in rights.”); *id.* § 73-3-8(1)(a)(ii) (stating that the state engineer must consider whether the proposed use will impair existing rights when approving an application to appropriate). Generally, a cause of action for interference lies where a junior appropriator’s use of water diminishes the quantity or quality of the senior appropriator’s existing water right. *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶ 48, 235 P.3d 730.

¶31 If a junior appropriator interferes with a senior appropriator’s water right, the junior appropriator has the right—at his or her own expense—to replace the senior appropriator’s water. *Id.* ¶ 63; *see also Fairfield Irr. Co. v. White*, 416 P.2d 641, 645–46 (Utah 1966) (upholding the district court’s order requiring defendant to supply replacement water as being supported by the evidence). This protection also extends to a senior appropriator’s “right to continue use of his [or her] existing and historical method of diverting the water.” *Wayment v. Howard*, 2006 UT 56, ¶ 13, 144 P.3d 1147.

¶32 When rights clash, however, seniority of rights is not the sole consideration. We have previously recognized that ordering a junior appropriator to supply replacement water in perpetuity is a “sweeping and pervasive responsibility” that “could prove to be highly inequitable and inconsistent with the objectives of our water law.” *Wayman v. Murray City Corp.*, 458 P.2d 861, 864 (Utah 1969). The primary objective is ensuring that “the greatest amount of available water is put to beneficial use.” *Id.* at 865; *see also* Utah Code § 73-1-3 (“Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.”). This objective becomes an important consideration when a junior appropriator’s diversion interferes with a senior appropriator’s water right. *See Wayman*, 458 P.2d at 864–67.

¶33 In *Wayman*, we adopted the “rule of reasonableness,” which allows courts to balance competing rights in a manner that best achieves the goal of putting the greatest amount of water to beneficial use. *Id.* at 865–67. Under the rule of reasonableness, “[a]ll 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

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greatest amount of available water is put to beneficial use.” *Id.* at 865. This rule tempers the prior appropriation doctrine, which could otherwise allow a senior appropriator to hold unappropriated water hostage due to outdated and inefficient methods of diversion. *Id.* at 865–66. In assessing reasonableness, courts should consider the total situation, including “the quantity of water available, the average annual recharge in the basin, the existing rights and their priorities.” *Id.* at 865.

¶34 Protecting senior water rights and maximizing the beneficial use of available water both have a place in our law. But these concepts do not always easily coexist. We take this opportunity to clarify the specific elements of a claim of interference with a water right. In doing so, we do not depart from prior case law; instead, we seek to synthesize it by explaining how the governing concepts should come together to establish a *prima facie* case of interference.

¶35 To prevail on an interference claim, we clarify that plaintiffs must establish that: (1) they have an enforceable water right,⁷ (2) their water right is senior to the defendant’s water right,⁸ (3) their methods and means of diversion are reasonable,⁹ (4) despite their reasonable efforts, they are unable to obtain the quantity or quality of water to which they are entitled,¹⁰ and (5) the defendant’s conduct obstructed or hindered their ability to obtain that water (causation).¹¹

¶36 The district court found that Pineview interfered with both the Arave and Snowberry Wells when it operated Well 4. Pineview argues that the district court erred in multiple ways.

⁷ See *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶¶ 48, 53, 235 P.3d 730.

⁸ See UTAH CODE §§ 73-3-1(5)(a), -21.1(2)(a).

⁹ This element is based upon the rule of reasonableness, which requires that each appropriator’s “means of diversion must be reasonable and consistent with the state of development of water in the area.” *Wayman v. Murray City Corp.*, 458 P.2d 861, 866 (Utah 1969).

¹⁰ See UTAH CODE § 73-3-23; see also *Wayment v. Howard*, 2006 UT 56, ¶ 13, 144 P.3d 1147.

¹¹ See UTAH CODE § 73-3-23; see also *Bingham*, 2010 UT 37, ¶ 48.

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First, it argues that none of the Plaintiffs established interference because they offered no evidence showing they were unable to get some quantity of their respective water rights. Second, Pineview argues that the district court erred in concluding the Plaintiffs' means of obtaining their water was reasonable. And finally, Pineview argues that the district court's damages assessment was wrong. We address the Arave Well and then the Snowberry Well, applying the prima facie case outlined above.

A. Arave Well

¶37 The district court correctly found that the Araves and Southwick¹² satisfied the first, second, and fifth elements of an interference claim: specifically, that the Plaintiffs possess enforceable water rights, those rights are senior to Pineview's water rights, and Pineview's pumping of Well 4 hindered the Plaintiffs' ability to get their water because it dropped the water table below the level of the Arave Well's pump. However, the court made insufficient findings to establish that the Plaintiffs' method and means of diversion were reasonable (the third element). Consequently, the court could not properly conclude that despite reasonable efforts, the Plaintiffs were unable to obtain some quantity of their water rights (the fourth element). For these reasons, we reverse the district court's interference determination.

¶38 With regard to the first element of an interference claim, Pineview does not dispute that the Araves and Southwick possess lawfully appropriated water rights. However, Pineview contends that the district court essentially granted the Plaintiffs a right to a certain level of the water table, to which they have no enforceable right. Pineview correctly characterizes the district court's conclusions. The court ruled that:

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

¹² In this section of the opinion addressing only the Arave Well, when we refer to the "Plaintiffs," we mean Arave and Southwick.

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¶39 Pineview relies on our decision in *Bingham v. Roosevelt City Corporation*, for its contention that the Plaintiffs have no enforceable right to the level of the water table. See 2010 UT 37, ¶ 12. In *Bingham*, the plaintiffs sued the city, alleging that its manner of diverting water had reduced the level of soil saturation beneath the plaintiffs' properties, thereby impairing their ability to raise crops and livestock. *Id.* ¶¶ 1, 5–6. Significantly, the plaintiffs had not appropriated the water in the soil. *Id.* ¶¶ 29, 36. Nevertheless, they argued that the level of soil saturation was a component of the water rights that they had appropriated because it allowed them to use the appropriated water more beneficially. *Id.* ¶¶ 20, 25. In other words, the plaintiffs required less water to irrigate their land before the city's diversion had lowered the water table. *Id.* ¶ 20. We affirmed the district court's grant of summary judgment in favor of the city, reasoning that beneficial use of water does not substitute for appropriation. *Id.* ¶¶ 29–30. Thus, because the plaintiffs had not appropriated the water in their soil, they did not have an enforceable right to its continued presence. *Id.* We also explained that the plaintiffs had sustained no compensable injury because they were still able to access all of the water to which they were entitled under their water rights. *Id.* ¶¶ 49–50.

¶40 The circumstances here are different than those in *Bingham*. Here, the Plaintiffs each have lawfully appropriated water rights, allowing them to divert water from their respective wells. They are not claiming an enforceable right to use additional unappropriated water simply because it is present in their soil. Cf. *id.* ¶ 24. Instead, they seek to enforce their existing senior water rights. And although we held in *Bingham* that the plaintiffs had no enforceable right to the water in their soil, we recognized that “a claim of interference can be sustained where a junior appropriator lowers the water table in a manner that hinders the diversion of water by a senior appropriator.” *Id.* ¶ 51.

¶41 We conclude that the Plaintiffs have satisfied this element of an interference claim because they have lawfully appropriated water rights. But we clarify that the Plaintiffs have an enforceable right only in these lawfully appropriated water rights—not in a particular level of the water table. The Plaintiffs' claim that Pineview's dewatering of the aquifer constitutes actionable interference cannot be divorced from the requirement that the Plaintiffs make reasonable efforts to obtain their water. Fundamentally, the Plaintiffs must show that because of the actions of Pineview, they can no longer access the water to which

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they are entitled even though they have made reasonable efforts to do so. If they cannot make such a showing, they have demonstrated only that Pineview has lowered the water table, not that it has prevented them from obtaining some quantifiable portion of their water right.

¶42 With regard to the second element, it is undisputed that the Araves' and Southwick's water rights are senior to Pineview's.

¶43 However, with regard to the third element, we conclude that the district court did not find sufficient facts to establish that the Plaintiffs' method and means of diversion were reasonable. This element is based upon the rule of reasonableness, which requires that each appropriator's "means of diversion must be reasonable and consistent with the state of development of water in the area." *Wayman*, 458 P.2d at 866. The rule of reasonableness permits the factfinder a measure of flexibility in considering the totality of relevant facts—such as the quantity of water available, the average annual recharge, the existing rights that are in conflict, and their relative priorities—with the objective of putting the greatest amount of water to beneficial use. *Id.* at 865. As we explained in *Wayman*, all water users are required 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." *Id.*

¶44 Here, the district court concluded, the "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 [Well 4] was drilled."

¶45 These findings are not sufficient to establish that the operation of the Arave Well was reasonable during the relevant time period. The district court appears to have based its conclusion on two findings: first that the Araves can divert their water only through the use of the well based on the terms of their water right, and second that the well functioned without issue until Well 4 began to operate. Those facts are certainly relevant to the reasonableness question, but they do not complete the analysis. It is also necessary to consider whether the Araves were operating the well efficiently and consistent with the current state of development in the area, and to identify and consider any other factors relevant to maximizing the beneficial use of water.

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¶46 Here, the record evidence established that although the water table dropped when Well 4 pumped, “there ha[d] not been a general decline in groundwater levels in the regional basin in which [the] aquifers are located,” although it fluctuated seasonally. Under these circumstances, it was necessary to determine whether the Plaintiffs made reasonable efforts to obtain the available water but were unable to do so. However, the court did not make findings related to whether the Plaintiffs could have lowered their pump or otherwise modified the well to reach the available water, or conversely, explain why this would have been futile or otherwise not possible.¹³ Without this, there are not adequate findings to establish that the Plaintiffs made reasonable efforts to obtain their water.

¶47 While the Plaintiffs’ failure to meet the requirements of the third element is dispositive, we note that the third and fourth elements are closely related. If the Plaintiffs cannot demonstrate that their means and method of diversion are reasonable, it is impossible to satisfy the fourth element of the *prima facie* case—that despite reasonable efforts, the Plaintiffs could not obtain the quantity of water to which they were entitled.

¶48 We note an additional problem with the Plaintiffs’ proof on the fourth element. The district court did not make findings about the specific amount of their respective water rights that the Araves and Southwick were unable to obtain. Rather, the court found that Pineview’s operation of Well 4 interfered with the Plaintiffs’ well. But this does not necessarily establish that the Plaintiffs were unable to obtain some quantity of their water right.

¶49 The Plaintiffs did not offer evidence of how much water they used or how much of their appropriated water they were not able to obtain. This is because the Araves did not have a metering device in their well. We do not mean to suggest that it was

¹³ Rather, the court found that the Araves removed the pump and used the well as a monitoring well to document the impact of pumping Well 4. The court accepted the Plaintiffs’ explanation that if they had pumped the well at the same time, it would have been more difficult to interpret the data. While this may be the case, it does not excuse the Araves from showing that at some point after the alleged interference, they made reasonable efforts to reach available water but were unable to do so.

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impossible for Plaintiffs to show interference by proving that Pineview interfered with the year-round nature of their water rights. But it is difficult for them to establish that Pineview prevented them from obtaining some quantifiable amount of the water to which they were entitled with no measurements of the amount of water they *could* obtain at the time of the alleged interference.

¶50 In sum, we conclude there are insufficient findings to establish that the Plaintiffs' means of diversion was reasonable and that despite their reasonable efforts the Plaintiffs were unable to obtain some quantity of their water rights. Accordingly, we reverse the district court's ruling that Pineview interfered with the Arave Well.

B. Snowberry Well

¶51 With regard to the Snowberry Well, Pineview argues that because Venture exceeded the terms and limits of its senior water right,¹⁴ it cannot make a viable interference claim. In other words, Pineview asserts that Venture's water use was illegal, and any alleged interference with an illegal use is not actionable. Pineview further argues that Venture did not prove it was unable to obtain the water to which it was entitled under its original, senior water right. We reject the first argument, but we agree that the district court did not make sufficient findings to establish that Pineview could not obtain some portion of its senior water right.

¶52 Pineview argues that Venture's excessive water use is fatal to its interference claim. This relates to the first element of the prima facie case. Pineview essentially argues that Venture's violation of its water right renders it unenforceable. We reject this argument. While excessive use may make it more difficult for Venture to prove that it could not obtain the water allotted to it under its 1960 right and that its diversion was reasonable, Venture has not lost its water right. Certainly, it risked an enforcement action by the state engineer. See UTAH CODE § 73-2-25(2)(a). But if Venture can make out a claim for interference, its excessive use would not bar such an action or shield Pineview from liability.

¹⁴ Venture not only used more water than it was allotted, but used it to support a commercial bed-and-breakfast and to irrigate when it was entitled to use its water only for domestic purposes.

Opinion of the Court

¶53 However, we agree with Pineview that Venture has not proven interference. With regard to the first element, it is undisputed that Venture has an enforceable 1960 water right that allows it to divert 0.45 acre-feet of water at a flow rate of 6.7 gallons per minute from the Snowberry Well for single-family domestic use.

¶54 Second, this water right is senior to both of Pineview's water rights. Because Venture exceeded the limits and terms of this senior water right, it obtained an additional water right from the state engineer. The new 2017 water right is junior to Pineview's rights and is not part of Venture's interference claim.

¶55 Third, with regard to reasonableness, the district court made the same finding for both wells. As described above, the court concluded that the "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 [Well 4] was drilled." For the reasons we explained above, this is insufficient to establish that the Snowberry Well was a reasonable means of diversion in the manner in which Venture operated it. *See supra* ¶¶ 43–45.

¶56 This impacts Venture's ability to satisfy the fourth element. As we have explained, without a sufficient finding of reasonableness, Venture cannot show that despite reasonable efforts it was unable to obtain its water. *See supra* ¶¶ 46–48.

¶57 And while this is determinative, we also note that the district court's findings regarding Venture's inability to obtain some measure of its water right were insufficient. While the district court found that Well 4 hindered the Snowberry Well's ability to produce water, it did not specifically find that Venture was unable to obtain the quantity of water to which it was entitled under its senior water right. The findings state only that the Snowberry Well "struggles" when Well 4 operates. So we do not know whether Venture was ultimately unable to obtain some portion of the 0.45 acre-feet of water allotted to it under its 1960 right. This is especially problematic where Venture used more than its allotted right.

¶58 Accordingly, we reverse the district court's determination that Pineview interfered with the Snowberry Well.

II. NEGLIGENCE

¶59 Pineview next contends that the district court erred in concluding it was negligent in locating, drilling, and using Well 4.

Opinion of the Court

The district court concluded Well 4 operates in a manner that interferes with the Arave and Snowberry Wells and that such harm was foreseeable due to Well 4's close proximity to the Plaintiffs' wells, its use of the Plaintiffs' water source, and its larger capacity.

¶60 First, Pineview argues that this ruling is erroneous because it was not Pineview but other developers who sited, drilled, and tested Well 4 and the Plaintiffs did not join those developers in this case. But even assuming Pineview did not site or drill Well 4, it does currently own and operate the well. And Pineview provides no argument or authority as to why the current operator of a well should be insulated from liability for negligence because it did not originally site and drill the well. Likewise, Pineview does not provide any legal argument or authority as to why not joining the prior developers is fatal to the Plaintiffs' negligence claim against Pineview.

¶61 Pineview also asserts that the Plaintiffs' negligence claim fails because they did not offer expert testimony establishing the relevant standard of care and causation. But Pineview has not explained why the Plaintiffs were obligated to present expert testimony to establish causation or the standard of care in this case. Pineview cites *Ladd v. Bowers Trucking, Inc.* to assert that "Utah courts generally require expert testimony to prove causation in tort cases in all but the 'most obvious cases.'" 2011 UT App 355, ¶ 10, 264 P.3d 752 (citation omitted). While that language was accurate in context—proving causation of medical injuries—we have also explained that "[q]uestions of ordinary negligence are properly determined by the lay juror without the need for expert testimony." *Graves v. N. E. Servs., Inc.*, 2015 UT 28, ¶ 40, 345 P.3d 619. Expert testimony is necessary only for "issues that do not fall within the common knowledge and experience of lay jurors." *Callister v. Snowbird Corp.*, 2014 UT App 243, ¶ 19, 337 P.3d 1044. Yet Pineview has failed to specify which matters are beyond the capacity of the factfinder in this case.

¶62 By failing to adequately analyze or argue either point, Pineview has failed to meet its burden of persuasion and has shifted the burden of research and argument to this court. See *Smith v. Four Corners Mental Health Ctr., Inc.*, 2003 UT 23, ¶ 46, 70 P.3d 904. Under rule 24(a)(8) of the Utah Rules of Appellate Procedure, an appellant's argument "must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal." This briefing

Opinion of the Court

requirement is “a natural extension of an appellant’s burden of persuasion.” *Living Rivers v. Exec. Dir. of the Utah Dep’t of Env’t. Quality*, 2017 UT 64, ¶ 33, 417 P.3d 57 (citation omitted). Thus, “[a]n appellant who fails to adequately brief an issue will almost certainly fail to carry its burden of persuasion on appeal.” *Id.* (citation omitted) (internal quotation marks omitted).

¶63 Accordingly, we decline to reverse the district court’s negligence ruling. However, in light of our reversal of the district court’s interference determinations, we remand this claim for reconsideration and further factfinding, if necessary. This is because the district court’s negligence determination flows from its finding of interference. The district court concluded that Pineview had breached a duty of care to the Plaintiffs when it “located, drilled, and used [Well 4] in a manner that *interferes with plaintiffs’ wells*.” (Emphasis added.) It is not clear how our reversal of the Plaintiffs’ interference claims impacts the district court’s negligence ruling. Accordingly, we remand for the district court to consider that question and make any additional findings of fact that it deems necessary.

III. DAMAGES

¶64 We also remand to the district court its calculation of damages and imposition of prospective remedies. The court should determine whether these are altered by the reversal of its interference determinations. Any damages now stem only from the Plaintiffs’ negligence claim.

¶65 Additionally, we vacate a portion of the court’s compensatory damages award. Pineview argues the damages award is excessive to the extent the district court required Pineview to refund water service fees paid by the Plaintiffs for periods when Well 4 was inactive and therefore did not impact the Plaintiffs’ ability to obtain water. We agree. The evidence presented at trial established that Well 4 pumped only seasonally and the Plaintiffs’ wells recovered within a day or two after Well 4 ceased pumping. In assessing the damages caused by Pineview’s negligence, the court should award damages only for fees paid during the period of the year that Well 4 injured the Plaintiffs’ use of their wells. Accordingly, we vacate the portion of the damages award that compensates the Plaintiffs for fees paid during periods in which their wells would have been unimpeded by Well 4 if they had attempted to use them.

IV. ATTORNEY FEES

¶66 Pineview requests attorney fees under Utah Code sections 73-2-28(4) and 78B-5-825. Because we affirm the district court's judgment that Pineview was negligent, we conclude that Pineview is not entitled to attorney fees on appeal.

CONCLUSION

¶67 We reverse the district court's determination of interference regarding the Arave and Snowberry Wells. In light of this, we remand the court's determination of negligence for reconsideration and further factfinding, as the court deems necessary. We vacate the damages award to the extent that it compensates the Plaintiffs for fees paid during periods of the year when Pineview did not utilize Well 4. And finally, we remand to the district court to determine whether to revisit its damages award and imposition of remedies in light of the reversal of its interference determinations.

EXHIBIT B

Complaint Report

Complaint Number: C20-0241

Customer Information

Customer Name: Arave, Roger and Kimberley**Account Number:****Email Address:** araveclan@gmail.com**Phone Number:** 801-388-3209**Service Address:** 1364 N. Highway 158
Eden, UT 84310**Cell Number:** 801-940-0665**Mailing Address:** PO Box 674
Eden, UT 84310

Complaint Information

Company Name: Pineview West Water Company**Date Received:** 12/3/2020**Type of Call:** Complaint**Complaint Received By:** Stefanie Liebert**Gone Formal:** NO**Date Resolved:****Complaint Type:** Rate Increase**Utility Company Analyst:**

Complaint Description:

The following complaint was received via email and has been copied and sent exactly as received.

From: DPU Web Server

Date: Thu, Dec 3, 2020 at 10:14 AM

Subject: Online Complaint Submission

To:

DPU ONLINE COMPLAINT

UTILITY CUSTOMER

FROM: Roger and Kimberley Arave

PHONE: 801-388-3209

OTHER PHONE: 801-940-0665

EMAIL: araveclan@gmail.com

SERVICE ADDRESS:

1364 N. Highway 158 Eden, UT 84310

MAILING ADDRESS:

PO Box 674 Eden, UT 84310

INCIDENT DETAILS

UTILITY: Pineview West Water Company (PWWC)

ACCOUNT NUMBER: 0000

COMPLAINT TYPE: Rate Increases

COMPLAINT:

Myself and the Snowberry Inn (1315 N. Highway 158, Eden, 84310) have been customers of PWWC since about 2007, after a PWWC well interfered with our private wells, making it necessary to connect with PWWC in order to have water supply. We were not notified of PWWC's request for rate increases since 12/2019 and they now are scheduled their final hearing with PSC on 12/15/20. We were made aware of these on-going hearings only 2 weeks ago. (11/14/20). We have been in litigation with PWWC for 6 years, won our case in local court for water interference and negligence. PWWC appealed to Utah Supreme Court and we received the preliminary decision on 10/15/20 that upheld the ruling for negligence on PWWC's part (No. 201800676 with Supreme Court). Our attorney, David Wright has requested and been waiting for a response from PWWC's attorney Ted Barnes so that we can come to a reasonable settlement for delivery of water. My fear is that Peter Turner (PWWC's president) is delaying/avoiding a response until after the rate increase is approved by PSC. After review of all the documents presented by PWWC to PSC, it appears that Peter has not disclosed that we are under litigation, therefore, he presented inaccurate filing. Our properties are not included on PWWC's service area map that was presented to PSC, which is misleading to PSC. I suspect that part of Mr. Turner's reasoning for requesting rate increase is to offset legal fees during our 6+ years of litigation.

SUGGESTED RESOLUTION: Our party is requesting that PSC decision for rate increase is postponed until after our litigation is complete. In light of continued development in the Crimson Ridge area, our best case outcome would be to remain on PWWC water system but under a different tier allowing for lower rates, no overage fee and waived from special assessment fees, as we have no access to secondary water and no fire suppression.

Additional Info:

From: kim arave

Date: Thu, Dec 3, 2020 at 10:26 AM

Subject: public comments docket#19-2438-01

To:

Dear sirs, I just submitted an informal complaint regarding PWWC hearing for water rate increase. Please review the attached document and contact me with any questions. Thank you, Kimberley Arave

EXHIBIT C

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of Roger and Kim Arave
against Pineview West Water Company

DOCKET NO. 20-2438-01

NOTICE OF FILING AND COMMENT
PERIOD

ISSUED: December 22, 2020

On December 21, 2020, Roger and Kim Arave ("Complainants"), filed a formal complaint with the Public Service Commission against Pineview West Water Company ("Pineview"). Pineview may submit a written response on or before **Tuesday, January 12, 2021**, and Complainants may submit a written reply on or before **Tuesday, January 19, 2021**.

DATED at Salt Lake City, Utah, December 22, 2020.

/s/ Yvonne R. Hogle
Presiding Officer

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#316812

DOCKET NO. 20-2438-01

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CERTIFICATE OF SERVICE

I CERTIFY that on December 22, 2020, 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

FORMAL COMPLAINT FORM
PUBLIC SERVICE COMMISSION
Heber M. Wells State Office Building
160 East 300 South, Fourth Floor
P.O. Box 45585
Salt Lake City, Utah 84114

Complaints are public documents and are maintained on the Public Service Commission website.
Further information on formal complaints is available at: <https://psc.utah.gov/complaint-process/>

1. Name of Complainant: Roger + Kim Arave
Address: 1325 N. Hwy 158 (regarding 1364 N. Hwy 158),
Eden, UT 84310
Telephone No.: (801) 388-3209
Email Address: araveclana@gmail.com
Preferred method of contact: ☒ Email or ☒ U.S. Mail (Po Box 674, Eden, UT 84310)

If represented by counsel, list:

Name: David Wright
Address: 175 S. main St., Ste 130, SLC, UT 84111
Telephone No.: (801) 359-3663 Email Address: dwright@mwjlaw.com

2. The utility being complained against is: PWWC (Pineview West Water Co.)

3. What did the utility do which you (the Complainant) think is illegal, unjust, or improper?
Include exact dates, times, locations and persons involved, as closely as you can.

We were not notified of Peter Turner's request (PWWC Pres.) to
increase rates. We have been in a water lawsuit with PWWC since
~2012; Utah S.C. awarded us "negligence" against PWWC 10/23/20.

4. Why do you (the Complainant) think these activities are illegal, unjust or improper?
Peter Turner did not include our property in the PWWC boundaries
though we are connected to PWWC + have paid full fees since 2007.

5. What relief does the Complainant request?
We request that PSC postpone the
decision to increase PWWC water rates until our litigation
is finalized.

6. Signature of Complainant Kimberley Arave
Date: 12/21/20

NOTE: Submit complaint by email or U.S. mail. (<https://psc.utah.gov/psc-filing-reports-inquiries>)

Complaint Report

Complaint Number: C20-0241

Customer Information

Customer Name: Arave, Roger and Kimberley

Account Number:

Email Address: araveclan@gmail.com

Phone Number: 801-388-3209

Cell Number: 801-940-0665

Service 1364 N. Highway 158

Mailing PO Box 674

Address: Eden, UT 84310

Address: Eden, UT 84310

Complaint Information

Company Name: Pineview West Water Company

Date Received: 12/3/2020

Date Resolved: 12/11/2020

Type of Call: Complaint

Complaint Type: Rate Increase

Complaint Received By: Stefanie Liebert

Utility Company Analyst:

Gone Formal: NO

Complaint Description:

The following complaint was received via email and has been copied and sent exactly as received.

From: DPU Web Server
Date: Thu, Dec 3, 2020 at 10:14 AM
Subject: Online Complaint Submission
To:

DPU ONLINE COMPLAINT

UTILITY CUSTOMER

FROM: Roger and Kimberley Arave

PHONE: 801-388-3209

OTHER PHONE: 801-940-0665

EMAIL: araveclan@gmail.com

SERVICE ADDRESS:
1364 N. Highway 158 Eden, UT 84310

MAILING ADDRESS:
PO Box 674 Eden, UT 84310

INCIDENT DETAILS

UTILITY: Pineview West Water Company (PWWC)

ACCOUNT NUMBER: 0000

COMPLAINT TYPE: Rate Increases

COMPLAINT:

Myself and the Snowberry Inn (1315 N. Highway 158, Eden, 84310) have been customers of PWWC since about 2007, after a PWWC well interfered with our private wells, making it necessary to connect with PWWC in order to have water supply. We were not notified of PWWC's request for rate increases since 12/2019 and they now are scheduled their final hearing with PSC on 12/15/20. We were made aware of these on-going hearings only 2 weeks ago. (11/14/20). We have been in litigation with PWWC for 6 years, won our case in local court for water interference and negligence. PWWC appealed to Utah Supreme Court and we received the preliminary decision on 10/15/20 that upheld the ruling for negligence on PWWC's part (No. 201800676 with Supreme Court). Our attorney, David Wright has requested and been waiting for a response from PWWC's attorney Ted Barnes so that we can come to a

reasonable settlement for delivery of water. My fear is that Peter Turner (PWWC's president) is delaying/avoiding a response until after the rate increase is approved by PSC. After review of all the documents presented by PWWC to PSC, it appears that Peter has not disclosed that we are under litigation, therefore, he presented inaccurate filing. Our properties are not included on PWWC's service area map that was presented to PSC, which is misleading to PSC. I suspect that part of Mr. Turner's reasoning for requesting rate increase is to offset legal fees during our 6+ years of litigation.

SUGGESTED RESOLUTION: Our party is requesting that PSC decision for rate increase is postponed until after our litigation is complete. In light of continued development in the Crimson Ridge area, our best case outcome would be to remain on PWWC water system but under a different tier allowing for lower rates, no overage fee and waived from special assessment fees, as we have no access to secondary water and no fire suppression.

Additional Info:

From: kim arave
Date: Thu, Dec 3, 2020 at 10:26 AM
Subject: public comments docket#19-2438-01
To:

Dear sirs, I just submitted an informal complaint regarding PWWC hearing for water rate increase. Please review the attached document and contact me with any questions. Thank you, Kimberley Arave

From: Cynthia Dumas
Date: Thu, Dec 17, 2020 at 9:16 AM
Subject: Formal Complaint Instructions
To:
Cc: Stefanie Liebert

Dear Kim Arave,

As spoken on the phone attached are the Formal Complaint instructions. If you have any questions regarding the Formal Complaint please contact the Public Service Commission at 801-530-6716.

Kind regards,
Cynthia Dumas
Office Specialist II
Division of Public Utilities Office
(801) 530-7622
Business hours are 8:00 a.m. - 5:00 p.m., Monday-Friday

EXHIBIT D

- 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

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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 E

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Request of Pineview West Water Company
for Approval of a Conservation Rate Increase

DOCKET NO. 19-2438-01
ORDER APPROVING STIPULATION
AND ASSOCIATED TARIFF
CHANGES

ISSUED: January 25, 2021

BACKGROUND

On April 24, 2020, Pineview West Water Company (“Pineview”) filed with the Public Service Commission (PSC) an application for approval of a rate change (“Application”).

On April 29, 2020, the Division of Public Utilities (DPU) filed comments indicating the Application was missing certain information required for water companies’ general rate case filings under Utah Administrative Code Rule R746-700-50 (“GRC Complete Filing Rule”). DPU thus recommended the PSC deem the Application as being incomplete. On May 19, 2020, the PSC issued an order finding that the Application was incomplete.

On May 29, 2020, DPU filed a memorandum indicating that it had reviewed additional documentation submitted by Pineview to support the Application, and determined that Pineview had filed all of the information required under the GRC Complete Filing Rule. On June 8, 2020, the PSC issued a Scheduling Order, Notice of Hearing, and Notice of Public Witness Hearing setting a schedule.

On June 4, 2020, Pineview filed testimony and exhibits in support of the Application. Pineview states it has not increased rates since 2009 and its proposed increase is necessary to purchase water from Ogden City. Pineview asserts that water has become increasingly expensive over the years, and that it has experienced increased water usage by many of its customers.

Pineview explains that, consequently, its costs of delivering water overall have increased. Pineview also explains that most of the increased usage occurs during summer months when culinary water is being used for outside irrigation by customers not on the secondary system. Pineview asserts it needs conservation rates to help cover the extra expenses and encourage water conservation.

On October 16, 2020, DPU filed the direct testimony and exhibits of Mr. Mark Long. Mr. Long explains that a capital reserve account is “primarily used for the repair and replacement of infrastructure ... [and] is funded from two sources.” Mark Long direct testimony, at 6. He explains that it is funded through (1) base rates and (2) from amounts billed in conservation tiers over and above the incremental variable cost of providing service. *Id.* Mr. Long states that it has been over 11 years since Pineview sought a rate increase, and that he was involved in the last rate case. Mr. Long further states that DPU has closely monitored Pineview for several years and “could not be more complimentary of its leadership and sound business practices. [Pineview] has used its capital reserve account to its advantage and despite now needing a rate increase, appears to be financially sound.” *Id.*, at 12. After going through a thorough review of Pineview’s existing rates in his testimony, Mr. Long then concludes that “the current rates and rate structure no longer cover fixed costs and do not have an effective conservation rate with an increasing tiered rate structure (increasing block unit) as mandated in Utah Code [Ann. §] 73-10-32.5(1).” He further concludes that the rates and rate structure no longer result in just and reasonable rates and are no longer in the public interest. *Id.*, at 13.

On November 12, 2020, DPU filed a Motion to Suspend Testimony Dates while Retaining Hearing Dates as Scheduled, which was granted by the PSC on November 16, 2020. On November 20, 2020, DPU filed a settlement stipulation (“Settlement”), proposed tariff sheets, and a motion to approve the Settlement and to hold the hearings as scheduled. DPU explained that Pineview and DPU had engaged in fruitful settlement discussions and had reached an agreement that led to the Settlement. On December 3 and 14, 2020, the PSC received written comments from two Pineview customers who opposed the proposed conservation rates. Specifically, the December 3, 2020 comments informed the PSC of a pending dispute in civil court with Pineview over water issues. Ms. Arave explained that she was not notified of the general rate case filing, and requests the PSC postpone its decision in this docket until a final decision is rendered in said pending dispute.¹

On December 15, 2020, the PSC held an evidentiary hearing and a public witness hearing. During the evidentiary hearing, DPU and Pineview testified that the Settlement is just, reasonable, and in the public interest. Subsequently, during the public witness hearing, two witnesses entered public comments recommending the PSC reject either the increase in the basic service charge, or the new proposed conservation rates.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Under the Settlement, the parties agreed that effective February 1, 2021 and subject to the PSC’s approval, Pineview’s rates and terms of service would be those listed in the Settlement

¹ On December 21, 2020, Mr. and Mrs. Arave filed a formal complaint against Pineview in a separate docket, Docket No. 20-2438-01, asserting the same issues Ms. Arave asserted in her December 3, 2020 public comments. The PSC issued a Notice of Filing and Comment Period in that case, and received comments from Pineview responding to the Arave’s complaint. The PSC will issue an order in that docket after it issues this order.

and the accompanying tariff sheets. Utah Code Ann. § 54-7-1 encourages settlements of matters before the PSC at any stage of the proceedings. Under Utah Code Ann. § 54-7-1(2)(a), the PSC may approve a settlement proposal if it finds the settlement proposal to be in the public interest. In addition, the PSC may adopt a settlement stipulation if the PSC finds, based on the evidence of record, that the proposal is just and reasonable in result.²

The PSC acknowledges the public comments requesting the PSC reject the increase in base rates and the proposed conservation rates, including the comments from Ms. Arave notifying the PSC of the ongoing dispute between the Araves and Pineview. However, the dispute has no bearing in this docket. Based on the Utah Supreme Court decision that was appended to the December 3, 2020 public comments, the ongoing dispute involves water well rights over which the PSC has no jurisdiction. In addition, the PSC is required to act on this Application within 240 days of the date the Application is deemed to be a “complete filing,” consistent with Utah Code Ann. § 54-7-12(3)(a).

The PSC finds the evidence supports (a) the base rate increase as being necessary to finance needed capital improvements and (b) the conservation rates necessary to compensate Pineview for the tiered water usage charges it incurs from Ogden City when its customers’ water usage requires additional tiered purchases from Ogden City. The PSC also finds the evidence supports Pineview’s need for future capital expenditures to support the functional operation of its water treatment and delivery systems. The PSC further finds the proposed rates are not designed to generate a windfall, and note that the revenues cannot be used for non-utility purposes.

² See Utah Code Ann. § 54-7-1(3)(d)(i)(A)-(B).

DOCKET NO. 19-2438-01

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ORDER

Based on the record, including the parties' testimony at hearing, and the Settlement, we find and conclude that the Settlement and the associated tariff sheets, are just, reasonable, and in the public interest. Thus we approve the Settlement, and the associated tariff sheets, filed November 20, 2020. We also approve the associated rate increase, effective February 1, 2021.

DATED at Salt Lake City, Utah, January 25, 2021.

/s/ Yvonne R. Hogle
Administrative Law Judge

Approved and confirmed January 25, 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#317068

DOCKET NO. 19-2438-01

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Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I CERTIFY that on January 25, 2021, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

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

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
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Division of Public Utilities

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