

Docket No. 23-010-01 Re: Cottonwood Mutual Water Company (CMWC)

To the Public Service Commission,

We respectfully plead that the Public Service Commission not delay updating Highlands Water Company's service area according to the protest letter from Michael Johanson for the following reasons -

In reviewing the protest letter from Cottonwood Mutual Water Company (CMWC) regarding the update to our service area, we have found multiple false claims that we would like to refute. To be clear, our goal in requesting the update to our service area is to make sure an accurate record is on file with the Public Service Commission of our *existing* service area, and to record other areas we could possibly serve in the future. We understand that a 'proposed' service area is very different from an existing service area. It is just an idea of what areas could possibly be served by a water company in the future.

The parcel of land over which CMWC is protesting however, has been a certified part of our service area since 1976 (see attached Exhibit A), and we have not been approached by CMWC or any other water company with a request to annex the land out of our service area, so it remains in our service area.

Below are our responses to the claims we found most relevant in Mr. Johanson's letter:

- *"...the proposed expansion encroaches upon the service area long identified as being in the CMWC service area."*
 - To substantiate this claim, Mr. Johanson includes one page from an unnamed, multi-page document that does not reference a date or any additional information identifying the validity of the *proposed* service area. The page we do have references a date of September 10, 1971, but that is listed as the date the applicant commenced rendering service, not the date of the document.
 - Again, the document includes a legal description for a *proposed* service area, not an accepted or certified service area. In contrast, we have certified documentation under CPCN 1520 dating back to 1976 showing that this parcel of land was accepted by the state as part of our legal service area.
- *"...infrastructure has been constructed (i.e. 1.0 million gallon tank and three wells in various stages of development..."*
 - Of note, this is the same million-gallon tank and three wells that Mountain Green Mutual Water Company, also a protestant, claim as part of their infrastructure. How can both companies claim these as their own?
 - In addition, the construction of this infrastructure is irrelevant to the certification of our service area, as we have more existing infrastructure in this area than any other water company.

- *“In 2016, Mr. Duane Johnson approached CMWC requesting his property be included in the CMWC service area, which CMWC adopted through resolution in 2017.”*
 - Regardless of the decision of CMWC’s board, a portion of Mr. D. Johnson’s property, the portion needing water service right now, has been certified under Highlands Water Company’s CPCN (referenced above and attached, Exhibit A).
 - Mr. Johnson has gone back and forth between wanting water service from CMWC and Highlands Water Company for the same property for years. Duane has come to us multiple times asking for water service, including a demand for a will-serve letter in 2020 (Exhibit B, attached). This obviously post-dates the 2017 CMWC resolution referenced by Mr. Johnson.
 - Also of note – for more than a year, Stokes Stevenson (the developers for Lee’s Market, which seems to be at the center of this controversy) has been requesting service from both water companies.
- *“CMWC has been working with Mr. Duane Johnson in developing the infrastructure to serve not only his property, but also the property located north of Old Highway Road and east of Trapper’s Loop Road.”*
 - This is irrelevant to the update of our service area, as the property referenced is a project that is already being served by Highlands Water Company.
 - If CMWC is developing infrastructure for land that has never been owned by Duane Johnson and is already being served by Highlands, that is an odd choice, but it in no way implies a claim to our service area.
- *“...we understand that a 10-inch water line with a fire hydrant has been stubbed into Mr. Johnson’s property...”*
 - Similar to the situation above, we don’t believe that installing a fire hydrant (or any kind of infrastructure) establishes a legal claim to a service area that is certified to another company.
- *“Cottonwood Mutual Water Company would respectfully request that this matter be continued for approximately 90 days so that it may continue negotiations and consider entering into agreements with the developers of the water tank and wells to allow service to these areas. Therefore, CMWC respectfully request that the Public Service Commission and Division of Public Utilities reconsider the approval of the Highlands Water Company service area and deny this expansion or at least delay this decision for another 90 days so that CMWC may attempt to reach a" final resolution with respect to these matters.”*
 - We respectfully ask that the PSC not to delay Highland’s request to update our service area while Cottonwood Mutual and Mountain Green Mutual negotiate about tanks and wells.

The issue comes down to this – Highlands has a signed document certifying a portion of Duane’s property to be in our service area. It is either in our service area or it is not. We do not need to be party to a debate between Cottonwood Mutual and Mountain Green Mutual over

infrastructure. We will abide by the decision of the PSC as to the status of the parcels (See exhibits C, D, E, and F), but the majority of this update includes other land we are anxious to have included in our service area to avoid debates like this one.

Sincerely,
Marjalee Smith
President of Highlands Water Company

Exhibit A

PSC Report and Order February 1976
Parcels added to Highland's Service Area

In the Matter of the Application of)
HIGHLANDS WATER COMPANY,)
INC. for an increase in its rates)
and charges for water service,)
addition to its certificated area,)
and certificate to furnish)
irrigation water.)

CASE NO. 5572 SUB 2 and SUB 4

REPORT AND ORDER

Submitted: June 2, 1975

Issued: February 25, 1976

Appearances:

Elliott Lee Pratt	For	Highlands Water Company, Inc.
Clair J. Jaussi, Assistant Attorney General	"	Division of Public Utilities, Department of Business Regulation, State of Utah
Robert A. Echard	"	Highlands Homeowner's Association
Philip C. Patterson	"	Morgan County

By the Commission:

The above-entitled application of Highlands Water Company for an increase in its rates, for an additional certificated area and for a certificate to serve irrigation water throughout its system to the consumers therein came on for hearing on February 26, 1975, thereafter on March 18 and finally on June 2, 1975. Notice of the hearing was given by mail and by publication.

Based upon the evidence adduced herein, the Commission finds as follows:

FINDINGS OF FACT

1. Highlands Water Company, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Mountain Green, Morgan County, Utah. The company was issued its original Certificate of Convenience and Necessity, No. 1520, in Case No. 5572 by order of this Commission dated May 28, 1965, and said certificate was amended August 11, 1966 in Case No. 5572 Sub 1. Thereafter, in Case No. 6328, the applicant was granted a rate increase by order of this Commission dated June 25, 1971, and from that date forward the applicant has been operating under the rates established by such order.

2. In Investigation Docket No. 168 this Commission, by its Report and Order issued November 13, 1974, ordered that the Gordon Creek Springs become the primary water source for the applicant, and that the Pate-Poll Well and Reservoir shall be operated only in emergencies; and the Commission retained further jurisdiction over the operation of the system requiring the system to meet the standards of the State of Utah Division of Health, Department of Social Services.

3. In the present application, Sub 2 and Sub 4, applicant seeks an extension of its certificated area, and extension of its certificate to permit it to furnish irrigation water through a secondary system, and to increase the culinary rates above those rates granted in 1971. The proposed additional area is set out in the attachment hereto, and is shown on the map exhibit submitted in these proceedings. Said additional areas include in Parcel No. 1 a trailer court, known as the Wagon Wheel Trailer Court, together with approximately 50 possible connections, 30 of which are in actual use, and some additional homes along the County Road in the general vicinity of the Wagon Wheel. In the additional areas there are various existing consumers who are now receiving water from applicant, there are consumers who desire to receive water and there are prospective consumers who will require water in the future development of the area.

4. The applications seek to increase the rates as follows:

Raise the rate for 6,000 gallons from \$4.50 to \$6.00, for 14,000 gallons from \$.35 per thousand gallons to \$.90 per thousand gallons, for 30,000 gallons from \$.30 per thousand gallons to \$.80 per thousand gallons, and for all over 50,000 gallons from \$.25 per thousand gallons to \$.70 per thousand gallons. The increase will also raise the minimum from \$4.50 to \$6.00; and the 3/4" connection fee from \$85 to \$300.

5. The applications further seek to obtain approval of the use of secondary water from Gordon Creek to serve the customers in the certificated areas with irrigation water, in addition to the culinary water which is now being served under the appropriate certificates. The Commission finds that as to the secondary irrigation system, that at the present time, and under the engineering studies and testimony adduced at the hearing, that there is presently insufficient need for the additional water in sufficient quantities and for enough

customers, to justify a finding that public convenience and necessity would best be served by the granting of such a certificate. The Commission further finds that due to sub-surface soil conditions and steep slopes, the increased application of surface waters likely to occur should a secondary system be approved would likely cause a serious risk of soil slippage and the secondary system should be disapproved for this reason alone.

6. The Commission finds that as to the additional area sought to be included in applicant's certificated area, that for the most part, the smaller areas are within the overall boundaries and service area presently being served by applicant, that there is a present public convenience and necessity which will be satisfied by granting a certificate to serve said areas. The Commission finds that as to the larger area lying to the north and east of the existing certificated area, that the reasonable and foreseeable development of said area, together with its proximity to the existing area and system of the applicant, justifies a finding that public convenience and necessity will be best satisfied by adding said area to the certificated area of applicant. In this connection the Commission finds that there are no other utilities having water which either at the present time or in the foreseeable future could serve said area; that applicant is the logical company to furnish water to said area; and that public convenience and necessity will best be served by granting said area to applicant.

7. The evidence shows that there is one metering connection at the Wagon Wheel whereby the trailers are all metered through a common meter. The evidence further shows that at the present time only one billing for the water used at the Wagon Wheel is being made by the Company. The Commission finds that such a practice is consistent with public convenience and necessity in this case.

8. The evidence shows that in the general vicinity of the Wagon Wheel, there were several homes which should be served by applicant; and the Commission finds that said homes shall be served and shall be billed and shall pay the same rates as are other customers in applicant's certificated area. In this connection, the evidence shows that some homes have been receiving water without being billed or paying for same; and the Commission finds that such a practice is inconsistent with proper utility regulation and shall cease; and that all water users throughout the entire system shall be billed and shall

All over 50,000 gallons	\$.70/thousand
Minimum	\$6.00
3/4" Connection	\$300.00

16. The Commission further finds that said rates should be put into effect for all connections made after the date of this order, and shall be effective beginning with the next billing date for all existing consumers now receiving service from applicant.

CONCLUSIONS

The Commission concludes that applicant's application for a certificate to furnish secondary irrigation water should be denied.

The Commission further concludes that the applicant's additional area requested herein should be certificated to applicant and added to its certificated area.

The Commission further concludes that the increase in rates sought herein by applicant should be approved.

The Commission further concludes that the Order herein should be conditioned upon applicant first obtaining all prior approvals required by the Utah State Board of Health and by Morgan County, as said approvals have been described in the Findings of Fact herein.

ORDER

IT IS THEREFORE ORDERED, That applicant's request for a certificate to serve irrigation water through a secondary system is denied.

IT IS FURTHER ORDERED, That applicant's certificated area shall be expanded to include the additional areas described in the attached Exhibit A, conditioned upon applicant first obtaining all prior approvals required by the Utah State Board of Health and by Morgan County.

IT IS FURTHER ORDERED, That the rates of applicant shall be increased in accordance with Finding No. 15 above, and that said rate increase shall be effective as to any new connections made after the date of this Order, and as to existing connections at the beginning of the next billing period.

IT IS FURTHER ORDERED, That applicant shall file with the Public Service Commission, Division of Public Utilities, copies of its operating statement and balance sheet every 90 days for the next year, or until further ordered by this Commission. These

CASE NO. 5572 SUB 2 and SUB 4

-7-

financial records must be in compliance in all respects with the uniform system of accounts and with the regulations of this Commission.

IT IS FURTHER ORDERED, That this Report and Order shall be effective upon the date it bears .

Dated at Salt Lake City, Utah, this 25th day of February, 1976.

/s/ Frank S. Warner, Chairman

(SEAL)

/s/ Olof E. Zundel, Commissioner

/s/ James N. Kimball, Commissioner

Attest:

/s/ Ronald E. Casper, Secretary

The applicant proposed to serve the following area:

1. Parcel 1: A part of the Southwest 1/4 of the Northwest 1/4 of Section 25, and the Southeast 1/4 of the Northeast 1/4 of Section 26, Township, 5 North, Range 1 East, Salt Lake Base and Meridian, described as follows: Beginning at a point on the West Boundry of said Section 25, which bears North 0° 16' East 299.0 feet from the West 1/4 corner of said Section 25, (said West 1/4 corner is located at a point which bears North 1319.0 feet from Engineers Station 52146+38.0 to the center line of the U.P.R.R. Main line (S.track) angle 88° 24' right; cantilever signal tower No. 9777 is located at Station 52143+45.8), and running thence South 72° West 114.5 feet; thence South 37° West 135.0 feet; thence South 77°30' West 418.0 feet; thence North 19° East 316.0 feet; thence North 53°15' East 240.0 feet; thence North 26° East 300.0 feet to the State Highway; thence along Highway North 85° 40' East 173.5 feet to the Section line; thence North 82° 52' East 942.0 feet; thence South 242.0 feet; thence South 49° 35' West 393.5 feet; thence South 69°30' West 424.0 feet; thence North 81°10' West 242.0 feet to the point of beginning.
2. Parcel 2: A part of the Southwest 1/4 of the Northwest 1/4 of Section 25, and the Southeast 1/4 of the Northeast 1/4 of Section 26, Township 5 North, Range 1 East, Salt Lake Base and Meridian, described as follows: Beginning at a point which bears North 0°16' East 155.8 feet from the West 1/4 corner of said Section 25, and running thence West 189.5 feet; thence North 37° East 135.0 feet; thence North 72° East 114.5 feet to the Section line; thence South 81°10' East 242.0 feet; thence North 69°30' East 424.0 feet; thence North 49°35' East 393.5 feet; thence South 293.0 feet to the North bank of an old channel of Cottonwood Creek; thence along the North bank of said old channel South 63°45' West 490.0 feet; thence West 497.0 feet to the point of beginning.
3. Parcel 3: Beg. at a point located E. 1167.8 feet; thence N. 430.3 ft; th. S. 85°25' W. 136.0 ft; th.S. 63°45' W. 106.0 ft. from the W. cor. of Sec. 25, T5N, R1E, SLB&M. said pt. of beg. being the Grantors SW prop. cor. th.N. 535.0 ft. to the S. r-of-way line of hwy. US 30-S; th. N. 85°30' E. alg. said r-of-way 16.5 ft.; th. S. 528.2 ft. to the Grantors S prop. line; th. S 63°45' W. 18.4 ft. to the place of beg.
4. Parcel 4: A part of NW 1/4 of Sec. 25, T5W, R1E, SLM comm. at pt. on S line of Co. Rd. (St. hwy.) 11.50 chs. N. & 242.68 ft. W. 87° E. of SW cor. of SW 1/4 of said Sec. 25; th. S. 10° E. 4.25 chs; th. N 87° E. 20 ft; th. N. 10°W 4.25 chs. more or less to St. hwy; th. S. 87° W. 20 ft. to place of beg. 0.129 ac.
A part of Sec. 25, T5W, R1E, SLM U. S. Survey des. as fol: Beg. at W1/4 cor. of said Sec. 25, and run. th. E. 40 chs. th. W. 3.82 chs; th. W 56° W 10.08 chs; th. W 1.50 chs; th. S. 4.0 chs; th. N 87° W 5.50 chs; th. W. 3.64 chs; th. S 86° W 18.30 chs; th. S 12 chs. to place of beg. except therefrom however, the fol. tract of land prev. con. to O.W. Pollins; beg. 4.0 chs. E of SW cor. of SE 1/4 NW 1/4 of Sec. 25, & run. th. W 2° W. 13.25 chs; S 37° E. 2.0 chs; th. S 66° E 5.0 chs; th. S 48° E. 12.93 chs; th. S 2.81 chs; th. W. 16 chs. to place of beg. 10.72 acs.

Exhibit B

Duane Johnson - Request for Will Serve Letter from Highlands Water Company

Rodger Smith
Highlands Water Company
5880 Highland Dr.
Morgan, UT 84050

via Hand Delivery
at 5880 Highland Dr.
Morgan, UT 84050

August 14, 2020

Re: Request for Will Serve Letter for Mountain Green Apartment and 110 Apartment Units

Dear Mr. Smith,

Soderby, LLC ("**Soderby**") respectfully requests that the Highlands Water Company ("**Highlands**") issue a letter to the Morgan County Zoning Administrator confirming the availability of Culinary Water Service for the Mountain Green Apartments Project ("**Project**"), The Project will have 110 units (Equivalent Residential Connections or ERCs) which will be located along Highway 30. The Project will be constructed on property subject to the 2007 Well Construction and Water Supply Easement Agreement ("**Agreement**"). The location of the Project is shown on the enclosed plans, **Attachment 1** ("**Plans**"). The enclosed plans also provide detailed information as to the water infrastructure for the Project sufficient, along with the standards in Rule 309 of the Utah Division of Drinking Water, for Highlands to commit in writing to provide service to the Project as required in section 8-4-3.B.3. of the Morgan County Code.

Morgan County Code Section 8-4-3.B.3. requires Soderby to provide the County with written verification of the availability of water in the form of a letter from Highlands addressed to zoning administrator, stating that Highlands will provide water service to the Project. The letter "should state what type, if any, interim system may be allowed until full service can be provided by the public agency; and that potable water will be available to the developer in quantities and quality as required by state requirements for the project." A copy of this Code Section is enclosed as **Attachment 2**. Such written confirmation is typically referred to as a "**Will Serve Letter**" and is so referred to here.

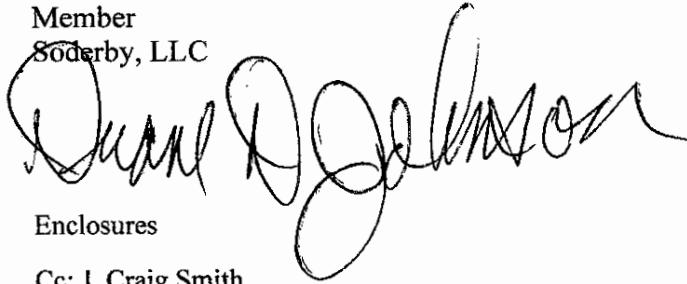
Additionally, as you are aware, Soderby previously obtained Master Development Agreement approval from Morgan County. This Master Development Agreement has been previously provided by Soderby to Highlands. A copy of the Master Development Agreement is enclosed as **Attachment 3**, for your convenience. The Projects 110 ERC's are part of the 533 Residential Dwelling Units approved by the County under the Master Development Agreement.

The enclosed Plans, Attachment 1, and Master Development Agreement, Attachment 3, provide all necessary information for Highlands to issue the requested Will Serve Letter, as required by Code Section 8-4-3.B.3., for the Project. Time is of the essence as the Will Serve Letter is one of the few remaining items to obtain land use approval for the Project and any delay caused by Highland's failure to issue the Will Serve Letter will result in substantial damages to Soderby. (Completion and occupancy of the Project is expected by June 1, 2021.) Accordingly, please

provide the Will Serve Letter to Soderby at 5449 W Mountain View Drive, Morgan, Utah 84050 by August 24, 2020. Soderby will then submit the Will Serve Letter to the County Zoning Administrator. A non-receipt of the Will Serve Letter by that date will be considered a refusal by Highlands to provide a Will Serve Letter and a refusal by Highlands to reserve 50% of the ERCs to Soderby as required in the Agreement.

Sincerely,

Duane Johnson
Member
Soderby, LLC



9-29-20

Enclosures

Cc: J. Craig Smith

Morgan County w/o Enclosures

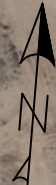
Exhibit C

Parcel 1 from PSC Report and Order February 1976



1:3000.006

STATE 167



OLD HWY RD

SWNW

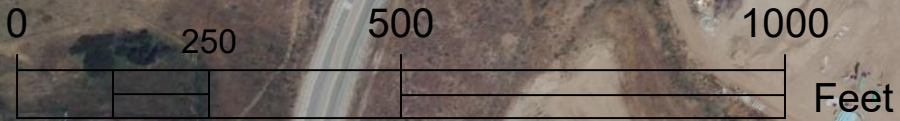
PARCEL 1

$\frac{1}{4}$ Section 25 Corner

FOR ILLUSTRATIVE PURPOSES ONLY
NOT FOR LEGAL OR SURVEYING PURPOSES

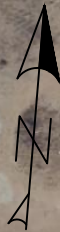
Exhibit D

Parcel 2 from PSC Report and Order February 1976



1:3000.006

STATE 167



OLD HWY RD

SWNW

PARCEL 2

$\frac{1}{4}$ Section 25 Corner

FOR ILLUSTRATIVE PURPOSES ONLY
NOT FOR LEGAL OR SURVEYING PURPOSES

Exhibit E

Parcel 3 from PSC Report and Order February 1976



STATE 167

SWNW

PARCEL 3

OLD HWY RD

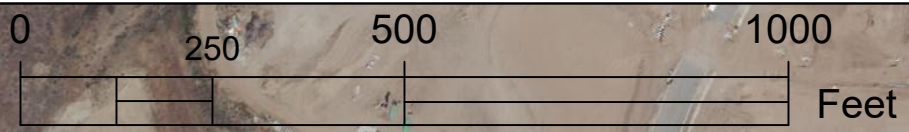
W ¹/₄ Section 25 Corner

FOR ILLUSTRATIVE PURPOSES ONLY
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Exhibit F

All three parcels together from PSC Report and Order February 1976

Note - Parcel 4 has errors in the legal description that make it impossible to plot.



1:3000



STATE 167

SWNW

OLD HWY RD

PARCEL 3

PARCEL 1

PARCEL 2

W $\frac{1}{4}$ Section 25 Corner

FOR ILLUSTRATIVE PURPOSES ONLY
NOT FOR LEGAL OR SURVEYING PURPOSES

