

Matthew E. Jensen (10693) (mjensen@parrbrown.com)
Kassidy J. Wallin (14360) (kwallin@parrbrown.com)
Tammy M. Frisby (17992) (tfrisby@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

*Attorneys for Respondents Mountain Green Mutual
Water Company and Village at Trappers Loop LLC*

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

HIGHLANDS WATER COMPANY INC.,

Applicant,

v.

MOUNTAIN GREEN MUTUAL WATER
COMPANY and VILLAGE AT TRAPPERS
LOOP LLC,

Intervenors.

**Comment Re Highlands Water
Company, Inc.’s Request to Update
Service Area**

Docket No. 23-010-01

Mountain Green Mutual Water Company (“MGMWC”) and Village at Trappers Loop LLC (“Village,” and collectively “Intervenors”) submit the following comment (the “Comment”) in response to Highlands Water Company, Inc.’s (“Highlands”) updated cover letter to its request to update its service area submitted on December 28, 2023 (the “Revised Letter”) and the Supplemental Comments from the Division of Public Utilities submitted on January 30, 2024 (“DPU Supplemental Comments”). This Comment incorporates Intervenors’ previous

Opposition to Highland’s Request filed on November 6, 2023,¹ and the points raised at the December 21, 2023 hearing on the petition for intervention.²

COMMENT

MGMWC and Village submit the following clarifications regarding Highlands’ Revised Letter and the DPU Supplemental Comments:

As an initial matter, Highlands’ Revised Letter should be read together with an updated map submitted in another docket pending before the Public Service Commission (“**Commission**”). In its December 28, 2023 Revised Letter, Highlands refers to Attachment 2 to its September 20, 2023 Request, which Highlands describes as “a map of our current certified service area” that “includes infrastructure and customers we currently serve but have no record of certification for.”³ On January 19, 2024, Highlands submitted a new map of its asserted service area “in comparison to MGMWC’s proposed service area” in the docket related to MGMWC’s application for exemption. *See* Docket No. 23-2643-01, Highlands’ Response to MGMWC’s Opposition to Highlands’ Petition to Intervene, Exhibit B, Map 2 (Jan. 19, 2024), attached hereto as **Exhibit 1**. On this most recent map, Highlands notes that the map shows parcels that “are already customers of HWC.” Relevant to this Comment, there are two areas of particular interest: the parcels marked as “Soderby” in the northeast part of the red outline, in between the two notches in the red outline marked “HWC” (the “**Wagon Wheel Area**”), and the purple-shaded area labeled “This property

¹ <https://pscdocs.utah.gov/water/23docs/2301001/330621MntnGrnVlgTrprsLpOpstn11-3-2023.pdf>.

² <https://pscdocs.utah.gov/water/23docs/2301001/331770RprtrTrnscrptDec2120231-10-2024.pdf>.

³ <https://pscdocs.utah.gov/water/23docs/2301001/331472UpdtdHWCSrvcAraCvrLtr12-28-2023.pdf>.

is owned by Soderby but the home and barn are served by HWC” (the “**Barn Parcel**”). MGMWC and Village submit that the more recent map should be treated as Highlands’ current representation of its service area in this docket as well.

On the January 19, 2024 map, Highlands improperly identifies areas as part of its current service area. Specifically, Highlands claims as part of its current service area parcels that (1) are subject to the April 2021 Settlement and Mutual Release Agreement between Highlands and Soderby, LLC (the “**Settlement Agreement**”), wherein Highlands “relinquish[ed] any claim that it is the exclusive provider of water”; (2) are owned or will be used by persons, specifically Soderby and Lee’s Marketplace, that have no intention of using Highlands as their water provider; and (3) for which Highlands has provided no evidence of Commission approval.

First, under the Settlement Agreement, Highlands may not demand to be the service provider for the Wagon Wheel Area or the Barn Parcel. *See* Opposition to Highlands Water Company, Inc.’s Request to Update Service Area, 2–3, 7 (Nov. 6, 2023); DPU Supplemental Comments, Exhibit C, PSC Report and Order in Case No. 55720 Sub 2 and Sub 4 (Feb. 25, 1976). Because Highlands may not assert a claim to be the exclusive public utility for the Wagon Wheel Area, its CC&N should be updated to remove those parcels from its service area.

Second, although Highlands represents that Lee’s Marketplace, which is being constructed in this area, intends to use Highlands as its service provider, that representation is, at best, outdated. *See* DPU Supplemental Comments, Exhibits A (Email thread ending Oct. 17, 2023) & B (letter dated Sept. 9, 2023). On December 5, 2023, a representative from Lee’s Marketplace confirmed to the Morgan County Commission with representatives of Highlands in attendance that Lee’s Marketplace is no longer in discussions with Highlands and was pursuing Will Serve letters solely

from Cottonwood Mutual Water Company (“CMWC”) and MGMWC.⁴ Thus, the exhibits on which the Division of Public Utilities relies to support the alleged Lee’s Marketplace service request are likewise outdated.

Third, with respect to the Barn Parcel, not only is it subject to the Settlement Agreement, but Highlands has presented no evidence in either of the dockets that it ever obtained Commission approval to include the Barn Parcel in its service area. *See* Exhibit 1. Intervenors accordingly object to Highlands’ representation that this property should be included in a clerical update to its CC&N.

Ultimately, even though expansion of Highlands’ service area to include the Wagon Wheel Area and the Barn Parcel does not preclude water service by MGMWC or CMWC in the future, the Public Service Commission should decline Highlands’ request in these two areas because such an expansion serves no beneficial purpose and would simply confuse future residents and businesses within these areas.

DATED this 5th day of February 2024.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Matthew E. Jensen
Matthew E. Jensen
Kassidy J. Wallin
Tammy M. Frisby
*Attorneys for Mountain Green Mutual Water
Company and Village at Trappers Loop LLC*

⁴ Morgan County Commission Meeting (December 5, 2023) at 1:05:27, available at <https://www.youtube.com/watch?v=oElhDcsXSfE>.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February 2024, I caused a true and correct copy of Comment Re Highlands Water Company, Inc's Request to Update Service Area to be served via e-mail to the following:

Marjalee Smith
President
HIGHLANDS WATER CO.
highlandswaterco@gmail.com

Patricia Schmid
Patrick Grecu
Assistant Utah Attorneys General
STATE OF UTAH
pschmid@agutah.gov
pgrecu@agutah.gov

Madison Galt
DIVISION OF PUBLIC UTILITIES
mgalt@utah.gov

/s/ Tammy M. Frisby
Tammy M. Frisby
Attorney for Intervenors

EXHIBIT 1

Highlands' Response to MGMWC's
Opposition to Highlands' Petition to Intervene,
Exhibit B, Map 2 (Jan. 19, 2024)

The blue areas represent parts of HWC's service area. The bold red line show MGMWC's approximate proposed service area. Many of the parcels MGMWC proposes to serve are already customers of HWC. This is of great concern to us. The bold white lines show that HWC has infrastructure in the area where Lee's Market is being built. We, of course, have additional pipelines, but the marked lines will be impacted by the current project. This is also of great concern. The green rectangle is approximately where Lee's Market is being built. I have not marked Cottonwood Mutual Water Company's service area, but it is shown on the previous map.

