

To the Public Service Commission of Utah

Highlands Water Company's Response to Mountain Green Mutual Water Company's Opposition to Highlands Water Company, Inc.'s Petition to Intervene in Application of Mountain Green Mutual Water Company for Exemption Docket No. 23-2643-01

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Highlands Water Company respectfully submits the following comments:

If the consideration for an application for exemption rests solely on whether a water company is "serving its members only and not the public generally" (Exhibit A) then, HWC can't initially tell whether MGMWC meets that qualification or not. MGMWC only lists two members, Village and Soderby LLC, who have identified a general area they plan to serve.

It is important to note that the area MGMWC has identified to serve includes parcels that are certified in the HWC service area as well as parcels where HWC serves existing customers. (Exhibit B) MGMWC made a statement in their Opposition to Highlands Water Company, Inc.'s Request to Update Service Area (Docket 23-010-01) pg. 8, last paragraph, that they plan to begin serving some of our current customers when their system is in place. This does not conform to the qualification for exemption that they are "serving members only".

In the Action Response of the Utah Division of Public Utilities, under the Discussion paragraph, they state: Mountain Green must meet three criteria for a complete filing: provide (1) documentation that the Company "has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal or other public authority, in order to expand its service area; (2) "a current map showing the water service area of all water utilities surrounding (Mountain Green)"; and (3) a statement that "any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public" and that the expansion will not "constitute an extension into the territory certified to the existing fixed public utility."

MGMWC fails to meet these three criteria. (1) Both MGMWC and HWC exist in unincorporated Morgan County. We are not aware of a county authority consenting to or issuing a permit for MGMWC to expand its service area. (2) The map MGMWC provides is flawed and fails to show the service area or **infrastructure** of HWC. (3) MGMWC checks the box that says their system will not conflict with or adversely affect another public utility or extend into the certified territory of an existing public utility. Based on the information outlined above, that is clearly untrue.

Again citing comments from the DPU Action Request Response on Docket No. 23-2643-01, referring to an exempt water company, "It has members at specific locations but if service provided anywhere deviates from the underlying conditions of its exemption, serving member/owner, it is violating public utility law."

MGMWC relies heavily on the Bear Hollow Restoration exemption case. In a quick perusal of this case, it only partially qualifies as a test case for this situation. The question to be answered in the Bear Hollow case was whether, among other things, the voting block created by two major shareholders would disqualify Summit Water Distribution Company as an entity exempt from regulation by the PSC. The issue of service area was not significantly addressed.

Regardless, the paragraph preceding Section A of the Application for Public Service Commission Regulation or Exemption states: "The information requested in the following sections covers the basic items of interest to the Division of Public Utilities. The list does not necessarily include all things the Public Service Commission and the Division of Public Utilities needs to review in the application." The sections of concern to HWC under Section A include the third and fifth checked boxes. (Exhibit C).

Based on these statements taken from the Public Service Commission's own application, it is inappropriate to restrict consideration for exemption simply to whether an applicant plans to serve only members.

Therefore, HWC stands by the statements filed on Dec. 28, 2023 and finds that MGMWC's application for exemption is adverse to the legal rights and interests of HWC. We respectfully ask the Commission to carefully consider the information provided.

## Exhibit A

## Application for Public Service Commission Regulation or Exemption Water and Wastewater Companies

Enclosed is an application designed by the Division of Public Utilities (DPU) intended to assist an applicant in determining if a water system qualifies as a public utility. Public utilities are subject to regulation by the Utah Public Service Commission (PSC or Commission).

In the regulation of water companies, the PSC can issue one of two different designations. The first is a Certificate of Public Convenience and Necessity (CPCN). A CPCN is required for any public utility providing service to the public generally. The Public Service Commission regulates companies with this designation. The second designation is a Letter of Exemption (LOE). An LOE is provided to companies providing water service that is limited to its members only and is not delivered to the public. If the company serves only its members, it is not serving the public generally. It is irrelevant how a member acquires their member status as long as a member's rights and duties are different than those of nonmembers.

Legal name of applicant (company name): Mountain Green Mutual Water Company



### Questionnaire

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Please fill out the following questionnaire to assist you in determining if you are subject to PSC regulation. *(Please check only one for each question.)*

**Q1. Is this company providing water to anyone other than the owner (two houses or more)?:**

**Yes**

If "Yes," then please continue to **Question Q2**.

**No**

If "No," then this company or water distribution system is not subject to PSC regulation. You are not required to register with the PSC at this time. If your circumstances change, you may be required to register with the PSC at a later time.

**Q2. Is the company serving its members only and not to the public generally?**

**Yes**

If "Yes," then this company appears to meet the criteria to be exempt from PSC regulation. Please complete and provide the information requested in **Sections A, C, and D**.

**No**

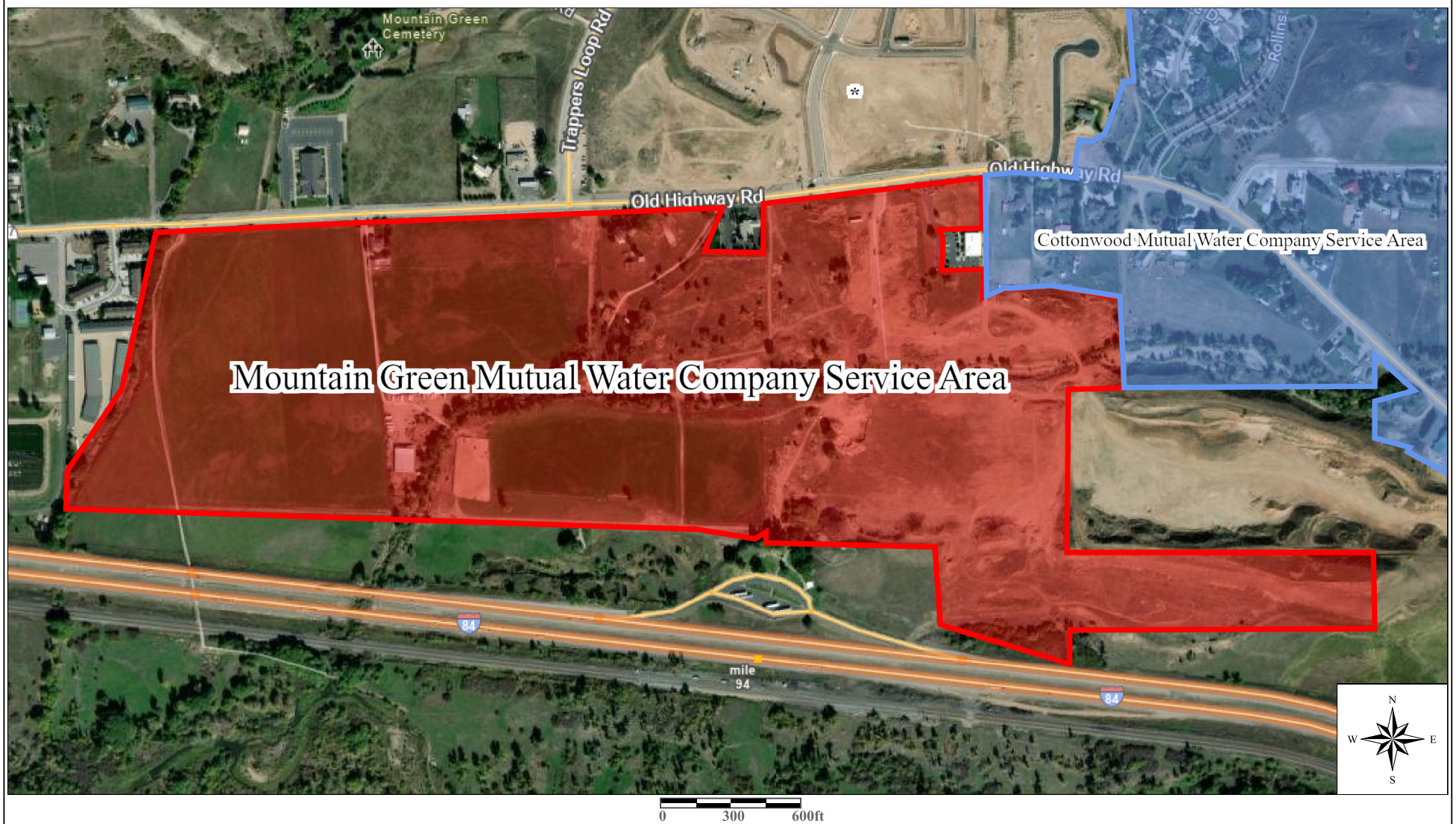
If "No," then this company meets the criteria requiring it to be regulated by the PSC. Please complete and provide the information requested in all the sections (**Sections A, B, C, and D**).

## Exhibit B

Map 1: submitted by MGMWC in Application for Exemption showing only Cottonwood Mutual Water Company service area.

Map 2: prepared by HWC to show our service area in comparison to MGMWC's proposed service area.

# Map #1 - MGMWC Service Area



\*Highlands Water Company Inc. also provides water service in the vicinity, but its service area boundaries are subject to a currently-pending expansion application which has not been approved, and a settlement agreement which alters Highlands' original boundary approved in 1976. All boundaries shown on this are approximate and for illustrative purposes only. Not a survey.

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.

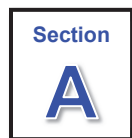


## Exhibit C



Legal name of applicant (company name): Mountain Green Mutual Water Company

*Please Note: The information requested in the following sections covers the basic items of interest to the Division of Public Utilities. The list does not necessarily include all things the Public Service Commission and the Division of Public Utilities need to review in the application procedure. Additional details may be requested as the Division and Commission become more familiar with the applicant's particular circumstances.*



## The following items are required with this application for ALL applicants, both regulated and exempt.

The following documentation **MUST** be provided to be considered complete. Incomplete applications will **NOT** be considered.

- Please provide copies of internal governing documents detailing water usage and any restrictions, e.g., by-laws, operating agreements, or other applicable internal operating documents. *(Attachment required)*
- Please provide documentation of the review and approval of the water system by the Division of Drinking Water. If approval of the water system is pending, please provide documentation indicating its status and contact information of who you are working with at the Division of Drinking Water. *(Attachment required)*
- Please provide maps (8 1/2" x 11") showing the location of the proposed water system relative to nearby towns and highways and the proposed platted subdivision. This map must also show the names and service area of any water utilities that are providing or proposing to provide similar service near or in any part covered by this applicant. *(Attachment required)*
- If this is an existing or operating water company, whether regulated or unregulated, please provide evidence showing that the company notified its customers that it is seeking an exemption from regulation by the Public Service Commission of Utah. *(Attachment required)*
- I certify that this proposed water utility will not conflict with or adversely affect the operations of any existing certified public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory of an existing public utility.

Initial Here:  RG