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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of the
Odd Fellows Sierra Recreation Association,
a California corporation, and Sierra Park
Water Company, Inc., a California corporation,
for a Certificate of Public Convenience and
Necessity to Operate a Public Utility Water
System near Long Barn, Tuolumne County,
California and to Establish Rates for Service
and For Sierra Park Water Company, Inc. to
Issue stock

) Application No. 13-09-023
) (Filed September 20, 2013)

Fred Coleman, Steven Wallace, Larry L. Vaughn
and Ruth Dargitz

Complainants

) Case 12-03-017
) (Filed March 14, 2012)
) (CONSOLIDATED)

vs

Odd Fellows Sierra Recreation Association

Defendant

**COMMENTS FOR THE COMMISSION ON ALJ SMITH'S PROPOSED
DECISION IN A. 13-09-023 AND C. 12-03-017 BY COMPLAINANTS
FRED COLEMAN, STEVEN WALLACE, LARRY L. VAUGHN AND
RUTH DARGITZ**

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2 Odd Fellows Sierra Recreation Association,)
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4 Water Company, Inc., a California corporation,)
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16 **COMMENTS FOR THE COMMISSION ON ALJ SMITH'S PROPOSED DECISION IN A. 13-09-023**
17 **AND C. 12-03-017 BY COMPLAINANTS FRED COLEMAN, STEVEN WALLACE, LARRY L.**
18 **VAUGHN AND RUTH DARGITZ**

19 **INTRODUCTION**

20 Complainants' comments on the Proposed Decision (the "Decision") raise concerns with the Recreation
21 Association and the Water Company which have been discussed in previous filings with the CPUC. First, the
22 "Decision" was made in part on the basis of erroneous and unsubstantiated information supplied by the
23 Applicants. Also, comments from Complainants are necessary to explain to the Commission the water fee that
24 was paid by three of the Complainants to the Recreation Association in 2012–2013. This fee was paid on the
25 basis of the February 14, 2013 Joint Scoping Memo of Assigned Commissioner Sandoval and ALJ Minkin.
Complainants and the Recreation Association both agreed to the terms of the Scoping Memo. Now the
"Decision" recommends voiding what was a contract between these two parties and the CPUC. Also, the audit
and other requirements ordered in the Joint Scoping Memo were never undertaken by the Division of Water

1 and Audits' Staff (DWA). If the audit had been conducted, the Recreation Association may have been less
2 likely to sue three of the Complainants for the non-payment of their 2012 -2013¹ water bill; this bill was paid
3 and evidence can be provided upon request. By complying with the Joint Scoping Memo and certain CPUC
4 procedures, DWA Staff may have been able to gain a better understanding of the water system, Sierra Camp
5 Subdivision², the actual work required of the Water Company employee, and the true cost of providing water
6 to the subdivision. Complying with the Joint Scoping Memo's provision for an audit may have saved time and
7 money for all concerned. Also, the "Decision" is counter to the recommendation of the DWA Staff Report
8 concerning over-charges by the Recreation Association for water in 2012-2013 and the Water Company in
9 2013-2014 and 2014-2015. The "Decision" fails to suggest a resolution for the over-charges paid by the lot
10 owners for 2015-2016. The rates recommended for the Water Company are approximately \$100,000 higher
11 than what the DWA Staff recommended as the 2012-2013 water rate for the Recreation Association. Simply
12 changing the name of the existing water purveyor, Odd Fellows Sierra Recreation Association to the Sierra
13 Park Water Company, does not justify an increase of approximately \$100,000.00 in the water rate. This is
14 especially true since nothing has changed concerning the subdivision's water system except the name. The
15 "Decision" also fails to address the Water Company's failure to comply with various requirements of applying
16 for a CPCN. DWA Staff failed to call attention to this and did not follow certain requirements of this
17 document either.

12 **Comments**

13 On page two of the "Decision" it states that the revenue requirement for 2015-2016 is \$193,349. This
14 amount, \$193,349, is consistent with the report issued by DWA Staff on September 30, 2014 that said the
15 requirement was \$194,272. However, the Water Company chose to ignore the September 30, 2014 report.
16 The Water Company presented and then gained their member's approval of a budget of \$340,131 for the
17 2015-2016 budget year. The "Decision" adopts what it considers as a reasonable rate on the basis of the DWA
18 Staff Report. However, the water company ignored the DWA Staff Report and billed the lot owners for an
19 amount substantially higher than the rate recommended by Staff as well as that in the Proposed Decision. This
20 fee was due on June 1, 2015. Developed lots (300) were charged \$955.00 and undeveloped lots (59) were
21 charged \$909.00.³ The "Decision" fails to suggest a process to the Commission for a refund of the 2015-2016
22 overpayment by most of the lot owners.

23 On page two of the "Decision", the assets needed by the Water Company are addressed. The Recreation

24 ¹ Steve Wallace, Larry Vaughn, and Fred Coleman paid per the agreement reached with ALJ Minkin and the
25 Recreation Association. Subsequent to the agreement and the payment, the Recreation Association filed a
lawsuit claiming the three Complainants and four other lot owners, who also paid the agreed on amount, had not
paid their water bill for 2012 -2013.

² The legal name of the subdivision is IOOF Odd Fellows Sierra Camp Subdivision NO 1 and NO 2 as filed with
the State in 1950 and 1959. For this document Sierra Camp Subdivision will be used.

³ The Water Company needs to explain how it arrived at 300 developed lots and 59 undeveloped lots.

1 Association proposes to transfer most of the water assets to the Service Company but not the land where the
2 water tanks are located. The Water Company, since its inception, has paid a lease to the Recreation
3 Association for this land. The property upon which the water tanks are located should be transferred to the
4 Water Company and the lease payment of \$5,000 per year, \$15,000 total, refunded to the consumers in the
5 same manner required by the “Decision” of the lease payments collected by the Service Company from the
6 Water Company. Complainants agree with the “Decision” concerning no lease payments for water assets.
7 Instead, the Water Company should own all water assets.

8 On page seven information is presented relating to the Water Company and the Recreation Association and
9 their discussions involving an agreement with the Tuolumne Utilities District (TUD). The “Decision” states:
10 “The record shows that although there were discussions, Odd Fellows and TUD did not reach an agreement
11 regarding services.” Can this Record be verified or is this, as is so much of what the Recreation Association
12 presents, simply based on what its representatives say?

13 Two of the Complainants filed a request for the “record” mentioned above with TUD. Melissa McMullen
14 with the TUD responded to the request by email on August 26, 2015. She said: “...I spoke with Lisa
15 Westbrook who was the TUD staff member that received the call from someone at the Odd Fellows group.
16 Below is the information she provided concerning your request: ‘As far as I know there are no public record
17 documents for discussions with the Odd Fellows group. There was just some verbal communication. This is
18 what I recall. Last year, I did have a phone call from someone at Odd Fellows inquiring about what would it
19 [sic] take for TUD to take them over. He said they were having water quality issues and there wasn’t a
20 licensed water operator overseeing their operation.’” Lisa Westbrook went on to say: “About two months
21 past [sic] and Tom Scesa and I had a meeting with Kassy Chauhan (State Water), sometime last fall I recall.”
22 Lisa then went on to say that Kassy brought up Odd Fellows park and said that they had been going up there
23 assessing their water system and “if we were interested in taking it over. Tom said, no ...”.⁴

24 Kassy Chauhan’s inquiry to Tom Scesa about TUD’s interest in taking over the water system is
25 contradictory to what is ascribed to her in the “Decision”. Pages twelve through thirteen of Attachment A
quotes a letter from Kassy D. Chauhan that states: “The Division determined that the Water Company has
adequate technical, managerial and financial capacity to effectively operate the water system and recommends
that the Commission should grant a CPCN to the Water Company.” Complainants’ question Kassy Chauhan’s
action and recommendation for several reasons:

1. Why did she ask TUD if they wanted the system if her recommendations to the Commission were so positive concerning the Water Company?
2. What documents were entered as evidence that the Water Company has adequate technical, managerial, and financial capacity to operate the water system?
3. If as Kassy Chauhan states on behalf of the State Water Resource Control Board that the

⁴ Tom Scesa was the District Engineer and General Manager of TUD at the time and is now retired.

1 Water Company has the financial capacity to operate the water system, then it
2 should be able to pay the full refund owed to the lot owners rather than only 25%.

3 4. Did the State Water Resource Control Board determine the Water Company's financial capacity on
4 the basis of an audit? If not, what criteria was used to determine the Water Company's "financial
5 capacity"?

6 5. The Water Company admits that it lacks the financial ability to operate on the Staff's
7 recommended budget. In the Water Company's response to the September 30, 2014 Staff Report it
8 states "that is [sic] fiscally impossible to run the current water system on the hypothetical budget the
9 staff proposed."⁵ The Water Company statement contradicts Kassy Chauhan's claim that the
10 Water Company has the financial capacity to operate.

11 That is the "record", as determined by Complainants concerning the contacts between TUD and the Recreation
12 Association and/or Water Company. This seems superficial and not as serious in nature as the "Decision"
13 implies. The information from TUD does not support the "record" referred to in the "Decision".

14 In the application for a CPCN it states on page two (e): "grant certificate for proposed water system only
15 when (1) need for the utility is demonstrated by applicant showing that no other entity is willing and able to
16 serve the development ...". Simply stating that the water company has met this requirement is not consistent
17 with the Commission's rules. The Commission should deny the CPCN until hard evidence is provided by
18 Applicants substantiating the "record" referred to in the "Decision". Kassy Chauhan (State Water) is not the
19 Applicant for the CPCN under consideration by the Commission. She is a public employee.

20 False information provided by Applicants was discussed on page twenty-three of Attachment A of the
21 "Decision". It states: "The applicants state that an option to turn over its operations to TUD was considered
22 and rejected by a majority of lot owners who preferred to keep operations independent." Complainants
23 addressed this false information in their Rebuttal Document filed with the CPUC on December 8, 2014.⁶
24 Applicants made a statement concerning what over 70% of the property owners in the subdivision wanted,
25 based on a survey that was conducted by the Ad Hoc Committee attempting to form a Community Service
District in the subdivision. The Water Company had not yet been formed; the earliest survey on record is
January 9, 2012. Note, no survey was ever conducted by the Water Company that was mailed to all of the lot
owners and specifically addressed turning the water system over to TUD or a like water utility. The survey
conducted by the Ad Hoc Committee was returned with 150 responses. Based on 364 lots that is a 41%
response, not 70% as Applicants claim. In the June 2012 mailing from the Ad Hoc committee conducting the
survey for the proposed Community Service District, the committee claimed 175 responses out of 329 surveys
mailed which was 53% or 48% when all the 364 lots in Sierra Camp Subdivision are considered. Based on
this, Complainants do not understand how the Ad Hoc Committee or Applicants arrived at the conclusion that

⁵ Rebuttal to Comments page 17 filed December 8, 2014.

⁶ Rebuttal to Comments page 23 filed December 8, 2014.

1 a majority of the lot owners rejected the option to turn over its operations to TUD. The Ad Hoc Committee
2 nor the subdivision had any operations to turn over. Once again, this survey was not from the Water
3 Company. In fact, the survey referred to in the DWA Staff Report was conducted approximately a year and a
4 half before the Water Company was even formed.⁷ This information was available to DWA Staff and was
5 filed with the Commission by Complainants. It is unclear to Complainants why the DWA Staff did not check
6 out the truthfulness of applicants' statements concerning this survey before issuing their final report.⁸

7 On page eight of the "Decision" the statement that the water company serves 364 connections is wrong.⁹
8 Rates should be determined on the basis of all connections, not 364. In calculating the water rate and any
9 reimbursements to the lot owners, the Commission should consider that there are seventy-two acres served by
10 the water system outside of the subdivision and referred to by the Recreation Association, the Service
11 Company, and the Water Company as the "Park". The "Park" borders Sierra Camp Subdivision but is not
12 legally a part of it. Areas included in this seventy-two acres, parts of which are irrigated, are a playground, a
13 picnic area, a dog-park, an apple orchard, a small pond, a needle dump, meadow, and a garbage dumpster;
14 there is also a shop, a garage, storage areas, the corp. yard, and a lodge hall/recreation hall. For these areas,
15 there are two 2 inch commercial connections, three irrigation connections, and a fire hydrant at the needle
16 dump. None of the seventy-two acres are needed or required by the subdivision. These areas were owned
17 exclusively by the Recreation Association and either have been or will be turned over to the Service
18 Company.¹⁰ The use of water by these connections should be figured into the water rate and will reduce the
19 rate for the lot owners. ALJ Long commented on the need for the Service Company to pay a fee for the water
20 delivered to the lodge hall/recreation hall.¹¹ Despite Judge Long's statement, to the best of Complainants'
21 knowledge, a fee has never been paid by either the Recreation Association or the Service Company for the
22 water delivered to the connection at the lodge hall/recreation hall. The same is true, as far as Complainants are
23 aware, for the other connections on the seventy-two acres. The seventy-two acres need to be addressed by the
24 Commission in order to establish an equitable water rate.

25 The "Decision", in stating that the subdivision is comprised of 364 lots, is basing its conclusion on the
DWA Staff Report. The DWA Staff Report, despite previous evidence submitted by Complainants to the
contrary, is wrong. The Subdivision Public Reports for 1950 and 1959 state that the subdivision is comprised
of 365 lots. Added to this number should be a two acre parcel with a residence (APN 031-010-25)¹² that is

⁷ Rebuttal to Comments EXHIBIT 8 filed December 8, 2014 provides information concerning the survey.

⁸ Rebuttal to Comments page 23 filed December 8, 2014.

⁹ All of these connections were explained by Complainants in at least one of their previous filings with the CPUC.

¹⁰ Lot owners in the subdivision are allowed to use the amenities found on the seventy-two acres by paying the required fee for the amenities to the Service Company.

¹¹ Prehearing Conference Transcript July 1, 2013 Page 88-89.

¹² Response of Opponents to Reply of Applicants page 11 lines 11-22 Filed March 14, 2014.

1 outside the subdivision with a 2 ½ inch connection to the water system; also a lot owned by the Recreation
2 Association (APN 031-052-16)¹³ for which they have never paid an assessment; and a five acre parcel (APN
3 031-091-23)¹⁴ outside the subdivision sold to the Cardoza's. This five acre parcel has a water agreement,
4 signed by Del Wallis acting as President of the Homeowners' Association, should the five acres ever be
5 developed. There are also the commercial and agricultural connections mentioned earlier. The Commission
6 should use the correct information and adjust the water rate accordingly. Page twenty-two of applying for a
CPCN requires from the Water Company the Number of Customers (End of Year). An accurate accounting,
with documentation, of the number of customers and connections should be provided to the Commission by
the Water Company.

7 The "Decision" does not consider persuasive the rates formulated and entered into evidence by
8 Complainants found in various filings with the CPUC. The Commission should be aware that the water
9 system under review is simple, requires little employee attention each week, and is inexpensive to operate.
10 One of two wells is turned on when the water tanks are determined to be below acceptable levels and water is
11 pumped up to the tanks through a looped system traversing the subdivision. Gravity feeds the subdivision
12 connections from these tanks. There are neither meters nor a treatment facility. The Water Company is
13 located in a rural area where costs are much lower than in the larger urban areas of the State. Rates must be
14 considered with the Tuolumne County location of the Water Company in mind. The Commission should
15 consider that in various filings with the CPUC, Complainants provided accurate methods of determining water
16 costs and rates for the subdivision. In one such filing, the costs for water in Budget years 2010-2011,
2011-2012, and 2012-2013 were discussed in detail. Also, in this filing is an accurate accounting of the actual
time that is devoted to water each year by the water employee. The time is substantially below 61%.¹⁵ TUD's
rates were also discussed and shown to be lower than those of either the Recreation Association or the Water
Company.¹⁶

17 Officials in both the Recreation Association and the Water Company have discussed rates much lower than
18 those currently being charged. Recreation Association Water Director Ron Hawke, in his 2011 Annual Report
19 to the Drinking Water Program ending December 31, 2011, stated that the annual flat rate for water was \$190
20 or \$16 per month per lot. At the Odd Fellows Sierra Recreation Association Annual General Meeting May 29,
21 2011 Water Director Ron Hawke reported on the cost of water. He said: "At this point, it is my hope that our
foreseeable future needs will be met with our current rate of funding for the Water Reserve, namely \$16,380
per year, which calculates out to \$3.75 per month per lot." Director Hawke went on to say: "The operating
cost, as proposed in our budget for 2011 to 2012, is \$19,050, which includes maintenance of the system and

22 _____
23 ¹³ Response of Opponents to Reply of Applicants page 12 lines 1 – 9 Filed March 14, 2014.

24 ¹⁴ Response of Opponents to Reply of Applicants page 18 lines 24 - 25 and page 19 lines 1 – 4 Filed March 14,
2014.

25 ¹⁵ Rebuttal to the Joint Filing of Application Exhibit 12 Filed October 14, 2013

¹⁶ Rebuttal to the Joint Filing of Application pages 19-21 sections XXXI and XXXII Filed October 14, 2013.

1 water testing and other actions to maintain our system to CDPH standards. This amounts to \$4.35 per month
2 per lot. The total cost for operating and reserves, comes to \$8.10 per lot per month.” Michael Lechner, at the
3 time the vice-president of the Water Company, said that the actual cost of water was \$100 per lot per year¹⁷. It
4 is disconcerting to Complainants that the information/evidence they provided in various filings with the CPUC
5 was never used by DWA Staff to determine fair water rates for either the Recreation Association or the Water
6 Company. Instead, Staff relied on what the Recreation Association and the Water Company said without
7 requiring supportive documentation like that supplied by Complainants. Also, the DWA Staff Report fails, as
8 CPUC regulations require, to bring the proposed rates in compliance with those of the nearest utility. That
9 utility is the one with a well adjoining Sierra Camp Subdivision, Tuolumne Utilities District.

10 The formation of the Service Company and the Water Company by the Recreation Association in 2013
11 brought a dramatic increase in the proposed costs to the lot owners in the subdivision.

12 For example:

- 13 1. The total budget for all services proposed by the Recreation Association for 2011- 2012 was
14 \$302,120.
- 15 2. The Recreation Association’s reported costs for 2013-2014 was \$99,950.
- 16 3. The Service Company’s budget for 2013-2014 was \$196,855
- 17 4. The Water Company’s budget for 2013-2014 was \$342,910.
- 18 5. The total for 2013-2014 for the three corporations was \$639,715.
- 19 6. Total costs increased by \$337,595 from the proposed 2011-2012 budget year to the 2013-2014
20 budget year.
- 21 7. An increase of over 100% was proposed without any changes offered for the proposed increases
22 except the formation of the Service Company and the Water Company by the Recreation
23 Association

24 Complainants are concerned about such a dramatic increase in proposed charges to lot owners. For
25 example, in 2011-2012 the proposed Recreation Association budget of \$302,120 covered all costs, including
water, roads, structures owned by the Recreation Association, equipment maintenance, wages and benefits,
fuel, insurance, accounting, taxes, etc. as well as providing the financial support required for the Recreation
Association’s approximately 490 acres of timber land. For 2015-2016, the budget for water alone is \$340,131
for the subdivision. Complainants urge the Commission to consider this dramatic increase in the water rate
before approving the CPCN. Despite the dramatic increase in water rates since 2012-2013, the only change to
the water system was a change to the name of the water purveyor; from the Odd Fellows Sierra Recreation
Association to the Sierra Park Water Company.

There are more economical avenues to follow than what is proposed by the Applicants. Water charges are
too high for a subdivision with approximately forty homes occupied full time, no overhead, no manager, a less

¹⁷ Response to Reply of Applicants page 43 lines 5 – 17 Filed March 14, 2014.

1 than full-time employee, no meters, and untreated water. Also, the water rates are too high for a company that
2 took over the existing water system at no cost. The Water Company was gifted the assets of an existing water
3 system which had been constructed, improved, maintained, and subsidized by the lot owners since the
4 inception of the subdivision approximately sixty years ago. Based on all of these factors, it is prudent to
5 consider water rates that are substantially lower than those suggested by the Applicants, the “Decision”, or
6 DWA Staff.

7 Page fourteen refers to the lack of experience of the intervenors (Complainants) concerning the water
8 system and water rates. Complainants dispute this assertion in the “Decision”. Two of the Complainants have
9 a combined total of approximately 12 ½ years of experience as directors on the Recreation Association Board
10 and one year each on the now defunct Homeowners’ Association Board. Water budgets, water expenses, and
11 employee work assignments were handled on a regular basis. Three of the Complainants have a combined
12 total of living in Sierra Camp Subdivision as full time residents of approximately fifty-six years. One of the
13 Complainants has installed water lines, worked on the water system on an as need basis, operated the water
14 system, and assisted the hired water employee when his assistance was requested. All of this was done on a
15 volunteer basis. The current water operator asks some of the Complainants where valves are located in order
16 to shut off sections of the water supply system.

17 Complainants who are full time residents of Sierra Camp Subdivision observe the activities in the
18 subdivision on a daily basis and know what is and is not being accomplished. This is especially true regarding
19 the work performed by the Water Company employee for the Service Company. Service Company work is
20 being billed to the lot owners by the Water Company at a much higher rate than what is actually reimbursed by
21 the Service Company. Thus, Water Company customers are subsidizing most of the work that the Water
22 Company employee does for the Service Company. It is dramatically higher than the 39% claimed by the
23 Water Company. Complainants provided evidence from the minutes of the Service Company and the Water
24 Company that substantiates a much higher amount than 39%.¹⁸ Complainants are more knowledgeable about
25 the costs and operation of the water system than the part-time residents serving on the Water Company’s board
and as well its employee. This is also true of DWA Staff who have never visited the subdivision despite
requirement in the application for a CPCN which requires staff to visit proposed water systems. A visit by
Staff was never made; class “D” water systems are not excluded from this requirement.

Page nine of the “Decision” expresses the need to engage an engineering consultant. Complainants
question the need to hire another consultant to examine the water system. The lot owners paid for the
consulting work recently completed by Domenichelli and Associates, Inc. Another fee for an engineering
report would duplicate, at great expense, what the lot owners already paid for. The only justification for
another engineering report would be to address the installation of meters. However, meters are the
responsibility of the Water Company as covered under Rule No. 16 A1a(1): “...the utility will furnish and

¹⁸ Reply to Staff Report page 10 lines 15-23, page 11 lines 1-25, page 12 lines 1-23, page 13 lines 1-25, page 14
lines 1-25, and page 15 lines 1-9 Filed October 11, 2014.

1 install the service pipe, curb stop, meter, and meter box at its own expense ...”. Fire suppression was
2 considered adequate by Dommenichelli and Associates, Inc.

3 Complainants are concerned about proposed costs in the “Decision” for a new engineering study. In the
4 DWA Staff Report on September 30, 2014 the recommended fee for the study was \$25,000. This
5 recommendation has increased by \$20,000 to \$45,000. As discussed above, Complainants do not think that a
6 new engineering study is necessary. Also, Complainants do not understand the increase for such a study of
7 \$20,000 from September 2014 to the present.

8 Page eleven discusses the Commission’s desire to merge small water systems into larger ones.
9 Complainants agree that such a merger would best serve the lot owners in the subdivision. Service would
10 improve and the cost of water would be kept down. Service, billing, administration, insurance and other costs
11 would not be duplicated if a merger took place. Such a merger would also save money since there would not
12 be a need in the future to raise rates to fund a manager for this small water company.

13 Something is also missing from the Staff Report that is required when applying for a CPCN. Complainants
14 have never received a list of nearby systems and an explanation as to why those systems cannot or will not
15 provide service in the area. The Commission, despite the recommendation in the “Decision”, should deny the
16 CPCN on the basis of Resolution No. M-4708 that states that the Commission will “deny certificates for a
17 potentially viable system if another entity, such as a public utility or public district, is able to serve the
18 proposed area.” Barring the Commission denying the CPCN, it should make its approval contingent upon the
19 Water Company providing hard evidence from TUD that it is unable or unwilling to serve the proposed area.

20 Should a merger between TUD and the Water Company not take place, applying for a CPCN requires:
21 “...proposed revenues would be generated at a rate level not greatly exceeding that set for comparable service
22 by other water purveyors in the general area.” The “Decision” does not address this. Complainants previously
23 compared water delivered by the Water Company and its cost to that of raw water delivered by TUD and its
24 cost. The reason for doing that was because the nearest comparison to the untreated water delivered by the
25 Water Company is the raw water delivered by TUD. Complainants would welcome a comparison by Staff of
the Water Company’s rates and those charged for comparable service from TUD.

In an earlier filing Complainants used data supplied by Applicants that was provided by TUD. A rate was
formulated for the subdivision using TUD rates:¹⁹

1. A cubic foot of water is 7.5 gallons.
2. Multiplying 7.5 gallons by the average monthly usage by TUD customers of 1,080 cubic feet equals
8,100 gallons. Twelve months times 8,100 gallons a month equals 97,200 gallons on average by TUD
customers per year.
3. TUD’s average rate of \$48.26 per month times 12 gives a yearly charge of \$579.12 per year.
4. Dividing \$579.12 by 97,200 gallons gives a rate of 0.006 cents per gallon.

¹⁹ Rebuttal to the Joint Filing for a Certificate pages 18 and 19 Filed October 14, 2013.

1 Based on the TUD numbers, a rate can be developed for Sierra Camp Subdivision. TUD delivers treated
2 water and there is far more irrigation by TUD customers than there is by Sierra Camp residents who reside at
3 an elevation of approximately 5,000 feet. Rates generated for Sierra Camp Subdivision based on the TUD
4 information above:

- 5 1. The average usage is 9,742,500 gallons per year. At least 1,742,500 gallons must be subtracted for
6 Recreation Association/Service Company usage for irrigation, commercial usage, operator error, etc.
7 This gives an annual domestic usage of 8,000,000 gallons by the 311 developed lots in Sierra Camp
8 Subdivision.²⁰
- 9 2. Dividing 8,000,000 gallons by 311 developed lots gives an average domestic usage of 25,723
10 gallons per year.
- 11 3. Using the TUD rate of 0.006 cents per gallon times 25,723 gallons gives a yearly rate for Sierra Camp
12 of \$154 per lot per year.
- 13 4. Taking the number used in the “Decision” of 364 lots times \$154.00 gives a total of \$56,056.

14 By using information provided by the Recreation Association, a valid comparison was made between TUD
15 water rates and those in Sierra Camp Subdivision. CPUC rules require that the water rates for the Water
16 Company be comparable to TUD rates. Complainants have generated a comparison for the Commission.
17 Before the Commission makes a decision and in fairness to all concerned, DWA Staff should be required to do
18 the same. Just giving the Water Company approximately half of their inflated request does not meet the
19 CPUC’s standards of fairness to consumers.

20 Page twelve discusses the connection between the Water Company, the Recreation Association, and the
21 Service Company. There is a clear conflict of interest, problems, and issues with the Water Company and
22 Service Company boards; for example, a husband and wife serve on both the Water Company and the Service
23 Company boards; also, the president of the Service Company board and, until recently, the vice-president of
24 the Water Company board was the same individual and also the father-in-law of the Water Company board’s
25 president; there are also several board members serving on both company’s boards simultaneously. Generally,
a meeting of one board takes place and immediately following its adjournment the meeting of the other board
opens for business. As the “Decision” recommends, such conflicts of interest must cease.

Beginning on page fifteen and ending on page eighteen there is a discussion in the “Decision” of rates
charged and the refunds that are required. In order to clarify and facilitate the comments of Complainants’, the
issues will be addressed in two parts, that of the Recreation Association and then the Water Company:

1. The water payment to the Recreation Association for 2012-2013 was addressed in the JOINT
SCOPING MEMO RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW
JUDGE filed on February 2, 2013. The judge was ALJ Minkin and the Assigned Commissioner was
Catherine J. K. Sandoval. Based on this ruling the Recreation Association, on December 7, 2012,

²⁰ Rebuttal to the Joint Filing for a Certificate page 18 Exhibit “10” provides the average water usage for Sierra
Camp Subdivision from 1985-2012 Filed October 14, 2013.

1 submitted a report detailing water costs for three years: the report stated that the actual expenses for
2 the 2010-2011 budget year were \$158,312.39; for 2011-2012 they were \$187,754.35; and that the
3 budget for the provision of water and maintenance of the water system for 2012-2013 was
4 \$208,061.71 or, based on 364 lots, \$571.60 per lot per year. Based on the yearly rate per lot of
5 \$571.60, both parties, Complainants and Recreation Association, agreed to follow a procedure for
6 payment of the water fee. On page four of ALJ Minkin's Scoping Memo, it states: "Defendant has
7 agreed to accept quarterly payments, subject to refund and will ensure that the funds are
8 available, should refunds be required." It goes on to say: "Complainants agreed to pay the full water
9 assessment subject to refund." On page five of the Scoping Memo it states: "... it is reasonable to lift
10 the stay and have our Staff from the Division of Water and Audits (DWA) review the books and
11 records of Defendant, assess the water system, and review the reports submitted by Complainants.
12 Staff will meet with Complainants and Defendant in order to prepare a report with its
13 recommendations." Should the Commission approve the "Decision" as proposed, it will be defaulting
14 on what was agreed on in the Scoping Memo of ALJ Minkin and Assigned Commissioner Sandoval:

- 15 a. Payment was made on the basis of a refund.
- 16 b. The Recreation Association agreed to ensure that the funds were available should refunds be
17 required.
- 18 c. Nothing in the Scoping Memo ordered, nor was payment made, on the basis of the refund being
19 only 25% of what was required as the "Decision" now proposes.
- 20 d. The "Decision" states that the Recreation Association's refund, per Staff's calculations, is
21 \$109,432.
- 22 e. However, the "Decision" proposes to refund only 25% of the \$109,432 overcharge.
- 23 f. Complainants argue that the refund should be the full \$109,432 with interest per Staff's
24 recommendation and per the contract entered into between Defendant and
25 Complainants that resulted from the Scoping Memo.
- g. On December 7, 2012 Del Wallis President of the Recreation Association sent a letter to the lot
owners that said: "Once the PUC has had an opportunity to review the Recreation
Association's budget and expenses for 2012-2013, it will determine if any refund is due to the
lot owners of the Park for 2012-2013 for the provision of water and maintenance to
the water system. If a refund [sic] ordered by the PUC, the Recreation Association will
immediately comply."
- h. The Recreation Association is not a newly formed corporation that is in danger of going broke
and should be required to pay the full amount, \$109,432, not 25% of that as suggested by the
Decision".
- i. Complainants will gladly accept payment on a quarterly basis just as the water payment was
made.

- 1 j. Staff never, to Complainants knowledge, complied with any of the actions ordered in the
2 Scoping Memo.
- 3 k. In a related matter, Staff has never visited the subdivision, even though a visit is required when
4 the Commission is considering the granting of a CPCN. At some point in this process Staff
5 from the DWA should have spent time in the subdivision gaining first-hand
6 knowledge about the water system.
- 7 l. There is another matter between the Complainants and the Recreation Association concerning
8 the agreement (contract) related to the 2012-2013 water rate and Scoping Memo that
9 the Commission needs to be aware of. Three of the Complainants were sued by the Recreation
10 Association on March 26, 2013 for, in part, the non-payment of the 2012-2013 water fee
11 despite the fact that they paid their water bill per the terms of the Scoping Memo.
- 12 2. The water rates from June 2013-May 2016 were established by the Water Company. The water rate
13 for 2013-2014 was \$968 for 300 developed lots and \$890 for 59²¹ undeveloped lots for a
14 total assessed income of \$342,910. The water rate for 2014-2015 was \$966 for 300 developed lots
15 and \$899 for 59 undeveloped lots for a total assessed income of \$342,841. The water rate proposed
16 for 2015-2016 and approved, was \$955 for 300 improved lots and \$909 for 59 unimproved lots
17 for a total assessed income of \$340,131. Based on these amounts, Complainants take issue with the
18 Decision”:
- 19 a. The “Decision”, on page seventeen, states that the forecast revenues for 2015 are only
20 \$193,349.00. However, Water Company records show the 2015-2016 assessment
21 income to be \$340,131.
- 22 b. This indicates that the Water Company completely ignored the September 30, 2014
23 recommendation by the DWA Staff Report for the 2015-2016 budget year.
- 24 c. In the Water Company Budget Report ended April 30, 2015, after eleven months of the fiscal
25 year, it showed \$80,210 in the checking account, \$71,952 in a general reserves account, and
\$10,000 in general reserves for a total of \$162,162.
- d. The DWA Report recommended a refund for 2013-2014 and 2014-2015 of \$321,422 with
interest. The “Decision” recommends to the Commission that the refund be
\$80,000 or only 25% of that owed to the lot owners. Complainants argue that this is grossly
unfair to the lot owners, some of whom are on limited and fixed incomes. This unregulated
Water Company took the opportunity to gouge the lot owners by increasing rates their first
year in operation by \$134,848.29 over that charged by the Recreation Association in
2012-2013. The DWA Report stated that the water rate in 2012-2013 of \$208,061.71 charged
by the Recreation Association was \$109,432 too high. That means, based on the DWA Staff

²¹ Water Company should supply the data that confirms 300 developed lots and 59 undeveloped lots.

1 computations, the water charge by the Water Company in 2013-2014 was actually
2 \$244,280.29 more than what the DWA Staff recommended as an acceptable water rate
3 for the Recreation Association in 2012-2013.

- 4 e. Complainants urge the Commission to reject the part of the “Decision” refunding only 25% of
5 what was overcharged by the Water Company and follow the recommendation of the DWA
6 Staff Report concerning a full refund to the lot owners with interest.
- 7 f. Complainants request that the same formula established in the DWA Staff Report for
8 2013-2014 and 2014-2015 overcharges be used for refunding the overcharges collected for
9 2015-2016.
- 10 g. If refunding the full amount owed to the lot owners causes this under-funded and poorly
11 managed water company to go bankrupt, then so be it. What happened to the money collected
12 but not needed for the operation of the Water Company per the Staff’s Report? Where did the
13 money collected in overcharges go?
- 14 h. Based on the Recreation Association’s fee for water in 2012-2013 of \$208,061.71 being
15 reduced by \$109,432 to \$98,629.71, it is not clear to Complainants what the DWA
16 Staff’s rationale is in suggesting a water rate of \$193,349 for the 2015-2016 budget year.
17 Neither significant improvements to the water system nor better service have taken place.
18 As Complainants stated earlier, the only change to the water system has been its name.

19 A fair water rate can be established by using the information generated by using the DWA Staff Report and
20 ALJ Minkin and Assigned Commissioner Sandoval’s Scoping Memo. The water rate for 2012-2013 found in
21 the Scoping Memo was \$208,062 (all amounts are rounded off to the nearest dollar). The DWA Report said
22 that the Recreation Association owed a refund for 2012-2013 of \$109,432. Subtracting \$109,432 from
23 \$208,062 gives a water rate of \$98,630 for 2012-2013. Each year’s rates can be calculated by adding a 5%
24 inflation factor to the \$98,630 water rate for 2012-2013 and then another 5% to each succeeding year.
25 Complainants assume that a 22% profit is included in the \$98,630 that DWA Staff recommended for
2012-2013. The following rates were generated:

1. 2013-2014 = \$103,562
2. 2014-2015 = \$108,740
3. 2015-2016 = \$114,177

These rates, which are based on the Scoping Memo of ALJ Minkin and Assigned Commissioner Sandoval
and the DWA Staff Report, are fairer to the rate payers and are much closer to the rates charged by the
Recreation Association prior to the Complaints filing against it with the CPUC. The rates above are also more
consistent with water rates quoted earlier by Water Director Ron Hawke and Vice-President Michael Lechner
than are the current rates charged by the Water Company.

CONCLUSION

1 Complainants urge the Commission to carefully consider the comments addressed above. The Commission's
2 decision, should it duplicate the Proposed Decision of ALJ Smith, would be going against its own rules, Judge
3 Minkin and Assigned Commissioner Sandoval's Scoping Memo, and the contract between the Complainants
4 and the Recreation Association found in the Scoping Memo. Approving the "Decision" would be based on
5 unsubstantiated, incorrect, misleading, and in some cases untruthful information provided by the Water
6 Company and the Recreation Association. The STAFF REPORT ON APPLICATION in ATTACHMENT A
7 of the "Decision", pages 26 and 27, addresses this same issue concerning information provided by Applicants:
8 "Applicants based their rate design on estimates that exceeded actual costs by a significant amount. Some
9 items include; higher than historical estimates for purchased power; charging full-time employee wages,
10 benefits, and taxes for an employee who devoted only 61% of his time for Water Company related matters;
11 charging inflated amounts for materials and water testing, charging unjustified legal and consulting expenses;
12 charging higher than reasonable general expenses; charging for lease payments for easements to water related
13 assets; and setting up a replacement reserve schedule without proper justification."

14 Applicants chose to conduct business in an irresponsible manner and do not deserve a break concerning
15 refunds of previous overcharges. By recommending a refund of only 25% of that recommended in the DWA
16 Staff Report, the "Decision" is condoning Applicants' irresponsible and bad behavior.

17 The CPCN should either be denied or delayed until the proper information is provided; it should be
18 accompanied by hard evidence rather than undocumented statements. There is also the problem of the Water
19 Company ignoring the rules of the Commission. All of the issues and concerns brought up in the
20 Complainants' Comments to the "Decision" should first be addressed before a decision is rendered. The Case
21 and the Application have been before the CPUC for several years. Extra time at this point to do it correctly
22 will not matter.

23 With this Class "D" water company eligible for a 22% margin of profit, it is imperative that all of its
24 claimed costs are verified. Should the Water Company be inflating its costs, then its profit margin would be
25 greater than the 22% it is allowed. Verification of the costs sent in by the Water Company is necessary to
protect the lot owners in Sierra Camp Subdivision.

At times, Complainants may seem overly critical of DWA Staff. However, Complainants understand that
DWA Staff have a job to do that includes many other duties than just this one complaint and application.
Complainants appreciate the detail, attention, and energy devoted to this complaint and application by all of
the CPUC Staff.

August 30, 2015

Respectfully submitted,

/s/ Fred Coleman

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