



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Complainants,

vs.

Odd Fellows Sierra Recreation Association,

Defendant

CASE NO. C-1203017

RESPONSE TO DEFENDANT’S JAUNARY 11, 2013 STATUS REPORT

1. On November 8, 2012 the Local Agency Formation Commission (LAFCO) issued a letter to Defendant stating “After reviewing the application materials submitted for the project, the Tuolumne County Local Agency Formation Commission (LAFCO) has determined that your application is incomplete or requires additional information.” The letter continues with a request for clarification, information, and concerns about seven items. As of 2:41 PM on January 16, 2013, according to Renee Hendry Planner II for Tuolumne County, “The County has received financial statements from the last two years and an updated CSD boundary map that shows the water tank locations”.

1 According to Defendant's Status Report on January 11, 2013 they had
2 fulfilled all of LAFCO's requests with the exception of the roads.

3 2. The Status Report was filed with the expectation of honesty and it is assumed
4 under the penalty of perjury. In exhibit "B" submitted by Defendant they
5 show that Fred and Ann Coleman, Ruth Dargitz, Larry and Louanne Vaughn,
6 and Steve and Debbie Wallace owed the Odd Fellows Sierra Recreation
7 Association \$1,024.00 and now have late charges of \$75.00 and still have an
8 outstanding balance owed. This is a complete lie. The individuals mentioned
9 above do not have CC&Rs in their chain of title. The Defendant (Recreation
10 Association) is not an HOA. The individuals mentioned above have never
11 entered into a contract with Defendant for most of the services Defendant is
12 billing for. Defendant was the developer of the subdivision which borders
13 land that Defendant still owns and Defendant thinks the lot owners in the
14 subdivision are obligated to pay for the privilege of living next to Defendant's
15 property.

16 3. At the telephone conference on September 11, 2012 Complainants brought up
17 an issue concerning the roads in the subdivision. Judge Minkin reminded
18 Complainants that the Commission has nothing to do with the roads. Since
19 that is the case concerning the roads, why is Defendant presenting items like
20 Exhibit "B" to the Commission which contains charges for items other than
21 water? This is especially deceitful and misleading since the so called
22 assessments are illegal. This seems like a blatant attempt to gain sympathy for
23 Defendant since the evil Complainants are not paying their bills to the poor
24 downtrodden Defendant. Defendant and their attorney need to stick to the
25 issue which is water and only water, not a charge that Defendant thinks

1 Complainants owe because Defendant was able to defraud the lot owners for
2 over twenty-five years.

3 4. Defendant misleads the Commission on page 4 item 8 when they say:

4 “Recreation Association hired Domenichelli and Associates, Inc. (the “Water
5 Consultant”), an independent civil engineering firm with expertise in water
6 systems, to study the water system used to provide water to the lot owners in
7 the Park and to recommend water user fee rates for the SPCSD. The Water
8 Consultant prepared a report for LAFCO which is attached hereto as **Exhibit**
9 **“C”**. As the Commission will see, the Water Consultant is recommending to
10 LAFCO that the monthly fee for provision of water to the lot owners of the
11 Park be set at **\$75.09 per month (or \$901.08 per year)** for the next five (5)
12 years.” This statement is misleading and far from the truth. Most of the
13 \$75.09 monthly fee attributed to the Water Consultant by Defendant comes
14 from Defendant’s own data presented to the Commission in Defendant’s
15 December 7, 2012 filing. It was not independently arrived at by the
16 Defendant’s Water Consultant. On the first page of Defendant’s **Exhibit “C”**,
17 the Defendant’s Water Consultant says: “Annual expenses are based on
18 information provided by the OFSRA and Golden State Surveying and
19 Engineering Inc. (GSSE) representing the Association. Capital costs for
20 repair and replacement of water facilities are based on recent pipeline projects
21 designed by Domenichelli and Associates (D&A) constructed in Sacramento,
22 El Dorado, and Calaveras counties.” Based on Defendant’s own Water
23 Consultant’s statement, it is obvious that the inflated water cost of \$571.60
24 was given to Defendant’s Water Consultant by the Defendant and their
25

1 surveying and engineering firm (GSEE). The \$571.60 was not independently
2 arrived at by Defendant's Water Consultant.

3 5. The engineering firm used by Defendant does not do any research on their
4 own in confirming the true water cost in the subdivision. They were hired to
5 assess the condition of the Park's water system and make recommendations
6 for repair and improvement over the next twenty years. In determining annual
7 expenses the Water Consultant just copied the inflated costs provided to them
8 by Defendant and GSEE and submitted by Defendant to the Commission on
9 December 7, 2012. To the \$571.60 a year presented in that filing by the
10 Defendant and GSEE, the engineering firm added \$23.89 a month for
11 suggested improvements and repairs (\$2,016,000 in suggested capital
12 improvements over the next twenty years) for and average monthly rate of
13 \$71.52 over the next five years. The Water Consultant also suggested the
14 water charge be increased by 5% to establish a reserve fund. The \$23.89 plus
15 the 5% added to the monthly rate of \$47.63 (\$571.60 divided by 12) provided
16 by Defendant and GSEE gives the \$75.09 monthly rate Defendant attributes to
17 their Water Consultant when in fact most of this rate is based on Defendants
18 fabricated water costs of \$571.60 per year or \$47.63 per month.

19 6. Defendant claims that a water rate of \$75.09 per month was proposed by the
20 Water Consultant. The Commission must remember that Defendant grossly
21 inflated their water costs for 2010-2011, 2011-2012, and 2012-2013 as
22 Complainants proved with Defendant's own documents in the Complainants'
23 December 20, 2012 filing. The Water Consultant just used Defendant's
24 fabricated water costs to generate the document Defendant now claims was
25 arrived at entirely by their Water Consultant.

1 7. Defendant claims that their water rate is fair since it falls between the rate
2 charged by Lake Alpine Water Company (LAWC) (\$127.70 per month for
3 300 connections) and Grizzly Flats CSD (\$60.37 per month for 600
4 connections). It is misleading for Defendant to quote \$127.70 per month for
5 the Lake Alpine Water Company since Defendant fails to explain to the
6 Commission that the monthly charge includes a fee of \$24.00 per month to re-
7 pay a loan to the State for a new water treatment plant. Operational expense is
8 \$71.00 per month even if the property owner fails to use one drop of water.
9 This gives a rate of \$95.00 per month. Water is then billed at \$6.36 per Ccf or
10 748 gallons of water (This information was obtained from Kim Johnson at the
11 Lake Alpine Water Company office via a phone conversation on January 18,
12 2013). It is unclear how Defendant arrives at the fee they present to the
13 Commission of \$127.70 per month.

14 8. Based on the discussion with Kim Johnson of the LAWC, it is obvious that
15 Sierra Park's water system nor water rate compares in any way to that of the
16 LAWC. The residents of the Bear Valley Community are receiving treated
17 water from LAWC, not the untreated water provided to Sierra Park. LAWC
18 also provides metered service which is the reason why they charge an
19 operational fee. The Defendant might be justified in some type of operational
20 fee provided water was metered rather than on a flat rate, if Defendant treated
21 their water, and if Defendant was re-paying a loan because of a new water
22 treatment plant or other major improvements to the water system. Also,
23 LAWC is regulated by the CPUC and is allowed a 12% profit.

24 9. Defendant states that LAWC has 300 connections when the web site
25 providing information about the LAWC states that they serve nearly 300

1 homes, 20 businesses, and 180 condominium units. They also sell water,
2 according to the “Bear Valley News and Views”, to Bear Valley Ski Resort
3 for snowmaking.

4 10. There is also a complaint against the LAWC with the CPUC number A-04-11-
5 013. It concerns the sale of half of the shares in LAWC to a developer in the
6 area. The sale is alleged to be in violation of CPUC regulations. The
7 complaint claims that the purchaser, Aspen Forest, is planning on developing
8 500 + condominiums, chair lift, and commercial space. LAWC does not
9 compare at all to Sierra Park.

10 11. The “Bear Valley News and Views” also provides a comparison between
11 LAWC’s yearly rate of \$968.58 in 2011 and other Class D water companies
12 and their rates for 2011: Cottage Springs Real Estate \$125.82; Madden Creek
13 Water Company \$202.17; Weimar Water Company, Inc. \$253.31; Sierra City
14 Water Works, Inc. \$372.32; R.R. Lewis Small Water Company \$287.28; and
15 Sonora Water Company \$201.65. The water companies mentioned above
16 seem like a better comparison to Sierra Park than does the Lake Alpine Water
17 Company. Defendant will go to any length to justify their inflated water cost
18 to the Commission.

19 12. Since Defendant suggests using the LAWC as a comparison to Sierra Park,
20 Complainants propose a fairer way to compare the two systems. In examining
21 Complainants’ **Exhibit “A”** the Commission will find that the price of a
22 gallon of water provided by LAWC is 0.0085 cents. In Complainants’
23 **Exhibit “B”** the water used by each lot per month on the basis of 311 lots
24 (actual connections) is 2,443 gallons. Using LAWC’s charge of 0.0085 cents
25 per gallon means that the water charge per month in Sierra Park should be

1 \$20.77 or \$249.24 per year. This is close to the amount, \$16.00 per month,
2 Water Director Hawke reported to the State in his 2011 Water Report.
3 However, if Defendant's method of billing for water is used and 364 lots is
4 applied, then monthly use of water comes to 2,087.20 gallons per lot per
5 month. Multiplying 2,087.20 by LAWC's charge of 0.0085 cents per gallon
6 gives Sierra Park lot owners a monthly fee of \$17.75 or \$213.00 per year.
7 These rates compare to those of Tuolumne Utilities District of \$12.82 per
8 month for raw water. Sierra Park has untreated water. These rates are also
9 comparable to those cited in eleven above.

10 13. Defendant claims in their **Exhibit "C"** that the water system is approximately
11 sixty years old. Complainants question the age of the water system on the
12 basis of evidence provided in Complainants' **Exhibit "C"**. This exhibit was
13 generated from the **2016 Odd Fellows Sierra Recreation Assoc. Federal**
14 **Asset Report**. Complainants' **Exhibit "C"** shows that the water system is not
15 sixty years old. Once again the engineer seems to have relied on
16 misinformation supplied by the Defendant and their representatives.

17 14. Complainants suggest that Defendant has inflated the water cost in order to
18 sell the proposed CSD to LAFCO. For some reason, Defendant seems to
19 think that water rates are safe from the mandates of Proposition 218. They are
20 not. The California Supreme Court, in the case Bighorn-Desert View Water
21 Agency v. Virjil, 2006 WL 2042597, ruled that water rates could be the subject
22 of local initiatives to repeal or reduce water rates. It is also illegal under
23 Proposition 218 to use the revenue collected for water to fund other expenses
24 incurred by the CSD.

1 15. Proposition 218 will force the CSD, should it be approved, to prove that the
2 inflated water costs proposed by Defendant are justified. The California
3 Supreme Court addressed “burden of proof” in the case Silicon Valley
4 Taxpayers Association Inc. v. Santa Clara County Open Spaces Authority
5 (2008) LEXIS 8677. The Court ruled that Proposition 218 eliminates any
6 shield normally held by local agencies against challenges to their decisions.
7 Without any presumption of validity, the burden now lies on the agency to
8 prove why its decision was valid. Thus, the CSD, if established, will have to
9 provide the evidence that Defendant’s inflated water costs are justified. This
10 is something the Commission should require Defendant to do prior to
11 Defendant dumping the water system on the lot owners and the proposed
12 CSD.

13 16. Defendant also seems unaware of the impact of Proposition 26 and their
14 inflated water rates if the CSD goes through. Proposition 26 says that the
15 local government, CSD in our case, bears the burden of proving by a
16 preponderance of the evidence that a levy, **charge**, or other exaction is not a
17 tax, and that **the amount is no more than necessary to cover the reasonable**
18 **costs of the governmental activity.**

19 17. If the CSD is approved on the basis of Defendant’s inflated water cost, the
20 CSD will be challenged under the mandates of Propositions 218 and 26. If the
21 inflated water cost now being proposed by Defendant are reduced, the newly
22 formed CSD will be in financial trouble from its inception.

23 18. A better solution than an expensive CSD is for Defendant to work
24 constructively with Complainants in arriving at a better method for delivering
25 water to the lot owners in Sierra Park. That solution is the Tuolumne Utilities

1 District. It is less expensive and we are in their area of operation. They
2 already have a well in Sierra Park.

3
4
5 DATED: January 21, 2013

Respectfully Submitted,


6 By: 
7 Fred Coleman

EXHIBIT "A"

LAKE ALPINE WATER COMPANY

- There is a charge of \$71.00 per month operational fee – ready to serve before any water is used.
- There is a charge of \$6.36 per Ccf or 100 cubic feet of water or 748 gallons of water.
- 100 cubic feet of water equals 748 gallons.
- LAWC bills \$6.36 for every 748 gallons of water used.
- Dividing \$6.36 by 748 gallons gives the per gallon rate LAWC customers are charged.
- This charge equals 0.0085 cents a gallon.

EXHIBIT "B"

SIERRA PARK

Sierra Park water usage for 2012:

- 10,129,900 gallons
- 10% of the 10,129,900 gives 1,012,990 gallons used to irrigate Defendant's property and provide water for Defendant's commercial connections.
- Subtracting 1,012,990 from 10,129,900 gives a total of 9,116,910 gallons of water used by the lot owners for 2012.
- Dividing the 9,116,910 gallons by 12 months = a monthly use of 759,742.50 gallons

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- 759,742.50 gallons divided by 311 lots (actual connections) = 2,442.90 gallons per lot per month.
 - 2,443 gallons times the per gallon rate charged by the LAWC of 0.0085 cents = \$20.77 per month rate for water in Sierra Park.
 - This amounts to 12 x \$20.77 per month for a yearly rate of \$249.24.

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- 759,742.50 gallons divided by 364 lots (as computed by Defendant) = 2,088 gallons per lot per month.
 - 2,088 gallons x the per gallon rate charge by the LAWC of 0.0085 cents = \$17.75 per month rate for water in Sierra Park.
 - This amounts to 12 x \$17.75 per month for a yearly rate of \$213.00.

EXHIBIT "C"

CAPITOL WATER IMPROVEMENTS JANUARY, 1975 TO MARCH, 2010

1				
2				
3	•	1/1/1975	Replace water lines	\$13,045
4	•	1/1/1976	Replace water lines	\$8,079
5	•	1/1/1976	210,000 gallon water tank	\$35,000
6	•	2/1/1980	New well and pipe	\$3,706
7	•	4/30/1984	Water sys pump	\$1,054
8	•	6/1/1984	Well pump	\$1,835
9	•	12/27/1986	New well #5	\$18,693
10	•	4/1/1988	Pump well #5	\$4,428
11	•	5/17/1993	45,000 gallon water tank	\$13,939
12	•	6/18/1993	45,000 gallon water tank	\$5,050
13	•	12/1/1994	4 water tanks 13,500 gallons	\$18,141
14	•	7/5/1995	4 water tanks 13,500 gallons	\$5,947
15	•	12/4/1996	Well and pump #6	\$7,954
16	•	9/15/1997	Well and pump #6	\$5,564
17	•	11/14/1999	Coat inside of tanks	\$19,665
18	•	1/26/20900	Wall switch	\$975
19	•	2/18/2002	Water improvements	\$1,492
20	•	1/24/20906	Generator and installation	\$30,086
21	•	11/20/2006	* Water repairs Steve Wallace	\$5,473
22	•	6/26/2007	* Water repairs Steve Wallace	\$3,420
23	•	10/31/2007	* Water repairs Steve Wallace	\$4,401

* The last three water repairs were to make three loops out of three dead ends.