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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)
And Related Matter,	Case 12-03-017

REBUTTAL TO:

COMMENTS OF APPLICANT ODD FELLOWS SIERRA RECREATION ASSOCIATION TO PUBLIC UTILITIES COMMISSION'S DIVISION OF WATER AND AUDITS STAFF REPORT DATED SEPTEMBER 30, 2014

AND

RESPONSE OF SIERRA PARK WATER COMPANY TO DIVISION OF WATER AND AUDITS STAFF REPORT DATED SEPTEMBER 30, 2014, ON APPLICATION OF ODD FELLOWS SIERRA RECREATION ASSOCIATION AND SIERRA PARK WATER COMPANY, INC. FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (A. 13-09-023) AND COMPLAINT BY FRED COLEMAN, STEVEN WALLACE, LARRY L. VAUGHN AND RUTH DARGITZ VS ODD FELLOWS SIERRA RECREATION ASSOCIATION (C. 13-03-017)

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December 8, 2014

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INTRODUCTION

On November 25, 2014 the Sierra Park Water Company and on November 26, 2014 the Recreation Association filed their comments on the Public Utilities Commission's Division of Water and Audits Staff Report dated September 30, 2014. Complainants found in the comments filed by the Recreation Association and the Water Company numerous examples of statements and information that are contradicted by evidence which will be explained and provided with this document. The comments of the Recreation Association will be addressed in **SECTION I** and those of the Water Company will be addressed in **SECTION II**.

SECTION I

1. Page 4 lines 17-19 - References are made to certain undocumented agreements. The Recreation Association should be required to list all such agreements, provide a hard copy of each agreement, and provide the date, place, vote totals relating to the approval of such agreements as well as all information sent out concerning the proposal to vote on such agreements, and the legal authority supporting these agreements.[1]
2. Page 4 lines 15-19 – The Recreation Association states that the HOA failed to deliver the assessments collected to the Recreation Association. The truth is that the HOA paid the amount required by the Water Use Agreement, $69,350.00, and requested bills from the Recreation Association for any other services that they claimed they provided. The Recreation Association refused to provide any bills to substantiate their

[1] It is time for the Recreation Association to back their statements up with proof. Statements without supportive evidence are meaningless.

demands. They said that they wanted all the money.[2] Paying the Recreation Association the money they demanded without invoices to substantiate the demand would have violated the Homeowners' Association Board of Directors' fiduciary responsibility.

3. Page 4 lines 20-25 - The Recreation Association addresses a case in Tuolumne County, Case No. CV57297, against the HOA. Complainants commented on this case, this issue, and membership in the HOA in an earlier filing.[3] From the inception of the Odd Fellows Sierra Homeowners' Association in 1986 to the spring of 2011, the Recreation Association was the only member of the HOA with CC&Rs in the chain of title to the property they owned in the subdivision and referred to as "the caretaker's cabin"; per the Bylaws of the Odd Fellows Sierra Homeowners having CC&Rs in their chain of title made the Recreation Association a member of the Homeowners' Association, in fact the only member.[4] By the spring of 2011, approximately nine lot owners had attached CC&Rs to their chain of title and thus became eligible to be a member of the HOA. Subsequently, one owner removed CC&Rs from his property. Therefore, in the suit, CV57297, the Recreation Association was suing themselves. Mr. Trujillo even substantiates the fact that most of the lot owners do not have CC&Rs when he said "I think there would be four or five that have CC&Rs. The other 360 do not have CC&Rs recorded on their property."[5] At the time that the Water Use Agreement and the Licensing Agreement were adopted, 1986, the Recreation Association was the only member of the Odd Fellows

[2] EXHIBIT 1 – Correspondence relating to the HOA's attempts to pay the Recreation Association during 2011-1012.
[3] Complainants' Response to the Joint Reply submitted on March 13, 2014 Section III pages 4 and 5.
[4] EXHIBIT 2 – Bylaws of Odd Fellows Sierra Homeowners' Association page 2 Article III Section 3.01.
[5] Transcript Prehearing Conference July 1, 2013 page 81 lines 15-17.

Sierra Homeowners' Association (HOA).[6] Del Wallis, the current President of the Recreation Association's board of directors, explained the relationship between the Recreation Association and the HOA to member Elsie Manning when she asked about the HOA and Recreation Association boards. Del Wallis stated that money "went through in name only to the Homeowners'. And it, and it became a paper deal." He went on to say "… since one board controlled both boards, it was just a paper shuffle…", [7] It must be noted that the case referenced in this section was an uncontested case in which the Recreation Association was allowed to present all the evidence and slant it to suit themselves.[8]

4. Page 5 lines 1-2 - The Water Use Agreement was drafted by the Recreation Association.[9] It contained a provision which allowed the Recreation Association to increase the fee for water each year to cover any increase in expenses.[10] The agreement did not address a profit. It is not clear to Complainants what point the Recreation Association is making in this section nor do Complainants consider it relevant to DWA Staff's determination of a fair rate for the period from 2012-2013. What the Recreation Association does not disclose is that the lot owners paid special water assessments to cover improvements to the water system as well as to create a Water Reserve Fund which is now depleted.[11] However, the reserve fund was not used for its stated purposes, such as improvements to

[6] EXHIBIT 2 - Bylaws of Odd Fellows Sierra Homeowners' Association page 2 Article III Section 3.01.
[7] EXHIBIT 3 – Transcript of a recording of Del Wallis answering a question from Recreation Association member Elsie Manning at the Special Member Meeting of OFSRA on December 3, 2011.
[8] Rebuttal to the Joint Filing of an Application October 14, 2013 page 5 VI lines 9-16
[9] A clear understanding of the Water Use Agreement and membership in the Homeowners' Association is given in Response to the Joint Reply March 13, 2014 page 4 lines 13-24 and page 5 lines 1-25.
[10] EXHIBIT 4 - Water Use Agreement page 3 number 6.
[11] Response to the Joint Reply March 13, 2014 page 25 lines 24 and 25 and page 26 lines 1-11.

the water system. It was also collected outside of the provisions of the Water Use Agreement.

5. Page 5 lines 4-6 - The Recreation Association should be required to provide DWA Staff with the same documents that they provided to the Tuolumne County Superior Court that substantiates their statement that they collected less than their expenses. If the Recreation Association lost money on the delivery of water, they should have followed the provisions of the Water Use Agreement by raising the amount that they charged for water per the Water Use Agreement[12]. The Recreation Association complains about their loss of money throughout their "Comments". One way to prove that they actually lost money is for them to submit their Federal Tax Returns to DWA Staff showing such a loss. They are a "for profit corporation" and such corporations file their losses for tax purposes. DWA Staff, ALJ Long, and the Commission can examine several years of the Compiled Financial Statements of the Recreation Association to determine for themselves if the Recreation Association actually lost money.[13] (Note that the loss shown for May 2012 was for the 2011-2012 budget year when the disagreement took place with the HOA and was not due to an increase in the cost of providing services.)
6. Page 5 lines 8-11 - The information that the Recreation Association submitted to the Tuolumne County Superior Court judge in the case referred to in this section should be provided to DWA Staff. It should be noted that, as one of the only members of the HOA, the Recreation was

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[12] EXHIBIT 4 – Water Use Agreement page 3 number 6.

[13] Go to WWW.Varvayanis.com/sp/ and then Sierra Park Documents followed by Finance and then Compiled Financial Statements. Note – The Recreation Association often claims a loss in their budget by listing depreciation. However, depreciation should not show up as a loss in their end of the year financial statement for the budget. It should only be used for tax purposes.

actually suing themselves because, as Mr. Trujillo said, "the other 360 lot owners do not have CC&Rs recorded on their property". According to the Bylaws of the Homeowners' Association, those 360 lot owners were not members of the HOA.

7. Page 5 lines 14-17 - The statement referenced in this section of the Recreation Association's "comments" is that the Recreation Association is not going after the lot owners concerning the judgment in CV57299. Of course the Recreation Association is not going after the lot owners since 360 lot owners do not have CC&Rs in their chain of title and, accordingly, are not members of the HOA. If the Recreation Association goes after the members of the HOA, they will have to collect from themselves and the four or five other lot owners in the subdivision with CC&Rs in their chain of title. Complainants do not understand the relevance of this lawsuit to the Complaint or the determination of a fair water rate for 2012-2013. Complainants suggest an independent audit for several reasons; to validate the DWA Staff Report; to substantiate Complainants' claim that a refund is required because of the excessive rates for 2012-2013; and because of the suggestion made by ALJ Minkin that an audit could show that the rates were too high and that the Recreation Association better have the money available should a refund be ordered.
8. Page 5 lines 17-18 - The Recreation Association claims that some of the Complainants did not pay their assessment for 2011-2012. Proof, provided by the Recreation Association, is needed to support this statement since the HOA collected the assessment for this period and all of the Complainants paid in full what they were billed by the HOA. The Recreation Association would be better served if they would stick to the issue of proving that their water charge for 2012-2013 was legitimate by providing the DWA Staff

with documents substantiating the water rate rather than trying to shift the focus of attention by denigrating the Complainants with false statements concerning their failure to pay the 2011-2012 HOA assessment.

9. Page 5 lines 21-22 – The statement made by the Recreation that the HOA is defunct and the Judgment appears to be uncollectable is wrong. Since the Recreation Association has CC&Rs on the property commonly known as the "caretaker's cabin", and as such still a member of the Homeowners' Association, the Recreation Association could pay themselves their portion of the Judgment. In fact, the Recreation Association, as the only member of the HOA, probably owes the full amount of the Judgment since there is no proof that the other lot owners with CC&Rs in their chain of title ever joined the HOA.
10. Page 6 lines 1-6 - Complainants agree with CDW Staff that the Recreation Association owes a refund for water for the period from June 1, 2011 to May 31, 2012. The Recreation Association was paid $69,350.00 in that time period by the HOA per the terms of the Water Use Agreement.
11. Page 6 lines 10-18 - An independent audit of the Recreation Association's finances for the period from June 1, 2012 to May 31, 2013 is an accurate way for the DWA Staff to obtain the true cost of delivering water for this time period. Barring that, DWA Staff should have sound methods of determining the costs incurred by a water system delivering untreated water, without meters, and a gravity fed system. The cost to operate a system such as this are minimal. They include occasionally checking tank levels, turning on and off the pumps as required, power used to run a 10 and a 15 horsepower motor to pump approximately 9,000,000.00 gallons of water a year, minor labor charges, and the occasional break or repair (an

average of approximately four a year).[14] The charts in **EXHIBIT 12**, in Complainants' October 14, 2013 filing provide a more accurate assessment of water cost and employee time for water related jobs than does the claim made by the Recreation Association. Another document that explains the cost of water in greater detail was filed by Complainants on December 20, 2012. The CDW, ALJ Long, and the Commission would gain a better understanding of what the true cost of delivering water to the lots in the subdivision is by revisiting this document.[15]

12. Page 6 lines 14-16 - Of course DWA Staff discounted what the Tuolumne County Superior Court determined about the assessment for the period from June 1, 2011 to May 31, 2012, since the assessment from which a majority of the refund will be ordered applies to the water charge presented to Judge Minkin for the period from June 1, 2012 to May 31, 2013. The DWA should, however, be given the same information that was provided to the Superior Court judge in this case, CV57299. That way DWA Staff will be able to review the evidence presented to the court in this case and gain a better understanding of what the Recreation Association is attempting to prove. The Recreation Association provided the Tuolumne County Superior Court with documents supporting that case but failed to provide the CDW Staff with the documents they requested.

13. Page 6 lines16-18 - Earlier in this document it was made clear that from 1986 to 2011 the Recreation Association was the only member of the HOA. Therefore, the Recreation Association provided services to the HOA, which was actually the Recreation Association as the only member of the HOA.

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[14] Rebuttal to the Joint Filing October 14, 2013 page 17 XXVII lines 4-16 and EXHIBIT 12 and page 17 XXVIII lines 18-22 and page 18 lines 1-13.

[15] Response to the Report of the Odd Fellows Sierra Recreation Association December 7, 2012 and filed by Complainants on December 20, 2012.

The board members for the Recreation Association and the Homeowners' Association were the same people. These board members were elected by the shareholders of the Recreation Association. The lot owners did not have a vote in board elections. The HOA, actually Recreation Association as discussed, then provided services to the lot owners who were not members of the HOA. This made the delivery of water, as one of the services provided, illegal under CPUC guidelines. If the Recreation Association provided these services at a loss for twenty-five years, it is their own fault since they established the rates and sold the services to the lot owners. To prove that they operated at a loss for this time period, the Recreation Association should, as suggested above, submit their tax records for the time period for which they claim losses.[16]

14. Page 5 lines 4-6, Page 6 lines 17-18, and Page 8 lines 4-7 – In this section the Recreation Association claims that the Annual Fees paid by (the HOA) were less than the fees incurred by the (the Recreation Association) in providing the services to the (HOA) pursuant to the Subject Agreements. The Recreation Association and the HOA were actually one entity using two different names. On page six the Recreation Association once again claims that the services they provided to the HOA since 1986 had been done so at a loss. They then, on page eight declare, "the Recreation Association has provided services to the lot owners for more than sixty (60) years and well knows how much it takes to operate the water system." This does not make sense. If the Recreation Association was aware, because of sixty years of experience, of how much water costs actually were, then why did they operate at a loss since 1986?

[16] Complainants have in their possession approximately 1,200 pages of the Recreation Association's tax records for part of this period and if they have time will review some to determine if they ever filed any losses.

15. Page 7 lines 1-23 - Complainants think that the DWA was more than fair to the Recreation Association concerning the water rate. Complainants would argue, based on information provided in earlier filings and some quoted above, that the CDW proposed a water rate for June 1, 2012 to May 31, 2013 that favored the Recreation Association at the expense of the rate payers.

16. Page 8 lines 4-6 - It is unclear to complainants that, since the Recreation Association has had approximately sixty years of experience in running the water system, why the water rate jumped from approximately $200.00 per year, as reported to the Health Department by Water Director Ron Hawke in his 2011 report, to almost $600.00 a year once the CPUC became involved. In May of 2011 Water Director Hawke suggested even a lower rate that what he reported to the Health Department. He stated that the proposed budget for 2011-2012 was $19,050.[17] The rate proposed by Water Director Hawke is consistent with the rate suggested by Complainants in **EXHIBIT 12** of an earlier filing with the CPUC[18]. Complainants are not clear on any changes in the subdivision's water system that would cause such a drastic increase in water rates except for the filing of the complaint with the CPUC. The argument that the Recreation Association lost money for sixty years is baseless unless proof is forthcoming. Based on the Water Use Agreement there was no reason for the Recreation Association to lose any money on the delivery of water since they could raise the water rate each year as required to prevent such a loss. A for profit corporation should

[17] EXHIBIT 5 – Odd Fellows Sierra Recreation Association Annual Meeting May 29, 2011 page 2 (Water Report continued from the previous page).
[18] Rebuttal to the Joint Filing October 14, 2013 EXHIBIT 12.

never operate at a loss when there is a mechanism, such as the Water Use Agreement, to prevent it.

17. Page 8 lines 18-19 - Two issues arise concerning the vote on the budget at the May 27, 2012 Annual meeting of Recreation Association shareholders. The first issue concerns the validity of any vote since the vote was corrupted by the attendance and voting of non-shareholders. President Velayas, in his opening statement, said "… this is a private corporation meeting …".[19] Therefore, the vote taken on an assessment or budget strikes as being illegal. At a private corporation meeting, non-shareholders have no legal authority to vote or make decisions, especially if those decisions are applied to other lot owners who are not in attendance nor in agreement with the vote. The other issue concerns the Recreation Association's statement concerning the 2012-2013 budget. They claim that the 2012-2013 budget was approved by 84% of the lot owners in the Park. Based on statements by the Recreation Association that there are 364 lots, taking 84% of 364 equals 306 lot owners who, according to the Recreation Association, approved the 2012-2013 budget. According to the minutes of the Annual Meeting of the Recreation Association in May of 2012, the vote on the budget was 89 yes votes and 19 no votes.[20] Such a vote equates to a 24% approval of the budget, not 84% as is claimed. Based on this misrepresentation of the facts, the Recreation Association is not trustworthy and should be required to provide supportive data to back up all their claims and statements in this and in any future filings with the CPUC.

[19] EXHIBIT 6 - Minutes of the Odd Fellows Sierra Recreation Association Annual General Meeting May 27, 2012 page 1 – opening statement.

[20] EXHIBIT 6 - Minutes of the Odd Fellows Sierra Recreation Association Annual General Meeting May 27, 2012 - page 3 last paragraph.

18. Page 8 lines 21-22 - What evidence is available to prove that the Recreation Association sustained a $170.34 per lot loss in 2012-2013 concerning the delivery of water in the subdivision? A company, such as the Recreation Association, should be filing bankruptcy with all the losses they say they have incurred over the last sixty years rather than spending money on legal fees trying to divest themselves of their assets.
19. Page 9 pages 4-5 - Once again the Recreation Association makes a statement, "the lot owners of the Park were therefore not overcharged for water" but fail to provide anything but unsubstantiated rhetoric. Since empty words are all that the Recreation Association has to back up their case, an audit is called for to once and for all settle the rate issue with sound evidence.
20. Page 10 – Complainants have a concern regarding the Recreation Association's transfer of the utility easement to the Service Company. There is still an issue over the ownership of the roads which also includes the utility easement. Should the Recreation Association be able to prove that they own the roads and the utility easement, there is no basis for them to transfer the subdivision's utility easement. The easement was developed and used for approximately sixty years without charge for the benefit of the lot owners and the provision of utilities, including water.
21. EXHIBIT A
    A. Page 3 A-4 - The Recreation Association, in seeking approval from LAFCO to form a Community Service District, never provided LAFCO with the proof that they requested from the Recreation Association concerning ownership of the roads. Ownership of the roads is an issue that will be decided in a court of law where both sides have an equal

opportunity to present evidence and challenge the false statements of the other side.

B. Page 3 B-1 - The Water Use Agreement was drafted and approved by the Recreation Association and entered into with the one member of the Odd Fellows Sierra Homeowners' Association. The one member of the HOA was the Recreation Association, as discussed above in this Rebuttal as well as in several other documents filed with the CPUC. Del Wallis, the secretary of the Recreation Association in 1986, signed the Water Use Agreement as the secretary of the Homeowners' Association.

C. Page 3 B-2 - The amount shown is wrong since the Water Use Agreement states that pursuant to this Agreement $69,350 was to be paid the first year of this Agreement.

D. Page 3 B-4 - Payment was not in advance but, according to the Agreement, to be paid in annual installments on the first day of the second month of each year of the term of this Agreement.[21]

E. Page 3 B-5 - Since the Recreation Association was the Plaintiff as well as the Defendant in this case, this statement is wrong. During the twenty five years of the Water Use Agreement and the License Agreement, including the period from June 1,2011 to May 31, 2012, the Recreation Association (the Defendant) never paid an assessment on the "caretaker's cabin" or the other lot in the subdivision it owns.

F. Page 3 C-1 - The License Agreement is another miss-representation of the truth by the Recreation Association. Just as the Water Use Agreement was between the Recreation Association and themselves as the only member of the HOA, so was the License Agreement.

[21] "B", "C" and "D" are found in EXHIBIT 4 – Water Use Agreement referenced in Footnote 10

G. Page 3 C-1 - There did not need to be an agreement to allow the lot owners to use the roads, since the development of the subdivision would have been rejected had there not been an easement granted to those purchasing the lots for access.

H. Page 4 C-2 - Complainants are not aware of any modifications to the License Agreement that requires the payment for the roads to be made in advance. The Recreation Association should provide the modified License Agreement they refer to. Even a modified License would have little or no validity since it would have been drafted by the Recreation Association and approved by them as the only member of the HOA. The lot owners were not legally bound by that which they did not legally approve, sign, or agree to.

I. Page 4 D-1 - Complainants are not aware of any so called "Subject Agreements". The Recreation Association should provide written copies of each signed and dated agreement; the date, place, vote totals, when they were approved, and under what legal authority they were approved.

J. Page 4 D-2 - Any agreement proving that payment in advance was approved along with the appropriate documents supporting such approval should be provided by the Recreation Association.

K. Page 5 E-1 - The Recreation Association states in its "Comments" that they lost money each year for approximately sixty years. According to the Recreation Association it, "at its annual meeting of shareholders, would determine, based on the previous year's costs, the estimated cost of the services to be provided … for the upcoming fiscal period." Based on this statement, it is inconceivable that the shareholders, each year, failed to raise the fees to a level necessary to prevent the corporation from suffering the losses they claim.

L. Page 5 E-2 - Lot owners who were not shareholders attended the annual meetings held by the Recreation Association and voted on the fees. As discussed earlier, such a vote by non-members of the corporation corrupted the vote and made it invalid.

M. Page 5 E-5 - Based on K above, it is difficult to understand why the fees billed to the lot owners were less than the expenses incurred by the Recreation Association. Complainants request permission, based on the Recreation Association referring to them in this proceedings, to review the documents presented to the Tuolumne County Superior Court that substantiates such a claim, or at least have the Recreation Association provide such documents to DWA Staff.

N. Page 6 F-1 - The statement that on May 29, 2011 the Plaintiff's (Recreation Association) shareholders approved a budget of $302,120.00 is untrue. At this meeting there was a motion to extend the previous year's assessment until September 1, 2011 along with provisions for the study and discussion necessary to formulate a new budget and assessment for 2011-2012. Members and non-members of the Recreation Association voted on this motion.[22] The rejection of the Recreation Association's budget was also noted in the May 2011 Homeowners' Association Newsletter for the only year that a board was actually elected by the lot owners.[23] Complainants have other documents supporting the fact that no budget or assessment for 2011-2012 was approved at the May 2011 Annual Meeting. Such a discussion has nothing to do with the rate for 2012-3013 which is what is under the most review. Based on this,

[22] EXHIBIT 5 - Minutes of the Odd Fellows Sierra Recreation Association Annual General Meeting May 29, 2011 page 4 item 6.

[23] EXHIBIT 7 - Newsletter for May 2011 of the Homeowners' Association page 2 under Assessments.

their claim concerning the water rate that was presented to the CPUC for 2012-2013 is suspect.

O. Page 6 F-3 and F-5 - The total for these two amounts, $50,000.00 and $19,350.00, is $69,350.00 which is the amount owed for water per the terms of the Water Use Agreement. Therefore, despite what the Recreation Association maintains, the HOA paid for water in 2011-2012. DWA Staff, in reviewing the water rate, needs to know that the HOA paid this under the terms of the Water Use Agreement and it is their decision whether this was a fair rate or not.

SECTION II

In order to connect the rebuttal comments in this section to the Comments of the Sierra Park Water Company, the page number and paragraph (p) number will be given due to the form used in this filing. Complainants reserve the right to comment on any changes made to this document by Applicant should they be required to re-file due to filing errors and modify this document's content as a result.

1. Page 1 p. 1 – The Water Company confirms what Complainants have maintained all along by stating "that is[sic] fiscally impossible to run the current water system on the hypothetical budget the Staff have proposed." Complainants have always argued that turning the water system over to an existing public utility, such as Tuolumne Utilities District (TUD), would be a more economical way to serve the lot owners. In an earlier filing, Complainants addressed the proximity of TUD to the subdivision and the CPUC requirement that a Certificate be denied when an existing utility was

as close as TUD.[24] Also, should the Application be approved, the CPUC requires the rates of the proposed water company to be competitive with other utilities in the area such as TUD. The DWA Staff Report brought the water rate closer to TUD's rate. If the Water Company, by their own admission, cannot even meet the rate recommended by DWA Staff, there is no way for them to be competitive with the TUD rate. On this basis, Complainants request that ALJ Long reject the application.

2. Page 1 p. 4 – The "exhaustive analysis" of over thirty pages that is not included is meaningless if it is used by Applicant to support its position but never made available to ALJ Long, Staff, or the Complainants for review and comment. The recommendation by Applicant that ALJ reject the Staff Report on the basis of a mystery document should be disregarded. Only the facts, as presented, count in the process currently taking place.
3. Page 2 p. 2 & 3 – Complainants do not understand why the rate would have been so much higher had the Applicant provided DWA Staff with a full twelve months of information rather than DWA Staff extrapolating to get the cost for the twelfth month. An explanation by Applicant is called for here.
4. Page 2 p. 4 – Complainants have addressed the lease of the easement in several filings.[25] For example, the Subdivision Map Act of 1937 under which the subdivision was developed required easements "as are necessary for the general use of the lot owners in the subdivision." ALJ Long also commented on a lease payment as noted in a previous filing by Complainants.[26] ALJ Long, at a Prehearing Conference, said, "Normally

[24] Response to the Joint Reply March 14, 2014 page 7 lines 3-24.
[25] Response to the Joint Reply March 14, 2014 page 12 lines 14-24 and page 13 lines 1-20.
[26] Response to the Joint Reply March 14, 2014 page 25 lines 1-23.

there's not really much to be paid by a utility for lease expenses of easements unless for some reason there's an impairment of the land because of continual crossing or use of it for other purposes."[27] The water lines run through a utility easement that has been in place for approximately sixty years. Other utilities, such as P. G. & E., use the easement and do not pay a lease. The utility easement was a requirement placed on the subdivider as a condition of developing the subdivision. The easement was for the benefit of the lot owners and the subdivision. A deed dated May 31, 1950 to George R. Hogrefe and Alma Hogrefe states, "RESERVING to grantor the rights to construct all public utilities along the property line or otherwise through or across said premises when necessary, and to enter in and upon said premises to make any and all repairs to said public utilities and to cut or trim trees as may be necessary to properly maintain utility lines; and the grantor may grant these rights to any public utility duly authorized to carry out its business under the laws of the State of California." The section quoted above does not provide for lease payments on such easements. Authorizing such lease payments seems to Complainants like a violation of the law. Transferring the easement to the Service Company instead of the Water Company is just another way to gouge the customers of the Water Company. The Recreation Association will have to provide the deed to the roads and easements, if they possess such proof of ownership, should they ever attempt to transfer the title to the roads and easements to the Service Company. The proposed lease payments should be rejected as being illegal, uncalled for, and unfair.

[27] Prehearing Conference December 18, 2013 page 14 lines 20-24.

5. Page 2 p. 5 – Since the Applicant thinks there are errors in the DWA Staff Report and the Complainants consider the Applicant's proposed rate schedule full of errors and fabrications, a forensic audit is called for in order to reconcile these differences and determine the truth.
6. Page 2 p. 7 – If the Water Company is truly dedicated to following Commission requirements, they would lower their water rate so that it is comparable to TUD's rate as is required by CPUC regulations. Complainants addressed the dramatic increase in cost to the subdivision with the formation of the Service Company and the proposed water company in an earlier filing. It was pointed out that the proposed Recreation Association budget for 2011-2012 was $302,120.00. The total for the budgets of the three corporations' increased dramatically for 2013-2014 to a combined total of $640,464.00[28] (Note – Recreation Association will complain about their loss in 2011-2012 but that was due to a disagreement between the HOA and the Recreation Association and not due to a major increase in expenses.).
7. Page 3 p. 1 – By broaching the subject of an executive and administrative staff, Applicant is suggesting a major increase in the future for the water rate when/if this takes place. Government entities such as school districts go through unification to eliminate duplications in staff found among several small school districts by combining into one large district in order to save the taxpayer (rate payer in our case) money. By mentioning an executive and administrative staff, Applicant is making the case to turn the water system over to a larger and more efficient system, TUD. TUD already has an executive and an administrative staff and, if they absorb this

[28] Reply to Staff Report October 11, 2014 page 8 lines 13-24 and page 9 lines 1-14.

small water system, there should not be any increase in expense to them or the rate payer. Unification between TUD and the subdivision's water system would save the rate payers in the subdivision money in numerous ways, executive and administrative staff being only one. Complainants do not think that approving the application makes any sense for the customer either monetarily or on the basis of the service provided.

8. Page 3 p. 1 – Applicant maintains that the one employee spends about 60% of his time dedicated to the operation and maintenance of the water system. In an eight hour day, 60% would equate to the water employee spending approximately five hours a day operating and maintaining the system. Complainants request a detailed report from Applicant listing what operation and maintenance is required each day that requires five hours a day or 100 hours a month dealing with water. It is a water system that requires little maintenance and a minimal amount of time each day to operate. Complainants broke such operation and maintenance down in an earlier filing in order to show the true costs of operating the water system and to demonstrate that the employee does not spend 60% of his time on water related matters.[29] Another telling argument that the caretaker does not spend 60% of his time on water operation and maintenance was in the references to the caretaker and his work by Human Resource Director Heidi Ordwein in her reports at Water Company and Service Company meetings.[30] Also, in the minutes of the May 25, 2014 Sierra Park Water Company Inc. Annual Shareholder Meeting, Human Resource Director Heidi Ordwein reported, "Extra personnel were hired or contracted to

[29] Rebuttal to the Joint Filing October 14, 2013 page 17 lines 4-16 See EXHIBIT 12 footnote 25'
[30] Reply to Staff Report October 11, 2014 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.

handle tasks while the Caretaker was on disability. Items such as snow removal, culvert cleaning and flushing, and snow stake placement were done." Such jobs are those related to the Service Company. The only water related job reported on was, "Water testing was handled by licensed personnel from Aqua labs …". Based on the discussion above, the following claim made by the Applicant, "… the Water Company's employee cost – and in fact all its costs – are dedicated entirely to serving customers with water" seems disingenuous.

9. Page 3 p. 2 – Applicant refers to an aged delivery system without being specific as to the actual age. Complainants have discussed the age of the system in a previous filing, as verified by the Health Department, as being approximately 40 years old.[31]

10. Page 3 p. 2 – The CPUC addresses turning the system over to an existing utility in close proximity such as TUD in Resolution No. M-4. Complainants urge the Commission to adhere to this resolution. Also, on page two of "Applying for a Certificate of Public Convenience and Necessity" it states that proposed revenues would be generated at a rate level not greatly exceeding that set for comparable service by other water purveyors in the general area. Thus, according to CPUC guidelines Applicant should either be turned over to TUD or, if approved, be required to meet TUD's rate. In the DWA Staff Report concerning rates it is possible that Staff was doing Applicant a favor by suggesting a rate that more closely conformed to that of TUD in order to give Applicant a better chance of having their Application approved. Based on the CPUC

[31] Response to the Joint Reply March 13, 2014 page 26 lines 12-25 and page 27 lines1-3.

regulations discussed above, there is no way that the Application can be approved if they insist on maintaining the exhorbitant rate they demand.

11. Page 3 p. 3 – Applicant makes a statement concerning what over 70% of the property owners in the subdivision want, based on a survey that was conducted by an ad hoc committee. However, Applicant fails to explain the survey used or what it proves. Complainants are able to provide some of the information left out by Applicant. One item on the survey dated January 9, 2012 provided a choice of unmetered water. A survey with misleading information such as this should be discounted because all water systems will be required to go to meters in the near future due to state law. Unmetered water is not a choice that we have. The survey was returned with 150 responses. Based on 364 lots that is a 41% response, not 70% as Applicant claims. In the June 2012 mailing from the committee conducting the survey, the committee claims 175 responses out of 329 surveys mailed which is 53%. In an update from a July 2012 town Hall Meeting they claim a 170 + response which is approximately 53%. Based on this, Complainants do not understand how Applicant generated the 70% that is claimed.[32]

12. Page 3 p. 4 – Complainants would like to examine the survey that approved not "giving away" the water system in lieu of exhorbitant water rates as well as a rate that seem to climb higher each year. The dissension that Applicant mentions might end if Applicant would examine the filings by Complainants, carefully examine the evidence provided, and stop contradicting such evidence with baseless statements like "the aged delivery

[32] EXHIBIT 8 – Information concerning survey.

system". It would also help if they were totally honest about costs, rates, employee time, water breaks, etc.

For example:

A. On June 16, 2014 the temporary caretaker was pushing pine needles at the needle dump and sheared off a hydrant. The Water Company was billed but the bill should have been paid by the Service Company. This incident was reported by Bill Ordwein in the Water Company's August 2014 newsletter.

B. Damage to the backhoe that reportedly occurred while fixing a water break. The repair cost was $4,882.00 and was billed to the Water Company. This is discussed later in Applicant's Response (page 8 paragraph 3 AN ASIDE). This damage actually occurred when two board members were picking up pine needles on Rebekah. They parked the backhoe, did not secure the brake properly, and the backhoe rolled down the hill and crashed into a tree. The backhoe was damaged and the tree has a large scar. (If this really occurred because of a water break, where is the report to the Health Department?) Since gathering pine needles along the roads is a Service Company function, this repair should have been billed to the Service Company.

C. On November 30, 2014 there was a water break in the area of the playground by the snack shack. Two people on Rebekah and two people on David complained to other subdivision residents that they did not have any water. With two homes on each of the two streets complaining about not having water, it means that the other homes on these two streets were also without water. Thus, approximately ninety homes on Rebekah and David were without water, or about 25% of the subdivision. No water means negative pressure and requires testing,

treatment, and a boil notice. None of these things occurred and, as far as Complainants are aware, the Health Department was not notified. The David tanks were empty, the pumps were not on, and the break was eventually isolated and repaired. Complainants are unaware if an operator with the required certification for treatment was on site.

For dissension to end, the Water Company needs to follow all the rules and protect the health and safety of the residents of the subdivision. Right now they have too many strikes against them to be trusted to manage a water system. Rates are only one issue of concern and have nothing to do with why several of the Complainants buy and use bottled water.

13. Page 4 p. 2 - Complainants are not aware that the community discarded the CSD. Where is the vote or survey that substantiates this statement?
14. Page 4 p. 3 – How and when were the property owners made aware of the CSD "flaws"? Who deemed the CSD "flawed"? Also, the two corporations do not seem independent. They have almost the same members on each board and utilize the same employee.
15. Page 4 p. 4 – Based on Applicant's contention that the Water Company cannot adhere to the rate suggested by DW Staff, it does not seem to Complainants that they truly support their statement, "becoming regulated represents an improvement in how water will be delivered to and paid for by the property owners." Complainants would agree with this statement should a professional water company, such as TUD, take over the delivery of water in the subdivision.
16. Page 5 p.1 – If Applicant had trouble filling out the application, they should have consulted with an attorney. It seems to Complainants that the Recreation Association has been funding some, if not all, of the Water Company's legal expenses throughout this process .

17. Page 5 indented section under p. 1 – This section refers to the California Department of Public Health. In a telephonic Prehearing Conference in December 2013 Ron Hawke said that they were operating with a temporary permit. Kirk Knudsen then said that the one attached to the file had an 11/30 expiration date. He continued by saying that as of December 1 they received an extension to March 14, 2014. He also said that Bill Ordwein could forward you (ALJ Long) a copy. ALJ Long responded, "… serve that on me as well as on the protestant, I will at some stage receive it into the record as an update." Complainants do not know if this was ever served on ALJ Long but Complainants have never been served. Complainants request copies of all extensions including the current one under which the Water Company is operating.[33]
18. Page 5 footnote 2 – If the CDPH has started establishing rates for water companies, this whole process with the CPUC seems meaningless and a waste of the taxpayer's money. Complainants would like to review the rules and guidelines used by the CDPH in establishing water rates. Also, there should be a letter somewhere notifying Water Director Ron Hawke that the stated water rate of $16.00 per month in his 2011 report to the CDPH was too low. An email between Fred Coleman and Kassy D. Chauhan Merced District Engineer with the CDPH contradicts Applicant's claims concerning the CDPH and the Water Company's rate.[34]
19. Page 6 p. 3 – Applicant comments on the DWA Staff's understanding of the community. Complainants realize that the CPUC and its Staff are under budget constraints. However, to really understand the water system and the community, DWA Staff members are urged to visit the subdivision for a

[33] Transcript of Prehearing Conference December 18, 2013 – Page 17 lines 1-24.
[34] EXHIBIT 9 – email between Fred Coleman and Kassy Chauhan December 4, 2012.

few days so that they can observe the actual operation of the water for themselves.

20. Page 13 p. 3 – Complainants agree that accurate accounting and expenses are critical. Since the Applicant did not provide DWA Staff with what was needed for their report, a full audit is called for to resolve all financial issues and rate determination.

21. Page 13 p.4 – This seems like a veiled threat to the Complainants. If anyone complains about the Water Company, the Water Company will just raise the water rate. Because continuing this process will add more to the costs, should Complainants drop their complaint? Should the CPUC just give the Water Company what they request without any investigation? Doing that would save money but continue with the Water Company's exhorbitant rate and remove the Water Company from all control. Unfortunately for the Applicant, that is not how the system works.

22. Page 16 p. 2 – This section concerns the approval of a budget by the shareholders of the Water Company. The process used by the Water Company concerning the budget is confusing and unorthodox:

    A. The May Newsletter with the Meeting Minutes for May 10, 2014 states that budget preparation was reviewed with Bill Ordwein and this is still in progress.

    B. In the Notice of the Annual Meeting dated May 6, 2014, it requests, "… that the shareholders ratify and approve the annual budget for the Corporation previously approved by the Board." How did the board approve a budget when, at the May 10, 2014 meeting, the budget was still in progress? How was it mailed to the shareholders?

    C. A proxy was mailed out for the annual May meeting of shareholders to be held on May 25, 2014. The proxy had a space to vote on the Annual

Report and Budget. However, a copy of the budget was not included with the proxy,

D. In the President's message noted in the June 2014 newsletter, it was reported that the budget passed.

E. In the Meeting Minutes for June 7, 2014 under correspondence, "One email was received expressing dissatisfaction with the budget not being sent out with the notice and proxy for the annual meeting. The email further stated the belief that the meeting should have been delayed until the budget was available."

Such a budget process seems unusual to Complainants and possibly illegal. Applicant's statement in their EXHIBIT E 1 of 2 states, "… the 14/15 Budget presented to and approved by shareholders on May, 26, 2014." Complainants do not understand how a budget was presented if it was not completed and mailed out to the shareholders prior to the meeting.

23. EXHIBIT D 1 of 2 – Complainants would like an explanation of how the tank life will be extended by fully filling it.

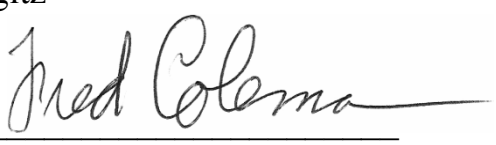
CONCLUSION

Complainants do not think that the Recreation Association or the Water Company are completely honest or forthcoming with Staff, ALJ Long, the Commission, or Complainants. Both entities ignored requests by Staff and some of what they did provide to Staff and also included in their "Response" was shown by Complainants be false. A company applying with the CPUC to become a regulated water company should establish credibility. The fact that Applicant has not done this is justification enough for the application to be denied. The statement by Applicant that it is unable to follow Staff's recommendation concerning the rate that DWA Staff recommended is also justification to deny the

application since CPUC regulations require an applicant to have a rate competitive to other water utilities in the area. Another CPUC rule requires denial of the Application when there is a public utility water company in close proximity that could take over the system; TUD is such a water utility in close proximity and with lower rates. Another issue for denial concerns the demonstrated inability to properly operate or manage the water system.

What is called for in the subdivision is a professionally managed water utility such as TUD. The registered voters in the subdivision vote on TUD board members and can even run for the TUD board. Residents can also attend TUD board meetings and address the board concerning important issues such as service and rate increases. Complainants do not think that lot owners would continue to argue for local control by lot owners in the subdivision if they knew that metered water was inevitable, that service would improve with a company like TUD, and that rates would go down. Water is so important in our lives that it should be provided under the safest conditions and in the best manner possible by professionals, not amateurs. Complainants maintain that both the Recreation Association and Sierra Park Water Company, Inc. fail to meet the demands of a twenty-first century water purveyor and should be rejected by ALJ Long and the Commission.

Respectfully submitted,
Fred Coleman, Steven Wallace,
Larry H. Vaughn, and Ruth
Dargitz

By: 

Fred Coleman