



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

06-27-12
04:59 PM

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

CASE NO. C-12-03-017

Complainants,

vs.

Odd Fellows Sierra Recreation
Association, a California Corporation,

Defendant

**COMPLAINANTS' RESPONSE TO ODD FELLOWS SIERRA RECREATION
ASSOCIATION'S VERIFIED ANSWER**

Fred Coleman
PO Box 184
Long Barn, CA 95335

Contact for Complainants

June 20, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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

CASE NO. C-12-03-017

Complainants,

Vs.

Odd Fellows Sierra Recreation
Association a California Corporation,
Defendant.

VERIFIED RESPONSE

I. BACKGROUND, HISTORY, AND RESPONSE TO OFSRA

The subdivision known as Odd Fellows Sierra Camp Subdivision No. 1 and Odd Fellows Sierra Camp Subdivision No. 2 (the “Park”) was formed in the late 1940’s by members of several Odd Fellows and Rebekah Lodges. Originally, only a member of an Odd Fellows or Rebekah Lodge (the “Lodge”) could own property in the “Park”. In the early 1980’s, limiting ownership in the “Park” to a member of the “Lodge” changed due to court decisions declaring such practices illegal. Ownership of Property in the “Park” was open to all persons. Membership in the “Lodge” was no longer a requirement.

1. Two corporations were formed in order to deal with non-members of the “Lodge” being allowed to own property in the “Park”.
2. The Odd fellows Sierra Recreation Association (OFSRA), a for-profit corporation, was formed in 1986 (**Exhibit A**).
3. OFSRA was formed to maintain ownership of the roads, water system, buildings including a cabin, a lake, a meadow, and other property known as the “common area”. To be a shareholder in OFSRA, a person had to own a lot in the “Park” and be a member of the “Lodge” (Page 2 Item 5 of **Exhibit A**). OFSRA took control of the management of the “Park” with a board of directors elected only by their shareholders, members of the “Lodge”. This board drafted budgets, sent out assessments to all lot owners, and made the decisions concerning the operation of the “Park”.

4. The Odd Fellows Sierra Homeowners" Association (OFSHA), a non-profit corporation, was formed in 1986 **(Exhibit B)**.
5. In order to hold membership in OFSHA, lot owners were required to record CC&Rs in their chain of title **(Exhibit C)** Page 2 Article III Section 3.01.
6. From 1986 until the Spring of 2011, the only property with recorded CC&Rs was the cabin owned by OFSRA. OFSRA was the sole member of OFSHA until eight other lot owners recorded CC&Rs in their chain of title after the Spring of 2011.
7. Del Wallis, the current President of OFSRA, signed the three exhibits cited above as the Secretary of the one member organization known as OFSHA.
8. At the April 16, 2011 meeting of the OFSRA board of Directors, the OFSRA meeting was closed and the meeting was reopened as the Odd Fellows Sierra Homeowners' Board of Directors meeting **(Exhibit D)** bottom of page five. The OFSHA By-Laws were then amended to remove the requirement of having CC&Rs in a lot owners chain of title to his/her property in order to be a member of OFSHA. OFSRA took such action since they needed to get the lot owners to approve a new Licensing Agreement for the roads and a new Water Use Agreement as these were both due to expire in October, 2011. It was also called to the attention of the OFSRA Board of Directors that their Articles of Incorporation **(Exhibit A)** Page 2 # 4 only allows OFSRA to collect an assessment from their own shareholders, not the other 284 lot owners. However, the CC&Rs of the Homeowners' Association **(Exhibit C)** Page 1 Article II Section 2.01 Letter c. allows OFSHA to collect an assessment from their members, those lot owners with CC&Rs in their chain of title.
9. As a result of OFSRA's action in # 8 above, OFSRA then declared that all lot owners were now members of OFSHA. It is questionable if OFSRA could use their one vote as the one and only member of OFSHA to require the lot owners to be members of OFSHA.
10. In 1984 OFSRA was advised by their attorney to turn the water system over to OFSHA in order to avoid CPUC intervention **(Exhibit E)**. On page two items one and two of this exhibit state that neither the Recreation Association nor the Homeowners'

Association wanted to make such a transfer concerning the water system. The Homeowners' Association was nonexistent in 1984 since it was not incorporated until October 10, 1986 (**Exhibit B**).

11. OFSRA moved ahead with its plan to control the water system by drafting the Water Use Agreement with OFSHA and signing it on October 12, 1986 (**Exhibit F**). This agreement was between OFSRA and OFSHA whose only member was the cabin owned by OFSRA. Del Wallis once again represented OFSHA and signed this agreement as the Secretary of OFSHA.
12. The cost of supplying water for the first year of the Water Use Agreement was set at \$69,350 and was to increase each year based on the increase in cost of supplying water (**Exhibit F**).
13. On March 13, 1988 the OFSRA Board of Directors closed their OFSRA meeting and the same group reopened as the Board of Directors of OFSHA. They then voted to raise the water charge to \$76,440 because they maintained that there was an increase in the cost of supplying water, (**Exhibit G**) top of page three. Evidence to justify such an increase was not provided.
14. On April 10, 1989 the OFSRA Board of Directors closed their OFSRA meeting and the same group reopened as the Board of Directors of OFSHA. They then voted to raise the water charge to \$97,552 because they maintained that there was an increase in the cost of supplying water, (**Exhibit H**) top of page three. Evidence to justify such an increase was not provided.
15. On April 8, 1990 the OFSRA Board of Directors closed their OFSRA meeting and the same group reopened as the Board of Directors of OFSHA. They then voted to raise the water charge to \$104,800 because they maintained that there was an increase in the cost of supplying water, (**Exhibit I**) top of page two. Evidence to justify such an increase was not provided.
16. In numbers 13, 14, and 15 above the OFSHA Board violated their fiduciary duty to the lot owners by not requiring OFSRA to show evidence supporting the increase in supplying water for each of those years.
17. The other problem is that the Board of Directors of OFSRA illegally conducted business as the Board of Directors of OFSHA. There was only one lot with CC&Rs until the Spring of 2011. That one lot was

owned by OFSRA giving them only one vote and the ability to designate only one person to represent OFSRA on the OFSHA Board. On Page six Article VI Section 6.01 of **(Exhibit C)**, the By-Laws of OFSHA, it says that there shall be a Board of nine persons who must be members of the Association. The OFSRA Board of nine members acted as the OFSHA Board on many occasions. Since these OFSRA board members did not have CC&Rs in their chain of title, they could not legally serve as the OFSHA Board of Directors.

18. On May 27, 1990 Odd Fellows Recreation Association Inc. put out a sheet showing the past history of the water costs for the "Park" as well as the projected water system costs. The figures presented differ substantially from what the lot owners were being charged **(Exhibit J)**. Adding the charges based on numbers 12, 13, 14, and 15 above for the first four years of the Water Use Agreement and then using \$104,800 for the next twenty-one years since OFSRA never raised or reduced the charge after 1990, the amount billed to the lot owners totaled \$2,548,942. This does not include special assessments paid by the lot owners for projects and to create a Water Reserve Fund. After reviewing OFSRA documents pertaining to the cost of supplying water from 1987-2010, it was determined that the cost of supplying water to the lot owners during this time period averaged \$16,005 per year. For this twenty-four year period, OFSRA's expense totaled \$384,120. Based on this, OFSRA made a substantial profit from the sale of water to the lot owners.
19. OFSRA has billed those undeveloped lots in the subdivision, forty-eight lots total, for water even though they are not hooked up to the water system. By charging owners of undeveloped lots for water, OFSRA violates the Final Subdivision Public Report that was filed with the Division of Real Estate on May 21, 1959 **(Exhibit K)**. On page two of this exhibit under WATER, it states that a nominal annual water assessment charge is made to lot owner after water hook-up is made.
20. Response to OFSRA items four through eleven – The only member of OFSHA from 1986 to the Spring of 2011 was the property owned by OFSRA with CC&Rs in the chain of title. OFSRA admits it sold water to other than its own members, the OFSHA. As a result of

selling water to other than its own members, the members of the “Lodge”, OFSRA was operating as a public utility subject to the regulation of the CPUC, including reasonable rates for water service (Public Utilities Code, 2701-2703). Since OFSHA had only one member from 1986 to the Spring of 2011, OFSHA sold water illegally for twenty-five years to the approximately 363 lot owners who were not members of OFSHA.

21. Response to OFSRA items twelve through fifteen – Item fifteen above and **(Exhibit J)** demonstrate that OFSRA was overcharging for water for twenty-five years and should be ordered to refund the overcharges to the lot owners. Other services are not relevant since this complaint deals with water and only what is under the jurisdiction of the CPUC and this complaint. OFSRA’s various charges and illegally collecting assessments for the last twenty-five years is a matter for the courts, not the CPUC.
22. Response to OFSRA item thirteen – OFSRA, as the only member of OFSHA, would acknowledge anything that benefitted OFSRA and its shareholders. It is up to the CPUC to rule on whether OFSRA operated as a public utility, not OFSRA acting as the one member of OFSHA.
23. Response to OFSRA items fourteen through sixteen – These items apply to OFSHA’s complaint, not the Complainants in C-12-03-017.
24. Response to OFSRA item seventeen – Forming a Community Service District at this point does not atone for the twenty-five years of overcharging the lot owners and operating illegally as both OFSRA and OFSHA in order to maintain a stranglehold over the “Park” and to keep the members of the “Lodge “ in control over the other 284 lot owners.
25. Response to OFSRA item twenty-three – The information provided above indicates that OFSRA violated the law for twenty-five years, overcharged for water, and illegally sold water.

II NOTE

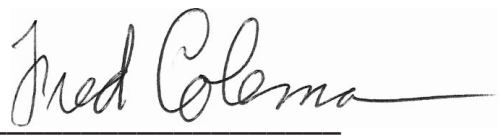
Complainants do not have additional information based on Defendant’s defense and reserve the right to add further information and evidence to this complaint.

III CONCLUSION

OFSRA crafted an elaborate plan prior to 1986 to maintain control of the “Park” by the members of the “Lodge” once non-members of the “Lodge” were allowed to own property in the “Park”. The plan was successful until 2011 when the License Agreement and Water Use Agreement were due to expire. OFSRA also became aware that they could not legally collect an assessment from the lot owners. In May, 2011 the lot owners were allowed to elect a Homeowners’ Board after twenty-five years. As a result of OFSHA having a functioning board, abuses in the water system were uncovered. This resulted when a water attorney was hired to advise the OFSHA Board about the renewal of the Water Use Agreement. It was then that OFSHA was advised that OFSRA was in violation of CPUC regulation and was operating as a public utility. For the reasons discussed in numbers one through twenty-five above, Complainants requests that the Court and Commission grant all relief, including refunds, that they have coming under the law and under the authority of the CPUC.

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

By: _____



Fred Coleman

PROOF OF SERVICE

I am over the age of eighteen and one of the complainants in this action. My address is PO Box 184, Long Barn, CA 95335. On June 22, 2012, I served the forging documents, described as:

COMPLAINANTS' RESPONSE TO ODD FELLOWS SIERRA RECREATION ASSOCIATION'S VERIFIED ANSWER – CASE NO. C-12-03-017

On the attorney for the party in this action addressed as follows:

Timothy T. Trujillo
DAMBACHER, TRUJILLO & WRIGHT
32 N. Washington Street
Sonora, CA 95370
Telephone: 209-533-1883
FAX: 209-533-3884
Email: ttrujillo@dtwlawyers.com

Scott Shapiro
DOWNEY BRAND LLP
621 Capitol Mall, 18 Floor
Sacramento, California 95814
Telephone: (916) 444-1000
FAX: (916) 444-2100
Email: sshapiro@downeybrand.com

X **(BY EMAIL)** To the emails listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 20, 2012, at Long Barn, California.



Fred Coleman