



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Odd Fellows Sierra Homeowners'
Association, a California non-profit Mutual
Benefit Association,

Complainant,

vs.

Odd Fellows Sierra Recreation
Association, a California Corporation,

Defendant.

CASE NO. C-1203016

**ODD FELLOWS SIERRA RECREATION ASSOCIATION'S
VERIFIED ANSWER**

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June 14, 2012

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VERIFIED ANSWER

Pursuant to Rule 13.1 of the Commission's Rules of Practice and Procedure, and the Instructions to Answer dated April 2, 2012, from the California Public Utilities Commission ("Commission") directed to counsel for Defendant Odd Fellows Sierra Recreation Association ("Recreation Association"), Recreation Association, in answer to Complainant Odd Fellows Sierra Homeowners' Association ("Homeowners' Association") Verified Complaint, admits, denies, and alleges as follows:

I. INTRODUCTORY ALLEGATIONS AND BACKGROUND

By way of background, and in support of its affirmative defenses, Recreation Association alleges the following facts:

1. Recreation Association is a California corporation that, pursuant to various agreements, sells water to Homeowners' Association and performs various services on behalf of Homeowners' Association for the lot owners of those certain subdivisions in Tuolumne County, California known as I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 (collectively, the "Park"). The Park consists of approximately 364 lots.

2. Homeowners' Association is a California non-profit mutual benefit corporation, whose members include lot owners of the Park.

3. Recreation Association owns wells, storage tanks, pipes, and related water delivery mechanisms that deliver water from wells on Recreation Association's property that is outside the Park to Homeowners' Association ("Odd Fellows Water System").

4. The terms of Recreation Association's water deliveries to Homeowners' Association were set by a Water Use Agreement ("Agreement") executed between the Homeowners' Association and the Recreation Association on October 12, 1986. The Agreement is attached hereto as **Exhibit A**.

5. Pursuant to the Agreement, Recreation Association sold water to the Homeowners' Association and the Homeowners' Association sold such water to the lot owners of the Park. Only lot owners of the Park take water from the Odd Fellows Water System.

6. Recreation Association is not currently offering, and has never offered, water service to the public at large. Since 1986, Recreation Association's only water delivery arrangement has been with Homeowners' Association.

7. The purpose of the Agreement was to permit Homeowners' Association to obtain water from the Odd Fellows Water System "for use by its members on a not-for-profit basis." [Agreement, Recitals].

8. Pursuant to the Agreement, Recreation Association furnished Homeowners' Association with "such water as may be necessary for the domestic use". [Agreement Term 1].

9. Recreation Association does not guarantee a specific quantity or quality of water to be supplied to Homeowners' Association. [Agreement Term 4].

10. Recreation Association bills Homeowners' Association a fixed annual fee in exchange for water service to Homeowners' Association. Pursuant to the Agreement, the fee is increased yearly in an amount equal to the amount by which Recreation Association's expenses in providing the water to Homeowners' Association have increased. Between 1986 and May 31, 2012, the fees paid by Homeowners' Association to Recreation Association for provision of water and the other services provided by Recreation Association to Homeowners' Association were less than the expenses incurred by Recreation Association in providing such services.

11. Recreation Association owns certain real property that is adjacent to the Park from which Recreation Association sells timber.

12. As the fees paid by the Homeowners' Association are less than the expenses of maintaining the Odd Fellows Water System and providing the other services that Recreation Association provides to Homeowners' Association, the Recreation Association has had to use the profits that Recreation Association receives from the sale of timber from its property (as referenced in the preceding paragraph) to subsidize such services.

13. Homeowners' Association acknowledged in 1986 that Recreation Association is not a public utility. [Agreement Term 4]. Recreation Association's water service relationship with Homeowners' Association has not changed in any significant way since that time.

14. In September 2011, Recreation Association billed Homeowners' Association \$302,120.00 for the water services provided by it in accordance with the terms of the Agreement and for the other services provided by Recreation Association. Upon information and belief, Homeowners' Association collected approximately \$286,350.00 from the lot owners of the Park for such services. However, the Homeowners' Association refused to make payment to Recreation Association for the amounts due to Recreation Association as set forth above other than \$69,350.00.

15. Although the Homeowners' Association refused to pay Recreation Association in full for the water services provided by it in accordance with the terms of the Agreement and for the other services provided by Recreation Association, Recreation Association did not seek payment from the individual lot owners of the Park, but continued to provide water services and the other services it was previously providing to the Homeowners' Association, and sought payment from Homeowners' Association directly.

16. The Agreement was set to expire by its own terms on October 11, 2011. However the parties agreed to extend the term of the Agreement to January 10, 2012. As a result of the failure of the Homeowners' Association to pay Recreation Association in full for the water services provided by it in accordance with the terms of the Agreement and for the other services provided by Recreation Association, the Recreation Association did not further extend the Agreement and it thus expired on January 10, 2012.

17. Following the dispute with Homeowners' Association as referenced above, Recreation Association initiated the process of establishing a Community Services District ("New CSD") to manage the Odd Fellows Water System. Recreation Association is in

negotiations with Tuolumne County Local Area Formation Committee to set the service area for this new district.

18. Once New CSD is established, Recreation Association intends to transfer the Odd Fellows Water System to New CSD, which will provide water service to the Park. Recreation Association will no longer provide water service after this transfer occurs.

II. ANSWERS TO SPECIFIC ALLEGATIONS

As to the specific allegations contained in Homeowners' Association's Verified Complaint, Recreation Association admits, denies, and alleges as follows:

19. As to the allegations contained in Section D of the Complaint, Recreation Association has insufficient information to verify these allegations, and so denies these allegations on information and belief.

20. As to the allegations contained in Section E of the Complaint, Recreation Association denies the allegation that its legal name is "Odd Fellows Sierra Recreation Association, Inc." The legal name of the Defendant is Odd Fellows Sierra Recreation Association. Recreation Association admits the remaining allegations in this section.

21. As to the allegations contained in Section F, Sentence 1, of the Complaint, which alleges that "Odd Fellows Sierra Homeowners' Association is a non-profit mutual benefit corporation whose directors are democratically elected by owners of all 281 lots within the Odd Fellows Sierra Park," Recreation Association has insufficient information to verify how Homeowners' Association is governed, and therefore denies this allegation on information and belief.

22. As to the allegations contained in Section F, Sentence 2, of the Complaint, Recreation Association denies on information and belief that Recreation Association supplies water for all lot owners within the Odd Fellows Sierra Park. Recreation Association cannot verify whether every current lot owner receives water, because Homeowners' Association may terminate a lot owner's water service for non-payment of the water service fees charged by Homeowners' Association, independent of Recreation Association.

23. As to the allegations contained in Section F, Sentence 3, of the Complaint, which alleges that "[t]he water system is required to be regulated by the CPUC under California Public Utility Code 2701 and 2702, but is not," Recreation Association alleges that this is a legal conclusion requiring no answer, but denies this allegation if it is taken to be factual.

24. Answering the allegations contained in Section F of the Complaint, as to Sentence 4, which alleges that “OFSRA consists only of Odd Fellows and Rebekahs; OFSRA provides no financial transparency concerning costs it incurs in providing water to lot owners,” Recreation Association denies the allegations contained in this section.

25. Answering the allegations in Section G, subsections (1) through (4), Recreation Association alleges that these allegations are legal conclusions requiring no answer. Insofar as any factual response is deemed necessary, Recreation Association denies each and every allegation contained in each and every such paragraph.

26. Answering the allegations in Section G, subsection (5), Recreation Association alleges that this is a legal conclusion requiring no answer. Recreation Association is separately moving for a stay of this proceeding. Recreation Association's Motion for Stay, filed concurrently with this Answer, will explain why a stay of the proceeding is appropriate.

III. AFFIRMATIVE DEFENSES

Recreation Association alleges the following affirmative defenses in response to the allegations contained in Homeowners' Association's Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

The California Public Utilities Commission lacks jurisdiction to award the relief requested by Complainant.

Recreation Association is not subject to the jurisdiction of the Commission because Recreation Association is not a public utility under Public Utilities Code §§ 2704 and 2706(b). The Odd Fellows Water System owned by Recreation Association is not available to members of the public at large, it is only available to lot owners of the Park through the Agreement between Recreation Association and Homeowners' Association. Water from the Odd Fellows Water System is available only to lot owners of the Park through the Homeowners' Association for domestic use; and the Homeowners' Association had previously contracted directly with Recreation Association for that service.

THIRD AFFIRMATIVE DEFENSE

Through its conduct with respect to the matters complained of in the Complaint, Homeowners' Association has waived any right to the relief it requested in the Complaint.

Homeowners' Association agreed in 1986 pursuant to the Agreement that Recreation Association was not a public utility. Recreation Association's water service relationship with Homeowners' Association has not changed since that time. Homeowners' Association cannot now claim that Recreation Association has become a public utility simply because its business relationship with Recreation Association has deteriorated.

FOURTH AFFIRMATIVE DEFENSE

Complainant is barred from receiving any relief requested in the Complaint by the doctrine of laches due to its unreasonable delay in bringing the claims contained in the Complaint.

Homeowners' Association agreed in 1986 that Recreation Association was not a public utility. Homeowners' Association has had numerous opportunities to challenge that status since 1986, but has failed to do so. Recreation Association's water service relationship with Homeowners' Association has not changed since that time.

FIFTH AFFIRMATIVE DEFENSE

Recreation Association lacks sufficient information or belief to determine whether it may have additional, as yet unstated, affirmative defenses to the Complaint, and based thereon, reserves the right to seek leave to add further affirmative defenses.

IV. CONCLUSION

For the above-stated reasons, Defendant requests that the Commission deny the relief sought by Complainant and dismiss the Complaint.

Respectfully submitted,

DAMBACHER, TRUJILLO & WRIGHT

By:

TIMOTHY T. TRUJILLO, ESQ.

Attorneys for Defendant

VERIFICATION

I am the President of Defendant Odd Fellows Sierra Recreation Association and am authorized to make this verification on its behalf. The statements in the foregoing Verified Answer are true of my own knowledge, except as to the matters which are therein stated on information and believe, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 2012, at Sonora, California.



By: Del Wallis

Exhibit "A"

WATER USE AGREEMENT

THIS AGREEMENT is made this 12th day of October, 1986, by and between ODD FELLOWS SIERRA RECREATION ASSOCIATION, a California corporation ("GRANTOR"), and ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION, a California nonprofit corporation ("GRANTEE").

WHEREAS, GRANTOR was, prior to its conveyance of certain portions to GRANTEE's members, the owner of certain tracts of land in the County of Tuolumne, State of California, which are particularly described on Exhibit A hereto; and

WHEREAS, GRANTOR has prior to this date subdivided and conveyed by separate deeds certain portions of the above-described land, which portions are described on Exhibit B hereto; and

WHEREAS, GRANTEE is a homeowners association organized and existing for the mutual benefit of some or all of the owners of the portions of said tracts subdivided and conveyed by GRANTOR; and

WHEREAS, GRANTOR owns and maintains a water system on the portions of said tracts of land it retained; and

WHEREAS, GRANTEE desires to obtain water from that water system for use by its members on a not-for-profit basis.

NOW, THEREFORE, the parties hereto agree as follows:

1. Agreement to Furnish Water. GRANTOR agrees to furnish to GRANTEE from its water system such water as may be necessary for the domestic use of GRANTEE's members subject to the terms and conditions hereinafter set forth.

2. Domestic Use Defined. The "domestic use" for which water is to be furnished GRANTEE's members under this Agreement consists in general of the usual household uses and adequate watering of ornamental plants and shrubbery and household garden plots connected with the occupancy and development of the lots of GRANTEE's members as a residence but not their development for any industrial, commercial, or agricultural purposes.

3. Limit on Water Amount. In no event shall the water furnished GRANTEE's members under this contract exceed one hundred percent (100%) of the maximum amount of water that may be made available from said water system or any replacement or expansion thereof.

4. Quality and Quantity. GRANTOR cannot and does not make any guarantee concerning the quality of water agreed to be furnished under this Agreement or concerning the continuing availability of water except as herein expressly provided. GRANTEE understands and hereby acknowledges on behalf of its members that GRANTOR is not a public utility, is not guaranteeing any specific quantity of water, is the sole owner of said water system and all water supplied therefrom or in any way connected with the retained portion of said tracts of land, and has agreed to furnish water to GRANTEE's members only in accordance with the terms of this Agreement. GRANTEE stipulates that neither it nor its members have any right, title, or interest in or to any water from said water system coming from the retained portion of said tracts of land except as herein specifically set forth.

5. Maintenance of Water System. GRANTOR shall at its sole cost and expense:

a. Maintain said water system in proper and sanitary order without representation as to the quantity or quality of water that may be produced by it;

b. Install such pipeline, tanks, and other facilities for the delivery of water to GRANTEE's members as GRANTOR may deem reasonably necessary;

c. Maintain and operate the facilities described in this paragraph for so long as it is reasonably possible to procure and distribute water from the water source supplying the water system; and

d. Repair, replace, or expand the water system as reasonably necessary, in the opinion of water experts, to supply water as herein agreed.

6. Payment. GRANTEE shall pay to GRANTOR for water furnished pursuant to this Agreement the sum of *Sixty nine thousand three hundred \$* Dollars (*\$69,350.00*) per year during the first (1st) year of this Agreement and shall pay during each subsequent year such amount plus any increase in expense of GRANTOR over its expenses for the prior year in furnishing water to GRANTEE under this Agreement. Unless otherwise agreed in writing, the yearly payments herein provided shall be paid by GRANTEE to GRANTOR in annual installments on the first (1st) day of the second (2d) month of each year of the term of this Agreement.

7. Term. This Agreement is made for the period of twenty-five (25) years, commencing on the date hereof, unless earlier terminated as hereinafter provided.

8. Default. Should GRANTEE fail to pay any annual charge for water specified in this Agreement for a period of ninety (90) days after receiving written notice thereof from GRANTOR, GRANTOR may suspend supplying water until the charge is paid in addition to pursuing any other legal or equitable right or remedy it may have. The prevailing party in any legal or equitable action brought pursuant to this paragraph shall be entitled to its reasonable attorneys' fees and costs. Notwithstanding the provisions of this paragraph, however, GRANTOR may not terminate this Agreement if GRANTEE fails to pay the annual charges for water.

9. Termination. This Agreement shall automatically terminate upon the termination of the irrevocable license of even date given by GRANTOR to GRANTEE to use its roads and retained land for access and recreational purposes.

10. Subject to Valid Laws. This Agreement is subject at all times to any and all valid laws, ordinances, and governmental regulations, whether federal, state, county, or city, and any modification made to this Agreement by such law, ordinance, or regulation or to the conduct of the parties under this Agreement shall not impose liability on either party hereto for breach of their duties under this Agreement.

** See Minutes of B.C.D of Odd Fellows Reg. Assoc.
on Oct. 12, 1986*

11. Assignment. This Agreement shall be binding on the parties hereto and on their successors in interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

GRANTOR:

ODD FELLOWS SIERRA RECREATION
ASSOCIATION

BY Deot H. Johnson

Title: President

GRANTEE:

ODD FELLOWS SIERRA HOMEOWNERS'
ASSOCIATION

BY W. J. Walker

Title: Secretary

PROOF OF SERVICE

I am over the age of 18 and not a party to this action. My address is 32 N. Washington St., Sonora, CA 95370. On **June 15, 2012**, I served the foregoing document, described as:

VERIFIED ANSWER, COMPLIANCE FILING: INDIVIDUAL STATUS REPORT OF THE ODD FELLOWS RECREATION ASSOCIATION, AND ODD FELLOWS SIERRA RECREATION ASSOCIATION'S MOTION FOR STAY – CASE NO. C-1203016

on the parties or attorneys for the parties in this action addressed as follows:

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| Ann Rankin, Esq. 3911 Harrison St. Oakland, Ca 94611 | Attorney for Complainant Telephone: 800-354-4529 Email: arankin@annrankin.com |
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| Scott Ward, Esq. 995 Morning Star Dr., Ste. C Sonora, Ca 95370 | Attorney for Complainant Telephone: 209-536-2750 Email: scott@youngwardlothert.com |
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(BY U.S. MAIL) I placed a true and correct copy of the above document in a sealed envelope individually addressed to the above person(s) and deposited said envelope with the U.S. Postal Service at Sonora, California, with postage fully prepaid, in the ordinary course of business.

(BY UPS OVERNIGHT DELIVERY) I placed a true and correct copy of the above document in a sealed UPS overnight envelope/package, individually addressed to the above person(s) and caused such envelope/package to be deposited in a box or other facility regularly maintained by UPS and/or picked up by and authorized representative of UPS with fees fully prepaid at Sonora, California, in the ordinary course of business.

(BY EMAIL) To the emails listed above at approximately 2:30 p.m.(time)

(BY PERSONAL SERVICE) I personally hand delivered a true and correct copy of the above document by personally giving same to the above person(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 15, 2012**, at Sonora, California.


Timothy T. Trujillo