

1                                   **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OF OREGON**  
3   UM 1769

4 In the Matter of  
5 MOUNTAIN HOME WATER DISTRICT,  
6 Application to Abandon Water Service and  
7 Abandon Water Utility.

STAFF'S REPLY BRIEF

8                                   **I. INTRODUCTION**

9           Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Reply Brief  
10 in docket UM 1769. The issue before the Commission in this proceeding is whether Mountain  
11 Home Water District's (Mountain Home or Company) Application to Abandon Water Service  
12 and Abandon Water Utility (Application) should be granted. Staff has reviewed the Opening  
13 Briefs of the Company and Intervenors, and continues to recommend that the Commission grant  
14 the Company's Application, subject to Staff's recommended conditions: (1) that the Company  
15 be required to render service until August 1, 2017, or when the last customer has left its system,  
16 whichever is sooner, and (2) that the Company be required to negotiate in good faith with any  
17 customer that requires an interest in property in order to drill and/or maintain an alternative water  
18 source on his or her property.

19                                   **II. ARGUMENT**

20 **(A) Abandonment is appropriate under the circumstances present in this case.**

21           The decision before the Commission is not whether the Company is physically *able* to  
22 continue providing service, as Intervenors allege,<sup>1</sup> but whether the Company should be *required*  
23 to continue providing service in light of the circumstances present in this case. Staff continues to  
24 believe that the circumstances in this case warrant abandonment by the Company, and  
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<sup>1</sup> Intervenors' Opening Brief at 12.

1 recommends that the Commission grant the Application before it, subject to Staff's two  
2 conditions.

3 First, no party disputes that alternative water sources are available to all customers.

4 Second, the circumstances supporting abandonment—the Company's concerns over compliance

5 with Oregon Water Resources Department (OWRD) restrictions,<sup>2</sup> the personal circumstances of

6 Dr. Ironside,<sup>3</sup> and the previous and potentially future financial hardship to the Ironside family<sup>4</sup>—

7 outweigh the circumstances supporting a continued obligation to serve. Third, if the

8 Commission denies the Company's Application, there is no guarantee that significant costs

9 would not be borne by Intervenors now and into the future.<sup>5</sup> Finally, contrary to Intervenors'

10 assertions otherwise,<sup>6</sup> the Company has complied with the application requirements in OAR 860-

11 036-0708 and the Commission has a robust record upon which to base its decision.<sup>7</sup>

12 **(B) Staff's proposed conditions are reasonable.**

13 Staff proposes that the Commission grant the Company's Application subject to two

14 conditions. The first is that the Company be required to continue to serve customers until

15 August 1, 2017, or when the last customer secures an alternative water source, whichever is

16 sooner. The Company agrees with Staff's proposed condition.<sup>8</sup> Intervenors request that the

17 Commission place a timeline on the Company's obligation to serve that is dependent on the

18 repair of the Original Well, assuming that it can be repaired, and grant of ownership of the

19 Original Well to Intervenors.<sup>9</sup> As discussed more fully below, the Commission does not have

20 the authority to grant Intervenors' request for ownership of the Original Well in this case. To

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22 <sup>2</sup> Staff's Opening Brief at 7-8; Company's Opening Brief at 5-6.

23 <sup>3</sup> Staff's Opening Brief at 9; Company's Opening Brief at 8.

24 <sup>4</sup> Staff's Opening Brief at 9-10; Company's Opening Brief at 6-7.

25 <sup>5</sup> Staff's Opening Brief at 12-15.

26 <sup>6</sup> See Intervenors' Opening Brief at 11-12.

<sup>7</sup> Staff's Opening Brief at 10.

<sup>8</sup> Company's Opening Brief at 12.

<sup>9</sup> Intervenors' Opening Brief at 24-25.

1 place a timeline on abandonment for such a circumstance would be unreasonable. Allowing  
2 customers to have until August 1, 2017 to secure an alternative water source, which they already  
3 know is viable, is a reasonable condition.

4 Staff's second condition is that the Company be required to negotiate in good faith with  
5 customers to facilitate access to any customer and its contractors to the extent reasonably  
6 necessary for construction and maintenance of their well(s).<sup>10</sup> Because the Company originally  
7 proposed this condition, Staff assumes that the Company takes no issue with its  
8 recommendation.<sup>11</sup> This condition could also reduce the cost to Intervenors of securing an  
9 alternative water source.<sup>12</sup>

10 **(C) The Commission does not have the authority to order the conditions sought by**  
11 **Intervenors in this case.**

12 Intervenors first request that the Commission deny the Company's Application.<sup>13</sup> For the  
13 reasons discussed above, Staff concluded that abandonment was appropriate in this case and  
14 recommends that the Commission allow the Company to abandon subject to Staff's two  
15 proposed conditions. Intervenors alternatively request the following conditions be placed on the  
16 Company if abandonment is granted: (1) Intervenors be granted ownership of the Original Well  
17 together with access to all material portions of the water system to benefit their property to the  
18 extent it benefits their property, (2) rights of access to and use of water from the Replacement  
19 Well pending confirmation that the Company's prior compromising of the Original Well can be  
20 addressed to allow the Original Well to be operational to the satisfaction of Intervenors, (3) that  
21 all costs associated with any work to be completed on the Original Well be borne by the  
22 Company, (4) on the occasion that the Original Well is confirmed as a reliable water supply, that  
23 the Replacement Well solely operate to provide water to Parcel I of the Ironside's property and

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<sup>10</sup> Staff's Opening Brief at 11-12.

25 <sup>11</sup> Company/100, Ironside/5.

26 <sup>12</sup> Staff's Opening Brief at 14.

<sup>13</sup> Intervenors' Opening Brief at 24-25.

1 as a backup supply of water to the Original Well for purposes of ensuring Intervenor and their  
2 successors and assigns a backup water supply.<sup>14</sup> Though not explicitly stated, Staff assumes that  
3 if the Original Well is found to be non-operational, Intervenor would not support abandonment.

4 Although interesting, Intervenor's arguments regarding the rights and obligations of  
5 parties to various deeds and contracts and the requested conditions stemming therefrom are not  
6 appropriately before the Commission.<sup>15</sup> As Staff stated in its Opening Brief, the Commission  
7 simply does not have the jurisdiction to determine the legal significance of property interests, nor  
8 does it have the authority to condition abandonment on the Company's donation of property and  
9 property interests to Intervenor.<sup>16</sup> Unfortunately, Intervenor's have spent a considerable amount  
10 of time and money<sup>17</sup> litigating issues before the Commission that the Commission has no  
11 authority to decide.<sup>18</sup> The Commission's purview in an abandonment case is whether the utility  
12 should be forced to continue providing service to customers *as regulated by the Commission* in  
13 light of the circumstances present.<sup>19</sup> A court of general jurisdiction may determine whether  
14 Intervenor have a legal right to the water supply from the original Bel-Ridge Water Utility  
15 system, the significance of the alleged failure of the Original Well, and any related remedies.

#### 16 IV. CONCLUSION

17 For the reasons stated above and in its Opening Brief, Staff recommends that the  
18 Commission allow Mountain Home Water District to abandon its obligation to provide water  
19 service effective August 1, 2017, or when its last customer leaves its system, whichever is  
20 earlier, subject to the condition that the Company be required to negotiate in good faith with any

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22 <sup>14</sup> Intervenor's Opening Brief at 25.

23 <sup>15</sup> Staff's Opening Brief at 15-18.

24 <sup>16</sup> Staff's Opening Brief at 15-18.

25 <sup>17</sup> Hearing Tr. at 168.

26 <sup>18</sup> Staff's Opening Brief at 16-17.

<sup>19</sup> The Oregon Legislature granted the Commission the authority to regulate the service provided by water utilities. ORS 757.061(1)(b) sets forth the statutes that apply to service-only regulated utilities.

1 customer that requires an interest in property in order to drill and/or maintain an alternative water  
2 source on his or her property.

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4 DATED this 13<sup>th</sup> day of February, 2017.

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Respectfully submitted,

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ELLEN F. ROSENBLUM  
Attorney General

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Sommer Moser, OSB # 105260  
Assistant Attorney General  
Of Attorneys for Staff of the Public Utility  
Commission of Oregon

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