BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1769

In the matter of MOUNTAIN HOME WATER DISTRICT, Application to Terminate Water Service and Abandon Water Utility.	**MOUNTAIN HOME WATER DISTRICT'S OPENING BRIEF**

Applicant Mountain Home Water District (the "District" or the "Company") files the following opening brief, in accordance with the schedule set in Administrative Law Judge Power's Ruling issued January 19, 2017. This opening brief supports approval of the District's Application to Terminate Water Service and Abandon Water Utility (the "Application").

I. Facts

"Mountain Home Water District" is an assumed business name, registered with the Oregon Secretary of State by the water system's owner, Keith Ironside, until the registration lapsed on April 15, 2016. The District submitted the Application on April 1, 2016, following the failure of its original well, construction of a replacement well, and a meeting with customers. At the time of the Application, the District supplied water to two homes on the owner's property, 2323 SW Buckman Road (owned and occupied by the owner's daughter, Valerie Meyer) and 2351 SW Buckman Road (owned by Keith Ironside and occupied by a tenant); as well as four customers. The four customers included Don Rushmer, at 2391 SW Buckman Road; Robert Wiest, at 2375 SW Buckman Road; Elizabeth Kelley, at 2385 SW Buckman Road; and Mel and Connie Kroker, at 2333 SW Turner Road. (Staff Ex. 103 at 5; Company Ex. 200 at 1:2 (correcting Don Rushmer's address).) Mel and Connie Kroker are the only intervenors in this case.

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A. History of the Water System

Keith Ironside and Gladys Beddoe purchased the 18-acre property at 2323 SW Buckman Road in 1979, together with the water system, then known as the "Bel-Ridge Water Utility." (Intervenors Ex. 402.) Both Keith Ironside and Gladys Beddoe worked full-time as physicians. Gladys Beddoe, who was skilled at such things, assumed the duty of managing all the details of the District's operations. (Staff Ex. 102 at 5.)

Gladys Beddoe died in 2004, and Keith Ironside, who was semi-retired at the time, took on administrative responsibility for the District. Unlike his wife, he was not particularly well-suited for the task, and he often did not have enough time to devote to District management. (Staff Ex. 102 at 5, 28.) In the decade that followed Dr. Beddoe's death, management of the District also became increasingly complex, with additional layers of state regulation. For example, the District received notices and correspondence from the Public Utility Commission in 2007 (Staff Ex. 102 at 19-20.), the Department of Human Services in 2008 (*see* Staff Ex. 102 at 22-23.), and the Oregon Water Resources Department in 2015 (Staff Ex. 102 at 17.).

In 2013, Keith Ironside relocated to Kennewick, Washington. He subdivided his property, and his daughter and her family moved to the main house at 2323 SW Buckman Road. Keith Ironside rents the smaller house at 2351 SW Buckman Road, where the well house, the original well, the interim well, and the replacement well are all located. In her father's absence, Valerie Meyer assumed some of the administrative responsibilities of the water utility. (Staff Ex. 102 at 5-6.)

B. Failure of the Original Well

In March 2016, well installer Steve Hougak, who has serviced the system since 1994, inspected the facilities to address a loss of water pressure. Because of blockage in the well, the pump had been set at 389 feet in 1994 (the total well depth is 600 feet). (Company Ex. 300 at 1.) Mr. Hougak determined that the pump needed to be lowered, and he recommended Vance

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Wagner to clear the well bore to make that possible. While the original well was out of service, Hougak connected the system to a small second well on Keith Ironside's property (the interim well). (*Id*. at 2.)

Well driller Vance Wagner cleared the well and began to install casing, which is his standard practice and would protect against further cave-ins. (Company Ex. 400 at 1; Hearing Transcript at 70-71, 88.) He found that the well bore was "very crooked," and he could not straighten it, nor install casing. He recommended that the well be abandoned and replaced. (Hearing Transcript at 76:15-16; Company Ex. 400 at 1-2.) The owner followed his advice. The replacement well was constructed and hooked up to the distribution system in April or May of 2016.

In total, Keith Ironside spent more than $70,000 on these repairs. (Staff Ex. 102 at 28-29.) He decided not to try to recoup these expenses from customers, but instead filed the Application on April 1, 2016.

C. Current Status of Water Service

The replacement well provides water service to the two Ironside households (2323 SW Buckman Road and 2351 SW Buckman Road) and to two remaining customers: Nate Seymour, purchaser of the property at 2385 SW Buckman Road; and the Krokers. Customers Wiest and Rushmer voluntarily left the system in September 2016 and receive water from a newly constructed, shared well that is owned by an LLC they formed together. (Company Ex. 200.) Customer Seymour purchased his property with the understanding that he would construct a new well once this case was resolved. (Staff Ex. 102 at 37.)

II. Argument

The District is a service-regulated public utility under the jurisdiction of the Commission. Under ORS 757.480(5), a water utility may not dispose of utility property without Commission approval. OAR 860-036-0708 provides specific requirements for a water utility's application to

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terminate service and abandon a water system. Neither the statute nor the rule states what standard the Commission must apply to evaluate an application for abandonment. However, ORS 756.062 provides that all of the laws administered by the Commission "shall be liberally construed * * * to promote the public welfare, efficient facilities and substantial justice between customers and public * * * utilities."

Thus, in order to abandon service, the District must (1) fulfill the application and notice requirements of OAR 860-036-0708, and (2) demonstrate that its reasons for seeking abandonment, when balanced against hardships to customers, are adequate to satisfy the standard of promoting the public welfare, efficiency, and substantial justice. As set forth below, the District has shown that the Application is sufficient and that its reasons for abandonment meet the standard in ORS 756.062.

A. Application Requirements

The District submitted the Application on April 1, 2016, complying with all requirements of OAR 860-036-0708, as Staff correctly concluded in its Reply Testimony. (Staff Ex. 100 at 7.) Intervenors have not asserted otherwise.

B. Reasons for Abandonment

In the Application and in subsequent responses to data requests, the District provided several reasons for seeking to abandon the water system. The immediate reason for the District's Application was the failure of the original water supply well in March 2016. As Keith Ironside explained in his Rebuttal Testimony, however, "the well's failure was simply the impetus for going forward with the application." (Company Ex. 100 at 2.) The three primary reasons are (1) regulatory compliance, (2) the financial burden of maintaining and operating the system, and (3) the owner's personal circumstances. The failure of the original well, and the costs the owner incurred in constructing a replacement well, are part of the second reason, discussed below.

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1. Regulatory Compliance

The District's well and water system are located within the Sherwood-Dammasch-Wilsonville region, which since 2003 has been managed as a Ground Water Limited Area, classified for exempt uses only. *See* OAR 690-502-0190. An exempt well may be used for group domestic purposes to a maximum flow of 15,000 gallons per day. Although the District's customer connections are not metered, the total peak use of the water system likely falls below that threshold. However, each exempt well is further limited to irrigation of no more than one-half acre of lawn or non-commercial garden. *See* ORS 537.545; OAR 690-340-0010. In other words, no more than one-half acre *in total* may be irrigated with District water, among all users.

Keith Ironside was unaware of this restriction until the Oregon Water Resources Department sent informational letters to landowners in 2015. (*See* Staff Ex. 102 at 17.) The District's owner believes it would be impossible to enforce this limitation. (*See* Company Ex. 100 at 2; Staff Ex. 102 at 4.) At the very least, enforcement would be extremely burdensome. (*See* Hearing Transcript at 196:8-13 (statement of Celeste Hari).)

Additional exempt wells that are drilled on parcels in separate ownership are each entitled to a separate one-half acre of landscape irrigation. *See* OAR 690-340-0010(1)(d). Former District customers Don Rushmer and Rob Wiest, who also received the 2015 letter from OWRD, decided to drill their own, shared well so that they could continue to legally irrigate their lawns and gardens, which totaled about one-half acre for both households. (*See* Company Ex. 200 at 1.) Don Rushmer testified that he did not think it was possible for the District "to even come close" to complying with the half-acre limitation. (*Id*.)

In his Cross-Answering Testimony, intervenor Mel Kroker criticizes the District's position that the half-acre limitation would be impossible to enforce; however, he offers no guidance, suggestions, or even hypothetical scenarios for how such enforcement could be accomplished. (Intervenors Ex. 300 at 11.) Therefore, based on the evidence in this record, it is not possible

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for the District to comply with OWRD's exempt-use restrictions. It would not serve the public welfare nor meet the standard of substantial justice for the Commission to require the District to continue water service when it cannot provide service lawfully. In a groundwater-limited area, having one exempt well per parcel, or one shared well between two parcels, is a far more efficient use of water facilities than the District's service to six households.

2. The Financial Burden

The Company provided evidence that the monthly fee charged to customers was not sufficient to meet the system's ongoing expenses and maintenance costs, and that Keith Ironside frequently used his personal funds to pay for non-routine repairs and improvements. (*See* Staff Ex. 102 at 4-5, 24-25, 32, 33.) When the original well failed during an attempt to clear a cave-in and install casing, the owner elected to bear the resulting expenses himself. (Staff Ex. 102 at 28-30.) Rather than ask for contributions from customers, he decided the best course would be to encourage customers to allocate those funds toward securing another water supply. (Staff Ex. 100 at 9.) The owner submitted the Application because he does not wish to continue subsidizing the cost of providing water service.

Two additional factors are relevant to the issue of subsidization. First, the distribution system is more than 40 years old and near the end of its useful life, as pump installer Steve Hougak explained in his Rebuttal Testimony. (Company Ex. 300 at 2; *see also* Company Ex. 200 at 2 (Rebuttal Testimony of Don Rushmer).) Thus, the costs of maintaining the system can be expected to increase significantly in the next decade. Second, not all customers paid even the monthly charge on time (Company Ex. 100 at 3; Company Ex. 101), and one customer, Elizabeth Kelley, remained almost three years in arrears when she sold her property in 2016. (Company Ex. 100 at 3.)

In his Cross-Answering Testimony, intervenor Mel Kroker counters the "financial burden" reason for seeking termination by alleging that any subsidization by Keith Ironside was

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the result of mismanagement, and specifically the District's failure to bill customers more regularly for expenses not covered by the monthly service charge. (Intervenors Ex. 300 at 16, 20.) It is true that the District only requested additional funds from customers on three occasions, in 1985, 1994, and 2009. (Staff Ex. 102 at 24-25.) It is also true that Keith Ironside's attention to the details of management were often inadequate. (Staff Ex. 102 at 28.) However, as discussed above, not all customers paid their bills regularly and on time (or at all, in the case of Elizabeth Kelley). If the District continued to provide service, it would have no guarantee that requests for additional funds would be successful, particularly if large portions of the aging distribution system failed and required expensive repairs.

Indeed, intervenor Mel Kroker testified that he would be unwilling to pay the costs that the District could reasonably assess if the Application were denied and he were the only remaining customer. (Intervenors Ex. 300 at 20-21 ("If abandonment is denied, I only am responsible for my share as if all 6 homes were receiving water.").) He also testified that he "should not have to pay for the cost of the replacement well" because he deemed it an unnecessary expense. (*Id*. at 10.) On cross-examination, he stated that he would "have supported the cost of one sixth of the replacement well." (Hearing Transcript at 167:5-6.) When asked whether he would be willing to pay more than a one-sixth share, if the District's Application were denied, he stated that he could not answer the question. (Hearing Transcript at 167:13-14.)

Based on this evidence, there is every reason to predict that the District would continue subsidizing the cost of providing water service, if the Application were denied. Yet under ORS 756.040(1), the Commission is charged with balancing the needs of utilities and customers by establishing "fair and reasonable rates" that include a reasonable rate of return. Although the District is not rate-regulated, the Commission's charge in ORS 756.040(1) strongly suggests that it would be unjust to require Keith Ironside to continue providing subsidized water service.

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3. The Owner's Personal Circumstances

The District's final reason for seeking to abandon its utility system concerns the owner's personal circumstances. The District's owner, Keith Ironside, is 76 years old. He no longer lives on the property where the well is located. After a period of semi-retirement that followed his wife's death, he relocated in 2013 to Kennewick, Washington, and now works six days per week as the director of two sleep centers. (Staff Ex. 102 at 5-6.) Unlike his wife, who managed the District for 28 years, he is not particularly well-suited to the administrative tasks of operating a water utility. (*Id*. at 28.) Although his daughter, Valerie Meyer, has been assuming many of the administrative duties of the utility since 2013, she is not willing to take on management of District on a permanent basis. (*See id*. at 6.)

Intervenor Mel Kroker submitted testimony acknowledging the difficulty that the owner's personal circumstances would pose in continuing to manage the District. (Intervenors Ex. 300 at 16 (conceding that "it may provide personally an extreme hardship to Dr. Ironside given his other commitments").) Mr. Kroker goes on to suggest that Valerie Meyer should assume control of the District, or that the District could "engag[e] a subcontractor to manage all aspects of the operating of the water system." (*Id*.) However, the Commission has no authority to conscript Valerie Meyer into involuntary service as the District's manager, and Mr. Kroker does not explain how the District would pay for a subcontractor, given its financial constraints and Mr. Kroker's unwillingness to assume a significant share of the District's costs. (*Id*. at 10, 20-21; Hearing Transcript at 166:1, 167:5-6, 167:13-14.)

Keith Ironside should be permitted to retire from his duties as District owner, without having to sell his property. To force him to continue would not serve the public welfare, nor satisfy substantial justice — particularly because the comparative "hardship" to the intervenors, viewed objectively, amounts to little more than inconvenience.

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C. Hardship to Customers

In her Cross-Answering Testimony, Celeste Hari summarized the "concerns" of customers as a factor in Staff's recommendation that the Application be approved. (Staff Ex. 200 at 5.) Based on the Petition to Intervene, the intervenors' concerns include the time allowed to secure an alternate water supply, "extreme financial hardship," their disagreement with the reasons for abandonment, and the challenges they face in constructing a water supply well on their property. (*See* Staff Ex. 100 at 13.) The timing concern is discussed in Part D.1, below, under "Conditions for Abandonment." Intervenors' disagreement with the District's reasons for abandonment is discussed in Part B, above. The remaining concerns of the intervenors include (1) financial hardship and (2) the feasibility of securing another source of water.

1. Financial Hardship

In the Petition to Intervene, intervenors claimed that abandonment of the water system imposed "extreme financial hardship to a retired couple living on Social Security." (Staff Ex. 100 at 13.) However, when asked to substantiate their claim, intervenors declined to provide *any* information about their financial circumstances. (Staff Ex. 104 at 1-3.) Instead, intervenors responded that "[o]ur financial assets have nothing to do with the magnitude of the loss imposed by the District on our health, and loss of value to our property by taking our water away." (*Id*. at 3.) In assessing and weighing the claim of financial hardship, Staff noted that the Krokers' statement about "extreme financial hardship" referred to a "general feeling of loss to our family" rather than to their specific financial situation. (Staff Ex. 100 at 14-15.) During the hearing, Mel Kroker confirmed that what he meant by "extreme financial hardship" had less to do with the intervenors' financial situation and more to do with the "trauma" of the Application itself: "The fact is, whether we are rich or poor, that should not make the determination of

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whether it's fair or right for this process to be proceeded against us." (Hearing Transcript at 168: 15-18.)

In his Rebuttal Testimony, Keith Ironside responded to the intervenors' claim of "extreme financial hardship to a retired couple living on Social Security." He pointed out (a) that the Krokers had declined to provide any financial information, (b) that the Krokers' estimate of their projected costs for a replacement water system were inflated by at least $43,000, and (c) that although the intervenors described themselves as a "retired couple," Mel Kroker stated in his Reply Testimony that he is currently employed as a consultant. (Company Ex. 100 at 4.)

In short, there is no support in this record for the intervenors' claim of financial hardship. The District does not doubt that the process of contesting the Application has been personally traumatic for Mel Kroker, but that is not the same as a "hardship" that can be objectively assessed. Certainly, the Commission can be sympathetic toward anyone who must change their source of domestic water supply after 37 years, but in evaluating the District's Application, it would be neither fair nor reasonable to give any weight to the allegation of "financial hardship." Celeste Hari summarized the issue succinctly in her Reply Testimony: "It is unfortunate any time unexpected and significant costs occur. However, it is not clear that costs are avoidable or able to be shifted away from the Krokers." (Staff Ex. 100 at 16.)

2. Feasibility of Securing an Alternate Water Supply

The intervenors have at least two viable options for securing a water supply to replace their service from the District. (*See* Staff Ex. 105:2.) First, the intervenors initially investigated the possibility of sharing a well with the neighboring property, then owned by Elizabeth Kelley. This appears to have been a feasible option, although the intervenors' response to the question of feasibility was ambiguous. (*See* Staff Ex. 104 at 9-10.) The intervenors elected to abandon

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that course, stating "we are not interested in continuing to spend any energy toward a shared well." (*Id*. at 10.)

Second, the intervenors' property has some steep grades and a drainfield that limit where they can site a well; nevertheless, they have clearance from Clackamas County and a proposal from a contractor to construct their own water system. (*See id*. at 12-13.) Well driller Vance Wagner, who visited the Kroker property, testified, "Sure. There's a way to get a well in there." (Company Ex. 400 at 2.) During the hearing, Mel Kroker confirmed that it was possible to construct a water system on his property. (Hearing Transcript at 172:22-25.) The intervenors' consultant, John Lambie, opined that a new well on the Krokers' property would most likely produce a reliable water supply. (*Id*. at 179:4-6.)

According to *Black's Law Dictionary*, "feasible" means "capable of being accomplished," or in other words, possible. It does not mean easy or effortless. Sharing a well might have required less effort, but the intervenors decided against that option. Because construction of an alternative water system is feasible for the intervenors, the inconvenience of doing so should carry only minimal weight as a "hardship" in the Commission's evaluation of the District's Application.

D. Conditions for Abandonment

In her Reply Testimony, Celeste Hari recommends that the District's Application be approved, subject to two conditions — that the "Company be required to provide water service to all customers until August 1, 2017," or until the customers secure an alternative water supply, whichever occurs first; and that the "Company execute a written instrument demonstrating that the Krokers have permanent access from Buckman Road for construction and maintenance of their well." (Staff Ex. 100 at 16-17.)

During cross examination, intervenor Mel Kroker was questioned at length about those conditions, and additional conditions he would seek if the Application were approved. He

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alluded to the possibility of financial compensation, or somehow restoring him to the status quo ante, but he stopped short of asking for any specific condition. (*See* Hearing Transcript at 169: 6-8 ("I'm looking for something that's of value to me in exchange for the — for the trauma that it has put in our life.").) He did request a specific condition about continued rights to the original well, which is discussed below along with Staff's proposed conditions.

1. August 1, 2017 Deadline

The Application's proposed effective date for service termination, June 30, 2016, is long past, and Staff's recommended date gives customers 16 months from the date they were notified of the abandonment. During the hearing, Mel Kroker confirmed that "giving us more time was the most important thing we can do." (Hearing Transcript at 169:24-25.) As for the proposed date, August 1, 2017, Mel Kroker testified that he "would agree to the recommendation in principal," but wanted an indefinite amount of time to complete construction of a water system. (Intervenors Ex. 300 at 19.) The District does not view an indefinite deadline as reasonable, but does support August 1, 2017 as a final deadline for customers to secure another water supply. (Company Ex. 100 at 5.)

2. Access Right from Buckman Road

Staff's other recommended condition was a right of access over the portion of Buckman Road that is located on Keith Ironside's property and is a private roadway. As shown on Staff Exhibit 102, page 11, however, the Krokers' property does not abut Buckman Road; thus a right to use the road would not provide the Krokers with access to their property unless they also obtained a right-of-way over Tax Lot 1900, which is owned by Nate Seymour, not a party to this proceeding. Mel Kroker confirmed that the intervenors have no such right-of-way over Mr. Seymour's property. (Hearing Transcript at 165:4-6.) However, he took the position that he wanted a right of access, including a right over the Seymour property, which he proposed should be secured at Keith Ironside's expense. (*Id*. at 170: 9-11.)

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The District considers Staff's condition unreasonable, because it does not solve the Krokers' access issue. The Commission has no jurisdiction to force the owner of Tax Lot 1900 to grant the intervenors a property right. Besides, the intervenors have another feasible route to the well site over their own property. (Staff Ex. 104: 12-13.) Thus, the District requests that the Commission approve the Application with no condition of access over Buckman Road.

3. Permanent Right to the Original Well

A third condition, raised by Mel Kroker for the first time on cross-examination, was that the District repair, at its expense, the original well, including installation of four-inch casing and a smaller pump, and then "put a deeded easement to that well house" for the intervenors' use. (Hearing Transcript at 171-172.) Even if this "condition" had been timely proposed and properly vetted among the parties, which it was not, it is patently unreasonable in several respects.

First, there is no guarantee that the original well could be repaired. Although Mr. Kroker believes the original well "remains operational" (Intervenors Ex. 300 at 6), the weight of other testimony in the record indicates otherwise. (Company Ex. 400 at 2.) Vance Wagner testified that the well had caved in and would likely do so again. (Hearing Transcript at 70-71.) There is no reason to suppose that four-inch casing would fit down the well, since it was "very crooked" as originally constructed. (*Id*. at 76:15-16.) John Lambie thought it could be done, but he is not a licensed well driller, and the device he used to test that the well was "clear and open" was a well sounding tape equipped with a lead weight only 1.5 inches in diameter. (*Id*. at 178:2-4, 182:10-24.)

Likewise, Mr. Kroker believes the lengthy water supply line to his house "works just fine" (Hearing Transcript at 172:7), but in fact the line is more than 40 years old and at the end of its useful life (Company Ex. 300 at 2). As a practical matter, even if the District agreed to Mr. Kroker's proposal, there is a high likelihood of significant, ongoing maintenance of the well

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and water line, which would involve the movement of heavy equipment over Keith Ironside's private property, and dismantling and reassembling of the well house every time the well needed major rehabilitation.

Second, a Commission order that forced Keith Ironside to convey a property right to the intervenors, and to lose exclusive control of the well house where his own water system and equipment is located, would not be just or reasonable. Similarly, requiring the District, or its owner, to pay for repairs to the original well — in spite of advice from the District's own contractors that the well was not worth saving — would be unjust and unreasonable. The District requests that the Commission approve the Application with no condition based on Mr. Kroker's 11th-hour proposal during the hearing.

III. Conclusion

The District's reasons for seeking abandonment are compelling and greatly outweigh any hardship to the intervenors. The age of the system, the age and personal circumstances of the owner, and the impossibility of compliance with OWRD regulations, all tip the balance decisively in favor of the District's Application. Approval of that Application serves the public welfare, supports the efficiency of water delivery facilities, and promotes substantial justice between the utility and its customers. Accordingly, the District requests that the Commission approve the Application, with the single condition that the District will provide water service until August 1, 2017, or until the last customer secures an alternate water supply, whichever occurs first. The District emphatically urges the Commission *not* to impose any condition that would require the owner or his family to grant property rights to or invite further entanglement with the intervenors. Sometimes, good fences make good neighbors. That is the situation here.

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DATED this 3rd day of February, 2017.

Respectfully submitted,

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CERTIFICATE OF FILING

I certify that on February 3, 2017, I filed the foregoing **UM 1769: Mountain Home Water District Opening Brief** by electronic mail with the Public Utility Commission at puc.filingcenter@state.or.us, with an electronic mail copy to the UM 1769 Service List, including interested parties:

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