

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: March 31, 2020**

**REGULAR**      **CONSENT**   X   **EFFECTIVE DATE**     April 6, 2020    

**DATE:** March 17, 2020

**TO:** Public Utility Commission

**FROM:** Scott Shearer

**THROUGH:** Bryan Conway, Michael Dougherty, and Bruce Hellebuyck **SIGNED**

**SUBJECT:** OREGON WATER UTILITIES - MOUNTAIN LAKES INC. and PINECREST WATER COMPANY:  
(Docket Nos. UP 408 and ADV 1090/Advice No. 20-1)  
Requests Approval for the Sale of Pinecrest Water Company to Oregon Water Utilities – Mountain Lakes, Inc.; Update Oregon Water Utilities – Mountain Lakes Inc. Tariff to charge Pinecrest Water Company Territory, and Applies Oregon Water Utilities - Mountain Lakes Inc. rates to former Pinecrest Water Company’s customers.

**STAFF RECOMMENDATION:**

Staff recommends the Commission approve the sale of Pinecrest Water Company (Pinecrest) to Oregon Water Utilities - Mountain Lakes, Inc. (Mountain Lakes), subject to conditions. Assuming the Commission approves the sale, Staff also recommends the Commission approve Mountain Lakes’ Advice No. 20-1 to charge former Pinecrest customers pursuant to Mountain Lakes’ Tariff.

Staff recommends the following conditions:

1. Mountain Lakes shall provide the Commission access to all books of account as well as all documents, data, and records that pertain to the transfer of properties or to transactions with Mountain Lakes or any other affiliate.
2. Mountain Lakes shall notify the Commission of any substantive changes made to the Asset Purchase Agreement (APA). Any substantive changes to the APA terms that alter the intent or extent of the APA from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.

3. Mountain Lakes shall provide notice to the Commission no more than 10 days after the close of the sale.
4. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding.
5. Mountain Lakes will ensure its and Pinecrest's books and records are available in accordance with the applicable uniform system of accounts or, as appropriate, generally accepted accounting principles.
6. Mountain Lakes will file a general rate case proceeding no later than six months from the date of a Commission Order in this proceeding.
7. Mountain Lakes agrees not to request rate recovery on any acquisition adjustment due to its purchase of Pinecrest assets.
8. Mountain Lakes will provide Pinecrest's customers access to on-line bill payment capabilities and call center customer support within 90 days after closing, or prior to filing of Mountain Lakes' next rate case, whichever is sooner.
9. Mountain Lakes will track costs, expenses, and billing between legacy Mountain Lakes and legacy Pinecrest systems until an order is issued in the combined companies' next rate proceeding.

## **DISCUSSION:**

### Issues

1. Whether the Commission should approve the sale of Pinecrest to Mountain Lakes.
2. Assuming the Commission approves the sale, whether the Commission should approve Mountain Lakes' Advice No. 20-1, which updates its tariff to include the provision of service to Pinecrest's customers under the same rates, terms and conditions as Mountain Lakes' customers.

### Applicable Law or Rule

ORS 757.480(5), ORS 757.485(1), OAR 860-036-2120(1), and OAR 860-036-2120(3) require water utilities doing business in Oregon to obtain Commission approval prior to selling, purchasing, or otherwise disposing of a water utility. While typically filed by the seller, the application may be filed by the seller, buyer, or jointly by the parties. The Commission has traditionally applied a public interest "no harm" standard when considering whether or not to approve such a transaction.

OAR 860-036-2120(4), calls for the utility to provide the Commission and its customers with notice of a sale, no less than 60 days prior to the closing date of the transaction.

ORS 757.205 and OAR 860-036-2000 state rate-regulated water utilities are to file with the Commission schedules showing all rates, tolls, and charges pertaining to services performed by the public utility.

ORS 757.220 and OAR 860-036-2010, mandates water utilities to file tariff changes with the Commission at least 30 days prior to the effective date of the change.

ORS 757.210 and ORS 756.040 require the Commission to approve rates, terms and conditions of service that are fair, just and reasonable.

### Analysis

#### *Background*

Pinecrest is a service regulated water utility, presently providing water service to approximately 48 customers near Bly, Oregon. The current owners had moved to the community to retire and offered to help run the system with the prior owner. Pinecrest's current owners were then thrust into ownership of the system by the prior owner, who walked away from the system. At the time, rates were under the \$24 minimum threshold for service regulation.

As a way to keep water service to the community, the current owners reluctantly agreed to accept ownership and to continue running the system. Due to many years of undercharging for service by the prior owners, there were severe financial difficulties for Pinecrest at that time. Pinecrest's current owners contacted Commission Staff for help in what to do with the system and how to apply new rates that would more reasonably recover costs.

Staff worked with the current owners to determine new rates. The new rates were set above the \$24 minimum threshold, thus triggering service regulation. Pinecrest became service regulated by the Commission in Order No. 19-237.

Since the inception of this transaction, Pinecrest's current owners have relayed concerns to Staff about their ability to physically continue to maintain the system properly.

As such, Pinecrest's current owners began looking for potential buyers for the system, including SouthWest Water Company (SWWC), Mountain Lakes' parent company. SWWC began due diligence on the potential transaction and determined that it would be most efficient to incorporate Pinecrest into Mountain Lakes' system and tariff structure. Specifically, SWWC stated that due to the small number of Pinecrest connections, the costs to create a "new" system within their computer architecture, hiring additional personnel to run Pinecrest, and the likelihood of increased costs to Pinecrest customers if they were to maintain the system separately, would not allow SWWC or Mountain Lakes to make a reasonable return on their investment, thus making the purchase untenable.

*Application - UP 408 - Sale of Pinecrest*

Related to the sale of the Pinecrest System, Staff has reviewed the scope and terms of the Asset Purchase Agreement (APA), purchaser's background and financial position, transfer pricing and allocation of gain, public interest compliance, joint buyer and seller Application, affiliated interest, ring-fencing and other provisions, and customer issues associated with the proposed transaction. Related to Mountain Lakes' proposal to charge Pinecrest customers pursuant to Mountain Lakes' tariff, Staff has also reviewed the Tariff Advice filing, Pinecrest's 2018 Operating Expenses, and Pinecrest's Replacement Cost Less Depreciation Study (RCLD).

Staff issued nine information requests related to the application and advice filing, in addition to the records provided in the filings.

1. Asset Purchase Agreement

On December 31, 2019, Mountain Lakes and Pinecrest signed the APA, which sets forth the agreement for Mountain Lakes to purchase, from Pinecrest, all assets associated with the water system and owned by the Pinecrest. The parties state the sale will complete after approval by the Commission.

This transaction is a privately-negotiated, non-auction sale between Mountain Lakes and Pinecrest. Per the Application, all utility property currently owned by Pinecrest is included in this transaction. This includes the well and reservoir plant site, easements to

the water system, the water distribution system, potable well, water tank, pump house, storage, pump and motor, chlorination system, electrical and associated equipment, fencing, available construction and plant logs, available maps and records, water line extension agreement, and current customer list. Staff reviewed the APA and noted no unusual or restrictive terms to the Agreement.

## 2. Purchaser Background and Financial Position

Mountain Lakes is fully owned by SWWC. SWWC currently owns and operates 130 water systems across six states, including approximately 2300 customers in its Oregon territories. Mountain Lakes' service territory is approximately 60 miles from the Pinecrest system. Mountain Lakes believes it can operate the Pinecrest system effectively with the personnel already stationed in the Mountain Lakes' area. Mountain Lakes, through its parent company SWWC, has the financial and operational ability to acquire Pinecrest. SWWC, Mountain Lake's parent, has a BBB+ credit rating with Standard & Poor's rating agency with a stable outlook<sup>1</sup>. As a result, Mountain Lakes has access to capital to finance the current operations and future capital expenditure requirements. Additionally, Mountain Lakes' 2018 Annual Results of Operations Report to the Commission shows sufficient capital and capacity to acquire Pinecrest without undue financial concern on the existing Mountain Lakes' system.

## 3. Transfer Pricing and Allocation of Gain

Mountain Lakes states it will not seek rate recovery related to any potential acquisition adjustment in its purchase of Pinecrest assets. This is also reflected in Staff's Recommended Condition 7.

## 4. Public Interest Compliance

### Service Impacts:

As described in this memo, Mountain Lakes has extensive experience in running a water system. The parties expect the proposed transaction to be seamless from the customers' perspectives, and assert that customers will experience no interruption in service due to Mountain Lakes' acquisition of Pinecrest. This transaction will not cause harm to the public as customer's service will not be materially affected by this transaction. In fact, Pinecrest's customers will see added benefits through the acquisition by Mountain Lakes as there will be additional operations and customer service staff to address all aspects of the operations and customers will have access to Mountain Lakes' on-line billing and payment services, as listed in Staff's Recommended

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<sup>1</sup> Per Mountain Lakes' Response to Staff's Information Request No. 8 "[SWWC] holds an issuer credit rating of BBB+ with stable outlook from Standard & Poor's rating agency."

Condition 8. Customers will also benefit from the utility industry expertise that Mountain Lakes' staff will be able to provide.

**Structural Issues:**

Staff examined the structure of the acquisition proposed by Mountain Lakes. Mountain Lakes proposes to incorporate Pinecrest into Mountain Lakes versus running Pinecrest as a separate and distinct system. As discussed above, the cost of keeping the systems separate would outweigh the benefits of the transaction, making Mountain Lakes' purchase of Pinecrest financially infeasible under that scenario. By incorporating the two systems, Mountain Lakes is able to gain efficiencies in the operations, billing, and customer service, that would not be realized as a separately run system. Staff is persuaded by the argument that combining the systems gains efficiencies that would not otherwise be realized as a separate system or absent the transaction altogether.

**Rate Issues:**

The acquisition presents rates issues. Mountain Lakes has proposed that Pinecrest customers begin paying Mountain Lakes' rates immediately after the close of the transaction. The first rate issue is whether the rates charged to former Pinecrest customers are fair, just and reasonable, particularly because the result is an immediate rate increase to former Pinecrest customers. The second rate issue is whether Mountain Lakes' customers will experience increased rates as result of the sale. These issues are further complicated by the limited plant records and details available on the Pinecrest system.

*a. Immediate Increase to Pinecrest Customers' Rates*

Pinecrest's customers are currently charged a \$30 base rate, with a commodity rate of \$0.97 per 100 cubic feet of usage. This equates to an average bill of \$40.86 per month. Mountain Lakes charges a \$33 base rate with a commodity rate of \$1.54 per 1,000 gallons of usage. Under current Mountain Lakes' rates, Pinecrest's customers would see an average monthly bill of \$45.90, a \$5.04 increase.

In order to determine whether charging former Pinecrest customers Mountain Lakes' rates is just and reasonable, Staff reviewed Pinecrest's 2018 Operating Expenses and Pinecrest's RCLD Study. As discussed in more detail below, Staff's conclusion is that the immediate rate impact is mitigated by the fact that Pinecrest's current rates do not allow for the recovery of its full costs, including rate of return on rate base, for the provision of utility service. This is clear when reviewing the Pinecrest Water Expense Study 2018, in the Application. See *Staff's Attachment A*.

Pinecrest's operating expenses for 2018 were \$49,454, while rates charged to customers only produced \$10,514 in income, as shown in Staff's Attachment A. When

factoring in the rates implemented by Pinecrest in mid-2019, the full year revenue estimate is \$23,487, which is still less than half the \$49,454 in revenue required for Pinecrest to recover its operating expenses, much less earn any kind of return. In fact, if rates were set to simply cover operating costs alone, Pinecrest rates could more than double to \$85.86 per month, on average. Staff notes that this is not a substitute for full and rigorous analysis that would normally occur in a rate proceeding, but believes this points to the need for potentially much higher rates if Pinecrest were to maintain a separate rate structure once acquired by Mountain Lakes.

As such, Staff agrees that the slight increase in rates, as a result of the transaction, due to current financial position of Pinecrest, appears to be reasonable. However, Staff believes a full review of the systems should be addressed in a rate proceeding and has recommended, in Condition 6, that Mountain Lakes be required to file a general rate case proceeding within six months of a Commission Order in this proceeding.

b. *Mountain Lakes Customers' Rates*

Regarding whether Mountain Lakes' current customer rates remain just and reasonable after the close of the transaction, Staff queried Mountain Lakes on Pinecrest and Mountain Lakes operating costs and rate base, both pre- and post-closing. This analysis is for illustrative purposes only, and does not constitute Staff's position on rates in a future general rate case proceeding; rather, this analysis provides Staff with confidence that its recommendations in this case are in the public interest and will result in rates that are fair, just, and reasonable.

Staff conducted an analysis of Mountain Lakes' operating costs by looking at data from Mountain Lakes' most recent general rate case related to operating expenses and customer count and applied them to Mountain Lakes current customer base, from Mountain Lakes' most recent results of operations. This gave Staff a basis for review of the current Mountain Lakes' operating expense, per customer, excluding the Pinecrest acquisition. Staff then added the incremental costs of incorporating Pinecrest to show the operating expense, per customer, after Pinecrest is integrated into Mountain Lakes. The effect is that the operating expense, per customer, would drop by \$24.65 annually as a result of the transaction. *See Staff's Attachment B.*

Staff then reviewed Mountain Lakes' rate base calculations by taking the rate base per customer based on 2018 operating revenues and calculated a rate base after incorporating Pinecrest into the Mountain Lakes' system. This shows that the rate base for Mountain Lakes' customers would decrease by seven percent after the transaction.

Due to the anticipated decreases in both operating expenses per customer and rate base per customer expected to result from the transaction, Staff anticipates no adverse

impacts on the current Mountain Lakes' customer rates, assuming Staff's proposed conditions (including a forthcoming general rate case where any potential efficiencies can be passed on to customers) are adopted.

*c. Limited Plant Record Availability*

Because the current owner has limited records related to plant and infrastructure, due to the previous owners handling of the system, there is not a simple way to determine a full net book value to assign to the plant currently. In substitution for this information, a RCLD study was performed on the Pinecrest system.

In the Application, Mountain Lakes initially stated that this was completed by third party engineering firm; however, in response to Staff's data requests, this was determined to be an error, as the study was not completed through the third party engineering firm, due to costs. Instead, it was completed by Jorge Lopez, P.E., Vice President of Engineering for Suburban Water Systems, a subsidiary of SWWC. The study was conducted by reviewing "as-built" design plans for the Pinecrest system to identify system components and applying local market cost estimates to them. The cost estimates and estimated useful lives were based on a recent third-party engineering study of a similarly situated small water system located in Klamath Falls. The Pinecrest values were then trended backward to their installation dates using factors provided by the Handy Whitman Index of Public Utility Construction Costs (Whitman Index)<sup>2</sup>.

Staff reviewed all data and records provided related to the study and comparisons to the Whitman Index. For purposes of the analysis necessary in this case, Staff feels this is a reasonable proxy for net book value due to the limited records available for the Pinecrest system. Staff used this information in developing its rate base per customer information mentioned above. However, consistent with proposed Condition 4, Staff believes it is appropriate to reserve the right to review the reasonableness of that number for ratemaking purposes until Mountain Lakes' next rate proceeding.

*Tariff Advice Filing - Advice No. 20-01*

Mountain Lakes' requests to charge newly acquired Pinecrest customers pursuant to the rates, terms and conditions in its currently approved tariff, which is part of the Commission's decision in this case. To effectuate this, the tariff change requested by Mountain Lakes is to expand the "Available:" section (i.e., the territory description) found in their tariff. Currently, the "Available" sections in all Mountain Lakes rate schedules

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<sup>2</sup> The Handy-Whitman Index calculates the cost trends for different types of utility construction. The Whitman Index values are used to trend earlier valuations and original cost records to estimate reproduction cost at prices prevailing at a given date.



state "To customers of the Utility at Running Y Ranch Resort and RidgeWater, and vicinity, Klamath Falls, Oregon." Pinecrest's location in Bly, Oregon, is approximately 60 miles away from Mountain Lakes. As such, it is not in the vicinity of Running Y Ranch Resort and RidgeWater, Klamath Falls, Oregon. Mountain Lakes proposed tariff language is "To customers of the Utility in Klamath County, Oregon, and vicinity." This would then cover Pinecrest's territory and give Mountain Lakes more flexibility in future potential expansions in the area as well. The tariff revisions were filed more than 30 days in advance of becoming effective, as required. Staff supports this change.

Based on the rate discussion above, Staff finds that Mountain Lakes' proposal to charge newly acquired Pinecrest customers the same rates as its current customers, and pursuant to the same rules and regulations, is fair just and reasonable because of the concerns with Pinecrest's current financial condition, Pinecrest's need for greatly increased rates due to current costs to operate the system, and in light of Staff's Recommended Condition 6, that Mountain Lakes file a general rate case proceeding within six months of a Commission Order in this proceeding.

#### *Affiliated Interest / Ring-Fencing / Other Provisions*

Since Pinecrest will become an integrated part of Mountain Lakes, Pinecrest customers will be protected from any potential harm resulting from affiliated interest transactions as a result of the provisions adopted by the Commission in Docket UI 418, through Order No. 19-429, which approved the Affiliated Interest agreements in place for Mountain Lakes and SWWC. Additionally, Pinecrest customers will be protected by the ring-fencing and other provisions adopted by the Commission in SWWC's acquisition of Mountain Lakes in Docket UP 346, through Order No. 17-168.

#### *Customer Issues*

Notice of the sale was provided to customers and the Commission on February 5, 2020, with a proposed close date of April 6, 2020, pending Commission approval, which meets the 60 day notice requirement in OAR 860-036-2120. As of March 20, 2020, there have been no recorded complaints with the Commission's Consumer Service Section regarding the transaction from either Pinecrest or Mountain Lakes' customers.

#### Conclusion

For the reasons stated above and subject to Staff's recommended conditions, Staff concludes the application for the sale of Pinecrest to Mountain Lakes meet the public interest, no harm standard, and recommends that the Commission approve the sale. Assuming the Commission approves the sale, Staff also recommends that the Commission approve Mountain Lakes' Advice No. 20-01, which would allow Mountain Lakes to charge the newly acquired Pinecrest customers the same rates, and subject

them to the same rules and regulations, as its current customers. Doing so would result in rates that are fair, just, and reasonable.

**PROPOSED COMMISSION MOTION:**

Approve the sale of Pinecrest to Mountain Lakes, subject to the recommended conditions.

Approve Mountain Lakes' proposed tariff changes to subject Pinecrest customers to Mountain Lakes' tariff.

PINECREST WATER EXPENSE STUDY 2018													
	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
V&B ACCOUNTING -													
RATE INCREASED TO 550 JAN OF 2019	400	400	400	400	400	400	400	400	400	400	400	400	4,800.00
V&B POSTAGE	47.04	31.73	26.62	25.00	29.15	28.13	26.50	28.00	27.21	52.84	28.86	4.84	355.92
V&B COPIES/PRINT	15.90	20.10	20.10	19.60	26.80	15.90	17.50	18.80	24.80	25.60	31.30	21.50	257.90
VERIZON - CELL	37.09	37.11	39.20	37.11	37.08	37.08	41.25	37.02	37.02	37.02	37.10	37.10	451.18
SPRING STREET - WATER TESTING	40	40	40	40	40	240	40	160	40	40	125	40	885.00
PACIFIC POWER WATER MASTER	477.38	483.09	392.05	429.57	448.72	453.39	597	778.15	479.85	387.53	338.47	436.37	5,701.98
PAYROLL	1459.13	535.63	789.59	789.59	789.59	789.59	788.73	0	0	0	0	733	6,674.85
PAYROLL TAXES SAIF - W.C. INSURANCE	343.42	0	0	503.00	0	0	430.10	0	0	144.22	0	0	1,420.74
WATER MASTER MILEAGE	25	50	25	25	55	97.50	65.00	0	0	300	300	75	1,017.50
OFFICE SUPPLIES / EXPENSES	156.00	0	0	0	0	8.38	0.00	0	150	113.24	0	431.67	859.29
MAINTENANCE SUPPLIES / LABOR	0.00	199.95	0	1784.00	948.00	300.00	135.93	110.10	669.47	849.43	737.81	4.09	5,738.78
CONTRACTED LABOR	0.00	250.00	300	465.00	720.00	1465.00	1814.00	3200.92	3379.53	6076.08	2960.00	0.00	20,630.53
OAW U & OHA	0.00	0.00	0	0.00	0.00	92.00	0.00	0.00	0.00	0.00	30.00	0.00	122.00
<b>EXPENSE TOTALS</b>	<b>3,000.96</b>	<b>2,047.61</b>	<b>2,571.31</b>	<b>4,517.87</b>	<b>3,484.34</b>	<b>3,926.97</b>	<b>4,356.42</b>	<b>4,732.89</b>	<b>5,207.88</b>	<b>8,425.96</b>	<b>4,988.54</b>	<b>2,183.57</b>	<b>49,454.42</b>
<b>TOTAL WATER PAYMENTS RECEIVED</b>	<b>593.61</b>	<b>895.21</b>	<b>693.80</b>	<b>426.00</b>	<b>728.69</b>	<b>706.02</b>	<b>727.64</b>	<b>642.07</b>	<b>1321.36</b>	<b>1347.06</b>	<b>1261.54</b>	<b>1171.92</b>	<b>10,514.92</b>
<b>DIFFERENCE</b>	<b>-2,407.35</b>	<b>-1,152.40</b>	<b>-1,877.51</b>	<b>-4,091.87</b>	<b>-2,765.65</b>	<b>-3,220.95</b>	<b>-3,628.78</b>	<b>-4,090.92</b>	<b>-3,886.52</b>	<b>-7,078.90</b>	<b>-3,727.00</b>	<b>-1,011.65</b>	<b>-38,939.50</b>

~From Page 34, Joint Application, Exhibit C - Pinecrest Expense Study 2018

<b>Operating Expense Calculations</b>	
2018 Mountain Lakes' Annual Report - Operating Expenses	\$291,337.00
2018 Mountain Lakes' Customer count	610
2018 Mountain Lakes' Expense per customer	\$477.60
2018 Mountain Lakes' Annual Report - Operating Expenses	\$291,337.00
2018 Pinecrest Expenses After Adjustment <sup>1</sup>	+ \$6,708.00
Combined Systems Operating Expense	\$298,045.00
Combined Systems Customer Count	÷ 658
Combined Expense Per customer	\$452.96
2018 Mountain Lakes' Expense per customer	\$477.60
<i>Expense Cost per Customer - Difference</i>	<i>-\$24.65</i>

<sup>1</sup> Total Pinecrest Expenses of \$49,454, minus costs expected to be taken over by OWU-ML operations of \$42,745, equals the \$6,708 balance.