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Attorneys for Defendant,
HART CREEK ESTATES MUTUAL WATER
COMPANY

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

ERIC LAFORTUNE, DON RICHARDSON, &
DAVE HARVEY,

Complainants,

v.

HART CREEK ESTATES MUTUAL WATER
COMPANY,

Defendants.

Case No. (C) 11-09-001

**ANSWER OF DEFENDANT HART
CREEK ESTATES MUTUAL WATER
COMPANY**

Pursuant to Rule 4.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (“PUC Rule”) defendant HART CREEK ESTATES MUTUAL WATER COMPANY, a California Corporation formed and existing under the General Corporation Law of California (Cal. Corporations Code §§100, et seq.) (hereinafter “Hart Creek” or “Defendant”) hereby files this answer to the Amended Complaint filed by complainants ERIC LAFORTUNE, DON RICHARDSON, AND DAVE HARVEY (“Complainants”) on September 7, 2011 before the Public Utilities Commission of the State of California (“Complaint”).

I. INTRODUCTION AND OVERVIEW

1. Defendant is a Mutual Water Company established in 1998. As stated in Defendant’s Articles of Incorporation, “the purpose of the corporation is to provide water for

1 shareholders.” [See Exhibit “A,” Articles of Incorporation, Second Paragraph]. Defendant’s
2 Articles of Incorporation further state that the “corporation is authorized to issue 150 shares of
3 capital stock” [see Exhibit “A,” Articles of Incorporation, Fifth Paragraph]. Defendant first issued
4 shares in 2000 and began providing water service to shareholders in 2000. To date, Defendant has
5 issued a total of ninety-one (91) shares; however, only eighty-eight (88) shares are currently
6 outstanding due to a lot line adjustment and the fact that some adjoining parcels have been
7 combined. All current shareholders are landowners within Tract Number 5871 and/or contiguous
8 parcels, all of which are located in Kern County, California (a map showing Tract Number 5871
9 and Defendant’s service area is attached hereto as Exhibit “B” and incorporated herein by
10 reference).

11 2. Defendant’s property has never been dedicated to public use. As discussed further
12 below, Defendant only provides water service to its shareholders at cost. As such, Hart Creek is
13 exempt from the jurisdiction of the Public Utilities Commission’s (“PUC”) pursuant to Public
14 Utilities Code §2705.

15 3. The Complainants in this action are owners of parcels situated within Tract Number
16 5871, are shareholders of Hart Creek, and receive water service from Defendant. They allege in
17 the Complaint that (i) Defendant is precluded from providing water service to parcels other than
18 those contained within the final version of Tract Number 5871; (ii) Defendant is providing water
19 service to parcels outside of the final boundaries of Tract Number 5871; and, therefore, (iii)
20 Defendant must be considered a Public Utility pursuant to Public Utilities Code §2702.
21 Complainants are mistaken.

22 4. At issue are five (5) parcels, known as parcels 67, 68-1, 68-2, 68-3, and 69 (“Subject
23 Parcels”). All five (5) of the Subject Parcels are contiguous to but outside the final boundaries of
24 Tract Number 5871. Each of the Subject Parcels has been determined by the board of directors of
25 Hart Creek to be eligible for water service from Defendant, shares of stock have been issued to the
26 owners thereof, and each of the Subject Parcels has been connected by service lines to the Hart
27 Creek water system for many years, all without prior objection by Complainants. All of the subject
28 parcels have been receiving water service from the Defendant for many years, without objection

1 from the Complainants, except Parcel 67 which has never received water service from Defendant,
2 as it does not have a water meter installed.

3 5. At the time Defendant was incorporated, Tract Number 5871 was in its planning
4 stages and it was anticipated that Tract Number 5871 would contain 94 parcels and Defendant
5 would provide water service to all of those parcels. The tentative tract map for Tract 5871
6 identified 94 parcels (see attached Exhibit "C"). The water permit issued to Defendant by the
7 Department of Health Services in March of 1998 provided that Defendant's system would serve all
8 of these 94 parcels (see attached Exhibit "D," Water Permit, Engineer's Report, Section B).
9 Defendant has not exceeded the proposed service area. Defendant's water service is currently
10 limited to 88 shareholders and is not available to the public generally.

11 6. The lands comprising Parcels 68-1, 68-2, and 68-3 were originally included in the
12 tentative tract map for Tract Number 5871. However, when that tract map was finalized in 1998,
13 these lands were omitted. In or around 2005, Parcel 68 was subdivided into 3 different parcels and
14 sold to individual owners. At the time Parcels 68-1, 68-2, and 68-3 were sold, the public
15 information report advised all purchasers that they would be connected to the Defendant's water
16 service system and receive water service from Defendant. As consideration for providing water
17 service to these parcels, Defendant was granted, by a Grant Deed recorded July 18, 2005, a 20-foot
18 by 20-foot easement for a future well site on Parcel 68-3. At that time, the owners of Parcels 68-1,
19 68-2, and 68-3 became shareholders of Hart Creek and were connected to the Hart Creek water
20 system. These parcels have been receiving water service from Defendant ever since. The owners
21 of Parcels 68-1, 68-2, and 68-3 have paid all assessments and fees due and owing to Defendant for
22 water service and are shareholders in good standing. Service to these parcels is appropriate since (i)
23 they were originally included within Tract 5871, (ii) they were included within the Hart Creek
24 water system service plan, (iii) at the time of purchase the purchasers were advised that water
25 service would be provided by Defendant without objection from any third parties, (iv) the
26 landowners have provided valuable consideration for such water service meeting the requirements
27 of Public Utilities Code § 2705(e)(2), and (v) no alternate water supply is readily available to the
28 property, Defendant's water system is capable of providing service, and, as a shareholder, the

1 property owners have agreed not to drill private wells which might overtax the groundwater basin.

2 7. Parcel 69 was issued stock by Defendant in 2001. The primary water well servicing
3 all of Defendant's shareholders, including Complainants, is known as Water Well #3 and located
4 on Parcel 69. Water Well #3 was drilled in 1964. The owner of Parcel 69 gave Water Well #3 to
5 Defendant in exchange for water service from Defendant's system. The owner of Parcel 69 has
6 paid all assessments and fees due and owing to Defendant and is a shareholder in good standing.
7 Parcel 69 has been receiving water service from Defendant as a shareholder for approximately the
8 past eleven (11) years. Service to Parcel 69 is appropriate since (i) the landowner has provided
9 valuable consideration for such water service meeting the requirements of Public Utilities Code
10 §2705(e)(2) and (ii) no alternate water supply is readily available to the property, Defendant's
11 water system is capable of providing service, and, as a shareholder the property owner has agreed
12 not to drill a private well which might overtax the groundwater basin.

13 8. Parcel 67 was issued stock by Defendant in 2001. The owner of Parcel 67 has paid
14 all assessments and fees due and owing to Defendant and is a shareholder in good standing.
15 Despite the fact that the owner of Parcel 67 is a shareholder, it has never received water service
16 from Defendant. Parcel 67 does not have a physical connection to Defendant's water system. As a
17 shareholder, the owner of Parcel 67 holds a right to connect and receive water from Defendant;
18 however, the owner of Parcel 67 has yet to make such a connection. Service to Parcel 67 is
19 appropriate since, no alternate water supply is readily available to the property, Defendant's water
20 system is capable of providing service, and as a shareholder, the property owner has agreed not to
21 drill a private well which might overtax the groundwater basin.

22 9. Defendant's Articles of Incorporation state that the area to be served by Defendant
23 is a certain Tract¹ and parcels contiguous thereto [see Exhibit "A," Second Paragraph]. The
24 Subject Parcels are contiguous to Tract Number 5871 and are, therefore, eligible for water service
25 from Defendant.

26 10. The Defendant's By-Laws state that landowners within Tract Number 5871 are

27 ¹ Due to an apparent typographical error, the Defendant's Articles of Incorporation identify Tract Number "5213"
28 instead of the intended Tract Number "5871".

1 eligible to be shareholders [see By-Laws, Article II, Section 1, attached hereto as Exhibit “E”].
2 The By-Laws do not state that only landowners within said Tract are eligible to be shareholders.
3 Therefore, there is no prohibition preventing Defendant from issuing shares and providing water
4 service to lands and landowners situated outside of but contiguous to Tract Number 5871.
5 Furthermore, even if such a prohibition existed in the By-Laws, such prohibition may be avoided
6 by action of the Board of Directors [see Exhibit “E,” Article III, Section 20]. Since the issuance of
7 shares to the owners of the Subject Parcels was authorized by action of the Board of Directors, the
8 By-Laws must be deemed amended as a matter of law.

9 11. The Complaint further alleges that Defendant “illegally” tried to amend it Articles
10 of Incorporation. Such allegation is untrue. In 2009, Defendant began the process to amend its
11 Articles of Incorporation in an effort to “clean them up” and correct a few mistakes contained
12 therein. Among other things, the proposed amendment was intended to reduce the number of
13 authorized shares from 150 to 94 in light of the physical limits of Defendant’s water system. After
14 being advised that such change required shareholder approval, it was determined that the
15 amendment to the Articles of Incorporation would not be pursued due to the time, effort and
16 expense required to complete the process. Hart Creek has not issued shares illegally or in excess of
17 the amount authorized by the approved Articles of Incorporation.

18 **II. ANSWER TO ALLEGATIONS**

19 12. Defendant has insufficient information or belief to enable it to form an answer to the
20 allegations of Paragraph (A) of the Complaint and, basing its denial on that fact, denies, both
21 generally and specifically, each and every allegation of Paragraph (A) of the Complaint.

22 13. Defendant has insufficient information or belief to enable it to form an answer to the
23 allegations of Paragraph (B) of the Complaint and, basing its denial on that fact, denies, both
24 generally and specifically, each and every allegation of Paragraph (B) of the Complaint, except to
25 the extent that Defendant admits that its name is “Hart Creek Estates Mutual Water Company”.

26 14. Defendant has insufficient information or belief to enable it to form an answer to the
27 allegations of Paragraph (C) of the Complaint and, basing its denial on that fact, denies, both
28 generally and specifically, each and every allegation of Paragraph (C) of the Complaint.

1 above, the owners of all five (5) of the Subject Parcels are shareholders, in good standing, and
2 eligible to receive water service from the Defendant.

3 23. Defendant, as a Mutual Water Company, is controlled and operated by its
4 shareholders. Defendant has issued 91 shares, which include both Complainants and the owners of
5 the five (5) Subject Parcels. Pursuant to *Yucaipa Water Co. No. 1 v. Public Utilities Commission*
6 (1960) 54 Cal.2d 823, when a Mutual Water Company is substantially customer-controlled and
7 delivers water at cost, usual judicial contract remedies available to those who deal with it are an
8 adequate substitute for public utility regulation.

9 **B. Second Affirmative Defense – Failure to State a Cause of Action**

10 24. The Complaint fails to state facts sufficient to state a cause of action under Public
11 Utilities Code §1702 and Article 4 of the PUC's Rules.

12 25. Section 1702 of the Public Utilities Code provides in pertinent part:

13 Complaint may be made by ... any corporation or person ... by written petition or
14 complaint setting forth any act or thing done, or omitted to be done by any **public utility**,
15 including any rule or charge heretofore established or fixed by or for any public utility, in
16 violation or claimed to be in violation, of any provision of law or of any order or rule of
17 the Commission. No Complaint shall be entertained by the commission, except upon its
18 own motion, as to the reasonableness of any rates or charges of any gas, electrical, water
19 or telephone corporation, unless it is signed by the mayor ... or by not less than 25 actual
20 or prospective consumers or purchasers of such gas, electricity, water or telephone
21 service. [Emphasis added.]

18 26. Rule 4.1 of the Commission's Rules of Practices and Procedure provides in pertinent
19 part:

20 A complaint may be filed by any corporation or person ... setting forth any act or thing
21 done or omitted to be done **by any public utility** including any rule or charge heretofore
22 established or fixed by or for any public utility, in violation, or claimed to be in violation,
23 of any provision of law or of any order or rule of the Commission. [Emphasis added.]

23 27. As seen above, a Mutual Water Company is not a “public utility” and is exempt
24 from the PUC's jurisdiction. Thus, the Complaint does not set forth any act or thing done or
25 omitted to be done *by a public utility*, which can be claimed to be in violation of any provision of
26 law or any order or rule of the PUC. Furthermore, the Complaint does not present any evidence or
27 make any allegation that Defendant provided water service to anyone other than its shareholders.
28 Rather, Complainants only allege that Defendant provided water service outside of Tract Number

1 5871.

2 28. The Complaint additionally asks the PUC to determine that Defendant's rates and
3 practices are unreasonable [Complaint ¶ (G)(4)]. Pursuant to Public Utilities Code §1702 such a
4 complaint cannot be entertained unless signed by not less than 25 actual or prospective customers.
5 Here, only three (3) customers have signed the Complaint (Lafortune, Richardson & Harvey).

6 29. A complaint must be dismissed if it does not allege that a public utility violated a
7 provision of law or order of the Commission. *L.J.T. Industries, Inc. and R.H. Mitman v. Pacific*
8 *Telephone Company*, 80 Cal. P.U.C. 836 (1976); *Blincoe, et al. v. Pac. Telephone & Telegraph*
9 *Co.*, 60 Cal. P.U.C. 432 (1963). Since the Complaint here does not provide any evidence that
10 Defendant is under the jurisdiction of the PUC and/or currently providing water service that is in
11 violation of any applicable section of the PUC Code or the PUC's Rules, the Complaint does not set
12 forth a valid cause of action and the Complaint should be dismissed.

13 **C. Third Affirmative Defense – Statute of Limitations**

14 30. Any causes of action that Complainants may have against Defendant arising from
15 the facts in the Complaint are barred by the applicable statutes of limitation.

16 **D. Fourth Affirmative Defense – Defendant's Actions are Consistent with Law**

17 31. As seen above, Defendant has not sold water or provided water service to anyone
18 other than its shareholders and fire protection services. Defendant's actions have been consistent
19 with and as permitted by applicable law.

20 **E. Fifth Affirmative Defense – Improper Remedy Sought / Wrong Venue**

21 32. Based on the allegations stated in the Complaint, it appears Complainants have
22 taken issue with the fact that the owners of the Subject Parcels are shareholders. In such instance,
23 the proper remedy is a breach of contract cause of action brought before the California Superior
24 Court. Complainants' claims, as stated in the Complaint, are improper and not subject to the
25 jurisdiction and control of the PUC.

26 **F. Sixth Affirmative Defense – Uncertainty**

27 33. The Complaint does not adequately advise Defendant or the Commission of the
28 grounds upon which Complainants claim that Defendant is a public utility subject to the

1 jurisdiction of the PUC or as to the grounds Defendant's rates are unreasonable. PUC Rule 4.2
2 requires that a complaint state the specific act complained of in ordinary and concise language, and
3 should be so drawn as to completely advise the defendant and the Commission of the facts
4 constituting the grounds of the complaint, the injury complained of and the exact relief which is
5 desired. Here, the Complaint fails to do such.

6 **G. Seventh Affirmative Defense – Latches**

7 34. The Complaint is barred by the doctrine of latches in that Complainants have
8 inexcusably and unreasonably delayed the commencement of this action, to the prejudice of
9 Defendant.

10 **H. Eighth Affirmative Defense – Estoppel**

11 35. Complainants are estopped to assert any of the claims set forth in the Complaint
12 under the doctrines of equitable estoppel, promissory estoppel, estoppel by contract, estoppel to
13 deny title, estoppel by title, judicial estoppel and/or estoppel *in pais*.

14 **IV. DEFENDANT'S ADDRESS AND PROCEDURAL MATTERS**

15 36. Defendant's address is 300 "H" Street, Bakersfield, CA 93304; and Defendant's
16 phone number is (661) 327-4496.

17 37. Defendant's representative for this case is: McMurtrey, Hartsock & Worth, 2001
18 22nd, Street, Suite 100, Bakersfield, CA 93301; (661) 322-4417.

19 38. Defendant does not object to the adjudicatory categorization of this case.

20 39. Defendant does not believe a hearing is necessary as this Complaint should be
21 dismissed.

22 40. In the event that a hearing is deemed necessary, Defendant requests that such a
23 hearing be held ninety (90) to one hundred twenty (120) days from the date of the filing of the
24 Complaint.

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V. CONCLUSION

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

DATED: November 4, 2011

McMURTREY, HARTSOCK & WORTH

By: 
Isaac L. St. Lawrence, Attorneys for Defendant,
Hart Creek Estates Mutual Water Company

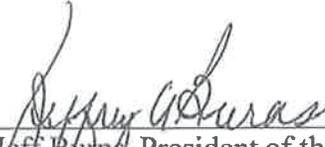
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VERIFICATION

I, JEFF BURNS, am the President of the Board of Directors of the Defendant in the above-entitled matter. I have read the foregoing document and know the contents thereof. The same is true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

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

Executed this 3 day of November, 2011, at Bakersfield, California.



Jeff Burns, President of the Board of
Directors for Hart Creek Estates Mutual
Water Company

EXHIBIT "A"



State of California

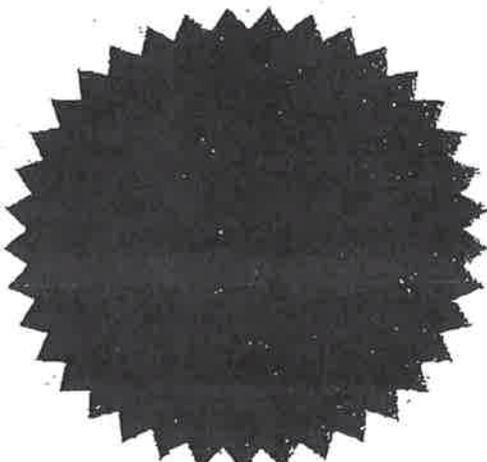
SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

FEB 05 1949



Bill Jones

Secretary of State

2068669

ENDORSED - FILED
IN THE OFFICE OF THE
SECRETARY OF STATE
OF THE STATE OF CALIFORNIA

FEB - 3 1990

ARTICLES OF INCORPORATION
OF
HART CREEK ESTATES MUTUAL WATER COMPANY

CLERK, SECRETARY OF STATE

The Articles of Incorporation of Hart Creek Estates Mutual Water Company are as follows:

First: The name of this corporation is HART CREEK ESTATES MUTUAL WATER COMPANY.

Second: The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the Corporations Code. The purpose of the corporation is to provide water for shareholders. The corporation will only sell, distribute or supply water to its shareholders. The maximum area to be served by the Corporation is tract No. 5213, and the contiguous parcels located in Kern County, California.

Third: The name and address in California of the corporation's initial agent for service of process is Wayne K. Lemieux c/o Lemieux & O'Neill, a Professional Corporation, 200 N. Westlake Boulevard, Suite 100, Westlake Village, California 91362.

Fourth: The number of directors will be three (3).

Fifth: The corporation is authorized to issue 150 shares of capital stock, of one class, of the par value of \$1.00, to be designated "Common Stock". One share of Common Stock will be issued to the owner of each subdivided lot purchased in the service area of the Corporation. Members will be entitled to one vote for each share of Common Stock.

Sixth: The Board of Directors may, in its discretion, levy and collect assessments

upon issued shares. The assessments shall be a lien on the shares assessed from the time of the levy. The levies of assessments and assessments shall be in conformity with Corporations Code Section 423. In the event of non-payment of any assessment, the Corporation may sell or forfeit the shares against which the assessment was levied, as now or hereafter provided by the laws of the State of California. Shares shall be considered appurtenant to the lands purchased therewith, and shall be so described in the stock certificate. This stock shall only be transferred with the land to which it is appurtenant. If property appurtenant to the share is foreclosed upon, only the corporation or the owner of the appurtenant property may acquire the shares at the foreclosure sale. Corporation shall reissue shares purchased at a foreclosure sale to the purchaser of the lots to which the shares are appurtenant payment of delinquent fees, interest, penalties, and costs. The sale price of such shares shall include arrears of the water company billings.

Seventh: The Board of Directors may levy and collect from the shareholders water tolls and charges, and withhold delivery of water while such tolls or charges are delinquent; make such tolls and charges a lien against the shares; and withhold transfer of shares subject to the lien of unpaid tolls, assessments or charges.

Eighth: The Board of Directors may adopt, repeal, modify, and enforce rules and regulations advisable for carrying out the foregoing purposes and powers, including the right to provide and determine when, where, and in what manner delivery of water is to be made, and the right to provide for and enforce the imposition of penalties for violation of such rules and regulations, including discontinuance of the delivery of water for such violation or for failure to pay any charges, tolls or assessments.

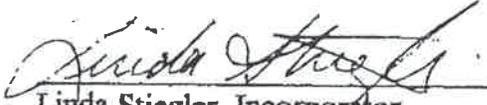
Ninth: The foregoing purposes and powers are subject to the express limitation and

condition that the Corporation shall carry on its business without the distribution of any gains, profits or dividends to its shareholders except upon dissolution.

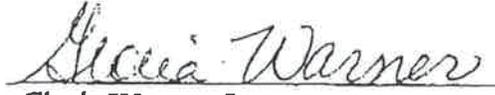
Tenth: Notwithstanding any other provision in these Articles, fifty percent (50%) of the shares entitled to vote, represent in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholder.

We declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct to our knowledge.

Dated: January 9, 1998

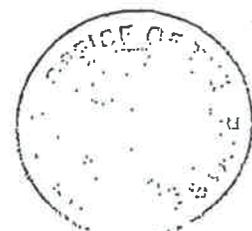

Linda Stiegler, Incorporator

Dated: January 9, 1998


Gloria Warner, Incorporator

Dated: January 9, 1998


Laura Renteria, Incorporator



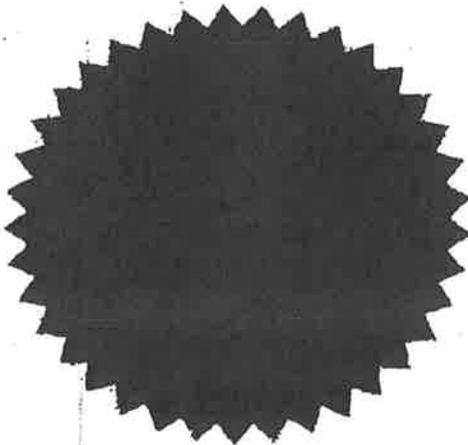


SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of
AUG 24 1999



Bill Jones

Secretary of State

A0530052

**CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION**

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 24 1999

BILL JONES, Secretary of State

The undersigned certify that:

1. They are the president and secretary, respectively, of Hart Creek Estates Mutual Water Company, a California corporation.

2. Article Nine of the Articles of Incorporation are amended to read as follows:

The foregoing purposes and powers are subject to the express limitation and condition that the Corporation shall carry on its business without the distribution of any gains, profits or dividends to its shareholders except upon dissolution. In the event of the dissolution of the company, each member, including former members, shall receive his proportionate share of the company's property based on patronage, insofar as is practicable after paying for the payment of all debts of the company.

3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.

4. The corporation has issued no shares.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATED

6/15/99

Wood Fisher
Signature of President

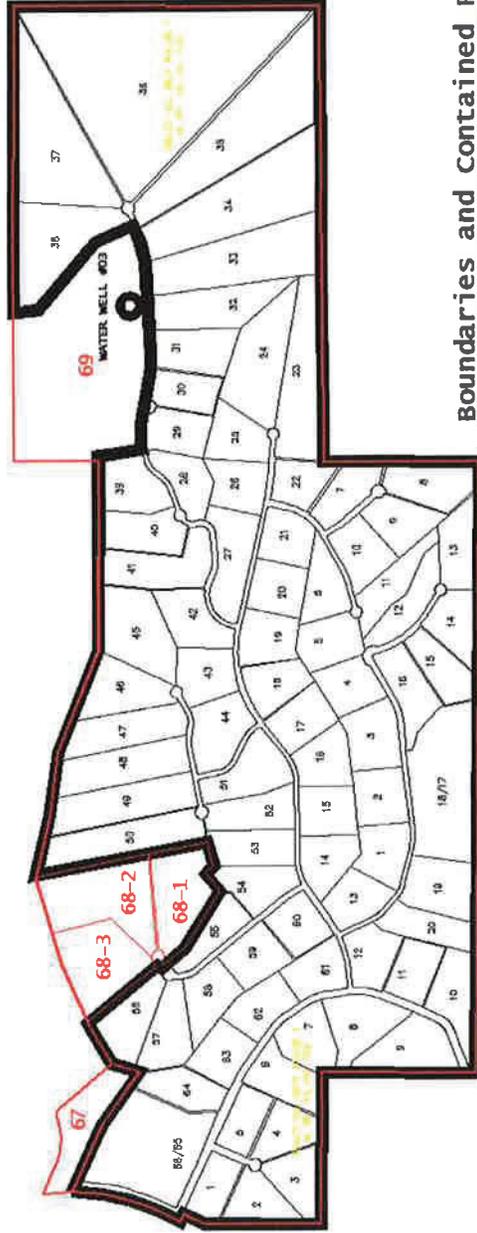
DATED

6/15/99

[Signature]
Signature of Secretary



EXHIBIT “B”



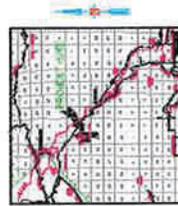
Boundaries and Contained Parcels

91 Lots

86 Lots

Tract No. 5871

HCEMWC



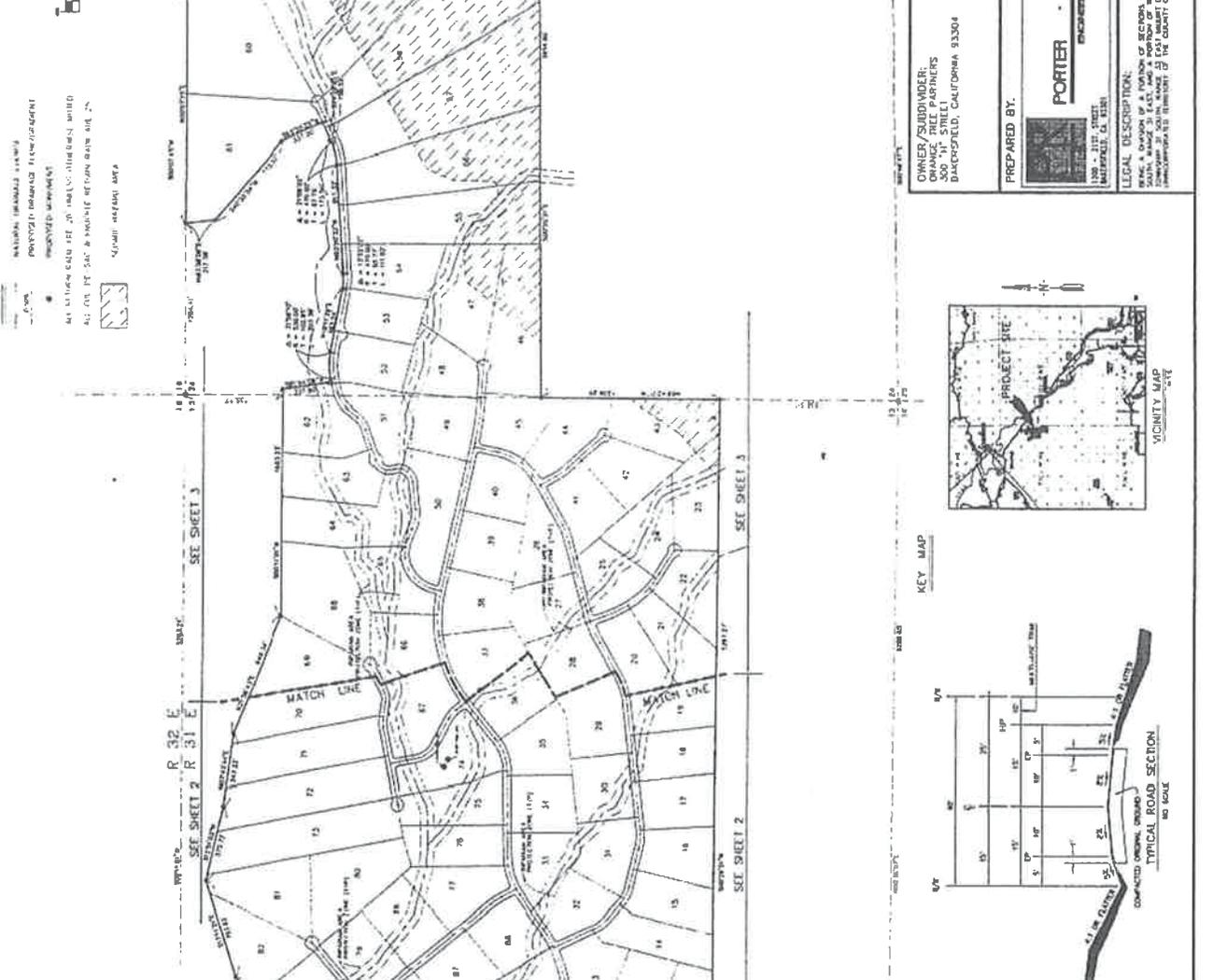
**HART CREEK ESTATES
TRACT 5871 PHASES 1&2**

PREPARED BY:	DATE:
PR	10/11/02
PORTER	JOB NO.: 97-934
ROBERTSON	LEGAL DESCRIPTION:
REGISTERED	BEING A PORTION OF A PORTION OF SECTION 27, T4N, R10W, S4E, COUNTY OF CLATSOP, STATE OF OREGON.
REGISTERED	DATE: 08/17/2001
REGISTERED	BY: 01/17/2001

EXHIBIT “C”

LEGEND

- 1. UNIMPROVED TRACTS
- 2. IMPROVED TRACTS
- 3. UNIMPROVED ROADS
- 4. IMPROVED ROADS
- 5. UNIMPROVED UTILITIES
- 6. IMPROVED UTILITIES
- 7. UNIMPROVED WATERWAYS
- 8. IMPROVED WATERWAYS
- 9. UNIMPROVED AIRWAYS
- 10. IMPROVED AIRWAYS
- 11. UNIMPROVED RAILROADS
- 12. IMPROVED RAILROADS
- 13. UNIMPROVED CANALS
- 14. IMPROVED CANALS
- 15. UNIMPROVED DRAINAGE
- 16. IMPROVED DRAINAGE
- 17. UNIMPROVED FLOOD CONTROL
- 18. IMPROVED FLOOD CONTROL
- 19. UNIMPROVED OTHER
- 20. IMPROVED OTHER



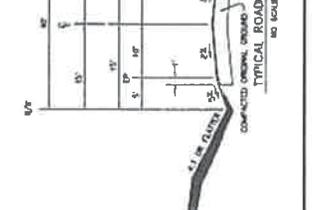
OWNER/SUBDIVIDER
 H. W. ROBERTSON
 500 1/2 STREET
 DAKESFIELD, CALIFORNIA 93304

PREPARED BY:
 PORTER - ROBERTSON
 ENGINEERS & SURVEYORS, INC.
 1300 - 21ST STREET
 WATERSIDE, CA 94131

DATE: 9/11/97
 431 NO. 97-934

SURVEYOR: HAROLD W. ROBERTSON L.S. 5337 EXP(12/31/99)

LEGAL DESCRIPTION:
 BEING A PORTION OF SECTION 12 AND 14, TOWNSHIP 31 SOUTH, RANGE 3 EAST, AND A PORTION OF THE NE 1/4 OF SECTION 14, TOWNSHIP 31 SOUTH, RANGE 3 EAST, COUNTY OF SONOMA, STATE OF CALIFORNIA, REPRESENTED BY THE COUNTY OF SONOMA, STATE OF CALIFORNIA.



- STATISTICAL INFORMATION:
1. UNIMPROVED TRACTS: 100
 2. IMPROVED TRACTS: 0
 3. UNIMPROVED ROADS: 0
 4. IMPROVED ROADS: 0
 5. UNIMPROVED UTILITIES: 0
 6. IMPROVED UTILITIES: 0
 7. UNIMPROVED WATERWAYS: 0
 8. IMPROVED WATERWAYS: 0
 9. UNIMPROVED AIRWAYS: 0
 10. IMPROVED AIRWAYS: 0
 11. UNIMPROVED RAILROADS: 0
 12. IMPROVED RAILROADS: 0
 13. UNIMPROVED CANALS: 0
 14. IMPROVED CANALS: 0
 15. UNIMPROVED DRAINAGE: 0
 16. IMPROVED DRAINAGE: 0
 17. UNIMPROVED FLOOD CONTROL: 0
 18. IMPROVED FLOOD CONTROL: 0
 19. UNIMPROVED OTHER: 0
 20. IMPROVED OTHER: 0

EXHIBIT “D”

Department of Health Services
Drinking Water Field Operations Branch

**HART CREEK ESTATES
MUTUAL WATER COMPANY**

Kern County
System No. 1503329
March 1998

WATER PERMIT NO. 03-12-98P-004

Engineering Report Prepared By

Betsy S. Lichti, P.E.
Associate Sanitary Engineer
Drinking Water Field Operations Branch

Approved By

Richard L. Haberman, P.E.
Senior Sanitary Engineer
Drinking Water Field Operations Branch

DEPARTMENT OF HEALTH SERVICES

DRINKING WATER FIELD OPERATIONS BRANCH
 5545 E. SHIELDS AVENUE
 FRESNO, CALIFORNIA 93727
 (209) 297-3883
 FAX (209) 297-3873



March 30, 1998

Hart Creek Estates Mutual Water Company
 300 H Street
 Bakersfield, CA 93304

Attention: Gerald Wells, Secretary

**PERMIT NO. 03-12-98P-004 Hart Creek Estates Mutual Water Company
 Water System No. 1503329**

The Department of Health Services, Drinking Water Field Operations Branch has recently completed a review of the water supply system proposed to serve the Keene Ranch Tract 5871 subdivision, to be operated as the Hart Creek Estates Mutual Water Company. A review of the water system was conducted for the preparation of an engineering report describing the existing facilities.

It is the Finding of the State Department of Health Services that Sections 116270 through 116751 of the California Health and Safety Code can be met by the water system. This finding is based on the enclosed Engineering Report, dated March 1998, prepared by the Drinking Water Field Operations Branch. A domestic water supply permit is hereby granted to the Hart Creek Estates Mutual Water Company for the operation of the water system serving the Keene Ranch Tract 5871, subject to the following provisions:

1. The only approved source of supply for the Hart Creek Estates Mutual Water Company water system is groundwater from the following wells:

<u>Well</u>	<u>Status</u>	<u>Primary Station Code</u>
03	Active	1503329-001
12	Active	1503329-002

No other sources or treatment facilities shall be used by this water system without prior permit approval by the Department.

2. The Hart Creek Estates MWC will be required to show the technical and managerial capability to maintain proper operation of the water system in compliance with all drinking water laws and regulations. Prior to the activation of the water system, documentation shall be provided to the Department identifying the individual or company to be used for operation of the water system. The documentation to be provided must show the general experience of the operator in

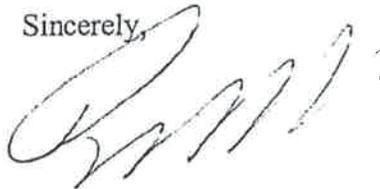
water system operation, including knowledge of the laws and regulations pertaining to public water systems, water quality sample collection and follow-up, response to customer problems, and understanding of water treatment.

3. A re-evaluation of the financial plan shown in Appendix D of the attached Engineering Report must be completed within one year of the issuance of the initial domestic water supply permit. The re-evaluation shall consider actual water usage rates by existing customers, actual operational costs as well as a revised growth rate based on actual construction.
4. The well capacities shall be re-evaluated after 30 connections to the water system have been completed, or sooner if water consumption records show that the wells are not adequate to meet peak demand. The re-evaluation must take into account the ability of the wells and storage to meet peak demand and a summary of the actual metered usage rates by the active users at that time.
5. Initial monitoring for lead and copper in the distribution system shall be completed within one year of the completion of five homes in the subdivision. Guidance for conducting the lead and copper monitoring is provided in Appendix G of the attached Engineering Report.
6. The Hart Creek Estates MWC shall comply with all bacteriological and chemical water quality monitoring as outlined within this engineering report and as shown in the appended Water Quality Monitoring Schedule.
7. The septic tank leachfield systems for lots 54, 55 and 56 shall be located as far from Wells 3 and 12 as is feasible. They should also be located so that the natural drainage from the leachfield sites would not be toward either well.
8. Wells 3 and 12 shall be monitored for iron and manganese on a quarterly basis, beginning immediately. If one year of quarterly monitoring shows an average concentration of iron or manganese in excess of the secondary MCLs of 300 ug/l and 50 ug/l, respectively, treatment of the water shall be provided.
9. An additional sample shall be collected from Well 3 for microscopic particulate analyses (MPA) during the Summer 1998 to determine if Well 3 is influenced by surface water. This monitoring shall be completed prior to any domestic use of the wells.
10. An updated Bacteriological Sample Siting Plan showing actual sample locations must be submitted upon activation of the water system. The plan must be updated as more connections are completed to ensure adequate sampling of the service area.

11. The issues identified by the Department by letter dated December 9, 1997, to Mr. Matt VoVilla, RCE, Porter-Robertson Engineering (copy provided in Appendix K of the attached Engineering Report), shall be addressed prior to any domestic use of the water system.
12. An approved Cross-Connection Control Program shall be established prior to the activation of the water system. The program shall include all of the elements identified in the attached Engineering Report.
13. A written request shall be made to the Department for final approval to allow the activation of the water system for domestic use.
14. The transfer of ownership or operation of the Hart Creek Estates MWC shall not be completed without prior permit approval by the Department. Any changes in ownership effective after January 1, 1998, must be approved by the Department to ensure that the change results in an owner that has the technical, financial and managerial capability to maintain proper operation of the water system in compliance with all drinking water laws and regulations.

The operation of the water system in non-compliance with the provisions listed above may result in an administrative fine of up to \$1000. If you have any questions concerning this permit, please contact this office at (209) 297-3883.

Sincerely,



Richard L. Haberman, P.E.
Senior Sanitary Engineer
DRINKING WATER FIELD OPERATIONS BRANCH

RLH
BSL/bl

Enclosures

98PL3329

DEPARTMENT OF HEALTH SERVICES

DRINKING WATER FIELD OPERATIONS BRANCH
5545 E. SHIELDS AVENUE
FRESNO, CALIFORNIA 93727
(209) 297-3883
FAX (209) 297-3873



Engineering Report
For the Consideration of a Permit for the
HART CREEK ESTATES MUTUAL WATER COMPANY
to serve the
KEENE RANCH TRACT 5871
System No. 1503329
Kern County
March 1998

Drinking Water Field Operations Branch
State Department of Health Services
Betsy S. Lichti, P.E., Associate Sanitary Engineer

I. INTRODUCTION

A permit application was submitted for the Hart Creek Estates Mutual Water Company, dated September 11, 1997, to serve the Keene Ranch Tract 5871, a proposed community water supply system, using two existing wells. Plans and specifications for the construction of the water system and appurtenant facilities, including a storage tank, pressure tank, booster pumps and the necessary distribution system accompanied the permit application.

The Department conducted a field inspection and sanitary survey of the existing wells on December 3, 1997. The purpose of this engineering report is to document the sanitary survey of the Hart Creek Estates Mutual Water Company's water supply system and to describe the proposed facilities and operational practices. This report will also make a recommendation regarding the issuance of a domestic water supply permit for the operation of the proposed water system.

A. *Brief Description of System*

The proposed community water system will consist of two wells, one 70,000 gallon storage tank, two booster pumps and a distribution system that consists of four pressure zones. The two existing wells, known as Well 3 and Well 12, will

pump into the 70,000 gallon storage tank. Two outlets from the tank will serve the system. One outlet will serve a pressurized zone at elevations above the storage tank with the use of two booster pumps and a pressure tank, while the second outlet will provide gravity flow to the lower three pressure zones. Four pressure reducing stations will be installed to maintain adequate pressures in the three lower zones.

B. *Background Information*

The Keene Water District was formed in 1967 as part of a planned residential development on Tract 5871 of Kern County. At least twelve wells were drilled between 1964 and 1966 to ascertain the availability of water to serve a development. During 1991-1992, the Department reviewed environmental documents and plans for the development of the Keene Ranch Development that included over 2,400 residential units, a golf course, equestrian center, school and commercial facilities, all on 12,520 acres. A wastewater treatment plant was planned to provide waste disposal to the entire area and provide reclaimed water for irrigation of the golf course.

The planned development of Keene Ranch lapsed due to financial problems and was subsequently purchased by the current owners, Orange Tree Partners (Gerald Wells, Walter Fisher and Bob Thomason). The development was scaled down and now consists of 94 residential lots on 2500 acres to be served by Wells 3 and 12. The system will be operated as a mutual water company. Wastewater disposal is to be by individual septic tanks and leach field systems. Portions of the land previously included in the early development have been sold to neighboring ranchers for cattle grazing.

C. *Area Served and Quantity of Supply*

The proposed development is on 2500 acres located south of State Highway 58, eight miles west of Tehachapi, and 25 miles east of Bakersfield. The land has historically been used for cattle grazing. The lot sizes will be about 5 acres each with individual septic tank leach field systems. Water service connections will be stubbed to each property. It will be the responsibility of the lot owners, as homes are built, to install a water meter and extend the service to the residence. No commercial connections are planned. A diagram showing the location of the proposed subdivision is provided in Appendix B.

The Department's major concern during the environmental evaluation of the previous development proposal was the availability of water to serve the development, since the wells drilled during the 1960's were all hard rock wells, which typically have a low actual safe yield. To assure that a water shortage

would not occur, the Department advised that only 25% of the wells' production pump test results would be credited until the wells could prove to produce more over a minimum of one year of actual pumping.

To establish a higher credit for the well production, the Department agreed to accept the results of a long-term pump test at a flow rate designed to produce the greatest discharge and drawdown possible, i.e., to challenge the rock formations.

During 1991, a study was conducted on three wells slated to serve the proposed development, Wells 2, 3 and 12, to determine the long-term yield of the wells. The study was conducted by Kenneth D. Schmidt and Associates, with a final report prepared dated November 1, 1991. The study found that Well 2 was hydraulically interconnected to Well 3, and therefore of no benefit to the development. Well 3 was pumped for 15 days at an average flow rate of 174 gpm. Full recovery was attained at 27 days. Because it took the well almost twice as long to attain full recovery compared to the pumping period, the long-term yield of Well 3 was estimated to be about one-half of the rate of 174 gpm, or 87 gpm. Well 12 was pumped for 12 days at an average flow rate of 148 gpm. Full recovery of the well was projected to be 80 days, resulting in an estimated long-term yield of about one-fourth of the pumping rate of 148 gpm, or 35 gpm.

Based on the results of these long-term pump tests, the Department will grant credit for the full capacity of the estimated yields of 87gpm and 35 gpm, respectively for Wells 3 and 12. However, the well capacities must be re-evaluated after 30 connections to the water system have been completed. This re-evaluation must take into account the ability of the wells to meet the peak demand at build-out and a summary of the actual metered usage rates by the active users at that time.

D. Operation

The subdivision is owned by Orange Tree Partners. The partners in this corporation include Gerald Wells, Walter Fisher and Robert Thomason. The proposed water system will be operated as the Hart Creek Estates Mutual Water Company. The Articles of Incorporation were filed with the Office of the Secretary of State on February 3, 1998 (see Appendix C). The directors of the Hart Creek Estates Mutual Water Company are Walter Fisher, Chief Executive Officer, Gerald Wells, Secretary, and Robert Thomason, Chief Financial Officer.

The Orange Tree Partners are also considering selling the water system at some time in the future to a private water company.

No specific information has been provided to the Department regarding the operation of the water system once it is activated. Current regulations require new

water system to show that they have the financial, technical and managerial capability to operate a water system. The MWC will be required to show technical and managerial capability prior to activation of the water system by providing specific information on the operator to be used for routine operation of the system. The documentation to be provided must show general experience in water system operation, including knowledge of the laws and regulations pertaining to public water systems, water quality sample collection and follow-up, response to customer problems, and understanding of water treatment.

E. *Financial Plan*

A five-year financial plan received March 18, 1998, was submitted to the Department as Exhibit A to the permit application (shown in Appendix D). The plan outlines the anticipated number of connections, usage, billable fees, revenues and operating expenses for the proposed water system. The plan indicates that a sinking fund will be established for replacement of facilities. The plan estimates full build-out in five years, which is unlikely for a rural residential development. A re-evaluation of the financial plan must be completed within one year of the issuance of the initial domestic water supply permit.

II. INVESTIGATIVE FINDINGS

A. *Source of Information*

Information for this report was obtained from discussions with Mr. Gerald Wells, co-owner of the development, Mr. Matt VoVilla, Porter-Robertson Engineering & Surveying, and documentation provided by the same. Information was also obtained from the files of the Department of Health Services, Drinking Water Field Operations Branch and from a sanitary survey of the water system completed on December 3, 1997. The investigation, analysis and preparation of this report was done by Betsy S. Lichti, P.E., Associate Sanitary Engineer, of the Drinking Water Field Operations Branch.

B. *Source of Supply*

All of the water proposed to serve the Keene Ranch Tract 5871 development will be groundwater derived from two existing wells, known as Well 3 and Well 12. The wells are located on lots 54 and 55, with permanent easements specified in the subdivision map and in title documents for those lots. A description of each well is given below:

Well 3 – (Primary Station Code 1503329-001). Well 3 is located east of the planned “C” Road at Lot 55. This well was drilled in 1964 to a total depth of 200’. The well is drilled into rock (granite and fractured granite) from 10’ below surface. The well was completed with 8” diameter steel casing to 12’ (2’ into bedrock) with no annular seal. A Well Drillers Report for the initial construction is on file. In 1991, the well was reconstructed with the placement of 6 ¾” casing to the full depth of the well and a 50’ seal. The new casing was proposed to be perforated from 75’ to 150’. A gravel pack was placed. The permit issued by Kern County for the reconstruction of Well 3 is on file and shown in Appendix E.

A concrete surface seal has been placed around the well casing, to a height of about 4” above grade. The plans prepared by Porter-Robertson Engineering & Surveying show that the concrete pump pad and surface seal will be raised to a minimum of 12” above grade. The casing will need to be extended to accomplish this. The casing should extend a minimum of 6” above the surface of the concrete pump pad.

Well 3 is currently equipped with a small capacity submersible pump, operated by a natural gas powered generator. This will be replaced by an electrically-powered submersible pump capable of producing at least 80 gpm.

Well 12 – (Primary Station Code 1503329-002). Well 12 is located about 500’ west of “C” Road, between Lots 54 and 55. This well was drilled in 1966 to a total depth of 393’, and completed to 388’ with the installation of 10” diameter steel casing. A 50’ cement annular seal was placed using a 14” diameter secondary casing, and a gravel pack extends from the surface to 388’. The casing is perforated from 97’ to 388’. The well is drilled into rock, with layers of quartz, granite, fractured granite and decomposed granite. Sand and clay strata were found at 142’, 168’ and 178’, with packed sand at 174’.

The plans call for the placement of a concrete surface seal around the casing of Well 12. The casing should extend a minimum of 6” above the surface of the concrete pad. The well is currently equipped with a small capacity submersible pump for water sampling. This will be replaced by an electrically-powered submersible pump capable of producing at least 40 gpm.

The 4” diameter discharge lines from Wells 3 and 12 will intertie underground near Well 12 prior to discharging into the 70,000 gallon tank. It is planned that the full demand from the system will be met by one well and the remaining well will act as reliability in the event of failure of the lead well. Both wells are planned to have facilities installed to allow for the quick installation of emergency chlorination and a power generator, if needed in an emergency.

Each residence will dispose of wastewater via individual septic tank leach field systems. The Department of Water Resources Bulletin 74-81 requires a minimum

separation of 100' from subsurface sewage leach fields and domestic water supply wells. It is the Department's recommendation that the septic tank leachfield systems for lots 54, 55 and 56 be located as far from Wells 3 and 12 as is feasible. They should be located so that the natural drainage would not be toward either well.

Well Data Sheets are provided for Wells 3 and 12 in Appendix E, along with a location diagram and photographs of the wells as they currently exist. Construction drawings of the proposed finished wells are appended also.

C. *Water Treatment*

Monitoring of Wells 3 and 12 shows elevated levels of iron and manganese in the water produced by the wells. The Department will allow additional monitoring to determine compliance with the iron and manganese secondary drinking water standards. If either source is shown to violate any standard, the Department will require the installation of treatment based on plans and specifications to be approved by the Visalia District Office.

Well 3 is near a seasonal creek and there is the possibility that the surface water could be directly influencing the well. The State's Surface Water Filtration and Disinfection Regulation requires that wells under the influence of surface water be treated in compliance with the regulation. Microscopic particulate analyses (MPA), conducted during the wet and dry season, would help to determine if Well 3 is influenced by surface water. The first sample for MPA analysis was collected on January 12, 1998. The sample volume was 1,490 gallons. The analysis, performed by BioVir Laboratories, showed no detection of *Giardia*, *Cryptosporidium* or primary particulates. One additional sample should be collected during the summer 1998 prior to any domestic use of the water.

The wells will have the proper connections and power hook-ups to allow the quick installation of continuous disinfection equipment.

E. *Storage and Distribution*

Storage Facilities

There will be one 70,000 gallon storage tank serving this system. The tank will be located on Lot 55, with easement access specified in the deed for the lot. The plans call for a bolted steel tank with a top inlet and bottom outlet. The tank dimensions will be 16' high by 29' diameter. The tank will gravity feed the lower system, while a booster pump station fed from the tank will feed the upper system (7 lots).

The tank interior will be coated with an epoxy coating certified to meet ANSI Standard 61 for indirect additives in drinking water.

The booster station will consist of two booster pumps, one acting as back-up. The plans call for two 30 hp, 400 gpm capacity, Peerless split-case horizontal booster pumps or equivalent.

Distribution System

The distribution system will consist of a lower gravity fed system and an upper pressurized system. There are four pressure reducing stations in the lower gravity system, creating three pressure zones. Including the upper pressurized system, there are a total of four pressure zones.

The distribution system piping will consist of 8" diameter class 150 PVC. The plans show nine dead-ends in the distribution system, each equipped with a below-grade blow-off. Fire hydrants are also specified, at about 750' intervals.

The water mains from the wells to the storage tank include 222' of 4" diameter schedule 40 galvanized steel, and 845' of 4" diameter class 150 PVC.

F. *Water Quality Monitoring*

Bacteriological

The system will be required to collect a minimum of one bacteriological water quality sample per month from the distribution system

A Bacteriological Sample Siting Plan has been developed for implementation upon activation of the water system. The plan identifies 5 routine sample sites to be rotated monthly. There is an upstream and downstream repeat sample site identified for each routine site, none of which are located on deadends, except in the upper system. There is only one line serving the upper system.

The Bacteriological Sample Siting Plan, as proposed, can only be fully implemented at complete build-out of the subdivision. Since this will not happen immediately upon activation of the water system, an updated plan showing actual sample locations must be submitted upon activation of the water system. The plan must be updated as more connections are completed to ensure adequate sampling of the service area.

A copy of the Bacteriological Sample Siting Plan is provided in Appendix I.

Chemical Water Quality

Copies of the most recent chemical water quality data for Wells 3 and 12 are provided in Appendix J. A Water Quality Monitoring Schedule applicable to both system wells, which shows the monitoring frequency and waivers provided for specific chemical constituents (Schedule CTGW), is provided in Appendix F.

General Mineral, General Physical and Inorganic Chemical

A minimum of one sample every three years is required for general mineral, general physical and inorganic chemical analysis. The most recent sample was collected on December 8, 1997, for Well 3, and December 21, 1997, for Well 12. The next general mineral, general physical and inorganic chemical analyses will be required in 2000.

Initial sampling of the wells in 1991 showed that water produced by Wells 3 and 12 had elevated levels of manganese. The updated monitoring conducted in December 1997 shows that both wells produce water with elevated levels of iron and manganese. The available data is summarized below. The Department will require treatment for iron and manganese if continued monitoring shows that the concentrations exceed the secondary MCLs on an annual average.

	Fe (ug/l)	Mn (ug/l)
MCLs:	300	50
Well 3		
12/8/97	452	85
10/2/91	66	78
Well 12		
12/21/97	369	65
9/16/91	110	56

Regulations require annual monitoring for nitrate from all sources.

Monitoring is to be increased to quarterly for 1 year if any result is > 1/2 the MCL of 45 mg/l (i.e., ≥ 23 mg/l). If the quarterly sample results remain below the MCL after one year of monitoring, the sampling frequency may be reduced to annual, upon written request, with the sample to be collected during the quarter of the highest result.

The December 1997 analyses showed nitrate concentrations of <0.4 mg/l for both Wells 3 and 12.

Asbestos

Asbestos sampling is required in source water if the source is vulnerable. The Department has determined that all hard rock wells are considered vulnerable to contamination of the water by asbestos. Therefore, Wells 3 and 12, both hard rock wells, shall be sampled for asbestos prior to activation of the water system, and once every nine years thereafter.

Distribution system monitoring for asbestos is required if asbestos-cement pipe is used. Since all pipelines are of galvanized steel or PVC, this monitoring is waived.

Lead and Copper Monitoring

Monitoring for lead and copper in the distribution system shall be conducted as required by regulation. Guidelines for complying with the requirements of the Lead and Copper Regulation are provided in Appendix G. Initially, five distribution system samples must be collected from water taps in the homes, as outlined in the guidance, during two sampling periods that are six months apart. This initial sampling must be completed within one year of the completion of at least five homes in the subdivision.

Radiochemical Quality

Sampling for radiological constituents is required from each well for four consecutive quarters every four years. One sample was collected from Well 3 on December 8, 1997, and analyzed for gross alpha particle activity. The result was $2.35 \text{ pCi/l} \pm 1.63$. A sample collected from Well 12 on December 21, 1997, showed a gross alpha particle activity of $0.22 \text{ pCi/l} \pm 1.57$. Additional samples must be collected from each well in March, June and September 1998. The next round of quarterly monitoring must be initiated in 2001.

Organic Chemical Quality

Water samples were collected for volatile organic chemical (VOC) and synthetic organic chemical (SOC) analyses on December 8, 1997, and December 21, 1997, for Wells 3 and 12, respectively. The results showed no detectable concentrations of VOCs, using EPA Method 524.2, or the SOCs Atrazine and Simazine, using EPA Method 525.2.

Monitoring shall continue at a frequency of once every 3 years from each well for all regulated VOCs and the once every 5 years for the SOCs Atrazine and Simazine. The next sample for VOCs will be due in 2000, and for SOCs in 2002, from each well.

Unregulated Organic Chemicals

The Hart Creek Estates MWC water system, with fewer than 150 connections, is hereby exempted from monitoring for the unregulated organic chemicals.

G. Operation and Maintenance

Cross-Connection Control Program

The Hart Creek Estates MWC will be required to maintain an approved Cross-Connection Control Program, which shall include the following elements (as applied from Title 17, California Code of Regulations, Section 7584):

- (a) Operating rules or an ordinance to implement the Cross-Connection Control Program must be adopted.
- (b) The MWC shall protect the public water supply from contamination by backflow by ensuring that the residential development does not pose a backflow hazard. Plans for all residential construction should be reviewed in the county building permit process to identify any potential hazards. These hazards should be eliminated or proper backflow protection provided at the service connection. The water system shall also be protected during the construction of new dwellings.
- (c) At least one person must be trained in cross-connection control to carry out the cross-connection program. This can be accomplished by having a water system representative trained or having on contract with the MWC a certified specialist to conduct the program on an on-going basis.
- (d) A procedure or system for testing backflow prevention devices by a certified tester shall be established (if and when devices are installed).
- (e) Records of locations, tests, and repairs of backflow prevention devices shall be maintained.

Emergency Disinfection Plan

The plans for the water system include the installation of facilities to accept hypochlorination equipment in an emergency. Attached to the permit application were specifications for a chemical feed pump and chlorinator housing, which could be purchased and installed on short notice.

Emergency Notification Plan

An Emergency Notification Plan, dated September 11, 1997, was submitted with the permit application. The plan identifies door-to-door notification as the quickest means to notify the customers during an emergency. The plan identifies Gerald Wells and Walt Fisher, Directors, as the water system representatives to contact in an emergency.

Annual Water Quality Report to Customers

Community water systems are required to provide a water quality report to consumers each year. The MWC will be required to provide a water quality report to customers following the first year of operation. An example of the format that can be used to provide customers with the necessary water quality information is provided in Appendix H.

III. RECOMMENDATIONS

The Drinking Water Field Operations Branch finds that the source and distribution facilities described in this report are capable of providing reliable, safe, wholesome, and potable water supply. It is therefore recommended that a new domestic water supply permit be issued to the Hart Creek Estates Mutual Water Company for the operation of the water system serving the Keene Ranch Tract 5871, subject to the following provisions:

1. The only approved source of supply for the Hart Creek Estates Mutual Water Company water system is groundwater from the following wells:

<u>Well</u>	<u>Status</u>	<u>Primary Station Code</u>
03	Active	1503329-001
12	Active	1503329-002

No other sources or treatment facilities shall be used by this water system without prior permit approval by the Department.

2. The Hart Creek Estates MWC will be required to show the technical and managerial capability to maintain proper operation of the water system in compliance with all drinking water laws and regulations. Prior to the activation of the water system, documentation shall be provided to the Department identifying the individual or company to be used for operation of the water system. The documentation to be provided must show the general experience of the operator in water system operation, including knowledge of the laws and regulations pertaining to public water systems,

water quality sample collection and follow-up, response to customer problems, and understanding of water treatment.

3. A re-evaluation of the financial plan shown in Appendix D must be completed within one year of the issuance of the initial domestic water supply permit. The re-evaluation shall consider actual water usage rates by existing customers, actual operational costs as well as a revised growth rate based on actual construction.
4. The well capacities shall be re-evaluated after 30 connections to the water system have been completed, or sooner if water consumption records show that the wells are not adequate to meet peak demand. The re-evaluation must take into account the ability of the wells and storage to meet peak demand and a summary of the actual metered usage rates by the active users at that time.
5. Initial monitoring for lead and copper in the distribution system shall be completed within one year of the completion of five homes in the subdivision. Guidance for conducting the lead and copper monitoring is provided in Appendix G.
6. The Hart Creek Estates MWC shall comply with all bacteriological and chemical water quality monitoring as outlined within this engineering report and as shown in the appended Water Quality Monitoring Schedule.
7. The septic tank leachfield systems for lots 54, 55 and 56 shall be located as far from Wells 3 and 12 as is feasible. They should also be located so that the natural drainage from the leachfield sites would not be toward either well.
8. Wells 3 and 12 shall be monitored for iron and manganese on a quarterly basis, beginning immediately. If one year of quarterly monitoring shows an average concentration of iron or manganese in excess of the secondary MCLs of 300 ug/l and 50 ug/l, respectively, treatment of the water shall be provided.
9. An additional sample shall be collected from Well 3 for microscopic particulate analyses (MPA) during the Summer 1998 to determine if Well 3 is influenced by surface water. This monitoring shall be completed prior to any domestic use of the wells.
10. An updated Bacteriological Sample Siting Plan showing actual sample locations must be submitted upon activation of the water system. The plan must be updated as more connections are completed to ensure adequate sampling of the service area.

11. The issues identified by the Department by letter dated December 9, 1997, to Mr. Matt VoVilla, RCE, Porter-Robertson Engineering (copy provided in Appendix K), shall be addressed prior to any domestic use of the water system.
12. An approved Cross-Connection Control Program shall be established prior to the activation of the water system. The program shall include all of the elements identified in this Engineering Report.
13. A written request shall be made to the Department for final approval to allow the activation of the water system for domestic use.
14. The transfer of ownership or operation of the Hart Creek Estates MWC shall not be completed without prior permit approval by the Department. Any changes in ownership effective after January 1, 1998, must be approved by the Department to ensure that the change results in an owner that has the technical, financial and managerial capability to maintain proper operation of the water system in compliance with all drinking water laws and regulations.

V. APPENDIX

2005 use/residence (42)
0.856 acre-feet

2003 total 28.01 acre-feet
2004 total 35.72 acre-feet
2005 total 35.95 acre-feet

HART CREEK MUTUAL WATER CO.						
Five Year Financial Plan						
No.	Category	Year 1	Year 2	Year 3	Year 4	Year 5
Anticipated Connections, "Standbys", and Yearly Usage						
1)	Metered Connections	35	53	71	85	94
2)	Standbys					
3)	Yrly Usage per Resid: AF	0.43	0.44	0.45	0.46	0.47
4)	Yrly Usage - Entire System - AF	15.05	23.03	31.71	38.81	43.54
5)	Power - Cost per KWH	0.07	0.07	0.07	0.07	0.07
Billable Fees:						
6)	Connection Fee	500.00	500.00	500.00	500.00	500.00
7)	Monthly Stand By Fee per unit					
8)	Fee per Acre Foot of Water	2178.00	2222.00	2266.00	2311.00	2358.00
9)	Fee pre 100 CF Water	5.00	5.10	5.20	5.31	5.41
Estimated Yearly Growth Rates						
10)	Metered Connections		50%	35%	20%	10%
11)	Standby Connections					
12)	Water Usage		2%	2%	2%	2%
13)	Fees		2%	2%	2%	2%
14)	Maintenance - Misc. Expenses		2%	2%	2%	2%
15)	Accounting & Billings		1%	1%	1%	1%
16)	Utilities		1%	1%	1%	1%
17)	Insurance			3%	3%	3%
Revenues						
18)	Connection Fee (500.00)	17500.00	8500.00	8500.00	7000.00	4500.00
19)	Metered Water Usage (24.25 + 1.38 Ccf)	18859.00	30072.00	40285.00	48229.00	53336.00
20)	Standby Fees					
21)	Total Revenues:	37359.00	38572.00	48785.00	55229.00	57836.00
Operating Expenses:						
22)	(Labor) 2hr per week	8000.00	5300.00	6615.00	6946.00	7293.00
23)	General Repairs/Maintenance	2500.00	2625.00	2756.00	2894.00	3039.00
24)	Insurance	2008.00	2060.00	2121.00	2182.00	2240.00
25)	Power Usage	3542.00	5364.00	7185.00	8002.00	9513.00
26)	PG & E Standby Charges	1200.00	1212.00	1224.00	1236.00	1249.00
27)	Electrical					
28)	Filter Chemicals & Water Test	500.00	505.00	510.00	515.00	520.00
29)	Billing @6.00	2520.00	3816.00	5112.00	6120.00	6768.00
30)	Slate Health Dept. Fees	607.00	607.00	607.00	607.00	607.00
31)	Cross Connection Control Pro.	118.00	118.00	118.00	118.00	118.00
32)	Total Operating Expenses:	18987.00	22607.00	28855.00	29220.00	31347.00
Net Income						
33)	Net Income Before Reserve	18372.00	15965.00	21930.00	19565.00	26489.00
34)	Sinking Fund (Replacement):	16019.00	16019.00	16019.00	16019.00	16019.00
35)	Net Disposable Income	2353.00	-54.00	5911.00	3546.00	10470.00

EXHIBIT "E"

BY-LAWS

of

HART CREEK ESTATES MUTUAL WATER COMPANY

ARTICLE I

General

Section 1. California General Corporation Law Applicable

The General Corporation Law is incorporated by this reference except as to matters authorized to be established by these By-Laws.

Section 2. Company Fiscal Year

The Company's fiscal year for allocating water among shareholders and for accounting purposes shall be July 1 through the following June 30. The Board may change the Company's fiscal year by resolution.

Section 3. Notices

(a) Notices shall be given by the Secretary, the President, or the Directors. If the person whose duty it is to give notice fails or refuses, it shall be given by any person directed by the President or the Directors.

(b) When notice is given by mail, such notice shall be deposited in the United States Post Office in Kern County, or in a United States Post Office within fifty miles of the principal office of the Company, with postage prepaid, and directed to the address of such person, appearing on the records of the Company. The notice shall be deemed to have been deposited in the Post Office, when deposited in a letter box, or other mail receptacle from which mail is regularly collected for the Post Office.

(c) The Board may regulate the matter and order notices as follows:

- (1) The board may select the method to be used as to one or more persons to be served, and another method as to others;
- (2) The newspaper in which publication is to be made;
- (3) The date, or dates, or publication;
- (4) The form and contents of the notice; and
- (5) The date of mailing of the notice.

When the time has arrived to give notice, and the Board has failed to determine any of the above, the same shall then be determined by the person giving the notice.

Section 4. Principal Office

The location or principal office of the Company is 300 "H" Street, Bakersfield, California. The Board may change the location of the principal office. Any change of location of the principal office shall be noted by the Secretary on these By-Laws in this section.

Section 5. Records and Reports

The Company shall keep:

- (a) Adequate and correct books and records of account;
- (b) Written minutes of the proceedings of its shareholders, Board, and committees of the Board; and
- (c) A record of each shareholder's name and address.

Section 6. Maintenance and Inspection of Articles and By-Laws

The Company shall keep at its principal office, or if its principal office is not in California, at its principal business office in this state, the original or a copy of the Articles of Incorporation and By-Laws, as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours.

ARTICLE II

Shareholders

Section 1. Eligibility

Persons owning land within Tract No. 5871 are eligible to be shareholders of the Company.

Section 2. Annual Meeting

An annual meeting of shareholders shall be held on the April 1 of each year, at the hour of 10:00 o'clock a.m.

Section 3. Special Meetings

Special meetings of the shareholders may be held upon call by the President; the Board, or shareholders holding not less than ten percent (10%) of the voting power of the Company.

Section 4. Place of Meetings

Unless some other place shall be appointed, meetings of shareholders shall be held at the principal office of the Company. The Board may change the place for a meeting to another place within Kern County.

Section 5. Notice of Meeting

Written notice of each meeting of shareholders, shall be given to each shareholder entitled to notice, not more than sixty days, nor less than ten days, before the meeting by delivering such notice personally or by mail.

Section 6. Form of Notice and Statement of Purpose

Notice of the meeting shall specify the place, the day and the hour of the meeting. In the case of special meetings, the general nature of the business to be transacted shall be stated in the notice. In the case of the annual meeting, the business to be transacted need not be stated.

Section 7. Shareholders Entitled to Notice

Notices of shareholders' meetings shall be mailed on the same day and at the same time. Notice shall be given to shareholders who appear as record holders at 12:00 o'clock, Noon, on the day immediately preceding the day of mailing (herein "record date").

Section 8. Waiver of Notice or Consent by Shareholder

Attendance by a person at a meeting shall also constitute a waiver of notice of meeting unless the person objects at the beginning of the meeting, except attendance at a meeting is not a waiver of any right to object to the consideration of matters required by the general Corporation Code to be included in the notice, and not so included if the objection is made at the meeting. Neither the business to be transacted nor the purpose of a regular or special meeting of shareholders need be specified in a written waiver, consent, or approval of minutes.

Section 9. Quorum

Fifty percent (50%) of the shareholders entitled to vote or the smallest percentage permissible by law, whichever is less, shall constitute a quorum at a shareholders' meeting. If 50% or more is required by law to constitute a quorum, the vote of a majority of the shareholders at the meeting shall be necessary for the shareholders to act.

Section 10. Shareholder Action Without a Meeting

Action may be taken by the shareholders without a meeting, if all shareholders consent in writing to the action. The written consent or consents shall be filed with the minutes of the proceedings of the shareholders. The action by written consent shall have the same force and effect as the unanimous vote of the shareholders.

Section 11. Proxies

Every person entitled to vote on any matter may vote in person or through agents authorized by a written proxy signed by the person and filed with the Secretary. A validly executed proxy shall continue in full force and effect unless (a) revoked by the person executing it, before the vote pursuant to that proxy, in writing, delivered to the Company stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at a meeting and voting in person by, the person executing the proxy; or (b) written notice of the death or incapacity of the maker of that proxy is received by the Company before the vote pursuant to that proxy is counted. No proxy shall be valid after the expiration of eleven months from the date of the proxy, unless a term not to exceed three years from the date of execution is stated on the proxy. A proxy shall be revocable. A proxy stated as irrevocable shall be governed by Corporations Code Section 7613.

A proxy for a meeting for election of directors marked by a shareholder "withhold" or otherwise marked in a manner indicating the authority to vote for the election of director is withheld, shall not be voted for the election of a director.

Section 12. Business to Be Transacted

At the annual meeting, directors to the number authorized shall be elected, reports of the affairs of the Company shall be considered, and any other business may be transacted within the powers of the shareholders subject to Corporations Code Section 601, requiring notice of special

proposals. At a special meeting, business may be transacted of the general nature specified in the notice, but not otherwise.

Section 13. Manner of Voting at Shareholders' Meetings

At meetings of shareholders, questions shall be *viva voce*, unless a majority in voting power of the shareholders present shall demand a vote by written ballot.

Section 14. Election of Directors

(a) The entire number of directors to be elected shall be elected at the same time and on a single vote or ballot. Directors shall not be elected separately or in any number less than the entire number to be elected. Each shareholder shall be entitled to cast one vote on each matter submitted to a vote of the shareholders.

(b) If no election of directors has been had for more than one year, a Board may be elected at a special meeting of the shareholders called in the manner and upon the notice required by these By-Laws. The terms of directors elected at a special meeting shall expire at the same time as though they had been elected at the annual meeting next preceding such special meeting.

Section 15. Share Certificates

(a) Certificates for shares shall be of such form as the Board may direct. Certificates shall be signed by the President and countersigned by the Secretary. Certificates shall express on its face its number, date of issuance, the number of shares for which, and the person to whom it is issued, and such other matter as may be required by law.

(b) Each certificate shall be issued and held upon and subject to the conditions and provisions thereon stated. The Certificate Book shall contain a margin on which shall be entered the number, date, number of shareholders, and the name of the person expressed in the corresponding certificate.

(c) The person to whom the share is issued is a "record holder". The person in whose name a pledge of shares may be registered on the certificate (and on the stock records of the Company) is a "registered pledgee."

(d) Shares may not be divided, and certificates for fractional shares shall not be issued or permitted. Shares sold or forfeited to the Company for non-payment of an assessment and any penalty thereon shall also be for full shares.

Section 16. Transfer of Shares

(a) The shares may be transferred by endorsement, by signature of the proprietor, agent, attorney or legal representative, and the delivery of the certificate. Upon presentation of the transferred shares, payment of appropriate transfer fees as the Board may determine, and indebtedness to the Company of the shareholder whose shares are being transferred, such transfer shall be entered upon the books of the Company to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of the transfer. When a transfer is made, the outstanding certificate shall be delivered to the Secretary for cancellation and shall be canceled before a new certificate is issued in lieu thereof. The Secretary shall preserve the certificate so delivered up, properly endorsed and canceled, as a voucher. If a certificate is lost or destroyed, the Board may order a new certificate to be issued as is by law required or permitted. No transfer of shares can or will be made on the books of the Company while any assessment,

charge or toll thereagainst remains or is unpaid.

(b) Upon surrender to the Secretary of a certificate, the Company shall issue a new certificate stating the name of the record holder, and the name of the registered pledgee, and cancel the old certificate, and record the transaction (with the name of the pledgee) on its books. More than one pledgee may be registered, their priority being indicated by the expressions "first pledgee," "second pledgee," and so forth.

Section 17. Shareholder's Inspection Rights

Subject to the Corporations Code and unless the Company provides a reasonable alternative as provided below, any shareholder may do either or both of the following for a purpose reasonably related to the shareholder's interest as a shareholder:

(a) Inspect and copy the records of shareholders' names, addresses, and voting rights during usual business hours on five days' prior written demand on the Company, which demand must state the purpose for which the inspection rights are requested; or

(b) Obtain from the Secretary on written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of shareholders who are entitled to vote for the election of directors as of the most recent record date for which that list has been compiled, or as of the date, after the date of demand, specified by the shareholder. The demand shall state the purpose for which the list is requested. The Secretary shall make this list available to the shareholder on or before the later of ten days after (i) the demand is received, or (ii) the date specified in the demand as the date as of which the list is to be compiled.

The Company may, within ten business days after receiving a demand under this Section, make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the list of shareholders. Any rejection of this offer must be in writing and must state the reasons that the proposed alternative does not meet the proper purpose of the demand.

If the Company reasonably believes that the information will be used for a purpose other than one reasonably related to a person's interest as a shareholder, or if it provides a reasonable alternative under this Section, it may deny the shareholder access to the list of shareholders.

Any inspection and copying under this Section may be made in person or by the shareholder's agent or attorney. The right of inspection includes the right to copy and make extracts. Any right of inspection extends to the records of any subsidiary of the Company.

Section 18. Records and Minutes

On written demand on the Company, any shareholder may inspect, copy and make extracts of the accounting books and records and the minutes of the proceedings of the shareholder, the Board, and committees of the Board for a purpose reasonably related to the shareholder's interest as a shareholder.

Section 19. Shareholders' Interest in Earnings

The Company shall only retain funds in excess of those needed to meet current losses and operating expenses to the extent reasonably necessary to meet future costs and expenses. Shareholders shall have an interest in retained funds based in proportion to the total amount paid by each shareholder bears to the total income of the Company for each year. Upon dissolution, the proceeds will be distributed to shareholders on the basis of shareholder's shares. The Company shall

maintain books and records to determine each shareholder's rights and interests in the Company's retained funds and proceeds upon dissolution.

Section 20. Right to Water Service

No shareholder shall be entitled to connect to the distributing system, used by the Company for delivery of water, or to take water, except with the consent, and upon and subject to the rules and regulations of the Company. The Company shall have full control over storing, distributing, measuring and diversion appliances, and over water until actually released or delivered to the shareholder.

ARTICLE III

Board of Directors

Section 1. Number and Qualification of Directors

Directors must be shareholders. The Board shall consist of at least three, but no more than five, directors until changed by amendment to these By-Laws. The exact number of Directors shall be fixed, within those limits, by a resolution adopted by the Board.

Section 2. Election, Designation and Term of Office

Directors shall be elected at each annual meeting of shareholders to hold office until the next annual meeting. If Directors are not elected at an annual meeting, they may be elected at any special shareholders' meeting held for that purpose or by written ballot. Each such Director, including a Director elected to fill a vacancy or elected at a special shareholders' meeting or by written ballot, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified.

Section 3. Vacancies on Board

A vacancy on the Board shall exist on the occurrence of the following:

- (a) the death or resignation of a director;
- (b) the declaration by resolution of the Board of a vacancy in the office of a director who has been declared of unsound mind by an order of court or convicted of a felony; or
- (c) the vote of a majority of shareholders to remove any director(s).

Section 4. Resignations

A director may resign by giving written notice to the President or Secretary of the board, or the General Manager. The resignation shall be effective when the notice is given unless it specifies a later time to become effective.

Section 5. Filling Vacancies

Except for a vacancy created by removal of a director, vacancies on the Board may be filled by a majority of the directors, whether or not less than a quorum. The shareholders may fill any vacancy or vacancies not filled by the directors within 60 days of the date of the vacancy.

Section 6. No Vacancy on Reduction of Number of Directors

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

Section 7. Directors' Meetings

(a) Meetings of the Board shall be held at any place designated by resolution of the Board or in the notice of the meeting or, if not so designated, at the principal office of the Company.

(b) Meetings may be held by conference telephone or similar communication equipment if directors participating in the meeting can hear one another.

(c) Immediately after each annual meeting, the Board shall hold a regular meeting for purposes of organization, election of officers, and the transaction of other business. Notice of this meeting is not required.

(d) Other regular meetings of the Board may be held without notice at such time and place as the Board may fix from time to time.

(e) Special meetings of the Board for any purpose may be called at any time by the President of the board, or the Secretary or any two directors. Notice of the time and place of special meetings shall be given to each director by personal delivery of written notice, by first class mail, postage prepaid, or by telephone, either directly to the director or to a person at the director's office who would reasonably be expected to communicate that notice promptly to the director. Notices sent by mail shall be deposited at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 48 hours before the time set for the meeting.

Section 8. Quorum

A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn. Action taken or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board, subject to the more stringent provisions of the California Corporation Law. A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

Section 9. Waiver of Notice

Notice of a meeting need not be given to any director who signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. Such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to a director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

Section 10. Adjournment

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

Section 11. Notice of Adjourned Meeting

Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than 24 hours. If the original meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

Section 12. Action Without a Meeting

If an action of the Board is required or permitted to take place, it may be taken without a meeting if directors consent in writing to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. Such consents shall be filed with the minutes of the proceedings of the Board.

Section 13. Compensation and Reimbursement

Directors may receive such compensation for their services, and such reimbursement of expenses, as may be determined by Board resolution to be just and reasonable.

Section 14. Powers of Board of Directors

The Board of Directors shall exercise the powers of the Company. The Board has full power and authority in respect to the following:

- (a) To adopt, use and alter, a corporate seal of form and device approved by the Board. There shall be set forth on the seal, the name of the Company, the State, and date of incorporation. The seal shall be affixed to the share certificates and such other instruments as the Board shall direct.
- (b) To prescribe the form and provide for keeping a share register and records pertaining to the issuance, registration and transfer of shares.
- (c) To prescribe the form, and provide for making and giving financial statements and reports to the shareholders. No balance sheet with statement of income and profit and loss, or other report need be sent to the shareholders.
- (d) To adopt, repeal, modify, and enforce, rules and regulations consistent with the laws of the State of California, the Articles of Incorporation, and these By-Laws, essential or desirable for the management or conduct of the Company's. The rules and regulations may, in addition to any other things, provide for and regulate any of the matters in this Article referred to, and authorized to be determined by the Board.
- (e) To provide for the payment of a fee for the transfer of shares upon the books of the Company. Such fee shall not exceed fifteen dollars (\$15.00) for each new certificate issued, plus mailing fee, if necessary.

Section 15. Dismissal of Employees

The Board may dismiss employee without liability on the Company other than for compensation for services actually performed to the time of dismissal and pro-rated (if that be necessary) at the rate provided for in the contract. The power of the Board to dismiss an employee shall be deemed a part of every employment and every contract of employment, whether such contract of employment be written or oral. No officer, agent, employee, or other representative of the Company shall have authority to employ any person other than upon and subject to the right of the Board to terminate the employment at any time, without liability resulting therefrom. The Board may waive such right of dismissal in any hiring for a period of not in excess of one year, by contract

in writing which contains express waiver of this provision.

Section 16. Delegation of Powers

The Board may delegate to the General Manager or agent of the Company, the enforcement of the rules and regulations of the Company, and the determination of ministerial matters.

Section 17. Regulation of Water Service

The Board may determine and fix any of the following with respect to delivery of water:

(a) The amount of water available for distribution to the shareholders, and the amount apportioned for and to be delivered for or to each shareholder for any season, year or period of time. In making such determination, the Board shall consider factors deemed relevant, and the determination shall be conclusive upon every shareholder;

(b) The time when delivery shall begin and end each day service is required;

(c) The times during the season when delivery is to be made, and for delivery in pressure upon recurring periods, and the amount delivered at any time, and the minimum and maximum number of shares in respect of which delivery will be made at one place or at one time;

(d) The notice required for and conditions under which delivery is to be made;

(e) Establish a rate structure to accumulate and maintain a fund for the repair and replacement of the water supply, distribution, and fire protection system (the "Repair and Replacement Fund"). The rate charge will bear a reasonable relationship to the cost of furnishing water. Unimproved lots included within the area to be served will bear a proportionate share of the cost of repair and replacement of the water supply, distribution and fire protection system, as well as a proportionate share of the cost of maintaining the Repair and Replacement Fund.

(f) The suspension or discontinuance of water delivery for violation of the rules and regulations, failure to pay any charges, tolls, assessments, costs, interest, penalties or other sums payable to the Company and the time when, and the conditions upon, such delivery or service shall be resumed.

(g) Fix the location and installation of the measuring gates, weirs and meters for turning out or measuring the water to which the respective shareholders may be entitled. No gate, hydrant, weir or meter shall be installed or changed without the consent and approval of the Board. Each new installation of such gate, hydrant, weir or meter shall be installed by the Company at the expense of the shareholder or shareholders using the same. Such appliance shall be owned by the Company and be part of the Company's distribution system.

(h) Apportion the water entitlement of the Company for the benefit of shareholders in proportion to stock ownerships. For any such apportionment, the Board shall provide for a system or method of operation first making Company owned water entitlement available, on a right of first refusal or other equitable basis, for shareholders.

(i) Fix and change the charges or tolls payable for water furnished, or other service rendered; and levy, collect and enforce assessments against the shareholders.

(j) Determine what part of the revenue of the Company shall be raised by assessments, and what part by tolls or rates, and what amount or items shall be charged to current operating expense, and what to permanent additions or betterments.

(k) Provide the time when tolls, charges and accounts shall be due, and when delinquent, and for the payment of interest on past due tolls, charges and accounts at a rate of not to exceed two percent (2%) per month.

Section 18. Extension of Distribution System

The Board may determine the place or places where, and the points to which, within the "service area" the water distributing system or any other system, service, or appliances of the Company shall be located or extended. The holding of shares of the Company shall confer no right upon the shareholder to have any pipeline, water conduit, or other appliance of the Company enlarged or extended without the consent of the Board.

Section 19. Inspection by Directors

Every director shall have the absolute right at any reasonable time to inspect the Company's books, records, documents of every kind, physical properties. The inspection may be made in person or by the director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 20. Amendments

(a) Subject to the rights of shareholders under these By-Laws, the Board may adopt, amend, or repeal By-Laws unless the action would:

(i) Materially and adversely affect the shareholders' rights as to voting, dissolution, redemption, or transfer;

(ii) Increase or decrease the number of shareholders authorized in total or for any class;

(iii) Effect an exchange, reclassification, or cancellation of all or part of the securities; or

(iv) Authorize a new class of share.

(b) Once shareholders have been admitted to the Company, the Board may not, without the approval of the shareholders, specify or change any By-Law provision that would:

(i) Fix or change the authorized number of directors;

(ii) Fix or change the minimum or maximum number of directors; or

(iii) Change from a fixed number of directors to a variable number of directors or vice versa.

(c) If any provision of these By-Laws requires the vote of a larger proportion of the Board than otherwise required by law, such provision may not be altered, amended, or repealed except by that greater vote.

ARTICLE IV

Officers

Section 1. Officers of the Company

The officers of the Company shall be a President, Secretary, and a Treasurer.

Section 2. Election of Officers

The officers of the Company, shall be chosen annually by the Board and serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment.

Section 3. Removal of Officers

Without prejudice to rights of an officer under any contract of employment, an officer may be removed with or without cause by the Board, if the officer was not chosen by the Board, the Board may confer the power of removal to the person who made the appointment.

Section 4. Resignation of Officers

An officer may resign by giving written notice to the Company. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

Section 5. Vacancies in Office

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these By-Laws for regular appointments to that office. Vacancies need not be filled on an annual basis.

Section 6. President

Subject to such supervisory powers as the Board may give to the President of the board, and subject to the control of the Board, the President of the Company and shall supervise, direct, and control the Company's activities, affairs, and officers. The President shall:

- (a) Preside at all shareholders' meetings and, in the absence of the President of the board, or if there is none, Board meetings;
- (b) Sign deeds and other instruments first approved or authorized by the Board; and
- (b) Supervise the business and affairs of the Company, and cause the orders and resolutions of the Board to be carried into effect, and shall have such other powers and duties as the Board or By-Laws may prescribe.

Section 7. Secretary

The Secretary shall:

- (a) Attend meetings of the Board and shareholders, record votes and minutes of proceedings, and perform like duties for the standing committees when required;
- (b) Keep the corporate seal, Articles of Incorporation, By-Laws, and books of blank certificates of stock, fill up and countersign certificates issued, and affix the corporate seal to papers requiring a seal; and
- (c) Keep proper account books and such records and books pertaining to the issuance and transfer of shares.
- (d) Give, or cause to be given, notice of meetings of shareholders, of the Board, and of committees of the Board required by these By-Laws to be given; and
- (e) Keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the By-Laws may prescribe.

Section 8. Treasurer

- (a) The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Company's properties and transactions. The Treasurer shall

send or cause to be given to the shareholders and directors such financial statements and reports as are required by law, by these By-Laws, or by the Board to be given. The books of account shall be open to inspection by any director at all reasonable times.

(b) The Treasurer shall deposit, or cause to be deposited, money and other valuables in the name and to the credit of the Company with such depositories as the Board may designate. The Treasurer shall disburse the Company's funds as the Board may order. The Treasurer shall render to the President and the Board when requested, an account of transactions as Treasurer and of the financial condition of the Company. The Treasurer shall have such other powers and perform such other duties as the Board or the By-Laws may prescribe.

(c) If required by the Board, the Treasurer shall give the Company a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the office and for restoration to the Company of all its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Treasurer on his or her death, resignation, retirement, or removal from office.

ARTICLE V

Financial

Section 1. Right of Indemnity

To the fullest extent permitted by law, this Company shall indemnify its directors, officers, employees, and other persons described in the Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding", as that term is used in that Section, and including an action by or in the right of the Company by reason of the fact that the person is or was a person described in that Section. "Expenses", as used in this By-Law, shall have the same meaning as in Section 7237(a) of the Corporations Code.

Section 2. Approval of Indemnity

On written request to the Board by any person seeking indemnification under Corporations Code Section 7237(b) or Section 7237(c), the Board shall promptly determine under Section 7237(e) whether the applicable standard of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the Board shall promptly call a meeting of shareholders. At that meeting, the shareholders shall determine under Section 7237(e) whether the applicable standard of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the shareholders present at the meeting in person or by proxy shall authorize indemnification.

Section 3. Advancement of Expenses

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these By-Laws in defending any proceeding covered by those Sections shall be advanced by the Company before final disposition of the proceeding, on receipt by the Company of an undertaking by or on behalf of that

person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Company for those expenses.

Section 4. Insurance

The Company may purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's, or agent's status as such.

Section 5. Assessments and Liens

An assessment levied by the Board shall be a lien upon the shares assessed from the time of the levy. Subject to provisions of law applicable thereto. There shall be on the face of each certificate a statement in form, meaning and effect, substantially as follows:

"Shares evidenced by this Certificate are assessable. No shares are transferable when: (a) an assessment is unpaid; or (b) a registered holder is indebted to the Company."

Section 6. Levy of Assessment

Every levy of an assessment shall be made by resolution of the Board and shall:

- (a) Identify the basis for determining the assessment;
- (b) Specify the amount thereof and to whom and where it is payable;
- (c) Fix a date on which the assessment is payable;
- (d) Fix a date, not less than thirty or more than sixty days from the date on which the assessment is payable, and which such assessment becomes delinquent is not paid;
- (e) Fix a date not less than fifteen or more than sixty days from the date on which the unpaid assessment becomes delinquent for the sale of delinquent shares and an hour and place for such sale of delinquent shares.

Section 7. Notice of Assessment

On or before the date an assessment is payable, the Secretary of the Company shall give notice thereof in substantially the following form:

"(Name of Company in full. Location of principal executive office.)"

"Notice is hereby given that the Board of Directors on _____
(date) has levied an assessment of \$ _____ per share upon the
shareholder of the Company payable to _____ (to whom and
where). A copy of the basis for determining the assessment is
attached to this notice. Any share upon which this assessment remains
unpaid on _____ (date fixed) will be delinquent. Unless payment
is made prior to delinquency, the said shares or as many of them as
may be necessary, will be sold at _____ (particular
place) on _____ (date) at (hour) of such date, to pay the
delinquent assessment, together with a penalty of 5% of the amount
of the assessment on such shares or be forfeited to the Company.

_____ (Name of secretary with location of office.)"

Section 8. Service of Notice of Assessment

The Notice of Assessment shall be served personally upon each holder of record of shares assessed; provided, however, that in lieu of personal service the notice may be mailed to each such shareholder, addressed to the last address of the shareholder appearing on the books of the Company or given by the shareholder to the Company for the purpose of notice, or if no such address appears or is given, at the place where the principal executive office of the Company is located.

Section 9. Penalties, Interest and Collection Costs

Each shareholder shall be liable for payment of and shall pay to the Company, upon its demand, all expenses incurred by the Company in collecting or enforcing payment from such shareholder of any delinquent assessment, charge, toll or other indebtedness. Included in such expenses are attorney fees in any proceeding for the enforcement of any lien herein provided for, or the collection of such indebtedness, whether by court action or otherwise, and all expenses of any sale.

If payment is made after an assessment has become delinquent and before the sale of such shares, the shareholder shall pay a penalty of five percent (5%) of the amount of the assessment on the shares in addition to the assessment. All penalties on delinquent assessments, interest on overdue charges, tolls or other indebtedness, and expenses of collection, as above provided for, shall be added to the principal debt, and shall become and be a lien upon and against the shares, and be secured thereby and enforced in the same manner and with the same effect as the principal debt.

Whenever elsewhere in these By-Laws or in the share certificates, the terms assessment, charge, toll, or any of them, shall be used, such terms shall be deemed to include, in each and every instance whenever such construction is possible or permissible, all penalties, interest and collection expenses pertaining to such assessment, charge or toll, or attaching, accruing or resulting from the nonpayment thereof when due.

Section 10. Record Holder Liable for Tolls and Charges

The record holder of any shares shall be entitled to the delivery of all water apportioned to such shares, subject to suspension or discontinuance, as herein provided, and shall be personally liable for the payment of all tolls, charges, interest, costs and penalties in respect of or on account of such shares during the time the same are registered in his name on the books of the Company.

Section 11. Annual Report

(a) An annual report shall be prepared within 120 days after the end of the Company's fiscal year. That report shall contain the following information in appropriate detail:

(1) A balance sheet as of the end of the fiscal year, and an income statement and statement of changes in financial position for the fiscal year, accompanied by any report on them by independent accountants, or, if there is no such report, by the certificate of an authorized officer of the Company that they were prepared without audit from the books and records of the Company.

(2) A statement of the place where the names and addresses of current shareholders are located.

(3) Any information that is required by this Article.

(b) The Company shall notify each shareholder annually of the shareholder's right to receive a financial report under this Section. Except as provided in subsection (3) of this By-Law, on written request by a shareholder, the Board shall promptly cause the most recent annual report to

be sent to the requesting shareholder.

Section 12. Annual Statement of Certain Transactions and Indemnifications

As part of the annual report to all shareholders, or as a separate document if no annual report is issued, the Company shall annually prepare and mail or deliver to its shareholders and furnish to its directors a statement of any transaction or indemnification of the following kinds within 120 days after the end of the Company's fiscal year:

(a) Unless approved by shareholders under Corporations Code Section 7233(a), any transaction (1) to which the Company, its parent, or its subsidiary was a party, (2) which involved more than \$50,000 or was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000, and (3) in which either of the following interested persons had a direct or indirect material financial interest (a mere common directorship is not a material financial interest).

(b) The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the Company, the nature of their interest in the transaction, and, when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

(c) A brief description of the amounts and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director, unless the loan, guaranty, indemnification, or advance has already been approved by the shareholders under Corporations Code Section 5034, or the loan or guaranty is not subject to the provisions of Corporations Code Section 7235(a).

Dated this 17 day of FEB, 1999.



, Secretary

(SEAL)

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of Hart Creek Estates Mutual Water Company, a California corporation, the above By-Laws, consisting of 15 pages, are the By-Laws of this Company as adopted by the Board of Directors on 2-26-98, and that they have not been amended or modified since that date.

Executed on FEB 1, 1999 at Bakersfield, California.



, Secretary

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I, GUADALUPE GONZALEZ, declare: I am and was at the time of the service hereunder mentioned, over the age of eighteen (18) years and not a party to the within cause. My business address is 2001 22nd Street, Suite 100, Bakersfield, California 93301.

On November 4, 2011, I served the document(s) titled:

**ANSWER OF DEFENDANT HART CREEK
ESTATES MUTUAL WATER COMPANY**

on the interested parties in this action, as listed below:

SEE ATTACHED MAILING LIST.

XXX **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

_____ **(BY FACSIMILE TRANSMISSION)** A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as completed and without error.

_____ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee(s).

_____ **(BY OVERNIGHT COURIER)** I caused such envelope with delivery fees fully prepaid to be sent by overnight courier.

XXX **(BY ELECTRONIC MAIL)** I served the foregoing document(s) by transmitting a copy of the document(s) by electronic mail to the email address shown above or on the attached list.

Executed on November 4, 2011, at Bakersfield, California.

XXX **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



GUADALUPE GONZALEZ

1 SERVICE LIST

2
3 COMPLAINANTS: (Served via U.S. Mail and Email)

4 Eric Lafortune
5 25474 Clear Creek Road
6 Keene, CA 93531-1327
7 FOR: ERIC LAFORTUNE
8 Email: eric@creativewireless.com

9 Don Richardson
10 27514 Carlyle Springs Road
11 Keene, CA 93531-1312
12 FOR: DON RICHARDSON
13 Email: don2dmf@yahoo.com

14 David Harvey
15 27584 Carlyle Springs Road
16 Keene, CA 93531-1312
17 FOR: DAVID HARVEY
18 Email: dh11173@hotmail.com

19 STATE SERVICE: (Served via Email)

20 Michael Colvin
21 Advisor – Energy
22 CPUC
23 Room 5212
24 San Francisco, CA 94102

25 ALJ Robert A. Barnett
26 CPUC
27 Division of Administrative Law Judges
28 Room 2208
505 Van Ness Avenue
San Francisco, CA 94102-3214
Email: rab@cpuc.ca.gov

Commissioner Mark J. Ferron
Email: fer@cpuc.ca.gov

ALJ Docket Office

ALJ Process Office