

1 Maurice Kurtz, Chairman of the Board  
2 38205 183<sup>rd</sup> Ave SE  
3 Auburn, WA 98092  
4 253-939-5739  
5 Plaintiff in Pro Per

6  
7 **BEFORE THE WASHINGTON**  
8 **UTILITIES AND TRANSPORTATION COMMISSION**  
9

10  
11 NEWAUKUM WATER SYSTEM, INC.,  
12 Petitioner,  
13 vs.  
14 WASHINGTON UTILITIES AND  
15 TRANSPORTATION COMMISSION  
16 Respondent.

DOCKET UW-143330  
(consolidated),  
Order 01 only  
**MOTION FOR SUMMARY DETERMINATION**

17  
18 **MOTION TITLE:** Newaukum Water System, Inc. (NWS) is seeking removal from Commission Jurisdiction.

19  
20 **BASIS FOR THIS MOTION:** NWS was put under UTC Jurisdiction by the proceedings of UW-132281 closed  
21 on 4/7/2014. A recent review of the proceedings by NWS Board of Directors revealed that there was a general  
22 misunderstanding by the UTC staff of nonprofit corporations and their rules of law, at the time of the UW-  
23 132281 proceeding. WAC 480-110-255 Jurisdiction was incorrectly applied to NWS based on the staff applying the  
24 rules for a for-profit corporation to the NWS nonprofit corporation.

25  
26 **NONPROFIT CORPORATION DEFINITIONS**

27 NWS is a nonprofit corporation and it is necessary to understand the laws and rules of a nonprofit as defined below  
28 to understand this pleading:

- 1 A. "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of  
2 this chapter, except a foreign corporation". RCW [24.03.005](#) Par.(1)
- 3 B. "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of  
4 which is distributable to its members, directors or officers. RCW [24.03.005](#) Par. (3)
- 5 C. NWS was formed as a "mutual benefit" corporation to furnish water to 27 lots, but currently limited to  
6 23 by the Washington State Department of Health (DOH). (*Reference Appendix Page 10*)
- 7 D. A nonprofit corporation has no owners, but can have members that receive benefits based on the  
8 purpose of the nonprofit. (*Reference Appendix Page 5*)
- 9 E. A nonprofit corporation has no investors. (*Reference Appendix Page 5*)
- 10 F. A nonprofit corporation needs to have IRS 501(c) (4) approved status. (*Reference Appendix Page 9*)

11  
12 **NEWAUKUM WATER SYSTEM PLEADING:**

13 After our review of the legal attributes of a nonprofit corporation and the WAC 480-110-255, Jurisdiction, we are  
14 making the following statements as clear assertions why the UTC does not have jurisdiction over NWS:

- 15 (1) NWS is a mutual benefit nonprofit corporation and abides by the rules for nonprofit corporations; it  
16 does not issue stock, there is no distribution of funds to members, it is not organized for profit, it has  
17 no ownership, it has no investors and it is recognized by the State of Washington and the IRS as a  
18 nonprofit corporation. NWS is an IRS approved 501 (c) (4) nonprofit corporation. All of these  
19 attributes of a nonprofit corporation are listed above with documentation references in the APENDIX.
- 20 (2) Quotations below from WAC-480-110-255, Jurisdiction are identified by quotation marks:
- 21 a. Paragraph "(1) The commission only regulates investor-owned water companies that:"
- 22 b. Newaukum Water System is neither an investor nor owner per rules of nonprofits, thus  
23 eliminating Newaukum Water System from jurisdiction of the UTC under paragraph (1), Ln 21  
24 and definitions lines 6 and 8 above.
- 25 c. Paragraph (1) (b) has been incorrectly interpreted by the staff as meaning any water company that  
26 charges more than \$46/month as being under UTC jurisdiction.
- 27 d. There is no wording in Paragraph (1) or following it that states "or any other company". A colon  
28 is the same as a period, except it indicates there is additional information that applies to the true

1 conditions before the colon. Therefore the UTC staff position that Paragraph (1) (b) applies to  
2 NWS was incorrect.

3 (3) Additionally, paragraph (2) and (2) (e) states that the commission does not regulate: “Homeowner  
4 associations, cooperative and mutual corporations, or similar entities that provide service only to their  
5 owners or members”.

6 a. As per page 2, line 14, Newaukum Water System is a mutual corporation.

7 b. This is the second location within WAC-480-110-255 that puts the Newaukum Water System  
8 outside of the jurisdiction of UTC control.

9 (4) During the UW-132281 hearing, UTC Staff member, Lauren McCloy, testified that mutual  
10 corporations are also controlled by the \$46/month rule of Paragraph (1) (b). This was incorrect  
11 testimony because Paragraph (1) (b) only applies to investor- owned water companies covered by  
12 Paragraph (1). Again there is no reference in WAC 480-110-255 that Paragraph (1) (b) applies to the  
13 water providers listed in Paragraph (2).

14 (5) WAC 480-110-255 Paragraph (2) (f) that was also quoted as a reason for UTC control of NWS based  
15 on non-members being charged a rate over \$46 per month is also incorrect. NWS does not provide  
16 water to any non-members. (*Reference Bylaws Appendix page 10*).

17 (6) The Commission has received written requests from 20 of the 23 NWS members to be released from  
18 UTC control based on the WAC 480-110-255 Jurisdiction definition.

19 (7) The jurisdiction position of NWS is supported by our two District 31 Legislator Representatives Hurst  
20 and Dahlquist (*See Appendix page 11*)

21 **EXPECTED DETERMINATION from the this Motion for Summary Determination**

22 (8) It is expected that the information furnished in this Motion to the Commission will result in NWS  
23 being released from UTC control prior to January 1, 2015.

24 (9) It is also expected that upon release from Commission control that all other Dockets and issues related  
25 to NWS be dismissed.

26 *Original Signed by*

27 Maurice Kurtz  
28 Chairman of the Board  
Signed this 10<sup>th</sup> day of November 2014

APPENDIX INDEX

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<u>Supporting Pleading Page Reference</u>	<u>Item Title</u>	<u>Appendix Page</u>
P2, Ln 7, Par. D & Ln 9, Par. E	Excerpts from US Legal pages	5
P2, Ln 20, Par. (2)	WAC 480-110-255, Jurisdiction	7
P2, Ln 1, Par. A & Ln 3, Par. B	RCW 24.03.005	8
P2, Ln 10, Par. F	IRS 501 (C) (4) Confirmation Letter	9
P2, Ln, 5, Par. C & P3, Ln 14, Par. 5	NWS Bylaw excerpt	10
P3, Ln 19, Par. (7)	Representative Hurst/Dahlquist Letter	11

1 APPENDIX

2 Excerpt from US Legal Home <http://definitions.uslegal.com/n/non-profit-corporation/>

3 Non Profit Corporation Law & Legal Definition

4 ""Under IRS rules, a nonprofit cannot make political lobbying a substantial part of its total activities, and a nonprofit  
5 must make sure that its activities don't personally benefit its directors, officers or members. Nonprofit corporations  
6 must abide by the following restrictions to retain their tax-exempt status:

- 7 • Nonprofit corporations with a 501(c)(3) tax exemption cannot participate in or contribute money to  
8 political campaigns. If they do, the IRS can revoke their nonprofit status, and can assess a special excise tax  
9 against the organization and its managers.
- 10 • Nonprofit corporations can engage in only limited lobbying activities. Tax-exempt 501(c)(3) nonprofits that  
11 influence legislation to any "substantial degree" face the loss of their nonprofit status. However, for tax-  
12 exempt nonprofits that want to participate in lobbying, the IRS simply sets a limit on the money they can  
13 spend on political activities.
- 14 • Nonprofit corporations must not distribute profits to members, officers or directors. A nonprofit corporation  
15 cannot be organized to financially benefit its members, officers or directors. However, reasonable salaries  
16 and expense reimbursements are permitted.
- 17 • Nonprofit corporations must pay taxes on income from "unrelated activities." The IRS requires nonprofits  
18 to pay corporate income taxes on such unrelated income over \$1,000, whether or not the group uses that  
19 money to fund its tax-exempt activities.
- 20 • Nonprofit corporations cannot make substantial profits from unrelated activities. If a nonprofit spends too  
21 much time on unrelated activities, or if the unrelated activities generate "substantial" income, the group's  
22 nonprofit status may be jeopardized.
- 23 • When a nonprofit corporation dissolves, its assets must be distributed to another tax-exempt group. Since  
24 tax-exempt organizations and their assets cannot be owned, they can never be sold.

25 DURATION

26 Nonprofits are not actually owned by anyone and therefore cannot be sold. If the directors of a nonprofit corporation  
27 decide to dissolve it, they must pay off all debts and obligations of the nonprofit and distribute all of its assets to  
28 another tax-exempt nonprofit corporation.

LIABILITY

1 **APPENDIX (continued from page 5)**

2 Forming a nonprofit corporation generally protects the directors, officers and members of the nonprofit from  
3 personal liability for the corporation's debts and other obligations. Only the assets of the corporation may be used to  
4 pay off debts and other liabilities. This protection from having personal assets available to pay off debts or  
5 judgments is called "limited liability".

6 In a few situations, people involved with a nonprofit corporation can be held personally liable for its debts. A  
7 director or officer of a nonprofit corporation can be held personally liable if she:

- 8 • personally and directly injures someone
- 9 • personally guarantees a bank loan or a business debt on which the corporation defaults
- 10 • fails to deposit taxes or file any necessary tax returns
- 11 • does something intentionally fraudulent, illegal or clearly wrong-headed that causes harm, or
- 12 • co-mingles nonprofit and personal funds.

13 To safeguard against some of these exceptions, insurance is available to protect volunteer directors, who may be  
14 reluctant to serve without it. ""

APPENDIX



- Inside the Legislature
  - \* Find Your Legislator
  - \* Visiting the Legislature
  - \* Agendas, Schedules and Calendars
  - \* Bill Information
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WACs > Title 480 > Chapter 480-110 > Section 480-110-255

480-110-245 << 480-110-255 >> 480-110-261

**WAC 480-110-255  
Jurisdiction.**

[Agency filings affecting this section](#)

- (1) The commission only regulates investor-owned water companies that:
- (a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite management agency is not an owner of the water company.
  - (b) Meet jurisdictional thresholds of one hundred or more customers, or have average revenue of more than five hundred fifty-seven dollars per customer per year.

If a water company serves customers	and has average annual revenue per customer	commission regulation
99 or less	\$557 or less	No
99 or less	more than \$557	Yes
100 or more	\$557 or less	Yes
100 or more	more than \$557	Yes



- (2) The commission does not regulate the following providers of water service:
- (a) Cities, towns, or counties.
  - (b) Public utility districts.
  - (c) Water districts.
  - (d) Local improvement districts.
  - (e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.
  - (f) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than five hundred fifty-seven dollars average annual revenue per nonmember.
  - (g) Entities or persons that provide water only to their tenants as part of the business of renting or leasing.
    - This may include:
      - (i) Apartment buildings.
      - (ii) Mobile home parks.
      - (iii) Manufactured home rental communities.
      - (iv) Office complexes.
      - (v) Commercial or industrial parks.
  - (3) To determine jurisdiction, the commission considers only those customers receiving water. The commission does not consider customers who do not receive water, such as customers who have paid:
    - (a) Water-availability letter fees.
    - (b) Standby charges.
    - (c) System-readiness fees.
    - (d) Ready-to-serve charges.
  - (4) To calculate the average annual revenue per customer, the commission considers only the charges that water-receiving customers are billed on a recurring basis, other than contributions in aid of construction. For example, this includes money billed for flat-rate service or the metered base-charge and all usage charges.
    - (a) The commission does not include charges billed to customers who do not receive water, such as:
      - (i) Water availability letter fees.
      - (ii) Standby charges.
      - (iii) System-readiness fees.
      - (iv) Ready-to-serve charges.
    - (b) The commission does not consider contributions in aid of construction in determining jurisdiction. These contributions can be money, services or property. Payments can be made in a lump sum or financed over time. Examples of contributions in aid of construction include payments for:
      - (i) Connection to system.
      - (ii) Meter installation.
      - (iii) System buy-in.
      - (iv) Facilities charges.
      - (v) Assessments for capital plant and equipment.

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RCWs > Title 24 > Chapter 24.03 > Section 24.03.005

Beginning of Chapter << 24.03.005 >> [24.03.007](#)

**RCW 24.03.005  
Definitions.**

As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(3) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(4) "Articles of incorporation" and "articles" mean the original articles of incorporation and all amendments thereto, and includes articles of merger and restated articles.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means an individual or entity having membership rights in a corporation in accordance with the provisions of its articles or [of] incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated in the articles or bylaws.

(8) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(9) "Deliver" means: (a) Mailing; (b) transmission by facsimile equipment, for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or members; (c) electronic transmission, in accordance with the officer's, director's, or member's consent, for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or members under RCW 24.03.009; and (d) as prescribed by the secretary of state for purposes of submitting a record for filing with the secretary of state.

(10) "Conforms to law" as used in connection with duties of the secretary



APPENDIX

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: SEP 26 2014

NEWAUKUM WATER SYSTEM  
PO BOX 11  
AUBURN, WA 98071

Employer Identification Number:  
45-3763026  
DLN:  
17053090350014  
Contact Person:  
PETER A ORLETT ID# 31436  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Form 990 Required:  
Yes  
Effective Date of Exemption:  
October 14, 2011  
Contribution Deductibility:  
No  
Addendum Applies:  
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax-exempt status we have determined that you are exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

For important information about your responsibilities as a tax-exempt organization, go to [www.irs.gov/charities](http://www.irs.gov/charities). Enter "4221-NC" in the search bar to view Publication 4221-NC, Compliance Guide for Tax-Exempt Organizations (Other than 501(c)(3) Public Charities and Private Foundations), which describes your recordkeeping, reporting, and disclosure requirements.

Contributions to you are not deductible by donors under section 170(c)(2) of the Code.

Sincerely,



Director, Exempt Organizations

1 APPENDIX

2 BYLAWS

3 OF

4 NEWAUKUM WATER SYSTEM, INC.

5 A NOT-FOR-PROFIT SUBDIVISION WATER PROVIDER

6 ARTICLE I. Name and Address

7 The name of this corporation is NEWAUKUM WATER SYSTEM INC. which may be  
8 referred to as NWS. The principal office initially shall be at the address of the resident agent  
9 which may be changed to another address by the Board of Directors. NWS is incorporated under  
10 the laws of the State of Washington as a nonprofit private corporation. The corporation is a  
11 closed end corporation with membership limited to the total number of lots in the original Bill  
12 Noah subdivision.

11 ARTICLE II. Objectives

12 The corporation's purpose is to operate a well and water system and provide water to the  
13 27 lots in the Bill Noah subdivision which includes the Newaukum Country Estates and the lots  
14 to the west within the water right area. NWS has the obligation to provide water to all 27 lots.  
15 The current 23 connections cannot be exceeded without system capacity improvements as  
16 designated by the Washington State Department of Health and after appropriate engineering  
17 evaluation. The water system is to be operated by NWS solely for the benefit of the lot  
18 owners/water users. It is not allowed to furnish water to any facility or area outside of the 27  
19 designated lots. Thus, the closed corporation referred to in Article I.

16 ARTICLE III. Membership

- 17 A. The lot owners are beneficiaries of NWS and constitute the corporation. Membership  
18 shall be inseparable from lot ownership. Upon the transfer of ownership or the  
19 making of a contract for the sale of any lot, the membership in the corporation will  
20 be deemed to have been transferred to the purchaser or grantee. In the case of the  
21 death of a member, the membership shall pass in the same manner and to the same  
22 person as does the real property itself.
- 23 B. No membership shall be forfeited, nor shall any member be expelled or otherwise  
24 prevented from voting. No member may withdraw except upon the transfer of title to  
25 or upon contracting for the sale of, the lot to which his or her membership is  
26 attached.
- 27 C. Members have the right to vote in the Annual Meeting, at special meetings, and by  
28 written ballots. They elect the Board of Directors, vote on the annual budget and the  
direction of NWS for the common good. Members have one vote for each metered

1 APPENDIX

2 STATE REPRESENTATIVE  
31<sup>st</sup> LEGISLATIVE DISTRICT  
3 CATHY DAHLQUIST

State of  
Washington  
House of  
Representatives

STATE REPRESENTATIVE  
31<sup>st</sup> LEGISLATIVE DISTRICT  
CHRISTOPHER HURST



4  
5  
6 October 16, 2014

7 **To: Washington Utilities and Transportation Commission**

- 8 David Danner, Commissioner Chairman
- 9 Philip Jones, Commissioner
- 10 Jeffrey Goltz, Commissioner
- 11 Mark Vasconi, Director Regulatory Services
- 12 Gene Eckhardt, Assistant Director

13 **From: State Representatives of 31<sup>st</sup> District: Cathy Dahlquist & Christopher Hurst**  
14 **Issue: Newaukum Water System, Inc. Release from UTC Control**

15 Dear Commissioners and Directors,

16 It has recently come to our attention that the Washington Utilities and Transportation  
17 Commission has unnecessary control over the Newaukum Water System, Inc.

18 We are writing in support of the Newaukum Water System's request to be released from the  
19 UTC jurisdiction to regulate. Newaukum Water System, Inc. was put under the UTC despite the  
20 fact that they do not fit the criteria outlined in WAC 480-110-255 (2) (e) and (f) it is a not-for-  
21 profit corporation nor is it a public corporation. The Newaukum Water System is a small  
22 operation that needs its own flexibility to function properly.

23 The financial limitations connected with the UTC regulation makes it too difficult for a small  
24 corporation like the Newaukum Water System to meet the same financial and health  
25 requirements that apply to large corporations with higher numbers of customers to support the  
26 expenses associated with the industry. They seem to be a self-sufficient and self-regulated and  
27 the regulations placed on it by the UTC will cause an unnecessary burden that will cause them  
28 to go under.

We appreciate you taking the time to listen to this request, and if you have any questions  
regarding this please feel free to contact us.

Sincerely,

Cathy Dahlquist, State Representative  
31<sup>st</sup> Legislative District

Christopher Hurst, State Representative  
31<sup>st</sup> Legislative District