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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of:

TFL ASSOCIATES, LLC, a Washington Limited Liability Company; CALIBER COMPANY, INC., a Washington corporation; and JACOBSON CONSTRUCTION & DEVELOPMENT, INC., a Washington corporation,

Petitioners,

v.

RAINIER VIEW WATER COMPANY, INC., a Washington corporation; SILVER CREEK DEVELOPMENT CO., a Washington Limited Partnership,

Respondents.

No. UW - 010683

INITIAL WRITTEN TESTIMONY OF
CARL D. WADE

Carl D. Wade testifies as follows:

- 1. I have personal knowledge of the facts set forth in this document and would be competent to testify to them if necessary.
- 2. I am owner of Caliber Company, Inc. ("Caliber"). Caliber is a validly organized Washington corporation. Caliber is in the business of developing residential real property. The address of Caliber is P.O. Box 1231, Puyallup, Washington 98371.
- 3. Caliber is a developer of real property located within Rainier View Water Company, Inc.'s ("Rainier's") service area.

INITIAL WRITTEN TESTIMONY OF
CARL D. WADE- 1

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1 4. Rainier is a public service company that owns and operates a water system subject to
2 regulation by the Commission.

3 5. Caliber has an ownership interest in the plat entitled Stonerise. Preliminary plat approval
4 has been received for Stonerise.

5 6. As of August 20, 1997, Sound Water Company, Inc., (“Sound Water”) was a public
6 service company owning and operating a water system subject to regulation by the Commission.

7 7. Caliber is the holder of a certificate of water availability letter signed by Sound Water
8 dated July 18, 1994.

9 8. On August 20, 1997, the Commission approved the sale and transfer of assets of Sound
10 Water to Rainier. Commission Docket UW-961070.

11 9. Exhibit “A” to the Bill of Sale for Rainier’s purchase of all of Sound Water’s assets states
12 that the “[b]uyer assumes and agrees to perform all of the Seller’s rights, duties and obligations
13 under the water rights, certificates and permits.” Further, this same paragraph states that “Seller
14 believes at the time that all water rights have been committed.”

15 10. Silver Creek Development is the developer of real estate known as the Silver Creek
16 Master Planned Community (“Silver Creek”) located within Rainier’s service area.

17 11. Silver Creek Development is the holder of a certificate of water availability letter signed
18 by Sound Water dated January 13, 1997. Silver Creek Development’s water availability letter from
19 Sound Water was issued 2.5 years after the letter issued by Sound Water to Caliber.

20 12. On April 29, 1996, Caliber’s plat of Stonerise received preliminary plat approval from
21 the Pierce County Hearing Examiner. During the intervening period between the issuance of a
22 certificate of water availability letter to Caliber from Sound Water and Pierce County’s approval of
23 Caliber’s preliminary plat, Caliber was assured by Sound Water that water service would be
24 available to it, notwithstanding any subsequent change in ownership of the water company.
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INITIAL WRITTEN TESTIMONY OF
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1 13. Rainier and its Operations Manager, Bob Blackman, repeatedly told Caliber that Rainier
2 was diligently pursuing acquisition of additional capacity and approval of hookups and that Caliber
3 would receive water hookups from Rainier based on a priority schedule reflecting the date of the
4 filing of Caliber's plat and the Pierce County Hearing Examiner's decisions approving Caliber's
5 plat. Mr. Blackman represented to me that, in addition to being Rainier's Operations Manager, he
6 was a member of Rainier's Board of Directors.

7 14. In 1997, I met with Bob Blackman and was shown a spreadsheet that listed Stonerise as
8 one of several plats in line to receive future water service from Rainier, along with a number of other
9 plats shown on this same spreadsheet. Mr. Blackman informed me that he updated this list
10 periodically as he received more information regarding the status of the various plats appearing on
11 the list. He showed me updated versions of this spreadsheet when I met with him throughout 1997
12 and 1998. Bob Blackman stated that the priority of hook-ups to Rainier's water system was
13 determined based on averaging the dates listed on the applicant's certificate of water availability
14 letter and the date of preliminary plat approval. Bob Blackman also promised that Rainier would
15 honor the certificate held by Caliber that was issued by Sound Water.

16 15. Caliber was informed that the spreadsheet that Mr. Blackman distributed constituted a
17 prioritization schedule of those plats that were to receive water from Rainier, as shown on the
18 spreadsheet. On October 13, 1998, I asked Mr. Blackman for a copy of the spreadsheet and he
19 agreed to provide me with a copy. Review of that copy showed that the plats that were the
20 precursors to Silver Creek are listed on the spreadsheet in a lower priority than the plat being
21 developed by Caliber.

22 16. During 1997 and 1998, Caliber was told by Bob Blackman that its plat was in line to
23 receive water from Rainier, based on a priority list prepared by Mr. Blackman and distributed by him
24 to Caliber in 1997. For more than a year, Caliber received repeated assurances from Mr. Blackman
25 that necessary improvements to Rainier's water system that would allow Rainier to make hookups
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1 available to them were in the design stage, would be submitted for approval shortly, and would
2 provide the necessary water for Caliber's plat.

3 17. On June 4, 1998, notwithstanding Mr. Blackman's prior representations to the contrary,
4 Richard Finnigan, Rainier's attorney, sent a letter to counsel for Caliber informing Caliber that
5 Rainier did not have a legal obligation to serve the plat of Stonerise.

6 18. In November of 1999, Caliber learned that Rainier had entered into negotiations with the
7 developers of the Silver Creek plat for the construction of a new water storage tank by Silver Creek
8 Development for the benefit of Rainier, at Silver Creek's expense. Based on representations
9 subsequently made by Bob Blackman to Caliber, the cost of the water storage facility ultimately
10 constructed by Silver Creek Development for Rainier exceeded \$1.5 million.

11 19. As a result of the negotiations between Rainier and Silver Creek Development, on
12 November 19, 1999, Rainier entered into an agreement with Silver Creek Development under which
13 Rainier agreed to provide all available water from Rainier's system to Silver Creek Development.
14 This commitment was made in exchange for Silver Creek Development's agreement to construct the
15 water storage tower referred to above. The agreement provides that Rainier would provide water
16 availability letters to Silver Creek and execute extension agreements on a priority basis over all other
17 requests for service within Rainier's system. This agreement also provided that those water
18 availability letters and extension agreements would be to the exclusion of any and all other
19 customers of Rainier, regardless of when such other requests were received or would be received in
20 the future by Rainier, and irrespective of when they were received in relation to other requests made
21 by Rainier's other customers. The agreement also stated that Rainier agreed to reserve sufficient
22 water rights and system capacity to meet Silver Creek's needs prior to issuing any other water
23 availability letters or signing or submitting to the WUTC any other extension agreements on behalf
24 of any other requests for service.

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INITIAL WRITTEN TESTIMONY OF
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