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September 20, 2001

Washington State Utilities and Transportation Commission
ATTN: Carole Washburn
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

RECEIVED
01 SEP 24 AM 9:11
OFFICE OF THE
ATTORNEY GENERAL

Dear Ms. Washburn

Please find enclosed an original, 19 copies, and a copy to be conformed and returned to our office, the enclosed Complaint.

I believe I have sent all necessary copies and have complied with filing rules. Please let me know if anything additional is needed so that I can respond in a prompt manner. Thank you for your assistance.

Yours truly,

Hanis & Olson

Patrick M. Hanis

Declaration of Mailing

I declare under penalty of perjury under the laws of the state of Washington that on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Rosario Utilities, Inc. containing a copy of the document to which this declaration is attached.

Signed at King County, Washington, this 20th day of September ~~18~~ 2001

Patrick M. Hanis - Patrick M. Hanis

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint of: David)
And Janis Stevens; Paul Carrick; Alan and)
Jim Wiemeyer; Chris and Cecily Flavell;)
Stan and Kay Miller; Michael and Colleen)
Stover; Richard and Paula Russell; Ben G.)
Marcin; Ronald and Victoria Montgomery;)
Charles and Michelle Clark; Paul Schulte;)
Sue Perrault; and Jorg Reinholt)
Complainants,)

v.)

Rosario Utilities, LLC)

Respondent.)

NO. UW-011320

COMPLAINT OF FOR IMPROPER DISTRIBUTION OF WATER PERMITS BY RESPONDENT

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UTILITY AND TRANSPORTATION COMMISSION

COME NOW the above-named Complainants by and through their attorney, Michael

M. Hanis, and for complaint against Respondent, allege as follows:

1. PARTIES

- 1.1 The Complainants are:
David and Janis Stevens
2900 Park Newport, Apt 236
Newport Beach, CA 92660
- Paul Carrick
93 Veneda Trail
Eastsound, WA 98245
- Alan and Jim Wiemeyer
PO Box 1587
Eastsound, WA 98245

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Chris and Cecily Flavell
6516 24th Ave. NW
Seattle, WA 98117

Stan and Kay Miller
PO Box 1983
Eastsound, WA 98245

Michael and Colleen Stover
7731 SW Stillman Rd.
Powell Butte, OR 97753-1554

Richard and Paula Russell
PO Box 208
Eastsound, WA 98245

Ben G. Marcin
PO Box 1316
Eastsound, WA 98245

Ronald and Victoria Montgomery
30254 25th Ave. SW
Federal Way, WA 98023-2316

Charles and Michelle Clark
PO Box 1162
Oracle, AZ 85623

Paul Schulte
PO Box 5606
Sun City West, AZ 85376

Sue Perrault
6925 NE 170th
Kenmore, WA, 98028

Jorg Reinholt
28 Cliffhouse Court
Eastsound, WA 98245

1.2 Complainants own real property within the service area of Respondent.

1 1.3 The Respondent is Rosario Utilities, LLC. Respondent is a public service company
2 owning and operating a water system on Orcas Island, San Juan County, Washington,
3 and is subject to regulation by the Washington Utilities and Transportation
4 Commission (Commission) with its principal place of business at 1400 Rosario Road,
5 Eastsound, WA, 98245.

2. RULES/STATUTES AT ISSUE

6 2.1 The following statutes and provisions of the Washington Administrative Code may be
7 brought into issue: RCW 80.28.110; RCW 80.28.090; RCW 80.28.270; RCW
8 80.16.020; RCW 80.28.010; RCW 80.28.020; RCW 80.28.040; RCW 80.04.440;
9 RCW 80.04.405; WAC 480-110-325; WAC 480-110-345; WAC 480-110-385; WAC
10 480-146-360; WAC 480-146-350.

11 2.2 RCW 80.28.110 requires a water company to furnish to all customers who may apply
12 for service, suitable facilities for furnishing and furnish water as demanded.

13 2.3 RCW 80.28.010 requires that all water companies furnish and supply such service as
14 shall be safe, adequate and efficient, and in all respects, just and reasonable. All rules
15 and regulations issued by any water company, affecting or pertaining to the sale or
16 distribution of its product, shall be just and reasonable.

17 2.4 RCW 80.28.090 requires a water company not to make or grant any undue or
18 unreasonable preference or advantage to any person in any respect whatsoever; or
19 subject any such person to any undue or unreasonable prejudice or disadvantage in any
20 respect whatsoever.

21 2.5 RCW 80.28.020 provides the Commission with jurisdiction over practices, acts or
22 services of any water company including service connections. The Commission shall
23 determine the fair, just, reasonable, and sufficient process for any aspect of service
24 connections.

25 2.6 RCW 80.16.020 requires that every public service company shall file with the
26 Commission for the furnishing of any service, right or thing made between a public
service company and any affiliated interest. The filing must be made prior to the
effective date of the contract or arrangement. The Commission may disapprove the
contract or arrangement for non-compliance.

RCW 80.28.010 requires that all rules and regulations issued by any water company
pertaining to the sale or distribution of its product shall be just and reasonable.

RCW 80.28.020 requires that if the Commission shall find that rates or charges
demanded, exacted, charge or collected, or that the rules, regulations, practices or

1 contracts affecting such rates or charges are unjust, unreasonable, unjustly
2 discriminatory or unduly preferential, or in any wise in violation of the provisions of
3 law, the Commission shall determine the just, reasonable, or sufficient rates, charges,
4 regulations, practices or contracts to be thereafter observed and in force, and shall fix
5 the same by order.

6 2.9 RCW 80.28.040 requires that if the Commission shall find that any rules, regulations
7 practices or acts of any water company are unjust, unreasonable, improper, insufficient,
8 inefficient or inadequate, or that any service which may be reasonably demanded is not
9 furnished, the Commission shall fix the reasonable rules, regulations, measurements,
10 standard, practices, acts, or service to thereafter be followed and shall fix the same by
11 order of rule. If a water company fails to comply with a Commission's order, the
12 Commission may request that the department petition the court to place the company
13 in receivership.

10 3. STATEMENT OF FACTS

11 3.1 Complainants desire water service but have been unable to receive such service
12 because of a moratorium on water connections which was recently lifted.

13 3.2 Complainants made inquiries of Respondent as early as 1995 regarding water
14 connections for their property. Respondent kept Complainants informed of the status
15 of a water treatment facility and the expected time frame in which the moratorium
16 would be lifted and new water connections would be given.

17 3.3 Complainants received assurances by Respondent that they were on a list for water
18 connections. One Petitioner was informed by Chris Vierthaler, agent for Respondent,
19 that they were number 32 on the list.

20 3.4 On approximately May 23, 2001, a Complainant contacted Chris Vierthaler regarding
21 the protocol for purchasing water connections. Complainants were instructed that no
22 advance purchase of water connections was possible and that permits would be sold
23 on June 15, 2001 at 9:00 a.m. at the office of Respondent.

24 3.5 Respondent failed to give adequate notice of the sale of water connections. It changed
25 the location less than 24 hours prior to the sale from Respondent's office to the
26 Discovery House, which is owned by Rosario Resort and on the Resort's property.
The changed location occurred after the "priority connections were sold" and upon
Chris Vierthaler learning that people were lining up outside the Respondent's office
for the remaining water connections.

3.6 Despite having the names, addresses, and phone numbers of Complainants, Respondent
did not contact Complainants to inform them of the changed sale location or the

1 opportunity to line up prior to the office opening at 9:00 a.m.

2 3.7 On June 14, 2001, Complainants were informed by Respondent that no line would be
3 allowed to form earlier than 9:00 a.m. on June 15, 2001 for the sale of water
4 connections.

5 3.8 Respondent, through Chris Vierthaler, informed Complainants that a Sheriff would be
6 alerted and that any person in the parking lot overnight would be removed by the
7 Sheriff for trespassing.

8 3.9 Some Complainants arrived late the night of June 14, 2001 to stand in line for water
9 connections, upon learning from others that night of the changed location of the sale
10 to Rosario Resort. Complainants were forced to leave by the Sheriff who was called
11 by Rosario Resort.

12 3.10 Complainants arrived at the sale as early as 8:00 a.m. on June 15, 2001. No
13 Complainant received a water connection.

14 3.11 The last water connection went to a person who lined up prior to 4:00 a.m.

15 3.12 Respondent failed to follow it's own guidelines in distributing the water connections
16 by telling Complainants they could not arrive prior to 9:00 a.m., with threat of arrest
17 for trespassing, while allowing others, including Rosario Resort, to line up at
18 approximately Midnight the night before the sale.

19 3.13 Rosario Resort is an affiliated interest of Respondent, both of which are owned by Oly
20 Rose, LLC. Oly Rose, LLC is the sole owner of Respondent.

21 3.14 Respondent failed to comply with affiliated interest filing requirements with regards
22 to the sale of water connections to Rosario Resort.

23 3.15 Rosario Resort was given unfair advantages and unreasonable preferences by
24 Respondent in the distribution of water connections. It was allowed to line up around
25 Midnight on June 14, 2001 or very early on June 15, 2001. Rosario Resort was
26 allowed to purchase approximately 16 water connections at one time without having
to return to the end of the line for each connection. Rosario Resort was allowed to
have an employee purchase the water connections rather than the property owner itself
as required by the rules posted by Respondent.

3.16 Respondent's dealings with Rosario Resort in the sale of water connections resulted
in collusion between the two entities. The affiliated interest statute rationale is
specifically aimed at preventing this type of abuse (U.S. West Communications, Inc.

1 v. Washington Utilities and Trans. Commission, 134 Wash.2d. 74 (1997)).

2 3.17 Respondent failed to follow the process outlined in WAC 480-110-385 in handling
3 complaints regarding the water connection sale received by Complainants. Respondent
4 did not investigate the matter, report the results of the investigation, or take corrective
5 action. Further, Respondent failed to inform Complainants that the decision could be
6 appealed to a higher level in the company, or to the availability of the Commission to
7 review the complaint. Respondent failed to inform Complainants of the Commission's
8 address and toll-free phone number.

9 3.18 Respondent willfully failed to meet it's duty to act in a fair, reasonable and sufficient
10 matter with respect to all aspects of the June 15, 2001 sale of water connections, and
11 in handling complaints received from Complainants.

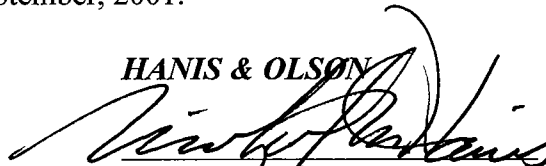
12 3.19 Complainants are entitled to compensation for damage, loss, injury, and attorney fees
13 in any court of competent jurisdiction pursuant to RCW 80.04.440.

14 **WHEREFORE, Plaintiff prays for relief as follows:**

- 15 1. That a formal hearing be held on the issues raised by this Complaint;
- 16 2. That Respondent be ordered to supply immediate service to the properties owned
17 by Complainants;
- 18 3. Recovery of damages, losses, or injuries as permitted by RCW 80.04.440,
19 including reasonable attorney's fees;
- 20 4. Penalties as allowed pursuant to RCW 80.04.405; and
- 21 5. For such other and further relief as the Commission deems just and
22 equitable.

23 **DATED** this 20th day of September, 2001.

24 **HANIS & OLSON**



25 Michael M. Hanis, WSBA #6166
26 Attorney for Plaintiff