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July 21, 2004

Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

Re: *WUTC v. Cougar Ridge Water System*
Docket No. UW-040367

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OFFICE OF THE ATTORNEY GENERAL
OLYMPIA, WASHINGTON

Dear Judge Mace:

At the July 20th oral argument on Cougar Ridge's motion to compel, one of the issues was Cougar Ridge's Data Request No. 9, dated June 17, 2004, in which the company requested a copy of the January 26, 2004, attorney advice memorandum to the Commissioners. This memo was the basis for the "probable cause" meetings that Staff had with each of the Commissioners to determine whether the Commission would initiate the instant proceeding. Staff objected to the request as calling for privileged attorney-client communications. You sustained Staff's objection to disclosure on that basis.

I indicated on the record that I did not believe the factual issues discussed in that memorandum were separable from the legal analysis and advice. While I still believe that is true, it also strikes me, on further reflection, that almost all of the legal analysis accompanying the facts set out in the memo has already been disclosed in the notice initiating a special proceeding and a complaint in this case.



Theodora Mace, ALJ
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I do not believe there would be any harm to the attorney-client relationship from the disclosure of most of the memorandum and it might help to assure the Respondent of the fairness of the "probable cause" meetings that preceded the initiation of this adjudication.

The memorandum does, however, contain some general legal advice to the Commission about enforcement to which the attorney-client privilege applies and the disclosure of which, not only in this case but as a matter of precedent, could harm the attorney-client relationship.

I therefore will deliver to you for the Commissioners' consideration, a copy of the memorandum with some notations indicating those portions that I believe could properly be redacted, with the remainder being disclosed to the Respondent.

I am not providing a copy of the memorandum to counsel for Cougar Ridge at this time because, as I stated in Staff's response to Cougar Ridge's motion to compel, it is my opinion that the privilege for this particular document runs to the Commission, not Staff. I will therefore await the Commissioners' instructions as to whether the memorandum should be disclosed, with the redactions, as I have suggested.

Very truly yours,



JONATHAN C. THOMPSON
Assistant Attorney General

JCT:kl
cc: Thomas Brown