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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE) Case No. KHW-W-05-01
APPLICATION OF KOOTENAI)
HEIGHTS WATER SYSTEM, INC. FOR) KOOTENAI HEIGHTS WATER -
A CERTIFICATE OF PUBLIC) MEMORANDUM
CONVENIENCE AND NECESSITY.)
_____)

COMES NOW the KOOTENAI HEIGHTS WATER SYSTEM, INC., by and through its counsel, Gary A. Finney of Finney Finney & Finney, P.A., and submits its Memorandum, as follows:

1. Kootenai Heights contests and disputes jurisdiction and this memorandum is submitted without waiver of jurisdiction.

2. The "Record" - None

There has been no evidentiary proceeding, no affidavits of fact, and only some kind of investigation/report submitted to the Commission which appears to be the basis of the Commission's findings, conclusions, and decisions to date. Without receiving the unknown documentation to date, there is no record below, no notice, and no reasonable opportunity to examine, cross-examine, or contest.

3. The Commission should rescind its prior findings, conclusions, and decisions until a hearing on the issues to develop a record and for opportunity to be heard. In short, "due process" is lacking.

4. In further proof that the findings and conclusions of comparable rates for water usage, attached hereto is the Sandpoint Daily Bee article of October 22, 2006. The City of Sandpoint water fees rose in the last two (2) years by forty percent (40%) and thirty-five percent (35%) respectively. On top of those raises, the new raise effective December 1, 2006, is an additional fifteen percent (15%) increase. The Commission's finding and conclusion that the City of Sandpoint charges \$7.00 per month is simply grossly in error. The new rate will be \$22.53 per month for 6000 gallons and \$2.44 per thousand gallons for 6,001-50,000. Out of town (Sandpoint) users, which include the Kootenai Heights subdivision which is at issue will be \$26.25 per month with \$3.06 additional per 1000 gallons (6,001-50,000).

There are 36 Lots in the Kootenai Heights Subdivision, the majority of which are served by the City of Sandpoint! The true comparable water rate for the 11 lots on Kootenai Heights Water is the City of Sandpoint, who serves the majority of the Lots in Kootenai Heights, i.e. as of December 1, 2006 is \$26.25 per month, plus \$3.06 per thousand gallons from 6001-50,000.

EXPLANATION AND HISTORY

5. In 1995, McGhees made a small plat of 36 lots in the City of Kootenai. A copy of the Kootenai Heights Subdivision is attached hereto. The City of Sandpoint serves water in the City of Kootenai. The City of Sandpoint decided its service area for the Kootenai Heights Subdivision would "split" the Kootenai Heights Subdivision. The City of Sandpoint would serve all 18 Lots on the East side, i.e. Lots 19-36; and Lots 1-3 on the West side, for a total of 21 Lots out of the 36 total Lots. The Lots being served by the City of Sandpoint (21 Lots) were sold-off first over a number of years. Lot 4 has "no" water.

6. This left McGhees with Lots 5 through 18, i.e. 14 Lots. McGhees owed the bare Lots and from time to time, as the market warranted it, they had houses built on the Lots and sold the completed house with its Lot.

7. In 2004, McGhees started to build on the Lots that were not served by the City of Sandpoint. They decided to build residences on Lot 5 and Lot 6, and since these Lots "had no water" they had a water well drilled on the Lot Line between Lots 5 and 6. A Well Agreement was made for the common usage of the water well and system and both residences were ultimately sold, sharing well water by contract, i.e. a Well Agreement.

8. TO "CLEAR UP" why the Company filed an Application with the Commission McGhees then pursued the idea of putting in further water wells for 2 lots to share. Then the Idaho

Department of Water Resources got involved! It decided that the property owners could not put water wells inside the City of Kootenai for 2 lots to share. It had to be a water well for all the remaining Lots to share!

McGhees sought approval of the Department of Water Resources for the second water well to serve 2 more Lots (7 and 8). The Department then refused to approve 2 Lots on 1 well and required serving all remaining 11 Lots to be served by one well - one system. Hence, McGhees complied and organized the present Company. McGhees personally (not the company) kept building houses on the Lots and sold them with water from the Company system as part of the purchase price for the whole lot i.e. residence, garage, water, and a Kootenai-Ponderay Septic Hookup.

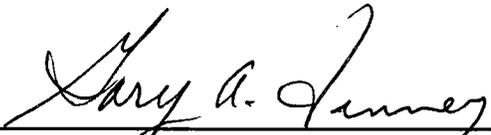
9. At no time has or does the Company sell or offer to sell water to the public. Idaho Code §61-129 has no application. In order to get water service for the residences built by McGhee, and sold by McGhee to the real estate Buyers, the Company was organized as a separate entity. The Buyers - i.e., the Users, bought real estate, a residence with water, and they could only obtain water use by buying the Lot - real estate. There is no offering or selling of water "to the public". All of the remaining real estate Lots were sold in this manner. There are no more Kootenai Heights Lots - and no water being sold to the public. Only two (2) Lots were sold "bare" and purchasers built their own home (Lots 14 & 17).

SUMMARY

There is no jurisdiction in the Commission. The Company and all the Lot Owners have a written and recorded Contract and Easement. The Commission has no jurisdiction to interfere or create "beaches" of the contract.

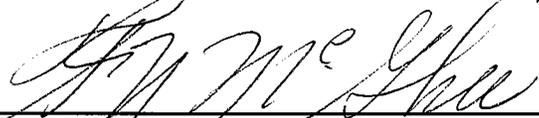
The Company only applied to the Commission because the Idaho Department of Water Resources said it was required which was probably incorrect. In hindsight, the "Application" is WITHDRAWN.

DATED this 24th day of October, 2006.



GARY A. FINNEY
Attorney for Company

KOOTENAI HEIGHTS WATER SYSTEM, INC.



By: F.N. McGhee, Officer

CERTIFICATE OF MAILING

I hereby certify that the ORIGINAL of the foregoing was mailed, postage prepaid, this 24th day of October, 2006 and was addressed to:

Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

By: 

CASE NO. KHW-W-05-01

KOOTENAI HEIGHTS

WATER SYSTEM, INC.

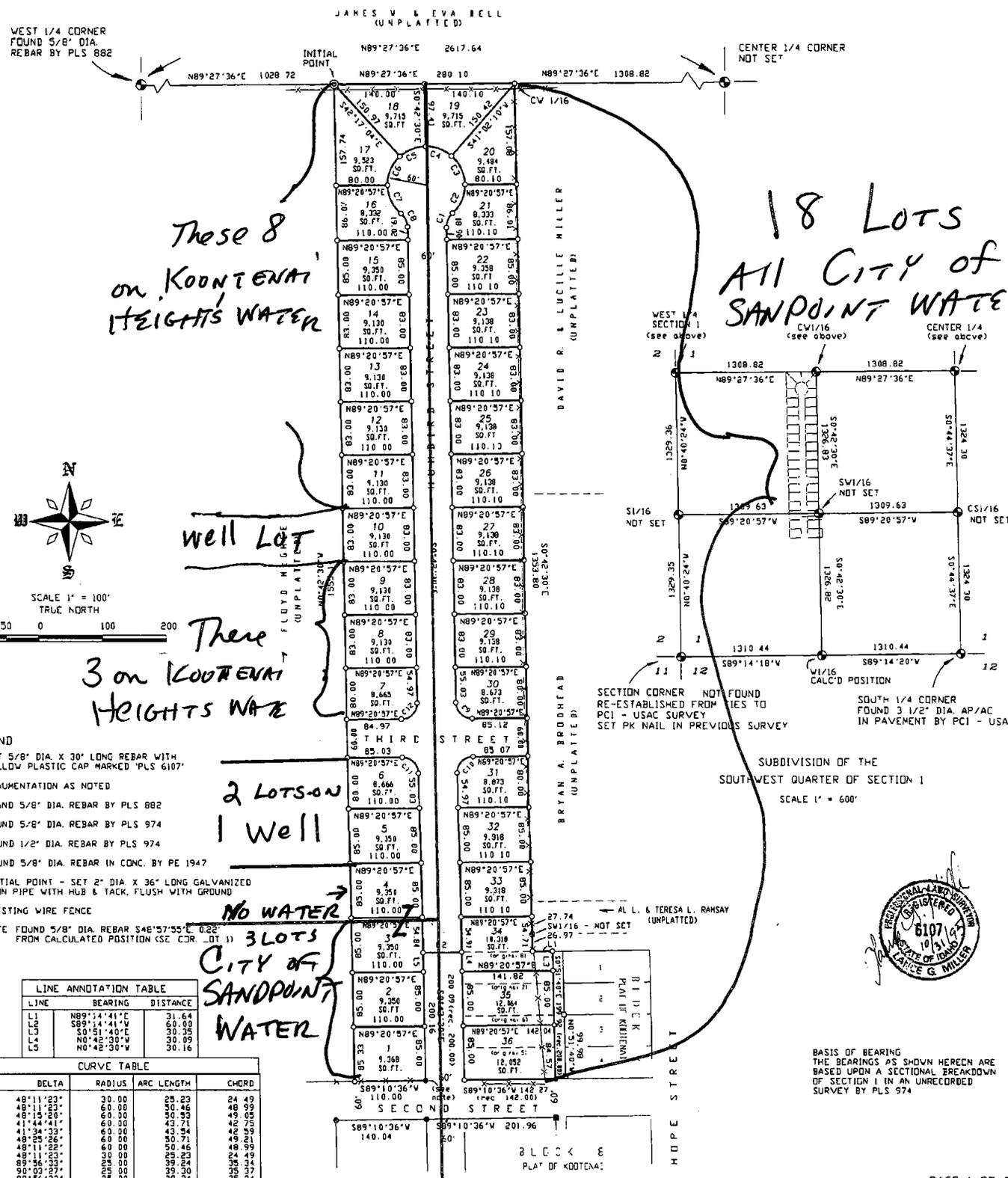
MEMORANDUM RE

JURISDICTION, EXHIBIT 1,

IS TOO DARK TO SCAN

A PLAT OF KOOTENAI HEIGHTS AND A REPLAT OF LOTS 5-8, BLOCK 7, PLAT OF KOOTENAI

LOCATED IN A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 57 NORTH,
RANGE 2 WEST, BOISE MERIDIAN, BONNER COUNTY, IDAHO, AND A PORTION OF BLOCK 7, OF THE
PLAT OF KOOTENAI, AS RECORDED IN BOOK 1 OF PLATS, PAGE 84, RECORDS OF BONNER COUNTY, IDAHO.



*These 8
on KOOTENAI
HEIGHTS WATER*

*18 Lots
All City of
SANDPOINT WATER*

well lot

*These
3 on KOOTENAI
HEIGHTS WATER*

*2 Lots on
1 Well*

*No WATER
3 Lots
City of
SANDPOINT
WATER*

- LEGEND**
- SET 5/8" DIA. X 30" LONG REBAR WITH YELLOW PLASTIC CAP MARKED 'PLS 6107'
 - ⊙ MONUMENTATION AS NOTED
 - FOUND 5/8" DIA. REBAR BY PLS 882
 - FOUND 5/8" DIA. REBAR BY PLS 974
 - FOUND 1/2" DIA. REBAR BY PLS 974
 - FOUND 5/8" DIA. REBAR IN CONC. BY PE 1947
 - ⊙ INITIAL POINT - SET 2" DIA X 36" LONG GALVANIZED IRON PIPE WITH HUB & TACK, FLUSH WITH GROUND
 - X- EXISTING WIRE FENCE

NOTE FOUND 5/8" DIA. REBAR S46°55'55"E 0.22' FROM CALCULATED POSITION (SEE COR. LOT 1)

LINE	BEARING	DISTANCE
L1	N89°14'41"E	31.64
L2	S89°14'41"W	60.00
L3	S0°51'40"E	30.35
L4	N0°42'30"W	30.09
L5	N0°42'30"W	30.16

CURVE	DELTA	RADIUS	ARC LENGTH	CHORD
C1	48°11'23"	30.00	25.23	24.49
C2	48°11'23"	60.00	50.46	48.99
C3	48°13'24"	60.00	50.95	49.05
C4	41°44'41"	60.00	42.71	40.59
C5	41°34'33"	60.00	43.54	42.59
C6	48°25'26"	60.00	50.71	48.28
C7	48°11'23"	60.00	50.46	48.99
C8	48°11'23"	30.00	25.23	24.49
C9	89°05'33"	60.00	39.50	35.34
C10	90°56'33"	60.00	39.24	35.34
C11	89°05'33"	60.00	39.50	35.34
C12	90°03'27"	25.00	39.30	35.37



BASIS OF BEARINGS THE BEARINGS AS SHOWN HEREON ARE BASED UPON A SECTIONAL BREAKDOWN OF SECTION 1 IN AN UNRECORDED SURVEY BY PLS 974