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Attorneys for Defendant Washington County  
Water Conservancy District

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**IN THE FIFTH JUDICIAL DISTRICT COURT FOR WASHINGTON COUNTY  
STATE OF UTAH**

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WASHINGTON TOWNHOMES, LLC, a Utah  
Limited Liability Company; HOMES BY  
HARMONY, INC., a Utah Corporation;  
COTTON MEADOWS, LLC, a Utah Limited  
Liability Company; SALISBURY  
DEVELOPERS, INC., a Utah Corporation;  
SALISBURY DEVELOPMENT, LC, a Utah  
Limited Liability Company; IVORY  
SOUTHERN LLC, a Utah Limited Liability  
Company and related entities; PERRY HOMES  
UTAH, Inc., a Utah Corporation; HENRY  
WALKER CONSTRUCTION OF SOUTHERN  
UTAH, LLC, A Utah Limited Liability  
Company; and John Doe Plaintiffs 1-1000 on  
their behalf and other similarly situated  
individuals,

Plaintiffs,

v.

WASHINGTON COUNTY WATER  
CONSERVANCY DISTRICT, a Utah special  
service district and John Doe Defendants 1-10,

Defendant.

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**ANSWER TO FIRST AMENDED  
COMPLAINT**

Civil No. 130500465

Judge Jeffrey C. Wilcox

Defendant Washington County Water Conservancy District (the “District”) answers Plaintiffs’ First Amended Complaint and alleges as follows:

**FIRST DEFENSE**

The Complaint and claims alleged therein fail to state a claim against the District upon which relief can be granted.

**SECOND DEFENSE**

Responding to the specific numbered paragraphs of the First Amended Complaint, the District admits, denies, and alleges as follows:

1-2. Admits jurisdiction and venue are generally proper; but reserves any specific jurisdictional defenses as set forth herein.

3-11. Generally admits Plaintiffs are corporate entities currently or formerly registered with the State of Utah; denies other allegations of ¶¶ 3 through 11 for lack of sufficient knowledge or information.

12. Admits.

13. Denies and affirmatively alleges that the District is primarily a wholesale water supplier to municipalities who perform those functions other than in a small, limited retail service area.

14. Denies for lack of sufficient knowledge or information.

15-23. Affirmatively alleges that the provisions of the Utah Impact Fees Act, which at the time of the adoption of the impact fees in question was Utah Code Ann § 11-36-101 *et seq.*, are the best evidence of their contents and speak for themselves and deny any argumentative characterizations or conclusions contained in said paragraphs.

24-30. Affirmatively alleges that the 2006 Plan and Analysis attached as Exhibit “A” is the best evidence of its contents and speaks for itself and denies any argumentative characterizations or conclusions contained in said paragraphs.

31. Admits.

32. Generally admits, but denies that all Impact Fees are collected “through municipalities acting as WCWCD’s agents”.

33-34. Denies for lack of sufficient information or knowledge.

35-36. Affirmatively alleges the court has already ruled on the level of service issue as a matter of law and therefore any allegations addressing level of service are not relevant or material to the remaining issues in this case. With respect to Exhibit “C”, the District further affirmatively alleges that it is the best evidence of its contents and speaks for itself and denies any argumentative characterizations or conclusions regarding Exhibit “C”.

37. Incorporates by this reference its response to Paragraphs 35-36 above and affirmatively alleges that Exhibit “D” is the best evidence of its contents and speaks for itself.

38. Incorporates by this reference its response to Paragraphs 35-36 above and affirmatively alleges that any US Census data is the best evidence of its content and speaks for itself.

39. Denies and incorporates by this reference its response to Paragraphs 35-36 above.

40-42. Affirmatively alleges that WCWCD Expenditure Reports, including Exhibit “E” are the best evidence of their contents and speak for themselves and denies any remaining argumentative characterizations or conclusions in said paragraphs.

43. Denies.

44. Affirmatively alleges that the 207 Report is the best evidence of its contents and speaks for itself.

45-49. Denies.

50. Incorporates by this reference its previous responses to Paragraphs 1-49 as set forth above.

51. Affirmatively alleges that the provisions of State or Federal Constitution are the best evidence of their contents and speaks for themselves.

52. Denies on the basis that the statement is confusing and difficult to understand as propounded and stated.

53-56. Denies and incorporates by the reference its response to Paragraphs 35-36 above.

57. Incorporates by this reference its previous responses to Paragraphs 1-56 as set forth above.

58-61. These paragraphs primarily contain legal conclusions of Plaintiff's counsel rather than allegations of specific fact and therefore cannot be appropriately answered by the District. To the extent that any responses are required, the District affirmatively alleges that the provisions of applicable law are the best evidence of their contents and speak for themselves, but denies Plaintiff's argumentative characterizations or conclusions regarding said paragraphs.

62-64. Denies.

65. Incorporates by this reference its previous responses to Paragraphs 1-64 as set forth above.

66-68. Denies and incorporates by the reference its previous response to Paragraphs 35-36 above.

Denies that Plaintiffs are entitled to any of the relief prayed for in the First Amended Complaint.

Denies that each and every other allegation of the First Amended Complaint and not specifically herein admitted.

### **THIRD DEFENSE**

One or more of the Plaintiffs' claims fail for being untimely filed pursuant to Utah Code Ann. § 11-36-401 et. seq. or § 11-36a-702, as applicable to the different claims made under variations of the Impact Fees Act.

### **FOURTH DEFENSE**

One or more of the Plaintiffs' claims fail because Plaintiffs lack standing to assert their claims.

### **FIFTH DEFENSE**

One or more of the Plaintiffs' claims fail because Plaintiffs' sole remedy, even assuming that an impact fee has not been properly calculated under the Impact Fees Act, Utah Code Ann. §§ 11-36-101 et. seq., is a declaration that until a new impact fee study is enacted, from the date of the decision forward, an impact fee may be charged only as the court determines would have been appropriate if it had been properly enacted.

#### **SIXTH DEFENSE**

One or more of the Plaintiffs' claims fail because Plaintiffs' sole remedy related to and assuming a successful challenge to the amount of an impact fee is a refund of the difference between what was paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

#### **SEVENTH DEFENSE**

Plaintiffs' "taking" claims fail because the benefits derived from the impact fees that are the subject of Plaintiffs' claims provide a demonstrable benefit to the Plaintiffs' real property developments and do not require newly developed properties to bear more than their equitable share of capital costs in relation to the benefits conferred.

#### **EIGHTH DEFENSE**

Plaintiffs' "taking" claims fail because a direct relationship or essential nexus exists between all impact fees imposed by the District and the predicted impact of development of real property.

#### **NINTH DEFENSE**

Plaintiffs' "taking" claims fail because the District has not deprived Plaintiffs of all economically viable use of their property.

#### **TENTH DEFENSE**

One or more of the Plaintiffs' claims fail because the District's actions were not taken pursuant to any unconstitutional policy, custom, rule or regulation.

#### **ELEVENTH DEFENSE**

One or more of the Plaintiffs' claims fail because the District had a rational motive and basis for its decisions and actions affecting Plaintiffs.

#### **TWELFTH DEFENSE**

Plaintiffs' "taking" claims fail because, to the extent Plaintiffs have a protectable interest or legitimate claim of entitlement to any property taken, that interest is derived from and recoverable pursuant to the Impact Fees Act, Utah Code Ann. §§ 11-36-101, et seq.

#### **THIRTEENTH DEFENSE**

Plaintiffs' "taking" claims fail because Plaintiffs alleged injuries are avoidable and not necessary to any public use, but are compensable, if at all, pursuant to the Impact Fees Act, Utah Code Ann. §§ 11-36-101, et seq.

#### **FOURTEENTH DEFENSE**

One or more of the Plaintiffs' claims may be barred by the doctrines of res judicata and/or collateral estoppel.

#### **FIFTEENTH DEFENSE**

One or more of Plaintiffs may not be eligible to receive a refund even in the event the action is successful based on the provisions of Utah Code Ann. § 11-36-101, et. seq.

#### **SIXTEENTH DEFENSE**

Plaintiffs have failed to adequately plead sufficient facts to demonstrate that they satisfy the requirements of Rule 23 of the Utah Rules of Civil Procedure to bring this matter as a class action.

### **SEVENTEENTH DEFENSE**

Plaintiffs or their counsel are not appropriate representatives of the alleged class because they cannot represent without conflict the interests of all categories of persons or entities that pay impact fees, including but not limited to the owners and developers of non-residential projects.

### **EIGHTEENTH DEFENSE**

One or more of Plaintiffs' claims fail because in calculating the impact fee which Plaintiffs' challenge, the District is required to comply with the minimum sizing requirements for source, storage and distribution as imposed by the Division of Drinking Water of the Utah Department of Environmental Quality as adopted by Utah Admin. R. 309-510-7, 8 & 9.

WHEREFORE, having fully answered, the District demands Plaintiffs' First Amended Complaint be dismissed with prejudice and on the merits, and that it be awarded judgment in its favor and against Plaintiffs, no cause of action, together with attorney fees and costs incurred herein, and such other relief as the Court deems just and equitable.

DATED this 3<sup>rd</sup> day of October, 2018.

**SNOW CHRISTENSEN & MARTINEAU**

/s/ Jody K Burnett

JODY K BURNETT

ROBERT C. KELLER

NATHANAEL J. MITCHELL

Attorneys for Defendant Washington County  
Water Conservancy District



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the attached **ANSWER TO FIRST AMENDED COMPLAINT** in Case No. 130500465 before the Fifth Judicial District Court for Washington County, State of Utah, was served upon the parties listed below via electronic notification, on the 3<sup>rd</sup> day of October, 2018.

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/s/ Zachary B. Hoddy  
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Legal Assistant