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Special Master

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE**

DENNIS LARGENT, MARY CORDOVA,
CHUCK STEELE, JULIE STILLMAN,
ROLLY WOOLSEY, MEMBERS OF THE
BOARD OF DIRECTORS OF THE TERRACE
LAKES WATER COMPANY,

Plaintiffs,

v.

ILENE JOHNSON, LONNIE BRAMON, and
DARLENE BLAKESLEE,

Defendants.

Case No. CV08-21-00103

**REPORT OF THE SPECIAL MASTER
RE: ANNUAL MEETING 2023**

The Court appointed this Special Master “for the limited purpose of conducting an accounting and determining whether all Company books and records have been transferred to the Plaintiffs.” (Findings of Fact & Conclusions of Law Following Evidentiary Hearing, Filed March 29, 2022. “Findings” page 23.) This authorization was renewed in the Court’s Memorandum Decision on Order for Entry of Declaratory Judgment, filed May 12, 2023, page 22. This Special Master was also tasked by the Court to “witness the annual meeting and elections, and any amendment to the Bylaws or Articles that may occur, to include collecting and counting the ballots and proxies to ensure that both the Bylaws and the Court’s Orders herein are followed

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and complied for 2023. . . [The Court found] the oversight of a Special Master is necessary for the protection of not only all the Subscribers, but also the current Board members and Company. This extension of duty shall only be for the meetings and election held in 2023, as they are necessary to get the Company on track, in compliance, and deescalate the conflict which has occurred in meetings since 2020.”

This report is the second report filed by this Special Master, and this report deals with the annual meeting held November 4, 2023. This Special Master attended the annual meeting held at the Garden Valley High School.

INTRODUCTION

Prior to the TLWC Annual Meeting held November 4th, Dennis Largent, board president and member resigned effective September 15, 2023. At the board’s Regular Meeting held September 17, 2023, the Board took the following action, as indicated by the board minutes: The Board acknowledged the resignation of Dennis Largent; by motion passed, Rolly Woolsey (then Board Member holding Seat E) filled the vacated Board seat held by Largent (Seat A); and by separate motion Woolsey was appointed as President of the TLWC Board. This action necessitated that Seat E (now vacant) be filled by election at the next annual meeting.

Thus, given the extensions of terms as ordered by the court, and the action described above, the following board seat terms were established, and adopted:

- | | |
|------------------------------|--|
| Seat A (held by Woolsey): | To Expire 2024 |
| Seat B (held by Cordova): | To Expire 2024 |
| Seat C (held by Steele): | Election 2023, and then to Expire 2026 |
| Seat D (held by Stillman): | Election 2023, and then to Expire 2026 |
| Seat E (vacated by Woolsey): | Election 2023, and then to Expire 2025 |

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Thus, at the November 2023 Annual Meeting, Seats C, D, and E were elected by ballots cast and counted under the supervision of the Special Master.

Prior to the annual meeting, questions and issues were raised by the board and subscribers about the eligibility of voters at the annual meeting. Based upon my analysis of the Court's orders, TLWC Bylaws, Policies & Procedures, and other documents, I expressed the following guidelines for the election:

ELIGIBLE VOTERS FOR TLWC ANNUAL MEETING

Based on the Bylaws, Policies and Procedures, and the court decisions in 2022 and 2023, the following will guide the voting at the 2023 Annual Meeting:

Each lot "eligible to receive water" from the TLWC of the of real property lots in the subdivisions known as Terrace Lakes Recreation Ranch units No. 1 through 13 or Timbers One will have one vote per lot, regardless of the number of owners of said lot. Northridge lots are not included.

"Subscribers" are defined by the Bylaws:

BYLAWS --ARTICLE II

Subscribers

Section 2.1 Subscribers. Each Owner of a Lot in a Subdivision shall be a Subscriber of the Company. However, no water or other services shall be supplied to a Subscriber until the Subscriber:

- (1) pays the connection fee;
- (2) agrees to be bound by the terms of the Articles, Bylaws, and Policies and Procedures, as amended from time to time;
- (3) agrees to pay dues, fees, and other assessed coats for operating the System in accordance with these Bylaws and the Policies and Procedures; and
- (4) agrees to be bound by the regulations governing water use promulgated from time to time.

After a Subscriber agrees to the preceding provisions, the Subscriber shall be eligible to receive water from the Company.

Section 2.2 Voting. Each Subscriber shall have one (1) vote for each Lot eligible to have water delivered to it.

Because of the lack of historical records maintained by the TLWC, subscribers currently receiving water with an account and receiving billings from the TLWC will be considered to have actually agreed to and satisfied all the requirements set forth in Section 2.1.

Any owners/lots of the real property defined above that cannot prove they paid a connection fee (even though they do not have a current billing account) will not be allowed to vote.

Connection is further demonstrated by the Policies 5.1 – 5.3 of the TLWC Policies and Procedures.

OTHER NOTES

The Bylaws define who is eligible to vote. Section 2.2 provides that “[e]ach Subscriber shall have one (1) vote for each Lot eligible to have water delivered to it.” “Subscribers” are defined as “[e]ach Owner of a Lot in a Subdivision[.]” Id. at § 2.1. “Owner” means “the person or persons or other legal entity or entities, including Grantor, holding the fee simple interest in a Lot.” Id. at § 1.3. “Lot” is defined as lots within the Terrace Lakes subdivision. Lots within the North Ridge subdivision are not included in the definitions. The plain language of these sections suggests that each individual lot owner is eligible to vote. This would mean that, for example, if a single lot is owned by five entities or persons, they would have five votes. If a lot is owned by a single individual, that individual would have only a single vote. However, this is contrary to the parties’ original intent and to how owners are billed for water. Each lot receives one bill for water. Given that the intent (and common sense) is to have one vote per lot, the Bylaws need to be amended to clarify this ambiguity.

3-29-2022 Court Order page 27

POLICIES AND PROCEDURES

V. APPLICATION FOR CONNECTION AND SERVICE

5.1 Connection to the System of the Company will be made by written application of the Subscriber, on forms provided by the Company, after the applicant agrees to comply with the rates, Bylaws, and Policies and Procedures of the Company, and after the approval of the application by the Company endorsed on the application. The size of the service lines, valves, meters and other fittings, fixtures, or appliances necessary to render the service for which application is made shall be determined by the Board of Directors.

5.2 On application of the Subscriber, water will be furnished through existing connections, or, on application of the Subscriber through new connections, after the Subscriber agrees to comply with the rates, Policies and Procedures, Bylaws, and after the approval of the application by the Company endorsed on such application.

The application shall state:

- (a) The name of the Subscriber;
- (b) The character and extent of the service desired;
- (c) A description of the Lot, including:
 - (1) The name of the street and house number, if any
 - (2) The number and kind of fixtures through which water will be supplied; and
 - (3) Such other information as the Company may reasonably require

5. 3 At the time of making application for connection or service, the Subscriber must make payment to the Company of the connection fees, dues, deposits, or rates, as the case may be, fixed by the Board of Directors for the service requested.

Based upon this analysis, and the fact that the Bylaws have not yet been amended to include Northridge lot owners, they were not included in the balloting.

Proxy ballots were provided to all subscribers as defined above. Attendees at the annual meeting were logged in until there were sufficient numbers to satisfy the quorum requirements. Ballots and proxy ballots were counted by the board members with the Special Master overseeing and ensuring accuracy. The voting results of the top three candidates were Eric Britson (93 votes); Cameron McFaddan and Tom Myers (both with 86 votes). As a result of the tie vote for seats “D” and “E,” a coin toss was held. A toss of ‘Heads’ would represent the winner of seat “D” and a toss of ‘Tails’ would represent seat “E.” It was determined that Cameron McFadden would make the call, and he called Heads. The coin toss resulted in Tails.

The new Board members were elected as follows:

Seat 'C' expires 2026 - Eric Britson

Seat 'D' expires 2026 - Tom Myers

Seat 'E' expires 2025 - Cameron McFaddan

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CONCLUSION

This Special Master concludes that the TLWC annual meeting was held pursuant to the applicable Bylaws, Policies & Procedures, and statutes. The voting was without incident and the newly elected board took office after the meeting.

It is anticipated, given comments and actions made by attendees and the board that at the next appropriately noticed meeting, there may be a call for a vote to include additional subscribers by amending the bylaws.

Unless notified by the board, or ordered by the Court, this Special Master will not be involved further in this matter.

Respectively submitted this 29th day of November, 2023.

NAYLOR & HALES, P.C.

By/s/ ***Kirtlan G. Naylor***

KIRTLAN G. NAYLOR

Special Master

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of November, 2023, I caused to be electronically filed the foregoing with the Clerk of the Court using iCourt e-filing system which sent a Notice of Electronic Filing to the following persons:

Michael Kane	_____	U.S. Mail
Michael Kane & Associates	_____	Email
mkane@ktlaw.net	<u> X </u>	iCourt E-File and Serve
<i>Attorney for Plaintiffs</i>		

Terri R. Pickens	_____	U.S. Mail
Pickens Law P.A.	_____	Email
terri@pickenslawboise.com	<u> X </u>	iCourt E-File and Serve
<i>Attorneys for Defendants</i>		

/s/ ***Kirtlan G. Naylor***

KIRTLAN G. NAYLOR

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