

December 29, 2022

VIA EMAIL: odav461@ecy.wa.gov

Opal Smitherman
Compliance and Enforcement
Water Resources Program
Southwest Region Office
PO Box 47775
Olympia, WA 98504-7775

RE: Public Utility District No. 1 of Thurston County
Technical Assistance Under RCW 90.360.605 for Legal Water Supply
for Parcels 0350048029000, 0350048014000, 035048014001

Dear Ms. Smitherman:

This letter responds to your letter of December 19, 2022 directed to the Public Utility District No. 1 of Thurston County (“Thurston PUD”). Thurston PUD appreciates Ecology’s interest and willingness in providing technical assistance. It also appreciates Ecology’s recognition that Thurston PUD, while only relatively recently haven taken over ownership and management of the Timberline Village Water System, has worked diligently to address distribution system leakage (DSL) loss. Consistent with your suggestion, I can reaffirm for you that Thurston PUD has been and continues to engage and work cooperatively with the Department of Health (DOH) to find a solution such that additional connections can be added to the system.

Thurston PUD was surprised to find that your letter concludes by stating that “[i]f voluntary compliance is not achieved, formal enforcement may be initiated in the form of an Administrative Order and/or Civil Penalties.” We are unsure what this is or may be referring to and what enforcement action Ecology would be considering. Ecology’s letter cites to RCW 90.360.605, which we believe is likely intended to refer to RCW 90.03.605. That statute provides:

When the department determines that a violation has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law.

RCW 90.03.605(1)(b). If Ecology believes “that a violation has occurred or is about to occur,” based on the contents of the December 19 letter, it is not clear

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to either Thurston PUD or our office what violation Ecology believes has or is about to occur.

Thurston PUD is a public utility district organized under Title 54 RCW and a municipal water supplier under RCW 90.03.015. Thurston PUD is not a developer, nor does it have any interest in development of the property or properties within the subject Timberline Village community, either in the past, or presently. Thurston PUD is further not proposing to develop any permit exempt well within the subject water system. Thurston PUD, as a public utility district, is also not a regulatory entity. Thurston PUD understands this decision-making authority to fall within the province of Lewis County, or Ecology and/or DOH, as appropriate. What Thurston PUD has communicated to property owners on certain occasions is that it will not object to or stand in the way of their individual pursuit of alternative water supply, including development of exempt wells within the Timberline Village Water System. Thurston PUD has communicated this position based on its conclusion that the water system's current permit status with DOH does not currently authorize Thurston PUD to provide for any new connections and, as such, Thurston PUD is presently unable to provide timely and reasonable service to new connections.

I am familiar with the *Campbell & Gwinn* case cited in your letter, however, its application here to the Thurston PUD is not clear. In *Dep't of Ecology v. Campbell & Gwinn, L.C.C.*, 146 Wn.2d 1, P.3d 4 (2002), a private developer sought to rely on the 5,000 gallon per day (gpd) permit exemption in RCW 90.44.050 to develop up to 20 individual lots. In that case, Ecology argued that the exemption cannot be relied on "where a developer of a residential subdivision proposes multiple wells that will individually serve each lot in the development that collective would withdraw more than 5,000 gpd. *Id.* at 4 (emphasis added). Here, as noted above, Thurston PUD is not a developer, and in fact is not proposing to develop any wells. Rather, because of the current system limitations, Thurston PUD understands individual lot owners may be seeking such authorization. As the supreme court noted "[t]he one seeking an exemption from permit requirements is necessarily the one planning the construction of wells or other works necessary for withdrawal of water and is the one who would otherwise have to have a permit before any construction commences or wells are dug." *Campbell & Gwinn*, 146 Wn.2d at 13; *see also id.* at 14 (noting and finding relevant that "[i]n this case it is the developer, not the homeowner, who is seeking the exemption in order to drill wells on the subdivision's lots and provide for group domestic uses in excess of 5,000 gpd"). Thurston PUD has no current plans to develop or construct

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permit exempt wells, or to connect the same to the existing public water system.

Based on our review, while we appreciate Ecology's engagement on this issue and interest and willingness to provide technical assistance, based on the contents of your letter, we fail to see or understand that a violation has occurred or is about to occur. We trust that the above is responsive to your letter and hopefully clarifies the role and responsibilities of Thurston PUD. If there remains any disagreement or if Ecology continues to believe a violation has occurred or is about to occur, we would appreciate further clarification regarding Ecology's position related to the same. We also can be available to discuss as may be helpful.

Thurston PUD is committed to continuing to engage and work cooperatively with DOH on this issue. Any further support Ecology is able and willing to provide is also welcome.

Sincerely,



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JR:en

cc: Andy Anderson, P.E. Regional Manager, Department of Health Office of Drinking Water, Southwest Region (Andy.Anderson@DOH.WA.GOV)

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