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October 26, 2009

VIA OVERNIGHT MAIL

Honorable Charles A. Buss
San Juan County District Court
1557 Greene Street
Silverton CO 81433

RE: San Juan County District Court Case No. 2009CV7
Legacy Real Estate Investments, LLC v. Mill Creek Lodge Estates, LLC, *et al.*

Dear Judge Buss:

The Colorado Office of the Attorney General represents the Colorado Public Utilities Commission ("PUC"). The PUC learned of the judicial foreclosure proceeding in Case No. 2009CV7 in San Juan County District Court through the pleadings filed by several parties in a matter presently pending before the PUC related to rates, terms, and conditions of the sewer services provided by Mill Creek Water Sales and Distribution, LLC ("Mill Creek"), PUC Docket No. 08A-373W. The PUC is also aware of the hearing scheduled in San Juan County District Court for October 28 through 29, 2009 and has reviewed many of the pleadings that have been filed by the parties in preparation for that hearing. The PUC, out of abundance of caution, respectfully wishes to apprise this Court of its position on the interplay between a judicial foreclosure proceeding and the role of the PUC in transfers of public utility assets in the event the parties in Case No. 2009CV7 have not already done so.

The PUC has been delegated broad authority to regulate public utilities pursuant to § 40-1-103(1)(a), C.R.S., and Article XXV of the Colorado Constitution. This includes jurisdiction over water utilities as well as combined water and sewer utilities such as Mill Creek. Further, the PUC has jurisdiction over transfers of public utility assets. Section 40-5-105(1), C.R.S., states that "[t]he assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the [PUC] and upon such terms and conditions as the [PUC] may prescribe..." See, e.g., *Mountain States Tel & Tel. v. Pub. Utils. Comm'n*, 763 P.2d 1020 (Colo. 1988).

The PUC is aware that the judicial foreclosure proceeding in Case No. 2009CV7 involves, in part, public utility assets presently held by Mill Creek. The PUC respectfully submits that any transfer of these public utility assets must be conditioned upon approval by the

PUC, which administrative proceeding would take place once the identity of the proposed transferee is known and before the transfer is consummated. The PUC would strive to rule on the merits of any application related to the transfer of public utility assets presently held by Mill Creek as expeditiously as possible.

The PUC wishes to protect the interests of its constituents, the water and sewer ratepayers of Mill Creek. The PUC is prepared to petition this Court to intervene in Case No. 2009CV7 and will do so if the Court believes this is necessary for the PUC to protect the interests of its constituents. The PUC is also prepared to participate in the hearing on October 28 through 29, 2009 by telephone.

Please do not hesitate to contact me if you have any questions in this matter or if I may be of any assistance.

Sincerely,

FOR THE ATTORNEY GENERAL



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