

Property Owner's Assn. v. Tennessee Regulatory Authority, _____ S.W.3d _____ (Tenn. Ct. App. 2014), 2014 WL 1494126 at *6 (April 14, 2014).

2. In a still-pending Cumberland County, Tennessee Chancery Court proceeding – *Tennessee Regulatory Authority v. Laurel Hills Condominium Property Owners Assn.* (#2012-CH-560 / Chancellor Thurman) (hereinafter “LHWS Receivership Court”) - - that Court placed LHWS into receivership. The LHWS Receivership Court entered, on October 26, 2015, an Order Appointing Receiver which appointed Receiver “as Receiver for the water system controlled by [Laurel Hills Condominium Property Owners Association]” – i.e. LHWS. A copy of Order Appointing Receiver is attached as **Exhibit A**¹.

3. In the LHWS Receivership Court’s Order Appointing Receiver (**Exhibit A**), the Receiver was “directed to take exclusive custody, control and possession of [all property and interest] owned or held by [LHWS] relating *in whole or in part* to the water system, with full power to sue for . . . and take possession of [water system related] properties.” *Id.* at ¶3 (emphasis, ellipses and brackets added).

4. The LHWS Receivership Court’s Order Appointing Receiver expressly stated that if the Receiver determined that a rehabilitation of LHWS was unfeasible, it would prepare a plan for the liquidation and sale of the LHWS water system assets and, if approved by the LHWS Receivership Court, the Receiver “shall carry out the plan.” *Id.* at ¶15.

5. On June 1, 2016, the Receiver moved the LHWS Receivership Court to approve and adopt its Receivership Plan. *See* Motion attached as **Exhibit C**. Filed with that Motion was the

¹ The LHWS Receivership Court entered an Amended Order Appointing Receiver on April 29, 2016. *See* **Exhibit B** hereto. The amendments effected through the LHWS Receivership Court’s Amended Order Appointing Receiver do not affect the ability or standing of LHWS, through its Receiver, to maintain this action.

Receivership Plan (copy attached as **Exhibit D**) which set forth the unfeasibility of a rehabilitation of LHWS and proposed the plan of soliciting bids for the ownership and operation of LHWS and to then submit any satisfactory proposals to the LHWS Receivership Court for approval. Through order entered by the LHWS Receivership Court on June 9, 2016, that Receivership Plan was approved and adopted, stating that “The Receiver shall forthwith implement and carry out its receivership plan.” *See Exhibit E.*

6. In discharge of the Receivership Plan, the Receiver sought out entities to bid upon LHWS. Ultimately, only one entity, Aqua Green Utility, Inc. of Acworth, Georgia, submitted a bid. Aqua Green then engaged in discussions with the entity that asserts most ownership/control over the property rights and property interests at issue in this action – Moy Toy, LLC. Aqua Green engaged in those discussions in order to clarify that it would have ownership or property rights sufficient to operate LHWS and also those property rights which it understood would be required by the Tennessee Regulatory Authority to issue a Certificate of Convenience and Necessity (“CCN”) to Aqua Green to operate LHWS as a public water utility. Those discussions did not result in Aqua Green being assured that it would receive from Moy Toy the needed property rights. *See August 17, 2016 letter from Aqua Green to counsel for Receiver, attached as Exhibit F.*

7. As more fully described herein, in order to carry out the Receivership Plan, this condemnation action and/or action for clarification is necessitated.

II. PARTIES TO THIS ACTION

8. LHWS brings this action by and through its Receiver, Receivership Management, Inc., which is a Tennessee corporation with its principal place of business being 1101 Kermit Drive, Nashville, Tennessee 37217. Receivership Management, Inc. acts in this matter solely in the capacity as Receiver of LHWS.

9. Respondent Moy Toy, LLC is a Tennessee Limited Liability Company with its principal office located at 3227 Renegade Mountain Parkway, Crab Orchard, Tennessee 37723.

10. Respondent Terra Mountain Holdings, LLC is a Georgia Limited Liability Company with its principal office located at 901 N. Broad Street, Suite 140, Rome, Georgia, 30161.

**III. ENTITIES NOT A PARTY TO THIS ACTION
BUT TO WHOM NOTICE IS GIVEN**

11. The Receiver has, in good faith, listed above the entities which have property rights or interests affected by this action or from which clarification of property rights or interests is needed. Other entities, however, may believe that their property rights or interests are affected and may, upon discovery in this matter, have property rights or interests that are at issue. In order to provide notice to those entities, a copy of this Petition for Condemnation and/or Clarification of Rights to Property will be sent to the following so that they may enter an appearance (so as to receive copies of pleadings, etc.) and/or move to intervene so as to address any issues relating to this Petition for Condemnation and/or Clarification of Rights to Property:

- a. Cumberland Point Condominium Property Owner's Association c/o Mary Ann Dorris, Highway 70 East, P.O. Box 3667, Crossville, TN 38557
- b. Laurel Hills Condominium Property Owners Association c/o Michael M. McClung, 3227 Renegade Mountain Parkway, Crab Orchard, TN 37723
- c. Woodridge Condominiums Property Association c/o Glenn McDonald, Highway 70 East, P.O. Box 288, Crab Orchard, TN 37723
- d. Atlantic Coast Conservancy, Inc. c/o Dr. Robert Keller, 72 South Main Street, Jasper, GA 30143

IV. STANDING, JURISDICTION AND VENUE

12. As a public utility, LHWS, through its Court-appointed Receiver, has standing to pursue the relief sought herein. *See Exhibit A* at ¶3; T.C.A. §65-27-101 et. seq. and T.C.A. §29-16-101 et. seq. To the extent that the requests for clarification of rights are sought requires declaration of rights or interests, LHWS has standing pursuant to T.C.A. §29-14-101, *et. seq.*

13. Jurisdiction over the subject matter of this action lies in this Court. T.C.A. §65-27-101 et. seq. and T.C.A. §29-16-104. To the extent that the requests for clarification of rights are sought herein requires declaration of rights or interests, jurisdiction is also based upon T.C.A. §29-14-101, *et. seq.*

14. Jurisdiction over the named Respondents is appropriate because they own, or are, in good faith, believed to own, the property and/or property interests at issue, all of which are located in the State of Tennessee.

15. Venue of this action in this judicial district is appropriate because all the property/property interests at issue are located in Cumberland County, Tennessee.

V. LAUREL HILLS CONDOMINIUM PROPERTY OWNERS ASSOCIATION /
TENNESSEE REGULATORY AUTHORITY PROCEEDINGS
AND SETTLEMENT AGREEMENT

16. In 2012, and for some time prior thereto, Laurel Hills Condominium Property Owners' Association ("Laurel Hills POA") was the operator of the water system at issue. In 2012, in reaction to an order from the Cumberland County Chancery Court which ordered Laurel Hills POA to continue to provide water to Renegade Mountain residents, Laurel Hills POA filed a petition with the Tennessee Regulatory Authority ("TRA") requesting the issuance of a certificate of public convenience and necessity ("CCN"). *See Docket #12-00030* (filed with the TRA on April 12, 2012). In those TRA proceedings, Laurel Hills POA maintained that it was the holder of all assets and service rights for the providing of potable water to the Renegade Mountain development.

17. In that TRA proceeding, Laurel Hills POA was denied a CCN and was ordered to divest itself of the water utility. Laurel Hills POA appealed to the Tennessee Court of Appeals. The Court of Appeals, in its decision referenced in ¶1 above, noted that there was no dispute that the Laurel Hills POA water system was a public utility and upheld the TRA order that Laurel Hills POA divest itself of the public utility.

18. Laurel Hills POA, apparently, was unable to divest itself of the public water utility and on July 27, 2015 entered into a settlement agreement in which various matters were agreed to as between Laurel Hills POA and the TRA Party Staff, one of which was Laurel Hills POA's voluntary placement of LHWS into receivership. That receivership was instituted in the LHWS Receivership Court on October 26, 2015, and, as referenced in ¶2 above, the Receiver was appointed by the LHWS Receivership Court.

19. The Settlement Agreement as between Laurel Hills POA and the TRA Party Staff does not have the Receiver as a party. While the Settlement Agreement contemplated the establishment of the receivership, it did not, and does not, bind the Receiver in the discharge of its duties.

20. Rather the Receiver, having been appointed as Receiver by the LHWS Receivership Court, is an officer of that court and is to be regarded as the hand of the appointing court in discharging the Receiver's duties as ordered by the LHWS Receivership Court.

21. As set forth previously, the LHWS Receivership Court has approved the Receiver's Receivership Plan regarding LHWS, a public utility, and has ordered the Receiver to take the necessary actions to implement that plan. *See Exhibits D and E* attached.

22. As discussed herein, the implementation of the Receivership Plan involves numerous matters that were either not addressed in the Laurel Hills POA – TRA Party Staff

settlement, or which are in need of clarification, relating to having title and/or easements to property or property interests regarding the entirety of LHWS so as to enable the Receiver to sell LHWS out of receivership, upon the approval of the LHWS Receivership Court, and in accordance with parameters that would, upon information and belief, allow the purchaser to have the necessary rights to secure a CCN from the TRA to operate the public water system.

23. Again, in order to proceed with the implementation of the Receivership Plan, as the Receiver is ordered to do by the LHWS Receivership Court, this action was necessitated.

VI. PROPERTY / PROPERTY INTERESTS AT ISSUE AND/OR IN NEED FOR CLARIFICATION

24. There are four distinct areas of necessary taking of property or property interests, and/or clarification of property or property interests, in relation to LHWS, a public entity, so as to allow the Receiver to implement the Receivership Plan: (1) property rights or interests relating to the water supply line which runs from property owned by the Crab Orchard Water Utility District to a water tower property “on the top” of Renegade Mountain, (2) property rights or interests relating to the referenced water tower property, (3) water service line easements throughout the Renegade Mountain development’s platted areas and roadways, and (4) access easement as to Renegade Mountain Parkway.

25. As set forth below, each of the areas of “taking” and/or clarification relate to the providing of potable water to the Renegade Mountain development by a public utility and therefore are in furtherance of the public good.

A. Water Supply Line

26. Attached as **Exhibit G** is a drawing of the Water Supply Line at issue in this action, with handwritten notes inserted, in good faith, by undersigned counsel for the Receiver.

27. The water for LHWS is purchased from the Crab Orchard Utility District (“COUD”) which is supplied from a 1.2 acre pump station property owned by the COUD, said parcel described as Parcel #141 033.00 in the Cumberland County Register of Deeds (“ROD”) Office.

28. Access (ingress and egress) to that COUD pump station property is through travel from Kemmer Road and Mullinax Road, both of which, upon reasonable investigation by the Receiver, are public streets maintained by the City of Crab Orchard, Tennessee. Therefore, the Receiver asserts that LHWS (and any subsequent water utility operator, such as Aqua Green) has the ability to travel upon those public streets to reach the 1.2 acre COUD property.

29. Located on the COUD 1.2 acre property are a small pump house and pipes owned by LHWS. LHWS, by and through its Receiver, anticipates agreement with COUD that would grant it full easement rights, while purchasing water from COUD, to the small pump house and water pipes and the full right to come upon the 1.2 acre property to maintain, repair and/or replace the small pump house (and contents) and the Water Supply Line owned by LHWS located on that property. That anticipated agreement also grants LHWS, by and through its Receiver (and its successors and assigns), the ability to use and occupy needed portions of the 1.2 acre tract to effect maintenance, repair or replacement of the small pump house (and contents) and/or the Water Supply Line. With that anticipated agreement, there are no further property, or property interests, held by COUD needed by the Receiver to implement the Receivership Plan. Accordingly, COUD is not named as a party to this action.

30. From that COUD water pump station property, the Water Supply Line runs “up the mountain” across portions of a 158.5 acre parcel owned by James A. and Elizabeth L. Kemmer, said parcel described as ROD Parcel #141 029.02. *See Exhibit G.*

31. LHWS, by and through its Receiver anticipates agreement with James A. and Elizabeth E. Kemmer that would grant it full easement rights as to the Water Supply Line as it crosses the Kemmer property and the full right to come upon the Kemmer property to maintain, repair or replace the Water Supply Line. The anticipated agreement also grants LHWS, by and through its Receiver (and its successors and assigns) the ability to use and occupy needed portions of the Kemmer property to effect maintenance, repair or replacement of the Water Supply Line. With that anticipated agreement, there are no further property, or property interests, held by the Kemmers needed by the Receiver to implement the Receivership Plan. Accordingly, Mr. and Mrs. Kemmer are not named as parties to this action.

32. The Water Supply Line continues “up the mountain” (*see Exhibit G*), and it crosses from the Kemmer 158.5 acre property on to a parcel owned by Terra Mountain Holdings, LLC (ROD Parcel #142 031.06), but which is subject to a Deed of Conservation Easement in favor of Atlantic Coast Conservancy, LLC (*see* ROD Book 1422, Page 1806-2009) – relevant parts attached as **Exhibit H**. The Deed of Conservation Easement, in pertinent part, states:

8. Permitted Uses. Permitted uses [reserved by Terra Mountain] of the Easement Area vary depending on where on the Easement Area such use occurs as specifically indicated below.

. . .

- The Acceptable Development Area – Existing Waterline will encompass the existing waterline as it transects the Easement Area, as specifically identified in *Section XI* of the Baseline Documentation Report, and will consist of a linear buffer of approximately 30 feet (91.44 meters). The linear buffer will originate from the centerline of the existing waterline and will extend 15 feet (45.72 meters) to either side of the existing waterline, and will permit [Terra Mountain] to maintain, repair, remove, or replace the waterline and its improvements.

. . .

8.1 *Acceptable Development Areas*. The following activities are permitted within each Acceptable Development Area to the extent indicated provided that [Terra Mountain] notifies the Conservancy in writing thirty (30) working days prior to exercising the prescribed permitted uses unless otherwise noted.

. . .

8.1.D Acceptable Development Area – Existing Waterline. Without prior written permission from the Conservancy, [Terra Mountain] may maintain, repair, remove, or replace one (1) existing waterline and its improvements within the area shown in the Conservation Easement Map, Section XI of the Baseline Documentation Report as Acceptable Development Area – Existing Waterline. Said improvements shall be located completely within the corresponding Acceptable Development Area – Existing Waterline. The foregoing permissions include, to the maximum extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions, including, without limitation, construction, repair, and maintenance of the structure and appurtenances permitted subservient utilities. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of extraction to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

See **Exhibit H**, Deed of Conservation Easement, ROD Book 1422 at Pages 1815, 1816, 1817 and 1819 (brackets and emphasis added).

33. The above quoted portion of the Deed of Conservation Easement references an “existing waterline” as identified in “Section XI of the Baseline Documentation Report.” That Baseline Documentation Report contains a map which states that the Existing Waterline is shown in the color “Lepidolite Lilac,” but all that is recorded is a poor black and white copy upon which no colors are discernable. See **Exhibit H**, Deed of Conservation Easement, ROD Book 1422 at Page 1942 and 1943 (pp. 42 and 43 of the Baseline Documentation Report). The Receiver is aware of no

waterline that crosses the conservation easement area established by the Deed of Conservation Easement other than the LHWS Water Supply Line. To that end, the Receiver relies upon the reasonable conclusion, and therefore asserts, that Terra Mountain is the holder of the existing water line easement set forth in the above-quoted language of the Deed of Conservation Easement which applies to the Water Supply Line. Accordingly, the grantee, Atlantic Coast Conservancy, Inc., has no interest in the Water Supply Line crossing over the Conservation Easement². In order to operate as a public utility, and to implement its Plan, the Receiver must have Terra Mountain assign to it all rights, title and interest it holds to the existing Water Supply Line and referenced easements as set forth in the Deed of Conservation Easement.

34. Moving further “up the mountain,” the Water Supply Line runs from the Conservation Easement property (as described immediately above) and crosses on to a parcel of land (22.75 acres) owned by Moy Toy, LLC. *See* ROD Parcel #141 056.00 and **Exhibit G**. This property is also known as the “Original Lodge Tract,” the original lodge of the Renegade Mountain development (which has subsequently burned to the ground) having been located thereon.

35. On February 3, 2016, Moy Toy granted to Laurel Hills POA an irrevocable, but limited, license for “existing utility purposes” which granted to Laurel Hills POA limited rights regarding the operation of the LHWS, in receivership. *See* copy attached as **Exhibit I**.

36. That “irrevocable license agreement” is purported to be part of the Laurel Hills POA/TRA Party Staff settlement referenced in ¶¶ 18 - 20 above and to which the Receiver is not bound. Again, the Receiver is specifically authorized to take the necessary actions to implement the Receivership Plan approved by the LHWS Receivership Court.

² The ability to come upon the conservation easement area to maintain, repair, remove or replace the existing water line (**Exhibit H** at Book 1422, Page 1819) expressly does not require permission from Atlantic Coast Conservancy.

37. Part of the “irrevocable license agreement” was Moy Toy’s granting of a non-exclusive, but supposedly irrevocable, license to Laurel Hills POA to come upon and use the “original lodge tract” regarding the “operation of a water distribution system” including “existing water transmission lines.” (See **Exhibit I** at p. 2 and p.1 of Exhibit A thereto.) The Receiver, in good faith, assumes that the “existing water transmission line” located on the “original lodge tract” is the same as, or includes, the Water Supply Line that crosses the Moy Toy property (RODMap 141, Parcel 056.00); *see also* **Exhibit G**.

38. The “irrevocable license” agreement from Moy Toy to Laurel Hills POA is a license, not the grant of an easement³. The “irrevocable license” agreement is a limited, non-exclusive grant. The “irrevocable license” agreement is vague in what the physical dimensions of the “license” are and what use rights are included regarding the Water Supply Line. The “irrevocable license” agreement does not address issues of repair, replacement and/or maintenance of the Water Supply Line nor the ability of the Receiver, or any subsequent utility provider, to come upon land adjacent to the Water Supply Line to effect repair, replacement and/or maintenance and to occupy said adjacent land during any such repair, replacement or maintenance.

39. In order to operate as a public utility, and to effect implementation of the Receivership Plan, the Receiver needs to have an (a) easement of 30’ (15’ as to each side of the

³ A license, revocable or not, is not an easement, the former providing use rights only and the later providing an interest in the land that, while subject to the dominant tenement, would run with the land. Upon information and belief, it is the gaining of easements, not licenses for use, that the TRA would require in relation to the operation of a public utility and it is the gaining of an easement, not a license for use, that is need to implement the Receivership Plan. There is also question as to how Laurel Hills POA has conveyed the “rights” obtained from Moy Toy through this “irrevocable license” on to LHWS. Presumably, Laurel Hills POA will maintain that what it received from Moy Toy, through the irrevocable license, was conveyed to LHWS, in Receivership, pursuant to an April 5, 2016 Bill of Sale. *See* **Exhibit J**. This is far from clear and requires either clarification or the granting of a full easement from the holder of the property rights at issue relating to that section of the Water Supply Line that crosses the Moy Toy property as well as other property rights conveyed in the April 5, 2016 Bill of Sale.

Water Supply Line), (b) an access easement across the Moy Toy property for the purpose of maintaining, repairing and/or replacing that portion of the Water Supply Line that crosses the Moy Toy property, and (c) an easement to use and/or occupy such portion of the Moy Toy property to effect any such repair, replacement or maintenance to the Water Supply Line. To the extent that Moy Toy asserts ownership rights to the Water Supply Line itself, such interest must be titled in the name of LHWS, in Receivership.

40. The Water Supply Line further runs “up the mountain” from the Moy Toy property, referenced in the paragraphs immediately above, to the parcel of property upon which the water tower is located – ROD Parcel #141 056.01. For further discussion of the Water Tower Property *see* ¶¶ 46 - 61 below.

41. In order to operate as a public water utility, LHWS in Receivership must have the ability to have water supplied to it and must have full property rights (not licenses) to maintain, repair, replace and exercise control over the Water Supply Line, as well as having the ability to come upon the relevant property for the purpose of inspection, maintenance, repair or replacement of the Water Supply Line and have the ability to use and occupy the property adjacent to the Water Supply Line, needed to effect any necessary maintenance, repair or replacement.

42. The use intended for the Water Supply Line easements are for the public good of supplying potable water to the Renegade Mountain development community.

43. Moreover, in order for the Receiver to move forward with the Receivership Plan submitted to, and approved by, the LHWS Receivership Court, the Water Supply Line easements and access noted in this section are necessary to secure a third party – e.g. Aqua Green – to purchase the LHWS and for that subsequent operator to secure the needed CCNs from the TRA.

44. If clarification of the property/property interests rights in favor of the LHWS regarding the Water Supply Line is not forthcoming, the Receiver requests the following property rights and interests be ordered as titled in its name and that such property rights and interests be fully transferrable from the Receiver to a court-approved third party water utility operator as per the Receivership Plan:

- a. The existing water line easements reserved by Terra Mountain in relation to the portion of the Water Supply Line that crosses the Conservation Easement and any ownership retained by Terra Mountain in said Water Supply Line, and
- b. 30' easement (15' on each side of the Water Supply Line) as to the Water Supply Line running across the Moy Toy property (i.e. the Original Lodge Tract) for maintaining, repairing, removing, and/or replacing that Water Supply Line, an easement to come upon the Moy Toy property to inspect, maintain, repair or replace the Water Supply Line and an easement to come upon, use and occupy the Moy Toy property adjacent to the 30' easement to the extent needed to effect the maintenance, repair, removal or replacement of the Water Supply Line and any ownership retained by Moy Toy in said Water Supply Line.

45. The property rights and interests sought in relation to the Water Supply Line may have been intended by the present holders of such rights. If so, then clarification of these property rights and interests may address the issue through declaration. If, however, condemnation is required, because the Water Supply Line has existed for decades over the Terra Mountain property, and because transfer of the easements reserved by Terra Mountain would not diminish the value of

any property right that Terra Mountain may have reserved in the Deed of Conservation Easement, transfer of the water line easements reserved by Terra Mountain in the Deed of Conservation Easement to the LHWS should not require any bond or deposit⁴. Because the Water Supply Line has existed for decades over the Moy Toy property, because establishment of the requested easement would not diminish the value of the 22.75 acre Moy Toy parcel and because Moy Toy, both as (a) the developer of the Renegade Mountain development in need of reliable potable water service and (b) the owner of numerous parcels in the platted areas of the Renegade Mountain development, stands to benefit through the provision of potable water to the area, imposition of an easement, as requested herein, over the Moy Toy property (Parcel #141 056.00) should not require any bond or deposit.⁵

B. Water Tower Property

46. Part of the LHWS assets is a .43 acre property upon which a water tower is located (ROD Parcel #141 056.01) (“Water Tower Property”). While the Water Supply Line, which supplies the water for the Renegade Mountain development, terminates at a water tower located on the Water Tower Property, the water tower itself has not been utilized for several years because of its poor condition, the tremendous costs associated with repairing it, and the lack of funds by previous operators to maintain and/or repair it⁶.

47. In order for the Receiver to implement its Receivership Plan, it must have clear ownership rights to the Water Tower Property free of unreasonable restrictions or provisions.

⁴ Filed with the Petition is a Motion for Expedited Court-Ordered Mediation and to Defer Bond or Deposit Issues in Relation to Petition for Condemnation.

⁵ Filed with the Petition is a Motion for Expedited Court-Ordered Mediation and to Defer Bond or Deposit Issues in Relation to Petition for Condemnation.

⁶ The current status of the water tower is such the Tennessee Department of Environment and Conservation will not permit the water tower’s use in relation to any potable water distribution system.

48. Prior to February 3, 2016 fee simple ownership of the Water Tower Property was held by Moy Toy.

49. On February 3, 2016, Moy Toy, via Quitclaim Deed, conveyed its rights and interests in the Water Tower Property and all appurtenances to the Receiver, as Receiver for LHWS. *See Exhibit K.*

50. The February 3, 2016 Quitclaim Deed from Moy Toy to the Receiver contains restrictions and reversion provisions:

- a. The Water Tower Property would be used for water utility purposes only;
- b. The Receiver is not obligated to utilize the water tower in its current condition, but if it, or any replacement, is used and subsequently abandoned or ceases to be used as part of the “Renegade Mountain Water System,” title to the Property reverts back to Moy Toy;
- c. The Receiver is required to “maintain the Water Tower Property, keeping any grass regularly mowed and landscaping trimmed and neat;”
- d. No chain link or barbed wire fencing shall be permitted on the Water Tower Property;
- e. The water tower (or replacement thereof) and any buildings or structures related to the support and maintenance of the water tower or its replacement are to be regularly maintained by the Receiver; and
- f. If the water tower is repaired, or if buildings or structures are constructed on the Water Tower Property, the repainting or painting will be of a neutral color and in harmony with other structures in the Renegade Mountain development and repainting of the water tower shall be in coordination with

Moy Toy so as to allow for the installation, preservation or repainting of advertising signage on the water tower.

Exhibit K at pp. 1-2.

51. The February 3, 2016 Quitclaim Deed also contained various reservations of rights and easements:

- a. Moy Toy reserved the right of an easement to install and maintain an “antenna and supporting appurtenances” on top of the water tower, or any replacement, including the right of ingress and egress to access the antenna, the design and construction of the antenna being in the sole discretion of Moy Toy; and
- b. Moy Toy reserved an easement to install and maintain lighting to illuminate the water tower, or any replacement, as well as an easement to keep and maintain a sign with the name “Renegade Mountain” on the water tower.

See Exhibit K at p. 2.

52. In order to operate LHWS as a public utility, and in order to implement the court-approved Receivership Plan in the LHWS receivership proceedings, the Receiver needs a fee simple transfer from Moy Toy of the Water Tower Property and all appurtenances, or in the alternative, a fee simple transfer from Moy Toy without various of the limitations and restrictions set forth in the February 3, 2016 Quitclaim Deed.

53. It is the Receiver’s understanding that the sole bidder for LHWS – Aqua Green – is agreeable to use the Water Tower Property only for current and/or planned water utility purposes. To the extent that not using the Water Tower Property solely for water utility purposes triggers a reversion (and that is not clear from the Quitclaim Deed), such must not be “automatic” and cannot

occur without prior approval from the applicable regulatory authority having jurisdiction over the water utility. Additionally, the restriction that if a water utility operator starts using the water tower and then elects to utilize other means of water storage on the Water Tower Property, then the property would revert to Moy Toy is not acceptable. Moreover, the ability/discretion to dismantle the water tower and utilize other means of water storage on the Water Tower Property must be held and controlled by the Receiver or a subsequent operator.

54. The water tower located on the Water Tower Property is in poor condition and thus the Receiver, or a subsequent operator, may need to dismantle it. Therefore, the restrictions in the February 3, 2016 Quitclaim Deed keyed to the existence of the water tower – e.g. painting, placement of an antenna with easement rights of ingress and egress to that antenna, design of any such antenna(s) being in the sole discretion of Moy Toy⁷, an easement for Moy Toy to install and maintain lighting of a sign saying “Renegade Mountain” – all must be expressly contingent on the existence, but not the requirement, of a water tower being on the Water Tower Property.

55. To the extent that an antenna is placed on top of the water tower, such must be upon the approval of LHWS, or a subsequent operator, because dependent upon what antenna is being proposed, operation and/or maintenance of the water tower could be disrupted - - e.g. a high intensity antenna would prohibit maintenance of the water tower at or around the area of its location. And, again, any ability for placement of an antenna must yield to the Receiver’s, or any subsequent operator’s ability to dismantle the water tower and any easement as to that antenna must be expressly conditioned on not interfering with the operation of LHWS.

⁷ Leaving the design, construction and placement of antennas on the top of the water tower in the sole discretion of Moy Toy also leaves open the issue of liability if such design, construction and placement creates a hazard or renders the water tower unstable or otherwise creates an impediment to the operations of the water utility.

56. The Receiver has no comment as to the restriction that it, or a subsequent operator, will maintain the Water Tower Property in a mowed/well-kept fashion nor the restriction that painting of the water tower or additional buildings on the property (if the Receiver or a subsequent operator elects to paint the water tower or construct additional buildings on the property) will be of an appropriate neutral color.

57. The Receiver also has no comment as to the restriction in the February 3, 2016 Quitclaim Deed prohibiting a chain link fence or barbed wire fencing on the Water Tower Property, so long as such is not required by law or such restriction does not otherwise interfere with the Receiver's or subsequent operator's ability to operate the water system.

58. Upon information and belief, various of the restrictions and prohibitions set forth in the February 3, 2016 Quitclaim Deed – if not having the conveyance by quitclaim deed, as opposed to via warranty deed, in the first instance – unreasonably restrict the Receiver, or a subsequent operator, to demonstrate ownership and control of the Water Tower Property necessary to operate a public water utility and/or to secure a CCN from the TRA.

59. Accordingly, various of the restrictions and prohibitions set forth in the February 3, 2016 Quitclaim Deed do not allow the Receiver to implement its Receivership Plan.

60. The Receiver requests that the conveyance of the Water Tower Property be via warranty deed, without limitation or restriction. In the alternative, the Receiver requests that the conveyance of the Water Tower Property to the Receiver be clarified, through declaration, so as to be in concert with the issues raised herein which impede its progression with the implementation of the Receivership Plan.

61. To the extent that the objectionable restrictions regarding the transfer of the Water Tower Property were not intended by Moy Toy, clarification of the issues raised, through

declaration, may well address the issues. If not, the issuance of a warranty deed as to the Water Tower Property without the objectionable reversions, restrictions or prohibitions set forth above does not diminish the value received by Moy Toy when it conveyed the Water Tower Property to the Receiver.⁸ Accordingly, no bond or deposit should be required in relation to any “taking” relating to the Water Tower Property.⁹

C. Water Service Line Easements

62. In order to implement the Receivership Plan, the Receiver needs to have full easement rights as to existing water service lines as well as to easement rights to the platted areas of the Renegade Mountain development.

63. As discussed earlier (¶ 6 above), in taking efforts to implement the Receivership Plan, the Receiver has obtained one, and only one, bidder for the LHWS - - Aqua Green. Aqua Green has conditioned its bid upon securing easement rights which would substantially comply with a template easement provided by it¹⁰. See **Exhibit L**.

64. As a result of the “transfers” of the LHWS assets to date, the Receiver does not have the easement rights sufficient to operate the water utility nor to implement the Receivership Plan nor to comply with, upon information and belief, the TRA criteria to grant a CCN for the water utility.

⁸ To the Receiver’s understanding, the only “challenged” restriction which could affect the “value” retained by Moy Toy is the ability to enjoy payment from Cumberland County for the placement of a 911 antenna atop the water tower. The Receiver, however, does not object to the placement of a 911 antenna on the water tower, if such yields to the Receiver’s, or subsequent operator’s ability to dismantle the water tower and not replace it and/or that the Receiver, or subsequent operator, be able to require that the placement of a 911 antenna would not jeopardize the stability of the water tower and not otherwise impair or impede the operation of the water utility. These are not matters which would unreasonably restrict any expectation by Moy Toy of “value” regarding payments from Cumberland County if those parties agreed to place a 911 antenna on the water tower.

⁹ Filed with the Petition is a Motion for Expedited Court-Ordered Mediation and to Defer to Bond or Deposit Issues in Relation to Petition for Condemnation.

¹⁰ **Exhibit L**, the template easement agreement, references water and sewer utilities. The issues involved in this action involve only a water utility.

65. What the Receiver has is an “irrevocable license” from Moy Toy to enter upon various tracts of land owned by Moy Toy on Renegade Mountain “in connection with the operation of a water system in receivership” and to utilize various tracts of land owned by Moy Toy on Renegade Mountain where water utility lines currently exist. See **Exhibit I**.

66. What the Receiver needs, whether through clarification or through condemnation, are specific easements, perpetual in nature that run with the land, both as to the existing water service lines and as to the providing of potable water with regard to the service rights transferred by Laurel Hills POA to the Receiver consistent in terms and effect with **Exhibit L**.

i) Easements As To Existing Water Service Lines.

67. To the Receiver’s understanding, the majority of the existing water service lines at issue (some of which are inoperable due to pre-receivership neglect and failure to repair/replace) are on property owned or controlled by Moy Toy.

68. To the Receiver’s understanding, those existing water service lines are located underneath various roadways or otherwise placed on rights-of-way throughout the Renegade Mountain development - - roadways and rights-of-ways over which Moy Toy asserts ownership and/or control.

69. In its February 3, 2016 “irrevocable license” (**Exhibit I**), Moy Toy grants non-exclusive rights for the Receiver (or a subsequent water utility operator) to “come upon land” where water service lines are located (presumably the roadways and/or rights-of-way) in connection with the operation of the water system. But, otherwise, the “irrevocable license” is silent or ambiguous as to critical aspects of the water utility operator’s “rights” to come upon the land, e.g. physical dimensions (e.g. 20’ – 10’ as to each side of the existing water service line), the ability to affect

maintenance, repair or replacement of the existing water service lines, the ability to occupy needed areas next to an easement to effect maintenance, repair or replacement, etc.).

70. Again, a license, revocable or not, is not an easement. In order to implement its court-approved Plan, and, upon information and belief, to secure the rights needed to comply with TRA criteria for the issuance of a CCN, easements rights in the nature of those set forth in **Exhibit L** are needed as to all existing water service lines existing on property owned or controlled by Moy Toy.¹¹

71. There are other sub-developments where water service lines exist in the overall Renegade Mountain development - - e.g. Cumberland Point, Laurel Hills, Woodridge. To the extent that discovery in this action reveals that the operation of the water system (and to the implementation of the Receivership Plan) necessitates inclusion of those sub-developments regarding needed easements, the Receiver reserves the right to amend this Petition accordingly. *See* T.C.A. §29-17-909.

ii) Water Service Line Easements As To Service Area Where Water Service Lines Do Not Exist

¹¹ Moy Toy's "irrevocable license" (**Exhibit I**) which, again, addresses only existing water utility infrastructure, sets forth four areas or "tracts" to which the license applies: (1) Original Lodge Tract, (2) Sport Tract, (3) Water Tank Site and (4) Rights of Way in Numerous Plats of the Renegade Mountain Development. As discussed above (§§37 - 40) the Receiver assumes that the reference to the "Original Lodge Tract" applies to the Water Supply Line that crosses that property, not to any water service lines. To the extent, however, that water service lines exist on the "Original Lodge Tract," the easements requested herein are needed as to any such water service lines. The "Sport Tract" refers to a parcel of land (Parcel # 142 031.05 ROD) which has an abandoned swimming pool and tennis complex. To the Receiver's understanding, a water service line runs under Running Deer Drive to that abandoned sport's complex, said water service line having been "shut off" for some time. The easements requested herein would need to apply to any and all water service lines on that tract. The "Water Tank Site" is a reference to the Water Tower Property discussed earlier (§§ 46 - 61). Finally, the "Right of Way" Tracts refer to numerous parcels of land platted and recorded with the ROD where water service lines exist (or may exist) in the roadways or rights-of-way set forth in those platted parcels. The easements requested herein would need to apply to those roadways/platted areas as well.

72. As noted above, all that the Receiver has regarding water service lines rights is an “irrevocable license” from Moy Toy that is limited and/or silent in various unacceptable ways and only covers existing water lines, meters, valves, etc.

73. In the Assignment and Bill of Sale executed by Laurel Hills to the Receiver dated April 5, 2016 (**Exhibit J**), Laurel Hills assigned all rights, title, and interests to numerous matters including “all service rights.” Laurel Hills had acquired those service rights from Moy Toy through Bill of Sale dated May 1, 2011 (**Exhibit M**).

74. The “service rights” held by Laurel Hills were the pre-receivership rights it had to furnish water in the Renegade Mountain development. The original plats to the Renegade Mountain development clearly establish that all platted lots had 10’ utility easements parallel to all property lines and that the roadways, open spaces, parks, etc. were dedicated to public use.¹²

75. The Receiver asserts that in order to implement its Plan and in order to realize upon the transfer from Laurel Hills of “all service rights,” clarification, through declaration, is needed that all of the 10’ utility easements set forth in the Plat Books referenced in footnote 12 run with the land and are in favor of the Receiver and fully assignable.

76. The roadways, open spaces and common areas shown on the Plat Books referenced in footnote 12 are dedicated to “public and private” use.

¹² See Plat of Block 1 (ROD Plat Book 2, Page 57); Plat of Block 2 (ROD Plat Book 2, Page 58); and Plat of Block 2 Revised (ROD Plat Book 2, Page 89); Plat of Block 4 (ROD Plat Book 2, Page 69); Plat of Block 4-A (ROD Plat Book 2, Page 67); Plat of Block 5 (ROD Plat Book 2, Page 68); Plat of Block 6 (ROD Plat Book 3, Page 25); Plat of Block 7 (ROD Plat Book 2, Page 81); Plat of Block 8 (ROD Plat Book 2, Page 90); Plat of Block 9 (ROD Plat Book 3, Pages 51-52 – with revision at Plat Book 8, Page 289); Plat of Block 15 (ROD Plat Book 9, Page 188 – with revision at Plat Book 9, Page 207); Plat of Block 16 (ROD Plat Book 9, Pages 188-189 – with revisions at Plat Book 9, Pages 208-209); Plat of Block 17 (ROD Plat Book 10, Page 419); Final Plat of Cumberland Point (ROD Plat Book 9, Page 165); Final Plat of Block Woodridge (ROD Plat Book 9, Page 185); Plat of Block 10 (ROD Plat Book 3, Page 54); Plat of Block 10-A (ROD Plat Book 5, Page 70); Plat of Block 11 (ROD Plat Book 3, Page 55); Plat of Block 12 (ROD Plat Book 3, Page 56 – with revision at Plat Book 5, Page 14); and Plat of Block 12-A (ROD Plat Book 5, Page 13).

77. To the Receiver's understanding, the majority of the roadways, open spaces, common areas, rights-of-way, etc. shown on the Plat Books referenced in footnote 12 are owned and/or controlled by Moy Toy. *See e.g.* Irrevocable License (**Exhibit I**) at Ex. A "Tract 4."

78. Because those platted roadways are dedicated to "public use," establishment of utility easements in those roadways or right-of-ways is reasonable and in the public good of providing potable water to the platted lots set forth in the Plats Books referenced in footnote 12.

79. Moreover, to the extent that services areas set forth in the Plats identified in footnote 12 are not contiguous, utility easements must be established along roadways or rights of way (e.g. Renegade Mountain Parkway) that run between or otherwise connect the non-contiguous service areas.

80. Accordingly, whether through clarification that the utility easements requested herein exist in the platted roadways or are otherwise established, or through order of condemnation establishing such utility easements, the Receiver requests that such easements be recognized and/or established in favor of the Receiver.

81. To the extent that the relief granted consists of clarification, through declaration, and recognition of easement rights, no bond or deposit would be required. To the extent that establishment of easement rights occurs by virtue of condemnation, the establishment of the utility easements requested herein is for the benefit of the Renegade Mountain community because the establishment of the easements is for the sole purpose of reliably providing potable water to that community. The establishment of the easements requested would not affect the value of the platted lots nor the relevant roadways or rights of way. Indeed, the benefit of having the easements would

enhance, not diminish, the value of the property effected by the easements. Thus no bond or deposit should be required.¹³

D. Ingress / Egress Easement As To Renegade Mountain Parkway

82. To the Receiver's understanding, the road from US Highway 70 "up the mountain" and leading to and through the platted areas of the Renegade Mountain development – i.e. Renegade Mountain Parkway – is a private road which is owned and/or controlled by Moy Toy.

83. In order to implement the Receivership Plan and to otherwise operate the public water utility, the Receiver, and any subsequent utility operator, needs ingress and egress rights as to Renegade Mountain Parkway, including any bridges along the access route.

84. Accordingly, to the extent that clarification is not reached as to these access rights, the Receiver requests the establishment of full and complete access easement in its favor regarding Renegade Mountain Parkway, including bridges, consistent with the easement rights being requested herein.

85. Because the grant of simple access easements to allow the operation of a public water utility does not diminish the property rights of Moy Toy - - indeed, if anything the operation of the public water utility would increase the value of Moy Toy's holdings and interests in the Renegade Mountain development - - no bond or deposit should be required as to the access rights upon Renegade Mountain Parkway.¹⁴

¹³ Filed with the Petition is a Motion for Expedited Court-Ordered Mediation and to Defer Bond or Deposit Issues in Relation to Petition for Condemnation.

¹⁴ Filed with the Petition is a Motion for Expedited Court-Ordered Mediation and to Defer Bond or Deposit Issues in Relation to Petition for Condemnation.

V. RECEIVER'S REQUEST FOR EXPEDITED COURT-ORDERED MEDIATION

86. Throughout this Petition, the Receiver requests clarification of property rights. This has been caused, in large measure, because of the non-specific, if not ambiguous, nature by which the Receiver has obtained various interests in property and/or that the conveyances are silent as to needed details (e.g. whether the water tower property conveyance requires the existence of a water tower or a replacement water tower, what are the dimensions and use rights regarding the easements set forth in the “irrevocable license”, etc.).

87. Clarification of these issues need not be by declaration, but could be had through agreement and such agreement could resolve much, if not all, of the matters at issue in this case.

88. As more fully set forth in the Motion for Expedited Court-Ordered Mediation and to Defer Deposit or Bond Issues, filed contemporaneously with the Petition (and served upon Respondents with the Summons and Petition), Receiver stresses that there is an urgent need to see if matters concerning the property rights and interests can be clarified and agreed to so that a water utility operator – e.g. Aqua Green – can be approved by the Receivership Court, as per the Receivership Plan, and set about the business of securing regulatory approval and providing reliable potable water to the Renegade Mountain community.

89. Accordingly, the Receiver requests the Court to order the parties, on an expedited basis, to conduct mediation in this case.

VI. PRAYER FOR RELIEF

Wherefore, LHWS, by and through its Receiver prays for the following relief:

1. Summons issued as to the named Respondents;
2. The Court order the parties to expedited mediation as soon as possible after service upon Respondents;

3. The Court defer any bonding or deposit requirement until after the results of the mediation are known;
4. If mediation is unsuccessful, all matters in dispute be tried before a jury of appropriate number consistent with the applicable eminent domain laws of the State;
5. The Court issue orders declaring rights and/or vesting title as to property and/or easement rights as requested herein in the name of LHWS, by and through its Receiver; and
6. The Court grant all other relief as dictated by equity and justice.

Respectfully Submitted,

By: *J. Graham Matherne*
J. Graham Matherne, BPR No. 011294
Wyatt, Tarrant & Combs, LLP
333 Commerce Street, Suite 1400
Nashville, Tennessee 37201
Telephone: 615.244.0020
Facsimile: 615.256.1726
gmatherne@wyattfirm.com

Attorneys for Petitioner for Laurel Hills Water System, in Receivership by and through its court-Appointed Receiver, Receivership Management, Inc.