



City of Grand Terrace

City Manager's Office

December 1, 2017

Resident
City of Grand Terrace

Subject: Response to RHW
From: G. Harold Duffey, City Manager

Dear Sir or Madam:

As the City Manager for the City of Grand Terrace, I am responsible to insure the City's fiscal solvency. A review of the City's financial records showed that RHW Company was not in compliance with the City's Municipal Code (37 years of unpaid street cuts, amounting to approximately \$500,000.00). I immediately contacted RHW and they agreed to start paying their street cut fees in 2016.

However, RHW continues to insist that they are exempt from paying a Franchise Fee because they were operating before the City incorporated. The City requested proof of the exemption but RHW has not provided the necessary documentation. I informed the Council and was given the following direction:

1. Work with RHW to pay their share for cutting into city streets and ask for information to support their claim of exemption from a Franchise Fee.
2. Compel RHW to present information supporting their claim of exemption from Franchise Fee.
3. Negotiate a Franchise Fee and operating principals to insure the City of Grand Terrace and RHW preserve City infrastructure.

The City Council of Grand Terrace, approved a contract to engage a water attorney to compel RHW to produce documentation to resolve this issue. RHW has and continues to rebuke the City's request to resolve this matter. I still maintain the premise of our original letter to RHW in April 2016, that RHW is a valued partner within the City of Grand Terrace. However, a partnership is based on both parties benefiting from the relationship.

The City cannot impose a tax unless authorized by the electorate and the State of California highly regulates a city's ability to impact the fees charged by utilities. However, state law does authorize cities to impose a Franchise Fee. A Franchise fee is in effect a rental payment or a toll for the use of the streets. The Franchise Fee is not a tax but rather a means for the heaviest users of the streets to pay the cost of maintenance caused by their use. Examples:

The State authorize a Franchise Fee for the following:

- Electricity
- Gas
- Telephone
- Cable
- Water
- Trash

State law authorizes a city, such as the City of Grand Terrace, to charge a Franchise Fee of not more than 2% but not less than 1% of a water company's revenue and it is true, that the utilities often pass this charge on to their consumers. The Charge usually appears on the consumers bill as a separate line item, but this is not required by law.

Riverside Highland Water (RHW) is a Mutual Water company and is not a public utility regulated by the Public Utilities Commission like in most urban areas. However, it has been afforded all rights of a public utility in the City of Grand Terrace's Municipal Code. Like all other utilities, it does not need a business license and it has full access to place new and repair existing infrastructure.

Every business has a direct overhead or operating costs. California Law requires a mutual water company deliver water to shareholders at cost. If the law requires a water agency to pay a Franchise Fee of 2% annually to a municipality and it is not paid because it's a mutual water agency, the business expense doesn't go away. The City is now subsidizing the mutual water agency and that is in direct violation of California Law.

I understand that this issue has been weaponized to appear as an unfair "water tax". However, RHW's General Manager and Board are aware of the City's request and refuse to comply with the law or provide proof of RHW exemption from the law.

If you have any further questions pertaining to information in this letter, please email me.

Sincerely,



G. Harold Duffey
City Manager

hduffey@grandterrace-ca.gov



12374 Michigan Street • Grand Terrace, CA 92313-5602 • (909) 825-4128 • FAX (909) 825-1715

November 28, 2017

[REDACTED]
Grand Terrace, CA 92313

Re: City of Grand Terrace v. Riverside Highland Water Company
San Bernardino County Superior Court Case No. CIVDS 1712996

Dear [REDACTED]

The purpose of this letter is to advise you of the recent efforts of the City of Grand Terrace to impose a new water tax on the residents of the City through the imposition of a franchise fee on the Riverside Highland Water Company by virtue of the above-referenced lawsuit.

In this regard, Riverside Highland Water Company was incorporated as a mutual water company by the State of California in 1898. Since that time, the Company has provided domestic and irrigation water services within what is now the City of Grand Terrace, as well as in portions of the City of Colton and unincorporated areas of the counties of San Bernardino and Riverside. As such, the property rights by which the Company transmits and distributes water to its shareholders were acquired either by express conveyance or by operation of law *approximately 80 years prior to the City's incorporation in 1978.*

Nevertheless, the City of Grand Terrace has filed a lawsuit against Riverside Highland Water Company seeking legal authority to unilaterally impose a franchise fee on the Company for the so-called privilege of the use of the Company's own pre-existing infrastructure. As a non-profit mutual water company, the Company is required by California law to deliver water to its shareholders at cost. Therefore, Riverside Highland Water Company would be compelled to pass any franchise fee levied by the City of Grand Terrace and all associated administrative costs onto Grand Terrace customers.

Consequently, the City of Grand Terrace is – in a very real sense – suing its own residents for the authority to impose a new tax on your water bill. Further, since the City's legal costs are being paid out of its public monies, and the Company's legal costs are being paid out of its corporate funds, the residents are paying twice to both initiate and defend a lawsuit that could result in a new water tax against the residents of Grand Terrace. This is a colossal waste of our financial resources and an unconscionable abuse of the public trust. Instead, the City and the Company should operate in harmony to provide the essential public services that are each party's respective responsibilities.

It is Riverside Highland Water Company's hope that the City Council will reconsider its litigation and dismiss its lawsuit against the Company. The Company remains willing to pay

inspection fees, street-cut fees, and permit fees to the City. However, it is both illegal and unnecessary for the City of Grand Terrace to attempt to extract additional new franchise fees from the Company for the use of facilities that have been in place since as early as the 1800s - and in some cases at least 80 years prior to the City's formation.

As your Board of Directors, we have done everything possible to this point to resolve this matter. We are now asking that you, our Shareholders and Customers, contact your representatives to voice your opinions and concerns.

Representative and Phone number	Mailing Address	Email Address
Darcy McNaboe-Mayor 909-824-6621 Ext 234	22795 Barton Road Grand Terrace, CA 92313	dmcnaboe@grandterrace-ca.gov
Sylvia Robles- Mayor Pro Tem. 909-824-6621 Ext 236	22795 Barton Road Grand Terrace, CA 92313	srobles@grandterrace-ca.gov
Doug Wilson- Council Member 909-824-6621 Ext 237	22795 Barton Road Grand Terrace, CA 92313	dwilson@grandterrace-ca.gov
Bill Hussey-Council Member 909-824-6621 Ext 235	22795 Barton Road Grand Terrace, CA 92313	bhussey@grandterrace-ca.gov

Thank You,
Riverside Highland Water Company
Board of Directors