



Windermere Oaks Water Supply Corporation

Committed to Providing Clean, Safe Water for All Our Residents

Frequently Asked Questions

Will the company need to raise rates again in 2021?

It might. The water company continues to face unprecedented legal expenses in response to suits filed against it. Just recently the company received notice that the attorney for plaintiffs' John Richard Dial, Stuart Bruce Sorgen and Rene Ffrench wants five more depositions of current and former directors. These are extremely costly to the corporation. Meanwhile, the rate protest filed by Josie Fuller and Patti Flunker is already nearing \$100,000 in legal costs, primarily to defend against their efforts to see privileged information in legal invoices from 2019 which can be used by their friends, Dial, Sorgen and Ffrench against the corporation in their lawsuit. And Danny Flunker has filed suit as intervenor in a case which the company filed to protect its privileged legal invoices from the attorney representing Dial, Sorgen and Ffrench (the Attorney General now agrees that the information in the invoices is privileged). The legal fees needed to protect the corporation are likely to exceed the \$250,000 which the directors budgeted for 2020. All legal fees are part of the general and administrative fees which may be included for consideration in the rate base. None of these fees are being incurred in a lawsuit that the corporation brought.

What are the costs?

The company is currently paying about \$20,000 a month to our law firms, but we have a backlog of bills owed to them, at about \$200,000. As long as the court cases continue, these costs will mount and we all will pay for them in the form of higher rates or special assessment.

Is the WOWSC paying for directors' legal costs?

Yes, the WOWSC is paying legal fees for the defense of eight current and former Board members in the case brought by plaintiffs Dial, Ffrench and Sorgen. The plaintiffs seek to hold these volunteer Board members **personally liable** for damages and penalties for acts the plaintiffs allege were beyond the powers of the Board and illegal. These allegations have not been proven in court. The current Board does not believe that the allegations are true and has agreed for the company to pay defense costs. This is standard practice for corporations to advance legal fees to defend its directors, and is contemplated and expressly allowed by Texas law. The Board followed Texas law in requiring each current and former Board director to affirm that they had not committed wrongdoing. And the Board may seek reimbursement of defense costs if a court finds otherwise.

Why is the company paying these fees?

The company is protecting benefits our customers have received from decades of service from volunteers performing a wide range of business activities. Before the plaintiffs and their allies began their legal attacks on the company, our members benefited from low monthly base rates for water service which has been delivered by volunteer Board members. If the lawsuits were to drop, the monthly base rates could be decreased once the corporation finishes payment for legal fees.

Is it legal for the company to pay directors' legal fees?

Absolutely yes! The Texas Legislature and U.S. Congress recognize the value of volunteers to non-profit corporations. The benefit is that a community does not have to pay these volunteers and yet receives considerable amounts of managerial and administrative support that keeps the company from needing to hire employees. The Texas Legislature and U.S. Congress have established robust legal protections from personal liability when no egregious abuses have occurred. Paying these legal fees is also specifically allowed by Texas business law, by decision of the Board.

Doesn't the corporation have insurance for these costs?

Yes, the corporation has Directors & Officers insurance which should, in the opinion of our counsel, cover these costs. The petitions by the plaintiffs allege felonious activity (in part) which has delayed the insurance company's response. The Board is continuing to pursue its claims on insurance.

What would happen if the corporation did not pay these legal fees?

In the view of the Board, the corporation would likely fail to attract any more volunteers to its service if people knew they could be held personally liable and then also be required to spend personal funds to defend themselves against a group of people who routinely sue the corporation. The value of volunteer service is worth protecting.

Has volunteerism suffered?

Yes! Consider that our 2020 election was cancelled due to lack of volunteer candidates. There were two positions open and only one sitting Board member agreed to run – no other candidates stepped forward from the community. The Board had to re-appoint another member who had previously served but had not applied.

Is the WOWSC paying for the defense costs of Friendship Homes?

No. That is one of the many false allegations by the plaintiffs and their allies. Friendship Homes is the company which purchased the 4.3 acres of land from the water company in 2016. The title company for Friendship Homes is paying for its attorney's filings, attendance at depositions, etc.

Did the company give 0.5 acres to Friendship Homes?

No. This is yet another contrivance of the plaintiffs and their allies. A series of errors at the title company did not convey all 4.3 acres covered by the sale contract at the time of the sale. The conveyance has been corrected with sworn affidavits confirming how the errors were made and their need for correction. The 2019 Board sought to correct this oversight to undo any potential liability it might face if the error remained.

Has the water company been losing or winning in the cases filed against it?

Overall, yes. Summarily, no. Our Board sought protection against cyberbullying against directors from the plaintiffs and their allies. The judge granted almost everything we asked for. Our company has asked the Attorney General to protect client-attorney privileged documents, namely legal invoices which could provide the plaintiffs with insights into strategy. The AG has agreed with our lawyers (but an intervention by Mr. Flunker is continuing the case and adding to our costs). The Public Utility Commission dismissed wide-ranging complaints about financial mismanagement alleged by Ms. Fuller and Ms. Flunker, but has continued its inquiry into the company's legal expenses in 2019. Again, the company is trying to protect these legal invoices as attorney-client privileged documents so that its legal protections in the Dial, Sorgen, French suit remain. The PUC judge did rule against our company's request to abate (postpone) the rate case until after the other case concludes. Mediation is slated later in November.

Did anything come of the letter to Burnet County Sheriff and District Attorney alleging organized crime at the water company?

No. While some officials may ask a few questions at some point after the civil case concludes, there was nothing criminally illegal about the activities alleged in the letter. Again, the letter is a false narrative, created by a handful of people who believe every action of the water company to somehow be part of a grand conspiracy. If anything, the letter further demonstrates the type of bullying and harassment which dissuades people from volunteering for board service and demonstrates the mindset which keeps adding to the legal costs.

What is the status of Public Information Act requests?

The company continues to receive PIA requests and responds to them in a timely and complete manner. In 2019, we received 46 requests with more than a hundred questions. The company responded with hundreds of emails and documents containing thousands of pages. In 2020, the company has received 32 requests and has supplied hundreds of emails and documents containing thousands of pages. In some circumstances the company has appealed to the Attorney General to retain or redact some information related to the court cases. The company is incurring significant legal costs responding to multiple inquiries related to legal invoices that the Texas Attorney General believes to contain attorney-client privileged information.

What is the cost to the corporation?

Over the corporation's history, it has never received this many PIA requests. The corporation contracted in July 2019 with Director Joe Gimenez to serve as Public Information Officer to defray costs for services that would be assigned to the law firm. Gimenez receives \$416 per month for this service, in addition to all the volunteer services he provides. Nonetheless, the PIA requests still require legal review and, sometimes, filings with the Attorney General to keep attorney-client counsel privileged. These requests increase the legal fees passed to ratepayers.

Didn't a majority of members vote to remove Joe Gimenez from the Board?

No. This is another false allegation of the plaintiffs' allies. In December 2019, only 56 members voted to remove Director Gimenez. Company bylaws required that a majority of ALL members – or 127 at the time – vote to remove for removal to happen.

Did the company lawyers help Mr. Gimenez retain his position?

No. The lawyers only assisted the company in holding a legally valid removal proceeding with mail-in ballots and counsel on meeting processes and procedures, which the company wanted to follow. Again, the allies to the plaintiffs who wanted Mr. Gimenez removed are fueling this false narrative in the neighborhood. The lawyers also assisted the corporation respond to various instances of business interference in the process leading up to the December hearing.

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