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Minutes of the 2025 OBCG Annual Meeting - Saturday, June 21

Attendance

Erika Aust, Josh and Christy Beam, DeeDee and Dan Benitez, Patrick Brockhaus, Eric Campbell, Kyle and Michelle Emtman, Wendy Frandle, Dennis and Kelly Frett, David and Teresa Hancock, Ella Mullins, Laura and Shelley Petrie, Kelly and Adam Silver, Chuck and Jil Wardle

Welcome

President Dennis Frett introduced himself, welcomed community members and called the meeting to order.

June 1, 2024 – June 10, 2025 Financial Report

The Operating Account end balance was $17,707.19; the Capital Account end balance was $10,205.12

Third Well Timeline and Status

President Frett reviewed the history of and progress toward the third OBCG well. Since the 2024 annual meeting, the well location was finalized (September 2024), the well was drilled on OBCG property at 312 E Orchard Beach Drive (October 2024) and the required testing (January 2025) was successful.

Northwest Water Systems, which is contracted to manage the system for OBCG, will soon complete the full engineering design needed to request quotes for the parts and labor to bring the third well online.

Third Well Costs

President Frett believes that if cost estimates for the remaining work don't change significantly, OBCG will have enough money after October 2025 (when annual fees are collected) to complete the well project.

The purpose of the third well is to support the OBCG goals of Reliability, Redundancy and Expansion; it is anticipated that at least six new connections will be authorized by the state Department of Health once the new well is online and a capacity analysis is completed. As OBCG is at capacity now, this responds to members' interest in obtaining additional connections.

Legal Issue Timeline and Status

President Frett detailed how the land survey commissioned by OBCG to confirm the boundaries of the parcel at 312 E Orchard Beach Drive, in support of the third well project, has led to a lawsuit against OBCG. Prior to the 2024 annual meeting, OBCG had been formally notified that a member who owns a parcel adjacent to the wellhouse property was claiming to have rights to the wellhouse property, through "adverse possession." Since then, OBCG has been forced to retain legal counsel to respond to the law firm representing the member; despite repeated efforts by OBCG to address misconceptions and de-escalate the situation, a lawsuit was filed against OBCG in Mason County Superior Court in September 2024. In June 2025, OBCG encouraged the member to dismiss the lawsuit on the grounds that as a municipal water system, OBCG is protected against an adverse possession claim; however, the member refused, and the lawsuit will proceed.

While the OBCG Executive Committee has done its best to control the legal costs down, with Vice President Erika Aust putting in many hours in support of the attorney retained by OBCG, more than $6,300 that normally would have gone toward the third well project has already been diverted to pay attorney fees. If the lawsuit proceeds to trial, dramatically increasing the legal cost, funding for the project will be at risk unless OBCG does an a special assessment specifically to cover attorney fees. OBCG bylaws authorize the Executive Committee to call for an assessment; a community vote is not required.

Excerpts from communications between the attorneys for the member and OBCG are in the appendix of the Annual Meeting handout, which was distributed to members in attendance and is being emailed with the minutes, in addition to being posted on the obcg.org website.

PUD #1 Acquisition of OBCG Water System

President Frett shared the timeline of meetings between the Executive Committee and Mason County PUD #1 regarding its possible acquisition of the OBCG water system. In the interests of maximum transparency, there also was a Zoom meeting with PUD #1 officials on May 16, 2025, to which all OBCG members were invited.

President Frett reviewed the pros and cons for moving forward toward an acquisition by PUD #1, and explained that nothing can proceed until the new third well is online. From then, it could be anywhere from six months to two years before the process of "onboarding" is complete; the PUD would take over management of the system from Northwest Water Services during the onboarding.

Questions, Answers and Comments

Q: Wendy Frandle asked, will the current fee structure for both operating and capital stay at $1000 per year?
A: Yes, however, if any unforeseen problems arise – like the failure of the pump in well #2 – OBCG would not have enough capital to complete well #3. Also, if the state regulator requires OBCG to install equipment to address the high level of manganese in the system's water (a common occurrence in systems near saltwater), that could cost as much as the new well.

Q: David Hancock asked, with the October distribution we should have enough to get the new well up and running?
A: With the operating at $17,000 and the capital at $10,000, if we bring in another $10,000 in October that will give us $20,000 in capital to finish the well.

Q: Wendy Frandle asked, do the bylaws give the board the authority to move money between operating and capital?
A: Yes.

C: Shelley Petrie asked for confirmation that legal costs related to the lawsuit against OBCG must be paid out of the fees being collected from OBCG members.
A: Correct.

Q: Chuck Wardle asked, what is the board's recommendation for the lawsuit?
A: We don't have a choice, we can't ignore it, but we don't have the money. So we would have to do a special assessment.

Q: Chuck Wardle asked, did the lawsuit go to arbitration first?
A: No.

Q: Wendy Frandle asked, do we have a title for the land the well is on?
A: Yes, and there are no recorded easements.

Q: Chuck Wardle asked, when you mention the estimated amount of a month's bill with PUD #1, is that based on an average, a dollar amount or meter reading?
A: PUD #1 does its billing on a monthly basis, unlike OBCG, but uses the same 3000 gallons/month standard for its base rate. Meters will continue to be read [which is also required by the state] to track consumption; however, the PUD's overage fees are much lower than ours.

Q: Chuck Wardle, next question, how many connections will PUD #1 give us?
A: That will be determined by the third well's capacity analysis once it is completed.
C: Laura Petrie added, PUD has no authority to authorize more connections; that is done by the state regulator, based on our capacity to draw and distribute water.

Q: Chuck Wardle said, out here on the north end of the road there are more parcels that can be developed. Can we add the vacant properties to the well?
A: Our water rights from the state are based on full buildout of all parcels in the community, which would be 64 fulltime residences [meaning there is enough water to supply undeveloped parcels, if and when the necessary connections are authorized by the state, but that depends on the infrastructure]

C: Shelley Petrie mentioned, last year we talked about our pipes being old and may need replacing. This is something PUD #1 would do. There are a lot of advantages with PUD #1.

Nomination for 3 Year Term Vice President

- President Dennis Frett asked for nominations, noting Eric Campbell was the only candidate nominated prior to the meeting; no more nominations were made.
- Eric Campbell was elected by acclamation and began his term immediately after the meeting.

Vote for PUD #1 Acquisition of OBCG Water System

- Voting was conducted by secret ballot; between those present and proxy votes, 30 ballots were counted; the result was 29-1 in favor of moving forward toward acquisition by Mason County PUD #1.

Closing Remarks

- President Frett thanked Erika Aust for her 12 years of service to the community as VP, and noted she will continue to act as liaison for OBCG with the attorney retained to defend the community against the member-filed lawsuit.
- President Frett motions to adjourn the meeting
- David Hancock seconded the motion

Meeting adjourned

Orchard Beach Community Group

Water System

ANNUAL MEETING
6.21.25

Orchard Beach Community Group

Annual Meeting Agenda
June 21, 2025

Welcome

Call to Order

Financial Report

Third Well – Timeline and Status

Legal Issue -- Timeline and Status

Acquisition by PUD #1 -- Vote

New Vice President -- Vote

June 1, 2024 – June 10, 2025 Financial Report

Orchard Beach Community Group

Group A Public Water System

Income and Expense report for June 1, 2024 to June 10, 2025

Beginning Cash Balance		
Operating Account	$	16,485.72
Capital Account	$	48,078.52
Interest	$	17.60
	$	64,581.84
Income		
Operating Income	$	17,400.00
Capital Reserve Income	$	19,000.00
Overage Income	$	640.02
Total Income	$	37,040.02
Operating Expenses		
PUD	$	(1,144.42)
Northwest Water Systems	$	(7,874.71)
INSURANCE	$	(2,799.00)
ANNUAL REPORT	$	(20.00)
Web Site, Internet Expenses	$	(3,700.00)
Department of Health	$	(880.75)
MISC.	$	(399.67)
Sub Total Operating Expenses	$	(16,818.55)
Capital Expenses		
Legal Fees	$	(6,306.84)
SO-1 Pump Replacement	$	(6,863.97)
Mason County	$	(295.00)
DR Surveying	$	(811.75)
NW Water (engineering)	$	(3,623.75)
Well Drilling	$	(18,967.51)
Well Pump/Test/	$	(20,004.58)
Sub Total Capital Expenses	$	(56,873.40)
Total All Expenses	$	(73,691.95)
Reduction in Cash Reserves	$	(36,651.93)
Operating Account Ending Balance	$	17,707.19
Capital Account Ending Balance	$	10,205.12
Total Cash Account Balances	$	27,912.31

Third Well -- Timeline and Status

9/2023	Vote to approve third well
10/2023	Design engineering begins; NWS requests identification of OBCG parcel boundaries
11/2023	Project delayed by discovery of boundary issue
3/2024	Legal description of boundary corrected
5/2024	Survey completed
9/2024	Location of third well finalized
10/2024	Drilling of third well completed
1/2025	Test of third well pump successful

New Well Costs (Estimate as of 9/23)

Scope

Drill new Well to provide Backup and Redundancy for SO-2 Well

Estimated Costs

Engineering/Design	$	15,000
Permitting	$	2,000
Well drilling (200')	$	20,000
Well Pump	$	10,000
Pump Controls	$	4,000
Pump Flow Meter	$	3,000
Electrical work	$	3,000
Pump house remodel	$	2,000
Tax	$	6,000
	$	65,000

- Current Spending on Well #3 = $50,000

Legal Issue -- Timeline and Status

6/2024	Neighbor claims rights to OBCG property
8/2024	OBCG attempts to de-escalate
9/2024	OBCG ‘has been a good neighbor’
9/2024	Neighbor threatens lawsuit/injunction
9/2024	OBCG continues de-escalation effort
9/2024	Neighbor escalates situation, files lawsuit
10/2024	Lawsuit a ‘surprise’ given recent interactions
3/2025	Neighbor pursues easement…again
6/2025	OBCG encourages dismissal of lawsuit

PUD #1 Acquisition of OBCG Water System

The Executive Committee has worked to ensure the OBCG water system continues our priorities of **Compliance, Reliability, Redundancy and Expansion.**

Looking ahead, it will be very difficult to continue to meet all of the requirements and future needs with a volunteer Executive Committee.

With limited funds and only 39 available connections, potential costs for future improvements or requirements will get very expensive.

Executive Committee members have met with PUD#1 multiple times over the past year; our recommendation is that it would be in the OBCG's best interest to move into an agreement to be acquired by PUD#1.

PUD #1 Acquisition of OBCG Water System

Pros	Cons
Estimated annual cost of service is lower	No voting for PUD #1 comissioners
Monthly billing instead of 1x-2x/year	
PUD has far more resources for responding to infrastructure issues	
Treatment for iron/manganese would be systemwide when mandated by EPA	
Connection fee should be lower	
Access to state and federal grants for infrastructure improvements	
Increased service stability	
Lower overage fee per gallon	

New Vice President -- Vote

- All terms on Executive Committee are for three years
- Members may cast **one vote per metered connection**
  -- number of parcels owned is not relevant
- Proxy votes allowed; members alerted about process, many proxies received
- Thank you, Erika Aust, for 12 years of service to our community as VP!

Orchard Beach Community

APPENDIX

Neighbor claims rights to OBCG property -- 6/2024

Excerpts from June 25, 2024 letter received by OBCG:

"My clients object to the placement of a new well, fence, and/or any other structures or improvements on any portion of their property, which includes their entire driveway that they have used since 2009. They object to this new (third) well and fence regardless of the outcome of any vote at the upcoming annual meeting on June 30th.

"My clients purchased their property in 2009. Since then, they have used their driveway to access their home, and they have done so in a way that satisfies either the adverse possession and/or prescriptive easement doctrines. Their predecessors likely did the same. Since they have used their entire driveway for more than ten years, and that use has been open and notorious, continuous, exclusive, actual, and without permission, they already have property rights to the area you are talking about fencing and/or adding a new well…

…"Once we can see how much my clients' driveway has encroached on to the well parcel, we can discuss next steps. Although this land is likely already part of my clients' property under the adverse possession doctrine, we might be able to resolve this encroachment quickly with an Easement Agreement. We will discuss this later…

"Like Mr. Eide and Ms. Farrell, my clients are prepared to vigorously defend their property rights should the OBCG ignore the demands in this letter or in any way interfere with or impact their access to and from their home…"

OBCG attempts to de-escalate – 8/2024

Excerpts from Aug. 12, 2024 letter from OBCG attorney, responding to neighbor's June 25, 2024 letter asserting potential adverse possession or prescriptive easement rights over portions of the OBCG's wellhouse parcel:

"… A claim of adverse possession requires (1) open and notorious possession, (2) exclusivity, (3) hostile possession, and (4) continuous and uninterrupted use, (5) for no less than 10 years. Your clients have not exclusively occupied the disputed areas in question, as the disputed areas adjacent to the existing wells and pump house have been shared with and used by the community, OBCG, and the well maintenance company which regularly inspects and services the wells and pump house. OBCG members have used the disputed areas when necessary to inspect or maintain the well or well house and associated equipment, including painting and installing a roof on the pump house and landscaping. Moreover, the use by your clients has been and continues to be permissive subject to the implied consent of OBCG. OBCG has been aware of your clients' respective use and has allowed it to continue as a neighborly courtesy (and therefore not "hostile"). Although the elements of a prescriptive easement differ slightly from those of adverse possession, such a claim still requires the use to be "exclusive" and "hostile", neither of which can your clients establish.

"Regardless of the relative merits (or lack thereof) of any legal claims, from a practical standpoint this is the only area where OBCG can drill a new well, and a new well is needed for the benefit of the community, including your clients. It is hoped that OBCG and your clients can reach an amicable solution to resolve this situation.

"My client requests that the parties focus their energy on working towards solutions to address each parties' interests and concerns, while preserving OBCG's ability to drill an additional well and provide water service to its members including your clients."

OBCG 'has been a good neighbor' – 9/2024

Excerpts from Sept. 6, 2024 letter from OBCG attorney responding to Aug. 13/Aug. 26 requests for "potential solutions" from neighbor's attorney:

"The OBCG Executive Committee has reviewed this matter at length, with assistance from members of its advisory committee. This diverse and community-minded group, which comprises more than 20% of the OBCG membership, gave thoughtful consideration to whether the concerns expressed by your clients could be addressed without also potentially restricting OBCG's ability to continue providing its members with a reliable supply of potable water.

"Unfortunately, while the options discussed among the committee members included not only access easements but also land exchanges and boundary adjustments, none was found viable.

"…The Executive Committee has gone to great lengths to locate this new well so that your clients may continue to cross the community parcel to access their properties. However, knowing more infrastructure improvements may be needed someday – such as a storage reservoir – the reviewing committee members concluded it would be irresponsible to make agreements with your clients that could limit or even prevent such upgrades in the future.

"…Similarly, the Executive Committee recently shared with OBCG members how the escalating challenges of internally managing the community water system may result in a transition to outside ownership and management – perhaps by a public utility district, as is the case with many other community water systems in Mason County. OBCG's Executive Committee believes entering into any form of agreement which could impact or

"…the OBCG Executive Committee has never formally proposed restricting [your clients'] ability to cross OBCG property for access purposes. On the contrary, OBCG has been a good neighbor by allowing this access as a courtesy and with express and/or implied permission.

"Legal fees paid to respond to your clients' claims eat away at OBCG's limited funds, jeopardizing the water system's operations and proposed expansion – which directly affect the habitability and value of all OBCG member properties, including those of your clients. In light of the foregoing, it is hoped that no further action will need to be taken on these matters requiring the ongoing involvement of counsel.

Neighbor threatens lawsuit/injunction – 9/2024

Text of Sept. 24, 2024 email from attorney for neighbor:

"I'm reaching out concerning the Orchard Beach Community Group. My partner, Britney Bergen, asked me to take over representation of the Lus. She made this request in light of the fact that the Association appears to be moving forward with its plans to install the new well despite the Lus' interest in the proposed area.

"As I understand it, OBCG sent a newsletter indicating that it intends to begin construction as early as next week. Based on OBCG's newsletter, my clients have authorized us to immediately move forward with filing a lawsuit, and seeking a TRO and/or injunction, as necessary. If there's a way to avoid that course of action, I and my clients would prefer to do so. For instance, some assurance, including updated plans, that confirm the Lus' driveway won't be obstructed with the new fence might work.

"We'd still need to quiet title to the driveway area to the extent it encroaches, but could do so without halting construction altogether. Let me know if this has any traction with OBCG, or if you'd like to discuss."

OBCG continues de-escalation effort – 9/2024

Text of Sept. 24, 2024 email from OBCG attorney:

"Thanks for your email. I think perhaps there are some misunderstandings here.

"First, the 3rd well will be located on OBCG parcel and in an area that will not interfere with your clients' permissive access. It will be adjacent to one of the existing wells, which is well away from your clients' claimed access point. If you need some documentation of where the new wellhead is to be located, I can see if I can provide that to you.

"Second, there is no plan to install any fencing.

"Third, should you choose to file suit, the costs incurred by OBCG in defending the lawsuit will diminish the funds needed for the 3rd well, which the community (including your clients) need to ensure an adequate water supply. Jeopardizing the community's water supply would seem unwise and likely an unpopular decision with the community.

"This is a small community with limited funds. Legal proceedings would be detrimental to the entire community and jeopardize its water supply. Hopefully, your clients will reconsider their approach on this matter."

Neighbor escalates situation, files lawsuit 9/2024

Excerpts from lawsuit filed Sept. 25, 2024 in Mason County Superior Court:

"Plaintiffs purchased Plaintiffs' Property in 2009. At that time, a gravel driveway provided access from Orchard Beach Drive to Plaintiffs' Property ("Driveway"). Since that time—for more than 15 years—Plaintiffs have exclusively used the Driveway as the sole means to access their home. Plaintiffs have exclusively used and maintained the entirety of the Driveway as their own for a period of more than 15 years."

"Plaintiffs request the following in relief:

- **A decree quieting the title to the Disputed Area in Plaintiffs free and clear of any and all claims by Defendant.**
- **A decree affirming Plaintiffs rights in Disputed area**
- **In the alternative, a decree declaring that the Well Parcel is burdened by, and the Plaintiffs property is benefitted by, a perpetual easement for ingress and egress over and across the disputed area.**
- **An award of costs and reasonable attorney fees under RCW 7.28.083 and other applicable sources of law and equity.**
- **An order of injunction relief ordering Defendant to permanently refrain from entering onto or otherwise taking action to possess or use the Disputed Area.**
- **Such other relief as the Court deems just and equitable."**

Excerpt from Oct. 7 email from attorney for neighbor:

"Ms. Bergen waited for several months to get information on your client's permissive use claim, or reach some other resolutio n short of filing. Since we hadn't received either, the Lus instructed us to file after learning of the OBCG's intent to start drilling.

"If the OBCG can provide evidence of the permissive nature of the Lus' use, I will discuss with them the potential of dismissing this suit. If not, title still needs to be quieted. It makes sense to do so by agreement, if possible. We plan to have a surveyor on-site in the coming weeks, which should clarify our position. For what it's worth, despite the filing, the Lus still wish to find an amicable way to quiet title. I'm happy to discuss how we can do this, even if that means pressing pause on the lawsuit."

Lawsuit a 'surprise' given recent interactions – 10/2024

Excerpts from Oct. 17, 2024 letter from OBCG attorney responding to filing of lawsuit:

"This lawsuit is an unfortunate development and one that is detrimental to the entire Orchard Beach community. I am writing this letter in the hope that the additional facts it clarifies will lead your clients to dismiss their lawsuit, as it is essential that the portion of OBCG property your clients are seeking by adverse possession (the "Disputed Area") remain owned by OBCG – without any limitations on access or use.

"The "exclusivity" and "hostile" elements of your clients' claims are disputed. As to exclusivity, in addition to periodic use of the Disputed Area by OBCG members to perform various maintenance and other work on the pumphouse (painting, landscaping, roof repair, etc.), OBCG has the well and pumphouse inspected and monitored by Northwest Water Systems ("NWS") monthly. NWS has records going back to 2006, documenting their visits…When NWS visits the site, they park their vehicle in the Disputed Area. In addition, Davis Pumps, Inc. ("DPI") performs periodic maintenance and repairs of the pumphouse equipment, including emergency repairs and has been doing so for decades. When DPI performs this work, it parks its vehicle in the Disputed Area… As noted by DPI, ensuring the Disputed Area is accessible is essential. The shared use by the owner (OBCG), including regular access by contractors retained by the owner, is likely fatal to your clients' claim for either adverse possession or a prescriptive easement.

"As to "hostility," your clients' use of the Disputed Area has been apparent for all to see when you drive by on the main road (Orchard Beach Drive) as their access point is visible to the naked eye. As you may or may not know, your clients very rarely use their property. This is supported by the records held by OBCG, which show zero water consumption at your clients' address during at least eight of the preceding 12 months. This very limited use of the Disputed Area was deemed acceptable by the OBCG in the past and the board has consented to it as an accommodation to your clients.

"Your clients' access to their property, which they rarely use, has not been impacted in any way. Should there be some issue in the future where this access must be blocked or restricted, your clients certainly have other options to access their property. In the meantime, your clients may still drive to and from their property, as they have since 2009. OBCG requests that your clients agree to dismiss the lawsuit… Should their lawsuit proceed, OBCG is prepared to vigorously defend its position and will seek an award of its fees and costs incurred.

Neighbor pursues easement…again – 3/2025

Excerpts from March 7, 2025 letter received by OBCG:

"The Lus recently commissioned a survey, which has now been completed. I am enclosing a copy the survey exhibit showing the a reas claimed by the Lus. Based on the historical use and possession of the claimed areas, I expect the Lus to prevail in the pending suit.
[OBCG note: survey referenced was done in May 2024, prior to contact with neighbor; OBCG commissioned it to support drilling of third well]

…"The Lus' use of the driveway would be found exclusive at trial, despite your clients' occasional use. Like in Crites and Harris, the Lus' use of the driveway is akin to use by a "true owner." Your clients' and the well maintenance company's infrequent periodic entry onto the property, to the extent it could even be substantiated, does not constitute use like a "true owner". The Lus, however, maintain the driveway, use it daily and as their exclusive means of access when they are staying at their property, and monitor others' use of the driveway as if it is their own. Considering Washington's well-established authority on these issues, the court will no doubt find here that the Lus' use and possession satisfies the exclusivity element.

"Your previous refusal to recognize their claim necessitated filing this lawsuit, and I am confident that my client's claim w ill be upheld in court. Before engaging in further proceedings, however, and solely in the interests of avoiding additional time and expenses, my clients have authorized me to convey the following settlement offer:

In exchange, the Lus would agree to dismiss their pending lawsuit with prejudice.

--**The parties execute a written settlement agreement, under which the Lus would forego their adverse possession claims;**

--OBCG grants the Lus an express, non-exclusive easement for ingress, egress, and utilities;

--OBCG pays all attorneys' fees and costs incurred by the Lus in this matter, including the costs of preparing the settlement agreement.

"This offer will remain open until **April 4 , 2025 at 5:00pm**, if not withdrawn before then. This offer should not be taken as a concession of any kind. I sincerely hope your client recognizes the value in this offer and the risks he faces by continuing with this conduct. "

OBCG encourages dismissal of lawsuit – 6/2025

Excerpts from June 9, 2025 letter from OBCG attorney in response to service of lawsuit:

"This letter is to bring two issues to the attention of your clients and provide them with the opportunity to dismiss their lawsuit.

1. OBCG members may be forced to pay directly and individually for legal costs incurred.
"As I have previously advised your office, OBCG has a limited budget… The time, money, and effort required to address and respond to your clients' lawsuit negatively impacts OBCG's operations and ability to maintain the community water system. This impacts all members.

"The OBCG Bylaws (copy enclosed for your reference) authorize the Executive Committee to take action as needed to protect the interests of the group. This includes addressing "unusual expenditures" and imposing increased member charges and/or special assessments. If this matter is not resolved soon, expenditures incurred in defending against your clients' lawsuit will have to be the subject of a financial assessment to all members.

2. As a Group A public water supplier, OBCG is exempt from adverse possession and prescriptive easement claims.
"As a Group A public water supplier, OBCG is exempt from adverse possession and prescriptive easement claims. OBCG is a Group A public water system as defined by WAC 246-290-020. Property owned by a community-owned Group A water system is not subject to claims for adverse possession or prescriptive easement."

OBCG encourages dismissal of lawsuit (cont.)

“RCW 7.28.090 specifically provides adverse possession claims do not extend to lands “held for any public purpose”. Washington courts have held “liberal construction required of RCW 7.28.090 reveals the legislature’s intent to broadly shield qualifying land from any form of adverse possession.”

“OBCG need only show “some advancement of the public’s well-being from any part of the property” it holds, “regardless of whether those uses are traditionally classified as “governmental” or “proprietary.” …. OBCG qualifies as a “municipal water supplier” under the statute and is defined as a Group A water system.

“Additionally, this situation is analogous to an HOA which owns common land for the benefit of the owners, which Washington law has expressly stated is not subject to adverse possession under RCW 64.90.705.

“Based on the foregoing, we expect a court will be inclined to find the property owned and managed by OBCG for the benefit of its members is not subject to an adverse possession or prescriptive easement claim and your clients’ lawsuit will be subject to dismissal. As you are aware, should OBCG prevail, it will be entitled to seek an award of its attorneys’ fees and costs. As this whole matter could have been avoided if your clients had been willing to be more reasonable, OBCG will most definitely be seeking an award of fees in this circumstance.

“In our prior correspondence, I set out the bases and evidence in support of other defenses to your clients’ claims, related to their inability to prove exclusive or hostile use of the disputed area. Our latest research has revealed an additional defense, which appears dispositive and subject to disposition by a motion to dismiss/summary judgment. OBCG requests confirmation within ten business days whether your clients will agree to dismiss their lawsuit."