

January 15, 2024

From: Steve Smith, authorized agent/designated manager of member Madrona Berry LLC.

Madrona Berry LLC is an owner of property within the EWUA service area which holds a water membership. Steve Smith is a member of Madrona Berry LLC and is the designated manager with regard to Madrona Berry LLC's EWUA membership. He has been authorized by action of the Madrona Berry LLC members to act on behalf of Madrona Berry LLC on all matters regarding EWUA. This includes receiving notices from EWUA to the members. EWUA has in its files for Madrona Berry LLC, a statement that Steve Smith is the authorized agent for Madrona Berry LLC.

This explanation is provided because EWUA disputes that Steve Smith has a right to request the information.

Please provide replies to:

Steve Smith, Manager, Madrona Berry LLC
PO Box 1573
Eastsound, WA 98245
Email - orcasart@gmail.com

Request for Information

This is a formal request from Steve Smith, as the designated manager of Madrona Berry LLC, a Member of EWUA, requesting that the EWUA Board direct the General Manager to permit the inspection and copying of the Association records as requested below and as permitted in RCW 24.03A.210. As an alternative to the in-person inspection at the EWUA offices, please direct the staff of EWUA to provide electronic copies of the requested information. Please authorize delivery of the information and provide an estimate of the time necessary to fulfill the requests. If any request is denied, please provide a written reason for the denial.

As EWUA has repeatedly ignored or forcefully rejected prior requests of very similar nature to this, this request is presented in a more formal format and prepared with the expectation of needing to ask the Court to compel EWUA to comply with the Member's right to inspect and copy the records of the Association.

All of the requested information should be available to any Member who asks without needing to resort to the courts.

1. Notices

Madrona Berry LLC, through Steve Smith, its manager, asks EWUA to provide notices to all Members who opt into a mailing list managed by EWUA to send notices of all regular Board meetings and special Board meetings. These notices should include the agenda of each meeting, the information packet provided to the Board, intent to go into executive session, and a record of any previous and relevant actions taken by the Board. These types of notices should be sent to the email of record for the Madrona Berry LLC account, which is orcasart@gmail.com.

Good faith reason

EWUA is a private nonprofit Member cooperative. It is owned by the Members. The Members have an inherent right to know what the elected representatives are doing on behalf of the Members. In the rare case where the Board may need to discuss sensitive information, that can be done in executive session. If EWUA is transparent, it will permit the Members to be aware of and to attend Board meetings and to receive information relevant to the Member-owned Association.

2. April 6, 2023 Board meeting minutes

Madrona Berry LLC, through Steve Smith, its manager, seeks the April 6, 2023 special Board meeting minutes and the recording of the meeting made by Clyde Duke, then President of EWUA. Duke acknowledged in emails and a subsequent board meeting that he made the recording. There was both an executive session and regular session during the April 6 meeting.

Good faith reason

RCW 24.03A.210 and .215 specifically require EWUA permanently keep a copy of the minutes of all meetings of the Board and its committees and permit the Members to review and copy those records. The Members have a good faith interest in what actions the Board took on April 6, 2023, as there was an agreement by the Board on this date to comply with the demand of the General Manager, Dan Burke, to modify the bylaws of the Association. A modification of the bylaws affects every Member's rights.

3. Record of Financial Transactions

Madrona Berry LLC, through Steve Smith, its manager, specifically seeks an electronic copy of all financial transactions that EWUA has made from January 2022 through the date EWUA delivers this information. Specifically, the following is requested:

- The journal entry for each expense incurred; this journal entry should be a recording of the date, the amount, the recipient, and the account the expense was assigned to.
- The detail of each expense made via each bill-paying service such as BillPay.
- The detail of each expense charged to each credit card.
- The daily deposit record of any revenues received.
- The monthly financial statements for 2022 through the time this request is completed.

This information should be provided in an electronic format such as Excel or CSV.

Good faith reason

RCW 24.03A.210 and .215 specifically allows any Member to inspect and copy the accounting records of the nonprofit corporation. Our good faith reason is that the law requires the organization to maintain and produce the records.

4. Log of Actions

Madrona Berry LLC, through Steve Smith, its manager, asks for a log of all Board authorizations made by the EWUA Board in 2023 through the time this request is complied with. This includes voted items at Board meetings and votes conducted via email by the Board.

Good faith reason

RCW 24.03A.210 and .215 specifically require the Association to maintain and allow the Members to inspect the record of all actions taken by the Board. The Members have a right to know what the decisions of the Member-owned Association are and if those calls to action are actually followed by the Board and staff.

5. Settlement Agreement

Madrona Berry LLC, through Steve Smith, its manager, asks for a copy of any settlement agreement EWUA entered into between EWUA and Dan Burke in 2023.

Good faith reason

General Manager, Dan Burke, threatened to sue EWUA if his demands were not met. These demands included a modification of the bylaws and a vote on the removal of a Board director. These statements are evidenced in the April 6, 2023 votes of the Board during which the Board voted to:

1. Hire Acuity Forensics to conduct an investigation of the General Manager's use of Association funds.
2. Enter into a settlement agreement between EWUA and the General Manager, Dan Burke, with the following elements.

"1. A letter from either you [Association attorney, Rochelle Doyea] or the Board will be sent to both Ms. Hall and Mr. Smith, reminding them of their continuing obligations to the EWUA, its users, and its employees.

"2. Mr. Smith will be asked to step down from the Board. If he refuses, then the Board will vote to remove him. I understand that this will be effective only if the vote is unanimous. If it is not unanimous, Dan will assess his options at that time under those circumstances.

"3. The EWUA bylaws, corporate documents, and employee handbooks will be reviewed and revised by counsel.

"4. Mr. Burke's attorney's fees will be covered (approximately \$8,500.00 as of today).

"Additionally, while not part of Dan's initial demands, the audit will move forward. As you stated, any investigation by the auditor will address the specific concerns raised by Mr. Smith and/or Ms. Hall."

The Board voted to accept the demands of General Manager Burke, with the exception of his demand for his attorney fees and made those conditional on the outcome of the forensic investigation.

The bylaws are of great interest to every Member of the Association. After agreeing to the terms of the settlement agreement, the EWUA Board proposed a set of modified bylaws and held two Member feedback input meetings to discuss the proposed changes.

As General Manager Dan Burke required a modification of the bylaws and as EWUA agreed to make modifications to the bylaws as a part of the settlement agreement, the Members have a legitimate reason to see the settlement agreement, as the bylaws affect the rights of every Member.

The intent of RCW 49.44.211 is, "The legislature recognizes that there exists a strong public policy in favor of the disclosure of ... wage and hour violations ... that is recognized as illegal under Washington state, federal, or common law, or that is recognized as against a clear mandate of public policy, that occurs at the workplace...

Nondisclosure and nondisparagement provisions in agreements between employers and current ... employees ... perpetuate illegal conduct by silencing those who ... who have knowledge of ... wage and hour violations... It is the intent of the legislature to prohibit nondisclosure and nondisparagement provisions in agreements, which defeat the strong public policy in favor of disclosure."

As noted in the forensic report issued by Acuity Forensics:

"In addition I found that during the entirety of his employment, Mr. Burke never allocated any of his time to paid time off. This included sick time, holiday time, and other personal time taken" (page 1, par 4)

"It is my professional opinion that Mr. Burke's payout of PTO not only violated the check-writing procedures in place at the time of payments, but that his PTO bank was likely significantly overstated at the time of his payout. As such, PTO payouts likely represent an overpayment of payroll." (page 5, par 6)

The settlement agreement between Burke and EWUA is of legitimate interest to the Members because Burke demanded the change of the Association bylaws, and the Board voted to agree to the process of changing the bylaws as a part of that agreement.

The settlement agreement between Burke and EWUA is of legitimate interest to the Members because the forensic report found evidence of taking of Member funds by the General Manager. The strong intent of RCW 49.44.211 is to prohibit the silencing of those who are aware of the illegal activity and encourages public policy in favor of the Members' right to know. Any provision in the settlement agreement that violates the intent of the law is void.

6. Madrona Berry LLC, through Steve Smith, its manager, asks for a record of the vote by the Board that authorized the final and signed version of the settlement agreement with the General Manager, Dan Burke.

Madrona Berry LLC, through Steve Smith, its manager, asks for a log of all voted actions taken by the EWUA Board in 2023 through the time this request is complied with. This includes voted items at Board meetings and votes conducted via email by the Board.

Good faith reason

The Members have a right to know if the signed version of the settlement agreement between EWUA and Burke was actually authorized by a Board vote.

RCW 24.03A.210 and .215 specifically require EWUA to permanently keep a copy of the minutes and decisions of all meetings of the Board and its committees.

7. Madrona Berry LLC, through Steve Smith, its manager, asks for the following 2023 Board election related information:

- a. The number of proxy votes cast for each of the Members who the Board cast proxy votes for in the 2023 Board election.
- b. Which candidate(s) the Board cast each proxy vote for.
- c. The list of Members who voted in the 2023 Board election and the number of votes each Member cast.
- d. The videos that were recorded by Sam and Ayn Gailey of the ballot-counting process.
- e. The names of the Members whose votes were not accepted and the reason each was not accepted.
- f. The Member list at the time of the 2023 Board election, the contact information for each Member, and the number of votes each Member is entitled to. This list should include the account number for the Member, as this is how EWUA tracks Members, and the name of the individual authorized to represent the Member. The list that EWUA provided to the election inspector did not contain the information.

Good faith reason

The Board of directors represents the Members of the nonprofit cooperative. The 2023 election was very seriously flawed.

- It did not recognize that there were three open seats. It failed to correctly allow three votes for the three open seats. It rejected any ballot that cast more than two votes.
- EWUA claimed that the seat held by the President of EWUA was not up for election, even though the term for the President's seat had expired.
- The prior Board solicited proxies from the Members by deceptively and inaccurately telling the Members that their proxy was needed for a quorum.

- The ballot did not allow the election inspector to know how many votes to allow each ballot, as the ballot did not always identify the entity who was voting.
- The name of the agent who was authorized to cast votes on behalf of the Member was not available.
- The prior Board was actively recruiting and screening candidates.
- The prior Board cast proxy votes for its preferred candidates.
- The Board continues to hold proxies that allow the Board to vote on behalf of the Member on any subject and however the Board wants.

RCW 24.03A.210 and .215 specifically require the Association to maintain and allow the Members to inspect the record of all actions taken by the Board.

The Members have a right to know if their vote was counted, if some Members votes were counted more than once, and to what extent the prior Board corrupted the election process.

RCW 24.03A.405 requires: "The list of members shall show the address of and number of votes each member is entitled to cast at the meeting."

8. D&O Insurance

Madrona Berry LLC, through Steve Smith, its manager, asks for a copy of the D&O insurance policy held by EWUA.

Good faith reason

Due to the legal liability that the General Manager has exposed the EWUA Members to for the unauthorized use of EWUA Member funds and due to the legal liability that the prior EWUA Board has exposed the Members to, the Members have a right to know if the D&O insurance that the Association bylaws Article VI G require EWUA to carry has, in fact, been purchased and is current. There is a real possibility that EWUA will face civil and defamation suits. The budget passed by the EWUA in November 2022 includes a line item for liability insurance. However, the August 2023 monthly financial statement and budget do not include the liability insurance line, and there is no evidence in the August financial statement that the insurance expense has been paid nor is there a projected budget expense.

RCW 24.03A.210 and .215 specifically require the Association to maintain and allow the Members to inspect the record of all actions taken by the Board.

The Members have a right to know if EWUA currently has insurance protection for the Members in place.

9. 990

Madrona Berry LLC, through Steve Smith, its manager, asks for a copy of the 2022 signed 990 form.

Good faith reason

RCW 24.03A.210 and .215 specifically allow any Member to inspect and copy the accounting records of the nonprofit corporation. The 990 is a part of the accounting records of the organization.

10. Labor Compensation

Madrona Berry LLC, through Steve Smith, its manager, asks for a copy of the compensation provided to the General Manager for 2022, and 2023. Please include the salary, any bonus, the value of the benefit package, the amount of 401k matching funds, the value placed on personal use of company vehicles, the amount of the housing subsidy provided if any (rents not collected from the GM or paid by the members on his behalf), personal expenses paid on behalf of the General Manager.

Please provide the Board minutes authorizing the 2024 General Manager compensation. Please provide the amount authorized in salaries, health benefits, 401k benefit, and the value of any one-time payments, any forgiveness, any discretionary adjustment or non-adjustment to any paid time off accounts, and any amounts received or retained by the general manager not otherwise coming within any of categories listed above.

Please provide a copy of the transaction records for all compensation paid to "contract labor" shown in account 51016. This will include the name of the payee, the amount, the date, and any memo noting the service received.

Good faith reason

RCW 24.03A.210 and .215 specifically allow any Member to inspect and copy the accounting records of the nonprofit corporation.

The General Manager's wages are a matter of public record. The IRS posts nonprofit 990 returns to their site, which find their way to the Propublica site, and the 990, which includes the Manager's salary though possibly not his entire compensation (like free use of company vehicles).

EWUA is a private, nonprofit, member cooperative. The Members are owners of the Association, and the owners have a right to inspect the compensation provided to their employees.