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Confluence Rivers – Exhibit 5
Cox Rebuttal
File No. WR-2023-0006

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Issues: Local Public Hearing Comments;
Consolidation; Timesheets and Executive
Payroll; Dedicated Missouri Employee;
Capitalization vs. Repair of Systems

Witness: Josiah Cox

Type of Exhibit: Rebuttal Testimony

Sponsoring Party: Confluence Rivers Utility
Operating Company, Inc

File Nos.: WR-2023-0006 / SR-2023-0007

Date: June 29, 2023

Missouri Public Service Commission

Rebuttal Testimony

of

Josiah Cox

On Behalf of

Confluence Rivers Utility Operating Company, Inc

June 29, 2023

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**REBUTTAL TESTIMONY OF
JOSIAH COX
CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.**

I. WITNESS INTRODUCTION

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Josiah Cox. My business address is 1630 Des Peres Road, Suite 140, St. Louis, Missouri, 63131.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am President of Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”). I am also President of CSWR, LLC, (“CSWR”) and Central States Water Resources, Inc., (“Central States”), each of which is a Confluence Rivers affiliate.

Q. ARE YOU THE SAME JOSIAH COX WHO PREVIOUSLY SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF CONFLUENCE RIVERS?

A. Yes.

II. OVERVIEW

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. The purpose of my Rebuttal Testimony is to respond to testimony at local public hearings; the direct testimony filed by the Missouri Public Service Commission Staff (“Staff”); as well as the direct testimony of the Office of the Public Counsel (“OPC”) on the following topics:

- 1 • Response to Testimony at Local Public Hearings
- 2 • System Consolidation
- 3 • Time Sheets and Executive Payroll
- 4 • Addition of a dedicated Missouri manager
- 5 • Staff’s characterization of investment as repairs

6
7 **Q. WOULD YOU IDENTIFY THE CONFLUENCE RIVERS’ WITNESSES THAT**
8 **ARE FILING REBUTTAL TESTIMONY IN THIS PROCEEDING?**

9 A. In total, Confluence is filing the rebuttal testimony of nine witnesses. In addition to me,
10 the following persons are filing rebuttal testimony on the identified issues:

- 11 • Todd Thomas – Customer Experience and Operations
- 12 • Jake Freeman – Engineering and PSC System Inspections
- 13 • Brent Thies – Revenue Requirement, Rate Base Valuations, Net Operating
- 14 Losses
- 15 • Caitlin O’Reilly – Revenue Requirement
- 16 • Dylan D’Ascendis – Capital Structure, Cost of Debt, Return on Equity
- 17 • Ned Allis – Depreciation
- 18 • Brad Seltzer – Net Operating Losses
- 19 • Tim Lyons – Consolidation, Rate Design

20
21 **Q. ARE YOU FAMILIAR WITH THE DIRECT TESTIMONY IN THIS CASE?**

22 A. Yes. Staff filed extensive revenue requirement testimony on May 26, 2023. In addition,
23 OPC filed revenue requirement testimony on the same date limited to cost of capital;
24 executive salaries; corporate policies and governance; the CSWR environmental,
25 sustainability and growth report; and certain customer-facing issues such as late fees and
26 payment plans. Additionally, both Staff and OPC filed testimony on June 8, 2023, on the
27 issues of consolidation and rate design.

28 **Q. DO YOU HAVE ANY OVERARCHING COMMENTS?**

29 A. Initially, I would push back on OPC Witness Marke’s characterization of the CSWR
30 business model as comparable to “We Buy Ugly Houses.” I think that such a

1 characterization demonstrates how little OPC witness Marke, and the OPC in general,
2 understands about the gravity of the situation Missouri customers face in terms of health
3 and safety when they are served by failing water and wastewater systems. Unfortunately,
4 OPC does not acknowledge or does not fundamentally understand what it means for
5 drinking water systems to have effective disinfection put into place, or sufficient water
6 pressure restored to prevent pathogens from entering into a water system. When
7 Confluence Rivers puts sufficient disinfection in place or maintains appropriate water
8 pressure to a drinking water system, that means Confluence Rivers is preventing Missouri
9 customers from being exposed to potential human health risks and keeping customers safe
10 from sickness caused by harmful pathogens. This means keeping Missourians safe.

11 Likewise in wastewater systems, OPC does not understand or does not
12 acknowledge when Confluence Rivers talks about adding disinfection, or removing sludge
13 from receiving water bodies, that means Confluence Rivers is removing disease causing
14 human pathogens from coming into direct contact with Missouri residents - the very
15 individuals OPC is presumably charged with representing. Adding disinfection and
16 removing sludge means that drinking water sources, both groundwater and surface water,
17 are being protected from the types of diseases that centralized sewer was intended to
18 remove. A great example of this type of wastewater was State Park Village which, when
19 purchased by Confluence Rivers, had discharged a sludge blanket (a/k/a untreated human
20 waste with bloodworms) into a tributary inside the Knob Noster state park that directly
21 feeds a river with recreational public water access.

1 Furthermore, when Confluence Rivers talks about cleaning up environmental
2 pollution from failed wastewater systems, that means millions of pounds of ammonia in
3 the form of nitrogen, biological oxygen demand, and total suspended solids have been
4 removed from these waterways. These are not simply esoteric measure of potentials
5 contaminants, these are EPA proven pollutants that are required to be removed to protect
6 the rivers, streams, lakes, and aquifers that Missourians depend on for drinking water,
7 general recreation, sport fishing, and so much more.

8 CSWR’s mission, and that of its utility operating companies, is to “bring safe,
9 reliable and environmentally responsible water resources to every community in the United
10 States.” With this in mind, the model is not simply to make a house (water / wastewater
11 system) more cosmetically desirable. Instead, CSWR makes real investments that are
12 essential to the health and safety of the affected community, and the entire state. These
13 water and wastewater improvements aren’t subjective, like cosmetically changing a
14 house’s appearance, these improvements are objective supported by DNR and EPA
15 required analytical water quality tests or pressure tests that prove the veracity of CSWR’s
16 claims.

17 At pages 11-13 of my Direct Testimony, I highlighted the improvements that
18 Confluence Rivers has made at Indian Hills and Elm Hills in Missouri. In both instances,
19 prior to Confluence Rivers acquiring and improving those systems, the local community
20 and its visitors were exposed to pathogens from wastewater discharging into the receiving
21 waterways and in their drinking water. Moreover, in some cases (i.e., Hillcrest), the
22 failings in the water and wastewater systems led to moratoriums in home construction and

1 the refusal of lenders to provide mortgages to potential purchasers of homes served by
2 those systems. Given the lack of mortgage lenders, owners effectively became prisoners
3 to their homes. The work performed by Confluence Rivers resulted in the lifting of home
4 construction moratoriums and opened the market of mortgage funds for potential buyers.
5 Effectively, Confluence Rivers restored these neighborhoods as real communities.¹ Again,
6 the improvements are not simply cosmetic they are literally analytical tests protecting
7 human health, human safety, and state environmental quality. Dr. Marke and OPC
8 implications that such results benefit only Confluence Rivers' investors and not its
9 customers demonstrates either a lack of understanding of the risks Confluence Rivers has
10 eliminated for customers across Missouri or an unwillingness to admit those measurable
11 EPA risks as the consumer advocate.

12 The Commission Staff's auditing department also fails to recognize the magnitude
13 of the public health issues Confluence Rivers communities faced. This is evident in their
14 attempt to disallow income tax recovery based on historical cash losses. When Confluence
15 Rivers purchases systems they are underfunded, lack professional management, and lack
16 investment which has led to health, safety, and environmental issues at each
17 system. Confluence Rivers adopts the currently charged rates which, for Commission-
18 regulated systems have not been modified in years, and, for previously unregulated
19 systems, have almost no basis in financial reality. Despite the inadequacy of such rates,
20 Confluence Rivers begins immediate repairs, replaces faulty or missing electric

¹ These types of improvements go beyond simply Indian Hills and Elm Hills. As set out in the testimony of Mr. Freeman, these types of improvements are occurring in virtually every system acquired by Confluence Rivers.

1 infrastructure, brings mechanical systems back online, and brings chemical disinfection
2 back into operation. All of these costs are not able to be captured within the current rates
3 adopted and charged by Confluence Rivers. To date, Confluence Rivers has not attempted
4 to recoup these cash losses, which means the immediate improvements to service (which
5 are protective of human health, safety, and environmental degradation) come free to
6 customers. That is the risk and commitment of Confluence Rivers to Missouri
7 residents. By disallowing income taxes because of historical cash losses, however, Staff
8 not only impinges on the Company's ability to have a fair and reasonable return, Staff also
9 fails to recognize the level of problems Confluence Rivers systems have faced or the
10 magnitude of human health, safety, and environmental benefits already realized by these
11 customers.

12 The value that Confluence Rivers provides in Missouri, while not acknowledged
13 by the Staff accounting group and Public Counsel, is readily acknowledged by the Missouri
14 Department of Natural Resources (“DNR”). In a recent letter, the DNR Compliance and
15 Enforcement Section Chief applauded the efforts made by Confluence Rivers.

16 When systems are unable to resolve their technical, managerial, or financial
17 problems, one reliable solution is selling the system to a higher-performing
18 utility operating company. *In Missouri, Confluence Rivers Utility*
19 *Operating Company, Inc. (CRUOC) is one of the few utility operating*
20 *companies who is willing to acquire some of the most difficult failing*
21 *systems.* CRUOC has consistently taken swift actions after taking control
22 of these systems to bring them into compliance by employing qualified
23 operators, effectively administering and managing the systems, and
24 investing in repairs and upgrades.

25
26 *CRUOC’s willingness to acquire systems with long-standing compliance*
27 *issues has proven to be beneficial to human health and the environment*
28 *by bringing many of these systems into compliance with environmental*
29 *laws.* The Department looks forward to continuing to work with CRUOC

1 as it continues to acquire wastewater and public water systems in Missouri,
2 in furtherance of the Department’s initiative to encourage regionalization
3 and consolidation of the many private systems in Missouri that are
4 struggling to achieve compliance with laws for the protection of public
5 health and the environment.²
6

7 DNR’s assertion that Confluence Rivers “is one of the few utility operating
8 companies who is willing to acquire some of the most difficult failing systems” is best
9 proven by the number of regulated utilities acquired by Confluence Rivers that had
10 languished in receivership or were buried under DNR enforcement actions proves.³ As
11 reflected in Schedules JMC-R-1, Confluence Rivers has purchased at least 13 regulated
12 utilities that were languishing through DNR enforcement actions and / or receiverships.
13 These 13 utilities do not include all the purchased regulated systems with historical MDNR
14 health and safety violations because that list would be close to comprehensive of all the
15 regulated systems purchased to date by Confluence Rivers. Clearly then, Confluence
16 Rivers’ efforts go well beyond the mission of “We Buy Ugly Houses.” While not
17 acknowledged by Dr. Marke or the Staff accounting group, Confluence Rivers is, by
18 restoring and operating water and wastewater systems to human health, safety, reliability,
19 and environmentally mandated standards, Confluence Rivers is protecting Missourians and
20 restoring hope to local communities (including regulated communities) that have been long
21 ignored.
22

² Schedule JMC-R-2 (emphasis added).

³ Since these were regulated systems that were taken out of receivership or DNR enforcement actions, these were systems under the Commission and its Staff’s supervision that were failing to provide safe and adequate service. Similarly, these were systems with customers which Public Counsel professes to represent and, despite such representation, for which Public Counsel was doing little, if anything, to ensure had safe and adequate service.

1 **III. RESPONSE TO LOCAL PUBLIC HEARING COMMENTS**

2 **Q. ARE YOU FAMILIAR WITH THE COMMENTS FROM THE LOCAL PUBLIC**
3 **HEARINGS?**

4 **A.** Yes. While I personally attended several of the local public hearings, I also received
5 reports regarding several of the comments from the local public hearings I did not attend.⁴
6 In my mind, the vast majority of the comments coalesced around concerns with amount of
7 the rate increase either in terms of the percent increase or in terms of the final rate.

8 The revenue requirement and the resulting rates are the subject of the testimony and
9 audit in this case. As such, recognizing that the revenue requirement and system
10 consolidation are the subjects of the entirety of the Confluence Rivers’ rebuttal testimony,
11 I will not discuss these issues other than to indicate that the increase for several systems
12 appears to be large because Confluence River adopts existing rates when it acquires a
13 system. In many cases, at the time that they were adopted, these rates had not been changed
14 in years – in several cases not for a decade or more – and existing rates did not accurately
15 reflect cost of service at the time of our acquisition. Had previous owners invested in plant
16 and professional operations and then sought rate increases on a regular basis to reflect
17 increases in the cost of service, the magnitude of the rate increases required in this case
18 would be much less. Confluence Rivers’ rate increase request merely seeks to bring rates
19 in line with reasonable current operating costs and provide the Company’s investor with
20 an opportunity to earn a fair return on its investment.

⁴ At the time that this testimony was drafted, the transcripts from the local public hearings were not yet available. As such, I am working from notes and may miss some specific comments.

1 A. CEDAR GLEN AND PORT PERRY COMMENTS

2 At the Camdenton local public hearing, there were several witnesses from the Cedar
3 Glen service area that complained about the fact that Osage Utility (a predecessor company
4 to Confluence Rivers) was permitted to purchase the Cedar Glen service area. As the
5 Commission may recall, this issue was litigated extensively before the Commission in Case
6 No. SA-2019-0186 and on appeal before the Western District Court of Appeals.
7 Ultimately, both the Commission and the reviewing court determined that the sale of the
8 Cedar Glen service area to Confluence Rivers was lawful. As such, these complaints at
9 the local public hearing were largely irrelevant to this rate case. In addition, I would point
10 out that the regional not-for-profit water district that sought to purchase Osage Utility has
11 continued to accumulate DNR compliance enforcement actions and has not invested in
12 permanent fixes the water district purportedly said that it would make.

13 Similarly, at the Farmington local public hearing, some representatives of Lake
14 Perry Landowners Association made comments about the Commission's past refusal to
15 require that the Port Perry assets be sold to the Homeowners Association. Again,
16 recognizing that the Commission has previously heard and decided such issues,⁵ those
17 comments were also largely irrelevant to this rate case. Also, as reflected in the last section
18 of my testimony regarding the intensive nature of the problems at the Port Perry wastewater
19 system, the monies sought to be raised by the Port Perry Landowners Association would
20 not have covered the improvement costs that DNR and third-party engineers determined

⁵ See, *Report and Order*, Case No. WA-2019-0299, issued August 26, 2020, at pages 17-25.

1 were required to bring Port Perry back into compliance with human health, safety, and
2 reliability standards simply reinforces the Commission’s original decision.

3 It is interesting that, while representatives of Cedar Glen and Lake Perry continue
4 to criticize the Commission for allowing the sale of these systems to Confluence Rivers
5 instead of to other parties those representatives preferred, the President of the Deer Run
6 Homeowners Association indicated that it had sold the system to Confluence Rivers to
7 avoid the “liability” of replacement of sewer assets. It is my opinion that, while unhappy
8 about the rate increase in this case, the residents of Cedar Glen and Lake Perry would, had
9 they been permitted to purchase the utility assets, reached the same conclusion previously
10 reached by Deer Run. Capital improvements made by Confluence Rivers would have had
11 to be made by whatever party owned the systems and rates would have had to be increased
12 to reflect operating cost increases. Specifically, absent the technical, financial, and
13 managerial expertise to operate those systems, the headaches associated with investing in,
14 operating and maintaining those systems would have eventually led to a sale to a utility
15 like Confluence Rivers.

16 B. MISSING WELL

17 At both the Camdenton and Sedalia local public hearings, a representative of
18 Missing Well testified that the “state” had previously let down the Missing Well
19 community by not requiring previous owners of the non-regulated system to bring those
20 facilities into environmental compliance. Recognizing that those issues all occurred prior
21 to the acquisition by Confluence Rivers, they also are not relevant to the rates to be
22 determined in this case. That said, the comments of the representative of Missing Well,

1 emphasize the mission statement of Confluence Rivers. Specifically, Confluence Rivers
2 recognizes that there are a multitude of similar systems throughout the state of Missouri
3 that, in many cases, have either effectively been abandoned by the previous owner or
4 exhibited severe operational shortcomings that were beyond the expertise and/or financial
5 means of the previous owner. Confluence Rivers was created to purchase such distressed
6 systems, like that at Missing Well, and bring technical, financial, and managerial expertise
7 to the system to correct those shortcomings.

8 C. SERVICE CONCERNS

9 **Q. WERE THERE ANY SERVICE CONCERNS EXPRESSED AT THE LOCAL**
10 **PUBLIC HEARINGS?**

11 A. Yes. In addition to the concerns regarding the magnitude of the rate increase, there were
12 some service issues raised. Confluence Rivers took resident contact information down and
13 is working through potential individual issues regarding billing errors that are not systemic
14 problems. The issue that caught my greatest attention, however, concerned the lack of
15 communication with residents of the Terre du Lac system. At the Farmington local public
16 hearing, several residents of Terre du Lac testified about communication shortcomings
17 regarding boil water advisories and other service-related issues. In addition, the fire chief
18 at Terre du Lac expressed his disappointment that Confluence Rivers did not communicate
19 with the fire department prior to taking water towers out of service for painting and
20 maintenance. Although Confluence Rivers is not obligated to provide fire flow for the fire
21 department this issue could have been handled better during water tank improvements that
22 are DNR mandated to provide safe and reliable service.

1 I take these issues regarding customer communications seriously. I hope that recent
2 organizational changes may help to alleviate these communications issues in the future.
3 First, in the last year, CSWR, the managing affiliate for Confluence Rivers, has invested
4 in creating a dedicated corporate communications department. Some ongoing efforts of
5 this department include streamlining pre-planned boil advisory notifications due to repairs
6 or large capital projects via the Company's website, emails, social media, and door hangers.
7 Additionally, the Company has implemented a process in which Engineering contractors
8 display signage in a given community detailing estimated completion date and approximate
9 costs in order to work towards transparency as requested by many customers.⁶ It is my
10 expectation that personnel in this department will help to further address any customer
11 communications concerns.

12 Second, in the last 6 months, CSWR has launched a new website. The new structure
13 of the website was, in large part, based upon the recognition that the previous website was
14 not easily navigated by customers. Therefore, I expect that the new website will also help
15 to alleviate concerns with more timely and easily accessible communications. Finally,
16 CSWR is exploring alternative means of communicating with customers. CSWR
17 recognizes that technological developments may allow for communications on a timelier
18 and more direct basis. As a result of all three recent developments, it is my belief and
19 commitment that Confluence Rivers is doing a better job of addressing customer
20 communication expectations.

⁶ Schedule JMC-R-3.

1 **IV. SYSTEM CONSOLIDATION**

2 **Q. DOES THE DIRECT TESTIMONY OF STAFF OR OPC SUPPORT COMPLETE**
3 **CONSOLIDATION OF RATES FOR CONFLUENCE RIVERS?**

4 A. No.

5 **Q. WHAT IS CONFLUENCE RIVERS' POSITION ON SYSTEM**
6 **CONSOLIDATION?**

7 A. As set forth in my Direct Testimony (pages 18-20), Confluence Rivers is seeking to
8 consolidate all of its current systems into common water and sewer tariffs that would have
9 consolidated rates, rules of service, and a single list of miscellaneous charges.

10 **Q. WHY DOES CONFLUENCE RIVERS SEEK TO CONSOLIDATE SYSTEMS**
11 **INTO A COMMON SET OF RATES AND TARIFFS?**

12 A. There are numerous reasons underlying this recommendation. ***First***, as has been well-
13 established in the industry, single tariff pricing helps to encourage the acquisition of small,
14 troubled water and wastewater systems by spreading costs to a larger customer base.⁷
15 ***Second***, as I mentioned in my direct testimony, the consolidation of systems into a single
16 tariff mitigates rate impacts and promotes affordability.⁸ ***Third***, while there may be

⁷ Staff has, in the past, recognized this benefit – at least with regards to Missouri-American Water Company (“MAWC”). “The systems that MAWC has been purchasing are small systems with mostly small, primarily residential customer bases. In order to keep these small systems in proper working order so that they can continue to provide safe, adequate, and reliable service to their customers, investment is needed or will need to be made in the future. When improvements need to be made, the higher cost of upgrades must be spread over the smaller customer base, which may cause rates to increase dramatically. The dramatic increases may result in rate shock to consumers. . . In Staff’s opinion, moving away from a strict DSP [District Specific Pricing] rate design philosophy will encourage not only MAWC, but other water and sewer utilities, to invest in Missouri.” (Busch Direct, Case No. WR-2015-0301, filed January 20, 2016, pages 8 and 9).

⁸ Again, Staff has previously agreed with this benefit of consolidation. “Staff agrees that spreading out costs over a larger customer base will tend to lower rates.” “Mr. Jenkins makes a good point that complying with regulations is expensive and spreading those costs over a larger customer base allows for the benefit of

1 different technologies utilized at different systems, all systems share many of the same
2 costs of service, generally use the same third-party operations firm, and are managed to the
3 same service quality standards.⁹ ***Fourth***, the development of a single set of tariffs provides
4 for a heightened level of regulatory, administrative, and billing efficiency. Specifically,
5 Confluence Rivers, as well as the Commission, won't have to maintain a familiarity with
6 a multitude of rules and rates which should lower customer costs.¹⁰ ***Fifth***, since all systems
7 will eventually require large capital investments over the next number of years, any
8 perceived inequities associated with system subsidization will be short-lived and will
9 eventually balance out.¹¹ ***Sixth***, since consolidated tariffs provide a more simplified
10 approach to rates and rules, I believe that it is more consumer friendly than dozens of

economies of scale to lower costs to the customers.” (Busch Rebuttal, Case No. WR-2017-0285, filed January 24, 2018, page 15 and 16). “The primary benefit of STP [Single Tariff Pricing] is that it spreads out costs to a larger customer base.” (Busch Direct, Case No. WR-2015-0301, filed January 20, 2016, page 6).

⁹ The Commission has previously adopted this logic for moving towards consolidated pricing. “The consistency in costs to serve customers between districts is attributable to the fact that most of the costs of providing service to Missouri-American’s customers are very similar, if not the same, from district to district because a portion of Missouri-American’s statewide costs are allocated to the various districts. So, for example, Missouri-American’s costs of capital will be the same for each of the districts. When Missouri-American buys pipe, meters, and other supplies, the cost of those supplies will be the same in all districts. Similarly, management salaries for Missouri-American’s executives will be allocated equally to customers in each of the districts.” (Report and Order, Case No. WR-2015-0301, page 12).

¹⁰ Staff also acknowledges the regulatory benefit of consolidated rates. “The reason for the difficulty in developing rates on a district-specific basis is the need to allocate corporate costs to each separate service territory. Corporate costs are a substantial portion of the cost of service for MAWC. Trying to determine the most equitable manner to allocate those costs to each service territory (especially the very small service territories) is difficult when attempting to determine the true cost of service to those service territories. Combining these service territories in the manner as Staff has in this proceeding alleviates some of the need for precision. (Busch Direct, Case No. WR-2015-0301, filed January 20, 2016, page 7). Consolidation “may benefit the customers through reduced rate case expense, as is it is likely that the Company will not have to allocate as many resources to future rate cases.” (*Id.*).

¹¹ The Commission has previously recognized this benefit. “All water systems will eventually require large capital investments. If the cost of making those investments is spread among consolidated districts, in the long term any perceived short-term unfairness will be balanced out.” (Report and Order, Case No. WR-2015-0301, issued May 26, 2016, at page 16).

1 different rate sheets. As Staff witness Roth readily acknowledges, “Confluence currently
2 has approximately 20 different customer charges for its water utility systems.”¹²

3 **Q. DOES STAFF RECOGNIZE THE BENEFITS OF SYSTEM CONSOLIDATION?**

4 A. As in its past testimony, Staff’s testimony in this case appears to acknowledge the
5 numerous, obvious benefits that can be achieved through consolidation.

6 The primary benefit to having multiple districts in this proceeding is to spread
7 out the costs of investment without causing customers who did not receive the
8 same level of investment in their systems to experience unnecessary and
9 substantial rate increases. All water systems will eventually need significant
10 investment of some kind. Confluence, in particular, has purchased several
11 systems that require upgrades, though not all upgrades have been completed.
12 Keeping the systems that have had recent investments and have very few
13 customers as stand-alone systems could result in very high rates, as there are
14 so few customers upon which to spread this cost recovery. . . Combining these
15 small systems into districts with larger systems mitigates this potential rate
16 shock. Further, those systems with lower cost of service are not subject to
17 unnecessary increases in rates. Some of the systems that have already had a
18 previous rate case after upgrades, and therefore already have very high rates,
19 will receive a decrease in rates under Staff’s proposal.¹³

20
21 **Q. DESPITE RECOGNIZING THESE OBVIOUS BENEFITS, DOES STAFF**
22 **RECOMMEND CONSOLIDATED PRICING?**

23 A. No. While Staff readily acknowledges the benefit of consolidated pricing, both in its
24 current and past testimony, its consolidation recommendation in this case prevents
25 Confluence Rivers from fully achieving these benefits.¹⁴ Instead, Staff witness Roth’s

¹² Roth Direct, p. 3.

¹³ Roth Direct, pages 4-5 (emphasis added).

¹⁴ In the testimony of Jordan Sarver, OPC provides two options regarding the consolidation of Confluence Rivers systems. Specifically, OPC suggests that the Commission can either fully consolidate all water and wastewater systems. Alternatively, OPC suggests that the Commission can refuse to undertake any further consolidation. While presenting both alternatives, in his testimony Mr. Sarver recommends that the Commission adopt his recommendation to refuse any further consolidation. While Staff’s recommendation of limited consolidation “prevents Confluence Rivers from fully achieving all of the benefits associated with

1 recommendation in this case falls short of full consolidation and instead recommends that
 2 the Confluence Rivers water systems be consolidated into 3 rate “districts” and that the
 3 Confluence Rivers sewer systems be consolidated into 4 “districts.” While the use of the
 4 word “district” suggests Staff’s proposal is based on the geographic location of Confluence
 5 Rivers’ systems, that is not the case. Ms. Roth bases her assignment of systems into rate
 6 “districts” based upon those systems’ cost of service - “Staff has chosen these groupings
 7 with an attempt to keep systems with a similar cost of service in the same district.”¹⁵ Under
 8 her recommendation, the Confluence River water systems would be consolidated as
 9 follows:

STAFF’S PROPOSED WATER SYSTEM CONSOLIDATION					
District #	System	Service	Current Rate	Proposed Rate	Increase
1 (Moderate)	Cedar Green	Unmetered	\$26.79	\$58.78	119.4%
1 (Moderate)	Fawn Lake	Metered	\$53.00	\$36.64	-30.8%
1 (Moderate)	Missing Well	Unmetered	\$20.00	\$58.78	193.9%
1 (Moderate)	Spring Branch	Unmetered	\$30.99	\$58.78	89.7%
1 (Moderate)	Branson Cedars	Unmetered	\$61.99	\$58.78	-5.2%
1 (Moderate)	Prairie Heights	Unmetered	\$20.00	\$58.78	193.9%
1 (Moderate)	Glen Meadows	Unmetered	\$27.50	\$58.78	113.8%
2 (Low Rate)	Hillcrest Manor	Metered	\$77.23	\$34.59	-55.2%
2 (Low Rate)	Elm Hills	Unmetered	\$60.15	\$34.48	-42.7%
2 (Low Rate)	Port Perry	5/8” Metered	\$31.13	\$34.59	11.1%
2 (Low Rate)	Port Perry	3/4” Metered	\$34.16	\$34.59	1.3%
3 (High Rate)	Terre du Lac	Metered	\$23.85	\$93.99	294.1%

consolidation”, the OPC position of status quo is even worse and prevent Confluence from achieving any of the consolidation benefits. Therefore, all of the criticisms that I raise regarding Staff’s consolidation position are equally applicable to OPC, but magnified in that the OPC position fails to recommend any consolidation.¹⁵ Roth Direct., page 4. While Staff claims to have grouped systems based upon “cost of service”, it is unclear from its testimony and workpapers how it defines cost of service. Specifically, is cost of service simply revenue requirement, or is it based upon a calculation that considers the number of customers. Grouping based upon revenue requirement, such as that reflected in Staff’s individual EMS runs, would label a large system, like Terre du Lac, as high cost without any consideration of the fact of the size of the system and the number of customers served. Similarly, a very small system may have a much smaller revenue requirement simply because the number of customers is limited. For this reason, Staff’s use of “cost of service” needs to consider the cost / customer. Again, it is not clear from the testimony or the workpapers the specific metric that Staff used for cost of service or the thresholds to separate different grouping of systems.

JOSIAH COX
REBUTTAL TESTIMONY

3 (High Rate)	Indian Hills	Metered	\$89.40	\$93.99	5.1%
3 (High Rate)	Cedar Glen	Metered	\$54.06	\$93.99	73.8%
3 (High Rate)	Cedar Glen	Unmetered	\$24.76	\$94.12	280.1%
3 (High Rate)	Cimmarron Bay	Metered	\$54.06	\$93.99	73.9%
3 (High Rate)	Cimmarron Bay	Unmetered	\$24.76	\$94.12	280.1%
3 (High Rate)	Eagle Woods	Metered	\$54.06	\$93.99	73.9%
3 (High Rate)	Auburn Lakes	Unmetered	\$69.93	\$94.12	35.2%
3 (High Rate)	Chelsea Rose	Metered	\$54.06	\$93.99	73.9%
3 (High Rate)	Calvey Brooks	Unmetered	\$69.93	\$94.12	35.2%
3 (High Rate)	Eugene	Metered	\$81.47	\$93.99	15.4%
3 (High Rate)	Evergreen Lakes	Metered	\$81.47	\$93.99	15.4%
3 (High Rate)	Gladlo	Metered	\$81.47	\$93.99	15.4%
3 (High Rate)	Majestic Lakes	Metered	\$81.47	\$93.99	15.4%
3 (High Rate)	Majestic Lakes	Unmetered	\$69.93	\$94.12	35.2%
3 (High Rate)	Roy-L	Metered	\$81.47	\$93.99	15.4%
3 (High Rate)	Roy-L	Unmetered	\$69.93	\$94.12	35.2%
3 (High Rate)	Smithview	Unmetered	\$71.25	\$94.12	32.1%
3 (High Rate)	Willows	Unmetered	\$69.93	\$94.12	35.2%

1

2 Similarly, Staff would consolidate the Confluence River wastewater systems as follows:

STAFF'S PROPOSED WASTEWATER SYSTEM CONSOLIDATION				
District #	System	Current Rate	Proposed Rate	Increase
A	Cedar Green	\$47.55	\$60.64	27.5%
A	DeGuire	\$20.00	\$60.64	203.2%
A	Glenmeadows	\$27.50	\$60.64	120.5%
A	Prairie Heights	\$25.00	\$60.64	142.6%
A	Deer Run	\$20.00	\$60.64	203.2%
A	Freeman Hills	\$16.67	\$60.64	263.8%
A	Missing Well	\$20.00	\$60.64	203.2%
B	Branson Cedars	\$61.97	\$74.54	20.3%
B	Clemstone	\$60.00	\$74.54	24.2%
B	Hillcrest Res'l	\$83.56	\$74.54	-10.8%
B	Hillcrest Aptmt	\$66.85	\$74.54	11.5%
C	Port Perry	\$18.94	\$41.34	118.3%
C	Terre du Lac	\$19.72	\$41.34	109.6%
C	Chelsea Rose	\$29.02	\$41.34	42.5%
C	Cimmarron Bay	\$29.02	\$41.34	42.5%
C	Cedar Glen	\$29.02	\$41.34	42.5%
C	South Route KK	\$29.02	\$41.34	42.5%
D	Missouri Utilities	\$99.88	\$73.60	-26.3%

JOSIAH COX
REBUTTAL TESTIMONY

D	State Park Village	\$99.88	\$73.60	-26.3%
D	Rainbow Acres	\$99.88	\$73.60	-26.3%
D	Twin Oaks	\$99.88	\$73.60	-26.3%
D	Berkshire Glen / Walnut Hills	\$44.81	\$73.60	64.2%
D	Bar-B Acres	\$44.81	\$73.60	64.2%
D	Countryside Meadows	\$44.81	\$73.60	64.2%
D	Wil-Mar Estates / Fox Run	\$44.81	\$73.60	64.2%
D	Country Hills	\$44.81	\$73.60	64.2%
D	Private Gardens / Prairie Field	\$44.81	\$73.60	64.2%
D	Villages at Whiteman	\$79.74	\$73.60	-7.7%
D	West 16 th Ridge	\$95.76	\$73.60	-23.1%
D	W.P.C. South Walnut Hills	\$95.76	\$73.60	-23.1%
D	Auburn Lakes	\$72.48	\$73.60	1.5%
D	Calvey Brook	\$72.48	\$73.60	1.5%
D	Castlereagh	\$72.48	\$73.60	1.5%
D	Chalet City / Alpine Village	\$72.48	\$73.60	1.5%
D	Lake Virginia	\$72.48	\$73.60	1.5%
D	Majestic Lakes	\$72.48	\$73.60	1.5%
D	Roy-L	\$72.48	\$73.60	1.5%
D	Villa Ridge	\$72.48	\$73.60	1.5%
D	Whispering Pines	\$72.48	\$73.60	1.5%
D	Clemstone	\$72.48	\$73.60	1.5%
D	Shelton Estates	\$72.48	\$73.60	1.5%

1

2 **Q. DO YOU AGREE WITH STAFF’S PROPOSAL TO CONSOLIDATE SYSTEMS**
3 **ON THE BASIS OF COST OF SERVICE?**

4 A. No. The primary problem underlying Staff’s consolidation approach (i.e., use of system
5 cost of service) is that it is not static – i.e., a system that has a high cost of service today
6 may become low cost (or vice versa) between Confluence Rivers’ rate cases. That is to
7 say, the designation of a system as high cost or low cost will be in a constant state of flux
8 as improvements are made.¹⁶ Specifically, a system may currently be designated by Staff

¹⁶ As previously indicated, Staff readily acknowledges that “[a]ll water systems will eventually need *significant* investment of some kind.” (emphasis added). Roth Direct, pages 4-5. Therefore, when systems

1 as a low-cost system simply because it has only been recently acquired and has not seen
2 improvements beyond simple triage measures. Once Confluence Rivers has deployed
3 capital to the system and made process improvements and plant upgrades, that system that
4 was once designated as a low-cost system may suddenly become a high-cost system.
5 Similarly, a high-cost system that experienced investment 5 years ago may now have a
6 decreasing cost of service as a result of the effect of depreciation on rate base and return.
7 The obvious concern, given the inevitable changes in a system's cost of service, is that
8 Staff's consolidation approach will be in a constant state of flux. A system that Staff has
9 labeled as low-cost in this case and consolidated with other low-cost systems will be torn
10 out of the low-cost grouping and moved into a high-cost grouping. Given the phenomenon
11 I just described, Staff's consolidation recommendation is an unworkable and an unsound
12 approach.¹⁷

13 **Q. DO YOU HAVE AN EXAMPLE OF A SYSTEM THAT STAFF GROUPS AS A**
14 **LOW-RATE SYSTEM (SEWER DISTRICT C) THAT YOU WOULD EXPECT TO**
15 **BECOME A HIGH-RATE SYSTEM?**

require this "significant investment", the cost of service for that system will change. Again, given Staff's statement, this change is not a possibility, but a certainty.

¹⁷ The tentative nature of a system as either a high or low-cost system is also reflected in the fact that it is absolutely dependent on the revenue requirement calculated for that system. Thus, if Staff's revenue requirement in this case for any particular system has errors, those errors will ultimately flow to the determination of whether a system is a high or low-cost system. For instance, Confluence Rivers believes that Staff revenue requirement calculation contains errors with regard to plant in service that will radically change whether a system is low, moderate, or high cost. Presumably, whether these errors are corrected by Staff or the Commission, Staff will then have to adjust its grouping of consolidated systems to account for the changing revenue requirements. Again, as mentioned, Staff's consolidation approach means that the grouping of systems is in a constant state of flux. Therefore, changes in revenue requirement in this case must then flow through to Staff's calculation of each individual system revenue requirement, the determination of whether that system is a high or low-cost system and the systems with which it is grouped. As I mentioned, Staff's approach is effectively unworkable.

1 A. Yes. The Terre du Lac wastewater system is a classic example of the problem with Staff's
2 consolidation approach. Terre du Lac is a wastewater system located four miles southwest
3 of Bonne Terre, Missouri. The wastewater system consists of three facilities: (1) Oxidation
4 Ditch; (2) Three Cell Lagoon; and (3) Single Cell Lagoon. Under its approach, Staff has
5 consolidated the Terre du Lac wastewater system with five other systems, each having a
6 monthly flat charge of \$41.34. This is the lowest rate of the Staff's four sewer
7 consolidation districts. However, later this year and continuing into next year, Confluence
8 Rivers intends to make numerous improvements to all three wastewater facilities at the
9 Terre du Lac system.¹⁸

10 The most significant improvements yet to be completed relate to the three-cell
11 lagoon treatment system. The system is not capable of achieving consistent compliance
12 with permit limits and will require process improvements to achieve compliance. The site
13 has been cleaned up, with berm damage repaired, rock applied around the lagoon berms,
14 damaged structures removed, damaged fencing repaired, and access road repaired and re-
15 rocked. Aeration improvements have already begun to be implemented in the form of new
16 surface aerators installed in the first cell of the lagoon. Additionally, an attached growth
17 treatment system called an algae wheel will be installed in new concrete basins being
18 installed on the site of the lagoon to allow for effective ammonia treatment and compliance
19 with nutrient limits. In addition to these primary improvements at the treatment plant,

¹⁸ To be clear Terre Du Lac has been under an almost 20-year Missouri Attorney General enforcement action with pathogens being released to the recreational lakes that serve the community.

1 repairs and sewer lining are being completed in the collection system to reduce the large
2 amounts of inflow and infiltration from the collection system overwhelming the plant.

3 The unpermitted single-cell lagoon plant (that means it was not allowed by MDNR
4 to be built and thus was unauthorized sewage cesspool inside a regulated utility) was
5 originally planned to be shut down and connected to the three-cell lagoon, however in
6 operating the system it has become clear that it will minimize rate impact to instead
7 rehabilitate the single cell lagoon. As a result, aeration and a chlorine contact chamber will
8 be installed at the single-cell lagoon. Berms have also been repaired and covered in rock
9 to prevent further damage to the lagoon berms, fencing repaired, and the access road has
10 been repaired and had rock applied.

11 Finally, the Oxidation Ditch facility has also undergone repairs, with general site
12 cleanup including access road improvements, fence repair, and trash removal, and
13 treatment improvements including repairs to both brush aerators, piping repairs and
14 replacement, clarifier repairs, and disinfection system repairs. More repairs will be
15 completed to the oxidation ditch structure, a proper dechlorination system will be installed,
16 and piping improvements will be completed.

17 In total, as a result of the improvements that Confluence Rivers intends to make at
18 the Terre du Lac wastewater system, Terre du Lac's rate base will, in the next year, increase
19 by 61.5%.

20 Importantly, while the Terre du Lac wastewater system is currently classified by
21 Staff as a low-rate system, as a result of the investments planned at Terre du Lac, it will no
22 longer be a low-rate system when Confluence Rivers files its next rate case. Instead,

1 because of the cost impacts of the planned investment I previously described, Staff will
2 need to reshuffle its Confluence Rivers consolidation groupings to account for the different
3 cost profiles that exist at that point in time. As I indicated, Staff's consolidation proposal
4 is unworkable because the cost groupings will be in a constant state of flux. This
5 willingness to accept a consolidation that is in a state of flux is particularly interesting in
6 light of Staff's previous comments on the need for stability. "One of the basic principles
7 of rate design is stability. Constantly changing rate design does not allow for stability and
8 could lead to greater customer confusion and dissatisfaction."¹⁹

9 **Q. IS THE DEFECT YOU JUST DISCUSSED THE ONLY PROBLEM WITH**
10 **STAFF'S PROPOSAL?**

11 A. No, it is not. Rate consolidation is a strategy intended to mitigate rate shock by spreading
12 required rate increases over the largest possible customer base. In that way, customers
13 whose systems require the most investment and/or whose operating costs increase
14 significantly are spared the full rate impacts of those cost increases. Instead, costs and
15 investments are spread over a utility's entire customer base. This is the reason single tariff
16 pricing was established decades ago and why it is commonplace for electric and gas
17 utilities. By grouping high-cost systems into discrete rate districts, Staff's proposal doesn't
18 mitigate rate shock for customers served by high-cost systems. Indeed, it exacerbates that
19 problem.

20 **Q. HOW HAS STAFF RECOMMENDED THAT CONSOLIDATION BE HANDLED**
21 **IN THE PAST?**

¹⁹ Busch Rebuttal, Case No. WR-2017-0285, filed January 24, 2018, page 13 (emphasis added).

1 A. In past Missouri-American Water Company (“Missouri American” or “MAWC”) rate
2 cases, Staff has recommended that systems be consolidated largely on the basis of
3 geography. “Unlike the water systems, there is no basic rhyme or reason for one system
4 having a lagoon versus a mechanical treatment plant. Staff tried to group these systems
5 based on geographic location. This is a reasonable approach because the workers will be
6 responsible for any given district will generally also have responsibility for nearby
7 systems.”²⁰

8 **Q. WHILE STAFF ACKNOWLEDGES THAT SYSTEMS THAT ARE PROXIMATE**
9 **TO EACH OTHER WILL LIKELY HAVE THE SAME OPERATORS AND**
10 **SHOULD BE GROUPED TOGETHER, DOES ITS APPROACH IN THIS CASE**
11 **REFLECT THIS REALITY?**

12 A. No. Staff’s recommendation falls well short of recognizing this geographic reality.
13 Attached are maps that show the location of the water and wastewater systems that Staff
14 has grouped into its various districts.²¹ As can be seen, Staff’s grouping of both water and
15 wastewater systems fail to recognize any geographic considerations. Instead, for both
16 water and wastewater systems, Staff’s groupings pick and choose systems without any
17 regard to geography or the recognition that workers responsible for any given district “will
18 generally also have responsibility for nearby systems.”

19 **Q. WHAT HAS BEEN THE COMMISSION’S PREVIOUS DIRECTION ON WATER**
20 **/ WASTEWATER CONSOLIDATION?**

²⁰ Busch Direct, Case No. WR-2015-0301, filed January 20, 2016, pages 10-11.

²¹ Schedule JMC-R-4 (water) and JMC-R-5 (wastewater).

1 A. The Commission has made, with regards to Missouri American, a pronounced movement
2 towards the consolidated pricing that Confluence Rivers seeks in this case. In 2015, the
3 Commission approved a stipulation that allowed Missouri American to move from eight
4 water districts to three consolidated districts. Similarly, the Commission approved a
5 stipulation that moved from 12 sewer districts to two consolidated districts. There, the
6 Commission noted the obvious desirability of a single consolidated tariff:

7 *Full single-tariff pricing is an attractive option*, but since none of the
8 parties proposed that option during the case it was not fully considered by
9 the parties. Because of that lack of scrutiny, the option has many unknowns,
10 and the Commission is not willing to take that leap at this time. The
11 Commission may need to make take that leap in Missouri-American's next
12 rate case as it will likely be facing the prospect of a major new capital
13 construction project in the Platte County district, a district that will have
14 difficulty affording a major capital expense. For that reason, *the*
15 *Commission will expect the parties to fully examine single-tariff pricing*
16 *in the next rate case.*²²
17

18 Similarly, for Missouri American's sewer operations, the Commission pointed out that
19 "[c]onsolidation is also needed on the wastewater side of Missouri-American's business."²³

20 "The Commission will direct that the existing sewer districts be consolidated into two
21 districts as proposed by Missouri-American. . . . In the next rate case, the Commission
22 intends to move the consolidated sewer systems toward a single, balanced rate."²⁴

23 **Q. DID THE COMMISSION CONTINUE ITS MOVEMENTS TOWARDS**
24 **CONSOLIDATED PRICING IN MISSOURI AMERICAN'S NEXT RATE CASE?**

²² Report and Order, Case No. WR-2015-0301, issued May 26, 2016, page 28 (emphasis added).

²³ *Id.*

²⁴ *Id.* at page 29.

1 A. Yes. In its decision in Missouri American’s 2017 rate case, the Commission continued its
2 march towards consolidated water and wastewater pricing. There, the Commission noted
3 that “[a] national trend has been moving towards consolidated pricing.” The Commission
4 also noted:

5 The operating characteristics of MAWC’s service areas support STP. All
6 the systems pump their treated water through transmission lines to
7 distribution areas that include mains, booster pump stations and storage
8 facilities. All of the areas rely on a centralized workforce for billing,
9 accounting, engineering, administration, and regulatory matters. MAWC
10 manages the state-wide operations from a common location. The various
11 service areas also rely on a common source of funds for financing.²⁵
12

13 Ultimately, as foreshadowed in its previous decision, the Commission took another step
14 towards achieving the benefits of consolidated pricing. That said, noting the unique nature
15 of Missouri American’s St. Louis County district, the Commission stopped just short of
16 achieving full, state-wide consolidation. Specifically, the Commission moved Missouri
17 American to two water districts and a single sewer district.

18 Approximately 84% of MAWC’s water customers live in the St. Louis
19 service area within District 1. . . In 2016, St. Louis County accounted for
20 approximately 73% of the metered water sold by MAWC. Since 2007,
21 MAWC has used an ISRS, a special rate mechanism, to address the cost of
22 replacing aging mains in St. Louis County. . . MAWC is only allowed to
23 collect an ISRS from St. Louis County customers, since only projects
24 performed in St. Louis County are eligible for ISRS recovery.
25

26 Although the water industry is moving towards STP, St. Louis County’s
27 unique circumstance makes it inappropriate to consolidate all three water
28 districts at this time. St. Louis County is subject to the ISRS, which is a
29 surcharge not recovered from other customers of MAWC, which can
30 increase a customer’s bill by as much as ten percent of the Company-wide
31 revenues. By combing all three districts, customers in St. Louis County
32 would be disadvantaged by being the only area paying the additional

²⁵ Report and Order, Case No. WR-2017-0285, issued May 2, 2018, page 26.

1 surcharge until costs can be included in rate base, while still contributing to
2 improvements in other areas.²⁶
3

4 **Q. DO THE SAME IMPEDIMENTS TO FULL CONSOLIDATION NOTED BY THE**
5 **COMMISSION FOR MISSOURI AMERICAN ALSO APPLY TO CONFLUENCE**
6 **RIVERS SYSTEMS?**

7 A. No. The Commission in the 2017 Missouri American rate case acknowledged two
8 impediments to total consolidation for Missouri American. First, the Commission noted
9 the unique size of the St. Louis County district (84% of MAWC's water customers), which
10 Confluence Rivers believes may be the single largest contiguous investor owned water
11 system in the US, and the existence of the statutory ISRS mechanism only applicable to St.
12 Louis County. Importantly, neither consideration applies to Confluence Rivers. While
13 Confluence Rivers has one wastewater system in St. Louis County (Castlereagh), it does
14 not utilize the ISRS mechanism referenced by the Commission as it has no water systems
15 in St. Louis County and does not intend to utilize that mechanism.²⁷ In addition,
16 Confluence Rivers has no service area, for either water or wastewater, that constitute a
17 similar relative percentage of its customer base similar to that for St. Louis County in
18 Missouri American. As such, the stated impediments to complete consolidation for
19 Missouri American do not apply to Confluence Rivers.

20 **Q. HAVE OTHER STATE UTILITY COMMISSIONS IMPLEMENTED RATE AND**
21 **TARIFF CONSOLIDATION FOR CONFLUENCE RIVERS' AFFILIATES?**

²⁶ *Id.* at page 30.

²⁷ Confluence Rivers has no water systems in St. Louis County.

1 A. Yes. CSWR affiliates in Louisiana, Mississippi, and Kentucky have been permitted to
2 consolidate. In addition, CSWR's operating subsidiary is currently seeking consolidation
3 in Texas.

4 **Q. HAS STAFF PREVIOUSLY RAISED CONCERNS REGARDING THE**
5 **POSSIBILITY OF OVER-INVESTMENT AS A RESULT OF THE MOVEMENT**
6 **TOWARDS SINGLE TARIFF PRICING?**

7 A. Yes. In the past, Staff has expressed concerns that consolidated pricing may provide an
8 incentive for a utility to over-invest and, since any over-investment would be recovered
9 from a larger group of consolidated customers it may not "be as objectionable to customers
10 or regulators."²⁸

11 **Q. HOW DID THE COMMISSION HANDLE STAFF'S CONCERNS REGARDING**
12 **AN INCENTIVE FOR A CONSOLIDATED WATER COMPANY TO OVER-**
13 **INVEST?**

14 A. In its Report and Order in Case No. WR-2015-0301, the Commission adopted a Staff
15 proposal that Missouri American "be required to file a five-year capital expenditure plan
16 with the Commission for review by January 31 of each year after the effective date of rates
17 in this case. Staff, and every party to this case, would then have the ability to review
18 Missouri-American's plans and could make recommendations regarding investment and
19 the need to make investments in any service area. All expenditures would be subject to
20 full review in Missouri-American's future rate cases."²⁹

²⁸ Busch Direct, Case No. WR-2015-0301, pages 8-9.

²⁹ Report and Order, Case No. WR-2015-0301, issued May 26, 2016, pages 15-16.

1 **Q. DO YOU HAVE CONCERNS THAT CONSOLIDATED PRICING WOULD**
2 **INCENT CONFLUENCE RIVERS TO ENGAGE IN OVER-INVESTMENT?**

3 A. No. As an initial matter, Staff and other parties always have the opportunity, in the context
4 of a rate case, to engage in a prudence review of any investments that Confluence Rivers
5 makes. With this in mind, Staff conducted a prudence review of Confluence Rivers’
6 investments and capital projects in this case. This review included an on-site inspection of
7 virtually every Confluence Rivers water and wastewater system. Based upon this prudence
8 review, Staff testified that it “found no imprudence in the capital projects included in this
9 rate case.”³⁰

10 Second, unlike Missouri American that has almost 500,000 combined water and
11 sewer customers, Confluence Rivers has barely over 9,000 combined water and sewer
12 customers. As such, concerns that Confluence Rivers would have an incentive to over-
13 invest simply because it would be spread over a larger customer base are muted.
14 Specifically, a large over-investment would not only be detected in a prudence review, it
15 would also be evident from the impact of over-investment on what is still a small customer
16 base. For this reason, concerns that consolidated pricing would lead to over-investment
17 are significantly minimized.

18 Finally, as the Commission ordered for Missouri American, Confluence Rivers is
19 willing to develop and provide a five-year capital plan similar to that ordered for Missouri
20 American when the Commission began consolidating its rates. In this regard, Staff
21 recommended in this case that such a capital plan be developed. Specifically, Staff noted:

³⁰ Roos Direct, page 5.

1 Staff concludes that Confluence has an informal, but adequate plan for
2 prioritizing and completing capital projects in the short term – meaning the
3 period of time after acquisition in which a system is initially evaluated and
4 refurbished to meet modern safety, reliability and environmental standards.
5 However, Staff is concerned that Confluence has no adequate long-term
6 capital plan for its Missouri water and sewer utilities.
7

8 Staff recommends that the Commission order Confluence to file in EFIS no
9 later than four months after the effective date of the Commission’s Report
10 and Order in this case a five-year capital plan. Staff further recommends
11 that by January 30 of each year until its next rate case, Confluence file an
12 updated five-year plan. This five-year capital plan will provide projected
13 plans for years one through five. For each water system, each yearly plan
14 will be divided between plant and transmission systems. For each sewer
15 system, each yearly plan will be divided between treatment plant and
16 collection system.³¹
17

18 **Q. IS CONFLUENCE RIVERS WILLING TO DEVELOP AND PROVIDE THE FIVE-**
19 **YEAR PLAN RECOMMENDED BY STAFF?**

20 A. Yes. Not only will the recommended 5-year plan provide comfort to Staff and other parties
21 that Confluence Rivers is not over-investing in its systems, such a plan is also consistent
22 with the current WSIRA legislation. Specifically, it is my understanding that Section
23 393.1506, RSMo, provides for the establishment of a mechanism to recover, as a surcharge,
24 the impact of investment made between rate cases. Given a recent determination in a
25 Liberty Utilities docket, the Commission made a conclusion suggesting that Liberty and
26 Confluence Rivers are not yet eligible to use that mechanism. That said, however,
27 Confluence Rivers hopes to qualify to use that mechanism in the near future. One
28 requirement for that mechanism is the preparation and filing of a “five-year capital
29 expenditure plan.”³² Thus, Staff’s recommendation for a five-year capital plan should not

³¹ *Id.* at page 6.

³² Section 393.1509(3).

1 only address over-investment concerns associated with consolidation, it would also meet
2 any requirements associated with Confluence’s eventual use of the WSIRA mechanism.

3 **Q. WHAT IS YOUR RECOMMENDATION REGARDING CONSOLIDATION IN**
4 **THIS CASE?**

5 A. I recommend that the Commission adopt Confluence Rivers’ request to move to a single
6 consolidated water district and a single consolidated sewer district. First, such an approach
7 is consistent with the guidance provided by the Commission with regards to Missouri
8 American over the past decade, and previously awarded to Confluence Rivers on a smaller
9 scale across previous operating companies, consolidated pricing that the current staff
10 recommendation unpicks contrary to previous findings. Second, consolidation of the
11 Confluence Rivers’ systems is consistent with the national trend, previously acknowledged
12 by the Commission, “towards consolidated pricing.” Third, adoption of such a
13 recommendation will unlock a multitude of benefits including, most importantly to
14 Confluence Rivers’ mission statement, creating an incentive for Confluence Rivers to
15 continue to acquire distressed water and sewer companies.

16
17 **V. TIME SHEETS / EXECUTIVE SALARIES**

18 **A. EXECUTIVE TIMESHEETS**

19 **Q. HAVE YOU REVIEWED STAFF’S TESTIMONY REGARDING THE**
20 **IMPLEMENTATION OF TIME SHEETS AT CONFLUENCE RIVERS?**

21 A. Yes. At pages 17 and 18 of her Direct Testimony, Ms. Sarver points out that Confluence
22 Rivers failed to abide by a commitment, from Case No. WR-2020-0053, to implement

1 timesheets for all employees. While Confluence Rivers took initial steps towards meeting
2 this commitment, it fell short of a complete implementation of this commitment.
3 Confluence Rivers implemented software that allows for timesheets and created Employee
4 Handbook section that requires “all employees . . . to accurately complete and confirm a
5 timesheet” in that software. However, the requirement did not translate to all employees.
6 Specifically, while some employees failed to keep a timesheet in particular months, the
7 majority of the executive team failed to meet this requirement for any month during the
8 test year.

9 **Q. DO YOU APPRECIATE THE DIFFICULTY THAT THIS FAILURE CAUSED**
10 **FOR STAFF IN COMPLETING ITS AUDIT IN THIS CASE?**

11 A. Yes and no. I appreciate that Staff is tasked with determining the appropriate level of
12 salaries to include in Confluence Rivers rates. Recognizing that CSWR employees have
13 oversight responsibilities for multiple jurisdictions, the Staff’s efforts to include the proper
14 amount of payroll, without any supporting documentation like timesheets, becomes more
15 difficult. As such, I apologize for the shortfalls of Confluence Rivers with regard to its
16 failure to abide by the timesheet commitment.³³ However, because both Confluence Rivers
17 and its other affiliated operating companies continue to grow at a rapid pace, it is doubtful
18 even full compliance with the timekeeping obligations to which the Company agreed
19 would have produced results that would be particularly useful in this case. The changes in
20 our affiliate group are happening so rapidly that timesheet allocations are likely to differ

³³ To put in perspective, the timekeeping requirement was imposed in a rate case for a company, since consolidated inside of Confluence Rivers, which represents only 1.5% of CSWR’s total customer base.

1 not only year-to-year but quarter-to-quarter. So, timesheet entries covering past periods
2 are unlikely to be accurate predictors of how each employee's time should currently be
3 allocated or will be in the future.

4 **Q. CAN YOU PROVIDE ANY JUSTIFICATION FOR THE FAILURE TO**
5 **COMPLETELY FULFILL THE TIMESHEET COMMITMENT?**

6 A. While not an excuse, ultimately the failure to meet this commitment is a result of the
7 tremendous growth experienced at CSWR since the time of that commitment. Since
8 December 31, 2020, CSWR has entered six additional states and closed on 157 acquisitions
9 with a total of approximately 95,000 connections. As mentioned throughout this case, this
10 is done in an effort to achieve economies of scale across the entire CSWR national
11 footprint, and to minimize, as much as possible, rate increases for customers served by the
12 systems our affiliated group acquires. As the Kentucky Commission has recognized, the
13 economies of scale associated with an increased customer base "should drive down costs
14 in the long term."³⁴ While this growth, to the degree it was responsible for the failure to
15 keep executive timesheets by executives, may have hindered Staff in quantifying the
16 appropriate allocations of overhead costs to include in rates in this case, it has nonetheless
17 led to benefits for Missouri ratepayers. Specifically, over the past five years, the amount
18 of CSWR corporate overheads allocated to Missouri has decreased as a result of the
19 tremendous CSWR group's growth.
20

³⁴ Order, Case No. 2020-00290, issued August 2, 2021, at page 13.

Quarter / Year	Missouri Allocation ³⁵
Q1 2020	26.42%
Q2 2020	26.42%
Q3 2020	17.67%
Q4 2020	17.67%
Q1 2021	16.17%
Q2 2021	16.58%
Q3 2021	15.05%
Q4 2021	12.93%
Q1 2022	10.50%
Q2 2022	12.55%
Q3 2022	10.94%
Q4 2022	10.05%
Q1 2023	7.99%
Q2 2023	7.56%

1

2 **Q. WHAT WAS THE ULTIMATE EFFECT, IN STAFF'S REVENUE**
3 **REQUIREMENT, OF CONFLUENCE RIVERS' FAILURE TO MAINTAIN**
4 **ADEQUATE TIME SHEETS?**

5 A. As it readily acknowledges, given the failure of CSWR executives to maintain timesheets,
6 Staff did not include any of the payroll or benefits associated with the CSWR executives
7 who failed to keep time records:

8 Q. Did Staff include the employee salaries that did not have a timesheet
9 in the cost of service?

10 A. No.³⁶

11 **Q. DO YOU BELIEVE THAT STAFF'S PROPOSED PENALTY OF DISALLOWING**
12 **ALL EXECUTIVE PAYROLL AND BENEFITS IS REASONABLE?**
13

14

³⁵ Prior to 2021, allocations to each individual state utility operating company were only calculated semi-annually. For this reason, the allocation for Q1 2020 and Q2 2020 were the same. Additionally, this does not provide an exact apples-to-apples comparison, as CSWR slightly changed its cost allocation approach at the beginning of 2022. That said, however, one can get a relative sense that the allocation percentage to Missouri operations as decreased dramatically as a result of the acquisitions of additional systems.

³⁶ Sarver Direct, page 17.

1 A. No. Staff's approach is extremely punitive. Effectively, the result of Staff's elimination
2 of the entirety of executive payroll and benefits is that Staff believes that Confluence Rivers
3 can effectively be managed without an executive team. Such a conclusion is nonsensical.
4 It is unquestioned that Missouri ratepayers receive a benefit from the efforts of this
5 management team. Most obviously, the executive team for which Staff has removed all
6 salaries and benefits for the team responsible for bringing 50 Missouri systems back into
7 compliance with health, safety, and environmental compliance. This executive team took
8 at least 13 Commission-regulated utilities out of receivership. This utility took numerous
9 utilities over at the behest of MDNR and/or the Commission staff. In addition this
10 executive team was responsible for securing the debt financing recognized in this case.
11 The benefits of those efforts are reflected in a lower overall cost of capital in this case.
12 Moreover, assuming a sufficient level of cash flow resulting from the rates in this case, that
13 same executive team will be responsible for securing additional debt financing. All of this
14 means Missouri customers now have safe drinking water and can now safely play in
15 numerous lakes, rivers, and streams that are protected from environmental degradation. As
16 such, to accept the benefits of the CSWR executive team and reflecting those benefits in
17 rates without also acknowledging at least some costs underlying that same team does not
18 seem consistent with Staff's duty to balance the interests of the utility and ratepayers.

19 **Q. SHORT OF COMPLETE DISALLOWANCE OF ALL EXECUTIVE SALARIES**
20 **AND BENEFITS, DO YOU BELIEVE THERE IS A MORE REASONABLE,**
21 **OBJECTIVE APPROACH TO INCLUDING A PROPER LEVEL OF EXECUTIVE**
22 **PAYROLL IN RATES IN THIS CASE?**

1 A. Yes. As with many corporate costs that are not easily assigned to a particular jurisdiction,
2 a general allocation, such as that produced by the corporation allocation manual, would
3 provide a reasonable level of executive salaries and benefits to include in rates. For
4 instance, costs associated with rent at the corporate headquarters, payroll administration
5 expenses, and various software expenses are allocated to the various state utility operating
6 companies on the basis of the general allocator described in the Cost Allocation Manual.
7 Applying the same general allocator that is used for rent and other corporate costs to
8 executive salaries and benefits would allow recognition of the fact that these executives
9 provide services that are necessary to the operations of the Missouri utility while also only
10 recognizing a reasonable amount of the associated salaries and benefits.

11 **Q. DOES CONFLUENCE RIVERS WISH TO BE RELIEVED OF THE**
12 **REQUIREMENT FOR EXECUTIVES TO KEEP TIME SHEETS?**

13 A. Yes. As mentioned, given the tremendous pace of growth which has demonstratively
14 benefited Missouri customers and made CSWR the 11th largest water and sewer IOU in the
15 United States, historical time sheets are not reflective of payroll allocations currently or
16 what they should be in the future. As such, I would ask that the need to maintain timesheets
17 should be withdrawn until such time as timekeeping can provide a useful estimate of
18 ongoing operations. In the alternative, Confluence Rivers believes that the requirement to
19 keep daily time sheets is onerous for executives that are responsible for the day-to-day
20 operations of a company that is operating in twelve different states. These executives move
21 dozens of times, throughout the course of the day, from issues arising in each of the CSWR
22 states. It is extremely time-consuming to expect these executives to keep accurate time

1 sheets of the multitude of projects that each address on a day-to-day basis. As such,
2 Confluence Rivers asks that the Commission modify the requirement to keep daily
3 timesheets such that directors and above be permitted to engage in exception timekeeping.
4 This proposal will be explained in greater detail in the rebuttal testimony of Mr. Brent
5 Thies. It is my opinion that, absent being relieved entirely from the timekeeping
6 requirement, the timekeeping proposal spelled out by Mr. Thies will: (1) recognize the fact
7 that directors and above are responsible for overall corporate direction and management
8 and should not be required to keep timesheets on an hourly basis; (2) provides Staff with
9 the necessary information to quantify a reasonable level of executive salaries and benefits
10 to include in rates; and (3) is consistent with the approach for timekeeping for executives
11 of other Missouri regulated utilities.

12 **B. EXECUTIVE SALARIES**

13 **Q. ARE YOU FAMILIAR WITH STAFF AND OPC'S TESTIMONY REGARDING**
14 **SALARIES AND BENEFITS?**

15 A. Yes. Both Staff witness Sarver and OPC witness Schaben address salaries and benefits.³⁷
16 While I will address and support the current level of executive salaries as addressed by Ms.
17 Schaben, Mr. Thies will address Ms. Sarver's criticism of non-executive salaries.

³⁷ In her direct testimony, Ms. Sarver makes overarching claims regarding executive salaries. "For instance, Some, if not all, of the employees listed above are compensated above that seen at other Missouri utilities. Confluence's president is paid more than the base pay that has been included in the cost of service for utility presidents for all the other major utilities in the State of Missouri." (Sarver Direct, page 18). That said, since she does not recognize any executive time, the importance of the compensation level is muted. As such, Ms. Sarver simply provides conclusory opinions regarding executive salaries, but provides no supporting analysis. In contrast, Ms. Schaben provides actual analysis. For this reason, my rebuttal testimony focuses on Ms. Schaben's testimony and analysis. That said, the conclusions that I reach in this testimony, namely that CSWR executive salaries are not excessive, is equally applicable to rebut Ms. Sarver's conclusory opinions.

1 **Q. PLEASE PROVIDE YOUR UNDERSTANDING OF MS. SCHABEN’S POSITION**
2 **REGARDING EXECUTIVE SALARIES.**

3 A. In her Direct Testimony, Ms. Schaben compares executive salaries at CSWR to those at
4 six other Missouri investor-owned utilities.³⁸ While her Direct Testimony does not identify
5 the other investor-owned utilities, it is likely that this includes electric utilities, such as
6 Ameren and Evergy, and gas utilities, such as Spire. Additionally, while Confluence
7 Rivers sought the workpapers underlying Ms. Schaben’s analysis, Public Counsel refused
8 to provide those workpapers as the underlying information was marked highly confidential
9 by the relevant utility. In any event, from her secret analysis, Ms. Schaben concludes that
10 “[e]xecutive level salaries, in particular, greatly exceed the salaries of other Missouri
11 regulated utilities.”³⁹

12 **Q. DO YOU BELIEVE THAT MS. SCHABEN’S ANALYSIS CONTAINS FLAWS**
13 **THAT UNDERMINE ITS VALUE?**

14 A. While the specific analysis was not provided by Public Counsel, I believe that at least two
15 obvious flaws can be identified in Ms. Schaben’s analysis. *First*, I believe that there is
16 little value in comparing the executive salaries for a rapidly growing water and wastewater
17 utility to those of largely static electric and gas utilities. The board of directors of any
18 relevant utility will look for experience that is applicable to that specific utility industry.
19 Thus, the Ameren and Evergy boards of directors will look for individuals with significant
20 executive electric and gas utility experience. Similarly, the managing entity of a water

³⁸ Schaben Direct, pages 3-5.

³⁹ Schaben Direct, page 2.

1 utility will inevitably seek leadership from highly skilled individuals experienced in the
2 water and wastewater industry. This fact is well proven. For instance, at the time that it
3 hired its current CEO (Marty Lyons), Ameren praised his 21 years of experience in the
4 electric industry.

5 Lyons joined Ameren in 2001 as vice president and controller. Since then,
6 he has served in several senior leadership roles, including chief financial
7 officer for 10 years, president of Ameren Services and in his current role as
8 president, Ameren Missouri. In all of these roles, and as a member of
9 Ameren's Executive Leadership Team, Lyons has gained extensive
10 strategic, operational, financial, risk management and regulatory
11 experience. He has also been active in several industry organizations,
12 including the Edison Electric Institute (EEI) and Nuclear Energy Institute
13 (NEI), as well as in several community organizations.⁴⁰

14
15 Similarly, at the time that it hired its current Chief Executive Office (David Campbell),
16 Evergy applauded his extensive experience in the electric utility industry.

17 Campbell, 52, has served as Executive Vice President and Chief Financial
18 Officer of Vistra Corporation, a multi-state electricity generation and retail
19 electric provider headquartered in Dallas, Texas. Campbell's focus at
20 Vistra has included the company's portfolio transformation, the
21 announcement of the company's greenhouse gas reduction targets, and the
22 articulation of the company's capital allocation strategy and long-term
23 fundamental outlook. During his tenure, the Vistra team delivered at the
24 high-end of its 2019 guidance and recently raised its 2020 outlook to the top
25 end of the prior guidance range.

26 In addition to his strong performance at Vistra, Campbell has been
27 successful in multiple leadership roles. As CEO of Sharyland, Campbell
28 successfully navigated complex regulatory dynamics and won support for
29 an asset swap with Oncor that resulted in a rate reduction for Sharyland's
30 customers, who otherwise faced higher rates due to Sharyland's rural
31 service territory. Prior to that, as CEO of Luminant, the largest power
32 generator in Texas, Campbell oversaw coal and nuclear operations that
33 consistently achieved top decile performance in capacity factors and top
34 quartile or top decile performance in costs relative to industry

⁴⁰ Ameren October 11, 2021 Press Release "Ameren Announces Leadership Changes Effective January 1, 2022."

1 benchmarks. As CFO of TXU Corp., Campbell was part of the senior
2 leadership team that led the company's financial and operational turnaround
3 from 2004-2007, achieving the top performance in the S&P 500 Utilities
4 Index.⁴¹

5 Not surprisingly, the biography for the Spire Chief Executive Officer (Susan Sitherwood)
6 references her "40 years of experience in the natural gas industry."⁴²

7 Given that utilities clearly value talent, a track record of success, and experience
8 within their specific industry when selecting executive leadership, it is misplaced for Ms.
9 Schaben to undertake an apples-to-oranges comparison by comparing executive
10 compensation at CSWR, a rapidly growing water and wastewater utility, to that at mature
11 electric and gas utilities. Instead, a more valuable comparison would be to compare to
12 executive salaries of other water and wastewater utilities.

13 Second, I believe that Ms. Schaben's analysis is short-sighted in comparing only to
14 Missouri utilities. As reflected in the biography of Mr. Campbell, the marketplace for a
15 chief executive search is nationwide. A Missouri utility will not, in the course of its search
16 for executives, limit itself to a limited geographic scope. As such, limiting a comparison
17 to just Missouri utilities is also misplaced. A utility Board of Directors must provide
18 compensation not only reflective of the specific industry, but also comparable to that paid
19 by other utilities nationwide. As such, limiting her comparison to just Missouri utilities is
20 misplaced.

⁴¹ Evergy December 8, 2020 Press Release "Evergy Appoints David A. Campbell as President, Chief Executive Office and Board Member."

⁴² [Suzanne Sitherwood | Our Team | Spire Inc. \(spireenergy.com\)](https://www.spireenergy.com)

1 **Q. GIVEN THE TWO OBVIOUS FLAWS IN MS. SCHABEN’S ANALYSIS, WHAT**
2 **WOULD BE A BETTER POINT OF COMPARISON FOR THE EXECUTIVE**
3 **SALARIES AT CSWR?**

4 A. Given that water and wastewater utilities inevitably seek to attract executives with
5 experience in the water / wastewater industry and recognizing that any compensation must
6 be competitive with other water utilities operating nationwide, a better comparison for the
7 reasonableness of CSWR executive salaries would be to other similarly sized national
8 water / wastewater utilities.

9 **Q. DOES THE INFORMATION EXIST FOR SUCH AN ANALYSIS?**

10 A. Yes. Similarly sized water and wastewater utilities are publicly traded. One part of the
11 SEC filings for publicly traded entities is executive compensation. As such, this
12 information is readily available.

13 **Q. PRIOR TO PROVIDING THE RESULTS OF YOUR ANALYSIS, DO YOU WISH**
14 **TO QUALIFY YOUR ANALYSIS IN ANY WAY?**

15 A. Yes. As an initial matter, it is important to understand that, at most utilities, executive
16 compensation is not limited solely to salaries. Instead, compensation also includes annual
17 bonuses and, since these utilities are publicly traded, stock options. For instance, for
18 Middlesex Water Company, the Chief Executive Officer is paid an annual salary of
19 \$700,000, but also received additional 2022 non-salary compensation, in the form of
20 restricted stock awards, that was valued at \$399,000.⁴³ By way of background, while

⁴³ Middlesex Water Company, 2023 Notice of Annual Meeting of Shareholders and Proxy Statement, filed April 10, 2023, at page 27.

1 serving roughly the same number of connections, Middlesex Water only provides service
2 in 2 states while operating approximately 20 systems (830 less than CSWR).

3 **Q. WHAT IS YOUR OPINION OF THE REASONABLENESS OF CSWR’S**
4 **EXECUTIVE SALARIES?**

5 A. Based upon the following comparison of the salaries of the five highest CSWR executives
6 to the 2022 salaries of the five highest executives at similar-sized national water and
7 wastewater utilities, I believe that the salaries and benefits for CSWR executives are very
8 reasonable and well within the mainstream of such water and wastewater utilities.

Utility	Middlesex Water ⁴⁴	Artesian Resources ⁴⁵	CSWR ⁴⁶
Connections	146,000	104,000	144,000
Chief Exec. Off.	Dennis O’Dell	Dian Taylor	Josiah Cox
Salary	\$700,000	\$611,330	** _____ **
Executive #2	Bruce O’Connor	David Spacht	Marty Moore
Salary	\$445,333	\$409,973	** _____ **
Executive #3	Jay Kooper	Joseph DiNunzio	Todd Thomas
Salary	\$345,013	\$444,589	** _____ **
Executive #4	Georgia Simpson	Nicholle Taylor	Russ Mitten
Salary	\$282,894	\$394,608	** _____ **
Executive #5	Robert Fullagar	Jennifer Finch	Mike Duncan
Salary	\$282,652	\$363,832	** _____ **
TOTAL	\$2,055,892	\$2,224,332	** _____ **

10 ****CONFIDENTIAL****

⁴⁴ *Id.*

⁴⁵ Artesian Resources Corporation, 2022 Form 10-K, filed March 10, 2023, at page 70.

⁴⁶ Please note that the level of salaries actually sought to be included in Missouri rates not only reflects an allocated Missouri amount, but also reflects a 10.8% voluntary reduction to account for executive supervision of business development efforts.

1 **Q. BASED UPON YOUR ANALYSIS, WHAT IS YOUR CONCLUSION?**

2 A. Contrary to Ms. Schaben’s conclusion that CSWR executive salaries are excessive, the
3 salaries provided to CSWR executives are comparable to those of other similarly sized
4 water utilities. In fact, the compensation for the five highest paid executives at CSWR
5 almost exactly matches the average of the two identified similarly sized national water and
6 wastewater utilities with significantly smaller state footprints and, regards to individual
7 operating systems, lower operational complexity by orders of magnitude.⁴⁷ As mentioned,
8 recognizing that these other utilities routinely offer other compensation in the form of
9 bonuses and stock options, I submit that the CSWR executive salaries are not only
10 reasonable, they actually lag behind that of other utilities in the industry.

11 **VI. DEDICATED MISSOURI EMPLOYEE**

12 **Q. ARE YOU FAMILIAR WITH STAFF WITNESS GATELEY’S TESTIMONY?**

13 A. Yes. In his testimony, Mr. Gateley identifies some limited examples of Confluence Rivers’
14 system problems (e.g., Auburn Lakes and Fox Run). Mr. Gateley then concludes that these
15 two limited examples are indicative of a “lack of oversight by Confluence, or a lack of
16 communication by Confluence’s contract operator.”⁴⁸ In conjunction with an alleged
17 refusal to “allow Staff access to its utilities via a contract operator”,⁴⁹ Mr. Gateley then

⁴⁷ The water utilities referenced in this comparison analysis only operate in a couple of jurisdictions and rarely purchase failing utilities. In fact, the operational sophistication required to operate the number of systems CSWR owns across the jurisdictional diversity of CSWR’s state footprint is significantly higher than the peer group referenced above. As I mentioned in my direct testimony CSWR is on track to take more domestic wastewater systems from noncompliance to compliance than any other water utility since the passage of the Clean Water Act.

⁴⁸ Gateley Direct, page 10.

⁴⁹ *Id.* at page 6.

1 concludes that “it has been demonstrated that Confluence’s lack of dedicated personnel
2 needed to oversee operations and contract operators in Missouri cannot continue.”⁵⁰

3 **Q. DO YOU AGREE WITH MR. GATELEY’S DESCRIPTIONS AND**
4 **CONCLUSIONS?**

5 A. Absolutely not. ***First***, as detailed in Mr. Thomas’ rebuttal testimony, Confluence Rivers
6 was aware, both through its own inspections and from communications with its third-party
7 operators, of the potential problems at both Auburn Lakes and Fox Run. Confluence Rivers
8 had detailed for Staff, both through informal conversations and data request responses, that
9 it was aware of potential shortcomings at these systems. In fact, given this understanding,
10 Confluence Rivers had taken steps inside operations and engineering, prior to Mr.
11 Gateley’s criticisms, to make upgrades and identify root cause problems for the situation
12 at both Auburn Lakes and Fox Run. The mere existence of utility problems certainly does
13 not rise to a “lack of oversight” referenced by Mr. Gateley. In fact, given his understanding
14 of the types of systems that Confluence Rivers acquires, Mr. Gateley should not be
15 surprised that such problems may arise. In fact, Confluence Rivers’ willingness to acquire
16 these distressed systems and tackle these problems is the underlying reason that DNR has
17 concluded that Confluence Rivers “has consistently taken swift actions after taking control
18 of these systems to bring them into compliance by employing qualified operators,
19 effectively administering and managing the systems, and investing in repairs and
20 upgrades.”⁵¹

⁵⁰ *Id.*

⁵¹ See, Schedule JMC-R-2.

1 Second, as detailed by Mr. Freeman, Confluence Rivers has not refused to “allow
2 Staff access to its utilities via a contract operator” in an effort to hinder Staff in performing
3 its inspections. Rather, Confluence Rivers believes that there will inevitably be
4 information related to specific systems and improvements that a contract operator is
5 incapable of providing. For instance, while a contract operator may understand operating
6 conditions at a particular system, the Confluence Rivers Director of Engineering will
7 understand those problems as well as the steps that are being taken to resolve any
8 operational problems. As such, Confluence Rivers sees value in having the director of
9 engineering escort Staff on its inspections instead of a contract operator. Finally, as Mr.
10 Freeman indicates, whether characterized as a “routine”, “customary”, “urgent”, or
11 “emergency” inspection, Confluence Rivers believes that it has been able to accommodate
12 Staff’s schedules when it requests such inspections.

13 **Q. WHAT ARE YOUR THOUGHTS ON STAFF’S REQUEST THAT THE**
14 **COMMISSION ORDER CONFLUENCE RIVERS TO RETAIN EMPLOYEES**
15 **DEDICATED SOLELY TO MISSOURI?**

16 A. As an initial matter, it is important to recognize that, while insisting that Confluence Rivers
17 be required to retain the dedicated Missouri employee(s), Mr. Gateley’s proposal lacks any
18 substance. For instance, when asked to identify the specific number of additional
19 position(s) that Mr. Gateley “believes should be created solely for Missouri operations,”
20 Mr. Gateley indicate that he “has not attempted to determine this.”⁵² Similarly, Mr. Gateley
21 did not attempt to quantify the costs of such additional position(s) or the impact on rates of

⁵² See, Response to DR 339.

1 such additional position(s).⁵³ Given this lack of cost analysis, it is not surprising then that
2 Staff does not include any of the costs associated with such an employee.⁵⁴ Rather, Staff
3 simply indicated that, while insisting that such positions be created, that it “will examine
4 costs as part of a future rate case.”⁵⁵ Worse still, Staff refused to even indicate whether it
5 believed that the creation of such a position was “prudent”.⁵⁶

6 In any event, Confluence Rivers is opposed to Mr. Gateley’s proposal that it be
7 required to retain new dedicated Missouri personnel. While Confluence Rivers currently
8 has a regional manager (Brad Thibault) that performs many of the duties identified by Staff,
9 he is not dedicated exclusively to Missouri. As with all aspects of its operational oversight
10 and improvements, Confluence Rivers must consider the impact on rates.

11 It would be easy for Confluence Rivers to accept Staff’s recommendation and
12 simply hire additional employees to satisfy Staff. As previously indicated, however,
13 Confluence Rivers was exposed to significant criticism at local public hearings for the
14 magnitude of the rate increases in this case. To the extent that additional costs are included,
15 as suggested by Staff, the recommendation will further increase those rate increases. At
16 this point, given the number of systems in Missouri, Confluence Rivers is hesitant to add
17 Missouri specific personnel and expose ratepayers to those additional costs. Instead, I
18 believe that Mr. Thibault can continue to handle these duties as a shared asset for both
19 Missouri and Tennessee.

⁵³ *Id.*

⁵⁴ See Response to DR 340 “It is Mr. Gateley’s understanding that no additional costs have been included in Staff’s revenue requirement to fund additional positions at this time.”

⁵⁵ Gateley Direct, page 14.

⁵⁶ See, Objection to DR 342.

VII. SYSTEM REPAIRS

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Q. ARE YOU FAMILIAR WITH THE PORT PERRY WASTEWATER SYSTEM?

A. Yes. I have personally inspected the Port Perry system several times. The Port Perry system is a combined water and wastewater system serving a total of approximately 680 customers. It is located approximately 12 miles west of Perryville, Missouri. Confluence Rivers’ acquisition of the Port Perry system closed on September 25, 2020. Relative to the wastewater operations, the system consists of a four-cell lagoon along with land application area. The system is considered a facultative system in that it is not aerated. Also, the system does not discharge into a waterway. Instead, the effluent applied to a discharge field by a series of irrigation sprinklers.

Q. WHAT WAS THE CONDITION OF THE PORT PERRY WASTEWATER SYSTEM AT THE TIME THAT IT WAS ACQUIRED?

A. My opinion was that the wastewater system was in very poor condition when it was acquired and in need of immediate upgrades. As mentioned, the wastewater consists entirely of lagoons, pumps for discharge spraying, and a discharge field. As the attached photos indicate, the Port Perry lagoons were suffering from years of neglect. Large trees had grown around the berms but were actually growing in the lagoon. Mature trees threaten the efficacy of the system. Mature trees produce large root beds. The roots in the berm threaten the stability of the berm and can produce sanitary sewage overflows. Roots from trees in the lagoon also undermine the ability of the lagoon to maintain storage per DNR. As a result, significant efforts needed to be made to restore the life of this facility.

1 **Q. WAS YOUR OPINION OF THE NEED FOR RESTORATION EFFORTS SHARED**
2 **BY THE DEPARTMENT OF NATURAL RESOURCES?**

3 A. Yes. Six days after the Port Perry system was acquired (October 1, 2020), the Department
4 of Natural Resources conducted an inspection of the Port Perry wastewater facility. The
5 findings from this inspection were detailed in a Letter of Warning issued on October 6,
6 2020.⁵⁷ Pages 3-4 of that Report contains DNR’s Unsatisfactory Findings. Most
7 significantly, DNR provided the following finding and Required Action related to the trees
8 in the lagoon.

9 1. Confluence Rivers – Port Perry WWRF failed to maintain the slopes of the
10 lagoon system in such a way as to remain consistent with design standards as
11 required by MSOP MOG8231226.

12
13 Earthen Storage Basin Operational Requirement #6 states: “The inner and outer
14 berm slopes of the storage basin shall be maintained in such a way as to remain
15 consistent with design standards. . . The berms of the storage basins shall be mowed
16 and kept free of deep-rooted vegetation, animal dens or other potential sources of
17 damage to the structural integrity of the berms.

18
19 **Required Action:** By January 1, 2021, have all large vegetation removed from
20 lagoon berms and lagoon cells, while ensuring the structural integrity of the system
21 is not compromised.

22
23 Attached to the report are several photos. Six of the photos specifically note “large trees”
24 either in or around the lagoon.

25 Interestingly, the existence of these trees and the need for removal was not a sudden
26 development. In 2012, DNR conducted an inspection of the Port Perry system as well. In
27 the Letter of Warning resulting from that inspection, DNR noted:

⁵⁷ Schedule JMC-R-6

1 Root growth from trees and shrubs in the lagoon can result in damage to the
2 lagoon liner and the integrity of the berms. Woody material (brush) and
3 weeds growing on and around the berms, and inside the cells provide cover
4 for burrowing animals, which can damage the berm and result in wastewater
5 leakage. A muskrat was seen running from the lagoon during the visit.
6 Annual mowing is seldom adequate to maintain the vegetation which grows
7 on lagoon berms.⁵⁸
8

9 Much as in 2020, DNR set forth Required Action resulting from the significant vegetation
10 growing in and around the lagoon.

11 3. Lack of proper maintenance at the lagoon location.

12 Because vegetation is established within the lagoon cells, it is reasonable to
13 assume that the clay liners have been compromised.

14
15 **Required Action:** The vegetation should be removed and the clay liner
16 inspected by a professional engineer, registered in the state of Missouri.
17 The engineer's report should evaluate the integrity of the clay seal and its
18 ability to collect, hold, and treat domestic wastewater to comply with 10
19 CSR 20-8.020 and all applicable laws and regulations. The report should
20 clarify that the percolation losses do not exceed 1/16 inch per day and make
21 recommendations for any replacement and or necessary repairs to the seal.
22

23 **Q. DO YOU HAVE PHOTOS THAT SHOW THE PROBLEMS DISCUSSED IN THE**
24 **DNR REPORTS?**

25 A. Yes. In addition to the photos included in the DNR reports, the following photos also
26 depict the severe nature of the vegetation growing in and around the Port Perry lagoons.

⁵⁸ Schedule JMC-R-7



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3 **Q. DOES THE VEGETATION REFLECTED IN THE PICTURES AND NOTED IN**
4 **THE DNR REPORTS REDUCE THE LIFE OF THE PORT PERRY LAGOONS?**

5 A. Certainly. As the DNR reports indicate, the roots caused by the large trees growing in and
6 around the lagoons threaten the efficacy of the clay seal and the lagoon’s ability “to collect,
7 hold, and treat domestic wastewater.” Moreover, wildlife growing in the vegetation, such
8 as the muskrat identified in the 2012 DNR report, can burrow into the berms and threaten
9 the lagoon’s ability to collect and hold wastewater.

10 **Q. HAS CONFLUENCE RIVERS REMEDIED THESE PROBLEMS?**

11 A. Yes. As the following pictures show, the vegetation has been removed and, as a result, the
12 threatening wildlife eliminated.

1



2



3



1

2 **Q. HOW ARE THESE LIFE RESTORING EFFORTS RELEVANT TO YOUR**
3 **REBUTTAL TESTIMONY?**

4 A. As detailed in the Rebuttal Testimony of Brent Thies, Confluence Rivers has capitalized
5 the costs of these efforts to restore the life of the Port Perry facility. In contrast, Staff has
6 defined these efforts as repair expenses. Since these efforts restore the life of these
7 facilities, Confluence Rivers does not believe that they are simply repairs. Absent such
8 efforts, the lives of the facilities were threatened. As Mr. Thies explains, Confluence
9 Rivers believes that the costs of these restorative efforts should be capitalized and not
10 expensed.

11 **Q. ARE YOUR CONCERNS WITH STAFF'S RECLASSIFICATION OF**
12 **CAPITALIZED ITEMS AS REPAIR EXPENSES LIMITED TO THE EFFORTS**
13 **AT PORT PERRY?**

1 A. No. As Mr. Thies explains, these issues arise throughout the systems purchased and
2 restored by Confluence Rivers. For instance, a storage tank at a water facility that has been
3 denied regular painting and maintenance will begin to rust and leak. As a result of previous
4 owner's refusal to maintain such facilities, the life of the storage tank has been undermined.
5 When Confluence Rivers purchases the facility and sands, patches, primes, and paints the
6 storage tank, it is not conducting repairs. Rather, it is restoring the life of the storage tank.
7 As such, the costs of those efforts should be capitalized and not expensed.

8 Similarly, Confluence Rivers routinely purchases wastewater facilities that have
9 tanks that are impacted with accumulated sludge. As a result, the tank has lost all of its
10 treatment ability. Instead of holding wastewater for treatment, the wastewater simply
11 passes across the accumulated sludge and discharges out of the facility into receiving
12 waterbodies exposing Missourians to potential health risks. Moreover, that tank will
13 prematurely rust and begin to leak. When Confluence River purchases such a facility, it
14 will immediately pump out the accumulated sludge and haul it for disposal. Similarly,
15 Confluence Rivers will then check the ability of the tank to hold wastewater and patch,
16 prime and paint any leaks. These efforts are not simply repairs to be expensed. Rather,
17 these efforts by Confluence Rivers restore the life of the facility. A facility that was
18 providing no treatment is suddenly reinvigorated and returned to life. These capitalized
19 capital costs represent Confluence Rivers' willingness to utilize the systems components it
20 inherits, rather than engaging in wholesale replacement which would drive up customers
21 costs higher than those we propose. These costs should be capitalized as Mr. Thies
22 explains.

1 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

2 A. Yes.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Confluence Rivers Utility)
Operating Company, Inc.'s Request for Authority)
to Implement a General Rate Increase for Water) **File No. WR-2023-0006**
Service and Sewer Service Provided in Missouri)
Service Areas.)

VERIFICATION OF JOSIAH COX

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

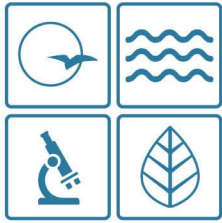
I, Josiah Cox, of lawful age, under penalty of perjury, and pursuant to Section 509.030, RSMo, state as follows:

1. My name is Josiah. I am President of Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers" or "Company"). 1630 Des Peres Road, Suite 140, St. Louis, Missouri, 63131.
2. My rebuttal testimony on behalf of Confluence Rivers Utility Operating Company, Inc. is attached to this verification.
3. My answers to each question in the attached rebuttal testimony are true and correct to the best of my knowledge, information, and belief.

/s/ Josiah Cox
Josiah Cox

June 29, 2023
Date

System Name	Docket Number	Source	Narrative
Hillcrest	WO-2014-0340	Staff's Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity	"Hillcrest entered into an emergency service agreement with DNR and Brandco, with the provision that permanent repairs will not be accomplished (by Hillcrest) unless and until the transfer of assets is approved and accomplished. Additionally, there were some shortcomings with respect to the wellhouse and the wellhead that are contamination risks, which Hillcrest assisted Brandco in repairing at least on a temporary basis. All of the repairs, as well as some ongoing operations matters, are the subject of the DNR Compliance Agreement dated Jun 13, 2014."
Indian Hills	WO-2016-0045	Staff's Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity	"In addition to a need for capital improvements, IHU is presently in an enforcement action with the Missouri Department of Natural Resources (DNR). IHU entered into a Bilateral Compliance Agreement with DNR in which it had agreed to obtain a backup operator within 120 days of July 17, 2015. IHUOC submitted email correspondence between it and DNR, pertaining to an extension of this agreement, as a Supplement to Application in this case on December 8, 2015, EFIS item No. 8."
MO Utilities	SM-2017-0150	ORDER APPROVING STIPULATION AND AGREEMENT, GRANTING CCN AND TRANSFER OF ASSETS	"Originally granted a CCN to provide water and sewer service in Case. No. WA-92-291, MO Utilities has been in receivership since August 14, 2006.4 MO Utilities has received notice from the Missouri Department of Natural Resources ("DNR") for exceeding permitted discharge limits, failure to maintain facilities, and failure to submit required reports. As Staff notes in Appendix A of its June 8, 2017 Recommendation, the current system is unable to meet anticipated new discharge limits for Escherichia coliform (E. Coli) bacteria and ammonia."
Glad Lo	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"Gladlo is a water and sewer utility that is in receivership. Gladlo's wastewater system is under a DNR schedule of compliance for ammonia removal. The system needs a new wastewater treatment plant biological reactor to process waste for nutrient removal. The water system is out of compliance for basic 24-hour storage and emergency service backup"
Calvey Brook	WM-2018-0116	Staff's Recommendation	"A bank foreclosed on the developer's land and the assets owned by the Calvey Brook regulated utilities, which are now defunct as corporate entities, prior to any development or homebuilding occurring in the subdivision. The water and sewer systems are now used to provide service to customers, but are owned and operated by an entity named Calvey Brook Estates Homeowners Association, Inc. There was no approval from the Commission for any transfer of assets. Staff attempted to work with this entity for the past several years, to resolve the regulatory issues regarding the water and sewer assets, to no avail."
Willows	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"Willows is a water and sewer utility. The wastewater and water systems are under a Missouri Attorney General enforcement action due to allegations of ongoing wastewater receiving stream water pollution, sanitary storm overflow pollution events, a lack of emergency wastewater system redundancy, potential public drinking water health hazards due to unreported low-pressure events, and a lack of emergency procedures for drinking water outages."
Villa Ridge	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"MPB is a sewer utility that was administratively dissolved, is in receivership, and has been a troubled company for at least 10 years. Its systems are not meeting their effluent limits, have major infiltration and inflow issues, and are actively discharging sludge into a receiving stream via discharge pipe or leaking berms. The owners have effectively abandoned the system."
Mill Creek	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"Mill Creek is a sewer utility. It has been placed in receivership, and the system is not meeting its effluent limits, does not have basic disinfection, and is discharging sludge into a creek."
Smithview	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"Smithview is a water utility that was administratively dissolved. Staff filed a complaint against Smithview for its failure to file annual reports, pay required Commission assessments, and provide safe and adequate service. Smithview has essentially abandoned the system."
Roy-L	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"Roy-L is a water and sewer utility. Its wastewater operations are under a Department of Natural Resources (DNR) schedule of compliance for ammonia removal and disinfection. The water system is out of compliance for basic drinking water security, physical separation of chlorine disinfection systems, monitoring of residual chlorine, emergency redundant chlorine pump, and corresponding operational management. Roy-L will be financially unable to meet DNR's water quality standards, which are necessary to provide safe and adequate service in the future."
Lake Virginia	WM-2018-0116	ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY	"MPB is a sewer utility that was administratively dissolved, is in receivership, and has been a troubled company for at least 10 years. Its systems are not meeting their effluent limits, have major infiltration and inflow issues, and are actively discharging sludge into a receiving stream via discharge pipe or leaking berms. The owners have effectively abandoned the system."
Terre Du Lac			"In August of 2010, the Missouri Attorney General's Office (AGO) brought a case against TDLU on behalf of DNR for violations of the Missouri Safe Drinking Water regulations and the Missouri Clean Water Law; Case No. 10SF-CC00186. The case was brought before the Circuit Court of St. Francois County, Missouri, and is ongoing. On May 19, 2015, the parties to the case filed an Agreed Partial Order of Preliminary Injunction, which required TDLU to complete multiple improvements to each of its permitted systems."
Osage Water	WA-2019-0185	Recommendation of Approval of Application	"On December 10, 2002, the Commission issued a Report and Order in Case No.WC-2003-0134,finding that Osage had been effectively abandoned by its owners, and that it was unable or unwilling to provide safe and adequate service to its customers."
Osage Water	WA-2019-0185	Recommendation of Approval of Application	"Due to certain decisions by company management, failure to properly construct, and failure to properly maintain the water and sewer systems, there are several compliance issues that need to be addressed. Some facilities are operating without permits from DNR; at least one wastewater treatment system is in such a state of disrepair that wastewater is bypassing treatment processes. (Bypassing means that partially treated or untreated wastewater is released from the system, endangering public health and the environment.) Varying degrees of immediate repairs and longer term capital improvements are necessary among the systems. OWC was placed into permanent receivership on October 21, 2005. More recently, OWC filed for Chapter 11 bankruptcy and a bankruptcy trustee was appointed on October 26, 2017. OWC's assets were liquidated by the bankruptcy trustee using a bidding procedure, with OUOC as the high bidder, resulting in this current case before the Commission."



MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Michael L. Parson
Governor

Dru Buntin
Director

June 22, 2023

OFFICIAL COPY VIA EMAIL

Josiah Cox
Confluence Rivers Utility Operating Company, Inc.
1650 Des Peres Road, Suite 303
Des Peres, MO 63131

RE: Confluence Rivers Utility Operating Company

Dear Josiah Cox:

The Missouri Department of Natural Resources regulates approximately 5,000 domestic wastewater treatment systems and approximately 2,700 public water systems in the State that are subject to the Missouri Clean Water Law and the Missouri Safe Drinking Water Law, respectively. The Department's primary goal as the regulatory authority in administering these state laws is to ensure environmental protection and human health and safety against pollution and health risks that may be caused by failing or improperly operating wastewater treatment systems and public water systems. The Department promotes compliance through compliance assistance, education, and, when necessary, enforcement actions. When systems end up in enforcement, it is often a result of limited resources and available solutions, which can sometimes draw cases out over a period of years.

When systems are unable to resolve their technical, managerial, or financial problems, one reliable solution is selling the system to a higher-performing utility operating company. In Missouri, Confluence Rivers Utility Operating Company, Inc. (CRUOC) is one of the few utility operating companies who is willing to acquire some of the most difficult failing systems. CRUOC has consistently taken swift actions after taking control of these systems to bring them into compliance by employing qualified operators, effectively administering and managing the systems, and investing in repairs and upgrades.

CRUOC's willingness to acquire systems with long-standing compliance issues has proven to be beneficial to human health and the environment by bringing many of these systems into compliance with environmental laws. The Department looks forward to continuing to work with CRUOC as it continues to acquire wastewater and public water systems in Missouri, in furtherance of the Department's initiative to encourage regionalization and consolidation of the many private systems in Missouri that are struggling to achieve compliance with laws for the protection of public health and the environment.



If you have any questions regarding this correspondence, you may contact Joe Clayton at Department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, MO 65102-0176; by phone at 573-522-1120; or by email at cwenf@dnr.mo.gov. Thank you for your cooperation in this matter.

Sincerely,

WATER PROTECTION PROGRAM

A handwritten signature in black ink, appearing to read "Joe Clayton", written in a cursive style.

Joe Clayton
Compliance and Enforcement Section Chief

JC/ehh

c: Lance Dorsey, Chief, PDWB, Compliance and Enforcement

Leon Springs Wastewater Treatment Plant



ABC Consulting Engineers

Keeley Construction

XYZ Construction Co., Inc.

Rehabbing Clarifiers 1 and 2

Estimated Completion: 10 / 2023

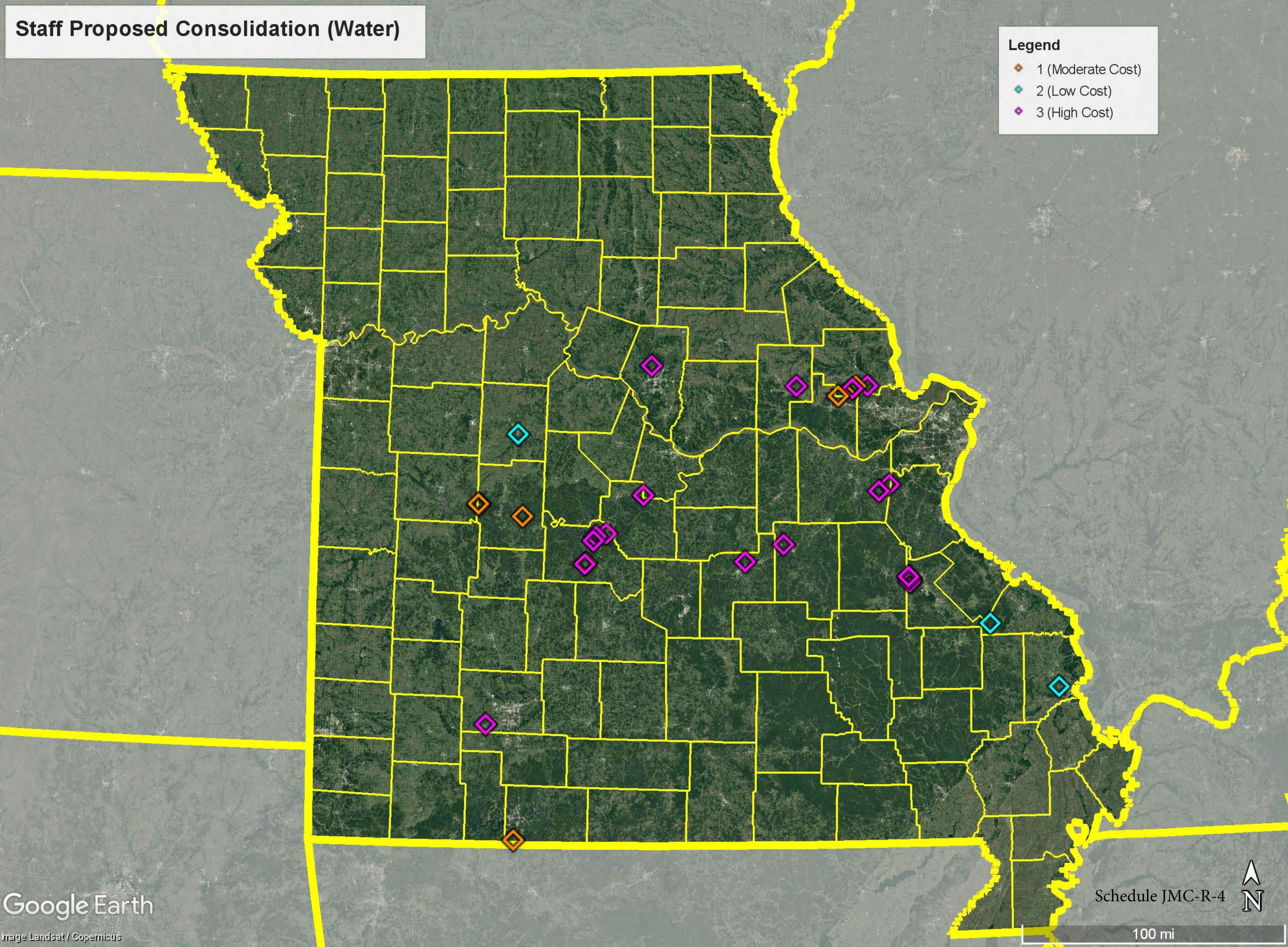
Projected Cost – More than \$800,000

CSWR-TEXAS Utility Operating Company

Staff Proposed Consolidation (Water)

Legend

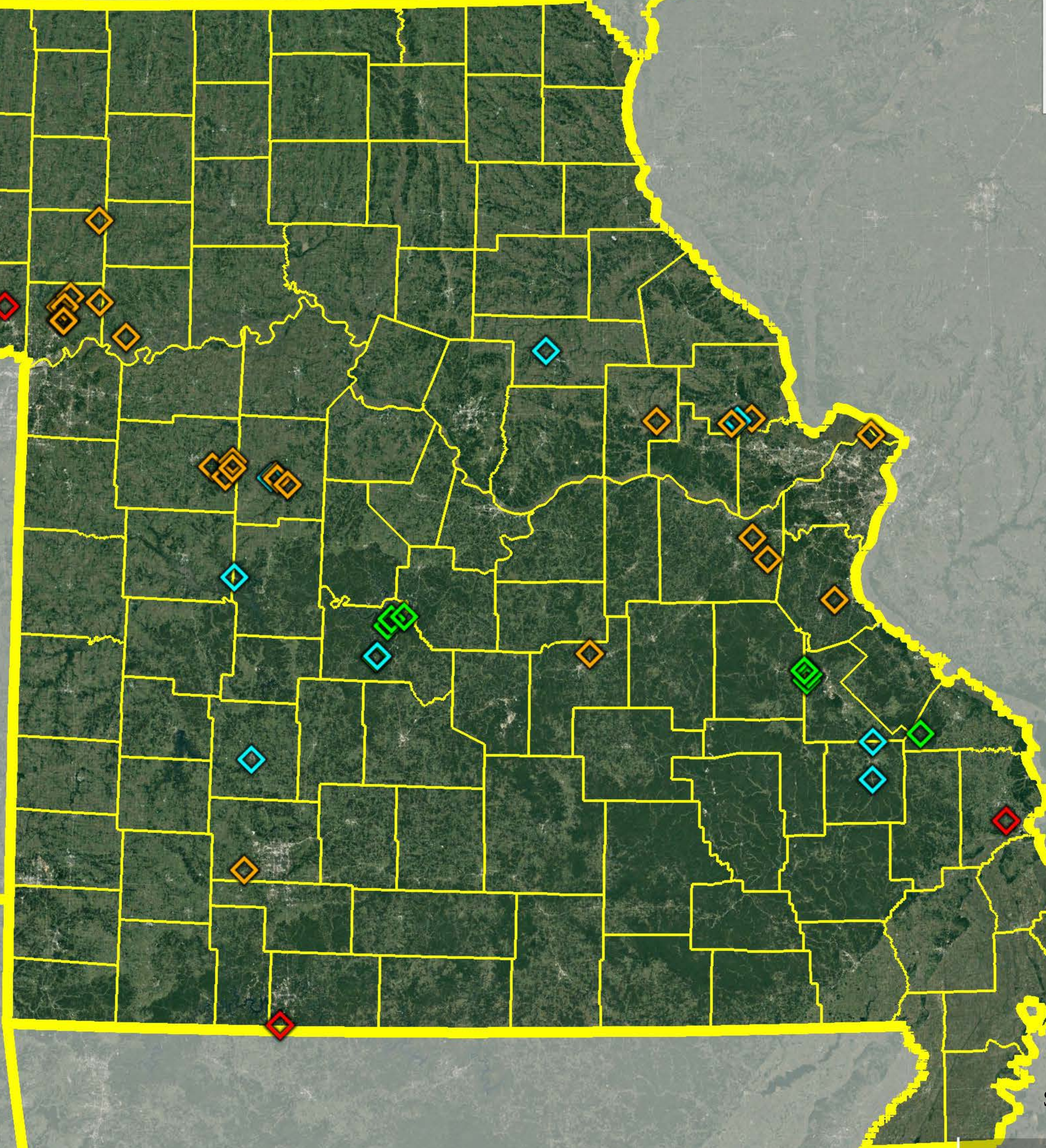
- 1 (Moderate Cost)
- 2 (Low Cost)
- 3 (High Cost)



Staff Proposed Consolidation (Sewer)

Legend

- A
- B
- C
- D





Missouri Department of dnr.mo.gov

NATURAL RESOURCES

Michael L. Parson, Governor

Carol S. Comer, Director

October 6, 2020

Certified Mail # 7018 0680 0001 2083 3616
Return Receipt Requested

Ali Alexander, Environmental Compliance Officer
Confluence Rivers Utility Operating Company
1650 Des Peres Rd. Suite 303
Des Peres, MO 63130

**LETTER OF WARNING
RESPONSE REQUIRED**

Dear Ms. Alexander:

Staff from the Department of Natural Resources conducted an inspection on October 1, 2020 of the Confluence Rivers-Port Perry WWTF located at 460 Lake Perry Lane, Perryville, MO in Perry County. The entity operates under the authority of MSOP MOG823126.

Compliance with the Missouri Clean Water Law was evaluated. A Letter of Warning (LOW) is being issued for the violations identified in the enclosed report.

Please direct your attention to the **Compliance Determination, Violations, and Required Actions** section in the enclosed report. The report documents the findings and the actions that you must take to address the violations. **A written response documenting actions taken to correct the violations is required by the date specified in the report.**

Fact sheets are available on the Department's website to assist entities with understanding and following environmental requirements.

Department records will document continued noncompliance of the environmental laws and regulations until the required actions are completed. Please understand that failure to respond or address ongoing violations may result in a follow-up inspection.

If you have any questions or would like to schedule a time to meet with Department staff to discuss compliance requirements, please contact Elizabeth Stephens (573) 840-9778 or in writing at the Southeast Regional Office, 2155 North Westwood Blvd., Poplar Bluff, MO 63901.

Sincerely,

SOUTHEAST REGIONAL OFFICE

A handwritten signature in blue ink that reads "Bradley K. Ledbetter". The signature is written in a cursive style with a large initial 'B'.

Bradley K. Ledbetter
Environmental Manager

BKL: esk

Enclosure: Report of Inspection

Missouri Department of Natural Resources
Southeast Regional Office
Report of Inspection
Confluence Rivers-Port Perry WWTF
460 Lake Perry Lane / Perryville / Perry County
MOG823126
October 6, 2020

Introduction

I, Elizabeth Stephens, conducted a routine compliance inspection of the Confluence Rivers-Port Perry WWTF in Perry County, Missouri on October 1, 2020. Participants during the inspection are listed below.

Strickland Engineering

Michael Montgomery Civil Engineer (573) 275-9261 mmontgomery@stricklandengineering.com

Charlie Staffeldt Operator

Center States Water Resources

Ali Alexander Env. Compliance (417) 260-2170 aalexander@cswrgroup.com

Perry County Department of Health

Melanie Zernicke Public Health (573)547-6564 melanie.zernicke@lpha.mo.gov

Missouri Department of Natural Resources

Elizabeth Stephens Env. Specialist (573) 840-9778 elizabeth.stephens@dnr.mo.gov

Deric Calvert Env. Specialist (573) 840-9056 deric.calvert@dnr.mo.gov

This inspection was conducted, pursuant to Section 644.026.1 RSMo of the Missouri Clean Water Law, to determine the facility's compliance with Missouri State Operating Permit (MSOP) MOG823126, the Missouri Clean Water Commission Regulations, and the Missouri Clean Water Law. This report presents the findings and observations made during the compliance inspection.

Entity Description and History

The latest issuance of MSOP MOG823126 was placed into effect on November 1, 2018 and expires on August 24, 2022. This permit sets forth effluent limitations, monitoring requirements, and permit conditions, both standard and specific, that the permittee is to follow.

The Confluence Rivers-Port Perry WWTF is in Perry County Missouri, and operates under the ownership of Confluence Rivers Utility Operating Company in Des Peres, Missouri. Confluence Rivers Utility Operating Company is also listed as the continuing authority.

The legal description of outfall #001 is SE ¼, NE ¼, Sec. 08, T34N, R9E, Perry County. The UTM coordinates for this location is listed as X=75931, Y= 4172557. The receiving stream for this location is Nations Creek (C). The first classified stream and ID is Nations Creek (C) 1708. This facility is located in the USGS# and Sub-watershed # 07140105 – 0108.

Port Perry Service Company is a four cell storage lagoon system with wastewater irrigation and sludge is retained in lagoon. The design population equivalent is 740. The design flow is 74,000 gallons per day. The actual flow is 10,000 gallons per day. The design sludge production is 11.1 dry tons per year.

This facility was previously inspected by Tim Mattingly on December 14, 2016. The facility was found to be in compliance at that time. This facility is listed as in enforcement with the Department at this time for failure to comply with permit conditions.

Discussion of Inspection and Observations

Prior to the inspection, the files and Permit Conditions of MSOP MOG823126 were reviewed. The electronic Discharge Monitoring Report (eDMR) system was also reviewed. There were no violations noted in the storage basin operational monitoring. Fees were not current at the time of inspection.

The inspection was conducted during normal business hours. Prior notification of the inspection was given to ensure timely access to the site. Upon arrival, we met with Ms. Ali Alexander, Mr. Charlie Staffeldt, and Mr. Michael Montgomery at the facility. Also present for the inspection is Melanie Zernicke from the Perry County Department of Health. We discussed the purpose and scope of the inspection. Ms. Alexander granted me permission to access the site and accompanied us throughout the inspection.

The inspection began with a discussion of the facility's MSOP permit and operational records. The permit conditions were reviewed and I answered questions that resulted from that discussion. Ms. Alexander did not have monitoring records available for review as Center States Water Resources just purchased the facility and no records were received from the previous owners. There was also discussion of the application to transfer the permit and signing up for eDMR.

This site consists of a four cell retention lagoon system and a land application area of approximately three acres. We began with a tour of the irrigation field. The area is mowed and would appear to be maintained. There are approximately 16 pivots, most that appear rusted, with evidence of pooling immediately around them. However, no water runoff concerns were noted. The lagoon was fenced on all sides, but the fencing has holes, and is falling in various areas. There is a gate that leads to each lagoon cell, it is noted that none of these gates are locked. There was greater than two foot of free board in each cell. It is noted that there is an abundance of trees growing inside two of the four lagoon cells.

There was discussion of tree removal without damage to the bottoms and berms of the cells. There is one lift station that services the residential area. It appeared well maintained with no

evidence of damage. It is unknown if the alarm is operational. It was advised that alarms should be operational and tested regularly.

We concluded the inspection with a review of my findings and I informed Ms. Alexander that the facility would receive a report in writing by me within 30 days. I thanked Ms. Alexander and other participants for their time and assistance in touring the facility and instructed them to call if they have any questions or concerns.

Sampling and Monitoring

The appropriate sampling materials were taken on the inspection, including a copy of the Missouri Department of Natural Resources' Standard Operating Procedures for Sampling. Instruments for field monitoring were taken on the inspection that are capable of testing pH, temperature, conductivity, total residual chlorine, and dissolved oxygen.

The facility was not discharging. Therefore, no samples were taken during this inspection.

Compliance Determination and Required Actions

The facility was found to be **not in compliance** with the Missouri Clean Water Law, the Clean Water Commission Regulations, and Missouri State Operating Permit MOG823126, based upon failure to meet permit conditions.

Unsatisfactory Findings

1. Confluence Rivers-Port Perry WWTF failed to maintain the slopes of the lagoon system in such a way as to remain consistent with design standards as required by MSOP MOG823126.

Earthen Storage Basin Operational Requirement #6 states: "The inner and outer berm slopes of the storage basin shall be maintained in such a way as to remain consistent with design standards...The berms of the storage basins shall be mowed and kept free of deep-rooted vegetation, animal dens or other potential sources of damage to the structural integrity of the berms.

Required Action: By January 1, 2021, have all large vegetation removed from lagoon berms and lagoon cells, while ensuring the structural integrity of the system is not compromised.

2. Confluence Rivers-Port Perry WWTF failed to provide accurate monitoring records for surface wastewater irrigation as required by MSOP MOG823126.

Surface Wastewater Irrigation Operational Requirements are listed in Table A of MSOP MOG823126. All parameters should be recorded every time that irrigation occurs.

Required Action: By November 6, 2020, the Confluence Rivers-Port Perry WWTF must submit a plan outlining how record keeping will be in compliance with permitted guidelines going forward and efforts that will be made to ensure that documentation is correct and accurately reflects lagoon levels and application rates. These monitoring requirements shall be submitted timely via the eDMR system according to the reporting requirements specified in MSOP MOG823126.

3. Confluence Rivers-Port Perry WWTF failed to provide accurate monitoring records for the earthen storage basin as required by MSOP MOG823126.

Earthen Storage Basin Monitoring Requirements are listed in Table B of MSOP MOG823126. Parameters should be recorded as outlined in Table B.

Required Action: By November 6, 2020, the Confluence Rivers-Port Perry WWTF must submit a plan outlining how record keeping will be in compliance with permitted guidelines going forward and efforts that will be made to ensure that documentation is correct and accurately reflects lagoon levels and application rates. These monitoring requirements shall be submitted timely via the eDMR system according to the reporting requirements specified in MSOP MOG823126.

Recommendations

1. It is recommended by the Department that an Operations and Maintenance manual (O&M) be kept and updated to accurately reflect upgrades and/or changes to the system, proper documentation of application, and pump maintenance.

Additional Comments / Conclusion

I would like to thank Ms. Alexander, Mr. Montgomery, and Mr. Staffeldt for their time and assistance during the inspection. If there are any questions concerning this report, please feel free to contact Elizabeth Stephens by phone at (573) 840-9778, by email at elizabeth.stephens@dnr.mo.gov, or at 2155 N. Westwood Blvd., Poplar Bluff, Missouri 63901.

Signatures

SUBMITTED BY:



Elizabeth Stephens
Environmental Specialist
Southeast Regional Office

REVIEWED BY:



Josh Wilkerson
Chief, Water Pollution Control Unit
Southeast Regional Office

Attachments

Attachment #1 – Photograph (#001) Through Photograph (#012)
Attachment #2 – Aerial View / Site Map

	<p>Photograph #: 001 Taken by: Elizabeth Stephens Entity: Confluence Rivers-Port Perry WWTF Permit: MOG823126 Location: Perry County</p> <p>Description: Partial view of cell one of the lagoon system. Note large trees in lagoon. Date Taken: October 1, 2020 Program: WPC Unit</p>
	<p>Photograph #: 002 Taken by: Elizabeth Stephens Entity: Confluence Rivers-Port Perry WWTF Permit: MOG823126 Location: Perry County</p> <p>Description: Partial view of cell one of the lagoon system. Note large trees in lagoon. Date Taken: October 1, 2020 Program: WPC Unit</p>
	<p>Photograph #: 003 Taken by: Elizabeth Stephens Entity: Confluence Rivers-Port Perry WWTF Permit: MOG823126 Location: Perry County</p> <p>Description: Partial view of cell two of the lagoon system. Note large trees around lagoon. Date Taken: October 1, 2020 Program: WPC Unit</p>

	<p>Photograph #: 004 Taken by: Elizabeth Stephens Entity: Confluence Rivers-Port Perry WWTF Permit: MOG823126 Location: Perry County</p> <p>Description: Partial view of cell two of the lagoon system. Note large trees around lagoon. Date Taken: October 1, 2020 Program: WPC Unit</p>
	<p>Photograph #: 005 Taken by: Elizabeth Stephens Entity: Confluence Rivers-Port Perry WWTF Permit: MOG823126 Location: Perry County</p> <p>Description: Partial view of cell two of the lagoon system. Note large trees in lagoon. Date Taken: October 1, 2020 Program: WPC Unit</p>
	<p>Photograph #: 006 Taken by: Elizabeth Stephens Entity: Confluence Rivers-Port Perry WWTF Permit: MOG823126 Location: Perry County</p> <p>Description: Partial view of cell three of the lagoon system. Note large trees in lagoon. Date Taken: October 1, 2020 Program: WPC Unit</p>



Photograph #: 007
Taken by: Elizabeth Stephens
Entity: Confluence Rivers-Port Perry WWTF
Permit: MOG823126
Location: Perry County

Description: Partial view of cell four of the lagoon system.

Date Taken: October 1, 2020
Program: WPC Unit



Photograph #: 008
Taken by: Elizabeth Stephens
Entity: Confluence Rivers-Port Perry WWTF
Permit: MOG823126
Location: Perry County

Description: Partial view of fenced enclosure. Note large hole in fence.

Date Taken: October 1, 2020
Program: WPC Unit



Photograph #: 009
Taken by: Elizabeth Stephens
Entity: Confluence Rivers-Port Perry WWTF
Permit: MOG823126
Location: Perry County

Description: Partial view of wastewater irrigation area.

Date Taken: October 1, 2020
Program: WPC Unit



Photograph #: 010
Taken by: Elizabeth Stephens
Entity: Confluence Rivers-Port Perry WWTF
Permit: MOG823126
Location: Perry County

Description: Partial view of wastewater irrigation area.

Date Taken: October 1, 2020
Program: WPC Unit



Photograph #: 011
Taken by: Elizabeth Stephens
Entity: Confluence Rivers-Port Perry WWTF
Permit: MOG823126
Location: Perry County

Description: View of one gate from the fenced enclosure. Note sign on gate.

Date Taken: October 1, 2020
Program: WPC Unit



Photograph #: 012
Taken by: Elizabeth Stephens
Entity: Confluence Rivers-Port Perry WWTF
Permit: MOG823126
Location: Perry County

Description: Inside view of lift station.

Date Taken: October 1, 2020
Program: WPC Unit

Wastewater Irrigation Area



Port Perry Service Company
Perry County
MO 0116998



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

October 15, 2012

Mr. Mike Yamnitz
Port Perry
P. O. Box 43
Perryville, MO 63775

LETTER OF WARNING

Dear Mr. Yamnitz:

A compliance inspection of the Port Perry Service Company Wastewater Treatment Facility located on Route T Perry County, Missouri was conducted on September 28, 2012, by a representative of the Missouri Department of Natural Resources' Southeast Regional Office. Enclosed is a copy of the inspection report.

I regret to inform you that during the inspection violations were found and required our office to issue this Letter of Warning. The report outlines the findings of the inspection and lists important recommendations that must be considered to ensure continued compliance.

If you have any questions, please contact me at the Southeast Regional Office, Cape Girardeau Satellite Office, 2007 Southern Expressway, Cape Girardeau, MO or call (573) 651-3008.

Sincerely,

Southeast Regional Office

A handwritten signature in cursive script, appearing to read "Nancy Wilhelm".

Nancy Wilhelm
Environmental Specialist

Enclosures: Report of Compliance Inspection

**REPORT OF COMPLIANCE INSPECTION
PORT PERRY SERVICE COMPANY
PERRY COUNTY
MO-0116998
October 15, 2012**

INTRODUCTION

Pursuant to Section 644.026.1 RSMo of the Missouri Clean Water Law, a routine compliance inspection of Port Perry WWTF in Perry County, Missouri was conducted by a member of the Missouri Department of Natural Resources' Southeast Regional Office on September 18, 2012. Mr. Mackey Smith, Port Perry Maintenance Supervisor, granted permission to enter the site and participated during the inspection.

This inspection was conducted to determine the facility's compliance with Missouri State Operating Permit (MSOP) MO-0116998, the Missouri Clean Water Commission Regulations, and the Missouri Clean Water Law. This report presents the findings and observations made during the compliance inspection.

FACILITY DESCRIPTION

MSOP # MO-0116998 was last issued on December 7, 2007, and expires on December 6, 2012. This permit sets forth effluent limitations, monitoring requirements, and permit conditions, both standard and specific, that the permittee is to follow.

The legal description for the WWTF is listed on the permit as the SE ¼, NE ¼, Section 8, Township 34 North, Range 9 East, in Perry County, Mo. The receiving stream is classified and is listed on the permit as Nations Creek (C) (02780)

The Facility is currently utilizing a four cell no discharge storage lagoon and land application system. Design population equivalent is 740. Design flow is 74,000 gallons per day. Actual flow is 10,000 gallons per day. Waste water at this facility includes domestic waste only.



Each home at Port Perry is equipped with a septic tank and small pump which transfers effluent from the residence homes to the sewer mains and then gravity flows to the lagoon system. The individual residential septic tanks are pumped approximately every 4 to 5 years by a contract hauler. The pumps utilized one chamber of a two cell septic tank and are activated by a float system. Each pump also has a visual high water alarm which is also float activated.

DISCUSSION OF INSPECTION AND OBSERVATIONS

Prior to the inspection, the files and Permit Conditions of MSOP #MO-0006998 for Port Perry Service Company were reviewed. The inspection was conducted during normal business hours. Prior notification of the inspection was provided. Upon arrival at the facility, the inspector met with Mr. Macky Smith, maintenance manager, to discuss the purpose and scope of the inspection. Mr. Smith granted permission to access the site and accompanied throughout the inspection of the facility.



CELL ONE



CELL 4

It was observed on the day of the visit that items listed as unsatisfactory during the previous inspection on February 22, 2011 had not been addressed and still existed on-site. Root growth from trees and shrubs in the lagoon can result in damage to the lagoon liner and the integrity of the berms. Woody material (brush) and weeds growing on and around the berms, and inside the cells provide cover for burrowing animals, which can damage the berm and result in wastewater leakage. A muskrat was seen running from the lagoon during the visit. Annual mowing is seldom adequate to maintain the vegetation which grows on lagoon berms.



10CRS 20-8-020(15) (B) 5 states, "Application areas should be fenced and posted along public roads and public use areas. Fencing is not required **if the wastewater is disinfected prior to application** or if other suitable barriers are provided or if the wetted application area is located in areas where access is limited. This rule goes on to say that **in a public use area** wastewater shall contain as few of the indicator organisms as possible **and in no case shall the irrigated wastewater contain more than two hundred (200) fecal coliform organisms per one hundred milliliters.**

Public Access Restrictions to the land application area is also noted on page 5 number 7 of the permit stating that public access to the irrigation site shall not be allowed.

WATER QUALITY MONITORING

The appropriate sampling materials were taken on the inspection, including a copy of the Missouri Department of Natural Resources' Standard Operating Procedures for Sampling. Instruments for field monitoring were taken on the inspection that are capable of testing pH, temperature, conductivity, and dissolved oxygen. Because this is a no discharge facility, no discharge was occurring on the day of the inspection.

COMPLIANCE DETERMINATION

On the day of inspection, no water quality violations were observed at this facility, however, a renewal application for the facility permit, scheduled to expire on December 6, 2012, has not been submitted and the facility failed to address any of the unsatisfactory features as listed in the previous inspection. At this time the facility **cannot be** listed as in compliance, and the unsatisfactory features listed below must be resolved within the time frame listed.

Within the next 15 days you must complete and submit a form B, Application for Construction or Operating Permit For Facilities Which Receive Primarily Domestic Waste, (see link in #1 below for a copy of the form).

You must also complete and submit a time line for completion of items 2 through 4 below to be received by the regional office in the next 15 days. You should state in your schedule the method for resolution and the anticipated completion date. All listed items should be completed no later than December of 2012 with the exception of number 4. Please check our web site or contact the regional office for information regarding available operator training classes.

If the items are not resolved by the anticipated time, the facility could face enforcement action.

UNSATISFACTORY FEATURES

1. On April 27, 2012, you were sent a letter reminding you that your current NPDES permit for this facility would soon be expiring. As of the date of this inspection, the permit application has not been received for processing.

Failure to apply for renewal of your Missouri State Operating Permit at least one hundred and eighty days before expiration is in violation as stated in MO CSR 20-6.010(5)(C) and Standard Conditions for NPDES Permits - Part 1 – General Conditions Section B – Duty to reapply.

The following link should take you to **FORM B – APPLICATION FOR CONSTRUCTION OR OPERATING PERMIT FOR FACILITIES WHICH RECEIVE PRIMARILY DOMESTIC WASTE (≤100,000 gallons per day) UNDER MISSOURI CLEAN WATER LAW:** <http://dnr.mo.gov/forms/780-1512-f.pdf>

REQUIRED ACTION: Complete and submit the required application immediately. The application should be sent to the attention of Refaat Mefrakis, P.E., Chief, Permits and Engineering, Water Pollution Control Branch, Missouri Department of Natural Resources, P. O. Box 176, Jefferson City, MO 65102.

2. Failure to fence the land application site as required in 10CRS 20-8-020(15) (B) 5 or in some way restrict entry.

The regulation as stated above will allow using your land application area as a public use area if the irrigation water has been disinfected and contains less than 200 fecal coliform organisms per 100 / ml.

REQUIRED ACTION: Please restrict the location or make necessary arrangement to add disinfection to your treatment process.

3. Lack of proper maintenance at the lagoon location.

Because vegetation is established within the lagoon cells, it is reasonable to assume that the clay liners have been compromised.

REQUIRED ACTION: The vegetation should be removed and the clay liner inspected by a professional engineer, registered in the state of Missouri. The engineer's report should evaluate the integrity of the clay seal and its ability to collect, hold, and treat domestic wastewater to comply with 10 CSR 20 – 8.020 and all applicable laws and regulations. The report should clarify that the percolation losses do not exceed 1/16 inch per day and make recommendations for any replacement and or necessary repairs to the seal.

4. Although the facility contracts with an A level operator, 10 CSR 20-9.020(B) states, "Any individual who operates or determines the method of operating a wastewater treatment system, either directly or by order," is considered an operator and must maintained a D level certificate.

REQUIRED ACTION: Please be certain all facility personnel maintain proper certifications.

RECOMMENDATIONS

No recommendations.

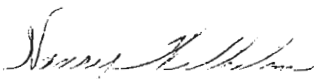
COMMENTS

No further comments.

CLOSING REMARKS

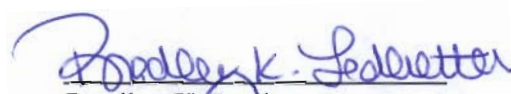
I would like to thank Mr. Smith for his time and cooperation during this inspection. If there are any questions regarding the contents of this report, please feel free to contact me at the Cape Girardeau Satellite Office, 2007 Southern Expressway, Cape Girardeau, MO or at 573-651-3008.

SUBMITTED BY:



Nancy Wilhelm
Environmental Specialist III
Southeast Regional Office

REVIEWED BY:



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