

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

In the Matter of the Application of)
Central Jefferson County Utilities, Inc.)
for an Order Authorizing the Transfer)
and Assignment of Certain Water and)
Sewer Assets to Jefferson County)
Public Sewer District and in)
Connection Therewith, Certain Other)
Related Transactions.)

Case No. SO-2007-0071

MISSOURI DEPARTMENT OF NATURAL RESOURCES' LEGAL BRIEF

COMES NOW the Missouri Department of Natural Resources (hereinafter "the Department"), by and through counsel, and for its Legal Brief states as follows:

The ultimate issue of fact to be determined by this Commission is whether the proposed transfer of Central Jefferson County Utilities, Inc.'s (hereinafter "Central Jefferson") water and sewer assets to the Jefferson County Public Sewer District (hereinafter "the Sewer District") would be detrimental to the public interest. 4 CSR 240-3.310 and 4 CSR 240-3.605.

The Department currently has numerous enforcement or compliance actions against Central Jefferson pertaining to its wastewater collection and treatment operations. In regard to wastewater, the Department considers Central Jefferson to be in significant non-compliance and a threat to public health and/or the environment at this time. Central Jefferson's monthly discharge monitoring reports filed with the Department indicate that in the past year, the inflow of wastewater into the wastewater treatment facility has averaged approximately 100,000 gallons per day, in excess of the facility's design flow of 64,000 gallons per day and in violation of Central Jefferson's operating permit (Tr.

623). The Department has also issued Central Jefferson numerous Notices of Violation for such conduct as polluting and discharging contaminants into waters of the state, failing to submit complete or timely discharge monitoring reports and failing to retain a certified operator to supervise the operation and maintenance of the wastewater treatment facility (Exhibits 19-21).

The Department does not currently have any enforcement or compliance actions against Central Jefferson pertaining to its drinking water operations. However, one of the two water supply wells serving the Raintree Plantation Subdivision (hereinafter the “Subdivision”) has been shown to produce water with levels of lead in excess of state and federal regulations (Tr. 429-30). This well may only produce drinking water when mixed with water from the second well (Tr. 429-30).

Central Jefferson is currently under an Order for Compliance from the United States Environmental Protection Agency, prohibiting any new connections to the wastewater treatment facility and therefore prohibiting new construction in the Subdivision since access to sewer and water facilities is a prerequisite to obtaining a construction permit from the county (Exhibit 22). The Environmental Protection Agency’s order prohibiting connections remains in effect until such time as new connections to the sewer collection system will not result in the wastewater treatment facility exceeding its daily design flow (Exhibit 22). The only way for the moratorium to be lifted is for the wastewater treatment facility to be upgraded and expanded in order to serve the existing and future demands upon the system.

Central Jefferson has no funds to invest in new infrastructure to upgrade and expand the drinking water and wastewater facilities serving the Subdivision (Tr. 442-44). With the wastewater treatment facility operating above its daily design flow and Central Jefferson being in significant non-compliance with its permit, there is a current threat to public health and/or the environment. So long as Central Jefferson remains the owner and operator of the proposed assets to be transferred, the threat remains. A transfer of Central Jefferson's assets to the Sewer District will alleviate the threat as the Sewer District has partnered with Environmental Management Corporation (hereinafter "EMC"), an experienced builder and operator of water and wastewater facilities.

The Sewer District and EMC recently finalized a Utility Operation, Maintenance and Capital Improvement Agreement. An earlier version of the agreement was filed with the Commission at the hearing (Exhibit 5). Pursuant to the executed agreement, EMC will undertake the construction to upgrade and expand the current drinking water and wastewater treatment facilities. EMC will also be responsible, for the next twenty years, for operating and maintaining the proposed assets to be transferred.

The Subdivision is platted for approximately 3,500 lots and all but 30 lots have been sold (Tr. 389). Homes have been constructed upon approximately 670 lots, and said homes produce approximately 100,000 gallons of wastewater per day (Tr. 623). The upgraded and expanded wastewater treatment facility will have a design flow of 400,000 gallons per day (Tr. 126). Pursuant to projections of future growth within the Subdivision over the next decade, the Sewer District and EMC anticipate that the

upgraded and expanded wastewater treatment facility will have adequate capacity to handle current and expected future growth (Exhibit 4).

On January 17, 2007, the Department, Sewer District and EMC executed a Compliance Agreement. An earlier version of the agreement was filed with the Commission at the hearing (Exhibit 23). The agreement sets forth a schedule for the completion of construction to upgrade and expand the drinking water and wastewater treatment facilities. The agreement further includes penalties for failing to meet the schedule. The Compliance Agreement ensures that the proposed capital improvements will be constructed in a timely manner, removing a threat to the environment and also allowing for new connections to the collection system for the wastewater treatment facility in the foreseeable future.

Furthermore, while the Compliance Agreement indemnifies the Sewer District and EMC from violations of Missouri's environmental laws, the agreement does not excuse, forgive, release or waive any claims that the Department may have against Central Jefferson for the numerous, pre-existing enforcement or compliance actions.

In order to finance the construction to upgrade and expand the water and wastewater treatment facilities and fund future improvements, the Sewer District and EMC have proposed two tap-on fees of \$1,500 and \$1,000 respectively (Exhibit 4). In an agreement between Raintree Plantation, Inc. and the Sewer District, the Sewer District, on behalf of Raintree Plantation, Inc., agreed to collect yet another tap-on fee ranging from \$550-\$1,100 (Exhibit 8, page 2). The tap-on fee to Raintree Plantation, Inc. is for

the purpose of reimbursing the developer for engineering fees and attorneys' fees (Exhibit 8, page 3).

Rather than allowing the tap-on fees to go directly to Raintree Plantation, Inc., the funds should be placed in escrow and should be used to fund, as much as possible, the cost of improvements to the wastewater collection and treatment operations recommended in the Sanitary Sewer Study and Improvement Plan referenced in the Compliance Agreement. Central Jefferson and Raintree Plantation, Inc. are responsible for the current condition of the infrastructure in the Subdivision. Their neglect and failure to invest in the future of the Subdivision by planning for expansions of the water and wastewater treatment facilities is a key factor of the problems plaguing the Subdivision. They should not be allowed to recoup expenses for alleged construction, maintenance or repair of the water and wastewater treatment facilities and infrastructure in light of the state of disrepair. Nor should Central Jefferson and Raintree Plantation, Inc. recoup legal fees incurred due to their failure to maintain the facilities in compliance with and prevent violations of Missouri's environmental laws. As an alternative to placing Raintree Plantation, Inc.'s tap-on fees in escrow, the payment of any connection fees, including tap-on fees, collected by the Sewer District on behalf Raintree Plantation, Inc. should not be a condition precedent to a lot being connected to the water and sewer facilities serving the Subdivision.

WHEREFORE, the Missouri Department of Natural Resources requests that the proposed transfer of Central Jefferson's water and sewer assets to the Sewer District be

approved by this Commission, subject to the conditions referenced in the Department's suggested conclusions of law.

Respectfully Submitted,

SCHREIMANN, RACKERS,
FRANCKA AND BLUNT, L.L.C.

/s/ Michael J. Schmid
Duane E. Schreimann, #27321
des@srfblaw.com
Michael J. Schmid, #53847
mjs@srfblaw.com
2316 St. Mary's Boulevard
Suite 130
Jefferson City, MO 65109
573-634-7580
573-635-6034 (facsimile)

Attorneys for the Missouri Department of
Natural Resources

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing document was sent via e-mail on January 19, 2007 to William R. England III at trip@brydonlaw.com, Attorney for Applicant; Dean Cooper at dcooper@brydonlaw.com, Attorney for Applicant; Keith Kruger at keith.krueger@psc.mo.gov, Attorney for General Counsel's Office; Christina Baker at christina.baker@ded.mo.gov, Attorney for the Office of the Public Counsel; Mark Comley at comleym@ncrpc.com, Attorney for the Raintree Plantation Property owners Association, Inc.; and mailed via United States mail, postage prepaid, on January 19, 2007, to Ct Corporation System, Registered Agent for EMC, 120 South Central Avenue, Clayton, Missouri 63105; Legal Department, Jefferson County Public Sewer District, P.O. Box 632, Hillsboro, Missouri 63050; Stanley Schnaare, Raintree Plantation Property Owners Association, Inc., P.O. Box 440, Hillsboro, Missouri 63050.

/s/ Michael J. Schmid
Michael J. Schmid