

Exhibit No.:	_____
Issue:	Overview of application; Big Island Development; Water and Sewer Systems
Witness:	Rick Rusaw
Sponsoring Party:	Big Island Water & Sewer Company, Inc.
Case No.:	Case No. WA-2006-0480

BIG ISLAND WATER & SEWER COMPANY, INC.

Case No. WA-2006-0480

SURREBUTTAL TESTIMONY

OF

RICK RUSAW

Longmont, Colorado
January, 2007

1 **Q. On pages 3-4 of his rebuttal, Mr. Hummel proposes that a substantial portion of**
2 **payments made by existing customers for service connections should be refunded**
3 **per his calculations. Do you agree with this idea?**

4 A. No, I do not. Mr. Hughes will testify as to other reasons to reject this idea, but it may not
5 be clear to the Staff that the payments paid by residents to reserve service connections
6 were part of requirements under covenants and restrictions binding the real property the
7 residents own. Without the agreements and assurances set out in those covenants, and the
8 tap on fees paid on the basis of those covenants, Folsom Ridge would not have been in a
9 position to install the system in the first place. His proposal would significantly alter the
10 obligations of the parties bound to the covenants and as a consequence increase disputes
11 among those parties on how to account for the payments. Mr. Hummel's
12 recommendation on partial refund of the connection fees should not be allowed.

13
14 **Ms. Orler's Testimony**

15 **Q. On page 1 of her rebuttal, Mr. Orler offers several reasons why she provides**
16 **testimony. What is your response?**

17 A. Instead of going line by line of her testimony, I will say that Mr. Golden and I, and our
18 company, Folsom Ridge LLC, have complied with each and every regulatory agency
19 governing the construction and operation of the water and sewer systems on Big Island.
20 The Missouri Department of Natural Resources issued notices of violation during the
21 construction of the systems and for every one, Folsom Ridge responded appropriately and
22 reasonably. It paid DNR's requested penalties and rectified situations DNR deemed
23 unsatisfactory. The systems are operating successfully, are managed successfully and in

1 compliance with applicable environmental regulations. Mr. McDuffey and Mr. Krehbiel
2 will also testify about this.

3
4 The existence of a centralized sewer system and community water distribution system has
5 created value in the property on Big Island and when the objections raised by the
6 interveners in this case are finally overruled, the value of property on the Island will
7 again see an increase. Property values on the Island continue to appreciate because of the
8 facilities Folsom Ridge has installed for wastewater management and water distribution.
9 In addition, we have paved the road and provided a boat ramp and numerous other
10 features and amenities on Big Island. I would say that Ms. Orler's testimony has more
11 negatively affected those values, not what Folsom Ridge has done or is doing to provide
12 water and sewer service on the Island.

13
14 Individuals who have paid the required connection fees to or for the benefit of Folsom
15 Ridge will have the right to connect to the systems but they have not acquired any
16 financial interest in the utility. Ms. Orler has no financial interest in Folsom Ridge, or its
17 property, to protect. Neither does she have a financial interest in the Association, or its
18 property, to protect.

19
20 **Q. On page 3 of her rebuttal Ms. Orler refers to an Escrow Agreement and lists a series**
21 **of opinions she claims were rendered by attorneys about service provided at Big**
22 **Island. Has the escrow arrangement been an effective tool in the collection of**
23 **connection fees and the extension of facilities to residents.**

1 A. Yes, it has. Although Central Bank never executed an escrow agreement for these
2 purposes, it did establish a bank account and restricted disbursement of funds from that
3 account until such time as the system met the requirements listed on the escrow
4 agreement draft. This arrangement with Central Bank worked very well overall for the
5 bulk of the residents on the Island, Ms. Orlor's objections notwithstanding. Regarding the
6 opinions she lists, counsel will object to their reference. Even so, the Commission should
7 realize that there have been no proceedings in a court of law which have questioned the
8 way in which service to customers on Big Island is being provided by the Big Island
9 Homeowners Water and Sewer Association (the "Association"). Our position in this
10 Commission is that the provision of service there is in compliance with all laws including
11 the Public Service Commission law. I suspect the Commission has received many
12 conflicting opinions of counsel over the years.

13
14 Q. **On page 4, Ms. Orlor claims she knows why a public utility was not sought initially.**
15 **Is she authorized to speak on your behalf?**

16 A. No, she is not. She would have no idea of the reasons for our decisions.
17

18 Q. **On pages 4 and 5 , Ms. Orlor claims that she was "intimidated" and "threatened" by**
19 **you and Mr. Golden. Did you ever threaten or intimidate Ms. Orlor?**

20 A. No. Ms. Orlor was asked to enter agreements which every other person connected to the
21 system has agreed to for proper billing, collection, operation and maintenance of the
22 systems. The same was expected of Ms. Fortney. Ms. Orlor and Ms. Fortney may feel
23 as if they were singled out, but that was because out of all the customers at the meeting,

1 they were the only ones refusing to pay. Neither denied this at the meeting Ms. Orlor
2 refers to in her testimony. It was difficult to discuss the situation with either. Both were
3 rude to the members at the meeting and the people leading the meeting.

4
5 **Q. On page 5, Ms. Orlor also discusses the reinstallation of her water line. Did Folsom**
6 **Ridge have an obligation to reinstall Ms. Orlor's water line?**

7 A. Absolutely not. It did not have an obligation to reinstall Ms. Fortney's line either.
8 However, both Folsom Ridge and the Association agreed to install a connection point in
9 front of her residence if she agreed to start paying the required fees. She agreed, the
10 connection point was installed but Ms. Orlor has refused to comply with her part of the
11 bargain.

12
13 **Q. On page 6, Ms. Orlor appears to claim that she or others requested certain**
14 **documents in this matter. Has the applicant in this case complied with all data**
15 **requests?**

16 A. Yes, all data requests submitted to the company have been answered. In this case, the
17 company did not receive any requests for the documentation Mr. Orlor lists on page 6 and
18 the top of page 7.

19
20 **Q. On page 7, Ms. Orlor refers to negotiations before she and others filed complaints in**
21 **another case. Were negotiations in good faith?**

22 A. No, Ms. Orlor has not been reasonable in her negotiations with Folsom Ridge or the
23 Association. She has not honored agreements she entered with the companies.

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Q. **She also states again on page 7 that she was threatened and intimidated. Have you or Folsom Ridge ever threatened or intimidated Ms. Orlor.**

A. No. Demanding payment of fees due, particularly fees that were part of an agreement she said she would honor, cannot be considered threatening or intimidating. She is correct that the Association is continuing to bill her for past fees. As part of the agreement we reached, an agreement Folsom Ridge complied with fully, we would waive those fees if she started paying regularly but she has not honored her part of the agreement.

Q. **On page 7, Ms. Orlor questions Ms. Brunk’s qualifications. Is she correct?**

A. No, Ms. Orlor has misread Ms. Brunk’s qualifications. Ms. Brunk has worked for approximately 20 years in real estate development and in that capacity has worked with professional engineers on the design, permitting and establishment of water and sewer facilities. Ms. Brunk can verify that.

Q. **On page 9, Ms. Orlor questions why you did not testify earlier. She also claims that you and Mr. Golden are the applicant in this case. Is this correct?**

A. The applicant in this case is Big Island Water and Sewer Company Inc. No individuals have filed for authority. The testimony filed on October 27, 2006 by the Company supports the application. I am testifying now because of the many inaccuracies in Ms. Orlor’s testimony and to the same extent the inaccuracies contained in the testimony of other interveners who agree with her.

1 **Q. On page 10 of her rebuttal, Ms. Orlor claims that you or Mr. Golden were**
2 **responsible for contacting property owners about the opportunity for better sewer**
3 **and water services. She also states that you and Mr. Golden were active in the**
4 **installation of the facilities. Were these the roles you and Mr. Golden were assigned**
5 **for this development?**

6 A. Ms. Orlor is confusing Mr. Golden and me with David Lees, a former member of the
7 LLC whose interest in the LLC was terminated in April of 2001. Mr. Lees was the point
8 person for this development. Mr. Lees was the only member of the company that was
9 paid for his services. He was paid from April 1998 through April 2001. Mr. Golden and
10 I were simply investment partners. Mr. Lees was responsible for canvassing existing
11 residents, acquiring the connection fees for the facilities and then supervising the
12 installation of those facilities in connection with engineering professionals. As Ms.
13 Brunk has explained in her testimony, our position is that Mr. Lees directed the
14 construction company on site to install the water and sewer lines in a manner violating
15 applicable regulations of DNR. After his termination, Mr. Golden's and my participation
16 in this project changed.

17
18 **Q. On page 11-12, Ms. Orlor sets out more issues she claims are involved in this case.**
19 **Do you have a response?**

20 A. Generally, these are arguments she has raised without a basis in fact, or arguments that
21 have no bearing on the application in this case, that she has raised for many years. I will
22 note that any facilities installed incorrectly have been rectified, that all notices of
23 violation by DNR have been resolved, and the person in our company responsible for

1 many of those problems has been removed; that the system is sized for present customers
2 and will be expanded to account for growth, all in compliance with applicable state
3 regulation; that by law, as an owner of lots within the affected area, Folsom Ridge is
4 entitled to vote as a member of the Association and the Association has welcomed
5 participation by all residents on the Island whether they consider themselves members or
6 not; that operations of the water and sewer systems have not been subsidized by Folsom
7 Ridge except at a time early in their operation; persons who use the water and sewer
8 system are expected to pay for what they use along with everyone else who is connected
9 to the system, and membership in the Association is expected as part of that process;
10 closings on the sale of property on Big Island are affected by the terms and conditions of
11 restrictions of record, and title companies expect the Association and its attorneys to be
12 involved in closings; commitments made by Folsom Ridge have been kept (Schedules
13 CJO 2 and 8 do not indicate otherwise) and finally, as if this has not been stated enough
14 before, no individual has been threatened, coerced or intimidated into joining the
15 Association. As I mentioned above, we have encouraged wide participation by residents
16 whether they consider themselves members or not.

17
18 **Q. At the bottom of page 12, Ms. Orlor refers to the platting of the center of Big Island.**
19 **Were protection of your property rights involved in the platting of that area.**

20 **A.** Yes, they were, undoubtedly, but at the same time, and quite beneficially, the platting of
21 that area provides us with a baseline for future development.

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Q. **On page 13 of her rebuttal, Ms. Orlor comments on the plans for extending the systems. What is your response to her questions and answers on page 13?**

A. Very simply, the water and sewer facilities have **always** been designed for expansion. The original systems were designed to offer the services to more than just the residents currently there. I do not know how Ms. Orlor can state otherwise.

Q. **On page 14 of her rebuttal, Ms. Orlor refers to the PUD for the Island and the Amended Covenants and Restrictions of record. What is your response?**

A. No violations of the restrictions are being committed except those committed by Ms. Orlor and others who have refused to comply with them. The original Association Covenants and Restrictions included all of the real property that Folsom Ridge owned or owns. The Restrictions contain a comprehensive legal description of the land affected and do not refer to new subdivisions by name. This is because the covenants were of record before the new subdivisions were created. Regarding line 13 of that page, neither system is over capacity. The connections allowed by Folsom Ridge or the Association are within the capacity and the capacity additions approved by DNR.

Q. **On page 15 of her rebuttal, Ms. Orlor again suggests that you and Mr. Golden approached local residents about sewer and water tap fees. She also claims that she was intimidated and coerced again. What is your response to page 15 of her testimony?**

1 A. I will repeat that David Lees as Folsom Ridge local manager contacted property owners
2 about the opportunity to connect to the water and sewer systems. I will again state that
3 no degree of coercion, intimidation or threatening was involved in this public service.
4 Each resident was given the opportunity to join. At every step, Folsom Ridge cooperated
5 with the residents even to the point of amending the covenants and restrictions pursuant
6 to resident request. Even Ms. Orler's predecessor in title agreed to pay the tap fees and
7 her right to connect was transferred to her with her home. We did not expect cooperation
8 from Ms. Orler and were not disappointed, however.

9
10 Because there were properties that would benefit from the systems, which properties
11 were not in the original covenants and restrictions, those property owners were asked to
12 **ratify** or agree to the covenants with respect to their property. This was entirely
13 consistent with the agreements and representations made from the beginning.

14
15 Q. **On page 17, Ms. Orler claims she understands your vision for Big Island and why it**
16 **has changed. What is your response.**

17 A. Ms. Orler cannot conceivably know all the reasons for our development plan and how
18 that plan has changed and why. These are baseless opinions of no consequence to this
19 application. Her question and answer at the top of page 18 of her testimony has the same
20 problem.

21
22 Q. **On page 18 of her testimony, Ms. Orler seems to claim that the systems are**
23 **undersized and Folsom Ridge has agreed to do more than it can. Is that correct?**

1 A. Ms. Orler is mistaken in her assumption which is baseless. Folsom Ridge has never
2 agreed to more connections to the system than what it could deliver. Plans are underway
3 now for expansion of the system per DNR requirements.

4
5 Q. **Regarding her questions and answers on page 19, do you have a response.**

6 A. No, Mr. Krehbiel is expected to address that page and page 20 through 21 of her
7 testimony.

8
9 Q. **On page 22, Ms. Orler argues that the systems have not been successfully**
10 **constructed or managed effectively. What is your response?**

11 A. Her comments are completely refuted by the facts. The customers receiving and paying
12 for service have no objections to the quality of the service or the rates. The system is
13 fully operational within DNR design guidelines and operates as designed. Furthermore, I
14 will note that the Staff of the Commission did not find any serious fault with the
15 management or operation of the system. On page 22, Ms. Orler also refers to a
16 development my church is undertaking. That development is in the platting stage, no
17 issues appear on water and sewer utilities, and is completely and categorically different
18 from the Big Island project. She does not state how they are similar anyway. It should
19 not have been mentioned.

20
21 Q. **On page 23 and part of page 24 of her rebuttal, Ms. Orler discusses Folsom Ridge's**
22 **sale of property in the interior of the Island. What is your response to her questions**
23 **and answers on page 23 and 24.**

1 A. The sale price for the interior of the Island was supported by a current independent
2 appraisal, which the residents could examine, accept or reject. The offer was at fair
3 market value. Regarding the suggestion of fraud, Ms. Orler apparently does not know
4 that this plan was not one Folsom Ridge created, but one suggested by Big Island
5 residents. The idea was eventually dropped but again, this was not contemplated by
6 Folsom Ridge. It was an idea of the neighbors from the beginning. The terms of the
7 proposal were suggested by those residents. All disclosures required were made by the
8 residents to Folsom Ridge as far as I know. No fraud was involved. Also, although it
9 makes little difference in my mind, I did not receive the email attached to Ms. Orler's
10 testimony as CJO Schedule 16.

11
12 Q. **On page 25 of her rebuttal, Ms. Orler again states that the systems are not**
13 **successfully constructed or effectively or efficiently managed. She also discusses a**
14 **general survey conducted about future connections. What is your response.**

15 A. Her arguments aside in lines 1-4 of page 25, which should be stricken, again the facts
16 refute this. The systems are well managed and operate well within DNR guidelines and
17 regulations. Regarding the survey she mentions, this was done to determine which home
18 owners were not participating in the water and sewer facility construction but who might
19 be interested in participating. This was done for planning purposes to size the system in
20 2001, after Mr. David Lees left the partnership. At that time Mr. Golden and I had to
21 educate ourselves about what was happening so that we could take over the
22 administration of the project in the field. Regarding her last question on page 25 and her

1 answer on page 26, I would say that Ms. Orler disagrees with the way in which we
2 planned for water and sewer construction on the Island but that is all.

3
4 **Q. On page 26, Ms. Orler rhetorically asks about the litigation pending against Mr.**
5 **Lees. What is your response?**

6 **A.** This case is still pending. Ms. Brunk's testimony is completely credible.

7
8 **Q. On page 27, Ms. Orler talks about your involvement in the project. What is your**
9 **response.**

10 **A.** I was an investment partner at the beginning of this project as was Mr. Golden. That had
11 to change after Mr. Lees' departure from the Company. The residents or complainants
12 may have documents of some kind, but I was not directly involved in the construction of
13 these facilities from the inception of the project. Mr. Lees was the only member of the
14 company that was paid for his services. He was paid from April 1998 through April
15 2001.

16
17 **Q. On page 28, Ms. Orler claims that Mr. Golden knew of the incorrect installation of**
18 **the now abandoned water line before Mr. Lees was terminated. What is your**
19 **response?**

20 **A.** First, Ms. Orler has no basis upon which to say that. Second, Mr. Lees alleges that other
21 members of the LLC were aware of the incorrect installation before his termination date
22 but that is not true. Up to the time of his termination, Mr. Lees and the engineers
23 involved in the project advised that the lines had been installed in accordance with DNR

1 regulations. Ms. Brunk I believe addresses this in her direct testimony and her rendition
2 would be correct.

3
4 **Q. On page 29, Ms. Orlor questions when the Association came into existence and**
5 **started billing for services. She also raises the questions about ownership of the**
6 **facilities. What is your response.**

7 A. The Association was formed July 16, 1998. It was our belief and understanding that the
8 Association qualified for permits through DNR and that the permit requests submitted
9 accurately represented the ownership, per DNR requirements, of the facilities. I will
10 confess to some confusion on my part about what degree of ownership DNR expected the
11 Association to have in connection with the operation and maintenance of the system. I
12 believed that these forms were prepared accurately and we had advised people on the
13 Island of the ownership interests of Folsom Ridge and the Association. Nothing
14 dishonest was intended and as this case was being filed, the nature of the ownership was
15 fully reviewed. This case is designed to eliminate any more confusion about ownership
16 of the facilities and what entity can be the continuing authority for wastewater and water
17 distribution in the service area.

18
19 **Q. On page 30, Ms. Orlor has questions about the legal effect of the declaration of**
20 **covenants and restrictions, and about consent of homeowners. What is your**
21 **response?**

22 A. Since Ms. Orlor is not a lawyer, she could not have the background to answer her first
23 question on that page. I will once again repeat that no person has been intimidated,

1 coerced or threatened to sign covenants and restrictions. Regarding lines 12-15 of this
2 page, I recall that Mr. McElyea advised that individuals who had connected to the system
3 should be considered members. Absent that classification, the individuals may have been
4 subject to disconnection. We were trying not to have to disconnect anyone and place
5 them in hardship. The water system was not involved
6

7 **Q. On page 31, Ms. Orlor claims that requests have been made for membership and**
8 **billing information in this case. What is your response?**

9 A. All data requests submitted in this case have been answered, and all data requests in the
10 companion complaint case have been answered.
11

12 **Q. On page 32 of her rebuttal, Ms. Orlor discusses the tap fee, and the rates for service**
13 **charged on the Island currently. What is your response to her questions and**
14 **answers.**

15 A. From LLC's perspective, the residents have purchased a right to connect. It is an
16 intangible item. It is certainly not a piece of property Folsom Ridge can claim or
17 residents can claim they own. All rates charged are approved by the Board of Directors
18 of the Association and were decreased by the board upon submission of a budget and
19 expense report at the meeting in May of 2006.
20

21 **Q. On page 33, Ms. Orlor questions if there is a reserve account at the Association,**
22 **discusses a \$7,000 line item on the Association's financial statements and discusses**
23 **the rates proposed in this case. What is your response.**

1 A. The Association carries a reserve account in the amount of \$9,000. The \$7,000 owed to
2 Folsom Ridge has been approved by the Association's Board of Directors and this refers
3 to collection of tap fees paid by new members. The bylaws require that tap fees be
4 passed through to Folsom. It is true that we have warned the residents of the Island that
5 regulation of the company will probably cause an increase in the rates charged just as the
6 feasibility study filed in this case will illustrate. I think our early estimates were that
7 people would pay 9% more because of additional assessments and imposed by the
8 Commission. To some this may be a "sky rocketing" amount but I have never used such
9 terms. Staff of the Commission have proposed rates in this case nearly 100% higher than
10 what is now being charged.

11
12 Q. **On page 34, Ms. Orlor questions Ms. Brunk's testimony that the Association is**
13 **operating in compliance with law. What is your response?**

14 A. Our position most definitely is that the companies are in compliance with law. Folsom
15 Ridge and the Association continue to contend that the operation and maintenance of the
16 water and sewer systems does **not** qualify as a public utility. Even so, we have filed this
17 application in order to remove any issue about this subject, and yet receive continued
18 objections from the same people.

19
20 Q. **On page 35, Ms. Orlor questions how Ms. Brunk did not know why Mr. Orlor and**
21 **others decided to file complaints. What is your response?**

22 A. The reasons why Ms. Orlor and the other complainants filed is something they will have
23 to explain, and not Ms. Brunk. Also, on page 35, Ms. Orlor thinks that as a non member

1 of the Association she has some right to approve or disapprove the asset purchase
2 agreement. Ms. Orler owns no assets subject to the asset purchase agreement involved in
3 this case.

4
5 **Q. Do you have any other comments to Ms. Orler's testimony.**

6 A. Yes, and instead of a page by page commentary, I will group as many into this answer as
7 I can. References to Pam Holstead and the nonprofit companies she has organized on the
8 Island are irrelevant to this case. We are trying our best to work with residents on an
9 entity that will provide water and sewer service to everyone with a minimum of
10 objections, but their creation and meetings with the staff on this subject does not bear on
11 the issues of this case. Regarding bylaws of Ms. Holstead's non profit companies, these
12 are not the property of Folsom Ridge, the Association or its attorneys and if a copy is
13 needed by any one, Ms. Holstead should be asked for a copy. Page 44-48 of her rebuttal
14 is not a summary of her testimony but is a repeat of arguments she has made for many
15 years. It is not testimony.

16
17 **Ben Pugh's Rebuttal Testimony**

18 **Q. On page 1, Mr. Pugh refers to Mr. Hiley's ability to vote in Association meetings.**
19 **He claims that allowing Mr. Hiley to vote is some kind of violation. What is your**
20 **response?**

21 A. Official votes at Association meetings are limited to members and only the votes of
22 members will count, but at every meeting participation is welcome from everyone
23 attending including Mr. Hiley. Mr. Pugh is a voting member. Ms. Orler has also been

1 allowed to participate at meetings and show approval or disapproval for items of
2 business.

3
4 Q. **On page 2 of his rebuttal, Mr. Pugh claims that you and Mr. Golden improperly**
5 **installed water and sewer lines that were part of a DNR notice of violation issued in**
6 **1999. Is that true?**

7 A. No, as I have said above, Mr. Golden and I were not in the field at the beginning of this
8 project. Mr. Lees was the only member of the company that was paid for his services.
9 He was paid from April 1998 through April 2001. Mr. David Lees was the member of
10 our company in charge of field type responsibilities. This is even noted on Mr. Pugh's
11 BP Schedule 1. In the litigation with Mr. Lees we contend that Mr. Lees directed the
12 construction company to install the lines in the same trench and that was not authorized
13 in any manner. Mr. Golden and I did not serve as active members in the company or
14 managers of this project until after April, 2001.

15
16 Q. **On page 3 of his rebuttal, Mr. Pugh states that Folsom Ridge confirmed that the**
17 **lines had been installed properly and attaches BP Schedule 3. Can you explain this**
18 **letter?**

19 A. The letter was written in November 2000 at a time when Mr. Lees was still reporting
20 conditions in the field to Mr. Golden and me. The letter was based on Mr. Lees'
21 information, not information we independently verified. At that time we had no reason to
22 question Mr. Lees on this topic. Mr. Lees was giving the same information to DNR as
23 the second part of BP Schedule 3 confirms. Mr. Lees and the engineers involved in the

1 construction phase repeatedly advised us that the lines had been installed in accordance
2 with DNR requirements.

3
4 **Q. Also on page 3, Mr. Pugh refers to meeting with DNR representatives and with**
5 **members of the General Assembly. Who from Folsom Ridge or the Association**
6 **attended these meetings.**

7 A. No one. We were never invited to these meetings and did not know they took place.

8
9 **Q. Mr. Pugh also states at lines 18-19 of page 3 of his rebuttal that there are**
10 **reinstallation problems on the systems that may have health risks. Is this true?**

11 A. No, the issues with DNR compliance have been fully rectified and the systems comply
12 with DNR restrictions and other regulations. Mr. Krehbiel and Mr. McDuffey will also
13 address this in their testimony.

14
15 **Q. Regarding the list of items Mr. Pugh enumerates on pages 3-4 would you tell the**
16 **Commission the action, if any, which has been taken on these matters.**

17 A. Regarding the labels on the sewer and water valves, all are properly labeled at this time.
18 The earlier labeling of the valves did not pose a health risk but out of an abundance of
19 caution, these valve labels were changed. Regarding the valve boxes that were not
20 removed after abandonment of the noncomplying water line, these have now been
21 removed. Again, they did not pose a threat to public health but were removed
22 nonetheless. Mr. McDuffey can add to this point but there are shutoff valves for each
23 residence to the best of our knowledge. The causeway water main relocation was

1 conducted in accordance with DNR requirements and is not a risk to public health. Mr.
2 Krehbiel will also address this. Regarding the distance between the well housings and
3 the treatment plant, Mr. Krehbiel or Mr. McDuffey or both will address this. On page 6
4 of Mr. Pugh's testimony, respecting the 715 feet of lines, Mr. McDuffey or Mr. Krehbiel
5 will address this. The project turned out to be unnecessary.

6
7 **Q. On page 6, Mr. Pugh also starts a list of the violations issued by and other**
8 **correspondence from DNR. Have all these been addressed and rectified by Folsom**
9 **Ridge?**

10 **A.** First, I think it is important for the Commission to know that the list in Mr. Pugh's
11 testimony contains some duplication and includes matters that are not violations. Mr.
12 McDuffey and Mr. Krehbiel will be addressing these in their separate testimony and Ms.
13 Brunk has given the Commission the chronology of the notices of violation affecting the
14 systems in her direct testimony. With respect to the notice of violation that involved
15 improper disposal of old roofing, this involved Mr. Lees. He removed the shingles from
16 his own home and dumped them on Folsom Ridge's property. After learning of this, Mr.
17 Golden and I directed him to clean this up. Unfortunately, residents on Big Island have
18 used the areas around the wastewater treatment plant and the well as a dumping ground.
19 This is monitored very strictly at this time. Also, respecting the Settlement Agreement
20 Folsom Ridge entered with DNR, this agreement has been fully complied with and I
21 know of no violation of that agreement.

1 Q. On page 9 and following, Mr. Pugh discusses an altercation with Mr. Lees. What is
2 your response?

3 A. Mr. Lees is no longer a member of the LLC and has not been for nearly 6 years. I would
4 never condone the behavior Mr. Pugh attributes to Mr. Lees. I do not know if Mr. Pugh
5 violated Mr. Lees' right of privacy.
6

7 Q. Regarding page 11 of Mr. Pugh's rebuttal, he summarizes his testimony in an
8 argument form, but states that his neighbors have been subjected to contamination
9 risks; that the applicant has little respect for the state of Missouri and gives low
10 priority to drinking water quality. What is your response?

11 A. No one on the Island has been exposed to a risk of contamination from either system. All
12 DNR notices of violation and reports of inspection where deficiencies were noted have
13 been fully complied with by Folsom Ridge and the Association. The systems are
14 operated by highly qualified operators who have a history of adherence to the highest
15 professional standards. Mr. Pugh is simply wrong.
16

17 **Ms. Fortney's Testimony**

18 Q. On page 2 of her testimony Ms. Fortney discusses her father's status with the
19 Association and his payment of connection fees. What is your response to her
20 questions and answers on page 2.

21 A. Just as everyone else, Ms Fortney's father was sent information and ratification forms
22 several times but he chose not to join the Association. The previous owner of 3298 Big
23 Island Drive chose not to ratify the covenants and restrictions and they did not appear on

1 the abstract of title or record of title to the property. The Association was formed in July
2 of 1998 and was in business in 1999 when Ms. Fortney's father bought his Portage Park
3 address. Originally, the Association was prepared not to charge customers until they
4 hooked up. But in the summer of 2000, a group of residents met with Folsom Ridge and
5 the Association in an effort to negotiate a change to the covenants that would encourage
6 Island wide membership. This group proposed a number of changes to the covenants and
7 restrictions, and almost all were agreed to. One change we did not agree to involved the
8 nature and length of the warranty on the water and sewer systems. This group promoted
9 the change in policy on deferring charges until hook up.

10
11 **Q. On page 3, Ms. Fortney states that Folsom Ridge tried to stop the closing of 1554 Big**
12 **Island Drive. Is this true?**

13 **A.** No, it is not. We were asked by the closing company to provide information on
14 assessments just like any other closing that happens with a reputable title company. Mr.
15 McElyea responded accordingly and advised of the obligations under restrictions of
16 record. In providing the amount of the assessments due, it was thought the request was
17 for two lots (lots 8 and 9) and not just for the 1554 Big Island Dr (PP3 lot 9) address.
18 That is why the amount looks doubled to Ms. Fortney.

19
20 **Q. On page 4 of her rebuttal, Ms. Fortney discusses more of the circumstances on the**
21 **closing of 1554 Big Island Drive. What is your response to this page of her rebuttal.**

22 **A.** Without adding great detail, it is best to say that the new owners were not confused about
23 their obligations and did hook up to both systems and are members of the Association.

1 They paid required fees and facilities were relocated for their convenience. Regarding
2 the entity to which fees should be paid, the bylaws of the Association provide that
3 Folsom Ridge receives tap fees up to a ceiling amount of \$300,000. Regarding the back
4 fees owed, the Board of Directors for the Association resolved to forgive them.

5
6 **Q. On page 5 of her rebuttal, she refers to the meeting where she and Ms. Orler**
7 **participated in May of 2005, and claims the Association and Folsom Ridge coerced**
8 **and intimidated her. What is your response?**

9 A. As I testified previously, Folsom Ridge and the Association have never coerced,
10 threatened or intimidated Ms. Orler or Ms. Fortney. I explained the circumstances of the
11 May 2005 meeting earlier and what occurred there. Ms. Fortney's remarks about the
12 legality of the meeting processes used are inaccurate; the Association has encouraged the
13 widest participation but only the votes of members count at these meetings.

14
15 **Q. Ms. Fortney also discusses the closing on another house, 3298 Big Island Drive, on**
16 **page 5 of her rebuttal. Did the Association or Folsom Ridge respond to the title**
17 **company's requests as it did in the previously mentioned closing?**

18 A. Yes, again the closing company called for a statement of the Association dues prior to
19 closing and Ms. Fortney properly prepaid the balance of the quarter. The Association
20 and Folsom Ridge do not interfere in closing transactions but continue to cooperate with
21 title companies and closing agents in providing requested information.

1 **Q. On page 6 through 7 of her rebuttal, Ms. Fortney discusses a repair to a water or**
2 **sewer tap on Lot 8, Portage Park. Did Folsom Ridge make the repair?**

3 A. If I understand the situation described by her question and answer correctly, yes, Folsom
4 Ridge was able to make the necessary repair or upgrade. We also made a gravel pad for
5 her to park her motorhome on adjacent to the road. I think the matter she refers to is the
6 same as Ms. Orler's complaints about running a tap across the road. Since both had
7 decided that they were not going to be members of the Association or pay charges as
8 others were doing, there was no justification to run a line across the road until they
9 wanted to hook up at a later date. We assured them that they still had a place reserved
10 and we would run the line at that time. Since the old waterline was abandoned there was
11 no need to remove it from the box with the sewer tap in it.

12

13 **Q. Does this conclude your surrebuttal testimony?**

14 A. Yes.