

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Evidentiary Hearing  
8 June 23, 2008  
9 Jefferson City, Missouri  
Volume 1

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12 In the Matter of Kenneth Jaeger )  
13 And Blue Lagoon Sewer Corp. ) Case No. SO-2008-0358

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16 MORRIS L. WOODRUFF, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

17

18 CONNIE MURRAY,  
19 TERRY JARRETT,  
KEVIN GUNN,  
COMMISSIONERS.

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21 REPORTED BY:

22 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
23 MIDWEST LITIGATION SERVICES

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25

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1 APPEARANCES:

2 CHRISTINA BAKER, Assistant Public Counsel  
3 P.O. Box 2230  
4 200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
(573)751-4857

5 FOR: Office of the Public Counsel  
6 and the Public.

7 KEITH R. KRUEGER, Deputy General Counsel  
8 P.O. Box 360  
200 Madison Street  
Jefferson City, MO 65102  
(573)751-3234

9 FOR: Staff of the Missouri Public  
10 Service Commission.

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Welcome, everyone, to the  
3 hearing in Case No. SO-2008-0358, which concerns Kenneth  
4 Jaeger and the Blue Lagoon Sewer Corporation. We'll begin  
5 today by taking entries of appearance, beginning with the  
6 Office of the Public Counsel.

7 MS. BAKER: Thank you, your Honor.  
8 Christina Baker, P.O. Box 2230, Jefferson City, Missouri  
9 65102, appearing on behalf of the Office of the Public  
10 Counsel and the ratepayers.

11 JUDGE WOODRUFF: Thank you. And for Staff?

12 MR. KRUEGER: Thank you, your Honor.  
13 Keith R. Krueger for the Staff of the Missouri Public  
14 Service Commission. My address is P.O. Box 360, Jefferson  
15 City, Missouri 65102.

16 JUDGE WOODRUFF: Thank you. And is anyone  
17 here for Kenneth Jaeger? I don't see anyone in the room.

18 All right. Before we get started with  
19 opening statements, do we want to go ahead and premark  
20 exhibits? We'll go off the record and premark exhibits.

21 (EXHIBIT NOS. 1 THROUGH 17 WERE MARKED FOR  
22 IDENTIFICATION BY THE REPORTER.)

23 JUDGE WOODRUFF: Okay. I believe we've  
24 finished marking all the exhibits, then, and we can begin  
25 with opening statements, beginning with the Public

1 Counsel.

2 MS. BAKER: Thank you. May it please the  
3 Commission?

4 Public Counsel comes before you today  
5 requesting that the Commission appoint an interim receiver  
6 and issue an order to the General Counsel's Office to  
7 petition the Circuit Court for appointment of a receiver  
8 for Kenneth Jaeger and the system of the Blue Lagoon Sewer  
9 System.

10 Section 393.145.1 of the Missouri Statute  
11 authorizes the Missouri Public Service Commission to seek  
12 the appointment of a receiver for a sewer corporation in  
13 certain circumstances. It provides in full as follows:

14 If, after hearing, the Commission  
15 determines that any sewer or water corporation that  
16 regularly provides service to 8,000 or fewer customer  
17 connections is unable or unwilling to provide safe and  
18 adequate service, has actually or effectively abandoned by  
19 its owners -- has been actually or effectively abandoned  
20 by its owners, or has defaulted on a bond, note or loan  
21 issued or guaranteed by any department, office,  
22 commission, board, authority or other unit of state  
23 government, the Commission may petition the Circuit Court  
24 for an order attaching the assets of the utility and  
25 placing the utility under the control and responsibility

1 of a receiver.

2                   Public Counsel requests that the Commission  
3 issue or appoint an interim receiver and issue an order to  
4 petition the Circuit Court because the records indicate  
5 that Ken Jaeger is the owner and operator of the Blue  
6 Lagoon Sewer System, the Blue Lagoon Sewer System is a  
7 public utility and a sewer corporation, and the conduct of  
8 Ken Jaeger and Blue Lagoon Corp. satisfies the statutory  
9 bases for the appointment of a receiver.

10                   In the evidence that will be presented  
11 today, you will hear from the Department of Natural  
12 Resources regarding complaints that they have received,  
13 violations that they have issued, and enforcement actions  
14 that they have requested the Attorney General's Office to  
15 begin against Ken Jaeger for the environmental violations  
16 of the sewer system.

17                   And so, therefore, the evidence will show  
18 that Ken Jaeger has not provided safe and adequate  
19 service, and the evidence will show that he apparently  
20 does not intend to continue this.

21                   And so you will also hear evidence that Ken  
22 Jaeger now resides in Texas, that some of the violations  
23 that the Department of Natural Resources have issued have  
24 been based on alarms that have gone off with the sewer  
25 system, sewage going into the -- into the nearby streams.

1 Therefore, the evidence will show that Ken Jaeger has  
2 abandoned the sewer system at Blue Lagoon.

3 Therefore, since the evidence will show  
4 that the requirements of Section 393.145.1 have been  
5 proven, Public Counsel will ask that the Commission  
6 appoint an interim receiver and issue an order to the  
7 General Counsel to petition for a permanent receiver.  
8 Thank you.

9 JUDGE WOODRUFF: Opening for Staff?

10 MR. KRUEGER: Thank you, your Honor. May  
11 it please the Commission? My name is Keith R. Krueger,  
12 and I'm the attorney for the Staff in this proceeding.

13 First of all, I'd say I think the Staff's  
14 evidence will be entirely consistent with what Ms. Baker  
15 has outlined for the Public Counsel's evidence. The  
16 evidence will show that Mr. Jaeger has been operating a  
17 sewer facility at Blue Lagoon for gain for several years  
18 and that he has a sewer corporation and, therefore,  
19 subject to regulation by the Commission.

20 The evidence will also show that the  
21 service he has provided violates the regulations of the  
22 Department of Natural Resources, results in sewage  
23 overflows, and results in the discharge of untreated  
24 sewage to the waters of the state. The evidence will show  
25 that the service that Mr. Jaeger provides is unsafe and



1 cooperative at this time, willing to make his assets  
2 available to the -- for service to the people who live out  
3 there at Lost Valley who are served by the Blue Lagoon  
4 system. But since he is in bankruptcy, he doesn't have  
5 the total say on that matter on what happens to his  
6 assets, and the trustee and his creditors in the  
7 bankruptcy court may place some limitations on that, but  
8 we want to work as diligently as we can to see that  
9 service is restored to these people. Thank you.

10 JUDGE WOODRUFF: And again, no one is here  
11 for Mr. Jaeger. All right. We'll begin with the first  
12 witness for Public Counsel.

13 MS. BAKER: Public Counsel calls Paul  
14 Dickerson, please.

15 JUDGE WOODRUFF: If you'd please raise your  
16 right hand, I'll swear you in.

17 (Witness sworn.)

18 JUDGE WOODRUFF: You may be seated. You  
19 may enquire.

20 MS. BAKER: Thank you.

21 PAUL DICKERSON testified as follows:

22 DIRECT EXAMINATION BY MS. BAKER:

23 Q. Could you state and spell your name,  
24 please.

25 A. My name is Paul Dickerson. That's P-a-u-l



1 D-i-c-k-e-r-s-o-n.

2 Q. And who are you employed by?

3 A. I work for the Department of Natural  
4 Resources in the Water Protection Program.

5 Q. Are you in a specific section of the Water  
6 Protection?

7 A. I work in the compliance and enforcement  
8 section enforcing the Missouri Clean Water Law.

9 Q. What is your education?

10 A. I have a bachelor's degree in biological  
11 sciences.

12 Q. How long have you worked for the Department  
13 of Natural Resources?

14 A. About six and a half years.

15 Q. Have you worked that entire time within the  
16 enforcement section?

17 A. Yes, I have.

18 Q. What is your job title?

19 A. I am an Environmental Specialist.

20 Q. What are the duties of this job?

21 A. I work with entities, working with them to  
22 negotiate settlement agreements, drafting administrative  
23 orders that include compliance schedules to bring them  
24 back into compliance with the Missouri Clean Water Law and  
25 its regulations.

1           Q.     Are you familiar with Ken Jaeger and the  
2 sewer system at Blue Lagoon?

3           A.     Yes, I am.

4           Q.     And how are you familiar with them?

5           A.     I am the case manager for this case.

6           Q.     Within the --

7           A.     Within the enforcement section, yes.

8           Q.     All right. I'm going to show you what has  
9 been marked as OPC-1. Are you familiar with this  
10 document?

11          A.     Yes, I am.

12          Q.     Can you describe what this document is?

13          A.     This is an Enforcement Action Request.  
14 This is a document that our regional offices put together  
15 when they want to refer a case to the program, to the  
16 enforcement section to initiate enforcement action.

17          Q.     And whose name is listed as the name of  
18 facility?

19          A.     Mr. Ken Jaeger.

20          Q.     And next to it is listed?

21          A.     Lost Valley Resort.

22          Q.     Can you explain how Lost Valley Resort is  
23 connected with the Blue Lagoon Sewer System?

24          A.     This -- the wastewater treatment system  
25 that was originally constructed at this site was known as

1 the Lost Valley Resort. They constructed this under a  
2 letter -- and operated under a letter of approval from the  
3 Department.

4 Q. And what is the date on this document?

5 A. October 5th, 2004.

6 Q. Who is the document from and to?

7 A. It is from the Northeast Regional Office,  
8 signed off by the regional director, Irene Crawford. It  
9 is to the Compliance and Enforcement Section.

10 Q. And that is the section that you work in?

11 A. That's the section I work for.

12 Q. When this document came in, was this given  
13 to you as the project manager? Was there a different  
14 project manager at this time?

15 A. There was a different project manager when  
16 it originally -- it was assigned to a different staff that  
17 has left, but I've taken over the case.

18 Q. Could you read on the first page the text  
19 that follows the number two?

20 A. The violations with statute section or  
21 regulation citations that are documented by the file are  
22 as follows: Ken Jaeger has caused or permitted  
23 construction, installation or modification of a sewer  
24 system or any water contaminate source, point source or  
25 water treatment facility without first receiving a

1 construction permit, that being violations of 644.051.2  
2 and 644.076.1 of the Revised State -- Missouri Revised  
3 Statute, and 10 CSR 20-6.010(1)(A), and (4)(A), and those  
4 are the Missouri Clean Water Commission regulations that  
5 require an operating permit and construction permit.

6                   Since April 8th, 2003, operated, used or  
7 maintained a facility for the storage, treatment, disposal  
8 of process wastes, domestic wastewater, without a Missouri  
9 State Operating Permit. That would be violations of  
10 Section 644.051.2 and 644.076.1 of the Revised Statutes,  
11 and 10 CSR 20-6.015(2)(A), and those are, again, the  
12 Missouri Clean Water Commission's regulations requiring an  
13 operating permit.

14           Q.       Could you describe the steps that would  
15 lead up to the Northeast Regional Office submitting a  
16 document like this?

17           A.       Typically in cases the regional office will  
18 investigate complaints, doc-- if they document violations,  
19 they will issue an Inspection Report, Notice of Violation,  
20 notifying the party that there are violations need to be  
21 resolved and requesting that the responsible party take  
22 action to address the violations. If they don't obtain  
23 compliance, then they would refer the matter to us.

24           Q.       I'm going to show you what has been marked  
25 as OPC-2, and at the same time OPC-3.

1 A. Okay.

2 Q. Do you recognize these documents?

3 A. Yes, I do.

4 Q. Can you describe what these documents are?

5 A. These are Inspection Reports that the  
6 Northeast Regional Office staff con-- they conducted  
7 inspections based on complaints, and went out and  
8 investigated and documented violations, and then wrote  
9 those up in a report and sent them to Mr. Jaeger.

10 Q. And what are the dates on each of these  
11 documents?

12 A. The first one is October 14th, 2003, and  
13 the second one is December 4th, 2003.

14 Q. So these documents are prior to the  
15 enforcement action request --

16 A. Yes, they are.

17 Q. -- that we discussed?

18 Q. And for these -- who is the document signed  
19 by?

20 A. The documents are signed by Irene Crawford,  
21 who's the regional office director. The cover letter and  
22 I believe the Inspection Reports are signed by the staff  
23 that conducted the investigation. In the October 14,  
24 2003, it would be Nick Hill, who's an investigator, and  
25 the December 4th, 2003 is signed by Irene Crawford.

1           Q.       Would these documents have been provided to  
2 your office as evidence of the need for the enforcement  
3 action request?

4           A.       Yes, they would.

5           Q.       So let's go to the one that is marked  
6 OPC-2, and let's go to the fourth page. Let's see. I  
7 think it is marked -- actually, it would be the fifth  
8 page. It will be marked page 4 at the top.

9           A.       Okay.

10          Q.       Under the summary section, can you read the  
11 first paragraph there?

12          A.       The observations made on September 12, 2003  
13 indicate that a discharge from the lagoon had occurred  
14 into a tributary to Salt River. Therefore, Notice of  
15 Violation No. 1673NE is being issued to Mr. Jaeger for  
16 discharging without a Missouri State Operating Permit and  
17 violating the Water Quality Standards. Any discharges  
18 without a permit authorizing such a discharge may be  
19 subject to enforcement action by the Department of Natural  
20 Resources' Water Pollution Control Program.

21          Q.       So this is basically one of the first  
22 violations that was issued by the Northeast Regional  
23 Office, and that made them decide to seek enforcement  
24 action through your section?

25          A.       Not -- this one did not initiate

1 enforcement action.

2 Q. Okay. We'll go to the next one, the one  
3 that is marked OPC-3, and again, can you read the date on  
4 this document?

5 A. Date on this one is December 14th, 2003.

6 Q. And who is this one signed by?

7 A. This one is signed by Irene Crawford,  
8 Regional Director.

9 Q. And then would this have come to you with  
10 the Enforcement Action Request --

11 A. Yes.

12 Q. -- to your section?

13 A. Yes, it would have.

14 Q. Can you read the paragraph on the first  
15 page, just after where it says Dear Mr. Jaeger?

16 A. The Northeast Regional Office conducted an  
17 investigation of your lagoon near the Salt River Resort on  
18 November 26th, 2003. The investigation was conducted due  
19 to citizens' concerns that the lagoon had been discharging  
20 and the residential connections being made to the lagoon  
21 are unpermitted. The investigation revealed no evidence  
22 of a discharge from the lagoon. It was discovered,  
23 however, that a lift station and sewer main were built  
24 without a construction permit.

25 Q. So with these two violations, the one that

1 is marked OPC-2 and the one that is marked OPC-3, did this  
2 cause the Northeast Regional Office to seek enforcement  
3 referral to your section?

4 A. Yes, at some point they did.

5 Q. Looking at OPC-3, on the second page, can  
6 you explain just briefly what the various dates are in  
7 this?

8 A. November 26, 2003 is the date that the  
9 investigation was conducted, and during that time they  
10 observed that the -- Mr. Jaeger was conducting land  
11 disturbance without a permit, as well as constructing a  
12 sewer system or a collection system that was to serve the  
13 Lost Valley Subdivision without a permit. They included  
14 an application.

15 They requested that he submit an  
16 application for the land disturbance by December 24th,  
17 2003, and then they also requested that he submit a  
18 response to the -- to the Northeast Regional Office by  
19 December 15, 2003, requesting that he apply for a permit  
20 and identify the continuing authority who was going to  
21 take over the system.

22 They also asked for a letter from -- he'd  
23 indicated that he had hired an engineer, and also in this  
24 letter we requested that he submit a letter from MECO  
25 containing information on the construction and operating



1 permit application by December 15, 2003, and submit a  
2 construction permit application for the sewer extension  
3 and lift station by January 30th, 2004.

4 Q. Do you know if any of these things were  
5 completed?

6 A. No, they were not.

7 Q. And so did that also add to the decision to  
8 make the Enforcement Action Request?

9 A. Yes.

10 Q. So once your office receives an Enforcement  
11 Action Request, what is done at that point?

12 A. Supervisors review the case and assign the  
13 case to staff, who then do an in-depth review of the case  
14 and put together a summary memo and recommend type of  
15 action we need to take, they're recommending to take to  
16 bring the system into compliance.

17 Q. Do you remember what type of action was  
18 taken in this regard?

19 A. In this case, we evaluated the case and  
20 recommended an immediate referral to the Attorney  
21 General's Office.

22 Q. I'm going to show you what's been marked as  
23 OPC-4. Are you familiar with this document?

24 A. Yes, I am.

25 Q. Can you describe what this document is?

1           A.       This is a letter from the Department  
2     Director to Joe Bindbeutel with the Office of the Attorney  
3     General's Office referring this matter to their office.

4           Q.       What was the reason why the enforcement  
5     section determined that it was necessary to move this to  
6     the Attorney General's Office?

7           A.       We wanted to ensure that there were no more  
8     homes sold out there and connected to the system. We  
9     needed a court order ordering Ken to stop selling and  
10    building homes so that the system would -- it was already  
11    overloaded, and we wanted to get that stopped.

12          Q.       I know it's kind of hard on the stamp, but  
13    can you basically tell me what date is on this?

14          A.       November 22nd, 2004.

15          Q.       Can you read the second paragraph on the  
16    first page there?

17          A.       The Department of Natural Resources staff  
18    have engaged in extensive conference, conciliation and  
19    persuasion with Mr. Jaeger since the Department's initial  
20    Notice of Violation issued on November 14, 2003. To date  
21    Mr. Jaeger has failed to obtain approval from the  
22    Department for the method of sewage treatment and disposal  
23    to be used in the development prior to the sale or  
24    construction of lots in the subdivision. Mr. Jaeger has  
25    sold 35 of the 37 lots, constructed homes on 31 lots, and

1 illegally connected these homes to his unpermitted lagoon.

2 The Department staff are concerned that Mr. Jaeger will  
3 abandon his legal responsibilities for this subdivision.

4 Q. So even back in 2004, there was a concern  
5 that Mr. Jaeger would abandon the sewer system --

6 A. Yes.

7 Q. -- at Blue Lagoon?

8 So what action was taken after this  
9 referral to the Attorney General's Office was given?

10 A. After referral, the Attorney General's  
11 Office filed a motion for a preliminary order.

12 Q. A preliminary injunction order?

13 A. Injunction, yes.

14 Q. And was that preliminary injunction issued?

15 A. Yes, it was.

16 Q. By which court was it issued?

17 A. By the Ralls County Circuit Court.

18 Q. Did the preliminary injunction fix the  
19 issues at Blue Lagoon Sewer System?

20 A. No, it did not.

21 Q. I'm going to have you look at what's been  
22 marked as OPC-5. Are you familiar with this document?

23 A. Yes, I am.

24 Q. Do you recognize the case number that is  
25 listed on this document?

1           A.       I don't recognize the number, but the case.

2           Q.       The call of the case?

3           A.       Yes.

4           Q.       And can you tell us what the call of the  
5 case is, where it says Re?

6           A.       Oh, State of Missouri vs. Ken Jaeger.

7           Q.       And what is this case?

8           A.       It's -- the case number?

9           Q.       No. Just a description of what the case  
10 is.

11           A.       It's a -- our concerns, we wanted to get a  
12 lawsuit filed and obtain an order requiring Mr. Jaeger to  
13 stop selling homes and to submit certain documents or an  
14 application for a construction permit and operating permit  
15 to get the system permitted. That's what we were asking  
16 from the court.

17           Q.       So this is the case that was filed on  
18 behalf of the Department of Natural Resources by the  
19 Attorney General's Office?

20           A.       Yes.

21           Q.       On the second page, can you read the  
22 paragraph after the number one?

23           A.       That on January 19, 2005, plaintiffs filed  
24 a Petition for Preliminary Injunction, Permanent  
25 Injunction and Civil Penalties against defendant Ken

1 Jaeger for violating the Missouri Clean Water Law,  
2 Chapter 644, Revised State Statutes, and its implementing  
3 regulations.

4 Q. So again, this is -- this is the case from  
5 the Attorney General's Office for the preliminary and  
6 permanent injunction?

7 A. Yes.

8 Q. And so can you describe basically what  
9 had -- what happened with that case since it was filed?

10 A. Since the case was filed, we've obtained a  
11 preliminary injunction which required Ken to again cease  
12 any new connections, to submit an engineering report to  
13 us, and then obtain -- submit a construction permit  
14 application for the sewer extension and obtain an  
15 operating permit, and then operate and maintain the  
16 system.

17 Q. I'm going to show you what's been marked as  
18 OPC-6. Are you familiar with this document?

19 A. Yes, I am.

20 Q. Can you read the title of this document  
21 about in the -- near the middle of the page?

22 A. This is a Judgment and Order of Preliminary  
23 Injunction Against Defendant Ken Jaeger.

24 Q. And can you describe what the document is?

25 A. This is a order from the Ralls County

1 Circuit Court requiring Mr. Jaeger to take certain actions  
2 to bring the system into compliance.

3 Q. And what is the date of the judge's  
4 signature on this document?

5 A. May 3rd, 2005.

6 Q. If you go to page 2, paragraph 4, can you  
7 read just the first sentence there?

8 A. Within 20 days of the date of this Order,  
9 defendant Jaeger is ordered to submit to the Department,  
10 for Department review and approval, a preliminary  
11 engineering report for a no-discharge wastewater treatment  
12 system and collection system that contains information  
13 required in 10 CSR 20-8.020 and 10 CSR 20-8.110 through 10  
14 CSR 20-8.220.

15 Q. Was this ever submitted by Jaeger?

16 A. We did receive an engineering report.  
17 However, it was incomplete.

18 Q. Were the insufficient items within the  
19 report ever completed by Jaeger?

20 A. Yes, they were.

21 Q. So a full, complete document was received  
22 by the Department?

23 A. We don't have a full, complete document.  
24 We do have -- he ended up hiring a different engineering  
25 company other than MECO to complete it, so it's not a

1 complete document.

2 Q. If you could go to the third page, can you  
3 read paragraph 5?

4 A. On or before May 15, 2005, defendant Jaeger  
5 is ordered to land apply the contents of the lagoon so as  
6 to achieve two feet of freeboard and notify the Department  
7 of Natural Resources when these levels have been reached.

8 Q. Was this completed by Jaeger?

9 A. No, it was not.

10 Q. Could you also read page -- or paragraph 7  
11 on that same page?

12 A. I'm sorry. On No. 5, I believe he did meet  
13 that? On No. 6 --

14 Q. Go ahead and read that.

15 A. On or before September 30 of each year,  
16 defendant Jaeger is ordered to land apply the contents of  
17 the lagoon to the minimum operating level of two feet from  
18 the bottom of the lagoon and notify the Department of  
19 Natural Resources when these levels have been reached.

20 Q. Has that been completed?

21 A. No.

22 Q. And then to No. 7.

23 A. At all times in the future, defendant  
24 Jaeger is ordered to operate and maintain the lagoon so as  
25 to prevent the contents of the lagoon from overtopping the

1 lagoon berms.

2 Q. Has the Blue Lagoon Sewer System been  
3 operated and maintained to prevent the contents of the  
4 lagoon from overtopping?

5 A. No, it has not.

6 Q. I'm going to show you what's been marked as  
7 OPC-7. Are you familiar with this document?

8 A. Yes, I am.

9 Q. Can you read the title of the document?

10 A. This is a Judgment of Contempt Against  
11 Defendant Ken Jaeger.

12 Q. Can you describe what this document is?

13 A. This is a Contempt Order against Mr. Jaeger  
14 for violating the terms and conditions of the original  
15 judgment, the May 3rd, 2005 judgment.

16 Q. And so what is the date of the judge's  
17 signature on this document?

18 A. The date is April 11, 2006.

19 Q. If you move to the fifth page, can you read  
20 the very last paragraph that begins, now, therefore?

21 A. Now, therefore, it is ordered and adjudged  
22 that defendant Ken Jaeger is found in contempt of this  
23 Court because of his failure to comply with the Court's  
24 May 3rd, 2005 Judgment and Order.

25 Q. Is this the only Order of Contempt that was



1 issued against Jaeger?

2 A. No.

3 Q. Do you know about when another order was  
4 issued?

5 A. I believe it was in the summer of 2006. It  
6 was following this one. I don't recall the exact date. I  
7 don't have a copy of it in my file.

8 Q. Do you know if Jaeger has ever gotten the  
9 Order of Contempt lifted against him?

10 A. No, I don't.

11 Q. I'm going to show you what's been marked as  
12 OPC-8, OPC-9, OPC-10, OPC-11 and OPC-13. Just take a  
13 moment to look at those. Are you familiar with these  
14 documents?

15 A. Yes, I am.

16 Q. And what are each of these documents?

17 A. These are Orders from the Ralls County  
18 Circuit Court ordering Ken Jaeger to take certain actions  
19 to address issues with the system.

20 Q. Let's start with OPC-8. Can you tell me  
21 the date of the judge's signature on this document?

22 A. March 21st, 2007.

23 Q. And what are the -- can you describe what  
24 the requirements are?

25 A. In the March 28 -- or March 21, 2007,

1 Mr. Jaeger was ordered to relocate the electrical panels  
2 that were serving the lift station. There's two service  
3 panels. One of them was the service panel for a lift  
4 station that served the Lost Valley Volley Subdivision.  
5 The panel was located inside of a private building.  
6 Because it was not accessible, we asked the Court to order  
7 him to move -- to either obtain access or relocate that  
8 panel outside.

9                   There's also a panel that serves some  
10 buildings to the west of the lagoon system that was also  
11 located in a private building. We were asking to have  
12 that relocated so that it could be accessed without having  
13 to get keys to the -- from the owner.

14                   We also in this order asked -- he was asked  
15 to submit a construction permit to relocate the emergency  
16 spillway. There is a -- the lowest spot on the lagoon was  
17 near where the homes had been built, so whenever there was  
18 a -- the lagoon filled up, there was an emergency spill,  
19 discharge, it would discharge directly into the back yards  
20 of some of the residents.

21                   So we'd asked that they relocate the  
22 emergency spillway, and also contact the Canon Water  
23 Supply District to determine whether they'd be interested  
24 in taking over the system.

25                   Q. Do you know if any of these conditions were

1 completed by Jaeger?

2 A. He has relocated the panels. I believe  
3 they've all -- he has obtained access to the panel that  
4 was in a private. They granted him access. And then he  
5 relocated the panel that was serving the Lost Valley  
6 Subdivision to the outside.

7 Canon Water Supply District was contacted,  
8 and I attended several meetings with the Canon Water  
9 Supply District, and they indicated that -- at some point  
10 they indicated they were not really interested in taking  
11 over the system. And then the emergency spillway has been  
12 relocated.

13 Q. Let's go to what's been marked as OPC-9,  
14 and again, what is the date on this order?

15 A. The date of this order is May 7th, 2007.

16 Q. And can you describe what has been ordered  
17 by the judge?

18 A. By June 1st, 2007, he was ordered to  
19 relocate the control panel serving the building owned by  
20 Sue Moses so that it's accessible, and by May 15th, 2007,  
21 construct the emergency spillway. And he also submitted  
22 some information to us on an irrigation system that he was  
23 recommending or proposing to use to land apply the  
24 content, and he was ordered to appear before the Water  
25 Supply District to show them the system and try to -- in

1 an attempt to get them to take that over. So he was  
2 ordered to follow up with the district. And then there  
3 was some other issues as far as the roads and maintenance  
4 at the site.

5 Q. Do you know if Jaeger ever received  
6 approval for the water irrigation system?

7 A. The Department engineers who reviewed the  
8 system looked -- evaluated it and believe that the system  
9 would work. He's never purchased the system.

10 Q. Let's go to the order under OPC-10. Can  
11 you tell me the date of the judge's signature on this  
12 order?

13 A. July 9th, 2007.

14 Q. And can you describe the requirements of  
15 this order?

16 A. By July 3rd, 2007, Mr. Jaeger was ordered  
17 to -- let's see. He's ordered to modify the engineering  
18 report the Department had received on the emergency  
19 spillway, and repair buildings and other structures that  
20 were damaged when he relocated the panel from the -- that  
21 was serving the Lost Valley Subdivision.

22 And then by August 1st, 2007, ordered to  
23 obtain letters from all potential authorities which shall  
24 outline all requirements and conditions needed for  
25 continuing authority to operate the system, and then

1 continue road maintenance, and appear before court on  
2 August 1st, 2007.

3 Q. Can you explain why the requirement for the  
4 continuing authority?

5 A. Well, we needed -- the Missouri Clean Water  
6 Regulations require that we have an approved continuing  
7 authority that can take over the system for the operation  
8 and maintenance, modernization, to keep the facilities  
9 running, and at this point we did not have an approved  
10 continuing authority.

11 Q. Is there an approved continuing authority  
12 at this time?

13 A. No, there's not.

14 Q. Okay. Let's go to what's marked as OPC-11.  
15 Again, what is the date of the judge's signature on this  
16 order?

17 A. August 17, 2007.

18 Q. And can you describe the requirements of  
19 this order?

20 A. In this order, the -- Mr. Jaeger was  
21 ordered to answer some interrogatory questions, ordered to  
22 produce documents that were as requested in the first  
23 request to produce documents. He was ordered to appear  
24 for deposition to answer questions relevant to his  
25 financial status. And then it also set up a civil penalty

1 hearing on December 4th, 2007.

2 Q. Do you know if that civil penalty hearing  
3 was held?

4 A. No, it was not.

5 Q. Do you know if Jaeger provided the answers  
6 to the interrogatories or the financial information?

7 A. He was deposed, I do know that.

8 Q. And then the last order that you have  
9 there, OPC-13, what is the date on that one, date of the  
10 judge's signature on that one?

11 A. December 17, 2007.

12 Q. Can you describe the requirements of this  
13 order?

14 A. In this order, Mr. Jaeger was ordered to  
15 reimburse the residents of Lost Valley \$2,400. He was  
16 assessed a civil penalty, \$75,000, 50,000 to be suspended,  
17 25,000 up front, and the 50 was suspended on a condition  
18 that he complies with the law in the future. He was  
19 enjoined to comply with the law, and then work with Bub  
20 Thompson to transfer the assets from Blue Lagoon to Bub  
21 Thompson.

22 Q. For clarification, is that Alvin Thompson?

23 A. Yes, I'm sorry, Alvin Thompson. And this  
24 was all conditioned on him being on file with the Public  
25 Service Commission to transfer the assets by a certain

1 date, I believe March 4, 2008.

2 Q. Do you know if the filing here at the  
3 Public Service Commission was completed by Ken Jaeger?

4 A. I'm not sure what -- the date that he did  
5 file. I do know that he has filed.

6 Q. Do you know if that application is still  
7 pending?

8 A. I believe it still is.

9 Q. Do you know if Jaeger has paid any of the  
10 civil penalties that have been listed in this order?

11 A. No, he has not.

12 Q. So describing the Ralls County court case,  
13 would you say that this case has been successful in  
14 getting the sewer system at Blue Lagoon up to the  
15 environmental standards of the Department of Natural  
16 Resources?

17 A. We have been successful in getting the  
18 system approved, but it's not complete at this point.  
19 We've made a lot of progress in getting the system to the  
20 point where it could be turned over to a continuing  
21 authority. However, there are still some issues with the  
22 system.

23 Q. And you say there are still some issues.  
24 Some issues such as what?

25 A. At this point, the lift station that's

1 serving the Lost Valley Subdivision, the lift station pump  
2 is not working, and the lift station -- or the manhole  
3 prior to the lift station has been bypassing for several  
4 months. The lagoon is full. The wastewater hasn't been  
5 land applied and is discharging at this point.

6 Q. Is there an operator onsite at this point?

7 A. No, there's not.

8 Q. Do you know where Ken Jaeger is located?

9 A. It's my understanding he's in Texas.

10 Q. If there is an issue with the sewer system,  
11 do you know if Ken Jaeger comes and responds to that?

12 A. No, he does not.

13 Q. I'm going to show you what's been marked as  
14 OPC-12, 14 and 15. Give you a moment to look through  
15 those. Are you familiar with these documents?

16 A. Yes, I am.

17 Q. Let's begin with OPC-12. Can you describe  
18 what this document is?

19 A. This is an Inspection Report and Notice of  
20 Violation that the Northeast Regional Office issued to  
21 Mr. Jaeger based on a complaint that there was a discharge  
22 from the system.

23 Q. And what is the date of this violation?

24 A. The date of the violation of the --

25 Q. Of the cover letter. I'm sorry.



1           A.       The cover letter is August 24th, 2007.

2           Q.       All right. And a copy of this violation  
3 went to you directly?

4           A.       A copy of it was copied to me, yes.

5           Q.       And who is this document signed by?

6           A.       It was signed by Irene Crawford, the  
7 Northeast Regional Office director.

8           Q.       If you go to the second page, near the  
9 middle of the document, it talks about Notice of  
10 Violation. Can you read that section?

11          A.       Notice of Violation No. WP0362NE is being  
12 issued to Mr. Jaeger, Mr. Ken Jaeger and Blue Lagoon Sewer  
13 System for, No. 1, on July 26, 2007, operated, used or  
14 maintained a water contaminant source, domestic sewage  
15 from a lagoon, which discharges to an unnamed tributary to  
16 Salt River, waters of the state, without a Missouri State  
17 Operating Permit. It's in violation of Section 644.051.2  
18 and 644.076.1 of the Revised Statutes, and  
19 10 CSR 20-6.010(1)(A) and (5)(A).

20                   Second violation was, caused pollution of  
21 an unnamed tributary to Salt River, waters of the state,  
22 or placed or caused or permitted to be placed a water  
23 contaminant in a location where it is reasonably certain  
24 to cause pollution to waters of the state. That's in  
25 violation of the Section 644.051.1(1) and 644.076.1 of the

1 Revised Statutes.

2 Q. So can you just give a description of what  
3 the violation was on this date?

4 A. The investigator investigated a complaint  
5 that there was a discharge from the system. The  
6 investigator didn't see a discharge from the lagoon, but  
7 there's a land application area, a field adjacent to the  
8 lagoon. The investigator observed evidence that he had  
9 over-land-applied and that there was effluent flowing off  
10 the site and into the stream.

11 Q. There are pictures that are at the end of  
12 this document. I'd like to go through, just briefly, what  
13 these pictures are of.

14 A. The first photograph on here, it's  
15 identified as P7260191, is a picture by Darryl McCullough,  
16 and it's a picture of effluent flowing from the north end  
17 of the field to the south end of the field.

18 The second photograph is identified as  
19 P7260192, again taken by Darryl McCullough, and it's  
20 effluent flowing from the north end of the field to the  
21 south end of the field.

22 The next photograph is identified as  
23 P7260193, taken by Darryl McCullough. It's a picture of  
24 effluent flowing from the north end of the field toward  
25 the creek along the west side of the field.

1                   And then the next photograph identified as  
2   P7260195, again taken by Mr. McCullough, and it's effluent  
3   flowing from the north end of the field towards the creek  
4   along the west side of the field.

5                   And then photograph No. P7260199 taken by  
6   Darryl McCullough shows effluent flowing from the north  
7   end of the field toward the creek along the west side of  
8   the field.

9                   Photograph No. P7260200, taken by Darryl  
10   McCullough, shows effluent flowing in the creek along the  
11   west side of the field.

12                  Q.       These photographs were used as a  
13   determination that the violation was necessary --

14                  A.       Yes.

15                  Q.       -- is that correct?

16                  A.       It was used to document the discharge.

17                  Q.       Let's go to the document that's listed as  
18   OPC-14. Can you tell me the date of this document?

19                  A.       February 22nd, 2008.

20                  Q.       And can you describe what this document is?

21                  A.       This is an Inspection Report and Notice of  
22   Violation for violations that were observed on  
23   February 19, 2008 by Staff. This was in response to a  
24   complaint that they -- a manhole was discharging.

25                  Q.       All right. Who is the document signed by?

1           A.       This document is signed by Irene Crawford,  
2   the regional director.

3           Q.       And a copy of this document went to you?

4           A.       Yes, I did receive a copy of this.

5           Q.       On the very first page, can you read the  
6   second sentence?

7           A.       The report indicated that the alarm was  
8   sounding on the lift station and sewage water was being  
9   released from a manhole cover. The report also alleged  
10   that -- I'm sorry.

11          Q.       Go ahead.

12          A.       The report also alleged that it appeared  
13   that the wastewater level in the lagoon was about to  
14   overtop the emergency spillway.

15          Q.       Can you explain the alarm that this talks  
16   about?

17          A.       The alarm on the lift station indicates  
18   that the lift station is full, and it's put there to  
19   notify the operator that there's a problem that needs to  
20   be resolved.

21          Q.       Is it an alarm that you hear or see or  
22   both?

23          A.       It's both.

24          Q.       Let's go to the third page, again under the  
25   Notice of Violation. Do these appear to be the same

1 violations that were listed in OPC-12?

2 A. Yes, they are.

3 Q. Let's do a brief look at the pictures in  
4 the back. Can you describe the pictures there?

5 A. The first photograph identified as  
6 P2190173, taken by Darryl McCullough, shows wastewater  
7 flowing from a manhole cover.

8 Q. And why would wastewater be flowing from a  
9 manhole cover?

10 A. The pump in the lift station was not  
11 working, so the lift station was full, had filled up with  
12 water and was backing up to the lowest point, which was  
13 this manhole.

14 Q. Go on.

15 A. Photograph identified as P2190175, taken by  
16 Darryl McCullough, is another photograph of the same  
17 manhole and water discharging from that, wastewater.

18 Photograph No. P2190174, again taken by  
19 Darryl McCullough, shows wastewater flow-- it's flowing  
20 from the manhole cover, and then there's -- where the tree  
21 line is, there's a stream right there. Sort of showing  
22 its relationship to the stream. It's pretty close.

23 Photograph P2190176, taken by Darryl  
24 McCullough, is a photograph of the control panel with the  
25 alarm set, with the light on the alarm sounding. It's

1 also indicated that the audio alarm was activated.

2 Photograph No. P2190177 is a picture of the  
3 inside of a lift station showing that it's within a few  
4 inches of the top of the lift station.

5 Photograph P2190178, taken by Darryl  
6 McCullough, shows the level -- this is a photograph taken  
7 at the emergency spillway, and it's -- it's very near  
8 discharging at this point.

9 Q. And in this particular photograph, there  
10 are two pipes shown. Can you explain what the two pipes  
11 are?

12 A. Those pipes were the pipes that Ken had  
13 used to -- there's a pump there also that he had been  
14 using to draw water from the lagoon and pump it on to the  
15 land application fields.

16 Photograph P2190179, taken by Darryl  
17 McCullough, is just another shot of the emergency spillway  
18 showing how the lagoon is very near discharging at this  
19 point. You can see some water on the emergency spillway,  
20 but it hadn't quite made it over the edge of the berm.

21 P2190180, taken by Darryl McCullough, is  
22 again a picture of the water level in the lagoon.

23 And P2190185, taken by Darryl McCullough,  
24 is another photograph of the -- of the wastewater flowing  
25 from the manhole cover and then the unnamed tributary,

1     which is right behind the manhole.

2                     P2190186 is a closeup shot of the manhole  
3     cover taken by Darryl McCullough.

4                     And the last photograph, P2190187,  
5     photograph taken by Darryl McCullough, and says that  
6     there's wastewater flowing from manhole cover, but again,  
7     the tree line right there is a picture of the unnamed  
8     tributary.

9             Q.       Now, the pictures showed the alarm going  
10    off. Do you know how long the alarm went off?

11            A.       No, I don't.

12            Q.       Do you know if Ken Jaeger ever responded to  
13    the alarm going off?

14            A.       No, he did not.

15            Q.       Let's go to what's been marked as OPC-15.  
16    Could you tell me the date of this document?

17            A.       March 31, 2008.

18            Q.       The title of this document?

19            A.       Notice of Violation.

20            Q.       Can you describe what this document is?

21            A.       This is another inspection report. We had  
22    a court date scheduled for early April, and the  
23    investigator went back out to the site to determine  
24    whether the manhole issue, the bypass of the manual had  
25    been corrected, and to observe the lagoon to see if the

1 lagoon was discharging.

2 Q. I'll have you read the second paragraph  
3 there on the first page.

4 A. An investigation of the environmental  
5 report was conducted by Mr. Darryl McCullough of the  
6 Missouri Department of Natural Resources' Northeast  
7 Regional Office on February 19, 2008. A Report of  
8 Investigation and Notice of Violation  
9 No. NER2008022015345604 was issued for violations of  
10 Missouri Clean Water Law and the Missouri Clean Water  
11 Commission Regulations. Follow-up investigations were  
12 conducted on February 26th, 28th, March 3rd and  
13 March 20th, 2008. Enclosed is a Report of Investigation  
14 concerning these follow-up visits. Also enclosed is  
15 Notice of Violation No. NER2008032813184788, which is  
16 being issued as a result of the violations observed during  
17 these visits.

18 Q. Can you explain why Mr. McCullough went out  
19 several times afterwards to reinvestigate?

20 A. He was following up on the initial Notice  
21 of Violation to determine whether those violations had  
22 ever been corrected.

23 Q. So from the issuance of the violations, can  
24 you tell if any of those violations had been corrected?

25 A. No, they were not.



1           Q.       Okay. On -- it's listed as page 4, five  
2 pages back, can you read the recommendations?

3           A.       In the recommendations, the inspector  
4 recommended evaluating the area along the west of the  
5 lagoon to assure that storm water does not enter the  
6 lagoon during excessive storm events, and evaluate whether  
7 there's inflow or infiltration occurring at the lift  
8 station serving the homes at the subdivision.

9           Q.       Let's go through the pictures that have  
10 been taken.

11          A.       Photograph P2260193, taken February 26,  
12 2008 by Darryl McCullough, is a photograph of the manhole  
13 south of the lift station, and at this time he didn't  
14 observe any flow coming from the manhole. However, the  
15 manhole, you can observe sewage, what appears to be sewage  
16 at the manhole cover.

17                   P2260196, taken February 26, 2008 by Darryl  
18 McCullough is a photograph of the lagoon and showing that  
19 the lagoon is within inches of discharging.

20          Q.       And what are the date of these photographs?

21          A.       Both of those photographs were dated  
22 February 26, 2008.

23          Q.       All right.

24          A.       Photo No. P2280205, taken February 28,  
25 2008, by Darryl McCullough. At this time wastewater was

1 flowing from the manhole south of the lift situation.

2 Photograph No. P2280207, taken February 28,  
3 2008 by Darryl McCullough, shows again water level in  
4 lagoon within inch of discharging.

5 Photograph P3030213, taken March 3rd, 2008,  
6 by Darryl McCullough, is a photograph of the emergency  
7 spillway. At this point the effluent from the lagoon is  
8 discharging.

9 Photograph P3030215, taken March 3rd, 2008  
10 by Darryl McCullough, was another angle of the emergency  
11 spillway showing wastewater is discharging from the  
12 lagoon.

13 Photograph P3200227, taken March 20, 2008  
14 by Darryl McCullough, is a photograph of the lift station  
15 serving the Lost Valley Subdivision just showing that the  
16 water level in the lift station is very near the top.

17 Photograph P3200231, taken March 20, 2008  
18 by Darryl McCullough, shows wastewater flowing from the  
19 manhole just south of the lift station.

20 Photograph P3200230, taken March 20th, 2008  
21 by Darryl McCullough, shows wastewater flowing from the  
22 manhole south of the lift station and entering the nearby  
23 tributary.

24 Photograph P3200232, taken March 20th, 2008  
25 by Darryl McCullough, is a photograph of inside the

1 manhole located on the west side of the lagoon. This is  
2 the -- I believe this is the manhole or the line that  
3 serves -- there's an RV park to the north of the lagoon,  
4 and I believe that he was taking a photograph of that just  
5 to show what kind of flow was coming from there.

6 Photograph P3200240, taken March 20th, 2008  
7 by Darryl McCullough, just showing a path of flow from the  
8 discharge of the emergency spillway.

9 Photograph P3200236, taken March 20, 2008  
10 by Darryl McCullough, is a photograph looking, I believe,  
11 to the north across the lagoon, and the emergency  
12 spillway's sort of there in the center of the lagoon, just  
13 showing the water level in the lagoon.

14 Q. Did Ken Jaeger respond to any of the issues  
15 that were found at any of these reinspections?

16 A. The lift station's not been corrected, and  
17 the lagoon, as far as I know, is still discharging.

18 Q. That brings me to what is the current  
19 status of the Blue Lagoon Sewer System?

20 A. Currently, the system's in noncompliance.  
21 The lift station that serves the subdivision does not have  
22 functioning pumps in it, so the lift station continues --  
23 and will continue to bypass. The lagoon is full and needs  
24 to be land applied during dry days. And so long as it's  
25 being used, there's still flow coming in from the RV park

1 and then some businesses to the west, so the system will  
2 continue to discharge.

3 Q. Has Ken Jaeger indicated that he will  
4 repair or maintain the system?

5 A. No, he has not.

6 Q. Has he hired anyone to repair or maintain  
7 it?

8 A. No, he has not.

9 Q. I'm going to show you the last document  
10 that I have, which is listed as OPC-16. Are you familiar  
11 with this document?

12 A. Yes, I am.

13 Q. Can you tell me the title of the document?

14 A. This is an Order of Commitment.

15 Q. Can you describe what this document is?

16 A. This is a document, we had -- the Attorney  
17 General's Office had asked the Court to place Ken Jaeger  
18 in jail until he purges the contempt order. The judge  
19 signed the Order of Commitment.

20 Q. And what date did the judge sign this  
21 order?

22 A. He signed this the 22nd day of April 2008.

23 Q. All right. And let's go to page 8, the  
24 last page, and can you read the text of that page?

25 A. On page 8?

1 Q. Yes.

2 A. Now, therefore, you are commanded to attach  
3 Ken Jaeger and commit him to the County Jail of Ralls  
4 County, Missouri, until such time as he has purged himself  
5 of contempt by: Fixing the lift station that is causing  
6 the collection system of the Lost Valley Subdivision to  
7 discharge wastewater into waters of the state. Defendant  
8 shall install two operational pumps in said lift station  
9 and secure the cover to said lift station with a lock.

10 Pumping and hauling the wastewater  
11 contained in the lagoon serving Lost Valley Subdivision to  
12 a permitted wastewater treatment plant until the  
13 wastewater in the lagoon is two feet from the top of the  
14 lowest point of the emergency spillway.

15 Q. To your knowledge, has Ken Jaeger purged  
16 himself of this contempt?

17 A. No, he has not.

18 MS. BAKER: That's all the questions I  
19 have.

20 JUDGE WOODRUFF: Cross-examination from  
21 Staff?

22 MR. KRUEGER: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. KRUEGER:

24 Q. Good morning, Mr. Dickerson.

25 A. Good morning.

1           Q.       Do you know how many people are served up  
2     there, how many customers are served out there at Blue  
3     Lagoon?

4           A.       No, I don't.

5           Q.       Do you know if it's fewer than 8,000?

6           A.       It is fewer than 8,000.

7           Q.       Can you give me kind of a rough ballpark  
8     idea of how many it may be?

9           A.       I believe there are about 60 lots in the RV  
10    park.  There's about 35 homes in the Lost Valley  
11    Subdivision.  There's a small motel, a theater and a  
12    convenience store that are all connected to the system.

13          Q.       Do you know if these people pay for their  
14    service?

15          A.       I believe some of them have paid for their  
16    service.

17                   MR. KRUEGER:  Thank you.  That's all the  
18    questions I have.

19                   JUDGE WOODRUFF:  We'll come up to questions  
20    from the Bench.  Commissioner Murray?

21    QUESTIONS BY COMMISSIONER MURRAY:

22          Q.       Good morning.

23          A.       Good morning.

24          Q.       Can you explain for the record, what is the  
25    issue of the continuing authority that you were asked

1 about earlier?

2 A. On all applications for construction/  
3 operating permits for a system, the rules outline certain  
4 entities that can be issued permits, things like public  
5 water supply districts, public sewer districts, cities,  
6 municipalities, private utilities that are regulated by  
7 the Missouri Public Service Commission. Those are the  
8 types of entities that we can issue permits to because we  
9 need an entity that can -- that will be there permanently  
10 to operate and maintain the system.

11 Q. And in this application that we have before  
12 us to seek a receivership for Blue Lagoon, what would be  
13 the status of a permanent or a continuing authority there?  
14 Would that qualify as a continuing authority or are you  
15 still going to be without a continuing authority for this  
16 location?

17 A. I believe that would take care of our  
18 continuing authority issue. The receiver would be able to  
19 apply for and obtain any permits that are necessary.

20 COMMISSIONER MURRAY: All right. Thank  
21 you.

22 JUDGE WOODRUFF: Commissioner Jarrett?

23 COMMISSIONER JARRETT: No questions.

24 JUDGE WOODRUFF: Commissioner Gunn?

25 COMMISSIONER GUNN: No questions.

1 QUESTIONS BY JUDGE WOODRUFF:

2 Q. I have a few questions, and you can answer  
3 these as best you can. If you can't answer, they might be  
4 questions for the Staff witnesses. I assume we'll have  
5 some Staff witnesses later.

6 Who's currently operating the system? I  
7 understand Mr. Jaeger's in Texas.

8 A. I don't believe anybody's operating the  
9 system at this point.

10 Q. So if something happens, it just -- it just  
11 happens?

12 A. That's -- we've sent our Inspection Reports  
13 to Ken in Texas, but we've gotten no response.

14 Q. Now, it sounds like the problem is that the  
15 sewage lagoon is overfull. Can you explain for me, why is  
16 that a concern for DNR?

17 A. The lagoon system that's serving this  
18 subdivision is a no-discharge system. So the way this  
19 operates is it stores the wastewater from all of the  
20 people using it. And there's a land application field  
21 where the operator should be land applying the contents of  
22 the lagoon throughout the spring, summer, fall. You pump  
23 it down as low as you can to within two feet of the bottom  
24 so that you have enough storage to get through the  
25 wintertime until you can start land applying again. That



1 was the way this thing was designed.

2 Q. Can you explain a little bit more about the  
3 land application system? I'd never heard of that before.

4 A. Well, at this point there is no system for  
5 land application. It --

6 Q. How is it supposed to work?

7 A. It's supposed to work, the operator would  
8 pump wastewater onto, I believe he's got some grass fields  
9 on the other side of the creek, and you would land apply  
10 that on -- land apply the contents of the lagoon to use  
11 for -- water the hay, provide nutrients, and then there's  
12 no discharge, so you don't have to sample the effluent and  
13 report to the Department. You just have to submit annual  
14 reports.

15 Q. But no discharge means there's not supposed  
16 to be anything flowing to the stream?

17 A. Not supposed to be any runoff, no runoff.  
18 You're not supposed to land apply during wet saturated  
19 conditions, when the ground's frozen. There's certain  
20 restrictions that are put on when you land apply.

21 Q. Some of those photographs show that, in  
22 fact, there was water flowing off the field?

23 A. Yeah. He'd over-land-applied in certain  
24 areas, hadn't moved the system. He was using some fixed  
25 sprinkler heads and wasn't moving them enough or wasn't

1 monitoring land application. Just running the pumps all  
2 day long and not monitoring it.

3 Q. Since he's in Texas, is anybody running the  
4 pumps now?

5 A. Nobody's doing it right now.

6 Q. Why is that a problem if there is  
7 discharge?

8 A. It's a violation of the Missouri Clean  
9 Water Law. If you're going to have -- in order to  
10 discharge, you're going to have to have an operating  
11 permit to discharge, so that there are certain effluent  
12 limits that are put on that.

13 Q. Can you give me an idea of what the  
14 practical effect of this discharge is?

15 A. It creates unsanitary conditions in the  
16 receiving stream. There's no --

17 Q. This is essentially raw sewage flowing to  
18 the stream?

19 A. It's partially treated, but yeah, it's --  
20 we have no idea whether it would meet effluent limits or  
21 it would be safe at this point.

22 Q. Has anybody tested that?

23 A. No, we haven't.

24 Q. And by partially treated, I assume it's  
25 supposed to settle out because it is a lagoon?

1           Q.       Because it is a lagoon, it does have some  
2     storage time there. There is some treatment, but it's  
3     difficult to obtain a sample of it running off without  
4     getting some sort of contamination. Usually there should  
5     be a pipe if you're going to dis-- if you're going to have  
6     a discharge, there should be a pipe where you can obtain a  
7     sample of the discharge.

8           Q.       And tell me how the lift station fits into  
9     this.

10          A.       The lift station, there are two lift  
11     stations. There's one that Mr. Jaeger constructed. He  
12     eventually did get a construction permit, constructed it  
13     and obtained engineer certification certifying that it was  
14     constructed appropriately. That serves about 35 homes in  
15     the Lost Valley Subdivision. This is the subdivision that  
16     he built and connected it.

17          Q.       This is supposed to lift the wastewater  
18     into the lagoon?

19          A.       It pumps the wastewater from these homes  
20     into the lagoon.

21          Q.       So if those pumps aren't working, then it  
22     just flows out --

23          A.       Yeah.

24          Q.       -- never goes into the lagoon at all?

25          A.       No, it does not.

1 Q. So that's totally untreated sewage?

2 A. That is, yes.

3 Q. I also had a question about this alarm that  
4 was going off. Do you know how long it went off?

5 A. No. I don't know when Ken responded. I  
6 believe he did turn the alarm off. But again, there's no  
7 pump in the lift station. There's not a functioning pump  
8 in the lift station.

9 Q. What I'm curious about, is this something  
10 that the residents could hear going off?

11 A. Yes.

12 Q. So it would be like a car alarm going off  
13 outside your window for days?

14 A. Yes.

15 Q. I imagine you got some calls about that,  
16 didn't you?

17 A. We did get calls about it and we  
18 investigated.

19 Q. Have you been in contact with Mr. Jaeger  
20 down in Texas?

21 A. No, I have not.

22 Q. Has anyone from DNR?

23 A. No.

24 Q. Is Mr. Jaeger currently in prison in Texas?

25 A. No. I don't believe so.

1           Q.     I just noticed that his address was --  
2     appeared to be some sort of institution down there where  
3     it had -- I'll see if I can find it here.

4           A.     Oh, Unit 2.

5           Q.     Unit 2. Do you know anything about his  
6     circumstances down there?

7           A.     No, I don't.

8           Q.     What's the reason for the excess water in  
9     the lagoon? Do you know?

10          A.     Well, he did not pump the lagoon down last  
11     fall. Typically on these no-discharge systems you want to  
12     pump it down in late November so that you have enough  
13     storage to make it through the wintertime. It was not  
14     pumped down to the low level. So he started out with a  
15     high level, with more wastewater in there in late fall,  
16     early winter than he should have, so as the system was  
17     used during the year, he ran out of storage.

18          Q.     And you can't pump out the lagoon onto a  
19     frozen field?

20          A.     Yeah, you can't.

21          Q.     Is it a matter of poor design with  
22     wastewater -- or storm water coming into the lagoon as  
23     well?

24          A.     He had claimed that the collection system  
25     had some inflow and infiltration into the system which

1 caused the pump to burn out. He's never submitted any  
2 type of engineering or anything that would document or  
3 show us that that is the case.

4 Q. Even if that were the case, it would be his  
5 responsibility to fix it, I assume?

6 A. Yes.

7 JUDGE WOODRUFF: All right. I don't  
8 believe I have any other questions for Mr. Dickerson. Any  
9 recross based on those questions?

10 MS. BAKER: No, but I'd like to go ahead  
11 and ask to admit OPC-1 through 16.

12 MR. KRUEGER: I do have a couple questions,  
13 your Honor.

14 JUDGE WOODRUFF: Okay. Go ahead. Well,  
15 let's go ahead and deal with the admission of the  
16 documents first, 1 through -- actually, I believe it's 1  
17 through 16.

18 MS. BAKER: Is the complete set, yes.

19 JUDGE WOODRUFF: Have been offered. Any  
20 objections to their receipt?

21 MR. KRUEGER: No objection, your Honor.

22 JUDGE WOODRUFF: Hearing none, they will be  
23 received into evidence.

24 (EXHIBIT NOS. 1 THROUGH 16 WERE RECEIVED  
25 INTO EVIDENCE.)

1 JUDGE WOODRUFF: Then recross from Staff.

2 RECROSS-EXAMINATION BY MR. KRUEGER:

3 Q. Mr. Dickerson, is it typical for  
4 no-discharge lagoons to have land applications such as you  
5 described for Blue Lagoon?

6 A. Yes, it is.

7 Q. Do they all have land application?

8 A. Yes, they do. There are some systems where  
9 they pump and haul it to a treatment facility, but the  
10 cost of that is -- it's very expensive to do that.

11 Q. Okay. And the problem here is that they  
12 just didn't do either one?

13 A. Yes, that's the problem.

14 MR. KRUEGER: Thank you. That's all I  
15 have.

16 JUDGE WOODRUFF: Any redirect?

17 MS. BAKER: No.

18 JUDGE WOODRUFF: All right, then.

19 Mr. Dickerson, you can step down.

20 Does Public Counsel have any other  
21 witnesses?

22 MS. BAKER: No. That's all.

23 JUDGE WOODRUFF: All right. Does Staff  
24 wish to call some witnesses?

25 MR. KRUEGER: Yes, your Honor. Martin

1 Hummel.

2 (Witness sworn.)

3 JUDGE WOODRUFF: You may inquire.

4 MARTIN HUMMEL testified as follows:

5 DIRECT EXAMINATION BY MR. KRUEGER:

6 Q. State your name and address for the record,  
7 please.

8 A. My name is Martin Hummel, H-u-m-m-e-l.

9 Q. By whom are you employed and in what  
10 capacity?

11 A. I'm employed by the Missouri Public Service  
12 Commission in the water and sewer department.

13 Q. In what capacity?

14 A. As an engineer.

15 Q. And what are your duties in the water and  
16 sewer department?

17 A. To evaluate the technical aspects of the  
18 water and wastewater treatment facilities.

19 Q. In the course of your employment, did you  
20 become acquainted with the sewer system at Blue Lagoon?

21 A. Yes, I have.

22 Q. I'm going to show you what's been marked as  
23 Staff 1 or I think maybe Exhibit 17. Ask if you can  
24 identify that?

25 A. Yes, I can identify this. This is a report



1     that I was involved in preparing in conjunction with  
2     Mr. Merciel.

3             Q.     Do you know when that report was prepared?

4             A.     I would have to go back and check the  
5     actual date.  It's been quite some time ago.

6             Q.     Do you know if it was soon after this case  
7     was filed, soon after the complaint case was filed?

8             A.     Yes, I do believe so.

9             Q.     On page 1 of that report, it states that  
10    there may be approximately 36 customers.  What is meant by  
11    customers?

12            A.     In this report, if we are saying customers,  
13    we're speaking in terms of residential homes or  
14    businesses, not numbers of people.

15            Q.     Okay.  And do you know if they were paying  
16    for their services?

17            A.     There were some parties paying for some  
18    services, and I can't speak to the specifics of which ones  
19    were or were not.  There were also some parties that had  
20    been paying, and then at some point in time when this was  
21    being reviewed, they ceased paying.

22            Q.     And did you review this report before you  
23    came here this morning to testify?

24            A.     Yes, I did.

25            Q.     Is everything that was stated in there

1 accurate and correct as of the date that it was prepared?

2 A. Yes.

3 Q. Have you visited Blue Lagoon since the time  
4 that this report was prepared?

5 A. Yes.

6 Q. Do you know how many occasions?

7 A. Not exactly. Maybe three times possibly.

8 Q. Do you know when was your most recent visit  
9 to Blue Lagoon?

10 A. Most recent time that I was there was the  
11 date of the public hearing at Monroe City where we --  
12 where I stopped there prior to going up to the public  
13 hearing to just make a quick observation of the conditions  
14 that existed, and that was March 29th.

15 Q. And that was the public hearing in the  
16 asset transfer case?

17 A. Correct.

18 Q. And did you visit it shortly before that as  
19 well?

20 A. I was also there on March 20th doing a  
21 fairly thorough review of what was there in conjunction  
22 with Mr. Alvin Thompson, who had made an application with  
23 Public Service Commission for certificating the sewer  
24 operation.

25 Q. Can you describe generally the condition of

1 the facilities at that time?

2 A. At the time of both my March 20th and the  
3 visit on the 29th, the facilities were not being taken  
4 care of. The manhole next to the main lift station was  
5 overflowing, that being raw wastewater going into the  
6 stream. The lagoon was full, and at least on the 29th, as  
7 I recall, there was some discharge coming out of the  
8 lagoon.

9 Q. I believe you referred to the main lift  
10 station. Is that the one that serves the residences  
11 there?

12 A. Yes, that is the main lift station that  
13 handles the water from all the homes. The secondary lift  
14 station is one that sits behind the motel.

15 Q. And so the one that you call the main lift  
16 station is the one that Mr. Dickerson testified about a  
17 little bit ago?

18 A. Correct.

19 Q. Did you see any conditions there that you  
20 considered unsafe?

21 A. Yes. The raw wastewater going into a  
22 stream is clearly unsafe in my mind, and it's certainly  
23 something that you wouldn't want people being exposed to,  
24 and downstream of this lift station there are a few other  
25 residences and so forth. It's accessible to people.

1           Q.     Do you have any reason to believe that the  
2     situation has changed since the time of your last visit?

3           A.     No, I do not. I think it is the same, best  
4     I can tell.

5           Q.     To your knowledge, is anyone operating the  
6     system at the present time?

7           A.     No, no one's operating it.

8           Q.     And did you hear the testimony of  
9     Mr. Dickerson?

10          A.     Yes.

11          Q.     Based upon your observation of the Blue  
12     Lagoon System, did he accurately describe the conditions  
13     there?

14          A.     Yes.

15          Q.     Did you hear any testimony from  
16     Mr. Dickerson with which you would disagree?

17          A.     No.

18          Q.     Have you investigated the possibility of  
19     the appointment of a receiver?

20          A.     I have not made a thorough search for  
21     someone that might do this. This system has been on my  
22     mind for some time, and consequently, when I've had  
23     opportunity during my other -- doing other work and so  
24     forth or being in contact with other people that I know in  
25     the water and wastewater industry, I on a few occasions

1 asked people a couple questions to just try to get some  
2 idea of what I would do to find someone to actually  
3 operate the system, but I haven't -- I haven't been able  
4 to pursue that very far.

5 I have -- the way things stand right now, I  
6 can't tell someone that might even be interested what  
7 physical facilities might really be available to them, and  
8 nor can I -- I have no revenue stream inasmuch as there is  
9 no approved monthly rate being charged to these customers.  
10 So I really have not pursued finding a receiver in any  
11 kind of formal way.

12 Q. What qualifications would you look for in a  
13 receiver?

14 A. I would hope to find someone that  
15 understands the process of treating wastewater, hopefully  
16 someone who has some formal training of some type that  
17 would show that he has that kind of knowledge. It would  
18 be great if I could combine that with someone who can  
19 handle some business aspects that would be involved with  
20 taking care of customers and billing and so forth.

21 Q. Have you been able to identify -- identify  
22 anyone who possesses those qualifications?

23 A. There's some possibilities out there,  
24 including such as Mr. Thompson. I don't know that he'd be  
25 available. Whether he has all the qualifications that

1   you'd like to see, it's hard to say. Besides having  
2   somebody, of course, that's qualified, I've got to have  
3   somebody that's willing, and again, I'm not sure if I can  
4   find somebody right now.

5           Q.     Have you asked anyone whether they would be  
6   willing to serve as receiver?

7           A.     I have mentioned it to someone that I know  
8   in the industry that has on previous occasions been up  
9   here to discuss forming a certificated company, and I know  
10  he's involved in the wastewater industry. Unfortunately,  
11  most of his work is on the western side of the state.

12                  I have not gotten very thorough with this  
13  yet. I've had it on my mind to try to, if I have an  
14  opportunity to talk to somebody, particularly if I happen  
15  to be able to figure out how to find somebody that would  
16  be local to the situation, I'd certainly want to pursue  
17  that. But I really have not gone very far with that  
18  aspect of it.

19           Q.     So you have some ideas, but nobody that you  
20  know of that would be able and willing at the present  
21  time?

22           A.     Correct.

23                  MR. KRUEGER: That's all the questions I  
24  have.

25                  JUDGE WOODRUFF: Cross from Public Counsel?

1 CROSS-EXAMINATION BY MS. BAKER:

2 Q. Good morning.

3 A. Good morning.

4 Q. Have you received or been in contact with  
5 some of the customers of the Blue Lagoon Sewer System?

6 A. At various times they have called me on the  
7 phone or I've talked to some of the customers in person.

8 Q. Can you describe what their main concerns  
9 are with the sewer system?

10 A. Their main concern is that there somehow or  
11 another there be a sewer system that is actually operated  
12 that they can rely on, that they don't have to worry about  
13 whether or not they are or are not getting service.

14 Q. You had said that some of them had been  
15 paying for service. Do you know what they received bills  
16 from Ken Jaeger or Blue Lagoon for?

17 A. I'm not exactly sure now off the cuff  
18 whether there was actually a formal bill sent to them or  
19 how that was being handled, and that's been some time  
20 back. There's a number of the customers that have not  
21 paid for, I would presume, for a couple years.

22 Q. Have you heard any reports of sewage going  
23 into the yards of any of the customers?

24 A. That has been certainly a concern, and yes,  
25 one of the customers have had issues with extraneous water

1 coming across their yard and so forth. And unfortunately,  
2 some of these homes are immediately downstream behind the  
3 lagoon berm, and that has certainly been an issue with  
4 them.

5 At this point in time, the lagoon, one of  
6 the changes that has occurred since this first came to  
7 light is there has been an emergency spillway placed on  
8 the other side of the lagoon opposite these homes so that  
9 when the lagoon does overflow, it will overflow away from  
10 the homes.

11 Q. But is there still a possibility that if  
12 the spillway overflows, it would go into streams nearby?

13 A. It would definitely -- it would likely go  
14 into streams unless some other action was taken.

15 Q. Do you know of any other actions being  
16 taken at this time by Ken Jaeger?

17 A. No.

18 MS. BAKER: I have no further questions.

19 JUDGE WOODRUFF: All right. Before we go  
20 to questions from the Bench, does Staff wish to offer its  
21 exhibit?

22 MR. KRUEGER: I was just going to mention  
23 that. Thank you, your Honor. I do wish to offer  
24 Exhibit 17.

25 JUDGE WOODRUFF: All right. 17 has been



1 offered. Any objections to its receipt?

2 MS. BAKER: No, no objections.

3 JUDGE WOODRUFF: Hearing none, it will be  
4 received.

5 (EXHIBIT NO. 17 WAS RECEIVED INTO  
6 EVIDENCE.)

7 JUDGE WOODRUFF: Questions from the Bench,  
8 then. Commissioner Murray?

9 COMMISSIONER MURRAY: Thank you.

10 QUESTIONS BY COMMISSIONER MURRAY:

11 Q. Good morning, Mr. Hummel.

12 A. Good morning.

13 Q. Perhaps I've not been paying close enough  
14 attention, but I'm a little confused as to the exhibit  
15 that was offered into evidence. It looks as if -- well,  
16 first of all, it's not dated. And secondly, it refers to  
17 two cases, other than the current case, referring to two  
18 complaint cases; is that correct?

19 A. I did not understand the very last part of  
20 your statement.

21 Q. Okay. The Report of Staff Investigation is  
22 the exhibit that was just filed; is that correct?

23 A. It was --

24 Q. What is the exhibit titled?

25 A. The exhibit title is Report of Staff

1 Investigation in -- then it gives the case numbers of  
2 SC-2005-0083 and --

3 Q. That is not dated; is that correct? I  
4 mean, I don't see any date on the exhibit.

5 A. There was a -- this report had a -- was  
6 part of -- was a portion of a response in those cases that  
7 was, as I understand, was dated --

8 MR. KRUEGER: Your Honor, I think I can  
9 resolve this question. That was the Staff Report of --  
10 Report of Staff Investigation was attached to a Staff  
11 recommendation that was filed in Case No. SC-2005-0083,  
12 and that was filed on December -- that was dated  
13 December 2, 2004. I'd ask the Commission to take  
14 administrative notice of that filing.

15 BY COMMISSIONER MURRAY:

16 Q. Okay. And how long have you personally  
17 been involved with the investigation of Blue Lagoon?

18 A. I'm not sure off the cuff of my first  
19 contact on this, except I do know it goes back to at least  
20 2003, and that's probably the likely origin of my  
21 involvement with this.

22 Q. And do you know when Ken Jaeger began  
23 operating the system?

24 A. I don't know that I ever had a very clear  
25 date on when that would have occurred. When we first

1 learned of this, he had already been operating the system  
2 for some somewhat indefinite amount of time. He had --  
3 when we first learned of this, there were a few homes that  
4 he had constructed, and originally the system was really  
5 set up only for the RV park and the motel and the lagoon  
6 was never -- originally was never constructed or had any  
7 homes on it. He simply had adjacent land next to it.  
8 Started building some homes and selling them to, you know,  
9 selling them to people.

10 Q. When did Staff first learn of the Blue  
11 Lagoon System?

12 A. I'm -- without further check, I'd have to  
13 say it was around that May of 2003 time frame. Initially  
14 by having a phone call from someone and then having to  
15 answer questions where they were concerned about what was  
16 required in terms of having a wastewater system and, you  
17 know, it was somewhat unclear whether or not this system  
18 would be under the jurisdiction of the Public Service  
19 Commission.

20 Initially there was not 30-some homes  
21 there. Initially there were perhaps 10 or less homes, and  
22 there was some question about what all was on this system  
23 until we had a chance to do a thorough investigation and  
24 make some determination on those lines.

25 Q. And what point in time did you determine

1     that it was a sewer corporation subject to regulation by  
2     the PSC?

3             A.       I formed opinion that -- that it  
4     potentially was fairly early.  As a matter of fact, I made  
5     a point of seeking out Mr. Jaeger on one of my earliest  
6     visits because I was trying to make contact with him to  
7     get him to pursue whatever would be legitimate in getting  
8     the job done.

9                     The reason I remember that is because I  
10    hadn't -- hadn't had any luck with getting him to respond  
11    to me, but on a visit I asked someone at the Quick Stop,  
12    and they pointed out that that was Mr. Jaeger on the  
13    backhoe.  So I went to Mr. Jaeger and talked to him while  
14    he was there in the area.

15            Q.       And what was the result of that  
16    conversation?

17            A.       I never did get any response from him.  I  
18    gave him my card, told him who I was and tried to  
19    encourage him to just simply talk to us so we could look  
20    at what the needs were and help him put it on sound  
21    footing.

22            Q.       And following no response, what did Staff  
23    do?

24            A.       I'm -- I'm trying to picture what  
25    specifically with regard to Mr. Jaeger.  In this same time

1 frame we were having contacts with some of the homeowners.  
2 I don't recall specifically what we did in terms of trying  
3 to -- making further effort to try and get Mr. Jaeger have  
4 some kind of discussion with us or some kind of dialog.

5 Q. And this was back in 2003 or early 2004,  
6 are we talking here?

7 A. It's in that time frame. There were other  
8 things going on. At one point there was -- we had a  
9 meeting at the DNR regional office. I did meet Mr. Jaeger  
10 there with his attorney. There was also -- and again, I  
11 don't have my dates with me. There was a public hearing  
12 there locally attended by a number of the residents and  
13 other people concerned with this system.

14 Q. Let me just get to the bottom here. What  
15 I'm trying to get at is, did Staff ever consider filing a  
16 complaint that this utility was operating without a  
17 permit, and if not, why not, or do you know?

18 A. I'm sure that we gave that some  
19 consideration, and I don't know where this fits in exactly  
20 with the filing of a complaint by the customers themselves  
21 with this SC--2005-0083. We were not -- various options  
22 were discussed to try to get to an end result of having a  
23 sewer system here that would then operate.

24 Q. Okay. But actually Staff never did file  
25 anything on behalf of Staff; is that correct?

1           A.       No, the Staff never filed a complaint on  
2 the behalf of the Staff. We --

3           Q.       That decision would have been made by the  
4 director of the Department, whether or not to file a  
5 complaint?

6           A.       Yes, in conjunction with discussing, you  
7 know, even with General Counsel perhaps, you know, and  
8 discussing whether or not that would be a route to take,  
9 that we could affect an ultimate solution or can we get  
10 there or is there even in terms of, you know, I'm not an  
11 attorney, but issues of law and whether we would take that  
12 step and be fruitful in accomplishing something.

13          Q.       And in the meantime, you were attempting to  
14 be fruitful in what fashion, through discussions with  
15 customers, through attempting to -- continuing to attempt  
16 to talk to Mr. Jaeger?

17          A.       We were talking to customers. This was  
18 somewhat complicated with the filing of lawsuits. And  
19 again, I don't know all the details of that, but there  
20 were court cases taking place in Ralls County in  
21 conjunction with a lot of this. There were a lot of  
22 issues here that we were unclear on in terms of how that's  
23 going to fit in with us taking other action.

24          Q.       And General Counsel's Office was involved  
25 in looking at these legal details as to how to go forward,

1     how the Staff should go forward?

2             A.       I'm not real clear on -- I mean, I can't  
3     speak to that very specifically, but I'm sure that we  
4     would have. On issues of how we would pursue a formal  
5     complaint, we certainly would have been talking to General  
6     Counsel to even consider that.

7             COMMISSIONER MURRAY: Thank you. That's  
8     all I have.

9             JUDGE WOODRUFF: Commissioner Jarrett?

10    QUESTIONS BY COMMISSIONER JARRETT:

11            Q.       Good morning.

12            A.       Good morning.

13            Q.       I had a few questions regarding sort of the  
14    practical aspects of a receivership. I take it from the  
15    testimony today you would agree that there -- that the  
16    system right now is not working properly?

17            A.       Correct.

18            Q.       Do you have any estimate on how much it  
19    would cost to bring the system up to adequate working  
20    capability?

21            A.       I don't have a good estimate of that.  
22    That's where we were at, in conjunction with the previous  
23    case where the applicant had filed for a certificate. We  
24    were in the process of trying to do some evaluation on  
25    that, and one of the very big items on that is making a

1 determination of what facilities are actually available to  
2 provide the service and who has -- whether those  
3 facilities are contributed by the developer or is there an  
4 additional investment needed in order to go forward.

5                   Now, that case, of course, had been  
6 withdrawn or whatever with Mr. Jaeger moving to Texas and  
7 so forth and Mr. Thompson no longer wanting to pursue  
8 that, but I never really got my answers from Mr. Thompson  
9 to try to clarify specific things like whether or not the  
10 investment in the equipment to put the waste out on the  
11 land was going to be contributed by the developer or not,  
12 whether or not the pumps that need to go in the lift  
13 station, would they be contributed by the developer or  
14 not.

15                   It's -- as you might guess, it's a  
16 completely different -- if I have to include the cost of  
17 those facilities in the ratemaking picture, then that's  
18 going to make those rates considerably higher than if all  
19 I'm doing is operation and maintenance. We really didn't  
20 go much further than what I've just stated in that  
21 evaluation in conjunction with that application being  
22 actually dropped.

23               Q.       Okay. Who was the -- who's the developer,  
24 do you know?

25               A.       When I speak of developer in this case, I'm



1 thinking in terms of Mr. Ken Jaeger.

2 Q. And he's not -- doesn't look like he's in a  
3 position to contribute anything at this point?

4 A. Apparently not. Again, that's -- to me,  
5 that's something that's unsettled. Even if I were to try  
6 to find a receiver now today, it's like I want to have  
7 someone to operate this system, but the lagoon, who owns  
8 it? I guess technically Mr. Jaeger owns it. Do I have it  
9 available for the receiver? I don't know. Even the lift  
10 station and the sewer lines, who them owns?

11 I've got a very difficult thing here to go  
12 to a potential receiver and say, do you want to get  
13 involved with this, and try to help even the receiver  
14 understand how they can actually make it work when they're  
15 not even sure -- I mean, how do they have the authority to  
16 be using these facilities in the first place? I don't  
17 have a good answer for that, and I won't have, I don't  
18 think, until something is clarified as far as actual  
19 ownership of these facilities.

20 If none of these facilities are available,  
21 if that land is not available for disposal of this  
22 wastewater, then the rates that were necessary to build a  
23 whole new sewer system basically, perhaps not the sewers  
24 themselves, but at least the treatment facility, the rates  
25 are going to have to be very high.

1                   And I -- and I don't want to be held to a  
2     specific number, but it wouldn't surprise me if you put a  
3     pencil to putting in a whole new treatment plant there and  
4     you're going to be looking at \$70 a month, 70 to \$90 a  
5     month rates or some such thing like that when it's set up  
6     in a fashion where the customers have to pay for all of  
7     the treatment plant that at this point doesn't even exist  
8     and they have to pay for even the process of getting it  
9     approved through DNR and everything.

10                   On the other hand, if as a result of legal  
11    proceedings the lagoon's available and the spray-off  
12    field's available, then it could very easily be that I  
13    could work with rates that are in the range of maybe \$30 a  
14    month. I still have to -- even in that scenario, I still  
15    have to invest in the equipment to spray off the water.  
16    That's at least a pumping system and some type of piping  
17    to get it to the spray-off field, and I have to invest in  
18    the lift station pumps. And there may be other equipment  
19    to go with that. It depends on how -- depends on what  
20    approach you take there.

21                   So it's -- I'm not sure what else to say  
22    about it, except it's -- eventually there's got to be a  
23    wastewater system functioning here, and I don't have at  
24    this point -- if I had a receiver to actually have  
25    something to work with, then we could proceed on those

1 terms until we actually have a legitimate owner of the  
2 facility.

3 COMMISSIONER JARRETT: Okay. Thank you. I  
4 don't have any further questions.

5 JUDGE WOODRUFF: Commissioner Gunn?

6 COMMISSIONER GUNN: I just have a couple.

7 QUESTIONS BY COMMISSIONER GUNN:

8 Q. Was there anybody from Staff involved in  
9 any of the either negotiations or when DNR was -- during  
10 the lawsuit period of time in Ralls County when the  
11 Attorney General brought the case, was there someone from  
12 Staff involved in the negotiation or planning or  
13 determining what kind of penalties may be imposed on  
14 Mr. Jaeger that you know?

15 A. I think the answer to that is no,  
16 notwithstanding I'm not sure whether we had someone from  
17 General Counsel just listen in to stay informed with what  
18 was going on.

19 Q. Same question, are there other water  
20 systems in the geographic vicinity of this area that you  
21 know of? Are there other waste facilities or treatments  
22 plants? If so, are those privately owned or are there any  
23 municipal or --

24 A. If you're thinking in terms of another  
25 entity that they might connect onto, the answer would be

1 no. Now, the water district that serves water would have  
2 authority to go into the business, and there have been  
3 significant discussions with them as a way to put this  
4 wastewater facility in the hands of a legitimate  
5 continuing authority. But the water district is not  
6 interested in it as it stands today. That's my  
7 understanding.

8                   Now, you know, there were significant  
9 discussions. I mean, that was -- part of that whole  
10 process was there was a real hard look at trying to find  
11 some other entity that would run this wastewater system,  
12 and this would include entity that would simply meet the  
13 definition of a good continuing authority for the  
14 Department of Natural Resources regardless of whether they  
15 were regulated by the Public Service Commission.

16                   So there was a hard look at -- not by PSC  
17 Staff, but Mr. Jaeger and his attorney approached the  
18 water district with some serious -- well, at least on  
19 several occasions.

20           Q.       So from a -- for my education, for lack of a  
21 better word, what happens if you can't find a receiver?

22           A.       I'm not sure what happens, other than  
23 obviously one of the things that continues is that you  
24 have wastewater, untreated wastewater overflowing from a  
25 manhole going directly into a small creek, and you have a

1 lagoon, which part of the wastewater is going into anyhow,  
2 and it will continue to overflow.

3                   Now, I really can't speak to the -- to the  
4 legal issues. I can -- I'm not sure what the Department  
5 of Natural Resources, how would they approach this in  
6 terms of -- first I'm sure they would want to be clear  
7 that Mr. Jaeger is simply not in the picture, but at some  
8 point it falls back on the homeowners. I'm not sure what  
9 solution they would come up with to getting something put  
10 in place here. Fortunately, this is not -- it's not that  
11 often that we run into this particular kind of problem.

12               Q.       But you think ultimately the responsibility  
13 would lay with the homeowners to figure out a way to keep  
14 their sewage from being put into the --

15               A.       Well, ultimately they're going to get the  
16 bill. They're going to get some kind of a bill. And  
17 how -- I'm not sure how that would play out even within  
18 Ralls County, whether there's anything that would be done  
19 on a county level. I'm not sure how that plays into the  
20 owner of the RV park. I'm not sure whether DNR would --  
21 how they could approach telling the businesses that you  
22 can't operate, you don't have a wastewater system. I'm  
23 not sure how that would play out.

24                   And understand, this is a -- I don't know  
25 what the economics are in terms of this area. It was a

1 problem originally because Mr. Jaeger was involved in this  
2 originally and went through bankruptcy before, and -- but  
3 now we've got 30-some private residences there that  
4 weren't there before. Before it was businesses.

5 COMMISSIONER GUNN: Okay. Thank you. I  
6 don't have any further questions.

7 JUDGE WOODRUFF: I have some questions.

8 QUESTIONS BY JUDGE WOODRUFF:

9 Q. First of all, can you give me some idea of  
10 where this whole subdivision is located? I understand  
11 this is Ralls County.

12 A. Yes. If you go to the Mark Twain Lake and  
13 you want to go across the dam that forms the lake, then  
14 you drive another maybe perhaps a mile or so, and you will  
15 be at the service area. It's very -- it's particularly  
16 close to where the dam is.

17 Q. But it's a rural area? There's no towns  
18 nearby?

19 A. There really is not any significant towns  
20 anywhere close.

21 Q. But it's near Mark Twain Lake and that  
22 whole recreation area?

23 A. Yes.

24 Q. Would this water be draining into Mark  
25 Twain Lake or is it below the dam?

1           A.       This would be going -- the wastewater would  
2   be draining in below the dam into a small tributary that  
3   then goes to Salt River.

4           Q.       I also wanted to ask you some questions  
5   about the status of the various actions that are currently  
6   pending before the Commission. Are you going to be the  
7   only witness for Staff or is somebody else going to  
8   testify also?

9                   MR. KRUEGER: I don't plan to call anyone  
10   else. Mr. Merciel is present to answer questions if you  
11   have additional questions.

12   BY JUDGE WOODRUFF:

13          Q.       I'll ask Mr. Hummel first. If he can't  
14   answer the questions, we'll defer them on.

15                   First of all, there's been a couple  
16   complaints mentioned that the Staff investigation report  
17   came from, the SC-2005-0083 and SC-2005-0099. I  
18   understand these were brought by customers that were  
19   concerned?

20          A.       Yes.

21          Q.       Okay. And are those complaints still  
22   pending?

23          A.       It's my understanding that they are.

24          Q.       Okay. It's my understanding that  
25   Mr. Jaeger has never had a certificate from the

1 Commission; is that right?

2 A. Correct.

3 Q. And Blue Lagoon also is not certificated?

4 A. There's never been a certificate involved

5 with this location at all.

6 Q. As Mr. Dickerson also mentioned another

7 action that he thought was pending before the Commission

8 for someone else to take over this system. Can you

9 explain what that was all about?

10 A. Another action that was pending before the

11 Public Service Commission?

12 Q. Yes. I believe it was --

13 A. No.

14 Q. -- Blue Lagoon, Incorporated was going to

15 take it over and operate it. I believe that was

16 Mr. Thompson was involved.

17 A. I don't -- well, the application itself is

18 a joint application by Ken Jaeger and Blue Lagoon, LLC.

19 Q. Okay. That's what I'm talking about.

20 A. And the name Blue Lagoon, from my

21 understanding, originated with Mr. Jaeger, but when

22 Mr. Thompson became involved, they continued using that

23 name to represent what they would have as the certificated

24 company.

25 Q. And Mr. Thompson was going to take over the



1 operations as a certificated company from Mr. Jaeger, was  
2 that the plan?

3 A. He would take it over in conjunction -- in  
4 the whole process, Mr. Thompson was going to take over  
5 what would then be Blue Lagoon, and Mr. Jaeger was going  
6 to be out of it completely once -- once approval was  
7 granted to Blue Lagoon to be a certificated company.

8 Q. Can you tell me, who is Mr. Thompson?

9 A. Who's Mr. Thompson?

10 Q. Yes.

11 A. Mr. Thompson is an individual that lives, I  
12 guess we'd say locally to this area who has -- most of his  
13 experience is in the agricultural arena, but he has also  
14 gotten in --

15 Q. He's a farmer?

16 A. Yes. Primarily with cattle. But he's  
17 gotten involved in installation of onsite wastewater  
18 treatment, which, of course, would normally be single  
19 homes. He has pursued that area, and he's been involved  
20 in doing some backhoeing work and hauling. He's also got  
21 a truck to do some hauling of gravel or whatever. And  
22 he's been involved with installation of onsite wastewater  
23 treatment systems. That's his background when it comes to  
24 the wastewater.

25 Q. Now, I understand that that application has

1     been dismissed; is that correct?

2             A.       Yes.

3             Q.       All right.  So it's no longer pending  
4     before the Commission?

5             A.       That is my understanding.

6             Q.       You indicated Mr. Thompson was a potential,  
7     somebody you might approach to be receiver?

8             A.       I would at least consider asking him.  I  
9     mean, it could be a scenario where you have someone that's  
10    willing to take care of the business aspects of this and  
11    actually be the receiver, but they would want somebody  
12    else to do some of the work for them.  So when you say get  
13    a receiver, it might involve more than one party actually.

14            Q.       I assume a receiver could hire somebody to  
15    actually go out and pump the water?

16            A.       Correct.

17            Q.       Assuming they had assets to hire somebody.

18            A.       Assuming they had the wherewithal to do  
19    that, yes.

20            Q.       All right.  And do you have any idea how  
21    long it will take to find at least an interim receiver?

22            A.       Due to the cloud on the picture with --  
23    with Mr. Jaeger being in Texas and having filed bankruptcy  
24    and how that clouds the ownership of facilities, I really  
25    don't have a good prediction on how fast to find somebody.

1 I don't even -- I don't know what to tell them in terms of  
2 what facilities are actually available. That's just me  
3 speaking from my perspective of what I'd be faced with  
4 with talking to somebody and trying to convince them to  
5 get involved.

6 Q. And you're the person for Staff who would  
7 be doing that?

8 A. There's a pretty good chance. I mean, I  
9 wouldn't be the only person, you know. There would be  
10 other parties that might be involved with talking to  
11 someone, particularly if we had them come to the PSC  
12 office to discuss this issue. It won't be just me talking  
13 to them, but I will be one of the primary people, I  
14 presume, trying to find somebody.

15 JUDGE WOODRUFF: I think that's all the  
16 questions I have. Any recross?

17 MS. BAKER: I guess I have one question.

18 RECROSS-EXAMINATION BY MS. BAKER:

19 Q. Given that Mr. Jaeger is in Texas and that  
20 he has not responded to the issues in the system, do you  
21 see any other avenue available besides trying to get a  
22 receiver?

23 A. No. I think you've got -- you have to --  
24 you have to approach it with the idea that you're going to  
25 have to find a receiver and somehow you're going to have

1 to get through all the hoops to put that in place perhaps.

2 MS. BAKER: Thank you. No further  
3 questions.

4 JUDGE WOODRUFF: Any redirect?

5 MR. KRUEGER: No questions, your Honor.

6 JUDGE WOODRUFF: Any other witnesses that  
7 Staff wants to call at this time?

8 MR. KRUEGER: No, your Honor.

9 JUDGE WOODRUFF: Then, Mr. Hummel, you can  
10 step down.

11 I believe that's all the evidence in this  
12 case, then. I do have some questions for counsel as to  
13 how we can proceed in this case. First of all, I'm  
14 looking at the statute. This would be 393.145. It talks  
15 about -- be subsection 2, and it says, if the Commission  
16 orders its general counsel to petition the Circuit Court  
17 for the appointment of a receiver under subsection 1 of  
18 this section, it may in the same order appoint an interim  
19 receiver for the sewer or water corporation.

20 Do the parties interpret that to mean that  
21 we need to name an interim receiver in the same order that  
22 we send -- in which we would direct Staff to go to the  
23 Circuit Court?

24 MR. KRUEGER: A strict construction of it  
25 would certainly indicate that. I think we had a similar

1 situation in regard to Missouri Utilities where we  
2 presented evidence on seeking authorization to seek the  
3 appointment of a receiver and could not identify a  
4 receiver, and I think in that case the order was not  
5 issued, the Commission did not issue an order until an  
6 interim receiver was identified.

7 JUDGE WOODRUFF: That was my case, and I  
8 believe it took about seven or eight months.

9 MR. KRUEGER: I think that's about right.

10 JUDGE WOODRUFF: Do you recommend that the  
11 Commission take the same course in this case?

12 MR. KRUEGER: Well, I think that statute  
13 has never been -- has never been tested. I think the  
14 Commission could issue an order probably finding that the  
15 appointment of a receiver is necessary, but I think  
16 actually directing the General Counsel to go into Circuit  
17 Court and seek the appointment of a receiver might be a  
18 little bit questionable based on a strict construction of  
19 the statute like I mentioned.

20 Furthermore, by the time -- we would want  
21 to know by the time we filed suit in Circuit Court that we  
22 have a permanent receiver identified.

23 JUDGE WOODRUFF: I assume the circuit judge  
24 isn't going to look kindly on your application if you come  
25 in saying I have no idea who could be receiver?

1                   MR. KRUEGER: Well, probably not, but my  
2   experience has been that when I go in to Circuit Court and  
3   seek the appointment of a receiver, I have somebody in  
4   mind and the judge has a different idea. So sometimes  
5   they can come up with suggestions that I would not have.

6                   Now, in the two cases in particular that  
7   I'm thinking of, there were legal problems, and what they  
8   did was appointed an attorney. And I think that basically  
9   there's a lot of legal issues and a lot of technical and  
10   operational issues, and so either you need a receiver  
11   who's good at the operational issues who will hire an  
12   attorney or you need to hire -- the receiver needs to be  
13   an attorney that will hire somebody for the operational  
14   issues.

15                  In this case, I think the most pressing  
16   present need is somebody to handle the technical issues,  
17   the operation of the facility. The other thing that's a  
18   very significant concern, of course, is getting some  
19   assets -- I mean, getting some money that the receiver can  
20   use to operate the facility. At present there's no  
21   revenue. He's not -- Mr. Jaeger is not allowed to collect  
22   revenue because it's unlawful for him to provide sewer  
23   services for gain without a certificate.

24                  We have talked with a number of different  
25   possible transferees. The Staff has been looking for

1 possible transferees for a number of years, ever since  
2 2004, in fact, and we've considered various ones. Right  
3 now it looks like perhaps the most promising thing might  
4 be a not-for-profit formed by some of the members, some of  
5 the people who are residents out there.

6 JUDGE WOODRUFF: If it was transferred to a  
7 receiver, the receiver would have to have a certificate  
8 before he or she could charge fees as well?

9 MR. KRUEGER: Correct.

10 JUDGE WOODRUFF: Ms. Baker, what's your  
11 view on all this?

12 MS. BAKER: My view on this is that Public  
13 Counsel just wants us to start moving down the path toward  
14 getting the receiver in this. I know that there are many  
15 steps between now and getting a permanent one, and so as  
16 long as we are moving forward with that, Public Counsel is  
17 fine with the suggestions that Mr. Krueger has brought up  
18 of giving out an order that a receiver will be -- or is  
19 reasonable and will be sought and then taking the time to  
20 find who we are going to have as the interim sitting  
21 someone before we actually issue the order to go to  
22 Circuit Court.

23 JUDGE WOODRUFF: Let me ask this question  
24 also. Will the receiver have to go into bankruptcy court  
25 in Texas to get control of these assets?

1                   MR. KRUEGER: Perhaps. We have  
2     communicated with the attorney for Mr. Jaeger. His name  
3     is Eddie Rodriguez, and he has indicated that Mr. Jaeger  
4     is cooperative. I think I mentioned that in my opening.  
5     And by cooperative I mean he knows that he's not going to  
6     get anything out of this, and so he'd just as soon the  
7     customers he was serving over there get it. And he is  
8     willing to transfer the 11 acres, I think, that he owns  
9     that would be used for the spray-off field.

10                  But like I also mentioned in my opening,  
11     the creditors, the trustee, the bankruptcy court may have  
12     something to say about that. Mr. Rodriguez said that he  
13     would consent to a lift of stay with regard to those -- to  
14     those assets, but I don't -- I don't know whether -- I'm  
15     not sure that you can just get a rubber stamp approval of  
16     that from the bankruptcy court.

17                  One other thing, I have talked over the  
18     weekend with an attorney in the Attorney General's Office  
19     who does a lot of work on bankruptcy matters, and she  
20     informed me that the thing that we would want to  
21     definitely stay away from is getting ownership of the  
22     assets without the approval or okay of the bankruptcy  
23     court. And it's possible that those assets might just be  
24     abandoned. I'm not sure. But once there is an order from  
25     the bankruptcy court that authorizes -- that either



1     abandons the assets or allows them to be transferred, then  
2     that could be done.

3                     But it's 11 acres, and I don't know whether  
4     that's enough value that the trustee might want to use  
5     those assets for the payment of the other creditors.

6                     MS. BAKER: And if I might add, an order  
7     from the Commission finding that a receiver is necessary  
8     in this will certainly carry great weight in front of the  
9     bankruptcy court because this is a health and safety issue  
10    for the customers.

11                    MR. KRUEGER: I would also say that, in my  
12    view, the system is worthless at the present time. The  
13    liabilities of the system are greater than the assets,  
14    but -- and so if you look at the 11 acres that Mr. Jaeger  
15    owns that were intended to be used for the spray-off field  
16    and the lagoon and all of the equipment and so forth, it  
17    probably has a zero value, and the bankruptcy trustee  
18    might say I would abandon that. But if the bankruptcy  
19    trustee looked at it as just here's 11 acres, I don't want  
20    to abandon that. I'll abandon all the lagoon and pumps.

21                    JUDGE WOODRUFF: But the lagoon is  
22    worthless without the spray-off field?

23                    MR. KRUEGER: Yes.

24                    JUDGE WOODRUFF: I believe it's also  
25    possible for Staff to be appointed as receiver, is that

1 correct, legally?

2 MR. KRUEGER: I'm not sure about that.

3 JUDGE WOODRUFF: I seem to recall some  
4 cases several years where the Staff served as receiver,  
5 unhappily as I recall.

6 MR. KRUEGER: I don't think the Staff  
7 has -- to my knowledge, the Staff has never served as a  
8 receiver. There was a case back in the early '90s, I  
9 think, where the Commission was appointed as the receiver.

10 JUDGE WOODRUFF: I'm sorry. I meant the  
11 Commission itself rather than Staff.

12 MR. KRUEGER: When the --

13 JUDGE WOODRUFF: Golden Glade or Golden --

14 MR. KRUEGER: No. It was Bill Gold, I  
15 think was the name of the owner of it. I'm not sure the  
16 business name. I don't know whether someone had been  
17 appointed as receiver and then resigned because he didn't  
18 have any assets to work with and the judge said, well, if  
19 the Commission isn't going to give them any assets to work  
20 with, I'm just going to appoint the Commission as the  
21 receiver.

22 JUDGE WOODRUFF: Mr. Merciel, I saw you  
23 back there like you'd like to say something. If you want  
24 to come forward and be sworn, I can swear you in.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may be seated.

2 JAMES MERCIEL testified as follows:

3 JUDGE WOODRUFF: What would you like to  
4 tell us?

5 MR. MERCIEL: Oh, I jumped just now when we  
6 were talking about the Commission being appointed  
7 receiver. Actually, there are several things during the  
8 course of this that I would have liked to have said, but  
9 on the receivership, what happened was Bill Gold  
10 Investments was the name of the utility. It was a sewer  
11 utility down by Battlefield outside of Springfield. A  
12 receiver was appointed.

13 The receiver filed a rate case, and the  
14 rate case had a timeline that the Commission set for some  
15 months. And the receiver went to the judge and said, I  
16 can't live with this, I don't have enough revenue. And so  
17 the receiver was relieved of his receivership duties,  
18 whereupon, as Mr. Krueger said, the judge appointed the  
19 Commission as receiver.

20 I think -- but I don't recall exactly what  
21 happened. I think the Commission went to court and  
22 challenged that, and was found that the Commission --  
23 well, basically, the judge didn't have the authority to  
24 appoint the Commission as receiver. However, there was  
25 nobody else to be a receiver. So what happened is the

1     Staff did take the initiative and more or less  
2     administered receivership.

3                     One thing we found is that the Commission  
4     or the Staff doesn't even have the authority to go open a  
5     bank account and bill customers and handle the money. In  
6     that case, there was a water district that was doing the  
7     billing for that company, so things like that fell into  
8     place and it did work out with some luck and with Staff  
9     doing some of the work. We went down and worked on the  
10    treatment plant, that sort of thing. So things fell into  
11    place until the City of Battlefield, I guess, annexed the  
12    area and they finally took it over.

13                    The point being, there are some, I guess,  
14    legal problems or just some issues with how the Commission  
15    would go about or the Staff would go about acting as  
16    receiver because there's just things that apparently we  
17    can't do, like handle money.

18                    JUDGE WOODRUFF: And that's just something  
19    that you're not recommending in this case, then?

20                    MR. MERCIEL: Well, yes. Not that the --  
21    not that the Commission or the Staff couldn't do it from a  
22    practical standpoint. Of course, with this matter, it's  
23    not -- in most receivership cases we have an existing  
24    company that at least has a system that at least was  
25    adequate at some time. It might need some repairs. But

1 in this case, first of all, we don't have a company. As  
2 we discussed, there would be a need for certification and  
3 creating an approved rate.

4 Plus there's some construction issues in  
5 improvement, some capital costs that would need to be  
6 undertaken, and receivers have an awful hard time with  
7 capital funds. They just don't have access to capital.  
8 Day-to-day expenses are one thing, but when you have to  
9 make some capital investments, it becomes very difficult  
10 for receivers.

11 JUDGE WOODRUFF: Commissioner, do you have  
12 any questions for Mr. Merciel?

13 COMMISSIONER GUNN: I do.

14 QUESTIONS BY COMMISSIONER GUNN:

15 Q. Has Staff been in contact with the  
16 residents?

17 A. Yes, on and off. I'm not sure we've had  
18 any contact since the local hearing back in March.  
19 Perhaps we have, although I haven't personally. And I --  
20 I hear that one of the residents is considering trying to  
21 get what we call a 393, a nonprofit utility. The 393s  
22 are -- it's a type of nonprofit, unregulated utility  
23 that's authorized by the statutes.

24 That would work. My only concern here is  
25 there's so many part-time residents. Most of them don't

1 live there. It's a fishing community around the lake. So  
2 they may have some logistic problems.

3 But as Mr. Hummel said, from a practical  
4 standpoint, this ultimately may fall back on the  
5 homeowners if there's nobody else to fix the problem.  
6 That might be something that they may have to consider  
7 doing.

8 COMMISSIONER GUNN: I'd like to ask the  
9 same question of Public Counsel when the time is  
10 appropriate. Thanks.

11 JUDGE WOODRUFF: All right. Any recross  
12 based on questions from the Bench?

13 MS. BAKER: No, your Honor.

14 JUDGE WOODRUFF: Redirect?

15 MR. KRUEGER: No, your Honor.

16 JUDGE WOODRUFF: Mr. Merciel, you may step  
17 down.

18 Commissioner Gunn, did you have further  
19 questions of Public Counsel?

20 COMMISSIONER GUNN: I do. I just wanted to  
21 know what the status is of your interaction with these  
22 ratepayers or these homeowners should we ultimately be  
23 burdened with this? Do they know this is coming? Have  
24 you --

25 MS. BAKER: They've certainly been aware of

1 issues within this system for going on at least five years  
2 as far as with the Department of Natural Resources. They  
3 are aware of the various court cases that have been going  
4 on. Some of them have been keeping very close tabs on the  
5 case in Ralls County. We have the complaint cases which  
6 are still pending and which I have issued or filed a  
7 motion to go ahead and get a final order in those cases.

8 But the customers are stuck. They bought  
9 their lots with water and sewer included. A few of them  
10 have gotten bills throughout the years. They've paid  
11 bills. Some of them paid bills for a while and then found  
12 out that they weren't approved by the Commission, so they  
13 stopped paying bills.

14 Their property values are affected by this  
15 because of the cloud of the sewer system and the fact that  
16 the sewer system continues to be in violation of DNR. And  
17 they -- they bought these lots and the houses were built,  
18 and Jaeger promised them very much and apparently gave  
19 very little.

20 COMMISSIONER GUNN: Is the only political  
21 subdivision that they're in Ralls County, other than  
22 school district? I mean, they're not within a city limit  
23 or anything? Is the only governmental entity that's over  
24 them would be a county government?

25 MS. BAKER: That's my understanding of it.

1 You might want to ask Mr. Hummel a little bit more about  
2 that. I don't believe that they're in a specific city who  
3 offers any utility service to them.

4 COMMISSIONER GUNN: You don't know of any  
5 other?

6 MS. BAKER: No, I do not.

7 COMMISSIONER GUNN: Thanks. I don't have  
8 any other questions.

9 JUDGE WOODRUFF: Well, I don't believe that  
10 Briefs are necessary in this case. I will give the  
11 parties an opportunity to make closing statements,  
12 beginning with Public Counsel.

13 MS. BAKER: Just that the evidence  
14 certainly shows that the customers are not getting safe  
15 and adequate service. The fact that Ken Jaeger is in  
16 Texas and has not responded to the various alarms that  
17 have been going off shows that he has abandoned the  
18 system.

19 So, therefore, Public Counsel believes that  
20 the criteria for a receiver has been met and would ask  
21 that the Commission issue an order for an interim receiver  
22 and ask that they issue the order for the General Counsel  
23 to go to the Circuit Court to ask for the permanent  
24 receiver.

25 JUDGE WOODRUFF: For Staff?



1                   MR. KRUEGER: Thank you, your Honor. I  
2 just want to mention a couple of things about the status  
3 of the previous cases that were filed involving this. The  
4 first cases that were filed were the two complaint cases,  
5 SC-2005-0083 and SC-2005-0099, one of them filed by  
6 Mr. Reiersen, one by Mr. Hellebusch, and I think the wife  
7 of one of them is also a complainant.

8                   And those complaints were filed in 2004,  
9 and eventually they proceeded to an evidentiary hearing  
10 which was held, I believe, last summer. The case was  
11 submitted and is awaiting decision. That's the motion  
12 that Ms. Baker mentioned just a little bit ago. So she is  
13 seeking an order from the Commission in regard to that  
14 case.

15                  The next case before the Commission was the  
16 asset transfer case that was filed by Mr. Jaeger and I  
17 think it was another corporation called Blue Lagoon.  
18 There are so many corporations called Blue Lagoon, it's  
19 hard to keep them straight, but that was to be owned by  
20 Mr. Thompson. That was a joint application for approval  
21 of the transfer of the assets, and eventually Mr. Thompson  
22 wanted to dismiss that case and did dismiss that case  
23 because of the filing of the bankruptcy.

24                  The Ralls County Circuit Court imposed  
25 certain requirements on Mr. Jaeger that would have

1     resulted in the system being improved. It would have  
2     required him to invest a certain amount of money, I think  
3     pay some penalties and transfer the system to  
4     Mr. Thompson. When he declared bankruptcy, however,  
5     obviously he wasn't going to be able to pay the money to  
6     upgrade the system, to put in the pumps and so forth.  
7     He's not able to pay his creditors.

8                     So that is a practical impossibility, and  
9     Mr. Thompson became concerned about that, and that's why  
10    he withdrew the application for transfer of assets.

11                    And then, of course, the third case is this  
12    one, the receiver. The issues in that, as I see it, is  
13    whether the company meets the -- satisfies the criteria  
14    that are set forth in 393.145. It's a small sewer company  
15    providing service to fewer than 8,000 customers, and it's  
16    been actually or effectively abandoned by its owners or is  
17    providing unsafe or inadequate service, then the  
18    appointment of a receiver is appropriate. And I think  
19    that that has been amply proven by testimony in this case  
20    this morning.

21                    I might wish to have the opportunity to  
22    provide a little documentation into the file of this case  
23    regarding what the Staff's activities have been in regard  
24    to this based on the questions that Commissioner Murray  
25    asked.

1 JUDGE WOODRUFF: All right. Well, if you  
2 believe you want to file something further, go ahead. And  
3 then Public Counsel, of course, can respond to that.

4 MS. BAKER: That's fine.

5 JUDGE WOODRUFF: If you wish to, we won't  
6 call it a formal brief or anything.

7 I would like to expedite the transcript in  
8 this case, have it ready in 7 working days rather than 14.  
9 Any other matters anyone wants to bring up while we're  
10 still on the record?

11 MR. KRUEGER: Not from Staff.

12 MS. BAKER: No, your Honor.

13 JUDGE WOODRUFF: We are adjourned.

14 WHEREUPON, the hearing of this case was  
15 concluded.

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, and Notary Public within and for the State of  
8 Missouri, do hereby certify that I was personally present  
9 at the proceedings had in the above-entitled cause at the  
10 time and place set forth in the caption sheet thereof;  
11 that I then and there took down in Stenotype the  
12 proceedings had; and that the foregoing is a full, true  
13 and correct transcript of such Stenotype notes so made at  
14 such time and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

17 \_\_\_\_\_  
18 Kellene K. Feddersen, RPR, CSR, CCR  
19 Notary Public (County of Cole)  
20 My commission expires March 28, 2009.  
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23  
24  
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