

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Hearing
6 March 1, 2006
7 Jefferson City, Missouri
8 Volume 6
9 Cathy J. Orlor,)
10 Complainant,)
11 v.) Case No. WC-2006-0082
12 Folsom Ridge, LLC, Owning and) et al.
13 Controlling the Big Island)
14 Homeowners Association,)
15 Respondent.)
16 In the Matter of the Application)
17 of Folsom Ridge, LLC, and Big)
18 Island Homeowners Water and Sewer)
19 Association, Inc. For an Order)
20 Authorizing the Transfer and) Case No. WO-2007-0277
21 Assignment of Certain Water and)
22 Sewer Assets to Big Island Water)
23 Company and Big Island Sewer)
24 Company, and in Connection)
25 Therewith Certain Other Related)
Transactions.)
HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE.
STEVE GAW,
LINWARD "LIN" APPLING,
COMMISSIONERS.

1 REPORTED BY:

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3 MIDWEST LITIGATION SERVICES

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

2 JUDGE STEARLEY: All right. Good morning
3 everyone. Today is March 1st, 2007. We are in the second
4 day of our hearing in WC-2006-0082 and WO-2007-0277. It's
5 my understanding, if I'm keeping correct track here, we're
6 going to begin with witness complainant Mr. Benjamin D.
7 Pugh this morning.

8 As far as the rest of the day, on our
9 current witness list we have Ms. Fortney, Mr. Rusaw,
10 Barbara Brunk, William Hughes, David Krehbiel, Michael
11 McDuffey, custodian of records for DNR, and I guess we
12 will see how far we make it here today. Is that correct?

13 MR. COMLEY: That's my understanding.

14 MR. TEMARES: Was I --

15 JUDGE STEARLEY: Oh, that's right,
16 Mr. Temares. I forgot we didn't have you in our original
17 order of witnesses, so we will -- we will -- but you did
18 not prefile any testimony in this matter?

19 MR. TEMARES: No.

20 JUDGE STEARLEY: No direct, no rebuttal or
21 surrebuttal testimony?

22 MR. TEMARES: No. I had sent in a letter
23 of agreement with the existing rebuttals of Ben Pugh and
24 Ms. Orler and Cindy Fortney.

25 JUDGE STEARLEY: Without having any type of

1 testimony, there would be no cross-examination, so you
2 would not be allowed to come up and give live direct
3 testimony because it was the directive in our procedural
4 schedule that testimony had to be prefiled.

5 MR. TEMARES: Right.

6 JUDGE STEARLEY: As a party to this matter,
7 though, when appropriate, you may cross-examine the
8 witnesses of the other parties.

9 MR. TEMARES: Thank you.

10 JUDGE STEARLEY: All right. We'll call
11 Mr. Pugh to the stand. Mr. Pugh, did you bring with you
12 the documents you intend to offer into evidence?

13 MR. PUGH: Yes, sir.

14 JUDGE STEARLEY: And do you have copies of
15 your prefiled testimony with you in case we need to refer
16 to those?

17 MR. PUGH: I think so.

18 JUDGE STEARLEY: Very well. I will swear
19 you in.

20 (Witness sworn.)

21 JUDGE STEARLEY: You may be seated.

22 MR. PUGH: Thank you.

23 JUDGE STEARLEY: Mr. Pugh, just as with
24 Ms. Orler yesterday, being a pro se litigant, I'm going to
25 ask you a short series of questions to set you up for

1 offering your testimony into the record.

2 BENJAMIN D. PUGH testified as follows:

3 QUESTIONS BY JUDGE STEARLEY:

4 Q. So would you please state and spell your
5 name for the record.

6 A. My name is Benjamin D. Pugh. That's
7 B-e-n-j-a-m-i-n, middle initial D, P-u-g-h.

8 Q. All right. And are you the same Mr. Pugh
9 who caused to be prepared and filed in this proceeding
10 certain direct, rebuttal, surrebuttal testimony in
11 question and answer form?

12 A. Yes, sir.

13 Q. And is your direct testimony marked as
14 Exhibit 4, your part of this proceeding, and is your
15 rebuttal testimony marked as Exhibit 5 in both cases, and
16 your surrebuttal testimony marked as Exhibit 6?

17 A. Sorry, sir. Just a second.

18 Q. Just want to be sure we're all looking at
19 the same exhibits.

20 A. Would you repeat those numbers, please?

21 Q. Yes, your direct would be marked as
22 Exhibit 4, rebuttal Exhibit 5, surrebuttal Exhibit 6.

23 A. Surrebuttal 6?

24 Q. Yes, sir.

25 A. Rebuttal is 5. All right. And direct

1 is 4.

2 Q. So do you have copies of your testimony now
3 before you?

4 A. Yes, sir.

5 Q. Do you need to make any changes with
6 respect to any of your testimony?

7 A. Not that I'm aware of, sir.

8 Q. All right. And your answers -- if I asked
9 you those same questions today, would your answers be
10 substantially the same?

11 A. Yes, sir, I believe they would.

12 Q. And are your answers true and correct to
13 the best of your knowledge, information and belief?

14 A. Yes, sir.

15 Q. And with that, Mr. Pugh, would you like to
16 offer into evidence Exhibits 4, 5 and 6?

17 A. Yes, sir. And I also have my complaint.
18 Is that part of the procedure?

19 Q. Your complaint has already been filed as a
20 pleading in this matter. You don't need to offer that
21 separately.

22 JUDGE STEARLEY: Before we move on, I know
23 you have some other documents we had premarked yesterday.
24 Before we move on to those, are there any objections to
25 the receipt of Mr. Pugh's testimony?

1 MR. COMLEY: Yes, your Honor. The record
2 will reflect that on or about February 24th, the
3 Respondents filed a series of written objections to the
4 testimony that Mr. Pugh had filed in the case, his direct,
5 rebuttal and surrebuttal. Very similar to what we did
6 yesterday, I think we are accustomed to the idea of the
7 Court's feelings about each of the objections and the
8 possible rulings on each objection.

9 So consistent with yesterday's procedure, I
10 would consent to the Judge taking these objections with
11 the case so that we do not draw out the time period in
12 going through each and every objection that's listed in
13 the written objections I submitted, but I would like those
14 objections to be pertaining to Mr. Pugh's direct
15 testimony, Mr. Pugh's rebuttal and Mr. Pugh's surrebuttal,
16 exhibits marked 4, 5 and 6.

17 JUDGE STEARLEY: Very well. We will take
18 those with the case. Are there any other objections from
19 any of the other parties that they wish to be made now?

20 MR. MILLS: No objections.

21 MS. HEINTZ: No objections, your Honor.

22 JUDGE STEARLEY: I'm sorry, Ms. Holstead.
23 You were speaking at the same time as Ms. Heintz.

24 MS. HOLSTEAD: No objection, your Honor.

25 JUDGE STEARLEY: Very well. They will be

1 received and admitted into evidence subject to the
2 prefiled objections that we will take with this case.

3 (EXHIBIT NOS. 4, 5 AND 6 WERE RECEIVED INTO
4 EVIDENCE.)

5 JUDGE STEARLEY: Now, Mr. Pugh, I know we
6 premarked a number of exhibits, documents yesterday you
7 intended to offer into evidence. Would you like to offer
8 those into evidence at this time?

9 MR. PUGH: Yes, sir.

10 MR. COMLEY: Your Honor, we have objections
11 to those exhibits.

12 JUDGE STEARLEY: I anticipated that, and we
13 will go through those here directly. If I am correct,
14 we're going to be looking at exhibits beginning numbered
15 47 through 71.

16 MR. COMLEY: That's correct, I think.

17 JUDGE STEARLEY: Just want to be sure.

18 MR. COMLEY: We've marked up to Exhibit 74,
19 but I think those are sponsored by Ms. Fortney.

20 JUDGE STEARLEY: Ms. Fortney took us to 74.
21 We then had another exhibit from Ms. Orlor, 75, and one
22 from Folsom Ridge, 76.

23 MR. COMLEY: Generally, Judge, I will point
24 the Commission to its rule on the filing of prepared
25 testimony. Direct testimony is to include all testimony

1 and exhibits asserting and explaining that party's entire
2 case in chief. It was incumbent upon the Complainant in
3 this case to prepare their direct testimony so that it did
4 contain any and every exhibit they intended to sponsor in
5 part of their case in chief.

6 My sense is that Mr. Pugh has provided
7 these exhibits to support his case in chief, and since
8 they were not attached to his direct testimony and
9 explained in his direct testimony, I would object to their
10 admission at this time.

11 JUDGE STEARLEY: I'm going to overrule that
12 particular objection. We're dealing with pro se
13 complainants, and it is understandably difficult for them
14 to follow every single rule and procedure to the letter.
15 Nonetheless, we still have to look at each individual
16 document here to see if there's other objections that may
17 be sustainable.

18 MR. COMLEY: Respecting Exhibit 47, we
19 would object on grounds of hearsay and on grounds that
20 the document is not complete. Also, there are remarks at
21 the top which do not belong apparently to the nature of
22 this -- to the document that's being offered. It's
23 unclear exactly what the purpose of the offer is.

24 JUDGE STEARLEY: Mr. Pugh, I'm not sure
25 what this document is and what it is being offered for,

1 and could you please respond to Mr. Comley's objections?

2 MR. PUGH: Yes, I'd like to, sir, but I
3 don't have -- all I have on my documents here are
4 Schedule 1 through Schedule 17. I don't have the --

5 MR. MILLS: 47 is this one (indicating).

6 JUDGE STEARLEY: Let's be sure you have a
7 copy of all your documents before you.

8 MR. PUGH: Okay. This one you're referring
9 to is what number, sir?

10 JUDGE STEARLEY: No. 47. Starts with the
11 words in bold, the highlighted wording was removed.

12 MR. PUGH: What is my question now?

13 JUDGE STEARLEY: Well, Mr. Comley has
14 objected to the admission of this evidence. I'm not sure
15 what the document is exactly, and you need to respond to
16 Mr. Comley's objections.

17 MR. PUGH: Mr. Comley, this is taken from a
18 draft that a group of concerned homeowners on Big Island
19 between the months of April 2000 to October 2000 were
20 negotiating with Mr. Golden to upgrade the covenants,
21 which he was trying to have us ratify, and we -- we as
22 homeowners felt that these -- that these covenants we were
23 supposed to ratify did not really represent our best
24 interests as homeowners. So we --

25 JUDGE STEARLEY: Mr. Pugh, I don't want to

1 cut you off here but, Mr. Comley, would you please repeat
2 your objections?

3 MR. COMLEY: Your Honor, we would object on
4 grounds that this is a hearsay document, first. It's
5 being offered without any kind of foundation about who
6 prepared it. Of course, there are comments at the top of
7 the document that don't appear to be associated with the
8 remainder of the document. There are strikeouts and other
9 things that cannot be explained by the face of the
10 document.

11 The author of this, and I'm gathering from
12 Mr. Pugh's explanation that this constitutes some document
13 that was never adopted, and I'm not -- I'm not -- I would
14 think there's no foundation for the use of this in his
15 testimony. I don't think there's anything that can direct
16 us to his testimony explaining it.

17 JUDGE STEARLEY: Mr. Pugh, are you the
18 author of this document?

19 MR. PUGH: No, sir. Actually --

20 JUDGE STEARLEY: Let me continue to ask you
21 some questions. Do you have any way of authenticating
22 from the author of this document what this document is?

23 MR. PUGH: Yes, sir. If you look in the
24 covenants, these words were removed from the Big Island
25 HOA covenants.

1 JUDGE STEARLEY: Okay. But these are not
2 an exact copy of those covenants. This is something
3 removed from those with additions, highlighting,
4 subtractions, et cetera.

5 MR. PUGH: Sir, this is a copy of a
6 draft that Mr. John Walker, our attorney, had prepared,
7 and this -- this was stricken, this highlighted wording
8 was stricken from this paragraph by, I assume, Folsom
9 Ridge's attorneys.

10 MR. COMLEY: Your Honor, again, I think
11 Mr. Pugh has identified who is directly responsible for
12 the preparation of this document and has also indicated
13 that he has assumed evidence that is not in the record.

14 JUDGE STEARLEY: I'm going to sustain the
15 objections. This document is hearsay. It's mixed. It's
16 not authenticated in any way. It will not be received
17 into evidence. Moving on to Exhibit 48.

18 MR. COMLEY: Your Honor, we have no -- we
19 have no objection to Exhibit 48.

20 JUDGE STEARLEY: Okay. Anyone else with
21 objections?

22 (No response.)

23 JUDGE STEARLEY: Exhibit 48 will be
24 received and admitted in evidence.

25 (EXHIBIT NO. 48 WAS RECEIVED INTO

1 EVIDENCE.)

2 MR. COMLEY: We have no objection to 49.

3 JUDGE STEARLEY: Any other party with
4 objections?

5 (No response.)

6 JUDGE STEARLEY: Hearing none, it will be
7 received and admitted into evidence.

8 (EXHIBIT NO. 49 WAS RECEIVED INTO
9 EVIDENCE.)

10 MR. COMLEY: We have no objection to 50,
11 Exhibit 50.

12 JUDGE STEARLEY: Any other party with
13 objections?

14 MR. COMLEY: And I'm saying this, we still
15 have our objection based upon the direct testimony rule.
16 At the same time, there are no follow-up objections to
17 these documents.

18 JUDGE STEARLEY: Understood.

19 Hearing none, Exhibit 50 will be received
20 and admitted into evidence.

21 (EXHIBIT NO. 50 WAS RECEIVED INTO
22 EVIDENCE.)

23 JUDGE STEARLEY: Exhibit 51 appears to be a
24 letter addressed to a Ms. Rickets.

25 MR. COMLEY: And looks like it's signed by

1 Mr. Golden. Again, this is a hearsay document. There's
2 no foundation for it. It has not been authenticated.

3 JUDGE STEARLEY: Mr. Pugh, do you have a
4 way of authenticating this letter?

5 MR. PUGH: Possibly by Mr. Rusaw, since
6 they are partners.

7 JUDGE STEARLEY: Okay. Mr. Rusaw is not
8 the author of this letter, and he will not be able to
9 verify or authenticate the contents of the letter.

10 MR. PUGH: Well, since -- I guess the
11 answer to your question is no.

12 JUDGE STEARLEY: All right. I will sustain
13 the objection. Exhibit 51 will not be received into
14 evidence.

15 MR. COMLEY: Exhibit 52 is a letter signed
16 by Mr. McElyea. It is hearsay. It has also not been
17 authenticated.

18 JUDGE STEARLEY: This appears to be a
19 letter addressed to Mr. and Mrs. Pugh; is that correct?

20 MR. COMLEY: Yes, it is.

21 MR. PUGH: Yes, sir.

22 JUDGE STEARLEY: Mr. Pugh, is this letter a
23 true and accurate copy of the letter that you received on
24 or that's dated November 29, 2001?

25 MR. COMLEY: We'll withdraw the objection.

1 JUDGE STEARLEY: All right. Are there any
2 other objections to Exhibit 52?

3 (No response.)

4 JUDGE STEARLEY: Hearing none, it will be
5 received and admitted into evidence.

6 (EXHIBIT NO. 52 WAS RECEIVED INTO
7 EVIDENCE.)

8 MR. COMLEY: Exhibit 53 is a copy of the
9 Code of State Regulations. The objection I would have,
10 I'm not too sure whether this is the current one, but to
11 that extent we have no objection to Exhibit 53.

12 JUDGE STEARLEY: Any other objections to
13 Exhibit 53?

14 (No response.)

15 JUDGE STEARLEY: Hearing none, it shall be
16 received and admitted into evidence. However, we would
17 need to compare in terms of relevant time dates if those
18 are the ones that are currently in effect or were in
19 effect at the time of the transactions involved.

20 (EXHIBIT NO. 53 WAS RECEIVED INTO
21 EVIDENCE.)

22 JUDGE STEARLEY: Exhibit 54?

23 MR. COMLEY: We would object. This is a
24 letter purportedly authored by Kristine Rickets. It has
25 not been authenticated. It's hearsay.

1 JUDGE STEARLEY: Mr. Pugh, do you have any
2 way of authenticating this document?

3 MR. PUGH: Well, it has a logo, Department
4 of Natural Resources. Since Ms. Rickets isn't here and
5 Mr. Golden isn't here, I --

6 JUDGE STEARLEY: Do you have any type of --

7 MR. PUGH: I see -- go ahead, sir.

8 JUDGE STEARLEY: Do you have any type of
9 affidavit from the custodian of documents from the
10 Department of Natural Resources?

11 MR. PUGH: Actually, yes, I can.

12 JUDGE STEARLEY: Do you have a written,
13 signed, notarized affidavit with you right now?

14 MR. PUGH: Not with me, sir, but at the
15 time I picked up many of these documents, I went down to
16 the Springfield office, DNR office, and as I took --
17 picked out these documents that I wanted, I signed for
18 them, so I can -- I can prove that I got these from --
19 directly from the DNR.

20 JUDGE STEARLEY: Even if you received them
21 from the DNR office, that does not authenticate this
22 particular copy of this document or the contents within
23 it, unless I have some type of signed statement from them
24 saying this is verifying this is their document.

25 MR. PUGH: Well, I understand you don't

1 want my opinion, but I think --

2 JUDGE STEARLEY: Your opinion is welcome.

3 It's just I have to make sure that our record has
4 authenticated and valid evidence admitted because the
5 Commissioners cannot make a decision or ruling on the case
6 without what's called substantial and competent evidence
7 on the record.

8 MR. MILLS: Your Honor, we're going to have
9 somebody under oath here today from DNR. Could we perhaps
10 ask that person whether or not they -- he or she can
11 authenticate some of these documents?

12 JUDGE STEARLEY: That's my understanding.
13 We can reserve this for later. Mr. Pugh, you will have
14 the opportunity upon cross-examination of that person to
15 attempt to authenticate this document.

16 MR. PUGH: Sir, as a layperson, not an
17 attorney, I -- at the time I received many of these
18 documents, I had no idea that these would have to be
19 authenticated, and I understand the law's the law,
20 but I -- I do think that this is -- these objections I
21 think are somewhat unreasonable.

22 JUDGE STEARLEY: I can understand your
23 opinion, but the Court of Appeals, the Missouri Supreme
24 Court of this state can overturn any decision by the
25 Commission if it's not based upon substantial and

1 competent evidence on the record as a whole.

2 MR. PUGH: I understand that, sir.

3 JUDGE STEARLEY: So I will reserve ruling
4 on this, and you may have an opportunity to verify this
5 document, authenticate it with the custodian of records of
6 DNR later today.

7 MS. ORLER: Excuse me, Judge Stearley. I
8 had two documents yesterday that were objected to that
9 were the same DNR documents, if we have a person here to
10 authenticate those.

11 JUDGE STEARLEY: I will give you an
12 opportunity upon your cross-examination of that witness to
13 attempt to authenticate them. If they are so
14 authenticated, I will reconsider the rulings on those
15 particular documents.

16 MS. ORLER: Thank you.

17 JUDGE STEARLEY: Moving on to Exhibit 55.

18 MR. COMLEY: This appears to be an
19 incomplete letter on the letterhead of Lewis Bridges Law
20 Firm.

21 MR. PUGH: Sir, on the back is the rest of
22 it.

23 MR. COMLEY: Mine's blank. If you have the
24 completed one, I'll get a copy from you, but the one I
25 have does not have that, and --

1 MR. PUGH: It was pretty poor copy, but --

2 JUDGE STEARLEY: I can make out
3 approximately two more lines of text and a signature line
4 on the back. Does that match your copy, Mr. Pugh?

5 MR. PUGH: Yes, sir. Signature, Lewis
6 Bridges' signature is on there.

7 JUDGE STEARLEY: Do you have a copy that
8 you can read, Mr. Comley?

9 MR. COMLEY: Yes, I do, and our objection
10 would be that it is a hearsay document. We question the
11 relevance as well of an attorney's opinion of this matter.
12 Whatever is referenced in there probably invades the
13 province of the Commission.

14 Furthermore, it sounds like there may be
15 some proposals for settlement in there, and again, it is a
16 hearsay document. It has not been authenticated. The
17 author of this document is not here.

18 JUDGE STEARLEY: Mr. Pugh, any response?

19 MR. PUGH: Yes. This letter is to
20 Mr. McElyea. He's here.

21 JUDGE STEARLEY: Mr. McElyea has appeared
22 as an attorney in this matter and has not been subpoenaed
23 as a witness and cannot testify to the authenticity of
24 this document.

25 MR. MILLS: May I ask the witness a couple

1 of brief questions about this document?

2 JUDGE STEARLEY: Certainly, Mr. Mills. I
3 will allow it.

4 MR. MILLS: Mr. Pugh, was Mr. Bridges an
5 attorney acting on your behalf at that time?

6 MR. PUGH: Yes, sir.

7 MR. MILLS: Did he send that letter on your
8 behalf?

9 MR. PUGH: Yes, sir.

10 MR. MILLS: Are you familiar with that
11 letter because --

12 JUDGE STEARLEY: Excuse me, Counsel. I
13 don't mean to interrupt, but, Mr. Pugh, if you could kind
14 of pull the microphone toward you if you're going to be
15 looking at Mr. Mills, so we can hear you well and get that
16 into the record.

17 MR. MILLS: So when that record was sent,
18 it was sent on your behalf, among others?

19 MR. PUGH: Yes, sir.

20 MR. MILLS: Were you familiar with the
21 document when it was sent?

22 THE WITNESS: Yes, sir.

23 MR. MILLS: Your Honor, I believe that's
24 sufficient to authenticate it and lay a foundation for it.

25 JUDGE STEARLEY: Mr. Comley?

1 MR. COMLEY: We have no opportunity to
2 cross-examine Mr. Bridges about the content of this
3 letter. The fact that it's been sent to Mr. Pugh, we will
4 accept that this was perhaps a letter sent on his behalf,
5 but as far as the nature of the material in there, we
6 think that that would be hearsay and not admitted, not
7 admissible.

8 JUDGE STEARLEY: I will declare this as
9 hearsay. However, I am going to allow it into the record
10 as hearsay. It will be subject to our determinations as
11 far as credibility and weight.

12 (EXHIBIT NO. 55 WAS RECEIVED INTO
13 EVIDENCE.)

14 MR. COMLEY: Exhibit 56, a letter addressed
15 to David Lees and Mr. Golden and Mr. Rusaw from John
16 Walker, again, this is a hearsay document, and there is no
17 way to authenticate it.

18 JUDGE STEARLEY: Mr. Pugh, any response?

19 MR. COMLEY: Let me add also that it's a
20 legal opinion containing legal conclusions, which would
21 not be relevant to this case.

22 MR. PUGH: Are you waiting for my --

23 JUDGE STEARLEY: Any response to
24 Mr. Comley's objections?

25 MR. PUGH: Yes, sir. I differ with

1 Mr. Comley on the -- I think this is very much related to
2 this case because we're talking about the requirements to
3 ratify the covenants and, yes, I disagree with him. I
4 think it should be admitted.

5 MR. MILLS: And, your Honor, I will note
6 that it was copied to Mr. Pugh, so he can authenticate it
7 in that way. He should have received a copy, and he can
8 tell us whether or not this is a true and correct copy of
9 the carbon copy that he received from the McElyea law
10 firm.

11 JUDGE STEARLEY: Mr. Pugh, I notice on the
12 very last page it shows that you were carbon copied on
13 this document; is that correct?

14 MR. PUGH: That is correct, sir.

15 JUDGE STEARLEY: Because it says you were
16 carbon copied, did you actually receive a copy of this in
17 the mail?

18 MR. PUGH: Yes, sir, I did.

19 JUDGE STEARLEY: And looking through the
20 contents of this document -- I will give you a moment to
21 examine it -- does this appear to be a true and accurate
22 copy of the letter that you received?

23 MR. PUGH: Yes, sir.

24 JUDGE STEARLEY: Do you see where the
25 document has been altered or changed in any manner?

1 MR. PUGH: Other than my highlighting, sir,
2 it is the same way as I received it.

3 JUDGE STEARLEY: Any further objection,
4 Mr. Comley?

5 MR. COMLEY: Same objections.

6 JUDGE STEARLEY: I will overrule. This
7 will be admitted and received into evidence.

8 (EXHIBIT NO. 56 WAS RECEIVED INTO
9 EVIDENCE.)

10 MR. COMLEY: Exhibit 57 is an undated
11 letter signed by -- apparently not even signed, but the
12 name of Dave Lees at the bottom, and we object on grounds
13 of hearsay, that there is no authentication for this
14 document.

15 JUDGE STEARLEY: Mr. Pugh?

16 MR. PUGH: Sir, to our case, this is
17 probably the most important piece of paper that we have.
18 At the time, first of all, Mr. Lees -- and I'm sure
19 Mr. Rusaw would agree with this -- he was not -- he was
20 not too good with writing letters, and this letter was put
21 together by Mr. Lees to hand out to the people on Big
22 Island in 1998 for the purpose of having people sign up to
23 the sewer and water system, particularly the sewer -- at
24 that time actually it was more the sewer system, very
25 little mention that I remember as the water system.

1 But this -- this was what he handed out to
2 the people, the homeowners on Big Island for the purpose
3 of creating some money to help build the systems.

4 JUDGE STEARLEY: Mr. Pugh, there's no date
5 on this letter. There's only a typed signature, not a
6 handwritten signature that can be verified. Mr. Lees is
7 not here to authenticate the contents of this document.

8 MR. PUGH: Sir --

9 JUDGE STEARLEY: Mr. Mills, it looks like
10 you were getting ready to say something.

11 MR. MILLS: If I may, the fact that
12 Mr. Lees didn't sign this or date it should not render it
13 inadmissible. If Mr. Pugh can identify that this is a
14 true and correct copy of a document that was given to him
15 directly by Mr. Lees, I think that authenticates it.

16 MR. COMLEY: To the contrary, I think it is
17 an out-of-court statement offered for the truth of the
18 statements therein contained, and the person who adopted
19 this or who sent this out needs to be the one that lays
20 the foundation for its admission.

21 MR. PUGH: Sir, could I add, this -- or
22 this is a way Dave Lees did business. Signing letters was
23 not -- meant nothing to him.

24 MR. COMLEY: Again, I think that in the
25 absence of David Lees to verify these things that Mr. Pugh

1 is testifying to in support of his exhibit, it is
2 inadmissible.

3 JUDGE STEARLEY: The problem, Mr. Pugh, is
4 I have no way of authenticating the contents of this
5 document, and it is hearsay in the fact that it is an
6 out-of-court statement being offered for the proof of the
7 matter stated.

8 MR. PUGH: Again, sir, I want to say that
9 this is probably the most important piece of paper that we
10 have.

11 JUDGE STEARLEY: I understand.
12 Mr. Mills?

13 MR. MILLS: Actually, I believe it's being
14 offered to show that this is something that the
15 homeowners, Mr. Pugh included, relied upon, not that these
16 statements are true, but that they were given these
17 statements by Mr. Lees and they subsequently relied on
18 them. It's not being offered to show that these are
19 actually true statements on Mr. Lees' behalf because, as
20 we all know, they're probably not.

21 They're being offered to show that Mr. Pugh
22 (sic) made these statements to the homeowners in the form
23 of this letter, and Mr. Pugh got this directly from Mr.
24 Lees and subsequently relied on it.

25 MR. COMLEY: I think this is semantical

1 argument. The offer is made to show the truth that these
2 things were, in fact, said, and because of that, it's a
3 hearsay statement. We are not permitted to cross-examine
4 the person who made the statement, and the extent to which
5 this -- and when this was sent out, there's a very, very
6 big issue on when this was sent out.

7 There's no way in verifying the author.
8 The author cannot tell us when he sent this. We have no
9 time frame. The author would be the one to authenticate
10 this. If it's being used as a form to establish an
11 agreement, there needs to be something more than that.

12 MR. MILLS: Mr. Pugh can identify when he
13 received and who he received it from. The fact that it
14 doesn't on its face give a date does not render it
15 inadmissible.

16 JUDGE STEARLEY: Mr. Pugh?

17 MR. PUGH: Yes, sir, this was --

18 JUDGE STEARLEY: Let me ask questions. Is
19 this a document you did, in fact, receive from Mr. Lees?

20 MR. PUGH: Yes, sir, it is.

21 JUDGE STEARLEY: Can you give me an
22 approximate time frame in which you received this
23 document?

24 MR. PUGH: Yes, sir, I can. This was a
25 couple weeks before -- before the escrow -- before we had

1 to have our money in the escrow account at Central Bank.
2 I would say this was about two weeks -- approximately two
3 weeks before -- well, the date, the date of the escrow
4 agreement was January the 15th, 1999. So I would say that
5 this was in either the last week of '98 or the first week
6 of '99.

7 JUDGE STEARLEY: And are you offering this
8 document to prove factually the statements that are in
9 this document?

10 MR. PUGH: Yes, sir. This was basically --
11 according to Mr. Lees, this was an agreement that if the
12 homeowners put their \$4,800 into escrow, this is what we
13 could expect.

14 JUDGE STEARLEY: All right. Mr. Pugh, if
15 you're offering it to prove the contents of the document,
16 it is a hearsay document. I am going to sustain the
17 objection. However, I am going to preserve it in the
18 record.

19 I believe we're at Exhibit 58, National
20 Codes. Pugh surrebuttal is marked at the upper right-hand
21 corner.

22 MR. COMLEY: I'm unclear on which would be
23 the first page of this exhibit. I was told this was a
24 two-page exhibit.

25 JUDGE STEARLEY: I have two pages. The

1 cover page that I have has a green-colored-type logo from
2 Department of Natural Resources. Second page is a black
3 and white, and in the upper right-hand corner says
4 violation of MO DNR and national codes.

5 MR. COMLEY: This does not conform to
6 what I have. What I have is a letter to Mr. Pugh dated
7 June 28th of 2000 from Stephen Jones, and it was attached.

8 JUDGE STEARLEY: That is what I have as the
9 cover letter.

10 MR. COMLEY: And then the other thing is a
11 memo to file dated June 23rd, 2000 from Timothy Neal on
12 the Department letterhead.

13 Respecting the first page of this, Mr. Pugh
14 can identify this, I'm certain, as a letter he received
15 from the Department. Respecting the memorandum that's
16 attached to it, that appears to be a memorandum that was
17 to a file held by the Department and it has not been
18 independently verified. It is hearsay and has not been
19 properly authenticated as an admissible business record.

20 JUDGE STEARLEY: Are there any other
21 objections to the first page of this document?

22 (No response.)

23 JUDGE STEARLEY: Hearing none, what I'm
24 going to do is admit the first page of this document. The
25 second page --

1 MR. MILLS: Your Honor, with respect to the
2 second page, it is referred to on the first page as an
3 enclosure, so it is part of the first page. It was -- if
4 you look at towards the middle of the middle paragraph, it
5 talks about recent discussions between Tim Neal and this
6 office and the developer David Lees, and then in the final
7 paragraph it refers to copies of the correspondence, which
8 I believe is the memorandum from Mr. Neal.

9 MR. COMLEY: Your Honor --

10 MR. MILLS: I believe that the memorandum
11 was part of the letter that was addressed to Mr. Pugh.

12 JUDGE STEARLEY: Mr. Pugh, can you verify
13 that this is, in fact, the actual memorandum that was
14 attached to this letter that you received?

15 MR. PUGH: Yes, sir. Ask that question
16 again, please, sir.

17 JUDGE STEARLEY: You have a letter from the
18 Department of Natural Resources that's dated June 28,
19 2000, and you have attached to that a memorandum dated
20 June 23, 2000.

21 MR. PUGH: Yes, sir.

22 JUDGE STEARLEY: Can you verify, looking at
23 that memorandum, that it is, in fact, the same memorandum
24 that you received attached to this letter when you
25 received the letter?

1 MR. PUGH: Yes, sir. This is the same --
2 the same letter received. Now, there's -- I've gotten
3 written up at the top, national codes. That was one of
4 the reasons why I wanted this in as evidence. It's also
5 scribbled in Tim Neal, and underlined Dave Lees' statement
6 there with a star. Other than that, yes, sir, it is the
7 same, the same thing I received.

8 JUDGE STEARLEY: Mr. Comley?

9 MR. COMLEY: The letter refers to
10 correspondence applicable to construction of water main
11 approval, and this memorandum -- well, I would say that
12 there's a difference in classification of documents
13 between the letter, which purports to be the cover letter,
14 and the memorandum, which purports to be its attachment.
15 Mr. Neal's memorandum does not really directly relate to
16 water main approval. It talks about the claims of the
17 homeowners.

18 JUDGE STEARLEY: I understand your
19 objection, but Mr. Pugh has confirmed this is the
20 memorandum that he has received. I will overrule the
21 objections. It will be received into evidence.

22 (EXHIBIT NO. 58 WAS RECEIVED INTO
23 EVIDENCE.)

24 MR. COMLEY: Exhibit 59 purports to be a
25 letter from Stephen Jones to Mr. David Lee. Mr. Jones --

1 this is a letter that is hearsay. It has not been
2 properly verified. It has not been properly qualified as
3 a business record that would be an exception to the
4 hearsay rule.

5 JUDGE STEARLEY: All right. With regard to
6 this, I am going to reserve ruling and Mr. Pugh will have
7 an opportunity in cross-examining the custodian of records
8 for DNR to attempt to authenticate this document.

9 MR. PUGH: Sir, we're talking about the
10 June 28th letter now; is that correct?

11 JUDGE STEARLEY: We're talking about
12 BP Schedule 1 dated May 25, 1999, marked as Exhibit 59.

13 MR. PUGH: I don't have that. I'm sorry.
14 Yes, I do. I'm sorry. Okay. I was in error. I do have
15 it. What was the question, sir?

16 JUDGE STEARLEY: No question. I'm going to
17 reserve ruling on that. You will have an opportunity to
18 attempt to authenticate it with the custodian of records
19 when DNR when they're here later today. Moving on to
20 Exhibit 60.

21 MR. COMLEY: Your Honor, this appears to be
22 a several-page exhibit. The first letter of the exhibit
23 is from Breck Summerford -- excuse me -- from Jim Jackson
24 to Breck Summerford. This is a hearsay document. It has
25 not been properly authenticated. It has not been

1 qualified as a business record under the statute. There's
2 not an exception to the hearsay rule.

3 The second letter is a letter purportedly
4 to Mr. Jackson from Breck Summerford. Again, it is a
5 hearsay statement. It is not qualified under the business
6 records exception.

7 The third letter purports to be a letter
8 from Breck Summerford to James Jackson, and I think all of
9 the letters in this package suffer from the same
10 objection, and that would be that they are hearsay, they
11 have not been properly authenticated, they do not qualify
12 as exceptions to the hearsay rule.

13 JUDGE STEARLEY: Mr. Pugh, do you have any
14 response to those objections?

15 MR. PUGH: Yes, sir. Again, your Honor,
16 these -- these pages are very important to our case. They
17 show --

18 JUDGE STEARLEY: Do you have any way of
19 authenticating these records from either Mr. Summerford or
20 Mr. Jackson, the receiver and signatory of the letter?

21 MR. PUGH: Well, neither one of those
22 parties are here today, so I guess it would be kind of
23 impossible.

24 MR. MILLS: May I ask Mr. Pugh a question?

25 JUDGE STEARLEY: Yes, Mr. Mills.

1 MR. MILLS: Mr. Pugh, did you get those
2 documents directly from DNR in Springfield as well?

3 MR. PUGH: Yes, sir.

4 MR. MILLS: It may be that the custodian of
5 DNR could authenticate these as well. I think a great
6 number of these documents the Complainants got from DNR
7 personally but did not realize that they needed to get
8 certificated or authenticated copies from DNR, and they
9 assumed that having gotten them from a State agency, that
10 they would be admissible. So I think you've got a bunch
11 of documents that they got directly from DNR but did not,
12 in the Court's view, become sufficiently authenticated.

13 JUDGE STEARLEY: As long as we can identify
14 those documents as such, I will reserve ruling on them
15 until Mr. Pugh has an opportunity to attempt to
16 authenticate them.

17 MR. MILLS: And if it's -- with the Court's
18 indulgence, if the custodian of records cannot identify
19 them on the record today, I would suggest that the
20 Complainants be allowed to file late-filed exhibits with
21 these exact same documents but authenticated by DNR.

22 JUDGE STEARLEY: We can allow the filing of
23 any late-filed exhibits, but they will be subject still to
24 any objections from any of the other parties.

25 Moving on to Exhibit 61, any objections to

1 Exhibit 61? This appears to be a letter to Benjamin and
2 Karen Pugh.

3 MR. COMLEY: We have no objection to
4 Exhibit 61.

5 JUDGE STEARLEY: Hearing no objections, it
6 will be received and admitted into evidence.

7 (EXHIBIT NO. 61 WAS RECEIVED INTO
8 EVIDENCE.)

9 JUDGE STEARLEY: Exhibit 62, marked as
10 Schedule 4 in the upper corner, also appears to be a
11 letter directed to Benjamin and Karen Pugh.

12 MR. COMLEY: Although there's highlighted
13 markings on this and notations in the margin, we have no
14 objection to that.

15 JUDGE STEARLEY: All right. Hearing no
16 others, it will be received and admitted into evidence.

17 (EXHIBIT NO. 62 WAS RECEIVED INTO
18 EVIDENCE.)

19 JUDGE STEARLEY: Exhibit 63, which appears
20 to be a series of pictures labeled BP Schedule 6.

21 MR. COMLEY: First, we'd object to the
22 caption of each -- to go ahead first, there's been no
23 foundation laid on what these purport to be and how they
24 were taken. There's no foundation for the photographs.

25 Furthermore, there are captions on, say,

1 for instance, the first page of the exhibit. This
2 contains findings and conclusions of someone who is not
3 identified in this, and there's also conclusions of an
4 engineering state. There's one comment about how
5 contamination can occur and how health risks can occur.
6 All this is expert testimony. There's been no
7 qualification for it.

8 JUDGE STEARLEY: Mr. Pugh, can you identify
9 these pictures for us?

10 MR. PUGH: Yes, sir. This group of
11 pictures was for the purpose of showing the Commission the
12 status as it is today.

13 JUDGE STEARLEY: All right. Are you the
14 photographer of these pictures?

15 MR. PUGH: Yes, sir, I was.

16 JUDGE STEARLEY: All right. And --

17 MR. PUGH: I also was the one that put in
18 the notations and the black writing here at the bottom.
19 I'm fully responsible for this whole series of pictures,
20 yes.

21 JUDGE STEARLEY: And when you took these
22 pictures, your camera was fully functional and you had
23 these developed in a manner in which pictures are normally
24 developed; is that correct?

25 MR. PUGH: Well, yes, I did take these

1 pictures. These were digital pictures, and I put them on
2 my computer and put these notations in here to explain
3 what they actually were representing. I was trying to
4 make it to where anybody could pick up these pictures and
5 get a fairly good idea of where they were taken and why
6 they were taken.

7 JUDGE STEARLEY: All right. Mr. Comley, do
8 you have any response to that?

9 MR. COMLEY: Well, I still think the
10 commentary below each picture is improper and it should
11 not be included in any of the photographs. The commentary
12 is testimony about these and it should have been in his
13 direct testimony, as I mentioned before.

14 As far as the foundation for the
15 photographs, I still think that's fairly cloudy and would
16 continue to object. They have not been properly
17 identified and there's no foundation for the photographs.

18 JUDGE STEARLEY: Mr. Mills, did you have a
19 comment?

20 MR. MILLS: I think this entire series were
21 attached to Mr. Pugh's complaint, and so they were filed
22 well over a year before direct testimony, so the fact that
23 they were not, once again, included for the Commission's
24 convenience with Mr. Pugh's direct testimony in no way
25 prejudices the Respondents. They had these pictures, they

1 knew about these pictures, and the fact that Mr. Pugh did
2 not reproduce them and attach them to his testimony in the
3 companion case does not render them inadmissible. We're
4 in a hearing in both cases right now.

5 And as to the question of whether the
6 commentary should be allowed, Mr. Comley's objection
7 really goes to the weight rather than the admissibility of
8 those comments. I think Mr. Pugh has not been qualified
9 as an expert, but he is the person who took the pictures,
10 who's familiar with what they depict, and I think he is
11 well qualified to offer his own lay opinion about what the
12 pictures show and his opinion about what they mean.

13 JUDGE STEARLEY: I am going to receive
14 these pictures into evidence. To the extent that they are
15 captioned with labels as to what they are, those captions
16 come in without objection. To the extent that there are
17 interpretive remarks, those come in only on the basis of
18 them being lay opinion of Mr. Pugh's and will not be
19 regarded as expert testimony in any manner.

20 (EXHIBIT NO. 63 WAS RECEIVED INTO
21 EVIDENCE.)

22 MR. COMLEY: Your Honor, since this is
23 relatively new, and I think it is a new matter, not in the
24 direct testimony and it's not been responded to by our
25 witnesses, I would like leave to ask one of our witnesses,

1 well?

2 MR. PUGH: Yes, sir, that is true.

3 JUDGE STEARLEY: Now, to the extent of this
4 cover page, the McDuffey Lab --

5 MR. PUGH: Sir, I think I just saw
6 Mr. McDuffey come in that door, so I think he is in the
7 building.

8 MR. COMLEY: Mr. McDuffey is going to be a
9 witness here.

10 JUDGE STEARLEY: All right. I will allow
11 the admission of the pictures. As to this cover page, you
12 will have the opportunity when Mr. McDuffey testifies on
13 cross-examination to attempt to authenticate this cover
14 page with him.

15 MR. PUGH: Yes, sir.

16 JUDGE STEARLEY: And I hope you're keeping
17 all these documents aside so you remember which ones that
18 you're going to attempt to authenticate with various
19 witnesses.

20 MR. PUGH: Actually, I'm putting them in
21 one pile. I think -- I think I'll be able to remember.

22 (EXHIBIT NO. 64 (PHOTOGRAPHS ONLY) WAS
23 RECEIVED INTO EVIDENCE.)

24 JUDGE STEARLEY: Very well. Exhibit 65,
25 which appears to be another series of photographs.

1 MR. COMLEY: And again, our objection would
2 be that they have not been properly -- there's no
3 foundation for them as of yet. The other things that are
4 on -- the commentary is that these are sewer leaks, and
5 there is nothing -- these are conclusions based upon facts
6 that are not apparent from the photographs, and there's no
7 explanation of how or when those leaks may have occurred.
8 That is so indefinite that it is going to be -- these are
9 conclusions of the witness that cannot be verified, and
10 those comments should not be included on the exhibits.

11 JUDGE STEARLEY: Mr. Pugh, again, are these
12 pictures that you've taken with your camera and processed
13 digitally, as you stated on the other series of pictures?

14 MR. PUGH: Yes, sir. These are digital
15 pictures I took, and I made all the notations that are on
16 them.

17 JUDGE STEARLEY: All right. I am going to
18 accept this into evidence. The notations are regarded as
19 lay opinion and, Mr. Comley, just like those previous
20 ones, you'll have an opportunity to rebut this with your
21 witnesses.

22 (EXHIBIT NO. 65 WAS RECEIVED INTO
23 EVIDENCE.)

24 MR. TEMARES: Your Honor, I'm sorry. In
25 several of those pictures that Ben did submit, I was

1 privileged to be shown some of those areas of those leaks
2 and I was a witness to them.

3 JUDGE STEARLEY: Mr. Temares, at this time
4 you're offering testimony and you're not in proper order
5 for offering that at this time. Those remarks will be
6 stricken from the record.

7 MR. PUGH: Your Honor, could I backtrack
8 just to the No. 64, this McDuffey Lab paper? I'm not
9 sure, my eyes aren't very good, but I see a pair of
10 suspenders back there. Is that Mr. McDuffey?

11 MR. McDUFFEY: Yes, it is, Michael Timothy
12 McDuffey.

13 JUDGE STEARLEY: Yes, Mr. Pugh. What I
14 stated was we would admit the pictures, admit this cover
15 document. You would have opportunity to try to
16 authenticate with Mr. McDuffey when you're doing your
17 cross-examination of him.

18 MR. PUGH: All right. Very good.

19 MR. MILLS: And, your Honor, to the extent
20 that Mr. Comley's opportunity to have one of his own
21 witnesses talk about these pictures is conditioned on
22 Mr. Comley's characterization of this stuff as new, I will
23 point out that Mr. Comley has had over a year and a half
24 to conduct discovery on these exhibits because they were
25 attached to the original complaints, and I believe that

1 Mr. Comley just talked about them as new, and I think
2 that's an incorrect characterization.

3 MR. COMLEY: In connection with this case,
4 Judge, it was the obligation of the parties to put their
5 direct testimony and exhibits together for the entire case
6 in chief. Mr. Pugh is accustomed to that. He knows that
7 rule. He put these -- he put these things in his own
8 surrebuttal in another case. Why it was not done in this
9 case has not been explained.

10 I will accept the Court's ruling, but
11 because of their apparent lack of information about the
12 rules, which suddenly happened in this case, I will accept
13 the ruling that they can come in based upon some of the
14 objec-- or lack thereof. I think Mr. Mills, his idea that
15 discovery could have happened, it's the obligation of the
16 Complainants to prove their case. It's not me to find out
17 if they can.

18 JUDGE STEARLEY: My prior ruling will stand
19 on that. Moving on to Exhibit 66.

20 MR. COMLEY: This is a letter purportedly
21 from Gary Webster, the highway administrator, and
22 William J. Randall, a district supervisor for the Camden
23 County Road and Bridge Department in Camden County. It is
24 not signed. It contains photographs attached. It's not
25 clear whether those photographs are part of the original

1 document.

2 This has not been verified. It is a
3 hearsay statement. The photographs, again, they are not
4 referred to in the letter and cannot be independently
5 verified or authenticated.

6 JUDGE STEARLEY: Mr. Pugh?

7 MR. PUGH: Your Honor, this first letter,
8 this Camden County Road and Bridge, again, I think I'm
9 safe in testifying that I also picked this up at the
10 Department of Natural Resources on one of my visits to
11 Springfield. The picture here, the picture that goes with
12 it is a digital picture that I took. I'm not too proud of
13 it, but the writing, the writing in there was done by me.

14 JUDGE STEARLEY: I'm going to reserve
15 ruling on this exhibit, as with the others that you may
16 have the opportunity to try to verify and authenticate
17 with the Department of Natural Resources, and I'll go
18 ahead and rule on the pictures at that time as well.

19 MR. PUGH: Thank you, sir.

20 MR. COMLEY: Exhibit 67 purports to be a
21 Department of Natural Resources document. Again, it has
22 not been properly authenticated here. It is hearsay.

23 JUDGE STEARLEY: This again I will hold
24 ruling on for the same reasons I just cited. Move on to
25 Exhibit 68.

1 MR. COMLEY: Exhibit 68 is another document
2 from the Department representative, Cynthia Davies,
3 attaching a report from Clinton Finn. The document is
4 hearsay and has not been properly authenticated as a
5 business record.

6 JUDGE STEARLEY: Again, I'll reserve
7 ruling. We'll give Mr. Pugh an opportunity to
8 authenticate that with the custodian of records.
9 Exhibit 69?

10 MR. COMLEY: It is a series of documents
11 covered by what appears to be a report of construction
12 inspection followed by a letter dated June 28, 2005,
13 signed by DNR representative Cynthia Davies, followed by
14 other documents, none of which have been authenticated as
15 documents from the Department. They are hearsay and do
16 not qualify as exceptions to the hearsay rule.

17 JUDGE STEARLEY: Again, we'll give Mr. Pugh
18 an opportunity to authenticate this document with the
19 custodian of records. I'll hold ruling at this time.

20 MR. COMLEY: Exhibit 70 is similarly
21 objectionable. It is, again, a document from the
22 Department of Natural Resources. It has not been properly
23 authenticated. It does not qualify as an exception to the
24 hearsay rule, and it is inadmissible.

25 JUDGE STEARLEY: I again will hold

1 ruling on that for the same reasons just stated.

2 Exhibit 71?

3 MR. COMLEY: This purports to be a police
4 report from Camden County Sheriff's Office for an
5 enforcement officer's report.

6 MR. PUGH: Actually, sir, it is two
7 reports. One of them is harassment and the other is
8 assault, third degree.

9 MR. COMLEY: I think, first and foremost, I
10 would question the relevance of this in connection with
11 the issues in this case. I don't think there is any issue
12 concerning treatment of Mr. Pugh at any time as part of
13 whether or not the company should be regulated, and also
14 it's a hearsay statement. It is a record of an
15 institution we have not had any verification for. It's
16 hearsay.

17 Also, there is a letter to Mr. Pugh from
18 Sherri Fazio on the back. To the extent it is relevant,
19 we will -- there's no objection on I think his ability to
20 say he received this letter. It's just I question the
21 relevance of this whole exhibit, particularly the last
22 page.

23 JUDGE STEARLEY: Mr. Pugh, the issues in
24 this case have to do with whether or not current operators
25 of Big Island Water and Sewer need to be a regulated

1 utility and the transfer of that utility. How do you
2 believe these documents are relevant to those issues?

3 MR. PUGH: Both of these -- both of these
4 charges here were done by Mr. Lees, who was a partner at
5 that time, was a partner to Folsom Ridge, and in our case,
6 we are trying to show that all has not been well on Big
7 Island as far as the installation of the sewer and water
8 system over the past eight years.

9 Actually, these -- both of these are very
10 muchly related to the sewer and water system because the
11 reason why I was harassed with his truck and later struck
12 in the mouth with his fist was related to me taking
13 pictures of Mr. Lees when they were digging, looking for a
14 leak. So, yes, they are very pertinent to this case.

15 They -- another thing was your first --
16 Mr. Comley, what was your --

17 MR. COMLEY: I think the objections were on
18 the grounds of hearsay.

19 MR. PUGH: Okay. The hearsay, I can -- the
20 hearsay, I have a place where I'm missing teeth in the
21 back here that I can -- so it's not hearsay.

22 MR. COMLEY: The report about it from the
23 Camden County Sheriff's Office is what I'm talking about.
24 If the Court permits you to testify over my objection that
25 it's irrelevant, you can describe what happened. But as

1 far as the report itself, my objection would be to the
2 fact that it's not been authenticated. It is hearsay.

3 JUDGE STEARLEY: I understand the positions
4 of the parties, and empathize with your situation,
5 Mr. Pugh, but this document is hearsay and I don't find it
6 to be relevant to the issues that are laid out in the list
7 of issues in this case, and I will not receive it into
8 evidence.

9 MR. COMLEY: I think that concludes the
10 exhibits that Mr. Pugh had offered in addition to his
11 testimony.

12 JUDGE STEARLEY: I believe that is correct.
13 At this time, Mr. Pugh, we will open you up to
14 cross-examination from the other parties, beginning with
15 the Office of Public Counsel, Mr. Mills.

16 MR. MILLS: I don't have any questions for
17 Mr. Pugh. Thank you.

18 JUDGE STEARLEY: Staff, Ms. Heintz?

19 MS. HEINTZ: Thank you, your Honor. No
20 questions.

21 JUDGE STEARLEY: The 393 companies,
22 Ms. Holstead?

23 MS. HOLSTEAD: Yes, your Honor, I do have a
24 couple of questions.

25 CROSS-EXAMINATION BY MS. HOLSTEAD:

1 Q. Mr. Pugh, if you have there Exhibit 63,
2 which you just put into evidence, it's a series of
3 pictures, and the final picture in that grouping, I
4 believe you've indicated that is on Mr. Bracken's
5 property?

6 A. Yes, ma'am.

7 Q. Okay. Did Mr. Bracken see you take those
8 photos?

9 A. No, he didn't. Actually, it was during the
10 construction of his home.

11 Q. Okay. Would it surprise you to learn that
12 Mr. Bracken insisted his contractor separate those lines?

13 A. I -- Mr. Bracken told me that they're
14 separated about a foot or so.

15 Q. And these lines --

16 A. I'll put it this way: I don't think
17 Mr. Bracken dug a new trench. I think he just spread them
18 out to where instead of being laid on top of one another,
19 they did spread them out. So I will say this, a little --

20 Q. Mr. Pugh, do you know for a fact that the
21 lines on Mr. Bracken's property are currently not
22 separated?

23 A. In two trenches?

24 Q. Do you know for a fact?

25 JUDGE STEARLEY: And that is a yes or no

1 question, Mr. Pugh.

2 THE WITNESS: Some questions, sir, you just
3 can't answer with a yes or no.

4 JUDGE STEARLEY: Yes, you can answer with a
5 yes or no, and you will have an opportunity to offer some
6 redirect testimony at the completion of your
7 cross-examination if you wish to explain some of these
8 answers.

9 THE WITNESS: Sir, I can only go by what
10 Mr. Bracken told me

11 JUDGE STEARLEY: But that is not the
12 question. If you would please repeat the question,
13 Ms. Holstead.

14 BY MS. HOLSTEAD:

15 Q. Do you know for a fact that these lines are
16 currently not separated?

17 MR. MILLS: And I object to the form of the
18 question because it's not clear what the question means by
19 separated. I think there's some disagreement between the
20 attorney and the witness about what separated means.

21 JUDGE STEARLEY: All right. Ms. Holstead,
22 would you please rephrase the question?

23 BY MS. HOLSTEAD:

24 Q. Mr. Pugh, do you know for a fact that the
25 lines as depicted in your pictures remain the same today?

1 A. I think I just told you, Ms. -- Pam --
2 Holstead. I'm sorry. I think I just told you that
3 Mr. Bracken said that they had separated them, and I
4 definitely was under the impression that he was referring
5 to where they weren't setting in contact with each other.

6 Q. So you --

7 A. That was the impression I got from his
8 conversation with me.

9 Q. So, Mr. Pugh, your pictures as you
10 submitted them to the Court do not accurately reflect to
11 the best of your knowledge how the lines are positioned
12 today?

13 A. As of today, like I said, Mr. Bracken told
14 me that they separated them, but I certainly did not get
15 the impression that they were in two trenches.

16 Q. So you're saying -- do you believe
17 Mr. Bracken's statements to you?

18 A. Yes. I have no reason not to believe him.

19 Q. Okay. Mr. Pugh, do you want Folsom Ridge
20 to be the sole owner and operator of the utilities on Big
21 Island? Just yes or no will be fine.

22 A. Again, we're getting into a question
23 that --

24 JUDGE STEARLEY: Mr. Pugh, I'm going to
25 direct you to answer this question with a yes or no

1 answer, and again, you will have an opportunity to offer
2 some additional testimony in explanation on your redirect.

3 THE WITNESS: Yes, I do want Folsom Ridge
4 to be regulated. Is that the answer?

5 BY MS. HOLSTEAD:

6 Q. No. My question was, do you want Folsom
7 Ridge to be the sole owner and operator of the Big Island
8 utilities?

9 A. Yes.

10 Q. Okay.

11 A. Yes, let me -- can I --

12 Q. No. That's enough.

13 JUDGE STEARLEY: That answers the question.

14 BY MS. HOLSTEAD:

15 Q. Mr. Pugh, you're currently connected to
16 sewer only; is that correct?

17 A. Yes, ma'am.

18 Q. Could you connect to the water system if
19 you were to purchase a tap?

20 A. Yes, Ms. Holstead, I could.

21 Q. And is it true that one of your objections
22 to the 393 bylaws is that people who are connected to
23 sewer only or water only cannot serve on the board of
24 directors?

25 A. Yes, that is -- that is a problem with me.

1 Q. Would you agree that if you were to connect
2 to the water system, then you would be eligible to serve
3 on the board of directors?

4 A. Yes, I realize that.

5 Q. That's enough. I just needed answered yes
6 or no.

7 Do you ever have any intention of
8 connecting to the water system?

9 A. Well, again, if -- I would have -- since I
10 have to go with a yes or no --

11 Q. Let me make it easier. At this point in
12 time, do you have any intention of connecting to the
13 system?

14 A. The water system, you're referring to?

15 Q. Yes.

16 A. No.

17 Q. Okay.

18 A. Thank you. That helped.

19 Q. Okay. In your testimony you indicated that
20 you are objecting to the 393 transfer because you don't
21 like the fact the system is being transferred as is; is
22 that correct?

23 A. That is -- yes, that is one thing that
24 bothers me.

25 Q. Okay. Ms. Orlor had stated in her

1 testimony that she would prefer the transfer take place
2 with some stipulations, she indicated a five-year
3 warranty, a bond exceeding three-quarters of a million
4 dollars, personal signature guarantees. Do you agree with
5 those things that she stated or do you have a different
6 list?

7 A. I -- I have never -- basically, the answer
8 is yes, I do agree with Ms. Orlor, although I would like
9 to add that I have not put a finger on bond, how much of a
10 bond. Five years seems like a reasonable -- at least from
11 my standpoint, it might not from the developers, but it
12 seemed to me like, since the system was incorrect from one
13 end to the other the first time around, and we've had
14 problems in the past, the past eight years have not --
15 have not been smooth as far as the water and sewer is
16 concerned.

17 Q. Mr. Pugh --

18 A. I think it should be -- I think there
19 should be a warranty on it, and the as-is is a problem
20 with me.

21 Q. Okay. It's been stated in testimony that
22 you were greatly responsible for the separation of the
23 water and sewer lines; is that correct?

24 A. Yeah. Everybody seems to want to give me
25 the credit for that. It was -- there was others involved

1 in that.

2 Q. When you -- did you have an opportunity to
3 observe the separation of the lines when they put in the
4 additional line to separate those two?

5 A. The second time around, you're talking
6 about?

7 Q. Yes.

8 A. No, ma'am. I talked with Mr. Rusaw on
9 several occasions with permission to take pictures, and I
10 actually -- that was -- my permission was not granted.

11 Q. Okay. Well, did you ever observe any of
12 the work going on? Forget taking pictures. Did you
13 yourself ever observe any of the work?

14 A. I basically had letters from Mr. McElyea to
15 stay off the property because of dangers.

16 Q. So is that a yes or no? You didn't observe
17 any of the work, the remedial work that was being done?

18 A. Actually, the answer is yes.

19 Q. You did observe some of the remedial work
20 that was being done?

21 A. I observed some work being done. It was
22 done along the road, the public road. I -- anything that
23 I could see from -- from our public road, yes, I did see
24 and I took pictures of it.

25 Q. Okay. Did you see any problems with the

1 remedial work that was being done?

2 A. Yes, I did.

3 Q. Okay.

4 A. And I can go on --

5 JUDGE STEARLEY: You've answered the
6 question.

7 BY MS. HOLSTEAD:

8 Q. Yes, you've answered the question. In her
9 opening statement, Ms. Orlor suggested to the PSC that
10 they should hire two Big Island residents to serve as
11 watchdogs over the utility systems and report back to the
12 PSC. Do you agree with that suggestion?

13 A. As long as one of them isn't me.

14 Q. Let me pose this question to you: If two
15 watchdogs would be good, would five watchdogs be better?

16 A. I don't know what your line of questioning
17 is supposed to get. I suppose.

18 Q. Okay. If those five watchdogs were all
19 customers of both the water and the sewer system, would
20 that be even better yet because they would have a vested
21 interest?

22 A. Yes, ma'am, I would say that's probably
23 true.

24 Q. And is it true the bylaws of the 393 call
25 for the five-member board of directors to all be members

1 of both the water and the sewer system?

2 A. Yes, ma'am, and I also think that's very
3 discriminatory because there's a lot of people --

4 MS. HOLSTEAD: You've answered my question.
5 You don't need to go any further. That concludes my
6 questioning, your Honor.

7 JUDGE STEARLEY: All right. Thank you,
8 Ms. Holstead. Folsom Ridge and the Association,
9 Mr. Comley?

10 CROSS-EXAMINATION BY MR. COMLEY:

11 Q. Mr. Pugh, I'm going to have just a few
12 questions for you, I think. It's not going to be -- and
13 I'm not going to try to trick you. I'm not going to try
14 to do any of that. I'm hoping you can hear me all right.

15 A. I hear you fine, sir.

16 Q. I had questions for Ms. Orler about the
17 background that she had, and I thought I'd go through your
18 background as well.

19 A. I had a hunch you would.

20 Q. We have a lot of information that's been
21 submitted on your lay opinion as the exhibits have gone in
22 and been allowed to go into evidence and some overruled,
23 but first, like Ms. Orler, you have never been licensed as
24 an operator for a wastewater system; is that correct?

25 A. That is correct.

1 Q. And you have never worked for the
2 Department of Natural Resources; is that correct?

3 A. That is correct.

4 Q. As I understand it, you retired from TWA
5 after a long tenure; is that correct?

6 A. That is correct, yes, sir. I was an
7 electrician.

8 Q. We'll go down the list again.

9 A. That's fine.

10 Q. Just for the record.

11 A. That's fine.

12 Q. You have never held a position of authority
13 with a homeowners association; is that correct?

14 A. Yes, sir.

15 Q. And you have never been in a position
16 yourself of operating or maintaining a wastewater system
17 or water system?

18 A. No, I haven't, thank God.

19 Q. Except your own, I guess, at the house?

20 A. My own at the house, yes. I am the No. 1
21 plumber.

22 Q. With respect to the installation of water
23 distribution lines or wastewater treatment lines, you have
24 not received any technical training about that; is that
25 correct?

1 A. Would you repeat that, please?

2 Q. You have not received any technical
3 training about the installation of underground wastewater
4 lines, collection lines or any water distribution lines;
5 would that be a correct statement?

6 A. It's all in the way you want to look at it.
7 I have spent a lot of time reading, trying to inform
8 myself on e-coli poisoning and whatever. Yes, I -- I
9 guess the answer to your question is no, but I have spent
10 a lot of time reading and trying to inform myself on the
11 sewer and water systems, yes, sir, I have.

12 Q. Your information about that subject matter
13 has come from your own research; is that correct?

14 A. Yes, sir, that is true. No formal
15 training.

16 Q. No formal training. And I take it you have
17 not received any formal training in installation, sizing
18 or the operation and maintenance of a wastewater treatment
19 system -- excuse me -- wastewater treatment plant?

20 A. Would you repeat that again?

21 Q. I take it you would not have received any
22 formal training in the installation, sizing, operation or
23 maintenance of a wastewater treatment plant?

24 A. That is true. The formal training part is
25 true. I have -- again, I have tried to educate myself on

1 it, yes, sir.

2 Q. Your education at any -- your formal
3 education, whether it was in high school or even technical
4 school, it did not include civil or structural
5 engineering, did it not?

6 A. No, sir.

7 Q. It did not deal with anything with what
8 would be called civil engineering; is that correct? I've
9 already asked that?

10 A. That's correct.

11 Q. Would it be fair to say that you had no
12 engineering training at all?

13 A. Probably not, because on my job as a lead
14 electrician at TWA, I spent a lot of time with
15 engineering, working with them, solving problems. So I
16 would have to say that I've had some engineering training,
17 yes, sir.

18 Q. And that would be in the electrical field?

19 A. Primarily, yes, sir. Not primarily. Yes,
20 sir. That's -- that is true.

21 Q. All of it?

22 A. Yes.

23 Q. You're not a plumber, licensed or
24 otherwise; is that correct?

25 A. Otherwise I've plumbed two houses so -- and

1 I've kept -- let's see. For 75 years I've only called a
2 plumber once, so yes, I am a plumber.

3 Q. You're a plumber, but you've never held out
4 a shingle and offered yourself to the public?

5 A. Nobody would want to hire me. Not only
6 that, I wouldn't want to go.

7 Q. All right. In terms of property
8 management, do you have any experience or real estate
9 development experience?

10 A. Other than building two homes of my own,
11 no, sir.

12 Q. Were those homes built on Big Island?

13 A. One of them was, yes, sir. Yes, sir, I
14 built -- my wife and I built a home with the help of a
15 carpenter.

16 Q. I'm a bit confused. I think on page 2 of
17 your direct testimony -- I'm going to take you there, if I
18 can, and I understand that there may be some difficulty
19 for you to read fine print.

20 A. Yes, that is correct. I can handle this.

21 Q. I think you told Ms. Holstead that your
22 position now would be that you would want Folsom Ridge and
23 the Association or one of them to continue to own all the
24 assets, wastewater and water, on Big Island?

25 A. I was a little confused with the question,

1 but I -- my interpretation of what she was asking was am I
2 for Folsom Ridge being regulated? I am for that. I would
3 prefer an independent party be the regulator, but I -- as
4 Ms. Orler said, it was pretty obvious from the Commission
5 Staff that that was not going to happen. So in my
6 preference, I would prefer that Folsom Ridge be regulated
7 rather than the 393.

8 I see some major problems with the 393. I
9 think with the bylaw that states that only -- the bylaw
10 states that to be on the board that you have to be a user
11 of both the sewer and water system. I think that's going
12 to eliminate -- on Big Island, I think that will eliminate
13 a good portion of the population being on the board.

14 Q. If that's -- if that's a concern of yours,
15 if you became a member of the sewer board or sewer
16 association, you would have a vote about how that board
17 would be constituted, wouldn't you?

18 A. Yes, sir, but I think it is very
19 discriminatory.

20 Q. Nonetheless, you would still have a vote
21 and some voice about how that company would be managed if
22 you accepted the privilege of membership; wouldn't that be
23 correct?

24 A. Yes, sir, but I'd only have one vote.

25 Q. Yes, sir.

1 A. Yes, sir, and unfortunately --

2 Q. As a member -- if you were not a member,
3 you would have no vote; would that be correct?

4 A. Actually, yes. I also would have no
5 liabilities.

6 Q. And you understand that the liabilities are
7 rather small with the way the statute reads for 393 and
8 also the bylaws of that company, the liabilities
9 of that association -- excuse me -- the liability of the
10 393 company could not be passed on to the property of the
11 membership; wouldn't that be correct?

12 A. I think Ms. Orlor hit on that subject.

13 Q. Do you know? If you don't know, that's
14 fine.

15 JUDGE STEARLEY: Please answer the
16 question, Mr. Pugh.

17 THE WITNESS: Ask it again.

18 BY MR. COMLEY:

19 Q. Isn't it true that the liabilities of the
20 393 companies cannot be passed on to the members or their
21 property?

22 A. I think that is in the statutes or bylaws.

23 Q. And because that statutory protection is in
24 place, isn't your concern about the liabilities, it's
25 simply -- I'll say it's non-existent, isn't it?

1 A. Actually, I would question an insurance
2 policy that would handle the legal problems that could be
3 involved if the 393 was put into effect and I'd like --

4 Q. I think we'll talk about that in a minute.
5 Let me talk to you first about page 3 of your direct. On
6 page 3 of your direct, you express concerns about the
7 placement of the water and sewer lines in the same trench
8 and your role that you discovered that. Just to confirm,
9 isn't it true that those lines have now been relocated?

10 JUDGE STEARLEY: That's a yes or no
11 question.

12 THE WITNESS: That is no.

13 BY MR. COMLEY:

14 Q. They have not been relocated?

15 A. Well, if you've got to go with a yes or no,
16 I have to say no, because there is -- there is lines that
17 are still in the same trench.

18 Q. There are lines in the same trench, but
19 isn't that permitted by DNR?

20 A. Yes, sir, it certainly is, because these
21 lines I'm referring to are service lines.

22 Q. I see. You're talking about service lines
23 being in the same trench?

24 A. Yes, sir. Now, if you want to talk about
25 mains --

1 Q. Let's talk about -- on the mains part, they
2 have been relocated?

3 A. Yes, sir, to the best of my knowledge, but
4 I was not allowed on the property, but I have faith that
5 Mr. Krehbiel saw to it that they were separated.

6 Q. Very well. So if Mr. Krehbiel would tell
7 you today that the water mains have been separated and
8 they comply with DNR regulations, you would believe him,
9 wouldn't you?

10 A. I would what?

11 Q. You would believe him?

12 A. Oh, yes, sir.

13 Q. Now, let's talk about service lines a
14 minute. Do you know, has the Association or even Folsom
15 Ridge taken an easement on your property for purposes of
16 service lines?

17 A. Folsom Ridge has put me a tap on my
18 easement in front of my property. Is that what you're
19 asking?

20 Q. You have not given Folsom Ridge an easement
21 on your property for purposes of those service lines; is
22 that correct? Does Folsom Ridge own any part of the
23 property where those service lines are located?

24 A. On my property?

25 Q. Right.

1 A. No, sir.

2 Q. They don't. And wasn't it up to you as an
3 individual to make sure that those service lines were
4 installed? That wasn't Folsom Ridge's responsibility, was
5 it?

6 A. Yes, sir. The -- I think if I understand
7 your question right, the system was put in by Folsom Ridge
8 for Folsom Ridge.

9 Q. And on the service line part, did you have
10 a contractor yourself that you paid to install those
11 service lines or did Folsom Ridge --

12 A. Folsom Ridge installed them, sir.

13 Q. They did? Okay.

14 A. Yes, sir.

15 Q. Would you agree with me that service lines
16 and the way in which they are placed into a trench or
17 upright is not under DNR regulation?

18 A. Yes, sir, and that is my problem. And I
19 understand from talking the other day, when you were
20 having that deposition, that it's a statewide problem and
21 maybe even more than that.

22 Q. When you say statewide problem, DNR does
23 not -- they have not promulgated regulations to take over
24 service line regulation; is that correct?

25 A. That is correct, and I think that's wrong.

1 Q. And you think it's wrong?

2 A. I certainly do.

3 Q. But right now DNR has not set aside a
4 regulation that takes into account service lines; is that
5 correct?

6 A. Yes, sir, but you'll have to admit when the
7 DNR signs off --

8 MR. COMLEY: Your Honor, I'm going to ask
9 the remainder of that answer be stricken.

10 JUDGE STEARLEY: Yes. Please confine your
11 answers to the questions asked.

12 MR. PUGH: Yes, sir.

13 JUDGE STEARLEY: If opposing counsel does
14 raise an objection and ask for remarks after that answer
15 be stricken, I will so do.

16 MR. PUGH: Yes, sir. I was out of line.
17 I'm sorry.

18 JUDGE STEARLEY: And those remarks will be
19 stricken.

20 BY MR. COMLEY:

21 Q. Also on page 3, you address things you
22 think are important for public health. Have you read
23 Mr. McDuffey's testimony in this case?

24 A. Yes, sir. It's been quite a while, so I'm
25 afraid I can't -- under oath, I can't testify to it

1 without first reading it.

2 Q. Well, let me -- do you understand that the
3 shutoff valve that you refer to on page 30 of your
4 testimony on the causeway and throughout the system, there
5 are shutoff valves for each residence? Do you understand
6 that?

7 A. Yes, and I don't agree with it.

8 Q. So if Mr. McDuffey would testify that there
9 are shutoff valves for each of the residences connected to
10 the system or for each residence that could connect to the
11 system, you would disbelieve that?

12 A. Yes.

13 Q. Okay.

14 A. He'd have to show me.

15 Q. That's fine. That's fine. His testimony
16 would not be enough to show you, is that what you're
17 telling us?

18 A. Yes, sir, because I -- my eyes aren't good,
19 but --

20 JUDGE STEARLEY: Mr. Pugh, I'm going to cut
21 you off at the yes in answering the question. Thank you.

22 BY MR. COMLEY:

23 Q. You have referred to your concern that the
24 relocated water line is in some areas below the sewer
25 line. Let me ask you, Mr. Pugh, if a Department of

1 Natural Resources representative told you that it was
2 within Department of Natural Resources regulations, that
3 the construction had fully complied, if Mr. Krehbiel told
4 you that this construction having the water line below the
5 sewer line was all right and Mr. McDuffey told you that
6 the line was correctly installed at that point, would you
7 change your mind about that?

8 A. No, sir.

9 Q. On page 2 of your rebuttal, you say that
10 the membership problem in connection with the --

11 A. Where are you at, sir?

12 Q. I think it's page 2 of your rebuttal
13 testimony.

14 Q. All right.

15 Q. At the bottom you say, a section -- it
16 would be on line 16 following -- the not-for-profit
17 corporation as proposed could create some possible
18 litigation, which I'm sure would not be advantageous to
19 anyone. Now, my understanding is that that case has been
20 filed?

21 A. Sir, are you on the rebuttal?

22 Q. Yes, sir, I am. I switched over to
23 rebuttal.

24 A. Okay. Now, you said line 16?

25 Q. Yes, sir.

1 A. And it says I have discussed this situation
2 with the DNR, is that --

3 Q. No. I'm not seeing that. On my page,
4 line 16 starts with you say, what is the purpose of this
5 rebuttal testimony, and at the end of that question you
6 say, the not-for-profit corporation as proposed, and then
7 say, could create some possible litigation.

8 A. Oh, okay. My pages are -- for some reason
9 or another are different from yours. Okay. Question 10
10 is, what is the purpose of this rebuttal testimony; is
11 that right?

12 Q. Right. And I'm looking at the end of your
13 answer on that about the membership problem and how the
14 not-for-profit corporation as proposed could create some
15 possible litigation.

16 A. Yes, sir, very much so.

17 Q. And you have already filed that litigation?

18 A. We have filed a petition, sir.

19 Q. So let me hand you what's been marked as
20 Exhibit 36.

21 MR. COMLEY: May I approach the witness?

22 JUDGE STEARLEY: Yes, you may.

23 BY MR. COMLEY:

24 Q. And, Mr. Pugh, is Exhibit 36 that I've
25 handed you a copy of the petition that you and others have

1 filed against Defendants, including Folsom Ridge and Big
2 Island Homeowners Water and Sewer Association, Inc.?

3 A. Yes, sir, that is true.

4 Q. Do you think that this litigation has
5 created advantages?

6 A. Sir, could I interrupt you a minute?

7 JUDGE STEARLEY: Mr. Pugh, I believe
8 you've -- is there something with regard to this question
9 that you just answered?

10 MR. COMLEY: The answer was satisfactory to
11 me.

12 JUDGE STEARLEY: Yes.

13 BY MR. COMLEY:

14 Q. Do you think that the litigation that has
15 been filed is advantageous to you or to anyone?

16 A. Yes, sir, I do, or we wouldn't have done
17 it.

18 Q. And would it be fair to say that it's
19 advantageous to you?

20 A. Yes, sir, very much to me in particular.

21 Q. And it would not be much advantage to the
22 other people connected on the system, would that be a
23 correct statement?

24 A. You're saying the -- are you asking me --
25 repeat that again, please.

1 Q. It would not be advantageous to other
2 persons connected to the system; is that correct?

3 A. Who are now members of -- would then be
4 393 members you're referring to?

5 Q. Anybody that's connected now.

6 A. No, I can't see where it would be
7 advantageous to them.

8 Q. Let me ask you, as part of your claim in
9 the petition, are you claiming an ownership interest in
10 the assets for water and sewer on Big Island?

11 A. No, sir. The way I understand this
12 petition is, I am asking that the monies that I have put
13 into the construction of the system not be transferred.

14 Q. Isn't that like claiming an ownership in
15 the operation and maintenance of the system?

16 A. I'm not an attorney, sir.

17 Q. You do not claim any kind of beneficial
18 interest in the wastewater assets?

19 A. Repeat that again.

20 Q. Do you claim any beneficial interest in the
21 assets that are used for water and sewer distribution,
22 water distribution and wastewater collection and treatment
23 on Big Island?

24 A. I'm not sure I understand the question.

25 Q. Are you claiming an ownership interest in

1 any of the assets on Big Island, any ownership interest,
2 beneficial, legal, whatever?

3 A. I guess my answer would have to be I'm
4 claiming that I do have an interest -- a \$4,800 interest
5 in the sewer system, and I don't want it transferred.

6 Q. Are you claiming, then, that to the extent
7 of \$4,800, you own assets in the system; is that correct?

8 A. Yeah, I guess so.

9 Q. On page 3 of your rebuttal -- it's going to
10 take me a minute to find it here. I'm sorry.

11 A. Yeah, I hear you.

12 Q. Oh, it's at the top of the page. Here is
13 the question: Krehbiel Engineering was the consultant for
14 the off-the-island extension. Do you, Mr. Pugh, have any
15 comments about the extensions? And I wanted to --

16 A. What page are you on?

17 Q. Page 3.

18 A. Okay. What is the --

19 Q. The question starts with Krehbiel
20 Engineering was.

21 A. That is the question?

22 Q. Yes, it was.

23 A. Okay. Yes, sir, I've got it.

24 Q. You found it?

25 A. I'm showing page 2.

1 Q. I don't want to get ahead of you. Please
2 take a look at it.

3 A. Yes, sir. I'm very familiar with that.

4 Q. Would it be a fair statement to say that
5 there is a benefit from centralized sewer and centralized
6 water distribution facilities?

7 A. Yes, sir. I am -- I agree that a community
8 system is the way to go.

9 Q. And as I understand it, when this system
10 was first proposed back in 1998, 1999, in that range, you
11 were very, very interested in getting it constructed;
12 would that be correct?

13 A. Yes, sir, I was one of their biggest
14 advocates. As a matter of fact, I actually worked with
15 Dave Lees trying to convince people that it would be
16 beneficial to Big Island for each and every one of us to
17 be hooked up.

18 Q. The benefit would be that it does reduce
19 the possibility of contamination not only for the land
20 area there, but also for the Lake of the Ozarks; isn't
21 that correct?

22 A. At the time I was -- at the time I was
23 pursuing the --

24 JUDGE STEARLEY: Mr. Pugh, could you please
25 answer that with a yes or no?

1 THE WITNESS: Okay.

2 BY MR. COMLEY:

3 Q. It does have benefits to eliminate or at
4 least reduce contamination to the land area around there
5 and also to the Lake of the Ozarks; wouldn't that be a
6 correct statement?

7 A. Yes, that was -- that was the intent.

8 Q. Yeah. That's the intent of any centralized
9 sewer system?

10 A. Yes, sir.

11 Q. An extension of that system would also
12 allow for those benefits for other people; wouldn't that
13 be correct?

14 A. Well, we get into this yes or no thing.

15 JUDGE STEARLEY: This is a yes or no
16 question, Mr. Pugh.

17 THE WITNESS: All right. Give it to me
18 again.

19 BY MR. COMLEY:

20 Q. Wouldn't you agree that extension of a
21 centralized wastewater system and extension of a
22 centralized water distribution system would also provide
23 benefits to other people of that system?

24 A. Well, I know the answer you're wanting is
25 yes.

1 Q. And are you reluctant to give it?

2 A. Yes, sir, you're right.

3 Q. You're reluctant to give it. Maybe I'll
4 make it easier for you, Mr. Pugh. Are you saying that
5 you're opposed to having other residents on the island
6 having the benefits of the centralized wastewater system
7 and the centralized water distribution system?

8 A. Mr. Comley, I'm not opposed to anybody on
9 the island having use of the sewer and water system. As a
10 matter of fact, I would highly recommend it. What I am --

11 JUDGE STEARLEY: Mr. Pugh, that answers the
12 question. Thank you.

13 THE WITNESS: Okay.

14 BY MR. COMLEY:

15 Q. Let's talk about your connection yourself.
16 You talked about Mr. Lees and you mentioned that you have
17 been -- maybe I'm -- you said something about Mr. Lees.
18 Were you -- did you and Mr. Lees work together in asking
19 residents if they wanted to connect to a new system?

20 A. No, not together. Actually, I was on my
21 own. Actually there was Mr. Larry Toombs was another
22 advocate. He's a homeowner. At that time he was
23 basically doing about the same thing I was, trying to talk
24 to people and convince them that the community system was
25 the right way to go. As a matter of fact, I'll even go on

1 further than that. I'd like to see it over the complete
2 Lake of the Ozarks.

3 Q. Certainly, I think that would be a major
4 goal for the area. I think that DNR would represent --
5 would agree with you on that.

6 Getting back to Mr. Lees, would it be fair
7 to say that you contacted and visited with Mr. Lees
8 regularly about the construction of the system as you went
9 out and visited with people joining and getting connected?

10 A. No. When Mr. Lees came on Big Island,
11 there was some opposition to change, which is not that
12 unusual. I -- I was -- I really was being realistic. I
13 knew that the beautiful property that Big Island was, that
14 it was inevitable that this would be a growth area on the
15 island. Let's see. I think I'm missing your question.

16 Q. Well, I think you're telling me, you
17 understood the benefits yourself of having --

18 A. Yes, sir. And from time to time I would
19 see Mr. Lees. We were not going out to dinner together or
20 anything like that, but yes, we were on a friendly basis
21 at that time.

22 Q. Did Mr. Lees send you correspondence from
23 time to time?

24 A. No, sir. I don't think Mr. Lees did too
25 much corresponding.

1 Q. He did not send a letter to you?

2 A. As you can tell by the letter that -- oh,
3 what was the question?

4 Q. Did Mr. Lees send correspondence to you as
5 a homeowner out there?

6 A. The only -- the only thing that I can
7 remember ever getting from Mr. Lees was the letter that
8 the -- from him that I have in my testimony.

9 Q. In the exhibit list?

10 A. Yes.

11 Q. Well, let me show you another one.

12 A. I can't imagine Mr. Lees writing a letter.
13 Sir, I don't remember this letter.

14 Q. Very well.

15 A. My guess is this was written by somebody
16 other than Mr. Lees.

17 Q. That's all right. If you don't remember
18 the letter, that's fine.

19 A. Sir, did that letter come through snail
20 mail or --

21 JUDGE STEARLEY: Mr. Pugh, please wait for
22 a question.

23 MR. PUGH: Yes, sir.

24 BY MR. COMLEY:

25 Q. In conjunction with your connection to the

1 sewer system -- I think you're only connected to the sewer
2 system; isn't that correct?

3 A. That is correct.

4 Q. You paid \$4,800 for the right to connect to
5 that sewer system; is that correct?

6 A. That is correct.

7 Q. And the money involved was deposited into
8 an escrow account at Central Bank of Lake of the Ozarks;
9 is that correct?

10 A. That is correct.

11 Q. And let me confirm with you that at the
12 time you were told how -- at that time you were not told
13 how service would be provided and by whom; would that be
14 correct?

15 A. Actually, the only thing I had was a letter
16 which is in your testimony. I think on that letter it
17 states that there would be three members of the
18 corporation and a new homeowner and a -- one of the
19 existing homeowners on a board to run it.

20 Q. All right.

21 A. As far as I knew, there would be five
22 people running it.

23 Q. So there was some sort of entity that was
24 going to be created; is that correct?

25 A. Yes, sir, that was in that letter.

1 Q. All right. And what about the kind of
2 septic facility that you would have to install, was that
3 placed in writing for you before you placed your money
4 into escrow?

5 Let me back up. Isn't it true that in
6 order to connect to this wastewater system, your septic
7 tank needs to meet certain specifications?

8 A. Yes, sir, that is true.

9 Q. And even as the homeowner, you have certain
10 maintenance responsibilities from time to time?

11 A. Yes, sir.

12 Q. And that would be in conjunction with the
13 operator of the wastewater system, there would be checking
14 and that kind of thing to make sure that the maintenance
15 had been completed properly; would that be correct?

16 A. Repeat that again.

17 Q. Would you be, as an owner, maintaining your
18 septic system sometimes in conjunction with the operator
19 of the system to make sure that the maintenance had been
20 done correctly? I'm talking about pumpouts.

21 A. Pumpouts? I believe -- I believe that
22 there was a letter, which I agreed on, agreed to, related
23 to the time between pumping the septic tanks, yes, sir.

24 Q. And that wouldn't have been at the time you
25 paid your \$4,800 for the tap?

1 A. No, sir, I don't believe so.

2 Q. That was later?

3 A. I think so.

4 Q. That would have been about the time the

5 systems were activated?

6 A. I'm sorry, sir. I can't give you a --

7 Q. Can't remember?

8 A. I can't give you a time date. I do

9 remember that letter, though.

10 Q. Do you know whether you'd been given

11 anything that would be a guarantee your rates would not go

12 up?

13 A. I certainly do not.

14 Q. Do you remember getting anything in writing

15 that would explain how you would be disconnected from the

16 system for perhaps --

17 A. Nonpayment.

18 Q. -- nonpayment or failing to comply with the

19 rules and restrictions on septic tank maintenance or

20 failing to have appropriate pumping or failure to have

21 appropriate power to the pumping facilities, anything like

22 that?

23 A. I think a lot of that is in the covenants,

24 I believe.

25 Q. And that would have been in the association

1 covenants?

2 A. I think so.

3 Q. At the time, though, you did not receive
4 that when you paid the \$4,800?

5 A. Oh, no, sir.

6 Q. That was not available to you then?

7 A. No, sir. The covenants came two years
8 later.

9 Q. But it was true at the time you paid
10 \$4,800, it was explained to you that there may be a board
11 of some sort?

12 A. Yes, sir. It was on that unsigned paper
13 that we discussed earlier today.

14 Q. At that time of your \$4,800 payment, there
15 was no document given to you about the form of governance
16 of or ownership of the facilities; is that correct?

17 MR. MILLS: Your Honor, given this line of
18 questions, I would like to ask you to reconsider your
19 ruling on Exhibit 57, which was the communication that
20 Mr. Pugh had.

21 MR. COMLEY: I've not referred to that
22 exhibit at all.

23 MR. MILLS: No, but this entire line of
24 questioning has to do with what did Mr. Pugh understand,
25 how did he understand it, what communications did he have.

1 Mr. Pugh has attempted to show the extent of the
2 communications he had, and Mr. Comley has objected to
3 that, and now he's trying to ask questions around the
4 fringes of it when we have the exact document that tells
5 exactly what Mr. Pugh learned from Folsom Ridge, and I
6 think that's the best evidence of what Mr. Pugh knew at
7 the time, rather than these series of questions about what
8 did you know, what didn't you know.

9 MR. COMLEY: The best evidence rule would
10 keep that exhibit out. It is not authenticated. It has
11 no signature. The person that created that document
12 purportedly is not in the courtroom to verify it. The
13 only thing we have left is Mr. Pugh's memory.

14 MR. MILLS: The point of these questions
15 is, what did Mr. Pugh know from Folsom Ridge, and what
16 Mr. Pugh knew from Folsom Ridge is all embodied on that
17 document.

18 MR. COMLEY: The questions speak for
19 themselves. The questions are not getting into the forms
20 of anything that's on that document. It is his
21 understanding of what was given to him and when.

22 MR. MILLS: Well, one of the questions had
23 to do with the board and its makeup, which is set forth on
24 that document.

25 JUDGE STEARLEY: My prior ruling on that

1 stands. Mr. Pugh's being requested to provide testimony
2 from his direct knowledge.

3 BY MR. COMLEY:

4 Q. Was there anything given to you when you
5 paid your tap fee of \$4,800 in 1998-1999, in that range,
6 telling you that the company that may operate the system
7 would be regulated or unregulated?

8 A. I don't recall that. I don't recall
9 regulation even being mentioned.

10 Q. You bought your property in 1962; is that
11 correct?

12 A. That is correct.

13 Q. And have you had the same septic tank for
14 your property since 1962?

15 A. No, sir.

16 Q. So you'd replaced your septic tank?

17 A. Yes, sir.

18 Q. How many times?

19 A. I think -- I think ever -- I think I'm on
20 my second tank. I've had pretty good luck.

21 Q. Replacing those tanks is not cheap, is it?

22 A. No, sir.

23 Q. The Association of Folsom Ridge have
24 invited you to become a member of the Association; isn't
25 that correct?

1 A. Yes, sir.

2 Q. And basically you decided not to be a
3 member?

4 A. Yes, sir.

5 Q. And the reasons you have for not being a
6 member are the reasons you have, your own reasons, and not
7 because the Association has told you that you cannot be a
8 member; would that be a correct statement?

9 A. Yes, sir, I have my reasons for not being a
10 member.

11 Q. And, in fact, since you have connected, you
12 have been treated as a member of the Association, haven't
13 you?

14 A. Yes, I received a letter from Mr. McElyea
15 saying that I was considered a member.

16 Q. And you've been treated like that at the
17 Association meetings; isn't that correct?

18 A. I would have to say so, and I -- but I
19 would also like to say that on -- I never did accept his
20 decision that I was considered a member because I
21 considered myself a nonmember because I hadn't ratified
22 anything.

23 Q. Whether you accepted it or not, you still
24 had a chance to speak your mind at the Association
25 meetings at almost -- I think maybe every annual meeting

1 you've been able to do that?

2 A. That is not true.

3 Q. You've not been able to stand up and --

4 A. No, sir.

5 Q. Let me finish the question. Are you saying
6 that at annual meetings you have not been able to stand up
7 and speak your mind about things going on on Big Island;
8 is that your testimony?

9 A. At this particular meeting that I'm
10 referring to, I was not allowed to talk. I started to
11 talk, and Mr. McElyea shut me down.

12 JUDGE STEARLEY: I'm going to have
13 Mr. Comley repeat the question because I believe he was
14 referring to specific meetings and you can answer yes or
15 no.

16 BY MR. COMLEY:

17 Q. And are you saying you have not been
18 permitted to speak at certain annual meetings?

19 JUDGE STEARLEY: And he's referring to
20 annual meetings.

21 THE WITNESS: I'm referring to annual
22 meetings also, and the answer -- I'm referring to one
23 annual meeting, I was -- I was not allowed to talk.

24 BY MR. COMLEY:

25 Q. Aside from that particular instance, have

1 you been allowed to speak at every annual meeting of the
2 Association?

3 A. I -- I only recall that one -- one time
4 even trying to participate. I was there primarily as an
5 observer. I never voted on anything that came before the
6 annual meeting. I was there strictly to observe of what
7 was -- what was occurring on Big Island.

8 Q. But as for the other times you visited
9 annual meetings, you've had a chance to talk with the
10 membership, you've had a chance to talk with the chairman
11 of the meeting. Would those be fair statements?

12 A. Repeat that again.

13 Q. Aside from the meeting you mentioned where
14 you say you were not allowed to speak, you have been
15 allowed to speak at the Association meetings to the
16 membership and you've been allowed to speak to the
17 presiding officer of the meeting?

18 A. I would say the answer to that is yes. But
19 again, I don't recall ever getting into any discussions
20 because, like I said, I was an observer.

21 Q. Would it be fair to say that Mr. Rusaw has
22 never threatened you in any way?

23 A. Oh, that's -- definitely.

24 Q. Is it also true that Mr. Golden has never
25 threatened you in any way?

1 A. Now, what do you mean by threaten?

2 Q. Let's see. We talked about Mr. Lees --

3 A. Are you talking physical threats?

4 Q. Yeah, physical threats.

5 A. Absolutely not. The only physical threats

6 I --

7 JUDGE STEARLEY: Mr. Pugh, you've answered

8 the question. Thank you.

9 BY MR. COMLEY:

10 Q. In your complaint -- do you have a copy of

11 your complaint handy?

12 A. Yes, sir, somewhere.

13 Q. Do you have it?

14 A. Yes, sir.

15 Q. Can you go with me to the -- I'll call it

16 the third page of the complaint. I think what I have is a

17 notice of complaint, then a cover page with three

18 paragraphs, and then following that is the a page full of

19 print.

20 A. At the top of this, this is 13 months?

21 Q. That's the page.

22 A. Okay.

23 Q. And there is an area where you have talked

24 about violations, and the first one is, charging

25 homeowners fees while they are not members of the

1 Homeowners Association.

2 A. Sir, I'm having a little trouble on my eyes
3 with it. Is that in the first paragraph?

4 Q. It's right at the end of the first
5 paragraph, Mr. Pugh. I say the first paragraph. It's the
6 first block of paragraph form there.

7 A. Would you read that again?

8 Q. It starts with No. 1, it's enumerated,
9 violations I could mention --

10 A. Oh, yes. Okay. Thank you.

11 Q. -- charging homeowners fees while they are
12 not members of the Homeowners Association?

13 A. Yes, sir.

14 Q. Okay. Now, you are connected to the
15 system, but you don't consider yourself a member; is that
16 correct?

17 A. That is correct.

18 Q. And you objected to being charged fees even
19 though you were a member, that's not what you're getting
20 at by this?

21 A. No, sir. I am a user of the sewer service,
22 and because I didn't want to become a member in the HOA, I
23 definitely had an obligation to pay for my service.

24 Q. All right. So you would agree with me that
25 the Association should be able to charge rates for service

1 to anyone who's connected to the system?

2 A. Anyone who is connected to the system, yes,
3 sir.

4 Q. Do you think it is fair for homes that are
5 not connected to the system but who could connect to pay
6 nothing?

7 A. Yes, sir, I do.

8 Q. And you understand that there are costs
9 associated -- you would understand, wouldn't you, there
10 are costs associated with maintaining the line that goes
11 to that house?

12 A. Yes, sir. And as a user, I think the -- I
13 think it's fair for me to be able to say it because I am a
14 user, I think those expenses should be on the users and
15 not the people that are just sitting there with a tap not
16 hooked up. Yes, sir, until you get services, there should
17 be no charge.

18 Q. So in essence, you would -- what's
19 happening is that, through your rates, you're helping to
20 pay for the availability of those facilities. Would you
21 agree with me that that's what's happening?

22 A. Through the users' rates?

23 Q. Yes.

24 A. Yes, sir. I'm paying for what?

25 Q. For your neighbors who are not connected?

1 A. Yes, sir, and rightly so.

2 Q. And you have no objection?

3 A. No, I have no objection to that at all. I
4 can't imagine somebody having to pay for something that
5 they're not -- they're not connected to. Just the fact
6 that they have paid their \$4,800, their 2,000, whatever,
7 just the fact that they have paid for these taps I don't
8 think warrants a bill.

9 Q. Would you agree with me that there are
10 residents connected to the system who disagree with you on
11 that?

12 A. There's a lot of people that disagree with
13 Ben Pugh.

14 MR. COMLEY: Just a minute, your Honor. I
15 think I'm fairly close to being done.

16 JUDGE STEARLEY: All right.

17 BY MR. COMLEY:

18 Q. Mr. Pugh, kind of a follow-up question on
19 the rates that we were talking about, you are aware that
20 people who have paid a connection fee or -- and who have
21 not connected, whether they are members or not of the
22 Association, have been billed a maintenance fee or an
23 availability fee on a periodic basis; is that correct?

24 A. Yes. People that are not hooked up, yes,
25 sir.

1 Q. And do you know how that fee came about?

2 A. Yes, sir, I do.

3 Q. Were you involved with other complainants
4 in connection with visiting about that fee?

5 A. Yes, sir. This question about charging,
6 I've had -- I along with others have had many
7 conversations, many meetings with Mr. Golden over this,
8 and --

9 Q. Wasn't it because of you and Mr. Schrader
10 that your proposals were part of getting this fee together
11 and started?

12 A. No, sir.

13 Q. Your proposals were not to get that fee
14 started?

15 A. Well, I'd like to be able to answer.

16 Q. Well, let me ask you this: There are other
17 residents on the island that wanted to have this fee
18 commenced; isn't that correct?

19 A. Yes, sir, but --

20 JUDGE STEARLEY: That answers the question,
21 Mr. Pugh.

22 BY MR. COMLEY:

23 Q. And I take it that you were part of the
24 group that had this discussion before the rate did
25 commence; is that correct?

1 A. Yes, sir. And we were trying to get this
2 put on a voluntary basis because I personally felt that
3 this charge was an illegal charge and that they would
4 get -- I agreed with Mr. Golden that this charge had some
5 merit, but this charge should have been put on a voluntary
6 basis. And I tried to convince Mr. Golden that he would
7 have -- with this \$5 charge, that he would have more
8 problems with that \$5 than any other \$5 he ever had in his
9 life, and rightfully so.

10 Q. And you've been the one to bring all those
11 complaints forward, haven't you?

12 A. I have.

13 Q. So you decided to do that. All right. Let
14 me ask you this: Again, there were others in that group
15 that disagreed with your analysis of the appropriateness
16 of the fee; isn't that correct?

17 A. I --

18 JUDGE STEARLEY: Yes or no, please,

19 Mr. Pugh.

20 THE WITNESS: No.

21 BY MR. COMLEY:

22 Q. Everybody agreed with you on that?

23 A. Well, it wasn't a matter of agreed with me.
24 I think we all agreed with Mr. Golden that this charge was
25 -- this \$5 would help build up an escrow. Not an escrow,

1 a --

2 Q. A reserve account?

3 A. A reserve account, but I think -- I can't
4 speak for the other members of the -- of the concerned
5 homeowners group, but I -- I think that we were very much
6 in the same thought that it should be on a voluntary
7 basis.

8 Q. You mentioned that you thought it was
9 illegal, but -- and maybe I already asked this question,
10 but you have had no legal training?

11 A. That's right. I'm not a lawyer, in case
12 you hadn't noticed.

13 MR. COMLEY: All right. That's all I have.

14 JUDGE STEARLEY: Thank you. At this
15 particular point in time, there will be no questions from
16 the Bench. We have been going for a couple hours here, so
17 at this time we are going to take approximately a
18 ten-minute break. When we come back, we will be picking
19 up with Mr. Pugh with redirect. All right.

20 (A BREAK WAS TAKEN.)

21 JUDGE STEARLEY: We are back on the record.
22 When we broke for our intermission, I noted that we were
23 going to recommence with Mr. Pugh's redirect, but it's my
24 understanding that Ms. Orlor, as a party to this case, has
25 a couple of cross-examination questions.

1 And although as I noted yesterday with
2 Mr. Temares, we didn't have the Complainants all listed in
3 our formal list adopting the order of cross, we will allow
4 you to ask some cross-examination questions, subject to
5 any objections by the other parties. So you may come to
6 the podium.

7 CROSS-EXAMINATION BY MS. ORLER:

8 Q. Mr. Pugh, are you in favor of the transfer
9 of assets from the current water and sewer utility to the
10 393 companies?

11 MR. COMLEY: That's been asked and answered
12 in his direct testimony.

13 JUDGE STEARLEY: That is correct.

14 BY MS. ORLER:

15 Q. Did you notify the 393 president, Ms. Pam
16 Holstead, that you were opposed to the transfer?

17 JUDGE STEARLEY: That is a yes or no
18 question, Mr. Pugh.

19 THE WITNESS: Yes.

20 BY MS. ORLER:

21 Q. And how did you do that?

22 A. I would assume by e-mail, because I don't
23 believe I had a personal talk with her.

24 Q. So it was in writing then?

25 A. Yes.

1 Q. Okay,

2 A. I would assume it was in e-mail.

3 Q. Okay. And are you currently connected to
4 the sewer system?

5 MR. COMLEY: That's been asked and
6 answered.

7 JUDGE STEARLEY: That's correct.

8 BY MS. ORLER:

9 Q. Okay. And you did file a petition against
10 claiming the assets involved with the utility transfer?

11 MR. COMLEY: That's been asked and
12 answered.

13 BY MS. ORLER:

14 Q. Okay. Being connected to the sewer system,
15 will you be affected by the petition that you filed as a
16 plaintiff?

17 A. Yeah, I'll be suing myself.

18 Q. And how will that affect you, do you think?

19 A. It will -- the petition you're referring
20 to, how will the petition -- I hope it blocks the transfer
21 of the funds and it remains as a -- or it becomes a
22 regulated system.

23 Q. So you yourself will be affected by your
24 actions that you have taken?

25 A. I would imagine, yes.

1 Q. And you will be affected no differently
2 than any other person who is connected to the sewer
3 system?

4 A. I agree with that.

5 MS. ORLER: Okay. Thank you.

6 JUDGE STEARLEY: Thank you, Ms. Orler.

7 Mr. Pugh, this is now your opportunity for redirect. You
8 may offer some testimony that pertains only to the
9 cross-exam questions you were asked. You may not
10 supplement your direct testimony at this time. And you
11 may proceed.

12 MR. PUGH: The first one would be to Pam
13 Holstead.

14 JUDGE STEARLEY: Okay. You're not
15 addressing her specifically. I assume you're addressing a
16 question that Ms. Holstead asked to you.

17 MR. PUGH: Yes. I think I misunderstood a
18 question that Ms. Holstead asked me. She said if two --
19 she asked me if two watchdogs would be good. I thought
20 she was referring to Cathy and I -- or not necessarily
21 Cathy and I, but to anybody that was watching over the
22 system, making sure it was done right.

23 My answer, if she was referring to these
24 five watchdogs as being the board of the -- of the 393,
25 no, I'd rather stick with the two watchdogs.

1 JUDGE STEARLEY: All right. Any other
2 matters you wish to address?

3 MR. PUGH: Yes, sir. I don't have it out
4 here right now. On this -- on this letter from Mr. Lees
5 that was circulated around to all residents of Big Island
6 in the -- along about January 1st of 1999, in that area --

7 JUDGE STEARLEY: Are we talking about
8 Exhibit 57? Am I remembering that correctly, just so
9 we're all clear which letter we're referring to?

10 MR. PUGH: Yes, sir. It's 57.

11 JUDGE STEARLEY: Okay. And that was the
12 letter we did not allow into evidence, correct?

13 THE WITNESS: Yes, sir. This letter was
14 basically all the homeowners had to go by on determining
15 whether they wanted to buy into the sewer system. The
16 information on here is basically the only information we
17 had to make any determination. The fact that Mr. Lees did
18 not put out a very fancy document was --

19 MR. COMLEY: Your Honor, I think he's
20 referring to Exhibit 57, and it's not been admitted in
21 evidence. If he's going to refer to what he remembers, I
22 have no objection to what he's saying.

23 JUDGE STEARLEY: All right.

24 MR. COMLEY: Otherwise, to the extent it
25 has been with reference to Exhibit 57, that is -- that is

1 not admissible.

2 JUDGE STEARLEY: That's correct, and if he
3 proceeds with his redirect into an area you wish to lodge
4 an objection, please do so.

5 Please continue, Mr. Pugh.

6 MR. MILLS: Your Honor, would it be
7 acceptable for Mr. Pugh to refresh his recollection as to
8 what it was he understood about the offer from Folsom
9 Ridge?

10 JUDGE STEARLEY: Yes.

11 MR. PUGH: Basically, in this letter,
12 Item 1 was that the charge was going to be \$10 per month.

13 JUDGE STEARLEY: Okay. Mr. Pugh, you
14 cannot quote from the document itself. What Mr. Mills has
15 referred to is if the document refreshes your memory as to
16 the contents of that letter. So I mean, do not be
17 referring line by line, sentence by sentence to the
18 letter. Please give us your general recollections of what
19 you remember this letter advising you of.

20 MR. PUGH: Okay. My recollection -- now,
21 you've got to remember 1998 or actually January or -- the
22 end of -- the end of '98 or the beginning of '99, that's a
23 long time back. But my recollections of that letter were
24 that there would be five members that would run -- that
25 would run this sewer system. At that time it was just

1 sewer system as far as I was concerned. There would be a
2 monthly fee of \$10.

3 The money was to be put -- I believe it was
4 in this letter that the money was to be put in an escrow
5 account and that nobody would be required to participate
6 unless they wanted to. It was strictly a voluntary thing.
7 We had the -- we had the right to hook up any time of our
8 choosing, and probably the most important one is that
9 there would be no charge until you hooked up.

10 JUDGE STEARLEY: All right. Do you have
11 any further recollections with that, with regard to that
12 matter?

13 MR. PUGH: I think that's basically all I
14 have recollection of.

15 JUDGE STEARLEY: All right. Do you have
16 any other matters you wish to address through redirect
17 testimony?

18 MR. PUGH: Yeah. In relation to
19 Mr. Comley's discussion about or questioning about people
20 being charged this \$5 fee that are not connected to the
21 system, this system had to go -- he made the case that the
22 \$5 fee was to help build up, you know, to finance the
23 operation of the system, but in reality, these people that
24 are paying that \$5 and not connected, that system had to
25 go by their house whether they were connected or not.

1 So in order to install the system to
2 service the homes on Big Island, the complete homes on
3 Big Island, the fact is that these -- these sewer lines,
4 sewer and water lines were going to have to be installed
5 whether any of us chose to participate or not. So I think
6 this \$6 -- this \$5 charge, I think it's illegal, but I'm
7 not an attorney.

8 JUDGE STEARLEY: Any other clarifications
9 to the cross-examination questions you were asked?

10 MR. PUGH: I think the primary one was my
11 first one. I misunderstood Ms. Holstead, what she was
12 trying to get out of me. I am -- I am not for 393.

13 JUDGE STEARLEY: All right. Does this
14 conclude your testimony?

15 MR. PUGH: I think so.

16 JUDGE STEARLEY: Very well. I thank you
17 for your testimony. You may step down from the witness
18 stand at this time. I do advise you, though, you are not
19 finally excused as a witness. You may be recalled later
20 by the Commissioners for some additional questioning.
21 Thank you very much, Mr. Pugh.

22 And we will call the next witness, which is
23 Cindy Fortney.

24 (Witness sworn.)

25 JUDGE STEARLEY: All right. You may be

1 seated. And as with the other pro se Complainants, I'm
2 going to ask you a series of questions about the offering
3 of your direct and rebuttal testimony.

4 THE WITNESS: Okay.

5 CINDY FORTNEY testified as follows:

6 QUESTIONS BY JUDGE STEARLEY:

7 Q. Would you please state and spell your name
8 for the record.

9 A. Cindy Fortney, C-i-n-d-y, Fortney,
10 F-o-r-t-n-e-y.

11 Q. And are you the same Ms. Fortney who caused
12 to be prepared and filed in this proceeding certain direct
13 and rebuttal testimony?

14 A. Yes.

15 Q. Did you also provide surrebuttal?

16 A. No, I did not, just direct. There was
17 rebuttal for the 0480 that I asked to be carried over to
18 the 0082 and 0277.

19 Q. And is your direct testimony marked as
20 Exhibit 7 in this proceeding?

21 A. I don't remember. I think so.

22 Q. And do you have those -- your testimony in
23 front of you?

24 A. Yes.

25 Q. Okay. And is your rebuttal testimony

1 marked as Exhibit 8? Those were the markings I have.

2 A. Okay. Rebuttal 8, yes.

3 Q. All right. Do you need to make any changes
4 with regard to either of these exhibits, Exhibit 7 or 8?

5 A. No.

6 Q. And with regard to your testimony, if I
7 asked you those same questions today, would your answers
8 be substantially the same?

9 A. Yes.

10 Q. And are your answers true and correct to
11 the best of your knowledge, information and belief?

12 A. Yes.

13 Q. And with that, Ms. Fortney, would you like
14 to offer Exhibits 7 and 8 into evidence at this time?

15 A. Yes. There was also -- I'm sorry.

16 MR. COMLEY: Your Honor, with respect to
17 Exhibit 7 and 8, objections have been prefiled in previous
18 writing of February 24th to Ms. Fortney's direct
19 testimony, which has been marked as Exhibit 6 -- excuse
20 me -- Exhibit 7, and like we have done previously for
21 Mr. Pugh and part of Ms. Orler's testimony, your Honor, we
22 can agree to allow those things to proceed with the case,
23 since we do have a glimpse of what the rulings may be on
24 those objections, and we will impose on you to make those
25 rulings in connection with your order.

1 With respect to Exhibit 8, which is
2 rebuttal in a previous case that has been dismissed, that
3 rebuttal was not filed pursuant to the rules of the
4 Commission concerning prefiling of testimony. It was not
5 filed in this case. The other parties have not had a
6 chance to review it in connection with preparation of
7 their own surrebuttal, and furthermore, it is not related
8 to the issues in this case, but to another case, and I
9 would object to the admission of that on that basis.

10 JUDGE STEARLEY: All right. With regard to
11 Exhibit 7, as we have agreed with the other witnesses, we
12 will take those objections along with the case.

13 With regard to Exhibit 8, I will overrule
14 the objection. You'll have an opportunity to
15 cross-examine this witness.

16 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
17 EVIDENCE.)

18 MR. COMLEY: We do not have a copy of her
19 rebuttal testimony.

20 JUDGE STEARLEY: All right. Do you need --
21 do you have additional copies, Ms. Fortney?

22 MS. FORTNEY: No, I just have the one. And
23 when I printed it, I got the copy off of EFIS. It came
24 out in small print, the way the PDF was done.

25 JUDGE STEARLEY: All right. Let's take a

1 brief break here and I will see if I cannot provide
2 Mr. Comley with a copy of this because you will need that
3 for your cross-examination.

4 MS. HEINTZ: I don't have either your
5 direct or rebuttal testimony.

6 (A BREAK WAS TAKEN.)

7 MR. COMLEY: I've had a chance to review
8 the exhibit, and I was going to ask leave of the
9 Commission to register more objections. I got ahead of
10 myself when I made the only solitary objection. I had not
11 had a chance to look at the document in full at that time.
12 I do have other objections to the exhibit I'd like the
13 record to reflect.

14 JUDGE STEARLEY: All right. And we are
15 back on the record and let's go through your objections,
16 Mr. Comley.

17 MR. COMLEY: Your Honor, it appears that
18 the rebuttal testimony that was filed in WA-2006-0480 is
19 nearly a duplicate of the first portion of her direct
20 testimony in this particular case consolidated with
21 WO-2007-0277. It differs with respect to other questions
22 she has posed in connection with the 393 companies, but in
23 almost every respect it is identical to the testimony that
24 she is sponsoring today in her direct.

25 Furthermore, attached to Exhibit -- excuse

1 me. I've forgotten the exhibit number. Is it 8?

2 JUDGE STEARLEY: Exhibit 8. Yes.

3 MR. COMLEY: There are schedules to which
4 we would object. The first is a letter purportedly from
5 David Lees. It is the letter that was referred to as
6 Exhibit 57 to which there has been an objection sustained.

7 MS. FORTNEY: But I received a copy of it
8 also.

9 MR. COMLEY: And we would also -- same
10 objections.

11 JUDGE STEARLEY: Right. Before we go into
12 those, Mr. Comley, could you please point out for me the
13 sections of this testimony that are different from the
14 direct testimony?

15 MR. COMLEY: Her direct testimony is
16 different from her rebuttal testimony, her questions and
17 answers in her direct testimony up to page 7, line 7, is
18 the same as her rebuttal testimony in WA-2006-0480. So it
19 is duplication of her direct testimony in this case.

20 JUDGE STEARLEY: To the extent that that
21 information is cumulative, I will sustain that objection.
22 Now, with regard to the remainder of this testimony, are
23 there any objections to that, then, going forward on
24 page 7, 8 and 9?

25 MR. COMLEY: On her direct testimony in

1 this case? Let's see.

2 JUDGE STEARLEY: On the rebuttal from 0480.

3 MR. COMLEY: Yes, sir. On 7, 8 and 9 on
4 Exhibit 8, we have similar objections to the summary
5 that's contained there. Again, this is a substitute for
6 argument, and for the most part it is irrelevant. We
7 would pose the same objections as we had done to the same
8 part of her direct testimony in this case, and those are
9 written down. It is argumentative, hearsay and
10 self-serving remarks.

11 JUDGE STEARLEY: Very well. And I will
12 take those with the case as we've done with Mr. Pugh.

13 Now, let's go to the attached exhibits and
14 the Schedule 1 which, as you pointed out, is identical to
15 E-57, Exhibit 57. That has already been ruled upon. The
16 objection is sustained. That document will not come into
17 evidence.

18 MR. COMLEY: CF Schedule 2 on Exhibit 8 is
19 the same as Exhibit 73 previously marked.

20 MS. FORTNEY: That's true.

21 MR. COMLEY: And our objection would be
22 that this is an improperly -- this is hearsay. This is
23 improperly authenticated, and it is -- there is no
24 exception to the hearsay rule concerning this document.

25 MS. FORTNEY: Which one is that, the

1 McElyea?

2 MR. COMLEY: It would be the letter.

3 MS. FORTNEY: Yes, I was in the meeting
4 when that was given to us. It was at the closing of --
5 when my dad sold his house, it was at the closing, and I
6 participated in that.

7 JUDGE STEARLEY: All right. But we have no
8 authentication as to the contents of this document, and I
9 believe I've already ruled on Exhibit 73. Correct me if
10 I'm wrong.

11 MR. MILLS: Your Honor, this may be the
12 same document, but I believe Ms. Fortney's knowledge of it
13 and the way she came into it is different from the
14 previous witnesses, if Ms. Fortney could be allowed to
15 explain how she got it and who she got it from.

16 JUDGE STEARLEY: I will allow her to do
17 that.

18 MS. FORTNEY: Is this the David Lees
19 letter?

20 JUDGE STEARLEY: This is the copy of the
21 letter addressed to Ms. Riggins from Charles McElyea dated
22 July 11, 2003, or is that 2005 in very small print here on
23 this copy (indicating)?

24 MS. FORTNEY: 2005. It was the day of
25 closing of the house, the house closing.

1 JUDGE STEARLEY: All right. And you've
2 provided a copy of this document?

3 MS. FORTNEY: I received it at the meeting.

4 JUDGE STEARLEY: Okay. You received this
5 document at which meeting?

6 MS. FORTNEY: Okay. My dad owned a house
7 that I was living in on Big Island, and I decided that I
8 wanted to buy a bigger house, so he sold that house. I
9 got the realtor, I set up all the meetings and everything,
10 went to closing with him, sold the house, went and bought
11 the new house, so we did everything together. And at the
12 meeting with Helen Riggins at the title company, as we
13 went to sign the paperwork on the house, we were given
14 this at the last minute.

15 JUDGE STEARLEY: So who gave you this
16 letter?

17 MS. FORTNEY: Helen Riggins.

18 JUDGE STEARLEY: And she gave you a copy of
19 the letter, not the original letter; is that correct?

20 MS. FORTNEY: It was a fax. I believe I
21 had the original copy. It came off the fax, but --

22 JUDGE STEARLEY: It's your testimony she
23 gave you the original letter?

24 MS. FORTNEY: Yes.

25 JUDGE STEARLEY: And this is -- and she

1 gave that to you by facsimile?

2 MS. FORTNEY: Yeah. There were actually
3 three documents together. That's what the other --

4 JUDGE STEARLEY: I'm just asking with
5 regard to this letter.

6 MS. FORTNEY: There are two of them
7 together.

8 Okay. Yes. At the top you can see the
9 fax, where it was faxed to Westside Escrow, and that's
10 where we did the closing.

11 JUDGE STEARLEY: Mr. Comley?

12 MR. COMLEY: Additionally, Judge, I would
13 object on grounds of relevancy. This, of course, deals
14 with a real estate transaction, and in terms of the issues
15 in this case, it does not bear on any issue pertaining to
16 whether or not the Homeowners Association or Folsom Ridge
17 is acting as a public utility.

18 MS. FORTNEY: I disagree. It has to do
19 with membership and membership fees, and we were not
20 connected to the system. We were not members, but yet we
21 were being told that we owed an assessment amount of \$990,
22 and if the new owners didn't sign to become a member of
23 the Association, they would never ever be able to hook up
24 to the system, and they were going to sue my dad for these
25 fees.

1 JUDGE STEARLEY: My concern is Ms. Riggins
2 is not here to validate the contents of this letter, and
3 the methods of transmission, I don't believe I can
4 confirm. It's difficult for me to authenticate this
5 document with the evidence I have before me.

6 MS. FORTNEY: Even when I was there in the
7 meeting?

8 JUDGE STEARLEY: You said this was
9 transmitted to you by fax, did you not?

10 MS. FORTNEY: We went to do the closing on
11 the house at Westside Escrow, and at the top you can see
12 where it says Westside Escrow. That's where it was faxed
13 to. It was faxed to Ron at Westside Escrow who gave it
14 to --

15 JUDGE STEARLEY: Did Ms. Riggins walk up
16 and hand you the original letter that she received?

17 MS. FORTNEY: Yes. In the meeting, yes.
18 Because we hadn't seen it before. She had not seen it
19 until that day either and she said, what's that?

20 JUDGE STEARLEY: And I'm missing -- I've
21 got a gap here.

22 MR. MILLS: I think I can help. Was the
23 original letter a fax?

24 MS. FORTNEY: Yes. That we got, yes.

25 MR. MILLS: So the only copy that either

1 you or Ms. Riggins got was a fax that was faxed to
2 Westside Escrow?

3 MS. FORTNEY: Yes.

4 JUDGE STEARLEY: And you were all present
5 in this room when this fax came in?

6 MS. FORTNEY: No.

7 JUDGE STEARLEY: Okay.

8 MS. FORTNEY: No. It was Mr. Ron Duggan
9 actually picked it up. I mean, it looks like it was two
10 or three days before that it was faxed, but it wasn't
11 given to anybody until we did the closing in that
12 conference room that day. It was handed to Helen Riggins.

13 JUDGE STEARLEY: So was this faxed on the
14 day of this meeting?

15 MS. FORTNEY. I don't -- actually, I
16 don't -- I don't know for sure. I just know that when I
17 was in the conference room, I got it.

18 JUDGE STEARLEY: When you were in the
19 conference room, Ms. Riggins handed you --

20 MS. FORTNEY: And said, what is this about?
21 And we did not know because we did not have a copy of it.

22 JUDGE STEARLEY: Okay. Mr. Comley?

23 MR. COMLEY: We'll stand by our objections,
24 your Honor.

25 JUDGE STEARLEY: And I'm going to rule this

1 is still hearsay. I will allow -- I will preserve it in
2 the record, however.

3 MS. FORTNEY: I was mistaken. Up above
4 where it says faxed July 27th, I don't know what that is
5 because I thought the closing date was before that, but --

6 JUDGE STEARLEY: We have some gaps in my
7 mind as to date of transmission, how it was received, so
8 as I -- and there's no way to authenticate the content, so
9 I am ruling it is hearsay, but I am going to preserve it
10 into the record.

11 MS. FORTNEY: Okay. Because I recollect it
12 to be exactly this, and that's -- and the second page went
13 with it, the next exhibit.

14 MR. COMLEY: Which was CF Schedule 3
15 attached to Exhibit 8, and it is a document purporting to
16 be a homes association certificate.

17 MS. FORTNEY: These true, it's --

18 MR. COMLEY: Dean Fortney's name is on the
19 bottom of this, but there's no way to authenticate this
20 document. And again, this would be a hearsay remark, a
21 hearsay statement, and would be objectionable on that
22 ground as well as the relevancy of this.

23 MS. FORTNEY: That document came with the
24 first.

25 JUDGE STEARLEY: I'm going to sustain the

1 hearsay objection, but I will also preserve this in the
2 record. However, I may need to add a number to this item.

3 MR. COMLEY: It is the same as Exhibit 72.
4 It is the same as previously marked Exhibit 72.

5 JUDGE STEARLEY: Yes. Thank you,
6 Mr. Comley. And we've already ruled on that.

7 MR. COMLEY: Our records do not show that,
8 but they may be incorrect. I think -- I think this is the
9 one that we were waiting to rule on, sir.

10 JUDGE STEARLEY: Yes, we would have gotten
11 to that in just a few moments, so we will not need to
12 bring that one up again. So this is the same as
13 Exhibit 72. The hearsay objection is sustained. I will,
14 however, preserve it in the record.

15 MS. FORTNEY: There's one more.

16 MR. COMLEY: We have another exhibit marked
17 that's outside of Exhibit 8. It's Exhibit 74.

18 JUDGE STEARLEY: I want to be sure there's
19 no other objections to Exhibit 8.

20 MR. COMLEY: I think we covered -- is there
21 one more schedule for Exhibit 8? Are you referring to --
22 is there another schedule on your testimony?

23 MS. FORTNEY: No.

24 MR. COMLEY: There are only three schedules
25 on my copy.

1 MS. FORTNEY: Right. I'm referring to this
2 one (indicating).

3 JUDGE STEARLEY: Mine as well. All right.

4 MR. MILLS: Your Honor, before we get too
5 far along, I'm not sure I understood your ruling on 72.
6 Did you say that that was going to be admitted into the
7 record or --

8 JUDGE STEARLEY: I sustained the hearsay
9 objection, but I am preserving it in the record.

10 MR. MILLS: So you're simply preserving it
11 for appeal?

12 JUDGE STEARLEY: That's correct.

13 MR. MILLS: This is the one that was signed
14 by Mr. Fortney at closing?

15 MS. FORTNEY: Uh-huh.

16 MR. MILLS: Is that correct?

17 JUDGE STEARLEY: Yes.

18 MR. MILLS: In Ms. Fortney's presence?

19 MS. FORTNEY: Yes.

20 MR. MILLS: Okay. And you believe that's
21 hearsay?

22 MS. FORTNEY: Both of those documents came
23 together.

24 MR. MILLS: On this one, did your father
25 sign this in your presence?

1 MS. FORTNEY: Yes.

2 MR. MILLS: And you recognize his signature
3 on this copy?

4 MS. FORTNEY: Absolutely, yeah. Yeah. And
5 I have a copy of his complaint that you can match it with.

6 JUDGE STEARLEY: Okay. Now I'm being
7 provided with some additional information because we are
8 looking at this as being attached to a faxed document.

9 MR. COMLEY: Your Honor, we'll withdraw the
10 objection to 72 respecting authentication, but we'll
11 maintain our objection that it is irrelevant. I'm going
12 to take it for granted that Ms. Fortney can recognize her
13 father's signature and can maintain that this is an
14 accurate reproduction of the copy he signed.

15 JUDGE STEARLEY: And I will overrule the
16 objection to relevance and I will allow this into the
17 record.

18 (EXHIBIT NO. 72 WAS RECEIVED INTO
19 EVIDENCE.)

20 MS. FORTNEY: Thank you.

21 JUDGE STEARLEY: Are we through now with
22 Exhibits 8 and 72?

23 MR. COMLEY: I think so.

24 JUDGE STEARLEY: Before we tender you for
25 cross, we have two other documents which you have offered,

1 and so we will look at those. We have Exhibit No. 73.

2 MR. COMLEY: And I think that's been ruled
3 on, Judge.

4 JUDGE STEARLEY: Yes, I believe you're
5 right. This is the same --

6 MS. FORTNEY: I'm sorry for the
7 duplication.

8 JUDGE STEARLEY: That's not a problem.
9 This was the same on the fax; is that correct?

10 MR. COMLEY: Yes.

11 MS. FORTNEY: Yes.

12 JUDGE STEARLEY: All right. And we have
13 Exhibit 74, which appears to be a spreadsheet.

14 MR. COMLEY: Which we would object on
15 grounds of relevancy. So long as Ms. Fortney can provide
16 a little foundation for the bottom of the document.

17 JUDGE STEARLEY: Ms. Fortney, can you
18 identify this document and authenticate it for us?

19 MS. FORTNEY: Yes. This is a closing
20 document on a house that I live in now, and at closing I
21 was told that I had to pay \$14 to homeowners -- to Big
22 Island Homeowners Association in association fees, and
23 that they would not close on the house until I did that.
24 I asked for documentation about the Association, what it
25 was for, anything, and Lisa Peterson was not able to give

1 me anything. Just said that, well, we got this from the
2 Big Island Homeowners Association and you need to pay
3 this.

4 JUDGE STEARLEY: And do you recognize your
5 own signature there? Is that your signature?

6 THE WITNESS: Yes.

7 JUDGE STEARLEY: And the signature of Dean
8 Fortney, that's your father; is that correct?

9 MS. FORTNEY: Yes.

10 JUDGE STEARLEY: And can you verify that
11 that is his signature?

12 MS. FORTNEY: Yes.

13 JUDGE STEARLEY: And you're offering this
14 in terms of relevance to demonstrate the \$14 association
15 dues charge that is --

16 MS. FORTNEY: The house is not connected
17 and not receiving service, but there is a sewer tap.

18 JUDGE STEARLEY: All right. And this is a
19 document that was included with your closing agreement for
20 purchasing the house?

21 MS. FORTNEY: A \$300,000 house, they wanted
22 to stop over \$14, and I just went ahead and --

23 JUDGE STEARLEY: And is this your house or
24 home purchase or your father's home purchase?

25 MS. FORTNEY: We both purchased it

1 together, 50/50.

2 JUDGE STEARLEY: Okay. I will overrule the
3 relevancy objection. The documents's been authenticated.
4 I will allow it into evidence.

5 MS. FORTNEY: Thank you.

6 (EXHIBIT NO. 74 WAS RECEIVED INTO
7 EVIDENCE.)

8 JUDGE STEARLEY: And I believe we've looked
9 at all documents at this time. We'll now tender you for
10 cross-examination, Ms. Fortney, beginning with Office of
11 the Public Counsel.

12 MR. MILLS: No questions. Thank you.

13 JUDGE STEARLEY: Staff?

14 MS. HEINTZ: Thank you. I have no
15 questions.

16 JUDGE STEARLEY: The 393 companies,
17 Ms. Holstead?

18 MS. HOLSTEAD: No questions, your Honor.

19 JUDGE STEARLEY: And Folsom Ridge and the
20 Association, Mr. Comley?

21 MR. COMLEY: Thank you, Judge.

22 CROSS-EXAMINATION BY MR. COMLEY:

23 Q. Ms. Fortney, just to confirm a few things,
24 you currently reside at 3298 Big Island Drive; is that
25 correct?

1 A. Yes.

2 Q. And I think you mentioned already in your
3 remarks about the exhibits, you and your father jointly
4 own that property?

5 A. Yes.

6 Q. I understand that the house is not
7 connected to either the water or the sewer system; is that
8 correct?

9 A. That's correct.

10 Q. And it's your understanding that your
11 father bought a sewer tap for that house?

12 A. No.

13 Q. The people that had the -- that we bought
14 the house from, they bought the sewer tap.

15 Q. Okay. The previous owner --

16 A. Yes.

17 Q. -- bought the sewer tap?

18 Now, it does not have a water tap; is that
19 correct?

20 A. That's correct. My father's previous
21 house, he bought the water and sewer tap for and he bought
22 a lot from Folsom Ridge that already had a water and sewer
23 tap in the same trench on it.

24 Q. Installed, it's already there?

25 A. Yes.

1 Q. But none of those homes are connected --
2 let's see. One home is connected to the system, as I
3 understand it?

4 A. Again, the house that I live in now is --

5 Q. Is not connected?

6 A. -- not connected.

7 Q. But one of the houses that you -- that your
8 father sold, the new owners are now connected?

9 A. That's correct. The two documents that
10 they're squabbling over where Mr. McElyea had sent the
11 documents to --

12 Q. Let me just check. One of the houses your
13 father sold --

14 A. Yes.

15 Q. -- is occupied now by people who have
16 connected to the systems; is that correct?

17 A. Yes.

18 Q. Okay. Now, my understanding is that you,
19 then, were not involved at all in the payments of any
20 sewer tap fee for the house that you're living in; is that
21 correct?

22 A. No. It was included in the payment of the
23 house.

24 Q. So you did not make a payment yourself, it
25 was included in the payment for the house?

1 A. Yes.

2 Q. Someone else had paid that, in other words?

3 A. Yes.

4 Q. And as far as the water tap fees for the

5 home your father owned previously, you were not involved

6 in the payment of the water tap fee for that house; is

7 that correct?

8 A. It was my dad's money, but I was -- and I

9 didn't sign the check or anything, no.

10 Q. So indirectly you lost your inheritance of

11 about \$2,000 for the water tap; is that correct?

12 A. Yeah.

13 Q. All right.

14 A. And it was included in the house when we

15 sold it.

16 Q. And I'm understanding that you did not have

17 any conversations with David Lees yourself --

18 A. No.

19 Q. -- concerning collection of tap fees; is

20 that correct?

21 A. No.

22 Q. All right.

23 A. No.

24 Q. And you're not a member of the Association?

25 A. No.

1 Q. And would it be true that you have been
2 invited to become a member of the Association?

3 A. More than invited, yes.

4 Q. You've been more than invited. In fact,
5 you've been invited and encouraged to become a member; is
6 that correct?

7 A. Intimidated and coerced, yes.

8 Q. Well, we'll use the word encouraged.
9 You've not been discouraged from being a member; is that
10 correct?

11 A. That's correct.

12 Q. All right. And it's true that you have
13 decided not to be a member?

14 A. At this time, that's true.

15 Q. And that is for reasons of your own?

16 A. Yes.

17 Q. It's not because the Association has said
18 you cannot be a member; would that be correct?

19 A. That's true.

20 Q. Is it now your present intention to connect
21 to the sewer system at your home?

22 A. In the next 30 days, no, but you never know
23 when you're going to have problems. The septic tank
24 that's at the house is the original, it's 20 years old.
25 You never know.

1 Q. And it could be coming up to time to make a
2 decision about that, correct?

3 A. Correct.

4 Q. And would you agree with me, as Mr. Pugh
5 did, that replacement of that septic tank is not going to
6 be an inexpensive item?

7 A. True.

8 Q. So you're telling me that at the time your
9 septic tank may become to the point that it is no longer
10 useful to you, that you would have serious considerations
11 of connecting to the system?

12 A. I would consider it, yes.

13 Q. You would consider it, but that doesn't
14 mean you would?

15 A. That's true.

16 Q. You're saying even then you may replace
17 your septic tank; is that what you're saying?

18 A. Well, I might -- well, if it's a septic
19 tank issue, if it collapses or something, I'd have to
20 replace it anyway.

21 Q. I guess --

22 A. Doesn't mean I have to replace it and put a
23 pump in it and pump it up to the main system.

24 Q. So what you would do is replace it with a
25 septic tank that may not be the same as a septic tank

1 that's connected to the centralized sewer system?

2 A. If there was a centralized system in place
3 that I was comfortable with that had a proven history, I
4 would think twice about hooking up to the system.

5 Q. But you're saying that you doubt that the
6 system that's in place now has a good history?

7 A. The history has not proven well.

8 Q. So really are you telling me that you don't
9 have any intention at all to connect to the system?

10 A. No, I'm not telling you that. No. If it
11 was regulated, it would even -- I would even think about
12 it more if I had a breakdown.

13 Q. So you're saying that regulation would
14 repair the system to your satisfaction; is that what
15 you're saying?

16 A. I believe so.

17 Q. So you're saying that even though the --
18 let's see. Would you agree with me that the systems have
19 been repaired to DNR regulation?

20 A. I do not know that.

21 Q. You do not know that?

22 A. No.

23 Q. You've never investigated that; is that
24 correct?

25 A. I have, but I -- I haven't -- I haven't

1 even seen the final signoff from the Attorney General's
2 Office with the -- you know, what was that called, the
3 settlement agreement thing.

4 Q. And I detect that you haven't tried to
5 contact the Attorney General to get that?

6 A. I know Cathy and Ben have, and I keep in
7 touch with them.

8 Q. But you haven't done it yourself?

9 A. No, I haven't.

10 Q. So I guess you don't know whether or not
11 they're complying with DNR regulations; is that correct?

12 A. That's --

13 Q. Is that what you said?

14 A. That's correct. And I even have some
15 problems with even knowing if -- sometimes if DNR's
16 correct in their --

17 Q. Would you agree with me that it's fair to
18 think that systems that may have been improperly
19 constructed can be rectified and repaired adequately?

20 A. Yes.

21 Q. You do agree with that?

22 A. Yes. Uh-huh.

23 Q. Let me ask you this: Would it be fair to
24 say that if you do connect to the system, you would want
25 to have an organization operating that system that had a

1 definite set of rules and regulations that applied to all
2 persons connected?

3 A. Yes.

4 Q. And would you agree with me that the
5 organization that runs the system should allow you a voice
6 in how the organization is managed and how the rules and
7 regulations and all the systems are operated and all the
8 rules and regulations are promulgated; would that be a
9 fair statement?

10 A. I don't remember everything you just said,
11 but for the most part, yes.

12 Q. I can break it down. I can break it down.
13 I'll break it down.

14 A. Okay.

15 Q. Wouldn't you agree that you'd like to have
16 a voice in that organization on how the organization is
17 managed?

18 A. Yes. I think the Public Service Commission
19 would listen.

20 Q. Wouldn't you -- I'm talking about an
21 organization that you would be a member of, provided you
22 would join as a member of the organization.

23 A. I wouldn't need to be a member if it was
24 regulated.

25 Q. Provided you would join as a member, and

1 you're saying you will never join as a member; is that it?

2 A. I would if it was regulated or if they --
3 yeah.

4 Q. So you would be a customer rather than a
5 member?

6 A. I would like that more, yes.

7 Q. You would rather be a customer?

8 A. The less responsibility I have with
9 something like that, the better.

10 Q. You would not then have a voice in the
11 organization that was managing the system, would you?

12 A. Repeat that question.

13 Q. You would not have a voice -- you would not
14 have a voice in the regulated organization's management at
15 that point, would you?

16 A. I think I could voice my opinion.

17 Q. And where would you voice your opinion?

18 A. Public Service.

19 Q. So you --

20 MS. HEINTZ: Your Honor, excuse me. I'm
21 sorry for interrupting. Could we go off the record for
22 just a second, and may I approach?

23 JUDGE STEARLEY: Certainly.

24 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

25 BY MR. COMLEY:

1 Q. I think we were talking about your
2 participation in a regulated company situation. Would it
3 be fair to you and your father if you were not responsible
4 for any of the wastewater or water company's debts?

5 A. I'm not sure how to respond to that.

6 Q. Would you like to have some of the debt of
7 the company that is offering you service?

8 A. If I'm receiving service, I would pay for
9 it.

10 Q. I'm talking about a loan or perhaps a
11 judgment. Would it be fair to you not to have obligations
12 with respect to paying off that organization's debts?

13 A. It -- repeat that one more time.

14 Q. Would it be fair to you not to have the
15 obligation to pay off any of that organization's debts?

16 A. I think so. If I'm receiving service -- if
17 I'm paying my bill and I'm receiving service, it would be
18 up to the company to take care of their debts.

19 Q. And wouldn't it be fair that you didn't
20 have to do anything yourself to pay those off?

21 A. Okay.

22 Q. Are you saying yes?

23 A. I think.

24 Q. Are you sure or not? That's what we're
25 trying to get at, Ms. Fortney.

1 A. Ask the question one more time, please. Or
2 can you ask it in a different way?

3 Q. Do you want to pay for any of the debts or
4 liabilities of the organization that gives you wastewater
5 service or water service?

6 A. No.

7 Q. Okay. I think that's another way to get to
8 it. All right. Would it be fair, Ms. Fortney, to say
9 that when you do connect to the system, you would expect
10 to have all the rights of anyone else who may be connected
11 to the system?

12 A. Yes.

13 Q. And would it also be fair that you and your
14 father would be subject to all the obligations and the
15 rules and regulations that all the others connected to
16 that system would have?

17 A. Yes, in a regulated environment.

18 Q. Any time you're connected to any system,
19 whether it's regulated or not, wouldn't you want to have
20 the rights of everybody else that's connected to the
21 system?

22 A. Okay.

23 Q. Is that --

24 JUDGE STEARLEY: Is that a yes or no?

25 THE WITNESS: Yes.

1 BY MR. COMLEY:

2 Q. And wouldn't you want to be in an
3 organization that had the least rates and yet provides you
4 with good service?

5 A. No.

6 Q. You don't want to -- you want to be in an
7 organization that charges high rates?

8 A. No.

9 Q. It's either least or high. Would you like
10 to have a service at a low rate that is adequate to cover
11 the cost and expenses and give adequate service, would
12 that be an objective of you and your father?

13 It's really not that hard a question.

14 A. It is, and I made a note so I could talk
15 about it later. Repeat the question one more time.

16 Q. Wouldn't it be fair for you to have a
17 system in which you and your father were connected that
18 charged low rates and still had adequate service?

19 A. Yes.

20 Q. And wouldn't it be fair for you to also
21 subscribe to rules and regulations about the maintenance
22 of your septic tank, just like everyone else?

23 A. If I was connected to the system?

24 Q. Right.

25 A. Yes.

1 Q. And wouldn't it be fair for you to agree to
2 rules and regulations that, for instance, regulated the
3 intensity of the wastewater that you put into the system?
4 Would that be a fair thing for you to do?

5 A. For me to do or the system -- or people
6 running the system?

7 Q. For you connected to the system, for you to
8 be obliged to follow those rules and regulations about the
9 intensity of the wastewater that's there.

10 A. Sure. Yes.

11 Q. I had a follow-up question about the
12 property that your father owned and sold. Going back, if
13 I can clarify, there was a property he owned that he
14 bought a water and sewer tap for; is that correct?

15 A. Yes.

16 Q. Is it also true that at the time of the
17 sale of that property --

18 A. Okay. Go ahead. I'm sorry.

19 Q. At the time of the sale of that property by
20 your father, it had already connected to the systems?

21 A. No.

22 Q. It had not been connected to the systems at
23 the time your father sold that property?

24 A. No.

25 Q. So you're saying it was connected after?

1 A. A good year or so, yeah.

2 Q. After it was purchased by the new owners?

3 A. Yes.

4 Q. Okay.

5 A. And to correct myself, I believe that my
6 dad just bought a --

7 JUDGE STEARLEY: Ms. Fortney, you've
8 answered the question.

9 THE WITNESS: Okay.

10 BY MR. COMLEY:

11 Q. Kind of ask this in reverse, but like I did
12 with Ms. Orlor and Mr. Pugh, I have some background
13 questions for you. In looking at your employment history
14 and your direct testimony, I wanted to confirm that you
15 have no engineering training; is that correct?

16 A. Computer engineering.

17 Q. Computer engineering. Okay. Maybe I
18 should be more specific. I was talking about in terms of
19 wastewater engineering, you have no training there; is
20 that correct?

21 A. That's correct.

22 Q. Or no training on -- in engineering
23 respecting water distribution systems; is that correct?

24 A. Only self training to understand how my
25 system works.

1 Q. Okay. You've utilized some sort of self
2 training and reading material and information, but at
3 least formal training, there's been no formal training in
4 those subjects; is that correct?

5 A. That's correct.

6 Q. You have never worked for a sewer company;
7 is that correct?

8 A. That's correct.

9 Q. And you never worked for a water company;
10 is that correct?

11 A. That's correct.

12 Q. And you've had no training in laboratory
13 analysis or wastewater samples or water samples; would
14 that be correct?

15 A. That's correct.

16 Q. And you're not a chemist; is that correct?

17 A. That's correct.

18 Q. I think it was on page 11 of your direct
19 testimony, which is Exhibit 7, and I'm not -- I don't have
20 your direct in front of me. I'm sorry.

21 A. Okay.

22 Q. But you say in the middle of the page that
23 you mentioned seeing blue and green paint spray painted on
24 uprights; is that correct?

25 A. Yes. Yes.

1 Q. These are the uprights that hold both the
2 water and wastewater service lines; is that correct?

3 A. Yes.

4 Q. Now, let me ask you this: Have you had any
5 experience with the system of marking water and sewer
6 lines above ground and underground in connection with
7 locating them for excavations?

8 A. No.

9 Q. Have you ever worked for a construction
10 contractor? I asked that to Ms. Orler. I thought I'd ask
11 you.

12 A. Been on the other side, when I built a
13 house, had contractors.

14 Q. So you didn't work with a construction
15 contractor, he just worked you over?

16 A. My dad and my grandfather were builder
17 contractors, too.

18 Q. Okay. So they knew what they were doing.
19 All right. Let me check real quickly.

20 A. Okay.

21 MR. COMLEY: Thank you. I have no other
22 questions of Ms. Fortney.

23 JUDGE STEARLEY: All right. There are no
24 questions from the Bench at this time.

25 MS. ORLER: Could I ask a question?

1 JUDGE STEARLEY: All right. Ms. Orler, you
2 may come to the podium and ask a cross-examination
3 question.

4 CROSS-EXAMINATION BY MS. ORLER:

5 Q. Ms. Fortney, with regards to utility
6 service, if you were connected and receiving service and
7 therefore responsible for the rates involving that
8 service, would you enjoy paying a lower rate that equaled
9 adequate service where you had the responsibilities of
10 ownership for the utility as well as the liability?

11 Would you enjoy paying a lower rate where
12 you yourself would have the ownership and liability of the
13 utility and would be receiving adequate service?

14 A. No. And I have that written down as what I
15 was writing when Mr. Comley asked me those questions
16 earlier, I was going to comment on that further.

17 Q. Would you enjoy paying a higher rate but
18 yet receive the same adequate service, but yet have no
19 liability and no responsibilities for ownership of that
20 utility?

21 A. Yes. That's exactly what I was going to
22 state when I had a chance because that was the additional
23 that I wanted to say besides just yes or no to
24 Mr. Comley's answers -- or questions.

25 Q. So based on your response to me, how would

1 you rate service in conjunction with rate structure?

2 A. In this case --

3 MR. COMLEY: I'll object on grounds there's
4 no foundation for Ms. Fortney's opinion on rate structures
5 of utilities. She is unqualified.

6 MS. ORLER: May I rephrase the question?

7 JUDGE STEARLEY: Yes, you may.

8 BY MS. ORLER:

9 Q. If the type of service that you were
10 receiving was dependent on the rate structure, would it be
11 fair to say that you would be willing to pay a higher rate
12 if the type of service received was also a higher rate of
13 service?

14 A. Yes. And if it was regulated I'd feel it's
15 like an insurance policy.

16 Q. Do you want to have personal liability and
17 the responsibility of personal ownership for a utility to
18 be able to receive service?

19 A. No. And that's what I stated to
20 Mr. Comley, that I'd rather not have any responsibility.
21 I'd rather it be like in the city where you get service,
22 you pay for service.

23 MS. ORLER: Thank you.

24 JUDGE STEARLEY: All right. At this
25 opportunity, Ms. Fortney, you have a chance for redirect.

1 Any additional testimony you offer can only pertain to the
2 cross-examination you just received.

3 MS. FORTNEY: Okay. That was one of the
4 things that Cathy just asked me, but I have one other
5 comment. It has to do with the house that my dad sold
6 that the people now are receiving service, and it goes
7 back to those documents. They -- I wanted to correct
8 myself. I believe my dad had only bought a sewer tap for
9 that house, not a water tap.

10 On the lot that he bought from Folsom Ridge
11 next door, it already had water and sewer, but it was in
12 the same trench, and so with the settlement agreement,
13 they did come back out and they Y'd off from the service
14 line from the next-door neighbor over to my dad's lot so
15 that he would then have water that was separate from
16 sewer.

17 The second thing I want to point out is,
18 the people next door, they were not charged the back fees.
19 My dad's never been sued, although there were these
20 threats and these letters.

21 MR. COMLEY: I think that may be beyond
22 what my questions were to her about the transactions, and
23 I had no questions about back fees being charged or the
24 way the Association had treated the transaction and what
25 was owed.

1 JUDGE STEARLEY: And are you asking for
2 those comments to be stricken?

3 MR. COMLEY: Yes, your Honor. I think
4 they're well beyond the scope of my cross-examination.

5 JUDGE STEARLEY: I believe they are, and
6 they will be stricken from the record.

7 MS. FORTNEY: Okay. One last thing. The
8 people did purchase a water tap, so they are hooked up
9 with water and sewer, and they did purchase it for \$3,000
10 now instead of the 2,000 that others paid.

11 JUDGE STEARLEY: Okay. Anything else you
12 would like to add at this time?

13 MS. FORTNEY: No.

14 JUDGE STEARLEY: All right. Thank you,
15 Ms. Fortney, for your testimony. As I have told the other
16 witnesses, you will not be finally excused at this time in
17 case the Commissioners would like to call you to ask some
18 additional questions.

19 With the completion of Ms. Fortney's
20 testimony, this looks like an opportune time to break for
21 lunch, and we shall resume, let's say, at 1:10.

22 (A BREAK WAS TAKEN.)

23 JUDGE STEARLEY: All right. We are back on
24 the record. A couple matters to bring up at this time.
25 We were scheduled to take the testimony of Mr. Rusaw and

1 Mr. Conway. I believe we may have a change in the order
2 of the presentation of witnesses.

3 MR. COMLEY: Your Honor, I ask that the DNR
4 custodian of records appear at this hour, and I would ask
5 leave that if we could take her out of order and go
6 through identification of records with the custodian at
7 this time.

8 JUDGE STEARLEY: Okay. I don't see a
9 problem with that. For our pro se complainants, I know
10 that you had a number of documents that you were going to
11 try to authenticate with this custodian of records. I
12 would like for you to have those documents ready. When
13 you get an opportunity to cross-examine, you can try to
14 have the custodian authenticate those documents for you.

15 As you present those documents, please
16 refer to them by number so that we're all kind of on the
17 same page with that.

18 MR. PUGH: Sir, could I get my testimony
19 schedules from the court reporter? I was using those.
20 Mine aren't numbered.

21 JUDGE STEARLEY: I think at the time you
22 come up to ask, the court reporter could share those with
23 you, but she's going to need to keep a copy. We'll make
24 sure that you have them and you can refer to them.

25 I also want to advise the parties that

1 Commissioner Gaw has issued a subpoena for John D.
2 MacEachen of the Department of Natural Resources. At this
3 point in time, the subpoena has not been served, and I
4 don't know if it will, in fact, get served in time for him
5 to appear as a witness tomorrow, or if there will be any
6 objections on DNR's part to the subpoena being issued in
7 the time in which it has, but I wanted to advise all the
8 parties that we may be adding an additional witness, Mr.
9 MacEachen tomorrow, and make sure that there's no shock or
10 surprise tomorrow and that you-all have an opportunity to
11 prepare if he's going to be testifying.

12 All right. And with that, we will go ahead
13 and call the custodian of records of the Department of
14 Natural Resources to the stand.

15 MR. COMLEY: Ms. Sue Spurlock, please.

16 JUDGE STEARLEY: Is that Spurlock? Am I
17 pronouncing that correctly?

18 THE WITNESS: Yes, sir.

19 JUDGE STEARLEY: Ms. Spurlock, if you'd
20 please raise your right hand.

21 (Witness sworn.)

22 JUDGE STEARLEY: You may proceed,
23 Mr. Comley.

24 MR. COMLEY: Thank you, Judge.

25 SUE SPURLOCK testified as follows:

1 DIRECT EXAMINATION BY MR. COMLEY:

2 Q. Ms. Spurlock, would you mind stating your
3 full name again for the Commission?

4 A. Sue Spurlock.

5 Q. And are you the custodian of records for
6 the Department of Natural Resources, I think particularly
7 in the water quality division?

8 A. Water protection program.

9 Q. In your position have you become familiar
10 with the manner in which documents are received and
11 maintained by the Department?

12 A. Yes.

13 Q. At my request and pursuant to a subpoena,
14 did you -- a subpoena containing a list of documents, did
15 you bring certain documents in the custody and control of
16 the Department or otherwise kept as records by the
17 Department?

18 A. I did.

19 Q. Have you compared the -- and identified the
20 records requested in the subpoena with the ones you have
21 produced today?

22 A. Yes, sir.

23 Q. And have you brought the records described
24 in the subpoena?

25 A. Yes.

1 Q. Were the records you have brought kept by
2 or prepared by the Department of Natural Resources in the
3 regular course of its business?

4 A. Yes, they were.

5 Q. And are those records made or kept at or
6 near the time of the act or event made of record?

7 A. Yes.

8 Q. Let's go through and identify the documents
9 you have brought today. Did you bring a letter dated
10 July 27, 1998 from James Jackson to Keith Forck?

11 A. I did.

12 MR. COMLEY: Your Honor, I'd like to have
13 that marked as an exhibit.

14 JUDGE STEARLEY: All right. You may. I
15 believe we are up to Exhibit No. 77 at this point.

16 MR. COMLEY: And I think what we would do,
17 with the Court's permission, we will have these things
18 marked. I do not have sufficient copies at this time, but
19 have made arrangements available for them to be copied and
20 returned. So I was going to ask that they be marked, and
21 as we get done, I'll have them copied and brought back.

22 JUDGE STEARLEY: All right. Let's go ahead
23 and mark them.

24 (EXHIBIT NO. 77 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 BY MR. COMLEY:

2 Q. Did you bring any application for
3 construction permits for water or sewer filed on
4 behalf of the Big Island Water Sewer Association or
5 Folsom Ridge, LLC?

6 A. Yes.

7 Q. How many of those were there?

8 A. I have a construction permit for a well.

9 Q. Let's mark that as an exhibit.

10 (EXHIBIT NO. 78 WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 THE WITNESS: And an application to
13 construct sewer extension.

14 BY MR. COMLEY:

15 Q. Just a moment. With respect to Exhibit
16 No. 78, that is a letter, November 22nd, 1998 from Lake
17 Professional Engineering Services, Inc, with attachments.

18 And what's the next one?

19 A. I have an application to construct sewer
20 extension.

21 Q. And what's the date on that?

22 A. January 1st -- or I'm sorry -- January 3rd
23 of 2000.

24 JUDGE STEARLEY: This would be Exhibit 79,
25 am I correct?

1 (EXHIBIT NO. 79 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)

3 JUDGE STEARLEY: And what was the date on
4 that document?

5 THE WITNESS: January 3rd, 2000.

6 MS. ORLER: Could I look at that document?
7 I think that's the same document that I was going to --

8 JUDGE STEARLEY: Once Mr. Comley gets all
9 his documents marked and can distribute copies, if there's
10 any duplication, you won't have to worry about offering
11 it.

12 MS. ORLER: I apologize.

13 THE WITNESS: And I've got an application
14 to construct water extension dated January 27, 2000, a
15 water --

16 MR. COMLEY: Let's do that one first.
17 Let's go ahead and mark that.

18 JUDGE STEARLEY: That would be Exhibit
19 No. 80.

20 (EXHIBIT NO. 80 WAS MARKED FOR
21 IDENTIFICATION BY THE REPORTER.)

22 BY MR. COMLEY:

23 Q. What's the next one, Ms. Spurlock?

24 A. Dated July 6, 2005 water extension, the
25 final construction.

1 Q. And what was the date on that one? I'm
2 sorry.

3 A. July 6th, 2005.

4 (EXHIBIT NO. 81 WAS MARKED FOR
5 IDENTIFICATION BY THE REPORTER.)

6 BY MR. COMLEY:

7 Q. Any other applications, permits?

8 A. I have a construction water line extension
9 dated July 22nd, 2005.

10 MR. COMLEY: Please hand that to the court
11 reporter.

12 JUDGE STEARLEY: Are we up to 82 now; is
13 that correct?

14 THE REPORTER: Yes.

15 (EXHIBIT NO. 82 WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 BY MR. COMLEY:

18 Q. Any other construction permits?

19 A. I also have a construction permit
20 application dated June 11th, '98 for a wastewater
21 facility.

22 MR. COMLEY: Yes. Please hand that to the
23 reporter. That would be 83.

24 (EXHIBIT NO. 83 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 BY MR. COMLEY:

2 Q. Were there any other construction permits
3 for water or sewer?

4 A. No, sir.

5 Q. Were there -- have you had any issued
6 construction permits?

7 A. I do.

8 Q. Could you please describe that for the
9 reporter, please?

10 A. I have a sewer extension construction
11 permit dated February 25th, 2000.

12 JUDGE STEARLEY: And this would be
13 Exhibit 84.

14 (EXHIBIT NO. 84 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. COMLEY:

17 Q. The next construction permit you have?

18 A. Wastewater construction permit for
19 June 23rd, 2000.

20 MR. COMLEY: Please have that marked by the
21 court reporter.

22 JUDGE STEARLEY: That would be 85.

23 (EXHIBIT NO. 85 WAS MARKED FOR
24 IDENTIFICATION BY THE REPORTER.)

25 BY MR. COMLEY:

1 Q. Other construction permits?

2 A. There's a wastewater construction permit on
3 January 5th, 1999.

4 JUDGE STEARLEY: Be 86.

5 (EXHIBIT NO. 86 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. COMLEY:

8 Q. The next permit?

9 A. That's all of the construction permits that
10 I have.

11 Q. Do you have an application for discharge
12 permit filed on behalf of Big Island Water and Sewer
13 Association or Folsom Ridge? That would be for operating
14 permits.

15 A. We're on bullet 4?

16 Q. Yes.

17 A. I believe it may have been attached to one
18 of the others that you have there.

19 Q. All right. That's been previously marked?

20 A. Uh-huh.

21 Q. Do you have a memo dated November 5th from
22 the water pollution control program, I think that's what
23 it is, to Mr. Keith Forck?

24 A. Yes.

25 MR. COMLEY: Can you hand that to the

1 reporter, please.

2 (EXHIBIT NO. 87 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. COMLEY:

5 Q. The next one would be a letter dated
6 November 10th, 1998 from David Lees to the Big Island
7 Homeowners Association?

8 A. Yes.

9 JUDGE STEARLEY: And that would be
10 Exhibit 88.

11 (EXHIBIT NO. 88 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. COMLEY:

14 Q. I'm not sure if this has been previously
15 marked, but a letter dated January 5, 1999 from Robert
16 Hentges of DNR to Big Island Homeowners Association?

17 A. January 5th, '99?

18 Q. Yes.

19 A. Yes, I have that.

20 JUDGE STEARLEY: That would be
21 Exhibit 89.

22 (EXHIBIT NO. 89 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. COMLEY:

25 Q. All operating permits issued to Big Island

1 Homeowners Association, Inc.

2 A. I have a wastewater permit dated
3 February 25th, 2000.

4 MR. COMLEY: Would you hand that to the
5 reporter?

6 JUDGE STEARLEY: That would be Exhibit 90.
7 (EXHIBIT NO. 90 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 THE WITNESS: That's the only operating
10 permit I had.

11 BY MR. COMLEY:

12 Q. That is the only operating permit. Was
13 there an operating permit for the water program?

14 Ms. Spurlock, there's no need for you to
15 look anymore. I think that's okay. The letter dated
16 April 23rd, 2004 from Mr. Mohammedi to Charles McElyea
17 enclosing a settlement agreement?

18 A. Yes, I have that.

19 MR. COMLEY: Please hand that to the court
20 reporter.

21 JUDGE STEARLEY: Be Exhibit 91.

22 (EXHIBIT NO. 91 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. COMLEY:

25 Q. Next would be a memo dated September 22nd,

1 2004 from Joseph Bindbeutel.

2 A. Yes.

3 JUDGE STEARLEY: That would be Exhibit 92.

4 (EXHIBIT NO. 92 WAS MARKED FOR

5 IDENTIFICATION BY THE REPORTER.)

6 BY MR. COMLEY:

7 Q. And a letter dated September 29th, 2005
8 from Cynthia Davies from Reggie Golden enclosing report of
9 final inspection?

10 A. Yes, sir.

11 JUDGE STEARLEY: That would be Exhibit 93.

12 (EXHIBIT NO. 93 WAS MARKED FOR

13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. COMLEY:

15 Q. Finally a letter dated February 15th, 2006
16 from Cynthia Davies to Mr. Golden enclosing report of
17 final inspection?

18 A. Yes.

19 JUDGE STEARLEY: That will be Exhibit 94.

20 (EXHIBIT NO. 94 WAS MARKED FOR

21 IDENTIFICATION BY THE REPORTER.)

22 MR. COMLEY: Your Honor, with respect to
23 any hearsay objections at this point, I would move for the
24 admission of these documents that have been previously
25 marked and identified by the custodian.

1 JUDGE STEARLEY: With respect to hearsay,
2 they've been identified by the custodian and marked. We
3 would overrule any hearsay objections.

4 MR. COMLEY: In terms of relevancy, I know
5 they would be reserved for other parties once they've seen
6 the exhibits, and we'll have them copied and identified in
7 the next hour or two.

8 JUDGE STEARLEY: All right. Did you want
9 to take an intermission and copy them and distribute them
10 at this time, or do you want to go ahead and offer them?

11 MR. COMLEY: I think if we can get beyond
12 the hearsay issue right now, I understand that there may
13 be other objections, but I'm thinking I need to release
14 this witness so that there's -- at least the foundation of
15 these in terms of business records has been satisfied. So
16 I'm moving for their admission and so we can get the
17 hearsay objection out of the way, if there's one
18 remaining.

19 JUDGE STEARLEY: Are there any objections
20 to admission of these documents that have been
21 authenticated by DNR's custodian of records?

22 MR. MILLS: I don't have any objection to
23 the extent that they're authenticated, but I have not seen
24 the documents. I have no way of knowing whether they're
25 in any way relevant.

1 MR. COMLEY: I would understand that.

2 JUDGE STEARLEY: All the parties can
3 reserve their objections in terms of relevancy and we can
4 revisit them if need be.

5 MR. COMLEY: My concern is that -- my idea
6 would be that if this witness is excused, then there has
7 been a waiver for all the parties for the hearsay
8 objection that may be attending these documents.

9 JUDGE STEARLEY: Ms. Spurlock, how long are
10 you available today?

11 MS. SPURLOCK: I'm on State time 'til five,
12 but I've got a big workload.

13 JUDGE STEARLEY: Okay. I just wanted to
14 make sure she didn't have to leave soon, so if we were
15 going to have an issue with that --

16 MR. COMLEY: In the meantime, we'll take
17 these exhibits she's identified and have them copied and
18 distributed to the parties in probably the next hour.

19 JUDGE STEARLEY: The reason I asked if you
20 wanted to take an intermission for that is, I was going to
21 allow the Complainants an opportunity to authenticate
22 prior documents that they were trying to admit into
23 evidence.

24 MR. COMLEY: I would not interfere with
25 that process at this point.

1 JUDGE STEARLEY: Okay. Very well.

2 THE WITNESS: Sir, could I submit this?

3 The one copy was wrinkled. I did find a better one going
4 through my file, for the letter dated November 10th.

5 JUDGE STEARLEY: Which number would this
6 be? You Have a cleaner copy to substitute for that and in
7 all other respects, it's identical?

8 THE WITNESS: Yes.

9 JUDGE STEARLEY: I certainly have no
10 problem with the substitute.

11 (EXHIBIT NO. 88 WAS REMARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 JUDGE STEARLEY: Other than the pro se
14 Complainants wanting to try to authenticate some
15 additional documents with this witness, are there any
16 other parties that have questions for this witness?

17 (No response.)

18 JUDGE STEARLEY: Okay. Hearing none, we'll
19 go ahead and proceed.

20 Ms. Orler, we'll begin with you. Did you
21 have documents that you tried to offer into evidence
22 yesterday that were -- in your belief were DNR documents
23 that we were unable to authenticate yesterday?

24 MS. ORLER: Yes, your Honor, I did.

25 JUDGE STEARLEY: And if you will bring your

1 document forward and alert the Commission as to which
2 exhibit this is. And do you have just one?

3 MS. ORLER: No, only the one.

4 JUDGE STEARLEY: Only the one. And this is
5 Exhibit No. 22?

6 MS. ORLER: And I think it is a duplication
7 of what Mr. Comley just received.

8 JUDGE STEARLEY: All right. If you would
9 first compare that.

10 MS. ORLER: This is a duplicate of
11 Exhibit 85.

12 JUDGE STEARLEY: It's a duplicate of
13 Exhibit 85?

14 MR. COMLEY: It got authenticated.

15 JUDGE STEARLEY: At this point you don't
16 need to offer that separately, if the parties are all in
17 agreement that this is, in fact, the same document.

18 MR. COMLEY: And I think it is.

19 JUDGE STEARLEY: Is it my correct
20 understanding, Ms. Orler, that was the one document that
21 you had?

22 MS. ORLER: Yes, your Honor, that's
23 correct.

24 JUDGE STEARLEY: Mr. Pugh, if I recall
25 correctly, you might have had a couple documents.

1 MR. PUGH: Yes, your Honor. Your Honor, I
2 have eight schedules from my direct testimony.

3 JUDGE STEARLEY: What I'm going to do is
4 have you bring them forward one at a time, or if you
5 needed to get a copy from the court reporter to verify the
6 exhibit number, if you'd please do so now, so we know
7 which exhibit you're referring to. And let's take them in
8 order, if we could.

9 If my remarks are correct from yesterday,
10 we would be starting with Exhibit 54.

11 MR. PUGH: Yeah. These are all mixed up.

12 JUDGE STEARLEY: But I've been wrong
13 before.

14 MR. PUGH: These are mixed up. I probably
15 did that for you.

16 MS. ORLER: Excuse me, Judge Stearley.
17 Mr. Pugh has difficulty seeing. Could I help him see?

18 JUDGE STEARLEY: Certainly.

19 MR. PUGH: Mrs. Spurlock; is that correct?

20 THE WITNESS: Yes, sir.

21 JUDGE STEARLEY: And, Mr. Pugh, you may
22 approach the witness with the documents and hand them to
23 her, and we'll go through them one at a time, give her an
24 opportunity to examine them. And we'll start with --

25 MR. PUGH: I have my identification just by

1 schedule. This here is one of them (indicating).

2 JUDGE STEARLEY: Okay. And which document
3 are we starting with, Mr. Pugh?

4 MR. PUGH: No. 59.

5 JUDGE STEARLEY: 59. Do you have an
6 Exhibit 54 in there?

7 I'd like to try to go in order if we could.
8 And the first one that I have is a DNR -- potentially a
9 DNR document I marked Exhibit 54 yesterday.

10 My marking system is primitive and
11 sometimes hard for me to read myself. I think that's the
12 one we're starting with, and that would be a letter to
13 Mr. Golden dated November 16, 2001.

14 MR. PUGH: That was 54, right?

15 THE WITNESS: Yes, sir.

16 MR. PUGH: Schedule 1.

17 JUDGE STEARLEY: Mr. Pugh --

18 MR. PUGH: Exhibit 59, is that the one?

19 JUDGE STEARLEY: The first one I have is
20 Exhibit 54.

21 MR. PUGH: Yes, sir, I have that.

22 JUDGE STEARLEY: Ms. Spurlock, would you
23 please examine that document?

24 THE WITNESS: Without reading it word for
25 word, it is an accurate copy.

1 JUDGE STEARLEY: It's your testimony as the
2 custodian of records of DNR that you can authenticate this
3 document?

4 THE WITNESS: Yes.

5 JUDGE STEARLEY: All right. At this time
6 we'll allow Mr. Pugh to offer it back into evidence.

7 MR. COMLEY: May I voir dire the witness
8 just briefly?

9 JUDGE STEARLEY: You may.

10 VOIR DIRE EXAMINATION BY MR. COMLEY:

11 Q. Ms. Spurlock, is it a true and accurate
12 copy of Exhibit 54? Can you take a look and compare it
13 with any redacting marks or any highlight marks?

14 A. The copy that I have from the file does not
15 have anything highlighted in it. This one appears that it
16 may have at some point.

17 Q. Have redacting marks?

18 A. Yes.

19 MR. COMLEY: Your Honor, to the extent of
20 the redaction, we would object to it and would prefer to
21 have the other document brought into the record. That
22 would be the true and accurate version of it, rather than
23 the one that Mr. Pugh has had marked.

24 JUDGE STEARLEY: And, Ms. Spurlock, you do
25 have that document with you?

1 THE WITNESS: Yes, sir.

2 JUDGE STEARLEY: We will substitute those
3 documents, then. Are there any other objections, though,
4 to admission of that?

5 MR. COMLEY: No.

6 JUDGE STEARLEY: With the substitution, it
7 will be received and admitted into evidence.

8 (EXHIBIT NO. 54 WAS REMARKED FOR
9 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

10 MR. PUGH: Judge, my next one I think's 59,
11 would that be correct?

12 JUDGE STEARLEY: That's what I have, which
13 is a three-page document. Cover letter's dated May 25th,
14 1999.

15 Ms. Spurlock, if you'd please examine that
16 document.

17 THE WITNESS: It does appear to be the
18 same, minus the highlighted areas.

19 JUDGE STEARLEY: And as Mr. Comley asked
20 you then, can you testify that that is a true and accurate
21 copy, other than the exception of that highlighted blank
22 page?

23 THE WITNESS: Yes.

24 JUDGE STEARLEY: Can we provide the clean
25 copy to substitute?

1 MR. COMLEY: Yes. No objection to that.

2 JUDGE STEARLEY: So these are copies the
3 Commission can retain?

4 THE WITNESS: Yes, sir.

5 JUDGE STEARLEY: And perhaps I can get one
6 of you-all to make enough copies to distribute to us all
7 later on.

8 Very well. Exhibit 59 is received and
9 admitted into evidence, the clean copy.

10 (EXHIBIT NO. 59 WAS REMARKED FOR
11 IDENTIFICATION BY THE REPORTER AND RECEIVED INTO
12 EVIDENCE.)

13 JUDGE STEARLEY: What is our next document,
14 Mr. Pugh?

15 MR. PUGH: Exhibit 60.

16 JUDGE STEARLEY: All right. And that
17 begins with a letter dated November 17, 1998?

18 MR. PUGH: That is correct.

19 JUDGE STEARLEY: To Mr. Summerford from
20 Mr. Jackson.

21 MR. PUGH: That is correct.

22 JUDGE STEARLEY: Total of five pages, if
23 I'm counting correctly.

24 MR. PUGH: Yes, your Honor.

25 JUDGE STEARLEY: Ms. Spurlock, would you

1 have matching documents in your records?

2 THE WITNESS: I'm looking for it.

3 It has several letters attached to it.

4 They're in a different order, so I'm trying to verify that
5 I have what was marked.

6 I have verified all of the letters. There
7 is still a technical drawing that I'm still looking for.
8 It is possible that it may be --

9 JUDGE STEARLEY: We've got the first four
10 pages; is that correct?

11 THE WITNESS: Yes.

12 JUDGE STEARLEY: Which were the letters.

13 THE WITNESS: Yes, sir. And it is possible
14 that the drawing may be with something.

15 JUDGE STEARLEY: Other than -- you do not
16 have another copy of the drawing?

17 MR. PUGH: Are you talking to me, sir?

18 JUDGE STEARLEY: No. I'm talking to
19 Ms. Spurlock.

20 THE WITNESS: I have not come across this
21 particular drawing, but like I say, it is possible that
22 it's with some of the things I've already submitted. I
23 brought one complete copy of the file.

24 JUDGE STEARLEY: With regard to Exhibit 60,
25 then, I propose we substitute the four clean pages,

1 without the attachment to be labeled as Exhibit 60.

2 MR. COMLEY: That would be acceptable, your
3 Honor. I think there's no way for verification of the
4 attachment to Mr. Pugh's exhibit.

5 JUDGE STEARLEY: I agree. So Exhibit 60 as
6 amended, is there any objection?

7 MR. COMLEY: No, there would not be any
8 objection.

9 JUDGE STEARLEY: That exhibit's shown to be
10 so received and admitted into evidence.

11 (EXHIBIT NO. 60 WAS REMARKED FOR
12 IDENTIFICATION BY THE REPORTER AND RECEIVED INTO
13 EVIDENCE.)

14 JUDGE STEARLEY: Mr. Pugh, your next
15 document would be?

16 THE WITNESS: 61.

17 MR. PUGH: Yes, 61.

18 MS. HEINTZ: Your Honor, I believe
19 Exhibit 61 has already been admitted into evidence.

20 JUDGE STEARLEY: Actually, Ms. Heintz, you
21 are correct. It has been admitted. That one did come in
22 yesterday.

23 MR. PUGH: I wasn't sure. Thank you.

24 JUDGE STEARLEY: Thank you. That's why I
25 didn't see my copy. I already had that in my admitted

1 pile.

2 MR. PUGH: Your Honor, should we go to 62?

3 MS. HEINTZ: 62's also been admitted, your

4 Honor.

5 JUDGE STEARLEY: You're correct, 62 was.

6 MR. PUGH: 66.

7 JUDGE STEARLEY: The next one I think on my

8 list is 67.

9 MS. HEINTZ: 66, your Honor.

10 JUDGE STEARLEY: 66. Was this also

11 purported to have come from DNR?

12 MS. HEINTZ: Yes.

13 JUDGE STEARLEY: The one that has the

14 pictures as the third page, the pictures attached to it?

15 MS. HEINTZ: Correct.

16 JUDGE STEARLEY: Okay. Mr. Pugh, the

17 pictures that are attached as the third page --

18 MR. PUGH: Yes, sir.

19 JUDGE STEARLEY: -- did you add that as an

20 attachment to these or did that come from DNR when you

21 purportedly received the letter from DNR?

22 MR. PUGH: I would guess it's probably been

23 added. I can't really tell you for sure.

24 JUDGE STEARLEY: Okay.

25 MR. PUGH: As a matter of fact, I'm fairly

1 sure that it's been added. The reason I say that, Judge,
2 is I took that picture and I --

3 JUDGE STEARLEY: I believe you collaborated
4 in yesterday's or this morning's testimony -- pardon me,
5 going back in time too far -- that these were, in fact,
6 pictures that you took, they were digital pictures.

7 MR. PUGH: Yes.

8 JUDGE STEARLEY: And you processed them
9 and you have them on your computer?

10 MR. PUGH: I would say that probably is.
11 She will not find that.

12 THE WITNESS: This is a letter from Camden
13 County Road and Bridge to Folsom Ridge.

14 MR. PUGH: I realize that, but I do not
15 recall getting it from Camden County, and I have been to
16 the data center down at Springfield, and I figured that
17 that possibly could be from there. Year 2000, that's a
18 long time ago.

19 THE WITNESS: I do have a copy of the
20 letter, the two sides. Not the pictures attachment.

21 JUDGE STEARLEY: So, Ms. Spurlock, you have
22 a copy of that as part of your file?

23 THE WITNESS: Yes.

24 JUDGE STEARLEY: With DNR with the matters
25 concerning Big Island?

1 THE WITNESS: Yes, sir.

2 MR. COMLEY: Your Honor, I think to the
3 extent that we can stipulate that DNR received a copy of
4 the letter is fine. It's just that we're still in a
5 position where we do not know the authors of the letter.
6 It's still hearsay with respect to these parties. It's a
7 letter that has somehow gotten in DNR's file, and I think
8 we can stipulate to that. But as far as the hearsay
9 objections about the author, I think they still stand.

10 MR. MILLS: And not having seen any of the
11 exhibits that Mr. Comley had recently marked, that could
12 be very well true of those.

13 MR. COMLEY: Exactly. There could be other
14 objections, that's double hearsay. My objective with
15 getting the custodian was to make sure there would not be
16 any hearsay objections with respect to the business
17 records that they kept. There still may be double hearsay
18 in these documents, and I think this is one of them.

19 So irrespective of the authentication that
20 it comes from the Department of Natural Resources file, we
21 still have the issue about the author. It's an unsigned
22 letter, and obviously it comes from the Camden County Road
23 and Bridge. It's not a document prepared by DNR.

24 JUDGE STEARLEY: Are there any remaining
25 issues with regard to the attached pictures?

1 MR. COMLEY: The pictures as well, I think
2 that would be something you'd have to independently
3 verify. And that would be Mr. Pugh's, his foundation
4 testimony.

5 JUDGE STEARLEY: All right. I believe he
6 did provide that for us, though, this morning.

7 MR. COMLEY: If they're marked as a
8 separate exhibit and he has the foundation proof, I don't
9 mind that. It's the letter that covers it.

10 JUDGE STEARLEY: All right. I'm going to
11 sustain the hearsay objection. I think we can consider it
12 as being authenticated to the extent that DNR has it in
13 its files, but as far as the contents, the hearsay
14 objection shall be sustained. I will allow it into the
15 record, however.

16 With regard to the pictures, we can mark
17 this as a separate exhibit, and I believe Mr. Pugh's prior
18 testimony supported the foundation and authenticity of
19 those pictures this morning.

20 MR. PUGH: No. 67, your Honor.

21 JUDGE STEARLEY: Hold on one moment.
22 I'd like the court reporter to get a copy of these
23 pictures, and let's go ahead and mark this as what would
24 be Exhibit 95.

25 (EXHIBIT NO. 95 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 JUDGE STEARLEY: That will be marked
3 Exhibit 95. It will be admitted and received into
4 evidence.

5 (EXHIBIT NO. 95 WAS RECEIVED INTO
6 EVIDENCE.)

7 JUDGE STEARLEY: And I believe that takes
8 us to Exhibit 67.

9 MR. PUGH: Yes, sir.

10 THE WITNESS: I am not coming across a copy
11 of it here. It may be submitted with something that we
12 have or it could be housed in the regional office.

13 JUDGE STEARLEY: Okay. At this moment in
14 time, you are unable to authenticate or verify this
15 document; is that correct?

16 THE WITNESS: That is correct. It is a DNR
17 form, but I don't have a matching copy of it.

18 JUDGE STEARLEY: The objection will be
19 sustained as to this document being unauthenticated and
20 this will not be received into evidence.

21 Are we looking at Exhibit 68 now? I
22 believe that would be our next one.

23 THE WITNESS: Sir, on these, I do want to
24 say that some of the documents that I submitted earlier
25 have other supporting documentation with it, so this may

1 be something that may be attached to what I've already
2 given. I'm just saying it's not in the left-over part of
3 the file.

4 JUDGE STEARLEY: Okay. If you have
5 authenticated it in a different matter and it's being
6 offered by another party, then it may come in that way,
7 but as this stand-alone exhibit --

8 THE WITNESS: I do not have a matching one.

9 JUDGE STEARLEY: At this point in time, it
10 has not been authenticated.

11 THE WITNESS: No.

12 MR. PUGH: Your Honor, now, this one that
13 she could not authenticate, I don't want to put it back in
14 with the court records, do I?

15 JUDGE STEARLEY: Yes, the court reporter
16 needs to maintain a copy.

17 MR. PUGH: That's what I wanted to know.
18 Thank you.

19 MR. COMLEY: For my clarification,
20 Exhibit 68 was a letter dated March 18, 2005 signed by
21 Cynthia Davies?

22 JUDGE STEARLEY: That's what I have.

23 MR. PUGH: That's what we have.

24 JUDGE STEARLEY: The record will reflect
25 that I did not allow it into evidence, but the court

1 reporter needs to maintain that copy.

2 MR. COMLEY: Your Honor, has 68 been ruled
3 on?

4 JUDGE STEARLEY: Not yet. I believe
5 Ms. Spurlock is diligently searching.

6 THE WITNESS: And found it.

7 JUDGE STEARLEY: And that is a letter with
8 an attachment, a two-page attachment; is that what you
9 have?

10 THE WITNESS: Yes, sir.

11 JUDGE STEARLEY: And you have a clean copy
12 of that document?

13 THE WITNESS: I do.

14 JUDGE STEARLEY: We will mark the clean
15 copy as Exhibit 68 and substitute it for Mr. Pugh's, which
16 had additional markings on it.

17 (EXHIBIT NO. 68 WAS REMARKED FOR
18 IDENTIFICATION BY THE COURT REPORTER.)

19 JUDGE STEARLEY: It has been authenticated.
20 Are there any other objections?

21 MR. COMLEY: No objection to 68.

22 JUDGE STEARLEY: And it shall be received
23 and admitted into evidence.

24 (EXHIBIT NO. 68 WAS RECEIVED INTO
25 EVIDENCE.)

1 JUDGE STEARLEY: I believe that takes us to
2 Exhibit 69, which is titled Southwest Missouri Department
3 of Natural Resources Public Drinking Water Unit.

4 MR. PUGH: That's what I have.

5 JUDGE STEARLEY: Which appears to be a
6 six-page document.

7 THE WITNESS: The problem I'm running into
8 is I don't have them grouped the same way they are.

9 JUDGE STEARLEY: That's quite all right.
10 You don't need to explain. I know you're doing your best
11 to locate them. I'm sure I don't have them all in the
12 same order as anyone else here either.

13 THE WITNESS: They were in order at one
14 time, yesterday. This is the letter (indicating).

15 Here again, I have a copy of the letter and
16 a Notice of Violation, but the report of construction
17 inspection may be attached to the permits.

18 JUDGE STEARLEY: So --

19 THE WITNESS: But I do have the June 28th,
20 2005 letter.

21 JUDGE STEARLEY: You have that letter,
22 which is a two-page letter?

23 THE WITNESS: Yes, sir, pages 2 and 3.

24 JUDGE STEARLEY: Right. And the other
25 documents you do not have; is that correct?

1 THE WITNESS: I have the last page, which
2 is the Notice of Violation on June 28th, 2005.

3 JUDGE STEARLEY: Which would be page 6 of
4 this (indicating)?

5 THE WITNESS: Yes.

6 JUDGE STEARLEY: Okay. We can amend
7 Exhibit 69 to include just these three pages. Can you
8 verify that these are true and accurate copies of those
9 pages?

10 THE WITNESS: Yes, sir.

11 JUDGE STEARLEY: And you have clean copies
12 of those pages?

13 THE WITNESS: Yes, and I believe the others
14 are actually attached to what I've submitted previously.

15 JUDGE STEARLEY: Would there be any
16 objections to the amended Exhibit 69, the admission of
17 that?

18 MR. COMLEY: That means that the cover page
19 on the existing Exhibit 69 would be removed, as well as
20 the two pages between the signature page for Ms. Davies
21 and the Notice of Violation signed by Clinton Finn.

22 JUDGE STEARLEY: That would be correct.

23 MR. COMLEY: I have no objection to the
24 replacement of the exhibit with the reformed exhibit.

25 THE WITNESS: I have the Notice of

1 Violation.

2 JUDGE STEARLEY: Very well. We will
3 replace that, and Exhibit 69, as amended, will be received
4 and admitted into evidence.

5 (EXHIBIT NO. 69, AS AMENDED, WAS RECEIVED
6 INTO EVIDENCE.)

7 JUDGE STEARLEY: And I believe our last one
8 is Exhibit 70, which I have the cover page June 28, 2005
9 letter to Mr. Golden from Cynthia Davies, total of five
10 pages. It's a letter with attachment.

11 THE WITNESS: I have that document, sir.

12 JUDGE STEARLEY: Do you have the same
13 pages?

14 THE WITNESS: Yes.

15 JUDGE STEARLEY: And can you verify that
16 it's true and accurate copies of those documents?

17 THE WITNESS: Other than reading them word
18 for word, they appear to be the same.

19 JUDGE STEARLEY: And you have clean copies
20 of those?

21 THE WITNESS: Yes, sir.

22 JUDGE STEARLEY: We will substitute for the
23 present copy, which has some additional markings, as
24 Exhibit 70.

25 MR. COMLEY: No objection.

1 JUDGE STEARLEY: All right. Hearing no
2 other objections, clean copies of Exhibit 70 shall be
3 received and admitted into evidence.

4 (EXHIBIT NO. 70 WAS RECEIVED INTO
5 EVIDENCE.)

6 JUDGE STEARLEY: Mr. Pugh, do you have any
7 additional documents?

8 MR. PUGH: I believe that is the last one,
9 your Honor, for DNR that is.

10 JUDGE STEARLEY: And I don't believe, by my
11 list, that there are any other parties that had documents
12 they wanted to verify with the DNR.

13 I thought you had already verified your
14 singular document, Ms. Orlor.

15 MS. ORLER: There were others that you had
16 omitted yesterday prior to Mr. Comley indicating that
17 someone would be here today.

18 JUDGE STEARLEY: Yes, and when I asked you,
19 you brought one document. Are these additional documents
20 that are DNR's, obtained from DNR, or what documents are
21 we referring to here?

22 MS. ORLER: The one I brought you did
23 receive a number from yesterday. These were from
24 yesterday that did not receive a number and, yes, these
25 are DNR documents.

1 JUDGE STEARLEY: They were not marked?

2 MS. ORLER: Yes.

3 JUDGE STEARLEY: You did not offer them as
4 part of your testimony yesterday?

5 MS. ORLER: Yes.

6 MR. COMLEY: If they have not been marked,
7 your Honor, I don't see how they could have been offered.

8 JUDGE STEARLEY: I don't either.

9 MS. ORLER: One has either 51, 52 or 53 on
10 it, but then I don't know if it got a number actually
11 assigned. It was 51.

12 MR. MILLS: Your Honor, it appears she's
13 looking now at Exhibit 51.

14 JUDGE STEARLEY: Exhibit 51 on my list is a
15 letter to a Mr. Rickets.

16 MS. ORLER: Kristine Rickets.

17 JUDGE STEARLEY: Okay. That particular
18 document was marked, and do you have additional documents
19 you're referring to?

20 MS. ORLER: Yes. Uh-huh.

21 JUDGE STEARLEY: Were they marked as
22 exhibits yesterday?

23 MS. ORLER: Either I didn't put numbers on
24 them or they didn't get marked.

25 JUDGE STEARLEY: If they did not get

1 marked, they were not exhibits that were offered during
2 your testimony and they will not be marked now or checked.
3 So would you like a few moments to try to confirm which
4 documents were, in fact, offered into evidence?

5 MS. ORLER: I would then assume this would
6 be the only document then, the one that does have a
7 number, which is 51 (indicating).

8 JUDGE STEARLEY: All right. If you will
9 please bring that forward, and may I take a look at it
10 first?

11 All right. If you'll please show this to
12 Ms. Spurlock, custodian of records.

13 Mr. Pugh, if you will leave all those clean
14 copies of marked exhibits there, we will -- at some point
15 when we have the opportunity, we'll get copies
16 distributed.

17 MR. PUGH: Thank you, your Honor.

18 MS. HEINTZ: Your Honor, while Ms. Spurlock
19 is looking for Ms. Orler's document, I have what was
20 previously the third page of 67, now marked as 95. Has
21 that been offered and admitted?

22 JUDGE STEARLEY: Yes.

23 MS. HEINTZ: Okay. Thank you.

24 JUDGE STEARLEY: No problem. I hope by the
25 end of this hearing all our exhibit lists will match one

1 another.

2 Mr. Comley, with the documents we had
3 authenticated for you today, are you going to be using
4 them with other witnesses as testimony is taken, or how do
5 you want to proceed with opening them up to any other
6 types of objections like relevancy, et cetera?

7 MR. COMLEY: I think what we'll do is, when
8 the copies get here, I will distribute them to each party
9 and we can go through the exhibit line by line or each
10 exhibit at that point and I'll make an independent or
11 separate offer, each exhibit.

12 JUDGE STEARLEY: Very good. I know we
13 still have a number of witnesses we're going to be trying
14 to reach today, and I'm not sure the extent of
15 cross-examination there will be for those witnesses, but I
16 am prepared to stay late so we can cover a lot of ground
17 this evening. We can kind of see where we're at in a
18 little bit, but if anyone would need to make arrangements
19 for having to stay late, I would encourage them to
20 contemplate that's a possibility today.

21 MR. MILLS: Would you anticipate about the
22 same as last night?

23 JUDGE STEARLEY: It may go later, depending
24 if we need to plow some ground here today so that we're in
25 a good position to finish up tomorrow.

1 MR. MILLS: I can stay to eight easily.

2 After eight --

3 JUDGE STEARLEY: Please keep me apprised if
4 there's these type of considerations because I do want to
5 be respective of the parties and their needs. I only have
6 to worry about three Labrador retrievers waiting at home
7 for me. I'm sure they'll be very upset if I'm too long in
8 arriving.

9 THE WITNESS: Your Honor, I'm not finding
10 this particular document; however, it is marked with the
11 DNR's received thing of what was the Jefferson City
12 regional office at the time. It may be attached to
13 something I've already submitted.

14 JUDGE STEARLEY: All right. As the
15 document stands, however, are you telling me you cannot
16 authenticate it?

17 THE WITNESS: Other than it does have the
18 DNR mark on it, that's all I can say.

19 JUDGE STEARLEY: All right. I will -- I
20 believe there was a previous objection made --

21 MR. COMLEY: Yes, there was.

22 JUDGE STEARLEY: -- and I will sustain that
23 at this time and it will not come into evidence.

24 Do we have any other matters that
25 Ms. Spurlock needs to address first today?

1 (No response.)

2 JUDGE STEARLEY: Not hearing anything from
3 the parties, Ms. Spurlock, I appreciate your patience and
4 your assistance, and we will excuse you as a witness.

5 THE WITNESS: Thank you.

6 JUDGE STEARLEY: Mr. Comley, I believe your
7 next witness is Mr. Rusaw.

8 MR. COMLEY: Yes. We'll call Mr. Rick
9 Rusaw to the stand.

10 (Witness sworn.)

11 JUDGE STEARLEY: You may be seated.

12 Mr. Comley, you may proceed.

13 RICK RUSAW testified as follows:

14 DIRECT EXAMINATION BY MR. COMLEY:

15 Q. Mr. Rusaw, would you again state your full
16 name for the record, please.

17 A. Rick Rusaw.

18 Q. And, Mr. Rusaw, are you the same Mr. Rusaw,
19 the same Rick Rusaw who caused to be filed in this case
20 three pieces of written testimony which have been --
21 direct, rebuttal and surrebuttal that have been marked as
22 Exhibits 9, 10 and 11?

23 A. I am.

24 Q. And do you also have copies of that
25 testimony in front of you?

1 the admission of Exhibits 9, 10 and 11 and offer the
2 witnesses for cross-examination.

3 JUDGE STEARLEY: Do we have any objection
4 to the admission of Exhibits 9, 10 and 11?

5 (No response.)

6 JUDGE STEARLEY: Hearing none, they will be
7 received and admitted into evidence.

8 (EXHIBIT NOS. 9, 10 AND 11 WERE RECEIVED
9 INTO EVIDENCE.)

10 MR. COMLEY: And as I said, I tender the
11 witness for cross.

12 JUDGE STEARLEY: Thank you, Mr. Comley.

13 And I believe we are beginning cross with
14 the 393 companies.

15 MS. HOLSTEAD: Your Honor, we waive
16 cross-examination.

17 JUDGE STEARLEY: All right. Followed by
18 Staff.

19 MS. HEINTZ: Thank you. I have no
20 questions.

21 JUDGE STEARLEY: Followed by the Office of
22 the Public Counsel.

23 MR. MILLS: I do have just a few questions.

24 CROSS-EXAMINATION BY MR. MILLS:

25 Q. Good afternoon, Mr. Rusaw.

1 A. Hi.

2 Q. I'm going to ask some background questions
3 about Folsom Ridge. What exactly is Folsom Ridge?

4 A. Folsom Ridge is a limited liability
5 company.

6 Q. And what is your involvement with Folsom
7 Ridge?

8 A. One of the partners.

9 Q. Who are the other partners?

10 A. Just one remaining partner, Mr. Reggie
11 Golden.

12 Q. Who were the original partners?

13 A. Mr. David Lees, Reggie and myself.

14 Q. And when was the -- is it a limited
15 liability corporation or a limited liability partnership?

16 A. It's a limited liability company.

17 Q. Okay.

18 JUDGE STEARLEY: Mr. Rusaw, could you
19 please speak a little bit more into the microphone?

20 THE WITNESS: Sure.

21 JUDGE STEARLEY: Thank you.

22 BY MR. MILLS:

23 Q. And when was that company formed?

24 A. I believe it was formed in 1998.

25 Q. And what was the purpose of its formation?

1 A. The purchase of ground over here at Lake of
2 the Ozarks, the Big Island purchase.

3 Q. It was formed expressly for the purpose of
4 developing Big Island?

5 A. Yes.

6 Q. And at that time, were you a resident of
7 Missouri or Colorado?

8 A. Colorado.

9 Q. And Mr. Golden?

10 A. Colorado.

11 Q. Mr. Lees?

12 A. Colorado, but had moved here to Missouri.

13 Q. Okay.

14 A. I don't know where his residency was after
15 that point.

16 Q. But at the time, he was -- he was
17 essentially the partner on the ground and you and
18 Mr. Golden were mostly in Colorado; is that correct?

19 A. Yes. The way it was set up was, we did
20 it -- I did it as an investment piece, so I wasn't an
21 active part of the management. Was a full partner, third
22 partner. Mr. Golden was in the same position, as an
23 investment partner. Mr. Lees was the managing partner and
24 was paid an annual salary of 75,000 a year to be the
25 on-ground, on-site managing partner.

1 Q. And when did Mr. Lees leave the
2 partnership?

3 A. I believe that was the spring of 2001.

4 Q. And what were the circumstances that led to
5 his leaving the partnership?

6 A. We had been experiencing more and more
7 difficulty with Mr. Lees related to complaints from
8 neighbors on the island, residents on the island
9 indicating that he was hard to get along with, but we were
10 experiencing difficulty with him in complying with just
11 some of our normal stuff we were asking for, receipts to
12 come on time, things like that. And Mr. Lees asked to be
13 bought out of the partnership.

14 Q. During the period of time before he left
15 the partnership, was he the main contact between Big
16 Island residents, prospective residents and Folsom Ridge?

17 A. Early on, he was the sole contact. And as
18 it progressed toward his leaving, he became -- but during
19 his tenure there, yes, he was the main contact.

20 Q. Would you have been privy to communications
21 that Mr. Lees sent out to residents of Big Island?

22 A. The answer is sometimes. We would have
23 assumed yes. My answer would like to be yes, that we
24 were, but we've discovered along the way, there were
25 things we didn't know was going on.

1 MR. MILLS: May I approach?

2 JUDGE STEARLEY: You may, Mr. Mills.

3 THE WITNESS: Can I be a mind reader and
4 guess what's coming?

5 MR. MILLS: Well, everybody else knows.

6 BY MR. MILLS:

7 Q. Let me show you what's been marked as
8 Exhibit 57, and you tell me if in your role as a partner
9 in Folsom Ridge, you're familiar with that document?

10 A. I have seen it. Not at the supposed time
11 it was delivered, but I have seen it subsequently.

12 Q. As a partner in Folsom Ridge, can you
13 confirm that that was, in fact, a communication from
14 Mr. Lees, your partner at the time, to residents of Big
15 Island?

16 A. No, I can't, because Mr. Lees never
17 confirmed this. The first time I saw this document was
18 actually Mr. Pugh showed it to me. Never have been able
19 to get Mr. Lees to verify this was something he gave. I
20 am not suggesting that he didn't. I'm just suggesting
21 that I can't verify that.

22 MR. MILLS: And, your Honor, that's all the
23 questions I have. Thank you.

24 JUDGE STEARLEY: All right. Thank you,
25 Mr. Mills.

1 Okay. We move to the Complainants.

2 Cross-examination, Ms. Orler?

3 MS. ORLER: Thank you, your Honor.

4 CROSS-EXAMINATION BY MS. ORLER:

5 Q. Mr. Rusaw, I'd like to go through each one
6 of your testimonies. We'll begin with your direct
7 testimony, please. On page 1 of your direct testimony,
8 begin with line 12, you have already provided your resume
9 and that is with Ms. Brunk's BB Schedule 2. I'd like to
10 ask you, are you a plumber?

11 A. No, I'm not.

12 Q. Do you have an engineering background?

13 A. No, I do not.

14 Q. Okay. Do you have any wastewater technical
15 experience?

16 A. No, I do not.

17 Q. Have you done any wastewater installation?

18 A. No, I have not.

19 Q. Do you have the ability to recognize and
20 install different sizing of pipes associated with
21 wastewater?

22 A. At my home, at a friend's house, you mean,
23 can I recognize that one pipe might be bigger than another
24 one? Yes, I could do that.

25 Q. Do you know the difference by definition

1 between a water main versus a service line?

2 A. Yes, I do.

3 Q. And could you provide that for the Court
4 today, please?

5 A. The water mains are lines that are two
6 inches or larger, if I'm understanding the DNR code on
7 that, and a service line would be smaller than two inches.

8 Q. And is that the only definition you're
9 familiar with?

10 A. For the most part.

11 Q. Okay. Can you tell me if a line is coming
12 to a residence and services more than one residence, what
13 the terminology would be for that?

14 A. No, I cannot.

15 Q. Do you have any construction background?

16 A. No, I do not.

17 Q. Have you ever managed construction crews?

18 A. No, I have not.

19 Q. Okay. Did you take any educational courses
20 either prior to the development on Big Island or during
21 the course of the development on Big Island to acquaint
22 yourself and educate yourself with water and wastewater
23 utility installation?

24 A. No.

25 Q. Would you please tell us why?

1 A. I wasn't operating personally. We've hired
2 people who are certified who have taken those courses, who
3 need to do that, have the ability to recognize someone's
4 license, application, opportunities, background,
5 experience. But no, I have not personally taken any
6 classes in that.

7 Q. Okay. Thank you. On page 3 of your direct
8 testimony, you've asked yourself the question, why are
9 both Folsom Ridge and the Association joining in the
10 agreement as sellers. Can you tell me who owns the
11 utility on Big Island?

12 A. The utility, the actual ground under it,
13 the utility itself, the pipes, the plants are owned by
14 Folsom Ridge, and the Big Island Homeowners Association
15 owns the operation and management.

16 Q. Okay. Based on your answer, can you tell
17 me why, then, a document was submitted to DNR, to Kristine
18 Ricketts, indicating that the ground and the utility had
19 been turned over to the Homeowners Association?

20 MR. COMLEY: That assumes facts not in
21 evidence, your Honor.

22 JUDGE STEARLEY: I will sustain that
23 objection.

24 BY MS. ORLER:

25 Q. On page 4, line 17 of your direct

1 testimony, you have indicated that the Association has
2 kept funds in a reserve for operational maintenance. And
3 at the time of this testimony you had indicated that there
4 was approximately \$7,000 in this account that would be
5 transferred to the 393 companies?

6 A. Yes.

7 Q. Okay. And you're also familiar with the
8 amended and restated covenants and conditions of the Big
9 Island Homeowners Association?

10 A. Yes.

11 Q. In the amended and restated covenants and
12 conditions governing the operations of the Big Island
13 Homeowners Association, can you tell the Court what those
14 documents indicate upon the dissolve of the corporation?

15 A. I don't have the documents directly in
16 front of me. It's my understanding, my recollection that
17 any net assets, any assets that are above and beyond, once
18 the dissolution or at the point of dissolution are to be
19 distributed, I believe, back to the members.

20 Q. That is correct. So in your testimony,
21 your direct testimony --

22 JUDGE STEARLEY: Ms. Orlor, I'm sorry. The
23 statement you added at the end, that is correct, that
24 constitutes testimony. Please restrict your questioning
25 to just questions for Mr. Rusaw.

1 MS. ORLER: I apologize.

2 JUDGE STEARLEY: Thank you.

3 BY MS. ORLER:

4 Q. How then, if the proceeds from the
5 corporation once it's resolved, if they're supposed to be
6 distributed among its members, how can the \$7,000 that's
7 left in the account be transferred to the 393 companies?

8 A. The Folsom Ridge and Big Island are
9 transferring one of those assets. One of the assets is
10 that reserve account.

11 Q. All right. So are you -- are you stating
12 then that there would be no residual because everything is
13 being transferred?

14 A. Everything is being transferred. There are
15 no proceeds, and the -- all of the assets of the company,
16 which would include that reserve account, are being
17 transferred.

18 Q. In your direct testimony, you have
19 indicated that on line 5, page 5, a portion of the tap fee
20 permits collected by the 393 companies from certain
21 homeowners or their successors in title over the next ten
22 years will be paid to Folsom Ridge as consideration for
23 the transfer of the assets; is that correct?

24 A. Yes.

25 Q. How did you arrive at that figure?

1 A. Which figure? I don't see a figure in
2 here. The 393, I believe that's the Missouri number for
3 nonprofit company, and the ten years is a specific time
4 period.

5 Q. Okay. And how did you arrive at that
6 ten-year time period?

7 A. We were -- we were looking at what is the
8 long-term buildout for us in our development so we would
9 have people in the PUD in any development that may occur
10 on the interior that would need to have water and sewer
11 provided to it. Since we would have built those lines as
12 part of the agreement, part of our recovery of those fees
13 would be in -- through the tap fees as they connect up.

14 Q. So the tap fees as you have just explained
15 them to the Court today extend to the PUD project and not
16 only to those individuals with reserved future rights to
17 connect, such as myself, that have not done so yet?

18 A. I'm not sure I understand your question.

19 Q. Okay. The tap fees that Folsom Ridge will
20 be receiving for a ten-year period into the future from
21 the 393 companies, where will those tap fees come from?

22 A. Those tap fees will come from any new
23 homeowner or purchaser of a villa, lot, that that comes
24 through the purchase.

25 Q. So those tap fees are not limited to or

1 restricted to existing homeowners that resided on Big
2 Island prior to Folsom Ridge purchasing property on Big
3 Island and those individuals purchasing water and sewer
4 taps with a reserved future right to connect that have not
5 yet connected?

6 A. I'm sorry. You're going to need to ask me
7 that again. I'm not sure what you're after.

8 Q. Someone such as myself who purchased from
9 Folsom Ridge a water and sewer tap, I am not yet
10 connected, yes, but yet I do have a reserved future right
11 to connect. Would I be one of the individual tap fees
12 included in this?

13 A. No. You've already paid that tap fee, and
14 you're already guaranteed a spot on the system. So
15 there's no additional fees that would be collected from
16 you for that.

17 Q. Okay. Then can you please tell us what
18 would be the amounts respective to sewer and respective to
19 water that Folsom Ridge will be receiving in the future
20 from the individuals that you've just described?

21 A. Which individuals? You or the people who
22 are coming on new?

23 Q. The people who are coming on new.

24 A. I don't believe we have set all of those
25 rates yet. Those need to be determined. Currently,

1 they're 4,800 for sewer and we've increased water to
2 3,000. That will still be part of the contractual
3 relationship to work out with the 393.

4 Q. Okay. So you're planning on transferring
5 assets, and a part of this agreement will include these
6 future fees, but you've not yet established those figures;
7 is that correct?

8 A. They are -- they are part of the whole
9 contract that has to be done before any of this is
10 completed. Those are to be determined.

11 Q. So how did you arrive then at these initial
12 figures?

13 A. Which initial figures?

14 Q. The ones that you're using of the \$4,800
15 for sewer and the \$3,000 for water.

16 A. What I said was currently today?

17 Q. Correct.

18 A. We would charge 4,800 for a sewer tap and
19 3,000 for a water tap.

20 Q. So how did you arrive at those figures that
21 you're using today?

22 A. Those are the costs for purchasing the tap.

23 Q. And how did you arrive at those figures?

24 Did you use a cost analysis, a cost basis? How did you
25 arrive at these figures?

1 A. We took the number of what we anticipate
2 the connections would be, we added in what we thought the
3 cost of construction would be, projected that out, and I'm
4 sure that's how we arrived at a number.

5 Q. Okay. Now, how did you arrive at the
6 figures for the person such as myself when I paid \$4,800
7 for sewer and I paid \$2,000 for water?

8 A. We took an approximate number of 80, which
9 is what the first filter bed was -- and sewer was
10 constructed for and first water plant that was constructed
11 for, took the cost that we had for construction of that
12 and divided that number by 80 to determine a tap fee.

13 Q. Now, are you aware that in the feasibility
14 study that was provided by Folsom Ridge in the application
15 case, that as a result of that study, the Staff has
16 determined now that there is a large amount of CIAC,
17 contribution in aid of construction refund now due the
18 individuals who paid \$4,800 for sewer and \$2,000 for
19 water?

20 MR. COMLEY: Objection. The feasibility
21 study is not a part of this testimony or not a part of
22 this record. It is part of a case that's been dismissed,
23 and the question to the witness is argumentative.

24 JUDGE STEARLEY: At this point, that
25 evidence is not in this matter, and I will sustain the

1 objection.

2 MS. ORLER: May I ask a question?

3 JUDGE STEARLEY: Certainly.

4 MS. ORLER: The issue before the Commission
5 as it stands is whether or not this utility should be
6 regulated and fall under the jurisdiction of the Missouri
7 Public Service Commission.

8 JUDGE STEARLEY: The initial issue is
9 whether or not we have a water or sewer company as defined
10 under our statutes which would qualify this as a public
11 utility that falls under our jurisdiction.

12 MS. ORLER: So then the CIAC refund amount
13 that is looming out there will have to be addressed once
14 this is ruled upon?

15 JUDGE STEARLEY: The amounts you're talking
16 about are not relevant to the issue that I just described.

17 MS. ORLER: Okay. Thank you.

18 JUDGE STEARLEY: Staff will be presenting
19 its witness later on in this proceeding, and if they offer
20 evidence regarding studies, et cetera, you will have the
21 opportunity to cross-examine those witnesses.

22 MR. MILLS: And, your Honor, since that
23 evidence is expected to be introduced by Staff in this
24 case, would it be appropriate for Ms. Orler to ask that
25 question in a hypothetical of this witness?

1 JUDGE STEARLEY: She can ask hypotheticals,
2 but as it stands right now, those facts are not in
3 evidence.

4 BY MS. ORLER:

5 Q. So hypothetically, Mr. Rusaw, how would you
6 address, then, the refund that is due to the CIAC refund,
7 how would you address that?

8 MR. COMLEY: I'll object to the form of the
9 question.

10 JUDGE STEARLEY: I'll sustain that. You
11 need to rephrase that objection (sic). You need to
12 develop a hypothetical question that gets you to that
13 answer. You're still assuming facts that are not in
14 evidence with the way you've stated that question.

15 BY MS. ORLER:

16 Q. Mr. Rusaw, hypothetically, if this utility
17 were to be regulated and as a result of that regulation
18 the asset transfer agreement were approved, how would you
19 address the refund amount due to purchasers in the CIAC?

20 MR. COMLEY: I still think the form of the
21 question is objectionable. I think now it's compound, and
22 would object to the form of the question on those grounds.

23 JUDGE STEARLEY: And I'm going to sustain
24 that objection. If you can perhaps break your question up
25 into a couple of questions in hypothetical to lead

1 Mr. Rusaw to appropriate answers, we will have it.

2 MS. ORLER: I'll try one more time.

3 BY MS. ORLER:

4 Q. If this utility were to become regulated by
5 the Public Service Commission, I would imagine that there
6 would be some conditions or issues that would be addressed
7 prior to the transfer of assets to the 393 companies.

8 Would you agree with that statement, Mr. Rusaw?

9 A. Would I agree that the Commission would
10 place some conditions on our transfer?

11 Q. Some issues that would need to be addressed
12 prior to the transfer.

13 A. I'm assuming that if the Commission had
14 issues we needed to address -- let me back up. If your
15 assumption is right that they're going to see us as
16 needing to be regulated and they would make conditions, I
17 would assume we would comply with those conditions.

18 Q. And if there was a refund in the CIAC
19 amount due and that were one of the issues, how would you
20 address that?

21 A. First of all, we would certainly have our
22 financial folks determine what -- whether that's -- how we
23 get to that number. If there's a number that is
24 determined by the Missouri Public Commission that we have
25 to comply with, we would comply with the number.

1 Q. All right. So if in the initial setting of
2 fees that resulted in a surplus or excess in the CIAC fund
3 but yet you're utilizing those same figures as a cost
4 basis for tap fees into the future, but they've already
5 been established to be too much, how would you address
6 that issue?

7 MR. COMLEY: Again, Judge, the form of the
8 question is confusing and vague and, again, I think
9 assumes facts not in evidence. Irrespective of the fact
10 that Mr. Merciel has attached Mr. Hummel's testimony to
11 his own in connection with the case, I don't think that
12 that can cure the fault with the question.

13 JUDGE STEARLEY: I'm having a great deal of
14 difficulty understanding the question myself, so I'm going
15 to ask Ms. Orlor to rephrase.

16 MS. ORLER: Okay. And perhaps I can better
17 address that using Mr. Hummel's calculations in his
18 testimony, and that would make it more understandable for
19 everyone at a later time.

20 JUDGE STEARLEY: It has not been offered
21 into evidence at this point in time. If you'd like to
22 show Mr. Rusaw a document that he can make some comments
23 regarding and ask him questions that are not
24 objectionable, we can perhaps proceed that way.

25 MS. ORLER: I'll just move on. I won't

1 take the Court's time. I realize I'm inexperienced in
2 asking that question and I'm not achieving the objective
3 I'd hoped to.

4 JUDGE STEARLEY: Keep in mind you'll still
5 have the opportunity to cross-examine Staff's witness when
6 they present their testimony.

7 BY MS. ORLER:

8 Q. With regard to your direct testimony on
9 page 7, beginning with line 22, you refer to a special
10 meeting of the Association's membership that was held on
11 January the 29th at Central Bank?

12 A. Yes.

13 Q. And how were residents notified of this
14 special meeting?

15 A. They were notified by letter.

16 Q. And can you explain the letter of
17 notification that went out?

18 A. It was a letter that was sent announcing
19 the meeting. It was announcing the issue to be dealt with
20 at the meeting and the date and time and place of the
21 meeting.

22 Q. Okay. And do you know what the
23 requirements are, as per the amended and restated
24 covenants and conditions that govern the Big Island
25 Homeowners Association, with regard to notice of an annual

1 meeting?

2 A. Yes, there's 30-day notice.

3 Q. Okay. And that same applies to a special
4 meeting, correct?

5 A. Yes, I believe it does.

6 Q. Do you know -- do you recall what the date
7 was on the letter that was sent out?

8 A. It was late December. I don't have the
9 letter in front of me.

10 Q. Do you recall what the postmark was on the
11 envelopes that that letter came in?

12 A. It would be late December as well.

13 Q. Just one moment, if I may.

14 A. We also sent a letter out, I think you're
15 going to show me, which you've already submitted into
16 evidence. You're going to show me something dated
17 January, I believe 18th maybe.

18 Q. That would be correct.

19 A. We sent a letter out two weeks later and a
20 letter out three weeks following, so that individual
21 homeowners received three notices. The first one went out
22 30 days prior. There was an additional one and a third
23 one that went.

24 Q. All right. On page 8 of your direct
25 testimony, line 20, you describe once again the customers

1 that are connected, and you did make some amendments to
2 this testimony today, correct?

3 A. Yes.

4 Q. I'm sorry. Now, on line 27, you indicate
5 that there are 92 customers that are billed by the
6 Association. Are all of these customers that are being
7 billed by the Association members of the Association who
8 have signed ratification documents mutually agreeing by
9 their signature to membership in the Association?

10 A. No. They've not all signed a ratification.

11 Q. Can you tell me what some of these
12 customers are being billed for if they are not members of
13 the Association?

14 A. There's some of those individuals who have
15 connected to the system and they're being billed for that
16 service. There are others who purchased a tap fee for
17 either water or sewer or water and sewer and they're being
18 charged a nominal fee that came out of a conversation in
19 the summer of 2000 through the fall of 2000, negotiation
20 with some neighbors that provided availability fee, a
21 maintenance fee, a small nominal charge to make sure that
22 the system was in shape for them when they should choose
23 to tap onto the system.

24 Q. So are you saying that rate structures and
25 rate fees are developed out of conversations?

1 A. I'm saying that we had conversations with
2 neighbors that were ongoing and that was one of the
3 proposals that was made that we moved forward with, and
4 then at a duly called meeting, Big Island Homeowners
5 Association approved that fee. So it wasn't simply, as
6 you're implying, out of a conversation, we just decided to
7 add it on.

8 Q. So when it was approved in a meeting by a
9 vote, how did this fee affect individuals who are not
10 members of the Association?

11 A. Would you restate your question or just ask
12 me again?

13 Q. How did you enforce that fee with
14 individuals that you are charging that fee to if they are
15 not members of the Association?

16 A. We simply send a bill and would like for
17 them to comply with that.

18 Q. Okay. Now, is there a fee associated with
19 all either water or sewer taps that are not connected to
20 the system?

21 A. Is there a -- there's a \$5 fee for sewer,
22 there's a \$5 fee for water.

23 Q. And whom is that -- to whom is that fee
24 being charged?

25 A. To those who have not connected to the

1 system.

2 Q. Okay. And approximately how many of those
3 billings monthly go out or how many people or how many
4 taps are affected by that?

5 A. There are approximately 30.

6 Q. 30?

7 A. 30, 31, 32. Approximately 30.

8 Q. Okay. And where are these bills sent?

9 A. To their mailing address.

10 Q. To their mailing address. Okay. Now,
11 Folsom Ridge owns lots that are a part of the original
12 system that by virtue of the amended and restated
13 covenants and conditions have a reserved future right to
14 connect. Does Folsom Ridge also pay this monthly fee for
15 those taps that are not connected?

16 A. We pay for the taps that we have connected.
17 We don't -- we didn't make deposit on any of those other
18 lots. Those will come online as those lots are developed
19 and move forward.

20 Q. Okay. Now, you said that you do pay for
21 your lots that are connected, but you do not pay for those
22 lots that are not connected?

23 A. But they have not -- they have not placed a
24 deposit down on those lots. We've not placed a deposit
25 from those lots for the water and sewer. So those are

1 anticipated down the road, and when they come online,
2 they'll pay their tap fee and they'll start being billed.

3 Q. And when you say deposit for those lots,
4 can you define deposit, please?

5 A. Just as you made a -- you paid a tap fee,
6 those lots have not paid a tap fee like that yet.

7 Q. So Folsom Ridge has vacant lots that have a
8 water and sewer tap on them currently but are not
9 connected, Folsom Ridge has not paid the \$4,800 per lot
10 for sewer, \$2,000 for water, and nor are you paying the
11 monthly I think you termed availability fee or standby
12 fee?

13 A. To the best of my knowledge, there -- I'm
14 not aware of what lots we have a tap already fed to, but
15 those have not been activated so, no, we have not paid.
16 We -- that would have been in part of our cost of the
17 construction that we would have accounted for those.

18 Q. So are you saying there are some lots that
19 do not have a water and sewer sub on them, water and sewer
20 tap, vacant lots that you own?

21 A. Sure. All along our PUD, we've not run the
22 service lines down to almost all those lots. Just the
23 ones that you've seen completed up on top.

24 Q. Okay. As a part of the original AE system?

25 A. No. Those have now come online with the

1 new system that's coming online.

2 Q. Okay. So a part of the original AE system
3 where you own vacant lots that are not yet connected that
4 have a water and sewer tap on them, have you paid the
5 deposit fee associated with those lots?

6 A. We paid for all of the construction, which
7 took into an account 80, which would have included some of
8 our lots.

9 Q. And so then do you pay the monthly standby
10 fee for those lots in the 80?

11 A. In the 80?

12 Q. Uh-huh.

13 A. I do not know the answer to that question.

14 Q. Okay. You don't know the answer to that.
15 Okay. Now, can you tell me, Mr. Rusaw, I've paid a
16 deposit for water and sewer, and can you confirm, do you
17 send me a monthly bill even though I am not connected?

18 A. Yes, we do.

19 Q. Okay. Thank you. On page 9 of your direct
20 testimony, on line 19, you stated that Folsom Ridge is a
21 member of the Association by virtue of its ownership of
22 lots covered by the declaration of covenants and
23 restrictions. And can you tell me as per the covenants
24 and restrictions how the vote is governed within the
25 homeowners association?

1 A. It's one vote per one lot.

2 Q. And can you tell me how many lots Folsom
3 Ridge votes?

4 A. We have the opportunity to vote 300-plus
5 lots.

6 Q. 300-plus. Can you be a little bit more
7 specific?

8 A. I believe the number's 353, but I might be
9 off slightly. We regularly are selling or transferring a
10 lot.

11 Q. Okay. Are you aware of how many
12 residential property owners there are on Big Island?

13 A. We believe there are 105, 106.

14 Q. And can you tell me of the 105 or 106
15 residential property owners on Big Island, how many of
16 those individuals are actual members who have signed a
17 ratification document agreeing to membership in the Big
18 Island Homeowners Association?

19 A. I believe there's roughly -- I can get you
20 that specific number. I don't have it right in front of
21 me, but I believe it's in the number of 60-some.

22 Q. So could I recap to make certain that I've
23 written down correctly what you told me? You're
24 indicating that Folsom Ridge votes approximately 353 lots
25 at each meeting?

1 A. Yes.

2 Q. That out of the total number of residents
3 on Big Island, which you have guesstimated to be between
4 105 to 106, which -- is that correct?

5 A. Yes.

6 Q. Okay. And actual members, actual
7 residential members in the Big Island Homeowners
8 Association is 60?

9 A. That's the number I'm not certain.

10 Q. Okay. But that's fairly close?

11 A. I believe so.

12 Q. On page 10 of your direct testimony, on
13 line 2, you have stated that the concept of the
14 Association was for members to have a special interest in
15 the operation, ownership and control of the water and
16 sewer system. Do you still agree with that statement?

17 A. I believe my answer -- you're referring to
18 page 10, line 2?

19 Q. Yes. Uh-huh.

20 A. -- is in response to the question, has the
21 Association ever declared a dividend to Folsom or any
22 members? And my answer was, no, it has not. I'm trying
23 to assess what you're asking about line 2.

24 Q. I think sometimes when these get printed
25 out, the questions carry over onto different pages. The

1 question --

2 A. I know mine is the one that was submitted.

3 Q. Oh, okay. Actually, you're asking yourself
4 the question, the Association is strictly a not-for-profit
5 entity. It was established for gain to Folsom Ridge or
6 gain to itself, and then you have stated that the concept
7 was for the members to have a special interest in the
8 operation, ownership and control of the water and sewer
9 system on Big Island.

10 A. Yes, I see where you're at now, and that
11 would be true.

12 Q. That would be true. Can you explain to me
13 how the members would have a special interest in the
14 operation, ownership and control of the water and sewer
15 system if Folsom Ridge is voting 353 lots each meeting?

16 MR. COMLEY: Object. That is
17 argumentative, and I object on those grounds.

18 JUDGE STEARLEY: I believe Mr. Rusaw can
19 answer the question. I will overrule.

20 THE WITNESS: We do believe that this does
21 allow the members to have interest in the operation and
22 the ownership and to provide direction for the control.
23 Currently, as with many HOAs that are in a development, we
24 have the ability, if we vote all of our lots, to certainly
25 carry any vote. But through the history of this, the

1 entire time, we have never, ever overridden the majority,
2 had to go in and put our votes in to override what the
3 majority would have voted at that meeting.

4 BY MS. ORLER:

5 Q. And do you have the documents to support
6 that?

7 A. Yes, we do.

8 Q. And what type of documents would those be?

9 A. Would be from minutes from those meetings.

10 Q. Meeting minutes?

11 A. Uh-huh.

12 Q. Now, I have attended the meetings
13 regularly, and I have -- and I have received meeting
14 minutes, but I would have to disagree that those meeting
15 minutes --

16 MR. COMLEY: Objection. That's testimony.

17 JUDGE STEARLEY: Sustained. You have to
18 restrict your comments to asking questions.

19 BY MS. ORLER:

20 Q. How are we to know that you've never
21 exercised your right to vote your lots?

22 MR. COMLEY: Objection. It's
23 argumentative.

24 JUDGE STEARLEY: I will overrule.

25 THE WITNESS: Because we haven't. We've

1 been at those meetings, we've made proposals. People have
2 adopted those. A majority of the people who voted who
3 were members carried that. We've never had to vote 353
4 lots to get an amendment to approve. We have certainly
5 voted all of our lots, but have never overridden what the
6 majority of the membership had voted for.

7 BY MS. ORLER:

8 Q. But is there any documentation to support
9 that?

10 A. To the best of my knowledge, there is.

11 Q. And what would that be?

12 A. I believe that's in our meeting minutes.

13 Q. Okay. On the same page, page 10 of your
14 direct testimony, you have asked yourself the question,
15 does the Association offer water and sewer services to
16 anyone outside the real property described in the
17 declaration of covenants and restrictions?

18 Now, I want to ask you, when you're saying
19 declaration of covenants and restrictions, are you
20 referring specifically to the declaration of covenants and
21 restrictions or are you referring to the amended and
22 restated covenants and restrictions?

23 A. The amended --

24 Q. Okay.

25 A. -- covenants and restrictions.

1 Q. And can you read for the Court your
2 statement to the question you asked yourself?

3 A. Yes, it does, but the offer of water and
4 sewer service is limited to the facilities that have been
5 installed. The Association does not offer water and sewer
6 service to the public generally, just those persons whose
7 property is proximate to the water mains and wastewater
8 collection lines installed for these systems and who have
9 agreed to pay the entire tap-on fees.

10 MS. ORLER: And, your Honor, if I may, this
11 is one of the documents I referred to earlier and you said
12 this would be the appropriate time to ask Mr. Rusaw about
13 this and then enter it into evidence.

14 JUDGE STEARLEY: Okay. Was that one that
15 was marked yesterday and/or ruled upon?

16 MS. ORLER: I don't have a mark on it, a
17 number on it. It was one of the ones that I had stated to
18 you to defend some of the statements that were asked of me
19 in my rebuttal by Mr. Comley.

20 JUDGE STEARLEY: All right. You can show
21 Mr. Rusaw the document and we can start by asking if he
22 can identify the document.

23 BY MS. ORLER:

24 Q. Can you identify this document
25 (indicating)?

1 JUDGE STEARLEY: And do you have a copy
2 that you can present opposing counsel with?

3 MS. ORLER: I have a copy for everyone.
4 Would you like for me to go ahead?

5 JUDGE STEARLEY: Yes, I would, so we all
6 know what we're looking at. Ms. Orler, can I get an
7 additional one for Commissioner Appling?

8 MS. ORLER: Okay.

9 JUDGE STEARLEY: Thank you.

10 BY MS. ORLER:

11 Q. Can you please identify this document
12 (indicating)?

13 A. Yes. It appears it's a letter we sent to
14 Mr. and Mrs. Schrader.

15 Q. And whose signatures appear at the bottom
16 of this letter?

17 A. It appears that's Mr. Golden's. I can't
18 verify that. That certainly looks like my signature, and
19 I can't verify Mr. Lees' signature.

20 Q. And could you read the top -- actually,
21 could you read the top two paragraphs, please?

22 A. I thought it was time to update all the
23 current members of the Big Island Homeowners Association
24 on the progress with the concerned citizens committee
25 representing approximately 20 non-members.

1 Q. Okay. And could you please read No. 5?

2 A. Restricting the boundary of the HOA to only
3 include the causeway and the island, thus eliminating
4 approximately 160 acres that is somewhat separate anyway.

5 Q. Okay. So if you have addressed this issue
6 with homeowners and you're telling the homeowners that
7 you're restricted boundary of the HOA to only include the
8 causeway and island, thus eliminating 160 acres that is
9 somewhat separate anyway, but in your testimony you're
10 indicating that you offer water and sewer services outside
11 the -- outside the real property described in the
12 declaration of covenants and restrictions --

13 MR. COMLEY: I'm going to object, Judge. I
14 think she's misstated the nature of the letter that she's
15 given to Mr. Rusaw, and again, I think this is arguing
16 with the witness about things. So I would object on those
17 grounds.

18 MS. ORLER: Maybe I can rephrase my
19 question.

20 JUDGE STEARLEY: Yes, why don't you try
21 doing that, Ms. Orler?

22 BY MS. ORLER:

23 Q. If in one letter you're stating to
24 residents that you're restricting the boundary that
25 will -- that the utility will service but in your

1 testimony you're indicating that you have gone outside of
2 that boundary, how do you explain the difference there?

3 MR. COMLEY: Your Honor, she's misstating
4 the nature of letter, and she's also arguing with the
5 witness.

6 JUDGE STEARLEY: I'm going to sustain that
7 objection. If you can ask a question that goes to the
8 explanation of the contents of this letter, please ask,
9 and in that manner.

10 BY MS. ORLER:

11 Q. For what purpose was this letter sent to
12 the homeowners, Mr. Rusaw?

13 A. As I -- as you had me read, it was time to
14 update the current members.

15 Q. And why were you committing to homeowners
16 to restrict the boundary that the HOA would service or
17 include? Why did you establish a boundary?

18 MR. COMLEY: Your Honor, there's nothing
19 in the letter to indicate a commitment to do so or
20 establishment of a boundary. I think it misstates the
21 nature of the letter. The letter speaks for itself.

22 JUDGE STEARLEY: I will sustain that
23 objection. If you wish to have Mr. Rusaw read Item 5 and
24 ask for his explanation of it, you may do that.

25 BY MS. ORLER:

1 Q. Can you please do that, Mr. Rusaw?

2 A. Do I need to reread it for the -- for this
3 restricting the boundary of the HOA to only include the
4 causeway and the island, thus eliminating approximately
5 160 acres that is somewhat separate anyway.

6 We believe we're still consistent with
7 that. We aren't servicing the 160 acres that is separate.
8 We're within the original filings we made with Portage
9 Park. Portage Park 1 does include down across the
10 causeway and along the water and back up into that -- just
11 what would be, I believe, east or southeast of the 160
12 acres.

13 So we had made a commitment to service
14 Portage Park 1, and we're doing that. The
15 160 acres will not be serviced by the water and sewer
16 system. Those will be all individual lots that will have
17 well and septic, and we have advertised them as such.

18 Q. And what is that subdivision called,
19 please?

20 A. Island View Estates.

21 Q. And you said that all of those lots will
22 not be serviced by this original system; is that correct?

23 A. That's correct.

24 Q. Are 12 of those lots currently connected to
25 the system, Mr. Rusaw?

1 A. No, they are not.

2 Q. And you're certain of that?

3 A. Of Island View Estates?

4 Q. Uh-huh.

5 A. To the best of my knowledge, the 160 acres,
6 which was actually 190 once we had it surveyed, is Island
7 View Estates, and there are no homes at all on that
8 property. Therefore, I'm assuming there are no
9 connections.

10 Q. Did you receive a Notice of Violation from
11 DNR in, I believe, June of 2005 for extending construction
12 without a permit off the island?

13 A. I don't have that exactly in front of me.
14 But we did receive a notice about not having a permit
15 filed timely, and I believe Mr. Krehbiel can address that.

16 Q. Are you aware of that there are 12 lots in
17 Island View Estates that as a result of the Notice of
18 Violation that was issued by the Missouri Department of
19 Natural Resources in June of '05 for connecting 12 lots of
20 the Island View Estates off of the island to this initial
21 system?

22 A. I believe you're confusing Island View
23 Estates, which was recently platted with Camden County,
24 with Portage Park 1, which was platted back in the 1960s.

25 Q. Okay. So you're saying that in June of

1 2005 when you were issued a Notice of Violation for
2 construction without a permit for extension of the water
3 line, that that water line went to what subdivision?

4 A. Portage Park 1.

5 Q. That's it for your direct testimony.

6 JUDGE STEARLEY: Ms. Orler, at this time
7 we've been going for a little bit over two hours. I'd
8 like to give our court reporter a break, so why don't we
9 all take about a ten-minute intermission here.

10 (A BREAK WAS TAKEN.)

11 JUDGE STEARLEY: We are now back on the
12 record and, Ms. Orler, you may continue.

13 BY MS. ORLER:

14 Q. I've handed you another document that's
15 very, very similar in information and verbiage to the one
16 that I handed you earlier. I obviously can authenticate
17 this document because it's addressed to me as Cathy Litty
18 under a former name.

19 Can you read to me Item No. -- well, it
20 appears above A and after 4 -- well, excuse me. Can you
21 read No. 4, Item No. 4 on this document, and then the next
22 sentence following Item No. 4?

23 MR. COMLEY: Your Honor --

24 JUDGE STEARLEY: Which page of the
25 document?

1 this document before, things of that nature.

2 BY MS. ORLER:

3 Q. I'm sorry. I've handed you a copy of this
4 document, Mr. Rusaw. Can you identify it as being a
5 document sent from Big Island Homeowners Association?

6 A. I can identify that it has Big Island
7 Homeowners Association at the top of the letter. To the
8 best of my knowledge, I've not seen this document before.
9 It is -- also has -- I can't make out the signature, but
10 what is typed is Reggie Golden. So that's what you've
11 handed me.

12 Q. And does Mr. Golden send out information
13 regarding Big Island Homeowners Association independent of
14 your knowledge?

15 A. He -- he has sent things. I wouldn't say
16 independent of my knowledge, but he has sent things.

17 Q. And since you are equal partner, as you
18 stated earlier, I think to Mr. Mills, can you authenticate
19 then this document?

20 A. At the date of this letter, we were --
21 Mr. Lees, Mr. Golden and I were all three members. Again,
22 to the best of my knowledge, I've not had this in my hand
23 before. Not necessarily saying it didn't get sent to you.
24 I'm just saying that I've not seen it before.

25 Q. Can you see a lot of similarities in the

1 information that's been provided in the second document
2 that I handed you compared to the first document?

3 A. This is a two-page letter. The previous
4 one was a one page. I haven't read either one thoroughly
5 to speak to the similarities. If you want to look at
6 maybe something specific.

7 Q. How about Item No. 4, where you're
8 restricting the boundary that the system -- the area that
9 the system will serve?

10 A. It's -- it does talk about restriction.
11 Your first document talks about not -- basically
12 eliminating what we now refer to as Island View Estates,
13 and the second document you've just given me has more
14 detailed description of that.

15 Q. So when I asked you with regards to the
16 first document exactly what subdivisions were either
17 included or excluded as a part of the boundary and you
18 indicated those subdivisions, you would agree then that
19 the second document would support your statement?

20 A. I would agree that these identify
21 subdivisions that we would be servicing with the water and
22 sewer system.

23 Q. So is the restricted boundary indicated on
24 the second document that I handed you identical to the
25 restricted boundary that was discussed on the first

1 document?

2 A. Well, there is no -- there's no specificity
3 on the first one as the second one has. I would assume
4 the -- again, I need to read this more carefully, but I
5 would assume that it has the same intent.

6 Q. All right. And then can you read the
7 sentence following Item No. 4?

8 A. On the second document?

9 Q. Yes, please.

10 A. Restricting the boundary of the area the
11 system will serve to only include the Big Island lake
12 sites, Big Island lake sites 1 -- or Big Island lake sites
13 first addition, Portage Park Unit 3, Portage Park Unit 1
14 and all other property on the island peninsula itself.

15 Q. And then can you read the following
16 sentence, please?

17 A. We've also dug several holes and have
18 verified proper installation of water and sewer lines.

19 Q. Okay. Now, were you asked -- excuse me.
20 Were you made aware by residents around or about the time
21 that this letter was sent out in -- both of these letters
22 were sent out in the year 2000. Did you have
23 conversations with either Mr. Pugh or any other residents
24 on the island concerning the incorrect installation of the
25 water and sewer lines?

1 A. Yes, we had.

2 Q. Okay. So why then have you made the
3 statement on the second document that I handed you, we
4 have also dug several test holes and have verified proper
5 installation of water and sewer lines?

6 MR. COMLEY: Objection. We're talking
7 about something that's never been admitted into evidence,
8 and again, the question is argumentative.

9 JUDGE STEARLEY: I believe it
10 mischaracterizes the letter as well. This appears to be a
11 letter from Mr. Golden, not a statement made by Mr. Rusaw,
12 as the question was phrased. I will sustain the
13 objection.

14 BY MS. ORLER:

15 Q. Mr. Rusaw, can you tell me, have you
16 made -- have you made commitments to the homeowners on Big
17 Island verifying the proper installation of the water and
18 sewer system?

19 A. Yes, I have.

20 Q. And were those commitments made verbally or
21 written or both?

22 A. I know I made them verbally. It's possible
23 I may have made some written. That's been a long time
24 back, 2000, 2001. Has been quite a while ago.

25 Q. So if you made those commitments, as you

1 said that you did, how do you explain then the improper
2 installation of the water and sewer lines on Big Island?

3 MR. COMLEY: Again, the question is
4 argumentative.

5 JUDGE STEARLEY: Do we have facts in
6 evidence at this time that the water lines were installed
7 incorrectly?

8 MS. ORLER: Yes, we do, your Honor.

9 JUDGE STEARLEY: I believe you can rephrase
10 your question so it doesn't come off as being
11 argumentative.

12 BY MS. ORLER:

13 Q. Since we have evidence, in fact, at this
14 point, Mr. Rusaw, that the water and sewer lines on Big
15 Island were installed incorrectly, how do you account for
16 the statements that you have made to residents both
17 verbally and in writing stating the proper installation of
18 the water and sewer lines?

19 A. The statements, if this document is from
20 Mr. Golden and if it is supportive, which would be -- I
21 made statements similar to that around this time frame,
22 dated November 29, 2000, absolutely believed it was
23 installed correctly, had verification from both our
24 project manager, Mr. Lees, from the contractor, from the
25 engineer.

1 We also had several holes dug and we
2 were -- I was absolutely convinced that Mr. Pugh's
3 concerns were related to some of the service lines that
4 had gone across the street, and even those we attempted to
5 rectify, and never at any time in this time period did I
6 have any knowledge otherwise than we had a correct
7 installation. We had an approved system from DNR, and
8 every representation made to me as a partner, as an
9 individual and as well, since I own a home there, as a
10 homeowner, was that the installation was correct.

11 I was as shocked as anybody in January of I
12 believe it was '04 when we stood there and those two test
13 holes showed there as a significant problem, which we then
14 immediately set out to rectify, and I have on a number of
15 occasions said we were wrong. We made statements, we made
16 assurances based on our knowledge. We were wrong. We
17 have fixed that.

18 Q. Was Mr. Pugh the only resident on Big
19 Island to bring this to your attention?

20 A. Mr. Pugh is in a group of people. I don't
21 recall any time that I was that Mr. Pugh wouldn't have
22 been involved, and as he was observing our meetings, as he
23 said, through his observation and a lot of vocal
24 encouragement that came with that observation. So it was
25 almost -- almost all my conversation would have been with

1 Mr. Pugh, in his home several times. We met at our place.
2 He and I would chat, and those would be on the occasional
3 times that I would be over at the Lake.

4 At this time in the history of the project,
5 I was a fairly passive partner in the actual operations.
6 I was a partner, so obviously I have responsibility for
7 that, but I wasn't there a lot and usually Mr. Pugh was
8 involved.

9 Q. And passive partner, but you did -- you did
10 send out regular correspondences, though, with your
11 signature?

12 A. This one we did send and my signature is on
13 this page (indicating).

14 MS. ORLER: Could I enter both of these
15 documents into evidence, please?

16 JUDGE STEARLEY: You will need to mark the
17 documents with the court reporter and then individually
18 you can offer them into evidence, and they will be subject
19 to the objections of the other parties. So if you would
20 please hand them to the court reporter.

21 And I believe we began with the July 20,
22 2000 letter addressed, Dear Jim and Jeanette. We'll mark
23 that as Exhibit 96.

24 The second letter with Big Island
25 Homeowners Association at the top, dated November 29,

1 2000, addressed to Jeffrey and Cathy Litty, we will mark
2 as Exhibit 97.

3 (EXHIBIT NOS. 96 AND 97 WERE MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 JUDGE STEARLEY: Beginning with Exhibit 96,
6 do you wish to offer this into evidence?

7 MS. ORLER: Yes, your Honor, I do.

8 MR. COMLEY: Your Honor, we would object to
9 the introduction of this because there are interpretive
10 remarks on the face of the document that are not certainly
11 identifiable to the signatories on the document. They're
12 also commentary on the case and what the context of the
13 letter is, and the letter speaks for itself.

14 But aside from the remarks at the top, if a
15 sanitized copy could be supplied, one that did not
16 highlight No. 5 on the letter, I think we would withdraw
17 the objection.

18 MS. ORLER: That can be done.

19 JUDGE STEARLEY: Can that be done?

20 MS. ORLER: Yes, sir.

21 JUDGE STEARLEY: All right. I will rely on
22 you to provide us with a clean copy of the document. Are
23 there any other objections?

24 (No response.)

25 JUDGE STEARLEY: A clean copy of the

1 document will be received and admitted into evidence.

2 (EXHIBIT NO. 96 WAS RECEIVED INTO
3 EVIDENCE.)

4 JUDGE STEARLEY: And Exhibit 97?

5 MS. ORLER: Yes. I'd like to enter that
6 into evidence also, your Honor.

7 MR. COMLEY: To the extent that our copy is
8 free of redaction or highlighted marks, I have no
9 objection to the introduction of that exhibit. I think
10 that the witness has reviewed a copy -- or a copy of the
11 letter that does have highlights on it, and at least I can
12 see some shading in this one, and the preference would be
13 that that shading be removed and allow the letter to speak
14 for itself.

15 JUDGE STEARLEY: Is this also a document
16 you can provide a clean copy of, Ms. Orler?

17 MS. ORLER: I'll do my best, yes, sir.
18 Yours has highlights on it, Mr. Comley?

19 MR. COMLEY: Well, it looks like there are.
20 At least my copy looks like there's areas of shading on
21 certain sentences and --

22 JUDGE STEARLEY: I have some slight
23 shading, but I am able to read the document. I believe
24 there's nothing obscured on my copy.

25 MR. COMLEY: If the document can be set up

1 so that these are subtle or subdued or they're not even
2 prominent, that would be fine, but it looks to me like
3 there's been some effort to emphasize certain sections of
4 the letter, and I don't think that should be -- that is
5 not appropriate for a clean exhibit.

6 MS. ORLER: It was done downstairs at the
7 copy center.

8 JUDGE STEARLEY: Before these proceedings
9 are over, if you could attempt to copy this with a lighter
10 setting, which would minimize any shading on those, we
11 will accept a clean copy.

12 MS. ORLER: Okay.

13 JUDGE STEARLEY: Any other objections?

14 (No response.)

15 JUDGE STEARLEY: A clean copy will be
16 accepted and received into evidence.

17 (EXHIBIT NO. 97 WAS RECEIVED INTO
18 EVIDENCE.)

19 JUDGE STEARLEY: You may proceed,
20 Ms. Orler.

21 BY MS. ORLER:

22 Q. Now to your rebuttal testimony, Mr. Rusaw.
23 On page 1 of your rebuttal testimony on line 22, you say,
24 it paid DNR's requested penalties. Is the it you're
25 referring to Folsom Ridge?

1 A. Yes. I believe it goes back to the
2 previous sentence, which says Folsom Ridge.

3 Q. And can you tell me, in the fines that were
4 paid by Folsom Ridge to DNR, were any of those fines or
5 penalties ever negotiated in the amounts paid?

6 A. I'm not sure what you mean.

7 Q. In other words, if DNR as a part of the
8 penalty or fine fined you an amount of \$10,000, did Folsom
9 Ridge ever negotiate those amounts to a lesser amount?

10 MS. HEINTZ: Your Honor, I'm going to raise
11 a relevance objection here. I don't see how that matters
12 to the issues that are before the Court.

13 MR. COMLEY: I would join that objection.

14 JUDGE STEARLEY: Ms. Orler, would you
15 explain how you believe that question is relevant?

16 MS. ORLER: Yes, I would, your Honor. It
17 goes back to the statements made by the Commissioners
18 yesterday with regards to penalties, and I'm forgetting
19 your legal term, but with regards to penalties being
20 assessed to the developer. This was in a conversation
21 that the Commissioners had with Mr. Thompson, and they
22 asked Mr. Thompson if he was planning on assessing any
23 penalties or sanctions, I believe is the correct term.

24 JUDGE STEARLEY: Kellene, could you please
25 read the question back to me.

1 (THE REPORTER READ BACK THE REQUESTED
2 PORTION.)

3 JUDGE STEARLEY: I don't find that relevant
4 to the issues in this case or any authorization for
5 penalties this Commission might award or authorize. So I
6 will sustain the objection.

7 MS. ORLER: All right.

8 BY MS. ORLER:

9 Q. Mr. Rusaw on page 2 of your rebuttal
10 testimony, on line 7, you say that property values on the
11 island continue to appreciate because of the facilities
12 Folsom Ridge has installed for wastewater management and
13 water distribution. Do you see where I'm reading?

14 A. Yes.

15 Q. And then on line 10 you have said that, I
16 would say that Ms. Orler's testimony has more negatively
17 affected those values, not what Folsom Ridge has done or
18 is doing to provide water or sewer service on the island.
19 Have you done property value appraisals as a comparison to
20 make the statement and the determination that my testimony
21 has negatively affected those values?

22 A. We have appraisals that regularly go with
23 the bank related to the property, and we are regularly
24 assessing market values over there. So my first line you
25 asked about, property values continue to appreciate,

1 that's true. And we know that having paved roads, water
2 and sewer add to the value of everybody's property.

3 On line 10, I would say that your
4 testimony, some of the things that have occurred out there
5 have had a negative impact on the values. The values have
6 not increased -- they have increased, but they've not
7 increased as much as they could. And I would say, as in I
8 would say. I'm not offering any other opinion. Haven't
9 asked an appraiser. Haven't done any assessment. I'm
10 giving you my opinion, which is why line 10, that sentence
11 begins with, I would say.

12 Q. In that same opinion, your opinion, would
13 you also say, then, that property values could also be
14 adversely affected by the incorrect installation of a
15 water and sewer utility on Big Island?

16 A. I would say that that's -- had that
17 situation not been rectified, that that would likely be
18 true.

19 Q. Do you think at the time that an incorrect
20 installation of water and sewer lines existed on Big
21 Island, that at that time property values were affected by
22 that improper installation?

23 A. Our sales records would show that property
24 values have increased every year.

25 Q. So even with -- are you saying then that

1 even with an incorrectly installed water and sewer system,
2 that the property values still did continue to increase?

3 A. They continued. What I would be suggesting
4 is that we've had a negative impact on sales from our
5 perspective because of the hostilities that you and other
6 neighbors have continued to keep going.

7 Q. And that is your opinion, correct?

8 A. Absolutely.

9 Q. All right. On the same page, page No. 2 of
10 your rebuttal testimony, on line 23, you're referencing
11 the membership in the 393 company, and you're saying that
12 that's required by status for persons accepting services
13 from such an entity. And then you make the statement that
14 membership is not unlike being a customer of a regulated
15 company. And how would you explain that comparison,
16 please?

17 A. I think trying to just give illustration
18 here that members in the 393 would be very similar to --
19 would be attached customers, much like customers of a
20 regulated company would be.

21 Q. And are customers of a 393 company who are
22 attached, as you say, also owners of that utility?

23 A. That I'm -- I can't speak to actually the
24 technicality of what the statute might say on that.

25 Q. Who owns a utility under the 393 companies?

1 Who has ownership of that?

2 A. The -- the 393 company.

3 Q. All right. And with regards to membership
4 in a 393 company, the respons-- financial responsibilities
5 then for that utility are whose responsibility?

6 A. It's my understanding that they're the
7 393's responsibility. That's my understanding.

8 Q. Okay. And then membership -- you say
9 membership for a regulated company. Are there memberships
10 associated with a regulated company?

11 A. I'm not actually sure what you're asking.

12 Q. Well, you say membership is not unlike
13 being a customer of a regulated company. So what are you
14 meaning by that statement?

15 A. It's my understanding that to be a member
16 in the 393 company, you would be accepting services from
17 the 393, much like a customer would accept service in a
18 regulated utility.

19 Q. And then with a regulated utility, then, do
20 the customers own that utility?

21 A. No. I would assume not.

22 Q. And do they have liability?

23 A. Unless it was like a rural coop or some
24 other kind of regulated utility that might have
25 membership.

1 Q. And then do customers of a regulated
2 utility then assume any liability?

3 A. Direct liability, no.

4 Q. Okay.

5 A. I would assume. I don't know the law. I
6 don't want to profess that I do.

7 Q. Okay. Page 3 of your rebuttal testimony on
8 line 9, you indicate that Folsom Ridge filed for an
9 application of certification before the Commission, but
10 Ms. Orler and other intervenors in this case objected to
11 the approval of that certificate?

12 A. To the best of my knowledge, that's what
13 happened.

14 Q. Okay. At the time that I believe it was
15 rebuttal testimonies and surrebuttal testimonies were
16 filed in that case, did intervenors in that case give
17 direct testimony that they would approve the certificate
18 of Folsom Ridge to provide service as a regulated entity?

19 A. I'd have to review the rebuttal and
20 surrebuttal. I do recall that there was strong opposition
21 that Mr. Golden or myself, Folsom Ridge, would be the
22 owner/operator, that you were asking for us to be removed
23 and you used a number of ways to describe that, but --
24 receivership or some other way that the utility would be
25 owned by somebody other than us.

1 Q. And ultimately, then, as a result of that,
2 did myself, as well as other intervenors, indicate that we
3 would indeed approve the certification but with
4 conditions?

5 A. I'd have to review it.

6 Q. All right. Page No. 4, beginning with
7 line 11, you make reference to the escrow agreement at
8 Central Bank. And can you describe for the Court exactly
9 what the escrow agreement was?

10 A. We had -- it's my understanding that
11 Central Bank had drafted with us an agreement that would
12 be executed with the existing homeowners who placed on
13 deposit a tap fee for the water or the sewer and that
14 there were restrictions of the disbursements of those
15 funds until it met the requirements listed on the escrow
16 agreement.

17 And that's to the best of my knowledge
18 exactly how that worked out. Central Bank didn't release
19 funds until things were accomplished that were listed in
20 the agreement.

21 Q. And you say on line 14 that this worked
22 very well overall for the bulk of the residents; is that
23 correct?

24 A. Yes.

25 Q. Did you receive any comments from residents

1 or written letters from residents or were you made aware
2 of any residents who were questioning this type of
3 arrangements and the disbursement of their funds?

4 A. None to me personally.

5 MS. ORLER: All right. Your Honor, if I
6 could get to my file, these are documents that you
7 suggested yesterday be authenticated by Mr. Rusaw today as
8 a part of this questioning.

9 JUDGE STEARLEY: You're welcome to attempt
10 to use any document you have as part of your questioning.

11 MS. ORLER: Just a moment. I apologize.

12 JUDGE STEARLEY: Do you have copies of that
13 document?

14 MS. ORLER: No, because you suggested that
15 I bring them forward at this point yesterday when I
16 cross-examined Mr. Rusaw.

17 JUDGE STEARLEY: If you're going to attempt
18 to offer that into evidence, everyone's going to be
19 needing a copy of it to see what the document is and what
20 it is you intend to offer.

21 If you intend just to show Mr. Rusaw the
22 document, lay some foundational evidence and ask him
23 questions about the document, you can do that, but every
24 document, just like all our orders have gone out, stated,
25 if you're going to offer evidence into the record, you

1 need to have a proper number of copies for the
2 Commissioners, presiding officer and opposing parties.

3 MS. ORLER: All right.

4 BY MS. ORLER:

5 Q. Can you read this to the Court, please?

6 MR. COMLEY: Your Honor, I'm going to
7 object to any reading of the exhibit. It's not been
8 marked, and any reading of it would presuppose that it's
9 been admitted, so I would object to its use in that
10 fashion.

11 JUDGE STEARLEY: And I will sustain. The
12 document hasn't even been identified at this point.
13 Ms. Orler, if you would like to ask Mr. Rusaw a couple of
14 foundational questions regarding that document, we can
15 proceed from that point. If you -- if we need to take an
16 intermission here so you can make copies, if you intend to
17 offer this into evidence, we can do so, and I would
18 suggest that we do so soon because I'm not sure how much
19 longer you're going to have access to the data center.

20 MS. ORLER: Would the Court indulge me in
21 that?

22 JUDGE STEARLEY: Yes. Let's take a brief
23 intermission here.

24 (A BREAK WAS TAKEN.)

25 JUDGE STEARLEY: We are back on the record.

1 Ms. Orlor, you may proceed.

2 BY MS. ORLER:

3 Q. Mr. Rusaw, prior to the intermission, we
4 were discussing the escrow account that you made mention
5 of in your rebuttal testimony. On line 14, you had
6 indicated that this arrangement with Central Bank worked
7 very well overall for the bulk of residents on Big Island.
8 Now, with regard to that statement, I've handed you three
9 documents that pertain to the escrow account. Two of
10 those documents are from residents of Big Island
11 indicating the contrary of your statement.

12 MR. COMLEY: I object. We're testifying
13 about the content of the documents, and they have not been
14 identified by the witness.

15 JUDGE STEARLEY: That shall be sustained.
16 Can you ask -- go one by one and attempt to see if
17 Mr. Rusaw can identify the document, and you can proceed
18 from there.

19 MS. ORLER: Thank you, and I apologize.

20 BY MS. ORLER:

21 Q. Mr. Rusaw, on the document that has Ben and
22 Karen Pugh in the upper left-hand corner, and it is
23 addressed to Mr. Jeff Welsh at Central Bank, can you
24 familiarize yourself with that document, please?

25 A. Were you asking me something?

1 Q. Yes. Have you familiarized yourself with
2 that document?

3 A. You mean, am I holding it in my hand now
4 and read it?

5 Q. Yes, have you read it?

6 A. Yes, I just read it.

7 Q. Now, we've just been discussing the escrow
8 agreement and your statement that it worked very well
9 overall for the bulk of the residents on Big Island, and
10 I'd like to know in your opinion, from reading this letter
11 with regards to the escrow account, was this a resident of
12 Big Island for whom this worked well?

13 MR. COMLEY: Objection, your Honor. We're
14 concluding that this document is something that is
15 something that can be used for purposes of evidence from
16 this witness. It has not been properly identified. The
17 witness has not said that he has read or knows about this
18 document or had anything to do with it.

19 JUDGE STEARLEY: I believe Mr. Rusaw
20 indicated that he read it, but we need further
21 foundational evidence or questioning, Ms. Orlor, to
22 establish what Mr. Rusaw's knowledge even exists of this
23 document as to whether or not he'll be able to testify to
24 anything.

25 MS. HEINTZ: And I'm sorry, your Honor.

1 Just for the clarity of the record, this exhibit has been
2 previously marked as No. 27, and it was prior ruled
3 inadmissible. So it has been marked.

4 JUDGE STEARLEY: Okay. This one has been
5 marked?

6 MS. HEINTZ: Yes.

7 JUDGE STEARLEY: And my ruling on it was
8 already excluding it from the record?

9 MS. HEINTZ: Yes.

10 JUDGE STEARLEY: Okay. Ms. Orler, you may
11 proceed with a line of questioning if you can develop
12 sufficient foundation where Mr. Rusaw can actually provide
13 some testimony regarding this document.

14 BY MS. ORLER:

15 Q. In your statement in your testimony with
16 regards to the escrow agreement and working very well
17 overall for the bulk of the residents on Big Island, were
18 you aware that this escrow agreement did not work well for
19 some residents on Big Island?

20 A. I was not.

21 Q. You were not aware of that?

22 A. No, I was not.

23 Q. Upon reading this document, are you
24 surprised to find out that this escrow agreement did not
25 work out well for Mr. Everett Jones?

1 MR. COMLEY: That's testimony coming from
2 the document itself. It's not been admitted. It's not
3 been authenticated. There's no conclusion that this has
4 happened.

5 JUDGE STEARLEY: And the objection will be
6 sustained.

7 BY MS. ORLER:

8 Q. So to the best of your knowledge, you were
9 not -- you had no information to the contrary that the
10 escrow agreement did not work well for some residents on
11 Big Island?

12 A. I'm not sure exactly I understood your
13 question, how you ordered that, but my answer would be
14 consistent with my testimony already in the rebuttal, that
15 this arrangement with Central Bank worked very well
16 overall for the bulk of the residents on the island.

17 Q. All right. Did you ever receive any
18 correspondence directly yourself from any residents on Big
19 Island with regards to concerns about the release of their
20 funds from the escrow account for the water and sewer fund
21 because of any issues surrounding the water and sewer
22 utility?

23 A. No, I did not.

24 Q. Okay.

25 A. Are we done with these?

1 Q. Yes.

2 MS. HEINTZ: Your Honor, I think I'd like
3 to make a correction. This was previously marked as
4 Exhibit 27, but I believe you reserved your ruling.

5 JUDGE STEARLEY: I was just going back
6 through my list as well to confirm that, and you are
7 correct, I did reserve. I did hold my ruling on that to
8 give Ms. Orler an opportunity to attempt to authenticate
9 this in another manner. At this point it still remains
10 unauthenticated.

11 MS. ORLER: I had received a copy of this,
12 being a committee of the Big Island property owners.

13 JUDGE STEARLEY: Ms. Orler, you're now
14 testifying instead of asking questions, and I will strike
15 that remark from the record.

16 MS. ORLER: All right. I apologize.

17 BY MS. ORLER:

18 Q. Turning your attention now to page 5 of
19 your rebuttal testimony, Mr. Rusaw, you indicate on line
20 24, Ms. Orler was asked to enter into agreements which
21 every other person connected to the system has agreed to
22 for proper billing.

23 In that statement, are you stating that
24 every person connected to the system has entered into the
25 agreements of the amended and restated covenants and

1 conditions and has agreed to those for billing?

2 A. Could you just restate that for me?

3 Q. Yes. On line 7 you're stating that
4 Ms. Orlor was asked to enter into agreements which every
5 other person connected to the system has agreed to. What
6 agreements are you referring to?

7 A. We have -- we have asked people to ratify
8 agreements. Some have. Some haven't. We have sent
9 bills. Most pay. Some don't. And we have invited people
10 to participate in the HOA, and many have. Some have not.

11 Q. So in your statement, you say that
12 Ms. Orlor was asked to enter into agreements which every
13 other person connected to the system has agreed to. So am
14 I the only person that has not agreed or entered into
15 these agreements?

16 A. I think we were back to the -- I was trying
17 to address the issue in your rebuttal or direct testimony
18 about whether you had been intimidated or threatened or
19 somehow by me or Mr. Golden.

20 Q. But that's not my question here. My
21 question is, you say every person connected to the system
22 has agreed to these agreements.

23 A. Again, my answer here was given as rebuttal
24 to the intimation that somehow you had been singled out,
25 somehow you have been treated differently than others.

1 Q. So in your statement, you are stating -- am
2 I correct in assuming that you are stating every person
3 connected to this system has agreed to the agreements of
4 the covenants and conditions or ratified the documents?

5 A. I would say that maybe that sentence could
6 be said better. Every other person that has been invited
7 or connected to the system has had those same agreements.
8 Whether they've all agreed to them or not would be a
9 misstatement on my part.

10 Q. So not everyone connected to the system has
11 ratified the documents that you're referring to?

12 A. Right. That would be true.

13 Q. Okay. So I would not be the only person,
14 then, outside of that?

15 A. Yeah. The intent was not to -- again,
16 probably could have worded this better, as I'm rereading
17 my answer, but the intent was that everybody's been given
18 the same opportunity. You haven't been singled out.

19 Q. Okay. Thank you. Now, later on this page,
20 on line 15, you're discussing the reinstallation of my
21 water line, and you're saying that Folsom Ridge did not
22 have an obligation to reinstall my water line. Why would
23 that be?

24 A. Our obligation was to provide a tap to the
25 main. In the original construction, we did provide

1 service lines across the street because the road hadn't
2 been paved yet at that point, and the tap fee is paid for
3 a tap into the main. There is no obligation on our part
4 to provide the service line across the street. We've done
5 that, we've willingly done that, but we've had no
6 contractual obligation to do that. The tap fee was to pay
7 for a tap into the main water and/or sewer line.

8 Q. And I've asked this question of you
9 earlier, and if you could repeat your answer, can you
10 define for the Court the difference between a service line
11 and a main, please?

12 MR. COMLEY: Objection, it's been asked and
13 answered. I will object, and it has been asked and
14 answered.

15 JUDGE STEARLEY: It has been asked and
16 answered. I'll sustain that objection.

17 BY MS. ORLER:

18 Q. In my instance, you were saying that you
19 had no obligation to install my water line correctly.
20 Why?

21 A. That's not what -- you're putting words in
22 my mouth. That's not what I said.

23 Q. Okay. Did Folsom have an obligation to
24 reinstall Ms. Orler's water line, and you said absolutely
25 not, and why is that?

1 A. We have an obligation to keep you a spot
2 into the water line or the sewer system, to reserve you a
3 spot. You have a reserved spot. You've always had a
4 reserved spot. We do not have obligation to run the
5 service line across the street to your property.

6 Q. But under the settlement agreement and the
7 terms of that agreement, what lines were you supposed to
8 correctly reinstall?

9 A. We were to correctly install the main
10 lines.

11 Q. And are you aware, Mr. Rusaw, that my water
12 line was indeed a main?

13 A. Not aware of that.

14 Q. The reason being the line that serviced or
15 came across the street serviced more than one residence.

16 MR. COMLEY: Objection, she's testifying.

17 MS. ORLER: I'm sorry.

18 JUDGE STEARLEY: Ms. Orler, you're
19 testifying again. Strike those additional remarks.

20 BY MS. ORLER:

21 Q. So you were not aware, then, when I made
22 the numerous requests for you to make the correct
23 reinstallation of my water line as per the settlement
24 agreement with DNR, you were not aware that at that time
25 my line was a main?

1 A. No, I was not aware of that.

2 MS. ORLER: Thank you.

3 MR. COMLEY: We're still not aware of it.

4 MS. ORLER: Thank you.

5 BY MS. ORLER:

6 Q. On page 6, 8, you have indicated that
7 Folsom Ridge did not ever threaten or intimidate me; is
8 that correct?

9 A. Yes.

10 Q. Okay. And you still stand by that
11 statement?

12 A. Yes.

13 Q. On the same page, on line No. 21, the
14 position of Folsom Ridge and the Association is that the
15 operations of the water and sewer systems and billing for
16 service provided by each complies with the Missouri --
17 with the Public Service Commission law and all applicable
18 rules?

19 A. Yes.

20 Q. Okay. Is the Association currently under
21 the jurisdiction of the PSC?

22 A. No, it's not.

23 Q. So if the Association is not currently
24 under the jurisdiction of the PSC, how can the billing for
25 the water and sewer services be in compliance with their

1 laws and rules?

2 MR. COMLEY: Objection, argumentative.

3 JUDGE STEARLEY: Sustained.

4 BY MS. ORLER:

5 Q. How can the laws and rules of the Missouri
6 Public Service Commission apply to the billing services
7 for Big Island Homeowners Association if it's not within
8 their jurisdiction?

9 MS. HEINTZ: I'm going to object, that
10 calls for a legal conclusion.

11 JUDGE STEARLEY: I will sustain. I believe
12 the question actually answered itself.

13 MS. ORLER: Thank you.

14 BY MS. ORLER:

15 Q. On page 7 of your direct testimony on
16 line 13, you have indicated that Mr. Golden and I, which
17 you're referring to yourself, were simply investment
18 partners. How do you term an investment partner? What
19 responsibilities, if any, go along with that?

20 A. We certainly have obligation for the LLC.
21 We were not active partners in the development project at
22 Big Island in its initial phase, its initial years that we
23 indicate here. Mr. Lees was the developer, moved onsite,
24 was paid by us, by the partnership, to do that.

25 So my obligation to the partnership would

1 be any other obligations that I have as a partner, which
2 meant when the service lines needed to be redone, that
3 came to Folsom Ridge. We had an obligation to do that.
4 My reference here is simply we were not active
5 participants in the development.

6 Q. And to the degree of your partnership, was
7 that equal then?

8 A. With -- just for clarity, all three of us,
9 were we equal partners? We were equal partners and
10 Mr. Lees was paid an annual salary on top of that.

11 Q. Thank you. And on page 8 of your rebuttal
12 testimony, lines 22 and 23, you state that the operations
13 of water and sewer systems have not been subsidized by
14 Folsom Ridge, except at an early time in their operation.
15 Can you explain the time at which you were subsidizing the
16 system?

17 A. Certainly early on, of course, we would --
18 we would subsidize in a number of ways. We paid some of
19 the contractual fees. If somebody needed to come out and
20 fix a problem, we would do that. We would pay for that
21 until there were enough people online that were helping to
22 pay for that. I believe it's been approximately since
23 2003 that Folsom has placed any additional dollars in to
24 supplement the HOA. It's been paying for itself.

25 Q. Okay. Thank you. And on page 10 of your

1 direct -- excuse me -- your rebuttal testimony, on lines 5
2 and 6, you indicate that Folsom Ridge and the Association
3 provide lawful service, but to put an end to the disputes
4 about this, both are prepared to hand over the systems to
5 the 393 companies. And will that end all disputes, in
6 your opinion?

7 A. Do you want my what I hope for or do you
8 want what I think actually? I believe that this could be
9 a good step. It's been recommended by PSC Staff. It's a
10 group of -- a majority of the island residents want to do
11 that. A group of neighbors have gone to all the effort to
12 make that happen. We're willing to participate in
13 achieving that. Do I believe that this will stop you and
14 Mr. Pugh? I can only hope that it might.

15 Q. Thank you. On page 17 of your rebuttal
16 testimony, Mr. Rusaw, can you tell me what Mr. Lees'
17 termination date was, please?

18 A. I believe it was -- I know it was in the
19 spring of 2001. I think it was April of 2001.

20 Q. All right.

21 A. To the best of my knowledge.

22 Q. And you have indicated Mr. Lees alleges
23 that other members of the LLC -- would that be yourself
24 and Mr. Golden?

25 A. Yes.

1 Q. -- were aware of the incorrect installation
2 before his termination date, but that is not true?

3 A. That's true.

4 Q. Okay. Now, in the documents, however, that
5 were just submitted prior to the recess to make copies, in
6 that the dates on these documents were the year 2000 and
7 2001. Do you need to review those documents?

8 A. I'd like to see. I'm not sure which
9 documents you're referring to.

10 JUDGE STEARLEY: And which documents do
11 you have?

12 MS. ORLER: I'm sorry. No. 97, about
13 quarter way down the page where Mr. Rusaw said we've.

14 BY MS. ORLER:

15 Q. Can you read that sentence, please?

16 A. Yes. We've also dug several holes and have
17 verified proper installation of the water and sewer lines.

18 Q. And what is the date of that document,
19 please?

20 A. November 29th, 2000.

21 Q. Okay. Thank you. So you've just indicated
22 to the Court that Mr. Lees' termination date was in the
23 year 2001. And you've also stated that Mr. Lees alleges
24 that other members of the LLC were aware of the incorrect
25 installation before his termination date, which would be

1 prior to 2001, and then you say, but that is not true.
2 But in the document that I just had you read, dated
3 November the 29th of 2000, where you read, we have also
4 dug several test holes and verified proper installation of
5 the water and sewer lines. Would you like to --

6 A. Absolutely. I believe both statements are
7 consistent. We were not aware of the incorrect
8 installation before Mr. Lees' termination. We were aware
9 of individuals saying it had been installed incorrectly.
10 Mr. Lees defended it. The contractor defended it. The
11 engineer defended it. DNR had approved it, and our
12 assessment of the situation was that it had been installed
13 properly. It wasn't until 2004 that we discovered it had
14 been installed improperly.

15 Q. All right. On page 22, line 19, you have
16 stated that, as far as I know, DNR has never recommended
17 installation of water meters on the system. Do you keep
18 records -- does Folsom Ridge keep records of all the DNR
19 documents associated with the Big Island water and sewer
20 utility project?

21 A. I'm sure we do. To the best of my
22 knowledge, we do.

23 Q. And would it surprise you to know that one
24 of the documents with DNR suggested water meters?

25 A. That would surprise me. I did not know

1 that.

2 Q. Okay. Now that Folsom Ridge has only two
3 partners, you've listed yourself and Mr. Golden, and you
4 said that it would surprise you, that you're not aware
5 that DNR made the recommendation of water meters, do you
6 make an effort to keep yourself updated with regard to
7 matters such as this?

8 A. Certainly I do. It's possible that over
9 the years we received something that either right now I
10 don't recall to the best of my knowledge. I do know that
11 a Staff recommendation was made that way. I'm not aware
12 that DNR made that recommendation.

13 Q. Hypothetically, if you had been made aware
14 that DNR had made that recommendation, what would be your
15 response to that?

16 A. We would take it and it depends on how --
17 is it a recommendation or a mandate? We would look at
18 that. If it was a recommendation, we would take it into
19 consideration and attempt to get after what they were
20 wanting to see accomplished.

21 Q. So you would try to make every effort to
22 accomplish what DNR was recommending?

23 A. We haven't had many things that DNR simply
24 just recommends and leaves it up to us to figure out if we
25 want to do it or not.

1 Q. All right. So, hypothetically, if DNR were
2 recommending that you install water meters, what would be
3 your actions taken towards that recommendation?

4 A. Hypothetically, my actions would be to meet
5 with whoever made that recommendation, assess why they
6 were making that recommendation and make a reasonable plan
7 to move forward based on that discovery.

8 Q. So are you saying that you would attempt,
9 then, to honor that recommendation made by DNR?

10 A. Hypothetically, I would assess the
11 recommendation, visit with DNR and see if that was a
12 reasonable proposal that they were asking or mandating.
13 If they were mandating, we have to comply and we have
14 complied with them.

15 Q. All right. On page 24 of your rebuttal
16 testimony on line 22, you state that official votes at
17 Association meetings are limited to members.

18 A. I'm sorry. What line, what page?

19 Q. At line 22, official votes at Association
20 meetings are limited to members.

21 A. Yes.

22 Q. Okay. And what do you term an official
23 vote? How's that determined or defined?

24 A. A motion is placed before -- in a duly
25 called meeting, a motion is placed and a vote is taken.

1 Since we have invited, and even with Mr. Pugh's testimony
2 today, he's been welcome and attends and would not
3 consider himself a member, although we do. Members vote,
4 and you have to be ratified member or connected to the
5 system to be a member of the HOA. So those individuals
6 get a vote.

7 Q. Now, can you be more specific about the
8 individuals that get a vote, please?

9 A. Those who have ratified the covenants
10 and/or are connected to the system. If you're connected
11 to the system, we consider you a member and will take your
12 vote.

13 MS. ORLER: Okay. That's all I have.

14 JUDGE STEARLEY: Thank you, Ms. Orler.
15 Cross-examination, Mr. Pugh?

16 MR. PUGH: Yes, your Honor. I do have a
17 couple questions to ask.

18 CROSS-EXAMINATION BY MR. PUGH:

19 Q. I hope this doesn't take long, Mr. Rusaw.

20 A. Thank you.

21 Q. I bet. Earlier this afternoon you made a
22 statement that the minimum size for mains is two inches.
23 Where did you get that information?

24 A. And again, that would be -- I believe I
25 said that was my understanding. I believe that's DNR

1 regulation, but I'm not qualified to make that assessment.

2 Q. Okay. I believe it was at the 2000 -- 2005
3 annual meeting, we received -- the homeowners received a
4 letter informing us of that meeting, and in that letter it
5 said that the homeowners owed Folsom Ridge 7,000 --

6 MS. HEINTZ: Your Honor, I object.
7 Mr. Pugh is testifying. Is there a question?

8 MR. PUGH: Yes.

9 JUDGE STEARLEY: I'll sustain that
10 objection. If you'll please get to your question,
11 Mr. Pugh.

12 BY MR. PUGH:

13 Q. This \$7,000 that the homeowners owe Folsom
14 Ridge, did they ever pay that?

15 A. I believe Mr. Hughes, our accountant for
16 the Association, will be testifying. He could better
17 answer that question.

18 Q. Earlier this afternoon you testified that
19 these 12 lots off -- west off the island, off island, you
20 testified that they were part of Portage Park 1?

21 A. I'm not sure about the number 12. I did
22 testify that there are, I believe Ms. Orlor was referring
23 to Portage Park Unit 1, Portage Park 1, and not the
24 160, Island View Estates. I believe she has that
25 confused.

1 Q. I'm referring to this extension that Folsom
2 Ridge put in just recently to 12 lots. I was under the
3 opinion that those lots were part of that 160 acres. Am I
4 wrong?

5 A. Yes.

6 Q. Okay. Do you have any documentation to
7 that?

8 A. Yes.

9 Q. Okay.

10 A. It's been on record with Camden County.

11 JUDGE STEARLEY: Mr. Rusaw, you've already
12 answered the question.

13 THE WITNESS: My apologies.

14 BY MR. PUGH:

15 Q. Would you agree with me that you can get
16 drinking water contamination from service lines as well as
17 mains?

18 A. Would I agree with you that contamination
19 can occur in lines?

20 Q. Yes, sir.

21 A. Yes, I would.

22 Q. Okay. Does it bother you that the DNR has
23 no jurisdiction over not only our service lines but I
24 assume the whole state of Missouri? Does that bother you?

25 A. Does it bother me that DNR doesn't have

1 jurisdiction over the service lines?

2 Q. Yes, sir.

3 A. Do I think they might find a way to have a
4 more appropriate code related to those? Possibly.

5 Q. The -- when the DNR signs off on an area
6 such as I think they have just recently done on Big
7 Island, since they have no jurisdiction over a pretty good
8 portion of the system, meaning the service lines, do you
9 agree that even though you have the approval by the DNR,
10 that there can still be some problems with a sewer system,
11 sewer and water system?

12 A. Would I agree that there could be problems
13 that would come off an individual's property or in a
14 service line that would run to a main? I would agree that
15 certainly everyone would have knowledge that there could
16 be problems.

17 Q. So I think you're saying, in agreement with
18 me, that due to the fact that there is no jurisdiction
19 over the service lines, that that is still not a low --
20 that is a high risk problem with the Big Island sewer
21 system; is that correct?

22 MS. HEINTZ: Your Honor, I'm going to raise
23 a relevance objection. Again, I don't see what DNR's
24 jurisdiction has to do with the issues in front of the
25 Commission.

1 JUDGE STEARLEY: And I will sustain that
2 objection.

3 BY MR. PUGH:

4 Q. You stated a while ago that you,
5 Mr. Golden and Mr. Lees were equal partners?

6 A. For a period of time, yes.

7 Q. Do you accept any of the responsibility for
8 the improper installation the first time around?

9 A. We have accepted responsibility. We've
10 acknowledged that many times.

11 Q. You stated -- you were a little vague on
12 it, but you stated that Dave Lees was out of your
13 employment in April of 2001?

14 A. I believe it was April of 2001.

15 Q. I think you're aware that I was -- well,
16 I'm testifying.

17 Mr. Lees on May 9th of 2001 was doing some
18 excavating to look for a sewer leak across from
19 Mr. Stoyer's?

20 JUDGE STEARLEY: Mr. Pugh, is this a
21 question?

22 MR. PUGH: Yes, sir, I'm trying.

23 JUDGE STEARLEY: Sounds like a statement to
24 me, which would be testimony. If you could please
25 rephrase.

1 BY MR. PUGH:

2 Q. Are you aware that Mr. Lees on May 9th was
3 still overseeing excavation?

4 A. I'm aware that when we executed our
5 agreement with Mr. Lees to terminate him from the
6 partnership and employment, that that was immediate.

7 Q. Are you aware that this lawsuit, this --
8 when I went to the sheriff's office with my complaint on
9 Mr. Lees that --

10 MS. HEINTZ: Your Honor, this is sounding
11 like testimony and statements again. Is there a question?

12 MR. PUGH: Probably not.

13 JUDGE STEARLEY: And I believe there was
14 some documentary evidence on that we already ruled was
15 irrelevant in this matter.

16 MR. PUGH: Okay.

17 BY MR. PUGH:

18 Q. Who was the engineer on the first Phase 1?

19 A. I believe it was Jim Jackson, Lake
20 Professional Engineers, I believe. I'm not sure of the
21 exact company name, but Jim Jackson.

22 Q. Are you aware that Mr. Jackson pleaded with
23 the DNR to let them install this line in the same trench?

24 A. I'm aware that Jim Jackson submitted plans
25 for a step trench.

1 Q. Would you read this (indicating)?

2 JUDGE STEARLEY: Mr. Pugh, we need to
3 identify this document that you have in your hands. Has
4 it already been marked as an exhibit?

5 MR. PUGH: Yes, sir.

6 JUDGE STEARLEY: And what number is that?

7 MR. PUGH: I don't have my numbers. It's
8 Schedule 2 of my direct testimony.

9 JUDGE STEARLEY: Okay. I believe this is
10 one that we allowed.

11 MR. PUGH: Yes.

12 JUDGE STEARLEY: All pages but -- let me
13 see. I believe Schedule 2 was Exhibit 60.

14 MR. COMLEY: My notes indicate it was
15 admitted without the drawing.

16 JUDGE STEARLEY: That is what I have as
17 well.

18 MR. COMLEY: Dated November 1998.

19 JUDGE STEARLEY: You may show this to
20 Mr. Rusaw. There will be no questioning or testimony
21 except with regard to the drawing which we have excluded.
22 BY MR. PUGH:

23 Q. Mr. Rusaw --

24 JUDGE STEARLEY: Mr. Pugh, why don't you
25 just hand Mr. Rusaw the document? Do you have a copy for

1 page of a stapled document. The second page of a letter
2 to Mr. Brick Summerford. The letter's from Mr. Jim
3 Jackson, and we're in the second paragraph on the second
4 page.

5 JUDGE STEARLEY: Thank you. You may go
6 ahead and read.

7 THE WITNESS: The developers are sorry for
8 the trouble caused by their starting construction without
9 a permit and for having to place the lines in the same
10 trench. They are respectfully requesting the permit be
11 issued for the construction of the lines in the same
12 trench, including the lines already constructed.

13 BY MR. PUGH:

14 Q. You notice it said developers, plural?

15 A. He did say that in his letter. Previously
16 he says developer, but that would be Folsom Ridge, which
17 Mr. Lees was representing.

18 JUDGE STEARLEY: Mr. Rusaw, you've already
19 answered the question.

20 THE WITNESS: Sorry.

21 BY MR. PUGH:

22 Q. Is -- Mr. Jackson in the statement you just
23 made is asking the DNR to allow them to install the water
24 and sewer line in the same trench, and that includes the
25 4,600 foot which they had already done illegally?

1 MS. HEINTZ: Your Honor, I object to that
2 statement. He's characterizing actions as illegal. He is
3 not a lawyer. Also, it sounds more like testimony than a
4 question to me.

5 JUDGE STEARLEY: I agree. The objection's
6 sustained. The remark will be stricken.

7 BY MR. PUGH:

8 Q. How has Mr. Jackson come out of this
9 without any problems at all?

10 MR. COMLEY: Objection, irrelevant, and I
11 don't know if that's really been established.

12 JUDGE STEARLEY: And he's asking for
13 speculation on the part of Mr. Jackson. I will sustain
14 the objection.

15 MR. PUGH: That's it.

16 JUDGE STEARLEY: Thank you, Mr. Pugh.
17 Cross-examination, Ms. Fortney?

18 MS. FORTNEY: No. I'll give him a break.

19 JUDGE STEARLEY: Cross-examination by
20 Mr. Temares?

21 MR. TEMARES: No, your Honor. I think he
22 got beat up enough.

23 JUDGE STEARLEY: Mr. Appling -- or
24 Commissioner Appling, you just joined us. Would you have
25 any questions for Mr. Rusaw?

1 QUESTIONS BY COMMISSIONER APPLING:

2 Q. Mr. Rusaw, how you doing?

3 A. I'm doing fine, thank you.

4 Q. Good. How many -- how many homes are on
5 Big Island that is not connected to it, is it 9, 11?

6 A. There are 105 homes, and I'm trying to
7 remember exactly. We have 60 that are connected to the
8 water, and I believe it's 49 -- or 60 to the sewer and 49
9 to the water.

10 Q. I don't know exactly how to phrase this
11 question, but have you tried anything -- you know, it just
12 seems to me you-all are spinning your wheels here. I
13 don't mean in the case and all that stuff. I'm sure as a
14 developer you want to move ahead here and get some things
15 done and sell some houses, right?

16 A. Absolutely.

17 Q. Okay. Have -- by any chance have you tried
18 any methods to try to work this out and get it solved?

19 A. I think -- I believe we have, and we would
20 be hopeful that we still could. I think the Complainants
21 would say that we haven't, but that's not how I see it.
22 We've had several meetings. We've met with Staff here.
23 We've not been able to seem to appease their concerns at
24 this point.

25 Q. Well, I didn't sit through most of your

1 testimony, so I'm going to move on and let you move on.

2 Thank you for your time. Okay.

3 A. Thank you, sir.

4 JUDGE STEARLEY: Mr. Rusaw, I have

5 basically one question for you.

6 QUESTIONS BY JUDGE STEARLEY:

7 Q. I believe you stated earlier on that Folsom
8 Ridge has the opportunity to vote 353 votes?

9 A. Approximately, yes.

10 Q. Approximately. On the one vote one lot
11 rule?

12 A. Right.

13 Q. You also testified that Folsom Ridge did
14 not exercise that option for major votes involving the
15 development here?

16 A. Maybe for some clarity, we -- we have never
17 had to use our votes to override what the remaining votes
18 would have had in majority.

19 Q. So it's your testimony that Folsom's votes
20 were always in line with the majority --

21 A. Yes.

22 Q. -- of the voters in the homeowners
23 association?

24 A. Yes, it was.

25 JUDGE STEARLEY: That's all I have. Is

1 there any recross based upon questions from the Bench?

2 Okay. 393 companies, Ms. Holstead?

3 MS. HOLSTEAD: No, your Honor.

4 JUDGE STEARLEY: Staff?

5 MS. HEINTZ: No, thank you.

6 JUDGE STEARLEY: Office of Public Counsel?

7 MR. MILLS: No questions based on that.

8 Thank you.

9 JUDGE STEARLEY: Complainants, any recross
10 based on the two questions you've heard from the Bench.

11 MS. FORTNEY: No, your Honor.

12 JUDGE STEARLEY: Very well. Any redirect?

13 MR. COMLEY: Yes, very briefly, I think.

14 REDIRECT EXAMINATION BY MR. COMLEY:

15 Q. Mr. Rusaw, during questioning by Ms. Orler,
16 she went through your qualifications, and it is really not
17 a secret that neither you or Mr. Golden would consider
18 yourself as administrators or managers of wastewater
19 systems, would that be correct or --

20 A. Yes.

21 Q. And tell me, why did you hire Mr. McDuffey?

22 A. Mr. McDuffey came recommended to us from a
23 number of places. DNR was one. The Central Bank at Lake
24 of the Ozarks, one of the officers there who has been
25 involved in a number of financing development projects

1 recommended him, and his credentials have him as the lead
2 person in the area down there.

3 Q. Briefly, what are his duties and
4 responsibilities with respect to the operation of the
5 wastewater system and the water distribution system?

6 A. He tests the system. If there's a problem
7 that comes up, if there's a concern, he's the one that
8 checks that out. I believe he or his staff are there
9 three times a week sampling. And so in the operation of
10 the system, it is Mr. McDuffey who we rely on.

11 Q. Did you and Mr. Golden consider yourselves
12 qualified in that field at all?

13 A. Not at all.

14 Q. Ms. Orlor also asked you about issues
15 concerning the dissolution of the Association. Do you
16 know whether articles of dissolution have been considered
17 for the Association?

18 A. Not at this time.

19 Q. Also she asked questions about Exhibit E
20 to the purchase agreement, questions concerning the number
21 of lots or number of owners that are involved with respect
22 to tap on fees that might be paid to Folsom from the
23 393 companies. I wanted to draw your attention to that,
24 and I think with respect to that exhibit, what is your
25 understanding of who is going to be charged and what is

1 the amount?

2 A. Yeah. I'm confident I was unclear with
3 that in my answer to Ms. Orlor. We have an agreement with
4 the 393 that we will provide or that they will -- that
5 there are some existing -- pre-existing residences, a
6 number of the residences that were around the east side of
7 the island, there are 13 who could connect to sewer and
8 43, I believe, who have -- who could connect to water.
9 Those would include things like Mr. Ashcroft's lots, so
10 already established owners, that we reserve the right to
11 with the 393 to collect a tap fee should any of those in
12 the next decade, the next ten years, choose to come on.
13 And that fee would be 4,800 for sewer and \$2,000 for
14 water.

15 There would be no collection of tap fees
16 for anything Folsom is developing as part of our future
17 development.

18 Q. All right. Now, is there any guarantee
19 that those individuals that you've identified would
20 connect in that ten-year window?

21 A. No. We just tried to pick a reasonable
22 time frame.

23 Q. There was also discussion about the tap
24 fees and whether or not Folsom Ridge paid itself a deposit
25 or tap fee for lots that are set up for connection or

1 nearly connected to the system. Can you explain why
2 Folsom Ridge did not charge a deposit for its lots?

3 A. Well, we would have been paying ourselves,
4 first of all, and we -- we're paying for the construction.
5 In essence, that's how we were paying for it. But any fee
6 we would have paid would have been from Folsom Ridge to
7 Folsom Ridge.

8 Q. On page 8 of your rebuttal, you were
9 questioned about subsidization of the systems. Ms. Orler
10 asked you about the term. Can you explain to the
11 Commission why Folsom Ridge did subsidize to some extent
12 the Association during that period of time?

13 A. We were in construction phase, and I
14 believe we have provided as attachment to the testimony
15 how many were connected each year, and so we were making
16 up any of the differences related to insurance or contract
17 fees. Didn't feel like that was our responsibility to
18 impose on the current connectors.

19 Q. At this time, do you know whether there's
20 any subsidization of the Association?

21 A. No, there isn't, and I believe, to the best
22 of my knowledge, there hasn't been since 2003.

23 Q. Mr. Pugh asked you questions about the
24 extension, about whether or not Portage Park Unit 1 was
25 within the 160 acres known as Island View Estates, and he

1 asked you whether there's any documentation about that.

2 Do you know where that documentation can be found?

3 A. I believe Ms. Brunk can provide that.

4 MR. COMLEY: Very well. That's all I have
5 on redirect.

6 JUDGE STEARLEY: Thank you, Mr. Comley.

7 And, Mr. Rusaw, thank you for your testimony.

8 MS. FORTNEY: Can I ask for clarification
9 on something that he just answered, a question from
10 Mr. Comley, a clarification?

11 JUDGE STEARLEY: Cross-examination is
12 closed, and Mr. Comley has just completed his redirect,
13 and I believe that the record will stand on its own as far
14 as the answers to those questions. If Mr. Comley wishes
15 to -- all right. Thank you. Thank you two for resolving
16 that.

17 Mr. Rusaw, thank you for your testimony.
18 You may step down, but I advise you that you're not
19 finally excused in this case, in case the Commissioners
20 would like to recall you for additional questions. Thank
21 you.

22 THE WITNESS: Thank you.

23 JUDGE STEARLEY: Thank you.

24 Before we continue, by my count, we still
25 have four witnesses that were on for today, plus the

1 reading of deposition testimony. With the addition of
2 Mr. MacEachen tomorrow, we still have four additional
3 witnesses remaining, for a total of eight witnesses. I'm
4 not sure it's going to benefit us to push much farther on
5 into the evening and would ask you-all to look at your
6 calendars. I have this hearing room available, and I am
7 available Monday through Wednesday next week if we need
8 additional days. I have Hearing Room 305 available and I
9 am available next Thursday and Friday, if we need to
10 continue on those days.

11 So I'd like to hear from the parties at
12 this point on how they might wish to proceed, because I
13 can't predict with the number of witnesses that we have
14 that we can actually be completed by the end of the day
15 tomorrow, and I don't want to wear everyone out tonight if
16 we're going to all agree that we're going to need
17 additional time anyway.

18 MR. MILLS: Your Honor, I can't really -- I
19 don't really have any substantial questions for any of the
20 other witnesses, and I think you'll have to hear from the
21 other parties to know how long it's going to take to get
22 through those eight witnesses.

23 JUDGE STEARLEY: And, Ms. Orlor, do you
24 anticipate the cross-examination that you have for the
25 upcoming witnesses will be similar in nature and time as

1 yours of Mr. Rusaw was today?

2 MS. ORLER: No, your Honor, not at all.

3 Just a couple of questions.

4 MR. COMLEY: Shall we try and see how far
5 we can get?

6 JUDGE STEARLEY: Let's see how far we can
7 get then. Let's go ahead and call the next witness and
8 we'll forge on. Does anyone need a break at this time
9 before we continue?

10 MS. HEINTZ: Would you mind if we took a
11 short recess now, your Honor?

12 JUDGE STEARLEY: We'll go ahead and take a
13 ten-minute break at this time.

14 (A BREAK WAS TAKEN.)

15 JUDGE STEARLEY: All right. We're going
16 back on the record and, Mr. Comley, we've called Barbara
17 Brunk to the stand.

18 MR. COMLEY: Yes.

19 JUDGE STEARLEY: Ms. Brunk, would you
20 please raise your right hand. I'll swear you in.

21 (Witness sworn.)

22 JUDGE STEARLEY: Thank you very much. You
23 may be seated.

24 BARBARA BRUNK testified as follows:

25 DIRECT EXAMINATION BY MR. COMLEY:

1 Q. Ms. Brunk, would you please state your full
2 name for the reporter, please.

3 A. Barbara Brunk.

4 Q. And are you the same Barbara Brunk who
5 caused to be filed in this testimony a piece of written
6 testimony which has been marked for identification by the
7 reporter as Exhibit 12?

8 A. Yes.

9 Q. And, Ms. Brunk, if I were to ask you the
10 same questions that are set forth in that testimony, would
11 your answers be the same?

12 A. With two small exceptions. On page 3
13 of the testimony, line 16, there's a date that says
14 November 25th, 1998. It should say April 29th, 1998.

15 And on page 14, line 17, the number -- it
16 says there are currently 61 customers. It should be 60.

17 JUDGE STEARLEY: Ms. Brunk, would you
18 please repeat your first correction for me.

19 THE WITNESS: Page 3, line 16, the date
20 as written is November 25th, 1998. It should reflect
21 April 29th, 1998.

22 JUDGE STEARLEY: Thank you very much.

23 BY MR. COMLEY:

24 Q. Ms. Brunk, if I were to ask you the
25 questions that are set forth in your testimony today,

1 would your answers be the same as you have changed them?

2 A. Yes.

3 MR. COMLEY: Your Honor, I would offer
4 Exhibit 12 into evidence.

5 JUDGE STEARLEY: Are there any objections
6 to the offering of Exhibit 12?

7 (No response.)

8 JUDGE STEARLEY: Hearing none, it shall be
9 received and admitted into evidence.

10 (EXHIBIT NO. 12 WAS RECEIVED INTO
11 EVIDENCE.)

12 MR. COMLEY: And I offer Ms. Brunk for
13 cross-examination.

14 JUDGE STEARLEY: Cross-examination
15 beginning with the 393 companies, Ms. Holstead?

16 MS. HOLSTEAD: No cross-examination, your
17 Honor.

18 JUDGE STEARLEY: Staff, Ms. Heintz?

19 MS. HEINTZ: Thank you, your Honor. I have
20 no questions.

21 JUDGE STEARLEY: Office of the Public
22 Counsel, Mr. Mills?

23 MR. MILLS: No questions.

24 JUDGE STEARLEY: Complainant, Ms. Orler?

25 MS. ORLER: Just one.

1 CROSS-EXAMINATION BY MS. ORLER:

2 Q. Ms. Brunk, with regards to all the
3 testimonies you've provided, you have given a great lot of
4 detail to the future vision of Big Island. I think that's
5 the correct terminology that you've used; is that correct?

6 A. Yes.

7 MS. HEINTZ: Your Honor, I'm going to
8 object here. I think we've already determined that future
9 plans of Big Island and Folsom Ridge are not relevant to
10 the Commission.

11 MS. ORLER: Thank you. That was going to
12 be my question.

13 JUDGE STEARLEY: Well, I haven't had a
14 chance to say anything. Yes, we have determined that the
15 future plans are not relevant to the issues that are
16 before the Commission.

17 MS. ORLER: Thank you.

18 JUDGE STEARLEY: Was that your only
19 question, Ms. Orler?

20 MS. ORLER: Yes.

21 JUDGE STEARLEY: Thank you.

22 Cross-examination? Mr. Pugh, do you have any
23 cross-examination for this witness?

24 MR. PUGH: No, sir, I don't.

25 JUDGE STEARLEY: Ms. Fortney?

1 MS. FORTNEY: No, sir.

2 JUDGE STEARLEY: And Mr. Temares?

3 MR. TEMARES: No, your Honor.

4 JUDGE STEARLEY: Questions from the Bench,
5 Commissioner Appling?

6 COMMISSIONER APPLING: No questions.

7 JUDGE STEARLEY: I have none either, so
8 there will be no recross based on no questions.

9 Redirect, Mr. Comley?

10 MR. COMLEY: I have no redirect.

11 JUDGE STEARLEY: Very well. Ms. Brunk, I'd
12 like to thank you for your patience and waiting to offer
13 your testimony today. It's greatly appreciated. You may
14 step down from the stand. However, I do advise you you're
15 not finally excused in case the Commission would like to
16 recall you to ask you some questions.

17 THE WITNESS: Thank you, your Honor.

18 JUDGE STEARLEY: Thank you very much.

19 Mr. Comley, you may call your next witness.

20 MR. COMLEY: Call William A. Hughes.

21 JUDGE STEARLEY: Mr. Hughes, if you'd
22 please raise your right hand.

23 (Witness sworn.)

24 JUDGE STEARLEY: Mr. Comley, you may
25 proceed.

1 WILLIAM A. HUGHES testified as follows:

2 DIRECT EXAMINATION BY MR. COMLEY:

3 Q. Mr. Hughes, would you state your name for
4 the reporter again.

5 A. William A. Hughes.

6 Q. And are you the same William A. Hughes who
7 caused to be filed in this case a set of written
8 testimony, a set of direct testimony which has been marked
9 by the reporter as Exhibit 13?

10 A. Yes, I did.

11 Q. And, Mr. Hughes, if I were to ask you the
12 questions that are contained in that piece of written
13 testimony, would your answers today be the same?

14 A. Yes, it would.

15 MR. COMLEY: Your Honor, I would offer into
16 the record Exhibit No. 13.

17 JUDGE STEARLEY: Are there any objections
18 to the offering of Exhibit 13?

19 (No response.)

20 JUDGE STEARLEY: Hearing none, it shall be
21 received and admitted into evidence.

22 (EXHIBIT NO. 13 WAS RECEIVED INTO
23 EVIDENCE.)

24 MR. COMLEY: And I'll tender Mr. Hughes for
25 cross-examination.

1 JUDGE STEARLEY: Cross-examination,
2 beginning with the 393 companies, Ms. Holstead?

3 MS. HOLSTEAD: No cross-examination, your
4 Honor.

5 JUDGE STEARLEY: Staff, Ms. Heintz?

6 MS. HEINTZ: No questions, thank you.

7 JUDGE STEARLEY: Office of the Public
8 Counsel?

9 MR. MILLS: No questions.

10 JUDGE STEARLEY: Complainant, Ms. Orler?

11 MS. ORLER: None, your Honor.

12 JUDGE STEARLEY: Mr. Pugh?

13 MR. PUGH: I do have one.

14 JUDGE STEARLEY: All right. Please come to
15 the podium.

16 CROSS-EXAMINATION BY MR. PUGH:

17 Q. Mr. Hughes, I -- in the notice from Folsom
18 Ridge for the annual meeting in 2005, Folsom Ridge
19 mentioned in that letter to all homeowners that the
20 homeowners owe \$7,000 to the -- to Folsom Ridge --

21 MS. HEINTZ: Your Honor, again, Mr. Pugh is
22 testifying. Is there a question?

23 BY MR. PUGH:

24 Q. Yes. Could you explain to me what that
25 \$7,000 was for?

1 MR. COMLEY: I'll object. First, I don't
2 know whether the witness will know about the notice, and I
3 would object to the form of the question about that.

4 JUDGE STEARLEY: Mr. Hughes, if you
5 would -- Pugh. I'm sorry. Now I've got Hughes and Pugh
6 before me. Mr. Pugh, if you would please rephrase your
7 question.

8 BY MR. PUGH:

9 Q. Does the Homeowners Association owe Folsom
10 Ridge \$7,000?

11 A. Currently?

12 Q. Yes, sir.

13 A. No.

14 Q. When was that paid?

15 A. I believe in either -- I'd have to take a
16 look at the record. It was either in '04 or '05.

17 Q. But it has been paid?

18 A. It has been paid.

19 MR. PUGH: Okay. That's all.

20 JUDGE STEARLEY: Thank you, Mr. Pugh.
21 Cross-examination, Ms. Fortney?

22 MS. FORTNEY: No, your Honor.

23 JUDGE STEARLEY: Mr. Temares?

24 MR. TEMARES: No, your Honor.

25 JUDGE STEARLEY: Questions from the Bench,

1 Commissioner Appling?

2 COMMISSIONER APPLING: No questions.

3 JUDGE STEARLEY: I have no question as
4 well. No recross-examination.

5 Redirect, Mr. Comley?

6 REDIRECT EXAMINATION BY MR. COMLEY:

7 Q. Mr. Hughes, with respect to the \$7,000 that
8 Mr. Pugh referred to, were there other years in which
9 Folsom Ridge was paid that amount or like amounts from the
10 Association?

11 A. There was another year that it -- as far as
12 the cost of it was, was a reimbursement for all the
13 expenses that Folsom Ridge had paid in the past. I was
14 asked as their outside CPA to go in and determine all of
15 the expenses that Folsom Ridge had paid on behalf of Big
16 Island. I created that information. We submitted it to
17 the board of directors. The first year they accepted it,
18 it went on in regards to the records. Then one year they
19 paid I believe it was around \$14,000 to Folsom Ridge --
20 I'd have to get the exact numbers -- which was also
21 approved by the board of directors of the Homeowners
22 Association.

23 Then a \$7,000 payment was paid, again
24 approved by a board of directors to pay that amount. And
25 then the final one was another \$7,000 that was paid to

1 finally pay for all the reimbursements of the expenses
2 that Folsom Ridge had paid.

3 Q. These were advanced expenses by Folsom
4 Ridge?

5 A. Correct.

6 Q. So my understanding is that all those
7 advancements have been repaid to Folsom Ridge?

8 A. Correct.

9 MR. COMLEY: That's all I have. Thank you.

10 JUDGE STEARLEY: Thank you, Mr. Comley.

11 Mr. Hughes, I'd like to thank you for your patience in
12 waiting to testify, and I advise you also, as I'm allowing
13 you to step down, that you've not been finally excused in
14 case the Commissioners would like to call you for some
15 additional questions. Thank very much.

16 You may call your next witness, Mr. Comley.

17 MR. COMLEY: David G. Krehbiel.

18 (Witness sworn.)

19 JUDGE STEARLEY: You may be seated.

20 Mr. Comley, you may proceed.

21 DAVID G. KREHBIEL testified as follows:

22 DIRECT EXAMINATION BY MR. COMLEY:

23 Q. Mr. Krehbiel, would you please state your
24 full name for the reporter, please.

25 A. First name is David, last name is Krehbiel.

1 Q. Are you the same David Krehbiel who caused
2 to be filed in this case written testimony including
3 direct testimony, rebuttal testimony and surrebuttal
4 testimony, that have been marked by the reporter for
5 identification as Exhibit Nos. 14, 15 and 16?

6 A. I did file that testimony. I'm not aware
7 of the numbering of the exhibits, but if that's correct,
8 I'll accept that.

9 Q. Do you have a copy of your testimony in
10 front of you?

11 A. Yes, I do.

12 Q. Mr. Krehbiel, if I were to ask you the
13 questions that are contained in your prefiled direct,
14 rebuttal and surrebuttal testimonies, would your answers
15 today be the same?

16 A. They would.

17 MR. COMLEY: Your Honor, based upon those
18 answers, I would move for the admission of Exhibits 14, 15
19 and 16.

20 JUDGE STEARLEY: Are there any objections
21 to Exhibits 14, 15 and 16?

22 (No response.)

23 JUDGE STEARLEY: Hearing none, they shall
24 be received and admitted into evidence.

25 (EXHIBIT NOS. 14, 15 AND 16 WERE RECEIVED

1 INTO EVIDENCE.)

2 MR. COMLEY: And tender the witness for

3 cross-examination.

4 JUDGE STEARLEY: All right.

5 Cross-examination beginning with 393 companies,

6 Ms. Holstead?

7 MS. HOLSTEAD: No cross, your Honor.

8 JUDGE STEARLEY: Staff?

9 MS. HEINTZ: Thank you, your Honor. I have

10 no questions.

11 JUDGE STEARLEY: Office of the Public

12 Counsel?

13 MR. MILLS: No questions. Thank you.

14 JUDGE STEARLEY: Complainant Ms. Orler?

15 MS. ORLER: None, your Honor. Thank you.

16 JUDGE STEARLEY: Mr. Pugh? I can give you

17 a moment if you need and ask the other complainants.

18 MR. PUGH: Go around, please.

19 JUDGE STEARLEY: Ms. Fortney?

20 MS. FORTNEY: No, your Honor.

21 JUDGE STEARLEY: And Mr. Temares?

22 MR. TEMARES: No, your Honor.

23 JUDGE STEARLEY: Mr. Pugh, take a moment

24 there.

25 MR. PUGH: I do have one question, your

1 Honor.

2 JUDGE STEARLEY: All right. Come to the
3 podium, please.

4 CROSS-EXAMINATION BY MR. PUGH:

5 Q. Would you give me your opinion of the lack
6 of jurisdiction on service lines by the DNR?

7 A. No, I would not.

8 Q. Would you say that the sewer water lines in
9 the same upright are not a health risk, sewer line valves?

10 A. I have no opinion.

11 Q. Do you agree that sewer and water lines not
12 separated give you a health risk?

13 A. Would you clarify agree with?

14 Q. Service lines running the same trench, does
15 that present a health risk?

16 A. Do service lines?

17 Q. Yes, service lines.

18 A. I have no opinion on service lines. I'm an
19 engineer that works on the main lines.

20 Q. Okay. Do you think a system, just because
21 it's bought off by the -- approved by the DNR, knowing
22 that they have no jurisdiction over the service lines, do
23 you -- do you think that that is a safe system?

24 MS. HEINTZ: Your Honor, I have to object
25 to Mr. Pugh's use of bought off. We have no evidence to

1 support that in the record.

2 JUDGE STEARLEY: I would sustain that.

3 Mr. Pugh, could you just rephrase your question.

4 BY MR. PUGH:

5 Q. Do you believe that an approved system by
6 the DNR is a risk-free system?

7 A. Would you clarify risk-free for me, please?

8 Q. Do you -- risk free, I'm referring to the
9 possibility of getting drinking water contamination.

10 A. Please repeat what the question with the
11 definition is for me.

12 JUDGE STEARLEY: I can have the court
13 reporter read that back, if you wish.

14 MR. PUGH: Yes, I would.

15 (THE REQUESTED TESTIMONY WAS READ BY THE
16 REPORTER.)

17 THE WITNESS: If you say there is no
18 possibility that the system will not be contaminated,
19 there are no assurances.

20 BY MR. PUGH:

21 Q. With sewer and water line in close
22 proximity, do they -- do they create more of a risk than
23 those separated?

24 A. Once again, I'd ask you to define close
25 proximity.

1 Q. All right. In the same trench. A service
2 line in the same trench, does that -- service lines
3 meaning water and sewer, does that -- is --

4 A. I have no --

5 Q. -- is that a risk?

6 A. I have no opinion with regard to service
7 lines.

8 Q. Why would that be, why you have no opinion
9 on service lines?

10 A. I'm an engineer that deals with the main
11 distribution line.

12 Q. You have nothing to do with service lines?

13 A. What do you mean nothing to do? I do not
14 design service lines.

15 Q. Didn't you just put in a new system on Big
16 Island with service lines?

17 A. I designed the main lines.

18 Q. And who designed the service lines?

19 A. I have no idea who designed the service
20 lines. They weren't under the purview of the DNR, and
21 therefore, we had no involvement with the service lines.

22 Q. I think you're making my point,
23 Mr. Krehbiel. Nobody has jurisdiction over part of this
24 system, and --

25 JUDGE STEARLEY: Mr. Pugh, you're now

1 testifying. Do you have another question for this
2 witness?

3 MR. PUGH: I think that will -- I think I
4 made my point.

5 JUDGE STEARLEY: All right. Thank you,
6 Mr. Pugh. Questions from the Bench, Commissioner Appling?

7 COMMISSIONER APPLING: No questions.

8 JUDGE STEARLEY: I have no questions
9 either. We are back to redirect, Mr. Comley.

10 MR. COMLEY: I have no redirect for
11 Mr. Krehbiel.

12 JUDGE STEARLEY: Mr. Krehbiel, again, I
13 thank you for your patience today in waiting to testify,
14 and as I've told the other witnesses, while you may step
15 down now, you're not finally excused in case the
16 Commissioners would like to recall you for additional
17 questions.

18 THE WITNESS: Would it be possible to be
19 excused, sir?

20 JUDGE STEARLEY: Do you have certain
21 obligations where you will not be available tomorrow to
22 testify?

23 THE WITNESS: I have appointments.

24 JUDGE STEARLEY: Very well. At this point
25 I should finally excuse you. Should the Commissioners

1 wish to question you further, we will take a different
2 type of approach, arrange a date, subpoena you if need be
3 for that. You will be finally excused at this time.

4 THE WITNESS: Thank you.

5 JUDGE STEARLEY: Thank you for calling my
6 attention to your needs.

7 Mr. Comley, you may call your next witness.

8 MR. COMLEY: Mr. Michael T. McDuffey.

9 JUDGE STEARLEY: Mr. McDuffey, if you'd
10 please raise your right hand.

11 (Witness sworn.)

12 JUDGE STEARLEY: You may be seated.

13 Mr. Comley, you may proceed.

14 MICHAEL T. McDUFFEY testified as follows:

15 DIRECT EXAMINATION BY MR. COMLEY:

16 Q. Mr. McDuffey, would you state your full
17 name.

18 A. Michael Timothy McDuffey.

19 Q. And are you the same Michael Timothy
20 McDuffey who caused to be filed in this case sets of
21 written testimony, direct testimony and rebuttal testimony
22 and surrebuttal testimony which our reporter has marked
23 for identification purposes as Exhibit 17 --

24 A. Yes.

25 Q. Excuse me. I'm sorry. I think I may have

1 mismarked your testimony. Let's see.

2 JUDGE STEARLEY: I have 17, 18 and 19.

3 MR. COMLEY: Thank you.

4 BY MR. COMLEY:

5 Q. 17, 18 and 19?

6 A. Mine are not marked, but yes.

7 Q. All right. If I were to ask you the same
8 questions that are set forth in the exhibits I've
9 identified for you, would your answers still be the same?

10 A. Yes, sir.

11 MR. COMLEY: And, your Honor, based upon
12 his answers, I would move for the admission of Exhibit 17,
13 18 and 19.

14 JUDGE STEARLEY: Are there any objections
15 to the admission of these three exhibits?

16 (No response.)

17 JUDGE STEARLEY: Hearing none, they shall
18 be received and admitted into evidence.

19 (EXHIBIT NOS. 17, 18 AND 19 WERE RECEIVED
20 INTO EVIDENCE.)

21 MR. COMLEY: Your Honor, earlier during the
22 proceedings, Mr. Pugh was allowed to introduce into
23 evidence Exhibit 63, 64 and 65. For the most part, these
24 are a series of photographs that Mr. Pugh identified in
25 the course of today, and these were not added to his

1 testimony, and I asked leave if I could question or add
2 supplemental kind of questioning in connection with these
3 exhibits, and I would like for leave to visit with
4 Mr. McDuffey a little bit about his understanding of these
5 particular photographs.

6 JUDGE STEARLEY: And I will grant that
7 leave and you may proceed.

8 MR. COMLEY: I hope to be very brief, and
9 in connection with that, is there someone who may have
10 another copy of these?

11 BY MR. COMLEY:

12 Q. Mr. McDuffey, in your duties as operator of
13 the wastewater system and the wastewater distribution
14 system, have you become familiar with its operations and
15 also various installations of its mains?

16 A. Yes, sir.

17 Q. Let me draw your attention to Exhibit 63
18 and the picture that is on Exhibit 63. Are you able to
19 explain what is depicted on this photograph to the
20 Commission?

21 A. I see two main lines coming through with
22 looks like two service drops coming off the one. I don't
23 know whether they're water or sewer or what, and I cannot
24 give you the location of that.

25 Q. So you would not be able to identify it as

1 being in the causeway?

2 A. No, sir, I could not.

3 Q. Let's turn to the second page of
4 Exhibit 63. Let me draw your attention to the photograph
5 that is depicted in the upper half of that page. It says
6 June 14, 2005, causeway service line. Could you explain
7 what that service line is for?

8 A. It's service line feeding off the main line
9 to an individual home.

10 Q. There's a reference to protective sleeving
11 in the photograph. Do you know whether protective
12 sleeving would be required in connection with this service
13 line?

14 A. I don't believe so, sir.

15 Q. At the bottom of the page, do you recognize
16 the photograph or the area of the photograph depicted
17 there?

18 A. Yes, sir, I do. That looks like the
19 causeway on Big Island.

20 Q. And there is mention of a new four-inch
21 reinstalled water main on the lower road. Do you
22 understand that to be the case?

23 A. Yes, sir, I do believe it is.

24 Q. Is there anything about the installation of
25 that four-inch reinstalled water main that is a risk to

1 public health, in your opinion?

2 A. Not to my knowledge.

3 Q. Let's go to the third page of the exhibit.

4 Again, would you mind explaining what is depicted on

5 there, to the best of your knowledge?

6 A. I would say that's the same photo as the

7 one we just looked at on the top of the page --

8 Q. Let's go to the next page.

9 A. -- prior to it.

10 Q. Let's go to the next page, which I think is

11 a larger photograph perhaps of the same service line.

12 A. Service line feeding off of the main to the

13 home.

14 Q. Can you explain to the Commission the

15 nature of the causeway and the length of that line and how

16 and why it's been constructed this way?

17 A. Causeway's very, very narrow at that point.

18 There's very limited access. Normally you can only come a

19 few feet off your main line, off of recorded easements,

20 and this looks like the trench probably, just a guess at

21 this point, from the new service line to the old service

22 line that's being replaced.

23 JUDGE STEARLEY: Mr. McDuffey, if you would

24 please pull your microphone a little closer to you so we

25 can hear you better and it helps our recording. I

1 appreciate it.

2 THE WITNESS: I'm sorry, your Honor. I'm
3 usually told to shut up, keep it down.

4 BY MR. COMLEY:

5 Q. Now, in a causeway, are there also
6 pressurized sewer lines?

7 A. Yes, sir.

8 Q. With respect to the pressurized sewer line
9 and this service line, is the relationship an issue for
10 operation of the system?

11 A. No, sir.

12 Q. Will the location of these lines with
13 respect to each in other any way impair or impede the
14 service that you provide through the water or sewer
15 system?

16 A. No, sir.

17 Q. With respect to the pressurization, as long
18 as these lines are pressurized, is there any concern over
19 cross contamination?

20 A. No, sir. There are extreme conditions that
21 can happen, but in normal operating conditions, it's not a
22 problem at all.

23 Q. Please turn to the next page. I'm
24 identifying that, this is a sole upright sewer lid. Are
25 you able to identify that as a sewer lid or the lid or cap

1 on a sewer installation for the Sowell's?

2 A. No. I see these every day, no matter where
3 I go in Missouri. I can't be more specific than that.

4 Q. What is the significance of that cover?

5 A. Well, it's to identify the location of the
6 access.

7 Q. I want you to presume for me for a moment
8 that the picture below it may have something to do with
9 the interior of what is covered in the upper part. Can
10 you identify that for the Commission?

11 A. That's a water line service connection
12 shutoff valve, and it appears to be a sewer line shutoff
13 valve with a check valve, the check valve being the lower
14 portion that you see on the bottom of the picture.

15 Q. Is this the way you can distinguish between
16 the two lines?

17 A. Oh, yes, sir.

18 Q. These are apparently enclosed within the
19 same covered area. With respect to the proximity of those
20 two lines, do you have an opinion about whether that is a
21 risk to public health?

22 A. No, I don't believe it is a risk to public
23 health.

24 Q. Can you explain to the Commission why they
25 would be installed in this way?

1 A. Very limited access in some areas. Big
2 Island is an old subdivision, and a lot of the older homes
3 have been built where there is no access. You have very
4 limited room to get the service line to the people's homes
5 for access. If you drive out on there, you'll find that
6 lots are 50 foot wide and there's 40 foot of concrete in
7 front of it.

8 Q. Given the conditions you've described at
9 Big Island, do you know of other areas in Lake of the
10 Ozarks where these same conditions exist?

11 A. Not personally, no.

12 Q. Are you aware of other systems that may
13 have service lines in this kind of configuration?

14 A. Yes, sir.

15 Q. Is that uncommon?

16 A. It is not uncommon. Most of the new
17 construction have them separated more, but, you know, it's
18 new construction, there's no obstruction. The old
19 building construction could impede their flow.

20 Q. So you're saying that the existing
21 construction was itself a factor in locating these two
22 lines?

23 A. Correct.

24 Q. Let's turn to Exhibit 64. On the cover
25 page, there is a document that has McDuffey Lab. Do you

1 recognize this document?

2 A. Yes, sir.

3 Q. And can you explain the significance of
4 this document to the Commission?

5 A. It's a fecal coliform sample that was
6 tested by McDuffey Lab to see the number of fecal
7 coliforms.

8 Q. Was that in connection -- excuse me. Go
9 ahead.

10 A. Yeah, I believe this was a sample brought
11 in by -- as I know, there's no name on it. It is Stoyer
12 that was brought it in off the Stoyer property and tested.

13 Q. With respect to the fecal coliform analysis
14 that was performed and reported on your lab report, can
15 you explain, what would -- would that mean to you in terms
16 of whether it was active sewage or wastewater or something
17 else?

18 A. I would say it's not active wastewater. It
19 could be just groundwater. Normal groundwater is
20 contaminated, has high numbers of fecal coliform. A
21 normal wastewater sample would be in the millions or too
22 numerous to count.

23 Q. When you say a normal wastewater sample,
24 would you mean active sewage or would this be treated
25 wastewater?

1 A. No. Treated wastewater is required to be
2 much lower than that, lower than normal wastewater. A
3 septic tank discharge untreated is going to be in the
4 million colonies per 20 milliliter sample, whatever you
5 tested it on. Treated wastewater from a discharge plant
6 is not allowed to be above 400.

7 Q. Why would there be fecal coliform counts of
8 this nature in groundwater?

9 A. Fecal coliform's natural in nature. It's
10 in the ground.

11 Q. Let's turn to the second page. At the top
12 of the page there is a statement that there is water at
13 the Stoyers. Were you able to review -- can you identify
14 this document as being part of the incident at
15 Mr. Stoyer's, which is referred to in his direct -- I
16 think his direct and -- excuse me -- rebuttal testimony.
17 This is referred to in Mr. McDuffey's rebuttal.

18 A. It looks like -- the lower picture looks
19 like the access for the water valve or for the sewer valve
20 there, and the upper picture appears to be a trench with
21 water in it, and I was called out on that job site and
22 when I got there, there was no water in the trench. The
23 water was there before I got there. It was not there when
24 I got there.

25 Q. In your review of the incident reported by

1 Mr. Stoyer about the water that was accumulating in the
2 trench, did you reach any conclusions about the origins of
3 that water?

4 A. Yes, but it took quite some time to figure
5 out where it was coming from. Most of it at this point in
6 time was rainwater.

7 Q. It was rainwater. Was it traceable to the
8 wastewater treatment plant?

9 A. No, not at that time.

10 Q. Can you explain to the Commission what the
11 discharge point is for the wastewater treatment plant?

12 A. What the discharge is?

13 Q. Where does it -- what is the watershed
14 below the treatment plant?

15 A. Mr. Stoyer's house.

16 Q. And from Mr. Stoyer's house, where does the
17 wastewater from the -- the treated wastewater go?

18 A. It actually goes in the opposite direction.
19 If Mr. Stoyer's house is on the east side of the island,
20 the wastewater is discharged on the west side of the
21 island.

22 Q. And what is the terminus or the end of the
23 watershed there? Is it the Lake?

24 A. It's the lake, yes, it pumps directly into
25 the lake.

1 Q. The picture that's at the bottom of that
2 page we're talking about, it has Stoyer 6/27/01 at 7 p.m.
3 Is there a way for you to determine the origin of the
4 water that's resting in that picture?

5 A. No, sir.

6 Q. Let's go to the next page. With respect to
7 the photograph that's at the top where there is a date of
8 July 5th, '01, can you determine whether or not the item
9 depicted here is wastewater or is it rainwater or other
10 kind of water?

11 A. No, sir.

12 Q. With respect to the photograph at the
13 bottom, apparently dated July 7th, '01, can you tell from
14 this photograph whether or not this water is wastewater,
15 rainwater or other kind of groundwater?

16 A. No, sir, I cannot.

17 Q. Let me direct you to the last page of
18 Exhibit 64. Can you explain the photograph that's
19 depicted in the last page?

20 A. No, sir.

21 Q. What is that pipe, by the way, that's on
22 that page?

23 A. Just a guess, locating a valve or it's a
24 flashback or a cleanout where somebody would have opened a
25 valve to flush the line.

1 Q. Is there any way for you to determine from
2 the picture what the source of the water or the dampness
3 around that pipe might be?

4 A. No, sir.

5 Q. Let's go to Exhibit 65. The top of the
6 page, there is a date of 3/12/02, and there a sign of
7 water in the trenches or in tire marks. Can you tell the
8 Commission, have there been leaks in the system in the
9 wastewater and water distribution system?

10 A. Have we had leaks? Yes, we've had leaks in
11 there.

12 Q. Is it uncommon for these kinds of systems
13 to have breaks or leaks?

14 A. No, sir. New construction, you've got guys
15 with backhoes digging up the water lines and sewer lines
16 all the time.

17 Q. You're saying that because of the
18 construction going on, there's a chance for leaks in the
19 system?

20 A. Yes, sir.

21 Q. In your position, do you have anyone that's
22 responsible for checking those leaks?

23 A. Yes, sir.

24 Q. Can you tell from the photograph whether or
25 not the water that's in the trenches or the ruts there is

1 groundwater, wastewater or other forms of groundwater?

2 A. No, sir.

3 Q. The bottom picture indicates there was a
4 serious leak across the road and then has a picture of
5 many dead trees. Are you aware of any leak that has
6 caused any damage to vegetation in the area?

7 A. No, sir, not for this condition. This
8 looks like a construction problem to me. And there was
9 also an abandoned lagoon back there that they closed down,
10 if I'm not mistaken. But I couldn't swear to the exact
11 location of this picture.

12 Q. Do you know whether or not wastewater in
13 any way, shape or form does affect the life of vegetation?

14 A. Usually makes it grow.

15 Q. Let's go to the second page of the
16 Exhibit 65. This is a photograph March 12th, 2002
17 apparently. Can you tell the Commission whether or not
18 you can tell from the photograph whether the water there
19 is groundwater, rainwater or wastewater?

20 A. No, sir, I cannot.

21 Q. Did you ever have a report of a sewer leak
22 of -- in that area concerning a customer who may have been
23 a dentist in the area?

24 A. Not to my knowledge, sir.

25 Q. In looking at the photograph, can you tell

1 where it's located?

2 A. No, sir, I cannot.

3 Q. With respect to the photograph on the lower
4 half, another photograph dated 3/12/02, can you tell from
5 the photograph whether or not this is wastewater,
6 groundwater or rainwater?

7 A. No, I cannot.

8 Q. The next page of the exhibit there is a
9 picture in the top half and then there is commentary at
10 the bottom, I think, that is not going to be considered.
11 The top half of the exhibit purports to be a sewer leak on
12 March 12, 2002. Has that been reported to you?

13 A. I do not recall that, sir.

14 Q. Can you tell from the photograph whether
15 this is groundwater, wastewater or rainwater?

16 A. No, sir, I cannot.

17 Q. The next page of the exhibit purports to be
18 done June 15th, 2002, the Mahrs. Were you aware of any
19 complaints of a leak at the Mahrs residence at Big Island?

20 A. Not to my knowledge, sir, no.

21 Q. And with respect to both photographs, are
22 you able to tell whether the water depicted there is
23 wastewater, groundwater or rainwater?

24 A. No, sir, I cannot.

25 Q. Going to the final page of Exhibit 65,

1 regarding the photograph at the upper half of the page, it
2 purports to be a leak at the Toombs residence. Do you
3 recall being notified that there had been a leak at the
4 Toombs residence?

5 A. No, sir, I do not recall.

6 Q. Can you tell from the photograph what the
7 origin of this water may be?

8 A. No, sir, I cannot.

9 Q. So going to the final photograph, the lower
10 half purports to be something regarding the Wickers
11 residence. Can you tell from the photograph where it was
12 taken?

13 A. No, sir.

14 Q. Can you tell from the photograph whether it
15 is wastewater, groundwater or rainwater?

16 A. No, sir, I cannot.

17 MR. COMLEY: I have no other questions for
18 Mr. McDuffey about these. Thank you very much.

19 JUDGE STEARLEY: All right. Mr. McDuffey,
20 we are now going to open you to cross-examination,
21 beginning with the 393 companies. Ms. Holstead?

22 MS. HOLSTEAD: No questions, your Honor.

23 JUDGE STEARLEY: Staff, Ms. Heintz? Do you
24 need a moment?

25 MS. HEINTZ: Yes, your Honor.

1 MR. COMLEY: Judge, Ms. Heintz has reminded
2 me that with respect to the first page of 64, there had
3 been a reserved ruling on that.

4 JUDGE STEARLEY: That is correct, and I was
5 going to get back to that with you.

6 MR. COMLEY: And because Mr. McDuffey has
7 identified it and explained it to the Commission, I would
8 move at this time for the introduction of Exhibit 64, the
9 first page thereof.

10 JUDGE STEARLEY: Right. The first page is
11 hereby admitted unless I hear any other objections to
12 that.

13 (No response.)

14 JUDGE STEARLEY: Very well. Thank you.

15 (EXHIBIT NO. 64 WAS RECEIVED INTO
16 EVIDENCE.)

17 JUDGE STEARLEY: Ms. Heintz, do you have
18 any cross-examination?

19 MS. HEINTZ: No, thank you, your Honor.

20 JUDGE STEARLEY: Office of Public Counsel?

21 MR. MILLS: I do have a few questions.

22 Thank you.

23 CROSS-EXAMINATION BY MR. MILLS:

24 Q. Good evening, Mr. McDuffey.

25 A. Good evening.

1 Q. Your direct testimony lists your
2 qualifications; is that correct?

3 A. Yes, sir.

4 Q. Do you have any formal education beyond the
5 high school level?

6 A. Yes. I have some college degrees -- or not
7 degrees, but hours.

8 Q. And what topics are those?

9 A. General business.

10 Q. General business?

11 A. Yes.

12 Q. Anything having to do with engineering?

13 A. No, sir.

14 Q. Have you ever supervised a construction
15 crew?

16 A. Yes, sir.

17 Q. And have you had any formal training in
18 engineering?

19 A. No, sir. I've worked in engineering and
20 maintenance since 1965.

21 Q. Is it possible for someone to become an
22 expert in the field of water and wastewater without having
23 an engineering degree or formal training in that area?

24 A. I don't propose to know everything about my
25 experience. I go to engineers all the time.

1 Q. My question was, is it possible for someone
2 to develop expertise in the --

3 A. Yes, it is.

4 Q. -- area of wastewater and water without
5 formal training?

6 A. Yes, sir.

7 Q. So that, for example, someone without an
8 engineering degree could recognize whether a two-inch pipe
9 was in close proximity to a four-inch pipe simply by
10 looking at it?

11 A. Yes, sir.

12 Q. Now, with respect to your specific duties
13 for the water and wastewater system at Big Island, if, for
14 example, there is a leak or a break or a problem, do you
15 get that call?

16 A. Yes, sir.

17 Q. And do you personally go out and check out
18 problems and fix them?

19 A. Myself or other employees.

20 Q. And how many employees are there?

21 A. There are five employees.

22 Q. Okay. And is it usually you or usually an
23 employee or does it just depend?

24 A. It just depends.

25 Q. Okay. Now, I believe you -- do you still

1 have those photographs there?

2 A. Yes, sir.

3 Q. If you could look at Exhibit 63, it was, I
4 believe, the second page at the top, there was a picture
5 of a blue pipe?

6 A. Yes, sir.

7 Q. Are you familiar with that particular
8 installation?

9 A. Specifically, I have no idea what house
10 this is going to. It looks like a standard installation
11 to me.

12 Q. So on the system at Big Island, there
13 is a -- is there a great deal of this blue plastic pipe?

14 A. No, not compared to the majority of the
15 system.

16 Q. But it's used in a number of locations?

17 A. Oh, yes.

18 Q. And have you been involved in installing or
19 reinstalling some of that pipe yourself?

20 A. No, sir, I have not.

21 Q. Who does that?

22 A. General contractor has been putting in the
23 main service line and tapping on to the service lines --
24 or main water line, I mean to say.

25 Q. So this pipe is used to connect a service

1 line to the water main; is that correct?

2 A. Yes, sir.

3 Q. Is that the only place that it's used?

4 A. Sometimes it's used as a main.

5 Q. Okay. So some of this pipe is actually
6 serving as main?

7 A. Yes. It comes in varying sizes.

8 Q. And in the pictures that you've got there,
9 is it -- what sort of material is it buried in?

10 A. Looks like native soil to me, at this point
11 in time. I don't see anything buried. It's all exposed.

12 Q. Now, from your point of view, is that a
13 good installation to bury that kind of pipe directly in
14 native soil?

15 A. It's ASTM approved, yes. There should be
16 some back fill with it, though.

17 Q. My question was not whether it was ASTM
18 approved. My question was --

19 A. Yes, it's acceptable for use, and that's my
20 response.

21 Q. Okay. Is it merely acceptable or is it
22 good?

23 A. I'm not the engineer to determine that, but
24 it is used and approved.

25 Q. If you were the one that had to install

1 those service lines, is that the way you would do it?

2 A. It would depend upon the location, sir.

3 Q. Would it surprise you that an engineer from
4 the DNR said he wouldn't do it that way?

5 A. No, sir, that would not surprise me.

6 MR. MILLS: Okay. That's all the questions
7 I have.

8 JUDGE STEARLEY: Okay. Thank you,
9 Mr. Mills. Cross-examination, Ms. Orler?

10 MS. ORLER: I do have a few, yes.

11 CROSS-EXAMINATION BY MS. ORLER:

12 Q. Mr. McDuffey, in your earlier conversation
13 with Mr. Comley, you referred to normal operating
14 conditions of a system. Can you define that for the
15 Court, please?

16 A. What was I referring to?

17 Q. Mr. Comley was asking you some questions
18 concerning leaks and when those might occur, and your
19 response was, not under normal operating conditions. So
20 could you please define what normal operating conditions
21 of the system would be?

22 A. No backhoes around, no heavy equipment
23 running over the water lines and such. I think that's
24 what that was in reference to.

25 Q. Okay. So then could you define, then, for

1 the Court what the normal operating conditions of the
2 system itself would be?

3 A. Pressure integrity.

4 Q. Pressure integrity. Okay. And you said in
5 your response that under normal operating conditions there
6 would be no cross contamination; is that correct?

7 A. Correct.

8 Q. All right. Now, you have also answered
9 Mr. Mills' question when something occurs, you have
10 indicated that you take the call?

11 A. Yes, ma'am.

12 Q. Okay. Who does that call come from?

13 A. Usually whoever it is. We get calls from
14 the homeowners or we get calls from the construction
15 manager or calls from the backhoe operator that's torn the
16 lines up. That's our normal problems.

17 Q. Okay. Do you have a protocol in place to
18 address any issues or problems that might occur as a
19 result of a deviation from the normal operating conditions
20 of the system?

21 A. You mean such as a break in the water line?

22 Q. Anything that deviates from the normal
23 operating conditions of the system, do you have a protocol
24 in place to address it?

25 A. Anything?

1 Q. Uh-huh.

2 A. No, I don't have a protocol for anything.
3 We have specific protocol for specific items.

4 Q. And is this protocol -- what type of
5 protocol is it? Is it written, in a written format?

6 A. You use standard operating procedures to
7 respond to some of the calls.

8 Q. And is that in a written format, then?

9 A. You know, I honestly don't know if I have
10 that written at the lab or not.

11 Q. Okay. So if it's a standard protocol that
12 you follow, and your answer to Mr. Mills' question that
13 sometimes you take the call and sometimes other
14 individuals take the call, how do the other individuals
15 know what the standard protocol is if it's not in a
16 written format?

17 A. They're certified operators and they've
18 been working with me for several years.

19 Q. So it's understood then?

20 A. Yes.

21 Q. Okay. Is this protocol, this -- well, it's
22 not in writing so it's understood, okay? And you've said
23 that the calls that you get when the conditions of the
24 system deviate from the norm could come from anybody?

25 A. Yes, ma'am.

1 Q. Okay. Have you distributed to the
2 residents on Big Island your name and a telephone number
3 to call when the system deviates from its normal operating
4 conditions?

5 A. Big Island management has. I have not
6 personally distributed my name and number, although most
7 people on the island know who we are. All of the
8 information, the name, business names and numbers and all
9 of that have been given to Folsom Ridge and it's been
10 available to the people.

11 Q. Can you confirm that statement with any
12 type of documentation?

13 A. Probably.

14 Q. And what type of documentation would that
15 be?

16 A. Probably a letter to them or contract to
17 them with the numbers to call for emergencies.

18 Q. And would that have been a document that
19 you prepared to have --

20 A. Yes.

21 Q. -- Folsom Ridge distribute?

22 A. No, not for -- we never made up a thing for
23 Folsom Ridge specifically to distribute our name and
24 number. They would have done that on their own.

25 Q. Would Folsom Ridge have obtained your

1 permission prior to doing that to verify the information?

2 A. More than likely.

3 Q. So that means you would have knowledge of a
4 document being prepared in that manner?

5 A. Not necessarily.

6 Q. And why would that be?

7 A. Because I would not have been -- I might
8 not have been sent that.

9 Q. But they -- but they would verify the
10 information with you; is that correct? Is that how you
11 answered?

12 A. Sure, yes.

13 Q. So you --

14 A. But that doesn't mean that they would have
15 sent me a letter to that effect.

16 Q. No, but you would have some knowledge of a
17 document as such was being prepared so that you --

18 A. Not necessarily, ma'am.

19 Q. Okay. So if Folsom Ridge were responsible
20 for preparing such a document to distribute to the
21 residents and they come to you for verification of the
22 information on that document, such as --

23 A. My name and phone number?

24 Q. And maybe an after-hours number or
25 something?

1 A. They had that when they hired me.

2 Q. They had all of that when they hired you?

3 A. Yes, ma'am.

4 Q. And none of that has changed?

5 A. No, ma'am. 346-2092, I've had it for 31

6 years, and that's emergency call-in number.

7 Q. Okay. Okay. So a deviation from the

8 standard normal operating conditions of the system, as

9 you've defined it to the Court today, would be a loss in

10 pressure?

11 A. Uh-huh.

12 Q. Okay. I'd like to refer now to your

13 surrebuttal testimony, please, which is Exhibit -- mine's

14 not marked. I apologize.

15 A. Mine isn't either. Is it rebuttal or

16 surrebuttal?

17 Q. 19.

18 A. Surrebuttal.

19 Q. Surrebuttal. And I am on page 10, line

20 items No. 5, 6, 7 and 8.

21 MS. HEINTZ: Excuse me, your Honor.

22 Mr. McDuffey's surrebuttal testimony isn't ten pages long.

23 JUDGE STEARLEY: I was just going to say

24 the same thing. My copy's got three pages.

25 MS. ORLER: Well, I'm looking at

1 surrebuttal testimony of Michael T. McDuffey, and it is
2 not this case number. I apologize. Could I still ask my
3 question, please? It's not pertaining to this testimony.

4 JUDGE STEARLEY: That testimony is not in
5 evidence.

6 MS. ORLER: Correct.

7 JUDGE STEARLEY: So you may not question
8 him with regard to that.

9 MS. ORLER: No, I won't, but I have a
10 general question that doesn't pertain to this testimony.

11 JUDGE STEARLEY: You may go ahead with any
12 general questions that will be subject to any normal
13 objections by opposing counsel.

14 BY MS. ORLER:

15 Q. You testified by definition that a
16 deviation from the normal operating conditions of the
17 system would be a loss in water pressure; is that correct?

18 A. Yeah, I believe I've answered that.

19 Q. All right. And you would then get the call
20 from anyone who might, I guess, experience, for example,
21 if a resident experienced a loss of water pressure and
22 then you would react to that call?

23 A. Yes, ma'am.

24 Q. Okay. So is this something that's
25 monitored regularly then?

1 A. Yes, ma'am.

2 Q. And how is that done?

3 A. We go to the site and visit the site two or
4 three times a week.

5 Q. And do you check the water pressure?

6 A. We check the water pressure, record
7 temperature -- or not temperature, but flow and usage. We
8 check the wastewater treatment plant.

9 Q. Okay. Thank you. And I know that Big
10 Island is not the only facility that utilizes your
11 services; is that correct?

12 A. Correct.

13 Q. How many other facilities do you contract
14 your services to, approximately?

15 A. Approximately 70.

16 Q. Approximately 70. And do you do the water
17 sampling for all of those 70 utilities?

18 A. Yes, we do.

19 Q. Okay. And can you tell me out of
20 the 70 -- approximately 70 utilities that you contract
21 your services to, about what length of time have you had
22 the number 70 utilities under your control?

23 A. It changes on a day by day, month by month
24 basis. You get contracts, you lose contracts, systems
25 change.

1 Q. So what would be an average number, then,
2 of utilities that you're responsible for the water
3 sampling for?

4 A. Probably the 70.

5 Q. Probably the 70. Okay. And can you tell
6 me, then, out of those 70, is it common for DNR to lose
7 these samples?

8 A. Oh, yes, ma'am, very common.

9 Q. It's very common?

10 A. Yes, ma'am.

11 Q. And how often does that occur?

12 A. Very common.

13 Q. Weekly?

14 A. Give a number, it's -- I couldn't guess.
15 Now, you're talking about an expertise that -- McDuffey
16 Lab is a State-certified lab, and I don't follow all of
17 those, but it happens often enough to be a problem, but
18 you have to consider that the State Health Department is
19 handling thousands and thousands of samples on a monthly
20 basis and, yes, things get lost.

21 Q. So out of the 70, would you say half?

22 A. No, ma'am.

23 Q. So what percentage?

24 A. It would be smaller.

25 MS. HEINTZ: Your Honor, I'm not sure what

1 this has to do with the issues that are in front of the
2 Commission.

3 MS. ORLER: I think water sampling is
4 extremely important in terms of health risks that's
5 created when the samples are lost.

6 JUDGE STEARLEY: I understand your position
7 on that, Ms. Orler, but the ultimate issues that were laid
8 out have to do with whether or not the current operations
9 are under the jurisdiction of this Commission and with
10 regards to the transfer, and I'm not following the
11 relevance of this either, and I will sustain that
12 objection.

13 MS. ORLER: I apologize.

14 BY MS. ORLER:

15 Q. You discussed with Mr. Comley a great lot
16 of detail or some detail regarding the leak at
17 Mr. Stoyer's home.

18 A. Yes, ma'am.

19 Q. Have you ever made reference either orally
20 or in written form with regards to Mr. Stoyer's leak in
21 terming it Stoyer's Springs?

22 A. Yes, ma'am, that's my term.

23 Q. And why do you use that terminology?

24 A. Because it was a spring with the water
25 flowing out through the area. It was coming down the hill

1 and coming through the culverts and coming through the
2 pipe casing and running down. If you remember, that was a
3 very wet spring when we went through this, and it
4 contributed to the length of the problem and the solution.

5 MS. ORLER: Thank you very much.

6 JUDGE STEARLEY: Thank you, Ms. Orler.

7 Cross-examination, Mr. Pugh?

8 CROSS-EXAMINATION BY MR. PUGH:

9 Q. Mr. McDuffey?

10 A. Yes, sir.

11 Q. Do you think that 76 days would be quite an
12 extensive time for a sewer repair?

13 A. For a normal sewer repair, Mr. Pugh, yes.
14 Under the circumstances that we went -- if you're talking
15 about the Stoyer's Spring --

16 Q. Yes.

17 A. -- incident.

18 Q. Actually, two of them.

19 A. I think that we did the best that we could
20 on that under the circumstances that we had and the wet
21 spring that we had.

22 Q. Actually, I was referring to also the one
23 over by the dentist. I don't even know whether you're
24 familiar with that one.

25 A. No, I'm not familiar with that.

1 Q. It was -- one of them I think was 78 and
2 the other one was 76 days.

3 MS. HEINTZ: Again, Mr. Pugh is testifying.

4 JUDGE STEARLEY: Mr. Pugh, you are
5 testifying. I will strike those remarks.

6 MR. PUGH: I'm sorry.

7 BY MR. PUGH:

8 Q. Mr. Comley showed you quite a few pictures
9 here that I had taken. You said that you couldn't
10 identify whether they were just water or sewage or what;
11 is that correct?

12 A. That's correct, sir.

13 Q. Do you think that I would falsify any of
14 these -- any of these pictures?

15 A. No, sir, I don't believe you would.

16 MR. PUGH: Thank you. That's it.

17 JUDGE STEARLEY: Thank you, Mr. Pugh.

18 Cross-examination, Ms. Fortney?

19 MS. FORTNEY: No, your Honor.

20 JUDGE STEARLEY: Mr. Temares?

21 MR. TEMARES: Yes, I do, sir.

22 CROSS-EXAMINATION BY MR. TEMARES:

23 Q. I've got the full copy of Mr. McDuffey's
24 direct testimony. I'm looking at page 4, and starting at
25 line 6, I guess I'm going to ask the question,

1 Mr. McDuffey, because I guess I'm ignorant to the fact and
2 would be interested in his opinion. Another
3 unsatisfactory feature noted was the system had not
4 obtained a written permit to dispense water. Does that
5 mean it's not approved to dispense water?

6 A. No, sir, I don't believe that's what that
7 means.

8 Q. How would you -- how would you explain
9 that?

10 A. In the course of putting in a new well, you
11 start with the construction permit, and the engineer
12 designs it and the well driller installs it and it's
13 inspected by the DNR to an acceptable level, and they
14 figure out the pump size and all of that. And after that
15 inspection is done, the DNR will issue a permit to
16 dispense. It's part of standard procedure. It's part of
17 the construction permit, and apparently it never came
18 forth, the permit to dispense.

19 And since that time, the Folsom Ridge or
20 Big Island Association has applied for that permit to
21 dispense, and that was in 2005, I think, we made
22 application for that, and we still haven't got the
23 response from the DNR on it. It does not mean that it's
24 not a safe well.

25 Q. It doesn't mean it's not a safe operation

1 or well?

2 A. No. Unsafe.

3 Q. I was just -- after reading through your --
4 when somebody says dispense, it sounds like you know
5 you're asking for water. You had testified already that
6 you had no formal training for your wastewater and --

7 A. No, sir, I did not testify that I did not
8 have formal training for my wastewater.

9 Q. Okay. Do you have formal --

10 A. Yes, sir.

11 Q. -- training for your wastewater?

12 A. I do.

13 Q. And what kind of training?

14 A. It's DNR training.

15 Q. All right. And what's required for that?

16 A. Classes, passing of test, continuing
17 education.

18 Q. Like seminars?

19 A. Yes. It's continuing ed all the time.

20 Q. And it certifies you to work on wastewater
21 plants?

22 A. Yes, sir.

23 Q. All right. And then you have to take a
24 test and you get certified by the State?

25 A. Yes, sir.

1 Q. And then all your employees, I think you
2 said five, are all certified?

3 A. All of the field men are certified. Some
4 of the people in the lab are certified under drinking
5 water.

6 Q. Okay. Are you also a plumber?

7 A. Yes, sir, I do quite a bit of plumbing.

8 Q. Are you a licensed plumber?

9 A. No, sir. There is no license in Camden
10 County.

11 Q. Okay. So all your -- I guess your piping,
12 your pipe work would be self-taught?

13 A. It's from 40 years of experience.

14 Q. Okay. Self-taught?

15 A. Well, no. Somebody taught me in the
16 beginning. I didn't know it all.

17 Q. Okay. The pictures that you were shown
18 that was indicating leaks that you couldn't identify by
19 the picture whether they were water leaks or wastewater
20 leaks, if you were -- had you been --

21 MS. HEINTZ: Excuse me, your Honor. I
22 don't think that Mr. McDuffey testified that the water in
23 the pictures was evidence of leaks. Could Mr. Temares
24 please rephrase his question?

25 MR. TEMARES: Oh, I'm sorry. The pictures

1 that you were shown and asked if you could identify them
2 as what type of leaks they were, and you said no, is that
3 the --

4 JUDGE STEARLEY: Excuse me, Mr. Temares. I
5 believe the question was if he could identify what type of
6 water was there and what the source of that water was.

7 MR. TEMARES: All right.

8 JUDGE STEARLEY: And Mr. Comley can correct
9 me if I'm wrong in that because he asked the question.

10 MR. COMLEY: I think the Judge is correct
11 and I concur in the objection of Staff counsel.

12 MR. TEMARES: Okay. I'm sorry.

13 BY MR. TEMARES:

14 Q. That type of -- what that water was. If
15 you had been called to Big Island and that water was in
16 that tire track or on the side of the road as you went up
17 to look at it, could you identify that water as to whether
18 it was rainwater or if it was sewer water when you walked
19 up to it?

20 A. No, not necessarily.

21 Q. I mean, the smell would indicate nothing?

22 A. Raw sewage sometimes is very easy to
23 determine.

24 Q. Oh, yes.

25 A. But a lot of times fresh water or rainwater

1 has a bad odor to it, too.

2 Q. I'm just asking because I was familiar with
3 some of the leaks.

4 MR. COMLEY: I object to his testimony
5 about being familiar with the leaks.

6 JUDGE STEARLEY: I will sustain that
7 objection. That remark will be stricken.

8 BY MR. TEMARES:

9 Q. Okay. When you go out to perform your
10 service on Big Island, do you have an inspection sheet?

11 A. Yes, we do.

12 Q. On this inspection sheet, when you're done
13 with your service, is it required by somebody on the
14 island to sign off on that inspection sheet that the work
15 has been performed?

16 A. No, sir.

17 Q. So what happens with that inspection sheet?

18 A. It's what we call trip sheets, and we keep
19 them for record.

20 Q. So nobody actually checks what's been done
21 and the date you've been there and how much time has been
22 spent?

23 A. No, sir, not normally, although those have
24 been called for to be inspected before.

25 Q. Okay. You were shown some pictures with

1 some pipes that you identified, and -- by Mr. Comley. Are
2 you capable of telling whether the pipes, by looking into
3 a trench or through those pictures, if they were installed
4 by code for the DNR?

5 A. There isn't any code for the service lines.

6 Q. Is there any into code for service lines?

7 A. No.

8 Q. Or tapping them into the main?

9 A. There is a code for tapping them into the
10 main.

11 Q. All right. The isolation valves for that
12 are supposed to be on, I guess, the main to isolate an
13 individual resident's home, are they above ground or below
14 ground?

15 A. No, sir. They're attached to the pipe,
16 normally called a corporation stop.

17 Q. All right. So they're below the ground?

18 A. Yes, sir.

19 Q. So if something happened and an individual
20 needed to isolate his residence or someone needed to be
21 called to isolate a residence because of contamination, it
22 couldn't be done other than by calling you?

23 A. No. Normally the homeowner for the service
24 line would put in their own shut-off valve, but the
25 corporation stop stays buried on the main line.

1 Q. I mean, in my case, the lines were already
2 installed in my home when I bought it.

3 A. Yes, sir.

4 Q. I haven't the slightest idea where the
5 isolation or if there's an isolation valve in my home, if
6 I needed to --

7 MS. HEINTZ: Your Honor, this is testimony.

8 JUDGE STEARLEY: Mr. Temares, again, this
9 is testimony, and I will strike that.

10 MR. TEMARES: All right. That's all I've
11 got.

12 JUDGE STEARLEY: Thank you, Mr. Temares.
13 Questions from the Bench, Commissioner Appling?

14 COMMISSIONER APPLING: I don't have any
15 questions.

16 JUDGE STEARLEY: Commissioner Gaw?

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. Just a few. Mr. McDuffey, just a
19 clarification. On the pictures that you looked at with
20 water in them earlier in your testimony, is there ever any
21 circumstance when you can look at a picture and tell
22 whether something is wastewater or not?

23 A. If we have a real good flow out of it, sir,
24 I can tell you if it's drinking water or --

25 Q. In a photograph?

1 A. In a photograph, no.

2 Q. That's what I'm asking.

3 A. No, sir.

4 Q. Okay. So in other words, from your

5 standpoint, you're not saying it is or it is not

6 wastewater, you just can't tell from these pictures?

7 A. I can't tell, no, sir.

8 Q. Did you -- do you keep records of your

9 calls out to Big Island?

10 A. Yes, sir.

11 Q. And do those records reflect what -- what

12 you find when there's a trouble call?

13 A. Yes, sir.

14 Q. How long do you keep those records?

15 A. What we do is we have a trip sheet and a

16 diary that my employees have or I have and that we log

17 when we get to the job site and what we perform, and we

18 copy those diaries and we put them up, and I don't know

19 how many years they go back, Commissioner Gaw.

20 Q. That's okay, but several years, would you

21 say?

22 A. Yeah.

23 Q. Has anyone in this case asked to look at

24 those records?

25 A. No, sir.

1 Q. If you had been called out or -- and I saw,
2 I mean, your company had been called out to look at
3 standing water and identify what it was and where it was
4 coming from. That would be reflected in those records?

5 A. Yes, they should be reflected in the
6 records.

7 Q. Earlier Mr. Comley asked you a number of
8 questions about whether you recalled certain things about
9 the incidents that were depicted in photographs, and if I
10 recall correctly, you said you didn't recall in a number
11 of answers to those questions; is that accurate?

12 A. You'd have to be more specific, Mr. Gaw.

13 Q. Well, do you recall him asking you
14 questions about incidents that happened on Big Island and
15 your response --

16 A. Yes, sir.

17 Q. -- something to --

18 A. Like for the leak at the dentist's house?

19 Q. Yes.

20 A. No, sir. I might -- I might have went out
21 and personally worked at it, but knew it was a dentist
22 house, no, sir. You asked me to tell you the truth and
23 I'm telling you truth. I would not know it as it's
24 depicted there.

25 Q. I understand. What I'm looking for here is

1 just so I'm understanding what your testimony is actually
2 saying. You're saying you just don't remember, in
3 essence, and you can't recall based upon those
4 photographs?

5 A. Yes, sir, or I may not personally have
6 worked on it.

7 Q. Okay. That's fine, and that would be
8 another reason why you wouldn't recall it?

9 A. Yes, sir.

10 Q. But there would be records that you would
11 have of those visits?

12 A. Either I would have them or the contractor
13 that fixed the leak would have them.

14 Q. Okay. Do you know how voluminous those
15 records might be for Big Island going back for the last
16 four to five years?

17 A. Is there a point for your question? Not to
18 be a smart aleck, but are you wanting something specific?

19 Q. My questions deserve ridicule, I'm sure, so
20 don't worry about it, but what I'm looking for is just to
21 see how much paperwork that is to look through.

22 A. You know, a point of standard business is
23 we keep track of how often we go to the site and visit it.
24 We keep track of the calls, the late-night calls. There's
25 people in this room who have called us and we keep service

1 calls for them, to the best of our ability, and we bill
2 for a lot of that. So there's billing records for all
3 this stuff. We don't fix water lines a lot of times
4 without charging for them, guys.

5 Q. Well, you're in business. You're in the
6 business of doing that, that's what your job is when you
7 go out there, right?

8 A. Yes, sir.

9 Q. But what I'm looking for is, if you went
10 out there and you found a problem or somebody working for
11 you found the problem, would it be shown in some of those
12 --

13 A. Yes, sir.

14 Q. -- papers that you have?

15 A. It should be, yes.

16 Q. Do you know whether there were wastewater
17 issues that might show up in some of your records or not?

18 A. Well, the Stoyer Springs, there was quite a
19 bit of recording on that and several letters written by
20 myself in the course of events to take care of this
21 problem.

22 Q. Okay. And I'm sure this is in the record,
23 but if you wouldn't mind telling me first of all, when was
24 that incident?

25 A. To give you a specific date, I --

1 Q. Just general?

2 A. I don't even remember what year it was,
3 sir.

4 Q. That's okay. I'm sure someone has said
5 something about it or will.

6 A. As a piece of remembrance, it's easy for me
7 to remember a focal point. Do you know what time John
8 Ashcroft was appointed the Attorney General?

9 Q. Okay.

10 A. What year?

11 Q. Was it around that same year?

12 A. Mr. Ashcroft showed up at Stoyer Springs
13 one day when I was there with several members of the
14 Department of Natural Resources, and we were investigating
15 this leak.

16 Q. Okay.

17 A. 2001? When was that, guys?

18 Q. That will be a matter of record that we can
19 tie back to, so that's helpful. Now -- no, I won't ask
20 you what he said. So --

21 A. He didn't have much to say, as I recall.
22 He might have been a little overwhelmed.

23 Q. This incident, what generally was it, this
24 Stoyer's Springs incident?

25 A. See if I can't explain this a little bit.

1 Q. Okay.

2 A. Mr. Stoyer lived on a lake level. The
3 wastewater treatment plant is on top of the hill probably
4 750 foot in elevation. We've got a 150 foot fall, maybe
5 more than that. Of course, we dug trenches from the main
6 water line down by Mr. Stoyer's house up to the wastewater
7 treatment plant and backfilled them with fill and covered
8 them up.

9 Q. Why did you do that?

10 A. Why did we do that?

11 Q. Yes.

12 A. It was part of the installation --

13 Q. Okay.

14 A. -- Mr. Gaw.

15 Q. Okay. Keep going.

16 A. So we've got water and sewer lines going up
17 to the well house and to the wastewater treatment plant.
18 The discharge line from the wastewater treatment plant was
19 installed, and the best that we can determine, that when
20 the contractor installed the electrical control panel to
21 operate the treatment plant, he drove a stake through the
22 discharge line of the treatment plant. So we're talking
23 about the treatment plant.

24 And the repair that was made -- and we
25 still have this item available for anybody to look at the

1 wastewater treatment plant. They took a rubber coupling,
2 cut it in half, put it around the pipe. The pipe has a
3 hole in the top of it and a hole in the bottom of it.
4 It's four-inch piece of pipe. They put in a three inch
5 rubber coupler. So when they covered the pipe up and put
6 their stainless steel clamps on it, the bottom of the pipe
7 has a split on this far (indicating) that the rubber
8 doesn't seal and the hole from the stake, and that water
9 was leaking out of that and going into a trench with
10 gravel.

11 And it was also a wet spring, and that was
12 running down the trenches to the area near Mr. Stoyer's
13 home. And when we finally found that leak, it pretty much
14 dried up.

15 Q. Okay.

16 A. That's not a normal circumstance that I see
17 for sewer leaks. And it did take some time, and I
18 apologized to the people for that, but it really was an
19 unusual circumstance.

20 Q. Now, at some point in your testimony
21 earlier, you were shown pictures with two lines that
22 weren't too far apart from one another, and you were asked
23 questions just generally, and I'm very much paraphrasing
24 here, about whether that was acceptable for those lines to
25 be that close together. If I recall correctly, and I want

1 you to tell me if I'm wrong, you said, well, in new
2 installations you would prefer to put those farther apart.

3 Do you recall that general testimony?

4 A. Yes, sir.

5 Q. Am I fairly accurately --

6 A. You are accurate. In new construction, I
7 would prefer that.

8 Q. Now, what I didn't hear is why you would
9 want in new construction those lines to be farther apart,
10 and I just wanted you to explain that.

11 A. Practical matters, if you got a guy down
12 then with a backhoe and the lines are in the same trench
13 and he breaks both lines, you create an unsafe condition
14 for the homeowner.

15 Q. Tell me why that is.

16 A. Because you can mix water and sewer
17 together at that point.

18 Q. Okay. So it is better to try to keep them
19 farther apart so you don't have that contamination problem
20 in the event that the lines do get broken?

21 A. Yes, sir.

22 Q. Okay. Now, if you don't know the answer to
23 this, just say. The lines, the service lines at Big
24 Island that have been referred to, who owns the service
25 lines? Is that owned by the --

1 A. Beyond the corporation, it is owned by the
2 homeowner and they're responsible for it.

3 Q. Well, if it's called a service line, is it
4 owned by the individuals, the homeowners and not the
5 company in all instances?

6 A. You know, a normal -- and you can take your
7 pick of what you want to call normal. Normally you put a
8 corporation stop on the main line and you run over three
9 or four foot and stay within your easement for the water
10 district easement or the sewer district easement and you
11 put in some kind of stop or a meter loop, and at that
12 point in time it becomes the homeowner's responsibility --

13 Q. Yes.

14 A. -- to take care of it into their home.

15 Q. I understand. My question is, when we're
16 referring to service lines in this testimony, is it --
17 would it be accurate to say that sometimes when we're
18 talking about service lines, some portion of that might be
19 owned by the company, some portion of it might be owned by
20 the homeowner?

21 A. Yes, sir.

22 Q. Okay. And you've already testified as to
23 where the normal point of demarcation is between the two?

24 A. Yes, sir.

25 Q. Do you know if that is true at Big Island

1 or not?

2 A. No, sir, I do not know.

3 Q. It's okay.

4 A. Normal water districts have a dedicated
5 easement, and you get around older construction and that
6 and you don't have that kind of stuff.

7 Q. Sure. Okay. Now, I think you said
8 earlier, and correct me if I'm wrong, that DNR does not
9 oversee or not regulate service lines?

10 A. I believe that's a true statement, yes.

11 Q. What do you base that on?
12 I'm going to ask that of someone else if
13 you don't know. That's okay.

14 A. I have never seen any engineering on it.

15 Q. That's fine. And I think one other
16 question or series of questions. You mentioned that you
17 do pressure checks --

18 A. Yes, sir.

19 Q. -- as part of your service at Big Island,
20 correct?

21 A. Yes, sir.

22 Q. Do those pressure checks catch all of the
23 leaks that may be in the system?

24 A. No, not necessarily.

25 Q. Okay. Generally, can you give me some sort

1 of a range of what type of leak you would expect to catch
2 with those pressure checks?

3 A. Larger leaks that, you know, if you go in
4 and read a meter and you count your volume and you're on
5 3,000 gallons of water a day, and you show up the next day
6 and it's up to 4,000, the odds are you may have a leak, or
7 it may be somebody started filling their swimming pool or
8 whatever, but you try and control that with keeping good
9 records.

10 Q. Okay. Now, on smaller leaks that might not
11 be caught by that type of a check, if lines were running
12 in close proximity to one another, such as the service
13 lines that were shown in the pictures earlier, is it
14 possible that on those smaller leaks you could have -- if
15 there were leaks, you could have cross contamination?

16 A. Yes, sir.

17 COMMISSIONER GAW: That's all I have.
18 Thank you, sir.

19 THE WITNESS: Thank you, Mr. Gaw.

20 JUDGE STEARLEY: All right. I have no
21 other questions from the Bench here, so we will go to
22 recross-examination based on questions from the Bench,
23 beginning with the 393 companies, Ms. Holstead?

24 MS. HOLSTEAD: No questions, your Honor.

25 JUDGE STEARLEY: Staff?

1 MS. HEINTZ: No questions, your Honor.

2 JUDGE STEARLEY: Office of the Public
3 Counsel.

4 MR. MILLS: Just a couple.

5 RECROSS-EXAMINATION BY MR. MILLS:

6 Q. Mr. McDuffey, Commissioner Gaw asked you a
7 question about whether or not walking up to what appears
8 to be a leak, whether you could ever tell what was the
9 cause of that leak, what was the source of that water. Do
10 you recall those questions?

11 A. Yes, sir, I do.

12 Q. Would it be possible that in the series of
13 pictures that you were shown, that the person taking the
14 pictures spent enough time walking around the area and
15 knowing what was going on in terms of weather, whether
16 there was any rainfall recently, so the person taking the
17 picture would have a good idea where that water came from?

18 MR. COMLEY: The question is speculative on
19 possibilities and what could have happened when the
20 picture was taken. I think that adds conjecture to the
21 question and the answer, and he should not be allowed to
22 answer the question.

23 MR. MILLS. Well, he did answer. Are you
24 asking that it be stricken?

25 MR. COMLEY: Yes, I will. I think it

1 should be stricken.

2 JUDGE STEARLEY: Okay. I will strike that
3 answer.

4 Mr. Mills, you can rephrase as a
5 hypothetical.

6 MR. MILLS: Well, I can actually -- I can
7 refer to a specific picture.

8 JUDGE STEARLEY: Very well.

9 BY MR. MILS:

10 Q. Pick any one of those pictures you've got
11 that has water in it.

12 A. Okay. Go right ahead.

13 Q. Assume for me -- well, don't assume. The
14 record will reflect that Mr. Pugh took those pictures. Is
15 that your understanding?

16 A. Yes, sir.

17 Q. Do you know where Mr. Pugh lives?

18 A. I have an idea, yes.

19 Q. Do you have an opinion as to whether or not
20 Mr. Pugh spent a fair amount of time looking around at
21 leaks on the island?

22 A. I can't answer that for you, sir. I don't
23 know what Ben does.

24 Q. Would it be possible for a hypothetical
25 person to spend a few minutes walking around a leak to get

1 an idea of whether or not it was from groundwater?

2 A. I'm sure you could get an opinion.

3 Q. Now, with respect to the questions that
4 Commissioner Gaw asked you about your records, I believe
5 you said that every time you get a call and you go out to
6 Big Island, you or one of your employees would make a trip
7 ticket; is that correct?

8 A. Yes, sir.

9 Q. In terms of your recordkeeping, would that
10 trip ticket go in a Big Island box or would it go in --

11 A. It should go in a Big Island box. We keep
12 a Big Island file, yes.

13 Q. So they're sorted by company and by date?

14 A. And water and wastewater, too.

15 Q. So if someone were to ask you to pull all
16 the trip tickets for Big Island, you wouldn't have to go
17 through, for example, a single day that might have trip
18 tickets from 20 different companies?

19 A. If you had a specific date, it would be
20 much easier to find.

21 Q. But you wouldn't be mingling through,
22 looking through all other copies mingled with Big Island,
23 they'd be separate?

24 A. No, sir, you shouldn't.

25 MR. MILLS: That's all the questions I

1 have.

2 JUDGE STEARLEY: Thank you, Mr. Mills.
3 Recross-examination from Complainants. Ms. Orlor, do you
4 have any questions based upon cross-examination?

5 MS. ORLER: One, your Honor.

6 RECROSS-EXAMINATION BY MS. ORLER:

7 Q. Mr. McDuffey, when Mr. Gaw was asking you a
8 series of questions with regards to service lines, you
9 made a reference -- and I may need some help with
10 clarification to your response -- that service line
11 installation you would do differently with new
12 construction as opposed to older construction; is that
13 correct?

14 A. Yes, ma'am.

15 Q. Okay. And then you made specific reference
16 to Big Island's older construction; is that correct?

17 A. It could be any subdivision, ma'am.

18 Q. Okay.

19 A. Older constructions, homes that have been
20 in the ground, have driveways and so forth.

21 Q. Okay. And let's take Big Island as an
22 example, since that's why we're here. What type of a
23 comparison would you make between the older construction
24 of the service lines and the new construction of the
25 service lines?

1 A. I couldn't compare them for you
2 specifically.

3 Q. Do you notice a difference in the
4 installation as you referenced earlier when Mr. Gaw was
5 asking you questions, Commissioner Gaw?

6 A. No. You'd have to be more specific.

7 Q. What differences have you noted on Big
8 Island?

9 A. I have not noticed any differences, ma'am.

10 Q. So --

11 A. I have not seen -- Mike McDuffey has not
12 seen a new installation out at Big Island in probably four
13 or five months.

14 Q. Okay. Then what would term an older
15 installation on Big Island?

16 A. The stuff that we're talking about with the
17 feeds in the same pit.

18 Q. And --

19 A. The stuff that was put in in '98, '99,
20 whenever it was put in.

21 Q. Okay. So when you're referring to service
22 line installation and you're classifying it as older
23 construction on Big Island, okay, and then you go back to
24 the date of 1998 and so forth --

25 A. Whenever it was.

1 Q. -- whenever it was, okay, are you aware
2 that prior to Folsom Ridge constructing the water and
3 sewer system on Big Island, that no service lines existed?

4 A. From the Big Island water system or the
5 water line to your house?

6 Q. Well, prior to Folsom Ridge, there was no
7 utility.

8 A. How did you get water to your house?

9 Q. I have a well.

10 A. You have a service line then.

11 Q. So did everyone else. But we're discussing
12 the service lines --

13 A. If there were none there, I don't have any
14 discussion for you. I'm sorry.

15 Q. Well, but we were discussing the service
16 lines --

17 MS. HEINTZ: Your Honor, I don't think that
18 anything that happened prior to Folsom Ridge or Big Island
19 and what the service lines were at that time is relevant.
20 I object.

21 JUDGE STEARLEY: I'm going to sustain that
22 objection. I don't see the relevance of this. Ms. Orler,
23 do you -- before I sustain, would you like to try to
24 explain to me where you're going with this line of
25 questioning and why you believe it's relevant?

1 MS. ORLER: Yes, I would, your Honor.
2 Prior to Folsom Ridge constructing the utility on Big
3 Island, using myself as an example with a private well, I
4 would have a service line, but it would be just for that
5 purpose of water. It would not be in a trench either
6 separated together or on an elevated shelf with the sewer.
7 So that would not even be an issue.

8 MS. HEINTZ: I still object on grounds of
9 relevance.

10 JUDGE STEARLEY: And I will sustain that
11 objection.

12 MS. ORLER: All right. Thank you for
13 allowing me the opportunity to rephrase.

14 JUDGE STEARLEY: Mr. Pugh, do you have any
15 recross-examination based upon the questions that were
16 asked during cross-examination?

17 MR. PUGH: No, your Honor.

18 JUDGE STEARLEY: Ms. Fortney?

19 MS. FORTNEY: Yeah, I had a question.
20 Maybe I can ask it differently than what Cathy did because
21 I have the same concern. I'm not sure that the Commission
22 and everybody understands. I have to get out of testimony
23 mode to ask the question.

24 RECROSS-EXAMINATION BY MS. FORTNEY:

25 Q. The difference between old and new,

1 Mr. McDuffey, did you say that like 1998 is old and 2001
2 or 2002 is new? Do you go by years? What is the
3 definition?

4 A. I'm talking about new construction as
5 opposed to construction prior to the main line put in.

6 JUDGE STEARLEY: Mr. McDuffey, could you
7 pull that microphone closer to you?

8 THE WITNESS: No. It's stuck.

9 JUDGE STEARLEY: I'm sorry. I'll have to
10 ask you to approach the microphone.

11 THE WITNESS: I'm referring to the homes
12 that were built prior to Folsom Ridge buying the property
13 and developing it.

14 BY MS. FORTNEY:

15 Q. Okay. The specific -- the specific exhibit
16 that had the Sowell's picture, it was the upright that had
17 the two valves in it, and the ones that were in close
18 proximity, that house was built after -- and they are
19 connected to the water --

20 MS. HEINTZ: Excuse me. This is testimony.

21 JUDGE STEARLEY: This is testimony and I
22 will strike.

23 BY MS. FORTNEY:

24 Q. Okay. Do you recognize -- do you know
25 where the Sowell's live?

1 A. No, ma'am.

2 Q. So you can't identify that upright?

3 A. No, ma'am.

4 Q. Okay. It's hard to get the question.

5 Okay. The utility, when it was put in, the mains were put
6 in and those service lines that were put in and put in to
7 the easement.

8 Okay. Let me ask this question
9 differently. Earlier you said there's something about the
10 main and then there's a service line and part of the
11 service line could be owned by the system because it goes
12 to part of the easement and then from that point to the
13 house is owned by -- can you --

14 A. That's on a normal system. I don't think
15 Big Island's could be classified as normal.

16 Q. Really?

17 A. Really.

18 Q. Okay. Because is it not true that all of
19 the service lines that are attached to the mains that go
20 around the island are set up that way?

21 A. Yes, but I don't know what their -- their
22 easements are, ma'am, and I'm reasonably certain they
23 don't go on to the individuals' private homes.

24 Q. So it would surprise you if I said that I
25 had property -- two different properties?

1 A. I congratulate you.

2 Q. And most of the property that I know out
3 there have it on the easement and it's --

4 MS. HEINTZ: Your Honor, this is testimony
5 again. Please strike it.

6 JUDGE STEARLEY: This is testimony, and I
7 will strike. If you could please phrase this as a
8 question.

9 BY MS. FORTNEY:

10 Q. Okay. I guess it just goes back to who
11 would own those service lines, and I guess you answered
12 that, that if it goes up to the easement --

13 JUDGE STEARLEY: Now you're asking and
14 answering your own questions, Ms. Fortney. I'm going to
15 strike that. You still have the opportunity. Please try
16 and formulate a question. I know this can be difficult,
17 but I'm going to give you the opportunity to ask the
18 question that you wish to.

19 MS. FORTNEY: No. I give up.

20 JUDGE STEARLEY: Thank you, Ms. Fortney.
21 Mr. Temares, do you have any recross-examination based
22 upon the questions that were asked during the
23 cross-examination?

24 MR. TEMARES: No, sir. I probably couldn't
25 get it into a question if I tried.

1 JUDGE STEARLEY: Very well. Redirect,
2 Mr. Comley?

3 MR. COMLEY: Thank you, Judge.

4 REDIRECT EXAMINATION BY MR. COMLEY:

5 Q. Mr. McDuffey, I think several examiners
6 asked you about leaks on the system, and that would be, I
7 think, both systems. Can you tell me, in your experience
8 with the 70 or more systems that you're contract operator
9 for, is there a leak-free system out there?

10 A. Not that I operate, sir.

11 Q. All right. Is that -- and I would take
12 that not because of the operator, it's because of the
13 system?

14 A. Yes, sir.

15 Q. With respect to the Big Island system, is
16 there anything about the Big Island system that
17 distinguishes it from any other system that you operate?

18 A. Mechanically?

19 Q. Mechanically or -- and I'm kind of picking
20 up on a question that got some roars from the crowd out
21 here about whether you thought the Big Island system was a
22 normal system?

23 A. That gets into a matter of opinion.

24 Q. Why would you --

25 A. Mechanically it's a very good system. The

1 wastewater treatment plant runs very efficiently. It's
2 never had a bad discharge report since we started
3 operating it. I don't believe there was a bad discharge
4 prior to us operating it. The drinking water system has
5 passed all the DNR standards. It's a pretty good system
6 in all reality.

7 Q. Explain to me about the pressure testing
8 that you conduct. Can you explain when that's done and
9 what is the purpose of pressure testing?

10 A. System integrity is done on a daily basis
11 through your pressure and volume use, but pressure testing
12 the water lines is something Mr. Krehbiel, when he designs
13 the system and it's installed, that the contractor
14 installs it must meet ASTM standards, American Society of
15 Testing. I know somebody took exception to that before,
16 but these are standards that we have to live by, and the
17 system has to be pressure tested before it can ever get
18 into service, and it also has to have bacteriologically
19 safe samples out of it before it can be put into service.

20 Q. Regarding the pressure testing, can you
21 tell us the results of the pressure testing that was done
22 after construction was complete on the system?

23 A. Yes. We did pressure tests at the Stoyer
24 residence and found no evidence of leaks.

25 Q. Did you conduct the pressure testing on the

1 project that relocated the water main that was done
2 pursuant to the settlement agreement?

3 A. No, sir. The contractor did that, but we
4 did do the testing off of it.

5 Q. You did do the testing off it?

6 A. Yeah, but the -- someone has the records of
7 the pressure testing. The testing results would have had
8 to have been turned in to the design engineer.

9 Q. Would DNR have reviewed the pressure
10 testing before it had final approval of the system?

11 A. I think they would probably -- it's just
12 assumption on my part that they would take Mr. Krehbiel,
13 that he had did his job.

14 Q. I'll ask you this question. I think it has
15 not been asked, but do you know of any incident where
16 there has been cross-contamination between the water and
17 sewer lines in Big Island?

18 A. No, sir, not to my knowledge.

19 Q. Can you tell the Commission, if you can,
20 the degree of likelihood of that ever happening?

21 A. I'm not much of an odds maker. That
22 potential's always there, though, when you have
23 pressurized systems, if you get someone in and they tear
24 your water lines up with a backhoe.

25 Q. Without the backhoe factor, what would

1 minimize the risk of having cross-contamination in the
2 systems?

3 A. What would minimize that risk? There
4 really isn't a lot of risk without that, other than
5 equipment getting in and tearing up your end service line,
6 the product delivery line.

7 Q. And protection of the underground
8 facilities is something that, well, that's not your firm's
9 responsibility, is it?

10 A. Well, 1-800-DIG-RITE is supposed to have
11 everybody that digs have those lines located before they
12 dig.

13 Q. Do you respond to emergencies from the
14 DIG-RITE number?

15 A. Oh, yes, sir, 24 hours a day, 7 days a
16 week, 365 days a year.

17 Q. On the records of calls and the trip
18 sheets, did you receive calls like this on the other
19 systems that you operate?

20 A. Sure.

21 Q. Are you in a position of comparing the
22 number of calls you receive on those systems with the ones
23 you receive on Big Island?

24 A. There's a variance in that, Mr. Comley.
25 New construction sites like Big Island, where we're

1 working all the time, do have a tendency to have more
2 calls. Once the systems are in and established and you're
3 not having the construction and new water taps and that
4 come in are a lot less. But it also depends upon the size
5 of the systems, whether you've got 30 miles of pipe in the
6 ground or 300 feet.

7 Q. Regarding Mr. Stoyer and Stoyer Springs,
8 Mr. Gaw asked you questions -- Commissioner Gaw asked you
9 questions about the wastewater pipe or the discharge pipe
10 from the wastewater plant. Do you recall that line of
11 questioning?

12 A. Yes, sir.

13 Q. At the discharge pipe, what is the quality
14 of the water that's being discharged?

15 A. It complies with the standards for the DNR
16 standards to be discharged into the lake.

17 Q. So that's the water that discharges into
18 the lake?

19 A. Yes, sir.

20 Q. So did you determine that the wastewater or
21 the treated wastewater from the plant was what was filling
22 up the trench at Stoyer Springs?

23 A. Yes, sir.

24 Q. You did?

25 A. Yes.

1 Q. You feel that that was the origin?

2 A. We believe the flow from that was heading
3 down the hill.

4 Q. You had several questions about service
5 line separation, and again, let's talk about new versus
6 old. The new construction on Big Island with respect to
7 that, do you know whether the lines are now being
8 separated by a wider degree?

9 A. Yes, sir, they are.

10 Q. They are?

11 A. Yes, sir. Well, the main water lines and
12 sewer lines are separated.

13 Q. What about the service lines to the homes,
14 are those being separated by wider distance?

15 A. To the best of my knowledge, they are.

16 Q. Is that part of the comparison we're making
17 here between old and new?

18 A. Yes, sir.

19 Q. Tell me again, why would the older
20 construction sometimes have the narrower separation
21 between the service lines?

22 A. Physical features at the site that you're
23 going to deliver the water or wastewater to.

24 Q. Why wouldn't those features be the same for
25 the new construction?

1 A. Because people built parking lots and
2 garages and so forth on the property, and on new
3 construction, you don't have a lot of that in already.

4 Q. Have there been occasions when pressure on
5 the water distribution lines has been low?

6 A. Yes, sir.

7 Q. What have you done when that has been
8 brought to your attention?

9 A. We respond to the call and make whatever
10 necessary repairs are there or take care of what needs to
11 be done.

12 Q. Has there ever been a boil issued for Big
13 Island?

14 A. Years ago there have been, but nothing
15 recently.

16 Q. In the last five years?

17 A. I don't believe so.

18 MR. COMLEY: That's all I have for

19 Mr. McDuffey.

20 JUDGE STEARLEY: All right. Thank you,
21 Mr. Comley.

22 Mr. McDuffey, I'd like to thank you for
23 your patience in waiting today to provide your testimony
24 and for providing your testimony. You will be excused,
25 you may step down, but I am not finally excusing you, just

1 in case the Commissioners decide they wish to recall you
2 for some additional questions. Can you be available
3 tomorrow if they would so require?

4 THE WITNESS: I can be available, sir.
5 However, this is a voluntary thing for me, and it has
6 interfered with vacation plans three times now, and --

7 JUDGE STEARLEY: I'm not anticipating that
8 we will need you back up here, but just want to know if
9 you would be available.

10 THE WITNESS: Well, I've been available in
11 Camden County for quite some time, so most people know how
12 to get ahold of me.

13 JUDGE STEARLEY: Will we be able to get
14 ahold of you, though, and have you here within an hour's
15 time, let's say?

16 THE WITNESS: It takes me longer than that
17 to get up here from Camden County. Two hours minimum.

18 JUDGE STEARLEY: Two hours. Okay. You may
19 step down.

20 THE WITNESS: Thank you, sir.

21 JUDGE STEARLEY: Mr. Comley?

22 MR. COMLEY: Your Honor, that concludes the
23 evidentiary portion of our case. We have premarked as
24 Exhibit 20 the joint application that was filed in this
25 case. I'm doing that -- it was strictly for convenience,

1 but at the same time I would like to make an offer of that
2 application at this time.

3 JUDGE STEARLEY: Are there any objections
4 to the offering of Exhibit No. 20, which was the transfer
5 application that was filed with the Commission?

6 MR. MILLS: I don't really have any
7 objection to having it marked as an exhibit for
8 convenience, but I will note that it's a pleading. It's
9 not anything -- there isn't any sworn testimony here, I
10 don't believe that it has any real evidentiary value.

11 JUDGE STEARLEY: Be that as it may, I
12 believe we'll go ahead and mark it and enter it into
13 evidence and we will treat it for its value as a pleading.

14 (EXHIBIT NO. 20 WAS RECEIVED INTO
15 EVIDENCE.)

16 JUDGE STEARLEY: Mr. Comley, I believe you
17 had planned to read some excerpts from the deposition, but
18 I was going to ask you, it's my understanding that
19 Mr. MacEachen is going to be available to testify tomorrow
20 at 9 a.m. Would you like to wait just in case some of
21 that testimony is duplicative which might alter the
22 excerpt?

23 MR. COMLEY: That's fine. I think there's
24 portions of the deposition -- I'm going to remind the
25 parties, this was a deposition of the Department itself

1 pursuant to written notice. Two witnesses were designated
2 to respond to the subject matters in the Notice of
3 Deposition. There is another witness that was designated
4 named Clinton Finn, and in addition to Mr. MacEachen's
5 testimony, I think I'd still reserve privilege of reading
6 from Mr. Clinton Finn's deposition, if necessary.

7 JUDGE STEARLEY: Certainly. And to the
8 extent that questioning of Mr. MacEachen doesn't touch
9 upon issues that you wish to enter from the deposition, by
10 all means you reserve those rights to further offer that
11 into the record.

12 MR. COMLEY: Thank you.

13 JUDGE STEARLEY: I'd like to congratulate
14 the parties. We covered a lot of ground here in the last
15 few hours, and -- unless there's any other matters we need
16 to take up at this time.

17 MR. MILLS: Just briefly, your Honor, I
18 noticed that a lot of the witnesses that have already
19 testified who have not been finally excused are from the
20 lake area.

21 JUDGE STEARLEY: Yes.

22 MR. MILLS: I don't know how likely it is
23 that the Commissioners are going to want to talk to them.
24 If we can work out something, for example, to let them
25 testify by telephone tomorrow so they don't have to sit

1 here all day on the off chance.

2 JUDGE STEARLEY: I think that's quite
3 reasonable and it's something we have the technology to
4 do. That's a good suggestion. Also --

5 MR. MILLS: You guys owe me.

6 JUDGE STEARLEY: Also, since Mr. MacEachen
7 is scheduled to appear at nine, I suggest that we
8 reconvene at nine tomorrow morning, because I don't
9 believe we can really start on anything within 30 minutes
10 prior to that anyway. Is that acceptable to the parties?

11 MR. COMLEY: That's fine.

12 JUDGE STEARLEY: All right. We are
13 adjourned for the day. Thank you very much.

14 WHEREUPON, the hearing of this case was
15 adjourned until March 2, 2007.

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