Exhibit No.:
Issue: *Availability Fees*
Witness: *Kimberly K. Bolin.*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Surrebuttal Testimony*
Case No.: *WR-2013-0461*
Date Testimony Prepared: *January 31, 2014*

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION
UTILITY SERVICES - AUDITING

SURREBUTTAL TESTIMONY

OF

KIMBERLY K. BOLIN

LAKE REGION WATER & SEWER COMPANY

CASE NO. WR-2013-0461

Jefferson City, Missouri
January 2014

** Denotes Highly Confidential Information **

NP

SURREBUTTAL TESTIMONY

OF

KIMBERLY K. BOLIN

LAKE REGION WATER & SEWER COMPANY

CASE NO. WR-2013-0461

Q. Please state your name and business address.

A. Kimberly K. Bolin, 200 Madison Street, Suite 440, Jefferson City, MO 65102.

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

A. I am employed by the Missouri Public Service Commission ("Commission") as a Utility Regulatory Auditor V.

Q. Are you the same Kimberly K. Bolin who has filed direct testimony and portions of the Missouri Public Service Commission Staff's ("Staff") Cost of Service Report in this case?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. My surrebuttal testimony will address the rebuttal testimony of Lake Region Water & Sewer Company ("Lake Region" or "Company") witness John R. Summers concerning availability fees. Staff witness James A. Merciel, Jr. will also be filing surrebuttal testimony on the issue of availability fees. My surrebuttal testimony will also address The Office of the Public Counsel's ("Public Counsel" or "OPC") witness Ted Robertson's rebuttal testimony concerning availability fees.

EXECUTIVE SUMMARY

Q. What topic is addressed in this piece of testimony?

A. I will be addressing the Staff's recommendation that "availability charges," also called "availability fees," should be included in Lake Region's revenue requirement calculation for the Shawnee Bend Water and Shawnee Bend Sewer service areas. No availability fees are charged to lot owners for sewer service availability in Lake Region's Horseshoe Bend Sewer service area. Staff is recommending that availability fees in the amount of $93,136 be included in revenue for the Shawnee Bend Water service area and $139,704 for Shawnee Bend Sewer service area. Staff's calculation of the availability fees are based upon new information provided to the Staff after Staff's direct filing.

Staff believes that Lake Region is the entity providing a guarantee of water and sewer service availability to the lot owners who are paying the availability fees and also is the entity supporting the utility plant facilities and infrastructure that exists in order to provide that service. The lot owners are paying the fees in order to support the utility system, which was built for the purpose of providing service to their lots. The entity presently collecting the availability fees, Lake Utility Availability 1, is not providing anything in consideration of the money that is being paid to them by the lot owners.

Staff will also address the rebuttal testimony of Public Counsel witness Robertson, in which he recommends that the prior availability fees collected should be considered as Contributions in Aid of Construction and offset Lake Region's rate base. Staff believes availability fees are not limited to capital uses only and can be used to maintain the system, thus they should be considered a revenue stream and not as an offset to capital.

AVAILABILITY FEES

Q. What are unimproved lots?

A. Unimproved lots are parcels of land in a subdivision that are sold by a developer with utilities, streets, rainwater drainage, and perhaps other amenities that are all available to the lot owner, typically for the purpose of constructing a house or some type of dwelling or commercial structure requiring water and sewer services. When a buyer has not constructed houses or buildings on the property, the lot owner is not connected to the water and sewer utility. Once the house or building is constructed, the utility needs to ensure water and sewer facilities are available to the homeowners and businesses to connect to.

Q. Is the utility infrastructure necessary to the provision of utility service provided under tariff by Lake Region?

A. Yes. The infrastructure is necessary to provide utility service to both existing Lake Region customers and future Lake Region customers (unimproved lots), which are intermixed through the regulated service area.

In order to serve water customers in Lake Region's service territory, a distribution system was installed by the developer, Mr. Harold Koplar, to ensure there was adequate water flow to the residences and businesses in its service area. The original developers also installed a waste water collection system for the Lake Region service area. When these water mains and collecting sewers were installed, all the lots along the water and sewer lines were initially unimproved. As the lots were sold, construction took place on some but not all lots. Any repairs necessary to the utility infrastructure have been or will be made by Lake Region or its predecessor utility companies. The repairs to and the construction of the utility system also benefits the owners of the unimproved lots because the system must be able to continue to operate when the owners of the unimproved lots connect to the systems and, further, Lake

Region must have sufficient funds to undertake necessary repairs whether or not there are enough customers connected paying rates. As such, the ability of the regulated utility to provide service to the unimproved lots is directly related to availability of the existing utility's infrastructure. If availability fee revenue did not exist, then a utility's operations might require subsidization by a developer for adequate revenue in order to meet operating expenses, particularly in early growing years when most lots are unimproved.

Q. Why is Staff proposing to include availability fees in rates?

A. The infrastructure in place for the unimproved lots is the same as that in place for developed lots that are currently connected to the water and sewer systems. Since the regulated utility must maintain the integrity of the utility infrastructure, in place for both the built and unconstructed lots, it is only equitable to include the availability fees in rates as a revenue source for the purpose of maintaining the costs of the entire water and sewer systems. Additionally, the owners of unimproved lots are paying a fee for the purpose of having a water and sewer system to connect to in the future.

Q. Has Staff updated the amount of availability fees to include in rates since Staff's Cost of Service Report filing?

A. Yes. RPS Properties LP ("RPS") responded in an answer to Staff's subpoena for information that RPS had collected ** _____ ** in availability fees for the period of July 1, 2012 thru June 30, 2013, which is the test year in this case. To calculate Staff's recommended level of imputed availability fees, Staff removed ** _____ ** from the amount of availability fees collected for the availability fees paid on an annual basis to the developer during the same time frame. The payment to the developer (Four Seasons Lakesites, Inc.) was a result of a settlement agreement between Lake Region,

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Ms. Sally Stump, RPS and Four Seasons Lakesites, Inc. to settle a civil court case filed in Camden County regarding the collection of availability fees.

Q. Has Staff included costs relating to the unimproved lots which give rise to availability fees in its cost of service?

A. Yes. Costs incurred to repair, maintain and construct the water distribution and waste water collection systems were included in the revenue requirement. This includes costs relating to the unimproved lots. Since these costs were included in rates, it is appropriate to include the availability fees as revenues in the rate calculation as well, as the purpose of collecting these fees are to maintain the utility infrastructure.

Q. Would it be reasonable for lot owners to pay availability fees if there was no water or sewer system available to connect to when the owner needed utility service?

A. No. Availability fees would not be charged and collected from the unimproved lot owners if water and/or sewer facilities were not adjacent to their lots and they were not able to connect to a water and sewer system. The only logical explanation for the purpose of the availability fees is the expectation that there is a water and sewer system that is continually supported and remains available to connect to when the need arises. Unimproved lot owners are making a contribution to the on-going operations of the utility so this utility system is maintained and in place when the lot owners need to connect to the system. The lot owners are not paying these fees to pay for the construction and maintenance of roads or common use areas within the subdivisions. They are paying the availability fees for the availability of adequately maintained water and sewer system, and nothing else.

Staff continues to believe the availability fees are being charged for the purpose of maintaining, repairing and replacing Lake Region's infrastructure. This is the only logical

reason why unimproved lot owners would agree to pay $300 annually for a promise to be able to receive utility service when these owners decide to build a house in Lake Region's service territory.

Q. If the Commission does not include the availability fees in the determination of rates, should the Commission adjust the expenses of Lake Region to disallow costs associated with the billing and collection of the availability fees?

A. Yes. In the Report and Order for the previous rate cases for Lake Region, Case Nos. SR-2010-0110 and WR-2010-0111, page 65, paragraph 212, the Commission concluded that $2,000 annually was a reasonable cost for providing the billing and collection service for the availability fees. If the Commission does not include availability fees in the cost of service, then at a minimum the Commission should excluded $2,000 from the Company cost of service; $1,000 from both Shawnee Bend Sewer and Shawnee Bend Water service areas.

The Camden County Water District No. 4 (Water District) bills the unimproved lot owners and collects the availability fees for Lake Utility Availability 1. However, nowhere on the time sheets for the Water District employees was there any time recorded for the billing and collection of the availability fees for Lake Utility Availability 1. Thus, Staff was unable to calculate an estimate as to the costs of billing and collecting availability fees for Lake Utility Availability 1. Also in Note 11 of Lake Region's Audited Financial Statements for 2012, it was stated that the availability fees were billed and collected by Lake Region but not recorded on the financial statements as either income or expense. Therefore, the only evidence Staff has of the billing and collection of availability fees shows that this function is attributable to Lake Region, and Staff believes the costs of billing and collecting availability fees the Commission decided upon in its last rate proceedings are reasonable.

Q. On page 10, lines 8 thru 13, of Lake Region's witness Summers' rebuttal testimony, he claims that Staff's approach would deny the developer and/or his assigns or designees the opportunity to recover the original investment and provide the customers a double benefit by not including contributed plant in rate base and including the revenue from the availability fees in Staff's case. Is this accurate?

A. No. Contributed plant is just that – donated property in which the owners of Lake Region have no investment. It would be improper and completely contrary to the way the Commission has established rates in the past for water and sewer utilities to allow a Company to earn a "return on" assets in which it has no investment dollars. In any event, Staff is not recommending adjusting rate base to account for prior availability fees that were collected. However, Staff is recommending that the present amount of annual availability fees collected be considered as revenue of the Company.

Q. On page 9, lines 18 through 20 and JRS Exhibit 2 of Mr. Summers Rebuttal testimony, he cites it would take more than 45 years to recoup the developer's investment in the water and sewer infrastructure donated to Lake Region. Does Staff know how much of the developer's investment has been recouped since the developer built the system?

A. No. Staff has not been able to determine the total amount of availability fees collected in the past. Staff had requested information in a subpoena to RPS regarding all availability fees collected in the past, but due to the amount of information RPS would have had to provide per this request, the subpoena was modified to require only information from the test year for this case. Also, Staff reviewed the response to OPC Data Request No. 1007 in this proceeding, in which Lake Region stated that it was unable to provide the amount of water availability fees billed and collected by the PWSD No. 4 because Lake Region was not

in possession, custody or control of such information. Thus, Staff was unable to determine an amount of availability fees that have been collected and cannot determine what part of the developer's investment has been recouped at this point.

Q. Does Staff know the amount of availability fees which have been collected by RPS from some point in 2005 thru May 2010?

A. Yes. In **five** years RPS collected over **$2.3 million** in availability fees. Included as Attachment KKB 1 (HC and NP) to this testimony is the affidavit[1] of W. Brian Schwermann, a designated representative of RPS, which is an owner of Lake Region and Lake Utility Availability 1, in which he states, "RPS began collecting availability fees sometime in 2005. From that time through May 12, 2010, at total of approximately $2,309,019 has been collected."

Q. What amount of availability fees did RPS collected during the test year in the case (July 1, 2012 thru June 30, 2013)?

A. RPS Properties collected **_____ ** in availability fees.

Q. Approximately when did unimproved lot owners start paying availability fees?

A. I believe availability fees were collected since at least 1993 in the Company's Shawnee Bend service area. Thus, availability fees have been paid by unimproved lot owners for at least **20** years. Common sense tells us that, when considering the known previous amounts that were collected in only six years, that any investment by the developer would have long since been recouped.

Q. Is it also possible that the developer may have recouped some of the money spent to install the water and sewer system when it sold the lots in the development?

[1] WR-2010-0111, Staff Exhibit No. 21, Response to Question No. 17.

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A. Yes, it is. The developer may have considered that it had recouped some of the costs to build the water and sewer systems when it sold undeveloped lots, just as other development costs are recovered. The developer made improvements to ready the lots for market. Improvements made to the real estate, which include the water and sewer system installation among the many other costs of undertaking subdivision development, would need to be recovered in the sale of lots, or otherwise the developer would not profit from its investment.

Q. On page 11, lines 1 thru 12 of Mr. Summer's rebuttal testimony, he states a belief that the financial viability of the Company could be hurt if availability fees are imputed in Lake Regions' revenue requirement calculation. In the past, has the Company benefited from and used availability fees?

A. Yes. Attachment KKB 2 to this testimony is an answer to a petition in a lawsuit in Camden County,[2] in which Lake Region was the defendant. At page 11, paragraph 3 of Attachment 2, it states:

> Since August, 1998, Plaintiff has continued attaching the requirement to pay availability or standby fees to the lots it sells, has continued to allow Defendant Waldo Morris to collect fees, and has continue to allow Defendant Waldo Morris to spend the fees for the benefit of Defendant Lake Region Water & Sewer Company to guarantee capacity and service for Plaintiff's developments.

Also on the same page, paragraph 27, the Company states:

> Lake Region Water & Sewer Company has used the availability or standby fees to build a new storage treatment plant and new water tower, invest in capital improvements, and otherwise increase capacity and service in order to provide capacity for Plaintiff's developments.

[2] WR-2010-0111, Staff Exhibit No. 52.

Q. On page 6 of Mr. Summers' Rebuttal testimony he claims that Lake Utility Availability 1 is not an affiliate of Lake Region. Does Staff believe Lake Utility Availability 1 is an affiliated entity of Lake Region?

A. Yes. Per the affiliate transactions rules for electric and gas companies, an affiliated entity is any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the regulated utility corporation. Staff believes this definition is consistent with the general understanding of an affiliate and is useful in understanding the business relationships of Lake Region.

In this case Lake Utility Availability 1 and Lake Region both have a common owner, RPS. Ms. Sally Stump was also a common owner until December 31, 2012, when she transferred her ownership of Lake Region to her husband, Mr. Vernon Stump. Both entities use the same employees to conduct business, the same phone number and address. In fact, the information concerning the billing and collecting of availability fees is stored on Lake Region's computer.

Q. On page 4 of OPC witness Ted Robertson's rebuttal testimony he states at lines 8 through 11: "Therefore, these fees are designed to recover the original cost of the utility investment along with any other additional treatment capacity or other water and sewer infrastructure, such as line extensions and pumping stations, etc., required to build a state of the art system to serve customers as the time they are ready to take service." Does Staff agree that availability fees must be used for capital purposes only?

A. No. Staff believes availability fees are not limited to capital uses only. Staff believes the availability fees can also be used to maintain the system, thus the fees should be considered as revenue in the costs of service. In fact this is the treatment afforded availability fees for this and other regulated utilities.

Q. Does this conclude your surrebuttal testimony?

A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer Company's Application to Implement a General Rate Increase in Water & Sewer Service	))))	Case No. WR-2013-0461

AFFIDAVIT OF KIMBERLY K. BOLIN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Kimberly K. Bolin, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 11 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.

Kimberly K. Bolin
Kimberly K. Bolin

Subscribed and sworn to before me this 31st day of January, 2014.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2016
Commission Number: 12412070

D. Suzie Mankin
Notary Public

Staff Exhibit No. 21
Date 6-24-10 Reporter PF
File No. SR-2010-0110
WR-2010-0111

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

AFFIDAVIT OF W. BRIAN SCHWERMANN

I, W. Brian Schwermann, of lawful age and being first duly sworn on oath, hereby state that I am a designated representative of RPS Properties, L.P. ("RPS"), and that each of the following responses to the questions posed by the Missouri Public Service Commission Staff, in its letter dated May 6, 2010, which I am providing on behalf of RPS, is true and correct to the best of my knowledge, information, and belief.

QUESTIONS AND RESPONSES

1. [redacted]

2. [redacted]

3. [redacted]

Attachment KKB 1 NP

[redacted]

4. [redacted]

5. [redacted]

6. [redacted]

7. [redacted]

8. [redacted]

9. [redacted]

Attachment KKB 1 NP

10. How much money did RPS receive for these availability fees for the calendar year 2008?

RESPONSE: During 2008, the total amount of availability fees collected was $396,154; however, RPS retained only a portion of that total.

11. [redacted]

12. [redacted]

13. [redacted]

14. [redacted]

15. [redacted]

16. [redacted]

17. Provide the total amount collected for availability fees and the time period since RPS has been involved in collecting them.

Attachment KKB 1 NP

RESPONSE: RPS began collecting availability fees sometime in 2005. From that time through May 12, 2010, a total of approximately $2,309,019 has been collected.

18. [redacted]

W. Brian Schwermann

W. Brian Schwermann

The foregoing was subscribed and sworn before me this 13 day of May, 2010.

Brandi Williams
Notary Public

My commission expires: 10-10-2012

NOTARY PUBLIC - State of Kansas
BRANDI WILLIAMS
My Appt. Expires 10-10-12

Attachment KKB 1 NP

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December 29, 2003

From: Susan Kliethermes

413533

Matte

To:	Company:	Fax Number:
Clerk of the Court, Circuit Court, Camden County, MO	Circuit Court, Camden County	(573) 346-5422

Number of Pages Transmitted (including this cover sheet): 17

Message:

Staff Exhibit No. 52
Date 6/24/11 Reporter DF
File No. SR-2010-0110
WR-2010-0111

If you have a problem receiving this facsimile, please call: (573) 893-4336 Fax Attendant: _____

JCDOCS 14854v1

Attachment KKB 2

LATHROP & GAGE L.C.

SUSAN C. KLIETHERMES
(573) 761-5001
EMAIL: SKLIETHERMES@LATHROPGAGE.COM
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314 EAST HIGH STREET
JEFFERSON CITY, MISSOURI 65101
(573) 893-4336, FAX (573) 893-5398

December 29, 2003

Via Facsimile (573) 346-5422 and U.S. Mail

Clerk of the Court
Circuit Court of Camden County
Courthourse
One Court Circle
Camdenton MO 65020

Re: **Four Seasons Lakesites, Inc. v Lake Region Water & Sewer Co.**
Case No. CV103-760CC

Dear Madam or Sir:

Attached for fax filing with your Court today is,

Answer of Defendants Lake Region Water & Sewer Co. and Waldo Morris to Plaintiff's Petition.

The original of this Answer will be placed in the U.S. Mail to you today.

Thank you for your assistance.

Sincerely,

LATHROP & GAGE L.C.

By: Susan Kliethermes
Susan C. Kliethermes
Paralegal

Attachment

cc: Attorneys of Record

JCDOCS 14846v2

Attachment KKB 2

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

FOUR SEASONS LAKESITES, INC., Plaintiff, vs. LAKE REGION WATER & SEWER CO., et al., Defendants.	)	Case No. CV103-760CC

ANSWER OF DEFENDANTS LAKE REGION WATER & SEWER CO. AND WALDO MORRIS TO PLAINTIFF'S PETITION

GENERAL ALLEGATIONS

COME NOW Defendants Lake Region Water & Sewer Co. and Waldo Morris (hereinafter "Lake Region," "Morris," or collectively "Defendants"), through undersigned counsel, and for their answer to the General Allegations in Plaintiff's Petition state as follows:

1. Admit.

2. Admit.

3. Admit.

4. Admit. In answering further, Defendant Lake Region states that it provides water and sewer service to those in its certificated service area as approved by the Missouri Public Service Commission.

5. Defendants admit that Defendant Waldo Morris is the sole shareholder of all Lake Region stock. All allegations contained in paragraph 5 not specifically admitted are denied.

Attachment KKB 2

6. Admit. In answering further, Defendant Lake Region states that the name of the company was changed as required by Plaintiff.

7. Defendants admit that as part of the consideration for the sale of stock in Four Seasons Water and Sewer Company by Four Seasons Group, Inc., to Roy and Cindy Slates, any rights or interest Plaintiff Four Seasons Lakesites, Inc., may have had in availability or standby fees were assigned to Roy and Cindy Slates personally. Defendants deny that Exhibit A to the Assignment represents the only availability or standby fees for which Plaintiff's rights or interests were assigned. All allegations contained in paragraph 7 not specifically admitted are denied.

8. Defendants admit that as a result of Slates pledging stock in Lake Region Water & Sewer Company and pledging any rights and interest in the availability or standby fees to Morris, Morris is now the sole shareholder of Lake Region Water & Sewer Company and possesses the rights and interest in the availability or standby fees. In answering further, Defendants deny Plaintiff's categorization and limitation of availability or standby fees assigned as only those listed on Exhibit A. All allegations contained in paragraph 8 not specifically admitted are denied.

COUNT I

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants admit that since acquiring the rights and interests in the availability or standby fees, Morris has collected those availability and standby fees. Defendants deny that Morris collected any standby fees that were not assigned to him. In answering further, Defendants deny Plaintiff's categorization and limitation of availability or standby fees assigned to Roy and Cindy Slates as only those listed on Exhibit A. All allegations contained in paragraph 2 not specifically admitted are denied.

Attachment KKB 2

3. Paragraph 3 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 3 requires an answer, Defendants deny paragraph 3. In answering further, Defendants assert that Plaintiff has no legal interest in the availability or standby fees and no standing to request access to the amount of those fees collected.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5. In answering further, Defendants assert that Plaintiff has no legal interest in the availability or standby fees and no standing to request access to the amount of those fees collected.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6. In answering further, Defendants assert that Plaintiff's alleged damages are an ascertainable amount of money, which by definition is an adequate remedy at law.

COUNT II

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

COUNT III

1. Defendants reassert the answers to all above numbered paragraphs.

Attachment KKB 2

2. Defendants are without sufficient information to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient information to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient information to answer paragraph 4; therefore, paragraph 4 is denied.

5. Defendants are without sufficient information to answer paragraph 5; therefore, paragraph 5 is denied.

6. Denied.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

8. Paragraph 8 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 8 requires an answer, Defendants deny paragraph 8.

COUNT IV

1. Defendants reassert the answers to all above numbered paragraphs..

2. Defendants are without sufficient information to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient information to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient information to answer paragraph 4; therefore, paragraph 4 is denied.

5. Defendants are without sufficient information to answer paragraph 5; therefore, paragraph 5 is denied.

Attachment KKB 2

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT V

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants are without sufficient knowledge to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient knowledge to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient knowledge to answer paragraph 4; therefore, paragraph 4 is denied.

5. Denied.

6. Denied.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

8. Paragraph 8 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 8 requires an answer, Defendants deny paragraph 8.

COUNT VI

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Plaintiff charged a total of $18,164.43 for its services. In answering further, Defendants deny that Plaintiff is entitled to $18,164.43 for excavation and rock drilling.

Attachment KKB 2

4. Denied.

5. Denied.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT VII

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Lake Region has not paid the $18,164.43. In answering further, Defendants deny that Plaintiff is entitled to $18,164.43 for rock drilling and excavation.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5.

COUNT VIII

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Plaintiff charged Lake Region $5,489.54, but deny that it was for concrete work for Defendant Lake Region.

4. Defendants admit the charges were fair and reasonable, but deny that the charges were for concrete work.

5. Admit.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT IX

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Denied.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

COUNT X

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied. In answering further, Defendants assert that Plaintiff's alleged damages are an ascertainable amount of money, which by definition is an adequate remedy at law.

8. Denied.

WHEREFORE, having fully answered Plaintiffs' Petition and Plaintiff having failed to plead a cause or causes of action, Defendants respectfully request that Plaintiff's Petition be dismissed and Defendants be granted such other and further relief as deemed just and proper.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. Defendants state that all allegations not specifically admitted in the answer above are denied, and all answers above are incorporated herein.

2. The assignment of availability and standby fees contested by Plaintiff in this action was expressly stated consideration in a July, 1998, Stock Purchase Agreement whereby Four Seasons Group, Inc. transferred all stock, rights, and interest in Four Seasons Water & Sewer Company (now renamed Lake Region Water & Sewer Company, Defendant herein) to Roy and Cindy Slates.

3. As part of that consideration, Four Seasons Group, Inc. had its subsidiary, Four Seasons Lakesites, Inc., assign all interest it had in the availability or standby fees to Roy and Cindy Slates.

4. The rights, interests, and obligations for which Plaintiff seeks relief in this action were conveyed by the Stock Purchase Agreement and assignment of rights and interests in the availability or standby fees, and Plaintiff has no claim for relief.

Standing

5. Plaintiff cannot assert rights or interests in the availability or standby fees.

6. The availability or standby fees are paid by individual private lot owners at the time that each such individual purchases a lot in order to reserve sewer and water capacity until the time the individual finishes building a home and connects the finished home to Four Season's Water & Sewer Company.

Attachment KKB 2

7. Plaintiff does not pay the fee, Plaintiff does not, and cannot, provide water or sewer service, nor does Plaintiff have any other legally cognizable interest in the availability or standby fees which Plaintiff admits are to provide sufficient sewer and water capacity.

8. Plaintiff has no standing to assert an interest in the availability or standby fees for itself or any third party.

9. The assignment of availability and standby fees was an assignment by Plaintiff Four Seasons Lakesites, Inc., and Four Seasons Water & Sewer Co. (which is now Defendant Lake Region Water & Sewer Co.).

10. If Plaintiff is correct in its assertion that availability and standby fees for lots sold after August 6, 1998, were not assigned to Roy and Cindy Slates, which Defendants deny, any interest in those fees would remain in the company now named Lake Region Water & Sewer Co, Defendant herein.

Failure to State a Claim Against Defendant Four Seasons Water & Sewer Co., Failure to State a Claim Against Defendant Waldo Morris, Improper Uniting of Claims and Parties

11. Plaintiff Four Seasons Lakesites, Inc., assigned its interest in the availability and standby fees to Roy and Cindy Slates personally.

12. Roy and Cindy Slates assigned their interests and rights in the availability and standby fees to Defendant Waldo Morris.

13. Counts I, II, and X of Plaintiff's Petition seek relief against both Waldo Morris and Lake Region Water & Sewer Co. for allegedly exercising rights and interests in the availability or standby fees that purportedly belong to Plaintiff.

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14. Plaintiff has failed to assert any facts, or state any claim, which if true would establish that Defendant Lake Region Water & Sewer Co. has exercised any right or interest in the availability or standby fees allegedly held by Plaintiff.

15. Count VII of Plaintiff's Petition seeks relief from Defendant Waldo Morris for alleged acts of Lake Region Water & Sewer Co. on the sole basis that Waldo Morris is a shareholder of Lake Region Water & Sewer Co.

16. Lake Region Water & Sewer Co. is a duly authorized corporation, and Mr. Morris cannot be sued on the basis that he is a shareholder.

17. Plaintiff's Petition alleges ten counts against Defendants based upon unrelated acts over a five-year period, and intermixes requests for relief between Lake Region Water & Sewer Co. and its shareholder Waldo Morris without stating specific bases or facts establishing that each defendant is allegedly liable for the relief requested by Plaintiff.

Estoppel, Laches, and Course of Conduct

18. Plaintiff alleges that it is entitled to availability or standby fees, and interest, for all lots Plaintiff sold subsequent to August 6, 1998.

19. The obligation of the individual property owners to pay the availability or standby fees is created when Plaintiff sells a lot to a lot purchaser and the obligation of the lot purchaser to pay the fees is attached as a covenant on the lot.

20. Plaintiff knows who it has sold lots to since August 6, 1998.

21. Plaintiff has known since August 6, 1998, that those lot owners have paid the availability or standby fees to Defendant Morris.

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22. Plaintiff has waited over five years to bring this action alleging that Defendants have been collecting availability or standby fees that Plaintiff alleges belong to it.

23. Since August, 1998, Plaintiff has continued attaching the requirement to pay availability or standby fees to the lots it sells, has continued to allow Defendant Waldo Morris to collect the fees, and has continued to allow Defendant Waldo Morris to spend the fees for the benefit of Defendant Lake Region Water & Sewer Company to guarantee capacity and services for Plaintiff's developments.

24. Pursuant to Chapter 644, RSMo, and it's implementing regulations, Plaintiff cannot sell lots without first demonstrating to the Missouri Department of Natural Resources that the entity certificated by the Missouri Public Service Commission to provide sewerage to the geographic area where the lots are located has sufficient capacity to provide sewer service for the lots Plaintiff sells.

25. Defendant Lake Region Water & Sewer Co. is the entity certified by the Missouri Public Service Commission to provide sewerage to Plaintiff's developments.

26. When Four Seasons Group, Inc., transferred the water and sewer company through the July, 1998, Stock Purchase Agreement, Plaintiff Four Seasons Lakesites, Inc., was limited by the State of Missouri to sell no more than fifty lots because of insufficient sewage capacity.

27. Lake Region Water & Sewer Company has used the availability or standby fees to build a new sewage treatment plant and new water tower, invest in capital improvements, and otherwise increase capacity and services in order to provide capacity for Plaintiff's developments.

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28. Plaintiff has never had to stop selling lots due to lack of capacity from Lake Region Water & Sewer Company, and Plaintiff has been able to develop and sell more lots because of Lake Region Water & Sewer Company's use of the availability or standby fees. Had Lake Region Water & Sewer Company not used the fees for their intended purpose, which only Lake Region Water & Sewer Company can do, Plaintiff's development would have stopped long ago.

29. Since August, 1998, Plaintiff has received the benefit of Lake Region Water & Sewer Company using the availability or standby fees to increase capacity so Plaintiff could sell more lots.

30. Plaintiff is equitably estopped from claiming availability or standby fees from August, 1998, to present, because Plaintiff has already received the benefit of those fees.

31. Plaintiff has waited an unreasonable amount of time to bring this action.

32. Plaintiff's unreasonable delay has worked to Plaintiff's benefit and Defendants' detriment.

33. Plaintiff's course of conduct is an admission that Plaintiff does not have rights or interest in the availability or standby fees.

Failure to Join an Indispensable Party and Failure of Consideration

34. Plaintiff Four Seasons Lakesites, Inc., now challenges in this action the assignment of the availability or standby fees which was express consideration granted by Four Season Group, Inc., by alleging that the assignment transferred something less than all interest in the availability or standby fees to the detriment of Defendants.

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35. Four Season's Group, Inc. is an indispensable party to this litigation in that Plaintiff is now disputing the consideration expressly granted by Four Seasons Group, Inc.

Statute of Frauds

36. Counts III and IV of Plaintiff's Petition seek relief for an alleged oral contract for real and personal property for a value of $87,500.00.

37. Count V of Plaintiff's Petition seeks relief for an alleged oral contract for goods and services worth $81,750.00.

38. Counts VI and VII of Plaintiff's Petition seek relief for an alleged oral contract for services worth $18,164.43.

39. Counts VIII and IX of Plaintiff's Petition seek relief for services worth $5,489.54.

40. Pursuant to §400.2-201, RSMo, contracts for goods, the price of which is $500.00 or more, are not enforceable unless in writing.

41. The alleged oral contracts Plaintiff seeks to enforce in this action are for "goods" as defined at §§400.2-105 – 400.2-107, RSMo, and therefore not enforceable.

42. The alleged oral contracts Plaintiff seeks to enforce in this action are for real property or an interest therein, and therefore were required to be in writing to be enforceable. §432.010, RSMo.

43. The alleged oral contracts Plaintiff seeks to enforce in this action are for services for a time longer than one year or not to be performed within one year of the making, and therefore were required to be in writing to be enforceable. §432.010, RSMo.

Statute of limitations

44. Counts I, II, and X seek relief based upon the July, 1998, Stock Purchase Agreement and assignment of availability or standby fees dated August, 1998.

45. Pursuant to §516.120, RSMo, such an action based upon a contract must be commenced with five years.

46. Plaintiff did not commence this action within five years as required by §516.120.

Plaintiff Drafted the Assignment

47. Plaintiff drafted the assignment of availability or standby fees.

48. Plaintiff seeks to use ambiguities in the assignment to Plaintiff's advantage in establishing that Plaintiff allegedly did not assign availability or standby fees for lots sold after August, 1998.

49. Plaintiff's assertion that it did not assign availability or standby fees for lots sold after August, 1998, is based solely on ambiguity in the assignment.

50. Because Plaintiff drafted the assignment, any ambiguity in the assignment must be construed against Plaintiff.

WHEREFORE, having fully answered Plaintiffs' Petition and Plaintiff having failed to plead a cause or causes of action, Defendants respectfully request that Plaintiff's Petition be dismissed and Defendants be granted such other and further relief as deemed just and proper.

Respectfully submitted,

LATHROP & GAGE L.C.

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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by facsimile and U.S. Mail, postage prepaid, this 29th day of December, 2003, to the following:

John E. Curran
Brook McCarrick
P O Box 600
Osage Beach, MO 65065
Facsimile: (573) 348-3093

_____
Attorney for Defendants

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