

**DAVID N. APPLEBY PC
ATTORNEY AT LAW**

119 NORTH SECOND STREET
POST OFFICE BOX 158
OZARK, MISSOURI 65721
417.581.2411 / 417.581.2447 facsimile
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DAVID N. APPLEBY

MORGAN N. ASH

April 15, 2010

MISSOURI PUBLIC SERVICE COMMISSION
SECRETARY/CHIEF REGULATORY LAW JUDGE
PO BOX 360
JEFFERSON CITY MO 65102-0360


FILED³
APR 19 2010
Missouri Public
Service Commission

RE: BEAR CREEK WATER & SEWER CO LLC

Dear Sir:

Accompanying Amended Applications for sale of water company and sewer company are sent to you for filing in compliance with the requirements of the Missouri Public Service Commission Law.

Very truly yours,


David N. Appleby

enclosure

cc: BEAR CREEK WATER & SEWER CO LLC

PUBLIC COUNSEL
TRUMAN BUILDING
301 WEST HIGH STREET
JEFFERSON CITY MO 65102

JERRY SCHEIBLE PE
UTILITY REGULATORY ENGINEER
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY MO 65102-0360

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

FILED³

APR 19 2010

Missouri Public
Service Commission

IN THE MATTER OF APPLICATION OF)
BEAR CREEK WATER AND SEWER, LLC)
TO SELL ITS WATER SYSTEM IN)
TANEY COUNTY, MISSOURI)
TO PUBLIC WATER SUPPLY DISTRICT)
NO. 3 OF TANEY COUNTY, MISSOURI)

Case No. WM-2010-0239

AMENDED APPLICATION TO SELL WATER SYSTEM

COMES NOW BEAR CREEK WATER AND SEWER, LLC and in support of its
application pursuant to Section 393.190, RSMo, states as follows:

1. That Seller is the owner of a certain water system in Taney County, Missouri. Its principal office is located at 4279 Highway 160 Walnut Shade, Missouri 65771.
2. Buyer Public Water Supply District No. 3 of Taney County, Missouri is a public water supply district established and operating pursuant to Missouri law, and as such is exempt from regulation by the Commission.

It's address is 114 Business Park Drive Suite A, Branson, Missouri 65616.
3. A certified copy of the resolution of Public Water Supply District No. 3 of Taney County, Missouri authorizing the purchase is shown at Exhibit "A" attached hereto and incorporated herein.
4. Correspondence, communications, orders, and decisions in this matter should be addressed to:

DANNY R. BROWN, MANAGING MEMBER
BEAR CREEK WATER AND SEWER, LLC
4279 HIGHWAY 160
WALNUT SHADE, MO 65771
417-334-4926

DAVID N. APPLEBY
ATTORNEY AT LAW
119 N SECOND STREET
PO BOX 158
OZARK, MO 65721
417-581-2411

5. That Buyer intends to purchase assets (excluding the certificate of convenience and necessity) of the water system upon the terms and conditions set forth in Agreement for Transfer of Water System, which is marked Exhibit "B" attached hereto, and incorporated herein.
6. The proposed transaction is not detrimental to the public interest in that service provided will not be changed. Notice to all present customers in the form shown at Exhibit "C" will be given at the direction of the Commission.
7. Upon closing, Seller intends to discontinue and Buyer will immediately and without interruption begin the rendition of water service in the service area.
8. The proposed transfer will have no impact on tax revenues of Taney County as shown by Exhibit "D" attached hereto, and incorporated herein..

WHEREFORE, Seller respectfully requests an order and decision of this Commission:

- (i) approving the sale and transfer of all of said water works and related assets of said water system by Seller to Buyer, and
- (ii) authorizing Seller to discontinue providing service in its service area as of the closing date of sale and the immediate continuance of service by the Buyer, and cancelling the existing tariff and certificate of convenience and necessity, and
- (iii) for such other relief deemed meet and proper to accomplish the purposes of this application.

Respectfully Submitted,
Bear Creek Water and Sewer, LLC

By: *Danny R. Brown*
Danny R. Brown, Managing Member

David N. Appleby
David N. Appleby, #25590
119 North Second Street
P.O. Box 158
Ozark, MO 65721
417-581-2411

VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF CHRISTIAN)

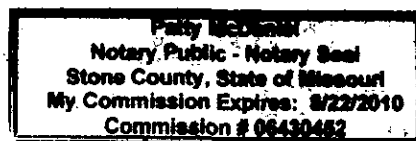
Danny R. Brown, being of age and duly sworn, states that he is the Managing Member of Bear Creek Water and Sewer, LLC, and that he has the authority to make this Application for sale of said system, and that he has read the application and the allegations contained therein are true and correct according to his best knowledge, information and belief.

Danny R. Brown
Danny R. Brown

SUBSCRIBED AND SWORN to before me this 15th day of April, 2010, 2009.

Sally McDaniel
Notary Public

My commission expires:



A RESOLUTION OF PUBLIC WATER SUPPLY DISTRICT NO. 3 OF TANEY COUNTY, MISSOURI, APPROVING A CONTRACT WITH BEAR CREEK WATER AND SEWER, LLC.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF PUBLIC WATER SUPPLY DISTRICT NO. 3 OF TANEY COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The contract with Bear Creek Water and Sewer, LLC, attached hereto as Exhibit A and incorporated herein by reference is approved as an obligation of this district.

Section 2. The President of the Board of Directors and the District Clerk are authorized and directed to execute the same.

Section 3. Copies of the agreement are to be provided to seller's attorney, David N. Appleby, 119 North 2nd Street, P.O. Box 158, Ozark, Missouri 65721 for presentation to the Missouri Public Service Commission in connection in with the seller's application for approval of the transaction.

PASSED, APPROVED and ADOPTED by the Board of Directors of Public Water Supply District No. 3 of Taney County, Missouri this 24th day of November, 2009.

**PUBLIC WATER SUPPLY DISTRICT NO. 3
OF TANEY COUNTY, MISSOURI**

(SEAL)

By: 
Bryan Caperton, President

ATTEST:


Marti Hancock, District Clerk

CERTIFICATION

I, the undersigned Clerk of the Board of Directors of Public Water Supply District No. 3 of Taney County, Missouri hereby certify that the above and foregoing resolution is a true and correct copy of the resolution adopted by said District's Board of Directors as the same appears of record in my office and that the same has not been amended or repealed as of the 24th day of November 2009.

(SEAL)


Marti Hancock, District Clerk

AGREEMENT FOR TRANSFER OF WATER SYSTEM

THIS AGREEMENT (the "Agreement"), made and entered into this 3 day of November, 2009, by and between Bear Creek Water and Sewer, LLC., ("Seller") and Public Water Supply District No. 3 of Taney County, Missouri, a public water supply district organized under Chapter 247 RSMo., ("Buyer").

WITNESSETH:

WHEREAS, the Seller has developed, and operates as a regulated water corporation, water facilities in an unincorporated area of Taney County, Missouri (hereinafter the "Water System"); and,

WHEREAS, Buyer and Seller are bodies organized and existing under the Constitution and the laws of the State of Missouri with all the requisite power necessary to enter into the transaction described hereinafter; and,

WHEREAS, Seller desires to transfer all the assets, property and real estate connected with the Water System; and,

WHEREAS, Buyer desires to accept all of the assets, property and real estate connected with the Water System; and,

WHEREAS, the parties have reached an understanding with respect to the transfer by the Seller to the Buyer of all of the Water System.

NOW, THEREFORE, it is mutually agreed that:

1. **TRANSFER OF ASSETS.**

For and in consideration as stated herein, and the covenants and promises hereinafter set forth, the Seller agrees that on the closing date, the Seller shall transfer, assign and deliver to Buyer all of Seller's then existing assets pertaining to the provision of water service in the Water System located in Taney County, in the State of Missouri, and related properties, including, without limitation, the

Exhibit B Page 1

following:

A. The land, buildings, interests in land, easements, rights of way, permits and leases generally described in Exhibit A, attached hereto;

B. All of Seller's water service facilities, equipment, lines, plant, pipes, manholes and appurtenances;

C. Any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items located in Taney County, Missouri, and used or held for use in connection with the Water System as generally described in Exhibit B, attached hereto;

D. All of Seller's rights, title and interest in and to any franchise agreements, franchise rights warranties, contracts, supply contracts, agreements, and utility deposits pertaining to, allocable to or arising out of the provision of water service in Taney County;

E. All of Seller's inventory, merchandise, contract rights, supplies, goodwill, and general intangibles including accounts receivable pertaining to the water service, except accounts receivable accrued through the end of the month in which Buyer commences operation;

F. All assets not described which are located in Taney County, Missouri, and used or useful in the Seller's water service.

G. The assets to be delivered, as above described, are hereinafter collectively described as the "Assets" together with a copy of any customer contracts and a complete customer list with addresses and telephone numbers if available.

2. CONVEYANCES OF REAL ESTATE.

The real estate to be conveyed by Seller will include all facilities described herein and all interest of Seller in any water easements. The real estate will be conveyed by general warranty deed, in a form satisfactory to Buyer, and will vest marketable title in fact in the Buyer. Easements shall be assigned by written assignment, in a form satisfactory to Buyer and will provide continuous and uninterrupted right-of-way for the facilities of the Seller. The Seller will provide a right-of-way map with one copy of each recorded easement.

3. **REGULATORY APPROVAL.**

The Seller agrees to make application to the Missouri Public Service Commission for authority to complete the transfer of the Assets. Buyer agrees to cooperate in this process when requested to do so by Seller. Buyer and Seller shall act diligently and cooperate with each other in obtaining final approval, if necessary, of the Missouri Department of Natural Resources. Costs of the proceedings are to be paid by Seller. The Seller's current Tariff establishing rates and charges is attached hereto as an exhibit. The Buyer anticipates modifications and improvements but will not modify the rate structure for Seller's customers for a period of two years following closing and in any event, the rate structure will not exceed that charged all other similarly classified customers in the water district. In the event the Missouri Public Service Commission declines approval on the sale then this agreement shall be null and void and of no further force and effect unless a novation agreement acceptable PSC is concluded between the parties.

4. **FAIR MARKET VALUE:**

For tax purposes, Seller may obtain an appraisal of the assets, at its own expense.

5. **CLOSING:**

The closing of the sale shall take place at a mutually agreeable location within thirty day after the effective date of any necessary regulatory authority approval, or at such other time as the parties hereto may mutually agree. At the closing, Seller shall deliver to the Buyer such deeds, bills of sale, endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be

effective to vest in the Buyer such title to the Assets to be transferred. From time to time, at Buyer's request, whether at or after the closing and without further consideration, the Seller will execute and deliver such other instruments of conveyance and transfer and take such other action as Buyer reasonably may require to more effectively convey and transfer to the Buyer any of the Assets to be transferred hereunder, and will assist the Buyer in the collection or reduction to possession of such Assets. The Seller will pay all sales, transfer and documentary taxes, if any, payable in connection with the transfers and deliveries to be made to the Buyer hereunder.

On the date of closing, Buyer shall accept and assume ownership and title to the Assets to be conveyed hereunder and Buyer shall assume liability, and become responsible, for all obligations in connection with the Assets, except for those liabilities and obligations which Seller has hereinunder agreed to retain.

6. SELLER'S REPRESENTATIONS AND WARRANTIES.

The Seller represents and warrants as follows:

A. Organization and Standing of Seller.

Seller is a body organized, existing under the constitution and laws of the State of Missouri in good standing, and has all the requisite power and authority to sell the Water System business and its Assets pursuant to the terms of this agreement.

B. Liabilities.

All liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise pertaining to or arising out from the Water System are liabilities and obligations of the Seller.

C. Absence of Certain Changes.

After Buyer's inspection and acceptance of the Water System, there shall not be:

- i. Any material change in the business or operations of the Water System;
- ii. Any damage, destruction or loss whether or not covered by insurance, materially and adversely affecting the Water System's assets.

D. Title to Properties.

Seller has, or shall have, good and marketable title to all of the Water Assets. Seller also owns the Assets to be transferred under this agreement, in all cases, free and clear of all liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges except amounts due Branson bank in the approximate amount of \$19,000.00 (which Buyer shall assume and agrees to pay, holding harmless and indemnifying Seller from any and all amounts due thereon) liens for taxes not yet due or payable, easements or right of ways, streets, railways, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the aggregate have a materially adverse effect on the value or utility of the Assets to be sold hereunder. Seller makes no warranty concerning the merchantability or status of the title of the real estate upon which the easements are located.

Seller agrees to identify any and all interests in land (including easements or license agreements) it has obtained in connection with its operation and maintenance of the Water System and provide Buyer or Buyer's representatives copies of the same or a reference to the book and page number of the records of the Taney County Recorder's Office where such easements are recorded.

E. Authority to Operate.

The Assets described at Section 1 of this agreement, constitute all of the assets presently owned by the Seller pertaining to the Water System. To the best of Seller's knowledge, the Water System is being conducted, and as of the closing date, will be conducted in full compliance with requirements of all regulatory bodies exercising jurisdiction with regard to rates and conditions of service, and with local

building and zoning codes. Seller has received no notice of any violation of federal or state safety or environmental statute, rule or regulation which remains uncorrected.

F. Litigation.

There is no litigation or proceeding pending, or to the knowledge of the Seller threatened, against or relating to the Seller, its properties, or the Water System, nor does the Seller know or have reasonable grounds to know of any basis for any such action, or of any governmental investigation relative to the Seller, its properties, or the Water System, except as otherwise disclosed to Buyer.

G. No Violation or Breach.

The performance of this agreement by the Seller, including any preconditions or surviving warranties or representations, is not in violation of any laws, statutes, local ordinances, state or federal regulations, court orders or administrative order or ruling, nor is such performance in violation of any loan documents, conditions or restrictions in effect for financing, whether secured or unsecured.

7. BUYER'S REPRESENTATIONS AND WARRANTIES.

Buyer represents and warrants as follows:

A. Organization and Standing of Buyer.

Buyer is a body organized, existing under the Constitution and laws of the State of Missouri, and has the requisite power to accept the assets which are to be transferred pursuant to the terms of this agreement.

B. Authority.

The execution and delivery of this agreement by Buyer and the transfer of the Assets as contemplated hereby have been duly authorized by the Buyer, and all necessary action on the part of the Buyer has been taken to authorize the execution and delivery of this agreement and to consummate the transfer contemplated hereby.

8. **CONDITIONS PRECEDENT.**

All obligations of the Buyer under this agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

A. Regulatory Approval.

The Missouri Public Service Commission and Missouri Department of Natural Resources shall have, if necessary, authorized or approved the sale, transfer or disposition of the Assets to the Buyer from the Seller. Both parties shall diligently pursue the required approvals and authorizations contemplated herein. In the event the parties are unable to obtain the required regulatory approval or authorization to complete the transactions contemplated by _____, 200__, this Agreement shall automatically terminate.

B. Representations and Warranties True at Closing.

The Seller's representations and warranties contained in this agreement shall be true at the time of closing as though such representations and warranties were made at such time.

C. Performance.

The Seller shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by Seller prior to or at the closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the closing date.

D. No Casualty.

The system at any location shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy, or any judicial, administrative or governmental proceeding.

9. **FEES AND COMMISSIONS.**

Exhibit B Page 7

Each party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder's fee in connection with the transactions contemplated by this agreement. Each party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this agreement and in closing and completing the transactions hereunder provided. Fees for professional advisors retained jointly by the parties for their mutual benefit shall be equally divided.

10. BENEFIT.

All of the terms of this agreement shall be binding upon, and enure to the benefit of, and be enforceable by, the respective legal representatives of the Seller, and the successors and assigns of the Buyer.

11. GOVERNING LAW.

This agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state.

12. COUNTERPARTS.

This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This agreement shall not be binding until executed by all parties.

13. NO THIRD PARTY BENEFICIARIES.

This Agreement shall not confer any rights or remedies upon any person other than the parties and heir respective successors and permitted assigns.

14. ENTIRE AGREEMENT.

This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements or

representations by or among the parties, written or oral, to the extent they have related in any way to the subject matter hereof.

15. SUCCESSION AND ASSIGNMENT.

This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of Buyer and Seller, said approval not to be unreasonably withheld.

16. HEADINGS.

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

17. NOTICES.

All notices, requests, demands, claims and other communications hereunder shall be in writing.

Any notice, request, demand, claim or other communication hereunder shall be deemed duly given and effective five (5) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

If to Buyer:

If to Seller:

David N. Appleby Attorney at Law PC
119 N. 2nd Street
P.O. Box 158
Ozark, Missouri 65721

Any party may send any notice, request, demand, claim or other communication

hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it is actually received by the intended recipient. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

18. AMENDMENTS AND WAIVERS.

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and Seller. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

19. SEVERABILITY.

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

20. CONSTRUCTION.

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or

burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

21. INCORPORATION OF EXHIBITS.

Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

22. DEFAULT; ATTORNEY'S FEES.

If either party shall default in it's performance under this Agreement, which default results in the expenditure of attorney's fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then the prevailing party shall receive it's reasonable and actually incurred attorney's fees in addition to any other damages recovered.

23. REPRESENTATIONS, COVENANTS AND WARRANTIES TO SURVIVE

CLOSING.

The representations, covenants and warranties by Seller will survive closing.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the day and year first above written.

BEAR CREEK WATER & SEWER, LLC

By: 

Danny R. Brown, Managing Member

TANEY WATER SUPPLY DISTRICT #3

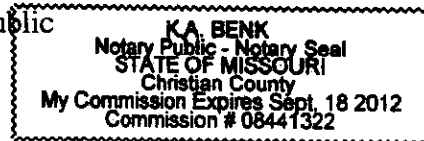
STATE OF MISSOURI)
)ss.
COUNTY OF CHRISTIAN)

On this 3 day of November, 2009, before me appeared Danny R. Brown to me personally known, who being by me duly sworn, did say that he is the Managing Member of Bear Creek Water & Sewer, LLC, a limited liability company, and that said instrument was signed and sealed in behalf of said limited liability company by authority of its Members, and said Danny R. Brown acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in DZARK, Missouri, the day and year first above written.

K.A. Benk
Notary Public

My Commission Expires: 9-18-2012



STATE OF MISSOURI)
)ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me appeared _____, to me personally known, who being by me duly sworn, did say that he is the _____ of Taney Water Supply District #3, and that the seal affixed to the foregoing Agreement to Provide Water Services is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in _____, Missouri, the day and year first above written.

Notary Public

My Commission expires: _____

Exhibit B Page 12

NOTICE

TO: ALL WATER CUSTOMERS OF BEAR CREEK WATER AND SEWER, LLC

Please take notice of the pending sale of the Water System of BEAR CREEK WATER AND SEWER, LLC to the PUBLIC WATER SUPPLY DISTRICT NO. 3 OF TANEY COUNTY. Such sale is contingent upon approval of the Missouri Public Service Commission. Rates for water service will remain the same as now authorized by the tariff of BEAR CREEK WATER AND SEWER, LLC; however, PUBLIC WATER SUPPLY DISTRICT NO. 3 OF TANEY COUNTY may in the future increase rates. You may object to this sale by writing the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, no later than _____. Questions about future water service may be answered by contacting_____

BEAR CREEK WATER AND SEWER, LLC

DANNY R. BROWN, Managing Member

Exhibit C Page 1

OFFICE OF THE ASSESSOR
TANEY COUNTY, MISSOURI
POST OFFICE BOX 612
FORSYTH, MISSOURI 65653
417-546-7242

Date: 1/12/10

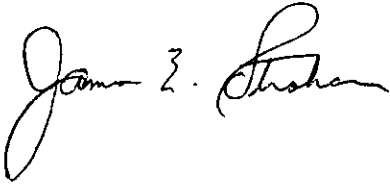
DAVID L RAUCH SECRETARY
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY MO 65102

RE: DANNY R. BROWN AND LINDA BROWN
(BEAR CREEK WATER AND SEWER, LLC)

To Whom It May Concern:

The proposed sale of assets to include well tract and real estate and easements of the Water Company of the Public Supply District No. 3 of Taney County, Missouri, will not effect the tax revenues in Taney County, Missouri.

Very truly yours,



Assessor

Exhibit D Page 1