

April 27, 2006

FILED<sup>2</sup>

MAY 01 2006

The Honorable Colleen M. Dale  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO. 65102-0360

Missouri Public  
Service Commission

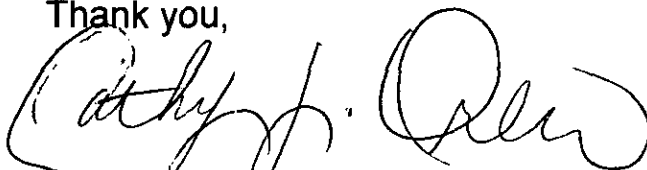
Re: Case Nos. ~~WC-2006-0082, WC-2006-0090~~, WC-2006-0107,  
WC-2006-0122, WC-2006-0121, WC-2006-0120, WC-2006-0129,  
WC-2006-0139, WC-2006-0138

The Honorable Judge Dale:

Please find enclosed for filing, two separate, (Complainant Case No. WC-2006-0090 and Complainant Case No. WC-2006-0082), "Complainant's Request to Have a Regulated Public Utility Operated and Managed by a "Certificated" Company Independent of Any Association With the Respondent or Any of Its Agents or Representatives." Five additional copies are also enclosed for the appropriate Commission personnel; if you would be so kind as to bring this filing to their attention.

Please contact me, if you should have any questions regarding this filing.

Thank you,



Cathy J. Orlor  
3252 Big Island Drive  
Roach, MO. 65787  
(573)317-1490

FILED<sup>2</sup>

MAY 01 2006

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Benjamin D. Pugh

Complainant

v.

Folsom Ridge, LLC (Owning and Controlling  
the Big Island Homeowners Association)

Respondent

Case No. WC-2006-0090

**COMPLAINANT'S REQUEST TO HAVE A REGULATED PUBLIC UTILITY  
OPERATED AND MANAGED BY A "CERTIFICATED" COMPANY  
INDEPENDENT OF ANY ASSOCIATIONS WITH  
THE RESPONDENT OR ANY OF ITS AGENTS OR REPRESENTATIVES**

**Come now complainant Benjamin D. Pugh to make the following request to the commission:**

**For a regulated public water and sewer utility servicing the Big Island community that is operated and managed by a certificated company that has a proven history by successfully providing safe and adequate service.**

1. All complainants are unanimous in wanting a utility that will provide safe adequate service into the future. This would be in the best interest of all residents of Big Island (BI). Not just the complainants.
2. All complainants agree that the water and sewer utility should be regulated but do question certifying the same entity which has created the problems and reason for us coming to the PSC for relief.
3. What assurance can the PSC give the complainants that certifying Folsom Ridge, (owning and controlling BIHOA) will equate to safe / adequate utility service in the future.
4. Folsom Ridge is currently operating under a mandated Settlement Agreement between the Department of Natural Resources and Attorney Generals Office for the incorrect installation of the Big Island water and sewer system. Folsom Ridge's past 7 years has shown aa obvious disrespect for the regulatory agencies and the rules and regulation and laws of the state of Missouri by committing a series of violations. How does the commission intend to enforce the regulatory tarriff by which a certificated company operates, to guarantee and reassure residents that this previous pattern of behavior will be corrected?
5. What penalties are imposed by the commission when violations by the certificated operator occur?
6. This complainant also request the Commission address and identify all issues of my complaints which fall under the jurisdiction of the PSC and issue a formal finding of fact by which a determination and ruling is made that Folsom Ridge is operating as an unlicensed pubic utility, by providing service and billing to several non-members including this complainant
7. This complainant also request that my formal complaint and this document and all attachments to both, be entered into evidence as a exhibit to the pleading, for the convenience of the commission in reviewing the issues.

### Reason for my complaint:

**Receiving service and being billed by the BIHOA ( Owned and controlled by Folsom Ridge) in which I Am NOT A MEMBER**

I would like to refer the commission to my original Formal Complaint with supporting documentation.

I am currently considered a member by Folsom Ridge/Big Island HOA because I am using their sewer services . In reality, I am a **customer**, not a member as I have never ratified any covenants consenting to become a member. Since I am one of the original homeowners solicited by Folsom Ridge to purchase a sewer tap, I feel that clarification on my complaint should be forthcoming from me.

To participate in the purchase of a sewer tap Folsom Ridge required my money to be deposited in a Escrow Account at Central Bank by the date, January 15, 1999. There was no mention of any HOA as a part of this purchase agreement, nor was an HOA in existence with respect to the water and sewer system and my tap purchase to receive utility service. Matter of fact, I was not asked to sign and ratify anything until 16 months after I had signed my check for \$4800 , for the right to connect to the Sewer system at a time of my choosing. There would be no fees until the time I connect to the system.. That was my contract: Pay \$ 4800 by January 15, 1999 so that I could connect at the time of my choosing. It certainly was not much of a contract, but it was all that was offered to me.

**You can't ratify a document, consenting to become a member in an association and be bound by the covenant and conditions, and the bylaws of that association - if it does not exist !** At the time of my hook up to the sewer system in November 1999 there was no operating HOA in existence and therefore was not a part of or a requirement of the contractual agreement with Folsom Ridge for future utility service. It was 5 months after my connecting to the system before I was approached to ratify a set of HOA covenants. (this was nearly 16 months after my utility tap purchase. The failure of Folsom Ridge to have a functioning HOA to operate, manage, and maintain the water & sewer utility at the time of my tap purchase has created the problem which exist today. That problem is not that of the complainants, but the mismanagement ,misrepresentation and lack of communication by the Developer Folsom Ridge..

These covenant drafts presented to residents by Folsom Ridge, nearly 16 months later, in my opinion, were not acceptable from a homeowners standpoint, A committee was then formed by Big Island homeowner Jim Schrader to negotiate with Mr. Golden on these original covenants and bylaws. I was on that committee. This committee of Concerned Homeowners negotiated for 6 months with an accumulation of Attorney fees of approximately \$5000, with at best, minimal success. These negotiations were mutually suspended in October 2000 because of lack of progress between the two parties.

### **Why didn't I participate in joining the HOA at that time?**

The new HOA's only function was to maintain and govern the water and sewer systems on Big Island.

I had in my possession many pictures of the incorrect installation of the system and I was well aware that this sewer and water system was installed with no concerns for health issues or the regulations and codes of the governing entity, the Department of Natural Resources (DNR).. I was aware that Folsom Ridge had installed 4600 feet of sewer and water pipes in the same trench without a permit being issued by the DNR.( See Attachment A ) I was aware that Folsom Ridge had been reprimanded for installing sewer and water pipes in the same trench and using the wrong size pipe as mains ( See Attachment B )

I was being asked to join an association (HOA) where their only product was a flawed system improperly installed with documentation and pictures to prove it. To this date nothing has changed. Folsom Ridge is still committing violations as recent as June 2005. ( See Attachment C ) Within the covenants and bylaws I felt that there were many questions as to: Was this HOA operating as a unlicensed Public Utility? I as a homeowner still feel the liability of becoming a member is greater than I was or am willing to accept. There are still problems with the system and it's operation in my opinion.

Folsom Ridge (owning and controlling the BIHOA) changed their strategy and completely disregarded ( In my opinion ), my civil rights by considering me a member without any ratification of the covenant by me. ( See Attachment D ) The BIHOA is operating as an unlicensed public utility by providing service to and billing non members. Attorneys representing me have stated that I am not a member without ratifying the covenants. Again, no mention of any membership requirement in any HOA was made until 16 months after I agreed to pay \$4800 for the right to connect to the sewer system. I had already connected to the system and had been receiving service for nearly 5 months. Ben Pugh is not the only Non Member receiving services from the sewer system. There are other non members receiving services and/or who are being billed who have not ratified the covenants.

When I refused to join the HOA, came the alternatives / conditions: A letter written by Folsom Ridge on April 26, 2000 with two alternatives /conditions to me and my family.

1. I need to sign the attached ratification to assure that sewer rights remain with my property.
2. If Central Bank doesn't receive your signed ratification within 30 days your escrow money will be refunded to you and you will not be eligible to use the system. ( See Attachment E ) This was not part of my tap purchase agreement to receive utility service. I had been connected to and receiving service from the sewer system for 5 months. I can only assume they intended to disconnect my line and leave me without a sewer system and leave my home useless for occupancy.

### **Why did I come to the Public Service Commission with a Formal Complaint?**

I was a member of a group of approximately 20 homeowners negotiating with Mr. Golden representing Folsom Ridge, in the year 2000. ( Mr. John Walker was our legal attorney ). It was evident that Folsom Ridge LLC planned to control the HOA with control of the board and votes by **voting by lots** and not one member one vote.

I saw after nearly seven years that the problems with the incorrect installation of the sewer and water system and the covenants would not be resolved through negotiations.. Therefore I felt the logical solution would have to come from a outside source , a different entity, a independant company with a proven history, operating the systems under the regulation of the PSC.

That was my intent at the time I became a complainant and it remains the same today.

The voluntary application draft for Folsom Ridge to become certificated and regulated by the PSC was not acceptable for many reasons and a disappointment. (Scheduling hearing March 31, 2006) I refer to Page 3 item 10 ( See Attachment F ) related to privately owned wells.

The insinuation that the private wells could adversely affect the aquifer supplying our drinking water can also be reversed. **I contend the community well could adversely affect the aquifer supplying our private wells for the following reasons:** Folsom Ridge installed the Sewer filter bed only 160 feet from the well, approximately half the distance as a directive states by their Project engineer Jim Jackson. ( See Attachment G ). Folsom Ridge ignored their own engineer's directive stating: The filter bed should be a minimum of 300 feet. from the community well. The Missouri health department minimums are stated in a chart , ( Attachment H ) to also be a Minimum 300 foot. Filter beds are not listed on the chart but I would be hard pressed to find a reason that the same minimum of 300 feet would not apply as the pipes to the filter bed are under pressure with sewer water and the filter bed itself is full of sewer

water, and yes it is possible that these sewer lines under pressure can break ( See Attachment I ) This picture is of a repaired section of pipe, relatively close to the community well, just inches below the ground surface which makes it vulnerable to damage, illustrates why the separation of sewer and water systems separation minimums should not be ignored. A excellent example of a unnecessary health risk .It is sad that the health regulations take a lesser priority to anything else. Again the sewer filter bed/ tank installation creates a high contamination risk to the community well and our private wells as it is located at the highest elevations on Big Island. Why would you install a sewer filter bed at the highest elevation next to the community water system? I have a problem with that logic.

In my opinion item 10 on page 3 of the certification draft is not a issue which should be in this certification application. If it is a issue it should be a issue for all homeowners on Big Island. **The complainants do not intend to negate the rights of other homeowners.**

Many important issues will be addressed.at a Formal Evidentiary Hearing . Example: Document from BIHOA to homeowners ,operating and billing non members ( Attachment J )

In closing I would like to ask you, the Commissioners, to give careful consideration to your final decision! I hope this letter will better explain my position and my concerns. Health issues on Big Island have always been my number one priority. Thank you.

Respectfully submitted,

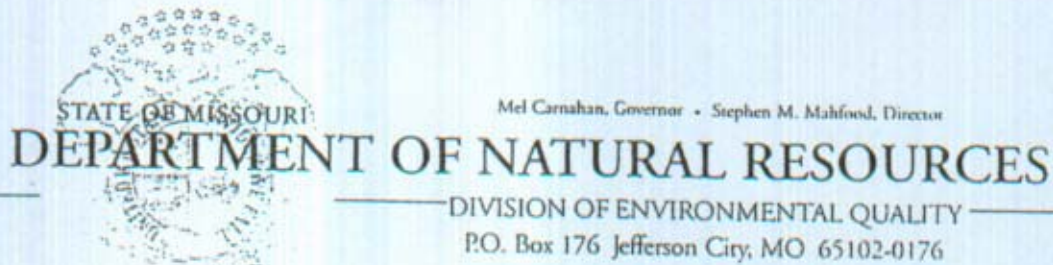


Benjamin D. Pugh  
Complainant, Big Island

#### Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent this 27th day of April, 2006 to the General Counsel's Office, and the Office of Public Council and via US mail, postage prepaid to Mark W. Comley, 601 Monroe Street, Suite 301, P.O.Box 537, Jefferson City, MO. 65102

## Attachment A



Camden County  
Big Island Home Owners Association  
Review No. 31182-98  
PWS ID # MO 3031265

November 19, 1998

Lake Professional Engineering Services, Inc.  
P.O. Box 27  
Camdenton, MO 65020

ATTN: James O. Jackson, P.E.

Dear Mr. Jackson:

We are in receipt of your letter dated November 17, 1998 and plan sheet of a trench detail for the water and sewer line construction for the Big Island Home Owners Association, Camden County, Missouri. In cases where it is not practical to maintain a ten foot separation, the department may allow deviation on a case-by-case basis, if supported by data from the design engineer. The supporting data must be provided. Also, any revisions to the plans and specifications must have the seal of a professional engineer affixed.

Please be advised that construction of the water and sewer must be stopped immediately, until such time a construction permit is issued. Should you have any questions with regard to this matter, feel free to give me a call.

Sincerely,

PUBLIC DRINKING WATER PROGRAM

A large, stylized handwritten signature in blue ink, which appears to read "Breck E. Summerford", is written over the typed name and title.

Breck E. Summerford, P.E., Chief  
Permit Section

BES:rme

c: City of Osage Beach  
Big Island Home Owners Association  
Jefferson City Regional Office

**LAKE PROFESSIONAL ENGINEERING SERVICES, INC.**

CONSULTING ENGINEERS

P.O. Box 27.

Camdenton, Mo. 65020

JAMES O. JACKSON, P. E. 573-480-0508 - BOWDEN CAMPBELL, EIT 573-480-7100  
573-873-3898

**RECEIVED**

**NOV 19 1998**

**PUBLIC DRINKING WATER  
PROGRAM**

November 17, 1998

Mr. Breck E. Summerford, P.E.  
Chief, Engineering and Compliance Section  
Public Drinking Water Program  
P.O. Box 176  
Jefferson City, MO 65102

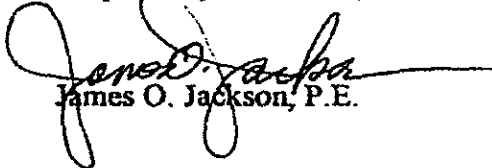
RE: Big Island Home Owners Association, Review No. 31182-98

Dear Mr. Summerford:

Attached is a copy of the drawing furnished the Jefferson City Regional Office concerning how the water and sewer lines have been constructed in the same trench. You also asked for the amount of line already installed and that figure is 4600'. As I indicated to you on the telephone yesterday, I will be glad to furnish any additional information to you, at any time.

I there are any questions please feel free to contact me.

Respectfully Submitted,

  
James O. Jackson, P.E.



## Attachment B

STATE OF MISSOURI  
**DEPARTMENT OF NATURAL RESOURCES**

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office

210 Hoover Road P.O. Box 170 Jefferson City, MO 65102-0170

(573) 751-2729

FAX (573) 751-0011

May 25, 1999

CERTIFIED MAIL # Z 290 136 189  
RETURN RECEIPT REQUESTED

Fulsum Ridgelle dba Big Island  
c/o David Lee, Management  
HCR 67, Box 680  
Roach, MO 65787

Dear Mr. Lee:

Enclosed is a Notice of Violation number 1315 JC being issued to Fulsum Ridgelle dba Big Island for failure to construct water lines and sewer lines in accordance with approved plans. On April 23, 1999, inspection of work being conducted on the water and wastewater lines for the Big Island in Camden County found illegal water and sewer mains being constructed. Instead of constructing individual one-inch PVC service lines for water and wastewater to each home, one inch lines were being placed to serve up to three homes. This would make the lines by definition water and wastewater mains, which have to be at least two-inch PVC and receive prior approval by the Department.

You stated at the time of my inspection that the change from single service lines to lines serving up to three homes was a misunderstanding of the requirements and what was approved. You have since stated to me that all work has been corrected. To resolve this matter, written certification needs to be submitted by your engineer verifying that all water and wastewater construction was corrected /completed in conformance with approved plans. Also, I noted that the water and wastewater service lines were being placed in the same trench. Separation of water and sewer service lines should meet national plumbing code standards.

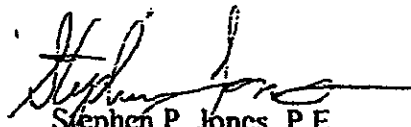


Mr. David Lee  
May 25, 1999  
Page Two

I appreciate your cooperation in this matter. If you have any questions regarding this matter, please contact me at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE

  
Stephen P. Jones, P.E.  
Environmental Engineer

SPJ/bg

Enclosure

c: John MacEachen, Public Drinking Water Program  
Breck Summerford, Public Drinking Water Program  
Jerry Croy, JCRO



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL QUALITY  
**NOTICE OF VIOLATION**

P.O. BOX 176  
JEFFERSON CITY, MO 65102

VIOLATION NUMBER

**1315 JC**

DATE AND TIME ISSUED

May 24, 1999

☐ A.M.

☐ P.M.

SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION)

Dulam Lignell, d/b/a Pig Island

MAILING ADDRESS

HCR 67, Box 680

CITY

Roach

STATE

MO

ZIP CODE

65787

NAME OF OWNER OR MANAGER

David Lee

TITLE OF OWNER OR MANAGER

Manager

LAW, REGULATION OR PERMIT VIOLATED

Construction of a sewer main without a permit 10 CSR 20-6.010(1)(A) & (4)(A)

Construction of a water main without a permit 10 CSR 60-3.010(1)(A)

NATURE OF VIOLATION

DATE(S):

April 23, 1999

TIME(S):

Construction of illegal water and wastewater mains.

SIGNATURE (PERSON RECEIVING NOTICE)

SIGNATURE (PERSON ISSUING NOTICE)

TITLE OR POSITION

TITLE OR POSITION/DNR REGION

Environmental Engineer

# Attachment C

## SOUTHWEST REGIONAL OFFICE MISSOURI DEPARTMENT OF NATURAL RESOURCES PUBLIC DRINKING WATER UNIT

6-9-05

Check One: Report of Construction Inspection ☒

or: Site Survey ☐

Public Water Supply Name: Big Island Subd. County Camden

Public Water Supply I.D. Number: 3031265 Review Number: 53303-04

Legal Owner(s) of Development: Mr. Reggie Golden (303) 702-0708  
Name(s) Address(es) Telephone Number(s)

Folsom Ridge, L.L.C.

P.O. Box 54

Longmont, CO 80501

Type: (check one) ☐ Individual ☐ Husband/Wife ☐ Partnership ☐ Unknown  
☐ Limited Partnership ☒ Corporation ☐ Municipality ☐ State ☐ Federal  
☐ Public Water District ☐ Homeowners Association ☐ Other \_\_\_\_\_

Specify

Contractor(s): \_\_\_\_\_  
Name(s) Address(es) Telephone Number(s) Ownership Type (see above for type)

Were there violations of Public Drinking Water Regulations, Design Guide, or Approved Plan/Specifications?

☒ Yes

☐ No

If yes, Notice of Violation Number: 11210SW Date Issued: 6-28-05

Issued to: Folsom Ridge, L.L.C.

P.O. Box 54

Longmont, CO 80501

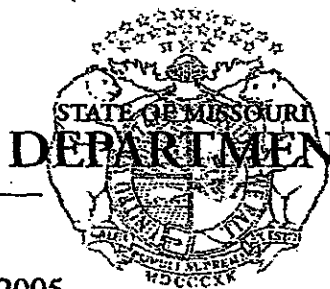
Observations: Construction of the approved water lines appears to be  
constructed properly. However, the water line extension past  
the cause way, on the main land was not approved and  
is construction without written approval and is a  
violation.

Date of Inspection: 6-9-05

Signature: Clinton J. Fin

Approved by: \_\_\_\_\_

c: Public Drinking Water Branch



Matt Blunt, Governor • Doyle Childers, Director

## DEPARTMENT OF NATURAL RESOURCES

[www.dnr.mo.gov](http://www.dnr.mo.gov)

June 28, 2005

### NOTICE OF VIOLATION #11210SW

Mr. Reggie Golden  
Folsom Ridge, L.L.C.  
P.O. Box 54  
Longmont, CO 80501

Dear Mr. Golden:

On May 13, 2005, during a construction inspection, Mr. Clinton J. Finn, P.E., of the Missouri Department of Natural Resources Southwest Regional Office (the department), observed an area adjacent to Big Island Subdivision that was being cleared for development. It was observed that waterlines from the Big Island Subdivision Waterline Relocation of Phase I and New Phase III project (review number 53303-04) appear to have been extended to this area under development.

In an effort to determine if this extension of waterlines was included in the approval of the above mentioned project, a construction inspection was conducted by Mr. Breck Summerford, P.E. and Mr. John MacEachen, both of the department's Public Drinking Water Branch, Ms. Elena Seon, of the department's Water Pollution Branch, and Mr. Clinton J. Finn, P.E., of this office.

During this construction inspection, it was determined that waterlines have been extended to this area adjacent to Big Island Subdivision and that this extension was not included in the approval for the Waterline Relocation of Phase I and New Phase III project. Therefore, this extension constitutes construction, installation, or modification of a community public water supply without written authorization, and is a violation of the federal and state Safe Drinking Water Law and Regulations as listed below:

Folsom Ridge, L.L.C. failed to obtain written authorization from the department prior to construction, alteration, or extension of the drinking water system at Big Island Subdivision in Roach, Camden County, Missouri.

These violations are also formally listed in the enclosed Notice of Violation NOV 11210SW.

### SCHEDULE OF COMPLIANCE

1. Cease construction immediately on waterlines that you do not have written approval for.


Mr. Reggie Golden  
Folsom Ridge, L.L.C.  
June 28, 2005  
Page 2

2. Within 30 calendar days, Folsom Ridge, L.L.C. shall submit to the Department of Natural Resources Southwest Regional Office, 2040 W. Woodland, Springfield, Missouri 65807, 417-891-4300, a written explanation of the failure to obtain written authorization (construction permit) from the department prior to improvements to the drinking water systems.
3. Within 30 calendar days, Folsom Ridge, L.L.C. shall submit to the Department of Natural Resources Public Drinking Water Branch, P.O. Box 176, Jefferson City, Missouri 65102, 573-751-5331, two copies of the engineering report, calculations, plans, and specifications prepared by a professional engineer registered in Missouri, for all public water supply improvements to be constructed along with a completed application for construction approval (enclosed). The engineering documents must include and clearly identify the portions of the system that have already been constructed. The proposed improvements as well as the portions constructed without a permit must comply with the department's *Design Guides for Community Water Systems*.

Please be aware that all future construction, alteration, or extension of the drinking water and wastewater system must be approved and authorized in writing before work can begin. Please contact Mr. Clinton J. Finn, P.E. of this office by calling 417-891-4300 or via mail at the Southwest Regional Office, 2040 W. Woodland, Springfield, Missouri 65807-5912 if you have any questions.

Sincerely,

SOUTHWEST REGIONAL OFFICE

  
Cynthia S. Davies, Chief  
Water Section

CSD/cfb

Enclosures

c: Krehbiel Engineering  
Public Drinking Water Branch  
Water Pollution Control Branch

CAMDEN/PDW  
BIG ISLAND SUBDIVISION  
MO-3031265  
029.pdwp.BigIslandSubdivison.mo3031265.WaterlineReplacement.2005.06.28.fy05.enrf.5330304.cjf.doc



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
NOTICE OF VIOLATION

VIOLATION NUMBER

11210SW

DATE AND TIME ISSUED

June 28, 2005

SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION)

Big Island Subd.

Folsom Ridge, L.L.C., P.O. Box 54, Longmont, CO 80501, (303) 702-0708

MO-3031265

SE1/4, SW1/4, Sec. 31, T39N, R17W; SE1/4, SE1/4, Sec. 1, T38N, R18W; W1/2, Sec. 6, T38N, R17W Camden County

MAILING ADDRESS

Folsom Ridge, L.L.C., P.O. Box 54

CITY

Longmont

STATE

CO

ZIP CODE

80501

NAME OF OWNER OR MANAGER

Mr. Reggie Golden, Folsom Ridge, L.L.C.

TITLE OF OWNER OR MANAGER

Owner

LAW, REGULATION OR PERMIT VIOLATED

Missouri Safe Drinking Water Law Section 640.115.2 RSMo  
Missouri Safe Drinking Water Regulation 10 CSR 60-3.010(1)(A)

NATURE OF VIOLATION

DATE(S):

TIME(S):

Caused or permitted construction, installation or modification of community public water supply without written authorization.

SIGNATURE (PERSON RECEIVING NOTICE)

Sent Via US Mail

SIGNATURE (PERSON ISSUING NOTICE)

Mr. Clinton Finn

TITLE OR POSITION

TITLE OR POSITION

Environmental Engineer/SWRO

DISTRIBUTION: SOURCE CENTRAL OFFICE REGIONAL OFFICE

# Attachment C

MISSOURI DEPARTMENT OF NATURAL RESOURCES  
REPORT OF INSPECTION  
COMMUNITY PUBLIC WATER SYSTEM  
BIG ISLAND SUBDIVISION  
CAMDEN COUNTY, MISSOURI  
PUBLIC WATER SYSTEM ID MO3031265

June 28, 2005

## INTRODUCTION

A routine inspection was made of the community public water system serving Big Island Subdivision by Sheila Yoder of the Missouri Department of Natural Resources-Southwest Regional Office on June 2, 2005. The purpose of the inspection was to determine compliance with the Missouri Safe Drinking Water Law and Regulations. The following unsatisfactory features were noted with comments and recommendations for correction. These unsatisfactory features are organized into categories as noted below.

## UNSATISFACTORY FEATURES

### Category I - Violations of Missouri Safe Drinking Water Regulations

These violations can result in enforcement action if repeated or not corrected. Some violations are more serious than others, and this is explained in the comments.

1. The public water system failed to collect routine samples from the distribution system as required by the Safe Drinking Water Regulation 10 CSR 60-4.020(1).
2. The public water system dispensed water without obtaining a written permit to dispense water in violation of Safe Drinking Water Regulation 10 CSR 60-3.010.
3. The public water system failed to develop a written total coliform bacteria sample siting plan as required by Safe Drinking Water Regulation 10 CSR 60-4.020(1)(A).
4. The public water system failed to obtain written authorization from the department prior to construction, alteration, or extension of the water system in violation of Safe Drinking Water Regulation 10 CSR 60-3.010(1).

### Category II - Construction Deficiencies from the January 1988 Missouri Department of Natural Resources Design Guide for Community Public Water Supplies Hereinafter Referred to as "Design Guide"



These deficiencies are important, and the public water system should give serious consideration to correction. However, these deficiencies are not normally subject to enforcement action unless the department determines that these are contributing to the failure of the public water system to provide an adequate volume of safe water to customers at sufficient pressure. If this determination is made, the department may declare that public water system inadequate or of defective design under Safe Drinking Water Regulation 10 CSR 60-4.080(5) and begin enforcement action for correction. If this determination was made during this inspection, the particular unsatisfactory feature is noted with "Violation of 10 CSR 60-4.080(5)."

5. The well casing was not protected against physical damage as required by the Design Guide, Part 3.2.7.3.a.7.
6. Each service connection is not individually metered as recommended by Design Guide, Part 8.10.

#### COMMENTS

Public water systems must collect total coliform samples according to a written sample siting plan at sites which are representative of water throughout the distribution system. Distribution sampling point should be chosen where both upstream and downstream repeat samples can be taken. The well can only be used for a repeat sample location, not for monthly routine samples.

All public water systems must obtain a permit to dispense water to the public. There is no permit fee. A new public water system must submit a permit to dispense application and an emergency operating plan, must have obtained a construction permit and constructed the facilities in accordance with this construction permit, and must meet MCL requirements. A grandfathered public water system must submit a permit to dispense application and an emergency operations plan, must submit evidence that the grandfathered well was drilled prior to October 1, 1979, and was used or intended for this system, must have chlorination facilities with 30 minutes effective contact time, must meet MCL requirements, and must submit duplicate certified plans.

The regulations require each system to have a written plan that outlines bacteriological sampling points. This plan should include the following:

- a) A map or sketch or written description indicating the geographic location (street address) of each routine sampling point and repeat sampling point.
- b) Five routine sampling points for small systems (under 4,901 population) and a separate sampling point for each sample collected on any day for large systems.

- c) Choose routine sampling points that have upstream and downstream repeat sampling points within five service connections. List these upstream and downstream repeat sampling points.
- d) Choose routine sampling points that are geographically scattered around the distribution system. Do not use the well or plant for routine sampling points.
- e) Choose sample taps in this order of preference:
  - cold water only inside taps
  - freeze-proof taps through the building foundation
  - hot/cold mixing faucets (kitchen sinks)
  - use mixing faucets only if no other taps are available

If you do use mixing faucets, take samples in the following manner: Remove screens, gaskets, and other faucet attachments. If the faucet appears dirty, spray down with a weak bleach solution (100 mg NaOCl/L). Flush the hot water for two minutes and then flush the cold water for three minutes (use a watch to time the two and three minutes). Fill the bottle to the 100 ml line near the top (if the water level is significantly below the line, the sample will be rejected Quantity Not Sufficient, and if it is significantly above the line, the sample will be rejected Bottle Too Full).

Do not use freeze-proof yard hydrants.

All community public water systems must obtain written authorization (a construction permit) from the department prior to construction, alteration, or extension of the water system. To obtain this authorization, two sets of an engineer's report, engineer's plans, and engineer's specifications prepared by and bearing the seal of a professional engineer registered in Missouri must be submitted to the Missouri Department of Natural Resources-Southwest Regional Office, 2040 West Woodland, Springfield, MO 65807, 417-891-4300 along with a construction permit application and a letter from the public water system authorizing the construction (unless the system is applying for the permit), and these documents must be approved by the department. Service lines are exempt from this requirement. A service line must serve only one connection. If a service line could reasonably be expected to serve additional connections in the future (i.e., crosses or is adjacent to property not owned by the business or residence being connected or extends across vacant land suitable for development), a main must be installed and a construction permit obtained. Repairs are generally exempt unless the system is going to be significantly changed. Replacement of mains is exempt unless the main diameter is going to be changed. However, the public water system must take all steps necessary to ensure that the replacement main is installed with proper pipe and connectors, bedding, thrust blocking, and at sufficient depth.

The well casing and discharge piping must be protected against deterioration, physical damage, and freezing. Paint protects the metal casing from corrosion. An insulated well house prevents freezing.

Individual meters reduce water usage compared to systems with a flat rate, unmetered charge. Customers have an economic incentive to reduce usage and fix leaks. Totalling individual customer meters and comparing with total well pumpage allows the loss due to leakage to be calculated.

#### RECOMMENDATIONS

##### Category I - Violations of Missouri Safe Drinking Water Law and Regulations

Note these recommendations are mandatory and failure to follow these recommendations may lead to enforcement action.

1. Discontinue using the well as a location for monthly routine samples and begin taking samples in the distribution system.
2. Complete and return to this office the enclosed application for a permit to dispense.
3. Submit a written coliform sample siting plan to the Southwest Regional Office within 30 calendar days of the date of this report and keep one copy in your permanent water records. A form for this is enclosed.
4. The issue of constructing without a permit is being evaluated and reviewed by the Drinking Water Engineering Unit in this office.

##### Category II - Design Guide Deficiencies


These recommendations are not mandatory unless noted.

5. Paint the exterior of the well casing.
6. Install meters on each service connection.

SUBMITTED BY:

  
Sheila Yoder  
Environmental Specialist

APPROVED BY:

  
Charles W. Collins, Chief  
Public Drinking Water Unit



**PHILLIPS, McELYEA, WALKER & CARPENTER, P.C.**

ATTORNEYS AT LAW  
190 COURT CIRCLE  
P.O. BOX 559  
CAMDENTON, MISSOURI 65020  
(573) 346-7231  
FAX (573) 346-4411

CHARLES E. McELYEA  
JOHN L. WALKER  
RONALD K. CARPENTER  
DAVID T. WELCH  
DEIRDRE O'DONNELL

BRANCH OFFICE:  
P.O. BOX 303  
OSAGE BEACH, MO 65065  
(573) 348-2247

LEGAL ASSISTANTS: Sharon Piskorski  
Gari Luttrell

HUGH PHILLIPS (1911-1997)

May 12, 2000

Mr. David V. Lees  
Folsom Ridge LLC  
Big Island Development Co.  
HCR 60 Box 800  
Roach, MO 65787

Mr. Reginald V. Golden &  
Mr. Rick Rusaw  
Folsom Ridge LLC  
2020 Terry Street, Suite A  
Longmont, CO 805011

Gentlemen:

I am writing to you on behalf of my client, a committee of concerned twenty plus Big Island Lakesites property owners. Mrs. Jeanette F. Schrader, Mr. Duane F. Stoyer, Mr. Benjamin D. Pugh, and Mr. James B. Kwiatkowski represent this committee. Although many of the property owners have received Mr. David V. Lees' letters dated April 11 and 27, 2000, some have not.

The committee representatives understand that you have delivered to Central Bank of Lake of the Ozarks, as escrow agent, a letter from a licensed engineer stating the sewer system is complete, in place and operational. They also understand that you have provided the escrow agent with a letter from the State of Missouri stating that the sewer system meets all requirements of the State of Missouri. With your completion of these requirements, they understand that the escrow agent should pay to Folsom Ridge LLC the \$4,800.00 that each of property owners deposited into the escrow account. They are agreeable for the transfer of such funds from the escrow agent to Folsom Ridge LLC as provided by the escrow agreement. The property owners understand that they received the right to connect to the sewer system upon payment of their respective \$4,800.00 into the designated escrow account, Folsom Ridge LLC completing the sewer system as promised, and upon completion of the sewer system, the escrow agent delivering their escrowed funds to Folsom Ridge LLC as provided by the escrow agreement. All of these requirements appear to be met. However, the committee representatives note that much clean up associated with the installation of the Water and Sewer Systems needs to be completed even if these systems are now operational.

However the property owners did not understand that they were required to ratify the

**COPY**



Mr. David Lees

May 12, 2000

Page 2 of 6

particular restrictive covenants (attached to your letter of April 11, 2000) as an additional condition in order to be able to connect to the completed sewer system. The committee representatives have diligently searched all papers received from Mr. David V. Lees on behalf of Folsom Ridge LLC and can not find any documentation, which supports this additional requirement contained in his letters of April 11 and 27, 2000. The property owners, having paid their money into escrow, have a right to connect to the sewer system whether or not they ratify any restrictive covenants. The property owners understand that subjecting their property to mutually agreed upon restrictive covenants may be an appropriate modification to the original agreement made between Folsom Ridge LLC and the individual property owners having a right to connect to the sewer system. However, each of these original agreements can not be modified unilaterally by Folsom Ridge LLC. Whether intended or not, the impression of unilateral modification by Folsom Ridge LLC was given to the individual members of the property owners committee by your recent letters.

The committee members have several concerns regarding the "Declaration of Covenants and Conditions" sent to them with the demand that they ratify such covenants or forfeit their ability to connect to the sewer system. If these concerns are addressed to their satisfaction they will ratify the agreed upon modified restrictive covenants as a modification to the individual original agreements between Folsom Ridge LLC and the individual property owners. If these concerns are not satisfactorily addressed, the individual property owners maintain their right to connect to the sewer system in keeping with the terms of the original agreement between Folsom Ridge LLC and the individual property owners without ratifying your "Declaration of Covenants and Conditions".

In a letter from Mr. Lees, on behalf of Folsom Ridge LLC, to the Big Island Homeowners (dated November 11, 1998) he makes reference to the Homeowners Association. In that letter he states, "The purpose of the (HOA) is to OWN and MAINTAIN the sewer and water facilities". The property owners do not oppose such an association if the powers of that association are limited to the sewer and water facilities in keeping with your earlier representations. Unfortunately, the "Bylaws of Big Island Homeowners Association, Inc." and the "Declaration of Covenants and Conditions" are much broader than the representation made in his November 11, 1998 letter. The powers granted under these two documents extend to the building and maintenance of roads, building restrictions, trash removal, security, etc. These extra purposes were not presented in your earlier representation of November 11, 1998 and were not agreed to by the property owners. The property owners were each offered to the right to connect to the "to be built" sewer system upon a payment into escrow of \$4,800.00 by each property owner. Each of the committee members accepted this offer, did pay the \$4,800.00 into escrow as directed and now that the sewer system is complete has the right to connect to the sewer system.

At this point, I should also add that Mr. Lees, on behalf of Folsom Ridge LLC, stated that Folsom Ridge LLC "intended to accommodate each homeowner with the location of a stub out, most convenient to their needs". Committee representatives say that although a licensed engineer and the State of Missouri have pronounced the sewer system completed, some

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homeowners, which paid the \$4,800.00 into escrow, do not have a waste water (sewer) stub installed at their property.

Although not mentioned in any of the other documents attached to the letters of April 11 and 27, 2000, Folsom Ridge LLC also promised each homeowner securing a right to connect to the sewer system that the monthly fee for sewer service would be \$10.00. Mr. Lees on behalf of Folsom Ridge LLC also assured them that such monthly fee would not be charged until the homeowner connects to the sewer system. Finally, Mr. Lees stated that Folsom Ridge LLC would operate the sewer system for the first five years of the sewer system's operation or until seventy-five (75%) per cent of your lots were sold, whichever first occurs. During this period, Folsom Ridge LLC would remain responsible at its cost for repairing or replacing any broken sewer line and any defects resulting from faulty installation of the sewer system. The \$10.00 monthly fee paid by the sewer system users would be applied toward the regular operating costs of the system. At the end of this five-year period, Folsom Ridge LLC would transfer the ownership and the responsibility of operating and maintaining the Water System and Sewer System to an association of system users. The foregoing is not addressed in your documents and will need to be addressed.

The following is a list of specific concerns that the committee members have with the proposed by-laws and covenants and conditions, as well as, proposals that would remedy these concerns. However, your representations as restated in the preceding paragraph will also need to be addressed in these modified documents.

First, the covenants and conditions (Section 1, Article IV) talk in terms of two different assessments: annual and special. However, Section 3, Article IV describes a third assessment, "working capital deposit". This appears to duplicate the annual assessment. Therefore they recommend that the Section 3, Article IV be struck from the covenants and conditions.

Second, Article IV is unclear as to who will pay the assessments. It is their understanding that the annual operating expenses will be apportioned among the actual users of the system. To clarify this we recommend modifying Section 1 of Article IV as follows (new language in Italics):

Section 1. *Parties Responsible for Assessments, Creation of Lien, Personal Obligation.*

*All actual users of the Water System and Sewer System, including Declarant and individual lot owners, shall apportion at uniform rate among the actual system users and agree to pay: (I) annual assessments or charges, and (II) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, shall become*

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*the personal obligation of the owner of such Lot or Property at the time when the assessment fell due, and his successors in title. If a Lot or Property is owned by more than one person or entity, the Owners of shall be held jointly and severally liable for all assessments or charges against such Lot.*

The third concern that they have with the covenants and conditions involves the expansion of the system. The committee members understand that by each paying the \$4,800.00 each is entitled to connect to the sewer system at any time, i.e. not required to connect immediately. The system is presently supposed to be able to service 80 homes without further modification. When further modification is necessary, this cost should be apportioned among the new users, not the ones already entitled to use the system. To achieve this end, we recommend the following changes. First, we recommend rewriting Section 4 of Article IV entitled "Special Assessment for Capital Improvements" as follows (new language in Italics):

Section 4. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon:

a. *With regard to the original Water System and Sewer System, any such special assessment for construction, reconstruction, repair or replacement under this section shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and who are system users or entitled to use such original Water System and Sewer System. The initial Sewer System is designed to serve to 80 homes (included in this number are homes which are entitled to connect to the system but that have not yet established a connection).*

b. *With regard to any expansion of the Water System and Sewer System, any costs to expand the original Water System and Sewer System, shall be assessed against the homeowners wishing to have the system expanded to accommodate their needs. Any such special assessment under this section shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and who are system users or are seeking to become system users.*

Next we recommend that Section 6, Article IV be struck from the covenants and conditions as this section is covered by the recommended rewritten Section 1 and Section 4, Article IV.

Finally, as mentioned previously, the committee members are concerned with the broad powers established in the By-laws of the Big Island Homeowners Association. They believe that the extra purposes of the Association should be removed to properly reflect the purpose of the association. The true purpose of the Homeowners Association is to own and maintain the sewer

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and water facilities. Therefore, parts a, c, e, g, h, the last sentence of l should be deleted from Section 1, Article II of the Association bylaws.

We recommend rewriting that part f, Article II of the Association bylaws as follows (new language in Italics):

f. To manage and control as trustee for its member *the* common properties (*Water System and Sewer System*) which may now or hereafter be designated as such, and any and all improvements thereon, provided that such management and control of said places and improvements shall at all times be subject to those powers had and exercised by any township, city, county or state or any of them, in which said places and improvements are located.

Also associated with the purpose clauses of the proposed association by laws (and troublesome) are parts l and m, Section 1, Article II indicating the association is a tax exempt organization under the provisions of Section 501 © (3) of the Internal Revenue Code. Although neither the committee members nor myself are tax experts, we do not believe that such an association is a "501 © (3)" tax exempt organization. Therefore, We recommend rewriting that part l, and m, Article II of the Association bylaws as follows (new language in Italics):

l. The corporation shall have the power, either directly or indirectly, either alone or in conjunction or cooperation with others, to do any and all lawful acts and engage in any and all lawful activities which may be necessary, useful, suitable, desirable, or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which the corporation is organized, and to aid or assist other organizations whose activities are such as to further, accomplish, foster or attain any of such purposes.

m. *In the event of the dissolution of the corporation, members shall be entitled to any distribution or division of its remaining property or its proceeds.*

These requests are not unrealistic and more accurately reflect the purposes for which the water and sewer system was originally envisioned. The committee members are willing to agree to modify their original individual agreements with Folsom Ridge LLC and thereby ratify mutually agreed upon covenants and conditions that resolve these concerns. If the concerns are not resolved, we wish to put you and Folsom Ridge LLC on notice that the property owners expect to be able to connect to the sewer system at any time in the future without the payment of any additional amount above the \$4,800.00 already paid. They acquired this right by accepting your original offer and by each paying the \$4,800.00 into escrow as directed.

If, after reading this letter, Folsom Ridge LLC agrees that the property owners have correctly stated the terms of their agreement with Folsom Ridge LLC with regard to connecting the to sewer system, please contact me so that we can arrange to meet to prepare a Declaration of

**COPY**

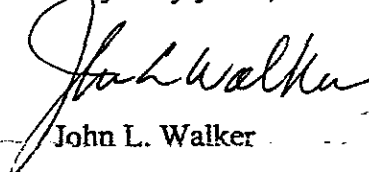
Mr. David Lees  
May 12, 2000  
Page 6 of 6

Covenants and Conditions to which all parties can agree. If Folsom Ridge LLC does not agree with the contents of this letter, we would appreciate receiving Folsom Ridge LLC's statement of its understanding as to the agreement with the property owners regarding connecting to the sewer system, and the documentation supporting such understanding.

In keeping with the representations already made to the property owners, the escrow agent releases the money to Folsom Ridge LLC upon completion of the system as provided in the escrow agreement. With the escrow agent in receipt of the documents required by the escrow agreement, the escrow agent is in the position to disburse the escrow funds to Folsom Ridge LLC at this time. Although the Water System and Sewer System are complete, Folsom Ridge LLC represented to the property owners that it would operate and maintain the systems for the first five years of operation or until seventy-five (75%) of your lots were sold, whichever first occurs. Therefore, the systems do not need to be immediately transferred to an association, and an association does not immediately need to assume operational responsibility for the systems. Folsom Ridge LLC has an opportunity to meet with the property owners to formulate a mutually agreeable modification of your original agreement as to connection, use and operation of the systems. We urge you to consider using the meeting scheduled for May 30, 2000 to further discuss and resolve how the contemplated Declaration of Covenants and Conditions, as well as the Articles and By Laws of the water and sewer association, can be further improved and made acceptable to all.

I shall await your response.

Very truly yours,



John L. Walker

JLW:jw

CC: Mrs. Jeanette F. Schrader  
Mr. Duane F. Stoyer  
Mr. Benjamin D. Pugh  
Mr. James B. Kwiatkowski  
Central Bank of Lake of Ozarks  
Attn: Mr. Jeff Welsh

**COPY**

**PHILLIPS, McELYEA, CARPENTER & WELCH, P.C.**

ATTORNEYS AT LAW  
190 COURT CIRCLE  
P.O. BOX 559  
CAMDENTON, MISSOURI 65020  
(573) 346-7231  
FAX (573) 346-4411

CHARLES E. McELYEA  
RONALD K. CARPENTER  
DAVID T. WELCH  
DEIRDRE O'DONNELL  
MICHAEL A. CARTER

LEGAL ASSISTANTS: Sharon Piskorski  
Dana Stoufer

HUGH PHILLIPS (1911-1997)

November 29, 2001

Mr. and Mrs. Ben Pugh  
HCR 67, Box 726  
Roach, MO 65787

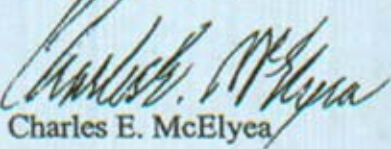
RE: Big Island Homeowners Association

Dear Mr. and Mrs. Pugh:

A question has arisen by some property owners as to whether or not they must sign an acknowledgment of membership in the Homeowners Association if they are hooked to the sewer system. Although this is preferred by the Homeowners Association, it is not a requirement. I am sending to you portions of the Code of State Regulations that addresses the issue as to membership in the Association. I have taken the liberty of highlighting certain portions of the regulations for your review. I direct your specific attention to 10 CSR 20-6.01(3)(b)5(iv) that states that everyone connected to the waste water treatment system shall be bound by the rules and regulations of the association and must be a member. Even though you have not signed the acknowledgment of membership, since you are connected to the Homeowners Association sewer system, you are considered a member of the Association. Of course, that does not mean you have to exercise your rights of membership. However, you are bound by the rules and regulations of the Association since you are connected to the system.

If you have any questions, do not hesitate to contact me.

Very truly yours,

  
Charles E. McElyea

CEM:sp  
enc.



## Attachment D

### **BRIDGES, CISAR AND MIZELL, L.L.C.**

ATTORNEYS AT LAW  
2140 BAGNELL DAM BOULEVARD, SUITE 203  
LAKE OZARK, MISSOURI 65049  
WWW.LAKEOZARKLAW.COM

LEWIS Z. BRIDGES  
TIMOTHY R. CISAR  
DANIEL C. MIZELL

TELEPHONE: (573) 365-2383  
FACSIMILE: (573) 365-2068

December 21, 2001

Charles McElyea  
Phillips, McElyea, Walker  
& Carpenter, P.C.  
190 Court Circle  
PO Box 559  
Camdenton MO 65020

RE: *Big Island Property Owners' Association*

Dear Mr. McElyea:

I have been retained by a group of property owners in the Big Island subdivision including Ben Pugh. My clients have all paid in advance for sewage disposal services to their property. Some are connected as Mr. Pugh is, but others have been refused the right to connect.

At the time they made their agreements, neither the developer nor the Association included any requirements that they become members of the Property Owners' Association or subjected them to any of their rules and regulations. Thereafter, they were presented with proposed revisions of restricted covenants and included property and rejected same.

\* It is my opinion that your clients and the developer or Big Island are contractually obligated to provide sewage disposal services to my clients. The format under which they will be provided is primarily your client's concern. My clients are not willing at this time to become members of your Association but would not be opposed to your client being licensed by the Public Service Commission. Your assertion that the Code of State Regulations makes Mr. Pugh a member upon connection to system mis-states the result. The fact that your client has made these commitments to non-members and has connected some of them is merely proof that the Association is violating DNR rules and the provisions of its license.



**LAKE OF THE OZARKS WATER & SEWER, INC.**

Wastewater and water specialists

840 Thunder Mountain Road  
Camdenton, Mo. 65020Phone 573 346-2092  
Fax 573 346-4676TO: Reggie Golden  
Big Island Subdivision

FROM: M.T. McDuffey

DATE: July 16, 2001

RE: "Stoyer Springs"

This is just a note to keep you informed of the events at "Stoyer Springs."

July 5: I received a call from Ken Carroll that the valve area across from Stoyer's home was wet. I arrived on the location of the wet spot to find Mr. Stoyer hand digging in area. Water was flowing in the area at this time.

July 6: Ken Carroll exposed Southwestern Bell Conduit at the fresh water line near Stoyer's property. Water was flowing from the conduit. Camden County Wastewater took a fecal sample from the Stoyer sewer vault.

July 9: Camden County Wastewater took another fecal sample. The results from the first sample were inconclusive.

July 10: The results from the fecal sample indicated the presence of wastewater.

July 12: We installed a 90° fitting on the Southwestern Bell Telephone conduit to bring the water flow out of the hole. We closed the hole at this time. (Water was flowing through the pipe within 30 minutes.) The backhoe was moved to an area near the wastewater treatment plant and used to expose the sewer line on the west side of the road. Fresh water was in the hole at the sewer line. The backhoe was moved across the road and used to expose the fresh water line and the Southwestern Bell Telephone conduit. A hole was drilled in the conduit to check for water flow. No water was flowing in the conduit. We put fluorescent dye in the hole at the sewer line.

July 13: The dye was showing in the culvert at Stoyers. We cut the Southwestern Bell Telephone conduit at the wastewater treatment plant and capped both ends and closed the hole. The hole with the dye was closed. We began digging at the wastewater treatment plant and found a hole in the discharge line from the wastewater treatment plant (the line between the chlorinator and the chlorine retention tank). It appears as if a stake was driven through the 4" schedule 40 line, and a rubber boot was installed to repair the break.

See BACK →



## Attachment E

**Big Island Homeowners Association  
P. O. Box 536  
Roach, MO 65787**

April 26, 2000

Benjamin & Karen Pugh  
HCR 67, Box 726  
Roach, MO 65787

Re: Big Island Lake Sites

Dear Benjamin & Karen:

We are pleased with the progress that we are making on Big Island. The paving of the road and the installation of the water and sewer system have made a difference for the residents. Our water system has been operational since last May and the sewer system is ready to be tapped into. We have just received approval for both the water and sewer from the Department of Natural Resources of Missouri. While we would have preferred a faster response we have had to let the department proceed at their pace.

Now that approval is secured we can proceed with the development of the Big Island water and sewer homeowners association. The covenants for this association are enclosed for your review. We will hold a meeting on Thursday, June 1, 2000 to elect individuals to the board from the island. Furthermore, to proceed, you need to sign the attached Ratification to ensure that water and sewer rights remain with your property in accordance with the Big Island water and sewer association. Please review the legal description of your property to be sure it is in accordance with your records.

After we are in receipt of your signed document, Central Bank will release escrow funds and you will be eligible to tap into the system. If Central Bank does not receive your signed Ratification within 30 days then your escrow money will be refunded to you and you will not be eligible for using the system. Future fees for water and sewer hookup are to be determined by the board of the homeowners association and can be expected to be considerably higher.

Please send the enclosed signature page to Jeff Welsh, c/o Central Bank of Lake of the Ozarks, 140 E. Highway 54, Camdenton, MO 65020. Thank you for your prompt attention to this matter.

Folsom Ridge, LLC

# Attachment F

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

In the Matter of the Application of )  
Big Island Water & Sewer Company, Inc. )  
for a Certificate of Convenience and )  
Necessity authorizing it to construct, )  
install, own, operate, control, manage, )  
and maintain a water and sewer system )  
for the public located in an unincorporated )  
area in Camden County, Missouri )

Case No. \_\_\_\_\_

**DRAFT**

### APPLICATION

COMES NOW, Big Island Water & Sewer Company, Inc. (hereinafter "Big Island" or "Applicant"), pursuant to Section 393.170, RSMo 2000 and 4 CSR 240-2.060(4)(A), and for its application states the following to the Missouri Public Service Commission ("Commission"):

1. Applicant is a Missouri corporation duly organized and existing under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 840 Thunder Mountain Drive mdenton, Missouri 65020. Pursuant to 4 CSR 240-2.060 (1)(B), Applicant's certificate of good standing from the Missouri Secretary of State's office is attached as Appendix 1.

2. Applicant is a private investor owned commercial corporation and has been recently organized to acquire the necessary regulatory approvals to offer and provide water and sewer service to members of the public residing in a geographical area along the shores of the Big Niangua Arm of the Lake of the Ozarks popularly known as Big Island. Residents on Big Island currently receive service from Big Island Homeowners Water and Sewer Association, Inc., (the Association) an unregulated homeowner's association. Service provided by the Association is the subject matter of several complaints pending before this Commission.<sup>1</sup>

<sup>1</sup> See *Orler. v. Folsom Ridge L.L.C. and Big Island Homeowners Water and Sewer Association, Inc.*, Case No. WC-2006-0082 (consolidated with eight other cases).



3. Communications respecting this Application should be addressed to:

Michael McDuffy, General Manager  
Big Island Water & Sewer Co., Inc. Co.  
840 Thunder Mountain Drive  
Camdenton, Missouri 65020  
Telephone: 573.346.2092  
Attention: Michael McDuffey

Mark W. Comley  
Newman, Comley and Ruth P.C.  
601 Monroe St., Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
573-634-2266 (Telephone)  
573-636-3306 (FAX)

4. Applicant requests permission, approval and a Certificate of Convenience and Necessity to extend, install, own, acquire, construct, operate, control, manage and maintain a water and sewer system for the public in areas located in an unincorporated area in Camden County, Missouri, as set forth on the map attached to this Application as Appendix 2. The proposed area is further described as follows:

[legal description underway]

5. In accordance with 4 CSR 240-2.060(4)(A)(5), Applicant has prepared a feasibility study for these areas and it is attached as Appendix 3.

6. There are no municipalities located within the proposed area, and approval by Camden County is not required for the Applicant to provide the water and sewer services in this area.

7. Applicant will assume ownership and control of the systems currently offering and providing service to Big Island residents. The systems are presently owned by Folsom Ridge,

LLC (Folsom Ridge) a Colorado limited liability company which acquired the construction and operating permits from the Missouri Department of Natural Resources ("DNR") for these systems. Applicant and Folsom Ridge have entered into an asset transfer agreement by which Applicant shall for nominal consideration acquire all right, title and interest in the wells, pipes, pumps, treatment facilities and related equipment used to provide service. A copy of that agreement is available upon request. Applicant expects those wells, pipes, pumps, treatment facilities and related equipment to meet all requirements of the DNR.

8. Some of the residents receiving service from the Association have paid connection fees to the Association in order to connect, or to preserve or protect their right to connect, to the water and sewer system now in place. Applicant has reached an Agreement with the Association by which to credit those residents with payment of the connection fees when each becomes a subscriber to Applicant's regulated service. Applicant expects that transition of the Association's customers to Applicant's service will be virtually seamless and transparent to the customers.

9. There are no other public utilities or governmental bodies rendering water or sewer service within the area proposed to be certificated.

10. The majority of the dwellings in the area requested to be certified are single family homes and duplexes. Also, there are areas that are still unimproved or in the earliest of development stages. Water and sewer services provided currently to these areas are unregulated and Commission approval of the CCN herein would eliminate issues related to the lawfulness of that service. Moreover, approval of this application would put in place a central regulated resource from which future residents of the area could acquire adequate and reliable water and sewer service rather than reliance upon individually drilled wells and septic systems. Operation of multiple wells and septic systems may adversely affect the quality of the aquifer which provides



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drinking water to all residents of the area. Therefore, public need exists for adequate water services within the area proposed to be served. The public convenience and necessity will be promoted by the granting of the authority herein requested.

11. There are more than ten (10) residents or landowners in the area sought to be certificated. Accordingly, and pursuant to 4 CSR 240-3.305(1)(A)(2) Applicant lists the name and address of each of the following persons residing in the proposed service area:

[add names]

12. Applicant has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates in which action, judgment or decision has occurred within three (3) years of the date of this application.

13. Applicant has no annual report or assessment fees which are currently overdue.

**WHEREFORE**, Applicant requests the Commission grant it permission, approval and a Certificate of Convenience and Necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a water and sewer system for the public within the area referred to in Paragraph 4, authorizing Applicant to implement rates and charges for the provision of services consistent with those contained in the feasibility study, and for such other orders as the Commission deems proper under the circumstances.

Respectfully submitted

---

Mark W. Comley, Mo. Bar #28847  
Newman, Comley & Ruth P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537  
(573) 634-2266 (voice)



(573) 636-3306 (facsimile)  
comleym@ncrpc.com

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this \_\_\_\_\_ day of February, 2006, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

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STATE OF MISSOURI       )  
                                      ) ss.  
COUNTY OF COLE        )

I, Michael McDuffy, being duly sworn, do depose and state that I am the General Manager of Big Island Water & Sewer Company, Inc., Applicant in the foregoing Application; that I am authorized to make this Verification on behalf of the Applicant; that the foregoing Application was prepared under my direction and supervision; and that the statements in the foregoing application with respect to the Applicant are true and correct to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Michael McDuffy

Sworn and subscribed before me this \_\_\_\_ day of February, 2006.

\_\_\_\_\_  
Notary Public



# LAKE PROFESSIONAL ENGINEERING SERVICES, INC.

CONSULTING ENGINEERS

P.O. Box 27

Camdenton, Mo. 65020

JAMES O. JACKSON, P. E.

573-480-0508

- BOWDEN CAMPBELL, EIT 573-480-7100

573-873-3898

September 7, 1998

## Attachment G

Mr. David Lees  
% Big Island Homeowners Association  
HCR 67, Box 800  
Roach, Missouri

RE: Sewage Treatment System

Dear Mr. Lees:

You have asked me to explain the type of treatment that has been designed for the Big Island Homeowners Association. The plans and specifications have been forwarded to the Missouri Department of Natural Resources for review and approval. I have discussed the project with the Jefferson City Regional Office and they have forwarded the plans and specifications to the State office for publication on the 30-day public notice list. If there are any questions they will be minor and we will answer them as soon as possible.

The following information is provided for the proposed treatment facilities:

Owner and operating authority – Big Island Homeowners Association, Inc.

Facility contact - Mr. David Lees

Consulting engineers – Lake Professional Engineering, % James O. Jackson, P.E.

Description of proposed facilities –

1. Construct a 120' x 46' Coarse Sand Filter .
2. Construct approximately 2000' of 2" pressure sewer lines
3. Construct approximately 7,200' of 3" pressure sewer lines
4. Construct approximately 3,400' of 4" pressure sewer lines
5. Install a stub out with a valve for ever two lots or houses
6. Install or use existing septic tanks
7. Install pumps and holding tanks as required
8. Install a chlorination tank to treat the effluent prior to discharge

Number of discharge points – one

Population equivalent – 296

See Page 2



Number of home to be served – 80

Design flow – 22,525 gallons

Does any bypassing occur? – No

Will any industrial waste be discharged to the Facility? – No

Does this facility discharge to losing stream or sinkhole? – No

What is the source of the drinking water to be furnished? – A state approved well will be installed (the plans are under design and will soon be forwarded for approval)

Proximity of water supply? – The well will be drilled at least 300' from the treatment facility

Quality of the effluent – The effluent will meet and/or exceed the Department of Natural Resources limits of 20mg/l of suspended solids and BOD

Design of the coarse sand filter –

1. The filter will be approximately 120' x 46'
2. The filter will be 4 feet deep
3. The top layer of rock will be 6" of ½" rock
4. The second layer will be 30" of 1 – 3 mm (pea gravel) rock
5. The third layer will have 4" of ¼" rock
6. The bottom layer will be 7" of ½" rock
7. There will be a 17,952 gallon recirculation tank with 2 pumps in it
8. A 1000 gallon chlorine tank will be installed
9. The facility will be fenced
10. Warning signs will be installed on the fence

As I told you earlier, this system would be better named as a rock filter instead of a coarse sand filter or for that matter a sand filter. There are a number of coarse sand filters in operation in this area. As far as I know, they are producing good effluent. The coarse sand filter is easier to maintain than an extended aeration plant. However, a coarse sand filter will require some maintenance and I would recommend an operator be hired to provide the limited operations and maintenance the plant will require.

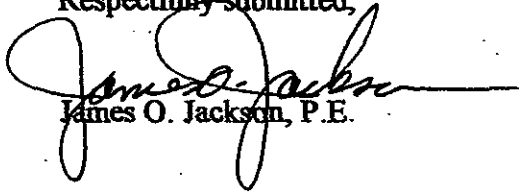
The coarse sand filter has been in operation in Oregon for about 25 years and they have had good success with this type of system. Their experience has been that the top 12 inches of rock may have to be removed and replaced in 12 to 15 years. There are no plants in this area that have been in operation for more than 4 or 5 years. There are a number of contractors in the area that can install this type of plant. There are several contractors that have the expertise necessary to operate this type of plant.

Because the plant is only 4' deep it is easier to install on the hills like we have around here. This plant can be set on top of the ground if solid rock is found. In that case a concrete wall will have to be constructed and the gravel install inside the walls.

I do not expect any problems in getting the approval for this project and unless there is a real early winter I do not know why the plant can not be started and finished this year. I will keep up on the progress of the approval and inform you when the construction can be started.

I believe that this letter answers your question. However, if you so have more questions please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James O. Jackson".

James O. Jackson, P.E.



# Attachment H

Table 1—Minimum Set-Back Distances

Minimum Distance From	Sewage Tank <sup>1</sup>	Disposal Area <sup>2</sup>	Lagoons
	(feet)	(feet)	(feet)
Private water supply well <sup>3</sup>	50	100	100
Public water supply well	300	300	300
Cistern	25	25	25
Spring	50	100	100
Classified stream, lake or impoundment*	50	50	50
Stream or open ditch <sup>4</sup>	25	25	25
Property lines	10	10**	75
Building foundation	5	15	15
Basement	15	25	25
Swimming pool	15	15	15
Water line under pressure	10	10	10
Suction water line	50	100	100
Upslope interceptor drains	-	10	10
Downslope interceptor drains	-	25	25
Top of slope of embankments or cuts of two feet (2') or more vertical height	-	20	20
Edge of surficial sink holes	50	100	500
Other soil absorption system except repair area	-	20	20

This chart is copied from a pamphlet from the:  
Missouri Department of Health

Title:

Missouri Laws accompanied by Department of Health Rules  
Governing

On-site sewage systems

Please note: "Public Water Supply Well"

The minimum distance from Septic- Tank-disposal area-lagoons

**300 feet**

Big Island is in violation of the 300 foot minimum requirement.

The distance of the public drinking water well from the disposal area at Big Island  
is approximately 150 feet.

## “Minimum” 300 Feet?

The Big Island Wastewater System Site Plan drawing as submitted in November 1998 to the DNR by Lake Professional Engineering Inc. called for the wastewater treatment filter bed to be separated from the drinking water supply (wells) by a minimum of 300'. On November 13, 2003, Clinton Finn, environmental engineer, Missouri Department of Natural Resources, Southwest Regional Office, walked off the distance to be only 160 feet of separation. As you can see, anything can happen and did,



**The code requirement is intended to protect against contamination of soil around the water service pipe.**

**Contamination of the potable water supply could occur.**



## Attachment J

**Big Island Homeowners Association  
P. O. Box 54  
Longmont, CO 80502**

April 25, 2001

*Mailed 5/03/01  
Accessed 5/07/01  
Paid 5/10/01*

Benjamin & Karen Pugh  
HCR 67, Box 726  
Roach, MO 65787

Dear Benjamin & Karen,

Enclosed is the sewer and water assessment for the first quarter of 2001. As you know, the assessments were voted on at the December 29, 2000 special meeting of the Homeowners Association. The assessments were set as follows:

Sewer

Non-members hooked up \$15.00

Non-members not hooked up \$5.00

Water

Non-members hooked up \$10.00

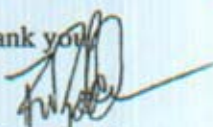
Non-members not hooked up \$5.00

These rates were agreed to be the rates until the next regular meeting in July when the assessment rates will be voted upon again. If you have any questions, please don't hesitate to call. This assessment is due upon receipt. The next assessment for the second quarter 2001 will be mailed in May.

Please keep in mind that the water tests are posted when we receive them at the well house on the west road. Please feel free to look at them. Your comments are welcome. Larry Toombs, Don Bracken, Reggie Golden, Rick Rusaw, and David Lees are your current board of directors.

Again, if you believe your bill is incorrect, please don't hesitate to call us at (303) 702-0708.

Thank you

  
Reggie Golden  
Big Island Homeowners Association