

Exhibit No.:	_____
Issue:	Overview of application; Big Island Development; Water and Sewer Systems
Witness:	Barbara Brunk
Sponsoring Party:	Big Island Water & Sewer Company, Inc.
Case No.:	Case No. WA-2006-0480

BIG ISLAND WATER & SEWER COMPANY, INC.

Case No. WA-2006-0480

DIRECT TESTIMONY

OF

BARBARA BRUNK

Longmont, Colorado
October, 2006

DIRECT TESTIMONY OF BARBARA BRUNK

Q. **What is your name and business address?**

A. My name is Barbara Brunk and my business address is, P.O. Box 1522, Longmont CO 80502.

Q. **What is your position of employment?**

A. I am the manager of Resource Conservation Partners, LLC. which provides consulting services to land development and conservation organizations.

Q. **What is your education and work experience?**

A. I have attached BB Schedule 1 which summarizes my education and professional experience.

Q. **Do you hold an office with Big Island Water and Sewer Company, Inc., the applicant in this matter?**

A. Yes, I do. I am the Secretary of the Corporation. My duties are set out in the bylaws of the company and include generally: (a) keeping the minutes of the meetings of the shareholders, of the Board of Directors, and any executive committee meetings; (b) issuance of notices to the membership, the board or the officers; (c) care and maintenance of the corporate records and (d) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to me by the President or by the Board of Directors.

1 **Q. Do you hold a position with Folsom Ridge LLC?**

2 A. No I do not. However, I have been a consultant to this firm. While with my previous
3 employer, TetraTech RMC, I started providing land planning consulting services to
4 Folsom Ridge during the spring and early summer of 2004. Those services have
5 continued through Resource Conservation Partners, LLC since August of 2004.

6
7 **Q. What is the purpose of your testimony?**

8 A. I will provide an overview of several topics that pertain to the application. I will discuss
9 in general the history of the real estate development ongoing on Big Island at the Lake of
10 the Ozarks; the construction of the water and sewer systems on the Island, their
11 operations and improvements and current rates for service; compliance with regulatory
12 agencies; and the need for the systems.

13
14 **Q. Ms. Brunk, while serving as a consultant to Folsom Ridge, have you become familiar**
15 **with the history and business of the company particularly in regard to the water**
16 **and sewer systems on Big Island in the Lake of the Ozarks.**

17 A. Yes, I have. Folsom Ridge LLC was formed in 1997 to engage in the business of owning
18 and developing real property in the State of Missouri. In pursuit of that purpose, Folsom
19 Ridge purchased all, or nearly all, of undeveloped Big Island at the Lake of the Ozarks,
20 which is located near Roach, Missouri. Folsom Ridge also purchased an adjacent 190
21 acres. Shortly after purchasing the property, Folsom Ridge proceeded to install the
22 necessary infrastructure to develop the land. Folsom Ridge platted and re-platted
23 portions of that land, sold homes and lots to local builders and it is currently building

1 villas in Phase 1 of the "Big Island Planned Unit Development." I will explain many of
2 these events in more detail later in my testimony.

3
4 Q. **Can you tell the Commission any other real estate developments that Folsom Ridge**
5 **is undertaking.?**

6 A. Folsom Ridge has concentrated entirely on its development of Big Island and the adjacent
7 190 acres I mentioned earlier. The 190 acres, now known as Island View Estates, has
8 been subdivided into 35, 3 acre to 12 acre building sites to be sold for custom homes. The
9 roads are paved and the lots are ready to sell. I will add that even though Folsom Ridge
10 has devoted itself to a single development, this is not the first nor the only real estate
11 development the members of the company have been involved in.

12
13 Q. **Who are the members of the company at this time?**

14 A. Reginald V. Golden and Frederick S. (Rick) Rusaw. I have attached to my testimony as
15 BB Schedule 2 the current biographies of the members.

16
17 **Development on Big Island**

18 Q. **How was Big Island selected for development by Folsom Ridge?**

19 A. Mr. David Lees, one of the initial members of the LLC, brought the project to the group.
20 The members evaluated the cost, the location and the level of activity at the Lake of the
21 Ozarks at that time and determined that there was potential for future development. After
22 that, the company commenced the acquisition of property. Its first property purchase was
23 on November 25, 1998.

1

2 **Q. How many acres has Folsom purchased in its name?**

3 A. Approximately 350 acres comprising undeveloped land and approximately 200 lots in
4 several platted subdivisions. Since that time Folsom has platted an additional 393 lots.

5

6 **Q. What is the developer's vision for full development of Big Island?**

7 A. The vision for the Big Island development has changed over time. In its present form, the
8 Big Island development is envisioned as a community that not only makes full use of the
9 recreational opportunities supplied by one of the largest inland lakes of the nation, but
10 also preserves the natural environment. The design for the development includes the
11 preservation of native vegetation but also the planting of native species as anchors for
12 new homes. Homes will be built so that woodlands are minimally disturbed. The
13 architecture of those homes will resemble the historic lakefront and woodland homes of
14 the vicinity. Congestion on the shoreline will be minimized through use of common
15 docks, rather than a dock for each home. The vision is to create a master planned
16 residential community that fits into the character of the Little Niangua Arm of the Lake
17 of the Ozarks in a manner that accents the natural beauty of the area. I have attached as
18 BB Schedule 3, a slide presentation of the vision document prepared by Folsom Ridge
19 and submitted to Camden County in 2004 as part of the company's Preliminary Planned
20 Unit Development application.

21

22 **Q. I understand that the Preliminary Planned Unit Development application was part**
23 **of the zoning approval process for the development. Would you explain the steps**

1 **Folsom Ridge followed in securing the necessary zoning approval for the**
2 **development.**

3 A. The steps for local land use approval Folsom Ridge followed were tied in large measure
4 to the plan of development, something that evolved over time. Land use regulations
5 were not adopted in Camden County until June of 2004. Prior to that time land could be
6 subdivided without advance review and approval of Camden County. The plats of the
7 subdivisions on the Island were recorded prior to the adoption of the County land use
8 regulations with the exception of Big Island PUD first filing and Island View Estates.
9 Folsom Ridge's initial development plan was to improve the infrastructure for the Island
10 and sell the existing platted lots to builders. Several options for development were later
11 analyzed and the plan was updated over time to respond to market conditions.

12
13 At the time Camden County's land use regulations were proposed, Folsom Ridge
14 prepared a Master Plan for the Island to illustrate the intent for development over time.
15 Camden County zoned Big Island for single family residential in 2004. Folsom Ridge
16 platted the center of the Island prior to adoption of the county's land use regulations to
17 establish a base line of density for future development. The Planned Unit Development
18 (PUD) application for Big Island was prepared and processed using the baseline density
19 as a starting point. The application for approval of the PUD Plan was submitted to the
20 Camden County Planning Commission in November 2004 and was approved on January
21 19, 2005. Representatives of the company met with the residents on Big Island through
22 out the fall of 2004 and revised the plans to respond to their concerns. The PUD was
23 amended in 2006 to add a location for a pool and play area and two existing homes.

1 Phase 1 of the final plat was recorded in September, 2006. In addition Folsom Ridge
2 prepared and processed a preliminary plat for Island View Estates (the 190 acres on the
3 adjacent mainland) through the Camden County Planning Department and recorded the
4 final plat for that parcel in 2006.

5
6 **Q. As of now, how much of the development has been done?**

7 A. The water and sewer systems to support all of the PUD "filing 1" development have been
8 installed. Five out of the one hundred and twenty (120) planned villas have been erected
9 and two others are under construction. The majority of the other improvements for PUD
10 filing 1 are completed or nearly completed. These improvements include the utilities,
11 access drives, docks, the marina site parking area, the pool and a picnic area. I would say
12 that approximately 10% of the development is completed at this time. Remaining phases
13 of the development will require extension of the water and sewer system and permit
14 applications for those extensions are pending before DNR.

15
16 **Q. Do you have photographs of the extent of the development for the Commission.?**

17 A. Yes, I do. I have attached to my direct testimony as BB Schedule 4 a series of sixteen
18 slides that were taken between September 14 and 18, 2006 at (or above) Big Island.

19
20 **Q. Are each of the slides a fair and accurate representation of the scene or condition**
21 **they depict.**

22 A. Yes, they are. A description of the photograph is found in the caption section of the each
23 slide attached as BB Schedule 4.

1 Q. **With respect to the new dwellings on the Island, tell the Commission the price at**
2 **which they are offered.**

3 A. When Folsom Ridge first purchased property on the Island it commenced a development
4 program utilizing the existing subdivided lots and imposing covenants and restrictions at
5 the time of sale. The homes constructed on those sold lots are basically single family
6 dwellings and sold in a range from \$220,000 to \$450,000.

7
8 Regarding the PUD, the villas that are erected and under construction have been offered
9 for sale between \$350,000 to \$375,000. None have been sold at the time I am preparing
10 this testimony.

11
12 Q. **Are the members of Folsom Ridge LLC also residents or part time residents on Big**
13 **Island?**

14 A. Yes, Mr. Golden and Mr. Rusaw are owners of a new home on the Island.

15
16 Q. **Ms. Brunk, you have referred to phases or first filings of the PUD. Could you**
17 **explain the sequence of development for the PUD and what the total projected build**
18 **out for the PUD is expected to be.**

19 A. Big Island PUD is currently permitted for 120 units. We expect it to be developed in four
20 phases over the next 5 to 7 years. The phases will be completed sequentially from north
21 to south along the western shoreline of the Island. There are also existing, platted lots in
22 the center of the island. We anticipate additional phases of the development to include
23 portions of the center of the island. Reconfiguration of those lots will require an

1 amendment to the PUD. The exact location and configuration of the future phases has
2 not been determined at this time. For purposes of sizing the wastewater treatment facility
3 and its expansion, a projected build out of 320 homes was used.

4
5 **Construction of the water and sewer systems on the Island**

6 **Q. Who designed the water and sewer system for the development on Big Island?**

7 A. Folsom Ridge has relied primarily on two professional engineering firms. Lake
8 Professional Engineering Services, Inc. was involved in the initial design of the two
9 systems and Krehbiel Engineering Inc. has been involved in the relocation of a water line,
10 and the design of extensions and improvements to the systems.

11
12 **Q. Can you explain the pipeline plan for the water and sewer service on the Island?**

13 A. Generally the water and sanitary sewer lines have been installed adjacent to the existing
14 road on the Island. The water well and pressure tanks and the wastewater filtering
15 system are located at a high point in the center of the Island. Mr. David Krehbiel will
16 provide a description of the systems in detail in his separately filed direct testimony. Mr.
17 McDuffey, the general manager of the company, will also describe the systems. The
18 layout of the systems can be found on exhibits included with the Feasibility Study.

19
20 **Q. Were existing homes and their water and sewer facilities taken into account in the**
21 **design of the central water distribution and wastewater system.**

22 A. Yes, they were. Folsom Ridge did a general survey of the existing homeowners on the
23 island and determined that there was an interest in future connection to a central water

1 and central sewer system. Many of the existing homes on the Island are built on 50 foot
2 wide lots and are served by individual wells and septic systems. Prudent planning
3 indicated that Folsom Ridge should include provision for those existing homes to hook
4 up to the systems as an alternative if their individual systems would fail or need to be
5 replaced. From a planning point of view, this would also be a means of protecting the
6 future environmental health and safety of the existing and future residents of the island.

7
8 **DNR permits**

9 Q. **Has the Missouri Department of Natural Resources (DNR) issued permits for these**
10 **systems.**

11 A. Yes, the systems are presently operating under a Federal Discharge Permit and State
12 Operating Permit # MO-0123013, and a public water supply permit MO-3031265. The
13 permits have been issued in the name of Big Island Homeowners Association, Inc. Mr.
14 Mike McDuffey will provide testimony regarding operation of the system and
15 compliance with these permits.

16
17 Q. **Has DNR inspected the systems?**

18 A. Yes, DNR has been very much involved in the installation of these systems, as I explain
19 below. It is my understanding that DNR has approved the construction of both systems
20 and that both systems comply with the specifications set out in DNR's approved
21 construction permits, initial and modified.

22

1 Q. **Has DNR issued notices of non compliance to Folsom Ridge regarding the operation**
2 **or construction of the water or sewer systems?**

3 A. Yes, during the course of construction of the first phase of water and sewer line
4 installation, DNR issued notices of violation to the company. DNR made an on site
5 inspection of construction on April 23, 1999 and issued Notice of Violation #1315JC on
6 May 25, 1999 for failure to construct water lines and sewer lines in accordance with
7 approved plans. The contractor had installed a one inch line instead of a two inch line on
8 a small portion of the system. This problem was corrected by replacing the line with the
9 appropriate size.

10
11 A notice of violation was issued on August 8, 2003 in which DNR cited Folsom for a
12 violation of the terms of Permit MO-0123013. The notice cited Folsom for construction
13 of water distribution and sewer collection lines in the same trench without proper
14 separation between the lines or proper fill material around the lines, failure to place the
15 water distribution lines on a packed earth shelf and failure to construct water and sewer
16 lines in accordance with the approved plans. This notice of violation was further
17 investigated by Folsom Ridge and DNR in January of 2004.

18
19 Q. **What did Folsom Ridge do in response to these notices of violation?**

20 A. Generally, upon notice of violation Folsom followed up to investigate the problem, hired
21 the appropriate local engineer or contractor to assist with determining the appropriate
22 solution and implemented a plan to resolve the issue.

23

1 With respect to the first notice the line was replaced as requested.

2
3 With respect to the second violation, Folsom Ridge entered a Settlement Agreement with
4 the DNR. A copy is attached as BB Schedule 5. By its terms Folsom Ridge was
5 required to pay a fine, provide plans and specifications for a solution to the problem and
6 construct the necessary improvements to bring the system into compliance. These terms
7 have been fully complied with.

8
9 **Q. Has DNR issued other notices of violation?**

10 **A.** On May 13, 2005, DNR inspected construction of an extension to the water system and
11 on June 28, 2006, issued Notice of Violation # 11210SW citing Folsom Ridge for causing
12 or permitting construction, installation or modification of a community public water
13 supply without written authorization.

14
15 This construction project was the subject of an application for construction permit already
16 on file with DNR but which had not been approved. Construction was started by
17 mistake. Folsom Ridge thought in error that the permit had been issued and authorized
18 the contractor to proceed. Construction of the extension was stopped until DNR
19 approved the pending permit application and was finalized after receipt of the permit.

20
21 Unrelated to the water and sewer system, DNR issued Notice of Violation # 10430SW on
22 June 3, 2004 to Folsom for disturbing land without a land disturbance permit issued by
23 the DNR. This notice involved work done by a Folsom contractor in connection with the

erection of the dock. The water and sewer systems were not involved with this notice.

The appropriate permit was obtained thereafter and work on the dock proceeded.

Q. Regarding the water and sewer systems, are there any DNR notices of violation that have not been resolved.

A. To the best of my knowledge, all notices have been resolved to DNR's satisfaction.

Q. Earlier you referred to an initial member of Folsom Ridge, Mr. David Lees. Is he still a member of the company.

A. No, he is not. His interest in the company terminated in April of 2001.

Q. What were his duties as a member or agent of the company.

A. Mr. Lees was responsible for oversight of the day to day operations of the development in Missouri. He was the "man in the field" and was the Folsom Ridge point of contact for many of the residents on the Island. He was also in charge of directing and supervising the installation of the water and sewer lines. Mr. Golden and Mr. Rusaw did not have direct involvement in the initial construction of these facilities. They were intended to be investment partners only.

Q. Were any of the DNR notices of violation attributable to Mr. Lees?

A. Yes. Some time after Mr. Lees' terminated as a member in the limited liability company, property owners on the Island, including I think some of the interveners in this case, submitted complaints to the DNR concerning the installation of the water and sewer lines

1 at the Big Island project. Based upon those complaints, DNR issued a notice of violation
2 to Folsom Ridge on August 8, 2003. DNR also continued an investigation which
3 included drilling test holes to see whether or not the water and sewer lines were
4 constructed in accordance with the approved plans and specifications and applicable
5 regulations. When these test holes were dug on or about January 12, 2004, it was
6 discovered that the water and sewer lines were in the same trench and had not been
7 constructed in accordance with the approved plans and specifications or applicable
8 regulations. As a result, Folsom Ridge entered the Settlement Agreement paid all fines
9 and corrected the problem by installing a new water line in a separate trench. The initially
10 constructed line was abandoned in place. It is the company's position that Mr. Lees
11 directed the construction company to install the water and sewer lines in the same trench,
12 in violation of applicable regulations of the Missouri Department of Natural Resources
13 and also in violation of the engineering plans and specifications for the project.

14
15 **Q. Is there litigation pending against Mr. Lees at this time?**

16 **A.** Yes, Folsom Ridge has filed suit against Mr. Lees in the Central Division of the United
17 States District Court for the Western District seeking indemnification from him for the
18 costs of correcting the improperly installed lines including the costs of replacing the line
19 and other related costs.

20
21 **System Operations.**

22 **Q. Which entity is operating and billing for the water and sewer systems at this time?**

1 A. The Big Island Homeowners Water and Sewer Association, Inc. is currently the
2 responsible entity for operating the system and billing for service. The name of the
3 Association was changed from Big Island Homeowners Association, Inc.

4
5 Q. **How long has the Association been operating the systems and billing for service?**

6 A. The Association has been operating the system since the first customers were connected
7 in early 2000, and has been billing for services since January 2001 to date.

8
9 Q. **Can you explain for the commission the significance of the declaration of covenants
10 and restrictions that affect property on the island and the Association itself?**

11 A. In order to provide for uniform governance of the water and sewer system available to
12 Big Island residents, Folsom Ridge developed a set of recorded covenants and restrictions
13 that apply to property sold by Folsom Ridge to new owners and to those who voluntarily
14 agreed to the terms of those covenants. I am not an attorney and do not intend to
15 interpret the covenants but will say that the covenants and restrictions generally govern
16 the connection to and use of the water and sewer system on the Island. The Association
17 and its role in that governance is spelled out in the document. The last and current
18 restatement of the Covenants and Restrictions is attached to my testimony as BB
19 Schedule 6.

20
21 **Customers of the systems at this time.**

22 Q. **How many sewer customers and water customers are connected to the systems at
23 this time?**

1 A. There are currently sixty (60) customers receiving sewer service and forty-eight (48)
2 customers receiving water service.

3
4 Q. **Are there residents on Big Island who have paid a connection or tap on fee but have**
5 **not yet connected to the system?**

6 A. Yes, there are thirty three (33) households who have paid a connection or tap fee but who
7 have not connected. .

8
9 Q. **Is there a contract operator for the systems at this time?**

10 A. Mr. Michael McDuffey of Lake Ozark Water and Sewer L.L.C. is under contract for the
11 operation and maintenance of the system. His company provides all periodic
12 maintenance services, testing services and reporting required.

13
14 Q. **What are the current rates for service?**

15 A. The rates for sewer service are \$15.00 per month and the rates for water service are
16 \$10.00 per month. Members of the Association who are not connected to the systems are
17 billed a charge of \$5.00 per month for water and \$5.00 per month for sewer. The rates
18 had been billed on a quarterly basis until July, 2006 when monthly billing commenced.

19

20 **The application**

21 Q. **Why has Big Island Water and Sewer Company Inc. filed this application?**

22 A. Among other reasons, the application has been filed to settle controversy raised by
23 complaints that were filed at this Commission over the manner by which water and sewer

1 services are supplied on the Island. Although Folsom Ridge and the Association believe
2 that the services provided are in compliance with the Missouri Public Service
3 Commission Law, this company was formed so that under a regulated entity safe and
4 adequate service at a just and reasonable rate for service could be provided without
5 concern over similar complaints in the future.

6
7 **Q. Describe the applicant's management and operations.**

8 A. The members of the board of directors for the company are at this time Reginald Golden,
9 Rick Rusaw and myself. The bylaws of the company allow the board of directors to
10 appoint two advisory directors for a total board membership of five people. I have
11 attached the bylaws of the Company as BB Schedule 7.

12
13 The applicant has named Mr. Michael McDuffey as General Manager of the company.
14 Mr. McDuffey and his company have been the operator of the systems since customers
15 were connected. At this time, the terms of his employment are conditional on approval of
16 the company's application. Mr. McDuffey will be filing testimony in this case and he
17 will describe the extent of his duties with respect to operations of the system. He is very
18 well qualified to operate and maintain these systems.

19
20 **Q. Does the applicant own the facilities?**

21 A. No, the applicant has entered into an asset purchase agreement with Folsom Ridge and
22 the Association.

23

1 To date, there has been no transfer of the hard assets or the real property on which these
2 improvements are located from Folsom Ridge to the Association, although the
3 Association has had control over those assets for purposes of operation. Because of the
4 present circumstances, it is unclear to what extent the Association has a right to claim any
5 of the hard assets at this time. To resolve any doubt about the quality of title, the
6 agreement has been structured such that both entities are entering the transfer. The
7 agreement is expressly conditioned upon the Association's membership approval if it is
8 determined that such approval will be required under the governing bylaws and the
9 covenants and restrictions applicable to the properties that ratified them.

10
11 Q. **Describe the proposed service area.**

12 A. The service area description should be amended. After filing the application we learned
13 that there had been an error in the description. The service area should also include
14 another area and attached to my testimony as BB Schedule 8 you will find a corrected
15 legal description.

16
17 Q. **Is there a need for the water and sewer system?**

18 A. Yes, definitely. That need is quite apparent from the level of development proposed and
19 the present use of the system. The public interest would be served if the application were
20 granted.

21
22 **Proposed rates and charges.**

23 Q. **What rates and charges does Big Island propose?**

1 A. The proposed rates and charges are set out in the Feasibility Study along with a
2 description by Mr. David Krehbiel on the manner in which those rates were designed.

3
4 Q. **Concerns have been raised by interveners in this case that the rates set out in the**
5 **feasibility study have been designed to recover the costs of the water line that**
6 **Folsom Ridge was required to abandon in place. Is that correct?**

7 A. It is my understanding that the total costs of constructing the systems, including costs for
8 the trenching of the replacement water line, have been set out in the rate analysis
9 contained in the Feasibility Study but that the rates are not designed to recover the cost of
10 replacement line itself. Mr. Krehbiel and Mr. Hughes will explain this in their testimony.

11
12 Q. **Concerns have also been raised by interveners and complainants in Case No. WC-**
13 **2006-0082 that those people who have already paid a tap fee for the right to connect**
14 **to the systems at a later date will be required to pay more for the right to tap on to**
15 **the system. What is the company's position on this?**

16 A. The applicant is completely opposed to collection of any additional funds from persons
17 who have previously paid a tap on fee or connection fee. Under the circumstances the
18 company believes it would not be reasonable to collect more from those who have
19 already paid for a tap, irrespective of the ultimately approved connection or tap fees in
20 this case.

21
22 Q. **Does this conclude your direct testimony?**

23 A. Yes.