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To: All Big Island Residents and Property Owners

From: Complainants - Cathy Orlor, Ben Pugh, Ben Weir, Stan Temares, Jim Schrader, Cindy Fortney, Leon Fortney

Until now, any and all, inquiries/questions/concerns regarding the details and specifics of the formal complaints filed with the Missouri Public Service Commission (PSC) from interested persons have been addressed on an individual basis. In an effort to inform and educate all of the residents of Big Island regarding the formal complaints filed with the PSC, and in preparation for the local Public Hearing scheduled for June 2<sup>nd</sup> this email is being sent.

In addition, this content with supporting documentation, including a summary of the individual formal complaints, will help clarify and correct several inaccuracies and missing information that were reported last week in a local newspaper article. The story, headlined: "Big stink on Big Island", appeared Thursday, May 11 in the Lake Sun Leader newspaper and said that "...a handful of disgruntled homeowners are causing problems for everyone..." but the story did not explain the actual reasons and/or contents of the complaints nor the seven year (7) history of DNR violations on Big Island that have caused many of the problems and controversies existing today.

**Complainants' Statement**

**(Including Summary of Individual Formal Complaints**

**And Seven (7) Year History of DNR Violations)**

After seven (7) years of ongoing controversies regarding the construction, management structure, and operations of the water and sewer utility (as well as the numerous violations associated with it), between Folsom Ridge, LLC, a Longmont, CO, developer and concerned residents of Big Island, Camden County, Roach, MO, nine (9) Formal Complaints were filed in August and September 2005 with the Missouri Public Service Commission (PSC).

The separate complaints (**Attachment A**) concern the developer owning and controlling the Big Island Homeowners Association (BIHOA) as well as the developer's documented seven (7) year history of violating the rules and regulations of the Missouri Department of Natural Resources (DNR).

Because the individual complaints involved related questions of law and fact, the PSC consolidated the complaints into a single case and directed its Staff to investigate the situation described in the complaints and file a report regarding the results of its investigation.

These individual complaints were originally filed against Folsom Ridge, LLC, and not against the BIHOA itself and/or its actual members. However, on January 31, 2006, the Commission filed an "Order...Adding Big Island Homeowners Association As A Respondent..." and explained that "Each complaint is somewhat different, but all allege that Folsom Ridge, Big Island Homeowners Association, or some combination of the two, is operating a water and sewer utility that should be subject to regulation by the PSC."

The nine (9) Formal Complaints were filed in the best interests of ALL Big Island property owners, with the intent to prevent current non-members and members of the BIHOA, as well as future members, neighbors and friends from inheriting the personal responsibilities and liabilities (both legally and financially) of a water and sewer utility that is laden with a past history of violations not only in its construction but also in its management structure and operations. (**Attachment B**)



On February 9, 2006, the PSC Staff Report of Investigation of the complaints and issues raised by them included these statements:

- "One well-known deficiency of the utility system is that during construction, both the water pipelines and the sewer pipelines were placed in the same trench, contrary to plans submitted to and approved by the DNR, and in violation of the Missouri Clean Water Law and the Missouri Safe Drinking Water Law. Subsequently, per an April 2004 settlement agreement between Folsom and DNR (represented by the Office of the Attorney General), Folsom agreed to make corrections to the water distribution system. This construction error is being corrected at the cost of the developer."

- "There is no question that central water and sewer facilities are desirable in this area. The Staff believes that among the problems associated with the water and sewer systems, one reason why these complaints were filed, and why the situation exists as it is, is that Folsom believed that it could create an association of utility customers, but retain for itself control of the association."

- Referring to a previous case, "...the Staff does not believe that the BIHOA is a "legitimate" homeowners association, since not all of its customers are members and, also since the developer has control of the association, not the customers."

- "Regardless of the organizational structure that is established for these water and sewer utility systems, it is clear that the technical oversight and construction inspection needs to be improved over what has been done in the past. Additionally, the management of the utility needs to be independent of the developer, and neutral to issues regarding future land development, even if the developers are the owners of the utility."

The Complainants are working towards and seeking a permanent and long-term resolution to the many problems and issues that exist with the current water and sewer system and its operations on Big Island. We are not willing to merely settle for a short term and temporary solution to what has been a chronic seven-year history of well-documented DNR violations involving this utility.

Big Island is located in a recreational, resort area of the Lake of the Ozarks. Most homeowners are part-time (week-end) residents, with less than one fourth (only 25 out of 110), of the total population being permanent residents. Moreover, most property owners want nothing more when they come to the lake on their weekend getaways than to relax and retreat from the stresses of everyday life leaving business concerns far behind. This contributes to an overwhelming issue of complacency and apathy, where the Big Island water and sewer utility and its operations are concerned. Most residents do not want to be bothered with problems of any nature when they come to the lake.

Without PSC regulation, there is no prior evidence to suggest that the operations and management of a Big Island water and sewer system by the residents through any HOA could be successful. To the knowledge of the Complainants, there are no residents who are experienced in the management and operations of a water and sewer system who are willing and/or logistically or physically available to serve on an HOA board for this purpose.

The residents of Big Island, who are currently and actively opposing PSC regulation, are also the same residents, whom until now, have shown very little interest or concern over the past (7) years by involving themselves to help resolve any of the many utility issues as outlined in the Formal Complaints.

In summary, the objective of the nine (9) Complainants in these cases is to ensure that safe and adequate water and sewer services will be provided to ALL residents of Big Island in the future through a regulated public utility that is operated and managed by a certificated company, independent of any association with the Respondent, Folsom Ridge, LLC, or any of its agents or representatives.



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**Summary of Formal Complaints Filed Against  
Folsom Ridge, LLC (Owning and Controlling the Big Island  
Homeowners Association a.k.a. BIHOA)**

1. **WC-2006-0082 (Orler)** - developer control, service to non-members, fees charged to non-customers – (8/18/05)
2. **WC-2006-0090 (Pugh)** - service to non-members, improper installation and permit compliance, improper real estate disclosure, developer control (8/25/05)
3. **WC-2006-0107 (Weir)** - developer control, entity acts as a utility rather than an association, improper installation and permit compliance, DNR violations, county road violations, fees charged to non-customers (9/9/05)
4. **WC-2006-0120 (Temares)** - improper real estate disclosure, developer control, entity acts as a utility rather than an association (9/19/05)
5. **WC-2006-0121 (Kentner)** - entity acts as a utility rather than an association, utility charges, fees charged to non-customers, connection requirements (9/19/05)
6. **WC-2006-0122 (Schrader)** - a promise to not charge fees to non-customers, improper real estate disclosure, improper installation and permit compliance, forfeit of the right to connect after a certain time, developer control, system capacity issues, threat and assault by utility/developer (9/19/05)
7. **WC-2006-0129 (Stoyer)** -leaks from treatment plant, health hazard, improper installation and permit compliance, developer control, fees charged to non-customers, service to non-members (9/23/05)
8. **WC-2006-0138 (C. Fortney)** - entity acts as a utility rather than an association, fees charged to non-customers, non-members forced to pay association fees, interference with real estate closure, developer control (9/27/05)
9. **WC-2006-0139 (D. Fortney)** - non-members forced to pay association fees, a promise to not charge fees to non-customers, demand for past fees, interference with real estate closure, improper installation and permit compliance, forfeit of the right to connect after a certain time, service to non-members (9/27/05)

Common among **ALL** of these complaints are the claims that **the BIHOA is not a legitimate association, but is controlled by the land developer** in the area who constructed the water and sewer systems. A second common claim is that **non-members of the BIHOA are essentially utility customers**. As such, the BIHOA or perhaps the developer **should be regulated as a water and sewer utility**. Some complaints also allege that the **water and sewer systems do not comply with the regulations of the Missouri Department of Natural Resources (DNR)**, and some allege improper or inconsistent rules and charges regarding service connections. (Excerpted from PSC Staff Report of Investigation, February 9, 2006)

## Seven (7) Year History of DNR Violations

- (1) Starting construction/installation of the water and sewer system without a permit from the Missouri Department of Natural Resources (DNR). (November 19, 1998)
- (2) Issued a Notice of Violation #1315 by the DNR for failure to construct water lines and sewer lines in accordance with approved plans. (May 25, 1999)
- (3) Received a reprimand by the Camden County Road and Bridge Department for digging up a utility crossing to repair a leaking line, tearing up new asphalt, without a permit. (Sept. 26, 2000)
- (4) Responding to issues raised by the Attorney General of Missouri, specifically that the wastewater system was not built as submitted to the Department of Natural Resources, answer was given that the DNR agrees that the system was not constructed as approved. (April 17, 2002)
- (5) Received DNR Complaint JC 011193 for improper disposal (dumping) of roofing shingles on top of the hill near the wastewater treatment plant and public drinking water supply. (October 18, 2001)
- (6) **Settlement Agreement (SA)** requiring Folsom Ridge, LLC to pay a monetary fine and correct the violations observed during the digging of the test pits on January 12, 2004 which proved that the water and sewer lines have been improperly installed per DNR regulations. (April 26, 2004)
- (7) Unsatisfactory features found during a DNR construction investigation made of Big Island Subdivision waterline replacement and extension mandated by the terms of the **Settlement Agreement (SA)** including: no bedding material being used on the service lines; not all of the water mains conform to the location shown on the approved revised plans; a few water line valves were not accessible because the valves were covered with mud and water inside of the valve box; and a few locations where the new service line valve boxes for both the water is less than ten feet (10') from the existing sewer line valve boxes. (March 18, 2005)
- (8) Issued a Notice of Violation #11210SW by the DNR for causing or permitting construction, installation or modification of community public water supply without written authorization by extending Phase I Water Main "off the Island" **which was in direct violation of Paragraph 15 of the Settlement Agreement signed in 2004.** (June 28, 2005)
- (9) Issued a series of violations of the Missouri Safe Drinking Water Regulations by the DNR. Included in these were: failure to collect routine samples from the distribution system; dispensing of water without obtaining a written permit to dispense water; and failure to develop a written total coliform bacteria sample siting plan. In addition, several construction deficiencies in the public water system were also noted. (June 28, 2005)