

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

The Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. WC-2016-0252</u>
	)	
Moore Bend Water Utility, LLC,	)	
	)	
Respondent.	)	

**ANSWER TO COMPLAINT**

Under authority of, and in accordance with, 4 CSR 240-2.070(9) and the Commission’s October 5, 2016, *Order Setting Deadline for Filing Answer*, Moore Bend Water Utility, LLC (“Respondent”), hereby answers and responds to each numbered paragraph of the *Complaint – Amended* (“Complaint”) filed September 6, 2016, by the Office of the Public Counsel (“OPC”).

1. Respondent denies it has failed to provide safe and adequate service to its customers, as required by Section 393.130, RSMo. Because OPC’s allegations in Paragraph 1 are inspecific, except as may otherwise be stated elsewhere in this answer Respondent lacks knowledge or information sufficient to form a belief as to whether it violated statutes or rules relating to (1) proper testing of water supplied to customers, (2) adequate documentation concerning chlorination, and (3) proper customer notification regarding a Boil Water Order (“BWO”) issued by the Missouri Department of Natural Resources (“DNR”). If an answer is required, Respondent denies all those allegations. Except for the period following the August 5, 2016, resignation of its certified system operator, Respondent denies it failed to retain a certified water system operator in accordance with DNR regulations. Respondent has diligently searched for a replacement operator since that resignation, but, as of the date of this answer, Respondent

has been unable to find a certified operator who would agree to take the position. Respondent denies it has taken no action to correct deficiencies in its system.

2. Paragraph 2 of the Complaint states one or more legal conclusions Respondent is not required to admit or deny. If an answer is required, Respondent denies all allegations in that paragraph.

3. Respondent admits all allegations in Paragraph 3.

4. Respondent admits all allegations in Paragraph 4.

5. Respondent admits it is engaged in the business of selling potable water for gain using property and facilities it owns, operates, and controls. The remainder of Paragraph 5 states one or more legal conclusions Respondent is not required to admit or deny. If an answer is required, Respondent denies all remaining allegations in that paragraph.

6. Paragraph 6 of the Complaint states one or more legal conclusions Respondent is not required to admit or deny. If an answer is required, Respondent denies all allegations in that paragraph.

7. Paragraph 7 of the Complaint quotes a portion of Section 386.390(1), RSMo., which speaks for itself, and states one or more legal conclusions Respondent is not required to admit or deny. If an answer is required, Respondent denies all allegations in that paragraph.

8. Paragraph 8 of the Complaint quotes a portion of Section 386.570, RSMo., which speaks for itself, and states one or more legal conclusions Respondent is not required to admit or deny. If an answer is required, Respondent denies all allegations in that paragraph.

### **Count I**

9. Respondent adopts all previously stated responses to Paragraphs 1 through 8 of the Complaint.

10. Respondent admits DNR issued a BWO to the water system's previous owner, Moore Bend Water Company, Inc., and that DNR cited the presence of *E coli* or fecal bacteria in two of the system's wells as the basis for its order. Although the BWO remains in effect, monthly tests conducted since Respondent acquired the system consistently confirm water provided to customers no longer contains *E coli* or fecal bacteria in levels that exceed DNR standards.

11. Respondent does not know what "documentation provided by the Department of Natural Resources" is referenced in Paragraph 11 of the Complaint, and therefore lacks knowledge or information necessary to form a belief as to the truth of allegations in that paragraph. If an answer is required, Respondent denies all allegations in that paragraph.

12. Respondent does not know what "communications with DNR" are referenced in Paragraph 12 of the Complaint, and therefore lacks knowledge or information necessary to form a belief as to the truth of allegations in that paragraph. If an answer is required, Respondent denies all allegations in that paragraph.

13. Paragraph 13 of the Complaint quotes a portion of 10 CSR 60-15.010(4)(a), which speaks for itself. If an answer is required, Respondent denies all allegations in that paragraph.

14. Paragraph 14 of the Complaint quotes a portion of 10 CSR 60-7.010(5), which speaks for itself, and states one or more legal conclusions Respondent is not required to admit or deny. If an answer is required, Respondent denies all allegations in that paragraph.

15. Respondent lacks knowledge or information necessary to form a belief as to the truth of allegations in Paragraph 15 of the Complaint. If an answer is required, Respondent denies all allegations in that paragraph.

16. Respondent admits it has not employed or retained a certified operator since the August 5, 2016, resignation of the prior operator. Respondent states although it has diligently searched for a replacement operator it has been unable to find one who would agree to take the position, and that OPC, DNR, and the Commission Staff have been informed of those efforts and their results.

17. Since it was granted a Certificate of Convenience and Necessity to own and operate the water system at issue in this case, Respondent admits it has violated one or more of DNR's regulations. Respondent denies the remaining allegations of Paragraph 17 of the Complaint.

### **Count II**

18. Respondent adopts all previously stated responses to Paragraphs 1 through 17 of the Complaint, and denies the remaining allegations in Paragraph 18.

19. Paragraph 19 of the Complaint quotes a portion of Section 386.310.1, RSMo., which speaks for itself. If an answer is required, Respondent denies all allegations in that paragraph.

20. Respondent adopts all previously stated responses to Paragraphs 9 through 18 of the Complaint, and denies the remaining allegations in Paragraph 20 of the Complaint.

### **Relief Requested**

21. Respondent denies Complainant is entitled to any relief requested in its Complaint.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

Respondent alleges the Complaint fails to state a claim upon which relief can be granted.

## **Second Defense**

Respondent alleges the Commission lacks jurisdiction and authority to decide one or more issues raised by the Complaint, including, but not limited to, alleged violations of federal and state clean water laws and administrative rules adopted by DNR to implement and enforce those laws.

WHEREFORE, having fully answered the Complaint, Respondent asks the Commission to dismiss the Complaint with prejudice or otherwise dispose of the Complaint in a manner consistent with Respondent's legal rights and the interests of justice, and to take such other action or grant such other relief as the Commission deems appropriate.

**/s/ L. Russell Mitten**

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L. Russell Mitten      MBN 27881  
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**ATTORNEYS FOR  
MOORE BEND WATER UTILITY, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify an electronic copy of the foregoing Answer to Complaint was served November 3, 2016, via e-mail, on counsel for each party of record.

**/s/ L. Russell Mitten**