

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DATE: July 22, 2022

3 DOCKET NOS.: W-1125, Sub 9; W-1125, Sub 10

4 TIME: 10:00 a.m. - 11:51 a.m.

5 BEFORE: Chair Charlotte A. Mitchell, Presiding

6 Commissioner Kimberly W. Duffley

7 Commissioner Jeffrey A. Hughes

8

9

10 IN THE MATTER OF:

11 Greater Kinnakeet Shores Home Owners, Inc.

12 c/o Pat Weston,

13 P.O. Box 853, Avon, North Carolina 27915

14 Complainant

15 v

16 Outer Banks/Kinnakeet Associates, LLC.,

17 Defendant

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NORTH CAROLINA UTILITIES COMMISSION

1 A P P E A R A N C E S:

2 FOR GREATER KINNAKEET SHORES HOME OWNERS, INC.:

3 Edward S. Finley, Jr., Esq.

4 2024 White Oak Drive

5 Raleigh, North Carolina 27608

7 FOR OUTER BANKS/KINNAKEET ASSOCIATES, LLC:

8 Patrick Buffkin, Esq.

9 Buffin Law Office

10 3520 Apache Drive

11 Raleigh, North Carolina 27609

13 FOR THE USING AND CONSUMING PUBLIC:

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24 NORTH CAROLINA UTILITIES COMMISSION

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## P R O C E E D I N G S

CHAIR MITCHELL: All right. Good morning. Let's come to order and go on the record, please. I'm Charlotte Mitchell, Chair of the Utilities Commission, and with me this morning are Commissioners Kimberly Duffley and Jeff Hughes.

I now call for hearing Docket No. W-1125, Sub 9, In the Matter of Complaint of Greater Kinnakeet Shores Home Owners Association, Inc. against Outer Banks/Kinnakeet Associates, LLC, as well as Docket No. W-1125, Sub 10, In the Matter of Complaint of Kashf Ain against Outer Banks/Kinnakeet Associates, LLC. I'll refer to Greater Kinnakeet Shores Home Owners, Incorporated as the HOA, and I'll refer to Outer Banks/Kinnakeet Associates, LLC as the utility.

Before we proceed further, as is required by the State Government Ethics Act, I remind Members of the Commission of our duty to avoid conflicts of interest and inquire, at this time, as to whether any member of the Commission has a known conflict with respect to matters coming before us.

(No response)

CHAIR MITCHELL: The record will reflect that no conflicts have been identified, so we'll

1 proceed. As to the Complaint filed by the HOA, on  
2 December 13th, 2021, HOA filed a complaint in Docket  
3 No. W-1125, Sub 9 against the Utility alleging  
4 operational deficiencies with the Kinnakeet Shores  
5 Wastewater Treatment Plant and requesting that the  
6 Commission require comprehensive due diligence,  
7 investigation into the Utility's suitability to own  
8 and operate the Wastewater Treatment Plant and  
9 Collection System.

10 Require the Utility to take immediate steps  
11 to rectify the deficiencies. Appoint an emergency  
12 operator if it determines that such action is  
13 necessary. Revoke the Utility's bond if it's  
14 determined that the Utility is unwilling or unable to  
15 operate the system in accordance with the Public  
16 Convenience and Necessity. Investigate the  
17 possibility of identifying a potential new owner of  
18 the Wastewater Treatment Plant. And if the Commission  
19 determines that the Utility should continue to own and  
20 operate the system, require substantial increase in  
21 the Utility's bond.

22 On January 27th, 2022, the Utility filed its  
23 first Answer to the HOA's complaint. Also on  
24 January 27th, 2022, the Utility filed a motion to

1 strike certain allegations from the Complaint.

2 On February 3rd, 2022, the HOA filed a  
3 response to the motion to strike.

4 On February 4th, 2022, the Utility filed a  
5 reply to the HOA's response to the motion to strike.  
6 Also on February 4th, 2022, the Utility filed a motion  
7 to dismiss the HOA's complaint for lack of standing  
8 and jurisdiction.

9 On February 7th, 2022, the HOA filed a reply  
10 to the Utility's first Answer requesting a hearing.

11 On February 11th, 2022, the HOA filed a  
12 response to the Utility's Motion to Dismiss, and on  
13 March 11th, 2022, the owners of 59 lots within the  
14 Kinnakeet Shores subdivision filed a joint petition to  
15 intervene, and on May 23rd, 2022, the Commission  
16 issued an Order granting that intervention.

17 On April 28th, 2022, counsel of record the  
18 Utility filed a motion to withdraw, which motion was  
19 allowed by Order of the Commission.

20 On May 12th, 2022, Deborah Ashe and Jonathan  
21 Farrell, owners of lots 16, 19, 26, and 20 of Phase 16  
22 of the Kinnakeet Shores subdivision filed a petition  
23 to intervene. The Commission issued an Order granting  
24 that petition on May 23rd, 2022.

1           On May 12th, 2022, Wiltton and Manette  
2 Britt, owners of a home at 41196 Windlass Court and a  
3 vacant lot at 41148 Portside Drive, located within the  
4 Kinnakeet Shores subdivision, filed a petition to  
5 intervene.

6           On May 23rd, 2022, the Commission issued an  
7 Order granting that petition.

8           On May 12th, 2022, seven members of the  
9 Board of Directors of the Kinnakeet Shores Home Owners  
10 Association, filed a joint petition to intervene as  
11 representatives of all members of the complainant HOA.  
12 Six of the board members also requested to intervene  
13 as current customers of the Utility.

14           On May 23rd, 2022, the Commission issued an  
15 Order granting that petition.

16           On June 12th, 2022, Marie and Stephen  
17 Minton, owners of a home at 41198 Spritsail Court  
18 within the Kinnakeet Shores subdivision, filed a  
19 petition to intervene, and on June 15th, 2022, the  
20 Commission issued an Order granting that petition.

21           On June 23rd, 2022, the Commission issued an  
22 Order granting in part and denying in part the  
23 Utility's motion to strike and allowing the Utility  
24 until July 8th, 2022, to respond to the remaining



1       allegations in the HOA's complaint.

2               On July 7th, Attorney Kurt Olson filed a  
3       notice of appearance in this docket as counsel of  
4       record for the Utility.

5               On July 7th, the Commission issued an Order  
6       extending the Utility's time to respond to July 12th.

7               On July 12th, the Utility filed its second  
8       Answer to the HOA's Complaint. Also on July 12th,  
9       Attorney Kurt Olson filed a motion to withdraw as  
10      counsel of record for the Utility, which motion was  
11      allowed by subsequent Order of the Commission.

12              On July 20th, 2022, Attorney Patrick Buffkin  
13      filed a notice of appearance as counsel of record for  
14      the Utility in this Docket.

15              Turning to the Complaint filed by Mr. Ain,  
16      on January 18th, 2022, Mr. Ain filed a Complaint in  
17      Docket No. W-1125, Sub 10 against the Utility alleging  
18      that the Utility's failure to operate and maintain the  
19      Wastewater Treatment Plant in proper working order  
20      resulted in a moratorium that prevented his wife  
21      from -- that prevented his wife and him from obtaining  
22      a building permit.

23              On February 3rd, 2022, the Utility filed an  
24      Answer to Mr. Ain's Complaint.

1           On February 14th, 2022, Mr. Ain filed a  
2       reply to the Utility's Answer in which he requested a  
3       hearing.

4           On April 28th, 2022, counsel of record for  
5       the Utility filed a motion to withdraw, which motion  
6       was allowed by Order of the Commission.

7           By Order of the Commission issued June 28th,  
8       2022, Docket No. W-1125, Sub 10 was consolidated with  
9       Docket No. W-11, (sic) Sub 9 and set the matter for  
10      hearing today.

11          All right. That brings us to today. I now  
12      call on counsel for the parties to announce their  
13      appearances for the record, beginning with the  
14      Utility.

15          MR. BUFFKIN: Good morning, Chair Mitchell,  
16      Commissioner Hughes, Commissioner Duffley, I'm Patrick  
17      Buffkin of the Buffkin Law Office, appearing on behalf  
18      of the defendant/respondent Outer Banks/Kinnakeet  
19      Associates, LLC.

20          CHAIR MITCHELL: Good morning, Mr. Buffkin.

21          MR. FINLEY: May it please the Commission,  
22      my name is Edward Finley, Raleigh, North Carolina,  
23      appearing on behalf of the complainant Greater  
24      Kinnakeet Shores Home Owners, Inc.

1 CHAIR MITCHELL: Good morning, Mr. Finley.

2 MS. CULPEPPER: Good morning. Elizabeth  
3 Culpepper with the Public Staff, appearing on behalf  
4 of the Using and Consuming Public.

5 CHAIR MITCHELL: Good morning,  
6 Ms. Culpepper. All right. Before we proceed any  
7 further, preliminary matters?

8 MR. BUFFKIN: Thank you, Madam Chair. I  
9 have two for the Commission's consideration. First,  
10 there have been two filings in this docket this  
11 morning with the Commission. The first is an  
12 affidavit of Mr. Ray E. Hollowell, the managing member  
13 of the Utility, and the second is a memorandum to the  
14 Commission regarding the hearing from Mr. Hollowell.

15 The memorandum speaks for itself and tends  
16 to provide some additional context for the matter  
17 stated in the affidavit, and I think that is  
18 sufficient to inform the Commission of the latest  
19 developments. And unless the Commission has any  
20 questions, I would just ask that those filings be  
21 noted for the record.

22 CHAIR MITCHELL: By filings, you're  
23 referring to the letter filed today and the affidavit  
24 filed also this morning?

1 MR. BUFFKIN: Yes, ma'am.

2 CHAIR MITCHELL: Any objections to the  
3 motion?

4 MS. CULPEPPER: As long as noted doesn't  
5 mean entered into evidence, because we would oppose  
6 the affidavit being entered into evidence.

7 CHAIR MITCHELL: Thank you, Ms. Culpepper.  
8 Mr. Buffkin, would you clarify what your motion is.

9 MR. BUFFKIN: Yes, Madam Chair, and a brief  
10 word of context. The memorandum tends to contradict  
11 or call into question some of the statements that are  
12 made in the affidavit. I feel obligated as an Officer  
13 of the Court to bring that to your attention. But  
14 with the memorandum having been filed, I think that  
15 speaks for itself and tends to provide the context and  
16 corrections to any statements in the affidavit that  
17 might no longer be true.

18 And, again, it would simply -- to ask that  
19 the Commission take note of those filings, to have  
20 that stated on the record, which I believe is my  
21 obligation to this tribunal.

22 CHAIR MITCHELL: All right.

23 MR. BUFFKIN: So to be clear, we're not  
24 asking it to be entered into evidence, only that it be

1 noted into the record in this hearing that those  
2 filings were made, and the contents of the memorandum  
3 provide a relevant context and tend to correct any  
4 statements in the affidavit that may no longer be  
5 true.

6 CHAIR MITCHELL: Thank you, Mr. Buffkin.  
7 Ms. Culpepper.

8 MS. CULPEPPER: It's fine as long as it's  
9 not entered into evidence.

10 CHAIR MITCHELL: All right.

11 MS. CULPEPPER: We were served with an  
12 affidavit this morning at 7:22, so it was not in  
13 compliance with G.S. § 62-68.

14 CHAIR MITCHELL: Thank you, Ms. Culpepper.  
15 Mr. Buffkin, the Commission takes note of those  
16 filings.

17 MR. BUFFKIN: Thank you, Madam Chair. And  
18 the second matter, and this is also addressed in the  
19 memorandum from Mr. Hollowell to the Commission that  
20 was filed this morning under circumstances of -- that  
21 are spoken to in the Rules of Professional Conduct,  
22 Rule 1.16(a) paragraph(3), I would move that the  
23 Commission allow me to withdraw from representing the  
24 Utility in this proceeding.

1 CHAIR MITCHELL: Thank you, Mr. Buffkin.  
2 Before ruling on your motion, I want to be clear as to  
3 my ruling on your first motion. We are not accepting  
4 those documents into the record, but we are taking  
5 note of them as you have asked us to do. We are not  
6 accepting those documents into the record of evidence  
7 in this proceeding as of today, but we are taking note  
8 of them as you have accepted us to do.

9 As to your motion to withdraw, any objection  
10 to the motion?

11 (No response)

12 CHAIR MITCHELL: Motion is allowed. Thank  
13 you, Mr. Buffkin.

14 MR. BUFFKIN: Thank you.

15 CHAIR MITCHELL: We are going to go ahead  
16 and proceed today. Notwithstanding withdrawal of  
17 counsel of record for the Utility, this is how I'd  
18 like to proceed. We'll begin with the HOA and allow  
19 the HOA to put on its evidence, and then I'd like to  
20 hear from the Public Staff. We'll start with the  
21 HOA's Complaint, and then we'll proceed to Mr. Ain, to  
22 the extent that Mr. Ain is here and desires to put on  
23 evidence.

24 MR. FINLEY: I don't think he's coming.

1 CHAIR MITCHELL: Okay. So with that said,  
2 we'll proceed with you, Mr. Finley, your clients, and  
3 then Ms. Culpepper. Again, notwithstanding withdrawal  
4 of counsel of record for the Utility and  
5 notwithstanding the fact that Mr. Ain did not appear  
6 today, I would like the Public Staff to proceed with  
7 any evidence at task as to the matters alleged in  
8 these complaints, and pertaining to the Commission's  
9 direction, to the Utility to show cause provided in  
10 the June 28 Order.

11 MS. CULPEPPER: Yes, ma'am.

12 CHAIR MITCHELL: To the extent that any  
13 intervenor in this proceeding wishes to provide  
14 evidence, they will be allowed a chance to do so too.  
15 Mr. Finley, recognizing you do not represent the  
16 intervenor, is it your understanding that the  
17 intervenors do not wish to present evidence?

18 MR. FINLEY: That's my understanding.

19 CHAIR MITCHELL: Okay. Let me just check in  
20 the audience to see if there are any intervenors here  
21 present that wish to present evidence today.

22 (No response)

23 CHAIR MITCHELL: I am not seeing any.  
24 You-all are very familiar with the proceeding before

1 the Commission. You will have an opportunity to  
2 cross-examine witnesses and redirect, engage in  
3 redirect examination. If necessary, witnesses will  
4 also take questions from Commissioners, if  
5 Commissioners have questions, and you-all will be  
6 allowed to ask questions on Commissioners' questions.  
7 All right. Let me check in one last time before we  
8 get started just to see if there's any additional  
9 procedural issues we need to cover.

10 MS. CULPEPPER: No, none that I'm aware.

11 CHAIR MITCHELL: Mr. Finley.

12 MR. FINLEY: The HOA calls Patricia Weston  
13 to the stand, please. Ms. Weston, if you will come up  
14 here and sit in one of these chairs, and you'll have  
15 to take that bible and be sworn in by the Chair.

16 MS. WESTON: Right here?

17 MR. FINLEY: That's fine, I think.

18 CHAIR MITCHELL: Yes. That's perfectly  
19 fine. Good morning, Ms. Weston. Go ahead and pull  
20 that microphone close to you so that we can hear you,  
21 and then let me get you sworn in, please.

22 MS. WESTON: Is that okay?

23 CHAIR MITCHELL: Yes. That's good. We can  
24 hear you.



1 MS. WESTON: Is that loud enough?

2 CHAIR MITCHELL: Yes, it is. If you would,  
3 ma'am, put your left hand on the bible and raise your  
4 right hand.

5 PAT WESTON;  
6 having been duly sworn,  
7 testified as follows:

8 CHAIR MITCHELL: Thank you. Mr. Finley, you  
9 may proceed.

10 DIRECT-EXAMINATION BY MR. FINLEY:

11 Q Would you state your name and address for the  
12 record, please, ma'am.

13 A Pat Weston, P.O. Box 853, Avon, North Carolina  
14 27915.

15 Q Ms. Weston, what role did you play on behalf of  
16 the complainant Greater Kinnakeet Shores Home  
17 Owners, Inc. in this matter?

18 A I've served as the President of Greater Kinnakeet  
19 Shores Home Owners, Inc. since the year 2000.

20 Q And are you familiar with the Complaint filed on  
21 behalf of the Home Owners Association in this  
22 docket, and what role did you play in gathering  
23 and reciting the information set forth in the  
24 Complaint?

1 A I am familiar with the Complaint and I verify the  
2 factual allegations set forth in it. On behalf  
3 of my Board, and with the assistance of our  
4 attorney, I compiled the information set forth in  
5 the Complaint and obtained approval from the  
6 Board to file a Complaint with the Commission.

7 The HOA is an official agency that  
8 acts for and on behalf of the property owners and  
9 utility consumers within the Kinnakeet Shores  
10 Home Owners -- excuse me, the Kinnakeet Shores  
11 subdivision in Dare County. The Board viewed the  
12 wastewater collection and treatment system in  
13 Kinnakeet Shores to be in critical need of  
14 remediation and sought help from regulators  
15 directed by the problems as quickly as possible.

16 Q Do the covenants and by-laws and other empowering  
17 documents of the Home Owners Association  
18 authorized the Board to file the Complaint on the  
19 Home Owners Association's behalf?

20 A Yes, sir. The provisions of this document  
21 authorizing the filing of a Complaint are  
22 addressed at length and the response to OBKA's  
23 Motion to Dismiss filed earlier in this docket.

24 Q Ms. Weston, please describe, in general terms,

1 the Kinnakeet Shores service area, provided  
2 wastewater service, by Outer Banks/Kinnakeet  
3 Associates, Inc.?

4 A Presently, Kinnakeet Shores consists of 379 home  
5 sites, 177 homes, and 202 vacant lots. Of the  
6 202 vacant lots at the time of the filing of the  
7 Complaint, more than a dozen owners and  
8 contractors had begun the process leading up to  
9 obtaining building permits for construction  
10 immediately or by the 1st of 2022.

11 Q Please address the allowed development in  
12 Kinnakeet Shores and the role played by OBKA in  
13 influencing that development.

14 A As recited in the Complaint, the period ending  
15 2021 had been one of exceptional growth in the  
16 real estate market within the Outer Banks in  
17 general, and Kinnakeet Shores in particular.  
18 Continuation of this growth is important to the  
19 HOA, and its constituents.

20 During an 11-month period in 2021,  
21 Kinnakeet Shores recorded 48 property sales in  
22 the phases served by the OBKA or more than double  
23 the sales and transfers of property in any  
24 previous year. Prior to 2021, lot owners within

1 Kinnakeet Shores were on the verge of submitting  
2 plans to obtain building permits to build new  
3 residences. Some of these lot owners had already  
4 sold their former residences in anticipation that  
5 no obstacle existed preventing construction of  
6 their new homes.

7 Taking advantage of potential  
8 growth in Kinnakeet Shores is an important  
9 objective of our Board and it's constituents.  
10 This growth also provides income for related  
11 providers of water and electric services, county  
12 taxes, and occupancy tax for rental properties.  
13 OBKA is the sole provider of service, sewer  
14 service. Without access to the sewer service,  
15 the building of homes cannot take place.

16 Q Please describe in summary fashion the services  
17 of OBKA provides to Kinnakeet Shores.

18 A OBKA provides wastewater collection and treatment  
19 services to Kinnakeet Shores service area  
20 pursuant to a Certificate of Public Convenience  
21 and Necessity issued by this Commission and a  
22 permit issued by the North Carolina Department of  
23 Environmental Quality, permit number WQ002393484.

24 Q What is the status of the permit to OBKA from the

1 Division of Water Resources?

2 A By letter dated August 25, 2021, the Division of  
3 Water Resources, Water Quality Regional  
4 Operations section, placed OBKA on moratorium  
5 effective October 13th, 2021.

6 Q What impact has the moratorium had on the  
7 residents and homeowners within Kinnakeet Shores?

8 A The imposition of this moratorium has resulted in  
9 a crippling effect on Kinnakeet Shores' current  
10 economy and future economic prospects, and  
11 severely frustrates the predetermined plans of  
12 property owners and builders. This is frustrated  
13 by the letter filed in this docket --

14 Q "This is illustrated," "illustrated," I think it  
15 would have said. It says "illustrated" instead  
16 of "frustrated."

17 A I'm sorry.

18 Q It is "illustrated by."

19 A Am I in the right place?

20 Q Yeah, but you said frustrated. You meant  
21 illustrated.

22 A Oh. I'm sorry.

23 Q Yeah.

24 A Okay. By illustrated by the letter filed in this

1 docket, by George E. Goodrich of Outer Point  
2 Joint Venture, where he states, "Several other  
3 builders find themselves in the same position as  
4 my company. We cannot move forward with our  
5 development plans for our properties until the  
6 moratorium is lifted. Dare County will  
7 experience a loss of tax revenue and income from  
8 tourists, the primary business of Dare County,  
9 until the situation is rectified."

10 Q Please summarize findings set forth in the  
11 moratorium addressing deficiencies within OBKA  
12 Treatment and Collection System?

13 A In its letter to OBKA, DEQ states that the  
14 Wastewater Treatment Plant, major treatment  
15 units, are no longer functional. Both  
16 clarifiers, the tertiary filter, spray irrigation  
17 system and backup generator are not functional.  
18 Bio solids have not been removed from the Plant  
19 for at least seven years. DEQ has placed the  
20 Wastewater Treatment Plant on sewer moratorium  
21 with no new sewer taps, sewer extensions, or  
22 additional flow effective as of the date of this  
23 moratorium.

24 Q Is the moratorium still in affect today?

1 A Yes, sir, it is.

2 Q Now, please state whether the conditions of the  
3 OBKA system are those arising in the recent past  
4 leading up to the imposition of the moratorium  
5 order?

6 A From our recent inquiries and evidenced by the  
7 numerous notices of violations, the conditions of  
8 the Wastewater Treatment Plant, which resulted in  
9 the imposition of the moratorium, arise from  
10 years of neglect and failures of OBKA to  
11 undertake appropriate maintenance and to  
12 adequately fund operations of the system. OBKA  
13 contracts with an operations service that makes  
14 due as best it is able with a limited funds  
15 available to it provided by OBKA.

16 I am in frequent communication  
17 with those who provide the operations service  
18 while OBKA's acts and omissions to date have not  
19 resulted in appreciable disruptions of wastewater  
20 collection services to existing connections. In  
21 my opinion, a less major and immediate steps are  
22 taken to address the deficiencies noted by DEQ,  
23 service disruptions can be expected at any time.  
24 DEQ's letter imposing the moratorium required

1 notice to be sent to OBKA's Kinnakeet Shores  
2 consumers. This notification and the perceived  
3 threat have caused and continue to cause  
4 substantial distrust and anxiety among users of  
5 OBKA services within Kinnakeet Shores.

6 Q To your knowledge, what has been the response of  
7 OBKA to the moratorium and the conditions  
8 resulting in its imposition?

9 A As of today, the moratorium remains in place.  
10 Consequently, OBKA's actions have not taken --  
11 been taken satisfactory to DEQ in order to have  
12 the moratorium lifted. OBKA's general rates have  
13 not been adjusted since initially approved in  
14 1999 to 2000.

15 The principal owner of OBKA is Ray  
16 Hollowell Jr., a former real estate developer of  
17 Kinnakeet Shores. On past occasions,  
18 Mr. Hollowell has informed the members of the  
19 Board that he lacks appropriate financial  
20 resources to make the needed repairs and  
21 improvements.

22 Q What is the Board's view on inference that might  
23 be taken by OBKA to obtain rate levels enabling  
24 OBKA to provide adequate service?



1 A The Board is not opposed to paying a reasonable  
2 rate for wastewater utility services. But in  
3 exchange for the payment of reasonable rates,  
4 customers should be entitled to adequate service  
5 and assurances of appropriate improvements and  
6 maintenance to the wastewater collection and  
7 treatment systems.

8 Q Has the Board and to your knowledge have  
9 Kinnakeet residents been in communication with  
10 the Public Staff and the Division of Water  
11 Quality in an effort to obtain assistance in  
12 supporting -- in support of addressing its  
13 concerns with OBKA?

14 A Yes, sir. I have personally and through our  
15 attorney of record, and on behalf of the Board,  
16 as well as other residents and property owners,  
17 have been in communication with the Public Staff  
18 and the Division of Water Quality in an effort to  
19 obtain assistance and support in addressing its  
20 concerns with OBKA.

21 Q Have the latest events leading into the  
22 imposition of the moratorium been isolated  
23 instances of difficulties OBKA has experienced?

24 A No, sir. We have reviewed the Commission's files

1 dating back 1999 and attempted to list examples  
2 that in our opinion, demonstrated failure to  
3 comply with the responsibilities of a public  
4 utility in this state. The only allegation the  
5 Commission allows us to address has to do with a  
6 report by the Public Staff addressing the general  
7 level of OBKA's rates that have been in effect  
8 since the franchise was granted in 2000.

9 The Public Staff reported that due  
10 to personal moves, at least one hurricane,  
11 financial records had been moved a couple of  
12 times over the years that were not easily  
13 located. From its reviews of the tax returns,  
14 the Public Staff noted reported losses in 2008 of  
15 \$631,920, for 2009 of \$414,388, for 2010 of  
16 \$450,369, and for 2011 of \$513,064. The bulk of  
17 these losses related to utility operations.  
18 Without requesting copies of invoices, the Public  
19 Staff was unable to determine the rate base of  
20 OBKA.

21 Q Have the Board's communications and interactions  
22 with OBKA been satisfactory?

23 A No, sir, they have not.

24 Q In addition to the Complaint filed by the Board

1 in this docket, there have been a number of  
2 requests for intervention filed by other  
3 Kinnakeet Shores property owners and customers or  
4 potential customers. Are you familiar with the  
5 situations of those who have filed these  
6 additional requests for intervention?

7 A Yes, sir. I have been in communication with the  
8 other individuals and property owners and have  
9 coordinated with them in the filing of their  
10 request for intervention in which they have  
11 implored the Commission to provide relief within  
12 Kinnakeet Shores in an expedited fashion. The  
13 purpose of these requested interventions was to  
14 reiterate to the Commission the severe  
15 difficulties existing within Kinnakeet Shores and  
16 to attempt to impress upon the Commission the  
17 need to act expeditiously.

18 Q Can you refer to a particular example?

19 A Yes. I refer to the petition to intervene filed  
20 on March 11th, 2022, by Themy Veltsistas, Charles  
21 and Michelle Hitchens, Jamie Mazerski, Mark  
22 Roberts, Joe Roberts, Rick Barto, and Pat Weston,  
23 and on behalf of a multitude of other property  
24 owners listed in that petition.

1 In paragraph 7, the petition  
2 stated petitioner's concur with complainant that  
3 consumers of respondent are in immediate need of  
4 the Commission's assistance in assessing the  
5 deficiencies outlined in the Complaint.

6 Petitioners understand that even though the  
7 Complaint requesting immediate action from the  
8 Commission has been pending for some time and  
9 motions from respondent had been filed and  
10 responded to, no action by the Commission, thus  
11 far, has taken place. By their request to  
12 intervene, petitioners seek to impress upon the  
13 Commission the urgent need for action and relief.

14 Q Subsequent to the filing of the Complaint by the  
15 Board, are you aware of other actions taken on  
16 behalf of regulators to address the Wastewater  
17 Treatment and Collection System within Kinnakeet  
18 Shores?

19 A Yes, sir. My understanding is that the North  
20 Carolina Attorney General's Office, on behalf of  
21 DEQ, has filed a complaint in the Dare County  
22 Superior Court seeking an injunction against  
23 OBKA. The Complaint was filed on May 5th, 2022,  
24 as case number 22 CVS 177. In its claim for

1 relief, the Complaint states, as of the date of  
2 the Complaint, defendant has failed to correct  
3 violations in the Treatment and Disposal System  
4 and in the Collection System, including but not  
5 limited to failing to properly maintain and  
6 operate the Wastewater Treatment Plant, failing  
7 to properly maintain and operate the Reclaimed  
8 Water Generation and Utilization facilities.  
9 Failing to properly monitor and report results of  
10 treatment wastewater effluent, exceeding effluent  
11 limitations, failing to provide a permit  
12 modification addressing outstanding property  
13 issues, and failing to maintain the Collection  
14 System in accordance with its permit.

15 Defendant's failure to correct  
16 these violations constitute continuing violations  
17 of the Treatment and Disposal System permit and  
18 Collection System permit. The current state of  
19 the Treatment and Disposal System, and the  
20 Collection System, presents a current and ongoing  
21 threat that wastewater discharged into the  
22 Collection System will not be adequately treated  
23 and disposed of in violation of NC General  
24 Statutes Subsections § 143-215.1 paragraph

1 (a) (2) .

2 The continuing threat adversely  
3 affects the public interest as described in NC  
4 General Statute Subsection §143-221. The State  
5 is entitled to preliminary and permanent  
6 injunctive relief against defendant to abate the  
7 ongoing violations and prevent the threatened  
8 violations set forth in this Complaint. My  
9 understanding is that the Public Staff will  
10 address this Complaint in greater detail in its  
11 testimony.

12 MR. FINLEY: Madam Chair, copies have been  
13 made of this Complaint that has been filed in the Dare  
14 County Superior Court. And the Public Staff has  
15 compiled an index of it and has put on page numbers of  
16 this exhibit. It has been distributed this morning,  
17 and we would move that this Complaint and Motion for  
18 Injunctive Relief be marked for identification as Home  
19 Owners Association Exhibit Number 1.

20 CHAIR MITCHELL: Mr. Finley, the document  
21 will be so marked for identification purposes.

22 (WHEREUPON, Home Owners

23 Association Exhibit No. 1, is

24 marked for identification.)

1 Q Ms. Weston, have you been in communication with  
2 other providers of Wastewater Utility Services  
3 that might express an interest in acquiring the  
4 wastewater system from OBKA providing service  
5 within the Kinnakeet Shores?

6 A Yes, sir, I have. Desperate to find a solution  
7 to the serious dilemma in which we have found  
8 ourselves, I have attempted to identify  
9 alternative service providers to explore the  
10 possibility that a sale or acquisition might  
11 provide a long-term remedy.

12 Q All right. Please recite, again, what the HOA is  
13 requesting the Commission to do in response to  
14 your Complaint?

15 A Greater Kinnakeet Shores Home Owners, Inc.  
16 respectfully requests that the Commission grant  
17 the following relief:

18 Number 1: That the Commission is,  
19 as expeditiously as possible, require a  
20 comprehensive due diligence investigation into  
21 OBKA's suitability to own and operate the  
22 Wastewater Treatment System and Collection System  
23 in compliance with the public interest.

24 Number 2: That the Commission, in

1 coordination with the Public Staff and the  
2 Department of Environmental Quality, require OBKA  
3 to take immediate steps to rectify the  
4 deficiencies causing the imposition of the  
5 moratorium.

6 3: That the Commission, if after  
7 investigation and due diligence, should determine  
8 that OBKA is incapable financially or  
9 operationally or otherwise to continue to operate  
10 the system, appoint an emergency operator.

11 4: That the Commission, to the  
12 extent that OBKA is unwilling or unable to  
13 operate the system in accordance with the Public  
14 Convenience and Necessity, revoke OBKA's bond.

15 5: That the Commission  
16 investigate the possibility of identifying a  
17 potential new owner of the Kinnakeet Shores  
18 Wastewater Treatment System that is willing to  
19 acquire and operate the system on terms that  
20 would not result in unreasonable rates to its  
21 ratepayers.

22 6: That to the extent the  
23 Commission determines that OBKA should continue  
24 to own and operate the system, that the



1 Commission require a substantial increase in  
2 OBKA's bond to be forfeited and revoked in the  
3 event OBKA's pattern of inadequate service is  
4 repeated in the future.

5 6(sic): For such other relief as  
6 the Commission deems appropriate.

7 MR. FINLEY: Thank you, Ms. Weston.

8 Ms. Weston is available for cross-examination.

9 CHAIR MITCHELL: Ms. Culpepper.

10 MS. CULPEPPER: No questions.

11 CHAIR MITCHELL: Thank you, Ms. Weston, for  
12 your testimony. Let me check in with my colleagues to  
13 see if there's any questions for you. Questions for  
14 Ms. Weston.

15 (No response)

16 CHAIR MITCHELL: Ms. Weston, I do have a few  
17 questions for you. Thank you, again, ma'am, for your  
18 testimony this morning.

19 EXAMINATION BY CHAIR MITCHELL:

20 Q You have provided a lot of information in your  
21 testimony, and I want to follow up with you on a  
22 couple of points that you have made. You  
23 mentioned the moratorium that was imposed by --

24 A Could you speak a little louder? I'm sorry.

1 Q Sure. That's okay. Is that better?

2 A That's better. Thank you.

3 Q So in your testimony, you mentioned the  
4 moratorium that was imposed by the Department of  
5 Environmental Quality, the Division of Water  
6 Resources in 2021. Are you aware of or do you  
7 have any information about any of the events that  
8 led up to the imposition of the moratorium?

9 A No, I did not. We were blindsided.

10 Q Okay.

11 A And we did not -- shall I continue or not?

12 Q Yes, you may continue.

13 A Okay. The letter was written August -- excuse  
14 me, August the 25th imposing the moratorium on  
15 October 13th. I did not find out on behalf of  
16 the Association until October 26th when I  
17 received a call from Donna Creef who, at that  
18 time, was the Dare County Planning Director,  
19 Planning Officer.

20 She asked me if I had heard about  
21 the moratorium. I said, "What moratorium?" She  
22 said, "The moratorium has been placed on the  
23 sewer plant." I said, "No." She said, I'm  
24 hitting the send key right now. Read it and call

1 me back." And as I said, we were totally  
2 blindsided. I mean, I spent the next few days  
3 just grasping at straws, calling people, you  
4 know, Mr. Tankard, anybody that I could get  
5 information from. This was incredible and put a  
6 total halt to many, many owners that I personally  
7 new were in the process of getting ready to put  
8 there submissions into the Architecture Review  
9 Committee to get a rubber stamp to take it to the  
10 building -- inspector's office for building  
11 permits, so I was on the phone for days.

12 Q Okay. In your testimony, you also mentioned that  
13 you have been in frequent communications with the  
14 operator, the contract operator of this system.  
15 Can you tell us who the contract operator is?

16 A Well, I speak with Michelle Pharr and David  
17 Pharr. They are the providers of the sewer  
18 operations at the Plant.

19 Q And can you tell me what you have learned in your  
20 conversations with Mr. and Mrs. Pharr?

21 A Learned that certain things were not working.  
22 They were broken or they needed new filters.  
23 There was not any capital to be spent; that they  
24 were doing everything they could to treat the

1 waste as best they could without being able to  
2 order new parts and have adequate replacements,  
3 to continue to run the Plant in the manner it  
4 should be run. We never spoke about -- I feel  
5 rather ignorant, but we never spoke about notices  
6 of violations. I never heard those words until  
7 this moratorium happened.

8 Q Okay. Did the Pharrs express any concerns to you  
9 about the Plant -- the performance of the Plant,  
10 other than the financial concerns that they  
11 appear to have expressed to you? Did they  
12 indicate that there could be any problems with  
13 the Plant?

14 A As far as serving the current customers, we did  
15 not discuss problems in that area, other than  
16 things that might happen, if it was a grease  
17 buildup at the shopping center or -- it was just  
18 run-of-the-mill talk about this is broken, we're  
19 hoping Ray will order this. This pump needs to  
20 be rebuilt, and now this other pump needs to be  
21 rebuilt. And we're hoping to get that done in  
22 the not-too-distant future, but everything  
23 depended on Mr. Hollowell.

24 Q Okay. Thank you, Ms. Weston.

1 CHAIR MITCHELL: Questions -- just checking  
2 in. Questions on any of the questions I've asked?

3 MS. CULPEPPER: No questions.

4 REDIRECT-EXAMINATION BY MR. FINLEY:

5 Q Ms. Weston, are the Pharrs here, by any chance?

6 A They are. And I can just further say that these  
7 people have gone out on a limb using every single  
8 remedy, simple remedy known to man, including,  
9 you know, chlorine bleach and other things to try  
10 to keep this Plant going and viable and treating  
11 what was coming into it, with no money to be had,  
12 so...

13 Q Why don't you identify who is here over your  
14 right shoulder there on the front row.

15 A Michelle Pharr and David Pharr.

16 Q And the other gentleman?

17 A Oh, I'm sorry, and Rick Barto. Rick is also on  
18 the Board and he has known Ray for 20 years, yep,  
19 at least, and lives in Kinnakeet Shores.

20 MR. FINLEY: No more redirect.

21 CHAIR MITCHELL: Okay. Thank you,  
22 Ms. Weston. I believe there's nothing further for  
23 you, so you may step down. Thank you for your  
24 testimony.

1 THE WITNESS: Thank you.

2 CHAIR MITCHELL: Ms. Culpepper.

3 MS. CULPEPPER: The Public Staff calls  
4 Charles Junis.

5 CHAIR MITCHELL: Mr. Finley, do you want to  
6 move in your exhibit?

7 MR. FINLEY: I'll be happy to do that now.  
8 We move the introduction of Home Owners Association as  
9 Exhibit 1.

10 CHAIR MITCHELL: Any objections,  
11 Ms. Culpepper?

12 MS. CULPEPPER: No.

13 CHAIR MITCHELL: Motion is allowed.

14 (WHEREUPON, Home Owners  
15 Association Exhibit 1, is marked  
16 in evidence.)

17 CHAIR MITCHELL: Mr. Junis, right hand up.

18 CHARLES JUNIS;  
19 having been duly sworn,  
20 testified as follows:

21 DIRECT-EXAMINATION BY MS. CULPEPPER:

22 Q Please state your name.

23 A Charles Junis.

24 Q Where do you work?

1 A Public Staff, for the North Carolina Utility  
2 Commission.

3 Q What is your business address?

4 A 430 North Salisbury Street, Raleigh, North  
5 Carolina.

6 Q What is your job title?

7 A Director of the Public Staff Water, Sewer, and  
8 Telephone Division.

9 Q How long have you been in that position?

10 A Approximately six months.

11 Q What are your duties?

12 A I have management responsibilities of the Water,  
13 Sewer, and Telephone Division. I'm responsible  
14 for analyzing filings, testimony, exhibits, and  
15 other data presented by parties before the  
16 Commission. I evaluate the operation of  
17 regulated water and sewer utilities, including  
18 expenses, capital spending and compliance with  
19 applicable regulations. My duties also include  
20 preparing testimony regarding my investigation  
21 activities and making recommendations to this  
22 Commission.

23 Q Please describe your education and work  
24 experience.

1     A     Yes. I graduated from North Carolina State  
2           University earning a Bachelor of Science degree  
3           in civil engineering in May of 2011. I'm a  
4           licensed professional engineer in North Carolina  
5           since December of 2015. I have over 11 years of  
6           water and wastewater engineering experience. And  
7           since joining the Public Staff in April of 2013,  
8           have worked on general rate cases, new franchise  
9           and transfer applications, emergency operations  
10          proceedings, customer complaints, rulemakings and  
11          other aspects of utility regulation.

12                         More specifically, I have assisted  
13          in the investigation in drafting of petitions  
14          and/or testified in the Webb Creek, Docket No.  
15          W-864, Sub 11, Riverbend Estates, Docket No.  
16          W-390, Sub 13, and Mountaineer, Docket No. 1148,  
17          Sub 20 emergency operator proceedings.

18                         Prior to joining the Public Staff,  
19          I worked for Farnsworth Group in engineering and  
20          architectural consulting firm. Through this  
21          education and experience, I've gained  
22          considerable knowledge of relevant in engineering  
23          and construction principles and utility  
24          operations, maintenance, and capital planning.



1 Q Do you believe that your testimony will be  
2 helpful in assisting the Commission understand  
3 the facts of these cases?

4 A Yes, I do.

5 MS. CULPEPPER: Chair Mitchell, at this  
6 time, the Public Staff tenders Mr. Junis as an expert  
7 in the field of Utility Operations and related  
8 regulatory matters.

9 CHAIR MITCHELL: All right. Thank you.  
10 Ms. Culpepper.

11 Q Mr. Junis, how did you become aware of the  
12 moratorium for the Kinnakeet Shores sewer system?

13 A In late October, 2021, I had separate phone  
14 conversations with Eddie Goodrich, prospective  
15 customer of Outer Banks Kinnakeet Associates,  
16 LLC, and Pat Weston, President of Greater  
17 Kinnakeet Shores Home Owners, Inc. about the  
18 moratorium.

19 Q How did you conduct your investigation?

20 A Upon becoming aware of this (43:24) user,  
21 Kinnakeet Shores, I compiled information,  
22 including additional communication with customers  
23 and prospective customers; contacting and meeting  
24 with North Carolina Department of Environmental

1       Quality, Division of Water Resources' staff;  
2       calling DEQ's Laserfiche database and company  
3       dockets. Ms. Weston, and subsequently Mr. Ain,  
4       filed formal complaints. The Public Staff  
5       monitored the Complaint proceedings and continued  
6       to compile information.

7               Sometime after the Complainants  
8       requested a hearing, the Public Staff, including  
9       Ms. Culpepper and myself, contemplated a motion  
10      to appoint an emergency operator, including  
11      contacting potential emergency operators and  
12      drafting a petition to appoint an emergency  
13      operator. Then this very hearing was scheduled.

14    Q    Have you personally visited the Kinnakeet Shores  
15          sewer system?

16    A    Yes, I have.

17    Q    When did you conduct this site visit?

18    A    This Tuesday, July 19th.

19    Q    Who was present during the site visit?

20    A    From DEQ's Washington Regional Office, Robert  
21          Tankard Assistant Regional Supervisor, Robert  
22          Bullock, Environment Specialist, and Sarah  
23          Toppen, Environmental Specialist. And from  
24          Albermarle Environmental, Inc., David and

1 Michelle Pharr, the contract operators.

2 Q Did you take photographs during your site visit?

3 A Yes, I did.

4 Q What did you take photographs of?

5 A While accompanying DEQ on their compliance  
6 inspection, I took photographs of key components  
7 of the Kinnakeet Shores Wastewater Treatment  
8 Plant and Collection System.

9 Q What documentation was produced based on your  
10 site visit?

11 A I prepared a PowerPoint presentation of the site  
12 visit. The presentation incorporates the  
13 photographs that I took. In addition, DEQ  
14 completed a compliance inspection report.

15 Q Are you prepared --

16 A Oh. I'm sorry. I would like to add I'm prepared  
17 to provide a narrative account along with the  
18 PowerPoint of the inspection.

19 Q Do the photographs, incorporated into the site  
20 visit PowerPoint presentation, accurately  
21 represent what you observed during the site  
22 visit?

23 A Yes. As the saying goes, "A picture is worth a  
24 thousand words," and I think everyone here today

1 would be appreciative, especially the court  
2 reporter, if we save several thousand words from  
3 being spoken today. However, DEQ staff and I  
4 made additional observations that is important  
5 context that I can provide.

6 MS. CULPEPPER: Chair Mitchell, at this  
7 time, we request that Mr. Junis be allowed to present  
8 the PowerPoint of the site inspection which has been  
9 premarked for identification as Public Staff Junis  
10 Direct Exhibit 1, which we provided paper copies of,  
11 and then also provide testimony describing the  
12 inspection.

13 (WHEREUPON, Public Staff Junis  
14 Direct Exhibit 1 is marked for  
15 identification.)

16 CHAIR MITCHELL: All right. You may  
17 proceed.

18 MR. JUNIS: Just giving it a second to get  
19 set up.

20 A All right.

21 Q Please proceed.

22 A So pictured here is the Kinnakeet Shores  
23 Wastewater Treatment Plant. It's the building in  
24 the top left-hand corner. The inspection, as

1 previously stated, was conducted this past  
2 Tuesday. From the Washington Regional Office,  
3 Robert Tankard, Robert Bullock, and Sarah Toppen,  
4 myself, and then the contract operators David  
5 Pharr and Michelle Pharr.

6 The Kinnakeet Shores Wastewater  
7 Treatment Plant, as stated, the permit number is  
8 WQ0002284. It is permitted for 350,000 gallons  
9 per day and is a Reclaimed Water Generation and  
10 Non-conjunctive Reclaimed Water Utilization  
11 System. And what you have pictured there in the  
12 background is one of the tanks.

13 On this page is a Plant diagram  
14 that I've prepared in consultation with DEQ  
15 staff, and in the background is the picture of  
16 the tank that it is describing. So this is an  
17 aerial perspective of that tankage, and you  
18 can -- oh, this actually works.

19 If you would draw a horizontal  
20 line crossing basically from equalization basin  
21 all the way through external clarifier, you can  
22 assume that there's a catwalk going across that  
23 tankage that we proceeded across, and then  
24 there's actually a circular catwalk that goes

1           around the internal clarifier.

2                       So from sort of left and moving  
3 clockwise, you have the equalization basin,  
4 the -- let me back up. There's sort of two  
5 trains of treatment here. 175,000 gallons each,  
6 and so flow can either go to either of the anoxic  
7 basins at the top or bottom, and then proceed to  
8 the aeration basins, and then to the clarifiers.

9                       So, now, we'll start at the sort  
10 of head of the Plant where the influent comes  
11 into the Plant. So the far right pipe, in the  
12 picture to the left, is the influent line, so you  
13 can assume you have the Collection System. All  
14 that Collection System eventually comes through  
15 that pipe and into the Plant.

16                      Then, it goes up into the manual  
17 bar screen, so that's the picture to the right.  
18 That flow would come through the pipe at the top  
19 of the picture, travel through the bar screen to  
20 try to take down as many solids, debris. Large  
21 foreign objects, essentially, that can make their  
22 way into a Wastewater Collection Treatment Plant.  
23 You can see sort of the condition of, just  
24 generally, the Plant, the cleanliness, and then

1 deterioration.

2 On this page is the flow  
3 equalization basin. So from the manual bar  
4 screen, the flow goes into the flow equalization  
5 basin that is 140,000 gallons. It's aerated and  
6 it should have two submersible transfer pumps.  
7 Those transfer pumps pump the flow from the EQ  
8 basin into the splitter box, and then the  
9 aeration basins.

10 As you can see in these pictures,  
11 the EQ basin has considerable solids at the top  
12 sort of floating in these basins. That is not  
13 ideal. That can impede proper treatment. You'll  
14 also notice that the EQ basin's intention is to  
15 regulate flow. You'll have I&I events, you'll  
16 have storms, you'll have high usage. And  
17 sometimes, that can overwhelm a plant's capacity.  
18 So the EQ is intended to sort of be a capture  
19 point, and then they can regulate the flow that  
20 goes through the rest of the Plant because you  
21 need proper retention time and treatment.

22 This Plant, as you'll see in both  
23 pictures, the EQ basin is being kept at a very  
24 low level. That exposes the tank walls to air,

1 which promotes corrosion, so it's actually not  
2 good for the long-term health of this facility to  
3 have that level that low. It would be one thing  
4 if you knew a storm was coming and wanted to  
5 prepare for that, to pump that tankage down, but  
6 for every day operations, this is far from ideal.

7 This page, you have the flow  
8 splitter box. So like I said, you go from the EQ  
9 basin. It should be pumped into this splitter  
10 box. Unfortunately, that is not used because  
11 essentially, half this Plant is offline. It is  
12 not being utilized for its purpose. Again, I  
13 would note the deterioration of that structure.

14 Next, you have the anoxic tank.  
15 So, again, from the perspective of that diagram,  
16 you have two pads, two sides of the Plant to go.  
17 You have an anoxic basin, sort of, to your right  
18 from the catwalk, and to the left, and so this is  
19 an attempt to provide that perspective.

20 On the left-hand picture, you will  
21 see that that anoxic basin or tank is not being  
22 utilized for treatment. Currently, that anoxic  
23 tank is essentially a holding tank for sludge.  
24 And then on the right-hand side, you will see the



1        anoxic tank in current operation. Again, a  
2        significant amount of solids at the top of that  
3        tank, which is not -- would not be representative  
4        of ideal -- ideal normal operations.

5                The course bubble aeration basin.  
6        This is, again, on the right-hand side of the  
7        Plant. You have essentially a 50,000 gallon and  
8        then a 125,000 gallon tankage that was phased for  
9        a total of 175,000 gallons for that side of the  
10       Plant. It is in active use. You can see some  
11       level of bubbles and aeration. However, it is  
12       probably not at the design level as will be  
13       talked about later.

14               The picture on the left is the  
15       other side of the Plant with the aeration basin.  
16       Again, this is not being utilized for treatment.  
17       It is functioning as storage and has been used  
18       for storage for approximately the past 10 years,  
19       the extent of Albermarle environmental's 10-year  
20       as contract operator of this system.

21               Then on the right, you have the  
22       internal clarifier. So from the aeration basins,  
23       the flow of the Plant is supposed to go to the  
24       clarifiers for treatment. The clarifiers are

1       supposed to function as sort of a settling tank,  
2       and there is a sweeping arm both at the top and  
3       bottom of that tank that would sweep away solids  
4       and push solids through the Plants, so those  
5       solids would then be moved to the digester or  
6       potentially cycled back through the Plant. That  
7       clarifier, again, as you can see, is at a very  
8       low level, and that's because it's not operating.  
9       The sweep arms don't function, and so under  
10      normal circumstances, that tank should be full of  
11      liquid waste. And the weirs down there at the  
12      bottom of the page, the flow should be going over  
13      those weirs into that trough and moved to the  
14      next stage of treatment.

15               Next page is the external  
16      clarifier. So, again, you have that first  
17      initial tankage, circular, that has an internal  
18      clarifier, and then the other components around  
19      it, but then you have a separate tank that is the  
20      second or external clarifiers as its referred to.  
21      This is just over 31,000 gallons. It also is  
22      currently not functioning as intended and has not  
23      functioned as intended for sometime now, and has  
24      been documented repeatedly by DEQ. Deterioration

1 of the interior of the tank, again, that level is  
2 not high enough for flow to go over the weir and  
3 proceed to the next stage of treatment. You have  
4 a substantial amount of solids at the top. And  
5 while on our site visit, the operator used a  
6 device called a Sludge Judge that was dipped into  
7 that tankage to take a sample of how much solids  
8 or sludge is at the bottom of that tank, and  
9 there was nearly three feet of sludge at the  
10 bottom of this tank. That again -- any solids at  
11 the bottom of a clarifier would be pushed by that  
12 bottom sweep arm into the digester.

13 Unfortunately, with that not functioning, you're  
14 just building up sludge that would eventually  
15 have to be pumped out.

16 I'm going to pause right there,  
17 and I just want to sort of connect some dots here  
18 with the document that was entered into the  
19 record, the Complaint and Motion for Injunctive  
20 Relief. You would note on page 28 of that  
21 document, which is towards the top, there's an  
22 Item 75, and then a heading, "Prayer for relief."  
23 And as you go down in that document, Item 2(b)(i)  
24 is the repair and replacement of all broken

1 malfunctioning or otherwise nonoperational  
2 mechanical elements of the treatment system,  
3 "including but not limited to: 1. clarifiers."

4 As you've seen from the pictures and the  
5 description I've given from my account of the  
6 inspection, the clarifiers are not functional.  
7 The aeration tank -- well, I haven't gotten there  
8 yet. So I just wanted to connect that dot, and  
9 there are more aspects here that will pull  
10 together as we continue through my presentations,  
11 but have that handy because we're going to flip  
12 back and forth.

13 Gear box assembly. I'm going to  
14 send you-all for another trip in the documents.  
15 You will recall -- number one, there was letters  
16 to DEQ in response to NOV's, and then there was a  
17 letter submitted by Mr. Hollowell dated May 27th,  
18 2022 that laid out sort of a -- I want to say  
19 Mr. Hollowell is a writer of fiction in the genre  
20 of fantasy when he talks about what will happen  
21 with his Plant, and it's repeated numerous times  
22 of this will happen and then it doesn't, and then  
23 it strings along both the regulators, his  
24 operators, and this community repeatedly.

1                   He refers to sort of a magic part,  
2                   this gear that they spent money, waited for.  
3                   That's what's pictured here, is the gear box  
4                   assembly, and specifically, sort of that sprocket  
5                   and cog at the top of the picture on the left.  
6                   It's our understanding from the operator that  
7                   that part was delivered, installed. And,  
8                   subsequently, this device broke yet again. So,  
9                   perhaps, for a couple of days at most, the  
10                  clarifier sweep arm functioned, but --

11       Q       Mr. Junis, can I ask you one question. The  
12                  letter you were talking about dated May 27th,  
13                  2022, was that filed with the Chief Clerk on  
14                  June 14th?

15       A       Yes, ma'am.

16       Q       Okay. I just wanted to clarify.

17       A       So I just want to draw that parallel because  
18                  we've seen numerous writings from Mr. Hollowell  
19                  that say something's going to happen, and then  
20                  subsequently over time, those things do not end  
21                  up happening. And I will just note that that  
22                  letter also goes through a string of events that  
23                  would supposedly happen within about 30 to 45  
24                  days. And I would note that this inspection that

1 we went on was July 19th, approximately 50  
2 some-odd days after this letter. None of this  
3 had come to fruition. Yes, the gear showed up,  
4 but it broke, and would have only gotten one  
5 clarifier potentially to semi-function. There  
6 was no effort to pump sludge. There was no  
7 efforts to move forward with repairs to the  
8 filter. No efforts to fix the turbidity meter.  
9 All the subsequent actions, there was no progress  
10 and no evidence upon the site visit that those  
11 things occurred.

12 All right. Back to the  
13 presentation. And I apologize for jumping  
14 around, but I think it's important to sort of  
15 connect the dots here of what's in the record and  
16 the evidence being submitted by the parties.

17 This is the tertiary filter. So  
18 from the clarifiers, that what should be top  
19 water, and relatively clear, should go through  
20 this tertiary filter with the traveling bridge.  
21 It's basically a sand filter. Unfortunately, as  
22 you can see in the picture, it has what -- it's  
23 sludge, to call it nicely. This whole structure  
24 is bypassed. It's not attempted to be used, it

1 does not function properly, and you will note in  
2 the bottom left-hand of the -- the bottom  
3 left-hand picture, there are a couple of chemical  
4 feed pumps that are supposed to be the chlorine  
5 disinfection system. That was not functional  
6 when we were on site.

7 The next pictures on the left is  
8 the bypass piping of the tertiary filter, so that  
9 is the back side of the external clarifier where  
10 the waste is going, and then you saw was sitting  
11 was substantial solids both at the top and bottom  
12 of that tankage. So there are pumps set in that  
13 external clarifier, and those pump down those  
14 lines to some PVC pipe that run along the wall of  
15 the building and then enters at the top left of  
16 the right-hand picture. If you see those PVC  
17 pipes coming in, into that basin, which was  
18 formally the UV disinfection basin, but the  
19 disinfection system had fallen into disrepair,  
20 and the permit was modified to include a chlorine  
21 and de-chlor system.

22 Again, the lines at the bottom  
23 right of the right-hand picture is the de-chlor  
24 chemical feed not in use, and we were told by the

1 operator upon the site visit that they were  
2 currently using chlorine tabs in that structure.  
3 I will tell you it was my account and the account  
4 of the DEQ inspectors that we did not visually  
5 see any chlorine tabs in that structure, but  
6 there was a bucket nearby. Another -- all right.  
7 I'm going to continue.

8 The on-site backup generator,  
9 which is pictured in the left-hand side, is not  
10 functional. This piece of equipment dating back  
11 to the Public Staff's report, that was filed in  
12 May of 2013, they had not had a functioning  
13 backup generator.

14 Q Mr. Junis, can I ask you, was that filed in  
15 Docket No. W-1125, Sub 4, the report you're  
16 talking about?

17 A Yes, ma'am.

18 Q Okay.

19 A That was actually the only noted deficiency at  
20 the time by the Public Staff's report. I was not  
21 privy to that report. I didn't work on it. I  
22 had only recently joined the Public Staff at that  
23 time. But I have reviewed that report, and there  
24 has been considerable changes in the



1           circumstances since then.

2                       So why is the generator a problem?

3           If you don't have backup generation, let's say  
4           during a storm that has -- now normally, this  
5           community is evacuated or is not there during a  
6           storm event, but you have to deal with I&I or you  
7           are subject to flooding on both the Collection  
8           System and the Plant if you do not have power.  
9           They don't have backup power, and outages can be  
10          weeks, even months long at the Outer Banks, and  
11          this has been a known issue for a long time.  
12          Another item where Mr. Hollowell has promised  
13          action, suggested costs, and nothing's been done.

14                      On the right-hand side is the  
15          intended blowers for this Plant. You have a  
16          string of three blowers, all of which are  
17          supposed to be 3,000 cubic feet per minute. The  
18          farthest one does not have a motor. You'll  
19          notice a void right there. There's no motor, so  
20          that one's not working. The middle one, which it  
21          has a number 2 under it, that one was tried to be  
22          turned on while we were on-site, and sparks and  
23          smoke shot out of it. That one doesn't work, and  
24          then the third didn't do anything. That one

1 doesn't work. The only source of aeration to  
2 this site is the tiny little blower on the left  
3 which has a capacity of about less than a tenth  
4 of just one of the intended blowers on this  
5 Plant, and its air flow is being diverted between  
6 the EQ basin, which is the intended purpose, and  
7 the aeration basin. So, again, you can't get  
8 proper treatment without adhering to the approved  
9 design components, and so you're just not getting  
10 enough air to promote that bacteria and proper  
11 treatment.

12 The building, in general, was  
13 probably in the best condition out of any of the  
14 components, and even that would be considered to  
15 be in relatively poor condition. You have in the  
16 left-hand picture structural damage. That's a  
17 horizontal support at the top of the building  
18 that has fallen and is just hanging there. That  
19 beam is supposed to go straight across just like  
20 the rest of them that are subsequently below, and  
21 then the roof line is an item that has been  
22 repeatedly identified by DEQ, but it's, I would  
23 say, the least of priorities in the grand scheme  
24 of the issues of this Plant. But, essentially,

1       they have an open skylight running down the  
2       middle of this Plant, so you can understand  
3       that's letting in the salt air. That's letting  
4       in moisture and rain events, and you're starting  
5       to see corrosion in the structural steel at that  
6       ridge.

7               So, at this point, I'm again going  
8       to jump back into the injunctive relief just to  
9       correlate those items, so page 28 of the exhibits  
10      submitted by the HOA. So we've now seen the  
11      tertiary filter, Item 2(b)(i)3 not functional,  
12      being bypassed. You have the aeration tank  
13      blowers, Item 4, not functional. Some are  
14      missing. You have the backup generator, not  
15      functioning, and probably it won't be -- well,  
16      can't be repaired, likely needs to be replaced.

17             A number of the pumps, the waste  
18      return pumps, many are missing or not  
19      functioning. Item 2(ii), "Repair the  
20      disinfection system." That's a problem. It's  
21      not operating, it's not functional given the  
22      current layout of the Plant and how it's being  
23      bypassed. You have then Item (iii), "Remove  
24      solids from clarifiers and sludge holding tank

1 and dispose of properly." That will likely be  
2 hundreds of thousands of dollars just to pump out  
3 all of that waste. That is a significant  
4 problem.

5 Now, we will move on to the next  
6 pictures. On the left-hand side, you have the  
7 five-day upset pond which is a lined  
8 three-million gallon structure, and on the  
9 right-hand side, you have the  
10 storage/infiltration pond which is unlined and  
11 over five-million gallons. Here's the problem  
12 with this. Currently, despite not meeting  
13 effluent limits, despite bypassing the Plant and  
14 not having treated wastewater, the flow is not  
15 going to the five-day upset pond. The flow is  
16 going directly into the unlined infiltration  
17 pond. That will lead over time to the  
18 accumulation of solids. You are looking at  
19 significant leaching of contaminants from the  
20 waste.

21 You also have a pond just on the  
22 other side of that line of trees on the  
23 right-hand side in a small, sort of, berm.  
24 There's a pond that houses are adjacent to.

1       There is a tent and kyaks literally on that water  
2       when I was there. So there are people using an  
3       adjacent pond that is most definitely  
4       hydraulically connected to the pond that  
5       essentially raw, untreated wastewater is going  
6       to. So not only do you have an environmental  
7       hazard, you have a potential health hazard here.  
8       So, as I said, you bypass the tertiary filter  
9       you're sending waste from that external  
10      clarifier. You saw the solids, you saw that it  
11      was not clear, and that is all going to that  
12      storage infiltration pond, and that is all  
13      noncompliant with their permit.

14               Here's a picture on the left-hand  
15      side of the irrigation pump. That is not  
16      functional. They are not using the irrigation  
17      system, but that is one way to dispose of  
18      effluent on this system. You have irrigation  
19      piping. This is just some of the irrigation.  
20      That's a drip irrigation system that's around the  
21      Plant. It doesn't look like that's getting much  
22      moisture. I would say that is an aerate  
23      environment, very dry, not utilized. And then  
24      the irrigation system throughout the community

1       that's supposed to cover 16 acres is not  
2       functional. Hasn't been used, even according to  
3       Mr. Hollowell, for over 12 years. Again, that is  
4       not how this system was designed. It's not how  
5       it's supposed to work.

6               So just to tie this back to our --  
7       or to the DEQ and the DOJ's prayer for relief,  
8       you have repair and replace the irrigation pumps  
9       and irrigation system, repair and replace the  
10      turbidity meter and flow meter, calibrate those.  
11      None of that has been -- has happened. The  
12      turbidity meter was reading 3.9, which is  
13      supposedly compliant. It has been reading 3.9  
14      from both the operator and DEQ staff for ages, so  
15      that is -- it's not compliant. You're not  
16      getting an accurate measurement because there's  
17      no possible way -- the turbidity would be a  
18      magnitude of 10 or more if your getting an actual  
19      reading based on the clarity of that wastewater.

20             The Collection System. So there  
21      are two main pump stations on this system. You  
22      have Lakeside and Dory. The picture on the left  
23      is Lakeside Lift Station. I would note the  
24      grease and foreign debris in that pump station.

1 That can lead to damage or blockage of the lines  
2 and/or pumps, and, again, will be  
3 counterproductive for the Wastewater Treatment  
4 Plant. If you're sending that grease, it's going  
5 to build up in the lines. It's going to build up  
6 in the Plant. It's going to damage components.  
7 It needs to be addressed.

8 And then also previous to the  
9 conversation that we had with the operator, that  
10 this system has numerous pump stations on it, and  
11 I would just like to reference this is Exhibit A  
12 of the Complaint and Motion which is page 32 of  
13 the PDF. And if you go all the way to actually  
14 page 36 of that document, you will see that this  
15 has at least permitted or plan approval 13  
16 simplex pump stations and 32 duplex.

17 From the operator, most, if not  
18 all of those duplex pump stations, only have one  
19 pump. That's not compliant. It will lead to  
20 reliability issues, and that's why I have this  
21 picture on the right-hand side. Those are  
22 portable sump pumps that the operators use, so  
23 they'll get an alarm or call from homeowners,  
24 this pump station's out of service, they don't

1           have that backup pump in the duplex.

2                       The duplex pump stations, those  
3           pumps are supposed to alternate operation as  
4           they're kicked on, and that redundancy provides  
5           reliability of service. They run out, throw one  
6           of these sump pumps in, and make due in the  
7           short-term until they can get either that pump  
8           repaired or a possible replacement, but fewer and  
9           fewer replacements as time has gone on.

10                    I think that concludes the presentations  
11           from the inspection.

12   Q     What did you conclude from the site visit?

13   A     The Wastewater Treatment Plant and Collection  
14           System are in very poor condition and have  
15           suffered from substantial deferred maintenance  
16           repair and replacement.

17   Q     So you had reviewed a number of documents,  
18           including what was entered -- what is identified  
19           as HOA Exhibit Number 1. Is that correct?

20   A     Yes, ma'am.

21   Q     What is your opinion regarding the allegations  
22           and the relief sought?

23   A     So I believe the allegations are substantiated  
24           and the relief sought is necessary and



1 appropriate. As we've walked through, those  
2 conditions have not changed and have possibly  
3 worsened since that document was compiled.

4 Q In your opinion, does OBKA have the technical,  
5 managerial, and financial capacity to become  
6 compliant?

7 A No. This that has become clear when you contrast  
8 the Public Staff report from May, 2013 filed in  
9 Docket No. W-1125, Sub 4 to the condition of the  
10 system and the Utility's finances now. This is a  
11 company that is delinquent on its 2020 annual  
12 report, and has shown both leading up to that  
13 2013 report and in subsequent annual reports that  
14 we do have of considerable losses.

15 And Mr. Hollowell, in response to  
16 DEQ regarding the NOV's, has consistently said  
17 that he does not have the funding. At one point,  
18 he said he had funding from elsewhere, but  
19 there's been no actual evidence that there has  
20 been an influx of funding from elsewhere.

21 Q And his correspondence with DEQ, those are  
22 exhibits too?

23 A Yes, ma'am.

24 Q What did you conclude regarding your

1 investigation?

2 A I conclude that a real emergency regarding the  
3 provision of adequate safe and reliable sewer  
4 utility service exists at Kinnakeet Shores  
5 necessitating the appointment of an emergency  
6 operator. Both North Carolina General Statutes  
7 Section § 62-116(b) and § 62-118(b) define an  
8 emergency as "The imminent" -- I'm sorry. As  
9 quote "The imminent danger of losing adequate  
10 water or sewer utility service or the actual loss  
11 thereof."

12 There has been an actual loss of  
13 adequate sewer utility service at Kinnakeet  
14 Shores. It may not be in the form of that a  
15 customer can flush their toilet that the system  
16 still is receiving wastewater, but it is not  
17 being treated. The wastewater is collected and  
18 pumped into the Wastewater Treatment Plant. It's  
19 not properly treated, and has not and would not  
20 meet permanent limits for effluent disposal. DEQ  
21 has determined that the Wastewater Treatment  
22 Plant and Collection System are not compliant.

23 Q What company did you contact regarding their  
24 willingness to serve as an emergency operator?

1 A The Public Staff has discussed the  
2 Carolina -- I'm sorry, has discussed with  
3 Carolina Water Service, Inc. of North Carolina,  
4 also referred to as CWS NC, their willingness to  
5 become the emergency operator of the Kinnakeet  
6 Shores Wastewater Treatment Plant and Collection  
7 System.

8 Q How did CWS NC respond regarding the Public  
9 Staff's inquiry?

10 A CWS NC has performed preliminary due diligence,  
11 is familiar with the Outer Banks system, and has  
12 informed the Public Staff it is willing to become  
13 emergency operator of the Utility system as soon  
14 as reasonably possible, subject to certain  
15 conditions that are required to ensure that CWS  
16 NC's ratepayers and shareholders do not assume  
17 financial responsibility for the situation  
18 created by Outer Banks Kinnakeet Associates.

19 Q What are the qualifications for CWS NC's to  
20 perform the service of emergency operator?

21 A CWS NC was appointed emergency operator by Order  
22 issued October 1st, 2014 in Docket No. W-408,  
23 Sub 9 and is currently serving as emergency  
24 operator at the 3 Cross Street Development

1 Company Water Utility Systems in Ashe County.  
2 CWS NC is currently serving as the emergency  
3 operator by Order issued January 31, 1997 and  
4 September 4th, 1998 in Docket Nos. W-796, Sub 12  
5 for the Hardscrabble Plantation Wastewater  
6 Utility System in Durham County and the River  
7 Oaks Wastewater Utility System in Wake County.  
8 CWS NC has -- was also appointed emergency  
9 operator for the Riverbend Estates Water Utility  
10 System in Macon County for -- by Order issued  
11 May 16th, 2017 in Docket No. W-390, Sub 13, and  
12 served as emergency operator until the Commission  
13 approved the transfer of the Riverbend Estates  
14 Water System to CWS NC by Order issued May 16th,  
15 2019 in Docket No. 3 -- W-354, Sub 358.

16 Furthermore, by Order issued  
17 May 4th, 2021 in Docket No. W-1148, Sub 20, CWS  
18 NC was appointed as emergency operator of the  
19 Mountaineer Water and Wastewater Utility System  
20 in Yancey County and is currently serving as  
21 emergency operator.

22 Q What is your opinion as to CWS NC's  
23 qualifications to provide emergency operator  
24 services?

1 A The Public Staff believes that CWS NC is  
2 well-qualified to perform the duties of emergency  
3 operator.

4 Q What facilities does CWS NC own and operate in  
5 the coastal region?

6 A CWS NC owns and operates 10 wastewater treatment  
7 plants and collection systems in the coastal  
8 region, the closest being the Village of Nags  
9 Head which is approximately 40 miles away from  
10 the Kinnakeet Shores System.

11 Q How much do you think improvements will cost to  
12 get this system back into compliance?

13 A A significant amount. A professionally-managed  
14 utility would need to be on-site, operate the  
15 system, and triage all major components. The  
16 relief sought by DEQ is a good starting point.  
17 The hope is that the building and tankage could  
18 be rehabilitated, but a significant portion of  
19 the mechanical and electrical equipment will need  
20 to be replaced. Then there is what lies beneath.  
21 For example, there's likely solids in storage.  
22 Infiltration pond and irrigation system piping  
23 hasn't been used in over a decade.

24 Q What is your recommendation to the Commission

1           regarding the appointment of CWS NC to service  
2           the emergency operator for the OBKA system?

3       A     CWS NC should be appointed emergency operator  
4           today and effective as soon as reasonably  
5           feasible for CWS NC.

6       Q     To your knowledge, does OBKA have bond posted  
7           with the Commission?

8       A     Yes.

9       Q     Do you know how much, approximately?

10      A     Yes.   Approximately \$110,000.

11      Q     What is your understanding of the statutory  
12           provisions regarding bond and the appointment of  
13           emergency operator?

14      A     Just give me one second.  I want to refer to that  
15           section.  So G.S. § 62-110.3(d), "The appointment  
16           of an emergency operator either by the superior  
17           court in accordance with G.S. § 62-118(b) or by  
18           the Commission with the consent of the owner or  
19           operator, operates to forfeit the bond required  
20           by this section."

21                        So there are sort of two paths.  
22           It's G.S. § 62-116(b) where the Commission  
23           exercises its authority subject to consent from  
24           the Utility, which I think the memorandum filed

1 by Mr. Hollowell this morning is informative  
2 that -- he indicated that it was his intention to  
3 recommend that the Commission take that bond to  
4 be utilized to make improvements on the system.  
5 At that point, he was originally contemplating  
6 Currituck Water and Sewer Company. His mind is  
7 apparently changed in that memorandum, and he now  
8 contemplates a similar action potentially with  
9 CWS NC.

10 I think it needs to be clarified  
11 whether he has truly consented. But if so, that  
12 bond money should be immediately taken by the  
13 Commission and utilized to offset costs for  
14 necessary improvements to re-establish a system's  
15 environmental compliance.

16 Q Do you have any additional recommendations?

17 A I think that it is fully within the Commission's  
18 powers under G.S. § 62-310 to issue penalties to  
19 this system. They are noncompliant, not only  
20 with environmental regulations, which is required  
21 under the Commission's rules, but have also  
22 strayed in compliance with Commission's orders.  
23 They, again, are delinquent on its annual report  
24 for 2020, and I think the Commission should fully

1 exercise those powers to issue penalties.

2 MS. CULPEPPER: Mr. Junis is available for  
3 cross-examination and Commission questions.

4 CHAIR MITCHELL: All right. Thank you,  
5 Ms Culpepper. Mr. Finley.

6 CROSS-EXAMINATION BY MR. FINLEY:

7 Q Mr. Junis, thank you. The first request of the  
8 Home Owners Association, as was read earlier  
9 today by Ms. Weston, is that the Commission, as  
10 expeditiously as possible, require a  
11 comprehensive due diligence investigation into  
12 OBKA's suitability to own and operate the  
13 Wastewater Treatment and Collection System in  
14 compliance with the public interest.

15 Do you view the investigation that  
16 you have conducted recently, the pictures you  
17 have taken, and the coordination you've done with  
18 the operators, and the environmental regulators,  
19 to meet that requirement of comprehensive due  
20 diligent investigation?

21 A I believe that it is a proper due diligence  
22 inspection. It depends on your of definition  
23 comprehensive. I think it was significant and  
24 substantive, but to call it comprehensive,



1           there's always -- there's more work to be done  
2           here. There's significant concerns about  
3           ownership and control. There are other questions  
4           about their financial viability that could only  
5           worsen the situation. But I would say based on  
6           our findings, at this point, they are not  
7           suitable for ownership and operation of the  
8           system.

9    Q    And if the Commission were to order right away  
10       the appointment of an emergency operator, how  
11       soon could that emergency operator move onto the  
12       system and start taking over.

13   A    I can only speculate on that, but in prior  
14       discussions, I think within, you know, a week or  
15       two that that could be facilitated, possibly  
16       sooner, but that conversation needs to be had  
17       directly with Carolina Water.

18   Q    And when the Commission appoints an emergency  
19       operator in a situation such as this, assuming  
20       that the activities taken are reasonable and  
21       prudent, for the most part, the emergency  
22       operator is recompensed for whatever expenses and  
23       costs are in operating the system as an emergency  
24       operator?

1 A Yes, sir.

2 Q All right. Now, Mr. Junis, you mentioned twice  
3 Public Staff's investigation report in Docket No.  
4 1125, Sub 4, did you not?

5 A Yes, sir.

6 MR. FINLEY: May I approach?

7 CHAIR MITCHELL: Yes.

8 A I do have a copy.

9 Q Let me see if I've got it. Is this it?

10 A Yes, sir.

11 MR. FINLEY: I'd like to mark this for  
12 identification as Home Owners Association Junis  
13 Cross-Examination Exhibit Number 1. I have the only  
14 copy because I didn't realize I would get anything and  
15 have it introduced.

16 CHAIR MITCHELL: The document will be  
17 identified as HOA Junis Cross Exhibit 1.

18 (WHEREUPON, HOA Junis Cross  
19 Exhibit 1, is marked for  
20 identification.)

21 MR. FINLEY: And those are all the questions  
22 that I have for Mr. Junis, and I would move at the  
23 appropriate time that that exhibit be received into  
24 evidence.

1 CHAIR MITCHELL: Hearing no objection,  
2 motion is allowed.

3 (WHEREUPON, HOA Junis Cross  
4 Exhibit 1, is marked in  
5 evidence.)

6 CHAIR MITCHELL: Let me check in with my  
7 court reporter. We're doing okay. We'll keep going.  
8 Questions from Commissioners. Commissioner Duffley.

9 EXAMINATION BY COMMISSIONER DUFFLEY:

10 Q Good morning, Mr. Junis.

11 A Good morning.

12 Q I have one question about the storage  
13 infiltration pond in your testimony regarding  
14 that pond. And what I'd like to know is whether  
15 the Washington Regional Office of DEQ has  
16 notified the community that is using the pond,  
17 that may be connected with this pond, that has  
18 non-properly treated waste.

19 A So it's my understanding a conversation was had  
20 with the County Health Department. And some  
21 efforts in the past have been made to inform that  
22 community and to advise them not to use that, but  
23 I don't have an authoritative document on hand  
24 that can identify the timing and exactly how that

1 was communicated.

2 Q Okay. Thank you.

3 A But I would be happy to attempt to find the  
4 document and provide it as a late-filed exhibit.

5 Q That would be helpful. If you could reach out to  
6 Robert Tankard, Robert Bullock, and Sandra (sic)  
7 Toppen to see if there's been official  
8 notification to that community. Thank you.

9 CHAIR MITCHELL: Mr. Hughes.

10 EXAMINATION BY MR. HUGHES:

11 Q Just one really quick clarification. You had  
12 mentioned that you had seen a bucket, and I just  
13 want to ask if that was a bucket that was labeled  
14 chlorine tablets or had chlorine tablets in it?

15 A So Mr. Tankard noted the bucket of chlorine tabs.  
16 I don't believe that he -- I think it was lidded,  
17 so it was identified as chlorine tabs. I don't  
18 know if it had any in it. And like I said, we  
19 did not see any personally in that -- in the UV  
20 structure, the disinfection chamber.

21 Q Okay. You showed in your photos quite a bit of  
22 electric equipment: blowers, pumps, that appear  
23 to rely on a significant amount of energy if they  
24 were operated. Would it be indicative of the

1 operation of the facility in the past if one  
2 looked at the electric bill for this facility to  
3 see whether those equipment had operated?

4 A You would likely see a correlation between energy  
5 use and the functionality of the Plant,  
6 especially those blowers. You know, there's  
7 supposed to be actually ventilation fans in that  
8 building. There's three -- well, supposed to be  
9 three. One was completely gone and the other two  
10 were rusted to the point where they're completely  
11 nonfunctional. So, yes, you should see a  
12 correlation, especially then with all the pumps,  
13 the traveling bridge filter at the time when you  
14 had UV disinfection. All of those would be  
15 energy users and should correlate to their  
16 functionality.

17 Q Okay. It would be possible to at least infer  
18 whether the equipment was ever running.

19 A (Nods in the affirmative).

20 Q The last question about the question of adequate  
21 service, I think you had made a mention about  
22 sort of distinguishing between the service  
23 related to -- at a consumer's premises and then  
24 the entire chain. Would it be your opinion that

1           when a consumer pays -- you know, pays for  
2           wastewater service, that that service would  
3           include the treatment beyond just essentially  
4           simply flushing the toilet and having it go away?

5       A    Yes. I absolutely agree with that, and that's  
6           why I concluded that there is a real emergency.  
7           That despite, you know, service in the concept of  
8           most customers just being flushing a toilet,  
9           still existing, that full treatment and  
10          comprehensive service does not exist because  
11          those customers are customers of this Utility.  
12          That by not properly treating, has created  
13          significant liabilities and potential future  
14          costs that I'm sure they would have the intention  
15          of attempting to recover from customers, but we  
16          would absolutely oppose.

17       Q    Okay.

18                   COMMISSIONER HUGHES: No further questions.

19                   CHAIR MITCHELL: Mr. Junis, thank you for  
20           your testimony today.

21       EXAMINATION BY CHAIR MITCHELL:

22       Q    Is it the opinion of the Public Staff that  
23           there's an immediate and pressing need for the  
24           Commission to take action here?

1 A Absolutely.

2 Q Okay. You testified as to your personal  
3 experience in investigating and being involved  
4 with systems that were in emergency condition.  
5 Give us your sort of high-level impression of  
6 this system relative to other systems you've seen  
7 before or investigated before that have been in  
8 an emergency condition.

9 A So in direct comparison to a wastewater treatment  
10 plant, Webb Creek comes to mind, and I would say  
11 that this is as bad, if not worse, than Webb  
12 Creek. I know we had a brief moment of comedy  
13 when I suggested that I had Mr. Grantmyre walk  
14 ahead of me at Webb Creek because of the  
15 deterioration of the catwalk. There were  
16 comparable concerns here just from the safety of  
17 the inspectors to be on-site.

18 While the aluminum grading was in  
19 good condition, the structural steel below that,  
20 which actually holds it up, had deteriorated  
21 significantly. You definitely kind of wanted to  
22 watch where you were stepping just in case.  
23 Mr. Tankard actually had an experience where he  
24 fell through such walkway and fell into a plant,

1 so it is a health concern for the operators and  
2 inspectors, and, again, condition of the Plant.  
3 Multiple components are not functioning at all.

4 The Plant is not providing  
5 treatment to any significant degree. It's not  
6 compliant with its effluent standards. It's not  
7 compliant with its permit. Not only the  
8 Treatment Plant, but the Collection System too.  
9 So this draws parallels. And like I said, it --  
10 if I had to do like an item-by-item, it's  
11 probably worse than Webb Creek.

12 Q Okay. The Commission has a couple of late-filed  
13 exhibits it would like to request. First, a copy  
14 of the sewer moratorium documentation issued by  
15 DEQ, Division of Water Resources, late last year.  
16 Second, we want to see --

17 A So --

18 Q Go ahead.

19 A I hate to interrupt you, but that moratorium  
20 notification is Exhibit K to the Complaint and  
21 Motion for Injunctive Relief.

22 Q Perfect. So I'll retract that request then. As  
23 noted by Mr. Junis, it's already in the record.

24 A You ask and you will receive, Chair.



1 Q I like it. I like it. Mr. Junis, we're  
2 interested in the relevant permits for the  
3 treatment facility.

4 A So, again, Exhibit A is the Collection System  
5 permit, and Exhibit B is the Wastewater Treatment  
6 and Disposal System renewed permit. That's the  
7 most recent one, and I am happy to get you  
8 previous versions, if you so request.

9 Q We have -- there's been issue noted by the  
10 Commission Staff as to the permit numbers for the  
11 Treatment Plant, so let me flip to Exhibit B  
12 here. So Exhibit B is permit number 2284, and we  
13 have seen reference to permit number 23934. I'd  
14 ask Public Staff counsel to investigate permit  
15 number WQ0023934. If you-all can figure out what  
16 it is, would you please provide it as a  
17 late-filed exhibit.

18 One last request. And, again,  
19 this request may be covered by what's already in  
20 the record. Outstanding notices of violation  
21 issued to the Utility. I see a number of NOV's.

22 A There are more. There was another one issued. I  
23 guess that would have been Wednesday. So an NOV  
24 and civil penalty was issued on Wednesday

1           regarding their March 2nd inspection. And then  
2           you would likely expect eventually another NOV  
3           and possible civil penalty stemming from our  
4           inspection on Tuesday.

5   Q    Okay. To the extent that there are NOVs that  
6           have been issued, that remain unaddressed or open  
7           matters with the DWR, please provide those as  
8           late-filed exhibits, to the extent they're not  
9           attached to the document Public Staff introduced  
10          as evidence.

11   A    And you're referring to the HOA Exhibit 1?

12   Q    That's right. Yes. Thank you for that  
13          correction. To be clear, HOA Direct Exhibit 1,  
14          yeah. I'd like to make additional requests for  
15          late-filed exhibit. To the extent the Public  
16          Staff is able to audit the electric usage at the  
17          Wastewater Treatment Plant, we'd like to see  
18          analysis of that usage.

19   A    Any expectation of how far back to go?

20   Q    As far back as you can go.

21   A    Okay.

22   Q    I don't know what the electric utility will be  
23          able to provide. Just one last question for  
24          purposes of clarity of the record. Mr. Junis,

1           has the Public Staff had an opportunity to  
2           communicate directly with Mr. Hollowell or his  
3           attorney or his counsel, to the extent that he  
4           has one, about the appointment of CWS NC as  
5           emergency operator?

6       A     So previous conversations with Mr. Hollowell  
7           directly, and then to my knowledge, conversations  
8           between counsel had been that he was not  
9           supportive of appointment of emergency operator.  
10          Like I said, there seems to be a changing of  
11          opinion and facts here with the memorandum filed  
12          this morning that indicates otherwise, and that's  
13          the only piece in writing, to my knowledge.

14       Q     So is my understanding correct that the Public  
15           Staff was unaware that Mr. Hollowell was going to  
16           make that communication to the Commission, the  
17           communication that appeared in the docket this  
18           morning?

19       A     Absolutely unaware. I mean this has been a  
20           shifting sand leading up to this hearing of what  
21           was going to happen.

22       Q     Okay.

23                   CHAIR MITCHELL: Questions on Commission's  
24           questions?

1 MS. CULPEPPER: I don't have any questions.  
2 We do have a copy of DEQ's compliance inspection  
3 report for the site visit this week, if you would like  
4 that. I have copies or we can file it as a late-filed  
5 exhibit.

6 CHAIR MITCHELL: Do you have copies  
7 available right now?

8 MS. CULPEPPER: Yes. Sure.

9 CHAIR MITCHELL: If you could, why don't you  
10 go ahead and distribute those, please, ma'am.

11 (Handed)

12 CHAIR MITCHELL: Let's go ahead and mark  
13 this document.

14 MS. CULPEPPER: I guess I don't really know  
15 how you want it marked. I don't know if it's --

16 CHAIR MITCHELL: Let's mark it as -- well,  
17 let's just mark it as Junis Direct.

18 MS. CULPEPPER: Exhibit 2?

19 CHAIR MITCHELL: Yes. Junis Direct  
20 Exhibit 2. Any objection?

21 (No response)

22 CHAIR MITCHELL: Okay.

23 (WHEREUPON, Junis Direct Exhibit  
24 2, is marked for identification.)

1 MR. FINLEY: What is 1?

2 CHAIR MITCHELL: The PowerPoint.

3 BY CHAIR MITCHELL:

4 Q Mr. Junis, just looking at this document quickly,  
5 it's the compliance inspection report prepared.

6 A I'm happy to provide some context regarding this  
7 document.

8 Q Let me ask you a few questions just real quick  
9 for purposes of the record. So it's an  
10 inspection report dated July 19th, 2022 related  
11 to permit WQ0002284. Type of inspection was the  
12 compliance evaluation.

13 A Is that the question?

14 Q No, I don't have the question yet.

15 A Okay. Sorry.

16 Q Indicates primary inspector was Robert Tankard.  
17 Did you -- were you present with Mr. Tankard when  
18 he conducted this inspection?

19 A Yes, I was.

20 Q Okay. And so you observed the same conditions  
21 and the same situation at the Plant as  
22 Mr. Tankard?

23 A Yes. I participated in all the conversations  
24 amongst Mr. Tankard, Mr. Bullock, and Ms. Toppen,

1 along with David and Michelle Pharr. I was  
2 alongside them or right behind them at every  
3 stage of the inspection.

4 Q And I note on page 2 of 6, down at the bottom,  
5 second to last paragraph, "Wastewater's being  
6 pumped into the Wastewater Treatment Plant  
7 facility and there is no treatment from the  
8 Plant. Do you see that sentence?

9 A Yes.

10 Q Do you agree with that observation?

11 A Yes.

12 Q Do you also agree with the following  
13 observations: "Effluent will not meet permit  
14 limits"?

15 A Yes.

16 Q That "The irrigation infiltration pond is loaded  
17 with algae and possibly solids"?

18 A Yes.

19 Q And that "Not sure how long infiltration pond  
20 will work based on effluent going into pond"?

21 A Yes.

22 Q Okay.

23 A So just context there regarding the functionality  
24 of an infiltration pond, those solids will

1           basically clog or create a layer preventing the  
2           infiltration of that water into the ground, and  
3           so then you're going to see continued rising of  
4           that pond to the point of you either can't keep  
5           discharging into it or it could end up  
6           overflowing.

7   Q       Okay. Thank you, Mr. Junis.

8           CHAIR MITCHELL: Questions, additional  
9           questions for Mr. Junis?

10                               (No response)

11           CHAIR MITCHELL: Any questions on Commission  
12           questions?

13           MS. CULPEPPER: No questions.

14           CHAIR MITCHELL: With that, Mr. Junis, you  
15           may step down. We've moved Junis Direct 2 into  
16           evidence.

17           MS. CULPEPPER: I don't think we've moved 1  
18           or 2.

19           CHAIR MITCHELL: All right. I'll take a  
20           motion.

21           MS. CULPEPPER: I move that Public Staff  
22           Junis Direct Exhibits 1 & 2 be admitted into evidence.

23           CHAIR MITCHELL: Hearing no objection, the  
24           motion will be allowed.

1 (WHEREUPON, Junis Direct Exhibits  
2 1 & 2, are marked in evidence.)

3 CHAIR MITCHELL: We are -- given that  
4 Mr. Ain is not here, we will conclude. Before we  
5 adjourn though, and before I -- I'm not going to call  
6 for post-hearing filings at this point in time. Stay  
7 tuned for further order of the Commission. Thank you  
8 very much, everybody, for your participation today.  
9 We'll be adjourned. Let's go off the record, please.

10 (The proceedings were adjourned.)  
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## C E R T I F I C A T E

I, TONJA VINES, DO HEREBY CERTIFY that the proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.



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Tonja Vines