

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1040, SUB 10
DOCKET NO. W-1328, SUB 4

In the Matter of
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road, Suite 303,)
St. Louis, Missouri 63131, and Bear Den Acres)
Development, Inc., 600 Bear Den Mountain Road,)
Spruce Pine, North Carolina 28777, for Authority to)
Transfer the Bear Den Acres Development Water)
System and Public Utility Franchise in McDowell)
County, North Carolina, and for Approval of Rates)
)

**DIRECT TESTIMONY OF JOSIAH COX
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

WITNESS INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Josiah Cox. My business address is 1650 Des Peres Road, Suite 303, St.
3 Louis, Missouri, 63131.

4 **Q. WHAT IS YOUR POSITION WITH RED BIRD UTILITY OPERATING**
5 **COMPANY, LLC (“RED BIRD” OR “COMPANY”)?**

6
7 A. I am President of Red Bird Utility Operating Company, LLC (“Red Bird”). I also am
8 President of CSWR, LLC, (“CSWR”) a Red Bird affiliate. Later in my testimony I will
9 describe CSWR's relationship to Red Bird and discuss the role CSWR would play in Red
10 Bird's future operations if the Commission approves the Joint Application for transfer of
11 the Bear Den system to Red Bird.

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
13 **EXPERIENCE.**

1 A. I received a Bachelor of Science with a major in Environmental Science from the
2 University of Kansas. Professionally, I worked at the Kansas state biological survey, where
3 I performed a wildlife habitat study. I then worked at a civil engineering firm where I was
4 involved in various facets of the land development process, including permitting,
5 entitlement, civil design, project management, and construction management. I focused
6 mainly on the water and wastewater side of the civil engineering business and participated
7 in every part of that business from waste-load allocation studies (now known as the anti-
8 degradation processes), design, permitting, project management, and construction
9 management. I also ran the firm's environmental consulting division and was the second
10 private consultant to submit a water quality impact study in the State of Missouri in 2003.
11 I subsequently joined the engineering firm's executive leadership team and helped run all
12 the firm's operations.

13 Beginning in 2005, I raised money from a group of investors and formed a full-
14 service civil engineering, environmental consulting, general contracting, and construction
15 management firm. I served as the Chief Operating Officer, and finally Chief Executive
16 Officer. I obtained extensive experience with rural communities in every facet of the water
17 and wastewater compliance process, including environmental assessment, permitting,
18 design, construction, operation and community administration of the actual water and
19 wastewater (sewerage) systems. The firm performed stream sampling and built waste-load
20 allocation models to determine receiving water-body protective permit-able effluent
21 pollutant loads. We did full engineering design of multiple whole community wastewater
22 and water infrastructure systems including wells, water distribution, water treatment, water
23 storage, wastewater conveyance, and wastewater treatment plants, and then took those

1 designs through federal and state administered permitting processes in Missouri. The
2 engineering firm also administered the construction of these water and wastewater systems
3 from green field site selection all the way through system startup and final engineering
4 sign-off.

5 During this time, I began the Master of Business Administration (“MBA”) program
6 at Washington University in St. Louis, from which I graduated in 2007. In addition, starting
7 in 2008, I took over the operations of an existing rural sewer district, and I still operate a
8 system managing the functioning, testing, and maintenance of that system. I also act as the
9 administrator for this municipal system, performing all the billing, emergency response,
10 accounts payable/accounts receivable, collections, budgeting, customer service, and public
11 town meetings required to service the community.

12 In late 2010, after working on several small, failing water and wastewater systems,
13 I created a business plan to acquire and recapitalize failing systems as investor-owned
14 regulated water and wastewater utility companies. In early 2011, I went to the capital
15 markets to raise money to implement my plan. Over a period of approximately three years,
16 I met with over fifty-two infrastructure investment groups trying to raise the necessary
17 financing. By February 2014, I achieved my goal, and I used the debt and equity capital I
18 was able to raise to start CSWR.

19 In 2018, I was able to attract an additional large institutional private equity investor,
20 which allowed me to expand the scope of my business plan. This new investor is allowing
21 CSWR to form companies for the purpose of acquiring water and wastewater systems in
22 additional states. Since its formation, CSWR has acquired, and currently is operating
23 through various affiliates, 410 water or wastewater systems in Missouri, Kentucky,

1 Louisiana, Texas, Tennessee, Mississippi, Arizona, and Arkansas, and, up to this point,
2 one in North Carolina. In Missouri, those systems are regulated by the Missouri Public
3 Service Commission; in Kentucky they are regulated by the Kentucky Public Service
4 Commission; in Louisiana they are regulated by the Louisiana Public Service Commission;
5 in Texas they are regulated by the Public Utility Commission of Texas; in Mississippi they
6 are regulated by the Mississippi Public Service Commission; in Arizona they are regulated
7 by the Arizona Corporation Commission; and in Arkansas, the systems are outside the
8 Arkansas Public Service Commission's jurisdiction due to the fact each system falls below
9 annual revenue thresholds that trigger regulation in that state. Pursuant to the
10 Commission's issuance of a Certificate of Public Convenience and Necessity to Red Bird
11 for the Ocean Terrace and Pine Knoll Townes properties in Pine Knoll Shores, in December
12 2021 Red Bird acquired its first system in North Carolina.

13 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS CASE?**

14 A. The purpose of my testimony is to support the Application for Transfer of Public Utility
15 Franchise and for Approval of Rates filed in these dockets ("Joint Application"), which
16 seeks Commission authority for Red Bird to acquire all utility assets currently used by Bear
17 Den Acres Development, Inc. ("Bear Den") and to provide water utility service to
18 customers in the Bear Den development. My testimony describes the proposed transaction
19 and explains why both Red Bird and Bear Den believe authorizing consummation of the
20 transaction is in the public interest. I also describe Red Bird's relationship to CSWR, the
21 role CSWR would play in Red Bird's operation of the water system at issue in this case,
22 and the benefits Red Bird's relationship with CSWR would bring to customers served by
23 the Bear Den system.

BACKGROUND INFORMATION REGARDING
RED BIRD AND ITS AFFILIATES

1 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ABOUT RED**
2 **BIRD AND CSWR.**

3 A. Red Bird is a limited liability company formed to acquire water and wastewater assets
4 in North Carolina and to operate those assets as a regulated public utility. In Docket No.
5 W-1328, Sub 7, the Commission authorized Red Bird to acquire and operate the four
6 wastewater systems previously owned by the Homeowners Associations, respectively, of
7 Ocean Terrace, Pine Knoll Townes I, II and II, all of which are located in Pine Knoll
8 Shores, North Carolina. In addition to the Joint Application in this docket, Red Bird
9 currently has Applications for Transfer of Public Utility Franchise and for Approval of
10 Rates pending before the Commission in twelve other dockets. As is the case with the Bear
11 Den system, many of the systems which Red Bird seeks to acquire here are distressed or
12 troubled systems. If the Commission grants the Joint Application in this docket, Red Bird
13 will acquire, own, and operate the water system currently owned by Bear Den.

14 Red Bird is an affiliate of CSWR, a Missouri limited liability company formed to
15 provide managerial, technical, and financial support to its utility operating affiliates. A
16 corporate organization chart illustrating that relationship was filed as Attachment K to the
17 Joint Application.

18 To date, CSWR-affiliated utility operating companies have acquired and are
19 operating water and/or wastewater systems in Missouri, Kentucky, Louisiana, Texas,
20 Tennessee, Mississippi, Arizona, and Arkansas, as well as the Ocean Terrace/Pine Knoll
21 Townes systems in North Carolina. In addition to Red Bird's other Applications pending

1 before the Commission, CSWR affiliates have applications pending in Mississippi,
2 Kentucky, Florida, Louisiana, Tennessee. and Texas to acquire more such systems.

3 **Q. WHAT IS CSWR'S BUSINESS PLAN WITH REGARD TO THE**
4 **ACQUISITION AND OPERATION OF SMALL AND DISTRESSED WATER AND**
5 **WASTEWATER SYSTEMS?**

6 A. CSWR's business plan is to pursue the purchase and recapitalization of small water and
7 wastewater systems and to operate those systems as investor-owned regulated utilities.
8 Many of the systems CSWR hopes to acquire are not currently regulated. Of those that are
9 regulated, many, if not most, are out of compliance with utility commission rules and with
10 federal and/or state pollution, environmental and/or safety laws and regulations. Indeed,
11 many systems we acquire do not even have federal or state permits required to lawfully
12 operate. We also have found that many regulated systems we acquire have not increased
13 their rates for a decade or more and, as a result, lack the financial resources necessary to
14 cover normal operating costs and/or to maintain and replace assets used to provide service
15 or bring their operations into compliance with rapidly changing environmental and water
16 quality regulations. Some systems we acquire are in receivership and, therefore, lack the
17 ability to raise capital necessary to improve their systems. CSWR's business plan has been
18 and continues to be making investments in and taking the risks necessary to bring small
19 water and wastewater systems into compliance with current statutes, rules, and regulations,
20 CSWR, through its affiliates, has been able to acquire distressed systems, invest capital
21 necessary to upgrade or repair physical facilities, and operate those systems in a way that
22 satisfies customers, regulators, and investors alike.

23 CSWR's business plan and the expertise its personnel provide to affiliates have
24 convinced regulators in Missouri, Kentucky, Louisiana, Texas, Tennessee, Mississippi,

1 and Arizona to allow those affiliates to acquire and operate numerous small water and
2 wastewater systems in those states. The North Carolina Commission has authorized our
3 Red Bird affiliate to acquire and serve four small systems in this state, and we are hopeful
4 we will be authorized to acquire additional systems here in the future. If the Commission
5 authorizes Red Bird to acquire Bear Den's water utility system, it will become part of the
6 portfolio of systems the Company seeks to build in North Carolina. We hope the
7 Commission will give Red Bird the same opportunity it did in the Ocean Terrace/Pine
8 Knoll Townes docket so we can continue our efforts to replicate in North Carolina the
9 record of success our affiliate group has achieved elsewhere.

10 **Q. PLEASE DESCRIBE YOUR AFFILIATES' EXPERIENCE WITH WATER**
11 **AND WASTEWATER SYSTEMS.**

12 A. Red Bird has the financial, technical, and managerial ability to acquire, own, and
13 operate Bear Den's water system in a manner that fully complies with applicable health,
14 safety, and environmental protection laws and regulations, and to provide reliable, safe,
15 and adequate service to customers. Red Bird is part of an affiliate group that currently owns
16 and operates wastewater systems serving approximately 94,000 customers and drinking
17 water systems serving approximately 59,000 customers in Missouri, Arkansas, Kentucky,
18 Louisiana, Texas, Tennessee, Mississippi, and Arizona.

19 On the wastewater side of the business, the CSWR affiliate group has purchased
20 wastewater treatment plants with associated pressure systems and sewer pumping stations,
21 gravity force mains, and gravity conveyance lines. With the approval of state wastewater
22 regulatory authorities, since March 2015, CSWR-affiliated companies have designed,
23 permitted, and completed construction of numerous sanitary sewer system improvements.
24 These improvements include wastewater line repairs to eliminate infiltration and inflow,

1 building numerous sewer main extensions, building and/or repairing hundreds of lift
2 stations, the closure of a number of existing regulatory impaired wastewater systems,
3 building new or refurbishing over 150 activated sludge plants, constructing dozens of
4 moving bed bio-reactor (“MBBR”) plants, converting multiple failing wastewater systems
5 into sludge storage/flow equalization and treatment basins, converting failed mechanical
6 systems to I-Fast systems, and constructing various other wastewater treatment supporting
7 improvements.

8 On the water side of the business, since March 2015 the CSWR affiliate group has
9 designed, permitted, and completed construction – with the approval of state regulatory
10 authorities – upgrades and improvements to numerous drinking water systems. Those
11 upgrades and improvements include construction of a large number of ground water
12 storage tanks and drinking water pressurization pump assemblies, drilling water wells,
13 erecting or rehabilitating well houses, closing failed wells, blasting/coating water storage
14 tanks, replacing meter pits with new meters, replacing or repairing numerous water
15 distribution lines, installing numerous isolation valve systems, installing a large number of
16 flush hydrants, repairing hundreds of leaking lines, and constructing or rehabilitating
17 various other improvements to existing drinking water systems.

18 **Q. DOES CSWR HAVE PERSONNEL QUALIFIED TO PERFORM THE**
19 **SERVICES YOU IDENTIFIED IN YOUR PRECEDING ANSWER?**

20 A. Yes, it does, as evidenced by the fact CSWR already is providing those and other similar
21 services for water and wastewater systems in Missouri, Arkansas, Kentucky, Louisiana,
22 Texas, Tennessee, Mississippi, and Arizona as well as for the Ocean Terrace/Pine Knoll
23 Townes systems in North Carolina. I already described my background and experience in
24 the water and wastewater utility industry. As shown by Attachment B to the Joint

1 Application, the other key members of CSWR's senior team who would be involved in Red
2 Bird's operations are well-qualified to meet the demands and needs of Red Bird and its
3 customers and of this Commission and other regulators charged with overseeing Red Bird's
4 operations. CSWR will provide Red Bird the same level of experience and expertise CSWR
5 currently provides to its affiliated systems located within and outside North Carolina. The
6 types and quality of services CSWR provides Red Bird are not usually available to small
7 systems such as the Bear Den system involved here. CSWR's business model was
8 developed to provide support, expertise and experience to affiliates and to do so while
9 achieving economies of scale attributable to CSWR's centralized management structure.
10 Not only would CSWR and Red Bird provide current Bear Den customers expertise not
11 generally available to small water systems, but it can realize economies of scale that would
12 not be possible if Red Bird had to acquire or provide such expertise and support on a
13 company or system-specific basis.

14 **Q. PLEASE DESCRIBE THE ECONOMIES OF SCALE YOU JUST**
15 **MENTIONED AND HOW THOSE WOULD BENEFIT CUSTOMERS**
16 **CURRENTLY SERVED BY BEAR DEN.**

17 A. CSWR's size and its consolidation of many small systems under one financing and
18 managerial entity will result in cost efficiencies in the operation of Bear Den's water
19 system, particularly in the areas of:

- 20 • Commission and environmental regulatory reporting;
- 21 • Managerial and operational oversight;
- 22 • Utility asset planning;
- 23 • Engineering planning;
- 24 • Ongoing utility maintenance;

- 1 • Utility record keeping;
- 2 • Customer service responsiveness; and
- 3 • Improved access to capital necessary to repair and upgrade the Bear Den system as
- 4 necessary to ensure compliance with all health and environmental requirements and
- 5 ensure service to customers remains safe and reliable.

6 CSWR/Red Bird believes these customers will benefit from economies of scale and other
7 advantages available from CSWR. While this does not necessarily reflect cost savings
8 compared to Bear Den's current operations expenses, the advantages of this acquisition are
9 reflected in CSWR's resources pertaining to customer service, an advanced computerized
10 maintenance management system, and personnel with years of experience across over 400
11 plants in nine states, making CSWR one of the single largest operators of small water and
12 sewer systems in the United States. After owning and operating the Bear Den system for
13 an initial period of time, Red Bird will be able to accurately assess needs and costs to more
14 accurately reflect the actual operating needs and characteristics of this system.

15 **Q. HAS YOUR GROUP OF AFFILIATED COMPANIES TAKEN STEPS TO**
16 **IMPROVE SERVICES AT THE SYSTEMS IT NOW OPERATES?**

17 A. Yes. In addition to the capital improvements made on systems our affiliate group has
18 acquired, we have built from scratch and implemented customer service systems that meet
19 or exceed regulatory commission rules and provide numerous benefits to the customers.

20 If the Joint Application is approved, Red Bird would implement operational
21 changes to improve and enhance service to Bear Den's current customers. For example,
22 those customers would have access to a 24-hour phone line to report any utility service
23 issues. Those calls initially would be answered by emergency service personnel who are
24 required to respond to emergency service calls within prescribed time limits. Those calls

1 would then be transferred into the computerized maintenance management system and
2 converted into work orders, which create a historical record of all reported service issues.
3 The work order also will ensure contracted customer service personnel can commence
4 work required to deal quickly and efficiently with any customer service issues. In addition,
5 Red Bird would ensure customers have access to customer service representatives during
6 normal business hours to talk about any customer concerns, and would establish a utility-
7 specific webpage and dedicated email address to keep customers informed about their
8 utility service. These types of customer service and operational resources generally are not
9 available to customers served by small utilities like Bear Den.

10 Information available on Red Bird's website, which is updated regularly, would
11 include dissemination of state-mandated information, up-to-date website bulletins about
12 service issues, and procedures for service initiation or discontinuance. Mirroring relevant
13 utility homepage information, Red Bird would provide a dedicated social media page to
14 offer another avenue of communication with customers about utility matters. The social
15 media account is manned by customer service representatives that can answer customer
16 questions. These resources also would provide customers with bulletins on current service
17 status and educational information relevant to their utility service. Finally, Red Bird's
18 platforms offer online bill paying options to customers, including e-checks, debit card, and
19 credit cards.

20 Because of the resources I just described, Red Bird believes the overall quality of
21 customer service will improve if Red Bird is authorized to acquire Bear Den's utility assets.

22 **Q. WHAT OTHER OPERATIONAL BENEFITS WOULD RED BIRD BRING TO**
23 **THE BEAR DEN SYSTEM AND CUSTOMERS?**

1 A. CSWR uses the Computerized Maintenance Management System (“CMMS”) program
2 called Utility Cloud to facilitate field work, inspections, maintenance schedules, and
3 reporting for all facilities. This allows CSWR to manage data, work, and compliance across
4 plant and distributed field assets. Utility Cloud has been implemented in other jurisdictions
5 to assist in avoiding compliance and equipment failures with real-time data monitoring
6 across people, machines, and sensors throughout all our service areas.

7 The main benefit Utility Cloud offers is that the system is a highly configurable,
8 easy-to-use asset management tool that helps all parties distribute work, report on
9 maintenance, and streamline compliance reports. With the system being highly
10 configurable, Red Bird can build out systems efficiently and begin tracking maintenance
11 and improvements on day one of ownership. Most operators of this system require only a
12 short training session to be able to navigate, create and assign work, and complete Work
13 Orders. The ability to get Red Bird’s contract operators trained on this system so quickly
14 speaks volumes as to how easy the system is to operate.

15 Features of Utility Cloud that CSWR would implement, and that have been
16 beneficial to the operations of its utility affiliates and have streamlined time-consuming
17 processes include:

- 18 • Automating the completion and submission of compliance reports using the exact
19 field data crews collect;
- 20 • Using custom accounts, security roles, and user rights to maintain the separation
21 between projects and managing multiple contractors while storing all CSWR’s data
22 in one database;

- 1 • Managing and tracking maintenance history on all assets to assist in identifying
- 2 potential capital improvement projects;
- 3 • Creating custom alerts to trigger as issues arise;
- 4 • Leveraging digital standard operating procedures, manuals, and layouts helping to
- 5 standardize complex work and meet regulatory and OSHA requirements;
- 6 • Creating powerful workflows and reports for our compliance objectives;
- 7 • Integrating with the survey database to create a useable asset for field work
- 8 tracking; and
- 9 • Using real-time data and leveraging analytical tools to trend plant performance.

10 Utility Cloud is pivotal in the operation and maintenance of our utility facilities.

11 The ability to create custom workflows gives us the ability to collect asset and task-specific
12 data quickly and efficiently. Using this system allows CSWR’s utility affiliates to quickly
13 implement new processes that apply to all our sites across the country with the click of a
14 button. This is the type of configuration scalability that CSWR requires and Utility Cloud
15 delivers on behalf of our utility affiliates and their customers.

16 **Q. WHAT EVIDENCE CAN YOU PROVIDE TO SUPPORT YOUR CLAIMS**
17 **ABOUT THE ABILITY OF RED BIRD’S AFFILIATES TO PROVIDE THESE**
18 **SERVICES OUTSIDE NORTH CAROLINA?**

19 A. In Missouri, where CSWR-affiliated companies have operated since 2014, the Missouri
20 Public Service Commission and the Missouri Department of Natural Resources have
21 recognized the solid track records of CSWR and its affiliates for acquiring, rehabilitating,
22 maintaining, and operating troubled water and wastewater systems in that state. In its order
23 approving a previous acquisition, the Missouri Commission noted CSWR’s Missouri
24 affiliate’s “sound track record in rehabilitating similarly situated [i.e. troubled] systems”

1 and its “ability to acquire, maintain, and operate the systems . . . to ensure safe and adequate
2 service.”¹ Indeed, for each of the acquisitions made in a state where a CSWR-affiliated
3 utility operating company has been approved to acquire a water or wastewater system,
4 regulators have found that a member of the CSWR affiliate group has the financial,
5 technical, and managerial ability necessary to provide, own and operate water and
6 wastewater facilities in a manner that ensures compliance with applicable health and
7 environmental regulations and reasonable service to the public.

8 As further evidence of our affiliates’ capabilities, regulators in Missouri, Texas, and
9 Louisiana have asked CSWR and its utility affiliates to assume emergency operational
10 responsibilities for distressed water and wastewater systems in those states. For example,
11 in Texas CSWR acts as an emergency manager trusted by the Texas Commission to take
12 over some of the state’s most troubled utilities. In Louisiana CSWR was named as the first
13 emergency manager for a water system by the Louisiana Department of Health, in addition
14 to taking more than a hundred systems over pursuant to a Louisiana Department of
15 Environmental Quality agreed order addressing ongoing serious environmental compliance
16 issues. In Arkansas and Kentucky CSWR has been specifically requested to take over a
17 number of distressed utilities by those states’ respective environmental regulators. In
18 Arizona the Arizona Corporation Commission recently authorized a CSWR affiliate to
19 acquire distressed utilities and also approved incentives (including the opportunity to
20 recover all or a significant portion of the difference between purchase price and net book
21 value of acquired assets) for those acquisitions.

¹ *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, Missouri Public Service Commission File No. WM-2018-0116 (February 4, 2019), at p. 6.

1 **Q. DO RED BIRD AND CSWR HAVE THE FINANCIAL CAPACITY TO**
2 **ACQUIRE, OWN, AND OPERATE THE SYSTEMS YOU PROPOSE TO**
3 **PURCHASE FROM BEAR DEN DEVELOPMENT?**

4 A. Yes, Red Bird and CSWR have the financial capacity to finance, own, and operate the
5 system we propose to acquire from Bear Den. The affiliated group of which Red Bird is a
6 member has been able to secure an ongoing commitment from Sciens Capital Management,
7 a Wall Street private equity firm, to provide capital necessary to purchase small, often
8 distressed, water and wastewater systems and then make investments necessary to bring
9 those systems into compliance with applicable health, safety, and environmental protection
10 laws and regulations. This investment commitment also includes working capital necessary
11 to operate until applications for compensatory rates can be prepared and prosecuted. To
12 date, CSWR, through its affiliates, has invested more than \$251 million to purchase,
13 upgrade, and operate water and wastewater systems. Although those investments have been
14 almost exclusively in the form of equity, at the appropriate time Red Bird plans to pursue
15 debt financing from non-affiliated commercial sources that would allow the company to
16 balance its capital structure. Ultimately, Red Bird's objective is a capital structure
17 consisting of 50% equity and 50% debt.

18 **Q. IF THE AUTHORIZATIONS REQUESTED IN THE JOINT APPLICATION**
19 **ARE GRANTED, WOULD RED BIRD HIRE CURRENT EMPLOYEES TO**
20 **PROVIDE SERVICE IN THE AREAS SERVED BY CARTWRIGHT CREEK?**

21 A. No, Red Bird does not plan to hire Bear Den's current employees to perform any
22 services after closing.

23 **Q. AFTER CLOSING, HOW DOES RED BIRD PROPOSE TO PROVIDE**
24 **SERVICE TO CUSTOMERS OF THOSE SYSTEMS?**

25 A. If the Joint Application is approved, Red Bird intends to hire a local, non-affiliated
26 third-party Operations and Maintenance ("O&M") firm that has knowledgeable and

1 experienced personnel, carries required state licenses, and has insurance coverage
2 necessary to manage daily water operations at the Bear Den system. These contracts are
3 competitively bid to ensure that the O&M services Red Bird requires are obtained at a
4 reasonable price. This is what Red Bird has done for the Ocean Terrace/Pine Knoll Townes
5 wastewater systems. It also is the approach that Red Bird's affiliated utility operating
6 companies have successfully employed in every state where CSWR affiliates operate water
7 and/or wastewater systems.

8 In addition to its service obligations during normal business hours, the O&M firm
9 would be required to have a 24-hour emergency service line to deal with customers
10 experiencing service disruptions. However, notice of all service disruption calls would be
11 forwarded to me, as CSWR's manager and the executive ultimately responsible for service
12 in the areas served by each of CSWR's utility affiliates. CSWR uses the Utility Cloud
13 centralized computerized maintenance management system ("CCMS") to monitor the
14 performance of our drinking water and wastewater systems, which also allows us to track
15 ongoing maintenance and testing work performed by the O&M contractors we employ at
16 each of our facilities. In addition, CSWR uses geographic information system ("GIS")
17 survey information to accurately map all infrastructure assets, which allows the Company
18 to specifically target ongoing infrastructure re-investment as part of the overall managerial
19 and technical support CSWR provides each of its utility operating affiliates.

20 Red Bird also would use a non-affiliated third-party billing and customer service
21 firm to send out bills and handle service-related billing questions. The billing firm, which
22 is used by all CSWR's utility affiliates, has in place an online billing system to receive
23 credit card and e-checks from customers. The billing firm also would establish a Red Bird-

1 specific customer service email account to field ongoing customer interactions. Customer
2 service representatives employed by the billing firm would be available during normal
3 business hours, would take messages twenty-four hours a day, and all customer
4 correspondence would be recorded and logged to consumers' accounts to ensure the highest
5 level of service.

6 While day-to-day operational, billing, and customer service functions would be
7 provided by non-employee contractors, all management, financial reporting, underground
8 utility safety and location services, Commission regulatory reporting, environmental
9 regulatory reporting and management, operations oversight, utility asset planning,
10 engineering planning, ongoing utility maintenance planning, utility record keeping, and
11 final customer dispute management would be performed by personnel at CSWR's corporate
12 office, with a proportional share of costs for those services passed down to Red Bird.
13 CSWR personnel also would monitor the activities of the non-employee contractors to
14 make sure the systems are being operated and maintained properly and customers' needs
15 are being met. The resumes of senior CSWR personnel who, in addition to me, would be
16 responsible for providing services or oversight to Red Bird's operation, are Attachment B
17 to the Joint Application.

18 **Q. AFTER CLOSING, WHAT INVESTMENT DOES RED BIRD PLAN TO MAKE**
19 **TO ADDRESS ISSUES IN THE BEAR DEN SYSTEM?**

20 A. As is our normal practice, following execution of the purchase agreement and as part
21 of our due diligence efforts, we engage a third-party engineering firm to perform a
22 preliminary survey and analysis of the water and/or wastewater system we propose to
23 acquire. For Bear Den, we engaged McGill Associates, an engineering firm headquartered
24 in Asheville, North Carolina. Based on McGill's survey, we initially estimated capital

1 investment totaling approximately of \$90,500 could be necessary to address any existing
2 acute issues with the Bear Den system, which investment was generally expected to relate
3 to addressing significant water losses and water line and meter replacements.

4 Both the survey and capital estimate were *preliminary* because information on
5 which they were based was incomplete and largely second-hand. As McGill stated in its
6 engineering report, which is Attachment L to the Joint Application, its survey was based
7 on data provided by the seller, available public records, and a field survey of visible, above-
8 ground assets. However, the field survey did not include detailed investigation of system
9 components, any system testing procedures, or an inspection or assessment of pipelines,
10 valves, or other below-ground facilities.

11 Over time more information became available to us and based on that additional
12 information our projections as to capital expenditure estimates changed. That's especially
13 true in a case like this one where the Joint Application was filed well over a year ago. Our
14 experience outside North Carolina has shown that the longer the interval between when a
15 sale contract is signed (and the initial engineering due diligence is completed), and final
16 approval of an acquisition application the more preliminary capital estimates change. And
17 our experience with Bear Den proves that point, because our capital estimate changed from
18 the initial estimate of approximately \$90,500, to approximately \$72,500, and ultimately to
19 our most recent estimate of approximately \$16,000. That significant decline is almost
20 entirely attributable to two factors. First, the seller informed us that substantial repairs had
21 been made to Bear Den's underground distribution system, thereby obviating
22 approximately \$46,000 in underground water line replacement. Second, we decided to

1 defer replacement of water meters, which reduced our preliminary capital estimates by
2 another \$33,000.

3 Regarding the information I just discussed, I want to emphasize – and the
4 Commission should keep clearly in mind – all capital estimates prepared thus far are still
5 preliminary. If our affiliate group’s ownership and operation of more than 400 water and
6 wastewater systems in eight other states has taught us anything, it’s that we can never be
7 sure exactly what capital investment will be required for repairs and upgrades until we have
8 a chance to actually operate the systems we acquire. Only then can we truly determine the
9 nature and full extent of the problems those systems face and the most cost-effective ways
10 to address and remedy those problems. I’m certain we will find that true for Bear Den as
11 well. Whatever problems ultimately are determined to exist and require remediation –
12 problems that equally confront and affect the current owner selling the Bear Den system,
13 Red Bird, or any other party seeking to acquire that system – Red Bird will fix those
14 problems in the most cost-effective way possible. Our track record outside North Carolina
15 is clear – CSWR does not invest capital it’s not required to invest, and it doesn’t “gold
16 plate” the systems it owns and operates. We invest the capital needed to provide safe,
17 reliable, and environmentally compliant water and sewerage service. And that’s the same
18 attitude and track record we will bring to this state as well.

DESCRIPTION OF THE PROPOSED TRANSACTION

19 **Q. PLEASE DESCRIBE THE WATER SYSTEM RED BIRD PROPOSES TO**
20 **ACQUIRE FROM BEAR DEN.**

21 A. Red Bird proposes to acquire the water system owned by Bear Den, which is located in
22 McDowell County. The Bear Den system currently serves approximately 55 customers.

1 Terms of the proposed asset purchase are governed by the *Agreement for the Sale*
2 *of Utility System* ("Agreement"), between Bear Den and CSWR. A copy of that Agreement
3 was filed as Confidential Attachment G to the Joint Application.

4 No closing date for the transaction has been set, but the Agreement identifies
5 various conditions precedent, including obtaining all required regulatory approvals, which
6 must be satisfied before the transaction can close. Section 18 of the Agreement also
7 authorizes CSWR to assign all its rights to the acquired assets to an affiliated entity. In
8 accordance with that section, CSWR assigned its rights under that Agreement to Red Bird.
9 A copy of the document assigning CSWR's interests in the Bear Den utility assets to Red
10 Bird was filed as Attachment G-1 to the Joint Application.

11 **Q. IF THE COMMISSION APPROVES THE JOINT APPLICATION, IS RED**
12 **BIRD WILLING AND ABLE TO MAKE ANY IMPROVEMENTS NECESSARY**
13 **TO BRING BEAR DEN'S WATER SYSTEM UP TO STANDARD AND INTO**
14 **COMPLIANCE WITH APPLICABLE REGULATIONS?**

15 A. Yes. If the Commission grants Red Bird the approval sought in the Joint Application,
16 Red Bird and CSWR are willing and able to invest capital necessary to bring the Bear Den
17 water system up to standard and into compliance with applicable regulatory and legal
18 requirements. As I described previously, the affiliate group of which Red Bird and CSWR
19 are part has access to capital adequate to make necessary upgrades and improvements to
20 the Bear Den system and to continue to operate that system in a manner that is in the public
21 interest and complies with applicable statutes, rules, and regulations.

22 **Q. WHAT RATES, RULES, AND REGULATIONS WOULD BE IN EFFECT FOR**
23 **THE BEAR DEN SYSTEM AT ISSUE IN THIS CASE?**

24 A. Initially, Red Bird proposes to adopt the tariffs, rules, and rates currently in effect for
25 the Bear Den system. However, if the revenue requirement for that system increases in the
26 future - as almost certainly will be the case given that Bear Den's last rate case was filed

1 in 1995 and additional capital investment will be needed for system upgrades and
2 improvements - Red Bird will petition the Commission to increase rates. Red Bird may
3 also seek authority to consolidate rates of the system it proposes to acquire in these dockets
4 with those of other water and wastewater systems it hopes to acquire and operate in North
5 Carolina.

6 **Q. WHAT IS YOUR UNDERSTANDING REGARDING DETERMINATIONS**
7 **THE COMMISSION TYPICALLY MAKES IN A TRANSFER DOCKET LIKE**
8 **THIS, BEYOND THE ISSUE OF WHETHER RED BIRD HAS THE FINANCIAL,**
9 **TECHNICAL, AND MANAGERIAL ABILITY NECESSARY TO BE ALLOWED**
10 **TO ACQUIRE, OWN AND OPERATE THE BEAR DEN WATER SYSTEM?**

11 A. I was surprised to learn that the practice here, when the purchasing utility will adopt
12 the purchased utility's rates, terms and conditions for service, as Red Bird will do with the
13 Bear Den system, is that the Commission typically goes beyond that threshold issue of
14 competence and establishes rate base in the acquired assets, as well as the purchaser's due
15 diligence costs associated with the acquisition. Based on our experience in other
16 jurisdictions, and since the approval of this proposed transfer is not a rate making
17 proceeding, I would have expected those issues to be deferred to the Company's initial
18 post-acquisition rate case. That type of deferral is, in effect, what the Commission did
19 when it deferred issues as to Red Bird's interim operating costs in the Ocean Terrace / Pine
20 Knoll Townes docket (W-1328, Sub 7), and would seem to be an appropriate approach in
21 a transfer proceeding such as this one.

22 **Q. WHAT IS THE RATE BASE IN THE UTILITY ASSETS BEING ACQUIRED**
23 **FROM BEAR DEN?**

24 A. Per Bear Den's 2020 Annual Report, which is the most recent annual report filed by
25 Bear Den, the residual rate base in the utility system assets being acquired by Red Bird was
26 \$4,249 at that time. We understand that this figure does not include the value of the land

1 and easements where utility system assets are located. As noted earlier, the seller informed
2 us that substantial repairs have now been made to Bear Den's underground water
3 distribution system, and we do not believe this figure reflects any of that investment. It has
4 been our experience that small utilities' historical record keeping as to investments and
5 expenses is typically poor, and Red Bird will audit the physical infrastructure and any
6 addition records it receives after closing.

7 **Q. WHAT COSTS HAS RED BIRD INCURRED IN CONDUCTING ITS DUE**
8 **DILIGENCE INQUIRY AND INVESTIGATION RELATING TO THE BEAR DEN**
9 **SYSTEM?**

10 A. We won't know the total due diligence and transactional costs associated with this (or
11 any other) acquisition until the purchase actually closes. Our experience is that smaller
12 systems often require more due diligence work than larger better managed systems, as the
13 document management, record keeping and regulatory compliance tendencies associated
14 with smaller systems tends to be poor and often incomplete, requiring additional efforts in
15 order to accurately determine what exists in the ground and in areas that sometimes have
16 not been maintained for decades.

17 The due diligence activities undertaken by Red Bird in connection with the
18 acquisition of the Bear Den system included surveying work, legal title work, preliminary
19 civil engineering work, environmental compliance site surveys, and accounting due-
20 diligence. As shown on Exhibit Cox 1, as of the date of my testimony Red Bird has
21 incurred costs totaling \$50,543 for due diligence, transactional and regulatory work related
22 to acquisition of the Bear Den system. As shown by that exhibit, we estimate that these
23 costs will total approximately \$70,000.

24 **Q. WHAT IS THE ROLE OF DUE DILIGENCE INVESTIGATIONS IN**
25 **CONNECTION WITH EVALUATION OF POTENTIAL ACQUISITIONS?**

1 A. Due diligence efforts provide insight to a potential purchaser as to the condition of a
2 utility system and the problems and issues that must be addressed. As noted above, the full
3 scope and scale of those problems cannot be truly known until we have acquired and begun
4 to operate a system. Due diligence is not a process that is limited to utility acquisitions.
5 Any business considering a significant acquisition routinely conducts due diligence to
6 determine the condition of the assets it proposes to acquire, to confirm that clear title to
7 those assets can be acquired, and to estimate the nature and extent of required future capital
8 investments.

9 The Commission should encourage due diligence in reviewing utility possible
10 acquisitions with the knowledge that not every system that is reviewed will be acquired.
11 This is especially the case with regard to troubled and distressed systems, where investment
12 is required in order to address problems and bring systems into compliance. Without due
13 diligence it would be impossible for Red Bird to acquire a system and ensure that from day
14 one it is able to operate the system in a manner that ensures customers receive safe and
15 reliable utility service provision. Without the basic knowledge our due diligence activities
16 provide about the systems we acquire, achieving the objective I just mentioned would be
17 extremely difficult if not impossible. CSWR prudently investigates acquisition
18 opportunities that present themselves and this analysis necessarily involves the expenditure
19 of time by properly trained employees and the use of consulting engineers, lawyers,
20 accountants, and other experts. There are some potential acquisitions which, after proper
21 due diligence, are shown to be not in the best interests of CSWR or its operating
22 subsidiary's ratepayers. However, these are legitimate business expenses and this type
23 "opportunity cost" should be shared with the ratepayers, just as the benefits are shared.

1 These efforts are necessary in order to make prudent acquisition decisions and are a
2 reasonable and necessary part of this process and therefore should be recoverable. It
3 reasonable and appropriate that the Company's due diligence costs associated with
4 investigating the Bear Den system and transactional costs incurred to this point, as shown
5 in Exhibit Cox 1, be included in rate base, subject to being recovered in the Company's
6 first general rate case.

7 **Q. THE PROCEDURAL ORDER ISSUED IN THIS CASE ESTIMATED A**
8 **MONTHLY RATE IMPACT OF \$32.56 PER CUSTOMER THAT WAS**
9 **ATTRIBUTABLE TO THE PURCHASE PRICE RED BIRD WOULD PAY FOR**
10 **THE BEAR DEN ASSETS, THE DUE DILIGENCE COSTS IT WOULD INCUR,**
11 **AND THE CAPITAL IMPROVEMENTS IT BELIEVES WOULD BE REQUIRED**
12 **AFTER CLOSING. WHAT ARE YOUR THOUGHTS REGARDING THAT**
13 **ESTIMATE?**

14 A. Let me begin by saying I do not believe it is possible at this time to accurately estimate
15 the future impact on rates of any cost that might be incurred to consummate Red Bird's
16 proposed acquisition of Bear Den. For one thing, the final amounts of the costs referenced
17 in the procedural order won't be known until sometime after the transaction is complete.
18 For another thing, the estimate assumes future rates for the Bear Den system will be set on
19 a stand-alone basis. In its first North Carolina rate case, Red Bird intends to propose
20 consolidated, statewide rates, which means the costs of acquiring Bear Den would be mixed
21 with similar costs for all other systems Red Bird acquires in North Carolina. Spreading
22 costs over a significantly larger customer base – Bear Den has only 55 customers – can
23 significantly reduce the per customer impact of acquisition-related costs. Because no one
24 can currently know the amount of transaction-related costs for Bear Den, how those costs
25 would be treated for ratemaking purposes, or what rate design would be approved to

1 recover such costs, no reliable estimate of the future rate impact of this transaction is
2 possible.

3 But beyond those general concerns, I believe the estimate included in the procedural
4 order significantly overstates the likely impact Red Bird's proposed acquisition would have
5 on customer rates. First, the estimate assumes the full amount of Red Bird's purchase price
6 would be recovered through customer rates. Although that assumption may have been valid
7 at the time the procedural order was issued, based on the belief that we have reached an
8 agreement with Public Staff resolving all other disputed issues, which agreement has not
9 yet been documented, Red Bird will not pursue an acquisition adjustment in this docket.

10 The estimated rate is also overstated because it assumes all post-closing capital
11 improvements are attributable to and specific to Red Bird's acquisition of the Bear Den
12 system. In fact, most if not all capital improvements we have identified thus far will be
13 required to ensure the Bear Den system is compliant with applicable health and
14 environmental regulations and capable of providing safe and reliable service to customers.
15 Therefore, no matter who owns the system – Bear Den, Red Bird, or some third party –
16 capital necessary to upgrade and improve facilities must be invested to address such issues
17 and that investment will impact future rates.

18 Regarding the final cost element included in the rate impact estimate – due
19 diligence costs associated with the transaction – I think the Commission would be making
20 a mistake if it concludes that reasonable due diligence, transactional, and regulatory costs
21 can't be recovered because they likely would cause an increase in future service rates. I say
22 this for several reasons. First, as I explained earlier in my testimony, due diligence and
23 other transaction-related costs are part of every acquisition transaction and are not unique

1 to this case. As mentioned previously, due diligence is required to provide Red Bird basic
2 information about a system it proposes to acquire so that when we acquire the system we
3 are able to operate it in a manner that ensures we are able to provide service to our
4 customers. Establishing a regulatory policy that such costs are unrecoverable in rates
5 would create a significant disincentive for future acquisitions in North Carolina, including
6 those of troubled water and wastewater systems whose acquisition by competent and
7 adequately capitalized companies like Red Bird clearly is in the public interest. As for
8 regulatory costs, those are unavoidable because Commission review and approval of public
9 utility acquisitions is required by law. As further evidence of how “mainstream” due
10 diligence and regulatory costs are to transactions such as the one currently under
11 consideration, I note the Uniform System of Accounts for small water and wastewater
12 companies, which was created by NARUC, expressly provides for the capitalization of
13 those costs. I therefore would not expect the Commission to deny Red Bird the right to
14 seek recovery of those costs in a future rate case.

15 **Q. ARE RED BIRD AND CSWR FAMILIAR WITH THE COMMISSION'S**
16 **RULES AND REGULATIONS GOVERNING WATER UTILITIES AND DO**
17 **THOSE COMPANIES PLEDGE TO OPERATE THE SYSTEM AT ISSUE IN THIS**
18 **DOCKET IN A MANNER THAT COMPLIES WITH THOSE RULES AND**
19 **REGULATIONS?**

20 A. Yes, CSWR and Red Bird are familiar with the Commission's rules and regulations and
21 pledge to operate the Bear Den system in a manner that complies with all Commission
22 requirements and all applicable state statutes and regulations.

23 **Q. HOW DOES RED BIRD PROPOSE TO SATISFY THE FINANCIAL**
24 **SECURITY REQUIREMENTS IMPOSED BY COMMISSION RULE R7-37?**

1 A. To provide the financial security required by the Commission's rules, Red Bird will
2 post its own bond, to be secured by a corporate surety bond in the amount recommended
3 by Public Staff, in a form that complies with Commission Rule R7-37.

4 **Q. DO YOU BELIEVE THE PROPOSED TRANSACTION IS IN THE PUBLIC**
5 **INTEREST?**

6 A. Yes. I believe Red Bird's proposed acquisition of the Bear Den water system currently
7 owned and operated by Bear Den Development will be consistent with and would promote
8 the public interest. Transfer of this system to a well-capitalized enterprise that is a
9 professional utility, will be in the best interest of the Bear Den customers. Red Bird and
10 CSWR are fully qualified, in all respects, to own and operate those systems and to
11 otherwise provide safe and adequate service.

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

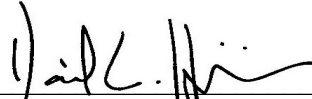
13 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the redacted public version of the foregoing document, has been served on all counsel of record for all parties in this docket, if any, and the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 11th day of February, 2022.

BURNS, DAY & PRESNELL, P.A.



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Exhibit Cox 1

Category	Estimates	Costs Incurred To Date	Vendor(s)
<u>Due Diligence Costs:</u>	\$ 40,000.00	\$ 35,984.45	
Engineering Design	\$ 35,000.00	\$ 31,486.39	McGill Associates, P.A.
Facility Reports	\$ 5,000.00	\$ 4,498.06	McGill Associates, P.A.
<u>Transactional Costs:</u>	\$ 30,000.00	\$ 14,558.92	
Closing Costs & Title Attorney Fees	\$ 10,000.00	\$ 2,959.92	Black, Slaughter & Black, PA
Contract Formation & Real Estate Due Diligence	\$ 20,000.00	\$ 11,599.00	Beckemeier LeMoine Law, 21Design Group
<u>Regulatory Costs:</u>	\$ -	\$ -	
Local Counsel Fees	\$ 14,000.00	\$ 7,307.83	Burns, Day & Presnell, P.A.
<u>Total:</u>	\$ 70,000.00	\$ 50,543.37	