



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

April 18, 2022

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Public Staff Late Filed Exhibit - W-1040, Sub 10, and W-1328, Sub 4
- Proposed Transfer of Bear Den Acres Development, Inc., to Red
Bird Utility Operating Company, LLC, d/b/a Red Bird Water and for
Approval of Rates

Dear Ms. Dunston:

During the evidentiary hearing in the above-referenced dockets on March 28, 2022, Presiding Commissioner Brown-Bland requested that Public Staff witness D. Michael Franklin provide a late-filed exhibit addressing the following issues: (1) whether there are any documents contained in the Public Staff's paper file for Docket No. W-1040, Sub 2 which address the correct identity of the seller; (2) whether the identity of the seller and purchaser of the system listed on the asset purchase agreement (APA), assignment, and amendment to the APA are correct; and (3) whether the campground adjacent to the system that is the subject of the transfer application is subject to regulation by the Commission. Pursuant to Commissioner Brown-Bland's request, please find attached Public Staff Franklin Late-Filed Exhibit 1.

By copy of this letter, we are forwarding copies to all parties of record.

Sincerely,

Electronically submitted
/s/ Megan Jost
Staff Attorney
megan.jost@psncuc.nc.gov

Attachments

Executive Director
(919) 733-2435

Communications
(919) 733-5610

Economic Research
(919) 733-2267

Legal
(919) 733-6110

Transportation
(919) 733-7766

Accounting
(919) 733-4279

Consumer Services
(919) 733-9277

Electric
(919) 733-2267

Natural Gas
(919) 733-4326

Water
(919) 733-5610

**Bear Den Acres Development, Inc.
Red Bird Utility Operating Company, LLC**

**Docket No. W-1040, SUB 10
Docket No. W-1328, SUB 4**

Public Staff Late Filed Exhibit 1

**Verified Responses to Commissioner Questions of
Public Staff Witness D. Michael Franklin**

1. Are any documents contained in the Public Staff's paper file for Docket No. W-1040, Sub 2 which address the correct identity of the seller?

Public Staff Response: The Public Staff's review of its paper file for Docket No. W-1040, Sub 2 yielded the two documents attached to this late filed exhibit as Attachments A and B which have bearing on the correct identity of the seller in these dockets. Attachment A is a letter from Rick Moody, who identifies himself as vice president of Bear Den Acres Development, Inc. (Bear Den Development), to the Commission to supplement Bear Den Development's application for a rate increase filed in Docket No. W-1040, Sub 2. In the letter, Mr. Moody requests that the Commission remove the names of William F. Moody and Bear Den Family Campground from the certificate of public convenience and necessity issued in a previous docket. Attachment B is the Recommended Order Granting Partial Rate Increase issued by Hearing Examiner Ronald D. Brown on April 18, 1996. Ordering Paragraph 1. of the recommended order states:

1. That the Certificate of Public Convenience and Necessity granted to William F. Moody, d/b/a Bear Den Campground, for providing water utility service in Bear Den Campground is revised to reflect Bear Den Acres Development, Inc. as the holder of the Certificate of Public Convenience and Necessity as shown in Appendix A attached and made a part of this Order.

Based on the contents of Attachments A and B, and the record in the present dockets, the Public Staff believes Bear Den Acres Development, Inc., is the correct seller of the water utility franchise at issue in this transfer application.

2. Provide information demonstrating that the seller and purchaser of the system are correct on the asset purchase agreement (APA), assignment, and amendment to the APA.

Public Staff Response: It is the Public Staff's understanding based on conversations with Red Bird Water Utility Operating Company, LLC (Red Bird), that Red Bird will execute an amended APA to correct errors with the currently filed APA, assignment, and amendment to the original APA. It is the Public Staff's

further understanding that the amended APA will include both Bear Den Acres Development, Inc., and Bear Den Mountain Resort, Inc., as sellers as both are owners of different parcels containing components of the water system being purchased by Red Bird.


3. Should the campground adjacent to the system that is the subject of the transfer application be regulated by the Commission?

Public Staff Response: The Public Staff does not believe the campground adjacent to the system being purchased by Red Bird is a public utility as defined by N.C. Gen. Stat. § 62-3(23) and Commission Rule R7-2. This response is based on electronic mail and telephone communications between Mr. Franklin and Mark Krauss, President of Bear Den Acres Development, Inc., and Bear Den Mountain Resort, Inc., who confirmed that water service for the campground is included in the rental fee and the campground lots and cabins located on campground property are not individually metered for water utility service. The few cabins located in Bear Den Acres Development that are metered have water utility service provided by the Bear Den Acres Development water utility system, but water service is included in the rental fee. The electronic mail correspondence between Mr. Franklin and Mr. Krause is attached to this late filed exhibit as Attachment C.

VERIFICATION

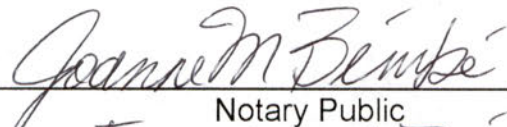
STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

D. Michael Franklin, first being duly sworn, deposes and says that he is a Utilities Engineer with the Water, Sewer, and Telephone Division, Public Staff – North Carolina Utilities Commission, that as such, he has read the foregoing Public Staff Late Filed Exhibit 1 and knows the contents thereof; that the same are true of his own knowledge except as to those matters stated therein on information and belief, and as to those he believes them to be true.



D. Michael Franklin

Sworn to and subscribed before me,
this 18th day of April, 2022.



Notary Public
JOANNE M. BERUBE

Joanne M. Berube
NOTARY PUBLIC
WAKE COUNTY, N.C.
My Commission Expires 12-17-2022.

My Commission Expires: 12/17/22

lee

OFFICIAL COPY
APR 18 2022

RECEIVED
MAY 15 1995
WATER & SEWER DIVISION
PUBLIC STAFF

FILED
MAY 15 1995
CHIEF CLERK
N.C. UTILITIES COMMISSION

May 12, 1995

North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

Dear Sir/Madam:

W-1040, SUB 2

Recently, I mailed to you a "Application for Rate Increase". I would like for you to attach this letter along with it please.

In November 1993, William F. Moody, doing business as Bear Den Family Campground and Bear Den Acres Development, Inc. was given a certificate of public convenience and necessity to provide water utility service in Bear Den Acres Development and Bear Den Campground, McDowell County, North Carolina. At that time William F. Moody and Bear Den Family Campground was supplying water to Bear Den Acres Development. Bear Den Family Campground no longer provides water service to Bear Den Acres Development. Bear Den Acres Development, Inc. now supplies water to Bear Den Acres Development. Due to this fact, I would like to ask the Commission to remove the names of William F. Moody and Bear Den Family Campground from the certificate. I would like for the certificate to read as follows:

BEAR DEN ACRES DEVELOPMENT, INC

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

BEAR DEN ACRES DEVELOPMENT AND BEAR DEN FAMILY CAMPGROUND

McDowell County, North Carolina

If you should have any questions, please advise.

Very truly yours,
Bear Den Acres Development, Inc.



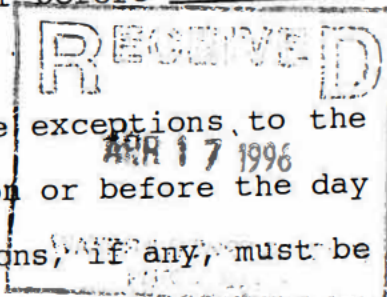
Rick Moody, VP

NORTH CAROLINA UTILITIES COMMISSION
RALEIGH

05/03/96

Docket No. W-1040, SUB 2 Exceptions due on or before _____

NOTICE TO PARTIES



Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day above shown as provided in G.S. 62-78. Exceptions, if any, must be filed (original and thirty (30) copies) with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefor at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become effective and final on 05/04/96 unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

OFFICIAL COPY
Apr 18 2022

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1040, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Bear Den Acres Development,)
Inc., Route 3, Box 284, Spruce Pine, North)
Carolina, 28777 for a Authority to Increase) RECOMMENDED ORDER
Rates for Providing Water Utility Service in) GRANTING PARTIAL RATE
Bear Den Acres Development, in McDowell) INCREASE
County, North Carolina)

HEARD IN: The Town Hall Courtroom, 106 Highland Avenue, Spruce Pine, North Carolina, on Wednesday, September 27, 1995, at 7:00 p.m.

BEFORE: Hearing Examiner, Ronald D. Brown

APPEARANCES:

For Bear Den Acres Development, Inc.:

Stephen R. Little, Attorney at Law, 8 North Main Street, Marion, North Carolina 28752

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BROWN, HEARING EXAMINER: On May 12, 1995, Bear Den Acres Development Inc., filed an application with the Commission seeking authority to increase its rates for water utility service in Bear Den Acres Development in McDowell County, North Carolina. On June 13, 1995, the Commission issued an Order scheduling hearing and requiring customer notice.

On May 15, 1995, the Applicant filed a letter requesting that the Certificate of Public Convenience and Necessity granted to Bear Den Acres Development, Inc., and William F. Moody, d/b/a Bear Den Campground be revised.

On September 6, 1995, the Public Staff filed the affidavit of Thomas W. Farmer, Jr., Director of the Public Staff's Economic Research Division. On September 7, 1995, the Public Staff filed the

testimony and exhibits of David A. Poole, Staff Accountant in the Public Staff's Accounting Division, and Gina Y. Casselberry, Utilities Engineer in the Public Staff's Water Division.

The matter came on for hearing as scheduled. The following seven customers testified at the public hearing: Foy Lunsford, Barbara Ewert, Emily James, Carl Brooks, Noretta Pratt, Gordon Tindle, and David Campbell.

The Applicant offered the testimony and exhibits of William F. Moody, Vice President of Bear Den Acres Development. The Public Staff offered the affidavit of Thomas W. Farmer, the testimony and exhibit of Accountant David Poole, and the testimony of Engineer Gina Casselberry.

The Public Staff filed the Public Staff's Proposed Recommended Order with the Commission on February 28, 1996. The Applicant filed comments regarding the Proposed Order on March 7, 1996.

Upon consideration of the Application, the testimony of public witnesses, the testimony and exhibits of the Public Staff witnesses, the testimony and exhibits of personnel associated with Bear Den Acres Development, Inc., the entire record of this proceeding, and the Commission's record, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Bear Den Acres Development is a public utility providing water utility service in Bear Den Acres Development in McDowell County, North Carolina.

2. The Applicant's existing and proposed rates are as follows:

	<u>Existing Rates</u>	<u>Proposed Rates</u>
Flat Rate	\$15.00	\$ 50.00
Tap-on Fee	n/a	\$600.00

3. The rates recommended by the Public Staff are as follows:

Base charge per month (no usage included)	\$35.00
Usage charge (per 1,000 gallons)	\$ 2.90
Meter installation Fee:	\$175, plus gross-up for taxes
Tap-on Fee:	\$600, plus gross-up for taxes

4. The test period established for use in this proceeding is the 12 months ended December 31, 1994.

5. The rate base methodology is the proper method of determining rates for the Applicant in this proceeding.

6. The Applicant's original cost rate base at the end of the test year is \$26,504.

7. The annualized level of operating revenue under the Applicant's present rates is \$5,760.

8. The rates proposed by the Applicant will result in an increase of annual revenues of \$13,440 for a total annual level of operating revenue of \$19,200. Under the Public Staff's recommended rates the additional annual revenue would be \$9,172 for a total annual level of revenue of \$14,932.

9. At the hearing, the Applicant amended its Application to include additional operating expenses related to this proceeding.

10. The annualized level of reasonable and appropriate operating revenue deductions under the Applicant's present rates is \$11,622, and under the Public Staff's recommended rates is \$12,441.

11. The rates recommended by the Public Staff will give the Applicant an opportunity to earn a return of 9.4% on the Applicant's original cost rate base.

12. The Applicant prefers a metered rate.

13. The Certificate of Public Convenience and Necessity granted to William F. Moody, d/b/a Bear Den Campground for providing water utility service in Bear Den Campground should be revised to reflect Bear Den Acres Development, Inc., as the holder of the Certificate of Public Convenience and Necessity.

14. The Applicant is requesting a \$175 meter installation fee.

15. The Applicant is requesting a \$600 tap-on fee.

16. During the hearing the Applicant amended its application for approval to collect the base rate for the period service is disconnected from customers who request to disconnect their water service and reconnect their water service within 12 months.

17. Customers who have disconnected from the water system and request to reconnect to the water system in the future should be considered new customers subject to the \$175 meter installation fee plus gross up and the \$600 tap-on fee plus gross up.

18. The water system serving Bear Den Acres was approved to serve 99 connections.

19. During the hearing the Applicant amended its application to remove meters and the cost to install the meters from rate base and charge current customers the proposed \$175 meter installation fee.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-17

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, and the testimony of the Company and Public Staff witnesses. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters involved are essentially uncontroverted.

Also, at the hearing, the Applicant presented updated expense information including \$365 for rate case related accounting fees, \$600 for rate case related legal fees, and \$1,200 for annual liability insurance expense, all of which are in addition to the operating expenses reported in the application. The Public Staff did not object to these additional expenses being included in this proceeding for purposes of setting rates. The additional \$965 in rate case related expenses amortized over three years results in an additional annual operating expense of \$322. The \$322 additional rate case related expense plus the additional insurance expense of \$1,200 results in a total additional annual operating expense of \$1,522, which the Hearing Examiner finds to be reasonable and should be added to the amount shown in Poole Exhibit 1, Schedule 3, Line 21, Column (c). Therefore, the appropriate level of total operating revenue deductions under present rates in this proceeding is \$11,622.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 18

The evidence supporting this finding of fact is contained in the verified testimony of Company witness Moody, and the testimony of Public Staff witness Casselberry. Company witness Moody testified that the Applicant would like to amend its application to reduce the number of lots from 99 to 77. Mr. Moody testified that the 22 unnumbered lots along the unnamed road to the well and past the well are not ready for sale or development.

Ms. Casselberry testified that the plans and specifications submitted to DEHNR were approved for 99 connections. She further testified that the unnumbered lots could be developed in the future and that the wells have the capacity to serve these lots.

The Hearing Examiner concludes that it was the Applicant's intention to serve 99 connections when the water system was installed. That the plans for Bear Den Acres Development is subdivided into 99 lots and the plans show that the Applicant intended on putting in a road and installing a water main to serve the 22 unnumbered lots. These same plans were submitted to DEHNR for plan approval and the water system was installed and approved with a capacity to serve 99 connections. Therefore, the Hearing Examiner concludes that the appropriate number of connections for rate base purposes is 99.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence supporting this finding of fact is contained in the testimony of Company witness Moody and Public Staff witnesses Casselberry and Poole. Mr. Moody testified that he wished to amend his application to remove the cost of installing meters from rate base and charge existing customers the installation fee of \$175 up front. Mr. Moody further testified that this would reduce the customer's monthly rate by approximately \$1.82.

The Public Staff opposed removing meters from rate base. The cost for meters were installed as part of the new water system and should not be removed from plant in service.

The Hearing Examiner concludes that the cost to install meters should not be removed from rate base.

SUMMARY CONCLUSIONS

Based on the foregoing Findings of Fact, the Hearing Examiner concludes that the rates approved herein are fair and reasonable to both the Applicant and its customers. The rates approved herein will allow the Company to earn a 9.4% return on its original rate base at December 31, 1994.

IT IS THEREFORE, ORDERED as follows:

1. That the Certificate of Public Convenience and Necessity granted to William F. Moody, d/b/a Bear Den Campground, for providing water utility service in Bear Den Campground is revised to reflect Bear Den Acres Development, Inc. as the holder of the Certificate of Public Convenience and Necessity as shown in Appendix A attached and made a part of this Order.
2. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and authorized to become effective for service rendered on and after the effective date of this Order.
3. That the Schedule of Rates is deemed filed with the Commission pursuant to G.S. 62 138.
4. That customers who have disconnected from the water system and request to reconnect to the water system in the future shall be considered new customers subject to the \$175 meter installation fee plus gross-up for taxes and the \$600 tap-on fee plus gross-up for taxes.

5. That a copy of the Notice to Customers, attached as Appendix C, be mailed or hand delivered to all customers in conjunction with the next regular billing process occurring after the effective date of this Recommended Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen
Geneva S. Thigpen, Chief Clerk

(SEAL)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX A

DOCKET NO. W-1040 SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

BEAR DEN ACRES DEVELOPMENT, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

BEAR DEN ACRES DEVELOPMENT

McDowell County, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION


Geneva S. Thigpen, Chief Clerk

(SEAL)

OFFICIAL COPY

Apr 18 2022

SCHEDULE OF RATES

for

BEAR DEN ACRES DEVELOPMENT, INC.for providing water utility service inBEAR DEN ACRES DEVELOPMENT

McDowell County, North Carolina

Metered Rates: (Residential Service)

Base charge per month (no usage included)	\$35.00
Usage charge (per 1,000 gallons)	\$ 2.90

Meter Installation Fee: \$175 (plus gross-up for taxes)Connection Fee: \$600 (plus gross-up for taxes)Reconnection Charge:

If water service cut off by utility for good cause:	\$15.00
If water service discontinued at customer's request:	\$15.00

(Customers who request to be reconnected within 12 months of disconnection at the same address shall be charged the base charge for the entire period they were disconnected.)

Return Check Charge: \$10.00Bills Due: On billing dateBills Past Due: 20 days after billing dateBilling Frequency: Shall be monthly for service in arrearsFinance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1040, Sub 2, on this the 18th day of April 1996.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX C
PAGE 1 OF 2

DOCKET W-1040, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Bear Den Acres Development, Inc.,)
Route 3, Box 284, Spruce Pine, North Carolina,)
for Authority to Increase Rates for Providing) NOTICE TO
Water Utility Service in Bear Den Acres) CUSTOMERS
Development in McDowell County, North)
Carolina)

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has granted a rate increase to Bear Den Acres Development, Inc., for water utility service provided in Bear Den Acres Development, in McDowell County, North Carolina. This decision was based upon evidence presented at the Public Hearing held on September 27, 1995, in Spruce Pine, North Carolina. The new rates are as follows and are effective for service rendered on and after the date of this Notice.

Metered Rates: (Residential Service)

Base charge per month (no usage included)	\$35.00
Usage charge (per 1,000 gallons)	\$ 2.90

Meter Installation Charge: \$175 (plus gross-up for taxes)

Tap-on Fee: \$600 (plus gross-up for taxes)

Reconnection Charge:

If water service cut off by utility for good cause:	\$15.00
If water service discontinued at customer's request:	\$15.00

Customers will be charged the base rate per month for the period water is disconnected if the customer requests to disconnect water utility service and reconnect within 12 months.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL)

Geneva S. Thigpen
Geneva S. Thigpen, Chief Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-1040, Sub 2, and the Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1996.

By: _____
Signature

Name of Utility Company.

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1040, Sub 2.

Witness my hand and notarial seal, this the _____ day of _____ 1996.

Notary Public

Address

(SEAL)

My Commission Expires:

Date

Franklin, Mike

From: Mark Krauss <Mark@LoveYourElevation.com>
Sent: Friday, April 1, 2022 11:45 AM
To: Franklin, Mike
Cc: Office Manager; Mark Krauss
Subject: [External] RE: Docket No. W-1328, Sub 4: Red Bird Water Utility System - Bear Den Acres Development

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hello Mike. All of your statements below are true. With regard to #6 below, we manage 7 cabins that stay open during the winter and are all in the Bear Den Acres subdivision (not the campground), and are all on the Bear Den Acres water system being sold to Red Bird. So we and the other cabin owners in the Acres will become customers of Red Bird.

Mark Krauss
 President
 Bear Den Acres Development, Inc.
 Bear Den Mountain Resort, Inc.

From: Franklin, Mike <Mike.Franklin@psncuc.nc.gov>
Sent: Friday, April 1, 2022 10:43 AM
To: Mark Krauss <Mark@LoveYourElevation.com>
Subject: Docket No. W-1328, Sub 4: Red Bird Water Utility System - Bear Den Acres Development

Mark, Good morning. Please see the below and let me know if I captured everything we discussed correctly. Feel free to revise accordingly and send back to me – sometime next week if possible. Thanks!

1. The Bear Den campground property is not included in the sale to Red Bird Utility Operating Company, LLC.
2. The campground is on a separate water system than Bear Den Acres Development.
3. Campground utility services including water service is included in the lot/cabin rental fee.
4. Individual campground lots and cabins are not individually metered for water utility service.
5. The campground is not included in the DEQ permit issued for Bear Den Acres Development.
6. The campground is seasonal and is not open the months of December, January, February and mid-March with the exception of some of the cabins (Mark – you might want to include more info on the cabins – the number of cabins and their location for example).

-Mike

Mike Franklin
 Water, Sewer & Telephone Division - Public Staff
 430 N. Salisbury Street, Suite 2074
 4326 Mail Service Center
 Raleigh, NC 27699-4300
 Ph: (919) 715-2666

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.