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PLACE: Dobbs Building
Raleigh, North Carolina
DATE: March 28, 2022
DOCKET NO.: W-1328, Sub 4; W-1040, Sub 10
TIME IN SESSION: 1:00 - 2:50 p.m.
BEFORE: Commissioner ToNola D. Brown-Bland
Chair Charlotte A. Mitchell
Commissioner Jeffrey A. Hughes

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
VOLUME 1

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A P P E A R A N C E S:
FOR RED BIRD UTILITY OPERATING COMPANY, LLC.:
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1 P R O C E E D I N G S

2 COMMISSIONER BROWN-BLAND: Good afternoon.
3 Let's come to order and go on the record. I am ToNola
4 D. Brown-Bland with the North Carolina Utilities
5 Commission, the Presiding Commissioner for this
6 hearing, and with me this afternoon, our Commission
7 Chair Charlotte A. Mitchell and Commissioner Jeffrey
8 A. Hughes.

9 I now call for order hearing Docket No.
10 W-1328, Sub 4 and W-1040, Sub 10, In the Matter of
11 Application for Transfer of Public Utility Franchise
12 of Bear Den Acres Development, Inc. to Red Bird
13 Utility Operating Company, LLC, doing business as Red
14 Bird Water filed pursuant to North Carolina General
15 Statute 62-111 and Commission Rule R7-37.

16 On December 4th, 2020, Bear Den Acres
17 Development, Inc. and Red Bird Utility Operating
18 Company, LLC, doing business as Red Bird Water, a
19 Joint Application with the Commission seeking
20 authority to transfer the utility's system and public
21 utility franchise serving the Bear Den Acres
22 Development to Red Bird and for approval of rates.

23 Between March 29th and October 6th, 2021,
24 the Applicants filed supplemental materials in support

1 of the joint application.

2 On January 5th, 2022, the Commission issued
3 an order scheduling hearing, establishing discovery
4 guidelines, and requiring customer notice.

5 On January 21st and February 7th, 2022, Red
6 Bird filed notice that it had provided the Required
7 Notice of this hearing to Bear Den's customers.

8 On February 11th, 2022, Red Bird filed the
9 direct testimony of Josiah Cox. And between
10 February 28th and March 25th, 2022, four customers
11 filed statements objecting to the proposed transfer.

12 The Public Staff's participation and
13 intervention in this matter is recognized pursuant to
14 North Carolina General Statute 62-15(d), and there are
15 no other intervenors in this matter.

16 On March 2nd, 2022, the Public Staff and Red
17 Bird filed a settlement agreement and stipulation
18 reporting to resolve all contested issues in this
19 docket.

20 On March 18th, 2022, the Public Staff filed
21 the testimony of D. Michael Franklin in support of the
22 stipulation.

23 On March 18th, 2022, Red Bird filed
24 supplemental testimony of Josiah Cox in support of the

1 stipulation.

2 On March 21st, 2022, Red Bird posted a
3 \$75,000 bond with the Commission, which was the agreed
4 upon amount reflected in the stipulation.

5 In compliance with the requirements of the
6 State Government Ethics Act, I remind all Members of
7 the Commission of our duty to avoid conflicts of
8 interest, and I inquire, at this time, whether any
9 member of the Commission has a known conflict of
10 interest with regard to these dockets.

11 (No response)

12 COMMISSIONER BROWN-BLAND: The record will
13 reflect that no conflicts were identified. I now call
14 upon counsel for appearances, and I'll begin with the
15 Applicant.

16 MR. HIGGINS: Good afternoon, Commissioners.
17 Dan Higgins with Burns, Day, & Presnell, appearing on
18 behalf of Red Bird Utility Operating Company, LLC.

19 COMMISSIONER BROWN-BLAND: Good afternoon,
20 Mr. Higgins.

21 MS. JOST: Good afternoon. Megan Jost with
22 the Public Staff, representing the Using and Consuming
23 Public.

24 COMMISSIONER BROWN-BLAND: Good afternoon,

1 Ms. Jost. Good to see you both back and in person.

2 MR. HIGGINS: Indeed.

3 COMMISSIONER BROWN-BLAND: All right. Are
4 there preliminary matters that we need to address or
5 straighten out before we start the hearing?

6 MR. HIGGINS: None that I'm aware of.

7 MS. JOST: None that I'm aware of either.

8 COMMISSIONER BROWN-BLAND: All right, then.
9 Mr. Higgins, the case is with the Applicant.

10 MR. HIGGINS: Thank you. I call to the
11 stand Josiah Cox.

12 COMMISSIONER BROWN-BLAND: Mr. Cox, if you
13 will, after you get settled in, place your left hand
14 on the bible and raise your right.

15 JOSIAH COX;

16 having been duly sworn

17 testified as follows:

18 COMMISSIONER BROWN-BLAND: All right.

19 EXAMINATION BY MR. HIGGINS:

20 Q Mr. Cox, would you please state your name for the
21 record?

22 A My name is Josiah Cox.

23 Q And what's your business address?

24 A It is 1650 Des Peres Road, Suite 303, Des Peres,

1 Missouri 63131.

2 Q And how are you employed, Mr. Cox?

3 A I'm the President.

4 Q President of?

5 A Of Sickle Six Water Resources, LLC.

6 Q And what is your relationship to the Applicant or
7 one of the Applicants in this docket, Red Bird
8 Utility Operating Company?

9 A Red Bird Utility, I'm the President of Red Bird
10 Utility Operating Company which is a wholly-owned
11 subsidiary of CSWR, LLC.

12 Q Okay. Did you cause to be prepared and filed on
13 February 11th, 2022, direct testimony, in this
14 docket, consisting of 27 pages of questions and
15 answers and one exhibit?

16 A I did.

17 Q Any changes or corrections to your prefiled
18 direct testimony?

19 A None.

20 Q Did you also cause to be prepared and filed on
21 March 18th three pages of supplemental testimony?

22 A I did.

23 Q Any changes or corrections to that testimony?

24 A None.

1 MR. HIGGINS: At this time, Commissioner
2 Brown-Bland, I move the admission of the prefiled
3 direct and supplemental testimony and the exhibit
4 attached to the direct testimony.

5 COMMISSIONER BROWN-BLAND: All right. The
6 prefiled direct testimony and the prefiled
7 supplemental testimony of Mr. Cox will be received
8 into evidence and treated as if given orally from the
9 witness stand. The one attached exhibit to his direct
10 prefiled will be identified as it was marked when
11 prefiled.

12 (WHEREUPON, Exhibit Cox 1 is
13 marked for identification as
14 prefiled.)

15 (WHEREUPON, the prefiled direct
16 and supplemental testimony of
17 JOSIAH COX is copied into the
18 record as if given orally from
19 the stand.)
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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.

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)

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APR 14 2022

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

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 **A.** I am President of Red Bird Utility Operating Company, LLC (“Red Bird”). I also am
7 President of CSWR, LLC, (“CSWR”), the corporate parent of Red Bird.

8 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS DOCKET?**

9 **A.** Yes, my direct testimony on behalf of Red Bird was filed in these dockets on February
10 11, 2022.

11 **Q. WHAT IS THE PURPOSE OF THE TESTIMONY YOU ARE NOW FILING?**

12 **A.** My supplemental testimony is provided on behalf of Red Bird, to support the
13 Commission’s approval and adoption of the Settlement Agreement and Stipulation

1 (“Stipulation”) entered into by the Public Staff and Red Bird and filed with the Commission
2 on March 2, 2022.

3 **Q. DID THE STIPULATION RESOLVE ALL DISPUTED ISSUES BETWEEN**
4 **RED BIRD AND THE PUBLIC STAFF?**

5 **A.** Yes, it resolved all contested issues remaining between the Company and Public Staff.

6 **Q. WHAT WERE THE UNRESOLVED ISSUES?**

7 **A.** The disputed issues related to Red Bird’s request for an acquisition adjustment in
8 connection with the acquisition of the Bear Den water system, the Bear Den rate base, and
9 the extent of Red Bird’s due diligence and acquisitions costs.

10 **Q. HOW DOES THE STIPULATION RESOLVE ALL OF THOSE ISSUES?**

11 **A.** The Stipulation reflects Red Bird’s agreement to not pursue an acquisition adjustment
12 in these two dockets, establishes the net book value of the Bear Den water system assets to
13 be acquired by Red Bird, and provides for Bear Den’s recovery of a meaningful portion of
14 its due diligence cost and transactional costs relating to this acquisition in a future rate case.

15 **Q. DID RED BIRD MAKE SIGNIFICANT CONCESSIONS IN REACHING THE**
16 **AGREEMENT ON THE STIPULATION?**

17 **A.** Yes, we did. That being said, the Stipulation is a product of the arms-length
18 negotiations of the parties that yielded a result that both parties could accept. Commission
19 approval of the Stipulation will also provide us with certainty moving forward as to the
20 Bear Den system.

21 The Stipulation is the product of the give-and-take in settlement negotiations between Red
22 Bird and the Public Staff. There are provisions of the Stipulation that are more important
23 to Red Bird, and, likewise, there are provisions that are more important to the Public Staff.

1 Nonetheless, working from different starting points and different perspectives, these parties
2 were able to find common ground and achieve a settlement. We also anticipate that the
3 Stipulation will facilitate an earlier closing of this acquisition, and thereby allow Red Bird
4 to begin operating this system and bringing the benefits of its ownership of this system to
5 Bear Den customers earlier than would otherwise be possible.

6 **Q. DID OTHER REASONS SUPPORT RED BIRD'S WILLINGNESS TO SETTLE**
7 **THESE FINAL ISSUES WITH THE PUBLIC STAFF?**

8 **A.** Yes. Red Bird has other transfer applications pending before the Commission, and we
9 look forward to adding Bear Den to the portfolio of systems the Company seeks to build
10 in North Carolina. As a newcomer to the North Carolina water and sewer utility landscape,
11 we are hopeful that reaching a compromise in this matter with the Public Staff will be a
12 step forward in our efforts to achieve that objective. As we move forward with our business
13 model and plans here, we will continue to work to replicate in North Carolina the record
14 of success our affiliate group has achieved elsewhere.

15 As shown in my direct testimony, Red Bird has the financial, technical, and managerial
16 ability to acquire, own, and operate Bear Den's water system in a manner that fully
17 complies with applicable health, safety, and environmental protection laws and regulations,
18 and to provide reliable, safe, and adequate service to customers. Red Bird is part of an
19 affiliate group that currently owns and operates wastewater systems serving approximately
20 94,000 customers and drinking water systems serving approximately 59,000 customers in
21 Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, and Arizona, as
22 well as the Ocean Terrace/Pine Knoll Townes systems which we recently acquired in North
23 Carolina.

1 There has been no significant protest by customers of the Bear Den system, the Stipulation
2 resolves the disputed issues and provides the parties with certainty moving forward, which
3 the Company and its investors need. This Stipulation is in the public interest and should be
4 approved.

5 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

6 **A. Yes.**

1 MR. HIGGINS: Thank you. Commissioner,
2 because of the Commission's recent order identifying
3 issues to be addressed, at least some of the issues to
4 be addressed, and the parties' stipulation and
5 settlement agreement, I had not prepared a summary of
6 Mr. Cox's testimony. I would propose to move to
7 questions that focus on the issues identified in the
8 recent order, but I'll take guidance from you as to
9 how we should proceed.

10 COMMISSIONER BROWN-BLAND: That will be
11 fine, and it is perfectly okay to dispense with any
12 summary.

13 MR. HIGGINS: All right.

14 BY MR. HIGGINS:

15 Q Mr. Cox, have you had an opportunity to review
16 the Commission's recent order identifying, at
17 least, some of the issues that are to be
18 addressed in the hearing today?

19 A I have.

20 Q Would you start by explaining the corporate
21 structure of the Central States Water Resources
22 family and its relationship with Red Bird Utility
23 Operating Company, and why that structure is
24 utilized?

1 A Yes. So Central States Water Resources was a
2 best-run utility company that founded -- our
3 business model is to purchase and acquire small,
4 typically failing water and wastewater systems
5 across the country.

6 We go to state markets. We built
7 the database of every single water and sewer
8 system in the U.S., and we separated states based
9 on how much fragmentation, based on how many
10 small systems they may have, and how much
11 environment distress, so typically EPA
12 violations.

13 So when we identify a state like
14 North Carolina to come into, we enter the state
15 and we go to see if we can sign enough contracts
16 with potential sellers, so systems that fit into
17 this category systems. And if we get critical
18 mass of that many systems, of enough systems, we
19 form a wholly-owned subsidiary to operate in that
20 state, thus Red Bird Utility Operating Company is
21 the wholly-owned subsidiary of CSWR, LLC.

22 And the reason for that is so that
23 when we do any case proceedings, it all stays at
24 the state level, so that, you know, the

1 financials are better, ring fences as much as
2 possible at the state level for Commission
3 proceedings. So that's the relationship.

4 Q Mr. Cox, let me ask you this. What is -- the
5 utility operating company here that proposes to
6 acquire the Bear Den Water System is Red Bird
7 Utility Operating Company, LLC, correct?

8 A Correct.

9 Q And what is its corporate parent's name?

10 A It's Red Bird Utility Holding Company, LLC, which
11 is then wholly-owned by CSWR, LLC.

12 Q And when you say CSWR, you mean Central States
13 Water Resources?

14 A Correct.

15 Q Okay. Are you also aware of the reference in the
16 recent Commission order to potential questions
17 about something called the Bear Den Water
18 Association?

19 A We heard of the Bear Den Water Association on
20 Thursday of last week.

21 Q Right. Is that when you first learned of the --
22 heard that term?

23 A It is.

24 Q Okay. When did you first become aware of the

1 Commission's order from 1993 regarding the Public
2 Utility status of Bear Den Acres Development,
3 Inc.?

4 A The Public Utility staff was able to get us a
5 copy of that 1993 order because it wasn't online
6 on Friday.

7 Q And what information can you provide, at this
8 time, about the Bear Den Water Association in
9 terms of what has Red Bird been able to pull
10 together since learning of this issue?

11 A Yeah. We've got a couple of findings on this.
12 So we were made aware of the Water Association,
13 like I said, on Thursday. As of right now, we
14 can't find a record of its existence in terms of
15 the North Carolina Secretary of State.

16 We received that 1993 CPCN case on
17 Friday. So, in a snapshot, in terms of how we
18 view this, we're purchasing the utility. Red
19 Bird's purchasing the utility from the NC that
20 holds the CPCN Bear Den Acres Development Inc.

21 After title work, which we do on
22 all these systems, we discovered the parent
23 company of Bear Den Acres Development which is
24 called Bear Den Mountain Resort, Inc., owns solar

1 waterline areas that provide service to the
2 community.

3 We have title records showing the
4 original property owners, the Moodys, who owned
5 this whole area before it took off into a
6 subdivision, conveyed this additional waterline
7 property to Bear Den Mountain Resort, and this is
8 very typical of what we see in these small, kind
9 of, mom-and-pop develop-run systems across the
10 country.

11 Then title work for a recording of
12 deeds, you know, they're not set up to be a
13 regulated utility; often times don't take the
14 time to make sure that the property records are
15 in order, so there's nothing that we're not
16 seeing across the country involved in this type
17 of situation.

18 Since this Bear Den Mountain
19 Resort is the same owner as the Bear Den Acres
20 Development, we don't feel we have any problem
21 cleaning up the title on this issue, you know,
22 pre-closing.

23 Q Have you reviewed the restrictive covenants which
24 were part of the 1993 proceedings which purported

1 to convey the waterlines from the developer
2 entity to the Bear Den Water Association?

3 A Yes, other than the 1993 order with that.

4 Q And those restrictive covenants which, I believe,
5 dated one from the 70's and one from the 80's,
6 did they also address who was responsible for
7 maintaining the waterlines?

8 A They did originally say that the Water
9 Association should have been responsible for
10 maintaining the waterlines, if it formed.

11 MR. HIGGINS: Thank you. If I could
12 approach and hand out some exhibits, please.

13 COMMISSIONER BROWN-BLAND: Yes.

14 MR. HIGGINS: I'd like to first ask you to
15 turn your attention to this document. Yes, sir.
16 We'll call this Cox Exhibit 2. It's a document
17 entitled "Water Log."

18 BY MR. HIGGINS:

19 Q Do you know where this document came from?

20 A Yes. The regulated utility that runs this water
21 system supplied this to us.

22 Q And, in fact, this was a document provided to the
23 Public Staff in response to data request in this
24 docket, wasn't it?

1 A Yes.

2 Q And tell the Commission what this document shows.

3 A So what you have here is a couple of years of
4 records from the Bear Den Utility describing
5 different areas, that they've done repair work on
6 replacement work on the water system from 2018
7 through 2001. Its timeframes and locations and
8 dates.

9 Q And does this conclude work on the waterlines?

10 A It does.

11 Q And, now, I'll ask you to look at this document,
12 if you would, please, Mr. Cox.

13 COMMISSIONER BROWN-BLAND: Just a minute,
14 Mr. Higgins. So the first document we were
15 discussing, the Water Log, is two pages, and we will
16 identify it as --

17 MR. HIGGINS: I ask --

18 COMMISSIONER BROWN-BLAND: -- Red Bird Cox
19 Exhibit 2.

20 MR. HIGGINS: Yes, ma'am. That'll be fine.

21 (Whereupon, Red Bird Cox Exhibit
22 2, was marked for
23 identification.)

24 COMMISSIONER BROWN-BLAND: All right. You

1 may continue.

2 Q This document, Mr. Cox, the document entitled --
3 the first page is the Phillip Pittman invoice.

4 MR. HIGGINS: I'd ask that that be labeled
5 as Red Bird Cox Exhibit 3.

6 COMMISSIONER BROWN-BLAND: It will be so
7 identified.

8 (Whereupon, Red Bird Cox Exhibit
9 3, was marked for
10 identification.)

11 Q And, Mr. Cox, can you tell us what this is and
12 how it came into possession of Red Bird Utility
13 Operating Company?

14 A This is another series of invoices for various
15 repair work, replacement work on the water system
16 over the last number of years. It was given to
17 us by the Utility, you know, Bear Den, and really
18 just to demonstrate the work that's been ongoing
19 over the last number of years.

20 So, yeah, mode of replacements.
21 You have electrical repairs. You have pump
22 repairs, you know, pump replacements. You
23 actually have some chemical bills in here that's
24 kind of a sundry of different projects that

1 happened inside the water system.

2 Q Are you aware of -- well, let me ask you this.

3 Was this documentation also provided to the
4 Public Staff in response to the data request?

5 A Yes.

6 Q Are you aware of any documentation reflecting
7 that the Red Bird Water Association has performed
8 any maintenance on the waterline or the water
9 system at Bear Den, at any time?

10 A We're not aware of any of that. And all the
11 bills paid for water service have been made out
12 to the Bear Den Water Utility Company.

13 MR. HIGGINS: The witness is available for
14 questions.

15 COMMISSIONER BROWN-BLAND: Is there any
16 cross-examination from the witness, Ms. Jost?

17 MS. JOST: No questions from the Public
18 Staff. Thank you.

19 COMMISSIONER BROWN-BLAND: All right.

20 EXAMINATION BY COMMISSIONER BROWN-BLAND:

21 Q Mr. Cox, I would like you to slowly go back over
22 the corporate structure, just a little bit. You
23 mentioned Red Bird Utility Operating Company, LLC
24 is a subsidiary of a parent company? Is that

1 correct?

2 A So there are three corporate levels: The top
3 corporate level, Central States Water Resources,
4 LLC, which then when we stand up to state market,
5 we go into the new state. We set up a holding
6 company and an LLC, so it's Red Bird Utility
7 Holding Company, LLC which wholly owns Red Bird
8 Utility Operating Company, LLC.

9 Q And then the holding -- is that the holding
10 company?

11 A So the top level parent corporation, Central
12 State Water Resources, LLC, which wholly owns Red
13 Bird Utility Holding Company, LLC, which wholly
14 owns Red Bird Utility Operating Company, LLC.

15 Q All right. Thank you. And a purchase agreement,
16 I believe, indicated a CSWR, Inc. Is that an
17 existing separate company?

18 A That's the management company inside the Central
19 States Water Resources, LLC. It's where the --
20 you know, errors and -- excuse me. It's where
21 the insurance board of directors is held and all
22 that kind of stuff.

23 Q So that LLC sits on top?

24 A That's correct.

1 Q All right. Now, Attachment G, I believe I may be
2 confused between attachments and exhibits, so I
3 would ask for counsel's assistance, but I have a
4 confidential G which is the agreement for sale of
5 the utility and -- hold on.

6 COMMISSIONER BROWN-BLAND: All versions of G
7 that the Commission has been able to find, have
8 missing pages. There are pages that appear to be
9 missing, and that would be the pages 6 through 13. Is
10 that something that can be provided?

11 MR. HIGGINS: Yes, ma'am, absolutely. I
12 wasn't aware that there was anything missing.

13 COMMISSIONER BROWN-BLAND: All right.

14 MR. HIGGINS: So pages 6 through 13?

15 COMMISSIONER BROWN-BLAND: Yes. So just to
16 be clear and so that we have it for our record, we
17 would like a full and complete copy of the agreement
18 for sale of the utility system that is identified in
19 the application as Confidential Attachment G. Also
20 one of the exhibits to that attachment is Exhibit D
21 which speaks to the rights via the agreement and
22 contract. And it has a blank in it, and so we'd like
23 the completed and complete version.

24 MR. HIGGINS: Was that D as in Dan?

1 COMMISSIONER BROWN-BLAND: It's D. This
2 particular document is the assignment document.

3 MR. HIGGINS: We'll provide that right away.

4 COMMISSIONER BROWN-BLAND: All right. I'm
5 assuming it should remain confidential? Is that
6 correct?

7 MR. HIGGINS: I believe the only redacted --
8 I believe that the only thing redacted from the
9 purchase agreement is the actual purchase price of the
10 Commission. And, yes, we've been keeping the purchase
11 price confidential.

12 COMMISSIONER BROWN-BLAND: And so the rest
13 can be filed as a public document?

14 MR. HIGGINS: Yes, ma'am, and I believe we
15 filed a redacted version of Attachment G already.

16 COMMISSIONER BROWN-BLAND: We would make
17 that request that we get a full and complete copy with
18 all the exhibits as well.

19 MR. HIGGINS: Understood.

20 COMMISSIONER BROWN-BLAND: The complete and
21 final version.

22 BY COMMISSIONER BROWN-BLAND:

23 Q Now, I believe that the documents do tell the
24 story that I want to ask and hear from it you,

1 Mr. Cox. So the management company, as you
2 described it, CSWR Inc., entered into this
3 purchase agreement with the purchase of Bear Den
4 Acres Development. And assuming that the plan is
5 to transfer the assets of Bear Den to Red Bird
6 Operating Company, what can you tell us about the
7 time frame and how all that is expected to take
8 place?

9 A I believe the contract is assignable, and we've
10 already assigned that contract over.

11 Q That's what that document is?

12 A That's correct. So it's already been assigned
13 over, that contract. The management company's
14 already been assigned to Red Bird Utility
15 Operating Company, LLC.

16 Q And that is a completed matter? There's no
17 contingencies or parts left open?

18 A I believe so, ma'am.

19 Q Okay. Now -- all right. And I believe you
20 explained that this is the process that you've
21 used in other jurisdictions, the way that you're
22 accomplishing, coming in and purchasing it and
23 having the assets transferred. Is this a similar
24 way that you do in all the other jurisdictions or

1 are there differences?

2 A I believe ever since we served in the single
3 state utility operating companies, so the last,
4 that I recall, it's five years, six years.
5 That's been the method, so that is correct. So
6 we've used that in seven other state markets.

7 Q Will the transferee, Red Bird, the operating
8 company, be subject to any charges, fees,
9 interest, or other liabilities that haven't been
10 fully disclosed and discussed with the Public
11 Staff?

12 A I don't believe so, no, ma'am. We don't do any
13 internal transfer pricing or anything.

14 Q And does the operating company or its parent or
15 any of the affiliates in the network there own
16 any other campground properties or have
17 experience with serving campgrounds?

18 A Are you asking it in other states do we service
19 campgrounds, ma'am?

20 Q Yes. Do the companies have any experience
21 dealing with campgrounds?

22 A Yes, we do.

23 Q All right. And are there -- are campgrounds
24 unique? Do they cause unique service issues?

1 A It depends on the situation, how they structure,
2 you know, originally put in. How the -- you
3 know, by-laws or rules for the campground, so it
4 varies on a case-by-case basis. Yes, there can
5 be unique circumstances.

6 Q Right. And I'm not requiring just about the
7 legalities or the transactions so much as the
8 service. Do campgrounds cause service issues
9 that are unique to campgrounds?

10 A You know, ma'am, here's where I struggle to
11 answer this question is because small water and
12 sewer pose such unique challenges for every
13 single small water and sewer system we buy. It's
14 hard to differentiate if campgrounds are much
15 different than almost any of those small systems
16 we buy.

17 So we've done campgrounds where we
18 just had faucets attached to them, you know, and
19 people are charged a connection fee, and
20 campgrounds where there's a volumetric basis. We
21 have RV parks with initial water-filling
22 stations, so it really is pretty unique depending
23 on the individual system.

24 Q How do they compare to service of residential,

1 what you would designate as residential,
2 single-family homes?

3 A Yeah, it would be somewhat different. Also
4 depending how your tariff is set up to handle it,
5 right? So is someone charged just a fee while
6 they're there, do they own it fee simple?
7 There's a bunch of, you know, kind of dynamics
8 from our perspective on that.

9 Q Can you give us any quantification of your
10 experience, the other experience, a number of
11 campgrounds, maybe, in the --

12 A I don't know the exact number.

13 Q Or percentages or --

14 A I would say between RV parks and campgrounds,
15 maybe we own 20 of them, something like that,
16 across the country. At this point, I think we
17 own 440 systems across our footprint.

18 Q And the every day problems of operating such, but
19 are there any issues that are outstanding or
20 stand out in your mind that those facilities have
21 caused?

22 A The only issue that comes to mind, as we talk
23 about, is people leaving on their spigot when
24 they take off, right, so they don't realize they

1 left the water running, especially if they're
2 filling a tank or something like that, if
3 something comes to the top of mind. You can
4 quickly locate that because you realize you have
5 this constant demand on your system.

6 Q What about communications with owners or users,
7 I'll say?

8 A So it depends if it's a rental situation because
9 they were typically dealing with the property
10 management or some type of ownership group, so
11 the RV or campgrounds that are rented out, they
12 were dealing with that ownership group, then
13 it's, you know, dealing with the user of the
14 water, if you will.

15 The other typically fee simples,
16 we have contact information for the people who
17 own the piece of property that's tied to our
18 water system.

19 Q Have you developed a communications plan or a
20 means to make sure that the intended messages are
21 getting through to both users and owners?

22 A Yes, ma'am, that's something we developed. And,
23 really, it's kind of carte blanche for us across
24 the country, these small systems.

1 It's, often times, difficult to
2 get down to the actual owners. You know, a lot
3 of the customer list we get from sellers are
4 incomplete. We've gotten things on notebook
5 paper. I mean, you name it. You know, index
6 cards, you know, the whole thing.

7 So we do a lot of work, you know,
8 to verify all that owner information and try to
9 send both written communication. We send out a
10 website, state specific, so Red Bird has been
11 already operating in the state.

12 We have a, you know, website, you
13 know, for customers. We use social media as well
14 as another customer channel so you can actually
15 interact with us directly on our Facebook or
16 Twitter page as well, so we try to use multiple
17 avenues.

18 Q When you're dealing with users of campground and
19 RV facilities, that kind of thing, have you found
20 that to be -- have you found what you do to be
21 effective? How effective are you in actually
22 knowing that people are receiving communications
23 from you about the water, about the ownership
24 they're building, that kind of thing?

1 A I believe we've been fairly effective. I've not
2 had any trouble with systems we purchased in
3 terms of not being able to deal with the eventual
4 owner and user of the system. You know, the only
5 breakdown I can think of is when it's a rental
6 property, but then we're holding the company that
7 owns the rental property responsible for that
8 water usage.

9 Q Now, am I correct to think in these campgrounds
10 that the users are either fairly changeable or on
11 another level just transient, come and go?

12 A It really depends on the type of property, so we
13 see a few of the fee simple, so I'm just giving
14 you the RV parks. You know, they own a piece of
15 property. They come and visit on the weekends or
16 holidays or vacation trips, right, or it's the
17 rental property where people are coming in and
18 out, right, but it's owned by some type of
19 management companies where we've simply seen it.

20 Q I think you alluded to it in your earlier
21 responses to Mr. Higgins, but explain to us how
22 you came to have interest in acquiring Bear Den
23 Acres Development System?

24 A So we're looking for small, private -- you know,

1 small, typically privately owned water waste,
2 water utilities. Typically, they need change of
3 ownership. You know, they shouldn't be in the
4 industrial utility world. I mean, so we look at
5 it two ways.

6 You know, one is -- one of them is
7 well aware of the Clean Water Act, increasingly
8 more the Clean Drinking Water Act, increasing
9 more stringent over time. So the system you
10 built 25 years ago, it, often times, doesn't meet
11 modern EPA requirements.

12 Knowing that, because utilities
13 run the primary business for most of these
14 owners, there's been a historical lack of
15 reinvestment. It didn't stray from the net book
16 value in the books of this system, right, so they
17 typically lack the technical, managerial,
18 financial ability to continue to own and operate
19 a water utility like this.

20 So you can tell that both from
21 violation information from the Federal EPA, net
22 book value information, you know. Ownership, you
23 know, evaluation shows that they don't own any
24 other utilities. It's not their primary

1 business.

2 Q So you gathered this information and saw this in
3 the database, and you reached out to the Bear Den
4 owners?

5 A That is correct, ma'am.

6 Q All right. So you approached them and expressed
7 an interest in purchasing or --

8 A That is correct. We went to them and said we
9 believe this is not your primary business and
10 offered to buy. And, often times, the sellers we
11 come to, didn't know there's a potential to sell
12 their company. They're running it on the side.
13 Often times, they didn't want to be in the
14 business, so we bought systems for a dollar
15 before. It just really depends on the individual
16 seller.

17 Q So you consider this utility that you seek to
18 acquire to be distressed?

19 A We would say they have -- at the very minimum,
20 they're technically and financially distressed in
21 the sense that they don't really know -- you
22 know, they haven't done reinvestment in the
23 system that we can document.

24 You know, a lot of these assets

1 are past their useful life. And then beyond
2 that, we don't see the financial wherewithal to
3 potentially do that. So those are the two, for
4 sure, I would point out.

5 Q Did you uncover if they had any service issues,
6 service quality issues?

7 A We didn't see a whole lot of service quality
8 issues. We definitely heard from residents about
9 outages a number of times. You know, I think the
10 system that small will typically have a hard time
11 communicating to residents that they have a
12 standard water main break or anything like that.

13 Q How did you come to hear from the residents?

14 A When we walk around on these properties, you
15 know, people come up and talk about what we're
16 doing. These are small communities. They see
17 you walking around.

18 Q All right. So they had some complaints about
19 outages?

20 A It's hard to get information out of the existing
21 utility, will be the general theme.

22 Q All right. Did you consider that you received or
23 somehow became aware of the customers had
24 complaints about their service?

1 A That was all anecdotal from being on site.

2 Q All right. And should you acquire the Bear Den
3 system, how do you anticipate keeping rates at a
4 reasonable level, if you connect, should you join
5 this system with other larger systems that
6 perhaps have greater service and water quality
7 issues?

8 A So we're adopting the existing tariffs as they
9 are part of this purchase. We have no plans to
10 raise rates upon purchasing the system.

11 Q Well, what's your vision? I understand you want
12 to acquire a network within North Carolina, and
13 then, eventually, have this uniformed systems.
14 So how do you envision that coming about?

15 And by that, I think I'm assuming
16 that most of the acquisitions will be at about
17 this level in terms of size, number of customers.
18 So how do you bring it together to where you
19 will -- you expressed in your testimony economies
20 of scales, spreading costs, and those kinds of
21 things. How do you envision that coming
22 together?

23 A Yes. So Bear Den's actually small from the
24 typical transaction size we do. And Bear Den is

1 a great example of a system that needs economy of
2 scales. They actually need to blend into a
3 larger customer base, you know, when you have a
4 larger placement project in Bear Den with such
5 small number of customers.

6 So when the hydropneumatic tank
7 eventually fails when you have a well casing
8 problem, that kind of thing. You know, those are
9 the kind of costs that we know will be
10 better-suited to be spread to a much larger
11 customer base in the long run.

12 And the way we look at the world
13 is that all these utilities have the same amount
14 of work that needs done over the next 10 years,
15 right? It's just about timeframes. What year is
16 System A going to need massive replacement versus
17 System B. And over a long enough time period
18 with a big enough customer base and purchasing
19 power; and technical, managerial, financial
20 ability; ratable, acute rates for reasonable
21 access to financials.

22 Q So the Commission has a general philosophy that
23 we do look for uniformed systems and we see
24 benefit in that to the customers, but -- so what

1 we have so far in North Carolina tend to be
2 larger systems, and so they come kind of
3 ready-made with a larger customer base across the
4 board.

5 But with the system -- this Red
6 Bird was getting started in North Carolina, and
7 also a system like Bear Den is very small. So is
8 it a possibility that a system like Bear Den is
9 too small to have the customers reap those same
10 benefits?

11 A No, ma'am. We've seen all over the country that
12 it's -- so we'll -- the system's smaller, you
13 know, 11. We've been asked to go purchase
14 systems by their environmental regulators or
15 economic regulators in various jurisdictions, and
16 we typically put large bunches of systems
17 together.

18 I mean, we have 150 individual
19 disbursed systems in a single-state market at
20 single-tariff pricing. So we really built the
21 Company to be able to manage these small remote
22 operations, so it's kind of one of our core
23 strengths, I believe, as a firm, so we do a good
24 job of using a -- using maintenance management,

1 remote monitoring technology.

2 We do GIS mapping of the systems,
3 which, you know, typically in Bear Den's cases
4 specific, there's been little to no asset mapping
5 over time, so we bring all those things to bear.
6 It actually makes it more efficient to run them
7 as part of a larger group of systems at a state
8 level.

9 Q So is it your experience, though, that you've
10 been -- when you've been sought out, that the
11 Company is in a level of distress needing or
12 having an immediate need for repair, replacement,
13 or some other kind of maintenance, as compared to
14 Bear Den?

15 A Bear Den's very similar to other systems we buy
16 all over the country. I mean, it's a developer
17 who has not had a utility business, really,
18 hasn't reinvested for, you know, any significant
19 level for a long period of time. You know,
20 they're one bad event from having some type of,
21 you know, major service area and their real plan
22 for asset management.

23 Q They have not had a bad event, to your knowledge,
24 that kind of bad event anyway?

1 A No, ma'am, not to my knowledge.

2 Q The conclusion of this -- of this transfer
3 petition, this transfer application, and if it's
4 allowed, what exactly will Red Bird Operating --
5 what would they own in terms of the utility
6 system? Will they own a full system in all
7 parts, in all land that's necessary or will other
8 entities such as the Water Association still own
9 some pieces or parts?

10 A It's our understanding from the type of work
11 we've done that we will own all the parts and
12 pieces; that the whole -- both the parcels, the
13 lines, and the well. And the wells -- you know,
14 the tanks, we'll all either own them or have the
15 easement rights to them.

16 Q All right. Should you find, in some regards, the
17 way the Water Association came to your attention,
18 do you anticipate any issues or will you be in a
19 position to own -- to acquire ownership of all
20 elements of the system?

21 A We don't see any issues. We believe we'll be
22 able to purchase all elements of the system.

23 Q All right. Now, your application was filed the
24 end of 2020? Have you had occasion to discuss

1 the acquisition with the residents, the
2 customers, or any of the local governmental units
3 in the area?

4 A We sent notification to the customers, ma'am. We
5 haven't had --

6 Q Haven't had any kind of town meetings --

7 A No, ma'am.

8 Q -- to let them know who you are and get to meet
9 you, that kind of thing?

10 A No, ma'am. Written communications were used for
11 that.

12 Q And beyond the notification, the customers don't
13 have any other information on any expected
14 changes or anticipated changes in their dealings
15 with -- with Red Bird as a utility versus Bear
16 Den as a utility?

17 A I'm sorry, ma'am. Can you say the question
18 differently? I'm --

19 Q Do the customers have any reason to expect
20 changes or know exactly what changes will be
21 coming as a result of the transfer?

22 A I mean, besides the written information that we
23 send over saying we plan to buy it, we're fully
24 qualified, we're excited to own your system, that

1 kind of thing. And, then, when we purchase
2 systems, we send a huge packet out about the
3 company, different mediums -- different mediums
4 to be able to communicate with us, all that.

5 Q All right. In your testimony, you indicated that
6 Red Bird was going to be deferring on the
7 replacement of water meters? What can you tell
8 us about the approximate age of the existing
9 meters, whether they're working properly, at this
10 stage, and when you anticipate they would need to
11 be replaced?

12 A So it's our belief on the water meters that the
13 majority of them are functioning in terms of
14 replacement schedule. I think we'll look at that
15 as a wider replacement program across the entire
16 state. Obviously, we'll replace every meter that
17 fails, but I don't know the exact date of the
18 meter ages.

19 Q Do you know if the meters are of different ages?
20 Are they the same between the campgrounds in
21 terms of their age versus what appears to be more
22 residential settings?

23 A The only information I can tell you, for sure, on
24 the meter ages are the meter replacements are

1 listed in the information that the sellers had
2 given us. They've obviously replaced some meters
3 as things have failed.

4 Q Would you anticipate a wholesale replacement, at
5 some point, where all meters would be replaced
6 and be new meters?

7 A We typically do not do that. It's a rolling
8 replacement schedule, just part of your, you
9 know, annual investment program.

10 Q And, at this point, you have no -- no time frame
11 in mind, just as-needed replacement?

12 A Probably. Typically, we come in maybe at a
13 five-year, you know, replacement program. I've
14 done 5 years, 10 years. It really depends on the
15 situation. I mean, there are situations where we
16 have done wholesale replacement. Those have been
17 unique situations.

18 Q So, initially, the Company thought the
19 replacement might be necessary, and then their
20 due diligence discovered otherwise? Is that
21 correct?

22 A Programs do water loss. There was a lot of water
23 lost in the system, and you have -- over the last
24 couple of years, the existing owners done spot

1 repairs, just kind of let the water loss -- not
2 their line replacement or very little of that,
3 but he has some spot repairs. So obvious to see
4 pumping rates versus sales rates, and it was much
5 better.

6 Q All right. In your supplemental testimony,
7 Mr. Cox, you indicate that Red Bird agrees not to
8 pursue an acquisition adjustment in the two
9 dockets, and -- but in the stipulation filed, the
10 language used there is the Company agrees not to
11 pursue an acquisition adjustment related to the
12 Bear Den system in this or any future proceeding.
13 Is there meaning behind the differing language?

14 A Not that I'm aware of, ma'am.

15 Q So you don't plan to seek an acquisition
16 adjustment in any future proceeding?

17 A That is correct. Bear Den would not. We're not
18 seeking any acquisition adjustment.

19 Q All right.

20 COMMISSIONER BROWN-BLAND: Are there
21 questions from -- Commissioner Hughes.

22 EXAMINATION BY COMMISSIONER HUGHES:

23 Q If you can just clarify that. Are you taking an
24 acquisition adjustment off the table for anything

1 that you're involved in, in North Carolina, or
2 just for Bear Den?

3 A Just for Bear Den.

4 COMMISSIONER HUGHES: Okay, for now.

5 COMMISSIONER BROWN-BLAND: Mr. Cox, I did
6 forget to ask.

7 EXAMINATION BY COMMISSIONER BROWN-BLAND:

8 Q So you -- we saw indication that you do plan a
9 rate increase in approximately 14 months.

10 A I believe that we would file the application,
11 depending on how much work we have done across
12 the state. I mean this --

13 Q What makes you know or think it will be in 14
14 months?

15 A That's typically how long it takes for -- we do
16 investment -- well, the way we look at systems
17 across the country is we do investment kind of in
18 two ways. We do our first initial investment,
19 what I would call triage investment. So there's
20 failing electrical components, failing mechanical
21 components. You've got, you know, lack of
22 security and locks, fences. I mean, just the
23 basic, you know. The systems needs to not be a
24 safety hazard. Needs to, you know, be

1 operational. So that's kind of Phase 1.

2 And then what we've seen is you
3 have to own the systems for a number of months so
4 you can really understand how they work, you
5 know. They all have nuances that are -- you
6 know, got different demand usages and the zones.
7 And they're not designed even according to what
8 we originally think, so there's some time to
9 understand what's really happening in the system.

10 And then from there, there's major
11 construction projects, and major being, you know,
12 depending on the size of the system. That
13 typically takes incurring work and construction
14 permitting, all of that. It's typically 14
15 months before we have both those ways of
16 investments done. I would say that schedule may
17 be elongated here in North Carolina just because
18 of, you know, how long it takes to acquire
19 systems, so we want to have, you know, a good
20 number of systems acquired, and through that
21 process, so it's pretty fluid right there.

22 COMMISSIONER BROWN-BLAND: Commissioner
23 Hughes.

24 EXAMINATION BY COMMISSIONER HUGHES:

1 Q Just related to that investment schedule and
2 potential for future increases, have you done --
3 have you looked into how the current rates for
4 Bear Den -- I know rates can be regional -- how
5 they fit into the local governments and the other
6 utilities in this general region in this state?

7 A I have not.

8 Q Um, would you be surprised to know that it's a
9 little bit on the low side, I think the rates
10 from what I can tell. With the level of
11 investment that you're going to make, do you have
12 projections out whether it's going to be
13 substantial increases, just -- I'll use that in
14 quotation marks -- but compared to the rates now
15 or is it going to be modest?

16 A Yeah. There's a lot of variables in that. So
17 its function of how many systems we purchase, how
18 bad the systems, how we actually start operating
19 them. So, you know, I've had initial rate
20 increases, you know, 25 percent, you know, and
21 had much higher, depending on how the level of
22 reinvestment that's required. So, you know,
23 that's a pretty -- especially in terms of how
24 many systems we buy also matters as well, so...

1 Q I mean, it sounds like you've been at this in
2 some other states. Again, just without holding
3 you to numbers, is that in the range in other
4 states where you've seen that 25 to much higher?

5 A Yeah. We've seen higher, but also from low
6 basis. You know, we bought systems. I mean, I
7 bought systems in one state market that had no
8 rates associated with a certificated area before.

9 And, you know, I bought systems
10 that had \$5.00 rates for 40 years that were, you
11 know, completely dilapidated, so it really just
12 depends on -- but what the existing rates are, it
13 doesn't shock me this system's rates are low.
14 They haven't had a rate increase since 1995, so
15 that makes sense to me.

16 Q It does. I guess I'm just concerned that
17 everyone's walking in with their eyes open but,
18 you know, this term rate shock, you know, could
19 occur. Maybe it's inevitable in this community
20 and some of your other communities, so I just
21 wanted to make sure that that was on the table.

22 I have another question that --
23 not related to -- well, indirectly related to the
24 cost. These systems, distressed, kind of orphan,

1 are getting a lot of attention, as I'm sure you
2 know: EPA, State, Department of Environmental
3 Quality, they're concerned, you know. And I
4 think you've voiced that and the solution that
5 many offer are similar to what you're providing.

6 The thing that we hear a lot is
7 the use of public funds to an influx to kind
8 of -- to your term triage or initial bringing up
9 to scale. This date, in particular, has some
10 very large funds that have been allocated to help
11 these types of systems, and I just -- could you
12 explain a little bit your research and how you've
13 worked and interfaced with that kind of public
14 money in other places and, you know, what you've
15 done in North Carolina as far as checking out
16 eligibility and things like that?

17 A Yes. So we have utilized those funds where they
18 either become available. So a recent example is
19 there was Covid relief money that certain states
20 allocated, and the investor-owned were also
21 eligible for.

22 So we applied for those funds, and
23 other state markets were -- you know, were able
24 to. We have used -- some states have, you know,

1 public -- you know, with the type money that's
2 available to investor-owned, and so we'll work
3 with those -- you know, those agencies as well.

4 Also, it's a cost benefit. You
5 know, we've been offered, you know, bonding in
6 certain states, but our cost of capital is
7 cheaper than the bond rate is all in, so it
8 doesn't make sense even though it's a public
9 bond.

10 And then in North Carolina and
11 specific, we have done some research, but I
12 apologize. I don't remember what the research is
13 here in North Carolina in terms of availability.
14 I know I can't remember state revolving fund
15 loans or they are walk-to investor-owned type. I
16 just don't remember off the top of my head.

17 Q They're on the drinking water side, but
18 certainly, it's something to navigate, but just
19 thank you for that, for giving your experience.

20 COMMISSIONER HUGHES: No further questions.

21 EXAMINATION BY COMMISSIONER BROWN-BLAND:

22 Q Mr. Cox, before I pass you off to Chair Mitchell,
23 something that I've been confused about the
24 entire time is in the beginning with this system,

1 there was the Bear Den Acres and there was the
2 campground piece; and together, they formed one
3 utility, but what's in the script -- can you
4 describe the customers served by -- what I'm
5 assuming is the residential piece separate and
6 apart from the campground?

7 Are those just cabins of an area
8 of typical single-family homes? Could you just
9 give me some description and idea?

10 A Ma'am, I do not -- I don't understand the
11 campground piece of this. I think there's 50 or
12 55 single-family homes. They're the majority of
13 the customers inside this system.

14 Q All right. And are they associated with the
15 campground, in any way, other than they initially
16 had the same owner or developed --

17 A Ma'am, I know that the owner of the entire
18 development was initial family who then created
19 development entities and sold it and all of that.

20 Q All right.

21 COMMISSIONER BROWN-BLAND: Thank you.

22 THE WITNESS: Yes, ma'am.

23 COMMISSIONER BROWN-BLAND: Chair Mitchell.

24 EXAMINATION BY CHAIR MITCHELL:

NORTH CAROLINA UTILITIES COMMISSION

1 Q Good afternoon, Mr. Cox. Just a few questions,
2 for you. Some are follow-up questions from
3 Commissioner Brown-Bland. Just help me get
4 oriented a little bit to some evidence that's
5 either in the record or not in the record.

6 Is there anywhere in the record a
7 list of assets identified, specific assets that
8 will be acquired by the LLC?

9 A I apologize, ma'am. I don't know if the assets
10 were in the contract. I know we've viewed the
11 tunnel work on the assets, but the -- I believe
12 there may be a list of assets we get from the
13 owner, correct.

14 Q Typically in an Asset Purchase Agreement, you'd
15 have a list of assets identified that is not
16 included in the copy of the Asset Purchase
17 Agreement I have in my file.

18 CHAIR MITCHELL: So to the extent that there
19 is such a list, Commissioner Brown-Bland, with your
20 permission, I'd like that to be a late-filed exhibit.
21 That is fine. And I don't know if that is not missing
22 pages, but we do want to acquire it in the list.

23 MR. HIGGINS: Fair enough. I believe --
24 going from memory, I think it's Exhibit B, but I may

1 be subject to correction on that.

2 CHAIR MITCHELL: And -- your memory's pretty
3 good, Mr. Higgins. Let me flip to -- I think that
4 Exhibit B is a description of land improvements,
5 easement, rights of permits and leases, and then C
6 is -- C is what I would think of as the --

7 MR. HIGGINS: Okay. I was close.

8 CHAIR MITCHELL: -- physical assets, yes,
9 but none of those is attached.

10 MR. HIGGINS: I apologize. I don't
11 understand why you don't have that, but you'll
12 certainly have it shortly.

13 CHAIR MITCHELL: But if you could -- and it
14 could be a problem on our end, but if you could insure
15 that into this -- if okay with you, insure that into
16 the record, gets the asset list which would be
17 Exhibit C and Exhibit B, to the extent that you-all
18 have identified the land and improvements thereon.

19 MR. HIGGINS: I don't know that we have a
20 real estate document yet that has all of that.
21 I'll -- certainly to the extent it exists, it will be
22 there. I have counsel -- I have the real estate
23 counsel here to answer any questions, so...

24 CHAIR MITCHELL: Okay.

1 MR. HIGGINS: But yes, we'll get you B and
2 C.

3 CHAIR MITCHELL: Okay.

4 BY CHAIR MITCHELL:

5 Q Is the Company confident, Mr. Cox, that at this
6 point, it has identified all of the assets that
7 must be acquired as well as any real estate
8 interests that must be acquired in order to
9 operate the utility safely and reliably?

10 A We do believe that we have identified everything
11 that needs to be -- to order all the assets to
12 provide service, yes.

13 Q And so, again, just for your counsel's benefit, I
14 want to make sure that that documentation is in
15 the record. Mr. Cox, there is assignment of
16 contract rights that's included in the copy of
17 the Asset Purchase Agreement that was provided --
18 that's on file in this docket, and it's undated.
19 I believe Commissioner Brown-Bland asked for a
20 dated copy of that agreement.

21 But as far as I can tell, it
22 likely predates an amendment to the agreement for
23 sale to the utility system that was entered into
24 on November 25th, 2020. And that amendment,

1 there is a dated executed version of that
2 amendment included in the documentation that's
3 been provided to the Commission.

4 My concern is here, the assignment
5 predates and assigns the rights of Central States
6 Water Resources, Inc. to the Op. Co. to Red Bird
7 Utility Operating Company, LLC, and then the
8 amendment entered into doesn't mention anything
9 about Red Bird. It just identifies Central
10 States Water Resources, Inc.

11 I want to make sure that any and
12 all contractual rights and obligations are
13 appropriately -- have been appropriately assigned
14 and accounted for. That's really just, again,
15 Mr. Higgins, a question for you.

16 But, Mr. Cox, to your knowledge,
17 any amendment to the contract would be done with
18 the assent and understanding of the Red Bird
19 Utility Operating Company?

20 A Yes. That is correct.

21 Q And to be clear, when I say contract, I'm
22 referring to the agreement for sale of utility
23 system. Okay. In the documentation that's on
24 file with the Commission, it's my understanding

1 that the Company provided notice to customers at
2 the direction of the Commission.

3 You-all provided notice to
4 customers by hard copy at service addresses and
5 then later provided hard copy to customers at
6 their billing addresses? Do I understand that
7 correctly?

8 A Ma'am, that may be true. I just don't know the
9 exact detail of that. I apologize.

10 Q Okay.

11 A I can go look back at it, but that sounds correct
12 to me.

13 Q Okay. Did you-all notice an uptick -- let me ask
14 this question first. Have you-all developed and
15 made live a website for the North Carolina
16 Operating Company, at this point?

17 A Yes. I believe we have that website up.

18 Q And do website analytics indicate an uptick in
19 visits to that website subsequent to the mailing
20 of the notices?

21 A I actually get those metrics on a monthly basis,
22 and I don't -- there was not a significant
23 uptick, you know. There was some uptick,
24 obviously, but -- I don't know what the number

1 is, but I can get that.

2 Q Okay. Are you aware that the Commission received
3 three -- I believe it's three letters, four
4 letters from customers of this utility regarding
5 the proposed transfer?

6 A I am.

7 Q Okay. And have you reviewed those letters?

8 A Yes. And the one -- the most recent one I'm more
9 familiar with because it's the one I most
10 recently read about the Water Association and all
11 of that.

12 Q Okay. And have you -- has the Company received
13 any additional communications, aside from these
14 three or four? Has the Company received
15 additional communications from customers of the
16 system?

17 A Not that I'm aware of.

18 Q Okay. Exhibit -- bear with me one minute. I'm
19 looking at one of the exhibits to the application
20 that identifies -- it's a five-year projected
21 Op's revenue. Bear with me. Bear with me.

22 It's Attachment F to the
23 application. It's confidential documents. I'm
24 not going to go into the numbers, but it seems to

1 be the title is "Operating Budget," and there's
2 some -- you know there are various years
3 identified here. There's year one, year two,
4 year three, year four, and year five.

5 Help me understand this operating
6 budget and the assumptions there. Is that just
7 for the -- is it for the utility system that
8 you-all -- that Red Bird Utility Operating
9 Company currently owns and this one proposal or
10 what are the assumptions there with those
11 numbers?

12 A Commissioner, I don't have that exhibit in front
13 of me. If I could get it in front of me, I can
14 properly answer those more intelligently.

15 MR. HIGGINS: Chair Mitchell, I'm chagrined
16 to tell you that I walked out of my office without the
17 notebook with the application.

18 COMMISSIONER BROWN-BLAND: I believe
19 Ms. Jost has it.

20 MS. JOST: I do.

21 MR. HIGGINS: Thank you.

22 CHAIR MITCHELL: Thank you, Ms. Jost.

23 Q Just walk me through -- don't identify any of the
24 numbers. I don't want to get into any

1 confidential information, but what are these
2 numbers?

3 A These are projections on a state-wide basis for
4 operating in capital budget numbers.

5 Q Assuming how many systems in operation?

6 A Assuming about 8,000 connections. You can see
7 there at the top, there's a customer account
8 that's per residential equivalent.

9 Q Okay. And so this system provides how many
10 connections?

11 A Like 50, 55.

12 Q That's just the single-family residences and
13 then --

14 A That's correct.

15 Q And then you've got the additional campground
16 connections?

17 A Which -- I don't know what the campground
18 connections are in terms of what the rate is over
19 there.

20 Q Okay. And the system for which the CPCN has been
21 issued for the two Red Bird, how many connections
22 are there?

23 A The one over on the outerbanks?

24 Q Yes.

1 A Forgive me. A couple hundred, I believe.

2 Something in that area.

3 Q Okay. So these numbers assume the acquisition or
4 the acquisition of a number of utility
5 franchises?

6 A Yeah. I believe we have 12 pending, currently.

7 Q Okay. Let's see. And just following up there,
8 the 12 systems, assuming all CPCN application or
9 transfer applications were granted, would you get
10 to around 7,500 connections?

11 A Correct. Actually, that number is going to
12 continue to grow as we sign more contracts in the
13 state. We're actively, you know, pursuing other
14 sellers as well.

15 Q Understood. I'm just trying to understand how
16 many systems are represented by that 7,500?

17 A It's the 12 existing transactions that are in
18 front of you.

19 Q Okay. Thank you.

20 A I believe there's 12 that's subject to
21 correction.

22 Q Okay. In your testimony to this Commission, it
23 was your direct testimony filed on February 11th.
24 On page 5, lines 10 through 12, you testified as

1 follows: "As is the case with the Bear Den
2 system, many of the systems which Red Bird seeks
3 to acquire here are distressed or troubled."

4 Now, you've already talked through
5 this question or this -- the use of the term
6 distressed or troubled. So is there -- help me
7 understand why the Company seeks to acquire
8 distressed or troubled systems?

9 A Because we've built kind of an expertise on
10 buying these small systems. I mean, typically
11 they're orphaned. The Commissioner brought that
12 up before. You don't see major consolidation of
13 these orphan systems because it takes a different
14 skill set to work on those. I mean, smaller
15 waste water, it's a radically different animal
16 than big water, waste water. The systems lack
17 redundancy, lack existing utility maps.
18 Operational know-how's way different to be able
19 to do it remotely. Cost effectively is a
20 different skill set that often times the larger
21 utilities have.

22 Q Okay. And so when you use the words distressed
23 or troubled, help me understand what a distressed
24 system is and what a troubled system is.

1 A Yes. I mean distressed, you could use the full
2 EPA designation of clean water, Drinking Water
3 Act, Clean Water Act. Troubled can be, you know,
4 a lack of Commission filings. They could be a
5 lack of long-term investment. It could be owners
6 who are not professionally -- they're not utility
7 professionals, and so that's a pretty large
8 umbrella there.

9 Q So help me understand the Company's expertise in
10 owning and operating distressed and troubled
11 systems. Just walk me through what that
12 expertise is and how the Company has acquired it.

13 A Yes. So, you know, my staff and myself has been
14 around water and wastewater my entire career.
15 From design, design build, design build operate,
16 and small being, you know, typical. We say small
17 is below 8,000 residential connections in a
18 single system, right, is kind of the definition
19 we use for small.

20 And really, you know, we currently
21 own 440 of these, you know, water and wastewater
22 systems across the country. I believe we're the
23 second -- first or second largest single
24 wastewater plant owner in the country, and, you

1 know, water systems, so similar account. So
2 we've really done this on a permanent basis.

3 So we've got a tool kit of
4 solutions, you know. I'd like to say we've seen
5 it all in terms of configurations, previous
6 ownerships. I mean, it's, you know -- but I
7 think that experience combined with really built
8 the Company to be remote, the way they operated,
9 right, so -- and did that by -- you know, from
10 day one of finding this Company. We've built the
11 whole company on the Cloud.

12 We've utilized GIS technology and
13 imperialized management systems so that you can
14 take an operator with a handheld and be able to
15 go out and be able to work on preventive work
16 orders, actual work orders that were called in,
17 you know, maintenance schedules, all of that, and
18 keep digital records for asset management and for
19 customer interaction all the way down to the
20 property level.

21 Q Okay. So it makes sense, remote operations,
22 where those can be accomplished. Understood, but
23 what will you do in terms of how -- how you have
24 boots on the ground in North Carolina, because

1 there will be times when you need to have a
2 person or people available to go to McDowell
3 County and to go to Currituck County or Carteret
4 County. So how are you going to manage that?

5 A Yeah, absolutely. So we do contract operations
6 and maintenance firms that we use. That's a, you
7 know, standard industry practice. And, really,
8 we have -- require an hour from a call-in,
9 emergency call-in to boots on the ground, right,
10 and back to emergency operations plan.

11 So if you're a customer of Red
12 Bird and you call in, and there's a -- you know,
13 you smell sewer, let's use that, or your water
14 pressure's going down, right? You call in and
15 that triggers a work order process. That work
16 order gets kicked down. Our operations
17 maintenance personnel have to answer that, that
18 work order to return the call in 15 minutes,
19 right? So that 15 minutes is not accomplished,
20 then the work order escalates all the way to me
21 eventually, up to the Company, to make sure it
22 gets addressed.

23 When you have an event that is
24 deemed an emergency event, which we have a water

1 pressure event, for example, so use water
2 pressure, then that automatically triggers
3 rolling a truck out, right? So they have an hour
4 to be on site, and we've got a GPS tag attached
5 with the handheld so we can track that the
6 person's left and gotten on site. So we go and
7 assess the situation.

8 If it's something that can't be
9 done, at that point, you know, your personnel in
10 the truck, you need a PCL iron that triggers a
11 whole 'nother work order process, the customer's
12 informed. In that scenario, if it's a water
13 pressure event, probably will trigger a
14 precautionary Boil Water Notice, which we handle
15 you know, both, you know, written e-mail blast,
16 all of that kind of stuff. And then we really
17 track cradle-to-grave. You know, it took us this
18 long to get a piece of yellow iron out there, you
19 know, resolve the issue, before and after
20 pictures, and then we have that, all type of --
21 the address, the original customer called in.
22 That's how we manage that.

23 Q Okay. Have you identified your contract
24 maintenance operations companies that you'll

1 partner here, that you will work with here in
2 North Carolina?

3 A Yeah. We already have some in place in terms of
4 outerbanks operations.

5 Q And what about for McDowell County?

6 A We do have -- we have it identified for the
7 entire state.

8 Q Oh, you have. Can you identify -- can you let me
9 know who they are?

10 A I'm sorry. I don't know the names of the
11 companies. I can think of one. Clear Water,
12 that I know for sure, is one of our providers
13 here.

14 Q All right.

15 CHAIR MITCHELL: If I may, Commissioner
16 Brown-Bland. Would you provide a list of those
17 operators as a late-filed exhibit?

18 THE WITNESS: Yes, ma'am.

19 CHAIR MITCHELL: Okay.

20 BY CHAIR MITCHELL:

21 Q What confidence should a customer sitting in
22 North Carolina have who's served by one of your
23 systems? That needs water to conduct, like daily
24 activities? That if there's a problem and water

1 services is impacted, and they make -- that
2 person makes a phone call, that it's going to be
3 responded to and addressed, you know, as quickly
4 as possible?

5 A I mean 100 percent confidence. We really pride
6 ourselves on that. I mean, that's one things --
7 we have not had a sustained customer complaint,
8 that I can think of, across the entire country.
9 We work very hard to be able to track everything.
10 It's one thing to say you can do, but it's
11 another to actually measure it.

12 So like everyone that calls in,
13 and I'm a father of four children. My water
14 pressure goes down. My little kids are going
15 crazy, I'm an unhappy camper, right? So I'm
16 calling my water company. I'm pretty mad, right?

17 And things get crossways in terms of how I deal
18 with the situation. I feel like I called five
19 times, you guys took two hours.

20 Well, we track every single phone
21 call. We record the phone calls that come in to
22 make sure that our customer service
23 representatives are being respectful, responsive.
24 Understand in lieu of that cradle-to-grave

1 approach, it gives customers 100 percent
2 guarantee that we're going to provide safe,
3 reliable service on a long-term basis.

4 Q Okay. The communications with customers are
5 really important, especially, you know, smaller
6 systems, neighborhood systems that are -- you
7 know, systems that serve neighborhoods that are
8 closely-knit neighborhoods or, you know, linked
9 together on next door or some of these other
10 website programs that allow communications, you
11 know, relatively easily among neighbors.

12 How is the Company proposing here
13 to make sure it reaches all of its customers,
14 stays in close contact with them, and is able to
15 reach them when there is a problem or, you know,
16 there is some other type of information that
17 needs to be disseminated?

18 A You know, like I said earlier, we're very big on
19 providing multiple mediums of communications.
20 It's funny you bring up next door. We've
21 utilized next door, so it's a service provider
22 inside a Geo-Sense location. We can actually
23 send messages to next door and done that in
24 communities that have a setup like that.

1 You know, we realize we're talking
2 to a range of customers, right? You've got
3 customers who are only going to receive
4 information written, you know. They're not going
5 to receive it. We know there are customers who
6 use social media for everything. Some people go
7 to the website. We try to open all those avenues
8 of communication to go back and forth realtime.

9 And on the ground for, you know, a
10 water event or something like that, you also have
11 posted signs, all those things, so we're trying
12 to utilize every single pathway we can. I think
13 it's one of the benefits for bringing a company
14 like us to a situation like Bear Den that doesn't
15 have multiple means of communication. That's
16 really where we, you know, really show the
17 difference between being owned by a professional
18 utility.

19 Q So what I'm hearing you say is that customers and
20 Bear Den, assuming the transfer application is
21 approved, once you-all are owners and operators
22 of that system, communications between the
23 customers and their utility are going to improve?

24 A Improve substantially. I can say it with

1 confidence with Bear Den.

2 Q Quality of service, will it improve as well?

3 A It will improve.

4 Q Okay.

5 A Especially with remote operations and remote
6 monitoring. We set up remote monitoring units.
7 So, you know, we're typically ahead of the curve
8 when an event happens because we're seeing it
9 happen on our -- monitoring before you call in.

10 Q All right.

11 CHAIR MITCHELL: Commissioner Brown-Bland, I
12 have nothing further.

13 COMMISSIONER BROWN-BLAND: Commissioner
14 Hughes.

15 EXAMINATION BY COMMISSIONER HUGHES:

16 Q I'm just curious, but it will impact your last
17 statement about the quality of service, the use
18 of SCADA and the use of remote control, you know.
19 As far as I could tell, one time, there was hopes
20 that things really could be completely remote and
21 that you could be -- actually control equipment.

22 I think in the last four or five
23 years, there's been pushback because of some of
24 the cyber issues. And have you had to kind of

1 reassess your operating strategy at all because
2 of that, and is it still going to work?

3 A Yeah. So we actually don't use remote operations
4 in the sense we're not turning valves from a
5 distance, we're not doing equipment, and we're
6 very big on cyber security. It's something we
7 had warned about quite a bit.

8 It's a huge issue, National
9 Association of Water Companies in terms of, you
10 know, a real present threat, continually getting
11 Homeland Security messages today, you know, about
12 the threat that poses. You know, we're very big
13 on internal security, dual authentication, all of
14 that. So we've not had a cyber security issue
15 yet, but we are concerned about it.

16 Our remote monitoring is more to
17 dispatch people than it is to remotely operate
18 it, right? And I would say, you know, one of the
19 things that goes along with that, one of the
20 things we're experiencing, the water industry's
21 experiencing is called Silver Tsunami. We have a
22 retirement of the trades that are coming out of
23 business, right?

24 So one of the things that we're

1 really dealing with is trying to make our
2 operations fullproof, right? That -- you know,
3 that a person with the right certifications and
4 the right handheld knows how to run it, so it's
5 not really complicated. So it's one of the
6 things that we've seen that really helps with
7 continuity of service.

8 COMMISSIONER HUGHES: Thank you. Thank you
9 for that.

10 EXAMINATION BY COMMISSIONER BROWN-BLAND:

11 Q All right. Mr. Cox, so is the Company able to
12 augment its application with any reports that
13 show its response time to customer calls and
14 repair times to customer calls? Is that a report
15 that comes out of your system that you --

16 A Yeah. I'd be glad to give you a couple recent
17 events that we have that we could show you
18 response times and all that.

19 Q Well --

20 MR. HIGGINS: Question. Are you -- I'm
21 sorry. Are you asking future --

22 Q Well, I was asking for historical information
23 that might support his testimony; that his
24 response time is quick, that his repair time is

1 quick. And then I was going to ask, on a
2 going-forward basis, is that something that with
3 regard to this system, that should you acquire
4 it, would you be able to provide? Is that a part
5 of your communications and database systems that
6 you would be able to print out a report that
7 would show the response times and the repair
8 times?

9 A We'd be happy to create a report, if it's
10 helpful. We've done that in jurisdictions,
11 especially on the customer service side. Call
12 wait times, dropped times. All of those kind of
13 reports, we have those.

14 Q All right. And that's going-forward. And do you
15 have historical -- some that you could provide?

16 A Yes. I could give you the last couple months of
17 customer service data.

18 COMMISSIONER BROWN-BLAND: All right. And
19 we'll take you up on that, Mr. Higgins, and ask that
20 that be filed with the Commission.

21 Q Now, Chair Mitchell reminded me. I had written
22 it down here in your testimony. When you talk
23 about the benefits to the customers, there's a
24 large emphasis here on social media being able to

1 use the Cloud tool and then different, sort of,
2 high-tech ways of communicating with customers,
3 or they may not seem high-tech to the majority
4 any more.

5 But in North Carolina, are you
6 familiar enough with the area to know that that
7 actually would provide a benefit to these 55
8 customers and who have residence in the
9 campground?

10 A I would say what we see, kind of, across the
11 board in these small communities, it's a mix.
12 It's a continuum of some people that's going to
13 be a real benefit. And other people, it's going
14 to be a very traditional means of communication.
15 I mean, there's some that, you know, in rural
16 communities, particularly where, you know, you've
17 got to have a sign at the front of the community
18 saying hey, we're a precautionary board, we're
19 doing water main maintenance, right, additional
20 door hangars. You know, those are all the
21 avenues.

22 So I agree with you in communities
23 across the U.S. I would say, you know, there's
24 certain percentages, depending upon the

1 community, that all the social media channels
2 don't mean anything. And then there's certain
3 communities that that's the only way they receive
4 any information, you know.

5 Q What about this community? Do you know if
6 there's adequate sale and Wi-Fi service in the
7 area?

8 A I don't know the answer on that, in this
9 community, in particular.

10 Q All right. And so what are the main benefits to
11 these customers if you were to take out that kind
12 of -- you know, the social media, the e-mail, the
13 text kind of things? Are there still -- what
14 benefits are left?

15 A It's still the same. I mean, you call in as a
16 customer because we're still providing safe and
17 reliable service to the individual home and
18 resident, right? So there's no difference if you
19 get your information via snail mail or Facebook.
20 When you call in, you get our people, you get the
21 response times.

22 You get the follow-up from -- to
23 close out any issues that have happened. You get
24 the advantage of a company that is doing

1 reinvestment over a long, you know, time period
2 so that you know you're going to have safe and
3 reliable service in the future. And I will say
4 that all the benefits are the same. The only
5 difference is you're not communicating with those
6 extra mediums.

7 Q All right. So one of my concerns, and I'll just
8 put it out here, is that you got 55 of the
9 single-family homes. We don't quite know how
10 much we'll be serving at the campground. But
11 aside from your testimony here today, we don't
12 have a record that the customers are unhappy with
13 their current service.

14 I can ask the Public Staff about
15 it, but the Commission's not aware of complaints,
16 and I'm just concerned -- or I'm looking for the
17 answer to how we can explain to those 55
18 customers that they truly are benefiting from
19 this change, particularly if they're anticipating
20 a rate increase, which is something that the four
21 customers have raised in there.

22 A Yeah. My answer to that would be one, it's
23 prorated. It's often times difficult for
24 residents to understand water and wastewater and

1 structure, right? I mean, how many customers,
2 unless they're right next to a piece of physical
3 infrastructure, can identify where the water's
4 coming from or the meter is often times where the
5 lines are, right?

6 You know, you flush your toilet or
7 you run your shower, and that's kind of your only
8 measure of that, right? You know, what we know
9 to be true, though, is that, you know systems
10 like this and think the systems -- you know, are
11 decades old without any major replacement
12 program.

13 What we know to bring to the table
14 is one, the continuity of service, because we'll
15 respond to bring resources to bear, but a
16 reinvestment plan so that this community
17 continues to receive safe and reliable service
18 for decades to come, because the current
19 trajectory, major failure will happen.

20 We can say whatever that time
21 period is, right, but what we say all the time in
22 the small water and wastewater business is the
23 infrastructure crisis is not looming. It's
24 already here for these small communities, right?

1 And so because this community is not
2 experiencing, thank God, some service failure at
3 the current rate of reinvestment, it will happen,
4 right, so that is one of the biggest reasons why
5 we're in this business. I mean, that would be my
6 response.

7 Q Is the infrastructure crisis here at Bear Den
8 Acres today?

9 A I would just say from the financial records
10 alone, you can tell the lack of reinvestment of
11 the last number of decades.

12 Q All right. Mr. Higgins and Ms. Jost earlier, I
13 indicated to you I had a question that comes out
14 of Attachment L to -- Attachment L to the
15 application which is marked as confidential. If
16 that attachment is truly confidential and I
17 should not ask questions in public, I'm prepared
18 to close the hearing room to the public.

19 THE WITNESS: Could I speak too that?

20 MR. HIGGINS: Yes.

21 A I'm pretty comfortable, you know, that -- unless
22 there's some specific technology thing in here
23 that I'm worried about, then I'm okay with some
24 of the -- we've pioneered some technology and

1 some systems. I read this earlier. So if I feel
2 like questions are confidential, is it okay if
3 say hey, I believe this would be confidential?
4 But I think in the majority, that would be fine.

5 Q Sure. I just didn't even want to reveal anything
6 in the question you might think is not. All
7 right. We'll forge ahead, and you let me know.
8 It's fairly simple and we've already touched upon
9 it.

10 What we saw in that engineering
11 memorandum, which is page 4 and 5 of Attachment
12 L, in there, we saw indication that there were
13 leaks and pipe breaks, and that kind of thing,
14 but especially leaking water meters. And yet,
15 we're hearing there's a decision to defer on a
16 placement on the water meters.

17 So are the meters functioning
18 accurately, especially for billing purposes, and
19 why, in the face of knowing that there are
20 leaking meters, has Red Bird made the decision
21 they would defer replacement of the water meters?

22 A Some of the repairs were made by the existing
23 owner. His water loss percentage was so high, he
24 was under pressure. There are certain thresholds

1 for water loss for which the State, you know,
2 kind of looks at, and I think it's 30 percent.

3 Q So he, the current owner, already replaced
4 meters, not just pipeline and lines, but meters
5 as well?

6 A Yeah. I think repairs the meters, you know, and
7 spot repairs at lines. There was kind of dual
8 pressure from us as well, so that's what gave us
9 the confidence we're not losing a bunch of water
10 and thus, in danger of risking service to the
11 customers.

12 Q And I asked you earlier about your time frame,
13 and you explained how you would make a decision
14 about when it was the time to replace and how
15 you'd go about that, but just to close that loop,
16 does Red Bird intend to replace meters closer to
17 the end of the one to five-year time frame that's
18 recommended by the engineer?

19 A I don't know the answer to that question. I
20 mean, I would say we'll fit them into a larger
21 meter replacement program kind of across the
22 State, right? Obviously, anything that fails,
23 we'll replace anything that's providing bad
24 service or, you know, I'm sure that everyone's

1 aware older meters underbill, they don't overbill
2 customers, right? So, you know, we have an
3 incentive to replace that as an as-needed, you
4 know, process, but we're not going to carte
5 blanche just do it.

6 Q All right.

7 COMMISSIONER BROWN-BLAND: Um, and
8 Mr. Higgins, before I turn it over to you for
9 questions on Commission's questions, you had a number
10 requests for some additional information or late-filed
11 exhibits. And I would just add to that in a general
12 sense as the situation progresses and there's a change
13 in status of what's available. If you will keep kind
14 of a rolling update of what we have here.

15 MR. HIGGINS: Yes, ma'am.

16 COMMISSIONER BROWN-BLAND: All right. All
17 right, Mr. Higgins. Do you have questions, or
18 Ms. Jost, for that matter? Ms. Jost, do you have
19 questions on Commission's questions?

20 MS. JOST: No questions.

21 COMMISSIONER BROWN-BLAND: Mr. Higgins?

22 MR. HIGGINS: I don't have any questions.

23 COMMISSIONER BROWN-BLAND: All right,
24 Mr. Cox. You may be excused. But, Mr. Higgins, you

1 may receive --

2 MR. HIGGINS: Yes, ma'am. I have
3 Mr. -- while it's unusual for the Commission to have
4 live testimony, I have Mr. Raymer present who is --

5 CHAIR MITCHELL: Well, first, wait. I was
6 referring to your exhibits.

7 MR. HIGGINS: Oh, sorry. Yes. I'd like to
8 move the exhibits of the documents that have been
9 marked as Red Bird Cox Exhibits 2 and 3.

10 COMMISSIONER BROWN-BLAND: All right.
11 Without objection, Red Bird Cox Exhibits 2 and 3 will
12 be received into evidence, at this time, as well as
13 Cox Exhibit 1.

14 (Whereupon, Red Bird Cox Exhibits
15 2 and 3, were received and
16 admitted into evidence.)

17 COMMISSIONER BROWN-BLAND: Thank you,
18 Mr. Cox.

19 THE WITNESS: Thank you.

20 COMMISSIONER BROWN-BLAND: Continue.

21 MR. HIGGINS: Yes, ma'am. I have
22 available -- because of the question about the
23 ownership of the waterlines that was alluded to in the
24 Commission's recent order, Mr. Raymer spent his --

1 sometime this weekend going through the Register of
2 Deeds office files in McDowell County. And I have a
3 deed that is a copy of recorded deed of which I've
4 come to learn that in 2016, the Bear Den Acres
5 Development, Inc. was conveyed to an entity called
6 Bear Den Mountain Resort, Inc.

7 And this is the deed by which the Moody
8 family conveyed its ownership of the land and the
9 utility entity without Commission approval, but there
10 is language in this deed that looks like the
11 conveyance of all the water utility system assets.

12 And, so, Mr. Raymer is here for the purpose
13 of authenticating the deed if the Commission requires
14 that. Otherwise, I would tender this as an exhibit on
15 behalf Red Bird. And we're at the Commission's
16 pleasure in terms of whether you want Mr. Raymer to
17 authenticate it.

18 COMMISSIONER BROWN-BLAND: Since
19 Mr. Raymer's here, let's get him on the stand.

20 MR. HIGGINS: All right.

21 COMMISSIONER BROWN-BLAND: Do you have a
22 copy for us, Mr. Higgins? And has Ms. Jost seen it?

23 MR. HIGGINS: Yes.

24 CHAIR MITCHELL: If you have any extras,

1 give one to our staff back there.

2 MR. HIGGINS: Mr. Raymer, would you state
3 your name for the record.

4 COMMISSIONER BROWN-BLAND: Hold on,
5 Mr. Raymer. Would you place your left hand on the
6 bible and raise your right.

7 JONATHAN RAYMER;
8 having been duly sworn,
9 testified as follows:

10 COMMISSIONER BROWN-BLAND: All right. Thank
11 you. Mr. Higgins.

12 EXAMINATION BY MR. HIGGINS:

13 Q Mr. Raymer, please state your name for the
14 record.

15 A My name is Jonathan Raymer.

16 Q And what's business address?

17 A 3623 North Elm Street, Greensboro, North
18 Carolina.

19 Q How are you employed?

20 A I'm an attorney with the Law Firm Carolinas.

21 Q All right. And how long have you been licensed
22 to practice law in North Carolina?

23 A Approximately 12 and a half, 13 years.

24 Q What is the focus of your practice?

1 A Real estate.

2 Q Were you retained by Central States Water
3 Resources to search title for real estate and
4 easements to be acquired by Red Bird Water in
5 connection with the acquisition of the Bear Den
6 Water Utility System?

7 A I was.

8 Q And did you become aware on the end last week of
9 the issue raised regarding restrictive covenants
10 purporting to create the Bear Den Water
11 Association and to convey waterlines?

12 A I was.

13 Q And did you undertake further research at the
14 Bear Den regarding Bear Den at the McDowell
15 County Register of Deeds?

16 A I did.

17 Q And did you locate a deed that has a bearing on
18 the question of the ownership of those assets?

19 A I did. We located a deed filed in 2016.

20 Q And what's the date of the deed, please?

21 A It is -- the recording date is what we go by
22 usually for title. It is December the 22nd of
23 2016.

24 Q All right.

1 MR. HIGGINS: Commissioner Brown-Bland, I
2 would ask that the deed that I've handed out, which
3 was recorded in Book 1,200, Page 1,006, be marked as
4 Red Bird Raymer Exhibit 1.

5 COMMISSIONER BROWN-BLAND: Yes. It will be
6 so identified Red Bird Raymer Exhibit 1.

7 (Whereupon, Red Bird Raymer
8 Exhibit 1, was marked for
9 identification.)

10 BY MR. HIGGINS:

11 Q And who were the parties to that deed?

12 A Parties to the deed, the Grantor and entity or
13 individuals were the heirs and/or individuals
14 ownership, the Moody family, who were in charge
15 of the development.

16 Q And were the Moody family, based on your research
17 and title, were they involved in the original
18 development of the Bear Den project?

19 A They were. The Moody family originally received
20 title, and I believe -- I don't have it in front
21 of me, but in 1971 as in their individual names,
22 Mr. Moody and his wife.

23 Q Then if you'll turn to page 10 of this document,
24 which is the last page, is there provision on

1 this page that deals with the transfer of the
2 ownership of Bear Den Acres Development, Inc. and
3 ownership of the Water Utility System?

4 A There is.

5 Q And would you read that into the record, please,
6 sir?

7 A Certainly. *It is acknowledged the Grantee is*
8 *purchasing all stock of Bear Den at Acres*
9 *Development, Inc., which owns and operates all*
10 *water utility equipment, including without the*
11 *limitation the water tank situated at northeast*
12 *terminus of Bear Cub Drive as shown on the plat*
13 *recorded in McDowell Plat Book 26 at Pages 98 &*
14 *99, and all roads as well as roadway and utility*
15 *easements that serve Bear Den Acres Phase 1 and*
16 *2, and the Mountain View Cabins.*

17 Q Are you aware of any other recorded documents
18 which address the ownership subsequent to the
19 2016 recordation of this deed that addressed the
20 ownership of these water system assets?

21 A I am not.

22 MR. HIGGINS: I don't have any other
23 questions for Mr. Raymer.

24 COMMISSIONER BROWN-BLAND: Any questions

1 from Ms. Jost?

2 MS. JOST: No questions.

3 COMMISSIONER BROWN-BLAND: Chair Mitchell.

4 EXAMINATION BY CHAIR MITCHELL:

5 Q Good afternoon. I guess a few questions.

6 Primarily, why did -- I mean, I'm looking at the
7 asset, I mean, the agreement for sale of the
8 utility system, and the parties to that agreement
9 are Central States Water Resources, Inc. and Bear
10 Den Acres Development, Inc.

11 A Um-um.

12 Q And signatory on behalf of Bear Den is Mark
13 Krauss?

14 A Correct.

15 Q Identified as the president. Is Mark just --
16 Mr. Krauss just -- was he unaware of this
17 transfer? Why would he enter into this agreement
18 in 2020 when this transfer of interest took place
19 in 2016?

20 A Mr. Krauss owns -- at least is the owner of both
21 of the entities of Bear Den. I did look at the
22 North Carolina Secretary of State site to see if
23 they had dissolved as pursuant to this document,
24 Bear Den Acres Development. It is currently

1 existing. Mr. Krauss is the existing owner and
2 manager or, I guess, president of the mountain
3 resort as well as Bear Den Acres Development.

4 Q So are you aware of any agreement whereby Bear
5 Den Mountain Resort, Inc. would have transferred
6 to Bear Den Acres Development, Inc. the assets
7 that are the subject of this CBCN transfer
8 application?

9 A Most all of my purview is basically limited to
10 the Register of Deeds recordings. There are no
11 other deeds which convey any other interest or
12 assets of Bear Den.

13 Q Okay. And the paragraph counsel had you read
14 into the record, it is acknowledged the grantee
15 is purchasing all of the stock?

16 A Correct.

17 Q Have you reviewed any agreement associated with
18 the purchase and sale of that stock by Bear Den
19 Mountain Resort, Inc. of Bear Den Acres
20 Development, Inc.?

21 A Other than what's reported by deed, I have no
22 other documentation.

23 Q Okay. And so what I'm hearing -- I want to make
24 sure I heard you correctly. Bear Den Acres

1 Development, Inc. has not been dissolved. It's
2 still a --

3 A An existing entity.

4 Q All right, an entity -- go ahead. Answer the
5 question. It has not been dissolved?

6 A It has not been dissolved.

7 Q Okay. And is it in good standing with the State
8 of North Carolina?

9 A According to the -- currently on the website for
10 the Secretary of State, it does show as active.
11 We have not pulled any kind of Certificate of
12 Good Standing --

13 Q Okay.

14 A -- for either entity, so I don't have further
15 information on that.

16 Q And you personally haven't had any discussions
17 with this Mr. Krauss about why he would have
18 entered into -- why Bear Den Acres Development
19 would have entered into this agreement?

20 A I have not. We do find -- and stop me if I'm
21 going over. We do find that a lot of times when
22 people enter purchase agreements, that they do it
23 under the wrong entity or they do it incorrectly
24 as we do title investigations. We further

1 clarify who the owner actually should be. And a
2 lot of times, those purchase agreements are
3 amended later in time. We find all the time
4 where sellers will enter into something, and it's
5 not just you. It's also your brother's an owner
6 or with companies. The wrong entity's being
7 represented. So as part of our title work,
8 sometimes we take corrective measures as to
9 purchase agreements.

10 Q Thank you for that explanation or that
11 information. It is experienced around here that
12 from time to time with smaller systems or even
13 with larger systems, there can be inaccuracies
14 and chain of title or other sort of problems with
15 real estate or with titled assets --

16 A Um-um.

17 Q -- that are not caught or not remedied, and so
18 hence, the reason for our questions, and we want
19 to get this right. Can you -- has your firm --
20 is your firm doing the title work on the assets
21 involved in this transfer?

22 A Not the assets, but as -- well, I don't know the
23 definition of assets, but the fee simple real
24 estate which is being conveyed. We are, of

1 course, doing that. Everything is subject to
2 title insurance, which are the fee simple assets
3 and also the easement assets. Now, as far as
4 waterlines and everything else, that isn't
5 typically insured through title insurance, and
6 it's usually not necessarily part of a deed which
7 would convey title.

8 Q Understood. So you're only going issue opinion
9 for title companies. Is that correct?

10 A Correct.

11 Q Okay. Assuming we get there.

12 CHAIR MITCHELL: Nothing further.

13 EXAMINATION BY COMMISSIONER BROWN-BLAND:

14 Q Mr. Raymer, in your dealings with this matter and
15 your research, did you discover that the
16 Development Company, Bear Den Acres Development,
17 had taken title to any of the property at the
18 issue? Are there deeds in the Development
19 Company's name?

20 A There are some. Stop me if I get into too much
21 detail, but as you see with a lot of these
22 developments, obviously, sometimes, the cart was
23 put in front of the horse as far as development
24 items. We did, of course, note that a lot of the

1 restrictions which were recorded, were recorded
2 before the Development Company actually gained
3 title to said property, which makes some of the
4 restrictive covenants invalid on certain items,
5 but there are deeds. There was a deed into Phase
6 1 of the community. Restrictions were placed on
7 afterwards. Phase 2 was not -- was owned solely
8 by the individuals, the Moodys, was never put
9 under Bear Den, so there's a little bit of
10 confusion as to title that we've had to clarify.

11 Q And a part of this transaction where this deed is
12 recorded, are you aware or ever see that there
13 were -- or, you know, any cross assignments or
14 changing of the deed, the owner?

15 A Not usually. It was either with the Moodys or
16 with the Development Company for -- from the 70's
17 forward up until this deed in 2016, which conveys
18 it to the Bear Den Mountain Resort.

19 Q So separate and apart from what I see here, the
20 Grantors are the Moodys and a Ms. Hawn?

21 A Um-um.

22 Q And -- but you aren't aware that Bear Den Acres
23 Development ever excused anything as Grantor
24 towards the Mountain Resort?

1 A No. No, ma'am. The only thing that we have is
2 the exhibit, the legal description, which we
3 presently read, which says that they were
4 conveying it and all assets of the development,
5 which wouldn't necessarily do that as well.

6 Q All right. Following up on the comment that
7 Chair Mitchell made, so one of the issues that
8 I've seen during my time at the Commission is
9 there'll be a little piece in the property or in
10 the system left over somewhere that's under
11 another owner's land or something, and we just
12 want to be able to avoid that.

13 So as a part of this, as I said
14 earlier, and Mr. Higgins, as we continue to
15 update the filings here, if you come across
16 anything, by all means, make the Commission aware
17 and let's see if we can make this as clean as
18 possible up front.

19 COMMISSIONER BROWN-BLAND: All right. Are
20 there questions -- Commissioner Hughes, do you have
21 any questions?

22 COMMISSIONER HUGHES: No.

23 COMMISSIONER BROWN-BLAND: All right.

24 Questions on Commission's questions?

1 MS. JOST: None for the Public Staff.

2 MR. HIGGINS: None.

3 COMMISSIONER BROWN-BLAND: All right.

4 Mr. Higgins, with regard to your exhibit --

5 MR. HIGGINS: I move the admission of Red
6 Bird Raymer Exhibit 1 into evidence, please, ma'am.

7 COMMISSIONER BROWN-BLAND: All right.
8 That'll be received into evidence without objection.

9 (Whereupon, Red Bird Raymer Exhibit 1, was
10 received and admitted into evidence.)

11 COMMISSIONER BROWN-BLAND: Mr. Raymer, you
12 may be excused, and thank you for coming and helping
13 us sort this out.

14 THE WITNESS: Thank you.

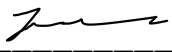
15 COMMISSIONER BROWN-BLAND: At this time,
16 Commission's going to take a break until 3:05.

17 [Whereupon, a break was taken]
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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.



Tonja Vines