

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-992, SUB 8
DOCKET NO. W-1328, SUB 9

In the Matter of
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road, Suite 303,)
St. Louis, Missouri 63131, and Crosby Utilities,)
Inc., 7536 NC Highway 39, Zebulon, North)
Carolina 27597, for Authority to Transfer the)
Baywood Forest Subdivision Water and Wastewater)
Utility Systems and the Cottonwood Subdivision)
Wastewater Utility System and Public Utility)
Franchise in Wake County, North Carolina, and for)
Approval of Rates

**NON-CONFIDENTIAL REBUTTAL TESTIMONY OF JOSIAH COX
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

I. INTRODUCTION

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

2 A. My name is Josiah Cox. My business address is 1630 Des Peres Road, Suite 140, St.
3 Louis, Missouri, 63131. I am President of Red Bird Utility Operating Company, LLC
4 (“Red Bird”). I also am President of CSWR, LLC, (“CSWR”) a Red Bird affiliate.

5 **Q. ARE YOU THE SAME JOSIAH COX WHO PREVIOUSLY FILED DIRECT**
6 **TESTIMONY IN THESE DOCKETS?**

7
8 A. Yes, I am.

9
10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11
12 A. The subject of these dockets is the Application for Transfer of Public Utility Franchise
13 and for Approval of Rates (“Joint Application”) filed in these dockets by Red Bird and
14 Crosby Utilities, Inc. (“Crosby”). The Joint Application seeks Commission approval for
15 Red Bird to acquire all utility assets currently used by Crosby and to provide water and

1 wastewater utility services to customers in the Baywood Forest and Cottonwood
2 Subdivisions, and to adopt Crosby’s existing Commission-approved rates. In testimony
3 filed February 23, Public Staff witness Michael Franklin acknowledged Red Bird has the
4 technical, managerial, and financial qualifications required to acquire, own, and operate
5 Crosby’s Baywood Forest Subdivision water and wastewater systems and its Cottonwood
6 Subdivision wastewater system, and appears to have conditionally recommended
7 Commission approval of the Joint Application. However, Mr. Franklin expressed Public
8 Staff’s concerns and reservations regarding certain aspects of the proposed transactions.
9 My rebuttal testimony addresses those concerns and reservations.

10 Specifically, my rebuttal testimony addresses the following issues raised in Mr.
11 Franklin’s testimony:

- 12 • The contention Crosby is not a “troubled” utility;
- 13 • Public Staff’s contention that no “acquisition adjustment” should be allowed in
14 connection with the proposed acquisition;
- 15 • Concerns expressed by Mr. Franklin regarding due diligence costs Red Bird will
16 incur in connection with this transaction;
- 17 • Public Staff’s claims regarding the effect approval of this acquisition would have
18 on customer rates; and
- 19 • Public Staff’s recommended bond should the Commission approve the sale of
20 Crosby’s assets to Red Bird.

21 I also will reiterate the many benefits Red Bird’s proposed acquisition would bring
22 to customers served by the Crosby water and wastewater systems both immediately and
23 long-term.

1

II. IS CROSBY A “TROUBLED” UTILITY

2 **Q. WHAT IS MR. FRANKLIN’S ASSESSMENT OF THE OVERALL**
3 **CONDITION OF CROSBY AND ITS UTILITY FACILITIES?**

4 A. As stated in his testimony, Mr. Franklin assesses the overall condition of Crosby’s
5 water and wastewater systems to be “fair.” It appears he bases his assessment on an
6 investigation that included a visual inspection of Crosby’s facilities conducted January 23,
7 2023. Accompanying Mr. Franklin on this inspection were two representatives of the North
8 Carolina Department of Environmental Quality (“NCDEQ”). Mr. Franklin also describes
9 his observations regarding the current condition of Crosby’s facilities, and notes
10 improvements made to the systems during the more than fourteen years since Crosby’s last
11 rate case. He also notes Crosby has no current or recent Notices of Violation (“NOV”) from
12 the NCDEQ and that Crosby received only one customer service complaint during the
13 period January 2020 through January 2023. Based on these factors, Mr. Franklin concludes
14 Crosby is not a troubled utility and is currently providing safe and reliable service to
15 customers.

16 **Q. DO YOU CONCUR WITH MR. FRANKLIN’S ASSESSMENT?**

17 A. No, I do not, and I base my disagreement on at least two factors. First, although
18 Mr. Franklin is an engineer, his degree is in chemical engineering and according to
19 information provided in responses to data requests he has never designed, constructed, or
20 operated a water or wastewater system. And although he has utility industry experience,
21 that experience was with a large investor-owned electric utility whose operations differ
22 materially from those of a small privately held water and wastewater utility such as Crosby.
23 In light of that lack of experience, I question whether Mr. Franklin can accurately or
24 adequately assess the current condition of Crosby’s facilities or their functionality or the

1 upgrades and improvements these water and wastewater systems will require in the future.
2 I'm especially skeptical – and I believe the Commission should be skeptical as well – of
3 an assessment of Crosby's facilities that is based on a single, brief site visit. Second, I
4 believe Mr. Franklin's assessment, which is based on a snapshot of Crosby's current
5 compliance and customer service history, is superficial because it fails to take into account
6 relevant operational and compliance information from the past and also fails to consider
7 whether Crosby has the ability to fund system maintenance and improvement requirements
8 currently and in the future.

9 **Q. DO YOU HAVE INFORMATION TO SUPPORT YOUR OPINION THAT**
10 **THE CROSBY AND ITS UTILITY SYSTEMS ARE "TROUBLED"?**

11

12 A. Yes, I do. Although Mr. Franklin's testimony accurately highlights that the
13 Cottonwood/Baywood wastewater treatment plant has not violated its permitted limits in
14 the last three years and has not recently been issued an NOV by the NCDEQ, that fact,
15 alone, does not capture all ongoing instances of noncompliance. Furthermore, there are
16 considerations beyond current compliance and quality of service that indicate areas where
17 the Crosby systems should be considered troubled and potentially incapable of maintaining
18 compliance in the future, especially when it comes to costs related to large capital
19 reinvestment that inevitably is required at any utility system.

20 **Q. WHAT INSTANCES OF ONGOING NONCOMPLIANCE HAS RED BIRD**
21 **IDENTIFIED IN ITS DUE DILIGENCE ANALYSIS OF THE CROSBY UTILITY**
22 **SYSTEMS?**

23

24 A. The clearest issue of noncompliance identified in the proforma improvement plans
25 and estimates Red Bird previously submitted for the Crosby systems concerns a problem
26 related to the lift stations, which constitutes a current violation of NCDEQ requirements
27 for wastewater systems. This was detailed in the confidential engineering memorandum

1 prepared by Red Bird's consulting engineers, McGill Associates, which states in relevant
2 part:

3 [t]he lift stations do not meet the state minimum design criteria outlined in
4 15A NCAC 02T .0305, which requires that sewer pump stations have
5 backup power supply with automatic activation if design capacity exceeds
6 15,000 gpd or that an appropriately sized portable power supply be available
7 for smaller pump stations. Neither of the lift stations have a dedicated
8 generator or connection for bypass pumping, which appears to be
9 particularly critical for Lift Station 1 given its critical role in the collection
10 system and proximity to Poplar Creek. System staff contend that since the
11 raw water supply wells could be expected to lose or regain electrical power
12 at the same time as the lift stations, a lack of water supply would preclude
13 overflows and eliminate the need for backup power. However, such an
14 exception could not be found in the 02T rules or NCDEQ Minimum Design
15 Criteria for the Permitting of Pump Stations and Force Mains. This
16 exception also does not account for infiltration and inflow or the presence
17 of a 10,000-gallon storage tank whose capacity exceeds that of the lift
18 station wet wells.

19 Without the presence of backup power at these lift stations the system has an
20 ongoing issue of noncompliance which requires significant investment to resolve. Whether
21 the NCDEQ has thus far identified this noncompliance or chosen to issue an NOV neither
22 changes the fact Crosby's wastewater system currently is not in compliance with applicable
23 regulations nor absolves the system from the obligation to comply with state minimum
24 design criteria.

25 **Q. ASIDE FROM THE CURRENT ONGOING NONCOMPLIANCE ISSUE,**
26 **ARE THERE EXAMPLES OF HISTORIC NONCOMPLIANCE THAT LED RED**
27 **BIRD TO CONSIDER CROSBY A TROUBLED UTILITY?**

28
29 A. Yes. While Mr. Franklin accurately notes the Crosby water and wastewater facilities
30 have been in compliance with permit limits for the last three years, that is not surprising
31 because Crosby's last NCDEQ inspection occurred immediately following the most recent
32 significant upgrades to Crosby's facilities. But Mr. Franklin's testimony fails to note
33 Crosby was required to make these upgrades to remedy a pattern and history of

1 noncompliance, fines, and NOVs that compelled current ownership to bring the facilities
2 back into compliance. A review of NCDEQ's files shows that beginning in 2018 the
3 Crosby wastewater system was subject to eight separate enforcement actions related to
4 treatment failures, effluent exceedances, and failures to complete required testing. These
5 enforcement actions are what spurred the most recent significant improvements to Crosby's
6 wastewater treatment facilities, which were completed immediately before the three-year
7 period Mr. Franklin considered. Had Mr. Franklin taken a longer-term view, he would have
8 seen periods of recurring noncompliance for which fines were levied. Mr. Franklin also
9 likely would have found evidence of Crosby's precarious financial position, which calls
10 into question its ability to access capital necessary to maintain and upgrade its systems,
11 especially in cases where more significant improvements are required to achieve consistent
12 compliance with applicable regulations.

13 **Q. PLEASE DESCRIBE WHY RED BIRD BELIEVES CROSBY IS**
14 **FINANCIALLY DISTRESSED.**

15
16 A. During the most recent round of enforcement actions against Crosby, which
17 included fines and which resulted in many of the plant improvements cited in Mr.
18 Franklin's testimony, Crosby sent a letter, dated April 12, 2018, to the Division of Water
19 Resources requesting remission of a civil penalty on grounds the company was unable to
20 secure funds necessary to make repairs and investments required to bring its wastewater
21 facility into compliance with applicable regulations. A copy of that letter is attached as Cox
22 Rebuttal Exhibit 1. The letter describes the significant financial burdens facing Crosby as
23 follows:

24 [W]e began the process of trying to secure funds to complete the renovation
25 back in 2016. After the business was not able to secure the necessary funds,
26 I personally started the process of mortgaging my house in order to make

1 the necessary repairs [to the wastewater treatment plant]. In late 2017 that
2 process was completed. . .

3 . . . The major renovation has been a challenge, not only in the scope of
4 work, but also the cost. We anticipated a total cost of repairs in excess of
5 \$70,000. In addition to that we have had to replace the pumps at both lift
6 stations since January 1, 2018. We are a very small utility that does not
7 have the resources that larger utilities might have. However, we do the best
8 we can. Payment of the \$11,000 penalty will prevent us from completing
9 all the repairs. As we previously have mentioned, we [the company's
10 owners instead of the utility itself] are financing this personally and have
11 had to spend an additional \$20,000+ of the budgeted money for lift station
12 repairs. We are not in the position to borrow any more money. We request
13 remission of the penalty so that we may use that money towards completion
14 of the repairs.

15 While these efforts did result in the completion of required repairs, it was at a
16 significant cost to Crosby's owners. Because the utility's finances weren't strong enough
17 to obtain commercial financing, the company's owners were required to mortgage their
18 personal assets to make investments necessary to bring the wastewater system into
19 compliance. This is confirmed by Crosby's most recent Annual Report, which shows two
20 mortgages with outstanding balances totaling more than \$164,000. These *personal loans*
21 *secured by the owners' personal assets* funded more than 80% of the company's total
22 capitalization. This is not a portrait of a viable company with access to the financial
23 resources necessary to deal with short-term emergencies or the need for long-term capital
24 investment.

25 **Q. ARE THERE ANY CONDITIONS RELATED TO THE CROSBY UTILITY**
26 **FACILITIES THAT POINT TO A NEED FOR BOTH SHORT AND LONG-TERM**
27 **CAPITAL INVESTMENT?**

28
29 A. Yes, in a site visit conducted by CSWR engineers on March 9, 2023, numerous
30 items were identified at the water and wastewater systems that will require additional
31 investment to ensure the facilities are able to properly treat effluent and ensure those
32 facilities comply with applicable law and continue to provide safe and reliable service.

1 These findings corroborate and confirm findings included in McGill’s engineering memo
2 prepared as part of Red Bird’s due diligence (and provided to Public Staff), and identify
3 additional issues that have developed since completion of that memo. Observed plant
4 damage and current and ongoing plant maintenance issues identified during our recent site
5 visit highlight the need for short-term repairs and longer-term capital investment. These
6 sorts of repairs illustrate the need for transfer of Crosby to a company like Red Bird that
7 has the expertise necessary to operate and maintain distressed water and wastewater
8 systems and access to capital required for longer-term improvements and replacements.
9 Requiring capital investment by the current owner would be expected to further exacerbate
10 the financial distress previously discussed and serve to further reinforce the DEQ opinion
11 that it is in the public’s interest for a company with greater technical, managerial, and
12 financial resources to take ownership of this treatment system.

13 **Q. IS RED BIRD ALONE IN ITS BELIEF A TRANSFER OF THE CROSBY**
14 **SYSTEMS IS IN THE PUBLIC INTEREST?**

15 A. No, we are not. In a June 7, 2018, email from Charles Weaver, an Environmental
16 Specialist at the NCDEQ (a copy of which is attached as Cox Rebuttal Exhibit 2), he
17 expressed that agency’s viewpoint as follows: “Getting a new owner or a sewer connection
18 seems to be the best solution if the current owners are running out of funds.”

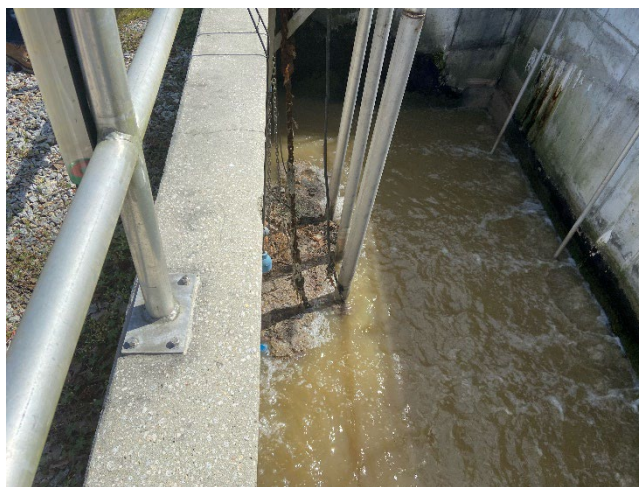
19 **Q. DID RED BIRD’S RECENT INSPECTION IDENTIFY ANY ISSUES**
20 **RELATED TO THE CURRENT OPERATION OF CROSBY’S FLOW**
21 **EQUALIZATION SYSTEM?**

22
23 A. Yes. Although there was a screen present at the Crosby facility, significant amounts
24 of nuisance solids were accumulating in the old plant, which had been converted to a flow
25 equalization basin, allowing those solids to collect on aeration drop pipes and the pumping
26 system. A failure to address these solids will result in the aeration and pumping equipment

1 in the equalization basin reaching the end of useful life more quickly than otherwise would
2 be the case and would reduce the holding capacity of the equalization basin. The following
3 pictures show the issue I just described.



4



5

6 *Solids accumulated on the drop pipes and pump rails in the flow equalization basin.*

7 **Q. DID RED BIRD'S INSPECTION IDENTIFY ANY ISSUES RELATED TO**
8 **THE WASTEWATER TREATMENT PLANT'S STEEL TANKS WHICH WILL**
9 **REQUIRE REPAIR?**

10

11 A. Yes. From the flow equalization portion of the old portion of the facility wastewater
12 is conveyed to the newer steel package plant. And although the plant currently is treating
13 to permitted limits, a number of conditional issues were identified, and some indications

1 of sanitary sewage overflows or leaks were noted. Across the top edge of the treatment
2 basin, at the water level, there are a large number of pinhole leaks – i.e., tiny points of rust
3 that have fully penetrated the tank wall. The portions of the tank above this row of pinhole
4 leaks also exhibits damage to the tank coating, resulting in areas of rust forming along the
5 top of the tank. This is attributable to a failure to maintain the tank coating and allowing
6 rust to form unaddressed. By not addressing this problem early, more significant rusting
7 will occur, thereby causing more serious, difficult to repair, and costly damage to the tank.
8 The picture below, taken during our recent site visit, shows the problems I just described.



9

10 *Pin hole leaks at water line level along the length of the aeration basin. Also visible rust*
11 *on the tank above the leak line.*

12 In addition to the leaks along the water line of the tank, other portions of the tanks
13 have notable damaged coating and rust. While I just described the rust issue of greatest
14 concern, significant rust abatement and coating repair must occur to prevent more serious
15 damage, which would require structural repair or possibly even tank replacement. An
16 example of the additional incidences of rust I just described are shown in the following
17 photograph.



1

2

Rust and coating failure throughout treatment basins.

3

4

5

6

In addition to rust damage to the tank exterior, we observed that some of the structural bracing has experienced serious section loss due to rust, including one portion of the bracing that fractured due the severity of the corrosion. Those conditions are shown below.



7

8

Fractured structural bracing on aeration basin (fracture due to rust).

9

10

11

In addition to rust damage to the tanks and supports, much of the catwalk above the facility is severely rusted and unstable. This adversely affects operator safety and could make it difficult to adequately inspect and service the facility. The rusted grating can be

1 seen in some of the above photograph as well as the one below. And while it is clear that
2 some of these gratings became so deteriorated the owners replaced them, much of the
3 rust/deterioration problem I described has been left unaddressed.



4

5

Deteriorating catwalk treads.

6 **Q. DURING RED BIRD'S RECENT INSPECTION WERE ISSUES OTHER**
7 **THAN RUST IDENTIFIED AT CROSBY'S AERATION TREATMENT BASIN?**

8

9 A. Yes, our inspection team did identify additional issues. In addition to the rust issues

10 I previously described, there are further conditions at the plant as well that currently are

11 not being addressed. For example, there are issues with the plant's aeration equipment,

12 which adversely affect treatment efficacy. More specifically, at the point where the

13 structural bracing I previously described corroded and broke, the aeration header has

14 developed a leak at the point of the broken brace. The leaking header caused a region of

15 lower pressure where drop pipes and diffusers are not receiving enough pressure to achieve

16 proper aeration treatment. And although a majority of the basin is still well aerated, these

17 sorts of issues, if left unaddressed over time, can lead to more seriously compromised

18 treatment. The photograph below illustrates the problem I just described.



1

2 *Example of drop pipe with minimal aeration due to air header leak, there are 3-4 drop*
3 *pipes in a row that are receiving minimal air pressure.*

4 Beyond the direct aeration equipment I just described, other aeration equipment
5 appears to not be functioning efficiently. Specifically, several of the scum skimmers in the
6 clarifier appear to not function properly. At least one skimmer is set too low causing it to
7 simply pull water and release air rather than effectively capture scum. Another is set too
8 high resulting in very little scum entering the skimmer. The photograph below illustrates
9 these two conditions.

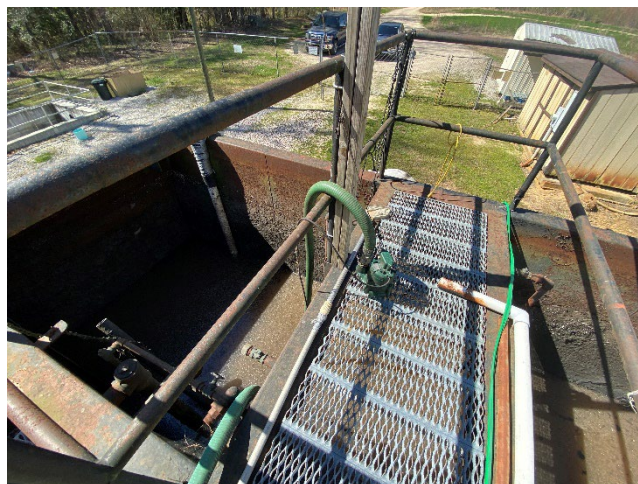


10

11 *Skimmer on the left is set too high, skimmer on the right is set to low, both resulting in*
12 *poor removal of pin floc and scum.*

1 **Q. DID RED BIRD'S RECENT INSPECTION IDENTIFY ANY ISSUES**
2 **RELATED TO PUMPING SYSTEMS AT THE TREATMENT PLANT?**

3
4 A. Yes, it did. The facility has a digester at one end of the aeration basin where sludge
5 can be washed from the clarifier return lines to store and further break down sludge.
6 Currently, the built-in pump for decanting the basin is in poor condition and does not work
7 as designed. Instead of repairing the pump, the current owners have a trash pump (a pump
8 designed to handle liquids and solids) sitting on the catwalk over the basin that is used to
9 manually decant the sludge. The proper pump should be repaired to working order and the
10 trash pump should be removed from the walkway, where it is currently poses a safety
11 hazard. The condition I just described is shown in the photograph below.



12

13 *Trash pump on catwalk over the digester basin.*

14 **Q. DID RED BIRD'S RECENT INSPECTION REVEAL ANY ISSUES**
15 **RELATED TO CROSBY'S DISINFECTION SYSTEM?**

16
17 A. Yes. The tank used for the disinfection system is older than the rest of the treatment
18 plant and is extremely rusted, with portions nearly completely deteriorated. While this has
19 not yet resulted in a failure in the disinfection process, this heavily rusted tank could easily

1 develop leaks, which would release water in an unauthorized discharge. Proper system
2 operation dictates that the tank be replaced or repaired to ensure the longevity of the
3 treatment facility and to prevent disinfection failure or sanitary sewage overflows. The
4 rusted tank I just described is depicted in the photographs below.



6

7

Rusted disinfection tanks in need of repair or replacement.

8 **Q. DID YOUR INSPECTION IDENTIFY ANY ISSUES RELATED TO**
9 **ELECTRICAL AND CONTROL SYSTEMS AT CROSBY'S TREATMENT**
10 **FACILITY?**

11

12 A. Yes. There are several power and control boxes showing signs of water infiltration
13 and rust, which could compromise plant operations. There is also at least one junction box
14 with no faceplate, leaving wires exposed to the elements. These issues could compromise

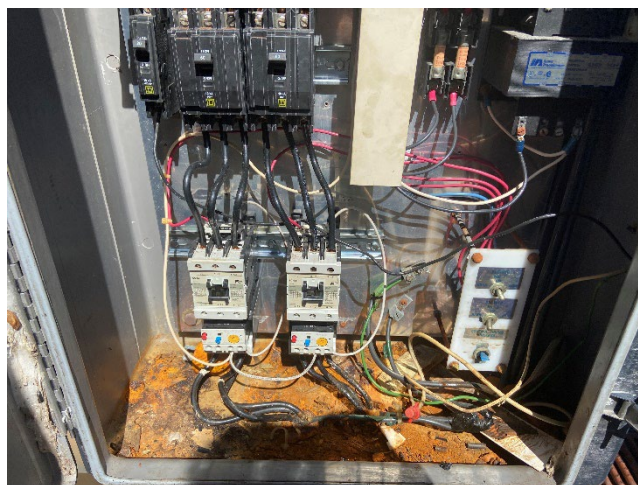
1 plant function and pose a threat to operator safety. Some of the electrical facilities I just
2 described are depicted below.



3

4

Junction box with no face plate, exposed wiring.



5

6

Control box with no faceplate, rust, and signs of water infiltration.

7 **Q. WERE ANY OTHER CONCERNS NOTED AT THE TREATMENT**
8 **FACILITY AT THE TIME OF THE RECENT INSPECTION?**

9

10 A. Yes. During our recent inspection we noted the color of the influent entering the
11 flow equalization basin was extremely pale, which implies very “weak” wastewater

1 flowing from the collection system. This typically occurs when a large amount of
2 groundwater or rainwater has entered the collection system as inflow and infiltration
3 (“I&I”). Not only is I&I a concern because the inflow can overwhelm a treatment plant,
4 but diluted wastewater also adversely effects the biology the plant needs to function
5 properly by not supplying enough food for microorganisms to thrive. Diluted wastewater
6 also can create a false impression of effective treatment when, in fact, it is only I&I dilution
7 that is causing the facility to meet effluent limits. The I&I issues we observed also indicate
8 there are likely damaged portions of the collection system that must be identified and
9 repaired to prevent further I&I flows and associated damage to the treatment facility and
10 deterioration of the waste treatment process. The following photograph illustrates the
11 effluent issues I just described



12

13 *Note pale, light brown color - characteristic of flows diluted by large amounts of I&I.*

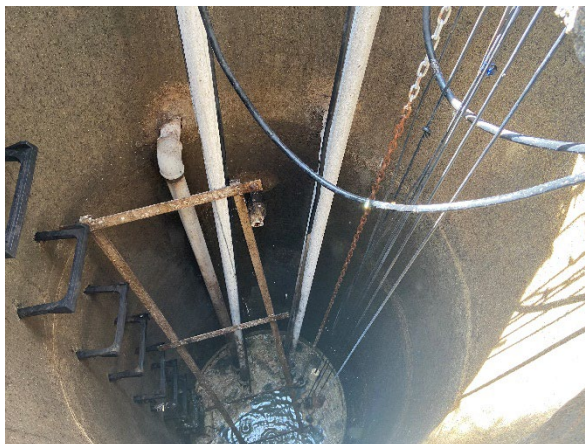
14 **Q. ASIDE FROM THE DILUTED INFLUENT INDICATING I&I ISSUES,**
15 **WERE ANY OTHER ISSUES IDENTIFIED WITH THE COLLECTION SYSTEM?**

16

17 A. Yes, inspection of the facility’s lift stations indicated a number of issues. First,

18 consistent with the evaluation set forth in the McGill Associates' engineering memorandum

1 and other inspections, significant rust and corrosion was noted on some of the lift chains,
2 rails, and other equipment in the lift stations. The following photographs show the
3 conditions I just described.



6 *Notable rusting on lift chains, rails, ladders, and hardware in both lift stations' wet wells.*

7 Second, both lift stations showed significant corrosion on all equipment, pipes, and
8 valves in the valve vaults. The owner indicated that it had been some time since the vaults
9 had been opened, meaning that the valves have not been recently exercised and are likely
10 frozen in place due to the corrosion present. This represents poor operational and
11 maintenance practices in the collection system and lift stations. The following photographs
12 illustrate the conditions observed.



1

2 *Severe corrosion and standing water noted in both lift station valve vaults, indicating*
3 *potentially blocked drains and poor maintenance.*

4 **Q. WERE ANY ISSUES NOTED IN INSPECTING THE DRINKING WATER**
5 **SYSTEM?**

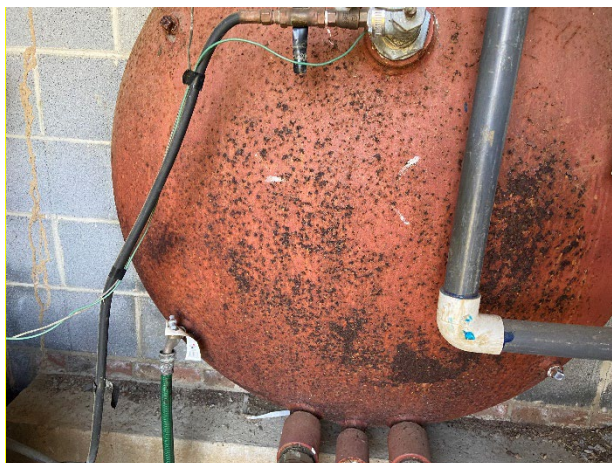
6

7 A. Yes. While not as many issues were identified with the drinking water system, a
8 number of concerns were noted. First, while there were trailer-mounted backup generators
9 at both primary wells during our initial visits in 2019, no backup power was present during
10 the recent inspection. And although backup power may not be required, it is best practice
11 to provide backup power in order to prevent service interruptions in the event of a power
12 failure.

13 **Q. WERE THERE ANY CONCERNS NOTED REGARDING THE**
14 **CONDITION OF TANKS AT THE PRIMARY WELL SITES?**

15 A. Yes, tanks at both well sites exhibited significant rust. While neither appeared to
16 be leaking, failure to address the rust and recoat the tanks soon could result in tank failure
17 and/or leaks. It is best practice to address rust early to prevent failure and extend the useful
18 life of the tanks. The rust conditions observed during the inspection are shown in the
19 following photographs.

1



2



3

Rusting on tanks and valves at both well houses.

4 **Q. WERE ANY OTHER ISSUES IDENTIFIED AT THE DRINKING WATER**
5 **WELL SITES?**

6

7 A. Yes. The radionuclide treatment units at one well site appeared to be leaking.

8 Leaking in well houses can lead to unsanitary conditions by allowing bacteria and fungus

9 to grow on water equipment and may indicate issues with the function of the treatment

10 systems. Water in the well house is also soaking the wood support system for the treatment

11 tanks, which will lead to rot that could damage and destabilize the costly treatment system.



1

2 *Note standing water and saturated wood under radionuclide treatment units, indicating*
3 *leaking.*

4 **Q. WHAT CONCLUSIONS SHOULD THE COMMISSION DRAW FROM**
5 **YOUR DESCRIPTION OF CROSBY'S COMPLIANCE AND ENFORCEMENT**
6 **HISTORY, ITS PROSPECTS FOR BEING ABLE TO FUND PLANT UPGRADES**
7 **AND REPAIRS, AND THE CURRENT OWNER'S ABILITY TO PROPERLY**
8 **OPERATE AND MAINTAIN THE COMPANY'S FACILITIES?**

9 A. The evidence I have presented rebuts Mr. Franklin's contentions that there are no
10 serious operational problems at Crosby and that its systems are being operated in a
11 satisfactory manner. The descriptions of problems observed during a site visit completed
12 just days prior to filing this testimony – and the photographs I provided showing those
13 problems – reveal that currently Crosby *has* operational problems and *is not* being operated
14 in a satisfactory manner. And although the systems have not received any recent NOV's
15 from the NCDEQ, that was not always the case and past violations were so serious they
16 resulted in significant penalties being levied against Crosby. Mr. Franklin apparently didn't
17 review this history. And if, as I have testified, the current lack of NOV's is attributable to
18 capital Crosby was forced to invest because of past violations, because the company has
19 no access to capital, it is only a matter of time before a lack of investment in plant

1 maintenance, upgrades, and replacements will lead to reoccurrence of Crosby’s history of
2 non-compliance with applicable environmental, health, and safety regulations.

3 As stated in my direct testimony, by any reasonable measure Crosby is a “troubled”
4 utility. It lacks the technical expertise and personnel to properly operate and maintain its
5 current plant and lacks the access to capital necessary to upgrade and replace those facilities
6 when the time comes to do so – as it inevitably will. Crosby’s current owners realize this,
7 which is a major reason they agreed to sell their company to Red Bird. And state officials
8 – as evidenced by the email I previously discussed from officials at NCDEQ, have for some
9 time recognized the need for this system to be acquired by a competent well capitalized
10 operator. To quote, again, from that DEQ email, “[g]etting a new owner . . . seems to be
11 the best solution.” And as part of an affiliate group that has successfully acquired,
12 upgraded, and operated small, distressed water and wastewater utilities in ten states outside
13 North Carolina, Red Bird is just the kind of new owner the Crosby systems need and
14 Crosby’s customers deserve.

15 **Q. WHAT WOULD RED BIRD DO TO ADDRESS THE VARIOUS ISSUES YOU**
16 **IDENTIFY IN THIS TESTIMONY?**

17 A. As noted in my direct testimony, based on McGill’s survey, in order to address
18 problems and compliance issues with these systems we estimate capital investment of at
19 least \$262,300 will be required, consisting of (i) approximately \$160,300 for the work on
20 the wastewater system described in my direct testimony; and (ii) approximately \$102,000
21 for the work on the water production system described in my direct testimony. Nothing
22 observed during the inspection last week is inconsistent with those projections.

1

III. ACQUISITION ADJUSTMENT

2 **Q. PUBLIC STAFF OPPOSES APPROVAL OF ANY ACQUISITION**
3 **ADJUSTMENT IN THIS CASE. DO YOU AGREE WITH THAT**
4 **RECOMMENDATION?**

5

6 A. No, I do not. As I explained in detail in my direct testimony, because of the many
7 benefits that will result from Red Bird's acquisition of the Crosby water and wastewater
8 systems, we believe an acquisition adjustment is more than justified. Distilled to its
9 essence, I understand that this Commission's standard is that to secure rate base treatment
10 of an acquisition adjustment the purchasing utility must establish "that the price to be paid
11 for the acquired utility is prudent and that both the existing customers of the acquiring
12 utility and the customers of the acquired utility would be better off [or at least no worse
13 off] with the proposed transfer, including rate base treatment of any acquisition adjustment,
14 than would otherwise be the case." I believe we have met that standard and therefore
15 qualify for an acquisition adjustment.

16 **Q. WHAT EVIDENCE DOES PUBLIC STAFF PRESENT TO REBUT THE**
17 **EVIDENCE PROVIDED IN YOUR DIRECT TESTIMONY IN SUPPORT OF RED**
18 **BIRD BEING ALLOWED AN ACQUISITION ADJUSTMENT?**

19 A. Although Mr. Franklin states Public Staff opposes an acquisition adjustment in this
20 case, he presents little or no evidence disputing my prior testimony that Red Bird has
21 satisfied the Commission's standard. Beyond noting that Red Bird agreed to a purchase
22 price greater than the net book value of the assets it would acquire from Crosby, Mr.
23 Franklin presents no evidence that the agreed-upon purchase price is imprudent. And with
24 regard to the portion of the standard that requires a showing customers would be better off
25 (or at least no worse off) after the proposed acquisition than before, Mr. Franklin merely
26 repeats his argument that Crosby is not a troubled utility.

1 With regard to the purchase price for Crosby’s assets, as I stated in my direct
2 testimony the price to be paid for the Crosby systems was negotiated at arm’s length
3 between totally unrelated parties. It took us four months to reach agreement with Crosby
4 on the purchase price, and the systems’ current owners would not sell their utility assets to
5 us for any lower price. As our affiliate group has found in the overwhelming majority of
6 the more than 300 acquisitions we have negotiated, it is unrealistic to expect current owners
7 to sell their assets for net book value. While that represents the remaining unrecovered
8 investment those owners have in their assets, net book value does not represent the true
9 market value of either the assets or the ongoing business those assets make possible. The
10 Crosby utility operation generates a revenue stream which the owners will not part with for
11 a lower price. Therefore, it would be both unfair and unrealistic to merely assume net book
12 value is the reasonable purchase price for utility assets and any purchase made above that
13 level is, by definition, imprudent. A rough analogy would be the sale of a residence. The
14 seller knows what he or she paid for the property and also what financial benefits they
15 derived from home ownership – e.g., tax deductions related to mortgage interest. But when
16 it comes time to sell that home, no one considers it unreasonable to price the house at
17 market (rather than at original cost less the amount of derived benefits) or for a buyer to
18 pay that price. Similar reality-based principles should apply to the purchase and sale of
19 utility assets.

20 In considering the reasonableness of the purchase price, the Commission also
21 should not ignore the fact Crosby’s current owners were required to take out personal loans
22 totaling more than \$164,000 that must be repaid at or prior to closing. That amount, alone,

1 constitutes nearly [BEGIN CONFIDENTIAL] [REDACTED]
2 [REDACTED] [END CONFIDENTIAL] that Red Bird seeks in this case.

3 As for whether Crosby is troubled, my rebuttal testimony addresses that issue in
4 detail. Our preliminary engineering studies suggest an investment of more than \$262,000
5 will be required to repair, refurbish, and replace Crosby's water and wastewater assets.
6 Crosby's current owners have no access to additional capital and therefore are not capable
7 of making the required investments. In contrast, Red Bird is part of an affiliate group that
8 has access to necessary capital – initially in the form of equity – to make investments
9 necessary to ensure these systems comply with applicable health, safety, and environmental
10 laws and provide safe and reliable service to customers. The affiliate group also
11 professionally operates water and wastewater systems in 11 states, and will bring the same
12 levels of experience and expertise to the Crosby systems it seeks to acquire here.

13 As stated in my direct testimony, Crosby's customers will be better off if this
14 transaction closes with approval of an acquisition adjustment, because Red Bird is ready,
15 willing and able to invest the capital necessary to address the near term and long term needs
16 in the Crosby systems. Those customers will also get the benefit of ownership and
17 operation of these systems by an adequately capitalized and professionally run utility.

18 **IV. DUE DILIGENCE COSTS**

19 **Q. PUBLIC STAFF RECOMMENDS THE COMMISSION DENY ALL**
20 **ENGINEERING-RELATED DUE DILIGENCE COSTS INCURRED BY RED**
21 **BIRD IN CONNECTION WITH THE CROSBY ACQUISITION. HOW DO YOU**
22 **RESPOND?**

23
24 A. I disagree with Public Staff's recommendation for at least two reasons. First,
25 because Red Bird is not proposing to change rates currently in effect for the Crosby
26 systems, there is no need to deal with any issue related to transaction costs in this

1 proceeding. Those issues should be deferred to Red Bird’s initial rate case involving the
2 Crosby systems when the full amount of transaction-related costs is known, and all parties
3 can provide evidence regarding the prudence of those costs and whether they should be
4 included in the rate base used to calculate rates.

5 Second, I find many of the arguments Mr. Franklin makes regarding engineering-
6 related due diligence costs to be unreasonable. For example, at page 15 of his testimony
7 Mr. Franklin claims these due diligence costs “should be absorbed by Red Bird as a cost
8 of doing business and not be included in rate base.” While I certainly agree these types of
9 due diligence costs are a cost of doing business, like all such costs a utility is entitled to
10 recover them if they were prudently incurred and are reasonable in amount. And although
11 both those issues should be deferred to a future rate case, I will briefly explain why I believe
12 our due diligence costs satisfy both those standards.

13 As part of the due diligence inquiry we conduct for all acquisitions made by our
14 affiliate group, we routinely engage a third-party engineering firm to assess the condition
15 of assets we propose to purchase and to project what capital improvements will be
16 necessary during the first few years we own and operate those assets. While these results
17 are preliminary – because we have found the true condition and needs of systems we
18 acquire can only truly be determined after we own and operate those systems – these
19 preliminary assessments are invaluable for many reasons. Among those is the need to
20 respond to questions raised by regulators in acquisition cases regarding future capital plans.
21 The Commission’s application form is a perfect example of why information gathered
22 during our engineering due diligence activities is essential to the process for obtaining
23 regulatory approval for acquisitions we seek to make. Questions 1 and 2 of the

1 Commission's *Application for Transfer of Public Utility Franchise and for Approval of*
2 *Rates* require applicants, like Red Bird, to provide the following information:

3 1. Are there any major improvements/additions required in the next
4 five years and the next ten years? Indicate the estimated cost of each
5 improvement/addition, the year it will be made, and how it will be financed
6 (long-term debt, short-term debt, common stock, retained earnings, and
7 other (please explain)).
8

9 2. Are there any major replacements required in the next five years
10 and the next ten years? Indicate the estimated cost of each replacement, the
11 year it will be made, and how it will be financed (long-term debt, short-term
12 debt, common stock, retained earnings, and other (please explain)).
13

14 Providing such information, which is required in order for an acquisition application to be
15 deemed "complete," would not be possible without the information gathered from the
16 engineering studies prepared as part of our acquisition due diligence. So, while the cost of
17 that due diligence is, as Mr. Franklin testifies, "a cost of doing business," it is a reasonable
18 cost that not only gives a prospective purchaser meaningful insight into the conditions and
19 issues in a system, it is necessary to complete the acquisition application.

20 **Q. DOESN'T MR. FRANKLIN ALSO CLAIM RED BIRD'S DUE DILIGENCE**
21 **COSTS ARE EXCESSIVE?**

22 A. Yes, he does. At page 15 of his testimony he states, "[t]hese costs are more than
23 1,400% of the due diligence expenses typically requested by applicants which are normally
24 comprised of the closing costs associated with the sale of the utility system." However, he
25 provides no support for that statement, and also doesn't explain how applicants whose due
26 diligence expenses are limited to closing costs were able to provide the kinds of capital
27 improvement estimates required by the Commission's acquisition application form. The
28 lack of such evidence – which isn't material to issues the Commission must decide in an
29 acquisition case – lends support to my contention that this is an issue that need not be dealt
30 with or decided in this case but should, instead, be deferred to a future Red Bird rate case.

1 **V. EFFECT OF PROPOSED ACQUISITION ON CUSTOMER RATES**

2 **Q. BOTH PUBLIC STAFF WITNESSES IN THIS CASE INCLUDE**
3 **ESTIMATES REGARDING THE EFFECT ON CUSTOMER RATES OF**
4 **VARIOUS ASPECTS OF THE JOINT APPLICATION. HOW DO YOU**
5 **RESPOND?**

6 A. As we made clear in the Joint Application and as I reiterated in my direct testimony,
7 if Red Bird is authorized to acquire Crosby’s water and wastewater systems then the
8 customer rates currently in effect will continue to be charged until the Commission
9 authorizes a change in rates in a future Red Bird rate case. Accordingly, approval of the
10 Joint Application will have no impact on customer rates. Therefore, the Commission
11 should disregard the rate impact estimates included in the testimonies of both Mr. Franklin
12 and Ms. Feasel. Those estimates have no relevance to the issues the Commission must
13 decide in this case – i.e., whether Red Bird is technically, managerially, and financially
14 qualified to own and operate the Crosby systems as a regulated public utility and whether
15 the proposed transaction is in the public interest.

16 But there is another reason Public Staff’s rate impact testimony should be
17 disregarded – the rate impacts calculated by both Mr. Franklin and Ms. Feasel are just
18 estimates. What’s more, they are estimates made based on assumptions regarding all
19 elements of ratemaking – revenue, expenses, rate base, capital structure, rate of return, rate
20 design, etc. – that may or may not be valid. For example, Red Bird has made clear it intends
21 to request in its first North Carolina rate case approval of consolidated, statewide rates for
22 both water and wastewater services. Based on the experience of our affiliate group in states
23 outside North Carolina, where such rates have been approved, consolidated rates are an
24 effective mechanism to mitigate “rate shock” that otherwise would result when small,
25 undercapitalized, and mismanaged systems are taken over by experienced and technically

1 competent owners that invest the capital required by those systems. Consolidated rates
2 allow all customers within a state to share the benefits of economies of scale our affiliated
3 group is able to achieve, and also helps to spread out the rate impact of required capital
4 investments that have greater impacts on some systems in the short term but that will affect
5 all systems in the long run. Despite Red Bird’s announced intent to seek consolidated rates,
6 Public Staff’s estimated rate impacts, in addition to be based on estimates and assumptions,
7 also are calculated as if rates for the Crosby systems would be set on a stand-alone basis.

8 **Q. BECAUSE OF THE FACTORS YOU JUST DESCRIBED, DO YOU THINK**
9 **THE COMMISSION SHOULD CONSIDER FUTURE RATE IMPACTS IN**
10 **REACHING A DECISION IN THIS CASE?**

11 A. No, I do not. The impact on future rates of Red Bird’s acquisition of the Crosby
12 systems will not and cannot be known at the present time, so it would be inappropriate and
13 unreasonable for the Commission to consider that issue in the current case. As a regulated
14 utility, Red Bird is prohibited by law from changing rates unless and until such a change is
15 authorized by the Commission. Under applicable law, no change in rates can be approved
16 by the Commission without a thorough consideration of a utility’s rate change request, with
17 full opportunity for interested parties – like Public Staff – to present evidence and
18 arguments regarding that request. Also, as provided in Chapter 62 all rates set by the
19 Commission must be fair and reasonable. For all these reasons, there is no need for the
20 Commission to consider possible future rate impacts in this case. Consideration of rates
21 can and should be deferred to future rate cases where all parties have the ability to present
22 evidence on all factors relevant to ratemaking. Following such consideration, both the
23 utility and its customers can be assured that whatever decision the Commission makes
24 regarding rates will be based on facts – instead of estimates and assumptions – and that the
25 resulting rates are fair and reasonable to all affected parties.

1 **VI. AMOUNT OF BOND REQUIRED BY N.C.G.S. § 62-110.3**

2 **Q. IF THE COMMISSION APPROVES THE PROPOSED TRANSFER OF**
3 **ASSETS, WHAT BONDS DO PUBLIC STAFF RECOMMEND THAT RED BIRD**
4 **BE REQUIRED TO POST TO SATISFY THE REQUIREMENTS OF N.C.G.S. § 62-**
5 **110.3?**

6 A, As stated in Mr. Franklin’s testimony at pages 18-19, should the Commission
7 approve Red Bird’s proposed acquisition of Crosby’s assets Public Staff recommends Red
8 Bird be required to post a \$90,000 bond for the Baywood Forest water system and a
9 \$110,000 bond for the Cottonwood wastewater system.

10 **Q. DO YOU AGREE WITH PUBLIC STAFF’S RECOMMENDATIONS?**

11 A. No, I do not. After considering all factors I believe are relevant to setting surety
12 bonds for the water and wastewater systems Red Bird proposes to acquire, I believe Public
13 Staff’s recommendations are excessive.

14 **Q. PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.**

15 A. As stated at page 18 of Mr. Franklin’s testimony, Public Staff’s rationale for its
16 bond recommendations are twofold. First, Public Staff claims Red Bird “does not have a
17 history of operations and management in North Carolina.” Second, Public Staff claims the
18 “track record in other states” of the CSWR-affiliate group “is not necessarily directly
19 transferrable given the size of and distance between” the Crosby systems and systems Red
20 Bird currently owns and operates in North Carolina – i.e., Bear Den Acres, Ocean Terrace,
21 and Pine Knoll Townes. While Mr. Franklin and Public Staff are correct that Red Bird does
22 not have a lengthy track record owning and operating water and wastewater systems in
23 North Carolina, the claim that the experiences of our affiliate group outside this state “don’t
24 necessarily translate” is demonstrably false.

1 My direct testimony in this case describes the history and experience of our affiliate
2 group with regard to the ownership and operation of water and wastewater systems. In
3 addition to North Carolina, our group owns and manages facilities in ten other states –
4 Missouri, Arkansas, Kentucky, Louisiana, Mississippi, Tennessee, Texas, Arizona,
5 Florida, and South Carolina. The group currently provides wastewater service to more than
6 200,000 customers and water service to more than 130,000 customers. A map showing the
7 location of systems our affiliates own and operate in all those states is attached to my
8 rebuttal testimony as Cox Rebuttal Exhibit 3. In addition to the large number of individual
9 water and wastewater systems our group owns and operates, that map also shows how
10 geographically disbursed those systems are. Yet, in every state where we operate all our
11 systems are successfully serviced and maintained by third-party operations and
12 maintenance contractors hired for that purpose.

13 We require those contractors to adhere to very specific performance standards –
14 which include periodic (sometimes daily) testing and inspections and a requirement to
15 respond to emergency service calls within two hours – and we regularly monitor our
16 contractors’ performance. Indeed, through entries contractors are required to make in our
17 operations and customer service data entry and recording systems, we have access to real-
18 time information regarding those contractors’ performance. The success of our affiliate
19 group in keeping the commitments we’ve made to provide first-rate customer service can
20 be measured, in part, from the fact that no state utility commission has ever found we are
21 unqualified to operate water and wastewater systems, and most of those commissions have
22 time and time again approved our affiliate’s acquisition applications. Such a result would

1 not be possible if we failed to provide the level of customer service to which we commit in
2 each and every acquisition case.

3 Our North Carolina operations mirror those in the other states I just mentioned, and
4 if Red Bird is authorized to acquire the Crosby systems they will be operated in a similar
5 fashion – i.e., using professional and experienced third-party contractors whose adherence
6 to our customer service requirements are carefully monitored. And although our affiliate
7 group has not had years of experience in this state, based on our track record elsewhere
8 there is no reason for the Commission – or Public Staff – to believe Red Bird’s performance
9 here will be of lesser quality than its affiliates’ performance elsewhere.

10 **Q. DO YOU HAVE ANY OTHER EVIDENCE THAT SUGGESTS THE**
11 **BONDS PUBLIC STAFF RECOMMENDS IN THIS CASE ARE EXCESSIVE?**

12 Q. Yes, I do. Based on information Crosby provided in each of its three most recent
13 annual reports, the bond currently required for the systems Red Bird seeks to acquire is
14 only \$36,400. And I remind the Commission that amount applies to a small,
15 undercapitalized utility that has been subject to penalty actions in the past and has allowed
16 its facilities to deteriorate as described earlier in my testimony. Despite those facts, Public
17 Staff proposes a fivefold increase in the amount of the required bond if the Crosby systems
18 are acquired by Red Bird, which is part of an affiliate group that is professionally managed,
19 well capitalized, and successfully operates water and wastewater systems serving more
20 than 330,000 customers in eleven states. In addition, for the North Carolina systems it
21 currently owns, Red Bird already has in place surety bonds totaling \$375,000. I believe
22 that amount is sufficient to cover all of Red Bird’s North Carolina operations if the
23 Commission approves acquisition of the Crosby systems. But even if an increase in Red
24 Bird’s current bond is required, the increase should not exceed \$50,000 – which is

1 significantly more than the existing bond for the Crosby systems. In my opinion any
2 amount of total bonding by Red Bird in excess of \$425,000 would be unreasonable.

3 **VII. CONCLUSION**

4 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS YOU WANT TO**
5 **EXPRESS TO THE COMMISSION REGARDING THIS JOINT APPLICATION?**

6 A. Yes. I would like to reiterate what I said at the conclusion of my direct testimony
7 in this case. Red Bird's proposed acquisition of the water and wastewater systems currently
8 owned and operated by Crosby would be consistent with and would promote the public
9 interest. Transfer of these systems to a well-capitalized enterprise that is a professional
10 utility, would be in the best interest of the Crosby customers. Red Bird and CSWR are
11 fully qualified, in all respects, to own and operate those systems and to otherwise provide
12 safe and adequate service. Accordingly, I respectfully ask the Commission to grant the
13 authority sought in the Joint Application and to adopt all other recommendations I made in
14 my rebuttal testimony related to that application.

15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY AT THIS TIME?**

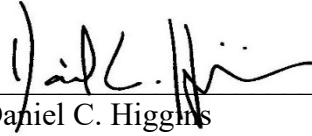
16 A. Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document, has been served on the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 15th day of March, 2023.

BURNS, DAY & PRESNELL, P.A.



Daniel C. Higgins
Post Office Box 10867
Raleigh, NC 27605
Tel: (919) 782-1441
Email: dhiggins@bdppa.com
Attorneys for Red Bird

Cox Rebuttal Exhibit 1

CROSBY UTILITIES INC.
7536 NC 39 HWY
ZEBULON, NC 27597

April 12, 2018

Division of Water Resources
Wastewater Branch
1617 Mail Service Center
Raleigh, NC 27699-1617

Subject: Request for Remission of Civil Penalty
NPDES Permit NC0065706
Cottonwood/Baywood WWTP
Case No. PC-2017-0058
Wake County

RECEIVED/DENR/DWR

APR 13 2018

Water Resources
Permitting Section

Dear Mr.Hennessy:

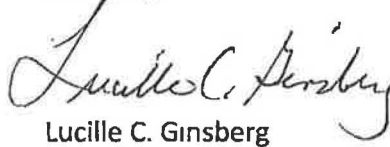
Crosby Utilities Inc. respectfully requests remission of the above civil penalty. We have never disputed that the WWTP needed to be repaired. As we stated in our response letter dated August 21, 2017, we began the process of trying to secure funds to complete the renovation back in 2016. After the business was not able to secure the necessary funds, I personally started the process of mortgaging my house in order to make the necessary repairs. In late 2017 that process was completed. In the time period beginning July 2017 we were working with the contractor planning the repairs. We discussed completely redoing the walls and floor of the EQ basin, fabricating a new bar screen and new air channel on the EQ basin, replacing handrails and catwalk on the EQ basin, replacing some of the grates on the main treatment plant, and repairing leaks in the air channel of the main treatment plant. Originally he had anticipated being able to have the work completed by the end of November 2017. However, due to some unforeseen and unavoidable events including weather, he was not able to meet that deadline. Feel free to contact Ben Aragona with Utilitech Inc. should you have questions regarding the contract or the timeline for completion. We completed the air leak repairs and replacement of needed grate sections on the main treatment plant in November 2017. A new blower had been ordered as soon as we were made aware of its failure. That blower was ordered on June 21, 2017 and was installed as soon as possible after its arrival. The remainder of the rehab work began the first week of February and is still in progress.

We had an engineer on site in early March to perform a facility evaluation. DWQ should have received his letter a couple of weeks ago.

We have never willfully or intentionally done anything to violate our permit nor has it been our intention to "willfully neglect" the facility. We recognize and value the importance of a good quality effluent, as evidenced by our record from January 1, 2011 thru April 2017. We

also recognize that treatment plants have many mechanical components and are subject to failure. We have made a continuous effort to address failures as they have occurred. The major renovation has been a challenge, not only in the scope of the work, but also the cost. We anticipate a total cost of repairs in excess of \$70,000. In addition to that we have had to replace the pumps at both lift stations since January 1, 2018. We are a very small utility that does not have the resources that larger utilities might have. However, we do the best we can. Payment of the \$11,000 penalty will prevent us from completing all the repairs. As we previously mentioned, we are financing this personally and have had to spend an additional \$20,000+ of the budgeted money for the lift station repairs. We are not in the position to borrow any more money. We request remission of the penalty so that we may use that money towards completion of the repairs.

Sincerely,

A handwritten signature in cursive script that reads "Lucille C. Ginsberg". The signature is written in black ink and is positioned above the printed name.

Lucille C. Ginsberg

Cox Rebuttal Exhibit 2

Weaver, Charles

From: Weaver, Charles
Sent: Thursday, June 7, 2018 2:26 PM
To: Hennessy, John
Cc: Corporon, Joe; Smith, Danny
Subject: Crosby Utilities facilities = 1
Attachments: 65706 Monitoring Report Violations Export.xls; 65706 evaluation 2009.pdf

Crosby Utilities only has permit NC0065706 (Cottonwood/Baywood). They sold Tradewinds (NC0065714) to AQUA several years ago. Sorry for my confusion on that one.

Their 2008 permit renewal required a facility evaluation. They submitted a report to the RRO in 2009 [attached]. You can compare the pictures from then to the more recent ones.

They went from 2009-2017 with no enforcements at all. I've attached a database of violations from 2008-2017, and you can see the decline in compliance post-2015.

Getting a new owner or a sewer connection seems to be the best solution if the current owners are running out of funds.

Charles H. Weaver
Environmental Specialist
N.C. Division of Water Resources
N.C. Department of Environmental Quality

919-807-6391
charles.weaver@ncdenr.gov

(mailing address) 1617 Mail Service Center, Raleigh, NC 27699-1617

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

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Mar 15 2023

Cox Rebuttal Exhibit 3

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