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**ORIGINAL**



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**AZ CORP COMMISSION  
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ORANGE COUNTY  
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2802

March 11, 2008

**VIA HAND-DELIVERY AND E-MAIL**

Blessing Chukwu  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Keith Layton, Staff Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Re: **Perkins Mountain Water Company and Perkins Mountain Utility Company  
Docket Nos. W-20380A-05-0490 and SW-20379A-05-0489  
Third Supplemental Response to Staff's Second Set of Data Requests Dated  
February 8, 2008**

Dear Ms. Chukwu and Mr. Layton:

Perkins Mountain Water Company and Perkins Mountain Utility Company ("Applicants") hereby submit the attached Supplemental Response to BNC 2.12 of Staff's Second Set of Data Requests dated February 8, 2008. An electronic version of this response is also being sent to you via e-mail. This supplement to the response provides additional information relating to the states of Virginia, Louisiana, and Nevada that was previously provided but was inadvertently not included. Please note that the documents attached to this Supplemental Response relate only to the supplemental information provided herein.

Arizona Corporation Commission  
**DOCKETED**  
MAR 11 2008

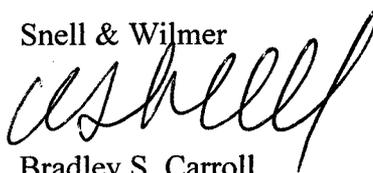
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Blessing Chukwu  
Keith Layton  
March 11, 2008  
Page 2

Please do not hesitate to contact me if you have any questions.

Sincerely,

Snell & Wilmer



Bradley S. Carroll

BSC/dcp

Enclosure

cc: Docket Control (Original plus 15 copies)  
Robin Mitchell, Esq. (Via e-mail only)  
Michele Finical (Via e-mail only)

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
AND PERKINS MOUNTAIN UTILITY COMPANY  
TO ARIZONA CORPORATION COMMISSION  
STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NOs. W-20380A-05-0490, SW-20379A-05-0489  
February 8, 2008 (Response Supplemented March 11, 2008)**

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**BNC 2.12** In March 2007, the Illinois Commerce Commission in Docket No. 06-0360, cited five (5) affiliates of Utilities, Inc., for failure to comply with Commission Orders and with Commission Rules. Please provide a history of Citations issued by regulatory agencies in other jurisdictions against Utilities, Inc. and/or any of its respective affiliates since the year 2000.

Response: Utilities, Inc. is a holding company that owns the stock of approximately 90 operating utilities in 17 states. As such, to the best of my knowledge and belief, there have been no citations that have been issued by regulatory agencies against Utilities, Inc. in connection with utility compliance obligations. With respect to its utility operating company affiliates, the requested information is set forth below for each of the applicable states:

Arizona None

Georgia None

Kentucky None

Louisiana On August 11, 2004, the Louisiana Department of Environmental Quality issued a Compliance Order to *Louisiana Water Service, Inc.* following an inspection by the Department. A copy of the Compliance Order is attached.

Mississippi None

New Jersey None

Ohio None

Tennessee None

Nevada – On October 25, 2000, the Public Utilities Commission of Nevada (“Commission”) issued an order in Docket No. 98-0-5008 relating to an application by *Spring Creek Utilities Company* to withdraw from its Capital Projects and Hydrant Fund. During the review of this application, the Commission’s Regulatory operations Staff identified three compliance issues including a failure to obtain a permit to construct pursuant to the

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
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Nevada Utility Environmental Protection Act ("UEPA") for construction of a 500,000 gallon storage tank. *Spring Creek Utilities Company* entered into a Stipulation wherein it agreed to pay a \$5,000 fine that would be suspended for three years and expunged if the utility obtained all necessary construction permits and there were no further violations of the UEPA. A copy of the order is attached.

On October 17, 2006, the Commission issued an order approving a Settlement Agreement and Stipulation Agreement between the Commission Staff and *Spring Creek Utilities Company* relating to a Petition for an Order to Show Cause that alleged that *Spring Creek Utilities Company* failed to provide reasonably continuous and adequate service to its customers. A copy of the order is attached.

Maryland      None

Pennsylvania      None

Indiana - On August 24, 2004, as part of an order involving the sale of assets and approval of an acquisition adjustment, the Indiana Utility Regulatory Commission ("Commission") found in Cause No. 41873 that certain records of *Indiana Water Services, Inc. ("IWSI")* were being kept out of state (in Northbrook, Illinois) contrary to the requirement that a utility's books be kept in the state and not be removed except upon conditions prescribed by the Commission. *IWSI* did this because one of its Indiana affiliates, Twin Lakes Utilities, had already been given permission by the Commission to keep its books in Illinois. The Commission found that notwithstanding its authorization for the affiliate to keep its books and records out of state, *IWSI* should have asked for permission. The Commission did not require *IWSI* to transfer the books and records back to Indiana, but merely ordered that *IWSI* would have to pay the costs of the Commission and the Office of Utility Consumer Counselor related to any necessary visits to Northbrook.

Virginia - On January 21, 2005 *Massanutten Public Service Corporation ("MPSC")* filed an application with the Virginia State Corporation Commission ("Commission") under the state's Affiliates Act requesting approval of a water services agreement with Water Service Corporation ("WSC") (an affiliate of *MPSC*) under which *MPSC* and *WSC* had already been operating. At the time *MPSC* and *WSC* had entered into the agreement, *MPSC* was exempt from the Affiliates Act because it did not

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY  
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February 8, 2008 (Response Supplemented March 11, 2008)**

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meet the financial threshold that would have required approval of the agreement. On April 20, 2005, *MPSC* filed a request to withdraw its application because certain provisions of the agreement needed to be revised. On April 21, 2005, the Commission granted the application and dismissed the case without prejudice. By order dated June 7, 2005, *MPSC* was directed to file a new application with a Revised Agreement. *MPSC* filed a new application for approval of the Revised Agreement in Case No. PUE-2005-0063. On October 19, 2005, the Commission issued an order granting approval of the Revised Application. In its order approving the Revised Agreement, the Commission found that *MPSC* and *WSC* had been operating under the prior agreement which had not been approved by the Commission and ordered that *MPSC* "take the necessary steps to ensure that prior approval is obtained by the Commission under the Affiliates Act for any future affiliate transactions." A copy of the order is attached for your convenience.

On March 15, 2006, *MPSC*, entered into a Consent and Special Order ("Consent Order") with the Virginia Department of Environmental Quality to resolve alleged violations of environmental laws and regulations. *MPSC* without admitting or denying the factual findings or conclusions of law contained in the Consent Order, agreed to perform the actions described in Appendix A to the Consent Order and to pay a civil charge of \$19,700. A copy of the Consent Order is attached.

Prepared by: Michael T. Dryjanski  
Manager, Regulatory Accounting  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF**

**LOUISIANA WATER SERVICE, INC.  
ST. TAMMANY PARISH  
ALT ID NO. LA0049794**

**PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT,  
La. R.S. 30:2001, ET SEQ.**

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*	
*	<b>ENFORCEMENT TRACKING NO.</b>
*	
*	<b>WE-C-04-0189</b>
*	
*	<b>AGENCY INTEREST NO.</b>
*	
*	<b>19474</b>
*	
*	

**COMPLIANCE ORDER**

The following **COMPLIANCE ORDER** is issued to **LOUISIANA WATER SERVICE, INC. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

**FINDINGS OF FACT**

I.

The Respondent owns and/or operates a privately owned treatment facility serving Kingspoint Subdivision located at 650 Voters Road in Slidell, St. Tammany Parish, Louisiana. The Respondent was issued LPDES permit LA0049794 on or about May 27, 1997. Louisiana Pollutant Discharge Elimination System permit LA0049794 was modified on or about September 5, 1997, to correct typographical errors. The permit expired on or about May 26,

2002. The Respondent submitted an application for renewal of LPDES permit LA0049794 on or about October 24, 2001, therefore LPDES permit LA0049794 was administratively extended. LPDES permit LA0049794 was reissued to the Respondent on or about February 20, 2004, with an effective date of March 1, 2004, and which shall expire on April 30, 2009. Under the terms and conditions of LPDES permit LA0049794, the Respondent is authorized to discharge treated sanitary wastewater from its facility into W-14 Drainage Canal, thence into Salt Bayou, thence into Lake Pontchartrain, all waters of the state.

II.

Inspections conducted by the Department on or about September 25, 2001, and December 25, 2003, and a subsequent file review conducted by the Department on or about April 1, 2004, revealed that overflows had occurred as reported by the Respondent. The overflows are as follows:

Date of Overflow	Overflow Location	Overflow Amount	Cause of Overflow
02/14/04	1329 & 1407 Admiral Nelson – 1470 Hillary, Slidell, LA	< 100 gal.	Lift station pump failure.
2/8/04	200 Foxbriar	< 100 gal.	Stopped 8" sewer main.
1/1/04	1407 Admiral Nelson, 1413 Kings Row, 1470 Hillary	1,500 gal.	Pump failure at the Montgomery St. station.
12/25/03	301 Brookhaven Ct.	100 gal.	Grease blockage in sewer main.
9/27/03	1404 Montgomery Blvd.	100 gal.	Grease blockage in the sewer main.
9/20/03-09/23/03	650 Voters Road	Unknown	Electrical breaker tripped.

8/11/03	209 & 215 Brookter St.	< 200 gal.	Main line blockage.
7/8/03	650 Voters Road	100 gal.	Heavy rainfall during Hurricane Bill.
6/8/03	209 Brookter Dr.	< 200 gal.	Pump failure due to resets tripping out.
4/28/02	Manholes at Foxbriar, Foxcroft, Hollow Rock, and Tiffany St.	50,000 gal.	Power out to liftstation due to underground lines hit by boring crew.
4/3/02	201 Brookter St.	500 gal.	Sewer main clogged with grease.
2/9/04	650 Voters Road	< 100 gal.	Blockage of sewer main.
11/26/01	Liftstation across from 125 Kingspoint Blvd.	12,000 gal.	Power outage.
11/26/01	#1 sewer lift station across from 125 Kingspoint Blvd.	12,000 gal.	Power outage.
8/19/01	Lifstation on Kingsport Blvd. Across from Rainbow Center	180 gal.	Heavy grease build-up caused float to stick.
5/17/01	Kingspoint Blvd. Bridge crossing the W-14 canal.	100 gal.	Ground washed away causing 8" sewer force main to crack.
6/4/00	Kingspoint Blvd. Bridge crossing the W-14 canal.	300 gal.	Repair clamp broke off.
10/22/99	#2 liftstation	< 40,000 gal.	Pumps quit due to vacuum leak.
6/3/99	Chancer sewer lift station	Unknown	Electrical malfunction that caused breaker to trip.

Each discharge not authorized by LPDES permit LA0049794 is in violation of La. R.S. 30:2075, La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A. Each failure by the Respondent to properly operate and maintain its sewerage system is in violation of LPDES permit LA0049794 (Part I, Page 2, and Part III,

Section A.2 and B.3.a), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.

### III.

An inspection conducted by the Department on or about September 25, 2001, revealed the Respondent was not properly operating and maintaining its facility. Specifically, the Respondent did not have a thermometer in the refrigerator containing the laboratory samples. The Respondent's failure to properly operate and maintain its facility is in violation of LPDES permit LA0049794 (Part III, Sections A.2, B.3, and C.5), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.

### IV.

An inspection conducted by the Department on or about September 25, 2001, revealed the Respondent was not maintaining proper records. Specifically, the Respondent failed to maintain temperature logs for the refrigerator containing the laboratory samples and no chain of custody forms were available prior to January 2001. The Respondent's failure to properly maintain records is in violation of LPDES permit LA0049794 (Part III, Sections A.2 and C.3) La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.2.

### V.

An inspection conducted by the Department on or about September 25, 2001, revealed the Respondent was not properly sampling. Specifically, the Respondent's chain of custody records for July 6, 2001, and September 6, 2001, indicated 3-hour composite samples were taken at 9:00 am when LPDES Permit LA0049794 specifies that the first portion of the composite sample shall be collected no earlier than 10 am. Each failure by the Respondent to properly sample is in violation of LPDES permit LA0049794 (Part I, Page 2, Part II, Section D.2.d, and

Part III, Sections A.2 and F.24.e) La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

VI.

An inspection conducted by the Department on or about September 25, 2001, revealed the Respondent was not sampling as required by LPDES permit LA0049794. Specifically, the Respondent failed to sample Dissolved Oxygen (DO) for the monitoring periods of January 2001 and February 2001. Each failure by the Respondent to sample is in violation of LPDES permit LA0049794 (Part I, Page 2 of 2, and Part III, Section A.2) La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

VII.

An inspection conducted by the Department on or about September 25, 2001, and a subsequent file review conducted by the Department on or about April 7, 2004, revealed the following effluent limitations violations as reported by the Respondent on Discharge Monitoring Reports (DMRs):

Date	Parameter	Permit Limit	Reported Value
12/97	Fecal Coliform (Weekly Avg.)	400 colonies/100 ml	15,400 colonies/100 ml
02/00	BOD <sub>5</sub> (Weekly Avg.)	30 mg/L	41 mg/L
08/01	Fecal Coliform (Weekly Avg.)	400 colonies/100 ml	37,600 colonies/100 ml
09/01	Fecal Coliform (Weekly Avg.)	400 colonies/100 ml	660 colonies/100 ml
11/01	Fecal Coliform (Weekly Avg.)	400 colonies/100 ml	113,000 colonies/100 ml

Each effluent limitation violation constitutes a violation of LPDES permit LA0049794 (Part I, Page 2, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

## COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

### I.

To immediately take, upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with LPDES permit LA0049794 and Water Quality Regulations.

### II.

The Respondent shall submit to the Enforcement Division, within (60) days after the receipt of this **COMPLIANCE ORDER**, a comprehensive plan for the expeditious elimination and prevention of such non-complying discharges as mentioned in Paragraph II of the Findings of Fact section of this document. Such a plan shall provide for specific corrective actions taken and shall include a critical path schedule for the achievement of compliance within the shortest time possible.

### III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**.

**THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:**

### I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a

written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the **Enforcement Tracking Number** and **Agency Interest Number**, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality  
Office of the Secretary  
Post Office Box 4302  
Baton Rouge, Louisiana 70821-4302  
Attn: **Hearings Clerk, Legal Division**  
Re: **Enforcement Tracking No. WE-C-04-0189**  
**Agency Interest No. 19474**

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the

Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

**NOTICE OF POTENTIAL PENALTY**

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be

filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Chad Keith at (225) 219-3773 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

III.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement.

IV.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 11 day of August, 2004.



Harold Leggett, Ph.D.  
Assistant Secretary  
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
P.O. Box 4312  
Baton Rouge, LA 70821-4312  
Attention: Celena Cage

c: Mr. Charles Faultry  
U.S. Environmental Protection Agency

Bill Hathaway  
Regional Sanitation Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

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Petition of the Regulatory Operations Staff for an order to show cause why Spring Creek Utilities Co. should not be found in violation of its duty to provide reasonable and adequate water service.

Docket No. 06-03003

RECEIVED  
PUBLIC UTILITIES COMMISSION  
OF NEVADA, CARSON CITY  
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Settlement Agreement and Stipulation

By and through their respective counsel, Spring Creek Utilities Co. (the "Company") and the Regulatory Operations Staff of the Public Utilities Commission of Nevada ("Staff," and together with the Company, the "Parties") enter into this Settlement Agreement and Stipulation (the "Settlement Agreement").

WHEREAS, Staff filed a Petition for an Order to Show Cause on March 6, 2006 (the "Petition");

WHEREAS, the Petition alleges, among other things, that the Company failed to provide reasonably continuous and adequate service to its customers in violation of an order issued by the Public Utilities Commission of Nevada (the "Commission") granting the Company certificate of public convenience and necessity 841 (the "Allegations");

WHEREAS, the Parties have had a fair opportunity to investigate the Allegations; and

WHEREAS, the Parties desire to resolve Docket No. 06-03003, the Allegations, as well as any claim, known or unknown, arising from any act or omission of the Company, its officers, agents or employees (the "Claims") that could have been raised in the Petition.

NOW THEREFORE, the Parties agree on the terms and conditions set forth in this Settlement Agreement as follows.

1. The Company shall invest \$25,000 (the "Investment") in a project that improves the water system or systems serving Spring Creek before July 1, 2007. The Company shall not, for the life of the Investment, request in any subsequent rate making proceeding that it earn a return (a) on the Investment by including the Investment in its rate base, or (b) of the Investment by including depreciation expense associated with the Investment in its revenue requirement.

1           2.     The Parties have each entered into this Settlement Agreement solely for the  
2 purpose of settling and compromising the Claims. Nothing contained in this Settlement  
3 Agreement or its performance shall ever be treated as an admission, acknowledgement or  
4 recognition of the validity of the Claims, liability, the existence of damages or the amount of any  
5 damages.

6           3.     The Company shall complete the capital improvement projects listed on Exhibit A  
7 within 18 months of the day on which the Commission approves this Settlement Agreement.

8           4.     The Company shall complete the capital improvement projects listed on Exhibit B  
9 before December 31, 2010. The Company shall specify a separate deadline for each one of those  
10 capital improvement projects by January 1, 2007.

11          5.     If the Company fails to complete any one of the projects listed on Exhibit A  
12 within 18 months of the day on which the Commission approves this Settlement Agreement or  
13 any one of the capital improvement projects listed on Exhibit B before the deadline established  
14 by the Company, it shall make a payment to the Commission in the amount of (a) \$250 per day  
15 for each day after the deadline until the capital improvement project is completed, but not to  
16 exceed \$20,000 for any single project, or (b) 10 percent of the total cost of the project, whichever  
17 of (a) or (b) is less.

18          A.     The payment provided for in Paragraph 5 shall be the exclusive remedy for any  
19 breach of this Settlement Agreement.

20          B.     The Company shall not be responsible for the payment required by Paragraph 5  
21 for any failure or delay in completing a project listed on Exhibit A or B to the extent the failure  
22 or delay is proximately caused by causes beyond that Company's reasonable control and  
23 occurring without its fault or negligence, including, without limitation, an untimely regulatory  
24 approval, an act of war, insurrection, riot, flood, earthquake, fire, casualty, act of God, quarantine  
25 restriction or other effect of epidemic or disease, freight embargo, national banking moratorium,  
26 weather-caused delay, lack of transportation attributable to any of those failures, or failure of a  
27 supplier, subcontractor, or third-party to perform an agreement. Dates by which performance  
28 obligations are scheduled to be met will be extended for a period of time equal to the time lost

1 due to any delay so caused.

2 6. The Company shall provide Staff critical path timelines identifying tasks  
3 necessary to complete each of the capital improvement path projects listed on Exhibits A and B  
4 (except for those that are either completed or substantially completed on the date of the  
5 Commission order approving this Settlement Agreement) by the deadline established for the  
6 project. The deadline for delivering the critical path timelines shall be November 15, 2006 for  
7 those projects listed on Exhibit A and January 1, 2007 for those projects listed on Exhibit B.

8 7. Beginning on April 1, 2007, and on the first day of each quarter thereafter, the  
9 Company shall provide Staff a report on the status of each project listed on Exhibits A and B as  
10 of 10 days before the deadline for delivery of the report. If, with respect to any specific project,  
11 a task identified in the critical path timeline was not completed by the task deadline, the report  
12 shall explain how the Company intends to compensate for any such delay in an attempt to  
13 complete the project by the established deadline.

14 8. If there is any change in any circumstance relating to any of the projects identified  
15 on Exhibit B to be completed by the established deadline, any Party shall notify the other Party  
16 and request a meeting to evaluate the timing of the project. If the Parties are unable to agree to a  
17 modification of the deadlines contained on Exhibit B, then either Party may petition the  
18 Commission for an order declaring whether the changed circumstances justify a modification of  
19 the deadline established for the project.

20 9. The Company acknowledges that the Commission's order issuing the Company a  
21 certificate of public convenience and necessity obligates the Company to provide reasonably  
22 adequate and continuous service in its service territory.

23 10. In consideration for the Company's promises set forth in this Settlement  
24 Agreement, Staff shall not recommend, and the Commission shall not seek, a civil penalty for (a)  
25 any Claim or (b) any alleged failure of the Company to provide reasonably adequate or  
26 continuous service based on any act or omission of the Company, its officers, employees or its  
27 agents relating to capital improvement or maintenance project before that occurred or should  
28 have occurred before December 31, 2010. Provided, however, that the Staff may recommend, or

1 the Commission may seek a civil penalty for any such act or omission if (a) the Company enters  
2 into a consent decree with the Commission establishing a reasonable deadline for taking specific  
3 action and the Company fails, neglects or refuses to comply with the deadline established by the  
4 consent order, or (b) Staff seeks, and the Commission enters, an order establishing a reasonable  
5 deadline for taking specific action and the Company fails, neglects or refuses to comply with the  
6 deadline established by such an order.

7 11. This Settlement Agreement may be executed in any number of counterparts and  
8 by facsimile signatures, each of which shall be taken to be an original.

9 12. The Settlement Agreement constitutes the entire agreement between the Parties  
10 regarding the settlement of all issues that were or could have been raised in this proceeding. If  
11 the Commission does not approve the Settlement Agreement, the terms and provisions of this  
12 Settlement Agreement are not severable and the Settlement Agreement is withdrawn. If the  
13 Settlement Agreement is withdrawn pursuant to this paragraph, nothing in the Settlement  
14 Agreement shall be admissible in this proceeding or any other proceeding before the  
15 Commission by any Party.  
16

17 13. The Parties shall recommend and use their best efforts to advocate that the  
18 Commission approve the Settlement Agreement.

19 Date this 17<sup>TH</sup> day of October 2006.

20 Lionel Sawyer & Collins

Regulatory Operations Staff

21  
22  
23 By: Shawn M. Elicegui  
24 Shawn M. Elicegui  
25 Lionel Sawyer & Collins  
26 50 West Liberty Street  
27 Reno, Nevada 89501

By: David Noble  
David Noble  
Assistant Staff Counsel  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, Nevada 89701-3109

Counsel to Spring Creek Utilities Co.

**EXHIBIT A**

- 1—INSTALLATION OF COVER BARS  
ESTIMATED COST \$6,500
- 2—ENGINEERING FOR TWO TWIN TANKS STATION BOOSTER UPGRADE  
ESTIMATED COST \$40,000
- 3—SUPPLY WELL FOR CAPITAL IMPROVEMENT PROJECT ("CIP") 100-1  
ESTIMATED COST \$800,000
- 4—ENGINEERING FOR CIP 300-2  
ESTIMATED COST \$71,000
- 5—ENGINEERING FOR CIP 400-2  
ESTIMATED COST \$226,000
- 6—CIP 200-1  
ESTIMATED COST \$278,000
- 7—CIP 300-2  
ESTIMATED COST \$776,000
- 8—ENGINEERING FOR CIP 200-2  
ESTIMATED COST \$63,000

DETAILS OF ALL PROJECTS LISTED ABOVE ARE INCLUDED IN  
SPRING CREEK UTILITIES COMPANY'S MASTER PLAN FILING  
DOCKET NO. 04-11031  
VOLUME 1 (REPORT)  
SECTION 9 (RECOMMENDED CAPITAL IMPROVEMENT PROGRAM)

**EXHIBIT B**

1—CIP (EXCLUDING WELL AND PIPING) 100-1  
ESTIMATED COST \$327,000

2—CIP 100-2  
ESTIMATED COST \$1,039,000

3—CIP 200-2 (EXCLUDING ENGINEERING)  
ESTIMATED COST \$630,000

4—CIP 300-1  
ESTIMATED COST \$1,392,000

5—CIP 400-1  
ESTIMATED COST \$89,000

6—CIP 400-2 (EXCLUDING ENGINEERING)  
ESTIMATED COST \$2,263,000

DETAILS OF ALL PROJECTS LISTED ABOVE ARE INCLUDED IN  
SPRING CREEK UTILITIES COMPANY'S MASTER PLAN FILING  
DOCKET NO. 04-11031  
VOLUME 1 (REPORT)  
SECTION 9 (RECOMMENDED CAPITAL IMPROVEMENT PROGRAM)

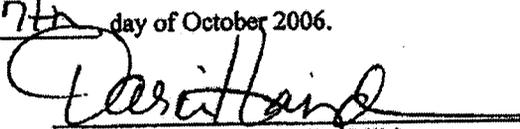
**PROOF OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address and mailing a copy thereof, properly addressed to:

Shawn EliceGUI, Esq.  
LIONEL SAWYER & COLLINS  
50 West Liberty Street, Ste 1100  
Reno, NV 89501  
[selicegui@lionelsawyer.com](mailto:selicegui@lionelsawyer.com)

Bradley Jordan  
UTILITIES INC OF CENTRAL NEVADA  
1240 East State Street, #115  
Pahrump, NV 89048

DATED at Carson City, Nevada, on this 17<sup>th</sup> day of October 2006.

  
An employee of the Public Utilities  
Commission of Nevada

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**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**MASSANUTTEN PUBLIC SERVICE CORPORATION**  
(VPDES Permit No. VA0024732)

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Massanutten Public Service Corporation, for the purpose of resolving certain violations of environmental laws and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "2002 Order" means the consent special order that became effective April 8, 2002.
7. "Amendment" means the amendment to the 2002 Order that became effective September 1, 2004.
8. "STP" means sewage treatment plant.
9. "Massanutten" means Massanutten Public Service Corporation, which owns and operates the Massanutten Public Service Corporation STP.
10. "Facility" and "Plant" means the Massanutten STP located in Rockingham County, Virginia.
11. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
12. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0024732 issued to Massanutten, which became effective November 20, 2000 and expires November 20, 2005. Permit limits include pH, biochemical oxygen demand ["BOD"], total suspended solids ["TSS"], dissolved oxygen ["D.O."], ammonia, and total residual chlorine ["TRC"].
13. "NOV" means Notice of Violation.
14. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
15. "VDH" means Virginia Department of Health.
16. "P.E.R." means Preliminary Engineering Report.
17. "O&M" means Operations and Maintenance.
18. "I&I" means Inflow and Infiltration.
19. "SMP" means Sludge Management Plan.
20. "CTO" means Certificate to Operate.
21. "TMP" means Toxicity Monitoring Program.
22. "TRE" means Toxicity Reduction Evaluation.
23. "EQ basin" means equalization basin.
24. "MGD" means million gallons per day.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The 2002 Order required Massanutten to complete the construction of Facility upgrade by May 15, 2003, to meet final effluent limitations and to conduct acute and chronic confirmational toxicity testing after the completion of the new Facility.
2. On August 16, 2002, the Virginia Department of Health conditionally approved the plans and specifications for the Facility upgrade. One of the conditions of that approval was that as-built plans and specifications were to be submitted to and approved by the Virginia Department of Health prior to issuance of a CTO for the upgraded Facility.
3. The Amendment to the 2002 Order provided additional time for Massanutten to submit approvable as-built plans and specifications and complete construction of the Facility upgrade including the second flow equalization basin. The Amendment required Massanutten to submit approvable plans and specifications for the upgraded Facility by January 31, 2005.
4. Following Massanutten's signing the Amendment on July 6, 2004, it submitted numerous versions of the as-built plans and specifications both before and after the January 31, 2005 due date for submittal of approvable plans and specifications.
5. DEQ issued a NOV on May 10, 2005, to Massanutten for violations of the Amendment's schedule of compliance including failure to submit approvable as-built plans and specifications for the upgraded Facility. The NOV also cited Permit violations for failure to sample and report total cyanide and di-2-ethylhexyl phthalate and failure to address technical inspection deficiencies in a timely manner in accordance with Permit requirements. (Note: total cyanide and di-2-ethylhexyl phthalate were later removed from the Permit).
6. Massanutten has been in compliance with the Permit's effluent limitations since May 2003.
7. On June 16, 2005, DEQ met with Massanutten in an informal conference to discuss the NOV, the status of the completion of the new Facility and the submittal of as-built plans and specifications for the new Facility. During the June 16, 2005, meeting, DEQ requested that Massanutten submit plans and schedules to address all of the outstanding issues regarding the new Facility.
8. By letters dated July 8 and September 15, 2005, Massanutten submitted to DEQ a revised plan and schedule of compliance for completion of the Facility upgrade. Sections of this plan and schedule have been incorporated into Appendix A of this Order.
9. Massanutten has made substantial progress in completing the upgraded Facility, but it did not submit approvable plans and specifications by January 31, 2005 or request a

conditional CTO by February 28, 2005, as required by the Amendment. The other ancillary problems cited in the NOV such as the inspection and reporting deficiencies have been resolved. The requirement to report total cyanide and di-2-ethylhexyl phthalate was subsequently dropped from the Permit and Massanuttten has addressed the inspection deficiencies by changing certain operational procedures.

10. On September 16, 2005, Massanuttten reported to DEQ a discharge of activated sludge to Quail Run. On September 16, 2005, DEQ staff conducted an inspection of the Facility and observed an ongoing sludge spill to Quail Run. DEQ advised Massanuttten to dam and pump accumulated sludge from the stream.
11. On September 19, 2005, DEQ staff continued the investigation of the activated sludge spill and observed activated sludge in Quail Run for a distance of approximately 1000 feet downstream from the Facility. Massanuttten estimated that 60,000-80,000 gallons of mixed liquor was lost in the event. During the September 19, 2005 inspection, DEQ staff noted that Massanuttten was in the process of sweeping and pumping solids from the stream. Massanuttten also indicated that a small fish kill was noted during the cleanup of the stream. The release occurred when tape covering the end of a drain line for an activated sludge basin gave way. Apparently, this drain line was taped and buried to protect it during the Facility's construction, but unlike the other six drain lines, it was never uncovered to properly install a valve and valve box. Massanuttten completed the cleanup of the activated sludge in the stream and installed the valve and valve box.
12. On October 28, 2005, Massanuttten reported to DEQ a break in a force main that led to an unauthorized discharge of approximately 200 gallons of wastewater/sowage to surface waters. This discharge was apparently composed primarily of backwash water from the water treatment plant with some raw sewage. Massanuttten took prompt action to cleanup the spill and repair the line.
13. On November 1, 2005, Massanuttten submitted to DEQ for review and approval another version of the as-built plans and specifications for the Facility upgrade. To date, however, Massanuttten has not received a CTO for the Facility upgrade required by the Amendment.
14. On November 9, 2005, DEQ issued NOV No. W2005-11-V-0004 to Massanuttten citing the September 16, 2005, unauthorized/unpermitted discharge of solids to State water which had an adverse impact on water quality. The NOV also cited the unauthorized discharge of approximately 200 gallons of wastewater to State waters that occurred on September 26, 2005. The October 28, 2005 unpermitted discharge was not included within the November 9, 2005 NOV.
15. On November 22, 2005, Massanuttten diverted approximately 0.5 MG of wastewater to the new EQ basin which is presently under construction. The use of the EQ basin has not been authorized through the issuance of a Certificate to Operate since the unit is still under construction. Massanuttten asserts that the diversion was necessary due to a

high rainfall event and was more environmentally protective since the action prevented the overflow of wastewater from the treatment plant.

16. On November 29, 2005, Massanutten experienced unauthorized/impermitted discharges of wastewater from the Facility and Massanutten again diverted approximately 0.5 MG of wastewater to the new EQ basin. Massanutten asserts that the diversion was necessary due to a high rainfall event and was more environmentally protective since the action reduced the amount and duration of overflows of wastewater from the treatment plant.
17. On January 3, 2006, Massanutten began the unauthorized operation (before receiving a CTO) of the second treatment train of the Facility. Massanutten asserts that the use of the second treatment train was necessary to treat the Facility's higher influent flows and compensate for operational problems due in part to filamentous growth. Massanutten asserts that the use of the second treatment train would allow the Facility to treat more influent more quickly and thus reduce the time the EQ basin would be utilized so that the EQ basin work could be completed more expeditiously. Massanutten asserts that without the use of the second treatment train to treat the additional influent, the high influent flows and reduced treatment efficiency could increase the delays in completing the EQ basin work and/or lead to effluent limitation exceedances. The Facility's high influent flows are also attributable to additional commercial connections and changes in seasonal use (i.e. from vacation to ski).

#### SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Massanutten, and Massanutten agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Massanutten, and Massanutten voluntarily agrees, to pay a civil charge of \$19,700 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, Massanutten shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. This Order cancels and supersedes the April 8, 2002 Order and the September 1, 2004 Amendment.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Massanutten, for good cause shown by Massanutten, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Massanutten admits the jurisdictional allegations contained herein, and neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Massanutten consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Massanutten declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Massanutten to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Massanutten shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Massanutten shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Massanutten shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may

delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which Massanutten intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Massanutten. Notwithstanding the foregoing, Massanutten agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Massanutten petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Massanutten.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Massanutten from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

17. The undersigned representative of Massanutten certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Massanutten to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Massanutten.
13. By its signature below, ~~the Town of~~ Massanutten voluntarily agrees to the issuance of this Order  


And it is so ORDERED this 20 day of March, 2006.

*R. Bradley Channing*  
Robert G. Burnley, Director DAVID K. JAYLOR  
Department of Environmental Quality

Massanutten Public Service Corporation voluntarily agrees to the issuance of this Order.

By: *[Signature]*

Title: Regional Vice President

Date: 1/17/06

North Carolina  
State of ~~Virginia~~  
City/County of Mecklenburg

The foregoing instrument was acknowledged before me this 17th day of January, 2006.

by Carl Daniel who is Regional VP of  
(name) (title)

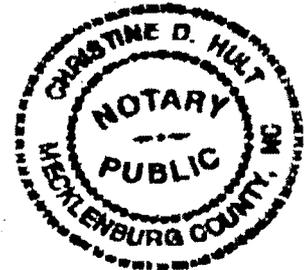
Massanutten Public Service Corporation, on behalf of said company.

January 17, 2006  
Date

Christine D. Hult  
Notary Public

My commission expires:

SEP 26 2009



**APPENDIX A  
SCHEDULE OF COMPLIANCE  
MASSANUTTEN PUBLIC SERVICE CORPORATION**

**As-built plans and specifications**

1. On November 1, 2005, Massanutten submitted to DEQ for review and approval another version of the as-built plans and specifications. Massanutten shall respond to any comments on the as-built plans and specifications within 30 days of receipt of written comments.

**Completion of Second Equalization Basin**

2. Massanutten has submitted to DEQ for review and approval the engineering plans and specification for the second equalization basin. Massanutten shall respond to comments regarding the plans and specifications within 30 days of receipt of written comments.
3. By April 30, 2006, Massanutten shall complete the installation of the equalization basin liner and the aeration equipment and pumps.
4. By May 31, 2006, Massanutten shall complete all work necessary for issuance of the CTO and request a CTO inspection for the entire Facility upgrade.
5. Within 365 days following issuance of a CTO for the upgraded Facility, Massanutten shall complete acute and chronic confirmational toxicity testing. The acute and chronic confirmational toxicity testing shall be conducted on four separate sets of 24-hour composite samples of effluent from Outfall 001, not to be conducted more frequently than monthly, and shall include samples collected during the months of August and February. A testing lab having applicable, approved toxicity testing protocols on file with DEQ shall do the confirmational toxicity testing. The acute toxicity testing shall be a "no observable adverse concentrations (acute) ("NOAEC")" test with a passing end point of 100% effluent, rather than the LC50 tests, which were used in earlier acute toxicity testing of this Facility's discharge. In order to successfully complete confirmational toxicity testing, all toxicity tests shall comply with the following endpoints (NOAEC = 100%, "no observable effect concentration (chronic) ("NOEC")" test  $\geq$  IWC). Each set of four toxicity tests shall be one acute and one chronic for each test species. The test results shall be submitted to DEQ within six weeks of the latest sampling date.

**Closure of the Old Plant Lagoon #1**

6. **By November 30, 2006, Massanutten shall complete the closure of Lagoon #1 and request a post-closure inspection and amend the Facility site deed to indicate that a closed sewage lagoon exists on the property.**

**I&I Reduction Studies in the Collection System.**

7. **By December 31, 2005, Massanutten shall complete repairs identified in Area 1 (sub-basin 7) as prioritized in the I&I studies.**
8. **By December 31, 2005, Massanutten shall complete TV studies to identify specific problem areas in Area 3 (sub-basins 3, 10, and 11) (referenced in the maps submitted to DEQ on October 9, 2003) as determined in the initial inspections.**
9. **By June 30, 2006, Massanutten shall complete flow measurement studies of the problem areas in Area 4 (referenced in the maps submitted to DEQ on October 9, 2003) as determined in the initial inspections.**
10. **By December 31, 2006, Massanutten shall complete any necessary TV studies to identify problem areas in Area 4.**
11. **By December 31, 2006, Massanutten shall complete repairs identified in Area 3 (sub-basins 3, 10, and 11) as prioritized in the I&I studies.**
12. **By June 30, 2007, Massanutten shall complete repairs identified in Area 4 as prioritized in the I&I studies.**

**Collection System Management Plan.**

13. **By January 1, 2007, Massanutten shall submit to DEQ for review and approval its plan for conducting future ongoing I&I work and the annual budget for the next three years that will be allocated to conduct that work. Massanutten shall respond to any questions concerning the plan within 30 days or receipt of written comments.**

**Reporting Requirements**

14. **Massanutten shall submit quarterly progress reports to DEQ, with the first report being due January 10, 2006. Subsequent Progress Reports will be due by April 10, July 10, October 10 and January 10, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The quarterly progress reports shall contain**

- a. a summary of all work completed since the previous progress report in accordance with the Order;
  - b. a projection of the work to be completed during the upcoming six months in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
15. No later than 14 days following a date identified in the above schedule of compliance Massanutten shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the schedule item. In the case of noncompliance the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled items.