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Transcript Exhibit(s)

Docket #(s): SW-02361A-08-0609

Arizona Corporation Commission

DOCKETED

MAY 22 2012

DOCKETED BY	<i>JM</i>
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Exhibit #: BMSC6, BMSC7, S10

Part 2 of 2

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
BLACK MOUNTAIN SEWER CORPORATION,)
AN ARIZONA CORPORATION, FOR A) DOCKET NO.
DETERMINATION OF THE FAIR VALUE OF) SW-02361A-08-0609
ITS UTILITY PLANT AND PROPERTY AND)
FOR INCREASES IN ITS RATES AND)
CHARGES FOR UTILITY SERVICE BASED)
THEREON.)
_____)

DEPOSITION OF TOM McCAHAN

Phoenix, Arizona
March 21, 2012

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite 502
2200 North Central Avenue
Phoenix, Arizona 85004-1481
By: Kate E. Baumgarth, RPR
Certified Reporter
Certificate No. 50582

Prepared for:
THE COURT

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1 DEPOSITION OF TOM McCAHAN was taken on March 14,
2 2012, commencing at 1:15 p.m., at the law offices of
3 FENNEMORE CRAIG, 3003 North Central Avenue, Suite 2600,
4 Phoenix, Arizona 85012, before KATE BAUMGARTH, RPR,
5 Certificate Reporter No. 50582 for the State of Arizona.

6

7

8

9 APPEARANCES:

10 For Black Mountain Sewer Corporation:

11 BOURQUE LAW FIRM, P.C.
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14 Phoenix, Arizona 85020

13

and

14

15 FENNEMORE CRAIG, P.C.
16 By: Mr. Todd Wiley
17 3003 North Central Avenue, Suite 2600
18 Phoenix, Arizona 85012

17

For The Boulders Resort:

18

19 RYLEY CARLOCK & APPLEWHITE
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22 Phoenix, Arizona 85004-4417

21

For the Arizona Corporation Commission Staff:

22

23 Ms. Robin Mitchell
24 Staff Attorney, Legal Division
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25

1 For Boulders Homeowners' Association:

2 RIDENOUR, HIENTON & LEWIS, P.L.L.C.
3 By: Mr. Scott S. Wakefield
4 201 North Central Avenue, Suite 3300
5 Phoenix, Arizona 85004-1052
6

7 ALSO PRESENT:

8 Mr. Les Peterson
9 Mr. Paul Walker
10 Mr. Greg Sorenson
11 Ms. Susan Madden
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1 TOM McCAHAN,
2 called as a witness herein, having been first duly sworn
3 by the Certified Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:

5

6

EXAMINATION

7

8 BY MR. BOURQUE:

9 Q. Good afternoon, Mr. McCahan; correct?

10 A. Yes.

11 Q. Please state your name.

12 A. Tom McCahan.

13 Q. And who do you work for?

14 A. I work for The Boulders.

15 Q. And who is -- who do you actually get your checks
16 from?

17 A. Hilton Waldorf Astoria.

18 Q. Okay. And it indicates that, in your testimony,
19 you're employed by Waldorf Astoria, LLC; is that correct?

20 A. Correct.

21 Q. And who do you report to? Who's your, if you
22 will, superior within the company?

23 A. Michael Hoffmann. He's the general manager --
24 managing director, actually.

25 Q. And do you know who Mr. Hoffmann reports to?

1 A He reports to Keith Clampet.

2 Q And Mr. Clampet is located?

3 A He's in McLean, Virginia.

4 Q What is your position at your company?

5 A I'm the director of club operations.

6 Q How long have you been that?

7 A I've been that -- that role since, I believe,
8 '04, 2004.

9 Q What did you do before that?

10 A I was the director of golf.

11 Q And was that at The Boulders?

12 A At The Boulders, yes.

13 Q How long were you the director of golf?

14 A Since '98.

15 Q And what did you do before '98?

16 A I was an assistant golf pro.

17 Q Where was that?

18 A At The Boulders.

19 Q From when to when?

20 A I started there in '91.

21 Q And to '98, I assume; correct?

22 A To '98, yes.

23 Q And what did you do before '91?

24 A Prior to '91, I was an assistant golf pro in Mesa
25 at Superstition Springs Golf Club.

1 Q. What's your highest level of education?

2 A. Some college.

3 Q. So you have been working physically at
4 The Boulders since 1991?

5 A. Correct.

6 Q. 21 years.

7 When you started working at The Boulders, were
8 there residences around the golf courses?

9 A. Yes.

10 Q. And my question presumed there were golf courses.

11 Were there the same two golf courses that there
12 are now?

13 A. Yes.

14 Q. Were all the residences up, or was it, say,
15 50 percent built out, or do you know?

16 A. There were -- excuse me -- there were homes built
17 mostly around the south course since I was there. So it
18 was not built out, no.

19 Q. Is the wastewater treatment plant near what's
20 called the north course?

21 A. Yes.

22 Q. Do you know if there were homes, you know,
23 immediately around the -- the wastewater treatment plant
24 when you started working in 1991?

25 A. I believe all the homes in that area were already

1 built.

2 Q. And beginning in 1991, I presume that you golfed
3 frequently on both golf courses?

4 A. Yes.

5 Q. Did you ever smell odors coming from the
6 wastewater treatment plant?

7 A. Didn't notice it early on.

8 Q. When did you first start noticing it?

9 A. Probably around -- I don't know specifically.
10 I'd guess early 2000s, maybe, but I don't remember
11 specifically a day or time or anything.

12 Q. Okay. And what did you notice when you started
13 noticing the odors?

14 A. Mostly driving in that area between a couple
15 holes. Between 1 and 2 you can -- just an odor, briefly.
16 By the time you got to the golf hole, you know, played the
17 hole, it was -- you know, you didn't smell it anymore.
18 But just a -- what you would expect to smell from a sewer
19 plant.

20 Q. Has anybody ever complained to you about the
21 odors emanating from the wastewater treatment plant?

22 A. Yes.

23 Q. Who?

24 A. Mostly members.

25 Q. And when you say "members," you mean members of

1 Boulders Resort?

2 A. Yes, residents, members of the club.

3 Q. Have you had any complaints in writing, or are
4 they all verbal, or a combination?

5 A. Mostly verbal, but at, I guess, the late 2000s,
6 it became a -- there was some in writing due to
7 homeowners' concerns.

8 Q. And what did you do with any complaints that you
9 got in writing from anybody?

10 A. Investigated.

11 Q. And what did you do to investigate it?

12 A. Initially, it was -- within our engineering,
13 within the hotel, we would check to see where the smells
14 were coming from.

15 Q. And did you conclude that the smells were coming
16 from the wastewater treatment plant?

17 A. Yeah.

18 Q. What did you do after reaching that conclusion?

19 A. By that time, the homeowners were involved, so I
20 knew of their concern with the plant. So just communicate
21 with -- with -- Les Peterson was involved from a
22 homeowner's standpoint. He's also a member. So there
23 was -- there was some communication about the concern
24 there between the club and the HOA.

25 Q. And what did you communicate to Les Peterson?

1 What did you say to him?

2 A. We were aware of the concern as well as they were
3 aware of the concern with the smell.

4 Q. Did you advise him that you were going to take
5 any action regarding the odor?

6 A. I don't recall. I don't recall any action that
7 we at that time were involved with.

8 Q. Other than reaching a conclusion that the odors
9 that you were smelling were from the wastewater treatment
10 plant and communicating with Les Peterson, what else, if
11 anything, did you do in your investigation or after your
12 investigation was complete?

13 A. Nothing else because I knew the homeowners were
14 acting on -- the homeowners were communicating with
15 Black Mountain about the concern.

16 Q. Have you communicated with Black Mountain
17 regarding the concern?

18 A. Eventually we did, yes.

19 Q. And when you say "eventually we did," who is we?

20 A. The resort.

21 Q. Who within the resort?

22 A. I spoke with -- I've been in meetings with the
23 HOA and Black Mountain.

24 Q. How many meetings have you been in with the HOA
25 and Black Mountain?

1 A. Six or so, six -- I don't know for sure
2 specifically how many, but half a dozen, several, in that
3 range.

4 Q. And who with respect to Black Mountain, which is
5 my client, was present at those meetings?

6 A. Greg was there, Sorenson, with most of them.

7 Q. Jay Shapiro?

8 A. Some, yes.

9 Q. Tom Nichols?

10 A. Yes.

11 Q. Anyone else you can think of besides Greg, Jay,
12 and Tom that was in those meetings from Black Mountain?

13 A. Not off the top of my head, no.

14 Q. And what was discussed at those meetings?

15 A. Possible solutions for the smell.

16 Q. Who was present other than you, Greg, Jay, and
17 Tom at those meetings?

18 A. Les Peterson was at many of them, Mr. Wakefield,
19 Sue Madden on our -- from The Boulders, Dean Hunter from
20 The Boulders.

21 Q. And what solutions, if any, came out of those
22 meetings?

23 A. I think some of it was looking for options on
24 replacement water.

25 Q. What are your job responsibilities?

1 A. I oversee the golf course, the membership,
2 tennis, the golf shop.

3 Q. And in those meetings with Greg Sorenson,
4 Jay Shapiro, and Tom Nichols, did they broach any ideas or
5 solutions to the water issues or to the odor issues?

6 A. Yes.

7 Q. And what were those?

8 A. They mentioned Desert Mountain might have some
9 water options or some excess. I don't know that all these
10 solutions came from them directly, but I think out of
11 these meetings, these options have come up.

12 Getting excess water from Scottsdale, the RWDS,
13 was something we looked into. We looked at -- I think in
14 Carefree there is a well No. 6 it's called, arsenic well
15 we called it. We -- other conservation options from a
16 course standpoint.

17 Q. Did you hire any experts or consultants to give
18 any opinions, reports, or other information regarding any
19 of these potential solutions, whether it be conservation,
20 whether it be obtaining water from the Carefree well,
21 whether it be building another plant?

22 A. Yes, we looked into building the plant, as
23 well -- I missed that one -- on property.

24 Q. And do you know if your company retained any
25 experts or consultants to look into those sorts of things?

1 A. We had someone take a look at it, yes.

2 Q. Who was that?

3 The names I've heard so far, which may help you,
4 one is Juergen Nick.

5 A. Yes.

6 Q. Is that who you were trying to think of?

7 A. Yes. Yes. Perc is the company, maybe. Does
8 that sound -- I think that's --

9 Q. Do you know -- did you deal with Mr. Nick?

10 A. I was in a meeting or two with him, yes.

11 Q. Was Ms. Madden in the meeting?

12 A. She was, yes.

13 Q. Is it fair to say that Ms. Madden has as much
14 knowledge as you regarding these issues, or would you --
15 do you think --

16 A. Most of -- I would say most of them, yes. I
17 mean, there's some specific areas, maybe, but overall,
18 yes, she is very knowledgeable about some of the options,
19 yes, or most of the options, yes.

20 Q. What areas would you -- do you think that you
21 might have knowledge on regarding potential options for
22 replacement water or other potential options, what areas
23 would you think your knowledge might be greater than hers?

24 A. I think she's been kept in the loop from our
25 team, that we're looking at options, up to most everything

1 that I know. There's some golf course options that our
2 superintendent might be more knowledgeable about than her
3 or I.

4 Q. And the superintendent is?

5 A. Dean Hunter.

6 Q. Have you had any dealings or meetings or
7 communications with Black Mountain separate and apart from
8 being with Ms. Madden? In other words, have you had
9 meetings or communications with my client or my client's
10 representatives separate and apart from her?

11 A. There may have been conversations with
12 Tom Nichols as options are being researched.

13 Q. Are you sure one way or the other?

14 A. No, not one way or the other. Tom may have been
15 researching some things and then would call or -- and give
16 an update on something.

17 Q. Has Tom Nichols been cooperative in working with
18 him?

19 A. I think he has, yes.

20 Q. When you obtain information regarding potential
21 solutions, do you share them with Ms. Madden?

22 A. Yes.

23 Q. Do you share them with other folks within your
24 company? You mentioned a team, and that's why I asked the
25 question.

1 A. Dean Hunter would be the other person involved.

2 Q. What about Mr. Hoffmann, would you consider him
3 part of that team that's addressing it; whereas, the
4 team -- your team, you, Ms. Madden, and Mr. Hunter,
5 addressing the issues and then ultimately conveying the
6 information to Mr. Hoffmann?

7 A. Yes.

8 Q. That's the way it works?

9 A. That's the way it works, yes.

10 Q. And how generally do you convey the information
11 to Mr. Hoffmann? Is it via e-mails? Is it in person? Is
12 it on the phone, or a combination thereof?

13 A. I think a combination of all of that.

14 Q. And who is the decision-maker, either on the
15 team, or is it Mr. Hoffmann in terms of, you know, how
16 to -- or who makes the decisions regarding these issues,
17 whether it be replacement water or whether it be, you
18 know, pursuing other options with Black Mountain?

19 MR. BELLAMY: Objection to form.

20 THE WITNESS: Well, I think the team -- team was
21 looking at all the options. So as a -- as our -- the
22 three people I mentioned, we would look at all the options
23 and report up, Dean, myself, and Sue, and we'd look for
24 options. And beyond that, I guess I don't understand.

25

1 BY MR. BOURQUE:

2 Q. Yeah. Do you -- do you-all within your company
3 have the decision-making power on the sorts of issues that
4 we're dealing with here, or do you kind of farm that up to
5 Mr. Hoffmann for him to decide?

6 MR. BELLAMY: Objection to form.

7 BY MR. BOURQUE:

8 Q. Or something else?

9 A. No. Looking for options, he did not have any
10 responsibility for looking at different options.

11 Q. Who had responsibility for looking for different
12 options?

13 A. The -- Sue, Dean, and I would be looking for
14 different options for the -- for water replacement. So he
15 did not decide on what we would research.

16 Q. And ultimately, did you, Dean, and Ms. Madden
17 come to any decision as to which option or options to
18 pursue?

19 A. Depending what you mean by "pursue." Ultimate
20 where we would go, no. Ultimately if there was one -- I
21 don't understand what you mean by pursue. But we looked
22 at a lot of options.

23 Q. For example, if -- if -- have you looked at the
24 option of what the resort would do if the effluent that's
25 now being sold by my client to the resort was stopped?

1 Have you looked at what you would do, like, right now to
2 try to, you know, move on with the situation and, you
3 know, continue servicing the -- the golf course customers?

4 A. We haven't -- that would not be a decision I
5 would make, but we've looked at all the different options,
6 and I don't think there's one that we would choose we have
7 come up with as what we would do.

8 Q. So you haven't determined if -- if the effluent
9 were to stop flowing from Black Mountain now, you haven't
10 determined what you would do?

11 A. I think some of that's an ownership decision on
12 what direction we would go.

13 Q. And who do you consider ownership in that regard?
14 What -- what folks within ownership?

15 A. Somebody up within Hilton.

16 Q. Who have you dealt with up in Hilton that would
17 be making that sort of decision?

18 A. I really am not sure who would be --

19 Q. I've --

20 A. -- making that decision.

21 Q. And maybe I can either jog your memory or not.
22 I've heard of a Ms. Sprogis and a Mr., I think,
23 Bussani.

24 A. Okay.

25 Q. Are you familiar with them making any decisions

1 when it comes to how to handle these matters?

2 A. That would -- that would make sense, yes.

3 Q. Did you look at any documents in preparing for
4 today's deposition?

5 A. Yeah.

6 Q. What did you look at?

7 A. I think, testimony that had already been
8 submitted.

9 Q. Your testimony?

10 A. Yeah.

11 Q. Any other documents?

12 A. Notes from files from previous meetings.

13 Q. Previous meetings between whom?

14 A. Black Mountain and the homeowners.

15 Q. And what was in those notes? What did the notes
16 say?

17 A. Details from options, just refreshing memory of
18 some of the meetings we've had.

19 Q. What other documents did you look at, if any?

20 A. Personal notes.

21 Q. Did you look at any agreements, like the Effluent
22 Delivery Agreement?

23 A. Not recently.

24 Q. Have you ever looked at that?

25 A. I've looked at -- looked at -- yes. Not in

1 detail, but I've seen it, yes.

2 Q. Have you discussed it with Ms. Madden, the
3 Effluent Delivery Agreement?

4 A. Yeah.

5 Q. Outside the presence of counsel?

6 A. Likely, yes, just like a lot of agreements we
7 have.

8 Q. And what do you recall the discussion was that
9 you had with her about the Effluent Delivery Agreement
10 outside the presence of counsel?

11 A. I don't -- I don't recall what we would have
12 talked about.

13 Q. If the Arizona Corporation Commission issued an
14 order closing the plant, do you know what effect that
15 would have on the Effluent Delivery Agreement? Did you
16 discuss that with Ms. Madden?

17 MR. BELLAMY: Objection to form.

18 THE WITNESS: I understand the agreement's until
19 2021 --

20 BY MR. BOURQUE:

21 Q. No matter what?

22 A. -- if that's -- if that's what you're referring
23 to. I don't -- that's one thing my understanding is.

24 Q. So you -- did you discuss or did you not discuss
25 with Ms. Madden the effect of a Corporation Commission

1 order closing the plant? Do you know if you specifically
2 discussed that with her?

3 A. Could have, yeah.

4 Q. Do you know what was discussed in that regard?

5 A. I don't.

6 Q. My understanding from paragraph 12 of the
7 Effluent Delivery Agreement is that the resort can
8 terminate the agreement by providing notice of its intent
9 to terminate in the event that the charge for effluent
10 goes up by a certain amount.

11 Did you know that?

12 A. No.

13 Q. Have you discussed with Ms. Madden the potential
14 for, you know, a rate increase in the -- in the rate of --
15 for effluent that your company receives if Black Mountain
16 is forced, for example, to build a new plant? Have you
17 discussed that?

18 A. No.

19 Q. Did you discuss it at all with Black Mountain?

20 A. Not that I recall.

21 Q. Are you the -- the person at all who deals at all
22 with -- with, for example, how much water costs? Are
23 you -- are you looking at those sort of things, or is that
24 Ms. Madden's bailiwick?

25 A. I don't see those bills.

1 Q. Your job responsibilities don't include dealing
2 with budgeting issues related to effluent and water --

3 A. No.

4 Q. -- correct?

5 Given your job responsibilities, what was your
6 role in your team in -- in dealing with the -- the water
7 issues out at the resort?

8 A. We would -- my role, make -- make some phone
9 calls to try to see if -- if there is available water from
10 a -- from different sources.

11 Q. Any other role that you had in that regard?

12 A. Just help try to find a solution.

13 Q. Other than making some phone calls, what else did
14 you do to try to find a solution?

15 A. Discussions with Mr. Peterson, as well. I think
16 we all were trying to find a solution from different
17 options.

18 Q. And what became of your discussions with
19 Mr. Peterson? Were there solutions that were agreed upon
20 or solutions that were broached, and if so, what were
21 they?

22 A. I think the well No. 6 was one that we talked
23 about; checking into Desert Mountain's available water;
24 City of Scottsdale, whether they had excess potable or --
25 or RWDS water.

1 Q Did you recommend to either your team or to
2 Mr. Hoffmann or to Ms. Sprogis or to Mr. Bussani, that
3 they pursue any one of these solutions?

4 MR. BELLAMY: You mentioned Bussani.

5 MR. BOURQUE: Thank you.

6 BY MR. BOURQUE:

7 Q Did you recommend or advise Ms. Madden,
8 Mr. Hunter, Ms. Sprogis, or anybody else, other than
9 counsel, to pursue one of these potential solutions?

10 A If you mean pursue being the one option that we
11 would decide to go with, no.

12 Q Why not?

13 A Not a decision that I would -- that I would be
14 able to make.

15 Q Did -- sitting here today, do you have a belief,
16 if you were king, so to speak, which solution you would
17 pursue for the resort?

18 MR. BELLAMY: Objection to form.

19 THE WITNESS: Which decision I would pursue?

20 BY MR. BOURQUE:

21 Q Which -- which solution do you think is best?

22 A My opinion?

23 Q Yes.

24 A The opinion -- my opinion. I don't know that I
25 have an opinion on which one is best.

1 Q. Sitting here today, do you know whether it's
2 technically feasible to build and effectually operate a
3 new wastewater treatment plant?

4 A. The meetings with Juergen seemed like it was an
5 option that was something that could work.

6 Q. My understanding is that Juergen didn't follow up
7 on that, and that was -- and -- and he didn't provide any
8 kind of a written report, but rather after he at least
9 broached the idea, then Black Mountain and its consultants
10 looked at the issue.

11 Is that consistent with your memory, or do you
12 have a different take?

13 A. I understood Black Mountain was looking at that
14 option, but I haven't -- I haven't heard anything.

15 Q. My understanding is that Juergen didn't reach any
16 conclusions, but rather, he broached the idea.

17 Is that different --

18 A. I'm fuzzy on the details of that.

19 Q. Okay. So sitting here today, do you know whether
20 it's technically feasible one way or the other to build a
21 replacement plant?

22 A. I don't know. I don't know the details of
23 whether it is or isn't.

24 Q. Do you know at your company who would?

25 A. I don't know.

1 Q Do you know if Ms. Madden would have less or more
2 information than you on that topic?

3 A She may recall more than -- than I'm recalling
4 about it.

5 Q Did -- did you deal directly with Juergen, or did
6 you -- did she, or did kind of both of you?

7 A We both met together.

8 Q And did Dean, as well?

9 A I don't know if Dean was there.

10 Q Was anybody else present at any meetings with
11 Juergen other than you and Ms. Madden and potentially
12 Dean?

13 A No one other than that, no.

14 There may have been one meeting -- there may have
15 been one meeting where Juergen brought somebody with him.
16 I can't remember his name.

17 Q And do you know what -- you said he, so I assume
18 it's a him?

19 A Yes.

20 Q What did that other individual say?

21 A They were looking into the -- they were getting
22 more details to look into the option of having a plant
23 on-site.

24 Q Did -- did Juergen give any kind cost estimate
25 for a replacement plant?

1 A. There -- there is a -- I think he gave a number.
2 I can't recall what it was, but it --

3 Q. Did you communicate with Juergen in writing at
4 all? And when I say "in writing," I mean e-mail or, you
5 know, fax or letter or the like?

6 A. I'm sure I have some e-mails from him, yes.

7 Q. And are you aware that -- that my client, if it
8 has to build a plant, can go seek a rate increase on the
9 effluent that it charges your company?

10 A. I would not be surprised if that was the case.

11 Q. Did -- did you-all internally -- other than with
12 counsel, did you internally discuss that potential impact
13 on the building of a new wastewater treatment plant,
14 that --

15 A. Not that I recall.

16 Q. Are you aware that a majority of folks who live
17 out in that community would like the plant to be closed?

18 A. Yes.

19 Q. And how did you become aware of that?

20 A. Through Mr. Peterson.

21 Q. And when Mr. Peterson tells you things like that,
22 what is your response to him?

23 A. We understand the concern with the -- with the
24 odors, but we -- but we also have a golf course that has a
25 high expectation on its quality, and we want to find a

1 solution so we can keep it at that level.

2 Q. And do you -- do you know how that can be done
3 without receiving the water from Black Mountain?

4 A. Not at this point.

5 Q. Do you know how the resort intends to cope in --
6 in 2021 if it -- assuming it's still getting effluent
7 until then, which is an assumption, but in 2021, do you
8 know how the resort intends to cope with the -- the
9 potential loss of that water?

10 A. Not at this point.

11 Q. Have there been discussions that, hey, we need to
12 keep that on the radar and we're going to need to do
13 something then?

14 A. We've had not a lot of deep conversation about it
15 at this point.

16 Q. And that implies that there's been something less
17 than deep conversation.

18 What's the conversation been?

19 A. No conversation -- a lot of it was related to
20 this -- the -- the closure of the plant now and
21 understanding when the contract runs to. So prior to this
22 concern, there was no conversation.

23 Q. You've -- have you met and spoke with
24 Greg Sorenson?

25 A. Yes.

1 Q Do you think he's acted in good faith in trying
2 to find a resolution?

3 A My interactions with Greg have been positive.

4 Q So would that be a, yes, you think --

5 A Yes.

6 Q -- he's acting in good faith?

7 A Yes.

8 Q Same question with Tom Nichols?

9 A Yes.

10 Q Have you dealt with anybody else at -- at
11 Black Mountain in -- with respect to the wastewater
12 treatment plant or -- or effluent issues?

13 A Not that I recall.

14 Q Within your company, other than your counsel and
15 other than Ms. Madden and Dean, who else have you spoken
16 about this with?

17 A Well, Mr. Hoffmann, who we keep in the loop.

18 Q Ms. Sprogis, you've been on the phone with her a
19 little bit on this?

20 A She's been communicated to, yes.

21 Q Actually, have you met with her in person on it
22 when she's been out here?

23 A I think so, yes.

24 Q And what is her opinion? What has she told you?

25 A To -- to try to find a potential solution with

1 Black Mountain.

2 Q. And what's your understanding of the status of
3 trying to find a solution with Black Mountain?

4 A. It's -- we're having a -- there's a difficult
5 time finding a low-cost answer.

6 Q. Have you conveyed that to Ms. Sprogis and
7 Mr. Hoffmann?

8 A. They're aware of that, yes.

9 Q. And what's causing the difficulty?

10 A. There's no low-cost answers that we've come up
11 with.

12 Q. Thus, every answer is high cost, and what are
13 those high-cost answers?

14 A. There's a question mark on the plant,
15 Desert Mountain. Those seem to be the main ones.

16 Q. I didn't -- and I apologize. I didn't understand
17 what you meant by "a question mark on the plant."

18 Oh, did you mean there's a -- there's a question
19 regarding the -- the feasibility of -- of constructing a
20 new plant?

21 A. The question of the feasibility of constructing a
22 new plant, as well as how much that would cost.

23 Q. What other potential high-cost answers are there
24 other than building a new plant?

25 A. We investigated getting water from Cave Creek,

1 which they may not have water, anyway, but a pipeline
2 would need to be constructed.

3 There are other things that we've looked at, but
4 it doesn't seem like they're permitted by the RWDS
5 agreement.

6 Q. If a solution can't be reached, was it the
7 resort's intent to simply, you know, seek to keep the
8 plant open until 2021 and let the Homeowners' Association
9 deal with the odors?

10 MR. BELLAMY: Objection to form.

11 THE WITNESS: Can you rephrase the question?

12 MR. BOURQUE: Could you repeat that for me, Kate.

13 (Requested portion of the record read.)

14 THE WITNESS: I don't make -- I don't make the
15 final decision, but if there's no solution, that -- that
16 seems to make sense.

17 BY MR. BOURQUE:

18 Q. Have you told that to Les Peterson?

19 A. I don't recall.

20 Q. Has Mr. Peterson broached any ideas or solutions
21 to -- to you?

22 A. Yes. I mean, earlier there was a similar
23 question. We've talked about a lot of solutions, yes.

24 Q. When is the first time that you ever heard that
25 the Homeowners' Association or Black Mountain wanted to

1 actually close the wastewater treatment plant?

2 A. Maybe 2009.

3 Q. How did you hear that?

4 A. Conversation with Les Peterson.

5 Q. What did he say?

6 A. That they've been working with the plant to
7 correct odors, and that they didn't seem to have any
8 solutions or come up with anything that would eliminate
9 the odors and were looking into closing the plant.

10 Q. Are you absolutely sure that -- that Les Peterson
11 had not contacted you about the Black Mountain situation
12 before the 2006 rate case order came out?

13 A. I knew they were working on coming up with
14 solutions for the smells on property with -- with
15 Black Mountain.

16 Q. And how did you know that?

17 A. Conversation with Mr. Peterson.

18 Q. Ms. Madden indicated in her testimony that,
19 "Although the resort is aware of the odor issues that have
20 been experienced in neighboring properties, including at
21 times, the resort property, the situation has improved
22 somewhat."

23 Would you agree with that or disagree with that?

24 A. I would agree with that.

25 Q. How has it improved?

1 A. Personally have heard less feedback from
2 residents, as well as personally went on the golf course.
3 Don't seem to smell it as much.

4 Q. Do you have any facts or evidence that
5 Black Mountain isn't properly operating its plant?

6 A. I have -- do I have any evidence that
7 Black Mountain is not properly operating the plant?

8 Q. Correct.

9 A. I have no -- no -- no evidence of that.

10 Q. Are you aware of any other party, other than the
11 resort, that wants to keep the wastewater treatment plant
12 open?

13 A. The resort -- the resort is okay and supportive
14 of closing the plant as long as we find suitable
15 replacement water. So no one -- well, I'll stop there.
16 You can rephrase if you like.

17 Q. I understand that -- that -- so what you're
18 saying is, the resort wants the plant kept open if it
19 cannot obtain suitable replacement water; correct?

20 A. Until we find a solution.

21 Q. And that solution, I think you testified, is
22 suitable replacement water; correct?

23 A. Correct.

24 Q. So the resort wants the plant kept open until it
25 can find suitable replacement water; is that correct?

1 A. Yes. Correct.

2 Q. Are you aware of any other person or entity that
3 wants the -- the wastewater treatment plant kept open for
4 any reason?

5 A. I assume people who -- no.

6 Q. And the suitable replacement water, you -- you
7 can obtain it, but it's simply a matter of cost; correct?

8 A. True.

9 Q. And do you have an opinion one way or the other
10 as to who should bear that cost?

11 MR. BELLAMY: Objection to form.

12 THE WITNESS: I don't know the details of the
13 contract in regards to that. I guess I don't -- maybe
14 rephrase the question again.

15 BY MR. BOURQUE:

16 Q. Are -- are you aware that if Black Mountain is --
17 has to incur a cost, say, for example, if it had to build
18 a new plant, that it could seek a rate increase and that
19 the resort would then indirectly bear that cost in the
20 form of higher effluent charges?

21 Are you aware of that?

22 A. No, but it makes sense.

23 Q. Why does it make sense to you?

24 A. Well, I don't know all the details of how -- I've
25 heard that the -- if the plant closes, they are in --

1 they -- if the plant closes, there are costs to that that
2 they pass on to the users. So it seems like if they have
3 costs, that they pass them on.

4 Q. And the resort is a user; correct?

5 A. Yes.

6 Q. Have you discussed internally, with the exception
7 of counsel, that the resort may end up paying in the form
8 of increased rates for the shutting down of the plant and
9 the building of another plant?

10 A. Not that I recall.

11 Q. Do you know why that hasn't been discussed?
12 Because it would obviously impact, you know, your -- your
13 company's bottom line.

14 A. No.

15 Q. Have you -- other than Mr. Peterson, have you
16 communicated in -- in -- well, actually, strike that.

17 Have you communicated with Mr. Peterson in -- in
18 writing, via e-mails or otherwise?

19 A. Yes.

20 Q. And have you communicated with other homeowners
21 regarding the situation in writing, meaning e-mails or
22 otherwise?

23 A. Possibly.

24 Q. And what have you told them with respect to the
25 plant closure, if anything?

1 A. We're supportive of the plant closing, just need
2 to find some replacement -- replacement water.

3 Q. Do you have a task list or an intent to do
4 anything, you know, after you walk out of here today, to
5 explore additional options for replacement water, or
6 otherwise, to try to resolve this situation, or are you,
7 you know -- or are you at an -- have you been at an end
8 point for some time in terms of looking for solutions?

9 A. We're always looking for -- we're always looking
10 for solutions. I wouldn't say we're at an end point, but
11 we're always looking.

12 Q. When's the last time you looked for a solution?

13 A. I don't know specifically.

14 Q. What was the last solution that you looked at --
15 potential solution, I should say?

16 A. Desert Mountain.

17 Q. Obtaining water from Desert Mountain?

18 A. Yes.

19 Q. And when was that looked at?

20 A. I don't know a specific date. I'd have to look.

21 Q. Was it in year 2012?

22 A. No.

23 Q. Was it in year 2011?

24 A. Yes.

25 Q. Okay. So it's been a number of months since

1 you've looked at solutions.

2 Why is that?

3 A. Don't -- it seems like we've looked at most of
4 the solutions available.

5 Q. And that implies that there are more. If you've
6 looked at most, that's not all.

7 Do you know what remaining solutions that you
8 haven't looked at?

9 A. I don't know, no.

10 Q. Do you have an intent to go forward in looking
11 for -- for more solutions, specifically any -- any things
12 that you're going to do after you walk out of here today?

13 A. I don't have anything specific, no.

14 Q. Do you know that anybody in your company does or
15 doesn't have that intent?

16 A. Not that I'm aware of.

17 Q. Okay.

18 A. I'm not sure the status of the treatment plant,
19 building -- building a new plant on property. Other than
20 that, no.

21 Q. You're not sure of the status of the treatment
22 plant.

23 My understanding is that Mr. Nick's assignment
24 with your company has ended and he's not doing ongoing
25 work.

1 Do you have a different understanding?

2 A. That's my understanding at this point.

3 Q. Okay. Do you know why he's not exploring in
4 further detail the status of the treatment plant?

5 A. My last assumption was they were --
6 Black Mountain's looking into that option, as well.

7 Q. But that wasn't my question.

8 My question was, do you know why Mr. Nick is no
9 longer looking at that, why your company is no longer
10 using him to look at that?

11 A. I don't know.

12 Q. Do you know why your company isn't using anybody
13 else in that regard, to look at the status of the
14 treatment plant?

15 MR. BELLAMY: Objection to form.

16 THE WITNESS: We're always looking for options.

17 BY MR. BOURQUE:

18 Q. I know you're always looking for options, sir, in
19 a generic sense, but I'm -- I'm looking at specifics here
20 and asking about specifics here.

21 And do you know why your company's not -- doesn't
22 have anybody right now looking at the status of an
23 alternative treatment plant?

24 MR. BELLAMY: Objection to form.

25 THE WITNESS: I don't know.

1 BY MR. BOURQUE:

2 Q And you've said several times your company's
3 always looking at options.

4 What options are you looking at right now?

5 A We've looked -- we've looked at Desert Mountain.
6 We've looked at -- Scottsdale had some options. Right now
7 actively, we're not -- we think we've come to a point
8 where we're waiting.

9 Q And what are you waiting on?

10 A We're waiting to see what happens with this case,
11 this discussion with the ACC, I guess.

12 Q You're waiting to see the outcome of this
13 litigation with the Arizona Corporation Commission?

14 A That's my personal thought.

15 Q Okay. Are you waiting on anything from
16 Black Mountain?

17 A No.

18 MR. BOURQUE: I don't have any further questions
19 at this time. I appreciate it. And counsel may have some
20 questions.

21 MR. WAKEFIELD: I do. Thank you.

22

23

24

25

1 EXAMINATION

2

3 BY MR. WAKEFIELD:

4 Q Mr. McCahan, I'm Scott Wakefield. I just have a
5 few questions.

6 You had referred to the fact that you've heard
7 complaints regarding the odors from golfers and members of
8 the club.

9 Over what time period have you heard such
10 complaints?

11 A Starting, I think it was, 2005-ish, maybe, there
12 would be some comments made by homeowners, golfers on
13 occasion.

14 Q And how recently have you heard such complaints?

15 A I haven't heard anything in the last six months.

16 Q Have you -- has your company taken any action to
17 bring the odor issue to the attention of the Arizona
18 Corporation Commission?

19 A Did we bring any action?

20 Q Did you do anything to bring the issue to the
21 Commission's attention?

22 A No, not that I'm aware of.

23 Q Did you make public comments at the Commission in
24 the sewer company's 2006 rate case?

25 A I don't think so.

1 Q Do you have the testimony that you recently filed
2 in this proceeding?

3 A I don't have it with me, no.

4 Q Okay. Do you recall that -- that in that
5 testimony, that you indicated that you became aware in
6 November of 2009 that the issue of closure of the plant
7 was on the table?

8 A That -- yes, that makes sense.

9 Q Okay. And were you made aware of that
10 possibility of plant closure at any time before November
11 of 2009?

12 A Plant closure before then, I don't -- I don't
13 think so, but my dates could be mixed up.

14 MR. WAKEFIELD: I'll have this marked.

15 (Exhibit 1 was marked for identification.)

16 BY MR. WAKEFIELD:

17 Q Mr. McCahan, do you recognize this document
18 that's been marked as Exhibit No. 1?

19 A Looks like an e-mail, yes.

20 Q And does it indicate that it was sent to you,
21 among others?

22 A Yes.

23 Q And in September of 2009?

24 A Yes.

25 Q Does it indicate that it's from Les Peterson?

1 A. Yes.

2 Q. Do you recall receiving this e-mail?

3 A. I received this e-mail, yes.

4 Q. Okay. And it indicates that -- that

5 Mr. Peterson's testimony that had been filed with the

6 Commission was attached to it; is that right?

7 A. Yes.

8 Q. And do you recall having reviewed that testimony

9 in about the time you received it?

10 A. I assume I did, yes.

11 Q. And is it your understanding that that testimony

12 brought to the Commission's attention the agreement

13 between the Homeowners' Association and the sewer company

14 that provided foreclosure of the treatment plant on

15 certain terms? Is that your understanding?

16 A. Yes.

17 Q. Okay.

18 (Exhibit 2 was marked for identification.)

19 BY MR. WAKEFIELD:

20 Q. And, Mr. McCahan, do you have what's been marked

21 as Exhibit No. 2?

22 A. Yes.

23 Q. And do you recognize that document?

24 A. Can I have a minute to read it?

25 Q. Go ahead. Take your time.

1 A. Okay.

2 Q. Do you recall receiving that e-mail?

3 A. I received this e-mail, yes.

4 Q. And it indicates it was sent in December of 2008;
5 correct?

6 A. Correct.

7 Q. And it's from Les Peterson to you?

8 A. Correct.

9 Q. And in the portion below the first part that says
10 Tom, and then there are two lines and Les, it's forwarding
11 another e-mail?

12 A. Yes.

13 Q. From December 17th of 2008; is that correct?

14 A. Correct.

15 Q. And in the -- in the first three lines of the
16 body of that forwarded e-mail, do you see that it refers
17 to preliminary discussions with BMS?

18 A. I do.

19 Q. And the nature of those discussions would have
20 resulted in removing a processing plant from within
21 The Boulders in 2016.

22 Do you see that?

23 A. I do.

24 Q. And on the second page of the exhibit is -- do
25 you recall this being attached to the e-mail you received?

1 A. It appears to be, yes.

2 Q. And in the second portion of that under BHOA to
3 receive, do you see No. 3 there where it says that BMS
4 agrees to remove the processing plant currently located
5 within The Boulders by not later than 2016?

6 A. Yes.

7 Q. And those references in -- in that e-mail and --
8 and the page attached to it, to the processing plant, do
9 you understand that to be the same wastewater treatment
10 plant that is the subject of this proceeding before the
11 Commission?

12 A. Yes.

13 Q. Okay. So as early as December of 2008, the
14 Homeowners' Association had communicated with you
15 regarding a proposal that would have resulted in the -- in
16 the treatment plant being closed by 2016; is that correct?

17 A. That's what this says, yes.

18 Q. Okay. When -- when that came to your attention
19 at the end of 2008, did the resort do anything to begin to
20 explore its options with respect to what it would do if
21 the -- if the treatment plant were closed in 2016?

22 A. At that point -- at that point, it was felt --
23 we -- let me rephrase that.

24 I know we -- the resort was supportive of closing
25 the plant as long as we had replacement water. And at

1 that time, it was assumed that the replacement water
2 options would be brought to our attention.

3 Q. Was there anything communicated to you that was
4 the basis of that assumption?

5 A. No.

6 (Exhibit 3 was marked for identification.)

7 BY MR. WAKEFIELD:

8 Q. Mr. McCahan, do you have in front of you what's
9 been marked as Exhibit No. 3?

10 A. Yes.

11 Q. And is that an e-mail dated November 13th, 2007,
12 addressed to you?

13 A. Yes.

14 Q. And it indicates it's from Les Peterson?

15 A. Yes.

16 Q. Do you recall receiving this e-mail in
17 approximately November 2007?

18 A. Looks like I received that e-mail, yes.

19 Q. And this e-mail also was forwarding an e-mail
20 dated November 13th, 2007; is that correct?

21 A. Yes.

22 Q. And in the last two lines of that forwarded
23 e-mail, do you see that it indicates that Mr. Peterson is
24 asking John to start the ball rolling in earnest, to look
25 at and implement a plan to shut down the BMS processing

1 plant in The Boulders?

2 A. Yes.

3 Q. Did the resort have any reaction to the idea of
4 implementing the plan to shut down the BMS processing
5 plant at that time?

6 A. Same comment of supportive of the plant shutting
7 down as long as we had replacement water.

8 Q. And was there anything communicated to you to
9 support an assumption that replacement water would be
10 provided?

11 MR. BELLAMY: Objection to form.

12 THE WITNESS: We assumed through the process that
13 there would be options given to us. To my understanding,
14 there would be.

15 BY MR. WAKEFIELD:

16 Q. What process was underway in November of 2007?

17 A. I'm not aware of any at that point.

18 Q. Did the resort take any action to remain involved
19 in the discussion of the concept of shutting down the
20 plant --

21 MR. BELLAMY: Objection to form.

22 BY MR. WAKEFIELD:

23 Q. -- during this time frame?

24 A. Seemed early in the process. Maybe, if I recall.

25 Q. I'm sorry. I didn't understand.

1 What did you mean that -- that this time was
2 early in the process, or it was too early in the process
3 for you to get involved, or something else?

4 A. Rephrase the question again, if you don't mind.

5 Q. Did the resort take any action to engage in any
6 process that may be underway regarding discussions of the
7 possibility of closing the treatment plant?

8 MR. BELLAMY: Objection to form.

9 THE WITNESS: It seemed early in the process of
10 the plant being shut down that we needed to look for water
11 right away and that the water experts,
12 Black Mountain Sewer, would have options available --
13 made -- made available to replace the water from there.

14 BY MR. WAKEFIELD:

15 Q. But you didn't have any communication from
16 Black Mountain Sewer that they would be exploring options
17 to provide you alternative water, did you?

18 MR. BELLAMY: Objection to form.

19 THE WITNESS: We didn't have discussions that I'm
20 aware of at that point.

21 BY MR. WAKEFIELD:

22 Q. Okay. You were the director of golf in 2001 when
23 the Effluent Delivery Agreement was negotiated; is that
24 correct?

25 A. I was the director of golf in 2001, yes.

1 Q Okay. And when that agreement was negotiated or
2 any time since then, up until November of 2009, did the
3 resort have in place any contingency plan in the event
4 that -- that the effluent that it received from
5 Black Mountain Sewer was no longer available to it?

6 A Not that I'm aware of.

7 MR. WAKEFIELD: Okay. Thank you, Mr. McCahan.
8 Those are all my questions.

9 MR. BOURQUE: I just had a couple of follow-up
10 questions.

11

12 FURTHER EXAMINATION

13

14 BY MR. BOURQUE:

15 Q Has the resort done any kind of --

16 MR. WILEY: I have to go to the bathroom. Can we
17 take, like, a four-minute break?

18 MR. BOURQUE: Oh, you bet. You bet. Absolutely.

19 (A recess was taken from 2:28 p.m. until
20 2:33 p.m.)

21 BY MR. BOURQUE:

22 Q Mr. McCahan, I just had a couple of follow-up
23 questions.

24 One is, has the -- has the resort done any kind
25 of analysis or evaluation regarding its effluent needs in

1 terms of, for example, how it would impact the golf
2 courses if it didn't receive that amount of effluent from
3 Black Mountain? And I understand it's about 15 percent of
4 the overall water that's used on the golf courses; is that
5 correct?

6 A. 15 percent is approximately correct, yes.

7 Q. Have you or somebody at the resort undertaken an
8 analysis of what the impact would be if it didn't receive
9 that 15 percent?

10 A. We've looked at that option, yes.

11 Q. And who's "we"?

12 A. Dean Hunter, our golf course superintendent.

13 Q. And how did you and Dean go about looking at that
14 option? What was your methodology?

15 A. The -- we receive water from both the City of
16 Scottsdale. We receive water from Black Mountain, as you
17 mentioned, 15 percent. And during the summer months and
18 overseeding, when we need the most water, determined that
19 that 15 percent would not -- losing that 15 percent would
20 affect how we overseed the golf course and affect our
21 summer golf products.

22 Q. And for -- for those ignorant in overseeding, how
23 do you mean? What is overseeding?

24 A. In the wintertime, the base grass and -- the
25 Bermuda grass is a summer grass on the golf courses. In

1 the wintertime when it gets cold and there's frost, that
2 Bermuda grass goes dormant and it turns brown.
3 Overseeding is putting down Rye grass in the fall so that
4 it stays green all winter, so the golf course stays green
5 all winter.

6 Q. And why do you mention overseeding in connection
7 with -- with your water needs?

8 A. It takes a -- it takes -- it takes a lot of water
9 to germinate the Rye grass in the -- in the fall, to get
10 it grown in before it gets cold.

11 Q. What is that period where you're using more water
12 to overseed in the fall?

13 A. Early September through mid to late October.

14 Q. So approximately six weeks?

15 A. Approximately, yes.

16 Q. And how much more water is used during that
17 six-week period than, for example, the other 46 weeks of
18 the year?

19 A. Well, during that period, we use all the water
20 that we receive from both Scottsdale and Black Mountain.

21 Q. And when you said "that period," you meant the
22 six weeks?

23 A. Yes.

24 Q. And then during the other 46 weeks, do you not
25 use all the water that you receive from Scottsdale and

1 Black Mountain?

2 A. From early May through the summer, we potentially
3 use all the water that we can get because of the warm
4 summer months. Depending on -- how much water we use
5 depends on monsoons, as well, how -- how much rainwater we
6 get.

7 Q. Okay. So excluding the six-week, I'll call it
8 overseeding period, and excluding the early May through
9 summer period when you potentially use all of the water
10 that you receive from Black Mountain and Scottsdale, do
11 you receive -- do you use something less than that?

12 A. Yes.

13 Q. How much less during these -- during the other
14 periods of the year?

15 A. I don't know the specifics, but during the -- I
16 don't know the specifics on how much less, but it's --
17 it's significantly less than what we need -- I'll rephrase
18 that.

19 We use less than our allotment the other -- the
20 other times of the year.

21 Q. Correct me if I'm wrong, but the times of year
22 other than that six-week overseeding period and other than
23 early May through summer, you use less than 85 percent of
24 the 100 percent collectively that you receive from
25 Scottsdale and Black Mountain?

1 MR. BELLAMY: Objection to form.

2 THE WITNESS: We don't use our full allotment
3 during the other times of the year.

4 BY MR. BOURQUE:

5 Q Right. But how much less than the full
6 allotment? I thought you said substantially, or words to
7 that effect. And when you said substantially, or words to
8 that effect, you mean less than 85 percent of the total
9 allotment?

10 A Generally based on weather, that's a true
11 statement.

12 Q Okay. Where are those records kept so that if we
13 wanted to go in and look at that, we could determine how
14 much was used in any given month and -- and figure that
15 out ourselves?

16 A I believe that's something that Dean Hunter, our
17 superintendent, has records on, water usage.

18 Q Now, from early May through the summer, everybody
19 who lives here and doesn't get out of town that much
20 during that period painfully knows that, you know, you see
21 tumbleweeds rolling through town, and a lot of people are
22 gone.

23 Are your -- are your golf courses used less
24 during that early May through summer period than the other
25 periods of the year?

1 A. Used less than the other times of the year, yes.

2 Q. In addition, are greens' fees considerably less
3 between early May through -- through summer than they are
4 at the other times of the year?

5 A. That's correct.

6 Q. Who would be able to tell us what the resort's
7 profit margins are for -- for running its golf course
8 during the early May through summer period? Would that be
9 Ms. Madden, would you think?

10 A. She has all the finances, yes.

11 Q. Do -- do you know if the resort makes any money
12 during that period of early summer -- early May through
13 summer on its golf courses, or loses money?

14 A. Much of the summer, we -- is a loss.

15 Q. And who would be the person to ask about that?
16 Would that be Ms. Madden?

17 A. Ms. Madden. I have the numbers, as well.

18 Q. And where -- where do you keep the numbers?

19 A. Either in my office or in accounting, depending
20 what one is looking for.

21 Q. Now, has anybody done an analysis for the period
22 from early May through the summer if you only receive
23 water from Scottsdale, the 85 percent out of the
24 100 percent, how that would impact the golf courses?

25 A. Have -- have we done an analysis?

1 Q. Yes.

2 A. I believe a couple summers ago Dean Hunter
3 tried -- did an experiment with that, yes.

4 Q. What was his experiment?

5 A. That we needed the -- our full allotment from
6 both Black Mountain and Scottsdale.

7 Q. And my question wasn't very artful, no pun
8 intended.

9 How did he go about doing his experiment? Did he
10 ratchet the water down from a hundred to 85 percent?

11 A. I think that was the goal, but I don't think he
12 was able to do that. I -- I don't know specifically. He
13 would know. He would recall how -- how he did that.

14 Q. Do you know why he did the experiment?

15 A. As an option to see if we could get away without
16 the Black Mountain water.

17 Q. Okay. Were you in town during that period when
18 he did the experiment?

19 A. I was around, yeah.

20 Q. In fact, were you using the golf course?

21 A. Probably at some point.

22 Q. What did you notice?

23 A. I don't recall. I don't know -- the golf course
24 seemed a normal summer. I don't recall what the golf
25 course was like.

1 Q Do you know if the golf course looked any
2 different when he was doing his experiment from when he
3 wasn't doing his experiment?

4 A A lot of that's based on weather conditions,
5 whether you get monsoons or not over the summer. I'd have
6 to refresh my memory on how much he actually cut back.

7 Q Did he record what his experiment was in terms of
8 how much water he was -- he had ratcheted and take
9 photographs or do any other kind of an empirical analysis?

10 A I'd have to see. I'd have to refresh my memory.

11 Q Do you know if there was any impact on revenues
12 that the resort received during that period?

13 A I don't -- I don't think he -- I don't think
14 there was anything significant.

15 Q Is -- and maybe you don't know this, but is the
16 crowd that you get to golf at the resort from early May
17 through summer different from -- I shouldn't say the
18 crowd, the golfers that you get from early May through
19 summer, are they from -- from a different -- let me use
20 the politically correct term here -- actually, are -- are
21 they from a different group? In other words, are they --
22 are there more -- you know, kind of like if -- if I were
23 to golf, it would probably be in the middle of summer.
24 You know, knowing my -- my economic proclivities, it would
25 probably be about 1 p.m. where I could get the best deal.

1 Is -- is -- is your crowd different in the summer
2 than it is in the winter? Is it more locals, for example?

3 A. All of our -- all of our golfers are important,
4 and we try to treat them all the same. It is a lower rate
5 in the summer, mostly locals, but some people do travel.
6 We call it drive -- drive traffic. They might be from
7 Texas or California, but --

8 Q. The Masochist Club of America, I hear, meets out
9 in Phoenix during the summer?

10 A. Something like that.

11 Q. So how much less are the green fees in midsummer
12 than they are, say, in the winter?

13 A. Low summer rates, 55 to 75; peak season, 200 to
14 250.

15 Q. And then are the volumes of golfers lower in the
16 summer, I would imagine, than in the peak season and other
17 times of the year?

18 A. There's fewer golfers in summer.

19 Q. Significantly?

20 A. Yeah, there's fewer golfers. Significantly's --

21 Q. Like, more than 30 percent fewer golfers?

22 A. That -- that's a good ballpark.

23 Q. Then during this overseeding period, I'll call
24 it, where there's six weeks, has anybody done any
25 experiments whereby they -- you would use, say, 85 percent

1 of the allotted water and not use the 15 percent that you
2 get from Black Mountain to see what would happen during
3 this overseeding period?

4 A. I don't know all the details of it, but there
5 would be no way we could overseed as we do now with less
6 water.

7 Q. Why do you say that?

8 A. Again, I'm not -- I don't have all the details,
9 Dean has those, but my understanding is that during
10 overseeding, every bit of water we get, we put on the golf
11 course, and -- and the lakes are even run very low at that
12 time of year, as well. So every bit of water that we can
13 put on the golf course, we put on it. Anything less would
14 affect how we overseed.

15 Q. Was there any analysis or any solution sought by
16 you or by anybody in your company whereby you could obtain
17 water from a different source during these two periods,
18 the summer period and the overseeding period, to meet your
19 needs?

20 A. There -- there was, I think we looked at trucking
21 in water. We looked at trucking in water for a period of
22 time on trucks, which is a lot of water on trucks.
23 Whether they can keep up or not, I don't recall. But we
24 looked into trucking in water, as well.

25 Q. Has anybody looked at a storage pond?

1 A. Yes, we did.

2 Q. And who's "we"?

3 A. Dean Hunter --

4 Q. And with a --

5 A. -- as well -- it came up. Dean Hunter and I
6 looked at it, yes.

7 Q. And was -- what -- what was your conclusion?

8 A. General overview of it -- I'm not the expert, but
9 we thought we could get -- at first look, we thought it
10 could work based on the amount of water that you have in
11 there, in the pond, based on evaporation, whether we could
12 keep it full, whether when the lake gets used and it goes
13 down, could there be odors. So there was a lot of
14 different things that popped up and made it seem like it
15 couldn't -- could not work, and whether it would even keep
16 up with what we -- keep up with what we need.

17 Q. Do you know if any experts or consultants, such
18 as Juergen Nick or anybody else, weighed in on that
19 storage pond issue, or whether it was just you and Dean
20 mulling it over?

21 A. I don't think Juergen got involved. I don't
22 recall if we had any experts look at it, other than
23 internally.

24 Q. Okay. Oh, do you have -- I'm sorry -- do you
25 have any internal experts on the issue?

1 A. Just Dean Hunter, who would be our golf course
2 superintendent.

3 Q. Any -- anyone else that you had from your
4 company, whether it's locally or nationally or
5 internationally, for that matter, come out or take a look
6 at replacement water issues and -- and weigh in on that?

7 A. We -- we have an agronomist within Hilton. I
8 know he's aware of it. I don't recall how involved he got
9 from looking at the lake, for example.

10 Q. And I apologize. Ms. Madden gave me his name,
11 and I can't find him here in our notes.

12 A. Frank Kynkor.

13 Q. Kynkor, right. I found it just as you found it
14 in your brain.

15 Where -- where's he based? In Boca Raton --

16 A. Yes.

17 Q. -- right?

18 And did he actually come out for -- for the very
19 purpose of evaluating water issues?

20 A. He -- he came to a couple, you know -- not for
21 this.

22 He's been out, yes.

23 Q. And has he been out, at least in part, looking at
24 water replacement pond issues, potentially other -- other
25 ways to solve the issues?

1 A. He has been involved, yes. I can't remember to
2 what -- what extent with all the different options.

3 Q. Have you e-mailed Frank on -- on some of these
4 issues?

5 A. He's -- I think Dean has -- has communicated with
6 him, yes.

7 Q. Dean has.

8 Have -- have you been in a loop since you're on
9 the team --

10 A. Yes.

11 Q. -- with Dean?

12 A. Overall, yes.

13 Q. Okay. Okay. If you would look at -- just like
14 to have you look at one exhibit, and it's already been
15 marked. It's the Effluent Delivery Agreement. And it
16 should be -- and it's in that stack.

17 Is that indeed No. 3?

18 A. 3.

19 Q. Yep. Thank you.

20 And please go to page 5.

21 A. Okay.

22 Q. Do you see paragraph 6, page 5?

23 A. Yes.

24 Q. Under 6(a) through (d) -- actually, strike that.

25 Do me a favor, if you would, and read 6(a)

1 through (d), and -- and then when you're done, just let me
2 know, please.

3 It's on page 5.

4 A. I'm refreshing what BCSC is. That would be
5 Boulders Carefree Sewer Corporation.

6 Okay.

7 Q. Ms. Madden testified earlier today that in her
8 view, BCSC has met its covenants and agreements as set
9 forth in -- in 6(a) through (d).

10 Do you have any facts that BCSC has not met its
11 covenants and agreements?

12 MR. BELLAMY: Objection to form.

13 THE WITNESS: Is BCSC Black Mountain Sewer?

14 MR. BOURQUE: Yes.

15 MR. WILEY: Off the record.

16 (Discussion off the record.)

17 BY MR. BOURQUE:

18 Q. Do you have any facts that my client has violated
19 any of these covenants and agreements in 6(a) through (d)?

20 MR. BELLAMY: Objection to form.

21 THE WITNESS: I'm not aware of any.

22 BY MR. BOURQUE:

23 Q. Okay. Then the first sentence after 6(a) through
24 (d) in Exhibit 3 on page 5 states that, "The obligations
25 of BCSC under this Paragraph shall terminate if physical

1 conditions at The Boulders East Plant or any laws,
2 regulations, orders, or other regulatory requirements
3 prevent or materially limit the operation of The Boulders
4 East Plant or render the operation of such plant
5 uneconomic."

6 Do you see that?

7 A. Yes.

8 Q. Have you looked at that language before?

9 A. Not that I'm aware of.

10 Q. If there were a Corporation Commission order
11 requiring Black Mountain to close The Boulders East Plant,
12 would you agree with me that under the language I just
13 quoted you, the obligations of BCSC under paragraph 6
14 would terminate?

15 MR. BELLAMY: Objection to form.

16 THE WITNESS: I don't -- I -- I'm not one to be
17 interpreting this.

18 BY MR. BOURQUE:

19 Q. What does the word "terminate" mean to you?

20 A. End.

21 Q. What does the word "obligation" mean to you?

22 A. Requirements, duties.

23 Q. You didn't think it would be a thesaurus test,
24 did you, today?

25 A. No, I forgot to brush up on that this morning.

1 Q As used in that sentence, "the obligations of
2 BCSC under this Paragraph," do you see the "Paragraph,"
3 that's capitalized?

4 A Yes.

5 Q What does -- what does that mean to you, then,
6 paragraph?

7 A Paragraph? I don't -- I'm not sure what the
8 question -- repeat the question.

9 Q Okay. The language, "The obligations of BCSC
10 under this Paragraph as set forth in paragraph 6 of the
11 Effluent Delivery Agreement," do you see that?

12 A The sentence underneath 6? Is that where you
13 are?

14 Q Yes. For example, if -- if you will see at the
15 end of paragraph 5 on page 5 --

16 A Yep.

17 Q -- of this agreement --

18 A Uh-huh.

19 Q -- you see it alludes to in -- "in accordance
20 with Paragraph 12."

21 Do you see that?

22 A Uh-huh. Yes.

23 Q Okay. And are you aware that there's a
24 Paragraph 12 in the Effluent Delivery Agreement?

25 A I'm sure there is one, since it references it.

1 Q So -- and you can verify that. It -- it's
2 actually that termination language that I talked about
3 with you earlier.

4 A Okay.

5 Q So when you look at paragraph 6 of the agreement
6 and it says, "The obligations of BCSC under this Paragraph
7 shall terminate," would you agree with me, and is it fair
8 to say, that refers to paragraph 6 of the Effluent
9 Delivery Agreement?

10 A It says that.

11 Q I just have a -- I'm sorry?

12 A I have -- nothing, unless you were following it.

13 Q I'm sorry?

14 A Nothing. Thank you.

15 Q Do you have any facts to contradict the statement
16 that if the Corporation Commission ordered my client to
17 close the plant, that my client would be required to close
18 the plant?

19 MR. BELLAMY: Objection to form.

20 THE WITNESS: My understanding is the plant could
21 close only after -- only after The Boulders has
22 replaced -- has been -- the plant could close only after
23 we worked out the water concern with The Boulders.

24 BY MR. BOURQUE:

25 Q So is it your understanding that the

1 Arizona Corporation cannot close the plant on its own?

2 MR. BELLAMY: Objection to form.

3 THE WITNESS: Beyond that, I don't know. I don't
4 know.

5 BY MR. BOURQUE:

6 Q. Where did you gain your understanding of -- of
7 the only condition under which the plant can close?

8 A. That's just my understanding. My
9 understanding -- one moment please.

10 Q. Sure.

11 A. I believe I read that. I believe it was in
12 something that came from the Corporation Commission, one
13 of the meetings, one of -- one of the documents from that.
14 I don't remember exactly where, but that's my
15 understanding.

16 Q. That's where you gain that understanding, and
17 you're not aware of any other source from which you gain
18 that understanding?

19 A. There may be, but I don't recall where it would
20 be.

21 Q. And do you believe that is correct, that your
22 understanding is correct, or do you know one way or the
23 other?

24 MR. BELLAMY: Objection to form.

25 THE WITNESS: I believe -- based on -- I'm not

1 sure.

2 MR. BOURQUE: That's all the questions I have. I
3 appreciate it.

4 MR. BELLAMY: He'll read and sign.

5 (The deposition concluded at 3:01 p.m.)

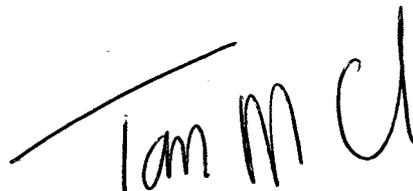
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Tom McCahan

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ORIGINAL

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1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3

4 BE IT KNOWN that the foregoing deposition was taken
5 by me, KATE E. BAUMGARTH, RPR, Certified Reporter No.
6 50582 for the State of Arizona, and by virtue thereof
7 authorized to administer an oath; that the witness before
8 testifying was duly sworn by me; that the questions
9 propounded by counsel and the answers of the witness
10 thereto were taken down by me in shorthand and thereafter
11 transcribed under my direction; that a review of the
12 transcript by the witness was requested; that the
13 foregoing pages contain a full, true and accurate
14 transcript of all proceedings and testimony had, all to
15 the best of my skill and ability.

16 I FURTHER CERTIFY that I am in no way related to nor
17 employed by any of the parties hereto, nor am I in any way
18 interested in the outcome hereof.

19 DATED at Phoenix, Arizona, this 1st day of April,
20 2012.

21 
22 _____
Kate E. Baumgarth, RPR
23 Certified Reporter, No. 50582

24
25

Subject: FW: Documents filed with ACC

Date: September 23, 2009 3:12:00 PM MST

To: "@theboulders.com"; 'Tom McCahan'; 'mayor@carefree.org'; 'Gary Neiss'

▶ 1 Attachment, 2.4 MB

Messer Hoffmann, McCahan, Schwan and Neiss,

Attached please find the documents we filed with the Corporation Commission last Friday seeking closure of the Black Mountain Sewer Processing in the Boulders.

Thank you.

Les Peterson

From: Scott S. Wakefield [mailto:SSWakefield@rhkl-law.com]

Sent: Tuesday, September 22, 2009 3:19 PM

To: 'Les Peterson'

Cc: 'Ted Wojtasik'

Subject: RE: Documents filed with ACC

Attached is a pdf file that includes Les' testimony and the attachments thereto, including the settlement agreement.

I will forward testimony filed by Staff, RUCO and Town of Carefree when I receive it all.

Scott S. Wakefield, Esq.

Ridenour, Hinton & Lewis, PLLC

Chase Tower

201 North Central Avenue, Suite 3300

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From: Les Peterson [mailto:passagesaz@cox.net]

Sent: Tuesday, September 22, 2009 2:55 PM

To: Scott S. Wakefield

Cc: 'Ted Wojtasik'

Subject: Documents filed with ACC

McCahan EXHIBIT 1
DATE 3-21-12
Kate E. Baumgarth, RPR, CR No. 50582

Scott,

Would you please send an electronic copy of the three documents filed with the ACC by the BHOA last Friday to Ted Wojtasik and me?

Thanks,

Les Peterson

No virus found in this incoming message.

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Version: 8.5.409 / Virus Database: 270.13.112/2389 - Release Date: 09/22/09 17:54:00



Peterson Dir....pdf (2.4 MB)

Subject: BMS situation - Confidential
Date: December 18, 2008 5:31:00 PM MST
To: 'TMcCahan@luxuryresorts.com'

Tom,
This is a brief summary of the current Black Mountain Sewer situation that we just discussed. Thanks for your cooperation regarding the sensors. I'll keep you posted as developments arise.
Les

From: Les Peterson [mailto:passagesaz@cox.net]
Sent: Wednesday, December 17, 2008 10:07 PM
To: 'rgr6504@gmail.com'; 'spurgroup@cox.net'; 'edsam@cox.net'; 'janie8@cox.net'; 'byelvington@cox.net'; 'cfmurphy@cox.net'
Cc: 'bgcoco@aol.com'; 'fineb@cox.net'; 'TWOjtasik@rossmar.com'; 'lewis7227@aol.com'; 'jbelkins7@hotmail.com'
Subject: BMS situation - Confidential

Simply to alert you that we are preliminarily discussing with BMS the basis under which we would consider entering into a contract with them to increase the effluent flow through the Processing Plant in exchange for, among other things, removing the Processing Plant from within the Boulders by 2016. We told BMS that we wouldn't budge on increased flow without that commitment. In our meeting today the Town was in support of this overall approach, although BMS's preliminary reaction was that they couldn't guarantee to have the Processing Plant removed by 2016. BMS and the Town are investigating the feasibility of the 2016 date, and alternatives, and are preparing to discuss this further at our January meeting. Help us by thinking expansively here, as there are big issues on the table. Getting a contract to get the Processing Plant out of the Boulders would be a huge step in the right direction. If there are any possible next steps emerging from the reports at the January meeting, before we do anything we will discuss it as a Board and determine how to respond. If some advantageous possibilities to us are presented, and we do elect to enter into negotiations, we would have an attorney, probably Lynn Krupnic at Eckmark & Eckmark, take the lead.

Mike is also addressing the current odor and related problems we are still encountering, as well as the landscaping around the Processing Plant. The 4 odor sensors around the Processing Plant indicate that the current odor is not coming from the Processing Plant. It may seem like it is but in the discussion with BMS today it was identified that there are vents in the collection system (whatever you call the vents you put the man-hole covers over) under the green on 8 North – that's right, under the green - and under a large rock in front of Duke Power's home at the corner of Indian Rock and Boulder Drive, that have not been sealed and these vents and/or the pipes linking them into the overall BMS system could well be the source(s) of the problem. A collection system line connecting these two vents also runs immediately adjacent to Bill Graham's house on Boulder Drive, a historical trouble point. Sensors at these locations are scheduled to be installed in the very near term. A plan to work with the Golf Course and residents, once the specific problems that we are dealing with are more fully defined, to address these issues is underway.

We can discuss this more fully at the January meeting. Please keep an open mind, and keep this confidential at this point.
Thanks,
Les

From: Les Peterson [mailto:passagesaz@cox.net]
Sent: Friday, December 12, 2008 10:37 AM
To: 'bgcoco@aol.com'; 'fineb@cox.net'; 'TWOjtasik@rossmar.com'
Subject: Draft #1 of BMS Term Sheet

MCCahan EXHIBIT *J*
DATE 3-21-12
Kate E. Baumgarth, RPR, CR No. 50582

Draft

Preliminary Discussion Guide

Black Mountain Sewer (BMS), Town of Carefree (Town) and The Boulders Homeowners Association (BHOA) : 12/17/08

BMS to Receive:

1. Support from the BHOA and the Town to regulatory authorities to increase the processing flow in the Processing Plant located within The Boulders up to its design capacity of 150,000 gallons/day
2. Approvals from the BHOA and the Town to construct and use a small maintenance office within the Processing Plant for use by BMS personnel servicing the Processing Plant
3. Upon completion of the clean-up/remediation of the property where the Processing Plant is currently located (see discussion below), and the certification of this occurrence by whatever Agency or inspection organization is required, the BHOA agrees to accept the property into the BHOA as a residential building lot, and the Town agrees to likewise approve the property as a residential building lot within the Town of Carefree. In the event a variance of some type is required from either or both the Town and the BHOA, this will be granted at this time. In essence, the intent here would be to pre-approve the Processing Plant property for use and sale as a residential lot once the Processing Plant is removed and the required remediation is completed and certified.
4. The BHOA will grant an easement over its Common Ground to BMS for BMS accessing and servicing the Processing Plant

BHOA to Receive:

1. The BHOA receives an engineering study/report from a qualified firm stating that the increased flow through the Processing Plant would be within the capacity of the Processing Plant to handle, and that the increased flow will actually enhance the performance/reduce problems associated with the Processing Plant
2. BMS will keep the existing Processing Plant operating in good working order throughout the duration of its use and commit to exercise the same degree of maintenance, repair and service in addressing and remedying any odor, noise and/or related problems to Boulders residents as the Company has for the last 12 months
3. BMS agrees to remove the Processing Plant currently located within the Boulders by not later than 2016
4. Upon the removal of the Processing Plant, BMS agrees to immediately remediate (clean-up, remove all non-naturally occurring substances and chemicals, etc., etc.) and to return the property to a standard acceptable under all Town of Carefree, Maricopa County, State of Arizona and Federal and all other applicable Statutes for residential use
5. BMS agrees to immediately cut back to the current 120,000 gallons/day level of processing through the Processing Plant if problems with any aspect of the Processing Plant and/or circulation system reoccur, or they exceed the levels experienced in the last 12 months, or new problems arise from the increased usage of the Processing Plant or any other aspect of the system
6. BMS commits to funding the entire landscaping plan as the BHOA will be proposing on 12/17/08 within 2 months after signing a contract addressing the above. The BHOA will handle and fund all annual landscape maintenance costs associated with the landscaping of the Processing Plant. BMS will supply the required water for the landscaping.

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Version: 7.5.552 / Virus Database: 270.9.15/1834 - Release Date: 12/6/2008 4:55 PM

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Version: 7.5.552 / Virus Database: 270.9.18/1851 - Release Date: 12/16/2008 8:53 AM

Subject: FW: Re-occurring Odors and Continuing Noise in the Boulders

Date: November 13, 2007 5:45:00 PM MST

To: 'TMcCahan@luxuryresorts.com'

Cc: "ucsgreg@aol.com" <"Jim Elkins"; Greg Gardner">

Tom,

FYI regarding the odors you mentioned were again evident in the Spa. North Boulders residents are smelling them again as well.

We intend to pursue this very aggressively and to get it fixed one way or another. This seems to be resulting from a combination of an antiquated Black Mountain Sewer collection system and Processing Plant and the Town of Carefree not enforcing their existing regulations regarding grease traps for restaurants.

Les Peterson

From: Les Peterson [mailto:passagesaz@cox.net]

Sent: Tuesday, November 13, 2007 10:31 AM

To: 'jon@carefree.org'; 'Bob Dodds'

Cc: 'Marilyn Courier'; 'Bob Williams'; 'susan gallinger'

Subject: Re-occurring Odors and Continuing Noise in the Boulders

Bob and Jon,

The work completed on the BMS collection system running through the Boulders has not remedied the odor problem but seems to have moved it from the collection system to the Processing Plant in the center of the Boulders. And now we have louder noises from the Processing Plant as well.

This cannot keep going on!

Boulders residents are "up in arms," and rightfully so, and the heavier usage/lower temperatures for this fall/winter season are just starting.

Jon, would you please quickly schedule a meeting with Bob Dodds, the Mayor and yourself, and the working team from the Boulders Homeowners Association, Marilyn Courier, Bob Williams and me, to start working on the immediate remedies to these problems, and to start the ball rolling in earnest to look at and implement a plan to shut down the BMS Processing Plant in the Boulders. Thanks for your immediate attention to this matter.

Les Peterson

----- Original Message -----

From: Debra McGrew

To: Dan Schanaman ; Charlie Hernandez

Cc: Tom Nichols ; Marilyn H. Courier ; Ed Sambuchi

Sent: Monday, November 12, 2007 10:45 AM

Subject: Boulders WRF noise evaluation and odor observations

Dan and Charlie

Preliminary Noise Evaluation

McCahan 3
EXHIBIT
DATE 3-21-12
Kate E. Baumgarth, RPR, CR No. 50582

Last night our acoustical engineer and I were at the WRF to evaluate the sound levels. We were on site for two hours between 9:30 and 11:30 pm. We found a couple of key sources for the noise complaints. Bill Holliday of Sound Solutions is preparing a report on the measurement which will include recommendations to lower sound emissions. We found that the levels were between 55 and 65 dB around the interior perimeter of the plant and 48 to 54 dB in a couple of locations outside the plant walls. If the plant were in central Phoenix those levels would not be an issue, but in the Boulders there is very little ambient noise so the equipment sounds do carry through the community.

We went to 1019 Boulder and took sound level measurements from the cart path behind the house. At first we weren't able to identify equipment sounds. We then walked up a small rise and onto the green we found that we were eye level with Mr. Hencel's patio. On the rise we were able to hear the sound of plant equipment, which measured between 32 and 34 dB. Two planes flew overhead during the measurements and raised ambient sound levels to 39 to 42 dB. The sound of the equipment wasn't loud but it definitely stood out.

I expect to have Bill's report within two weeks. It would be good to meet with the HOA after you've had an opportunity to review the report. Most of the ideas Bill mentioned last night seemed to be relatively simple ways to absorb and deflect equipment sounds. He felt that with his recommendations ambient plant noise could drop between 10 to 12 dB which would also cause noise levels outside the plant to drop the same 10 to 12 dB. As a frame of reference Bill said normal conversations are usually between 25 to 30 dBs.

Odor Observations

In regards to odors at the plant, last night the air was quite still and we were able to detect a strong odor coming from a louver for the influent pump station. It was strongest right next to the louver but was also detectable walking around the plant. I did not detect odor from the trash rack manhole the temporary carbon polisher appears to be working in this location.

We also noticed a strong smell of detergent around outside perimeter of the plant; the smell was similar to what you would expect in coming from a commercial laundry. This smell was preferable to the influent lift station odor but may not be acceptable to residents.

Debra C McGrew, PE
McBride Engineering Solutions
7305 W Boston St
Chandler, AZ 85226
Office: 480.759.9608
Fax: 480.706.1106
Cell: 602.405.0527

----- Original Message -----

From: Debra McGrew

To: Marilyn H. Courier ; Ed Sambuchi

Sent: Wednesday, November 07, 2007 9:25 AM

Subject: plant odors over the weekend

Marilyn and Ed

I just received a copy of the emails you sent regarding odors over the weekend. Now that we have the air jumpers in place it looks like we'll need to address the plant odor control system.

Were the odors to the west of the plant? The emails seem to indicate the odors were strongest on the cart path.

Were the odors noticeable pre-dawn and after sunset or all day?

I know that during the study phase of our evaluation when I walked Boulder Drive I noticed odors from the plant in three primary locations – immediately west of Marilyn's house, at the intersection of Boulder and Quartz Valley and along the cart path when I could first see the green to the west of the plant.

Debra C McGrew, PE

McBride Engineering Solutions

7305 W Boston St

Chandler, AZ 85226

Office: 480.759.9608

Fax: 480.706.1106

Cell: 602.405.0527

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 IN THE MATTER OF THE APPLICATION OF)

3 BLACK MOUNTAIN SEWER CORPORATION,)

4 AN ARIZONA CORPORATION, FOR A) DOCKET NO.

5 DETERMINATION OF THE FAIR VALUE OF) SW-02361A-08-0609

6 ITS UTILITY PLANT AND PROPERTY AND)

7 FOR INCREASES IN ITS RATES AND)

8 CHARGES FOR UTILITY SERVICE BASED)

9 THEREON.)

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12 DEPOSITION OF DEAN HUNTER

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Phoenix, Arizona
March 21, 2012

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(No exhibits were marked.)

1 DEPOSITION OF DEAN HUNTER was taken on March 14,
2 2012, commencing at 3:15 p.m., at the law offices of
3 FENNEMORE CRAIG, 3003 North Central Avenue, Suite 2600,
4 Phoenix, Arizona 85012, before KATE BAUMGARTH, RPR,
5 Certificate Reporter No. 50582 for the State of Arizona.

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9 APPEARANCES:

10 For Black Mountain Sewer Corporation:

11 BOURQUE LAW FIRM, P.C.
12 By: Mr. Arthur J. Bourque
13 1747 East Morten Avenue, Suite 105
14 Phoenix, Arizona 85020

13

and

14

15 FENNEMORE CRAIG, P.C.
16 By: Mr. Todd Wiley
17 3003 North Central Avenue, Suite 2600
18 Phoenix, Arizona 85012

17

18 For The Boulders Resort:

18

19 RYLEY CARLOCK & APPLEWHITE, P.A.
20 By: Mr. Fredric D. Bellamy
21 One North Central Avenue, Suite 1200
22 Phoenix, Arizona 85004-4417

21

22 For the Arizona Corporation Commission Staff:

22

23 Ms. Robin Mitchell
24 Staff Attorney, Legal Division
25 1200 West Washington Street
Phoenix, Arizona 85007

25

1 For Boulders Homeowners' Association:

2 RIDENOUR, HIENTON & LEWIS, P.L.L.C.
3 By: Mr. Scott S. Wakefield
4 201 North Central Avenue, Suite 3300
5 Phoenix, Arizona 85004-1052
6

7 ALSO PRESENT:

8 Mr. Les Peterson
9 Mr. Paul Walker
10 Mr. Greg Sorenson
11 Ms. Susan Madden
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1 DEAN HUNTER,
2 called as a witness herein, having been first duly sworn
3 by the Certified Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:

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EXAMINATION

7

8 BY MR. BOURQUE:

9 Q. Good afternoon. Please state your name.

10 A. Dean Hunter.

11 Q. And, Mr. Hunter, who are you employed by?

12 A. Waldorf Astoria -- Hilton Waldorf Astoria.

13 Q. You've given some written testimony, I think, in
14 this case; correct?

15 A. Yes.

16 Q. Had you ever done that before?

17 A. No.

18 Q. Did you review your testimony?

19 A. Yes.

20 Q. Is it accurate?

21 A. Yes.

22 Q. I apologize.

23 How long have you worked for your employer?

24 A. This is my second tour. My first one was

25 20 years. I left for seven and came back. Now I'm on

1 No. 8. So 28 years total.

2 Q. And what years were the -- kind of the gap years
3 where you didn't --

4 A. I left in '96 and returned in 2004.

5 Q. What did you do during that time?

6 A. Superintendent at Stonecreek Golf Club and
7 superintendent at Ancala Country Club.

8 Q. Are either or both of those owned by Hilton or --

9 A. No.

10 Q. -- Waldorf Astoria? They're unrelated?

11 A. Unrelated.

12 Q. Were both golf courses that are currently at
13 The Boulders, were both built when you first started
14 working there?

15 A. When I started in '77, the -- there were two golf
16 courses there -- well, there was one golf course, the
17 north course, which back then, it -- and it is completely
18 different now that it's renovated. I was there through
19 all the renovation and the additional 18 being built.

20 Q. Is -- is the north course the course nearest the
21 wastewater treatment plant?

22 A. Yes.

23 Q. And were those residences that are near the
24 wastewater treatment plant, were those there when you
25 first started working?

1 A. No.

2 Q. Do you know when those were built, around?

3 A. I would have to say early '80s -- late '70s,
4 early '80s.

5 Q. And do you know who -- who owned the property
6 upon which they were built at that time; do you know?

7 A. Are you talking about the realtor or the --

8 Q. The -- my understanding was that the -- and I
9 could be wrong -- that the resort owned the -- the dirt
10 upon which the residences now sit, sold the dirt to people
11 that developed it.

12 A. Yeah, I forget the name of the company. It all
13 started with Carefree Development, and then
14 Don Dickinson -- I'm not sure what the name of his company
15 was -- owned it. Then Russ Lyons purchased it. So in
16 that -- I think Russ Lyons purchased it in the early '80s.

17 Q. And when you say --

18 A. Like, '80. I'd say 1980, 1981.

19 Q. Okay. And when you say purchased "it," what do
20 you mean?

21 A. The whole property --

22 Q. Okay.

23 A. -- before the resort was there.

24 Q. And when was -- when was -- when did the resort
25 come in?

1 A. I believe it was '83. I -- don't quote me on
2 that, though, but it's in that time frame.

3 Q. And did the -- the resort have anything to do
4 with selling lots or --

5 A. Not that I'm aware of, no.

6 Q. Okay. Tom McCahan had indicated that -- that you
7 did some tests on how much water you could use during
8 summer months to feed the golf course; is that right?

9 A. After we learned about the closure, yes, we did a
10 test.

11 Q. And when you say "after we learned about the
12 closure"?

13 A. Well, the possible closure. We heard about
14 Black Mountain Sewer possibly leaving us.

15 Q. When was that?

16 A. Gosh, I -- I don't know the date. I can't give
17 you an exact date. It was -- it was definitely last year.

18 Q. Okay. And so did you do your experiment in the
19 summer of 2011?

20 A. Yes.

21 Q. What did you do?

22 A. We cut back the amount of water we'd be receiving
23 for Black Mountain through RWDS, meaning we get 90 gallons
24 a minute from them, some -- in that ballpark. So I
25 basically ordered less from RWDS Scottsdale.

1 Q. And how much less?

2 A. Well, the same amount we'd have received from
3 Black Mountain.

4 Q. Okay.

5 A. So one -- 120,000 gallons a day, I believe, it
6 comes out to.

7 Q. And then what did you do in your experiment?

8 A. We continued watering it like that. We started
9 in May, and I -- it was late May, because we were just --
10 we were in transition.

11 And by July, I had to stop. The liner of the
12 lake was exposed, and I was kind of concerned about the
13 ultraviolet rays.

14 Q. Okay. So you started in -- the experiment in
15 late May, and it was in -- did you say July?

16 A. Yeah, the first week or so of July.

17 Q. Okay. Did you record what you were doing in any
18 way, such as, you know, by taking notes or by taking
19 pictures or recordings?

20 A. No. No, I did not.

21 Q. And the liner of the lake was exposed.

22 What lake?

23 A. The large lake, the north lake that accepts most
24 of the water. That's our main irrigation lake. We have
25 two of them, but the north is the largest.

1 Q. And that caused you to stop the experiment?

2 A. Yeah, once I got down into the liner, exposed
3 liner, I should say.

4 Q. And during the -- the period that you ran the
5 experiment up until the time that -- that the lake liner
6 was exposed, what impact did you see, if any, on the golf
7 course?

8 A. It was -- there was no impact on the golf course.
9 Just that the lake was continually going down, down, down,
10 and we were getting hotter and hotter.

11 Q. Hotter, just -- you mean --

12 A. Yeah, no -- our monsoon wasn't the greatest.

13 Q. I remember.

14 A. You get a monsoon, and it's a relief. You can
15 cut back your water, shut it off, and two or three days,
16 the lake builds back up.

17 Q. Other than the -- if the lake -- if the -- the
18 lower lake liner hadn't been exposed, would you have
19 continued with the experiment?

20 A. Probably, yes.

21 Q. Is it fair to say, do you think some years when
22 there's more monsoon rains than others, you'll be able to
23 make it through a summer without Black Mountain water, and
24 then other years, the -- the lower lake liner would be
25 exposed?

1 A. If I could make it through the summer, that'd be
2 great, but overseeding's another thing, as well. I take
3 it -- you use a lot of water overseeding. We start in
4 September.

5 Q. By the way, just to close out the -- the lower
6 lake liner being exposed --

7 A. Uh-huh.

8 Q. -- what -- what was the -- the -- the -- the
9 downside of that, other than, you know, esthetically
10 there's a lake with -- without water in it?

11 A. Well, the liner gets -- it's PVC, basically,
12 liner. Once it gets exposed to the sun for numerous days,
13 it just gets hardened.

14 Q. And when you say "liner," do you mean the lake
15 has a -- a -- kind of like a tub?

16 A. It's a PVC. It's like a -- I don't know how to
17 explain it. It would be like a tarp, only PVC all glued
18 together. So it's like a pool.

19 Q. Okay.

20 A. Aboveground pool, exactly. It's a 30 mill, and
21 it's glued and holds water.

22 Now, I -- I've had one exposed. I was talking
23 about this recently, and this was in July. I was at
24 Ancala. We had lowered the lake to make some patchworks
25 on it. We got a hailstorm. It was completely shredded.

1 A \$2800 job turned into \$70,000 to repair it.

2 Q. I see.

3 So your lower lake liner being exposed could
4 subject it to damage sort of thing?

5 A. Yes.

6 Q. Okay. And --

7 A. Dries it up, hardens.

8 Q. I see.

9 Is there any other way other than, you know,
10 putting water on top of it to -- to cover the liner so
11 that it doesn't -- isn't exposed to the elements?

12 A. Well, when you do build it, you -- you do
13 shotcrete so far down, and then you put sand or some type
14 of dirt without rocks.

15 Q. Over the PVC?

16 A. Yes.

17 Q. Yes.

18 A. By lowering the lake, though, the -- the soil
19 moves with it. We found that.

20 Q. What's the -- the -- the area of that -- the --
21 the -- the dirt over the PVC in that -- in that lower
22 lake?

23 A. What are you -- are you talking about?

24 Q. Like the -- the -- like the -- like the area of
25 this -- this is -- the area of this table, you know what

1 that is.

2 Is it -- are we talking like a football field?
3 Are we talking a baseball diamond? What -- is it a huge
4 lake? I haven't been out there.

5 A. It is a good-sized lake. It's -- I don't know
6 the exact acreage -- an acre and -- 1.9, I think that lake
7 is.

8 Q. 1.9 acres?

9 A. I think. I -- I don't know. Don't quote me on
10 that. It -- it's large.

11 Q. Okay. And when the water goes down in the lake,
12 it kind of takes the sediment and dirt with it?

13 A. That's correct.

14 Q. And if -- if that were exposed in the future,
15 could you mitigate that problem by simply having some
16 people go out there and -- and just putting, you know,
17 dirt on it or something else on it?

18 A. No. Then we'd start filling the lake up with
19 dirt eventually. We would lose our depth.

20 Q. I see.

21 Do -- do any golf courses that you're aware of
22 allow that sort of situation to get exposed and -- and
23 mitigate it --

24 A. No.

25 Q. -- somehow?

1 A. That's not good. No.

2 Q. You're -- you're positive nobody else has dealt
3 with that?

4 A. Well, I don't -- I don't know. I've had one bad
5 experience, and I don't want to do that again. If
6 somebody else does it, I -- I --

7 Q. Yeah, sure.

8 A. -- wouldn't want to be in their shoes.

9 Q. Sure.

10 And was one of the -- obviously, evaporation
11 caused water to -- to come out of the -- the lower pond.

12 Was another reason water went out of the -- the
13 lower pond to -- to, you know, water the flora and fauna,
14 as it were?

15 A. Yes.

16 Q. I see.

17 When you saw the -- the lower lake going down,
18 did you think, or did you try maybe, hey, let -- let's see
19 if we can even take less water from it and see whether we
20 can make it?

21 A. Well, we always do that. We try to save on water
22 as much as possible.

23 You know, our busiest years in the winter, and
24 then slows -- in the summer it's slow months, so you kind
25 of watch your water bills. I -- I don't see the water

1 bill, but she does, and I don't want to hear it from her.

2 Q. Right.

3 A. So we try to save water as much as possible.

4 Q. I see.

5 Okay. Were there any other ill impacts from your
6 experiment other than that lower lake pond being exposed?

7 A. No. I would have to sit and think about that a
8 bit.

9 Not that I can recall right offhand.

10 Q. Okay. Let -- let's go to that overseeding
11 period --

12 A. Okay.

13 Q. -- that you talked about.

14 My understanding from Mr. McCahan is that that
15 period is for approximately six weeks?

16 A. Yes.

17 Q. From sometime in September to sometime in
18 October; is that correct?

19 A. Yes.

20 Q. And what's your opinion there in terms of trying
21 to operate without Black Mountain's water during that time
22 period?

23 A. We use just about every bit of water we can in
24 the large lake and the -- the south lake over by the club.
25 We take it down way below the liner. Even with

1 Black Mountain's water, we -- it still goes down.

2 I believe without Black Mountain's water, it
3 would probably be -- we could possibly may not -- may not
4 just have enough. We try to go in full lake, both lakes
5 completely full.

6 Q. When you say "go in," you mean --

7 A. Go into the overseeding, when we start watering.
8 **SEE ATTACHED / KEB**
9 We water nine times a day, spaced every hour and
10 40 minutes apart, irrigation cycles.

10 Q. I see.

11 A. And in September you got temperatures well into
12 the hundreds, still.

13 Q. Is that nine cycles a day something that your --
14 you know, the folks at the Phoenician do, the folks at
15 the --

16 A. Yes.

17 Q. -- other courses do?

18 A. Yes.

19 Q. Is that kind of the standard?

20 A. It all depends on the weather, though, too. If
21 you get a little monsoon shower, you get a break,
22 excellent.

23 Q. Yep.

24 A. You save.

25 Q. What options have you looked at, or folks on your

1 behalf looked at, and that includes any consultants like
2 Juergen Nick, or anybody else, what options have you-all
3 looked at to try to fill in the gaps during that summer
4 period and during the overseed -- the overseeding period?
5 What alternative sources of water have you -- you looked
6 at, if any?

7 A. Well, I'm sure -- I don't know if it's been
8 brought up before about Scottsdale. Is that what you're
9 talking about, buying City water? Is that what you're
10 saying, or what are you --

11 Q. I'm just asking, have -- have you participated in
12 any discussions, say, with -- with Ms. Madden or
13 Mr. McCahan, or anybody else, seeking alternative water
14 sources if you weren't receiving Black Mountain's water?

15 A. Yeah.

16 Q. Okay. What were those discussions?

17 A. I -- one is -- I didn't get too involved with the
18 Desert Mountain one. That was -- that was Sue and Tom, I
19 believe. And Scottsdale's water, I've talked to them on
20 the phone, plus Sue and Tom.

21 Where else?

22 I did have a conversation about Cave Creek,
23 getting effluent from them.

24 And City of Carefree, I talked to Stan with
25 Carefree about getting it from well No. 6.

1 I don't know about -- hold on. There's got to be
2 more. It seems like it.

3 We did talk to a gentleman -- I'm not sure
4 about -- I forget his name. It was about wells, drilling
5 wells. I -- I don't know. I don't know -- recall that
6 one. But I know I spoke with somebody about well water.

7 Q. Do you know what the result of the discussion
8 with that individual about well water was?

9 A. Well, as soon as I learned that we couldn't use
10 well water, I believe it was with the City -- RWDS
11 contract, that kind of just squashed that.

12 Q. What were the results of your discussions with
13 Stan at Carefree regarding well No. 6?

14 A. They could possibly -- they could get it to us.
15 We'd have to put a line in. And he -- basically, it -- it
16 was well water, but it was tainted with arsenic, arsenic
17 well. And so we talked about that a little bit. And I
18 talked to Tom about it, and Sue. And I think that had to
19 come down to the RWDS, as well. It was against the
20 contract.

21 Q. And -- and did you discuss with RWDS, hey, can
22 we -- can we do this notwithstanding the contract?

23 A. Repeat that.

24 Q. I think you said it was the -- well No. 6
25 potential solution was against your RWDS contract.

1 A. That's correct.

2 Q. And so my follow-up question is: Did you follow
3 up with the city of Scottsdale, the RWDS contract, and
4 ask, hey, can we do this notwithstanding the --

5 A. I believe --

6 Q. -- contract we have?

7 A. -- Sue did. I did not.

8 Q. You did say you talked with Scottsdale about
9 water.

10 Do you know who you spoke with there?

11 A. No. I -- actually, I talked to some employees
12 that were there at one time about -- we have a lake-fill
13 that's already there, and I noticed one of the employees
14 with the City of Scottsdale, and I asked them, who could I
15 call about this line that goes into our lake, because
16 there's a valve there. And he gave me the phone number.

17 And I'm not sure who I spoke with, but he said,
18 "That line does go to your lake, but it's emergency use
19 only." So I kind of just forwarded the information on to
20 Tom at that time. And I believe Tom or Sue, or both,
21 picked up on that after that, and I kind of was out of it.

22 Q. Your -- your title at -- is?

23 A. Superintendent.

24 Q. Superintendent. And what are your job
25 responsibilities, Dean?

1 A. Growing grass.

2 Q. It's on the record.

3 A. Well, I -- maintain the golf courses --

4 Q. Okay.

5 A. -- to the best shape possible, and some of the --
6 sorry, Sue --

7 Q. Did you review any documents in preparation for
8 today's deposition?

9 A. No. What I have with me.

10 Q. What do you have with you?

11 A. Just same as with you, probably the deposition.

12 Q. Your -- your testimony?

13 A. Yes.

14 Q. I see.

15 Have you had any conversations with
16 Greg Sorenson, who's in the room?

17 A. At other meetings, maybe, yes.

18 Q. Have you also met Tom Nichols, who's with my
19 client, Black Mountain?

20 A. Yeah, probably. Yes.

21 Q. And then Jay Shapiro, who's --

22 A. Yes.

23 Q. -- a lawyer?

24 Did you participate in -- in a meeting or two
25 with them?

1 A. Yes.

2 Q. Was it a meeting or two?

3 A. I believe I was with one in Scottsdale.

4 Q. And did you take notes?

5 A. No, not really.

6 Q. Do you know what happened at the meeting; in
7 other words, what did you say, what did they say?

8 A. I -- bits and pieces. I -- I didn't take notes.

9 Q. Oh, that's fine.

10 And maybe you don't remember, because the voids
11 of memory, and believe me, I'm the first to be reminded by
12 my wife of my lack of memory.

13 A. Yeah.

14 Q. But what do you remember, independently sitting
15 here, happened at that meeting?

16 A. There was a -- another gentleman there about his
17 home next to the treatment plant.

18 Q. Mr. Marshall?

19 A. Yes. He was there, and he was -- he was speaking
20 about his home and about living next to the treatment
21 plant on his health -- health issues.

22 Q. Okay.

23 A. I remember that.

24 Then I also -- near the end of the meeting, we
25 started talking about building a lake, retention lake.

1 Q. And what became of that retention lake idea?

2 A. Sounded great at the time, but it -- it
3 wouldn't -- I -- it would not work.

4 Q. Why not?

5 A. First of all, we -- it would probably hold
6 10 acre feet of water, and usually I get 6 acre feet of --
7 or 66 acre feet of water in 6 months, and we're looking at
8 10 acre feet. So I don't think it would work. It may
9 work for a few weeks, but after that, it's dry.

10 Q. You don't think it's big enough?

11 A. It's not big enough. I would have to have a
12 pretty good sized lake.

13 And then the smell, I -- I think it would
14 probably be worse than what the treatment plant is right
15 now.

16 Q. Why do you think that?

17 A. You drain it -- you fill it in December and start
18 draining it in May. And what's going to hold, 28 days,
19 30 days? Then after that, it's just going to be open pit,
20 empty lake. And then the cost of pumping it back and
21 forth, installation of pump stations.

22 It just -- it's not -- not good.

23 Q. With respect to odors now, do you know whether or
24 not there are odors emanating off the wastewater treatment
25 plant site onto the -- say, for example, the golf course?

1 A. I can notice it going from 1 to 2. Once you get
2 to two tees, then I -- you don't smell it.

3 Q. It's the first hole to the second hole on the
4 golf course?

5 A. Yeah. Once you cross the street and get by the
6 drinking fountain, that's about where I can -- well, I can
7 smell it from the drinking fountain to the tee, and that's
8 about it, in that area. I don't think I've ever smelled
9 it over around 8 or 2, no.

10 Q. Other than hearing Mr. Marshall articulate his
11 concerns with you in that meeting, have you had other
12 people complain to you about odors from the wastewater
13 treatment plant?

14 A. No. I -- I rarely talk to golfers out on the
15 golf course or anybody about that.

16 Q. Just growing grass?

17 A. Well --

18 Q. I had to, once.

19 A. No comment.

20 Q. Have you discussed with Mr. McCahan and
21 Ms. Madden what you believe to be Black Mountain's
22 responsibility with -- in connection with providing
23 effluent?

24 A. Yes. I think I know what you're talking about,
25 yeah.

1 Q. And what -- what -- are you --

2 A. Are you -- repeat the question.

3 Q. Yeah.

4 Is it -- is it your position that -- that even if
5 the Arizona Corporation Commission ordered closure of the
6 wastewater treatment plant, that my client has an
7 obligation to provide effluent to you?

8 MR. BELLAMY: Objection to form.

9 THE WITNESS: I don't know. I don't know how to
10 answer that.

11 BY MR. BOURQUE:

12 Q. Okay. Have you discussed that with Ms. Madden
13 or -- or Mr. McCahan?

14 A. Not really. It's -- I'm not -- I don't know
15 quite what you're trying to ask me.

16 Q. I'm trying to ask you if you -- very simple. If
17 you -- if somebody asked me a question, have you discussed
18 with Mr. Peterson the sky is blue, my answer's going to
19 be, no, I haven't.

20 And my question to you --

21 A. Well, we've talked about its close, yes. Is that
22 what you're saying, it -- it's closed?

23 Q. I'm not saying anything. I'm asking a question.

24 And my question is: Have you discussed with
25 Ms. Madden or Mr. McCahan what Black Mountain's

1 responsibilities are in the -- to -- to your company, in
2 the event that the Corporation Commission orders
3 Black Mountain to shut the plant down? And maybe you
4 discussed it; maybe you didn't.

5 A. I -- I don't know when I discussed it with them,
6 but I understand we have a contract with them, yes. And
7 it -- I thought that we were supposed to get water from
8 them until -- I -- I'm not sure of the date, but it's
9 beyond my tenure going to be there.

10 Q. No matter what, even if there's a --

11 A. Yeah.

12 Q. -- closure order?

13 A. That's what I -- I was -- that's what I was
14 assuming, yeah.

15 Q. Okay. And what do you assume it's based on?
16 Based on what?

17 A. Well, a contract.

18 Q. Oh, have you read the contract?

19 A. No.

20 Q. Okay. Then how can you assume it's based on the
21 contract?

22 A. Well, probably from what everybody says. I don't
23 know. Hearsay? I don't know.

24 Q. Okay. Whose hearsay?

25 A. Well, I've heard it from Tom. I've heard Tom say

1 we have a contract with them.

2 Q. But -- and you're saying Tom McCahan specifically
3 told you?

4 A. Well, he didn't tell me.

5 Q. Okay. I'm just asking.

6 A. In conversation.

7 Q. Okay.

8 A. Well, they have a contract with us. I said,
9 okay.

10 Q. Okay.

11 A. When I learned that we'd possibly lose the water,
12 I was concerned.

13 Q. Understood.

14 A. And the conversation came up that they do have a
15 contract with us to supply us water to -- I'm not sure
16 what it was -- 2021 or something. I'm not sure on that.
17 But that's --

18 Q. Okay.

19 A. Yeah, that's about the -- I -- I did not read the
20 contract. I don't know any of the parts of the contract.
21 That is what I've heard.

22 Q. Yeah. And I'm not trying to give you grief. I'm
23 just trying to --

24 A. Okay.

25 Q. -- figure out what you've talked about --

1 A. Yeah.

2 Q. -- with -- have you been in any e-mail
3 communications with Ms. McCahan -- Ms. Madden or
4 Mr. McCahan on these issues? Have you e-mailed back and
5 forth?

6 A. Well, on issues of other sources of water, yes.

7 Q. Do -- are you -- does your company right now have
8 a -- a backup plan for -- in -- in the -- in the event
9 that it wasn't receiving the Black Mountain water?

10 A. I'm not -- to be honest with you, I'm not sure
11 what we're going to do.

12 Q. That hasn't been discussed?

13 A. We talked about not overseeding the roughs on
14 both courses, just having green fairways, tees. That --

15 Q. And what would that do?

16 A. Well, obviously, nobody wants to play a brown
17 course. I would assume that the membership and the guests
18 probably wouldn't like it. I probably wouldn't. It --
19 you know, we -- it's a topnotch resort. Great golf
20 course. You don't want to see brown grass.

21 Q. Yeah.

22 And other -- other than that, doing that, there's
23 no kind of contingency plan?

24 A. No. We've tried. I think we've tried quite a
25 bit.

1 Q. And that's -- you're referring to the things
2 you've already testified --

3 A. Yes.

4 Q. -- to?

5 What is your knowledge of the feasibility, or
6 lack of feasibility, of building a separate wastewater
7 treatment plant? Do you know whether it's feasible or
8 not?

9 A. I don't know. When this took place, I was on
10 vacation, but I thought it sounded good.

11 Q. Other than --

12 A. From what I understand, from what I caught from
13 it, I thought it was a good idea.

14 Q. Other than being -- you thought it was a good
15 idea.

16 Do you know whether it was feasible or not, you
17 know, given -- given the costs, given the logistics? Do
18 you know one way or the other?

19 A. I thought the logistics was good. The cost, I
20 wasn't aware of.

21 Q. And who did you get the logistics from?

22 A. Well, you're talking about location; right?
23 Where?

24 Q. I'm talking about the logistics overall of -- of
25 building a plant, where it would be, how --

1 A. All I know is where it would be and somewhat how
2 it was run, but I wasn't quite sure how it'd run.

3 Q. And who conveyed that information to you?

4 A. Tom. When I got -- when I returned back from
5 vacation, he talked to me about it.

6 Q. Tom McCahan?

7 A. Yes.

8 Q. And did anybody follow up on that issue, to your
9 knowledge?

10 A. I did not.

11 Q. Okay. And are you being kept in the -- in the
12 loop because you're -- you're managing the golf course, I
13 assume --

14 A. Yes.

15 Q. -- on these sorts of issues?

16 Have you conducted any other experiments other
17 than the -- the one that you testified to earlier?

18 A. No.

19 Q. Have you spoke with Mr. Peterson about the
20 situation?

21 A. No. If I did, it was right around our first
22 meeting. That's -- the very first meeting we had at
23 The Boulders. I'm not -- that was maybe a year and a half
24 ago.

25 Q. Has anybody evaluated removing or eliminating any

1 turf from the golf courses to ease the water burden?

2 A. No. I don't -- there's -- I -- there's no room
3 for that. It doesn't have that much turf as it is now.
4 They are pretty small, very target.

5 MR. BOURQUE: Let me take a quick look here. And
6 I may be done.

7 BY MR. BOURQUE:

8 Q. Do -- do you have any fact that Greg Sorenson or,
9 you know, Tom Nichols, or Jay Shapiro had acted in bad
10 faith in -- in their meetings with you or -- or what
11 they're trying to do to resolve the situation?

12 A. No, not that I'm aware of.

13 MR. BOURQUE: That's all the questions I have,
14 and I don't know if counsel for the Homeowners'
15 Association has some questions.

16 MR. WAKEFIELD: I do have a few questions. Thank
17 you.

18

19 EXAMINATION

20

21 BY MR. WAKEFIELD:

22 Q. Mr. Hunter, I'm Scott Wakefield. I'm the
23 attorney for The Boulders Homeowners' Association.

24 One of the earlier deponents today, maybe both of
25 them, I thought, referred to the -- the idea of

1 overseeding in alternate years.

2 Is that currently a practice that --

3 A. Yes.

4 Q. -- the resort has?

5 Explain to me, what -- what is overseeding in
6 only alternate years?

7 A. It gives the Bermuda a break, a year break in the
8 ground -- every year you overseed into it, and when you --
9 when you transition from Rye back to Bermuda, it's -- both
10 grasses, they compete with each other. And if the
11 weather's not in your favor, the Rye grass wins and then
12 the Bermuda grass doesn't come out and you've got bare
13 spots everywhere.

14 So by leaving -- by skipping a year, the Bermuda
15 is healthier. It's a year and a half old, a year and
16 three-quarters old because we skipped, so it's less turf
17 loss.

18 Q. So -- so in one year you'll overseed the north
19 course, and then the other year, you'll overseed the south
20 course?

21 A. Yes.

22 Q. So in the year that you don't overseed the north
23 course --

24 A. Uh-huh.

25 Q. -- does it go brown?

1 A. Yes.

2 Q. And that's -- so that's in the wintertime it will
3 go brown; correct?

4 A. That's correct.

5 Q. Do you notice any change in how the course gets
6 used when it's in its --

7 A. Yes.

8 Q. -- state of being brown?

9 What do you -- what is --

10 A. Well, we get a lot of -- well, I guess -- are you
11 asking about the members? Are you talking about how it's
12 played, or what are you --

13 Q. Well, you're -- that's -- that's the peak time of
14 year --

15 A. Uh-huh.

16 Q. -- the winter, and half of your golf course goes
17 brown every winter?

18 A. Well, the rough goes brown, the rough --

19 Q. Okay.

20 A. -- on one course.

21 Q. So only the rough?

22 A. Only the rough.

23 Q. On one course? And -- okay. I think that's all
24 I need on that. Okay. Thank you.

25 When was it that you personally first learned of

1 the possibility of a closure of The Boulders treatment
2 plant?

3 A. I saw a petition in an -- in the office, in Tom's
4 office, and I asked what that was.

5 Q. And do you recall what year that would have been?

6 A. Maybe late 2010, I think. I don't know. I
7 believe.

8 Q. Okay. Sometime in 2010?

9 A. I don't even know.

10 Q. Okay.

11 A. I remember seeing it, but I -- I just don't know
12 when it was. It could have been 2009. I don't know, but
13 I remember seeing it.

14 Q. So you first learned about the issue not from Tom
15 or Sue, but from just seeing a piece of paper around Tom's
16 office?

17 A. I saw the paper.

18 Q. Okay. The RWDS agreement --

19 A. Uh-huh.

20 Q. -- is for 1.25 million gallons a day of effluent;
21 is that correct?

22 A. Yes.

23 Q. And do you -- does the resort take the entire
24 allocation under that RWDS agreement?

25 A. In the summer months, we -- yes, we do.

1 Q. And in the -- how many days a year would you say
2 you take the entire allocation from RWDS?

3 A. Daily.

4 Is that what you're asking?

5 Q. Right.

6 A. I don't have an amount of days, but I know
7 there's days where we water 1.5 million a night. If we
8 get 10 days, 110 degrees, the lake plummets.

9 So to say how many days we get -- we receive
10 that, I don't know, but I would assume it would be more
11 than -- I don't know. I can't answer that, but it's --
12 it's numerous. It is -- it's the majority of the days in
13 the summer months.

14 Q. Majority in the summer?

15 A. Yeah. Right at or more than the 1.25.

16 Q. And -- and the -- The Boulders plant provides
17 120,000 gallons a day; is that right?

18 A. Yes.

19 Q. And you get that every day -- you get -- you get
20 that every day from The Boulders treatment plant?

21 A. Yes.

22 Q. I don't recall if it was in your testimony. It
23 probably wasn't. I think it was in -- some on the other
24 testimony from the witness -- about 15 percent of the
25 effluent that the golf course needs comes from The

1 Boulders treatment plant; is that right?

2 A. Yes. It's right in that ballpark.

3 Q. If -- if you used all the resources under the
4 RWDS agreement first and supplemented with resources from
5 The Boulders treatment plant, would that still be -- that
6 would affect the 15 percent measurement in terms of the
7 percentage of -- of overall water that comes from
8 The Boulders plant; correct?

9 A. Say that again.

10 Q. Okay. If you -- let me try and rephrase.

11 If you took the entire 1.25 million gallons a day
12 from RWDS --

13 A. Okay.

14 Q. -- and only used The Boulders plant's effluent to
15 supplement that as necessary, what percentage -- would
16 the -- would the 15 percent, then, be a lower -- would it
17 go down? Would you have less than 15 percent of your
18 water coming from The Boulders plant?

19 A. I don't -- I guess I don't understand that.

20 Q. Okay. The -- let's try it this way: The
21 1.25 million gallons --

22 A. Yes.

23 Q. -- from RWDS, some days you don't take all of
24 that.

25 What's the lowest level you take from that source

1 during the year?

2 A. Oh, I don't know.

3 Q. Do you take -- I mean, do you always take at
4 least half of that?

5 A. No. It depends. It depends on your -- your
6 rain. It depends on a lot. It's your weather. I don't
7 know.

8 I guess I don't understand your question.

9 Q. Okay. Every day you take the 120,000 from
10 The Boulders --

11 A. Yes.

12 Q. -- plant?

13 A. We take all of it.

14 Q. And then you take -- whatever else, you take in
15 RWDS?

16 A. Yes.

17 Q. And you have access to 1.25 million?

18 A. Yes.

19 Q. So on days where you don't need the whole
20 1.25 million gallons a day from RWDS, what's the least
21 amount you might take from RWDS?

22 A. It may not be anything. Like I said, if there's
23 a monsoon, I won't rain -- I won't water. It could be
24 zero. It could be half. It could be three-quarters. It
25 all depends.

1 Q. At page 6 of your testimony you discussed hauling
2 water by truck to fill the lakes as a solution that you
3 had explored.

4 And you indicated that truck traffic would occur
5 for about six months of the year; is that right?

6 A. Yeah.

7 Q. Okay.

8 A. Yes.

9 Q. If you took all the water that was available from
10 RWDS and trucked in the -- the rest of what you needed,
11 would you still need to truck in for the entire
12 six months, or would it be some lesser time period?

13 A. The truck thing, that is -- that was -- that's --
14 that would -- that would be a nightmare.

15 Q. Okay. My question was: If you took all the
16 water available from RWDS and trucked in and filled the
17 lakes with what else you -- you found you needed on top of
18 that, would you still need six months of trucking, or
19 would there be some lesser period of time?

20 A. There would be some lesser period of time.

21 Q. Approximately what would you estimate would be
22 the amount of time you would need to truck in water for
23 those circumstances?

24 A. Six months.

25 Q. But you said that you would need that -- a lesser

1 period of time than six months if you took all the RWDS
2 water first?

3 A. First of all, the truck, you -- I couldn't get
4 that much hauled from what I get from Black Mountain Sewer
5 today in one day. I couldn't haul that in one day, with
6 the -- it would be -- it's -- basically, that is not a
7 good -- I -- I researched it. We would be going 24 hours
8 a day driving to Carefree and back at a standpipe, going
9 back and forth emptying the lake. I don't think I could
10 do it.

11 Q. Okay. You -- your testimony indicated that
12 you -- that the cost of hauling water would be \$780,000.

13 It's somewhere around page 6.

14 A. Give me a minute.

15 Yeah, for six months during the year.

16 Q. Okay. Actually, your -- your testimony, you said
17 it's roughly \$780,000 more per year than our current
18 costs.

19 Are there any costs that would go down or go away
20 as a result of hauling water instead?

21 A. No.

22 Q. Okay. So that 780,000 is just the cost to
23 actually purchase and haul the water; is that right?

24 A. That's correct. And as I --

25 Q. And is that a cost for hauling 120,000 gallons a

1 day --

2 A. That is the cost --

3 Q. -- for six months?

4 A. No. That is the cost for truck rental and the
5 operator to go back and -- to go back and forth.

6 Q. Okay.

7 A. And that was close to 24 hours a day.

8 Q. And --

9 A. I estimated it would take 20 minutes -- well, no,
10 it was more than 20 minutes. I forget what it was.

11 I can't remember. I think it was a 45-minute
12 round trip to Carefree and back to fill it and then come
13 back, because it was -- I -- I had it all written out on
14 paper, how long it would take to fill the truck and how
15 long it would dump. And you -- it's -- it was -- this
16 was -- I remember \$780,000, but -- I don't know. It -- it
17 just wouldn't work out. Jeez, the homeowners would have a
18 fit.

19 Q. Was 780,000 computed by starting with an amount
20 of water that's being hauled?

21 A. That's starting with the renting of the truck,
22 operator, back and forth, the price of water.

23 Q. And how many gallons of water a day are being
24 used to compute that 780,000?

25 A. I -- I don't have my notes with me. I had the

1 notes on the -- the -- how -- truck size, the gallons.
2 I -- this was done over a year ago. I'm sorry. I should
3 have researched it more before I arrived. But I know this
4 was correct, 780,000.

5 MR. WAKEFIELD: Okay. That's all I have.

6 THE WITNESS: I'm sorry. Okay.

7 MR. BOURQUE: I don't have any further questions.

8 (The deposition concluded at 3:59 p.m.)

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Dean Hunter

ORIGINAL



1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3

4 BE IT KNOWN that the foregoing deposition was taken
5 by me, KATE E. BAUMGARTH, RPR, Certified Reporter No.
6 50582 for the State of Arizona, and by virtue thereof
7 authorized to administer an oath; that the witness before
8 testifying was duly sworn by me; that the questions
9 propounded by counsel and the answers of the witness
10 thereto were taken down by me in shorthand and thereafter
11 transcribed under my direction; that a review of the
12 transcript by the witness was requested; that the
13 foregoing pages contain a full, true and accurate
14 transcript of all proceedings and testimony had, all to
15 the best of my skill and ability.

16 I FURTHER CERTIFY that I am in no way related to nor
17 employed by any of the parties hereto, nor am I in any way
18 interested in the outcome hereof.

19 DATED at Phoenix, Arizona, this 1st day of April,
20 2012.

21 
22 _____
Kate E. Baumgarth, RPR
23 Certified Reporter, No. 50582

24

25

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES

Chairman

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner



IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN SEWER
CORPORATION, AN ARIZONA
CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY
PLANT AND PROPERTY AND FOR
INCREASES IN ITS RATES AND CHARGES
FOR UTILITY SERVICE BASED THEREON.

DOCKET NO. SW-02361A-08-0609

(REHEARING)

DIRECT TESTIMONY

OF

ELIJAH O. ABINAH

ASSISTANT DIRECTOR

UTILITES DIVISION

ARIZONA CORPORATION COMMISSION

APRIL 20, 2012

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1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Elijah O. Abinah. My business address is 1200 West Washington Street,
4 Phoenix, Arizona, 85007.

5
6 **Q. Where are you employed and in what capacity?**

7 A. I am employed by the Utilities Division ("Staff") of the Arizona Corporation Commission
8 ("ACC" or "Commission") as the Assistant Director.

9
10 **Q. How long have you been employed with the Utilities Division?**

11 A. I have been employed with the Utilities Division since January 2003.

12
13 **Q. Please describe your educational background and professional experience.**

14 A. I received a Bachelor of Science degree in Accounting from the University of Central
15 Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from
16 Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the
17 ACC, I was employed by the Oklahoma Corporation Commission for approximately eight
18 and a half years in various capacities in the Telecommunications Division.

19
20 **Q. What are your current responsibilities?**

21 A. As the Assistant Director, I review submissions that are filed with the Commission and
22 make policy recommendations to the Director regarding those filings.

23
24 **Q. What is the purpose of your testimony?**

25 A. The purpose of my testimony is to address Staff's opinion on the request by the Boulders
26 Home Owners Association ("BHOA") for a Commission order to close the Black

1 Mountain Sewer Company (“Black Mountain” or “Company”) wastewater treatment
2 plant (“WWTP”) and to respond to the testimony filed by the Company and Wind P1
3 Mortgage Borrower LLC (the “Resort”).
4

5 **STAFF COMMENTS**

6 **Q. Can you please provide a brief background?**

7 A. Yes. On January 24, 2012, the Commission voted to grant the application of the BHOA
8 under ARS §40-252 to reopen Decision No. 71865. In Decision No. 71865, the
9 Commission found that a Wastewater Treatment Plant Closure Agreement (“Closure
10 Agreement”) between the BHOA and the Company was an appropriate mechanism to
11 resolve ongoing order problems in the Boulders area. The Closure Agreement called for
12 closure of the treatment facility within 15 months of the satisfaction of certain conditions;
13 (i) acquisition of additional treatment capacity from the City of Scottsdale; (ii)
14 renegotiation of an effluent delivery agreement with the Resort; and (iii) approval of a
15 closure surcharge, capped at \$15 per month, per customer, to recover capital costs
16 associated with the plant closure.
17

18 **Q. Is Black Mountain in compliance with the Commission other and other regulatory
19 authorities?**

20 A. Yes. A status report from Arizona Department of Environmental Quality dated February
21 16, 2012, indicates that the Company is in compliance. In response to a data request (1.9)
22 issued to the Company by the Resort dated February 14, 2012, the Company indicated that
23 it is not aware of any exceedances or violations of applicable legal standards or permit
24 requirements regarding odors or noise levels emitted by the WWTP.

1 **Q. Did the Commission, in Decision No. 71865, order the closure of the WWTP?**

2 A. No. The Commission found that “the Closure Agreement provides an appropriate and
3 creative for solution for what we believe is a unique set of circumstances.”¹
4

5 **Q. Is the Black Mountain wastewater treatment plant used and useful?**

6 A. Yes.
7

8 **Q. Does Staff believe that the Company may still have odors with the removal of the
9 WWTP?**

10 A. There are odors associated with lift stations and collection lines. During the Open
11 Meeting that approved Decision No. 71865, the Company indicated that it would not be
12 removing its lift stations or collection lines. In response to a Staff data request, the
13 Company has indicated that its plan is to abandon the force main, lift station (Quartz
14 Valley Court) and connecting gravity line leading into the WWTP and connect the Quartz
15 Valley Court gravity line to the Boulder Drive gravity line. The two remaining lines will
16 be reconnected to the existing line that transports the flows to the City of Scottsdale
17 treatment facility. The remainder of the lift stations, however, will remain within the
18 Boulders community. Therefore, there may still be odors emanating from these remaining
19 lift stations.
20

21 **Q. Does Staff have a position on whether the Commission should order the closure of
22 the WWTP?**

23 A. Staff believes that recommending the closure of a facility that is used and useful and that
24 is operating in compliance with all applicable rules and regulations creates a difficult
25 situation because it is included in the rate base, as such, it is part of setting the revenue

¹ Decision No. 71685 at 53.

1 requirement.² It should be noted that the Company argued that it was unclear whether the
2 Commission has the authority to order it to remove plant that is used and useful and
3 operating within regulatory requirements, but because of the overwhelming support of the
4 community in paying a reasonable amount to close the WWTP, the legal argument should
5 not stop the Commission from crafting a remedy.³ However from the public interest and
6 public policy perspective, and the overwhelming desire of the community to close the
7 plant, the Commission has the authority to order the closure of the plant.

8
9 **Q. Does this conclude your Rehearing Direct Testimony?**

10 **A. Yes it does.**

² Decision No. 71685 approved a surcharge mechanism, similar to a Arsenic Cost Recovery Mechanism, to recover costs associated with the plant closing, to be subject to true up at the Company's next rate case. The Company must file for a rate case within 12 months of plant closure.

³ Company's Closing Brief at 10.