

Exhibit No.: _____
Issue: Overview of Asset Transfer
Agreement and
Public Interest
Witness: Rick Rusaw
Sponsoring Party: Folsom Ridge LLC and Big
Island Homeowners Water
and Sewer Association, Inc.
Case No.: Case No. WO-2007-0277
**Joined for hearing with
Case No. WC-2006-0082**

FOLSOM RIDGE LLC AND
BIG ISLAND HOMEOWNERS WATER AND SEWER ASSOCIATION, INC.

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SURREBUTTAL TESTIMONY

OF

RICK RUSAW

Longmont, Colorado
February, 2007

1 Q. **On pages 8 of her rebuttal Ms. Orlor questions the amount Folsom Ridge may**
2 **receive in tap fees over the ten year period provided in the Purchase Agreement.**
3 **Can you explain how this provision will operate?**

4 A. This will apply to properties/households identified on Exhibit E to the Purchase
5 Agreement. Receipt is conditioned of course on if those homes decide to connect to the
6 system in the ten year window. For those affected by this provision who connect outside
7 of the ten year window, Folsom Ridge is not entitled to a connection or tap fee from the
8 393 Companies.

9
10 Q. **On page of 9 of her rebuttal, Ms. Orlor questions the lawfulness of billing customers**
11 **connected to the systems and questions the validity of the vote taken at the**
12 **Association's special membership meeting. On page 10 of her testimony she claims**
13 **that Folsom Ridge relinquished control of the Association on September 1, 2006 and**
14 **the special meeting could not be called under its present leadership. Has the**
15 **Association billed its customers and conducted its membership meeting in**
16 **accordance with law as you understand it?**

17 A. This may have not been clear in my direct testimony. The Association was created to
18 offer water and sewer service to its "members." It was not created to offer service to
19 anyone else. Every household connected to either system has been offered
20 "membership" in the Association. No household connected to either system has been
21 denied an opportunity to become a member in the Association. To become a member of
22 the Association, some property owners are expected to agree to or "ratify" the Amended

1 and Restated Covenants and Conditions. Generally, these are property owners who have
2 homes that were not covered originally by the recorded Covenants and Conditions

3
4 The Covenants and Conditions set out the rights and duties of each owner connected to
5 the system. Some households connected and receiving service from the Association have
6 refused to become members. The Association has no control over that decision. The
7 Association has preferred to keep these customers connected to the system because there
8 are environmental and public health benefits involved and basically because the
9 Association wants to allow them to receive service. Although there are homeowners
10 connected who have not formally accepted the terms of the Covenants and Conditions,
11 the Association has treated them as “members” and given them a voice at meetings of the
12 membership, and it is up to them to become a voting member. Their votes at the
13 meetings are not part of official tallies because they are not members. If it is lawful for
14 property owners who claim not to be members to receive service, it should be lawful for
15 them to pay for it.

16
17 Regarding the vote at the special meeting in January, the official vote of the Association
18 is determined by the bylaws, but nothing prevents the Association from taking a “straw
19 poll” of others on the Island regarding the future of water and sewer services that will
20 serve or potentially serve them. The results of the voting strongly support the asset
21 transfer proposed in this case.

22

1 Regarding the significance of September 1, 2006, the Amended and Restated Declaration
2 of Covenants and Conditions, which are attached to Ms. Brunk's direct testimony,
3 provide that for a period ending September 1, 2006, Folsom Ridge is entitled to appoint
4 three of the five directors of the Association. This provision is also repeated in the
5 Association bylaws. That means that at the next annual meeting of the members, which
6 generally is held in May, Folsom Ridge will no longer be able to exercise this
7 appointment power. This provision does not affect the authority of the directors and
8 officers in office now. The special meeting of the membership was conducted properly.

9
10 **Q. On pages 11-12, Ms. Orlor argues that services supplied outside the real property**
11 **described in the Amended and Restated Declarations of Covenants and Conditions**
12 **is a violation. Do you have a response?**

13 **A.** The objective of the Association is to provide water and sewer service through
14 centralized facilities which in turn reduce threats of contamination to the Lake of the
15 Ozarks. The Association does not consider it a violation of its charter to engage in that
16 activity or to continue to offer membership in the Association for households who would
17 benefit from those centralized facilities. When a property owner ratifies the Covenants
18 and Conditions, his or her property becomes covered by their terms and provisions.

19
20 **Q. On page 12 of her rebuttal, Ms. Orlor states there is a discrepancy between your**
21 **schedule reporting 25 sewer connections in 2001 and a letter reporting that there**
22 **were 33 or 34 active connections in 2001. Can you explain your schedule please?**

1 A. The schedule attached to my testimony was to show the number of customers that were
2 connected and being billed. In order to prepare this schedule historical data was
3 compared to arrive at the figures, and this is the best rendition of billed customers I had
4 available. If there were reports from our offices that connections were more than those
5 billed I am not surprised. Billings did lag behind connections on occasion.

6

7 **Q. On pages 13- 14 Ms. Orlor implies that the systems have exceeded their capacity.
8 Have the water and sewer systems on Big Island been operated and maintained
9 within system specifications?**

10 A. Mr. Krehbiel or Mr. McDuffey or both will also address this but based upon the
11 information I have been given, each system has been operated within its capacity and the
12 loading on the systems has never exceeded what they were designed to handle.

13

14 **Q. Regarding the remainder of her rebuttal testimony, do you have any response?**

15 A. The matters she mentions in pages 15 to the end of her rebuttal testimony seem to be
16 repetition of material in her direct testimony which I have covered in my previously filed
17 rebuttal testimony.

18

19 **Q. Does this conclude your surrebuttal testimony?**

20 A. Yes.