

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10A-168W

IN THE MATTER OF THE JOINT APPLICATION OF MILL CREEK WATER SALES AND DISTRIBUTION, LLC, THROUGH ITS RECEIVER, AND GRIZZLY PEAK WATER SALES AND DISTRIBUTION, LLC FOR APPROVAL OF THE TRANSFER OF PUC CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND RELATED ASSETS AND FOR WAIVER OF CERTAIN COMMISSION RULES.

STIPULATION AND SETTLEMENT AGREEMENT

COME NOW Mill Creek Water Sales and Distribution, LLC, through its Court Appointed Receiver (“Mill Creek”), Grizzly Peak Water Sales and Distribution, LLC, (“Grizzly Peak”) (collectively “Joint Applicants”), and Cascade Village Condominium Association-2004 (the “Association”), and Robert Oppenheimer (“Oppenheimer”), (collectively referred to as “CVCA”), (all of the foregoing named entities and persons collectively referred to as the “Parties”) and submit this Stipulation and Settlement Agreement (“Stipulation”) for consideration by the Commission in resolution of all of the issues that have been, or could have been raised, in the above-referenced proceeding.

I. INTRODUCTION

By an Application filed March 29, 2010, Mill Creek and Grizzly Peak filed a Joint Application, pursuant to Section 40-5-105 C.R.S. and 4 C.C.R. 723-5-5104. Joint Applicants seek an Order of the Commission authorizing:

- Transfer of Certificates of Public Convenience and Necessity from Mill Creek to Grizzly Peak;
- Transfer of certain related assets from Mill Creek to Grizzly Peak; and

Submitted to Colorado PUC E-Files System

RECEIVED
PUBLIC UTILITIES COMMISSION
MARCH 27 2010

- Waiver of certain Commission rules, as more fully set forth in the Application.

On April 27, 2010, CVCA filed a Motion to Intervene setting forth various concerns with the transfer as proposed, and raising issues with the Application that involved factual, legal and policy issues, as more fully described in the CVCA Motion to Intervene.

By Decision No. C10-0438 mailed May 10, 2010, the Commission deemed the Application complete and referred the Application to an Administrative Law Judge for disposition. The Parties developed, and the Administrative Law Judge to whom this matter was assigned, approved a procedural schedule for the handling of this docket. As the time approached for the beginning of preparation of direct testimony and exhibits, the Parties began settlement negotiations in an effort to resolve their differences and reach resolution of this docket without the necessity of engaging in a litigated proceeding. The procedural schedule was postponed by mutual agreement of the Parties and the approval of the Commission's designated ALJ. (Decision No. R10-0754-I).

During the course of the negotiations for the development of this Stipulation, Case No. 2009CV7 was pending in the District Court for San Juan County, Colorado. A number of matters then pending in that case were litigated before the District Court in a hearing held on June 28th, 30th, and July 1, 2010. On July 27, 2010, the District Court issued an Order resolving many of said pending matters before the Court, holding the resolution of some matters in abeyance and making certain specific findings with respect to the transfer proceeding before the Commission in this docket. Attached hereto as **Exhibit A** is a copy of the Order issued by the District Court for the benefit of the Commission.

As the Commission acknowledged in Decision No. C10-0438, Mill Creek is currently under the control of a Court Appointed Receiver, who has overseen the operations and management of Mill Creek's physical plant, as well as the management, maintenance and operation of Mill Creek, since his appointment by the District Court. The Receiver's responsibilities regarding the day-to-day operations of Mill Creek are addressed further by the District Court in Exhibit A.

II. BACKGROUND

1. Mill Creek owns and operates a Certificate of Public Convenience and Necessity ("CPCN") issued by the Commission by Decision No. R08-0611. Pursuant to that CPCN, Mill Creek provides water service to customers located in the Cascade Village Subdivision located near Durango, Colorado.

2. In addition to providing water service, Mill Creek has continuously provided wastewater service to the same Cascade Village Subdivision customers, as well as to the Colorado Department of Transportation. In Commission Docket No. 08A-373W (the "2008 Sewer Case") Mill Creek requested a CPCN that would enable it to:

- Provide sewer service in designated areas of San Juan County, Colorado;
- Contract with respect to, maintain, own and operate sewer facilities necessary to provide sewer service in and to such areas; and
- Charge rates pursuant to terms and conditions of service to such areas.

A final Commission decision has not been entered in the 2008 Sewer Case.

3. Grizzly Peak is a Colorado limited liability company that is 100% owned by Bush Mountain LLC. Bush Mountain, LLC, in turn, is owned 100% by James A. Bush Living Trust. An entity known as Legacy Real Estate Investments LLC ("Legacy") is owned by a number of

entities established by Mr. Bush. Those entities, and their ownership interests in Legacy are as follows: James A. Bush Living Trust 87.5%; James A. and Mary P. Bush Charitable Trust 6.1%; Jessica Amanda Bush Irrevocable Trust 3.2% and Jonathan Adam Bush Irrevocable Trust 3.2%. On June 19, 2009, Mill Creek, Mill Creek's sole owner, Randall J. Miller, and certain Mill Creek affiliates also solely owned by Randall J. Miller (the "Miller Interests") entered into an agreement with Legacy that gave Legacy the right to foreclose on certain real estate property, certain public utility property and certain other collateral owned by one or more of the Miller Interests. The Foreclosure Agreement also authorized Legacy to seek the approval of this Commission for the transfer to Legacy of certain CPCN interests and certain "Water/Sewer Properties" and "Water/Sewer Permits," all as described more fully in the Foreclosure Agreement attached as Exhibit 3 to the Application, which commenced this docket. For purposes of this Settlement Agreement, that Foreclosure Agreement is incorporated herein by reference.

4. Mill Creek's general service area is the Cascade Village Subdivision in San Juan County, Colorado. Mill Creek presently provides water and sewer service to approximately 134 residential customers and a multi-tenant commercial building within the Cascade Village development. Mill Creek also provides water and sewer service to six single family homes in the Twilight Meadows Development, and sewer service only to the Colorado Department of Transportation.

5. The Foreclosure Agreement incorporated herein by reference, along with various additional documents not relevant to this Stipulation, led to the acquisition by Legacy at a Sheriff's foreclosure sale of the Commission-jurisdictional public utility water and wastewater assets of the Miller Interests (as well as extensive other holdings, real property and assets of the

Miller Interests) on or about February 25, 2010. The best available description of the Miller Interests that were conveyed at the time of this Sheriff's Sale is contained in the Sheriff's Certificate of Purchase and other official documentation in Exhibit 14 to the Application herein. The Sheriff's Certificate of Purchase in said Exhibit 14 also shows that Legacy assigned all of its rights to ownership of the assets that were the subject of the sale to Grizzly Peak Investments LLC. Exhibit 14 to the Application is incorporated herein by reference

6. As noted, Legacy, the entity which foreclosed upon the assets of the Miller Interests, is owned and controlled by entities created by James A. Bush. Mr. Bush is also the owner of Grizzly Peak Investments LLC. By this Application, with the approval and authorization of Mr. Bush, Grizzly Peak requests Commission approval of the transfer to it of all of the Commission jurisdictional public utility assets of the Miller Interests that were acquired through foreclosure by Legacy and Grizzly Peak Investments LLC.

7. Grizzly Peak states that the non-Commission jurisdictional assets of the Miller Interests that were acquired by Legacy and Grizzly Peak Investments LLC, as more fully described in the Judgment and Decree of Foreclosure, the Sheriff's Certificate of Purchase, and Sheriff's Deed and other documents in Exhibit 14 to the Application which commenced this docket, will remain with Grizzly Peak Investments LLC and are not part of the transfer request made by this Application.

8. Grizzly Peak, with the support of Mr. Bush, has the financial ability to own, operate and maintain the public utility assets that are sought to be transferred in this proceeding. As more fully described below, Mr. Bush has obtained a commitment from a financial institution to provide the funding necessary to operate, maintain and upgrade, as necessary, the facilities being acquired.

9. On October 31, 2008, the Colorado Department of Public Health and Environment (“CDPHE”) sent a Compliance Advisory-Notice of Significant Non-Compliance (“Notice”) to Mr. J. Randall Miller of Mill Creek Management Company LLC informing Mill Creek Management Company LLC that the operation of the Mill Creek wastewater treatment facility for Cascade Village was in “significant non-compliance.” To the best of Joint Applicants’ knowledge, despite this notice neither Mr. Miller nor Mill Creek nor any of Mr. Miller’s other affiliates made substantive efforts to upgrade, repair or replace the current non-conforming wastewater treatment facility to bring said wastewater treatment facility into compliance with CDPHE requirements.

10. As more fully described below, Grizzly Peak through the financial support of Mr. Bush and lenders has the financial ability to bring the Mill Creek wastewater treatment facilities into compliance with CDPHE requirements. Upon the conclusion of this docket and approval by the Commission of the acquisition by Grizzly Peak of the public utility assets conveyed in the aforementioned Sheriff’s sale, Grizzly Peak will commence the process of working with CDPHE to bring the Mill Creek wastewater treatment facilities into compliance with state requirements. This will be of significant benefit to the residents of Cascade Village who will have a refurbished wastewater treatment facility available to serve them as a result of this transfer and the commitment of Grizzly Peak to upgrade the wastewater treatment facility.

III. TERMS AND CONDITIONS

11. Moratorium on base rate increase. Grizzly Peak will not increase current base rates for water and sewer service for a minimum period of 24 months from and after entry of a final Commission order approving the transfer sought in this docket (the “Moratorium Period”). For the purpose of this 24-month moratorium (the “Moratorium”), “base rates” means the current

rate for water service appearing in the Mill Creek Water Sales & Distribution LLC tariff (the “Current Water Rate”), and the “interim” or “emergency” sewer rate (the “Interim Sewer Rate”) appearing in the same tariff. The Interim Sewer Rate was authorized by Decision No. R08-1196-I (dated November 14, 2008) in the 2008 Sewer Case. A final decision in the 2008 Sewer Docket has not been entered. Grizzly Peak commits to maintain in effect during the Moratorium Period the Interim Sewer Rate upon Commission approval of the transfer sought in this docket, subject to the provisions of Paragraph 12 below. Grizzly Peak also commits to seek to fix the Interim Sewer Rate in Docket No. 08A-373W as the sewer rate in effect for the Moratorium Period, subject to the provisions of Paragraph 12 below.

12. Potential partial exception to Moratorium. A partial exception to the Moratorium shall exist to the extent necessary to accommodate an increase in sewer base rates required to begin charging customers through such base rates for the cost of a fully constructed and used and useful wastewater plant improvement solution (the “Wastewater Plant Solution”) that addresses deficiencies that have been identified in the current wastewater system and/or plant by the CDPHE. This partial exception shall be effective only if, during the Moratorium Period, first, the Wastewater Plant Solution is fully constructed, placed in service and deemed used and useful; and, second, Grizzly Peak appropriately seeks and obtains a final order from the Commission authorizing it to place in effect increased sewer base rates to begin recovering such Wastewater Plant Solution costs.

13. Financial records, future rate increases. The stipulating parties recognize and agree that the currently available financial records of Mill Creek are both unaudited and probably do not contain accurate and reliable information regarding the actual historical expenses of operating the water and sewer utility systems subject to this application, or the actual value of

assets and liabilities appropriately assigned to those systems. During the Moratorium Period Grizzly Peak will begin to establish and maintain accounting and recordkeeping systems to record accurate actual water and sewer operating cost and other information relevant to ratemaking. This shall include developing accurate and reliable property records, depreciation expense records and records needed to produce an accurate and reliable balance sheet. A new balance sheet for utility operations will if necessary be developed from scratch or, if Grizzly Peak is able to do so, reconstructed from legitimate and fully documented property records maintained by Mill Creek or its affiliates. Any rate increase sought by Grizzly Peak from and after the date of a final Commission order in this docket shall be based on financial information derived from accounting and record-keeping systems described in this paragraph.

14. Utility personnel, quality of service and manner of operation. To operate the water and wastewater utility system Grizzly Peak shall utilize the services of one or more Colorado-based persons or companies appropriately licensed and certified by the CDPHE to manage, test and operate the class of systems involved. Grizzly Peak will establish a local business office in San Juan County and will employ a Colorado-based bookkeeper. Grizzly Peak's controller will be Mike Bagby (or another equally qualified individual), whose resume is attached as Exhibit B. The principal owner and principal manager of Grizzly Peak will be James A. Bush. For purposes of engineering the Wastewater Plant Solution, Grizzly Peak intends to use the services of Briliam Engineering, whose capability statement is attached as Exhibit C. Grizzly Peak will strive to operate the utility systems in an efficient, transparent and cost-effective manner at all times, while delivering safe, reliable and reasonably priced water and wastewater service.

15. Wastewater Plant Solution. Grizzly Peak will work diligently to develop and implement a Wastewater Plant Solution that meets the requirements of the CDPHE at the most reasonable cost possible. Grizzly Peak will keep the CVCA board of directors fully informed of progress in the development and implementation of the Wastewater Plant Solution as these processes move forward, including how customers will be affected during construction and implementation. Grizzly Peak will submit its plan on how to build and finance any selected Wastewater Plant Solution to the CVCA board in advance of presenting a request to the CPUC for authority to construct. The plan shall ensure that all customers have fully reliable and adequate wastewater service at all times prior to, during and following Wastewater Plant Solution construction and implementation.

16. Financing of Wastewater Plant Solution. Grizzly Peak shall finance the entire cost of the Wastewater Plant Solution, inclusive of any temporary system alterations required during construction and inclusive of all hard and soft costs that would normally be capitalized in such an undertaking, including all engineering studies performed prior to actual construction. Grizzly Peak represents that Grizzly Peak and Mr. Bush, Grizzly Peak's principal owner, are jointly capable of financing, and will finance, the entire cost of any required Wastewater Plant Solution without seeking any advance recovery of costs or capital from customers. As evidence of this capability, Grizzly Peak provides the commitment letter from the Bank of Oklahoma attached hereto as Exhibit D, to loan Grizzly Peak up to one million dollars. Grizzly Peak warrants that if said Bank of Oklahoma loan commitment is withdrawn or the size of the commitment reduced or determined to be insufficient before full financing of the Wastewater Plant Solution has been accomplished, Grizzly Peak and Mr. Bush will obtain alternative and/or

additional commitments for financing to assure the availability of at least one million dollars of financing for implementation of the Wastewater Plant Solution.

17. Rate recovery of Wastewater Plant Solution costs. Grizzly Peak will not seek to recover from customers the financing, construction and operating costs of the Wastewater Plant Solution until same is actually placed in service and “used and useful.” Recovery of costs from existing customers will be sought solely through base rates (as contrasted to advance customer assessments or contributions). Recovery of costs from future customers will be sought through a combination of such base rates and a “system development” (or similar) charge assessed to new customers at such time as capital expenditures necessary to connect the future customers to the system are made, pursuant to a Commission approved tariff. Wastewater Plant Solution base rates shall be designed to recover reasonable ongoing operating costs plus reasonable unrecovered (that is, not recouped through system development or similar charges) capital costs (including return) and depreciation, using a “rate base/rate of return” methodology that takes into account the expected life of the Wastewater Plant Solution. Anything in the foregoing provisions of this paragraph to the contrary notwithstanding, Grizzly Peak in advance of applying to the CPUC for recovery of the Wastewater Plant Solution costs may at its option negotiate with the CVCA board of directors a plan to recover the capital costs of the Wastewater Plant Solution through a combination of a one-time facilities improvement fee and future base rates (as to capital costs not recovered through such a fee). If such negotiations occur and result in an agreement in writing, Grizzly Peak may apply to the CPUC for recovery of the Wastewater Plant Solution costs through the approach set forth in said written agreement.

18. Water system facility costs. Grizzly Peak agrees to use a traditional “rate base/rate of return” approach for recovering the costs of any new water service facilities added to the system after the final decision entered in this docket.

19. Reserved Issue. Certain real property upon which certain public utility water and sewer facilities continuously operated by Mill Creek are located (including the current wastewater treatment facility) and on which the Wastewater Plant Solution will be located (hereafter, “Utility Facility Land”), was included in the Miller Interests acquired at the Sheriff’s Sale ordered in Case No. 09CV7, District Court, San Juan County by Grizzly Peak Investments, LLC (GPI). The Utility Facility Land is a portion of a larger tract of land at Cascade Village commonly referred to as Tract F. A copy of a map showing the Utility Facility Land is attached hereto as Exhibit E. It is the position of GPI and Grizzly Peak that GPI rather than Grizzly Peak owns the Utility Facility Land and that GPI has the right to charge Grizzly Peak rent for continued use of the Utility Facility Land and that Grizzly Peak has the right to recover that cost from customers pursuant to standard rate making treatment. Whether that is true, and, if so, what amount of rent GPI should be entitled to charge Grizzly Peak for use of the Utility Facility Land are issues the Parties have not been able to resolve for purposes of this Stipulation and Settlement Agreement. The Parties agree to address these questions at such time as Grizzly Peak makes a claim for recovery of such rent in a subsequent rate proceeding, provided the rate proceeding is one the Parties have agreed may occur within the parameters of the Parties’ agreements concerning the Moratorium and the Partial Exception to the Moratorium, above.

IV. GENERAL PROVISIONS

The Parties agree to join in a motion that requests the Commission to approve this Stipulation and to support this Stipulation.

This Stipulation is a negotiated compromise of issues raised in this proceeding relating to the joint application by Mill Creek and Grizzly Peak for Commission approval of the transfer of Mill Creek's CPCN, certain related utility assets and the waiver of certain Commission rules. By signing this Stipulation and by joining the motion to adopt the Stipulation filed with the Commission, the Parties acknowledge that they pledge support for Commission approval and subsequent implementation of these provisions.

Nothing in this Stipulation shall bind any of the Parties with respect to any position such party may take in any other proceeding before this Commission. This Stipulation shall not become effective until the issuance of a final Commission Order approving the Stipulation, which Order does not contain any modification of its terms and conditions that is unacceptable to any of the Parties. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on the issues that may be appropriately raised by that party in the reopened Docket No. 10A-168W. The withdrawing Party shall notify the Commission and the Parties to this Stipulation by e-mail within five business days of the Commission's final order modifying the Stipulation that the Party is withdrawing from the Stipulation and that the Party is ready to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the Party desires to proceed to hearing (the "Hearing Notice").

The withdrawal of a Party shall not automatically terminate this Stipulation as to the withdrawing Party or any other Party. However, within five business days of the date of the Hearing Notice from the first withdrawing Party, all Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Party's withdrawal from this Stipulation. Within five business days of the

date of the Hearing Notice, the Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and the list of issues that remain settled. The Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Stipulation. Hearing shall be scheduled on all of the issues designated in the formal notice filed with the Commission as soon as practicable.

The Parties agree that the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding, except as may be necessary in any proceeding to enforce this Stipulation.

The Parties agree that approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in the above-captioned proceeding. The Parties believe that reaching Stipulation in this docket by means of a negotiated settlement is in the public interest and that the results of the compromises and settlements reflected by this Stipulation are just, reasonable and in the public interest.

All Parties have had the opportunity to participate in the drafting of this Stipulation. There shall be no legal presumption that any specific Party was the drafter of this Stipulation.

This Stipulation may be executed in counterparts, all of which when taken together shall constitute the entire agreement with respect to the issues addressed by this Stipulation.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 27 day of September, 2010.

APPROVED:

By: _____
Jeffrey G. Pearson, #5874
Jeffrey G. Pearson, LLC
1570 Emerson Street
Denver, CO 80218-1450
(303) 832-5138
(303) 837-1557 (Fax)
jpearson@jgp-law.com

**ATTORNEY FOR CASCADE VILLAGE
CONDOMINIUM ASSOCIATION-2004
AND ROBERT OPPENHEIMER**

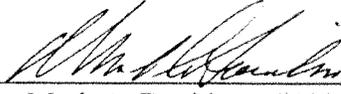
By: _____
Robert Oppenheimer
50827 Highway 550 North
Durango, CO 81301

**CASCADE VILLAGE CONDOMINIUM
ASSOCIATION--2004**

By: _____
Richard A. Champany, DDS, MPH
President, Board of Directors

APPROVED:

HOLLAND & HART LLP

By:  _____
Mark A. Davidson, #10364
Michelle Brandt King, #35048
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202-3979
(303) 295-8572
(303) 295-8261 (Fax)
mdavidson@hollandhart.com
mbking@hollandhart.com

**ATTORNEYS FOR GRIZZLY PEAK
WATER SALES AND DISTRIBUTION,
LLC**

By: _____
Richard L. Corbetta, #20766
Dufford & Brown, P.C.
1700 Broadway, Suite 2100
Denver, CO 80290
(303) 861-8013
(303) 832-3804 (Fax)

**ATTORNEYS FOR MILL CREEK WATER
SALES AND DISTRIBUTION, LLC
THROUGH ITS COURT APPOINTED
RECEIVER**

APPROVED:

APPROVED:

HOLLAND & HART LLP

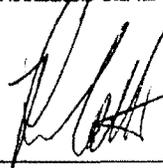
By: _____
Jeffrey G. Pearson, #5874
Jeffrey G. Pearson, LLC
1570 Emerson Street
Denver, CO 80218-1450
(303) 832-5138
(303) 837-1557 (Fax)
jpearson@jgp-law.com

By: _____
Mark A. Davidson, #10364
Michelle Brandt King, #35048
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202-3979
(303) 295-8572
(303) 295-8261 (Fax)
mdavidson@hollandhart.com
mbking@hollandhart.com

**ATTORNEY FOR CASCADE VILLAGE
CONDOMINIUM ASSOCIATION-2004
AND ROBERT OPPENHEIMER**

**ATTORNEYS FOR GRIZZLY PEAK
WATER SALES AND DISTRIBUTION,
LLC**

By: _____
Robert Oppenheimer
50827 Highway 550 North
Durango, CO 81301

By: _____

Richard L. Corbetta, #20766
Dufford & Brown, P.C.
1700 Broadway, Suite 2100
Denver, CO 80290
(303) 861-8013
(303) 832-3804 (Fax)

**CASCADE VILLAGE CONDOMINIUM
ASSOCIATION-2004**

**ATTORNEYS FOR MILL CREEK WATER
SALES AND DISTRIBUTION, LLC
THROUGH ITS COURT APPOINTED
RECEIVER**

By: _____
Richard A. Champany, DDS, MPH
President, Board of Directors

APPROVED:

By: 
Jeffrey G. Pearson, #5874
Jeffrey G. Pearson, LLC
1570 Emerson Street
Denver, CO 80218-1450
(303) 832-5138
(303) 837-1557 (Fax)
jpearson@jgp-law.com

**ATTORNEY FOR CASCADE VILLAGE
CONDOMINIUM ASSOCIATION-2004
AND ROBERT OPPENHEIMER**

By: _____
Robert Oppenheimer
50827 Highway 550 North
Durango, CO 81301

**CASCADE VILLAGE CONDOMINIUM
ASSOCIATION--2004**

By: 
Richard A. Champany, DDS, MPH
President, Board of Directors

APPROVED:

HOLLAND & HART LLP

By: _____
Mark A. Davidson, #10364
Michelle Brandt King, #35048
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202-3979
(303) 295-8572
mdavidson@hollandhart.com
mbking@hollandhart.com

**ATTORNEYS FOR GRIZZLY PEAK
WATER SALES AND DISTRIBUTION,
LLC**

By: _____
Richard L. Corbetta
Dufford & Brown, P.C.
1700 Broadway, Suite 2100
Denver, CO 80290

**ATTORNEYS FOR MILL CREEK WATER
SALES AND DISTRIBUTION, LLC
THROUGH ITS COURT APPOINTED
RECEIVER**

APPROVED:

APPROVED:

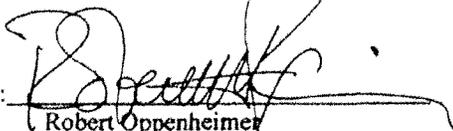
HOLLAND & HART LLP

By: _____
Jeffrey G. Pearson, #5874
Jeffrey G. Pearson, LLC
1570 Emerson Street
Denver, CO 80218-1450
(303) 832-5138
(303) 837-1557 (Fax)
jpearson@jgp-law.com

By: _____
Mark A. Davidson, #10364
Michelle Brandt King, #35048
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202-3979
(303) 295-8572
mdavidson@hollandhart.com
mbking@hollandhart.com

**ATTORNEY FOR CASCADE VILLAGE
CONDOMINIUM ASSOCIATION-2004
AND ROBERT OPPENHEIMER**

**ATTORNEYS FOR GRIZZLY PEAK
WATER SALES AND DISTRIBUTION,
LLC**

By: 
Robert Oppenheimer
50827 Highway 550 North
Durango, CO 81301

By: _____
Richard L. Corbetta
Dufford & Brown, P.C.
1700 Broadway, Suite 2100
Denver, CO 80290

**CASCADE VILLAGE CONDOMINIUM
ASSOCIATION--2004**

**ATTORNEYS FOR MILL CREEK WATER
SALES AND DISTRIBUTION, LLC
THROUGH ITS COURT APPOINTED
RECEIVER**

By: _____
Richard A. Champany, DDS, MPH
President, Board of Directors

CERTIFICATE OF SERVICE
Docket No. 10A-168W

I hereby certify that on this 27 day of September, 2010, an original and 4 copies of the foregoing **STIPULATION AND SETTLEMENT AGREEMENT** was served via hand-delivery and via electronic mail to the following:

Doug Dean, Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Doug.Dean@dora.state.co.us

and copies were sent via electronic mail or U.S. mail to the following:

Richard L. Corbetta
Dufford & Brown, P.C.
1700 Broadway, Suite 2100
Denver, CO 80290-2101
rcorbetta@duffordbrown.com

James A. Bush
Grizzly Peak Water Sales & Distribution, LLC
7170 S. Braden Ave., Suite 200
Tulsa, OK 74136
jim.bush@tulsacoxmail.com

Jeffrey E. Pearson
Jeffrey E. Pearson, LLC
1570 Emerson Street
Denver, CO 80218-1450
jpearson@jgp-law.com

Paul R. Williams
CBRE/Oklahoma
1401 S. Boulder Avenue, Suite 100
Tulsa, OK 74119
Paul.williams@cbreok.com



| | | | |
|---|-----------------------|---|---|
|  | <p>Granted</p> | <p>The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 5 days from the date of this order.</p> | <p><i>Gregory G. Lyman</i></p> <hr/> <p>Gregory G. Lyman District Court Judge Date of Order attached</p> |
| <p>DISTRICT COURT, SAN JUAN COUNTY, COLORADO Court Address: 1557 Greene Street Silverton, CO 81433 (970) 387-5790</p> | | | <p>▲ COURT USE ONLY ▲</p> |
| <p>Plaintiff: LEGACY REAL ESTATE INVESTMENTS, LLC, Defendants: MILL CREEK LODGE ESTATES, LLC; MILL CREEK WATER SALES AND DISTRIBUTION, LLC; J. RANDALL MILLER; J. CHRIS JONES; McCARSON L. JONES; BREEZE INVESTMENTS, LLC; BREEZE ENERGY, LLC; BUSH MOUNTAIN, LLC; BUSH LIVING TRUST and BEVERLY RICH.</p> | | | <p>Case Number: 2009CV7 Div.: ____ Ctrm: _____</p> |
| <p style="text-align: center;">ORDER</p> | | | |

THIS MATTER, having come before the Court on June 28, 30, and July 1, 2010 for hearing on: 1) Receiver's January 21, 2010, Verified Motion for Remedial or Punitive Contempt Citation against Mill Creek Lodge Estates, LLC ("MCLE"), Mill Creek Water Sales and Distribution, LLC ("MCWSD"), J. Randall Miller ("Miller") and Terry J. Westemeir ("Westemeir"), including Receiver's February 23, 2010 Verified Supplement to His Motion for Remedial or Punitive Contempt; 2) Defendants' J. Randall Miller, MCLE and MCWSD February 4, 2010 Verified Motion for Remedial or Punitive Contempt against Receiver Paul Williams; 3) Receiver's April 28, 2010 Motion for Emergency Order, including Receiver's June 16, 2010 Supplement to Motion for Emergency Order; and 4) Defendant J. Randall Miller's June 16, 2010 Renewed, Amended and Restated Motion to Dismiss, Discharge and Sanction Paul Williams as Receiver and Motion for Sanctions, and the Court having heard testimony, received exhibits and reviewed the authorities cited by the parties hereby makes its **FINDINGS** and **ORDERS** as follows:

FINDINGS:

The Court has consulted the June 19, 2009 Foreclosure Agreement between Legacy Real Estate Investments, LLC ("Legacy") and Mill Creek Lodge Estate, LLC, Mill Creek Water Sales and Distribution, LLC, Mill Creek Management Co., LLC and J. Randall Miller on a number of

occasions and while this Order is not a ruling on the rights under the Foreclosure Agreement, it is a helpful starting point in this Court's analysis.

The Court finds that the Foreclosure Agreement provides that Legacy is entitled to full control of the Mill Creek entities. Further, the Court finds that under the circumstances and pursuant to the various documents that have been executed between Legacy, the Mill Creek entities and Mr. Miller, that the appointment of a Receiver *ex parte* was contemplated by those agreements and was appropriate under the circumstances.

The Court has heard the concerns asserted in Mill Creek and Mr. Miller's motion to discharge the Receiver that there is an appearance of an improper relationship between Mr. Bush and his businesses and CB Richard Ellis Oklahoma, of which Mr. Williams is a member. The Court believes that the time to have objected to the Receiver was at the time of his appointment in July, 2009. However, the Court is satisfied, based upon the testimony given during this hearing and by its review of the transcripts of the October 28-29, 2009 proceedings that there was no close relationship between Mr. Bush and Mr. Williams at the time of Mr. Williams' appointment. Moreover, while the Court will continue to scrutinize his judgment and decisions, the Court is satisfied that since his appointment, Mr. Williams has acted in his capacity as Receiver, independently and without bias.

On August 19, 2009, the Court entered an Order, requiring *inter alia* the Mill Creek entities to turn over possession and control of all bank accounts and to disclose all collateral. While initially contacts between the Receiver and Mr. Westemeir and Mr. Miller were cooperative, disagreements about the Receiver's authority arose almost immediately. The accounts were not turned over to the Receiver. Consequently, because the parties, the principal offices of the Mill Creek entities and the bank accounts are located in Tulsa, OK, the Receiver filed a Petition for Declaratory and Injunctive Relief styled *Paul R. Williams, Receiver for Mill Creek Lodge Estates, LLC and Mill Creek Sales and Water Distribution, LLC v. Summit Bank et al.*, Case No. CJ-2009-6288, District Court for Tulsa County, State of Oklahoma ("Oklahoma Declaratory Relief Action"). That Petition was not successful. However, the Court does not find that Mr. Williams' actions violated any of the canons of judicial ethics. The Court also does not find that Mr. Williams made any misrepresentation or acted in bad faith in seeking a temporary restraining order in the Oklahoma Declaratory Relief Action. The Court understands that Mr. Williams, in his capacity as Receiver, is an officer of the Court, expects him to conduct himself in that fashion and finds that he has done so.

Thereafter, the Receiver sought an order clarifying his authority. After holding a hearing on October 28-29, 2009, Judge Buss entered an Order clearly delineating the Receiver's authority with respect to MCLE (the "October 29 Order"). While the October 29 Order was not so clear as to MCWSD it was an effort by the Court to create a common-sense approach to encourage the parties to work together. The Order gave the Receiver authority to manage and oversee the affairs of MCWSD on behalf of the lender while retaining Mr. Westemeir to fulfill the utility's obligations to its ratepayers, the PUC and to operate its permits. However, that effort ended quickly when, among other issues, a conflict arose over certain payments that Mr. Westemeir wanted to make that the Receiver opposed. Those disputes resulted in another round of pleadings seeking further clarification.

In light of the October 29 Order, which contemplated Receiver oversight and continued use of Mr. Westemeir's expertise to run MCWSD, the Court finds that the October 29 Order abrogates any allegations of contempt on the part of Mr. Miller or Mr. Westemeir prior to January 14, 2010. However, on January 14, 2010, Judge Buss issued an Order clarifying the Receiver's authority with respect to MCWSD (the "January 14 Order"). The Court finds that the January 14 Order expanded the Receiver's powers with respect to MCWSD. The January 14 Order entitled the Receiver to take control of the accounts, the operations and the proceedings before the PUC on behalf of MCWSD. The five paragraphs constituting the January 14 Order gave the Receiver specific authority to conduct the billings, to deal with the employees and to do the other things as very clearly set forth in those paragraphs of the January 14 Order.

When the Receiver attempted to enforce the January 14 Order, Mr. Westemeir removed more than \$31,000 from the MCWSD Summit Bank account and put it into a different account with First National of Broken Arrow. The Court finds that this action was contrary to the January 14 Order and that Mr. Miller and Mr. Westemeir violated the January 14 Order. However, the Court does not find that Mr. Westemeir did anything improper with that money. Nevertheless, the money in the First National of Broken Arrow account is to be returned to the Receiver to the extent it exists on or before 5:00 p.m. July 16, 2010. To the extent it does not exist, a full accounting of what was done with the money is required to be provided to the Receiver by that same deadline. Moreover, it is ordered that there is to be no further depletion of funds from the First National of Broken Arrow account as of July 1, 2010. In addition, Mr. Miller and Mr. Westemeir are ordered to make accessible to the Receiver all records of MCLE and MCWSD on or before 5:00 p.m. July 16, 2010. The Court reserves ruling on the contempt against Mr. Miller and Mr. Westemeir resulting from their actions in response to the January 14 Order and continues this matter under advisement to determine compliance with these orders.

The actions that the Receiver took in response to Mr. Westemeir's removal of the more than \$31,000 from the MCWSD Summit Bank account have also been propounded as a basis for the Receiver's removal. When Mr. Westemeir removed the \$31,000 and put it into a different account, the Receiver filed a police report in Oklahoma. The Receiver also filed a Petition for Conversion styled *Paul R. Williams, Receiver for Mill Creek Lodge Estates, LLC and Mill Creek Sales and Water Distribution, LLC v. Terry J. Westemeir*, Case No. CJ-2010-765, District Court for Tulsa County, State of Oklahoma ("Oklahoma Petition for Conversion Action"). The Court understands that Oklahoma police considered the issue to be a civil matter choosing not to pursue it and that the Oklahoma Petition for Conversion Action resulted in an order of dismissal and harsh findings made against Mr. Williams. As this Court's representative, the Court expected Mr. Williams to be with his wife during her sudden illness and treatment which occurred during that time. The Court finds that if Mr. Williams missed a pleading or missed a court appearance because he was with his wife, he did not disappoint this Court by that conduct.

The Court understands that there are issues with certain payments made by MCWSD both preceding and subsequent to the creation of the receivership. Preceding the creation of the receivership \$18,000 was paid to MCWSD by the Colorado Department of Transportation for a settlement which was then paid to Mr. Miller's firm. Subsequent to the creation of the receivership Mr. Westemeir made payments to Mr. Westemeir and Ms. Hanlon in the amounts of

\$14,000 and \$3,900 respectively which are disputed by the Receiver. The Court does not find these payments to be fraudulent on their face. The Court is not ordering the disgorgement of those funds or their return to the Receiver at this time. However, objections can be made to these payments and those will be sorted out at the conclusion of the receivership.

The Court rescinds the Receiver's decision to fire Mr. Westemeir. MCWSD still exists as a corporation and Mr. Westemeir's continued employment or not will be determined between he and Mr. Miller. However, the Receiver's Emergency Motion is granted. The Receiver is to manage and control MCWSD, its business, facilities, employees, accounts, day-to-day business operations, billings, collect payment from the ratepayers of MCWSD for water and sewer services, and all matters of which it is required to do in compliance with its Certificate of Public Convenience and Necessity and the transfer matters presently pending before the Public Utilities Commission. Mr. Miller and Mr. Westemeir are ordered to cease and desist from any actions on behalf of MCWSD in the operation of its utility business.

Because the parties, the principal offices of the Mill Creek entities and the bank accounts are located in Tulsa, OK, to the extent that this Order can be domesticated and enforced in Oklahoma, under Oklahoma law, to facilitate any legal proceedings in Oklahoma consistent with this Order, without the parties having to come to Colorado for enforcement, it is this Court's desire that this Order be given such effect by the Oklahoma Courts.

IT IS HEREBY ORDERED:

1. Defendant J. Randall Miller's June 16, 2010 Renewed, Amended and Restated Motion to Dismiss, Discharge and Sanction Paul Williams as Receiver and Motion for Sanctions is **DENIED**.

2. Defendants' J. Randall Miller, MCLE and MCWSD February 4, 2010 Verified Motion for Remedial or Punitive Contempt against Receiver Paul Williams is **DENIED**.

3. Receiver's April 28, 2010 Motion for Emergency Order, including Receiver's June 16, 2010 Supplement to Motion for Emergency Order is **GRANTED**. The Receiver is to manage and control MCWSD, its business, facilities, employees, accounts, day-to-day business operations, billings, collect payment from the ratepayers of MCWSD for water and sewer services, and all matters of which it is required to do in compliance with its Certificate of Public Convenience and Necessity and the transfer matters presently pending before the Public Utilities Commission.

4. Mr. Miller and Mr. Westemeir are Ordered to cease and desist from any actions on behalf of MCWSD in the operation of its utility business.

5. Mr. Miller and Mr. Westemeir are Ordered that the money in the First National of Broken Arrow account is to be returned to the Receiver to the extent it exists on or before 5:00 p.m. July 16, 2010. To the extent it does not exist, a full accounting of what was done with the money is required to be provided to the Receiver by that same deadline. Moreover, it is ordered that there is to be no further depletion of funds from the First National of Broken Arrow account

as of July 1, 2010. In addition, Mr. Miller and Mr. Westemeir are ordered to make accessible to the Receiver all records of MCLE and MCWSD on or before 5:00 p.m. July 16, 2010.

6. The Court reserves ruling on the Receiver's January 21, 2010, Verified Motion for Remedial or Punitive Contempt Citation against Mill Creek Lodge Estates, LLC, Mill Creek Water Sales and Distribution, LLC, J. Randall Miller and Terry J. Westemeir, including Receiver's February 23, 2010 Verified Supplement to His Motion for Remedial or Punitive Contempt. If the funds and records of MCWSD and MCLE are turned over to the Receiver by 5:00 p.m. on July 16, 2010, the Court will refrain from making a contempt finding. If not, the Court will reconsider issuing a ruling.

7. The Court is not ordering the disgorgement or return to the Receiver of the \$18,000 paid to MCWSD by the Colorado Department of Transportation or the payments to Mr. Westemeir and Ms. Hanlon in the amounts of \$14,000 and \$3,900 respectively at this time. However, objections can be made to these payments and those will be sorted out at the conclusion of the receivership.

8. Because the parties, the principal offices of the Mill Creek entities and the bank accounts are located in Tulsa, OK, to the extent that this Order can be domesticated and enforced in Oklahoma, under Oklahoma law, to facilitate any legal proceedings in Oklahoma consistent with this Order, without the parties having to come to Colorado for enforcement, it is this Court's desire that this Order be given such effect by the Oklahoma Courts.

9. The Court reserves Receiver's request for attorneys' fees for another day.

10. It is Ordered that the Receiver's bond be increased to \$200,000 and that such bond be posted by July 12, 2010.

DONE and **DATED** this ____ of July, 2010, *nunc pro tunc*, July 1, 2010

BY THE COURT

Judge Gregory G. Lyman
District Court Judge

Approved as to Form:

DUFFORD & BROWN, P.C.

Joanne Herlihy, Esq. #17838

Attorneys for Paul R. Williams
as Receiver for Mill Creek Water
Sales and Distribution, LLC and
Mill Creek Lodge Estates, LLC

MCLACHLAN & UNDERELL, LLC

Marla C. Underell, Esq. #31076

Attorneys for Legacy Real Estate Investments, LLC

LAW OFFICES OF JOHN C. SEIBERT, LLC

John C. Seibert, Esq. #21437

Attorney for Mill Creek Lodge Estates, LLC
and Mill Creek Water Sales and Distribution, LLC

J. RANDALL MILLER

J. Randall Miller, *Pro Se*

This document constitutes a ruling of the court and should be treated as such.

Court: CO San Juan County District Court 6th JD

Judge: Gregory G Lyman

File & Serve

Transaction ID: 32310471

Current Date: Jul 27, 2010

Case Number: 2009CV7

Case Name: LEGACY REAL ESTATE INVESTMENTS LLC vs. MILL CREEK LODGE ESTATES
LLC et al

Court Authorizer: Gregory G Lyman

/s/ Judge Gregory G Lyman

MICHAEL D. BAGBY, CPA
(918) 836-4577

3427 East 12th Street
Tulsa, Oklahoma 74112

Resume

Controller/CFO for numerous businesses, primarily oil and gas but including attorney services, electronic data interchange, real estate, retail, medical services, not-for-profit, and telecommunications. Responsibilities include business development, short and long-range planning, financial and tax reporting, and coordination of contracts, banking, and insurance matters. Directly familiar with regulatory financial reporting procedures and requirements (City government, Community Development Block Grants, Indian Nation Housing Authorities, and South American financial reporting).

Career Overview:

1990 – current Off-Premises Controller/CFO.

1978 – 1990 Helmerich & Payne, Inc (diversified NYSE energy, chemicals and real estate company) as Accounting Manager: General Reporting Supervisor 1989-1990 responsible for Corporate consolidation, financial reporting and cost/budgeting. Manager, Drilling Accounting 1984-1989 responsible for preparation of financial statements, drilling well cost reports, and capital expenditure budgeting as well as supervision of local offices in South America. Projects Manager 1979-1984 responsible for remediation of problems and issues. Concurrent tax responsibilities 1979-1988 "in season" reporting to the Treasurer.

1973 –1978 Peat, Marwick, Mitchell & Co, CPA (now KPMG): Supervising Senior and Computer Audit Specialist supervising personnel performing audits, EDP systems analyst, computer programming, serving as technical assistance to the audit, and supervision and training of junior auditors.

Education Credentials:

MS Degree in Accounting, OSU

BS Degree in Accounting, Computer Science Minor, OSU

Professional Credentials:

Certified Public Accountant, Oklahoma

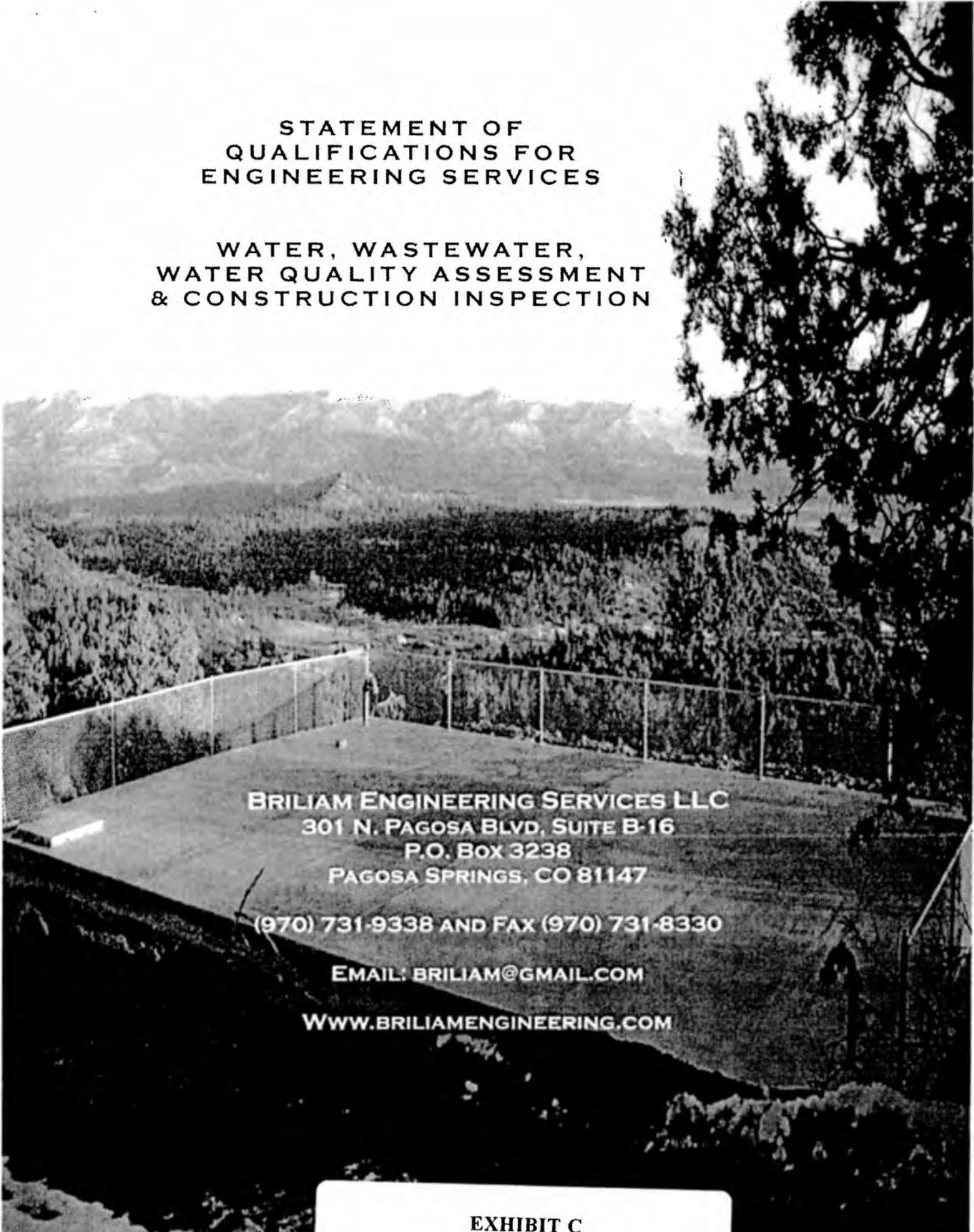
Computer Audit Specialist (PMM&Co)

Member American Institute of Certified Public Accountants

Member Oklahoma Institute of Certified Public Accountants

**STATEMENT OF
QUALIFICATIONS FOR
ENGINEERING SERVICES**

**WATER, WASTEWATER,
WATER QUALITY ASSESSMENT
& CONSTRUCTION INSPECTION**



**BRILIAM ENGINEERING SERVICES LLC
301 N. PAGOSA BLVD, SUITE B-16
P.O. BOX 3238
PAGOSA SPRINGS, CO 81147**

(970) 731-9338 AND FAX (970) 731-8330

EMAIL: BRILIAM@GMAIL.COM

WWW.BRILIAMENGINEERING.COM

EXHIBIT C

WHO WE ARE

Briliam Engineering Services LLC has been in the water and wastewater business since 2002 and focuses on the planning, design, and construction of municipal and industrial water and wastewater treatment facilities, water distribution systems and booster pump stations, sanitary sewer collection systems and lift stations, and the hydraulic modeling of both water and sanitary sewer systems. The types of projects range from multidiscipline design-build to conventional design-bid-construct contracts.

Briliam Engineering Services LLC provides professional engineering services to governmental, municipal, and industrial clientele throughout the Four Corners Region. Project delivery methods vary from multidiscipline design-build to modified conventional design-bid construction contracts.

OUR SERVICES

- Our experience in the water treatment category varies from water treatment facility design from 0.2 MGD to 4 MGD, related chemical feed systems, water booster stations, storage tanks, distribution system pipelines, hydraulic modeling, and related studies and reports.
- Our experience in the wastewater category varies from wastewater treatment facility design from 0.25 MGD to 4 MGD, including headworks facilities, odor control systems, activated sludge processes, solids handling system, and disinfection systems; collection system, lift station, hydraulic modeling, and related studies and reports
- Preliminary Design and Engineering Reports, State Compliance, Water Quality Analysis
- Permits, Permit Renewals, and Permit Amendments
- Pilot Testing
- Design/Bid/Build
- Design/Build

FUNDING, GRANT ACQUISITION, AND VALUE ENGINEERING

Briliam Engineering Services LLC also offers grant acquisition assistance – we search for the best way to achieve the objective at the most practical cost.

PROJECT MANAGEMENT APPROACH

COST, SCHEDULE AND QUALITY CONTROL

SMALL BUSINESS WITH PERSONAL SERVICE—BIG SKILLS

Briliam Engineering is registered as a federal contractor (CCR) and is listed with the Small Business Administration as a Small Business, an Emerging Small Business, and is registered and eligible to receive Federal HUBZone contracts.

PROFESSIONAL ENGINEERS

PATRICK J. O'BRIEN, P.E., PRINCIPAL-IN-CHARGE

Mr. O'Brien has over 16 years experience in the planning, design, and construction of municipal and industrial water and wastewater treatment facilities ranging in size from 10,000 to 40 million GPD, water distribution and booster pump stations and sanitary sewer collection systems and lift stations. Mr. O'Brien is experienced in the hydraulic analysis of water and sanitary sewer systems and the analysis of water and sewer rates. Types of projects range from multidiscipline design-build to modified design-build to conventional design-bid-construct contracts. His roles include project manager, project engineer, and construction manager.

MARK A. DAHM, P.E., PROJECT ENGINEER, PROJECT MANAGER

Mr. Dahm has over 20 years experience in the design of municipal and industrial wastewater treatment plants, and the design and construction of industrial wastewater and municipal water plants. His project experience in treatment facility design and construction projects includes design engineering, project management, engineering services during construction, and facility start up. Mr. Dahm's past responsibilities and project applications include a wide range of wastewater and water treatment technologies, and design of treatment facilities from 50 gpm to 2 MGD, design/troubleshooting and modification of plant subsystems and ancillary treatment equipment, regulatory compliance and permitting, and preparation of engineering reports and cost analyses in support of client decision-making.

BRETT M. SCHMIDT, P.E.

Mr. Schmidt brings international experience as a former full time environmental engineer for the U.S. Department of Defense, including performance evaluation of numerous drinking water and wastewater systems and preparation of comprehensive reports articulating his findings, and developing technical proposals and work plans for new systems or the upgrade of existing systems. He served on Environmental Compliance Teams assessing numerous pollutants on U.S. military bases and completed subsurface investigations of historical spills of the WWII era. Mr. Schmidt's experience also includes delivery of training presentations to senior DOD public works and environmental personnel in the area of water and wastewater, clean and polluted. In addition to his license as a professional engineer, Mr. Schmidt also has a Juris Doctor and Master's Degrees in Environmental Engineering and Urban Planning.

JOSEPH WILLIAMS, P.E., CIVIL ENGINEER

Mr. Williams has over thirteen years of consulting engineering experience developing construction ready documents in the specific fields of Transportation, Utility, Process Mechanical, and Civil/Site design for public and private clientele. Discipline associated experience in hydrology analysis, construction management, construction inspection, and topographic and boundary survey work.

ROBERT WYMAN, P.E., STRUCTURAL ENGINEER

Mr. Wyman has 53 years experience in structural engineering, being self-employed for the last 25 years. He designed a variety of buildings in wood, concrete, and metal for uses ranging from refineries to schools, up to 100,000 sf, for such companies as Sterns Roger Corporation and C.F. Braun.



TECHNICAL STAFF

STEVEN G. OMER, B.S., DESIGNER/PROCESS OPTIMIZATION/ INSTRUMENTATION & CONTROLS

Mr. Omer has over 12 years of experience in process chemistry, plant operations and GIS, including design and operations experience in the areas of municipal and industrial wastewater and drinking water facilities. He currently possesses Class A Industrial and Municipal Wastewater Operations licenses and brings a hands-on approach to the design and operation of a facility. MODELING BLURB??

STEPHEN G. WILLIAMS, DESIGNER/DRAFTER

Mr. Williams has more than 10 years of design experience in computer aided drafting and design, civil design, land development, GIS and surveying.

BETH A. STODDARD, CONSTRUCTION INSPECTOR/MANAGER

Ms. Stoddard has 25 years of civil/structural inspection experience in water and wastewater treatment plants, erection of steel reservoirs, quality control inspection and documentation for the installation of reinforced concrete, pipelines, and foundation piling, sewer alignments, installation of connections, monitoring backfill and compaction operations, witnessing testing, and setting up of laboratory testing for compaction tests and asphalt testing.

PEGGY MCMAHAN, OFFICE MANAGER

Ms. Lane has 25 years of experience in managing paperwork and record keeping. Her resume includes contract/budget management and job costing for commercial construction projects up to \$4 million, construction contract documents, contractor's applications for pay and change order documentation, research and report composition.

POTABLE WATER AND RELATED EXPERIENCE

Our firm's history in analyzing and/or designing drinking water treatment systems consists of the following different components:

PLANNING

We provide consulting services to municipal clients regarding LT1 and LT2ESWTR, Stage 1 and Stage 2 DDBPR, additional CDPHE regulatory requirements, and compliance strategies.

JAR TESTING/BENCH SCALE TESTING

Although jar testing does not provide a perfect correlation to the full scale facilities, it can provide a baseline of data for the development of a treatment strategy and the related process components.

WATER QUALITY ASSESSMENT

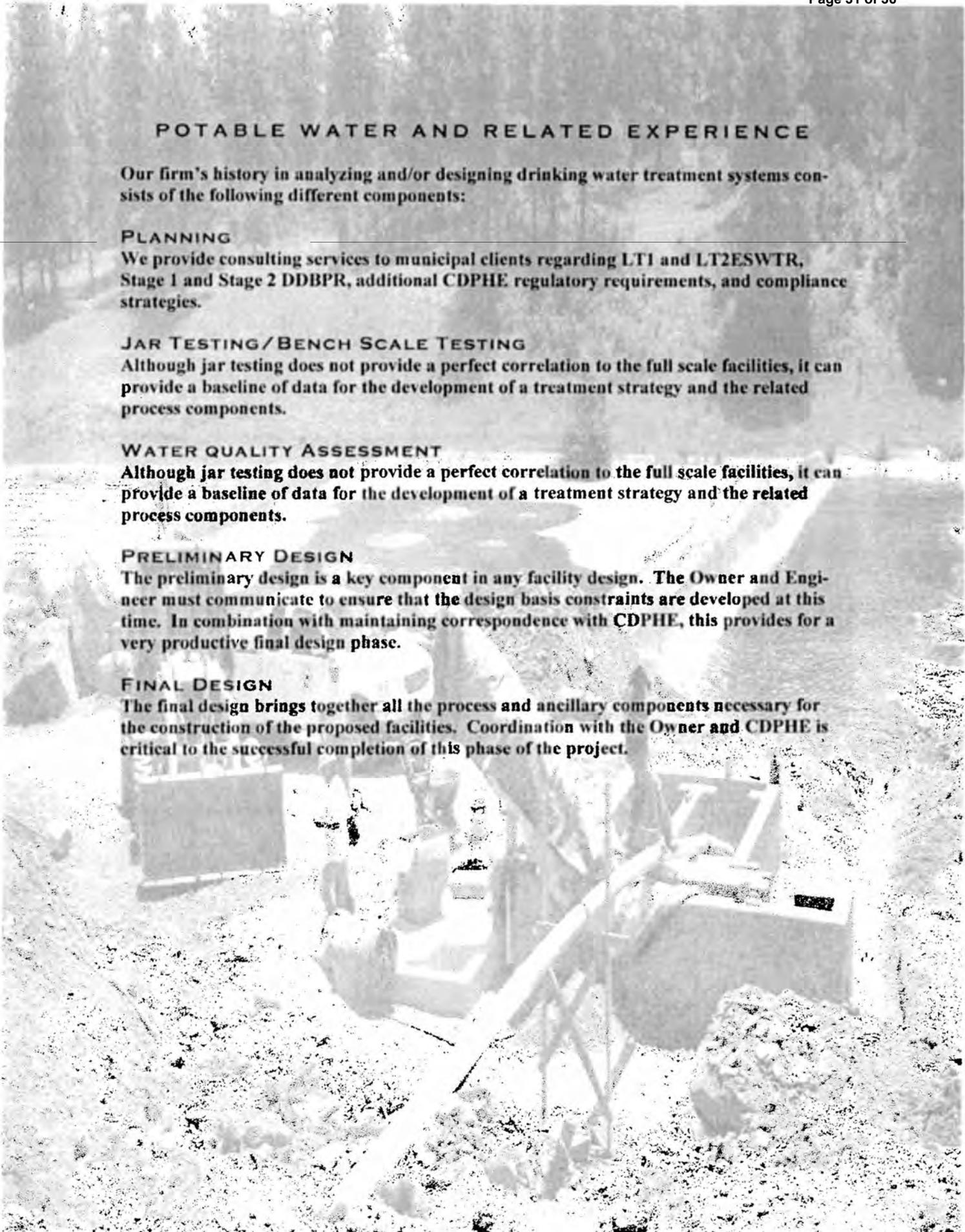
Although jar testing does not provide a perfect correlation to the full scale facilities, it can provide a baseline of data for the development of a treatment strategy and the related process components.

PRELIMINARY DESIGN

The preliminary design is a key component in any facility design. The Owner and Engineer must communicate to ensure that the design basis constraints are developed at this time. In combination with maintaining correspondence with CDPHE, this provides for a very productive final design phase.

FINAL DESIGN

The final design brings together all the process and ancillary components necessary for the construction of the proposed facilities. Coordination with the Owner and CDPHE is critical to the successful completion of this phase of the project.



POTABLE WATER PROJECTS

SAN JUAN RIVER VILLAGE METROPOLITAN DISTRICT

Water Treatment Plant Improvements – 55 gpm Microfiltration System, chemical feed systems, facility structure and miscellaneous site work.

PROSPECT MOUNTAIN WATER COMPANY

Water Treatment Plant Improvements – 45 gpm Microfiltration System, chemical feed systems, clearwell, booster station, facility structure improvements.

NEW MEXICO STATE PARKS

Water Treatment Plant Improvements – 45 gpm Microfiltration System with raw water storage tanks, chemical feed systems, decommissioning of the existing facility, structural improvements and miscellaneous site work.

LUMBERTON MUTUAL DOMESTIC WATER CONS. ASSN.

Water Treatment Plant Improvements – 25 gpm Microfiltration System with conventional pre-treatment, chemical feed systems, facility structure and miscellaneous site work.

MONTEZUMA WATER COMPANY

Water Treatment Plant Improvements – Chlorine Dioxide Feed System and Facility improvements.

MONTEZUMA WATER COMPANY

Secondary Disinfection System Improvements – Chloramines Feed System, and facility improvements.

LAKE DURANGO WATER COMPANY

Water Treatment Plant Improvements – Chlorine Dioxide Feed System, and facility improvements.

TOWN OF BAYFIELD

Water Storage Tank Improvements – 1 MG water storage tank, tank mixing system, and miscellaneous site work.

PAGOSA AREA WATER AND SANITATION DISTRICT

Water Treatment Plant Improvements – Chlorine Dioxide Feed System, 2MGD GAC contactors, clearwell, finished water conveyance pumps, chemical feed systems, facility structure and miscellaneous site work.



**Bayfield Mountain View PRV
Vista
Highlands Lagoon Elimination
Another conveyance system?**

**PAGOSA SPRINGS SANITATION GENERAL IMPROVEMENTS DISTRICT
WASTEWATER TREATMENT PLANT IMPROVEMENTS PROJECT**
0.98 MGD. Replacement of the existing lagoon system wastewater treatment facility, including headworks, sequencing batch reactor activated sludge process, solids digestion, solids handling, and UV disinfection.

**VILLAGE OF TAOS SKI VALLEY
WASTEWATER TREATMENT PLANT IMPROVEMENTS PROJECT**
Wastewater Treatment Plant Improvements Project 0.5 MGD
Replacement of headworks facilities and conventional activated sludge process with Kaldnes process to increase influent organic loading capacity and nutrient removal processes.

**WOLF CREEK SKI AREA
WASTEWATER TREATMENT PLANT IMPROVEMENTS PROJECT**
Wastewater Treatment Plant Improvements Project 0.02 MGD
Replace existing conventional activated sludge process to sequencing batch reactor process to increase organic loading capacity and process removal capabilities, miscellaneous chemical feed systems, and an UV disinfection system.

**PAGOSA AREA WATER & SANITATION DISTRICT
WASTEWATER TREATMENT PLANT IMPROVEMENTS PROJECT**
Wastewater Treatment Plant Improvements Project 0.75– 1.0 MGD Current (4.0 MGD Design)
Upgrade of the existing centrifuge/polymer feed system (added second centrifuge, upgraded control system, polymer feed system, and odor control system); digester modifications to increase VSS conversion (aeration system component modifications, piping/equipment upgrades).

QUALITY ASSESSMENT SERVICES

Corrosion Control

HYDRAULIC MODELING

Briliam is experienced in using the latest technology to help you invest your capital wisely:

- AutoCAD — for comprehensive design and analysis
- SewerCAD — Hydraulic Modeling for water and wastewater systems to plan, design, analyze and optimize wastewater collection systems, both pressurized force mains and gravity hydraulics
- Civil 3D — Briliam is experience in using the latest technology to performs tasks including CAD and modeling.
- SCADA (Supervisory Control and Data Acquisition) Systems (including remote status reporting)

CONSTRUCTION MANAGEMENT/INSPECTION

PROJECT 1

GEOTHERMAL INFRASTRUCTURE

- The use of geothermal water for heating of buildings
 - Analysis of Existing Geothermal Heat Use
 - Heat Exchanger Modeling
 - Evaluation of System Capacity
- The use of geothermal water for snowmelt



ON-CALL SUPPORT AND SERVICE

Briliam Engineering Services LLC is associate with several municipalities and districts to offer on-call service and support.

SPECIAL EXPERTISE



Bank of Oklahoma, N.A.

P.O. Box 2300
Tulsa, Oklahoma 74102

www.bok.com

June 2, 2010

James A. Bush
Grizzly Peak Water Sales and Distribution, LLC
7170 S. Braden, Suite 200
Tulsa, OK 74126

Dear Mr. Bush:

This letter is to serve as proof that Bank of Oklahoma is willing to lend up to \$1,000,000 to Grizzly Peak Water Sales and Distributions.

If additional information is required, please feel free to contact me at 918-588-6375.

Sincerely,

A handwritten signature in black ink that reads "J. Nick Cooper".

J. Nick Cooper
Assistant Vice President
Bank of Oklahoma

Aug 16 10 11:48a Southwest Land Services 9702590181

P. 4

FROM :GOFF

FAX NO. :9702471710

Aug. 19 2010 11:33AM P3

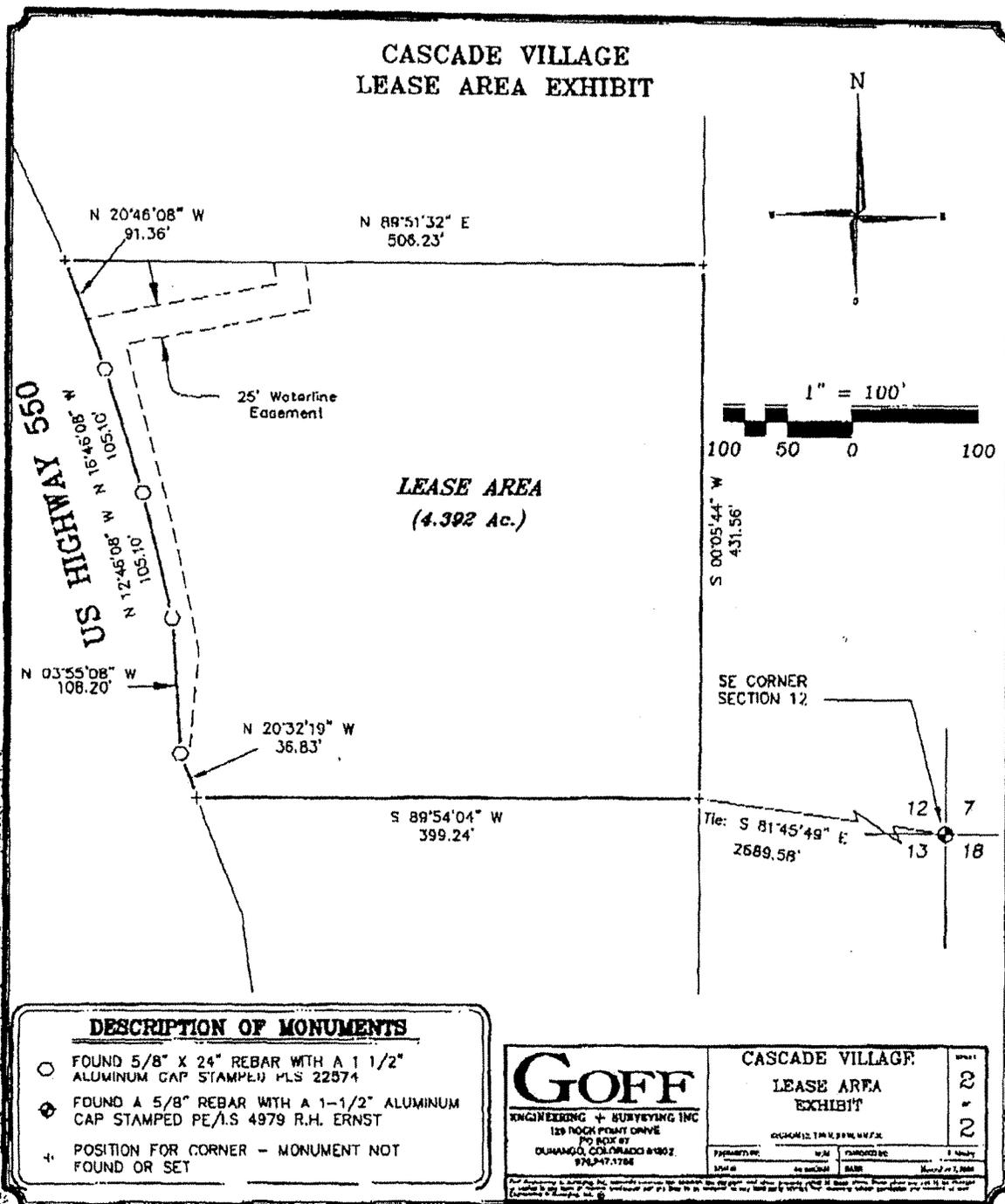


EXHIBIT E