

BRUCE E. SMITH LAW OFFICES, PLLC  
201 SOUTH MAIN STREET  
NICHOLASVILLE, KENTUCKY 40356  
(859) 885-3393 + (859) 885-1152 FAX

RECEIVED

JAN 14 2015

PUBLIC SERVICE  
COMMISSION

BRUCE E. SMITH  
[bruce@smithlawoffice.net](mailto:bruce@smithlawoffice.net)

HENRY E. SMITH  
[henry@smithlawoffice.net](mailto:henry@smithlawoffice.net)

January 14, 2015

**VIA HAND DELIVERY**

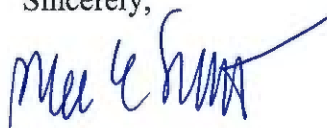
Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Jessamine-South Elkhorn Water District Notice of Filing

Dear Mr. Derouen:

Delivered under cover of this letter is an original and ten (10) copies of **Jessamine-South Elkhorn Water District's Rebuttal Testimony (L. Nicholas Strong, William L. Berkley and John G. Horne) and Notice of Filing thereof.**

Sincerely,



Bruce E. Smith

Enclosures

cc: Robert M. Watt, III, Esq.  
Jennifer Black Hans, Esq.

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**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**APPLICATION OF JESSAMINE-SOUTH ELKHORN )  
WATER DISTRICT FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT AND FINANCE A WATERWORKS )     **CASE NO 2014 -00084**  
IMPROVEMENT PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )**

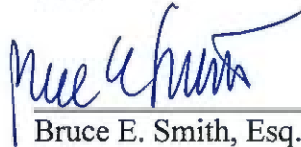
**APPLICANT’S NOTICE OF FILING – REBUTTAL TESTIMONY**

Pursuant to Ordering Paragraph 5 of the Commission’s Order of January 7, 2015 (“Order”), the Applicant, Jessamine-South Elkhorn Water District (the “District”), by counsel, gives notice to the Commission and all other parties hereto that the District has filed under cover of this Notice the following documents:

1. Rebuttal Testimony of L. Nicholas Strong, Chairman of the District;
2. Rebuttal Testimony of William L. Berkley, certified Kentucky appraiser; and
3. Rebuttal Testimony of John G. Horne, P.E.

Anthony G. Martin, Esq.  
P.O. Box 1812  
Lexington, Kentucky 40588  
agmlaw@aol.com  
(859)268-1451

**AND**



---

Bruce E. Smith, Esq.  
Henry E. Smith, Esq.  
Bruce E. Smith Law Offices, PLLC  
201 South Main Street  
Nicholasville, Kentucky 40356  
bruce@smithlawoffice.net  
(859)885-3393  
**CO-COUNSEL FOR DISTRICT**

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Notice with attachments was mailed to the following individuals, postage prepaid, on January 14, 2015:

Robert M. Watt, III, Esq.  
Monica H. Braun, Esq.  
300 West Vine Street, Suite 2100  
Lexington, KY 40507

Jennifer Black Hans, Esq.  
Gregory T. Dutton, Esq.  
Assistant Attorneys General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204



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Bruce E. Smith

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JAN 14 2015

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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IMPROVEMENT PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )

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REBUTTAL TESTIMONY OF WILLIAM L. BERKLEY, JR.

JANUARY 14, 2015

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1           **Please state your name and business address.**

2                     William L. Berkley, Jr.

3                     366 Waller Avenue, Suite 203

4                     Lexington, KY 40504

5           **By whom are you employed and in what capacity?**

6                     Principal – Bluegrass Valuation Group, LLC/Real Estate Appraisers.

7           **Are you certified to appraise real estate in Kentucky?**

8                     Yes. I am a Kentucky Certified General Appraiser #721.

9           **Do you wish to incorporate the testimony and exhibits that you sponsored in Case No.**  
10 **2012-00470 into this proceeding?**

11                     Yes

12           **Do you wish to incorporate the analysis that you prepared and sponsored in Case No.**  
13 **2012-00470 concerning the impact, if any, of the construction of an elevated water**  
14 **storage tank on property values in the Forest Hills subdivision?**

15                     Yes.

16           **Was the analysis that you prepared in Case No. 2012-00470 based on market data and**  
17 **comparisons to other properties?**

18                     Yes.

19           **Have you investigated and updated the market data that you used in Case No. 2012-**  
20 **00470 as the basis for the opinion that you are now expressing?**

21                     Yes.

22           **In Case No. 2012-00470 you testified as a result of your analysis that the presence of**  
23 **a one million gallon water tank on the Switzer site would not diminish real estate**

1 values in the Forest Hills subdivision. After reviewing the Intervenor's testimony in  
2 this case, what is your response to Mr. Toleman's allegation that a 750,000 gallon tank  
3 on the Switzer site will reduce property values in the subdivision by an average of  
4 20%?

5 Mr. Toleman's conclusions are not supported by market data or comparisons to  
6 other properties. The market data and comparisons reflected in my analysis, which was the  
7 basis for my testimony in Case No. 2012-00470, would still be pertinent and reliable when  
8 applied to the 750,000 gallon tank and would result in the same conclusion that a 750,000  
9 gallon tank would not result in a diminution in real estate values in Forest Hills subdivision.  
10 This is confirmed by my recent investigation of market data.

11 **Is there any recent evidence that the market for homes in Forest Hills has been**  
12 **negatively impacted in any way given the possibility of a 750,000 gallon elevated water**  
13 **tank being constructed on the Switzer site?**

14 Other than normal market variations, there are no noted negative changes in  
15 marketing times, properties for sale, sold, expired listings or sale prices in Forest Hills  
16 subdivision since 2012 when knowledge of a proposed tank was publicized.

17 **Does recent building activity in the Forest Hills subdivision support Mr. Toleman's**  
18 **claim that the construction of a water tank as proposed in this application will reduce**  
19 **property values by 20%? Please explain.**

20 No. An analysis of Multiple Listing Service (MLS) data since 2010 for Forest Hills  
21 subdivision does not indicate a variation in the number of properties for sale or sold, in  
22 marketing times or expired listings above normal market fluctuations.

23 **Is Mr. Toleman's allegation of a 20% decline in property values in the Forest Hills**  
24 **subdivision supported by an objective study or analysis? Please explain.**

1           No. Mr. Toleman relied solely upon published Jessamine County Property  
2 Valuation Administrator's (PVA) assessed values and then applied an unsupported  
3 diminution factor of 20% to calculate his estimated damage to Forest Hills' property  
4 values. Further, Mr. Toleman made no study or market analysis of Forest Hills or of  
5 comparable neighborhoods to support his conclusion. A comparable neighborhood,  
6 Harrod's Ridge, which has an existing 500,000 gallon elevated water tank already  
7 constructed that is located within the view shed of a number of homes in that neighborhood,  
8 is located across Harrodsburg Road (US 68) from Forest Hills and could have easily been  
9 utilized.

10           **In response to the District's Information Request No. 9, Mr. Toleman provided a**  
11 **number of economic studies that he stated were used by him in preparing his**  
12 **testimony for this case. Do the studies provided by Mr. Toleman support his**  
13 **methodology or conclusion in this case?**

14           No. Many of the articles cited by Mr. Toleman emphasized the importance of  
15 basing appraisal opinions on market data and upon the comparison of the subject property  
16 to comparable properties. Mr. Toleman did not use market data or comparisons in reaching  
17 his opinion. One of these articles, which focused on the analysis of Detrimental Conditions,  
18 went so far as to declare that quantifying damages on something less than market data when  
19 it is available, as it is here, was reckless and probably unethical. None of the articles  
20 specifically studied water towers and none proposed or endorsed Mr. Toleman's use of  
21 PVA data and the appraiser's professional judgment as to a diminution factor, not based  
22 on market data, as an acceptable basis for stating an opinion.

23           **What is your opinion with respect to the impact, if any, of the construction of the**  
24 **proposed 750,000 gallon elevated water storage tank on property values in the Forest**

1           **Hills subdivision, in particular with respect to Mr. Toleman's conclusion?**

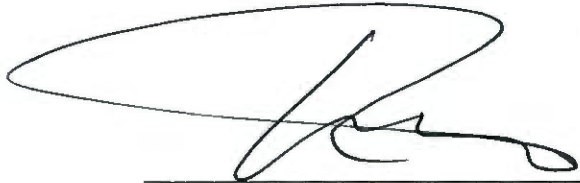
2           In my opinion, there would be no diminution in the real estate values of Forest Hills  
3 subdivision as a result of the construction of a 750,000 gallon elevated water storage tank.  
4 My opinion and conclusion are based on my examination of past and recent real estate  
5 market data for Forest Hills subdivision, of past and recent real estate market data from a  
6 comparable subdivision, Harrods Ridge, located across Harrodsburg Road from Forest  
7 Hills subdivision where a number of homes and lots are within the view shed of the above  
8 ground tank and others are not, as would be the case if a tank were constructed in Forest  
9 Hills. This recent data was compared for an indication of differences in real estate values  
10 and none were found. I also examined recent market data for homes in proximity to the  
11 elevated water storage tank located at the Arboretum on the University of Kentucky  
12 campus in Lexington, Kentucky and found no evidence which would alter my opinion that  
13 the presence of above ground water tanks in residential areas do not adversely impact real  
14 estate values in those areas.

15  
16  
17  
18                           **VERIFICATION FOLLOWS ON THE NEXT PAGE**



1 **VERIFICATION**

2 The undersigned, William L. Berkley, Jr. being duly sworn, deposes and says that he has personal  
3 knowledge of the matters set forth in the foregoing responses for which he is the identified witness  
4 and that the information contained therein is true and correct to the best of his information,  
5 knowledge and belief.

6   
7 \_\_\_\_\_

8 William L. Berkley, Jr.

9 COMMONWEALTH OF KENTUCKY

10 COUNTY OF FAYETTE, SCT...

11 Acknowledged, subscribed and sworn to me, a Notary Public in and before said County  
12 and State by William L. Berkley, Jr., this the 14th day of January, 2015.

13 (Exp. date: 10/3/17) Henry Smith 498 328  
14 NOTARY PUBLIC NO.

15  
16  
17  
18 **Bes/JSEWD/Forest Hills/Application No. 2/Testimony/Berkley/Berkley Rebuttal**

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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IMPROVEMENT PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )

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REBUTTAL TESTIMONY OF JOHN G. HORNE

JANUARY 14, 2015

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1 **Please state your name and business address.**

2 John G. Horne

3 Horne Engineering Inc.

4 216 South Main Street

5 Nicholasville, KY 40356

6 **Have you previously filed direct testimony in this proceeding?**

7 Yes.

8 **Have you previously testified before this Commission?**

9 Yes, several times. The most recent being in Case No. 2012-00470.

10 **Do you wish to incorporate the testimony and exhibits that you provided at the hearing**  
11 **in Case No. 2012-00470 concerning siting issues into this proceeding?**

12 Yes.

13 **Do you wish to incorporate the analysis filed with the PSC on February 25, 2013, that**  
14 **you prepared in Case No. 2012-00470 in which you reviewed a number of sites that**  
15 **were suggested by Photo Science as alternative sites for the one (1) million gallon water**  
16 **tank for which the District sought approval in that case?**

17 Yes.

18 **Is that report still accurate and are the recommendations contained therein still**  
19 **appropriate for this proceeding as to site selection?**

20 Yes.

21 **Mr. Ritchie in his testimony in this case stated that “the Water District failed to**  
22 **consider alternative sites and, thus, has not conducted a reasonable site selection**  
23 **process.” Do you have any comments on this allegation?**

24 Mr. Ritchie’s term, “the Water District failed to consider alternative sites and, thus,  
25 has not conducted a reasonable site selection process.” is confusing as to when this allegation

1 applies. In one utterance, it is applied before the purchase of the Switzer Site and then in  
2 another it refers to the time period after the hearing of Case No. 2012-00470. Both are in  
3 error.

4 Original Purchase

5 In the early stages of the Water District's search for a usable site, there were  
6 eleven (11) possible locations identified. However, the owners of seven (7) of these  
7 sites were not interested in further discussions with the District. Consequently, prior  
8 to and concurrent with the purchase of the Switzer Site, there were only four (4) sites  
9 under consideration. They were: 1) Switzer, 2) Henry Knight, 3) Cave Springs Farm,  
10 and 4) R.J. Corman. Contrary to Mr. Ritchie's assertion that there is only one proper  
11 way and method that a proper and suitable site may be selected for a water tower, my  
12 fifty plus years in the field of engineering water systems has taught me this is  
13 inaccurate. That, coupled with my forty-two (42) years as consultant to the  
14 Jessamine-South Elkhorn Water District and forty-eight (48) years of the practice of  
15 land surveying and engineering in Jessamine County has afforded me the insight and  
16 knowledge not available to a matrix modeling computer program.

17 I agree with Mr. Ritchie's proposition that there are alternate sites available  
18 for the construction of a water tower, but I take strong exception that alternative sites  
19 were not considered prior to the District's acquisition of the Switzer Site. In totality,  
20 the District has investigated twenty-one (21) sites, and of all these sites, the Switzer  
21 Site remains the most appropriate.

22 Ritchie Alternates

23 It is true that subsequent to the hearing of Case No. 2012-00470, the District  
24 did not conduct any additional survey and/or investigations proposing to relocate the  
25 existing site of the water tower. The question begs the answer, why should the

1 District incur additional waste of time and monies – when the District had already  
2 evaluated the seven (7) alternate sites (B-H) advocated in Mr. Ritchie’s siting study,  
3 utilizing his procedural methods by Horne Engineering, Inc. in a study titled  
4 “Evaluation of Jessamine-South Elkhorn Water Tank Siting Study By Photo Science,  
5 January 3, 2013” which was presented in Case No. 2012-00470. The conclusive  
6 results of this evaluation are shown on page 35 wherein the Switzer Site received the  
7 highest matrix ranking and a matrix value 2.3 times the nearest site (B) and 11.9  
8 times the highest site (G). Therefore, by Mr. Ritchie’s own selection process, the  
9 Switzer Site still proves to be the best site, even when the Intervenor’s primary  
10 argument of view shed is an integral part of the evaluation.

11 **Mr. Ritchie provided an aerial photograph taken in July, 2014 as part of his testimony.**

12 **Does this photograph provide any further support for Mr. Ritchie’s allegations?**

13 It is difficult to respond to this allegation or the arguments Mr. Ritchie purports to  
14 convey with this photograph due to a dearth of specific information or cross-reference to his  
15 prior argument. However, the following points are addressed based on my assumption of  
16 the purpose of the photograph and based on the only specifics of the photograph, i.e.; the  
17 legend.

18 Removed Structures:

19 A careful search of the photograph reveals only three (3) removed structures  
20 noted, two are apparent farm outbuildings on the McMillan Farm and a mare/light  
21 barn on the Ramsey Farm. However, it is confusing when you note that the  
22 photograph clearly shows that the mare/light barn, which was allegedly removed, is  
23 still standing.

1                   New Structures:

2                   Since the primary thrust of the opposition is the objection to residents being  
3                   able to view the proposed water tower, I assume the plotting of new structures was  
4                   intended to represent single family residences. However, on closer examination of  
5                   the photograph, Mr. Ritchie plotted ALL STRUCTURES including barns, farm  
6                   sheds, and some that are undetermined.

7                   New Residences – Forest Hills - Interestingly, Mr. Ritchie does indicate  
8                   seven (7) new homes in Forest Hills that have been constructed in the time  
9                   period of January 3, 2013 to July 5, 2014. However, this photograph does  
10                  not show an additional two (2) residences that have begun construction  
11                  subsequent to the July 5, 2014 photograph, making a total of nine (9) new  
12                  residences that have been started or completed subsequent to the date of the  
13                  complaint filed by Forest Hills residents. This represents an approximate  
14                  50% increase of residences in a subdivision that allegedly will be destroyed  
15                  both as to desirability and value due to the threat of a proposed water tower.  
16                  Six of those new residences are being or were constructed on Chinkapin  
17                  Drive – one almost in the shadow the proposed tank with a view  
18                  unencumbered by even a tall weed. All these homes were or are being built  
19                  with the wide-spread publicizing of the proposed construction of the water  
20                  tower.

21                  Validity:

22                  A detailed review of the information shown and/or indicated on the  
23                  photograph and in comparison with the photograph evidence (4. Build Environment,  
24                  page 4) of the January 3, 2013 Jessamine-South Elkhorn Water District Water Tank

1 Siting Study, reveals some major discrepancies and/or errors, some of which are as  
2 follows.

3 **Silver Fox Drive** – The Siting Study indicated only three (3)  
4 residences on Silver Fox, but the photograph clearly indicates five (5) with  
5 no indication of any being a new structure.

6 **1050 contour** – Unsure as to the purpose of the 1050 contour, but it  
7 should be noted that all are located outside of and east of the District's  
8 easterly boundary. Apparently, Mr. Ritchie is not familiar with the statutory  
9 requirement of the Water District service boundaries.

10 There are two (2) of the 1050 contour that are located outside of and  
11 adjacent to Jessamine-South Elkhorn Water District's east service boundary.  
12 These are located on the Crowe Farm and the 1050 contour essentially  
13 outlines a barn and a residence. If the purpose of this designation was to  
14 show areas of appropriate siting for a proposed tank, then I submit that it has  
15 failed, because I do not think any reasonable person would request that a  
16 water tower be constructed on top of a home or a barn.

17 **Eagle Drive** - The cul-de-sac loop has four (4) single family  
18 residential lots. The Built Environment map of the siting study indicates  
19 three (3) existing homes. Whereas, the July 5, 2014 photograph indicates two  
20 (2) new structures subsequent to the January 3, 2013 Siting Study, giving a  
21 total of five (5) homes. This is an error because you cannot build five (5)  
22 homes on four (4) lots, so one of the maps is in error.

1                    **1027 contour** – It is unclear as to the purpose of this or the other 950  
2                    contour and 1000 contour. The proposed water tower is based on a 1,023-  
3                    foot elevation. Therefore, it would appear that this contour should have been  
4                    shown.

5                    **Mr. Ritchie states that the District has chosen a site for the proposed 750,000 gallon**  
6                    **tank in this proceeding that is “inappropriate”. Do you have any comments on this**  
7                    **allegation?**

8                    Mr. Ritchie makes the allegation that the Switzer site is inappropriate, but has not  
9                    offered one scintilla of evidence to support that allegation. The thrust of his argument and  
10                   that of his client is that the proposed water tower can be viewed by the residents of Forest  
11                   Hills and they want it denied and ordered to be relocated to another site so that it can be  
12                   viewed by “other” people.

13                   Nowhere in Mr. Ritchie’s original testimony or rebuttal does he acknowledge the fact  
14                   that the Switzer site was evaluated and selected several years prior to his clients’ constructing  
15                   their homes. Had the water tower been constructed at that time, most likely the only homes  
16                   that would be able to view the Switzer tank would be the same ones that were already  
17                   viewing the existing Parks Lane (500,000 gallon at Harrods Ridge Subdivision) and  
18                   Harrodsburg Road (50,000 gallon on Old US 68) tanks.

19                   The thrust of Mr. Ritchie’s arguments and presentation can best be described as a  
20                   “shell game”. In one breath he states that his evaluation is “... patterned after the Electric  
21                   Power Research Institute/Georgia Transmission Corporation (EPRI/GTC) Transmission  
22                   Line Siting Methodology..” and goes on to state that it has been, and is used to site electric  
23                   transmission lines in Kentucky, but at no point does he cite where this specific methodology,  
24                   or a derivation of same, is used to site elevated water tanks.



1 Mr. Ritchie goes on to cite the use of the “three prong methodology” in preparation  
2 of another report entitled “Water Main Routing Study and Pumping Station Siting Study”.  
3 Mr. Ritchie stated, this study was never submitted to or reviewed by the PSC. Review of  
4 this study reveals that in regards to selection of water transmission main corridors, the study  
5 was very detailed and extensive, although “view” appears not to have been a consideration.

6 One must acknowledge that a water main is subterranean and is not visible.  
7 However, the pump station would be an above ground structure and clearly visible.  
8 Interestingly, it appears the entirety of the site evaluation for the visible portion of the  
9 proposed infrastructure was:

#### 10 3.4 Pumping Station Site Evaluation

11 “The RR Team was provided with general guidance from the BWSC  
12 that the pump station site would ideally be located in the western third of the  
13 project area. Using that information as guidance, the new Midway  
14 development proposed on the northeast side of the intersection of Interstate  
15 64 and State Route 341 emerged as an ideal site for the pumping station. The  
16 site was located adjacent to the transmission main corridor identified by the  
17 initial Corridor Analyst simulation, adjacent to I-64 which would make it  
18 easily accessible to maintenance and was near sufficient electrical power.  
19 The RR Team obtained development plans for the site which further justified  
20 this location as a possible site.

21 Information that became available later in the study limited the pump  
22 station site to an area between Duckers Station Road and 2,000 feet east of  
23 Highway 1685 due to hydraulic constraints. This meant that the Midway site  
24 near State Route 341 was no longer a viable site because it would cause an  
25 unacceptable loss in suction pressure. Further evaluation of other sites that

1 meet the new requirement was not performed as part of this study and will  
2 need to be completed during the detailed design phase.”

3 In Case No. 2012-00470 and as was previously stated in this rebuttal, we conducted  
4 an evaluation of the alternate sites suggested by Mr. Ritchie utilizing methodology proposed  
5 by Mr. Ritchie and our conclusion was that the most appropriate site was the Switzer Site.

6 **Is the Switzer site an appropriate site for the proposed 750,000 gallon water tank?**

7 The following is evidence that the proposed 750,000 gallon water tank on the Switzer  
8 Site is appropriate.

- 9 • Approval of the Catnip Hill Water Tank Project Profile by the Bluegrass  
10 (409) Water Management Council.
- 11 • Bluegrass (409) Water Management Council’s ranking of the Catnip Hill  
12 Tank as the No. 1 priority of Jessamine County water projects.
- 13 • State Clearinghouse approval of the project including clearance for the  
14 following categories:
  - 15 ○ Archeological
  - 16 ○ Environmental
  - 17 ○ National Wildlife
  - 18 ○ Prime Farmland
- 19 • Concurrence by Federal Aviation Administration
- 20 • Approval by Division of Water, Kentucky Environmental Protection Agency
- 21 • Review of hydraulic and construction plans by PSC staff
- 22 • Kentucky Infrastructure Authority approval
- 23 • Kentucky Transportation Cabinet approval
- 24 • Jessamine County Planning Commission approval
- 25 • The site is located within 200± from a county road.

- 1 • The site is near the centroid of the District demand.
- 2 • The site is adjacent to a 12” main that is directly attached via other 12” mains
- 3 for parallel looped mains to the supply source pump station.
- 4 • Site belongs to the District.
- 5 • System upgrades and hydraulic reinforcement completed subsequent to site
- 6 purchase were completed, predicated on this site.
- 7 • Availability

8 To date, the only objection of appropriateness appears to evolve from several  
9 residents of Forest Hills Subdivision with the glaring absence of any other adjoiner  
10 objecting. The foregoing compels the conclusion that the Switzer Site is appropriate.

11 **Mr. Davis alleges that John Horne, “sought information regarding the discussion and**  
12 **attendance at Forest Hills Residents Association, Inc.’s meeting” and “that Mr. Horne**  
13 **was advising a Forest Hills resident regarding the legal arguments made in Case No.**  
14 **2012-00470. What is your response to these allegations?**

15 Once again, Mr. Davis has attempted to support the Intervenor’s position(s) by  
16 alleging multiple actions on my part, which are unsupported by the facts.

- 17 • Initial contact was by Mr. Haley calling my office as evidenced on the phone
- 18 log of April 21, 2014.
- 19 • My initial conversation with Mr. Haley was on May 1, 2014, and as my notes
- 20 indicate, was essentially responding to Mr. Haley’s concerns and questions,
- 21 and not seeking information from him.
- 22 • The matter of context is important in placing in perspective Mr. Davis’
- 23 assertion of rancor in quoting the phrase “not going to back down” which was
- 24 contained in Note 2:

1                    “He wanted some definite statement that it was going to happen. I  
2                    responded not qualified to make that response. But common sense  
3                    tells you that District not going to back down.”

4                    This was in response to Mr. Haley’s concern as to whether or not a tank is  
5                    going to be constructed, and again, common sense tells one that unless PSC  
6                    amended their regulations regarding minimum storage, the District is by  
7                    regulation required to build a tank. Therefore, they are not going to (cannot)  
8                    back down.

9                    Review of the notes regarding the additional phone conversations between myself  
10                    and Mr. Haley would be construed by any reasonable person as a fact finding discussion  
11                    between two (2) individuals, with neither trying to influence nor interrogate the other.

12                    **Do you have any further comments about the testimony filed by Intervenor Forest Hills**  
13                    **in this proceeding?**

14                    As an engineer with fifty plus years of experience, I believe that the paramount  
15                    parameters and considerations of an engineering project is – engineering. But that is not to  
16                    say that other or additional factors should not be considered. However, in my long years of  
17                    experience, I have never encountered, before this, a situation where being able to see an  
18                    elevated water storage tank is even a consideration, much less a contended controlling factor.

19                    After a review of the engineering contents of the Kentucky Administrative  
20                    Regulations, State Revolving Fund Handbook, and the Public Service Commission  
21                    regulations, regarding potable water, I have not found any notation or inference that being  
22                    able to see an elevated water storage tank is even mentioned, inferred, discussed, or made  
23                    conditional to the approval of construction of an elevated water storage tank.

1 As to the proposition of the Intervenor's consultant that the Switzer Site is  
2 inappropriate, one has only to look at Mr. Ritchie's Water Tank Siting Study to find his  
3 proof, in fact, supports the appropriateness of the Switzer Site.

4 On page 7, under the title "5. Built Environment with Viewshed" there is an aerial  
5 photograph overlain with red color which Mr. Ritchie states, "The areas in red on this map  
6 are visible from residences. Therefore, **the areas without red represent siting**  
7 **opportunities.**"(emphasis added) The map also shows the property lines and since Mr.  
8 Ritchie stated, "Photo Science created the most accurate terrain map of Jessamine County  
9 that has ever been created." one must presume the property lines to be accurate. Although  
10 the scale of the map is quite small and one must use a magnifying glass to view, it is very  
11 clear that the northeastern corner of the Switzer Property (i.e.; Switzer Site) is NOT colored  
12 red, and by Mr. Ritchie's own statement, it is a siting opportunity.

13 Even if one argued that the Switzer Site area is too small to be able to see and evaluate  
14 (to which I would take exception), it is indisputable that the areas east of the Switzer and  
15 Forest Hills boundary are completely absent of any red color. Also, the majority of the  
16 eastern portion of the five (5) Forest Hills lots immediately northerly of the Switzer boundary  
17 is also absent of any red color, stipulating that they, too, "represent siting opportunities.

18 **Having reviewed the testimony filed by Intervenor Forest Hills in this case, as well as**  
19 **the record in the previous proceeding, and having considered numerous alternative**  
20 **sites, what is your recommendation as to the proper site for this proposed water tank?**

21 The appropriate site is the Switzer Site. The Intervenor has failed to prove the Switzer  
22 Site is inappropriate under their three prong evaluation which are; "Engineering Criteria,  
23 Natural Environment and the Built Environment".

24 Engineering Criteria – Not one iota of evidence or even an allegation was  
25 presented by the Intervenor to suggest that the Switzer Site did not meet engineering

1 principles or design. In fact, the site has received engineering approval from all  
2 required agencies.

3 Natural Environment – By the Intervenor’s own evidence and presentation,  
4 the Switzer Site does not violate any natural environment. In fact, the site has  
5 received environmental approval under the State Clearinghouse process.

6 Built Environment – The majority, if not all, of the basis of the Intervenor’s  
7 objection stems from their allegation that being able to see the proposed water tower  
8 would lower the value of their existing homes and by deduction would lower the  
9 desirability of the remainder of the subdivision. Although implying this concluded  
10 principle to nearby areas and subdivisions, they have failed to provide proof or  
11 testimony that persons other than a minority in the Forest Hills Subdivision either  
12 cares or objects to construction of the proposed water tower.

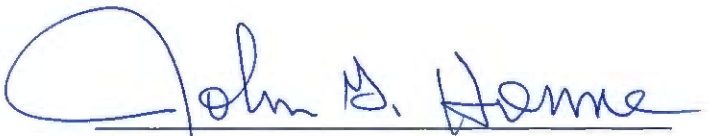
13 Their argument is further weakened by their own testimony (via the July 5,  
14 2014 photograph) that shows six (6) homes constructed post Case No. 2012-00470  
15 hearing, four (4) of which are in direct view of the proposed water tower. What is  
16 also interesting is there are two (2) additional homes under construction, both in  
17 direct view of the proposed water tower. In fact, one is almost in the shadows of the  
18 tank with an unobstructed view.

19 In conclusion, the Intervenor has failed to substantiate its allegation regarding the  
20 inappropriateness of the Switzer site regarding engineering and environment, and by its own  
21 evidence has disproved its allegation of view shed detriment. The Intervenor has attempted,  
22 but failed to conclusively prove that the Switzer Site is inappropriate. In fact the applicant,  
23 based on the Intervenor’s evidence, has shown and proves that the Switzer Site is the  
24 appropriate site for construction of the elevated storage tank Also, in my fifty some years of

1 experience in water system and storage tanks, I cannot recall where being able to see the  
2 tank was a basis for denial. Therefore, I strongly recommend that the Commission issue the  
3 requested CPCN approving financing and construction of the 750,000 gallon tank at the  
4 Switzer Site.

5 **VERIFICATION**

6 The undersigned, John G. Horne, being duly sworn, deposes and says he is President of Horne  
7 Engineering, Inc. and that he has personal knowledge of the matters set forth in the foregoing  
8 responses for which he is the identified witness and that the information contained therein is true  
9 and correct to the best of his information, knowledge and belief.

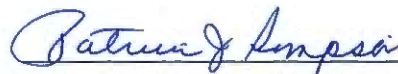
10   
11

12 John G. Horne, P.E.

13 COMMONWEALTH OF KENTUCKY

14 COUNTY OF JESSAMINE, SCT...

15 Acknowledged, subscribed and sworn to me, a Notary Public in and before said County and  
16 State by John G. Horne, this the 14 day of January, 2015.

17   
18

19 NOTARY PUBLIC

NO. 462930

Bes/JSEWD/Forest Hills/Application No. 2/Testimony/Horne, J Rebuttal Testimony

Expri: March 13, 2016

RECEIVED

JAN 14 2015

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JESSAMINE-SOUTH ELKHORN )  
WATER DISTRICT FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT AND FINANCE A WATERWORKS ) CASE NO 2014- 00084  
IMPROVEMENT PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )

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REBUTTAL TESTIMONY OF L. NICHOLAS STRONG

JANUARY 14, 2015

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1 **Please state your name and business address.**

2 L. Nicholas Strong  
3 1900 Cambridge Drive  
4 Lexington, KY 40504

5 **By whom are you employed and in what capacity?**

6 President – Old Colony Insurance Service, Inc.

7 **Do you serve in any capacity with the Jessamine South Elkhorn Water District?**

8 Yes. I am Chairman of the Board of Commissioners of the District.

9 **Do you wish to incorporate the testimony and exhibits you sponsored at the hearing**  
10 **in Case No. 2012-00470 into this proceeding?**

11 Yes

12 **Has the District provided a complete history of its efforts to review alternative sites**  
13 **and its conversations with various concerned parties (including subdivision**  
14 **developer Barry Mangold) with respect to site selection and alternatives prior to the**  
15 **filing of Case No. 2012-00470?**

16 Yes. A summary of the events was filed as part of the District's Answer to the  
17 Intervenor Association's Complaint made in Case No. 2011-00138, which was  
18 incorporated into the District's first CPCN Application in Case No. 2012-00470 which  
19 has been incorporated into this proceeding. A copy of that portion of the Answer  
20 containing the summary, titled *Unmentioned Project History by Complainants*  
21 ("History") is attached as Exhibit "A". There are two typographical errors in this  
22 summary which are insignificant to an understanding of the history of this matter. First,  
23 the elevation necessary for the location of the tank site had to be 1,000 feet, not 950 feet,

1 and second, the date of "February of 2010" found in the first literary paragraph on page  
2 eight (8) of Exhibit "A" should be "February of 2011".

3 **What steps did the District take to advise the developer Mr. Mangold of its plans for**  
4 **the Switzer property?**

5 The District became aware of plans to construct a residential subdivision (Forest  
6 Hills) on property adjoining the Switzer Site about one year after it had taken title to the  
7 Site. The District's engineer corresponded with the developer of the subdivision  
8 (Mangold) and advised of the District's plans to construct a tank. The letter also  
9 admonished the developer to place potential purchasers of lots in Forest Hills on notice of  
10 the tank's future construction. After the letter, the developer and the District engaged in  
11 discussions over an eight-month period regarding the relocation of the tank site to a spot  
12 within the Forest Hills boundary. A verbal agreement between the District and the  
13 developer as to the relocation was reached and a written contract was prepared by the  
14 District's counsel. The contract was forwarded to the Developer for signing, but without  
15 explanation the developer stopped communicating with the District and did not sign the  
16 contract.

17 **Mr. Davis has alleged that the District has acted in bad faith with respect to**  
18 **considering an alternative site for the proposed water tank, and that the District**  
19 **"never actually considered moving the proposed tank to an alternate location."**  
20 **What is your response to this allegation?**

21 The record compiled in Case No. 2012-00470 and the History attached as Exhibit  
22 "A" substantiate the District's search for and consideration of 11 alternate tank sites prior  
23 to its purchase of the Switzer Site, the consideration of the three (3) sites suggested by  
24 Mr. Davis and Mr. Bates prior to the filing of their Complaint (Case No. 2011-00138)

1 and the evaluation of the seven (7) alternate sites proposed by the Intervenor Association  
2 in the prior CPCN proceeding (Case No. 2012-00470). Mr. Davis' allegation of "bad  
3 faith" on the part of the District in considering alternate sites is apparently based upon his  
4 recent discovery of the limitation to a specific site for the expenditure of these funds that  
5 is imposed by the Grant Assistance Agreements with the Kentucky Infrastructure  
6 Authority ("KIA"). It is actually the grants of these funds by the Kentucky General  
7 Assembly ("KGA") which are site specific and the Grant Assistance Agreements with the  
8 KIA simply reinforce this limitation. The Switzer Site, acquired by the District in 2004,  
9 was linked to the initial \$1,000,000.00 grant by the KGA in April of 2008 when it passed  
10 the law making these funds available, two (2) years before any contact by the Forest  
11 Hill's residents with the District. The existence of this limitation does not mean that it is  
12 carved in stone. This limitation can be changed as demonstrated by the recent addition to  
13 the tank project of the \$440,000.00 in grants that were specific to another project and  
14 location. However, a suitable alternate site must be identified and available before an  
15 attempt can even be made to persuade the KGA to enact the appropriate legislation to  
16 change the site where the funds can be spent. The process of changing sites is one fraught  
17 with uncertainty since it is a legislative undertaking. To add to the risk involved, the  
18 grant funds have to be re-authorized by the KGA at its 2016 session. Injecting a change  
19 in site into the political process on top of a re-authorization of funds would be a venture  
20 not to be undertaken lightly unless absolutely necessary. Further, the site limitation  
21 imposed by the KGA is only one of many hurdles to be negotiated before an alternate site  
22 could be accepted. There are also approvals from various federal and state agencies that  
23 must be obtained. The Water District demonstrated its good faith in considering an  
24 alternate site by devoting the time and the dollars in holding the discussions with Mr.

1 Davis and Mr. Bates and by investigating the sites proposed by them before the first  
2 CPCN Application and the Intervenors in the that proceeding. The District spent eight  
3 months in discussion with the Forest Hills' residents only to have them refuse to move  
4 forward with an offer they made and then receive a Complaint they filed falsely alleging  
5 that they had been mistreated by the District. The History attached fully documents the  
6 events which actually took place. Mr. Davis' allegations of bad faith, when compared to  
7 the events recounted therein, are obviously untrue.

8 At present, the District owns a suitable lot for which all approvals and permits  
9 have been obtained save that of the PSC. This site is similar in location to a 500,000  
10 gallon elevated water storage tank located near and in the view shed of a subdivision of  
11 equal stature and value to Forest Hills that is located immediately across US 68 from it.  
12 The site is already served by a 12" water main constructed with pipe left over from  
13 another project and no booster pumps will be required for the operation of the tank at this  
14 site. There is no reason to continue to try to identify an alternate site simply to placate the  
15 desires of less than one (1%) percent of the total customer base served by the District in  
16 this area.

17 **Do you have any response to Mr. Davis' statement that he is disappointed the**  
18 **District has not conducted a "recent analysis" of alternate tank sites and that this**  
19 **inaction is unreasonable?**

20 Mr. Davis' disappointment that the District "still refuses to consider any alternate  
21 locations or alternate storage options" is unrealistic. The District investigated three (3)  
22 sites suggested by Mr. Davis and Mr. Bates before the Complaint was filed by the  
23 Intervenor Association and found them unsuitable for good and sufficient reasons. Then  
24 it fully investigated the seven (7) alternate sites suggested by the Intervenor's expert in

1 the first CPCN proceeding and found all of them to be either unavailable and/or  
2 unsuitable as locations. At this point, the District has expended thousands of dollars  
3 investigating 11 sites prior to its purchase of the Switzer Site, three (3) sites during  
4 discussions with Davis and Bates and the seven (7) sites suggested by the Intervenors'.  
5 The District's supplier of water (Kentucky American Water Company) has affirmed by  
6 letter filed herein that it cannot "guarantee additional capacity to serve the Water District  
7 in an emergency situation" and that the contract between the two "places the  
8 responsibility for storage solely on the Water District". The District does not believe it  
9 prudent to continue the expenditure of funds simply to try and find a site that is  
10 acceptable to a very small, but vocal minority of its customer base. To do so would be  
11 unfair to the District's other customers.

12 **Mr. Davis alleges that the District has been "acting with rancor" towards the**  
13 **Intervenor. Would you care to comment on this claim?**

14 Mr. Davis' claims of unreasonable treatment by the District and the District's  
15 refusal to consider another site for the tank are completely false and are apparently  
16 motivated by his desire to stop construction of the tank regardless of the events that  
17 actually took place. Although the District had already completed its due diligence as to  
18 the suitability of the Switzer Site at an expense of \$15,731.33 and expended \$40,000.00  
19 for purchase of the Site almost six years before a resident of Forest Hills approached the  
20 District about its plans for the Site and in spite of the fact that the District had  
21 substantially completed the tank's design based on the location of the Switzer Site at a  
22 cost of \$65,000.00, the District agreed to discuss an alternative site with Mr. Davis and  
23 another resident of Forest Hills, Mr. Bates, beginning in June of 2010. The discussions  
24 which proved unsuccessful took place over eight (8) months as outlined in the History.

1 Nonetheless, Davis approached me after the March 2011 meeting and proposed another  
2 spot on the McMillen farm ("McMillen site No. 2") and offered to post a \$250,000.00  
3 letter of credit as security for the added costs of investigating and relocating to this site. I  
4 polled the District's other Commissioner's by telephone and they agreed to once again try  
5 to accommodate the Forest Hills residents if they would sign a memorandum of  
6 understanding regarding this further investigation and post the letter of credit which they  
7 suggested. The District's counsel forwarded the memorandum of understanding on to  
8 Davis on March 11, 2011, but he reneged on his offer and a month later the Intervenors  
9 filed a Complaint with the PSC (Case No. 2011-00138). Thereafter, the District filed a  
10 CPCN Application (Case No. 2012-00470) which the Forest Hills residents vigorously  
11 opposed as they are doing in this second Application. It does not make sense that Mr.  
12 Davis would contend that anyone but himself has acted with rancor in this matter. He and  
13 Mr. Bates were treated with the utmost courtesy at their meetings with the District and  
14 the two of us have never spoken a harsh word towards the other. The District is  
15 proceeding with the intention of doing what is best for the customer base at large after  
16 having investigated and seriously considered the concerns of a distinct minority.

17 **Has the District given due consideration to the impact of the proposed tank on**  
18 **property values in Forest Hills subdivision?**

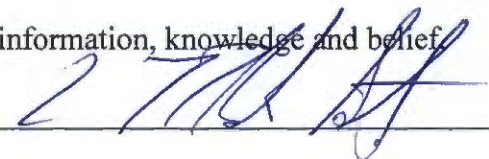
19 Yes. Although Mr. Davis has alleged in his pre-filed testimony that the District  
20 "has given no consideration to the dramatic financial loss" that construction of the tank  
21 would allegedly cause to the value of his home and that the attitude of the District has  
22 been "remarkably dismissive" as to his concerns, these allegations are unfounded. Mr.  
23 Davis' statements completely ignore the findings of the District's real estate expert  
24 voiced in the first CPCN proceeding and the example established by another subdivision

1 across US 68 from Forest Hills which has an existing 500,000 gallon elevated water  
2 storage tank. The District engaged an expert appraiser, William L. Berkley, Jr., in  
3 January of 2013 to study the effect of the tank on property values in Forest Hills. Mr.  
4 Berkley concluded, as stated in his report filed in Case No. 2012-00470, that there was  
5 "no market evidence that would indicate that the proximity to or location within the view  
6 shed of a 1.0MG elevated water storage tank would result in the diminution in the market  
7 value of property within Forest Hills subdivision." Berkley further opined that Mr. Davis'  
8 real estate expert's (Toleman) finding of a decline in home values within the subdivision  
9 was due to market forces, principally the economic recession from which the United  
10 States is now recovering. A prime and existing example of the accuracy of Berkley's  
11 opinion, and the inaccuracy of Toleman's conclusions, is the subdivision located directly  
12 across US 68 from Forest Hills which has a 500,000 gallon elevated water storage tank in  
13 plain view of many of the homes located therein (Harrods Ridge). The Harrods Ridge  
14 homes are of equal quality to those in Forest Hills and the presence of the tank there has  
15 had no deleterious impact on values. Finally, Mr. Davis' own testimony belies his fears  
16 when he discloses that new homes have been constructed in Forest Hills since the first  
17 Application for a CPCN was filed and that there is a residence being constructed  
18 immediately adjacent to the tank site. Unlike Mr. Davis, it would impossible for these  
19 new home owners, as members of the Association, to claim that they were unaware of the  
20 potential use of the Switzer Site for the construction of a tank. Contrary to the assumption  
21 made by Mr. Davis, they were apparently undeterred by the prospect of the construction  
22 of a tank. The decision of these new owners seriously erodes the credibility of the  
23 Intervenor Association's expert's conclusion and Mr. Davis' fears.

24

1 **VERIFICATION**

2 The undersigned, L. Nicholas Strong, being duly sworn, deposes and says he is Chairman of the  
3 Jessamine South Elkhorn Water District, that he has personal knowledge of the matters set forth  
4 in the foregoing responses for which he is the identified witness and that the information  
5 contained therein is true and correct to the best of his information, knowledge and belief.

6   
\_\_\_\_\_

7 L. Nicholas Strong

8  
9 COMMONWEALTH OF KENTUCKY

10 COUNTY OF JESSAMINE, SCT...

11 Acknowledged, subscribed and sworn to me, a Notary Public in and before said County  
12 and State by L. Nicholas Strong, this the 14th day of January, 2015.

13   
\_\_\_\_\_

14 *My Commission expires; March 23, 2016*

14 NOTARY PUBLIC NO. 462930

15 Bes/JSEWD/Forest Hills/Application No. 2/Testimony/Strong/Strong Rebuttal 01-13-14



a. UNMENTIONED PROJECT HISTORY BY COMPLAINANTS

The District serves the northwest area of Jessamine County which has experienced rapid residential growth over the past 10-20 years. In response to this growth and the increased water usage and in view of the requirements of 807 KAR 5:066 §4(4), the District began exploring its territory for a site on which to construct a new, aboveground water storage tank ("tank")<sup>1</sup>. The site's location could not be selected at random since it had to have an elevation of at least 950 feet. The first mention of the search for a tank site can be found in the District's meeting minutes of February 7, 2001, where two possible locations were discussed. On April 11, 2001, the District was approached by R.J. Corman who offered to donate a tank site to the District on his property in return for certain considerations. The District initiated an investigation of the Corman property and surveyed a parcel of his land for the site. Before the District's attorney could draft an agreement memorializing the transaction, Corman unexplainably withdrew his offer sometime after January of 2002.

The District continued its search for a new site and the September 3, 2003 minutes reflect there were several suitable sites under consideration.<sup>2</sup> The owners of these properties were approached and in November of 2003, Sue Switzer agreed to consider selling the District a one-acre parcel ("Switzer site") for \$40,000.00 from the interior of her farm located off Catnip Hill Road.<sup>3</sup> For an aerial photograph of this property and other points of interest addressed later in the Answer, see **Exhibit "A"** attached hereto. Sometime in January of 2004, Switzer finally signed a written sale

<sup>1</sup> Currently, the District has two, existing tanks in the area with storage of 550,000 gallons, but the average amount of water used each day by the District's customers exceeds 760,000 gallons.

<sup>2</sup> Cave Springs Farm, Henry Knight Farm, Ramsey Farm and the Sue Switzer property.

<sup>3</sup> Switzer already has a tank located on the opposite end of her farm. Exhibit "A".

contract with the District for the one-acre parcel. (**Exhibit "A"**) Thereafter, The District approved a geotechnical exploration of the Switzer site by QORE Property Sciences at a cost of \$4,625.00. Upon receiving a positive report from QORE, the District proceeded with surveying and platting the Switzer site and applied for an encroachment permit with the Transportation Cabinet for an access point to it from Catnip Hill Road. During this same time period, the District directed its engineer, Horne Engineering, Inc. ("Horne") to conduct a capital improvement plan system storage study in preparation for requesting such a system development charge from the PSC for funds to construct the tank. The District's Board also authorized hiring Caryn Lee of Kentucky Rural Water Association to advise the District with regard to the system development charge request. Sue Switzer finally conveyed the one-acre parcel and a water line easement from the watermain on Catnip Hill Road to the District by deed dated May 10, 2004. The system development charge study continued.

During 2005 and in order to broaden its construction funding options for the new tank, the District's Board approved submission of a loan application to the United States Department of Agriculture – Rural Development ("USDA-RD") at the April 20, 2005 meeting. In the summer of 2005, the District also became aware that a developer, Barry Mangold<sup>4</sup>, was planning a residential subdivision known as Forest Hills on a farm adjoining the farm of Sue Switzer and the District's Switzer site. **Exhibit "A"**. Prior to finalization of the plans for this subdivision, Horne notified Mangold in writing, by letter dated November 11, 2005 (**Exhibit "B"**), that the District was planning to construct a tank on the adjoining Switzer site. The letter also contained an admonition to Mangold

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<sup>4</sup> Barry Mangold conducted business during the development of Forest Hills under several limited liability companies, including Forest Hills Development, LLC, Forest Hills, LLC and Forest Hills of Kentucky, LLC. Barry Mangold and these other entities will be referred to collectively as "Mangold".

that he should place potential purchasers of lots in Forest Hills on notice of the tank's future construction. Presumably in response to the letter, Mangold appeared at the December 7, 2005 meeting of the District and formally offered to donate a tank site to the District within Forest Hills. As part of the offer, Mangold also offered to reimburse the District for the costs it had already spent in investigating the Switzer site. The District's staff took the Mangold proposal under consideration as reflected in the January 3, 2006 Memorandum to the District's Board from Horne. (**Exhibit "C"**) Thereafter, Mangold not only surveyed a suitably elevated site within Forest Hills, but he also commissioned a geotechnical investigation of this site ("Forest Hills site") **Exhibit "A"**. Discussions with Mangold continued and at the March 29, 2006 meeting, an express understanding was reached whereby Mangold would donate the Forest Hills site to the District and reimburse the District for the costs it had previously expended on vetting the Switzer site. In return, the District would agree not to construct a tank on the Switzer site for a period of 30 years. In conjunction with and as required by USDA-RD, procurement of an engineer to design the new tank was completed by the District at the April 11, 2006 meeting. The May 3, 2006 meeting minutes noted that Mangold had not yet returned the written agreement tendered by the District confirming the contemplated transfer of the Forest Hills site. Although Horne advised in a letter dated July 28, 2006 (**Exhibit "D"**), that Mangold was refusing to complete the transaction with the District, the August 2, 2006 meeting minutes reflect the District's Chairman was going to make a last-ditch effort to save the deal. Unfortunately, the effort failed. The August minutes also note that the PSC denied the District's request for the assessment of a system development charge to finance construction of the tank. <sup>5</sup>

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<sup>5</sup> Case No. 2006-00156.

The District again turned its attention towards construction of the tank on the Switzer site. In June of 2007, the District's attorney was authorized to contact Bob Damron, the State Representative for Jessamine County, regarding construction funding for the tank. This contact led to the passage of Kentucky House Bill 608 in April of 2008 which awarded grant funds of \$1,000,000.00 that would partially fund the approximate \$2,500,000.00 project cost. The District continued to pursue other funding sources for the additional monies needed to construct the tank, including USDA-RD and the Kentucky State Legislature. The Blue Grass Area Development District ("BGADD") was also asked to make a proposal as project administrator for the grant funds already obtained. BGADD submitted a proposal to administer the grant at the November 5, 2008 meeting, but it was decided at the March 4, 2009 meeting to designate Horne as the project administrator.

In November of 2009 and after completion of the relocation of water mains due to the widening of U.S. 68, the District took possession of an excess quantity of 12" pipe left from this project and decided to use the pipe to connect the Switzer site to the watermain on Catnip Hill Road.

Over eight (8) years after the District began the search for a tank site in September of 2001 and almost six (6) years after the Switzer site was purchased by the District in May of 2004, a resident of Forest Hills Subdivision, William Bates, appeared at the April, 2010 meeting to inquire what use the District intended for the Switzer site. He was advised that the District was going to construct an aboveground storage tank on the parcel and that the developer of Forest Hills had been fully advised of that use. Mr.

Bates returned with several other residents <sup>6</sup> of Forest Hills to the District's meeting on June 9, 2010, to express their objections to the tank's location on property adjoining their subdivision. The objections were primarily aesthetic in nature and they alleged that there would be a diminution in property values in Forest Hills if the tank was constructed on the Switzer site.<sup>7</sup> Notwithstanding that the District had already completed its due diligence on the Switzer site; substantially completed the tank's design for that site; had acquired partial funding of \$1,000,000.00 for the project cost; and was actively pursuing the remaining funds needed for construction; the District's Board agreed to discuss and consider an alternative tank site proposed by Bates on the McMillen farm adjoining Forest Hills to the east. **Exhibit "A"** These residents, including Bates, were warned at this meeting that they would have to proceed in a "timely manner" to acquire an alternative site and that the added expense in securing another site would have to be reimbursed by them and not borne by the District's customers. Bates and the other residents' indicated that they understood the District's position with regard to moving quickly and to reimbursing the expenses. Importantly, Bates and the other residents voiced no objection to the District's conditions. Another resident of Forest Hills, T. Logan Davis, accompanied Bates to the July, 2010 meeting. They were again advised that the District would expect reimbursement of monies already spent on the investigation of the Switzer site and that the costs of a subsurface investigation, survey and legal work for an alternative site would have to be borne by them and not the District's customers. No objection was heard from Davis or Bates.

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<sup>6</sup> The Forest Hills Residents' Association, Inc. was not formed until October 14, 2010.

<sup>7</sup> It should be mentioned here that the District's, existing 500,000 gallon tank stands to the west of and across U.S. 68 from Forest Hills in Heritage Estates which is very similar to Forest Hills and which was developed in plain view of this already constructed tank without apparent concern of the developer or present homeowners for damage to property values.

The District continued its effort at finding the added funding for the tank's construction as illustrated by the letters written by Horne attached as **Group Exhibit "E"**. At the same time, the District, through Horne, generated an estimate of the additional cost of relocating the tank site to the suggested site on the McMillen Farm. **Exhibit "F"** Bates, Davis and McMillen Farm owner, Lloyd McMillen, appeared at the August, 2010 meeting. The District's estimated relocation costs of the tank site to the McMillen farm were shared with this group. Once again, the District mentioned reimbursement of added costs and, once again, no objection was forthcoming as to this condition. A meeting between the District's representatives and the residents of Forest Hills was scheduled for August 17, 2010, but the residents cancelled the meeting. Surprisingly, the District did not hear from the Forest Hills residents for the next 2 ½ months. Bates then appeared at the November, 2010 regular meeting to discuss possible alternative sites to the McMillen farm. Bates and McMillen reappeared at the December, 2010 District meeting to discuss another location on the Switzer farm other than the already acquired Switzer site and a location within Forest Hills next to an existing District tank immediately off Old US 68. On January 5, 2011, the District received a letter from Bates with an attached letter of intent from Ronald W. Brown (**Group Exhibit "G"**) expressing an offer to sell a site off Old US 68 ("Brown site") next to the District's existing tank. **Exhibit "A"** Through its staff, the District studied the Brown site and found that it offered a significant "added cost" reduction as compared to the McMillen site, but it was otherwise flawed with serious legal deficiencies and too small in size to accommodate the tank the District had to build. See **Group Exhibit "H"** for a series of three (3) letters from the District's engineer and counsel which illustrate the

depth of the District's investigation of the Brown site. Faced with the unsuitability of the Brown site and the prospect of further, lengthy delays in proceeding with the tank project, the District decided in February of 2010 to construct the tank on the Switzer site. Counsel for the District advised Forest Hills' counsel of this decision by letter Dated February 24, 2011. **(Exhibit "I")**

In response to District counsel's letter, Bates and Davis appeared at the March 2, 2011 District meeting to discuss the matter further. Although the District's Board reaffirmed its decision to go forward with construction on the Switzer site, Davis approached the District's Chairman immediately after the March meeting with a proposal for a tank site on another spot on the McMillen Farm. To encourage the District to rescind its decision to construct on the Switzer site, Davis offered, on behalf of the Forest Hills Residents' Association, Inc. ("Association"), to immediately post a \$250,000.00 letter of credit as security for the added costs to the District of investigating and relocating to the new McMillen farm location. After polling the District's other commissioners by telephone, the District's Chairman instructed District counsel to draft a memorandum of understanding, incorporating the terms of the Association's offer, and send it to Davis for execution. Counsel did so on March 11, 2011. **(Exhibit "J")** The District was never contacted by the Association or Bates after transmittal of this letter. The Association reneged on its offer and one (1) month later, it and Bates filed their Complaint with the Commission.

**b. INACCURATE ALLEGATIONS BY COMPLAINANTS**

The Complainants's portrayal of their advance knowledge of the project and the District's actions in pursuing selection of the site, consideration of alternate sites and