

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE ADDISON WATER)
AND SEWAGE TREATMENT FACILITIES)
) CASE NO.
) 93-053
)
)
ALLEGED VIOLATION OF KRS CHAPTER 278)

SHOW CAUSE ORDER

On July 28, 1992, the Commission received a letter from Natural Resources and Environmental Protection Cabinet, Division of Water ("DOW") concerning the existence of a small water and sewage utility adjacent to Highway 144 in Addison, Breckinridge County, Kentucky, serving 10 homes.

On August 6, 1992, an inspection was made of Addison Water and Sewage Treatment Facilities ("Addison Water and Sewer") by the Commission's Division of Engineering. The findings of that inspection were reduced to a report, attached hereto and incorporated herein as Appendix A, and sent to Mr. George Lucas, Sr. ("Lucas") on October 13, 1992. The report was attached to a letter, attached hereto and incorporated herein as Appendix B, advising Lucas that he met the statutory definition of a "utility" and must comply with KRS Chapter 278 and the regulations promulgated pursuant thereto. Lucas' response, attached hereto and incorporated herein as Appendix C, was received on December 3, 1992.

On January 14, 1993, Commission Staff received additional information from DOW. The information contained a letter, attached hereto and incorporated herein as Appendix D, to DOW from one of the property owners. The letter indicates that Mr. Randell Butler ("Butler") is Lucas' designated representative for operating and managing the water and sewer system.

Addison Water and Sewer is privately owned by Lucas ("Lucas"), and operated and managed by Butler. Lucas and Butler are engaged in the distribution of water and the treatment of sewage to the public for compensation and are subject to the regulatory jurisdiction of this Commission pursuant to KRS 278.040.

KRS 278.160 requires each utility to file a tariff with the Commission showing all rates and conditions of service and also prescribes that a utility cannot charge any rate not contained in its tariff. No tariff concerning the water system or the sewage treatment system has been filed with the Commission.

KRS 278.080 authorizes the Commission to prescribe rules for the performance of any service furnished or supplied by a utility. Pursuant to that statute, the Commission promulgated regulations 807 KAR 5:066, Section 7 and 5:071, Section 7, which set forth requirements for the operation, maintenance, and provision of service by water and sewer utilities.

Based upon the foregoing, the Commission finds that a prima facie showing has been made that Lucas and Butler have violated KRS 278.160 by failing to have a tariff on file with the Commission and 807 KAR 5:066, Section 7 and 5:071, Section 7, by failing to adhere

to Commission requirements governing the operation and maintenance of water and sewer utilities in compliance with the requirements of Commission regulations.

IT IS THEREFORE ORDERED that:

1. Lucas and Butler shall, by written response to the allegations contained herein, show cause why they should not be penalized pursuant to KRS 278.990(1) for failing to comply with KRS 278.160 and 807 KAR 5:066, Section 7 and 5:071, Section 7, and required under KRS 278.160(2) to make refunds of compensation collected prior to filing their schedule of rates and conditions of service, if such violation is found to have occurred. Said written response shall be filed with the Commission no later than 30 days from the date of this Order.

2. Lucas and Butler shall appear at a public hearing scheduled for March 17, 1993, at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to present evidence on the alleged violation of 807 KAR 5:066, Section 7 and 5:071, Section 7, and KRS 278.160, and be prepared to show cause why they should not be penalized under KRS 278.990 and required under 278.160(2) to make refunds of compensation collected prior to filing their schedule of rates and conditions of service, if such violation is found to have occurred.

3. Any motion requesting an informal conference with Commission Staff for the purpose of clarifying issues, stipulating facts, or negotiating a settlement of the case shall be filed with

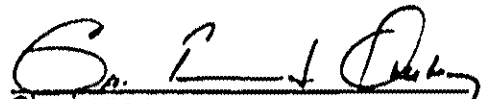
Lucas' and Butler's written response to the allegations contained herein.

4. The unauthorized utility investigation report submitted September 10, 1992, attached as Appendix A, is hereby made a part of the record of this case.

5. Any motion requesting cancellation of the hearing must be made no later than March 12, 1993.

Done at Frankfort, Kentucky, this 12th day of February, 1993.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:



Executive Director

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. DATED February 12, 1993.Commonwealth of Kentucky
Public Service Commission

UNAUTHORIZED UTILITY INVESTIGATION REPORT

Community of Addison
Breckinridge County, Kentucky

On July 28, 1992, the Public Service Commission ("PSC") received a letter from Ms. Donna C. Drury, Public Inquiry Coordinator, Natural Resources and Environmental Protection Cabinet, Division of Water, concerning the existence of a small water and sewage utility that may be in violation of PSC rules and regulations. This utility serves 10 homes in Addison, Kentucky. Addison is located approximately 6.8 miles from the intersection of U.S. 60 and KY 144, East on 144 East in Breckinridge County (see attached map).

On August 6, 1992, a field inspection was initiated to determine (a) if the company is operating as a public utility pursuant to state laws and regulations and (b) the condition which the utility is operating at the current time.

Investigation

The investigation consisted of researching the records of the PSC, an on-site inspection, interviewing Mr. John Monarch and Mr. J. F. Hunt, customers of the utility. Also interviewing Mr. George Lucas, alleged owner of the sewage utility. During the investigation the following information was discovered:

1. The sewage treatment system consists of collection lines, a lateral field and 3 sludge holding tanks with pumps that move the sludge from the holding tanks to the lateral field.

2. The water system consists of a well, a pump, a pressure tank with a hypochlorination unit and a distribution line to the 10 houses.

3. According to Mr. Lucas the contract/deed he signed between him and the buyer of his houses, states that he is the responsible party for the operation of the water and sewage treatment system.

4. According to Mr. Lucas no person is taking care of the sewage system.

5. According to Mr. Monarch and Mr. Hunt, they pay Mr. Lucas \$13.00 per month for water service and sewage treatment service.

6. According to the letter forwarded to the PSC from Donna Drury, Mr. & Mrs. Knight pay Mr. Lucas \$8.00 per month for water service and sewage treatment service (see attached).

7. According to Mr. Monarch and Mr. Hunt they paid about \$1,100 dollars for installation of the present sewage system.

8. The following is a paragraph in part from the deed of Mr. James F. Hunt and Luwanna J. Hunt, his wife.

There is also conveyed a perpetual easement to use the existing water and sewer system; including the water well, subject to a reasonable monthly charge to be assessed by the Grantor or their designated representative, for the exclusive purpose of paying the cost of operating and maintaining the water and sewer system.

9. The person to contact concerning the utility is as follows:

Mr. George Lucas, Sr.
885 North Gardner
Scottsburg, Indiana 47170
Telephone No. [REDACTED]

10. A Certificate of Public Convenience and Necessity has not been issued for the water system or the sewage treatment system.

11. No annual reports, rules and regulations, tariff, inspection procedures manual or safety manual concerning the water system or the sewage treatment system has been filed with the PSC.

12. Certain improvements/corrections are necessary to bring the utility to an acceptable operating condition and into compliance with PSC rules and regulations. They are as follows:

Sewage Treatment System

- A. The septic tank needs to be cleaned out.
- B. The electric service needs to be restored to the pumps at the sludge holding tanks.
- C. The lift pumps at the sludge holding tank need to be repaired and put in service.
- D. The weeds around the septic tanks and on the lateral field need to be cut.
- E. The lateral fields need to be checked for proper operation.
- F. A certified sewage treatment plant operator is needed.

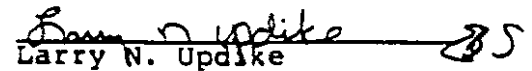
Water System

- A. A certified water plant operator is needed.
- B. The water system needs to be checked for proper operation of the pressure tank and the hypochlorination unit.

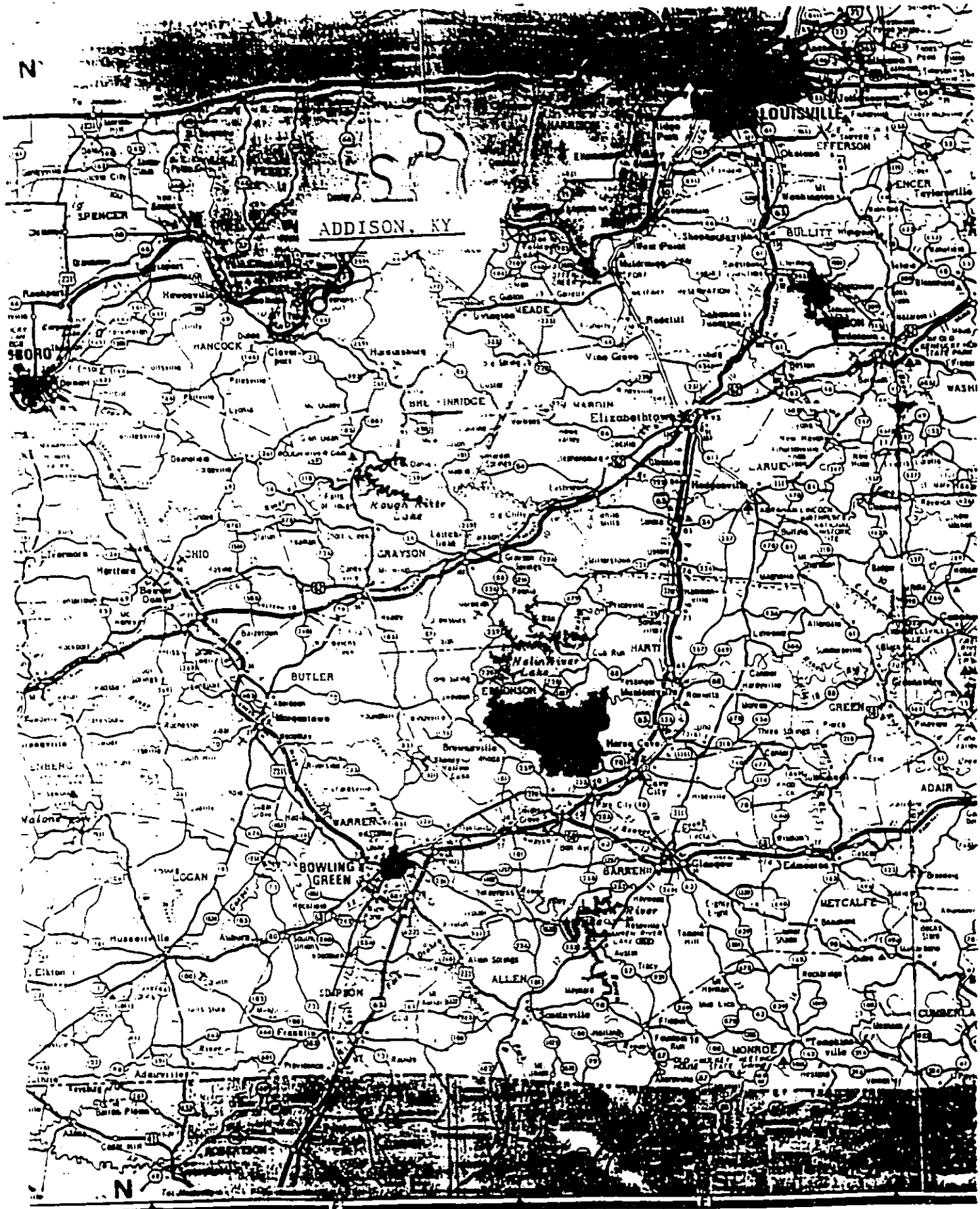
Conclusion

The office of General Counsel should determine if the sewage treatment system serving Addison, Kentucky is subject to the jurisdiction of the Public Service Commission.

Submitted,
September 10, 1992


Larry N. Updike
Utility Investigator

CGR:LNU:aem





COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
710 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-1940

October 13, 1992

Mr. George Lucas, Sr:
885 North Gardner
Scottsburg, Indiana 47170

Dear Mr. Lucas:

On August 6, 1992, Commission Staff conducted a field inspection of the water and sewage utility in Addison, Kentucky pursuant to a letter received from Natural Resources and Environmental Protection Cabinet, Division of Water, concerning the existence of this facility and possible violations of Public Service Commission rules and regulations.

KRS 278.010(3)(d) defines a "utility" as any person except a city, who owns, controls, operates or manages any facility used for or in connection with the furnishing of utility services to the public for compensation. All utilities so defined are subject to the jurisdiction of the Commission with respect to all rates and services. As a utility subject to the jurisdiction of the Commission, a utility is required to have on file a tariff listing all rates and services provided by the utility and must comply with other requirements of KRS Chapter 278 and the regulations promulgated pursuant thereto. The Commission currently, has no tariff on file for this water and sewage utility in Addison, Kentucky.

There is a possibility that this water and sewage facility could be non-jurisdictional if the facility is owned by the people it serves. This can be accomplished by deeding the facility to the homeowners or by forming a Home Owners Association. Based on our investigation, the property owners have already been conveyed a perpetual easement to use the existing water and sewer system. However, operation and maintenance of the system is the responsibility of the Grantor for which a monthly charge is assessed.

Mr. George Lucas, Sr.
October 13, 1992
Page Two

Enclosed you will find blank tariff sheets along with a sample tariff for comparison. I have also enclosed a copy of applicable Commission regulations which you should refer to when completing the tariffs sheets.

Also enclosed is a sample deed giving ownership of the utility to the property owners. In addition, a copy of a non-jurisdictional Home Owners Associations' Articles of Incorporation have also been included for your convenience.

If you wish, Commission Staff will attempt to provide any assistance you may require, once you have determined which of the above mentioned procedures you choose, to ensure all the necessary information has been included.

The information should be completed and filed with the Commission within 30 days from the date of this letter.

If you have any questions, please contact Phyllis Bruning at (502) 564-3940.

Sincerely,

A handwritten signature in black ink that reads "Don Mills". The signature is written in a cursive style with a large, looped initial "D".

Don Mills
Executive Director

fb

Enclosures

NAPIER & NAPIER, P.S.C.

ATTORNEYS AT LAW
GARY L. NAPIER**
CINDY HARRINGTON NAPIER
OF COUNSEL:
MARK JOSEPH SMITH
MICHAEL L. HARDEN

**ALSO ADMITTED TO PRACTICE
IN
WASHINGTON DC

RECEIVED

DEC 1 1992

PUBLIC SERVICE
COMMISSION

November 30, 1992

RECEIVED

FAX TRANSMISSION TO (502) 564-7279
HARD COPY TO ADDRESS BELOW

DEC 1 1992

GENERAL COUNSEL

Mr. Don Mills
Executive Director
Commonwealth of Kentucky
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Dear Mr. Mills:

This letter is submitted in response to your letter to Mr. George Lucas, Sr., dated October 13, 1992. This firm has been retained by Mr. Lucas to represent him in this matter and I would appreciate all further correspondence being forwarded to the undersigned.

Enclosed please find a copy of a deed conveying one of the pieces of property in Addison, said deed contains language regarding the sewer and water systems with which your office is concerned (all other conveyance instruments have the same language). You will note that the Grantor may assign the maintenance of the system, and for many years, one of the landowners has operated the system and has collected monies from the individual landowners for the system. The intent of the deeds was to result in all of the homeowners taking responsibility for the maintenance and care of the systems, but they are unwilling to do so. The reference in number 6 of Mr. Updike's letter to your office regarding the payment by the Knight's to Mr. Lucas is only partially correct. For many years the Knights have insisted on remitting payments to Mr. Lucas, in spite of his instruction that they remit the monies to the individual landowner who was willing (with the cooperation of the other landowners) to take the responsibility for maintenance of the system.

1800 Waterfront Plaza
325 West Main Street
Louisville, Kentucky 40202
Phone (502) 587-0707
Fax (502) 587-0705

APPENDIX C

Mr. Don Mills
Public Service Commission
November 30, 1992
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In one isolated instance a new sewer system was put in by the landowners and Mr. Lucas fronted the payment, but the remittance made by the other landowners to Mr. Lucas was only for monies he advanced.

Thus, Mr. Lucas submits that pursuant to statute, he does not operate a utility for compensation. We will cooperate in any manner necessary to effectively resolve this matter.

Very truly yours,

NAPIER & NAPIER, P.S.C.



Cindy Harrington Napier

CHN/mrd
cc: Mr. George M. Lucas, Sr.

l:lucas.psc

LOU R.O.

RECEIVED

August 29 1991

RECEIVED
SEP 13 10 01 AM '91

Mr. Jim Webb
Division of Environmental Protection
18 Rilley Road
Frankfort Ky. 40601

Charles D. Knight
R.R. 2, Box 111-A
Hardinsburg Ky. 40143
Phone: [REDACTED]

Dear Sir:

I live at Addison, in Breckinridge County. I am on a water well that supplies water to ten houses. We have just been removed from a Boil Water Notice, this is just one of many problems we are having out of the water system. Six homeowners on the system had a meeting with Rick Monahan with the Lincoln Trail District Health Department, concerning problems that we are having with our sewer system and the people that are suppose to be taking care of the system. He advised Paul Janko that it was Randall Butler's responsibility to fix the system. He also recommended that we contact you about the problems that we are having with our water system.

Each of the homeowners have a Deed with George Lucas Sr. containing the following paragnaph.

"There is also conveyed a Perpetual Easement to use the existing water and sewer system, including the water well, subject to a reasonable monthly charge to be assessed by the Grantors or their designated representative, for the exclusive purpose of paying the cost of operating and maintaining the water and sewer system. In regards to the said water and sewer system, the Grantors reserve an easement across the land of the Grantees for the purpose of repairing, maintaining, replacing and or expanding the existing systems."

Randall Butler is George Lucas's designated representative and has taking care of the water and sewer system for the past six years. We have his Sworn Deposition stating that he is George Lucas's representative and that he was supposed to put \$5.00 of the monthly bill of each ten homeowners in an escrow account to take care of expenses for the water and sewer system. He has admitted to not putting any money into the escrow account for the last six years. His wife collects the water and sewer bill from nine homeowners and one homeowner sends his directly to George Lucas Sr.

The old water pipe is over 50 years old and is corroded and is frequently leaking and having to be replaced a few feet at a time, and there are no shutoff valves on the outside of the houses, the shutoff valves are in the basement and come up through the floor and are in bad shape.

Randall Butler put in a new water pipe to his house and to the next three houses without notifying the other six homeowners and hasn't offered to continue the new pipe to the other six homeowners on the water system. He originally tried to put it in without a licensed plumber and without obtaining a permit. Were still not sure if he obtained the proper permit.

Randall Butler has built a garage over the water pipe, and the new garage diverts rain water into the well. About two months ago during a hard rain the well flooded and blew out the pressure tank and tore up the chlorination pump

Randall Butler's wife Margery takes the water samples that are tested and sends them to McCoy & McCoy's in Maddisonville Ky. She has admitted to not putting chlorine in the water and has admitted to not having the water tested for a long period of time and says that she can do it again. She says that it is supposed to be tested at the last house once a month but that she only does it about once a year. Were not even sure that the water that she sends in is from our water system.

Randall Butler has threatened to blow up the well, and drill his private well; leaving us without a water system. He also rased the water and sewer bill from \$8.00 to \$13.00 without improving the service.

We would like to find out if,

1. Can we have someone to come and test the water so that we know that it is being taking care of properly?
2. The water is extremely hard, has a lot of mineral deposits, is oily, smells and tastes bad. I would like to know if we can get George Lucas and Randall Butler to improve the water quality?
3. Can we force Randall Butler to continue the new water pipe to service the other six houses on the system?

If I can be of any further assistance to you , or if you have any questions please feel free to contact me any time.

My phone # is [REDACTED].

Thanking you in advances

Charles D. Knight

