

## Case


FILED

August 10, 2017

120552

INDIANA UTILITY

REGULATORY COMMISSION

Priority  
NormalCreated On  
4/18/2017 12:19 PMCase Closed Date  
7/18/2017Owner  
 China Miles

## Summary

## CUSTOMER AND CONTACT

## Complainant



Ellen Tennant

## SERVICE ADDRESS

Service Address is Same as Customer

No

## Customer is also Complainant

No

## Address Line 1

11 EMS B14 Ln

## Customer



Carry Zeigler

## Address Line 2

## Customer Type

Business

## City

Pierceton

## Company Name

Kuhn Lake  
Lakeside Resort

## State

IN

## Email

BDodd@Lewis-  
Kappes.com,  
TBalzer@Lewis-  
Kappes.com,  
crz.ent@gmail.co  
m

## County

Kosciusko

## Zip Code



46562

## Home Phone

## CASE DETAILS

## Case Closed Date

7/18/2017

## Business Phone

## Is Case Closed

Yes

## Contact Phone

c/o Tabitha L.  
Balzer, 317-639-  
1210

## Resolution Type

Substantiated


## Contact Method

Online

## Adjustment

## UTILITY

Contacted Utility Yes

Contacted Utility Date  
3/29/2017Utility  Lakeland Regional Sewer DistrictIndustry  Sewer

## Description

## CASE DESCRIPTION

Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park) ("Kuhn Lake") is a campground located in the Lakeland Regional Sewer District

("LRSD"). The present Complaint is being brought pursuant to IC 13-26-11-2.1 because LRSD has refused to bill Kuhn Lake in accordance with the requirements for billing campgrounds established by IC 13-26-11-2.

On March 6, 2017, Kuhn Lake orally requested a metered rate from LRSD, but an LRSD employee denied the request without citing a reason for the denial. (This oral communication was not a formal denial by the Board for purposes of IC 13-26-11-2.1(c), as LRSD has confirmed).

On March 8, 2017, Kuhn Lake sent a letter to LRSD which in part attempted to resolve LRSD's refusal to classify Kuhn Lake as a "campground" and its refusal to permit Kuhn Lake to be charged based on a metered campground rate. (Exhibit A). As Kuhn Lake's March 8 letter explained, Kuhn Lake is a seasonal campground containing a mixture of mobiles homes (as that term is used in common parlance), campers, and park models within the LRSD area. Kuhn Lake contains 28 lots, some of which are unoccupied. It is open only from May 1 to October 1 each year, and therefore is not designed for permanent or year-round occupancy. It is classified as a campground by the Indiana Department of Health pursuant to 410 IAC 6-7.1-3. (Exhibit B) (facility listed as "Reynolds Vacation MHP", its former name). Furthermore, LRSD categorized Kuhn Lake as a Campground Site in its December 20, 2012 Construction Permit Application to the Indiana Department of Environmental Management (IDEM) (Exhibit C at pg. 4/12). The IDEM application, which lists the resort as "Reynolds Vacation," calculated the facility's usage as 7.25 EDUs for 29 sites. (Id.)

Due to file size, the entire Complaint is not being submitted herein, but has instead been submitted concurrently via email to Consumer Affairs Division Director Kenya McMillin.


## More Case Details

### CASE CODING

Case Number 120552

Type Case

Case Type Complaint

Case Category  Billing Dispute

Case Detail 1  Rates

Case Detail 2

Hot Case Type

Referred By

### INTERNAL INFORMATION

Case Created By

Assigned To  Sara Satterfield

Legacy Assigned To

Referred To Lakeland

Referred Date 4/18/2017

## Draft Emails

Subject	Regarding	Modified On	To
<p style="text-align: center;">* Loading Activity records...</p>			
0 - 0 of 0 (0 selected)			Page 1

## Complaint Activity

Subject	From	Description	
<p style="text-align: center;">* Loading Activity records...</p>			
0 - 0 of 0 (0 selected)			Page 1

Subject	Description	Complaint Activity	Date Created
Email - Complaint Receipt Acknowledgement - Case 120552 - Lakeland Regional Sewer District CRM:0126996	Emailed appeal rights to the customer.	Attachment 1	4/18/2017 16:25
Email - New Case 120552 - Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park) CRM:0102391	Sent to the utility	Attachment 2	4/18/2017 16:29
Email - FW: Complaint Receipt Acknowledgement - Case 120552 - Lakeland Regional Sewer District CRM:0126996		Attachment 3	4/19/2017 15:00
Analyst - Sara	Additional information was received for this case on April 18, 2017 - with attachment - 60 pages- Please see below.	Attachment 4	4/26/2017 9:10
Analyst - Sara	Attachment received with above email - From page 1 to page 28	Attachment 5	4/26/2017 9:15
Analyst - Sara	Additional information from page 29 to page 60	Attachment 6	4/26/2017 9:18
Analyst - SARA	Utility response	Attachment 7	5/5/2017 16:09
Analyst - Sara	Email from Ms. Balzer	Attachment 8	5/5/2017 16:09
Email - FW: Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District CRM:0102391	Response from customer	Attachment 9	5/15/2017 10:34
Email - FW: Pine Bay Campground v. Lakeland Regional Sewer District CRM:0102391	Email from utility - Lakeland requested additional days, until May 26 to follow up.	Attachment 10	5/15/2017 11:09

Email - FW: Cause No. 44798 --- Petition for Rehearing and Reconsideration CRM:0102391	From customer - Received on May 17, 2017	Attachment 11	6/26/2017 15:42
Email - FW: Lakeland Regional/Pine Bay Resort - CRM:0102391	From utility - Received email from utility on May 24, 2017	Attachment 12	6/27/2017 16:47
Email - Read: Case 120552 - Kuhn Lake - CRM:0102391	Email to the lawyer who is representing the utility.	Attachment 13	7/5/2017 14:43
Email - RE: Case 120552 - Kuhn Lake - CRM:0102391	Email from lawyer - utility	Attachment 14	7/6/2017 11:45
Analyst - Sara	I called Mr. Blume and left a message on his voicemail. I advised case still in pending status. I informed Mr. Blume that I just need to know how they come up with the monthly sewer flat rate.	Comment	7/6/2017 13:22
Email - RE: Case 120552 - Kuhn Lake - CRM:0102391	Response from lawyer Mr. Blume.	Attachment 15	7/7/2017 14:07

Analyst - Sara	<p>I called the lawyer Mr. Blume and left the resolution on his voicemail. I informed him that I received his email and this time I was calling him to provide him with my determination. I told Mr. Blume that based on the information submitted by both parties, it is CAD decision that the informal complaint filed by Northcrest, Barbee Landing, Kuhn Lake and Pine Bay are allowable to dispute the utility rates per IC 13-26-11-2.1.</p> <p>I told him in reference to the complaint, CAD's determination is that Lakeland must bill their customers using a metered sewer rate, or a maximum flat rate based on 1/3 EDU and recommended to bill the customers based on a 1/3 EDU rate, until the meters are installed, and to refund them any overcharges.</p> <p>Regarding the facilities, whether they qualify as a campground or mobile home parks I told him that neither argument is particularly relevant as to whether an entity constitutes a campground for purposes of section 2, and informed him this is based on the analysis presented on March 23, 2017 docket number 44798.</p>	Comment	7/18/2017 11:40
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Analyst - Sara	<p>I called the lawyer Tabitha Balzer and I was informed that she was not in the office. I asked for her voicemail but I was advised to leave a message to her assistance and the resolution was left on her assistance voicemail. I informed her that I was calling from the IURC to provide the resolution to Ms. Balzer regarding Northcrest, Barbee Landing and Kuhn Lake complaints against Lakeland. I told her that based on the information submitted by both parties, it is CAD decision that the informal complaint filed by Northcrest, Barbee Landing Kuhn Lake and aslo Pine Bay are allowable to dispute the utility rates per IC 13-26-11-2.1. I told her in reference to the complaint, I told her that it is my determination that Lakeland must bill their customers using a metered sewer rate, or a maximum flat rate based on 1/3 EDU. I told her that I recommended Lakeland to bill the customers based on a 1/3 EDU rate, until the meters are installed, and to refund them any overcharges. I told her that is my determination and as of today July 18, I will close this case. Case closed.</p>	Comment	7/18/2017 11:53
Email - Case 120552 has been closed CRM:0102000000540	Closure to utility.	Attachment 16	7/18/2017 15:26
Analyst - Sara	<p>I received a call from Mr. Blume to let me know that he will appeal my decision. I informed him the process and he stated that he will send her appeal to my director via email. I advised no later than July 25.</p>	Comment	7/21/2017 14:39
Staff - Kenya McMillin	<p>Complaints 120549 120550, 120552, 120559 are all related. The appeal of the analyst's decision to theses cases was received on 7/21/17 and is attached to 120549.</p> <p>I called Shelia Marley, the legal assistant, yesterday to let her know the complaints will be referred to the Commission.</p> <p>All complaints were referred to the Commission today.</p>	Comment	7/26/2017 13:19

# Attachment 1

**Email**

# Complaint Receipt Acknow...

Created On  
4/18/2017 3:55 PM

Date Received  
4/18/2017 4:25 PM

Date Sent  
4/18/2017 4:25 PM

Status Reason  
Sent

**Email**

**From**  Sara Satterfield

**To**  Ellen Tennant

**Cc**

**Bcc**

**Subject** Complaint Receipt Acknowledgement - Case 120552 - Lakeland  
Regional Sewer District CRM:0126996

File Name	
No Attachment rec	
0 - 0 of 0 (0 selected)	Page 1

**Dear Ellen Tennant ,**

**Thank you for contacting the Consumer Affairs Division (CAD) of the Indiana Utility Regulatory Commission (Commission) regarding Lakeland Regional Sewer District . Your complaint has been assigned to me. I will contact you to further discuss the matter after I have reviewed your complaint with the utility.**

**After I have researched your complaint, I will issue a determination. If you disagree with my decision regarding your complaint, you will have seven days to appeal it to the CAD Director. If you would like more information about the appeals process, please see Article 16 at the following link:  
[www.in.gov/legislative/iac/title170.html](http://www.in.gov/legislative/iac/title170.html).**

**If you have any questions, please contact me directly at the number listed below. You also can call our office at (800)-851-4268 or (317)-232-2712.**

**Sincerely,**

**Sara Satterfield  
Consumer Affairs Division  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E.  
Indianapolis, IN 46204  
317-233-6003  
[ssatterfield@urc.IN.gov](mailto:ssatterfield@urc.IN.gov)**



# Attachment 2

## Email

## New Case 120552 - Kuhn L...

Created On  
4/18/2017 3:55 PM

Date Received  
4/18/2017 4:29 PM

Date Sent  
4/18/2017 4:29 PM

Status Reason  
Sent

## Email

From  Sara Satterfield

To  John Gastineau

Cc

Bcc

Subject New Case 120552 - Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park) CRM:0102391

File Name
No Attachment rec
0 - 0 of 0 (0 selected) Page 1

This correspondence is in relation to a complaint the Consumer Affairs Division (CAD) of the Indiana Utility Regulatory Commission received involving Lakeland Regional Sewer District. Please review the information provided and respond directly to this email. For tracking purposes, please keep all subsequent correspondence in the same email thread.

After I have completed researching the complaint, I will issue a determination. If you disagree with my decision regarding the complaint, you will have seven days to appeal it to the CAD Director. If you would like more information about the appeals process, please see Article 16 at the following link:  
[www.in.gov/legislative/iac/title170.html](http://www.in.gov/legislative/iac/title170.html).

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-----  
Case: 120552  
Created On: 4/18/2017 12:19 PM  
Case Type: Complaint  
Industry: Sewer  
Hot Case Type:  
Case Category: Billing Dispute  
Case Detail 1: Rates  
Case Detail 2:  
Contact Method: Online  
Assigned Analyst: Sara Satterfield  
-----

Customer Type: Business  
Customer: Carry Zeigler  
Business Phone:  
Home Phone:

Contact Phone: c/o Tabitha L. Balzer, 317-639-1210  
Service Address: 11 EMS B14 Ln  
City, State, ZIP: Pierceton, IN, 46562  
Email: BDodd@Lewis-Kappes.com, TBalzer@Lewis-Kappes.com, crz.ent@gmail.com

-----  
Case Description: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park) ("Kuhn Lake") is a campground located in the Lakeland Regional Sewer District ("LRSD"). The present Complaint is being brought pursuant to IC 13-26-11-2.1 because LRSD has refused to bill Kuhn Lake in accordance with the requirements for billing campgrounds established by IC 13-26-11-2.

On March 6, 2017, Kuhn Lake orally requested a metered rate from LRSD, but an LRSD employee denied the request without citing a reason for the denial. (This oral communication was not a formal denial by the Board for purposes of IC 13-26-11-2.1(c), as LRSD has confirmed).

On March 8, 2017, Kuhn Lake sent a letter to LRSD which in part attempted to resolve LRSD's refusal to classify Kuhn Lake as a "campground" and its refusal to permit Kuhn Lake to be charged based on a metered campground rate. (Exhibit A). As Kuhn Lake's March 8 letter explained, Kuhn Lake is a seasonal campground containing a mixture of mobile homes (as that term is used in common parlance), campers, and park models within the LRSD area. Kuhn Lake contains 28 lots, some of which are unoccupied. It is open only from May 1 to October 1 each year, and therefore is not designed for permanent or year-round occupancy. It is classified as a campground by the Indiana Department of Health pursuant to 410 IAC 6-7.1-3. (Exhibit B) (facility listed as "Reynolds Vacation MHP", its former name). Furthermore, LRSD categorized Kuhn Lake as a Campground Site in its December 20, 2012 Construction Permit Application to the Indiana Department of Environmental Management (IDEM) (Exhibit C at pg. 4/12). The IDEM application, which lists the resort as "Reynolds Vacation," calculated the facility's usage as 7.25 EDUs for 29 sites. (Id.)

Due to file size, the entire Complaint is not being submitted herein, but has instead been submitted concurrently via email to Consumer Affairs Division Director Kenya McMillin.

Sincerely,

Sara Satterfield  
Consumer Affairs Division  
101 West Washington Street, Suite 1500 E  
Indianapolis, IN 46204  
317-233-6003  
ssatterfield@urc.IN.gov

Regarding  120552

Duration

# Attachment 3

## Email

## FW: Complaint Receipt Ack...

Created On  
4/19/2017 3:00 PM

Date Received  
4/19/2017 2:58 PM

Date Sent

Status Reason  
Received

## Email

**From**  Tabitha Balzer

**To**  Sara Satterfield;  Sara Satterfield

**Cc**

**Bcc**

**Subject** FW: Complaint Receipt Acknowledgement - Case 120552 - Lakeland Regional Sewer District CRM:0126996

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

Dear Ms. Satterfield,

I wanted to let you know that Bette Dodd and I are representing the Complainant in this case.

Please do not hesitate to contact me with any questions. Thank you for your assistance.

Sincerely,  
Tabitha Balzer


[website](#) | [map](#)

 LK\_logo\_2013  
wline.png

**Tabitha L. Balzer**

Associate

LEWIS KAPPES  
One American Square, Suite 2500  
Indianapolis, IN 46282  
P: 317.639.1210  
F: 317.639.4882  
E: [TBalzer@lewis-kappes.com](mailto:TBalzer@lewis-kappes.com)

 E  
F  
F  
4  
5  
E  
1  
L

File Name

[BFF45B1D-FC35-4d5b-968B-A51F89D613B](#)

[BFF45B1D-FC35-4d5b-968B-A51F89D613B](#)

[LK\\_logo\\_2013wline.png](#)

1 - 3 of 4 (0 selected)

Page 1

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**From:** Satterfield, Sara [<mailto:ssatterfield@urc.IN.gov>]

**Sent:** Tuesday, April 18, 2017 4:26 PM

**To:** Ellen Tennant

**Subject:** Complaint Receipt Acknowledgement - Case 120552 -  
Lakeland Regional Sewer District CRM:0126996

Dear Ellen Tennant ,

Thank you for contacting the Consumer Affairs Division (CAD) of the Indiana Utility Regulatory Commission (Commission) regarding Lakeland Regional Sewer District . Your complaint has been assigned to me. I will contact you to further discuss the matter after I have reviewed your complaint with the utility.

After I have researched your complaint, I will issue a determination. If you disagree with my decision regarding your complaint, you will have seven days to appeal it to the CAD Director. If you would like more information about the appeals process, please see Article 16 at the following link: [www.in.gov/legislative/iac/title170.html](http://www.in.gov/legislative/iac/title170.html).

If you have any questions, please contact me directly at the number listed below. You also can call our office at (800)-851-4268 or (317)-232-2712.

Sincerely,

Sara Satterfield  
Consumer Affairs Division  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E.  
Indianapolis, IN 46204  
317-233-6003  
[ssatterfield@urc.IN.gov](mailto:ssatterfield@urc.IN.gov)

Regarding  120552

Duration

# Attachment 4

## Satterfield, Sara

---

**From:** McMillin, Kenya  
**Sent:** Tuesday, April 25, 2017 12:08 PM  
**To:** Satterfield, Sara  
**Subject:** FW: Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District  
**Attachments:** 2017 04-18 CAD Complaint-KUHN LAKE with Attachments.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**From:** Ellen Tennant [mailto:ETennant@Lewis-kappes.com]  
**Sent:** Tuesday, April 18, 2017 4:27 PM  
**To:** McMillin, Kenya <KMcmillin@urc.IN.gov>; aboxberger@carsonboxberger.com; blume@carsonboxberger.com  
**Cc:** Tabitha L. Balzer <TBalzer@lewis-kappes.com>; Bette J. Dodd <BDodd@lewis-kappes.com>; Amanda Tyler <Atyler@lewis-kappes.com>  
**Subject:** RE: Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

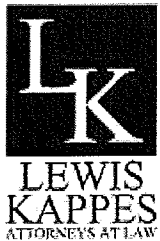
---

Ms. McMillin,

I apologize, I had your email address incorrect. Attached please find the Complaint of Kuhn Lake Lakeside Resort.

Thank you,  
Ellen

[website](#) | [map](#)



Ellen Tennant

---

Legal Assistant

**LEWIS KAPPES**

One American Square, Suite 2500

Indianapolis, IN 46282

P: 317.639.1210

F: 317.639.4882

E: [ETennant@Lewis-kappes.com](mailto:ETennant@Lewis-kappes.com)

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**From:** Ellen Tennant  
**Sent:** Tuesday, April 18, 2017 11:48 AM  
**To:** 'KMcMillin@iurc.in.gov'; [aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com); [blume@carsonboxberger.com](mailto:blume@carsonboxberger.com)  
**Cc:** Tabitha L. Balzer; Bette Dodd ([bdodd@lewis-kappes.com](mailto:bdodd@lewis-kappes.com)) ([bdodd@lewis-kappes.com](mailto:bdodd@lewis-kappes.com)); Amanda Tyler ([atyler@lewis-kappes.com](mailto:atyler@lewis-kappes.com)) ([atyler@lewis-kappes.com](mailto:atyler@lewis-kappes.com))  
**Subject:** Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District

Ms. McMillin,

Attached please find Kuhn Lake's Complaint, with exhibits, against Lakeland Regional Sewer District.

This constitutes the entire Complaint. A portion of this Complaint is being filed electronically as well, but due to size constraints the entire Complaint is not being filed electronically.

Thank you,  
Ellen

# Attachment 5



**LEWIS  
KAPPES**  
ATTORNEYS AT LAW

---

One American Square, Suite 2500, Indianapolis, IN 46282 T: 317.639.1210 F: 317.639.4882 [www.lewis-kappes.com](http://www.lewis-kappes.com)

Tabitha Balzer  
[tbalzer@Lewis-Kappes.com](mailto:tbalzer@Lewis-Kappes.com)

April 18, 2017

**VIA ELECTRONIC MAIL**

Ms. Kenya McMillin, Director  
Consumer Affairs Division  
INDIANA UTILITY REGULATORY COMMISSION  
101 West Washington Street, Suite 1500 East  
Indianapolis, Indiana 46204  
[KMcmillin@iurc.in.gov](mailto:KMcmillin@iurc.in.gov)

**Re: Complaint of Kuhn Lake against Lakeland Regional Sewer District**

Dear Ms. McMillin:

Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park) ("Kuhn Lake") is a campground located in the Lakeland Regional Sewer District ("LRSD"). The present Complaint is being brought pursuant to IC 13-26-11-2.1 because LRSD has refused to bill Kuhn Lake in accordance with the requirements for billing campgrounds established by IC 13-26-11-2.

On March 6, 2017, Kuhn Lake orally requested a metered rate from LRSD, but an LRSD employee denied the request without citing a reason for the denial. (This oral communication was not a formal denial by the Board for purposes of IC 13-26-11-2.1(c), as LRSD has confirmed).

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Ms. Kenya McMillin, Director  
Consumer Affairs Division  
INDIANA UTILITY REGULATORY COMMISSION  
April 18, 2017  
Page 2

IDEM application, which lists the resort as “Reynolds Vacation,” calculated the facility’s usage as 7.25 EDUs for 29 sites. (*Id.*)

The March 8 letter further explained that Kuhn Lake meets the definition of “campground” established by LRSD’s Rate Ordinance No. 2016-03, Section 1(b), which provides that:

“‘Campground’ shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy.”

(Exhibit D). Kuhn Lake is (1) real property (2) set aside and offered for the remuneration of the owners/operators (3) for parking or accommodation of shelters similar to the enumerated shelter types and (4) which is not designed for permanent or year-round occupancy. Because Kuhn Lake qualifies as a “campground” under the ordinance, it is entitled to a metered rate pursuant to Ind. Code § 13-26-11-2(b), or alternatively, to be billed at 1/3 of a residential equivalent unit pursuant to Ind. Code § 13-26-11-2(c).

On March 10, LRSD sent Kuhn Lake a bill for \$1,900.31. (Exhibit E).

On March 24, LRSD responded to Kuhn Lake’s March 8 letter by summarily stating that LRSD “is categorized as a mobile home park in accordance with the District’s Rate Ordinance” and that the “District has investigated to confirm that the classification is correct.” (Exhibit F).

On March 29, Kuhn Lake replied to LRSD’s March 24 letter. Kuhn Lake pointed out that LRSD’s March 24 letter lacked any reasoning and failed to address the issue of whether the Kuhn Lake qualifies as a campground under the ordinance. (Exhibit G). Kuhn Lake pointed out that a facility may qualify as both a mobile home park and a campground. The definition of campground is simply narrower because it requires that usage be seasonal. Kuhn Lake fits the narrower definition of “campground,” because its usage is seasonal.

In its March 29 letter, Kuhn Lake also pointed out that LRSD’s March 24 letter failed to address a highly relevant IURC docket entry in Cause 44798 dated March 23, 2017. Cause 44798 involved the request by three other recreational facilities in the LRSD service territory seeking to be billed under campground rates pursuant to Ind. Code § 13-26-11-2 (“Section 2”). The Docket Entry explained that the definition of campground under an ordinance is irrelevant, and that the real question involves the definition of campground under Section 2. The Docket Entry used ordinary dictionary definitions to define “campground,” and concluded that the proper analysis of whether a facility is a campground is “**the nature of its use, i.e. recreational**

**use versus full-time residential use, rather than the type or size of the shelter located at the facility.”**

Kuhn Lake explained that under the definitions established by the Docket Entry, it is clearly a campground entitled to be billed at campground rates because the nature of Kuhn Lake’s use is recreational, not full-time residential. Kuhn Lake requested that LRSD reconsider its March 24 letter in light of the clear guidance provided by the Docket Entry. Kuhn Lake acknowledged that LRSD may not have reviewed the March 23 Docket Entry prior to sending its letter dated March 24. (In an email, LRSD confirmed that its March 24 letter was not a formal denial by the Board for purposes of IC 13-26-11-2.1(c)).

On April 11, 2017, LRSD sent an email to counsel for Kuhn Lake indicating that a Complaint for Declaratory Judgment had been filed in Kosciusko County that day, and that this filing served as LRSD’s determination that Kuhn Lake was classified as a Mobile Home Park and therefore is not eligible for metered rates. (Ex. H). (The Declaratory Judgment action was also filed against the three Complainants in Cause 44798). The Declaratory Judgment action requests that the Kosciusko County Superior Court make a finding regarding:

- 1) whether the LRSD’s classification of its properties as mobile home parks were rational, and not arbitrary and capricious;
- 2) whether it is within LRSD’s discretionary authority to define the terms “campground,” “mobile home,” and “mobile home park,” and
- 3) whether LRSD’s definition of “campground,” “mobile home,” and “mobile home park” are rational.

Kuhn Lake is filing the present Complaint demanding to be billed at campground rates according to the requirements of IC 13-26-11-2. Kuhn Lake has a statutory right to seek Commission review of LRSD’s refusal to bill it at campground rates pursuant to IC 13-26-11-2.1, and LRSD cannot circumvent this right by preemptively filing an action for declaratory judgment in state court. Kuhn Lake will be filing a Motion to Dismiss the Kosciusko County Superior Court action.

Kuhn Lake is represented in this matter by Bette Dodd (Atty. # 4765-49) and Tabitha Balzer (Atty. # 29350-53) of Lewis & Kappes P.C. Ms. Dodd and Ms. Balzer can be reached by email at BDodd@Lewis-Kappes.com and TBalzer@Lewis-Kappes.com, and by telephone at (317) 639-1210.

Ms. Kenya McMillin, Director  
Consumer Affairs Division  
INDIANA UTILITY REGULATORY COMMISSION  
April 18, 2017  
Page 4

LRSD is believed to be represented by Mr. Andrew Boxberger of the law firm of Carson Boxberger in Fort Wayne, Indiana. Mr. Boxberger's telephone number is (260) 423-9411 and his email address is Aboxberger@carsonboxberger.com. LRSD may also be represented by Mr. Eric Blume at the same firm; his email address is blume@carsonboxberger.com.

Respectfully submitted,

LEWIS KAPPES, P.C.

*/s/ Tabitha L. Balzer*

Tabitha L. Balzer

TLB/ert  
Attachments

cc: Bette J. Dodd  
Andrew Boxberger  
Eric M. Blume  
Jason Kuchmay

# **EXHIBIT A**



**LEWIS  
KAPPES**  
ATTORNEYS AT LAW

One American Square, Suite 2500, Indianapolis, IN 46282 T: 317.639.1210 F: 317.639.4882 [www.lewis-kappes.com](http://www.lewis-kappes.com)

Tabitha Balzer  
[tbalzer@Lewis-Kappes.com](mailto:tbalzer@Lewis-Kappes.com)

March 8, 2017

**VIA U.S. MAIL AND ELECTRONIC MAIL**

Andrew D. Boxberger, Esq. Eric M. Blume, Esq. CARSON BOXBERGER LLP 301 W. Jefferson Boulevard, Suite 200 Fort Wayne, IN 46802 <a href="mailto:Aboxberger@carsonboxberger.com">Aboxberger@carsonboxberger.com</a> <a href="mailto:Blume@carsonboxberger.com">Blume@carsonboxberger.com</a>	Jason M. Kuchmay, Esq. SNYDER MORGAN LLP 200 West Main St. Syracuse, IN 46567 <a href="mailto:JMK@smfklaw.com">JMK@smfklaw.com</a>
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**Re: Lakeland Regional Sewer District Rates to Kuhn Lake Lakeside Resort  
(f/k/a Reynold's Vacation Park)**

Dear Mr. Boxberger, Mr. Blume, and Mr. Kuchmay,

I am contacting you regarding your client, Lakeland Regional Sewer District (LRSD), on behalf of my client, Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park). This communication is an attempt to resolve a dispute regarding two issues: (1) your client's insistence on billing Kuhn Lake Lakeside Resort for full rates before the Resort has had the opportunity to tie on to the LRSD system; and (2) your client's refusal to classify Kuhn Lake Lakeside Resort as a "campground" and refusal to permit Kuhn Lake Lakeside Resort to be charged based on a metered campground rate.

**I. Kuhn Lake Lakeside Resort should not be charged full rates until it ties onto the LRSD system**

Kuhn Lake Lakeside Resort has requested a waiver to permit the Resort to wait until this winter to tie onto the LRSD system, and has been told that there is no reason the waiver will not be granted. Pursuant to the waiver, the Resort will not be using LRSD's system until next spring at the earliest. It is unjust and unreasonable to charge the Resort until it begins actually using the LRSD system, because the Resort places absolutely no strain on the system until it begins service.



Mr. Andrew Boxberger, Mr. Eric Blume, & Mr. Jason Kuchmay  
March 8, 2017  
Page 2 of 3

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Accordingly, the Resort demands that LRSD withhold billing until such time as the Resort has joined the LRSD system. Any payment that Kuhn Lake Lakeside Resort may make to LRSD prior to tying onto the system is made under protest and shall be subject to refund.

## **II. Kuhn Lake Lakeside Resort is a Campground**

Kuhn Lake Lakeside Resort is a seasonal campground containing a mixture of mobiles homes (as that term is used in common parlance), campers, and park models within the LRSD area. The Resort contains 28 lots, some of which are unoccupied. It is open only from May 1 to October 1 each year, and therefore is not designed for permanent or year-round occupancy. It is classified as a campground by the Indiana Department of Health pursuant to 410 IAC 6-7.1-3 (listed as "Reynolds Vacation MHP"). Furthermore, LRSD categorized the Resort as a Campground Site in its December 20, 2012 Construction Permit Application to the Indiana Department of Environmental Management (IDEM). The IDEM application, which lists the resort as "Reynolds Vacation," calculated the facility's usage as 7.25 EDUs for 29 sites.

Accordingly, Kuhn Lake Lakeside Resort meets the definition of "campground" established by LRSD's Ordinance No. 2016-03, Section 1(b), which provides that:

"Campground" shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy.

Kuhn Lake Lakeside Resort is (1) real property (2) set aside and offered for the remuneration of the owners/operators (3) for parking or accommodation of shelters similar to the enumerated shelter types and (4) which is not designed for permanent or year-round occupancy. As such, the Resort qualifies as a "campground" under the ordinance.

Because Kuhn Lake Lakeside Resort is a campground, it is entitled to a metered rate pursuant to Ind. Code § 13-26-11-2(b), or alternatively, to be billed at 1/3 of a residential equivalent unit pursuant to Ind. Code § 13-26-11-2(c). However, when Kuhn Lake Lakeside Resort orally requested a metered rate on March 6, 2017, LRSD denied the request without citing a reason for the denial.

This letter represents a formal request for Kuhn Lake Lakeside Resort to be billed as a campground when it ties onto the LRSD system, and to be charged a metered rate. Any payment that Kuhn Lake Lakeside Resort may make to LRSD at non-campground rates is made under protest and shall be subject to refund.

Mr. Andrew Boxberger, Mr. Eric Blume, & Mr. Jason Kuchmay  
March 8, 2017  
Page 3 of 3

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### III. Conclusion

Kuhn Lake Lakeside Resort hereby formally requests the following:

1. That LRSD withhold charging Kuhn Lake Lakeside Resort until after the Resort has tied onto the LRSD system;
2. That LRSD charge Kuhn Lake Lakeside Resort as a campground based on metered rates (or based on 1/3 of a residential equivalent unit until such time as meters can be installed; and
3. That LRSD refund any excess payments made to the extent that LRSD does not charge Kuhn Lake Lakeside Resort as described in #1 and #2 above.

Please provide a response indicating LRSD's proposed disposition of this dispute by **Thursday, March 9, 2017** to avoid further action on this matter. If you would like more time to prepare a response to this letter, please confirm that the LRSD board has not yet prepared a proposed disposition of this matter, as defined by Ind. Code § 13-26-11-2.1(c). In such case, we will agree to a reasonable extension of time for LRSD to respond.

Sincerely,

LEWIS KAPPES, P.C.



Tabitha L. Balzer

TLB/ert

## **EXHIBIT B**

**Indiana State Department of Health**

# **Kosciusko County Campgrounds**

## **Table of Contents**

1. Barbee Christian Campground
2. Barbee Landing MHP
3. Bowman's Landing
4. Brown's Resort
5. Caldwell Lake Camp
6. Clearwater Resort
7. Compass Court
8. Cripplegate Woods
9. Crowl Homestead Resort
10. Dwyer's Trailer Park
11. Hide-Away Campground
12. Hill Lake Resort
13. Hoffman Lake Camp
14. Joyland Trailer Park, LLC
15. Lakeview Terrace MHP
16. Long's Trailer Park
17. Lozier's MHP & Campground
18. Muskellunge Lake Camp
19. Naomi's Lake Breeze Campground
20. Northcrest
21. Paton Point
22. Patona Bay Resort
23. Pic-a-Spot Campground
24. Pike Lake Campground
25. Pine Bay Resort, LLC
26. Ponderosa Campground
27. Quaker Haven Campground
28. Reynold's Vacation MHP
29. The Moorings, LLC
30. Tippy Mobile Court
31. Yellow Creek Resort, LLC.
32. Yogi Bear's Jellystone Camp-Resorts

## **Barbee Christian Campground**

### **Barbee Christian Campground**

27 EMS B2 Lane

Leesburg, IN

barbeecc@gmail.com

10 Dependent Campsites

0 Independent Campsites

Water: Well

Sewage Disposal: Onsite

Pool: No

Beach: Yes

### **Owner:**

Christian Church in Indiana

1100 W. 42nd Street

Leesburg, IN 46208

**Quaker Haven Campground**

111 EMS D16C Lane  
Syracuse, IN  
info@quakerhaven.com  
50 Dependent Campsites  
0 Independent Campsites  
Water: Well  
Sewage Disposal: Onsite  
Pool: No  
Beach: Yes

**Owner:**

Quaker Haven Camp  
111 EMS D16C Lane  
Syracuse, IN 46567  
Phone: (574) 834-4193  
info@quakerhaven.com

**Manager:**

Brandon Dennis

**Reynold's Vacation MHP**

**Reynold's Vacation MHP**

EMS Lane 14 & 15, S.R. 13  
Pierceton, IN  
crz.ent@gmail.com  
0 Dependent Campsites  
29 Independent Campsites  
Water: Well  
Sewage Disposal: Onsite  
Pool: No  
Beach: No

**Owner:**

CRZ Home Services  
Carry Ziegler  
5917 N. County Line Road  
Huntertown, IN 46748  
Phone: (260) 715-2888  
crz.ent@gmail.com

**The Moorings, LLC**

**The Moorings, LLC**

EMS B17 Lane  
Pierceton, IN  
0 Dependent Campsites  
24 Independent Campsites  
Water: Well  
PWSID: 2430082  
Sewage Disposal: Onsite  
Pool: No  
Beach: No

**Owner:**

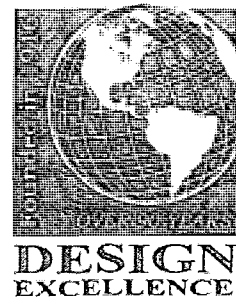
The Moorings, LLC  
Randall and Donna Pollen

# **EXHIBIT C**



IDEA  
OFFICE OF  
WATER QUALITY

2012 DEC 27 P 3: 16



December 20, 2012

Mr. Don Worley  
Indiana Department of Environmental Management  
Office of Water Quality  
Facility Construction Permit Section  
100 North Senate Avenue  
Indianapolis, Indiana 46204

Subject: **Lakeland Regional Sewer District**  
**Sanitary Collection System and Wastewater Treatment Plant**  
Facility Construction Permit Application  
DLZ Job No. 1166-5133 70

Dear Mr. Worley:

Enclosed is the required information for application to the Indiana Department of Environmental Management for the review and issuance of a Facility Construction Permit for the Lakeland Regional Sewer District project in Kosciusko County, Indiana. This project is being funded by USDA Rural Development, and the project will consist of a collection system, transmission line and a wastewater treatment plant around the Barbee Lake Chain south of North Webster, Indiana. (see attached map)

The **collection system** includes approximately 154,700 linear feet of 2-inch to 10-inch diameter low pressure force main, 76,200 linear feet of 1-1/4-inch diameter lateral service lines from the grinder pump stations to the main lines, with 1,341 grinder pump stations, and three larger regional pump stations. The grinder pumps stations will serve one or multiple connections and contain centrifugal grinder pumps. The grinder pump stations will be owned and operated by the Lakeland RSD, with electrical service from REMC and NIPSCO at a non-metered rate paid through the RSD. In general, the collection system is located around or in close proximity of Barbee Lake Chain.

The **transmission force main** to the wastewater treatment plant includes approximately 18,800 linear feet of 10-inch force main. The main runs from the south side of the collection system to the proposed wastewater treatment plant.

The new **wastewater treatment plant** design flow is 0.4 MGD and will outlet into the Van Curen Ditch.



IDEM OWQ Construction Permits Section

Page 2 of 3



The following items are enclosed:

**1. Collection System & Transmission Force Main Construction Application**

**a. Application for Sanitary Sewer Construction Permit Per IAC 3**

**b. Technical Memorandum and Calculations**

- i. Technical Memorandum
- ii. Grinder Pump Curves (Single-Stage and Two-Stage)
- iii. Main Pump Station Pump Curves (PS No. 1, PS No. 2 and PS No. 3)
- iv. PS No. 1 Force Main Hydraulic Calculations
- v. PS No. 2 and PS No. 3 Hydraulic Analysis
- vi. Collection System Hydraulic Analysis Spreadsheet
- vii. Hydraulic Map of Collection System
- viii. USDA Rural Development EDU Determination and Bulletin 1780-3

**c. Request for Technical Standard Alternative for the following items:**

- i. Directional Drilling
- ii. HDPE Pipe Material
- iii. Force Main Size Less than 4-inch Diameter
- iv. Coefficient of Friction  $C=130$  for HDPE Force Main
- v. Velocity Below Two (2) Feet Per Second
- vi. Sanitary Sewer or Force Main Construction Within 10 Feet of a Private Drinking Water Well

**2. Application for Wastewater Treatment Plant**

- a. Lakeland Regional Wastewater Treatment Plant
- b. Laboratory Equipment List
- c. Selected Specification Sections (WWTP Equipment)

**3. Preliminary Effluent Limits**

- a. Antidegradation Assessment/Preliminary Effluent Limits Letter dated 10-12-11.

**4. \$50 check** for review/application fee for new wastewater treatment plant for regional sewer district.

**5. Potentially Affected Persons (PAP)** labels for collection system, transmission force main and wastewater treatment plant.

**6. Plans for Wastewater Treatment Plant**

**7. Plans for Section A** (transmission force main, Pump Station 1 and south collection system)

**8. Plans for Section B** (Pump Station 2 and northwest/middle collection system)





IDEM OWQ Construction Permits Section

Page 3 of 3

9. **Plans for Section C** (Pump Station 3 and east/middle collection system)



Should you have any questions, do not hesitate to contact me.

Sincerely,

**DLZ Indiana, LLC**

Casey M. Erwin, P.E.  
Project Manager

Enclosures

cc: *Jerry Dittmer, Municipal NPDES Permits Section*  
*David Doctor, President Lakeland Regional Sewer District*

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## Technical Memorandum Lakeland Regional Sewer District

December 21, 2012

This memorandum serves as an explanation of design and hydraulic calculations for the Collection System, Lift Stations and Offsite force main for the Lakeland Regional Sewer District Project (Project).

### 1. Project Description

- a. Project includes a low pressure sewer system to serve an area south of North Webster, Indiana and in the area known as the Barbee Lake Chain. The low pressure sewer (LPS) system will include 2 to 10 inch force main, appurtenances and grinder stations for all connections. Grinder stations will serve 1 or multiple structures and will be maintained by the sewer district.

### 2. Appurtenances, Facilities, Structures and Equipment

- a. Collection System Sanitary sewer force main
  - Main sizes ranging from 2-inch through 10-inch HDPE, DR11
  - Majority of mains will be horizontal directionally drilled
  - Air-release structures installed at high points
- b. Grinder Station Pumps (see attached pump curves)
  - Pumps shall be centrifugal type grinder pumps
  - Liberty Pumps, Single Stage Omnivore, shut-off head 110 feet
  - Liberty Pumps, Two Stage Omnivore, shut-off Head 185 feet
- c. Main Pump (lift) stations
  - There will be three (3) pump stations serving the collection system.
  - Pump station 1, located south side of project and discharge into offsite transmission line that carries flow to the wastewater treatment plant
  - Pump station 2, located northwest side of pump station and discharges into downstream LPS system and eventually to Pump Station 1.
  - Pump station 3, located east side of pump station and discharges into downstream LPS system and eventually to Pump Station 1.
  - Stations to include wet well with submersible non-clog pumps

### 3. Collection System Design – LPS Hydraulic Design

- a. **Reference and Basis for Design is the US EPA Manual**, Alternative Wastewater Collection Systems dated October 1991. (applicable sections attached)
- b. Typical findings and design assumptions for Design Flows as discussed in EPA Manual include:
  - General rule of an Average Daily Flow of 100 gpcd allows for infiltration that may occur in a pressure system, and "Experience with pressure sewerage has shown a lower allowance to be more in order"

- The Average Daily Flow rate normally assumed for pressure systems is 50 – 70 gpcd
- "Daily peak flows may exceed design values by times and occur several times per day but these are of little importance due to their short duration".
- "the purpose of the pressure sewer pump is to discharge flows at a rate such that the level in the tank will not reach the high water alarm level"
- Concerning Design Flows & calculation methods:
  - "Design flows are maximum flow rates expected to occur once or twice per day, and are used to size the pressure main"
  - Two design approaches are available, Probability Method and Rational Method.
  - "probability method would best apply to pumps having vertical or near vertical head-discharge curves, such as semi-positive displacement pumps"
  - "The Rational Method can logically be applied when either centrifugal pumps or semi-positive displacement pumps are used."
  - "The Rational Method proposes a design flows corresponding to the number of homes served by the pressure sewer, which is used to size the mains and to construct the design hydraulic grade line. Pumps are then selected that can discharge into the main at an acceptable flow rate given the design discharge pressure."
  - Single stage grinder pumps are used where the total dynamic head (TDH) is 100' or less. Two-stage grinder pumps are used where the TDH is greater than 100'.
  - Rational Method Equation:

$$Q = AN + B \quad (\text{equation used for calculating Design Flows Project})$$

Where,  $Q$  = Design flow (gpm)  
 $A$  = Coefficient selected by engineer, typically 0.5  
 $N$  = Number of homes or Equivalent Dwelling Units (EDUs)  
 $B$  = A factor selected by the engineer, typically 20

$A = 0.5$  (Coefficient used for project)

$B = 20$  (for pumps upstream of pump station)

$B$  = Pump Station 2 or 3 Design Flow  
 (Factor used for pumps downstream of pump station 2 or 3, this accounts for the grinder stations that have to encounter downstream design flows from the Pump Stations.)

c. Calculation Head loss

- Hazen-Williams used for calculating dynamic head loss
- Coefficient of friction for calculations is 130
- Static Head is calculated from the lowest grinder pump to the peak downstream elevation

## **Request for Technical Standard Alternative**

### **1. Technical Standard Alternative – Directional Drilling**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting the use of directional drilling as a method of installation for the sanitary sewer collection system for the proposed project. The directional drilling method shall be a two step process with step one consisting of a pilot hole and the second step consisting of enlarging the pilot hole to convey the soil cuttings to the surface for disposal. The contractor shall be required to maintain uniform grade and the depth of bore of the pipelines shall be a minimum of 5 feet.

### **2. Technical Standard Alternative – HDPE Pipe Material**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting the use of HDPE force main (AWWA C906). The HDPE, High Density Polyethylene Pipe shall conform to AWWA C901, C906 and ASTM D3350. The pipe shall have a minimum pressure rating of 200 psi, or be DR 11 or thicker-walled for both directional drilling and open cut installations. All pipe shall be DIPS, have a longitudinal co-extruded green stripe, have butt-fused joints and have a #12 AWG solid steel core hard drawn extra-high strength tracer wire installed with the pipe. This wire shall be connected to all ductile fittings and valves for the purposed of main locations post-installation.

### **3. Technical Standard Alternative – Force Main Size Less Than 4-Inch Diameter**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting the use of force main piping less than 4-inch diameter as part of the low-pressure, small diameter collection system with grinder pump units.

### **4. Technical Standard Alternative – Coefficient of Friction in HDPE Force Main Pipe C=130**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting the use of a coefficient of friction factor C=130 for the low pressure HDPE force main in the collection system hydraulic design.

### **5. Technical Standard Alternative – Velocity Below Two (2) Feet Per Second**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting the use of a velocity in the collection system of less than two feet per second in only a few of the force main segments in the collection

system. These cases occurred due to using larger pipe diameter sizes to reduce the total dynamic head in the system and to accommodate future growth in the system.

**6. Technical Standard Alternative – Design Flow Rate Average Daily Flow 150 gpd/unit for Single-Family Home**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting the use 150 gpd/unit or per EDU (Equivalent Dwelling Unit). This is based on the EDU determination by the USDA Rural Development Bulletin 1780-3. This is also confirmed with historical flow data from similar seasonal lake communities in the region.

**7. Technical Standard Alternative – Sanitary Sewer or Force Main Construction Within 10 Feet of a Private Drinking Water Well**

In accordance with 327 IAC 3-6-32, Technical Standard Alternative Demonstration, the Lakeland Regional Sewer District is requesting that sanitary sewer or force main be installed within 10 feet of a private well in cases where there is no feasible alternative. It is anticipated that there will be approximately 50 cases where the property cannot be serviced without placing the sanitary line within 10 feet of the private drinking water well due to small lot size and closely spaced structures. The Kosciusko County Health Officer was contacted and is in agreement that in these cases the RSD will obtain written permission from the property owner to place the sewer within 10 feet of the private drinking water well.



# APPLICATION FOR SANITARY SEWER CONSTRUCTION PERMIT PER 327 IAC 3

STATE FORM 53159 (R2 / 9-08)

Indiana Department of Environment & Natural Resources

Office of Water Quality - Mail Code 65-42

Facilities Construction Section

100 North Senate Avenue, room N1255

Indianapolis, IN 46204-2251

## INSTRUCTIONS:

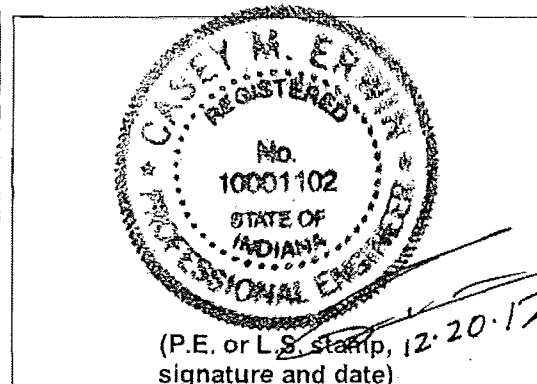
1. This form must be filled out completely.
2. Additional pages (attachments following this form) are part of this application form and must be filled out completely.
3. Submission of plans and specifications are part of the application.
4. Submit the application form, additional pages, plans and specifications to the above address.
5. If you have any questions regarding this application, call IDEM's Office of Water Quality at (317) 232-8670.

APPLICANT		APPLICANT'S ENGINEER OR LAND SURVEYOR	
Name David L. Doctor		Name Casey M. Erwin	
Company Name Lakeland Regional Sewer District		Company Name DLZ Indiana, LLC	
Address 301 North Main Street, P.O. Box 705		Address 111 West Columbia Street, Suite 100	
Address North Webster, IN 46555		Address Fort Wayne IN 46802	
Telephone number 574-834-2382		Telephone number 260-420-3114	
NAME AND LOCATION OF PROPOSED FACILITY		ATTACHMENT CHECKLIST	
Name Lakeland Regional Sanitary Collection System		A. Sanitary Sewer Design Summary Form: <input checked="" type="checkbox"/> Yes	
Location (Referenced to two existing streets) North Boundary: Armstrong Road (500 N)		B. Capacity Certification/Allocation Letter: <input checked="" type="checkbox"/> Yes	
Location East Boundary: SR 13 South Boundary: McKenna Rd and South Barbee Dr.		C. Certification of Registered Engineer or Land Surveyor Letter: <input checked="" type="checkbox"/> Yes	
Location West Boundary: 475 E		D. Plans and Specifications: <input checked="" type="checkbox"/> Yes	
City North Webster to the North Warsaw to the South		E. Identification of Potentially Affected Persons (see note below): <input checked="" type="checkbox"/> Yes	
County Kosciusko		F. Mailing Labels for Potentially Affected Persons: <input type="checkbox"/> Yes	
Lakes: Kuhn Big Barbee Little Barbee Sechrist Sawmill Irish Banning Shoe		Note Regarding item (E) above: Fully identify all persons, by name and address, who may be potentially affected by the issuance of this permit, such as adjoining landowners, persons with a propriety interest, and/or persons who have complained or submitted comments about your facility. Under IC 4-21.5-3-4, IDEM is required to notify potentially affected persons of its permit decision.	
PERMIT APPLICATION FOR CONSTRUCTION, EXPANSION, OR MODIFICATION OF		FUNDING	
(Check all that apply)			
A. Municipal Collection Facility: <input checked="" type="checkbox"/> Yes		SRF Funding: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
B. Semipublic Collection Facility: <input type="checkbox"/> Yes		USDA Rural Development Loan	
C. New facility: <input checked="" type="checkbox"/> Yes			
D. Expansion or modification of existing facility: <input type="checkbox"/> Yes			
CERTIFICATION AND SIGNATURE			
Application is hereby made for a Permit to authorize the activities described herein. I certify that I am familiar with the information contained in this application and to the best of my knowledge and belief such information is true, complete and accurate.			
Printed name of person signing David L. Doctor		Title Lakeland Regional Sewer District President	
Signature of Applicant 		Date application signed (month, day, year) 12-20-12	
*Please refer to IC 13-30-10 for penalties of submission of false information*			

**SANITARY SEWER DESIGN SUMMARY**

Design Flow			
Number of units	See Itemized Summary		
1,730	Single family home/cottage/individual mobile home(1.0 EDU) Equivalent Dwelling Unit	150 gpd/unit Per USDA RD	259,500 gpd
11	Apartments	150 gpd/unit	1,650 gpd
10	Commercial lots	See itemized summary	2,730 gpd
145	Mobile Home Sites (0.75 EDU)	112.5 gpd/unit	16,312.5 gpd
276	Campground sites (0.25 EDU)	37.5 gpd/unit	10,350 gpd
		<b>Total average flow</b>	290,542.5 gpd
Peaking factor	3.5	<b>Peak flow</b>	1,016,900 gpd

Sewer	
ft.	8-inch _____ (sewer type)
ft.	10-inch _____
ft.	
ft.	<b>NO GRAVITY SEWER</b>
ft.	<b>See Itemized Summary of Force Main</b>
ft.	Total length of sewer
The new sewer will be connected to an existing _____-inch diameter sanitary sewer at _____ (referenced to two existing streets)	



Pump Station No. 1 (N 600 E)				
Type	Submersible, wet-well pump station (wet/dry, submersible, wet-well mounted, etc.)			
Number of pumps	2			
Capacity of pumps	750 gpm	120 TDH	RPM 1770	60 HP
Back-up power source	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No emergency gas powered generator			
Average wet-well detention time	10 minutes			
Audio/visual alarm with self-contained power supply or telemetry system	Audio/visual alarm with SCADA			
Force Main	Open cut: 18,204 LF of 10-inch PVC DR 21 (ASTM D2241), Joints ASTM F477/D3139 HDD: 700 LF of 10-inch PVC DR 21 (ASTM D2241), fused joints 11,038' - distance to high point on FM			
Force main discharge elevation	904' at WWTP; 925' at high point on force main			

Pump Station No. 2 (Old Shoe Lake Road)				
Type	Submersible, wet well pump station (wet/dry, submersible, wet-well mounted, etc.)			
Number of pumps	2			
Capacity of pumps	193 gpm	91 TDH	RPM 3495	11 HP
Back-up power source	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No emergency gas powered generator			
Average wet-well detention time	40 minutes			
Audio/visual alarm with self-contained power supply or telemetry system	Audio/visual alarm with SCADA			
Force Main	HDD: 3,002 LF of 6-inch, 4,408 LF of 8-inch and 4,596 LF of 10-inch HDPE DR 11, fused joints			
Force main discharge elevation	867.5' at Pump Station No. 1; 882' at high point on force main			

Pump Station No 3 (SR 13)				
Type	Submersible, wet well pump station (wet/dry, submersible, wet-well mounted, etc.)			
Number of pumps	2			
Capacity of pumps	235 gpm	115 TDH	RPM 3510	23 HP
Back-up power source	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No emergency gas powered generator			
Average wet-well detention time	22 minutes			
Audio/visual alarm with self-contained power supply or telemetry system	Audio/visual alarm with SCADA			
Force Main	HDD: 4,853 LF of 6-inch, 5,674 LF of 8-inch and 3,989 LF of 10-inch HDPE DR 11, fused joints			
Force main discharge elevation	867.5' at Pump Station No. 1; 876' at high point on force main			

Waste Treatment	
Wastewater treatment will be provided by	Lakeland Regional Wastewater Treatment Plant

Inspection/Maintenance	
Inspection during construction will be provided by	DLZ
Maintenance after completion will be provided by	Lakeland Regional Sewer District

**ITEMIZED SUMMARY OF DESIGN FLOW****Single Family Dwellings**

(homes, cottages, individual mobile homes) 1,730 units x 150 gpd/unit = **259,500 gpd**

**Apartments**

11 units x 150 = **1,650 gpd**

TES Apartments (3 units)

Smugglers Cove Apartments (8 units)

**Commercial Lots**

18.2 EDUs x 150 = **2,730 gpd**

Open Bible Baptist Church (200 seats)

3 EDUs

Barbee Landing

1 EDU

Barbee Hotel & Grill

3.2 EDUs

Jot-Em-Down Market

3 EDUs

Barbee Marina

1 EDU

Anthony's Anchor Bay Marine and Bait Shop

2 EDUs

Harris Construction and Excavating

2 EDUs

Corner Stone Home and Construction

1 EDU

Paul's Welding shop

1 EDU

Burch Property

1 EDU

**Mobile Home Sites**

108.75 EDUs x 150 = **16,312.5 gpd**

Lake Estates (120 units)

90 EDUs

Hilltop Land Trust (7 units)

5.25 EDUs

Heath MHP (11 units)

8.25 EDUs

Dahm & Mentzer MHP (7 units)

5.25 EDUs

**Campground Sites**

69 EDUs x 150 = **10,350 gpd**

Barbee Lakes Christian Camp (various facilities)

6 EDUs

Pic-A-Spot Campground (60 sites)

15 EDUs

The Moorings Campground (24 sites)

6 EDUs

Pine Bay Resort (46 sites)

11.5 EDUs

Barbee Landing MHP (15 sites)

3.75 EDUs

Clearwater Resort (29 sites)

7.25 EDUs

Lakeview Terrace (21 sites)

5.25 EDUs

Northcrest Inc. (28 sites)

7 EDUs

Reynolds Vacation (29 sites)

7.25 EDUs



<b>Sewer Collection System</b>	
C. Individual grinder pumps: see Plans for grinder pump Types 1-5 details	
1. Location:	On homeowner property
2. Number of pumps:	1,341 (1,126 single-stage and 215 two-stage)
3. Capacity of pumps:	7gpm - 20.5 gpm
4. RPM and TDH:	3450 RPM, Maximum 106' TDH for single-stage and Maximum 185' TDH for two-stage
5. Volume of the wet well:	Type 1=118gal; Type 2=184gal; Type 3=264gal; Type 4=264gal; Type 5=470gal
6. A gate valve and a check valve in the discharge line:	ball valve and check valve in discharge
7. Ventilation:	yes; vent on top
8. Alarm:	visual red light/audible alarm at each grinder pump station

**ITEMIZE SUMMARY OF COLLECTION SYSTEM FORCE MAIN**

<u>SIZE (DIAMETER)</u>	<u>LENGTH (FEET)</u>
1-1/4" (from grinder pump to main line)	76,200
2"	78,000
3"	31,400
4"	10,000
6"	14,300
8"	12,400
10"	8,600

**CAPACITY CERTIFICATION/ALLOCATION LETTER***This form must be filled-out in its entirety.*

Name of applicant: David L. Doctor
Name of owner: Lakeland Regional Sewer District
Name of project: Lakeland Regional Sanitary Collection System

**CERTIFICATION**

I, David L. Doctor, representing the Lakeland Regional Sewer District, in my capacity  
(Name of individual) (Name of city or town)  
 as LRSD President have the authority to act on behalf of the Lakeland Regional Sewer District  
(Title) (Name of city or town)

certify that I have reviewed and understand the requirements of 327 IAC 3 and that the sanitary collection system proposed, with the submission of this application, plans and specifications, meets all requirements of 327 IAC 3. I certify that the daily flow generated in the area that will be collected by the project system will not cause overflowing or bypassing in the collection system other than NPDES authorized discharge points and that there is sufficient capacity in the receiving water pollution treatment/control facility to treat the additional daily flow and remain in compliance with applicable NPDES permit effluent limitations. I certify that the proposed average flow will not result in hydraulic or organic overload. I certify that the proposed collection system does not include new combined sewers or a combined sewer extension to existing combined sewers. I certify that the ability for this collection system to comply with 327 IAC 3 is not contingent on water pollution/control facility construction that has not been completed and put into operation. I certify that the project meets all local rules or laws, regulations and ordinances. The information submitted is true, accurate, and complete, to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Gallons per day (Total Average Flow for Project)	291,142.5
Wastewater treatment plant (Name of WWTP)	Lakeland Regional Wastewater Treatment Plant
Sewers (Owners of sewers)	Lakeland Regional Sewer District
Signature <i>David L. Doctor President</i>	Date Signed (month, day, year) <i>12 '20 '12</i>

**(Please refer to IC 13-30-10 for penalties of submission of false information.)**

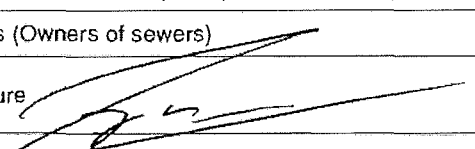
**CERTIFICATION OF REGISTERED PROFESSIONAL ENGINEER OR LAND SURVEYOR LETTER***This form must be filled-out in its entirety.*

Name of applicant: Casey M. Erwin
Name of owner: Lakeland Regional Sewer District
Name of project: Lakeland Regional Sanitary Collection System

**CERTIFICATION**

I, Casey M. Erwin, P.E., representing the project applicant, in my capacity as a registered  
(Name of individual) (Name of city or town)  
 professional Engineer, 10001102 certify the  
(Engineer or Land Surveyor) (Indiana registration number)

following under penalty of law: The design of this project has been performed under my direction or supervision to assure conformance with 327 IAC 3 and the plans and specifications require the construction of said project to be performed in conformance with 327 IAC 3-6. The peak daily flow rates, in accordance with 327 IAC 3-6-11 generated from within the specific area that will be collected by the proposed collection system that is the subject of the application, plans, and specifications (when functioning as designed and properly installed), will not cause overflowing or bypassing in the same specific area serviced by the proposed collection system other than from NPDES authorized discharge points. The proposed collection system does not include new combined sewers (serving new areas) or a combined sewer extension to existing combined sewers. The sewer at the point of connection is physically in existence and operational. Based upon information provided by the owner of the Wastewater System, the ability for this collection system to comply with 327 IAC 3 is not contingent on downstream water pollution/control facility construction that has not been completed and put into operation. The design of the proposed project meets applicable local rules or laws, regulations and ordinances. The information submitted is true, accurate, and complete, to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Gallons per day (Total Average Flow for Project)	291,142.5
Wastewater treatment plant (Name of WWTP)	Lakeland Regional Sanitary Collection System
Sewers (Owners of sewers)	Lakeland Regional Sewer District
Signature 	Date Signed (month, day, year) 12/20/12

**(Please refer to IC 13-30-10 for penalties of submission of false information.)**

**IDENTIFICATION OF POTENTIALLY AFFECTED PERSONS**

Please list any and all persons whom you have reason to believe have a substantial or proprietary interest in this matter, or could otherwise be considered to be potentially affected under law. Failure to notify a person who is later determined to be potentially affected could result in voiding our decision on procedural grounds. To ensure conformance with Administrative Orders and Procedures Act (AOPA), please list all such parties. The letter on the opposite side of this form will further explain the requirements under the AOPA. Attach additional names and addresses on a separate sheet of paper, as needed.

**SEE ATTACHED LIST**

Name	
Kosciusko County Commissioners	
Address (number and street)	
100 West Center Street	
City	
Warsaw	
State	ZIP
IN	46580

Name	
Address (number and street)	
City	
State	ZIP

Name	
Kosciusko County Health Department	
Address (number and street)	
100 West Center Street	
City	
Warsaw	
State	ZIP
IN	46580

Name	
Address (number and street)	
City	
State	ZIP

Name	
Address (number and street)	
City	
State	ZIP

Name	
Address (number and street)	
City	
State	ZIP

Name	
Address (number and street)	
City	
State	ZIP

Name	
Address (number and street)	
City	
State	ZIP

Name	
Address (number and street)	
City	
State	ZIP

Name	
Address (number and street)	
City	
State	ZIP

## IDENTIFICATION OF POTENTIALLY AFFECTED PERSONS

## CERTIFICATION

I certify that to the best of my knowledge I have listed all potentially affected parties, as defined by IC 4-21.5-3-4.

Proposed facility name Lakeland Regional Wastewater Collection System	Printed Name David L. Doctor <i>David L. Doctor President</i>
City 301 N Main St., PO Box 795, North Webster, IN 46555	Signature <i>David L. Doctor President</i>
County Kosciusko	Date (month, day, year) 12 / 20 / 12



# APPLICATION FOR WASTEWATER TREATMENT PLANT CONSTRUCTION PERMIT PER 327 IAC 3

STATE FORM 53160 (R2 / 9-08)  
Approved by State Board of Accounts, 2007

Exhibit C

Indiana Department of Environmental Management  
Office of Water Quality - Mail Code 65-42  
Facilities Construction Section  
100 North Senate Avenue, room N1255  
Indianapolis, IN 46204-2251

## INSTRUCTIONS:

1. This form must be filled out completely.
2. Additional pages (attachments following this form) are part of this application form and must be filled out completely.
3. Submission of plans, flow charts and/or schematic drawings are part of the application.
4. Submit the application form, additional pages, plans and specifications to the above address.
5. If you have any questions regarding this application, call IDEM's Office of Water Quality at (317) 232-8670.

APPLICANT		APPLICANT'S ENGINEER	
Name David L. Doctor		Name William Boyle Jr.	
Company Name Lakeland Regional Sewer District		Company Name DLZ Indiana, LLC	
Address 301 North Main Street, P.O. Box 705		Address 111 West Columbia Street, Suite 100	
City North Webster		City Fort Wayne	
State Indiana	ZIP code 46555	State Indiana	ZIP code 46802
Telephone number (including area code) 574-834-2382		Telephone number (including area code) 260-420-3114	
NAME AND LOCATION OF PROPOSED FACILITY		ATTACHMENT CHECKLIST	
Name Lakeland Regional Wastewater Treatment Plant		A. Wastewater treatment plant design summary form: <input checked="" type="checkbox"/> Yes	
Location (Referenced to two existing streets)		B. Plans and specifications: <input checked="" type="checkbox"/> Yes	
Location 4670 E 100 N between		C. The appropriate fee (if applicable, no fees for state or federal projects): <input checked="" type="checkbox"/> Yes	
Location N 400 E and N575 E	rec'd 12/27/12	D. Identification of Potentially Affected Persons (see note below): <input checked="" type="checkbox"/> Yes	
City Warsaw		E. Mailing Labels for Potentially Affected Persons: <input checked="" type="checkbox"/> Yes	
County Kosciusko			
Note Regarding item (D) above: Fully identify all persons, by name and address, who may be potentially affected by the issuance of this permit, such as adjoining landowners, persons with a propriety interest, and/or persons who have complained or submitted comments about your facility. Under IC 4-21.5-3-4, IDEM is required to notify potentially affected persons of its permit decision.			
PERMIT APPLICATION FOR CONSTRUCTION, EXPANSION, OR MODIFICATION OF (Check all that apply)		FUNDING	
A. Municipal wastewater treatment facility: <input checked="" type="checkbox"/> Yes		SRF Funding: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
B. Semipublic wastewater treatment facility: <input type="checkbox"/> Yes		USDA Rural Development	
C. New facility: <input checked="" type="checkbox"/> Yes			
D. Expansion or modification of existing facility: <input type="checkbox"/> Yes			
CERTIFICATION AND SIGNATURE			
Application is hereby made for a permit to authorize the activities described herein. I certify that I am familiar with the information contained in this application and to the best of my knowledge and belief such information is true, complete and accurate.			
Printed name of person signing David L. Doctor	Title Regional Sewer District President	Date application signed (month, day, year) 12-20-12	
Signature of Applicant <i>David L. Doctor</i>	IDEM - AR PAID		

\*Please refer to IC 13-30-10 for penalties of submission of false information\*

please process this check  
Thanks, Don Worley 2-5579

# Attachment 6

# **EXHIBIT D**



**LAKELAND REGIONAL SEWER DISTRICT**

**ORDINANCE NO. 2016-03**

AN AMENDED AND RESTATED ORDINANCE ESTABLISHING A SCHEDULE OF RATES AND CHARGES TO BE COLLECTED BY THE LAKELAND REGIONAL SEWER DISTRICT FROM OWNERS OF PROPERTY SERVED OR TO BE SERVED BY THE DISTRICT'S SEWAGE WORKS AND ADDRESSING OTHER MATTERS RELATED THERETO OR ARISING THEREFROM.

WHEREAS, the Lakeland Regional Sewer District, hereinafter "the District," is duly constituted to provide for the collection, treatment, and disposal of Sewage inside and outside the District, pursuant to I.C. 13-26 *et seq.*; and

WHEREAS, the District has heretofore authorized the construction, maintenance and operation of Works for the collection and disposal of Sewage under the provisions of I.C. 13-26 *et seq.*; and

WHEREAS, the District is authorized, pursuant to I.C. 13-26-11-1 *et seq.*, to fix, alter, charge, and collect reasonable rates and other charges in the area served by its facilities to every Person whose premises are, whether directly or indirectly, provided with sewage services by the facilities for the purpose of providing for payment of the expenses of the District; the construction, acquisition, improvement, extension, repair, maintenance, and operation of its facilities and properties; the payment of principal and interest on its obligations; and to fulfill the terms of agreements made with the purchasers or holders of any obligations or with a Person or eligible entity; and

WHEREAS, the District Board of Trustees, pursuant to I.C. 13-26-11-8, shall, by ordinance, establish just and equitable rates or charges for the use of and service rendered by a Sewage Works, payable by the owner of each lot, parcel of land, or building that is connected with and uses a Works, that is to be connected and that is to use a Works, or that in any way uses or is served by the Works; and

WHEREAS, pursuant to I.C. 13-26-11-9, just and equitable rates are considered to be those rates that provide sufficient revenue to pay all expenses incident to the operation of the Works to include maintenance cost, operating charges, upkeep, repairs, and interest charges on bonds or other obligations; provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds; and provide adequate funds to be used as working capital, as well as funds for making improvements, additions, extensions, and replacements; and

WHEREAS, the District intends to build and install a sanitary sewage collection and treatment system within its operating territory and now needs to establish a schedule of rates and charges to pay all lawful expenses associated with the construction and operation of said system; and

WHEREAS, said I.C. 13-26-11-1 *et seq.* require that the rates and charges to be collected for the use of and the service rendered by such Sewage Works to be fixed by ordinance, finally adopted after due notice and public hearing, and authorizes the collection of rates and charges;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE LAKELAND REGIONAL SEWER DISTRICT AS FOLLOWS:

Section 1. Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as follows:

- a. "Board" shall mean the Board of Trustees of the Lakeland Regional Sewer District, or any duly authorized officials, agents, or employees acting on its behalf.
- b. "Campground" shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy.
- c. "Capacity Charge" shall mean a charge to the owner of any lot, parcel, real property, or building connection to the Sewage Works whose property was not included in the Project or construction or installation of the Sewage Works and who has not paid monthly rates and charges previously.
- d. "CBOD" (or "Carbonaceous Biochemical Oxygen Demand") shall the same meaning stated in the Sewer Use Ordinance.
- e. "Credit Card" means a credit card, debit card, charge card, or stored value card.
- f. "Debt Service Costs" shall mean the principal and interest payments on all proposed revenue bonds or other long-term capital debt.
- g. "Dwelling Unit" shall mean a room or rooms in which cooking and/or sleeping facilities are provided.
- h. "District" shall mean the Lakeland Regional Sewer District acting by and through the Board.
- i. "Electronic Funds Transfer" shall mean a transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, computer, magnetic tape, or other electronic means to order, instruct, or authorize a financial institution to debit or credit an account.

- j. "Excessive Strength Surcharge" shall mean an additional charge that is billed to users for treating sewage wastes with an average strength in excess of Normal Domestic Sewage.
- k. "Guesthouse" shall mean a structure that contains a non-leased Dwelling Unit, which is located on the same and/or immediately adjacent lot as a Single-Family Residence, but does not share a common wall with the Single-Family Residence. Moreover, a Guesthouse must be owned by the same individual or nuclear family that owns the Single-Family Residence.
- l. "Manufactured Home" shall mean a factory-built unit that meets Federal performance standards and that is assembled in a factory, has a chassis, is transported by special permit, and serves as a Dwelling Unit for year-round occupancy.
- m. "Mobile Home" shall mean a residential structure that is transportable in one or more sections, is thirty-five (35) feet or more in length with the hitch, is built on an integral chassis, is designed to be used as a place of human occupancy when connected to the required utilities, contains the plumbing, heating, air conditioning, and/or electrical systems in the structure, and is constructed so that it may be used with or without a permanent foundation.
- n. "Mobile Home Court" shall mean a parcel of land containing two or more spaces, with required improvements and utilities, used for the long-term placement of Mobile Homes.
- o. "Normal Domestic Sewage" (for the purpose of determining surcharges) shall mean wastewater or Sewage from segregated domestic and/or sanitary conveniences, rather than wastes from industrial processes, and having an average daily concentration as follows:
  - 1. Phosphorus - not more than 10 mg/l
  - 2. S.S. - not more than 275 mg/l
  - 3. Ammonia - not more than 20 mg/l
  - 4. CBOD - not more than 275 mg/l
- p. "Operation and Maintenance Cost" shall include all costs, direct and indirect, necessary to provide adequate wastewater collection, transport and treatment on a continuing basis and produce discharges to receiving waters that conform with all related Federal, State, and local requirements. These costs include replacement.
- q. "Other Charges" shall mean Capacity Charges, tap charges, connection charges, area charges, and/or other identifiable charges.
- r. "Person" shall mean any and all persons, natural or artificial, including any

individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency, or other entity authorized by Indiana law.

- s. "Project" shall mean the construction and installation of the initial sanitary Sewage collection and treatment system or systems in the District's operating territory.
- t. "Recreational Vehicle" shall mean a travel trailer, park model, collapsible trailer, truck-mounted camper, or motor home. A "Recreational Vehicle" is not a "Mobile Home."
- u. "Replacement Costs" shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances, which are necessary during the useful life of the Sewage Works equipment to maintain the capacity and performance for which such Works were designed and constructed.
- v. "S.S." (or "Suspended Solids") shall have the same meaning as stated in the Sewer Use Ordinance.
- w. "Sewage" shall have the same meaning as stated in the Sewer Use Ordinance.
- x. "Sewage Works" or "Works" shall have the same meaning as stated in the Sewer Use Ordinance.
- y. "Sewer Use Ordinance" shall mean a separate and companion enactment to this Sewer Rate Ordinance that regulates the connection to and use of public and private sewers.
- z. "Shall" is mandatory; "may" is permissive.
- aa. "Single-Family-Dwelling Unit" shall mean a Single-Family Residence or a Mobile Home, or Manufactured Home that is not located in a Mobile Home Court.
- bb. "Single-Family Residence" shall mean one or more rooms that are arranged, designed, or used as living quarters for one family and shall include, but not be limited to, a complete, single, permanently installed kitchen facility.
- cc. "User Charges" shall mean a charge levied on users of the Sewage Works for the cost of operation and maintenance of said Works.
- dd. "User Class" shall mean the division of Sewage Works customers by source, function, waste characteristics, and process or discharge similarities (i.e., residential, commercial, institutional, and governmental).

- i. "Commercial User" shall mean any establishment involved in a commercial enterprise, business or service which, based on a determination by the District, discharges primarily segregated domestic waste or wastes from sanitary conveniences into the Sewage Works.
- ii. "Governmental User" shall mean any Federal, State, or local governmental user of the Sewage Works.
- iii. "Institutional User" shall mean any establishment involved in a social, charitable, religious, and/or educational function which, based on a determination by the District, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.
- iv. "Residential User" shall mean a user of the Sewage Works whose premises or building is used primarily as a residence for one or more persons, including all Dwelling Units, etc.

Section 2. Every Person whose premises are available to be served by or that are served by the District's Sewage Works shall be charged for the services provided or to be provided by the District. These charges are established for each User Class, as defined, in order that the District shall recover, from each user and User Class, revenue which is proportional to its availability and use of the Sewage Works. User Charges are levied to defray the cost of operation and maintenance (including replacement) of the Sewage Works. User Charges shall be uniform in magnitude within a User Class.

The various classes of users of the Sewage Works for the purpose of this Ordinance shall be as follows:

Residential  
Commercial  
Governmental  
Institutional  
Industrial

Section 3. For the availability of service rendered by or to be rendered by the Sewage Works or for the use of and service rendered or to be rendered by the Sewage Works, rates and charges shall be collected from the owners of each and every lot, parcel of real estate, or building that is connected, that will be connected, or that is required to be connected to the District's sanitary systems by Indiana statute and/or local ordinance, or that otherwise discharges sanitary sewage, industrial waste, water, or other liquids, either directly or indirectly, into the sanitary sewage system of the District. Such rates and charges shall include User Charges, Debt Service Costs charges, Excessive Strength Surcharges, and Other Charges, which rates and charges shall be payable as hereinafter provided, and shall be in an amount determined as follows:

- a. Sewage rates and charges shall be determined by equivalent single family dwelling units (ESFDU), except as herein provided. Sewage bills shall be

rendered once each month (or a period equaling a month). Monthly charges shall be determined by the schedule of rates and charges marked Exhibit A, attached hereto, and incorporated herein by reference.

After considering the District's current and future financial needs, the statutes that govern rate making by a regional sewer district, and the advice and recommendations of its financial consultant, the Board hereby finds that the rates and charges identified in Exhibit A are just and equitable, as those terms are defined by Indiana law.

- b. An industry with industrial process effluent discharged into the sanitary sewage system shall install, operate and maintain, at the user's expense, a measuring device satisfactory to the District for the measurement of the volume of flow discharged for sanitary sewers and shall be charged for the quantity of flow under rates established or to be established.
- c. Connections which qualify for more than one category of use (e.g., Single-Family Residence and professional office in home) shall be calculated and charged as the sum of the equivalent single family dwelling units (EFSDUs) for all applicable categories.
- d. For services rendered to the District, said District shall be subject to the same rates and charges established herein.
- e. Except as otherwise provided by statute, the monthly rates and charges provided herein shall be applied throughout the year based upon the maximum sewage service required in any month in any calendar year. For example, the User Charges based on employment shall be applied throughout the year based upon the maximum employment of the user for such single maximum employment month, and such maximum usage shall be applied throughout the year.
- f. Capacity charges shall be determined on the basis of the cost of the Project. The owner of any lot, parcel, real property, or building connection to the Sewage Works whose property was not included in the construction and installation of a Sewage Works and who has not paid monthly rates and charges previously shall pay a Capacity Charge for each connection to the Sewage Works. Capacity Charges shall also be imposed on all connections made to future extensions of the Sewage Works. Capacity Charges shall be paid before the property owner will be allowed to connect the property to the Sewage Works. The schedule of Capacity Charges shall be determined and enacted when the Project is complete.

In addition to the Capacity Charge, the property owner shall pay all costs associated with connecting his or her property to the District's Works, including, but not limited to, the costs to purchase any equipment necessary to connect the property, the costs to install said equipment, and the costs to disable and abandon to the District's satisfaction any septic or other private sewage collection and

treatment system located on or serving the property.

- g. Pursuant to I.C. 13-26-11-5, in order to produce an amount sufficient to meet the interest on revenue bonds and other expenses payable before the completion of the Project, after the contracts for said Works have been let and the actual work commenced thereunder, the owners of each and every lot, parcel of real estate or building to be connected to the Sewage Works shall pay a monthly billing rate of \$3.80 per bill and a user charge of \$7.40 per ESFDU. Campgrounds that choose a metered rate shall pay a monthly billing rate of \$3.80 per bill and a user charge of \$1.64 per thousand gallons of flow. Beginning with the first month after completion of the Sewage Works, the full rates and charges established herein shall become effective for each such lot, parcel of real estate, or building; but in any event, said full rates and charges shall become effective no later than January 31, 2017, so that billings for full rates and charges shall be rendered no later than March 1, 2017.

Section 4. The aforementioned rates and charges shall be prepared, billed and collected by the District in the manner provided by law and ordinance.

- a. The rates and charges for all users identified in Exhibit A shall be prepared and billed monthly, except that the District may use a coupon book, mailing it once a year.
- b. All rates and charges (as described herein) not paid when due are hereby declared to be delinquent, and may incur a one-time penalty of ten (10) percent of the amount of the rates and charges declared delinquent. Such penalty shall not be compounded over time. For example, should an owner have a current monthly rate of \$66.15 and not pay it when due, the District may impose a one-time penalty of ten (10) percent on that given amount (i.e., \$6.62). Should the owner then fail to pay the monthly charge and its one-time penalty of ten (10) percent by the time another month has passed, the District may impose no further penalty on the first month, but shall impose a one-time penalty of ten (10) percent on the second monthly charge (i.e., \$6.62) if the second monthly charge becomes delinquent.

The time at which monthly charges shall be paid is now fixed as the last day of each calendar month. The District will use its best efforts to mail the bills by the 10<sup>th</sup> of each month. Payment is considered made when it is received by the District at its office. The District may also charge the owner for the cost of certified postage paid by the District to notify the owner of delinquency.

- c. As authorized by I.C. 13-26-5-9 and Ind. 36-1-8-11, the District may pay claims owed by the District and receive payments owed to the District by cash, check, bank draft, money order, bank card, Credit Card, or Electronic Funds Transfer. A convenience fee for the use of electronic financial instruments accordingly is hereby established. The convenience fee shall be the amount charged to the District by the financial instrument's vendor but shall not exceed five (5) percent

of the amount of the payment.

Written notification is required to initiate Electronic Funds Transfer and to make any account changes after initiation. The owner's account must be brought current before Electronic Funds Transfer may be initiated with the District.

- d. Regardless of the manner of payment, if any payment to the District is taken back by a bank or other financial institution as a result of said payment being dishonored for insufficient funds, the owner shall pay to the District an insufficient funds fee of \$30.00, and the District shall charge the dishonored amount to the owner again.

Section 5. In order to recover the inherent costs associated with providing services other than operation and maintenance services, including, but not limited to, inspections, the fee schedule shown in Exhibit B, attached hereto and incorporated herein by reference, is hereby adopted.

Section 6. In order to recover the inherent costs associated with fee collection on delinquent accounts, the District shall charge the cost of certified postage to the owner of the delinquent account for all mailings sent to the owner relating to the collection of the owner's debt.

Section 7. The District shall charge to the owner the costs associated with recording special agreements, easements, liens, releases of liens, and any other required recording with a local or state government.

Section 8. In accordance with the Sewer Use Ordinance, any owner found to have obstructed or damaged the District's Sewage Works on his or her property shall be held liable for the costs to repair (or replace) the damaged portion of the Works. Moreover, any owner found to have improperly discharged certain prohibited discharges, as identified in the Sewer Use Ordinance, shall be held liable for any and all costs associated with cleaning out, rebuilding, and repairing the Sewage Works. To hold such owner liable, the District shall bill said owner and the charges shall be placed on the owner's account.

Section 9. In addition to paying the monthly charges, each owner shall pay the electrical bill required for the operation of the effluent pump that serves the owner's property which is a part of the public sewer system.

Section 10. Upon written notification by the District, the owner shall pay the cost to disable and abandon the septic or other private collection and treatment system located on the owner's property in a manner satisfactory to the District. If the owner does not disable and abandon the septic or other private collection and treatment system within 10 days of receipt of said written notice, the District shall contract to have the septic or other private collection and treatment system on the property disabled and abandoned, and the expenses incurred by the District shall be added to the next monthly charge to the owner.



Section 11. To the extent allowed by law, the District shall recoup all costs associated with service to owners, including, but not limited to, services relating to connections, repairs, and collections. The District may recoup such costs by resolution, creating charges or fees for owners users when they use such services.

Section 12. For the service rendered to the District, the District shall be subject to the same rates and charges hereinabove provided, or charges and rates established in harmony therewith.

Section 13. In order that the rates and charges may be justly and equitably charged for the service rendered to owners, the District shall base its charges not only on the volume of wastewater flows to be collected and treated, but also on the strength and character of the stronger-than-Normal Domestic Sewage and wastes that are discharged into the Sewage Works. The District shall require the owner to determine the strength and content of all the Sewage and wastes discharged, either directly or indirectly into the sanitary sewage system, in such manner and by such method as the District may deem practicable in light of the conditions and attending circumstances of the case in order to determine the proper charge. The user shall furnish a central sampling point available to the District at all times.

Normal Domestic Sewage strength should not exceed a Carbonaceous Biochemical Oxygen Demand of 275 milligrams per liter of fluid or Suspended Solids in excess of 275 milligrams per liter of fluid or ammonia in excess of 20 milligrams per liter of fluid or phosphorous in excess of 10 milligrams per liter of fluid. Additional charges for treating stronger-than-normal domestic waste shall be made on the bases identified in Exhibit C, attached hereto and incorporated herein by reference. Said schedule of surcharges is hereby adopted.

The determination of Suspended Solids, ammonia, phosphorous, and Carbonaceous Biochemical Oxygen Demand contained in the waste shall be in accordance with the latest copy of "Standard Methods for the Examination of Water, Sewage, and Industrial Wastes," as written by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation, and in conformance with "Guidelines Establishing Test Procedures for Analysis of Pollutants," Regulation CFR Part 136, published in the Federal Register on October 16, 1973.

Section 14. The District shall make and enforce such by-laws and regulations as may be deemed necessary for the safe, economical and efficient management of the District's Sewage Works, for the construction and use of said Works, for connection to said Works, and for the regulation, collection, and crediting, rebating or refunding of such rates and charges. No free service shall be provided to any user of the Sewage Works. The Board is hereby authorized to prohibit dumping of wastes into the District's Works which, in its discretion, are deemed harmful to the operation of the Works of the District.

Section 15. In order to ensure that the rates and charges for Sewage services are just and equitable and sufficient to cover the District's costs, pursuant to I.C. 13-26-11-9, the District shall conduct a study following the first two years of its operation at the full rates and charges

identified herein and within a reasonable period of time following the normal accounting period. Said study shall include, but not be limited to, (1) an analysis of the costs associated with the treatment of excessive strength effluents from industrial users, (2) volume and delivery flow rate characteristics attributed to the various users or User Classes, (3) the financial position of the Sewage Works and the adequacy of its revenue to pay the costs identified by Indiana law, and (4) replacements and capital improvements to the wastewater treatment systems.

Thereafter, the District shall conduct a similar study as often as is necessary to ensure that the District's rates and charges are just and equitable and sufficient to cover the costs identified I.C. 13-26-11-9, but in no event shall said study be conducted any less often than every two years.

Section 16. All ordinances or parts of ordinances in conflict herewith are hereby repealed. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

Section 17. Any differences that may arise between users and District that cannot be otherwise resolved may be appealed to the District Board.

Section 18. The rates and charges as herein set forth shall become effective on the first full billing period occurring after the adoption of this ordinance.

Section 19. This ordinance shall take effect upon promulgation according to law.

*[Signatures follow on the next page.]*

ALL OF WHICH IS DULY ORDAINED THIS 4<sup>TH</sup> DAY OF AUGUST,  
~~2015.~~ 2016

LAKELAND REGIONAL  
SEWER DISTRICT  
BOARD OF TRUSTEES

James P. Stacey

Robert J. Marucci

John B. G. Smith

W. L. W. C.

James A. Hall

John A. Hall

H. S. L.

**LAKELAND REGIONAL SEWER DISTRICT  
SCHEDULE OF RATES AND CHARGES  
EXHIBIT A**

Billing & administrative costs - per monthly bill Monthly Rate  
\$3.80

	<u>Monthly Rate</u>			
	<u>Equivalency Factors</u>	<u>User Charge</u>	<u>Debt Service</u>	<u>Totals</u>
<b>Residential:</b>				
Single family residence/unit	1.000	\$19.65	\$46.50	\$66.15
Apartments, condominiums & townhouses/unit	1.000	19.65	46.50	66.15
Mobile home court/space available for rent	1.000	19.65	46.50	66.15
Duplexes/unit	1.000	19.65	46.50	66.15
Detached guesthouse or garage apartment	0.500	9.83	23.25	33.08
<b>Commercial:</b>				
Retail establishment:				
First 3 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54
Gasoline service station or repair/service shop:				
First 3 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54
Cabins and resorts (per unit):				
Per each 11 person capacity	1.000	19.65	46.50	66.15
Hotels or motels:				
Per room	0.330	6.48	15.35	21.83
Professional offices:				
First 3 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54
Restaurants, drive-ins, bars & organizations with eating and/or drinking facilities (not open 24 hrs.)				
Per seat	0.100	1.97	4.65	6.62
Shop, office or business in residence	1.000	19.65	46.50	66.15
Recreational areas:				
Campgrounds:				
Non-metered:				
Without individual sewer hook-ups:				
Per available campsite	0.150	2.95	6.98	9.92
Plus: Per Office, structures with Restroom facilities, showers, and/or washaterias/washers	1.000	19.65	46.50	66.15

## With individual sewer hook-ups:

Per available campsite	0.300	5.90	13.95	19.85
Plus: Per Office, structures with restroom facilities, showers, and/or washaterias/washers	1.000	19.65	46.50	66.15

Metered - 1,000 gallons

\$14.70 per 1,000 Gallons of flow

## Marinas:

First 3 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54

**Institutional:**

Churches &amp; other religious organizations:

For first 200 members plus fraction thereof	1.000	19.65	46.50	66.15
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**Governmental:**

Offices:

First 3 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54

Post office:

First 3 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54

Fire department

1.000	19.65	46.50	66.15
-------	-------	-------	-------

**Industrial:**

Manufacturing - unmetered:

First 2 employees	1.000	19.65	46.50	66.15
Each additional employee	0.250	4.91	11.63	16.54

**CHARGES OTHER THAN FOR MONTHLY SERVICE  
EXHIBIT B**

Fees and charges for services other than monthly sanitary sewer collection and treatment services shall be payable as hereinafter provided.

a.	Residential:	<u>Fee</u>
	New dwelling constructions; Original Connections; Additions to existing dwellings; Unattached garages, accessory or storage buildings connected to system; Manufactured Home not located in a Mobile Home Court. This fee includes one (1) trip to the building site.	\$120.00
	Unattached garages, accessory or storage buildings not connected to system; Decks, porches, carports, fences, retaining walls, or similar type construction, Manufactured Home located in a Mobile Home Court. These items include one (1) trip only to the building site.	\$40.00
	Each subsequent trip for the same or similar purpose.	\$50.00
b.	Commercial:	
	New construction, original connections and additions	\$120.00
	If a non-objection letter/amendment is required by other agencies not covered above and does not require a site inspection, there will be a minimum charge of \$10.00 per letter.	
	Renewal of expired letters of non-objection is \$10.00 if no changes are made to original submitted drawings or no new trips are required for re-inspection.	
	One Trip:	
	Inspection of tank, plumbing and electrical	\$90.00
	Electrical only	\$90.00
	Plumbing only	\$90.00
	Re-inspection fees will be charged per trip	\$50.00
	Post-construction permit: Double the amount of original permit fee	

- c. Encroachment Agreement or the cost to the District of dealing with any encroachment shall include the cost of preparing any agreement, any attorney's fees, recording fees, and other expenses incurred by the District at a rate of:

Attorney's Fees:	\$150.00 per hr.
Supervisor or Staff:	\$60.00 per hr.
Technician:	\$55.00 per hr.

- d. Any job or service performed by the District will be charged at the following rates:

Supervisor or Staff:	\$70.00 per hr.
Technician:	\$60.00 per hr.
Equipment Charges:	
Backhoe	\$115.00 per hr.
Sewer Vacuum Truck	\$95.00 per hr.
Portable Sewer Jetter	\$45.00 per hr.
Dump Truck	\$45.00 per hr.
Trailer	\$25.00 per hr.
Service Truck	\$40.00 per hr.
45 KW Generator	\$45.00 per hr.
Small Generator	\$25.00 per hr.
Fusion Machine	\$40.00 per hr.
Request for billing statement for property transfer	\$25.00 per request

Rental equipment and materials will be charged cost plus 30% for administrative, service and other overhead costs.

**SURCHARGES FOR STRONGER-THAN-NORMAL WASTEWATER  
EXHIBIT C**

1. Rate Surcharge Based Upon Suspended Solids – There shall be an additional charge of \$0.10 per pound of Suspended Solids for Suspended Solids received in excess of 275 milligrams per liter of fluid.
  2. Rate Surcharge Based Upon CBOD – There shall be an additional charge of \$0.10 per pound of Carbonaceous Biochemical Oxygen Demand for CBOD received in excess of 275 milligrams per liter of fluid.
  3. Rate Surcharge Based Upon Ammonia – There shall be an additional charge of \$1.17 per pound of ammonia received in excess of 20 milligrams per liter of fluid.
  4. Rate Surcharge Based Upon Phosphorous – There shall be an additional charge of \$2.41 per pound of phosphorous received in excess of 10 milligrams per liter of fluid.
  5. Rates Surcharge Based Upon Fats and Grease – There shall be an additional charge of \$1.12 per pound of phosphorous received in excess of milligrams per liter of fluid.
-



# **EXHIBIT E**

Lakeland Regional Sewer District  
c/o Jones Petrie Rafinski Corp  
P O Box 2907  
Elkhart, IN 46515

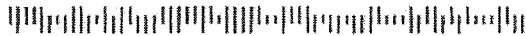
Temp—Return Service Requested

Summary of Service  
Interim Wastewater Charge 1900.31  
Last Payment Date 03/03/17  
Last Payment Amount 240.24

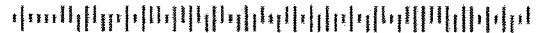
Account Number	8 00954 00
Due if paid by 03/31/17	1900.31
Due if paid after 03/31/17	2090.34
Amount Paid	



01171 \*\*\*\*\*AUTO\*\*ALL FOR AADC 467  
CARRY ZEIGLER \*5-1171  
5917 N COUNTY LINE RD W  
HUNTERTOWN IN 46748-9476



Lakeland Regional Sewer District  
c/o Jones Petrie Rafinski Corp  
P O Box 2907  
Elkhart, IN 46515



PLEASE DETACH AND RETURN UPPER PORTION WITH PAYMENT. THANK YOU.

Jones Petrie Rafinski Corp  
P O Box 2907  
Elkhart, IN 46515

Hours  
Monday thru Thursday, 9:00am - 4:00pm

Website  
<http://lakelandrsd.com>

Billing Questions: (574) 226-8468  
Email for billing questions:  
[jransbottom@jpr1source.com](mailto:jransbottom@jpr1source.com)

#### Account Information

Account Number	Bill Date	From Date	Thru Date	Service Address		
8 00954 00	03/10/17	02/01/17	02/28/17	11 EMS B14 LN		
Charge Description	Previous Reading	Present Reading	Total Consumption	Previous Balance	Tax	Charge
Interim Wastewater Charge				-21.84		1922.15

AMOUNT DUE IF PAID BY 03/31/17: 1900.31  
IF PAID AFTER 03/31/17: 2090.34

Make Checks Payable to: Lakeland Regional Sewer District

PAYMENT IS DUE UPON RECEIPT. IF NOT PAID WITHIN 15 DAYS OF BILLING DATE, A PENALTY WILL BE ADDED.

#### PENALTY IS:

Wastewater: 10% of Wastewater Charge

Account is not considered paid until payment is received in our office.

We are not responsible for the U.S. Mail.

Failure to receive a bill does not relieve consumer of penalty.

The Lakeland Regional Sewer District project is nearing completion, and it is anticipated that you will receive written connection instructions in February. Please be advised that **beginning with the March** sewer bill, your rate will be the **full monthly sewer rate of \$69.95** per dwelling unit.

This institution is an equal opportunity provider.

Esta institucion es un proveedor de servicios con igualdad de oportunidades.

# **EXHIBIT F**



Andrew D. Boxberger  
[aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com)

March 24, 2017

[carsonboxberger.com](http://carsonboxberger.com)

260 423-9411

The Harrison  
301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802

Certified Mail  
Return Receipt Requested  
9214 8969 0099 9790 1613 8825 16

Tabitha L. Balzer, Esq.  
LEWIS & KAPPES, P.C.  
One American Square, Suite 2500  
Indianapolis, IN 46585-0003

Re: Kuhn Lake Lakeside Resort

Dear Ms. Balzer:

As you are aware, we represent the interests of the Lakeland Regional Sewer District (the "District"). I am in receipt of your letter dated March 8, 2017, on behalf of your client, Kuhn Lake Lakeside Resort (the "Resort"). With regard to #I of your letter, your client should have received a connection notice dated March 2, 2017, informing them of the necessity to connect to the District's system. That letter is enclosed with this letter and please allow this letter to serve as certified notice to your client as their obligation to connect. A certified copy of this letter and the enclosed is also being sent to your client.

Also with regard to #I of your letter, your client has 180 days (from the date of the letter) to connect to the system. There is no waiver available for connection and your client should consider themselves legally obligated to connect prior to the end of the notice period. Statutory and case law are clear as to the District's rights to commence charging for rates and charges in accordance with the operation, maintenance and debt service of the system.

With regard to #II of your letter, the Resort is categorized as a mobile home park in accordance with the District's Rate Ordinance (the "Ordinance"). The District has investigated to confirm that the classification is correct. As a result, the Resort will be billed in accordance with the Ordinance.

Respectfully yours,

CARSON BOXBERGER LLP

A handwritten signature of Andrew D. Boxberger in black ink, written over the printed name.

Andrew D. Boxberger, Esq.

ADB:cc/encs.

Cc: Jim Haynie  
Kuhn Lake Lakeside Resort

# **EXHIBIT G**



LEWIS  
KAPPES  
ATTORNEYS AT LAW

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One American Square, Suite 2500, Indianapolis, IN 46282 T: 317.639.1210 F: 317.639.4882 [www.lewis-kappes.com](http://www.lewis-kappes.com)

Tabitha Balzer  
[tbalzer@Lewis-Kappes.com](mailto:tbalzer@Lewis-Kappes.com)

March 29, 2017

**VIA U.S. MAIL AND ELECTRONIC MAIL**

Andrew D. Boxberger, Esq.  
Eric M. Blume, Esq.  
CARSON BOXBERGER LLP  
301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802  
[Aboxberger@carsonboxberger.com](mailto:Aboxberger@carsonboxberger.com)  
[Blume@carsonboxberger.com](mailto:Blume@carsonboxberger.com)

**Re: Lakeland Regional Sewer District Rates to Kuhn Lake Lakeside Resort  
(f/k/a Reynold's Vacation Park)**

Dear Mr. Boxberger,

I am contacting you regarding your letter of March 24, 2017 on behalf of your client, Lakeland Regional Sewer District (LRSD), in response to my letter of March 8, 2017, on behalf of my client, Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park) (herein "Resort").

As I explained in my March 8 letter, the Resort is a seasonal campground only open from May 1 to October 1 each year. It is classified as a campground by the Indiana Department of Health<sup>1</sup> and LRSD categorized it as a campground in its December 20, 2012 IDEM permit application. As the March 8 letter explains, the Resort qualifies as a campground because it is (1) real property (2) set aside and offered for the remuneration of the owners/operators (3) for parking or accommodation of shelters similar to the enumerated shelter types and (4) which is not designed for permanent or year-round occupancy.

Your response of March 24 does not address any of these facts, and instead simply states summarily that the Resort "is categorized as a mobile home park in accordance with the District's Rate Ordinance" and that the "District has investigated to confirm that the classification is correct." The letter lacks any reasoning regarding the basis of this determination. Furthermore, the letter fails to address the issue of whether the Resort qualifies as a campground under the ordinance. A facility may qualify as both a mobile home park and a campground. The definition of campground is simply narrower because it requires that usage be seasonal. The Resort fits the narrower definition of "campground," because its usage is seasonal.

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<sup>1</sup> The Resort is listed as Reynolds Vacation MHP, its former name.

Mr. Andrew Boxberger & Mr. Eric Blume  
March 29, 2017  
Page 2 of 2

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In addition, your letter does not address a recent highly relevant Indiana Utility Regulatory Commission decision in Cause 44798. As you know, Cause 44798 is another case involving the request by three recreational facilities in the LRSD service territory seeking to be billed under campground rates pursuant to Ind. Code § 13-26-11-2 ("Section 2"). On March 23, 2017, the IURC issued a Docket Entry in that case which discussed the definition of "campground" for purposes of Section 2. This Docket Entry explained that the definition of campground under an ordinance is irrelevant, and that the real question involves the definition of campground under Section 2. The Docket Entry used ordinary dictionary definitions to define "campground," and concluded that the proper analysis of whether a facility is a campground is **"the nature of its use, i.e. recreational use versus full-time residential use, rather than the type or size of the shelter located at the facility."**

You may not have received or had the opportunity to review the Docket Entry prior to sending your March 24 letter, because the Docket Entry was issued and faxed the day before the date of the letter. However, in light of the clear guidance provided by the Docket Entry, I ask that you reconsider the position taken in your letter. Kuhn Lake Lakeside Resort is clearly a campground because the nature of this seasonal facility's use is recreational, not full-time residential. Accordingly, the Resort is entitled to be billed at campground rates.

Please let me know by **close of business on Thursday, March 30** whether your March 24 letter represents a proposed disposition of this matter, as defined by Ind. Code § 13-26-11-2.1(c), or whether the Board is still considering the matter, especially in light of the Docket Entry. If I do not hear back from you by close of business on March 30, the Resort will file a Complaint with the Consumer Affairs Division of the Indiana Utility Regulatory Commission.

Sincerely,

LEWIS KAPPES, P.C.



Tabitha L. Balzer

TLB/ert

# **EXHIBIT H**



STATE OF INDIANA ) IN THE KOSCIUSKO SUPERIOR COURT  
 ) SS:  
 COUNTY OF KOSCIUSKO ) CAUSE NO.: \_\_\_\_\_

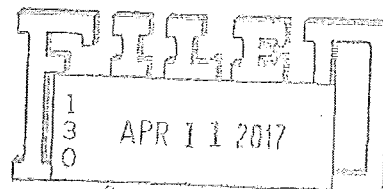
LAKELAND REGIONAL SEWER DISTRICT, )

Plaintiff, )

vs. )

PINE BAY RESORT, LLC, )  
 TLH1, LLC/NBW2, LLC/RTK Group 1, LLC, )  
 d/b/a Northcrest, WELKER ENTERPRISES, )  
 INC., d/b/a Barbee Landing MHP, and )  
 CRZ HOME SERVICES, LLC d/b/a Kuhn )  
 Lake Lakeside Resort, )

Defendants. )



CLERK KOSCIUSKO SUPERIOR COURT

### COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Lakeland Regional Sewer District (the "District"), by counsel, and for its Complaint for Declaratory Judgment against Defendants, Pine Bay Resort, LLC ("Pine Bay"), TLH1, LLC/NBW2, LLC/RTK Group 1, LLC, d/b/a Northcrest ("Northcrest"), Welker Enterprises, Inc., d/b/a Barbee Landing MHP ("Barbee Landing"), and CRZ Home Services, LLC d/b/a Kuhn Lake Lakeside Resort ("Kuhn Lake"), alleges and states as follows:

### PARTIES AND JURISDICTION

1. The District is a regional sewer district, duly organized and operating pursuant to Indiana Code § 13-26, *et al*, with its principal place of business at 301 N. Main Street, North Webster, Indiana 46555.

2. Pine Bay is an Indiana limited liability company with its principal place of business at 4257 N. Sullivan Road, Leesburg, Indiana 46538.

3. Northcrest is owned by three Indiana limited liability companies with its principal place of business at 1 Lane EMS B 61 D, Warsaw, Indiana 46582.

4. Barbee Landing appears to have been an Indiana for profit corporation before being administratively dissolved on February 17, 2005, but which continues to do business under its assumed business name, Barbee Landing, at its principal place of business at 67 EMS B 61 Lane, Warsaw, Indiana 46580.

5. Kuhn Lake is owned by an Indiana limited liability company with its principal place of business at EMS Lane 14 and 15, Pierceton, Indiana 46562.

6. Jurisdiction over Defendants is proper in this Court, at least, pursuant to Rule 4.4(A)(1) and (5) of the Indiana Rules of Trial Procedure.

7. Venue is proper in this Court because all events giving rise to this cause of action occurred in Kosciusko County, Indiana, and Kosciusko County is a preferred venue under Rule 75(A)(2) and (4).

#### RELEVANT FACTS

8. The District is a regional sewer district, duly organized and operating pursuant to Ind. Code 13-26, *et al.*

9. Following its organization, the District worked with DLZ (its engineers) and H.J. Umbaugh & Associates ("Umbaugh") (its rate consultants) to do a number of things, including the preparation of rate studies and the development of a rate ordinance.

10. Starting in April, 2013, DLZ, Umbaugh, and the District, began performing site visits of properties to be within the District's service area as part of the effort to classify properties and their uses.

11. Following that date, the District began drafting its rate ordinance.

12. As the ordinance language was being drafted, site visits continued in early 2015, to see where certain properties and uses fell within the contemplated definitions for various uses of property.

13. During the site visits sometime in 2015, the District confirmed that, according to the definitions noted below:

- a. Pine Bay had 45 mobile homes and one recreational vehicle;
- b. Northcrest had 28 mobile homes; and
- c. Barbee Landing had 12 mobile homes, two recreational vehicles and one empty lot.
- d. Kuhn Lake had at least 22 mobile homes and at least three recreational vehicles.

14. At the same time, in February 2015, the District verified with the Indiana State Board of Health and Kosciusko County Planning Department the number of lots for Pine Bay, Northcrest, Barbee Landing, and Kuhn Lake. Each property had more than two lots, which is also confirmed by the fact that more than two mobile homes are located on each property owned by the Defendants.

15. On June 4, 2015, the District, by its Board of Trustees (the "Board") enacted Ordinance No. 2015-02, amended most recently on or about April 6, 2017 as

Ordinance No. 2017-03 (the "Ordinance"), an ordinance establishing the schedule of rates and charges to be collected by the District from property owners in the service area.

16. There were several definitions in the Ordinance pertinent to this case. In that regard, the Ordinance provided that:

- a. **"Campground"** shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy.
- b. **"Mobile Home"** shall mean a residential structure that is transportable in one or more sections, is thirty-five (35) feet or more in length with the hitch, is built on an integral chassis, is designed to be used as a place of human occupancy when connected to the required utilities, contains the plumbing, heating, air conditioning, and/or electrical systems in the structure, and is constructed so that it may be used with or without a permanent foundation.
- c. **"Mobile Home Court"** shall mean a parcel of land containing two or more spaces, with required improvements and utilities, used for the long-term placement of Mobile Homes.

17. Following the enactment of the Ordinance, the Defendants' properties were all classified as "mobile home courts" in accordance with the District's definitions.

18. Following the enactment of the Ordinance, Northcrest, Barbee Landing, Pine Bay, and Kuhn Lake all claimed that their properties were used as campgrounds and asked to be billed accordingly to that claimed use, pursuant to Ind. Code § 13-26-11-2.1.

19. On August 13, 2015, the District's attorney informed Barbee's attorney that its request was denied.

20. On August 13, 2015, the District's attorney informed Pine Bay that its request was denied.

21. On September 2, 2015, the District's attorney informed Northcrest that its request was denied.

22. On or about April 11, 2017, the District's attorney informed Kuhn Lake's attorney that its request was denied.

23. The District took no further action on the above requests.

24. Pine Bay did not seek a review of the District's decision until October 6, 2015, when Pine Bay filed its complaint with the Consumer Affairs Division ("CAD") of the Indiana Utility Regulatory Commission (the "Commission").

25. Northcrest and Barbee did not seek a review of the District's decision until February 22, 2016, when they filed their respective complaints with the Commission.

26. Kuhn Lake has not sought a review of the District's decision with the Commission.

27. In response to Pine Bay's Complaint, the CAD Analyst made an initial determination, consistent with the District's position, that the Commission lacks jurisdiction to determine whether a property is a campground, and that Pine Bay's billing dispute does not fall under one of the three issues raised in Ind. Code § 13-26-11-2.1.

28. Nevertheless, on March 23, 2017, the Commission, through its Administrative Law Judge, found that each of Defendants' complaints were premature and, therefore, failed to meet a statutory prerequisite for commission review pursuant to Ind. Code § 13-26-11-2.1.

COUNT I  
DECLARATORY JUDGMENT

29. The District incorporates by reference the material allegations contained in Paragraph 1 through 28 of this Complaint for Declaratory Judgment as if those allegations were fully set forth in this paragraph.

30. An actual controversy exists between the parties regarding:

- (1) whether the District's classification of Defendants' properties as mobile home parks was rational, and not arbitrary and capricious;
- (2) whether it is within the District's discretionary authority to define the terms "campground," "mobile home," and "mobile home park"; and
- (3) whether the District's definition of "campground," "mobile home," and "mobile home park" are rational.

31. Declaratory relief is appropriate pursuant to Ind. Code § 34-14-1, *et seq.*

WHEREFORE, Plaintiff, Lakeland Regional Sewer District, by counsel, requests the Court to enter an Order finding that the District's classification of Defendants' properties as mobile home parks was rational, and not arbitrary and capricious; that the District has the discretionary authority to define terms in its Ordinance; that the District's definitions contained within its Ordinance are rational; and for all other just and proper relief in the premises.

Respectfully submitted,

CARSON BOXBERGER LLP



---

Eric M. Blume #29836-02

Andrew D. Boxberger #23515-02

Eric D. Carr #33977-49

Attorneys for Plaintiff

301 W. Jefferson Blvd., Suite 200  
Fort Wayne, IN 46802  
(260) 423-9411  
EMB/EDC/lm 24459.7

# Attachment 7





carsonboxberger.com

260 423-9411

The Harrison

301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802

April 21, 2017

Eric M. Blume

blume@carsonboxberger.com

RECEIVED

VIA EMAIL and  
CERTIFIED MAIL, RETURN RECEIPT REQUESTED

APR 25 2017

Kenya McMillin, Director  
Consumer Affairs Division  
Indiana Utility Regulatory Commission  
101 W. Washington St., Suite 1500 East  
Indianapolis, IN 46204

INDIANA UTILITY  
REGULATORY COMMISSION

Re: Complaint of Pine Bay Resort, Barbee Landing, Northcrest RV  
Park, and Kuhn Lake Resort v. Lakeland Regional Sewer District

Dear Ms. McMillin:

I represent Lakeland Regional Sewer District (the "District") in connection with the Complaints filed by Pine Bay Resort, LLC Campground, Northcrest RV Park, Barbee Landing, and Kuhn Lake Resort (together referred hereinafter as the "Complainants"). In response to the Complainants' various letters dated April 17 and 18, 2017 requesting certain relief and other damages from the IURC, please allow this correspondence to serve as Lakeland's response.

From the outset, it is important to note that this dispute is currently before the Kosciusko Superior Court. The District filed a declaratory judgment action before a court of law with jurisdiction to hear this dispute. (A copy of the Complaint for Declaratory Judgment action was submitted by Pine Bay as Exhibit 6.) On March 23, 2017, the IURC dismissed the Complainants' original complaints for lack of ripeness. The IURC directed the Complainants to re-file, if they so chose, once the case was ripe. The District then filed a declaratory judgment in trial court so that this dispute could be heard in a venue vested with jurisdiction. Since the declaratory judgment action was filed before the newly filed Complaints by the Complainants, the IURC should dismiss these Complaints. Failure to do so could subject the District to disparate rulings.

Lakeland submits that the IURC should dismiss the various Complaints, and not refer them to the IURC, for the following reasons:

1. The IURC does not have jurisdiction to hear this dispute<sup>1</sup>;
2. Even if the Commission has jurisdiction to review the dispute concerning the District's classification of the Complaint and its properties, the Complainants failed to timely appeal the District's decision to the IURC; and
3. The District properly exercised its legislative discretion in classifying the Complainants' properties and, therefore, the Commission may not intervene to overturn a legislative act.

For these reasons, the District requests that the Consumer Affairs Division dismiss the Complaint filed by the IURC by the Complainants and allow this matter to proceed before the trial court.

The District will briefly summarize its positions identified above:

1. It is well settled that, as an administrative agency, the IURC derives its power solely from statute. *General Tel. Co. of Indiana, Inc. v. Public Serv. Comm'n of Indiana*, 154 N.E.2d 372, 373 (Ind. 1958). As such, unless a statute specifically grants the Commission a power to act, there is none. *Id.* Even the Commission recognized this limitation on its jurisdiction, holding "**this Commission...has only such jurisdiction as is specifically delegated by statute.**" *In re Madison Light & Power Co.*, 1924C Pub. Util. Rep. (PUR) 517, 519 (IPSC 1924)(emphasis added). It has also been held that "[a] decision is contrary to law when the [Commission] fails to stay within its jurisdiction and to abide by the statutory and legal principles that guide it." *Indiana Office of Utility Consumer Counselor v. Lincoln Utilities, Inc.*, 834 N.E.2d 137, 142 (Ind. App. 2006) (citation omitted); see also *Concerned Citizens of West Boggs Lake v. West Boggs Sewer District, Inc.*, 810 N.E.2d 720, 723 (Ind. App. 2004).

With the foregoing understanding regarding the limitations on the IURC's power to act, I.C. 13-26-11-2.1(c) grants the Commission the power to conduct an informal review on *only* the following three narrow issues:

1. Whether a campground is being billed at rates charged to residential customers for equivalent usage under a metered rate;

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<sup>1</sup> The District would also point out that the Consumer Affairs Division Analyst agreed with the District on this jurisdictional issue.

2. Whether the number of residential equivalent units determined for the campground in a flat-rate system complies with I.C. 13-26-11-2(c); and
  3. Whether any additional charges imposed on a campground under section 2(d) of this chapter are reasonable or nondiscriminatory.
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I.C. 13-26-11-2.1(c) provides the extent of the IURC's power to act on billing disputes. Nowhere in that chapter is the IURC authorized to review a district's decision to classify the use of a property as a Mobile Home Court for ratemaking and billing purposes.

Because there is no statute granting the Commission the power to decide the issues in this case, there is no such power. Accordingly, under the above authority, any review of the classification issue in this case would be contrary to law. This is a purely legal issue for which summary judgment is appropriate, and the Commission should go no further in its analysis. The District would also point out that the Consumer Affairs Division Analyst agreed with the District on this jurisdictional issue.

Because the IURC does not have jurisdiction to hear a dispute challenging the District's classification determinations of the Complainants, the Complaints against the District should all be dismissed.

2. Setting aside the issue of whether the IURC has the power to review this classification dispute, the fact is that the owner or operator of a campground *must* ask the Commission to review their billing dispute involving the above three issues, "not later than seven (7) days after receiving notice of the board's proposed disposition of the matter." I.C. 13-26-11-2.1(c). The seven-day time limit is mandatory, and not discretionary. *Id.* Moreover, it is undisputed that all three of the Complainants failed to timely seek review by the Commission.

The undisputed facts confirm that the Complainants were informed of the District's decision denying their request to reclassify their properties on August 13, 2015 (as to Barbee Landing and Pine Bay), and September 2, 2015 (as to Northcrest). This is confirmed by way of affidavit and acknowledged by the Complainants in their complaints initiating this action. The undisputed facts also confirm that the Complainants did not file their requests seeking review by the Commission until October 6, 2015 (as to Pine Bay), and February 22, 2016 (as to Northcrest and Barbee Landing), all well after the mandatory seven-day filing deadline.

As a result of the untimely filings, the Commission has no power to act on this dispute even to the extent this dispute fits within the Commission's limited jurisdiction. There are no genuine issues of material fact, and the District is entitled to judgment as a matter of law.

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3. While it is unnecessary to delve into the appropriateness of the classification of the Complainants as Mobile Home Parks, in the event the IURC rules against the District on the first two issues, the Complaints should be dismissed and these issues not be placed before the IURC because the IURC lacks any authority to review the District's classification of properties for ratemaking and billing purposes.

The power to classify property use for ratemaking and billing purposes is vested in regional sewer districts, not the Commission, by common law. That common law principle and the extent of a district's power to classify are found in *Yankee Park Homeowners Ass'n, Inc. v. LaGrange Cnty. Sewer Dist.*, 891 N.E.2d 128 (Ind. App. 2008). The *Yankee Park* decision is helpful in resolving this dispute because it states clearly the principles by which regional sewer districts can make decisions involving classification of property use for rate-making and billing purposes. In particular, the Court said the following:

Thus, the question for our review is whether the District acted arbitrarily, capriciously, or otherwise contrary to law in defining mobile home and mobile home court as it did for purposes of assessing sewer rates and by classifying Yankee Park as a mobile home court. "Under this narrow standard of review, we 'will not intervene in a local legislative process [if it is] supported by some rational basis.'" [Citations omitted]

"We will find a municipal entity's action arbitrary or capricious only if it is 'patently unreasonable.' [internal citations omitted] "In short, '[j]udicial review of whether a governmental agency has abused its rulemaking authority is highly deferential.' " *Id.* (quoting *Ind. High Sch. Athletic Ass'n, Inc. v. Carlberg*, 694 N.E.2d 222, 234 (Ind.1997)). We are not permitted to substitute our judgment for the municipality's

discretionary authority. *Id.* Rather, we may only determine whether the municipality is acting within its statutory authority. *Id.*

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In *Bass Lake*, the Indiana Supreme Court noted that “[r]ate making is a legislative, not a judicial function.” *Id.* “User classifications are inherent in ratemaking.” *GPI at Danville Crossing, L.P. v. West Cent. Conservancy Dist.*, 867 N.E.2d 645, 650 (Ind.Ct.App.2007), *reh'g denied, trans. denied*. Thus, the District's classification of Yankee Park as a mobile home court falls under its ratemaking authority. *See id.* Our review in this case is limited to determining whether the District acted within the scope of its statutory authority, and if so, whether its actions were supported by some rational basis. *See Bass Lake*, 839 N.E.2d at 702; see also Ind. Code § 13-26-11-15(g) (noting that a court “shall determine ... (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter[;] (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges....”).

*Yankee Park*, 891 N.E.2d at 130-31 (emphasis added).

It is significant to note that the court held that the definitions of terms that apply to statutes under Title 13 do not include definitions for the terms “mobile home,” “mobile home court,” or “campgrounds.” *Yankee Park*, 891 N.E. 2d at 132. The court accordingly acknowledged the district's authority to employ its own definitions in order to classify property use for billing purposes.<sup>2</sup>

It is also significant to note that the court reviewed in detail the case of *Board of Directors of Bass Lake Conservancy District v. Brewer*, 818 N.E. 2d 952 (Ind. App. 2004). The court noted that the Indiana Supreme Court granted transfer and agreed with the dissent at the Court of Appeals level. In the dissent the judge stated that how a property is zoned is irrelevant to the issue of how it is to be billed by a sewer utility. *Brewer*, 818 N.E.2d 960-61. Based on that analysis, the court in *Yankee Park* concluded, “[a]s in *Bass*

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<sup>2</sup> It is noteworthy that *Yankee Park* made it clear that the District was permitted to define property classes how it so chose. It is irrelevant how the Department of Health or any court of law would define the terms. So long as the definitions are “rational,” neither a court of law nor the IURC has the authority to substitute its definition of “campground” or “mobile home court” for that of the District.

Lake, the statutes and regulations governing the Indiana Department of Health may define mobile home community and campground differently than the District's ordinance, but those definitions are not binding upon the District." *Yankee Park*, 891 N.E. 2d at 135 (emphasis added).

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In this case, the District acted for the same reasons and in the same manner as the district in *Yankee Park*, *supra*. Indeed, in drafting its rate ordinance, the District employed definitions of the terms "campgrounds," "mobile home," and "mobile home court" that were the same as or similar to the definitions of those terms that the Court deemed to be legally sound in *Yankee Park*, *supra*. The District also defined those terms by examining ordinances enacted by other local sewer districts. Accordingly, the District rationally defined the terms by which it would classify property use for ratemaking and billing in its Ordinance. The District also engaged in site visits to confirm how the Complainants' properties were being used, the number of lots, the utilities and improvements, etc.... and then rationally applied the definitions to the actual uses - to properly classify the properties as mobile home courts. The District at all times acted well within its statutory and its common law authority.

Given the statutory and common law limits on the Commission's authority, the Commission may not intervene to overturn the legislative act. Moreover, the District had a rational basis for its actions and acted within the scope of its authority. As such, IURC cannot substitute its judgment for that of the District. The IURC does not have the authority to overturn the District's classification determinations because doing so would serve as overturning a local legislative act.

### CONCLUSION

For the reasons set forth above, the IURC does not have jurisdiction to decide the dispute brought by Pine Bay, along with the other Complainants, before the IURC. The IURC's jurisdiction is limited. Such was recognized and agreed to by the CAD Analyst who made an initial determination in late May or early June, 2016 that the IURC did not have jurisdiction to hear this dispute. However, even if the IURC has jurisdiction over this dispute, the Complainants failed to timely appeal the District's decision thus depriving any jurisdiction of the IURC.

Despite both of these procedural arguments which deprive the IURC of jurisdiction, on the merits, the District should prevail in this case under the reasoning and holding of *Yankee Park*. The Court of Appeals held that the District is permitted to

April 21, 2017  
Page 7

define classes of properties in the manner it so chooses so long as such definitions are not arbitrary and capricious. The IURC does not have the authority to decide whether the classification made by Lakeland is rational and/or arbitrary and capricious. The IURC was vested with limited authority by the General Assembly to hear three issues raised in the language of Indiana Code §13-26-11-2.1. None of those issues were presented by the Complainants.

The District requests that the IURC Complaints filed by the Complainants be dismissed and that the IURC allow these issues to be determined by the trial court, which has jurisdiction over these issues.

Sincerely,

CARSON BOXBERGER LLP



Eric M. Blume

EMB/skm

cc: Andy Boxberger  
Robert Glennan  
Tabitha Balzer  
Betty Dodd  
OUCC  
Aaron Schmoll



Carson  
Boxberger

The Harrison  
301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802



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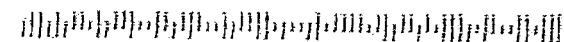
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APR 25 2017

Kenya McMillin, Director  
Consumer Affairs Division  
Indiana Utility Regulatory Commission  
101 W. Washington St., Suite 1500 East  
Indianapolis, IN 46204

INDIANA UTILITY  
REGULATORY COMMISSION

4520432754 0017





# Attachment 8

## Satterfield, Sara

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**From:** Tabitha L. Balzer <TBalzer@lewis-kappes.com>  
**Sent:** Thursday, May 04, 2017 5:01 PM  
**To:** Shelia Marley; McMillin, Kenya; Satterfield, Sara  
**Cc:** Bette J. Dodd; robertglennonlaw@gmail.com; Eric Blume; Andrew Boxberger; Hitz-Bradley, Lorraine; UCC Info Mgt; Ellen Tennant  
**Subject:** RE: Pine Bay Resort et al v. Lakeland Regional Waste District

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Dear Ms. McMillin and Ms. Satterfield,

We would like to request a brief three day extension of time to submit our reply, up to and including Friday, May 12.

Thank you for your consideration.

Sincerely,  
Tabitha Balzer

**From:** Tabitha L. Balzer  
**Sent:** Tuesday, April 25, 2017 10:12 AM  
**To:** Shelia Marley <marley@carsonboxberger.com>; kcmcmillin@urc.in.gov  
**Cc:** Bette J. Dodd <BDodd@lewis-kappes.com>; informgt@oucc.in.gov; aschmoll@urc.in.gov; robertglennonlaw@gmail.com; Eric Blume <blume@carsonboxberger.com>; Andrew Boxberger <aboxberger@carsonboxberger.com>; 'LHitzBradley@oucc.IN.gov' <LHitzBradley@oucc.IN.gov>  
**Subject:** RE: Pine Bay Resort et al v. Lakeland Regional Waste District

Dear Ms. McMillin,

Northcrest, Barbee Landing, and Kuhn Lake would all like to submit a Reply. We will provide it by Tuesday, May 9 if that is okay with you.

Sincerely,  
Tabitha Balzer

[website](#) | [map](#)

# Attachment 9

**Email****FW: Kuhn Lake Lakeside Resort v. Lakeland Regional Se...**


Created On  
5/15/2017 10:34 AM



Date Received  
5/15/2017 10:32 AM

Date Sent

Status Reason  
Received

**Email**

**From**  Sara Satterfield

**To**  Sara Satterfield;  Sara Satterfield

**Cc**

**Bcc**

**Subject** FW: Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District CRM:0102391

File Name2017 05-12 Kuhn Lake CAD Reply.pdfBFF45B1D-FC35-4d5b-968B-A51F89D613BLK logo 2013wline.png

1 - 3 of 3 (0 selected)

Page 1

**From:** Ellen Tennant [mailto:ETennant@Lewis-kappes.com]  
**Sent:** Friday, May 12, 2017 4:36 PM  
**To:** Satterfield, Sara <ssatterfield@urc.IN.gov>;  
 aboxberger@carsonboxberger.com; blume@carsonboxberger.com  
**Cc:** Tabitha L. Balzer <TBalzer@lewis-kappes.com>; Bette J. Dodd  
 <BDodd@lewis-kappes.com>; Amanda Tyler <Atyler@lewis-kappes.com>  
**Subject:** Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District

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Ms. Satterfield,

Attached please find Kuhn Lake Lakeside Resort's CAD Reply, with exhibit, against Lakeland Regional Sewer District. If you have any questions, please do not hesitate to contact our office.

Thank you,  
Ellen

[website](#) | [map](#)

**Ellen Tennant**

Legal Assistant

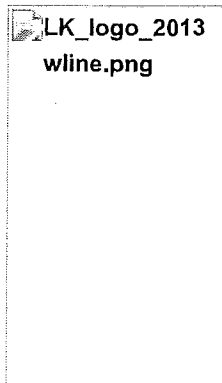
**LEWIS KAPPES**

One American Square, Suite 2500

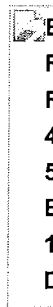
Indianapolis, IN 46282

7/27/2017

Email: FW: Kuhn Lake Lakeside Resort v. Lakeland Regional Sewer District CRM:0102391



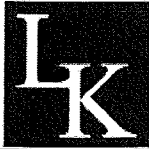
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**LEWIS  
KAPPES**  
ATTORNEYS AT LAW

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One American Square, Suite 2500, Indianapolis, IN 46282 T: 317.639.1210 F: 317.639.4882 [www.lewis-kappes.com](http://www.lewis-kappes.com)

Tabitha Balzer  
[tbalzer@Lewis-Kappes.com](mailto:tbalzer@Lewis-Kappes.com)

May 12, 2017

**VIA ELECTRONIC MAIL**

Ms. Sara Satterfield  
Consumer Affairs Division  
INDIANA UTILITY REGULATORY COMMISSION  
101 West Washington Street, Suite 1500 East  
Indianapolis, Indiana 46204  
[SSatterfield@iurc.in.gov](mailto:SSatterfield@iurc.in.gov)

**Re: Complaint of Kuhn Lake against Lakeland Regional Sewer District**

Dear Ms. Satterfield:

Kuhn Lake Lakeside Resort (“Kuhn Lake”) hereby submits its Reply to the April 21 Response of Lakeland Regional Sewer District (“LRSD”) to the Complaint in this Cause. As explained below, (1) Kuhn Lake’s Complaint should not be dismissed; (2) the Commission has jurisdiction to hear this dispute; (3) Kuhn Lake’s Complaint was timely; and (4) LRSD did not properly classify Kuhn Lake.

**I. Kuhn Lake’s Complaint should not be dismissed**

Without citing to any legal authority or providing any analysis,<sup>1</sup> LRSD argues that Kuhn Lake’s Complaint should be dismissed because LRSD has filed a declaratory judgment action in trial court. Yet the Complaint should not be dismissed because Kuhn Lake has a statutory right

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<sup>1</sup> Because LRSD failed to support its position with analysis or citation to legal authority, it should be prohibited from introducing new arguments or legal authority on this issue in a sur-reply. Alternatively, if LRSD is permitted to introduce a sur-reply, Kuhn Lake should be permitted to respond to LRSD’s sur-reply.

to petition the Commission to review its dispute, which LRSD cannot circumvent by filing a declaratory judgment action in state court. Furthermore, LRSD has failed to exhaust its administrative remedies. Finally, even if Kosciusko County had jurisdiction over the present matter, the Commission should instead hear this dispute under the doctrine of primary jurisdiction. For all of these reasons, the filing of the Kosciusko County declaratory judgment action was improper, and Kuhn Lake intends to file a Motion to Dismiss the Kosciusko County matter. Accordingly, Kuhn Lake's Complaint in the present cause should not be dismissed.

**A. Kuhn Lake has a statutory right to petition the Commission to review its dispute**

Indiana Code § 13-26-11-2.1 provides campground owners the right to seek Commission review over disputes with regional sewer districts. The statute applies to an owner or operator of a campground who disputes:

- (1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 2(b)(1) of this chapter;
- (2) the number of resident equivalent units determined for the campground under section 2(c) of this chapter; or
- (3) that any additional charges imposed on the campground under section 2(d) of this chapter are reasonable or nondiscriminatory.

In the event of such a dispute, the owner or operator must make a good faith attempt to resolve the dispute through any grievance or complaint procedure prescribed by the board or other negotiations with the board. If the owner is dissatisfied with the board's proposed disposition of the matter, the owner or operator may file with the Commission a written request for review of the disputed matter through the Consumer Affairs Division of the IURC.

The ability of campground owners and operators to petition for Commission review of a regional sewer district's charges is a statutory right. In fact, the statute itself expressly refers to the campground's request for review as a "right." See §2.1(h). Because the right of an aggrieved campground owner to seek Commission review of a regional sewer district's charges under Section 2.1 is statutory, it cannot be circumvented by the filing of a declaratory judgment action by a regional sewer district.

Furthermore, LRSD's filing of a declaratory judgment action is especially problematic in the present case, because the declaratory judgment action was filed after Kuhn Lake had already made a good faith attempt to resolve their dispute with LRSD. See Exhibits A and G of Kuhn Lake's Complaint in this matter. As noted above, campground owners/operators are required by the statute to try to make a good faith attempt to resolve their disputes with regional sewer districts before filing a complaint. The campground owner cannot file a complaint with the Commission until it has received the board's proposed disposition of the dispute. However, if regional sewer districts were permitted to file declaratory judgment actions after being contacted by a campground owner to resolve the dispute, then the regional sewer districts could *always* deprive campground owners of their right to Commission review. Such an interpretation of the statute cannot be adopted because it would render Section 2.1 entirely meaningless.

*Bloomington Country Club v. City of Bloomington Water & Wastewater Utilities*, 827 N.E.2d 1213, 1219-20 (Ind. Ct. App. 2005) (statute should not be interpreted in a manner that renders it a nullity or produces an absurd result).



**B. LRSD has failed to exhaust its administrative remedies**

LRSD filed its Declaratory Judgment Action in Kosciusko County despite the fact that Kuhn Lake has a statutory right to seek IURC review of LRSD's decision, and Kuhn Lake had already contacted LRSD in an attempt to resolve the dispute as required by Section 2. By statute, the decision of whether to resolve a dispute between a campground and a regional sewer district belongs to the campground. If the campground opts for resolution at the IURC, then the regional sewer district must exhaust its administrative remedies before seeking appeal of the IURC's determination.

"It has long been Indiana law that a claimant within an available administrative remedy must pursue that remedy before being allowed access to the judicial power." *Carter v. Nugent Sand Co.*, 925 N.E.2d 356, 361 (Ind. 2010). If a party fails to exhaust administrative remedies, the trial court lacks subject matter jurisdiction. *Turner v. City of Evansville*, 740 N.E.2d 860, 861 (Ind. 2001). "Even when neither statute nor agency rule specifically mandates exhaustion as a prerequisite to judicial review, the general rule is that a party is not entitled to judicial relief from an alleged or threatened injury until the prescribed administrative remedy has been exhausted." *Bridges v. Veolia Water Indianapolis*, 978 N.E.2d 447, 454 (Ind. Ct. App. 2010) (quoting *Austin Lakes Joint Venture v. Avon Utils., Inc.*, 648 N.E.2d 641, 644 (Ind. 1995)).

LRSD must allow Consumer Affairs to adjudicate Kuhn Lake's Complaint. If LRSD is unsatisfied with LRSD's disposition, LRSD can appeal it to the full Commission. If LRSD is dissatisfied with the Commission's resolution, LRSD can submit an appeal with the Court of Appeals. Failure to take these steps constitutes a failure to exhaust administrative remedies. LRSD has instead tried to make an end run around both the statute that vests jurisdiction in the

IURC and the required procedural process to challenge an IURC decision. However, where an administrative remedy is readily available, filing a declaratory judgment action is not a suitable alternative. *Carter*, 925 N.E.2d at 361. A party must pursue its administrative remedies, and may not avoid doing so through collateral action. *Turner*, 740 N.E.2d at 862.

**C. Even if Kosciusko County Superior Court had jurisdiction, the Commission should still hear the present dispute under the doctrine of primary jurisdiction**

The doctrine of primary jurisdiction is an invention of the United States Supreme Court “to deal with the problem that arises when courts and an agency both have claims to jurisdiction of an issue in a case that has come before a court.” *Austin Lakes Joint Venture v. Avon Utilities, Inc.*, 648 N.E.2d 641, 645 (Ind. 1995). The doctrine of primary jurisdiction only applies if there is at least one issue before the court that is a matter of judicial determination. *Sun Life Assur. Co. v. Comp. Health Ins.*, 827 N.E.2d 1206, 1213 (Ind. Ct. App. 2005). In the present case, because Kuhn Lake has a statutory right to seek IURC review of LRSD’s decision, the Kosciusko County Superior Court has no subject matter jurisdiction to hear this Complaint, and therefore the issue of primary jurisdiction need not even be reached.

However, even if there were at least one issue that was properly before the trial court, the present dispute must still be heard by the IURC and/or its Consumer Affairs Division under the doctrine of primary jurisdiction. If there is an issue before a trial court that can be decided by either the trial court or by the administrative agency, the trial court must examine (1) what sort of facts will arise and whether the kind of factfinding involved will be within the special competent and expertise of an administrative body, and (2) to what degree uniformity in the regulatory scheme is desirable and to what degree a court decision might affect the uniformity of a

regulatory scheme. *Austin Lakes Joint Venture*, 648 N.E.2d at 647. Furthermore, trial courts must invoke the doctrine of primary jurisdiction where at least one issue in the case requires exhaustion of remedies before judicial review can occur. *N. Ind. Pub. Serv. Co. v. Dozier*, 674 N.E.2d 977, 988 (Ind. Ct. App. 1996).

LRSD's Declaratory Judgment action requests that the Kosciusko County Superior Court make a finding regarding:

- 1) whether the LRSD's classification of its properties as mobile home parks were rational, and not arbitrary and capricious;
- 2) whether it is within LRSD's discretionary authority to define the terms "campground," "mobile home," and "mobile home park," and
- 3) whether LRSD's definition of "campground," "mobile home," and "mobile home park" are rational.

These issues are ratemaking issues within the specialized expertise of the IURC, and therefore the Commission should decide them. Moreover, LRSD cannot excuse its failure to exhaust administrative remedies by simply asserting that Kuhn Lake is not a "campground." This type of challenge is not really a challenge to jurisdiction, but rather a denial of Kuhn Lake's allegations. *Sun Life*, 827 N.E.2d at 1210. In other words, "criminal courts do not have jurisdiction over just 'criminals.' They have jurisdiction over persons accused of crimes." *Id.* (quoting *State ex rel Paynter v. Marion Cnty. Sup. Ct., Room No. 5*, 264 Ind. 345, 349, 344 N.E.2d 846, 849 (Ind. 1976)). LRSD's argument also would have the effect of denying campgrounds from exercising their statutory right to IURC review by simply defining campground to exclude all businesses as campgrounds, thus rendering the statute meaningless.

Finally, the doctrine of primary jurisdiction is especially applicable where an agency has already exercised its authority to decide an issue. *Austin Lakes Joint Venture*, 648 N.E.2d at 647-48. Since the IURC has already issued rulings in a related case (Cause 44798) and provided guidance regarding key issues such as the definition of “campground,” the IURC should exercise jurisdiction over the present matter to ensure that the resolution of the disputes is consistent. LRSD should not be permitted to take a “second bite at the apple” with the trial court simply because it does not like the IURC’s guidance regarding the definition of “campground” under the statute. By filing in state court, LRSD is essentially trying to forum shop and issue a collateral attack on the Commission’s rulings.

## **II. The Commission has jurisdiction to hear this dispute<sup>2</sup>**

LRSD’s claim that the Commission does not have jurisdiction to hear this dispute is contradicted by the Commission’s previous orders/docket entries in a related case, Cause 44798. In that case, LRSD raised the same jurisdiction arguments that it is currently raising, yet the Commission did not dismiss the Complainants’ Complaints on the basis of LRSD’s jurisdiction arguments. Instead, the Commission dismissed the Complaints based on a totally different issue that the Commission raised *sua sponte* – whether the Complainants had received full (non-interim) bills from LRSD. The Docket Entry contemplated and expressly permitted the Complainants to refile after LRSD’s treatment operations were placed in service and Complainants were billed for those operations. If the Commission had accepted LRSD’s jurisdiction arguments, it would not have permitted Complainants to refile their complaints.

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<sup>2</sup> LRSD states in a footnote that the Consumer Affairs Division Analyst agreed with LRSD on this point. However, the Consumer Affairs Division has never ruled on Kuhn Lake’s Complaint.

Furthermore, the Docket Entry provides guidance to the parties regarding the proper definition of a campground. There would be no reason to include such guidance if the Commission had accepted LRSD's arguments that the Commission lacked jurisdiction.

Moreover, it is the Commission's statutory duty to hear the complaints of campground owners under I.C. § 13-26-11-2.1. A necessary component of determining the merits of such complaints is determining whether the complainant is an entity entitled to request such relief. The IURC, as an administrative agency, has "such implicit power and authority as is inherent in its broad grant of power from the legislature to regulate which is necessary to effectuate the regulatory scheme outlined by the statute." *N. Ind. Pub. Serv. Co. v. Citizens Action Coal.*, 548 N.E.2d 153, 158 (Ind. 1989); *see also Celco Partnership v. Ind. Util. Reg. Com'n*, 810 N.E.2d 1137, 1142 (Ind. Ct. App. 2004); *Prior v. GTE North Inc.*, 681 N.E.2d 768 (Ind. Ct. App. 1997). The fact that authority is not expressly spelled out in enabling legislation is not a bar to the IURC's ability to administer the regulatory scheme, as not all power and authority granted to the agency is explicitly delineated by statute. *N. Ind. Pub. Serv. Co. v. Citizens Action Coal.*, 548 N.E.2d at 158.

In addition, I.C. § 13-26-11-2 was created to address the particular situation of charges by a regional sewer district to campgrounds and youth camps. The legislative intent of this carve-out is clear: the statute is designed to ensure that campgrounds are not charged exorbitant rates or rates that assume year-round usage. The legislature granted the IURC jurisdiction over these disputes due to the IURC's specialized expertise over ratemaking issues. It would be contrary to legislative intent to permit a regional sewer district to circumvent the IURC's authority by allowing the district to define the term "campground" so narrowly as to render it meaningless.

Furthermore, LRSD's reliance on *Yankee Park Homeowners Ass'n, Inc. v. LaGrange County Sewer District*, 891 N.E.2d 128 (Ind. App. 2008) is misplaced. Yankee Park involved adjudication by a trial court, and is premised upon the notion that "[r]ate making is a legislative, not a judicial function." *Id.* at 131. However, the Commission is not a trial court, it is a legislative body. *Harris v. United Water Serv., Inc.*, 946 N.E.2d 35, 39 (Ind. Ct. App. 2011) (quoting *N. Ind. Pub. Serv. Co. v. United States Steel Corp.*, 907 N.E.2d 1012 (Ind. 2009)). Moreover, in ratemaking matters, the IURC's determinations are treated with deference and weight that is not given to a trial court. *See Ind. Gas Co., Inc. v. Ind. Fin. Auth.*, 999 N.E.2d 63, 66 (Ind. 2013); *Concerned Citizens of West Boggs Lake v. West Boggs Sewer District, Inc.*, 810 N.E.2d 720, 723 (Ind. Ct. App. 2004). Its interpretation of statutes that it is charged with the duty of enforcing is entitled to great weight. *Concerned Citizens of West Boggs Lake* 810 N.E.2d at 723.

### **III. The Complaint was timely**

LRSD also raises timeliness arguments against all Complainants, including Kuhn Lake. Though LRSD lumps all Complainants together, its arguments are premised on facts that are not germane to Kuhn Lake, and instead appear to be directed only to the other Complainants.

Kuhn Lake contacted LRSD in an attempt to resolve its dispute with LRSD on March 8, 2017. (See Compl. Ex. A.) The parties exchanged several letters, but LRSD did not provide a proposed disposition to the dispute until April 11, 2017, when it filed its complaint for declaratory judgment in state court. (Compl. Ex. F-H; see also Compl. Reply Exhibit I). Kuhn Lake filed its CAD complaint seven days later on April 18, 2017, and therefore it was not untimely.

#### **IV. LRSD did not properly classify Kuhn Lake**

In its Docket Entry of March 23, 2017 in Cause 44798, the Commission explained that neither the definition of “Campground” nor the definition of “Mobile Home Park” in LRSD’s ordinance is relevant as to whether an entity constitutes a “Campground” for purposes of IC § 13-26-11-2. (Docket Entry at 6). Rather, “the correct analysis is not whether Lakeland’s adoption or interpretation of a definition forecloses Commission review of what constitutes a ‘campground’ under Section 2,” as this issue had already been addressed in *Shaper v. LaGrange Regional Utility District*, Cause 44541 (IURC May 27, 2015). (*Id.*) Instead, the Commission stated that “we must define the term as intended by the legislature.” (*Id.*)

Kuhn Lake meets the Commission’s definition of “campground” under the statute for the reasons explained in its Complaint. In addition, even if the definitions in LRSD’s Rate Ordinance were relevant (which they are not, as the IURC has determined), Kuhn Lake qualifies as a campground under the Rate Ordinance for the reasons stated in its Complaint. Furthermore, even if Kuhn Lake did not qualify as a campground under LRSD’s Rate Ordinance, it would be arbitrary and capricious to exclude it from the definition of “campground” because there is no rational basis to exclude seasonal mobile homes from a definition that includes Recreational Vehicles, camper trailers, camping trucks, motor homes, and similar shelters.

#### **CONCLUSION**

Kuhn Lake’s Complaint should not be dismissed because it has a statutory right to petition the Commission to review its dispute with LRSD. LRSD cannot circumvent this right by filing a declaratory judgment action in state court. In addition, LRSD has failed to exhaust its administrative remedies, and even if Kosciusko County had jurisdiction over the present matter,

Ms. Sara Satterfield  
Consumer Affairs Division  
INDIANA UTILITY REGULATORY COMMISSION  
May 12, 2017  
Page 11

the Commission should instead hear this dispute under the doctrine of primary jurisdiction.

Moreover, the Commission has jurisdiction to hear this dispute, which was not untimely.

Finally, LRSD improperly classify Kuhn Lake for billing purposes.

Respectfully submitted,

LEWIS KAPPES, P.C.

/s/ Tabitha L. Balzer

Tabitha L. Balzer

TLB/ert  
Attachments

cc: Bette J. Dodd  
Andrew Boxberger  
Eric M. Blume



# **REPLY EXHIBIT I**

**Ellen Tennant**

---

**From:** Andrew Boxberger <[aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com)>  
**Sent:** Tuesday, April 11, 2017 4:34 PM  
**To:** Tabitha L. Balzer; Ellen Tennant; Eric Blume  
**Cc:** Bette J. Dodd; Amanda Tyler  
**Subject:** RE: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)  
**Attachments:** Complaint for Declaratory Judgment - fsc.pdf

Tabitha,

In response to your emails regarding Northcrest, Barbee Landing and Kuhn Lake, attached please find the Complaint for Declaratory Judgment filed this afternoon in Kosciusko County. Please allow this filing, and the notice thereof, to serve as the District's determination regarding the letters sent to Kuhn Lake and Northcrest (on March 24<sup>th</sup>) that they classified as Mobile Home Parks and therefore not eligible for metered rates.

Thank you

---

**From:** Tabitha L. Balzer [<mailto:TBalzer@lewis-kappes.com>]  
**Sent:** Thursday, March 30, 2017 9:42 AM  
**To:** Andrew Boxberger; Ellen Tennant; Eric Blume  
**Cc:** Bette J. Dodd; Amanda Tyler  
**Subject:** RE: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)

Thank you.

---

**From:** Andrew Boxberger [<mailto:aboxberger@carsonboxberger.com>]  
**Sent:** Thursday, March 30, 2017 9:45 AM  
**To:** Tabitha L. Balzer <[TBalzer@lewis-kappes.com](mailto:TBalzer@lewis-kappes.com)>; Ellen Tennant <[ETennant@Lewis-kappes.com](mailto:ETennant@Lewis-kappes.com)>; Eric Blume <[blume@carsonboxberger.com](mailto:blume@carsonboxberger.com)>  
**Cc:** Bette J. Dodd <[BDodd@lewis-kappes.com](mailto:BDodd@lewis-kappes.com)>; Amanda Tyler <[Atyler@lewis-kappes.com](mailto:Atyler@lewis-kappes.com)>  
**Subject:** RE: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)

Yes. That is correct.

---

**From:** Tabitha L. Balzer [<mailto:TBalzer@lewis-kappes.com>]  
**Sent:** Thursday, March 30, 2017 9:02 AM  
**To:** Andrew Boxberger; Ellen Tennant; Eric Blume  
**Cc:** Bette J. Dodd; Amanda Tyler  
**Subject:** RE: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)

Thank you, Andrew. Am I correct to interpret your email that the March 24 letter to Tammie Pluchel on behalf of Northcrest is not the board's proposed and final disposition under IC 13-26-11-2.1(c)?

---

**From:** Andrew Boxberger [<mailto:aboxberger@carsonboxberger.com>]  
**Sent:** Wednesday, March 29, 2017 4:07 PM  
**To:** Tabitha L. Balzer <[TBalzer@lewis-kappes.com](mailto:TBalzer@lewis-kappes.com)>; Ellen Tennant <[ETennant@Lewis-kappes.com](mailto:ETennant@Lewis-kappes.com)>; Eric Blume <[blume@carsonboxberger.com](mailto:blume@carsonboxberger.com)>  
**Cc:** Bette J. Dodd <[BDodd@lewis-kappes.com](mailto:BDodd@lewis-kappes.com)>; Amanda Tyler <[Atyler@lewis-kappes.com](mailto:Atyler@lewis-kappes.com)>  
**Subject:** RE: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)

I understand.

On behalf of the board, please be advised that the letter dated March 24<sup>th</sup> is **NOT** the board's proposed and final disposition under IC 13-26-11-2.1(c) with regard to Kuhn Lake Lakeside Resort's request for a metered rate.

We are in the process of scheduling a meeting to discuss the pending Pine Bay et al. matter and will discuss the threatened action by Kuhn Lake as well. However, next week is spring break. We will have a response back to you on both matters the week of April 10<sup>th</sup>.

Please let me know if you have any questions or concerns.

Thank you

---

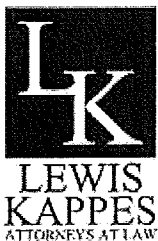
**From:** Tabitha L. Balzer [<mailto:TBalzer@lewis-kappes.com>]  
**Sent:** Wednesday, March 29, 2017 1:38 PM  
**To:** Ellen Tennant; Andrew Boxberger; Eric Blume  
**Cc:** Bette J. Dodd; Amanda Tyler  
**Subject:** RE: Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)

Andrew,

I am not intending to rush you with this letter, rather, I am simply ensuring that there is no argument that the statute of limitations has been missed. If you confirm that your letter dated March 24 is not a proposed disposition of the LRSD Board under Ind. Code 13-26-11-2.1(c), Kuhn Lake Resort will not file a Complaint with Consumer Affairs on Friday. Please let me know as soon as possible, but in no event later than close of business tomorrow.

Sincerely,  
Tabitha

[website](#) | [map](#)



Tabitha L. Balzer

Associate

**LEWIS KAPPES**

One American Square, Suite 2500

Indianapolis, IN 46282

P: 317.639.1210

F: 317.639.4882

E: [TBalzer@lewis-kappes.com](mailto:TBalzer@lewis-kappes.com)

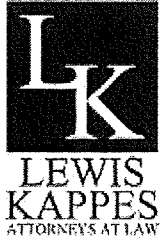
**From:** Ellen Tennant  
**Sent:** Wednesday, March 29, 2017 1:37 PM  
**To:** [aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com); [blume@carsonboxberger.com](mailto:blume@carsonboxberger.com)  
**Cc:** Tabitha L. Balzer <[TBalzer@lewis-kappes.com](mailto:TBalzer@lewis-kappes.com)>; Bette J. Dodd <[BDodd@lewis-kappes.com](mailto:BDodd@lewis-kappes.com)>; Amanda Tyler <[Atyler@lewis-kappes.com](mailto:Atyler@lewis-kappes.com)>  
**Subject:** Kuhn Lake Lakeside Resort (f/k/a Reynold's Vacation Park)  
**Importance:** High

Mr. Boxberger and Mr. Blume,

Attached is correspondence from Tabitha Balzer. A hard copy will follow in the mail. Please do not hesitate to contact our office with any questions.

Thank you,  
Ellen

[website](#) | [map](#)



Ellen Tennant

---

Legal Assistant

**LEWIS KAPPES**

One American Square, Suite 2500

Indianapolis, IN 46282

P: 317.639.1210

F: 317.639.4882

E: [ETennant@Lewis-kappes.com](mailto:ETennant@Lewis-kappes.com)

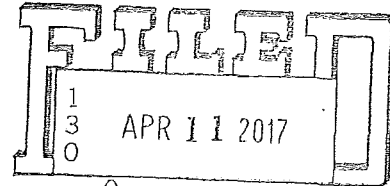
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STATE OF INDIANA ) IN THE KOSCIUSKO SUPERIOR COURT  
 ) SS:  
COUNTY OF KOSCIUSKO ) CAUSE NO.: \_\_\_\_\_

LAKELAND REGIONAL SEWER DISTRICT, )  
 )  
Plaintiff, )

vs. )

PINE BAY RESORT, LLC, )  
TLH1, LLC/NBW2, LLC/RTK Group 1, LLC, )  
d/b/a Northcrest, WELKER ENTERPRISES, )  
INC., d/b/a Barbee Landing MHP, and )  
CRZ HOME SERVICES, LLC d/b/a Kuhn )  
Lake Lakeside Resort, )  
 )  
Defendants. )



*Ann Jorgensen*  
CLERK KOSCIUSKO SUPERIOR COURT 1

### COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Lakeland Regional Sewer District (the "District"), by counsel, and for its Complaint for Declaratory Judgment against Defendants, Pine Bay Resort, LLC ("Pine Bay"), TLH1, LLC/NBW2, LLC/RTK Group 1, LLC, d/b/a Northcrest ("Northcrest"), Welker Enterprises, Inc., d/b/a Barbee Landing MHP ("Barbee Landing"), and CRZ Home Services, LLC d/b/a Kuhn Lake Lakeside Resort ("Kuhn Lake"), alleges and states as follows:

### PARTIES AND JURISDICTION

1. The District is a regional sewer district, duly organized and operating pursuant to Indiana Code § 13-26, *et al*, with its principal place of business at 301 N. Main Street, North Webster, Indiana 46555.

2. Pine Bay is an Indiana limited liability company with its principal place of business at 4257 N. Sullivan Road, Leesburg, Indiana 46538.

3. Northcrest is owned by three Indiana limited liability companies with its principal place of business at 1 Lane EMS B 61 D, Warsaw, Indiana 46582.

4. Barbee Landing appears to have been an Indiana for profit corporation before being administratively dissolved on February 17, 2005, but which continues to do business under its assumed business name, Barbee Landing, at its principal place of business at 67 EMS B 61 Lane, Warsaw, Indiana 46580.

5. Kuhn Lake is owned by an Indiana limited liability company with its principal place of business at EMS Lane 14 and 15, Pierceton, Indiana 46562.

6. Jurisdiction over Defendants is proper in this Court, at least, pursuant to Rule 4.4(A)(1) and (5) of the Indiana Rules of Trial Procedure.

7. Venue is proper in this Court because all events giving rise to this cause of action occurred in Kosciusko County, Indiana, and Kosciusko County is a preferred venue under Rule 75(A)(2) and (4).

#### **RELEVANT FACTS**

8. The District is a regional sewer district, duly organized and operating pursuant to Ind. Code 13-26, *et al.*

9. Following its organization, the District worked with DLZ (its engineers) and H.J. Umbaugh & Associates ("Umbaugh") (its rate consultants) to do a number of things, including the preparation of rate studies and the development of a rate ordinance.

10. Starting in April, 2013, DLZ, Umbaugh, and the District, began performing site visits of properties to be within the District's service area as part of the effort to classify properties and their uses.

11. Following that date, the District began drafting its rate ordinance.

12. As the ordinance language was being drafted, site visits continued in early 2015, to see where certain properties and uses fell within the contemplated definitions for various uses of property.

13. During the site visits sometime in 2015, the District confirmed that, according to the definitions noted below:

- a. Pine Bay had 45 mobile homes and one recreational vehicle;
- b. Northcrest had 28 mobile homes; and
- c. Barbee Landing had 12 mobile homes, two recreational vehicles and one empty lot.
- d. Kuhn Lake had at least 22 mobile homes and at least three recreational vehicles.

14. At the same time, in February 2015, the District verified with the Indiana State Board of Health and Kosciusko County Planning Department the number of lots for Pine Bay, Northcrest, Barbee Landing, and Kuhn Lake. Each property had more than two lots, which is also confirmed by the fact that more than two mobile homes are located on each property owned by the Defendants.

15. On June 4, 2015, the District, by its Board of Trustees (the "Board") enacted Ordinance No. 2015-02, amended most recently on or about April 6, 2017 as

Ordinance No. 2017-03 (the "Ordinance"), an ordinance establishing the schedule of rates and charges to be collected by the District from property owners in the service area.

16. There were several definitions in the Ordinance pertinent to this case. In that regard, the Ordinance provided that:

- a. **"Campground"** shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy.
- b. **"Mobile Home"** shall mean a residential structure that is transportable in one or more sections, is thirty-five (35) feet or more in length with the hitch, is built on an integral chassis, is designed to be used as a place of human occupancy when connected to the required utilities, contains the plumbing, heating, air conditioning, and/or electrical systems in the structure, and is constructed so that it may be used with or without a permanent foundation.
- c. **"Mobile Home Court"** shall mean a parcel of land containing two or more spaces, with required improvements and utilities, used for the long-term placement of Mobile Homes.



17. Following the enactment of the Ordinance, the Defendants' properties were all classified as "mobile home courts" in accordance with the District's definitions.

18. Following the enactment of the Ordinance, Northcrest, Barbee Landing, Pine Bay, and Kuhn Lake all claimed that their properties were used as campgrounds and asked to be billed accordingly to that claimed use, pursuant to Ind. Code § 13-26-11-2.1.

19. On August 13, 2015, the District's attorney informed Barbee's attorney that its request was denied.

20. On August 13, 2015, the District's attorney informed Pine Bay that its request was denied.

21. On September 2, 2015, the District's attorney informed Northcrest that its request was denied.

22. On or about April 11, 2017, the District's attorney informed Kuhn Lake's attorney that its request was denied.

23. The District took no further action on the above requests.

24. Pine Bay did not seek a review of the District's decision until October 6, 2015, when Pine Bay filed its complaint with the Consumer Affairs Division ("CAD") of the Indiana Utility Regulatory Commission (the "Commission").

25. Northcrest and Barbee did not seek a review of the District's decision until February 22, 2016, when they filed their respective complaints with the Commission.

26. Kuhn Lake has not sought a review of the District's decision with the Commission.

27. In response to Pine Bay's Complaint, the CAD Analyst made an initial determination, consistent with the District's position, that the Commission lacks jurisdiction to determine whether a property is a campground, and that Pine Bay's billing dispute does not fall under one of the three issues raised in Ind. Code § 13-26-11-2.1.

28. Nevertheless, on March 23, 2017, the Commission, through its Administrative Law Judge, found that each of Defendants' complaints were premature and, therefore, failed to meet a statutory prerequisite for commission review pursuant to Ind. Code § 13-26-11-2.1.

**COUNT I**  
**DECLARATORY JUDGMENT**

29. The District incorporates by reference the material allegations contained in Paragraph 1 through 28 of this Complaint for Declaratory Judgment as if those allegations were fully set forth in this paragraph.

30. An actual controversy exists between the parties regarding:

- (1) whether the District's classification of Defendants' properties as mobile home parks was rational, and not arbitrary and capricious;
- (2) whether it is within the District's discretionary authority to define the terms "campground," "mobile home," and "mobile home park"; and
- (3) whether the District's definition of "campground," "mobile home," and "mobile home park" are rational.

31. Declaratory relief is appropriate pursuant to Ind. Code § 34-14-1, *et seq.*

WHEREFORE, Plaintiff, Lakeland Regional Sewer District, by counsel, requests the Court to enter an Order finding that the District's classification of Defendants' properties as mobile home parks was rational, and not arbitrary and capricious; that the District has the discretionary authority to define terms in its Ordinance; that the District's definitions contained within its Ordinance are rational; and for all other just and proper relief in the premises.

Respectfully submitted,

CARSON BOXBERGER LLP



---

Eric M. Blume #29836-02

Andrew D. Boxberger #23515-02

Eric D. Carr #33977-49



Attorneys for Plaintiff

301 W. Jefferson Blvd., Suite 200  
Fort Wayne, IN 46802  
(260) 423-9411  
EMB/EDC/lm 24459.7

# Attachment 10

**Email****FW: Pine Bay Campground...**Created On  
5/15/2017 11:09 AMDate Received  
5/15/2017 11:05 AM

Date Sent

Status Reason  
Received**Email****From**  Sara Satterfield**To**  Sara Satterfield;  Sara Satterfield**Cc****Bcc****Subject** FW: Pine Bay Campground v. Lakeland Regional Sewer District  
CRM:0102391File Name

No Attachment rec

0 - 0 of 0 (0 selected)

Page 1

**From:** Eric Blume [mailto:blume@carsonboxberger.com]  
**Sent:** Monday, May 15, 2017 9:02 AM  
**To:** Robert Glennon <robertglennonlaw@gmail.com>  
**Cc:** Satterfield, Sara <ssatterfield@urc.IN.gov>; Andrew Boxberger  
 <aboxberger@carsonboxberger.com>; Tabitha L. Balzer <TBalzer@lewis-  
 kappes.com>; Bette Dodd <bdodd@lewis-kappes.com>;  
 informgt@oucc.in.gov Consumer Counselor <informgt@oucc.in.gov>; Hitz-  
 Bradley, Lorraine <LHitzBradley@oucc.IN.gov>; Ellen Tennant  
 <ETennant@Lewis-kappes.com>; Amanda Tyler <Atyler@lewis-  
 kappes.com>  
**Subject:** Re: Pine Bay Campground v. Lakeland Regional Sewer District

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT  
 open attachments or click links from unknown senders or  
 unexpected email. \*\*\*\*

---

**All:**

Since the reply briefs filed by the various Complainants have raised  
 additional arguments and issues, Lakeland intends to file a surreply  
 brief. Lakeland requests up to and including May 26, 2017 to  
 submit its brief.

Thank you,

**Eric M. Blume**  
**Attorney**  
**Carson Boxberger LLP**  
**301 W. Jefferson Blvd., Suite 200**  
**Fort Wayne, Indiana 46814**

**Phone: (260) 423-9411**

**Fax: (260) 423-4329**

**On May 12, 2017, at 5:15 PM, Robert Glennon**

**<[robertglennonlaw@gmail.com](mailto:robertglennonlaw@gmail.com)> wrote:**

**Greetings all.**

**Ms. Satterfield:**

**Attached please find Pine Bay Campground's Response to LRSD Reply to Pine Bay's refiled CAD billing complaint.**

**If you need further info or have questions please let us know.**

**Have a splendid weekend.**

**Bob**

**<Reply CAD letter re LRSD Response final 5-12-17.pdf>**

**Robert M. Glennon**

**Robert Glennon & Assoc., P.C.**

**3697 N. Co. Rd. 500 E.**

**Danville, IN 46122**

**Phone: (317) 852-2723**

**Fax: (317) 852-0115**

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**On May 12, 2017, at 4:35 PM, Ellen Tennant**

**<[ETennant@Lewis-kappes.com](mailto:ETennant@Lewis-kappes.com)> wrote:**

**Ms. Satterfield,**

**Attached please find Northcrest R.V. Park's CAD Reply, with exhibit, against Lakeland Regional**

**Sewer District. If you have any questions, please  
do not hesitate to contact our office.**

**Thank you,  
Ellen**

**Ellen Tennant**

**Legal Assistant**


<LK\_logo\_2013wline.png>

**LEWIS KAPPES**  
**One American Square, Suite 2500**  
**Indianapolis, IN 46282**  
**P: 317.639.1210**  
**F: 317.639.4882**  
**E: [ETennant@Lewis-kappes.com](mailto:ETennant@Lewis-kappes.com)**

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**<2017 05-12 Northcrest CAD  
Reply.pdf>**

**Regarding**

 120552

**Duration**

# Attachment 11



**Email****FW: Cause No. 44798 --- P...**

Created On  
6/26/2017 3:42 PM

Date Received  
6/26/2017 3:38 PM

Date Sent

Status Reason  
Received

**Email**

**From**  Sara Satterfield

**To**  Sara Satterfield;  Sara Satterfield

**Cc**

**Bcc**

File Name

ATT00001.htm

Petition for Rehearing and Reconsideration

1 - 2 of 2 (0 selected)

Page 1

**Subject** FW: Cause No. 44798 --- Petition for Rehearing and Reconsideration CRM:0102391

Received May 17, 2017

**From:** Robert Glennon [mailto:robertglennonlaw@gmail.com]  
**Sent:** Wednesday, May 17, 2017 10:04 AM  
**To:** Satterfield, Sara <ssatterfield@urc.IN.gov>  
**Cc:** axson@carsonboxberger.com Axson <axson@carsonboxberger.com>; Bette Dodd <BDodd@lewis-kappes.com>; Ellen Tennant <ETennant@Lewis-kappes.com>; Hitz-Bradley, Lorraine <LHitzBradley@oucc.IN.gov>; Tabitha L. Balzer <TBalzer@lewis-kappes.com>; Eric Blume <blume@carsonboxberger.com>; Andrew Boxberger <ABoxberger@carsonboxberger.com>  
**Subject:** Re: Cause No. 44798 --- Petition for Rehearing and Reconsideration

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

Good morning Ms. Satterfield,  
 To keep you up to date please find Pine Bay Campground's Petition for Reconsideration and Motion to Consolidate as filed in Cause No. 44798 yesterday.  
 Hope you all have a great day.  
 Bob

**Regarding**  120552

**Duration**

Robert M. Glennon  
Robert Glennon & Assoc., P.C.  
3697 N. Co. Rd. 500 E.  
Danville, IN 46122  
Phone: (317) 852-2723  
Fax: (317) 852-0115

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**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

COMPLAINT OF PINE BAY RESORT CAMPGROUND.	)	
NORTHCREST R.V. PARK, AND BARBEE LANDING	)	
AGAINST THE LAKELAND REGIONAL SEWER	)	CAUSE NO. 44798
DISTRICT CONCERNING THE PROVISION OF	)	
SEWER UTILITY SERVICE.	)	

**COMPLAINANT PINE BAY CAMPGROUND'S PETITION FOR REHEARING AND  
RECONSIDERATION AND MOTION TO CONSOLIDATE**

Complainant Pine Bay Resort Campground ("Pine Bay") by counsel, hereby submits this Petition for Reconsideration and Rehearing and Motion For Consolidation of the Commission's April 26, 2017 Final Order in this Cause and in support thereof states as follows:

1. On October 25, 2016, Complainant Pine Bay and other campground complainants (collectively "Complainants") filed motions for summary judgment ("MSJ") in this Cause against Lakeland Region Sewer District ("LRSD"). Therein the Complainants asked the Commission to find these campgrounds should be charged metered campground rates pursuant to Ind. Code 13-26-11-2.1 ("Section 2.1") rather than being forced by LRSD to pay the dramatically higher, inapplicable, and unlawful mobile home court rate. LRSD also filed an MSJ asking the Commission to find that the Commission has no jurisdiction over this campground billing dispute. All parties filed respective Responses on November 28, 2016, and Replies on December 14, 2016, thereby perfecting the various MSJs.

2. Pine Bay recently learned that on March 2, 2017, while the summary judgment motions were pending, LRSD gave notice stating that its System is complete and that full monthly rates were taking effect ("Notice of Completion"). See attached Exhibit A.

3. LRSD sent a bill to Pine Bay on or about March 10, 2017 charging Pine Bay the full flat monthly, non-campground, mobile home court rates. See attached Exhibit B.

4. At the time the Notice of completion was sent, Pine Bay Campground was closed for the off season and its 74 year old owner / operator was in Florida and on a cruise ship.

4. LRSD's Notice of Completion and first full mobile home court rate sewage bill eventually came to the attention of Pine Bay's owner / operator on March 25, 2017 and he paid the bill in full that same day under written protest subject to refund. See attached Exhibit C.

5. Meantime, on March 23, 2017, the Commission entered a Docket Entry on the pending summary judgment motions in this Cause ("Docket Entry"). The Commission found *sua sponte*:

"...that Complainants' requests for Commission Review of this issue is premature, as there is no current billing dispute due to the fact that Lakeland's treatment facilities were not in service and bills have not been issued." (Docket Entry at 7).

6. However, unknown to the Commission or Pine Bay, at the time of the March 23 Docket Entry, LRSD's treatment facilities were in service, and LRSD's first round of mobile home court bills had already recently been issued to Pine Bay.

7. The Docket Entry "direct[ed] the Parties to further discuss resolution of the issue presented." (Docket Entry at 7).

8. Pine Bay complied with the Docket Entry instruction and guidance by sending a Notice of Billing Dispute letter to LRSD on March 29, 2017 requesting a metered campground rate and thereafter by communicating with LRSD counsel in writing. See attached Exhibit D.

9. LRSD did not resolve the dispute but instead denied Pine Bay's request on April 11, 2017 by sending an email with a copy of its Complaint for Declaratory Judgment filed in

Kosciusko County court that day and thereafter confirming that filing serves as LRSD's denial of Pine Bay's billing complaint and its request for metered campground rates and refund

10. In compliance with the Docket Entry's instruction and guidance, and to prevent any LRSD arguments about the I.C. § 13-26-11-2.1 seven-day language for appealing LRSD's denial of Pine Bay's campground billing complaint denial to the Commission's Consumer Affairs Division ("CAD"), Pine Bay re-filed its campground billing complaint with CAD on April 17, 2017.

11. As of May 12, 2017 the refiled CAD complaint is briefed before CAD with LRSD's response and Pine Bay's and other Complainants' replies already sent to CAD.

12. Pursuant to 170 16-1-5(e), CAD may "refer a complaint to the commission for review at any time during the review process based the complexity of the issues or circumstances involved in a complaint as determined by the director of consumer affairs or directors designee." In fact the current open Cause No. 44798 is a result of CAD referring Pine Bay and other Complainants' campground billing complaints to the Commission.

### **Appropriateness of Rehearing and Reconsideration**

**New important facts.** The Docket Entry pivots upon a finding that the Campground billing dispute was not ripe because LRSD's new sewage plant was not yet in service and LRSD had not yet rendered the full bills for the service of that new sewage plant. However, unbeknownst to the Commission and to Pine Bay, LRSD had already sent bills for the in service sewage plant just a few days before the issuance of the Docket Entry. Accordingly, Pine Bay's billing dispute had, under the criteria set in the Docket Entry, already become ripe. Thus, it is appropriate that the Commission accept into this Cause LRSD's March Notice of Completion

and the March mobile home court rate bill to Pine Bay for the in service sewage plant and thereby recognize Pine Bay's billing complaint is ripe.

Because LRSD had in fact recently billed Pine Bay the full in service mobile home court rate before the Docket Entry was issued, the Commission is in the position now to rule on the fully briefed, pending, ripe Motions For Summery Judgment on their merits and / or make ruling upon the verified information and affidavits before it.

**Administrative and judicial economy.** Ruling on those pending MSJs would serve administrative and judicial economy as they are fully briefed, and the recent LRSD's full "plant in service" billing is attached to and documented by this Petition. Importantly, as of the date of this Petition, Pine Bay's refiled CAD campground billing dispute, made in compliance with the Docket Entry's clear instructions, is also now perfected and ripe with LRSD's Response and Pine Bay's Reply having been sent to CAD.

Given the new information that the sewage plant is in service and full bills are being rendered, the Commission in its administrative discretion and regulatory expertise may find it very advantageous to reconsider and revise its recent April 26, 2017 final order in this Cause to not be a dismissal order but rather be an order to consolidate the pending, refiled, post in service Pine Bay campground CAD billing dispute into this Cause 44798, in furtherance of administrative efficiency, the goals of Section 2.1 and justice.

By such consolidation, the verified facts and documents presented in the MSJ's would be available to the Commission and combined with the recent full, post in service, mobile home court bills and the arguments presented to CAD in the now refiled CAD campground billing complaint. As CAD did with the original campground billing dispute complaint, it may perhaps

again find it advantageous to transfer the refiled billing complaint to the Commission to be combined with the current record in this Cause No. 44798.

With the proposed consolidation, the Commission in its expert discretion could rule on the merits of the MSJs, or rule on the basis of the refiled CAD complaints, or rule on both. Such flexibility increases the opportunities to satisfy Section 2.1 and promote fair campground rates. It may also serve to minimize resources wasted in the improper Kosciusko complaint.

**Satisfaction of Commission jurisdiction and statutory relief.** The Commission's April 26, 2017 Order graciously provided very clear regulatory guidance and renewed opportunity for LRSD to resolve this campground billing complaint, along with a discussion of why Pine Bay and other Complainants vacation, seasonal use, lake side recreational facilities fit the logical and statutory analysis of qualifying as campgrounds for rate classification and billing rather than being misclassified and grossly over charged as mobile home courts.

But despite that opportunity, it is déjà vu all over again, with LRSD once again not providing the reasonable, seasonal, vacation campground rate treatment the complainants need and have a lawful right to under Section 2.1. Instead, LRSD's new tact is a doomed effort to just walk away from the Commission's ongoing campground complaint Section 2.1 jurisdiction, abandon its unused administrative remedies, and flee to Kosciusko County court to face motions to dismiss its improper complaint, causing unnecessary further fees and costs to all Parties. Reconsideration and Consolidation would further evidence the continuation of Commission jurisdiction and the ongoing administrative remedies.

**Minimizes all stakeholders' fees and costs.** The fees and costs being created by LRSD's refusal to place its campgrounds on a metered campground rate, or at campground's option, a 1/3 EDU rate, as required by Section 2.1 are growing for all stakeholders, including the Commission

/ CAD. Consolidation of Cause 44798 and the pending refiled Pine Bay campground complaint affords the opportunity for the Commission to minimize future fees and costs, and make prompt ruling on the merits to the benefit of all stakeholders.

**Further avoids LRSD's incorrect seven-day arguments.** In this cause, and again in the refiled campground CAD complaint, LRSD has ineffectively argued that Pine Bay's pursuit of its CAD campground billing complaint was not timely made within seven days of LRSD denying its requested campground metered rate. Pine Bay has in this Cause and in its refiled CAD complaint, explained the many reasons why LRSD's seven-day deadline arguments are incorrect. Nonetheless, to avoid any similar incorrect LRSD arguments, Pine Bay refiled its campground CAD complaint on April 17, 2017, **six days** after its renewed request for metered campground rate was denied by LRSD and LRSD filed its declaratory judgment complaint. This requested Reconsideration of the April 27, 2017 Order and consolidation of the refiled CAD complaint with this cause serve to eliminate any further assertion by LRSD's of its incorrect seven-day argument while offering the potential to expedite resolution on the merits of this billing dispute.

**May promote resolution.** The granting of this Petition and Motion would to logical minds again send a clear message that absent informal resolution, the Commission will rule on the merits of this case and do so promptly, without any need for or additional expense from a completed CAD review and subsequent appeal to the full Commission. Moreover, the guidance provided in the April 26, 2017 Order would perhaps be amplified.

**Conclusion.** For all the foregoing reasons and in pursuit of statutory right to campground rates and fairness, Pine Bay respectfully requests rehearing and reconsideration of



the Commission's April 27, 2017 Final Order in this Cause and consolidation of Pine Bay's refiled CAD complaint into this Cause.

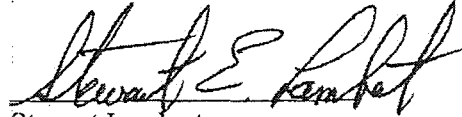
Respectfully submitted,

/s/ R. M. Glennon

Robert M. Glennon  
ROBERT GLENNON & ASSOC., P.C.  
3697 N. Co. Rd. 500 E.  
Danville, IN 46122  
[glennon@iquest.net](mailto:glennon@iquest.net)  
[robertglennonlaw@gmail.com](mailto:robertglennonlaw@gmail.com)

Verification

I affirm under the penalty of perjury that the foregoing representations are true and accurate to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Stewart E. Lambert", written over a horizontal line.

Stewart Lambert  
Owner / Operator  
Pine Bay Campground

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing document was served via electronic mail, hard copies available upon request, this 16<sup>th</sup> day of May, 2017, upon the following:

Andrew D. Boxberger  
Eric M. Blume  
Sharon Axson  
CARSON BOXBERGER LLP  
301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802  
[aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com)  
[Blume@carsonboxberger.com](mailto:Blume@carsonboxberger.com)  
[axson@carsonboxberger.com](mailto:axson@carsonboxberger.com)

Lorraine Hitz-Bradley  
OFFICE OF UTILITY CONSUMER COUNSELOR  
115 West Washington Street, Suite 1500 South  
Indianapolis, IN 46204  
[LHitzBradley@oucc.in.gov](mailto:LHitzBradley@oucc.in.gov)  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)

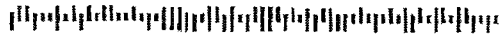
Bette J. Dodd,  
Tabitha L. Balzer,  
LEWIS & KAPPES, P.C.  
One American Square, Suite 2500  
Indianapolis, IN 46282-0003  
Telephone: (317) 639-1210  
Facsimile: (317) 639-4882  
Email: [BDodd@Lewis-Kappes.com](mailto:BDodd@Lewis-Kappes.com)  
[TBalzer@Lewis-Kappes.com](mailto:TBalzer@Lewis-Kappes.com)

/s/ R.M. Glennon  
Robert M. Glennon

Robert M. Glennon  
ROBERT GLENNON & ASSOC., P.C.  
3697 N. Co. Rd. 500 E.  
Danville, IN 46122  
[glennon@iquest.net](mailto:glennon@iquest.net)  
[robertglennonlaw@gmail.com](mailto:robertglennonlaw@gmail.com)

# Exhibit A

Service Address:

33 EMS B43A LN  
LEESBURG IN, 46538T2 P190 \*\*\*\*\*AUTO\*\*SCH 5-DIGIT 46565  
PINE BAY RESORT LLC  
4257 N SULLIVAN RD  
LEESBURG, IN 46538-8811

March 2, 2017

Dear Lakeland Regional Sewer District Property Owner,

## NOW YOU CAN CONNECT!

Thank you for your patience and understanding as we worked diligently to complete the Lakeland Regional Sewer District ("District") sanitary sewer collection system project ("System"). Several people deserve thanks in working tirelessly to bring this benefit to the community. Thanks to those efforts, the System is now ready for your property to be connected. Indiana Law requires that your property be connected to the System in a minimum of 90 days. However, the District is providing additional time and **requires that your property be connected within 180 days from the date of this letter.**

Attached, you will find a checklist with a general overview of the connection steps and the required forms. During the connection process, please be sure to review the District's connection requirements and processes thoroughly, and be certain that all connections are made properly. The District's Development Standards Manual, all required forms, and a detailed explanation of the connection process and requirements can be found on the District's website at [www.lakelandrdsd.com](http://www.lakelandrdsd.com). This information can also be reviewed by visiting the District's office located at the North Webster Community Center, 301 North Main Street, North Webster, 46555. The office hours are: Tuesday ~ Friday, 8am to 4pm, and on Saturday 8am to noon. Also, you can contact the office during those same hours at (574) 529-2383. A non-comprehensive list of available contractors to assist you in the process is also available on the District's website or its' office (the District does not officially endorse any contractor).

Please be aware that you may have more than one pipe exiting your home, all sanitary plumbing needs to be combined prior to making a single connection into the grinder tank. The old septic tank(s) and any dry wells must be abandoned properly. An inspection from the District is required for the gravity connections, electrical connections, and when the old septic tank(s) is abandoned. **Please do not cover any part of the gravity or electrical connections before it has been inspected by the District.**

(over)

To schedule an inspection please call the number listed in the Development Standards Manual (574) 529-2383 at least 48-hours in advance. This is to ensure the availability of the District's inspection contractor. The standard inspection fee for a residential property is \$120.00.

Now that the System is complete, the District's full monthly rate shall take effect. Beginning with your March bill, your monthly rate for sanitary sewer service shall be \$69.95 per month. Please see the District's Rate Ordinance and Use Ordinance (available on the District's website or in its' office) for more details.

The District is privileged to bring this beneficial service to the community and improve everyone's property. Please contact the District's office anytime with questions regarding this process.

Sincerely,

Lakeland Regional Sewer District

# Exhibit B

Lakeland Regional Sewer District  
c/o Jones Petrie Rafinski Corp  
P O Box 2907  
Elkhart, IN 46515

Temp—Return Service Requested

**Summary of Service**  
Interim Wastewater Charge 3012.28  
Last Payment Date 02/28/17  
Last Payment Amount 378.62

Account Number	8 00332 00
Due if paid by 03/31/17	3012.28
Due if paid after 03/31/17	3313.51
Amount Paid	\$ 3012.28



\*\*\*\*\*AUTO\*\*SCH 5-DIGIT 46565  
PINE BAY RESORT LLC \*2-194  
4257 N SULLIVAN RD  
LEESBURG IN 46538-8811



Lakeland Regional Sewer District  
c/o Jones Petrie Rafinski Corp  
P O Box 2907  
Elkhart, IN 46515



Approved by the State Board of Accounts for Jones Petrie Rafinski - 2015

PLEASE DETACH AND RETURN UPPER PORTION WITH PAYMENT. THANK YOU.

Jones Petrie Rafinski Corp  
P O Box 2907  
Elkhart, IN 46515

**Hours**  
Monday thru Thursday, 9:00am - 4:00pm  
**Website**  
<http://lakelandred.com>

Billing Questions: (574) 226-8468  
Email for billing questions:  
[jransbottom@jpr1source.com](mailto:jransbottom@jpr1source.com)

#### Account Information

Account Number	Bill Date	From Date	Thru Date	Service Address
8 00332 00	03/10/17	02/01/17	02/28/17	33 EMS B43A LANE

Charge Description	Previous Reading	Present Reading	Total Consumption	Previous Balance	Tax	Charge
Interim Wastewater Charge				-34.42		3046.70

AMOUNT DUE IF PAID BY 03/31/17: 3012.28  
IF PAID AFTER 03/31/17: 3313.51

*Paid March 25, 2017  
Check # 3484*

Make Checks Payable to: Lakeland Regional Sewer District

PAYMENT IS DUE UPON RECEIPT. IF NOT PAID WITHIN 15 DAYS OF BILLING DATE, A PENALTY WILL BE ADDED.

#### PENALTY IS:

Wastewater: 10% of Wastewater Charge

Account is not considered paid until payment is received in our office.  
We are not responsible for the U.S. Mail.  
Failure to receive a bill does not relieve consumer of penalty.

The Lakeland Regional Sewer District project is nearing completion, and it is anticipated that you will receive written connection instructions in February. Please be advised that **beginning with the March** sewer bill, your rate will be the **full monthly sewer rate of \$69.95** per dwelling unit.

This institution is an equal opportunity provider.  
Esta institucion es un proveedor de servicios con igualdad de oportunidades.



# Exhibit C



PINE BAY RESORT LLC  
4257 N. SULLIVAN ROAD  
LEESBURG, INDIANA 46538

71-371/748

3484

DATE March 25, 2017

PAY TO THE  
ORDER OF

Lake land Regional Sewer District  
three thousand twelve and 28/100

\$3,012.28

DOLLARS

Acct. #

 **Lake City Bank**

NORTH WEBSTER, INDIANA 46555

FOR

8 0033200

Paid under Protest

Stewart E. Lombert  
AUTHORIZED SIGNATURE

⑈003484⑈ ⑆074903719⑆ ⑆010355473⑈

THIS CHECK OR ANY INFORMATION CONTAINED HEREIN IS UNLAWFUL TO REPRODUCE OR TRANSMIT IN ANY MANNER. IT WILL DISAPPEAR WITH HEAT.

# Exhibit D

ROBERT GLENNON  
& ASSOC., P.C.  
3697 N. Co. Rd. 500 E.  
Danville, Indiana 46122  
(317) 852-2723

March 29, 2017

VIA U.S. MAIL AND ELECTRONIC MAIL

Andrew D. Boxberger, Esq.  
Eric M. Blume, Esq.  
CARSON BOXBERGER LLP  
301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802  
[Aboxberger@carsonboxberger.com](mailto:Aboxberger@carsonboxberger.com)  
[Blume@carsonboxberger.com](mailto:Blume@carsonboxberger.com)

Jason M. Kuchmay, Esq.  
SNYDER MORGAN LLP  
200 West Main St.  
Syracuse, IN 46567  
[JMK@smfklaw.com](mailto:JMK@smfklaw.com)

**Re: Notice of disputed Lakeland Regional Sewer District bill to Pine Bay  
Resort Campground and demand for refund and metered campground rate.**

Dear Mr. Boxberger, Blume and Kuchmay:

I write on behalf of my client Pine Bay Resort Campground and its owner / operator Stewart Lambert regarding your client Lakeland Regional Sewer District ("LRSD"). Mr. Lambert very recently received LRSD's March bill for \$3,012.20 ostensibly for the period 2/1/17 - 2/28/17. This is the first bill that reflects the supposed completion of Lakeland's new sewage collection and treatment systems.

Pine Bay Resort Campground disputes this bill and its underlying mobile home court rates. Pine Bay Resort Campground is a seasonal, recreational campground, not a mobile home court, as already documented in Pine Bay's pleadings and exhibits in Indiana Utility Regulatory Commission ("IURC") Cause No. 44798. Pine Bay Resort Campground should be charged the substantially lower campground rates, not LRSD's mobile home court rates, just as Pic-A-Spot Campground is charged the much lower campground rates. Moreover, two of Pine Bay's campsites do not have any sewage connections available and should not be charged at all by LRSD. Mr. Lambert has under written protest paid the disputed bill, but requests that LRSD promptly refund or credit Pine Bay Resort Campground for the substantial over collection. Pine Bay Resort Campground is hereby making a good faith attempt to resolve this billing dispute.


I recently received the March 23, 2017 docket entry from the IURC in Cause Number 44798 concerning a complaint by Pine Bay Resort Campground and other

campgrounds disputing LRSD's intention to charge these campgrounds as though they are mobile home courts rather than campgrounds. The IURC's docket entry clearly noted the meaning of campground is "...an area used for setting up camp..." and camp is further defined as "[a] place composed of more or less permanent shelters used for recreation." p. 6. The IURC agreed with Pine Bay Resort Campground's assertion that "...the proper analysis to determine whether an operation qualifies as a "campground" under Section 2, for purposes of a campground owner or operator availing itself of a metered rate sewer rate (or a maximum flat rate based on 1/3 EDU), is the nature of the shelter's use, i.e. recreational use vs. full time residential use, rather than the type or size of the shelter located on the facility." p.6. Thus, Pine Bay Resort Campground is clearly a seasonal, recreational campground.

In addition to LRSD's statutory opportunity to resolve this bill dispute with Pine Bay Resort Campground and the other complainant campgrounds, the IURC specifically directs "...the parties to further discuss resolution of the issue presented." p.7.

Pine Bay Resort Campground hereby demands that LRSD refund or credit Pine Bay 2/3 of the paid March bill to reflect the unmetered rate of 1/3 EDU as applicable to campgrounds under the statute and that LRSD offer a metered campground rate to Pine Bay, just as it has to Pic-A-Spot Campground, rather than continuing to charge excessive unlawful mobile home court rates. You may contact me at the telephone number above to further discuss these matters.

Sincerely,



Robert M. Glennon  
Attorney at Law

Enclosures

RMG/jcg

Robert Glennon <glennon@iquest.net>

April 13, 2017 3:50 PM

To: Andrew Boxberger <aboxberger@carsonboxberger.com>

Cc: Eric Blume <blume@carsonboxberger.com>

Re: Pine Bay Campground Bill Dispute with LRSD

---

Andrew,

Thank you for emailing me the copy of LRSD's April 11 Motion For Declaratory Judgement. Also, thank you for speaking with me today and confirming that the LRSD has denied Pine Bay's March 29, 2017 written notice of bill dispute, demand for refund and application of campground metered rates.

My best regards.

Bob

Robert M. Glennon

Robert Glennon & Assoc., P.C.

3697 N. Co. Rd. 500 E.

Danville, IN 46122

Phone: (317) 852-2723

Fax: (317) 852-0115

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On Apr 11, 2017, at 4:36 PM, Andrew Boxberger <[aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com)> wrote:

Robert,

I was out of town last week and apologize for the delay. In response to your email below, please see the attached filed today in Kosciusko County.

---

**From:** Robert Glennon [mailto:glennon@iquest.net]

**Sent:** Monday, April 10, 2017 6:24 PM

**To:** Andrew Boxberger

**Cc:** Eric Blume

**Subject:** Re: Pine Bay Campground Bill Dispute with LRSD

Andrew,

I have not yet been advised by you of LRSD's position as you promised below.

Do you have a response to our notice of dispute / demand letter?

Thank you

Bob

Robert M. Glennon

Robert Glennon & Assoc., P.C.

3697 N. Co. Rd. 500 E.

Danville, IN 46122

Phone: (317) 852-2723

Fax: (317) 852-0115

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On Mar 30, 2017, at 7:11 PM, Andrew Boxberger <[aboxberger@carsonboxberger.com](mailto:aboxberger@carsonboxberger.com)> wrote:

Mr. Glennon,

The has a meeting next week to discuss the Pine Bay matter and we will advise.

Thank you

---

**From:** Robert Glennon [mailto:[glennon@jquest.net](mailto:glennon@jquest.net)]  
**Sent:** Wednesday, March 29, 2017 8:31 PM  
**To:** Andrew Boxberger; Eric Blume; Jason Kuchmay  
**Subject:** Pine Bay Campground Bill Dispute with LRSD

Andrew, Jason and Eric,

Attached please find Pine Bay Resort Campground's notice of bill dispute to your client Lakeland Regional Sewer District. Please have your client give their prompt attention to this matter.

Thank you,  
Bob

<Complaint for Declaratory Judgment - fsc.pdf>



# Attachment 12

## Email

**FW: Lakeland Regional/Pin...**

Created On  
6/27/2017 4:47 PM

Date Received  
6/27/2017 4:45 PM

Date Sent

Status Reason  
Received

## Email

**From**  Sara Satterfield

**To**  Sara Satterfield;  Sara Satterfield

**Cc**

**Bcc**

**Subject** FW: Lakeland Regional/Pine Bay Resort - CRM:0102391

File Nameimage001.pngimage2017-05-23-143908.pdf

1 - 2 of 2 (0 selected)

Page 1

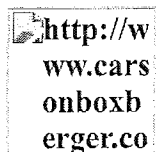
**From:** Shelia Marley [mailto:marley@carsonboxberger.com]  
**Sent:** Wednesday, May 24, 2017 3:27 PM  
**To:** Satterfield, Sara <ssatterfield@urc.IN.gov>  
**Subject:** Lakeland Regional/Pine Bay Resort

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

This letter was sent to you yesterday. I just received notification that you did not receive it. I am sending it to you again.

Surreply from Lakeland Regional attached.

Thank you.



**Shelia Marley**  
Legal Assistant, Carson Boxberger LLP  
Direct (260) 469-5084  
Office (260) 423-9411  
[carsonboxberger.com](http://carsonboxberger.com)

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**From:** [scanner@carsonboxberger.com](mailto:scanner@carsonboxberger.com)

[<mailto:scanner@carsonboxberger.com>]

**Sent:** Tuesday, May 23, 2017 2:39 PM

**To:** Shelia Marley

**Subject:**

**Regarding**  120552

**Duration**



carsonboxberger.com  
260 423-9411

The Harrison  
301 W. Jefferson Boulevard, Suite 200  
Fort Wayne, IN 46802  
May 23, 2017

Eric M. Blume  
blume@carsonboxberger.com

ssatterfield@iurc.in.gov

Sarah Satterfield  
Consumer Affairs Division  
Indiana Utility Regulatory Commission  
101 W. Washington St., Suite 1500 E.  
Indianapolis, IN 46204

Re: Complaint of Pine Bay Resort, Barbee Landing, Northcrest RV  
Park, and Kuhn Lake Resort v. Lakeland Regional Sewer District  
Cause No: 44798

Dear Ms. Satterfield:

Please accept this brief correspondence to serve as Lakeland Regional Sewer District's ("the District") Surreply, as the various properties raised separate and distinct issues in their Reply.

From the outset, the District still contends that the Complaints should be dismissed for various reasons, including the fact the IURC does not have jurisdiction over this classification dispute and that the Complainants failed to timely file their claims. In addition, to the merits of the dispute, the District properly classified the Complainants' properties as "Mobile Home Courts" while performing a legislative act. While the IURC does not have jurisdiction to hear the dispute anyways, it is also improper for the IURC to overturn a legislative act in this forum and when the District had a rational basis for doing so. The District will not reiterate its arguments that the IURC lacks jurisdiction or that the Complainants did not fail to timely file their Complaints. Those issues have been fully briefed out in various forums, including its Response already provided to the IURC.

To briefly address only the newly raised issues in the Complainants' various Reply briefs, consider the following: (1) The Complainants do not have a statutory right to petition the Commission as they are not campgrounds; (2) Kosciusko Superior Court has jurisdiction over this case; (3) the doctrine of primary jurisdiction does not apply as the IURC does not have jurisdiction; and (4) Lakeland's Complaint is not subject to dismissal as there were no administrative remedies that needed to be exhausted.

### **I. THE COMPLAINANTS DO NOT HAVE A STATUTORY RIGHT TO PETITION THE COMMISSION**

As indicated in the Complainants' Reply Briefs, Indiana Code § 13-26-11-2.1 provides campground owners with the right to seek commission review over disputes. In fact, the title of that Indiana Code section is "campground rates; appeal to the utility regulatory commission." That provision, however, does not apply because the Complainants are not campgrounds. They are mobile home courts as that term is defined in the Ordinance. The fact that the Indiana Board of Health may define campground a certain way is not dispositive or relevant. *Yankee Park* clearly addressed this argument and entirely rejected it. Therefore, because the Complainants are not campgrounds, they are not entitled to any statutory right to petition the commission.

### **II. THE KOSCIUSKO SUPERIOR COURT HAS JURISDICTION OVER THIS MATTER**

As indicated above, the IURC does not have jurisdiction to hear this dispute. However, the trial court does have jurisdiction. After the IURC indicated that Cause No. 44798 would be dismissed for lack of ripeness, the District brought this dispute before the Kosciusko Superior Court in order to have it judicially determined. This was proper because the trial court has jurisdiction to hear the Complainants' classification determination, whereas the IURC does not hold such jurisdiction. Therefore, if the IURC elects to determine the classification issue dispute and the jurisdiction issue will be appealed to the Indiana Court of Appeals.

### **III. THE DOCTRINE OF PRIMARY JURISDICTION DOES NOT APPLY**

The doctrine of primary jurisdiction does not apply as the IURC does not have jurisdiction over the classification issue. As indicated in the Complainants' Reply Brief the doctrine of primary jurisdiction only applies if the courts and an administrative agency both have claims to jurisdiction over a particular issue. Here, however, the doctrine of primary jurisdiction fails, as a threshold issue, because the IURC does not have jurisdiction over this case. The IURC only possesses jurisdiction over issues specifically provided for by statute. The statute does not provide the IURC with jurisdiction to hear classification disputes and, furthermore, does not provide an appeal process through the IURC for mobile home courts. For that reason, the doctrine of primary jurisdiction does not apply to this dispute.

#### IV. LAKELAND'S COMPLAINT IS NOT SUBJECT TO DISMISSAL

The Complainants advance an argument that Lakeland failed to exhaust administrative remedies and, therefore, the declaratory judgment action pending in Kosciusko County is subject to dismissal. Once again, the Complainants argument fails as Lakeland had no administrative remedies to exhaust and the statute providing for an appeal process for campgrounds is not applicable as the Complainants are not campgrounds.

While I.C. §13-26-11-2.1 does provide for IURC review of billing rate disputes brought by campground owners (see *LaGrange County Regional Utility Dist. V. Bubb*, 914 N.E.2d 807 (Ind. Ct. App. 2009), that is not the threshold issue of this case and, furthermore, the claimants are not campground owners. The threshold issue of this case is whether LRSWD properly classified the claimants' property as a mobile home park. The fact that the properties' believe they are campgrounds does not make them campgrounds for purposes of I.C. §13-26-11-2.1.

*Danville, L.P. v. West Central Conservancy District*, 867 N.E.2d 645 (Ind. Ct. App. 2007) stands for the proposition that, absent statutory provisions which create an administrative process for appealing the classification of properties by a conservancy district (which are similar to regional sewer districts in scope, purpose, and authority), there is *no requirement* that the parties exhaust administrative remedies before resorting to the courts. *Id.* (citing *Underwood v. City of Jasper Mun. Util. Serv. Bd.*, 678 N.E.2d 1280, 1285 (Ind. Ct. App. 1997) (stating where no statutory remedy provided, due process and due course of law clauses of federal and state constitution's guarantee right to judicial review)). Therefore, because no statute grants a property owner the right to challenge a regional sewer district's classification decision at the IURC, appealing to the courts is the only allowable course of action.

Because there is no statutory provision requiring a classification dispute to be proper for the IURC or any other state agency, there is no requirement that Lakeland exhausted the administrative remedies. This dispute can clearly be brought before the trial court and has been done many times in the past. For instance, the classification dispute at issue in *Yankee Park* was initiated by a declaratory judgment in the trial court. If there was, in fact, a requirement for the parties to exhaust administrative remedies, then such a case would have been subject to dismissal. Clearly that was not the case.

May 23, 2017

Page 4

## V. CONCLUSION

Based upon the arguments set forth in the District's response letter dated April 17, 2017 and herein, the District respectfully requests the IURC to dismiss Cause No. 44798 and the newly filed complaints.

Sincerely,

CARSON BOXBERGER LLP



Eric M. Blume

EMB/skm

cc: Andy Boxberger  
Robert Glennan  
Tabitha Balzer  
Betty Dodd  
OUCC  
Aaron Schmoll

# Attachment 13






**Email****Read: Case 120552 - Kuhn ...**

Created On  
7/5/2017 2:43 PM

Date Received  
7/5/2017 2:39 PM

Date Sent

Status Reason  
Received

**Email****From** Eric Blume**To** Sara Satterfield;  Sara Satterfield**Cc****Bcc****Subject**

Read: Case 120552 - Kuhn Lake - CRM:0102391


File Name

Read Case 120552 - Kuhn Lake - CRM0102

1 - 1 of 1 (0 selected)

Page 1

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**Regarding** 120552**Duration**

## Miles, China

---

**From:** Eric Blume <blume@carsonboxberger.com>  
**To:** Satterfield, Sara  
**Sent:** Wednesday, July 05, 2017 2:39 PM  
**Subject:** Read: Case 120552 - Kuhn Lake - CRM:0102391

Your message

To: Eric Blume  
Subject: Case 120552 - Kuhn Lake - CRM:0102391  
Sent: Wednesday, July 5, 2017 2:32:39 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Wednesday, July 5, 2017 2:38:57 PM (UTC-05:00) Eastern Time (US & Canada).

# Attachment 14

## Email

## RE: Case 120552 - Kuhn La...

Created On  
7/6/2017 11:45 AM

Date Received  
7/6/2017 11:41 AM

Date Sent

Status Reason  
Received

## Email

**From**  Eric Blume

**To**  Sara Satterfield;  Sara Satterfield

**Cc**  Andrew Boxberger

**Bcc**

**Subject** RE: Case 120552 - Kuhn Lake - CRM:0102391

File Name

image001.png

1 - 1 of 1 (0 selected)

Page 1

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

Sara:

I'm a little confused by your email below. Is this a final determination by the IURC that it has jurisdiction over Pine Bay's classification dispute complaint? This email mischaracterizes Lakeland's arguments that were briefed out extensively over the last several months.

Give me a call or send me an email if you wish to discuss this matter further.



**Eric Blume**  
Partner, Carson Boxberger LLP  
Direct (260) 469-5045  
Office (260) 423-9411  
[carsonboxberger.com](http://carsonboxberger.com)

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**From:** Satterfield, Sara [mailto:ssatterfield@urc.IN.gov]  
**Sent:** Wednesday, July 05, 2017 2:33 PM  
**To:** Eric Blume  
**Subject:** Case 120552 - Kuhn Lake - CRM:0102391

Mr. Blume,

After reviewing the information provided by both parties , the commission has authority under Ind. Code § 13-26-11-2.1 to determine if the customer has been billed correctly.

Based on the information submitted by Kuhn Lake, the utility billed this place \$1,900.31 (billing date 3/10/17). Kuhn Lake states that Lakeland is refusing to charge them a flat rate based on a 1/3 EDU rate until the meters are installed.

Per the information provided by Lakeland, beginning with March 2017 bill, the customer monthly rate for sanitary sewer service shall be \$69.95 per month. Based on Ind. Code § 13-26-11-2 (b) the district is required to bill the campground based upon the volume measured by the meter or a maximum flat rate based on 1/3 EDU.

Could you please advised how the utility come up with the amount of \$69.95 per month?

Thank you,

Sara

**Sara Satterfield**

**Senior Consumer Affairs Analyst**

**Consumer Affairs Division**

**Indiana Utility Regulatory Commission**

**101 W Washington Street, Suite 1500 East**

**Indianapolis, Indiana 46204**

**Phone (317) 233-6003**

**Email: [ssatterfield@urc.in.gov](mailto:ssatterfield@urc.in.gov)**

Regarding  120552

Duration

# Attachment 15

## Email

## RE: Case 120552 - Kuhn La...

Created On  
7/7/2017 2:07 PM

Date Received  
7/7/2017 2:03 PM

Date Sent

Status Reason  
Received

## Email

**From**  Eric Blume

**To**  Sara Satterfield;  Sara Satterfield

**Cc**  Andrew Boxberger

**Bcc**

File Name
<a href="#">20170707132926745.pdf</a>
<a href="#">image001.png</a>
1 - 2 of 2 (0 selected) Page 1

**Subject** RE: Case 120552 - Kuhn Lake - CRM:0102391

\*\*\*\* This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\*\*

Sara:

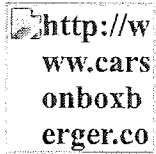
From the statement below where you indicate that "the commission has authority under Ind. Code § 13-26-11-2.1 to determine if the customer has been billed correctly," it appears that the IURC has made an initial determination that it has jurisdiction over the Complainants' classification dispute. Lakeland strongly opposes such a ruling, as the IURC does not have jurisdiction to hear a dispute as to its classification of the Complainants' properties as "Mobile Home Courts." From the attached, the CAD made a determination on June 3, 2016, over one year ago, that the IURC does not have jurisdiction over these issues. If the statement below is a final determination that the IURC has jurisdiction over this dispute, Lakeland respectfully requests that it reconsider such a position.

The Complainants' properties are being charged at the rate of 1.0 EDU, not .33 EDU, because the Complainants are not campgrounds. While it is true that Ind. Code § 13-26-11-2(b) requires Lakeland to bill campgrounds at a maximum flat rate based on 1/3 EDU, such is immaterial in this case as they are not campgrounds. Lakeland has classified the Complainants' properties as "Mobile Home Courts" pursuant to the definitions in the rate ordinance. Pursuant to binding case precedent (*Yankee Park Homeowners Ass'n., Inc. v. LaGrange Cnty. Sewer Dist.*, 891 N.E.2d 128 (Ind. App. 2008), the definition in the rate ordinance is binding. Therefore, based upon Lakeland's definitions, the Complainants' properties are not campgrounds, so Ind. Code § 13-26-11-2(b) is immaterial.

It is my understanding that the Complainants are being charged \$69.95, which comprises of 1.0 EDU at a rate of \$66.15 plus a \$3.80 administrative

fee. The billing at 1.0 EDU is appropriate in this case as the Complainants are not campgrounds, but rather, Mobile Home Courts which are to billed at the rate of 1.0 EDU per the district's rate ordinance.

If you have any other questions, feel free to contact me. Thanks.



**Eric Blume**  
Partner, Carson Boxberger LLP  
Direct (260) 469-5045  
Office (260) 423-9411  
[carsonboxberger.com](http://carsonboxberger.com)

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---

**From:** Satterfield, Sara [mailto:ssatterfield@urc.IN.gov]  
**Sent:** Wednesday, July 05, 2017 2:33 PM  
**To:** Eric Blume  
**Subject:** Case 120552 - Kuhn Lake - CRM:0102391

Mr. Blume,

After reviewing the information provided by both parties, the commission has authority under Ind. Code § 13-26-11-2.1 to determine if the customer has been billed correctly.

Based on the information submitted by Kuhn Lake, the utility billed this place \$1,900.31 (billing date 3/10/17). Kuhn Lake states that Lakeland is refusing to charge them a flat rate based on a 1/3 EDU rate until the meters are installed.

Per the information provided by Lakeland, beginning with March 2017 bill, the customer monthly rate for sanitary sewer service shall be \$69.95 per month. Based on Ind. Code § 13-26-11-2 (b) the district is required to bill the campground based upon the volume measured by the meter or a maximum flat rate based on 1/3 EDU.

Could you please advise how the utility come up with the amount of \$69.95 per month?

Thank you,  
Sara  
Sara Satterfield  
Senior Consumer Affairs Analyst  
Consumer Affairs Division  
Indiana Utility Regulatory Commission  
101 W Washington Street, Suite 1500 East  
Indianapolis, Indiana 46204




7/27/2017

Email: RE: Case 120552 - Kuhn Lake - CRM:0102391

**Phone (317) 233-6003**

**Email:** [ssatterfield@urc.in.gov](mailto:ssatterfield@urc.in.gov)

**Regarding**

 120552

**Duration**

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
101 W. WASHINGTON STREET, SUITE 1500B  
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iuro>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

June 3, 2016

Lorraine Seyfried, Chief Administrative Law Judge  
Indiana Utility Regulatory Commission  
101 W. Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204-3407

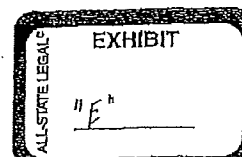
Re: Referral of Consumer Affairs Division Complaints to IURC  
and Request to Consolidate CAD Complaint Numbers 115723, 117004, and 117005

Dear Judge Seyfried:

Pursuant to 170 IAC 16-1-5(e), the Director of Consumer Affairs Division ("CAD") and the General Counsel are referring CAD complaint numbers 115723, 117004, and 117005 to the Indiana Utility Regulatory Commission ("IURC" or "Commission") and requesting that these complaints be docketed for determination by the Commission, due to the complexity of the issues involved. The main issue is whether the IURC has jurisdiction to determine whether each of the properties involved in these complaints is a campground and therefore qualifies for dispute resolution by the IURC under Ind. Code § 13-26-11-2.1. In addition, because these three complaints all involve the same issue, CAD and General Counsel ask that these three CAD complaints be consolidated.

On October 6, 2015, Pine Bay Resort Campground brought a billing-dispute complaint against Lakeland Regional Sewer District ("Lakeland") (CAD file 115723). The CAD analyst made an initial determination that the Commission does not have jurisdiction to determine if a property is or is not a campground, and that the billing dispute brought before CAD does not fall under one of the three issues raised in Ind. Code Section 13-26-11-2.1. Pine Bay Resort Campground requests a reversal of the CAD analyst's initial determination.

On February 22, 2016, Northcrest R.V. Park ("Northcrest") and Barbee Landing Mobile Home Park ("Barbee Landing") contacted CAD regarding their ongoing billing dispute with Lakeland for deciding that Northcrest and Barbee Landing do not qualify as campgrounds, and therefore do not qualify for metered campground rates. (CAD files 117004-117005) Northcrest and Barbee Landing contend that the Commission has jurisdiction over this property designation issue, and request the Commission hear the matter and make a final determination.

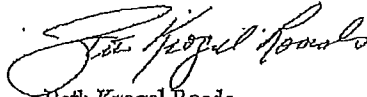


Judge Seyfried  
Page 2  
June 3, 2016

Please be advised that the parties in these cases are represented by counsel and that counsel have presented legal arguments for and against IURC jurisdiction in these matters.

Attached are the CAD, appeal, and rebuttal files for the complainants and respondents involved in these complaints. Please let me know if you need any additional information.

Sincerely,



Beth Krogel Roads  
General Counsel  
Indiana Utility Regulatory Commission

Enclosures

cc: Kenya McMillin, IURC, Consumer Affairs Division Director  
Curt Gassert, IURC, Division Director, Water and Wastewater  
Robert Glennon, Attorney for Pine Bay Resort Campground LLC  
John R. Gastineau, Attorney for Lakeland Regional Mobile Home Park  
Tabitha Balzer and Bette Dodd,  
Attorneys for Northerest R. V. Park and Barbee Landing Mobile Home Park

# Attachment 16

## Email

## Case 120552 has been clos...

Created On  
7/18/2017 1:56 PM

Date Received  
7/18/2017 3:26 PM

Date Sent  
7/18/2017 3:26 PM

Status Reason  
Sent

## Email

From  Sara Satterfield

To  Eric Blume

Cc

Bcc

Subject Case 120552 has been closed CRM:0102000000540

Mr. Blume,

Thank you for the information provided.

Based on the information submitted it has been determined that Northcrest, Barbee Landing, Kuhn Lake and Pine Bay are allowed to dispute the utility rates per IC 13-26-11-2.1.

Regarding the facilities, whether they qualify as a campground or mobile home parks, based on the analysis presented on March 23, 2017 docket number 44798, neither argument is particularly relevant as to whether an entity constitute a campground for purposes of section 2.

In reference to the complaint, it is my determination that Lakeland must bill their customers using a metered sewer rate or a maximum flat rate based on 1/3 EDU. Therefore, I suggest Lakeland to bill the customers based on a 1/3 EDU rate, until the meters are installed and to refund any overcharges to Northcrest, Barbee Landing, Kuhn Lake and Pine Bay.

Complaint closed as Substantiated.

Thanks,

Sara Satterfield  
101 W Washington St Ste 1500  
Indianapolis, IN 46204  
UNITED STATES  
Indianapolis  
ssatterfield@urc.IN.gov

Regarding  120552

Duration

File Name	
No Attachment rec	
0 - 0 of 0 (0 selected)	Page 1