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AZ CORP COMMISSION
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2004 JUL -9 P 3: 32

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BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF:) DOCKET NO. W-02124A-04-0416
8 AJF CUSTOM HOMES, LLC, an Arizona)
Limited Liability Company,)
9 Complainant,)
10 vs.)
11 DESERT HILLS WATER COMPANY, Inc.,)
12 An Arizona Corporation,)
Respondent.)

14 IN THE MATTER OF:) DOCKET NO. W-02124A-04-0469
15 UTILITIES DIVISION, of the Arizona)
Corporation Commission,)
16 Complainant,)
17 vs.)
18 DESERT HILLS WATER COMPANY, Inc.,)
19 An Arizona Corporation,)
Respondent.)

ANSWER

Arizona Corporation Commission

DOCKETED

JUL - 9 2004

DOCKETED BY *CR*

1 Desert Hills Water Company, Inc. ("Desert Hills" or the "Company"), by and through
2 undersigned counsel, respectfully states the following in Answer to the Complaint of the Utilities
3 Division, ("Staff"):

- 4 1. Desert Hills admits Paragraphs 2, 3, 4, 6, 12, 13, 16, 28, 31, and 33 of the Complaint.
- 5 2. Desert Hills denies Paragraphs 18, 20, 29, 32, 34, 37, and 38 of the Complaint.
- 6 3. Desert Hills denies Paragraph 5 and alleges that the Company received engineering drawings
7 from Northpoint Engineering dated September 15, 2003, proposing the utility facilities
8 necessary for a 99 lot subdivision, including the subject lots, which facilities would be
9 constructed by North Valley Dirt Works, on behalf of Mike Pollack, dba D & M Land
10 Development ("D&M"). The plans for the subdivision were inadequate because they were (1)
11 inconsistent with good utility practice for on-site facilities, because as revised did not include
12 "looping" the distribution system, (2) made no provision for adequate storage or pressure to the
13 lots or for the fire hydrants that were included in the design, (3) had numerous technical
14 deficiencies, and (4) would therefore be unacceptable to the Maricopa County Department of
15 Environmental Services. Desert Hills further alleges that on or about September 30, 2003,
16 Company representatives met with Mr. Pollack regarding service to the area as a subdivision, at
17 which time the Company was advised that the Developer had sold most of the lots and would
18 not proceed with the subdivision plan, but would coordinate the water service with the new
19 owners. Mr. Pollack was verbally advised of the plan deficiencies on or about October 23,
20 2003 at which time Mr. Pollack indicated he had sold all of the property and no longer had any
21 involvement with the project and that the area would therefore be developed as a "lot split"
22 development. Desert Hills further alleges that in a meeting with Staff members Steve Olea, Del
23 Smith and Vicki Wallace, following an explanation of the history of the property, Staff agreed

1 that it would be the responsibility of the developers to finance the infrastructure to solve the
2 pressure and flow problems for that area. Desert Hills further alleges that on the February 24,
3 2004, the Company sent a letter to D & M's successor in interest, AJF Custom Homes, LLC
4 ("AJF"), describing the required utility facilities necessary to serve that area. A copy of that
5 letter is attached hereto as Exhibit A and incorporated herein by this reference for all purposes.
6 Desert Hills further alleges that on or about March 1, 2004, Company representatives were
7 contacted by Mr. Fernandez, the representative of AJF, and were advised that the efforts to
8 coordinate service to the subdivision had failed and he requested water service to the subject
9 five lots.

10 4. Desert Hills admits Paragraph 7, but alleges that it offered to provide service conditionally to
11 the lots as set forth in the February 24, 2004 letter, Exhibit A hereto.

12 5. Desert Hills is without sufficient knowledge and information to admit or deny the allegations of
13 Paragraph 8, but alleges that at the time of the March 1, 2004 discussion with Mr. Fernandez,
14 AJF was already building the subject homes, and, upon information and belief, Desert Hills
15 alleges that AJF received the required building permits for aforesaid houses based upon the
16 representation to Maricopa County officials that the water would be provided to the subject lots
17 by the owners drilling their own well on each lot. Desert Hills had not, as of that date, provided
18 MCDES with its standard "will serve" letter for those lots. Desert Hills further alleges that the
19 Company was telephonically contacted by Ms. Connie Walczak, the Staff Consumer Services
20 Manager, on or about April 13, 2004 regarding an informal complaint by AJF, and was advised
21 that the Staff would like to meet with the Company on April 22, 2004 to "mediate" this
22 informal complaint. The Company was further advised that it need not have an attorney present
23 at this informal meeting. There was no written notice to the Company regarding that meeting.

1 6. Desert Hills denies Paragraph 9. Ms. Rowland was quoted out of context in the Complaint.

2 The response to the question as to whether the Company could serve the subject lots on Central
3 Avenue was, in fact, that the four lots could be served with "no problem" as to pressure or flow,
4 however, the full answer was that Mr. Fernandez was requesting service to not only his two lots
5 on Central Avenue, but two or three additional lots which would cause a problem. Ms.
6 Rowland stated that the Company was required to look at its obligations to serve the entire area,
7 not just the two lots. This explanation was more fully developed by Ms. Rowland at the
8 mediation.

9 7. Desert Hills admits that it entered into Service Contracts with AJF and accepted deposits for the
10 two lots as alleged in the Complaint Paragraphs 10 and the first Paragraph 11. However, that
11 was under substantial duress from the Staff and based upon less than full knowledge regarding
12 the development. The Company entered into those Service Contracts on April 24, 2004, which
13 were backdated to April 22, 2004 (Exhibit A to the Complaint). The Company anticipated
14 "tapping" into its transmission line for service to Lots 14 and 15 on or about June 1, 2004.
15 However, at a Maricopa County Technical Advisory Committee meeting on May 18, 2004
16 regarding an adjacent property, the attendees, including Ms. Rowland, were advised that the lots
17 in question in the Complaint were the subject of an Arizona Department of Real Estate illegal
18 subdivision investigation. ADRE has subsequently confirmed that this investigation is ongoing.
19 See Exhibit B hereto which is incorporated herein by this reference for all purposes.

20 8. Desert Hills admits the first sentence in the second Paragraph 11 to the Complaint. The
21 Company admits the second sentence, but alleges that the deposit was returned based upon the
22 alleged illegal subdivision which, if upheld, would exclude the subject lots from the design or
23

1 cost participation by the ultimate developer(s) for the required facilities, all as fully explained in
2 the transmittal letter returning the deposit to AJF, Exhibit A hereto.

3 9. Desert Hills denies Paragraph 14, and alleges that although Lots 14 and 15 could physically be
4 interconnected to the existing system to receive service, AJF should be required to receive
5 service under a refundable plant expansion agreement consistent with A.A.C. R14-2-406 or a
6 Hook-Up Fee that would fund of construction of facilities necessary for the exclusive use of the
7 subdivision. Desert Hills further alleges that without building those required facilities for
8 service to the subject lots, those lots will receive a lesser quality service than other Desert Hills
9 customers. Customers on the Desert Hills system receive water at pressures ranging between
10 90 to 40 PSI. Lots 14 and 15 will have no higher pressure than 35 PSI, marginally within the
11 MCDES and Commission minimum requirements. Desert Hills further alleges that the
12 anticipated requests for service to adjacent lots within the subdivision could adversely impact
13 on the Company's service to other customers on its system.

14 10. Desert Hills denies the allegation of Paragraph 17 of the Complaint, and alleges that any lot that
15 is part and parcel of a subdivision cannot, and should not, receive water service independent of
16 the Company's commitment to that entire subdivision.

17 11. Desert Hills admits that the statutory and constitutional provisions cited in Paragraphs 20 and
18 22 of the Complaint say what they say, but alleges that as of the date of the Complaint the
19 Commission has not "found", "determined", or "ordered" the Company to serve the subject lots.
20 The Mediator's letter of May 12, 2004 clearly states that the parties have the right to further
21 formal proceedings. The Company did respond, through counsel, on May 24, 2004. See
22 Exhibit C attached hereto and incorporated herein by this reference for all purposes. This
23 response evoked AJF's Complaint of June 4, 2004, in Docket No. 0416, which has been

1 consolidated with this Docket. Desert Hills filed its Answer and Counterclaim on June 25,
2 2004. Desert Hills further alleges that any attempt to discipline or fine the Company prior to
3 such finding, determination, or order would be a denial of the Company's right to due process
4 under the Arizona and United States Constitutions.

5 12. Desert Hills admits that A.A.C. R14-2-405 cited in Paragraph 24 of the Complaint says what it
6 says, and alleges that Regulation 405 is not applicable in the event a line extension agreement is
7 required pursuant to A.A.C. R14-2-406, as in the instant case.

8 13. Desert Hills admits Paragraph 25 and 26 of the Complaint, but realleges Paragraphs 8 and 9 of
9 this Answer.

10 14. Desert Hills denies Paragraph 27 of the Complaint and alleges that service to the subject lots
11 would, in fact, violate A.A.C. R14-2-403(C) (2) (4) and (5) any one of which is a valid basis for
12 denying service, in that (a) "A condition exists which in the utility's judgment is unsafe or
13 hazardous to the applicant [or] the general population", (2) where the "Customer is known to be
14 in violation of the... Commission's rules and regulations" and (3) "Failure of the customer to
15 furnish such funds, service, equipment, and/or rights-of-way necessary to serve the customer
16 and which have been specified by the utility as a condition for providing service".

17 15. Desert Hills denies Paragraph 36 of the Complaint, and alleges that all service provided by the
18 Company and all public service corporations is based upon the Arizona Constitution and
19 Statutes, the Commission's Rules and Regulations, and contractual agreements between the
20 Company and its customers.

21 16. Desert Hills denies that it has breached any agreement as alleged in Paragraph 40, but has
22 deferred performance until certain Commission, ADRE, and MCDES mandated conditions are
23 met by AJF.

1 17. Desert Hills admits and denies the reallegations of Paragraphs 1 to 38 of the Complaint, and
2 reasserts its answers thereto.

3 18. Desert Hills denies each and every allegation not specifically admitted herein.

4 AFFIRMATIVE DEFENSE

5 19. On information and belief, Desert Hills alleges that the subject lots are being developed as part
6 of an illegal subdivision, and therefore the Company is not obligated to contribute to that illegal
7 activity by providing the requested service.

8 20. Respondent is uncertain as to what, if any, other affirmative defenses may exist pursuant to
9 Rule 8(d), Arizona Rules of Civil Procedure, and therefore adopts by reference each and every
10 affirmative defense there set forth.

11 21. Desert Hills alleges that service to the subject lots is not required at this time because AJF has
12 not met to the requirements of A.A.C. R14-2-403 (C) 2, 4, and 5.

13 COUNTERCLAIM

14 22. Desert Hills has limited production, storage, transmission, and pressure capacities in the vicinity
15 of the subject lots. The Commission's Rules and Regulations, and good utility practice, require
16 that the Company not commit to serving additional customers, which service could result in the
17 deterioration in service to existing customers, whether immediately or within the foreseeable
18 future. Any additional demand placed on the system is clearly the responsibility of the new
19 customers. The Company is ready, willing, and able to service this area within its Certificate of
20 Convenience and Necessity, consistent with long-standing and well-reasoned policy of having
21 growth pay for growth. This area is adjacent to a relatively small transmission line from a
22 relatively small storage tank, and is generally up-hill from the point of interconnection. Nor
23 would service to Lots 14 and 15 be served through an essential "looped" system. The Company

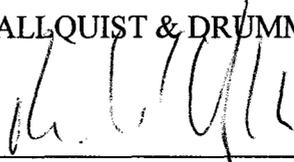
1 cannot properly service the area with adequate volume, pressure, or fire flow without the
2 customer providing a tank site, storage and pressure facilities, and a distribution system that
3 interconnects to other transmission lines to assure reliable service. The owner of the entire 99
4 lot subdivision approached the Company regarding service to the entire area and was advised of
5 the required facilities, including a cost estimate for those facilities. Apparently to avoid that
6 cost, and the subdivision process through the Arizona Department of Real Estate, that developer
7 has elected to proceed on a "lot-split" development basis that the Company cannot adequately
8 serve without additional facilities. Whether by a single developer, an informal group of lot
9 owners, the formation of a homeowners association or improvement district, or an additional
10 Hook-Up Fee Tariff, a solution for the entire tract must be arranged before the Company can
11 provide service. The Company would urge the Commission to condition any service to that
12 area on such an arrangement under the Company's standard refundable Line Extension
13 Agreement, consistent with the Commission's Rules and Regulations, and as approved by the
14 Commission Staff.

15 WHEREFORE, having fully answered the Complaint, Respondent respectfully prays for
16 judgment against the Complainant as follows:

- 17 1. That the Complaint be dismissed, that all relief sought in Paragraphs 41 through 49
18 and the related counts be denied, and the Complainant take nothing thereby;
- 19 2. That the AJF be ordered to request water service from the Company only under a
20 Commission approved Line Extension Agreement including a pro rata share of the
21 required storage and pressure facilities consistent with the Commission's Rules and
22 Regulations; and
- 23 3. For such other and further relief as the Commission deems just and proper.

1 Respectfully submitted this 9TH day of July, 2004

2 SALLQUIST & DRUMMOND, P.C.

3 

4 Richard L. Sallquist
5 Sallquist & Drummond, P.C.
6 2525 E. Arizona Biltmore Circle
Suite 117
Phoenix, AZ 85016-2129
Attorney for Desert Hills Water Company, Inc

7 Original and fifteen copies of the
8 foregoing filed this 9TH day
of July, 2004, with:

9 Docket Control
10 Arizona Corporation Commission
11 1200 West Washington
Phoenix, Arizona 85007

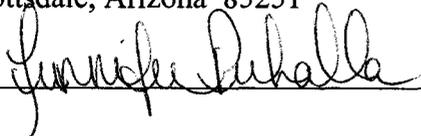
12 Copies of the foregoing
13 hand delivered/mailed this 9TH
day of July, 2004 to:

14 Hearing Division
15 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

16 Legal Division
17 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

18 Utilities Division
19 Arizona Corporation Commission
1200 West Washington
20 Phoenix, Arizona 85007

21 Court S. Rich
22 7272 E Indian School Road, Suite 205
Scottsdale, Arizona 85251

23 

DESERT HILLS
WATER CO., INC

May 24, 2004



Alan Fernandez
A.J.F. Custom Homes
P.O. Box 27705
Scottsdale, AZ 85255

Re: 14 and 15 W. Summerset Dr.

Dear Mr. Fernandez:

As I am sure you are aware, our Company has had concerns about delivery of water service to the 97+ lots south of Carefree Highway on Central Avenue which were created from two parcels totaling approximately 120 acres. Because of the elevation of the lots and the method of splitting these lots there are pressure and flow issues that need to be addressed to provide safe and adequate water service to these lots. After a meeting with the Arizona Corporation Commission on April 22nd, it was recommended by a member of the Commission staff that we serve those properties contiguous to the main line on Central Avenue. We have subsequently advised the Commission staff that we cannot accept their conclusion.

At this time, we have been notified by Maricopa County and the Arizona Department of Real Estate that there is an active illegal subdivision investigation on these properties. If the properties are in fact deemed a subdivision, the platting process will require specific design requirements for issues such as rights-of-way, public utility easements, meter placement and size, pressure, and fire flow. Also, the concerns that our Company has expressed in the past must be addressed prior to service to insure that we do not create a situation which will have adverse impacts on the ability to serve your lots, the remaining lots in the development, and our existing customers and facilities.

Meter fees you previously paid are enclosed. We look forward to working with you and the other developers of these properties to fund the facilities necessary to serve your lots when the investigation is completed.

Sincerely,

A handwritten signature in cursive script that reads "Mary Beth Rowland".

Mary Beth Rowland
Vice President

cc: Connie Walczak, Arizona Corporation Commission
Bill Day, Arizona Department of Real Estate
Jordan R. Rose
Tom Ewers, Maricopa County Plan Review Services
Richard Sallquist, Sallquist & Drummond, P.C.

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EXHIBIT "A"



**STATE OF ARIZONA
DEPARTMENT OF REAL ESTATE**

JANET NAPOLITANO
GOVERNOR

ELAINE RICHARDSON
COMMISSIONER

2910 NORTH 44TH STREET, SUITE 100 PHOENIX, ARIZONA 85018
TELEPHONE (602) 468-1414 FACSIMILE (602) 468-0562

400 WEST CONGRESS, SUITE 523 TUCSON, ARIZONA 85701
TELEPHONE (520) 628-6940 FACSIMILE (520) 628-6941

July 8, 2004

Ms. Mary Beth Rowland
Desert Hills Water Company, Inc.
2464TH North 10TH Street
Phoenix, AZ 85086

Re: Investigation, Central and Carefree Hwy

Dear Ms. Rowland

The Department has an open investigation in the area of Central Ave. and Carefree Highway involving subdividing of lands in violation of the provision of A.R.S. §32-2181 et seq. (illegal subdivision) Case Number C03-000658. Attached is a map of the area subject to the investigation. As of this date the Department has not completed its investigation.

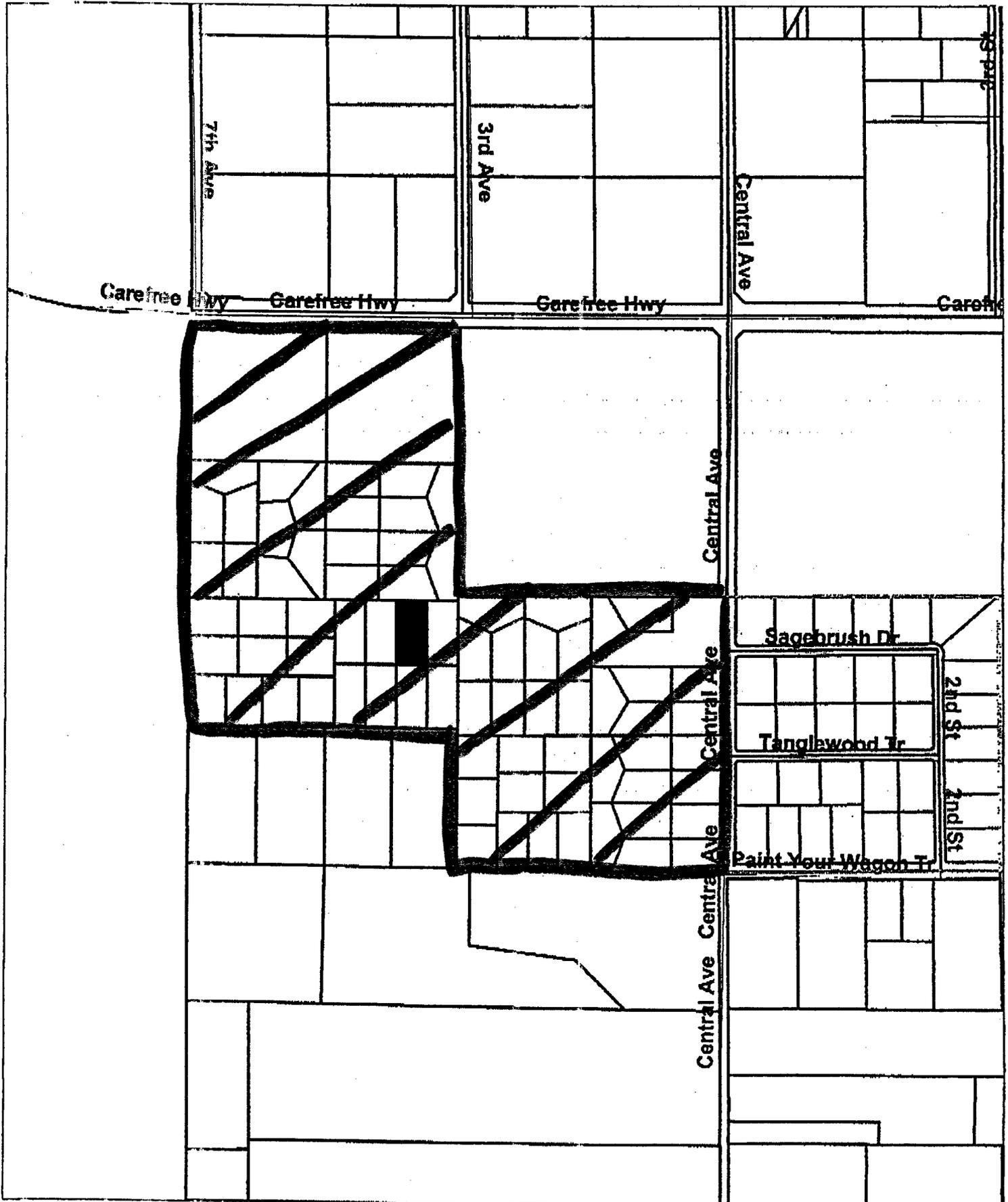
If you have any further questions. Please contact me a 602-468-1414 ext. 555.

Sincerely,

A handwritten signature in cursive script that reads "William E. Day".

William E. Day CFE
Deputy Director of Investigations

County Parcels



SALLQUIST & DRUMMOND, P.C.
ATTORNEYS AT LAW
2525 EAST ARIZONA BILTMORE CIRCLE
SUITE A-117
PHOENIX, ARIZONA 85016-2129

RICHARD L. SALLQUIST

PHONE (602) 224-9222
FACSIMILE (602) 224-9366
E-MAIL dick@sd-law.com

May 24, 2004

Connie Walczak
Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Re: Mediation-Alan Ferguson of AJF Custom Homes with Desert Hills Water Company

Dear Ms. Walczak:

We are in receipt of your May 12, 2004 letter to Desert Hills Water Company (the "Company") regarding the subject mediation. While the Company appreciates the Mediator's position on this matter, we must respectfully disagree. Providing water service to Mr. Fernandez as suggested will certainly have serious adverse impacts on the quality and reliability of the Company's service to this subdivision and also to other existing and future customers on the system.

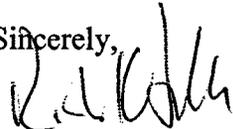
Further, the construction by the Company of the appropriate facilities necessary to properly serve that customer would adversely impact on the Company's planned and future critical capital projects, possibly including its arsenic abatement plans.

Finally, providing that service would establish the unacceptable precedent of providing water service to an illegal subdivision without the benefit of a Line Extension Agreement that properly assigns the financial responsibility and risk of the development to the property owners, not to the Company or its other customers.

The Company is ready willing and able to provide services to the subject area under a refundable line extension agreement under which the property owners fund the entire cost of the project-specific storage and pressure facilities and site, the related transmission lines with appropriate easements/rights-of-way, and the fire hydrants required for similar projects.

The Company looks forward to discussing the specifics with the property owners at their convenience.

Sincerely,



Richard L. Sallquist
For the Firm

cc: Engineering Division
Jordan R. Rose
Mary Beth Rowland

25017-00000.146

EXHIBIT "C"