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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
SANDRA D. KENNEDY
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BOB STUMP

2009 MAY -5 A 9:17

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

MAY -5 2009

DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF CHARLES J. DAINS AGAINST
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

RESPONSE TO ANSWER TO FORMAL COMPLAINT AND MOTION TO DISMISS

1 Charles J. Dains ("Mr. Dains") hereby responds to the April 13, 2009, pleading titled:
2 "Answer to Formal Complaint and Rigby Water Company's Motion to Dismiss."

3 **I THE COMMISSION HAS JURISDICTION OVER THIS DISPUTE**

4 Rigby Water does not deny that it is generally subject to the Commission's oversight and
5 regulation, or that it is a party to a Main Extension Agreement ("MXA") with Mr. Rigby
6 concerning Terra Mobile Ranchettes Estates in Avondale, Arizona. Nor does Rigby Water deny
7 that the Commission has jurisdiction concerning disputes about MXAs. Therefore, the
8 Commission has jurisdiction over this dispute.

9 **II NO STATUTE OF LIMITATIONS HAS RUN**

10 **A THIS IS NOT A DISPUTE CONCERNING TARIFFED RATES OR**
11 **CHARGES**

12 Mr. Dains is not complaining about excessive rates or discriminatory charges. He is
13 complaining generally that Rigby Water has not complied with the Commission's rules
14 concerning MXAs. As such, the referenced statute of limitations does not apply.

15 **B THE MXA IS AN EXECUTORY CONTRACT**

16 The MXA still governs the relationship between Mr. Dains and Rigby Water concerning
17 Estates. The MXA still requires Rigby Water to make refunds to Mr. Dains. As such, the MXA
18 is an executory contract, not subject to a statute of limitations.

1 **III RIGBY WATER NEVER FILED THE MAIN EXTENSION AGREEMENT**

2 As cited in the Complaint, Commission Rule R14-2-406(M) provides as follows:

3 All agreements under this rule shall be filed with and approved by the Utilities
4 Division of the Commission. No agreement shall be approved unless
5 accompanied by a Certificate of Approval to Construct as issued by the Arizona
6 Department of Health Services. Where agreements for main extensions are not
7 filed and approved by the Utilities Division, the refundable advance shall be
8 immediately due and payable to the person making the advance. (Emphasis
9 added.)

10 Rigby Water simply ignores this Rule (which does not have a statute of limitation). It provides
11 an independent basis for the Complaint. Because Rigby Water did not deny the allegation that it
12 failed to file the MXA, it must be taken as admitted. Therefore, in accordance with Rule R14-2-
13 406(M), the entire amount of the refundable advance (\$237,000 – refunds to date) is immediately
14 due and payable to Mr. Dains.

15 RESPECTFULLY SUBMITTED on May 5, 2009.

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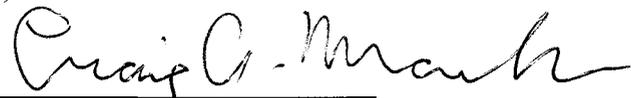
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27 Original and 13 copies **filed**
28 on May 5, 2009, with:

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