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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

DOCKET NO. W-01808A-09-0137

**COUNTERSTATEMENT OF  
UNDISPUTED FACTS IN  
RESPONSE TO  
COMPLAINANT'S MOTION FOR  
SUMMARY JUDGMENT**

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Pursuant to Rule 56(c), Arizona Rules of Civil Procedure, Rigby Water Company ("Rigby") submits this Counterstatement of Undisputed Facts in Response to Complainant's Motion for Summary Judgment dated May 5, 2009.

1. Mr. Charlie Dains ("Mr. Dains") was the developer of the Terra Ranchetts Estates ("Terra Ranchettes"). [Complaint (3/19/2009).]
2. In or about March 1996, Mr. Dains began construction of the water system infrastructure for Terra Ranchettes. [Declaration of Fred T. Wilkinson (6/9/2009) ("Wilkinson Decl."), ¶ 2.]
3. On or about June 1, 1997, Mr. Dains completed construction on Terra Ranchettes. [Id., ¶ 3.]
4. Following construction of the water system, Mr. Dains expressed interest in Rigby providing water service to Terra Ranchettes. [Id., ¶ 4.]

1           5.     On March 1, 1999, Mr. Dains executed Rigby's standard Main Line Extension  
2 Agreement ("Agreement"), which provided that Rigby would refund ten percent (10%) of  
3 the revenue (excluding taxes) it received from providing water service to Terra Ranchettes  
4 to Mr. Dains for a period of twenty (20) years. [Complaint, Exh. A (the Agreement).]

5           6.     The Agreement further provided that "[a]ny balance remaining a (sic) the end  
6 of the twenty year period shall become non-refundable," [id.], and that Mr. Dains, as the  
7 developer of the system, was obligated to provide the required Certificate of Approval to  
8 Construct. [Id.]

9           7.     Rigby made repeated attempts to obtain the Certificate of Approval to  
10 Construct from Mr. Dains. [Wilkinson Decl., ¶ 5.]

11           8.     Mr. Dains has not, to date, provided the Certificate of Approval to Construct  
12 to Rigby. [Id., ¶ 6.]

13           9.     Rigby has been unable to locate any records demonstrating that- the  
14 Agreement was filed with the Commission at that time. [Id., ¶ 7.]

15           10.    On October 19, 2006, Mr. Dains lodged an informal complaint with the ACC  
16 against Rigby. [See Informal Complaint materials docketed by Staff on June 2, 2009.]

17           11.    As part of that informal complaint process, both Mr. Dains and Rigby filed a  
18 copy of the Agreement with the Commission. [Id.; see also Wilkinson Decl., ¶ 8.]

19           12.    In 2009, in an abundance of caution, Rigby re-filed the Main Line Extension  
20 Agreement with the ACC. [See Docketed Notice of Filing (5/18/2009).]

21           DATED this 9<sup>th</sup> day of June, 2009.

22  
23           BRYAN CAVE LLP

24  
25           By 

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1 **ORIGINAL** and 13 copies of the foregoing  
2 filed this 9 day of June, 2009 with:

3 Docket Control Division  
4 Arizona Corporation Commission  
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7 and

8 COPY of the foregoing mailed  
9 this 9 day of June, 2009, to:

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