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Attorneys for WILHOIT WATER COMPANY,  
INC

**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the Matter of THE APPLICATION OF  
WILHOIT WATER COMPANY, INC.,  
THUNDERBIRD MEADOWS SYSTEM,  
FOR RETROACTIVE APPROVAL OF A  
FINANCING APPLICATION

DOCKET NO. W-02065A-07-0306

In the Matter of THE APPLICATION OF  
WILHOIT WATER COMPANY, INC.,  
THUNDERBIRD MEADOWS SYSTEM,  
FOR APPROVAL OF A FINANCING  
APPLICATION

DOCKET NO. W-02065A-07-0307

In the Matter of THE APPLICATION OF  
WILHOIT WATER COMPANY, INC.,  
THUNDERBIRD MEADOWS SYSTEM,  
FOR APPROVAL OF A PERMANENT  
RATE INCREASE

DOCKET NO. W-02065A-07-0312

**SUPPLEMENT TO COMMENTS**  
**TO SUPPLEMENTAL STAFF**  
**REPORT**

Commission Staff requested that the Company docket correspondence between the Company and Walden Meadows Community Cooperative regarding bulk water deliveries. Attached is a letter (Exhibit A) I sent to the attorney for Walden Meadows following negotiations to clarify the agreement between Walden Meadows and the Company. Also attached is the response from the attorney from Walden Meadows (Exhibit B).

DATED this 18<sup>th</sup> day of June, 2009.

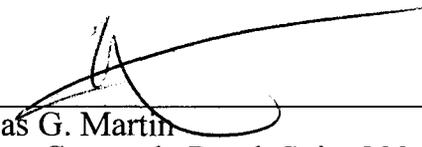
Arizona Corporation Commission  
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MARTIN & BELL, L.L.C.

By \_\_\_\_\_

  
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ORIGINAL filed with copies  
mailed/delivered this 18<sup>th</sup> day  
of June, 2009 to:

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November 13, 2008

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Steve Wene  
Moyes, Sellers & Sims Ltd.  
1850 N. Central Avenue, Suite 1100  
Phoenix, Arizona 85004

Re: Wilhoit Water Company: Thunderbird Meadows  
& Walden Meadows Community Cooperative

Dear Mr. Wene:

My purpose here is to set forth my understanding of the parties' past custom and practice that continues the status quo between them into the future. First, it is my understanding that, in the past, from time to time during the hot season, the 400,000 gallon per month threshold has been exceeded. That has caused some concerns when Walden capacity was limited. Since then, it is my understanding that the Walden capacity has increased substantially because a new, productive well has come on-line, with new pumping capacity. Because of that, it is my understanding that Walden has the capacity to deliver quantities of water up to 990,000 gallons per month to Thunderbird during periods of need. It is my understanding that, based upon some careful calculations completed by the Walden Board, sales up to this level to Thunderbird will not cause any concerns for the Walden non-profit status.

To the extent that, in the past, there has been some requirement of a declaration, in writing, of emergency and the like, the parties have agreed that that is no longer necessary because no steps are now needed to permit the necessary flow to meet Thunderbird summer season water needs.

It is my understanding that, for the future, the usage will be reflected by the statements sent by Walden to Thunderbird with timely payments to be continuously made by Thunderbird, based on actual usage.

It is no secret that Arizona Corporation Commission staff input and demands caused the filing of the pending complaint, which the parties do agree to dismiss, without prejudice, with each party to bear its cost and fees. In that regard, I have prepared a stipulation and proposed form of order for your review.

If this letter accurately states the understandings between the parties that exists today, so much the better. If not, I look forward to your supplement to explain and illuminate any areas that I have neglected. Anne Conlin, the new generation of Thunderbird leadership, appreciates the Board's willingness to continue the relationship and expects, with her new staff people and

June 18, 2009

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the new leadership of Thunderbird, that the relations should move forward on a much more cooperative and friendly basis than may have existed in the past. These are neighbors. Some of the neighbors own lots in both developments. There is every reason that these neighbors should continue to cooperate to serve their mutual water needs.

Cordially,

Douglas G. Martin

DGM/rdg

**B**

Conlin Walden

 **MOYES SELLERS & SIMS**

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1850 N. Central Ave., #1100 • Phoenix, AZ 85004 • fax 602.274.9135



December 23, 2008

Douglas G. Martin  
Martin & Bell, L.L.C.  
365 East Coronado Road, Suite 200  
Phoenix, Arizona 85004

**Re: Bulk Water Sale Conditions**

Dear Doug:

The purpose of this letter is to memorialize Walden Meadows Community Cooperative's ("Walden") position regarding bulk water deliveries to Wilhoit Water Company ("Wilhoit"). The agreement between these two parties dated May 28, 1986 states that Walden will sell water to Wilhoit "at a maximum rate of delivery of 400,000 gallons per month; provided, however, that in the event of an emergency water shortage on the Wilhoit system that Walden will upon request positively consider additional deliveries to Wilhoit subject to the limitations of its own water system needs."

As you know, Walden recently added another well to its water system and thereby greatly increased the amount of water it can supply to both the Walden and Wilhoit water systems. Consequently, Walden is in a much better position to be able to supply Wilhoit with more than 400,000 gallons of water per month ("Additional Water") when necessary. Walden is aware of only a few physical and legal constraints that could limit Additional Water deliveries to Wilhoit. Therefore, Walden wants to take this opportunity to memorialize the simple procedure we have agreed upon to initiate Additional Water deliveries and clarify that Walden will continue to make such deliveries so long as it is physically and legally able to meet Wilhoit's requests.

First, Wilhoit must request the Additional Water deliveries in writing during any month before such water is delivered.<sup>1</sup> This assures both companies that there are no misunderstandings and provides documentation that is essential to the ongoing management of both the Wilhoit and Walden water systems. This protocol is already in place and Walden believes it is working to the satisfaction of both parties.

<sup>1</sup> Walden does not maintain the position that an "emergency" condition must exist.

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Second, as a non-profit § 501(c)(12) cooperative formed under the United States Internal Revenue tax code, at least 85% of Walden's income must be generated from water sales to its members. Otherwise, Walden's non-profit tax exempt status may be revoked. Historically, Walden has never received enough non-member income from Wilhoit or any other source to make this constraint an issue. So even though the likelihood of this becoming an issue is slight, Walden must note that it would be forced to limit Additional Water deliveries if it became clear that the income derived from such water sales would cause Walden to exceed the income limitation identified above.

Third, Walden's first obligation is to meet the water demands of its customers. Thus, Walden cannot make Additional Water deliveries unless its customers' demands are being met. Accordingly, if Walden has declared a Stage 2 situation exists under its Curtailment Plan and has sought to initiate water use restrictions by its customers, then Walden will not make Additional Water deliveries to Wilhoit.

Finally, these terms are based upon the premise that the contract remains in effect, timely payment is occurring, good faith dealings by both parties continue to occur, and that there are no mechanical failures or acts of God that could limit water deliveries.

Based on our earlier conversations, Walden understands that these terms are acceptable to Wilhoit. However, if this understanding is incorrect, please let us know as soon as possible. Walden appreciates your attention to this matter and looks forward to continuing good relations with Wilhoit.

Respectfully,



Steve Wene

SW/dah