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BEFORE THE ARIZONA CORPORATION COMMISSION

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8 IN THE MATTER OF THE APPLICATION OF
 9 FAR WEST WATER & SEWER COMPANY,
 10 AN ARIZONA CORPORATION, FOR
 APPROVAL OF INTERIM RATES AND
 CHARGES.

Docket No. WS-03478A-08-0608

RUCO'S REPLY BRIEF

INTRODUCTION

11

12

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14 Far West Water and Sewer ("Far West" of the "Company") seeks interim rates

15 arguing that the Sewer Division is unable to meet its obligations. The Company asserts

16 that it has a shortfall in both its operational and capital budgets. The Commission

17 should deny the request for interim rates because, on a total company basis, the

18 Company has sufficient funds to meet its operational expenses and debt service.

19 Shortfalls in the Company's capital budget for construction work in progress are not a

20 ratepayer obligation and therefore the Commission should not consider capital budget

21 shortfalls as a basis for awarding interim rates.

Arizona Corporation Commission
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1 **A. THE COMMISSION SHOULD DETERMINE INTERIM RATES BASED ON**
2 **WHETHER THE COMPANY HAS SUFFICIENT CASH FLOW IN ITS**
3 **OPERATIONAL BUDGET**

4 **1. On a total company basis, Far West has sufficient cash flow to cover its**
5 **operating expenses and debt service.**

6 The Company seeks \$2,161,788 or a **101 percent** increase to its revenues for the
7 Sewer Division. The Company claims that the increase is necessary to keep the Sewer
8 Division solvent and operating at a \$0 operating margin. Closing Brief at 18. The Company's
9 analysis of the revenue necessary to meet debt service and operating expenses is flawed.
10 The Company based its analysis on the financial statements of the Sewer Division, alone. The
11 Company chose to pursue financing and the Commission approved the Company's application
12 on a total company basis.¹ As such, the Commission should evaluate the need of interim rates
13 on a total company basis and find that the Company is able to meet its bond obligations and
14 that there is no emergency or imminent emergency.

15 **2. The Commission should not consider extraordinary expenses resulting from the**
16 **Company's mismanagement.**

17 The Company's witness, Thomas Bourassa claims that on a total company basis the
18 Company lost \$972,000 and had a positive cash flow of only \$13,058.² RUCO's witness,
19 William Rigsby testified that the Company had free cash flow of \$674,756 in 2007 and
20 \$939,066 in 2008, after annual interest and principal payments were satisfied.³ The major
21 difference between the calculations of Mr. Bourassa and Mr. Rigsby stems from their treatment
22 of extraordinary expenses. Extraordinary expenses are non-reoccurring expenses, typically

23 ¹ See R-1 Financing Application and Decision No. 69950, Docket No. WS-03478A-07-0442.

24 ² A-3 Rebuttal Testimony of Thomas Bourassa

³ R-3, Testimony of William Rigsby at 15. See also Schedule. WAR-1. Staff's witness, Gerald Becker,
 estimated the Company's free cash flow for 2009 as \$781,702.

1 considered below the line expenses, meaning expenses not paid by ratepayers.⁴ Mr.
2 Bourassa included the extraordinary expenses in his cash flow analysis and Mr. Rigsby did
3 not.

4 The bulk of extraordinary expenses were for the removal of effluent from the Palm
5 Shadows Wastewater Treatment Plant ("Palm Shadows"). After completion of Section 14
6 Wastewater Treatment Plant ("Section 14") and the Palm Shadows Force Main, the Company
7 will convert Palm Shadows to a lift station and send its wastewater flows to Section 14 for
8 processing. In the meantime, the Company has been removing effluent from the Palm
9 Shadows because the plant does not operate properly. In 2007, the Company spent
10 \$347,446.72 to collect and haul the effluent.⁵ In 2008, the Company spent \$501,363 to
11 remove effluent from Palm Shadows and haul it to the City of Yuma's wastewater treatment
12 system.⁶

13 The Company claims the Commission should consider the extraordinary expense it
14 pays to collect and haul wastewater from Palm Shadows to the City of Yuma. RUCO asserts
15 that the Commission should disregard these expenses because they are below the line non-
16 operational expenses for which the ratepayers are not responsible.⁷ The Company's
17 accountant, Lloyd H. Sunderman, supports RUCO's position because he also classified these
18 expenditures non-reoccurring and non-operational, below the line deductions in his
19 compilations of the Company's financial statements for 2007 and 2008.⁸

22 ⁴ T: 1089

⁵ R-18, Response to Staff's DR 1.1

23 ⁶ R-19 Response to Staff's DR 1.2

⁷ T: 1089

24 ⁸ R-18 and R-19, 2007 and 2008 Financial Statements provided in response to Staff DR 1.1 and 1.2,
respectively.

1 RUCO believes these expenses result from the mismanagement and negligence of the
2 Far West management and therefore should be borne by the shareholders.⁹ Palm Shadows
3 was designed with two evaporation/percolation ponds. Pursuant to the approved design flow,
4 effluent produced from the treatment process should have evaporated into the air or percolated
5 into the soil. As the Company's witnesses, Andrew Capestro and Gary Lee acknowledged,
6 Palm Shadows does not percolate because it was built on clay soils, which do not percolate
7 when saturated.¹⁰ According to Mr. Lee, the Company's engineer:

8 Palm Shadows could not handle either existing or the projected effluent due to
9 clay soils....testing confirmed that clay began approximately ten feet below
10 grade, and continued for another thirty to thirty five feet, to approximately forty
11 to forty-five feet below grade...the clay was of a type that would not allow any
12 percolation after it became saturated. The thickness of the clay also prohibited
13 the use of a vadose recharge well.¹¹

14 Mr. Capestro initially testified that the Company did not construct Palm Shadows and
15 was not responsible for its poor construction.¹² He claimed that a developer with whom Far
16 West had no past or current relationship built Palm Shadows. Id. He testified that Mr. Bruce
17 Jacobson, a licensed engineer, certified the design and construction for the builder and that
18 Far West took over operations of Palm Shadows post-construction. Id.

19 Contrary to Mr. Capestro's testimony, Far West submitted the original application to
20 build and operate Palm Shadow in June 1998.¹³ Far West's president, Brent H. Weidman
21 signed the application stating the plant would be completed and in service in September 1998.
22 The application confirmed that Far West retained Norman Bruce Jacobson as the engineer on

23 ⁹ The Shareholders are also the managers of the closely held private company. As such they are ultimately
24 responsible for the Company's capital outlays and any below the line expenses.

¹⁰ T: 589.

¹¹ R-25 Company's Response to RUCO's DR5.14

¹² T: 109

¹³ R-23 Aquifer Application Permit dated June, 1998.

1 the project.¹⁴ According to public comment, the homeowners purchased their lots from Palm
2 Shadows Partnership, a partnership made up of Brent H. Weidman, Donald Jacobson and
3 Norman Bruce Jacobson.¹⁵ Notably, Mr. Weidman was also President/CEO and a Director of
4 Far West and President/Vice President and a Director of H & S, at the time.¹⁶ Contrary to Mr.
5 Capestro's assertion that the companies were unrelated, at the time Palm Shadows was
6 constructed, Mr. Weidman was President of Far West, H & S Developers and a partner in the
7 development company, Palm Shadows Partnership. Id. In addition, Mr. Jacobson, the engineer
8 who certified the design of Palm Shadows was a partner with Mr. Weidman in Palm Shadows
9 Partnership. Id. The documents of Arizona Department of Environmental Quality ("ADEQ")
10 reflect a clouding of interests. It is clear, that the companies were related parties, but the fact
11 that ADEQ documents reflect Far West was the original permitting party, the parties were not
12 only related, their interests were merged.

13 Although Mr. Capestro initially disputed Far West's responsibility for constructing Palm
14 Shadows on non-percolating soils, he ultimately acknowledged the wastewater treatment plant
15 does not work, and the Company is responsible for the nonfunctioning plant.¹⁷ RUCO believes
16 the management and shareholders, not the ratepayers, should pay for extraordinary expenses
17 associated with effluent removal from Palm Shadows.¹⁸ As such, the Commission should not
18 consider the effluent removal expenses to determine cash flow in this interim rate case.

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21 ¹⁴ See Exhibit R-23 and 24. T: 590

22 ¹⁵ See Attachment A- Excerpt from public comment of Mr. Gary Frye docketed March 17, 2009, which
includes a copy of the ratepayers purchase agreement Palm Shadows Partnership and a copy of a
Development Agreement signed by City of Yuma and the partners of Palm Shadow Partnership: Bruce
and Donald Jacobson and Brent Weidman dated October 28, 1998.

23 ¹⁶ See Attachment B, Annual Report of H & S Developers dated September 18, 2008. See also
Attachment C, Annual Report of Far West dated September 18, 1998.

24 ¹⁷ T: 589.

¹⁸ T: 1089

1 The Company asserts that Staff agrees with its position. The Company misstates the
2 evidence. The Staff's witness, Gerald Becker, testified that even considering the extraordinary
3 expenses, the Company had sufficient cash flow to cover its operational expenses and debt
4 service.¹⁹ Mr. Becker further testified that the Company did not have an emergency
5 necessitating interim relief. Id. Mr. Becker testified that if the Company's action or inaction
6 resulted in shortfalls in its capital budget, management needs to raise capital or pay for those
7 expenditures through means other than seeking it from ratepayers through financing or equity
8 mechanisms²⁰

9 **3. The Company is not insolvent.**

10 The Company claims it is unable to meet its obligations in the ordinary course and
11 therefore is insolvent. Company's Closing Brief at 16-17. More specifically, the Company
12 claims that it is unable to pay property taxes of \$300,000 due as of May 1, 2009.²¹ The
13 Company also implies in its brief that it may be unable to pay its debt service. Id. at 19.

14 Mr. Rigsby calculated the Company's free cash flow of \$674,756 in 2007 and free cash
15 flow \$939,066 in 2008. By Mr. Rigsby's analysis, the Company's financial position improved
16 between 2007 and 2008. Mr. Rigby's calculations assumed payment of \$326,702 in property
17 tax expense as well as \$1,925,000 in principal and interest payments.²² Likewise, when Mr.
18 Becker calculated free cash flow of \$781,702 for 2009, his estimate of free cash flow
19 presumed payment of ordinary businesses expenses including taxes and debt service.²³

20
21 ¹⁹ T: 1184-85.

22 ²⁰ T: 1186-1187, 1193-95, The Staff Report included an alternative recommendation of a 43 percent
increase in revenues. Mr. Becker testified unequivocally that there is no emergency and Staff is not
recommending interim rates. He testified: "the recommendation is not to grant interim rates." T: 1194.

23 ²¹ A-11

24 ²² R-3, Testimony of William Rigsby at 15. See also Schedule. WAR-1.

²³ S-1 Staff Report. Staff's witness, Gerald Becker, estimated the Company's free cash flow for 2009 as
\$781,702 after deducting annual interest and principal payments and below the line interest income of \$162, 379.

1 The Company has sufficient cash flow to pay its debt service and operational expenses.
2 If the Company has encountered shortfalls, it is because its management failed to prioritize
3 operational expenses and debt service. As both Mr. Rigsby and Mr. Becker indicated, the
4 principals of Far West have failed to manage and prioritize its obligations.²⁴ From RUCO's
5 perspective, poor planning on the part of Far West's management team does not constitute an
6 emergency necessitating approval of the Company's request for a 101 percent increase in
7 rates from ratepayers.

8 The Company also asserts it is unable to pay \$100,000 to the Yuma Mesa Irrigation
9 District ("Yuma Irrigation") for 2,500-acre feet of additional water.²⁵ By the Company's
10 admission the additional 2,500 acre-feet of water is unused. Id. The Company is asking
11 current ratepayers to pay a 101 percent increase so the Company can pay for water that
12 current ratepayers do not need. RUCO asserts that the additional water is not used and
13 useful and therefore the Commission should not consider the unpaid Yuma Irrigation bill when
14 determining the Company's free cash flow or need for interim rates.

15 If the Company is facing such cash flow shortfalls, the Commission should question why
16 the shareholders' affiliates have not paid the Far West amounts owed to relieve some of the
17 purported cash flow difficulties. More specifically, why have the shareholders' affiliated golf
18 courses failed to pay outstanding irrigation bills to Far West. H & S an affiliate owned by the
19 shareholders owns three golf courses, Las Barrancas, Foothills Executive and Foothills Par
20 3.²⁶ As of February 2009, Mr. Capestro acknowledged that the golf courses owed Far West in
21

22 Recalculating Mr. Becker's figures to include interest income reflects a 2009 cash flow of \$944,081. See also T:
1201-1203.

23 ²⁴ T:1210

²⁵ T: 486, Although Mr. Capestro originally testified that the entire balance was due and owing, he subsequently
revealed he had worked out a payment plan with Yuma Irrigation for partial payments.

24 ²⁶ R-5, Accounts receivable for golf course.

1 excess of \$253,172.²⁷ Mr. Capestro claims that the unpaid golf course bills are setoff by work
2 H & S does for Far West. Id. The Company's financial statements refute his position. The
3 financial statements compiled by Far West's accountant list H & S's unpaid golf bills as an
4 account receivable owed to Far West.²⁸ If Far West had applied a set off as suggested by Mr.
5 Capestro, H & S's unpaid golf bills would not be recorded as a Far West account receivable.

6 **4. There is no precedent compelling approval of interim rates.**

7 The Company claims that it is entitled to interim rates based on a precedent established
8 by the Commission in July 1999 when it granted Far West's water division interim rates in
9 Decision No. 61833 ("FWWS 1").²⁹ Far West's argument suggests that the Commission may
10 not decide each rate case on its own merits and that the Commission is bound by the rate
11 orders issued in the prior Far West dockets. The Company's position is contrary to
12 established law.³⁰ The issues presented in a rate proceeding, the positions advanced by the
13 parties during the proceeding, and any other factors that the Commission deems relevant may
14 all contribute to different treatment at different times, if warranted.³¹ For example, in FWWS 1,
15 the Company spent or committed to spend \$4.0 million toward repairs. The current project is
16 funded by IDA bonds, which will be repaid entirely by the ratepayers. The Commission's order
17 approving the IDA funding allowed the Company to repay its shareholders 100% of the short-
18 term bond anticipation notes they secured, leaving them with no current investment in the
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20 ²⁷ T: 164-171.

²⁸ R-18 and R-19, Response to Staff DR 1.1. ad 1.2.

²⁹ *In the matter of Far West Water and Sewer*, Docket No. WS-03478A-99-
21 0144, Decision No. 61833 dated July 20, 1999.

³⁰ *Morris v. Ariz. Corp. Comm'n*, 24 Ariz. App. 454, 457, 539 P.2d 928, 931 (1975) (The ratemaking process
22 does not lend itself to rule formulation because the relevant factors may be given different weight in the discretion
of the Commission at the time of the inquiry.)

³¹ In *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 534, 578 P.2d 612, 615, (1978) and *Simms*, 80 Ariz. at 150,
23 294 P.2d at 382, the appellate courts indicated that the Commission should consider all relevant factors when
setting rates. In both cases, reviewing courts criticized the Commission for mechanical, formula-based rate setting
24 that failed to consider all available information.

1 capital project. Moreover, Far West affiliates are profiting from the capital improvement project.
2 The Company admits that its affiliates received \$2.5 million dollars in construction contracts.³²
3 The Company further admits that H & S affiliates received approximately \$244,424 for effluent
4 removal.³³

5 In FWWS 1, the Company sought interim rates to qualify for low-cost, long-term funding
6 from WIFA. In this case, Mr. Capestro claims he is unable to procure lower interest rate loans
7 or stimulus funds.³⁴ In FWWS 1, RUCO recommended interim rates to bring the Company to a
8 DSC ratio of 1.5.³⁵ In this case, the Company's DSC ratio in 2008 was already 1.49%.

9 The Commission decides each case on the record before it. The Company has not
10 demonstrated that the Commission's decision in FWWS 1 binds the Commission to certain
11 determinations in the current case. RUCO submits that FWWS 1 is not precedent and the
12 Commission should judge each case on its own merits.³⁶

13 The Company also asserts that Decision No. 70667 that provided interim rate relief to
14 APS binds the Commission to approve interim rates in the instant case.³⁷ Again, the
15 Company's position is contrary to established law.³⁸ Moreover, the two rate cases are factually
16 distinguishable. APS is a publicly traded company, which sought interim rates to avoid a
17 reduction in its bond rating or a downgrading of stock, which would inhibit its ability to raise
18 equity funds and develop renewable energy sources as required by the Commission. In its
19 ruling, the Commission specifically stated APS needed interim rates to ensure its access to

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21 ³² A-15, H & Developers, Payments for Construction

³³ T: 917

³⁴ T: 637

³⁵ *In the matter of Far West Water and Sewer*, Docket No. WS-03478A-99-0144, Decision No. 61833
dated July 20, 1999 at 6.

³⁶ T:1159.

³⁷ *In the matter of Arizona Public Service*, Docket No. E-01345A-08-0172,
Decision No. 70667 dated Dec. 24, 2008.

³⁸ *Morris v. Ariz. Corp. Comm'n*, 24 Ariz. App. 454, 457, 539 P.2d 928, 931(1975).

1 capital funds to provide service, via renewable energy expansion as ordered by the
2 Commission.

3 Here, Far West is not a publicly traded company seeking an equity infusion from the
4 issuance of bonds or shares. Far West is a privately held utility owned by two shareholders
5 who seek interim rates to avoid making an equity infusion. The Commission decides each
6 case on the record before it. The Company has not demonstrated that the Commission's
7 decision in APS binds the Commission to certain determinations in the current case. RUCO
8 submits that the APS order is not precedent and the Commission should judge each case on
9 its own merits.³⁹

10 **B. THE COMMISSION SHOULD NOT CONSIDER THE COMPANY'S**
11 **CAPITAL BUDGET SHORT FALLS.**

12 **1. The management and/ or shareholders are responsible for the capital budget.**

13 According to the Company, it owes past due balances of \$3,350,933 to its vendors and
14 needs \$1,272,663 to complete the ADEQ compliance projects. In total, the Company claims it
15 needs \$4,623,566.⁴⁰ Mr. Capestro testified that without payment of the past due balances,
16 with few exceptions, vendors would not complete remaining construction projects. Id. RUCO
17 strongly objects to the imposition of interim rates to complete the Company's capital projects.
18 The Company spent \$3,739,247 on non-ADEQ Sewer and Water projects, which is roughly
19 equal to the amount the Company owes in accounts payable.⁴¹ If the Company had not
20 misspent the IDA funds on non-ADEQ projects, the Company would have sufficient funds
21 available to manage the remaining work. Id.

22
23 ³⁹ T: 1159.

⁴⁰ A-11 Summary of Amounts Owed and Necessary to Complete.

24 ⁴¹ R-31 Non-ADEQ Expenditures, T: 1074-1076

1 The Company claims that the shortfall in its capital funds constitutes an emergency
2 requiring approval of interim rates. RUCO disagrees for two reasons. First, RUCO asserts
3 and Staff concurs that the Company's capital budget is the responsibility of shareholders.⁴²
4 Gerald Becker, Staff's witness, testified that capital budgets are the responsibility of
5 shareholders and should not be used as a basis for determining interim rates.⁴³ As Mr. Becker
6 explained, operating budgets are the responsibility of ratepayers as they reflect the cost of
7 service. Id. RUCO agrees with Mr. Becker and asserts that capital expenditures should not be
8 funded at the expense of captive consumers.

9 RUCO also believes the Commission should disregard the Company's purported capital
10 shortfalls because the shortfalls are a direct result of the shareholders' mismanagement and
11 greed. In Decision No. 69950, the Commission approved the Company's \$25.2 million IDA
12 bond issuance.⁴⁴ The Commission authorized the indebtedness for three specific purposes:
13 1.) sewer system improvements necessary to comply with ADEQ Consent Orders; 2.) retire a
14 1999 WIFA loan; and 3.) retire other short term debt incurred in December 2006 to undertake
15 emergency sewer plant upgrades and improvements necessary to comply with the
16 requirements imposed by ADEQ.⁴⁵ The shareholders admittedly spent funds intended for the
17 ADEQ projects on other non-ADEQ related projects. RUCO believes the Commission should
18 deny the Company's request for interim rates to supplement the misspent capital funds. In no
19 event should captive ratepayers be required to pay a 101 percent increase in interim rates to
20 subsidize the shareholders' poor decision-making. Granting interim rates to backfill the

22 ⁴² Typically, the capital budget and capital expenditures are the responsibility of management, but in this
23 case the Far West management and its shareholders are the same because Far West is a closely held,
24 developer owned utility.

⁴³ T: 1187-1195

⁴⁴ R-1, Application (Financing), Docket No. WS-03478A-07-0442, Decision No. 69950 at 2.

⁴⁵ Id.

1 misused funds would only serve to reward Far West for its circumvention of Decision No.
2 69950.

3 The Company asserts that the Commission should ignore the shareholders' misdeeds
4 in determining the emergency. RUCO disagrees. If the Commission is going to consider the
5 Company's capital budget shortfalls, it should also consider the manner in which shareholder
6 mismanagement, negligence and greed contributed to the shortfalls.⁴⁶ RUCO believes and the
7 record reflects that the capital budget shortfalls arose from the Company's repeated errors
8 motivated by greed, a failure to prioritize and mismanagement.

9 **a. Mismanagement and Poor Prioritization**

10 The Company asserts that during the summer of 2008, it became aware of cost
11 overruns and the need for additional funding.⁴⁷ The Company's characterization of "cost
12 overruns" implies that its capital budget shortfalls arose from increased construction costs. Id.
13 The implication is false. In fact, the Company's initial difficulties arose from its failure to abide
14 by Decision No. 69950. The Company used \$1,883,593 of the IDA proceeds to fund water
15 related projects (including Design & Construction of the 44th Street Water Main Project) which
16 were not priorities authorized by the Commission's order.⁴⁸ In addition, the Company spent
17 \$357,059 on software programs for asset management and mapping, billing and fuel
18 dispensing.⁴⁹ The Company also spent \$379,487.51 on a Fortuna Road improvement project.
19 Id. As the Company's engineer admits, the Fortuna Road project was not an ADEQ project.⁵⁰
20 The Company made the expenditures despite the clear language of the Commission's order

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22 ⁴⁶ T: 1118

⁴⁷ T: 489

⁴⁸ A-8 at 7

⁴⁹ Id. Note: Asset Management, Mapping, Billing and Fuel Dispensing software expenses related to
water excluded.

⁵⁰ T: 773-74.

1 directing the Company to spend the IDA funds on ADEQ compliance. If the Company had not
2 spent \$2,620,139 on the non-priority projects, the Company would have more than sufficient
3 funds to cover the \$1,200,000 needed to complete the ADEQ related sewer projects. Id. The
4 Commission should not reward the Company with interim rates to pay for capital budget
5 shortfall created by mismanagement.

6 **b. Greed**

7 Many of the Company's difficulties arise from the shareholders' greed. For example,
8 the Company misdirected the ADEQ compliance funds to design larger plants at Section 14
9 Wastewater Treatment Plant, ("Section 14"). According to the Company's witness, prior to
10 entry of the ADEQ Consent Order, Section 14 was designed as 150,000 gallon per day ("gpd")
11 plant and Palm Shadows was designed as a 200,000-gpd plant.⁵¹ As part of the ADEQ
12 compliance order, the Company was required to expand Section 14 to take the wastewater
13 from Palm Shadows. According to the Company, the peak flows of Palm Shadow and Section
14 14 occurs in the winter months between November and February of each year.⁵² The
15 **combined** peak flows of Palm Shadows and Section 14 was 209,000 gpd in 2004/2005 and
16 274,000 in 2005/2006. Id. Nonetheless, the Company redesigned Section 14 for 2.0 million
17 gallons per day ("mgd") and built it to 1.3 mgd. The Company claimed it built the plant to 1.3
18 mgd at the behest of ADEQ. However, ADEQ's compliance director, Cynthia Campbell
19 testified that she negotiated the consent order and the Company offered to build the plant to
20 1.3 mgd and ADEQ accepted.⁵³ She indicated that ADEQ did not demand 1.3 mgd design
21 flow for Section 14. Id. She further testified that the compliance department seeks design flow

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23 ⁵¹ R-9 Direct Testimony of Gary Lee.

⁵² R-17 Individual Aquifer Protection Permit Application for Section 14 dated December 31, 2008 seeking an
increase from 1.3 mgd to 2.0 mgd.

24 ⁵³ T: 446-447.

1 sufficient to cover current flows and any previously granted "capacity assurances." "Capacity
2 assurances" are letters provided to property owners by utilities agreeing to provide services for
3 water, sewer or refuse disposal to the property owner seeking to subdivide property.⁵⁴ In
4 Arizona, a property owner cannot legally sell subdivided land unless the owner can
5 demonstrate capacity assurances for water, sewer and refuse disposal services.⁵⁵

6 The Company asserts it needed 1.3 mgd design flow and ultimately 2.0 mgd design flow
7 to provide for previously granted capacity assurances. Ms. Campbell indicated that under
8 ADEQ rule, a utility could not grant additional capacity assurances until it has ADEQ approval
9 for permitted facilities.⁵⁶ In this instance, the Company's permitted capacity at Section 14 was
10 150,000 gpd until October 2008. Accordingly, the Company should not have granted capacity
11 assurances beyond 150,000 gpd until ADEQ approved the Section 14 permits.

12 Clearly, current ratepayers at Palm Shadows and Section 14 do not need a 1.3 to 2.0
13 mgd plant to meet current combined peak flows of 274,000 gpd. This begs the question of
14 why the Company would need 1.0 to 1.7 mgd more in capacity at Section 14. The answer is
15 greed. In fact, the Company designed the plant to 2.0 mgd and built the plant to 1.3 mgd to
16 accommodate future development. Notably, Far West affiliates own many of the future real
17 estate developments in the area. These developments include Schechert Estates, the
18 Ravines 1, 2 and 3, Las Barrancas 2 and 3 comprising a total of 940 proposed residential lots.
19 Moreover, some of the future developments are on land previously owned by Far West such at
20 Las Barrancas 1 and Arroyo de Fortuna 1-5. Although the Company's witness, Mr. Capestro,
21 initially denied any connection with Las Barrancas or Arroyo de Fortuna, he ultimately
22 acknowledged that Far West affiliates own or previously owned the land, which includes an

23 ⁵⁴ Arizona Administrative Code R18-9-E301(C) (1)

⁵⁵ A.R.S. §§32-2181, 48-6411.

24 ⁵⁶ T: 440. See also A.A.C. R18-9-E301

1 additional 505 lots.⁵⁷ RUCO believes the affiliation is important because to sell raw land with
2 subdivision capacity, the affiliates needed capacity assurances from Far West. Far West could
3 not give capacity assurances without permitted capacity.⁵⁸ ADEQ permitted Section 14 for
4 150,000 gpd. To meet the demands of Section 14 and Palm Shadows at their combined peak
5 flows, the Company needed 350,000 gpd.⁵⁹ To garner the best price for land they wished to
6 sell and to develop subdivisions on land they wished to retain, the affiliates needed additional
7 capacity at Section 14. Without the over sizing of the Section 14 plant, the affiliates would not
8 be able to sell the raw land with subdivision development capacity or develop their own
9 subdivisions. Dictated by greed, Far West shareholders and managers designed Section 14
10 for 2.0 mgd to meet the needs of their affiliates.⁶⁰ The Company spent at least \$420,000 to
11 engineer the expansion of Section 14 from 1.3 mgd to 2.0 mgd.⁶¹ Mr. Capestro asserts Far
12 West paid the engineering costs before it knew of the capital budget shortfalls. Id. His
13 statement is false. According to the Company's report on IDA construction distributions, the
14 engineering expenses associated with the expansion of Section 14 occurred between August
15 19, 2008 and September 8, 2008, after the Company admittedly knew of the capital budget
16 shortfalls for the ADEQ mandated projects.⁶² Moreover, to expand the plant from 671 gpd to
17 2.0 mgd, the Company spent \$200,000 of IDA funds to purchase land from Schechert Trust,
18 an affiliate to build three vadose recharge wells.⁶³ Notably, they spent the IDA funds on this
19

20 ⁵⁷ T: 161-162, 520-22.

⁵⁸ Arizona Administrative Code, R18-9-E301(C) (1).

21 ⁵⁹ Include 280,000 gpd existing peak flow plus 20% engineering margin as recommended in ADEQ Bulletin 11=
approximately 350,000 gpd.

⁶⁰ T: 522.

22 ⁶¹ T: 513-514.

⁶² A-8 Request for Disbursement at

23 ⁶³ According to the Company's engineer, Gary Lee, ADEQ permitted Section 14 for 1.3mgd in phases. In
Phase 1, ADEQ permitted a design flow of 671,000 gpd due to inadequate land or wells in which to place excess
24 effluent. ADEQ required additional recharge wells because the affiliate's golf course ponds were too saturated to
accept additional effluent.

1 non-ADEQ project on October 14, 2008 well after they were aware of the capital budget
2 shortfalls.⁶⁴ The Company built the plant to 1.3 mgd having spent \$4,146,672 to date and
3 owing an additional \$2,416,002.⁶⁵ The shareholders are motivated by self-interest and greed.
4 The Commission should not compel the ratepayers to fund the shareholders' personal gain.

5 The ADEQ order requires nominal changes to the Marwood plant.⁶⁶ Far West
6 made significant expenditures to redirect Marwood flow to Section 14. The question is
7 why. The answer is shareholders' self-interest and greed. Far West shareholder, Paula
8 Capestro, is developing 460 residential homes at El Rancho Encantado with her
9 husband, Andrew Capestro.⁶⁷ In order to develop the El Rancho Encantado, the
10 Capestros needed capacity. Their property is located in the Marwood plant service
11 area.⁶⁸ There was no capacity at Marwood to accommodate the additional development.
12 To ensure they could develop El Rancho Encantado, the shareholders overbuilt Section
13 14 to accommodate redirected flow from Marwood. The shareholders used
14 \$607,381.75 of the IDA funds to develop the infrastructure (Paula Street Lift Station) to
15 redirect flows from Marwood to Section 14.⁶⁹ In 2007, Far West misspent \$200,000 on
16 this non-ADEQ project to purchase land from an affiliate.⁷⁰ Far West spent an
17 additional \$400,000 of IDA funds on this non-ADEQ project between August and
18 September 2008, after it was aware of capital budget shortfalls impeding completion of
19 the ADEQ mandated improvements. Id at 5-6.

21 ⁶⁴ A-8 Disbursement Requests at 6.

22 ⁶⁵ A-8 Disbursement Requests and A-11 Summary of Amounts Owed and Necessary to Complete.

23 ⁶⁶ R-1, Financing Application, attachment 3.

24 ⁶⁷ T: 520 and R-10 Company's response to RUCO DR 5.07

⁶⁸ A-20, Service Area map. Note: Although the Company lists El Rancho Encantado in the Marwood Service area, as of October, 2007, El Rancho Encantado was not listed in the Marwood CC&N. See R-29.

⁶⁹ A-8 Disbursement Requests.

⁷⁰ A-8 Disbursement Requests at 7.

1 In addition to these expenditures, Far West also paid Gary Lee to engineer a low-
2 pressure system for El Rancho Encantado. Gary Lee, the Company's engineer
3 submitted testimony in support of the Company's request for permanent rates.⁷¹ In his
4 testimony, he admits designing the low-pressure sewage systems at two subdivisions
5 for Far West. Although Mr. Capestro testified, that Far West did not pay the engineer to
6 design low-pressure systems in private subdivisions, the summary of Request for
7 Disbursements include a disbursement of \$257,000 on November 6, 2006 to Coriolis for
8 engineering the "El Rancho Encantado LPS."⁷² Mr. Capestro acknowledges the
9 disbursement was an error and testified that the funds were returned, but there is no
10 subsequent entry reflecting the reimbursement of the funds. Id. The Commission
11 should not reward the Company for spending financing available for ADEQ compliance
12 on non-ADEQ related projects. Granting interim rates in these circumstances is
13 offensive to the principles of fairness and equity.

14 Prior to the ADEQ order, Del Oro had a design flow of 300,000 gpd. Pursuant to the
15 ADEQ order, the Del Oro plant had to absorb 40,000 gpd redirected flows from Del Rey and
16 Del Royal.⁷³ According to the Company, the total average monthly flow at Del Oro under its
17 new permit is 127,500 gpd.⁷⁴ Yet, the Company redesigned Del Oro for a flow of 495,000 gpd.
18 Id. Mr. Capestro admitted the additional flow would permit the addition of 1,780 new
19 residences.⁷⁵ It is inequitable to expect ratepayers to pay a 101 percent rate increase to
20 backfill the capital shortfalls created by the shareholders' mismanagement and greed. The
21

22 ⁷¹ R-9 Direct Testimony of Gary Lee

⁷² A-13 Requests for Disbursement No. 8B dated November 6, 2006.

⁷³ R-1 Financing Application, attachment 3.

⁷⁴ R-21 at 16.

⁷⁵ R-12 Minutes of Mesa del Sol Property Owners' Association of Annual Membership Meeting on
24 February 19, 2008

1 costs for future development should fall upon the subdivision developers, (i.e. Far West
2 affiliates) and future ratepayers.

3 **2. Shareholders' have placed their interests above the needs of the ratepayers.**

4 The Company's witness, Mr. Capestro testified that Far West needs \$1.2 million to
5 complete the ADEQ projects and has \$3.4 million in accounts payable to its ADEQ project
6 vendors. At the same time Far West claims to have capital budget deficiencies preventing
7 payment of ADEQ project vendors, it has made large payments to H & S and its shareholders.
8 During 2007, one year prior to filing the request for interim rates, Far West paid shareholder
9 affiliates \$1,462,684 million dollars.⁷⁶ Moreover, in 2008, Far West paid shareholders affiliates
10 \$920,651 for accounts payable and repaid, in full, a long-term loan of \$571,244 owed to
11 shareholders. In total, between December 31, 2007 and December 31, 2008, Far West paid
12 its affiliates approximately \$1.4 million.⁷⁷ The amount of the payments raises the issue of why
13 shareholders prioritized payments to themselves before payments to third party vendors.

14 RUCO believes the answer is greed. As Mr. Rigsby concisely stated:

15 If these [shareholders] thought they could solve the problem with other people's money,
16 I think probably they would if they thought [an interim rate case] was a way they could
do this without having to invest their own funds...⁷⁸

17 The shareholders placed their interests above the interests of the ratepayers. The result
18 is a capital budget shortfall. The Commission should not reward the shareholders with
19 revenue from ratepayers to compensate the capital budget drained by the selfish interest of its
20 shareholders.

23 ⁷⁶ R-18, Response to Staff DR 1.1 at 5.

⁷⁷ T: 1189

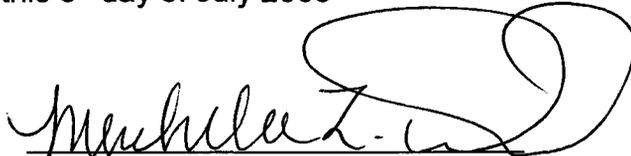
24 ⁷⁸ T: 1107

1 **CONCLUSION**

2 The Commission should deny the request for interim rates because on a total company
3 basis the Company has sufficient cash flow to pay its operational expenses and debt service.
4 In making this determination, the Commission should not consider extraordinary expenses
5 such as the cost of effluent hauling or accounts payable to Yuma Irrigation for water the
6 ratepayers do not use. The Company is solvent and there is no emergency necessitating
7 approval of interim rates. Likewise, there is no legal precedent compelling a 101 percent
8 increase in rates.

9 Capital budgets are the responsibility of management and/or shareholders. As such, the
10 Commission should not grant interim rates to backfill the shareholders' capital budget shortfall,
11 particularly when the shortfall results primarily from the shareholders' mismanagement, greed,
12 non-compliance with a Commission order and a failure to prioritize. Accordingly, RUCO
13 hereby requests the Commission deny the request for interim rates.

14 RESPECTFULLY SUBMITTED this 8th day of July 2009

15 
16 Dan Pozefsky, Chief Counsel
17 Michelle L. Wood, Counsel

18
19 AN ORIGINAL AND THIRTEEN COPIES
20 of the foregoing filed this 8th day
21 of July, 2009 with:

22 Docket Control
23 Arizona Corporation Commission
24 1200 West Washington
Phoenix, Arizona 85007

1 COPIES of the foregoing hand delivered/
2 mailed this 8th day of July, 2009 to:

3 Jane L. Rodda
4 Administrative Law Judge
5 Arizona Corporation Commission
6 400 West Congress
7 Tucson, Arizona 85701

8 Lyn Farmer
9 Chief Administrative Law Judge
10 Hearing Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

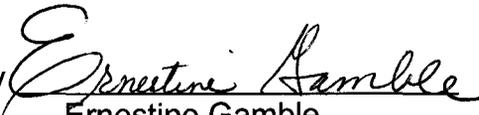
14 Janice Alward, Chief Counsel
15 Legal Division
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Ernest Johnson, Director
20 Utilities Division
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24 Robin R. Mitchell, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Norman James
Jay Shapiro
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

22
23
24

By 
Ernestine Gamble

ATTACHMENT A

-03478A-08-0608

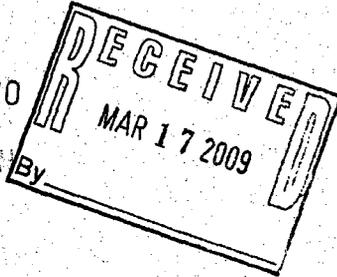
ORIGINAL

March 16, 2009

RECEIVED

2009 MAR 17 P 12:20

AZ CORP COMMISSION
DOCKET CONTROL



To: Arizona Corporation Commission
Attn: Commissioners
1200 W. Washington Street
Phoenix, AZ 85007

From: Gerald R. Frye

Subject: My letter dated March 12, 2009 concerning Palm Shadows Wastewater Treatment Plant, Far West Water & Sewer Company - Yuma, AZ

Dear Chairman Mayes:

Due to my ongoing review of the Palm Shadows Plant, as it relates to the Vista Del Sol subdivision, I want to inform you of my current findings and related information.

The information on Item A. 1. of my March 12, 2009 letter, needs more history added. Along with ADEQ's authorization of the Palm Shadows Wastewater Treatment Plant, Yuma County also authorized the Plant by a "Special Use Permit". And, the city of Yuma rezoned the land for "the operation of a wastewater treatment plant" (see attached Development Agreement). So, it appears those agencies, as well as ADEQ, are responsible for the doomed Plant being constructed at that site and, they should be referenced in Item A. 10. of that letter. Therefore, in my opinion, those agencies are responsible for the \$500,000 +/- Palm Shadows Wastewater Treatment Plant failure (paid for by subdivision property owners) and, they should be responsible of correcting the problem. Like connecting the cities West Dunes facility, etc.

The following is another prime example of Far West's classic property development approach. The subdivision developer, who was the President of Far West Water & Sewer Company, was also the "licensed real estate broker" for the Vista Del Sol subdivision (see attached Purchase Contract & Receipt). So, (1) subdivision lots completely sold, very good planning on their part. (2) Palm Shadows Wastewater Treatment Plant failed, no planning at all. (3) Customers complain about odors and still 5 lot owners cannot build due to building moratorium . Plus, Far West wants to increase sewer fees by 214% to correct these and other problems. Buyers Beware. What's wrong with this picture?

Arizona Corporation Commission
DOCKETED

MAR 17 2009

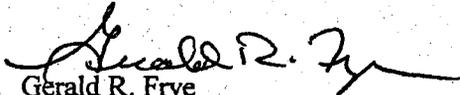
DOCKETED BY 

A

I've taken time to look through news paper articles and other information available on the ongoing Far West sewer disaster. If you look at them "one by one" as they developed, they don't seem too outrageous. But, if you look at them in total as "the big picture" it is very depressing that something like this could continue for so long. The right hand didn't know what the left hand was doing. Some of my attachments are statements made by various agencies concerning Far West Water & Sewer Companies state of affairs.

Finally, my assessment of Far West's problems is becoming more clear there is something along the lines of the "Good Old Boy" syndrome that has been taking place in the Foothill Area for some time. All in the name of development and tax revenues.

Sincerely,



Gerald R. Fry
9565 E. 33rd Street
Yuma, AZ 85365

cc: U.S. Senator John McCain
Arizona Governor, Jan Brewer
Arizona Department of Environmental Quality, Director
Arizona Residential Utility Consumer Office, Director
City of Yuma, Mayor
County of Yuma, Administrator

Purchase Contract and Receipt



Palm Shadows Partnership
1334 South 5th Avenue
Yuma, Arizona 85364
(928) 782-1801

Yuma, Arizona DATE 16-Mar-2002

RECEIVED FROM: [REDACTED], husband and wife, CPWROS

The Sum of Five hundred dollars DOLLARS (\$ 500.00) In the form of: personal check

As earnest money and part purchase price of the following described property, situated in the County of Yuma, State of Arizona, to wit:

Lot 419, Vista Del Sol Unit #4, for the full purchase price of
Twenty eight Thousand Five Hundred Fifty DOLLARS (\$ 28,550.00)

JACOBSON COMPANIES BY Ruth Wiseman

The balance of the purchase price to be paid as follows, to wit:

\$ 28,550.00 by above deposit with YUMA TITLE & TRUST

\$ 500.00 Earnest deposit

\$ 28,050.00 Cash at close of escrow from loan with Bank of America

Interest on deferred payments at the rate of _____ percent per annum, from _____, payable

IT IS HEREBY AGREED: First, that in the event said purchaser shall fail to pay the balance of said purchase price, or complete said purchase as herein provided, the seller may demand specific performance of this contract, or may retain the amount paid herein as liquidated and agreed damages, as he may elect.

Second: The purchaser and seller agree that if the title to the above property be defective, ninety days from this time will be given the seller, or his agent, to perfect same. If said title can not be perfected within said time limit earnest money receipt for herein shall, upon demand of the purchaser, be returned to the purchaser and this contract canceled.

Third: That the evidence of title is to be a Title Insurance Policy issued by YUMA TITLE & TRUST insuring the purchaser in the full amount of the purchase price shown herein, and to be issued and paid for by the seller; said title insurance policy to show title to said premises to be subject to the usual exceptions contained in the regular form of owner's policy of title insurance in use by YUMA TITLE & TRUST and subject to building and other restrictive covenants of record pertaining to the use of said premises and encumbrances, taxes and assessments or other matters affecting said property as follows: None

Closing shall be no later than 1-Jun-2002, subject to extensions set forth in escrow instructions and the cancellation provision thereof.

Fourth: It is understood and agreed that the purchaser is of legal age and that said property has been inspected by the purchaser or the purchaser's duly authorized agent; that the same is, and has been, purchased by the purchaser as the result of said inspection and not upon any representation made by the seller, or any selling agent, or other agent of the seller, and the purchaser hereby expressly waives any and all claims for damages because of any representation made by any person whomsoever other than as contained in this agreement, and the seller or his agent shall not be responsible or liable for any inducement, promise, representation, agreement, condition or stipulation not specifically set forth herein.

Fifth: That the taxes, insurance, rents, etc. affecting said premises shall be prorated to the close of escrow.

Sixth: This contract shall become binding only when executed by the purchaser and by the seller, and shall be in force and effect from the date of such execution.

Seventh: Time is declared to be the essence of this contract.

Eighth: This earnest money is to be deposited with YUMA TITLE & TRUST and all other funds to be paid by the parties hereto are to be paid in escrow to YUMA TITLE & TRUST and the parties hereto agree to pay, in equal portions, the fee for escrow services in connection with this transaction; and the purchaser agrees to pay the costs of recording any instruments which directly convey title to the purchaser which evidence the rights of the purchaser in there premises, or which evidence any deferred balance due upon this purchase.

Ninth: The parties hereto agree also (within 10 days from the date of acceptance hereof by seller) to execute escrow instructions to YUMA TITLE & TRUST upon its ordinary form for the guidance of said company in the handling of this transaction; providing the terms of said escrow instructions do not conflict with the terms and conditions hereof.

Tenth: The seller agrees to deliver or cause to be delivered to YUMA TITLE & TRUST all instruments which are required to carry out this contact and to cause said Title Company to issue the insurance policy herein provided for; and the conveyance of these premises by the seller to the purchaser shall be by warranty deed, subject to the conditions of this agreement.

Eleventh: This deposit is accepted subject to prior sale and subject to approval of seller.

THE PURCHASER MUST BE GIVEN A COPY OF THE PUBLIC REPORT OF THE ARIZONA DEPARTMENT OF REAL ESTATE PRIOR TO THE SIGNING OF THIS DOCUMENT.

IT IS UNDERSTOOD THAT DONALD E. JACOBSON AND BRENT H. WEIDMAN ARE LICENSED REAL ESTATE BROKERS DEALING AS PRINCIPLES HEREIN.

THE PURCHASER OR LESSEE HEREUNDER HAS THE LEGAL RIGHT TO RESCIND (CANCEL) THIS AGREEMENT WITHOUT CAUSE OR REASON OF ANY KIND AND TO THE RETURN OF ANY MONEY OR OTHER CONSIDERATION UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY THE PURCHASER OR LESSEE EXECUTED SUCH AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION TO THE SELLER. FURTHER, IF THE PURCHASER OR LESSEE DOES NOT INSPECT THE LOT OR PARCEL PRIOR TO THE EXECUTION OF THE AGREEMENT, THE PURCHASER OR LESSEE SHALL HAVE A SIX-MONTH PERIOD TO INSPECT THE LOT OR PARCEL, AND AT THE TIME OF INSPECTION SHALL HAVE THE RIGHT TO UNILATERALLY RESCIND THE AGREEMENT.

We (I) the undersigned certify the we have inspected the lot(s) to be purchased before signing this contract.

We (I) agree to purchase the above described property on the terms and conditions herein stated, provided acceptance of this agreement by seller, or his authorized agent is made on or before 16-Mar-2002

Seller - Palm Shadows Partnership

Date

Purchaser

Date

By:

Brent H. Weidman
Agent

Purchaser

Date

61280 Blakely Road, Bend, OR. 97702

Purchaser's Address

(541) 382-6035 home

Purchaser's Phone Number

BASE PRICE	\$	22,500.00
FENCE		1,500.00
SEPTIC PACK		
GRADE AND GRAVEL		4,550.00
OTHER		
TOTAL	\$	28,550.00

City of Yuma

YUMA COUNTY RECORDER
SUSAN MARLER

EXHIBIT A

FEE #: 1998 - 295

DEVELOPMENT AGREEMENT

11/04/1998 11:39 PAGES: 000
FEES: 4.00 4.00 .00 .00
REQ BY: CITY OF YUMA
REC BY: ELIZABETH POST

Vista del Sol Recreational Vehicle Subdivision
West of Avenue 10E, Highway 80

THIS AGREEMENT, made and entered into, pursuant to Arizona Revised Statutes (A.R.S.) § 9-500.05, by and between Palm Shadows Partnership ("OWNER"), and the CITY OF YUMA ("CITY"), a municipal corporation of the State of Arizona.

RECITALS

The CITY adopted its General Plan in 1983, and the use and development of the property is consistent with the goals and objectives of the City of Yuma General Plan, as amended, and

The OWNER is owner of real property, Assessor's Parcel No. 112-20-040, ("PROPERTY") located in unincorporated lands which is territory that is desired by the CITY to be annexed into the boundaries of the CITY, and

The CITY acknowledges that Jacobson Companies has been planning, for several years, the design and construction of the Vista del Sol subdivision in accordance with Yuma County zoning, subdivision, and construction standards and that annexation may adversely impact the financial feasibility of the project by the requirement of imposing City standards for development, and

The OWNER desires certain assurances and/or commitments from the CITY upon annexation.

THEREFORE, in consideration of the above recitals, the parties agree as follows:

- I. The OWNER agrees to consent to annexation of PROPERTY into the City of Yuma pursuant to A.R.S. 9-471, and to utilize City of Yuma water to serve the project, and not promote the expansion of the Far West Water Company's water service area into the City of Yuma's water service area.
- II. The OWNER agrees to provide to the CITY, at no cost, a fifteen foot utility easement along the Stetson Avenue alignment, extending across the entire width of the property.
- III. Upon annexation the CITY agrees to rezone the PROPERTY, at no cost to the OWNER, the County C-2 zoned property to the City's B-2 zoning district as set forth in Section 111 in the CITY's Zoning Code, and the remainder of the PROPERTY to CITY's RVS zoning district as set forth in Section 075 in the CITY's Zoning Code. The CITY also agrees that once the PROPERTY is rezoned to the City's RVS zoning district, one single-family residence per parcel, limited to either a recreational vehicle, manufactured home, or site built home is permitted. However, if a parcel has an area of at least six thousand square feet one additional recreational vehicle may occupy the parcel, in accordance with the County's RVS zoning

district regulations.

Additionally, the CITY agrees to rezone the south six hundred and sixty feet of the PROPERTY to the CITY's C-2 zoning district for the operation of a wastewater treatment plant, as authorized by a Special Use Permit granted by Yuma County.

- IV. Upon annexation the CITY agrees that the following development standards on the planned Vista del Sol subdivision plat are to be considered grandfathered and acceptable to the CITY, subject to requirements to comply with all other applicable City, County, State or Federal laws, regulations or rules

a. Street Widths. The existing County standards of fifty-foot width right-of-way and thirty-eight foot pavement width for local streets will prevail. The existing County eighty-foot right-of-way width for mid-section line roads will prevail and no median will be required.

b. Curb, Gutter, and Sidewalks. The existing County standards of rolled curb and gutter exclusive of any sidewalk requirement will prevail.

c. Retention Basin Slope. The existing County standard of a 3:1 retention basin slope will prevail.

d. Future Pro Rata Fees. In the event the City establishes a Pro Rata plan for the East Mesa area, the Vista del Sol subdivision will be exempt from any Pro Rata fees or credits, with the exception of fire Pro Rata fees at a fee of \$1,044/ac (*same as Cielo Verde and The Lakes of Yuma*).

- V. The CITY agrees that the plat layout and design for Vista del Sol Recreational Vehicle Subdivision as presented to the CITY on the date of this Agreement (Exhibit 1) is acceptable as prepared in conformance with Yuma County subdivision regulations. Additionally, the CITY agrees to recognize the Special Use Permit issued by Yuma County for the wastewater treatment plant to be located on the PROPERTY.

- VI. This Agreement will commence upon the date of its execution, and will terminate when the obligations of the parties with respect to the improvements and use of the property contained in this Agreement are fully complied with and the parties mutually provide for termination.

- VII. All notices, demands or other communications must be in writing and are deemed to duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

CITY: City Administrator
City of Yuma
180 West First Street
Yuma, Arizona 85364

AGENT: Bruce Jacobson
Jacobson Companies
1334 S. 5th Avenue
Yuma, Arizona 85364

If either party changes address they must give written notice to the other party. Notice of

change of address is deemed effective five (5) days after mailing by the party changing address.

- VIII. This agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.
- IX. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the other party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.
- X. The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The parties must institute and maintain any legal actions or other judicial proceeding arising from this Agreement in a court of competent jurisdiction in the Yuma County, Arizona.
- XI. If either party brings an action or proceeding for failure to observe any of the terms, or provisions of this Agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration, and collection expenses, including, but not limited to, witness fees, court costs and reasonable attorney fees.
- XII. This Agreement contains the entire agreement between the parties, and no oral or written statement, promises or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed, and endorsed by the parties.

WITNESSED, the parties executed this Agreement through their authorized representatives on 28th day of October, 1998.

APPROVED:
CITY OF YUMA

BRUCE JACOBSON
DONALD JACOBSON
BRENT WEIDMAN

By Joyce A. Wilson
Joyce A. Wilson
City Administrator

By Bruce Jacobson
Bruce Jacobson
Donald Jacobson
Donald Jacobson
Brent A. Weidman
Brent Weidman

ATTEST:

APPROVED AS TO FORM:

for By Brigitta K. Stanz
Brigitta K. Stanz
City Clerk

By Steven W. Moore
Steven W. Moore
City Attorney

ATTACHMENT B



STATE OF ARIZONA CORPORATION COMMISSION CORPORATION ANNUAL REPORT & CERTIFICATE OF DISCLOSURE



DUE ON OR BEFORE 10/09/1998

FILING FEE \$45.00

The following information is required by A.R.S. §10-1022 & §10-1024 for all corporations organized pursuant to Arizona Revised Statutes, Title 10. The Commission's authority to prescribe this form is A.R.S. §10-121.A. & §10-254.A. THIS REPORT MUST BE FILED WITHIN THE YEAR ENDING 12/31/98. Make changes or corrections where necessary. Information for the report should reflect the current status of the corporation. See instructions for proper format. REFER TO THE INSTRUCTIONS ON PAGE 4.

FAR WEST WATER & SEWER, INC. 12488 S FOOTHILLS BLVD YUMA, AZ 85967

RECEIVED SEP 18 1998

Business Phone: _____ Corporation File Number: 0822288-6 State of Domicile: ARIZONA Type of Corporation: BUSINESS

2. Arizona Statutory Agent: STEPHEN P SHADLEK Street Address: 2280 S 4TH AVE #2000 (NOTE: P.O. BOX) City, State, Zip: YUMA AZ 85904

Notarization stamp area with fields for Name, Party, Office, State, Title, and Filing Fee.

Use this box only if appointing a new Statutory Agent. I (Incorporator or We, corporation or limited liability company) having been designated the new Statutory Agent, do hereby consent to the appointment until my removal or resignation pursuant to law. J.P.C. CORPORATION'S DIV. Statutory Agent

JAN 4 1999

Address/Stat Agent Change per 22

DOCUMENTS ARE SUBJECT TO REVIEW BEFORE FILING

Date: 1/1/99 Initials: YAH

4. Check the one category below which best describes the CHARACTER OF BUSINESS of your corporation.

- BUSINESS CORPORATIONS: 1. Accounting, 2. Advertising, 3. Aerospace, 4. Agriculture, 5. Architecture, 6. Entertainment, 7. Banking/Finance, 8. Construction, 9. Contracting, 10. Distribution, 11. Education, 12. Engineering, 13. Entertainment, 14. General Consulting, 15. Health Care, 16. Hospitality, 17. Import/Export, 18. Insurance, 19. Legal Services, 20. Manufacturing, 21. Mining, 22. News Media, 23. Pharmaceuticals, 24. Printing/Publishing, 25. Ranching/Livestock, 26. Real Estate, 27. Restaurants, 28. Retail Sales, 29. Science/Research, 30. Sports/Sporting Events, 31. Technology (Computer), 32. Technology (General), 33. Telecommunications, 34. Tourism/Convention Services, 35. Transportation, 36. Utilities, 37. Veterinary Medicine/Veteral Care, 38. Other

B

5. CAPITALIZATION: ~~Common Shares and Business Trusts are REQUIRED~~ to complete this section.)
 Please indicate the number of transferable certificates held by trustees evidencing their beneficial interest in the trust estate.

Number of Shares/Certificates Authorized: 100,000 Class: Common Series Within Class (if any): _____

Number of Shares/Certificates Issued: 100,000 Class: Common Series Within Class (if any): _____

6. SHAREHOLDERS: ~~Common Shares and Business Trusts are REQUIRED~~ to complete this section.)
 List shareholders holding more than 20% of any class of shares issued by the corporation, or having more than a 20% beneficial interest in the corporation.

ROSE Name: H. H. Developers, Inc. Name: _____

Name: _____ Name: _____

7. OFFICERS: (If no changes since last report, check here and go on to Section 8.) See Attached List.

Name: BRENT WEIDMAN Name: _____

Title: PRESIDENT/CEO Title: _____

Address: _____ Address: _____

Date taking office: 10-09-97 Date taking office: _____

Name: LYNN WAGNER Name: _____

Title: SECRETARY Title: _____

Address: _____ Address: _____

Date taking office: 10-09-97 Date taking office: _____

8. DIRECTORS: (If no changes since last report, check here and go on to Section 9.)

Name: SANDRA GARCIA Name: _____

Address: PO BOX 65 Address: _____

TERREBONNE, OR 97760

Date taking office: 10-09-97 Date taking office: _____

Name: _____ Name: _____

Address: _____ Address: _____

Date taking office: _____ Date taking office: _____

**Far West Water & Sewer, Inc.
Corporate Officers & Directors**

OFFICERS:

Chairman of the Board: Dorothy Schochert
4908 N. 77th Pl.
Scottsdale, AZ 85251

Date of Taking Office: 01/01/98

Vice President: Randie Bruden
P. O. Box 63
Tombona, OR 97760
Date of Taking Office: 01/01/98

Secretary/Treasurer: Lynn Wagner
11429 E. 37th Lane
Yuma, AZ 85367
Date of Taking Office: 01/01/98

President: Brent Waldman
1153 Tansmach Ave.
Yuma, AZ 85364

Date of Taking Office: 01/01/98

Vice President: Paul Capetro
P. O. Box 223081
Corona, CA 92922
Date of Taking Office: 01/01/98

Directors:

Brent H. Waldman
1153 Tansmach Ave.
Yuma, AZ 85364
01/01/98

Dorothy Schochert
4908 N. 77th Pl.
Scottsdale, AZ 85251
01/01/98

Lynn Wagner
11429 E. 37th Ln.
Yuma, AZ 85367
01/01/98

Randie Bruden
P. O. Box 63
Tombona, OR 97760
01/01/98

Paul Capetro
P. O. Box 223081
Corona, CA 92922
01/01/98

Please Enter Corporation Name: Far West Water & Sewer, Inc.

Page 3

9. FINANCIAL DISCLOSURE (A.R.S. §§10-1022.B & 10-2001.A.6)

Only nonprofit corporations must attach a financial statement (balance sheet including assets, liabilities and equity). All other forms of corporations are exempt from filing a financial disclosure.

10. CERTIFICATE OF DISCLOSURE (A.R.S. §§10-1022.A.8 & 10-2005.A)

Has ANY person acting either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation been:

- 1. Contacted a lawyer involving a transaction in securities, consumer fraud or unfair in any state or federal jurisdiction within the seven year period immediately preceding the execution of this certificate?
- 2. Contacted a lawyer, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
- 3. Or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immediately preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:
 - (a) fraud or regulation provisions of the securities laws of that jurisdiction, or
 - (b) the consumer fraud laws of that jurisdiction, or
 - (c) the restraint or restraint of trade laws of that jurisdiction?

~~NO~~ YES NO

If YES, the following information must be included as an attachment to this report for each person subject to one or more of the actions stated in items 1. through 3. above.

- | | |
|---|---|
| 1. Full name and prior names used. | 6. Date and location of birth. |
| 2. Full birth date. | 7. Social Security Number |
| 3. Present home address. | 8. The nature and description of each conviction or judicial action; the date and location; the court and public agency involved, and the fine or cause number of the case. |
| 4. Prior addresses (for immediate preceding 7 year period). | |

11. STATEMENT OF BANKRUPTCY (A.R.S. §10-202.D.2)

Has ANY person acting either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 20% of the issued and outstanding common shares or 20% of any other proprietary, beneficial or membership interest in the corporation served in such capacity or held a 20% interest in any other corporation during the bankruptcy, receivership, or similar resolution of the other corporation?

~~NO~~ YES NO

~~NO~~ Chapter _____ Date Filed _____ Case Number _____

~~NO~~

12. SIGNATURES

~~NO~~

I DECLARE, UNDER PENALTY OF LAW, THAT ALL CORPORATE INCOME TAX RETURNS REQUIRED BY TITLE 43 OF THE ARIZONA REVISED STATUTES HAVE BEEN FILED WITH THE ARIZONA DEPARTMENT OF REVENUE.

I further declare under penalty of law that I (we) have examined this report and the certificate, including any attachments, and to the best of my (our) knowledge and belief they are true, correct and complete.

Name Brent H. Weidman Date 7/7/09

Signature [Handwritten Signature] Signature _____

Title President Title _____

(Signature(s) must be duly authorized corporate officer(s) listed in section 7 of this report.)

ATTACHMENT C

E. CAPITALIZATION: ~~For all corporations and business trusts see REGISTRATION to complete this section.~~
 Business trusts must indicate the number of transferable certificates held by trustees exercising their beneficial interest in the trust estate.

Number of Shares/Certificates Authorized	Class	Series Within Class (if any)
4,000,000	Common	
Number of Shares/Certificates Issued	Class	Series Within Class (if any)
2850	Common	

F. SHAREHOLDERS: ~~For all corporations and business trusts see REGISTRATION to complete this section.~~
 List shareholders holding more than 20% of any class of shares issued by the corporation, or having more than a 20% beneficial interest in the corporation.

None Name: Henry & Dorothy Schuchart Trust Name: _____
 Name: _____ Name: _____

G. OFFICERS: (If no changes since last report, check here and go on to Section 8.) See Attached List →

Name: Brent Weidman Name: GROVER BRADEN Sandra Braden
 Title: President → Title: VICE-PRESIDENT
 Address: _____ Address: P O BOX 65
TERREBONNE, OR 97760

Date taking office: 8-01-94 Date taking office: 03-16-97
 Name: LYNN WAGNER Name: LYNN WAGNER Paula Capistrano
 Title: SECRETARY - TREASURER Title: TREASURER VP →
 Address: 11429 E 37TH LN Address: 11429 E 37TH LN
YUMA, AZ 85367 YUMA, AZ 85367

Date taking office: 08-15-90 Date taking office: 08-15-90 3-14-97

H. DIRECTORS: (If no changes since last report, check here and go on to Section 9.)

Name: PAULA CAPESTRO Name: SANDRA BRADEN
 Address: P O BOX 223081 Address: P O BOX 65
YUMA, AZ 85322 TERREBONNE, OR 97760

Date taking office: 03-17-97 Date taking office: 03-17-97
 Name: BRENT H WEIDMAN Name: HENRY SCHUCHART →
 Address: 1153 TANARACK AVE Address: 12406 S FOOTHILLS BLVD
YUMA, AZ 85364 YUMA, AZ 85367

Date taking office: 08-01-94 Date taking office: 08-01-95

-0060443-9

**H & S Developers, Inc.
Corporate Officers & Directors**

OFFICERS:

Chairman of the Board: Dorothy Schuchert
4508 N. 77th Pl.
Scottsdale, AZ 85251
Date of Taking Office: 09/13/98

President: Brent Waldman
1153 Tamarack Ave.
Yuma, AZ 85364
Date of Taking Office: 09/01/94

Vice President: Shadie Benson
P. O. Box 65
Tucson, OR 97760
Date of Taking Office: 03/14/97

Vice President: Paula Capostro
P. O. Box 223081
Carmel, CA 95022
Date of Taking Office: 03/14/97

Secretary/Treasurer: Lynn Wagner
11429 E. 37th Lane
Yuma, AZ 85367
Date of Taking Office: 09/15/98

Directors:

Brent H. Waldman
1153 Tamarack Ave.
Yuma, AZ 85364
09/01/94

Shadie Benson
P. O. Box 65
Tucson, OR 97760
03/17/97

Dorothy Schuchert
4508 N. 77th Pl.
Scottsdale, AZ 85251
03/14/97

Paula Capostro
P. O. Box 223081
Carmel, CA 95022
03/17/97

Lynn Wagner
11429 E. 37th Ln.
Yuma, AZ 85367
09/15/98

Pledge Eater Corporation Name: H & S Developers, Inc.

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9. FINANCIAL DISCLOSURE (A.R.S. §§10-1022.B & 10-2001 A.2)

Only nonprofit corporations must attach a financial statement (balance sheet including assets, liabilities and equity). All other forms of corporations are exempt from filing a financial disclosure.

10. CERTIFICATE OF DISCLOSURE (A.R.S. §§10-1022.A.2 & 10-2001A)

Has ANY person serving either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation been:

- 1. Convicted of a felony involving a transaction in securities, consumer fraud or restraint in any state or federal jurisdiction within the seven year period immediately preceding the execution of this certificate?
- 2. Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by this pretense or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
- 3. Or was subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immediately preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:

- (a) fraud or misrepresentation provisions of the securities laws of that jurisdiction, or
- (b) the consumer fraud laws of that jurisdiction, or
- (c) the restraint or restraint of trade laws of that jurisdiction?

~~CHECK BANKRUPTCY~~ YES NO

If "YES", the following information must be submitted as an attachment to this report for each person subject to one or more of the actions stated in items 1. through 3. above.

- | | |
|---|---|
| 1. Full name and prior names used. | 6. Date and location of birth. |
| 2. Full birth name. | 8. Social Security Number |
| 3. Present home address. | 7. The nature and description of each conviction or judicial action; the date and location; the court and public agency involved, and the file or cause number of the case. |
| 4. Prior addresses (for immediate preceding 7 year period). | |

11. STATEMENT OF BANKRUPTCY (A.R.S. §10-202D.2)

Has ANY person serving either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 20% of the issued and outstanding common shares or 20% of any other proprietary, beneficial or membership interest in the corporation served in such capacity or held a 20% interest in any other corporation during the bankruptcy, receivership, or Chapter 11 reorganization of the other corporation?

~~CHECK BANKRUPTCY~~ YES NO

~~ENTER NUMBER FOR INFORMATION~~ Chapter _____ Date Filed _____ Case Number _____

~~If "YES", the following information must be submitted as an attachment to this report for each person subject to one or more of the actions stated in the attached copy. If "No" the following information must be submitted as an attachment to this report for each person subject to one or more of the actions stated in the attached copy.~~

12. SIGNATURE

~~Under penalty of law, the undersigned hereby certifies that the information furnished herein is true and correct to the best of his or her knowledge and belief. If the undersigned is a corporation, the signature of the officer or director authorized to sign must be attached.~~

I DECLARE, UNDER PENALTY OF LAW, THAT ALL CORPORATE INCOME TAX RETURNS REQUIRED BY TITLE 43 OF THE ARIZONA REVISED STATUTES HAVE BEEN FILED WITH THE ARIZONA DEPARTMENT OF REVENUE.

I further declare under penalty of law that I (we) have examined this report and the certificate, including any attachments, and in the best of my (our) knowledge and belief they are true, correct and complete.

Name: Brent H. Meadows Date: 9/2/08 Name: _____ Date: _____

Signature: Brent H. Meadows Signature: _____

Title: President Title: _____

(Signature(s) must be duly authorized corporate officer(s) listed in section 7 of this report.)