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**EXCEPTION**

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Douglas G. Martin – 004233

**MARTIN & BELL, L.L.C.**

365 East Coronado Road, Suite 200

Phoenix, Arizona 85004

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2009 JUL 16 P 4:47

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

**DOCKETED**

JUL 16 2009

Attorneys for WILHOIT WATER COMPANY,  
INC

DOCKETED BY *[Signature]*

**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

*Docket No 10, W-02065A-08-0138*

**EXCEPTIONS TO  
RECOMMENDED ORDER**

**FINANCING**

In Administrative Law Judge Marc Stern's Recommended Order of July 10, 2009, it states that on June 8, 2009 the Company filed comments to the supplemental Staff Report and indicated its agreement with Staff's recommendations concerning back property taxes and the adoption of Staff's recommended rates, charges and Staff's proposed ISM.

In the Company's June 8, 2009 comments (Exhibit A), the Company agreed with Staff regarding the recommended rates, but the Company recommended a minor adjustment in the surcharge mechanism to reflect a revised estimate of \$145,877 to construct the

1 required storage facilities. The Company requests approval of financing in the amount  
2 of \$145,877 (Docket No. W-02065A-07-0307) that reflects the revised quote.

#### 3 4 EFFECTIVE DATE FOR RATES

5 On Page 22 of the Recommended Order, it states that the new “rates and charges shall be  
6 effective for all service provided on and after August 1, 2009.” Immediately following,  
7 the Recommended Order states the Company is ordered to notify its customers “in its  
8 next regular monthly billing which precedes the month in which they become effective.”  
9 Clearly, the Company cannot comply with these orders when the application is scheduled  
10 for consideration by the Commission on July 28 and 29, 2009. The Company requests  
11 modifying the Recommended Order to have the rates and charges become effective  
12 September 1, 2009.

#### 13 ADEQUATE WATER SUPPLY

14 On Page 22 of the Recommended Order, it states that the Company shall comply with  
15 each of the recommendations appearing in Findings of Fact No. 43. Finding of Fact No.  
16 43 (t) states “that the Company file, within 60 days of the effective date of this Decision,  
17 with the Commission’s Docket Control, as a compliance item in this docket, a signed  
18 Agreement that modifies the Agreement between WMCC and the Company dated May  
19 18, 1986. The May 28, 1986 Agreement should be modified to include the “Bulk Water  
20 Sale Conditions” included in the letter dated December 23, 2008, from Steve Wene  
21 (Attorney representing WMCC) to Douglas G. Martin (Attorney representing the  
22 Company), and enumerate the specific conditions which will increase the amount of  
23 water above 400,000 gallons WMCC will supply to the Company without an emergency  
24 condition.

25 On Page 23 of the Recommended Order, it states “that Wilhoit Water Company, Inc.’s  
26 Thunderbird Meadows System shall file, within 60 days of the effective date of this

1 Decision, with the Commission's Docket Control, as a compliance item in this docket, a  
2 signed modification of its 1986 Agreement with Walden Meadows Community Co-op to  
3 ensure a reliable back-up supply of water, and if the Company is unable to secure said  
4 modification, is shall immediately file notice with the Commission so that all necessary  
5 steps can be taken to alleviate the possibility of a shortage.

#### 6 NEW AGREEMENT BETWEEN THE COMPANY AND WMCC

7 In the Company's June 8, 2009 comments (Exhibit A), the Company noted that efforts  
8 have been made to modify the 1986 Agreement and that WMCC was unwilling to do so.  
9 On May 22, 2008, the Company filed a formal complaint requesting the Commission  
10 order WMCC to negotiate a wheeling arrangement with the Company. This complaint  
11 was filed to negate the need for the Company to spend several hundred thousand dollars  
12 for infrastructure to assure an adequate water supply for its customers. As a result of the  
13 formal complaint, the Company and WMCC negotiated an agreement for WMCC to  
14 supply the Company with sufficient supplies of water on terms that are acceptable to the  
15 Company.

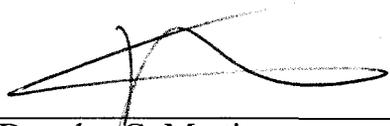
16 On December 5, 2008, the Company filed a stipulation for dismissal of the complaint  
17 with the Commission. As the Company noted in its June 8, 2009 comments, the  
18 Company believes the December 23, 2008 letter from Wene to Martin represents a  
19 binding agreement between WMCC and the Company. In addition, in response to a  
20 request from Staff, the Company filed supplemental comments on June 18, 2009 (Exhibit  
21 B) with correspondence between Martin and Wene further clarifying the conditions  
22 where additional water will be supplied by WMCC to the Company.

23  
24 The agreement between WMCC and the Company has the result of assuring an adequate  
25 water supply for the customers of the Company and saving the customers of the  
26 Company several hundred thousand dollars of unnecessary expense.

1 The Company requests modifying the Recommended Order to remove Findings of Fact  
2 No. 43 (t) and that that the portion of the Recommended Order dealing with the  
3 modification of the Agreement between WMCC and the Company be eliminated.  
4

5 DATED this 16<sup>th</sup> day of July, 2009.  
6

7 MARTIN & BELL, L.L.C.  
8

9 By   
10

Douglas G. Martin  
365 East Coronado Road, Suite 200  
Phoenix, Arizona 85004  
Attorneys for Wilhoit Water Company, Inc.  
11  
12  
13

14 ORIGINAL filed with copies  
15 mailed/delivered this 16<sup>th</sup> day  
of July, 2009 to:

16 Janice Alward, Chief Counsel  
17 Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
18 Phoenix, AZ 85007

19 Ernest G. Johnson, Director  
20 Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
21 Phoenix, AZ 85007

22 Lyn Farmer, Chief  
23 Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
24 Phoenix, AZ 85007

25 Arizona Reporting Service, Inc.  
26 2200 North Central Avenue, Suite 502

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Phoenix, AZ 85004

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5 Telephone: (602) 230-0030

6 Attorneys for WILHOIT WATER COMPANY,  
7 INC

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

DOCKET NO. W-02065A-07-0306

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

DOCKET NO. W-02065A-07-0307

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

DOCKET NO. W-02065A-07-0312

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

24 In the Supplemental Staff Report dated May 29, 2009 on the above referenced matter,  
25 Staff addresses four issues. The Company agrees with Staff on items 1) and 2) dealing  
26 with property tax issues.

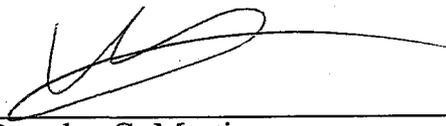
The Company agrees with Staff on item 3) regarding rates in this matter and believes the Staff recommendations on surcharges should reflect a minor adjustment based on a revised estimate to construct the required storage facilities (Exhibit A).

The Company disagrees with Staff on item 4) regarding the settlement agreement between Walden Meadows Community Co-op (Walden) and the Company. The

1 agreement modification requested by Staff would have no real world impact on  
2 availability of water to be purchased by the Company. The letter from Steve Wene  
3 (Attorney representing Walden) dated December 23, 2008 represents a binding  
4 agreement between Walden and the Company. When the Company sought an  
5 amendment to the 1986 agreement between Walden and the Company, we were told by  
6 Walden that no modification to the agreement would be made. The Company believes it  
7 is in compliance with the requirement to provide adequate water supplies to its  
8 customers. However, if the Commission concludes that a modification is the 1986  
9 agreement is required, the Commission should require Walden to do so. The Company  
10 does not believe that is necessary based upon the December 23, 2008 facts that followed  
11 the litigation between Walden and the Company. That peaceful agreement result  
12 providing for future needs is adequate and avoids \$490,000 of estimated costs to the  
13 company and its customers to find and route new water sources.

14 DATED this 8<sup>th</sup> day of June, 2009.

15  
16 MARTIN & BELL, L.L.C.

17  
18  
19 By 

20 Douglas G. Martin  
21 365 East Coronado Road, Suite 200  
22 Phoenix, Arizona 85004  
23 Attorneys for Wilhoit Water Company, Inc.

24 ORIGINAL filed with copies  
25 mailed/delivered this 6<sup>th</sup> day  
26 of June, 2009 to:

27 Janice Alward, Chief Counsel  
28 Legal Division  
29 ARIZONA CORPORATION COMMISSION

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Phoenix, AZ 85007

Arizona Reporting Service, Inc.  
2200 North Central Avenue, Suite 502  
Phoenix, AZ 85004

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Wilhoit Water Company  
 Summary of Permitting, Engineering and Construction Costs  
 FANN ENVIRONMENTAL

| Item | Description   | Cost (\$)                       |
|------|---|---------------------------------|
| 1    | <b>Engineering Services</b><br>Design, site investigation, permitting assistance,<br>construction inspection, as-builts | \$17,880                        |
| 2    | <b>Construction Services</b><br>60,000 Gallon Tank, tank pad, mechanical piping<br>Electrical<br>Fence                  | \$112,000<br>\$3,600<br>\$4,500 |
| 3    | <b>Permitting</b><br>Legal Description<br>Yavapai County Use Permit   | \$125<br>\$825                  |
|      | <b>SUBTOTAL</b>   | \$138,930                       |
| 4    | <b>5% Contingency</b>   | \$6,947                         |
|      | <b>TOTAL</b>  | <b>\$145,877</b>                |

**B**

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2009 JUN 18 P 1:10

AZ CORP COMMISSION  
DOCKET CONTROL

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18 APPLICATION

DOCKET NO. W-02065A-07-0307

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20 WILHOIT WATER COMPANY, INC.,  
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22 FOR APPROVAL OF A PERMANENT  
23 RATE INCREASE

DOCKET NO. W-02065A-07-0312

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

24 Commission Staff requested that the Company docket correspondence between the  
25 Company and Walden Meadows Community Cooperative regarding bulk water  
26 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.

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MARTIN & BELL, L.L.C.

By 

Douglas G. Martin  
365 East Coronado Road, Suite 200  
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Attorneys for Wilhoit Water Company, Inc.

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

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ARIZONA CORPORATION COMMISSION  
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November 13, 2008

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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

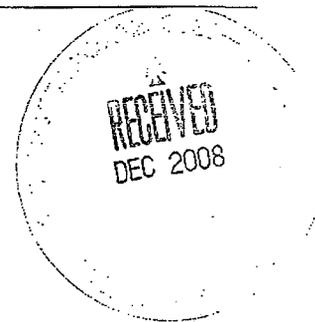
Page 2

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

**MS** MOYES SELLERS & SIMSSTEVE WENE • 602-604-2189 • swene@lawms.com  
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.

December 23, 2008  
Page 2

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