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COMMISSIONERS

**KRISTIN K. MAYES, Chairman**  
**GARY PIERCE**  
**SANDRA D. KENNEDY**  
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ARIZONA CORPORATION COMMISSION  
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Arizona Corporation Commission

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

DOCKET NO. W-01808A-09-0137

**RIGBY WATER COMPANY'S  
RESPONSE TO COMPLAINANT'S  
MOTION TO CONTINUE**

BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000

Rigby Water Company ("Rigby") hereby responds to Complainant's Motion to Continue dated October 5, 2009. While Rigby understands that Complainant Dains has a witness that is unavailable on the date currently scheduled for the hearing of this matter, Rigby believes that the hearing should not be continued, but instead used as an opportunity to hold oral argument on Rigby's outstanding Motion to Dismiss. Dains' Motion for Summary Judgment was disposed of in the September 15, 2009 Procedural Order in this matter; however, Rigby's Motion to Dismiss was not addressed in that order. As a result, the Commission has not yet considered Rigby's Motion to Dismiss. Rigby's Motion is based purely on questions of law that do not need witness testimony or further exhibits to resolve. Specifically, that motion requests the dismissal of Dains' Complaint for (1) running afoul of the relevant statute of limitation, (2) lacking jurisdiction to grant the relief requested, and (3) failing to state a cause of action pursuant to Commission Rules.

1 Given Mr. Marks' avowals concerning witness availability, Rigby understands that  
2 the hearing cannot go as scheduled and is willing to accommodate that request. However,  
3 because granting Rigby's Motion to Dismiss would obviate the need for an evidentiary  
4 hearing, Rigby believes that the current hearing date should be used to argue that Motion,  
5 and a separate hearing date set thereafter only if it is necessary following resolution of the  
6 pending Motion to Dismiss.

7 In the event that a new hearing date is set, Rigby concurs with Dains' request that the  
8 other pre-hearing deadlines for disclosure of witnesses and exchange of exhibits be  
9 continued.

10 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of October, 2009.

11 BRYAN CAVE LLP

12  
13  
14 By 

15 Steven A. Hirsch #006360  
16 Stanley B. Lutz, #021195  
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19 Attorneys for Rigby Water Company

20 ORIGINAL and 13 copies of the foregoing  
21 filed this 7<sup>th</sup> day of October, 2009 with:

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

26 COPIES of the foregoing hand-delivered  
27 this 7<sup>th</sup> day of October, 2009, to:

28 Yvette B. Kinsey, Esq.  
Administrative Law Judge  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

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8 Arizona Corporation Commission  
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11 COPY of the foregoing mailed and e-mailed  
12 this 7<sup>th</sup> day of October, 2009, to

13 Craig A. Marks, Esq.  
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