

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

EXCEPTION RECEIVED

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COMMISSIONERS
KRISTIN K. MAYES, CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 DEC 31 P 1:50

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE
APPLICATION OF Q MOUNTAIN
MOBILE HOME PARK FOR
APPROVAL OF AN EMERGENCY
RATE INCREASE.

DOCKET NO. W-02518A-09-0076

Q MOUNTAIN MOBILE HOME PARK'S
EXCEPTIONS

Q Mountain Mobile Home Park ("Q Mountain" or "Company"), through its undersigned attorney, hereby files exceptions to the Recommended Opinion and Order ("ROO") pursuant to A.A.C. R14-3-110(b).

Q Mountain supports dismissal of the pending application. Q Mountain further welcomes Arizona Corporation Commission ("Commission") Staff review of its system, books and operations, as well as Staff's investigation into customer concerns. Q Mountain believes such interaction will be beneficial both to the Company and its customers and also provide Staff a better understanding of Q Mountain. However, the best way to accomplish such review is by a site visit and informal discussions with the Company and not through a full rate application. Such a filing will only confuse customers and unnecessarily tax Q Mountains limited resources, especially if the end result is a confirmation of its current rates and charges. Moreover, the rate filing will be based on a test year that reflects only four (4) months of operations under the Water Service Agreement with the Town of Quartzsite that went into effect September 1, 2009.

Arizona Corporation Commission

DOCKETED

DEC 31 2009

Docketed by [Signature]

1 If after conducting an on-site visit and informal review of Q Mountain, Staff
2 determines an adjustment in rates is needed, Q Mountain can and will voluntarily make a full
3 rate filing consistent with Staff's recommendation.

4 To place this matter into perspective the following background is provided.

5 **BACKGROUND**

6 Q Mountain is a small Arizona nonprofit corporation that serves as both a
7 homeowners association and water provider for a RV subdivided development located within
8 the Town of Quartzsite (the "RV Development"). The RV Development was developed by
9 Mr. Rex Byrd on 64 acres in the late 1980s and early 1990s. The water system serving the RV
10 Development was constructed by the developer, Mr. Byrd.

11 Mr. Byrd also formed Q Mountain in 1986. From 1986 through 2005, Mr. Byrd
12 and/or his family members served as President and Directors of the corporation. Mr. Covey
13 assisted the Byrd family in its development activities, including water system matters. In
14 1989, Mr. Byrd, on behalf of Q Mountain, sought and was granted a certificate of convenience
15 and necessity to serve the first phase (32 acres) of the RV Development. Decision No 56484.
16 In 1991, the certificate was extended to encompass the second phase (an additional 32 acres)
17 of the RV Development. Decision No. 57430. In accordance with Decision No. 56484, Q
18 Mountain filed a general rate application. By Decision No. 57816 the Commission affirmed Q
19 Mountain's existing rates and charges. The rates are \$12.00 per month for 5/8" x 3/4" meters
20 and \$2.00 per 1,000 gallons used.

21 In approximately 2006, the Byrd's transferred control of the corporation to the
22 members. A five (5) member Board of Directors elected by and from its member-customers
23 now runs the Company, including the water system. Unfortunately, the Byrd's failed to
24 transfer historical corporate documents making the transition more difficult.

25

1 The Board contracts with a certified operator to perform water quality testing, to
2 prepare and file ADEQ reports and to oversee system operations. A part time office person
3 staff's the Company's office and does its billings. The water system generates approximately
4 \$50,000 in gross revenues, the major portion of which is now paid to the Town of Quartzsite
5 for its water supply.

6 In late 2008, Q Mountain interconnected with the Town of Quartzsite's water
7 system to address a nitrate problem in two of its three wells. This action was taken only after
8 conducting several meetings of members to discuss options. Additionally, the Town sent an
9 informational letter which was made available to all Q Mountain member-customers
10 explaining that it would charge its connection fee (\$750 per lot) in addition to a monthly fee
11 and commodity charge if Q Mountain interconnected with the Town.

12 Q Mountain's members were polled by written ballot and overwhelmingly
13 supported interconnecting with the Town. Some members, like Mr. Byrd and Mr. Homlan,
14 opposed interconnecting with the Town, preferring the Company drill replacement wells. It is
15 the concerns raised by these two Q Mountain customers that are referenced in the ROO in
16 findings of fact 8 and 9.

17 Attached hereto as Exhibit A, is the Status Report filed by Q Mountain on
18 September 17, 2009, including a copy of its Agreement with the Town.

19 **A RATE FILING SHOULD NOT BE ORDERED**

20 The ROO indicates that the recent interconnection with the Town "raises
21 concerns over the Company's deteriorating water system infrastructure and whether the
22 existing rates are sufficient to provide quality water service to its customers." ROO at 6. It
23 continues: "Of greater concern is the appropriateness and legal authority, of the Town's
24 imposition of a \$750 assessment on Q Mountain's customers." *Id.* The ROO then concludes,
25 "The above concerns, along with the length of time since Q Mountain's last rate case, are

1 sufficient reasons to grant Staff's recommendation to require Q Mountain to file a full rate
2 case by no later than May 31, 2010, using a 2009 test year." *Id.*

3 Q Mountain welcomes Commission review of the concerns raised by Mr. Byrd
4 and Mr. Homlan. The Company invites Staff to conduct an on-site review of its system and of
5 its books and records. If the Commission's legal division deems an investigation into the
6 Town's legal authority to impose a \$750 assessment on Town residents served by Q Mountain
7 appropriate, such an investigation can proceed. However, none of those actions require, as a
8 predicate, Q Mountain's filing a rate application.

9 Q Mountain suggests Staff should conduct its review first and that Q Mountain
10 be required to file a rate application *only if* the review indicates a rate filing is, in fact,
11 warranted. This will also allow the Commission Staff to conduct a review sooner because
12 they will not need to await the rate filing of Q Mountain (due by May1, 2010).

13 The biggest concern, according to the ROO, is the appropriateness and legal
14 authority of the Town to impose a \$750 assessment on Q Mountain's customers. Q
15 Mountain's customers are also residents of the Town. The \$750 fee is the same connection
16 fee charged by the Town to all of its residents when their lots are interconnected to the Town's
17 water system. They were aware when they selected interconnection with the Town that the
18 Town has a \$750 connection charge per lot and that the Town intended to collect it as a
19 condition of interconnecting to the Town's system. See, Informational Letter provided by the
20 Town attached hereto as Exhibit B. Q Mountain's member-customers still selected the
21 interconnection option.

22 There can be no question that the Town could have required Q Mountain pay a
23 connection fee as a condition of interconnecting to the system. In fact, the emergency rate
24 application was filed to ensure Q Mountain would have the means to pay such a charge by
25 collecting \$12.50 each month from its customer-members. Staff found the charge reasonable

1 and recommended Q Mountain be authorized to collect the monies from its members. These
2 funds would have then been paid to the Town. The water service of any customer failing to
3 pay the \$12.50 charged by Q Mountain would have been subject to termination. The customer
4 would have had no option but to pay the fee every month.

5 The Town ultimately agreed to assess and collect its connection fee directly
6 from its residents, eliminating the additional billing and collection issue for Q Mountain. In
7 negotiating its Agreement with the Town, Q Mountain made certain that the payment of the
8 assessment by individual Town residents who were Q Mountain customers was **not** a
9 condition of continued water service to Q Mountain or its customers. *See*, Paragraphs 5.4.1 &
10 5.4.2 of the Agreement. In contrast, if Q Mountain had assumed the obligation to pay the
11 Town's connection fee, the failure on the part of individual customers to pay the \$12.50
12 monthly assessment when due would not only have subjected their individual water service to
13 termination, but would also have jeopardized Q Mountain's ability to comply with the
14 Agreement and thereby jeopardized uninterrupted water service to all Q Mountain customers.
15 Having the Town assess and collect the fee directly from its residents completely avoids this
16 potential issue.

17 In order to protect its customers further, the Company also secured the Town's
18 commitment that the Town would not pursue collection activities (other than re-billing)
19 against Q Mountain customers who were in arrears on paying the Town assessment. *See*,
20 Paragraph 5.4.1 of the Agreement. No other Town residents are provided such an exemption
21 from collection activities. No other Town residents can fail to pay the Town assessment
22 without risking having their water service terminated.

23 In short, Q Mountain secured a long term (minimum 15 year) reliable water
24 source from the Town, at rates that will not change for five years, without assuming an
25 obligation to collect the Town's connection fee for the Town and did so (1) without subjecting

1 its water supply to termination if the connection fee was not paid by individual Town
2 residents/Q Mountain member-customers and (2) while protecting its member-customers from
3 collection actions by the Town if they, individually, did not pay the Town's assessment.¹
4 Having the Town act as its own collection agent for its connection fee (which was going to be
5 incurred in any event) is beneficial to Q Mountain and to its customers.

6 Attached hereto as Exhibit C is the listing of connection fees *paid to the Town*
7 on lots within Q Mountain's certificated area through October 2009. The names of customers
8 have been blacked out to protect their privacy, but are available to the Commission upon
9 request. None of these amounts were paid to or assessed by Q Mountain.

10 **SUGGESTED AMENDMENT TO THE ROO**

11 In order to facilitate the investigation, without the requirement of a full rate case,
12 Q Mountain asks that the ROO be amended as follows:

13 A. Delete the last sentence of finding of fact number 14 and add the following new
14 finding of fact 15:

15 15. The above concerns, along with the length of time since Q
16 Mountain's last rate case are sufficient reasons for this Commission
17 to conduct an on-site review of Q Mountain's system and operations.
18 In this regard, Staff will be directed to conduct an on-site inspection
19 of Q Mountain's facilities, books and records and operations and file
20 a report in this docket no later than May 31, 2010. Q Mountain shall
21 cooperate fully with Staff. In the event Staff recommends the filing
22 of a full rate case, Staff will assist Q Mountain in preparing a rate

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25 ¹ If after five (5) years 25 % of the Town's assessments are in arrears, Q Mountain can be requested
by the Town to file an application to collect rates that would enable it to pay the delinquent
assessments, without interest. The Commission, however, would decide whether to allow Q Mountain
to collect those amounts. *See*, Paragraph 5.4.2.1 of the Agreement.

1 application and Q Mountain shall file same no later than December
2 1, 2010 with a test year to include through at least June 30, 2010. If
3 Staff finds serious facility or service issues exist that warrant more
4 immediate action by the Commission, it shall initiate appropriate
5 action, such as an order to show cause proceeding, to address those
6 concerns.

7 B. Delete the second ordering paragraph and replace with:

8 It is further ordered that Commission Staff shall file with Docket
9 Control in this docket its report on Q Mountain before May 31, 2010.

10 C. Delete the ordering paragraph on page 8 commencing at line 5.

11 **CONCLUSION**

12 Q Mountain has proceeded in accordance with the wishes of the majority of its
13 member-customers by interconnecting with the Town's water system. It has negotiated what it
14 believes to be a very favorable long term water service agreement with the Town. In doing so,
15 it has achieved a fixed charge for water from the Town for five (5) years which it can pay with
16 existing rates and charges. It has avoided becoming the Town's collection agent for the Town's
17 connection fee, while assuring uninterrupted water service for Q Mountain customers. The
18 new arrangement went into effect September 1, 2009, so a test year ending December 31, 2009
19 would have to be adjusted in an attempt to project revenues and expenses under the Agreement.
20 Q Mountain welcomes a review by Staff of its system and books and records. However, such a
21 review does not need to be and should not be coupled with an order to file what it believes is an
22 unnecessary rate application. However, if the Staff's actual review establishes a rate application
23 is warranted, Q Mountain will proceed to make the filing by December 1, 2010 with a test year
24 ending no sooner than June 30, 2009.

1 DATED this 31st day of December, 2009.

2
3 CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

4
5
6 By: 

7 William P. Sullivan
8 501 East Thomas Road
9 Phoenix, Arizona 85012-3205
10 Attorneys for Q Mountain Mobile Home Park

11 PROOF OF AND CERTIFICATE OF MAILING

12 I hereby certify that on this 31st day of December, 2009, I caused the
13 foregoing document to be served on the Arizona Corporation Commission by delivering the
14 original and thirteen (13) copies of the above to:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

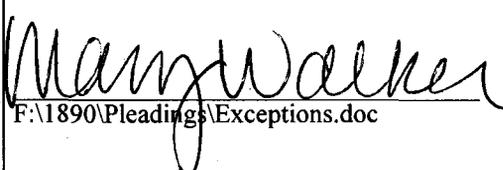
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EXHIBIT A

1 Application sought authority to include a \$12.50 per month surcharge per customer to enable Q
2 Mountain to meet its anticipated obligation to the Town. Staff filed its Staff Report on March
3 23, 2009 recommending approval of the Application. The matter was set for hearing April 3,
4 2009.

5 Our office was retained by Q Mountain on March 23, 2009. We filed a Notice of
6 Appearance and a Motion to Continue on March 27, 2009. The Motion to Continue included a
7 March 27, 2009 letter from the Town's Interim Town Manager stating:

8 "[T]he Town is also individually assessing and billing each
9 property owner connected to the Q Mountain water system (and
10 receiving the benefit of the Town's water supply) the Town's
11 normal capacity fee (currently \$750.00). The capacity fee is a
12 Town charge and is not something Q Mountain is imposing or has
13 agreed to pay.

14 It is my understanding that the property owners within the Q
15 Mountain water system have expressed support for paying the
16 Town's capacity fee . . .

17 At present, the Town is reassessing its fee schedule, policies and
18 procedures relating to the provision of water service, and is
19 holding a Public Hearing as part of that process. It is for this
20 reason no written agreement has yet been finalized with Q
21 Mountain.

22 . . . The Town commits to provide a water supply to Q Mountain.

23 The Town is aware some property owners are not paying the
24 capacity fee. However, in view of the emergency situation
25 involved, the Town agrees it will not terminate service to Q

1 Mountain based upon the payment status of the capacity fees.

2 At the time scheduled for hearing on the Application, the evidentiary portion of
3 the hearing was continued for an indefinite time at Q Mountain's request. On April 8, 2009
4 representatives of Q Mountain met with Staff to discuss the Staff Report and the pending
5 Application. At that time, Staff was advised that Q Mountain intended to propose a form of
6 water supply agreement to the Town before the end of the month. An initial draft agreement
7 was presented to the Town of Quartzsite for its review and comment and Staff was advised on
8 March 27, 2009 that a draft agreement was being circulated. We were hopeful that the Town
9 would be in a position to place it on an upcoming Council agenda in the near future.¹

10 Other pressing concerns facing the Town took precedent to finalizing the
11 agreement with Q Mountain. Q Mountain, however, has responded promptly to questions and
12 concerns raised by the Town in the interim. On August 25, 2009, the Mayor and Town
13 Council of the Town of Quartzsite considered and approved a Water Supply, Construction,
14 Operation & Maintenance Agreement with Q Mountain (the "Water Supply Agreement"). On
15 August 21, 2009 the Q Mountain Board of Directors approved the Water Supply Agreement.
16 A copy of the executed Water Supply Agreement is attached as Exhibit A hereto.

17 THE APPLICATION MUST BE DISMISSED AS MOOT

18 As noted above, this Application was filed to allow Q Mountain to meet an
19 anticipated monetary obligation to the Town of Quartzsite related to the Town's Capacity Fee.
20 By its March 27, 2009 letter, the Town eliminated the emergency by: a) acknowledging that Q
21 Mountain was not responsible for paying the Town's Capacity Fee, b) assuming the
22 responsibility for billing and collecting the Town's fee directly from the Town's residents and
23 c) agreeing not to terminate water service to Q Mountain if individual Town residents failed to
24

25

¹ We apologize for not docketing a formal status report with this information by May 1, 2009.

1 pay the Capacity Fee.

2 The Water Supply Agreement recently approved between Q Mountain and Town
3 is consistent with the Town Manager's March 27, 2009 letter. The Water Supply Agreement
4 can be summarized as setting forth:

- 5 • The respective responsibilities of Q Mountain and Town relating to
6 water service related activities within Q Mountain's certificated area
7 are set forth;
- 8 • A five year window for Town to determine whether it wants to
9 acquire and fully integrate the Q Mountain system and customers
10 within Town's water system;
- 11 • Q Mountain's cost of a water for at least five years and establishing a
12 mechanism for altering rates thereafter, subject to Town's public
13 hearing process;
- 14 • Q Mountain's continuing responsibility for maintaining the Q
15 Mountain water system and for billing and servicing Q Mountain
16 customers;
- 17 • Town's continuing responsibility for directly billing and collecting
18 Town's capacity fees from Town residents, but expressly protecting Q
19 Mountain and its customers from a) any disruption in water delivery
20 arising from individual Town residents' payment or nonpayment of
21 the Town's capacity fee and b) collection activities other than (i)
22 rebilling and (ii) after 5 years, requesting Q Mountain to seek
23 Commission approval of rates to pay delinquent and accruing
24 capacity fees (provided Town has not acquired Company's Water
25 System and more than 25% of Town's residents located within

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Company's certificated area are delinquent on Town billings for the capacity fee);

- Town's obligation to keep a schedule of the payments made by Town residents within Q Mountain's certificated area and to make it available to Q Mountain;
- A structure by which Town can provide labor and materials to Q Mountain, on a case by case basis, when both parties agree;
- A structure allowing Town's certified operator to act as Q Mountain's certified operator and perform Q Mountain's water testing, if mutually agreed upon in the future (Q Mountain has hired its own certified operator and the Town currently has no desire to assume this function);
- Q Mountain's right to receive partial reimbursement for the cost of extending Town's system, if the line extension is utilized by Town to serve other customers; and
- An initial 15 year term that will automatically renew for successive 10 year terms unless terminated as otherwise provided in the Water Supply Agreement.

Q Mountain now believes its existing rates will allow it to meet its obligations to Town under the Agreement. Certainly the surcharge requested by the pending Application is no longer necessary as the Town has agreed that: a) Q Mountain is not responsible for paying the connection fee and b) water deliveries will not be terminated in the event individual Town residents fail to timely pay the Town's connection fee. As a result the emergency confronting Q Mountain when the Application was filed no longer exists.

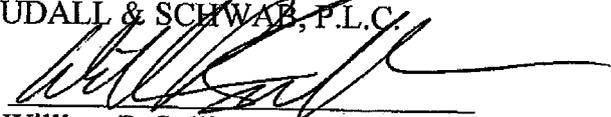
Q Mountain notes that pursuant to recommendations contained in the Staff

1 Report (Items 10 and 11), it has separately docketed both a Curtailment Plan Tariff and a Cross
2 Connection/Backflow Tariff. ADEQ's Drinking Water Compliance Status Report dated March
3 30, 2009 (Staff Recommendation Item 9) is also submitted as Exhibit B attached hereto
4 showing that the Company is in compliance with ADEQ requirements and delivering safe
5 water that meets applicable water quality requirements.

6 WHEREFORE it is respectfully requested that the pending Application for
7 Emergency Rate Relief be dismissed without prejudice as moot.

8 DATED this 17th day of September, 2009.

9 CURTIS, GOODWIN, SULLIVAN,
10 UDALL & SCHWAB, P.L.C.

11 By: 

12 William P. Sullivan
13 501 East Thomas Road
14 Phoenix, Arizona 85012-3205
15 Attorneys for Q Mountain Mobile Home
16 Park

17 PROOF OF AND CERTIFICATE OF MAILING

18 I hereby certify that on this 17th day of September, 2009, I caused the
19 foregoing document to be served on the Arizona Corporation Commission by delivering the
20 original and thirteen (13) copies of the above to:

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

25 COPY of the foregoing mailed
this 17th day of September, 2009 to:

Larry Holman
Post Office Box 1555
Payson, Arizona 85547

1 Vernon L. Byrd
2 Post Office Box 4685
3 Quartzsite, Arizona 85359

4 *Mary Walker*
5 1890 Pleadings Status Report Mtn to Dismiss

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EXHIBIT A

Water Supply, Construction, Operation
and Maintenance Agreement

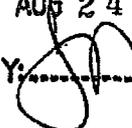
between

The Town of Quartzsite

and

Q Mountain Mobile Home Park

RECEIVED
AUG 24 2009

BY: 

Contract No.

WATER SUPPLY, CONSTRUCTION,
OPERATION AND MAINTENANCE AGREEMENT

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WATER SUPPLY, CONSTRUCTION,
OPERATION AND MAINTENANCE AGREEMENT

1. PARTIES:

The parties to this Agreement (the "Agreement") are the TOWN OF QUARTZSITE, a municipal corporation (hereinafter called "Town"), and Q MOUNTAIN MOBILE HOME PARK, an Arizona non-profit corporation (hereinafter called "Company").

2. RECITALS:

This Agreement is made with reference to the following facts, among others:

- 2.1 Company holds a certificate of convenience and necessity issued by the Arizona Corporation Commission ("Commission") to provide water service to approximately 244 lots in what is commonly referred to as Q Mountain Estates, La Paz County, Arizona;
- 2.2 Until October 2008, Company used its own wells and storage facilities to provide a water supply to customers within its certificated area through a Company owned and operated water distribution system ("Company Water System");
- 2.3 Town owns and operates a water system and provides water service to most of the Town of Quartzite pursuant to Ordinances and policies approved or authorized by the Town's Mayor and Council;
- 2.4 In order to address the emergency situation arising from water quality issues with some of Company's wells by securing an alternative water supply from Town and thereby benefiting Town residents living within Q Mountain Estates, Company, at its sole cost and with Town's consent, constructed and installed extensions of both water systems and installed a six (6) inch meter to measure water delivered to Company by Town, interconnecting the two water systems;
- 2.5 Coincident with interconnecting with the Town's water system and in order to comply with Arizona Department of Environmental Quality ("ADEQ") rules and regulations, Company completely disconnected its wells and storage facilities from Company's distribution system and is now totally dependent upon Town for its water supply, including storage;

2.6 In order to address the emergency facing Company, Town is willing to undertake the responsibility of supplying water to meet the water demand of the Company's Water System and performing limited construction, operation and maintenance on Company's water distribution system, subject to the terms and conditions set forth in this Agreement; and

2.7 The Town also intends to investigate the feasibility of acquiring and/or assuming full operational responsibility of the Company Water System and believes its experience under this Agreement will help it in making that evaluation.

3. AGREEMENT:

In consideration of the mutual promises and covenants contained herein, including the recitals that are hereby incorporated in the Agreement, the parties agree as follows:

4. EFFECTIVE DATE AND TERM:

This Agreement shall be effective as of the 1st day of September, 2009 (the "Effective Date"), shall extend for a term of fifteen (15) years and shall be automatically extended for additional periods of ten (10) years each from each expiration date, unless terminated in accordance with Section 11.

5. OBLIGATIONS OF THE PARTIES:

5.1 Under the terms and conditions set forth herein, Company shall retain primary responsibility for:

5.1.1 Maintaining and operating Company's water distribution system;

5.1.2 Billing Company customers for water service provided by Company under rates approved by the Commission;

5.1.3 Complying with all regulatory requirements applicable to Company's water distribution system, including without limitation those of the Commission and ADEQ;

5.1.4 Expanding, improving and replacing Company's water distribution system in order to maintain Company's water distribution system in a safe and proper operating condition, consistent with accepted industry practice and custom in the water utility industry in the southwestern region of the United States;

5.1.5 Employing staff or contracting with others, including Town under this Agreement, to provide for the performance of the foregoing responsibilities, including a certified operator and performing water testing as required; and

5.1.6 Timely payment of all services and costs pursuant to Section 6 hereof.

5.2 Under the terms and conditions set forth herein, including its right to bill Company therefore, Town shall be responsible for:

5.2.1 Supplying at the interconnection location (i.e., the Town-owned 6 inch meter) all water required by Company to meet the demand of Company's customers within Company's certificate of convenience and necessity, including any expansions thereof consented to in writing by Town;

5.2.2 If requested by Company, and accepted by Town in Town's discretion, registering the Town's certified operator of record as the certified operator of record for Company and taking water samples (with billing for testing billed directly to Company) and filing reports and advising Company as necessary for Company to comply with the requirements of the ADEQ, excluding water testing performed for Company under the ADEQ's Monitoring Assistance Program ("MAP");

5.2.3 If requested by Company, and accepted by Town in Town's discretion, providing labor and materials in maintaining, replacing, improving and expanding the lines and appurtenances of Company's existing water distribution system within Company's certificated area on either an actual cost basis or on a Fixed-Fee Amount basis as evidenced by the estimate to be provided in accordance with Section 5.2.4. Fixed-Fee Amount projects shall be billed to the Company pursuant to Section 6 without regard to the actual cost of the items specified in Section 6.1.3. Instead, the total Fixed-Fee Amount shall be billed to Company for such project, with no true-up to actual costs; and

5.2.4 Providing Company a detailed estimate of the cost of each job for which it contemplates charging Company under Sections 5.2.3 and securing Company's written authorization prior to commencing the work.

- 5.3 Under the terms and conditions set forth herein, and in consideration of the monthly charges payable by Company pursuant to Section 6, Town shall also be responsible for:
- 5.3.1 Maintaining, operating, constructing and reconstructing Town's water supply and distribution system up to and including the water meter at the interconnect location, including all actions a reasonably prudent water utility would take to provide reliable water service to Company and to restore water service to Company if interrupted.
- 5.4 Town shall be responsible for billing and collecting directly from Town residents residing within Company's certificate of convenience and necessity the Town's Water Capacity Fee imposed by Town on Town residents for the benefits received from the use of the Town's water system to meet the water demands of such Town residents.
- 5.4.1 Town shall not terminate service to Company or institute collection activities (beyond rebilling) against Company or Company customers in order to collect the Town's Water Capacity Fee or due to the non-payment thereof.
- 5.4.2 Except as set forth in this subsection, Company shall have no responsibility for the payment of the Town's Capacity Fee, or any similar successor Fee.
- 5.4.2.1 In the event Town has not acquired Company's Water System within five (5) years from the Effective Date of this Agreement and if at that time 25% or more of the Town's residents located within Company's certificated area are delinquent on Town billings for the Capacity Fee, then Town may request Company and the Company shall within 6 months of receiving the Town's written request file an application with the Commission for approval of rates and charges that will enable Company to pay all delinquent (without penalty or interest) and accruing Capacity Fees. Company shall not be responsible for paying the delinquent (without penalty and interest) and accruing Capacity Fees unless it receives such authorization from the Commission.

5.4.2.2 in no event shall Company be responsible for a Capacity Fee of more than \$750 per lot within Company's certificated area, less any amounts received by Town from Town residents for such lots, payable over 5 years at the rate of \$12.50 per lot commencing with the month following Company receiving authorization from the Commission to assume the obligation and collect rates and charges reflecting the obligation.

5.4.2.3 Town shall maintain a ledger by owner and lot of all Capacity Fees billed and paid by residents within Company's certificated area and shall provide a copy of the ledger to Company monthly in a format acceptable to Company.

5.5 All materials and workmanship provided by Town under this Agreement shall comply with applicable laws, regulations, and codes and be consistent with accepted industry practice and custom in the water utility industry in the southwestern region of the United States.

5.6 In the event easements or rights-of-way are required when Town agrees, ~~at~~ in its sole discretion, to extend Company's Water System, Company shall obtain and provide such easements and rights-of-way without cost or expense to Town.

5.7 Town and Company shall cooperatively utilize their respective powers and authorities to facilitate the performance of this Agreement.

6. **BILLING AND PAYMENT:**

6.1 Town shall endeavor to render bills to Company on or before the fifteenth (15th) day of each calendar month for services furnished during the preceding month. In such bills, Town may designate certain items as being estimated due to unavailability of final underlying data, in which event adjustments to the correct amounts, when correct amounts are determined, shall be included in a bill for a subsequent month. Bills shall be calculated as the sum of the following items:

6.1.1 For services provided under Section 5.2.1:

6.1.1.1 A Monthly Base Rate of:

6.1.1.1.1 For the first five (5) years of this Agreement:

\$1,436.50 per month.

6.1.1.1.2 Following the initial five (5) years of this Agreement:

Town's Monthly Base Rate for a 6 inch water meter, as established by Town pursuant to A.R.S. §9-511.01 unless the Town and Company agree in writing that a different negotiated Monthly Base Rate shall apply.

6.1.1.2 A Monthly Commodity Charge for the actual water delivered to Company as measured at the interconnection meter:

6.1.1.2.1 For the first five (5) years of this Agreement:

the first 15,000 gallons - \$1.40 per 1,000 gallons

Above 15,000 gallons - \$1.30 per 1,000 gallons

6.1.1.2.2 Following the initial five (5) years of this Agreement:

The Commodity Charge for service to 6 inch water meters as established by Town pursuant to A.R.S. §9-511.01, unless Town and Company agree in writing that a different negotiated Commodity Charge shall apply.

6.1.2 For services, if any, provided pursuant to Section 5.2.2:

6.1.2.1 A monthly fee for providing a certified operator for Company:

6.1.2.1.1 For the first five (5) years of this Agreement:

\$100

6.1.2.1.2 Following the initial five (5) years of this Agreement:

An amount determined by Town after public notice and hearing, not to exceed an increase of 10% per year following the last adjustment in the monthly rate.

6.1.2.2 The actual cost of water quality test performed or secured by Town on behalf of Company as certified operator for Company.

6.1.2.3 Any other fees or charges paid by Town on behalf of Company as certified operator for Company

6.1.3 For services, if any, provided pursuant to Section 5.2.3:

- 6.1.3.1 Cost of material to Town delivered to the place of installation, which cost shall include purchasing, stores expense, cost of delivery, and applicable loadings;
- 6.1.3.2 Labor costs, which shall include State worker's compensation, insurance, Federal and State unemployment benefits, and any other costs occasioned by State or Federal laws or regulations, and board and lodging of Town's employees, if any while on Town business, and applicable loadings;
- 6.1.3.3 Transportation and Equipment usage, which shall be charged on the same basis as Town charges for its own work, including applicable loadings; and
- 6.1.3.4 Telephone, telegrams, or other expenses made exclusively for the benefit of Company.
- 6.1.4 As used in Section 6.1.3, "Loadings" shall include those standard loadings as the Town charges for its own work, including but not limited to benefits, allowed time, engineering and supervision, administrative and general and those direct loadings referenced elsewhere in this Agreement.
- 6.2 Payment by Company shall be due and payable when rendered and shall be delinquent 25 days after the date of billing. Payment shall be mailed, or may be paid in person, to Town's main office in Quartzsite, Arizona, or at such other offices as Town may from time to time designate. In the event any such billing becomes delinquent, Town may assess a delinquent collection charge as established by Town pursuant to A.R.S. §9-511.01.
- 6.3 In the event any portion of any bill is disputed, the disputed amount shall be paid under protest when due. If the protested portion of the payment is found to be incorrect, Town shall refund to Company any overpayment, including interest at the rate of 1% compounded monthly from the date of payment by Company to the date the refund check is mailed by Town.
- 6.4 In the event Company fails to pay a delinquent bill for water under this Section 6.1, Company's water service may be disconnected after being given notice and

opportunity for hearing and a delinquent turnoff fee charged as permitted in the Town Code.

7. REIMBURSEMENT FOR OVERSIZING: Town required Company to install an oversized 680 feet of 12 inch water line, a back flow device, valves and appurtenant facilities at a cost of \$72,301.50 in order to interconnect with Town's water distribution system. In the event additional properties are connected to Town's system utilizing the 680 feet of 12 inch water line, Town agrees to reimburse Company \$53.16 for every linear foot of pipe added, up to a maximum of \$36,150.00.
8. INDEMNITY; INSURANCE:
 - 8.1 Company shall indemnify and save harmless Town, its agents, representatives, and employees, from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought or made against Town or incurred by Town on account of injuries or damages to persons (other than Town's employees) or property, which may occur related to Company's water distribution system, by reason of, or arising out of any act or omission by Company, its employees, agents, or representatives, or arising out of Workmen's Compensation Claims, Unemployment Compensation Claims, or Unemployment Disability Compensation Claims of employees of Company or out of claims under similar such laws, except where such liability arises out of the negligence of Town.
 - 8.2 Town shall indemnify and save harmless Company, its agents, representatives, and employees, from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against Company or incurred by Company on account of injuries or damages to persons or property by reason of, or arising out of, any act or omission by Town, its employees, agents or representatives, while working on Company's or Town's distribution system, or arising out of Workmen's Compensation Claims, Unemployment Compensation Claims, or Unemployment Disability Compensation Claims of employees of Town or out of claims under similar such laws, except where such liability arises out of the negligence of Company.

8.3 Each party shall provide and maintain insurance coverages, using forms and insurers reasonably acceptable to the other party for: (a) Commercial General Liability; (b) Automobile Liability (c) Workers' Compensation to statutory limits; and (d) Employer's Liability.

9. LAWS AND REGULATIONS: All work performed hereunder shall be consistent with accepted industry practice and customs in the water utility industry in the southwestern region of the United States and any applicable governmental standards. Both parties shall conduct the performance of their obligations in accordance with all applicable laws and regulations of regulatory authorities having jurisdiction over this Agreement, its subject matter, and the parties' performance of their respective obligations.

10. UNCONTROLLABLE FORCES:

Town shall prosecute the work contemplated hereunder with reasonable dispatch, but shall not be liable for delays or failure to perform under this Agreement occasioned by the inability of suppliers to furnish materials to Town, or by reason of conditions beyond Town's control, including, but not limited to, the following: acts of God, acts of federal, state, or local government, or any agency thereof, compliance with applicable laws, regulations, rules, or orders of any government authority, the enactment, application, or enforcement of any law or regulations which unreasonably restricts the ability to perform the work, strikes, disputes, or labor shortages, energy conditions, or equipment failure.

11. TERMINATION:

11.1 This Agreement may be terminated by either party by:

11.1.1 Notifying the other party in writing at least six (6) months prior to the expiration date of this Agreement or any extension thereof that the Agreement will not be extended, or

11.1.2 By giving the other party at least five (5) year's written notice of its intent to terminate the Agreement.

11.2 In the event of/or by reason of the acquisition of Company's water distribution system by Town Company shall cease to distribute water within its certificated area as a public utility, this Agreement shall cease to be of any force and effect from and after the date when Company ceases to distribute water within Town as a public utility.

11.3 Town may cancel this contract as permitted under A.R.S. § 38-511. The parties expressly acknowledge that Councilman Robert Kelley was significantly involved in initiating, negotiating, securing, drafting or creating this Agreement, and agree that in so doing he was acting on behalf of Company, as a nonsalaried officer of Company which is an Arizona nonprofit corporation and not on behalf of the Town.

12. NOTICE:

All notices provided for in this Agreement shall be mailed or delivered to:

COMPANY: President
 Q MOUNTAIN MOBILE HOME PARK
 P.O. BOX 4930
 Quartzsite, AZ 85359

TOWN: Town Clerk
 TOWN OF QUARTZSITE
 P.O. Box 2812
 465 N. Plymouth Ave.
 Quartzsite, AZ 85346

Either party may alter the person or address for notice to them by providing written notice of the change to the other party. Notice shall be deemed received upon receipt or upon the fifth (5th) business day following deposit stamped and addressed with the United States postal service or an equivalent private carrier. Faxes and facsimiles are acceptable means of providing notice.

13. ASSIGNMENT:

This Agreement shall be binding on, and shall inure for the benefit of the successors and assigns of the Parties, but no assignment shall be binding upon the non-assigning party until approved in writing by an authorized representative. Such approval shall not be unreasonably withheld.

14. GOVERNING LAW:

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Arizona.

15. EFFECT OF THIS AGREEMENT:

If any term of this Agreement directly conflicts with the terms of a Town regulation or ordinance and cannot be reconciled therewith, the terms of this Agreement shall govern.

16. AMENDMENT:

This Agreement represents the entire agreement and understanding of the parties in respect to the subject matter addressed herein. There are no other understandings other than those set forth herein. This Agreement may be amended by the parties, but no amendment shall be binding unless it is reduced to writing and signed by authorized representatives of the parties.

17. DISPUTE RESOLUTION:

Any dispute arising under this Agreement shall be resolved in the manner stated in this Section 17. The party initiating the dispute shall submit a written statement to the other party, stating in detail the basis for the dispute. Thereafter, the parties shall meet to address the matter in dispute within five (5) working days after receipt of the abovementioned written statement. Present at the meeting and throughout the dispute resolution process shall be an authorized representative of each party that can agree to settlement of the dispute without resort to higher authority. If the dispute is not resolved within thirty (30) days after the first meeting – or such extended period as to which the parties may otherwise mutually agree in writing, then either party shall be free to resort to such other means of dispute resolution as is then available to it.

[INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed to be effective as of the day and year first above written.

TOWN OF QUARTZSITE

By Wesley Huntley
Mayor

ATTEST:
Nancy P. Ross
Town Clerk

APPROVED AS TO FORM:
Robert W. [Signature]
Town Attorneys

Q MOUNTAIN MOBILE HOME PARK

By [Signature]
Vice-President

ATTEST:
Nancy B. Williams
Secretary

1890/agreements/Water Supply_O_M Agreement w Quartzsite (execution) 082109

EXHIBIT B

Arizona Department of Environmental Quality
Drinking Water Monitoring and Protection Unit
 Mail Code 5415B-2
 1110 West Washington Street
 Phoenix, AZ 85007

Drinking Water Compliance Status Report

System Name	System Type	Is system consecutive?
Q MOUNTAIN HOA	<input checked="" type="checkbox"/> Community	<input checked="" type="checkbox"/> Yes, to PWS # 15346
System ID #	<input type="checkbox"/> Non-transient Non-community	<input type="checkbox"/> No
15509	<input type="checkbox"/> Transient Non-community	

Overall compliance status	<input checked="" type="checkbox"/> No major deficiencies	<input type="checkbox"/> Major deficiencies
Monitoring and Reporting status	<input checked="" type="checkbox"/> No major deficiencies	<input type="checkbox"/> Major deficiencies
Comments: None		

Operation and Maintenance status	<input checked="" type="checkbox"/> No major deficiencies	<input type="checkbox"/> Major deficiencies
Date of last Sanitary Survey	2/17/09	Inspector Karen Berry, CRO
Major unresolved/ongoing operation and maintenance deficiencies:		
<input type="checkbox"/> unable to maintain 20psi	<input type="checkbox"/> inadequate storage	
<input type="checkbox"/> cross connection/backflow problems	<input type="checkbox"/> surface water treatment rule	
<input type="checkbox"/> treatment deficiencies	<input type="checkbox"/> ATC/AOC	
<input type="checkbox"/> certified operator	<input type="checkbox"/> other =	
Comments: None		

Is an ADEQ administrative order in effect?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Comments: None		

System Information	
Population Served	440
Service Connections	220
Number of Entry Points to the Distribution System	0 (consecutive)
Number of Sources	0 (consecutive)
Initial Monitoring Year	1995
Monitoring Assistance Program (MAP) System	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Evaluation completed by	Donna Calderon, Manager Drinking Water Monitoring and Protection Unit		
Phone	602-771-4641	Date	March 30, 2009
<input checked="" type="checkbox"/>	Based upon data submitted by the water system, ADEQ has determined that this system is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4, and PWS is in compliance.		
<input type="checkbox"/>	Based upon the monitoring and reporting deficiencies noted above, ADEQ cannot determine if this system is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4, and/or PWS is not in compliance.		
<input type="checkbox"/>	Based upon the operation and maintenance deficiencies noted above, ADEQ cannot determine if this system is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4, and/or PWS is not in compliance.		

This compliance status report does not guarantee the water quality for this system in the future, and does not reflect the status of any other water system owned by this utility company.

EXHIBIT B



TOWN OF QUARTZSITE

465 North Plymouth Avenue • PO Box 2812 • Quartzsite, AZ 85346

(928) 927-4333 • Fax (928) 927-4400

Arizona Relay Service (928) 927-3762 (TDD)

we are an equal opportunity employer

www.ci.quartzsite.az.us

Q Mountain Estates
PO Box 4930
Quartzsite AZ 85359

January 25, 2008

RE: Connecting to Town of Quartzsite Water System

To Whom it Concerns:

This is an informational letter and all information is subject to change.

Q Mountain Estates has approached the Town of Quartzsite regarding the costs of connecting to Town Water. There are many variables in determining costs; this letter will go over individual costs of connection. Since the Town of Quartzsite will not be responsible for the lines within the subdivision, we cannot determine those costs.

There are two (2) scenarios involved:

1. ***IF*** there is an easement granted from Vernon Byrd, the Town of Quartzsite will take the main water line to Kuehn St at the easement. Q Mountain Estates will be responsible to take the line down the easement to Covey Lane.
2. If the easement is ***NOT*** granted from Vernon Byrd, the Town of Quartzsite will take the main water line to the corners of Kuehn St and Covey Lane.

The main water line is a 12" line. ***IF*** the main line is reduced down it will not be reduced down to *anything smaller than an 8" line*. The Q Mountain Estates will be responsible for the cost of the meter and backflow to be placed according to either #1 or 2 above. The meter and backflow will be commercial size of either 12", 10", or 8" depending on whether or not it is determined feasible to reduce the main water line.

At the time of connection, the appropriate fees will then be due. Since Q Mountain Estates is a subdivision there will be a capacity fee of \$750, per lot,

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which can be made in payments of \$12.50 per month for 60 months. There will also be a monthly fee per lot. The monthly fee covers many things. Since Q Mountain Estates will be handling their own meter reading and maintenance, we will determine our normal meter reading and meter maintenance fees and back those out of the normal charge of \$16 per month.

There is a copy of the Town Code for the Water, as well as the fees, included with this letter.

If there are any further questions or comments, please do not hesitate to call.

Sincerely,



Kimberly Bryant
Town of Quartzsite
Utility Department

EXHIBIT C

