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1 BEFORE THE ARIZONA CORPORATI

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3 IN THE MATTER OF THE FORMAL)
4 COMPLAINT OF SPARTAN HOMES)
5 AND CONSTRUCTION, INC.,)

DOCKET NO.
WS-03478A-08-0256

6 COMPLAINANT,)
7 vs.)

8 FAR WEST WATER AND SEWER, INC.,)
9

EVIDENTIARY
HEARING

10

11 At: Tucson, Arizona

12 Date: January 7, 2010

13 Filed: JAN 21 2010

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25

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 222 of
4 said Commission, 400 West Congress Street, Tucson,
5 Arizona, commencing at 9:00 a.m., on the 7th day, of
6 January, 2010.

7

8 BEFORE: BELINDA A. MARTIN, Administrative Law Judge

9

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1 ALJ MARTIN: Let's go ahead and go on the record.

2 This is the continuation of the hearing in the
3 matter of the formal complaint of Spartan Homes &
4 Construction, Inc., complainant, versus Far West Water &
5 Sewer, respondent, Docket No. WS-03478A-08-0256.

6 And I believe we left off last evening with
7 Mr. Crockett doing his cross-examination of Mr. Capestro.

8

9 FURTHER CROSS-EXAMINATION

10

11 Q. (BY MR. CROCKETT) Good morning, Mr. Capestro.

12 A. Good morning.

13 Q. I thought we would start off today talking about
14 water and sewer main extension agreements.

15 I have handed you two exhibits. One is marked
16 Exhibit A-58. It's a table that is entitled "Water Main
17 Extension Agreements 2004 to 2006, Far West Water & Sewer,
18 Inc." And the second is marked as Exhibit A-59, and the
19 title of that table is "Sewer Main Extension Agreements,
20 2004 to 2006, Far West Water & Sewer, Inc."

21 You would not have seen these before because I
22 prepared these based on information that we received from
23 Far West Water in response to a data request.

24 And while we are talking about data requests, I
25 would like to have you get in front of you the binder that

1 is marked as Exhibit A-45. This is the responses of Far
2 West Water & Sewer to Spartan Homes' first set of data
3 requests dated October 21st of 2008.

4 Would you just take a quick minute and look at
5 that binder to see if it looks familiar to you,
6 Mr. Capestro.

7 MR. CROCKETT: Your Honor, have I given you a
8 copy of the binder mark as A-45?

9 ALJ MARTIN: Yes.

10 MR. CROCKETT: Thank you.

11 Q. (BY MR. CROCKETT) Mr. Capestro, does that look
12 familiar to you?

13 A. Yes, it does.

14 Q. Do you remember working on preparing the
15 responses to those data requests?

16 A. I remember having people respond for me.

17 Q. Okay. If you would, at the beginning where the
18 questions are produced or reproduced, would you turn to
19 page No. 8 and specifically look at subpart 0 to question
20 1.5.

21 Do you have that?

22 A. Yes.

23 Q. Would you read the question?

24 A. "Please provide a copy of all main extension
25 agreements for water service signed by Far West Water &

1 Sewer during the years 2004, 2005, 2006."

2 Q. And according to your response you have attached
3 those as Exhibit H.

4 Would you turn to tab H in that binder, and you
5 will see on the first sheet is a listing of contents?

6 A. Yes.

7 Q. Is that the total of water main extension
8 agreements that were executed by Far West Water & Sewer
9 during the years 2004 through 2006?

10 A. To the best of my knowledge. The Staff was the
11 one that prepared it.

12 Q. Do you have any reason -- do you have any
13 information that this is a complete list of water main
14 extension agreements signed during that period of time?

15 A. No.

16 Q. Do you recall receiving a third set of data
17 requests in December -- it may have been November --
18 November or December in 2005 where I asked if there were
19 any updates to your prior answer to see data requests?

20 A. Yes.

21 Q. And do you recall that you did not provide
22 anything in the way of updates to these data responses?

23 A. I believe so.

24 Q. You believe you recall -- I guess the point is,
25 as you sit here today, you believe this is a complete

1 listing of the water main extension agreements executed
2 during 2004, 2005, and 2006?

3 A. Without going over the file myself, I have no
4 belief that there is anything else during that period of
5 time.

6 Q. Did you direct one of your employees to go over
7 the files to produce all copies of water main extension
8 agreements that were signed during that period of time?

9 A. No. I told them to go through and have -- and
10 find all that had been approved during that period of
11 time.

12 Q. The question says, please provide a copy of all
13 main extension agreements for water service signed by Far
14 West during those years.

15 A. Maybe I misunderstood.

16 Q. Then is it your testimony that you have signed
17 main extension agreements that were not approved by the
18 Commission for this period of time?

19 A. I don't really know. I don't believe so.

20 Q. There could be?

21 A. There could be right on the border between 2006
22 and 2007, but I'm not sure.

23 Q. So what have you provided to me is a list of
24 the -- or you provided copies of main extension agreements
25 that were approved by the Commission during this period of

1 time?

2 A. That's correct.

3 Q. But you don't know whether this is all the main
4 extension agreements for water service that were signed
5 during that period of time?

6 A. As I said, there could have been one at the very
7 end of 2006, early 2007.

8 Q. Okay. And if it was signed in 2007, that would
9 not be responsive to my question; correct?

10 A. That's correct.

11 Q. Would you be willing to revisit your files and
12 see if there are any additional water main extension
13 agreements that were signed during 2004, 2005, 2006 that
14 were not provided in response to this data request?

15 A. Yes, I will revisit files.

16 MR. CROCKETT: And, Your Honor, I don't know if
17 it would be appropriate, but could I request as a late
18 filing that Mr. Capestro indicate whether there are, in
19 fact, any additional water main extension agreements that
20 are responsive to the data request?

21 ALJ MARTIN: If I forget to mention it at the
22 end, remind me.

23 MR. CROCKETT: Okay. Thank you, Your Honor.

24 ALJ MARTIN: Okay. I'm not making any promises
25 about my memory at this point in the day.

1 MR. BLACK: Your Honor.

2 ALJ MARTIN: Mr. Black, if those are found,
3 Mr. Crockett, would you prepare the -- I assume you want
4 copies as well?

5 MR. CROCKETT: Correct.

6 MR. BLACK: Can we provide a list and file the
7 list with docket control without having to file copies of
8 every one and provide them to you in response, or would
9 you rather that we send in copies of all of them in docket
10 control?

11 MR. CROCKETT: Well, my assumption at this point
12 is that there is not going to be a lot of water main
13 extension agreements that were signed but not approved by
14 the Commission. So I ask that the actual main extension
15 agreements be docketed.

16 MR. BLACK: Okay. Thank you.

17 Q. (BY MR. CROCKETT) Mr. Capestro, now back to
18 page 8 of the questions. I would like you to look at
19 subpart E.

20 Would you read that question?

21 A. Which subpart?

22 Q. Subpart P.

23 A. "Please provide a copy of all collection main
24 extensions for sewer service signed by Far West Water
25 during the years 2004, 2005, 2006."

1 Q. Okay. And you provided copies of agreements as
2 tab I to your response; is that correct?

3 A. Yes.

4 Q. And I think we have established that sewer main
5 extension agreements don't get submitted to the Commission
6 for approval; is that correct?

7 A. That's correct.

8 Q. And so can I assume that this is a list of all
9 sewer main extension agreements that were signed by Far
10 West Water & Sewer during the years 2004 through 2006?

11 A. Once again I would have to take a look to see if
12 there is one in the end of 2006 and 2007. There would
13 have been a water and sewer together, so the same thing, I
14 will have to double-check the record.

15 Q. And again, if it was signed in 2007, it would not
16 be responsive to the question?

17 A. Absolutely.

18 MR. CROCKETT: But I would ask, Your Honor, the
19 same thing, if Mr. Capestro finds that there are
20 additional sewer main extension agreements, that those
21 also be docketed as a late filing in this case.

22 Q. (BY MR. CROCKETT) Is that okay with you,
23 Mr. Capestro?

24 A. That's fine.

25 Q. All right. So let's start with the water main

1 extension agreements, which are tab H of your exhibit of
2 your responses.

3 A. Yes, sir.

4 Q. And turn if you would to the first main extension
5 agreement.

6 MR. CROCKETT: And for Exhibits H and I, Your
7 Honor, I have added Bates numbers at the bottom of the
8 page so we can follow those. I probably should have done
9 it for the entire exhibit, but since we were using these,
10 I only did these.

11 Q. (BY MR. CROCKETT) Mr. Capestro, this first main
12 extension agreement is for Estrella at Mesa Del Sol Unit
13 I; is that correct?

14 A. Am I looking at the wrong one?

15 Q. We are in tab H.

16 A. I was in tab H.

17 MR. BLACK: Looking at two, I must have missed
18 one.

19 Yes, it was.

20 Q. (BY MR. CROCKETT) And what is the date of this
21 agreement?

22 A. 31st day of January, 2005.

23 Q. I'm sorry. Say that again.

24 A. 31st day of January, 2005.

25 Q. Okay. Now, in section 1 of this agreement, does

1 this indicate an estimated start date and estimate
2 completion date?

3 A. Yes, it does.

4 Q. And the start date is July 2003 and completion
5 date is December 2003?

6 A. That's correct.

7 Q. So is it fair to say that this main extension
8 agreement for water was prepared and signed well after the
9 water infrastructure was constructed?

10 A. It appears so.

11 Q. Do you know whether or not Far West assessed or
12 required the payment of any capacity fees in connection
13 with this main extension agreements?

14 A. I have no records of Far West requiring capacity
15 fees for water in this time period.

16 Q. And what time period -- can you tell me -- this
17 might shortcut some questions today.

18 Does Far West impose a capacity fee for water
19 today?

20 A. Today Far West as part of its agreements with the
21 developers is asking for a -- their share of the capacity.

22 Q. And is that a set capacity fee or does it vary
23 depending on the development?

24 A. It varies depending upon the estimated water use
25 as shown by the engineer for that company or that

1 developer.

2 Q. So it's not calculated on a per-lot basis?

3 A. There are some lots that are mostly RVs and
4 modular homes.

5 If you were having larger homes, you would
6 probably use more water.

7 Q. And the fee might be higher for those?

8 A. That's correct.

9 Q. Is this a fee that is approved under a
10 Commission -- is this a fee that's approved by the
11 Commission as part of your tariff?

12 A. It has to be approved with the agreement as it is
13 set by the ACC.

14 Q. So if you have a capacity fee associated with
15 water service, it would now be included in the water main
16 extension agreement?

17 A. That's correct.

18 Q. And I have read this water main extension
19 agreement, and, in fact, I have read all the 12 water main
20 extension agreements that were responsive to this
21 question, and I don't see a capacity fee referenced in any
22 of them.

23 A. No. The agreements after -- there was no
24 capacity fees in any of those.

25 Q. And when did you begin requiring a capacity fee

1 for water service?

2 A. After May of 2006.

3 Q. Okay.

4 A. As we got estimates from our engineers to what it
5 would require to improve the plant.

6 Q. So when Mr. Householder was working with Far West
7 Water & Sewer for water and sewer service in 2004 and
8 2005, you -- at that period of time you were not requiring
9 a water capacity fee of developers?

10 A. That's correct.

11 Q. So with regard to the remaining 51 lots in the
12 Sierra Ridge subdivision, are you -- is it your position
13 today that the company should -- that Spartan should be
14 subject to a water capacity fee?

15 A. I think that is a legal question that I would
16 refer to my counsel.

17 Q. Well, aren't you a lawyer?

18 A. I am, but I'm not a utility's attorney.

19 Q. Okay. What would be -- what about that makes it
20 a legal question in your mind?

21 A. It's a question as to whether or not legally new
22 homes that are being hooked up in the future should have a
23 capacity fee attached to them, not to the consumer, but to
24 the developer. And I'm not sure whether or not there is
25 supposed to be capacity fees bearing part of their share

1 of the financing or how it's supposed to be termed. And I
2 don't know.

3 Q. Okay. Assume with me that Mr. Householder --
4 assume for me that we had a signed water main extension
5 agreement for Sierra Ridge Unit 1 from January 2005.

6 A. Yes.

7 Q. That agreement would not have required the
8 payment of a water capacity fee by Spartan; is that
9 correct?

10 A. That is correct at that time.

11 Q. And so is it your position there is a legal
12 question regarding the fact that we are now in 2010 and
13 these lots don't have homes and once someone wants to put
14 a home on them, you believe there is a legal question
15 about whether or not a water capacity fee would be
16 charged?

17 A. I don't know the answer to that. I know that had
18 there been a signed agreement without a capacity fee, it
19 would be my belief that we would be bound by that
20 contract.

21 Q. Okay. And you have testified, though, that if
22 there was a signed agreement, it would certainly not have
23 contained a water capacity fee; correct?

24 A. At that time, no.

25 Q. And do you disagree with -- well, you have heard

1 Mr. Householder testify that but for the fact that he
2 could not obtain additional connections to the Palm
3 Shadows sewer treatment facility, he would have finished
4 building out the lots in Sierra Ridge Unit 1?

5 A. He never asked for water alone.

6 Q. Had he, in fact, asked for water service for
7 Sierra Ridge Unit 1, you would have provided that?

8 A. Yes.

9 Q. Without requiring a capacity fee?

10 A. Yes, but the moratorium was only against sewer
11 connections, not water.

12 Q. Okay.

13 ALJ MARTIN: Mr. Crockett, are you about to move
14 on from capacity fees?

15 MR. CROCKETT: Well --

16 ALJ MARTIN: I ask because I have a question that
17 I would like to ask.

18 MR. CROCKETT: By all means, Your Honor.

19 ALJ MARTIN: Mr. Capestro, it was your testimony
20 that for main extension agreements beginning in about May
21 of 2006, they contained -- those agreements from that
22 point on contained capacity fees.

23 Was that your testimony?

24 THE WITNESS: The few agreements that we had,
25 yes.

1 ALJ MARTIN: Okay. And those fees were in Far
2 West tariff at that time?

3 THE WITNESS: No. They are not part of the
4 tariff. It's not shown as a capacity fee. It's shown as
5 a fee to the developer to be approved by the ACC in the
6 water agreements.

7 ALJ MARTIN: All right. I'm sorry. I was
8 confused. Mr. Crockett was asking about something in the
9 tariff.

10 THE WITNESS: No, we were not charging them
11 capacity fees. Far West charges the consumers exactly
12 what is in the tariff.

13 ALJ MARTIN: Okay. I'm sorry. I was confused by
14 that.

15 MR. CROCKETT: I appreciate that, Your Honor.
16 That may illuminate something I didn't clarify a little
17 bit.

18 Q. (BY MR. CROCKETT) Mr. Capestro, Far West Water &
19 Sewer does not today have an approved capacity fee for
20 water or sewer in its tariff on file with the Commission;
21 is that correct?

22 A. As part of its tariff it has hook-up fees and the
23 cost of hooking up at cost. It does not have a capacity
24 fee in the tariff itself.

25 Q. But those are like the service line connection

1 fee and meter fee for water service?

2 A. That's correct.

3 Q. That is not an off-site facility fee or capacity
4 fee; correct?

5 A. That's correct.

6 Q. And Far West Water & Sewer company did not have a
7 Commission-approved capacity fee for water or sewer
8 service in its tariff in 2004 or 2005 either, did it?

9 A. That is correct.

10 Q. So it is your testimony that if the company is
11 going to require a capacity fee for water or for sewer,
12 that would need to be included in the main extension
13 agreement; is that correct?

14 A. Absent a tariff that goes directly to the
15 consumer, yes, it would have to be part of the main
16 extension agreements.

17 Q. And we have established, have we not, that we do
18 have an absence of a tariffed capacity fee for water or
19 sewer service; correct?

20 A. That is correct.

21 ALJ MARTIN: Thank you.

22 Q. (BY MR. CROCKETT) All right. And with regard to
23 the water main extension agreements, those are submitted
24 to and approved by the Utilities Division Staff; correct?

25 A. That is correct.

1 Q. So the Utilities Division Staff would be looking
2 at the capacity fee for water service to the extent there
3 is one included in the water main extension agreement?

4 A. That is correct.

5 Q. Do all main extension agreements that are
6 submitted now to the Commission include a capacity fee for
7 water service or are there some that do not?

8 A. No, they are all the same.

9 Q. Now, in section 2 -- we are still on the first
10 main extension agreement -- in section 2 it identifies the
11 refundable advance in aid of construction; is that
12 correct?

13 A. Correct.

14 Q. And for this particular agreement it identifies
15 an amount of \$183,100; correct?

16 A. Correct.

17 Q. That does not include any capacity fee; is that
18 correct?

19 A. That is correct.

20 Q. That is purely the cost of what I would describe
21 as on-site water distribution infrastructure?

22 A. Correct.

23 Q. Now, I believe I may have distributed this
24 yesterday. This is a copy -- did I give you the wrong
25 copy?

1 A. There is no exhibit number on it.

2 Q. I'm not intending it as an exhibit. These are
3 copies of Commission rule.

4 Did I hand you the 400 series rules or 600
5 series?

6 A. You handed me R14-2-401.

7 Q. Okay. That is the right rules. I just for some
8 reason didn't keep a copy myself, but that is okay.

9 ALJ MARTIN: Mr. Crockett, I had already made my
10 own copy of it. Do you need --

11 MR. CROCKETT: Thank you, Your Honor.

12 Q. (BY MR. CROCKETT) I think I probably handed
13 these out yesterday and gave away my copies.

14 But Mr. Capestro, would you turn to Rule
15 14-2-406, main extension agreements?

16 A. Yes.

17 Q. And specifically I would like to look at
18 subsection C, which is minimum written requirements?

19 A. Yes.

20 Q. And No. 1 says: "Each main extension agreement
21 shall include the following information."

22 And I'm looking at subsection E, which says, an
23 itemized cost estimate to include materials, labor, and
24 other costs as necessary.

25 Do you see that?

1 A. I see that.

2 Q. Would you agree with me that a main extension
3 agreement does not need to contain actual costs of
4 construction?

5 A. That is not my understanding.

6 Q. What is your understanding?

7 A. My understanding is the same as what I understood
8 the testimony to be yesterday.

9 If the main extension agreement itself is signed
10 before construction, it's an estimate, and it's also my
11 understanding that that is followed up by the actual cost.
12 If it is done after construction is completed, it has to
13 be the actual cost.

14 Q. And you heard Ms. Wallace testify yesterday?

15 A. Yes, I did.

16 Q. And do you recall her testifying that the main
17 extension agreement, if the utility company is following
18 the Commission's rules, should never be signed after the
19 construction is completed?

20 A. She said it's done both ways, but they prefer to
21 have it before.

22 Q. Well, I'm not sure that is correctly
23 characterizing her testimony. I believe she testified
24 that to do a main extension agreement after construction
25 of the infrastructure would be a violation of the

1 Commission's rules.

2 I understand that it's done both ways?

3 A. Yep.

4 Q. But what I'm saying is that if you are following
5 the Commission's rules, should not a main extension
6 agreement be signed before construction of the
7 infrastructure?

8 A. You will have to show me the paragraph in the
9 rule that says that.

10 Q. Do you recall her testimony to that effect?

11 A. I remember her saying that that was the position
12 that they took.

13 Q. Okay.

14 A. And I'm not that familiar with utility rules.

15 Q. Is it your position, Mr. Capestro, that water
16 main extension agreements may be completed after
17 construction of the water infrastructure that is covered
18 in that main extension agreement?

19 A. It was my understanding that most of these
20 agreements were where they put in the infrastructure
21 itself and therefore it had to be before the
22 infrastructure was being put in. Because you had to have
23 a signed agreement before you started construction as a
24 utility, like APS does and other utilities do, so that
25 there was a binding contract approved by the ACC. And the

1 reason for that is to make sure that you are not charging
2 the developer too much.

3 I heard her testimony yesterday that it's
4 slightly different from what my understanding was as to
5 when it has to be done. I thought there was probably a
6 difference when the developer puts in the infrastructure.

7 Q. Mr. Capestro, I handed you a copy of Rule
8 R-14-2-606, collection main extension agreements. This is
9 under the sewer provisions.

10 A. Yes.

11 Q. And specifically look at subsection A5, and would
12 you read that for me?

13 A. "All collection main agreements requiring payment
14 by the applicant shall be in writing and signed by each
15 party before the utility commences construction."

16 Q. Okay. So under -- pursuant to this provision
17 with regard to sewer main extension agreements, would you
18 agree with me that there is a rule that provides that a
19 sewer main extension agreement should be signed before
20 commencement of construction?

21 A. No. It goes along with exactly what I said. It
22 says before the utility commences construction. This is a
23 situation where you have to have an agreement if the
24 utility is putting in the water or the sewer, and it has
25 to be signed before.

1 Q. Okay.

2 A. And I think that is exactly what it says. It
3 says, "All collection main extension agreements requiring
4 payment by the applicant shall be in writing and signed by
5 each party before the utility commences construction."
6 And that was my understanding.

7 Q. And did you also -- did you hear Ms. Wallace
8 yesterday testify that the Commission Staff views the
9 provision of -- or providing completed infrastructure to
10 be the same as providing cash to the utility to pay for
11 the construction of the infrastructure?

12 A. I heard her say something to that effect. I'm
13 not sure of the words, but it was similar to that.

14 Q. But you would disagree with that?

15 A. It was not my understanding until I heard her say
16 that.

17 Q. Okay. Now, so that I understand your position,
18 if the utility company is going to be constructing the
19 on-site infrastructure, then there needs to be a signed
20 main extension agreement before the utility constructs
21 on-site infrastructure?

22 A. Absolutely, so that it is shown that the amount
23 that the utility is charging for that is fair.

24 Q. Okay. But if -- but do you do any of your
25 construction that way or do the developers all construct

1 the on-site?

2 A. Starting January 1, 2010 the company will be
3 doing it --

4 Q. Okay.

5 A. -- all.

6 Q. But prior -- up to almost this point in time, it
7 has been the developer who has constructed the on-site
8 water distribution and on-site sewer collection; correct?

9 A. That is correct.

10 Q. And in those instances it is your position that a
11 main extension agreement does not need to be signed before
12 the developer constructs that infrastructure?

13 A. Until I heard the testimony yesterday, I thought
14 our position was correct.

15 Q. Did that testimony yesterday cause you to
16 question whether your position is correct?

17 A. It questioned -- I had a question because of
18 Staff's position is different from the position I
19 understood it.

20 Q. Would you defer to the Staff position?

21 A. I don't know if I am incorrect, because once
22 again the utility has to put on its books how much it
23 costs to be reimbursing the developer. And that has to be
24 a reasonable cost also that the company is taking a look
25 at. We want to make sure that what is in the estimate is

1 actually put in the ground.

2 Q Okay. I understand that. We will get back to
3 that point in a little bit today.

4 Now, back to section 2 of this water main
5 extension agreement, subsection A identifies materials; is
6 that correct?

7 A That is correct. And I don't know if that is
8 material before or after construction. It doesn't say.

9 Q Well, presumably since this main extension
10 agreement was executed after construction was completed,
11 that presumably is what was constructed?

12 A That is my belief because the next section is
13 labor; see attached cost sheet. So apparently there was
14 an itemization.

15 Q Is there an attached cost sheet to this document?

16 A I see a two-page document. Apparently the middle
17 page is gone, and I don't see any attachments.

18 Q Do you know whether or not you attached a cost
19 sheet regarding labor?

20 A When it was delivered to you, I don't know. I do
21 know that we would have needed a cost sheet to be able to
22 enter it into our books as AIAC.

23 Q Would you accept my word that none of these main
24 extension agreements that you provided to me have a cost
25 sheet attached with labor?

1 A. Can I blame my counsel when he transmitted them
2 on? I don't know.

3 Q. Do you have a labor cost sheet for each of these
4 main extension agreements?

5 A. I really don't know. I would assume so because
6 you would have to do that for your entering it as AIAC.

7 Q. Would you be willing to provide complete copies
8 of these main extension agreements to me as a late filing
9 in this case?

10 A. I have no problem with that as long as somebody
11 gives me a list.

12 Q. Okay. Turning to page 2 of this main extension
13 agreement.

14 A. Yes.

15 Q. Actually, you know, I assume this is page 2 of
16 the copy you gave to me, but it appears that there is a
17 middle part of this main extension agreement that is
18 missing.

19 Would you agree with me?

20 A. Correct. And since it was approved by the
21 Commission, there has to be another page. And there also
22 has to be a cost sheet for them to have approved it.

23 Q. And do you know whether you have a complete copy
24 of this main extension agreement in your file?

25 A. I don't have a clue. I would have to go back to

1 the administrator.

2 Q. Is it possible that you do not have a complete
3 copy of this main extension agreement in your file?

4 A. It's possible, but not probable.

5 Q. Who signed this agreement on behalf of Far West
6 Water & Sewer?

7 A. Mr. Kaveney.

8 Q. And he signed this agreement on January 31, 2005?

9 A. The date on the first sheet is that. It was
10 approved on February 8th, so I would assume so.

11 Q. On January 31, 2005 was Mr. Kaveney authorized to
12 sign this agreement on behalf of Far West Water & Sewer?

13 A. Yes.

14 Q. And this shows that the Commission approved this
15 agreement, as you indicated, on February 8th, 2005?

16 A. Yes.

17 Q. Let's turn to the next main extension agreement;
18 the Bates number at the bottom is page 6.

19 A. Yes, sir.

20 Q. What is the date of this main extension
21 agreement?

22 A. January 31, 2005.

23 Q. And when -- and this is for Estrella at Mesa Del
24 Sol Unit 2?

25 A. Correct.

1 Q. And the estimated start date of construction is
2 August of 2004?

3 A. Correct.

4 Q. With an estimate completion date of January of
5 2005?

6 A. That is what it says.

7 Q. So would you agree with me that under this main
8 extension agreement that the water infrastructure
9 described here was installed prior to the execution of
10 this main extension agreement?

11 A. That is correct.

12 Q. Now, this agreement appears to have the missing
13 page, which is page -- Bates No. 7 at the bottom.

14 A. Yes.

15 Q. Would you agree?

16 A. Yes.

17 Q. So it appears that your main extension agreement
18 at that point in time was a three-page document for water?

19 A. From reviewing the documents, each of them seem
20 to be three pages.

21 Q. And again, is there a copy of a labor sheet -- a
22 labor cost sheet attached to this document?

23 A. For each of these documents, I will agree to go
24 through our records and look for cost sheets.

25 Q. Okay. Turn, if you would, to the third main

1 extension agreement.

2 MR. CROCKETT: And we are not going to go through
3 every one of these, Your Honor.

4 ALJ MARTIN: You anticipated my question. Thank
5 you, Mr. Crockett.

6 Q. (BY MR. CROCKETT) What is the date of this
7 agreement?

8 A. For the record, Counsel, I believe that you --
9 I'm sorry. Let me go ahead.

10 June 30, 2004.

11 Q. And who is this agreement between?

12 A. H & S Developers and Far West.

13 Q. Okay. And this is for Foothills Mobile Estates
14 No. 30?

15 A. Correct.

16 Q. And again, this agreement has an estimate start
17 date of July of 2002 and completion date of November 2003?

18 A. That is correct.

19 Q. So again, this agreement was executed in advance
20 of -- or I'm sorry -- was executed after the
21 infrastructure was constructed?

22 A. That is correct.

23 Q. Turn to page -- the third page of this agreement.

24 A. Yes.

25 Q. Who signed this agreement on behalf of Far West

1 Water & Sewer?

2 A. Mr. Kaveney.

3 Q. And who signed this agreement on behalf of H & S
4 Developers?

5 A. Dusty Thomas.

6 Q. And was he signing as director of operations for
7 H & S Developers?

8 A. That is his signature, yes.

9 Q. He could also have signed this agreement as
10 director of operations for Far West Water & Sewer?

11 A. I assume so.

12 Q. And so I asked the question yesterday -- I mean,
13 in this main extension agreement who would have
14 negotiated -- would Mr. Thomas had sat down with
15 Mr. Kaveney to draft this agreement, or how would that
16 have worked?

17 A. I don't know.

18 Q. Mr. Capestro, if you would turn to Exhibit A-58.
19 Do you have that? That is the single sheet that I handed
20 you.

21 A. I'm sorry.

22 Q. Do you have that?

23 A. Yes, I do.

24 Q. This -- what I have done is I have taken these
25 11 -- I believe I said 12 main extension agreements

1 earlier; it's actually 11 water main extension
2 agreements -- and I have put them on this table. I have
3 indicated the date of the agreement and the date it was
4 approved by the Corporation Commission, the estimated
5 start date and the estimated completion date.

6 The items 3 and 5 were the only two agreements
7 that I saw in there that had a date on the agreement that
8 was other than January 25th or January 31, 2005.

9 Would you accept my avow that this information is
10 accurate on this chart?

11 A. Yes, I would.

12 Q. Okay. And if you would scan down the completion
13 date, is there any -- is there any main extension
14 agreement executed in the years 2004, 2005, or 2006 that
15 was prepared before the water infrastructure covered under
16 that agreement was constructed?

17 A. Not according to this chart.

18 Q. Now I'm going to ask you to go back to the data
19 request, and we are going -- and look at the listing of
20 contents of Exhibit H.

21 Do you see that?

22 A. Yes.

23 Q. Keep your finger there and then go to tab I,
24 listing of contents.

25 A. Yes.

1 Q. And you would see that there are many more sewer
2 main extension agreements that were signed during this
3 period of time than water main extension agreements.

4 Would you agree?

5 A. Yes.

6 Q. Now, looking at the listing of contents under H,
7 Roman numerals III and IV are water main extension
8 agreements for Foothills Mobile Estates No. 30 and
9 Foothills Mobile Estates No. 31, also known as the Ravine.

10 Do you see that?

11 A. Yes.

12 Q. Now, if you look at the tab I listing of
13 contents, you see Foothills Mobile Estates No. 25, No. 26,
14 No. 27, No. 28, No. 29.

15 Why don't I see corresponding water main
16 extension agreements for those phases?

17 A. Because those corresponding water agreements
18 would have been executed prior to the dates that you
19 requested.

20 Q. Okay. And your testimony, I believe, was for
21 whatever reason the folks that were running -- that were
22 operating the utility did not believe that you needed to
23 have sewer main extension agreements signed?

24 A. That was my understanding.

25 Q. And that was your understanding based upon what

1 facts?

2 A. Mr. Kaveney had stated he didn't believe they
3 were necessary, and we contacted counsel and sure enough
4 they were necessary so we put them together.

5 Q. Mr. Capestro, would you look at Exhibit A-59.
6 This is my table summarizing the sewer main extension
7 agreements that were provided.

8 A. Yes.

9 Q. Looking down the estimated start date for
10 construction of these, would you agree with me that there
11 are various agreements that -- for example, Domino's Pizza
12 July 1999; No. 4, Foothills Mobile Estates No. 25, October
13 1998 with a completion date of January 1999.

14 Mr. Kaveney joined the company in September of
15 2003; correct?

16 A. Yes.

17 Q. So Mr. Kaveney would not have been around in the
18 later part of the '90s when a number of these main
19 extension agreements would have ordinarily been executed;
20 is that right?

21 A. That's correct.

22 Q. So you testified just now that Mr. Kaveney was
23 under the mistaken belief that he did not need to get
24 sewer main extension agreements signed or did not need to
25 enter into agreements; is that right?

1 A. That's correct.

2 Q. But he wasn't around in those earlier years.

3 So did someone prior to him have the same
4 mistaken belief?

5 A. That is my assumption. I think it was a
6 carryover.

7 Q. And who would have had that mistaken assumption
8 prior to Mr. Kaveney?

9 A. Well, 1999 with the start date there would have
10 been Mr. Weidman. Then after Mr. Weidman it would have
11 been Mr. Thomas.

12 Q. So would you agree with me that Mr. Weidman,
13 Mr. Thomas, and Mr. Kaveney may have all been laboring
14 under the same misunderstanding, that they did not need to
15 enter into sewer main extension agreements?

16 A. That is my assumption. I never asked past
17 Mr. Kaveney when we found there was various places that
18 did not have the sewer extension agreements.

19 Q. Okay. But I guess my -- to cut to the chase, my
20 question is, is Mr. Kaveney solely responsible for this
21 error?

22 A. No. No. I'm not putting the burden on his
23 shoulders. You asked why they weren't done, and there was
24 a mistake in belief.

25 Q. Okay. And do you remember what triggered the

1 inquiry to your counsel about whether these needed to be
2 approved?

3 A. I think the big catalyst was making sure that we
4 were prepared with all the documentation for an earlier
5 rate case with the sewer.

6 Q. Okay. Now, Mr. Capestro, with regard to Exhibit
7 A-58, we also have the same issue with water main
8 extension agreements, did we not? If you look at
9 estimated start dates, just reading down the list,
10 July 2003, August 2004, July 2002, septic systems 2003,
11 November 2002, septic systems 2003. It appeared you
12 weren't executing water main extension agreements either.

13 A. That is a different question. Your question
14 before was why was 59 so much longer.

15 Q. Okay. But I thought your testimony was that the
16 company had a mistaken belief that sewer main extension
17 agreements did not need to be entered into?

18 A. That is why it went all the way back to 1999.
19 These go with completion dates of 2003 and 2004.

20 Q. Okay. So did you have the same mistaken belief
21 about water main extension agreements, that they did not
22 need to be signed?

23 A. I did not ask Mr. Kaveney that question. I asked
24 Mr. Kaveney the question as to why we went all the way
25 back to 1999.

1 Q With regard to sewer?

2 A Sewer.

3 Q With regard to water agreements, do you have any
4 idea why the company would not have been signing water
5 main extension agreements?

6 A Probably under the same assumption that when
7 people put in their own infrastructure it was not required
8 before. You had to have the actual cost.

9 But I don't know. You asked me if I had any
10 idea, and that is my only idea.

11 Q Now, Mr. Kaveney, back to Exhibit A-59.

12 A I won't answer that.

13 Q I'm sorry, Mr. Capestro.

14 What I did in this document is on line No. 19,
15 Mountain View Estates No. 3 or Unit 3, I highlighted the
16 date of the agreement there, June 4, 2005. And on page 3,
17 the very last one, No. 49, I highlighted is February 11,
18 2005. Every other date that I could find was either
19 January 25th or January 31st.

20 Do you have any reason to dispute what I'm
21 telling you?

22 A No, I believe you are very meticulous.

23 Q Okay. So it appears then that we had 47 sewer
24 main extension agreements that were prepared at the end of
25 January, and we had an additional 10 water main extension

1 agreements. So 59 agreements would have been prepared by
2 Mr. Kaveney and signed on two days in January.

3 A. I don't know. I assume he prepared them all in
4 the days. I can't figure out why he put a different day,
5 but, yeah, he probably did.

6 Q. Would you agree with me that Mr. Kaveney was
7 probably very busy around the end of January working on
8 these main extension agreements?

9 A. Yes.

10 Q. Was Mr. Kaveney generally a busy man at this
11 point in time, putting aside putting together all of these
12 main extension agreements?

13 A. Mr. Kaveney had a pretty big staff at that time
14 that relieved some of his load.

15 As to how busy he was, I don't know.

16 Q. What was general state of growth within your
17 company in the latter part of 2004 going into 2005?

18 A. Extra 1,000 homes a year.

19 Q. Was that a substantial amount for your company?

20 A. The company doubled in size between 1998 and
21 2005.

22 Q. So I would assume that a lot of people in your
23 company were pretty busy trying to keep up with that
24 growth.

25 Would you agree with that?

1 A. That is why the staff was so big.

2 Q. Now, Mr. Capestro, I'm going to ask you to look
3 at another data request, and it's the same data request or
4 set of data requests. But I'm looking at 1.5 J, which is
5 on page 6 of the beginning of Exhibit A-45.

6 Would you read J when you get there?

7 A. "Please provide a copy of the complete contact of
8 any file which Far West Water & Sewer, Inc. maintains on
9 Brian Householder, Spartan Homes & Construction for the
10 development known as Sierra Ridge, including all utilities
11 or phases of Sierra Ridge."

12 Q. And your response is attached as Exhibit C, which
13 is tab C?

14 A. That is correct.

15 Q. Now, I'm going to ask you to turn to the very
16 back of tab C. I unfortunately did not have these pages
17 Bates labeled, so we will have to do this the hard way.
18 But at the back of tab C there is a whole bunch of these
19 inspection release forms. I want to look at a document
20 that is right in front of those inspection release forms.
21 It's a fax to Sarah Phillips from Israel Moreno.

22 A. Excuse me. I'm trying to --

23 Q. Have I lost you? Do you see where I am?

24 ALJ MARTIN: Before the inspection release or
25 after?

1 MR. CROCKETT: Yes, it's the document right in
2 front of the inspection releases. There are a whole bunch
3 of them.

4 THE WITNESS: What I have in the tab C is a
5 letter to Yuma Territorial Engineering.

6 Q. (BY MR. CROCKETT) Yuma County Territorial
7 Engineering?

8 A. No, Yuma County Development Services.

9 Q. Okay. Go to the very end of tab C.

10 A. I am.

11 Q. Okay. And do you see where the inspection
12 release forms are?

13 A. I found them.

14 Q. Go to the document immediately before those
15 inspection release forms start. It's a four-page
16 facsimile.

17 A. Yes.

18 Q. Do you see that?

19 A. Yes.

20 Q. And it came from Yuma Territorial Engineering to
21 Sarah Phillips in your office?

22 A. Yes.

23 Q. Now, this document is an engineer's opinion of
24 probable construction costs?

25 A. Correct.

1 Q. And it's for Sierra Ridge Phase I.

2 Would you turn to the fourth page of that
3 document, which is actually the page immediately before
4 the inspection release starts.

5 A. Yes.

6 Q. Now, on that document, that document is dated
7 December 15th, 2004?

8 A. Correct.

9 Q. And this is Yuma Territorial Engineering's
10 opinion of probable construction cost?

11 A. Correct.

12 Q. And they identify in very specific detail what
13 the cost of -- or what the different components are of the
14 water system and the sewer system that needs to be
15 installed; is that right?

16 A. What should have been installed, yes.

17 Q. What should have been installed?

18 A. Correct.

19 Q. Now, when we were looking at the main extension
20 agreements for water and for sewer, for example, going
21 back to tab H, in the first agreement we looked at, which
22 is for Estrella at Mesa Del Sol, the information that was
23 filled in under materials appears to be the type of
24 information that was provided under this engineer's
25 opinion of probable construction cost; is that correct?

1 A. It's the type.

2 Q. Okay. So if you were going to sign a main
3 extension agreement before you construct infrastructure,
4 all you have got is an engineer's estimate of the
5 construction cost; is that correct?

6 A. That is correct.

7 Q. You can't put final cost data in the document
8 because you don't have it?

9 A. Not unless they are done after it's completed.

10 Q. Yeah. I mean, if you do the document after the
11 construction is completed, you can have final cost data?

12 A. That is true, but most of the agreements, as was
13 testified to yesterday, have a provision for the final
14 cost to be delivered to the developer -- to the utility.

15 Q. Do your agreements indicate that?

16 A. Our present agreements do.

17 Q. Do these agreements indicate it?

18 A. I don't know.

19 Q. Can you look at one and tell me?

20 A. I don't see anything in there, including I don't
21 see anything after granted easement or grant of going onto
22 people's property. And I do see that it says that money
23 will be given to the company, which is not correct. And
24 it also says, see attached cost sheet.

25 So no, there is nothing in there that says that

1 it has to be the cost has to be given. That is why we
2 went to counsel to get appropriate, you know, line
3 extension agreements.

4 Q. Okay. Do you have any background in utility
5 accounting?

6 A. Absolutely none.

7 Q. So in terms of how you would account for a main
8 extension agreement on the company's books, do you know
9 how that would be done?

10 A. To be able to do that, I went to utility counsel
11 and to the utility CPA along with the controller and found
12 out what they needed to have on the books, and that is
13 what we asked for.

14 Q. And do you do that accounting for the company?

15 A. Do I do the accounting for the company?

16 Q. Yes.

17 A. I'm not an accountant. You wouldn't want my
18 accounting.

19 Q. Well, that is certainly true.

20 You made some statements yesterday that I would
21 like to follow up on.

22 A. Okay.

23 Q. About what can be booked and what can't be
24 booked.

25 A. Correct.

1 Q. Where a utility company has a main extension
2 agreement that has been signed and it includes a cost
3 estimate, do you know whether or not under -- well, let me
4 start over.

5 Do you know what the NARUC Uniform System of
6 Accounts is?

7 A. I am familiar with it.

8 Q. To what extent are you familiar with it?

9 A. I have seen it. I have seen the requests for the
10 NARUC in the rate cases as far as -- and been reviewing it
11 with a CPA. But as to how you get into the NARUC, I don't
12 understand it.

13 Q. Have you ever read the NARUC Uniform System of
14 Accounts?

15 A. No, I have not.

16 Q. You certainly don't consider yourself an
17 authority or expert on NARUC Uniform System of Accounts,
18 do you?

19 A. Of course, not.

20 Q. Do you know whether or not the NARUC Uniform
21 System of Accounts allows a company to book an estimate of
22 construction costs with regard to main extension
23 agreements?

24 A. I don't know what NARUC does. I know what I have
25 been told we are supposed to do, and that is we are

1 supposed to book them once the system is completed and
2 accepted into our system.

3 Q. My question is -- my question to you is: Do you
4 know what NARUC requires in that regard?

5 A. I think my answer was, no, I don't. I just know
6 what we were told to do.

7 Q. Now, when a company -- you indicated your concern
8 about having an accurate accounting on the books in terms
9 of utility infrastructure; correct?

10 A. Correct.

11 Q. When a company pays a refund of an advance in aid
12 of construction, do you know whether the developer
13 receives back 100 percent of the amount of the advance?

14 A. No, but it stops when the advance has been paid
15 in full or the period of time set forth in the agreement.
16 And it's my understanding water agreements have to be at
17 least 10 years.

18 Q. Do you know what your agreements provide for?

19 A. We have 10 percent for 10 years for the water.
20 We had been at 5 percent for 20 years for sewer.

21 Q. So if a developer -- I will do a hypothetical
22 with you.

23 If a developer advances \$100,000 in either cash
24 or infrastructure to the utility, the utility makes
25 refunds -- when I say the utility, I'm going to say Far

1 West Water & Sewer now -- makes refund payments to that
2 developer for a period of 10 years; correct?

3 A. Correct.

4 Q. And how do you calculate the amount of the refund
5 that is paid each year?

6 A. It's a percentage of the amount received.

7 Q. By?

8 A. By the people that have hooked up in that
9 development.

10 Q. Okay. Would you agree with me that it's the
11 gross receipts from customers connected to that utility
12 infrastructure?

13 A. Correct.

14 Q. And it is 10 percent of that amount?

15 A. Correct.

16 Q. In the early years of a subdivision, do you have
17 100 percent occupancy?

18 A. No, you do not.

19 Q. So the refund payments are small in early years?

20 A. Correct.

21 Q. Large in later years?

22 A. Correct.

23 Q. Back to my hypothetical, if a developer advances
24 \$100,000 to the utility company, do you have any idea how
25 much of that \$100,000 the developer would get back over

1 the ten-year refund period?

2 A. It all depends on the development because it's
3 not 10 percent of what is owed. It's 10 percent of what
4 you receive.

5 Q. Let's be very clear on the terminology here.

6 It's 10 percent of what the utility receives in
7 the form of payments from customers connected to that
8 infrastructure?

9 A. Correct.

10 Q. It doesn't tie off of how much the developer is
11 paying as an advance; correct?

12 A. That is true up to the full amount.

13 Q. Right. So the utility company is not required to
14 pay back in excess of how much a developer pays into the
15 utility; correct?

16 A. Correct.

17 Q. But where I'm going with this, Mr. Capestro, is I
18 have been doing utility work for close to 20 years now,
19 and I know that developers only receive back a fraction of
20 what they put up in terms of the advance.

21 A. That would be my belief.

22 Q. Okay. So if a -- in my hypothetical, and this is
23 just -- I'm not stating this as fact, but I'm saying in my
24 experience what the developer gets back is below 50 cents
25 on the dollar.

1 A. I don't know what the percentage is, but I know
2 normally it's less than 100 percent.

3 Q. So if a developer advances \$100,000 and let's say
4 the developer over the life of the refund obligation gets
5 back 50 cents on the dollar, that developer is going to
6 get back \$50,000; correct?

7 A. Correct.

8 Q. Now, if the estimate that goes on the company's
9 books -- if, for example, that utility infrastructure
10 actually cost \$80,000 and not \$100,000 to construct --

11 A. Correct.

12 Q. -- the utility is not hurt by that in paying
13 refunds because the utility, like I said, generally has
14 paid back far less than what has been received; is that
15 right?

16 A. It may not be hurt in refund, but it may be hurt
17 in other ways.

18 Q. Okay. And it may be -- it may be hurt in the
19 sense that you have on your books more infrastructure
20 than -- or you have a higher cost for infrastructure than
21 what the actual construction cost was; right?

22 A. That is one of the things.

23 Q. Okay.

24 A. The other thing is that they may not have put in
25 the quality that was set forth in the engineering

1 drawings, and that is a question of quality control,
2 making sure that the sub that is out there puts in the
3 quality of pipe that is in there.

4 And one of the big problems you have is pipes
5 breaking because some of the subs are trying to cut
6 corners to make a profit.

7 Q. Have you had any problems like that in Sierra
8 Ridge Unit 1?

9 A. I have not, to my knowledge, had those problems
10 in Sierra Ridge Unit 1. I have had it in other place in
11 the Foothills.

12 Q. Is your testimony that there is a quality problem
13 with infrastructure that went in this Sierra Ridge?

14 A. No, I don't know of any problems in Sierra Ridge.

15 Q. And isn't it true that the company has an
16 opportunity to inspect, in fact, probably has an
17 obligation to inspect the construction and the utility
18 infrastructure that it accepts?

19 A. We are now guaranteed under our agreements the
20 opportunity to inspect. And because of the problems we
21 have had in the past, in the future we will be putting in
22 the infrastructure ourselves. But sometimes we have to
23 accept the inspection by the County.

24 Q. And in this case did not also Francisco Galindo
25 of Yuma Territorial Engineering perform inspections?

1 A. I didn't understand his testimony to be that he
2 was out there at all time. I remember him testifying that
3 he accepted the certificate from Russ Noll that it was
4 built as specified. He believed the certificate from
5 Mr. Noll.

6 Q. In the file though do you have copies of a
7 variety of inspection test results that show that the
8 infrastructure passed inspection?

9 A. It passed pressure tests.

10 Q. Did it pass other types of testing,
11 microbiological, for example?

12 A. Correct, but it doesn't -- there is no testing
13 for the thickness of the pipe or the quality of pipe that
14 is used. And, of course, that would have been -- somebody
15 would have had to be out there inspecting.

16 Q. Do you know whether Mr. Kaveney was inspecting
17 that infrastructure as it was being constructed?

18 A. I don't know.

19 Q. Would that have been part of his job duties as
20 general superintendent for the utility company?

21 A. It would have been his or one of his
22 subordinates.

23 Q. Mr. Capestro, back to tab C and those pages -- I
24 should have had you keep your finger there -- those pages
25 that we were looking at for Yuma Territorial Engineering.

1 A. Yes.

2 Q. I'm going to go back three or four pages prior to
3 that and look at invoices from Noll Construction.

4 A. Yes.

5 Q. In terms of the cost paid by Spartan for the
6 water and sewer infrastructure -- well, let me back up.

7 There is four documents from Noll Construction.
8 The first says "Estimate." Let me have you look at the
9 invoices that follow, the three invoices.

10 A. Yes.

11 Q. Are not invoices evidence of the actual cost of
12 construction?

13 A. No. It does not break it down into the footages.
14 It does not -- it did not have attached receipts of any
15 type for what he had purchased as the type of pipe.

16 Q. Where is the requirement that an invoice contain
17 receipts for materials purchased?

18 A. It's what we requested.

19 Q. And how did you request that? In writing?

20 A. Well, if you take a look at the letter from
21 Mr. Householder, he said the rest of the information we
22 requested was going to be delivered by Mr. Galindo.

23 Q. Okay. Do you know what the Uniform System of
24 Accounts requires in terms of support documentation for
25 utility infrastructure?

1 A. No, I do not.

2 Q. Do you know whether or not it indicates that
3 invoices are adequate support for construction costs?

4 A. I am only following the advice of counsel as to
5 what I needed.

6 Q. You would not disagree with me, though, that you
7 have invoices of the construction costs of the water and
8 sewer infrastructure for Sierra Ridge Unit 1?

9 A. I have bills that have no breakdown except that
10 it's water and sewer. And I don't know which part of the
11 work they had done, whether they had done half of it, a
12 third of it, all of it. And I don't know what footages he
13 put in.

14 Q. Well, you have as-built certifications, do you
15 not, for this project?

16 A. I have as-builts that were stamped by Mr. Galindo
17 because Mr. Noll told him he had done them that way.

18 Q. Do you have any reason to question whether
19 Mr. Noll had, in fact, done the work?

20 A. Well, I don't know what Mr. Noll did out there.
21 I have asked that for all the developers I want the
22 invoices and I want a detailed breakdown.

23 Q. Okay. So we have Mr. Galindo and Yuma
24 Territorial Engineering that prepare detailed design plans
25 for the water and sewer infrastructure?

1 A. Correct.

2 Q. Those are approved by ADEQ?

3 A. Correct.

4 Q. Those are submitted to Mr. Kaveney who signs off
5 on those?

6 A. I'm not sure that the infrastructure is approved
7 by ADEQ or the County.

8 Q. Well, either ADEQ or by delegated authority, Yuma
9 County, would you agree?

10 A. Correct.

11 Q. And you heard Mr. Galindo testify that he
12 provided the design plans for the water and sewer to
13 Mr. Kaveney and that Mr. Kaveney gave him a verbal
14 approval?

15 A. That's correct.

16 Q. And you also agree that Mr. Noll certified the
17 construction was in accordance to the plans to
18 Mr. Galindo; correct?

19 A. That's what I understood.

20 Q. And Mr. Galindo issued a certification bearing
21 his engineering seal and license that attested to the fact
22 that the infrastructure was constructed according to the
23 as-builts; correct?

24 A. Based upon what Mr. Noll told him.

25 Q. And Mr. Galindo also testified that he was in the

1 field and observed various inspections that were done of
2 the infrastructure; is that correct?

3 A. That's what I understood.

4 Q. And all of this was submitted to Far West Water &
5 Sewer?

6 A. Yes, I believe so.

7 Q. Okay. So I'm trying to understand what is
8 lacking here in your mind that causes you to call into
9 question any of the infrastructure that was constructed
10 for Sierra Ridge.

11 A. The lack of the backup invoices and detail by
12 Mr. Noll.

13 Q. Well, let me stop you there.

14 We have invoices. We have invoices. We have
15 invoices from Noll Construction to Brian Householder that
16 detail cost.

17 A. Only thing it does is give a bill. It does not
18 detail any of the costs that Mr. Noll or the construction
19 company occurred or at least the type of pipe that it used
20 to put in the ground.

21 Q. And where in your agreements does it indicate
22 that -- when I say in your agreements, any of these 59 or
23 60 main extension agreements that we have in this data
24 request, where does it indicate what type of detail you
25 require in support of an invoice?

1 A. Our present agreements require that.

2 Q. I'm not talking about your present agreement.

3 A. As I state before, I don't see it in those
4 agreements.

5 Q. And you can cite to me any rule or statute or
6 accounting standard that requires that an invoice be
7 backed up with a receipt for ten feet of pipe?

8 A. I can't cite you to any type of rule or statute.

9 Q. Now, back to Exhibit A-59, which is our sewer
10 main extension agreements.

11 A. Yes.

12 Q. If you will scan down through this document,
13 under the category date of the agreement there are 26 of
14 these agreements that are unsigned by the applicant.

15 Would you confirm that for me?

16 A. That is what it says.

17 Q. Okay. Will you accept my representation that I
18 have been through these main extension agreements and the
19 ones that indicate that they were unsigned by the
20 applicant are, in fact, unsigned? In fact, if you would
21 like to spot check a few --

22 A. No. I know you are very meticulous. If you say
23 they are unsigned, they are unsigned.

24 Q. Can you tell me whether you have a copy of a main
25 extension agreement in your file -- let's take, for

1 example, the very first one, Domino's Pizza -- the
2 Domino's lift station. If you will turn to the second
3 page of that document, H & S Developers is the applicant;
4 is that correct?

5 A. That's correct.

6 Q. And this document is unsigned by H & S
7 Developers?

8 A. That is what this one is.

9 Q. Do you have a fully executed copy of this
10 document in your files?

11 A. I really don't know.

12 Q. Is that something I can ask you to verify?

13 A. I will verify each and every one of these, but
14 please give me a list when we get through.

15 Q. Okay. I will provide a list.

16 And if you still have handy the Arizona
17 Administrative Code rules on sewer utilities, this is a
18 rule we looked at previously, R-14-2-606(A)(5).

19 A. Yes.

20 Q. I'm going to read that to you. I think I had you
21 read that before. It says, "All collection main extension
22 agreements requiring payment by the applicant shall be in
23 writing and signed by each party before the utility
24 commences construction."

25 The fact -- if, in fact, these agreements were

1 not signed by the applicant, would you agree that that
2 constitutes a violation of this rule?

3 A. No.

4 Q. And explain to me why it would not be a violation
5 of the rule.

6 A. It says, "All collected main extension agreements
7 require payment by the applicant."

8 Q. So again it's your position that where the
9 applicant is constructing, that that is not payment and
10 therefore this rule does not apply?

11 A. No, and it says "before the utility commences
12 construction."

13 Far West Water was not doing any construction
14 back in 1999.

15 Q. And so where a developer is doing construction,
16 your position is -- well, I think your position is that
17 where a utility -- where a developer is doing
18 construction, you need not enter into a main extension
19 agreement before the construction is completed?

20 A. That was my understanding.

21 Q. And that understanding may be changing now as a
22 result of the testimony yesterday of Ms. Wallace?

23 A. I understood Staff's position on water
24 agreements. I don't think they had a position on sewer
25 agreements.

1 Q Okay.

2 ALJ MARTIN: Mr. Crockett.

3 MR. CROCKETT: Yes, Your Honor.

4 ALJ MARTIN: I think we will stop for about
5 10 minutes and take a break.

6 MR. CROCKETT: That would be great.

7 ALJ MARTIN: Okay. We will go off the record and
8 be back here around 25 till by that clock. Okay.

9 (Whereupon, a recess was taken from 10:22 a.m.
10 until 10:34 a.m.)

11 ALJ MARTIN: Okay. Let's go ahead and go back on
12 the record.

13 And, Mr. Crockett, you may continue.

14 MR. CROCKETT: Your Honor, before I forget and
15 move on, I would like to move the admission of A-58 and
16 A-59.

17 ALJ MARTIN: Mr. Black?

18 MR. BLACK: No objection, Your Honor.

19 ALJ MARTIN: All right. 58 and 59 are admitted.

20 (Exhibits A-58 and A-59 were admitted into
21 evidence.)

22 Q (BY MR. CROCKETT) Mr. Capestro, I have given you
23 another document, which I have marked as Exhibit A-57.

24 A I see it.

25 Q This is an e-mail that I received in four parts

1 from Mr. Black that was -- it is dated December 24th,
2 2009, kind of a Christmas present, I guess, as it turns
3 out.

4 A. I hope you like presents.

5 Q. And it was responsive to our second set of data
6 requests, and specifically we had asked about sewer
7 connection fees. I would like to ask you some questions
8 about this document that you provided.

9 A. Okay.

10 Q. If you would turn to -- well, let me read the
11 first part of Mr. Black's e-mail to you. It says,
12 "Jeff" -- this is page 1 of Exhibit A-57 -- "Jeff, this is
13 the first of four e-mails responsive to Spartan data
14 request No. 2 sewer fees. The attached documents are
15 broken down by each development. It appears that payments
16 were made by some developers in full while other
17 developers paid as each connection was made. The chart
18 set forth the amounts and dates of each fee payment.
19 There were no such fees paid for water," and that is the
20 one I want to ask you about.

21 The way I construe that comment is that with
22 regard to the corresponding water main extension
23 agreements for these development there were no water
24 capacity fees paid.

25 Would that be a correct reading of that?

1 A. That is correct.

2 Q. And that is consistent with what you testified to
3 today?

4 A. That is correct.

5 Q. Okay. Then if you would turn to the first
6 document.

7 A. Yes.

8 Q. There is a spreadsheet for Seasons No. 1 sewer
9 connect.

10 Is this a document that is kept in the ordinary
11 course of business or was that prepared for this case?

12 A. It was not prepared for this case, but quite
13 frankly I don't know how it was kept up.

14 Q. Where did it come from?

15 A. I had asked for an accounting a couple years ago
16 as to what fees had been paid and what fees had not been
17 paid.

18 Q. Who did you ask to do that accounting?

19 A. I asked the CPA for H & S Developers.

20 Q. Why would the CPA for H & S Developers have
21 information about hook-up fees or capacity fees that were
22 paid to Far West Water & Sewer?

23 A. On Seasons No. 1, when the CC&N was extended, the
24 report before the Arizona Corporation Commission was that
25 the developer would be financing the Seasons wastewater

1 treatment plant. An agreement was made between the
2 developer and H & S that H & S would pay for the new plant
3 that was being put in.

4 Q. Was that a written agreement?

5 A. I don't know. That was between Mr. Weidman and
6 with Mr. Spencer.

7 Q. Do you know -- okay. So you testified you do not
8 know if that was a written agreement?

9 A. No, I do not.

10 Q. And it's safe to say that you have never seen a
11 written agreement between those two parties?

12 A. I have never seen an agreement. All I know is
13 that it was broken down based upon the cost of that plant.

14 Q. Okay. So this chart or spreadsheet for Seasons
15 1, this is a document that was not maintained by Far West
16 Water & Sewer but by H & S Developers?

17 A. I asked H & S to do it, and at the time, I don't
18 know if Far West was keeping a similar account or not.

19 Q. When you asked a developer to pay capacity fees,
20 how is that communicated to the developer?

21 A. I'm not sure that it's a capacity fee. It's
22 their portion of the cost of that development.

23 Seasons was just one developer, and that was
24 Scott Spencer, and he agreed to pay his proportionate
25 share of what the cost of that development was. And all

1 checks were made payable to H & S Developers, not Far
2 West.

3 Q. Is the Seasons plant a different plant from Palm
4 Shadows?

5 A. Yes, it is.

6 Q. Where is Seasons located?

7 A. Seasons is north of the freeway -- oh, closer
8 than 9 1/2 E where Palm Shadows is, but not that close.
9 It's west of Fortuna, and it's inside the county, not
10 inside the city.

11 Q. So how did you figure out when a developer wanted
12 sewer service -- again, when I ask you these questions,
13 they will pertain to the 2004/2005 time period -- but when
14 a developer came in and said, I want water and sewer
15 service, first off, with regard to water service, you are
16 not going to ask that developer to pay any kind of
17 capacity fee because you weren't requiring those back
18 then?

19 A. Not at that time.

20 Q. So with regard to sewer service, how would you
21 determine what a developer was going to pay or what you
22 were going to ask a developer to pay?

23 A. It was based upon the cost of the plant or any
24 addition to the cost and divided by the number of homes
25 that could be put on that plant.

1 Q. So if a developer was going to do 100 lots and it
2 was going to cost \$100 to build the plant, then you would
3 ask the developer to pay \$1 per lot using those numbers?

4 A. Who is "you would"?

5 Q. The utility.

6 A. The utility wasn't asking.

7 Q. Who was asking?

8 A. H & S Developers. H & S was advancing the funds.
9 Far West was not advancing funds.

10 Q. I'm moving beyond Seasons. I'm talking
11 generally.

12 A. Back then the only plants that there was a fee
13 were ones where H & S -- where the agreement was the
14 original developer agreed to finance the plant. There
15 were no plants financed by Far West back then that were
16 being charged a connection fee.

17 The plant -- I think I answered your question, I
18 believe.

19 Q. You --

20 A. I have been told I go on and on and on.

21 MR. BLACK: I didn't say anything.

22 Q. (BY MR. CROCKETT) So which plants did H & S
23 Developers pay to build?

24 A. H & S paid for the Seasons plant. It paid for
25 the Palm Shadows plant. It paid for the expansion of the

1 Del Oro plant. And then those plants were contributed as
2 CIAC to Far West.

3 Q. By H & S Developers?

4 A. Correct.

5 Q. Okay.

6 A. Even though it was not in their area of
7 development.

8 Q. Okay. So let me just get the players on the
9 field here.

10 So Seasons, Palm Shadows, and the expansion of
11 Del Oro were paid for by H & S?

12 A. Correct.

13 Q. And did that all occur at one time?

14 A. No.

15 Q. Were those done at different times?

16 A. No, over a period of time.

17 Q. How many years?

18 A. Well, there were two phases to Palm Shadows, a
19 50,000-gallon-per-day facility then an additional 150 to
20 make it 200,000.

21 Q. Okay. Give me your best estimate on the dates
22 that those two capacities were added or were developed.

23 A. I don't have that in front of me. I'm sorry.

24 Q. Was it in the 2000s or was it prior to that?

25 A. The first phase of Palm Shadows I believe was in

1 1999. The second phase was in the 2000s. All of these
2 plants were after Hank Schechert died.

3 Q. Okay. And then so Palm Shadows we have
4 200,000-gallons-per-day capacity.

5 What about Seasons?

6 A. Seasons was either 50,000 or 77,000. I don't
7 remember which. The new plant is going to be 150, but I
8 think it was 77,000.

9 Q. So when was the -- so Seasons was constructed as
10 a new plant?

11 A. Correct.

12 Q. And it was either 50- or 77,000?

13 A. I believe the first part of it was 50,000. Right
14 now it's at 77,000.

15 Q. And do you remember when the first part was
16 constructed approximately?

17 A. I wasn't here.

18 Q. It would have been in the 2000s?

19 A. It was. It was after the Palm Shadows plant.

20 Q. Okay. And then the expansion of Del Oro, when
21 did that expansion occur?

22 A. The improvement of Del Oro was late 2001, and
23 there was a expansion in -- started in 2004, finished in
24 2005.

25 Q. And how much capacity was added in the expansion?

1 A. It was increased to 150,000 gallons.

2 Q. And when you did the improvement in late 2001,
3 did that add capacity?

4 A. No.

5 Q. Do you remember what the original capacity was?

6 A. That was a plant that Far West took over from
7 Mesa Del Sol and Eddie Loo.

8 Q. And so those were all -- those plant expansions
9 and plant improvements were funned by H & S Developers?

10 A. Correct.

11 Q. The affiliate of Far West Water & Sewer?

12 A. Under the ACC definition, yes, it is.

13 Q. Now, what other plants existed in the 2004/2005
14 time period?

15 A. What other plants existed?

16 Q. That were opened and operated by Far West Water &
17 Sewer.

18 A. Oh, Far West took over the Villa Del Rey and
19 Villa Royale plants from Mesa Del Sol and Eddie Loo. They
20 are small package plants. One is under 20,000 and one is
21 under 10,000 gallons per day. That is a plant that was in
22 since 1982. But these were things that were taken over by
23 Far West from a previous developer.

24 Far West has owned the Marwood plant since 1994,
25 and that has not expanded. And it built the Section 14

1 plant or H & S built the Section 14 plant 2001/2002, and
2 H & S contributed that plant to Far West as CIAC.

3 Q. Not as an advance in aid of construction, but as
4 CIAC?

5 A. No, as CIAC.

6 Q. So Villa Del Rey, Villa Royale, Marwood,
7 Section 14E, Seasons, Palm Shadows, and Del Oro.

8 Are those all of the existing plants today?

9 A. If you come up with seven, that is.

10 Q. That is seven.

11 A. Okay.

12 Q. So we have all of them accounted for?

13 A. Yes.

14 Q. So back in the 2004/2005 time period -- I'm
15 confused. You will have to help me understand -- if a
16 developer came to Far West and wanted to connect to the
17 sewer system, and let's say it was going into the Palm
18 Shadows plant, the developer would be told at that time
19 that they needed to pay for capacity?

20 A. I don't know. I don't know how it was handled.
21 I know there were earlier agreements directly between
22 Brent Weidman and Scott Spencer for Seasons and between
23 Brent Weidman and Bruce Jacobson for Palm Shadows.

24 How that was handled after that, I don't know how
25 that was communicated to them.

1 Q Well, if a developer came to Far West Water &
2 Sewer and wanted to connect with the Palm Shadows plant
3 and that plant had available capacity, do you know whether
4 or not it would be appropriate for Far West Water & Sewer
5 to charge that developer for that available capacity?

6 A Far West never charged for capacity of what was
7 given to it. Every check that I have been able to review
8 from the developer went to H & S Developers, the party
9 that financed the plant. Palm Shadows was the same thing
10 with the extension of our CC&N. It was right in there, in
11 the order, that the developers will finance the
12 construction of the plant. H & S was not a developer for
13 anything in the Palm Shadows area or anything in the
14 Seasons area.

15 Q Now, did -- so you are saying that the agreement
16 between H & S and Far West Water & Sewer required that a
17 developer who was going to use one of the plants
18 constructed by H & S would pay H & S money for capacity?

19 A No, I did not say that.

20 What I said was that there was an agreement that
21 H & S would finance it or the developer, and that was
22 directly with the developer.

23 Q What developer are the talking about?

24 A Originally the developers were Jacobson companies
25 and Scott Spencer for those two places. How it expanded

1 from that, you are asking me things I do not know.

2 ALJ MARTIN: Mr. Crockett, I seem to be the only
3 one in the room who isn't exactly sure of all the special
4 interrelationships between H & S Developers, who they are
5 as related to Far West. Apparently everybody is making a
6 big assumption here. Could you lay some foundation as
7 regarding H & S Developers?

8 MR. CROCKETT: You bet.

9 ALJ MARTIN: Thank you.

10 Q. (BY MR. CROCKETT) Mr. Capestro, who are the
11 owners of H & S Developers?

12 A. The primary owner of H & S Developers, 69 percent
13 is owned by Dorothy Schechert.

14 Q. Let me stop you there. Dorothy Schechert, who we
15 know is 91 years old?

16 A. Correct, and I love her. You would love to have
17 her here.

18 Q. And how much percent?

19 A. 69 percent.

20 Q. Okay. 69 percent.

21 And what about the remaining?

22 A. 15.5 percent Paula Capestro, 15.5 percent
23 Sandy Braden.

24 Q. And tell me how long each of those has held those
25 ownership percentages?

1 A. Since the '80s.

2 Q. In those proportions?

3 A. Well, it was Dorothy and Hank Schechert together
4 that owned 69 percent.

5 Q. And she acquired his portion when he passed away?

6 A. Correct.

7 Q. And at some point in time was the utility company
8 part of H & S Developers?

9 A. Correct. It was a subsidiary of H & S Developers
10 and by recommendation or order -- I'm not sure which -- of
11 the Commission, it was spun off as a separate -- a totally
12 separate company.

13 Q. Okay. When you say a subsidiary, you are not
14 saying it was a separate legal entity.

15 Was it just a division within H & S Developers?

16 A. It was a dba.

17 Q. It was a dba?

18 A. H & S Developers doing business as Far West Water
19 & Sewer.

20 Q. Okay. But what about what would happen when
21 H & S Developers was developing real estate? What
22 would -- it would operate under the name H & S Developers;
23 correct?

24 A. That is correct.

25 Q. Okay. And briefly -- it might also be good for

1 me to know -- but briefly describe for me what type of
2 development activities H & S is engaged in.

3 A. At the present time?

4 Q. Let's start with the present time and then we
5 will back up.

6 A. Very little in this economy.

7 Q. Okay. Let's go back to, say, 2000 through 2005,
8 what was H & S doing?

9 A. H & S developed land mostly east of Foothills
10 Boulevard from 2000 on. And those plants were serviced by
11 the Marwood plant and by the Section 14 plant.

12 Q. Now, did H & S Developers also build homes or did
13 they just entitle the lots and then sell those to
14 builders?

15 A. Until approximately 2005 all H & S Developers did
16 was develop lots. Starting in 2005 it tried its hand at
17 building a few homes.

18 Q. And you might have said this, but when did Far
19 West Water & Sewer get spun off as a separate legal
20 entity?

21 A. It was '98 it was spun off, and the report to the
22 IRS was filed in '99.

23 Q. Okay. Now, do you Paula Capestro or
24 Sandy Braden operate any other businesses in Yuma?

25 A. Yes.

1 Q Are those businesses related to H & S Developers
2 or Far West Water & Sewer?

3 A H & S Developers owns and operates a grocery
4 store, a mini-mart. Paula and Sandy own a hardware store.
5 And Sandy Braden is a real estate broker and does
6 brokerage on her own.

7 Q Is she active?

8 A Yes.

9 Q Does she sell lots that were developed by H & S
10 Developers?

11 A She sells some of the lots that are developed by
12 H & S Developers. Some of the lots are sold by another
13 realtor.

14 Q And is that other realtor affiliated with the
15 Capestro family or the Braden family or the Schechert
16 family?

17 A Well, the other lots are owned by an entity that
18 is related to those families, but it has another broker.

19 Q And I think my question was, was that other
20 broker that sells lots, is that other broker related in
21 any way to your family, the Bradens or Ms. Schechert?

22 A No. No, it's not.

23 Q Okay. Other than her interest in H & S
24 Developers and Far West Water & Sewer, does
25 Dorothy Schechert have other business interests in Yuma

1 that are related to H & S Developers or Far West Water &
2 Sewer?

3 A. Dorothy Schechert individually has no interest in
4 Far West, and I'm trying to decide whether or not amounts
5 that are owed to her by H & S is a relationship.

6 Dorothy Schechert is owed quite a bit of money by
7 H & S Developers.

8 Q. Is that secured by a note of some kind?

9 A. There are notes.

10 Q. I remember also in Mr. Kaveney's deposition he
11 talks about a testing laboratory that was owned by, I
12 don't know if it was owned by Far West or if it was owned
13 by someone. It did the testing of the samples for Far
14 West Water & Sewer.

15 Was that a separate business?

16 A. No, that was employees of Far West.

17 Q. So that testing lab was operated under Far West
18 Water & Sewer?

19 A. Mostly for our own testing.

20 Q. But I think he testified that that lab did
21 testing for others in the Yuma area?

22 A. We did, but it was mostly for Far West.

23 Q. And there is an entity, Arizona Land Sales, which
24 may be a trust.

25 Is that an entity that is familiar to you?

1 And just to follow up on your point that Dorothy
2 individually has no interest in Far West Water, does she
3 have an indirect interest through any kind of a trust
4 relationship or anything in the family?

5 A. Well, I am a little uncomfortable since I'm the
6 attorney for the estate as to how I should be answering
7 these questions.

8 I shouldn't be asking this, but what is the
9 relevance?

10 Q. Well, I'm just trying to -- I'm trying to
11 understand the relationship as they relate to Far West
12 Water & Sewer and H & S Developers. We have apparently
13 obviously a very close relationship between H & S and Far
14 West, and there were agreements that were made between the
15 two of them.

16 My question is: Are there other agreements
17 impacting or affecting -- well, this will be my
18 question -- are there other agreements that were impacting
19 or affecting the utility company with other entities that
20 were related to or affiliated with any of the people
21 involved in H & S or Far West Water & Sewer?

22 MR. BLACK: Just point of clarification, existing
23 agreements; correct?

24 MR. CROCKETT: Well, I mean, I think it's broader
25 than that in the sense we are talking about some

1 agreements between Seasons, for example, and H & S
2 Developers and Far West back in the early 2000s. So I
3 don't know whether those agreements would still be in
4 existence or not.

5 Q. (BY MR. CROCKETT) I want to be broader than
6 agreements existing today.

7 A. Okay. No, there is no existing agreements.

8 And as far as the original plants that H & S
9 built within its development area, it's my understanding
10 that that was all in as CIAC. That is why -- the other
11 ones it was just the financier of the ones that were being
12 prepared for Scott Spencer.

13 Q. And when you say they are the financier, you are
14 saying H & S Developers was the financier for Seasons and
15 for -- which was Scott Spencer's development, and
16 Bruce Jacobson's development was?

17 A. Was around Palm Shadows.

18 Q. So the financier was H & S Developers; correct?

19 A. H & S paid for the engineering and paid for the
20 subs. Whether or not it did any work at either of those
21 places, I don't know.

22 Q. Okay. All I'm trying to do is make sure that I'm
23 precise here, that you are not -- when you say "the
24 financier," you are not talking about Wells Fargo or some
25 other entity.

1 A. No. It --

2 Q. It fronted the money?

3 A. It fronted the money for developers and wanted to
4 get its money back.

5 ALJ MARTIN: Please don't talk over one another,
6 please.

7 Q. (BY MR. CROCKETT) So Mr. Spencer then, when he
8 made payments, those payments went to H & S Developers to
9 reimburse H & S Developers for money it had advanced to
10 construct the Seasons plant?

11 A. Correct.

12 Q. Okay. And so there was one agreement between
13 H & S Developers and Far West Water & Sewer pertaining to
14 the construction of the Seasons plant?

15 A. I don't know what type of agreement there was
16 between H & S Developers and Far West. I knew about the
17 agreement between Mr. Spencer and H & S.

18 Q. Is that a written agreement?

19 A. I have never seen one.

20 Q. You can't say for certain that a written
21 agreement exists between Scott Spencer, the developer of
22 Seasons, and H & S Developers?

23 A. No, I cannot.

24 Q. What about between Mr. Jacobson and H & S
25 Developers?

1 A. I can't say that either. I have never seen one.

2 Q. So you don't know that there is an agreement
3 between those entities?

4 A. I know what I was told by Mr. Weidman and by
5 Mr. Spencer and by Bruce Jacobson, but I have never
6 received a written agreement.

7 Q. What were you told by Mr. Weidman?

8 A. That he had an agreement that H & S would be
9 paying for these improvements and it would get paid back
10 over a period of time.

11 Q. Did Mr. Weidman work for Far West Water &
12 Sewer -- I'm sorry -- did Mr. Weidman work for H & S
13 Developers at any time?

14 A. Yes, he was president.

15 Q. And he also was -- was he also president of Far
16 West Water & Sewer?

17 A. He was.

18 Q. Was that before or after the time that those
19 entities were separated legally?

20 A. He was there before and after.

21 Q. Okay. Did Mr. Weidman -- are you familiar with a
22 development known as Vista Del Sol?

23 A. I am.

24 Q. Is Mr. Jacobson the developer of that
25 development?

1 A. One of them.

2 Q. Who are the other developers?

3 A. He had a partner.

4 Q. And who was that?

5 A. Mr. Jacobson and Mr. Weidman.

6 Q. So Mr. Jacobson and Mr. Weidman were partners in
7 Mesa Del Sol?

8 A. Yes.

9 Q. And where does the sewage go from Vista Del Sol?

10 A. The sewage, that was the first area that Palm
11 Shadows took the sewage, and the land for that sewage
12 plant was sold to Far West by the partnership.

13 Q. Okay. And so Mr. Weidman, who is a partner in
14 the Vista Del Sol development, sold land to Far West Water
15 & Sewer where he was the president?

16 A. Apparently so.

17 Q. And in Vista Del Sol, were there only the two
18 partners, Mr. Brent Weidman and Bruce Jacobson?

19 A. I don't know. I know about the two of them
20 because I saw their names on documents.

21 Q. Was Paula Capestro a partner in that?

22 A. No. Had nothing to do with that.

23 Q. Sandy Braden?

24 A. No.

25 Q. Dorothy Schechert?

1 A. Nor was Hank Schechert.

2 Q. And was Far West Water & Sewer a partner of that
3 development?

4 A. No. No. Absolutely not.

5 Q. So Mr. Weidman and Mr. Jacobson sold land to Far
6 West Water & Sewer when he was the president.

7 Can you tell me, do you know what steps were
8 taken to insure -- this was not an arm's-length transaction,
9 would you agree?

10 A. Elbow-to-elbow.

11 Q. Okay. So something less than arm's length.

12 And then Mr. Weidman and Mr. Jacobson, did they
13 enter into an agreement with H & S Developers?

14 A. That was my understanding.

15 Q. Did Mr. Weidman have an interest, an ownership
16 interest in -- well, and did Mr. Weidman work for H & S
17 Developers as well?

18 A. He did.

19 Q. And what was his title?

20 A. President.

21 Q. Okay. So he could have done this deal all
22 himself, could he not? Could he have not signed documents
23 for all three entities, for Far West Water & Sewer, H & S
24 Developers, and Vista Del Sol?

25 A. It's something we would have done if

1 Hank Schechert had been alive.

2 Q. But Hank Schechert was not alive after that?

3 A. It was right after his death.

4 Q. And it is something that did happen?

5 A. It is something that did happen.

6 Q. And how long did this type of activity continue?

7 A. I don't know if there were other parts that

8 ~~Mr. Weidman and Mr. Jacobson were partners in. They had~~

9 known each other for a long, long time. They --

10 Q. Now, do you know, were payments made on Vista Del
11 Sol to H & S Developers?

12 A. Yes.

13 Q. But you don't know whether there was any written
14 agreement between Vista Del Sol and H & S Developers?

15 A. No. We were pretty much out of the loop while
16 Mr. Weidman was in charge.

17 Q. And do you know whether or not that agreement
18 would have obligated other developers who tied into the
19 Palm Shadows plant to H & S Developers?

20 A. Yes, it was to be financed by the developers who
21 were going to hook up a Palm Shadows plant. That is my
22 understanding of the order from the ACC on the extension
23 of the CC&N.

24 Q. And did -- and which extension of the CC&N are we
25 talking about, sewer or water?

1 A. Well, it turned out to be just sewer extension.
2 It started out as water and sewer extension, but the City
3 ended up with the water, and Far West Water ended up with
4 sewer and Vista Del Sol.

5 Q. But I think we established that the Sierra Ridge
6 property is not within the CC&N granted by the Commission;
7 is that correct?

8 A. The present CC&N granted by the Commission?

9 Q. Right.

10 A. From the time that the expanded CC&N was given
11 for Vista Del Sol, there was a number of applications to
12 add property to the CC&N. It was apparent that they were
13 careful to keep out the stuff that was already on septic
14 tank and put it into development as it came along.

15 Q. Your testimony is that the Commission issued an
16 order extending a CC&N, which required developers to pay
17 for -- did the order require developers to pay H & S
18 Developers for capacity?

19 A. No. What I think it was in the findings was that
20 the findings were that the -- this plant will be paid for
21 by the developers.

22 Q. Okay. And could that -- in that sense could
23 developers have been Mr. Jacobson and Mr. Weidman?

24 A. Could have been.

25 Q. Do you believe that it was broader than that and

1 it expanded to other developers?

2 A. As they expanded the CC&N. I know Scottsdale
3 Estates paid.

4 Q. Okay. But we are not -- I'm not talking about
5 expanding. I'm talking about this specific order that you
6 are talking about.

7 And I think the point is -- I think the point you
8 are making is that you say there is a Commission order
9 that required developers to pay for expansion of these
10 plant. And Mr. Householder's property today is not within
11 a CC&N issued by the Commission for sewer; correct?

12 A. That's correct.

13 Q. And so there is no Commission order that would
14 have required Mr. Householder to do anything, would you
15 agree?

16 A. And there is no CC&N, so maybe if it was extended
17 to that properly, it would have been included then.

18 Q. Well, that is speculative. We don't know; right?

19 A. I don't know. You asked me what happened in the
20 past.

21 Q. Now, this agreement between Mr. Jacobson and
22 Mr. Weidman at Vista Del Sol and H & S Developers, to get
23 repaid for the construction of the plant, could an
24 agreement between those three entities -- H & S
25 Developers, Mr. Weidman, and Mr. Jacobson -- could it bind

1 some developer that did not sign that agreement to pay for
2 plant capacity?

3 A. It was my understanding that each time another
4 developer wanted to be serviced in that area, they came up
5 with an agreement including that developer. Whether or
6 not -- how that was done, I don't know.

7 Q. And those agreements were with -- those
8 ~~agreements would have been with H & S Developers; correct?~~

9 A. That is correct.

10 Q. So I'm trying to understand, what is the legal
11 basis to require a developer to go sign an agreement with
12 H & S Developers, which is not a utility company?

13 A. Because it was -- it had financed it.

14 I totally understand where you are coming from,
15 and that is why in the future it's going to be part of
16 what Far West does, not what H & S does.

17 Q. All right. And when Mr. Householder, if he
18 develops a project in the future in your service area, and
19 I guess we will approach it differently, but we are
20 talking about history now, not the future; correct?

21 A. I understand that. I also understand there is a
22 cost, and this is not the way I would have wanted to do
23 it.

24 Q. Okay. And I guess my point is, Mr. Capestro, is
25 that quite often in my questioning you come back to what

1 we are doing today and what we are doing in the future.
2 This case is about what happened to Mr. Householder back
3 in 2004, 2005; correct?

4 A. Correct.

5 Q. Okay. So I would like to stay in that time
6 period, if we can, and not talk about what is going to
7 happen in the future.

8 ~~A. But the problem is that if H & S was not paid for~~
9 expanding the facilities, then there is no good reason for
10 H & S to put up any more money.

11 Q. Well, I understand that, but my understanding of
12 the Commission rules -- and you are general counsel for a
13 utility company, are you not?

14 A. I am now.

15 Q. Okay. And you have had that position at least
16 since 2006; correct?

17 A. Correct.

18 Q. And so you obviously have a familiarity with the
19 rules regarding the regulation of utility companies in
20 Arizona?

21 A. Correct.

22 Q. Okay. Well, it is my understanding of the
23 Commission's rules that if a developer approaches a
24 utility and asks for capacity and the utility has
25 capacity, that the utility needs to make that available to

1 the developer requesting the capacity.

2 Would you agree?

3 A. If it's within the CC&N.

4 Q. If it's within the CC&N. Okay.

5 The fact -- in this example the fact that H & S
6 Developers built a plant which it contributed to Far West
7 Water & Sewer, can you cite to me any legal authority that
8 would enable Far West Water & Sewer to tell

9 Mr. Householder to go cut a deal with H & S Developers to
10 repay them for plant costs that they put up?

11 A. No.

12 Q. So there was no uniform amount that -- you are
13 testifying that the --

14 A. What do you mean there was no uniform?

15 Q. Let me start over with the question.

16 You testified that when capacity charges were
17 assessed, it was based on capacity and not necessarily the
18 number of lots?

19 A. That's not true. I said what we are doing now --

20 Q. And when --

21 A. -- is based upon capacity because you may have a
22 lot that is going to use a lot more.

23 In the past these charges were based upon lots.

24 Q. Were based upon lots?

25 A. That's correct. They broke down the capacity per

1 lots.

2 Q And who was it that received those payments?

3 A The entity that put up the money to put those
4 together.

5 Q Which was not Far West Water & Sewer?

6 A That's correct.

7 Q So --

8 ~~A But they did not receive any money directly from~~
9 any customer. It was always with the developer.

10 Q Wait a minute.

11 Who did not receive any money directly?

12 A H & S did not receive any money from a customer.

13 It received it from the developers --

14 Q Right.

15 A -- pursuant to the agreement that it had.

16 Q Back in this time frame, if I was a developer in
17 the 2004/2005 -- let me start over.

18 In the 2004/2005 time frame, if I was developing
19 property and I came to Far West Water & Sewer and I was in
20 the sewer CC&N, I would sign a main extension agreement
21 with Far West Water & Sewer that would cover the on-sites?

22 A Correct.

23 Q And then I would be told that I needed to pay
24 some capacity fee to H & S Developers if I want to use the
25 Palm Shadows plant.

1 Is that what your testimony is?

2 A. What I have said is I really don't know how they
3 handled it. I don't know. All I know is that the checks
4 came into H & S Developers. I know the original agreement
5 was with Mr. Jacobson over there to have H & S fund the
6 doggone thing, and I'm not sure what ever happened.

7 ~~Q. Would you be willing to search your files to see~~
8 ~~if you can find an agreement between H & S Developers and~~
9 Far West Water & Sewer over the construction of the Palm
10 Shadows wastewater treatment plant?

11 A. I would be willing to take a look at that.

12 Q. And would you also have access to any agreement
13 that may exist between H & S Developers and Bruce Jacobson
14 and Brent Weidman?

15 A. I'm not so certain about that. A lot of
16 documentation went with Mr. Weidman on his own computer.

17 Q. Where does Mr. Weidman reside today?

18 A. Just outside of Salt Lake City, Utah. He was a
19 professor at BYU before.

20 Q. Did he spend any time in prison as a result of
21 the conviction?

22 A. No. He had to do community service, which was
23 teaching safety classes.

24 Q. Now, Mr. Capestro, continuing on with Exhibit
25 A-57, let's look at Bates No. 149 at the bottom.

1 Do you have that?

2 A. Yes, I do.

3 Q. Now, this is Seasons No. 1?

4 A. Correct.

5 Q. Is this a spreadsheet that resides on a Far West
6 Water & Sewer Company computer?

7 A. I don't know where this comes from.

8 Q. ~~So this could have also come from H & S~~

9 Developers?

10 A. It could have.

11 Q. I notice on this exhibit, 149, that there are
12 some lot numbers that show a connection date but no
13 payment of a capacity fee.

14 Can you explain why that would be?

15 A. I do not know. I think the answer comes on the
16 very last page.

17 Q. Which Bates number are you referring to?

18 A. 152.

19 Q. Which says "Paid in full"?

20 A. Correct.

21 Q. Okay. But I see -- okay. So there are only a
22 couple there.

23 All right. So we have a number of spreadsheets
24 for Seasons 1, 2, 3, and 4. And your answer would be the
25 same for all of these spreadsheets; you don't know where

1 these came from?

2 A. No, I do not.

3 Q. As part of our list, would you be willing to
4 confirm whether these came from Far West Water & Sewer or
5 H & S Developers?

6 A. I'm unable to do that. They were in files in the
7 office, and I tried to confirm who it was that made these
8 up, and none of our present Staff knows who actually put
9 these together, but they are in files.

10 Q. But these documents are in the files of Far West
11 Water & Sewer?

12 A. No, they are files in my office.

13 Q. Those are not files of Far West Water & Sewer?

14 A. I was given a box of files that was in the CPA's
15 office, Lloyd Sunderman, S-u-n-d-e-r-m-a-n, and I don't
16 know the source. I tried to confirm the source because I
17 knew it would be important, and I just don't know.

18 Q. Does that apply to this entire list of documents?

19 A. That is correct.

20 Q. And how long have you had this box in your
21 office?

22 A. I would say two years.

23 Q. When did you first look at this box?

24 A. Some time ago when I was trying to figure out how
25 I could get some payments from Mr. Jacobson when he

1 stopped paying.

2 Q. So given that these documents are not on Far West
3 Water & Sewer's computers, is it safe to say that no one
4 has been pursuing any of the outstanding balances here?

5 A. I have had numerous discussions with Mr. Jacobson
6 about what he has owed.

7 Q. Okay.

8 ~~A. He's in a situation as Mr. Householder. He can't~~
9 build. He said once that is resolved, we will talk.

10 Q. Okay. But he has had connections on lots that
11 have been built on which he has not paid for?

12 A. That is correct. The way it had worked was that
13 they had to connect first -- he had to sell the lot, they
14 would connect, and he would pay.

15 Q. Do you -- you mentioned that you first looked at
16 that box when you were trying to find a way to get
17 Mr. Jacobson to pay?

18 A. And others.

19 Q. And others. Okay.

20 And who were you trying -- do you represent H & S
21 Developers as well?

22 A. I do, but there is very little work for H & S
23 Developers legally right now.

24 Q. So when you were trying to get Mr. Jacobson and
25 others to pay, were you trying to get them to pay Far West

1 Water & Sewer or H & S Developers?

2 A. H & S Developers.

3 Q. Why do you care whether these developers pay H &
4 S Developers?

5 A. You asked if I'm also counsel for H & S
6 Developers. I am.

7 Q. But you said that you do very little work, and
8 ~~from that I assumed -- it may be a wrong assumption.~~

9 A. No. The amount of work you have to do for Far
10 West is much greater than the legal work do you for H & S
11 Developers. That is all I'm saying.

12 Q. So the legal work you are doing for H & S
13 Developers is trying to collect what you believe is owed
14 to H & S Developers from some developers?

15 A. Correct.

16 Q. And that is not -- and that is -- so Far West
17 Water & Sewer is not owed any money from any of these
18 developers --

19 A. Well --

20 Q. -- for capacity fees?

21 A. Well, not for these. For the expansion that we
22 have had to do since 2006, which is being financed by Far
23 West, yes. For the previous expansions, no.

24 ALJ MARTIN: Do we need to take a break? Because
25 you guys are doing a lot of conversing.

1 MR. CROCKETT: Your Honor, I think we will push
2 ahead for a little bit, if that is okay.

3 ALJ MARTIN: Okay. I am just concerned about the
4 number of and length of discussions. I know you have a
5 right to confer with your client, but, you know -- you
6 know what I mean.

7 MR. CROCKETT: Okay. We will keep moving.

8 ~~Q. (BY MR. CROCKETT) While we are -- is~~
9 Mr. Jacobson the developer of Yuma East Estates?

10 A. He is.

11 Q. Would you -- well, I will get back to that in a
12 minute.

13 Turn, if you would, to the page that's been Bates
14 No.'d 0177 in the A-57 exhibit. This is a spreadsheet for
15 Via Chaparral 1; is that correct?

16 A. That's correct.

17 Q. And I see -- and the pages that follow, we go
18 through four units at Via Chaparral, and I ended up with
19 the total lots, and I come up with 477 lots. And I see
20 connection dates on a lot of these lots, but I don't see
21 any amount being paid.

22 Can you explain why that is?

23 A. Yes. It was reported to me by the CPA, by H & S,
24 that payments had stopped from various developers. I
25 sought out Mr. Jacobson, and Mr. Jacobson told me that

1 Mark Kaveney told him he did not have to pay anymore
2 because Mr. Householder had contacted the ACC and that
3 there was not going to be any kind of connection.

4 I told Mr. Jacobson that his agreement was with
5 H & S; it was not with Far West, and he has continued to
6 refuse to pay.

7 Q. When did you have that discussion with
8 Mr. Jacobson?

9 A. I think I was alerted to it way after this,
10 either in 2005, 2006, but it's continued on since then.

11 Q. Is it accurate -- is this accurate that there has
12 been no payment for Via Chaparral Unit 1 through 4?

13 And I will refer you to page 0179, for example.

14 A. I am looking to see if there are hookups in 4.

15 That's correct, and I use these figures to show
16 him how much I think he owes H & S Developers.

17 Q. So on Bates page 179 it shows a balance of
18 \$108,300 for 114 lots?

19 A. Yeah.

20 Q. Now, it appears that a number of these is -- I'm
21 just looking at dates on these, Mr. Capestro.

22 A. Yes.

23 Q. Many of these are before Mr. Householder
24 contacted the Corporation Commission?

25 A. I'm totally aware of that. I told you what

1 Mr. Jacobson's excuse was for not paying.

2 Q. But he stopped paying before Mr. Householder
3 called the Arizona Corporation Commission?

4 A. Apparently, but all I could say is that that was
5 his excuse. Bottom line is that H & S is not going to
6 finance any more wastewater treatment plants on a deal
7 like this.

8 Q. ~~And it wasn't H & S Developers' job to finance~~
9 plant, would you agree?

10 A. It should not have.

11 Q. Well, isn't it the responsibility of the utility
12 company to provide for the construction of infrastructure?

13 A. I'm not so certain of that, especially when the
14 report with the ACC is that the developers were going to
15 pay for the construction of the plants.

16 Q. But wouldn't the proper way -- assuming that you
17 are going to have the developers pay, there are two ways
18 that I know to do that.

19 Number one is to go to the Commission and you
20 request a hook-up fee tariff or a capacity fee so that you
21 could charge everybody the same fee to connect to the
22 sewer?

23 A. Correct.

24 Q. That is one way, would you agree?

25 A. Correct.

1 Q. And another way is to enter into a main extension
2 agreement or sometimes a master utility agreement that
3 provides for the construction of backbone infrastructure.

4 Is that another way?

5 A. That is correct.

6 Q. Those are the only two ways that I know of to
7 fund construction if you are a utility company -- or,
8 ~~well, the third way is to fund it out of your own cash, if~~
9 you have it.

10 But it seems highly unusual for Far West to have
11 expected or asked H & S Developers, a development company,
12 to front the cost of building sewer plants and then ask
13 them to go collect money from developers.

14 Would you agree?

15 MR. BLACK: Your Honor, I think that has been
16 asked and answered. Mr. Capestro said on several times he
17 would not have done it that way.

18 MR. CROCKETT: And my question is, isn't it
19 highly unusual?

20 ALJ MARTIN: I will allow it.

21 THE WITNESS: I don't know the answer to that. I
22 do know that Mesa Del Sol plant was done by Mesa Del Sol,
23 and it served -- it had three plants over there. And the
24 development company built all three.

25 I do know that in the past package plants have

1 been financed by the various developers, and there are a
2 number of other package plants in the county itself. And
3 developers actually put in their own package plants.

4 Whether or not it happens with a utility and they
5 are asked to extend their CC&N, I do not know. I find
6 it -- as I said, once it's in our CC&N, and it should be
7 done. But at the same time I know the Commission does not
8 want it to be a burden of the ratepayers.

9 Q. (BY MR. CROCKETT) Turn, if would you,
10 Mr. Capestro, to page Bates No. 189.

11 A. I have that.

12 Q. That is a development called Wild Flower?

13 A. I see that. I don't know Wild Flower.

14 Q. The reason I ask, I don't see Wild Flower on your
15 table of contents for Exhibit I, which lists sewer main
16 extension agreements.

17 A. I don't know what Wild Flower is.

18 Q. Could that have another name?

19 A. I don't know.

20 Q. Turn to page 198 or Bates No. 198.

21 A. Yes.

22 Q. This is Yuma East Estates 3 and 4?

23 A. Correct.

24 Q. I see a lot of lots that show connection dates
25 with no fee being paid.

1 A. Yes.

2 Q. Is this the same issue with Mr. Jacobson refusing
3 to pay?

4 A. Well, except this one coincides with the date
5 that Mr. Weidman left and went back to BYU to teach.

6 Q. And the relevance of that is what?

7 A. I'm just sort of surprised there was an agreement
8 ~~that Mr. Weidman and Mr. Jacobson worked out. And this~~
9 one stops the same month that Mr. Weidman left,
10 apparently. Maybe not. I looked at the last date, and
11 that was March. There are some after that, so I stand
12 corrected. There was some payments after it.

13 Q. So do you know why the payments were not made on
14 other connections in Yuma East Estates 3 and 4?

15 A. I have given Mr. Jacobson this entire accounting
16 and showing him the amounts that are owed for the
17 construction, and I have not received a payment. I don't
18 know the answer except for his excuse.

19 Q. Has Mr. Jacobson told you whether or not there is
20 a written agreement with H & S Developers and his
21 partnership?

22 A. No, and I don't remember if I have asked.

23 Q. And if you are trying to collect -- you are the
24 attorney for H & S Developers and you are trying to
25 collect these amounts that are owed, and you didn't think

1 to ask him if there a written agreement that covers the
2 payment of these collection fees -- or the capacity fees?

3 A. No. I knew how Mr. Weidman and Mr. Jacobson
4 reacted to one another, and so I just assumed there was
5 not one. But that is very good question that I should
6 have asked.

7 Q. You knew how they reacted or interacted?

8 A. ~~They were both from the same temple together.~~

9 They were very close friends for the longest time.

10 Q. And from that you assume there was no written
11 agreement between them?

12 A. My assumption was there was a lot of handshakes
13 back then.

14 Q. And when you are saying there was no agreement,
15 written agreement, that would have been between the
16 partnership that was developing real estate and H & S
17 Developers?

18 A. That was my assumption, but I may have been
19 incorrect. I should have asked that question. That is
20 what happens when you assume.

21 Q. Are you going to ask that question of
22 Mr. Jacobson now?

23 A. I sure am.

24 MR. CROCKETT: And, you know, I will not go
25 through the rest of these, Your Honor.

1 Q. (BY MR. CROCKETT) Yuma East Estates No. 6
2 beginning on Bates No. 0203, same thing, lots of
3 connection with no payments.

4 It goes, would you agree, for pages with
5 connections but no payments?

6 A. Yes. Isn't it nice for me to produce these for
7 you?

8 Q. That's very helpful. Thank you.

9 ALJ MARTIN: Could I ask a quick question.

10 As I leaf through this there are a number of
11 pages, not very many, a few towards the back that I guess
12 have highlighted lines or something on the originals so
13 that when they were copied the lines are blotted out.
14 For example, Bates stamp 0254, 53, in that area, there are
15 a few pages where you can't read what is there.

16 And then also on Bates stamp 168, it looks like
17 there was a Post-it note that either got copied -- I don't
18 know if that is the original or what Mr. Crockett made
19 copies of.

20 MR. CROCKETT: That is the way it came to us, I
21 believe, Your Honor.

22 THE WITNESS: Yeah.

23 ALJ MARTIN: If we could get cleaned-up copies of
24 those.

25 THE WITNESS: That is fine. I don't know why

1 those lines are there.

2 ALJ MARTIN: I don't think they were redacted. I
3 think it was something on the original.

4 THE WITNESS: I had somebody on our staff grab
5 all the files and copy them and scan them and send them.

6 ALJ MARTIN: Right. So if we could get
7 cleaned-up pages, not the whole exhibit.

8 Q. (BY MR. CROCKETT) Mr. Capestro, on Bates page
9 1212, Mountain Vista 5, you did not --

10 A. 0212?

11 Q. Yes, 0212.

12 A. Okay.

13 Q. Got it?

14 A. All right.

15 Q. This is a development called Mountain Vista 5.

16 I do not see a main extension agreement produced
17 under Exhibit I for this one.

18 Do you know why that would be?

19 A. I think -- I don't know if there is a Mountain
20 Vista. I don't have a clue. I see no connection dates.
21 Like there is no connection dates on Yuma East 9 and 10,
22 and I don't think there are any connections there.

23 But I think these forms were made up to go
24 through all the various proposed subdivisions. I just
25 don't know what Mountain Vista 5 is. I can't answer your

1 question.

2 Q. Okay. Turning now to page Bates page 0215, Yuma
3 Meadows 2, who is the developer of the Yuma Meadows
4 development?

5 A. New Sun Homes.

6 Q. Is Mr. Jacobson affiliated with New Sun Homes?

7 A. I don't believe so.

8 Q. Is Mr. Weidman?

9 A. No.

10 Q. If you look at page 0215 for lots 59 through 65,
11 I notice there are connections but no payments?

12 A. I see that.

13 Q. Do you know why that is?

14 A. No, I do not.

15 Q. And just continuing through the next several
16 pages, I see -- well, and turning to page 219, do you see
17 that?

18 A. Correct.

19 Q. Page 219 and 220 show that all of those lots were
20 connected but they show no corresponding payments.

21 A. That goes along with the statement I had earlier
22 when I was advised by the CPA for H & S Developers that
23 payments all of a sudden had stopped, and that is when I
24 asked for a report.

25 Q. So this is a developer other than Mr. Weidman and

1 Mr. Jacobson that has also stopped making these payments
2 to H & S Developers?

3 A. That's correct.

4 Q. When did you talk to the CPA about the payments
5 stopping?

6 A. Either in 2005 or 2006, when it was brought to my
7 attention.

8 Q. And who brought it to your attention?

9 A. Lloyd Sunderman.

10 Q. Who is the CPA?

11 A. Correct.

12 Q. Let me have you turn to page -- Bates page 222,
13 Estrella No. 2.

14 Do you know who the developer of Estrella is?

15 A. Scott Spencer.

16 Q. Okay. And I see connections here with no
17 payments.

18 Is your answer the same with regard to
19 Mr. Spencer, that he also stopped making payments?

20 A. Actually Mr. Spencer made payments longer than
21 most other people did.

22 Q. Do you have an explanation for why there are a
23 number of connection dates where there are no
24 corresponding payments?

25 A. No, I do not.

1 Q. Have you talked to Mr. Spencer about his lack of
2 payments?

3 A. I have talked to Mr. Spencer about the Estrella 3
4 and Estrella 4. I don't remember if I talked to him about
5 the earlier Estrella.

6 Q. Now, Estrella 3 and 4, I don't see connections
7 for Estrella 3 and 4, do you?

8 A. He signed a new extension agreement with it being
9 part of the new agreements where he is paying for
10 capacity.

11 Q. And is he making those payments to Far West Water
12 & Sewer?

13 A. Those payments are to Far West Water & Sewer and
14 is not a payment per lot. It's a lump sum, before we
15 accept the sewer.

16 Q. And how much is that lump sum payment?

17 A. I don't remember. I would have to look at the
18 agreement.

19 Q. And do you know -- I assume then you don't know
20 how much it would work out to per lot?

21 A. It was over -- well, Estrella 3 probably was
22 under the original estimate of what it was going to cost
23 for the sewer, and then Estrella 4 would be higher than
24 that because it is going to cost more.

25 And I know it's under -- I know it's somewhere

1 around \$1,940 for new ones. I would have to take a look.

2 Q. And is that all for sewer?

3 A. That is for sewer.

4 Q. Did construction stop on homes at Estrella?

5 A. For probably 60 days.

6 Q. They don't have -- that sewage doesn't go to the

7 Palm Shadows plant?

8 A. No. It goes to the Del Oro plant, and ADEQ
9 allowed us to put a temporary plant at Del Oro in June of
10 2006 and then gave approval for specified homes.

11 Q. Mr. Capestro, turn to Bates page 0236.

12 A. Yes.

13 Q. This is MDS No. 12, Phase I.

14 What development is that?

15 A. That is called Mesquite.

16 Q. And who is the developer of Mesquite?

17 A. Eddie Loo, Mesa Del Sol, Inc.

18 Q. This shows at the bottom -- these connections --
19 and do you know where Mesquite is located in reference to
20 Sierra Ridge?

21 A. It's west -- east of Fortuna Road north of the
22 freeway and north of the north frontage road.

23 Q. Is that across the freeway from Mr. Householder's
24 development?

25 A. Pretty close.

1 Q. Could you gauge how far distancewise?

2 A. I don't know where 12 comes in over there.

3 Q. Is it 1,000 feet?

4 A. Whatever the width of the freeway is plus the
5 commercial lot. I couldn't estimate it.

6 Q. So it is -- it is right across the freeway from
7 the Sierra Ridge subdivision?

8 A. Correct. And then you go past the commercial lot
9 on the frontage road, and then you get into Mesquite.

10 Q. Okay. And this Bates page 326, it shows 44 lots,
11 and it shows no payments?

12 A. Correct.

13 Q. Is that correct?

14 A. That's correct.

15 Q. And can you explain why that is? It appears that
16 these connections were occurring at about the same time
17 that Mr. Householder was connecting homes?

18 A. Same problem, all of a sudden all payments
19 stopped except for Mr. Spencer's, and he paid through
20 2006.

21 Q. Okay. But the sewage from this development goes
22 to a different plant; correct?

23 A. Correct.

24 Q. And you did not have -- I mean, you have not had
25 a lengthy stoppage at Del Oro, have you?

1 A. No.

2 Q. So I understand with Mr. Jacobson he can't build
3 any homes --

4 A. Correct.

5 Q. -- because Palm Shadows plant is down?

6 A. Correct.

7 Q. And it has been for four years now?

8 A. Correct.

9 Q. But this development was not subject to that same
10 problem.

11 So can you explain why Mr. Loo did not make the
12 payments?

13 A. I don't think people stopped making payments
14 because of stoppage. I think they stopped making payments
15 because -- probably because Mr. Weidman left and he had
16 negotiated the agreement. I don't know. I found it very,
17 very strange.

18 But Mesa Del Sol 12, Phase 2, which is
19 Mesquite 2, they entered into a line extension agreement
20 where they are paying their capacity fees.

21 Q. Okay. But that is not this Phase I, would you
22 agree?

23 A. No. I had a disagreement with them on that. But
24 he does have a stoppage for his developments next to the
25 Villa Royale and Villa Del Rey.

1 Q Well --

2 A Those were not problems of the plant itself. It
3 was the problem of the fact that you cannot renew your
4 reuse permit with a general permit, and that is what his
5 plans were. You need an individual ABP to get the reuse
6 permit.

7 Q Do you recall Mr. Householder's testimony, that
8 he was speaking with Francisco Galindo at Yuma Territorial
9 Engineering who told him that he was aware of another
10 development that was not paying capacity fees?

11 A I heard him say that.

12 Q And do you recall him mentioning that it was the
13 Mesquite development?

14 A No, I don't remember that.

15 If Mr. Loo stopped paying, it was because he just
16 stopped payment. He knew the agreement.

17 Q How do you know that Mr. Loo had an agreement to
18 pay capacity fees with H & S Developers?

19 A There was an original agreement between Eddie Loo
20 and H & S Developers on the upgrade of his plant.

21 Q And what personal knowledge do you have that such
22 an agreement exists?

23 A I have seen it.

24 Q Oh, you have seen it?

25 A Yes.

1 Q. It's a written agreement?

2 A. Yes.

3 Q. And that agreement -- so the agreement that
4 applies to MBS No. 12, Phase I, which is this Bates
5 page 236, requires the payment of capacity fees?

6 A. No, it did not mention the phases. It mentioned
7 the capacity of Del Oro. But it did not mention the
8 expansion of Del Oro, but there was an earlier agreement
9 back in 2001.

10 Q. And that is an agreement between H & S Developers
11 and Mr. Loo?

12 A. Correct, and Mesa Del Sol, Incorporated.

13 Q. And that is a written agreement; is that correct?

14 A. Correct.

15 Q. Well, I'm still confused.

16 Is it that agreement you said was back in 2001 or
17 so that would require the payment of capacity fees for MDS
18 No. 12, Phase I?

19 A. I must have misunderstood your question. I
20 thought you said any fees paid by Mr. Loo or Mesa Del Sol.

21 Q. No. Is MDS No. 12, Phase I, does that go by a
22 different name?

23 A. Mesquite.

24 Q. Mesquite.

25 And is there -- what is it that obligated Mr. Loo

1 to make payments for capacity for MDS No. 12, Phase I?

2 A. The same agreements that they had throughout,
3 that if there was an expansion of a plant that was
4 financed by the developers through H & S or whoever it was
5 going to be, that they would reimburse whoever paid for
6 the expansion of the plant.

7 Q. ~~And that is not the agreement you mentioned a~~
8 minute ago, the 2001 agreement that was in writing?

9 A. The 2001 agreement was for the improvement of his
10 plant, that Mr. Loo had.

11 Q. For -- to serve MDS No. 12, Phase I?

12 A. I don't think they had the capacity to do that.
13 That is what I said. I misunderstood your question.

14 Q. Okay.

15 A. I don't think it covered Mesquite I.

16 Q. Okay. So back to Mesquite I --

17 A. Correct.

18 Q. -- which is Bates No. 0326, what evidence do you
19 have, other than what you have heard, that an agreement
20 existed which obligated Mesa Del Sol, Inc., to pay H & S
21 Developers for capacity for Mesquite Phase I?

22 A. I have absolutely none. I don't know.

23 Q. Now, flipping back a couple pages --

24 MR. CROCKETT: And, Your Honor, I think I can

25 wrap up this line of questioning within a few minutes and

1 we could take a lunch break.

2 ALJ MARTIN: Okay.

3 MR. CROCKETT: This is not -- Mr. Black -- this
4 has gone a little longer this morning than I thought it
5 would be because I got answers to my question that were
6 different than the answers I thought I would get to my
7 questions.

8 THE WITNESS: I will try to change that after
9 lunch.

10 Q. (BY MR. CROCKETT) Okay. Back to page 238, which
11 is Mesa Del Sol 12, Phase II.

12 A. Yes.

13 Q. Do you know -- I do not see a main extension
14 agreement in the documents that were attached to Exhibit I
15 of the data response for Mesa Del Sol 12, Phase II. I see
16 Mesa Del Sol 10 and 11, which is Roman numeral XV. I
17 don't see Mesa Del Sol 12.

18 A. 12?

19 Q. Well, we have been talking about Mesa Del Sol 12,
20 Phase I and Phase II.

21 Phase I you said is Mesquite.

22 Is Phase II also Mesquite?

23 A. Mesquite.

24 Q. So Mesquite 1 and Mesquite 2.

25 I don't see Exhibit I, and if you have it handy,

1 I would have to take look. I don't see a main extension
2 agreement that says Mesquite 1 or 2, nor do I see anything
3 that says Mesa Del Sol 12.

4 A. I will have to double-check that. I do know that
5 there is an agreement per Mesa Del Sol 12.2, and that
6 was -- that is one of those I have to determine whether or
7 ~~not if it was late 2006 or early 2007.~~

8 As far as Mesquite 1, I will have to go over my
9 notes about that. I don't have a good answer for you.

10 Q. Turn to page 0252.

11 A. Okay.

12 Q. This is a spreadsheet for Rancho Del Oro, and on
13 this page 252 I see a number of connection dates, but no
14 payments.

15 Can you describe for me or explain to me why the
16 payments stopped at Rancho Del Oro?

17 A. Well, yes. I believe that Rancho Del Oro is
18 serviced by the Del Oro wastewater treatment plant. We
19 did not take over that plant until late 2001. If you will
20 notice all of these hookups were before that. So if any
21 payments were made, they were made to Mesa Del Sol, Inc.,
22 not us.

23 Q. Because Mesa Del Sol, Inc., owned that treatment
24 plant prior to the time you owned it?

25 A. Correct. Correct.

1 Q. And you acquired it when?

2 A. In September, October, 2001.

3 Q. Now, if you would turn to page 0255.

4 A. Yes.

5 Q. We come to Rancho Rialto, which I think we
6 established is the development that is immediately across
7 ~~the street to the west from Mr. Householder's Sierra Ridge~~
8 development; is that correct?

9 A. That's correct.

10 Q. And starting at page 255, the pages come in a
11 little out of sequence. This is one of the last pages,
12 but if you look through the 255, 256, 257, 258, 259 -- I
13 mean, continuing on, I don't see any payments of capacity
14 fees for Rancho Rialto.

15 Can you explain why that is?

16 A. Well, I think -- I can't -- I know it's an RV and
17 mobile home park.

18 Q. When you say a mobile home park, are you
19 referring to a modular home?

20 A. Yeah, modular home and RV park.

21 Q. Is half the park modular homes and half the park
22 RVs?

23 A. Approximately.

24 Q. And those modular homes, once they are
25 constructed on the lot, is it fair to say that they

1 generally stay put?

2 A. Usually.

3 Q. Whereas on the RV side people will bring an RV
4 in, and they will be there for the season, and then they
5 will move out; correct?

6 A. Correct.

7 Q. ~~On the model home site you have a building,~~
8 except for that -- and once you install the home on-site,
9 generally it stays there like a stick-built home.

10 Would you agree?

11 A. Correct, except modular homes depreciate and
12 stick-built homes increase in value.

13 Q. Okay. So who is the developer of Rancho Rialto?

14 A. I don't know.

15 Q. It's not Mr. Spencer?

16 A. No.

17 Q. Nor is it Mr. Jacobson?

18 A. No.

19 Q. Or Mr. Weidman?

20 A. I have seen the name, I just don't remember it.

21 Q. Okay. Does McMillian ring a bell?

22 A. I know the name McMillian, but I'm not sure.

23 Q. All right. And I was distracted, but in
24 answering my question about why there were no capacity
25 fees paid on Rancho Rialto, you don't have an answer to

1 that?

2 A. All I know is that I asked for an accounting of
3 all divisions that are serviced for me to figure out what
4 we were doing.

5 Q. And when you say you asked for an accounting,
6 this goes back a couple of years when you were trying to
7 sort out payments?

8 A. Right. Right. It started in 2005 and continued
9 on through 2006 and was updated every so often.

10 Q. Can you confirm for me that there has been no
11 payments for H & S on the Rancho Rialto development?

12 A. I can find out. I can confirm that for you. I
13 thought you asked me if I can confirm it to you.

14 Q. Well, you have indicated that you have been
15 trying to collect these moneys that are allegedly owed to
16 H & S Developers.

17 Is Rancho Rialto one that you were trying to
18 collect moneys from?

19 A. I have never talked to the owner about this one.
20 I have other problems with Rancho Rialto, and I -- quite
21 frankly, with all problems with Palm Shadows, you know,
22 it's a little difficult. That is why I wanted the new
23 agreement.

24 Q. Would you say it's a touchy situation?

25 A. It's a very touchy situation.

1 Q And I think we talked yesterday about the fact
2 that Rancho Rialto has had approximately 115 connections
3 since the moratorium took effect on the Palm Shadows
4 plant; is that correct?

5 A Which Far West has absolutely no control over.

6 Q Does Far West -- how does Far West bill for sewer
7 service to Rancho Rialto?

8 A ~~It's a -- once we find out that the modular home~~
9 is there and we are able to discover who the owner is, we
10 bill the owner of the modular home for sewer alone. The
11 water is billed to Rancho Rialto.

12 Q And I think you testified yesterday that fee is
13 \$5 a lot plus usage; is that correct?

14 A Only in the RV lots.

15 Q For RVs. For the modular home it's the normal
16 \$21.75 for sewer?

17 A For sewer.

18 Q What it for water?

19 A For water it's a commercial --

20 Q Okay.

21 A -- meter.

22 Q That is what I'm trying to understand.

23 To calculate the commercial water bill for Rancho
24 Rialto, do you charge \$5 per lot plus the usage measured
25 at the master meter?

1 A. No. We charge \$5 a lot for sewer. We charge
2 \$21.57 for sewer for modular homes.

3 We charge a tariff rate for a commercial meter of
4 the size that they have plus usage.

5 Q. Okay.

6 A. So we only have one bill for water.

7 Q. Okay. Getting close to the end here, on Bates
8 page 266 there is a spreadsheet for Scottsdale East
9 Estates?

10 A. Yes.

11 Q. I do not see main extension agreement on your
12 list of contents for Exhibit I, which identifies
13 Scottsdale East Estates.

14 A. Yes.

15 Q. Do you know if a main extension exists for sewer
16 service for Scottsdale East Estates?

17 A. I don't believe so.

18 Q. You don't believe it exists?

19 A. No.

20 Q. And can you explain to me why that is?

21 A. The same issue, as we were trying to get
22 extension agreements for various places for Jacobson homes
23 and the like, we put together the new agreements, sent out
24 letters to Jacobson, to New Sun, to Mr. Householder, and
25 out of that group the only one I got a response from was

1 Mr. Jacobson that came to my office, and said he didn't
2 want to do it.

3 I have a similar problem with the developers that
4 are on the Palm Shadows plant, and I don't blame them
5 because they can't hook up new places.

6 Q. These hookups, these connections on Scottsdale
7 East Estates, go back to 2005?

8 A. Correct.

9 Q. Is that correct?

10 A. That's correct.

11 Q. And some in 2006.

12 This would have been after the time when you
13 identified the problem and said that you addressed the
14 problem?

15 A. I did not identify -- you mean with making sure
16 there was sewer connections?

17 Q. Well, making sure there was sewer main extension
18 agreements.

19 A. In January of '05 everything that I knew about or
20 Mr. Kaveney told me about, he put together sewer
21 agreements. In April or May of 2006 I retained
22 Jay Shapiro to make sure that we had everything taken care
23 of, and this was one of them.

24 Q. Is Scottsdale East Estates connected to the Palm
25 Shadows plant?

1 A. Yes, it is.

2 Q. Have you made any connections at Scottsdale East
3 Estates since the moratorium went into effect on
4 October 31, 2006?

5 A. Do you have my responses to discovery that were
6 done in December, I believe?

7 Q. And remind me, do those reflect that connections
8 were made?

9 A. It shows what connections were made and at what
10 time. There were some for Scottsdale East Estates that
11 were approved before the moratorium and constructed after
12 the moratorium. And I believe -- I know that the ones
13 that were approved, the County agreed to allow it be
14 transferred to a different lot or the same thing because
15 it would have been the same capacity. And we would have
16 done the same thing for Mr. Householder if he would have
17 applied for it and it would have been approved.

18 Q. But is it your testimony that there has been --
19 you testified yesterday that there had been two
20 connections post moratorium that had gotten ADEQ approval.

21 A. I said one did not get approval. One did get
22 approval. As far as the County was concerned, these were
23 pre-moratorium because it had already been approved before
24 the moratorium.

25 Q. When you say "approved," are you talking about a

1 building permit had been issued?

2 A. I believe so.

3 Q. So is that the trigger, a building permit?

4 A. That was my understanding. I was working closely
5 with Rick Stacks, and he was working with ADEQ as to what
6 we could do. And he sent you the paperwork showing that
7 they -- these four had been approved.

8 ~~It's my understanding that the County was not~~
9 pulling building permits. They said we are not issuing
10 new ones after October 24th -- or the 31st.

11 Q. Of what year?

12 A. 2006.

13 MR. CROCKETT: I think I'm about wrapped up with
14 this line of questioning, and this would be maybe a good
15 time to take a lunch break.

16 ALJ MARTIN: Okay. Did you want to move this
17 into admission now?

18 MR. CROCKETT: I'm finished enough with it. I
19 think I'm largely finished, so I will move the admission
20 of Exhibit A-57.

21 ALJ MARTIN: Mr. Black?

22 MR. BLACK: As long as he is finished with it, no
23 objections.

24 ALJ MARTIN: Do you swear?

25 All right. A-57 is admitted.

1 (Exhibit A-57 was admitted into evidence.)

2 ALJ MARTIN: All right. We will go ahead and
3 take a lunch break. Let's come back here -- I apologize.
4 I need to come back about 1:30. All right? So you have a
5 little extra time for lunch.

6 (Whereupon, a recess was taken from 12:11 p.m.
7 until 1:29 p.m.)

8 ~~ALJ MARTIN: Let's go ahead and go on the record.~~

9 MR. CROCKETT: Judge Martin, I think this came up
10 right before the break, but there is the issue of
11 Mr. Householder's deposition transcript that has been
12 marked as Exhibit R-2, and I'm assuming that Mr. Black
13 will offer that. We will stipulate to that if that is the
14 case. If he is not planning to offer it, I think we would
15 offer it because we referred to a couple exhibits in that.
16 I would like it in the record.

17 ALJ MARTIN: Okay. Mr. Black.

18 MR. BLACK: I would like to offer R-2 into
19 evidence.

20 ALJ MARTIN: Okay.

21 MR. BLACK: Mr. Householder's deposition.

22 ALJ MARTIN: Okay. And Mr. Crockett, he would
23 stipulate to it so it's admitted.

24 (Exhibit R-2 was admitted into evidence.)

25 ALJ MARTIN: Okay. Mr. Crockett, you may

1 continue with cross-examination.

2 MR. CROCKETT: Thank you, Your Honor.

3 Q. (BY MR. CROCKETT) Good afternoon, Mr. Capestro.

4 I have handed you a document that is marked
5 Exhibit A-61.

6 A. Yes.

7 Q. This is actually three letters on Far West

8 ~~Water & Sewer letterhead. The three letters are each a~~
9 single page, and they are each dated December 13th, 2007?

10 A. That's correct.

11 Q. To Yuma County Development Services?

12 A. Yes.

13 Q. Do you remember preparing these letters?

14 A. Yes.

15 Q. They were signed by you?

16 A. Yes.

17 Q. They pertain to -- well, the re: line says,
18 "Utility provisioning assurance," and they apply to
19 addresses 11553, 11563, and 11573 East 34th Place?

20 A. Yes.

21 Q. Do you recognize that address generally?

22 A. I know that they are part of the, I believe,
23 Scottsdale Estates of New Sun.

24 Q. That is my understanding as well.

25 A. Correct.

1 Q So, Mr. Capestro, you have indicated that these
2 three letters -- well, let me just read the body of the
3 letter. It's the same for each of the approximate one,
4 two, three -- four.

5 It says, "To Whom It May Concern, Far West Water
6 & Sewer, Inc., is granted the certificate of convenience
7 and necessity by the Arizona Corporation Commission to
8 ~~provide water and wastewater utility service. This letter~~
9 is to provide assurances that we have the capacity
10 available to provide water and wastewater service at 11553
11 East 34th Place."

12 A Correct.

13 Q Which wastewater treatment plant services
14 Scottsdale East Estate?

15 A Palm Shadows.

16 Q Now, we have established that pursuant to the
17 consent order that applies to Palm Shadows the company was
18 -- the company being Far West Water & Sewer -- was
19 prohibited from connecting new services to that plant
20 after October 31, 2006, unless you received approval from
21 ADEQ?

22 A It's my understanding that it was for connection
23 of anything that did not have a permit before that point.

24 Q Okay. Now, you would agree that these letters
25 that are dated December 13, 2007 are more than a year

1 after the date of the moratorium and consent order?

2 A. Yes, but this is half of the document that I
3 provided to you.

4 Q. Okay. Half the document?

5 A. Correct.

6 Q. Okay. Is there more to these letters than what I
7 have seen here?

8 ~~A. There is the previous address that they had~~
9 approved before the moratorium, and these were transfers
10 from that particular lot that was approved by Rick Stacks
11 at the County. These are part of the four that I talked
12 to you about before the break.

13 Q. Okay. So --

14 A. These were just transfers from -- they decided to
15 use a different lot instead.

16 Q. To build their home on?

17 A. I think one of these was a model, but I'm not
18 sure. And I don't know what the other two are. But they
19 had a number of them that were approved, and they -- my
20 records show that there were four letters, but two of them
21 were hooked up, of what I got from my office, but they
22 were transfers from ones that had already been approved
23 and not hooked up.

24 Q. When you say "approved," what do you mean?

25 A. The records showed that there were four locations

1 at least that had been approved earlier by the County
2 before the moratorium and by Far West Water & Sewer.

3 Q. And when you say "approved," does that mean that
4 the County had issue a building permit?

5 A. I don't know. I went to the County and told them
6 what we had and what they wanted to do, and they approved
7 it.

8 Q. ~~And so do you know what lot numbers -- do you~~
9 know what the prior lot number was that pertained to each
10 of these three?

11 A. Yes. There is a document next to Mr. Black on
12 two of them, and I gave to you the rest of the documents
13 in my discovery.

14 Q. And you have copies of what you say is the other
15 half of these letters?

16 A. In the car, and I may have it in the discovery
17 documents. If I could --

18 MR. CROCKETT: Would you mind taking a moment,
19 Your Honor, if that would be okay, to allow Mr. Capestro
20 to take a look?

21 ALJ MARTIN: That's fine.

22 MR. BLACK: Jeff, we will try to get copies of
23 that. What I just handed him -- does Mr. Crockett have a
24 copy of what I just handed you?

25 THE WITNESS: Yes, he does, with the discovery of

1 December.

2 Q. (BY MR. CROCKETT) This is the more recent
3 discovery?

4 A. Yes.

5 Q. This was -- was this responses to the third set
6 of data requests or do you recall?

7 A. It was -- this is January 15th.

8 ~~MR. BLACK: Provide the page.~~

9 MR. CROCKETT: Is this what he is referring to?

10 MR. BLACK: No. Let me just grab it.

11 THE WITNESS: I don't know if these were.

12 MR. BLACK: Could we go off record?

13 ALJ MARTIN: Off the record.

14 (Discussion off the record.)

15 ALJ MARTIN: Let's go ahead and go back on the
16 record, please.

17 Q. (BY MR. CROCKETT) Mr. Capestro, I'm going to go
18 ahead and mark this as an exhibit so that while we are
19 looking at this we are all hopefully looking at the same
20 document.

21 Mr. Capestro, before we took a short break we
22 were talking about Exhibit A-61, which is three letters
23 that you wrote to Yuma County Development Services
24 regarding the availability of water and sewer service to
25 three different residences in Scottsdale East Estates.

1 And I was asking you if whether or not the
2 provisioning of service to these three addresses, which
3 would appear based on the date of your letter to have
4 occurred after December 13, 2007, violated the moratorium
5 on new connections at the Palm Shadows wastewater
6 treatment plant that became effective on October 31st of
7 2006, and you referred me to a response to a data request,
8 ~~which I have had marked as Exhibit A-63, which you have~~
9 before you.

10 A. Yes, sir.

11 Q. And does this help us understand what happened
12 with regard to those three service addresses?

13 A. No. These three on A-61 are not included in A-63
14 because A-63 was a list of addresses that was given to our
15 office by your office and these were not included.

16 Q. Okay.

17 A. So the staff only responded to the ones you
18 requested.

19 Q. So with respect to those three service addresses,
20 which are included with Exhibit A-61, it is your testimony
21 that these -- that the homes that were going to be
22 constructed on three other lots were moved to these three
23 lots?

24 A. No, two of them were.

25 Q. Okay. So -- and for those two lots, were

1 building permits on those two lots issued prior to the
2 October 31, 2006 moratorium?

3 A. What I have in the records is not a building
4 permit because we are normally not given building permits.
5 But water and sewer service was established on all of
6 these lots -- or on lots in December of '05.

7 Q. Let me stop you.

~~8 A. Permit me to go through these three.~~

9 Q. Okay. All right.

10 A. On lot No. 11553 East 34th Place, water and sewer
11 was established for construction on a different lot, which
12 was 11635 East 34th Place. No construction was ever used
13 on that property.

14 Q. Can I stop you there for a minute?

15 A. Yes.

16 Q. So you are saying that water and sewer service
17 was established for construction on -- at 11635 East 34th
18 Place?

19 A. Correct.

20 Q. And that occurred in 2005?

21 A. December -- the scheduled new connection went out
22 for the water on 10/17/2005, and sewer was connected on
23 December 15th, 2005.

24 Q. 12/15/2005 was sewer?

25 A. Correct.

1 Q. And I'm confused because I have never -- I'm not
2 familiar with sewer -- construction sewer service. I
3 thought usually that was a port-a-potty on the property?

4 A. I'm just reading the document.

5 Q. What are you reading from?

6 A. I'm reading from a work order.

7 Q. Okay. And was a home built on -- at 11635 East
8 34th Place?

9 A. It's my understanding that there was no home
10 built on that. I was given a list of addresses from the
11 owners of Scottsdale Estates that they have not built on,
12 and that they had water and sewer service established and
13 wanted to know if they could transfer those to another lot
14 that they had for sale. And I confirmed with Rick Stacks
15 with the County to find out if it was within the
16 provisions of the order, and he did not believe that it
17 changed anything, that the sewer and water was established
18 in 2005 before the consent order.

19 Q. Did Mr. Stacks approve the three transfers to
20 these lots?

21 A. Yes, did he.

22 Q. Did he do that in writing?

23 A. I discussed it with Mr. Stacks and sent him this
24 letter.

25 Q. Which letter?

1 A. The letters of December 13, 2007, correct.

2 But there are only two of them. The third one on
3 11573, that property already had water and sewer as of
4 December 15th, 2005.

5 Q. And with regard to both this service address and
6 the first one, can you establish service to a lot where
7 there is no structure to be served?

8 ~~A. You establish water at the very beginning.~~

9 Q. Okay. And the water gets stubbed to a water
10 meter on the property?

11 A. Normally -- some of them have a construction
12 meter; other places have a regular meter. That is where
13 it's normally going to go.

14 Q. And how do you establish sewer service for
15 construction on a lot?

16 A. I don't know.

17 Q. Now, you said that Mr. Rick Stacks removed these.

18 Do you know under the consent order with ADEQ if
19 Mr. Stacks was authorized to give consent on behalf of
20 ADEQ?

21 A. Well, quite frankly, I agree with him. I do not
22 believe it increased the number of homes that had already
23 been approved and hooked up.

24 Water service had already been established and we
25 would have had to use the sewer with the water.

1 Q. Okay. But in this particular case, sewer service
2 had not been established to a residence; correct? It had
3 been stubbed to a lot?

4 A. Water service had been established, and under the
5 perimeters from ADEQ, once you established water service,
6 you had to give them the sewer service.

7 Q. Okay. So it may be the case that they didn't
8 ~~actually have sewer service but you established water to~~
9 the property; right?

10 A. That we did. We had meters established over
11 there, and I think I have meter numbers on this.

12 Q. Because it doesn't make sense to me that you
13 would do a sewer construction service to a lot.

14 A. I'm not a contractor.

15 Q. Okay. And do you know -- so presumably the two
16 that we are talking about, the first and the third letter
17 in Exhibit A-61, those had building permits that were
18 issued prior to the moratorium.

19 Is that your understanding?

20 A. Which ones are you talking about?

21 Q. I'm talking about -- the address -- the service
22 address you gave me on the first letter was 11635?

23 A. Yes.

24 Q. On the third letter you have a service address
25 from that one for the first location?

1 A. The third one is 11573 that you have here, and
2 that was no transfer. It was established December 15th,
3 2005.

4 Q. Well, if service was established December 15th,
5 2005 on 11573, why did you need to do a letter in December
6 of 2007 indicating that you would provide service to that
7 property?

8 ~~A. Because the County required it.~~

9 Q. And the County required it for what purpose?

10 A. Because building had not started. Everything
11 that had not started before, they wanted to find out if
12 there was established service before that.

13 If there was established service before that, we
14 had to show that we sent them a report that service had
15 been established.

16 Q. So do you know when the structure was built on
17 11573 East 34th Place?

18 A. No, but I would assume it was after December 13,
19 2007.

20 Q. And when you established service, which you
21 testified was on December 15th, 2005, did you begin
22 billing this address for that service?

23 A. I don't have those records. I just have the work
24 orders.

25 Q. Would it ordinarily be the company's practice to

1 start issuing bills when service is established?

2 A. Yes, you issue bills to the contractor or the
3 developer.

4 Q. Okay. So there was no transfer with regard to
5 the third letter.

6 The second letter, is that a transfer to 11563?

7 A. The transfer of 11563 was one from 11586 East
8 35th Place.

9 I apologize. I have more complete records in the
10 office, but I can get you copies of what I have here.

11 Q. On 11563, did your work order indicate when work
12 was established for water and sewer on that property?

13 A. On 11536?

14 Q. Correct.

15 A. I have the work orders here from where it was
16 transferred from.

17 Q. Which is 11586?

18 A. Correct.

19 Q. What are those dates?

20 A. Well, 11586 I have the date of establishment --

21 Q. For water?

22 A. -- which was October 17, 2005.

23 Q. October 17, 2005 for water?

24 A. For water.

25 Q. Do you have an establishment date for sewer?

1 A. Was that 11586?

2 Q. Yes.

3 A. That was 10/7, not 10/17.

4 Sewer, it just has written in 15 December '05,
5 but the service request is all on the same document. Work
6 order date is 10/6/05 and 10/14/05.

7 Q. Now, you mentioned a fourth address in Yuma -- in
8 Scottsdale East Estates?

9 A. Yes.

10 Q. And just to close the loop out, what is -- where
11 was service established on that fourth one?

12 A. When I talked about four, it's the two that you
13 have here.

14 Q. Okay.

15 A. And the third one you have here is no transfer.

16 Q. Okay.

17 A. On Exhibit No. 63, 11625 East 35th Street was
18 transferred from 11543 East 34th Place and that was
19 established on 12/14/05.

20 And then 11626 East 35th Street was transferred
21 from unused service from 11605 East 34th Place, and that
22 was established also on 12/15/05.

23 So those are the four.

24 Q. Okay. Plus the additional one, 11573, where
25 there is no transfer?

1 A. There was no transfer. That was established
2 before.

3 Q. Okay. Did you have any discussions about these
4 five addresses with anyone at ADEQ in Phoenix?

5 A. At this point I don't remember.

6 Q. Okay. And on these documents do you have --
7 would you have an invoice that would show the date of
8 establishment of service on these lots originally -- on
9 the original lots for the four?

10 A. I have the establishment of service.

11 Do you want a separate invoice?

12 Q. Well, I know that Mr. Householder would receive a
13 document that would assess a \$25 fee for water and \$50 fee
14 for sewer. I guess that is what I'm looking for.

15 A. I'm sure that we do. I am just looking at the
16 work orders themselves.

17 Q. Is that something you would be willing to provide
18 along with these other things we have asked about?

19 A. Absolutely.

20 Q. Okay.

21 MR. CROCKETT: Your Honor, at this point I would
22 move admission of A-61 and A-63.

23 ALJ MARTIN: Mr. Black?

24 MR. BLACK: No objection, Your Honor.

25 ALJ MARTIN: Okay. 61 and 63 are admitted.

1 (Exhibits A-61 and A-63 were admitted into
2 evidence.)

3 THE WITNESS: Do you want copies of other
4 documents where it says transfer from or do you want to
5 have that with the supplemental documents?

6 Q. (BY MR. CROCKETT) With the supplemental
7 documents is fine.

8 A. Remember, keep a list.

9 ALJ MARTIN: We will have two 63s?

10 THE WITNESS: Yes, we do.

11 MR. CROCKETT: What was the other 63?

12 THE WITNESS: The one right here.

13 MR. CROCKETT: So let's make --

14 Q. (BY MR. CROCKETT) Mr. Capestro, I have a couple
15 other exhibits to look at quickly.

16 Exhibit A-62 is a copy of a response to a data
17 request from Spartan Homes. It's No. 2.5.

18 Do you recognize that document?

19 A. Yes, I do.

20 Q. And in that we ask you to describe the policy of
21 Far West Water & Sewer with regard to refunding developer
22 advances in aid of construction for water infrastructure?

23 A. Correct.

24 Q. And your response indicates that the refund is
25 10 percent a year for 10 years?

1 A. That's correct.

2 Q. I also handed you an exhibit that has been marked
3 as Exhibit A-64, which is a response of Far West Water &
4 Sewer to a Spartan data request 2.6?

5 A. Correct.

6 Q. It's a similar question in that it asks what the
7 company's policy is with regard to refunds for sewer
8 infrastructure advanced by the developer?

9 A. Correct.

10 Q. And your response here is that refunds include
11 either a 5 percent or 10 percent refund for 10 or
12 20 years?

13 A. Correct.

14 Q. I'm guessing that the options are 5 percent for
15 20 years or 10 percent for 10 years?

16 A. Correct.

17 Q. Is that at the developer's option or is that the
18 company that decides that?

19 A. Usually negotiated.

20 Q. Okay. Is it either one or the other or is it a
21 range in between those two numbers?

22 A. Those are the only two we have negotiated so far.
23 Our present agreements, if it's for 10 years, is the
24 utility's option of extending the time for repayment.

25 Q. Do you know, is that policy the company's policy

1 today?

2 A. That is.

3 Q. Mr. Capestro, I'm looking at a document in
4 Mr. Kaveney's deposition. It's part of attachment 19 to
5 his deposition transcript.

6 A. Yes.

7 Q. It's a water main extension agreement dated
8 January 31st, 2005 for Via Chaparral No. 3.

9 A. Okay.

10 Q. And as I read through the refunding provision of
11 that document, it indicates that the company will refund
12 an amount equal to 10 percent of total gross annual
13 revenues from water sales to each bona fide consumer whose
14 service line is connected to the main lines covered by the
15 main extension for a period of 20 years.

16 A. I'm familiar with a few of those that he did that
17 way.

18 Q. Okay. So some of them -- on the water agreements
19 some of them were 10 percent for 20 years?

20 A. The way he put them because he thought the
21 instructions were water to be 10 percent for 20 years and
22 sewer to be 5 percent for 20 years. And the instructions
23 were 10 percent per year for 10 years.

24 Q. And he is Mark Kaveney?

25 A. Correct.

1 Q. So do you know, have you honored that 10 percent
2 for 20 years on this Via Chaparral No. 3 main extension
3 agreement?

4 A. I plan to.

5 Q. Okay.

6 MR. CROCKETT: Your Honor, at this point I would
7 move Exhibit A-62 and A-64.

8 ALJ MARTIN: Mr. Black?

9 MR. BLACK: No objection.

10 ALJ MARTIN: 62 and 64 are admitted.

11 (Exhibits A-62 and A-64 were admitted into
12 evidence.)

13 MR. CROCKETT: And, Your Honor, I don't recall,
14 did I move Exhibits A-61 and A-63?

15 ALJ MARTIN: I have them marked as admitted, yes.

16 MR. CROCKETT: Okay. Thank you.

17 Q. (BY MR. CROCKETT) Mr. Capestro, is Far West
18 Water & Sewer currently making refunds of advances to
19 developers under its water and sewer main extension
20 agreements?

21 A. We are behind on our payments.

22 Q. Are you making no payments to any developer or
23 are there some developers that are receiving refund
24 payments?

25 A. Nobody is receiving anything at the present time.

1 Q. Do you know when you stopped making refund
2 payments?

3 A. It was about at the same time as we got a
4 shortage on the amounts that we had to pay for the new
5 facilities.

6 Q. And can you confirm for the record that Far West
7 Water & Sewer has not made any refund payments to Spartan
8 Homes for the Sierra Ridge subdivision?

9 A. We have not made any refund payments to Spartan
10 Homes.

11 Q. On your existing main extension agreements are
12 there agreements where you have not started to make
13 payments under those agreements?

14 A. I don't know the answer to that.
15 Am I supposed to have two A-56s?

16 Q. No. One is complimentary.

17 A. Thank you, I guess.

18 Q. Mr. Capestro, this exhibit which I have marked as
19 A-56 is in response to a Spartan data request 2.15, and it
20 is a spreadsheet of service addresses connected to the
21 Palm Shadows wastewater treatment sewer collection system
22 since January 1, 2005. It's 13 pages.

23 Do you recognize that document?

24 A. Yes, I do.

25 Q. Was that prepared by you or under your direction?

1 A. It was prepared by Far West Water & Sewer by the
2 administrative offices.

3 MR. CROCKETT: Okay. I don't intend to ask
4 questions on this, but I would like it introduced as part
5 of the record. So I would move for the admission of
6 Exhibit A-56.

7 ALJ MARTIN: Mr. Black?

8 MR. BLACK: No objection, Your Honor.

9 ALJ MARTIN: Okay. 56 is admitted.

10 (Exhibit A-56 was admitted into evidence.)

11 ALJ MARTIN: Mr. Crockett, do you show on your
12 checklist the admission of A-57?

13 MR. CROCKETT: I do show that.

14 ALJ MARTIN: I must not have checked it then.

15 MR. CROCKETT: That is this big document. You
16 know what? I believe I had moved it and it's been
17 admitted today.

18 MR. BLACK: Yes.

19 ALJ MARTIN: Okay. Thank you.

20 Q. (BY MR. CROCKETT) Mr. Capestro, I have handed
21 you now an exhibit that has been marked as Exhibit A-28.
22 And I know I risk confusing the record with this, but I
23 will launch in anyway.

24 Yesterday we filed or we had admitted a different
25 version of this. It was Exhibit A-23A, which is copies of

1 inspection release forms that Mr. Householder had in his
2 file.

3 This Exhibit A-28 was prepared from documents
4 that Far West Water & Sewer had provided to me in response
5 to a data request requesting the contents of the file on
6 Spartan Homes.

7 What is -- what I want to talk to you about on
8 this exhibit is your -- the inspection -- strike that.

9 The inspection releases that you provided in
10 response to a data request, which are contained here in
11 this Exhibit A-28 represent inspection releases for 51
12 lots within Sierra Ridge.

13 The copies that Mr. Householder has in his file,
14 which we introduced yesterday as Exhibit A-23A, contain
15 forms for 62 lots that currently have structures on them
16 in Sierra Ridge. And that leave a difference of -- and so
17 as I went through -- I'm not going ask you to do it now,
18 but I will ask you to accept my word for it, subject to
19 check, that as I went through your documents that were
20 provided I did not find inspection release form for lots
21 10, 28, 47, 51, 63, 71, 76, 81, 86, 104, and 105.

22 And my question to you is: Do you know where the
23 inspection release forms are for those lots?

24 A. I did not know the number we gave you was short
25 11. So I don't know.

1 Q. Okay. Is it possible that you did not retain
2 copies of those 11 inspection forms?

3 A. I don't know the answer to that.

4 Q. Have you found that there are documents missing
5 from your files generally for Far West Water & Sewer?

6 A. No.

7 Q. You have not found that to be the case?

8 A. That is not generally the case. On occasion
9 there are some things missing, but it's not generally the
10 case.

11 MR. CROCKETT: Your Honor, at this point I would
12 move the admission of Exhibit A-28.

13 ALJ MARTIN: Mr. Black?

14 MR. BLACK: No objection.

15 ALJ MARTIN: A-28 is admitted.

16 (Exhibit A-28 was admitted into evidence.)

17 Q. (BY MR. CROCKETT) One last question with regard
18 to Exhibit A-57, which are the spreadsheets that were
19 provided on payments to H & S Developers, is that
20 information that was provided to the Commission in
21 connection with your emergency rate case?

22 A. No.

23 Q. I guess what my question is is, in evaluating
24 your application for the emergency rate case did the
25 Commission consider or factor into account revenues that

1 were received from developers by H & S Developers, the
2 affiliate of Far West Water & Sewer?

3 MR. BLACK: I will object to that question. It
4 comes to relevance.

5 MR. CROCKETT: Well, Your Honor, I'm trying to
6 gauge, I guess, the accuracy of information that is being
7 provided. And my question is, is that information that
8 has generally been provided to the Commission in terms of
9 how the funding of the infrastructure occurs at Far West
10 Water & Sewer?

11 MR. BLACK: Whether it was information given to
12 the Commission in term of an emergency rate case, I don't
13 believe that that has an impact on this particular
14 complaint.

15 ALJ MARTIN: I think I have to agree with
16 Mr. Black.

17 MR. CROCKETT: Fair enough. I will withdraw the
18 question, Your Honor.

19 ALJ MARTIN: Thank you.

20 Q. (BY MR. CROCKETT) Okay. Mr. Capestro, we are
21 going to look now for a moment at the testimony of
22 Mr. Galindo, and that is -- let's see what exhibit number
23 that is -- A-2.

24 Do you have it up there?

25 A. I don't see it.

1 Q We are getting to have a big pile of exhibits,
2 aren't we?

3 ALJ MARTIN: We passed that about two days ago.

4 Q (BY MR. CROCKETT) Have you had luck finding
5 that?

6 A Yes, I did. It was in order right past A-1.

7 Q Congratulation. On page 10 of his testimony
8 ~~beginning at line 9 Mr. Galindo indicates that he provided~~
9 documentation to Far West. Then he identifies a number of
10 items beginning with engineer's design report and water
11 service.

12 Are those documents now found in the files of Far
13 West Water & Sewer?

14 A Yes, they are.

15 Q Now, on page 23, line 17 of Mr. Householder's
16 prefiled direct testimony, which is Exhibit A-1,
17 Mr. Householder testified that he met with you in
18 approximately April 2007.

19 Do you recall such a meeting?

20 A I remember meeting with him.

21 Q Does that time frame sound like it's in the right
22 ballpark?

23 A I believe it was.

24 Q And Mr. Householder testified as follows:

25 "Mr. Capestro showed me copies of the new main extension

1 agreements for Sierra Ridge Unit 1 on his computer screen,
2 but when I asked Mr. Capestro to e-mail copies of the main
3 extension agreements to me so that I could have my
4 attorney review the agreements, Mr. Capestro told me that
5 Spartan would first need to provide copies of engineering
6 plans, approvals to construct, approvals of construction,
7 test results, and related items for the water distribution
8 ~~infrastructure and the sewer collection infrastructure for~~
9 Sierra Ridge Unit 1."

10 Is that statement consistent with your
11 recollection of what happened in the meeting?

12 A. No, it is not.

13 Q. Did Mr. Householder ask you to provide him with
14 copies of -- well, first of all, have you prepared main
15 extension agreements for Sierra Ridge Unit 1?

16 A. Yes, I have -- excuse me. No, I have not. They
17 have been prepared.

18 Q. And who prepared them?

19 A. It was from -- I believe that they were prepared
20 by Mr. Shapiro.

21 Q. Are they consistent with the form of main
22 extension agreements that we have looked at in the
23 responses to Spartan's first set of data requests?

24 A. No.

25 Q. It is a much different looking document?

1 A. Yes, it is.

2 Q. Have you provided copies of those documents to
3 Mr. Householder?

4 A. No, I did not.

5 Q. Do you know when those documents were prepared?

6 A. They were prepared in outline, but Mr. Shapiro
7 had asked for certain things in a letter to
8 Mr. Householder, and there were some blanks in the
9 agreements themselves. But they were more boilerplate
10 than anything else, and there were some holes in the data
11 and some exhibits that were necessary.

12 And I just referred it back to Mr. Shapiro to get
13 the remainder of the information so he could get him a
14 full agreement, and there was a breakdown of any
15 communication between Mr. Shapiro and Mr. Householder.

16 Q. And do you know what accounted for that
17 breakdown?

18 A. Part of it was that, as I understood it,
19 Mr. Householder before he would sign an agreement wanted
20 an assurance that he would have capacity by a certain
21 date. And I think the response was, that you will get
22 capacity at the same time as the rest of the people get
23 capacity as these plants are finished.

24 But I was not a part of those communications. I
25 know there were e-mails going back and forth between the

1 two of them.

2 Q That would have been communicated to
3 Mr. Householder by Mr. Shapiro?

4 A I believe Mr. Householder was communicating
5 directly with Mr. Shapiro by e-mail.

6 Q And you said that was part of what led to the
7 breakdown.

8 Is there another part?

9 A I -- the discussions between the two seemed to be
10 fairly heated, and I don't know what else it was. But all
11 I know is that we couldn't -- Mr. Shapiro did not forward
12 to me any information from Mr. Householder to -- that he
13 wanted to use to complete the extension agreements.

14 Q Do you know whether or not the breakdown had
15 something to do with the insistence by Mr. Shapiro that
16 Spartan Homes pay capacity fees for water and for sewer?

17 A That was part of it.

18 Q And do you know whether or not Mr. Shapiro was
19 also requiring that Spartan Homes advance \$15,000 to cover
20 the cost to review design plans, et cetera?

21 A There is a letter from Mr. Shapiro in the
22 records. I don't remember if it's \$15,000; I thought it
23 was \$5,000.

24 Q And the letter would speak for itself on that
25 point?

1 A. Absolutely.

2 Q. And given that all of the infrastructure -- and
3 do you remember the date of Mr. Shapiro's letter
4 approximately?

5 A. May of 2006, and there is correspondence back and
6 forth.

7 Q. And at that point in time all of the
8 infrastructure had been in the ground. It had been
9 accepted and was being used by Far West Water to provide
10 water and sewer service; correct?

11 A. That's correct. My purpose with meeting with
12 Mr. Householder in April of 2007 was to diffuse the
13 situation so we could get more information so that
14 Mr. Shapiro could finish it. I knew they were unable to
15 talk to each other.

16 Q. Do you know -- well, given that all of the
17 infrastructure in the ground was in the ground and was
18 accepted and being used by Far West, what would be the
19 basis for charging Mr. Householder \$15,000 for
20 administrative costs and to review engineering plans?

21 A. I'm not the one that put it in the letter. I
22 don't know.

23 Q. At -- in your April 2007 meeting with
24 Mr. Householder he indicated that he saw copies of main
25 extension agreements on your computer.

1 Is it your testimony that that did not occur?

2 A. No. My testimony is that I don't remember doing
3 that. It could have.

4 Q. It's possible that that could have happened?

5 A. Yeah. I believe by that time I had draft
6 agreements that had been e-mailed to me by Mr. Shapiro.

7 Q. Do you recall Mr. Householder asking you to send
8 him copies of those agreements so his attorney could
9 review them?

10 A. Yes, and I told him that I would refer it to my
11 attorney and he would make the decision.

12 Q. And do you know whether or not those agreements
13 were ever provided to Mr. Householder?

14 A. I don't know. I referred it to Mr. Shapiro at
15 the time.

16 Q. Now, back to the statement that we were just
17 looking at in Mr. Householder's testimony. I'm going to
18 continue reading.

19 According to Mr. Householder's testimony he said:
20 "When I responded that all of this documentation had been
21 provided to Far West previously on multiple occasions,
22 Mr. Capestro told me that Far West did not have any of the
23 documentation. I then asked Mr. Capestro if Far West had
24 lost this information, and he responded, yes."

25 Do you recall that exchange?

1 A. No. I believe there is a misunderstanding there.
2 He asked me if I had the information in my
3 office, and I didn't have the information in my office,
4 that I would have to go back to the other office and see
5 what I had.

6 But I don't believe I ever said that we had lost
7 anything.

8 Q. ~~But it is your testimony now that there appears~~
9 to be a miscommunication, but what was intended to be
10 communicated was that you didn't have that documentation
11 in your office with you but it was in another place?

12 A. I was in an office away from Far West Water when
13 we met.

14 Q. Do you recall telling Mr. Householder that you
15 had the documentation in another location?

16 A. No. I told him I would have to check to see what
17 we had and what more he needed to do.

18 Q. And did you check?

19 A. I believe so. By the time we got through, we had
20 several copies of everything.

21 Q. Okay. So I'm trying to establish the timeline
22 and pattern here.

23 You told Mr. Householder you would have to check
24 and see what documentation you had and what documentation
25 was lacking?

1 A. Yes.

2 Q. And did you respond back to Mr. Householder?

3 A. Yes, and he sent me the bills and that was
4 insufficient. As I stated before, I wanted the backup,
5 and I don't think he could get the backup from Mr. Noll.

6 Q. How did you communicate that to Mr. Householder?
7 Was that done in an e-mail or a letter or was that
8 verbally communicated?

9 A. I don't remember. I do know that when he did
10 deliver the stuff from Mr. Noll, it came with a note. I
11 don't believe I saw him at that time.

12 Q. In this meeting in April of 2007, that occurred
13 in your office?

14 A. I believe so.

15 Q. And where is your office located?

16 A. 12486 South Foothills Boulevard.

17 Q. Is that what would be described as the 44th
18 Street office?

19 A. No.

20 Q. Is that your law office?

21 A. My law office is in California.

22 Q. Okay. So -- I'm sorry. Tell me again, where
23 were you -- you were meeting at which office?

24 A. I have an office in H & S Developers.

25 Q. So that's the H & S Developers office --

1 A. Correct.

2 Q. -- is where you met?

3 A. Yes.

4 Q. Okay. Mr. Capestro, I have handed you a document
5 which you have seen before. It's in the testimony in this
6 case, but I have marked it separately. It's Exhibit A-9.
7 It is a water service agreement and sewer service
8 agreement for Sierra Ridge No. 1 and No. 2.

9 You recognize that document, do you not?

10 A. I have seen it before. We produced it.

11 Q. Is there anything in that document that is
12 inaccurate?

13 A. Yes.

14 Q. And what is that?

15 A. This was prepared under the time that there was
16 Sierra Ridge 1, 2, and 3. 3 has become 2, and 1 and 2 is
17 1.

18 Q. Okay. If I were -- I mean, if I were to tell
19 you -- well, okay.

20 If this document said Sierra Ridge No. 1, which
21 comprises 113 lots, would it then be accurate?

22 A. Yes.

23 Q. And you agree with me, do you not, that what was
24 originally identified as Sierra Ridge Nos. 1 and 2, which
25 comprise a total of 113 lots, was ultimately combined at

1 the request of the County into one unit?

2 A. I don't know whose request it was, but I agree.

3 Q. Okay.

4 MR. BLACK: I would like to ask a question.

5 Didn't we go over all of these documents
6 yesterday?

7 ALJ MARTIN: I was wondering as well. As I
8 recall.

9 MR. BLACK: We went through all of these
10 documents yesterday.

11 MR. CROCKETT: We did go through a number of
12 documents yesterday. What we looked at was the capacity
13 assurance for sewage treatment. This is the capacity
14 assurance for sewage collection. This is not a document
15 that we looked at yesterday.

16 MR. BLACK: Okay. But the previous document was
17 a document we looked at yesterday, correct?

18 MR. CROCKETT: The previous document was one we
19 looked at yesterday, correct.

20 MR. BLACK: Do we have any other documents that
21 you are going to provide that we looked at yesterday?

22 MR. CROCKETT: Mr. Black, I don't know, but I'm
23 trying to move quickly.

24 MR. BLACK: Okay. Thank you.

25 MR. CROCKETT: I don't think I'm being

1 particularly repetitive here.

2 Q. (BY MR. CROCKETT) Mr. Capestro, Exhibit A-11 is
3 a copy of a capacity assurance for sewage collection
4 system for Sierra Ridge 1 and 2.

5 A. Yes.

6 Q. I understand your comment earlier that there is
7 an issue of the combining of the two units, okay. But
8 putting aside that issue, is there anything that you are
9 aware of in this document that is not accurate?

10 A. No, I'm not.

11 MR. CROCKETT: Your Honor, I would move for the
12 admission of Exhibits A-9 and A-11.

13 ALJ MARTIN: Mr. Black?

14 MR. BLACK: No objection.

15 ALJ MARTIN: Okay. A-9 and A-11 are admitted.

16 (Exhibits A-9 and A-11 were admitted into
17 evidence.)

18 MR. BLACK: Just for purposes of clarification,
19 on A-11, Mr. Crockett, is the Sierra Ridge 1 and 2 the
20 same? Does that refer to what is now 1?

21 MR. CROCKETT: Correct.

22 MR. BLACK: Okay. Thanks.

23 Q. (BY MR. CROCKETT) Mr. Capestro, in this case did
24 you take the deposition of Mr. Householder?

25 A. Yes, I did.

1 Q. And I think we discussed yesterday you attended
2 the deposition of Mr. Kaveney?

3 A. Yes, I did.

4 Q. Did you send a data request to Spartan Homes; do
5 you recall?

6 A. I don't remember. I thought we did, but I'm not
7 sure. I thought it went with the deposition. We used
8 those documents during the deposition.

9 Q. Did you take the deposition of Mr. Galindo?

10 A. I don't believe so.

11 Q. I think that is right.

12 Now, you indicated in your testimony yesterday
13 that you have spoken to Mr. Thomas in connection with this
14 case; is that right?

15 A. Correct.

16 Q. Did you speak to Murphy Campbell?

17 A. I can't.

18 Q. Is he deceased?

19 A. No.

20 Q. Is he not -- why can't you speak with him?

21 A. I don't know if he is walking the streets.

22 Q. You wouldn't know how to get ahold of him?

23 A. Last known address was a prison.

24 Q. Okay. And was his incarceration in prison as a
25 result of anything that he did while working at Far West

1 Water & Sewer?

2 A. You asked that yesterday.

3 MR. BLACK: Asked and answered, but we are not
4 being repetitive.

5 ALJ MARTIN: Yeah, that was yesterday.

6 Q. (BY MR. CROCKETT) But I think we asked with
7 Mr. Weidman yesterday. I don't recall asking about
8 Mr. Campbell.

9 ALJ MARTIN: Well, go ahead and answer the
10 question.

11 THE WITNESS: His problem was a domestic matter.

12 Q. (BY MR. CROCKETT) Okay. So unrelated to Far
13 West Water & Sewer?

14 A. That's correct.

15 Q. In connection with this complaint proceeding you
16 have spoken with Rick Stacks of Yuma County Development
17 Services?

18 A. Not concerning this complaint.

19 MR. CROCKETT: If you bear with me, Your Honor,
20 I'm kind of moving quickly through my outline trying to
21 wrap up here.

22 ALJ MARTIN: That's fine.

23 Q. (BY MR. CROCKETT) In light of the discussion we
24 have had today I want to ask a question about something in
25 Mr. Kaveney's deposition. He said at page 71, lines 16

1 through 20 that Dusty Thomas was the person at Far West
2 Water & Sewer that was involved in the deciding what money
3 came from what developers prior to Mr. Shapiro getting
4 involved.

5 That doesn't appear to be accurate in light of
6 the fact that it appears that it was H & S Developers that
7 was focused on collecting money from developers.

8 Do you agree with that?

9 A. Dusty Thomas was the director of operations for
10 H & S Developers.

11 Q. Okay. So he may have been wearing his H & S
12 Developers' hat in context of that comment?

13 A. He may have. The only agreements that I knew
14 about were between Brent Weidman and developers.

15 Whether or not Mr. Thomas continued that, I don't
16 know.

17 Q. Do you know what the current daily wastewater
18 flow into the Palm Shadows wastewater treatment plant is?

19 A. No, I don't.

20 Q. Do you know what the current committed wastewater
21 flow is to the Palm Shadows plant?

22 A. The last time I looked at it it was 176- or
23 186,000 gallons a day. It actually exceeds that.

24 Q. The actual flow exceeds that today?

25 A. Yeah. The engineer's estimate of what would be

1 coming from the developments is lower than the actual
2 flows from some of the developments.

3 Q. When I had a discussion yesterday with
4 Ms. Wallace regarding the items that need to be submitted
5 with a main extension agreement to the Commission for
6 approval, we identified three items. One is the signed
7 main extension agreement. A second is an approval to
8 construct. And the third is a water use data sheet.

9 Do you recall that?

10 A. Yes.

11 Q. And we indicated or we discussed the fact that
12 the approval to construct is provided generally by the
13 entity that is constructing the infrastructure. In the
14 case of Far West Water & Sewer that would most likely be
15 the developer.

16 Would you agree with that?

17 A. Up until now, yes.

18 Q. Up until now.

19 And the water use data sheet we discussed is a
20 document that is prepared by the water company.

21 Do you agree with that?

22 A. That is correct.

23 Q. And are those the things -- do you agree that
24 those are the things that need to be submitted along with
25 a signed copy of the water main extension agreement to the

1 Commission?

2 A. Well, they are exhibits that have to be attached
3 to the main extension agreement itself.

4 Q. The things that need to be included in the main
5 extension agreement are found in R14-2-406; correct?

6 A. I don't know without reviewing those. I do know
7 that you have to have a legal description of the property.
8 You have to have the cost, and you have to have some other
9 documents. But it's itemized in the agreements itself.

10 Q. Okay. Assume with me that a main extension
11 agreement contains everything that needs to be contained
12 in it according to the rule.

13 A. Yes.

14 Q. Is there anything that you are aware of that
15 needs to be submitted with that agreement besides the
16 approval to construct and a water use data sheet?

17 A. Not that I know of.

18 Q. Mr. Capestro, have you read Mr. Galindo's
19 prefiled direct testimony in this case?

20 A. Not for some time.

21 Q. Did you read it at one time?

22 A. I did.

23 Q. In your direct prefiled testimony you really
24 don't address Mr. Galindo's testimony. I'm just wondering
25 if there is anything in there that you disagree with.

1 A. I don't have that clear of a recollection of his
2 testimony, prefiled testimony.

3 Q. Mr. Capestro, at page 5, lines 10 through 13 of
4 your direct testimony, you state as follows --

5 A. On my testimony?

6 Q. Yes, your direct testimony, page 5, lines 10
7 through 13 you state, "Far West hired --

8 A. Just a minute. I'm trying to find it.

9 Q. I'm sorry. Let me know when you get there,
10 Mr. Capestro.

11 ALJ MARTIN: What we are going to do is take a
12 10-minute break for the court reporter's benefit and for
13 the judge's too. In that time, Mr. Capestro can find that
14 and then maybe you might have an idea of what questions
15 you want to finish up with.

16 MR. CROCKETT: Your Honor, I'm within minutes of
17 being done. So I will collect my thoughts and I think I
18 can wrap up.

19 (Whereupon, a recess was taken from 2:59 p.m.
20 until 3:09 p.m.)

21 ALJ MARTIN: Back on the record.

22 Q. (BY MR. CROCKETT) Mr. Capestro, before the break
23 I had asked you about page 5, lines 10 through 13 of your
24 testimony, and you state as follows: "Far West hired
25 Coriolis Engineering to address the situation the company

1 was facing in 2006."

2 I just want to ask you, what was the situation
3 the company was facing in 2006?

4 A. We had a plant at Del Oro that had failed and was
5 not taking care of effluent at all. And we had other
6 plants that did not denitrify.

7 Q. Okay.

8 A. Actually we had two plant that did not denitrify.

9 Q. Okay. You know, I'm down to my last question, I
10 think, and over the three days of this hearing, maybe four
11 days of this hearing, there has been a lot of discussion
12 about Mr. Kaveney and what he did and whether he did
13 favors. There has been discussion about others at the
14 company -- Mr. Weidman, Mr. Thomas -- who did things in a
15 way that I think you would do differently if you could do
16 it over again.

17 My question to you is this: Where does the buck
18 stop with the company? In your opinion, are the owners of
19 the company ultimately responsible for what happens in
20 that company?

21 A. The company is responsible for what happens in
22 that company. Whether or not stockholders are
23 responsible, that is a different story.

24 Q. Well, in your company -- in I guess your wife's
25 company, it's a company, but it's not like an APS, for

1 instance, which has tens of thousands of shareholders.
2 This is a very closely-held business.

3 A. Would you agree?

4 A. Correct, but if you are asking about personal
5 liability --

6 Q. No. I guess my question is not personal
7 liability. My question is: Who needs to take
8 responsibility for the actions of Far West Water & Sewer
9 company? Ultimately isn't that Ms. Capestro, Ms. Braden?

10 A. I think Ms. Capestro, Ms. Braden, and myself are
11 taking responsibility by the huge investment we have put
12 in and also trying to find additional financing through
13 the use of our own assets.

14 MR. CROCKETT: Your Honor, that is the end of my
15 cross-examination of Mr. Capestro.

16 Thank you. You have been very patient these last
17 two days.

18 THE WITNESS: Thank you, Mr. Crockett.

19 ALJ MARTIN: And, Mr. Crockett, thank you very
20 much. With your last question you actually eliminated the
21 last question I had on my list. Thank you for asking all
22 of my questions.

23 MR. CROCKETT: I thought I asked everybody's
24 questions.

25 MR. BLACK: Unfortunately I have a few.

1 ALJ MARTIN: Okay. Then, Mr. Black, redirect.

2 MR. BLACK: Thank you, Your Honor.

3

4

REDIRECT EXAMINATION

5

6 Q. (BY MR. BLACK) Mr. Capestro, I would like you to
7 look at what has been marked as Exhibit A-33. That would
8 be Decision No. 71447.

9 A. I have it.

10 Q. Mr. Capestro, if you could turn to page 28 of
11 that order.

12 MR. CROCKETT: And, Your Honor, if you could bear
13 with me for a minute. That is the one exhibit I can't put
14 my hand on. If I could have a moment to find it.

15 ALJ MARTIN: Yes.

16 Q. (BY MR. BLACK) I would like you to read into the
17 record beginning at line 14 with the word "based," to line
18 17 ending with the word "ratepayers."

19 A. "Based upon the testimony and evidence presented
20 in this case, the Commission has lost confidence in the
21 company's current management ability to complete the sewer
22 construction project and operate the company to the
23 benefit of the ratepayers."

24 Q. Thank you. I would like to -- my next few
25 questions I would like you to keep that sentence in mind.

1 A. I don't want to. It's abusive. I don't mean
2 that. It's just --

3 Q. This morning and this afternoon Mr. Crockett had
4 spent a lot of time going over the main extension
5 agreements that were signed in January of '05; is that
6 correct?

7 A. Yes.

8 Q. And wouldn't you agree that the purpose of that
9 cross-examination was to demonstrate that things were not
10 done correctly in 2005; correct?

11 A. That is my belief, yes.

12 Q. And I think your prior testimony was that things
13 were not done correctly prior to Ms. Capestro and yourself
14 taking active management of the company in 2006; is that
15 correct?

16 A. That is my belief.

17 Q. In 2006 was that the first time you became aware
18 of the Commission's policy of growth paying for growth?

19 A. Yes, it was.

20 Q. And in response to that policy, what did you do
21 in terms of changing the form of your main extension
22 agreements?

23 A. We had a much more formal agreement requiring the
24 developers to pay their pro rata share of the facility to
25 help finance those facilities. Quite frankly if I had had

1 the payments for developments that I thought were going to
2 be done at the present time, I would not be in this
3 financial bind.

4 Q And isn't it true that one of the reliefs sought
5 by Mr. Householder and Spartan Homes is to enter into a
6 main extension agreement in a form that is similar or
7 duplicative to the terms of many of the main extension
8 agreements that were signed and submitted on January 31st,
9 2005?

10 A That is true, but as shown in the hearings and
11 before the Commission, I don't think the Commission is
12 going to tolerate any developer having a free ride. I
13 know H & S Developers has paid its share ever since 2006
14 in its rate cases and so has several other developers.

15 Q And is Mr. Householder's situation unique with
16 respect to Far West?

17 A No.

18 Q So there are other developers that are in similar
19 situations as Mr. Householder?

20 A There are other developers with bigger
21 developments than him.

22 Q So they have developments that are partially
23 hooked up?

24 A That's correct.

25 Q And there are empty lots as a result of the

1 moratorium?

2 A. That's correct.

3 Q. Do you think that the Commission would approve of
4 any action by Far West at this time to allow developers to
5 hook into the system? Given the state of the system and
6 given the requirements required to approve that system, do
7 you think that the Commission would tolerate allowing
8 developers to hook in for free?

9 A. No. In fact, that was the biggest comment from
10 the people in the community saying, we don't mind paying
11 our fair share, but why don't the developers pay for their
12 new homes that are making the profits? And there was
13 quite an angry outburst of it, and the Commission did take
14 note of it and so did the administrative law judge.

15 Q. So there have been comments made, at least the
16 perception is, that many of the problems that the company
17 is facing today is as a result of the growth that occurred
18 in the early 2000s through 2005; correct?

19 A. Tremendous growth.

20 Q. And the way that extensions were made back then
21 also has contributed to the problem; correct?

22 A. That's correct.

23 Q. So as we sit here today, do you believe that you
24 are at all at liberty to provide the relief granted to
25 Spartan Homes and Mr. Householder with respect to the

1 remaining 50 lots in Sierra Ridge?

2 A. I think my hands are tied because if I do that,
3 the other developers would want the same. You should
4 treat the other developers equally. And it would take
5 away quite a bit of investment money that could help pay
6 for the new plant and reduce the amount that the
7 ratepayers would have to pay.

8 Q. Also yesterday during your testimony you had
9 indicated that -- you used the term cowboys and how things
10 had been done prior to yourself and Ms. Capestro taking an
11 active management role in the company.

12 Is that something else that you are trying to
13 address with respect to how the company is -- does
14 business today?

15 A. I'm trying to address it. I haven't gotten there
16 yet. It's a big task, but we are trying at every move to
17 go to -- from a small company to a real company that has
18 17,000 customers. And we have to take care of our service
19 for them.

20 We want to make sure that the programs that we
21 have gives the information to the ACC, the ADEQ, the
22 County that they are entitled to get.

23 A little example of it is before trying to figure
24 out who is in the CC&N and where, like Mr. Householder
25 testified, where the lines are. We now have switched to a

1 mapping system that is high level and low level
2 photography that maps out every line we have, the depth of
3 every line. You just push on a manhole and you know
4 exactly how deep it is and what size the lines are, and
5 you know where it could be hooked up to and you know what
6 capacity it is. And it will show you every single
7 customer on that street, so you know what you are doing
8 and what capacity you have to have.

9 Q. And isn't it true, Mr. Capestro, that the
10 Commission is so concerned with your and management's
11 ability to operate the company to the benefit of the
12 ratepayers, that they have considered the appointment of
13 an interim operator?

14 A. They had asked the Staff to investigate as to
15 whether an interim can gain the confidence of the ADEQ and
16 whether or not the interim operator can better fund the
17 financing to be able to complete the project.

18 Q. And do you believe if an interim operator were
19 managing the company today, that interim operator would
20 allow for the hookup of facilities -- excuse me -- the
21 hookup of lots without paying for that growth?

22 A. No, I don't think so.

23 Q. Mr. Capestro, I would also like you to look at
24 your direct testimony beginning at page 10.

25 A. Yes.

1 Q. Is it still your position today that if the
2 Commission determines that it is in the public interest to
3 allow these hookups without any payment, then you will
4 abide by that decision?

5 A. Of course.

6 Q. If the Commission determines that the on-site
7 infrastructures that Mr. Householder and Spartan Homes
8 constructed and transferred over to the company, if the
9 Commission decides that immediate refund is proper and in
10 the public interest, will the company abide by that
11 decision?

12 A. To the best of its ability, knowing that its
13 financial situation is very, very stressed. But we would
14 have to abide by the Commission's decision.

15 Q. And isn't the purpose of your testimony to
16 demonstrate that at this point in time the company does
17 not feel like it can do anything without Commission
18 oversight?

19 A. That is exactly correct.

20 Q. So if you had allowed Mr. Householder to connect
21 his 50 connections as well as other developers that
22 were -- that did not -- that were not able to finish their
23 subdivisions because of the moratorium --

24 MR. BLACK: I'm sorry. Can you read the
25 beginning of that back?

1 (Requested portion of the record read.)

2 MR. BLACK: Thank you.

3 Q. (BY MR. BLACK) Without either Commission Staff's
4 involvement or without the Commission approval, do you
5 believe that would be looked upon negatively by the
6 Commission?

7 A. I think it would be looked on extremely
8 negatively.

9 I feel for the plight of these developers that
10 are not able to develop at the present time, but I have
11 been to those hearings and I have heard the comments and I
12 have heard the questions from Staff and RUCO as to why we
13 don't make sure developers pay their fair share.

14 Q. So when you say that Mr. Householder's problems
15 are the least of your concerns, again, you don't mean to
16 minimize the problems that he is facing; you just want to
17 put it in context.

18 Is that correct?

19 A. Oh, no. No. No. I want him to know that, you
20 know, I'm not his adversary. I really feel for what has
21 happened over there, and I hope we get it rectified soon.
22 But after finding out in 2006 what should be done for the
23 backbone and listening to the testimony and the comments,
24 I don't think I have any other choice.

25 Q. And since you have taken an active management,

1 you and Ms. Capestro, of the company since 2006, have you
2 been trying to do things the correct way?

3 A. We have tried, and we are learning quite a bit,
4 and we are bringing in more and more capable people that
5 are able to handle the problems. And we are presently
6 interviewing a man that has an engineering degree and an
7 MBA degree, and he's a Class IV in all four divisions.
8 That would be of great help also.

9 MR. BLACK: Your Honor, that is the extent of my
10 redirect.

11 ALJ MARTIN: Thank you. I have a question.

12

13

EXAMINATION

14

15 Q. (BY ALJ MARTIN) You talked about the
16 Commission's desire to have growth pay for growth, make
17 developers pay for their infrastructure.

18 However, does the Commission -- in your view,
19 does the Commission have the ability to go back and change
20 the terms of existing validly-executed main extension
21 agreements?

22 A. Not if there is an existing validly-executed main
23 extension agreement. There is not one in this case. And
24 I have two other developers that refuse to sign extension
25 agreements also, at least two.

1 Q. Okay. You do agree that it's Mr. Householder's
2 contention that there is an existing validly-executed line
3 extension agreement; correct?

4 A. I know what he said. I have gone through the
5 files, and I have gone through the computers. It's not
6 there. That is why when we added to the list that we gave
7 to Mr. Shapiro, the Spartan Homes Sierra Ridge -- and that
8 is also why there was a letter from Mr. Kaveney -- stating
9 that he needed some -- he was working on the main
10 extension agreement and needed some information to
11 complete it.

12 Q. I understand that, but for the sake of argument,
13 solely for the sake of argument, admitting nothing --

14 A. Okay.

15 Q. -- if Spartan Homes has a validly-executed and
16 existing main extension agreement, the company would have
17 to honor its contractual obligations, or are you saying
18 that the Commission has the ability to go in and change
19 those terms?

20 A. No. I do not think the Commission has the
21 ability to change an existing contract.

22 Q. Thank you.

23 ALJ MARTIN: Mr. Black, since I asked a different
24 question, would you have anything else you would like to
25 bring up in light of that?

1 MR. BLACK: Well, Judge Martin, the Commission
2 has wide discretion to do what it does in its orders,
3 whether that is in a complaint order or whether that is in
4 a rate case order.

5 So with respect to your question concerning
6 whether the Commission can go back and change the terms of
7 a main extension agreement, that is for the Commission to
8 decide. I don't think that -- I think that
9 Mr. Capestro -- you know what? I will handle it in my
10 closing argument.

11 ALJ MARTIN: Okay.

12 THE WITNESS: Can I make one comment?

13 ALJ MARTIN: Sure.

14 THE WITNESS: When Far West took over the Del Oro
15 plant, there is an existing contract for the disposal of
16 effluent from the Del Oro plant to the Mesa Del Sol Golf
17 Course. And Far West took that contract, that plant,
18 subject to that contract. The Commission is looking into
19 that contract at the next hearing to see whether or not we
20 will have to charge or we just put it in our rate base
21 because we accepted a contract like that.

22 So with Mr. Black's comments, I don't know if
23 they can change a contract or not, but I know they are
24 looking into that one. And that one dates back to 2000.

25 ALJ MARTIN: Yes. We wouldn't talk about golf

1 courses. Let's not go there, please.

2 All right. Then, Mr. Capestro, you may step
3 down -- I'm sorry. Mr. Black, anything else?

4 MR. BLACK: No, Your Honor.

5 ALJ MARTIN: Before you step down, Mr. Crockett?

6 MR. CROCKETT: Yes.

7 THE WITNESS: Oh, no.

8 ALJ MARTIN: Very briefly, please.

9 MR. CROCKETT: Your Honor, and I just wanted to
10 follow up on one thing that came up with your questioning
11 and it's something Mr. Capestro talked about yesterday.

12

13 RE-CROSS-EXAMINATION

14

15 Q. (BY MR. CROCKETT) It has to do with you looking
16 for this agreement. You said you have looked at the
17 computers.

18 Do you have -- do you still have Mr. Kaveney's
19 computer that he was using at the time he was with the
20 company?

21 A. Yes.

22 Q. And is the company -- is your computer system
23 networked at the company?

24 A. I don't know if that particular computer is
25 networked. Many of them are.

1 Q. And do you know, did Mr. Kaveney keep copies of
2 all the main extension agreements he did?

3 A. I was specifically looking for that one. I would
4 have to find out. I don't know the answer to that.

5 Q. And where is his computer kept today?

6 A. I believe that that is still kept over at Far
7 West Water & Sewer. If not it's with our IT person.

8 Q. Did you look -- did you look in the location
9 where Mr. Householder alleges that he met with
10 Mr. Kaveney? Did you look over at the water plant?

11 A. No. His computer was moved over to Far West
12 Water & Sewer when he moved his office over there.

13 There is a computer at the Far West Water
14 treatment plant. I don't think it has anything like that
15 because it keeps water data, but I will look in that one
16 too.

17 MR. CROCKETT: Your Honor, that is all I have.

18 ALJ MARTIN: Okay. All right. Mr. Capestro, you
19 may step down. Thank you very much.

20 THE WITNESS: Thank you.

21 ALJ MARTIN: Mr. Black, do you have any further
22 witnesses?

23 MR. BLACK: No, Your Honor.

24 ALJ MARTIN: I just have to ask.

25 MR. BLACK: He is hiding back there.

1 THE WITNESS: Are we putting Mr. Crockett on the
2 stand?

3 MR. BLACK: No.

4 ALJ MARTIN: Okay. All right. We had discussed
5 earlier the briefing schedule.

6 MR. BLACK: Any closing remarks?

7 ALJ MARTIN: Pardon.

8 MR. BLACK: No closing?

9 ALJ MARTIN: Would you like the opportunity? I
10 was going to go with -- since we had a briefing schedule,
11 I thought we could go with that. If you would like to
12 offer a closing, I will offer the opportunity.

13 Mr. Crockett?

14 MR. CROCKETT: I am going -- we will do our
15 closing in our brief.

16 ALJ MARTIN: Mr. Black.

17 MR. BLACK: Just a few comments, Your Honor,
18 again. And thank you, Mr. Crockett, for being very
19 thorough over the last three days.

20 I think that what a lot of the evidence shows is
21 that this company is in a conundrum with this complaint.
22 There were -- I think that Mr. Crockett has aptly
23 demonstrated that things could have been done differently;
24 things should have been done differently.

25 Mr. Capestro and Mrs. Capestro, current

1 management of the company, is dealing with the, I guess,
2 sins of the past that occurred between 2000 and 2005,
3 beginning of 2006.

4 With the type of relief that was requested by
5 Mr. Householder, the company felt in light of, again, the
6 Commission's lack of confidence in their ability to
7 operate the company to the benefit of the ratepayers, has
8 basically forced us into a position where we had to go
9 through a hearing in this complaint.

10 Again, Mr. Capestro has testified that if the
11 Commission determines that the relief sought by
12 Mr. Householder is in the public interest, then that is a
13 decision for the Commission to decide. Mr. Capestro felt
14 that he could not make that decision in light of
15 everything that was going on.

16 So again, I just would like to close by saying
17 that, you know, we appreciate everybody's time, and we
18 will let the Commission decide how to resolve this matter.

19 And one more thing. Mr. Capestro has -- does
20 feel for Mr. Householder, but felt he could not make --
21 provide him the relief without some type of Commission
22 approval.

23 Thank you.

24 ALJ MARTIN: Thank you.

25 And I neglected to ask, Mr. Crockett,

1 Mr. Householder, do you believe this proceeding that we
2 have gone through has afforded you adequate opportunity to
3 make your case and position heard?

4 MR. CROCKETT: Yes, we do, Your Honor. Thank
5 you.

6 ALJ MARTIN: All right. Thank you.

7 Mr. Black, do you believe this proceeding has
8 afforded your client the opportunity to be heard
9 appropriately?

10 MR. BLACK: Yes, Your Honor.

11 ALJ MARTIN: All right. Thank you very much.

12 And something in one of the -- in Mr. Capestro's
13 direct testimony, I believe it was, talks about the public
14 interest. If in your closing briefs you could address the
15 role of Commission decision in public interest in a
16 complaint matter, that would be helpful. Okay.

17 So a little bit of housekeeping here. First of
18 all the briefing schedule -- well, I will let you write.

19 Okay. The briefing schedule I have that we
20 agreed upon -- I believe Mr. Capestro was rummaging
21 through his car when we talked about this -- I have the
22 opening brief for Spartan Homes due Monday, February 22,
23 2010. The reply -- or the responsive brief due from Far
24 West on March 22, 2010, and the reply brief due from
25 Spartan on April 12, 2010.

1 Is that correct, Mr. Crockett?

2 MR. CROCKETT: It is, Your Honor.

3 ALJ MARTIN: And that is what you had, Mr. Black?

4 MR. BLACK: Yes, Your Honor.

5 ALJ MARTIN: Okay. Let me ask you, Mr. Black,
6 did you wish to do any sort of rejoinder?

7 MR. BLACK: Yes, we would like some time for
8 rejoinder.

9 ALJ MARTIN: Two or three weeks?

10 MR. BLACK: Three.

11 ALJ MARTIN: All right. That would be --

12 MR. CROCKETT: And, Your Honor, I guess I
13 would -- I don't know if I can raise an objection at this
14 point because you are the one that came up with this idea.
15 My understanding or my experience with the Commission is
16 that in a complaint proceeding the complainant has the
17 opportunity to have the last word.

18 ALJ MARTIN: Oh.

19 MR. CROCKETT: This is not like a rate case.

20 ALJ MARTIN: I'm sorry. This is the first
21 hearing I have had on a complaint, so I apologize.

22 Mr. Black, Mr. Capestro, is that an issue? If
23 you really feel strongly about having rejoinder, then I
24 guess I have to offer Mr. Crockett the opportunity to do
25 like a surrejoinder.

1 MR. BLACK: No. We were keeping the opportunity
2 open.

3 ALJ MARTIN: And I'm sorry. Thank you for
4 pointing that out Mr. Crockett. I am sure you would like
5 to stop as soon as possible hashing all of this out.

6 Okay. And then I have some notes as to what
7 Mr. Capestro had been requested to provide, and perhaps
8 Mr. Crockett and Mr. Black can tell me if I'm missing
9 anything.

10 First I had updates to signed MXAs as late-filed
11 exhibits. I believe you indicated, Mr. Capestro, you were
12 going to file for those.

13 MR. CAPESTRO: I believe they were through 2006.

14 ALJ MARTIN: I was going to ask what the time
15 frames were.

16 MR. CROCKETT: The time frames in the data
17 responses were 2004, 2005, and 2006.

18 ALJ MARTIN: Okay. And then second,
19 Mr. Crockett, you were going to provide a copy of whatever
20 regulation or rule requires the company to use the
21 available sewer facilities instead of septic if those
22 facilities are available.

23 MR. CROCKETT: That's correct, Your Honor.

24 ALJ MARTIN: Okay. And then I have down complete
25 copies of MXAs. I wonder if that was just the one that --

1 MR. CROCKETT: Well, there was one that we
2 identified that there was a page missing. I think that
3 also went to the issue of whether there was an attachment
4 dealing with labor costs that should have been included
5 with those.

6 ALJ MARTIN: That's right. Yes.

7 MR. CAPESTRO: And there was one that missed the
8 middle page. We were going to go through those to make
9 sure we had complete copies.

10 ALJ MARTIN: Okay. Fourth I have the provision
11 of written agreements, if any, between H & S and Far West
12 regarding Palm Shadows.

13 Is there more to it than that?

14 MR. CROCKETT: It would be -- yes, it would be
15 written agreements between H & S and Far West --

16 ALJ MARTIN: Okay.

17 MR. CROCKETT: -- regarding Palm Shadows.

18 MR. BLACK: I believe that that was a written
19 agreement between H & S and Mr. Weidman and Mr. Jacobson.
20 Or is that another set of agreements?

21 MR. CROCKETT: Well, my recollection, Your Honor,
22 was that I asked for both, the agreement from Far West --
23 or a written agreement, if it exists, between Far West and
24 H & S Developers. And then I had also asked about an
25 agreement between H & S Developers and Mr. Jacobson and

1 Mr. Weidman, the partnership. I think Mr. Capestro -- I
2 mean, I would like to get that agreement, if he has that
3 in his files.

4 MR. CAPESTRO: That was my memory, that he wanted
5 both also.

6 ALJ MARTIN: Okay. Then I had requested some
7 cleaned-up copies from the Exhibit A-57. Some had lines
8 through it, and one had a Post-it note on it.

9 And then I missed -- there was something about
10 invoices related to something in Exhibit 61 and
11 Exhibit 63. I am afraid I didn't take notes on it.

12 MR. CROCKETT: Yeah, I think that is Scottsdale
13 East Estates that we were talking about, and what we had
14 asked for were the -- it's almost like a bill that comes
15 from a utility company that imposes connection fees for
16 water and sewer.

17 ALJ MARTIN: Okay. I think I was taking notes
18 and got distracted at that point.

19 Okay. And according to my notes that is all I
20 have that had been requested.

21 Was there something else, Mr. Crockett, that I'm
22 missing on your end?

23 MR. CROCKETT: I'm sorry?

24 ALJ MARTIN: Was there anything else? That is
25 all I have written down that had been requested.

1 MR. CROCKETT: Your Honor, that is all I can
2 think of. I think that is the complete list.

3 ALJ MARTIN: Mr. Black, was there anything else
4 that we are missing?

5 MR. BLACK: I think that is it, Your Honor.

6 ALJ MARTIN: Okay. Then one last item. On
7 behalf of the Respondent I show that I have admitted
8 Exhibits R-1 and R-2.

9 Is that correct, Mr. Black?

10 MR. BLACK: Yes.

11 ALJ MARTIN: Okay. And one last time,
12 Mr. Crockett, we will go over your list as soon as you are
13 ready.

14 MR. CROCKETT: I'm ready, Your Honor.

15 ALJ MARTIN: Okay. I show as admitted by Spartan
16 Homes Exhibits A-1, 2, 3, 6, 9, 11, 22, 23, 23A, 24, 25,
17 27, 27A, 28, 29, 30, 32, 33, 35, 36, 36A, 37, 38, 39, 40,
18 41, 42, 42A, 44, 45 -- I have 46 offered but withdrawn --
19 A-47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 61, 62,
20 63, and 64.

21 Is that correct?

22 MR. CROCKETT: That is what I have.

23 ALJ MARTIN: All right. Then if there is nothing
24 else, Mr. Crockett --

25 MR. CROCKETT: That's all I have. My thanks to

1 the court reporter for these three days. She has done a
2 terrific job.

3 ALJ MARTIN: Bravo, Kate.

4 MR. CROCKETT: And I appreciate everyone's work
5 on the case.

6 ALJ MARTIN: Mr. Black?

7 MR. BLACK: Thank you.

8 ALJ MARTIN: All right. Then this concludes the
9 hearing. The matter will be kept open for the submission
10 of the additional exhibits and for closing briefs, and
11 then I will take them under advisement pending submission
12 of a Recommended Opinion and Order to the Commission.

13 And thank you very much everyone.

14 (The hearing concluded at 3:45 p.m.)

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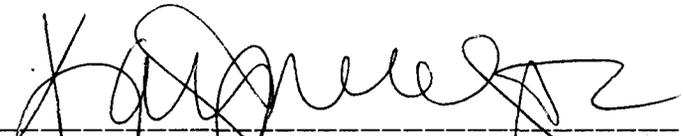
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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, KATE E. BAUMGARTH, RPR, Certified Reporter
 No. 50582, for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, and
 accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 20th day of January, 2010.



 Kate E. Baumgarth, RPR
 Certified Reporter, No. 50582