

ORIGINAL

Lise A. LaBarre M.D



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Practice Limited to Neurology

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2010 MAY -6 P 12:06  
 Arizona Corporation Commission  
 Corporation Division 1300. West Washington  
 Phoenix, AZ 85007  
 AZ CORP COMMISSION  
 Hearing Division 1200 West Washington, 1st Fl,  
 Phoenix, AZ 85007

Docket #W-01997-A  
 -09-0297

REQUEST FOR HEARING

With respect to the following referenced Application for Approval to Issue Stock Pursuant to the Agreement and Plan of Reorganization, and the Application titled "First Amended Application for Approval to Issue Stock Pursuant to The Agreement and Plan of ReOrganization", herein also referenced, by virtue of copy of the Front Pages of the Applications, we the undersigned request Formal Hearing, as allowed under AZ State Law.

We submit that the entity in question, Adaman Mutual Water Company is not eligible for this type of tax-free reorganization, on the basis that the interests of the parties to the Company, ie, the current holders of Common Stock, are not equally protected under the Proposed Reorganization. By the creation of dividend-granting Preferred Shares, the current stockholders assume a liability which they do not currently have.

Further, the ability of the current Stock-holders to participate in the management of the Company is greatly diluted.

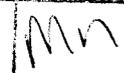
We hold that our Company was initially created by ourselves, with self-assessed fees and collected monies, to be owned and operated by our Community, for the well-being of our Community and we believe that in was never our intent to have our Company become a for-profit Public Company, with Investment Shares to be sold to the Public outside our Community.

We plan to submit an Interveener, and are hiring legal counsel to that end.

We submit additional supporting material for your consideration (addended)

Sincerely,  
  
 Lise A. LaBarre, M.D.

Arizona Corporation Commission  
**DOCKETED**  
 MAY - 6 2010

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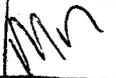
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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**

JUN 12 2009

DOCKETED BY 

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10 Attorneys for Adaman Mutual Water Company

11 **BEFORE THE ARIZONA CORPORATION COMMISSION**

12 **IN THE MATTER OF THE APPLICATION OF**  
13 **ADAMAN MUTUAL WATER COMPANY FOR**  
14 **APPROVAL TO ISSUE STOCK**

Docket No. W-01997A-09-0297

15 **FIRST AMENDED APPLICATION**  
16 **FOR APPROVAL TO ISSUE**  
17 **STOCK PURSUANT TO THE**  
18 **AGREEMENT AND PLAN OF**  
19 **REORGANIZATION**

20 Adaman Mutual Water Company ("Adaman"), an Arizona non-profit corporation,  
21 pursuant to Ariz. Rev. Stat. ("A.R.S.") §§ 40-301 and 40-302, submits this Amended  
22 Application requesting the Commission's approval of Adaman's Agreement and Plan of  
23 Reorganization, as amended, (the "Plan of Reorganization"), to be effective as of January 1,  
24 2010,<sup>1</sup> and the approval of Adaman's issuance of 2,486.68 shares of common stock in  
25 conjunction with Adaman's Plan of Reorganization as a for-profit Arizona corporation. (A true

26 <sup>1</sup>Adaman requests that the order issued by the Commission approving the Plan of Reorganization be effective as  
27 of January 1, 2010, in order to avoid filing two tax returns for 2009, and to simplify accounting and financial  
28 record keeping. If the Commission's order were to become effective during 2009, Adaman would have a short  
tax year as a non-profit corporation and a short tax year as a for-profit corporation.

# NEW APPLICATION

## ORIGINAL

## RECEIVED

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**

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JUN - 4 2009

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7 Attorneys for Adaman Mutual Water Company

### BEFORE THE ARIZONA CORPORATION COMMISSION

9  
 10 IN THE MATTER OF THE APPLICATION OF  
 ADAMAN MUTUAL WATER COMPANY FOR  
 11 APPROVAL TO ISSUE STOCK

Docket No. W-01997A-09-0297

**APPLICATION FOR APPROVAL  
TO ISSUE STOCK PURSUANT TO  
THE AGREEMENT AND PLAN OF  
REORGANIZATION**

16 Adaman Mutual Water Company ("Adaman"), an Arizona non-profit corporation,  
 17 pursuant to Ariz. Rev. Stat. ("A.R.S.") §§ 40-301 and 40-302, submits this Application  
 18 requesting the Commission's approval of Adaman's Agreement and Plan of Reorganization, as  
 19 amended, (the "Plan of Reorganization") and Adaman's issuance of 2,486.68 shares of common  
 20 stock in conjunction with Adaman's Plan of Reorganization as a for-profit Arizona corporation.  
 21 (A true and correct copy of the Plan of Reorganization and First Amendment thereto are  
 22 attached hereto as Exhibit A.) In support of this Application, Adaman provides the following  
 23 information:

#### Stock Will Be Issued for Lawful Purposes

25 Adaman was incorporated in Arizona on November 23, 1943, and is currently a non-  
 26 profit corporation qualifying as a tax-exempt mutual organization under Section 509(c)(12) of  
 27 the Internal Revenue Code of 1986, as amended (the "Code"). Adaman was initially organized  
 28 primarily for the purpose of providing water for the domestic, municipal, and industrial use of

## MEMORANDUM

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**Date:** April 3, 2009  
**To:** Members, Adaman Mutual Water Company  
**From:** Board of Directors, Adaman Mutual Water Company  
**Subject:** Adaman Mutual Water Company: Response to Letter from Lisa LaBarre, M.D.

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This memorandum responds to issues raised in a letter sent to the Members of Adaman Mutual Water Company (the "Company") by Lisa LaBarre, M.D. Dr. LaBarre's letter is misleading and in a number of respects either misunderstands or mischaracterizes the reasons the Board of Directors (the "Board") has recommended the Company be reorganized as a for-profit corporation. The Q&A's the Board distributed to Members were intended to address the very issues that Dr. LaBarre has raised. To assist members in better understanding why we have recommended that the Plan of Reorganization be adopted, we have directed that the following information be sent to each Member.

Q1: What are the reasons the Board has recommended changing the Company from a nonprofit corporation to a for-profit corporation?

A: As presently organized, the Company cannot make distributions to its Members. The Company can only deliver water to persons located within the Project Area the Company services. The Company cannot even become a cooperative. If the Company's water facilities were to be condemned, Members would be unable to participate in or benefit from condemnation proceeds. The Company would also be unable to contract with the City of Goodyear to sell excess water. For these reasons, we believe that the change is necessary. We believe it is possible that at some point in the future, the Company's facilities may be condemned and in that event, its Members should benefit.

Q2: Will the proposed changes give Members fewer rights than they have today?

A: No. Members will have greater rights under the reorganized Company. As the Company is currently organized, Members do not have the right to exercise cumulative voting for the election of directors. Each Member has as many votes as the Member owns acres within the project. If the new Plan of Reorganization is approved, Members will be able to cumulate their votes in the election of directors.<sup>1</sup>

Q3: Why does the reorganized Company allow the shareholders one vote per acre?

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<sup>1</sup> This gives minority members greater voting rights when it comes to the election of directors.

A: Historically, the Company's charter documents (Articles of Incorporation and Bylaws) have provided one vote per acre of land owned within the Project Area. This is the same method of voting that applies to the Salt River Project and to many other agricultural districts. If the Company is reorganized from a nonprofit to a for-profit corporation, I.R.S. rules require that there must be a continuity of interest in order for the reorganization to be tax-free. By maintaining the same one vote per acre structure, that continuity of interest is preserved for tax purposes, thus helping to assure that the reorganization is tax-free. If Dr. LaBarre's suggestions were adopted, the Company would likely not be able to effect a tax-free reorganization.

Q4: What Bylaws govern the business of the Company?

A: Dr. LaBarre incorrectly states that the Company is operating under its old Bylaws. The Company's old Bylaws, as well as the new Bylaws, allow the Board to amend, repeal and adopt new Bylaws. This is true for most corporations. The Board has adopted new Bylaws. In an effort to keep Members advised of the Board's actions, we elected to submit those Bylaws to the Members and to have the Members ratify the Bylaws adoption. This was not required by law. Dr. LaBarre is criticizing us for being open with the Members of the Company.

Q5: If the Plan of Reorganization is adopted, will the Company be authorized to issue Preferred Bonds?

A: Dr. LaBarre's letter incorrectly states that the Plan of Reorganization would allow the Company to issue Preferred Bonds. Bonds are debt, not equity. Preferred Stock has rights that are lesser than and subordinate to, debt. The Plan of Reorganization would allow the Company to issue Preferred Stock, which is a form of equity. The Company would only issue Preferred Stock if it needed to do so to finance the development and build out of its water system or make other capital improvements. Virtually all corporations that are "for profit" have the ability, by law, to issue Preferred Stock, as long as the Company's articles of incorporation so provide. Our legal counsel suggested that we have this right in the event it might be necessary in the future. There is nothing unusual in providing that the Company may issue Preferred Stock if the Board determines it is appropriate to do so. This is the same function that a Board performs in any company, including some of the largest in the country.

Q6: Dr. LaBarre's letter seems to assume that shares of common stock may be transferred separate from the land. Is this correct?

A: No. Shares of common stock of the Company can only be transferred *with* the land. The Board is authorized to determine whether Preferred Stock, if ever issued, will be subject to the same restrictions.

Q7: If the Plan of Reorganization is approved, what role will the Arizona Corporation Commission ("ACC") play?

A: If the Plan of Reorganization is approved, the Company will still be subject to the jurisdiction of the ACC. In fact, our legal counsel has told us that the ACC must approve the Plan of Reorganization before it can be implemented. Consequently, if the Plan is approved, we will submit the Plan to the ACC for its approval. The ACC will want to assure that the rates charged for delivery of the Company's water are fair, and if the Company is able to profit from the contract with Goodyear, the ACC will likely require that the Company reduce its rates to water users. Thus, there will be no change in the manner in which the Company is regulated, and the Company may, in fact, be subject to more stringent regulation.

Q8: Dr. LaBarre's letter suggests that the Board conducts business in secret. Is this accurate?

A: No. The Board conducts business in the manner that every other board of a corporation conducts business. This means that the Board sets forth an agenda, votes on those matters, and periodically sends reports to the Members regarding the action taken by the Board. There is an open nomination process for naming director nominees.

Q9: Dr. LaBarre characterizes the past vacancies on the Board and change in the size of the Board from seven to five as tightening of control. Why were there vacancies, and why the change?

A: The Board has had difficulty finding others to serve as directors. Due to this difficulty, the new Bylaws provide for five, instead of seven directors, in order to avoid having continual vacancies. Under the proposed Amended and Restated Articles of Incorporation, however, the Bylaws may be amended to increase the number of directors up to thirteen, where under the old Articles of Incorporation the Board may only have a maximum of seven directors.

Q10: Why does Dr. LaBarre suggest that a member derivative suit might be appropriate?

A: Dr. LaBarre's suggestion that a member derivative suit might be appropriate is difficult to understand. What the Board is asking the Members to do is to approve the Plan of Reorganization. *If the Plan of Reorganization is approved, it will only be with the Member's consent.* Any derivative suit would apparently be aimed at preventing the Members from considering and voting upon the Plan of Reorganization and would simply deny Members their rights.

Derivative suits are difficult to bring, expensive and frequently benefit no one but the lawyers. We simply do not understand Dr. LaBarre's comments in this regard.

March 31, 2009

Dear Adaman Mutual Water Company Member,

You have no doubt received a packet of information from our water company, asking you to endorse a change of corporate status, new Bylaws, and two Directors, supported by the current Board.

Since you will find my name also on the ballot, with a "no position" non-endorsement from the Board, you might well think this letter is a campaign letter for a position on the Board; it is not. It is a plea for us to re-gain control of our water company before it is gutted.

When I read the proposed Agreement, the proposed Incorporation, and proposed Bylaws, my initial thoughts were that this simply represented a tightening of control by the Board, going from the current seven (7) Board members to five (5), giving the Board, or a quorum of the Board, three (3) individuals the right to issue Preferred Bonds, not just to Company members, but to the public at large, the power to decide how much these Bonds were worth (our Common Stock having a value of zero (0)); the power to decide whether these Bonds were paid up at issuance or not (ie, "gifting" of Bonds), as well as deciding what the dividends paid to each class of Bonds would be (ours, owners of Common Stock would no doubt be minimal compared to what the owners of Preferred Stock would be).....and I thought this was bad enough...but then I read everything again....and a light came on....

Over the last several months, since I have attended the Board meetings (at least since 4/08), I became aware that our Company had committed itself (although still a non-profit) to selling water to Goodyear, at a profit of several million dollars a year, potentially. That would necessitate a change in corporate status. Fine, perhaps. There was never any discussion of an alternate status other than a regular "C" corporation, although you will read that a "cooperative" system, "LLC corporation" and Chapter "S" corporation were considered. I never heard these mentioned in the Board meetings. This doesn't surprise me, since the current Bylaws state that the Board can have meetings over the telephone, make decisions over the telephone, even out-of-State, if they chose. We don't even have the right to attend the Board meetings; it was made clear to me that I was a "guest", and allowed to attend by the graciousness of the Board. ( PLEASE read the current Bylaws which will be provided at the meeting)

Getting back to the point: I have never seen a Business Plan showing what our expenses, including State, Federal and County Property taxes would be under any scenario, and how much water we would have to sell to Goodyear to break even. The proposed contract with Goodyear stipulates that Goodyear will finance an

Arsenic treatment Plant, at a cost of about 1.3 million dollars. It is already installed and functioning.

In exchange, we have agreed to sell water to Goodyear for 99 years, rate to be determined. Amount to be determined, depending on the level the aquifer drops down to. Because we have been supplementing ground (well) water with CAP water, the aquifer level has been rising over the last few years. Our needs are not likely to increase much over the next few years, but in a few years, Goodyear could "suck us dry", with their planned developments, once this recession is over. There is a provision to slow and even halt all water sales to Goodyear, if this happens, but how much money do we need in reserve, for paying all these taxes if we don't sell water to Goodyear, or if Goodyear doesn't need as much as it has planned to need?

Yes, we might NEED to sell Preferred Bonds at that time. Strangely, although our water company has existed since 1943, we have never had to "sell ourselves" before, to make ends meet. The Board suggests that this is the reason Preferred Stocks would be issued. Not so fast.

Back to the Board Meetings. When someone asked what we, the company would do, with the expected profits from Goodyear, someone suggested we could reduce our water rates, we could give dividends (regular "profit-sharing"), to the members of the Adaman water company, in proportion to the acreage one holds. No one seemed very enthusiastic about any suggestion.

I eventually realized that the "large land-owners" who run the Board (MRs Ashby, Conklin and Etchart) don't even have a domestic water account. That's right. An owner may irrigate 500 acres, that has nothing to do with our domestic water company. Just about all the owners of 20 acres or more lease their land for farming, but they don't pay a nickel a year in Domestic Water Fees, if they don't have a faucet on their property. Most don't. The large landowners who don't actually live in our water company boundaries (MRs Ashby and Etchart don't; Mr Coklin has an office in our area) don't pay a yearly assessment per acre, for the water company to maintain a domestic water line across the front of their 200-300 acre parcels, they don't voluntarily "gift" \$50,000. to \$100,000.00 a year to the water company. They pay nothing, unless they have a Domestic Water Account. They pay irrigation water to the Adaman Irrigation Water District, a completely different corporate entity.

So why have we let the "large land-owners" control our water company, when we, the 230 or so owners of 20 acres or less, most of whom live here, pay for our water, pay for the maintenance of the wells, pay for the office staff, pay for every chair in the company office, while others pay nothing ?????? I guess we were asleep at the controls.

This is one reason we cannot support this type of incorporation at this time. We cannot let the same individuals who have controlled the company for the last 20-25 years not only continue to control the company, but tighten their grip on it.

I mentioned that the current Bylaws, since 1994, have called for seven Board members. Has it occurred to anyone else that we have voted for only 5 since at least 1989? Why? Because that is the number of positions the Board offered up for election, as the Board empirically decided years ago that it preferred "naming" to the Board our two (2) full time employees, this, year after year.

When I mentioned to Mr Carklin, President of the Board that four (4) positions were open, since even if there is a vacancy which develops on the Board during the year, the Board can nominate a replacement Director, only until the next election, and documented this by a letter I hand-delivered to him, a decision was made to ignore my request for four positions to be offered for election. I also requested that a letter be sent ahead of the election, asking for candidates to be nominated for those four positions, so all the candidates could be placed on the ballots which would be mailed.

After all, how can one know a certain candidate has been nominated from the floor at the meeting, as allowed in the Bylaws, if someone has already voted by mail? This was also ignored.

As you can see in the proposed Incorporation, the Directors have already been chosen by the Board, even the positions which are up for election. Obviously, they don't have much faith in my candidacy.

Why are the Board members so brazen? Because thus far, we have allowed people who own a lot of land, and who could potentially receive water from our Domestic Water Company (not to be confused with the water from the Irrigation Water District, which they also "own" for all practical purposes) to control our company, when they contribute NOTHING to it.

In passing, please let us not include Mr. K. Moss, Director for many years, as one who does not contribute towards Company expenses. Mr Moss's cows will not drink irrigation water; he has brought them up well, and they have financed many a well repair, bless those girls

In short, thus far, our Annual Meeting is out of order because it violates Section 2, par 2.4 of the current Bylaws, which are still in force, until after the membership votes for a change, if it does (3/4 of the membership must support a change, for it to be valid). The proxy vote is inaccurate and invalid legally, since there ARE currently (Bylaws, Section 3, 3.1) FOUR POSITIONS open for Director not two. The Board is conveniently asking that the new Bylaws have only 5 members of the Board, but the new BYLAWS have NOT been voted on yet, so they have to offer four positions.

This should be enough, right? No Business Plan offered, no real consideration of alternate incorporations (it isn't "real" to me until I have seen some Figures to back any proposal). A Board who has misrepresented elections for years, not only to us but to the Arizona Corporation Commission in its Annual Reports (back to '89; I didn't go back any further ), possibly jeopardizing our status (I've checked\*status OK-corrected forms need to be submitted if what I described to them-the above-is correct).

An incorrect election ballot. It should be enough. But it seems it isn't

I've figured out that purchasing "Preferred Shares" is the best way the "large land-owners" can benefit from the profits of our water company. Our "Common shares" are worth nothing but the right to receive water and to elect Directors (one owner, one vote). The Preferred Shares are where the Real Value of the company is. Anyone can buy Preferred Shares, whether they own any land in our district or not; it is essentially our little water company "going public".

Once we sell Preferred Shares, at the exclusive decision of the Board, the Board decides how much the shares are worth, how much the dividends will be, etc. It even decides to whom and when it may give (declare them "Paid) shares.

\*\*\*\*\* There, ladies and gentlemen is where the profits from the sale of water to Goodyear will go, if you agree to this.

The folks who can afford it will buy the worthwhile shares of our company. If our company takes out a loan, or has financial problems, Preferred Shares will be protected by law; whereas if we should go bankrupt, or be condemned by a city (taken over), or sell our company, the owners of Preferred Shares would get any "real value" of our company, to the extent of the value of their shares; we would get the leftovers.

WE OWN OUR COMPANY. Why should we expose ourselves to this?????

The Board says we need "Preferred Shares" in case we need to borrow money. Why then go ahead with a sale plan which they think is likely to result in our needing to borrow money by issuing shares when we are financially very stable now, and we can get a bank loan whenever we need it????

We can see now what happens when Directors of a company are paid in shares. They drive the company into the ground in order to cash out their shares. That's how companies are gutted. This is what hedge funds do also. They buy a controlling interest, gut the company and sell the corpse.