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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

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

2010 JUL 30 P 2:42

AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. W-01808A-09-0137

NOTICE OF FILING TESTIMONY

The Estate of Charles J. Dains hereby files the following two documents:

1. Direct Testimony of Charles D. Dains; and
2. Direct Testimony of David C. Iwanski.

RESPECTFULLY SUBMITTED on July 30, 2010.

Craig A. Marks
Craig A. Marks, PLC
10645 N. Tatum Blvd
Suite 200-676
Phoenix, Arizona 85028
(480) 367-1956
Craig.Marks@azbar.org
Attorney for Estate of Charles J. Dains

Arizona Corporation Commission
DOCKETED

JUL 30 2010

DOCKETED BY

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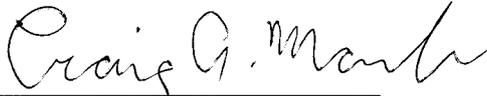
1 Original and 13 copies **filed**
2 on July 30, 2010, with:

3
4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8
9 Copies **e-mailed**
10 on July 30, 2010, to:

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12 Stephen A. Hirsch/Stanley B. Lutz
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14 Two N. Central Avenue, Suite 2200
15 Phoenix, AZ 85004-4406

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17 Robin Mitchell
18 Staff Counsel
19 Arizona Corporation Commission
20 1200 West Washington
21 Phoenix, AZ 85007

22
23
24
25 By: 
26 Craig A. Marks

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

DOCKET NO. W-01808A-09-0137

**DIRECT TESTIMONY
OF
CHARLES D. DAINS
ON BEHALF OF
THE ESTATE OF CHARLES J. DAINS
JULY 30, 2010**

1 I INTRODUCTION AND QUALIFICATIONS

2 **Q. WHAT IS YOUR NAME AND ADDRESS?**

3 A. My name is Charles D. Dains. My business address is 4439 W Glendale Avenue,
4 Glendale, Arizona 85301-2804.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am the President of Sundancer Motors, an automobile and truck dealership located in
7 Glendale, Arizona

8 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

9 A. I am testifying on behalf of the Estate of Charles J. Dains, the complainant in this case.

10 **Q. WERE YOU RELATED TO CHARLES J. DAINS?**

11 A. Yes. He was my father.

12 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

13 A. I will discuss the development of Terra Mobile Ranchette Estates and our interactions
14 with Rigby Water Company.

15 **Q. WHAT IS THE TERRA MOBILE RANCHETTE ESTATES DEVELOPMENT?**

16 A. The development is located in Avondale, Arizona in Rigby Water's service territory.
17 The Dains Family constructed and provided the streets and infrastructure for 84
18 manufactured-home sites, which were all sold by the early 2000s. Exhibit CDD-1 is a
19 map showing the location of the development.

20 **Q. WERE YOU INVOLVED IN THE DEVELOPMENT OF TERRA MOBILE**
21 **RANCHETTE ESTATES?**

22 A. Yes. I was a partner with my father and fully participated in the business decisions that
23 led to the development of the Estates.

1 **Q. WHEN DID YOU PURCHASE THE LAND THAT WAS LATER DEVELOPED**
2 **AS TERRA MOBILE RANCHETTE ESTATES?**

3 A. We purchased the original 80-acre parcel in 1986 along with other partners. In 1993, we
4 split the parcel and retained the 30-acre parcel to develop and sell as a manufactured
5 home development. The other partners kept the remaining 50 acres.

6 **Q. WERE YOU ABLE TO DEVELOP TERRA MOBILE RANCHETTE ESTATES?**

7 A. No. Unfortunately, we were in Rigby Water's service territory, but could not get water
8 service. Without water service, we could not develop Terra Mobile Ranchette Estates.

9 **Q. WHY COULD YOU NOT GET WATER SERVICE FROM RIGBY WATER?**

10 A. From 1985 until 1995, Rigby Water was out of compliance with the Arizona Safe
11 Drinking Water Act. Exhibit CDD-2 is a copy of a letter we received in 1985 from the
12 Maricopa County Health Department, which states that the Department cannot forward
13 our Subdivision Plans to the Real Estate Department because Rigby Water was not in
14 compliance with the Safe Water Drinking Act.

15 Rigby Water was unable to resolve its compliance issues for many years. One of the
16 major issues was that Rigby Water did not have adequate water storage. Exhibit CDD-3
17 is a copy of a 1994 Consent Agreement between Rigby Water and the Maricopa County
18 Environmental Services Department. The Consent Agreement stated that Rigby Water
19 was not in compliance with the Maricopa County Health Code and required the company
20 to construct adequate storage equal to peak daily demand by May 31, 1996. Rigby Water
21 was ordered to cease and desist providing water service in non-compliance with the
22 Health Code.

23 **Q. HOW DID RIGBY WATER'S INABILITY TO PROVIDE WATER SERVICE**
24 **AFFECT YOU?**

1 A. My father and I were not big developers, but we did think that we had a chance to help
2 provide for his retirement and our family. The first consequence of Rigby Water's non-
3 compliance was that our partners backed out. They took 50 acres for later development
4 and we retained 30 acres. We were ready to immediately begin developing our 30-acre
5 parcel in 1993, but are plans were thwarted by Rigby Water's inability to provide water
6 service. We were forced to carry a high-interest note and pay real estate taxes for more
7 than ten years before we could move forward. This was a huge financial set-back for us.

8 **Q. DID YOU DO ANYTHING TO HELP RIGBY WATER FINALLY BECOME**
9 **COMPLIANT WITH THE COUNTY?**

10 A. Yes. As I just discussed, the County was demanding that Rigby Water construct
11 additional storage capacity. We agreed to finance and construct a 50,000 gallon storage
12 tank to help the company become compliant. The storage tank far exceeded our needs,
13 but we desperately needed to sell lots. We completed all construction in early 1997.

14 **Q. DID YOU ALSO CONSTRUCT A DISTRIBUTION SYSTEM FOR TERRA**
15 **MOBILE RANCHETTE ESTATES?**

16 A. Yes. We completed construction in 1997 and finally connected to Rigby Water's system.
17 Finally, we would be able to sell lots!

18 **Q. WHAT WAS YOUR UNDERSTANDING CONCERNING HOW YOU WOULD**
19 **BE REIMBURSED FOR THE INFRASTRUCTURE YOU CONSTRUCTED FOR**
20 **RIGBY WATER?**

21 A. Our total expenditures were \$236,988.68. Of that amount, \$124,931 was for the
22 distribution system and the remaining \$112,000 was for the storage tank, booster pumps
23 and other improvements. Based on our discussions with Rigby Water, my father and I
24 believed that we would be refunded the full \$237,000 over 20 years. Given the delays we
25 had to endure as a result of Rigby Water's non-compliance and the additional money that

1 we spent to help Rigby Water become compliant, this seemed like a reasonable
2 arrangement.

3 **Q. DO YOU HAVE ANY EVIDENCE THAT RIGBY WATER UNDERSTOOD**
4 **THAT IT WAS GOING TO REFUND YOU \$237,000 OVER 20 YEARS?**

5 A. Yes. Exhibit CDD-4 is a copy of a 1998 letter to Mr. Dains from Fred Wilkinson, Rigby
6 Water's president. Rigby Water estimated for us that we would receive refunds of
7 approximately \$12,225 annually for 20 years, for a total of \$244,500. This is slightly
8 more than the actual cost of the total advanced infrastructure of \$237,000.

9 **Q. WHEN DID YOU BEGIN SELLING HOMESITES IN THE DEVELOPMENT?**

10 A. Once we had water service from Rigby, we were finally able to sell lots. In less than 2.5
11 years, we were able to sell over 36 of our 84 lots. My sister purchased the first lot for our
12 family home on July 31, 1997. We sold a total of seven lots in 1997, at an average price
13 of \$27,629. In 1998, we sold another 21 lots, at an average price of \$31,614.29. In
14 1999, we sold another eight lots, at an average price of \$34,025.00. The last of the 83
15 lots was sold in 2002.

16 It is particularly interesting that by the date the MXA was executed, May 5, 1999, we had
17 already sold 31 lots.

18 **Q. HOW SOON AFTER A LOT WAS SOLD DID RIGBY WATER START**
19 **SELLING WATER TO THE HOMEOWNER?**

20 A. Almost immediately. Typically, we would request a meter to be set at the time the
21 property closed. In almost every case, the financing included funding for a manufactured
22 home, which would be on site and hooked up to water and sewer within a few weeks.
23 The new homeowner would move in almost immediately.

1 **Q. DID YOU SET WATER METERS IN THE TERRA MOBILE RANCHETTE**
2 **ESTATES DEVELOPMENT?**

3 A. No. Rigby Water installed and read the water meters. We had to pay for the meters.

4 **Q. WHEN DID RIGBY WATER TELL YOU THAT IT WANTED YOU TO SIGN A**
5 **MAIN EXTENSION AGREEMENT?**

6 A. Sometime in 1998. This seemed very strange to us. It didn't make much sense to sign
7 an agreement to build infrastructure that had already been built, turned over to Rigby
8 Water, and used by the company to sell water in the development. . Still, we didn't see
9 any harm to executing the agreement, as long as it didn't affect our refunds.

10 **Q. WHEN DID YOU EXECUTE THE MAIN EXTENSION AGREEMENT?**

11 A. We signed the MXA on March 2, 1999. Rigby Water did not sign the MXA until May 5,
12 1999. A copy of the MXA is attached to Mr. Iwanski's testimony as Exhibit DCI-By the
13 time the MXA was executed, Rigby Water was already serving approximately 30
14 customers in the development.

15 **Q. HAVE YOU BEEN RECEIVING THE REFUNDS YOU EXPECTED?**

16 A. Not even close. Exhibit CDD-45 is a copy of the most recent refund check that we
17 received from Rigby Water. The check is only for \$2,421.05. As I said, we expected
18 annual refunds of about \$12,225, so this check is about \$10,000 too little. It is obvious
19 that we have received far less than Rigby Water told us to expect. Mr. Iwanski calculates
20 the amount that we have received to date, and what we believe we are still owed.

21 **Q. DO YOU HAVE ANY CONCLUDING REMARKS?**

22 A. We ask that the Commission give us justice. Rigby Water has caused us incredible harm
23 over the years. First, their non-compliance with County health regulations caused us
24 years of delays. Second, they forced us to fund and build excessive storage so that they

1 could finally come into compliance. Third, they misled us by telling us that we would be
2 refunded our entire investment, including for the 50,000-gallon storage tank. Fourth,
3 until the Commission forced them to, they refused to provide us any supporting
4 calculations for the "refund" checks they sent us. Fifth, now they want to get a windfall
5 from the City of Avondale for the plant that we financed and built and for which they
6 have paid us virtually nothing.

7 My father was 77 years old when he signed the MXA in 1999. He passed away just last
8 fall. It hurts me that he had to spend the last ten years of his life knowing that Rigby
9 Water was still trying to take advantage of him. I am especially sorry that he didn't live
10 long enough to finally get justice.

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.

MARICOPA COUNTY HEALTH DEPARTMENT

A DIVISION OF THE MARICOPA COUNTY DEPARTMENT OF HEALTH SERVICES
1825/1845 East Roosevelt, Phoenix, Arizona 85006

Exhibit CDD-2



Phone: 602-258-6381

April 22, 1985

Terra Ranchette Estates Partnership
Route 8 Box 371
Phoenix, AZ 85031

Gentlemen:

Your proposed Subdivision, "Terra Ranchette Estates" cannot be forwarded to the State Real Estate Department because the water supplier, Rigby Water Company, "is not in compliance with the Safe Drinking Water Act of Arizona." Specifically, ARK 9-8-223 B 1. (analysis of the water for inorganic chemicals within the past 3 years) and ARR 9-8-223 E 1C (analysis of the water for Radiochemicals withing the past 4 years).

When these violations have been satisfactorily eliminated, I will be able to send the "Certificate of Approval of Sanitary Facilities for Subdivisions" to the Arizona State Real Estate Department.

If you have any questions concerning the water supply, please contact Mr. Otmar Olson at this office or the undersigned at 258-6381.

Sincerely,

Don Conroy
Don Conroy, P.E., Public Health Engineer
Bureau of Public Health Engineering
Environmental Services Division

DC:sh

cc: Otmar Olson, P.E., Public Health Engineer
Arizona State Real Estate Dept., R. Tanney

Exhibit CDD-3

MARICOPA COUNTY

IN THE MATTER OF:

COMPLIANCE AGREEMENT
CAUSE NO. 94-169

Rigby Water Co.)
Rigby System)
PWS#07062)

It is hereby stipulated and agreed by and between Tom Macherione, ^{PRESIDENT (TM)} owner of the Rigby Water Co. and Maricopa County as follows:

- 1. That the Rigby Water Co. is a public water system approved by Maricopa County to operate within Maricopa County.
- 2. That all public water systems are required to conform to the Maricopa County Health Code as stated in Chapter V, and the Arizona Administrative Code, Title 18, Chapter 4.
- 3. That a Registered Professional Engineer of Maricopa County has presented evidence that the Rigby Water Co. was not being operated in accordance with the Maricopa County Health Code, and the Arizona Administrative Code.
- 4. That the Rigby Water Co. was notified by Certified mail to Cease and Desist from operating in non-compliance with the Maricopa County Health Code and the Arizona Administrative Code.
- 5. That the Rigby Water Co. was informed of the right to a hearing concerning Cease and Desist Order #94-169.
- 6. That the Rigby Water Co. did thereupon agree to correct any Health Code violations and to maintain this public water supply henceforth in compliance with Health Code requirements.

IT IS THEREFORE STIPULATED BY AND BETWEEN THE PARTIES ABOVE-NAMED:

A. That the ^(TM)owner of the Rigby Water Company shall provide adequate storage capacity equal to the average daily demand during the peak month of the year by May 31, 1996.

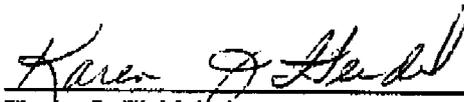
By Tom Macherione
Tom Macherione, ~~owner~~ ^{PRESIDENT}
of the Rigby Water Co.

By John A. Power
John A. Power, Manager
Division of Water and Waste Mgnt.

CAUSE NO. 94-169

Pursuant to the STIPULATION, and good cause appearing therefore,
IT IS ORDERED that the above and foregoing Stipulation is hereby approved.

Dated this 27th day of May, 1994.



Karen J. Heidel, Ph.D., Director, Environmental Services Department

COPIES of the above and foregoing mailed/delivered

1 day of ~~May~~, 1994, to:

JUNE

Tom Macherione
Rigby Water Co.
7627 S.W. Greenwood St.
Portland, Oregon 97223

William P. Sullivan
Martinez & Curtis PC
2712 N. 7th St.
Phoenix, AZ 85006-1003

c: John A. Power, Manager, Division of Water and Waste Management
Maricopa County Attorney's Office
Gene Bond, Legal Liaison Officer, Environmental Svcs. Department

RECEIVED

JUN 03 1994

MARTINEZ & CURTIS

IN THE MATTER OF

CEASE AND DESIST ORDER
CAUSE 94-169

Rigby Water Co.)
Rigby System)
PWS #07062)

To: Tom Macherione

YOU ARE HEREBY NOTIFIED that on the basis of inspections made and information furnished to Maricopa County regarding the above-named establishment, the undersigned has reasonable cause to believe that you are engaged in practices that are contrary to the laws of the State of Arizona and the rules and regulations promulgated thereunder.

The aforementioned inspections and information reveal that you are operating a public water system in Maricopa County, specifically, Rigby Water Co. - PWS #07062 located at 115th Avenue and Roeser, Maricopa County, Arizona, in non compliance with the Maricopa County Health Code, Chapter V and the State of Arizona Administrative Code, R-18-4-212. Specifically you have failed to provide adequate water storage capacity equal to the average daily demand during the peak month of the year.

IT IS THEREFORE ORDERED, pursuant to A.R.S. § 36-601.B, and A.R.S. 49-142 that you, your operator(s), officers, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation with you who receive actual notice of this **CEASE AND DESIST ORDER** by personal service or otherwise, shall immediately **CEASE AND DESIST** from operating or maintaining the Rigby Water Co. - PWS #07062 in non-compliance with the Maricopa County Health Code and the Rules of the State of Arizona.

This Cease and Desist Order is effective immediately upon its receipt.

YOU ARE FURTHER NOTIFIED that, within fifteen (15) days after receipt of this Order, you may request in writing that a hearing be held to review this Order. Your request to review must be directed to Legal Liaison Officer, Gene Bond at 2406 S. 24th St., Suite E-204, Phoenix, Arizona 85034 (telephone 506-6621).

3

Page Two

CAUSE 94-169

YOU ARE FURTHER NOTIFIED that failure to comply with this Order may subject you to criminal prosecution and injunctive action in the Superior Court.

DATED THIS 5th DAY OF April, 1994.



Karen J. Heidel, Ph.D., Director
Environmental Management

Copies mailed/delivered this 6 day of April, 1994, to:

Tom Macherione
Rigby Water Co.
7627 SW Greenwood St.
Portland, Oregon 97223

Mike Law, Deputy County Attorney
Maricopa County Attorney's Office

John Power, Manager, Division of Water & Waste Management

Ronald Ramsey, Engineering Aide

Gene Bond, Legal Liaison Officer

cc: Irene Torres
Utilities Division
1200 W. Washington
Phoenix, AZ 85007

4



**FIRST
NATIONAL
MANAGEMENT
INCORPORATED**

1832 S. Mac Donald, Suite 201 • Office: (602) 833-2027
P.O. Box 1289 • Mesa, AZ 85211-1289 • FAX: (602) 833-3250

June 26, 1998

Mr. Charlie Daines
c/o Sun Dance Motors
4439 W. Glendale Boulevard
Glendale, AZ 85301

R. [Signature]

Dear Charlie:

We have estimated the annual refund applicable to the water system serving your Terra Mobile Ranchettes Estates subdivision. The estimate is based on the following:

- 1) Assumes the subdivision is fully owner occupied.
- 2) Assumes the average annual water billing is 719,050 gallons per lot.

In determining the average annual consumption, the current consumptions were annualized to reflect the total estimated consumption for the totally occupied subdivision.

Based on the above, the annual refund is estimated to be \$12,225.00. If the occupancy or consumption varies so will the annual refund. Assuming the estimated refund is reasonably accurate, the refund agreement should be for approximately 20 years.

In the event you or your accountant have any questions or comments regarding this matter, please contact us.

Sincerely,

[Signature]
Fred T. Wilkinson
President

cc: RF
File

*Included is copy of
contract to be signed this
week - ~*

RIGBY WATER COMPANY
PO BOX 1020
APACHE JUNCTION, AZ 85217-1020
(480) 677-6980

BANK OF AMERICA, NA
APACHE JUNCTION, AZ 85220
91-1701221

1277

7/14/2010

PAY TO THE ORDER OF Annie Dains

\$ 2,421.05

Two Thousand Four Hundred Twenty-One and 05/100*****

DOLLARS 05

Annie Dains
5216 S 107th Ave
Tolleson, AZ 85353

TWO SIGNATURES REQUIRED OVER \$500.00

Annie Dains
Sydia A. Dains

MEMO

line extension

⑈001277⑈

Exhibit CDD-5

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

DOCKET NO. W-01808A-09-0137

**DIRECT TESTIMONY
OF
DAVID C. IWANSKI
ON BEHALF OF
THE ESTATE OF CHARLES J. DAINS
JULY 30, 2010**

1 I INTRODUCTION AND QUALIFICATIONS

2 Q. **WHAT IS YOUR NAME AND ADDRESS?**

3 A. My name is David C. Iwanski. My business address is 4980 South 157th Avenue, PO
4 Box 5100, Goodyear, AZ 85338.

5 Q. **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by the City of Goodyear as its Water Resources Manager. I have held this
7 position for almost six years.

8 Q. **WHAT WAS YOUR PREVIOUS PROFESSIONAL EXPERIENCE?**

9 A. I began my career serving four years of active duty with the Army in the Judge Advocate
10 General's Corps. I next worked two years for Arizona Congressman Eldon Rudd. I then
11 worked a year as the Congressional and Legislative Affairs Director for the U. S. Bureau
12 of Reclamation. I then worked for five years as the Water Resources Director for the
13 City of Glendale, Arizona. My last job before joining the City of Goodyear was 11 years
14 as the Executive Vice President of the Agri-Business Council of Arizona.

15 Q. **WHAT IS YOUR EDUCATIONAL EXPERIENCE?**

16 A. I received my B. A. from Marquette University in Wisconsin and a J. D. from Pepperdine
17 University School of Law in California.

18 Q. **ARE YOU A MEMBER OF ANY PROFESSIONAL ORGANIZATIONS OR
19 ASSOCIATIONS?**

20 A. I served 11 years as the State Director to the National Water Resources Association, five
21 years as a Board Member of the Family Farm Alliance, ten years on the Board of
22 Directors of the Arizona Utilities Association (now the Arizona Investment Council), five
23 years on the Valley Forward Water Resources Committee, and ten years as co-chair of
24 the WESTMARC Water Resources Committee. I currently serve as Vice-Chair of the

1 Maricopa Association of Governments' Water Quality Assurance Committee, and I chair
2 the Avondale City Planning and Zoning Commission.

3 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

4 A. I am testifying on behalf of the Estate of Charles J. Dains, the complainant in this case.

5 **Q. ARE YOU TESTIFYING ON BEHALF OF THE CITY OF GOODYEAR?**

6 A. No. I am a long-time friend of the Dains Family and am testifying to support their
7 complaint in this case. My testimony represents my personal and professional opinion
8 and is not being provided on behalf of the City of Goodyear. To my knowledge, the City
9 of Goodyear takes no position in this case.

10 **Q. HOW DID YOU FORM YOUR OPINIONS IN THIS TESTIMONY?**

11 A. I first became aware of the issues in this case through discussions with the Dains family.
12 I then reviewed their correspondence with Rigby Water, the resulting 1999 Main
13 Extension Agreement ("1999 MXA") with Rigby Water concerning the Rigby family
14 development known as Terra Mobile Ranchettes Estates, and visited the Corporation
15 Commission to look for any other relevant documents. I subsequently reviewed
16 documents provided by Rigby Water in response to data requests and other documents
17 provided to me by the Dains family and counsel. I also discussed the issues with counsel.

18 **Q. ARE YOU BEING COMPENSATED FOR YOUR TESTIMONY IN THIS CASE?**

19 A. No. I am testifying because I am a family friend and I believe the Dains Family has been
20 wronged by Rigby Water Company.

21 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

22 A. I will provide background on issues in this case and then discuss why Rigby Water
23 should immediately refund \$366,000 to the Estate of Charles J. Dains.

1 **Q. WHAT IS THE TERRA MOBILE RANCHETTE ESTATES DEVELOPMENT?**

2 A. The development is located in Avondale, Arizona in Rigby Water's service territory.
3 The Dains Family constructed and provided the streets and infrastructure for 84
4 manufactured-home sites, which were all sold by the early 2000s. A map showing the
5 location of the development is attached to Mr. Dains' testimony as Exhibit CDD-1.

6 **Q. WHAT IS THE 1999 MXA?**

7 A. Charles J. Dains and Rigby Water were parties to a 1999 MXA concerning the Terra
8 Mobile Ranchette Estates Development. The 1999 MXA provided that Mr. Dains would
9 construct the water infrastructure Rigby Water needed to provide service to the
10 development and then transfer the infrastructure to Rigby Water. Exhibit DCI-1 is a copy
11 of the executed 1999 MXA. It is signed by Mr. Dains and by Fred Wilkinson, as
12 president of Rigby Water Company.

13 **Q. DID MR. DAINS CAUSE THE WATER INFRASTRUCTURE TO BE
14 CONSTRUCTED AND TRANSFERRED TO RIGBY WATER.**

15 A. Yes. Several years before executing the MXA, Mr. Dains caused to be constructed and
16 advanced to Rigby Water utility infrastructure that cost him approximately \$237,000.

17 **Q. DID RIGBY WATER PROMISE TO MAKE REFUNDS FOR THE ADVANCED
18 INFRASTRUCTURE?**

19 A. Yes. Exhibit DCI-2 is a copy of a 1998 letter to Mr. Dains from Fred Wilkinson, Rigby
20 Water's president. Rigby Water estimated Mr. Dains would receive refunds of
21 approximately \$12,225 annually for 20 years, for a total of \$244,500. This is slightly
22 more than the actual cost of the total advanced infrastructure of \$237,000. In addition,
23 this figure does not include the value of the Certificated Water Right which Mr. Dains
24 had secured, allowing the legal authorization to pump and deliver groundwater.

1 **Q. DOES THE 1999 MXA REQUIRE RIGBY WATER TO PROVIDE REFUNDS TO**
2 **MR. DAINS TO COMPENSATE HIM FOR CONSTRUCTING THE**
3 **DEVELOPMENT'S WATER INFRASTRUCTURE?**

4 A. Yes. The 1999 MXA, which requires Rigby Water to provide refunds for 20 years to Mr.
5 Dains in return for constructing and advancing the water infrastructure.

6 **Q. HOW MUCH HAS RIGBY WATER ACTUALLY REFUNDED TO MR. DAINS?**

7 A. Based on a Rigby Water data response, I calculate that Rigby Water has actually
8 refunded approximately \$25,800 to Mr. Dains over the last 11 years. Of the \$237,000
9 that Mr. Dains expected over 20 years he has received just 11% of that in the first 11
10 years of the MXA.

11 **Q. DID RIGBY WATER FILE THE 1999 MXA WITH THE COMMISSION?**

12 A. In 2006, I traveled to the Commission to try to answer that question. I first reviewed the
13 files. I was unable to find any evidence that Rigby Water ever filed the 1999 MXA with
14 the Commission. I then spoke with Blessing Chukwu from the Commission Staff. She
15 confirmed that the 1999 MXA was never filed with the Commission.

16 I understand that after Mr. Dains filed his complaint in this docket, Rigby Water did file a
17 copy of the complaint.

18 **Q. WHY DOES IT MATTER WHETHER RIGBY WATER FILED THE 1999 MXA**
19 **WITH THE COMMISSION?**

20 A. The Commission's rules seem pretty clear. Commission Rule R14-2-406(M) says:

21 All agreements under this rule shall be filed with and approved by the
22 Utilities Division of the Commission. No agreement shall be approved
23 unless accompanied by a Certificate of Approval to Construct as issued by
24 the Arizona Department of Health Services. Where agreements for main
25 extensions are not filed and approved by the Utilities Division, the

1 refundable advance shall be immediately due and payable to the person
2 making the advance. (Emphasis added.)

3 Because the 1999 MXA was never filed, the entire amount of the refundable advance
4 (\$237,000 – refunds to date) is immediately due and payable to Mr. Dains, together with
5 interest on the refund shortage.

6 **Q. RIGBY WATER NOTES IN ITS ANSWER THAT MR. DAINS CONSTRUCTED**
7 **AND TURNED OVER A FULLY OPERATIONAL WATER SYSTEM TO RIGBY**
8 **WATER; IS THIS SIGNIFICANT?**

9 A Yes, this is very significant. Mr. Dains effectively built and sold to Rigby Water an
10 operating water system with customers. The sale price appears to have been the
11 estimated \$244,500 figure contained in Mr. Wilkinson's letter, to be paid over 20 years.
12 Rather that properly treat this transaction as an acquisition, for which Rigby Water would
13 have been required to get Commission approval, Rigby Water appears to have tried to
14 disguise the acquisition as a main extension agreement, executed two years after the sale.
15 Now, Rigby Water wants to avoid paying the agreed-upon purchase price.

16 **Q. IN ITS ANSWER TO MR. DAINS' COMPLAINT, RIGBY WATER STATES**
17 **THAT MR. DAINS NEVER PROVIDED THE CERTIFICATE OF APPROVAL**
18 **TO CONSTRUCT; IS THIS SIGNIFICANT TO YOU?**

19 A. No. I do not know if this is true, but the 1999 MXA did not require Mr. Dains to provide
20 Rigby Water a copy of the Certificate of Approval to Construct. If this was important to
21 Rigby Water, it should have asked for this in the MXA, especially given that the system
22 had already been operating for several years.

23 **Q. IN ITS ANSWER TO MR. DAINS' COMPLAINT, RIGBY WATER STATES**
24 **THAT IT WAS NEVER PROVIDED WITH DETAILED INVOICES OR "AS-**
25 **BUILT" DRAWINGS; IS THIS SIGNIFICANT TO YOU?**

1 A. No. First, I don't know if the statement is true or not, but I don't see the significance.

2 Paragraph 3 of the 1999 MXA clearly states that:

3 Applicants cost, as set forth in Exhibit B, a copy of which is attached
4 hereto and made a part hereof, shall be subject to refund in accordance
5 with the rules and regulations of the ACC and further described in Section
6 16 of this Agreement. (Emphasis added.)

7 Rigby Water specified what was to be built, and the Company had been using it to
8 provide service for two years before the MXA was executed. The stipulated cost set forth
9 in Exhibit B is \$236,988.68. This is the amount to be refunded.

10 Again, Rigby Water seems to have tried to disguise a system purchase as a main
11 extension. The system's construction costs were known and stipulated to by the parties
12 in Exhibit B.

13 **Q. IN ITS ANSWER TO MR. DAINS' COMPLAINT, RIGBY WATER STATES**
14 **THAT IT SHOULD NOT BE HELD TO ITS ESTIMATED REFUND AMOUNT**
15 **BECAUSE MR. DAINS "AS THE DEVELOPER OF THE SYSTEM HAD MORE**
16 **KNOWLEDGE OF HIS SYSTEM AND ITS DELIVERY HISTORY THAN**
17 **RIGBY"; IS THIS SIGNIFICANT TO YOU?**

18 A. No, this is both incorrect and irrelevant. Rigby Water states in the same document that:
19 "Rigby utilized data obtained from meters Mr. Dains installed to homes in Terra
20 Ranchettes to estimate annual water usage." This also appears to be incorrect. Like any
21 utility, Rigby Water installed the meters as Mr. Dains requested them and then read the
22 meters each month.

23 As the local water utility, Rigby Water was the custodian of the data and the party in the
24 best position to estimate future water revenues and refunds. Mr. Dains did not have the
25 data and had no expertise in forecasting revenues and refunds. Further, because the

1 transaction was really a sale of the system to Rigby, it does not seem accidental that the
2 refund estimate is so close to the construction cost.

3 **Q. WHO HOLDS THE CERTIFICATE OF ASSURED WATER SUPPLY FOR**
4 **TERRA MOBILE RANCHETTE ESTATES?**

5 A. Exhibit DCI-3 is a copy of the 1985 Certificate of Assured Water Supply, which was
6 issued to Mr. Dains. We could locate no records that show this Certificate as having been
7 transferred.

8 **Q. DOES THE DAINS FAMILY OWN ANY WELL SITES IN THE AREA OF**
9 **TERRA MOBILE RANCHETTE ESTATES?**

10 A. Yes. Rigby Water required Mr. Dains to reserve a lot for a well site, but not to transfer
11 title. The Dains Estate still holds title to an undeveloped one-acre well site.

12 **Q. IS THE SYSTEM BUILT AND SOLD BY MR. DAINS A SIGNIFICANT PART**
13 **OF RIGBY WATER'S SYSTEM?**

14 A. Yes. I have reviewed Rigby Water's 2009 Annual Report to the Commission. I note that
15 Rigby Water only has approximately 315 customers. This means that the 84 customers in
16 Terra Mobile Ranchette Estates represent more than one-fourth of Rigby Water's
17 customer base. If I compare the plant listed in Exhibit B of the 1999 MXA to Rigby
18 Water's plant in service, the plant Mr. Dains built and turned over to Rigby Water is a
19 similar percentage.

20 **Q. WHY IS IMPORTANT FOR THE COMMISSION TO DETERMINE RIGBY**
21 **WATER'S REFUND OBLIGATION?**

22 A. Rigby Water is in the planning area for the City of Avondale ("Avondale"). On
23 December 1, 2008, Avondale adopted Ordinance 1336-1208, which authorized the
24 acquisition of Rigby Water, by either purchase or condemnation. Exhibit DCI-4 is a copy

1 of that ordinance. Rigby Water and Avondale were unable to agree on a purchase price,
2 so Avondale has filed suit to acquire through condemnation all of Rigby Water's assets.
3 As shown on Exhibit DCI-5, Avondale has budgeted \$1.65 million for the acquisition.
4 As chair of the Avondale Planning and Zoning Commission I had access to staff
5 information which indicated Rigby Water Company was asking as much as \$4 million as
6 a purchase price.

7 As part of Rigby Water acquisition, Avondale will acquire the assets advanced by Mr.
8 Dains. Mr. Dains constructed and advanced approximately one-fourth of the assets that
9 Avondale has budgeted \$1.65 million to acquire. One-fourth of \$1.65 million is more
10 than \$400,000. It would be very unfair for Rigby Water to receive \$400,000 for assets
11 that it effectively paid almost nothing for. And the Court could award more, which
12 would make Rigby Water's treatment of Mr. Dains even more unfair.

13 **Q. DO THE COMMISSION'S RULES ADDRESS A UTILITY'S MXA REFUND**
14 **OBLIGATIONS IN THE EVENT OF A CONDEMNATION?**

15 A. Not directly. The parties to a condemnation could negotiate a sale, which would be
16 subject to the Commission's jurisdiction and rules. In that case, Commission Rule R14-
17 2-406(F) would apply

18 F. The Commission will not approve the transfer of any Certificate of
19 Public Convenience and Necessity where the transferor has entered into a
20 main extension agreement, unless it is demonstrated to the Commission
21 that the transferor has agreed to satisfy the refund agreement, or that the
22 transferee has assumed and has agreed to pay the transferor's obligations
23 under such agreement. (Emphasis added).

24 Rigby Water's refund obligation would then equal \$237,000, less all refunds provided to
25 date.

1 However, in the event of a condemnation, whether friendly or hostile, the Commission
2 may lack jurisdiction to enforce a utility's refund obligation. Therefore, it is important
3 that the Commission act quickly to ensure that refunds are made.

4 **Q. COULD YOU SUMMARIZE WHAT THE DAINS ESTATE IS ASKING THE**
5 **COMMISSION TO DO?**

6 **A.** Yes. The Dains Estate is asking the Commission to order Rigby Water to repay the
7 Dains Estate the amount of \$237,000 less all refunds paid to date, or \$210,607 to be
8 repaid. Exhibit DCI-6 shows how I calculated this amount.

9 Rigby Water should repay this amount, based on three theories. First, because Rigby
10 Water never filed the MXA, the Commission's rules require that the full value of the
11 advanced facilities be refunded. Second, Rigby Water misled Mr. Dains concerning the
12 refunds he should expect, acquired a working water system without obtaining
13 Commission approval, and tried to disguise the transaction as a main extension
14 agreement. Because Rigby Water has never paid the agreed-upon purchase price, it
15 should be required to refund the unpaid amount. Finally, given that the owners of Rigby
16 Water will soon be paid a significant amount of money for their utility, including the
17 amount built and constructed by Mr. Dains, it would be unjust for Rigby Water to profit
18 from the condemnation when it has not paid the agreed-upon purchase price for a
19 significant portion of the condemned assets.

20 Rigby Water should also be required to pay interest on the unrefunded balance. An
21 appropriate rate would be the rate Rigby Water charges its customers for past-due bills.
22 In Exhibit DCI-6, I calculate that Rigby Water owes the Dains Estate interest on the
23 unrefunded balances of \$155,221, based on an interest rate of 1.5% per month,
24 compounded monthly. Therefore, the total amount that the Commission should order
25 Rigby Water to pay to the Estate of Charles J. Dains is \$365,828.

1 **Q. IS THE DAINS ESTATE ASKING FOR DAMAGES ASSOCIATED WITH THE**
2 **TEN-YEAR DELAY IN DEVELOPING THE PROPERTY AS A RESULT OF**
3 **RIGBY WATER'S COMPLIANCE ISSUES?**

4 A. No. However, we ask that the Commission to consider these damages as yet another
5 reason is should award the Dains Estate the full amount of the relief requested in the
6 previous question and answer.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes.

MAIN EXTENSION AGREEMENT

WATER FACILITIES

This Agreement is entered into at Mesa, Arizona on this 1st day of October, 1998, by and between Terra Mobile Ranchettes Estates, hereinafter referred to as Applicant and Rigby Water Company, an Arizona corporation, hereinafter referred to as Utility.

1) Applicant is the owner of the property as set forth in Exhibit A, a copy of which is attached hereto and made a part hereof and hereinafter referred to as Property.

2) Applicant intends to develop said Property within the property set forth in Exhibit A and will require domestic water service.

3) Applicant and Utility agree that said property lies within the Certificate of Convenience and Necessity of Utility and therefore Utility is obligated to provide said domestic water service in accordance with the rules and regulations of the Arizona Corporation Commission (ACC)

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions set forth below, the parties hereto agree:

1) Applicant shall cause the proposed domestic water system to be designed, constructed or installed as necessary to provide an adequate supply of domestic water to each and every dwelling unit within the property as described in Exhibit A. Said water system shall include all necessary water facilities including but not limited to mains, fittings, fire hydrants, service lines, meter assemblies, meters, storage and pumping facilities.

2) Applicant shall be responsible for all costs associated with the construction of the domestic water system including engineering, permits, easements, labor, materials, equipment, transportation, insurance and bonds if applicable.

3) Applicants cost, as set forth in Exhibit B, a copy of which is attached hereto and made a part hereof, shall be subject to refund in accordance with the rules and regulations of the ACC and further described in Section 16 of this Agreement.

ORIGINAL

4) Applicant shall cause the domestic water system to be designed and constructed with sufficient capacity to serve the water needs of the Property, including fire protection.

5) Applicant may be required by Utility to provide "oversizing" in Applicants design and construction to benefit the needs of Utility. If oversizing is required by Utility, the Utility shall be obligated to pay those costs applicable to the oversized facilities. Said payment shall be based on material costs only and shall not include any costs for labor, equipment, transportation engineering, permits, disinfection, testing or any other costs not applicable in the sole discretion of Utility. Oversizing costs are set forth in Exhibit C, a copy of which is attached hereto and made a part hereof.

6) Applicant shall obtain all applicable permits, including zoning and other necessary permits which may be required prior to construction of the Domestic water system. All domestic water system facilities shall be constructed in accordance with the plans and specifications as prepared by Applicants engineer and reviewed by Utility's engineer and approved by Utility in writing. All domestic water system facilities shall be constructed in accordance with acceptable utility construction practices and in accordance with the rules and regulations of the ACC and the Arizona Department of Environmental Quality and the requirements of all other municipal and governmental agencies having jurisdiction.

7) Applicant shall comply with Utility's requirements for inspection and testing of the domestic water facilities constructed under this Agreement. Applicant shall provide Utility adequate notice when facilities under construction are ready for inspection and/or testing. Utility shall provide said inspection within five working days of being so noticed.

8) Utility shall provide Applicant written notice of any deficiencies discovered during said inspection within 10 working days of said inspection. Utility reserves the right to withhold acceptance of the facilities unless said facilities have been constructed in accordance with the requirements set forth herein.

9 Applicant herewith agrees to diligently pursue and promptly correct all deficiencies in construction, materials and workmanship as noted in Utilities written notice of deficiencies.

10) Applicant agrees to promptly correct all defects and deficiencies in construction, materials, and workmanship upon request by Utility and for one year following Utility's acceptance of the facilities at Applicants sole cost. It is understood that inspection and / or acceptance by Utility in no way relieves or limits Applicant of any responsibility and liability for construction and installation of the facilities in accordance with the terms of this Agreement.

11) The domestic water system facilities and all parts thereof, upon acceptance by Utility as provided herein, shall become and remain the sole property of utility without the requirements of any written document of transfer to Utility. However, Applicant shall furnish such documents pertaining to ownership and title as Utility may reasonably request to evidence or confirm transfer of possession and title to Utility free and clear of liens, or containing provision for satisfaction of lien claims by Applicant, acceptable to Utility. Applicant shall cause or cause to be repaired promptly, at no cost to Utility, all damage to the facilities caused by construction operations until all construction within the property is complete whether caused by Applicant or not.

12) Applicant shall convey or cause to be conveyed to Utility by Warranty Deed free and clear title to the land upon which any well and/or storage facility pertinent to the provision of domestic water is required. Any other lands applicable to and necessary for the provision of domestic water service as set forth on Applicants plans and specifications shall also be conveyed to Utility. Said lands are described on Exhibit C, a copy of which is attached hereto and made a part hereof.

13) Applicant shall, at no cost to Utility, grant or cause to be granted to Utility, perpetual right-of-ways and easements, in a form acceptable to Utility, for the facilities and future attachments to the facilities, including, but not limited to water mains, and access to the supply, production and storage sites. If any rights of way of easements are required by Utility for attachments to developments other than Applicants development, Utility and Applicant shall mutually agree on an acceptable location for such easements or rights of way.

14) Applicant shall, within 120 days following acceptance by Utility of facilities, furnish Utility with the following described original documents.

a) Copies of all invoices and billings and other statements of expenses incurred by Applicant for the construction of the domestic water system.

b) Releases and waivers from contractors, sub-contractors and vendors for materials, equipment, supplies, labor and other costs of construction of said facilities.

15) Utility will provide domestic water service to the Property in accordance with the rates, charges and conditions set forth in the tariffs of Utility as files with the ACC and in effect from time to time. It is agreed that water service to each and every dwelling unit within the Property will be metered accordingly. Applicant acknowledges and agrees that Utility has the right to and may in the future, connect the domestic water facilities to Utility's existing and/or future domestic water system.

16) The cost of construction and installation of facilities as evidenced by invoices furnished to Utility pursuant to Section 14 shall be advances in aid of construction subject to refund by Utility to Applicant. Utility shall make refunds annually to Applicant on or before August 31 for the preceding July 1 through June 30 period. The amount to be refunded annually shall be ten percent (10%) of the revenues (excluding sales taxes and all District, Municipal, County State or Federally imposed regulatory assessments) derived from the provision of metered domestic water service to the Property. Refunds shall be payable for a period of twenty (20) years from the date metered domestic water service is initiated to the Property. In no event shall the refunds paid to Applicant exceed the amount of the advanced in aid of construction. Any balance remaining at the end of the twenty year period shall become non-refundable. No interest shall be paid on any amount(s) advanced.

17) Applicant will furnish Utility with appropriate certificates of insurance, each containing a thirty (30) day notice of cancellation clause, stating collectively that Applicant or its contractors and subcontractors has the following insurance coverage during the period of construction hereunder.

a) Workman's Compensation Insurance in the amounts required by the laws of the state of Arizona.

b) Comprehensive General Liability Insurance including Products/Completed operations, with limits of not less than Two Million Dollars (2,000,000.00) combined single limit for bodily injury (including death) and property damage.

18) Applicant hereby assumes the full and entire responsibility and liability for any and all incidents of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence of Applicant, its agents, servants, employees, contractors or subcontractors, arising out of or in connection with the construction of the domestic water facilities prior to Utility's acceptance as set forth herein. Accordingly, Applicant will indemnify and hold harmless Utility, its officers, directors, agents and employees from and against claims or expenses, including penalties and assessments, and attorneys' fees to which they or any of them may be subjected by reason of such injury, death, loss, claim, penalty assessment of damage, and in case any suit or other proceeding shall be brought on account thereof, Applicant will assume the defense at Applicant's own expense and will pay all judgements rendered therein.

19) Applicant shall furnish Utility within sixty (60) days after completion of construction "As-Built" drawings certified as to correctness by an engineer registered in the State of Arizona showing the locations and respective sizes of all supply, transmission, production, storage, pumping facilities, and distribution facilities up to the curb valve of service connections to all dwelling units and/or structures served by the domestic water system.

20) Applicant shall cause any Department of Real Estate Subdivision reports issued regarding the Property, clearly to state that water services are to be provided by Utility and that Utility shall own all facilities utilized in providing said services, other than the service connections from the curb line into the dwelling unit premises.

21) The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

22) Communications hereunder shall be sent to the respective parties, addressed as follows:

APPLICANT: Terra Mobile Ranchettes Estates
4439 W. Glendale Boulevard
Glendale, AZ 85301

UTILITY: Rigby Water Company
P.O. Box 2899
Gilbert, AZ 85299-2899

or to other such address as the parties may advise each other in writing.

23) It is agreed that Utility is not an agent of Applicant and shall not incur any costs or expenses on behalf of Applicant and that Applicant is not an agent of Utility and shall not incur any cost or expenses on behalf of Utility.

24) This Agreement shall be governed by the laws of the State of Arizona and shall be subject to the approval of the ACC and such other regulatory agencies as may be required under the laws of said State.

25) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. However, neither Applicant nor Utility shall assign its rights, obligations and interest in this Agreement without the prior written consent of the other and such consent shall not be unreasonably withheld or delayed by either Applicant or Utility. Any attempted assignment without such consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

APPLICANT

Terra Mobile Ranchettes Estates

UTILITY

Rigby Water Company

By: Charles Dains
Charles Dains-DAINS

By: Fred T. Wilkinson
Fred T. Wilkinson, President

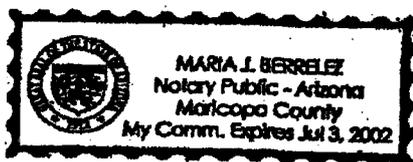
By: Judy A. Lopez
Judy A. Lopez, Secretary,
Treasurer

STATE OF ARIZONA)
County of Maricopa) SS

The foregoing instrument was acknowledged before me this ___ day of March 2nd, 1997, by Charles DAINS known to me to be the ___ of ___, and authorized by said corporation to make this acknowledgement on its behalf.

By Maria J. Berlez
Notary Public

My Commission Expires



STATE OF ARIZONA)
County of Maricopa) SS

The foregoing instrument was acknowledged before me this
5th day of May, 1999, by Fred J. Wilkinson
known to me to be the President of Rialto
Water Company, and authorized by said corporation to
make this acknowledgement on its behalf.

By Judy A. Lopez
Notary Public

My Commission Expires
6/28/02



MBC No. RWC-002

Date February 18, 1999

Applicant: Terra Mobile Ranchettes Estates

TIERRA MOBILE RANCHETTES

EXHIBIT B

Distribution System:

5,440 L/F 8" C-900 P.V.C.	\$11.20	\$60,928.00
4,400 L/F 6" c-900 P.V.C.	\$9.00	\$39,600.00
1 only 6" 90 Bend	\$87.00	\$87.00
18 each 6" Gate Valve	\$580.00	\$10,440.00
1 only *'x6" Reducer	\$140.00	\$140.00
2 each 8" 45 Bend	\$98.00	\$196.00
8 each 8"x^6" Tee	\$220.00	\$1,760.00
8 each 6" Fire Hydrant	\$890.00	\$7,120.00
2 each 8" 90 Bend	\$105.00	\$210.00
4 each 8" Gate Valve	\$780.00	\$3,120.00
7 each 6"x6" tee	\$190.00	\$1,330.00

Sub-Total		\$124,931.00

Services:

83 each 1" Corp. Stops	\$52.00	\$4,316.00
83 each 1" Angle Meter Stops	\$48.00	\$3,984.00
83 each Meter Boxes	\$70.00	\$5,810.00
1 only 8" 22 1/2 Bend	\$158.00	\$158.00

Sub-Total		\$14,268.00

Reservoir:

1 only 50,000 gallon Tank	\$27,000.00	\$27,000.00
Clean up and testing costs	\$2,600.00	\$2,600.00

Sub-Total		\$29,600.00

Booster Pumps:	\$50,851.00	\$50,851.00
Easement:		
Art Tobin Easement	\$16,000.00	\$16,000.00
Miscellaneous:		
Bonds	\$672.00	\$672.00
Permits	\$666.68	\$666.68
	Sub-Total	\$1,338.68

SUMMARY:

Distribution System:	\$124,931.00
Services:	\$14,268.00
Reservoir:	\$29,600.00
Booster Pumps:	\$50,851.00
Easement:	\$16,000.00
Miscellaneous:	\$1,338.68
Total	\$236,988.68

MEC No: RWC-002

Dated: February 18, 1999

Applicant: Terra Mobile Ranchettes Estates.

EXHIBIT C

OVERSIZING COSTS

No oversizing costs are required under this agreement.



**FIRST
NATIONAL
MANAGEMENT
INCORPORATED**

Exhibit DCI-2

1832 S. Mac Donald, Suite 201 • Office: (602) 833-2027
P.O. Box 1289 • Mesa, AZ 85211-1289 • FAX: (602) 833-3250

June 26, 1998

Mr. Charlie Daines
c/o Sun Dance Motors
4439 W. Glendale Boulevard
Glendale, AZ 85301

R. [Signature]

Dear Charlie:

We have estimated the annual refund applicable to the water system serving your Terra Mobile Ranchettes Estates subdivision. The estimate is based on the following:

- 1) Assumes the subdivision is fully owner occupied.
- 2) Assumes the average annual water billing is 719,050 gallons per lot.

In determining the average annual consumption, the current consumptions were annualized to reflect the total estimated consumption for the totally occupied subdivision.

Based on the above, the annual refund is estimated to be \$12,225.00. If the occupancy or consumption varies so will the annual refund. Assuming the estimated refund is reasonably accurate, the refund agreement should be for approximately 20 years.

In the event you or your accountant have any questions or comments regarding this matter, please contact us.

Sincerely,

[Signature]
Fred T. Wilkinson
President

cc: RF
File

*Included is copy of
contract to be signed this
week - ~*



STATE OF ARIZONA DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that
Charles Davis

Terra Rancho Estates Subdivision
SE₄, Section 30, T1N, R1E, G&S R B&M

Maricopa County

Phoenix Active Management Area

has demonstrated to the Arizona Department of Water Resources, in accordance with the requirements and procedures of A.R.S. § 45-576 and the applicable regulations, that sufficient water of adequate quality will be continuously available to satisfy the water needs of the referenced subdivision for at least one hundred years. The aforementioned subdivision consists of 63 lots which will be provided

water by Robby Water Company

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in the applicable regulations,

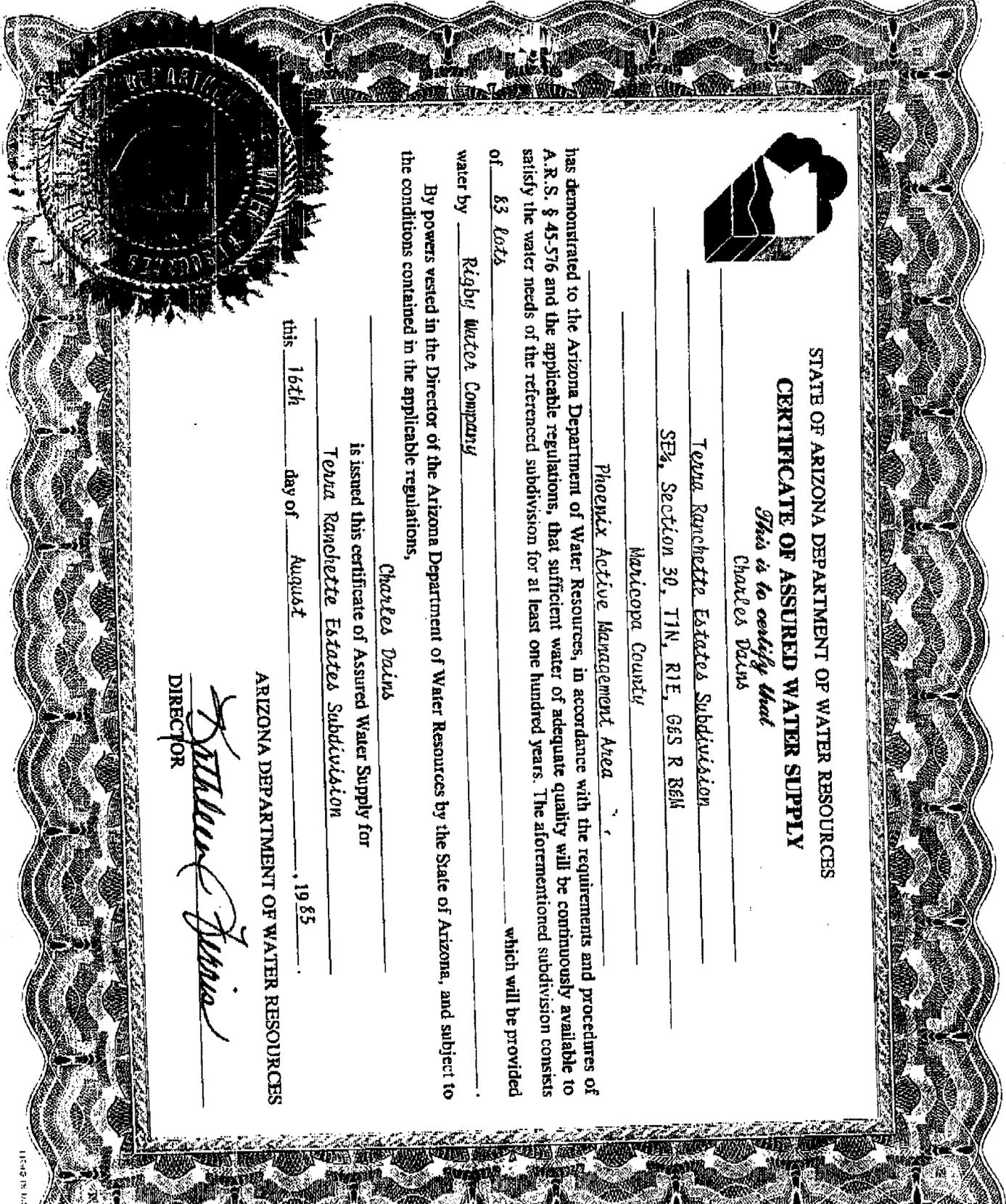
Charles Davis

is issued this certificate of Assured Water Supply for
Terra Rancho Estates Subdivision

this 16th day of August, 1985.

ARIZONA DEPARTMENT OF WATER RESOURCES

DIRECTOR
William J. Thomas





CITY COUNCIL REPORT

SUBJECT:

Ordinance 1336-1208 - Authorizing the Purchase of the Rigby Water Company

MEETING DATE:

December 1, 2008

TO: Mayor and Council

FROM: Wayne Janis, Water Resources Director, (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting the City Council adopt an ordinance approving the acquisition of the Rigby Water Company, located in the Southern Avondale Planning Area, by purchase or condemnation.

DISCUSSION:

The City of Avondale has been in negotiations with the principals of Rigby Water Company regarding possible acquisition since 2006. Rigby's service area is located in southern Avondale near and around Avondale Blvd., El Mirage Road, Broadway Road, and Southern Ave.

Currently, all existing City of Avondale residents are also Avondale water and sewer customers. As the City expands and grows to the south, it is in the City's best interest to continue providing its residents with those services. The Rigby Water Company currently serves the small neighborhood of Tierra Ranchettes. As the incorporated area moves south to include areas like the Ranchettes, and as new development occurs, it is important for the City to manage the delivery of these basic life services. In doing so, these residents will obtain the same quality water and sewer services as their neighbors to the north. In addition, when all City residents are also City customers, future bond votes that affect the delivery of water and sewer services are decided by only those individuals with a vested interest in those infrastructure improvements.

BUDGETARY IMPACT:

Funding is available in the Water Resources Capital Improvement Program Budget, Line Item No. 514-1212-00-8520.

RECOMMENDATION:

Staff is recommending the City Council adopt an ordinance approving the acquisition of the Rigby Water Company, located in the Southern Avondale Planning Area, by purchase or condemnation.

ATTACHMENTS:

[Click to download](#)

[Ordinance 1336-1208](#)

ORDINANCE NO. 1136-1208

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION OF THE RIGBY WATER COMPANY, INCLUDING ALL REAL AND PERSONAL PROPERTY RELATING THERETO, BY PURCHASE OR CONDEMNATION.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the City Council of the City of Avondale hereby approves the acquisition of the Rigby Water Company, including all real and personal property relating thereto, by purchase or condemnation, for the purpose of incorporating the facilities of such water company into the municipal water system.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, December 1, 2008.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

Exhibit DCI-5

Capital Improvement Plan

Fiscal Years 2011-2020

Water Development

Project No: WA1201 **Pct. New Development:** 100.00% **Total Project Cost:** \$1,150,000

Project Title: Well 22 - SWC Avondale and Van Buren

Funding Source: Development Fees

Project Description:

The development of the Wieler Well which is located at the southwest corner of Avondale Boulevard and Van Buren Street. The Weiler Well will serve as a water supply for the Coldwater Springs Booster Sattion and Reservoir and should provide a pump capacity of approximately 2,000 gpm.

	Carryover	FY 10-11	FY 10-11 Total	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 16-20
Capital Costs:	1,150,000	-	1,150,000	-	-	-	-	-
Operating Impact Totals:								

Project No: WA1212 **Pct. New Development:** 100.00% **Total Project Cost:** \$1,650,000

Project Title: Purchase of Rigby Water Company

Funding Source: Bonds

Project Description:

Purchase of that portion of the Rigby Water Company which provides service to residents within Avondale planning area. Purchase includes service area wells, reservoirs, booster facilities and distribution infrastructure.

	Carryover	FY 10-11	FY 10-11 Total	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 16-20
Capital Costs:	1,350,000	300,000	1,650,000	-	-	-	-	-
Operating Impact Totals:								

Project No: WA1214 **Pct. New Development:** 100.00% **Total Project Cost:** \$2,180,000

Project Title: MARWEST well

Funding Source: Development Fees

Project Description:

With the anticipated growth in the City's customer base, the Marwest Well has been identified as a water source that meets the objectives of the City's Water Master Plan. The Marwest Well is located ¼ mile north of Van Buren Street, on the east side of El Mirage Road, should provide a pump capacity of approximately 1,200 gpm, and will serve as a water supply for the Coldwater Reservoir and Booster Station.

	Carryover	FY 10-11	FY 10-11 Total	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 16-20
Capital Costs:	180,000	-	180,000	-	600,000	1,400,000	-	-
Operating Impact Totals:								

