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**BEFORE THE ARIZONA CORPORATION COMMISSION  
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Arizona Corporation Commission

**DOCKETED**

JUL -9 2010

AZ CORP COMMISSION  
DOCKET CONTROL

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2 COMMISSIONERS  
 3 KRISTIN K. MAYES, Chairman  
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 7 BOB STUMP

2010 JUL -9 P 2:28

8 IN THE MATTER OF:  
 9 CHARLES J. DAINS,  
 10 Complainant,  
 11 v.  
 12 RIGBY WATER COMPANY,  
 13 Respondent.

DOCKET NO. W-01808A-09-0137

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

14 On March 19, 2009, Charles J. Dains ("Complainant") filed with the Arizona Corporation  
 15 Commission ("Commission") a Formal Complaint ("Complaint") against Rigby Water Company  
 16 ("Rigby" or "Respondent"). The Complaint states that Rigby is in violation of A.A.C. R14-2-406  
 17 (regarding main extension agreements) and requests that the Commission grant Complainant relief in  
 18 the amount of \$237,000, less any previously refunded amounts.

19 On April 13, 2009, Rigby filed an Answer to the Complaint and a Motion to Dismiss.

20 On May 5, 2009, Complainant filed a response to Rigby's Answer to the Complaint and  
 21 Rigby's Motion to Dismiss. Complainant also filed a Motion for Summary Judgment.

22 On May 14, 2009, by Procedural Order, a procedural conference was set for June 2, 2009.

23 On May 18, 2009, Rigby filed a notice of filing a main extension agreement ("MXA") and a  
 24 reply in support of its motion to dismiss.

25 On June 2, 2009, a procedural conference was held as scheduled. Complainant, Respondent,  
 26 and Staff appeared through counsel for the conference. At the conclusion of the procedural  
 27 conference, the parties were directed to discuss settlement of the issues and to jointly file a status  
 28 report on the settlement discussions.

On June 9, 2009, Rigby filed a Response to Complainant's Motion for Summary Judgment.

1 On June 29, 2009, counsel for Complainant and Respondent made a joint filing stating that  
2 the parties had been unable to reach settlement on the issues.

3 On September 15, 2009, by Procedural Order, the hearing in this matter was set for October  
4 29, 2009.

5 On October 5, 2009, Complainant filed a Motion to Continue Hearing, stating that one of the  
6 Complainant's witnesses would be unavailable for the October 29, 2009, hearing date.

7 On the same date, Complainant filed a Motion to Compel, stating that Respondent had  
8 objected to a request for discovery on various grounds, including relevance, and confidentiality.

9 On October 7, 2009, Rigby filed a response to Complainant's Motion to Continue. In the  
10 response, Respondent requested that the current hearing date be used for oral argument on Rigby's  
11 Motion to Dismiss and stated that Rigby did not object to a continuance of the evidentiary portion of  
12 the hearing.

13 On the same date, Rigby also filed a response to the Motion to Compel. The response stated  
14 that Complainant's request for discovery amounted to a "fishing expedition" and that the information  
15 requested was irrelevant to the issues raised in the Complaint.

16 On October 23, 2009, by Procedural Order, a procedural conference was set for November 5,  
17 2009, to hear oral argument on Complainant's Motion to Compel; the hearing scheduled for October  
18 29, 2009 was vacated; and the parties were directed to make a joint filing with mutually agreed upon  
19 hearing dates.

20 On November 5, 2009, the procedural conference was held as scheduled. Complainant,  
21 Respondent, and Staff appeared through counsel. Prior to providing oral argument on Complainant's  
22 Motion to Compel, the parties informed the Administrative Law Judge that the parties had resolved  
23 the discovery dispute. The parties requested that the hearing in this matter be rescheduled for  
24 December 2, 2009.

25 On November 9, 2009, by Procedural Order, the hearing in this matter was rescheduled to  
26 begin on December 2, 2009.

27 On November 24, 2009, counsel for Complainant filed a Motion to Continue Hearing, stating  
28 that Complainant, Mr. Charles J. Dains, had passed away. According to the motion, Mr. Dains' son,

1 Mr. Charles J. Dains Jr., planned to take over for his father in this case, but that he needed time to  
2 prepare for the hearing. The motion requested an indefinite continuance of the hearing and stated  
3 that the other parties did not object to the request.

4 On November 25, 2009, a Procedural Order was issued vacating the hearing scheduled for  
5 December 2, 2009, and directing counsel for Complainant to file a status report on or before February  
6 26, 2010.

7 On March 2, 2010, the Complainant filed a status report, stating that the Complainant was  
8 ready to proceed and requested that a procedural conference be scheduled.

9 The parties were contacted telephonically and a telephonic procedural conference was set for  
10 March 22, 2010.

11 On March 22, 2010, a telephonic procedural conference was held as scheduled to discuss the  
12 status of the case. Complainant, Rigby, and Staff appeared through counsel. Discussions were held  
13 regarding the Complainant's standing, in light of the death of Mr. Charles Dains; Staff's expanded  
14 role in the proceeding; and the length of time needed for a hearing in this matter.

15 On April 19, 2010, by Procedural Order, Complainant was ordered to docket, on or before  
16 May 7, 2010, an affidavit of an individual authorized to pursue the claim in this matter stating that the  
17 individual is authorized to act for the Estate of Mr. Charles Dains, and that the individual intends to  
18 pursue the claims in this case on behalf of said Estate, along with documentation establishing that the  
19 individual is authorized to pursue the claim on behalf of Mr. Charles Dains' Estate.

20 On May 6, 2010, counsel for Complainant's Estate filed the following documents: (1)  
21 Affidavit of Annavate V. Dains, stating she is the widow, and personal representative of Mr. Charles  
22 J. Dains' Estate and that she intends to pursue the claims under this docket; and (2) a Letter of  
23 Appointment of Personal Representative and Acceptance of Appointment as Personal Representative  
24 of Annavate V. Davis in the Matter of the Estate of Charles J. Dains issued by the Superior Court of  
25 Maricopa County (Case No. PB2010-000988).

26 On May 21, 2010, Complainant docketed a Notice of Filing Proposed Filing Dates.

27 IT IS THEREFORE ORDERED that the **hearing** in this matter shall be held on **September**  
28 **20, 2010, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's offices, 1200

1 West Washington Street, Room 100, Phoenix, Arizona 85007.

2 IT IS FURTHER ORDERED that **Complainant's direct testimony and associated exhibits**  
3 to be presented at hearing shall be reduced to writing and filed on or before **July 30, 2010**.

4 IT IS FURTHER ORDERED that **any testimony and associated exhibits to presented at**  
5 **the hearing on behalf of Staff and/or Rigby** in response to Complainant's direct testimony, shall be  
6 reduced to writing and filed on or before **August 20, 2010**.

7 IT IS FURTHER ORDERED that **Staff's testimony shall** include a discussion of Staff's  
8 process for reviewing and approving MXAs pursuant to A.A.C. R14-2-406; references to past  
9 Commission Decisions approving MXAs; and Staff's interpretation of the provision contained in  
10 A.A.C. R14-2-406(M).

11 IT IS FURTHER ORDERED that **Complainant's witness(es)** may provide rebuttal  
12 testimony orally at the hearing.

13 IT IS FURTHER ORDERED that any objections to **testimony or exhibits** shall be filed on or  
14 before **September 10, 2010**.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized  
16 Communications) applies to this proceeding as the matter is now set for hearing.

17 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
18 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
19 Rules of Arizona Supreme Court). Representation before the Commission includes the obligation to  
20 appear at all hearings and procedural conferences, as well as all Open Meetings for which the matter  
21 is scheduled for discussion, unless counsel has previously been granted permission to withdraw by  
22 the Administrative Law Judge or the Commission.

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25 ...

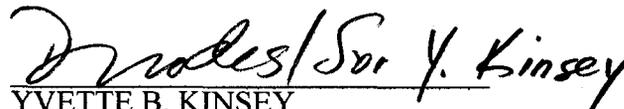
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1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
3 hearing.

4 DATED this 9<sup>th</sup> day of July, 2010.

6   
7 YVETTE B. KINSEY  
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 9<sup>th</sup> day of July, 2010 to:

11 Craig A. Marks  
12 CRAIG A. MARKS, PLC  
13 10645 North Tatum Blvd., Suite 200-676  
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15 Attorney for the Estate of Charles J. Dains

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32 ARIZONA REPORTING SERVICE, INC.  
33 2200 North Central Avenue, Suite 502  
34 Phoenix, AZ 85004-1481

35 By:   
36 Debra Broyles  
37 Secretary to Yvette B. Kinsey  
38