

ORIGINAL



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COMMISSIONERS

KRISTIN K. MAYES, Chairman  
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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 28 2010

DOCKETED BY

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

DOCKET NO. W-01808A-09-0137

**RIGBY WATER COMPANY'S  
RESPONSE TO MOTION TO  
ADMIT LATE-FILED EXHIBITS  
AND ALTERNATIVE REQUEST  
TO ADMIT ADDITIONAL LATE-  
FILED EXHIBITS**

BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000

On October 19, 2010, Complainant filed a Motion to Admit Late-Filed Exhibits. Immediately before filing that Motion, Complainant disclosed a number of documents, including the proposed late filed exhibits, to Rigby Water Company. [See Exh. A. (email from counsel dated October 19, 2010 disclosing documents).] Apparently, Complainant obtained the late disclosed documents from the Maricopa County Health Department following the hearing in this matter on September 20, 2010. Complainant now seeks the admission of (1) the Certificate of Approval to Construct issued by Maricopa County in 1985, which directly rebuts Complainant's allegations that he and his father were unable to proceed with development due to Rigby Water Company's non-compliant status in 1985, and (2) a memorandum from the Maricopa County Environmental Services Department to the Arizona Real Estate Division, dated May 2, 1996, indicating that the earlier Certificate of Approval to Construct had been reinstated.

1 Rigby Water Company has no objection to the late admission of Complainant's  
2 proposed exhibits Dains 12 and Dains 13, as those proposed exhibits conclusively  
3 demonstrate that Complainant could have developed the subject parcel in 1985 but chose  
4 not to, and that Rigby Water Company was never provided with the Approval to Construct  
5 required by the Commission for approval of the mainline extension agreement. However,  
6 Rigby Water Company submits that two additional documents disclosed by Complainant  
7 should also be admitted as late filed exhibits to supplement issues that arose at the hearing.  
8 Specifically, Rigby Water Company requests that the following additional documents  
9 (attached at Exhibit B) be admitted:

10 RWC 15 - Water Report signed and sealed by James M. Samer on February 24, 1996 that  
11 indicates that construction of the Terra Ranchette Estates Subdivision required the  
12 installation of an additional 50,000 gallons of storage capacity; and

13 RWC 16 - A letter from Rigby Water Company to W. Steiner, Arizona Department of  
14 Water Resources, dated March 19, 1985, with copy to C. Dains, indicating that water  
15 service for Terra Ranchette Estates Subdivision was conditioned on Mr. Dains financing  
16 construction of the necessary improvements, conveying all land titles and easements to  
17 Rigby Water Company, and the obtaining all necessary governmental approvals, including  
18 approvals from the Commission.

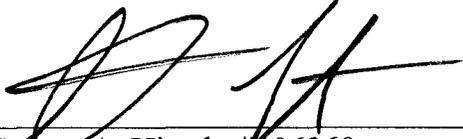
19 As noted, these proposed exhibits offer further evidence that Mr. Dains was aware of  
20 the legal requirements related to Rigby Water Company's provision of water service to  
21 Terra Ranchettes Estates Subdivision and that the infrastructure installed by Mr. Dains was  
22 necessary to serve his proposed development, not to enrich Rigby Water Company.  
23 Accordingly, Rigby Water Company respectfully requests that if Complainant's request to

24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1 late file exhibits Dains 12 and Dains 13 is granted that RWC 15 and RWC 16 also be  
2 admitted as supplemental late filed exhibits in this matter.

3  
4 RESPECTFULLY SUBMITTED this 28th day of October, 2010.

5 BRYAN CAVE LLP

6  
7  
8 By 

9 Steven A. Hirsch, #006360

10 Stanley B. Lutz, #021195

11 Two N. Central Avenue, Suite 2200

12 Phoenix, AZ 85004-4406

13 Attorneys for Rigby Water Company

14 **ORIGINAL** and 13 copies of the foregoing  
15 filed this 28th day of October, 2010 with:

16 Docket Control Division  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 COPIES of the foregoing hand-delivered  
21 this 28th day of October, 2010, to:

22 Yvette B. Kinsey, Esq.  
23 Administrative Law Judge  
24 Arizona Corporation Commission  
25 1200 W. Washington  
26 Phoenix, AZ 85007

27 Mr. Stephen M. Olea  
28 Director, Utilities Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000

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Robin Mitchell, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

COPIES of the foregoing mailed  
this 28<sup>th</sup> day of October, 2010  
to:

Craig A. Marks, Esq.  
Craig A. Marks, PLC  
10645 North Tatum Boulevard  
Suite 200-676  
Phoenix, Arizona 85028

Yisa Bemus

# **EXHIBIT A**

**Lutz, Stanley**

---

**From:** Craig.Marks [Craig.Marks@azbar.org]  
**Sent:** Tuesday, October 19, 2010 1:59 PM  
**To:** Lutz, Stanley  
**Cc:** Hirsch, Steven; rmittell@azcc.gov; Charles Dains; David Iwanski  
**Attachments:** 101019 Copies of Documents from Maricopa County Health Department.pdf

Stan,

I am not sure without looking if these documents are responsive to any of your DRs, but to be safe I am sending you copies. These were obtained from the Maricopa County Health Department.

Craig

10/28/2010

# **EXHIBIT B**

# **EXHIBIT RWC 15**

In the Matter of the  
Formal Complaint of  
Charles J. Dains Against  
Rigby Water Company  
Docket No. W-01808A-09-0137

## TERRA RANCHETTE ESTATES

A Subdivision at 107th Ave. & Roeser Road  
Avondale, Arizona

### **WATER REPORT**

#### PROJECT DESCRIPTION:

Terra Ranchette Estates is a proposed mobile home subdivision to be developed in the City of Avondale at the Southwest corner of Rose Road and 107th. Ave. The subdivision will contain 83 Lots and be in 27.57 gross acres. A reduced copy of the recorded plat is included in the appendix.

The Water supply, certified of assessed water supply by the Arizona Department of Water Reserve in August of 1989, will be by the Rigby Water Company.

#### REQUIREMENTS:

The Proposed subdivision will require an assured supply of 400 gallons per day per lot. The 83 lots in this subdivision will require 33,200 gallons per day. The Rigby Water company has about 120 additional customers on this facility which would add 48000 gallons per day. Thus a supply of 81,200 gallons per day will be required to adequately serve the new customers and the existing users.

#### EXISTING FACILITIES:

The Rigby Water Company have existing facilities at a site about 1/2 mile were of the subdivision with lines going South to Southern and then East on Southern to 107th Ave. The plant at Roeser and 115th Ave. consists of an 8" well; three storage tanks totaling 35,000 gallons, a 2000 gallon pressure tank and two booster pumps. The site currently produces 75apm with a 5 h.p. pump:

Data furnished by the Water Company is reproduced in the apendix includes site information, water quality analysis and a certificate of assessed water supply.

In addition the Water Company owns an inactive 6" well site that would be brought to standards and put on line and approved when needed.

#### PLANT IMPROVEMENTS NEEDED:

Other than any items required by the DEQ for compliance with other requirements, it will be necessary to add storage and on increased pump capacity.

In as much as the calculated requirements is 81,200 gallons, and the current capacity is 35,000 gallons, a 50,000 gallons storage tank will be added to the capacity.

Also an 8" well should be capable of more than 75gpm, which is the capacity of the 5 h.p. pump. It is proposed to increase this to a 20 h.p. pump to improve well production to 250 to 300 gpm. This will more than adequately serve the proposed 200 to 210 customers.

**CONCLUSIONS:**

The Rigby Water Company has the franchise to serve the proposed development . It also has the capability, with the additions described, to serve the proposed development. The Water Company has also an assured water supply. The proposed development will meet the ADEQ requirements to have an adequate supply of portable water available when it is completed.

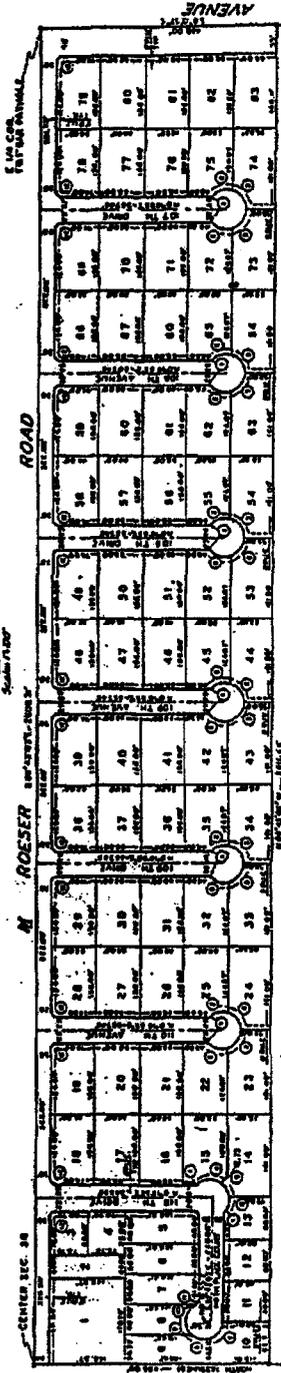
**APPENDIX**

- (1) Recorded subdivision plat
- (2) Certificate of assured water supply
- (3) Water quality analysis
- (4) By reference - Development Plans For well site delivery system.





UNSUBDIVIDED ROAD



LOT	ACRES	AREA	AREA	AREA	AREA
1	0.10	0.10	0.10	0.10	0.10
2	0.10	0.10	0.10	0.10	0.10
3	0.10	0.10	0.10	0.10	0.10
4	0.10	0.10	0.10	0.10	0.10
5	0.10	0.10	0.10	0.10	0.10
6	0.10	0.10	0.10	0.10	0.10
7	0.10	0.10	0.10	0.10	0.10
8	0.10	0.10	0.10	0.10	0.10
9	0.10	0.10	0.10	0.10	0.10
10	0.10	0.10	0.10	0.10	0.10
11	0.10	0.10	0.10	0.10	0.10
12	0.10	0.10	0.10	0.10	0.10
13	0.10	0.10	0.10	0.10	0.10
14	0.10	0.10	0.10	0.10	0.10
15	0.10	0.10	0.10	0.10	0.10
16	0.10	0.10	0.10	0.10	0.10
17	0.10	0.10	0.10	0.10	0.10
18	0.10	0.10	0.10	0.10	0.10
19	0.10	0.10	0.10	0.10	0.10
20	0.10	0.10	0.10	0.10	0.10
21	0.10	0.10	0.10	0.10	0.10
22	0.10	0.10	0.10	0.10	0.10
23	0.10	0.10	0.10	0.10	0.10
24	0.10	0.10	0.10	0.10	0.10
25	0.10	0.10	0.10	0.10	0.10
26	0.10	0.10	0.10	0.10	0.10
27	0.10	0.10	0.10	0.10	0.10
28	0.10	0.10	0.10	0.10	0.10
29	0.10	0.10	0.10	0.10	0.10
30	0.10	0.10	0.10	0.10	0.10
31	0.10	0.10	0.10	0.10	0.10
32	0.10	0.10	0.10	0.10	0.10
33	0.10	0.10	0.10	0.10	0.10
34	0.10	0.10	0.10	0.10	0.10
35	0.10	0.10	0.10	0.10	0.10
36	0.10	0.10	0.10	0.10	0.10
37	0.10	0.10	0.10	0.10	0.10
38	0.10	0.10	0.10	0.10	0.10
39	0.10	0.10	0.10	0.10	0.10
40	0.10	0.10	0.10	0.10	0.10
41	0.10	0.10	0.10	0.10	0.10
42	0.10	0.10	0.10	0.10	0.10
43	0.10	0.10	0.10	0.10	0.10
44	0.10	0.10	0.10	0.10	0.10
45	0.10	0.10	0.10	0.10	0.10
46	0.10	0.10	0.10	0.10	0.10
47	0.10	0.10	0.10	0.10	0.10
48	0.10	0.10	0.10	0.10	0.10
49	0.10	0.10	0.10	0.10	0.10
50	0.10	0.10	0.10	0.10	0.10
51	0.10	0.10	0.10	0.10	0.10
52	0.10	0.10	0.10	0.10	0.10
53	0.10	0.10	0.10	0.10	0.10
54	0.10	0.10	0.10	0.10	0.10
55	0.10	0.10	0.10	0.10	0.10
56	0.10	0.10	0.10	0.10	0.10
57	0.10	0.10	0.10	0.10	0.10
58	0.10	0.10	0.10	0.10	0.10
59	0.10	0.10	0.10	0.10	0.10
60	0.10	0.10	0.10	0.10	0.10
61	0.10	0.10	0.10	0.10	0.10
62	0.10	0.10	0.10	0.10	0.10
63	0.10	0.10	0.10	0.10	0.10
64	0.10	0.10	0.10	0.10	0.10

UNSUBDIVIDED

VACOR ROAD

107 TH AVENUE

**REMARKS:**

THIS PLAT WAS PREPARED BY THE ENGINEER FROM THE RECORDS OF THE COUNTY CLERK OF MARICOPA COUNTY, ARIZONA, AND IS SUBJECT TO THE RECORDS OF THE COUNTY CLERK OF MARICOPA COUNTY, ARIZONA.

IN WITNESS WHEREOF, THE ENGINEER HAS HEREUNTO SET HIS HAND AND SEAL AT PHOENIX, ARIZONA, THIS 15TH DAY OF MARCH, 1964.

\_\_\_\_\_  
 ENGINEER

**REMARKS:**

THIS PLAT WAS PREPARED BY THE ENGINEER FROM THE RECORDS OF THE COUNTY CLERK OF MARICOPA COUNTY, ARIZONA, AND IS SUBJECT TO THE RECORDS OF THE COUNTY CLERK OF MARICOPA COUNTY, ARIZONA.

IN WITNESS WHEREOF, THE ENGINEER HAS HEREUNTO SET HIS HAND AND SEAL AT PHOENIX, ARIZONA, THIS 15TH DAY OF MARCH, 1964.

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 ENGINEER

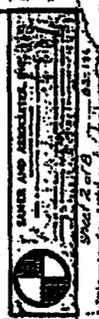
**REMARKS:**

THIS PLAT WAS PREPARED BY THE ENGINEER FROM THE RECORDS OF THE COUNTY CLERK OF MARICOPA COUNTY, ARIZONA, AND IS SUBJECT TO THE RECORDS OF THE COUNTY CLERK OF MARICOPA COUNTY, ARIZONA.

IN WITNESS WHEREOF, THE ENGINEER HAS HEREUNTO SET HIS HAND AND SEAL AT PHOENIX, ARIZONA, THIS 15TH DAY OF MARCH, 1964.

\_\_\_\_\_  
 ENGINEER

**TERRA RANCHETTE ESTATES**  
 A SUBDIVISION OF THE NORTH HALF 1/2 OF THE SOUTHEAST QUARTER 1/4 OF SECTION 30, T11N., R1E., S 2 & S45 & N., MARICOPA COUNTY, ARIZONA



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

*This is to certify that*  
*Charles Dains*

Terra Ranquette Estates Subdivision  
SE $\frac{1}{4}$ , Section 30, T1N, R1E, G&S R 8&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 83 lots which will be provided water by Rigby 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,

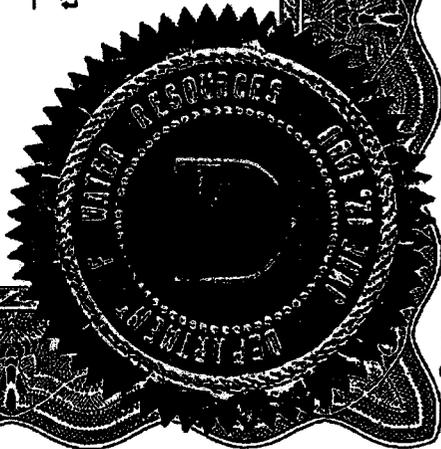
Charles Dains

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

this 16th day of August, 1985.

ARIZONA DEPARTMENT OF WATER RESOURCES

Kathleen June  
DIRECTOR



**WATER QUALITY ANALYSIS - Chemical**

SPECIMEN UNSATISFACTORY

Specimen Number: 960500      System Number: 07-062      Cert. no. 0002

Name of Client: Rigby Water Company      Identification Number: \_\_\_\_\_

Address: 3218 East Clarendon

City: Phoenix      State: AZ      Zip Code: 85018      County: Maricopa

Reason: \_\_\_\_\_

**SOURCE TYPE (check one)**  
 Well     Surface

**SOURCE DATA (check each applicable box)**  
 Public System     Treated     Routine Sample  
 Individual System     Untreated     Re-Sample  
 Semi-Public     Grab Sample     Special  
 Composite Sample     New Source     Existing Source

LAB USE ONLY  
Lab Performing Test: 4

MAILING ADDRESS OF REPORT: Rigby Water Company

ADDRESS: Box 535

DO NOT CHARGE: 1

CITY: Cashion      STATE: AZ      ZIP CODE: 85329

**FIELD DATA -**  
 Conductivity \_\_\_\_\_ Mhos D.O. \_\_\_\_\_ pH \_\_\_\_\_  
 Air Temp. \_\_\_\_\_ °C. Water Temp. \_\_\_\_\_ °C.  
 Well Depth \_\_\_\_\_ Static Water Level \_\_\_\_\_  
 Gage Height \_\_\_\_\_ Discharge \_\_\_\_\_ CFS  
 Depth to Surface \_\_\_\_\_ GPM

SYSTEM OR SOURCE NAME: Rigby Water Co.      CITY: Cashion      WELL NUMBER: 30-1 #1

LOCATION OF SAMPLING POINT: 5602 S. 115th Ave.      WELL NAME: #1

COUNTY: Maricopa      TOWNSHIP: \_\_\_\_\_      RANGE: \_\_\_\_\_      SECTION: \_\_\_\_\_      COLLECTED BY: V. Lee

STATION NUMBER: \_\_\_\_\_      DATE COLLECTED: 4/2/79      HOUR: 9:20 am

CONTROL NUMBER: \_\_\_\_\_      PRESERVATIVE ADDED?  Yes     No

**SAMPLE APPEARANCE -**  
 Clear     Turbid     Silty     Floating     Other

**WEATHER -**  
 Clear     Cloudy     Rain     Snow     Other

**SAMPLER'S COMMENTS:** \_\_\_\_\_

10  ROUTINE WATER CHEMISTRY

11  Specific Resistance (OHMS) \_\_\_\_\_

12  pH 7.6

30  Residue (3000) 1730

13  CATIONS

	Mg/l
14 Calcium	120
15 Magnesium	63
32 Hardness (CaCO3)	559
16 Sodium	342
17 Iron (2.0)	1t* 0.1
18 Copper (1.0)	1t* 0.05
19 Manganese (0.2)	1t* 0.05
20 Zinc (5.0)	0.24

21  ANIONS

	Mg/l
22 Alk P (CaCO3)	0
23 Alk MP (CaCO3)	128
24 Chloride (1000)	760
25 Nitrate N (10.0)	2.6
26 Sulfate (1000)	212
28 Fluorides	0.3

41  TRACE METALS

	Mg/l
42 Arsenic (.05)	1t* 0.01
43 Silver (.05)	1t* 0.02
44 Chromium (0.05)	0.01
45 Cadmium (0.01)	1t* 0.005
46 Lead (0.05)	1t* 0.02
47 Selenium (0.01)	1t* 0.005
48 Mercury (.002)	1t* 0.001
57 Barium (1.0)	1t* 0.2

Acceptable for Public Usage  
 Provisionally Accepted for Public Usage\*  
 Rejected for Public Usage\*  
 Based on Parameters Run  
 \*See attached for interpretation  
 Evaluated by \_\_\_\_\_  
 Bureau of Water Quality Control  
 Date \_\_\_\_\_

1t\* = less than

*See det #7303 #125*

COMMENTS: \_\_\_\_\_

Date Reported: 4/6/79  
 cc: Arizona Dept. of Health Services  
 cc: Maricopa County Health Dept.

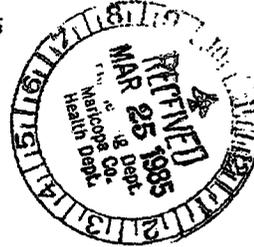
*Steven Hankins*  
 Steven Hankins  
 Laboratory Director

# **EXHIBIT RWC 16**

In the Matter of the  
Formal Complaint of  
Charles J. Dains Against  
Rigby Water Company  
Docket No. W-01808A-09-0137

RIGBY WATER COMPANY  
P O Box 31607 \* Phoenix, AZ 85046 \* (602) 971-4471

March 19, 1985



Mr. Wesley E. Steiner, Director  
State of Arizona  
Department of Water Resources  
99 East Virginia Avenue  
Phoenix, AZ 85004

RE: Assured Water Supply for Terra Ranchette Estates Subdivision

Dear Sir:

Rigby Water Company is an Arizona Public Utility Corporation and holds a Certificate of Public Convenience and Necessity for an area which encompasses the proposed Terra Ranchette Estates Subdivision.

Based upon the information provided us to date by the developer, Mr. Charles Dains, and his engineers, Samer and Associates, preliminary plans for extension of Rigby Water Company's distribution system, Rigby Water Company agrees to furnish water thru 84 residential metered service connections to the subdivision from its existing Well #1 water supply.  
Well #1 reference: DWR # A(1-1)30cbb, Reg#55-635444

Water service by Rigby Water Company is expressly conditioned upon the developers financing the cost of the project, conveyance of land titles and easements, and obtaining all necessary governmental approvals, including those required of, but not limited to, the Department of Water Resources, the Arizona Department of Health Services, Maricopa County, the City of Avondale, and the Arizona Corporation Commission.

Very truly yours,

Tom Macherione  
President

CC: Charles Dains, Terra Ranchette Estates ✓  
William Sullivan, Atty (Martinez & Curtis)  
Arizona Corporation Commission