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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

IN THE MATTER OF THE APPLICATION OF
FAR WEST WATER & SEWER COMPANY FOR
A DETERMINATION OF THE FAIR VALUE OF
ITS SEWER UTILITY PLANT AND PROPERTY
AND FOR INCREASES IN ITS RATES.

DOCKET NO. WS-03478A-08-0454

**SUPPLEMENT TO STATUS
REPORTS**

1 At the January 5, 2011, Procedural Conference in the above-captioned docket,
2 Administrative Law Judge Jane L. Rodda asked that Far West Water & Sewer Company ("Far
3 West") file a copy of the June 22, 2010, Consent Judgment between Far West and the Arizona
4 Department of Environmental Quality. A copy of the Consent Judgment is attached for filing.

Respectfully submitted on January 6, 2011, by:

Craig A. Marks
Craig A. Marks, PLC
10645 N. Tatum Blvd.
Suite 200-676
Phoenix, AZ 85028
(480) 367-1956
Craig.Marks@azbar.org
Attorney for Far West Water & Sewer Company

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Original and 13 copies filed
on January 6, 2011, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing e-mailed on
January 6, 2011, to:

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
solea@acc.gov

Robin Mitchell, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
rmitchell@azcc.gov

Ayesha Vohra, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
avohra@azcc.gov

Michelle Wood, Attorney
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, AZ 85007
mwood@azruco.com

Barbara and Robert Gilkey
14784 E. 49th St.
Yuma, AZ 85367
BOBnBARB325@aol.com

Robert Rist
9593 E. 34th Place
Yuma, AZ 85365
bobandjoanrist@gmail.com

Copies of the foregoing mailed on
January 6, 2011, to:

Jane L. Rodda, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

Carl Bailey
9723 E. 36th Ln.
Yuma, AZ 85365

By:


Craig A. Marks

1 **TERRY GODDARD**
Attorney General
2 Firm Bar No. 14000

3 **CAROLYN R. MATTHEWS**
4 State Bar No. 013953

5 **CURTIS A. COX**
6 State Bar No. 019040
Assistant Attorneys General
7 1275 West Washington Street
Phoenix, Arizona 85007-2926
8 Telephone: (602)542-7781
9 Fax: (602) 542-7798
Environmental@azag.gov

10 Attorneys for Plaintiffs

11 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **FOR MARICOPA COUNTY**

13 **STATE OF ARIZONA, ex rel, BENJAMIN**
14 **H. GRUMBLES, Director, Arizona**
15 **Department of Environmental Quality,**
16 **Plaintiffs,**
17 **vs.**
18 **FAR WEST WATER AND SEWER, INC., an**
Arizona Corporation, and H & S
19 **DEVELOPERS, INC., an Arizona**
Corporation.
20 **Defendants.**

Civil Action No. CV2008-021676
CONSENT JUDGMENT
(Non-classified Civil)

21 **I. NATURE OF THE CASE**

22 A. The Plaintiff, State of Arizona ex rel. Benjamin H. Grumbles, Director, Arizona
23 Department of Environmental Quality (the "State" or "Plaintiff"), has filed against the
24
25
26

1 Defendants Far West Water and Sewer, Inc. ("Far West"), and H & S Developers, Inc. ("H&S"),
2 a Complaint alleging violations of the Arizona Aquifer Protection Permit Program, A.R.S. Title
3 49, Chapter 2, Article 3, and Arizona Administrative Code ("A.A.C.") Title 18, Chapter 9; the
4 Safe Drinking Water Program, A.R.S. Title 49, Chapter 2, Article 9, and A.A.C. Title 18,
5 Chapters 4 and 5; the Direct Reuse of Reclaimed Water Program, A.R.S. § 49-203(A) (6) and
6 A.A.C. Title 18, Chapter 9, Article 7; and the Air Pollution Control Program, A.R.S. §§ 49-462
7 and 463 and A.A.C. Title 18, Chapter 2. The State brought claims pursuant to A.R.S. §§ 49-
8 262, 354, 462, and 463, seeking injunctive relief and civil penalties.

11 B. Benjamin H. Grumbles is the Director of the Arizona Department of
12 Environmental Quality ("ADEQ") and has been duly authorized by the State to enter into this
13 Consent Judgment for and on behalf of the State.

15 C. Far West Water and Sewer, Inc., is an Arizona corporation doing business in the
16 State of Arizona. Far West owns and operates seven wastewater treatment plants and a public
17 drinking water system in Yuma County, Arizona.

19 D. H & S Developers, Inc., is an Arizona corporation doing business in the State of
20 Arizona. H&S is a general contractor and land development corporation. Prior to April 8, 1998,
21 H&S and Far West operated as one company.

22 E. On or about September 9, 2008, the State filed Civil Complaint No. CV2008-
23 021676, in the Superior Court of Arizona, County of Maricopa, against Defendants. Defendants
24 were served with a copy of the Summons and Complaint, which Defendants answered.
25
26

1 Defendants having been fully advised of their rights to a trial in this matter, waive such rights in
2 favor of this settlement agreement.

3
4 F. Defendants admit the jurisdiction of this Court and that venue is proper in
5 Maricopa County.

6 G. Defendants have consented to the terms and entry of this Consent Judgment and
7 acknowledge that the State has made no promise of any kind or nature other than what is set
8 forth in this Consent Judgment, and that Defendants have entered into this Consent Judgment
9 voluntarily and after due consideration. It is the intent of the parties that this Consent Judgment
10 supercede and replace Consent Order Nos. P-18-06 and P-105-06 (ADEQ).
11

12 H. The parties hereto agree that settlement of the violations alleged in the Complaint
13 is in the best interest of the Parties and the public and that entry of this Consent Judgment
14 without further litigation is the most appropriate means of resolving the allegations contained in
15 the Complaint. Therefore, the parties hereby intend to completely and finally settle and release
16 the civil liability of the Defendants for the violations described in the Complaint, and hereby
17 move the Court to enter this Consent Judgment according to the following terms as set forth
18 herein.
19
20

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1 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
2 follows:
3

4 **II. JURISDICTION AND VENUE**

5 A. The Court has jurisdiction over the subject matter of this action and the parties
6 pursuant to A.R.S. §§ 49-123, 262, 263, 354, 462, 463, 12-1801, and Ariz. Const. Art. 6, Sec.
7 14. The Complaint states claims upon which relief may be granted against the Defendants.
8

9 B. ADEQ maintains its principal office at 1110 West Washington Street, Phoenix,
10 AZ, in Maricopa County. Venue is proper in Maricopa County pursuant to A.R.S. §§ 12-265
11 and 12-401(17).
12

13 **III. BINDING EFFECT**

14 A. This Consent Judgment constitutes and embodies the full and complete
15 understanding of the parties and supersedes all prior understandings or agreements, whether oral
16 or in writing, which pertain to the subject matter contained herein.

17 B. This Consent Judgment applies to and is binding upon the State and Defendants
18 Far West and H&S. The State and Defendants hereby consent to its terms and its entry by the
19 Court. The State and Defendants and their officers and directors, agents, servants, employees,
20 successors, assigns, related entities, attorneys and persons and entities acting on behalf of
21 Defendants agree not to contest this Consent Judgment's validity in any subsequent proceeding.
22

23 C. Defendants shall provide a copy of this Consent Judgment with the Compliance
24 Schedule A in Attachment A, Compliance Schedule B in Attachment B, and/or the
25 Supplemental Environmental Project if approved by ADEQ, to each primary and/or general
26

1 contractor retained to perform an activity described in Compliance Schedule A, Compliance
2 Schedule B, and/or the Supplemental Environmental Project. In any action to enforce this
3 Consent Judgment, the Defendants shall not raise as a defense the failure by any of its agents,
4 servants, primary or general contractors, subcontractors, employees, successors or assigns to
5 take actions necessary to comply with this Consent Judgment.
6

7 D. Any change in ownership status of the Far West wastewater treatment plants
8 ("WWTPs"), sewage collection system(s), or public water system(s) as well as any and all parts
9 or components thereof, including but not limited to any transfer of assets or real or personal
10 property shall in no way alter Far West's responsibilities under this Consent Judgment. If Far
11 West sells or otherwise conveys or assigns any of its rights, title or interests in any of its
12 WWTPs, sewage collection system, public water system, or components thereof, such sale,
13 conveyance or assignment shall not release Far West from any obligation imposed by this
14 Consent Judgment, unless:
15
16

17 1) The party to whom the right, title or interest has been sold, transferred or
18 assigned agrees in writing to fulfill the obligations of this Consent Judgment; and,
19

20 2) ADEQ reasonably approves the provision transferring the obligations.

21 E. The Defendants shall notify the State in writing of any purchase or succession in
22 interest no later than thirty (30) days after such transfer. Far West shall give written notice of
23 the existence of this action and provide a copy of this Consent Judgment to any successors in
24 interest or transferees.
25
26

1 F. Each of the Defendants certifies that its undersigned representative is fully
2 authorized by the Defendants, respectively, to enter into the terms and conditions of this Consent
3 Judgment, to execute it on behalf of that defendant, and to legally bind that defendant to its
4 terms.
5

6 **IV. DEFINITIONS**
7

8 The terms used in this Consent Judgment shall have the same meanings as defined in
9 Title 49 A.R.S., Chapters 2 and 3 and all applicable rules and regulations enacted thereunder.

10 "Complaint" means the Civil Complaint No. CV2006-021676 filed by the State in the
11 Superior Court of Arizona, County of Maricopa, against the Defendants on or about September
12 9, 2008.

13 "Compliance Date" means (1) the date Far West receives the Remaining Compliance
14 Funds for completion of its wastewater treatment plants and collection system upgrade or (2)
15 July 1, 2010, whichever date comes first.
16

17 "Remaining Compliance Funds" shall mean sufficient financial ability to meet all
18 requirements of Compliance Schedule A, and the requirements under Paragraphs A and B of
19 Compliance Schedule B.
20

21 "Day" shall mean a calendar day, unless otherwise noted. In computing any period under
22 this Consent Judgment, where the last day would fall on a Saturday, Sunday, or a State or
23 Federal holiday, the period shall run until the close of business of the next business day.
24

25 "Effective Date" shall be the date that the Consent Judgment is entered by this Court.
26

1 "Force Majeure" is defined as any event arising from causes beyond the reasonable
2 control of the Defendants and/or their employees or contractors that delays the performance of
3 any obligation under this Consent Judgment. Force Majeure does not include financial inability
4 to complete any requirement of this Consent Judgment.
5

6 "State" means the Plaintiff, State of Arizona ex rel. Benjamin H. Grumbles, Director,
7 Arizona Department of Environmental Quality. For purposes of this Consent Judgment, the
8 State does not include any other Agency, Board, Commission, Department, Officer or
9 employees of the State of Arizona.
10

11 "Covered Matters" shall mean any claims for civil liability for violations which arise or
12 could be alleged from the facts in the fifty counts of the Complaint in CV2008-021676, Consent
13 Order Nos. P-18-06 and P-105-06 (ADEQ), violations of the Safe Drinking Water Act, the
14 Arizona Aquifer Protection Permit Program, the Reclaimed Water for Reuse Program, and
15 A.A.C. § R18-2-730(D) of the Air Pollution Control Program which occurred prior to the
16 Effective Date of this Consent Judgment, and violations of a continuing nature which are
17 intended to be remedied by this Consent Judgment.
18
19

20 Covered Matters shall not include:

- 21 1. Compliance with the Defendant's obligations under this Consent Judgment;
- 22 2. Claims based on a failure of Defendant to comply with its obligations under this
23 Consent Judgment;
- 24 3. Claims for liability under the Clean Water Act, the Safe Drinking Water Act, the
25 Arizona Aquifer Protection Permit Program, the Reclaimed Water For Reuse Program, the Air
26

1 Pollution Control Program or any other laws pertaining to the regulation of wastewater, drinking
2 water, reclaimed water, or air quality that occur after the Effective Date of this Consent
3 Judgment except for violations of a continuing nature which are intended to be remediated by
4 this Consent Judgment;
5

- 6 4. Criminal liability arising from violations of any local, State, or Federal laws; and
- 7 5. Any liability to any State agency other than ADEQ.

8 V. CIVIL PENALTY

9
10 A. The Defendants Far West and H&S shall be jointly and severally liable and shall
11 pay to the State the sum of seventy-five thousand U.S. dollars and no cents (\$75,000) as a civil
12 penalty ("Civil Penalty I") within sixty (60) days of the effective date pursuant to A.R.S. §§ 49-
13 262 49-354(G), and 49-463.

14
15 B. In addition to Civil Penalty I, Defendant Far West shall be liable and shall pay to
16 the State the sum of seventy-five thousand U.S. dollars and no cents (\$75,000) as a civil penalty
17 ("Civil Penalty II"), pursuant to A.R.S. §§ 49-262 49-354(G), and 49-463, in accord with the
18 following payment schedule.

19
20 1. By July 1, 2011, Far West shall remit to ADEQ a payment of at least fifty
21 thousand dollars and no cents (\$50,000) of Civil Penalty II.

22 2. By December 1, 2011, Defendants shall remit to ADEQ a payment of twenty-five
23 thousand dollars and no cents (\$25,000) of Civil Penalty II or the remaining balance if the
24 remaining balance of the Civil Penalty II is less than \$25,000.
25
26

1 Pursuant to A.R.S. § 49-113, interest on any unpaid amount shall accrue from the date the
2 amount is past due until the amount is paid in full. Payments shall be made pursuant to the
3 terms in Section VI below.
4

5 C. The Defendants and the State agree that the Civil Penalties I and II imposed by the
6 State and agreed to by the Defendants constitute a debt for a fine, penalty or forfeiture payable
7 to and for the benefit of a governmental unit, is not compensation for actual pecuniary loss, and
8 is specifically non-dischargeable under 11 U.S.C. § 523(a)(7). Upon entry of this Consent
9 Judgment, the State shall be deemed a judgment creditor for purposes of collecting the civil
10 penalty.
11

12 D. The State shall have the right to record this Consent Judgment in every County in
13 Arizona.
14

15 VI. MANNER OF PAYMENT

16 All payments made to the State under this Consent Judgment, including the monetary
17 judgment, interest payments, liquidated damages, and stipulated penalties, shall be made by
18 cashier's check or money order payable to ADEQ and shall be hand-delivered or mailed and
19 postmarked, postage prepaid, to:
20

21 Michael Clark
22 Chief Financial Officer
23 Arizona Department of Environmental Quality
24 ATTN: Accounts Receivable
25 1110 W. Washington Street
26 Phoenix, Arizona 85007

with a letter tendering the payment. In the alternative, upon prior written notification to the
Chief Financial Officer at the above address, the payments may be made by wire transfer to

1 "Arizona Department of Environmental Quality", Bank of America, Account No. 252844527,
2 Routing No. 026009593. All letters regarding payment shall identify this case by the names of
3 the Parties and the Court docket number, CV2008-021676.
4

5 Copies of the letters shall be sent to the Office of the Attorney General at:

6 Curtis Cox
7 Assistant Attorney General
8 Environmental Enforcement Section
9 Office of the Attorney General
10 1275 W. Washington Street
11 Phoenix, Arizona 85007; or
12 curtis.cox@azag.gov

13 and to ADEQ at:

14 Water Quality Enforcement Unit
15 Water Quality Compliance Section
16 Arizona Department of Environmental Quality
17 1110 W. Washington Street
18 Phoenix, Arizona 85007; or
19 mrc@azdeq.gov

20 **VII. CIVIL PENALTY HELD IN ABEYANCE AND COMPLIANCE SCHEDULE**

21 A. The Defendant Far West shall be liable and shall pay to the State the additional
22 sum of two hundred thousand U.S. dollars and no cents (\$200,000) as a civil penalty to be
23 suspended and held in abeyance ("Suspended Civil Penalty") by depositing \$200,000 in an
24 account ("Suspended Civil Penalty Account") maintained and controlled by Far West for the
25 duration of Compliance Schedule A, Attachment A. No later than October 1, 2010, Far West
26 shall open the Suspended Civil Penalty Account with a federally registered commercial bank or
other financial institution ("Bank") and shall deposit the amount of \$200,000 in the Suspended
Civil Penalty Account. Within ten (10) days of opening the Suspended Civil Penalty Account,

1 Defendants shall submit to ADEQ the appropriate written documentation, such as a letter from
2 the Bank, confirming that the requirements under this paragraph have been met.

3
4 B. Far West agrees to pay the amount of ten thousand dollars and no cents (\$10,000)
5 from the Suspended Civil Penalty Account for each one of the twenty Compliance Requirements
6 stated in Compliance Schedule A, Attachment A, that is not completed by its corresponding
7 scheduled completion deadline, unless the performance is prevented or delayed by events which
8 constitute a Force Majeure under Section XIV of this Consent Judgment.

9
10 C. ADEQ agrees to provide a release in writing to Defendants of the amount of ten
11 thousand dollars and no cents (\$10,000) from the Suspended Civil Penalty Account, and agrees
12 to the corresponding incremental reduction of the balance of the Suspended Civil Penalty, for
13 each one of the twenty Compliance Requirements in Compliance Schedule A, Attachment A,
14 that is completed by its corresponding scheduled completion deadline. Far West agrees that it
15 will not remove any money from the Suspended Civil Penalty Account without ADEQ's written
16 release.
17

18
19 D. By the fifteenth day of each month, beginning with the first full month following
20 the month after the Suspended Civil Penalty Account is established, and for the duration of
21 Compliance Schedule A, Far West shall submit to ADEQ an exact and complete copy of the
22 Bank-issued monthly financial statement(s) demonstrating the balance and all monthly activity
23 for the previous month in the Suspended Civil Penalty Account. Far West shall submit the
24 monthly Bank-issued financial statements to ADEQ in accordance with the requirements in
25 Section XI below.
26

1 E. Within ten (10) days of the completion date of each compliance requirement in
2 Compliance Schedule A, Far West shall submit to ADEQ written notice that the compliance
3 requirement has been completed or not completed, and if not completed, whether a Force
4 Majeure, in accordance with Section XIV, was the cause of Far West's failure to complete. Far
5 West's written notice under this paragraph shall comply with the requirements in Section XI
6 below.
7

8 F. For the Compliance Requirements in Compliance Schedule A that Far West
9 completes prior to the establishment of the Suspended Civil Penalty Account, and for which Far
10 West has also provided ADEQ with written notice, ADEQ shall provide a written release,
11 pursuant to paragraph C, within thirty (30) days of Far West's submission of documentation
12 confirming establishment of Suspended Civil Penalty Account under Paragraph A. Thereafter,
13 ADEQ shall provide a written release to Far West as provided in paragraph C of Section VII,
14 within thirty (30) days after receipt of Far West's written notices.
15
16

17 **VIII. ADDITIONAL COMPLIANCE SCHEDULE**
18

19 Defendant Far West shall conduct and complete the following tasks:

20 A. Defendant Far West shall complete all tasks stated in the Compliance Schedule B,
21 Attachment B, by the corresponding deadline stated in Compliance Schedule B.
22

23 B. Within ten (10) days of the completion date of each scheduled event in the
24 Compliance Schedule B, Attachment B, Defendant Far West shall submit to ADEQ a written
25 notice that the compliance requirement has been completed. Far West's written notice shall
26 comply with the requirements in Section XI below.

1 **IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

2 A. Within sixty (60) days of the Effective Date, Far West shall submit to ADEQ a
3 Supplemental Environmental Project ("SEP") Proposal, related to wastewater reclamation,
4 recycling, or reuse; water conservation; or energy conservation. The SEP Proposal shall be
5 made in accordance with ADEQ's SEP Policy found at Chapter 8 in ADEQ's Compliance and
6 Enforcement Handbook. The SEP Proposal shall: 1) include a detailed description of the SEP
7 and its relation to wastewater reclamation, recycling, or reuse; water conservation; or energy
8 conservation; 2) provide a budget demonstrating that the value of Far West's expenditures for
9 the SEP will equal or exceed one hundred fifty thousand U.S. dollars and no cents (\$150,000);
10 3) identify a list of major milestones along with deadlines for completion of each; 4) provide a
11 certification stating that as of the Effective Date, Far West is/was not required to perform or
12 develop the SEP by any federal, state or local law or regulation, nor perform or develop the SEP
13 by any other agreement, grant or required injunctive relief in this or any other case. Far West
14 must further certify that it has not received, and is not presently negotiating to receive, credit in
15 any other enforcement action for the SEP.

16 B. Far West shall not proceed with the SEP until ADEQ provides written approval.
17 If ADEQ requires additional information regarding the SEP Proposal, Far West shall provide
18 such information within thirty (30) days of ADEQ's written request. If ADEQ rejects the SEP
19 Proposal, Far West shall submit an alternative proposal within sixty (60) days of such rejection.
20 If ADEQ requires additional information regarding any such alternative SEP, Far West shall
21 provide such information within thirty (30) days of ADEQ's written request. In any event,
22
23
24
25
26

1 ADEQ shall issue its decision in writing within thirty (30) days of receipt of such information.

2 In the SEP process, including consideration of the SEP and any alternative SEP Proposal,

3 ADEQ shall provide instructive guidance to Far West to assist in the submittal of an acceptable

4 SEP Proposal, and Far West shall carefully consider such guidance in the development of any

5 proposal made by ADEQ.

6
7 C. Within thirty (30) days of completing the SEP obligations, Far West shall submit
8 to ADEQ a SEP Completion Report containing the following information:
9

10 1. A detailed description of the SEP as implemented;

11 2. A description of any operating problems encountered and the solutions
12 implemented;

13 3. Itemized costs, documented by copies of purchase orders, accounts and receipts or
14 canceled checks; and

15 4. Certification that the SEP has been fully implemented pursuant to the SEP
16 Proposal approved by ADEQ and the provisions of this Consent Judgment.
17

18 D. All written or oral public statements made by Far West in connection or relation to
19 the SEP must include a statement that Far West's participation is in connection with this Consent
20 Judgment.
21

22 E. Upon approval by ADEQ, Far West shall complete the SEP by or in accordance
23 with the deadlines set in the SEP Proposal. The parties agree that if Far West fails to complete
24 the SEP obligations by the completion date set forth in the SEP, then Far West will be liable for
25 and shall pay an additional civil penalty of one hundred and fifty thousand dollars and no cents
26

1 (\$150,000) by no later than thirty (30) days after the completion date set forth in the approved
2 SEP Proposal. Far West shall pay this additional civil penalty under the terms in Section V,
3 Paragraphs C and D, and Section VI of this Consent Judgment.
4

5 F. If Far West completes the SEP to ADEQ's satisfaction at a value less than
6 \$150,000, then within thirty (30) days of receipt of ADEQ's written approval of the SEP
7 completion, Far West shall remit the difference between the SEP's value and the approved value
8 (\$150,000) to the State as a "Additional Civil Penalty Payment" in a manner pursuant to Section
9 V, Paragraphs C and D, and Section VI of this Civil Judgment.
10

11 G. Far West's certifications under this Section shall be made in accordance with
12 Section XI.
13

14 H. Far West shall complete all obligations under this Section within thirty (30) days
15 of the completion date set forth in the SEP, or within one year of the Effective Date, whichever
16 occurs later.
17

18 **X. PROGRESS REPORTS**

19 Far West shall submit to ADEQ quarterly progress reports, which at a minimum shall
20 describe:

- 21 1. Actions that were taken to achieve compliance with Compliance Schedules A and
22 B and the SEP obligations, as well as other applicable provisions of this Consent
23 Judgment, during the previous calendar quarter;
24
25
26

1 Phoenix, Arizona 85007;
2 curtis.cox@azag.gov.

3 B. All certified reports, progress reports, notices, bank statements, and SEP
4 certifications, referenced herein, submitted to the State pursuant to this Consent Judgment shall
5 certify under penalty of law that the information contained in the document is true, accurate and
6 complete by having an authorized representative of Far West include and sign the following
7 statement:
8

9 I certify under penalty of law that this document and all attachments, if any, were
10 prepared under my direction or supervision by qualified personnel responsible for
11 properly gathering and evaluating the information submitted. Based on my
12 inquiry of the person or people who are responsible for gathering and evaluating
13 the information, to the best of my knowledge and belief, the information submitted
14 is true, accurate and complete. I am aware that there are significant penalties for
15 knowingly submitting false information, including the possibility of fines and
16 imprisonment for knowing violations.

17 C. Documents, materials or notices submitted to Far West in accordance with this
18 Consent Judgment will be deemed submitted when postmarked, return receipt requested,
19 accepted for delivery by a commercial delivery service, sent by telecopy, emailed or hand-
20 delivered to Far West at:

21 12486 South Foothills Boulevard
22 Yuma, Arizona 85367
23 c/o Paula Capestro and
24 Andy Capestro;
25 pcapestro@msn.com and
26 acapestro@aol.com

XII. LIQUIDATED DAMAGES

27 A. Far West agrees that calculating the harm to the State for violations of Sections
28 VIII, X, XI, Attachment B, or if Far West fails to establish the Suspended Civil Penalty Account
29 under Section IV.A in this Consent Judgment would be very difficult. Far West therefore agrees

1 that a violation of the provisions of these stated sections of the Consent Judgment renders Far
2 West liable for liquidated damages. The liquidated damages shall begin to accrue on the day
3 that performance is due, and shall continue to accrue through the day before performance is
4 completed. Interest on any unpaid amount shall accrue pursuant to A.R.S. §49-113, and be paid
5 from the date said payment is due until the amount owed is paid in full.
6

<u>Period of Failure to Comply</u>	<u>Damages per Day of Violation</u>
7 1 st through 31 st day	\$1,250 per day per violation
8 32 nd through 60 th day	\$1,500 per day per violation
9 After 60 days	\$2,000 per day per violation

10
11
12 B. Unless Far West invokes, in writing, the dispute resolution procedure specified in
13 Section XIII of this Consent Judgment, it shall pay the liquidated damages set forth in this
14 Section within thirty (30) days following written demand by the State. Payment shall be made
15 in the manner set forth in Section VI. Liquidated damages shall begin to accrue on the day after
16 performance is due and shall continue through the final day of completion, even if no notice is
17 sent to Far West. Nothing herein shall prevent the simultaneous accrual of separate liquidated
18 damages for separate violations of these stated sections of the Consent Judgment.
19

20
21 C. Liquidated damages shall accrue as provided in this Section during the dispute
22 resolution procedure required by Section XIII of this Consent Judgment, but the due date for
23 payment of liquidated damages shall be extended until the dispute resolution process is
24 concluded.
25
26

1 **XIII. DISPUTE RESOLUTION**

2 A. The decisions of the State rendered pursuant to this Consent Judgment, including,
3 but not limited to, the meaning or the application of this Consent Judgment and its provisions, or
4 whether the Defendants are in compliance with its terms, shall be delivered in writing to the
5 Defendants with an explanation for the decision. Such decisions shall be final unless the
6 Defendants invoke the dispute resolution provisions below.
7

8 B. The State's comments and decisions regarding the Supplemental Environmental
9 Project under Section IX are not subject to the dispute resolution provisions under this section.
10

11 C. After notice is received by the Defendants as provided in Paragraph A above, the
12 Parties shall engage in informal negotiations regarding the dispute for a period of thirty (30)
13 business days, or for a longer period mutually agreed upon by the Parties.
14

15 D. If the dispute is not resolved pursuant to the informal process described in
16 Paragraph C above, the decision of the State shall be considered final and binding unless the
17 Defendants request, in writing and within thirty (30) days of receipt of the State's decision, that
18 the ADEQ Director of the Water Quality Division ("Division Director") reconsider the initial
19 decision. The Division Director shall issue a final written decision after receipt of the request.
20 The written decision of the Division Director is final and binding except as otherwise provided
21 in Paragraph E.
22

23 E. A judicial review of the Division Director's decision made pursuant to Paragraph
24 D above may be brought by the Defendant by filing a motion in this Court. In any such
25 proceeding, the Defendant shall have the burden of proving that the decision of the Division
26

1 Director is arbitrary and capricious, an abuse of discretion, or contrary to law. Review by the
2 Court shall be based exclusively upon the written administrative record that was before the
3 Division Director at the time of the decision, without any evidentiary hearing or discovery.
4

5 F. For decisions made pursuant to this Consent Judgment, including decisions under
6 this Section, Defendants waive any statutory rights to review of an administrative decision
7 pursuant to A.R.S. Title 12, any formal administrative appeal pursuant to A.R.S. Title 41, or any
8 further informal appeal of disputes under this Consent Judgment.
9

10 G. The Defendants' invocation of this Section shall not itself toll or extend any time
11 periods for performance by the Defendant under the provisions of this Consent Judgment.
12

13 XIV. FORCE MAJEURE

14 A. Defendants shall perform all the requirements of this Consent Judgment according
15 to the time limits and schedules set forth herein, unless the performance is prevented or delayed
16 by events which constitute a Force Majeure. Defendants shall take all reasonable measures to
17 prevent or minimize any delay in performing the requirements of this Consent Judgment.
18

19 B. If any Force Majeure event occurs that may delay the performance of any work
20 under this Consent Judgment, the Defendants shall notify the Water Division Compliance
21 Section Manager at ADEQ within 48 hours of discovering the Force Majeure event or of the
22 time that the Force Majeure reasonably should have been discovered. Within ten (10) days of
23 actual or reasonable date of discovery of the Force Majeure event, the Defendants shall provide
24 and submit to Water Quality Division Compliance Section manager at ADEQ in the manner
25 provided under Section XI a written explanation and description of the reasons for the delay in
26

1 performance; the anticipated duration of the delay; all actions taken or to be taken to prevent or
2 minimize the delay; a schedule for implementation of any measures to be taken to prevent or
3 mitigate the delay or the effect of the delay; and the rationale for attributing such delay to a
4 Force Majeure event. Defendants shall provide a copy to the Attorney General's Office,
5 Environmental Enforcement Section in the manner provided under Section XI. Failure to
6 comply with the above requirements shall preclude the Defendants from asserting any claim of
7 Force Majeure. The Defendants shall be deemed to have knowledge of any Force Majeure
8 circumstance of which its contractors or any party acting on its behalf had or should have had
9 knowledge.
10
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12 C. If the State agrees that the delay in performance is attributable to a Force Majeure
13 event or is reasonable under the circumstances, the time for performance of the obligations
14 under this Consent Judgment that are affected by the Force Majeure event and the time for
15 performance of any activity dependent on the delayed activity shall be extended for such time as
16 is necessary to complete those obligations. An extension of time for performance of the
17 obligations affected by the Force Majeure event or non-Force Majeure event shall not, of itself,
18 extend the time for performance of any other obligation. If the State does not approve the delay
19 or agree that the delay or anticipated delay has been or will be caused by a Force Majeure event,
20 or is not otherwise reasonable, the State shall notify the Defendants in writing of its decision. If
21 the State agrees that the delay is attributable to a Force Majeure event or is reasonable under the
22 circumstances, the State shall notify Defendants in writing of the length of the extension which
23 will be equivalent in time to the reasonable delay, if any, for performance of the obligations
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1 affected by the Force Majeure event, or as otherwise approved by the State. The decision of the
2 State pursuant to this paragraph is subject to the dispute resolution procedure in Section XIII of
3 this Consent Judgment.
4

5 XV. MATERIAL BREACH

6 Any failure to pay the monetary judgment within the times specified by Section V, pay
7 the liquidated damages within the times specified by Section XII, conduct the work within the
8 times specified by Section VII and VIII and Attachments A and B, or complete the requirements
9 in Section IX, unless delayed by a Force Majeure event or unless otherwise agreed to by the
10 State, shall constitute a material breach and violation of this Consent Judgment. The State, in its
11 sole discretion, shall have the option of either:
12

13 A. Enforcing this Consent Judgment through the Court against any Defendant against
14 whom the Consent Judgment has not been terminated under Section XXIV, in which case such
15 Defendant shall be liable for interest and additional penalties pursuant to the provisions of
16 A.R.S. § 49-113(B) and the State's reasonable costs and attorney fees incurred in enforcing this
17 Consent Judgment if the State prevails; or
18

19 B. Declaring the Consent Judgment null and void against any Defendant against
20 whom the Consent Judgment has not been terminated, and the State may pursue the Complaint
21 or re-file this action against such Defendant. In this event, such Defendant shall be barred from
22 alleging the affirmative defenses of estoppel, laches, or the expiration of any statute of
23 limitations. In any future actions for the violations contained in the Complaint, such Defendant
24 shall receive credit for any civil penalties paid to the State pursuant to this Consent Judgment.
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XVI. RELEASE

A. Upon termination of this Consent Judgment against each respective Defendant, pursuant to Section XXIV, each respective Defendant and all of its past, present, and future directors, officers, shareholders, employees, agents, trustees, attorneys, successors, assigns, parent corporation and related entities, shall be released from any and all civil liability to the State for the Covered Matters.

B. This release does not cover criminal liability under any local, state or federal statute or regulation.

C. Defendants and all of their past, present, and future directors, officers, shareholders, employees, agents, trustees, attorneys, successors, assigns, parent corporation and related entities, release the State of Arizona, its agencies, departments, officials, employees or agents from any and all claims or causes of action against, arising under, or related to the allegations contained in the Complaint and Covered Matters.

XVII. SEVERABILITY

This Consent Judgment is not severable. If any Section of this Consent Judgment is declared by this Court to be invalid or unenforceable, the entire Consent Judgment is rendered invalid and the parties shall return to the positions they occupied prior to the execution of this Consent Judgment except as against any Defendant whom the Consent Judgment has been terminated under Section XXIV.

1 **XVIII. APPLICABLE LAW**

2 The validity, meaning, interpretation, enforcement and effect of this Consent Judgment
3 shall be governed by the law of the State of Arizona.
4

5 **XIX. COSTS**

6 Each party shall bear its own costs and attorney's fees in this action, except that pursuant
7 to Section XV, the Defendants shall be liable for the State's reasonable costs and attorney fees
8 incurred in enforcing this Consent Judgment if the State prevails.
9

10 **XX. RESERVATION OF RIGHTS**

11 A. Entry of this Consent Judgment is solely for the purpose of settling the Complaint
12 and the Covered Matters and except as expressly set forth herein, does not preclude the Plaintiff
13 or any other agency or officer of the State of Arizona, or subdivision thereof, from instituting an
14 action for matters not included in the Covered Matters against the Defendants as may be
15 appropriate now or in the future.
16

17 B. This Consent Judgment does not encompass issues not expressly covered by the
18 terms of this Consent Judgment. The State reserves the right to take any appropriate legal action
19 against the Defendants for violations which are not within the Covered Matters. The State
20 reserves the right to take any and all appropriate action necessary to protect the public health,
21 welfare, or the environment.
22

23 C. Nothing in this Consent Judgment shall constitute a permit of any kind, or a
24 modification of any permit of any kind, under federal, state or local law. Except as specifically
25 provided herein, nothing in this Consent Judgment shall in any way alter, modify or revoke
26

1 federal, state or local statutes, regulations, rules or requirements. Nor shall this Consent
2 Judgment affect or relieve Defendants in any manner of its obligations to apply for, obtain and
3 comply with applicable federal, state and local permits. Compliance with the terms of this
4 Consent Judgment shall be no defense to an action to enforce any such permits or requirements.
5 Although all actions required by Defendants hereunder are agreed by the Parties to be lawful,
6 the State does not by its consent to the entry of this Consent Judgment, warrant or aver that
7 compliance with this Consent Judgment will constitute or result in compliance with Arizona
8 law. Notwithstanding the State's review and approval of any materials submitted pursuant to
9 this Consent Judgment, the Defendants shall remain solely responsible for compliance with any
10 other applicable federal, state or local law or regulation. Any submissions made to the State
11 pursuant to this Consent Judgment shall not be interpreted as a waiver or limitation of the
12 State's authority to enforce any federal, state, or local statute or regulation including permit
13 conditions.
14

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17 D. The State shall have the right to take enforcement action for any and all violations
18 of this Consent Judgment and reserves the right to pursue all legal and equitable remedies.
19

20 E. Except as provided herein, this Consent Judgment does not affect any Consent
21 Orders in effect between the State and Defendants.
22

23 F. The entry of this Consent Judgment shall not serve as a basis for any defenses of
24 claim splitting, estoppels, laches, res judicata, or waiver challenging the State's legal right to
25 bring an action regarding matters not expressly covered by this Consent Judgment.
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XXI. RIGHT OF ENTRY

The State or its representatives, contractors, consultants and agents, shall have the right to enter the Facility at any location, at all reasonable times, upon presentation of credentials to the site representative for the purpose of:

A. Observing and monitoring the progress and compliance with the provisions of this Consent Judgment.

B. Verifying any data or information submitted to the State in accordance with the terms of the Consent Judgment;

C. Obtaining samples, and, upon request, splits of any samples taken by the Defendants or their consultants.

This right of entry shall be in addition to, and not in limitation of or substitution for, the State's rights under applicable law. The State's Right of Entry in no way affects or reduces any rights of entry or inspection that the State has under any law or regulation.

XXII. MODIFICATIONS

Any modification of this Consent Judgment must be in writing and approved by the parties and the Court, except that any extensions for the performance of any requirement of this Consent Judgment may be requested in writing by a Defendant and consented to in writing by the State.

XXIII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over both the subject matter of this Consent Judgment and the Parties to effectuate and enforce this Consent Judgment or to provide further orders,

1 direction, or relief as may be necessary or appropriate for the construction, modification, or
2 execution of this Consent Judgment. Upon the Effective Date, however, all claims stated and
3 relief sought in the Complaint in this matter are resolved by this Consent Judgment subject to
4 Section XV herein.
5

6 **XXIV. TERMINATION OF CONSENT JUDGMENT**

7 The provisions of this Consent Judgment shall be deemed satisfied and shall terminate
8 with respect to each Defendant as follows:
9

10 1. As to Defendant H&S, the provisions of this Consent Judgment shall be deemed
11 satisfied and shall terminate with the payment of Civil Penalty I under Section V, Paragraph A
12 of this Consent Judgment.
13

14 2. As to Defendant Far West, the provision of this Consent Judgment shall be
15 deemed satisfied and shall terminate with completion of the following actions:

16 a. Payment of all civil penalties due under Sections V and any liquidated
17 damages due under Sections XII of this Consent Judgment; and

18 b. Completion of all actions required under Sections VII, VIII, IX, and X, and
19 Attachments A and B, of this Consent Judgment.
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STATE v. FAR WEST WATER AND SEWER, INC. and H & S DEVELOPERS, INC.

CIVIL ACTION NO. CV2008-021676

CONSENT JUDGMENT

ATTACHMENT A: COMPLIANCE SCHEDULE A

ATTACHMENT A

ATTACHMENT - A

Compliance Schedule - A

Within five (5) days of receipt of the Remaining Compliance Funds, Far West shall notify ADEQ in writing of such receipt, including in the notification the dollar amount received.

Regarding disbursement of the Remaining Compliance Funds, and the sequence in which the remaining tasks are to be performed, Far West shall give priority towards completing the following two tasks:

- A. Phase I of the Section 14 WWTP Expansion. This entails the use of Membrane Bio-Reactor (MBR) technology as an element of the treatment process, plus increasing plant capacity from 0.15 MGD to 0.8125 MGD by the addition of five membrane cassettes with a capacity of 0.1625 MGD each.
- B. Construction of the collection system (Palm Shadows Collection System or PSCS) that is intended to transport influent from developments currently being served by the Palm Shadows WWTP, to the expanded Section 14 WWTP.

Section 14 WWTP

- 1. Within sixty (60) days of the Compliance Date, Far West shall complete procurement of the remaining equipment and appurtenances necessary to complete Phase 1 Expansion of the Section 14 WWTP.
- 2. Within one hundred and eighty (180) days of the Compliance Date, Far West shall complete Phase 1 Expansion of the Section 14 WWTP by, at a minimum, performing the following tasks:
 - a. Complete all installation and construction activities;
 - b. Inspections by equipment representatives;
 - c. Installation of additional equipment as necessary;
 - d. Plant start-up and commissioning;
 - e. Stabilization of operations.
- 3. Within thirty (30) days of completing Phase 1 Expansion of the Section 14 WWTP as described in Item 2 above, Far West shall submit to ADEQ a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by ADEQ, confirming that the Phase I Expansion was completed in accordance with

the design report, engineering plans and specifications and other associated data and information, verified and/or approved by ADEQ.

Palm Shadows Collection System (PSCSP)

4. Within thirty (30) days of the Compliance Date, Far West shall submit to ADEQ a Notice of Intent (NOI) to Discharge on a form provided by ADEQ, in accordance with A.A.C. R18-9-A301(B), along with the applicable fee established in A.A.C. R18-14-103.
5. Within sixty (60) days of the Compliance Date, Far West shall procure the remaining equipment and appurtenances necessary to complete construction of the PSCS.
6.
 - a. Within one hundred and twenty (120) days of ADEQ's issuance of the Construction Authorization for the PSCS, or within thirty (30) days of completion of the requirement in Paragraph 3, whichever occurs later, Far West shall complete construction of the PSCS in accordance with the Construction Authorization, and with all other applicable requirements provided under A.A.C. R18-9-E301, and shall seek Discharge Authorization by submitting to ADEQ a completed Request for Discharge Authorization form along with a signed, dated and sealed Engineer's Certificate of Completion confirming that construction of the PSCS was done in conformance with the aforementioned Construction Authorization and A.A.C. R18-9-E301.
 - b. Prior to transferring sewage flow that was intended for the Palm Shadows WWTP, via the PSCS, to the upgraded Section 14 WWTP, and prior to the completion of construction of the PCSC, Far West shall test the force main for leakage in accordance with A.A.C. R18-9-E301, and shall submit the test data and as-built plans for the force main, with a signed, sealed and dated Engineer's Certificate of Completion to ADEQ within twenty (20) days of completion. ADEQ shall act on the submittals made under this paragraph in a timely manner.
 - c. Upon receipt of ADEQ's written approval of the test data and as-built plans along with the Engineer's Certificate of Completion for the force main submitted under Paragraph 6(b), Far West shall begin delivering raw sewage to the upgraded Section 14 WWTP, via the PCSC, under this Consent Judgment, until such time as ADEQ issues a Discharge Authorization for the PSCS.
7.
 - a. Within thirty (30) days of ADEQ's issuance of the required Discharge Authorization, Far West shall optimize and stabilize the upgraded Section 14 WWTP and the PSCS, commence routine operation, and notify ADEQ in writing that routine operation of the upgraded Section 14 WWTP and PSCS has begun.

- b. Until such time as routine operation of the upgraded Section 14 WWTP and PSCS commences, Far West shall not construct any new connection(s) to the PCSC intended to increase influent flow.

Del Oro WWTP - Phase I

8. Within sixty (60) days of the Compliance Date, Far West shall complete procurement of the remaining equipment and associated items necessary to complete Phase 1 Expansion of the Del Oro WWTP.
9. Within one hundred and eighty (180) days of the Compliance Date, Far West shall complete construction of the Phase 1 Expansion of the Del Oro WWTP to meet Class A⁺ reclaimed water standards, pursuant to A.A.C. R18-11-303 by, at a minimum, performing the following tasks.
 - a. Removal of the temporary 0.300 MGD MBR treatment module, and installation of a permanent 0.300 MGD MBR treatment module to the WWTP;
 - b. Inspections by equipment representatives;
 - c. Installation of additional equipment as necessary;
 - d. Plant start-up and commissioning;
 - e. Plant stabilization;
 - f. Begin routine operation;
 - g. Submit to ADEQ written notification confirming that this task has been completed.
10. Until the requirement at Paragraph 17 is met, Far West shall:
 - a. Operate the Del Oro WWTP in such a manner that it produces Class A⁺ reclaimed water pursuant to A.A.C. R18-11-303 and meets the Discharge Limits provided in Tables 1, 2, and 3 in EXHIBIT 1.
 - b. Collect representative reclaimed water samples, at the frequency provided in Tables 1, 2, and 3 in EXHIBIT 1, from a location downstream of the UV treatment system and/or chlorine contact chamber, and have these samples analyzed by an Arizona state laboratory licensed to perform each respective analysis. Far West shall submit the analytical results including complete laboratory reports and sample chain of custody forms to ADEQ

as part of the quarterly Progress Report described at Section X of this Consent Judgment.

Del Rey and Villa Royale Collection System

11. Within thirty (30) days of the Compliance Date, Far West shall submit to ADEQ an Notice of Intent (NOI) to Discharge on a form provided by ADEQ, in accordance with A.A.C. R18-9-A301(B), along with the applicable fee established in A.A.C. R18-14-103, for authorization to construct a collection system, Del Rey and Villa Royale Collection System (DVCS), to transport influent from the developments served by the Del Rey and Villa Royale WWTPs to the 0.3000 MGD Del Oro WWTP.
12. Within sixty (60) days of the Compliance Date, the Far West shall complete procurement of the remaining equipment and associated items necessary to complete construction of the DVCS.
13.
 - a. Within sixty (60) days of ADEQ's issuance of the Construction Authorization for the DVCS, or a court order granting Far West easement rights, or thirty (30) days after completion of Paragraph 9.g, whichever occurs later, Far West shall complete construction of the DVCS in accordance with the Construction Authorization and with all other applicable requirements under A.A.C. R18-9-E301, and shall seek Discharge Authorization by submitting to ADEQ a completed Request for Discharge Authorization form along with a signed, dated and sealed Engineer's Certificate of Completion confirming that construction of the DVCS was done in conformance with the aforementioned Construction Authorization and A.A.C. R18-9-E301.
 - b. Prior to transferring sewage flow that was intended for the Villa Royale and Villa Del Rey WWTPs, via the DVCS, to the upgraded Del Oro WWTP, and prior to the completion of construction of the DVCS, Far West shall test the force main for leakage in accordance with A.A.C. R18-9-E301, and shall submit the test data and as-built plans for the force main, with a signed, sealed and dated Engineer's Certificate of Completion to ADEQ within twenty (20) days of completion. ADEQ shall act on the submittals made under this paragraph in a timely manner.
 - c. Upon receipt of ADEQ's written approval of the test data and as-built plans along with the Engineer's Certificate of Completion for the force main under Paragraph 13.b, Far West shall begin delivering raw sewage to the upgraded Del Oro WWTP, via the DVSC, under this Consent Judgment, until such time as ADEQ issues a Discharge Authorization for the DVCS.
14.
 - a. Within thirty (30) days of ADEQ's issuance of the required Discharge Authorization, Far West shall optimize and stabilize the upgraded Del Oro

WWTP and the DVCS, commence routine operation, and notify ADEQ in writing that routine operation of the upgraded Del Oro WWTP and DVCS has begun.

b. Until such time as routine operation of the upgraded Del Oro WWTP and DVCS commences, Far West shall not construct any new connection(s) to the DVSC intended to increase influent flow.

Del Oro WWTP - Phase II

15. Within sixty (60) days of completing the requirement at Sub-Paragraph 9(g), Far West shall complete procurement of the remaining equipment and appurtenances necessary to complete Phase 2 Expansion of the Del Oro WWTP.
16. Within three hundred and sixty (360) days of the Compliance Date, Far West shall complete construction of Phase 2 of the Del Oro WWTP to meet a treatment capacity of 0.495 MGD, and meet the Class A⁺ reclaimed water standards by, at a minimum, performing the following tasks.
 - a. Install/construct the remaining equipment and appurtenances necessary to further expand the plant's treatment capacity to 0.495 MGD.
 - b. Inspections by equipment representatives;
 - c. Installation of additional equipment as necessary;
 - d. Plant start-up and commissioning;
 - e. Plant stabilization;
 - f. Begin routine operation.
17. Within thirty (30) days of completing Phase 2 Expansion of the Del Oro WWTP as described in compliance requirement at Item 2 above, Far West shall submit to ADEQ a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by ADEQ confirming that the Phase 2 Expansion was completed in accordance with the design report, engineering plans and specifications and other associated data and information verified and/or approved by ADEQ.

Seasons WWTP

18. Within sixty (60) days of completing the requirement at Sub-Paragraph 9(g), Far West shall complete procurement of the remaining equipment and appurtenances necessary to complete expansion of the Seasons WWTP from 0.05 MGD to 0.150 MGD.

19. Within three hundred and sixty (360) days of the Compliance Date, Far West shall complete expansion of the Seasons WWTP by, at a minimum, performing the following tasks.
 - a. Install/construct the remaining equipment and appurtenances necessary to further expand the plant's treatment capacity to 0.150 MGD.
 - b. Inspections by equipment representatives;
 - c. Installation of additional equipment as necessary;
 - d. Plant start-up and commissioning;
 - e. Plant stabilization;
 - f. Begin routine operation.

20. Within thirty (30) days of completing expansion of the Seasons WWTP as described in Item 2 above, Far West shall submit to ADEQ a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by ADEQ confirming that the Seasons Expansion was completed in accordance with the design report, engineering plans and specifications and other associated data and information verified and/or approved by ADEQ.

EXHIBIT - A

Table 1 ROUTINE DISCHARGE MONITORING – DEL ORO WWTP

Sampling Point	Latitude		Longitude	
Down Gradient of UV System	32° 40' 41"		114° 25' 48"W	
Parameter	DL ¹	Units	Sampling Frequency	Reporting Frequency
Total Flow ² : Daily ³	Not Established	MGD ⁴	Daily	Quarterly
Total Flow: Average Monthly	0.275	MGD	Monthly ⁵	Quarterly
Fecal Coliform Single sample maximum	23.0	CFU or MPN ⁶	Any Sample	Quarterly
Fecal Coliform: four (4) of seven (7) samples in a week ⁷	Non-detect ⁸	CFU or MPN	Daily	Quarterly
Total Nitrogen ⁹ : Five-sample rolling geometric mean	10.0	mg/l	Monthly ¹⁰	Quarterly
BOD (30-day average)	30	mg/l	Monthly	Quarterly
BOD (7-day average)	45	mg/l	Daily	Quarterly
TSS (30-day average)	30	mg/l	Monthly	Quarterly
TSS (7-day average)	45	mg/l	Daily	Quarterly
Nitrate, as N	10	mg/l	Monthly	Quarterly
Nitrite, as N	1.0	mg/l	Monthly	Quarterly
TKN	19	mg/l	Monthly	Quarterly
pH	6 - 9	Std. Units	Daily	Quarterly
Turbidity, 24 hour average	Less than 2.0	NTU	Daily	Quarterly
Turbidity: Any sample	Less than 5.0	NTU	Any Sample	Quarterly

¹DL = Discharge Limit

²Total flow for all methods of disposal

³Flow shall be measured using a continuous recording flow meter which totals the flow daily.

⁴mgd = million gallons per day

⁵Monthly = Calculated value = Average of daily flows in a month.

⁶CFU = Colony Forming Units / 100 ml sample. MPN = Most Probable Number / 100 ml sample. For CFU, a value of <1.0 shall be considered to be non-detect. For MPN, a value of <2.2 shall be considered to be non-detect.

⁷Week means a seven-day period starting on Sunday and ending on the following Saturday.

⁸If at least four (4) of seven (7) samples in a week are non-detect, report "yes" in the appropriate space on the SMRF (indicating that the standard has been met). If at least four (4) of seven (7) samples in a week have detections of fecal coliform, report "no" in the appropriate space on the SMRF (indicating that the standard has not been met).

⁹Total Nitrogen = Nitrate as N + Nitrite as N + Total Kjeldahl Nitrogen

¹⁰A five-month geometric mean of the results of the five (5) most recent samples

Table 2 Discharge Monitoring - Metals

Parameter	DL	Sampling Frequency	Reporting Frequency
Antimony	0.006	Quarterly	Quarterly
Arsenic	0.05	Quarterly	Quarterly
Barium	2.00	Quarterly	Quarterly
Beryllium	0.004	Quarterly	Quarterly
Cadmium	0.005	Quarterly	Quarterly
Chromium	0.1	Quarterly	Quarterly
Cyanide (As free cyanide)	0.2	Quarterly	Quarterly
Fluoride	4.0	Quarterly	Quarterly
Lead	0.05	Quarterly	Quarterly
Mercury	0.002	Quarterly	Quarterly
Nickel	0.1	Quarterly	Quarterly
Selenium	0.05	Quarterly	Quarterly
Thallium	0.002	Quarterly	Quarterly

Table 3 Discharge monitoring – Volatile Organic Compounds

Parameter	DL	Sampling Frequency	Reporting Frequency
Benzene	0.005	Semi-annually	Semi-annually
Carbon tetrachloride	0.005	Semi-annually	Semi-annually
o-Dichlorobenzene	0.6	Semi-annually	Semi-annually
para-Dichlorobenzene	0.075	Semi-annually	Semi-annually
1,2-Dichloroethane	0.005	Semi-annually	Semi-annually
1,1-Dichloroethylene	0.007	Semi-annually	Semi-annually
cis-1,2-Dichloroethylene	0.07	Semi-annually	Semi-annually
trans-1,2-Dichloroethylene	0.1	Semi-annually	Semi-annually
Dichloromethane	0.005	Semi-annually	Semi-annually
1,2-Dichloropropane	0.005	Semi-annually	Semi-annually
Ethylbenzene	0.7	Semi-annually	Semi-annually
Monochlorobenzene	0.1	Semi-annually	Semi-annually
Styrene	0.1	Semi-annually	Semi-annually
Tetrachloroethylene	0.005	Semi-annually	Semi-annually
Toluene	1.0	Semi-annually	Semi-annually
Trihalomethanes (total)	0.1	Semi-annually	Semi-annually

1,1,1-Trichloroethane	0.20	Semi-annually	Semi-annually
1,2,4 - Trichlorobenzene	0.07	Semi-annually	Semi-annually
1,1,2 - Trichloroethane	0.005	Semi-annually	Semi-annually
Trichloroethylene	0.005	Semi-annually	Semi-annually
Vinyl Chloride	0.002	Semi-annually	Semi-annually
Xylenes (Total)	10.0	Semi-annually	Semi-annually

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CIVIL ACTION NO. CV2008-021676

CONSENT JUDGMENT

ATTACHMENT B: COMPLIANCE SCHEDULE B

ATTACHMENT B

ATTACHMENT - B

Compliance Schedule - B

A. Palm Shadows WWTP

Within one hundred and eighty (180) days of submitting to ADEQ the Engineer's Certification of Completion confirming completion of the PSCS, Far West shall complete all closure activities pertaining to the Palm Shadows WWTP in accordance with APP No. P-103608, Part II(E).

B. Del Rey and Villa Royale WWTPs

Within ninety (90) days of submitting to ADEQ written notification, confirming completion of the DVCS, Far West shall complete all closure activities pertaining to the Del Rey and Villa Royale WWTPs in accordance with A.A.C. R18-9-A306(A)(5). Far West shall also submit written notification to ADEQ confirming this requirement has been met.

C. Section 14 WWTP

1. Within thirty days of the Compliance Date, Far West shall submit to ADEQ the installation report for the Vadose Zone Well constructed to receive recharge from the Phase 1 Section 14 WWTP Expansion. At a minimum this report must include the ADWR registration Report, as-built diagram, and the drilling log.
2. Beginning the first calendar month after the Compliance Date, and each month thereafter, for a period of twelve consecutive months, Far West shall collect ambient ground water samples from POC Well No. 2, located south of the WWTP at Latitude $32^{\circ} 38' 46''$ and longitude $114^{\circ} 23' 30''$, and have these samples analyzed by a state of Arizona licensed laboratory, for the parameters provided in Exhibit B.
3. Far West Shall submit to ADEQ the ambient sampling analytical results including complete laboratory reports, on a quarterly basis as part of the Quarterly Progress Report required at Section X of this Consent Judgment.
4. As part of the Quarterly Progress Report immediately following the twelfth month of ambient ground water sampling, Far West shall provide the following pertaining to the ambient ground water sampling:

- a. A table showing the twelve month analytical results for the parameters in Exhibit B;
 - b. Proposed Alert levels (ALs) and Aquifer Quality Limits (AQLs) for Total Nitrogen, Nitrate-Nitrite, and Total Kjeldahl Nitrogen (TKN);
 - c. An APP Other Amendment application, with the applicable fee, to establish ALs and AQLs for ground water monitoring in APP No. P-105014
5. Within sixty calendar days of the Effective Date, Far West shall submit to ADEQ an APP application seeking to amend APP No. P-105014 to include a description of the existing treatment process and its monitoring requirements.

D. Seasons WWTP

1. Within sixty (60) calendar days of the Effective Date, Far West shall submit to ADEQ an APP application seeking to amend APP No. P-103618 to include a description of the existing treatment process and its monitoring requirements.
2. Within sixty (60) calendar days of the Effective Date, Far West shall submit to ADEQ well design reports and locations for groundwater monitoring well MW # 1, and ambient monitoring well MW # 2, pursuant to APP No. P-103618, Section 3.2.a.
3. Far West shall:
 - a. Complete the requirements at APP No. P-103618, Section 3.2.b within sixty (60) days of ADEQ approval of groundwater monitoring well MW # 1 and ambient monitoring well MW # 2 designs and locations;
 - b. Complete the requirements at APP No. P-103618, Section 3.2.c, within sixty (60) days of completing construction of both groundwater monitoring well MW # 1 and ambient monitoring well MW # 2.
 - c. Complete the requirements at APP No. P-103618, Section 3.2.d, by sampling ambient monitoring well MW # 2 for twelve (12) consecutive months, beginning within sixty (60) days of ADEQ approval of the well construction;
 - d. Commence routine monitoring at groundwater monitoring well

MW # 1, pursuant to APP No. P-103618, Section 3.2.e, within sixty (60) days of ADEQ approval of the well construction;

- e. Complete the requirements at APP No. P-103618, Section 3.2.f, within sixteen (16) months of the effective date.

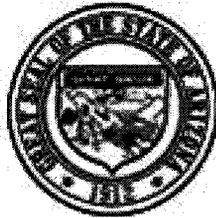
EXHIBIT B

AMBIENT GROUNDWATER MONITORING

Sampling Point Number	Latitude	Longitude		
2	32° 38' 46"	114° 23' 30"		
Parameter	AQL ¹⁵	Units	Sampling Frequency	Reporting Frequency
Total Nitrogen ¹⁶	Not Established	mg/l	Monthly	Quarterly
Nitrate-Nitrite as N	Not Established	mg/l	Monthly	Quarterly
Total Kjeldahl Nitrogen (TKN)	Not Established	mg/l	Monthly	Quarterly
Total Coliform	Absence ¹⁷	CFU or MPN ¹⁸	Monthly	Quarterly
Water Table	Not Established	Feet below ground surface	Monthly	Quarterly

Granted

Signed on this day, June 22, 2010



/S/ Robert Oberbillig
Judicial Officer of Superior Court