

ORIGINAL



0000128409

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

RECEIVED

Arizona Corporation Commission
DOCKETED

2011 AUG 18 P 12:17

AUG 18 2011

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF RIGBY WATER COMPANY FOR
APPROVAL OF TRANSFER OF ASSETS
AND CONDITIONAL CANCELLATION OF
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY

DOCKET NO. W-01808A-10-0390

**NOTICE OF FILING
COMPLIANCE ITEMS
PURSUANT TO DECISION
NO. 72387**

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

Applicant Rigby Water Company hereby files (1) an Acknowledgement of Payment of the amounts ordered to be paid to the Estate of Charles J. Dains pursuant to Decision No. 72252 and (2) the Final Order in Condemnation in the pending condemnation suit entitled City of Avondale v. Rigby Water Company, et al., Maricopa County Superior Court Case No. 2009-003060. A copy of the Acknowledgement of Payment is attached as Exhibit A, and a copy of the Final Order in Condemnation is attached as Exhibit B. A separate notice as to the Acknowledgement of Payment has been docketed in Docket No. W-01808A-09-0137.

RESPECTFULLY SUBMITTED this 18th day of August, 2011.

BRYAN CAVE LLP

By

Steven A. Hirsch, #006360
Stanley B. Lutz, #021195
Two N. Central Avenue, Suite 2200
Phoenix, AZ 85004-4406
Attorneys for Rigby Water Company

1 ORIGINAL and 13 copies of the foregoing
2 filed this 18th day of August, 2011 with:

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

7 COPIES of the foregoing hand-delivered
8 this 18th day of August, 2011, to:

9 Lyn A. Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 Steve Olea
16 Director, Utilities Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 Janice Alward, Chief Counsel
21 Legal Division
22 Arizona Corporation Commission
23 1200 W. Washington Street
24 Phoenix, AZ 85007

25 Cathy Russell
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMMISSIONERS

- GARY PIERCE, Chairman**
- BOB STUMP**
- SANDRA D. KENNEDY**
- PAUL NEWMAN**
- BRENDA BURNS**

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF RIGBY WATER COMPANY FOR
APPROVAL OF TRANSFER OF ASSETS
AND CONDITIONAL CANCELLATION OF
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY

DOCKET NO. W-01808A-10-0390
**ACKNOWLEDGEMENT OF
PAYMENT**

Applicant, Rigby Water Company (“Rigby”), and Intervenor, Estate of Charles J. Dains (“Dains”), hereby acknowledge that the City of Avondale (“Avondale”) has timely paid in full (1) the amount Rigby was ordered in Decision 72252 (Docket No. W-01808A-09-0137) and as a condition to Decision 72387 entered in this Docket No. W-01808A-10-0390 to pay to Dains for reimbursement of an MXA; and (2) the remaining amount of the Lump Sum Settlement Amount. Therefore, Avondale has satisfied the requirements of the three-party agreement with Dains; the up-front settlement payment obligations of the Settlement Agreement and First Addendum between Rigby and Avondale; and the payment conditions to Decision 72387.

///
///

1 A copy of the Final Order of Condemnation, once it is entered, will be provided for
2 the docket in this matter as required by Decision 72387.

3
4 DATED this 12 day of August, 2011.

5 THE ESTATE OF CHARLES J. DAINS

6
7
8 By *Ann Marie Dains*
9 Its: _____

10 CRAIG A. MARKS, PLC

11
12 By *Craig A. Marks*
13 Craig A. Marks
14 10645 North Tatum Boulevard
15 Suite 200-676
16 Phoenix, Arizona 85028
Attorney for the Estate of Charles J. Dains

17 RIGBY WATER COMPANY

18
19
20 By _____
21 Its: _____

22 BRYAN CAVE LLP

23
24 By *St. A. Hirsch*
25 Steven A. Hirsch, #006360
26 Stanley B. Lutz, #021195
27 Two N. Central Avenue, Suite 2200
28 Phoenix, AZ 85004-4406
Attorneys for Rigby Water Company

1 A copy of the Final Order of Condemnation, once it is entered, will be provided for
2 the docket in this matter as required by Decision 72387.

3
4 DATED this 5th day of August, 2011.

5 THE ESTATE OF CHARLES J. DAINS

6
7
8 By _____

9 Its: _____

10 CRAIG A. MARKS, PLC

11
12
13 By _____

14 Craig A. Marks
15 10645 North Tatum Boulevard
16 Suite 200-676
17 Phoenix, Arizona 85028
18 Attorney for the Estate of Charles J. Dains

19 RIGBY WATER COMPANY

20 By Judy A. Lopez

21 Its: President

22
23 BRYAN CAVE LLP

24
25
26 By [Signature]

27 Steven A. Hirsch, #006360
28 Stanley B. Lutz, #021195
Two N. Central Avenue, Suite 2200

EXHIBIT B

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2011-0672730 08/12/2011 11:54
00193100060D-9-1-1--

ELECTRONIC RECORDING

EAM or DAP (CJR)
Gust Rosenfeld P.L.C.
One E. Washington, Suite 1600
Phoenix, Arizona 85004

FINAL ORDER OF CONDEMNATION

CITY OF AVONDALE, an Arizona municipal corporation,

Plaintiff,

vs.

RIGBY WATER COMPANY, an Arizona corporation, aka RIGBY WATER COMPANY, INC.; HELEN G. RIGBY, a single woman and widow of WILLIAM FREEMAN RIGBY; unknown heirs and devisees of WILLIAM F. RIGBY; SENAIDA BANUELOS, a single person; the SPOUSE of OFELIA BANUELOS, if other than Senaida Banuelos on May 9, 1984; TERESA CARRANZA; ASA R. ANDREWS and IVA OPAL ANDREWS, husband and wife; unknown heirs and devisees of ASA R. ANDREWS or IVA OPAL ANDREWS, or both; unknown successors in interest to ASA R. ANDREWS and IVA OPAL ANDREWS as fee owners and lessors of the property described and all rights, obligations and privileges held under that certain Well-Site Agreement recorded in Docket 12931, Page 30, Maricopa County Recorder's Office; ARTHUR C. TOBIN; unknown heirs and devisees of ARTHUR C. TOBIN; unknown successors in interest to ARTHUR C. TOBIN as fee owner and grantor of easement across the property described in that conveyance of easement recorded as Document No. 1996-0847690, Maricopa County Recorder's Office; STATE OF ARIZONA by the ARIZONA DEPARTMENT OF REVENUE, as to any unpaid taxes on centrally-valued utility property; COUNTY OF MARICOPA, as to any unpaid real property taxes; PARTY(IES) IN POSSESSION OF AN UNRECORDED INTEREST; UNKNOWN DEFENDANTS; HEIRS AND DEVISEES OF THE ABOVE-NAMED DEFENDANTS, IF DECEASED,

Defendants.

**DO NOT REMOVE
THIS IS PART OF THE OFFICIAL DOCUMENT**

CERTIFIED COPY

8/11/11 FILED 4:00 PM
MICHAEL K. JEANES, Clerk
By *J. Rutledge*
Deputy

1 **GUST ROSENFELD P.L.C.**
2 One East Washington Street, Suite 1600
3 Phoenix, AZ 85004-2553
4 (602) 257-7422
5 David A. Pennartz – 006429
6 dpennartz@gustlaw.com
7 Andrew J. McGuire – 016653
8 amcguire@gustlaw.com
9 Eric McGlothlin – 026060
10 emcglathlin@gustlaw.com
11 **Attorneys for City of Avondale**

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

14 **CITY OF AVONDALE**, an Arizona
15 municipal corporation,

16 Plaintiff,

17 vs.

18 **RIGBY WATER COMPANY**, an Arizona
19 corporation, aka **RIGBY WATER**
20 **COMPANY, INC.**; **HELEN G. RIGBY**, a
21 single woman and widow of **WILLIAM**
22 **FREEMAN RIGBY**; unknown heirs and
23 devisees of **WILLIAM F. RIGBY**;
24 **SENAIDA BANUELOS**, a single person;
25 the **SPOUSE** of **OFELIA BANUELOS**, if
26 other than Senaída Banuelos on May 9,
1984; **TERESA CARRANZA**; **ASA R.**
ANDREWS and **IVA OPAL ANDREWS**,
husband and wife; unknown heirs and
devisees of **ASA R. ANDREWS** or **IVA**
OPAL ANDREWS, or both; unknown
successors in interest to **ASA R.**
ANDREWS and **IVA OPAL ANDREWS**
as fee owners and lessors of the property
described and all rights, obligations and
privileges held under that certain Well-Site
Agreement recorded in Docket 12931, Page
30, Maricopa County Recorder's Office;
ARTHUR C. TOBIN; unknown heirs and
devisees of **ARTHUR C. TOBIN**; unknown
successors in interest to **ARTHUR C.**
TOBIN as fee owner and grantor of
easement across the property described in
that conveyance of easement recorded as
Document No. 1996-0847690, Maricopa

No. CV2009-003060

**FINAL ORDER OF
CONDEMNATION**

(EMINENT DOMAIN)

A.R.S. § 12-1126, § 9-518

(Assigned to Honorable Eileen Willett)

1 County Recorder's Office; STATE OF
2 ARIZONA by the ARIZONA
3 DEPARTMENT OF REVENUE, as to any
4 unpaid taxes on centrally-valued utility
5 property; COUNTY OF MARICOPA, as to
6 any unpaid real property taxes;
7 PARTY(IES) IN POSSESSION OF AN
8 UNRECORDED INTEREST; UNKNOWN
9 DEFENDANTS; HEIRS AND DEVISEES
10 OF THE ABOVE-NAMED
11 DEFENDANTS, IF DECEASED,

12
13 Defendants.

14
15 Final Judgment in Condemnation having been entered on July 20, 2011¹,
16 pursuant to the complete settlement having been reached between the principal parties,
17 in favor of Defendant RIGBY WATER COMPANY ("Rigby"); Defendant COUNTY
18 OF MARICOPA ("County") having acknowledged that all real property taxes on the
19 property and subject water facilities being acquired by Plaintiff, CITY OF AVONDALE
20 ("Plaintiff," "City" or "Avondale"), have been paid in full and that future property taxes
21 will not accrue if the Final Judgment in Condemnation was recorded with the Office of
22 the Maricopa County Recorder before August 15, 2011; and it appearing to the Court
23 that all payments immediately due (excluding contingent Future Payment Amounts
24 under the terms of the Amended Settlement Agreement between the City and Rigby,

25
26

¹ The referenced Final Judgment in Condemnation encompasses all claims of Rigby,
the County, and all other parties – except Defendants William W. Perry and Nancy M.
Perry, as Co-Trustees of the William W. Perry and Nancy M. Perry Living Trust dated
May 20, 1999 (the "Perry Defendants"), as to which a separate Judgment is entered
pursuant to Rule 54(b), *Arizona Rules of Civil Procedure*, and a separate Final Order of
Condemnation will be entered in due course pursuant to the terms of the Perry
Judgment. All references herein to the Judgment or Final Judgment in Condemnation
shall refer only to that Judgment entered on July 20, 2011 that excludes the claims of
the Perry Defendants.

1 that are not yet accrued and are not released by this Final Order of Condemnation) from
2 Plaintiff under the referenced Judgment have been paid in full by the City; and

3 It further appearing to the Court that, pursuant to the provisions of Paragraph 15 of
4 the Final Judgment in Condemnation herein, this Court may now enter its Final Order of
5 Condemnation.

6 I. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, as follows:

7 A. The Final Judgment in Condemnation was recorded with the Office
8 of the Maricopa County Recorder, prior to the deadline of August 15, 2011, provided in
9 paragraph 6 of the Final Judgment in Condemnation, viz., on July 21, 2011 at Document
10 No. 2011- 0608388, MCR. The City therefore takes title to the assets and subject water
11 facilities as provided in the Final Judgment in Condemnation and this Final Order of
12 Condemnation free and clear of any claims by Maricopa County for any taxes due, as
13 initially claimed in Maricopa County's Answer filed in this Condemnation action.

14 B. By this Final Order of Condemnation and pursuant to Arizona law,
15 there is hereby condemned for public use and vested in Plaintiff a fee simple absolute
16 interest in the real property interests together with all right, title and interest in and to all
17 of the water utility plant, system, business, real and personal property and interests in
18 property, and other facilities utilized or which may be utilized to provide water service
19 to the public, as well as the Certificate(s) of Convenience and Necessity, franchise(s),
20 intangible assets and rights, and all other assets of any type or nature owned by and/or
21 associated in any way with the utility operations of the Rigby Water Company, located
22 within and without the City, in Maricopa County, Arizona, including but not limited to
23 those facilities, pumps, wells, waterlines, meters, personal property and/or other
24 equipment, properties and rights used or useful to provide water service in the Rigby
25 system or division and Holly Acres system or division both of the Rigby Water
26 Company, including well sites, easements, leaseholds and other interests in real property

1 described in **Exhibit A** attached hereto and incorporated herein, and all equipment and
2 facilities thereon (collectively the "Subject Water Facilities"). The Subject Water
3 Facilities include all intangible assets of Rigby relating to the Subject Water Facilities
4 and the Rigby Certificated Area, including but not limited to any claim for going
5 concern value, growth and development potential, lost future earnings, the Certificate of
6 Convenience and Necessity and Rigby's Certificated Area and the leasehold interest,
7 easements, rights, obligations and privileges of Rigby Water Company, under that
8 certain Well-Site Agreement recorded in Docket 12931, Page 30, Maricopa County
9 Recorder's Office, which well-site is described as Parcel 2 in Exhibit A attached hereto.

10 C. As provided in the First Amended Complaint in Condemnation,
11 paragraph IV, this Final Order of Condemnation does not grant condemnation of
12 Defendant Rigby Water Company's non-utility property, equipment or furnishings,
13 general plant assets, or working funds, receivables, other current assets or stock. This
14 Final Order of Condemnation also does not reference all operative terms and provisions
15 of the settlement reached between the parties and documented in their Settlement
16 Agreement and Addendum thereto ("Settlement Agreement") or found in the Final
17 Judgment in Condemnation recorded on July 21, 2011, at Doc. 20110608388, records of
18 the Maricopa County Recorder and entered upon stipulation of the parties. None of the
19 terms and provisions of the Settlement Agreement or Final Judgment in Condemnation
20 that are provided to have operation beyond the recording of this Final Order of
21 Condemnation are terminated by this Final Order of Condemnation, including but not
22 limited to provisions relating to the contingent Future Payments provided for in the
23 Final Judgment in Condemnation.

24 II. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, with the sole
25 exception provided above as to the interests of the Perry Defendants which shall be
26 subject of a separate and additional Final Order of Condemnation. that no other person,

1 firm or corporation has any right, title or interest in and to the Subject Water Facilities,
2 or any part thereof, and any person, firm or corporation claiming any interest in or to the
3 Subject Water Facilities, or any part thereof, subsequent to the recording of the Notice
4 of Lis Pendens in this matter, in the Maricopa County Recorder's Office as Doc. No.
5 2009-0441812 on May 15, 2009, is hereby adjudged and decreed to be without any
6 right, title or interest in or to the Subject Water Facilities or any part thereof.

7 ENTERED this 11 day of Aug, 2011.

8
9
10 
11 _____
Honorable Eileen Willett
Judge of the Superior Court

12 APPROVED AS TO FORM:

13 GUST ROSENFELD, P.L.C.

BRYAN CAVE, LLP

14
15
16 /s/ Eric A. McGlothlin - 016653
17 David A. Pennartz
18 Andrew J. McGuire
19 Eric McGlothlin
One E. Washington St., Suite 1600
Phoenix, AZ 85004-2553
Attorneys for *City of Avondale*

/s/ Eric A. McGlothlin - 016653 for
/s/ Steven A. Hirsch and
/s/ Stanley B. Lutz
Steven A. Hirsch
Stanley B. Lutz
Two North Central Avenue, Ste. 2200
Phoenix, AZ 85004-4406
Attorneys for *Rigby Water Company*

20
21
22
23
24
25
26

EXHIBIT A

**RIGBY WATER COMPANY
PARCELS 1 THROUGH 6**

PARCEL NO. 1 (Well site APN 500-68-008G):

The East 93 feet of the South 238 feet of the East 10 rods of the Southeast quarter of the Southeast quarter of Section 25, Township 1 North, Range 1 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 198 feet.

PARCEL NO. 2 (Portion APN 500-87-004A):

Well-Site: The South 38 feet of the West 30 feet of Lot 4, Sierra Estrella Ranchos, a subdivision recorded in Book 85 of Maps, Page 46, Maricopa County Recorder's Office, being situated in the S.E. Quarter of Section 26, Township 1 North, Range 1 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, except for an easement previously granted across the South 8 feet thereof;

TOGETHER WITH an Easement for water line across said Lot 4, Sierra Estrella Ranchos due North to Hidalgo Street; and

An easement for ingress and egress across said Lot 4, Sierra Estrella Ranchos to the above described leased property.

PARCEL NO. 3 (Portion APN 101-43-001):

An easement and privilege of placing, erecting, constructing, repairing, replacing, maintaining and using a single eight (8) inch water line across the following described property:

The Northeast quarter of the Southwest quarter of Section 30, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said easement being 12.0 feet in width, 6 feet on either side of the following described center line:

Commencing at the center of said Section 30;

Thence South 6.00 feet to the True Point of Beginning;

Thence West along a line 6.00 feet South of and parallel with the East-West midsection line, to a point 100 feet East of the West line, thence South 45 degrees West a distance of 31.11 feet to a point;

Thence West along a line 28.00 feet South of and parallel with the East-West midsection line, to the West line of said Northeast quarter of the Southwest quarter of said Section 30 and there terminating;

TOGETHER with the right of ingress and egress to permit operation and maintenance of said water line, all as created in instrument recorded in Document No. 96-0847690.

PARCEL NO. 4 (Well Site APN 101-43-009A):

Lot Three (3), Dix-Lee, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 75 of Maps, Page 6.

EXCEPT THE North 150 feet thereof.

PARCEL NO. 5 (Well Site APN 500-69-076):

Tract A, Holly Acres, according to Book 110 of Maps, Page 12, records of Maricopa County, Arizona.

PARCEL NO. 6 (Portion APN 101-43-009B):

An easement for Roadway over the West 20 feet of the North 150 feet of Lot 3, Dix-Lee, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 75 of Maps, Page 6.

The foregoing instrument is a full, true
and correct copy of the original document.

Attest August 11 2011

MICHAEL K. JEANES, Clerk of the
Superior Court of the State of Arizona, in
and for the County of Maricopa.

By [Signature] Deputy