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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
ROBERT BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF FAR WEST WATER & SEWER, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE	**DOCKET NO. WS-03478A-12-0307** **NOTICE OF FILING PRE-FILED DIRECT TESTIMONY OF BRIAN HOUSEHOLDER**

Intervenor Spartan Homes & Construction, Inc. ("Spartan") hereby files the Pre-Filed Direct Testimony of Brian Householder in the above-captioned docket.

RESPECTFULLY submitted this 13th day of February, 2013.

BROWNSTEIN HYATT FARBER SCHRECK LLP

Jeffrey W. Crockett, Esq.
One East Washington Street, Suite 2400
Phoenix, Arizona 85004
Attorneys for Spartan Homes & Construction, Inc.

ORIGINAL and thirteen (13) copies of the foregoing filed this 13th day of February, 2013, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED
FEB 13 2013
DOCKETED BY

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One East Washington Street, Suite 2400
Phoenix, AZ 85004

Copy of the foregoing hand-delivered
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Phoenix, Arizona 85007

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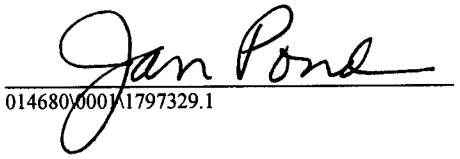

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF FAR WEST WATER & SEWER, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE	**DOCKET NO. WS-03478A-12-0307**

PRE-FILED DIRECT TESTIMONY OF BRIAN HOUSEHOLDER ON BEHALF OF INTERVENOR SPARTAN HOMES AND CONSTRUCTION, INC.

FEBRUARY 13, 2013

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EXECUTIVE SUMMARY

Brian Householder will testify regarding: (i) the poor level of service provided by Far WestWater & Sewer, Inc., ("Far West") to Spartan Homes and Construction, Inc., and to its customers generally; (ii) Far West's self-serving dealings with affiliated companies such as H & S Developers, Inc., and the impact of such dealings on sewer rates; (iii) Far West's failure to comply with the rules, regulations, decisions and consent orders of the Arizona Corporation Commission and the Arizona Department of Environmental Quality; (iv) whether Far West has excess capacity in the recently expanded Section 14 wastewater treatment plant which should be excluded from rate base; and (v) whether Far West has appropriately accounted for and refunded advances in aid of construction. Mr. Householder also makes recommendations to be adopted by the Commission if the Commission approves a rate increase for Far West.

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Q. Please state your name, business address and occupation.

A. My name is Brian Householder. My business address is 11858 Via Loma Vista, Yuma, Arizona 85367. I am a developer and general contractor in Yuma County, Arizona.

Q. Are you a native of Yuma County?

A. I am not a native of Yuma County but I have lived in Yuma County for approximately 35 years.

Q. Do you currently have a business in Yuma County?

A. Yes. Spartan Homes and Construction, Inc., ("Spartan") is an Arizona corporation which develops real property and constructs homes in Yuma County. I am the Vice President/Secretary and a shareholder of Spartan. My wife Susan Householder is the President of Spartan.

Q. Does Spartan have an existing development project in Yuma County?

A. Yes. Spartan is the developer of a residential and commercial development in Yuma County known as Sierra Ridge. Sierra Ridge is located outside but adjacent to the city limits of the City of Yuma in a portion of the west ½ of the northwest ¼ of Section 9, Township 9 South, Range 21 West, Gila and Salt River Base and Meridian. Sierra Ridge includes a residential subdivision (the "Residential Property") covering approximately 45.83 acres and a commercial parcel (the "Commercial Property") covering approximately 12.12 acres.

Q. Please describe your Residential Property.

A. The Residential Property is being developed in two phases. Sierra Ridge Unit 1 includes 113 single-family lots and Sierra Ridge Unit 2 includes 60 single-family lots. The final plat for Sierra Ridge Unit 1 was recorded March 11, 2005 as Fee No. 2005-10314, Official Records of Yuma County Recorder. The final plat for Sierra Ridge Unit 2 has been prepared and approved by Yuma County but has not yet been recorded.

Q. Please describe your Commercial Property.

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A. The Commercial Property is located immediately adjacent to the South Frontage Road for Interstate 8 which runs through the City of Yuma. Planning for the Commercial Property has commenced but has not been completed.

Q. Who provides water and wastewater services to Sierra Ridge?

A. Far West is the water and wastewater provider for Sierra Ridge. Far West is currently providing water and sewer service to approximately 63 occupied homes in Sierra Ridge Unit 1, all of which were constructed and sold by Spartan. Spartan owns the remaining 50 lots in Sierra Ridge Unit 1. Spartan has completed a spec home on lot 90, and is constructing spec homes on lots 54, 72, 91 and 101 within Sierra Ridge Unit 1.

Q. Is Spartan a current customer of Far West?

A. Yes. Each of Spartan's lots 54, 72, 90, 91 and 101 is receiving water and sewer service from Far West.

Q. Is Sierra Ridge included in the certificates of convenience and necessity ("CC&Ns") of Far West for water and sewer service?

A. Sierra Ridge is included in Far West's CC&N for water, but it is outside of Far West's CC&N for sewer. However, in Decision 72594 (September 15, 2011) in Docket WS-03478A-08-0256, the Arizona Corporation Commission ("Commission") ordered that "Far West Water and Sewer, Inc., must provide sewer service to the remaining 51 lots in [Spartan's] Sierra Ridge Unit 1 … on a nondiscriminatory basis, and charge its approved rates."[1] Decision 72594 further ordered Far West to "file with the Commission a sewer CC&N extension application encompassing the entire Spartan Property" within 90 days of the decision, or by December 14, 2011.[2]

Q. Has Far West filed an application to extend its sewer CC&N to include the Sierra Ridge property as ordered in Decision 72594?

A. No.

[1] Decision 72594 (Docket WS-03478A-08-0256) at 79, lines 23-25.
[2] *Id.* at 79-80.

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Q. Do you know why Far West has not filed for the sewer CC&N extension to include the Sierra Ridge property?

A. No. Spartan has provided everything that Far West requested in connection with the application.

Q. Has Spartan executed a main extension agreement for sewer service for Sierra Ridge Unit 1 with Far West?

A. Yes. On November 20, 2011, Far West and Spartan executed a Sewer Main Extension Agreement for Sierra Ridge Unit 1 as required by Decision 72594. The Sewer Main Extension Agreement acknowledged that Spartan previously paid Far West $119,092.47 in the form of constructed infrastructure as a refundable advance in aid of construction.

Q. Do you believe that Far West should be required to file an application to extend its sewer CC&N to include the Sierra Ridge property before any rate increase approved by the Commission in this case be allowed to go into effect?

A. Yes. As a customer, I believe that Far West should be required to comply with prior Commission decisions before any rate increase may be implemented. The failure of a utility to comply with Commission decisions may very well lead to higher rates for customers. Beyond that, it is simply not good business practice to disregard or ignore orders of regulators. Where there is disregard or disdain for the orders of the Commission, that same attitude shows up in poor customer service.

Q. Regarding customer service, has your experience working with Far West as the utility serviced provider for Sierra Ridge been a positive one?

A. No, it has not. Unfortunately, I have found that Far West has continually failed to honor agreements it made with Spartan regarding providing utility services for Sierra Ridge. Further, Far West has failed to comply with Commission statutes and rules. As a result, I was forced to file a formal complaint against Far West in Docket WS-03478A-08-0256.

Q. Did the Commission issue a decision in Docket WS-03478A-08-0256?

A. Yes. The Commission issued Decision 72594 which found that Far West: (i) violated A.A.C. R14-2-406(C)(2) because it failed to provide a copy of the executed water main

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extension agreement for Sierra Ridge Unit 1 to Spartan; (ii) violated A.A.C. R14-2-406(M) because it failed to submit the water main extension agreement to Utilities Division Staff for approval; (iii) violated A.A.C. R14-2-606(B)(2) because it failed to provide a copy of an executed sewer main collection agreement for Sierra Ridge Unit 1 to Spartan; and (iv) violated the terms of its sewer main collection agreement with Spartan because it failed to make required refunds of advances in aid of construction paid by Spartan under the agreement. As I explain above, Decision 72594 also ordered Far West to provide sewer service to all lots in Sierra Ridge Unit 1 and to file a sewer CC&N extension application encompassing the entire Spartan Property by December 14, 2011. In addition, Decision 72594 ordered Far West to pay refunds to Spartan of advances in aid of construction that had been illegally withheld from Spartan under its sewer main extension agreement. Further, Decision 72594 ordered Far West to immediately refund $154,180 to Spartan for the costs of the water infrastructure constructed by Spartan for Sierra Ridge Unit 1 and conveyed to Far West.

Q. Has Far West complied with these requirements of Decision 72594?

A. For the most part, no. Far West has allowed Spartan to connect lots to the sewer system, but it still refuses to file an application to extend its sewer CC&N to include the Sierra Ridge property nearly 18 months after Decision 72594. Further, Far West has refunded only a portion of the $154,180 that it was ordered to refund. While Far West did make an initial refund payment to Spartan under the sewer main extension agreement for amounts owed from August 31, 2005, through August 31, 2011, it has failed to make the refund payment due for gross revenues received through August 31, 2012.

Q. Has Far West contacted you regarding the missed refund payment for 2012?

A. No.

Q. Based upon your experience, do you believe that there may be problems with refunds due other developers under Far West main extension agreements?

A. Yes. I question whether Far West is properly accounting for and refunding advances in aid of construction to other developers in its service territory. I am aware, for example,

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that significant fees were advanced by developers to H & S Developers, Inc. ("H & S Developers") an affiliate of Far West, as opposed to Far West itself. I question whether amounts advanced to H & S Developers are being refunded to developers pursuant to the Commission's rules. I also question how such amounts are treated on the books of Far West.

Q. Do you believe that Far West should be required to fully comply with Decision 72594 before any rate increase may be implemented?

A. Yes. I believe that is the only way Far West will ever fulfill the requirements of Decision 72594.

Q. Have the failures on the part of Far West negatively impacted you as a customer?

A. Absolutely. Far West's failure to comply with Commission rules and the requirements of the Arizona Department of Environmental Quality ("ADEQ") forced Spartan to stop selling homes right in the middle of the project and at the top of the real estate market. This caused large financial losses to Spartan, myself and my wife. What's worse, Spartan was forced to hire an attorney and incur large legal bills to force Far West to follow the Commission's rules and decisions—something that Far West should have been doing anyway. I am still incurring legal expenses in an effort to force Far West to comply with Decision 72594.

Q. Beyond the negative effects experienced by Spartan, do you believe that Far West's failure to follow the rules and decisions of the Commission and other regulatory bodies negatively impacts all customers of Far West?

A. Clearly. Far West has a track record of disregarding and ignoring statutes, rules, regulations, decisions, consent orders and the like. The legal fees, court costs, travel costs, fines, penalties, lost employee productivity and other natural consequences of non-compliance have a direct negative effect on the financial stability and operations of Far West and, therefore, upon the rate payers. I would urge the Commission to ensure that Far West complies with all applicable statutes, rules, regulations, decisions, consent orders or other regulatory mandates as a precondition of implementing any rate increase.

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Q. What has your experience taught you about the value that Far West places on customer service?

A. I don't see that Far West values customer service at all. It has been extremely difficult dealing with Far West in the development of Sierra Ridge. I frequently received mis-information. My phone calls were often not returned. I was repeatedly asked to resubmit the same documents because they had been lost by Far West. Customer service is simply abysmal.

Q. You mentioned that you received mis-information. Can you give me an example?

A. Yes. As I was performing my pre-purchase due diligence on the Sierra Ridge property in 2003, I contacted Far West and was told that the property was within both the water and sewer CC&Ns for Far West. As it turned out, the property was located adjacent to but outside of the sewer CC&N. This became a serious problem for me. After I had constructed and conveyed the sewer infrastructure to Far West, and after Far West had commenced providing sewer service to customers within the development, Far West argued that it was not obligated to provide sewer service to the remaining lots in Sierra Ridge Unit 1 because the subdivision is outside of its CC&N. Fortunately, Far West was ordered to provide sewer service to the remaining lots in Sierra Ridge Unit 1 in Decision 72594.

Q. In addition to the severe deficiencies in customer service, do you have other concerns about Far West's application to increase its sewer rates by almost 175%?

A. Yes. I have serious concerns about the transparency, reasonableness and propriety of the many business transactions between Far West and its non-regulated affiliates, including H & S Developers. For example, during the mid 2000's, at the same time that Far West was seeking interim and permanent rate increases in two separate dockets, affilate H & S Developers—and not Far West—received more than $500,000 in impact fees from developers. The misdirection of these impact fees through an affiliate obscures the true financial condition of Far West and will result in rates that are not just and reasonable if it is not addressed. In the July 8, 2009, Reply Brief of the Residential Utility Consumer

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Office ("RUCO") filed in Docket No. WS-03478A-08-0608,[3] a copy of which is attached hereto as Attachment 1, RUCO identified other instances of self-serving transactions between Far West and its affiliates, including H & S Developers, which led to this harsh conclusion:

> The Company's witness, Mr. Capestro testified that Far West needs $1.2 million to complete the ADEQ projects and has $3.4 million in accounts payable to its ADEQ project vendors. At the same time Far West claims to have capital budget deficiencies preventing payment of ADEQ project vendors, it has made large payments to H & S and its shareholders. During 2007, one year prior to filing the request for interim rates, Far West paid shareholder affiliates $1,462,684 dollars. Moreover, in 2008, Far West paid shareholder affiliates $920,651 for accounts payable and repaid, in full, a long-term loan of $571,244 owed to shareholders. In total, between December 31, 2007 and December 31, 2008, Far West paid its affiliates approximately $1.4 million. The amount of the payments raises the issue of why shareholders prioritized payments to themselves before payments to third party vendors. RUCO believes the answer is greed.
>
> The shareholders placed their interests above the interests of the ratepayers. The result is a capital budget shortfall. The Commission should not reward the shareholders with revenue from ratepayers to compensate the capital budget drained by the selfish interest of its share holders.[4]

Q. Do you agree with RUCO that Far West places the interests of its shareholders above the interests of rate payers?

A. Yes. That has certainly been my experience.

Q. Do you have concerns regarding the abilty of the owners of Far West to properly and honestly manage utility operations?

A. Yes. Unfortunately, I have come to question whether the owners of Far West have the capability and honesty to properly manage the daily, weekly, monthly and annual finances and operations of the utility. As one example, it appears clear that Far West grossly over-expanded its Section 14 wastewater treatment plant for the benefit of its

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[3] *In the Matter of the Application of Far West Water & Sewer Company, an Arizona Corporation, for Approval of Interim Rates and Charges* (Docket WS-03478A-08-0608).

[4] RUCO's Reply Brief dated July 8, 2009 (Docket WS-03478A-08-0608) at p. 18, lines 4-14 (emphasis added, citations omitted).

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affiliates, to the detriment of rate payers. RUCO addressed this issue in its July 8, 2009, Reply Brief in Docket No. WS-03478A-08-0608, explaining as follows:

> Clearly, current ratepayers at Palm Shadows and Section 14 do not need a 1.3 to 2.0 mgd plant to meet current combined peak flows of 274,000 gpd. This begs the question of why the Company [Far West] would need 1.0 to 1.7 mgd more in capacity at Section 14. The answer is greed. In fact, the Company designed the plant to 2.0 mgd and built the plant to 1.3 mgd to accommodate future development. Notably, Far West affiliates own many of the future real estate developments in the area. These developments include Schechert Estates, the Ravines 1, 2 and 3, [and] Las Barrancas 2 and 3 comprising a total of 940 proposed residential lots. Moreover, some of the future developments are on land previously owned by Far West such as Las Barrancas 1 and Arroyo de Fortuna 1-5. Although the Company's witness, Mr. Capestro, initially denied any connection with Las Barrancas or Arroyo de Fortuna, he ultimately acknowledged that Far West affiliates own or previously owned the land, which includes an additional 505 lots. RUCO believes the affiliation is important because to sell raw land with subdivision capacity, the affiliates needed capacity assurances from Far West. Far West could not give capacity assurances without permitted capacity. ADEQ permitted Section 14 for 150,000 gpd. To meet the demands of Section 14 and Palm Shadows at their combined peak flows, the Company needed 350,000 gpd. To garner the best price for land they wished to sell and to develop subdivisions on land they wished to retain, the affiliates needed additional capacity at Section 14. Without the over sizing of the Section 14 plant, the affiliates would not be able to sell the raw land with subdivision development capacity or develop their own subdivisions. Dictated by greed, Far West shareholders and managers designed Section 14 for 2.0 mgd to meet the needs of their affiliates. The Company spent at least $420,000 to engineer the expansion of Section 14 from 1.3 mgd to 2.0 mgd. Mr. Capestro asserts Far West paid the engineering costs before it knew of the capital budget shortfalls. His statement is false. According to the Company's report on IDA construction distributions, the engineering expenses associated with the expansion of Section 14 occurred between August 19, 2008 and September 8, 2008, after the Company admittedly knew of the capital budget shortfalls for the ADEQ mandated projects. Moreover, to expand the plant from 671 gpd to 2.0 mgd, the Company spent $200,000 of IDA funds to purchase land from Schechert Trust, an affiliate, to build three vadose recharge wells. Notably, they spent the IDA funds on this non-ADEQ project on October 14, 2008 well after they were aware of the capital budget shortfalls. The Company built the plant to 1.3 mgd having spent $4,146,672 to date and owing an additional $2,416,002.65. The shareholders are motivated by self-interest and greed. The Commission should not compel the ratepayers to fund the shareholders' personal gain.[5]

[5] *Id.* at pp. 14-16 (emphasis added, citations omitted).

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Q. Should the Commission exclude any excess capacity found to exist in the Section 14 wastewater treatment plant?

A. Yes. It would be unfair to require rate payers to pay for excess capacity at the Section 14 wastewater treatment plant—excess capacity that was constructed to benefit the developer affiliates of Far West.

Q. Is there anything else about the Section 14 wastewater treatment plant expansion that troubles you?

A. Yes. While constructing the Section 14 wastewater treatment plant expansion, Far West fell seriously behind in payments to vendors and suppliers on the project. However, Far West and its affiliates made sure that they were paid first. RUCO explained as follows in its July 8, 2009, Reply Brief in Docket No. WS-03478A-08-0608:

> Far West affiliates are profiting from the capital improvement project. The Company [Far West] admits that its affiliates received $2.5 million dollars in construction contracts. The Company further admits that H & S affiliates received approximately $244,424 for effluent removal.[6]

Far West's constant policy of placing the interests of its owners and affiliates far ahead of those of the rate payer has led to a downward spiral in the financial strength and stability of the utility, to the harm of the rate payers. Now, Far West is seeking a very painful 175% rate increase to try to climb out of a hole that it dug itself by self-serving affiliate transactions and the failure to follow the rules, decisions and consent orders of the Commission and ADEQ.

Q. What actions would you recommend that the Commission take in this rate case docket?

A. First, I would recommend that the Commission order Far West to demonstrate compliance with all Commission statutes, rules and decisions before the company is permitted to implement any rate increase approved in this docket. This includes full compliance with Decision 72594 in Docket WS-03478A-08-0256. In addition, Far West should be required to demonstrate compliance with the statutes, rules and consent orders of ADEQ before the company is permitted to implement a rate increase.

[6] *Id.* at p. 9, lines 1-4 (emphasis added, citations omitted).

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Second, I would recommend that the Commission require Far West to demonstrate and certify that it is current on all refunds of advances in aid of construction for its water and wastewater divisions.

Third, I would recommend that the Commission prohibit any transactions between Far West and any of its affiliates until such time as Far West prepares and implements a code of conduct, approved by the Commission, establishing protocols for how transactions will be handled between Far West and any of its affiliates and how such affiliate transactions will be recorded on the books of the companies. The code of conduct would be designed to ensure transparency in affiliate transactions and full compliance with the Commission's rules on Public Utility Holding Companies and Affiliated Interests as set forth in A.A.C. R14-2-801 *et seq.*

Q. Does this conclude your testimony?

A. Yes.

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ATTACHMENT 1

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BEFORE THE ARIZONA CORPORATION COMMISSION

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2009 JUL -8 P 4: 18

AZ CORP COMMISSION
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COMMISSIONER

IN THE MATTER OF THE APPLICATION OF FAR WEST WATER & SEWER COMPANY, AN ARIZONA CORPORATION, FOR APPROVAL OF INTERIM RATES AND CHARGES.	Docket No. WS-03478A-08-0608

RUCO'S REPLY BRIEF

INTRODUCTION

Far West Water and Sewer ("Far West" of the "Company") seeks interim rates arguing that the Sewer Division is unable to meet is obligations. The Company asserts that it has a shortfall in both its operational and capital budgets. The Commission should deny the request for interim rates because, on a total company basis, the Company has sufficient funds to meet its operational expenses and debt service. Shortfalls in the Company's capital budget for construction work in progress are not a ratepayer obligation and therefore the Commission should not consider capital budget shortfalls as a basis for awarding interim rates.

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A. THE COMMISSION SHOULD DETERMINE INTERIM RATES BASED ON WHETHER THE COMPANY HAS SUFFICIENT CASH FLOW IN ITS OPERATIONAL BUDGET

1. On a total company basis, Far West has sufficient cash flow to cover its operating expenses and debt service.

The Company seeks $2,161,788 or a ***101 percent*** increase to its revenues for the Sewer Division. The Company claims that the increase is necessary to keep the Sewer Division solvent and operating at a $0 operating margin. Closing Brief at 18. The Company's analysis of the revenue necessary to meet debt service and operating expenses is flawed. The Company based its analysis on the financial statements of the Sewer Division, alone. The Company chose to pursue financing and the Commission approved the Company's application on a total company basis.[1] As such, the Commission should evaluate the need of interim rates on a total company basis and find that the Company is able to meet its bond obligations and that there is no emergency or imminent emergency.

2. The Commission should not consider extraordinary expenses resulting from the Company's mismanagement.

The Company's witness, Thomas Bourassa claims that on a total company basis the Company lost $972,000 and had a positive cash flow of only $13,058.[2] RUCO's witness, William Rigsby testified that the Company had free cash flow of $674,756 in 2007 and $939,066 in 2008, after annual interest and principal payments were satisfied.[3] The major difference between the calculations of Mr. Bourassa and Mr. Rigsby stems from their treatment of extraordinary expenses. Extraordinary expenses are non-reoccurring expenses, typically

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[1] See R-1 Financing Application and Decision No. 69950, Docket No. WS-03478A-07-0442.
[2] A-3 Rebuttal Testimony of Thomas Bourassa
[3] R-3, Testimony of William Rigsby at 15. See also Schedule. WAR-1. Staff's witness, Gerald Becker, estimated the Company's free cash flow for 2009 as $781,702.

considered below the line expenses, meaning expenses not paid by ratepayers.[4] Mr. Bourassa included the extraordinary expenses in his cash flow analysis and Mr. Rigsby did not.

The bulk of extraordinary expenses were for the removal of effluent from the Palm Shadows Wastewater Treatment Plant ("Palm Shadows"). After completion of Section 14 Wastewater Treatment Plant ("Section 14") and the Palm Shadows Force Main, the Company will convert Palm Shadows to a lift station and send its wastewater flows to Section 14 for processing. In the meantime, the Company has been removing effluent from the Palm Shadows because the plant does not operate properly. In 2007, the Company spent $347,446.72 to collect and haul the effluent.[5] In 2008, the Company spent $501,363 to remove effluent from Palm Shadows and haul it to the City of Yuma's wastewater treatment system.[6]

The Company claims the Commission should consider the extraordinary expense it pays to collect and haul wastewater from Palm Shadows to the City of Yuma. RUCO asserts that the Commission should disregard these expenses because they are below the line non-operational expenses for which the ratepayers are not responsible.[7] The Company's accountant, Lloyd H. Sunderman, supports RUCO's position because he also classified these expenditures non-reoccurring and non-operational, below the line deductions in his compilations of the Company's financial statements for 2007 and 2008.[8]

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[4] T: 1089
[5] R-18, Response to Staff's DR 1.1
[6] R-19 Response to Staff's DR 1.2
[7] T: 1089
[8] R-18 and R-19, 2007 and 2008 Financial Statements provided in response to Staff DR 1.1 and 1.2, respectively.

RUCO believes these expenses result from the mismanagement and negligence of the Far West management and therefore should be borne by the shareholders.[9] Palm Shadows was designed with two evaporation/percolation ponds. Pursuant to the approved design flow, effluent produced from the treatment process should have evaporated into the air or percolated into the soil. As the Company's witnesses, Andrew Capestro and Gary Lee acknowledged, Palm Shadows does not percolate because it was built on clay soils, which do not percolate when saturated.[10] According to Mr. Lee, the Company's engineer:

> Palm Shadows could not handle either existing or the projected effluent due to clay soils....testing confirmed that clay began approximately ten feet below grade, and continued for another thirty to thirty five feet, to approximately forty to forty-five feet below grade...the clay was of a type that would not allow any percolation after it became saturated. The thickness of the clay also prohibited the use of a vadose recharge well.[11]

Mr. Capestro initially testified that the Company did not construct Palm Shadows and was not responsible for its poor construction.[12] He claimed that a developer with whom Far West had <u>no past or current</u> relationship built Palm Shadows. Id. He testified that Mr. Bruce Jacobson, a licensed engineer, certified the design and construction for the builder and that Far West took over operations of Palm Shadows post-construction. Id.

Contrary to Mr. Capestro's testimony, Far West submitted the original application to build and operate Palm Shadow in June 1998.[13] Far West's president, Brent H. Weidman signed the application stating the plant would be completed and in service in September 1998. The application confirmed that Far West retained Norman Bruce Jacobson as the engineer on

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[9] The Shareholders are also the managers of the closely held private company. As such they are ultimately responsible for the Company's capital outlays and any below the line expenses.
[10] T: 589.
[11] R-25 Company's Response to RUCO's DR5.14
[12] T: 109
[13] R-23 Aquifer Application Permit dated June, 1998.

the project.[14] According to public comment, the homeowners purchased their lots from Palm Shadows Partnership, a partnership made up of Brent H. Weidman, Donald Jacobson and Norman Bruce Jacobson.[15] Notably, Mr. Weidman was also President/CEO and a Director of Far West and President/Vice President and a Director of H & S, at the time.[16] Contrary to Mr. Capestro's assertion that the companies were unrelated, at the time Palm Shadows was constructed, Mr. Weidman was President of Far West, H & S Developers and a partner in the development company, Palm Shadows Partnership. Id. In addition, Mr. Jacobson, the engineer who certified the design of Palm Shadows was a partner with Mr. Weidman in Palm Shadows Partnership. Id. The documents of Arizona Department of Environmental Quality ("ADEQ") reflect a clouding of interests. It is clear, that the companies were related parties, but the fact that ADEQ documents reflect Far West was the original permitting party, the parties were not only related, their interests were merged.

Although Mr. Capestro initially disputed Far West's responsibility for constructing Palm Shadows on non-percolating soils, he ultimately acknowledged the wastewater treatment plant does not work, and the Company is responsible for the nonfunctioning plant.[17] RUCO believes the management and shareholders, not the ratepayers, should pay for extraordinary expenses associated with effluent removal from Palm Shadows. [18] As such, the Commission should not consider the effluent removal expenses to determine cash flow in this interim rate case.

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[14] See Exhibit R-23 and 24. T: 590

[15] See Attachment A- Excerpt from public comment of Mr. Gary Frye docketed March 17, 2009, which includes a copy of the ratepayers purchase agreement Palm Shadows Partnership and a copy of a Development Agreement signed by City of Yuma and the partners of Palm Shadow Partnership: Bruce and Donald Jacobson and Brent Weidman dated October 28, 1998.

[16] See Attachment B, Annual Report of H & S Developers dated September 18, 2008. See also Attachment C, Annual Report of Far West dated September 18, 1998.

[17] T: 589.

[18] T: 1089

The Company asserts that Staff agrees with its position. The Company misstates the evidence. The Staff's witness, Gerald Becker, testified that even considering the extraordinary expenses, the Company had sufficient cash flow to cover its operational expenses and debt service.[19] Mr. Becker further testified that the Company did not have an emergency necessitating interim relief. Id. Mr. Becker testified that if the Company's action or inaction resulted in shortfalls in its capital budget, management needs to raise capital or pay for those expenditures through means other than seeking it from ratepayers through financing or equity mechanisms[20]

3. The Company is not insolvent.

The Company claims it is unable to meet its obligations in the ordinary course and therefore is insolvent. Company's Closing Brief at 16-17. More specifically, the Company claims that it is unable to pay property taxes of $300,000 due as of May 1, 2009.[21] The Company also implies in its brief that it may be unable to pay its debt service. Id. at 19.

Mr. Rigsby calculated the Company's free cash flow of $674,756 in 2007 and free cash flow $939,066 in 2008. By Mr. Rigsby's analysis, the Company's financial position improved between 2007 and 2008. Mr. Rigby's calculations assumed payment of $326,702 in property tax expense as well as $1,925,000 in principal and interest payments.[22]. Likewise, when Mr. Becker calculated free cash flow of $781,702 for 2009, his estimate of free cash flow presumed payment of ordinary businesses expenses including taxes and debt service.[23]

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[19] T: 1184-85.

[20] T: 1186-1187, 1193-95, The Staff Report included an alternative recommendation of a 43 percent increase in revenues. Mr. Becker testified unequivocally that there is no emergency and Staff is not recommending interim rates. He testified: "the recommendation is not to grant interim rates." T: 1194.

[21] A-11

[22] R-3, Testimony of William Rigsby at 15. See also Schedule. WAR-1.

[23] S-1 Staff Report. Staff's witness, Gerald Becker, estimated the Company's free cash flow for 2009 as $781,702 after deducting annual interest and principal payments and below the line interest income of $162, 379.

The Company has sufficient cash flow to pay its debt service and operational expenses. If the Company has encountered shortfalls, it is because its management failed to prioritize operational expenses and debt service. As both Mr. Rigsby and Mr. Becker indicated, the principals of Far West have failed to manage and prioritize its obligations.[24] From RUCO's perspective, poor planning on the part of Far West's management team does not constitute an emergency necessitating approval of the Company's request for a 101 percent increase in rates from ratepayers.

The Company also asserts it is unable to pay $100,000 to the Yuma Mesa Irrigation District ("Yuma Irrigation") for 2,500-acre feet of additional water.[25] By the Company's admission the additional 2,500 acre-feet of water is unused. Id. The Company is asking current ratepayers to pay a 101 percent increase so the Company can pay for water that current ratepayers do not need. RUCO asserts that the additional water is not used and useful and therefore the Commission should not consider the unpaid Yuma Irrigation bill when determining the Company's free cash flow or need for interim rates.

If the Company is facing such cash flow shortfalls, the Commission should question why the shareholders' affiliates have not paid the Far West amounts owed to relieve some of the purported cash flow difficulties. More specifically, why have the shareholders' affiliated golf courses failed to pay outstanding irrigation bills to Far West. H & S an affiliate owned by the shareholders owns three golf courses, Las Barrancas, Foothills Executive and Foothills Par 3.[26] As of February 2009, Mr. Capestro acknowledged that the golf courses owed Far West in

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Recalculating Mr. Becker's figures to include interest income reflects a 2009 cash flow of $944,081. See also T: 1201-1203.

[24] T:1210

[25] T: 486, Although Mr. Capestro originally testified that the entire balance was due and owing, he subsequently revealed he had worked out a payment plan with Yuma Irrigation for partial payments.

[26] R-5, Accounts receivable for golf course.

excess of $253,172.[27] Mr. Capestro claims that the unpaid golf course bills are setoff by work H & S does for Far West. Id. The Company's financial statements refute his position. The financial statements compiled by Far West's accountant list H &S's unpaid golf bills as an account receivable owed to Far West.[28] If Far West had applied a set off as suggested by Mr. Capestro, H & S's unpaid golf bills would not be recorded as a Far West account receivable.

4. There is no precedent compelling approval of interim rates.

The Company claims that it is entitled to interim rates based on a precedent established by the Commission in July 1999 when it granted Far West's water division interim rates in Decision No. 61833 ("FWWS 1").[29] Far West's argument suggests that the Commission may not decide each rate case on its own merits and that the Commission is bound by the rate orders issued in the prior Far West dockets. The Company's position is contrary to established law.[30] The issues presented in a rate proceeding, the positions advanced by the parties during the proceeding, and any other factors that the Commission deems relevant may all contribute to different treatment at different times, if warranted.[31] For example, in FWWS 1, the Company spent or committed to spend $4.0 million toward repairs. The current project is funded by IDA bonds, which will be repaid entirely by the ratepayers. The Commission's order approving the IDA funding allowed the Company to repay its shareholders 100% of the short-term bond anticipation notes they secured, leaving them with no current investment in the

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[27] T: 164-171.

[28] R-18 and R-19, Response to Staff DR 1.1. ad 1.2.

[29] *In the matter of Far West Water and Sewer*, Docket No. WS-03478A-99-0144, Decision No. 61833 dated July 20, 1999.

[30] Morris v. Ariz. Corp. Comm'n, 24 Ariz. App. 454, 457, 539 P.2d 928, 931 (1975) (The ratemaking process does not lend itself to rule formulation because the relevant factors may be given different weight in the discretion of the Commission at the time of the inquiry.)

[31] In Scates v. Ariz. Corp. Comm'n, 118 Ariz. 531, 534, 578 P.2d 612, 615, (1978) and Simms, 80 Ariz. at 150, 294 P.2d at 382, the appellate courts indicated that the Commission should consider all relevant factors when setting rates. In both cases, reviewing courts criticized the Commission for mechanical, formula-based rate setting that failed to consider all available information.

capital project. Moreover, Far West affiliates are profiting from the capital improvement project. The Company admits that its affiliates received $2.5 million dollars in construction contracts.[32] The Company further admits that H & S affiliates received approximately $244,424 for effluent removal.[33]

In FWWS 1, the Company sought interim rates to qualify for low-cost, long-term funding from WIFA. In this case, Mr. Capestro claims he is unable to procure lower interest rate loans or stimulus funds.[34] In FWWS 1, RUCO recommended interim rates to bring the Company to a DSC ratio of 1.5.[35] In this case, the Company's DSC ratio in 2008 was already 1.49%.

The Commission decides each case on the record before it. The Company has not demonstrated that the Commission's decision in FWWS 1 binds the Commission to certain determinations in the current case. RUCO submits that FWWS 1 is not precedent and the Commission should judge each case on its own merits.[36]

The Company also asserts that Decision No. 70667 that provided interim rate relief to APS binds the Commission to approve interim rates in the instant case.[37] Again, the Company's position is contrary to established law.[38] Moreover, the two rate cases are factually distinguishable. APS is a publicly traded company, which sought interim rates to avoid a reduction in its bond rating or a downgrading of stock, which would inhibit its ability to raise equity funds and develop renewable energy sources as required by the Commission. In its ruling, the Commission specifically stated APS needed interim rates to ensure its access to

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[32] A-15, H & Developers, Payments for Construction
[33] T: 917
[34] T: 637
[35] *In the matter of Far West Water and Sewer*, Docket No. WS-03478A-99-0144, Decision No. 61833 dated July 20, 1999 at 6.
[36] T:1159.
[37] *In the matter of Arizona Public Service*, Docket No. E-01345A-08-0172, Decision No. 70667 dated Dec. 24, 2008.
[38] *Morris v. Ariz. Corp. Comm'n*, 24 Ariz. App. 454, 457, 539 P.2d 928, 931(1975).

capital funds to provide service, via renewable energy expansion as ordered by the Commission.

Here, Far West is not a publicly traded company seeking an equity infusion from the issuance of bonds or shares. Far West is a privately held utility owned by two shareholders who seek interim rates to avoid making an equity infusion. The Commission decides each case on the record before it. The Company has not demonstrated that the Commission's decision in APS binds the Commission to certain determinations in the current case. RUCO submits that the APS order is not precedent and the Commission should judge each case on its own merits.[39]

B. THE COMMISSION SHOULD NOT CONSIDER THE COMPANY'S CAPITAL BUDGET SHORT FALLS.

1. The management and/ or shareholders are responsible for the capital budget.

According to the Company, it owes past due balances of $3,350,933 to its vendors and needs $1,272,663 to complete the ADEQ compliance projects. In total, the Company claims it needs $4,623,566.[40] Mr. Capestro testified that without payment of the past due balances, with few exceptions, vendors would not complete remaining construction projects. Id. RUCO strongly objects to the imposition of interim rates to complete the Company's capital projects. The Company spent $3,739,247 on non-ADEQ Sewer and Water projects, which is roughly equal to the amount the Company owes in accounts payable.[41] If the Company had not misspent the IDA funds on non-ADEQ projects, the Company would have sufficient funds available to manage the remaining work. Id.

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[39] T: 1159.
[40] A-11 Summary of Amounts Owed and Necessary to Complete.
[41] R-31 Non-ADEQ Expenditures, T: 1074-1076

The Company claims that the shortfall in its capital funds constitutes an emergency requiring approval of interim rates. RUCO disagrees for two reasons. First, RUCO asserts and Staff concurs that the Company's capital budget is the responsibility of shareholders.[42] Gerald Becker, Staff's witness, testified that capital budgets are the responsibility of shareholders and should not be used as a basis for determining interim rates.[43] As Mr. Becker explained, operating budgets are the responsibility of ratepayers as they reflect the cost of service. Id. RUCO agrees with Mr. Becker and asserts that capital expenditures should not be funded at the expense of captive consumers.

RUCO also believes the Commission should disregard the Company's purported capital shortfalls because the shortfalls are a direct result of the shareholders' mismanagement and greed. In Decision No. 69950, the Commission approved the Company's $25.2 million IDA bond issuance.[44] The Commission authorized the indebtedness for three specific purposes: 1.) sewer system improvements necessary to comply with ADEQ Consent Orders; 2.) retire a 1999 WIFA loan; and 3.) retire other short term debt incurred in December 2006 to undertake emergency sewer plant upgrades and improvements necessary to comply with the requirements imposed by ADEQ.[45] The shareholders admittedly spent funds intended for the ADEQ projects on other non-ADEQ related projects. RUCO believes the Commission should deny the Company's request for interim rates to supplement the misspent capital funds. In no event should captive ratepayers be required to pay a 101 percent increase in interim rates to subsidize the shareholders' poor decision-making. Granting interim rates to backfill the

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[42] Typically, the capital budget and capital expenditures are the responsibility of management, but in this case the Far West management and its shareholders are the same because Far West is a closely held, developer owned utility.

[43] T: 1187-1195

[44] R-1, Application (Financing), Docket No. WS-03478A-07-0442, Decision No. 69950 at 2.

[45] Id.

misused funds would only serve to reward Far West for its circumvention of Decision No. 69950.

The Company asserts that the Commission should ignore the shareholders' misdeeds in determining the emergency. RUCO disagrees. If the Commission is going to consider the Company's capital budget shortfalls, it should also consider the manner in which shareholder mismanagement, negligence and greed contributed to the shortfalls.[46] RUCO believes and the record reflects that the capital budget shortfalls arose from the Company's repeated errors motivated by greed, a failure to prioritize and mismanagement.

a. Mismanagement and Poor Prioritization

The Company asserts that during the summer of 2008, it became aware of cost overruns and the need for additional funding.[47] The Company's characterization of "cost overruns" implies that its capital budget shortfalls arose from increased construction costs. Id. The implication is false. In fact, the Company's initial difficulties arose from its failure to abide by Decision No. 69950. The Company used $1,883,593 of the IDA proceeds to fund water related projects (including Design & Construction of the 44th Street Water Main Project) which were not priorities authorized by the Commission's order.[48] In addition, the Company spent $357,059 on software programs for asset management and mapping, billing and fuel dispensing.[49] The Company also spent $379,487.51 on a Fortuna Road improvement project. Id. As the Company's engineer admits, the Fortuna Road project was not an ADEQ project.[50] The Company made the expenditures despite the clear language of the Commission's order

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[46] T: 1118
[47] T: 489
[48] A-8 at 7
[49] Id. Note: Asset Management, Mapping, Billing and Fuel Dispensing software expenses related to water excluded.
[50] T: 773-74.

directing the Company to spend the IDA funds on ADEQ compliance. If the Company had not spent $2,620,139 on the non-priority projects, the Company would have more than sufficient funds to cover the $1,200,000 needed to complete the ADEQ related sewer projects. Id. The Commission should not reward the Company with interim rates to pay for capital budget shortfall created by mismanagement.

b. Greed

Many of the Company's difficulties arise from the shareholders' greed. For example, the Company misdirected the ADEQ compliance funds to design larger plants at Section 14 Wastewater Treatment Plant, ("Section 14"). According to the Company's witness, prior to entry of the ADEQ Consent Order, Section 14 was designed as 150,000 gallon per day ("gpd") plant and Palm Shadows was designed as a 200,000-gpd plant.[51] As part of the ADEQ compliance order, the Company was required to expand Section 14 to take the wastewater from Palm Shadows. According to the Company, the peak flows of Palm Shadow and Section 14 occurs in the winter months between November and February of each year.[52] The **combined** peak flows of Palm Shadows and Section 14 was 209,000 gpd in 2004/2005 and 274,000 in 2005/2006. Id. Nonetheless, the Company redesigned Section 14 for 2.0 million gallons per day ("mgd") and built it to 1.3 mgd. The Company claimed it built the plant to 1.3 mgd at the behest of ADEQ. However, ADEQ's compliance director, Cynthia Campbell testified that she negotiated the consent order and the Company offered to build the plant to 1.3 mgd and ADEQ accepted.[53] She indicated that ADEQ did not demand 1.3 mgd design flow for Section 14. Id. She further testified that the compliance department seeks design flow

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[51] R-9 Direct Testimony of Gary Lee.

[52] R-17Individual Aquifer Protection Permit Application for Section 14 dated December 31, 2008 seeking an increase from 1.3 mgd to 2.0 mgd.

[53] T: 446-447.

sufficient to cover current flows and any previously granted "capacity assurances." "Capacity assurances" are letters provided to property owners by utilities agreeing to provide services for water, sewer or refuse disposal to the property owner seeking to subdivide property.[54] In Arizona, a property owner cannot legally sell subdivided land unless the owner can demonstrate capacity assurances for water, sewer and refuse disposal services.[55]

The Company asserts it needed 1.3 mgd design flow and ultimately 2.0 mgd design flow to provide for previously granted capacity assurances. Ms. Campbell indicated that under ADEQ rule, a utility could not grant additional capacity assurances until it has ADEQ approval for permitted facilities.[56] In this instance, the Company's permitted capacity at Section 14 was 150,000 gpd until October 2008. Accordingly, the Company should not have granted capacity assurances beyond 150,000 gpd until ADEQ approved the Section 14 permits.

Clearly, current ratepayers at Palm Shadows and Section 14 do not need a 1.3 to 2.0 mgd plant to meet current combined peak flows of 274,000 gpd. This begs the question of why the Company would need 1.0 to 1.7 mgd more in capacity at Section 14. The answer is greed. In fact, the Company designed the plant to 2.0 mgd and built the plant to 1.3 mgd to accommodate future development. Notably, Far West affiliates own many of the future real estate developments in the area. These developments include Schechert Estates, the Ravines 1, 2 and 3, Las Barrancas 2 and 3 comprising a total of 940 proposed residential lots. Moreover, some of the future developments are on land previously owned by Far West such at Las Barrancas 1 and Arroyo de Fortuna 1-5. Although the Company's witness, Mr. Capestro, initially denied any connection with Las Barrancas or Arroyo de Fortuna, he ultimately acknowledged that Far West affiliates own or previously owned the land, which includes an

[54] Arizona Administrative Code R18-9-E301(C) (1)
[55] A.R.S. §§32-2181, 48-6411.
[56] T: 440. See also A.A.C. R18-9-E301

additional 505 lots.[57] RUCO believes the affiliation is important because to sell raw land with subdivision capacity, the affiliates needed capacity assurances from Far West. Far West could not give capacity assurances without permitted capacity.[58] ADEQ permitted Section 14 for 150,000 gpd. To meet the demands of Section 14 and Palm Shadows at their combined peak flows, the Company needed 350,000 gpd.[59] To garner the best price for land they wished to sell and to develop subdivisions on land they wished to retain, the affiliates needed additional capacity at Section 14. Without the over sizing of the Section 14 plant, the affiliates would not be able to sell the raw land with subdivision development capacity or develop their own subdivisions. Dictated by greed, Far West shareholders and managers designed Section 14 for 2.0 mgd to meet the needs of their affiliates.[60] The Company spent at least $420,000 to engineer the expansion of Section 14 from 1.3 mgd to 2.0 mgd.[61] Mr. Capestro asserts Far West paid the engineering costs before it knew of the capital budget shortfalls. Id. His statement is false. According to the Company's report on IDA construction distributions, the engineering expenses associated with the expansion of Section 14 occurred between August 19, 2008 and September 8, 2008, after the Company admittedly knew of the capital budget shortfalls for the ADEQ mandated projects.[62] Moreover, to expand the plant from 671 gpd to 2.0 mgd, the Company spent $200,000 of IDA funds to purchase land from Schechert Trust, an affiliate to build three vadose recharge wells.[63] Notably, they spent the IDA funds on this

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[57] T: 161-162, 520-22.
[58] Arizona Administrative Code, R18-9-E301(C) (1).
[59] Include 280,000 gpd existing peak flow plus 20% engineering margin as recommended in ADEQ Bulletin 11= approximately 350,000 gpd.
[60] T: 522.
[61] T: 513-514.
[62] A-8 Request for Disbursement at
[63] According to the Company's engineer, Gary Lee, ADEQ permitted Section 14 for 1.3mgd in phases. In Phase 1, ADEQ permitted a design flow of 671,000 gpd due to inadequate land or wells in which to place excess effluent. ADEQ required additional recharge wells because the affiliate's golf course ponds were too saturated to accept additional effluent.

non-ADEQ project on October 14, 2008 well after they were aware of the capital budget shortfalls.[64] The Company built the plant to 1.3 mgd having spent $4,146,672 to date and owing an additional $2,416,002.[65] The shareholders are motivated by self-interest and greed. The Commission should not compel the ratepayers to fund the shareholders' personal gain.

The ADEQ order requires nominal changes to the Marwood plant.[66] Far West made significant expenditures to redirect Marwood flow to Section 14. The question is why. The answer is shareholders' self-interest and greed. Far West shareholder, Paula Capestro, is developing 460 residential homes at El Rancho Encantado with her husband, Andrew Capestro.[67] In order to develop the El Rancho Encantado, the Capestros needed capacity. Their property is located in the Marwood plant service area.[68] There was no capacity at Marwood to accommodate the additional development. To ensure they could develop El Rancho Encantado, the shareholders overbuilt Section 14 to accommodate redirected flow from Marwood. The shareholders used $607,381.75 of the IDA funds to develop the infrastructure (Paula Street Lift Station) to redirect flows from Marwood to Section 14.[69] In 2007, Far West misspent $200,000 on this non-ADEQ project to purchase land from an affiliate.[70] Far West spent an additional $400,000 of IDA funds on this non-ADEQ project between August and September 2008, after it was aware of capital budget shortfalls impeding completion of the ADEQ mandated improvements. Id at 5-6.

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[64] A-8 Disbursement Requests at 6.
[65] A-8 Disbursement Requests and A-11 Summary of Amounts Owed and Necessary to Complete.
[66] R-1, Financing Application, attachment 3.
[67] T: 520 and R-10 Company's response to RUCO DR 5.07
[68] A-20, Service Area map. Note: Although the Company lists El Rancho Encantado in the Marwood Service area, as of October, 2007, El Rancho Encantado was not listed in the Marwood CC&N. See R-29.
[69] A-8 Disbursement Requests.
[70] A-8 Disbursement Requests at 7.

In addition to these expenditures, Far West also paid Gary Lee to engineer a low-pressure system for El Rancho Encantado. Gary Lee, the Company's engineer submitted testimony in support of the Company's request for permanent rates.[71] In his testimony, he admits designing the low-pressure sewage systems at two subdivisions for Far West. Although Mr. Capestro testified, that Far West did not pay the engineer to design low-pressure systems in private subdivisions, the summary of Request for Disbursements include a disbursement of $257,000 on November 6, 2006 to Coriolis for engineering the "El Rancho Encantado LPS."[72] Mr. Capestro acknowledges the disbursement was an error and testified that the funds were returned, but there is no subsequent entry reflecting the reimbursement of the funds. Id. The Commission should not reward the Company for spending financing available for ADEQ compliance on non-ADEQ related projects. Granting interim rates in these circumstances is offensive to the principles of fairness and equity.

Prior to the ADEQ order, Del Oro had a design flow of 300,000 gpd. Pursuant to the ADEQ order, the Del Oro plant had to absorb 40,000 gpd redirected flows from Del Rey and Del Royal.[73] According to the Company, the total average monthly flow at Del Oro under its new permit is 127,500 gpd.[74] Yet, the Company redesigned Del Oro for a flow of 495,000 gpd. Id. Mr. Capestro admitted the additional flow would permit the addition of 1,780 new residences.[75] It is inequitable to expect ratepayers to pay a 101 percent rate increase to backfill the capital shortfalls created by the shareholders' mismanagement and greed. The

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[71] R-9 Direct Testimony of Gary Lee
[72] A-13 Requests for Disbursement No. 8B dated November 6, 2006.
[73] R-1 Financing Application, attachment 3.
[74] R-21 at 16.
[75] R-12 Minutes of Mesa del Sol Property Owners' Association of Annual Membership Meeting on February 19, 2008

costs for future development should fall upon the subdivision developers, (i.e. Far West affiliates) and future ratepayers.

2. Shareholders' have placed their interests above the needs of the ratepayers.

The Company's witness, Mr. Capestro testified that Far West needs $1.2 million to complete the ADEQ projects and has $3.4 million in accounts payable to its ADEQ project vendors. At the same time Far West claims to have capital budget deficiencies preventing payment of ADEQ project vendors, it has made large payments to H & S and its shareholders. During 2007, one year prior to filing the request for interim rates, Far West paid shareholder affiliates $1,462,684 million dollars.[76] Moreover, in 2008, Far West paid shareholders affiliates $920,651 for accounts payable and repaid, in full, a long-term loan of $571,244 owed to shareholders. In total, between December 31, 2007 and December 31, 2008, Far West paid its affiliates approximately $1.4 million.[77] The amount of the payments raises the issue of why shareholders prioritized payments to themselves before payments to third party vendors. RUCO believes the answer is greed. As Mr. Rigsby concisely stated:

> If these [shareholders] thought they could solve the problem with other people's money, I think probably they would if they thought [an interim rate case] was a way they could do this without having to invest their own funds... [78]

The shareholders placed their interests above the interests of the ratepayers. The result is a capital budget shortfall. The Commission should not reward the shareholders with revenue from ratepayers to compensate the capital budget drained by the selfish interest of its shareholders.

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[76] R-18, Response to Staff DR 1.1 at 5.
[77] T: 1189
[78] T: 1107

CONCLUSION

The Commission should deny the request for interim rates because on a total company basis the Company has sufficient cash flow to pay its operational expenses and debt service. In making this determination, the Commission should not consider extraordinary expenses such as the cost of effluent hauling or accounts payable to Yuma Irrigation for water the ratepayers do not use. The Company is solvent and there is no emergency necessitating approval of interim rates. Likewise, there is no legal precedent compelling a 101 percent increase in rates.

Capital budgets are the responsibility of management and/or shareholders. As such, the Commission should not grant interim rates to backfill the shareholders' capital budget shortfall, particularly when the shortfall results primarily from the shareholders' mismanagement, greed, non-compliance with a Commission order and a failure to prioritize. Accordingly, RUCO hereby requests the Commission deny the request for interim rates.

RESPECTFULLY SUBMITTED this 8th day of July 2009

Dan Pozefsky, Chief Counsel
Michelle L. Wood, Counsel

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ATTACHMENT A

-03478A-08-0608

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AZ CORP COMMISSION
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MAR 17 2009
By

March 16, 2009

To: Arizona Corporation Commission
Attn: Commissioners
1200 W. Washington Street
Phoenix, AZ 85007

From: Gerald R. Frye

Subject: My letter dated March 12, 2009 concerning Palm Shadows Wastewater Treatment Plant, Far West Water & Sewer Company -Yuma, AZ

Dear Chairman Mayes:

Due to my ongoing review of the Palm Shadows Plant, as it relates to the Vista Del Sol subdivision, I want to inform you of my current findings and related information.

The information on Item A. 1. of my March 12, 2009 letter, needs more history added. Along with ADEQ's authorization of the Palm Shadows Wastewater Treatment Plant, Yuma County also authorized the Plant by a "Special Use Permit". And, the city of Yuma rezoned the land for "the operation of a wastewater treatment plant" (see attached Development Agreement). So, it appears those agencies, as well as ADEQ, are responsible for the doomed Plant being constructed at that site and, they should be referenced in Item A. 10. of that letter. Therefore, in my opinion, those agencies are responsible for the $500,000 +/- Palm Shadows Wastewater Treatment Plant failure (paid for by subdivision property owners) and, they should be responsible of correcting the problem. Like connecting the cities West Dunes facility, etc.

The following is another prime example of Far West's classic property development approach. The subdivision developer, who was the President of Far West Water & Sewer Company, was also the "licensed real estate broker" for the Vista Del Sol subdivision (see attached Purchase Contract & Receipt). So, (1) subdivision lots completely sold, very good planning on their part. (2) Palm Shadows Wastewater Treatment Plant failed, no planning at all. (3) Customers complain about odors and still 5 lot owners cannot build due to building moratorium . Plus, Far West wants to increase sewer fees by 214% to correct these and other problems. Buyers Beware. What's wrong with this picture?

Arizona Corporation Commission
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MAR 17 2009
DOCKETED BY

A

I've taken time to look through news paper articles and other information available on the ongoing Far West sewer disaster. If you look at them "one by one" as they developed, they don't seem too outrageous. But, if you look at them in total as "the big picture" it is very depressing that something like this could continue for so long. The right hand didn't know what the left hand was doing. Some of my attachments are statements made by various agencies concerning Far West Water & Sewer Companies state of affairs.

Finally, my assessment of Far West's problems is becoming more clear there is something along the lines of the "Good Old Boy" syndrome that has been taking place in the Foothill Area for some time. All in the name of development and tax revenues.

Sincerely,

Gerald R. Frye
9565 E. 33rd Street
Yuma, AZ 85365

cc: U.S. Senator John McCain
Arizona Governor, Jan Brewer
Arizona Department of Environmental Quality, Director
Arizona Residential Utility Consumer Office, Director
City of Yuma, Mayor
County of Yuma, Administrator

Purchase Contract
and Receipt

Palm Shadows Partnership
1334 South 5th Avenue
Yuma, Arizona 85364
(928) 782-1801

Yuma, Arizona DATE 16-Mar-2002

RECEIVED FROM: [redacted], husband and wife, CPWROS

The Sum of Five hundred dollars DOLLARS ($ 500.00) In the form of: personal check

As earnest money and part purchase price of the following described property, situated in the County of Yuma, State of Arizona, to wit:

Lot 419 , Vista Del Sol Unit #4, for the full purchase price of

Twenty eight Thousand Five Hundred Fifty DOLLARS ($ 28,550.00)

JACOBSON COMPANIES BY Ruth Wiseman

The balance of the purchase price to be paid as follows, to wit:

$ 28,550.00 by above deposit with YUMA TITLE & TRUST

$ 500.00 Earnest deposit

$ 28,050.00 Cash at close of escrow from loan with Bank of America

Interest on deferred payments at the rate of _____ percent per annum, from _____, payable

IT IS HEREBY AGREED: First, that in the event said purchaser shall fail to pay the balance of said purchase price, or complete said purchase as herein provided, the seller may demand specific performance of this contract, or may retain the amount paid herein as liquidated and agreed damages, as he may elect.

Second: The purchaser and seller agree that if the title to the above property be defective, ninety days from this time will be given the seller, or his agent, to perfect same. If said title can not be perfected within said time limit earnest money receipt for herein shall, upon demand of the purchaser, be returned to the purchaser and this contract canceled.

Third: That the evidence of title is to be a Title Insurance Policy issued by YUMA TITLE & TRUST insuring the purchaser in the full amount of the purchase price shown herein, and to be issued and paid for by the seller; said title insurance policy to show title to said premises to be subject to the usual exceptions contained in the regular form of owner's policy of title insurance in use by YUMA TITLE & TRUST and subject to building and other restrictive covenants of record pertaining to the use of said premises and encumbrances, taxes and assessments or other matters affecting said property as follows: None

Closing shall be no later than 1-Jun-2002 , subject to extensions set forth in escrow instructions and the cancellation provision thereof.

Fourth: It is understood and agreed that the purchaser is of legal age and that said property has been inspected by the purchaser or the purchaser's duly authorized agent; that the same is, and has been, purchased by the purchaser as the result of said inspection and not upon any representation made by the seller, or any selling agent, or other agent of the seller, and the purchaser hereby expressly waives any and all claims for damages because of any representation made by any person whomsoever other than as contained in this agreement, and the seller or his agent shall not be responsible or liable for any inducement, promise, representation, agreement, condition or stipulation not specifically set forth herein.

Fifth: That the taxes, insurance, rents, etc. affecting said premises shall be prorated to the close of escrow.

Sixth: This contract shall become binding only when executed by the purchaser and by the seller, and shall be in force and effect from the date of such execution.

Seventh: Time is declared to be the essence of this contract.

Eighth: This earnest money is to be deposited with YUMA TITLE & TRUST and all other funds to be paid by the parties hereto are to be paid in escrow to YUMA TITLE & TRUST and the parties hereto agree to pay, in equal portions, the fee for escrow services in connection with this transaction; and the purchaser agrees to pay the costs of recording any instruments which directly convey title to the purchaser which evidence the rights of the purchaser in there premises, or which evidence any deferred balance due upon this purchase.

Ninth: The parties hereto agree also (within 10 days from the date of acceptance hereof by seller) to execute escrow instructions to YUMA TITLE & TRUST upon its ordinary form for the guidance of said company in the handling of this transaction; providing the terms of said escrow instructions do not conflict with the terms and conditions hereof.

Tenth: The seller agrees to deliver or cause to be delivered to YUMA TITLE & TRUST all instruments which are required to carry out this contact and to cause said Title Company to issue the insurance policy herein provided for; and the conveyance of these premises by the seller to the purchaser shall be by warranty deed, subject to the conditions of this agreement.

Eleventh: This deposit is accepted subject to prior sale and subject to approval of seller.

THE PURCHASER MUST BE GIVEN A COPY OF THE PUBLIC REPORT OF THE ARIZONA DEPARTMENT OF REAL ESTATE PRIOR TO THE SIGNING OF THIS DOCUMENT.

IT IS UNDERSTOOD THAT DONALD E. JACOBSON AND BRENT H. WEIDMAN ARE LICENSED REAL ESTATE BROKERS DEALING AS PRINCIPLES HEREIN.

THE PURCHASER OR LESSEE HEREUNDER HAS THE LEGAL RIGHT TO RESCIND (CANCEL) THIS AGREEMENT WITHOUT CAUSE OR REASON OF ANY KIND AND TO THE RETURN OF ANY MONEY OR OTHER CONSIDERATION UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY THE PURCHASER OR LESSEE EXECUTED SUCH AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION TO THE SELLER. FURTHER, IF THE PURCHASER OR LESSEE DOES NOT INSPECT THE LOT OR PARCEL PRIOR TO THE EXECUTION OF THE AGREEMENT, THE PURCHASER OR LESSEE SHALL HAVE A SIX-MONTH PERIOD TO INSPECT THE LOT OR PARCEL, AND AT THE TIME OF INSPECTION SHALL HAVE THE RIGHT TO UNILATERALLY RESCIND THE AGREEMENT.

We (I) the undersigned certify the we have inspected the lot(s) to be purchased before signing this contract.

We (I) agree to purchase the above described property on the terms and conditions herein stated, provided acceptance of this agreement by seller, or his authorized agent is made on or before 16-Mar-2002

Seller - Palm Shadows Partnership Date

By: Beth Mileeman
Agent

[redacted] 3-16-02
Purchaser Date

[redacted] 3-16-02
Purchaser Date

61280 Blakely Road, Bend, OR. 97702
Purchaser's Address

(541) 382-6035 home
Purchaser's Phone Number

BASE PRICE	$	22,500.00
FENCE		1,500.00
SEPTIC PACK		
GRADE AND GRAVEL		4,550.00
OTHER		
TOTAL	$	28,550.00

City of Yuma

YUMA COUNTY RECORDER
SUSAN MARLER

FEE #: 1998 – 293
11/04/1998 11:39 PAGES: 000
FEES: 4.00 4.00 .00 .00
REQ BY: CITY OF YUMA
REC BY: ELIZABETH POST

EXHIBIT A

DEVELOPMENT AGREEMENT

Vista del Sol Recreational Vehicle Subdivision
West of Avenue 10E, Highway 80

THIS AGREEMENT, made and entered into, pursuant to Arizona Revised Statutes (A.R.S.) § 9-500.05, by and between Palm Shadows Partnership ("OWNER"), and the CITY OF YUMA ("CITY"), a municipal corporation of the State of Arizona.

RECITALS

The CITY adopted its General Plan in 1983, and the use and development of the property is consistent with the goals and objectives of the City of Yuma General Plan, as amended, and

The OWNER is owner of real property, Assessor's Parcel No. 112-20-040, ("PROPERTY") located in unincorporated lands which is territory that is desired by the CITY to be annexed into the boundaries of the CITY, and

The CITY acknowledges that Jacobson Companies has been planning, for several years, the design and construction of the Vista del Sol subdivision in accordance with Yuma County zoning, subdivision, and construction standards and that annexation may adversely impact the financial feasibility of the project by the requirement of imposing City standards for development, and

The OWNER desires certain assurances and/or commitments from the CITY upon annexation.

THEREFORE, in consideration of the above recitals, the parties agree as follows:

I. The OWNER agrees to consent to annexation of PROPERTY into the City of Yuma pursuant to A.R.S. 9-471, and to utilize City of Yuma water to serve the project, and not promote the expansion of the Far West Water Company's water service area into the City of Yuma's water service area

II. The OWNER agrees to provide to the CITY, at no cost, a fifteen foot utility easement along the Stetson Avenue alignment, extending across the entire width of the property.

III. Upon annexation the CITY agrees to rezone the PROPERTY, at no cost to the OWNER, the County C-2 zoned property to the City's B-2 zoning district as set forth in Section 111 in the CITY's Zoning Code, and the remainder of the PROPERTY to CITY's RVS zoning district as set forth in Section 075 in the CITY's Zoning Code. The CITY also agrees that once the PROPERTY is rezoned to the City's RVS zoning district, one single-family residence per parcel, limited to either a recreational vehicle, manufactured home, or site built home is permitted. However, if a parcel has an area of at least six thousand square feet one additional recreational vehicle may occupy the parcel, in accordance with the County's RVS zoning

district regulations.

Additionally, the CITY agrees to rezone the south six hundred and sixty feet of the PROPERTY to the CITY's C-2 zoning district for the operation of a wastewater treatment plant, as authorized by a Special Use Permit granted by Yuma County.

IV. Upon annexation the CITY agrees that the following development standards on the planned Vista del Sol subdivision plat are to be considered grandfathered and acceptable to the CITY, subject to requirements to comply with all other applicable City, County, State or Federal laws, regulations or rules

a. Street Widths. The existing County standards of fifty-foot width right-of-way and thirty-eight foot pavement width for local streets will prevail. The existing County eighty-foot right-of-way width for mid-section line roads will prevail and no median will be required.

b. Curb, Gutter, and Sidewalks. The existing County standards of rolled curb and gutter exclusive of any sidewalk requirement will prevail.

c. Retention Basin Slope. The existing County standard of a 3:1 retention basin slope will prevail.

d. Future Pro Rata Fees. In the event the City establishes a Pro Rata plan for the East Mesa area, the Vista del Sol subdivision will be exempt from any Pro Rata fees or credits, with the exception of fire Pro Rata fees at a fee of $1,044/ac *(same as Cielo Verde and The Lakes of Yuma)*.

V. The CITY agrees that the plat layout and design for Vista del Sol Recreational Vehicle Subdivision as presented to the CITY on the date of this Agreement (Exhibit 1) is acceptable as prepared in conformance with Yuma County subdivision regulations. Additionally, the CITY agrees to recognize the Special Use Permit issued by Yuma County for the wastewater treatment plant to be located on the PROPERTY.

VI. This Agreement will commence upon the date of its execution, and will terminate when the obligations of the parties with respect to the improvements and use of the property contained in this Agreement are fully complied with and the parties mutually provide for termination.

VII. All notices, demands or other communications must be in writing and are deemed to duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

CITY:	City Administrator City of Yuma 180 West First Street Yuma, Arizona 85364	AGENT:	Bruce Jacobson Jacobson Companies 1334 S. 5th Avenue Yuma, Arizona 85364

If either party changes address they must give written notice to the other party. Notice of

change of address is deemed effective five (5) days after mailing by the party changing address.

VIII. This agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

IX. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the other party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

X. The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The parties must institute and maintain any legal actions or other judicial proceeding arising from this Agreement in a court of competent jurisdiction in the Yuma County, Arizona.

XI. If either party brings an action or proceeding for failure to observe any of the terms, or provisions of this Agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration, and collection expenses, including, but not limited to, witness fees, court costs and reasonable attorney fees.

XII. This Agreement contains the entire agreement between the parties, and no oral or written statement, promises or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed, and endorsed by the parties.

WITNESSED, the parties executed this Agreement through their authorized representatives on 28th day of October, 1998.

APPROVED:
CITY OF YUMA

By Joyce A. Wilson
Joyce A. Wilson
City Administrator

BRUCE JACOBSON
DONALD JACOBSON
BRENT WEIDMAN

By Bruce Jacobson
Bruce Jacobson
Donald Jacobson
Donald Jacobson By Bruce Jacobson AI
Brent A. Weidman
Brent Weidman

ATTEST:

By Edna M. Martin, Deputy for
Brigitta K. Stanz
City Clerk

APPROVED AS TO FORM:

By Steven W. Moore
Steven W. Moore
City Attorney

29381

ATTACHMENT B

STATE OF ARIZONA
CORPORATION COMMISSION
CORPORATION ANNUAL REPORT
& CERTIFICATE OF DISCLOSURE

DUE ON OR BEFORE 10/09/1999 FILING FEE $45.00

The following information is required by A.R.S. §10-1622 & §10-1624 for all corporations organized pursuant to Arizona Revised Statutes, Title 10. The Commission's authority to prescribe this form is A.R.S. §10-131 A. & §10-1624 A. YOU MUST SIGN OR SUBMIT THE REPORT FORM. Make changes or corrections where necessary. Information for this report should reflect the current status of the corporation. See instructions for proper format. REFER TO THE INSTRUCTIONS ON PAGE 4.

1. FAR WEST WATER & SEWER, INC.
12496 S FOOTHILLS BLVD
YUMA, AZ 85367

RECEIVED
SEP 1 8 1998

Corporation File Number: [illegible] -0822286-8

Business Phone: _____
State of Domicile: ARIZONA
Type of Corporation: BUSINESS

2. - Arizona Statutory Agent: STEPHEN F SHADLEK
Street Address: 2260 S 4TH AVE #2000
(NOT P.O. BOX)
City, State, Zip: YUMA AZ 85364-

Use this box only if appointing a new Statutory Agent

I (Individual) or We, (corporation or limited liability company) having been designated the new Statutory Agent, do hereby consent to the appointment until my removal or resignation pursuant to law.

A.C.C. CORPORATIONS DIV
Signature of new Statutory Agent

Fee
Filing $
Microfilm $
Search $
Total $
FY98-99

PAID

3. Secondary Address:

JAN 4 6 1999

Address/Stat Agent Change per AR
Date: 1/1/99 Initials: Y/AL

DOCUMENTS ARE SUBJECT TO REVIEW BEFORE FILING

4. Check the one category below which best describes the CHARACTER OF BUSINESS of your corporation.

BUSINESS CORPORATIONS

1. __ Accounting
2. __ Advertising
3. __ Aerospace
4. __ Agriculture
5. __ Architecture
6. __ Banking/Finance
7. __ Carbon/Consulting
8. __ Construction
9. __ Contractor
10. __ Credit/Collection
11. __ Education
12. __ Engineering
13. __ Entertainment
14. __ General Consulting
15. __ Health Care
16. __ Hotel/Motel
17. __ Import/Export
18. __ Insurance
19. __ Legal Services
20. __ Manufacturing
21. __ Mining
22. __ News Media
23. __ Pharmaceutical
24. __ Publishing/Printing
25. __ Realtor/Broker
26. __ Real Estate
27. __ Restaurant/Bar
28. __ Retail Sales
29. __ Science/Research
30. __ Sports/Sporting Events
31. __ Technology/Computing
32. __ Technology/General
33. __ Telephone/Radio
34. __ Tourism/Convention Services
35. __ Transportation
36. X Utility
37. __ Veterinary Medical/Medical Care
38. __ Other _____

NON-PROFIT CORPORATIONS

1. __ Charitable
2. __ Educational
3. __ Educational
4. __ Club
5. __ Political
6. __ Religious
7. __ Social
8. __ Literary
9. __ Cultural
10. __ Athletic
11. __ Scientific/Research
12. __ Hospital/Health Care
13. __ Agricultural
14. __ Animal Husbandry
15. __ Homeowner's Association
16. __ Professional, commercial, industrial or trade association
17. __ Other _____

B

Page 2

4. CAPITALIZATION: (Business Corporations and Business Trusts are REQUIRED to complete this section.) Business trusts must indicate the number of transferable certificates held by trustees evidencing their beneficial interest in the trust estate.

Number of Shares/Certificates Authorized	Class	Series Within Class (if any)
100,000	Common	

Number of Shares/Certificates Issued	Class	Series Within Class (if any)
100,000	Common	

5. SHAREHOLDERS: (Business Corporations and Business Trusts are REQUIRED to complete this section.) List shareholders holding more than 20% of any class of shares issued by the corporation, or having more than a 20% beneficial interest in the corporation.

ROSE ☐

Name: H & S Developers, Inc. Name:

Name: Name:

7. OFFICERS: (If no changes since last report, check here __ and go on to Section 8.) See Attached List.

Name: BRENT WEIBRAN Name:

Title: PRESIDENT/CEO Title:

Address: Address:

Date taking office: 10-09-97 Date taking office:

Name: LYNN WAGNER Name:

Title: SECRETARY Title:

Address: Address:

Date taking office: 10-09-97 Date taking office:

8. DIRECTORS: (If no changes since last report, check here __ and go on to Section 9.)

Name: SANDRA GARCIA Name:

Address: PO BOX 65 Address:

TERREBONNE, OR 97760-

Date taking office: 10-09-97 Date taking office:

Name: Name:

Address: Address:

Date taking office: Date taking office:

Far West Water & Sewer, Inc.
Corporate Officers & Directors

OFFICERS:

Chairman of the Board: Dorothy Schoefert
4908 N. 77th Pl.
Scottsdale, AZ 85251
Date of Taking Office: 01/01/96

President: Hazel Waldman
1153 Tamarack Ave.
Yuma, AZ 85364
Date of Taking Office: 01/01/96

Vice President: Sandie Boulos
P. O. Box 65
Terrebone, OR 97760
Date of Taking Office: 01/01/96

Vice President: Paula Cipriano
P. O. Box 223081
Carmel, CA 93922
Date of Taking Office: 01/01/96

Secretary/Treasurer: Lynn Wagner
11439 E. 37th Lane
Yuma, AZ 85367
Date of Taking Office: 01/01/96

Directors:

Hazel H. Waldman
1153 Tamarack Ave.
Yuma, AZ 85364
01/01/96

Sandie Boulos
P. O. Box 65
Terrebone, OR 97760
01/01/96

Dorothy Schoefert
4908 N. 77th Pl.
Scottsdale, AZ 85251
01/01/96

Paula Cipriano
P. O. Box 223081
Carmel, CA 93922
01/01/96

Lynn Wagner
11439 E. 37th Ln.
Yuma, AZ 85367
01/01/96

Please Enter Corporation Name: Far West Water & Sewer, Inc./ Page 3

9. FINANCIAL DISCLOSURE (A.R.S. §10-1622.B & 10-2001.A.6)
Only nonprofit corporations must attach a financial statement (balance sheet including assets, liabilities and equity). All other forms of corporations are exempt from filing a financial disclosure.

10. CERTIFICATE OF DISCLOSURE (A.R.S. §10-1622.A.3 & 10-2005.A)
Has ANY person serving either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation been:

1. Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the execution of this certificate?
2. Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
3. Or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immediately preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:

(a) fraud or registration provisions of the securities laws of that jurisdiction, or
(b) the consumer fraud laws of that jurisdiction, or
(c) the antitrust or restraint of trade laws of that jurisdiction?

[redacted] YES ☐ NO ☒

If "YES", the following information must be included as an attachment to this report for each person subject to one or more of the actions stated in items 1. through 3. above.

1. Full name and prior names used.
2. Full birth name.
3. Present home address.
4. Prior addresses (for immediate preceding 7 year period).
5. Date and location of birth.
6. Social Security Number
7. The nature and description of each conviction or judicial action; the date and location; the court and public agency involved, and the file or cause number of the case.

11. STATEMENT OF BANKRUPTCY (A.R.S. §10-202.D.2)
Has ANY person serving either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 20% of the issued and outstanding common shares or 20% of any other proprietary, beneficial or membership interest in the corporation served in such capacity or held a 20% interest in any other corporation during the bankruptcy, receivership, or shortly preceding of the other corporation?

[redacted] YES ☐ NO ☒

[redacted] Chapter _____ Date Filed _____ Case Number _____

[redacted]

12. SIGNATURES

[redacted]

I DISCLOSE, UNDER PENALTY OF LAW, THAT ALL CORPORATE INCOME TAX RETURNS REQUIRED BY TITLE 43 OF THE ARIZONA REVISED STATUTES HAVE BEEN FILED WITH THE ARIZONA DEPARTMENT OF REVENUE.

I further declare under penalty of law that I (we) have examined this report and the certificate, including any attachments, and to the best of my (our) knowledge and belief they are true, correct and complete.

Name Brent E. Weldman Date [illegible] Name _____ Date _____

Signature X [signature] Signature _____

Title President Title _____

(Signature(s) must be duly authorized corporate officer(s) listed in section 7 of this report.)

ATTACHMENT C

STATE OF ARIZONA
CORPORATION COMMISSION
CORPORATION ANNUAL REPORT
& CERTIFICATE OF DISCLOSURE

DUE ON OR BEFORE 11/05/1998 FILING FEE $45.00

The following information is required by A.R.S. §10-1022 & §10-2201 for all corporations organized pursuant to Arizona Revised Statutes, Title 10. The Commission's authority to prescribe this form is A.R.S. §10-121.A. & §10-3145.A. YOUR REPORT MUST BE WRITTEN IN THE CORRECT FORMAT. Make changes or corrections where necessary. Information for the report should reflect the current status of the corporation. See instructions for proper format. REFER TO THE INSTRUCTIONS ON PAGE 4.

1. H & S DEVELOPERS, INC.
12488 FOOTHILLS BLVD
YUMA, AZ 85365

RECEIVED
SEP 18 1998
ARIZONA CORPORATION COMMISSION
CORPORATION DIVISION

Corporation File Number: -0060443-9
Business Phone: _____
State of Domicile: ARIZONA Type of Corporation: PROFIT

2. Arizona Statutory Agent -HENRY-SCHECHERT- Brant H. Weidman
Street Address: 12488-FOOTHILL-BLVD- 1153 Tamarisk Wave.
(NOT P.O. BOX)
City, State, Zip: YUMA AZ-85365- 85364

Use this box only if appointing a new Statutory Agent

Acceptance of appointment as new statutory agent (MUST consent to the appointment by signing below.)

I, (individual) or We, (corporation or limited liability company) having been designated the new Statutory Agent, do hereby consent to this appointment until my removal or resignation pursuant to law.

X Brant H. Weidman
Signature of new Statutory Agent

Accounting Use Only
Fee $ 45
Penalty $ PAID
Interest $
Specific $
Total $
FY98-99

3. Secondary Address: (Provide this information only if requested in the instructions for this section.)

4. Check the one category below which best describes the CHARACTER OF BUSINESS of your corporation.

BUSINESS CORPORATIONS

___ 1. Agriculture
___ 2. Advertising
___ 3. Aerospace
___ 4. Agriculture
___ 5. Automotive
___ 6. Banking/Finance
___ 7. Business/Consulting
X 8. Construction
___ 9. Contractor
___ 10. Credit/Collection
___ 11. Education
___ 12. Engineering
___ 13. Entertainment
___ 14. General Consulting
___ 15. Health Care
___ 16. Hospitality
___ 17. Import/Export
___ 18. Insurance
___ 19. Legal Services
___ 20. Manufacturing
___ 21. Mining
___ 22. Napa Valley
___ 23. Pharmaceutical
___ 24. Publishing/Printing
___ 25. Retailing/Wholesale
___ 26. Real Estate
___ 27. Restaurant/Bar
___ 28. Retail sales
___ 29. Science/Research
___ 30. Sports/Sporting Goods
___ 31. Technology (Computers)
___ 32. Technology (General)
___ 33. Television/Radio
___ 34. Tourism/Convention Services
___ 35. Transportation
___ 36. Utilities
___ 37. Wholesale Merchandise/Goods
___ 38. Other _____

NONPROFIT CORPORATIONS

1. ___ Charitable
2. ___ Benevolent
3. ___ Educational
4. ___ Civic
5. ___ Political
6. ___ Religious
7. ___ Social
8. ___ Library
9. ___ Cultural
10. ___ Athletic
11. ___ Scientific/Research
12. ___ Hospital/Health Care
13. ___ Agricultural
14. ___ Animal Husbandry
15. ___ Homeowner's Association
16. ___ Professional, commercial, industrial or trade association
17. ___ Other _____

C

Page 2

5. CAPITALIZATION: (Business Corporations and Business Trusts are REQUIRED to complete this section.)
Business trusts must indicate the number of transferable certificates held by trustees evidencing their beneficial interest in the trust estate.

Number of Shares/Certificates Authorized	Class	Series Within Class (If any)
4,000,000	Common	

Number of Shares/Certificates Issued	Class	Series Within Class (If any)
2850	Common	

6. SHAREHOLDERS: (Business Corporations and BUSINESS TRUSTS are REQUIRED to complete this section.)
List shareholders holding more than 20% of any class of shares issued by the corporation, or holding more than a 20% beneficial interest in the corporation.

NONE ☐

Name: Henry & Dorothy Schechert Trust
Name:
Name:
Name:

7. OFFICERS: (If no changes since last report, check here __ and go on to Section 8.) See Attached List →

Name: Brent Weidman
Title: President →
Address:
Date taking office: 8-01-94

Name: SANDRA BRADEN Sandra Braden
Title: VICE-PRESIDENT
Address: P O BOX 65
TERRESDONE, OR 97760-
Date taking office: 03-10-97

Name: LYNN WAGNER
Title: SECRETARY — Treasurer
Address: 11429 E 37TH LN
YUMA, AZ 85367-
Date taking office: 09-15-90

Name: LYNN WAGNER Paula Capestro
Title: ~~TREASURER~~ VP →
Address: ~~11429 E 37TH LN~~
~~YUMA, AZ 85367-~~
Date taking office: ~~09-15-90~~ 3-14-97

8. DIRECTORS: (If no changes since last report, check here __ and go on to Section 9.)

Name: PAULA CAPESTRO
Address: P O BOX 223081
YUMA, AZ 85322-
Date taking office: 03-17-97

Name: SANDRA BRADEN
Address: P O BOX 65
TERRESDONE, OR 97760-
Date taking office: 03-17-97

Name: BRENT H WEIDMAN
Address: 1153 TAMARACK AVE
YUMA, AZ 85364-
Date taking office: 08-01-94

Name: HENRY SCHECHERT →
Address: ~~12586 S FOOTHILLS BLVD~~
~~YUMA, AZ 85367-~~
Date taking office: ~~09-01-94~~

-0060443-9

H & S Developers, Inc.
Corporate Officers & Directors

OFFICERS:

Chairman of the Board: Dorothy Schechter
4508 N. 77th Pl.
Scottsdale, AZ 85251
Date of Taking Office: 09/13/90

President: Brent Waldman
1153 Tamarack Ave.
Yuma, AZ 85364
Date of Taking Office: 08/01/94

Vice President: Sandie Braden
P. O. Box 65
Tamiquea, OR 97760
Date of Taking Office: 03/14/97

Vice President: Paula Capestro
P. O. Box 222081
Carmel, CA 93922
Date of Taking Office: 03/14/97

Secretary/Treasurer: Lynn Wagner
11429 E. 37th Lane
Yuma, AZ 85367
Date of Taking Office: 09/15/90

Directors

Brent H. Waldman
1153 Tamarack Ave.
Yuma, AZ 85364
08/01/94

Sandie Braden
P. O. Box 65
Tamiquea, OR 97760
03/17/97

Dorothy Schechter
4508 N. 77th Pl.
Scottsdale, AZ 85251
03/14/97

Paula Capestro
P. O. Box 222081
Carmel, CA 93922
03/17/97

Lynn Wagner
11429 E. 37th Ln.
Yuma, AZ 85367
09/15/90

Profile Editor Corporation Name: H & S Developers, Inc. Page 3

9. FINANCIAL DISCLOSURE (A.R.S. §§10-1622.B & 10-2001.A.8)
Only nonprofit corporations must attach a financial statement (balance sheet including assets, liabilities and equity). All other forms of corporations are exempt from filing a financial disclosure.

10. CERTIFICATE OF DISCLOSURE (A.R.S. §§10-1622.A.8 & 10-2001.A)
Has ANY person serving either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation been:

1. Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the execution of this certificate?
2. Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
3. Or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immediately preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:

   (a) fraud or registration provisions of the securities laws of that jurisdiction, or
   (b) the consumer fraud laws of that jurisdiction, or
   (c) the antitrust or restraint of trade laws of that jurisdiction?

[redacted] YES ☐ NO ☑

IF "YES", the following information must be submitted as an attachment to this report for each person subject to one or more of the actions stated in Items 1. through 3. above.

1. Full name and prior names used.
2. Full birth name.
3. Present home address.
4. Prior addresses (for immediate preceding 7 year period).
5. Date and location of birth.
6. Social Security Number
7. The nature and description of each conviction or judicial order, the date and location, the court and public agency involved, and the file or cause number of the case.

11. STATEMENT OF BANKRUPTCY (A.R.S. §10-202.D.1)
Has ANY person serving either by election or appointment as an officer, director, trustee, incorporator and person controlling or holding more than 20% of the issued and outstanding common shares or 20% of any other proprietary, beneficial or membership interest in the corporation served in such capacity or held a 20% interest in any other corporation during the bankruptcy, receivership, or chapter reorganization of the other corporation?

[redacted] YES ☐ NO ☑

[redacted] Chapter _____ Date Filed _____ Case Number _____

[redacted]

12. SIGNATURES

[redacted]

I DECLARE, UNDER PENALTY OF LAW, THAT ALL CORPORATE INCOME TAX RETURNS REQUIRED BY TITLE 43 OF THE ARIZONA REVISED STATUTES HAVE BEEN FILED WITH THE ARIZONA DEPARTMENT OF REVENUE.

I further declare under penalty of law that I (we) have examined this report and the certificate, including any attachments, and to the best of my (our) knowledge and belief they are true, correct and complete.

Name Brent H. Weldman Date 9/15/08 Name _____ Date _____

Signature [signature] Signature _____

Title President Title _____

(Signature(s) must be duly authorized corporate officer(s) listed in section 7 of this report)