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BEFORE THE ARIZONA CORPORATIC
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COMMISSIONERS

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

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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 SURREBUTTAL
TESTIMONY OF BRIAN
HOUSEHOLDER

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

RESPECTFULLY submitted this 29th day of March, 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 29th day of March, 2013, with:

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

Arizona Corporation Commission
DOCKETED

MAR 29 2013

DOCKETED BY

Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Suite 2400
Phoenix, AZ 85004

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1 Copy of the foregoing hand-delivered
2 this 29th day of March, 2013 to:

3 Wesley C. Van Cleve
4 Legal Division
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 Robin R. Mitchell
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Michelle L. Wood
14 Residential Utility Consumer Office
15 1110 West Washington Street, Suite 220
16 Phoenix, Arizona 85007

17 Copy of the foregoing sent via first class mail
18 and e-mail this 29th day of March to:

19 Daniel W. Pozefsky, Chief Counsel
20 Residential Utility Consumer Office
21 1110 West Washington Street, Suite 200
22 Phoenix, Arizona 85007
23 E-mail: dpozefsky@azruco.gov

24 Craig A. Marks, Esq.
25 Craig A. Marks, PLC
26 10645 N. Tatum Boulevard
27 Suite 200-676
28 Phoenix, Arizona 85028
E-mail: craig.marks@azbar.org

Copy of the foregoing sent via first class
mail this 29th day of March to:

Robert C. Gilkey
Barbara S. Gilkey
14784 E. 49th Street
Yuma, Arizona 85367

1 Robert Rist
2 9593 E. 34th Place
3 Yuma, Arizona 85365

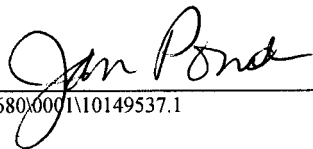
4 Rodney Taylor
5 Kim Taylor
6 11440 E. 26th Lane
7 Yuma, Arizona 85367

8 Seth Davis
9 Barbara Davis
10 2006 S. Arboleda Drive
11 Merced, California 95341

12 Jerry S. Durden
13 12789 E. 46th Street
14 Yuma, Arizona 85367

15 William B. Ott
16 Margaret Marie Ott
17 4232 Jane Street
18 Redding, California 96002

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Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Suite 2400
Phoenix, AZ 85004

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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 SURREBUTTAL TESTIMONY OF BRIAN HOUSEHOLDER ON BEHALF
OF INTERVENOR SPARTAN HOMES AND CONSTRUCTION, INC.**

MARCH 29, 2013

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EXECUTIVE SUMMARY

Brian Householder responds to the Rebuttal Testimony of Ray L. Jones dated March 8, 2013, and makes an additional recommendation that any funds of Far West that were improperly diverted to personally benefit the owners and/or affiliates of Far West should be paid back as a condition of implementing any approved rate increase.

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

2 A. My name is Brian Householder. My business address is 11858 Via Loma Vista, Yuma,
3 Arizona 85367. I am a developer and general contractor in Yuma County, Arizona, and
4 an owner of Intervenor Spartan Homes and Construction, Inc. (“Spartan”).

5 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS DOCKET?**

6 A. Yes. On February 13, 2013, my Pre-Filed Direct Testimony on Behalf of Intervenor
7 Spartan Homes and Construction, Inc. (the “Direct Testimony”) was filed in this docket.

8 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

9 A. I have reviewed the Rebuttal Testimony of Ray L. Jones on Behalf of Far West Water &
10 Sewer, Inc., dated March 8, 2013 (the “Rebuttal Testimony”). At page 30 of his Rebuttal
11 Testimony, Mr. Jones provides comments on my Direct Testimony. I would like to
12 respond to Mr. Jones’ comments.

13 **Q. WHAT COMMENTS DO YOU HAVE REGARDING THE JONES REBUTTAL**
14 **TESTIMONY?**

15 A. Mr. Jones asserts that I am reiterating matters addressed in the formal complaint in
16 Docket WS-03478A-08-0256. However, this comment is simply a subterfuge intended
17 to distract the Arizona Corporation Commission from the legitimate issues raised in my
18 Direct Testimony and to minimize my participation in this case. For some time now and
19 certainly throughout the course of this rate case, Far West Water & Sewer, Inc., (“Far
20 West”) has claimed that the company is in dire financial circumstances, literally on the
21 verge of bankruptcy. In his Rebuttal Testimony, Mr. Jones states that “Far West has
22 been struggling to meet its financial obligations for many years, and it continues today to
23 struggle to meet its financial obligations.”¹ In response to a recommended set of
24 conditions by Utilities Division Staff that must be satisfied by Far West before any
25 increase in rates may be implemented, Mr. Jones states that “[t]he Company would like
26 nothing more than to be able to report that they have all been resolved.”² He continues:

27 ¹ Rebuttal Testimony of Ray L. Jones at 25, lines 18-19.

28 ² *Id.* at p. 25, lines 15-16.

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In response to these proposed conditions, the Company has initiated contact and meetings with its creditors in an effort to arrange payment plans that could be implemented once rates are in effect. The Company hopes to complete these meetings with the goal of offering some specific post-rate implementation alternatives in its Rejoinder Testimony.³

However, Spartan is a creditor of Far West as a result of Decision 72594 issued in Docket WS-03478A-08-0256, and Far West has made no recent effort to contact me to arrange a payment plan. In fact, my past efforts to negotiate a mutually acceptable payment plan with Far West were almost entirely ignored. Thus, I question the sincerity of Far West when its witness states that the “Company would like nothing more than to be able to report that [the issues] have all been resolved.” Spartan is still waiting.

Q. DO YOU BELIEVE THAT FAR WEST HAS THE FINANCIAL ABILITY TO PAY ITS OUTSTANDING OBLIGATIONS?

A. It certainly appears based upon the evidence that Far West has been able to pay the obligations owed to its affiliates and owners over the years. Data requests and other documents reviewed in this case substantiate my position. The owners of Far West have a lengthy track record of paying themselves first while ignoring payments to other parties and contractors which have performed work for Far West. Evidence of this is discussed in RUCO’s July 8, 2009, Reply Brief in Docket WS-03478A-08-0608 that was attached as Attachment 1 to my Direct Testimony. I also have personal experience which supports my position.

Q. CAN YOU PROVIDE SPECIFIC EXAMPLE EXAMPLES?

A. Yes. Spartan presented evidence in Docket WS-03478A-08-0256 (Spartan’s formal complaint case against Far West) which showed that in the mid-2000s, developers in Yuma County paid water and sewer infrastructure fees totaling more than \$500,000 to H & S Developers instead of paying those fees to Far West. H & S Developers is an affiliate of Far West, and H & S Developers should never have received those payments. Mr. Capestro testified in the complaint case that there were written agreements between

³ *Id.* at p. 26, lines 13-16.

1 the developers, H & S Developers and Far West which permitted the payments to bi-pass
2 Far West. However, notwithstanding a specific request to produce those agreements
3 from the administrative law judge in the complaint case, Far West never produced any
4 agreements.

5 **Q. DO YOU HAVE ANOTHER EXAMPLE?**

6 A. In 2008-2009, Far West was seeking a rate increase and documents and evidence show
7 that its affiliate, H & S Developers, and Andy Capestro were each paid substantial
8 amounts of money. It is my understanding that Mr. Capestro is not licensed to practice
9 law in the State of Arizona, yet Far West has paid him nearly \$1 million dollars in Legal
10 Expense & Management Fees. These payments to an affiliate and to Mr. Capestro are
11 quite concerning. With little explanation around the expenditures, I have concerns that
12 Far West may have overpaid for the services that were provided by its affiliate and by
13 Mr. Capestro.

14 **Q. ARE THERE OTHER EXAMPLES OF SELF DEALING?**

15 A. Yes. I have reviewed Far West's responses to various data requests in this case and I
16 have found financial indiscretions in every one of them. They support my contention
17 that the owners of Far West have had the ability to pay company obligations but have
18 elected to pay themselves ahead of others. The following examples illustrate my point:

- 19 1. Far West Unpaid Liabilities – Payables & Receivables to Related Parties lists a
20 2011 loan payable to Schechert Trust of \$1,144,257.00. From 7/11/2011 to
21 12/3/11, the Schechert Trust was paid \$1,279,500. How were these payments
22 made at the very time that Far West was in its self-described dire financial
23 circumstances? And why did the owners apparently pay their trust \$135,243
24 more than the loan amount? Far West has indicated that it does not have written
25 loan agreements. Is this one of the unwritten loan agreements? If there is no
26 record of a loan agreement and no proof that Far West owes the debt, then the
27 entire \$1,279,500 has a huge effect on the rate base.
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2. Additionally, from 12/29/10 to 12/20/11 the owners paid H & S Developers \$480,500 in operating funds. Where is the evidence that Far West owes H & S developers this money? Absent such proof, If there is no proof then this has a huge effect on the rate hearing.
3. The Schechert Trust received \$97,527.00 in main extension agreement refunds in 2010 and 2011. Far West has not made the most recent main extension refund payment owed by Spartan in August last year.
4. Also, from 2/7/11 to 3/2/11, Mr. Capestro received fuel expense reimbursement of \$3,600. The size of this reimbursement is questionable. Assuming gasoline at \$4 per gallon and mileage of 10 miles per gallons, that represents 9,000 miles in a 30-day period. Far West should explain this reimbursement.
5. Data Request FWS DR 2 GB 2-1 3 Cash Receipts and Disbursements shows large amounts being paid out to the owners' affiliates in 2011. From 1/1/11 to 8/24/11 the amounts totaled \$341,674 and from 8/25/11 to 12/23/11 the amounts totaled \$1,603,000, for a grand total of \$1,944,674. This is a significant amount of cash flowing out of Far West to its affiliates.
6. RUCO's July 8, 2009, Reply Brief in Docket WS-03478A-08-0608 discusses the owners of Far West spending over \$3,700,000 on non-approved projects. Further, the RUCO brief discusses how the funds were used for improvements that benefitted the owners' personal projects. One of the projects is a subdivision called El Rancho Encantado. While many other individual property owners including myself could not develop, build upon or improve our properties until September 2012, the owners enjoyed the luxury of selling their lots at El Rancho Encantado because they misused IDA loan funds. This also afforded the owners of Far West a virtual monopoly in the market. Further, the owners could have paid back to Far West the monies they used upon the sale of these properties, which would have given Far West working capital to pay its obligations.

1 however, Far West had to later take out another substantial loan for some of the
2 improvements that should have been performed with the IDA loan funds. Far
3 West pays interest on that loan.

4 **Q. DO THESE DEALINGS INVOLVING FAR WEST, ITS OWNERS AND**
5 **AFFILIATES CONCERN YOU?**

6 A. Yes. When I formed Spartan Homes and Construction, Inc., one of the first things I
7 learned is that my business and personal finances are to be kept completely separate, and
8 each and every transaction must stand on its own two feet. I have loaned money to
9 Spartan in the past from my personal account but every penny that was transferred has a
10 paper trail and I can account for every penny of that money today on the books of
11 Spartan. Given the public trust that is placed in a public utility such as Far West, it is
12 even more important that there be transparency, clarity, accountability and a complete
13 absence of self-dealing. Far West has failed badly in each of these obligations.

14 **Q. DO YOU BELIEVE THAT FAR WEST DOES IN FACT HAVE THE ABILITY**
15 **TO PAY ITS OBLIGATIONS?**

16 A. Yes. I believe Far West has always had the ability to pay its obligations, including the
17 amount owed to Spartan under Decision 72594.

18 **Q. WHAT WOULD YOU ASK THE COMMISSION TO DO IN THIS RATE CASE?**

19 A. I have included recommendations to the Commission in my Direct Testimony. In
20 addition, I would recommend that any funds of Far West that were improperly diverted
21 to personally benefit the owners and/or affiliates of Far West should be paid back as a
22 condition of implementing any approved rate increase.

23 Q. Does this conclude your testimony?

24 A. Yes.

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