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BEFORE THE ARIZONA CORPORATION COMMISSION
IN THE RATE CASE OF
FAR WEST WATER & SEWER, INC.
DOCKET # WS-03478A-12-0307

JOINT RESPONSE OF
ROBERT RIST
ROBERT GILKEY
BARBARA GILKEY
TO
SUSAN BITTER SMITH
LETTER DATED MARCH 28, 2013

Arizona Corporation Commission

DOCKETED

APR - 9 2013

DOCKETED BY *nr*

1 Dear Susan Bitter Smith and all Parties to Docket No. WS-03478A-12-0307;

2
3 **Re: Why is it necessary to install an Interim Manager?**

4 Historically, the Foothills area started developing because of the efforts of Hank Schechert, the father
5 of the current owners, Paula Capestro and Sandra Braden. In the early development stages, most lots
6 were developed with on site septic tanks but lot size and regulations soon required use of public
7 wastewater systems.

8 H&S Developers never wanted the problems of wastewater plants, but they were a necessity if they
9 wanted to continue to develop land in the Foothills. Small package wastewater plants were put on
10 line in a haphazard approach with no planning for the future only looking at the immediate needs of
11 the developer, which was usually H&S Developers.

12 H&S became the manager and operated with as little experienced personnel as possible and as little
13 investment as possible. In 2001, a terrible accident occurred where two workers were killed
14 maintaining one of the package plants and working in a confined space for which they'd had no
15 training. One was an H&S employee and the other was a Santec employee. Santec is the
16 manufacturer of the package plants which are used in several of H&S Developers' treatment plants. It
17 is at this point that H&S house of cards started to crumble.

18 Legal moves were taken to protect H&S by splitting off the sewer and water services and forming Far
19 West Water & Sewer, Inc. Problems continued with hundreds and hundreds of complaints about bad
20 odors and sewage backups. Finally ADEQ responded with inspections which resulted in more than 50
21 violations and substantial fines. Far West hired Universal Asset Management/Coriolis Engineering to
22 design a solution to the many problems.

23 Coriolis came in and in a week announced in their company newsletter that Far West was "the sweet
24 smell of success". They had supposedly put in solutions for odors at the Palm Shadows and Del Oro
25 plants. Nothing could have been further from the truth. Palm Shadows stunk like hell until the day it
26 was taken off line.

27 Palm Shadows treatment plant was a failure from the day it was designed. (Norman) Bruce Jacobson,
28 of Jacobson Engineering, was a close friend and business associate of Hank Schechert. Jacobson
29 designed the Palm Shadows plant to serve his own development known as Vista del Sol and soon
30 other developments were added to the flow going into Palm Shadows.

31 Palm Shadows utilized Santec package plants along with percolation/evaporation ponds. Percolation
32 tests should have been done before construction was allowed to start. A simple on site septic system
33 must pass a percolation test before construction is allowed. Jacobson designed and built the plant
34 without any such percolation test. Far West accepted the plant. ADEQ accepted the plant. Brent
35 Weidman (see attachment 1), a principal of Jacobson Engineering, was also President, CEO and a
36 director of Far West Water & Sewer, Inc. and President/Vice President and a director of H&S
37 Developers. (see RUCO's reply brief, Docket #WS-03478A-08-0608 pages 4 and 5, for the
38 intertwined relationships between Far West, Jacobson and Weidman).

39 Palm Shadows was originally permitted by ADEQ to have two percolation ponds. When those failed
40 to percolate, four more **unpermitted** ponds were added by Far West. The result was, as shown in Staff
41 DR 11.1, that users paid in \$975,000.00 in sewer capacity fees to pay for that plant and now are

1 paying \$2.1 million to construct a force main to pump Palm Shadows sewage to Section 14 WWTP.
2 Far West has a history in both this rate case and the last rate case of making sure their affiliates get
3 paid and everyone else gets ignored. Proof of this is shown in the Schedule of Activity for Far West
4 Water & Sewer Main Line Extension Agreements (refer to Staff G.B. 2-2) where it clearly shows just
5 who was and who was not paid.

6 On page 6, lines 5 through 10, in the rate design surrebuttal testimony of Gerald Becker, he points out
7 that a regulated entity has an obligation not to promote profitability for itself or another interested
8 company in a transaction that may not be at arms-length to the detriment of its customers. We further
9 believe that Far West has the obligation to make purchases at the lowest possible price, even if that
10 means purchasing from a non related company.

11 In Staff Data Request GB 2-1, answer 2, paragraphs 4 & 5, it was stated "Far West employees
12 occasionally provide services to H&S. When provided, those services are billed at cost to H&S.
13 H&S owns and operates Hank's Market & Butcher Shop, Foothills Mini Mart, and Foothills Sand &
14 Gravel. Far West purchases certain materials and supplies from those entities at retail prices. H&S
15 receives and pays water and sewer bills for its properties receiving water or sewer service from Far
16 West. Foothills Hardware & Lumber is a partnership between Paula Capestro and Sandra Braden.
17 Far West purchases certain materials and supplies from Foothills Hardware & Lumber at retail
18 prices". Our question is, why should Far West pay full retail to its affiliates so they can make a profit,
19 while providing services at cost with no profit involved? We have personally witnessed Far West
20 personnel and have pictures of its equipment vehicles being used at El Rancho Encantado to construct
21 sidewalks in that subdivision.

22 Staff's Rebuttal Testimony, page 8 line 14, states "Staff notes that Far West has incurred long term
23 debt without obtaining Commission approval in advance as required by ARS 50-301 and 40-3-2, as
24 discussed more fully in the Direct Testimony of John Cassidy". After the fact, they did file a Request
25 for Declaratory Ruling in Docket No. WS-03478A-12-0085, on March 5, 2012 and as of April 4, 2013
26 the case is still pending. Staff is giving them a free pass. Again, they do what they want and as usual
27 ask for forgiveness not for permission. This is a clear indication of poor management practices.

28 Gilkey/Rist DR 2.6 requesting copies of all 1099's showing amounts paid to Andrew Capestro for
29 legal fees and/or legal and management fees for tax years 2008 through 2012, brought the following
30 response from Far West: "The request does not seek information that is relevant to this rate case".
31 Gilkey/Rist 3.9 requesting copies of 1099's paid to the Schechert Family Trust and to Southwest Land
32 (owned by Paula and Andrew Capestro) for rent paid to each entity for tax years 2008 through 2012
33 brought the same response. February 6, 2013, we received a supplemental response saying "Without
34 waiving the objection attached are the requested 1099's for the 2011 test year".

35 The 1099 for the Schechert Family Trust showed \$90,179.28 in interest. The 1099 for Andrew
36 Capestro showed \$154,500.00. In the Gilkey/Rist DR 5.9 we asked for the explanation for the
37 difference between the \$167,000.00 which was shown on the disbursement ledger for affiliated parties
38 and the \$154,500.00 shown on the 1099. The response was that Mr. Capestro was paid \$167,000.00
39 by Far West Water & Sewer, Inc. for the year 2011. The 1099 reflected \$154,500.00, which is what
40 was compiled by Quickbooks. Quickbooks compiles 1099's based upon paid and applied bills. There
41 were bills that had been paid but payments were not applied to those bills until 2012 after the 1099's
42 had been distributed. A Supplemental response claimed something entirely different, stating the
43 \$12,500.00 was a loan and was repaid at a later date. Since Mr. Capestro cashed the \$12,500.00

1 check, and then wrote a separate check the very next day entitled "loan", he still received the
2 \$12,500.00 in question as legal fees and loaned the company money from his own funds. When the
3 company "repaid the loan" the following day, they also showed it as legal fees in the ledger, not as a
4 loan repayment, so the figure of \$167,000.00 was correct and the 1099 in error. The company
5 supplied us with a "Reconciliation of Payments to Mr. Capestro with 1099 issued to Mr. Capestro"
6 never once mentioning a loan.

7 Since we did not receive any other of the 1099's we requested, we could not reconcile them with the
8 cash disbursement ledger they provided to see if there were other mistakes of this nature made. This
9 is where a physical audit must be done to ascertain what is correct. Relying on the company's figures
10 is not showing what has actually transpired.

11 In Gilkey/Rist 5.17, we asked for an explanation of a \$25,000.00 entry in the Cash Disbursement
12 journal as an entry July 22, 2009 for "Employee Expense" Our first answer was "The 'Employee
13 Expense' was for the payment of medical claims incurred by Far West employees". In our later Data
14 Request 8.1, we requested backup documentation for the medical claims and were told that "The
15 payment was applied to the H&S open invoices shown on the schedule attached as Gilkey 8.1 H&S
16 payment schedule .PDF. The schedule titled "check history" was printed directly from Far West's
17 Quickbooks accounting records and is the transaction history for the 7-22-2009 ACH transfer of
18 \$25,000.00 to H&S Developers showing the H&S Developers invoices that this payment was applied
19 against. The backup documentation for each of the invoices is attached as a PDF file with the invoice
20 number as the file name."

21 First of all, again we have one answer to our data request which was then changed at a later date when
22 questioned. Secondly, **every invoice shown** in the backup was **generated by affiliate H&S**, to Far
23 West. Arms-length transactions do not seem to be the norm for this company. Again, we maintain
24 that relying on the company's figures is not showing what has actually transpired and this can only be
25 correctly identified by Forensic and Operational audits.

26 The Gilkey/Rist DR 2.7, we requested a list of all of the RV parks connected to the Far West Sewer
27 system. We were given a list of four parks which did not include the Schechert Family Aquatics &
28 Fitness Center RV Park, an affiliate of Far West, with 48 usable spaces. When questioned later in our
29 DR 5.1, we were told that park was placed into service in 1991 and it is connected to the Far West
30 Sewer System and our DR 8.2 brought the response that the RV park has been connected to the the
31 system since 1999.

32 In Ray Jones' Rebuttal Testimony – Rate Design, page 8, he admitted there is one commercial
33 business and an RV park with 48 available spaces but went on to state that Far West relies on the
34 underlying zoning of each community to determine its classification for billing purposes. Since the
35 RV park and the Schechert Family Aquatics & Fitness Center, a commercial business with a swimming
36 pool, gym and showers, are **both affiliated companies** on the same parcel of land, Far West
37 management with any amount of common sense would know that there should be charges for both the
38 commercial building and the 48 individual RV spaces. At best, this is poor management and appears
39 to be disingenuous.

40 There are several commercial buildings located on Foothills Blvd. owned by Affiliates which are not
41 listed as being connected to Far West Sewer. Often times these properties are located directly next to
42 a property which *is* connected to the sewer and only a physical audit will prove which properties are
43 connected and which are not.

1 There has been no fairness or consistency in the application of capacity fees. Fees are arbitrarily
2 assigned or negotiated, without regard to the actual requirements of growth. A tariff should be
3 implemented and capacity fees placed into a fiduciary account so the current rate payers are not held
4 responsible for new growth.

5 Please refer to Docket # WS-03478A-08-0608, Judge Rodda's Decision #71447 for additional
6 information and orders. This Opinion and Order points out the Company's numerous problems, errors
7 and omissions and with the exception of the new construction, those problems still exist. Please make
8 special note of the IDA bond issues.

9 If the points which have been made in this letter are in some way not completely accurate, we
10 maintain it is because there is no transparency into this company and we, too, have used some of their
11 figures without an audit. We believe in capitalism and free enterprise, however this company is a
12 monopoly and its customers have no choice of a service provider. They treat customers with disdain,
13 arrogance and disregard.

14 As far as appointing an Interim Manager, precedence has been set with the appointment of an Interim
15 Manager for the Tacna Water Company. We spoke with Nancy, the co-owner of Sun States
16 Environmental in Yuma, who has been appointed to the position at Tacna Water Company. While the
17 scope of the problems at Tacna aren't on the scale of Far West, the situation is very similar. Nancy
18 reports that customers who have not paid their bills in 12 months are now paying. They are also in
19 support of a rate increase because they have confidence in their management. Foothills residents have
20 totally lost confidence in the current management of Far West Water & Sewer Co.

21 We have only touched the surface of the multitude of problems there are with the management of Far
22 West Water and Sewer, Inc.

23 We have to ask ourselves why Far West would not want an Interim Manager and Forensic and
24 Operational audits. If they have nothing to hide, as they say, then the Manager and audits would clear
25 up all of the issues and we Intervenors would have no argument.

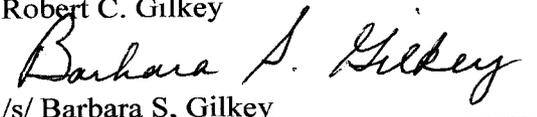
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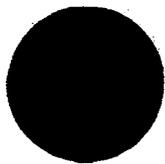
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ATTACHMENT 1



LABORERS' HEALTH AND SAFETY FUND OF NORTH AMERICA



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Employer Sentenced to Safety Training For On-the-Job Deaths

In what may be the last word in the criminal prosecution of **Far West Water & Sewer, Inc.** for the on-the-job deaths of two workers in 2001, a *Yuma County Superior Court* judge sentenced former company president **Brent Weidman** to seven years of probation and 840 hours of community service teaching safety classes for the Arizona OSHA.

After his conviction in June on two counts of negligent homicide, Weidman faced nearly four years in prison. According to prosecutors, Weidman had failed to train his workers in how to properly enter sewage tanks and on how to conduct emergency rescues, both required by OSHA. Also, the company failed to conduct required tests for sewer gas on the day of the incident. In addition to Weidman's sentence, the company was convicted of five felonies and ordered to pay \$1.77 million in criminal fines.

Though the decision may be the last word in this particular case, the issue of criminal prosecution for company negligence for on-the-job deaths continues to heat up across the U.S. (see *States Pursuing Prosecutions against Corporations, Directors*). Some advocates believe prosecution will lead to better training; others believe prosecutions will force companies to ensure compliance, not only in training, but in all areas of management responsibility.

Speaking of the judge's decision to make Weidman conduct safety training as part of his probation, the press secretary of the Arizona Attorney General's office told an *Occupational Hazards* reporter, "That was really the point of pursuing criminal charges against him. We think [safety training] was one thing that was really needed to help these workers avoid this incident."

In contrast, *Confined Space* blogger **Jordan Barab** took issue with the sentence and the Attorney General's rationale.

I don't think training was the point here. No one will dispute the value of a good worker training program, particularly when it comes to the potentially deadly hazards of confined spaces...[However, t]he law states that the employer is responsible for maintaining safe working conditions. Putting the entire blame on lack of training puts the burden on the employee to confront his managers, risking his job. While risking one's job is clearly preferable to losing one's life, that's not the way the law is supposed to work in this country. After all, if the trained employee doesn't confront his manager, then whose fault is that?

After the sentencing, Weidman said, "I'm pleased it's over and that it came out the way it did. But, it will always be a sore spot in everyone's life. I'm sorry for the families and their loss and sorrow."

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