

ORIGINAL FILED THIS _____
DAY OF _____
JEANNE HICKS
Clerk Superior Court
By Heather Figueroa
Deputy

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8 Attorney for Inscription Canyon Ranch Sanitary District, Gene Leasure, Shirley Leasure, Charlie
9 Turney, Michelle Turney, Dayne Taylor and Marless Taylor

10 SUPERIOR COURT OF ARIZONA
11 YAVAPAI COUNTY

12 HARVARD SIMON I, LLC, an Arizona)
13 limited liability company; THE PRESERVE)
14 AT THE RANCH, LLC, an Arizona limited)
15 liability company; OLD CAPITOL)
16 INVESTMENTS, LLC, an Arizona limited)
17 liability company; WHISPERING CANYON)
18 DEVELOPMENT, LLC, an Arizona limited)
19 liability company,)

20 Plaintiffs,)

21 v.)

22 INSCRIPTION CANYON RANCH)
23 SANITARY DISTRICT, an Arizona sanitary)
24 district; GENE LEASURE and SHIRLEY)
25 LEASURE, husband and wife; CHARLIE)
26 TURLEY and MICHELLE TURNEY,)
husband and wife; DAYNE TAYLOR and)
MARLESS TAYLOR, husband and wife;)
JOHN and JANE DOES I-X,)

Defendants.)

**VERIFIED ANSWER TO
VERIFIED FIRST AMENDED
COMPLAINT**

(Violations of Open Meeting Laws, Special
Action, Declaratory Judgment)

For their Verified Answer to the Verified First Amended Complaint (the "Amended
Complaint"), Inscription Canyon Ranch Sanitary District, Gene and Shirley Leasure, Charlie and
Michelle Turney, and Dayne and Marless Taylor (collectively, "Defendants") allege as follows:

1 Answer Exhibit 1 (Letter from District (Douglas C. Nelson) to Plaintiffs' counsel (Dawn
2 Meidinger), dated December 29, 2009), Answer Exhibit 2 (Inscription Canyon Ranch
3 Sanitary District – Effluent Treatment, dated January 12, 2010), Answer Exhibit 3 (Excerpts
4 of ADEQ regulations, *Arizona Administrative Code*, Title 18, Chapter 9) and Answer
5 Exhibit 4 (Civiltec Engineering, Calculation for Talking Rock Ranch Compound, dated
6 April 4, 2007).

7
8 12 through 23. For each respective paragraph in the Amended Complaint,
9 Defendants incorporate by reference (and make a part hereof) each respective answer as set
10 forth in their Verified Answer, filed February 01, 2010, and the exhibits referenced therein.

11 24. Deny that representatives of Harvard and the District's Board of Directors met on
12 August 26, 2009 in Executive Session, and further deny the purported allegations of what was
13 discussed during that meeting. The Harvard representatives (Craig Krumweide and Clint Poteet)
14 spoke to the Board members following the July 23, 2009 Regular Meeting, in a Special Session,
15 in which the Harvard representatives demanded that the public not be in attendance and that no
16 minutes or recording be taken of the private conversation. The Harvard representatives reported
17 that Harvard had no funds and therefore Harvard would not build the new plant. Answer Exhibit
18 20 (Notes of Charlie Turney on July 23, 2009 agenda). **Exhibit B** (District's Agendas of
19 Regular Meeting and Special Session and Minutes of Regular Meeting, July 23, 2009).

20 25 through 65. For each respective paragraph in the Amended Complaint, Defendants
21 incorporate by reference (and make a part hereof) each respective answer as set forth in their
22 Verified Answer, filed February 01, 2010, and the exhibits referenced therein.

23 66. Admit that the Preserve representative requested a "copy of every item set forth
24 in the notice" on January 8, 2010. Deny that any meeting occurred in which the District
25 Board, its counsel and lot owners met behind closed doors on January 06, 2010, and
26 therefore, there are no minutes or recordings of such meeting.

1 67. Deny that the District did not provide Harvard or Preserve with information
2 requested prior to the January 13, 2010 meeting.

3 68 through 70. For each respective paragraph in the Amended Complaint, Defendants
4 incorporate by reference (and make a part hereof) each corresponding answer as set forth in their
5 Verified Answer, filed February 01, 2010, and the exhibits referenced therein.

6 71. Deny that the Board “purported” to ratify Resolution No. 2009-01 and admit that
7 the District and Board ratified Resolution No. 2009-01 substantially in accordance with the Open
8 Meeting Law.

9 72. Admit that the District provided Harvard and Preserve with the information they
10 requested and deny that the District provided the information after the conclusion of the January
11 13, 2010 meeting.

12 73. Deny that the District has not made available for public inspection the minutes
13 and recordings of the January 13, 2010 meeting. Answer Exhibit 26.

14 74. Deny that the Board held an unnoticed Executive Session at the commencement
15 of the January 13, 2010 meeting.

16 75. Deny that the Board held an Executive Session without publicly voting and
17 without specific provisions of the Open Meeting Law.

18 76. Deny that the Board violated the Open Meeting Law, deny that the Board should
19 be penalized, and deny that the Yavapai County Board of Supervisors could assume the duties of
20 the Board under A.R.S. § 48-2010 (C).

21
22 **COUNT I**
23 **(Violations of the Open Meeting Laws)**

24 77 through 89. For each respective paragraph in the Amended Complaint, Defendants
25 incorporate by reference (and make a part hereof) each corresponding answer that is sequential to
26 paragraphs 72 through 84 as set forth in their Verified Answer, filed February 01, 2010, and the

1 exhibits referenced therein. Deny each and every allegation in this Count that was denied
2 previously in this Answer or the previous Answer

3 90. Admit that the District's minutes or recordings were not prepared or available for
4 reproduction within three working days after the January 6 and 13, 2010 meetings but minutes
5 and recordings are provided when they are available from the District's clerk.

6 **IV. Defendants Complied with Statutory Requirements for Executive Sessions.**

7 91. Admit that A.R.S. § 38-431.01 (D) is quoted in part.

8 92. Deny that Defendants violated A.R.S. § 38-431.01 (D).

9 93. Admit that A.R.S. § 38-431.03 (A) is quoted in part.

10 94. Deny that Defendants violated A.R.S. § 38-431.03 (A).

11 95 through 108. For each respective paragraph in the Amended Complaint, Defendants
12 incorporate by reference (and make a part hereof) each corresponding answer that is sequential to
13 paragraphs 86 and 99 as set forth in their Verified Answer, filed February 01, 2010, and the
14 exhibits referenced therein.

15 109. Deny that the Board failed to ratify the adoption of Resolution No. 2009-01 in
16 accordance with the Open Meeting Law at the January 13, 2010 meeting.

17 110. Admit that A.R.S. § 38-431.05(B)(1) is quoted in part.

18 111. Deny that the initial adoption of Resolution No. 2009-01 was in violation of the
19 Open Meeting Law. Admit that Plaintiffs' claim in their December 21, 2010 letter that
20 Defendants allegedly violated the Open Meeting Law.

21 112. Deny that Defendants had until January 20, 2010 to ratify Resolution No. 2009-01
22 because the initial adoption of the Resolution was valid, or alternatively, the District could adopt
23 a subsequent resolution after the matter was duly noticed and adopted during an open meeting.

24 113. Deny that Defendants failed to initially adopt Resolution No. 2009-01 or that
25 ratification of Resolution No. 2009-01 was improper.

26 114. Deny that Resolution No. 2009-01 is null and void.

COUNT II
(Special Action)

1
2 115. Deny each and every allegation in this Count that was denied previously in this
3 Answer or the previous Answer.

4 116. Deny that the District and its Board, in exercising their discretionary powers and
5 authorities, acted arbitrarily or capriciously.

6 117. Deny that the District's adoption of Resolution 2009-01 was arbitrary or
7 capricious, and an abuse of discretion.

8 118. Admit that the District is the sole source of sewer service to residential
9 communities within its boundaries and the District has a duty to provide adequate service from
10 funding by the Plaintiffs to build a new plant. Deny that certain Plaintiffs paid for the
11 construction of the Existing Plant with the expectation of service to their property, for the reason
12 that Plaintiffs agreed to fund, design, engineer and construct a new plant to receive effluent from
13 their County-approved lots.

14 119. Deny that the District's Ordinance precludes the construction of any building
15 within the District's boundaries. See **Exhibit A**.

16 120. Deny that the reasons set forth in Resolution No. 2009-01 are erroneous.

17 121. Deny that the Existing Plant is operating "only at 53% [] of its designed capacity
18 and there are no existing or threatened permit violations related to capacity or pollution
19 constituent exceedences." Deny that "any potential limitations are due to the District's improper
20 plant operation." See Answer Exhibit 7.

21 122. Deny that Resolution No. 2009-01's stated conditions for lifting the moratorium
22 are solely to cure a monetary dispute with Old Capitol and to obtain expedited completion of a
23 new plant that is not necessary at the current time.

24 123. Deny that Plaintiffs are entitled to an expeditious ruling "that the adoption of
25 Resolution No. 2009-01 is arbitrary and capricious and is an abuse of discretion."
26

1 124. Admit that the County has approved lots of the Plaintiffs' developments, but deny
2 that such approved lots are to receive service from the Existing Plant, because Harvard
3 contractually agreed to construct a new plant to service those approved lots in compliance with
4 ADEQ's laws and regulations and the District's Ordinance.

5 125. Deny that Plaintiffs have no equally plain, speedy and adequate relief in this
6 matter.

7 126. Deny that Plaintiffs are entitled to recover their attorneys' fees and costs pursuant
8 to A.R.S. § 12-348.

9
10 **COUNT III**
11 **(Declaratory Judgment)**

12 127. Deny each and every allegation in this Count that was denied previously in this
13 Answer or the previous Answer

14 128. Admit that the District is the sole source of sewer service within its boundaries
15 and has exercised its duty to provide adequate service by adopting Resolution No. 2009-01 so
16 that a new plant will adequately serve the County-approved lots of the Plaintiffs, as required by
17 ADEQ's laws and regulations and the District's Ordinance and as contractually agreed to by
18 Harvard.

19 129. Deny that certain Plaintiffs paid for the Existing Plant with the expectation of
20 service to their property, for the reason that Harvard contractually agreed to construct a new
21 plant to service the County-approved lots of the Plaintiffs and Plaintiffs assured the District and
22 ADEQ that the new plant will have adequate capacity to treat effluent from those County-
23 approved lots.

24 130. Deny that Resolution No. 2009-01 precludes any construction within the District,
25 admit that the District's Ordinance requires connection to the sanitary system in the District,
26 however Yavapai County Development Services informed the District that it will continue to
issue building permits and septic permits within the District's boundaries. **Exhibit A** (Letter
dated January 20, 2010 from Yavapai County Development Services, ¶ 10).

1 131. Deny that the reasons for adopting the Hookup Moratorium are erroneous. Deny
2 that the Existing Plant is improperly being operated. Defendants assert they have
3 continuously sought ways to improve performance of the Existing Plant which however is
4 not in compliance with ADEQ laws and regulations or the District's Ordinance to treat
5 current and future effluent.

6 132. Deny that the Existing Plant is operating at only 53% of its designed capacity
7 and that there are no existing or threatened permit violations related to capacity or pollution
8 constituents exceedences.

9 133. Deny that the Hookup Moratorium is "solely to cure monetary disputes with Old
10 Capitol and to obtain expedited completion of a new plant that is not necessary at the current
11 time."

12 134. Deny that Plaintiffs are entitled to an expeditious ruling that the Hookup
13 Moratorium is arbitrary and capricious and thus an abuse of discretion.

14 135. Deny the allegations in this paragraph of the Complaint. Any actual controversy
15 between Plaintiffs and Defendants is of the Plaintiffs' own making, because Harvard agreed
16 to construct a new plant in compliance with ADEQ laws and regulations and the District's
17 Ordinance and to fund the design, engineering, permitting and construction of the new plant
18 so that the District Board would meet its fiduciary duties to its members.

19 136. Deny that Plaintiffs are entitled to declaratory relief in this action pursuant to
20 *A.R.S. § 12-1832*.

21 137. Deny that declaratory relief sought by Plaintiffs will terminate the controversy
22 and remove any uncertainty.

23 138. Deny that Plaintiffs are entitled to declaratory judgment and deny that the
24 Defendants acted arbitrarily and capriciously by adopting Resolution No. 2009-01 and
25 therefore not an abuse of discretion.
26

1 139. Deny that Plaintiffs are entitled to recover attorneys' fees and costs pursuant to
2 *A.R.S. § 12-348.*

3 140. Deny that this matter requires a speedy hearing pursuant to Rule 57, *Arizona*
4 *Rules of Civil Procedure.*

5 141. As to any allegation not specifically admitted, Defendants deny each and every
6 other allegation in the Amended Complaint.
7

8 **AFFIRMATIVE DEFENSES**
9

10 1. Plaintiffs' Amended Complaint is barred by *A.R.S. § 12-820.01* because the
11 actions taken by the Board of Directors of the District are acts involving fundamental
12 governmental policy and the exercise of their discretion. The District is a "public entity,"
13 which is defined as including "this state and any political subdivision of this state." *A.R.S. §*
14 *12-820 (6).*

15 *A.R.S. § 12-820.01* provides:

16 A. A public entity shall not be liable for acts and omissions of its
17 employees constituting either of the following:
18 * * *

19 2. The exercise of an administrative function involving the
20 determination of fundamental governmental policy.

21 B. The determination of a fundamental governmental policy involves
22 the exercise of discretion and shall include, but is not limited to:

23 1. A determination of whether to seek or whether to provide the
24 resources necessary for any of the following:

- 25 (a) The purchase of equipment.
- (b) The construction or maintenance of facilities.
- (c) The hiring of personnel.
- (d) The provision of governmental services.

26 2. A determination of whether and how to spend existing resources,
including those allocated for equipment, facilities and personnel.

1 * * *

2 2. Plaintiffs' Amended Complaint is barred by *A.R.S.* § 12-820.02, because the
3 three Directors of the District are "employees" of the District. "Employee" is defined as
4 including an officer "who is authorized to perform any act or service, except that employee
5 does not include an independent contractor." *A.R.S.* § 12-820 (1). "Public employee"
6 means "an employee of a public entity," as defined under *A.R.S.* § 12-820(5).

7 *A.R.S.* § 12-820.02 provides:

8 Unless a public employee acting within the scope of his employment intended to
9 cause injury or was grossly negligent, neither a public entity nor a public
employee is liable for:

10 * * *

11 5. The issuance of or failure to revoke or suspend any permit, license,
12 certificate, approval, order or similar authorization for which absolute immunity
is not provided pursuant to § 12-820.01.

13 3. Plaintiffs' Amended Complaint is barred by *A.R.S.* § 48-187. The District's
14 Board of Directors are immune from civil liability under *A.R.S.* § 48-187, because their
15 conduct were discretionary acts for which the rational bases have been documented in
16 District meeting minutes and other documents, including the exhibits hereto, and such
17 actions are protected from judicial action.

18 *A.R.S.* § 48-187 provides:

19 A person who serves on the governing body of a district is immune from
20 civil liability and is not subject to suit directly or by contribution for any
21 act or omission resulting in damage or injury if such person was acting in
22 good faith and within the scope of his official capacity, unless the
23 damage or injury was caused by willful and wanton or grossly negligent
24 conduct of duties of such person. Nothing in this section limits or
modifies the duties of such person to the district. As used in this section
"official capacity" means any decision, act or event undertaken by the
district in furtherance of the purpose or purposes for which the district
was formed or any ancillary or additional purposes authorized by law.

25 4. Plaintiffs' claims are barred by unclean hands, because Plaintiffs in the past
26 encouraged District officials to violate the Open Meeting Laws by executing documents

1 before public notice and formal action in a public meeting (see Answer paragraph 20 and
2 footnote 3), at the request of Harvard representatives met with District Board members
3 during a noticed Special Session after a Regular public meeting to avoid Harvard's
4 communication being heard by the public or recorded or included in District minutes (see
5 this Answer paragraph 24), and effort to violate the confidentiality of the District's
6 Executive Session by listening in on the discussion after being requested not to do so (see
7 Answer paragraph 68).

8 5. Plaintiffs' claims are barred by unclean hands, because the Plaintiffs control the
9 funding of the new plant's design, permitting, engineering and construction and they are
10 aware of the ADEQ laws and regulations and the District's Ordinance requirements for
11 adequate wastewater treatment for approved-platted lots and the need for treatment capacity
12 before lots are sold or houses are built.

13 6. Plaintiffs agreed to indemnify and hold the Defendants, including Defendant
14 District and its officers and directors "harmless for, from and against all claims or other
15 liability, whether actually asserted or threatened, arising out of or related to Developer's
16 construction of the Facilities hereunder." Development Agreement, Section 12 on page 11.

17 7. Plaintiffs' Amended Complaint fails to state a cause of action because
18 Defendants complied with the Open Meeting Law.

19
20 **DEFENDANTS' REQUEST FOR ATTORNEYS' FEES AND COSTS**

21 1. The Development Agreement provides for the recovery of attorneys' fees and
22 costs associated with the wastewater "facilities" associated with Plaintiffs' developments:
23 "Developer shall reimburse District for reasonable fees, costs and expenses incurred in
24 connection with its review of the engineering plans and specifications for the Facilities, the
25 preparation of this Agreement and other necessary legal services, inspection and testing of
26 the Facilities during their construction, and other fees, costs and expenses reasonably and

1 necessarily incurred by District with respect to the project during the course of construction
2 (collectively, "Administrative Costs") (Section 7 on page 8).

3 2. Under the Development Agreement, attorneys' fees are to be awarded to the
4 prevailing party (Section 17 on page 14).

5 3. This a contractual matter involving the Development Agreement, Escrow
6 Agreement and MOU, and thus Defendants request reasonable attorneys' fees and costs
7 pursuant to *A.R.S. § 12-341.01 (A)* for Plaintiffs' anticipatory breach of the Development
8 Agreement, Escrow Agreement and MOU. Answer 11 at page 9.

9
10 **WHEREFORE**, Defendants request the following relief:

11 1. That the Court not order any civil penalty against the District, Gene Leasure,
12 Charlie Turney and Dayne Taylor.

13 2. Deny Plaintiffs' request for an order removing Gene Leasure, Charlie Turney
14 and Dayne Taylor from office.

15 3. Deny Plaintiffs' request for an order declaring the Board's adoption of
16 Resolution No. 2009-01 as being null and void.

17 4. Deny Plaintiffs' request for this Court's jurisdiction of this special action.

18 5. Deny Plaintiffs' request for an order that the District and its Board acted
19 arbitrarily and capriciously and abused their discretion by adopting Resolution No. 2009-01.

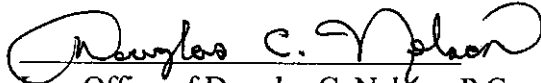
20 6. Deny Plaintiffs' request for a declaratory judgment from the Court that
21 Defendants acted arbitrarily and capriciously by adopting Resolution No. 2009-01 and
22 determine that the Board did not abuse its discretion.

23 7. Deny an award of reasonable attorneys' fees and costs to the Plaintiffs.

24 8. Award the Defendants their reasonable attorneys' fees and costs in defending
25 this action.

26

1 Dated this 10th day of February, 2010.

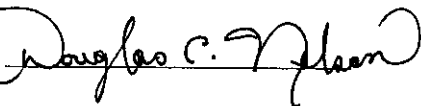
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3 Law Office of Douglas C. Nelson, P.C.
4 Douglas C. Nelson (SBA No. 004787)
5 7000 North 16th Street, Suite 120-307
6 Phoenix, Arizona 85020
7 Telephone: (602) 395-1612
8 Facsimile: (602) 395-1943
9 Email: DougCNelson@cox.net

10 ORIGINAL Hand-Delivered to
11 Yavapai Superior Court this 10th day
12 of February, 2010.

13 FOUR COPIES Hand-Delivered on this
14 10th day of February, 2010 to:

15 FENNEMORE CRAIG, P.C.
16 Andrew M. Federhar
17 Dawn Meidinger
18 3003 North Central Avenue
19 Suite 2600
20 Phoenix, Arizona 85012-2913
21 Attorneys for Plaintiffs

22 

VERIFICATION

Pursuant to Rule 80(i), *Arizona Rules of Civil Procedure*, Gene Leasure, chairperson of the Board of Directors of the Inscription Canyon Ranch Sanitary District, being first duly sworn, declares that he is one of the Defendants in the foregoing action, that he has read the foregoing Verified First Amended Answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters stated on information and belief and, as to those matters, he believe them to be true.

I declare under penalty of perjury the foregoing is true and correct.

Dated this 20 day of February, 2010.



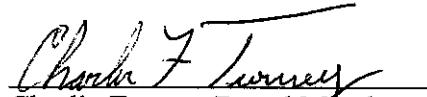
Gene Leasure, Chairperson
Inscription Canyon Ranch Sanitary District

VERIFICATION

Pursuant to Rule 80(i), *Arizona Rules of Civil Procedure*, Charlie Turney, a member of the Board of Directors of the Inscription Canyon Ranch Sanitary District, being first duly sworn, declares that he is one of the Defendants in the foregoing action, that he has read the foregoing Verified First Amended Answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters stated on information and belief and, as to those matters, he believe them to be true.

I declare under penalty of perjury the foregoing is true and correct.

Dated this 10th day of February, 2010.


Charlie Turney, Board Member

Inscription Canyon Ranch Sanitary District

VERIFICATION

Pursuant to Rule 80(i), *Arizona Rules of Civil Procedure*, Dayne Taylor, a member of the Board of Directors of the Inscription Canyon Ranch Sanitary District, being first duly sworn, declares that he is one of the Defendants in the foregoing action, that he has read the foregoing Verified First Amended Answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters stated on information and belief and, as to those matters, he believe them to be true.

I declare under penalty of perjury the foregoing is true and correct.

Dated this 20th day of February, 2010.



Dayne Taylor, Board Member
Inscription Canyon Ranch Sanitary District

DEFENDANTS'
INDEX OF EXHIBITS

- Exhibit A Letter dated January 15, 2010 from Douglas C. Nelson to Yavapai County Development Services and Letter dated January 20, 2010 from Yavapai County Development Services to Douglas C. Nelson
- Exhibit B District's Agendas of Regular Meeting and Special Session and Minutes of Regular Meeting, July 23, 2009

EXHIBIT A

Letter dated January 15, 2010 from Douglas C. Nelson to Yavapai County Development Services and Letter dated January 20, 2010 from Yavapai County Development Services to Douglas C. Nelson

EXHIBIT A

Law Office of Douglas C. Nelson, P.C.

7000 North 16th Street, Suite 120-307

Phoenix, Arizona 85020

Telephone 602.395.1612 Cell 602-349-8731 Facsimile 602.395.1943

Email DougCNelson@cox.net

January 15, 2010

Mr. Steve Mauk, Interim Director
Yavapai County Development Services
Marina Street Annex
500 South Marina Street
Prescott, AZ 86303

RE: Inscription Canyon Ranch ("ICR") Sanitary District

Dear Mr. Mauk:

The ICR Sanitary District held a meeting on January 13, 2010. The District Board requested a representative from your office to present the role of Yavapai County in addressing certain issues relating to sanitary services provided by the District. Unfortunately no one attended the meeting from your office. The issues that the District Board would like Yavapai County to address are as follows:

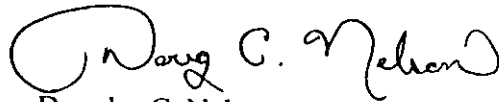
- 1) What is the role of the County under its "delegation agreement" with the Arizona Department of Environmental Quality ("ADEQ") with respect to the wastewater treatment plant within the ICRSD? With respect to the new wastewater treatment plant? With respect to the Aquifer Protection Permit?
- 2) How many lots have been approved by the County for development within the ICRSD service area?
- 3) How many building permits have been granted by the County within the ICRSD service area?
- 4) What are the County's authorities in assuring wastewater treatment plant capacity when approving land or lots for service within the ICRSD Service Area?
- 5) What are the County's procedures for determining wastewater treatment plant capacity when approving land or lots for service within the ICRSD service area?

- 6) What is the arrangement by the County in distributing "new" Capacity Assurance forms?
- 7) Is it possible for the County to provide records of signed Capacity Assurance forms to the ICRSD?
- 8) What actions, if any, will be undertaken by the County if the ICRSD does not have adequate capacity to treat effluent generated by developments within the ICRSD service area?
- 9) What is the expectation of the County regarding the District's efforts to assure adequate wastewater plant capacity and compliance with ADEQ requirements?
- 10) What is the authority for the County's proposal to allow for on-site "septic systems" on a builder/owner for new construction in the ICRSD service area recognizing that the District's Ordinance precludes installation of on-site septic system within the District's service area?
- 11) Is there any requirement, other than the District's Ordinance, which mandates new construction within a sanitary district in Yavapai County connect to an existing system?

The District Board would appreciate a written response to this inquiry, or if you prefer, please let me know when you would be available to make a presentation during a District Board meeting.

Thank you in advance for your assistance.

Sincerely yours,



Douglas C. Nelson

Law Office of Douglas C. Nelson, P.C.

c: ICR Sanitary District Board of Directors
Carol Springer, Yavapai County Supervisor
Thomas Thurman, Yavapai County Supervisor
Chip Davis, Yavapai County Supervisor

Mr. Steve Mauk, Interim Director
Yavapai County Development Services
January 15, 2010
Page 3

Sheila Polk, Yavapai County Attorney
Ms. Dawn Meidinger, Fennemore Craig, P.C.

YAVAPAI COUNTY

Development Services

Prescott - (928) 771-3214 Fax: (928) 771-3432
Cottonwood - (928) 639-8151 Fax: (928) 639-8153



Flood Control District

Prescott - (928) 771-3197 Fax: (928) 771-3427
Cottonwood - (928) 639-8151 Fax: (928) 639-8118

500 S. Marina Street, Prescott, AZ 86303 and 10 S. 6th Street, Cottonwood, AZ 86326
Addressing – Building Safety – Customer Service & Permitting – Environmental – Flood Control District – Land Use – Planning & Design Review

January 20, 2010

Douglas C Nelson
Law Office of Douglas C Nelson, PC
7000 N 16th St, Ste 120-307
Phoenix, AZ 85020

REC'D JAN 28 2010

Dear Mr. Nelson,

In response to your letter dated January 15, 2010, I would like to offer the following.

First I would like to clarify that Yavapai County staff was never invited to any meeting of the ICRSD, with exception to the December meeting that the district cancelled. Staff did note an inference from one member that indicated they thought staff had been invited. However, when staff tried to confirm that our presence was requested the District did not respond. I apologize for any confusion in that regards.

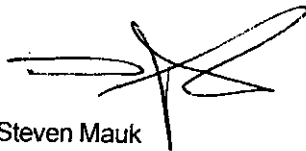
Upon reviewing your questions we have compiled the statistical data you've requested and also attempted to address your other concerns. The questions are answered below in the order they were asked.

1. Yavapai County has no delegated authority over the permitting and operation of any wastewater treatment plant or facility with design flows greater than 24,000 gallons per day. That authority remains with the Arizona Department of Environmental Quality.
2. It appears there are approximately 1504 lots listed in the Certificates of Approval of Sanitary Facilities for Subdivisions issued for the subdivisions with lots connecting to the ICRSD.
3. To date Yavapai County has issued 888 building permits within the boundaries of the district, 411 of which are single family dwellings.
4. The County has no authority to determine the capacity of a wastewater treatment facility. During the subdivision review process the facility owners indicate that they are willing and able to serve the lots in the proposed subdivision. It is the facility owner's responsibility to ensure that said capacity is available as lots are connected to their system.
5. The county has no procedure to determine the wastewater treatment facility capacity. The Facility owner indicates that they are willing and able to service the proposed lots during the subdivision review process. The Facility Owner provides the county with capacity information.
6. The current form used by the county for ensuring a treatment facility has capacity is called, "Sewage Treatment Facility- Capacity Assurance." This document is available from our offices in person or via fax or email and can be downloaded from our website (<http://www.co.yavapai.az.us/WorkArea/showcontent.aspx?id=35610>).
7. The county is able to provide copies of the document in use at the time each subdivision was reviewed to indicate ability and agreement to serve the lots in the subdivision. A request must be made by filling out and submitting a *Verified Statement of Non-Commercial Purpose Public Data Request*. The form can be emailed to you or it can filled out at the Development Services counter.
8. As stated, the county has no authority over the plant. Issues surrounding adequacy and operation should be referred to ADEQ.
9. The Arizona Department of Environmental Quality is responsible for determining the compliance status of and initiating any enforcement actions for any wastewater treatment facility with a design capacity in excess of 24,000 gallons per day. Yavapai County is not involved in those activities per the delegation agreement currently in effect with the Arizona Department of Environmental Quality.

10. Yavapai County does recognize that the District has adopted an ordinance requiring connection to the district facilities. However, we also note that there is currently a moratorium in place prohibiting same required connection. Upon rescission of the Moratorium the county will cease issuing septic permits within the district boundaries
11. The requirement to connect to a sewage collection system under the conditions defined in Arizona Administrative Code R18-9-A309A.5: A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if:
 - a. One of the following applies:
 - i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
 - ii. A county, municipal, or sanitary district ordinance requires connection; or
 - iii. The on-site wastewater treatment facility is located within an area identified for connection to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or
 - b. A sewer service line extension is available at the property boundary and both of the following apply:
 - i. The service connection fee is not more than \$6000 for a dwelling or \$10 times the daily design flow in gallons for a source other than a dwelling, and
 - ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than \$3000 for a dwelling or \$5 times the daily design flow in gallons for a source other than a dwelling.

I hope that I have answered your questions. Please contact me if I can be of further assistance.

Respectfully,



Steven Mauk
Interim Director
Development Services

C: Jack Fields, Deputy County Attorney
Elise Link, Planning Manager

EXHIBIT B

District's Agendas of Regular Meeting and Special Session and Minutes of Regular Meeting, July 23, 2009

EXHIBIT B

**PUBLIC NOTICE
REGULAR MEETING OF THE
I.C.R. SANITARY DISTRICT**

AGENDA

Date: July 23, 2009
Time: 9:00 a.m.
Place: 5360 W. Inscription Canyon Drive, Prescott, AZ 86305

District Board Meeting Guidelines: The meeting will be held in accordance with A.R.S. Title 38 Open Meeting Laws. Board and attendee participation shall be civil and courteous. Any disruptive behavior could result in removal from the meeting. Comments and questions from the public shall be called upon by the Board Chairperson, and shall begin with stating and spelling of the speaker's name and address. All comments and questions shall be directed to the Board Chairperson. If a matter not specifically listed on the agenda is brought up during a meeting, discussion and decision on the matter will be deferred until a later meeting so that the item can be "specifically" listed on the agenda. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting Gloria Lornizen, District Clerk of the Board of Directors, for the I.C.R. Sanitary District, at 445-3292. Requests should be made as early as possible to allow time to arrange the accommodation. Requests for copies of Board Meeting minutes or other District documents, or complaints should be submitted in writing to the District Clerk, ICR Sanitary District, 5360 W. Inscription Canyon Drive, Prescott, AZ 86305.

During the Public Meeting the Board may vote to go into Executive Session. If so, the public will be asked to leave.

1. **Call Regular Board Meeting to Order**
2. **Introduction of Attendees.**
3. **Approve minutes from previous Meetings of 7/9/09.**
4. **NEW BUSINESS**
 - a. **Review April Financial Reports discussion and possible action**
 - i. **Review 2009/2010 Adopted Budget discussion and possible action**
 - b. **Review Status of True-Up expense reimbursement with Mr. Craig Krumwiede of Harvard Investments discussion and possible action**
 - c. **Review Motion List and Action Item List discussion and possible action**
5. **OLD BUSINESS**
 - a. **Weed Control at Santec plant discussion and possible action**
 - b. **Harvard Investments/Whispering Canyon status regarding plant design progress discussion and possible action**
 - c. **Civiltec Report discussion and possible action**
 - i. **Status of Talking Rock Ranch Master Plan review discussion and possible action**
 - ii. **Status of Effluent Flow Meter installation design discussion and possible action**

**PUBLIC NOTICE
REGULAR MEETING OF THE
I.C.R. SANITARY DISTRICT**

AGENDA

Call to the public—The Board may not discuss or take action on matters during the call to the public that are not specifically on the Agenda. The Board may respond to criticism made by those who addressed the Board, ask staff to review a matter, or ask that a matter be put on a future agenda.

6. Adjourn Meeting

The opening meeting law requires at least 24 hours advance notice of this meeting. This Notice was posted at 5360 W. Inscription Canyon Drive, Prescott, Arizona on _____, at ____ a.m/p.m. by

Print Name **Signature**

**PUBLIC NOTICE
SPECIAL SESSION OF THE
I.C.R. SANITARY DISTRICT**

AGENDA

Date: July 23, 2009
Time: 10:30 A.M.
Place: 5360 W. Inscription Canyon Drive, Prescott, AZ 86305

1. **Call Special Session to Order**
2. **Introduction of Attendees.**
3. **Information discussion with Harvard Investments**
4. **Adjourn Special Session**

The opening meeting law requires at least 24 hours advance notice of this meeting. This Notice was posted at 5360 W. Inscription Canyon Drive, Prescott, Arizona on _____, at _____ a.m/p.m. by

Print Name

Signature

**MINUTES OF THE REGULAR MEETING
OF THE I.C.R. SANITARY DISTRICT
July 23, 2009**

Minutes Approved: 8/26/09

Time: 9:00 a.m. -
Place: 5360 W. Inscription Canyon Drive, Prescott, AZ 86305

I.C.R. Sanitary District Board of Directors

Gene Leasure, Chair
Dayne Taylor, Director
Charlie Turney, Director
Gloria Lorntzen, District Clerk

Guests

Cheryl Ibbotson, Wallace & Assoc.
Jimmy Stoner, Homeowner
Chris Stoner, Homeowner
Bill Meyer, Homeowner
Craig Krumwiede, Harvard
Clint Poteet, Talking Rock

1. Call to Order

The meeting was called to order at 9:03 a.m. by Chair Gene Leasure. A quorum was present for the purpose of conducting business.

2. Present were Gene Leasure, Chair; Charlie Turney, Director; Dayne Taylor, Director; Gloria Lorntzen, District Clerk; Cheryl Ibbotson, Wallace & Assoc.; Jimmy and Chris Stoner, Homeowners; Bill Meyer, Homeowner; Craig Krumwiede, Harvard Investments; Clint Poteet, Talking Rock.

3. Approve minutes from previous Meetings of 7/9/09.

Revisions were made to the meeting minutes of 7/9/09. There was one item in the Minutes that was not clear, so Gloria is to re-listen to the tape of the meeting, revise the Minutes, if necessary, and e-mail to the Board. Approval of the 7/9/09 Minutes has been tabled until the next meeting.

Action Item: Gloria to re-listen to tape of 7/9/09 Minutes, make necessary revisions, and e-mail to the Board.

4. NEW BUSINESS

a. Review April Financial Reports discussion and possible action

i. Review 2009/2010 Adopted Budget discussion and possible action

The Board reviewed the April Financial Reports with Cheryl. Gene advised that the District received reimbursement checks from Harvard for ADEQ payments. Cheryl advised that the County Treasurer is holding all interest money on the interest bearing account to cover anticipated increased FDIC fees. There may be a small disbursement in July or August. The Board discussed possibly moving the money to another account.

**MINUTES OF THE REGULAR MEETING
OF THE I.C.R. SANITARY DISTRICT
July 23, 2009**

Minutes Approved: 8/26/09

b. Review Status of True-Up expense reimbursement with Mr. Craig Krumwiede of Harvard Investments discussion and possible action

Craig advised the Board that Kevin's wife had a stroke, so his ability to work on Harvard matters has been limited. He also advised that he needs to get a check cut, but there is still some discussion regarding the allocation of sludge costs that needs to be addressed in the future. This will include the true-up through June 2009, or approximately \$50,000. This check should be cut within the next week or so.

Gene gave Craig a copy of the latest ADEQ billing that he previously forwarded to Craig on approximately July 14, 2009, for payment. Craig advised that he did not receive it, but will pay it.

c. Review Motion List and Action Item List discussion and possible action

The Motion List was reviewed, and the Action Item List was reviewed and updated.

5. OLD BUSINESS

a. Weed Control at Santec plant discussion and possible action

Dayne advised that aQuality has not paid Ian for the weed work that he has done. Also, aQuality has not purchased the weed whacker yet.

Action Item: Gene to call Pat about paying Ian who has done the work and about purchasing a new weed whacker.

b. Harvard Investments/Whispering Canyon status regarding plant design progress discussion and possible action

Gene gave a copy of a letter from ADEQ with more questions to Clint and the Board. Gene advised that he called Aqua, but has not received a return call. Gene called Tally of ADEQ a week or two ago, and asked him where the District is in the approval process. Tally advised that the District is in the middle of the process. Clint will call Justin today regarding the latest questions from ADEQ..

Action Item: Clint to call Justin today regarding the latest questions from ADEQ.

c. Civiltec Report discussion and possible action

Dayne advised that he was told by Rick that CivilTec should have something for the Board in approximately the middle of August.

**MINUTES OF THE REGULAR MEETING
OF THE I.C.R. SANITARY DISTRICT
July 23, 2009**

Minutes Approved: 8/26/09

i. Status of Talking Rock Ranch Master Plan review discussion and possible action

Dayne advised that he met with Rick of CivilTec two weeks ago, and that CivilTec will be reviewing one of the pump stations to address concerns. CivilTec is looking at the daily flows, in regard to when the pumps will have to be replaced. Craig suggested that at the end of CivilTec's review, maybe there should be a meeting with all parties to discuss their findings.

ii. Status of Effluent Flow Meter installation design discussion and possible action

Dayne advised that a meter will be installed to know what the discharge rate is. CivilTec has designed to put it in a cement vault with a digital readout at the plant.

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Jimmy asked about the allocation of sludge costs. Gene advised that the allocation of sludge costs has not been discussed with Craig Krumwiede yet, and he will report on it at a meeting after it happens.

6. Adjourn Meeting at 10:09 a.m.

District Board Meeting Guidelines: The meeting will be held in accordance with A.R.S. Title 38 Open Meeting Laws Board and attendees' participation shall be civil and courteous. Any disruptive behavior could result in removal from the meeting. Comments and questions from the public shall be called upon by the Board Chairperson, and shall begin with stating and spelling of the speaker's name and address. All comments and questions shall be directed to the Board Chairperson. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting Gloria Lorntzen, District Clerk of the Board of Directors, for the I.C.R. Sanitary District, at (928) 237-0309. Requests should be made as early as possible to allow time to arrange the accommodation. Requests for copies of Board Meeting minutes or other District documents, inquiries, or complaints should be submitted in writing to the District Clerk, ICR Sanitary District, 5360 W. Inscription Canyon Drive, Prescott, AZ 86305.