

April 21, 2011

**Residents of Talking Rock Ranch, The Preserve at The Ranch,  
Whispering Canyon, and Inscription Canyon:**

In response to our letters to all of you, we received very positive feedback for which we thank all of you. However we did receive indications that there were still some unanswered questions about a few additional items. The general nature of the questions and our answers are provided below.

**1. Explain the so called 200 GPD per lot capacity “requirement”.**

**There is no statute, regulation or rule requiring 200 gallons per day (GPD) of capacity be available in the plant for every lot sold.** When new plants are constructed a design flow is established to size the plant for ultimate build-out capacity. Design flows can be determined using known flow data and where there is none, standardized tables are often used. No doubt you have seen references from the Board to “Table 1” of the ADEQ regulations as being the “law” in this case. **This is a complete mischaracterization.**

When the existing plant was constructed, design capacity was based on historical water usage within the District (plus a 25% safety factor addition) to establish the design flow of 200 GPD. That figure was then multiplied by the total number of lots in the District at build-out of homes (2,272 lots) to determine that a 455,000 GPD plant may ultimately be needed. This is the only purpose for the use of 200 GPD per lot figure.

The proof is the fact that ADEQ issued the aquifer protection permit (the “Permit”) for the existing plant for 455,000 GPD at build out, and approved a four-phased expansion schedule based on actual flows. A copy of that ADEQ approved expansion schedule is attached to this letter. **Design flows are used for initially sizing plants and actual flows are used to determine when expansions are needed.**

If you think about it, if there were a law or regulation that required 200 GPD of capacity be available for every lot sold in the District, why would ADEQ ever have allowed the first phase of the Santec plant to be constructed at 62,500 GPD when over 400 lots had already been sold in the District (400 lots x 200 GPD = 80,000 GPD)? Under the Board’s analysis, ADEQ would have issued a notice of violation for this situation long ago, and they have not.

We urge you to read the applicable regulations for yourself.<sup>1</sup> In fact, we encourage you to ask the current Board to provide you with a citation to the law they say applies. **Thousands of pages of legal documents have been filed by their lawyers and they have yet to inform us what law they are referring to.**

<sup>1</sup> A.A.C. R18-9-B202 (9)(a) and referenced Table 1 (see footnote at bottom of Table 1).

## **2. What happened to the lot fees collected by Pivotal and how much money is unaccounted for?**

When the District was initially established in the late 1990s, a system was set up by the original Inscription Canyon Ranch developer and the District Board to assess a fee upon the sale of every lot in the District. The amount of the per-lot fee (or wastewater development fee) has varied over time and the purpose is for future capital improvements. The fee serves as financial assurance that money will be available when the expansion is needed due to growth.

The District collected the per-lot fee from 1995 through 2001 during which time over 200 lots were sold in Inscription Canyon Ranch. We do not have any information about the collection of those funds. When Talking Rock and Whispering Canyon were annexed into the District, the amount of the per-lot wastewater development fee was \$2,417 and the collection continued.

In 2001, the Board authorized Pivotal Utility Company to collect fees for Talking Rock and Whispering Canyon because Pivotal was hired to construct and operate the Santec plant. Pivotal continued to be responsible for collecting the fees through 2006 when the Board demanded Pivotal be terminated. The Board's mandate required Talking Rock and Whispering Canyon to negotiate a termination agreement with Pivotal. The Board was not a party to that agreement, but required the firing nonetheless. Under the termination agreement, **a full accounting of the collected lot fees was undertaken and Pivotal was required to transfer the balance of the unused fees to a joint escrow account at First American Title Company (which is currently managed by Talking Rock and the District). That accounting was provided to the Board and never questioned by them.** Pivotal transferred most, but not all, of the fees and they acknowledge money is still owed.

In order to secure the outstanding balance, Talking Rock placed a first lien on real estate Pivotal owns. The notice of lien is recorded and the outstanding principle balance is \$142,587.80. The principal balance accrues interest at 8.25% per annum. **To date, Pivotal has paid over \$19,000 toward the accumulated interest into the joint escrow account, and has committed to continue making monthly interest payments until the principle balance is paid or the property with the lien sells.**

As part of the settlement discussions held with the Board last summer, Talking Rock compiled an accounting of the wastewater development fees for all lots sold in Talking Rock, Whispering Canyon and The Preserve and provided it to the Board. If you are interested, a copy of what was provided over a year ago will be posted on the Talking Rock website. Today, there is over \$560,000 in the jointly managed escrow account which will continue to grow over time as more lots are sold and interest is earned. 1,318 planned and platted lots remain to be sold in the District. **Assuming the current per lot fee remains at \$3,000, the escrow account will grow to \$3,954,000. Together with interest and the outstanding Pivotal funds, the balance will likely increase to \$5,000,000.**

### **3. Do Talking Rock and Whispering Canyon really owe the District over a million dollars?**

On the date the moratorium was adopted, Talking Rock did not owe the District **any** money and was **voluntarily** paying approximately \$130,000 annually for treated effluent, which was discharged on the golf course. These fees are equal to over 70% of the District's operating and maintenance cost. Following the illegal moratorium Talking Rock stopped all voluntary payments to the District.

The Board claimed Whispering Canyon owed \$13,203.45 for outstanding services. Whispering Canyon disputed \$11,906.65 of that total because the Board essentially double billed them for information previously compiled and provided. Nevertheless, those outstanding invoices were one of the Board's justifications for the illegal moratorium that they adopted. **It is outrageous the Board would pass a moratorium against all property owners, based on a \$13,203.45 dispute with one developer.**

Since the moratorium, the Board has continued to invoice Talking Rock on average \$10,000 per month, plus **15% monthly interest (180% annualized) and penalties**. The Board claims they are owed \$492,859, which includes past due fees, the monthly interest and \$1,700 in penalties. Similar tactics were employed by the Board to calculate Whispering Canyon fees. Whispering Canyon's original invoices are in the amount of \$13,203.45. However the Board is now claiming Whispering Canyon owes \$780,845 for past due fees, monthly interest and penalties.

### **4. Was the original SBR plant really taken off line without the Board's knowledge or agreement?**

**The answer is emphatically "no"**. There are a number of mischaracterizations being stated about the original plant that utilized sequence batch reactor ("SBR") technology. These are the facts:

- The Board approved the removal of the SBR plant in favor of the existing Santec plant.<sup>2</sup>
- The SBR plant did not function properly due to low flows. Further, the plant produced **excessive odor** resulting from its **open-air** design which reduced the ability of the plant to maintain optimal temperatures during cold weather months.
- The effluent from the SBR plant was poor quality and was permitted for discharge on District land in a fenced off area. That on site discharge was problematic because it could not be contained on site in storm events and the land area for the discharge was insufficient to support growth. In 2002, ADEQ was threatening fines and actually issued a notice of violation for this problem in 2003.<sup>3</sup>
- The SBR plant was approved only as a 46,000 GPD plant,<sup>4</sup> not a 120,000 GPD plant despite Board assertions to the contrary. Any expansion to that higher level would have required additional permitting and additional land acquisition for effluent disposal.

<sup>2</sup> ICRSD Letter to Property Owners dated June 21, 2002 attaching 2002-03 budget and announcing the decommissioning of the SBR plant and new plant replacement.

<sup>3</sup> ADEQ Notice of Violation dated January 31, 2003.

<sup>4</sup> ADEQ Executive Summary for Permit for SBR plant.

## 5. Why won't the developers provide additional financial assurance?

It appears the Board would like nothing more than to drive the developers out of business, but the truth is these rumors are fear mongering designed to justify unnecessary financial assurances. **The existing escrow account and the per-lot fee structure are the only financial assurance needed for future plant expansion.** Further, Talking Rock intends to meet its obligations under the existing Development Agreement so that additional capacity is constructed at no cost to the District.

It is true that all of the developers have suffered extreme financial damage as a result of the moratorium. Regardless, we are committed to making our projects successful and are doing everything we can to get this burden lifted off our community. Talking Rock, Whispering Canyon and The Preserve at the Ranch have invested millions of dollars in backbone infrastructure (waste water, sewer, dry utilities) in the communities served by the District. In fact, Talking Rock recently constructed an additional storage lake on the golf course at a cost of over \$600,000 in the height of the recession.

In an effort to save a few trees, we have not included all of the attachments, rather we asked Talking Rock if they would kindly post this letter and all copies of the documents we have referenced on their website and they agreed. We encourage you to go to [www.talkingrockranch.com/ICRDOCUMENTS.aspx](http://www.talkingrockranch.com/ICRDOCUMENTS.aspx) for this additional information.

Thank you for taking the time to read this letter.



Craig Krumwiede  
*Talking Rock*



Cole Johnson  
*Whispering Canyon*



Jim Heitel  
*The Preserve*

WATER PERMITS  
 SEP 04 2002  
 RECEIVED

**SANTEC DESIGN CALCULATIONS  
 FOR MULT-PHASE SYSTEM OPERATION**

PROJECT NAME: Inscription Canyon Ranch  
 PROJECT LOCATION: Yavapai County, Arizona  
 DATE: 9/3/02  
 PREPARED BY: Daniel D.

DESIGN CAPACITY (gpd) PER PHASE  
 PHASE ONE: 62,500  
 PHASE TWO: 131,000  
 PHASE THREE: 131,000  
 PHASE FOUR: 131,000  
 TOTAL CAPACITY: 455,500

INFLUENT FLOW VOLUME (gpd)	PHASE ONE		PHASE TWO		PHASE THREE		PHASE FOUR		DESIGN CAPACITY
	gpd	gpm	gpd	gpm	gpd	gpm	gpd	gpm	
10,000	10,000	7	NOT CONSTRUCTED	62,500					
20,000	20,000	14	NOT CONSTRUCTED	62,500					
30,000	30,000	21	NOT CONSTRUCTED	62,500					
40,000	40,000	28	NOT CONSTRUCTED	62,500					
50,000	50,000	35	NOT CONSTRUCTED	62,500					
53,125	53,125	37	CONSTRUCTION START	62,500					
60,000	60,000	42	NOT CONSTRUCTED	193,500					
70,000	70,000	49	NOT CONSTRUCTED	193,500					
80,000	80,000	56	NOT CONSTRUCTED	193,500					
90,000	90,000	63	NOT CONSTRUCTED	193,500					
100,000	100,000	69	NOT CONSTRUCTED	193,500					
110,000	110,000	76	NOT CONSTRUCTED	193,500					
120,000	120,000	83	NOT CONSTRUCTED	193,500					
130,000	130,000	90	NOT CONSTRUCTED	193,500					
140,000	140,000	97	NOT CONSTRUCTED	193,500					
150,000	150,000	104	NOT CONSTRUCTED	193,500					
160,000	160,000	111	NOT CONSTRUCTED	193,500					
164,475	164,475	113	CONSTRUCTION START	193,500					
170,000	170,000	117	NOT CONSTRUCTED	193,500					
180,000	180,000	124	NOT CONSTRUCTED	193,500					
190,000	190,000	131	NOT CONSTRUCTED	324,500					
200,000	200,000	138	NOT CONSTRUCTED	324,500					
210,000	210,000	145	NOT CONSTRUCTED	324,500					
220,000	220,000	152	NOT CONSTRUCTED	324,500					
230,000	230,000	159	NOT CONSTRUCTED	324,500					
240,000	240,000	166	NOT CONSTRUCTED	324,500					
250,000	250,000	173	NOT CONSTRUCTED	324,500					
260,000	260,000	180	NOT CONSTRUCTED	324,500					
270,000	270,000	187	NOT CONSTRUCTED	324,500					
275,825	275,825	189	CONSTRUCTION START	324,500					
280,000	280,000	193	NOT CONSTRUCTED	324,500					
290,000	290,000	199	NOT CONSTRUCTED	455,500					
300,000	300,000	206	NOT CONSTRUCTED	455,500					
310,000	310,000	213	NOT CONSTRUCTED	455,500					
320,000	320,000	220	NOT CONSTRUCTED	455,500					
330,000	330,000	227	NOT CONSTRUCTED	455,500					
340,000	340,000	234	NOT CONSTRUCTED	455,500					
350,000	350,000	241	NOT CONSTRUCTED	455,500					
360,000	360,000	248	NOT CONSTRUCTED	455,500					
370,000	370,000	255	NOT CONSTRUCTED	455,500					
380,000	380,000	262	NOT CONSTRUCTED	455,500					
390,000	390,000	269	NOT CONSTRUCTED	455,500					
400,000	400,000	276	NOT CONSTRUCTED	455,500					
410,000	410,000	283	NOT CONSTRUCTED	455,500					
420,000	420,000	290	NOT CONSTRUCTED	455,500					
430,000	430,000	297	NOT CONSTRUCTED	455,500					
440,000	440,000	304	NOT CONSTRUCTED	455,500					
455,500	455,500	311	NOT CONSTRUCTED	455,500					

**Actual flow required before Phase Two construction start.**

**Average reported monthly flows as of June 2010 was 33,000 GPD.**