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U.S. EPA REGION IX
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3 Realty & Mortgage Co., Inc.
4 P.O. Box 640
5 Wittmann, AZ 85361
6 AZ Bar No. 003429

7 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9**

8 IN THE MATTER OF:) DOCKET NO. SDWA-09-2007-0004
9)
10 American Realty & Mortgage Company, Inc.,) **ANSWER TO**
11 Respondent.) **COMPLAINT AND NOTICE**
12 Proceedings under Section U.S.C. 1414(g) of the Safe) **OF OPPORTUNITY FOR HEARING**
13 Drinking Water Act, 42 300g-3(g))

14 **COMES NOW** the corporation American Realty & Mortgage Company, Inc., Respondent and Answers
15 and pleads as follows:

16 **I**
17 **Response to Opening Paragraph (Lines 18 to 23)**

18 Upon information and belief Respondent pleads that the Administrator of the United States Environmental
19 Protection Agency ("EPA") herein after referred to as solely the "EPA" has no authority or jurisdiction over the now
20 defunct water system, previously known as Hacienda Acres Water System. The water system ceased all water
21 operations on August 27, 2007 before this Complaint was filed. Further, on September 15, 2007, the corporation
22 surrendered its Certificate of Convenience and Necessity to the Arizona Corporation Commission. Thus, no water
23 system existed on September 28, 2007 when the Complaint was filed. In addition, the main reason for dissolution
24 was that the water system was continually losing money, was bankrupt and the Arizona Corporation Commission
25 failed to grant a single rate increase during the over twenty-five (25) years the water system operated forcing it out

1 of business and making it impossible to meet "EPA" or Arizona Department of Environmental Quality, herein after
2 referred to solely as the "ADEQ", rules and regulations.

3
4 **II**
Response to second Paragraph (Lines 23 to 25, Page 1)

5 Respondent is without sufficient knowledge to properly respond therefore it denies same and requests strict
6 proof thereof.

7
8 **III**
Response to First Paragraph of page 2

9 Respondent incorporates its answer to Paragraph II above herein as if fully set forth.

10
11 **Responding to the GENERAL ALLEGATIONS commencing on page 2.**

- 12
13 **1.** Respondent admits it is an Arizona Corporation, but pleads it is now defunct, bankrupt
14 and had no revenues except from water system operations which totally ceased on August
15 27, 2007, before this Complaint was filed. Further, "EPA" was previously notified that
16 the water system had ceased all water operations to avoid any further violation of the
17 "EPA" and "ADEQ" rules and regulations as it was totally bankrupt and compliance was
18 impossible without funds.
- 19 **2.** Paragraph 2 is totally denied, the water system is defunct and non-existent.
- 20 **3.** Paragraph 3. is totally denied. Further, the water system is defunct and has no water
21 customers whatsoever. Further, Respondent believes the cited statutes or section was
22 never applicable to the water system as the minimum numbers of water customers
23 standard was set arbitrarily and capriciously as to this tiny, tiny water system in a hot, dry
24 desert area. Further, the standard would be unconstitutional as it would constitute a
25

1 wrongful taking or inverse condemnation of any and all assets the water system possessed.

2 4. Paragraph 4. is totally denied.

3 5. Paragraph 5. is totally denied.

4 6. Paragraph 6. is totally denied.

5 7. Paragraph 7. is totally denied. Further, answering, previously the water system was from
6 a ground water well no longer owned by Respondent.

7 8. Paragraph 8. is denied.

8 9. Respondent is without sufficient knowledge to properly respond, but upon information
9 and belief believes no proper citation was ever issued as Respondent protested and
10 objected to the "EPA's jurisdiction in 2005 and no hearing or due process was ever
11 granted Respondent. Upon information and belief the 2005 order was unconstitutional,
12 not applicable and in valid.

13 10. Respondent's answer to Paragraph 9. is incorporated herein. The water system had no
14 revenues, was bankrupt and it was impossible to meet "EPA" and "ADEQ" water
15 standards without funds. Further, neither the federal government nor state Government or
16 any agency provided any monies whatsoever to cover all costs of compliance, yet all
17 knew the water system was suffering heavy financial losses as reported in the water
18 system annual reports.

19
20 **Response to the SPECIFIC ALLEGATIONS commencing on page 3.**

21 11. Respondents answer to paragraphs 1 through 10 are re-alleged and incorporated herein by
22 reference.

23 12. Respondent incorporates its Response to the paragraphs above, and Denies said
24 paragraph 12's introductory phrase. Respondent further responds to Count 1 and
25 following counts as follows:

1
2 **Count 1. Failure to conduct lead and copper monitoring**

3 13. Upon information and belief Respondent believes the allegations of paragraph 13. are
4 true, but not applicable as the water system is out of business. Further, application would
5 be improper and unconstitutional as it would in effect be a condemnation of corporate
6 assets.

7 14. Paragraph 14. is denied. Respondent's response to paragraph 1 – 13 are also incorporated
8 herein.

9 15. Denied. Respondent's response to paragraphs 1 – 14 are also incorporated herein.

10 16. Denied. Respondent's response to paragraphs 1 – 15 are incorporated herein.

11 **Count 2. Failure to conduct quarterly nitrate monitoring**

12 17 – 20. Denied. Respondent's response to paragraphs 1 – 19 are incorporated herein.

13 **Count 3. Failure to conduct confirmation sampling**

14 21 – 24. Denied. Respondent's response to paragraphs 1 – 23 are incorporated herein. Count 3 is
15 totally denied.

16 **Count 4. Failure to comply with 48-hour reporting requirements of 40 C.F.R. 141.31(b)**

17 25 – 27. Respondent denies and incorporates its responses to paragraphs 1 – 26 herein.

Count 4. is totally denied.

18 **Count 5. Failure to provide public notice of violation of 40 C.F.R. Part 141 specific in the Order**

19 28 – 31. Respondent denies Count 5 and incorporates its responses to paragraphs 1 – 30 herein.

20 **Count 6. Failure to provide public notice of violation of 40 C.F.R. Part 141 after the effective date of the Order**

21 32 – 34. Respondent denies Count 6 and incorporates its responses to paragraphs 1 – 33 herein.
22

23 **Respondents Response to PROPOSED ADMINISTRATIVE CIVIL PENALTIES**

24 35. Respondent denies paragraph 35 as the Section and Statute cited are not applicable.

25 Respondent incorporates its responses to paragraphs 1 – 34 herein. Further, responding,

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the water system is out of business and bankrupt, thus, the issues are moot. Also, any penalties assessed would constitute an unlawful taking or condemnation of the few or non-existent assets of the water system or corporation.

36. Respondent denies paragraph 36. No penalties of any type are proper or necessary as the water system was bankrupt and out of business. Respondent's responses to paragraphs 1 – 35 are incorporated herein.

37. Respondent denies paragraph 37. and incorporates its responses to paragraphs 1 – 36 herein. Further, Respondent specifically denies the wording on lines 23 – 25 of said paragraph 37, where in it is alleged that Respondent's disregarding "EPA's" regulation "has provided significant economic benefit to Respondent". The water system has never received a penny of assistance nor gained any significant economic benefit. The water system lost thousands and tens of thousands of dollars for the last several years as the "EPA" was clearly here to fore informed.

Respondents Response to PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

38. Response to paragraph 38 page 9 as follows: Respondent requests a hearing on the record if any hearing is necessary concerning this out of business water system without any customers or monies. Further, Respondent requests that any hearings be held in Phoenix Arizona so as not to burden the corporation any more than necessary as legal counsel soon intends to resign as not having been paid a penny for this Response.

Respondents Response to ANSWERING THE COMPLAINT page 9 paragraph 39

39. Respondents Response to paragraphs 1 – 38 and introductory paragraphs are incorporated herein. Respondent clearly contests many material facts of the Complaint; Respondent contends the proposed penalty is not only inappropriate but illegal as a direct or inverse

1 condemnation of corporate non-existent ~~assets~~ or miniscule assets; and; Respondent is
2 entitled to judgment as a matter of law including but not limited to lack of due process,
3 arbitrary and capricious statutes and confiscation or condemnation of its meager assets
4 without due process of law. Again, all issues would appear to be moot as the water
5 system is totally out of business, has no revenues, has no customers and no water system
6 now exists.

7 **40 – 42.** Respondents Response to paragraphs 40 – 42 is that it has fully answered all allegation 1
8 - 39 and Respondent denies all allegation not specifically admitted, it has set forth
9 various facts and matters which are hotly contested, it has requested HEARING IN
10 Phoenix and opposes any relief or penalties be granted against the defunct, out of
11 business water system which has no customers.

12 **Respondents Response to OPPORTUNITIES TO BE HEARD page 10**

13 **43 – 45.** Respondents Response to paragraphs 43 – 45 is follows:

14 Respondent has requested a hearing on the record upon all the issues raised including the
15 constitutional violations of Respondents rights and attempts to confiscate and condemn
16 Respondent's property rights without any due process of law disguising the taking as
17 "penalties, etc."

18 Further, Respondent requests that the hearing be held in Phoenix, Arizona; that legal
19 counsel be hired and paid to represent the corporation as this counsel has plans to resign
20 as counsel for lack of payment of any attorney fees.

21 Paragraphs 1-44 of Respondent's response are incorporated herein.

22 **46 – 52** Respondent responds to paragraphs 46 – 52 by incorporating it responses to paragraphs 1
23 – 45 herein.

24 Further, Respondent pleads and prays fir the "EPA's" Complaint to be dismissed with
25 prejudice as most all issues of the EPA Complaint are old, stale, moot and not applicable
after this tiny, tiny remote hot desert water system was bankrupt and put out of business

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even before this Complaint was filed.

Respondents Response to FILING DOCUMENTS page 12

53. Respondents Response to paragraphs 53 is as follows:

Upon information and belief the data furnished appears on its face to be accurate, but Respondent is without sufficient knowledge to answer and therefore denies same.

54. Respondent believes paragraph 54 is correct --- respondent has a right to be represented by an attorney at any stage of the proceedings and specifically requests Complainant "EPA" hire and pay a knowledgeable attorney to represent it as its present attorney plans to resign for lack of payment and other reasons. Of course, Respondent can not receive due process of law without reasonable legal representation.

55 - 56. Respondent answers paragraphs 55 and 56 as follows:

The water ^{Co is} ~~is~~ defunct, there are no water customers thus the "EPA" rules and statutes are not applicable at this time to a non-existent water company. Thus, as a matter of law such rules and statutes are totally inapplicable.

Respondent incorporates its answers and responses to paragraphs 1 - 55 herein.

Respondents Exhibits A and B are incorporated herein.

Wherefore, Respondent request immediate dismissal of "EPA's" Complaint on the many grounds set forth in Respondent's Answer:

1. The issues are moot as the water system is out of business, bankrupt and there are no customers - not one.
2. The water system was losing thousands of dollars each year and had no monies with which to comply as revenues were almost non-existent and never paid even all the electric and maintenance bills.
3. The "EPA" had actual notice or should have known of the water systems heavy money losses. Said losses made any major penalties or even minor ones a taking or condemnation of the very tiny assets or revenues of the water system.

- 1 4. Penalizing a non-existent water system serves no valid governmental objective or statutory or
2 constitutional mandate. On the contrary it defeats or contravenes many basic legal and constitutional
3 rights.
4 5. It is obvious that a water system without a single water customer does not fall within the purview fo
5 jurisdiction of the "EPA" and should be dismissed as a simple matter of law.
6 6. "EPA's" Complaint should be totally dismissed forthwith as it is contrary to public policy to waste
7 governmental monies for no good reason and for no public benefit.

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10 Dated this 31st day of December, 2007.

11 Attorney Joseph W. Lee for
12 American Realty and Mortgage Company, Inc.

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EXHIBIT "A"
NOTICE

**TO ALL RESIDENCE OF HACIENDA
ACRES, CUSTOMERS OF AMERICAN
REALTY & MORTGAGE CO., INC.**

**ALL WATER SERVICE BY THIS COMPANY
WILL BE TERMINATED EFFECTIVE UPON
RECEIPT OF THIS NOTICE OR AS OF 7:00
A.M. MONDAY AUGUST 27, 2007**

**DUE TO EXTREME HARDSHIP AND POOR
FINANCIAL CONDITION OF THE WATER COMPANY,
AMERICAN REALTY & MORTGAGE CO., INC. IT HAS
BECOME IMPERATIVE THAT IT CEASE OPERATION
IMMEDIATELY.**

**ALL WATER SERVICE TO
HACIENDA ACRES SUBDIVISION
AND AMERICAN REALTY AND
MORTGAGE CO., INC.
CUSTOMERS WILL BE
TERMINATED AFTER 7:00 A.M.
MONDAY AUGUST 27, 2007**

**SECRETARY/TREASURER
AMERICAN REALTY & MORTGAGE CO.,
JOSEPH W. LEE**

Exhibit "B"
Joseph W. Lee

Attorney at Law

003429

32241 S. Center St. ** P. O. Box 640, Wittmann, Arizona 85361

Ph: 623-388-2949 or 623-388-0500 *** Fax: 623-388-2413

September 5, 2007

Arizona Corporation Commission
Utilities Division
1200 West Washington St.
Phoenix, Arizona 85007

All Commissioners and Agents Thereof

RE: W-02258A-07-04414 and
W-02258A-07-0470

**NOTICE OF SURRENDER
OF WATER FRANCHISE OF
AMERICAN REALTY AND MORTGAGE CO. INC.**

This Notice formally confirms that American Realty and Mortgage Company Inc. hereby gives up and surrenders its water franchise of our thirty years.

Prior Notice of the Water Company's decision to cease was given during the Arizona Corporation Commission hearing on August 20th 2007 for an emergency rate increase. The tiny water company has no monies to continue as a public water system – no rate increase in over thirty years.

Water operations ceased at 7:00 a.m. Monday August 27th, 2007. See copy of attached Notice of Termination of Water Service given to all customers.

Dated this 5th day of September, 2007

Joseph W. Lee

Joseph W. Lee
Attorney for
American Realty and Mortgage Co. Inc.