

Ferguson/Waterview Agreement

Exhibit A (map)

Exhibit B (map)

Exhibit C – Diversion Ditch Plan

Exhibit D – Conservation Easement

Mutual Release

Order of Dismissal with Prejudice

**WATERVIEW ESTATES LLC
404 EAST KIEHL AVENUE
SHERWOOD, ARKANSAS 72120**

July 16, 2007

Mr. Graham Rich
Chief Executive Officer
Central Arkansas Water
221 East Capitol Avenue
Little Rock, Arkansas 72202

RE: *Central Arkansas Water v. Waterview Estates, LLC, et al*
Pulaski County Circuit No. CV04-5428

Dear Mr. Rich:

In connection with the Agreement which you and I are executing this date evidencing the settlement of the referenced case, please be advised that septic tank sewer service will not be authorized on the Withdrawn Lands as that term is defined in the Agreement and instead all sewer effluent generated by the Withdrawn Lands will be treated at a sewer treatment plant currently operating situated outside the Lake Maumelle Watershed.

Sincerely,
Waterview Estates LLC

BY: 

HJK/hjk

AGREEMENT

This Agreement is made and entered into effective as of _____, 2007 by and among Central Arkansas Water (“CAW) and Waterview Estates LLC (“Waterview”), Big Bald Eagle Land Baron Company, LLC, (“Baron Company”), James A. Matthews and Melanie G. Matthews (collectively the, “Matthews”) Scotland Farms, LLC (“Scotland Farms”), Westwood Development Company, LLC (“Westwood Company”), Back Investments, LLC (“Back Investments”), RKT, LLC (“RKT”) and Steven Eugene Cauley (“Cauley”) [Waterview, Baron Company, Matthews, Scotland Farms, Westwood Company, Back Investments, RKT and Cauley being collectively referred to as the “Waterview Landowners”]; and CAW and the Waterview Landowners being sometimes herein collectively referred to as the “Parties”.

WHEREAS, CAW commenced a condemnation action in the Circuit Court of Pulaski County, Arkansas, Civil Case Number CV-04-005428 against Waterview, Baron Company, Matthews, Scotland Farms, Westwood Company and Back Investments seeking to condemn 301 acres, more or less (the, “Taken Waterview Lands”) as more particularly described on Exhibit “A” attached hereto and made a part hereof, said circuit case being referred to as the “Pending Action”; and,

WHEREAS, the CAW and the Waterview Landowners are desirous of settling the Pending Action on and under the conditions herein stated.

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the premises, promises, covenants, and agreements herein contained to be well, truly and completely observed and performed and which are acknowledged by the Parties hereto to be mutually beneficial and other good and valuable consideration, the receipt and sufficiency of which is further acknowledged, the Parties hereto, subject to the terms and conditions hereof, covenant and agree as hereinafter set forth:

Section 1: Recitals. The Parties hereto acknowledge the accuracy of the recitals hereinabove set forth, which they agree are not mere recitals of fact, but are intended as contractual in nature and the same are hereby incorporated herein.

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Section 2: Withdrawal from Watershed. A map (the "Map") depicting the Taken Waterview Lands is attached hereto marked as Exhibit "B" and made part hereof. Baron Company, Matthews, Scotland Farms, Westwood Company, Back Investments and RKT will grant a temporary 60 foot wide easement for the construction and maintenance of a ditch to Waterview. Waterview at its cost and expense shall construct a concrete lined ditch (the "Ditch") along the approximate route and within the area as depicted on the Map of the Ditch Easement (the "Temporary Ditch Easement") in conformity with the Diversion Ditch Construction and Maintenance Plan (the "Ditch Construction and Maintenance Plan") attached hereto marked as Exhibit "C" and made a part hereof. Upon completion of construction of the Ditch, the affected Waterview Landowners will grant a perpetual 60 foot wide easement (the "Permanent Ditch Easement") for the maintenance, repair and reconstruction of the Ditch within the area of the Permanent Ditch Easement to an Improvement District to be formed pursuant to Arkansas law ("the District"), and the District shall thereafter contract with CAW that the District shall maintain the Ditch and the Permanent Ditch Easement at the sole cost of the District in accordance with the Ditch Construction and Maintenance Plan. The maintenance, repair and reconstruction (if needed) of the Ditch and other improvements within the Permanent Ditch Easement shall be the sole financial obligation of the District, and the District will levy such assessment against the Withdrawn Lands sufficient to pay the District's obligations including development of a reserve to be used in the repair or reconstruction of the Ditch. If the District is not formed, then the Permanent Ditch Easement will be granted to a Property Owners Association (the "POA") or such other entity as is deemed by the affected Waterview Landowners desirable, and that the POA or other entity shall be substituted for the District herein and thereafter maintain, repair and reconstruct the Ditch and other improvements at its sole cost and expense in accordance with the Ditch Construction and Maintenance Plan. That portion of the Taken Waterview Lands lying north of the south line of the Ditch as constructed (herein declared and defined as the, "Withdrawn Lands") shall be deemed withdrawn from, and no longer lying within, the Lake Maumelle Watershed (the, "Watershed"). Subject to compliance with the Ditch Construction and Maintenance Plan (including the covenant running with the Withdrawn Lands prescribed in Section 7 thereof), the Waterview Landowners may use, hold for investment, develop, plat, subdivide, live on and occupy or otherwise use for any lawful purpose the Withdrawn Lands and any portion of the Waterview Lands (other than the lands in the Conservation Easement Area) and may as they desire in their discretion from time to time construct, reconstruct, install, maintain, operate and repair such houses, buildings, structures, roads, improvements, utilities and

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infrastructure on the Withdrawn Lands and any portion of the Waterview Lands (other than the lands in the Conservation Easement Area) as they deem desirable. The parties agree that following dismissal of the Pending Action and prior to the filing of the Conservation Easement, no activities will be conducted on, or alterations made to, the property south of the Temporary Ditch Easement other than those activities that might be necessary for construction of the Ditch and that are consistent with the Ditch Construction and Maintenance Plan.

Section 3: Conservation Easements. Concurrent with execution of the Permanent Ditch Easement, each Waterview Landowner owning lands south of the Permanent Ditch Easement will make, execute and cause to be recorded a conservation easement in the form attached hereto marked as Exhibit "D" (the "Conservation Easement") and made a part hereof by this reference, perpetually encumbering that portion of the Taken Waterview Lands lying between the north line of CAW's lands and the south line of the Permanent Ditch Easement (the "Conservation Easement Area") as a conservation easement to be used and maintained in accordance with the terms of the Conservation Easement and perpetually prohibiting thereby the construction, erection or maintenance of any homes, buildings or structures within the Conservation Easement Area. CAW and each Waterview Landowner owning lands south of the Permanent Ditch Easement agree that CAW shall participate in the development of a program ("the Program") intended to implement the Purposes of the Conservation Easement, including but not limited to, development of the forest management plan, the wildlife management plan and the grasslands, wildflower and vegetation management plan, and that once the Program is developed, it will not be modified, changed or amended without the prior consent of CAW, which consent will not be unreasonably withheld.

Section 4: Settlement. In consideration of the agreement to settle the Pending Action, CAW agrees to pay to Waterview the sum of \$1,000,000.00 upon execution hereof.

Section 5: Indemnity. Waterview covenants and agrees with CAW that Waterview will indemnify, save, defend and hold harmless CAW of and from any claim, cause of action, judgments, liabilities, liens, losses, demands asserted by a third party against CAW and any and all costs, expenses, attorney's fees and any fees, charges and expenses of any expert witnesses or professionals incurred by CAW (including any such costs, expenses, fees and charges incurred in the enforcement of this indemnification) arising out of, resulting from, related to or in any way connected with failure to construct,

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operate or maintain the Ditch in accordance with the Ditch Construction and Maintenance Plan.

Section 6: Identification of Lands. Attached hereto marked as Exhibit “E” and made a part hereof by this reference is a Map which depicts the lands owned by the Waterview Landowners hereinafter referred to as the “Waterview Lands.”

Section 7: Water Provision to Waterview Landowners. Upon request by Waterview or any of its successors or assigns as to the Waterview Lands, CAW agrees that CAW shall promptly supply potable water to the Waterview Lands in the volume necessary to allow, support and facilitate full development, use and occupancy of the Waterview Lands at the market rates and in accordance with applicable laws and regulations, as well as the CAW policies pertaining to the extension of water to any new customer of CAW which are in effect at the time of the request, either directly by allowing the Waterview Landowners or any of them to connect a water supply line or lines for their respective Waterview developments to CAW’s distribution system at the nearest then existing point where CAW sells water to anyone or indirectly by CAW selling potable water to the nearest water supply entity serving the area.

Section 8: Assurances to Work Together. CAW and the Waterview Landowners, to the extent that they or any affiliated company controlled by either of them own other lands in the Lake Maumelle Watershed, pledge to continue working together to implement a comprehensive watershed management plan for the Watershed through voluntary development agreements and through the adoption of appropriate ordinances by local governments. Further, the parties agree that it is mutually beneficial to arrive at such agreements so as to allow for development of the private land in the Watershed within the framework of a watershed management plan that protects the water quality of Lake Maumelle.

Section 9: Dismissal of Pending Actions. The Waterview Landowners and CAW covenant and agree that on the date of the complete execution of this agreement by all parties, each shall approve and present to the Court an Order to be entered dismissing with prejudice their respective claims against one another in the Pending Action, and each shall give the other a full release in connection therewith.

Section 10: Miscellaneous. The Parties agree as follows:

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(a) This Agreement, together with all exhibits and documents referred to herein, contains all the terms and conditions agreed upon by the Parties hereto with respect to the transactions contemplated hereby, and the same shall not be amended or modified except by written instrument signed by all of the Parties.

(b) This Agreement shall be binding upon and inure to the benefit of the representatives, heirs, estates, successors and assigns to the parties hereto.

(c) Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm or corporation, other than the parties hereto, their successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

(d) Time is of the essence of this Agreement.

(e) This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(f) This Agreement shall be governed by and construed under the laws of the State of Arkansas.

(g) Each Party and counsel for each party have reviewed this Agreement, and, accordingly, the normal rule of construction to the effect that any ambiguities herein or created hereby are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(h) In the event either party to this Agreement shall employ legal counsel to protect its rights under this Agreement or to enforce any term or provision of this Agreement, then the party prevailing in any such legal action shall have the right to recover from the other party all of its reasonable attorneys' fees, costs and expenses incurred in relation to such claim.

(i) Wherever in this Agreement it is provided that any party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express agreement to