




MEMORANDUM

Date: September 8, 2011

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Marana Sewer Litigation**

A number of actions have been taken recently regarding this matter. To provide the Board with the most current information, I am attaching the following:

1. An offer of settlement made by the County to the Town of Marana.
2. Letters from the Pima Association of Governments (PAG) and the County in response to Marana's letter to the Arizona Department of Environmental Quality (ADEQ) requesting approval of the Marana 208 Plan Amendment.
3. Litigation filed at the direction of the Board challenging the constitutionality of Senate Bill (SB) 1171 enacted by the Arizona Legislature and signed into law by the Governor.
4. The County's appellate brief appealing a portion of the decision by the Maricopa County Superior Court in *Town of Marana v. Pima County* (CV2008-001131).

The following is more specific information regarding each of these documents.

1. Offer of Settlement made by the County to the Town of Marana.

The County has offered to settle the litigation with Marana by entering into a settlement agreement, the terms of which are outlined in Attachment 1. This settlement would allow Marana to become the sewer provider for a portion of north Marana. The County would sell the Marana Wastewater Reclamation Facility to Marana for our net cost, and Marana would be the sewer provider only within the north Marana Designated Management Area (DMA). The County would remain the DMA for all areas outside of Marana's DMA, and the County's provision of sewer service to the balance of Marana residents would be unrestricted. Marana would relinquish any right or claim to County sewer infrastructure outside of the north Marana DMA.

2. Letters from PAG and the County in response to Marana's letter to ADEQ requesting approval of the Marana 208 Plan Amendment.

The Town has written to ADEQ in an attempt to circumvent the regional and federally authorized Clean Water Act Section 208 planning requirements. The Town's request for a separate DMA was denied by the PAG Regional Council; hence, Marana is asking ADEQ to

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circumvent the local planning process. PAG has objected, and their response to ADEQ is Attachment 2A. Our response to this effort is Attachment 2B.

3. Litigation filed at the direction of the Board challenging the constitutionality of Senate Bill (SB 1171) enacted by the Arizona Legislature and signed into law by the Governor.

SB 1171 is an overly broad interference by the State Legislature in the operation of a viable public utility. Many provisions of SB 1171 are unlawful. The litigation filed by the County (Attachment 3) challenges the constitutionality of the law and seeks to have it declared invalid by the courts. The drafting of SB 1171 was in response to Marana's desire to avoid the outcome of the civil litigation filed by the Town against the County and tried in Superior Court in Maricopa County. The Court completely agreed with Pima County's position with respect to the ownership of the treatment facility and of certain runs of sewer only to have its ruling largely nullified by the enactment of SB 1171.

This litigation was filed by our contracted counsel, Gabroy Rollman & Bossé, PC.

4. The County's appellate brief appealing a portion of the decision by the Maricopa County Superior Court in *Town of Marana v. Pima County* (CV2008-001131).

To conserve resources, the County Attorney filed the Appellant's Opening Brief (Attachment 4) in partial appeal of the ruling of the Maricopa Superior Court in *Town of Marana v. Pima County*. Our disagreement with the trial court relates to its very first ruling, which was directed at the County's authority to provide sewer service within the Town of Marana. The Court relied on the 1979 Intergovernmental Agreement (IGA) as the authority of the County to provide sewer service; such is not the case. The County's authority to provide sewer service to the Town arose from the A.R.S. § 11-264 and its designation under section 208 of Clean Water Act as the local waste treatment management agency, and this authority was not eliminated when the Town terminated the 1979 IGA with the County. The County had, and continues to have, all necessary legal authority to provide sewer service within the Town of Marana.

I will continue to keep the Board apprised of developments regarding this matter. In the meantime, should you have any questions or desire additional information, please contact me.

CHH/mjk

Attachments

c: John Bernal, Deputy County Administrator for Public Works
Jackson Jenkins, Director, Regional Wastewater Reclamation
Regina Nassen, Deputy County Attorney
Richard Rollman, Gabroy Rollman & Bossé, PC
Michael Racy, Racy Associates, Inc.

ATTACHMENT 1

08/16/11 PIMA COUNTY COMMENTS

POSSIBLE SETTLEMENT REGARDING MARANA 208 PLAN AMENDMENT AND SEWER UTILITY ACQUISITION AND OPERATION

CONFIDENTIAL – FOR DISCUSSION ONLY

1. Marana will purchase the Marana Wastewater Reclamation Facility (MWRf) and land, as well as regulatory buffers located adjacent to it (except for a Floodway Setback Easement to be granted by the County and the City of Tucson Setback Easement previously granted by City), as shown on Exhibit 1, based on a price and terms negotiated between Marana and Pima County based on the County's documented investment, including interest on bonds issued to finance the facility, less all connection fees paid and all state and federal funds received by the County attributable to the MWRf.
2. The County will support Marana's PAG request to be the DMA for a portion of the incorporated Town limits within Pima County as shown in Exhibit 2. For that area shown on Exhibit 2 outside the Marana DMA but within the area denoted future Marana DMA, the County consents to inclusion of said area in the Marana DMA upon annexation of the property or any portion of the property into the Town of Marana.
3. Marana and Pima County shall cooperatively plan for sewer service at their joint

DMA boundary and may alter the DMA service boundary by mutual agreement when service efficiency, based on engineering criteria, justifies DMA boundary modification. Any such boundary modification is to be documented in an intergovernmental agreement executed by both parties.

4. Pima County shall consent to Marana's annexation of the MWRf as defined in Exhibit 1. This annexed area will be considered part of the Marana DMA area.
5. Pima County shall remain the DMA for all areas of incorporated Marana except for the area shown in Exhibit 2 and shall provide sewage treatment and conveyance services to new and existing customers within all areas where it remains the DMA. The County will provide sewer service to all properties within the Town and County DMA based on specific land uses approved by Marana.
6. Marana agrees to only request transfer of County wastewater assets in areas where Marana is the DMA. Within the Marana DMA shown on Exhibit 2, the County will transfer all wastewater assets without cost except for the MWRf. All other wastewater assets of the County shall remain the property of the County without qualification or reservation. Marana will convey to the County any right and/or interest the Town may have in any portion of the collection system located within the County DMA area.

7. Marana sets and collects sewer connection and user fees for customers actually served by Marana. Pima County sets and collects sewer connection and user fees (sewer user fees collected through the respective water service provider) for customers actually served by the County, including County customers located within the Town of Marana.

8. For development of Pima County DMA areas within the Marana town limits, Pima County will provide sewer service without limitation subject only to available conveyance and treatment capacity.

9. Pima County shall support Marana's efforts to get beneficial use of as much effluent as possible generated from Marana Utilities Department potable water deliveries at the Ina Road WRF, less the County's 10 percent reservation and the existing SAWRSA and Conservation Effluent Pool set-asides, and shall retain the Cortaro-Marana Irrigation District point of discharge at the Ina Road WRF as shown in Exhibit 3 to accommodate effluent deliveries directly from the Ina Road WRF.

10. Marana will not dispose of sludge from the North Marana Treatment Facility at Pima County's Tangerine Road Sanitary Landfill.

11. Marana and Pima County agree to be responsible for and to comply with all regulatory requirements for operating their respective wastewater collection and treatment systems.

12. The County will issue a letter of no objection to (or withdraw from participating as a stakeholder in) Marana's CAAG request to be the DMA for Marana's General Plan limits within Pinal County.

13. Pima County will consent to the formation of a Landscape Improvement District by the Town of Marana for Ina Road from Silverbell Road to Interstate 10. Marana will landscape its property along Star Commerce Way. The Landscape Improvement District shall landscape and beautify the north and south sides of Ina Road. Pima County agrees to pay its share of the Landscape Improvement District.

14. Marana agrees to enter into a settlement agreement, as well an intergovernmental agreement with a term of 25 years with the option for renewals, with the County to formalize the terms of this settlement. The parties shall be contractually bound to the ongoing obligations of this settlement (i.e., Items 2, 3, 4, 5, 6, 9, 10, 13 and 14) until December 31, 2036 unless options for renewal are exercised.

15. Pima County and Marana shall stipulate to the dismissal of pending sewer litigation, without prejudice, with each party bearing its own costs and attorneys' fees.

Marana WRF
1000 FT. Buffer



Legend

- 1000 Foot Regulatory SetBack
- Floodway Limits
- Exist. Sewer
- SetBack Purchase
- SetBack Easement
- City of Tucson Easement

MARANA TREATMENT					
#	Parcel	E/W(ft)	N/S(ft)	Sq. ft.	Acres
1	208-12-001N	739.40	509.20	376502	8.6
2	208-12-004C	142.00	167.84	23833	.5
3	208-12-004D	142.00	831.93	118134	2.7
4	208-12-004F	244.92	253.49	62084	1.4
5	208-12-002C	1174.34	164.00	192591	4.4
6	208-12-002A	1171.89	576.15	676596	15.5
7	208-12-002A	1171.89	252.09	295421	6.8
8	208-09-010K	942.29	2152.02	2027826	46.6
9	208-14-0020	935.73	363.67	340296	7.8
10	208-12-013C	1479.18	350.40	518304	12.4

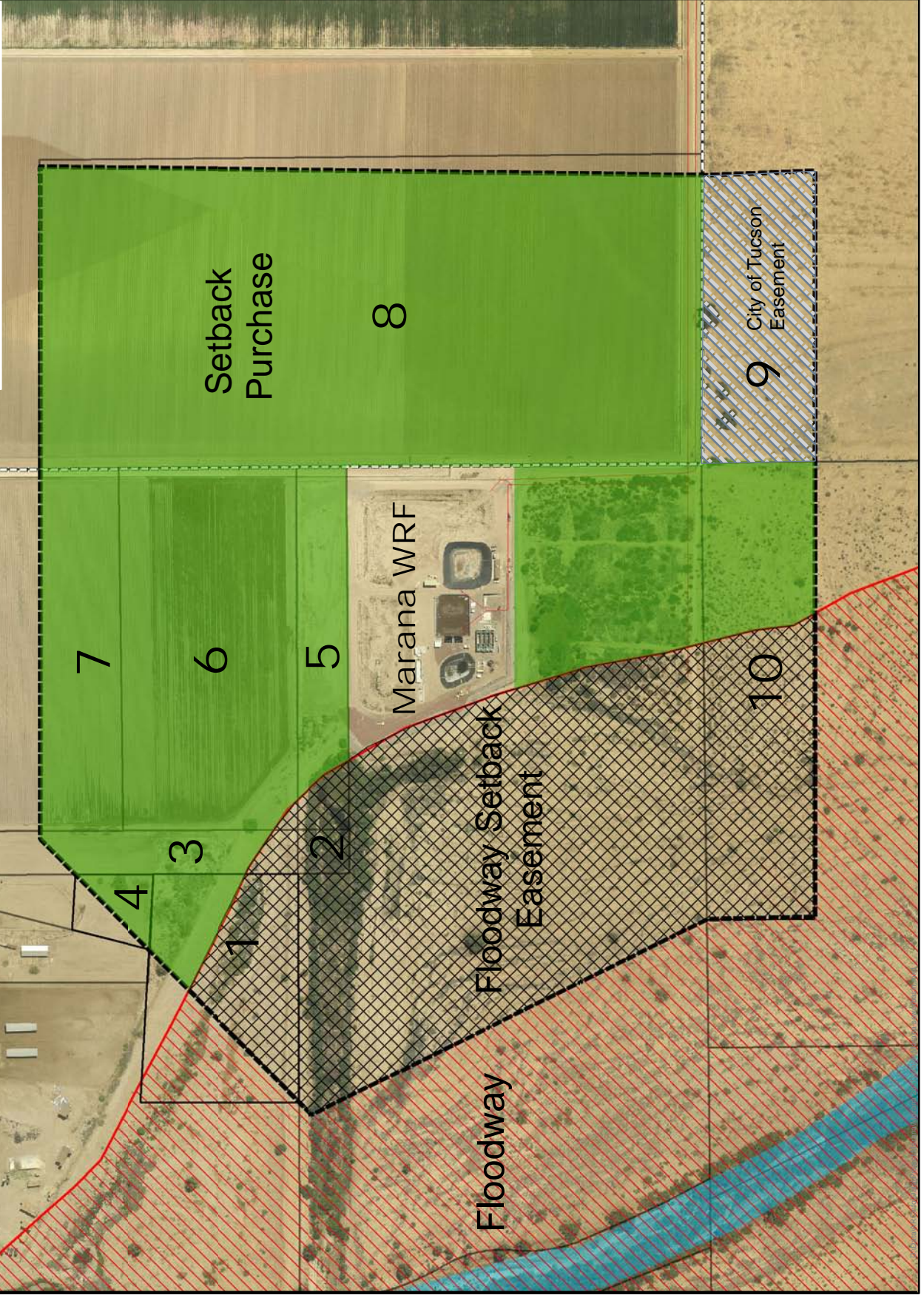


EXHIBIT 1

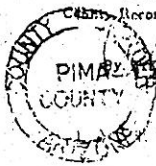
STATE OF ARIZONA }
COUNTY OF PIMA }
Witness my hand and Official Seal.

I hereby certify that the within instrument was filed for record in Pima County, State of Arizona

No. 42660
Book 6515
Date Nov 23 '81 8:55 AM
Request of: George E. Mangum
Fee: 3.00

RICHARD J. KENNEDY
County Recorder

Indexed	Paged	Blotted



THIS INSTRUMENT IS BEING RE-RECORDED TO CORRECT AN OMISSION IN THE LEGAL DESCRIPTION

THIS INDENTURE, made this 15th day of November, 1980, by and between PIMA COUNTY, a Body Politic and Corporate hereinafter known as the Grantor, and CORTARO-MARANA WATER USERS ASSOCIATION, agents for the CORTARO-MARANA IRRIGATION DISTRICT, the Grantee,

WITNESSETH:

That the Grantor, for and in consideration of One (\$1.00) dollar, and other valuable consideration to in hand paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby convey unto the Grantee, its successors and assigns, exclusive and perpetual right of way, privilege and easement for transmission carriage and delivery of irrigation water.

DESCRIPTION

A 25 foot wide strip of land, the centerline of which is described as follows:
BEGINNING at the North quarter corner of Section 1, Township 13 South, Range 12 East, G. & S. R. B. & M., Pima County, Arizona, and bearing North 89°55'43" West along the North line of said section a distance of 1258.56 feet to a point;

THENCE South 1°17'50" East, a distance of 75 feet to a point on the South right of way line of Ina Road said point being the FROM POINT OF BEGINNING;

THENCE, South 48°18'13" East, a distance of 143.76 feet to a point;

THENCE, South 65°51'53" East, a distance of 473.87 feet to a point;

THENCE, South 89°55'43" East, a distance of 255.00 feet to a point;

THENCE, South 1°17'50" East, a distance of 1233.85 feet to a point;

THENCE, South 34°49'10" West, a distance of 141.19 feet to a point;

THENCE, Southeasterly a distance of 256 feet more or less to the well located within wellsite I-F as described in Deed of record in Book 314 of Deeds at Pages 429-444, Instrument No. 02518.

The Grantee shall have the right under this easement over the above described property to construct and maintain a water irrigation system and to enter upon said above described property for the purpose of maintaining said easement.

~~6494~~ 827 6515 386

CONDITIONS:

1. The Grantor, for themselves, their successors and their assigns, hereby waives any claim for any and all damages to Grantor's remaining property contiguous to the right of way hereby conveyed by reason of the location, construction, landscaping or maintenance of said Easement.

2. That if at any time hereafter the above described easement is abandoned by the Grantor said parcel of land shall revert to the Grantors or to the successors in interest of the Grantors, and all right, title, interest or claim existing by virtue and authority of this instrument shall be extinguished.

3. That all grants, covenants and provisions herein shall be binding on and unure to the benefit of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, I, or we, have hereunto set my hand (s) this 13th day of November, 1980.

PIMA COUNTY BOARD OF SUPERVISORS

James E. Riley
BY: JAMES E. RILEY, ASST. COUNTY MANAGER

STATE OF ARIZONA)
COUNTY OF PIMA) ss

The foregoing instrument was acknowledged before me, the undersigned authority on this, the 13 day of November, 1980, by
JAMES E. RILEY, ASST. COUNTY MANAGER

Linda L. Class
NOTARY PUBLIC

MY COMMISSION EXPIRES:

May 3, 1984

6515 PA 387

easement / concrete ditch

A 25 foot wide strip of Land, the centerline of which is described as follows:

BEGINNING at the North quarter corner of Section 1, Township 13 South, Range 12 East, G. & S. R. B. & M., Pima County Arizona, and bearing North $89^{\circ}55'43''$ West along the North line of said section a distance of 1258.56 feet to a point;

THENCE, South $1^{\circ}17'50''$ East, a distance of 75 feet to a point on the South right of way line of Ina Road said point being the TRUE POINT OF BEGINNING;

THENCE; South $48^{\circ}18'13''$ East, a distance of 143.76 feet to a point;

THENCE, South $65^{\circ}51'43''$ East, a distance of 233.00 feet to a point;

THENCE, South $1^{\circ}17'50''$ East, a distance of 1233.85 feet to a point;

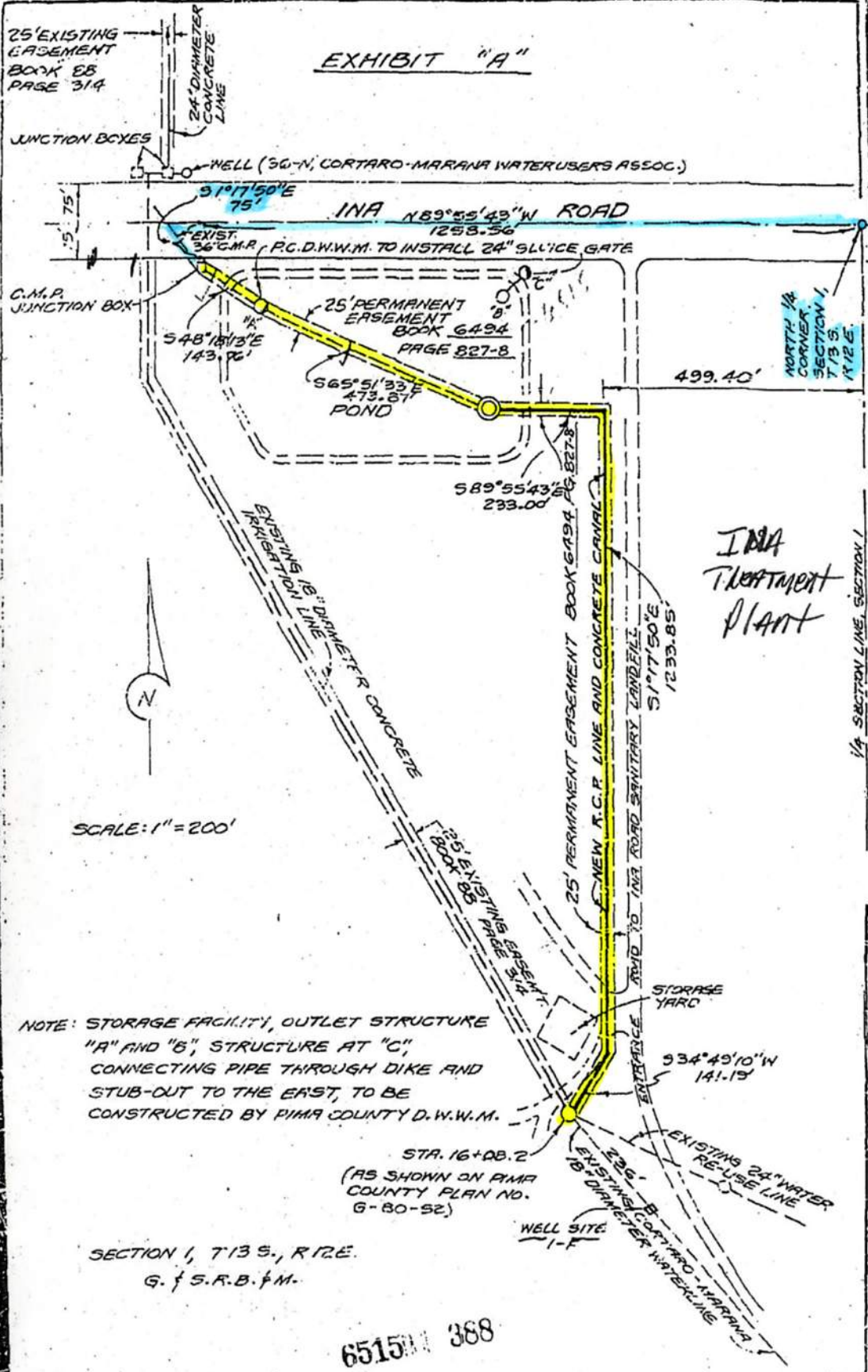
THENCE, South $34^{\circ}49'10''$ West, a distance of 141.19 feet to a point;

THENCE, Southeasterly a distance of 236 feet more or less to the well located within wellsite 1-F as described in Deed of Record in Book 314 of Deeds at Pages 429-444, Instrument No. 02518.

SM 12.2.02
CMID

EXHIBIT "A"

FIELD



25' EXISTING EASEMENT BOOK 58 PAGE 314

JUNCTION BOXES

WELL (50'-N, CORTARO-MARIANA WATER USERS ASSOC.)

31°17'50"E 75'
INA N89°55'43"W ROAD 1253.56'

C.M.P. JUNCTION BOX

548°18'13"E 143.76'
25' PERMANENT EASEMENT BOOK 6434 PAGE 827-8

565'51'33" 473.87' POND

499.40'

NORTH 1/4 CORNER SECTION 1, T13 S, R12 E

589°55'43"E 233.00'

25' PERMANENT EASEMENT BOOK 6494 PG. 827-8

INA TREATMENT PLANT



SCALE: 1" = 200'

NOTE: STORAGE FACILITY, OUTLET STRUCTURE "A" AND "B", STRUCTURE AT "C", CONNECTING PIPE THROUGH DIKE AND STUB-OUT TO THE EAST, TO BE CONSTRUCTED BY PIMA COUNTY D.W.W.M.

STA. 16+08.2 (AS SHOWN ON PIMA COUNTY PLAN NO. G-80-52)

SECTION 1, T13 S, R12 E. G. & S.R.B. & M.

6515 388

ATTACHMENT 2A

