

EXHIBIT 2



Questar Gas Company

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October 21, 2011

Legal Department

Mr. Shawn E. Draney
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Salt Lake City, Utah 84111

Re: *Questar Gas Company's Property Rights in Westview Dr./Metropolitan Water District Easement Crossing on Westview Drive*

Dear Mr. Draney:

As a follow up to our meeting on June 9, 2011, and subsequent e-mails, I am forwarding to you a research memorandum from my outside counsel at Clyde Snow & Sessions. This memorandum discusses the property rights that govern Questar Gas' and Metropolitan Water District's rights in Westview Drive.

Questar Gas' position is that Metropolitan Water District holds a non-exclusive easement along Westview Drive. As an easement holder, Metropolitan Water District may seek to exclude concurrent users who unreasonably interfere with the easement holder's use of its easement. In this case, Metropolitan Water District and Questar Gas both have overlapping nonexclusive easement rights and have co-existed without any claims of unreasonable interference for over 50 years.

As we discussed, a common practice among concurrent users of non-exclusive easements is to enter into "Common Use Agreements" to help govern the co-existence, maintenance and operation of adjacent facilities in overlapping or immediately adjacent easements. I have enclosed a typical Common Use Agreement for your review.

My apologies for the delayed response. Please call me if you have any questions or would like to discuss further.

Very truly ours,

Colleen Larkin Bell

CLB/gj
Enclosures
129718



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MEMORANDUM

TO: Colleen Bell; Dee Heugly
FROM: Perrin R. Love; J.D. Kesler *PRL JAK*
DATE: 10/12/11
SUBJECT: Metropolitan Water District of Salt Lake and Sandy – Westview Drive Crossing

At your request, we have compiled the following information regarding the current dispute between Metropolitan Water District of Salt Lake and Sandy (“Metro Water”) and Questar Gas Company (“Questar Gas”). An easement holder does not have the right to exclude other users or uses of the property which are permitted by the property owner and which do not unreasonably interfere with the easement holder’s use of its easement. Based upon the records, we conclude that Metro Water holds a non-exclusive easement and thus has no right to exclude Questar Gas where Questar Gas obtained approval from Salt Lake County (the fee owner) under the Franchise which granted Questar Gas the right to “construct, maintain and operate in the present and future roads, streets, alleys, highways and other public rights-of-way ... within County limits a distribution system for furnishing natural and manufactured gas...” Questar Gas has no duty to obtain permission from adjacent easement holders.

GENERAL METRO WATER BACKGROUND

Metro Water currently owns and operates the Salt Lake Aqueduct (“SLA”). The SLA carries water from Deer Creek Reservoir running through Utah County and ending near 3300 South at a storage facility called Terminal Reservoir. The SLA is a reinforced and lined cement pipe with a 69-inch inside diameter.

Construction of the SLA began in 1940 and was completed in 1951. The Bureau of Reclamation (“BOR”) owned the SLA from the time it was constructed until October 2, 2006, when the BOR quitclaimed the property rights related to the SLA to Metro Water.

SLA CONFLICT

The portion of the SLA easement relevant to this Memorandum is 150 to 175 feet in width and runs adjacent to and under Westview Drive for 4,307 feet from Brockbank Drive south to Fortuna Drive. (A map showing Questar Gas’ facilities in Westview Drive is attached as Exhibit A.) Questar Gas has an existing 2-inch IHP steel natural gas main which crosses the SLA in four locations. For the remainder of the distance, Questar Gas’s IHP line parallels the SLA within the SLA corridor. There are also at least 40 homes along Westview drive adjacent to the SLA and therefore the 20 homes on the west side of the street appear to have service lines crossing the SLA.

METRO WATER’S TITLE AND PROPERTY RIGHTS RELATED TO THE SLA

Metro Water’s rights stem from a reservation in the patent granted by President William McKinley to John A. Hamilton for property located in the S1/2 of the SE1/4 of Section 2 in Township 2 South, Range 1 East Salt Lake Base & Meridian. This Patent was recorded on May 5, 1898 as entry no. 119680 in Book 5H at page 275.

The reservation that “there are reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.” Metro Water has asserted that its rights stem from 43 U.S.C. § 945, which is commonly referred to as the Canal Act of 1890. The language in the reservation is identical to the language required under the Canal Act of 1890, but the act itself is not specifically mentioned in the reservation.

Neither the reservation, nor the Canal Act of 1890, defines the width or other limits of the easement. Case law interpreting the Canal Act of 1890, provides no indication that the Canal Act of 1890 creates an exclusive easement, or an easement with a higher priority than other easements created by deed. One relatively recent case explains that an easement holder under the Canal Act of 1890 has a “non-possessory interest ... for construction, maintenance, and operation of [a] canal.” *Unicorn Drilling, Inc. v. Heart Mountain Irr. Dist.*, 3 P.3d 857, 860 (Wyo. 2000). In *Unicorn Drilling*, the court expressly stated that the easement holder’s “right of way is not exclusive” under the Canal Act of 1890 because “the landowners and third parties with the landowners’ permission may use the road if their use is not inconsistent with the operation and maintenance of the canal.” *Id.* at 861. A Tenth Circuit case interpreting easement rights under the Canal Act of 1890 similarly emphasizes the limitations of such easements:

The provision contained in the Act approved August 30, 1890, ... concerns itself solely and exclusively with easements or surface rights or way for ditches and canals constructed by the United States. It reserves to the United States easements or surface rights for that purpose from lands patented under the land laws of the United States. That was its congressional purpose and it goes no further. ... And an easement or surface right of that kind does not include title to the oil and gas underlying the land constituting the right of way.

Northern Pac. Ry. Co. v. U.S., 277 F.2d 615, 618 (10th Cir. 1960).

The above cases conform to the general law of easements in Utah. In Utah, unless the easement grant contains language to the contrary, a property owner may use his property for any purpose which does not unreasonably interfere with the easement holder's use of its easement. *McBride v. McBride*, 581 P.2d 996, 996 (Utah 1978); *see also Stevens v. Bird-Jex Co.*, 18 P.2d 292, 294 (Utah 1933). This right includes the right to grant additional easements burdening the owner's property.

Metro Water's SLA easement encumbers most, if not all of the residential lots along Westview Drive. A review of the record title for the adjacent homeowners did not uncover any agreements entered into between the property owners and the BOR or Metro Water.

WESTVIEW DRIVE OWNERSHIP

On August 9, 1955, Bernard and Nada Brockbank, the fee owners at the time, signed the Owner's Dedication on the plat for the Mt. Olympus Hills, #1 subdivision granting ownership of the roads to Salt Lake County. This subdivision included the portion of the Metro Water Easement and all roads under which Questar Gas installed natural gas lines to service the subdivision. The Owner's Dedication included the following language:

Know all men by these presents that we, the 2 undersigned owner(s) of the above described tract of land, having caused same to be subdivided into lots and streets to be hereafter known as the MT. OLYMPUS HILLS #1 do hereby dedicate for perpetual use of the public all parcels of land shown on this plat as intended for Public use.

All of Questar Gas' natural gas lines were installed within the Mt. Olympus Hills #1 subdivision, after the roads were dedicated to the public, under permits from Salt Lake County issued between August 23, 1956 and January 2, 1968, under the Salt Lake County Franchise. The Salt Lake County Franchise does not contain any provisions which would grant

Metropolitan Water additional rights under Westview Drive in Mt. Olympus Hills #1 or would subordinate Questar Gas' franchise rights to Metro Water.

QUESTAR GAS' RIGHT TO OCCUPY WESTVIEW DRIVE

Questar Gas' right to occupy Westview Drive stems from Salt Lake County's fee ownership of the public road. In spite of Salt Lake County's fee ownership of the road, Metro Water has asserted that the license agreement executed by Mountain Fuel and the BOR dated December 5, 1956 (the "BOR License") provides Metro Water with additional property rights in the SLA and the county road. Questar Gas' license agreement with the BOR does not give Metro Water the legal right to exclude Questar Gas from Westview Drive. The term of the BOR License was fifty years. The BOR License is limited in scope by paragraph 9 which states: "This license shall be effective only as against such interests as the United States may have in and to the land and premises affected hereby." Where Metro Water only holds an easement over the property, the license was effective only to the extent of its easement rights. The BOR License cannot, and does not attempt to, increase Metro Water's rights underneath Westview Drive. Nor does the BOR License waive any claims which Questar Gas has arising out of the Salt Lake County Franchise or permits obtained from Salt Lake County.¹

Moreover, the BOR License has no effect now that it has expired. Generally, a licensor's remedy against a licensee for remaining on licensor's property after expiration of the license is an action to enjoin trespass. *See* 25 Am. Jur. 2d Easements and Licenses § 124. Currently, Metro Water has no underlying right to exclude Questar Gas upon which it can base an action for trespass.

¹ It is our opinion that Questar Gas' predecessor (Mountain Fuel) was not legally obligated to enter into the BOR License Agreement. We understand Questar Gas currently enters into Common Use Agreements with neighboring easement or facility owners that allow concurrent easement holders to coordinate maintenance activities.

COMMON USE AND CROSSING AGREEMENT

THIS COMMON USE AND CROSSING AGREEMENT (the "Agreement") is entered into this ____ day of _____ 2011, by and between Questar Gas Company, a Utah corporation, with offices located at 1140 West 200 South, Salt Lake City, Utah 84145-0360 ("Questar Gas"), and Metropolitan Water District of Salt Lake and Sandy ("MWDSLS"), a political subdivision of the State of Utah. Questar Gas and MWDSLS are sometimes hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

RECITALS

- A. MWDSLS owns and operates a [MWDSLS to provide description] ("_____") within an easement _____.
- B. Questar Gas owns and operates a ____ inch natural gas pipeline referred to as _____ (the "Pipeline") which runs _____.
- C. Because the Parties will be operating their respective facilities in relatively close proximity to each other and both will be performing work near the crossing, now or in the future, the Parties enter into this Agreement to provide construction guidelines and procedures which the Parties shall use when performing work.

TERMS

NOW, THEREFORE, in the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits of the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

1. Crossing Location. The crossing is located at approximately _____ (the "Crossing"). When a Party to this Agreement is performing work within 25 feet of the Crossing, the terms of this Agreement shall apply.
2. Protection of Facilities. Questar Gas shall comply with the requirements of this Agreement, including the construction specifications found in Exhibit A, attached hereto and incorporated by reference, to protect [DESCRIPTION OF OTHER PARTY'S FACILITIES] during construction and relocation of the Pipeline and at such times in the future when repairs or maintenance are performed within 25 feet of the Pipeline. MWDSLS shall comply with the requirements set forth in this Agreement, including Exhibit B, attached hereto and incorporated by reference, to protect the Pipeline during performance of any repairs, maintenance or construction being performed within 25 feet of the Pipeline.

3. Reasonable Precautions. Questar Gas shall take all reasonable precautions to protect the [DESCRIPTION OF OTHER PARTY'S FACILITIES], property and persons, including, but not limited to, third parties, from damage or injury during any period when the [DESCRIPTION OF OTHER PARTY'S FACILITIES] is exposed, being excavated or backfilled, or when work is occurring above or within 25 feet of the [DESCRIPTION OF OTHER PARTY'S FACILITIES]. MWDSLs shall take all reasonable precautions to protect the Pipeline, property, and persons, including, but not limited to, third parties, from damage or injury during any period when the Pipeline is exposed, being excavated or backfilled, or when work is occurring above or within 25 feet of the Pipeline.

4. Compliance with Applicable Laws. MWDSLs acknowledges that Questar Gas must ensure that construction operations involving or near the Pipeline comply with applicable regulations, including, but not limited to, regulations of the United States Department of Transportation ("DOT") in 49 C.F.R. Part 192. Both Parties agree to comply with all applicable laws and regulations while performing work within twenty five feet of the Crossing.

5. Inspectors. The Party initiating construction or work on its facilities ("Constructing Party") shall give reasonable notice to the other Party ("Inspecting Party") prior to any work within twenty-five (25) feet of the Inspecting Party's facilities described in this Agreement. The Constructing Party shall not perform any excavation, construction, maintenance or repair requiring earth disturbance within twenty-five (25) feet of the Inspecting Party's facilities unless a qualified inspector designated by the Inspecting Party is on-site. In the event that the Inspecting Party's inspector determines that there is a threat of imminent danger to the Inspecting Party's facilities, the inspector may suspend the Constructing Party's activities. The Constructing Party agrees to defer to the judgment of the Inspecting Party's inspector in such circumstances, provided such judgment by the inspector is made in good faith. The Parties agree to cooperate and attempt to promptly resolve any such conflicts, so as to limit the interference with or delay of construction activities. The Constructing Party shall fully reimburse the Inspecting Party for costs incurred for having its inspector on-site. The Inspecting Party shall submit an invoice detailing the costs within 60 days of completion of the work requiring the presence of an inspector under this Agreement. The Constructing Party shall pay the Inspecting Party's invoice within 30 days of receipt.

6. One Call Notice. The Constructing Party shall notify Blue Stakes at least 48 hours prior to starting installation or construction activities near the Pipelines.

7. Crossing. All construction, installation, and maintenance activities, performed or authorized by either Party within twenty-five (25) feet of the Crossing, including but not limited to excavating, surveying, leveling, grading, installing, planting, placing, removing, reclaiming, re-contouring, construction and any subsequent improvements, or modifications, are to be completed in accordance with any and all applicable industry practices or federal and state laws and regulations.

8. Cathodic Protection. The Parties shall cooperate to minimize any stray current interference between the [DESCRIPTION OF OTHER PARTY'S FACILITIES] and the Pipeline. The Parties agree that all metallic pipelines with metallic parts or structures, that cross

the other Party's pipeline(s) shall have cathodic monitoring facilities installed at the crossing and where interference is occurring as a result of the Project, cathodic mitigation facilities shall be installed.

9. Indemnity. Each Party hereto ("Indemnifying Party") shall release, indemnify, hold harmless, and defend the other and its respective successors, corporate parents, and affiliates at any tier, and their respective directors, officers, shareholders, representatives, employees, agents, and contractors ("Indemnified Parties") from and against any and all claims, liabilities, losses, damages, costs, expenses, actions, and causes of action, including reasonable attorney fees, for damage or injury to any persons or property (collectively "Losses"), to the extent caused by the negligent, or intentional acts of the Indemnifying Party or its agents in its performance of work covered under this Agreement.

10. Parties Maintain Existing Rights. MWDSLS and Questar Gas acknowledge and agree that the Parties maintain all of their respective rights under any applicable franchises, licenses, easements, permits, statutes or regulations.

11. Law and Attorney Fees. If any dispute arises between the Parties relating to the subject matter of this Agreement, the breaching Party shall pay all of the non-breaching Party's reasonable court costs and attorney's fees whether or not litigation is commenced.

12. Emergency Notification. For damage or rupture of Questar facilities, immediately call 911 and notify Questar Gas at 1-800-797-1689. For damage to MWDSLS's facilities, immediately notify _____ at _____.

13. Notices. All notices to either Party shall be in writing and served personally on, or sent by first class U.S. Mail, postage-prepaid, to:

Questar Gas Company
Attn: High Pressure Construction
PO Box 45360
Salt Lake City, Utah 84145-0360

Company Name
Attn:
Address

14. Miscellaneous. This Agreement shall inure to the benefit of and be binding on the respective heirs, successors, assigns, agents, contractors, and personal representatives of the Parties to this Agreement. Nothing contained in this Agreement shall be construed to abrogate or relinquish any rights granted or otherwise available to MWDSLS or Questar Gas, unless any such rights are specifically assigned or relinquished. This Agreement is entered into for the sole benefit of Questar Gas and MWDSLS and their respective successor or assigns, and no other party shall have any right, benefit or interest under, or because of the existence of, this Agreement.

15. Authority to Bind. Each person signing this Agreement warrants that the person has full legal capacity, power, and authority to execute this Agreement for and on behalf of the respective Party and to bind such Party.

AGREED AND ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE:

QUESTAR GAS COMPANY

METROPOLITAN WATER DISTRICT OF SALT
LAKE & SANDY

C. Kim Blair
General Manager,
Engineering and Project Management

Michael L. Wilson
General Manager

EXHIBIT A

INSERT MWDSLs CONSTRUCTION STANDARDS

EXHIBIT B

QUESTAR GAS CONSTRUCTION STANDARDS

This Exhibit B (“Exhibit B”) is part of and subject to the Common Use and Crossing Agreement by and between Questar Gas Company (“Questar Gas”) and Metropolitan Water District of Salt Lake & Sandy (“MWDSL”) to which it is attached (“Agreement”). Capitalized terms used but not defined in this Exhibit B have the meanings assigned them in the Agreement.

INSERT QUESTAR GAS SPECIFIC CONSTRUCTION STANDARDS FOR LOCATION OF PROPOSED CROSSING OR PARALLEL FACILITIES