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[redacted]

Law Offices

Burton M. Bentley W-5022-0
Our File No. _____

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September 30, 1987 PUBLIC AVAILABILITY DATE: 11-23-87

ACT	SECTION	RULE
1933	4(2)	---

Ms. Linda Quinn, Director
Division of Corporate Finance
SECURITIES AND EXCHANGE
COMMISSION
450 Fifth Street, N.W.
Washington D.C. 20549

RECEIVED
OCT 7 1987
OFFICE OF THE DIRECTOR
CORPORATION FINANCE

Re: Request For No Action Letter
In Connection With Sale of Warrants
To Company's Independent Contractors

Dear Ms. Quinn:

Our firm represents Water Resources International, Inc. ("Company"), an Arizona corporation organized on December 30, 1983, which has its principal place of business in Maricopa County, Phoenix, Arizona. The Company is engaged in the manufacture of water treatment devices, principally for the home, which includes the Hydro-Quad water softener and conditioner and the United Standard Series, a reverse osmosis water purifier.

The products manufactured by the Company are not sold directly to consumers by the Company. All of the Company's products are sold through Company appointed Distributors, currently numbering approximately 70 distributors, located in 34 states. In accordance with the provisions of the standard Distributor's License Agreement attached as Exhibit "A," Distributors are independent contractors who:

(a) are free to purchase and sell those products manufactured by the Company, along with all other competing products;

(b) are given an area in which the Company will not compete directly or indirectly;

(c) purchase for cash, at wholesale, from a price list which is furnished by the Company to all Distributors;

(d) has the right to use only those trademarks or service marks authorized by the Company, but not the Company name as part of the Distributor's name;

(e) is neither a partner nor joint venturer with the Company;

(f) is required to maintain product in sufficient quantitites to service his customers and a competent staff, and to comply with all federal, state and local laws; and

(g) pays a surcharge of 5% to the Company to cover future defalcations of the Distributor in connection with service warranties related to the Company's product.

The Company's experience indicates that with respect to the sale of its products, approximately 85% of such sales are financed by the homeowner through banks, lending and finance companies or mortgage companies, and in most such instances the loans are secured by a second or third deed of trust, or mortgage, on the homeowner's residence. Although loans to the homeowner are readily available in most instances, the applicable interest rate often times exceeds that of the first mortgage, and acts as a detriment or obstacle to Distributor making the sale.

To finance Distributor sales therefore, the Company is planning a future public offering (1989), the proceeds of which will provide additional financing for Distributors' sales.

As a growing company with annually increasing profits, a future public offering will command a higher price per share than at present. Management believes that by June, 1989, the history and earnings of the Company will permit the sale of its shares at a more advantageous offering price.

To reward Distributors, without whom the Company could not succeed, the following plan is contemplated:

1. The sale of Common Stock Purchase Warrants to Distributors for the purchase of one share of the Company's $.10 par value Common Stock, per Warrant, exercisable at or about June 30, 1989.

2. Warrants will be sold to Distributors at $5.00 per Warrant, based upon the Distributors' actual monthly sales of Hydro-Quad water softener and conditioner units and United Standard Series reverse osmosis units, such that for each Hydro-Quad sold the previous month, the Distributor will be entitled to purchase two (2) Warrants, and for each reverse osmosis units sold in the previous month, the Distributor will be entitled to purchase one (1) Warrant.

3. The exercise price of the Warrants will be fixed at one-half (50%) of the offering price of the Company's initial public offering of Common Stock at the time of such Offering.

4. Up to 300,000 Warrants, representing a maximum aggregate offering of $1,500,000, will thus be sold on a first come, first sold basis, only to the Company's Distributors.

5. The Company will match all proceeds from the sale of Distributors' Warrants. The combined funds contributed by distributors and the Company will be deposited in a special interest bearing trust account in a state or nationally chartered bank, until June 30, 1989, or until the Company's public offering shall have been registered pursuant to law under the Securities Act of 1933. In the event that a registration statement shall have been filed, but does not become effective by June 30, 1989, the Company will have the right to extend the offering to September 30, 1989.

6. The matching funds contributed by the Company will be credited toward the funds available to Distributors to finance sales of the Company's products.

7. As and when the Company's initial public offering of Common Stock shall have been registered, the interest earned on all funds deposited pursuant to the foregoing, will inure to the benefit of the Company and will also be utilized to finance Distributors' sales, in the same fashion as the proceeds derived from the initial public offering and the matching funds contributed by the Company.

8. The election to purchase Warrants as aforedescribed, will be solely at the discretion of each Distributor to accept or reject the offer to become subscribers.

9. In the event that the Company shall have failed to register its initial public offering of Common Stock on or before September 30, 1989, all funds contributed by distributors, together with their pro-rata share of earned interest, will be paid out to the Distributors on a pro rata basis. Likewise, funds contributed by the Company, together with its pro rata share of earned interest will be paid out to the Company.

10. Distributors will not have the right to withdraw funds designated to purchase Warrants after such funds have been deposited to the trust account; and to insure that Warrants are paid for in a timely manner pursuant to the Subscription Agreement, the Company will surcharge each Hydro-Quad $10.00 and each

United Standard Series reverse osmosis device $5.00 at the time of sale to the Distributor.

11. All Warrants will be sold for investment purposes only, will carry an appropriate restrictive legend and will require approval of the Company and its legal counsel prior to further sale, assignment or other disposition.

We are of the opinion that the plan to offer and sell the Company's Common Stock Purchase Warrants in the manner described above, qualifies as an exempted transaction pursuant to the Securities Act of 1933, as amended, for the following reasons:

1. Section 4(2) of the Act exempts transactions by an issuer not involving any public offering. Although the Act itself does not define "public offering," there are abundant court cases, dating back to Ralston Purina (1953) and prior thereto, which together with specific S.E.C. Releases, provides a reliable benchmark for making an informed opinion.

In this connection, Release No. 33-285, January 24, 1935, 11 F.R. 10952 provides in part as follows:

> ". . .in determining what constitutes a substantial number of offerees the basis on which the offerees are selected is of the greatest importance. Thus, an offering to a given number of persons chosen from the general public . . . may be a public offering even though an offering to a larger number of persons who are all members of a particular class, membership in which may be determined by the application of some pre-existing standard, would be a non-public offering."
>
> ". . .Thus, an offering to the members of a class who should have special knowledge of the issuer is less likely to be a public offering. . . ."
>
> Moreover, the Release states that an offering
>
> ". . .not likely to come into the hands of the general public. . ." would tend to make registration unnecessary."
>
> ". . .a material consideration is whether the security in question is part of an issue

> already dealt in by the public . . . or . . . is likely thus to be dealt in shortly after its issuance."
>
> ". . .transactions which are effected by direct negotiation by the issuer are much more likely to be non-public than those effected through the use of the machinery of public distribution."

In considering the foregoing elements, it should be noted that the group of contemplated offerees is well defined to be those persons, who by written agreement, have agreed to sell the Company's products as its distributors, numbering approximately 70 persons presently, and with the exception of a few states having only one person in each state being designated as the Distributor.

The Company is not presently a public company, having issued its securities only to the original founders. The private nature of the contemplated offering of Common Stock Purchase Warrants lies in the fact that only "rights" are being issued, exercisable only upon the condition that the Company completes its registration of an initial public offering; and in that event, all of the shares of Common Stock issuable upon exercise therefore, will be fully registered shares.

No broker-dealers or other agents or finders will be or become involved in the sale of Warrants to Distributors; nor will any commissions or other remuneration be paid to any person in contemplation of the offering of Warrants. Thus, no machinery of public distribution will be or become involved.

2. The contemplated offering will be of direct benefit to Distributors who purchase Warrants. The funds from the sale of Warrants will be used to finance Distributors' sales of the Company's products. While it is true that the Ralston Purina case illustrated the sensitivity of the court to sales to "employees," the sale to "distributors" each of whom have a significant financial investment in his business, is quite another matter. The Distributor is not, of course, an employee, but truly an independent person. Moreover, the information which is made available to the Distributor (prior to his election to become a Distributor), is vital information geared to the ability of the Company to produce products and fulfill its business commitments to its Distributors and their customers. The very livelihood of the Distributor is dependent upon the Company. The

relationships are measured by the confidence of one and the performance of the other.

3. All funds from the offering will be placed in trust, not to be used by the Company for any purpose whatsoever, until and unless its initial public offering has been registered. At that time, Distributors will be given the opportunity to purchase registered Common Stock at one-half of the public offering price. This fact underscores the non-public nature of the Warrant offering to Distributors.

For all of the reasons stated above, it is our opinion that an offering of Common Stock Purchase Warrants to the persons and in the manner above-described would not constitute a public offering of securities required to be registered under the Securities Act of 1933, as amended, and we request therefore, concurrence from the Commission staff that no action will be taken to require compliance with the registration requirements of the Act in the event that Warrants are offered pursuant to the above.

Very truly yours,

BENTLEY, BRANDES & BRANDES, P.C.

Burton M. Bentley

BMB:dh

cc: Water Resources International, Inc.

OCT 2 8 1987

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: Water Resources International, Inc.
Incoming letter dated September 30, 1987

This is in response to your letter of September 30, 1987 regarding our views with respect to the proposed sale of common stock purchase warrants of Water Resources International, Inc. (the "Company") to Distributors of the Company without compliance with the registration requirements of the Securities Act of 1933 (the "Securities Act") in reliance upon the exemption therefrom provided by Section 4(2) of the Securities Act.

As stated in Securities Act Release No. 5487 (April 23, 1974) announcing the adoption of Rule 146, the staff will consider no-action requests relating to Section 4(2) infrequently and only in the most compelling circumstances. As such circumstances are not present in your case, the staff is unable to express a view on your transaction.

Sincerely,

Gloria F. Smith-Hill

Gloria F. Smith-Hill
Special Counsel