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AZ CORP COMMISSION  
DOCUMENT CONTROL

Attorneys for Applicant

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE  
APPLICATION OF WILHOIT WATER  
COMPANY FOR APPROVAL OF THE  
SALE OF THE ASSETS AND  
CANCELLATION OF A PORTION OF  
ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO.: W-<sup>02065A</sup>~~06065A~~-03-0490

EXCEPTION TO THE  
PROPOSED ORDER  
Arizona Corporation Commission

DOCKETED

FEB 05 2004

DOCKETED BY

Pursuant to § R14-3-110(B) of the Arizona Administrative Code, the Applicant hereby submits its Exception to the Proposed Order, dated January 27, 2004 (the "Proposed Order"). The Applicant adopts the City of Avondale position as presented by the City to the hearing officer.

**I. Factual Background.**

In the Proposed Order, the Corporation Commission (the "Commission") seeks evidence that the outstanding tax liens, calculated on the date of the Proposed Order to be \$214,065.54, have been satisfied. See Maricopa County Treasurer's Office Redemption Statement (the "Redemption Statement"), attached hereto as Exhibit A. The tax liens at issue have been assigned to the State of Arizona (the "State") and certificates of purchase

1 were subsequently issued to the State pursuant to the procedure set forth in ARIZ. REV.  
2 STAT. § 42-18113. Those certificates of purchase, dating back to 1978, have not since  
3 been redeemed by the State in a foreclosure sale.

4 The City of Avondale completed a purchase of all of these assets subject to the  
5 disclosed tax matter. The City has abandoned the former well and storage tanks and has  
6 directly served all the Glenarm Farms customers since the September 2, 2003 purchase  
7 closing.  
8

## 9 **II. Legal Analysis.**

### 10 **A. The Tax Liens Merge with the City's Title Upon Acquisition.**

11 Under the merger doctrine, as adopted by the Arizona Supreme Court in *State ex.*  
12 *rel. Peterson v. Maricopa County*, 38 Ariz. 347, 300 P. 175 (1931) and then reaffirmed  
13 and extended to municipalities by the Arizona Court of Appeals in *City of Eloy v. Pinal*  
14 *County*, 158 Ariz. 198, 761 P.2d 1102 (App. 1988), preexisting liens on property  
15 acquired by a municipality are merged into the municipality's title and are extinguished.  
16 Therefore, the City has urged that the outstanding tax liens on the portion of the  
17 Company sought to be purchased by the City are extinguished and merged into the City's  
18 title upon acquisition.  
19

20 The public policy supporting the merger doctrine is found in Article 9, Section 2,  
21 of the Arizona Constitution, exempting all federal, state, county and municipal property  
22 from taxation. *See City of Eloy*, 158 Ariz. at 201, 761 P.2d at 1105. State property is  
23 exempt from taxation because it is futile for a state to tax "its own property in order to  
24 produce the funds with which to operate its own affairs." *Id.* As the court explained in  
25

1 *City of Eloy*, this “rationale for exempting state property from the levy of taxes led the  
2 courts . . . to conclude that property acquired by the state becomes freed of liabilities for  
3 taxes previously assessed and unpaid.” *Id.*, 158 Ariz. at 201, 761 P.2d at 1105.

4 In 1999, the State legislature enacted ARIZ. REV. STAT. § 9-404, setting forth that,  
5 after December 31, 1998, tax liens on property acquired by municipalities cannot be  
6 discharged or abated by operation of the merger doctrine. See Senate Fact Sheet for SB  
7 1031. However, prior to the enactment of the statute, the Arizona Constitutional  
8 provision giving rise to the merger doctrine had not been amended, nor had the public  
9 policy reasons given by the Arizona Supreme Court supporting the doctrine been altered.  
10 To date, the same is true. Because the State Supreme Court “has the power of final  
11 decision as to the meaning of the State Constitution . . .” *Menderson v. City of Phoenix*,  
12 51 Ariz. 280, 288, 76 P.2d 321, 324 (1938), the constitutional validity of ARIZ. REV.  
13 STAT. § 9-404 is in question because it may subject municipal property to taxation  
14 contrary to the rule set forth by the Arizona Supreme Court in *Peterson*.  
15  
16

17 **B. ARIZ. REV. STAT. § 42-18208 Operates to Void the Certificates of Purchase**  
18 **Issued Prior to 1994.**

19 Even if the merger doctrine does not operate to extinguish the tax liens, the vast  
20 majority of these liens are void by operation of ARIZ. REV. STAT. § 42-18208. Under  
21 ARIZ. REV. STAT. § 42-18208,

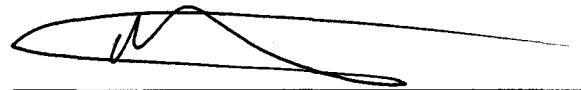
22 [i]f a tax lien that was purchased on or before August 31, 2002 is not  
23 redeemed and the purchaser’s heirs or assigns fail to commence an action  
24 to foreclose the right of redemption on or before ten years from the date  
25 that the lien was purchased, the certificate of purchase or registered  
certificate expires and the lien is *void*. (emphasis added).

1 As evidenced by the Redemption Statement, all but one of the certificates of purchase  
2 held by the State were purchased more than ten years ago. Because the State has not  
3 commenced an action to foreclose its right of redemption on those liens, by operation of  
4 statute, they are null and void without any further action. Accordingly, the outstanding  
5 tax liens, as of the date of this document, total \$16,947.71 (Certificate of Purchase, dated  
6 2/22/03, totaling \$5,983.73 + \$6,158.40 in delinquent taxes for 2002 + \$4805.58 in  
7 delinquent taxes for 2003) versus \$214,065.54.

8  
9 The public interest is served by the City's service to its new water users. The  
10 Applicant joins the City request that the Proposed Order be amended to reflect the only  
11 outstanding taxes of approximately \$16,947.71.

12 DATED: FEBRUARY 5, 2004

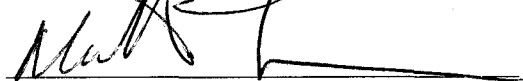
13 MARTIN & BELL, LLC

14  
15 

16 Douglas G. Martin  
17 365 E Coronado Road, Suite 200  
18 Phoenix, AZ 85004  
19 Attorneys for the Applicant

20 COPY of the foregoing filed  
21 on February 5, 2004 to:

22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 

A



# Maricopa County Treasurer's Office

Doug Todd, Treasurer

PARCEL NUMBER 629-99-200 9

WILHOIT WATER CO  
P O BOX 870  
CLARKDALE AZ 86324

## LEGAL DESCRIPTION

Lot/Section:

Block/Town:

Tract/Range:

TOTAL VALUE OF OPERATING PROPERTY

Dear Taxpayer:

There are existing tax lien(s) on the above-listed parcel. This statement shows the amount due and payable in order to redeem your property.(1) To remove these tax liens, please return this statement with your payment by: **CASHIER'S CHECK, CERTIFIED CHECK, or MONEY ORDER** to: **MARICOPA COUNTY TREASURER, 301 W. Jefferson, Rm 100, Phoenix, AZ 85003.** *\*Note: This amount may change based on activity to this parcel.*

Thank You.

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Total Due By	Total Due By
2/29/2004	3/31/2004
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The following tax liens were sold to the State of Arizona on the property described above for taxes.

Certificate of Purchase (C.P.) Number 80010810			
Purchase Date: 2/21/1978	For Tax Year 1976	\$3,566.65	\$3,566.65
Interest Factor: 16.00%	Redemption Interest(3)	\$14,884.45	\$14,932.00
	Redemption Fee	\$25.00	\$25.00
Certificate of Purchase (C.P.) Number 80010811			
Purchase Date: 2/27/1979	For Tax Year 1977	\$6,001.62	\$6,001.62
Interest Factor: 16.00%	Redemption Interest(3)	\$24,085.90	\$24,165.92
Certificate of Purchase (C.P.) Number 80010812			
Purchase Date: 2/24/1980	For Tax Year 1978	\$2,550.03	\$2,550.03
Interest Factor: 16.00%	Redemption Interest(3)	\$9,825.87	\$9,859.87

Certificate of Purchase (C.P.) Number 80010813		
Purchase Date: 2/23/1981 For Tax Year 1979	\$2,360.96	\$2,360.96
Interest Factor: 16.00% Redemption Interest(3)	\$8,719.59	\$8,751.07
Certificate of Purchase (C.P.) Number 80010814		
Purchase Date: 2/24/1982 For Tax Year 1980	\$2,210.54	\$2,210.54
Interest Factor: 16.00% Redemption Interest(3)	\$7,810.38	\$7,839.85
Certificate of Purchase (C.P.) Number 81011049		
Purchase Date: 2/25/1983 For Tax Year 1981	\$1,732.66	\$1,732.66
Interest Factor: 16.00% Redemption Interest(3)	\$5,844.69	\$5,867.80
Certificate of Purchase (C.P.) Number 83014418		
Purchase Date: 2/21/1984 For Tax Year 1982	\$2,853.77	\$2,853.77
Interest Factor: 16.00% Redemption Interest(3)	\$9,169.89	\$9,207.93
Certificate of Purchase (C.P.) Number 83014419		
Purchase Date: 2/25/1985 For Tax Year 1983	\$2,859.51	\$2,859.51
Interest Factor: 16.00% Redemption Interest(3)	\$8,730.82	\$8,768.94
Certificate of Purchase (C.P.) Number 84014592		
Purchase Date: 2/24/1986 For Tax Year 1984	\$3,084.29	\$3,084.29
Interest Factor: 16.00% Redemption Interest(3)	\$8,923.66	\$8,964.78
Certificate of Purchase (C.P.) Number 85017319		
Purchase Date: 2/27/1987 For Tax Year 1985	\$3,136.16	\$3,136.16
Interest Factor: 16.00% Redemption Interest(3)	\$8,571.96	\$8,613.77
Certificate of Purchase (C.P.) Number 86021888		
Purchase Date: 2/29/1988 For Tax Year 1986	\$3,043.09	\$3,043.09
Interest Factor: 16.00% Redemption Interest(3)	\$7,830.69	\$7,871.26
Certificate of Purchase (C.P.) Number 87027179		
Purchase Date: 2/21/1989 For Tax Year 1987	\$3,355.52	\$3,355.52
Interest Factor: 16.00% Redemption Interest(3)	\$8,097.79	\$8,142.52
Certificate of Purchase (C.P.) Number 88029947		
Purchase Date: 2/22/1990 For Tax Year 1988	\$2,948.64	\$2,948.64
Interest Factor: 16.00% Redemption Interest(3)	\$6,644.10	\$6,683.42
Certificate of Purchase (C.P.) Number 89028905		
Purchase Date: 2/20/1991 For Tax Year 1989	\$3,183.63	\$3,183.63
Interest Factor: 16.00% Redemption Interest(3)	\$6,664.23	\$6,706.68

Certificate of Purchase (C.P.) Number 90027859  
 Purchase Date: 2/29/1992 For Tax Year 1990 \$3,255.20 \$3,255.20  
 Interest Factor: 16.00% Redemption Interest(3) \$6,293.23 \$6,336.63

Certificate of Purchase (C.P.) Number 91021692  
 Purchase Date: 2/28/1993 For Tax Year 1991 \$3,514.74 \$3,514.74  
 Interest Factor: 16.00% Redemption Interest(3) \$6,232.65 \$6,279.51

Certificate of Purchase (C.P.) Number 01021792  
 Purchase Date: 2/22/2003 For Tax Year 2001 \$5,099.79 \$5,099.79  
 Interest Factor: 16.00% Redemption Interest(3) \$883.94 \$951.94

State C.P. Total \$203,995.64 \$204,725.69

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Redemption Cost(1) \$203,995.64 \$204,725.69  
 Open Back Tax Due (2002) \$6,092.00 \$6,158.40  
 Current Year Due (FULL) \$4,805.58 \$4,836.78  
**\*TOTAL DUE \$214,893.22 \$215,720.87**

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- (1) A.R.S. 42-18153
- (2) A.R.S. 42-18113, 18115
- (3) A.R.S. 42-18118