

# ORIGINAL EXCEPTION



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OPEN MEETING AGENDA ITEM

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AZ CORP COMMISSION  
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8 Attorneys for the Intervenor

## BEFORE THE ARIZONA CORPORATION COMMISSION

9  
10 IN THE MATTER OF THE  
11 APPLICATION OF WILHOIT WATER  
12 COMPANY FOR APPROVAL OF THE  
13 SALE OF THE ASSETS AND  
14 CANCELLATION OF A PORTION OF  
15 ITS CERTIFICATE OF CONVENIENCE  
16 AND NECESSITY.

DOCKET NO.: W-<sup>02005</sup>~~06065~~A-03-0490

### EXCEPTION TO THE PROPOSED ORDER

Arizona Corporation Commission

**DOCKETED**

FEB 05 2004

DOCKETED BY

15 Pursuant to § R14-3-110(B) of the Arizona Administrative Code, the City of  
16 Avondale, Arizona (the "City"), hereby submits its Exception to the Proposed Order,  
17 dated January 27, 2004 (the "Proposed Order").

#### 18 I. Factual Background.

19  
20 In the Proposed Order, the Corporation Commission (the "Commission") ordered  
21 that Wilhoit Water Company (the "Company") file with the Commission evidence that  
22 the outstanding tax liens, calculated on the date of the Proposed Order to be  
23 \$214,065.54, have been satisfied. See Maricopa County Treasurer's Office Redemption  
24 Statement (the "Redemption Statement"), attached hereto as Exhibit A. The tax liens  
25

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

5 **II. Legal Analysis.**

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

7  
8 Under the merger doctrine, as adopted by the Arizona Supreme Court in *State ex.*  
9 *rel. Peterson v. Maricopa County*, 38 Ariz. 347, 300 P.175 (1931) and then reaffirmed  
10 and extended to municipalities by the Arizona Court of Appeals in *City of Eloy v. Pinal*  
11 *County*, 158 Ariz. 198, 761 P.2d 1102 (App. 1988), preexisting liens on property  
12 acquired by a municipality are merged into the municipality's title and are extinguished.  
13 Therefore, the outstanding tax liens on the portion of Company sought to be purchased  
14 by the City are extinguished and merged into the City's title upon acquisition.  
15

16 The public policy supporting the merger doctrine is found in Article 9, Section 2,  
17 of the Arizona Constitution, exempting all federal, state, county and municipal property  
18 from taxation. *See City of Eloy*, 158 Ariz. at 201, 761 P.2d at 1105. State property is  
19 exempt from taxation because it is futile for a state to tax "its own property in order to  
20 produce the funds with which to operate its own affairs." *Id.* As the court explained in  
21 *City of Eloy*, this "rationale for exempting state property from the levy of taxes led the  
22 courts . . . to conclude that property acquired by the state becomes freed of liabilities for  
23 taxes previously assessed and unpaid." *Id.*, 158 Ariz. at 201, 761 P.2d at 1105.  
24  
25

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

12  
13 **B. ARIZ. REV. STAT. § 42-18208 Operates to Void the Certificates of**  
14 **Purchase Issued Prior to 1994.**

15 Even if the merger doctrine does not operate to extinguish the tax liens, the vast  
16 majority of such liens are void by operation of ARIZ. REV. STAT. § 42-18208. Under  
17 ARIZ. REV. STAT. § 42-18208,  
18

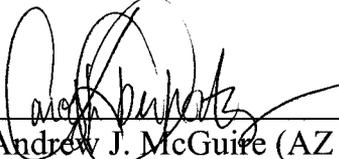
19 [i]f a tax lien that was purchased on or before August 31, 2002 is not redeemed  
20 and the purchaser’s heirs or assigns fail to commence an action to foreclose the  
21 right of redemption on or before ten years from the date that the lien was  
22 purchased, the certificate of purchase or registered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

24 As evidenced by the Redemption Statement, all but one of the certificates of purchase  
25 held by the State were purchased more than ten years ago. Because the State has not  
commenced an action to foreclose its right of redemption on those liens, by operation of

1 statute, they are null and void without any further action. Accordingly, the outstanding  
2 tax liens, as of the date of this document, total \$16,947.71 (Certificate of Purchase,  
3 dated 2/22/03, totaling \$5,983.73 + \$6,158.40 in delinquent taxes for 2002 + \$4805.58  
4 in delinquent taxes for 2003) versus \$214,065.54. Therefore, the City requests that the  
5 Proposed Order be amended to reflect outstanding taxes totaling approximately  
6 \$16,947.71.

7  
8 DATED: 2/5/04

9 JORDEN BISCHOFF MCGUIRE & ROSE, P.L.C.

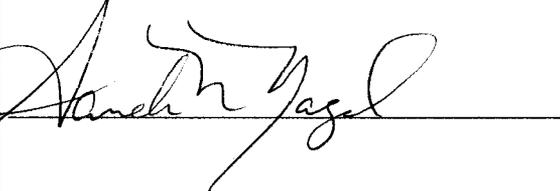
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12 Andrew J. McGuire (AZ Bar No. 016653)  
13 Carolyn K. Oberholtzer (AZ Bar No. 021877)  
14 Attorneys for the Intervenor

15 COPY of the foregoing mailed/delivered  
16 on February 5, 2004 to:

17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Douglas G. Martin  
21 MARTIN & BELL, LLC  
22 365 Coronado Road, Suite 200  
23 Phoenix, Arizona 85004  
24 Attorneys for Wilhoit Water Company, Inc.

25 

**EXHIBIT A**

Redemption Statement

[See following pages]



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
	<b>*TOTAL DUE</b>	<b>\$214,893.22</b>	<b>\$215,720.87</b>

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