

OPEN MEETING ITEM



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**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: JUNE 22, 2004

DOCKET NOS: W-03898A-04-0089, SW-03898A-04-0089, W-01303A-04-0089 and WS-01303A-04-0089

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

RANCHO CABRILLO WATER & SEWER CO., AZ-AMERICAN WATER CO, (AGUA FRIA AND ANTHEM/AGUA FRIA DISTRICTS)  
(TRANSFER/CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 1, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 6, 2004 and JULY 7, 2004

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**  
JUN 22 2004

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF  
RANCHO CABRILLO WATER COMPANY,  
RANCHO CABRILLO SEWER COMPANY,  
ARIZONA-AMERICAN WATER COMPANY,  
AGUA FRIA DISTRICT AND ARIZONA-  
AMERICAN WATER COMPANY,  
ANTHEM/AGUA FRIA DISTRICT [DISTCO] FOR  
THE TRANSFER OF CERTIFICATES OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
WATER AND WASTEWATER UTILITY  
SERVICES AND EXTENSION OF SERVICE  
AREA.

DOCKET NO. W-03898A-04-0089  
DOCKET NO. SW-03898A-04-0089  
DOCKET NO. W-01303A-04-0089  
DOCKET NO. WS-01303A-04-0089

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING:	May 20, 2004
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Teena Wolfe
APPEARANCES:	Todd Wiley, Gallagher & Kennedy, P.A., on behalf of Arizona-American Water Company;
	Mark Dioguardi, Tiffany & Bosco, on behalf of Rancho Cabrillo Water and Sewer Company; and
	Gary Horton, Legal Division, on behalf of the Arizona Corporation Commission's Utilities Division Staff.

**BY THE COMMISSION:**

On February 6, 2004, Rancho Cabrillo Water Company ("RCWC"), Rancho Cabrillo Sewer Company ("RCSC"), and Arizona-American Water Company ("Arizona-American" or "Company"), through its Agua Fria Water District and its Anthem/Agua Fria Wastewater District, jointly filed with the Arizona Corporation Commission ("Commission") an application to transfer RCWC's and RCSC's Certificates of Convenience and Necessity ("CC&Ns") to Arizona-American's Agua Fria Water District and its Anthem/Agua Fria Wastewater District, respectively. The application also

1 requested an additional extension of Arizona-American’s service territory under its existing CC&Ns  
2 for the Agua Fria Water District and its Anthem/Agua Fria Wastewater District.

3 On February 24, 2004, the Commission’s Utilities Division Staff (“Staff”) filed a letter  
4 informing Applicants that the application was administratively complete.

5 A Procedural Order was issued on February 25, 2004 setting a hearing on these matters for  
6 May 20, 2004, and setting associated procedural deadlines.

7 On April 7, 2004, Arizona-American filed an Amendment to the application. The  
8 Amendment added an alternative request to the application. Arizona-American requested that, in the  
9 event the CC&Ns held by RCWC and RCSC became invalid prior to a Commission Decision in this  
10 matter, the existing CC&Ns held by Arizona-American’s Agua Fria Water District and Anthem/Agua  
11 Fria Wastewater District be extended to include the RCWC and RCSC territory, in addition to the  
12 extension of territory requested in the application.

13 On April 29, 2004, Staff filed a Staff Report on this matter recommending approval of the  
14 alternative request in Arizona-American’s Joint Application as amended, with certain conditions.

15 On May 4, 2004, Procedural Orders were issued in RCWC’s CC&N application docket and  
16 RCSC’s CC&N application docket. The Procedural Orders extended compliance deadlines in those  
17 dockets, with the effect of maintaining the validity of the CC&Ns held by RCWC and RCSC.

18 A hearing was held as scheduled before a duly authorized Administrative Law Judge of the  
19 Commission. Applicants and Staff appeared through counsel, and Arizona-American and Staff  
20 presented evidence. Arizona-American and Staff filed a stipulation regarding compliance filing  
21 requirement conditions on May 26, 2004. This matter was then taken under advisement pending the  
22 submission of a Recommended Opinion and Order for the Commission’s final disposition.

23 \* \* \* \* \*

24 Having considered the entire record herein and being fully advised in the premises, the  
25 Commission finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. RCWC was granted a CC&N by Decision No. 63592 (April 24, 2001) authorizing it to  
28 provide water utility service to the public in an area in which approximately 2,500 homes are

1 planned, located in Maricopa County, Arizona, approximately 10 miles west of Interstate 17 near  
2 Happy Valley Road.

3 2. Currently, there are no water utility customers in the RCWC CC&N service area.  
4 RCWC does not have any assets, is not providing water service to any customers, and has not yet  
5 constructed the water system necessary to provide service in its service area. RCWC has not taken  
6 any customer security deposits and there are no refunds due under any main extension agreements.

7 3. RCSC was granted a CC&N by Decision No. 63658 (May 4, 2001), authorizing it to  
8 provide wastewater utility service to the public in an area concurrent to the CC&N territory of  
9 RCWC.

10 4. Currently, there are no wastewater utility customers in the RCSC CC&N service area.  
11 RCSC does not have any assets, is not providing wastewater service to any customers, and has not yet  
12 constructed any facilities necessary to provide service in its service area. RCSC has not taken any  
13 customer security deposits and there are no refunds due under any main extension agreements.

14 5. Arizona-American is an Arizona corporation engaged in providing water and  
15 wastewater services to approximately 115,000 customers in its twelve water and wastewater districts  
16 located in portions of Maricopa, Mohave and Santa Cruz counties in Arizona pursuant to authority  
17 granted by this Commission.

18 6. Arizona-American is a wholly-owned subsidiary of American Water Works, Inc. The  
19 ultimate parent of American Water Works, Inc. is RWE AG.

20 7. RCWC, RCSC and the developer ("Rancho Cabrillo") of the Rancho Cabrillo  
21 Development ("Development") have requested that Arizona-American provide water and wastewater  
22 services to the Development. At the time of the hearing, the Development comprised approximately  
23 685 acres, but Rancho Cabrillo planned to bid on an adjacent parcel consisting of approximately 30  
24 acres of State Trust Land.

25 8. Arizona-American and Rancho Cabrillo entered into the Rancho Cabrillo Water and  
26 Wastewater Agreement on January 23, 2004. Under the terms of that agreement, Rancho Cabrillo  
27 will construct, or have constructed, the necessary water and wastewater facilities to serve the  
28 Development, and Arizona-American will operate the facilities. The agreement includes terms for

1 Rancho Cabrillo to pay Project Facilities Fees to the Company, and for the Company to make refunds  
2 to Rancho Cabrillo as the Company receives revenue from end-use customers in the Development.

3 9. On February 6, 2004, RCWC, RCSC and Arizona-American jointly filed with the  
4 Commission an application to transfer RCWC's and RCSC's CC&Ns to Arizona-American's Agua  
5 Fria Water District and its Anthem/Agua Fria Wastewater District, respectively.

6 10. In the application, Arizona-American also requested an extension of the service  
7 territory under its existing CC&Ns for its Agua Fria Water District and its Anthem/Agua Fria  
8 Wastewater District to encompass approximately 1 ½ sections, or approximately 240 acres, of State  
9 Trust Land adjacent to, and partially surrounded by, the existing RCWC and RCSC service territory.

10 11. On April 2, 2004, an affidavit of publication was filed indicating that notice of the  
11 application and hearing was published on March 22, 2004 in the *Record Reporter*.

12 12. On April 7, 2004, Arizona-American filed an Amendment to the Joint Application.  
13 The purpose of the Amendment was to include an alternative request that, in the event the CC&Ns  
14 held by RCWC and RCSC became invalid prior to a Commission Decision in this matter, that the  
15 existing CC&Ns held by the Agua Fria Water District and the Anthem/Agua Fria Wastewater District  
16 be extended to include the RCWC and RCSC territory and the additional territory requested in the  
17 Joint Application.

18 13. On April 22, 2004, Arizona-American filed a Notice of Publication and Mailing that  
19 included an affidavit of publication certifying publication of notice of the hearing in the *Arizona*  
20 *Republic* on March 24, 2004, and also included a proof of mailing certifying mailing of notice of the  
21 hearing to Arizona-American's Agua Fria Water District and Anthem/Agua Fria Wastewater District  
22 customers on April 12, 2004.

23 14. No public comments or requests for intervention were filed.

24 15. On April 29, 2004, Staff filed a Staff Report on this matter recommending approval of  
25 the alternative request in Arizona-American's Joint Application as amended, with certain conditions.

26 16. On May 4, 2004, Procedural Orders were issued in Docket No. W-03898A-00-0474,  
27 RCWC's CC&N application docket, and SW-03898A-00-0789, RCSC's CC&N application docket.  
28 The Procedural Orders extended compliance deadlines required by Decision No. 63592 (April 24,

1 2001) and Decision No. 63658 (May 4, 2001), and had the effect of maintaining the validity of the  
2 CC&Ns held by RCWC and RCSC.

3 17. A Procedural Order was issued on May 14, 2004 moving the time for commencement  
4 of the May 20, 2004 hearing from 9:30 a.m. to 1:30 p.m. due to a witness scheduling conflict.

5 18. RCWC and RCSC no longer wish to provide water and wastewater services in their  
6 certificated service territories. Their existing service territories are concurrent and encompass  
7 approximately 685 acres, as depicted on Exhibit A, attached hereto and incorporated herein by  
8 reference.

9 19. Arizona-American also requests authority to extend its CC&Ns to include  
10 approximately 240-acres of State Trust Land. That proposed extension area is depicted on Exhibit B,  
11 attached hereto and incorporated herein by reference. Arizona-American's witness testified that 30  
12 acres of those State Trust lands are located within the planned Development, but are not in the  
13 existing RCWC and RCSC CC&Ns. He stated that the remainder of the requested State Trust Land  
14 extension area had no pending requests for service, but that the State Land Department is supportive  
15 of including their properties in utility service areas. In a letter to Arizona-American dated May 23,  
16 2002, the Arizona State Land Department stated that it has determined that it is in the best interest of  
17 those State Trust Lands to be included in a water and sewer service area. Arizona-American's  
18 witness stated that State Trust Lands located within a utility's planning area gain value and earn a  
19 better return for the State of Arizona.

20 20. The proposed CC&N transfer, along with the proposed CC&N extension, would add  
21 approximately 925 acres to Arizona-American's existing service territory, and between  
22 approximately 2,200 to 3,200 customers at build-out.

23 21. Staff supports of Arizona-American's application, including the request for extension  
24 of its territory to encompass the requested State Trust Land territory. Staff's witness testified at the  
25 hearing that Staff recognizes the long-term value of working with a State agency to ensure that its  
26 goals and objectives are met, and agreed with the State Land Department's request that the State  
27 Trust Land parcel be included in a water and sewer utility service area.

28 22. The requested CC&N transfer and extension areas are included in the Company's

1 water and sewer regional master plans dated July 10, 2002. Staff reviewed the application and the  
2 regional master plans and determined that the proposed water and wastewater systems will have  
3 adequate production and storage capacity and adequate sewage treatment capacity to serve the  
4 proposed CC&N areas, or that the Company can reasonably be expected to develop the needed  
5 storage, production and treatment capacities.

6 23. Staff stated in the Staff Report that its recommendation for approval of the application  
7 does not imply a recommendation for any particular future rate base treatment of the proposed plant  
8 facilities, that Staff made no "used and useful" determination of the proposed plant facilities, and that  
9 no conclusions should be inferred from its approval recommendation for ratemaking or rate base  
10 purposes.

11 24. Arizona-American's witness testified that the Company's wastewater and water  
12 facilities regional master planning area covers the requested CC&N areas, and that it extends to the  
13 southern boundary of the City of Peoria's planning area and to the eastern boundary of the City of  
14 Surprise's planning area. He testified that the Development property and the State Trust Land  
15 property together represent the last remaining land in the vicinity that is not yet integrated into either  
16 Arizona-American's, Peoria's or Surprise's planning area.

17 25. The Staff Report states that the Maricopa Association of Governments ("MAG"),  
18 which is the designated water quality planning agency for the requested CC&N areas, has given  
19 Arizona-American authority for the additional capacity to treat wastewater flows from the requested  
20 CC&N territory.

21 26. Arizona-American's witness testified that it has already completed a 2 million gallon-  
22 per-day expansion to the Company's Northwest Regional Wastewater Reclamation Facility, formerly  
23 known as the Sun City West Wastewater Reclamation Facility, and that this will provide service to  
24 the Development as well as to other properties within the Company's planning area.

25 27. Arizona-American's witness testified that on the water side of the project, the  
26 Company has completed construction of one well and necessary transmission mains, and an initial  
27 booster station including storage facilities.

28 28. The Staff Report's recommendation for approval of the application included one

1 condition requiring the filing of Arizona Department of Environmental Quality (“ADEQ”) Approvals  
2 to Construct and one condition requiring the filing of Arizona Department of Water Resources  
3 (“ADWR”) Certificates of Assured Water Supply, with both filings to be made within 365 days of a  
4 Decision in this matter. Staff also recommended that if the Company did not timely file the ADEQ  
5 and ADWR documentation, that the requested CC&N extension be considered null and void, without  
6 further order of the Commission.

7 29. Arizona-American and Staff filed a stipulation on May 26, 2004. Therein, the parties  
8 stipulated to alternatives to the conditions recommended in the Staff Report regarding the filing of  
9 ADEQ Approvals to Construct and ADWR Certificates of Assured Water Supply. The stipulated  
10 conditions are as follows:

11  
12 (1) That the Commission require Arizona-American Water Company to file, with the  
13 Director of the Utilities Division, the ADEQ Approvals to Construct the facilities  
14 required to serve the initial phase of the Rancho Cabrillo development, including at a  
15 minimum the Approvals to Construct for the Phase IV Regional Water Facilities, the  
16 Phase IV Regional Wastewater Collection Facilities and the initial phase of the On-  
Site Subdivision Facilities (as those facilities are defined in the Rancho Cabrillo Water  
and Wastewater Agreement), together with the appropriate main extension agreement,  
within 365 days from the effective date of the Commission’s Decision; and

17 (2) That the Commission require Arizona-American Water Company to file, with the  
18 Director of the Utilities Division, a copy of the ADWR Certificate of Assured Water  
19 Supply for the initial phase of the Rancho Cabrillo development within 365 days from  
the effective date of the Commission’s Decision.

20 30. For the RCWC and RCSC service areas, and for the additional requested extension  
21 area, Arizona-American proposes to charge its authorized rates and charges for its Agua Fria Water  
22 District and its Anthem/Agua Fria Wastewater District. Staff recommended approval of this  
23 proposal.

24 31. No other investor-owned or municipal water or wastewater utility is proposing to  
25 provide service to the requested CC&N transfer and extension areas.

26 32. The Staff Report states that the Phoenix Active Management Area (“AMA”) reported  
27 that the Company is in total compliance with ADWR reporting and conservation rules.

28 33. The Staff Report states that some wells within the Company’s Agua Fria District

1 exceed the new federal arsenic standard, and that the Company plans on meeting the new standard by  
2 blending water, retiring wells with high arsenic levels or by water treatment. The Staff Report states  
3 that the Company is currently performing an arsenic pilot study in its Sun City West District for the  
4 purpose of evaluating and selecting treatment processes and reactor media.

5 34. Staff's witness testified that the Company is in complete compliance with ADEQ  
6 water quality requirements for all its systems.

7 35. The Staff Report states that the Company has no outstanding compliance issues with  
8 the Commission.

9 36. The recommendations set forth in Findings of Fact Nos. 27, 28 and 29 are reasonable  
10 and should be adopted.

11 **CONCLUSIONS OF LAW**

12 1. RCWC, RCSC and Arizona-American are public service corporations within the  
13 meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

14 2. The Commission has jurisdiction over RCWC, RCSC and Arizona-American and the  
15 subject matter of the joint application.

16 2. Notice of the application was provided as required by law.

17 3. There is a continuing need for water and wastewater utility service in RCWC's and  
18 RCSC's certificated areas.

19 4. Arizona-American is a fit and proper entity to receive RCWC's and RCSC's CC&Ns.

20 5. It is in the public interest to grant the request of RCWC and Arizona-American to  
21 transfer RCWC's existing CC&N to Arizona-American's Agua Fria Water District.

22 6. It is in the public interest to grant the request of RCSC and Arizona-American to  
23 transfer RCSC's existing CC&N to Arizona-American's Anthem/Agua Fria Wastewater District.

24 7. There is a need for water and wastewater service in the requested extension area.

25 8. Arizona-American is a fit and proper entity to receive CC&Ns authorizing it to  
26 provide water and wastewater services to the requested extension area.

27 9. It is in the public interest to grant Arizona-American's request to extend the existing  
28 CC&N of its Agua Fria Water District to include the area described in Exhibit B.



1 and Wastewater Agreement), together with the appropriate main extension agreement; and that if  
2 Arizona-American Water Company fails to timely make these filings, that the Certificate of  
3 Convenience and Necessity transfers and extensions granted herein shall be null and void, without  
4 further order of the Commission.

5 IT IS FURTHER ORDERED that Arizona-American Water Company shall file, with the  
6 Director of the Utilities Division, within 365 days, a copy of the Arizona Department of Water  
7 Resources Certificate of Assured Water Supply for the initial phase of the Rancho Cabrillo  
8 development; and that if Arizona-American Water Company fails to timely make this filing, that the  
9 Certificate of Convenience and Necessity transfers and extensions granted herein shall be null and  
10 void, without further order of the Commission.

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1 IT IS FURTHER ORDERED that Arizona-American Water Company shall charge its  
2 authorized rates and charges for its Agua Fria Water District and its Anthem/Agua Fria Wastewater  
3 District in the Certificate of Convenience and Necessity transfer and extension areas granted herein.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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8 CHAIRMAN COMMISSIONER COMMISSIONER

9  
10 COMMISSIONER COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
12 Secretary of the Arizona Corporation Commission, have  
13 hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this \_\_\_\_ day of \_\_\_\_\_, 2004.

16 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

17 DISSENT \_\_\_\_\_

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19 DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR: RANCHO CABRILLO WATER COMPANY,  
2 RANCHO CABRILLO SEWER COMPANY,  
3 ARIZONA-AMERICAN WATER COMPANY, AGUA  
FRIA DISTRICT AND ANTHEM/AGUA FRIA  
DISTRICT  
4 DOCKET NOS.: W-03898A-04-0089, SW-03898A-04-0089, W-01303A-  
5 04-0089 and WS-01303A-04-0089  
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Ernest G. Johnson, Director  
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ARIZONA CORPORATION COMMISSION  
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EXHIBIT A

**Legal Description**  
**Certificate of Convenience and Necessity**  
**Arizona-American Water Company, Agua Fria Water District**  
**And Anthem/Agua Fria Wastewater District**  
**Proposed Water and Sewer Service Transfer Area From Rancho Cabrillo Water and**  
**Wastewater Company**

Township 4 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County,  
Arizona

The North half (N ½) of Section 10;

The East half (E ½) and the South half (S ½) of the Northwest Quarter (NW ¼) Section 3.

**DECISION NO.** \_\_\_\_\_

EXHIBIT B

**Legal Description**  
**Certificate of Convenience and Necessity**  
**Arizona-American Water Company, Agua Fria Water District**  
**And Anthem/Agua Fria Wastewater District**  
**Proposed Water And Wastewater Service Extension Area**

Township 4 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County,  
Arizona

The Southwest Quarter (SW ¼) and the North half (N ½) of the Northwest Quarter (NW ¼) Section  
3.

**DECISION NO.** \_\_\_\_\_