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MEMORANDUM

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TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: May 14, 2004

RE: NEW RIVER UTILITY COMPANY - APPLICATION FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICE IN MARICOPA COUNTY, ARIZONA (DOCKET NO. W-01737A-04-0274)

Attached is the Staff Report for the above referenced application. Staff is recommending denial of the application.

EGJ:JEF:hml

Originator: Jim Fisher

Arizona Corporation Commission
DOCKETED

MAY 14 2004

DOCKETED BY	<i>Ma</i>
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Service List for: New River Utility Company
Docket No. W-01737A-04-0274

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President
New River Utility Company
7839 West Deer Valley Road
Phoenix, Arizona 85382

Mr. Marshall Reynolds
Arrowhead Ranch Office Park, LLC
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Phoenix, Arizona 85016

Mr. Jay Shapiro
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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

NEW RIVER UTILITY COMPANY

DOCKET NO. W-01737A-04-0274

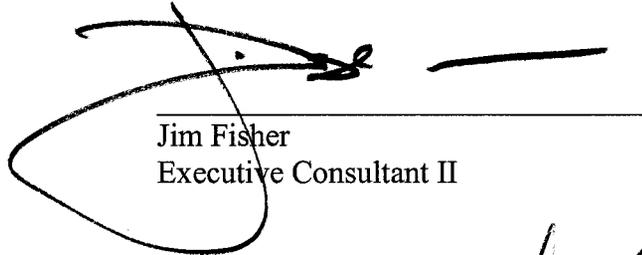
APPLICATION FOR AN EXTENSION OF
ITS CERTIFICATE OF CONVENIENCE & NECESSITY
TO PROVIDE WATER SERVICE
IN MARICOPA COUNTY, ARIZONA

MAY 2004

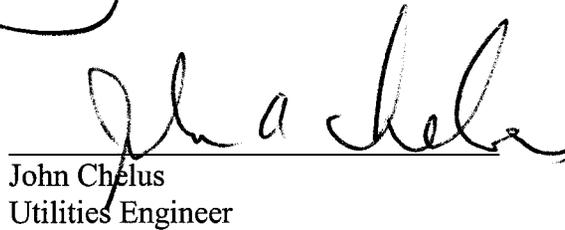
STAFF ACKNOWLEDGEMENT

The Staff Report for New River Utility Company (Docket No. W-01737A-04-0274) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analyses of the Company's application. John Chelus was responsible for the engineering and technical analysis.

Contributing Staff:



Jim Fisher
Executive Consultant II



John Chelus
Utilities Engineer

**EXECUTIVE SUMMARY
NEW RIVER UTILITY COMPANY
DOCKET NO. W-01737A-04-0274**

On April 9, 2004, New River Utility Company ("New River" or "Company"), a certificated Arizona public service corporation, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval for an extension of its existing Certificate of Convenience and Necessity ("CC&N") to include additional property in Maricopa County, Arizona.

On March 24, 2004, Utilities Division Staff ("Staff") met with representatives of the Company, the City of Peoria and the Mr. Reynolds, the developer seeking inclusion of the subject property. During the meeting, New River asserted that it was the Company's desire to serve the property under the Commission's rules for contiguous service. Staff explained that the Company's view was not shared.

On April 9, 2004, the Company filed its application. On April 13, 2004, Staff requested a compliance status report from the Maricopa County Environmental Service Department ("MCESD"). On April 15, 2004, MCESD provided Staff with a status report disclosing major deficiencies in overall compliance, monitoring and reporting and operation and maintenance.

By this application, New River is seeking to add approximately 9.4 acres to its existing two square miles of certificated area. New River is located at the southeast corner of 78th Avenue and Deer Valley Road in the city of Peoria in Maricopa County. The area requested for service will include the proposed Arrowhead Ranch Office Park.

Arrowhead Ranch Office Park is a proposed medical office condominium complex of 36 units. New River has an existing transmission main bordering the northern portion of the property. The Company will construct a distribution loop into the property and interconnect the condominium units to the distribution facilities.

Staff recommends that the Commission deny the New River Utility Company's application for an extension of its Certificate of Convenience and Necessity in a portion of Maricopa County to provide water service, until the utility is able to demonstrate compliance with the following conditions:

1. To file evidence of its compliance with all aspects of the Maricopa County Environmental Service Department.
2. To file a report with the Commission's Utilities Division describing its arsenic treatment plan within three months from the effective date of any decision in this matter or by December 31, 2004, whichever comes first, to ensure the water quality standards are met.

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Introduction

On April 9, 2004, New River Utility Company ("New River" or "Company"), a certificated Arizona public service corporation, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval for an extension of its existing Certificate of Convenience and Necessity ("CC&N") to include additional property in Maricopa County, Arizona.

On March 24, 2004, Utilities Division Staff ("Staff") met with representatives of the Company, the City of Peoria and the Mr. Reynolds, the developer seeking inclusion of the subject property. During the meeting, New River asserted that it was the Company's desire to serve the property under the Commission's rules for contiguous service. Staff explained that the Company's view was not shared.

On April 9, 2004, the Company filed its application. On April 13, 2004, Staff requested a compliance status report from the Maricopa County Environmental Service Department ("MCESD"). On April 15, 2004, MCESD provided Staff with a status report disclosing major deficiencies in overall compliance, monitoring and reporting and operation and maintenance.

On April 16, 2004, Staff informed New River of the MCESD compliance status report. On April 20, 2004, the Company informed Staff that it was working with MCESD to resolve the issues in the status report.

Background

New River is an Arizona subchapter S corporation, authorized by the ACC to provide water service within a portion of Maricopa County, Arizona. The ACC initially authorized New River a CC&N in 1961.

New River's current authorized rates became effective in Decision No. 65134 (August 22, 2002) which recognized 1,150 customers in the Test Year. The decision was based on a settlement agreement that approved a revenue requirement of \$678,180, a rate base of \$826,355, and an authorized rate of return of 7.78 percent.

According to its last Annual Report to the Commission, the Company currently serves approximately 2,548 customers, producing revenue of \$1,220,733 and income \$138,660. The Company reported income in the previous year of \$210,555. However, according to the annual report, salaries and wages increased from \$131,324 to \$517,750.

Decision No. 65134 found that MCESD could not determine if the Company was in compliance with regulations. The Commission required the Company to demonstrate compliance with MCESD prior to the new rates going to effect. Decision No. 65134 also required the Company to file a Curtailment Plan Tariff within 90 days of the effective date of the decision.

According to the Utilities Division Compliance Section, the Company complied with both conditions in a timely manner.

New River reports property tax payments of \$27,830.

The Extension Request

By this application, New River is seeking to add approximately 9.4 acres to its existing two square miles of certificated area. New River Utility is located at the southeast corner of 78th Avenue and Deer Valley Road in the City of Peoria in Maricopa County. The area requested for service will include the proposed Arrowhead Ranch Office Park ("ARO").

ARO is a proposed medical office condominium complex of 36 units. New River has an existing transmission main bordering the northern portion of the property. The Company will construct a distribution loop into the property and interconnect the condominium units to the distribution facilities.

On March 31, 2004, Marshall Reynolds, president of Rencor Development, the developer of Arrowhead Ranch Office Park requested service from New River.

On April 6, 2004, New River and the City of Peoria ("City") entered into a Utility Services Operating Agreement to allow the utility to operate in the streets of the City prior to obtaining a franchise that includes the proposed extension area.

The April 6, 2004 agreement, requires the Company to comply with all applicable statutes and regulations of a competent authority. The agreement specifically requires the Company to provide water in compliance with MCESD. The agreement requires the Company to provide the City with billing information to ensure the City can bill the development for wastewater services.

Finance of Facilities

On March 15, 2004, New River and ARO signed an Main Extension Agreement ("MXA"). New River will finance the required transmission and distribution facilities primarily with Advances in Aid of Construction ("AIAC"). AIAC are often in the form of MXAs. MXAs generally require the developer to design, construct and install (or cause to be), all facilities to provide adequate service to the development. The developer is required to pay all costs of constructing the required facilities necessary to serve the development. Upon acceptance of the facilities by the utility the developer will convey the water facilities by way of a warranty deed. The utility will often refund ten (10) percent of the annual water revenue associated with development for a period of ten (10) years.

The Company has informed Staff that service will be extended by installing 8-inch and 6-inch distribution lines, fire hydrants, and service connections. The projected costs are estimated to be \$313,715.

The MXA is consistent with Arizona Administrative Code R14-2-406 and should be approved as part of this application.

Water Production Capacity

New River has six production wells with a total production capacity of 4,497 gallons-per-minute ("GPM"). The system also retains 3,000,000 gallons of storage capacity, booster pumps, pressure tanks, and a distribution system serving 2,550 connections.

Based on historical growth rates, it is anticipated that the existing service area will have 5,000 total customers at the end of five years. The company has predicted an additional six customers for the proposed CC&N extension, at the end of five years. The existing production and storage can serve approximately 5,800 connections.

Therefore, Staff concludes that the existing system has adequate production and storage capacity to serve the existing and proposed CC&N area within a conventional five year planning period and can reasonably be expected to develop additional storage and production as required in the future.

Maricopa County Environmental Services Department ("MCESD") Compliance

MCESD regulates the water system under ADEQ Public Water System I.D. # 07-051. Based on data submitted by the Company, MCESD has determined that this system is currently delivering water that does **not** meet water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

MCESD has determined that the water company's violations are major deficiencies. Such major water quality violations raise a presumption of fact that the utility is operating, or has operated, in an unsafe and improper manner.

MCESD reported that point of entry ("POE") two, does not have a fence around the site and the well sign is not posted. Storage tanks at POE three have loose cathodic covers. Sites attached to POE two, need weeds removed and fence repaired. The system missed the November 2003 total coliform monitoring. The system did not perform total coliform monitoring in accordance with Safe Drinking Water Act requirements. Monitoring assistance program reports population exceeding 6,000 which requires seven monthly samples. The system needs to perform missed monitoring public notice for November 2003 and incorrect monitoring for total coliform. System needs to submit new microbial site sampling program for review and approval based upon proper population and chlorine by product testing plan by June 1, 2004. The system has attached an unapproved source to POE 3.

Arsenic

The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter ("µg/l") to 10 µg/l. The date for compliance with the new MCL is January 23, 2006. The most recent lab analysis by the Company indicated that the arsenic level in its source supplies are Well No. 1 at 5 µg/l, Well No. 2 at 8 µg/l, Well No. 3 at 8 µg/l, Well No. 4 at 14 µg/l and Well No. 6 at 16 µg/l.

Based on this arsenic level, the Company will be required to implement a plan to address this issue. This could mean installing treatment facilities, locating a better source of water or blending sources of water to achieve 10 µg/l or less.

Staff recommends that the Company be required to file a report to the Commission's Utilities Division describing what steps the Company is planning to take in order to reduce the level in its water to a concentration to below 10 µg/l within three months from the effective date of any decision in this matter or by December 31, 2004, whichever comes first.

Arizona Department of Water Resources Compliance

New River is within the Phoenix Active Management Area, and consequently is subject to reporting and conservation rules (GPCD requirements) of the Arizona Department of Water Resources ("ADWR"). The Phoenix AMA reported that New River Utility is in total compliance with the ADWR reporting and conservation rules.

The requested area is for a commercial development and therefore will not require a certificate of assured water supply from ADWR.

Curtailment Plan Tariff

Decision No. 65134 required the Company to file a Curtailment Plan Tariff within 90 days of the effective date of the decision. According to the Utilities Division Compliance Section, the Company complied in a timely manner.

ACC Compliance

A check with the Utilities Division, Compliance Section showed no outstanding compliance issues for the Company.

Proposed Rates

New River has proposed to extend service to the property at its authorized rates.

Recommendations

Staff recommends that the Commission deny the New River Utility Company's application for an extension of its Certificate of Convenience and Necessity in a portion of Maricopa County to provide water service, until the utility is able to demonstrate compliance with the following conditions:

1. To file evidence of its compliance with all aspects of the Maricopa County Environmental Service Department.
2. To file a report with the Commission's Utilities Division describing its arsenic treatment plan within three months from the effective date of any decision in this matter or by December 31, 2004, whichever comes first, to ensure the water quality standards are met.

MEMORANDUM

DATE: April 14, 2004

TO: James E. Fisher

FROM: John A. Chelus
Utilities Engineer 

RE: New River Utility Company
CC&N Extension – Water
Docket No. W-01737A-04-0274

Introduction

New River Utility Company (New River Utility or Company) has applied to extend its Certificate of Convenience and Necessity (CC&N). The requested service area will add approximately 9.4 acres to its existing two square miles of certificated area. New River Utility is located in the area of 78th Avenue and Deer Valley Rd. in the City of Peoria in Maricopa County. The area requested for service will hold the Arrowhead Ranch Office Park.

Capacity

New River Utility has in existence six well(s) with a total production capacity of 4,497 gal/min, 3,000,000 gallons of storage capacity, booster pumps, pressure tanks, and a distribution system serving 2,550 connections. Based on historical growth rates, it is anticipated that the existing service area will have 5,000 total customers at the end of five years. The Company has predicted an additional six customers for the proposed CC&N extension, at the end of five years. The existing production and storage can serve approximately 5,800 connections. Therefore, Staff concludes that the existing system has adequate production and storage capacity to serve the existing and proposed CC&N area within a conventional five year planning period and can reasonably be expected to develop additional storage and production as required in the future. The area development will meet the City of Peoria fire flow requirements of 2,500 gal/min for 2 hours at a residual pressure of 20 pounds per square inch (“psi”).

Maricopa County Environmental Services (MCES) Compliance

MCES regulates the water system under ADEQ Public Water System I.D. # 07-051. Based on data submitted by the Company, MCES has determined that this system is currently delivering water that does **not** meet water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

MCES has determined that the water company's violations are major deficiencies. Such major water quality violations raise a presumption of fact that the utility is operating, or has operated, in an unsafe and improper manner.

MCES reported that point of entry (POE) 2 does not have a fence around the site and the well sign is not posted. Storage tanks at POE 3 have loose cathodic covers. Sites attached to POE 2 need weeds removed and fence repaired. The system missed the November 2003 total coliform monitoring. The system did not perform total coliform monitoring in accordance with safe drinking water act requirements. Monitoring assistance program reports population exceeding 6,000 which requires 7 monthly samples. The system needs to perform missed monitoring public notice for November 2003 and incorrect monitoring for total coliform. System needs to submit new microbial site sampling program for review and approval based upon proper population and chlorine by-products plan by June 1, 2004. The system has attached an unapproved source to POE 3.

The public interest is the controlling factor in the decision to issue a Certificate of Convenience and Necessity, and the Certificate of Convenience and Necessity can only be acquired by an affirmative showing that the issuance will serve the public interest. The granting of a CC&N to a public service corporation, which is operating in an unsafe and improper manner, is not in the public interest. Therefore, Staff recommends that the application for an extension to the CC&N be denied.

Arsenic

The U.S. Environmental Protection Agency (EPA) has reduced the arsenic maximum contaminant level (MCL) in drinking water from 50 micrograms per liter ($\mu\text{g/l}$) to 10 $\mu\text{g/l}$. The date for compliance with the new MCL is January 23rd, 2006. The most recent lab analysis by the Company indicated that the arsenic level in its source supplies are Well No. 1 at 5 $\mu\text{g/l}$, Well No. 2 at 8 $\mu\text{g/l}$, Well No. 3 at 8 $\mu\text{g/l}$, Well No. 4 at 14 $\mu\text{g/l}$ and Well No. 6 at 16 $\mu\text{g/l}$.

Based on this arsenic level, the Company will be required to implement a plan to address this issue. This could mean installing treatment facilities, locating a better source of water or blending sources of water to achieve 10 $\mu\text{g/l}$ or less. Staff recommends that the Company, within 3 months from the effective date of the Decision or by December 31, 2004, whichever comes first, submit a report to the Commission's Utilities Division describing what steps the Company is planning to take in order to reduce the level in their water to a concentration to below 10 $\mu\text{g/l}$.

Arizona Department of Water Resources (ADWR) Compliance

New River Utility is within the Phoenix Active Management Area, and consequently is subject to reporting and conservation rules (GPCD requirements). The Phoenix AMA reported that New River Utility is in total compliance with the ADWR reporting and conservation rules. It is also recommended that the New River Utility shall file with the commission a copy of the developers' certificate of Assured Water Supply, where applicable or when required by statute.

Summary

1. Staff concludes that the existing system has adequate production and storage capacity to serve the existing and proposed CC&N area within a conventional five year planning period and can reasonably be expected to develop additional storage and production as required in the future.
2. MCES regulates the water system under ADEQ Public Water System I.D. # 07-051. Based on data submitted by the Company, MCES has determined that this system is currently delivering water that does **not** meets water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

MCES has determined that the water company's violations are major deficiencies. Such major water quality violations raise a presumption of fact that the utility is operating, or has operated, in an unsafe and improper manner.

The public interest is the controlling factor in the decision to issue a Certificate of Convenience and Necessity, and the Certificate of Convenience and Necessity can only be acquired by an affirmative showing that the issuance will serve the public interest. The granting of a CC&N to a public service corporation, which is operating in an unsafe and improper manner, is not in the public interest. Therefore, Staff recommends that the application for an extension to the CC&N be denied.

3. Staff recommends that the Company, within 3 months from the effective date of the Decision or by December 31, 2004, whichever comes first, submit a report to the Commission's Utilities Division describing what steps the Company is planning to take in order to reduce the level in their water to a concentration below 10 µg/l.
4. New River Utility is within the Phoenix Active Management Area, and is subject to reporting and conservation rules (GPCD requirements). The Phoenix AMA reported that New River Utility is in total compliance with the ADWR reporting and conservation rules. Staff recommends that New River Utility file with the

New River Utility Company Water CC&N Extension

Docket No. W-01737A-04-0274

Page 4

commission a copy of the developers' certificate of Assured Water Supply, where applicable or when required by statute.

MEMORANDUM

TO: Jim Fisher
Executive Consultant II
Utilities Division

FROM: Barb Wells *lew*
Information Technology Specialist
Utilities Division

THRU: Del Smith *DS*
Engineering Supervisor
Utilities Division

DATE: April 23, 2004

RE: **NEW RIVER UTILITY COMPANY (DOCKET NO. W-01737A-04-0274)**

The area requested by New River for an extension to its CC#N has been plotted with no complications using the legal description provided with the application (a copy of which is attached).

Also attached is a copy of the map for your files.

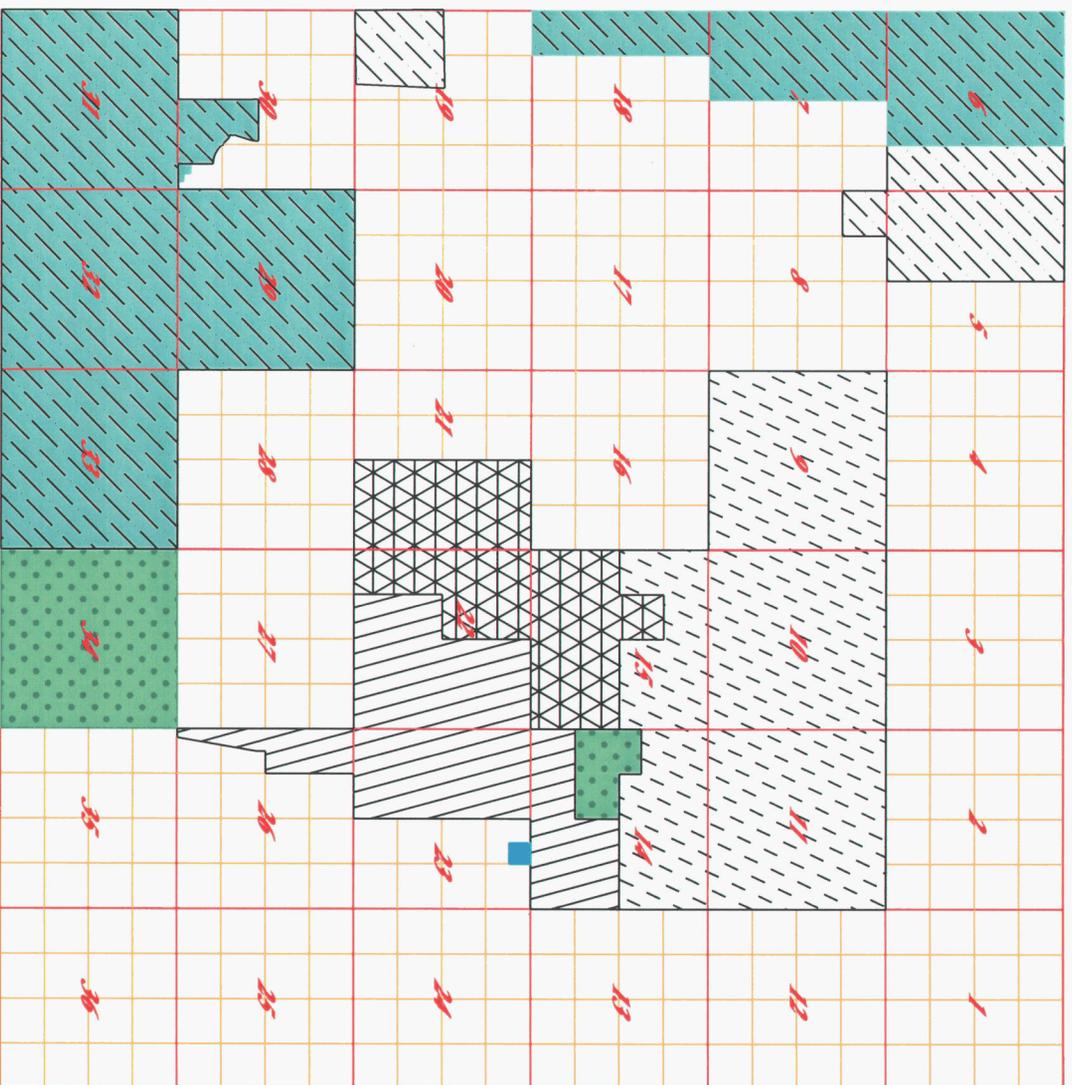
:bsw

Attachments

cc: Docket Control
Mr. Jay Shapiro
Ms. Deb Person (Hand Carried)
File

COUNTY: Maricopa

RANGE 1 East



TOWNSHIP 4 North

-  WS-1303 (14)  Sewer
-  Arizona-American Water Company
-  W-1737 (1)
-  New River Utility Company
-  W-1539 (1)
-  Rose Valley Water Company
-  W-2069 (1)
-  Sunrise Water Company, Inc.
-  C-0008 (3)  Sewer
-  City of Peoria (Nonjurisdictional)
-  New River Utility Company
Docket No. W-1737-04-274
Application for Extension

Exhibit A

That portion of the Northwest Quarter of the Northeast Quarter of Section 23, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows: Commencing at the North quarter corner of said Section 23;

Thence North 89 degrees 36 minutes 41 seconds East, along the North line of said Northeast Quarter, 665.89 feet to the Northwest corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23, and the point of beginning of the herein described parcel;

Thence continuing North 89 degrees 36 minutes 41 seconds East, along said North line, 665.69 feet to the Northeast corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23;

Thence South 00 degrees 12 minutes 23 seconds West, 660.70 feet to the Southeast corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23;

Thence South 89 degrees 39 minutes 55 seconds West, 665.24 feet to the Southwest corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23;

Thence North 00 degrees 09 minutes 01 second East, 660.07 feet to the point of beginning;

Except the West 25 feet; and

Except the South 22 feet of the North 55 feet, thereof, as conveyed to Maricopa County, a political subdivision of the State of Arizona in Deeds recorded in Document No. 01-965229 and Document No. 01-966003 and Document No. 01-965340; and

Except beginning at the point of intersection of the East line of the West 25 feet, and the South line of the North 55 feet, of the West half of the West half of the Northeast quarter of the Northwest quarter of the Northeast quarter of said Section 23;

Thence Southerly, 30 feet, along said East line of the West 25 feet ;

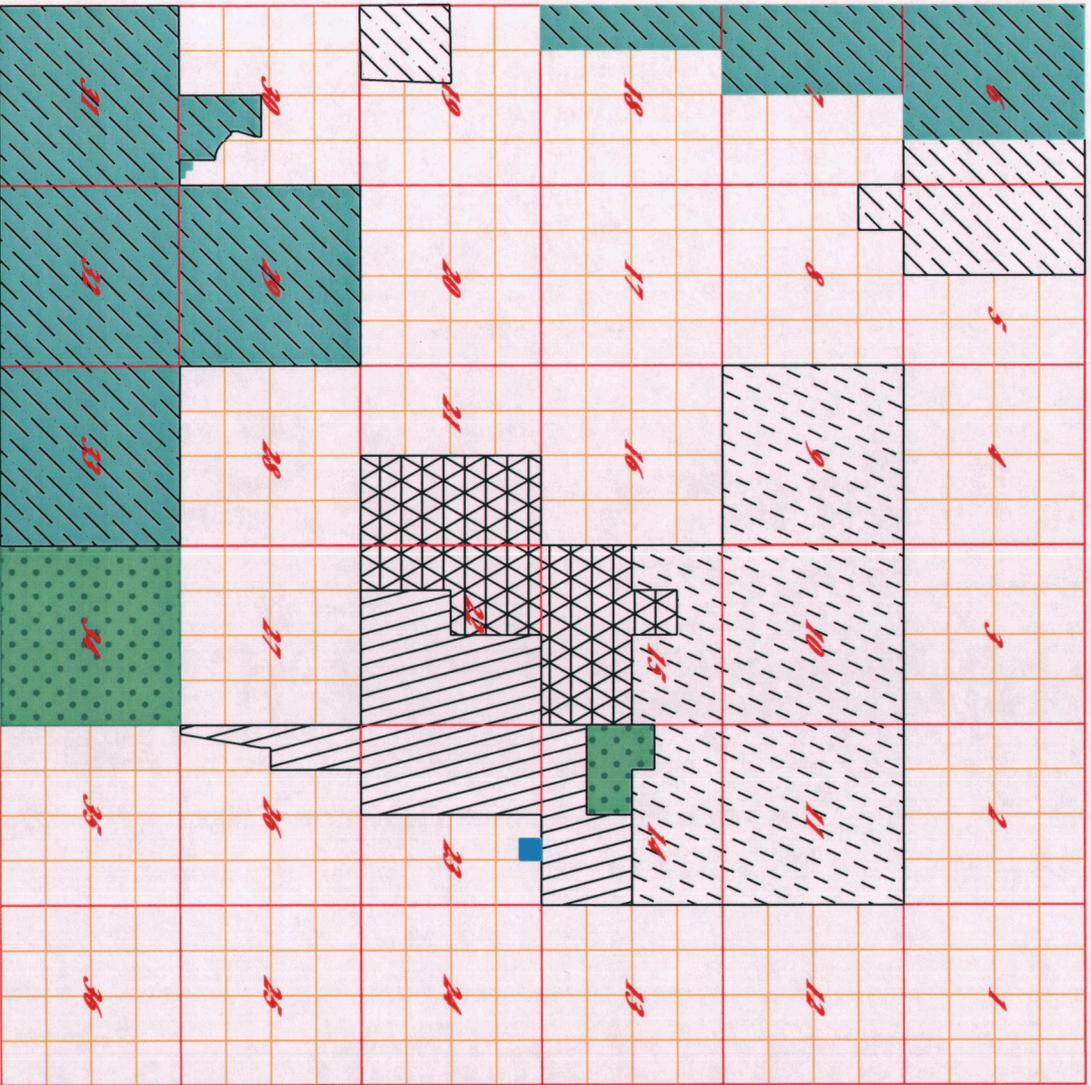
Thence in a Northeasterly direction to a point on said South line of the North 55 feet that is 30 feet Easterly from said point of intersection;

Thence Westerly, 30 feet to said point of beginning, as conveyed to Maricopa County, a political subdivision of the State of Arizona by Deed recorded in Document No. 01-965229; and

Except all coal, oil, gas and other mineral deposits as reserved in the Patents to said land recorded in Docket 1791, page 376, and Docket 1585, page 483.

COUNTY: Maricopa

RANGE 1 East



TOWNSHIP 4 North

-  WS-1303 (14)  Sewer
-  Arizona-American Water Company
-  W-1737 (1)  Sewer
-  New River Utility Company
-  W-1539 (1)
-  Rose Valley Water Company
-  W-2069 (1)
-  Sunrise Water Company, Inc.
-  C-0008 (3)  Sewer
-  City of Peoria (Nonjurisdictional)
-  New River Utility Company
Docket No. W-1737-04-274
Application for Extension