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1 COMMISSIONERS

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Arizona Corporation Commission

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- 2 Jeff Hatch-Miller - Chairman
- 3 William A. Mundell
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- 5 Mike Gleason
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MAY 23 2005

AZ CORP COMMISSION  
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BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE APPLICATION )  
 8 OF ARIZONA WATER COMPANY FOR )  
 9 AN EXTENSION OF ITS CERTIFICATE )  
 10 OF CONVENIENCE AND NECESSITY )  
 11 AT CASA GRANDE, PINAL COUNTY, )  
 12 ARIZONA )

DOCKET NO. W-01445A-03-0559

RESPONSE TO MOTION TO INTERVENE  
 AND REQUEST FOR LEAVE TO FILE  
 RESPONSE TO STAFF  
 RECOMMENDATION AND EXCEPTIONS  
 TO ALJ'S PROPOSED ORDER

13 Arizona Water Company (the "Company") files its response to Cornman Tweedy  
 14 560, LLC's ("Cornman") and Picacho Water Company's ("Picacho") motion to intervene in the  
 15 above-captioned matter and request for leave to file a reply to the Company's Response to Staff's  
 16 Recommendation for Additional Evidentiary Proceedings and Exceptions to the ALJ's proposed  
 17 order (the "Response"). For the following reasons, the Commission should deny the motion to  
 18 intervene and the requests in their entirety.

19 As a preliminary matter, the fact remains that Picacho and Cornman are not parties  
 20 to this proceeding, as the ALJ correctly concluded, and a point that Picacho and Cornman  
 21 apparently now concede. Therefore, they have no right to participate in this proceeding. They  
 22 also mischaracterize the Company's position as an argument that the Staff also cannot participate  
 23 in this proceeding. Nothing could be further from the truth. The Staff, of course, is always a  
 24 "party" to Commission proceedings, fully participated in this matter, and has every right to  
 25 evaluate the Company's request. What the Company objected to, and the ALJ's recommendation  
 26 sustains, was the Staff's reliance upon the unsupported allegations from non-parties to a  
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ORIGINAL

1 proceeding. Cornman and Picacho, having foregone the opportunity to intervene and participate  
2 in this matter when it was considered and heard by the Commission, now have no right to be  
3 heard or relied upon. That is what the ALJ correctly concluded.

4           As an additional preliminary matter, the Company's request for additional time to  
5 comply with Decision No. 66893's filing requirement was timely filed. The ALJ's recommended  
6 order correctly concludes this, as it is undisputed that the Company's request was filed before the  
7 365-day period ended. As the Company pointed out in the Response (a copy of which is attached  
8 hereto as Exhibit "A"), Robson-related companies have also requested, and have been routinely  
9 granted, extensions of time to comply with similar filing requirements-indeed, in Robson's case,  
10 up to two additional years, in some cases. See December 20, 2004 procedural order in Docket  
11 No. W-04137A-02-0691   Cornman's and Picacho's unsupported assertion-no citation was  
12 provided-that the Staff has "testified" that 30 days is needed to process such requests should be  
13 given no weight whatsoever. Indeed, it seems to be a backhanded assertion that Staff cannot  
14 process such requests any faster. In addition, Cornman and Picacho conveniently ignore an  
15 important-and, the Company submits, telling-fact, i.e. that the ALJ directed the Staff to file a  
16 response to the Company's request on April 11, 2005-5 days beyond the 365 day period provided  
17 in Decision No. 66893. Thus, as the ALJ concluded, the Company did everything required of it  
18 to request additional time. The unsupported assertion of non-parties that some artificial time  
19 period is necessary for Staff to process requests like the Company's should be given no weight  
20 whatsoever.  
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25           CORNMAN AND PICACHO HAVE NO RIGHT TO INTERVENE IN THIS PROCEEDING

26           The Commission has an excellent website that any member of the public may  
27 access. The website includes notice of daily filings and pending matters. The Commission also  
28

1 makes available to the public a hearing docket. Any interested person can follow a proceeding if  
2 it chooses to do so. The procedural order in this matter set a deadline for filing motions for  
3 intervention-February 2, 2004 (see Procedural Order entered on December 10, 2003)-that has  
4 long since passed, and public notice of the hearing in this matter was provided. Thus, the  
5 question must be raised-if Cornman and Picacho have such a substantial interest in the  
6 Company's application as they claim, why did they fail to follow proper procedure and apply to  
7 intervene within the lawful time period? For whatever reason, they did not do so, and now ask  
8 the Commission to rescue them.  
9

10 Moreover, neither Cornman nor Picacho have any standing to intervene under the  
11 Commission's Procedural Rules. The applicable rule provides that "(s) uch application shall be  
12 served and filed by an applicant at least five days before the proceeding is called for *hearing*."  
13 (emphasis supplied) A.A.C. R14-3-105.B. Clearly, the "hearing" referred to in this rule is an  
14 evidentiary hearing before the Commission, or, as is the Commission's usual procedure, an  
15 administrative law judge. The rule does not apply to a non-evidentiary, non-record proceeding  
16 such as the Commission's Open Meetings, which are not even addressed in the Commission's  
17 own procedural rules. This conclusion is further cemented by the provisions of A.A.C. R14-3-  
18 109, "Hearings, prehearings, conduct of hearings, procedure, evidence, subpoenas, briefs,  
19 arguments, official notice and rulings." It should be obvious to anyone that this rule sets out the  
20 procedures for the hearing referred to in A.A.C. R14-3-105. See, e.g., A.A.C. R14-3-109.F.  
21 "Testimony Under Oath", G. "Order of Procedure", and I. "Limiting Number of Witnesses". No  
22 one can seriously argue that any of these provisions concern Open Meetings.  
23  
24

25 The provisions of A.A.C. R14-3-105 do not apply to requests such as those being  
26 made by Cornman and Picacho. If they did, little would stop any person-such as AWC-from  
27 coming to the Commission at least five days before an Open Meeting and asserting that it should  
28

1 be permitted to intervene in a case in which it had, until then, chosen not to participate. Surely  
2 this is not what the Commission's procedural rules contemplate, and the Commission should  
3 therefore deny Cornman and Picacho's untimely and misapplied motion to intervene.  
4

5 THE REQUEST FOR LEAVE TO FILE A REPLY TO THE RESPONSE

6 SHOULD ALSO BE DENIED

7  
8 In its letter to the Commission that accompanied its Motion-which letter, of course,  
9 concerning which the Company and the Staff had no right to cross-examine because it has been  
10 submitted long after the record has been closed-Cornman and Picacho argue that there is no legal  
11 basis for the Company's argument that only parties have the right to participate in these  
12 proceedings. This argument is incorrect.

13 As the Company argued in the Response, a Commission procedural rule, A.A.C.  
14 R14-3-103.A, provides for the Classification of Parties:

15  
16  
17 "A. Classification of parties. Parties to any proceeding before the  
18 Commission shall consist of and shall be designated "Applicant",  
19 "Complainant", "Respondent", "Intervenor", or "Protestant", according to the  
20 nature of the proceedings and the relationship of the party thereto."  
21

22 Neither Cornman nor Picacho could claim (and still cannot claim) the status of any  
23 of these classifications before submitting their April 7, 2005 letter to the Commission. Therefore,  
24 unless the Commission ignores its own procedural rules, neither Cornman nor Picacho had or  
25 have any right to submit anything to the Commission in this proceeding, and the Staff, although  
26 it has the right to evaluate the Company's request, something that the Company has never  
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1 contested, could not rely on the April 7, 2005 letter to recommend additional evidentiary  
2 proceedings. That, simply put, is what the ALJ has concluded-indeed, if the ALJ had concluded  
3 otherwise, nothing would prevent any other person, in addition to Cornman or Picacho, from  
4 asserting a right to be heard in a matter the Commission has already decided. Surely this type of  
5 chaos is not something the Commission would want to sanction.

6  
7 Cornman and Picacho, in their May 19, 2005 letter, argue that their actions are not  
8 an unlawful collateral attack on a Commission order that is forbidden by A.R.S. 40-252 and 40-  
9 253 ("In all collateral actions or proceedings, the orders and decisions of the Commission which  
10 have become final shall be conclusive"). But a collateral attack is an effort obtain another and  
11 independent judgment that will destroy the effect of another judgment, *Cox v. MacKenzie*, 70  
12 Ariz. 308, 219 P.2d 1048 (1950), and that is precisely what Cornman and Picacho are trying to  
13 do. Where a gas company failed to pursue its statutory remedy of applying for a rehearing,  
14 instead bringing an action in Superior Court, the Commission's decision was final, and not  
15 subject to collateral attack. *Winslow Gas Co. v. Southern Union Gas Co.*, 76 Ariz. 383, 265 P.2d  
16 442 (1954). In this case, Cornman and Picacho, who failed to intervene in this matter before it  
17 was heard, and have no standing, now seek to have the Commission vacate its order, thus  
18 pursuing an unlawful collateral attack, the Commission should reject their efforts.

19  
20  
21 CONCLUSION

22 Cornman and Picacho have no right to intervene in this proceeding, and their motion to intervene  
23 should be denied. Since they have no right to intervene, the Commission should deny their  
24 remaining requests for relief or to make any filings whatsoever in this matter. The ALJ correctly  
25 concluded that the Company made a timely, reasonable request for an extension of time that  
26 should be granted, and the Commission should approve the ALJ's recommended order.

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RESPECTFULLY SUBMITTED this 23rd day of May, 2005.

ARIZONA WATER COMPANY

By: Robert W. Geake  
Robert W. Geake  
Vice President and General Counsel  
ARIZONA WATER COMPANY  
Post Office Box 29006  
Phoenix, Arizona 85038-9006

Original and thirteen (13) copies of the foregoing filed this 23rd day of May, 2005 with:

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Phoenix, Arizona 85007

A copy of the foregoing was hand delivered this 23d day of May, 2005 to:

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Chairman, Arizona Corporation Commission  
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Commissioner  
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Honorable Marc Spitzer  
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Honorable Kristin K. Mayes  
Commissioner  
1200 West Washington  
Phoenix, AZ 85007

Honorable Amanda Pope  
Administrative Law Judge  
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By: Robert W. Yeake

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**COMMISSIONERS**

Jeff Hatch-Miller - Chairman  
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2005 APR 20 A 8: 06  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF ARIZONA WATER COMPANY FOR )  
AN EXTENSION OF ITS CERTIFICATE )  
OF CONVENIENCE AND NECESSITY )  
AT CASA GRANDE, PINAL COUNTY, )  
ARIZONA )

**DOCKET NO. W-01445A-03-0559**

**RESPONSE TO STAFF'S  
RECOMMENDATION FOR ADDITIONAL  
EVIDENTIARY PROCEEDINGS**

On March 30, 2005 Arizona Water Company (the "Company") filed a Request for Additional Time to Comply with the following provisions of Decision No. 66893, which was entered on April 6, 2004, approving the Company's application for an extension of its Certificate of Convenience and Necessity for its Casa Grande system:

"IT IS FURTHER ORDERED that Arizona Water Company shall file a copy of the Developer's Assured Water Supply for each respective development with the Commission within 365 days of this Decision."

"IT IS FURTHER ORDERED that Arizona Water Company shall file a main extension agreement associated with the extension area more fully described in Exhibit A within 365 days of this Decision."

1 "IT IS FURTHER ORDERED that in the event Arizona Water Company  
2 fails to meet the above conditions within the time specified, this Decision  
3 is deemed null and void without further Order of the Arizona  
4 Corporation Commission."

5  
6 That request was a routine filing given the facts in this case and the developers'  
7 own timetable. Harvard Investments and Core Group Consultants, Ltd., the developers for the  
8 expansion areas, informed the Company that development in the areas they propose to develop  
9 would be delayed for another year. For that reason, the Company requested that it be given an  
10 additional 365 days to file a copy of the Developer's certificate of assured water supply and the  
11 main extension agreements. As the Company pointed out, its routine request should not  
12 prejudice any other party, as the Company was the only applicant for a Certificate of  
13 Convenience and Necessity for the areas to be served and there was no objection or opposition.  
14

15 On April 5, 2005-one day before the expiration of the 365 days deadline-the  
16 presiding administrative law judge entered procedural order that directed the Staff to respond to  
17 AWC's request on or before April 11, 2005. Thus, significantly, the procedural order, by its very  
18 terms, permitted Staff to respond to AWC's request beyond the 365 days deadline, beyond, of  
19 course, any control by or input from AWC.  
20

21 On April 13, 2005 the Company received a copy of a Staff Memorandum which  
22 referred to a ". . . change in circumstances in facts . . ." based primarily upon assertions  
23 contained in a letter from Robson Communities ("Robson") on behalf of Cornman Tweedy 560,  
24 LLC ("Cornman Tweedy"), and recommended that the Company's request be scheduled for  
25 additional evidentiary proceedings on the merits of the Company's request and Robson's  
26 objection to that request.  
27  
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1 For the following reasons, Robson's assertions should be disregarded, and the  
2 Staff's recommendation should be rejected.

3 The Staff recommendation must be rejected because Robson and Cornman Tweedy  
4 have no standing to present any objections, or to be heard at all in this matter (In order to have  
5 standing, plaintiff must have been injured in fact by the action plaintiff seeks to have reviewed,  
6 *Bernally v. Hodel*, 940 F.2d 1194 (C.A. 9 (Ariz.) 1990)), because neither Robson nor Cornman  
7 Tweedy is even a party to this matter.  
8

9 Under the Commission's Rules of Practice and Procedure, R14-3-103.A, parties to  
10 any proceeding before the Commission shall consist of and shall be designated "Applicant,"  
11 "Complainant," "Respondent," "Intervenor," or "Protestant" according to the nature of the  
12 proceedings and the relationship of the party thereto. Having failed to participate in any capacity  
13 in this matter before the Commission prior to sending its April 7, 2005 letter to the Commission  
14 over a year after the record in this matter was closed, and Decision No. 66893 was entered-  
15 Robson and Cornman Tweedy fall into none of these party designations.  
16

17 Since neither Robson nor Cornman Tweedy is a party to this proceeding, neither  
18 has any of the rights that a party is entitled to under the Commission's Rules of Practice and  
19 Procedure. Under R14-3-104.A, at a hearing a party shall be entitled to enter an appearance,  
20 introduce evidence, examine and cross-examine witnesses, make arguments, and generally  
21 participate in the conduct of the proceeding. As non-parties, Robson and Cornman Tweedy were  
22 not entitled to any of these rights, and, therefore, Robson and Cornman Tweedy have no standing  
23 in this case and Robson's post-hearing, and post-final order letter can be given no weight  
24 whatsoever by the Commission. The Staff completely overlooked these compelling factors in  
25 making its recommendation, which was clearly triggered by Robson's letter.  
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1           There is another, equally compelling reason that Staff's recommendation must be  
2 rejected. That is, Robson's action clearly constitutes an unlawful collateral attack upon the  
3 Commission's final decision in this matter, which is unlawful pursuant to A.R.S. 40-252 and 40-  
4 253. ("In all collateral actions or proceedings, the orders and decisions of the commission which  
5 have become final shall be conclusive." A.R.S. 40-252). A collateral attack upon a judgment is  
6 an effort to obtain another and independent judgment that will destroy the effect of another  
7 judgment, *Cox v. MacKenzie*, 70 Ariz. 308, 219 P.2d 1048 (1950). Where, after the Commission  
8 issues a Certificate of Convenience and Necessity to a gas company authorizing it to operate a  
9 utility business in a municipality, and another gas company which objected to the issuance of the  
10 certificate failed to pursue its statutory remedy of applying for a rehearing, instead bringing an  
11 action in the Superior Court, the Commission's decision was conclusive, and not subject to  
12 collateral attack. *Winslow Gas Co. v. Southern Union Gas Co.*, 76 Ariz. 383, 265 P.2d 442  
13 (1954). In this case, Robson, a non-party, is attempting to have Decision No. 66893 invalidated  
14 in order to obtain a new order in its favor. This, clearly, is an unlawful collateral attack.  
15

16           The routine nature of the Company's request is also confirmed by the fact that  
17 Robson - controlled companies, themselves, request and receive delays from the Commission for  
18 filing requirements similar to those involved in this matter. In a Picacho Water Company  
19 ("Picacho") application for a certificate of convenience and necessity filed in 1998, Decision No.  
20 61266, entered on November 25, 1999 ordered that a developer's certificate of assured water  
21 supply be filed within one year of the entry of the Decision, i.e., no later than November 25,  
22 2000. In a procedural order entered on September 11, 2000 Picacho's routine request for an  
23 extension of the filing deadline, until November 25, 2001 was granted. Apparently this was not  
24 sufficient because Picacho then requested an additional extension to December 31, 2002 because  
25 the developer's timetable had now changed to 2003. In a procedural order entered on July 11,  
26  
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1 2001 the Commission granted Picacho's second request for additional time-pointing out,  
2 significantly, that the Utilities Division did not object to this second request for additional time.

3 In Docket No. W-04137A-02-0691, Santa Rosa Water Company's ("Santa Rosa")  
4 CC&N granted by the Commission was conditioned upon, among other things, the submission of  
5 an approval to construct ("ATC") facilities being filed within 24 months of the entry of Decision  
6 No. 65753 on March 20, 2003. On September 30, 2004 Santa Rosa requested an extension of  
7 time, until September 30, 2006 to comply with the ATC requirement. Santa Rosa claimed that  
8 considerable progress had been made toward obtaining the ATC but a dispute over ownership of  
9 the property covered by the CC&N had delayed Santa Rosa's efforts, so additional time was  
10 needed. The Utilities Division verified the reason for the request, and recommended approval,  
11 and a December 20, 2004 procedural order, a copy of which is attached hereto as Attachment  
12 "A", approved the request. The foregoing factual recitations confirm the Company's position -  
13 i.e., requests for extensions of time are routinely requested, and routinely approved.  
14

15 In conclusion, Robson and Cornman Tweedy cannot be heard in this matter, and the  
16 Staff cannot use, or rely upon in any manner, Robson's April 7, 2005 letter in considering the  
17 Company's request. Under the Commission's own Rules of Practice and Procedure-which the  
18 Commission would have to ignore to follow the Staff's recommendation Robson and Cornman  
19 Tweedy are not parties to this proceeding. In addition, applicable and binding statutory and case  
20 law, cited above, clearly provides that Robson's collateral attack upon Decision No. 66893 is  
21 unlawful. Robson's arguments, and the Staff's recommendation of an additional evidentiary  
22 proceeding, which has no other foundation, must be rejected. The Company's Request for  
23 Additional Time was filed before the 365 days deadline, (that request, in fact, is a routine filing  
24 given the facts in this case and the developers' own timetable) and the directive by the  
25 Administrative Law Judge in the procedural order, over which the Company had no control,  
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1 cannot be used to penalize the Company. The Staff has presented no reason why the Company's  
2 request should not be approved; therefore, it should be approved.

3 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of April, 2005.  
4

5 ARIZONA WATER COMPANY  
6

7 By: Robert W. Geake  
8 Robert W. Geake  
9 Vice President and General Counsel  
10 ARIZONA WATER COMPANY  
11 Post Office Box 29006  
12 Phoenix, Arizona 85038-9006

13 Original and thirteen (13) copies of the foregoing filed this 19<sup>th</sup> day of April, 2005 with:

14 Docket Control Division  
15 Arizona Corporation Commission  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007

18 A copy of the foregoing was hand delivered this 19<sup>th</sup> day of April, 2005 to:

19 Honorable Amanda Pope  
20 Administrative Law Judge  
21 Hearing Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, AZ 85007

25 A copy of the foregoing was mailed this 19<sup>th</sup> day of April, 2005 to:

26 Christopher Kempley, Chief Counsel  
27 Legal Division  
28 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest G. Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

By: Robert W. Geake



BEFORE THE ARIZONA CORPORATION CO.

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COMMISSIONERS

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

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Arizona Corporation Commission  
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DEC 20 2004

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
SANTA ROSA UTILITY COMPANY FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
SERVICE IN PIMA COUNTY, ARIZONA.

DOCKET NO. SW-04136A-02-0691

IN THE MATTER OF THE APPLICATION OF  
SANTA ROSA WATER COMPANY FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER SERVICE IN  
PIMA COUNTY, ARIZONA.

DOCKET NO. W-04137A-02-0692

PROCEDURAL ORDER

**BY THE COMMISSION:**

In Decision No. 65753 (March 20, 2003), the Arizona Corporation Commission ("Commission") approved applications for Certificates of Convenience and Necessity ("CC&Ns") filed by Santa Rosa Utility Company ("SRUC") and Santa Rosa Water Company ("SRWC") (collectively "Companies") to provide wastewater and water utility service, respectively, in Pinal County, Arizona.

SRUC's CC&N was conditioned on, among other things, submission of an Aquifer Protection Permit ("APP") and an Approval to Construct ("ATC") within 24 months from the date of Decision No. 65753 (i.e., March 20, 2005). SRWC's CC&N was conditioned on, among other things, submission of an ATC within the same 24-month timeframe.

On September 30, 2004, the Companies filed letters in the above-captioned dockets requesting extensions of time, until September 20, 2006, to comply with the APP and ATC requirements. SRUC and SRWC claim that although considerable progress has been made towards obtaining the necessary approvals from the Arizona Department of Environmental Quality ("ADEQ"), a dispute over ownership of the property covered by the CC&Ns surfaced and was subsequently litigated and resolved. The Companies state that they intend to resume efforts to obtain

1 the APP and ATCs, but will need additional time to obtain the regulatory approvals from ADEQ.

2 On November 23, 2004, the Commission's Utilities Division Staff ("Staff") filed a  
3 Memorandum recommending approval of the Companies' request for an 18-month extension of time.  
4 Staff claims that it verified the reason for the requested extension of time and is satisfied with the  
5 Companies' explanation.

6 IT IS THEREFORE ORDERED that Santa Rosa Utility Company shall file, by no later than  
7 September 20, 2006, copies of its Aquifer Protection Permit and Approval to Construct from ADEQ.

8 IT IS FURTHER ORDERED that Santa Rosa Water Company shall file, by no later than  
9 September 20, 2006, a copy of its Approval to Construct from ADEQ.

10 IT IS FURTHER ORDERED that in all other respects, the findings and requirements set forth  
11 in Decision No. 65753 shall remain in full force and effect.

12 Dated this 20<sup>th</sup> day of December, 2004

13  
14  
15 

16 DWIGHT D. NODES  
17 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

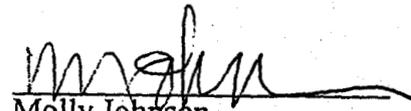
18 The foregoing was mailed/delivered  
19 this 20 day of December, 2004 to:

20 Jim Poulos  
21 SANTA ROSA UTILITY COMPANY  
22 SANTA ROSA WATER COMPANY  
23 9532 E. Riggs Road  
24 Sun Lakes, AZ 85248

25 Norman James  
26 FENNEMORE CRAIG  
27 3003 N. Central Avenue, Ste. 2600  
28 Phoenix, AZ 85012

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By:   
Molly Johnson  
Secretary to Dwight D. Nodes