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6 Attorneys for Coronado Utilities, Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION  
 10 OF CORONADO UTILITIES, INC. FOR A  
 11 CERTIFICATE OF CONVENIENCE AND  
 12 NECESSITY TO PROVIDE WASTEWATER  
 13 SERVICE IN PINAL COUNTY, ARIZONA.

DOCKET NO. SW-04305A-05-0086

14 IN THE MATTER OF THE APPLICATION  
 15 OF CORONADO UTILITIES, INC., AN  
 16 ARIZONA CORPORATION, FOR  
 17 AUTHORITY TO ISSUE SHORT AND  
 18 LONG-TERM DEBT INSTRUMENTS IN  
 19 CONNECTION WITH FINANCING THE  
 20 ACQUISITION OF THE WASTEWATER  
 21 UTILITY PLANT OF BHP COPPER, INC.  
 22 AND CONSTRUCTING IMPROVEMENTS  
 23 THERETO.

DOCKET NO. SW-04305A-05-0087

CORONADO UTILITIES' COMMENTS ON AMENDED STAFF REPORT

(Consolidated)

18 Coronado Utilities, Inc. ("Coronado") hereby submits its Comments on the Amended  
 19 Staff Report issued August 31, 2005 in this docket ("Amended Report"). Staff's additional  
 20 analysis has not altered its conclusion that it is in the public interest for Coronado to own and  
 21 operate a wastewater utility serving the community of San Manuel, Arizona under a CC&N  
 22 issued by this Commission. Nevertheless, Coronado submits these comments to address issues  
 23 that remain in dispute and/or require further clarification.

A. Staff's Recommended Retention of Earnings Should be Rejected.

24 In the original Staff Report, Staff recommended that the Commission reject Coronado's  
 25 proposed capital structure, which was roughly 87 percent debt and 13 percent equity, in favor of a  
 26

1 capital structure comprised of 60 percent debt and 40 percent equity. Amended Report at 2.  
2 Coronado opposed Staff's recommendation asserting that it would preclude the Company from  
3 taking advantage of low cost financing and result in higher rates. See Response to Staff Report,  
4 Exhibit A-3, at 4-5.

5 In discussions subsequent to the June 29, 2005 hearing, Staff and Coronado reached  
6 agreement on a revised capital structure of 27 percent equity and 73 percent debt. Amended  
7 Report at 2. Coronado also agreed to phase-in new rates for sewer service in order to ameliorate  
8 rate shock resulting from the unavoidable transition from subsidized sewer service by BHP. *Id.*  
9 In other words, to the direct benefit of its future ratepayers, Coronado has agreed to triple its  
10 investment, delay recovery and accept more risk. Yet, Staff still wants more. Specifically, Staff  
11 recommends that the Commission order Coronado to retain 75 percent of its earnings until the  
12 capital structure contains at least 40 percent equity. *Id.* In other words, Staff has selectively  
13 accepted parts of Coronado's compromise position only to continue asserting its original claim  
14 that the equity component must be 40 percent. Staff's recommended confiscation of the lion's-  
15 share of Coronado's earnings is ill-advised and should be rejected.

16 Staff has failed to show that the Commission has the legal authority to force a utility to  
17 retain its earnings. Moreover, adoption of Staff's recommendation would undermine Coronado's  
18 ability to raise capital. As discussed, Coronado has agreed to raise more than \$560,000 of  
19 additional capital to finance the new treatment facility needed in San Manuel, bringing its total  
20 investment to more than \$850,000. Obviously, investors will look less favorably on an  
21 investment that will return no more than one-quarter of its authorized return for an indefinite  
22 period of time. At a minimum, an investor would expect to receive a substantially higher rate of  
23 return to account for the added risk that arises from restricted earnings. On the other hand, if  
24 Coronado cannot raise the necessary capital because there is likely to be minimal to no return on  
25 the investment, Coronado will be unable to build a new wastewater treatment facility and become  
26 the wastewater service provider. Staff recognizes that would be contrary to the public interest.

1 Thus, Staff's recommendations should be rejected and Coronado allowed to raise capital on  
2 reasonable terms so it can meet its obligations as a public service corporation.

3 **B. Santec and the Incident at Far West Water and Sewer Company.**

4 Two of Coronado's shareholders, Dwight Zemp and John Clingman, are also owners of  
5 Santec, which designs and constructs wastewater treatment facilities. Amended Report at 1.  
6 Coronado's President, Jason Williamson, testified that Santec is in consideration to be selected to  
7 build the new wastewater treatment facility necessary to serve customers in San Manuel.  
8 Consequently, one of the primary reasons for delay in this docket was the involvement of Santec  
9 in an incident occurring nearly four years ago at the Far West wastewater treatment facility in or  
10 near Yuma, Arizona. This incident resulted in the death of two individuals, one an employee of  
11 Far West and the other an employee of Santec. *Id.* at 3-4. Criminal proceedings against Santec,  
12 among others, followed.

13 Santec has maintained that the deaths resulted from the two individual's failures to follow  
14 the requisite safety procedures for confined space entry of a wastewater treatment facility.  
15 However, rather than incur the expense of defending protracted criminal proceedings, Santec  
16 entered into a plea agreement on June 30, 2005, which plea was accepted by the court on August  
17 23, 2005. *Id.* The sentence imposed on Santec will have no impact on Santec's ability to  
18 continue conducting business in Arizona, including construction of a plant for Coronado and no  
19 evidence is being presented to show that the sentence against Santec impacts Coronado's fitness  
20 to receive a CC&N. Indeed, while Staff has offered two additional conditions intended to ensure  
21 that an incident like the one occurring at Far West does not occur at Coronado's facility, the first  
22 such condition is already a part of Coronado's method of operations and the second is simply a  
23 reporting requirement, to which Coronado agrees. Thus, in sum, the incident at the Far West  
24 facility, while tragic, has no material impact on this docket.

1           **C.     BHP's Status as a Public Service Corporation is Immaterial.**

2           As discussed in the Amended Report, BHP's "status as a utility" has come up in this  
3 proceeding. Staff and Coronado disagree on whether BHP is subject to regulation as a public  
4 service corporation under Arizona Law. As Coronado explained in its brief submitted August 31,  
5 2005, BHP is not a public service corporation because it did not operate the San Manuel  
6 wastewater treatment plant "for profit." The "for profit" limitation for sewage disposal  
7 companies set forth in the Constitution is dispositive. The overwhelming evidence is that BHP is  
8 not providing -- and has never provided -- sewer service for profit.<sup>1</sup>

9  
10           Nor is there any reason for the Commission to tip the scales and attempt to regulate BHP.  
11 Staff's doomsday scenario of BHP terminating service at a moment's notice is a red herring.  
12 After much due diligence and negotiation, BHP has arranged for the transition of the service  
13 without interruption to a regulated provider. Pivotal is operating the plant now, and with the  
14 Commission's issuance of a CC&N, Coronado will take over all aspects of wastewater utility  
15 service. Assuming the Commission approves Coronado's proposed rates, Coronado will soon  
16 provide sewer service for profit and will be a public service corporation subject to Commission  
17 jurisdiction.

18  
19           Furthermore, whether BHP is a public service corporation will have no impact on the  
20 final outcome of this proceeding. Amended Report at 3. A new wastewater treatment plant and  
21 significant rate increases will be necessary no matter who provides service. *Id.* Given  
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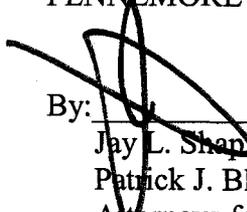
<sup>1</sup> Staff in fact concedes in its brief on the public service corporation issue that BHP did not operate for profit, which  
26 should have been the end of the analysis. The factors announced in the 1950 *Serv-Yu* case for determining whether  
an entity qualifies as a public service corporation are totally irrelevant if the sewage disposal company is not  
providing service "for profit." A 1950 court case cannot trump a 1974 constitutional amendment.

1 Coronado's agreement to phase-in rates, customers might actually realize lower increases than if  
2 BHP were forced to continue service.

3 Finally, whether or not BHP is a public service corporation, Staff agrees that all relief  
4 necessary for Coronado to become the exclusive provider of sewer utility service in the area  
5 currently being served by BHP can and should be granted in this proceeding on its current  
6 timeline. Thus, the issue of whether BHP is a public service corporation is immaterial to the  
7 central issues in this case—whether Coronado is a fit and proper entity to fulfill the need for a  
8 sewer utility service provider in San Manuel.  
9

10 DATED this 13<sup>th</sup> day of September, 2005.

11  
12 FENNEMORE CRAIG, P.C.

13  
14 By: 

Jay L. Shapiro

Patrick J. Black

Attorneys for Coronado Utilities, Inc.

15  
16 ORIGINAL and 15 copies delivered this  
17 13<sup>th</sup> day of September, 2005:

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1 COPY sent via e-mail and U.S. Mail  
2 this 13<sup>th</sup> day of September, 2005:

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