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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION  
OF WOODRUFF WATER COMPANY, INC.,  
FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE WATER  
SERVICE IN PINAL COUNTY, ARIZONA

DOCKET NO. W-04264A-04-0438

IN THE MATTER OF THE APPLICATION  
OF WOODRUFF UTILITY COMPANY, INC.,  
FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE SEWER  
SERVICE IN PINAL COUNTY, ARIZONA

DOCKET NO. SW-04265A-04-0439

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY, AN  
ARIZONA CORPORATION, TO EXTEND  
ITS EXISTING CERTIFICATES OF  
CONVENIENCE AND NECESSITY AT  
CASA GRANDE AND COOLIDGE, PINAL  
COUNTY, ARIZONA.

DOCKET NO. W-01445A-04-0755

**CLOSING POST-HEARING BRIEF OF WOODRUFF WATER COMPANY  
AND WOODRUFF UTILITY COMPANY**

Woodruff Water Company and Woodruff Utilities Company hereby submit their Closing Post-Hearing Brief in support of their Application for a Certificate of Convenience and Necessity ("CC&N") to provide water and wastewater service to the Sandia master-planned development in Pinal County, Arizona. Woodruff Water Company and Woodruff Utilities Company share the same board of directors, officers, shareholders and place of business, and are collectively referred to herein as "Woodruff."

Snell & Wilmer

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1 reclaimed wastewater, will best meet the objectives of reliable utility service and  
2 conservation of finite resources. In addition, the integration of water and wastewater  
3 service will result in a stronger combined utility, and will avoid the problems sometimes  
4 associated with stand-alone wastewater utilities, as noted by Staff. Staff recognized the  
5 superior benefits of interconnected water and wastewater utilities, and supported  
6 Woodruff's application. Staff's support is very significant in evaluating competing  
7 applications, and its recommendation should be given substantial weight by the  
8 Commission. The Commission's assistant director, Steve Olea, testified as the final  
9 witness in this case:

10 *[B]ased on all the facts that we had at the time we made the*  
11 *recommendation and the facts we have today, the plans are that this is going*  
12 *to be a large water company, it's going to be a large wastewater company*  
13 *and they would work better together. That's how Staff came up with this*  
14 *recommendation and that's how the scales tilted slightly in favor of*  
15 *Woodruff. Transcript Vol. VII at 1367, lines 14-20 (emphasis added).*

16 Mr. Olea's testimony came on the seventh day of hearings, after six Woodruff  
17 witnesses and three Arizona Water witnesses. Mr. Olea testified that Staff had "many  
18 meetings on this case," and in addition, Staff propounded multiple sets of data requests to  
19 both parties. Transcript Vol. VII at 1367, lines 4-5. Certainly, Staff did not recommend  
20 Woodruff without careful consideration of the Commission's policies and prior decisions,  
21 as well as a thorough vetting of the material factors. And, while the decision may have  
22 been close, it was not too close for Mr. Olea to make:

23 *In rare, rare occasions it's so close that Staff will not make a choice either*  
24 *way. Staff felt that in this case that the scale was tilted enough in favor of*  
25 *Woodruff that Staff would recommend that Woodruff Water get the area that*  
26 *it was asking for. Transcript Vol. VII at 1365, line 22, to 1366, line 2.*

An integrated water/wastewater utility is simply more efficient than separate stand-  
alone utilities because it shares overheads and key personnel, coordinates financial capital  
requirements, and synchronize essential functions.

1           **Fourth**, Woodruff has already taken many steps and expended significant money  
2 in preparing to provide water service to Sandia. Woodruff is ready, willing and able to  
3 serve Sandia once certificated. The demonstrated preparation of Woodruff is another  
4 significant factor, and one which is entitled to appropriate weight.

5           **Fifth**, Woodruff has proposed a tiered rate design for Sandia, while Arizona Water  
6 has not. This Commission has long supported tiered rate design as a way of encouraging  
7 water conservation in a state which has finite water resources. Arizona Water has  
8 consistently resisted the implementation of tiered rates, another significant factor which  
9 should be given appropriate weight.

10           Arizona Water made several arguments why Woodruff should not receive the  
11 CC&N for water service, but these arguments cannot—individually or collectively—  
12 overcome the advantages of Woodruff, as detailed above. Arizona Water's chief  
13 argument is that the Staff-recommended Woodruff rates for water service are higher than  
14 the current rates of Arizona Water. While this may be true at the beginning of  
15 development, it will not remain true throughout the 20-year build-out of Sandia. Arizona  
16 Water Company's rates are relatively low in Coolidge not because of efficiency or  
17 inherent technical advantage, but simply because they are based on the historic cost of an  
18 old system that has seen little growth over the last 20 years. Nobody disputes that  
19 Arizona Water's rates will rise—and rise appreciably—in coming years. Arizona Water  
20 is currently asking to increase its Coolidge rates, and after a decision in that case, the  
21 company will immediately file for another rate increase using a 2006 test year. Neither  
22 Arizona Water's current rates nor the requested rates in the pending case include expenses  
23 for arsenic removal in Coolidge and Casa Grande—those costs will be addressed in the  
24 next rate case. Furthermore, Arizona Water's rates do not address the impact of the  
25 imminent consolidation of the Casa Grande and Coolidge divisions, or the costs of  
26 constructing a treatment plant to treat Central Arizona Project ("CAP") water. Each of

1 these factors will impact Arizona Water's rates long before the majority of the new  
2 residents move into Sandia.

3 By comparison, the Staff-recommended Woodruff rates already include arsenic  
4 removal, as a result of Woodruff's conservative assumption that treatment will be  
5 necessary. Certainly, the Staff-recommended Woodruff water rates are within the range  
6 of rates charged by utilities in Arizona and are reasonable. Given that Woodruff and  
7 Arizona Water must construct substantially the same infrastructure (*i.e.*, wells, storage  
8 capacity, transmission and distribution) to serve Sandia, and given that Arizona Water's  
9 rates do not include any costs of arsenic removal, any impact resulting from the  
10 consolidation of the Casa Grande and Coolidge divisions, or any costs of the construction  
11 of the CAP treatment plant, there is simply no basis to argue that Arizona Water's rates  
12 will remain lower than Woodruff's rates as Sandia develops. Arizona Water's argument  
13 is fatally flawed, and is not a basis for rejecting Staff's recommendation.

14 In determining whether or not a CC&N should be granted to an applicant—or  
15 which of two qualified applicants should receive a CC&N—the relevant standard is: *What*  
16 *is in the public interest?* *James P. Paul Water Co. v. Arizona Corp. Comm'n*, 137 Ariz.  
17 426, 671 P.2d 404 (1983). There is no single factor or scripted formula for making this  
18 determination. Rather, Mr. Olea correctly noted that the Commission considers many  
19 factors in reaching its decision: "*it's not just one thing that Staff looks at on any case,*  
20 *because what's in the public interest involves many, many factors.*" Transcript Vol. VII at  
21 1384, lines 4-6. That is, in fact, what happened in this case.

22 Staff evaluated the rationales and advantages supporting each applicant, and listed  
23 those findings in the Staff Report. *See* Exhibit S-4, *Staff Report*, Attachment A, third  
24 page. After carefully weighing the material factors on each side, Staff concluded that the  
25 CC&N for wastewater and water should go to Woodruff, as summarized in this exchange  
26 between Mr. Olea and counsel for Arizona Water:

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*Q. And at least in this case, Mr. Olea, ... the Staff did not feel the fact that Arizona Water Company had the existing certificate to the east, south and north [sic] and had been in the state for 50 years was enough to tilt it in favor of a -- of it getting the certificate as opposed to a new start-up water provider?*

\* \* \*

*A. That's correct. Transcript Vol. VII at 1384, lines 8-13, 24.*

There is substantial evidence to support the grant of a CC&N for both water and wastewater to Woodruff. This Commission should follow the reasoned recommendation of Staff, acknowledge the request of the landowners/customers, and approve Woodruff's request for a CC&N to provide water and wastewater service at Sandia. Woodruff does not contest the grant of a CC&N to Arizona Water to serve Martin Ranch. Likewise, Arizona Water does not contest the grant of the wastewater CC&N to Woodruff.

**II. WOODRUFF IS FIT AND PROPER.**

In considering whether an entity is "fit and proper" to hold a CC&N, the Commission must consider whether the entity has the technical expertise and the financial wherewithal to operate a public utility. Exhibit S-4, *Staff Report*, at 14. Staff found Woodruff fit and proper on both scores:

*The developer has demonstrated a strong background and success in formulating, developing, and operating water and wastewater utilities in similar situated master planned developments. Pivotal has demonstrated that it is capable of ensuring the utilities are financially capable of developing the assets necessary to serve the requested property with water and wastewater services. Exhibit S-4, Staff Report, at 14.*

The fact that an applicant for a CC&N is a new entity does not in any way render the applicant unqualified, as evidenced by this exchange between Messrs. Sabo and Olea:

*Q. And let's talk about Staff's task for whether an applicant will have the technical capability to provide service. In looking at that question, does Staff consider whether an applicant has existing*

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*capacity or the capability to develop capacity?*

A. *Yes. And that goes for both new CC&Ns and existing ones. Even in this case, although Arizona Water has existing capacity to serve phase 1, they are going to have to put in more capacity as this grows. In the case of Woodruff, they are going to have to put in more capacity from day one.*

Q. *So the test can be met either by showing that you have sufficient existing capacity or that you have the capability to develop sufficient capacity in the future?*

A. *That's correct. Transcript Vol. VII at 1421, lines 11-20.*

**A. Woodruff Has the Requisite Technical Expertise.**

Woodruff has purposefully assembled a team of top notch professionals to plan, design, construct, operate and manage the water and wastewater utility. As properly reported by Staff, this team has the technical expertise to successfully manage and operate a water and wastewater utility to serve Sandia.

- Karl Polen--Vice President. Karl Polen is the Vice President of Woodruff and the Executive Vice President of affiliate Pivotal Group. Mr. Polen will oversee the operation and management of Woodruff. Transcript Vol. I at 50, lines 15-17. He has many years experience in the certification and operation of water and wastewater utilities, together with an extensive background in Arizona water policy. Prior to joining Pivotal Group in 2002, Mr. Polen was employed for 15 years as Chief Financial Officer of Robson Communities ("Robson"), which controls water and wastewater utilities serving its various communities. Transcript Vol. I at 90, lines 11-13. While at Robson, Mr. Polen was responsible for the Robson utilities, and personnel operating the utilities reported directly to him. Transcript Vol. I at 91, lines 3-5. Robson's utilities include Lago Del Oro Water Company, Pima Utility Company, Quail Creek Water Company, Picacho Utilities and Saddlebrooke Utility Company, and collectively, they provide service to an

1 estimated 40,000 customers in Arizona. Exhibit S-4, *Staff Report*, at 3. Mr. Polen was  
2 also responsible for obtaining water and environmental permits for Robson's large scale  
3 master-planned communities. Transcript Vol. I at 91, lines 5-8. Regarding the high  
4 caliber of utilities operated under Mr. Polen's oversight at Robson, Mr. Olea testified:

5 *Q. And would it be your opinion that in terms of developer-managed*  
6 *water companies, Robson is sort of at the top of the list?*

7 *A. There is a few companies I would put up there along with Arizona*  
8 *Water Company, and Robson's companies would be those also.*  
9 *Transcript Vol. VII at 1424, lines 17-22.*

10 In addition to his operational and managerial expertise with public utilities, Mr.  
11 Polen has had substantial involvement in formulating water policy for the State of  
12 Arizona. He served as a member of Governor Symington's Central Arizona Project  
13 Advisory Committee and as a member of Governor Hull's Groundwater Management  
14 Advisory Committee. Transcript Vol. I at 91, lines 11-20; Exhibit S-4, *Staff Report*, at 3.  
15 He served four years as a member of the board of directors of the Central Arizona Water  
16 Conservation District, and as a delegate to the Arizona Town Hall dedicated to water  
17 issues. Mr. Polen has sponsored water legislation and has testified frequently before the  
18 Arizona Legislature. *Id.* Specifically, Mr. Polen was closely involved in the preparation  
19 and passage of the legislation that created the Central Arizona Groundwater  
20 Replenishment District.

21 • Paul Hendricks--Certified Operator. Woodruff has contracted with Paul  
22 Hendricks to act as certified operator for the Woodruff water and wastewater systems.  
23 Mr. Hendricks has 35 years' experience, and Mr. Polen worked closely with Mr.  
24 Hendricks in connection with the operation of Robson's utilities. Transcript Vol. I at 130,  
25 lines 17-20, and 132, lines 9-14.  
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1           • Wood Patel. Woodruff contracted with the engineering firm Wood Patel  
2 & Associates to design the water infrastructure necessary to serve Sandia. Transcript Vol.  
3 II at 273, lines 3-4. Troy Bontrager was primarily responsible for preparing the  
4 Conceptual Master Potable Water Plan for Sandia. Mr. Bontrager holds professional  
5 engineering licenses in civil engineering and environmental engineering, and has designed  
6 approximately 65 water systems in the last nine years. Transcript Vol. II at 286, lines 18-  
7 20, and 287 at lines 6-9.

8           • Ron Kozoman--Certified Public Accountant. Woodruff contracted with  
9 Ron Kozoman to provide initial accounting services for Woodruff, including preparation  
10 of proposed rates, estimated expenses and estimated operating revenues. Mr. Kozoman is  
11 a certified public accountant with 30 years' experience in public utility accounting.  
12 Transcript Vol. III at 416, lines 3-4. He is a recognized expert in utility accounting, and  
13 has testified before the Commission approximately 80 times. *Id.* at line 10.

14           • Southwest Groundwater Consultants. Woodruff contracted with  
15 Southwest Ground-water Consultants ("SGC") to perform a preliminary hydrological  
16 investigation to be used in support of a physical availability demonstration for Sandia.  
17 Transcript Vol. II at 366, lines 7-11. SGC also sampled existing wells within Sandia to  
18 evaluate the quantity of the groundwater and performed a Preliminary Recharge  
19 Characterization for use in permitting the recharge facility associated with Woodruff's  
20 planned wastewater treatment plant. WWC-31, WWC-39 and WWC-40.

21           • LJ Farrington Engineers. Woodruff contracted with LJ Farrington  
22 Engineers to design, permit and administer construction of the wastewater treatment plant  
23 that will serve Sandia. Transcript Vol. I at 182, lines 10-12.

24           Woodruff's team has recognized expertise in planning, designing, constructing,  
25 operating and managing public utilities. This team is second to none, including the staff  
26 and management of Arizona Water.

1     **B.     Woodruff Has Requisite Financial Wherewithal.**

2             The Woodruff companies are affiliates of Pivotal Group. Pivotal Group has  
3 operated over the past 25 years, and has developed top tier projects such as the Camelback  
4 Esplanade, Esplanade Place and Arrowhead Ranch in Arizona, Promontory in Park City,  
5 Utah (6,500-acre golf community), Cimarron Hills in Austin, Texas (3,200-acre golf  
6 community), and the Century Plaza Hotel in Los Angeles. Transcript Vol. I at 41, line 20,  
7 to 42, line 21. Pivotal Group has real estate holdings valued in excess of \$1.5 billion, and  
8 the company has a capital base in excess of \$500 million. Exhibit S-4, *Staff Report*, at 3;  
9 Transcript Vol. I at 43, lines 9-10. Pivotal Group's remarkable success is directly related  
10 to the company's excellent leadership and management. Mr. Najafi testified that in 30  
11 years of business, "we have not had one single failure in the business." Transcript Vol. I  
12 at 46, line 24, to 47, line 1. No one can dispute the exceptional track record of Pivotal  
13 Group and its affiliated business ventures.

14             Pivotal Group's stake in the successful development and operation of water and  
15 wastewater utilities to serve Sandia is obvious. Pivotal Group will invest \$300 million  
16 developing Sandia. Transcript Vol. I at 80, lines 2-13. Quality water and wastewater  
17 utilities, constructed on schedule, and providing reliable service, is essential to the  
18 successful development of Sandia. Transcript Vol. I at 94, line 12, to 95, line 2. In this  
19 regard, timely access to capital is key. Mr. Najafi testified that funding to capitalize  
20 Woodruff would be in place two weeks after an order of the Commission approving the  
21 CC&N:

22             *Q.     As you've testified, there is money, approximately \$300 million,*  
23             *that's been allocated for the Sandia project, and presumably, that*  
24             *money is sitting in a bank account somewhere, is that correct?*

25             *A.     Well, in our institutional investor's bank account, not my bank*  
26             *account. We generally don't ask for money until we need the*  
              *capital. Because the way it works is that the capital is committed to*

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*us, but we don't pay the so-called interest on that capital until it's called. So when we need it, we call in stages.*

*Q. So if the Commission approves the CC&Ns for Woodruff Water Company and Woodruff Sewer Company, then the capital--*

*A. Is available right away. I mean, we could fund within two weeks.*

*Q. And it would be injected into the utility companies?*

*A. Absolutely. Transcript Vol. I at 80, lines 4-21.*

Thus, there is no question that adequate funding will be available to Woodruff—as needed and when needed—to construct the water and wastewater infrastructure for Sandia.

### III. WATER SERVICE.

#### A. Public Interest Analysis.

The Commission considers many factors in determining what is in the public interest. Staff correctly analyzed and weighed the material factors in this case and concluded that Woodruff should receive the CC&N to provide water service to Sandia. The most significant factors supporting the award of the water CC&N to Woodruff are discussed below.

#### 1. The Customer Requested Service from Woodruff, not Arizona Water.

Woodruff received multiple requests from members of the Wuertz family and their related business entities to provide water and wastewater service to their properties comprising Sandia; Arizona Water received none.<sup>1</sup> While the desires of landowners/future customers are not dispositive in awarding a CC&N, they are an important factor that should be given proper weight by the Commission. Arizona Water

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<sup>1</sup> Requests for service were received from Howard Wuertz (on behalf of Sundance Farms), Howard and Jewell Wuertz (on behalf of themselves individually), David Wuertz (on behalf of Wuertz Farming Ltd., Wildcat Farms, and himself individually), Sarah Wuertz, Carol Wuertz Behrens (on behalf of McKinney Farming and herself individually), and Gregory Wuertz. See Exhibit WWC-6, Requests for Service.

1 erroneously argued that the Wuertzes will not be customers of Woodruff once Sandia  
2 begins to develop. This is not true, and Mr. Polen set the record straight:

3 *Howard and [Jewell] Wuertz still live there and they intend to live there.*  
4 *They have the right to live there until they die and that's what they've*  
5 *indicated they plan to do. And they'll continue to be customers of the*  
6 *Woodruff Water Company. Transcript Vol. I at 109, lines 1-5.*

7 The Wuertzes requested water service from Woodruff, not Arizona Water. What's  
8 more, Howard Wuertz came down to the Commission to oppose Arizona Water's  
9 competing application. Exhibit S-4, *Staff Report*, at 4. Absent a compelling public  
10 interest reason to disregard the request of the customer—which has not been demonstrated  
11 in this case—the Commission should respect the customer's request.

12 **2. Woodruff Offers Water and Wastewater Service; Arizona Water Does**  
13 **Not.**

14 Putting aside for a moment the problem that Arizona Water has not received a  
15 request for service for Sandia, the company's proposal to provide water service only *half*  
16 responds to the Wuertzes' request. The Wuertzes requested water and wastewater service,  
17 and Woodruff is the only applicant that satisfies that request. Arizona Water's failure to  
18 fully respond to the customers' request is fatal to its application.

19 Arizona Water's offer to satisfy one-half of the service request is analogous to a  
20 contractor—solicited by the State of Arizona to build a bridge across an unspanned  
21 gorge—submitting a proposal to build one-half of the bridge. That builder might argue  
22 that the State can find another contractor to complete the other half of the bridge. Even  
23 assuming this were true, it would certainly be no easy task to interconnect the two halves  
24 of a bridge designed and constructed by two different builders. Would the two halves  
25 connect at the proper elevation? Would they properly align? Would the bridge be level?  
26 Would the connecting point hold together? At a bare minimum, the cost of using two  
builders would be higher than using a single builder.

1 In much the same way, there are practical difficulties integrating separate water  
2 and wastewater utilities in a large, master-planned community, especially on the  
3 wastewater side. For example, if this Commission were to decide that usage-based  
4 wastewater rates are preferable to flat rates, Woodruff would not have access to water  
5 usage data for its customers unless Arizona Water provided such data, which it is not  
6 obligated to do. Similarly, Woodruff has no feasible way to terminate the wastewater  
7 service of a non-paying customer unless Arizona Water terminates water service to that  
8 customer, which it is not obligated to do. In addition, at certain times of the year,  
9 Woodruff will need to recharge treated effluent in order to accommodate seasonal  
10 imbalances between effluent demand and effluent discharge from its treatment plant.  
11 Transcript Vol. II at 256, lines 16-23. The recharge of effluent is affected by the timing,  
12 quantity and location of groundwater withdrawals within Sandia. In order for Woodruff  
13 to properly manage its effluent recharge, it must also control the withdrawal of  
14 groundwater within Sandia. These are just a few of the practical difficulties Woodruff  
15 would face if it does not control the water system serving Sandia, and must rely upon  
16 Arizona Water.

17 While Arizona Water may say that it will cooperate with Woodruff, it has no  
18 obligation to do so, and its track record would indicate otherwise. Arizona Water has a  
19 history of suing municipalities which attempt to deliver effluent within the company's  
20 certificated territory. In 1989, Arizona Water filed a lawsuit against the City of Bisbee  
21 arguing that Bisbee did not have the right to deliver effluent to Phelps Dodge for use in its  
22 leaching operation. *Arizona Water Company v. City of Bisbee*, 172 Ariz. 176, 836 P.2d  
23 389 (Ct. App. 1991), *rev. den.* (Sep. 22, 1992). Arizona Water lost that case. Yet, as  
24 recently as 2000, Arizona Water filed a lawsuit against the City of Casa Grande seeking to  
25 stop Casa Grande from delivering effluent to a new power plant in Arizona Water's Casa  
26 Grande service territory. *Arizona Water Company v. City of Casa Grande*, CV2000-

1 022448 (Maricopa County Superior Court, Judge Albrecht). The superior court denied  
2 Arizona Water's requested relief, and the decision was affirmed on appeal in an  
3 unreported memorandum decision. Thus, despite assertions that Arizona Water would  
4 cooperate with Woodruff, Woodruff has justifiable concerns that Arizona Water would  
5 actually work with Woodruff.

6 Even if Arizona Water wanted to voluntarily cooperate with Woodruff, it is  
7 certainly not clear that Arizona Water could legally terminate water service to a paid-up  
8 customer for non-payment of a bill owed to another utility for another type of service. For  
9 all of these reasons, it is more difficult to operate a stand-alone wastewater utility as  
10 compared to an integrated utility. That is precisely why the Wuertz family requested  
11 service from an integrated provider, and precisely the reason why Staff recommended that  
12 Woodruff receive the CC&N for water and wastewater.

13 **3. Integrated Water/Wastewater Utilities Are Superior to Stand-Alone**  
14 **Utilities.**

15 Staff recognizes that an integrated water/wastewater utility is better able than  
16 stand-alone utilities to efficiently manage water production and wastewater reuse and  
17 recharge. Staff explained:

18 *Water policy requires recognition of the value of appropriate treatment and*  
19 *use of wastewater in water scarce areas. Staff must base its*  
20 *recommendation on goals to ensure the long term viability and compliance*  
21 *of water and wastewater utilities. Staff supports regional planning for*  
22 *water and wastewater to ensure an economy of scale for both services.*  
23 *Staff recognizes integrated utilities provide enhanced services to work in*  
24 *conjunction with public policy goals of clean water, use of reclaimed*  
25 *water for turf facilities and recharge of the aquifer. Exhibit S-4, Staff*  
26 *Report at 15 (emphasis added).*

24 In addition, Staff recognized that in certificating Arizona Water, the Commission  
25 would create a stand-alone sewer company, a scenario that historically has proven to be  
26 problematic, as evidenced by the serious problems at the Casitas Bonitas system operated

1 by American Public Service and the system operated by AUSS. Transcript Vol. VII at  
2 1372, line 25, to 1373, line 16. Mr. Olea is personally familiar with the risks associated  
3 with stand-alone wastewater companies, explaining as follows:

4 *And with the experience that Staff and this Commission has had with stand-*  
5 *alone wastewater companies, if there is a chance that we could find a*  
6 *viable wastewater and water company to be basically one entity, then that's*  
7 *what Staff is going to recommend. Transcript Vol. VII at 1366, lines 8-12.*

8 Mr. Olea was careful to make clear that this is no negative reflection on the ability  
9 of Woodruff to provide good service, but rather, a recognition that any integrated  
10 water/wastewater utility has a better chance of success than separate utilities providing the  
11 same services:

12 *It's not Woodruff or it's not Arizona Water. It's any time you start a new*  
13 *company you want to do whatever you can to give it as much advantage as*  
14 *you can to be viable. And it's--Staff's opinion was that it would be more of*  
15 *a chance for it to be viable if they were combined, not that the only way it*  
16 *would be viable is if they were combined. Transcript Vol. VII at 1375, lines*  
17 *10-15.*

18 If the Commission certifies Arizona Water to provide water service to Sandia, it  
19 will create a stand-alone wastewater utility. While this does not mean that a wastewater-  
20 only Woodruff would be non-viable, the chance for success is diminished. Arizona Water  
21 presented no persuasive evidence why the Commission should allow this increased risk  
22 for the wastewater provider for Sandia.

23 Apart from the risk issue identified by Staff, integrated water/wastewater utilities  
24 are simply more efficient because they can share overheads and key personnel, coordinate  
25 financial capital requirements, and synchronize essential functions. Exhibit S-4, *Staff*  
26 *Report*, Attachment A, third page; Transcript Vol. I at 95, line 15, to 96, line 25. For  
example, Woodruff can better enforce collection of wastewater bills because it can  
terminate water service to non-paying wastewater customers. Woodruff can share office

1 space, office personnel, maintenance personnel, billing functions, etc. *Id.* Woodruff can  
2 coordinate the pumping of groundwater with effluent recharge, which will ensure that the  
3 wastewater treatment plant operates at the highest level of efficiency with less chance for  
4 violations. In sum, combination of the water and wastewater utilities optimizes the  
5 provision of both services. Arizona Water cannot provide these benefits.

6 **4. Woodruff Has Taken a Number of Steps to Prepare to Provide Water**  
7 **Service.**

8 Woodruff has taken a number of steps and incurred significant expenses in support  
9 of its application for a CC&N to provide water service. These steps include:

10 a. **Formation of Woodruff Water Company.** Woodruff filed Articles  
11 of Incorporation for Woodruff Water Company on March 31, 2004. Exhibit WWC-1  
12 (Attachment "G").

13 b. **Application for Development Plan Approval.** On April 20, 2004,  
14 Pivotal Group filed an Application for Development Plan Approval to Retire an Irrigation  
15 Grandfathered Right for a Non-Irrigation (Type 1) Use with the Arizona Department of  
16 Water Resources. Exhibit WWC-7. The application states that the land was retired "*to*  
17 *initiate formation of the Woodruff Water Company.*" By letter dated January 19, 2005,  
18 ADWR notified Pivotal Group that the development plan was approved on September 3,  
19 2004. Exhibit WWC-8.

20 c. **Initial Request to Establish a New Service Area Right.** On or  
21 about September 2, 2004, Karl Polen representing Woodruff Water Company filed an  
22 initial request to establish a new service area right with ADWR. Exhibit WWC-9;  
23 Transcript Vol. I at 113, line 11 to 115, line 17. Woodruff initiated water service to  
24 Howard Wurtz on September 1, 2004, from a well registered as No. 55-621828.  
25 Woodruff filed its application to establish a service area right so that the company would  
26 be able to begin providing water service in September 2005 if certificated by the

1 Commission. *Id.* Woodruff continues to provide water service to Mr. Wuertz.

2 d. Master Potable Water Plan for Sandia. Wood, Patel & Associates  
3 prepared a Master Potable Water Plan for Sandia Master Planned Community dated  
4 August 18, 2004. Exhibit WWC-10.

5 e. Application for Physical Availability Demonstration. On May 10,  
6 2004, Pivotal Group filed an Application for a Physical Availability Demonstration  
7 (“PAD”) with ADWR identifying Woodruff Water Company as the proposed water  
8 provider for Sandia. Exhibit WWC-11. The PAD was supported by a Hydrogeologic  
9 Investigation prepared by Southwest Ground-water Consultants dated April 1, 2004. The  
10 estimated total demand for Sandia as calculated by SGC was 8,159 acre-feet per annum,  
11 or 5,058.4 gallons per minute. *Id.* at Attachment 1, page 4. By letter dated August 2,  
12 2004, ADWR notified Pivotal Group of its finding that “*sufficient groundwater is*  
13 *physically available to meet the projected demand of approximately 8,159 acre-feet per*  
14 *year for 100 years under A.A.C. R12-15-703(B) for assured water supply purposes in*  
15 *[Sandia].*” Exhibit WWC-12.

16 f. Pinal County Water Franchise. Woodruff filed an application for a  
17 water franchise from Pinal County on June 15, 2004. Exhibit WWC-1, Attachment I.  
18 Pinal County granted a Water Franchise to Woodruff on August 25, 2004. Exhibit WWC-  
19 13.

20 g. Well Evaluation and Sampling. Southwest Ground-water  
21 Consultants prepared a report dated August 2, 2004, documenting water quality sampling  
22 regarding six existing irrigation wells located within Sandia. Exhibit WWC-31.

23 The steps listed above demonstrate a tangible commitment by Woodruff to provide  
24 water service to Sandia. It is readily apparent that the company’s application for a water  
25 CC&N was not hastily assembled, but contains significant and substantive financial  
26 analysis prepared over many weeks with the assistance of Wood Patel and Mr. Kozoman.

1 Woodruff obtained detailed engineering analysis of the water infrastructure necessary to  
2 serve the development from Wood Patel. SGC evaluated the aquifer that will supply the  
3 development to verify that sufficient water exists and that the quality of that water will  
4 meet safe drinking water standards. Woodruff obtained the necessary franchise from  
5 Pinal County, and initiated the establishment of a service area right so that once  
6 certificated, there will be no additional delay in commencing water service. All of these  
7 steps demonstrate that Woodruff has carefully planned to provide water service to Sandia.

8 **5. Woodruff Has Proposed a Tiered Rate Design.**

9 Woodruff has proposed a tiered rate design, which promotes the conservation of  
10 water resources consistent with the Commission's many prior pronouncements.  
11 According to Woodruff witness Ron Kozoman, "*the idea here is to give a message to the*  
12 *customer that the more water you use, the more expensive it will be.*" Transcript Vol. III  
13 at 421, lines 19-21. For many years, the Commission has ordered tiered rate designs as a  
14 means of achieving the important goal of water conservation. See Decision 58641 (May  
15 27, 1994) at 9, lines 12-16; Decision 67576 (February 15, 2004) at ¶ 21. In the 2004  
16 Arizona-American Water Company rate case, the Commission adopted Staff's  
17 recommended two-tier inverted rate design, stating "*we find that overall, Staff's revised*  
18 *rate design ... best addresses the goals of conservation, efficient water use, affordability,*  
19 *fairness, simplicity, and revenue stability.*" Decision 67093 (June 20, 2004) at 41, lines  
20 17-19.

21 The rates that Arizona Water charges in Coolidge—which are the rates that would  
22 apply at Sandia—are not tiered. This is an important difference between Woodruff and  
23 Arizona Water, and one which clearly favors Woodruff.

1           6.    Water Service by Woodruff Avoids Subsidization of Sandia by Coolidge  
2           Residents.

3           Mr. Whitehead testified that the existing rate base in Coolidge is approximately  
4 \$900 per unit. Transcript Vol. VI at 1126, lines 6-8. Mr. Whitehead further testified that  
5 Arizona Water's anticipated rate base for Sandia would run approximately \$2,760 per  
6 unit. *Id.* at lines 1-4. Thus, if Arizona Water serves Sandia, the rates paid by residents of  
7 Coolidge must necessarily increase toward the \$2,760 figure. However, if Woodruff  
8 serves Sandia, subsidization of Sandia water infrastructure by residents of Coolidge is  
9 avoided.

10        B.    Response to Arizona Water's Arguments.

11           1.   The Water Task Force Report Does Not Bar a Water CC&N for  
12           Woodruff.

13           In January 2000, the Commission's Water Task Force docketed a report ("Task  
14 Force Report") containing recommendations regarding policy changes concerning the  
15 establishment of new water companies. In November 2000, the Commission issued  
16 Decision 62993 approving Staff's recommendations with regard to the Task Force Report.  
17 Exhibit AWC-13. Arizona Water contends that Decision 62993 requires that Arizona  
18 Water, as an established water provider, receive the CC&N to provide water service at  
19 Sandia. However, Steve Olea unequivocally testified that Decision 62993 did not  
20 establish Commission policies, but rather ordered Staff to develop proposed policies to be  
21 considered by the Commission for adoption at a future open meeting. In following this  
22 directive, Staff subsequently proposed four policy statements for consideration by the  
23 Commission. *See* Exhibit WWC-45. As Mr. Olea testified in response to questions from  
24 Mr. Sabo, these proposals have never been acted upon by the Commission:  
25  
26

- 1 Q. *And does that finding of fact [finding of fact 9 in Decision 62993]*  
2 *indicate that Staff is being directed to develop a statement of policy?*
- 3 A. *It states that Staff recommends that that's what the Commission*  
4 *ordered, and I believe in the ordering portion of this paragraph it*  
5 *adopts that, so Staff was ordered to develop a statement of policy.*
- 6 Q. *And would it be your understanding that any policy developed by*  
7 *Staff pursuant to this finding would have to be approved by the*  
8 *Commission to become official?*
- 9 A. *That is the way Staff understood it and that's how the policy was*  
10 *written.*
- 11 Q. *And behind it there should be the memo, the water task force*  
12 *memorandum dated June 29, 2001.*
- 13 A. *To the Commission from Deborah Scott.*
- 14 Q. *Yes. And that was previously marked, as I understand it, as WWC-*  
15 *45. Could you turn to the second page of that memo?*
- 16 A. *Okay.*
- 17 Q. *And why don't you just read that last sentence there?*
- 18 A. *Staff recommends that these policy statements be discussed at an*  
19 *open meeting at the Commission's convenience.*
- 20 Q. *And is that consistent with the understanding of the order that you*  
21 *just gave us?*
- 22 A. *Yes.*
- 23 Q. *And did the Commission ever have the open meeting that's discussed*  
24 *in this sentence?*
- 25 A. *Not to my recollection.*
- 26 Q. *And down at the bottom of the memo it says: Originator, Stephen M.*  
*Olea, is that correct?*
- A. *That's correct.*

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*Q. Does that mean that you wrote the memo?*

*A. That's correct.*

*Q. And behind there there is an attachment A that says: Proposed policy for water certificates of convenience and necessity?*

*A. Yes.*

*Q. And would it be your understanding that by entitling the document "proposed policy" that that would mean the policy is not yet in effect?*

*A. It was titled proposed so the Commission would have a chance to discuss it at open meeting—discuss it at open meeting and either approve it or not. Trans. Vol. VII at 1338, line 14, to 1340, line 8.*

The fact that the four policies proposed in the June 29, 2001, Staff memorandum were never adopted by the Commission is apparent from Arizona Water's own actions with regard to these proposals. Attachment C to the memorandum calls for consideration of tiered water rates for the purpose of conserving water. Arizona Water, in subsequent rate applications for the Eastern Group and for the Western Group did not propose tiered water rates. Regarding tiered rates, witness Bill Garfield testified as follows in response to questioning from Mr. Cohen:

*Q. Attachment C is a proposed policy for water system tiered rate design. That calls for looking at using tiered rates for conservation of water as one of the proposed policies for the Commission; isn't that correct?*

*A. For the consideration of tiered rates. That's correct.*

*Q. For the purpose of conserving water?*

*A. That's correct.*

*Q. And in your Eastern Group rate case, you proposed rates that didn't have a tiered rate design; is that correct?*

- 1           A.     *That's correct.*
- 2           Q.     *And at the end of the case were you required to put in tiered rates?*
- 3           A.     *In the Eastern Group rate case?*
- 4           Q.     *Yes.*
- 5           A.     *That's correct.*
- 6           Q.     *And you did?*
- 7           A.     *And we did such. Transcript Vol. IV at 683 line 23 to 684 line 17.*
- 8           Q.     *When you filed your Western Group rate case which includes Casa*  
9                 *Grande and Coolidge, you didn't propose tiered rates, did you?*
- 10          A.     *No. We did not, Mr. Cohen. Transcript Vol. IV at 685 lines 16-19.*

12           Further, Attachment D to the June 29, 2001, Staff memorandum is a proposed  
13           policy for Central Arizona Project cost recovery such as the deferred capital costs sought  
14           by Arizona Water in its pending Western Group rate case. The proposed policy calls for a  
15           division of cost recovery between rates and hook up fees. Application of that policy to  
16           recovery of deferred capital costs for the Coolidge CAP allocation would have resulted in  
17           recovery of 75% from rates and 25% from hook up fees. Transcript Vol. IV at 689, lines  
18           4-10. However, in its rate application, Arizona Water proposed to recover all of the  
19           deferred capital costs from rates, notwithstanding the proposed policy set forth in  
20           Attachment D. Transcript Vol. IV at 689, line 21, to 690, line 11.

21           Having sought water rates inconsistent with the policy proposals in Attachments C  
22           and D to the June 29, 2001 Staff memorandum, Arizona Water cannot now claim that the  
23           policy proposal in Attachment A is somehow binding on Staff and the Administrative  
24           Law Judge.

25           In any event, the proposed policy concerning issuance of new CC&Ns contained in  
26           Attachment A was not intended to apply to large developments such as Sandia and well

1 financed water utilities such as Woodruff. This could not have been any clearer in the  
2 responses of Mr. Olea to cross examination by Mr. Hirsch:

3 *Q. Isn't the proliferation of individual water utilities that are conceived*  
4 *and designed to serve only their own development such as Sandia*  
5 *and such as one might be at Cardon if they choose to go in that*  
6 *direction, isn't that exactly what the task force recommendation*  
7 *served to try to prevent and stop from a public policy perspective?*

8 *A. No. What I recall that it was trying to stop from a public policy*  
9 *perspective was, as I said, the 100-, 200-lot subdivision water*  
10 *companies, not the 5,000-, 6,000-lot water companies. Transcript*  
11 *Vol. VII at 1380, lines 15-24.*

12 And further:

13 *[B]ased on all the facts that we had at the time we made the*  
14 *recommendation and the facts we have today, the plans are that this is going*  
15 *to be a large water company, its going to be a large wastewater company*  
16 *and they would work better together. That's how Staff came up with this*  
17 *recommendation and that's how the scales tilted slightly in favor of*  
18 *Woodruff. Transcript Vol. VII at 1367, lines 14-20 (emphasis added).*

19 The proposed policy set forth in Attachment A to the June 29, 2001, Staff  
20 memorandum cannot be used to bar the grant of the CC&N for water to Woodruff.

21 **2. Arizona Water's Future Water Rates are Unstable and Likely to**  
22 **Increase.**

23 Arizona Water makes much of the initial differential between its average  
24 residential bill for Sandia based on current Coolidge rates and the average residential bill  
25 for Sandia based on water rates proposed by Woodruff and modified by Staff. Based on a  
26 hypothetical usage of 10,000 gallons per month, the Staff-recommended rates for  
Woodruff would result in a future average residential bill of \$47.30 per month, while  
Arizona Water's current Coolidge rates would result in an average residential bill of \$29  
per month. However, a comparison of the applicants based on this initial rate differential  
is misleading and inappropriate because: (i) the Arizona Water rates do not include costs

1 related to the removal of arsenic; (ii) the Arizona Water rates are subject to change in the  
2 current rate case, the planned 2006 test-year rate case, and in future rate cases; (iii) the  
3 Arizona Water rates will be affected by the planned integration of the Coolidge and Casa  
4 Grande systems within the next two years; and (iv) the construction of the CAP treatment  
5 plant will provide another occasion for an Arizona Water rate increase.

6 a. Arizona Water's Current Rates Do Not Include the Costs of  
7 Arsenic Removal.

8 A primary reason for the current rate differential is the fact that the Staff-  
9 recommended Woodruff rates include the cost of arsenic and fluoride removal while  
10 Arizona Water's rates do not. The rate impact of arsenic removal is substantial; estimated  
11 by Mr. Garfield to increase average residential rates by 40%:

12 Q. *(By Mr. Cohen) Now, you have testified in the rate case, Mr.*  
13 *Garfield, didn't you, that in... the Western Group, rates would have*  
14 *to increase on average of 40 percent for an average residential*  
15 *customer to cover the costs of constructing and operating treatment*  
16 *facilities to meet the new arsenic standard. Do you recall that?*

17 A. *I believe, yeah. I believe that percentage is the number that was*  
18 *used in there, yes.*

19 \* \* \*

20 Q. *Now, if arsenic treatment is needed to serve the Sandia project, then*  
21 *there's the potential for Coolidge rates to increase by 40 percent by*  
22 *reason of such requirement, isn't there?*

23 A. *I think there's a potential for that, yes. Transcript Vol. IV at 737,*  
24 *line 18, to 738, line 18.*

25 Thus, in order to properly compare the Staff-recommended future Woodruff rates  
26 with Arizona Water's future rates for Sandia, the cost of arsenic treatment must be added  
to Arizona Water's Coolidge rate. A 40% increase in the rates proposed by Arizona  
Water in its pending rate case would result in an average monthly residential bill of \$49

1 (\$35 times 1.4), which is about \$2 higher than the Staff-recommended Woodruff rates.  
2 This illustration shows just how quickly Arizona Water's alleged rate differential can  
3 evaporate.

4 While the three wells that currently produce water to serve Coolidge do not require  
5 arsenic treatment, three new wells are being constructed in Coolidge during the next year  
6 to accommodate new development. In addition, if the CC&N for Sandia were awarded to  
7 Arizona Water, the company would construct six additional wells at Sandia. All of the  
8 active wells on the Sandia property currently produce water with arsenic levels above the  
9 new EPA standard. And at least one existing well near the three wells being constructed  
10 by Arizona Water east of Sandia produces water with arsenic levels above the heightened  
11 EPA standard. It cannot be assumed that the Coolidge water rates will somehow avoid  
12 increases caused by arsenic treatment costs.

13 **b. Arizona Water has a Rate Case Pending and Will Soon**  
14 **Thereafter File Another Rate Case Using a 2006 Test-Year.**

15 Arizona Water is currently seeking a rate increase that would raise the  
16 average monthly residential bill in Coolidge to approximately \$35, if approved. Staff is  
17 proposing a decrease in rates that would lower the average monthly residential bill to  
18 \$26.60, if approved. Neither figure includes any costs for arsenic removal. Transcript  
19 Vol. VII at 1297, line 22, to 1298, line 4. While nobody knows today what Arizona  
20 Water's Coolidge rates will be at the end of the rate case, we do know that whatever rates  
21 are established, they will be subject to increases during the next few years. For example,  
22 Mr. Garfield testified that Arizona Water will be filing a new rate case in September 2007  
23 based on a 2006 test year. That case will deal with arsenic treatment plants needed to  
24 meet the new EPA arsenic standard that takes effect in January 2006:

25 *Q. (By Mr. Cohen) You're planning to file a new rate case in 2007, are*  
26 *you not?*

1           A.    *That's correct.*

2           Q.    *Using a 2006 test year?*

3           A.    *Actually, yeah....What will automatically be included are the*  
4                *impacts of arsenic treatment. Transcript Vol. IV at 731, line 25, to*  
5                *732, line 21.*

6           By comparison, the Staff-recommended Woodruff rates would be stable for at least  
7           the next five years. Transcript Vol. III at 443 line 13 to 444 line 5. It should be noted that  
8           the Staff-recommended Woodruff rates assume that arsenic removal will be required, and  
9           the costs of treatment are included in the \$47.30 residential monthly bill. Thus, while the  
10          future water rates of Arizona Water for the Coolidge area are quite uncertain, they could  
11          very well go higher than Woodruff's rates in the coming years.

12                   c.    **Arizona Water's Rates Will Be Affected When Arizona Water**  
13                        **Combines its Coolidge and Casa Grande Systems.**

14          Arizona Water's future rates in the Coolidge service area will also be  
15          affected by the planned integration of its Casa Grande and Coolidge systems. Arizona  
16          Water witness Michael Whitehead testified in response to a question from his legal  
17          counsel that the two systems will be interconnected within the next year or two:

18           Q.    *Now, as Vice President of Engineering, Mr. Whitehead, can you,*  
19                *using Exhibit 12B and I think you have got a blowup of it there if it's*  
20                *easier—generally tell us going forward the engineering plan, and*  
21                *with specific reference to any plans to interconnect the Casa Grande*  
22                *and Coolidge system, what the company has been planning for in*  
23                *this regard.*

24           A.    *Well, yeah. That is the purpose really of this master plan is to make*  
25                *sure that we get it right the first time when we do interconnect*  
26                *Coolidge and Casa Grande. And, frankly, that's going to happen*  
               *probably within the next year, two years tops. Transcript Vol. V at*  
               *878, line 16, to 879, line 3.*

              The Casa Grande system utilizes 13 wells, all of which will require arsenic treatment.  
              According to Mr. Whitehead, Arizona Water is in the process of constructing extensive

1 arsenic treatment facilities for its Casa Grande wells:

2 Q. (By Mr. Cohen) So essentially you will have two treatment facilities  
3 treating the water from 10 wells?

4 A. For those 10 wells. We have more wells in Casa Grande not shown  
5 on that map.

6 Q. Right. Last year... the Arizona Water Company, reported to the  
7 Department of Water Resources that you had 13 wells producing  
8 water for Casa Grande. We're showing nine of those wells here.  
9 You say there's a Well 22 that belongs on here. How many more  
10 wells are you going to treat for arsenic besides?

11 A. I believe three. Transcript Vol. VI at 1085, line 23, to 1086, line  
12 103.

13 In addition to arsenic treatment, Arizona Water recently purchased a site at Signal  
14 Peak Mountain in the Casa Grande service area where Arizona Water will construct two 5  
15 million gallon elevated storage tanks that are intended to provide storage for the Coolidge  
16 service area. Mr. Whitehead testified that the Casa Grande wells will provide back up for  
17 Coolidge and the Coolidge wells will provide back up for Casa Grande. And in the near  
18 future—by 2010 or 2012—Arizona Water will construct a CAP water treatment plant to  
19 provide CAP water to both Coolidge and Casa Grande. Transcript Vol. IV at 729 lines 1-  
20 10; Transcript Vol. VI at 1197, line 19, to 1198, line 1. Under these circumstances, with  
21 extensive common storage and production it is most unlikely that Arizona Water will be  
22 able to maintain separate rates for the two integrated service areas.

23 d. **Arizona Water's Rates Will Increase When the CAP Treatment**  
24 **Plant is Constructed.**

25 Arizona Water's construction of a CAP water treatment plant to serve both  
26 Coolidge and Casa Grande will provide, after 2007, another occasion for potential  
increases in the water rates for Coolidge. Mr. Kozoman calculated that the effect of  
Company financing and construction of the plant would be to support the addition of

1 \$7.50 to the average monthly water bill in Coolidge. Exhibit WWC-51B; Transcript Vol.  
2 III at 435, line 17, to 437, line 17. If Arizona Water's proposed rate increase in the  
3 current case is adopted and costs of arsenic treatment are added either because of  
4 integration of the Casa Grande and Coolidge systems or because new wells being drilled  
5 in the Coolidge area produce water that requires arsenic treatment, then the average  
6 Coolidge rate could increase to as much as \$49 per month within the next three years.  
7 With the construction of the CAP treatment plant two to four years later, the average  
8 Coolidge rate could increase to \$56.50 per month. Again, Arizona Water's alleged rate  
9 differential quickly evaporates once future plant additions are factored in.

10 e. Staff Correctly Concluded That Future Water Rates are Too  
11 Uncertain to be a Decisive Fact in Awarding the CC&N at  
12 Sandia.

12 Staff recognized the highly uncertain nature of Arizona Water's future rates in the  
13 Coolidge area and did not consider the initial rate differential a decisive factor in  
14 evaluating the competing applications. When the Administrative Law Judge asked  
15 whether the present rate differential is part of the public interest analysis, Mr. Olea  
16 correctly noted that the Arizona Water rates are not static going forward:

17 *If you are looking at just the rate case today for Arizona Water, that's*  
18 *correct, but probably before all or even quite a few customers come into*  
19 *Sandia, Arizona Water is going to be in here for another rate case because*  
20 *they have been ordered to take care of the arsenic recovery system, so the*  
*rates are going to be a little higher than—at least a little higher than what*  
*you see in the current rate case. Transcript Vol. VII at 1406, lines 4-11.*

21 Mr. Olea was generous in stating that Arizona Water's rates would be a "little  
22 higher" than the current rates once arsenic treatment is included. Mr. Garfield testified in  
23 Arizona Water's pending rate case that in the Western Group, which includes Coolidge,  
24 "rates would have to increase by an average of 40% for an average residential customer  
25 to cover the costs of constructing and operating treatment facilities to comply with the  
26

1 new MCL.” Exhibit WWC-47A at 8, lines 15-18.

2 In response to questioning by Mr. Sabo, Mr. Olea recognized the uncertainties  
3 inherent in relying on the initial rate differential:

4 Q. *And the judge had asked you about the impact of the different rates  
5 and how that factored into Staff’s analysis. It’s the case, isn’t it, that  
6 in 2007, Arizona Water is going to have another rate case?*

7 A. *From what I recall from previous orders and I think the  
8 recommendation in the current case, that’s correct.*

9 Q. *Now, my recollection, I think Mr. Najafi said build-out was sort of  
10 targeted for about 20 years. If that’s correct, over the next 20 years  
11 would it be likely, if Arizona Water gets this area, that they would  
12 have a number of rate cases over that 20-year period?*

13 A. *That’s probably a good guess.*

14 Q. *And likewise if Woodruff got the CC&N, would it be likely that they  
15 would have a number of rate cases over that 20-year period?*

16 A. *I would think so.*

17 Q. *So sitting here today, can we have any certainty about what the rates  
18 will be 20 years from now at build-out?*

19 A. *No. Transcript Vol. VII at 1425, line 23, to page 1426, line 20.*

20 Arizona Water is facing known future expenses in dealing with arsenic,  
21 constructing a plant to treat its CAP water, and completing the integration of its Coolidge  
22 and Casa Grande divisions. These expenses are not speculative, and they will affect rates  
23 going forward. The only questions are how high will rates get and how quickly will they  
24 get here.

25 f. **Current Water Rate Differentials Should Not Be the Basis for the**  
26 **CC&N Award.**

As Staff properly concluded, future rates are too uncertain and speculative a basis

1 on which to decide which applicant should be granted a water service CC&N. The results  
2 of the current Arizona Water rate proceeding are unknown; the effect of the 2006 test-year  
3 rate case on Coolidge rates is unknown; the rate effects of the imminent integration of the  
4 Casa Grande and Coolidge service areas are unknown; the costs of arsenic treatment are  
5 not included; and the effect of the construction and operation of the CAP treatment plant  
6 is unknown. Clearly, the Arizona Water rates must increase in the near term and the long  
7 term—Arizona Water cannot offer stable rates at Sandia. The Woodruff rates are stable  
8 for at least the next five years.

9 The reality of the matter is very simple. There is no reason why Arizona Water's  
10 cost structure would be inherently lower than Woodruff's. Any entity certificated to serve  
11 Sandia will need to construct wells, storage capacity, arsenic treatment, transmission and  
12 distribution. Arizona Water's Coolidge rates are very low because they are based on a  
13 system which is old and largely depreciated, as evidenced by the following exchange  
14 between Messrs. Cohen and Whitehead.

15 *Q. (By Mr. Cohen) You said Coolidge is now \$900 total rate base per unit in*  
16 *Coolidge.*

17 *A. That's correct.*

18 *Q. That's less than it costs now just for distribution?*

19 *A. That's correct.*

20 *Q. And that \$900 is because that's a really old system, isn't it?*

21 *A. Yes. I suspect that the rate base in Coolidge is heavily affected by*  
22 *depreciation. Transcript Vol. VI at 1126, lines 6-15.*

23 In contrast to the Arizona Water rates, the Staff-recommended Woodruff rates are  
24 based on construction of a new system, with today's much higher standards, and much  
25 higher material and labor costs. In addition, Woodruff's rates assume that both arsenic  
26

1 and fluoride treatment will be needed at Sandia; the Arizona Water rates assume no such  
2 treatment will be required. If it turns out that costly arsenic and fluoride treatment is not  
3 needed, then the Commission can make appropriate adjustments to Woodruff's rates when  
4 the company comes in for a rate case in five years. If, on the other hand, Arizona Water is  
5 required to treat the groundwater at Sandia, then Arizona Water will certainly need to  
6 increase its rates. It is better public policy to take a conservative approach to treatment  
7 and leave room for rate adjustments later, rather than assume no treatment will be required  
8 and then shock customers with unexpected rate increases on the order of 40%.

9 g. **The Mountain Glen Water Service Case Illustrates that Rate**  
10 **Comparisons Alone Are Not Dispositive in Awarding a CC&N.**

11 Mountain Glen Water Service ("Mountain Glenn") involved competing  
12 applications for a CC&N to provide water service to a 95-unit development known as  
13 Linden Trails. Mountain Glen was providing water service to approximately 235  
14 residential customers located five miles northwest of Show Low, Arizona, adjacent to the  
15 Linden Trails development. Cedar Grove Water ("Cedar Grove") provided water service  
16 to approximately 240 residential customers 18 miles east of Linden Trails. The developer  
17 of Linden Trails requested water service from Cedar Grove, which filed an application for  
18 a CC&N, and thereafter, Mountain Glen filed a competing application.

19 The evidence in this case showed that the water rates of Mountain Glen were  
20 significantly higher than the rates of Cedar Grove (\$50.25 for Mountain Glen versus  
21 \$43.75 for Cedar Grove, based on an assumed usage of 10,000 gallons per month). The  
22 evidence also showed that (i) Mountain Glen was unable to provide fire suppression  
23 service due to the system's configuration and lack of storage capacity; and (ii) two of  
24 three Mountain Glen wells had arsenic levels near or above the new arsenic standard.

25 However, Staff recommended approval of the CC&N for Mountain Grove on the  
26 grounds that it was consistent with the "orderly growth and expansion of small water

1 companies which the Commission has previously found lead to economies of scale in the  
2 provision of utility service rather than promoting numerous small separate satellite  
3 systems with limited opportunities for growth and expansion.” Decision 61271 at 6, ¶ 20.  
4 Thus, Staff concluded that Mountain Glen would benefit more from the addition of the  
5 new customers that Cedar Grove, notwithstanding the shortcomings of Mountain Glen.

6 Although the Mountain Glen case is clearly distinguishable from the case at hand  
7 in that Mountain Glen was a tiny 235-customer water company seeking to add 95 new  
8 customers on 75 acres whereas Woodruff would have close to 10,000 customers on 3,200  
9 acres.<sup>2</sup> However, the case is instructive because the Commission granted a CC&N to a  
10 water company notwithstanding the fact that the company had higher water rates than the  
11 competing applicant because the Commission placed greater emphasis on other factors in  
12 evaluating the public interest. In other words, while the comparative rates of two  
13 competing applicants is a factor to be considered in granting a CC&N, it was not the  
14 determinative factor in the Mountain Glen Water Service case, and it should not be in this  
15 case.

16 3. **Arizona Water Will Not be Precluded from Interconnecting its Casa**  
17 **Grande and Coolidge Divisions by the Grant of a CC&N to Woodruff.**

18 Arizona Water argues that the grant of a water CC&N to Woodruff will prevent the  
19 company from interconnecting its Coolidge and Casa Grande systems. However, anyone  
20 looking at a map of the area will see that there are multiple opportunities for Arizona  
21 Water to interconnect its two divisions to the south. In response to questioning from Mr.  
22 Sabo, Mr. Olea testified as follows:

23 <sup>2</sup> When asked whether the water task force recommendation was intended to prevent the proliferation of individual  
24 water companies serving only a single development, Mr. Olea responded as follows: “*What I recall that it was trying*  
25 *to stop from a public policy perspective was, as I said, the 100-, 200-lot subdivision water companies, not the 5,000-,*  
26 *6,000-lot water companies.”* Transcript Vol. VII at 1380, lines 21-24. Cedar Grove Water would have been such a  
100-lot water company. However, as correctly noted by Mr. Olea, Woodruff “is going to be a large water company,  
it’s going to be a large wastewater company and they would work better together.” Transcript Vol. VII at 1367, lines  
14-20.

1 Q. [I]s there sufficient room even if they don't get Woodruff to  
2 interconnect between Coolidge and Casa Grande and also the lower  
3 Tierra Grande system to the south?

4 A. Based on this map, it looks like the Casa Grande and Coolidge  
5 systems have several places where they will soon be touching.  
6 Transcript Vol. VII at 1423, lines 2-8.

7 Mr. Whitehead testified that as development filled in south of Sandia and Arizona  
8 Water's certificated area expanded to serve it, connections could be made between the  
9 Casa Grande and Coolidge systems along McCartney Road, Randolph Road, Kleck Road  
10 and Storey Road. Transcript Vol. V at 1186, line 24, to 1187 line 23. Mr. Whitehead  
11 further testified that Arizona Water holds franchises from Pinal County and the City of  
12 Coolidge. Transcript Vol. V at 873, lines 5-12. In response to questioning from Mr.  
13 Sabo, Mr. Whitehead acknowledged that Arizona Water could connect its planned five  
14 million gallon storage tank at Signal Peak Mountain in Casa Grande to the Coolidge  
15 system via a public utility easement on a public road without actually having a CC&N to  
16 serve the area through which the public road runs. Transcript Vol. VI at 1189, line 3,  
17 through 1191, line 5. The argument that the grant of a CC&N to Woodruff will preclude  
18 Arizona Water from interconnecting its Casa Grande and Coolidge divisions is not  
19 supported by the evidence, or for that matter, a simple look at the company's service area  
20 maps.

21 4. **Sandia Does Not Have Uncommon Water Quality Problems.**

22 Arizona Water asserts that its access to groundwater from any portion of its large  
23 service area gives it an important advantage over Woodruff in providing potable water to  
24 the Sandia development. Mr. Whitehead testified that:

25 *Well, one advantage is that when you cover this kind of territory with your*  
26 *distribution system, you have unlimited places to drill wells. Unlimited.*  
*We know a lot about the water quality in this Valley. We've been at this for*  
*50 years. Over those years, we've become acquainted with this area. We*

1           *know where the good water is. We know where the bad water is. We know*  
2           *where to drill, where not to drill. That in itself goes a long way to*  
3           *answering your question. In other words, when we drill a well, we do not*  
4           *assume we're going to have to treat. We assume we're going to get potable*  
5           *water straight out of the ground, chlorination, right into the system. The*  
6           *dollars associated with treatment are astronomical on the capital side, on*  
7           *the O&M side. If you can avoid treatment, that's the way to go. Transcript*  
8           *Vol. V at 883, line 25, to 884 line 15.*

9           The Sandia development covers approximately 3,200 acres. Notwithstanding the  
10          size of Arizona Water's service area, the evidence established that ten of the thirteen wells  
11          serving the Company's Casa Grande area were drilled on only a thousand acres, one-third  
12          of the acreage available to Woodruff at Sandia. Further, notwithstanding Mr.  
13          Whitehead's understandable desire to avoid the high costs of arsenic treatment for the  
14          company's water, he admitted that Arizona Water must provide such treatment for all 13  
15          Casa Grande wells and was constructing facilities to do so.

16          The evidence established that there are four potential contaminants in the  
17          groundwater in the Coolidge/Casa Grande area: nitrates, total dissolved solids ("TDS"),  
18          fluoride and arsenic. Activated alumina adsorption is an acceptable method for treating  
19          fluoride and arsenic in domestic water supplies. Woodruff's proposed water rates  
20          conservatively assume that this treatment may be needed. In other words, treatment for  
21          fluoride and arsenic is manageable. In contrast, water exceeding the EPA nitrate standard  
22          is extremely expensive to treat. Mr. Garfield testified concerning the use of expensive  
23          reverse osmosis ("RO") to treat for nitrates and high TDS. He pointed out that 20% of the  
24          water would be lost to the waste stream and disposal would be a major problem.  
25          Transcript Vol. III at 625, lines 10-14.

26          RO is a very expensive treatment process to reduce TDS in water. While there is  
no EPA minimum contaminant level for TDS, the secondary standard is 500 parts per  
million, and water is not considered potable when TDS exceeds 1,000 parts per million.

1 Transcript Vol. VI at 1144, lines 5-14. Arizona Water's counsel asserted at the hearing  
2 that RO would be needed to treat the contaminants in the water at Sandia:

3 *Well, we're going to have plenty of evidence when we hear from Mr.*  
4 *Whitehead and we see these test results for these Sandia wells, and we're*  
5 *going to hear that RO is likely potentially the only feasible treatment*  
6 *methodology for the degree of contaminants that we're going to have to*  
7 *work with these wells. Transcript Vol. III at 624, lines 1-7.*

8 However, when Mr. Whitehead testified, he agreed with Woodruff's engineer,  
9 Troy Bontrager, that RO would not be needed and should not be used at Sandia. He  
10 agreed with Woodruff's engineers that activated alumina adsorption was the proper  
11 treatment methodology for arsenic and fluoride and that the more expensive RO was not  
12 appropriate. Transcript Vol. V at 936, lines 13-24.

13 The uncontraverted evidence of Mr. Noel's tests on three operating wells on the  
14 Sandia property firmly establishes that an adequate supply of water of adequate quality  
15 can be produced at Sandia. Mr. Noel tested existing wells numbers 1065, 1100, 1110 and  
16 found acceptable levels of TDS (550 to 620 parts per million) and acceptable levels of  
17 nitrates (1.3 to 3.4 parts per million). Further, the three wells were capable of pumping a  
18 total of 5,453 gallons per minute. See Table 1 in Exhibit WWC-41. The "maximum day"  
19 water demand at Sandia at full build-out was projected by both Arizona Water and  
20 Woodruff to be in the range of 4,000 to 5,000 gpm. Exhibit WWC-23 at Attachment A-3;  
21 Exhibit WWC-10 at 3; Transcript Vo. II at 373, lines 16-19. So these three existing wells  
22 at Sandia would currently be capable of meeting the full demand at build out and would  
23 not require any expensive nitrate or TDS treatment. This clearly establishes that wells can  
24 be drilled on the Sandia property to produce domestic water in adequate quantities that  
25 would not require treatment for TDS or nitrates.

26 While neither TDS nor nitrate would be required for new wells at Sandia, the  
existing wells indicate that arsenic and fluoride treatment may be needed. Woodruff

1 conservatively prepared its application in contemplation of the potential need for arsenic  
2 and fluoride treatment, with proposed rates that would cover the costs of such treatment.  
3 Both Mr. Whitehead and Mr. Noel, Woodruff's hydrologist, described a testing method  
4 for new wells that identifies the segments in a well that would produce contaminants so  
5 that these segments can be sealed off. Both Mr. Whitehead and Mr. Noel would plan to  
6 construct new wells that seal off contaminant segments. It may be possible to produce  
7 water at Sandia that requires no treatment for arsenic or fluorides, it may not. If it turns  
8 out that such treatment is not needed, the Woodruff rates will be adjusted downward at the  
9 rate case that will occur after five years of operating experience. If, however, Arizona  
10 Water receives the CC&N and it turns out that such treatment will be needed, the residents  
11 of Sandia will be faced with a significant increase in rates to cover what Mr. Whitehead  
12 characterized as the "astronomical" costs of treatment. Transcript Vol. V at 884, line 14.

13 In sum, there are no water quality problems at Sandia that would provide any basis  
14 for awarding the CC&N to Arizona Water rather than to Woodruff.

#### 15 IV. WASTEWATER SERVICE.

16 Staff recommended approval of the wastewater CC&N for Woodruff, the City of  
17 Coolidge supports the application, and Arizona Water has not opposed the CC&N.  
18 Woodruff is the only applicant for the wastewater CC&N, and thus, there is no basis to  
19 deny the request.

#### 20 A. Public Interest Analysis.

21 As set forth above, Woodruff has received requests from the Wuertzes to provide  
22 water and wastewater service to their respective properties. Staff has found Woodruff to  
23 be a fit and proper entity to hold a CC&N, and has recommended that Woodruff receive a  
24 CC&N to provide wastewater service for Sandia, subject to standard conditions.  
25 Woodruff has agreed to abide by Staff's proposed conditions. No other applicant has  
26

1 applied to provide sewer service to the development, and there is a demonstrated need for  
2 sewer service. Accordingly, the Commission should approve the application of Woodruff  
3 for a CC&N to provide wastewater service.

4 1. **Woodruff Has Taken a Number of Steps to Prepare to Provide**  
5 **Wastewater Service.**

6 Woodruff has taken a number of steps and incurred significant expenses in support  
7 of its application for a CC&N to provide wastewater service. These steps include:

8 a. **Formation of Woodruff Utilities Company.** Woodruff filed  
9 Articles of Incorporation for Woodruff Water Company. Exhibit WWC-2 (Attachment  
10 "G").

11 b. **Pinal County Water Franchise.** Woodruff filed an application for a  
12 wastewater franchise from Pinal County on May 14, 2004. Exhibit WWC-2 (Attachment  
13 "I"). Pinal County granted a Water Franchise to Woodruff on August 25, 2004. Exhibit  
14 WWC-14.

15 c. **Central Arizona Association of Governments 208 Amendment**  
16 **for Sandia Water Reclamation Plant--Woodruff Utility Company 2004.** LJ  
17 Farrington Engineers prepared a 208 Amendment for the Sandia wastewater reclamation  
18 plant dated September 30, 2004. Exhibit WWC-15. By letter dated September 21, 2004,  
19 the City Manager of the City of Coolidge notified the Central Arizona Association of  
20 Governments ("CAAG") that he was aware of Woodruff's planned wastewater treatment  
21 plant at Sandia and its 208 amendment, and stated that he agreed with Woodruff's request  
22 for a 208 amendment. Exhibit WWC-16. On December 1, 2004, CAAG unanimously  
23 approved Woodruff's 208 Amendment. Exhibit WWC-18. By letter dated January 10,  
24 2005, the Director of ADEQ certified to EPA Region IX that the "208 Plan Amendment  
25 for the Woodruff Utilities Company is consistent with both the State of Arizona's and the  
26 Central Arizona Association of Governments' Water Quality Management Plans."

1 Exhibit WWC-19.

2 d. Preliminary Recharge Characterization and Addendum.

3 Southwest Ground-water Consultants prepared a report entitled Preliminary Recharge  
4 Characterization--Woodruff Underground Storage Facility dated November 16, 2004,  
5 addressing the suitability of soils in the vicinity of the planned Sandia wastewater  
6 reclamation facility for recharge of treated effluent. Exhibit WWC-39. SGC prepared an  
7 Addendum to the Preliminary Recharge Characterization dated March 14, 2004. Exhibit  
8 WWC-40

9 e. Plant Design. Woodruff contracted with LJ Farrington Engineers to  
10 prepare the design plans for the Sandia wastewater reclamation plant. As of the hearing,  
11 the design plans for the Sandia plant were approximately 30-35% complete, and the plans  
12 for phase one of the facility were approximately 50% complete.

13 Woodruff Utilities Company has taken substantial steps in preparing to provide  
14 wastewater service to Sandia. These steps demonstrate that Woodruff has the  
15 commitment and expertise to design, construct and operate the wastewater system for  
16 Sandia.

17 2. City of Coolidge Has No Plans to Serve Sandia.

18 Arizona Water asserted that the City of Coolidge can and should provide  
19 wastewater service to Sandia. However, the City of Coolidge has made clear on more  
20 than one occasion that it is not interested in providing wastewater service to Sandia. In a  
21 letter from Robert Flatley, City Manager of the City of Coolidge, to Russ Shasky dated  
22 April 15, 2005, Mr. Flatley stated:

23 *In reference to my letter to Central Arizona Association of Governments*  
24 *(CAAG) dated September 21, 2004, I am confirming that I agreed with*  
25 *Pivotal's request for a CAAG 208 Amendment.*

26 *I concluded that it is in the City's best interest to support the Woodruff*



1 A COPY of the foregoing was hand-delivered  
2 this 19th day of September, 2004, to:

3 Marc Stern, Administrative Law Judge  
4 Hearing Division  
5 ARIZONA CORPORATION COMMISSION  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8 Timothy J. Sabo, Staff Attorney  
9 Legal Division  
10 ARIZONA CORPORATION COMMISSION  
11 1200 West Washington  
12 Phoenix, Arizona 85007

13 Ernest Johnson, Director  
14 Utilities Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington  
17 Phoenix, Arizona 85007

18 A COPY of the foregoing mailed  
19 this 19th day of September, 2005, to:

20 Robert W. Geake  
21 Vice President and General Counsel  
22 ARIZONA WATER COMPANY  
23 P.O. Box 29006  
24 Phoenix, Arizona 85038-9006

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