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BEFORE THE ARIZONA CORPORATION COMMISSION

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2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
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6 IN THE MATTER OF THE APPLICATION OF
SUN VALLEY UTILITIES, INC., TO EXTEND ITS
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-01698A-01-0323

DECISION NO. 64359

OPINION AND ORDER

8
9 DATE OF HEARING: August 14, 2001
10 PLACE OF HEARING: Phoenix, Arizona
11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
12 APPEARANCES: Mr. Jack Vicars, President of Sun Valley Utilities, Inc.;
13 Hammond & Tobler, P.C., by Mr. Doug Tobler, on
14 behalf of Intervenor, Gary and Lillian Darling; and
15 Mr. Jason Gellman, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

16 **BY THE COMMISSION:**

17 On April 16, 2001, Sun Valley Utilities, Inc. ("Sun Valley" or "Applicant") filed with the
18 Arizona Corporation Commission ("Commission") an application for an extension of its Certificate
19 of Convenience and Necessity ("Certificate") to provide public water utility service for an additional
20 section of land in Navajo County, Arizona.

21 On May 23, 2001, by Procedural Order, the above-captioned matter was scheduled for a
22 hearing on August 14, 2001, and Applicant was ordered to publish notice of the application and the
23 hearing thereon.

24 On July 16, 2001, the Commission's Utilities Division ("Staff") filed its Staff Report in this
25 matter.

26 On July 18, 2001, Mr. and Mrs. Gary Darling filed a Motion to Intervene in the above-
27 captioned proceeding.

28 On August 7, 2001, by Procedural Order, intervention was granted to Mr. and Mrs. Darling in

1 the proceeding.

2 On August 14, 2001, a full public hearing was convened before a duly authorized
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant's
4 President appeared on its behalf. The intervenors and Staff appeared with counsel. At the conclusion
5 of the hearing, the matter was taken under advisement pending submission of a Recommended
6 Opinion and Order to the Commission.

7 * * * * *

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

10 **FINDINGS OF FACT**

11 1. Pursuant to authority granted by the Commission, Applicant is engaged in providing
12 water service to approximately 80 customers in an area located approximately five miles east of the
13 City of Holbrook ("City"), Navajo County, Arizona.

14 2. Sun Valley was organized as a non-profit corporation by various land owners to
15 operate the water utility after the individuals who developed the land in the area abandoned the utility
16 and left the vicinity.

17 3. Mr. Jack Vicars works as the utility's president on a voluntary basis while working
18 full-time as a service manager for a local automobile dealership. Applicant employs two part-time
19 maintenance men and a part-time clerk to operate the utility.

20 4. On April 16, 2001, Sun Valley filed an application for an extension of its existing
21 certificate in order to provide water service to a section (640 acres) of land which is adjacent to its
22 existing service area which is more fully described in Exhibit A attached hereto. This area is east of
23 the City and west of Applicant's existing service area.

24 5. Applicant provided notice of the Application and hearing thereon in the manner
25 prescribed by law.

26 6. Applicant's existing service area consists of ten sections of land with approximately
27 73 residential customers and seven commercial customers.

28 7. A primary reason for Applicant's request for an extension of its Certificate is because

1 of the fact that, since 1972, Sun Valley has been providing water service to a business near Interstate
2 40 at the Keams Canyon Intersection known as the Shipley-Phillips Truck Stop ("Truck Stop"). It is
3 located in the approximate middle of the section which Sun Valley has requested be certificated
4 herein, and is provided with water by means of a four-inch service line that extends from Applicant's
5 certificated service area across several parcels of land to the Truck Stop parcel¹.

6 8. Sun Valley's certificated service area is located on both the north and south side of
7 Interstate 40.

8 9. Applicant has two wells with a present pumping capacity of approximately 155
9 gallons of water per minute and 55,000 gallons of storage on the south side of Interstate 40 and
10 45,000 gallons of storage on the north side of Interstate 40.

11 10. The majority of Applicant's customers are provided service by means of ½ inch
12 meters. The Truck Stop is provided with service by means of a two-inch meter which is located
13 inside of Applicant's certificated service area where it connects with the Truck Stop's service line.

14 11. Mr. and Mrs. Darling together with Mr. Darling's brother have purchased 23 acres of
15 land in the area sought to be certificated herein. The land will be used primarily for the construction
16 of a motel with approximately 100 rooms and a Texaco Starmart and convenience store and also a
17 restaurant. The Darlings' land is located between Applicant's certificated area and the Truck Stop.

18 12. The intervenors, while supporting Sun Valley's application, are concerned that
19 Applicant will be unable to supply sufficient water to their property in order to run their businesses.

20 13. Mr. Darling related that, at the time the Darlings' purchased their property from the
21 owner of the Lewis Trading Post, Mr. Paul Lewis, they were under the impression that they would be
22 able to connect on to the Truck Stop's service line which runs across their property and utilize water
23 destined for the Truck Stop for their property which they are developing.

24 14. However, the owner of the Truck Stop, Mr. Phillips, opposes the amount of water
25 which the Darlings wish to utilize and will not let them hook onto his service line unless the
26 Darlings' estimated demands are reduced from 600,000 gallons of water per month to approximately

27 _____
28 ¹ There are several businesses located at the Truck Stop including a café, laundromat, truck wash and Burger King that
are apparently charged for water by Mr. Dale Phillips, the Truck Stop's owner.

1 75,000 gallons per month.

2 15. The Darlings have also been in discussion with the City with respect to a possible
3 extension of the City's water system to provide their property with water and how the costs would be
4 shared between the two property owners (the Darlings and Mr. Phillips).

5 16. Another commercial business where the Truck Stop service line also runs across its
6 property, the Petrified Forest Dinosaur Park ("Park"), which, while presently hauling water, may be
7 interested in being connected to Applicant's system in the future, if Applicant is certificated to
8 provide water service to the Park's area.

9 17. Mr. Vicars believes that Sun Valley has adequate water to serve the area for which it is
10 seeking a Certificate and as additional demands are placed on Applicant's system, would utilize
11 Commission approved main extension agreements to extend service to the area.

12 18. To Mr. Vicars' knowledge, Sun Valley does not have a recorded easement permitting
13 it to run its service line from its certificated service area to the Truck Stop. However, Mr. Vicars
14 indicated that there is a July 1974 private easement agreement between the Lewis family that once
15 owned much of the land in question and Mr. Phillips. The agreement is on file with the Navajo
16 County Recorder's office and provides Mr. Phillips with an easement from his meter to the Truck
17 Stop property. Apparently other property owners are unaware of this private easement.

18 19. Mr. Vicars is aware of a City feasibility study with respect to water usage at the
19 Keams Canyon Intersection that projects, in five years, it will require at least 210 gallons of water per
20 minute, which is in excess of Applicant's existing water production capacity of 155 gallons per
21 minute.

22 20. Mr. Vicars made it clear that if additional demand arises in the area between the
23 location of the Truck Stop and Sun Valley's existing certificated area, a water main would have to be
24 constructed in order to provide service to the area because the Truck Stop's service line was
25 constructed in a "haphazard" manner and does not meet Applicant's requirements.

26 21. Sun Valley is willing and able to serve future customers in the extension area and will
27 invest funds as needed for the expansion of its utility plant.

28 22. Sun Valley's two existing wells have additional pumping capacity, easily more than

1 200 gallons per minute, if larger pumps are installed to pump more water. Additionally, Applicant
2 has purchased two additional lots which adjoin their existing well-sites, which enable Sun Valley to
3 drill additional wells as needed.

4 23. According to Mr. Vicars, the City does not plan to extend water service to the area
5 sought to be certificated herein in the immediate future because it is not financially feasible.

6 24. Applicant and the Darlings have not yet discussed the cost of a main extension
7 agreement at this time, but they are aware that they will have to enter into a main extension
8 agreement to provide water service to their property if they wish to secure service from Sun Valley.

9 25. Mr. Darling testified that the Darlings' commercial development will definitely need
10 water service and, at present, the property is being prepared for future construction. According to
11 projections by their experts, the Darlings' project will require up to 85,000 gallons of water per day.

12 26. Mr. Darling wants to ensure that there is sufficient water capacity to handle his
13 commercial project and avoid future problems with easement issues that he has experienced in
14 dealing in the past with Mr. Phillips.

15 27. Mr. Darling testified that he had an agreement with the former property owner, Mr.
16 Lewis, that he could tap into the Truck Stop's service line, but when he did so, Mr. Phillips had a
17 contractor pour concrete on his hook-up.

18 28. Although Mr. Lewis gave the Darlings permission in writing to connect with the
19 Truck Stop service line, the Darlings were unaware that the Truck Stop owned the service line until
20 they investigated the status of the service line after they purchased Mr. Lewis' property.

21 29. The Darlings' Starmart and the Truck Stop will be competitors and there has already
22 been civil litigation between the two parties.

23 30. According to Mr. Darling, he and Mr. Phillips have reached a settlement with respect
24 to their dispute, and in the event that their properties are annexed by the City and a water line is
25 extended from the City, Mr. Phillips is willing to pay 100 percent of the cost of the water line with
26 Mr. Darling paying Mr. Phillips 25 percent of the total cost over 25 years.

27 31. According to a Staff estimate, Applicant presently has excess capacity of
28 approximately 53,300 gallons of water per day with no changes to its utility plant. This capacity is

1 based on an assumption of a peak day ratio which builds in an extra 25 percent of usage not normally
2 required and further takes into account that, at other times, more water would be available.

3 32. Staff believes that Applicant can meet the demands of its existing customers and
4 provide for future growth by developing additional capacity. Staff does normally not expect a
5 company to construct facilities before the growth is experienced since it would lead to excess
6 capacity and would not be a prudent investment by the utility.

7 33. Staff pointed out that the City's feasibility study took into account eight separate areas
8 for development if the City extended its service. However, the Certificate extension herein only
9 involves three of the eight areas, so that the amount of water required per day would be entirely
10 different, and thus Applicant has sufficient water.

11 34. Applicant is current on the payment of its property and sales taxes. Sun Valley is also
12 in total compliance with the rules of the Arizona Department of Environmental Quality, does not
13 exceed any MCLs and meets the water quality standards of the Safe Drinking Water Act.

14 35. Applicant has the necessary franchise from the Navajo County Board of Supervisors
15 for the area described in Exhibit A.

16 36. Applicant is current of its filings with the Commission.

17 37. Applicant has indicated that it will charge its existing rates and charges to customers
18 in the area described in Exhibit A.

19 38. Staff is recommending approval of Sun Valley's application for the extension of its
20 Certificate and that Applicant be ordered to continue to charge its existing rates and charges to
21 customers in the area described in Exhibit A.

22 39. In so far as there was some evidence that the Truck Stop is reselling water to various
23 tenants, Staff indicated that any action on matters such as this should be addressed in a separate
24 proceeding, if necessary.

25 CONCLUSIONS OF LAW

26 1. Applicant is a public service corporation within the meaning of Article XV of the
27 Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-282.

28 2. The Commission has jurisdiction over the Applicant and of the subject matter of the

1 application.

2 3. Notice of Sun Valley's application as described herein was given in the manner
3 prescribed by law.

4 4. The public convenience and necessity require and the public would benefit by the
5 extension of Sun Valley's Certificate so that its certificated service area includes the area more fully
6 described in Exhibit A.

7 5. The Applicant is a fit and proper entity to receive an amended Certificate which
8 encompasses the area more fully described in Exhibit A.

9 6. Sun Valley's application for the extension of its Certificate should be approved as
10 recommended by Staff in Findings of Fact No. 38.

11 **ORDER**

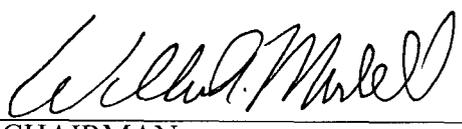
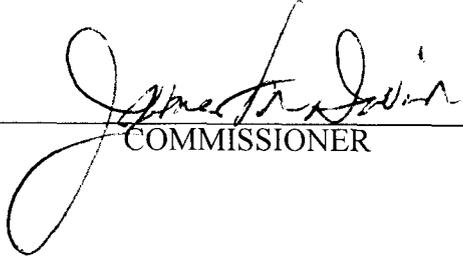
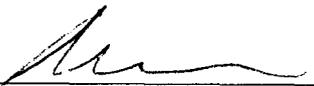
12 IT IS THEREFORE ORDERED that the application of Sun Valley Utilities, Inc. for the
13 extension of its Certificate of Convenience and Necessity for the operation of water facilities in the
14 area more fully described in Exhibit A be, and is hereby, approved.

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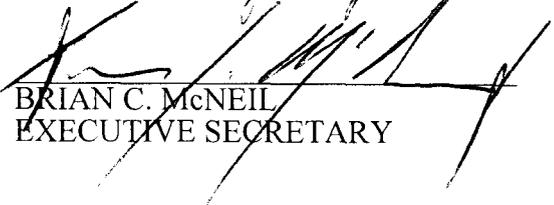
1 IT IS FURTHER ORDERED that Sun Valley Utilities, Inc. shall charge those customers in
2 the area more fully described in Exhibit A its existing rates and charges until further Order by the
3 Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6 
7 CHAIRMAN
8  COMMISSIONER
9  COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this 15th day of January, 2002.

15 
16 BRIAN C. McNEIL
17 EXECUTIVE SECRETARY

18 DISSENT _____

19 MES:mj

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1 SERVICE LIST FOR:

SUN VALLEY UTILITIES, INC.

2 DOCKET NO.

W-01698A-01-0323

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CERTIFICATE EXTENSION FOR SUN VALLEY UTILITIES, INC.

Section 11, Township 18 North, Range 21 East, G&SRB&M, Navajo County, Arizona

EXHIBIT A

DECISION NO. 64359