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BEFORE THE ARIZONA CORPORATION COMMISSION  
Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

SEP 30 2005

DOCKETED BY *CM*

IN THE MATTER OF THE APPLICATION OF  
CAVE CREEK WATER COMPANY TO EXTEND  
ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY (PARCEL NO. 216-29-002A).

DOCKET NO. W-01452A-05-0082

IN THE MATTER OF THE APPLICATION OF  
CAVE CREEK WATER COMPANY TO EXTEND  
ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY (PARCEL NO. 211-99-006).

DOCKET NO. W-01452A-04-0810

DECISION NO. 68190

OPINION AND ORDER

DATE OF HEARING: August 23, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Roshka, Heyman & DeWulf, by Michael W. Patten, and Salmon, Lewis & Weldon, by Kristin Magin, on behalf of Cave Creek Water Company; and

Diane Targovnik, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission

BY THE COMMISSION:

On November 12, 2004, Cave Creek Water Company ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate") to provide public water utility service to Parcel No. 211-99-006 ("Parcel 211") in Maricopa County, Arizona.

On December 7, 2004, pursuant to A.A.C. R14-4-411, the Commission's Utilities Division ("Staff") issued a Notice of Insufficiency in Docket No. W-01452A-04-0810.

On February 9, 2005, the Company filed with the Commission another application for an extension of its Certificate to provide public water utility service to Parcel No. 216-29-002A ("Parcel

1 216”) in Maricopa County, Arizona.

2 Subsequently, in accordance with A.R.S. § 41-1074(C), the Company’s application in Docket  
3 No. W-01452A-05-0082 for Parcel 216 was deemed sufficient.

4 On March 15, 2005, by Procedural Order, a hearing was scheduled to commence on the  
5 Company’s application on Parcel 216 in Docket No. W-01452A-05-0082 on May 5, 2005.

6 On April 4, 2005, the Company filed certification that it had provided public notice of the  
7 proceeding in Docket No. W-01452A-05-0082 pursuant to the Commission’s Procedural Order.

8 On May 5, 2005, a hearing was held in Docket No. W-01452A-05-0082 for the taking of  
9 public comment only with the evidentiary portion of the proceeding continued until June 28, 2005.

10 On June 8, 2005, Staff issued a Notice that the Company’s application in Docket No. W-  
11 01452A-04-0810 for Parcel 211 was deemed sufficient.

12 On June 15, 2005, by Procedural Order, a hearing was scheduled to commence on the  
13 Company’s application on Parcel No. 211 in Docket No. W-01452A-04-0810 on August 23, 2005.

14 In both proceedings, the Town of Cave Creek (“Town”) had filed requests for intervention  
15 which were granted without objection.

16 On June 16, 2005, the Company filed a Motion to Consolidate (“Motion”) in both of the  
17 above-captioned proceedings. The Company requested that the June 28, 2005, evidentiary hearing  
18 scheduled in Docket No. W-01452A-05-0082 be vacated and the proceeding consolidated in the  
19 hearing scheduled in Docket No. W-01452A-04-0810 which was scheduled for hearing on August  
20 23, 2005. Applicant pointed out in its Motion(s) that it would be prudent and in the public interest to  
21 conserve the time and resources of the parties in both Dockets to consolidate these matters into one  
22 proceeding. The Company indicated that it had contacted Staff and the Town with respect to the  
23 respective Motion(s) and that neither party objected to the consolidation of these proceedings.  
24 Lastly, the Company agreed to waive any time-clock requirements or deadlines necessary to facilitate  
25 the consolidation of the proceedings.

26 On June 17, 2005, by Procedural Order, the Company’s Motion was granted and the above-  
27 captioned proceedings consolidated for purposes of hearing. The hearing scheduled in Docket No.  
28 W-01452A-05-0082 was vacated and the time-clock requirements of the proceedings were

1 suspended. Lastly, the public notice previously required in the Procedural Order with respect to  
2 Docket No. W-01452A-04-0810 was revised and notice of the consolidated proceeding published on  
3 July 1, 2005.

4 On August 23, 2005, a full public hearing was convened before a duly authorized  
5 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Cave Creek and  
6 Staff appeared with counsel. Two members of the public appeared and gave public comment at the  
7 outset in favor of the applications. At the conclusion of the hearing, the matter was taken under  
8 advisement pending submission of a Recommended Opinion and Order to the Commission.

9 \* \* \* \* \*

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

12 **FINDINGS OF FACT**

13 1. Pursuant to authority granted by the Commission in Decision No. 28958 (May 24,  
14 1955), the Company is an Arizona corporation which is engaged in the business of providing water  
15 service in an area in and near the Town of Cave Creek, parts of the Town of Carefree, and in  
16 unincorporated portions of Maricopa County, Arizona.<sup>1</sup>

17 2. On November 12, 2004, the Company filed an application for an extension of its  
18 Certificate to provide service to an area known as Parcel 211 which is marked Exhibit "A", attached  
19 hereto and incorporated herein by reference.

20 3. On February 9, 2005, the Company filed an application for an extension of its  
21 Certificate to provide service to an area known as Parcel 216 which is marked Exhibit "B", attached  
22 hereto and incorporated herein by reference.

23 4. Notice of the applications was provided in accordance with the law.

24 5. On June 10, 2005, Staff filed its Staff Report recommending conditional approval of  
25 the application concerning Parcel 216 following a hearing.

26 6. On July 21, 2005, Staff filed its Staff Report recommending conditional approval of  
27

28 <sup>1</sup> On May 3, 2005, the Company's and an affiliated company's stock were acquired by Global Water Resources, L.L.C.

1 the application concerning Parcel 211 following a hearing.

2 7. Parcel 211 is being developed as Black Mountain Vistas on 9.26 acres of land which is  
3 described in Exhibit A. The developer of the parcel has requested water service to develop his land  
4 as a 5 lot subdivision.

5 8. Parcel 216 is being developed as Carefree Vistas on approximately 30 acres of land  
6 which is described in Exhibit B. The developer of the parcel has requested water service to develop  
7 his land as a nine lot subdivision.

8 9. Cave Creek currently provides water service to approximately 2,300 customers in its  
9 certificated service area.

10 10. Cave Creek and the respective developers will enter into main extension agreements  
11 which will be filed for Commission approval after the extension is granted for the areas described in  
12 Exhibits A and B.

13 11. No other public service corporations provide water service in the proposed service  
14 areas.

15 12. The requested extension areas both lie within the Town of Carefree where the  
16 Company operates by permit agreement since the Town has not issued a franchise to the Company,  
17 and prior to the incorporation of Carefree operated as a public service corporation in the Town of  
18 Carefree under its existing Maricopa County franchise.

19 13. However, in this instance, the Company indicated that it will be providing service  
20 through mains in private streets located within the two small projects by means of private easements  
21 granted the developers.

22 14. Staff reviewed the water production and storage capacity of the Company and believes  
23 that Applicant has adequate facilities and capacity to provide service in the requested extension areas  
24 described in Exhibits A and B.

25 15. Although the Company is in substantial compliance with the Maricopa County  
26 Department of Environmental Services ("MCDES") and is providing water which meets the  
27 requirements of the Safe Drinking Water Act, the day before the hearing, Staff became apprised of a  
28 compliance issue which related back to the Company's former owner. The issue was initially raised

1 by MCDES, which notified the Company on December 27, 2004 that the Company failed to monitor  
2 for nitrates at a point of entry during the first quarter of 2003. To be in compliance with MCDES, the  
3 Company was required to provide public notice of the event within 12 months of the notice by  
4 MCDES. There is evidence that on February 2, 2005, a draft copy of the public notice was prepared,  
5 but the Company is presently unable to provide verification from the local newspaper that the public  
6 notice had been posted as required.

7 16. Staff and the Company agreed that, if the verification of notice could not be located by  
8 the Company's present owner and filed with the Commission, then the Company will prepare and  
9 post a new notice in compliance with MCDES' rule by December 27, 2005.

10 17. Cave Creek is current on the payment of its property taxes, and is in compliance with  
11 its filing requirements with the Commission.

12 18. According to Staff, six of the Company's eight wells exceed the new arsenic standard  
13 effective January 23, 2006, but the Company has been testing a blending program to treat its water  
14 using Central Arizona Project ("CAP") water and expects approval of its arsenic treatment plan prior  
15 to the end of 2005.

16 19. Although Staff had pointed out in the Staff Report for Docket No. W-01452A-05-0082  
17 that the Company's treatment plant was not in compliance with MCDES rules because the Company  
18 did not have Approval(s) to Construct ("ATC") from MCDES for several recent upgrades made to its  
19 system, the Company has secured the necessary ATC(s) from MCDES, and provided them to Staff.

20 20. Staff believes there is a public need and necessity for water service to the requested  
21 areas and that the extensions of the Company's Certificate are in the public interest.

22 21. Staff recommended that the Commission condition approval of the applications on the  
23 Company meeting the following conditions:

- 24 1. that the Company be ordered to charge its existing rates and charges in the  
25 proposed extension areas pursuant to Decision No. 55269 (October 30,  
26 1996);
- 27 2. that the Company be ordered to file a rate case by March 31, 2007, using a  
28 2006 test year, at which time the Company's CAP tariff shall be examined;

- 1                   3. that the Company be ordered to file, as a compliance item in this docket, by  
2                   December 31, 2005, with the Commission's Docket Control, a copy of the  
3                   ATC to be issued by MCDES for the Company's final arsenic treatment  
4                   plan;
- 5                   4. that the Company be ordered to file, as a compliance item in this docket,  
6                   within 365 days of the effective date of this Decision, with the  
7                   Commission's Docket Control, a copy of the developer's Certificate of  
8                   Assured Water Supply, stating that there is an adequate water supply,  
9                   where applicable or when required by statute;
- 10                  5. that, pursuant to A.A.C. R14-2-406, the Company file, in Docket Control  
11                  as a compliance item in this case, within 365 days of the effective date of  
12                  this Decision, its main extension agreements with the respective developers  
13                  for approval by Staff; and
- 14                  6. that the Company be ordered to file, in Docket Control as a compliance  
15                  item in this case, not later than forty-five days after the effective date of  
16                  this Decision, a Curtailment Tariff, which shall generally conform to the  
17                  sample tariff found on the Commission's website at [www.cc.state.az.us](http://www.cc.state.az.us).

18           22. Staff further recommends that if the Company fails to timely meet the conditions  
19 numbered 2, 3, 4, 5 and 6 above in Findings of Fact No. 21, then the extensions approved hereinafter  
20 shall be null and void without further Order by the Commission.

21           23. We find that Staff's recommendations, as set forth in Findings of Fact Nos. 21 and 22  
22 are reasonable.

23           24. Because an allowance for the property tax expense of the Company is included in the  
24 Company's rates and will be collected from its customers, the Commission seeks assurances from the  
25 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
26 authority. It has come to the Commission's attention that a number of water companies have been  
27 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,  
28 some for as many as twenty years. It is reasonable, therefore, that as a prophylactic measure the

1 Company annually file, as part of its annual report, an affidavit with the Utilities Division attesting  
2 that the company is current in paying its property taxes in Arizona.

3 **CONCLUSIONS OF LAW**

4 1. The Company is a public service corporation within the meaning of Article XV of the  
5 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

6 2. The Commission has jurisdiction over the Company and the subject matter of the  
7 applications.

8 3. Notice of the applications was provided in accordance with the law.

9 4. There is a public need and necessity for water utility service in the proposed service  
10 areas described in Exhibits A and B.

11 5. Applicant is a fit and proper entity to receive the extensions to its Certificate.

12 6. The applications by Applicant to extend its Certificate for the areas described in  
13 Exhibits A and B should be granted subject to the conditions described in Findings of Fact Nos. 21  
14 and 22.

15 7. Cave Creek should comply with the conditions set forth above in Findings of Fact  
16 Nos. 21 and 22.

17 **ORDER**

18 IT IS THEREFORE ORDERED that the application of Cave Creek Water Company for an  
19 extension of its Certificate of Convenience and Necessity for the operation of a water utility in the  
20 areas more fully described in Exhibits A and B be, and are hereby, granted subject to the conditions  
21 as set forth in Findings of Fact No. 21.

22 IT IS FURTHER ORDERED that in the event that Cave Creek Water Company does not  
23 timely comply with condition numbers 2, 3, 4, 5 and 6 in Findings of Fact No. 21 and Conclusion of  
24 Law No. 6, then the extension of its Certificate of Convenience and Necessity shall be deemed to be  
25 null and void without further Order of the Commission.

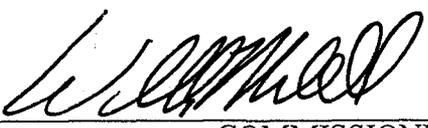
26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that Cave Creek Water Company shall charge water customers  
2 in the areas more fully described in Exhibits A and B the rates and charges authorized in Decision  
3 No. 55269 until further Order by the Commission.

4 IT IS FURTHER ORDERED that Cave Creek Water Company shall file, as part of its annual  
5 report, an affidavit with the Utilities Division attesting that the company is current in paying its  
6 property taxes in Arizona.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9  
10    
11 CHAIRMAN COMMISSIONER

12  
13  
14     
15 COMMISSIONER COMMISSIONER COMMISSIONER

16  
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
18 Director of the Arizona Corporation Commission, have  
19 hereunto set my hand and caused the official seal of the  
20 Commission to be affixed at the Capitol, in the City of Phoenix,  
21 this 30<sup>th</sup> day of Sept., 2005.

22   
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_  
24  
25 DISSENT \_\_\_\_\_  
26  
27  
28

1 SERVICE LIST FOR: CAVE CREEK WATER COMPANY  
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**LEGAL DESCRIPTION**

THAT PART OF THE LITTLE HOPE MINING CLAIM IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 07 MINUTES 22 SECONDS EAST (RECORD SOUTH 00 DEGREES 07 MINUTES 48 SECONDS EAST) A DISTANCE OF 494.41 FEET (RECORD 494.48 FEET) TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00 DEGREES 07 MINUTES 22 SECONDS EAST (RECORD SOUTH 00 DEGREES 07 MINUTES 48 SECONDS EAST) A DISTANCE OF 1454.39 FEET (RECORD 1454.42 FEET);

THENCE SOUTH 77 DEGREES 30 MINUTES 39 SECONDS WEST (RECORD SOUTH 77 DEGREES 30 MINUTES 35 SECONDS WEST) A DISTANCE OF 26.03 FEET;

THENCE NORTH 20 DEGREES 40 MINUTES 50 SECONDS WEST A DISTANCE OF 1435.12 FEET (RECORD 1435.15 FEET);

THENCE NORTH 77 DEGREES 29 MINUTES 46 SECONDS EAST (RECORD NORTH 77 DEGREES 32 MINUTES EAST) A DISTANCE OF 541.99 FEET TO THE TRUE POINT OF BEGINNING.

LEGAL DESCRIPTION

The Southeast quarter of the Northwest quarter of Section 34, Township 6 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona EXCEPTING therefrom the following described parcel:

BEGINNING at the 2 inch diameter brass cap that is stamped center of Section 34, Township 6 North, Range 4 East, L.S. 1681, said point being also the Southeast corner of the Southeast quarter of the Northwest quarter of Section 34;

thence South 89 degrees 07 minutes 56 seconds West, 362.49 feet along the south line of said Southeast quarter of the Northwest quarter to an iron pipe tagged L.S. 1681 set for the Southwest corner of the herein described parcel of land;

thence North 00 degrees 42 minutes 47 seconds West, 1107.69 feet parallel with the East line of said Southwest quarter of the Northwest quarter to an iron pipe tagged L.S. 1681 set for the Northwest corner of the herein described parcel of land;

thence North 89 degrees 07 minutes 56 seconds East, 362.49 feet parallel with the South line of said Southeast quarter of the Northeast quarter to an iron pipe tagged L.S. 1681 set for the Northeast corner of the herein described parcel of land at a point that is on the East line of said Southeast quarter of the Northwest quarter and from which point the Northeast corner of said Southeast quarter of the Northeast corner of said Southeast quarter of the Northwest quarter bears North 00 degrees 42 minutes 47 seconds West, 205.77 feet;

thence from said Northeast quarter of the herein described parcel of land South 00 degrees 42 minutes 47 seconds East, 1107.69 feet along the east line of said Southeast corner of the Northwest quarter to said 2 inch diameter brass cap that is Southeast corner of the herein described parcel of land and the POINT OF BEGINNING.

EXCEPT from all the above, all the coal and other minerals as reserved in Patent from the United States of America.