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Transcript Exhibit(s)

- W-01646A-05-0509
- W-01868A-05-0509 —
- W-02235A-05-0509
- W-02316A-05-0509
- W-02230A-05-0509 —
- W-01629A-05-0509
- W-02240A-05-0509
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MEMORANDUM

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2005 AUG -5 P 2:20

TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

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AUG 05 2005

AZ CORP COMMISSION
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DATE: August 5, 2005

RE: IN THE MATTER OF THE DETERMINATION OF A HOOK-UP MORATORIUM FOR MIRACLE VALLEY WATER COMPANY, INC., COCHISE WATER CO., HORSESHOE RANCH WATER COMPANY, CRYSTAL WATER COMPANY, MUSTANG WATER COMPANY, CORONADO ESTATES WATER COMPANY, AND SIERRA SUNSET WATER COMPANY, ALL OWNED OR OPERATED BY JOHNNY A. MCLAIN (DOCKET NOS. W-01646A-05-0509, W-01868A-05-0509, W-02235A-05-0509, W-02316A-05-0509, W-02230A-05-0509, W-01629A-05-0509, AND W-02240A-05-0509)

Attached is the Staff Report for Miracle Valley Water Company, Inc., Cochise Water Co., Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado Estates Water Company, and Sierra Sunset Water Company (all owned or operated by Johnny A. McLain). Staff recommends the Commission impose a hook-up moratorium.

EGJ:SMO:lh

Originator: Steven M. Olea

EXHIBIT NO. _____
S-1
admitted
LB 9/15/05

Service List for:

Docket Nos. W-01646A-05-0509, W-01868A-05-0509, W-02235A-05-0509, W-02316A-05-0509, W-02230A-05-0509, W-01629A-05-0509, and W-02240A-05-0509

Mr. Timothy Edwards
Arizona Small Utilities Association
210 North Central Avenue, Suite 6B
Avondale, Arizona 85323

Christopher C. Kempley
Chief, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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

**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**MIRACLE VALLEY WATER COMPANY, INC.,
COCHISE WATER CO., HORSESHOE RANCH WATER COMPANY,
CRYSTAL WATER COMPANY, MUSTANG WATER COMPANY,
CORONADO ESTATES WATER COMPANY, AND
SIERRA SUNSET WATER COMPANY, ALL OWNED OR
OPERATED BY JOHNNY A. MCLAIN**

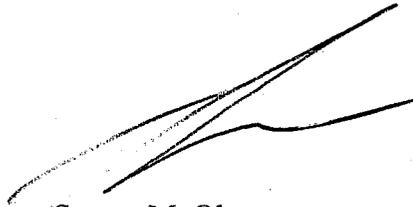
**DOCKET NOS. W-01646A-05-0509
W-01868A-05-0509
W-02235A-05-0509
W-02316A-05-0509
W-02230A-05-0509
W-01629A-05-0509
W-02240A-05-0509**

**APPLICATION FOR
THE
DETERMINATION OF A
HOOK-UP MORATORIUM**

AUGUST 2005

STAFF ACKNOWLEDGMENT

The Staff Report for Miracle Valley Water Company, Inc., Cochise Water Co., Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado Estates Water Company, and Sierra Sunset Water Company (all owned or operated by Johnny a. McLain) Docket Nos. W-01646A-05-0509, W-01868A-05-0509, W-02235A-05-0509, W-02316A-05-0509, W-02230A-05-0509, W-01629A-05-0509, and W-02240A-05-0509, was the responsibility of the Staff members listed below.

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form the name 'Steven M. Olea'.

Steven M. Olea
Assistant Director

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INTRODUCTION

At the direction of the Arizona Corporation Commission ("Commission"), the Commission Staff ("Staff") opened the above dockets. The purpose of the above dockets was for Staff to evaluate the need for a moratorium on new service connections for each of the seven listed water companies. The following is a discussion of Staff's evaluation along with Staff's recommendations based on this evaluation.

GENERAL DISCUSSION

In evaluating whether or not a water system should have a moratorium on new hook-ups placed on it, one needs to consider several primary factors:

1. Water production capacity
2. Water storage capacity
3. The condition of the infrastructure
4. The system's compliance with regulatory requirements.

When considering the above factors, one needs to consider them simultaneously, i.e., how one affects the other. The following are some examples to illustrate this:

1. A water system may have adequate water production capacity supplied by one source (one well, one treatment plant, one interconnection, etc.), but little to no water storage capacity. A system with one water production source must have, at a minimum, storage capacity equal to the system's average daily water use during the peak month. In this particular type of system, the fact that there is adequate water production to serve its customers is not enough. The system as a whole is inadequate due to the lack of proper storage. In addition, due to the critical lack of water storage, the condition of the infrastructure and the compliance status of the system are for all intents and purposes irrelevant.
2. A water system may have adequate water production supplied by several separate sources (wells, rivers, interconnections, etc.). At the same time, the system may have little to no storage. Depending on the location and amount of water production, the fact that the system has little to no storage may or may not render the storage capacity inadequate. The water production sources may be of such capacity and located in such a fashion that even if one or two of the primary sources were out of service, the remaining sources could still supply the amount of water necessary to supply the flow required to serve the average daily usage during the peak month. For this particular type of system, one would need to consider the condition of the infrastructure and the system's compliance status before making a decision on the need for a moratorium on new service connections. It should be noted that even in a water system with many and adequate sources, it is preferable, from an operational standpoint, that the system

have some storage, even though it may not be required from a regulatory standpoint.

3. A water system may have more than adequate storage capacity installed, but may have inadequate water production, even though it may have several sources. In this particular type of system, the water storage capacity, the condition of the infrastructure, and the compliance status are basically irrelevant. A system may have all the storage in the world, all the newest and best infrastructure, and may be in compliance with all regulatory requirements (except for adequate water production), but none of this matters because there is not enough water to fill the tanks or flow through the infrastructure to provide proper and adequate service to the customers.
4. A water system may have completely adequate water production and storage capacities, but may have infrastructure that has been improperly maintained for years and/or may be totally out of compliance with all applicable regulatory agencies. Because of the dilapidated infrastructure and non-compliance status of the system, the service being provided is not adequate and proper and cannot be adequate and proper without major investment in the system for improvements.

CORONADO ESTATES WATER COMPANY ("Coronado")

Based on the Water Use Data Sheet ("WUDS") submitted by the Arizona Small Utilities Association ("ASUA"), the peak water use month for Coronado was June 2005 with a water use of 2,053,320 gallons. (ASUA is the interim operator for all seven McLain water systems.) The WUDS lists Coronado as having one well with a production of 300 gallons per minute ("gpm") and no storage. Based on the water usage during the peak use month, the one well can adequately serve approximately 800 connections. This system currently has approximately 195 connections. However, with one well, this system should have a *minimum* storage capacity equal to the average day water usage during the peak month (with one well, it is preferable to have two to three days worth of storage). It is Staff's opinion that there should be a hook-up moratorium placed on Coronado until at least 100,000 gallons worth of storage is placed on this system. This would provide approximately 1½ days worth of storage. In addition, the moratorium should remain in effect until a well meter is placed on all water sources. Metering the water sources is critical to track water loss and assist in determining if the well(s) and well pump(s) are functioning as expected. Staff also recommends that the moratorium remain in effect until the water system is in total compliance with Commission requirements and in at least substantial compliance with Arizona Department of Environmental Quality ("ADEQ") requirements. Coronado should also consider adding a second well for back-up and reliability purposes, although with 100,000 gallons of storage, this second well would not be a requirement to lift the moratorium.

CRYSTAL WATER COMPANY ("Crystal")

Based on the WUDS submitted by ASUA, the peak water use month for Crystal was May 2005 with a water use of 903,110 gallons. The WUDS lists Crystal as having one well with a production of 30 gpm and no storage. Based on the water usage during the peak use month, the one well can adequately serve approximately 60 connections. This system currently has approximately 65 connections. This system has both inadequate well production capacity and inadequate storage capacity. Therefore, it is Staff's opinion that there should be a hook-up moratorium placed on Crystal until its water production is increased (either a second well or a larger well pump in the current well, if possible) and at least 50,000 gallons worth of storage is placed on this system. This would provide approximately 1½ days worth of storage. In addition, the moratorium should remain in effect until a well meter is placed on all water sources. Metering the water sources is critical to track water loss and assist in determining if the well(s) and well pump(s) are functioning as expected. Staff also recommends that the moratorium remain in effect until the water system is in total compliance with Commission requirements and in at least substantial compliance with ADEQ requirements. Crystal should also consider adding a second well for back-up and reliability purposes, although with 50,000 gallons of storage, this second well would not be a requirement to lift the moratorium.

MIRACLE VALLEY WATER COMPANY, INC. ("Miracle Valley")

Based on the WUDS submitted by ASUA, the peak water use month for Miracle Valley was April 2005 with a water use of 2,740,490 gallons. The WUDS lists Miracle Valley as having one well with a production of 300 gpm and no storage. Based on the water usage during the peak use month, the one well can adequately serve approximately 800 connections. This system currently has approximately 255 connections. However, with one well, this system should have a *minimum* storage capacity equal to the average day water usage during the peak month (with one well, it is preferable to have two to three days worth of storage). It is Staff's opinion that there should be a hook-up moratorium placed on Miracle Valley until at least 150,000 gallons worth of storage is placed on this system. This would provide approximately 1½ days worth of storage. In addition, the moratorium should remain in effect until a well meter is placed on all water sources. Metering the water sources is critical to track water loss and assist in determining if the well(s) and well pump(s) are functioning as expected. Staff also recommends that the moratorium remain in effect until the water system is in total compliance with Commission requirements and in at least substantial compliance with ADEQ requirements. Miracle Valley should also consider adding a second well for back-up and reliability purposes; although with 150,000 gallons of storage, this second well would not be a requirement to lift the moratorium.

SIERRA SUNSET WATER COMPANY ("Sierra")

Based on the WUDS submitted by ASUA, the peak water use month for Sierra cannot be determined because the customers are not metered. The WUDS lists Sierra as having one well with a production of 30 gpm and no storage. Based on a water usage assumption of 0.5 gpm per

connection for well design purposes, the one well can adequately serve approximately 60 connections. This system currently has approximately 30 connections. However, with one well, this system should have a *minimum* storage capacity equal to the average day water usage during the peak month (with one well, it is preferable to have two to three days worth of storage). It is Staff's opinion that there should be a hook-up moratorium placed on Sierra until at least 30,000 gallons worth of storage is placed on this system. In addition, the moratorium should remain in effect until a well meter is placed on the all customers' service lines and all water sources. Metering the customers and water sources is critical to track water loss and assist in determining if the well(s) and well pump(s) are functioning as expected. Staff also recommends that the moratorium remain in effect until the water system is in total compliance with Commission requirements and in at least substantial compliance with ADEQ requirements. Sierra should also consider adding a second well for back-up and reliability purposes; although with 30,000 gallons of storage, this second well would not be a requirement to lift the moratorium.

MUSTANG WATER COMPANY ("Mustang")

Based on the WUDS submitted by ASUA, the peak water use month for Mustang was May 2005 with a water use of 534,040 gallons. The WUDS lists Mustang as having one well with a production of 60 gpm and no storage. Based on the water usage during the peak use month, the one well can adequately serve approximately 215 connections. This system currently has approximately 70 connections. However, with one well, this system should have a *minimum* storage capacity equal to the average day water usage during the peak month (with one well, it is preferable to have two to three days worth of storage). It is Staff's opinion that there should be a hook-up moratorium placed on Mustang until at least 30,000 gallons worth of storage is placed on this system. This would provide approximately 1½ days worth of storage. In addition, the moratorium should remain in effect until a well meter is placed on all water sources. Metering the water sources is critical to track water loss and assist in determining if the well(s) and well pump(s) are functioning as expected. Staff also recommends that the moratorium remain in effect until the water system is in total compliance with Commission requirements and in at least substantial compliance with ADEQ requirements. Mustang should also consider adding a second well for back-up and reliability purposes; although with 30,000 gallons of storage, this second well would not be a requirement to lift the moratorium.

COCHISE WATER CO. & HORSESHOE RANCH WATER COMPANY ("Cochise/Horseshoe")

Cochise Water Co. ("Cochise") and Horseshoe Ranch Water Company ("Horseshoe") are physically tied together; therefore, they will be analyzed as one system. Based on the WUDS submitted by ASUA, the peak water use month for Cochise/Horseshoe was June 2005 with a water use of 4,251,600 gallons. The WUDS lists Cochise/Horseshoe as having four wells (all on the Cochise system) with a total production capacity of 155 gpm. Based on the water usage during the peak use month, the wells can adequately serve approximately 620 connections. This system currently has approximately 590 connections. The WUDS shows Cochise/Horseshoe as having a combined storage capacity of 200,000 gallons. As with all the other water systems

owned and/or operated by Johnny A. McLain, Cochise/Horseshoe is out of compliance with Commission requirements and ADEQ requirements. Cochise/Horseshoe has had a long history of water outages and inadequate service due to inadequate infrastructure and lack of maintenance. Based on this non-compliance status and inadequate infrastructure, it is Staff's opinion that there should be a hook-up moratorium placed on Cochise/Horseshoe until both systems are in total compliance with Commission requirements and at least in substantial compliance with ADEQ. In addition, the moratorium should remain in effect until a well meter is placed on all water sources. Metering the water sources is critical to track water loss and assist in determining if the well(s) and well pump(s) are functioning as expected. Cochise/Horseshoe should also consider adding an additional well or installing large pumps (if possible) in its existing wells (this is currently being evaluated by ASUA) due to the fact that the current customer count (590) is not far from the listed well service capacity (620 customers).

CONCLUSION

Staff is recommending that a moratorium on new service connections be placed on all seven of the water systems owned and/or operated by Johnny A. McLain. The moratoriums should remain in effect until the recommended additions and/or repairs are made to each of the systems.

It should be noted that several of the above systems are in close proximity to each other and could be inter-connected. If this were to occur, the combination of water sources and storage facilities could provide redundancies that would require less storage for each of those systems than delineated above. In the case of the Cochise/Horseshoe system, it may be possible to interconnect it with the neighboring Bella Vista Water C.

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



ARIZONA CORPORATION COMMISSION

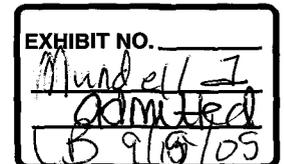
Brian C. McNeil
Executive Secretary

Direct Line: (602) 542-3935
Fax: (602) 542-0752
E-mail wmundell@azcc.gov

July 22, 2005

Chairman Patrick Call
Cochise County Board of Supervisors
1415 Melody Lane
Bisbee, AZ 85603

Re: McClain Water Systems:
Miracle Valley Water Company W-01646A-03-0601
Cochise Water Company W-01868A-03-0601
Horseshoe Ranch Water Co W-02235A-03-0601
Mustang Water Company W-02230A-03-0601
Coronado Estates Water Co W-01629A-03-0601
Sierra Sunset Water Company W-02240A-03-0601
Crystal Water Company W-02316A-03-0601



Dear Chairman Call:

As you know, in recent weeks the Commissioners and Staff of the Arizona Corporation Commission have taken steps to update the public on what is being done to resolve the problems with the McLain water systems. Due to our great concern, the McLain water systems issue was added to the Commission's July 12, 2005 Open Meeting agenda. Then on July 18, 2005 at the town hall meeting in Sierra Vista, residents were given a forum to discuss their concerns with the Commissioners.

At the town hall meeting, the public asked to have a moratorium established to resolve the issues of the McLain water systems. In a recent letter to Commissioner Spitzer you also requested that the Commission establish a moratorium. Several mechanisms can be utilized in this situation, including a moratorium on new hook-ups or a moratorium on building construction. Zoning changes can also be used to help resolve these issues. Since the request of a single supervisor is not binding on the Cochise County Board of Supervisors, I would like to know if the Board is going to vote on a moratorium or other zoning changes. A formal vote and decision by the Supervisors will aid the Commission in addressing the issues of the McLain water systems.

Chairman Patrick Call
July 22, 2005
Page 2

I look forward to working with you and the other supervisors to solve the plight facing the people of Cochise County.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Mundell". The signature is fluid and cursive, with the first name "William" being the most prominent.

William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Cochise County Supervisor Paul Newman
Cochise County Supervisor Richard Searle
Chairman Jeff Hatch-Miller
Commissioner Spitzer
Commissioner Gleason
Commissioner Mayes
Brian McNeil
Ernest Johnson
Timothy Edwards

Board of Supervisors

Patrick G. Call
Chairman
District 1

Paul Newman
Vice-Chairman
District 2

Richard R. Searle
District 3



Jody N. Klein
County Administrator

Nadine Parkhurst
Clerk

August 4, 2005

The Honorable Jeff Hatch-Miller
Chairman, Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Dear Chairman Hatch-Miller and Commission Members:

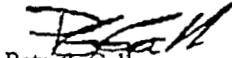
The Board of Supervisors of Cochise County unanimously requests that the Arizona Corporation Commission establish a moratorium on new hook-ups to the McLain water companies in Cochise County that are now under the interim management of ASUA.

The Board of Supervisors greatly appreciates the efforts that have been undertaken by the Commission and the Governor's office to address the concerns. As of this writing, temporary water service to many residents who have been without water on a regular basis has been restored. Most of the homes in the area use evaporative cooling and many of the residents in the area are elderly. However, there remain substantial problems with the infrastructure, and a permanent solution must occur in order to preserve the health and well being of the residents of these seven water companies.

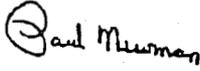
Given the continuing issues with the infrastructure and lack of a permanent solution, it makes no sense at all to continue adding new users until the issues are resolved. We, the Board of Supervisors, recognize that a moratorium on new hook-ups to the system, which is within the constitutional power and authority of the Commission, is a severe step to take. Nevertheless, it is the right one. We have explored whether or not the County has the legal authority to impose a moratorium through its land use processes, and it is the opinion of our legal counsel that we do not have the statutory authority to do so under A.R. S. section 11-833, and even if we did, it would be for a very limited time, and the County does not have any authority to effectuate a viable solution. Accordingly, we urge the Commission to exercise the authority that it possesses to impose such a moratorium.

Thank you for your consideration. Please feel free to contact us if you need further information.

Sincerely,



Patrick Call
Chairman



Paul Newman
Supervisor, District 2



Richard Searle
Supervisor, District 3

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



ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
Executive Secretary
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E-mail: kmayes@cc.state.az.us

August 8, 2005

Supervisor Pat Call
Supervisor Paul Newman
Supervisor Richard Searle
Cochise County Board of Supervisors
1415 Melody Lane, Building G
Bisbee, AZ 85603

Re: McLain Water System Unpaid Taxes; Docket No. W-01646A-03-0601, et al

Dear Supervisors:

I'm writing to you today about the unpaid taxes owed by the McLain Water Systems to Cochise County. The combined water systems owned by Johnny McLain owe approximately \$500,000 to your County. I would like to ask you to vote to waive part, or all, of these monies.

Toward that end, I believe you would be aided by Arizona Revised Statute § 42-18124 granting county boards of supervisors the authority to compromise taxes, interest and penalties:

"A. If it appears to the board of supervisors that any property is not worth the amount of taxes, interest, costs and penalties due or that the tax lien on the property would not sell for that amount, the board may compromise the taxes, interest and penalties with the owner."

I ask you to act pursuant to ARS § 42-18124 in order to reduce these taxes, which in turn will lower the purchase price on the system and help prevent further harm to the ratepayers of the McLain system. As you know, there is an interested buyer for the system who has committed \$200,000 in earnest money and who has participated with the Commission in crafting a pathway toward a final purchase. However, the ultimate purchase price will no doubt be largely driven by the outstanding property and sales taxes owed by McLain. Therefore, any amount – large or small – that is forgiven by the County, will help encourage a sale and prevent ratepayers from being asked to foot the bill for the unpaid taxes in the form of an even heftier future rate increase request by the purchasing company.

Indeed, one of the most frustrating aspects of this case is that ratepayers have already paid the Commission-approved rates that McLain charged over the past two decades, which includes property taxes. It was McLain's obligation to pay these taxes and to seek regular rate adjustments to cover these and other operating expenses. But because of McLain's inaction to do

Cochise County Supervisors

August 5, 2005

Page 2

so and because of his failure to pay the property taxes owed to the County, these ratepayers are saddled with this burden through no fault of their own. Now, these ratepayers, who have already suffered much, may face a considerable increase above the water systems' value so that McLain's delinquent tax bill can be paid, after a company purchases the water systems. I am hopeful that we can avoid this bad result.

Finally, let me thank each of you for your help in addressing this troubled water system these past few months. I received your letter requesting the hook-up moratorium and appreciate the alacrity with which it was issued and the thoughtfulness that went into writing it. I anticipate a vote on the moratorium issue closely on the heels of a Staff report and recommendation on the matter, which was filed on Friday.

I stand ready to work with you to find a permanent solution for the citizens who rely on this system. Thank you very much for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Mayes", with a long horizontal flourish extending to the right.

Kris Mayes
Commissioner

Cc: Chairman Jeff Hatch-Miller
Commissioner William Mundell
Commissioner Marc Spitzer
Commissioner Mike Gleason
Ernest Johnson
Steve Olea
Brian McNeil
Heather Murphy