



BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN

2005 SEP 30 P 4: 55

WILLIAM A. MUNDELL

MARK SPITZER

AZ CORP COMMISSION
DOCUMENT CONTROL

MIKE GLEASON

KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION
OF WATER UTILITY OF GREATER
TONOPAH, INC., FOR AN EXTENSION
OF ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY

DOCKET NO. W-02450A-05-0430

POST HEARING MEMORANDUM

Water Utility of Greater Tonopah, Inc. ("WUGT"), by and through its attorneys undersigned, files this post hearing brief on the issue of whether a *nunc pro tunc* order is appropriate in accordance with the instruction of Administrative Law Judge Kinsey at the close of the evidentiary hearing.

INTRODUCTION

The above captioned matter was initiated only after WUGT unexpectedly discovered that the Commission's records still reflect West Phoenix Water Company, Inc. ("West Phoenix") as the water provider certificated to serve the West Half of Section 30, and all of Section 31 in Township 2 North, Range 6 West, Maricopa County (the "Land"). As will be demonstrated herein, the record created in 1985 clearly reflects that all of West Phoenix's certificate was transferred without West Phoenix retaining a small CC&N over the Land. What occurred was an inadvertent mistake in the legal description that resulted in Decision No. 54419 failing to properly reflect the action taken - - the transfer of all of West Phoenix's CC&N. An Order *nunc pro tunc* amending Decision No. 54419 to include the Land pursuant to A.R.S. § 40-

1 252 is the appropriate procedure to correct the record. If an Amended Decision is not entered
2 *nunc pro tunc*, there will be a 20 year period where a dissolved corporation, without any
3 employees and making none of the required regulatory filings, held a CC&N for the Land. On
4 the other hand, entry of an Amended Decision *nunc pro tunc*, will ensure the Commission's
5 records show the certificate encompassing the Land timely passed to a viable public service
6 corporation. The latter result, not the former, is what the Commission actually ordered by
7 Decision No. 54419, but for an error in the legal description.

8
9 **THE COMMISSION MAY ENTER NUNC PRO TUNC ORDERS**

10 A.R.S. § 40-252 expressly vests the Commission with authority to rescind, alter or
11 amend its decisions at any time:
12

13 The commission may at any time, upon notice to the corporation
14 affected, and after opportunity to be heard as upon a complaint, rescind,
15 alter or amend any order or decision made by it. When the order
16 making such rescission, alteration or amendment is served upon the
17 corporation affected, it is effective as an original order or decision.

18 Since the Commission has clear authority to amend Decision No. 54419, the only
19 question is whether it has authority to do so *nunc pro tunc*. *Nunc Pro Tunc* is a Latin term
20 meaning "now for then". When an order is signed "*nunc pro tunc*" as of a specified date, it
21 means that a thing is now done which should have been done on a specified date. Black's Law
22 Dictionary, 7th Edition page 1097 citing 35a *C.J.S. Federal Civil Procedures* § 370, at 556
23 (1960). Black's further defines *nunc pro tunc* judgment as "a procedural device by which the
24 record of a judgment is amended to accord with what the judge actually said and did so that the
25 record will be accurate. This device is often used to correct defects in real-estate titles." *Id.* at p.

26 848
27

1 Rule 60(a) A.R.C.P. permits the correction of clerical mistakes in judgments,
2 orders or other parts of the record and errors therein arising from oversight or omission. Rule
3 58(a) A.R.C.P. expressly authorizes the entry of judgment *nunc pro tunc*, "in such circumstances
4 and on such notice as justice may require." The Commission has specifically incorporated the
5 Arizona Rules of Civil Procedure pursuant to A.A.C. R14-3-101A.
6

7 In *American Trucking Associations v. Frisco Transportation Company*, 358 U.S.
8 133, 145-46, 79 S. Ct. 170-78 (1958), the Court stated:

9 "[T]he presence of authority in administrative officers and tribunals to
10 correct such errors [arising from oversight or omission] has long been
11 recognized - -probably so well recognized that little discussion has
12 ensued in the reported cases."

13 In *McKeone v. Red Ball Transfer Co.*, 159 Neb. 448, 67 N.W. 2d 475 (1954), the
14 Nebraska Supreme Court recognized it to be appropriate for a utility regulatory commission to
15 enter an order *nunc pro tunc* fifteen (15) years following the entry of an original order granting a
16 certificate clarifying the area (route) covered by the certificate. The court recognized that the
17 proper function of a *nunc pro tunc* order "is to correct the record which has been made, so that it
18 will truly record the action really had, but which through some inadvertence or mistake has not
19 been truly recorded."¹ *Cf. Andrews v. Nebraska State Railway Commission*, 178 Neb. 799, 135
20 N.W. 2d. 712 (where the court upheld the Commission's refusal to issue an order *nunc pro tunc*
21 that would have enlarged the authority originally granted).
22

23 In the present case, the original Decision of the Commission was to convey all of
24 West Phoenix's CC&N. Therefore, an amendment of the Decision pursuant to A.R.S. § 40-252
25 to include the Land inadvertently omitted can and should be made *nunc pro tunc*.
26

27 _____
28 ¹ A copy of the McKeone case is provided to the Administrative Law Judge and Staff for their convenience.

1 **WEST PHOENIX HELD THE CC&N FOR THE LAND**

2 As reflected in the Affidavit of John Mihlik, Jr. attached hereto as Exhibit A,
3 WUGT has searched the Commission's records with the assistance of Docket Control personnel,
4 to locate relevant Commission Decisions. As reflected in the testimony at hearing, the Land was
5 encompassed within the certificate of convenience and necessity of the Tonopah Water
6 Company, a Partnership, pursuant to Decision No. 33434, dated October 6, 1961.² A copy of the
7 Decision is attached as Exhibit B. WUGT's search of the Commission's records located no
8 Decisions deleting the land from Tonopah's certificated area. See Affidavit of John Mihlik, Jr.
9

10 Next, Decision No. 39759, dated December 5, 1968, approved Tonopah's
11 Application to transfer all of its certificate of convenience and necessity to West Phoenix Water
12 Company, the Land was necessarily encompassed within West Phoenix's CC&N. A copy of
13 Decision No. 39759 is attached as Exhibit C.
14

15 West Phoenix then transferred all of its CC&N pursuant to Decision Nos. 54418
16 and 54419, copies of which are attached hereto as Exhibits D and E.
17

18 **WEST PHOENIX SOUGHT, AND THE COMMISSION APPROVED A**
19 **TRANSFER OF ALL ITS CC&N**

20 In July 1984, West Phoenix filed applications with the Commission to transfer its
21 entire certificate of convenience and necessity, in part to West Buckeye Water Co. (now WUGT)
22 and in part to Northwest Buckeye Water Company, Inc. (now Water Utility of Greater
23 Buckeye)³. At the hearing conducted on February 7, 1985, Mr. Mihlik explained at pp 5-6:
24
25

26 ² The first ordering paragraph granted a certificate of convenience and necessity to construct, operate and maintain a
27 public water system to serve specifically described area, including "the West Half ("W1/2") of Section 30, and all of
28 Section 31 in Township 2 North, Range 6 West."

³ The Amendments changing the corporate names are attached hereto as Exhibits F and G.

1 “. . . West Phoenix Water Company, at this point in time has a CC&N
2 or certificated area as shown in green. It takes up a fair amount of land
3 towards the Tonopah area. The two areas of the green are separated by
4 the Hassayampa River which runs down through this area here. The
5 other company, Sunshine Land and Cattle Corporation, operates and
6 owns the franchise and certificated area in blue here, which is, again,
7 on the west side of the Hassayampa River.

8 So what these two companies did is they got together and West
9 Buckeye Water Company purchased all the franchise area on the west
10 side of the River. Northwest Buckeye Water Company purchased this
11 portion of the West Phoenix Water Company franchise area and
12 certificated area. So what happens is that . . . [A]ll of the properties
13 west of the Hassayampa now belong to West Buckeye Water Company.
14 All of the properties or all of the certificated areas now east of the
15 Hassayampa River belong to Northwest Buckeye Water Company.”

16 Legal counsel for West Phoenix further stated at page 12: “. . . The main purpose
17 was to divide these two companies, the one group of companies under one entity on the one side
18 of the Hassayampa River and the other under another corporation on the other side of the
19 Hassayampa River. The same owners are involved in each.” Copies of the transcript’s cited
20 pages are attached as Exhibit H.

21 As a result of the hearing, the Commission issued Decision Nos. 54418 and 54419
22 on April 1, 1985. Decision No. 54418 transferred a portion of West Phoenix’s certificate of
23 public convenience and necessity to Northwest Buckeye Water Company, Inc. (now Water
24 Utility of Greater Buckeye) and Decision No. 54419 transferred a portion of West Phoenix’s
25 CC&N to West Buckeye Water Company (now, WUGT). As referenced in Decision No. 54419
26 “the primary purpose of the transfers was to bring in persons with financial capabilities to assist
27 with development as needed and to divide the areas to be serviced into two discrete areas
28 separated by the Hassayampa River (“River”).” (emphasis added) The Decision further

1 explained: "This can not approve/disapprove any deletions until a determination is made on the
2 overall affect to the public in the current and remaining certificated areas."

3 From the foregoing it is clear the Applicant sought, and the Commission granted,
4 the transfer of all of West Phoenix's CC&N. However, it was not possible to simply make
5 reference to all of the certificated area as had been done in Decision No. 39759. Since the
6 CC&N area was being divided and transferred to two entities, lengthy legal descriptions of the
7 area to be transferred to West Buckeye Water Company (now WUGT) needed to be set forth in
8 Findings of Fact 3 and 4, with Finding of Fact number 4 listing the area to be transferred from
9 West Phoenix. The description however, inadvertently omitted the Land. The omission of the
10 Land was an inadvertent mistake and inconsistent with the Commission decision to transfer all
11 of West Phoenix's CC&N through Decision No. 54418 and 54419. WUGT did not realize a
12 mistake had been made until the later part of 2004 or early 2005 when it received a map from the
13 Arizona Corporation Commission mapping division which reflected a small area still certificated
14 to West Phoenix Water Company. The error was immediately brought to the Commissions
15 attention through the present application. See Affidavit of John Mihlik, Sr. previously filed in
16 this docket; a copy of which is attached hereto as Exhibit I.

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20 **RELIEF SOUGHT**

21 WUGT seeks an order from the Commission pursuant to A.R.S. § 40-252
22 amending Decision No. 54419 to include the Land's legal description within Finding of Fact No.
23 4. Such an amendment is clearly authorized by A.R.S. § 40-252 and is supported by the
24 testimony in 1985 and in this docket. WUGT further asks that the amendment of Decision No.
25 54419 be entered *nunc pro tunc*, since it reflects the true Decision entered by the Commission in
26
27
28

1 1985. Whether entered *munc pro tunc* or not, Decision No. 54419 should be amended to include
2 a legal description of the Land in Finding of Fact No. 4.

3
4 Alternatively, if the Commission decides not to amend Decision No. 54419, then
5 WUGT respectfully requests the CC&N that would still be held by West Phoenix be forthwith
6 transferred to WUGT.

7 DATED this 30th day of September, 2005.

8 CURTIS, GOODWIN, SULLIVAN,
9 UDALL & SCHWAB, P.L.C.

10
11 By 
12 William P. Sullivan, Esq.
13 Michael A. Curtis, Esq.
14 Nancy A. Mangone, Esq.
15 2712 North Seventh Street
16 Phoenix, Arizona 85006-1090
17 Attorneys for Water Utility of Greater Tonopah,
18 Inc.
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PROOF AND CERTIFICATE OF MAILING

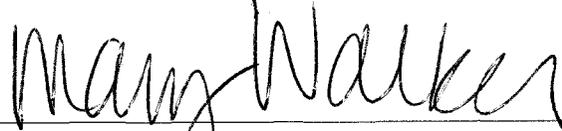
I hereby certify that on this 30th day of September, 2005, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Yvette B. Kinsey, ALJ
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007



F:\1284-5-3-2 (West Phoenix CC&N Transfer)\Pleadings\Post Hearing Brief.doc

EXHIBIT A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 **MARK SPITZER, CHAIRMAN**

4 **WILLIAM A. MUNDELL**

5 **JEFF HATCH-MILLER**

6 **MIKE GLEASON**

7 **KRISTIN K. MAYES**

8 **IN THE MATTER OF THE**
9 **APPLICATION OF WATER UTILITY OF**
10 **GREATER TONOPAH, INC., FOR AN**
11 **EXTENSION OF ITS CERTIFICATE OF**
12 **CONVENIENCE AND NECESSITY**

DOCKET NO. W-02450A-05-0430

AFFIDAVIT OF J. JOHN MIHLIK, JR.

13 I, John Mihlik, Jr., being first duly sworn upon my oath, do attest to the following:

14 1. I am the Chief Financial Officer of Water Utility of Greater Tonopah, Inc.
15 ("Company").

16 2. During the month of September 2005, the Company had its Staff, with the
17 assistance of the Arizona Corporation Commission Docket Control Department, research
18 any ACC Decisions regarding the **CC&N of West Phoenix Water Company** and the
19 **CC&N of Tonopah Water Company** from 1961 to 2005. The following Decisions were
20 located:

21 a. **Decision No. 33434** dated October 6, 1961– In the matter of **Tonopah**
22 **Water Company**, a partnership consisting of R. M. Makemson, R. S. Spoon, John A.
23 Murphy, John M. Scott and Earl P. Snoddy, for a Certificate of Convenience and Necessity
24 to construct, operate and maintain a public utility water system in the area described
25
26
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28

1 (includes the West Half of Section 30 and all of Section 31, Township 2 North, Range 6
2 West of Maricopa County).

3
4 b. **Decision No. 39759** dated December 5, 1968– In the matter of
5 **Tonopah Water Company** for authority to sell, transfer and assign all of its right, title and
6 interest in and to the Certificated of Convenience and Necessity heretofore issues by this
7 Commission to **West Phoenix Water Co.**, an Arizona corporation.

8
9 c. **Decision No. 39760** dated December 5, 1968 – In the matter of
10 **Wintersburg Water Company** for authority to sell, transfer and assign all of its right, title and
11 interest in and to the Certificate of Convenience and Necessity heretofore issued by this
12 Commission to **West Phoenix Water Co.**, an Arizona corporation.

13
14 d. **Decision No. 40701** dated June 22, 1970 – In the matter of C. S. Jensen,
15 dba **Rose View Water Company**, for authority to sell the physical assets and transfer the
16 Certificate of Convenience and Necessity to **West Phoenix Water Company**, a corporation.

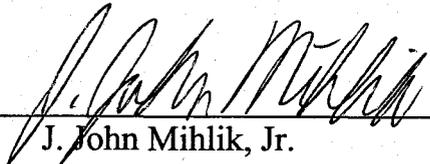
17
18 e. **Decision No. 54419** dated April 1, 1985 – In the matter of **Sunshine**
19 **Land and Cattle Corp.** dba **Sunshine Water Company** and **West Phoenix Properties, Inc.** dba
20 **West Phoenix Water Co., Inc.** for a transfer of corporate assets to **West Buckeye Water Co.**

21
22 f. **Decision No. 54418** dated April 1, 1985– In the matter of **West Phoenix**
23 **Properties, Inc.** dba **West Phoenix Water Co., Inc.** for a transfer of a portion of the
24 corporate assets to **Northwest Buckeye Water Company, Inc.**

25 3. None of the foregoing Decisions approve the deletion of the West Half of
26 Section 30 or all of Section 31, Township 2 North, Range 6 West of Maricopa County from
27 any Certificate of Convenience and Necessity subsequent to the property's initial inclusion
28

1 within the Certificate of Convenience and Necessity issued to Tonopah Water Company
2 pursuant to Decision No. 33434.

3 Further affiant sayeth naught.

4
5 
6 _____
7 J. John Mihlik, Jr.

8 STATE OF ARIZONA)
9) ss.
10 County of Maricopa)

11 The above instrument was executed and acknowledged before me this 29th
12 day of September, 2005, by J. John Mihlik, Jr.

13 
14 _____
15 Notary Public

16 My Commission Expires:

17 10/31/06
18 _____



19 CHRISTINA VAN GOETHEM
20 Notary Public - Arizona
21 Maricopa County
22 Expires 10/31/06

EXHIBIT B

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF TOMOPAH WATER COMPANY, A PARTNERSHIP CONSISTING OF R. M. MAKINSON, R. S. SPOON, JOHN A. MURPHY, JOHN M. SCOTT AND EARL P. SNODDY, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO CONSTRUCT, OPERATE AND MAINTAIN A PUBLIC UTILITY WATER SYSTEM IN THE AREA DESCRIBED AS SECTIONS 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35 AND 36 OF TOWNSHIP 2 NORTH, RANGE 7 WEST, AND SECTIONS 1, 2, 3, 4, 5 AND 12 OF TOWNSHIP 1 NORTH, RANGE 7 WEST, SECTIONS 18, 19, 30 AND 31 OF TOWNSHIP 2 NORTH, RANGE 6 WEST, AND SECTION 6, TOWNSHIP 1 NORTH, RANGE 6 WEST, GASBARI, MARICOPA COUNTY, ARIZONA.

DOCKET NO. U-1648

DECISION NO. 15434

OPINION AND ORDER

DOCKETED
JAN 10 1960
ARIZONA CORPORATION COMMISSION

BY THE COMMISSION:

Notice having been given as provided by law the above entitled matter came on for hearing before the Commission on February 4, 1960 in Phoenix, Arizona, after having been continued from June 19, 1959 on motion of James E. Smith, attorney for and on behalf of applicants.

Applicants were represented by their attorney, James E. Smith, of the law firm of Stahl, Murphy & Blakely. Appearances in opposition were entered by J. Lamar Shelley, attorney for and on behalf of the League of Arizona Cities and Towns, Patrick Burke on behalf of the City of Phoenix, and numerous landowners in their own behalf.

During the hearing Applicants through their attorney requested and was given permission to amend their application by deleting therefrom the West Half (W_{1/2}) of Section 18, Township 2 North, Range 6 West; Lots 1, 2, 3, 4 and the East Half (E_{1/2}) of the West Half (W_{1/2}) of Section 18, Township 2 North, Range 6 West and the Northwest Quarter (NW_{1/4}) of Section 18, Township 2 North, Range 7 West, the South Half (S_{1/2}) of Section 19, Township 2 North, Range 7 West; the South Half (S_{1/2}) and the Northwest Quarter (NW_{1/4}) of Section 19, Township 2 North, Range 6 West; the East Half (E_{1/2}) of Section 30, Township 2 North, Range 6 West; the West Half (W_{1/2}) of Section 2, Township 1 North, Range 7 West, Section 3, Township 1 North, Range 7 West.

The State Land Department entered its opposition to the granting of the certificate over any and all State Land which

WLG-4

ORDER NO. U-1042DECISION NO. 27, 27

was included in the application.

In an Executive Session held on August 9, 1961 it was the decision of the Commission that the application be granted subject to stipulations entered into and deletions requested.

~~WHEREFORE~~, IT IS ORDERED that this order shall constitute and be a certificate of convenience and necessity pursuant to §40-281, Arizona Revised Statutes, authorizing applicants herein to construct, operate and maintain a public water system to serve domestic water to the residents and commercial establishments in the area described as all of Section 8, Township 1 North, Range 6 West; the East Half (E $\frac{1}{2}$) of Section 18, the Northwest Quarter (NW $\frac{1}{4}$) of Section 19, the West half (W $\frac{1}{2}$) of Section 30, and all of Section 31 in Township 2 North, Range 6 West; the East Half (E $\frac{1}{2}$) of Section 2, all of Section 4, all of Section 5 and all of Section 12 in Township 1 North, Range 7 West; all of Section 13, the Northeast Quarter (NE $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of Section 14, the North Half (N $\frac{1}{2}$) of Section 15, all of Section 16, all of Sections 20, 21, 22, 23 and 24 and all of Sections 25, 26, 27, 28, and 29, and all of Sections 32, 33, 34 and 35 and all of Section 36 in Township 2 North, Range 7 West, ~~CoSHist~~, Maricopa County, Arizona.

IT IS FURTHER ORDERED that the rates approved and which shall apply are \$4.00 minimum charge per month for the first 8,000 gallons or less per consumer, and \$0.40 per 1,000 gallons in excess of the first 8,000 gallons minimum. All other rates and charges shall be all in accordance with General Order No. U-4, Rules and Regulations for Domestic Water Companies.

IT IS FURTHER ORDERED that before any construction is commenced by Applicants, plans and specifications of the system must be submitted to the Bureau of Sanitation of the State Health Department for approval of same and said approval must be obtained. Otherwise, this certificate of convenience and necessity shall be null and void.

DOCKET NO. U-1648

DECISION NO. 38434

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction over this matter and in the future anyone owning 160 acres or more and who desires to have his property deleted from the certificated area herein may by written application to the commission in which good cause is shown have his property deleted from this certificate of convenience and necessity.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed, at the Capitol in the City of Phoenix, this 6 day of Oct, 1961.

FRANCIS J. BYRNES
SECRETARY

Francis J. Byrnes

[Signature]

CHAIRMAN

COMMISSIONER

COMMISSIONER

EXHIBIT C

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BEFORE THE ARIZONA CORPORATION COMMISSION

E. T. "BOB" WILLIAMS, JR.

Chairman

IRVIN HERBERT

Commissioner

MILTON J. HENRY

Commissioner

IN RE MATTER OF THE APPLICATION OF TONGPAH WATER COMPANY FOR
ADJUSTMENT OF RATE, TRANSFER AND ASSIGN ALL OF ITS RIGHT, TITLE
AND INTEREST IN AND TO THE CERTIFICATE OF CONVENIENCE AND
NECESSITY HERETOFORE ISSUED BY THIS COMMISSION TO WEST PHOENIX
WATER CO., AN ARIZONA CORPORATION.

U-1683
DOCKET NO. H-2667

DECISION NO. 39759

OPINION AND ORDER

BY THE COMMISSION:

The above entitled matter came on for hearing before
the Commission at Phoenix, Arizona on October 10, 1968.

John A. Murphy appeared on behalf of Tongpah Water
Company and Frank B. Salisbury represented West Phoenix
Water Co. Evidence was adduced and from that evidence it is
found:

1. That applicant desires to sell, transfer and assign all of its right, title and interest to West Phoenix Water Co., a corporation.
2. That such sale and transfer is in the public interest.

IT IS FURTHER ORDERED that the rates and charges for water sold shall be:

MONTHLY SERVICE CHARGE

5/8" Meters	\$ 4.00
3/4" "	5.00
1" "	7.00
1 1/2" "	12.00
2" "	18.00

75¢ per thousand gallons for all water consumed.

WHEREFORE, IT IS ORDERED that the application be, and the same is hereby, granted as prayed for.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

ORDER NO. 12345

ORDER NO. 39759

BEFORE ME, CHARLES D. HADLEY,
Secretary of the Arizona Corporation Commission,
my hand and seal and in the official
presence of this Commission, to be affixed at the
City of Phoenix, this 5th day
of October, 1968.

Charles D. Hadley
CHARLES D. HADLEY
SECRETARY

David Herbert *John H. ...*
CHAIRMAN COMMISSIONER COMMISSIONER

EXHIBIT D

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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

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RICHARD KIMBALL
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
RENZ D. JENNINGS
COMMISSIONER

DOCKETED BY *[Signature]*

IN THE MATTER OF THE APPLICATION OF)
WEST PHOENIX PROPERTIES, INC. dba WEST)
PHOENIX WATER CO., INC., FOR A TRANSFER)
OF A PORTION OF THE CORPORATE ASSETS)
TO NORTHWEST BUCKEYE WATER COMPANY,)
INC. (U-2451))

DOCKET NO. U-2067-84-182

DECISION NO. 54418

OPINION AND ORDER

DATE OF HEARING: February 7, 1985
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Jerry L. Rudibaugh
APPEARANCES: Christopher Kempley, Attorney for the Legal
Division, on behalf of the Arizona Corporation
Commission Staff
Cunningham, Goodson & Tiffany, Ltd., by John F.
Goodson, Attorneys for the Applicants.

BY THE COMMISSION:

On July 24, 1984, West Phoenix Properties, Inc., dba West Phoenix Water
Company, Inc. ("West Phoenix") and Northwest Buckeye Water Company, Inc.
("Northwest") filed an Application with the Arizona Corporation Commission
("Commission") seeking authorization to transfer to Northwest a portion of West
Phoenix's Certificate of Public Convenience and Necessity ("Certificate") and
corresponding corporate assets.

Pursuant to Notice dated January 24, 1985, the Application came on for
hearing before a duly authorized Hearing Officer of the Commission at its
offices in Phoenix, Arizona, on February 7, 1985. West Phoenix, Northwest, and
the Commission's Utilities Division Staff ("Staff") appeared through counsel.
Evidence was presented in support of the Application and after a full public
hearing, the matter was adjourned pending submission of a recommended

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1 Opinion and Order by the Presiding Officer to the Commission.

2 DISCUSSION

3 In 1970, West Phoenix was granted a Certificate to provide water service
4 to large areas on both sides of the I-10 Freeway, north of the Palo Verde
5 Nuclear Generating Plant ("Palo Verde") and the Town of Buckeye ("Town"). The
6 development of the area has lagged due to delays in completion of the freeway
7 into Phoenix as well as the scare resulting from the Three Mile Island Nuclear
8 accident.

9 To date, there are no customers in the area proposed to be transferred to
10 Northwest. This has resulted in a financial liability placed on the current
11 owners of West Phoenix (the John Mihlik family) and they have opted to transfer
12 portions of West Phoenix to two newly formed water companies (Northwest and
13 West Buckeye Water Co.) in which ownership of each is divided equally among
14 three families. (For discussion of the transfer to West Buckeye Water Co., see
15 Docket No. 2067-84-183). The purpose of the transfers was to primarily bring in
16 persons with financial capabilities to assist development as needed and to
17 divide the areas to be serviced into two discrete areas separated by the
18 Hassayampa River ("River").

19 The proposed area to be transferred to Northwest is located east of the
20 River and north of the Town and encompasses approximately 3300 acres. The area
21 includes West Phoenix Estates subdivisions X, XI and XII, which consist of 350
22 one acre parcels. There are two well sites and approximately seven miles of
23 water lines located throughout the area. With completion of I-10 into central
24 Phoenix, Northwest expects development to occur in the area. In addition,
25 Northwest is currently negotiating a contract to provide water to the Town
26 which is located outside of the proposed area to be transferred. Northwest
27 indicated it had an assured water supply which would be sufficient to service
28 its proposed area as well as the Town. If the contract is constructed, a 12

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D-2007-11-121

1 mile line will have to be constructed which will require considerable
2 financing.

3 Mr. Richard Wrublick of Buckeye, Arizona attended the hearing and
4 expressed a desire to have his land holdings removed from the certificated
5 area. Northwest and West Phoenix were in agreement with Mr. Wrublick's
6 request. However, it is noted that prior to any decision on deletion, there
7 will need to be a hearing request and a determination as to whether or not it
8 would be in the public interest.

9 * * * * *

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

12 **FINDINGS OF FACT**

13 1. West Phoenix is an Arizona corporation which was granted a
14 certificate by this Commission in June 1970, pursuant to Decision No. 40701, to
15 provide water utility service in certain portions of Maricopa County, Arizona.

16 2. On July 24, 1984, West Phoenix and Northwest filed an Application
17 with the Commission seeking authorization to transfer to Northwest a portion of
18 the Certificate and corporate assets of West Phoenix.

19 3. The area proposed to be transferred is as follows:

- 20 A) West Phoenix Estates, Unit X
- 21 T1N, R5W, Sec. 1, E 1/2 and SW 1/4
- 22 B) West Phoenix Estates, Unit XI
- 23 T1N, R4W, Sec. 6, W 1/2
- 24 C) West Phoenix Estates, Unit XII
- 25 T1N, R4W, Sec. 6, E 1/2
- 26 D) Township 2 North, Range 4 West
- 27 Section 33: N 1/2
- 28 E) Township 1 North, Range 5 West
- Section 13: NW 1/4

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F) Township 1 North, Range 4 West
Section 7: SE 1/4
18: E 1/2 Except SE 1/4, SE 1/4
17: NW 1/4
21: All
28: N 1/2

4. Maricopa County Board of Supervisors has consented to the transfer of franchise from West Phoenix to Northwest for the proposed area.

5. There will be no affect on the rates established for the proposed area.

6. There are no other water companies sarvicing the area.

7. The assets to be transferred include two wells, water lines, gate valves, and a large underground reservior of potable water.

8. Northwest's stockholders are individuals who are capable of generating sizeable amounts of capital and loans necessary to enlarge the existing water utility facilities.

9. Notice of the proposed transfer was published in the Buckeye Valley News.

CONCLUSIONS OF LAW

1. West Phoenix is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 and §40-282.

2. The Commission has jurisdiction over West Phoenix and Northwest and of the subject matter of the Application pursuant to A.R.S. §40-285.

3. There is a continuous need for a domestic water company to serve future customers in West Phoenix's certificated area east of the the River.

4. Northwest is a fit and proper entity to receive a Certificate for providing of water utility service to the area to be transferrad.

ORDER

WHEREFORE, IT IS ORDERED: That West Phoenix Water Company, Inc. is hereby authorized to transfer its Certificate of Public Convenience and Necessity for the area east of the Hassayam, River as described in Finding of Fact No. 3,

U-2007-04-101

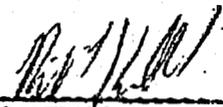
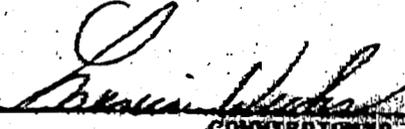
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1 and its corresponding corporate assets to Northwest Buckeye Water Company, Inc.

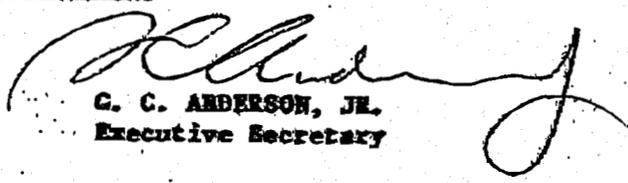
2 IT IS FURTHER ORDERED: That the rates to be charged by Northwest Buckeye
3 Water Company, Inc. to the area east of the Hassayampa River shall remain the
4 same as West Phoenix Water Company, Inc. rates currently on file with the
5 Commission.

6 IT IS FURTHER ORDERED: That this Decision shall be effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8   
9 CHAIRMAN COMMISSIONER COMMISSIONER

10
11 IN WITNESS WHEREOF, I, G. C. ANDERSON, JR.,
12 Executive Secretary of the Arizona Corporation
13 Commission, have caused to set my hand and caused the
14 official seal of this Commission to be affixed at the
15 Capitol, in the City of Phoenix, this 21st day
16 of April, 1985.


G. C. ANDERSON, JR.
Executive Secretary

17 DISSENT _____
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EXHIBIT E

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Arizona Corporation Commission
DOCKETED

BEFORE THE ARIZONA CORPORATION COMMISSION

APR 1 1985

1 RICHARD KIMBALL
2 CHAIRMAN
3 MARCIA WEEKS
4 COMMISSIONER
5 REEZ D. JENNINGS
6 COMMISSIONER

DOCKETED BY *[Signature]*

5 IN THE MATTER OF THE APPLICATION OF)
6 SUNSHINE LAND AND CATTLE CORP. dba)
7 SUNSHINE WATER COMPANY AND WEST PHOENIX)
8 PROPERTIES, INC. dba WEST PHOENIX)
9 WATER CO., INC. FOR A TRANSFER OF)
CORPORATE ASSETS TO WEST BUCKEYE WATER)
CO. (U-2450)

DOCKET NO. U-2107-84-183
U-2067-84-183

DECISION NO. 54419

OPINION AND ORDER

10 DATE OF HEARING: February 7, 1985
11 PLACE OF HEARING: Phoenix, Arizona
12 PRESIDING OFFICER: Jerry L. Rudibaugh

13 APPEARANCES: Christopher Kempley, Attorney for the Legal
14 Division, on behalf of the Arizona Corporation
15 Commission Staff
16 Cunningham, Goodson & Tiffany, Ltd., by John F.
Goodson, Attorneys for the Applicants.

17 BY THE COMMISSION:

18 On July 24, 1984, West Phoenix Properties, Inc. dba West Phoenix Water
19 Company, Inc. ("West Phoenix"), Sunshine Land and Cattle Corporation dba
20 Sunshine Water company ("Sunshine"), and West Buckeye Water Company ("West
21 Buckeye") filed an Application with the Arizona Corporation Commission
22 ("Commission") seeking authorization to transfer to West Buckeye a portion of
23 West Phoenix's and all of Sunshine's Certificate of Public Convenience and
24 Necessity ("Certificates") and the corresponding corporate assets.

25 Pursuant to Notice dated January 24, 1985, the Application came on for
26 hearing before a duly authorized Hearing Officer of the Commission at its
27 offices in Phoenix, Arizona, on February 7, 1985. West Phoenix, Sunshine, West
28 Buckeye, and the Commission's Utilities Division Staff ("Staff") appeared
through counsel. Evidence was presented in support of the Application and

U-2067-84-182
U-2107-84-182

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1 after a full public hearing, the matter was adjourned pending submission of a
2 recommended Opinion and Order by the Presiding Officer to the Commission.

3 DISCUSSION

4 In 1970, West Phoenix and Sunshine were granted Certificates to provide
5 water service to large areas on both sides of the I-10 Freeway, north of the
6 Palo Verde Nuclear Generating Plant ("Palo Verde") and the Town of Buckeye
7 ("Town"). The development of the area has lagged due to delays in completion
8 of the freeway into Phoenix as well as the scare resulting from the Three Mile
9 Island Nuclear accident. As discussed in West Phoenix's companion
10 application, (Docket No. U-2067-84-182), the primary purpose of the transfers
11 was to bring in persons with financial capabilities to assist development as
12 needed and to divide the areas to be serviced into two discrete areas separated
13 by the Hassayampa River ("River")

14 The proposed area to be transferred is located west of the River and
15 primarily north of Palo Verde with a center near the Town of Tonopah. It
16 encompasses approximately 50 or 60 square miles. There are currently twelve
17 customers being served by either West Phoenix and Sunshine.

18 Because of the very large area involved, two members of the Tonopah Valley
19 Association asserted that many of the people in the area were unaware whether
20 their land was in the certificated area. One of the members, Mr. Richard
21 Wrublick requested that his land holdings be deleted from the certificated area
22 to be transferred to West Buckeye. At the request of Mr. Wrublick, West
23 Buckeye agreed to provide a map showing the certificated area to the Tonopah
24 Valley Association for its monthly newsletter. Further, West Buckeye agreed to
25 allow land owners to be removed from its requested certificated area if they
26 notify West Buckeye within 60 days of the Tonopah newsletter. Although West
27 Buckeye and the landowners might be in agreement as to deletion, this
28 Commission can not approve/disapprove any deletions until a determination

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1 made on the overall affect to the public in the current and remaining
 2 certificated areas. Furthermore, that determination can not be made until
 3 those parties desiring deletion request and have a hearing.

4 * * * * *

5 Having considered all the evidence herein and being fully advised in the
 6 premises, the Commission finds, concludes and orders that:

7 FINDINGS OF FACT

8 1. West Phoenix and Sunshine are Arizona corporations certificated by
 9 this Commission in 1970 pursuant to Decision Nos. 40701 and 41072 respectively
 10 to provide water utility service in certain portions of Maricopa County,
 11 Arizona.

12 2. On July 24, 1984, West Phoenix, Sunshine, and West Buckeye filed an
 13 Application with the Commission seeking authorization to transfer to West
 14 Buckeye a portion of West Phoenix's and all of Sunshine's Certificates and the
 15 corresponding corporate assets.

16 3. The area proposed to be transferred from Sunshine is as follows:

- 17 A) Phoenix Valley West, Unit I
 18 T18, R5W
 Section 6: E 1/2, SW 1/4 &
 19 W 1/2, SE 1/4
 Section 7: All W 1/2 Except
 20 NW 1/4, SW 1/4
 Section 7: W 1/2, E 1/2 &
 21 SE 1/4, SE 1/4
- 22 B) Phoenix Valley West, Unit II
 T18, R5W, Sec. 4 SE 1/4
- 23 C) Township 1 North, Range 6 West
 24 Section 24: W 1/2, SW 1/4
 25 25: E 1/2, SE 1/4
 26 26: W 1/2, NE 1/4
- 27 D) Township 1 South, Range 6 West
 28 Section 1: SW 1/4

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- 1 E) Township 1 North, Range 5 West
Section 30: S 1/2, NW 1/4 and
N 1/2, SW 1/4
2 Section 31: W 1/2, NE 1/4
- 3 F) Township 1 South, Range 5 West
4 Section 6: N 1/2, NE 1/4 and
SW 1/4, NE 1/4 and
NE 1/4, NW 1/4
5 Section 5: NE 1/4, SW 1/4
6 SW 1/4 & SW 1/4,
7 SE 1/4 & E 1/2
8 E 1/2, SE 1/4 &
9 NW 1/4, NE 1/4,
10 SW 1/4
Section 8: All
Section 3: All S 1/2 lying South of Hassayupa
right of way and North of Ward Road right of way.
Section 10: NW 1/4 lying North of Ward Road right of way
- 11 4. The area proposed to be transferred from West Phoenix is as follows:
- 12 A) West Phoenix Estates, Unit I
T2N, R7W, Sec. 20, SW 1/4
- 13 B) West Phoenix Estates, Unit II
14 T2N, R7W, Sec. 20, NW 1/4
- 15 C) West Phoenix Estates, Unit III
16 T2N, R7W, Sec. 22 N 1/2
- 17 D) West Phoenix Estates, Unit V
T2N, R7W, Sec. 15, NE 1/4
- 18 E) West Phoenix Estates, Unit VII
19 T2N, R6W, Sec. 29, S 1/2
- 20 F) Rose View Estates, Units I & II
21 T1N, R8W, Sec. 6, W 1/2
- 22 G) Township 2 North, Range 7 West
23 Section 13: All
24 14: S 1/2 and NE 1/4
25 15: N 1/2
26 16: All
27 20: E 1/2
28 21: All
29 22: All
30 23: All Except E 1/2, SE 1/4
31 24: All
32 25: All
33 26: All
34 27: All
35 28: All

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- 29: All
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H) Township 1 North, Range 7 West
 Section 2: E 1/2
 4: All
 5: All
 12: All

I) Township 2 North, Range 6 West
 Section 18: E 1/2
 19: NW 1/4
 20: S 1/2
 21: W 1/2
 22: All
 23: All Except NW 1/4
 26: All
 27: All
 28: All Except NE 1/4
 29: All
 32: All
 33: All
 34: All
 35: All

J) Township 1 North, Range 6 West
 Section 3: S 1/2 and S 1/2, NW 1/4 and SW 1/4, NE 1/4
 4: All
 5: All
 6: All
 7: All
 8: All
 9: All
 10: All
 11: All
 14: All
 15: All
 17: All
 18: All Except W 1/2, NW 1/4 and NW 1/4, SW 1/4
 19: NE 1/4, NE 1/4 and S 1/2, NE 1/4, SE 1/4
 20: All
 21: All
 22: All Except SW 1/4, SW 1/4
 23: All Except NW 1/4

5. Maricopa County Board of Supervisors has consented to the transfer of franchises from West Phoenix and Sunshine to West Buckeye for the area proposed to be transferred.

6. There are no other water companies servicing the area.

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1 7. The assets to be transferred include five wells and three operating
2 systems including storage tanks, pumping facilities and water lines in the
3 area.

4 8. There will be no affect on the rates established for the area
5 proposed to be transferred.

6 9 West Buckeye anticipates a large amount of growth in the area which
7 will require a substantial amount of capital.

8 10. West Buckeye's stockholders are individuals who are capable of
9 generating sizeable amounts of capital and loans necessary to enlarge the
10 existing water utility facilities.

11 11. The existing customers of Sunshine and West Phoenix were notified of
12 the proposed transfer.

13 12. Notice of the proposed transfer was published in the Tonopah Valley
14 Association newsletter.

15 13. There is one outstanding line extension agreement and it will be
16 assumed by West Buckeye.

17 CONCLUSIONS OF LAW

18 1. West Phoenix and Sunshine are public service corporations within the
19 meaning of Article IV of the Arizona Constitution and A.R.S. §40-281, §40-282,
20 and §40-285.

21 2. The Commission has jurisdiction over West Phoenix, Sunshine and West
22 Buckeye and of the subject matter of the Application.

23 3. There is a continuous need for a domestic water utility company to
24 service present and future customers in the certificated area.

25 4. West Buckeye is a fit and proper entity to receive a Certificate for
26 providing of water utility service to the area to be transferred.

27 . . .

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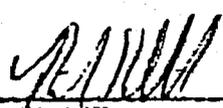
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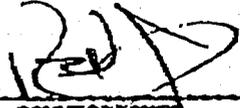
WHEREFORE, IT IS ORDERED: That West Phoenix Water Company, Inc. and Sunshine Water Company are hereby authorized to transfer their Certificates of Public Convenience and Necessity for the area west of the Hassayampa River as described in Finding of Facts No. 3 and 4 and their corresponding corporate assets to West Buckeye Water Company, Inc.

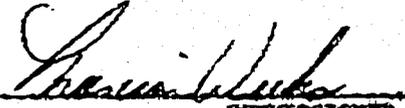
IT IS FURTHER ORDERED: That the rates to be charged by West Buckeye Water Company, Inc. to the area west of the Hassayampa River shall remain the same as rates for West Phoenix Water Company, Inc. and Sunshine Water Company and their former corresponding areas.

IT IS FURTHER ORDERED: That this Decision shall be effective immediately.

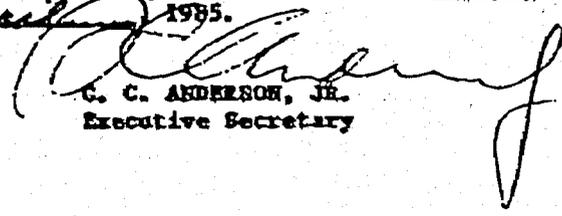
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, C. C. ANDERSON, JR., Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 1st day of April 1985.


C. C. ANDERSON, JR.
Executive Secretary

DISSENT _____
dp

EXHIBIT F

EXHIBIT G

Exhibit 4

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION
OF
WEST BUCKEYE WATER COMPANY, INC.
an Arizona corporation

THIS IS TO CERTIFY that a special meeting of the shareholders of WEST BUCKEYE WATER COMPANY, INC., an Arizona corporation was held on Wednesday, July 31, 1985, at Phoenix, Arizona pursuant to a notice of that meeting, the purpose of which meeting was the consideration of an amendment to the Articles of Incorporation of that corporation.

At that meeting were present, in person or by proxy, the entire 13,500 shares of the outstanding common voting stock of the corporation. A resolution was duly, regularly and unanimously adopted by the shareholders of the corporation amending Article I of the Articles of Incorporation to read as follows:

* * *

- 1. The name of this corporation is changed to and it shall henceforth be known as WATER UTILITY OF GREATER TONOPAH, INC.

* * *

IN WITNESS WHEREOF, the President and Secretary of this corporation have affixed the Seal of the corporation and set their hands this date: July 31, 1985.

WATER UTILITY OF GREATER TONOPAH, INC.

By John F. Goodson, President

ATTEST:
Colleen Goodson Manley, Secretary

STATE OF ARIZONA)
) -ss.
County of Maricopa)

This instrument was acknowledged before me this date: July 31, 1985, by JOHN F. GOODSON and COLLEEN GOODSON MANLEY, known to be to be the persons whose names are subscribed to the foregoing instrument, who acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

Notary Expiration Date

(SEAL)

Notary Public

GOODS & ALLE
(602) 257-
2000 NORTH MESA STREET - PHOENIX, ARIZONA

EXHIBIT H

1 HEARING OFFICER RUDIBAUGH: You are not necessarily
2 going to be against the applicant, but you want to find out
3 what's going on?

4 MR. BULFER: I don't fully understand. I don't want
5 to answer yes or no on that, but I'm concerned about my
6 situation.

7 HEARING OFFICER RUDIBAUGH: After we go through the
8 proceedings, I will give you an opportunity to make a
9 statement.

10 I'll turn it over to the applicant to proceed.
11 I assume it would be best to take each one separately.
12 Perhaps you can give an overview to start with. For the
13 record, if we can, we'd like to keep them somewhat
14 separated.

15 MR. MIHLIK: Can everyone see the map all right? The
16 West Phoenix Properties, which has been the dba called
17 West Phoenix Water Company, at this point in time has a
18 CC&N or certificated area shown in green. That takes up a
19 fair amount of land towards the Tonopah area. The two
20 areas of the green are separated by the Hassayampa River
21 which runs down through this area here. The other company,
22 Sunshine Land and Cattle Corporation, operates and owns the
23 franchise and certificated area in blue here, which is,
24 again, on the west side of the Hassayampa River.
25

1 realize that these are complex transactions that the
2 applicants are attempting to pursue, and we don't wish to
3 be an obstructionist with regard to those. But the Staff is
4 really of the opinion that it is essential that the
5 proceedings result in some clear idea of exactly what the
6 transactions, what the effect of the transactions would be
7 if approved by the Commission. And that's what we will
8 attempt to elicit.

9 HEARING OFFICER RUDIBAUGH: Okay. Do you have any
10 comments on that? I think you understand the problem. I
11 have the same problem. If we deal with them all at once, it
12 will be very confusing on my part. And I'm sure it will be
13 on their part. If we can at this time get into what I note
14 as docket U-2067-84-182 and get testimony on that, then
15 once we go through everything there, we can go into each
16 other one separately.

17 MR. GOODSON: That makes sense. We are trying to
18 simplify it because they are all related. The main purpose
19 was to divide the two companies, the one group of companies
20 under one entity on the one side of the Hassayampa River
21 and the other under another corporation on the other side
22 of the Hassayampa River. The same owners are involved in
23 each.

24 The other was to bring in persons that have
25 financial abilities to carry out all of the necessities and

EXHIBIT I

