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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

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

<p>IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN CASA GRANDE, PINAL COUNTY, ARIZONA.</p>	<p>DOCKET NO. W-01445A-03-0559</p> <p>(1) NOTICE OF APPEARANCE OF COUNSEL; (2) MOTION TO CONSOLIDATE; (3) REQUEST TO FILE BRIEF ON THE ISSUE OF WHETHER ARIZONA WATER COMPANY'S CC&N IS NULL AND VOID AND REQUEST FOR ORAL ARGUMENT; AND (4) REQUEST FOR RULING ON MOTION FOR INTERVENTION</p>
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Picacho Water Company ("Picacho" or the "Company"), through counsel undersigned, hereby petitions the Arizona Corporation Commission ("Commission") to: (1) consolidate this docket (the "AWC Docket") with Docket W-03528A-05-0281 (the "Picacho Docket"); (2) Rule on Picacho's pending Motion to Intervene in the AWC Docket; and (3) grant Picacho leave to file a brief on the issue of whether Arizona Water Company's ("AWC") certificate of convenience and necessity ("CC&N") is null and void and schedule oral argument on the issue.

The Commission or its presiding officer may "consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and that the rights

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1 of the parties will not be prejudiced by such proceedings.” A.A.C. R14-3-109(H). The
2 area covered by Picacho's application to extend its CC&N filed in the Picacho Docket and
3 a portion of the area conditionally granted to AWC in Decision 66893 in this docket
4 overlap. Picacho asserts that the extension of AWC's CC&N conditionally approved in
5 Decision 66893 is null and void because AWC failed to timely satisfy the conditions
6 contained in that decision. However, AWC asserts that the CC&N extension is valid.
7 Necessarily, the status of the grant of the CC&N addressed in Decision 66893 must be
8 resolved in order for the Commission to properly rule on the application filed by Picacho
9 in the Picacho Docket. Accordingly, in the interests of due process and judicial economy,
10 Picacho respectfully requests the consolidation of the two dockets. The central issue—
11 whether AWC's CC&N for the "overlap" area remains in effect—is the same in both
12 dockets, and neither AWC nor Picacho will be prejudiced by the consolidation.

13 Additionally, Picacho requests a ruling on the Motion for Intervention filed by
14 Picacho in this docket on May 19, 2005. The Motion for Intervention was filed on behalf
15 of Picacho and Cornman Tweedy 560, LLC. If the Commission grants this Motion to
16 Consolidate, then the Motion for Intervention filed by Picacho in this docket may be
17 moot.

18 In a Procedural Order, dated September 28, 2005, issued in the AWC Docket, the
19 Administrative Law Judge ("ALJ") required Legal Staff to file a brief on the issue of
20 whether the extension of AWC's CC&N is null and void by the express terms of the
21 Decision granting the CC&N. The Procedural Order does not allow either Picacho or
22 AWC to file briefs on the issues; therefore, Picacho requests leave to file a brief and
23 requests that the ALJ schedule oral argument on the issue.

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1 **I. BACKGROUND**

2 In Decision 66893, the Commission conditionally approved the extension of
3 AWC's CC&N to serve an overall area of 11 square miles in Pinal County, Arizona.
4 However, AWC failed to satisfy the compliance requirements of that decision within the
5 time specified, which was April 6, 2005, and pursuant to the express language of the
6 decision, the extension became null and void without further order of the Commission.

7 On April 15, 2005, Picacho filed an application to serve approximately 1,138 acres
8 of the 11 square miles addressed in Decision 66893. There are two proposed
9 developments by Robson Communities in the area of Picacho's existing CC&N and the
10 requested extension: (1) EJR Ranch is a 2,343 acre master planned community, of which
11 1,205 acres are located within Picacho's existing CC&N and the other 1,138 acres are
12 located in the contested area; and (2) Robson Ranch is a 3,376 acre master planned
13 community that is entirely in Picacho's existing CC&N. Picacho Sewer Company, which
14 is related to Picacho, has a CC&N which covers both EJR Ranch and Robson Ranch.
15 Thus, one critical issue to be resolved in the consolidated docket is whether EJR Ranch
16 will obtain water service from a single water provider—Picacho, which is related to the
17 sewer provider for the development—or from two separate providers.

18 On May 19, 2005, Picacho filed a motion to intervene in the AWC Docket.
19 However, the Commission's hearing division has not ruled on Picacho's motion to
20 intervene. On May 20, 2005, AWC moved to intervene in the Picacho Docket, and
21 AWC's application to intervene was approved on June 10, 2005.

22 The Commission discussed the status of Decision 66893 and Picacho's motion to
23 intervene at the open meeting held May 24, 2005. At that open meeting, the
24 Commissioners instructed AWC and Picacho to attempt to reach a settlement on the
25 contested CC&N area—approximately 1,138 acres of the 11 square miles addressed in
26 Decision 66893. The Commissioners' instruction to the parties was formalized in a

1 procedural order dated June 10, 2005 in the AWC Docket. On July 29, 2005, AWC
2 informed Picacho that AWC was unwilling to negotiate further, even though AWC and
3 Picacho had met only once regarding settlement. On July 29, 2005, the parties filed
4 separate status reports advising the Commission of the lack of a settlement.

5 On September 16, 2005, the Commission's Chief ALJ issued a Procedural Order in
6 the Picacho Docket setting a procedural conference for September 23, 2005. At the
7 procedural conference, AWC's counsel reiterated that AWC is unwilling to discuss
8 settlement. The ALJ also stated that she would be issuing a further procedural order.

9 On September 28, 2005, a Procedural Order was issued in the AWC Docket. This
10 Procedural Order discussed both AWC's docket as well as Picacho's docket and discussed
11 the reliance on one another. The Chief ALJ ordered the Commission's Legal Staff to file a
12 legal memorandum on the issue of whether the extension of AWC's CC&N under
13 Decision 66893 is null and void.

14 **II. MOTION TO CONSOLIDATE**

15 **A. THE CENTRAL ISSUE IS THE SAME IN BOTH DOCKETS**

16 Arizona Administrative Code Rule R14-3-109(H) states that the Commission or its
17 presiding officer "may consolidate two or more proceedings in one hearing when it
18 appears that the issues are substantially the same and that the rights of the parties will not
19 be prejudiced by such procedure." In Decision 66893, the Commission conditionally
20 approved AWC's application to extend its CC&N to include Sections 19 through 23, the
21 west 1/2 of Section 24, the west 1/2 of Section 25, and Sections 26 through 30, all in
22 Township 6 South, Range 7 East, Pinal County, Arizona. Picacho has applied to extend
23 its existing CC&N to include portions of Sections 26, 27 and 28, Township 6 South,
24 Range 7 East, Pinal County, Arizona. The area requested by Picacho is part of the AWC
25 extension area conditionally approved in Decision 66893, and the two parties cannot both
26 serve that area.

1 In most instances, the Commission has consolidated dockets when two entities file
2 competing applications to serve the same area. *See generally In the Application of*
3 *Woodruff Water Company, Inc., for a Certificate of Convenience and Necessity to Provide*
4 *Water Service in Pinal County, Arizona, et al.*, Docket Nos. W-4264A-04-0438, W-
5 04265A-04-0439 and W-01445A-04-0755 (consolidated). The central issue in both the
6 Picacho Docket and the AWC Docket is whether the CC&N granted to AWC in Decision
7 66893 remains in effect, notwithstanding the express provision that the decision was to be
8 deemed null and void in the event AWC failed to timely satisfy the conditions of the
9 decision. It would be premature to make any dispositive ruling on Picacho's application
10 in the Picacho Docket without first resolving whether AWC's CC&N in the contested area
11 remains in effect. To this point, the September 28, 2005, Procedural Order in the AWC
12 Docket states that "before the Commission can process Picacho's application [in the
13 Picacho Docket] for extension of its CC&N, a determination should be made as to
14 whether AWC has a valid CC&N for that area." Procedural Order (September 28, 2005)
15 at page 3, lines 2-3.

16 **B. PARTIES RIGHTS WILL NOT BE PREJUDICED**

17 The second prong of A.A.C. R14-3-109(H) addresses whether the rights of the
18 parties will be prejudiced by the consolidation. Here, the consolidation of these dockets
19 will more expeditiously resolve the respective rights of AWC and Picacho. By
20 proceeding separately, the Commission's finite resources and those of the parties may be
21 used inefficiently, and the Commission also runs the risk of conflicting results. For
22 example, if the Commission dismisses Picacho's application for a CC&N on the grounds
23 that the requested area is already addressed in Decision 66893, and then subsequently the
24 Commission determines that AWC's CC&N extension under Decision 66893 is null and
25 void, then Picacho would be harmed. By consolidating the dockets, the Commission can
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1 ensure that the matter is resolved expeditiously, and that the rights of neither party are
2 prejudiced.

3 **C. BURDEN OF PROOF**

4 At the September 23, 2005, Procedural Conference, in the Picacho Docket, Utilities
5 Division Staff advised the ALJ that the language in Decision 66893 stating that "this
6 Decision is deemed null and void without further Order of the Arizona Corporation
7 Commission" may not be operative without some further action by the Commission,
8 notwithstanding the express language of that decision to the contrary.¹ Staff also advised
9 the ALJ that Picacho has not yet demonstrated that the conditional CC&N granted to
10 AWC in Decision 66893 is null and void, presumably because neither the ALJ nor the
11 Commission have ruled on the issue. The position advanced by Staff highlights the
12 importance of consolidating these dockets. It would violate principles of due process and
13 fundamental fairness to impose on Picacho a burden of proof in the Picacho Docket to
14 demonstrate that the conditional CC&N authorized by Decision 66893 in the AWC
15 Docket is null and void—especially in light of the fact that Picacho filed a motion to
16 intervene in this docket, which has never been granted or denied. Picacho is entitled to an
17 evidentiary hearing to resolve these issues. The consolidation of the two dockets will
18 enable Picacho to demonstrate that AWC's CC&N is null and void, and that the public
19 interest is best served by granting Picacho the CC&N for the requested area. Picacho also
20 notes that the consolidation of these dockets may eliminate the need for the Commission
21 to rule on Picacho's motion to intervene in the AWC Docket which was filed May 19,
22 2005.

23 It must be noted that to this point in time, Picacho has not had an opportunity to
24 demonstrate, in any forum, that the CC&N of AWC granted in Decision 66893 is null and

25 ¹ Nothing in this pleading should be construed in any way as a concession by Picacho that AWC has a valid CC&N.
26 It is Picacho's position that the CC&N granted to AWC in Decision 66893 is null and void by operation of the terms
of the decision.

1 void and that the public interest would best be served if Picacho was allowed to serve the
2 entire EJ Ranch development, as opposed to only half of the development. Simply
3 stated, Picacho has not had its day in court.

4 **III. REQUEST FOR RULING ON MOTION TO INTERVENE**

5 If this Motion to Consolidate is denied, Picacho requests that the Hearing Division
6 issue a ruling on Picacho's Motion for Intervention that was filed in the AWC Docket on
7 May 19, 2005.

8 **IV. LEAVE TO FILE BRIEF ON LEGAL ISSUE AND SCHEDULE ORAL**
9 **ARGUMENT**

10 On September 28, 2005, a Procedural Order was issued in the AWC Docket that
11 required Legal Staff to file, no later than October 14, 2005, a legal memorandum or brief
12 on the issue of whether the AWC extension is null and void. Because Picacho's
13 application in the Picacho Docket will be impacted by the resolution of the legal issue,
14 due process and fundamental fairness require that Picacho be allowed file a legal brief on
15 the issue in the AWC Docket. As acknowledged by the ALJ in the September 28, 2005,
16 Procedural Order, "before the Commission can process Picacho's application for extension
17 of its CC&N, a determination should be made as to whether AWC has a valid CC&N for
18 that area." Permitting Picacho to address the legal issue will provide additional
19 information that can only help the ALJ in reaching a conclusion on the issue. For these
20 reasons, Picacho requests permission to file a response to Staff's legal brief or
21 memorandum on the issue. Picacho believes that a date two weeks following the date
22 Legal Staff's brief is due, which is Friday, October 28, 2005, would be sufficient.

23 Additionally, Picacho requests that the Hearing Division schedule oral argument
24 following submission of the briefs on the issue of whether AWC's CC&N conditionally
25 approved in Decision 66893 is null and void.

26

1 **V. APPEARANCE OF COUNSEL**

2 Notice is hereby given that the law firm of Snell & Wilmer will be appearing on
3 behalf of Picacho Water Company in both the Picacho Docket and the AWC Docket.
4 Thus, copies of pleadings and other correspondence in this docket should be directed to
5 Picacho Water Company as follows:

6 Jeffrey W. Crockett, Esq.
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14 - and -

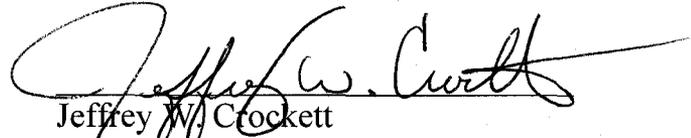
15 Peter M. Gerstman
16 Vice President and General Counsel
17 ROBSON COMMUNITIES, INC.
18 3532 East Riggs Road
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20 **VI. CONCLUSION**

21 For the reasons set forth above, Picacho Water Company respectfully requests that
22 Dockets W-03528A-05-0281 and W-01445A-03-0559 be consolidated, or in the
23 alternative, that the Motion for Intervention be granted in the AWC Docket. Picacho
24 further requests that it be granted leave to file a responsive brief on the issue of whether
25 AWC's CC&N is null and void, and that the Hearing Division schedule oral argument on
26 the issue.

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RESPECTFULLY SUBMITTED this 5th day of October, 2005.



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ORIGINAL and fifteen (15) copies
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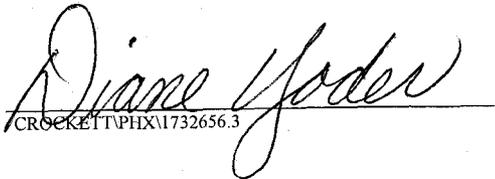
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