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BEFORE THE ARIZONA CORPORATION COMMISSION

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<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><b>DOCKET NO. W-01445A-03-0559</b></p> <p><b>PICACHO WATER COMPANY'S REPLY TO IN SUPPORT OF ITS MOTION TO CONSOLIDATE, REQUEST TO FILE BRIEF, AND REQUEST FOR RULING ON MOTION TO INTERVENE</b></p>
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Picacho Water Company ("Picacho" or "Company") hereby submits this Reply to in support of its Motion to Consolidate, Request to File a Brief on the issue of Whether Arizona Water Company's CC&N is Null and Void and Request for Oral Argument, and Request for Ruling on Motion to Intervene.

**I. INTRODUCTION.**

In Decision 66893, the Commission conditionally approved the extension of AWC's CC&N to serve an area approximately 11 square miles in Pinal County, Arizona. Pursuant to the decision, AWC had one year from the date of the decision—or until April 6, 2005—to (1) file a copy of the developer's assured water supply for each respective development within the extension area; and (2) file a main extension agreement associated with the extension area. If AWC failed to meet the conditions, then the language of the Decision states that it "is deemed null and void without further order of the Arizona Corporation Commission." AWC did not meet

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1 either condition within the specified time, but rather belatedly filed a request to extend the  
2 deadline on March 30, 2005, one week prior to the expiration of the deadline. Obviously, AWC  
3 knew there was no possibility the Commission could approve the requested extension prior to the  
4 expiration of the deadline. Thus, the CC&N extension was deemed null and void on April 6,  
5 2005.

6 On April 15, 2005, Picacho filed its application to extend its CC&N to include  
7 approximately 1,138 acres of the 11 square miles addressed in Decision 66893. On May 20,  
8 2005, AWC moved to intervene in the docket, and AWC's request to intervene was granted on  
9 June 10, 2005. Picacho filed a Motion to Intervene in Docket W-01445A-03-0559 on May 19,  
10 2005, and then renewed its motion on October 5, 2005. However, the Commission's hearing  
11 division has not ruled on Picacho's motion to intervene.

12 On October 14, 2005, Utilities Division Staff filed a legal brief in Docket W-03528A-05-  
13 0281 addressing the issue of whether AWC's CC&N is null and void.

14 **II. MOTION TO CONSOLIDATE SHOULD BE GRANTED.**

15 The Commission or its presiding officer "may consolidate two or more proceedings  
16 in one hearing when it appears that the issues are substantially the same and that the rights  
17 of the parties will not be prejudiced by such procedure." A.A.C. Rule R14-3-109(H).  
18 Consolidation of Dockets W-03528A-05-0281 and W-01445A-03-0559 is clearly  
19 appropriate under the facts of these dockets.

20 **A. The Issues in the Two Dockets Are Substantially the Same.**

21 AWC asserts that the issues in the two dockets are not substantially the same because "the  
22 different procedural postures of the two dockets pose completely different questions." It is hard  
23 to imagine how AWC can assert with a straight face that the two dockets "pose completely  
24 different questions." AWC asserts that it has already been granted a CC&N, and that Picacho is  
25 seeking to collaterally attack the CC&N in another proceeding. However, Picacho is not seeking  
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1 to collaterally attack Decision 66893. To the contrary, Picacho would like the Commission to  
2 enforce Decision 66893 exactly as written, because Picacho believes the decision is null and void  
3 by its own terms. The issue in Docket W-01445A-03-0559 is simply this: is the CC&N  
4 conditionally granted in Decision 66893 still in effect, or is the CC&N null and void for failure of  
5 AWC to satisfy the conditions of the decision? The answer to this question bears directly upon  
6 the application filed by Picacho in Docket W-03528A-05-0281. Since the Commission has  
7 already found Picacho to be a fit and proper entity to hold a CC&N,<sup>1</sup> the central issue in Docket  
8 W-03528A-05-0281 is the same as Docket W-01445A-03-0559. Picacho's motion to consolidate  
9 should be granted.

10 **B. The Rights of the Parties Will Not be Prejudiced by Consolidation.**

11 AWC states that "allowing Picacho to intervene now [in the AWC docket] would  
12 prejudice Arizona Water Company's existing CC&N." In its response, AWC deceptively refers  
13 to its CC&N for the extension area as an "existing" CC&N, but the validity of that CC&N is the  
14 very question at issue. There is no dispute that AWC did not comply with two conditions of  
15 Decision 66893, and there is no dispute that Decision 66893 "is deemed null and void without  
16 further Order of the Arizona Corporation Commission" if AWC fails to meet the conditions  
17 within the time frames specified. While AWC filed a request to extend the compliance deadline  
18 at the very last possible moment, that request is still pending and has never been granted. So long  
19 as the Commission has not granted the request for extension, the CC&N addressed in Decision  
20 66893 is null and void. Picacho cannot "prejudice Arizona Water Company's existing CC&N" if  
21 no CC&N exists. Since this is the only argument raised by AWC regarding any prejudicial effect  
22 of consolidation, Picacho's Motion to Consolidate should be granted.

23 It also bears noting that at the procedural conference held September 23, 2005,  
24 Staff Attorney Janet Wagner stated that "it seems to me that . . . the Commission might  
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26 <sup>1</sup> Picacho already possesses a CC&N.

1 have some desire for these matters to be considered together.” Transcript of September  
2 23, 2005, Procedural Conference, p. 12, lines 9-10. Picacho agrees with this assessment.

3 **III. THE COMMISSION SHOULD ALLOW PICACHO TO FILE A BRIEF.**

4 AWC states that the chief administrative law judge ("ALJ") ordered "Commission Staff  
5 [to] file a brief addressing the narrow legal question of whether Arizona Water Company's CCN  
6 remained valid in the face of attempts by a developer to thwart compliance with the  
7 Commission's deadlines." AWC Response to Motion to Consolidate, p. 7, lines 5-7. This is a  
8 misstatement of the ALJ's directive, which was that "file a legal brief on the issue of whether the  
9 CC&N extension of AWC is void." Procedural Order, September 28, 2005, p. 3, lines 5-6. Other  
10 than misstating the ALJ's directive, AWC fails to articulate any substantive reason why Picacho  
11 should be precluded from filing a legal brief in response to the brief filed by Staff. Picacho  
12 believes that the Commission would benefit from the additional legal briefing that would be  
13 provide by Picacho, and such briefing would not prejudice any party to the proceeding.

14 The Commission's Legal Staff appeared to support the idea of briefing by the parties to  
15 the proceeding. In discussing the issue at the September 25, 2005, Procedural Conference, Staff  
16 Attorney Janet Wagner stated "of course the other parties will have their opportunity to weigh in  
17 on these legal issues as well." Transcript of Procedural Conference, September 23, 2005, p. 9,  
18 lines 16-17. Picacho respectfully requests the opportunity to weigh in on this important legal  
19 issue which bears directly upon the application of Picacho pending in Docket W-03528A-05-  
20 0281.

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**IV. CONCLUSION.**

Based upon the foregoing, Picacho respectfully requests that the Commission grant the Motion to Consolidate or in the alternative schedule oral argument in the matter.

RESPECTFULLY SUBMITTED this 24th day of October, 2005.



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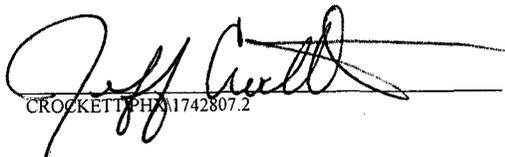
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