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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
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MIKE GLEASON
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2005 NOV 14 P 1:08

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY FOR AN
EXTENSION OF THE SERVICE AREA UNDER
ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
WATER UTILITY SERVICES.

DOCKET NO. W-01445A-03-0559

PROCEDURAL ORDER

BY THE COMMISSION:

In Decision No. 66893 (April 6, 2004), the Arizona Corporation Commission (“Commission”) granted Arizona Water Company’s (“Arizona Water” or “AWC”) application for an extension of its Certificate of Convenience and Necessity for its Casa Grande system, subject to certain conditions.

Specifically, AWC was ordered to file (1) a copy of the Developers’ Assured Water Supply for each development with the Commission within 365 days of the Decision and (2) a main extension agreement associated with the extension area within 365 days of the Decision. Pursuant to Decision No. 66893, failure to meet these conditions within the specified time would render the Decision null and void without further Order of the Commission.

On March 30, 2005, AWC filed a Request for Additional Time to Comply with the Filing Requirement (“Request”). By its filing, AWC requested an additional 365 days to comply with the above referenced conditions based upon the fact that development in the proposed expansion area would be delayed for a year.

By Procedural Order issued April 5, 2005, the Commission’s Utilities Division Staff (“Staff”) was ordered to file a response to AWC’s Request on or before April 11, 2005.

On April 7, 2005, Robson Communities, Inc. (“Robson”) filed a letter in this Docket on behalf of Cornman Tweedy 560, LLC (“Cornman”), an affiliate of Robson and the owner of approximately 1,200 acres of real property located within the area in Pinal County for which AWC was granted an extension in Decision No. 66893, which is to be developed as part of the EJR Ranch

1 Master Planned Community ("EJR Ranch"). Robson argued that given AWC's failure to timely
2 comply with the above referenced conditions, Decision No. 66893 is automatically null and void
3 without further Order of the Commission.

4 On April 11, 2005, Staff filed a Memorandum, which recommended the scheduling of
5 additional evidentiary proceedings on the merits of AWC's Request in light of Robson's objection.

6 On April 15, 2005, Picacho Water Company ("Picacho"), and affiliate of Robson, filed an
7 application for an extension of its CC&N to include the area.¹

8 On April 20, 2005, AWC filed a Response to Staff's Recommendation for Additional
9 Evidentiary Proceedings by which AWC argued that Staff's recommendation must be rejected as
10 Robson and Cornman have no standing to present objections. AWC further argued that extensions
11 for compliance, such as those set forth in AWC's Request, are routine in nature and should be
12 granted.

13 On May 10, 2005, the assigned Administrative Law Judge issued a Recommended Order
14 which granted AWC's request for additional time to comply with Decision No. 66893 and which
15 found that neither Robson nor Cornman had standing to object to AWC's request.

16 On May 19, 2005, Cornman and Pichaco filed a Motion to Intervene and Request for Leave to
17 File Reply to AWC's Response to Staff Recommendation for Additional Evidentiary Proceedings
18 and Exceptions to ALJ's Proposed Order.

19 On May 23, 2005, Arizona Water filed its Response to Motion to Intervene and Request for
20 Leave to File Response to Staff's Recommendation and Exceptions to ALJ's Proposed Order.

21 The Recommended Order was discussed by the Commission during its May 24, 2005 Open
22 Meeting, but no vote was taken on the matter.

23 On June 10, 2005, a Procedural Order was issued in Docket No. W-03528A-05-0281
24 directing the parties to make a good faith effort to discuss and attempt to resolve this matter prior to
25 proceeding in either docket.

26 On July 29, 2005, in Docket No. W-03528A-05-0281, AWC filed a Status Report and
27 Request for Decision, and Picacho filed a Status Report and Request for Hearing. The parties
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¹ Docket No. W-03528A-05-0281

1 indicated that they were unable to resolve this matter. Accordingly, by Procedural Order issued
2 September 16, 2005, a procedural conference was scheduled in Docket No. W-03528A-05-0281.

3 On September 23, 2005, the Procedural Conference was held as scheduled. AWC appeared
4 and was represented by counsel; Picacho was not represented by counsel, but its General Manager
5 appeared; and Staff appeared through counsel. The parties indicated that they had not reached any
6 agreement and that they had no recommendation on how to proceed with the matter, other than to
7 grant their own, separate, requests.

8 Subsequently, by Procedural Order issued September 28, 2005 in this docket, W-01445A-03-
9 0559, the Commission's Staff was directed to file a legal brief on the issue of whether the CC&N
10 extension of AWC is void pursuant to Decision No. 66893.

11 On October 5, 2005, Picacho filed its (1) Notice of Appearance of Counsel; (2) Motion to
12 Consolidate; (3) Request to File Brief on the Issue of Whether Arizona Water Company's CC&N is
13 Null and Void and Request for Oral Argument; and (4) Request for Ruling on Motion for
14 Intervention.

15 On October 14, 2005, Arizona Water filed its Response to Picacho's Motion to Consolidate,
16 Request to File Brief, and Request for a Ruling.

17 Also on October 14, 2005, Staff filed its Legal Memorandum Pursuant to the September 28,
18 2005 Procedural Order.²

19 On October 24, 2005, Picacho filed its Reply in Support of its Motion to Consolidate, Request
20 to File Brief, and Request for Ruling on Motion to Intervene.

21 Cornman and Picacho's Motion to Intervene states that Cornman is the owner of
22 approximately 1138 acres of land within the area covered by the CC&N extension and therefore it is
23 "directly and substantially impacted by the Commission's determinations regarding AWC's CC&N."
24 Arizona Water has not disputed that Cornman owns property in the affected area. As a landowner in
25 the area certificated in Decision No. 66893, Cornman does have an interest in receiving service from
26 a certificated provider. Accordingly, Cornman should, if it still desires to participate, be granted
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² The Procedural Order directing Staff's filing was in this docket, but Staff filed its memo in Docket No. W-03528A-05-0281.

1 intervention in this docket's proceeding to determine if the CC&N is void and whether AWC's
2 March 30, 2005 Request should be granted.³

3 The motion to intervene states that Picacho's ability to extend its CC&N is affected by the
4 Commission's decision whether the time periods for compliance should be extended. While
5 Picacho's or any other potential provider's ability to extend its CC&N to this area may be affected,
6 Picacho is not *directly* affected.⁴ Picacho is not a landowner or customer in the area. Picacho's
7 intervention in this docket would be for a purpose which is beyond the scope of this proceeding, and
8 would unduly broaden the issues. Further, Picacho has filed its own application to extend its CC&N,
9 and its direct interests will be addressed in that proceeding. Accordingly, Picacho's motion to
10 intervene in this docket is denied.

11 A Procedural Conference should be held to discuss the remaining Motions and filing of any
12 responses to Staff's Legal Memorandum.

13 **IT IS THEREFORE ORDERED that a procedural conference for the taking of oral**
14 **argument and discussion of procedural issues in the above-captioned matter shall commence on**
15 **November 21, 2005, at 2:30 p.m.,** or as soon thereafter as is practical, at the Commission's offices,
16 1200 West Washington Street, Phoenix, Arizona 85007.

17 **IT IS FURTHER ORDERED** that the Motion to Intervene by Cornman is granted, and such
18 intervention is limited to the issue of whether the CC&N issued in Decision No. 66893 is void and
19 whether the requested extension of time should be granted.

20 **IT IS FURTHER ORDERED** that the Motion to Intervene by Picacho is denied.

21 **IT IS FURTHER ORDERED** that the **Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized**
22 **Communications) applies to this proceeding as the matter is now set for public hearing.**

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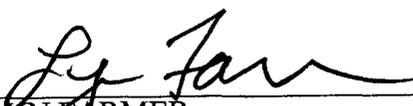
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27 _____
28 ³ The scope of this proceeding will be discussed at the Procedural Conference scheduled herein.

⁴ A.A.C. R14-3-105(A) "Intervention. Persons, other than the original parties to the proceedings, who are directly and substantially affected by the proceedings, shall secure an order from the Commission or presiding officer granting leave to intervene before being allowed to participate."

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order by subsequent Procedural Order.

3 DATED this 14th day of November, 2005.

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6 
7 LYN FARMER
8 CHIEF ADMINISTRATIVE LAW JUDGE

9
10 Copies of the foregoing mailed/delivered
11 this 14th day of November, 2005 to:

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