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**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKET NO. W-01032B-00-1043

**CITIZENS' POST-HEARING  
BRIEF**

IN THE MATTER OF THE APPLICATION OF  
CITIZENS COMMUNICATIONS COMPANY,  
AGUA FRIA DIVISION, FOR (1) AN EXTENSION  
OF THE AREA COVERED BY ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY (2) APPROVAL OF THE  
CATERPILLAR PROPERTY WATER/  
WASTEWATER AGREEMENT, (3) APPROVAL  
OF THE TARIFF FOR THE WATER FACILITIES  
HOOK-UP FEE, (4) APPROVAL OF THE TARIFF  
FOR GENERAL NON-POTABLE WATER  
SERVICE, AND (5) APPROVAL OF RULE NO. 12  
APPLICABLE TO NON-POTABLE WATER  
SERVICE.

DOCKET NO. SW-03454A-00-1043

Arizona Corporation Commission  
**DOCKETED**

OCT 19 2001

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
CITIZENS WATER SERVICES COMPANY OF  
ARIZONA FOR (1) AN EXTENSION OF THE  
AREA COVERED BY ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY FOR WASTEWATER SERVICE, (2)  
APPROVAL OF THE CATERPILLAR PROPERTY  
WATER/ WASTEWATER AGREEMENT, AND (3)  
APPROVAL OF THE TARIFF FOR THE  
WASTEWATER FACILITIES HOOK-UP FEE.

In accordance with the Administrative Law Judge's October 5, 2001 procedural  
order, Citizens Communications Company, through its Aqua Fria Division ("Citizens"), and  
Citizens Water Services Company of Arizona ("DistCo") submit the following post-hearing  
brief. This brief focuses on the following four questions raised by the Commissioners at the

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1 October 2, 2001 open meeting and outlined in the October 5, 2001 procedural order:

- 2 (1) What percentages of groundwater, effluent and CAP water will be used to irrigate  
3 the proposed golf courses and other turf areas in the proposed Whitestone  
4 development;
- 4 (2) What is the timetable for construction of various components of the project and  
5 the water usage associated with those components (*i.e.*, the approximate volumes  
6 and/or ratios of ground water, effluent and CAP water);
- 6 (3) In evaluating a request for extension of the CC&N, what may the Commission  
7 consider as part of its “need” analysis; and
- 7 (4) Can the Commission consider “urban sprawl” as part of its analysis in evaluating  
8 a CC&N application.

9 ***I. BRIEF STATEMENT OF THE LEGAL ISSUES.***

10 In this docket, the ACC is charged with deciding two fundamental but limited  
11 issues: (i) is it necessary to expand the service areas of Citizens and DistCo to meet the public  
12 water and sewer utility needs of the proposed Whitestone Development and (ii) are Citizens and  
13 DistCo capable of providing those services. The factual record is undisputed that Citizens and  
14 DistCo’s proposed water and wastewater facilities serve the public needs for the Whitestone  
15 Development; and, Citizens and DistCo are fit and proper entities to provide those services.  
16 Under Ariz. Rev. Stat. §§ 40-281 and 40-282, the ACC’s scope of authority does not extend  
17 beyond those issues in evaluating this CC&N application.

18 At the October 2 open meeting, however, the Commissioners expressed certain  
19 reservations about approval of Citizens’ and DistCo’s application based on policy issues  
20 surrounding “urban sprawl,” water usage and availability and development concerns with the  
21 Whitestone Project. Those issues go well beyond the scope of a CC&N proceeding and the  
22 ACC’s powers in evaluating and deciding CC&N filings.

23 By law and statute, the focus of a CC&N filing under Ariz. Rev. Stat. § 40-281  
24 and § 40-282 is whether the proposed utility services meet the public utility needs in a particular

1 service area; and, whether the applicant is a fit and proper entity to provide the proposed  
2 services.<sup>1</sup> Arizona's statutory scheme for issuance of CC&Ns governs these issues:

- 3 • (1) Under Ariz. Const. Art. 15, § 2, the Commission only has authority to  
4 regulate "public service corporations" and has no constitutional authority to issue  
5 CC&Ns to public service corporations.
- 6 • (2) Under Ariz. Rev. Stat. § 40-281 and § 40-282, the Legislature expanded  
7 the Commission's power to include issuance of CC&Ns to utility companies. But  
8 the Legislature did not mention land use, development or water rights as part of  
9 the Commission's certificate jurisdiction or powers.
- 10 • (3) "Neither the Constitution nor the statutes give the Corporation  
11 Commission unlimited power" to issue CC&Ns. Williams v. Pipe Trades  
12 Industry Program of Arizona v. Arizona Corporation Comm'n, 100 Ariz. 14, 17,  
13 409 P.2d 720, 723 (1966). Arizona courts have interpreted the Commission's  
14 powers to issue CC&Ns under Ariz. Rev. Stat. §§ 40-281 and 40-282 as limited to  
15 whether the proposed utility services meet the public's needs in a particular  
16 service area; and, whether the CC&N applicant is a fit and proper entity to  
17 provide the proposed utility services.
- 18 • (4) Title 40 of Arizona's statutes and Article 15 of the state constitution  
19 contain no provisions giving the ACC any authority to consider and/or decide  
20 issues relating to "urban sprawl," water usage, management and/or availability  
21 and/or land use and development as part of the certification process.

22 **II. THE UNDISPUTED FACTUAL RECORD NECESSITATES GRANTING OF**  
23 **CITIZENS' AND DISTCO'S APPLICATION FOR A CC&N EXTENSION TO SERVE THE**  
24 **WHITESTONE DEVELOPMENT.**

On December 20, 2000, Citizens and DistCo jointly filed an application to extend

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18 <sup>1</sup> Staff Counsel Janice Alward phrased the scope of the Commission's duties in a  
19 CC&N docket this way at the October 2, 2001 open meeting: "Chairman, Commissioners, in the  
20 nature of a CC&N, the courts are pretty clear in finding the Commission's jurisdiction is  
21 statutory not constitutional. It's different than our rate making authority. We have not always  
22 agreed with that interpretation, but that right now is the present status of the way the courts look  
23 at our authority to issue certificates. And I think that those statutes and the cases that have  
24 interpreted them have focused on the Commission's jurisdiction to basically do two things. One,  
to determine whether the applicant is a fit and proper entity to provide the service, which would  
mean is Citizens capable of providing the services... And the second question is whether there is  
a need for Citizens to provide the service or for the certificate to be granted..." See October 2,  
2001 Open Meeting, Comments by Janice Alward (based on transcription of Open Meeting  
tapes).

1 their respective service territories to serve the proposed Whitestone Development. ACC Staff  
2 reviewed the CC&N application, and determined that Citizens and DistCo satisfied all of the  
3 elements required for issuance of CC&N extensions to serve the development under Ariz. Rev.  
4 Stat. § 40-282, A.A.C. R14-2-401, et. seq. and A.A.C. R14-2-601, et. seq. Put simply, Staff  
5 recommended approval of the application because the proposed water and sewer services are  
6 necessary to serve the Whitestone Development; and, Citizens and DistCo are fit and proper  
7 entities to provide those services. See Staff Report docketed July 26, 2001.<sup>2</sup> Id. Citizens'  
8 application was not opposed by any party.

9 After a public hearing, ALJ Nodes issued a proposed opinion and order (on  
10 September 21, 2001) and recommended approval of the CC&N extension for Citizens and  
11 DistCo. The ALJ rendered the following conclusions of law based on the undisputed record:

- 12 4. There is a public need and necessity for water and wastewater utility services in  
13 the proposed extension area.
- 14 5. Citizens and DistCo are fit and proper entities to receive an extension of their  
15 water and wastewater Certificates which, as proposed, would encompass an area  
16 currently within the town of Buckeye corporate limits, at the Northwest corner of  
17 203<sup>rd</sup> Avenue and McDowell Road....

16 See Proposed Opinion and Order docketed September 21, 2001, p. 7.

17 As a matter of law and fact, the underlying record contains no justification for  
18 rejecting these findings. "Arizona Corporation Commission decisions must be supported by  
19 substantial evidence, not speculation." Arizona Corporation Comm'n v. Citizens Utilities Co.,

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20 <sup>2</sup> As required by applicable statutes and regulations, Staff's CC&N review focused  
21 on (i) whether the proposed sewer and water facilities are necessary to serve the Development,  
22 (ii) are the proposed rates reasonable, and (iii) are Citizens and DistCo capable of serving the  
23 extension area. Staff did not address land use, water management or urban sprawl issues because  
24 those issues are not part of CC&N proceedings. Here, Staff applied the same CC&N analysis to  
Citizens and DistCo as it has done for many years for other water/sewer utilities when a  
developer requests utilities for a specific service area outside the companies' existing certificated  
areas.

1 120 Ariz. 184, 584 P.2d 1175 (App. 1978). Here, there is no evidence, let alone substantial  
2 evidence, indicating that the proposed sewer and water services fail to meet the public utility  
3 needs of the Whitestone Development or that Citizens/DistCo are unfit utilities.

4 **III. THE ISSUES RAISED AT THE OCTOBER 2, 2001 OPEN MEETING GO BEYOND**  
5 **THE SCOPE OF CC&N PROCEEDINGS.**

6 At the October 2, 2001 open meeting, however, the Commissioners expressed  
7 policy reservations based on urban sprawl, water management and usage, and certain  
8 development issues associated with the Whitestone Development. The Commissioners then  
9 deferred the pending CC&N docket and asked the parties to brief whether the ACC may consider  
10 such issues as part of a CC&N filing. As a matter of law and fact, the answer is no.

11 By their very nature, the issues raised by the Commissioners at the October 2,  
12 2001 open meeting do not focus on the proposed utility services or whether it is necessary to  
13 extend Citizens' and DistCo's certificates to serve the Whitestone Development. Instead, the  
14 Commissioners focused on policy issues underlying the "development concept," the  
15 Commission's "goal of not encouraging urban sprawl," "the wisdom of an 8,800 acre master  
16 planned community in Buckeye," "the use of water and it's relative scarcity in our community"  
17 and "the economic and development destiny of that community." See October 2, 2001 Open  
18 Meeting Transcript.

19 The Commissioners also raised concerns about the consistency of policy  
20 determinations from an unrelated case involving Johnson Utilities. Based on that recent docket,  
21 the Commissioners expressed concerns about issuing "speculative CC&Ns" as a matter of  
22 policy. The apparent concern is that utilities may attempt to tie up vast undeveloped land areas  
23 with CC&N filings. Along those lines, Chairman Mundell expressed concerns about assurances  
24 that the developer DMB would go forward with the Whitestone project and possible Commission

1 remedies if that doesn't happen.

2           That concern should not impact this CC&N proceeding for several reasons. First,  
3 this application is not a speculative CC&N filing. Second, the factual record does not bring  
4 those issues into play because it is clear that the proposed water and wastewater services are  
5 necessary for the Whitestone Development project and Citizens/DistCo are the proper entities to  
6 provide those services. There simply is no dispute on those points.<sup>3</sup>

7           Third, the evidence is undisputed that DMB has spent vast sums of money to  
8 pursue the project and intends to go forward. At the October 2, 2001 open meeting, Robert  
9 Kamerle (DMB's Vice President and Director of Development) reinforced DMB's commitment  
10 to the project. Whether the Whitestone Development may only partially succeed is a matter of  
11 pure speculation and is not a valid basis to deny the pending application.<sup>4</sup> Finally, the ACC has  
12 no jurisdiction to regulate the development because DMB is not a public service corporation. See  
13 Ariz. Const. Art. 15, § 2. Conditions requiring assurances from the Developer or imposing time  
14 frames for project construction go beyond the Commission's powers to regulate public utilities  
15 and issue CC&Ns under Ariz. Rev. Stat. §§ 40-281 and 40-282.

16           Next, the Commissioners raised concerns about water use and availability. They  
17 expressed concern over the use of groundwater for irrigation of golf courses and possible uses of  
18 other water sources. Citizens answers those water concerns below as a matter of fact, but  
19 maintains that the ACC has no authority to impose water management conditions in this docket.

20 \_\_\_\_\_  
21 <sup>3</sup> It also should be noted that Ariz. Rev. Stat. § 40-281 and § 40-282 do not prohibit  
22 CC&N extensions or filings for large service areas. Nor do the governing administrative  
23 regulations. See A.A.C. R14-2-401, et seq. and A.A.C. R14-2-601, et seq.

24 <sup>4</sup> If, for some reason, the Whitestone Development does not fully develop, the  
Commission may withdraw the undeveloped areas upon the proper public interest showing. See,  
e.g., James P. Paul Water Co. v. Arizona Corporation Comm'n, 137 Ariz. 426, 671 P.2d 404  
(1983).

1                   Finally, the Commissioners focused on the issue of “urban sprawl” at the  
2 October 2, 2001 open meeting. Essentially, the Commissioners questioned whether an 8,800  
3 acre master planned development in Buckeye is the right development decision. Commissioner  
4 Spitzer summed up that concern by questioning the development “concept,” but not the need for  
5 the proposed services or whether Citizens and DistCo are the right companies to provide the  
6 services:

7                   “We’ve got the framework of, and I would respectfully disagree with the developer. I  
8 think this is urban sprawl and we’re putting three golf courses way out, you know, miles  
9 out of the city, and I understand you need the golf courses to sell lots and that’s the  
10 developer’s issue. *They’ve got the right company and I am familiar with Citizens’ efforts  
11 with regard to groundwater and I appreciate them. My hang-up is with the concept of  
12 the project and I’m not sure additional information would deal with that issue. I mean if  
13 you think putting a ton of people out at 130<sup>th</sup> Avenue and McDowell was a great idea, I  
14 mean, you’ve got the right folks.*” (emphasis added)

15                   See October 2, 2001 Open Meeting Transcript, Comments by Commissioner Spitzer. The  
16 Commissioners went on to question the Development based on the ACC’s policy of “not  
17 encouraging urban sprawl.” *Id.* Those issues are not part of a CC&N filing.

18                   **IV. THE ACC HAS NO AUTHORITY TO ADDRESS URBAN SPRAWL, WATER  
19 RIGHTS AND LAND USE ISSUES IN AN APPLICATION FOR A CC&N EXTENSION.**

20                   **A. Arizona’s Statutory Framework for Issuance of Utility CC&Ns Does not Include Land  
21 Use, Development, Zoning or Water Management Powers.**

22                   In the wake of the October 2, 2001 open meeting, the ACC stands on the verge of  
23 drastically reworking Arizona’s statutory framework for issuance of utility certificates. The  
24 ACC appears ready to plunge into policy waters of urban sprawl, water rights and development  
planning as part of CC&N dockets. Those issues go way beyond the statutory process for  
issuance of utility certificates. The ACC is not a land use, development or zoning commission.  
It is not ADWR nor an urban planning agency. Issues relating to land use, economic  
development, water rights and urban sprawl are not part of the ACC’s CC&N powers.

1 Not only would such issues violate the statutory framework for issuance of  
2 CC&Ns, but imposing such land use, urban sprawl and/or water use concerns on CC&N filings  
3 raises a host of practical and legal problems. Injecting such issues into certificate dockets would  
4 require utilities and Commission Staff to act as developers, zoning commissions and land use  
5 specialists. In the process, utility customers would face rate increases resulting from increased  
6 administrative costs, regulatory lag and technical analyses. Interjecting water management,  
7 development and zoning issues into this CC&N proceedings also raises problems with treating  
8 Citizens and DistCo differently than other CC&N applicants. These problems would impose  
9 substantial consequences for the entire water/sewer utility industry in Arizona.

10 Even further, ACC decisions addressing such issues would usurp and conflict  
11 with powers given to other state and municipal agencies responsible for land use, zoning,  
12 development and water management issues. For example, Article 15 of the state constitution and  
13 Title 40 of Arizona's statutes convey no land use, zoning or development powers on the ACC.  
14 By contrast, those powers reside in cities and towns, planning and zoning commissions and the  
15 like. Land use regulation in Arizona is governed, in large part, by adoption in 1973 of the Urban  
16 Environmental Management Act (UEMA). UEMA gave Arizona cities and towns extensive  
17 planning and development authority. See Ariz. Rev. Stat. §§ 9-461, et. seq. On the other hand,  
18 the Commission has no such authority.

19 Arizona's recent Growing Smarter Legislation reinforces those powers in local  
20 and municipal bodies. That legislation requires local communities to implement land use plans,  
21 growth management plans, citizen participation programs and other land use mechanisms. Here,  
22 the Town of Buckeye has approved and supported the Whitestone Development. The ACC has  
23 no authority to override that decision by refusing to grant Citizens/DistCo's pending application.  
24

1           Likewise, Article 15 and Title 40 do not give the ACC any powers to implement  
2 water use and management policies. Those powers reside with the Arizona Department of Water  
3 Resources; and, any venture by the ACC into those water issues would violate statutory  
4 provisions conveying such powers to ADWR. See, e.g., Ariz. Rev. Stat. §§ 45-103 (ADWR  
5 Director has general control and supervision of groundwater); 45-105.B.4 (requiring the Director  
6 to coordinate and confer with various state agencies “with respect to matters within their  
7 jurisdiction relating to surface and groundwater...”);<sup>5</sup> 45-451 (governing use and withdrawal of  
8 groundwater in an active management area); 45-576 (requiring developer to obtain certificate of  
9 assured water supply from ADWR). ACC decisions or conditions imposing water management  
10 policies also may potentially conflict with or hinder a utility’s compliance with water regulations  
11 or ADWR policies. That result obviously is at odds with the legislative decision to centralize  
12 these powers and policy making in ADWR.

13           **B.     The Commission Must Abide By Its Limited Statutory Powers to Grant CC&Ns.**

14           Under Arizona’s constitutional framework, the ACC, as relevant here, only has  
15 jurisdiction over “public service corporations.” See Ariz. Const. Article XV, Section 2. Citizens  
16 and DistCo are public service corporations; but the developer DMB and the Town of Buckeye  
17 are not. That means the ACC has no authority to regulate development activities related to land  
18 use, project time frames, construction phases, water rights and usage and urban sprawl as raised  
19 by the Commissioners at the October 2, 2001 open meeting. The ACC has extremely limited  
20 jurisdiction over non-public service corporations. Put another way, if the ACC rejects this  
21 CC&N filing because of urban sprawl, water management or development issues, the ACC

22  
23           <sup>5</sup> Ariz. Rev. Stat. § 45-105.B.4 does not mention the Commission which reinforces  
24 the point that the Legislature did not intend for the Commission to exercise water management  
powers.

1 would be regulating DMB and the Town of Buckeye--not Citizens or DistCo. Obviously, the  
2 ACC has no jurisdiction over DMB or Buckeye.

3           As a matter of law, the ACC must abide by its limited statutory power to issue  
4 CC&Ns. The Arizona Constitution “does not authorize the Commission to issue public  
5 certificates of convenience and necessity...” Williams v. Pipe Trades Industry Program of  
6 Arizona, Inc, 100 Ariz. 14, 409 P.2d 720 (1966). “Issuing certificates of convenience and  
7 necessity is far from a plenary power of the Commission. To the contrary, it is a legislative  
8 power delegated to the Commission subject to restrictions as the legislature deems appropriate.”  
9 U S West Communications, Inc. v. Arizona Corporation Comm’n, 197 Ariz. 16, 20, 3 P.3d 936,  
10 940 (App. 1999), review denied April 18, 2000.

11           Ariz. Rev. Stat. §§ 40-281 and 40-282 “establish the procedure for applying for a  
12 certificate of convenience and necessity...The only absolute requirement for issuance of the  
13 certificate is an affirmative showing that issuance thereof would best serve the public interest...it  
14 is only the interest for and against the issuance of the certificate that are at issue before the  
15 Commission...” Gamet v. Glen, 104 Ariz. 489, 455 P.2d 967 (1969) (emphasis added). Under  
16 Ariz. Rev. Stat. § 40-281 and § 40-282, therefore, the focus of a CC&N case is whether the  
17 proposed utility services are necessary to satisfy the public utility needs for the specific area in  
18 question; and, whether the CC&N applicant is a fit and proper entity to provide the proposed  
19 utility services. In Gamet, the Arizona Supreme Court stressed that the public need analysis for  
20 CC&N filings does not involve water rights issues:

21           For the reasons that follow, we hold that the Commission, in granting a  
22 certificate of convenience and necessity, has no jurisdiction to determine  
23 conflicting water rights, cannot purport to license the wrongful deportation of  
24 water, and cannot consider the issue of water rights...”

Gamet, 104 Ariz. at 493, 455 P.2d at 970. See also Burlington Northern & Santa Fe Railway

1 Co. v. Arizona Corporation Comm'n, 198 Ariz. 604, 12 P.3d 1208 (App. 2000)(overturning  
2 ACC order requiring railroad crossing at private road because “neither the Arizona Constitution  
3 nor the Legislature has conferred authority on the Commission to require such a crossing”). The  
4 same reasoning applies to urban sprawl and land use/development issues.

5           It is “not the purpose of regulatory bodies to manage the affairs of a corporation.”  
6 Southern Pacific Co. v. Arizona Corporation Comm'n, 98 Ariz. 339, 344, 404 P.2d 692, 695  
7 (1965). Here, the ACC’s reservations border on intrusions into internal management decisions  
8 about how the development should be designed, what water rights should be obtained, how water  
9 should be allocated and used, where the project should be located and other business decisions.  
10 Those issues are beyond the ACC’s jurisdiction and authority.

11           Ultimately, the Commission’s powers “do not exceed those to be derived from the  
12 strict construction of the Constitution and implementing statutes.” Williams, 100 Ariz. at 17,  
13 409 P.2d at 723 Commercial Life Ins. Co. v. Wright, 64 Ariz. 129, 166 P.2d 943 (1966). It has  
14 no “inherent power.” Williams, 100 Ariz. at 7, 409 P.2d at 723. In this case, no constitutional or  
15 statutory provision gives the Commission any power to decide urban sprawl policy issues and/or  
16 any other zoning/land use matters.

17           Likewise, §§ 40-281 and 40-282 do not give the ACC power to render and/or  
18 determine water use conditions. “Neither the Constitution nor the statutes give the Corporation  
19 Commission the unlimited power to issue” CC&Ns. Williams, 100 Ariz. at 18, 409 P.2d at 724.  
20 “In judging whether an applicant shall receive a certificate of convenience and necessity, the  
21 Commission has the power to determine the legal qualifications of the proposed recipient [and]  
22 to judge the legal right of the applicant to transact such a business in Arizona.” Arizona Public  
23 Service v. Southern Union Gas Co., 76 Ariz. 373, 265 P.2d 435 (1954). Public regulation of  
24

1 need for certification is concerned “with the service rendered” and “ the price charged the  
2 public.” Natural Gas Service Co. v. Serv-Yu Corp., 70 Ariz. 235, 219 P.2d 324 (1950).

3 “Public interest is the controlling factor in decisions concerning service of water  
4 by water companies.” James P. Paul Water Co v. Arizona Corporation Comm’n, 137 Ariz. 426,  
5 671 P.2d 404 (1983). The terms “public interest,” however, do not confer upon the ACC broad  
6 powers to range beyond the specific powers vested by statute. Rather, the public interest  
7 analysis is limited to the specific service area in question and whether the proposed utility  
8 services meet the public needs and interests for that area. The public interest is determined by  
9 comparing the capabilities and services provided by competitors seeking the right to provide  
10 utility service. Id. at 430, 671 P.2d at 408. In terms of a “need” analysis, the “Commission is  
11 required to investigate all applicants for a certificate of convenience and necessity for a given  
12 area...and to issue a certificate only upon a showing that the issuance to a particular applicant  
13 would serve the public interest.” Id. Citizens and DistCo have met the necessary conditions for  
14 issuance of the CC&N extension to serve the Whitestone Development.

15 **V. WATER USAGE AND CONSTRUCTION PHASES FOR THE PROPOSED**  
16 **WHITESTONE DEVELOPMENT.**

17 Although Citizens and DistCo maintain that issues regarding development phases  
18 and water rights for the project are beyond the ACC’s scope of authority in reviewing this  
19 CC&N filing, the companies have addressed below the Commissioners’ questions about  
20 percentages of ground water, effluent and CAP water to be used for the Whitestone Development  
21 for golf course irrigation; and, the percentages of water usage for the various construction phases  
22 of the project. Citizens and DistCo incorporate the attached affidavit of Blaine Akine  
23 (Engineering and Development Services Director for Citizens’ operations) as part of the  
24 underlying record in this case.

1                   Following the October 2, 2001 open meeting, Citizens and DistCo analyzed the  
2 specific issues raised by the Commissioners regarding water usage and construction phases. The  
3 companies also consulted with the developer DMB on those points. As part of the project review  
4 process, the companies reviewed the current development master plans. They also examined the  
5 development's water resource plan to quantify the amount, timing and percentages regarding use  
6 of effluent, surface water and ground water for the Whitestone Development. See Akine  
7 Affidavit, ¶¶ 1-6. In reviewing those plans, the companies verified that there are no major  
8 changes to the development plans; and, the water resources plan coincides with Citizens'  
9 regional plan to propose renewable water resources. Id. at ¶ 6.

10                   In terms of a "more definitive time table for construction of various components  
11 of the project," Table 1 to Mr. Akine's affidavit is a Proposed Land Use Phasing Schedule  
12 which details timing for completion of residential and commercial units, including golf courses,  
13 parks and landscaping. Id. at ¶ 7. Table 2 to Mr. Akine's affidavit provides a Water Balance  
14 Analysis for the Whitestone Development. Id. at ¶¶ 8-9. Table 2 includes yearly engineering  
15 estimates for the amount and type of water used to provide potable and irrigation water demands  
16 (including construction demands) for the Whitestone Development. Id. Simply put, Citizens  
17 expects to satisfy the total irrigation needs for the project through build-out with renewable water  
18 supplies by combining direct effluent reuse, recovered effluent storage credits and recovered  
19 CAP water storage credits. Id. at ¶ 9.

20                   Tables 2 and 3 attached to Mr. Akine's affidavits also demonstrate that the total  
21 potable water demand for the Whitestone Development through build-out will be provided by a  
22 combination of direct deliveries of treated CAP water, recovered effluent water storage credits,  
23 recovered CAP water storage credits and groundwater pumping. Those tables illustrates that the  
24

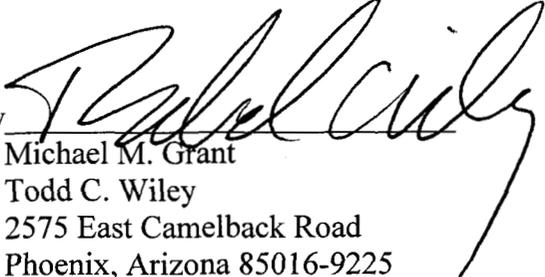
1 bulk of the Development's potable water demand will be provided by renewable water sources.  
2 Id. Starting in 2005, direct deliveries of CAP water will be made to the project and, after 2006,  
3 71 percent of the project's potable water demand will be provided by direct deliveries of treated  
4 CAP water and the remaining 29 percent will be provided by recovered effluent storage credits  
5 and groundwater. Id.

6 **VI. CONCLUSION.**

7 For the reasons noted above, the Commission should issue its order approving  
8 Citizen's and DistCo's CC&N extension application in this docket and adopting the  
9 Administrative Law Judge's Proposed Opinion and Order docketed on September 21, 2001. No  
10 further evidentiary hearing is necessary because the underlying factual record is undisputed and  
11 the ALJ and Commission may decide the legal issues based on the legal briefs.

12 DATED this 19 day of October, 2001.

13 GALLAGHER & KENNEDY, P.A.

14  
15 By   
16 Michael M. Grant  
17 Todd C. Wiley  
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18 Phoenix, Arizona 85016-9225  
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19 Company

20 **Original** and ten copies filed this  
21 19th day of October, 2001, with:  
22 Docket Control  
23 Arizona Corporation Commission  
1200 West Washington  
24 Phoenix, Arizona 85007

1 **Copy** of the foregoing hand-delivered  
this 19<sup>th</sup> day of October, 2001, to:

2 Dwight D. Nodes  
3 Administrative Law Judge  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 **Copies** of the foregoing mailed  
8 this 19<sup>th</sup> day of October, 2001, to:

9 Christopher Kempley, Esq.  
10 Legal Division  
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STATE OF ARIZONA        )  
                                  )  ss.  
County of Maricopa        )

BLAINE H. AKINE, being first duly sworn and upon his oath deposes and says:

1.       I am the Engineering and Development Services Manager for Citizens Communications Company (“Citizens”) regarding its Maricopa County operations. In that capacity, I am responsible for engineering and development services for Citizens’ Agua Fria Division and Citizens Water Services Company of Arizona (“DistCo”).

2.       I am providing the following affidavit in support of Citizen’s Agua Fria Division’s and DistCo’s joint application for an extension of their certificated areas and related approvals to provide water and sewer services to the Whitestone Development under Commission Docket No. W-01032B-00-1043 and SW-03454A-00-1043. This affidavit supplements the factual record in the pending docket and addresses the issues raised by the Commissioners at the October 2, 2001 open meeting and listed in the Administrative Law Judge’s Procedural Order issued on October 5, 2001.

3.       Specifically, I discuss below the amount and percentages of groundwater, effluent and CAP water that will be used 1) to irrigate the proposed golf courses and other turf areas, and 2) to meet the potable demands within the Whitestone Development. I also address the timetable for the various phases of project construction and provide the water usage associated with those construction phases (including approximate volumes and ratios of groundwater, effluent and CAP water). This affidavit is based on my review of planning and engineering studies for the Whitestone Master Planned Community and other pertinent materials. And it is based on my engineering expertise and experience. This affidavit also is based on analysis and work provided by other Citizens’ employees and engineers.

4. As part of the project review process and following the October 5, 2001 procedural order, Citizens' engineering team reviewed the current development plans and master infrastructure plans for the Whitestone Development. The purpose was to verify information on projected population growth for the Development; and, to evaluate timing for construction of development facilities, including golf courses. We also reviewed the Development's water resource plan to quantify the amount and percentage of effluent, surface water, and groundwater to be used for the Development.

5. Our analysis confirmed that the Whitestone Development master plans have experienced no major changes and are materially the same as the master plans approved by the Town of Buckeye and previously submitted to Commission Staff in the pending docket. The only notable change is that the number of golf courses within the Whitestone Development at build-out has been reduced from five to four. Our analysis also confirmed that the Development's water resources master plan is consistent with the plan previously presented to Commission Staff. I also would point out that the Whitestone Development water resources plan is consistent with Citizens' regional plan to provide significant renewable water resources to the region. Citizens previously discussed these issues with Commission Staff.

6. In terms of a "more definitive time table for construction of various components of the project," the attached Proposed Land Use Phasing Schedule (Table 1) provides a completion timeline for various components of the Whitestone Development, including residential units (both single and multiple family units), commercial/retail units, resorts, schools, community facilities, parks, golf courses and landscaping. The Land Use Phasing Schedule illustrates that the Whitestone Development will be constructed in seven phases over a fifteen year period as approved by the Town of Buckeye. Construction is

scheduled to begin in March 2002 with the first residential units being occupied in July 2003. As illustrated by the phasing schedule, the developer has made substantial commitments to build the project and extension of Citizen's and DistCo's service territories are necessary to serve the public utility needs of the Development.

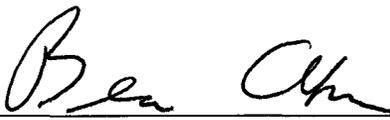
7. Table 2 and Table 3 provide information relating to the percentages of groundwater, effluent, and Central Arizona Project ("CAP") water that will be used to irrigate the proposed golf courses and other turf areas in the proposed development and potable water usage associated with construction of the various components of the project. Specifically, Table 2 is a Water Balance Analysis for the Whitestone Development providing a yearly summary of the estimated amount and type of water expected to be used to meet the Development's potable and golf course/ landscaping irrigation demands, including all construction demands. Table 3 is the same water balance information provided in Table 2 but with the water resource information broken down by percentage of total potable and total golf course/irrigation supply.

8. Addressing the proposed golf courses and other turf areas, Tables 2 and 3, demonstrate that the total irrigation demand for the Whitestone Development through build-out will be provided entirely with renewable water supplies through a combination of direct effluent reuse, recovered effluent storage credits, and recovered CAP water storage credits. It is important to note that well pumpage will be utilized for the project, but withdrawals either will be recovered effluent or recovered CAP water. No use of mined groundwater is planned for the Whitestone Development golf courses or other irrigation demand through build-out.

9. Addressing the various components of the project (which constitute the project's potable water demand), Tables 2 and 3 document that the total potable

water demand for Whitestone through build-out will be provided from a combination of direct deliveries of treated CAP water, recovered effluent water storage credits, recovered CAP water storage credits, and groundwater pumping. Table 3 indicates that during the first two years of development, recovered CAP water storage credits will provide 50 percent of the potable demand and 50 percent will be provided from groundwater. Beginning in 2005, direct deliveries of treated CAP will be made and will provide 71 percent of total potable demand after 2006. The remaining 29 percent of potable demand will be provided from a combination of recovered effluent storage credits and groundwater. It is important to note that this small remaining portion of groundwater use on the project is subject to a replenishment obligation under Assured Water Supply Rules.

DATED this 19th day of October, 2001.

  
\_\_\_\_\_  
BLAINE H. AKINE

SUBSCRIBED AND SWORN TO before me this 19th day of October, 2001, by

Blaine H. Akine. \_\_\_\_\_

  
\_\_\_\_\_  
NOTARY PUBLIC  
(married)  


My commission expires:

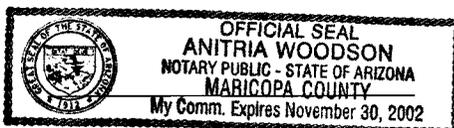


TABLE 1

PROPOSED LAND USE PHASING SCHEDULE

Project: Whitestone

Location: Buckeye, Arizona

Year	Quarter	Month	Single Family		Multiple Family (units)	Commercial/ Retail/ Office (acres)	Resort (rooms)	School (acres)	Community Facilities (acres)	Park (acres)	Golf Courses	Roadway Landscaping (acres)		
			Density < 4 DU/ acre (units)	Density > 4 DU/ acre (units)										
2003	1	Jan	0	0	0									
	2	Apr	0	0	0									
	3	Jul	50	52	15						1			
	4	Oct	50	52	15									
2004	1	Jan	50	78	15	4.7	0	27.8	15.2	40.3		49	Ph 1	
	2	Apr	50	71	15									
	3	Jul	57	52	15									
	4	Oct	57	52	15									
2005	1	Jan	57	84	30									
	2	Apr	61	78	24									
	3	Jul	58	78	30									
	4	Oct	69	79	30									
2006	1	Jan	69	78	30									
	2	Apr	69	60	30									
	3	Jul	69	60	30	43.5	250	20.2	19.9	51.4	1	43.9	Ph 2	
	4	Oct	72	78	15									
2007	1	Jan	69	78	15									
	2	Apr	70	86	11									
	3	Jul	83	78	15									
	4	Oct	84	103	15									
2008	1	Jan	67	112	15									
	2	Apr	70	84	15									
	3	Jul	78	78	137									
	4	Oct	78	60	15									
2009	1	Jan	76	78	160	0.0	0	0.0	8.7	27.8	0	15.2	Ph 3	
	2	Apr	75	78	0									
	3	Jul	65	103	15									
	4	Oct	75	103	15									
2010	1	Jan	72	103	15									
	2	Apr	71	84	15									
	3	Jul	71	76	15									
	4	Oct	79	103	166									
2011	1	Jan	79	69	15									
	2	Apr	73	103	15									
	3	Jul	75	103	15									
	4	Oct	67	117	315									

Year	Quarter	Month	Single Family		Multiple Family (units)	Commercial/ Retail/ Office (acres)	Resort (rooms)	School (acres)	Community Facilities (acres)	Park (acres)	Golf Courses	Roadway Landscaping (acres)	
			Density < 4 DU/ acre (units)	Density > 4 DU/ acre (units)									
2012	1	Jan	79	103	32	17.5	0	50.0	20.0	63.1	1	36.4	Ph 4
	2	Apr	83	103	30								
	3	Jul	74	119	30								
	4	Oct	69	103	30								
2013	1	Jan	65	98	30								
	2	Apr	63	71	24								
	3	Jul	62	69	30								
	4	Oct	65	78	180								
2014	1	Jan	61	78	45	93.9	550	0.0	2.5	56.6	1	45.7	Ph 5
	2	Apr	58	69	45								
	3	Jul	52	52	195								
	4	Oct	45	43	45								
2015	1	Jan	52	17	37								
	2	Apr	53	0	42								
	3	Jul	53	0	30								
	4	Oct	48	0	30								
2016	1	Jan	37	0	30	56.9	0	0.0	3.0	11.5	0	17.9	Ph 6
	2	Apr	37	0	30								
	3	Jul	37	0	15								
	4	Oct	34	0	0								
2017	1	Jan	32	0	0	18.1	200	0.0	0.0	7.7	0	6.4	Ph 7
	2	Apr	24	0	0								
	3	Jul	24	0	0								
	4	Oct	24	0	0								
2018	1	Jan	19	0	0								
	2	Apr	14	0	0								
	3	Jul	0	0	0								
	4	Oct	0	0	0								
2019	1	Jan	0	0	0								
	2	Apr	0	0	0								
	3	Jul	0	0	0								
	4	Oct	0	0	0								
<b>Totals</b>			<b>3,572</b>	<b>3,751</b>	<b>2,238</b>	<b>234.6</b>	<b>1,000</b>	<b>98.0</b>	<b>69.3</b>	<b>258.4</b>	<b>4</b>	<b>214.6</b>	

**Table 2  
Whitestone  
Water Balance Analysis**

10/19/01  
By: RCJ

Year	Potable Water					Golf Course / Irrigation / Construction Water				
	Potable Demand (Acre-Ft)	Treated CAP Water (Acre-Ft)	Recovered Effluent (Acre-Ft)	Recovered CAP Water (Acre-Ft)	Groundwater (Acre-Ft)	Irrigation Demand (Acre-Ft)	Direct Effluent Reuse (Acre-Ft)	Recovered Effluent (Acre-Ft)	Recovered CAP Water (Acre-Ft)	Groundwater (Acre-Ft)
2002	0	0	0	0	0	378	0	0	378	0
2003	212	0	0	106	106	491	16	0	475	0
2004	377	0	0	188	188	625	205	0	421	0
2005	616	256	0	180	180	624	332	0	292	0
2006	1,076	770	0	0	306	967	555	37	375	0
2007	1,521	1,084	0	0	437	1,243	774	46	424	0
2008	1,833	1,306	0	0	527	1,242	891	107	244	0
2009	2,215	1,578	0	0	637	1,281	1,018	181	83	0
2010	2,518	1,793	151	0	574	1,281	1,096	185	0	0
2011	2,857	2,035	292	0	530	1,281	1,153	128	0	0
2012	3,497	2,489	118	0	890	1,910	1,588	322	0	0
2013	3,802	2,706	255	0	840	1,910	1,656	254	0	0
2014	4,660	3,316	95	0	1,249	2,539	2,096	443	0	0
2015	4,866	3,461	215	0	1,190	2,539	2,150	389	0	0
2016	5,124	3,644	351	0	1,129	2,564	2,224	341	0	0
2017	5,343	3,799	449	0	1,095	2,577	2,260	317	0	0
2018	5,381	3,826	477	0	1,078	2,577	2,265	312	0	0
2019	5,383	3,828	480	0	1,075	2,577	2,265	312	0	0

**Table 3  
Whitestone  
Water Balance Analysis**

10/19/01  
By: RCJ

Year	Potable Water					Golf Course / Irrigation / Construction Water				
	Potable Demand (Acre-Ft)	Treated CAP Water (Acre-Ft)	Recovered Effluent (Acre-Ft)	Recovered CAP Water (Acre-Ft)	Groundwater (Acre-Ft)	Irrigation Demand (Acre-Ft)	Direct Effluent Reuse (Acre-Ft)	Recovered Effluent (Acre-Ft)	Recovered CAP Water (Acre-Ft)	Groundwater (Acre-Ft)
2002	0	0%	0%	0%	0%	378	0%	0%	100%	0%
2003	212	0%	0%	50%	50%	491	3%	0%	97%	0%
2004	377	0%	0%	50%	50%	625	33%	0%	67%	0%
2005	616	42%	0%	29%	29%	624	53%	0%	47%	0%
2006	1,076	72%	0%	0%	28%	967	57%	4%	39%	0%
2007	1,521	71%	0%	0%	29%	1,243	62%	4%	34%	0%
2008	1,833	71%	0%	0%	29%	1,242	72%	9%	20%	0%
2009	2,215	71%	0%	0%	29%	1,281	79%	14%	6%	0%
2010	2,518	71%	6%	0%	23%	1,281	86%	14%	0%	0%
2011	2,857	71%	10%	0%	19%	1,281	90%	10%	0%	0%
2012	3,497	71%	3%	0%	25%	1,910	83%	17%	0%	0%
2013	3,802	71%	7%	0%	22%	1,910	87%	13%	0%	0%
2014	4,660	71%	2%	0%	27%	2,539	83%	17%	0%	0%
2015	4,866	71%	4%	0%	24%	2,539	85%	15%	0%	0%
2016	5,124	71%	7%	0%	22%	2,564	87%	13%	0%	0%
2017	5,343	71%	8%	0%	20%	2,577	88%	12%	0%	0%
2018	5,381	71%	9%	0%	20%	2,577	88%	12%	0%	0%
2019	5,383	71%	9%	0%	20%	2,577	88%	12%	0%	0%