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ORIGINAL

Arizona Corporation Commission

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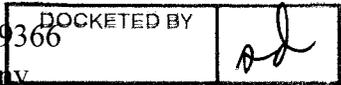
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2 2525 E. Arizona Biltmore Circle, Suite 117
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Attorneys for Litchfield Park Service Company



AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

5	IN THE MATTER OF THE APPLICATION OF)	DOCKET NOS. W-01427A-00-1004
6	LITCHFIELD PARK SERVICE COMPANY FOR)	SW-01428A-00-1004
7	AN EXTENSION OF ITS CERTIFICATE OF)	
8	CONVENIENCE AND NECESSITY TO)	APPLICANT'S RESPONSE TO
9	PROVIDE WATER AND WASTEWATER)	STAFF REPORT
	SERVICE IN MARICOPA COUNTY, ARIZONA,)	
	AND DELETION OF A PORTION OF THE)	
	WATER CERTIFICATED.)	

10 1. On December 8, 2000, Litchfield Park Service Company ("LPSCO" or the "Company")
11 filed an application to extend and delete portions of this Certificate of Convenience and
12 Necessity.

13 2. On May 14, 2001, the Commission Staff filed its Staff Report recommending approval of
14 the Application with certain specific recommendations.

15 3. On June 26, 2001 the Administrative Law Judge issued an Amended Procedural Order
16 ordering, among other things, "that any objections to the Staff Report and associated exhibits to
17 be presented at hearing by Applicant shall be reduced to writing and filed on or before 4:00 p.m.
18 on August 2, 2001."

19 4. Upon review of the Staff Report, LPSCO has objections to two specific recommendations
20 contained in the Staff Report.

21 5. The fourth recommendation on Page 3 of the Staff Report, recommends that the decision
22 condition the approval on the Company docketing the developer's Certificate of Assured Water
23

1 Supply (the "CAWS") within 180 days of the effective date of the Decision. The Company is of
2 the opinion that period is not sufficient for the developer to obtain the CAWS. As the
3 Commission is aware, there are numerous approvals a developer must receive from zoning
4 authorities, Arizona Department of Environmental Quality, and the Arizona Department of Real
5 Estate prior to obtaining the Arizona Department of Water Resources CAWS. The 180 day
6 period is insufficient for the developer to obtain these approvals and the CAWS. Further, the
7 Company is of the believe that the Commission typically allows at least 365 days for a company
8 to docket that requirement.

9 6. Therefore, the Company respectfully requests that the Decision allow 365 days from the
10 effective date of the Decision to file the Certificate of Assured Water Supply.

11 7. The Staff Report also recommends that the Company file a County Franchise within 365
12 days of the effective date of the Decision. That franchise cannot be provided. The subject area is
13 located within the City of Goodyear, and therefore Maricopa County will not issued a franchise
14 for that area. The Staff may have been misled by LPSCO's response to Paragraph M1 of the
15 standard application (Attachment D to the Application), which indicates the "franchise" would
16 be a late filed exhibit.

17 8. The Company serves other areas within the City of Goodyear, and has established a good
18 working relationship and procedure with the City when facilities must be placed in the City's
19 rights-of-way That procedure was restated in the Agreement with the City regarding "exchange"
20 of service areas subject to this Application, which Agreement has previously been provided to
21 the Staff, and a copy of which is attached hereto. The Company is of the opinion the intent of the
22 Commission requirement is met with that Agreement .

1 9. Therefore, LPSCO proposes that the filing requirement be modified from "County
2 Franchise" to "City License"

3 10. All other conclusions and recommendation of the Staff Report are acceptable to LPSCO.

4 Respectfully submitted this 10th day of July, 2001.

5 SALLQUIST & DRUMMOND, P.C.

6 By: 

7 Richard L. Sallquist

8 SALLQUIST & DRUMMOND, P.C.

9 2525 E. Arizona Biltmore Circle, Suite 117

10 Phoenix, AZ 85016

11 Attorneys for Litchfield Park Service Company

12 The original and ten copies of
13 the foregoing were filed this 17th
14 day of July, 2001:

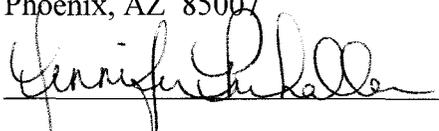
15 Docket Control
16 Arizona Corporation Commission
17 1200 W. Washington St.
18 Phoenix, AZ 85007

19 Copies of the foregoing were mailed
20 this 17th day of July, 2001 to:

21 Hearing Division
22 Arizona Corporation Commission
23 1200 W. Washington St.
Phoenix, AZ 85007

Legal Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007



**WATER AND WASTE WATER SERVICE MEMORANDUM OF
UNDERSTANDING**

This Memorandum of Understanding is entered into this 14th day of ~~July~~ ^{August}, 2000 between the City of Goodyear, an Arizona municipal corporation ("Goodyear" or the "City"), and Litchfield Park Service Company, an Arizona corporation ("LPSCO"), regarding certain water and wastewater service.

WHEREAS, Goodyear provides numerous services to its residents, including water and wastewater service, and

WHEREAS, LPSCO is a public service corporation authorized by the Arizona Corporation Commission (Commission) to provide water and wastewater service in the vicinity of the City; and

WHEREAS, certain areas within the LPSCO Certificate of Convenience and Necessity (CC&N), would best be served by Goodyear; and

WHEREAS, certain non-certificated areas adjacent to LPSCO's existing certificated area would most efficiently and effectively be provided water and wastewater service by LPSCO; and

WHEREAS, the Parties agree that this realignment of service areas would be in the best interest of the Parties, present and future utility customers, and the public.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the Parties hereto as follows:

- 1 CC&N Application. LPSCO will, within thirty days, file an application with the Commission requesting modification to its water and wastewater CC&N, specifically to delete the water certificate for those portions of Section 1, Township 1 North, Range 2 West lying south of Interstate Highway 10, and those portions of Section 6, Township 1 North, Range 1 West lying south of Interstate Highway 10, (collectively referred to as "Canyon Trails" and described on Exhibit A hereto) (LPSCO does not hold the wastewater certificate for that area). LPSCO shall further apply to the Commission seeking authority to provide water and wastewater service to Section 32, Township 2 North, Range 1 West (the "Section 32 Property" and described on Exhibit B hereto). The City hereby provides its consent for LPSCO to obtain the CC&N within the city limits of the City. The City will cooperate with LPSCO in all reasonable requests to assist LPSCO in obtaining the requested CC&N.
- 2 Interim Period. It is understood by the Parties that the Commission will require approximately six months to process the application, hold an evidentiary hearing and issue its decision in the subject application. During the time from the execution of this Agreement until the Commission decision becomes effective (the "Interim Period") it is agreed that the City may commence water service to Canyon Trails

pursuant to the City's terms, conditions, rates, and charges, and that LPSCO may commence water and wastewater service to the SECTION 32 pursuant to LPSCO's terms, conditions, rates and charges.

- 3 Construction Responsibility. During the Interim Period, both Parties shall be responsible for the construction, operation, and maintenance of any facilities necessary to provide service to their respective Operating Areas (Canyon Trails for Goodyear and the SECTION 32 for LPSCO), and shall collect and receive all revenues for services provided by them at their respective rates and charges.
- 4 LPSCO Service. Following the Commission's granting of the CC&N for the SECTION 32 to LPSCO, LPSCO shall provide water and wastewater service to SECTION 32 in accordance with the Commission's rules and regulations, the Arizona Department of Water Resources ("ADWR") and all other applicable agencies having jurisdiction over the Facilities or services. LPSCO will utilize good utility practice and its best efforts to provide said services.
- 5 Applicable Rates. Services provided by LPSCO shall be provided under the terms, conditions, rates, and charges for water service which are currently on file with the Commission, subject to change from time to time upon application of LPSCO and as approved by the Commission.
- 6 Goodyear Service. Following the Commission's deletion of Canyon Trails from the LPSCO's water CC&N, Goodyear will provide water and wastewater service to that area consistent with the service provided elsewhere in the City.
- 7 Facilities and Net Revenue Conveyance. In the event the Commission does not grant the deletion and expansion as requested, the Parties will work diligently with each other and the developers to provide immediate and smooth transition back to their respective system, including, conveyance to the other all new plant within their respective Operating Areas and transfer any obligation associated with such plant to the other Party. Any net operating income or surplus from such operations shall be retained by the Party providing the service as full compensation for providing that service. Any net operating loss shall remain the responsibility of the Party providing said service.
- 8 City License. The City shall provide to LPSCO, prior to the construction of any facilities in the Section 32 Property, a license from the City to install LPSCO's facilities within the dedicated rights-of-way in the portions of the City necessary for LPSCO to serve the Section 32 Property.
- 9 Title. No provision of this Agreement shall create any right, title or interest by one Party in the other Party's utility system or facilities.
- 10 Conditions Precedent. The Parties acknowledge and agree that the provisions of this Agreement shall be contingent upon the City Council of the City adopting a Resolution approving this Agreement.

- 11 Term. This Agreement shall remain in effect for one year, until the Commission grants the revised CC&N, or until it is either breached or is terminated by mutual written consent of the Parties. This Agreement may be renewed by the mutual written consent of the Parties. Utility service obligations to the areas established under this Agreement shall survive the term of this Agreement.
- 12 Post Agreement Service. It is agreed that following the required Commission and City Council approval, and after the expiration of this Agreement, LPSCO and Goodyear will continue to provide water and wastewater service to the service areas established in this Agreement.
- 13 Conflict of Interest Statutes. This Agreement is subject to, and may be terminated by, either Party in accordance with the provisions of A.R.S. § 38-511.
- 14 Time of Essence. Time is of the essence of each and every provision of this Agreement.
- 15 Severability. If any provision of this Agreement is declared void or unenforceable (or is construed as requiring either Party to do any act in violation of any constitutional provision, law regulation, municipal code or municipal charter), in whole or in part, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided, however, that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.
- 16 Attorneys' Fees. If any action is brought by either party to this Agreement with respect to its rights under this Agreement, the prevailing party or parties shall be entitled to attorney fees and costs from the party as determined by a court of law.
- 17 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement.
- 18 Exhibits and Recitals. All Exhibits attached to this Agreement and all of the recitals set forth above are incorporated into and made an integral part of this Agreement for all purposes by this reference.
- 19 Integration. This Agreement (including the Exhibits hereto) constitutes the entire agreement between the Parties with respect to, and supersedes any prior agreement, understanding, negotiation or representation regarding, the subject matter of this Agreement. There are no representations, warranties, understandings or agreements other than those expressly set forth in this Agreement. The Parties expressly acknowledge and agree that any discussion outlines utilized during the course of negotiations do not constitute binding agreements of the Parties and shall not be

utilized to interpret or construe any provision of this Agreement.

- 20 Further Assurances. Each Party agrees to perform such further acts and to execute and deliver such additional agreements, documents, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the transactions contemplated by this Agreement.
- 21 Construction and Section Headings. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine, neutral or feminine shall include each of the other. The Section headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.
- 22 Relationship of Parties. No partnership, joint venture or other business relationship is established among the Parties to this Agreement. Except as expressly provided in this Agreement, no Party shall be liable for any acts, omissions or negligence on the part of any other Party or such Party's employees, agents, independent contractors, agents or successors-in-interest resulting in either personal injury, economic loss, or property damage to any individual or entity.
- 23 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, or other matter, such consent or approval may be given or denied by such Party, in its reasonable discretion, unless this Agreement expressly provides otherwise.
- 24 Inurement. Except as provided in this Agreement to the contrary, all of the terms, covenants and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, each Party and the successors and assigns of such Party.
- 25 Amendment. The terms, conditions and representations of the Parties contained in this Agreement may not be orally amended, modified or altered. This Agreement may be modified only if done in writing, signed by the Parties.
- 26 Notice. All notices, claims, requests, and demands under this Agreement are to be in writing and served in person or via certified (return receipt requested) United States mail, postage prepaid, addressed as follows:

If to the City: City of Goodyear
Attn.: City Manager
119 N. Litchfield Road
Goodyear, Arizona 85338

with copy to: City of Goodyear Attorney's Office
117 N. Litchfield Road
Goodyear, Arizona 85338

If to LPSCO: Dave Ellis, General Manager
Litchfield Park Service Company
111 W. Wigwam Blvd., Suite B
Litchfield Park, Arizona 85340

with copy to: Richard L. Sallquist, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Cr., Suite 117
Phoenix, Arizona 85016

or at such other address as shall be determined in writing by the Parties. Service by such mail will be deemed to occur on the postmark date borne by the return receipt.

Routine communications, written or telephonic, between the City and LPSCO shall be directed for the City, to the Water Operations Director (623) 932-1637 and for LPSCO, to the LPSCO General Manager (623) 935-9367. The City and LPSCO shall each have the affirmative duty to notify each other in writing when notice shall be given to a different person or address. No payment required under this Agreement shall be deemed made until actually received by the intended payee.

27 Effectiveness of Agreement. This Agreement shall become effective upon the date of the approvals requested under Section ___ hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this ___ day of July, 2000.

LITCHFIELD PARK SERVICE COMPANY,
an Arizona corporation

CITY OF GOODYEAR
an Arizona municipal corporation

By: David W. Ellis

By: William O. Cook
Mayor

Its: General Manager

ATTEST: Dee Cochran
City Clerk

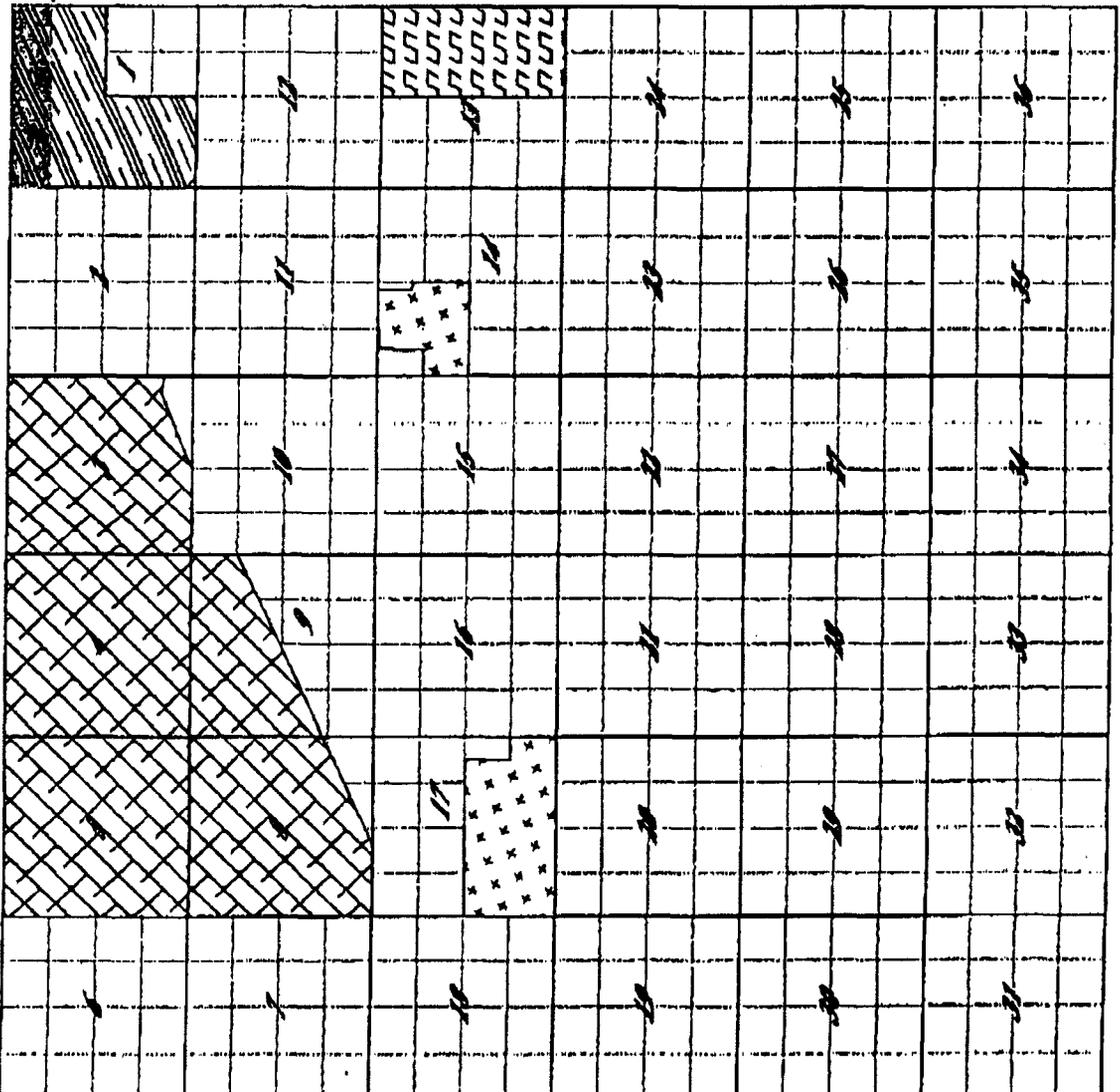
Approved as to form:

John H. Quinn
Goodyear City Attorney

COUNTY of Maricopa

RANGE 2 West

TOWNSHIP 1 North



- W-1445 (3)
Arizona Water Company (White Tanks?)
- W-1427 (4)
Litchfield Park Service Company
- SW-1428 (4)
Litchfield Park Service Company
- W-2451 (4)
Water Utility of Greater Buckeye, Inc.
- (2)
City of Goodyear (Nonjurisdictional)

EXHIBIT A-1

COUNTY of Maricopa

RANGE 1 West

TOWNSHIP 1 North

-  W-1427 (4)
Litchfield Park Service Company
-  SW-1428 (4)
Litchfield Park Service Company
-  W-1808 (2)
Rigby Water Company
-  (2)
City of Avondale
-  (2)
City of Goodyear

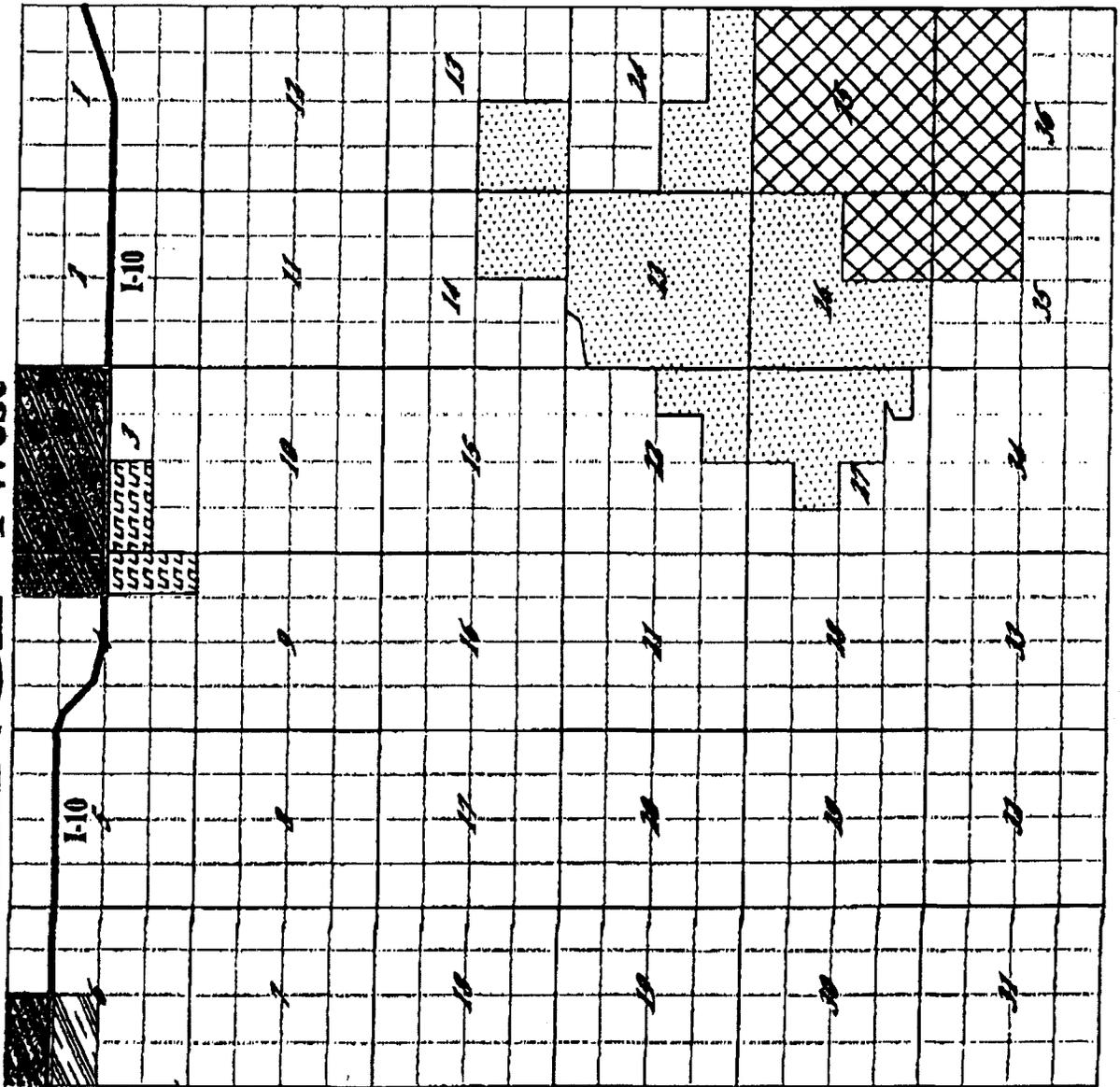
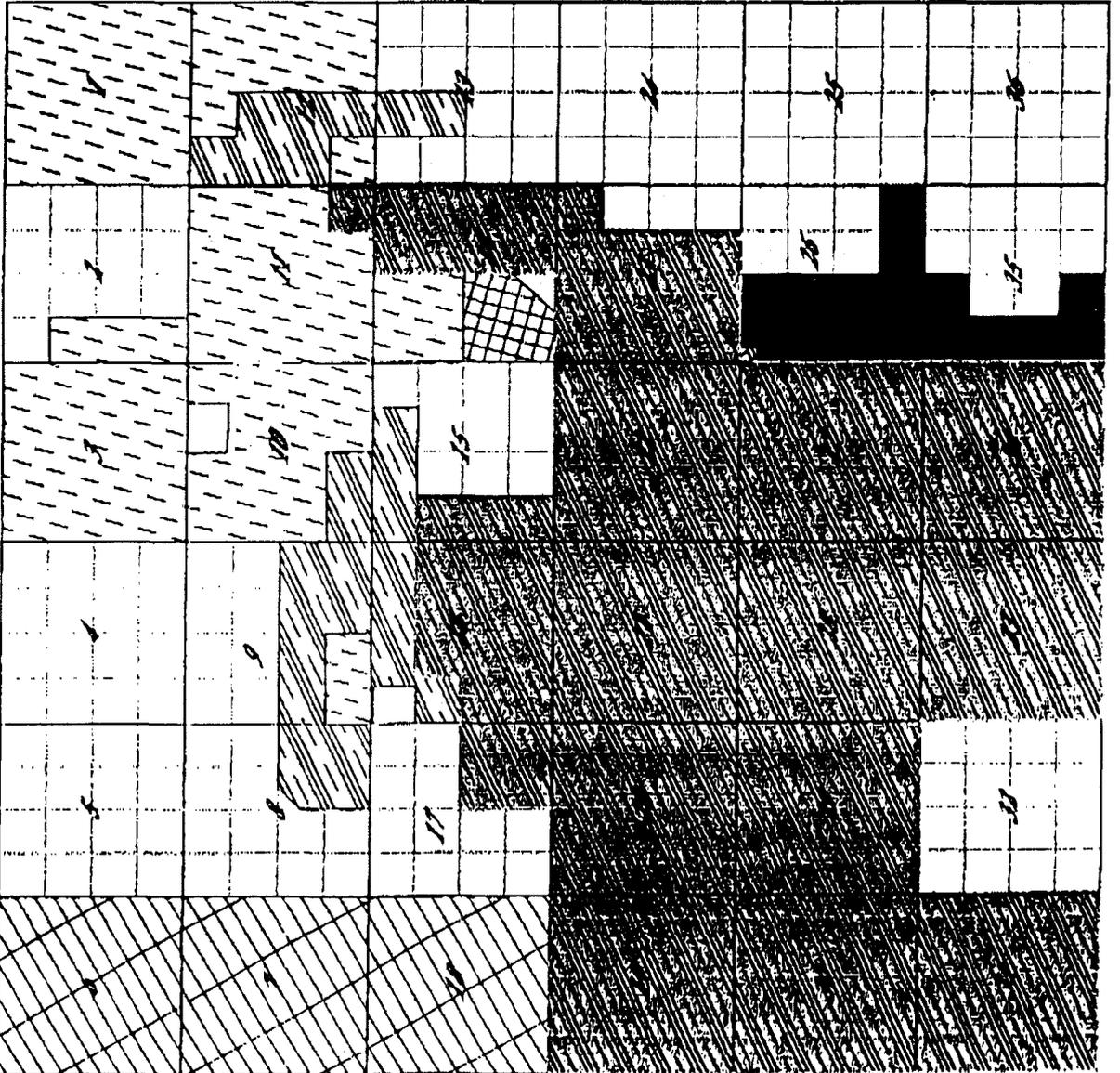


EXHIBIT A-2

COUNTY OF Maricopa

RANGE 1 West

TOWNSHIP 2 North



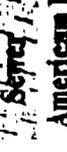
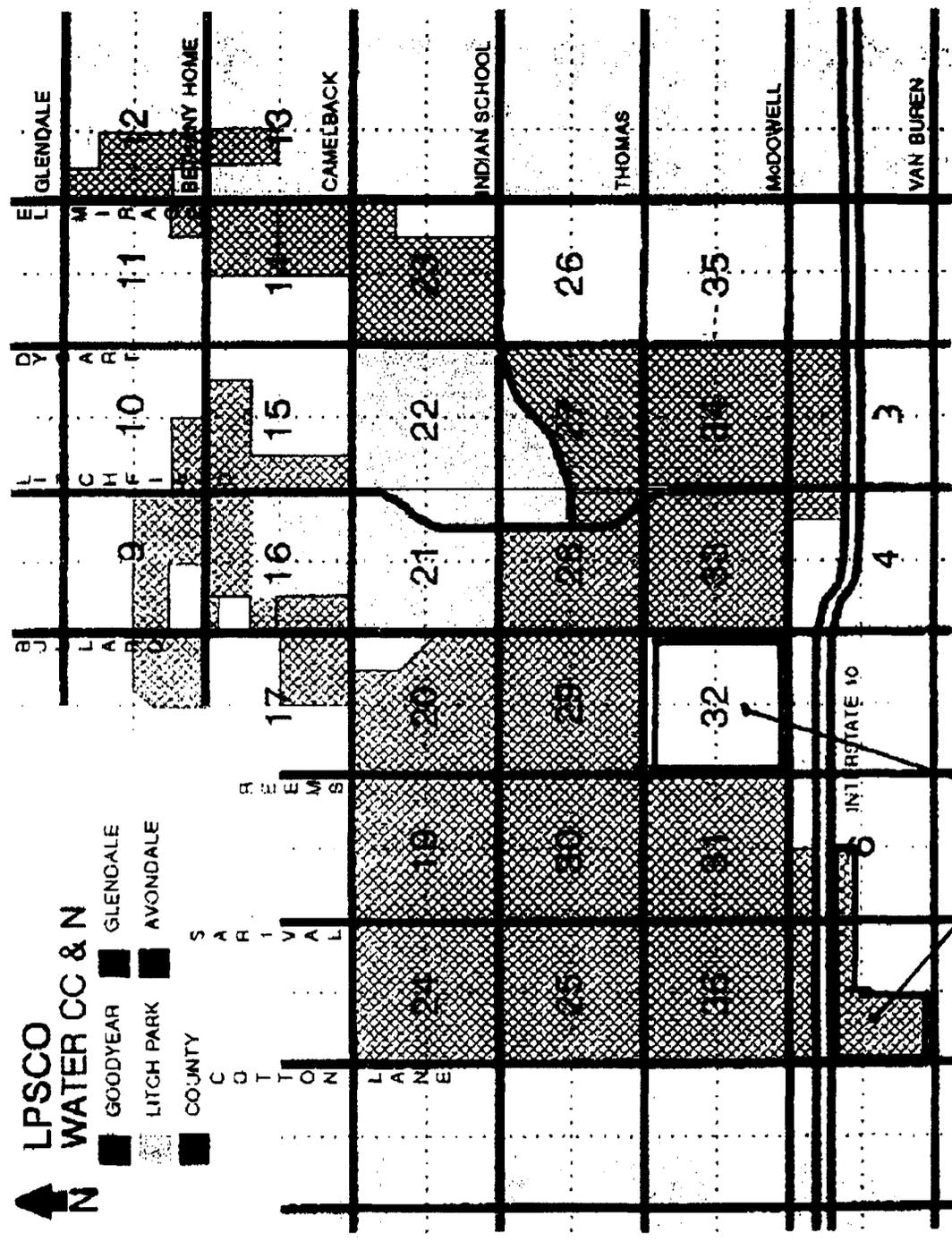
-  W-1997 (2)
Adaman Mutual Water Company
-  W-1427 (4)
Litchfield Park Service Company
-  SW-1428 (4)
Litchfield Park Service Company
-  W-2076 (1)
Tierra Buena Water Company
-  W-1412 (1)
Valley Utilities Water Company, Inc.
-  SW-2422 (1)
American Public Service Company
-  C-0001 (3)
Casitas Bonitas Division
-  City of Avondale (Non-jurisdictional)

EXHIBIT B

LPSCO WATER CC & N

- GOODYEAR
- LITCH PARK
- COUNTY
- GLENDALE
- AVONDALE



AREAS TO BE EXCHANGED