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EXCEPTION

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FENNEMORE CRAIG  
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Arizona Corporation Commission

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Attorneys for Harvard Simon I, L.L.C.

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE  
APPLICATION OF ICR WATER  
USERS ASSOCIATION FOR AN  
EXTENSION OF ITS EXISTING  
CERTIFICATE OF  
CONVENIENCE AND  
NECESSITY

Docket No. W-02824A-01-0450

Exceptions to Recommended Order

Pursuant to A.A.C. R14-3-110(B), Harvard Simon I, L.L.C. ("Harvard"), hereby files its exceptions to the recommended Opinion and Order of Administrative Law Judge Marc E. Stern ("Recommended Order") in the above-captioned docket.

Harvard supports the Recommended Order with one exception. Harvard respectfully suggests that the Commission further consider the recommendation to require Harvard to transfer ownership of the wells and related water production facilities to ICR Water Users Association, Inc. ("ICR") within 365 days.

The Recommended Order, paragraph 34, states that the Commission's concern that ICR does not own its own water production facilities was not adequately addressed. The Recommended Order concludes, therefore, that Harvard should transfer ownership of the wells and related water production facilities to ICR within 365 days of the effective date of the Commission's decision. Recommended Order ¶ 35. Contrary to the Recommended Order, ICR's ability to ensure an adequate water supply was contemplated by Staff, ICR and Harvard and addressed at the hearing. There is absolutely no evidence to suggest that customers may be

1 harmed by the fact that ICR does not own its own production wells or water production facilities.  
2 To the contrary, the evidence demonstrates that ICR's customers will be adequately protected.  
3 Furthermore, there is no legal requirement that ICR own the production wells. Therefore, the  
4 recommendation that Harvard should transfer ownership of the wells and related water  
5 production facilities to ICR is unnecessary.

6 On April 27, 2001, ICR and Harvard entered into a Water Purchase Agreement  
7 ("Agreement") that more than adequately assures that ICR will have adequate water for its  
8 customers. The Agreement provides that Harvard will own and operate the production wells  
9 used to serve the Harvard development in accordance with all law, rules, ordinances and  
10 regulation of all governmental authorities having jurisdiction over domestic water systems.  
11 Agreement ¶ 6. Further, in the event that Harvard fails to perform its obligations to deliver water  
12 to ICR or operate the wells as required by the Agreement, ICR may enter upon the wellsite and  
13 operate, maintain, repair and replace any of the production wells. Agreement ¶ 7. In furtherance  
14 of this provision, upon approval of the CC&N extension by the Commission, Harvard will cause  
15 an easement over the wellsite to be granted to ICR to allow a right of entry. Id.

16 Additionally, the term of the agreement is perpetual. Agreement ¶ 14. If such term is  
17 found to be invalid, the initial term is 120 years with automatic 25 year renewal periods unless a  
18 notice of termination is issued by either party. Agreement ¶ 14. Additionally, ICR's easement  
19 ensures permanent access to the wells and production facilities. Therefore, the Agreement  
20 provides for a stable water supply in perpetuity.

21 The Recommended Order seeks to disturb an agreement that both ICR and Harvard  
22 believe is in their best interest, as well as the future customers of ICR, even though there is no  
23 evidence or legal requirement to do so. Therefore, Harvard respectfully requests that the  
24 Commission delete paragraphs 34 and 35 prior to approving the Recommended Order.

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DATED this 2nd day of January, 2002.

FENNEMORE CRAIG, P.C.

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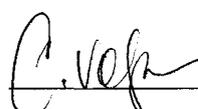
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10 COPIES OF THE FOREGOING  
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11 of January, 2002, to:

12 Thomas H. Campbell  
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Jim Irvin	JIR	1-2-02
William Mundell	WM	1-2-02
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