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BEFORE THE ARIZONA CORPORATION COMMISSION

ORIGINAL RECEIVED

- 2 WILLIAM A. MUNDELL  
Chairman
- 3 JIM IRVIN  
Commissioner
- 4 MARC SPITZER  
Commissioner
- 5

Arizona Corporation Commission  
**DOCKETED**

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AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY **CAR**

6 IN THE MATTER OF THE APPLICATION OF  
7 ARIZONA-AMERICAN WATER COMPANY,  
8 INC., FOR A COMPLETE WAIVER OF PUBLIC  
9 UTILITY HOLDING COMPANIES AND  
AFFILIATED INTERESTS RULES (A.A.C.  
R-14-2-801. *et. seq.*) AND RELATED RELIEF

DOCKET NO. W-01303A-01-0983

**PROTECTIVE AGREEMENT**

10 The Arizona American Water Company ("Arizona American") has filed an application in  
11 the above captioned matter regarding its proposed acquisition by RWE or its affiliates (collectively  
12 referred to as "RWE"). RWE alleges that access to certain matters concerning Arizona American's  
13 above captioned application should be protected from public disclosure because they contain  
14 confidential information related to trade secrets, or they are of a proprietary, confidential, or legally  
15 protected nature. Those matters that RWE alleges should be protected from public disclosure,  
16 including alleged confidential documents, data, studies and other materials, shall hereinafter be  
17 referred to as "Confidential Information". The designation by RWE of any matter as Confidential  
18 Information does not reflect an agreement by the Arizona Corporation Commission ("Staff"), or any  
19 contracting consultants ("consultants") retained by Staff, that the designated Confidential  
20 Information contains matters that should be protected from public disclosure. However, in order to  
21 expedite the provision of information in the above captioned docket, RWE, Arizona American, Staff,  
22 and any consultants retained by Staff concerning this docket (cumulatively referred to herein as "the  
23 parties"), agree that matters designated by RWE as Confidential Information under this Protective  
24 Agreement, shall be treated as follows:

25 § 1. **Non-Disclosure.** Except with the prior written consent of the party originally  
26 designating a document to be stamped as Confidential Information, or as hereinafter provided under  
27 this Agreement, no Confidential Information may be disclosed to any person. This requirement does  
28 not prohibit Staff from using and disclosing Confidential Information provided by RWE in reports

1 or documents that aggregate all information gathered from parties to this docket, provided RWE's  
2 individual disclosure is indiscernible from the aggregate report.

3       **§ 2. Designation of Confidential Information.** For purposes of this Agreement, all  
4 documents, data, information, studies, and all other written, printed, transcribed, audio-taped, or  
5 video-taped materials furnished to Staff that RWE claims to be a trade secret, or of a proprietary,  
6 confidential, or legally protected nature, shall be designated and referred to herein as "Confidential  
7 Information". Access to and review of Confidential Information shall be strictly controlled by the  
8 terms of this Agreement.

9       All Confidential Information provided to Staff pursuant to this Agreement shall be so marked  
10 by RWE with a designation indicating its alleged trade secret, proprietary, confidential, or legally  
11 protected nature. Any Confidential Information disclosed verbally by RWE shall be memorialized  
12 in writing by the Company within five (5) business days of its verbal disclosure, and the writing shall  
13 be marked by the Company with the appropriate designation. Any Confidential Information  
14 disclosed verbally by RWE shall be safeguarded by Staff and its consultants during the five (5)  
15 business day period during which memorialization may be provided. If no memorialization is  
16 provided during the five- (5) day period, the information shall be subject to public disclosure.

17       **§ 3. Performance under Agreement Does Not Result in Waiver or Disclosure.**  
18 Execution of this Agreement by the parties and performance of their obligations thereunder shall not  
19 result in waiver of any claim, issue or dispute concerning the trade secret, proprietary, confidential  
20 or legally protected nature of the Confidential Information provided. Neither shall the limited  
21 provision of Confidential Information by RWE pursuant to this Agreement, nor the limited provision  
22 by Staff of Confidential Information pursuant to Paragraph 6 of this Agreement constitute public  
23 disclosure of it.

24       **§ 4. Access to Confidential Information.** Prior to reviewing any Confidential  
25 Information, any Commission Staff members or independent contracting consultants shall first be  
26 required to read a copy of this Protective Agreement, and to certify by their signatures on Exhibit A  
27 of this Agreement, that they have reviewed the same and have consented to be bound by its terms.  
28 Exhibit A of this Agreement shall contain the signatory's full name, business address and employer,

1 and the signatory's position with, or relationship to the Arizona Corporation Commission  
2 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel  
3 for RWE.

4       **§ 5. Use of Confidential Information.** All persons who are signatories to this Agreement  
5 shall neither use nor disclose the Confidential Information for purposes of business or competition,  
6 or for any purposes other than those necessary for the disposition of this docket, including  
7 preparation for and the conduct of any administrative or legal proceeding. All persons entitled to  
8 review or afforded access to Confidential Information shall keep it secure as trade secret,  
9 confidential, or legally protected information in accordance with the purposes and intent of this  
10 Agreement.

11       **§ 6. Non-Signatories Entitled to Review.** The information provided pursuant to this  
12 Protective Agreement may be disclosed to other members of the Staff by any Commission signatory  
13 to this Agreement only to the extent that disclosure is necessary to the disposition of this docket.  
14 Such disclosure may be made only if the non-signatory is provided with a copy of this Agreement  
15 and agrees to be bound by its terms.

16       **§ 7. Disclosure of Information to the Public.** The Confidential Information provided  
17 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in  
18 this docket, or in any other administrative or legal proceeding unless Staff provides RWE five (5)  
19 business days written notice that information designated by RWE as Confidential Information shall  
20 be subject to disclosure as a public record. Upon the expiration of five (5) business days from the  
21 date written notice is received by RWE, any Confidential Information identified in the notice as  
22 subject to disclosure shall become part of the public record in this docket, unless RWE initiates a  
23 protective proceeding under the terms of this Agreement.

24       **§ 8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that RWE  
25 seeks to prevent public disclosure of Confidential Information pursuant to Paragraph 7 above, RWE  
26 shall file within five (5) business days of receipt of Staff's written notice, a motion presenting the  
27 specific grounds upon which it claims that the Confidential Information should not be disclosed or  
28 should not be made a part of the public record.       Staff shall have an opportunity to respond to

1 the motion. RWE's motion may be ruled upon by either the Commission or an assigned  
2 Commission Administrative Hearing Officer ("ALJ"). RWE may provide to the Commission or the  
3 ALJ, the Confidential Information referenced in the motion without waiver that the information  
4 should remain confidential under the terms of this Agreement. Any Confidential Information so  
5 provided shall be kept under seal for the purpose of permitting inspection by the Commission or the  
6 ALJ prior to ruling on the motion.

7 Notwithstanding any determination by the Commission or ALJ, that any Confidential  
8 Information provided pursuant to this Agreement should be made a part of the public record or  
9 otherwise disclosed, public disclosure shall not occur for a period of five (5) business days so that  
10 RWE may seek judicial relief from the Commission's or ALJ's decision. Upon expiration of the five  
11 (5) day period, the information shall be subject to public disclosure, unless RWE has received a stay  
12 or determination from a court of competent jurisdiction that the records, data, information or study  
13 are proprietary or are not otherwise subject to disclosure.

14 **§ 9. Judicial Proceedings Related to a NonParty's Request for Disclosure.** In any  
15 judicial action against the Commission and/or Commissioners by a nonparty to this Agreement,  
16 seeking disclosure of Confidential Information, unless specifically named, RWE as a real party in  
17 interest, shall join in the action as a co-defendant. RWE also agrees to indemnify and hold the  
18 Commission harmless from any assessment of costs, expenses, attorneys fees, or damages under  
19 A.R.S. § 39-121.02 or any other law, resulting from denial of access by the Commission to the  
20 information, data, records, or study subsequently found to be non-confidential.

21 In the event that the Commission becomes legally compelled (by deposition, interrogatory,  
22 request for documents, subpoena, civil investigative demand, or similar process) to make a public  
23 disclosure of any of the Confidential Information, the Commission shall provide RWE with prompt  
24 written notice of such requirement so that RWE may seek an appropriate remedy and/or waive  
25 compliance. RWE agrees that upon receipt of such notice, RWE will either undertake to oppose  
26 disclosure of the Confidential Information or waive compliance with this Agreement. In the event  
27 that disclosure of the Confidential Information is ordered, the Commission agrees to furnish only that  
28 portion of the Confidential Information, which is legally required.

1           **§ 10. No Preclusion of Evidentiary Objections.** In the event that disclosure of  
 2 Confidential Information occurs in accordance with Paragraphs 7 or 8 of this Agreement, the  
 3 provision of such information by RWE pursuant to this Agreement shall not limit the right of RWE  
 4 to object to its relevance or admissibility in proceedings before the Commission.

5           **§ 11. Return of Confidential Information.** Upon the final disposition of any  
 6 administrative or legal proceeding arising in or from this docket, all Confidential Information, copies  
 7 thereof, and notes made by signatories to this Agreement shall be returned to RWE or destroyed.

8           **§ 12. No Admission of Privileged or Confidential Status.** By participating in this  
 9 Agreement, Staff and its contracting consultants are neither admitting nor agreeing with RWE that  
 10 any of the materials or communications designated as Confidential Information are, either in fact or  
 11 as a matter of law, a trade secret or of a proprietary, confidential, or legally protected nature.

12           **§ 13. Breach of Agreement.** RWE, in any legal action or complaint it files in any court  
 13 alleging breach of this Agreement shall, at the written request of the Commission, name the Arizona  
 14 Corporation Commission as a Defendant therein.

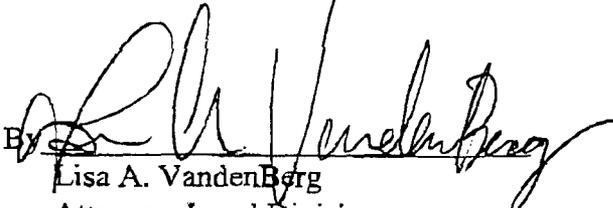
15           **§ 14. Non-Termination.** The provisions of this Agreement shall not terminate at the  
 16 conclusion of this proceeding.

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19           DATED this 17<sup>th</sup> day of JUNE, 2002.

20  
 21 ARIZONA CORPORATION COMMISSION  
 22 UTILITIES COMPANY

*RWE and its affiliates* *ms*  
~~ARIZONA AMERICNA WATER COMPANY,~~  
~~INC.~~

23  
 24 By   
 25 Lisa A. Vandenberg  
 26 Attorney, Legal Division  
 27 Arizona Corporation Commission  
 28 1200 West Washington Street  
 Phoenix, Arizona 85007  
 (602) 542-3402

By   
 Michael M. Grant, Esq.  
 Gallagher and Kennedy P.A.  
 2575 East Camelback Road  
 Phoenix, Arizona 85016-9225  
 Attorney for RWE and its affiliates  
 (602) 530-8000

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**EXHIBIT "A"**

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

John S. Thornton  
Name

[Handwritten Signature]  
Signature

ACC  
Employer or Firm

1200 W. Wash. St.  
Business Address Phx. AZ 85007

Chief, FRA  
Position or relationship

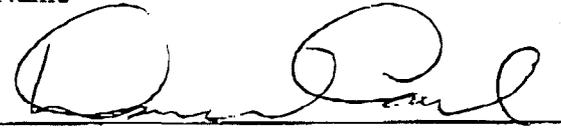
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

DARRON W. CARLSON  
Name

  
Signature

ARIZONA CORPORATION COMM  
Employer or Firm

1200 W. WASHINGTON ST.  
PHOENIX, AZ. 85007  
Business Address

PUBLIC UTILITIES MA. V  
Position or relationship

6/19/02.  
Date

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**EXHIBIT "A"**

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JOHN A. CHELUS  
Name

*John Chelus*  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 W. WASHINGTON, PHX, 85007  
Business Address

UTILITIES ENGINEER  
Position or relationship

06/19/02  
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**EXHIBIT "A"**

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

Joel M. Reiker

Name

Joel M. Reiker

Signature

AZ Corporation Commission

Employer or Firm

1200 W. Washington

Business Address

Public Utilities Analyst

Position or relationship

6/20/02

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**EXHIBIT "A"**

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

DEL W. SMITH  
Name

Del W. Smith  
Signature

ACC  
Employer or Firm

1200 W. WASHINGTON  
Business Address PHX, AZ

STAFF  
Position or relationship

6/20/02  
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**EXHIBIT "A"**

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

ROBERT S. KENNEDY  
Name

Robert S. Kennedy  
Signature

AZ. CORPORATION Commission  
Employer or Firm

1706 W. WASHINGTON  
PHOENIX AZ 85007  
Business Address

MANAGER CONSUMER SVCS  
Position or relationship

6-19-02  
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

Monica A. Martinez  
Name

Monica A. Martinez  
Signature

ACC  
Employer or Firm

1200 W. Washington St.  
Business Address Phoenix, AZ  
85007

Staff  
Position or relationship

6-20-02  
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

Angela L. Bennett  
Name

Angela L. Bennett  
Signature

A.C.C. Legal  
Employer or Firm

1200 W. Washington  
Business Address

Secretary  
Position or relationship

6/20/02  
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

NANCY ROE  
Name

Nancy Roe  
Signature

ACC  
Employer or Firm

1200 W. Washington  
Business Address

Executive Legal Assistant  
Position or relationship

6-20-02  
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

Viola R. Kizis  
Name

Viola R. Kizis  
Signature

A.C.C. Legal  
Employer or Firm

1200 W. Washington  
Business Address

Secretary  
Position or relationship

6/20/02  
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EXHIBIT "A"

I have read the foregoing Protective Agreement dated 6/19/02, in Docket No. W-01303A-01-0983 and agree to be bound by the terms and conditions of such Agreement.

Deborah A Amaral  
Name

Deborah A Amaral  
Signature

ACC  
Employer or Firm

1200 W. Washington  
Business Address

Legal Secretary  
Position or relationship

6/20/02  
Date