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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

MAY 05 2006

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
THE WHISPERING PINES FIRE DISTRICT FOR
A VARIANCE TO THE MORATORIUM ON NEW
SERVICE CONNECTIONS FOR PAYSON
WATER COMPANY'S GERONIMO SYSTEM.

DOCKET NO. W-03514A-05-0729

DECISION NO. 68696

OPINION AND ORDER

DATE OF HEARING: February 8, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
APPEARANCES: Mr. Robert T. Hardcastle, Brooke Utilities, Inc., on behalf of Payson Water Company;
Mr. Randall Kincaid, in propria persona;
Mr. James Dye, in propria persona;
Mr. James Dunne, in propria persona;
Mr. John Swanson, in propria persona;
Mr. Steve Prahin, in propria persona;
Mr. Joseph Stapp, in propria persona;
Mr. David Mayne, in propria persona; and
Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On April 11, 2005, the Arizona Corporation Commission ("Commission") issued Decision No. 67747. That Decision granted a variance to the existing moratorium on new water service connections for Payson Water Company's Geronimo System ("Payson Water" or "Company") to a single customer, but directed that no additional variances would be granted until the Company had conducted a 12-month system monitoring exercise to determine available system capacity.

1 In Decision No. 68232 (October 25, 2005), the Commission denied a prospective customer's
2 request for a variance to the moratorium, without prejudice (Docket No. W-03514A-05-0352).
3 During the October 18, 2005 Open Meeting discussion regarding Docket No. W-03514A-05-0352,
4 the Commission directed the Utilities Division Staff ("Staff") to explore whether the 12-month water
5 usage study could be shortened in order to accommodate a request for service by the Whispering
6 Pines Fire District ("WPF") made prior to the Open Meeting. During the discussion,
7 Commissioners also suggested that other customer service requests should be considered in the
8 context of a new docket to be opened to consider the WPF variance request.

9 On October 19, 2005, Harry D. Jones, on behalf of the WPF, filed in the above-captioned
10 docket a request for a variance from the existing moratorium on new service connections.

11 By Procedural Order issued November 7, 2005, Staff was directed to contact the Company to
12 review the status of the system monitoring exercise ordered in Decision No. 67747 in order to
13 determine whether it is reasonable to shorten the system monitoring exercise for purposes of
14 evaluating available system capacity. Staff was also directed to prepare a Staff Report by November
15 21, 2005 that included, at a minimum, a recommendation regarding available capacity and whether it
16 is in the public interest to grant additional variances to the current moratorium.

17 On November 21, 2005, Staff filed a Staff Report. On the same date, Staff filed a Request to
18 Withdraw the Staff Report. In its Request to Withdraw, Staff stated that it had "learned that some of
19 the critical information that Payson Water provided to Staff was not accurate." Staff further indicated
20 that it intended to file a corrected Staff Report as soon as possible after receiving correct information
21 from the Company.

22 After issuance of the November 7, 2005 Procedural Order, the following requests for
23 intervention were filed in this docket: Joe Brown, on behalf of the Geronimo Properties
24 Homeowners Association (November 18 and 21, 2005); Daniel and Jody Welsch (November 18 and
25 22, 2005); Jim Dunne (November 21 and 22, 2005); Steven Prahin (November 21, 2005); Jerry and
26 Marda Larson (November 21, 2005); Randy Bonds (November 21, 2005); John Swanson (November
27 21, 2005); Randall Kincaid (December 6, 2005); and James Dye (December 6, 2005).

28 On December 21, 2005, Staff filed its Revised Staff Report. Based on the information

1 available to Staff, it concluded that the Geronimo System currently has 77 active meters, and 6
2 additional meters are inactive, have no usage, or have been pulled. Staff believes the system could
3 support up to 92 total connections and Staff suggested several options for the Commission to consider
4 for allowing additional service connections depending on assumptions regarding the inactive meters.
5 Staff also recommended that the WPFDD should be given the highest priority for connection to the
6 system, and that additional connections should be granted on a first-come first-served basis. Staff
7 further recommended that Payson Water should be ordered to immediately begin searching for new
8 water sources, and should investigate two possible water sources identified by the WPFDD.

9 By Procedural Order issued January 4, 2006, this matter was scheduled for hearing on
10 February 8, 2006, and Payson Water was directed to mail notice to each of the affected customers and
11 publish notice in a newspaper of general circulation in its service area. The January 4, 2006
12 Procedural Order also granted intervention to the following persons: Joe Brown; Daniel and Jody
13 Welsch; Jim Dunne; Steven Prahin; Jerry and Marda Larson; Randy Bonds; John Swanson; Randall
14 Kincaid; and James Dye¹.

15 The Company filed the requisite affidavits of mailing and publication on January 20, 2006
16 and February 7, 2006, respectively.

17 The hearing was conducted as scheduled on February 8, 2006. At the hearing, Harry Jones
18 and WPFDD Fire Chief Mark Essary offered testimony on behalf of the WPFDD. Sworn testimony was
19 also given by the following persons: Randall Kincaid; James Dye; James Dunne; John Swanson;
20 Steve Prahin; Joseph Stapp; David Mayne; Irene Medina; Rollin Carlblom; Clifford Potts; and
21 Roland Spokely. Staff witness Steve Olea testified in support of Staff's position and Robert
22 Hardcastle offered testimony on behalf of Payson Water.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Commission finds, concludes, and orders that:

26 ...

27

28 ¹ Joseph Stapp and David Mayne were granted intervention at the February 8, 2006 hearing.

FINDINGS OF FACT**Background of Payson Water's Geronimo System**

1
2
3 1. A moratorium on new service connections was implemented by Decision No. 57584
4 (October 11, 1991), which limited the former United Utilities, Inc. ("United") Geronimo System to
5 serving no more than 60 service connections. The Geronimo System had previously been limited to
6 no more than 45 service connections pursuant to Decision No. 52454 (September 18, 1981).

7 2. Decision No. 57584 directed United to submit an engineering and design study to
8 explain the steps that would be undertaken in the Geronimo System to permanently lift the
9 moratorium. Although United's former owner, Mr. Richard Williamson, submitted a study on
10 December 10, 1991, Staff found that the study did not contain necessary technical data to
11 demonstrate a sufficient availability of water to justify lifting the 60 service connection limit.

12 3. According to the Staff Report filed in Docket No. W-01993A-04-0428², United
13 submitted a letter on February 8, 1996 stating that the Geronimo System was serving 66 service
14 connections as of December 1995. The letter received by Staff claimed that only 61 connections
15 were being served by the Geronimo System and the other five customers were part of a separate
16 system called Elusive Acres, which United asserted was not subject to the moratorium. However,
17 Staff stated its belief that the Geronimo Estates and Elusive Acres subdivisions were being served by
18 a single water system and both subdivisions were therefore subject to the moratorium.

19 4. Staff also stated in that prior Staff Report that it sent a letter to Mr. Williamson on
20 March 1, 1996 informing him that the Geronimo System was in violation of the 60 connection limit.
21 Staff directed Mr. Williamson to conduct a system monitoring study over a 12-month period and to
22 submit the results of the study. The Staff Report indicated that Staff intended to evaluate the
23 monitoring study to determine if the moratorium could be amended. However, Mr. Williamson never
24 submitted the required study.

25 5. In Decision No. 60972 (June 19, 1998), Brooke Utilities, Inc. ("Brooke Utilities") was
26 authorized to acquire United from Richard Williamson, and United was organized into three

27 ² This docket involved a prior request for variance from the Payson Water moratorium and resulted in Decision No.
28 67747 (April 11, 2005).

1 operating companies: Payson Water Company; Strawberry Water Co., Inc.; and Tonto Basin Water
2 Co., Inc. Payson Water serves the Geronimo Estates subdivision and the Elusive Acres subdivision
3 as a single system.

4 6. In Decision No. 67747 (April 11, 2005), the Commission granted a variance to the
5 moratorium to one customer, subject to the requirement that Payson Water conduct a system
6 monitoring exercise for 12 months following the effective date of that Decision, and that the
7 Company submit the following data based on the study: monthly static water levels from both wells;
8 number of gallons pumped per month from each well; number of gallons sold per month; and number
9 of active and inactive connections per month. In that Decision, the Commission specifically stated
10 that “no additional new service connections shall be permitted on the Geronimo System until the data
11 is received and reviewed by Staff, and an Order is issued by the Commission allowing additional
12 service connections, unless otherwise ordered by the Commission” (Decision No. 67747, at 5).

13 7. As stated in Decision No. 67747, the water monitoring study requested in 1996 was
14 never submitted. According to Staff, Payson Water was not aware of the 1996 letter from Staff
15 because the transfer of ownership from United to Brooke Utilities/Payson Water was in the process at
16 that time. In response to Staff data requests in that proceeding, Payson Water submitted Water Use
17 Data Sheets for the Geronimo System showing 68 service connections and 73 active accounts³, and a
18 “Consumption by Customer” spreadsheet (*Id.* at 3).

19 8. In Decision No. 68232 (October 25, 2005), the Commission denied a request by
20 Steven Prahin, without prejudice, for a variance to the current moratorium on new service
21 connections for the reasons set forth in Decision No. 67747 (*i.e.*, that no additional connections
22 should be permitted until a full year’s water usage data was obtained and evaluated by Staff and the
23 Commission). During the October 18, 2005 Open Meeting discussion regarding Docket No. W-
24 03514A-05-0352, the Commission directed Staff to explore whether the 12-month water usage study
25 could be shortened in order to accommodate a request for service by the WPFDD made prior to the
26 Open Meeting. During the discussion, Commissioners also suggested that other customer service

27 ³ The data provided to Staff showed that, during the peak usage month, the Geronimo System had 73 active accounts – 61
28 accounts that used water and 12 accounts that had no usage (Decision No. 67747, at 3).

1 requests should be considered in the context of a new docket to be opened to consider the WPFD
2 variance request.

3 **Procedural History of WPFD's Application**

4 9. As described above, on October 19, 2005, Harry D. Jones, on behalf of the WPFD,
5 filed in the above-captioned docket a request for a variance from the existing moratorium on new
6 service connections.

7 10. By Procedural Order issued November 7, 2005, Staff was directed to contact the
8 Company to review the status of the system monitoring exercise ordered in Decision No. 67747 in
9 order to determine whether it is reasonable to shorten the system monitoring exercise for purposes of
10 evaluating available system capacity. Staff was also directed to prepare a Staff Report by November
11 21, 2005 that included, at a minimum, a recommendation regarding available capacity and whether it
12 is in the public interest to grant additional variances to the current moratorium.

13 11. On November 21, 2005, Staff filed a Staff Report. On the same date, Staff filed a
14 Request to Withdraw the Staff Report. In its Request to Withdraw, Staff stated that it had "learned
15 that some of the critical information that Payson Water provided to Staff was not accurate." Staff
16 further indicated that it intended to file a corrected Staff Report as soon as possible after receiving
17 correct information from the Company.

18 12. Intervention was granted to the following persons: Joe Brown; Daniel and Jody
19 Welsch; Jim Dunne; Steven Prahin; Jerry and Marda Larson; Randy Bonds; John Swanson; Randall
20 Kincaid; James Dye; Joseph Stapp; and David Mayne.

21 **Geronimo System Usage and Capacity**

22 13. In its Amended Staff Report (Ex. S-1), Staff indicated that its on-site inspection
23 revealed 83 connections on the Payson Water Geronimo System (70 in Geronimo Estates and 13 in
24 Elusive Acres). According to Staff, of the 70 connections in Geronimo Estates, two have had the
25 meters pulled and two are inactive, for a net of 66 active meters. Staff also found that two meters
26 were inactive in Elusive Acres. Staff concluded, therefore, that the Geronimo System has a total of
27 77 active meters (66 in Geronimo Estates and 11 in Elusive Acres).

28 14. Based on the eight months of available water usage data available at the time of the

1 Staff Report, Staff determined that the 77 active connections have a peak use of approximately 0.17
2 gallons per minute ("gpm"). For the current 77 active connections, Staff calculated a total peak use
3 demand of 13.31 gpm. Based on the combined production capacity from the Company's two wells of
4 16 gpm⁴, Staff concluded that the system could serve approximately 92 connections⁵.

5 15. The WPFDD prepared an exhibit (WPFDD Ex. 1) that purported to show that the existing
6 Geronimo system wells were significantly underutilized, and that the Elusive Acres well is capable of
7 producing an additional 131,586 gallons per month, enough to serve 73 new connections. The
8 WPFDD also prepared an exhibit (WPFDD Ex. 2) that listed a number of persons in the Geronimo
9 Estates subdivision and the claimed capacity of each of the wells drilled by those individuals (ranging
10 from 1.0 gpm to 7.0 gpm).

11 16. Staff witness Steve Olea challenged the conclusions reached in the WPFDD exhibits.
12 With respect to WPFDD Exhibit 1, Mr. Olea testified that the calculations are based on a monthly
13 average availability rather than a peak-day demand, which Staff asserts is the correct method of
14 designing and analyzing available system capacity (Tr. 167). Mr. Olea also discounted the usefulness
15 of WPFDD Exhibit 2 because the list of individual wells does not include data regarding whether the
16 alleged capacity of the wells is based on the original driller's estimate, the owner's experience at the
17 time of drilling, or simply an estimate of current capacity (Tr. 176).

18 17. During cross-examination of Company President Mr. Hardcastle, the WPFDD
19 introduced a page from Payson Water's 2004 Annual Report to the Commission which shows a
20 reported pump yield for the Elusive Acres well of 24.1 gpm (compared to the claimed capacity of 10
21 gpm in this proceeding) and a pump yield of 36.6 gpm for the Geronimo Estates well (compared to
22 the claimed capacity of 6 gpm in this proceeding) (WPFDD Ex. 4). Mr. Hardcastle's explanation for
23 this seeming discrepancy is that the data in the Annual Report does not indicate when during 2004 the
24 measurements were taken and the pump yield could fluctuate dramatically during the course of the

25 ⁴ According to the Staff Report, Staff observed during its October 28, 2005 site visit that the Company's wells were
26 pumping at a combined rate of almost 24 gpm. However, Staff cautioned that based on the history of the system, Staff
27 does not believe that this higher pumping rate can be sustained for a prolonged period of time, especially in the summer
28 months (Ex. S-1, at 2).

⁵ In a previous Staff Report issued November 15, 2004, and as discussed in Decision No. 67747, Staff determined based
on the data available at that time that it appeared the Geronimo System could serve no more than approximately 88 total
connections (*Id.*).

1 year (Tr. 228-232).

2 Staff's Proposed Options

3 15. Based on its analysis, Staff indicated that several options are available to the
4 Commission with respect to the current moratorium. The options cited by Staff are as follows:

- 5 a) Keep the total moratorium in effect and allow no more than the
6 existing 83 connections (both active and inactive) until the
7 Geronimo System finds an additional reliable water source(s);
- 8 b) Allow up to 88 total connections as stated in the November 15,
9 2004 Staff Report (in Docket No. W-01993A-04-0428), while
10 assuming that the six inactive connections could become active at
11 any time, thereby allowing five additional 5/8 inch x 3/4 inch
12 connections;
- 13 c) Allow up to 88 active connections while assuming that the 6
14 inactive connections will not become active any time soon (based
15 on the fact that there are currently no building structures on these
16 properties), thereby allowing 11 additional active 5/8 inch x 3/4 inch
17 connections;
- 18 d) Allow up to 92 total connections to the system while assuming that
19 the 6 inactive connections could become active at any time,
20 thereby allowing 9 additional 5/8 inch x 3/4 inch connections; or
- 21 e) Allow up to 92 active connections to the system while assuming
22 that the 6 inactive connections will not become active any time
23 soon, thereby allowing 15 additional 5/8 inch x 3/4 inch
24 connections.

25 16. Staff recommended that, regardless of the option chosen by the Commission, the
26 WPFD request for a 5/8 inch x 3/4 inch meter connection should be granted subject to water usage
27 being confined to the limited purposes outlined in the application filed in this docket. As described in
28 the application, the water meter for the fire station would be "installed to supply a regular hose bib ...
to be able to hose off steps of fire trucks (to avoid slip injuries) and to be able to wash hazardous
chemicals and blood off our professional firefighters after they make emergency medical calls. We
are not requesting water to fight fires or to refill our tender trucks, just seeking to protect our staff and
equipment that frequently responds in snow, mud, and serious medical situations" (Ex. S-1, at 1).

17. Staff also recommended that at least 12 months of consistent water system data is

1 needed (as ordered in Decision No. 67747) before a final decision on the moratorium is made. At the
2 hearing, Mr. Olea testified that the 12-month water usage data study period, which would currently
3 end in May 2006, should be extended through at least September 2006 in order to capture an
4 additional period of summer usage and supply (Tr. 204-205).

5 18. With respect to the five options listed in the Staff Report, Staff recommended that if
6 the Commission wishes to allow further connections (in addition to the WPFDD) it believes the system
7 could support either Option B or D. As indicated above, Option B would permit service to the WPFDD
8 plus 4 additional connections, while Option D would allow the WPFDD plus 8 additional connections.
9 Under either option, Staff recommends that the WPFDD be given first priority (Ex. S-1, at 2-3).

10 **Process for New Connections**

11 19. Staff further recommended that, if additional connections are allowed on the system,
12 such connections should be made on a first-come, first-served basis and new customers should be
13 required to obtain a building permit from Gila County within 45 days⁶ for a permanent residential
14 dwelling unit or face removal of the meter.

15 20. At the hearing, Mr. Olea described Staff's proposal as being comparable to the process
16 currently in place for Pine Water Company (except that Pine Water allows up to two new connections
17 per month). He indicated that the first-come, first-served policy should be based on actual requests
18 being made to the Company for service, and would not exclude residents with existing homes or
19 building permits who were forced to build their homes with alternative sources of water (*i.e.*, drilling
20 an individual well and/or using a cistern system). Thus, under Staff's recommendation, Payson
21 Water would be required to offer a meter to persons in order of prior requests, based on a review of
22 its records of prior requests for service.

23 **Obligation to Search for Additional Sources of Water**

24 21. Staff's final recommendation is that Payson Water be required to immediately begin
25 searching for new water sources. Staff indicated that the WPFDD had identified two potential sources
26 of water which are located approximately two miles from the Geronimo system service area, at the

27 ⁶ At the hearing (Tr. 168), Mr. Olea agreed to revise Staff's recommendation to allow 90 days to obtain a building permit
28 in accordance with a request made by Gila County's Community Development Director (*See*, Letter from Joe Mendoza
filed February 1, 2006).

1 Camp Geronimo Boy Scout Camp and Bray Creek Ranch. The Staff Report also mentioned that the
2 Geronimo Estates Property Owners Association Group may be interested in purchasing the Geronimo
3 system from Payson Water.

4 22. Although the Company does not oppose Staff's recommendation, Mr. Hardcastle
5 testified that a 2005 report prepared by consultants for Pine Water Company (in Docket No. W-
6 03512A-03-0279) investigated the possibility of obtaining water from Camp Geronimo and Bray
7 Creek Ranch for both Pine Water and Payson Water's Geronimo system. Mr. Hardcastle stated that
8 the estimated cost from either source would be at least \$400,000 to \$500,000 to construct a pipeline
9 to the Geronimo system. He concluded that it was not economically feasible to pursue water from
10 those sources because cost recovery from the small number of Geronimo system customers would
11 likely require an increase in rates of several times more than customers are paying currently (Tr. 209-
12 212).

13 **Resolution**

14 23. Based on the record before us, we believe that the WPF's request for a 5/8 inch x 3/4
15 inch service connection should be granted in accordance with the limited purposes set forth in the
16 application and as described at the hearing. We will also modify the current moratorium consistent
17 with Staff's proposed Option D, which will permit an additional 8 connections to the system. The
18 availability of the 8 additional connections shall be limited to lots where a main currently exists to
19 serve those lots. As recommended by Staff, new connections should be honored in the order that is
20 approved by Staff, subject to the new customers obtaining a building permit from Gila County within
21 90 days for a permanent residential dwelling unit. The Company should create a waiting list. The
22 Company should work with Staff to ensure that the service requests are accommodated, and waiting
23 lists are maintained, in a nondiscriminatory manner by submitting its method for accomplishing all
24 this to Staff, within 30 days of this Decision, for Staff's approval.

25 24. We also agree that it is prudent to adopt Staff's recommendation to extend the water
26 system usage data study period ordered in Decision No. 67747 through September 2006 in order to
27 capture an additional period of summer usage and supply. This additional study period will enable
28 Staff to analyze whether there is sufficient water available to further modify the moratorium.

1 Geronimo System, to allow a service connection for the WPF and 8 additional customers at this
2 time, pursuant to Staff's recommendations and as discussed herein, is reasonable and in the public
3 interest under the facts and circumstances presented herein.

4 4. Staff's recommendation to require Payson Water to extend the system monitoring
5 analysis of the Geronimo System through September 2006 prior to authorization by the Commission
6 of additional service connections is reasonable and should be adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that Payson Water Co., Inc. is hereby authorized to provide a
9 service connection to the Whispering Pines Fire District and to eight additional customers in the
10 Geronimo Estates and Elusive Acres subdivisions, as part of the Geronimo System, conditioned on
11 compliance with the recommendations set forth in the Staff Report and as discussed herein.

12 IT IS FURTHER ORDERED that new connections shall be honored in the order that is
13 approved by Staff, subject to the new customers obtaining a building permit from Gila County within
14 90 days for a permanent residential dwelling unit. The Company shall create a waiting list, and work
15 with Staff to ensure that the service requests are accommodated, and waiting lists are maintained, in a
16 nondiscriminatory manner by submitting its method for accomplishing all this to Staff, within 30
17 days of this Decision, for Staff's approval.

18 IT IS FURTHER ORDERED that Payson Water Co., Inc. is directed to continue to conduct a
19 system monitoring exercise through September 2006, and to submit the following data based on that
20 study: monthly static water levels from both wells; number of gallons pumped per month from each
21 well; number of gallons sold per month; and number of active and inactive connections per month.
22 The system monitoring report shall be filed with Docket Control within 30 days following
23 completion of the monitoring exercise.

24 IT IS FURTHER ORDERED that no additional new service connections shall be permitted on
25 the Geronimo System until the data is received and reviewed by Staff, and an Order is issued by the
26 Commission allowing additional service connections, unless otherwise ordered by the Commission.

27 IT IS FURTHER ORDERED that Payson Water Co., Inc. shall immediately begin searching
28 for new water sources for its Geronimo system and shall submit a report in this docket no later than

1 December 31, 2006, including supporting documentation, addressing, at a minimum: the pump yield
2 discrepancy raised by WPF Ex. 4; the feasibility and cost estimate of drilling one or more shallow
3 wells in or around the Geronimo system to bolster the existing limited water sources; the feasibility
4 and cost estimate of drilling a deeper well or wells in the Geronimo system area as a means of
5 obtaining a more reliable permanent source; and any other alternatives that may be available as a
6 means to provide service to all requesting customers in the Company's CC&N area.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10
11 *Jeffrey M. Hatch-Miller*
12 CHAIRMAN

Will Miller
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16 COMMISSIONER

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18
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20
21
22 *[Signature]*
23 COMMISSIONER

[Signature]
24 COMMISSIONER

[Signature]
25 COMMISSIONER

26 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
27 Director of the Arizona Corporation Commission, have
28 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this 5th day of May, 2006.

[Signature]
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

DDN:mj

1 SERVICE LIST FOR:

PAYSON WATER COMPANY

2 DOCKET NO.:

W-03514A-05-0729

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