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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS 2006 JUN -11 P 4:30

JEFF HATCH-MILLER -- Chairman  
WILLIAM A. MUNDELL AZ CORP COMMISSION  
MARC SPITZER DOCUMENT CONTROL  
MIKE GLEASON  
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

JUN 01 2006

DOCKETED BY RB

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXTEND ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY IN THE CITY OF CASA GRANDE AND IN PINAL COUNTY, ARIZONA

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION OF PALO VERDE UTILITIES COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION OF SANTA CRUZ WATER COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

MOTION TO EXCLUDE CP WATER COMPANY'S CERTIFICATED TERRITORY FROM ARIZONA WATER COMPANY'S REQUESTED EXTENSION AREA

(ORAL ARGUMENT REQUESTED)

Snell & Wilmer

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

CP Water Company ("CP Water"), an Arizona public service corporation, respectfully requests that its certificated territory be deleted from the requested extension area in Arizona Water Company's ("AWC") application (the "Application") to extend its existing Certificate of Convenience and Necessity ("CC&N") in these consolidated dockets. On April 28, 2006, CP Water filed a Motion to Intervene in these consolidated dockets, and in a Procedural Order issued May 15, 2006, CP Water was granted intervention.

I. BACKGROUND.

In Decision 54089 (June 25, 1984), the Arizona Corporation Commission ("Commission") approved the transfer of a portion of the CC&N of Desert Carmel Service

1 Company to provide water service in Pinal County, Arizona, to CP Water. Specifically, the area  
2 transferred to CP Water (the "CP Water Certificated Territory") consists of the following legally  
3 described areas:

- 4 • SE ¼ of Section 1, Township 6 South, Range 4 East
- 5 • W ½ of the SW ¼ of Section 6, Township 6 South, Range 5 East
- 6 • N ½ and the SE ¼ of Section 7, Township 6 South, Range 5 East
- 7 • Section 8, except the NE ¼ of the NE¼, Township 6 South, Range 5 East

8 Commission Maps 16 and 17 depicting the CP Water Certificated Territory are attached hereto  
9 as Attachment "A."

10 CP Water is a wholly owned subsidiary of CHI Construction Company ("CHI"). CHI  
11 acquired all of the issued shares of stock of CP Water pursuant to a Stock Assignment dated  
12 October 29, 2004, a copy of which is attached hereto as Attachment "B." CP Water currently  
13 has 16 customers. Pursuant to an Agreement for Operation of Water System (the "Operation  
14 Agreement") between AWC and CP Water, dated October 22, 1985, and letter amending the  
15 Operation Agreement, dated December 15, 1988, AWC operates the water distribution system  
16 which provides water service to CP Water's customers. A copy of the Operation Agreement and  
17 letter are attached hereto as Attachment "C."

18 **II. CP WATER'S CERTIFICATED TERRITORY MUST BE DELETED FROM**  
19 **AWC'S REQUESTED EXTENSION AREA.**

20 On March 29, 2006, AWC filed the Application to extend its existing CC&N to provide  
21 public water utility service within the City of Casa Grande and various parts of Pinal County,  
22 Arizona (collectively, the "Extension Area"). The Extension Area is described in Exhibit 1 to  
23 the Application, and is depicted on the map attached as Exhibit 2 to the Application. AWC's  
24 requested Extension Area includes all of the CP Water Certificated Territory, which is a direct  
25 violation of long-established Arizona case law. In the well known case of *James P. Paul Water*  
26 *Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (1983), the Arizona  
27 Supreme Court ruled that a CC&N confers an exclusive right to serve within the certificated  
28 area:

1 Once granted, the certificate confers upon its holder an exclusive right to provide  
2 the relevant service for as long as the grantee can provide adequate service at a  
3 reasonable rate. If a certificate of convenience and necessity within our system of  
4 regulated monopoly means anything, it means that its holder has the right to an  
5 opportunity to adequately provide the service it was certified to provide. *Id.* at  
6 407.

7 CP Water has not consented—and does not consent—to the inclusion of the CP Water  
8 Certificated Territory in AWC's requested Extension Area. Pursuant to the holding of *James P.*  
9 *Paul*, the CP Water Certificated Territory must be excluded from AWC's requested Extension  
10 Area.

11 **III. CONCLUSION.**

12 CP Water respectfully requests that the Commission grant this motion and issue an order  
13 excluding the CP Water Certificated Territory from AWC's requested Extension Area. Further,  
14 CP Water requests that the Commission's hearing division schedule oral argument on this motion  
15 at the earliest possible date.

16 DATED this 1st day of June, 2006.

17 SNELL & WILMER

18   
19 Jeffrey W. Crockett  
20 Marcie Montgomery  
21 One Arizona Center  
22 400 East Van Buren  
23 Phoenix, Arizona 85004-2202  
24 Attorneys for CHI Construction Company

25 ORIGINAL and thirteen (17) copies  
26 filed with Docket Control this 1st  
27 day of June, 2006.

28 COPY of the foregoing hand-delivered  
this 1st day of June, 2006, to:

Yvette B. Kinsey  
Administrative Law Judge, Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Christopher C. Kempley  
2 Chief Counsel, Legal Division  
3 ARIZONA CORPORATION COMMISSION  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007

6 Ernest G. Johnson  
7 Director, Utilities Division  
8 ARIZONA CORPORATION COMMISSION  
9 1200 West Washington Street  
10 Phoenix, Arizona 85007

11 COPY of the foregoing sent via first class  
12 mail this 1st day of June, 2006, to:

13 Steven A. Hirsch, Esq.  
14 Rodney W. Ott, Esq.  
15 BRYAN CAVE LLP  
16 Two North Central Ave., Suite 2200  
17 Phoenix, Arizona 85004-4406

18 Robert W. Geake  
19 Vice President and General Counsel  
20 ARIZONA WATER COMPANY  
21 P.O. Box 29006  
22 Phoenix, Arizona 85038

23 Michael W. Patten  
24 ROSHKA, DeWULF & PATTEN  
25 400 E. Van Buren St., Suite 800  
26 Phoenix, Arizona 85004

27 Brad Clough  
28 ANDERSON & BARNES 580, LLP  
ANDERSON & MILLER 694, LLP  
8501 N. Scottsdale Road, Suite 260  
Scottsdale, Arizona 85253

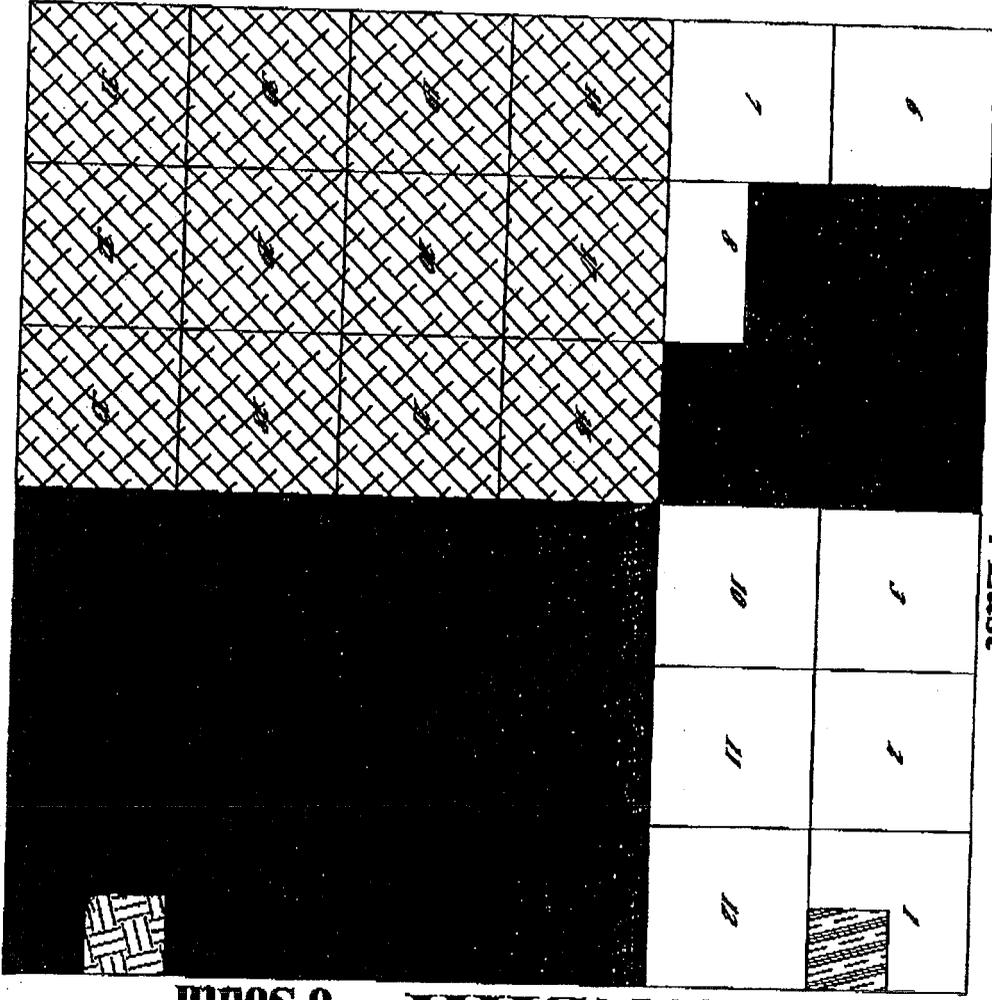


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**ATTACHMENT "A"**

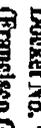
# COUNTY OF Pinal

## RANGE 4 East



## TOWNSHIP 6 South

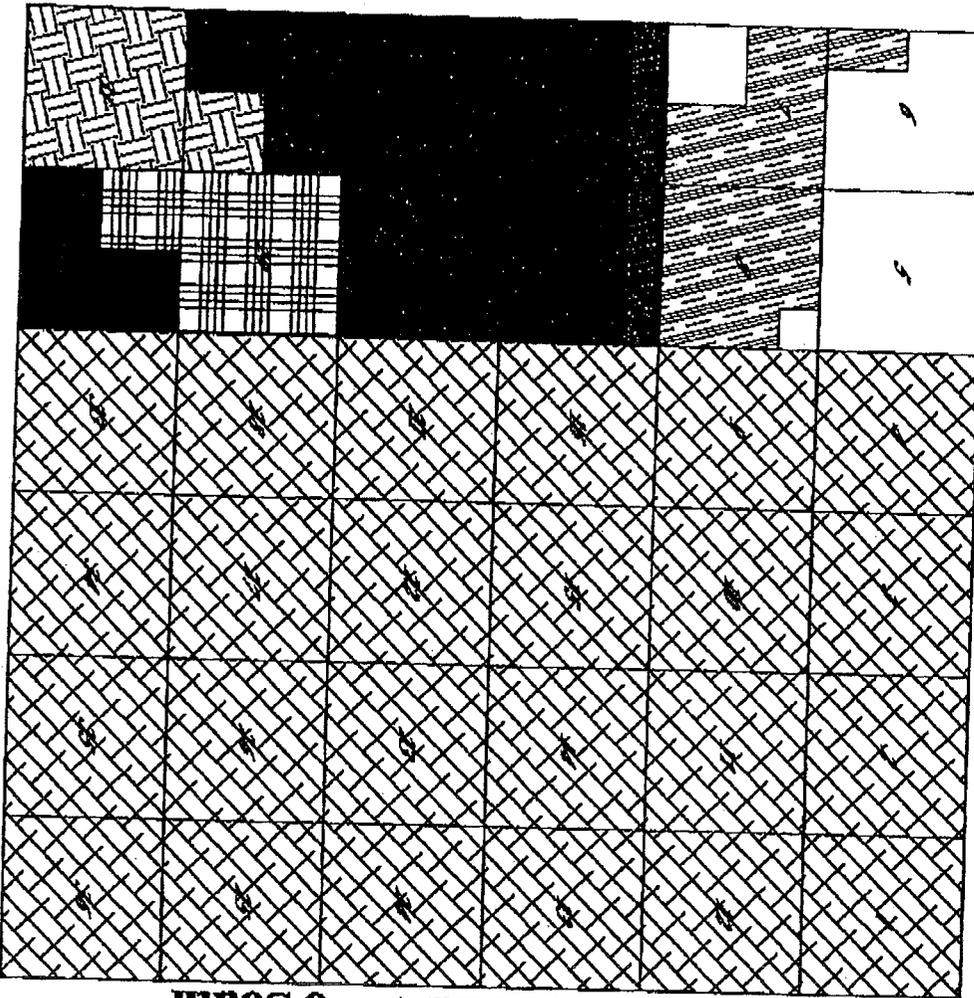
Map No. 16

-  W-1445 (34)(3)
-  Arizona Water Company (Standfield)
-  W-2442 (2)
-  CP Water Company
-  WS-1775 (2)
-  Francisco Grande Utility Company
-  Nonjurisdictional (2)
-  Copper Mountain Ranch Community Facilities District
-  (2)
-  Francisco Grande Utility Company
-  Docket No. WS-01775A-05-0700
-  Application for Partial Transfer to Arizona Water Company
-  Docket No. W-01445A-05-0700
-  (Francisco Grande will retain sewer in this area)

TRKSLZ 15 JAN 2002

**COUNTY: Pinal**

**RANGE 5 East**



-  W-1445 (34)(3)  
Arizona Water Company (Stanfield)
-  W-1990 (1)  
Case Grande West Water Company, Inc.
-  W-2442 (2)  
CP Water Company
-  W-S-1775 (2)   
Francisco Grande Utility Company
-  (8)  
Arizona Water Company  
Docket No. W-01445A-05-0469  
Application for Extension
-  (2)  
Francisco Grande Utility Company  
Docket No. WS-01775A-05-0700  
Application for Partial Transfer to  
Arizona Water Company  
Docket No. W-01445A-05-0700  
(Francisco Grande will retain server in this area)

**ATTACHMENT "B"**

**STOCK ASSIGNMENT  
SEPARATE FROM CERTIFICATE**

FOR VALUE RECEIVED, the undersigned shareholder ("Seller") hereby sells, assigns, and transfers to CHI Construction Company, an Arizona corporation ("Buyer"), ten (10) shares (the "Shares") of Common Stock, No Par Value, of CP Water Company, an Arizona corporation (the "Company"), standing in its name on the books of the Company and represented by Certificate No(s). 5, and hereby irrevocably constitutes and appoints the Secretary of the Company as attorney-in-fact to transfer the Shares to Buyer on the books of the Company with full power of substitution in the premises.

DATED: Oct. 29, 2004

**SHAREHOLDER:**

Freeport Copper Company and ASARCO  
Santa Cruz, Inc., Joint Venturers doing  
business as Santa Cruz Joint Venture

By: ASARCO Santa Cruz, Inc., Managing  
Joint Venturer

By: D. E. McAllister  
Name: Douglas E. McAllister  
Title: Vice President

Consented to and ratified October 28, 2004.

Freeport Copper Company

By: George D. MacDonald  
Name: George D. MacDonald  
Title: Vice President

**ATTACHMENT "C"**

AGREEMENT FOR OPERATION  
OF WATER SYSTEM

RECEIVED  
ARIZONA WATER CO.

OCT 22 1985

PHOENIX  
OFFICE

THIS AGREEMENT, made and entered into this 22nd day of October, 1985, by and between Arizona Water Company ("AWC"), an Arizona Corporation, and CP Water Company ("CP"), an Arizona Corporation.

CP is a wholly-owned subsidiary of Getty Mining Company, a Delaware Corporation, which is a wholly-owned subsidiary of Getty Oil Company.

RECITALS

A. AWC and CP are public service corporations subject to the jurisdiction of the Arizona Corporation Commission;

B. CP operates a water distribution system (the "Water System") located in an area west of Casa Grande, Arizona, which is located within the boundaries of the Southwest ¼ of the Southeast ¼ of Section 7, Township 6 South, Range 5 East, Gila and Salt River Base and Meridian, Pinal County, Arizona; the Water System is presently operated by CP on behalf of Getty Mining Company, the owner of the Water System.

C. CP is desirous of having AWC operate the Water System, and AWC is willing to operate the Water System for CP, subject to the terms and conditions set forth herein.

THEREFORE, In consideration of the premises and the mutual agreements, covenants, promises, representations and understandings contained in this Agreement and other valuable consideration, the parties hereto have entered into the following Agreement:

1. AWC agrees to perform the following acts for CP in conjunction with the operation by AWC of the Water System:

- (a) Install a two-inch (2") compound water meter and sell water to CP pursuant to the terms and conditions established by AWC's Tariff W-103 for its Casa Grande Operating System. AWC will not assess sales taxes to CP on sales of water pursuant to Tariff W-103;
- (b) Read meters, prepare and compute monthly water bills according to CP's water service tariff as approved by and filed with the Arizona Corporation Commission, mail bills to customers, pay postage, reasonably endeavor to collect payments due from customers, and render an annual accounting thereon to CP for a minimum fee of \$100 per month for up to 18 customers. The monthly fee will be increased by AWC at such time as its cost for labor increases, and/or at such time that CP increases the number of active, permanent services beyond 18 customers presently being served.
- (c) Provide labor and materials required to operate and maintain the Water System and repair damages to it;
- (d) Designate AWC's Casa Grande office, located at 220 East 2nd Street, Casa Grande, Arizona, as the location where the customers of the Water System may come regularly to pay their bills. If payment by mail is preferred by customers of the Water System, the following address shall be used: Arizona Water Company, P.O. Box 1019, Casa Grande, AZ 85222.

AWC shall have no obligation to advance its own funds for any of the items referred to above. AWC may use operating revenue from the Water System

for such purposes. If operating revenue is not sufficient, AWC may use its own funds and CP shall reimburse AWC within fifteen (15) days following receipt of an invoice for such from AWC for any expenditures AWC makes in excess of revenue available for such purposes.

2. CP shall, prior to the date when AWC is to commence operation of the Water System, cause the two water wells which presently provide water to the Water System, and which are owned by Getty Mining Company, to be physically disconnected from the Water System. The disconnection of said water wells shall be carried out according to specifications approved by AWC, and shall be monitored by AWC operations personnel.

3. The entire cost of purchasing and installing the 2" compound water meter as provided in Paragraph 1(a), above, shall be paid by CP in advance upon request for such by AWC. AWC shall be under no obligation to advance any of its own funds for the purpose of accomplishing said water meter installation.

4. AWC does not, by this Agreement or by the transactions contemplated herein, assume any responsibilities and obligations for CP except for duties which AWC expressly agrees to perform hereunder. CP shall hold harmless, indemnify and defend AWC against any obligation, damage, loss or liability of any kind arising, directly or indirectly, from AWC's operation of the Water System.

5. This Agreement shall commence on the 22nd day of October, 1985.

6. Either party may terminate this Agreement upon giving to the other party thirty (30) days' written notice of its intention to so terminate; in addition, if CP fails or refuses to reimburse AWC as provided in Paragraph 1, above, AWC shall have the right to terminate this Agreement and any duty

arising hereunder upon giving CP ten (10) days notice of its intention to so terminate on account of said failure or refusal.

7. CP and AWC agree to cooperate and use their best efforts in obtaining such approvals of this Agreement as may be required by law. In the event that the approval of the Arizona Corporation Commission, the Arizona Department of Water Resources, or other governmental authority becomes required, the proposed plan of operation detailed herein shall be conditional upon the receipt of such necessary approvals. If any necessary approval cannot be obtained, or is denied, then this Agreement shall be null and void and all rights and obligations of the parties hereunder shall be abrogated and of no further force and effect.

8. Required or permitted notices to either party concerning this Agreement shall be sent by certified mail, except that invoices and other written communications may be sent by first-class mail.

Notices and written communications to CP shall be addressed as follows:

CP Water Company  
c/o James W. Johnson  
Fennemore, Craig, von Ammon,  
Udall & Powers  
1700 First Interstate Bank Plaza  
100 West Washington Street  
Phoenix, Arizona 85003

Notices and written communications to AWC shall be addressed as follows:

Arizona Water Company  
Post Office Box 5396  
Phoenix, Arizona 85010  
Attention: President

9. This Agreement shall be binding and enforceable upon the parties hereto, their successors, agents and assigns.

10. This Agreement represents the entire Agreement between the parties hereto and supersedes any prior representations or understandings.

11. This Agreement may be modified or amended as mutually agreed in writing by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first hereinabove written by their duly authorized corporate officers.

ARIZONA WATER COMPANY

By *[Signature]*  
Title PRESIDENT

CP WATER COMPANY

By *[Signature]*  
Don A. Nichols  
Title Vice President

## ARIZONA WATER COMPANY

2512 N. 50TH AVENUE, POST OFFICE BOX 5396 PHOENIX, ARIZONA 85010 P-O-BOX 18021 308-4101

December 15, 1988

Mr. Phillip Darrow  
Fennemore Craig  
One Renaissance Square  
Two North Central Avenue  
Phoenix, Arizona 85004-2393

Re: CP Water Company

Dear Mr. Darrow:

I have recently completed a review of the costs Arizona Water Company (the "Company") has incurred in performing services for CP Water Company ("CP"). The purposes of this letter is to inform you of the results of that review and notify you of the revised billing terms under which the Company is willing to continue providing water operation and management services.

The October 22, 1985 agreement provided that the Company would provide monthly meter reading, billing, and collection services and render an annual accounting to CP for a minimum fee of \$100 per month. The cost of labor and materials furnished by the Company to operate, maintain or repair the CP system would be billed separately. The Company entered into this agreement with CP in the belief that it would be a short term arrangement lasting only until CP's customers could be relocated and the operation phased out. The Company did not contemplate the addition of any new customers or that our services would be needed beyond 1986.

The recently completed review of our costs indicates that for the first ten months of 1988, the Company's direct CP related costs exceeded \$1,822.82. These costs included \$1,172.98 of reimbursable but unbilled charges, as illustrated on Attachment 1. These unbilled charges for 1988 have been added to the enclosed statement for the month of October. Our indirect costs such as meter reading labor and vehicle costs, computer usage, postage and accounting labor, as well as a profit for the Company are not included in either of these amounts.

The Company is willing to continue providing management and operating services after January 31, 1989, but will bill monthly for its total direct costs, i.e. column (a) of Attachment 1, plus 30% to provide for indirect costs, overhead and profit for services provided after such date. Please sign and return the extra copy of this letter if you want the Company to continue providing services

Mr. Phillip Dar. <sup>sw</sup>  
Fennemore Craig

December 15, 1988  
Page 2

to CP under the revised billing arrangement described in this  
letter.

Sincerely,



Ralph J. Kennedy  
Vice President  
and Treasurer

RJK:kn

Enclosures

cc: John Bradshaw

REVISED BILLING ARRANGEMENT  
ACCEPTED ON BEHALF OF CP BY:

Robert O. Cat  
12/29/88  
Date

12/15/88

ARIZONA WATER COMPANY  
 ANALYSIS OF EXPENSES INCURRED ON BEHALF OF CP WATER CO  
 FOR THE TEN MONTHS ENDING OCTOBER 31, 1988

CHEMEXPAN:BJK

	TOTAL CHARGES			REIMBURSEMENT BUT UNLILLED CHARGES			NON REIMBURSED		PRO FORMA DILLING			
	Direct Payroll Taxes (a)	Payroll Taxes (b)	Vehicle Charges (c)	Direct Payroll Taxes (d)	Vehicle Charges (e)	Overhead (f)	Total (g)	Total (h)				
JAN	106.40	11.67	40.46	16.17	174.79	67.04	7.44	25.78	16.17	117.23	57.56	227.22
FEB	106.40	11.55	40.46	17.62	176.11	67.04	7.36	25.78	17.62	110.59	57.51	228.94
MAR	106.40	11.44	40.46	16.11	174.49	67.04	7.29	25.78	16.11	117.02	57.47	226.84
APR	89.52	9.17	34.02	11.15	143.06	50.00	5.21	19.33	11.15	86.58	57.28	187.02
MAY	159.72	14.57	60.69	30.25	265.24	101.76	9.20	38.67	30.25	179.97	65.27	344.81
JUN	106.40	10.34	40.46	13.10	170.30	67.04	6.59	25.78	13.10	143.30	57.08	221.49
JUL	87.16	8.30	33.12	18.35	146.93	67.04	6.46	25.78	18.35	118.43	28.50	191.01
AUG	89.52	8.51	34.02	10.63	142.60	50.00	4.04	19.33	10.63	85.68	57.00	185.49
SEP	106.40	10.21	40.46	10.09	175.24	33.92	3.25	12.09	10.09	88.15	107.09	227.82
OCT	159.72	14.02	60.69	10.66	253.10	101.76	6.93	30.67	18.66	168.02	85.07	329.03
NOV	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
DEC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	1,110.04	109.78	424.06	170.14	1,622.02	670.40	66.65	257.79	170.14	1,172.96	649.84	2,369.66

ATTACHMENT 1