

ORIGINAL



0000051001

RECEIVED

05

1 FENNEMORE CRAIG, P.C.
 2 A Professional Corporation
 3 Jay L. Shapiro (No. 014650)
 4 Patrick J. Black (No. 017141)
 5 3003 North Central Avenue
 6 Suite 2600
 7 Phoenix, Arizona 85012
 8 Telephone (602) 916-5000

2006 JUN -7 P 3:11

AZ CORP COMMISSION
DOCUMENT CONTROL

Attorneys for Northern Sunrise Water Company
and Southern Sunrise Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION OF
 10 NORTHERN SUNRISE WATER COMPANY FOR A
 11 CERTIFICATE OF CONVENIENCE AND
 12 NECESSITY TO PROVIDE WATER UTILITY
 13 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

12 IN THE MATTER OF THE APPLICATION OF
 13 SOUTHERN SUNRISE WATER COMPANY FOR A
 14 CERTIFICATE OF CONVENIENCE AND
 15 NECESSITY TO PROVIDE WATER UTILITY
 16 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

15 IN THE MATTER OF THE JOINT APPLICATION
 16 OF NORTHERN SUNRISE WATER COMPANY
 17 AND SOUTHERN SUNRISE WATER COMPANY
 18 FOR THE APPROVAL OF SALE AND TRANSFER
 19 OF WATER UTILITY ASSETS, AND
 20 CANCELLATION OF CERTIFICATES OF
 21 CONVENIENCE AND NECESSITY, FOR
 22 MIRACLE VALLEY WATER COMPANY,
 23 COCHISE WATER COMPANY, HORSESHOE
 24 RANCH WATER COMPANY, CRYSTAL WATER
 25 COMPANY, MUSTANG WATER COMPANY,
 26 CORONADO ESTATES WATER COMPANY, AND
 SIERRA SUNSET WATER COMPANY, LOCATED
 IN COCHISE COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251
 W-20454A-06-0251
 W-01646A-06-0251
 W-01868A-06-0251
 W-02235A-06-0251
 W-02316A-06-0251
 W-02230A-06-0251
 W-01629A-06-0251
 W-02240A-06-0251

**APPLICANTS' JOINT LEGAL
 BRIEF ON COMMISSION
 AUTHORITY TO GRANT
 CERTIFICATE OF
 CONVENIENCE AND NECESSITY
 WITH CONDITIONAL
 OBLIGATION TO SERVE**

Pursuant to Administrative Law Judge Rodda's order at the May 30, 2006 hearing in the
 above-captioned matter, Northern Sunrise Water Company ("Northern Sunrise") and Southern

1 Sunrise Water Company ("Southern Sunrise") (collectively, "Applicants") hereby file this Legal
2 Brief on the issue of whether the Arizona Corporation Commission ("Commission") can grant a
3 certificate of convenience and authority ("CC&N") with terms and/or conditions that must be
4 satisfied before the applicant utility can actually provide water utility service to customers.
5 Applicants conclude that the Commission is authorized to grant a utility a CC&N but may
6 condition service extensions on further requirements.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 The Commission has granted CC&Ns with conditions that must be satisfied prior to the
9 utility extending service to customers within the CC&N area. For instance, in Decision No.
10 66394 (October 6, 2003), the Commission approved the joint applications of Palo Verde Utilities
11 Company and Santa Cruz Water Company for an extension of their CC&Ns, but required each
12 utility to file a Curtailment Tariff within 365 days of the Decision, and **prior to** service being
13 provided to customers in the extension area. Similarly, in Decision No. 66784 (February 13,
14 2004), the Commission approved Gold Canyon Sewer Company's application for an extension of
15 its CC&N, but required the company to file proof of compliance with all ADEQ standards at least
16 30 days **prior to** serving customers in the proposed extension area.

17 While these types of conditions do not make the CC&N itself conditional, the extension of
18 actual service is held in abeyance until certain conditions are met. This practice has support in
19 statute. A.R.S. § 40-282 sets forth certain requirements for issuance of a CC&N. A.R.S. § 40-
20 282(C) provides, in part:

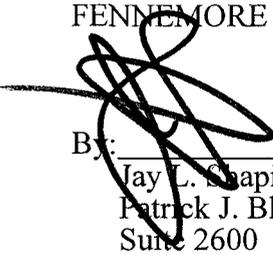
21
22 The commission may, after a hearing, issue the certificate or refuse to issue
23 it, or issue it for the construction of only a portion of the contemplated street
24 railroad, line, plant or system, or extension thereof, or for the partial exercise
25 only of the right or privilege, and may attach to the exercise of rights granted
26 by the certificate terms and conditions it deems that the public convenience
and necessity require.

1 This subsection allows the Commission broad authority to issue CC&Ns, including the ability to
2 impose terms and conditions deemed appropriate or otherwise in the public interest. Therefore, if
3 it is in the public interest, the Commission may condition the utility applicant's actual extension
4 of service on its compliance with certain specified requirements that must be satisfied before the
5 obligation to provide service commences.

6 In short, the authority delegated to the Commission under A.R.S. § 40-282(C) includes the
7 ability to grant a CC&N that is currently effective, but nevertheless precludes a utility from
8 actually furnishing service until certain conditions have been satisfied, based upon a finding that
9 it is in the public interest to do so.

10 RESPECTFULLY SUBMITTED this 7th day of June, 2006.

11 FENNEMORE CRAIG, P.C.

12
13
14 By: 

Jay L. Shapiro
Patrick J. Black
Suite 2600
3003 North Central Avenue
Phoenix, Arizona 85012
Attorneys for Northern Sunrise Water
Company and Southern Sunrise Water
Company

15
16
17
18
19 ORIGINAL and 33 copies delivered
20 this 7th day of June, 2006 to:

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25
26

1 Copy hand-delivered
2 this 7th day of June, 2006 to:

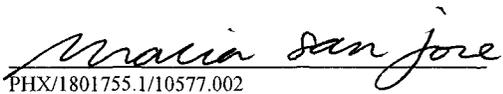
3 Hearing Division
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 Chris Kempley, Esq.
8 Chief Counsel
9 Legal Division
10 Arizona Corporation Commission
11 1200 W. Washington St.
12 Phoenix, AZ 85007

13 Linda Jaress, Executive Consultant
14 Utilities Division
15 Arizona Corporation Commission
16 1200 W. Washington St.
17 Phoenix, AZ 85007

18 Copy emailed
19 this 7th day of June, 2006 to:

20 Jane Rodda, Administrative Law Judge
21 Hearing Division
22 Arizona Corporation Commission
23 400 West Congress
24 Tucson, AZ 85701
25 *JRodda@azcc.gov*

26 
PHX/1801755.1/10577.002