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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Jeff Hatch-Miller - Chairman  
William A. Mundell  
Marc Spitzer  
Mike Gleason  
Kristin K. Mayes

AZ CORP COMMISSION  
DOCUMENT CONTROL

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

DOCKET NO. W-01445A-06-0059

RESPONSE TO PUBLIC COMMENT  
LETTERS

In a procedural order entered in this docket on May 11, 2006 the presiding administrative law judge directed Arizona Water Company (the "Company") to respond to the public comment letters filed on the eve and on the day of the May 8, 2006 scheduled hearing in this matter by Ridgeview Utility Company, Picacho Water Company, Lago Del Oro Water Company, and Santa Rosa Water Company (collectively, the "Robson") whose letter is dated May 5, 2006, and attached hereto as Attachment A), Ms. Patricia Jo Robertson, whose letter is dated May 4, 2006 and attached hereto as Attachment B, and Global Water Resources LLC ("Global"), whose letter is dated May 8, 2006 and attached hereto as Attachment C. The Company now presents its collective response to the letters.

**I. RESPONSE CONCERNING REQUESTS FOR SERVICE**

In its letter, Robson Utilities refers to a "long-followed" (page 1) and "long-established" (page 3) Commission policy that Certificates of Convenience and Necessity ("CCN") for water companies should only be extended in areas where they

1 have requests for service. Global's letter simply says that this practice is Commission  
2 policy. Neither letter supports these contentions.

3 First, there is no Commission rule, no statute, and no Arizona case that supports  
4 the Global or Robson positions. The best that Robson can do to buttress its claim of a  
5 "long-established" policy is to cite a 1995 Commission Decision involving one section of  
6 land, and a transcript reference to the hearings that preceded the entry of Decision No.  
7 68453 (February 2, 2006), a Decision that is now on appeal by the Company.  
8 Furthermore, the transcript citation in Robson's letter concerning this Decision indicates  
9 that Staff was stating its opinion, not a Commission policy. Decision No. 68453 contains  
10 no reference to the existence of a Commission policy on requests for service. Thus,  
11 while Robson and Global refer to a Commission policy that they claim the Company is  
12 violating, and Global claims the Company's application violates Commission precedent,  
13 they provide no support for their arguments and they cannot be seriously considered.

14 Second, the Robson and Global letters confirm that AWC's application does  
15 contain requests for service and, since there is no Commission policy that requests for  
16 service must completely match the CCN area requested, AWC's application follows  
17 Commission policy. As Global admits, at page one of its letter, the Company has a  
18 request for service for each of the parcels it included in describing the CCN area for  
19 which it is applying (five parcels, five requests, as noted in Global's letter, and confirmed  
20 in the Company's application). Robson admits in its letter that about half of the CCN  
21 area the Company requests is covered by requests for service (Robson letter, top of  
22 page 2). Thus, it is clear that the Company's application is supported by requests for  
23 service and that the true nature of the Robson and Global protests may be, as noted on  
24 page one of Robson's letter, that the Company's application, rather than violating  
25 Commission policy, "...directly harms the interests of the Robson Utilities and other  
26 providers."

27 Finally, Global claims to be concerned that the Company's applications create an  
28 undue burden for the Staff (Global letter, at page 2). However, it has been the

1 Company's experience that the Staff is perfectly capable of performing its task of  
2 evaluating the public interest in CCN cases involving the Company and other utilities.  
3 Indeed, in this case, the Staff Report in this case carefully and thoroughly evaluated the  
4 Company's application and recommended approval, without citing the violation of any  
5 Commission policy, or indicating any undue review burden. Indeed, judging from the  
6 amount of insufficiency letters issued by the Staff in recent cases, it seems that Global's  
7 CCN applications, not the Company's, are creating more work for the Staff. Global's  
8 purported concern, involving the enforcement of a non-existent policy, should be given  
9 no weight whatsoever.

10

11 **II. THERE ARE VALID PUBLIC POLICY REASONS WHY CCN**  
12 **REQUESTS SHOULD NOT BE REQUIRED TO INCLUDE A**  
13 **REQUEST FOR SERVICE BY EVERY PROPERTY OWNER**

14

15 Robson and Global both, coincidentally, describe the Company's application in  
16 this docket, and recent Company applications, as "land grabs" (Robson letter, at page 4;  
17 Global letter, at page 2). This is a mischaracterization of the Company's application in  
18 this case which, as noted above, is supported by requests for service covering nearly  
19 half the requested CCN area. Moreover, there are sound public policy reasons why the  
20 Commission does not have a policy that requires a request for service by every property  
21 owner in the CCN extension area.

22 When a water utility formulates its plans for extending its system to meet the  
23 present and future needs of the growth and development of an area, it is sound public  
24 policy for it to have the flexibility to extend its system into areas that are a natural and  
25 logical extension and beneficiary of that growth. Design and extension cannot be  
26 accomplished in the fractured, disorganized and pall mall fashion that would result from  
27 the "policy" that Global and Robson advocate. In the hearings leading up to the entry of  
28 Decision No. 68453, Company witness Vice President-Engineering Michael J.

1 Whitehead sponsored the then-latest version of the Company's Pinal Valley Master  
2 Plan, and described, in great detail, the Company's painstaking planning efforts to  
3 design its system to meet the growth that is occurring in this rapidly developing area.  
4 The Company's CCN applications, which are carefully reviewed by the Staff and the  
5 Commission, are designed to meet the needs of the customer growth and demands in  
6 its system. The Company's CCN extensions are designed to follow this plan, and,  
7 directly contrary to Global's and Robson's contentions that they violate Commission  
8 policy, they have been approved by the Commission when the Staff and the  
9 Commission determine that the applications are in the public interest.

10 There is also at least a modicum of administrative efficiency that the Company's  
11 applications follow, To follow the non-existent policy that Robson and Global advocate  
12 would greatly increase the number of applications that water utilities would need to file,  
13 greatly increasing the burden on the Staff about which Global is purportedly concerned.

14

15 **III. RESPONSE CONCERNING INTEGRATED WATER AND**  
16 **WASTEWATER UTILITY "POLICY"**

17

18 Ms. Robertson's letter presents a concern that, since the Company does not  
19 provide sewer service to her property, it will be difficult to find a sewer provider who is  
20 willing to provide sewer service without being able to also provide water service.  
21 Robson's letter, at page 2, refers extensively to Ms. Robertson's letter, and, in a  
22 footnote, refers to Decision No. 68453, apparently as an argument that the Commission  
23 now favors integrated water and wastewater utilities over water service only providers,  
24 such as the Company.

25 For over fifty years, the Company has provided water service to a growing  
26 number of customers in eight Arizona counties without being an integrated provider, by  
27 cooperating and working with municipal and other public and private wastewater service  
28 providers. There is no evidence whatsoever that it cannot continue to provide such

1 service for another fifty years. There is no established Commission policy that favors so-  
2 called integrated utilities, and, indeed, the great majority of Arizona water utilities  
3 provide water service only. The purported preference that Robson implies to exist is  
4 only an illusion desired by integrated providers.

5 Turning to Ms. Robertson's letter, no support for her concerns exist and, indeed,  
6 considering the location of her property, there is every reason to believe that either the  
7 City of Casa Grande or the City of Coolidge will be able and willing to provide  
8 wastewater service to her property. These are two of the municipalities that the  
9 Company has worked with for many years for the provision of their wastewater  
10 treatment service, a cooperative effort that has supported the remarkable growth in both  
11 communities. Simply put, there is no evidence that a property owner such as Ms.  
12 Robertson cannot receive the highest quality of wastewater service from either city if the  
13 Company is certificated to serve her property. There is also no proof that utilities such  
14 as Robson or Global offer any advantages to property owners like Ms. Robertson.

15 **CONCLUSION**

16 There is no evidence that the public comments describe any existing  
17 Commission policy, and, for that reason, they should be given little, if any, weight or  
18 consideration in this proceeding.

19  
20 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of June 2006.

21 **ARIZONA WATER COMPANY**

22  
23  
24 By: Robert W. Geake  
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Original and thirteen (13) copies of the foregoing filed the 16<sup>th</sup> day of June, 2006 with:

Docket Control Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

A copy of the foregoing was hand-delivered this 16th day of June 2006 to:

Yvette B. Kinsey, Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

A copy of the foregoing was mailed this 16<sup>th</sup> day of June, 2006 to:

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By: Robert W. Deane

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2006 MAY -5 P 4: 42

AZ CORP COMMISSION  
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May 5, 2006

VIA HAND DELIVERY

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

*Re: Public Comment Regarding Arizona Water Company's Application for  
Extension of Certificate of Convenience and Necessity.  
Docket No. W-01445A-06-0059*

Dear Judge Kinsey:

I am the Manager of Ridgeview Utility Company, Picacho Water Company, Lago Del Oro Water Company and Santa Rosa Water Company (collectively, the "Robson Utilities"), and I am submitting these public comments on behalf of the Robson Utilities. The Robson Utilities each provide water service in portions of Pinal County, Arizona. The Robson Utilities oppose the initial grant or extension of a certificate of convenience and necessity ("CC&N") to any water provider which does not have a request for service covering the area requested, or at least substantially all of the area requested. It is becoming a worrisome trend for Arizona Water Company ("AWC" or the "Company") to file applications for vast extensions of the Company's CC&N without the prerequisite requests for service from the landowners. In this docket, AWC has produced requests for service covering less than half of the extension area requested. In addition, AWC recently filed another extension request covering a staggering 69,000 acres,<sup>1</sup> yet AWC had requests for service addressed to AWC covering less than 200 acres. See Docket No. W-01445A-06-0199. These applications violate the Arizona Corporation Commission's long-followed policy of requiring a request for service before a CC&N is extended. The Robson Utilities and other utility providers operate in Pinal County in close proximity to AWC. AWC's obvious plan to lock-up for itself the balance of the un-certificated territory in Pinal County directly harms the interests of the Robson Utilities and other providers. More importantly, these land grabs by AWC thwart the Commission's policy on CC&N extensions, and thereby adversely impact the public interest.

<sup>1</sup> The AWC extension request covers 108 sections.

In this case, it appears that only about one-half of the requested extension area is covered by requests for service. However, one might be led to believe from a reading of the application that AWC has requests for service covering all of the extension area. The following portions of the requested extension area do not have any requests for service:

- Parcel One: NW ¼, NE ¼, NE ¼ and NE ¼, NE ¼, NE ¼ of Section 28 and E ½, SE ¼, SE ¼ of Section 34, Township 5 South, Range 6 East.
- Parcel Two: W ½ of Section 14 and approximately the western half of E ½ of Section 15, Township 7 South, Range 5 East.
- Parcel Three: E ½ of Section 35, Township 5 South, Range 7 East; SW ¼ and S ½, SE ¼ of Section 3, NE ¼ of Section 4, All of Section 9, All of Section 16 of Township 6 South, Range 7 East.
- Parcel Four: All of Section 35, Township 6 South, Range 7 East (Ms. Robertson's property).

Not only has AWC failed to provide requests for service for all of the requested extension area, at least one land owner has specifically requested that her land not be included in the extension. Ms. Patricia Jo Robertson filed a letter with the Commission dated May 4, 2006, stating that she did not request water service from AWC, and that she is concerned about her ability to find a stand-alone wastewater provider if AWC is granted the requested extension.<sup>2</sup> Ms. Robertson specifically requested that her property be excluded from AWC's requested extension. Ms. Robertson owns approximately 640 acres consisting of Section 35, Township 6 South, Range 7 East. A copy of Ms. Robertson's letter is attached.

The Robson Utilities note that recently, AWC orally amended its application at the hearing to extend its CC&N in Docket No. W-01445A-05-0469 to exclude a parcel of property where a property owner withdrew its request for service before the hearing. AWC's Vice President of Engineering, Mike Whitehead, testified that AWC "received a letter from the developer requesting that the parcel be removed from this application and we are certainly willing to honor that." *Hearing Transcript at 33 (Docket No. W-01445A-05-0469)*. Accordingly, AWC should honor Ms. Roberson's request to exclude her section of land.

<sup>2</sup> There are several other providers of water service in Pinal County that also have companion sewer providers. In Decision 68453 (February 2, 2006), the Commission recently ruled in favor of the issuance of a CC&N to a new water company with an affiliated wastewater provider instead of AWC on the grounds that (i) the landowner had not requested water service from AWC; and (ii) "[t]he benefits of developing and operating integrated water and wastewater utilities in this instance outweigh the economies imputed to AWC's larger scale." *Decision 68453, FOF ¶ 129*.

Ms. Robertson's letter begs the question whether other property owners in the requested extension area knowingly consented to the inclusion of their properties, or whether they were even aware of AWC's application. The Robson Utilities urge the Administrative Law Judge to require a request for service for each portion of the requested extension area before recommending the extension of AWC's CC&N to include the area. This is sound regulatory policy.

It is long-established policy at the Commission that CC&Ns for water companies should only be extended in areas where companies have requests for service. In 1995, for example, Beardsley Water Company ("Beardsley") filed an application to extend its CC&N to include all of Section 25, Township 5 North, Range 3 West. *Decision 59396, Docket No. U-2074-95-103 (Nov. 28, 1995)*. Beardsley had received requests for service for the southwest quarter of Section 25, but had no requests for service for the remaining portion of Section 25. The Commission properly limited Beardsley's extension to that area where the company had requests for service, namely the southwest quarter of Section 25. In that case, Utilities Division Staff would not recommend approval of Beardsley's CC&N extension in the remaining portion of Section 25 without a request for service and a demonstration of the public need for certification. *Staff Report dated Sept. 1995 (Docket No. U-2074-95-103)*.

The Commission had occasion to reiterate this policy recently in a case where AWC filed a competing application against Woodruff Water Company (*Docket Nos. W-04264A-04-0438, SW-04265A-04-0439, W-01445A-04-0755*). Three days before the hearing, the Cardon Hiatt Companies ("Cardon") filed a letter with the Commission requesting that its property of approximately 720 acres be excluded from AWC's CC&N extension.<sup>3</sup> During the hearing, Assistant Director Steve Olea testified that the Cardon property should be excluded, as set forth in the following exchange between the administrative law judge and Mr. Olea:

- Q. [Administrative Law Judge Marc Stern:] ... So what is the status of Staff's recommendation to the areas not requested - that haven't requested service apparently and which would include Sandia... and then there is a number of small little sections and a couple of other sections [sic] in which part of it is that Cardon property that didn't request service apparently.
- A. [Assistant Director Olea:] Okay. Staff's opinion is that on sections 19 and 30, which I think we are referring to as the Cardon areas, there is not a request for service. Whether it's to Woodruff or to anybody, there is not a request.

<sup>3</sup> Cardon did not intervene in the case, but its request to have its property excluded from the case was granted.

Judge Yvette B. Kinsey  
ARIZONA CORPORATION COMMISSION  
May 5, 2006  
Page 4

And for a CC&N, Staff has always been in the opinion that there has to be a need for service, and without a request, there is not a need, so there is no need to have a certificate of convenience and necessity because the necessity portion isn't met.

*See Transcript Vol. VII at 1415:3-18 (Aug. 4, 2005), Docket Nos. W-04264A-04-0438, SW-04265A-04-0439, W-01445A-04-0755.*

The Commission properly determined that it was in the public interest to limit AWC's CC&N extension to include only those areas where AWC had received requests for service. *Decision No. 68453, FOF ¶¶ 78, 119, 129.* Areas with no requests for service, including the Cardon property, were removed from AWC's CC&N extension. *Id.*

There is a wise rationale behind the Commission's policy of requiring a request for service from the landowner before extending a CC&N to include the property. To do otherwise encourages utility companies to engage in speculative land grabs, which subverts the public interest. The merits of each extension of a water company's CC&N should be addressed at the time that there is a demonstrated need for utility service. At that time, the Commission can evaluate the financial stability and compliance status of the applicant, as well as any competing applications for the extension area. The Robson Utilities urge the Commission to exclude any lands from AWC's requested extension area which are not covered by a request for service.

Thank you for considering these comments.

Very truly yours,



Jim Poulos, Manager  
Ridgeview Utility Company  
Picacho Water Company  
Lago Del Oro Water Company  
Santa Rose Water Company

JP/jp  
Enclosure

## ROSHKA DEWULF &amp; PATTEN

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May 8, 2006

*Via Hand Delivery*

Chairman Jeff Hatch-Miller  
Commissioner William A. Mundell  
Commissioner Marc Spitzer  
Commissioner Mike Gleason  
Commissioner Kristen K. Mayes  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Re: **Today's Hearing**  
Arizona Water Company CC&N Extension  
Docket No. W-01445A-06-0059

Dear Commissioners:

Global Water Resources, LLC ("Global") would like to bring to your attention a serious issue with regard to this docket. Specifically, Arizona Water Company (AWC) has **not provided requests for service** for a substantial part of the proposed extension area in this case. AWC seeks an addition of approximately 10 square miles to its CC&N near Casa Grande. According to the Staff Engineering Report, at build-out this area will have approximately 10,200 customers.

The extension area is comprised of five separate parcels. AWC submitted five requests for service. AWC's application contains a list matching the five parcels and the five requests for service. This naturally implies that the requests for service match the areas of the five requested parcels. Indeed, that is what we concluded in our initial review of this matter.

On Friday, May 5, 2006, it came to our attention that the five requests for service do not cover all of the areas of the five parcels requested by AWC in this case. A close review of the requests for service confirmed this conclusion. For example, for Parcel 2, AWC submitted a request for service by CG 8 LLC. Parcel 2 contains half of two sections, i.e. 640 acres. Yet the request for service by CG 8 LLC covers only 67 acres. (See Exhibit 3.2 to AWC's Application). This is less than 11% of the requested area.

## ROSHKA DEWULF & PATTEN

Chairman Jeff Hatch-Miller  
Commissioner William A. Mundell  
Commissioner Marc Spitzer  
Commissioner Mike Gleason  
Commissioner Kristen K. Mayes  
May 8, 2006  
Page 2 of 3

Global is concerned that AWC's practice of requesting areas with no requests for service is directly contrary to ACC practice and precedent. This is not the first time AWC has made such requests. For example, in the Woodruff case, AWC, in addition to disputing the Sandia development with Woodruff, also sought areas with no requests for service. The Commission rejected AWC's attempt to gain areas without requests for service. See Decision No. 68453 (February 2, 2006).

Likewise, in Docket No. W-01445-06-0199, AWC filed an application for a vast extension of more than 69,000 acres. As we noted in our letter of April 7 in that docket, AWC had requests for service for only 197 acres – less than 3/10 of 1% of the requested area. AWC also submitted numerous requests for water service directed to **Global**, totaling about 19,373 acres. But even of those requests were considered, more than 49,430 acres have no requests for service. Thus, there are no requests for service for more than 70% of the proposed extension area in that case.

Moreover, Global is concerned that these actions will create an undue burden for Staff. Global carefully ensures that it has requests for service from all affected landowners in an area before we file any CC&N Extension. That is not unusual - other responsible utilities do the same thing. But when a utility submits requests which do not cover the entire area, a substantial problem is created. The discrepancy can only be found by a painstaking, line-by-line comparison of the legal description of the proposed extension area to the legal descriptions contained in the requests for service. These discrepancies are easy to miss – as we missed them in this case. Staff has limited resources, and should not be forced to devote its resources to such tasks – the ACC rightly presumes that filed Applications and the legal descriptions attached thereto match – however, in several recent AWC cases they do not. AWC should be directed, in no uncertain terms, to stop its practice of filing for extensions without legitimate requests for service from all affected landowners.

Finally, allowing AWC's practice will only lead to more time-consuming and difficult contested CC&N cases. AWC is clearly engaged in a pattern of "land grabs" to lock up territory. Other companies will be forced to object, to copy AWC's inappropriate practice, or remain silent and risk being swept aside. In contrast, if applications are allowed only with requests for service, the areas subject to each case will be smaller and less likely to be disputed. We believe this is partly the intent of the ACC's policy of requiring requests for service.

**ROSHKA DEWULF & PATTEN**

Chairman Jeff Hatch-Miller  
Commissioner William A. Mundell  
Commissioner Marc Spitzer  
Commissioner Mike Gleason  
Commissioner Kristen K. Mayes  
May 8, 2006  
Page 3 of 3

Global hopes that this information aids you in your evaluation of this case.  
Global also joins in the public comment letter submitted May 5, 2006 by the Robson  
Utilities.

Respectfully submitted,

ROSHKA DEWULF & PATTEN, PLC

By 

Michael W. Patten  
Attorneys for Global Water Resources, LLC

cc: ACC Docket Control (Original and 13 Copies)  
Administrative Law Judge Yvette B. Kinsey  
Ernest G. Johnson, Esq.  
David Ronald, Esq.  
Ms. Linda Jaress  
Robert W. Geake, Esq.



**ORIGINAL** May 4, 2006

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VIA HAND DELIVERY

Arizona Corporation Commission  
Docket Control  
1200 Washington Street  
Phoenix, Arizona 85007

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AZ CORP COMMISSION  
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**RE: Application of Arizona Water Company for approval to extend their existing Certificate of Convenience and Necessity**

**Docket Number W-01445A-06-0059**

**To Whom It May Concern:**

I am the owner of the following real property:

Section 35, Township 6S, Range 7E  
401-01-086-05  
401-01-087-04  
401-01-088-03

Recently, I received notice of an application by the Arizona Water Company, which was filed with the Arizona Corporation Commission whereby the Applicant applied to extend its Certificate of Convenience and Necessity to include my property. Please be aware that I have not requested water service from Arizona Water Company. In addition, I am concerned that Arizona Water Company does not provide sewer service, and that it will be difficult to find a sewer provider who is willing to provide sewer service without being able to also provide water service. Under the circumstances, I believe it is inappropriate to include my property in this CC&N at this time.

Should you have any questions or comments regarding the foregoing, please feel free to contact me at your convenience.

Sincerely,

Patricia Jo Robertson

Contact Information:

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