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BEFORE THE ARIZONA CORPORATION CO.

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COMMISSIONERS

JEFF HATCH-MILLER - Chairman
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2006 JUN 21 P 4: 30

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
NORTHERN SUNRISE WATER COMPANY
FOR A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE WATER
SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

IN THE MATTER OF THE APPLICATION OF
SOUTHERN SUNRISE WATER COMPANY
FOR A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE WATER
SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

IN THE MATTER OF THE JOINT
APPLICATION OF NORTHERN SUNRISE
WATER COMPANY AND SOUTHERN
SUNRISE WATER COMPANY FOR THE
APPROVAL OF SALE AND TRANSFER OF
WATER UTILITY ASSETS, AND
CANCELLATION OF CERTIFICATES OF
CONVENIENCE AND NECESSITY, FOR
MIRACLE VALLEY WATER COMPANY,
COCHISE WATER COMPANY, HORSESHOE
RANCH WATER COMPANY, CRYSTAL
WATER COMPANY, MUSTANG WATER
COMPANY, 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

**STAFF RESPONSE TO
APPLICANTS' JOINT LEGAL
BRIEF ON COMMISSION
AUTHORITY REGARDING
CONDITIONAL OBLIGATION
TO SERVE AND STAFF'S REPLY
TO JOINT APPLICANTS'
RESPONSE TO STAFF'S LATE
FILED EXHIBIT 4**

At the conclusion of the hearing on this matter, at least two filing obligations were left to the Parties. First, Staff was to file Late Filed Exhibit 4. In addition, the Parties were directed to submit legal memoranda discussing the issue of whether the Commission has authority to grant Applicants a certificate of convenience and necessity ("CC&N"), with the requirement that before service could commence in a portion of the area, the developer provide a certificate of assured water supply from

1 the Arizona Department of Water Resources (“ADWR”). Staff subsequently submitted its Late Filed
2 Exhibit 4, and on June 12, the Applicants submitted a response thereto. In addition, on June 7, 2006,
3 Applicants submitted a joint legal brief as directed. This filing constitutes Staff’s Reply to the Late
4 Filed Exhibit, and Staff’s Response to Applicants’ Joint Legal Brief.

5 **I. Staff is willing to acquiesce to the allocation methodology proposed by**
6 **Applicants’ Late Filed Exhibit.**

7 Staff’s Late Filed Exhibit 4 proposed to allocate “negative goodwill” by applying the
8 adjustment solely to Land and Land Rights. The Applicants objected to that proposed treatment.
9 Applicants contend that the existence of the “negative goodwill” in this matter is primarily related to
10 the poor condition of the water facilities rather than the condition of the land. As a result, in their
11 Late Filed Exhibit, Applicants submitted an allocation methodology that allocated the “negative
12 goodwill” among the hard assets of the system, rather than applying it to the Land and Land Rights.

13 Upon further consideration, Staff has reconsidered our position regarding the allocation of
14 “negative goodwill”. The Parties to this proceeding have acknowledged that the inadequate water
15 service is caused by poor physical infrastructure and deteriorated plant equipment, rather than
16 inadequacy of land and land rights. Accordingly, Staff is willing to adopt the allocation of “negative
17 goodwill” proposed in Applicants’ Late Filed Exhibit A.

18 **II. The Commission has authority to grant a CC&N which conditions service within**
19 **an area.**

20 Applicants’ Joint Legal Brief on Commission Authority points out that the Commission has
21 commonly granted CC&Ns with conditions that must be met before service can be extended within
22 the CC&N area. Staff is in agreement that the Commission has authority to grant a CC&N with such
23 conditions.

24 Under Article XV of the Arizona Constitution, the Commission has broad regulatory authority
25 over public service corporations. In Staff’s view, that authority would include the regulatory
26 authority to require that certain conditions be met before a utility could serve customers within all or
27 a part of a certificated area. This would apply either upon issuance of a CC&N or after. For
28

1 example, even after a CC&N was issued, the Commission could impose a moratorium on new
2 connections if circumstances dictated such an action.

3 Of course, there are two ways that the Commission can accomplish the objective of granting
4 the CC&N while requiring a finding of an adequate water supply before the actual providing of
5 service is permissible. One would be to grant a CC&N with the condition that service not be
6 extended until the developer has provided a statement of assured water supply from ADWR. The
7 other would be to grant an Order Preliminary for the area in question. The Order Preliminary
8 approach is specifically recognized under A.R.S. § 40-282(D). If an Order preliminary were granted,
9 the Commission would issue a CC&N as a ministerial act upon the Applicants' compliance with the
10 requirements of the Order Preliminary. Staff believes that either approach is within the
11 Commission's authority.

12 RESPECTFULLY SUBMITTED this 21st day of June, 2006.

13
14 *Christopher Kempley by*
15 Christopher C. Kempley *Jessie Alwan*
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19 The original and thirteen (13) copies
20 of the foregoing were filed this 21st
21 day of June 2006 with:

21 Docket Control
22 Arizona Corporation Commission
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24 Copies of the foregoing were mailed
25 this 21st day of June 2006 to:

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