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BEFORE THE ARIZONA CORPORATION C

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Arizona Corporation Commission

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COMMISSIONERS

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JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

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 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

**REPLY IN SUPPORT OF
MOTION TO EXCLUDE
PROPERTY OF CHI
CONSTRUCTION COMPANY
FROM ARIZONA WATER
COMPANY'S REQUESTED
EXTENSION AREA**

**(ORAL ARGUMENT
SCHEDULED FOR SEPTEMBER
27, 2006)**

On June 1, 2006, intervenor CHI Construction Company ("CHI") filed a motion (the "Motion") to exclude certain real property it owns in Pinal County from the requested extension area of Arizona Water Company ("AWC") in these consolidated cases. On August 15, 2006, Utilities Division Staff ("Staff") filed its response (the "Response") to CHI's Motion stating that Staff does not have enough information to determine whether the property CHI owns should be excluded, and that the CHI's Motion should be denied at

Snell & Wilmer

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

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1 this time. CHI hereby files its reply in support of its Motion and urges the administrative
2 law judge to order the deletion of CHI's real property from the extension area requested by
3 AWC.

4 **RELEVANT FACTS**

5 CHI currently owns approximately 7,000 acres which will be developed as the
6 Legends master planned development (the "Legends Property"). The Legends Property is
7 highlighted in yellow on the map attached hereto as Attachment A and includes all or
8 portions of Sections 1, 12, 13, 23, 24, 25 and 26, Township 6 South, Range 4 East, and all
9 or portions of Sections 5, 6, 7, 8, 17, 18, 19 and 30, Township 6 South, Range 5 East.

10 Approximately 3,700 acres of the Legends Property is located within the existing
11 water certificate of convenience and necessity ("CC&N") of Francisco Grande Water
12 Company. Approximately 1,450 acres of the Legends Property is located within the
13 existing water CC&N of CP Water Company,¹ which is a wholly-owned subsidiary of
14 CHI. Approximately 300 acres, or just 4%, of the existing Legends Property is located
15 within the existing water CC&N of AWC.² The remaining approximately 1,550 acres of
16 the Legends Property is not currently within the water CC&N of any public service
17 corporation. The certificated territories of Francisco Grande Water Company, CP Water
18 Company and AWC within the Legends Property are identified on the map attached
19 hereto as Attachment B. That portion of the Legends Property located south of Kortsen
20 Road (approximately 4,100 acres) is located within the sewer CC&N of Francisco Grande
21 Sewer Company.

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25 ¹ Notwithstanding the fact that CP Water Company possesses a valid CC&N, AWC included the CP Water
26 Company's certificated territory in its requested extension area in these consolidated cases. However, in
27 the Staff Response to CHI Motion to Exclude and CP Water's Motion to Exclude filed August 15, 2006,
28 Staff stated that CP Water Company's motion to exclude its property from AWC's extension area should
be granted. AWC has not sought to include the certificated territory of Francisco Grande Water Company
in AWC-requested extension area.

² The certificated territory of AWC is located in the north half of Section 30, Township 6 South, Range 5
East, which is a small area in the very southeast corner of the Legends Property.

1 Docket Nos. W-04264A-04-0438 *et al.* In denying the extension, the Commission
2 explained that “we also concur with Staff’s recommendation that additional areas which
3 have not requested service should not be included in AWC’s certificated area at this
4 time.” *Id.* at 29. Also at issue in the case was the disputed Sandia master planned
5 development. The owner of the Sandia property requested water service from Woodruff
6 Water Company, not AWC. The Commission denied AWC’s competing application to
7 serve Sandia stating that “[n]either...Sandia nor CHC has requested that their properties
8 be included in the CC&N extension that AWC seeks.” *Id.*

9 Decision 68453 was based on Staff’s recommendation in the case. Assistant
10 Director Steve Olea, who testified on behalf of Staff, stated as follows:

11 *Staff has always been [of] the opinion that there has to be a need for*
12 *service, and without a request, there is not a need, so there is no need to*
13 *have a certificate of convenience and necessity because the necessity*
14 *portion isn’t met.”* Hearing Transcript Vol. VII at 1,415 (Aug. 4, 2005) in
15 Docket W-04264A-04-0438.

16 In adopting Decision 68453, the Commission also acknowledged the importance of
17 landowner rights in approving a utility provider. Former Commissioner Marc Spitzer
18 stated: “Commissioner Gleason alluded to it very early that the property owner ought to
19 have some say in how utility service is provided... the rights of the property owner ought
20 to be accorded some degree of respect.” Transcript of Open Meeting at 109 (Jan. 27,
21 2006).

22 The examples cited above are not isolated examples, but represent the norm. The
23 Commission recently denied part of a requested extension area where requests for service
24 were lacking. *Lyn Lee Water Co.*, Decision 68445 at Finding of Fact No. 22 (Feb. 2,
25 2006). Similarly, Johnson Utilities Company was forced to withdraw part of an
26 application due to a lack of requests for service. *H2O, Inc. et al.*, Decision 64062 at
27 Finding of Fact No. 48 (Oct. 4, 2001). Another application filed by Johnson Utilities
28 Company was denied for lack of requests for service in Decision 64288 at Finding of Fact
Nos. 47, 70, and 84 (Dec. 28, 2001). In Decision 68607 dated March 23, 2006 (Docket

1 No. W-01445A-05-0469), a parcel was excluded from AWC's requested extension area
2 because the landowner revoked his request for service and AWC honored the landowner's
3 request. In another case, the Commission indefinitely continued a utility's
4 application after the landowners withdrew their requests for service, noting "the public
5 interest would not be served by conducting a hearing on competing applications, or on one
6 of those applications, where there does not currently exist a request for service from any
7 property owner in the proposed extension areas of either application." *Diversified Water*
8 *Utilities, Inc.*, Procedural Order dated May 11, 2005 at 4 (Docket Nos. W-02859A-04-
9 0844 *et al.*).

10 In its Response to CHI's Motion, Staff states that a request for service is a relevant
11 factor in analyzing a requested CC&N extension, but a request for service is not
12 controlling. *Response* at 2, lines 14-15. According to Staff, "a request for service is one
13 of many factors that Staff uses in determining its ultimate recommendation." *Id.* at 2,
14 lines 15-16. However, Staff deeply understates the importance of a request for service in
15 a case such as this. CHI is not a small landowner. The uncertificated portion of the
16 Legends Property included in AWC's requested extension area exceeds two square miles!
17 Consistent with the Commission's well established policy and the many cases cited
18 above, CHI's property should be excluded from these consolidated cases. Moreover,
19 AWC is not simply lacking a request for service for the CHI property—CHI strongly
20 opposes the inclusion of its property. Staff has not cited a single case where a CC&N has
21 been extended to a large tract of land over the objection of the landowner.

22 Staff's opposition to CHI's Motion is wholly inconsistent with Staff's position in
23 prior cases, and should be rejected by the ALJ. So long as CHI's property is subject to
24 this proceeding, CHI will continue to needlessly incur the legal and others costs
25 associated with its participation in this case.

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B. THE COMMISSION SHOULD NOT GRANT AWC'S REQUESTED EXTENSION IN THE LEGENDS PROPERTY BECAUSE IT WILL RESULT IN MULTIPLE WATER PROVIDERS SERVING THE SAME MASTER PLANNED DEVELOPMENT.

The more significant problem with AWC's requested extension is that if granted, it will result in multiple water providers operating within the Legends Property. This is unacceptable to CHI, and it adversely impacts the future customers that will reside at Legends. CHI is actively pursuing a global strategy for integrated water and wastewater service for the Legends Property. An application at this time by any water provider is premature. Once CHI has developed its strategy for providing water and wastewater service to the Legends Property, CHI will make a request for service to the appropriate providers. At that time, the Commission will have an opportunity to consider the appropriate water provider for Legends.

CONCLUSION

For the foregoing reasons, CHI respectfully requests that the Commission grant its motion to exclude its property from AWC's requested extension area.

DATED this 29th day of August, 2006.

SNELL & WILMER



Jeffrey W. Crockett
Marcie Montgomery
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202
Attorneys for CHI Construction Company

ORIGINAL and seventeen (19) copies filed with Docket Control this 29th day of August, 2006.

COPY of the foregoing hand-delivered this 29th day of August, 2006, to:

1 Yvette B. Kinsey
2 Administrative Law Judge, Hearing Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 Christopher C. Kempley
7 Chief Counsel, Legal Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007

11 Ernest G. Johnson
12 Director, Utilities Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 COPY of the foregoing mailed
17 this 29th day of August, 2006, to:

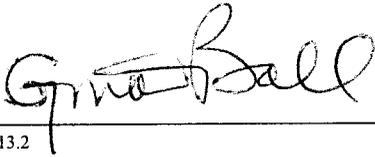
18 Steven A. Hirsch, Esq.
19 Rodney W. Ott, Esq.
20 BRYAN CAVE LLP
21 Two North Central Ave., Suite 2200
22 Phoenix, Arizona 85004-4406

23 Robert W. Geake
24 Vice President and General Counsel
25 ARIZONA WATER COMPANY
26 P.O. Box 29006
27 Phoenix, Arizona 85038

28 Michael W. Patten
ROSHKA, DeWULF & PATTEN
400 E. Van Buren St., Suite 800
Phoenix, Arizona 85004

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

1 Kenneth H. Lowman
2 KEJE Group, LLC
3 7854 West Sahara
4 Las Vegas, Nevada 89117
5
6 Craig Emmerson
7 ANDERSON & VAL VISTA 6, LLC
8 8501 North Scottsdale Rd., Suite 260
9 Scottsdale, Arizona 85253
10
11
12 Philip J. Polich
13 GALLUP FINANCIAL, LLC
14 8501 North Scottsdale Rd., Suite 125
15 Scottsdale, Arizona 85253
16
17
18
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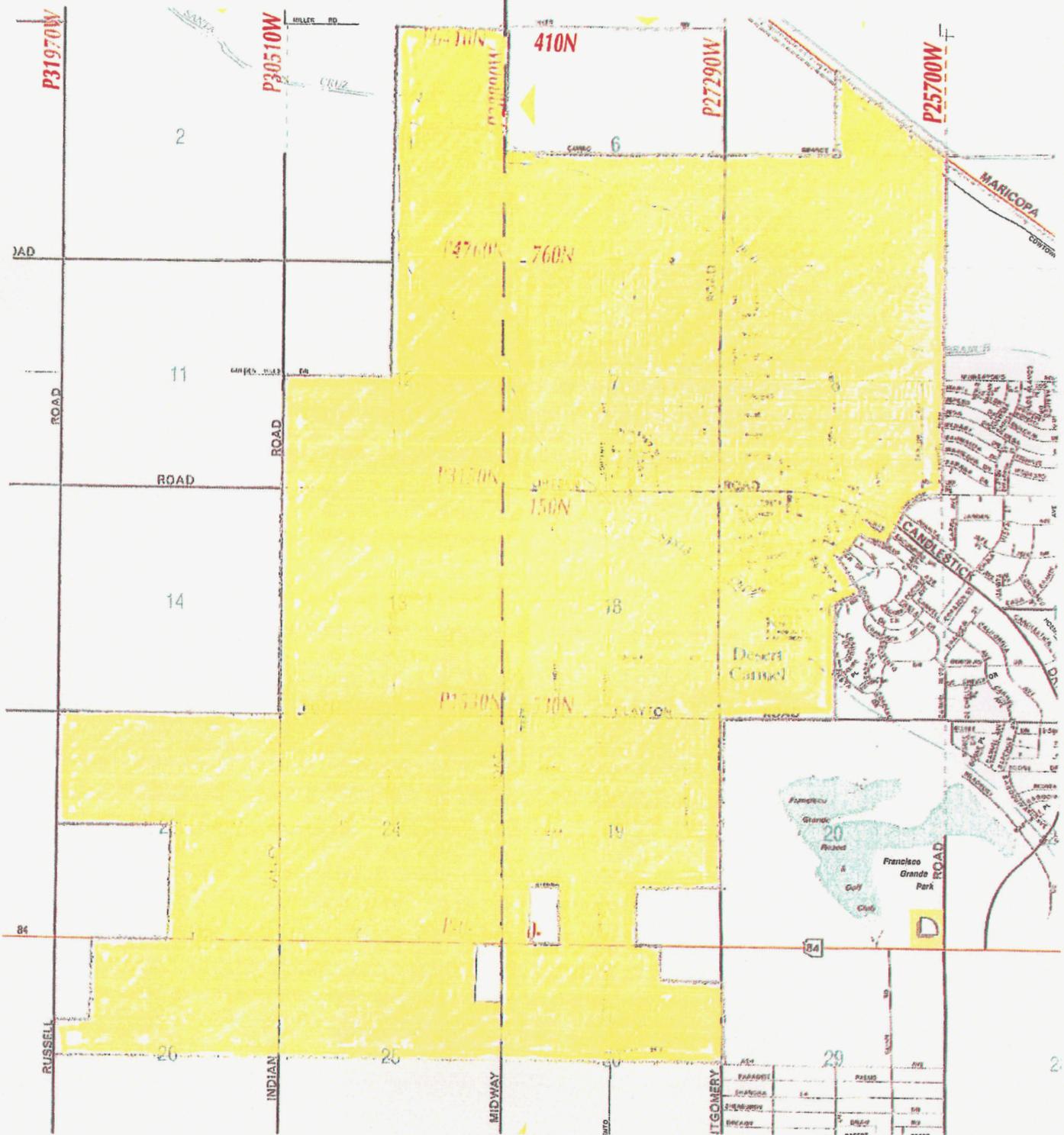


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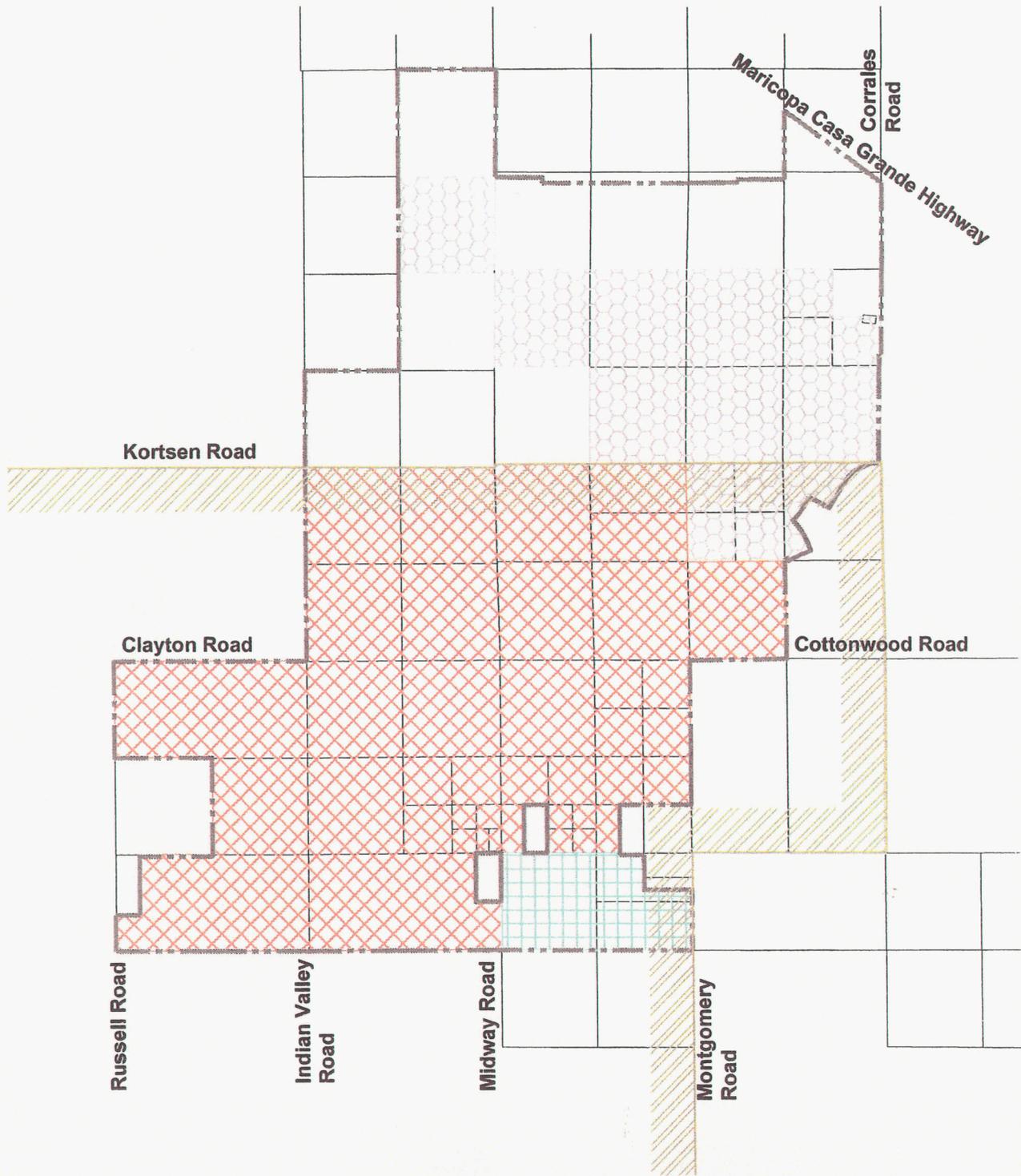
ATTACHMENT A

T6S, R4E

T6S, R5E



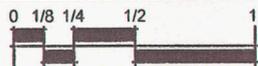
ATTACHMENT B



Legends

Pinal County, Arizona

Utility Company CC & N



North Scale: 1" = 1/2 Mile

CMX Project Number: 7128 August 18, 2006

Project Manager: T. Peterson P.E.

Designed By:

Graphics By: N/A

Drawn By:

CMX Project Number: 7128 August 18, 2006

Project Manager: T. Peterson P.E.

Designed By:

Graphics By: N/A

Drawn By:



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Legend

----- Legends Boundary

	Francisco Grande Sewer-CC & N		CP Water CO. Water-CC & N
	Francisco Grande Water-CC & N		AZ Water CO. Water-CC & N