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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

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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)**

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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

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

RELEVANT FACTS

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

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

[1] Notwithstanding the fact that CP Water Company possesses a valid CC&N, AWC included the CP Water Company's certificated territory in its requested extension area in these consolidated cases. However, in the Staff Response to CHI Motion to Exclude and CP Water's Motion to Exclude filed August 15, 2006, 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.

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LEGAL ARGUMENTS

CHI's Motion should be granted because (i) CHI has not requested water service from AWC, and in fact, opposes the inclusion of its property in the AWC extension area; and (ii) approval of AWC's requested extension will result in multiple water providers serving within the Legends Property.

A. THE COMMISSION SHOULD ONLY GRANT OR EXTEND A CC&N IN AREAS WHERE THERE ARE REQUESTS FOR SERVICE.

AWC's extension request contravenes a well-established Commission policy of requiring a request for service before granting or extending a CC&N. The issuance of a CC&N requires a demonstration of necessity by the applicant, and the Commission finds necessity by looking for requests for service. Staff has stated that:

> *[A CC&N] should not be issued lightly... [it] by definition, requires a showing of necessity. Ordinarily, a showing of necessity is made by demonstrating requests for service for the area. In an exceptional situation, a showing of necessity can be made by other means.* Staff's Response to Johnson Utilities Company's Motion to Continue at 1 (April 29, 2005) in Docket No. W-02859A-04-0844.

Thus, absent some compelling reason to do otherwise, the Commission has routinely excluded the properties of landowners who have not requested utility service or who have affirmatively opposed the inclusion of their property. In a case involving Beardsley Water Company, for example, the Commission refused to grant the entire extension where Beardsley Water Company had received requests for service covering only 25% of the requested extension area. Decision 59396 (Nov. 28, 1995) in Docket No. W-02074A-95-0103. In limiting the grant to only that area which had requests for service, the Commission explained that "there is no need to grant exclusive rights to [Beardsley Water Company] for the three quarters of [the area] in which no development is taking place." *Id.* at 2.

Similarly, in a recent case involving competing applications filed by AWC and Woodruff Water Company, the Commission denied AWC's requested extension in areas where AWC had not received requests for service. Decision 68453 (Feb. 2, 2006) in

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

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

> *Staff has always been [of] 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.*" Hearing Transcript Vol. VII at 1,415 (Aug. 4, 2005) in Docket W-04264A-04-0438.

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

The examples cited above are not isolated examples, but represent the norm. The Commission recently denied part of a requested extension area where requests for service were lacking. *Lyn Lee Water Co.*, Decision 68445 at Finding of Fact No. 22 (Feb. 2, 2006). Similarly, Johnson Utilities Company was forced to withdraw part of an application due to a lack of requests for service. *H2O, Inc. et al.*, Decision 64062 at Finding of Fact No. 48 (Oct. 4, 2001). Another application filed by Johnson Utilities 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

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

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

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

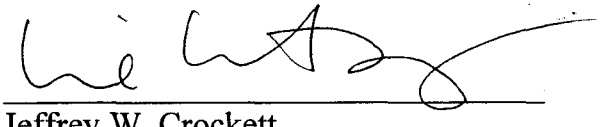
The more significant problem with AWC's requested extension is that if granted, it will result in multiple water providers operating within the Legends Property. This is unacceptable to CHI, and it adversely impacts the future customers that will reside at Legends. CHI is actively pursuing a global strategy 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



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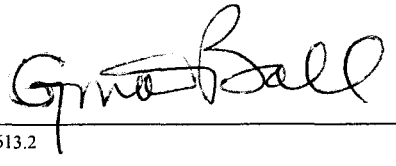

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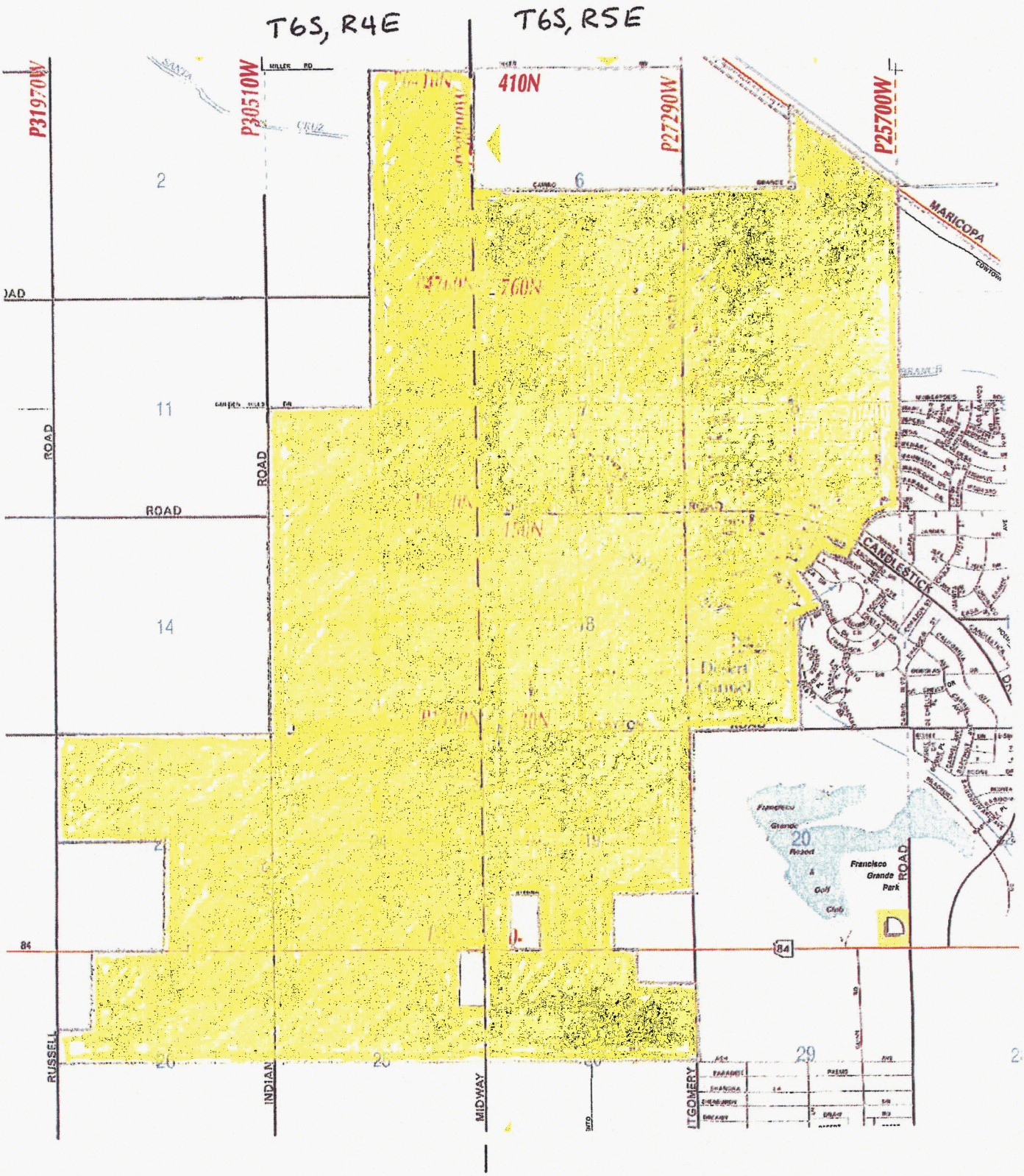
ATTACHMENT A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INDIAN
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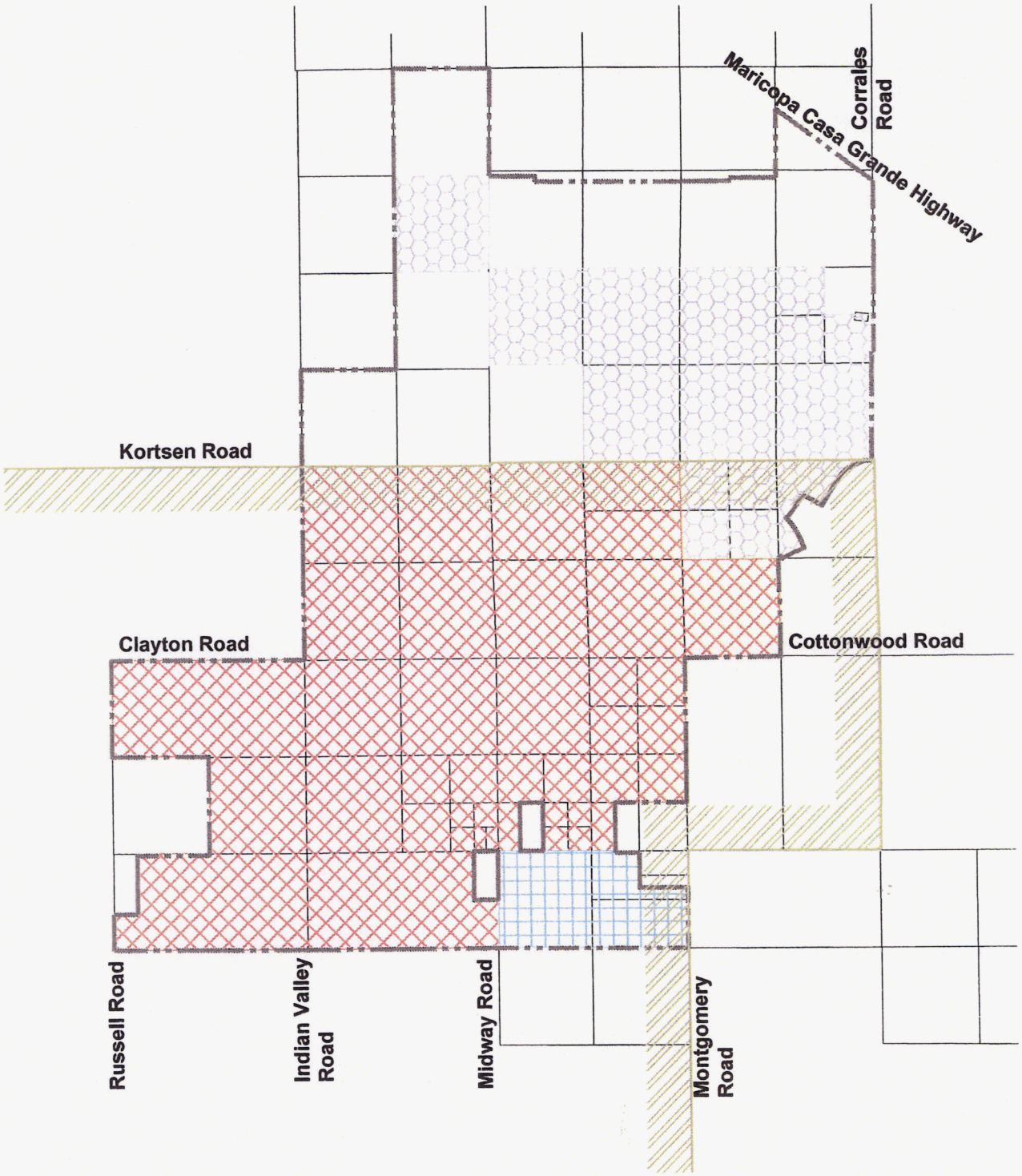
ATTACHMENT B



Legends

Pinal County, Arizona

Utility Company CC & N

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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:

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Legend

Legends Boundary

Francisco Grande Sewer-CC & N

Francisco Grande Water-CC & N

CP Water CO. Water-CC & N

AZ Water CO. Water-CC & N