

ORIGINAL



0000062080

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

28

JEFF HATCH-MILLER

Chairman

2006 OCT -6 P 1:41

WILLIAM A. MUNDELL

Commissioner

Arizona Corporation Commission

AZ CORP COMMISSION
DOCUMENT CONTROL

MIKE GLEASON

Commissioner

DOCKETED

KRISTIN K. MAYES

Commissioner

OCT -6 2006

BARRY WONG

Commissioner

DOCKETED BY	NR
-------------	----

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

Docket No. W-01445A-03-0559

**ARIZONA WATER COMPANY'S
RESPONSE TO (1) CORNMAN
TWEEDY 560, LLC'S CLOSING
BRIEF AND (2) STAFF'S
OPENING BRIEF**

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

The Cornman Tweedy 560, LLC ("Cornman Tweedy") Closing Brief dated September 15, 2006 ("Cornman Tweedy's Brief") is essentially a repeat recitation of Cornman Tweedy's desire to have its associated water company, Picacho Water Company, serve property Cornman Tweedy subsequently purchased within Arizona Water Company's certificated area. Rather than defending its own conduct that led directly to Arizona Water Company's request for an extension of time to comply with conditions in Decision No. 66893 (the "CCN Decision"), Cornman Tweedy's Brief focuses exclusively on the "changed circumstances" it created by its own hand. It now argues that those circumstances justify deleting its property from Arizona Water Company's extended certificated area (the "Extended CCN Area") already approved by the Arizona Corporation Commission ("Commission") in the CCN Decision.

Analysis of Cornman Tweedy's arguments reveals that there are no sufficient legal, factual or public policy reasons for deleting the Cornman Tweedy property from the Extended CCN Area. Indeed, sound public policy and applicable Arizona law confirm that

1 Cornman Tweedy should not be rewarded for its conduct in interfering with Arizona Water
2 Company's compliance with the CCN Decision conditions, or be allowed to engage in a
3 blatant collateral attack on the CCN Decision.

4 Staff's Opening Brief dated September 15, 2006 ("Staff's Brief") does not take a
5 position on Arizona Water Company's request, but cites arguments suggested in the record
6 both for and against the requested time extension (Cornman Tweedy relies only on the latter
7 arguments in its Brief and ignores, without justification, the well-stated Staff arguments in
8 support of the requested time extension). For the reasons that follow, Arizona Water
9 Company asserts that the Staff's reasons supporting why the requested time extension
10 should be granted, [Staff's Brief at 2, Argument II], are far better supported than the reasons
11 why the request should not be granted. This is especially true because each of the reasons
12 Staff cites for denying the extension relate to roadblocks that Cornman Tweedy placed in
13 front of Arizona Water Company's compliance; and have little to do with the public interest
14 and almost everything to do with Cornman Tweedy/Robson Communities' efforts to purloin
15 part of the Extended CCN Area and have it eventually transferred to its affiliated entity,
16 Picacho Water Company.

17 For these reasons, Arizona Water Company's request for an extension of time in
18 which to comply with the conditions found in the CCN Decision should be granted.
19 Moreover, the record in this case also establishes that the Commission should find that
20 Arizona Water Company has at this time fully complied with the conditions set forth in the
21 CCN Decision.

22 **I. ARGUMENT.**

23 Cornman Tweedy, despite its protestations to the contrary, is seeking to overturn or
24 fundamentally change the CCN Decision in order to pave the way for its own associated
25 water company, Picacho Water Company, to provide service within the Extended CCN
26 Area. Specifically, Cornman Tweedy is now seeking to have the Commission delete the
27 property Cornman Tweedy purchased in the Extended CCN Area after the Commission
28

1 already granted Arizona Water Company an extension to its existing Certificate of
2 Convenience and Necessity (“CCN”) for its Casa Grande system. [Cornman Tweedy’s
3 Brief at 2-4.] If its request is granted, Cornman Tweedy’s Brief makes clear that it will seek
4 to have Picacho Water Company provide service to that property in the future, in complete
5 derogation of Arizona Water Company’s right to serve that area. [*Id.* at 12-13.] While
6 Cornman Tweedy claims that its property will not be developed for five years, nothing
7 would prevent Cornman Tweedy from changing that recently-adopted position and seeking
8 instead to have Picacho Water Company provide such service immediately if Arizona Water
9 Company’s CCN rights are eliminated.

10 Cornman Tweedy does not dispute that it purchased property within the Extended
11 CCN Area knowing that Arizona Water Company had already been granted a CCN to
12 provide water service to that property. Because Cornman Tweedy purchased its property
13 after the CCN Decision became final, it should be precluded from now seeking to void or
14 fundamentally change the CCN Decision through a collateral attack on that final decision in
15 this limited proceeding. *See* A.R.S. §§ 40-252 (“In all collateral actions or proceedings, the
16 orders and decisions of the commission which have become final shall be conclusive”), 40-
17 254 (party in interest must commence action challenging Commission decision within thirty
18 days of rehearing being denied or granted); *Kunkle Transfer & Storage Co. v. Superior*
19 *Court*, 22 Ariz. App. 315, 317, 526 P.2d 1270, 1272 (1974) (“In the absence of pursuing the
20 statutory remedy, Commission orders or decisions are not subject to collateral attack”);
21 *Arizona Corp. Comm’n v. Tucson Ins. & Bonding Agency.*, 3 Ariz. App. 458, 463, 415 P.2d
22 472, 477 (App. 1966) (Commission’s issuance of CCN “is conclusive and in the absence of
23 an appeal therefrom is res adjudicata”).¹

24 Cornman Tweedy’s collateral attack on a final Commission decision should not be
25

26 ¹ Notably, under the statutory scheme, Cornman Tweedy bears the burden of demonstrating
27 by clear and convincing evidence that the Commission’s prior decision was invalid. *Tucson*
28 *Ins. & Bonding Agency*, 3 Ariz. App. at 462, 415 P.2d at 476. Cornman Tweedy completely
fails to meet that burden of proof.

1 permitted. Allowing the CCN Decision to be altered as requested by Cornman Tweedy is
2 outside the scope of this proceeding, improper as a matter of law, and against the public
3 interest and public policy. Granting the type of relief Cornman Tweedy seeks would result
4 in a patchwork of conditional CCNs, lead to uncertainties in utility service, and promote
5 future unnecessary and wasteful proceedings for the Commission and its Staff whenever
6 other developers seek to collaterally attack Commission decisions based on so-called
7 changed circumstances manufactured by the developers themselves. [See Transcript at
8 327:8-13 (recognizing the dangers of requiring each parcel to have a separate request for
9 service).] Cornman Tweedy's clearly improper attempt to circumvent the Commission's
10 final decision through misdirection and subterfuge should be denied, and Arizona Water
11 Company's request for additional time should be granted.

12 **A. Cornman Tweedy's Asserted "Changed Circumstances," Which Are**
13 **Attributable Solely To Cornman Tweedy's Own Actions, Do Not Justify**
14 **Denying Arizona Water Company's Request For A Time Extension Or**
15 **Deleting Cornman Tweedy's Property From The Extended CCN Area.**

16 Cornman Tweedy insists throughout its brief that "changed circumstances" justify
17 denial of Arizona Water Company's request for an extension of time to comply with the
18 conditions in the CCN Decision. [Cornman Tweedy's Brief at 2-4.] A closer look at the
19 purported changes in circumstances, however, proves that there have been no changes that
20 justify reopening or altering the CCN Decision. Instead, by its arguments, Cornman
21 Tweedy improperly seeks to elevate its self-serving preference for its own affiliated water
22 company over the Commission's prior final determination of what is in the public interest,
23 including the interests of surrounding developers and the eventual public utility customers in
24 the Extended CCN Area.

25 **1. Cornman Tweedy Has Not Demonstrated That Changed**
26 **Circumstances Justify Deletion From Arizona Water Company's**
27 **Extended CCN Area.**

28 Cornman Tweedy repeatedly alleges that its purchase of the Florence Country Estates
property (along with other property located in the Extended CCN Area, now collectively

1 referred to as the “EJR Ranch” property), coupled with its pronouncement made on the eve
2 of the July 2006 hearings that it would “shelve” development of that property for five years,
3 constitutes a changed circumstance justifying deletion of the Cornman Tweedy property
4 from the Extended CCN Area.² In taking this position, Cornman Tweedy relies on its
5 insistence that it no longer wishes Arizona Water Company to provide water service to the
6 EJR Ranch property located in the Extended CCN Area, as well as its newly-hatched
7 decision to “shelve” demand for water services for now (presumably for as long as it tries to
8 get the Commission to delete its property from Arizona Water Company’s Extended CCN
9 Area). Cornman Tweedy ignores its role in creating the allegedly “changed circumstances”
10 and dismisses, without discussion, the Commission’s previous determination that granting
11 an extension of Arizona Water Company’s existing Casa Grande system CCN is in the
12 public interest. Those same factors, which Cornman Tweedy and Robson Communities
13 failed to challenge in the context of the original CCN Decision, demonstrate that Cornman
14 Tweedy’s alleged “changed circumstances” do not justify altering the CCN Decision to
15 delete the Cornman Tweedy property from the Extended CCN Area.

16 As detailed in Arizona Water Company’s September 15, 2006 Post-Hearing
17 Memorandum, the need for water service *did* exist and development was imminent during
18 all relevant times leading up to the CCN Decision. It was not until Cornman Tweedy
19 instructed the prior owners of the Florence Country Estates to cancel their pending
20 application for a Certificate of Assured Water Supply (“CAWS”), which was then
21 substantially complete and ready for issuance, that its current strained argument that “there
22 is no longer a need or request for service” could be made. [See CT-10A (Poulos Revised
23 Rebuttal at 6:22–27; Transcript at 255:6–258:15; Exs. CT-17, 20; Ex. WMG-12.]

24 The contrived nature of these arguments is further confirmed by the fact that
25

26 _____
27 ² Cornman Tweedy is now contesting the propriety of Arizona Water Company’s Extended
28 CCN Area only with respect to Cornman Tweedy’s own property. [See Cornman Tweedy’s
Brief at 4, ll. 10-11.]

1 Cornman Tweedy then submitted an application to the Arizona Department of Water
2 Resources (“ADWR”) without informing Arizona Water Company for an Analysis of
3 Assured Water Supply (the “Analysis”) covering the entirety of its EJR Ranch property,
4 both that within the Extended CCN Area and that to the immediate south of the Extended
5 CCN area. [Pre-filed Garfield Direct at 10:8-12; Transcript at 263:2-12; Ex. WMG-13.]
6 That application even listed Arizona Water Company as the water provider for the EJR
7 Ranch property located in the Extended CCN Area, further eroding Cornman Tweedy’s
8 current arguments that there is no need for service from Arizona Water Company. [Ex.
9 WMG-13.] The applied-for Analysis was issued by ADWR in March of 2005, within the
10 time frame contained in the CCN Decision. [Ex. WMG-16.] However, Cornman Tweedy
11 never provided the ADWR-issued Analysis to Arizona Water Company, again
12 demonstrating that its current “changed circumstances” arguments are pretextual and
13 designed to cover the tracks of its scheme to shift a portion of the Extended CCN Area to its
14 affiliate, Picacho Water Company. [See Pre-filed Garfield Direct at 9:25-10:18; Pre-filed
15 Garfield Rebuttal at 8:23-27; Transcript at 246:9-19.] In fact, at that time Cornman Tweedy
16 never notified Arizona Water Company that it had purchased property within the Extended
17 CCN Area [Pre-filed Garfield Direct at 9:25-10:26; Transcript at 245:6-21; 246:9-19] and
18 never notified Arizona Water Company or the Commission that it did not wish Arizona
19 Water Company to provide water service to its property, again showing that its current
20 assertions are contrived. [*Id.*]

21 When Arizona Water Company requested an extension of time in which to comply
22 with the conditions in the CCN Decision, Cornman Tweedy ignored that request and waited
23 until the day after the time frames for compliance set out in the CCN Decision had run to
24 assert the invalidity of Arizona Water Company’s Extended CCN and request the extension
25 of Picacho Water Company’s CCN to cover all of the EJR Ranch property. [Docketed
26 Letter from Peter M. Gerstman to the Commission (4/7/2005).] When that gambit failed,
27 Cornman Tweedy then sought to turn the present proceeding into an untimely and improper
28

1 appeal of the Commission's CCN Decision, and now belatedly requests that the
2 Commission delete the Cornman Tweedy property located within the Extended CCN Area.
3 Not only do these events vitiate the impact of the so-called "changed conditions" that
4 Cornman Tweedy relies upon in its brief, but by continuing to rely upon them, Cornman
5 Tweedy simply ignores its bad faith actions.

6 Furthermore, Cornman Tweedy now admits that Arizona Water Company is a fit and
7 proper water provider capable of providing service to the Extended CCN Area. [Cornman
8 Tweedy's Brief at 4; *see also* Staff's Opening Brief at 2 (stating as a reason to grant an
9 extension that Arizona Water Company is "a 'fit and proper entity to serve the area'")
10 (quoting Mr. Olea's testimony).] Under these circumstances, Cornman Tweedy should not
11 be allowed to substitute its self-serving preference for its own affiliated water company for
12 the Commission's prior determination of what is in the public interest, convenience and
13 necessity: that Arizona Water Company is the proper provider of water service for the
14 entire Extended CCN Area. Cornman Tweedy's Brief continues to disregard the well-
15 settled principle that "[a] property owner's interests and desires must yield to the public
16 convenience" *Tucson Ins. & Bonding Agency*, 3 Ariz. App. at 463, 415 P.2d at 477 (in a
17 case directly on point with the present circumstances, denying a property owner's
18 application for deletion of its property from the certificated area of a water company, even
19 though property owners allegedly had not received notice of the application for extension of
20 the CCN).

21 This principle reflects the Arizona Supreme Court's recognition of the public benefits
22 of granting a CCN to a single water company for larger tracts of land. "[Allowing the area]
23 to remain gerrymandered in small non-integrated tracts served by different companies must
24 inevitably injure both the consumer and the companies." *Davis v. Corporation Comm'n*,
25 96 Ariz. 215, 217, 393 P.2d 909, 910 (1964) (quoting the Commission; alteration in the
26 original); *see also Corporation Comm'n v. People's Freight Line, Inc.*, 41 Ariz. 158, 165,
27 16 P.2d 420, 422 (1932) ("Many years of bitter experience have proved beyond a doubt in
28

1 every line of public service ... that if more than one instrumentality is allowed to operate
2 when one is amply sufficient to meet the public needs, the actual cost to the public in the
3 long run is not only as a rule greater than it would be with but one plant, but the service is
4 also less satisfactory”).

5 While the property owner’s preference may be one factor the Commission examines
6 in determining whether a CCN should be granted, it is not a dispositive factor, as Cornman
7 Tweedy argues. [See Transcript at 325:8–327:7 (Staff will approve extension of CCN even
8 when there is no request for service in certain situations); Docket No. W-01445A-06-0059,
9 Supplement to Staff Report (6/30/2006) at 2-3 (“Staff believes there are certain
10 circumstances under which the Commission should consider approving extensions into areas
11 for which there are no requests for service” and setting forth nine factors, of which customer
12 preference is but one, for consideration in deciding whether to approve the extension of a
13 CCN into areas for which there are no requests for service).] The relevance of a
14 developer’s preference for its own affiliated water company is especially diminished, if not
15 eliminated, when Cornman Tweedy’s predecessor-in-interest requested service from
16 Arizona Water Company at the time the CCN was issued, and the belated assertion of the
17 new property owner’s choice of provider came long after the statutory time frame for
18 challenging the CCN award had passed.

19 These important legal and public policy principles dictate that Cornman Tweedy’s
20 desire to have its property deleted from the Extended CCN Area should be denied under the
21 circumstances of this case. First, Cornman Tweedy’s own predecessor-in-interest, Core
22 Group Consultants, requested service from Arizona Water Company for a large portion of
23 that property, together with Harvard Investments, another landowner in the Extended CCN
24 Area. As noted in Arizona Water Company’s Post-Hearing Memorandum, Cornman
25 Tweedy stepped into Core Group Consultants’ shoes and, as assignee, should be bound by
26 the actions of its predecessor-in-interest in support of Arizona Water Company serving the
27 Extended CCN Area. [Post-Hearing Memorandum at 24-25.] The fact that no request for
28

1 service was received for the remainder of Cornman Tweedy's property in the Extended
2 CCN Area is of no moment, especially where, as here, there are numerous compelling
3 reasons to allow Arizona Water Company to connect its Casa Grande and Tierra Grande
4 CCN areas along Florence Boulevard. Despite notice, none of the property owners in the
5 Extended CCN Area objected to Arizona Water Company's application to extend the CCN
6 to the area. [Transcript at 325:23-326:5; CCN Decision at 3 (FOF No. 8).] The lack of
7 objections, as well as the fact that no requests for service were received for some portions of
8 the Extended CCN Area, were already considered by the Commission as part of its CCN
9 Decision in this matter. [Transcript of 326:6-327:7 (Staff would have taken lack of requests
10 for service into account when it recommended approval of the Extended CCN Area); CCN
11 Decision at 6 ("There is a public need and necessity for water utility service in the proposed
12 extension area").]

13 Even without a request for service covering every square foot in the Extended CCN
14 Area, as Cornman Tweedy now argues is required, the Commission properly determined
15 that inclusion of that property in Arizona Water Company's CCN was in the public interest.
16 [CCN Decision at 6; *see also Tucson Ins. & Bonding Agency*, 3 Ariz. App. at 463, 415 P.2d
17 at 477 ("The issuance of the certificate of convenience and necessity to [the certificate
18 holder] was based on a determination by the commission that the public interest would
19 thereby be served").] Moreover, until Cornman Tweedy raised its arguments in an attempt
20 to create a subterfuge allowing it to challenge the CCN Decision outside the statutory
21 framework, Cornman Tweedy proceeded as though Arizona Water Company was going to
22 provide water service to its property in the Extended CCN Area. [See WMG-13 (listing
23 Arizona Water Company as the anticipated water service provider).]

24 The decisions cited in Cornman Tweedy's Brief as support for its proposition that a
25 request for service for every square foot of territory is a prerequisite to an extension of a
26 CCN do not actually support Cornman Tweedy's position in the present circumstances. For
27 example, in Docket No. W-01445A-05-0469, Arizona Water Company agreed to revise its
28

1 application for an extension to its CCN to accommodate a landowner with a legitimate
2 request that was in the public interest. That revision occurred before the Commission had
3 considered the issue of public interest and necessity. In Decision No. 68445 (February 2,
4 2006), the Commission limited the applicant's requested extension to the parcel containing
5 customers the utility was already serving where no development was expected in the
6 remainder of the parcel and there were questions as to the utility's ability to serve,
7 circumstances that do not exist here. In Decision No. 68247 (October 25, 2005), the
8 Commission limited a new water company's requested extension to the area in which it
9 actually had requests for service, as the company had no track record of service; again a
10 circumstance that does not exist here. In Decision No. 64062 (October 4, 2001), Johnson
11 Utilities withdrew a portion of its CCN extension application covering lands owned by the
12 State and BLM which obviously were not going to be developed. In Decision No. 64288
13 (December 28, 2001), the Commission denied Johnson Utilities' request to extend its CCN
14 because the utility (and a competing applicant) engaged in multiple violations of
15 Commission rules and orders, failed to provide necessary information, and had not received
16 a single request for service in the area, which are factors that are not present here. The
17 decisions relied upon by Cornman Tweedy have no bearing on the issues presented here
18 because they are factually and legally distinguishable from the circumstances in this case.
19 *See Tucson Ins. & Bonding Agency*, 3 Ariz. App. at 463-64, 415 P.2d at 477-78 (holding
20 that evidence of Commission's prior practice of deleting property "was improperly
21 considered," and that "fact findings relative to a policy of deletion will not support a
22 reversal of the commission's decision").

23 The only legitimate changed circumstances in this matter not arising from Cornman
24 Tweedy's deliberate efforts to interfere with Arizona Water Company's Extended CCN
25 Area dictate that the CCN Decision be affirmed and support an order that Arizona Water
26 Company be granted an additional time to comply with the conditions in that decision.
27 Since the date of the CCN Decision, Arizona Water Company has received requests for
28

1 service from six additional developers located within the Extended CCN Area, including
2 one whose property nearly surrounds Cornman Tweedy's property. [Pre-Filed Whitehead
3 Direct at 11:20-14:11; *see also* MJW-32 (map detailing requests for service).] These
4 requests demonstrate the rapid growth occurring in the Extended CCN Area and fully
5 validate the Commission's prior determination that the extension of Arizona Water
6 Company's existing CCN was in the public interest and necessary to provide service to this
7 area. [Transcript at 326:6-327:7; CCN Decision at 6.] In addition, Arizona Water Company
8 has executed a main extension agreement with two of the developers (JBC and Springwater
9 Point) and is in the process of finalizing main extension agreements with several of the other
10 developers. [See Exhibit MJW-35 and Pre-Filed Whitehead Direct at p. 13 lines 11-18; *see*
11 *also* Docketed Certificates of Filing of Compliance Items filed July 14, 2006 and August 16,
12 2006) (each a "Compliance Certificate").] These agreements similarly demonstrate the
13 propriety of the Commission's decision extending Arizona Water Company's CCN to the
14 entirety of the Extended CCN Area, and also prove that tremendous prejudice and hardship
15 would result if these areas were deleted from Arizona Water Company's CCN.

16
17 Moreover, Cornman Tweedy's requested relief would interfere with the orderly and
18 efficient provision of water service within the remainder of the Extended CCN Area.³ A
19 review of the map introduced by Arizona Water Company (Exhibit MJW-32) and other
20 maps in the record in this case shows that what is now the EJR Ranch property located in
21 the Extended CCN Area forms a "T" that is almost entirely surrounded by property owned
22 and now being developed by others. Arizona Water Company has received approval to

23
24 ³ Denial of Cornman Tweedy's request for deletion of its property from Arizona Water
25 Company's extended CCN would have no comparable drawbacks. If Arizona Water
26 Company's requested additional time is granted, Cornman Tweedy will not be forced to
27 develop its property. When Cornman Tweedy does decide to develop its property (or sells it
28 to some other developer) it will know that the water service provider has been decided, that
it will not have to undergo further proceedings before the Commission before seeking
development entitlements, and that physical supplies of water have already been
demonstrated and reserved for Cornman Tweedy's property in the Extended CCN Area.

1 construct a water main along Florence Boulevard, immediately north of Cornman Tweedy's
2 property. [Pre-filed Whitehead Direct at 6:10-15; Transcript at 45:13-18; Ex. MJW-1.] The
3 area in question —essentially the top of the “T” presently owned by Cornman Tweedy—
4 will be infused with transmission mains to serve AG Robertson, the Arizona Water
5 Company customer developing the property that nearly surrounds the cross of the “T.” It
6 would be inefficient, costly and manifestly illogical to provide water utility service to the
7 property located to the south of the upper “T” portion of Cornman Tweedy's property by
8 running water mains around the periphery of that property. [See Transcript at 310:9-21
9 (AWC's master plan configured along major roads benefits customers); *see also* Decision
10 No. 68859 (July 28, 2006) (granting request to extend CCN to property through which
11 transmission line would run, even though no request for service for parcel).] Rather, as
12 envisioned in Arizona Water Company's master plan, it would be far more orderly and
13 efficient to install lines across the “T” to serve both that property and the property
14 surrounding Cornman Tweedy's property. [Transcript at 310:9-21; *see also* MJW-2
15 (Arizona Water Company master plan).] As a result, the Commission's decision granting
16 Arizona Water Company's Extended CCN Area properly recognized that such an extension
17 was in the public interest. To the extent Cornman Tweedy is questioning the CCN Decision
18 on the basis of purported changes in circumstance, its questions are posed much too late,
19 and are not supported by the factual record.

2. Cornman Tweedy's Own Actions Contradict Its Requested Relief.

21 As Cornman Tweedy admitted at the July 2006 hearings, it does not truly believe that
22 a CCN should be denied simply because there are no immediate plans for development of a
23 specific parcel. [See Transcript at 285:6-22 (Picacho Water Company is not seeking to
24 delete *its* CCN for the EJ Ranch property just over the section line to the south of the
25 Extended CCN Area even though development of that property has also been “shelved”);
26 287:16-21 (Mr. Poulos would not contend from a public policy standpoint that Picacho's
27 CCN should be deleted because development was not imminent).] In fact, Cornman
28

1 Tweedy is proceeding at full speed to obtain a CAWS for the EJR Ranch property
2 immediately south of the Extended CCN Area in order to satisfy the Commission's decision
3 in a separate docket, in order to confirm Picacho Water Company's extension of its own
4 CCN to that property. [*Id.* at 283:15-284-1; Ex. AWC-9.] To the extent that the EJR Ranch
5 property (whether within the Extended CCN Area or immediately south of that area) may
6 not be developed in the next five years, it is impossible to reconcile Cornman Tweedy's
7 position in this docket with its continued efforts to support Picacho Water Company's
8 existing CCN in the remainder of the "shelved" EJR Ranch property. Cornman Tweedy
9 compounds its hypocrisy by arguing that because Picacho Water Company is seeking to
10 extend its CCN to cover the EJR Ranch property to the south of the Extended CCN Area,
11 Cornman Tweedy can obtain water service from another provider when it decides to
12 develop EJR Ranch in the future. [Cornman Tweedy's Brief at 12-13.] But this is true only
13 if the Commission takes diametrically opposing positions in the two dockets. As a result,
14 Cornman Tweedy's arguments concerning the availability of another water provider in the
15 area (and Staff's listing of that argument as one supporting a denial of the requested time
16 extension) must be rejected.

17 **B. The Commission Should Not Reopen CCN Proceedings And Undertake A**
18 **New Public Interest Analysis Every Time Title To Property Changes**
19 **Hands.**

20 Cornman Tweedy's requested approach in this matter conflicts with Commission
21 policy and practice and the interests of the public. Under the approach advocated by
22 Cornman Tweedy, every time undeveloped land within an existing CCN changes hands, and
23 the new owner decides that it does not want the existing CCN holder to provide water
24 service to the undeveloped land (despite buying it with full knowledge of the existing CCN,
25 as here), the Commission would be forced to reopen a final CCN decision and conduct a
26 new public interest analysis. [*See* Cornman Tweedy's Brief at 4 ("If the Commission would
27 not approve a CC&N extension request for the Cornman Tweedy Property under the facts as
28 they exist today, then the Commission should not grant [Arizona Water Company's request

1 for additional time] with regard to the Cornman Tweedy Property”), 13 (same).] Under the
2 approach advocated by Cornman Tweedy, that challenge would require the Commission to
3 undertake a *de novo* review of its prior decision to determine if the Commission would
4 make the same decision because of some new facts, even if the new facts are completely
5 contrived by a party deliberately seeking to undermine the interests of a competing entity
6 with a valid CCN for the area. [*Id.*] Such an approach is unworkable, contrary to the
7 statutory requirements and bad public policy. *See* A.R.S. § 40-252 *et seq.* Utilities and
8 third parties who legitimately rely on final Commission CCN decisions and proceed with
9 development plans would be placed at risk of reopened CCN proceedings, as Cornman
10 Tweedy seeks here. The Commission and its Staff would face additional, wasteful
11 workloads. [Transcript at 327:8-14.] Developers and utilities would face uncertainty as to
12 who the water provider for each individual parcel of land would be until construction
13 actually began. If Cornman Tweedy’s approach were to be adopted, any undeveloped
14 property located in existing CCNs might be removed from those CCNs, resulting in a
15 patchwork of gerrymandered CCNs that would prevent the efficient provision of utility
16 service to the public. *See Davis*, 96 Ariz. at 217, 393 P.2d at 910. In seeking to maximize
17 its own financial interests, Cornman Tweedy is advocating a position that flies in the face of
18 reason and ultimately harms the public interest. For this reason alone, Cornman Tweedy’s
19 requested relief (and suggested approach) should be rejected.

20
21 Moreover, as demonstrated by the record, Cornman Tweedy’s suggested approach
22 would be harmful to the broader public in this instance. Arizona Water Company has
23 already undertaken efforts and incurred costs to plan for and obtain additional water
24 supplies to serve the entirety of the Extended CCN Area. [*See* Pre-Filed Whitehead Direct
25 at 5:20-6:15; 12:12-25; Ex. MJW-32.] Arizona Water Company has entered into a main
26 extension agreement with JBC Development, which is developing property within Arizona
27 Water Company’s Extended CCN [Pre-filed Whitehead Direct at 13:11-18; Ex. MJW-35.]
28 and Arizona Water Company has already committed to provide service to five other

1 developments in the Extended CCN Area. [*Id.* at 11:20-14:11.]

2 If Cornman Tweedy has its way, however, the Commission will be forced to reopen
3 the CCN Decision and reconsider its prior assessment of public interest. If that occurs, the
4 third party developers, who have justifiably relied on the CCN Decision in executing
5 extension agreements and firming up water supplies, will be forced to delay or halt their
6 developments until the Commission can undertake a new public interest analysis after notice
7 and an opportunity to be heard, a process that could take months or years. *See* A.R.S. § 40-
8 252 (application to alter Commission decision requires notice and opportunity to be heard).
9 If Cornman Tweedy prevails in its belated challenge to the CCN Decision, Arizona Water
10 Company will lose its investment in planning for service in the relevant area, lose the
11 connection between its existing Casa Grande and Tierra Grande CCNs (as recognized by the
12 Commission in the CCN Decision) and see its master plan for the efficient provision of
13 water utility service in this portion of Pinal County significantly impaired. Just as
14 importantly, the eventual homeowners/ratepayers in the Extended CCN Area will suffer
15 entirely preventable harm. Such a result is not consistent with the public interest or public
16 policy and should not be countenanced.

17 **C. The Strict Reading Of The CCN Decision Conditions Advocated by**
18 **Cornman Tweedy Reveals That Arizona Water Company Has Now**
19 **Complied With The Conditions.**

20 Finally, even if the Commission were to adopt the draconian interpretation of the
21 CCN Decision advocated by Cornman Tweedy, the record supports a finding that Arizona
22 Water Company has complied, at this juncture, with the actual conditions found in that
23 Decision. Arizona Water Company filed an executed main extension agreement for
24 property located within the Extended CCN area on July 14, 2006. [Docketed Compliance
25 Certificate, Attachment A (7/14/06); *see also* Docketed Compliance Certificate, Attachment
26 A (8/16/2006).] That filing clearly satisfied the first condition found in the CCN Decision.
27 [CCN Decision at 7 (Arizona Water Company directed to “file a main extension agreement
28 associated with the extension area”).] Although Cornman Tweedy implies that this

1 condition required the filing of an executed main extension agreement for each property
2 located within the Extended CCN Area, the plain language of the condition states otherwise.
3 Recognizing that fact, Cornman Tweedy does not seriously dispute compliance with the
4 main extension agreement condition.

5 The CCN Decision also calls for Arizona Water Company to “file a copy of the
6 Developers’ *Assured Water Supply* for each respective development” (*i.e.* Florence Country
7 Estates and Post Ranch). [CCN Decision at 7 (emphasis supplied).] The condition actually
8 imposed by the Commission does not indicate what type of “Assured Water Supply” must
9 be filed.⁴ Arizona Water Company’s Physical Availability Determination alone should
10 suffice to fully satisfy the assured water supply condition. [See Docketed Compliance
11 Certificate, Attachment D (7/14/06); Transcript at 317:4-19 (Staff recognizes that both
12 Analysis of Assured Water Supply and Physical Availability Determination “all show[] that
13 there’s enough water”); Pre-Filed Garfield Direct at 6:18-21 (prior to requesting extension
14 of its CCN, Arizona Water Company had completed a physical availability determination
15 demonstrating sufficient water to supply Post Ranch and Florence Country Estates (now
16 EJR Ranch).] Arizona Water Company has also filed an ADWR-issued Analysis of
17 Assured Water Supply covering the Florence Country Estates property and a Certificate of
18 Assured Water Supply covering the Post Ranch property. [Docketed Compliance
19 Certificate, Attachment B and C (7/14/2006).] These documents clearly meet the “Assured
20 Water Supply” condition as well. [Transcript at 317:4-9.]

21 Thus, on the record before the Commission, all CCN Decision conditions have been
22 fully satisfied at this time. Confirming the CCN Decision is, therefore, entirely appropriate
23 and fully resolves this matter.

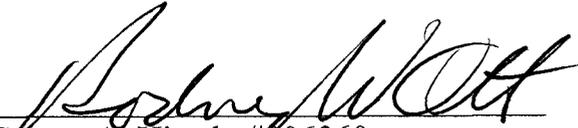
24 _____
25 ⁴ The findings of fact in the CCN Decision mention the filing of a CAWS for each
26 development then requesting service, though that requirement was not carried over into the
27 Commission’s actual Order. [CCN Decision at 7.] As a result, and as explained below,
28 Arizona Water Company, by filing the Analysis of Assured Water Supply covering the
Florence Country Estates property and the CAWS for the Post Ranch property, has now
complied with the express terms of the CCN Decision.

1 **II. CONCLUSION.**

2 For the reasons stated above, and as demonstrated in its previously filed Post-Hearing
3 Memorandum, the Commission should (1) approve Arizona Water Company's timely,
4 reasonable request for an extension of time to comply with the CCN conditions at issue, (2)
5 rule that the conditions have been complied with, and (3) order that the Extended CCN as
6 set forth in the CCN Decision is final in every respect.

7 Respectfully submitted this 6th day of October, 2006.

8 BRYAN CAVE LLP

9
10 By 
11 Steven A. Hirsch, #006360
12 Rodney W. Ott, #016686
13 Two N. Central Avenue, Suite 2200
14 Phoenix, AZ 85004-4406

15 ARIZONA WATER COMPANY
16 Robert W. Geake
17 P. O. Box 29006
18 Phoenix, AZ 85038

19 Attorneys for Arizona Water Company

20 ORIGINAL and 15 copies filed this
21 6th day of October, 2006, with:

22 Docket Control
23 Arizona Corporation Commission
24 1200 W. Washington Street
25 Phoenix, AZ 85007

26 COPY of the foregoing hand-delivered
27 this 6th day of October, 2006, to:

28 Christopher C. Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

1 Ernest G. Johnson, Director
2 Utilities Division
3 ARIZONA CORPORATION COMMISSION
4 1200 W. Washington Street
5 Phoenix, AZ 85007

6 Teena Wolfe
7 Administrative Law Judge
8 ARIZONA CORPORATION COMMISSION
9 1200 W. Washington Street
10 Phoenix, AZ 85007

11 David M. Ronald
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 W. Washington Street
15 Phoenix, AZ 85007

16 COPY of the foregoing e-mailed and mailed
17 this 6th day of October, 2006, to:

18 Jeffrey W. Crockett, Esq.
19 Marcie Montgomery, Esq.
20 SNELL & WILMER
21 One Arizona Center
22 Phoenix, AZ 85004-2202
23 e-mail: jcrockett@swlaw.com

24 Peter M. Gerstman, Esq.
25 Vice President and General Counsel
26 ROBSON COMMUNITIES, INC.
27 9532 E. Riggs Road
28 Sun Lakes, AZ 85248
e-mail: peter.gerstman@Robson.com

Attorneys for Cornman Tweedy, LLC

24
25 
26
27
28