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AZ CORP COMMISSION
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Arizona Corporation Commission

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Attorneys for Northern Sunrise Water Company
and Southern Sunrise Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION OF
10 NORTHERN SUNRISE WATER COMPANY FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER UTILITY
13 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

14 IN THE MATTER OF THE APPLICATION OF
15 SOUTHERN SUNRISE WATER COMPANY FOR A
16 CERTIFICATE OF CONVENIENCE AND
17 NECESSITY TO PROVIDE WATER UTILITY
18 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

19 IN THE MATTER OF THE JOINT APPLICATION
20 OF NORTHERN SUNRISE WATER COMPANY
21 AND SOUTHERN SUNRISE WATER COMPANY
22 FOR THE APPROVAL OF SALE AND TRANSFER
23 OF WATER UTILITY ASSETS, AND
24 CANCELLATION OF CERTIFICATES OF
25 CONVENIENCE AND NECESSITY, FOR
26 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

STATUS REPORT

23 Northern Sunrise Water Company and Southern Sunrise Water Company (collectively,
24 "Applicants") hereby submit this Status Report in the above-referenced matter. The purpose of
25 the Status Report is to provide the Commission and Staff updated information concerning
26 Applicants' progress towards acquiring the McLain Water System assets, including progress

1 towards improvements of the facilities as contemplated in Decision No. 68826 (June 29, 2006).

2 **I. STATUS OF BANKRUPTCY PROCEEDINGS.**

3 Applicants have been working diligently and cooperating with the creditors in an effort to
4 get the transaction ready for Closing. Significant matters encountered, but which now appear
5 resolved, include 1) the need to get two liens recorded against various properties; and 2) obtaining
6 definitive instructions from the creditors and court concerning how the purchase price proceeds
7 could be used to extinguish the property tax claims that gave rise to the bankruptcy. Notably,
8 Northern and Southern offered and were prepared to close over all these potential lien claims and
9 potential title imperfections, requiring only that the parties and court acknowledge and agree that
10 they all instead attach to the purchase price proceeds (which had long ago been paid into Escrow).

11 Concerning the first issue, the creditors attempted to contact the lien holders to obtain
12 releases but found one was deceased. The decedent's estate was unaware of the claim and was
13 neither in a position nor prepared to grant the necessary release. This required the creditors to
14 invalidate the lien claims through the courts – a process that took over four months to complete.
15 The court issued its final Order Vacating Potential Lien Claims on November 17, 2006.

16 Regarding the second issue, the Escrow Agent/Title Company was awaiting direction and
17 guidance concerning how the back property taxes were to be discharged (by payment or by some
18 other instrument) and what was or was not authorized with respect to distribution of the purchase
19 price funds, which Algonquin has already paid. The Escrow Agent recently received a letter,
20 December 6, 2006, from the Cochise County Attorney (as the representative of the lead creditor)
21 dated November 29, 2006 instructing them to pay only the post-petition back taxes and therein
22 indicating “that the sale to Algonquin is free and clear of any tax lien for such pre-petition taxes
23 and that any lien shall attach to the sale proceeds and subject to the future distribution orders of
24 the Bankruptcy Court”. The Escrow Agent circulated the letter, but more importantly initiated a
25 consultation with the title insurer to see if they would accept the letter as sufficient to effect a
26 discharge of such back taxes. As of last week, Algonquin was informed that the letter may be

1 sufficient for its purposes.

2 Meanwhile, Applicant's affiliate, Algonquin Water Services, Inc. ("AWS") took over
3 interim operation of the McLain water systems on September 19, 2006 concurrent with the
4 resignation of ASUA, during which time the process of reconciling the real property parcels was
5 continuing. When the list of parcels was forwarded to the Escrow Agent by the creditors, AWS,
6 with its growing field experience, realized that there were some oversights.

7 As of last week there are only two matters that may need some consideration prior to a
8 Closing:

9 1) The parcel list did not include a 100'x100' "well site" in the Miracle Valley
10 subdivision that is described in the County records as being owned by the debtor. In addition to a
11 well, this property has a storage/pressure tank installation, both of which are in active service in
12 the Miracle Valley water system. This omission appeared to be an oversight on the part of the
13 parties to the bankruptcy as it is obvious this is a water system asset. It serves no other purpose,
14 there are no other claims on the property and no other plans for liquidation. Thus, Algonquin
15 believes that there should be no issue getting it included as one of the parcels to be deeded to
16 Applicants as part of this transaction.

17 2) The debtor also owns a large parcel (which may be actually be two adjoining
18 parcels) on which is located a commercial structure (which used to be the office and shop
19 associated with the water companies) and two residences occupied by members of the McLain
20 family. The commercial part of the larger parcel was apparently proposed for liquidation
21 separately in the creditor plan of reorganization, but Applicants were not intended to receive that
22 land as part of the purchase. However, while operating the system, AWS became aware that there
23 is a well and a storage pressure tank bearing ADEQ identification numbers associating this parcel
24 of property and in active service for the Cochise water system. Applicants have no aspirations as
25 to owning the whole of the property(s). However, Applicants are looking for some enforceable
26 arrangement whereby they can continue to use and access those installations while they are part

1 of the Cochise water system.

2 Unfortunately, Algonquin could not have known about these omissions until it had both
3 the parcel list and a sufficient understanding of the operation of the water system. Consequently,
4 despite the issuance of the consent order from ADEQ and the resolution of many outstanding
5 issues, the closing has been delayed because of the unknown factors discussed above which
6 neither Algonquin nor any other party could have foreseen at the time Decision No. 68826 was
7 issued. However, working with the plan proponent and creditors, Applicants have been able to
8 come to at least a partial resolution of the two issues. Specifically, the plan proponent and
9 creditors have indicated that the well site in the Miracle Valley system should be covered by
10 existing bankruptcy orders and, therefore, be subject to the sale and transferred to Applicants at
11 the close. Algonquin is informed that such instruction to the Escrow Agent will be forthcoming
12 and has been led to believe that a deed will be executed by the debtors and the additional legal
13 description would be added to the conveyance documents being prepared by the title company. If
14 this change is made and the well site is conveyed, Applicants are prepared to close the
15 transaction. Regarding the other parcel, Applicants will undertake reasonable efforts, either
16 inside or outside of the bankruptcy proceeding, to obtain the necessary rights with respect to the
17 facilities located on the other parcel owned and occupied by the debtor and his family.

18 **II. MISCELLANEOUS.**

19 Since September 19, 2006, AWS, in its role of Interim Operator, has provided the required
20 personnel to both operate the seven (7) troubled McLain water systems and to improve the safety
21 and reliability of the systems. AWS, as Interim Operator, has been meeting monthly in Tucson
22 with ACC and ADEQ staff to report on the operations. Both ACC and ADEQ staff have
23 expressed satisfaction with the performance of AWS as Interim Operator.

24 A Public Meeting with the ratepayers from the seven (7) McLain systems was held on
25 November 15, 2006 in Sierra Vista to inform the ratepayers of the status of the bankruptcy
26 proceedings and to provide details of the operations of the systems by Applicants as Interim

1 Operators and to hear and address concerns of the ratepayers. Staff from both ACC and ADEQ
2 were in attendance and Commission Staff addressed specific questions from the ratepayers.

3 DATED this 19th day of December, 2006.

4 FENNEMORE CRAIG, P.C.

5
6 By: 
7 Jay L. Shapiro
8 Patrick J. Black
9 Attorneys for Applicants,
Northern Sunrise Water Company and
Southern Sunrise Water Company

10 ORIGINAL and 33 copies delivered
11 this 19th day of December, 2006 to:

12 Docket Control
13 Arizona Corporation Commission
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16 this 19th day of December, 2006 to:

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Copy emailed and mailed
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