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Arizona Corporation Commission
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GARY PIERCE
Commissioner

In the Matter of the Application of Green
Acres Water, LLC, for Approval of a
Certificate of Convenience and Necessity to
Provide Water Service

Docket No. W-20430A-05-0839

In the Matter of the Application of Green
Acres Sewer, LLC for Approval of a
Certificate of Convenience and Necessity to
Provide Sewer Service

Docket No. SW-20431A-05-0840

EXCEPTIONS TO RECOMMENDED OPINION AND ORDER

The Town of Buckeye (the "Town") respectfully files these exceptions to the Recommended Opinion and Order dated December 26, 2006. As the Town has indicated throughout this proceeding, its purpose for participating in this proceeding is to involve itself now in the planning process for this area within its MPA, rather than at a later date when problems occur. Although the Town recognizes that the order preliminary would require that Green Acres receive approvals from other agencies, including approval of a 208 Plan Amendment from the Maricopa Association of Governments ("MAG") prior to receipt of its certificate, the Town believes that the Arizona Corporation Commission (the

1 “Commission”) should allow those processes to proceed prior to issuance of an order or
2 order preliminary in this matter.

3 **I. IT IS TOO EARLY TO GRANT ANY RIGHTS TO GREEN ACRES**

4 As evidenced by the numerous amendments filed in this proceeding and as
5 demonstrated at the hearing on this matter, the planning for water and wastewater services
6 in this area is still in the very early stages and in many cases has not commenced. *See*
7 *Recommended Opinion and Order (“ROO”)* at 4.¹ Although Green Acres seeks
8 approximately 3300 acres as part of its certificated area, only 600 acres of that area is
9 nearing development and the timing for development of those 600 acres is still very
10 speculative. *See* *Hearing Transcript (“Tr.”)* at 41-44. At this time, certain critical
11 planning remains unfinished. Green Acres has not filed for a 208 Plan Amendment with
12 MAG nor has it filed for an aquifer protection permit with ADEQ. *See* ROO at 5. Indeed,
13 Green Acres has not prepared a drinking water design report for the area, because they
14 “are not at a stage where that would be necessary to be working on that.” *Tr.* at 23.

15 Given that many of the important decisions and planning for these services have not
16 reached any certainty or in certain cases have not commenced, the Town submits that
17 granting even an order preliminary to Green Acres is premature.

18 **II. ANY ORDER FROM THE COMMISSION WILL CARRY WEIGHT**
19 **WITH OTHER PLANNING AGENCIES**

20 If the Commission issues an order preliminary, Green Acres still must receive
21 numerous approvals from other governmental agencies prior to its receipt of a permanent
22 certificate of convenience and necessity from the Commission. These include approvals to
23 construct and an aquifer protection permit from ADEQ and a 208 Plan Amendment from
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25 _____
26 ¹ “At the evidentiary hearing, it was apparent that plans for development of the area requested for certification are in their early planning stages.” ROO at 4.

1 MAG.² Certain of these approvals are interrelated, but for each of them, it will carry
2 weight that the Commission has examined the matter and has granted a certificate to Green
3 Acres, even if that certificate is in the form of an order preliminary.³ Although the Town
4 is confident that Green Acres will not receive a 208 Plan Amendment from MAG or
5 receive certain approvals from ADEQ, it is concerned that any order from the
6 Commission, even an order preliminary, could carry weight in these processes.

7 **III. SERVICE BY GREEN ACRES WILL RESULT IN A COUNTY ISLAND**
8 **WITHIN THE TOWN'S MPA**

9 The area requested by Green Acres is within the Town's Municipal Planning Area
10 ("MPA"). MPAs were created by MAG to allow for responsible planning for essential
11 services within the MPA, including wastewater planning as part of the 208 Water Quality
12 Management Plan. As Mr. Borst explained at the hearing, in his experience and based on
13 recent conversations with MAG and Maricopa County, MAG will not adopt an
14 amendment to the 208 Plan unless the affected municipality sponsors the proposed
15 amendment. *See* Tr. at 91; ROO at 8. The Town is currently working on a comprehensive
16 208 Plan Amendment to be filed with MAG that will cover its entire MPA, including the
17 area that is sought by Green Acres. *See* Tr. at 91; ROO at 8. The Town believes that its
18 more regional approach to service in this area of its MPA is superior to the plan proposed
19 by Green Acres. *See* Tr. at 93.

20 Although the Town believes that MAG will not process Green Acres 208 Plan
21 Amendment filing without Town sponsorship, Green Acres has indicated that it intends to
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23 ² Green Acres will not receive an aquifer protection permit from ADEQ until a 208 Plan Amendment is
24 approved.

25 ³ If an order preliminary is granted to Green Acres, it is important that the water and wastewater certificates
26 be tied together so that Green Acres may only provide water service if it also provides wastewater service
and conversely may only provide wastewater service if it provides water service. The Town believes that
Finding of Fact 46 and the ordering paragraphs accomplish this, but asks that the Commission make this
explicit if an order preliminary is granted.

1 pursue sponsorship from Maricopa County. *See* ROO at 5. As noted above, if the
2 Commission were to grant an order preliminary, it would carry weight with these other
3 planning agencies, including Maricopa County. Given the uncertainty that exists
4 regarding Green Acres plans for this area, as well as the uncertainty that exists regarding
5 the experience of Green Acres' management to successfully operate a utility (*see* ROO at
6 12), the Town believes that the Commission should allow these other processes to proceed
7 to allow planning for the services and development in this area to reach more certainty
8 before issuing any order in this matter.

9 If Green Acres is ultimately the provider of water and wastewater service to this
10 area, it will result in the creation of a county island within the Town's MPA. Currently,
11 annexation is planned for the Insignia property, which is directly to the west of the Green
12 Acres property and which Green Acres originally included as part of its requested area.
13 *See* Tr. at 96; Exhibits A-1 and A-2. If Green Acres ultimately serves this area, not only
14 will water and wastewater be provided by a small private utility, but other essential
15 services, such as fire service, will also be provided by a non-municipal provider. *See* Tr.
16 at 20, 110. The Town is greatly concerned about the problems that could arise from the
17 creation of a county island and believes that annexation and provision of these services by
18 the Town is in the best interest of the public and the ultimate residents of this community.

19 IV. CONCLUSION

20 For the reasons set forth in this filing, the Town submits that the Commission
21 should deny Green Acres' application or, in the alternative, hold this matter until more
22 certainty exists regarding the timing and other specifics for development in this area.
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1 Dated this 4th day of January, 2007.

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10 ORIGINAL and fifteen (15) copies
11 of the foregoing filed this 4th day
of January, 2007, with:

12 The Arizona Corporation Commission
13 Utilities Division – Docket Control
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15 Copy of the foregoing
16 hand-delivered this 4th day
of January, 2007, to:

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LAWYERS

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2 this 4th day of January, 2007, to:

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