

ORIGINAL



0000064175

MEMORANDUM

30ms

TO: Docket Control

FROM: Ernest G. Johnson  
Director  
Utilities Division

DATE: December 5, 2006

RE: ARIZONA WATER COMPANY, L.L.C. – REQUEST FOR ADDITIONAL  
TIME TO COMPLY WITH FILING REQUIREMENT  
(DOCKET NO. W-01445A-05-0469)

2006 DEC -5 11:42

AZ CORP COMMISSION  
DOCUMENT CONTROL

On November 28, 2006, Arizona Water Company (“AWC” or “Company”) filed a Request for Additional Time to Comply with Filing Requirement (“Motion”) with the Arizona Corporation Commission (“ACC” or “Commission”) requesting an extension of time for certain compliance items due on March 23, 2007, pursuant to Decision No. 68607 (March 23, 2006).

### Background

On March 23, 2006, the Commission issued Decision No. 68607 approving AWC’s application for extension of its water Certificate of Convenience and Necessity (“CC&N”) to various portions of Pinal County, Arizona, subject to certain conditions. Decision No. 68607 also granted an Order Preliminary to the issuance of a CC&N for the area (Parcel 8) within the municipal boundary of the City of Eloy (“City”), Arizona, subject to AWC obtaining a franchise or other consent to operate within the municipal boundary of the City within one year of the date of Decision No. 68607.

By this Motion, AWC is requesting that the Commission grant the Company, an additional period of time of not less than one year beyond March 23, 2007, in which to continue its efforts to obtain a franchise, consent, or permission of the City.

According to the Motion, AWC has made efforts to obtain a franchise or consent from the City and has recently been informed “that the City Council has decided not to consider the Company’s application for a City franchise.” The Company intends to “renew its efforts to obtain a City right of way permit for the area” that is within the City’s municipal boundary. For more detail regarding AWC’s efforts to obtain a franchise or consent from the City, please see the attached Motion.

Arizona Corporation Commission

DOCKETED

DEC - 5 2006

DOCKETED BY	<i>SM</i>
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### **Analysis**

Every applicant for a CC&N and/or CC&N extension is required to submit to the Commission evidence showing that the applicant has received the required consent, franchise or permit from the proper authority, pursuant to ARS 40-282.B.

Staff is aware that the City "has clearly stated that Arizona Water has no such consent, franchise or permit; and Doug Olson, Water/Wastewater System Manager for the City of Eloy, testified that Eloy would not grant such authority within its city limits as Eloy desires to serve its own constituents within its municipal boundaries." (See Decision No. 68607, Findings of Facts No. 42).

On November 1, 2006, Staff received a copy of the "Extract of Minutes of the Honorable Mayor and City Council" ("Minutes") of the City. In the Minutes, the Motion to deny a Proposed Franchise Agreement between AWC and the City, "passed unanimously." (See the attached Minutes).

AWC has made efforts according to its Motion to obtain a right of way permit and a franchise from the City to no avail. The Company indicated in its Motion that it intends to "renew its efforts to obtain a City right of way permit for the area." Staff believes the one year time period ordered in Decision No. 68607 for AWC to file evidence that it has obtained a franchise or other consent from the City for the purpose of providing water utility service within Parcel 8 is reasonable. There is approximately three and one half months until the compliance due date of March 23, 2007. AWC can utilize the remaining time period to again pursue a City right of way permit.

### **Recommendations**

Staff recommends that AWC's request for an additional period of time of not less than one year beyond March 23, 2007 in which to continue its efforts to obtain a franchise, consent, or permission of the City of Eloy be denied.

EGJ:BNC:tdp

Originator: Blessing Chukwu

SERVICE LIST FOR: Arizona Water Company  
DOCKET NO. W-01445A-05-0469

Mr. Robert W. Geake  
Arizona Water Company  
Post Office Box 29006  
Phoenix, Arizona 85038

Mr. Thomas H. Campbell  
Mr. Michael T. Hallam  
LEWIS AND ROCA  
40 North Central Avenue  
Phoenix, Arizona 85004

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

1 BEFORE THE ARIZONA CORPORATION COMMISSION

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2 2006 NOV 28 P 1:27

3 COMMISSIONERS

- 4 Jeff Hatch-Miller - Chairman
- 5 William A. Mundell
- 6 Mike Gleason
- 7 Kristin K. Mayes
- 8 Barry Wong

AZ CORP COMMISSION  
DOCUMENT CONTROL

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NOV 27 2006

AZ CORP COMM  
Director Utilities

9 IN THE MATTER OF THE APPLICATION OF  
10 ARIZONA WATER COMPANY FOR AN  
11 EXTENSION OF ITS CERTIFICATE  
12 OF CONVENIENCE AND NECESSITY AT  
13 CASA GRANDE, PINAL COUNTY,  
14 ARIZONA

DOCKET NO. W-01445A-05-0469

REQUEST FOR ADDITIONAL TIME TO  
COMPLY WITH FILING REQUIREMENT

15 On March 23, 2006 the Commission entered Decision No. 68607 in the above-captioned  
16 docket. Decision No. 68607 (the "Decision") approved the Company's application for an  
17 extension of its certificate of convenience and necessity for its Casa Grande system. It also  
18 contained the following ordering paragraphs, at page 11, lines 11-25 of the Decision:

19  
20 IT IS ORDERED that pursuant to A.R.S. 40-282 (D), this Order Preliminary  
21 to the issuance of the Certificate of Convenience and Necessity is granted and  
22 upon the granting of a franchise or other consent to operate within the municipal  
23 boundary of Eloy. Arizona Water Company shall file a motion in this docket for  
24 the issuance of a Certificate of Convenience and Necessity authorizing it to  
25 construct, maintain and operate facilities to provide water service to the public in  
26 the area more fully described in Exhibit A.

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IT IS FURTHER ORDERED that upon the motion of Arizona Water Company and verification of satisfaction of the requirements for the issuance of the Certificate of Convenience and Necessity for the area described in Exhibit A, Staff shall prepare and docket an Order that grants the Certificate of Convenience and Necessity for Commission approval.

IT IS FURTHER ORDERED that in the event that Arizona Water Company does not obtain a franchise or other consent to provide water utility service to the area described in Exhibit A within one year for the date of this Decision, then the Order Preliminary approved herein shall be deemed null and void. In such event, Staff shall file a memorandum to close this docket.

Since March 23, 2006 the Company has made the following efforts to obtain a franchise, or the consent or permission of the City of Eloy with respect to installing water utility facilities within the public right of ways in the area described in Exhibit A of the Decision:

1. The Company has applied for, in the manner provided by the City of Eloy, and has made repeated efforts to obtain a right of way permit to install a water line for the purpose of serving a customer to be located within the area described in Exhibit A. A copy of a Certificate of Approval to Construct Water Facilities issued to the Company by the Arizona Department of Environmental Quality, a City of Eloy permit application, and a May 26, 2006 letter from the City of Eloy Public Works Department, evidencing the Company's efforts to obtain the permit are attached hereto as Exhibits 1, 2 and 3, respectively.
2. On or about September 7, 2006 at the request of the City of Eloy, the Company submitted to the Public Works Director a proposed form of city

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franchise for the City's consideration and approval. The franchise was patterned after the Company's City of Casa Grande and City of Coolidge franchises.

Following the application to the City of Eloy described in paragraphs 1 and 2, above, the Company contacted the City to ascertain the status of, and progress on, the Company's application. Notwithstanding the Company's efforts, the City of Eloy, through its public works director, recently informed the Company that the City Council has decided not to consider the Company's application for a City franchise. As best the Company can determine at this time, it must now renew its efforts to obtain a City right of way permit for the area described in Exhibit A of the Decision.

As evidenced by the preceding discussion, it is clear that the Company's efforts to comply with the Decision are being frustrated by the City of Eloy's shifting and conflicting directives. The Company submits that these actions also hinder, and are contrary to the intent of the Commission concerning the Company's extension of its Certificate of Convenience and Necessity, as provided by the Decision.

For these reasons, the Company respectfully requests that it be given an additional period of time of not less than one year beyond March 23, 2007 in which to continue its efforts to obtain a franchise, or the consent or permission of the City of Eloy for the construction, operation and maintenance of facilities for the provision of water service in the area described in Exhibit A to the Decision.

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RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of November 2006.

ARIZONA WATER COMPANY

By: Robert W. Geake  
Robert W. Geake  
Vice President and General Counsel  
ARIZONA WATER COMPANY  
Post Office Box 29006  
Phoenix, Arizona 85038-9006

Original and thirteen (13) copies of the foregoing filed the 28<sup>th</sup> day of November 2006 with:

Docket Control Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

A copy of the foregoing was mailed this 28<sup>th</sup> day of November 2006 to:

Thomas H. Campbell  
Michael T. Hallam  
Lewis and Roca  
40 N. Central Avenue  
Phoenix, Arizona 85004  
Attorneys for the City of Eloy

Christopher Kempley, Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest G. Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

By: Robert W. Geake

EXHIBIT 1



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
CERTIFICATE OF APPROVAL TO CONSTRUCT  
WATER FACILITIES

Page 1 Of 1

<b>ADEQ File No:</b> 20060330	<b>LTF No:</b> 39764
<b>System Name:</b> Az Water Co-Casa Grande	<b>System Number:</b> 11-009
<b>Project Owner:</b> Arizona Water Co.	
<b>Address:</b> P O Box 29006, Phoenix, AZ 85038	
<b>Project Location:</b> Casa Grande	<b>County:</b> Pinal
<b>Description:</b> WATER DISTRIBUTION LINE ALONG PHILLIPS ROAD FROM SUNLAND GIN ROAD TO TOLTEC BUTTES ROAD TO SERVE THE ETHINGTON PROPERTY AT PARCEL 53A. INSTALL 9240 LF OF 12" DIP.	

*Approval to construct the above-described facilities as represented in the approved documents on file with the Arizona Department of Environmental Quality is hereby given subject to provisions 1 through 4 continued on page 1 through 1*

1. This project must be constructed in accordance with all applicable laws, including Title 49, Chapter 2, Article 9 of the Arizona Revised Statutes and Title 18, Chapter 5, Article 5 of the Arizona Administrative Code.
2. Upon completion of construction, the engineer shall fill out the Engineer's Certificate of Completion and forward it to the Central Regional Office located in Phoenix. If all requirements have been completed, that unit will issue a Certificate of Approval of Construction. R18-5-507(B), Ariz. Admin.Code. At the project owner's request, the Department may conduct the final inspection required pursuant to R18-5-507(B); such a request must be made in writing in accordance with the time requirements of R18-5-507(C), Ariz. Admin. Code.
3. This certificate will be void if construction has not started within one year after the Certificate of Approval to Construct is issued, there is a halt in construction of more than one year, or construction is not completed within three years of the approval date. Upon receipt of a written request for an extension of time, the Department may grant an extension of time; an extension of time must be in writing. R18-5-505(E), Ariz. Admin. Code.
4. Operation of a newly constructed facility shall not begin until a Certificate of Approval of Construction has been issued by the Department. R18-5-507(A), Ariz. Admin. Code.

Reviewed by: AQ1

By:  Date: 4/12/06  
 Kwame A. Agyare, P.E.  
 Manager, Drinking Water and  
 Wastewater Engineering Review  
 Water Quality Division

cc: File No : 20060330  
 Regional Office: Central  
 Owner: Arizona Water Co.  
 County Health Department: Pinal  
 Engineer: Az Water Co.  
 Planning and Zoning/Az Corp. Commission  
 Engineering Review Database - Etr021



EXHIBIT 2

CITY OF ELOY  
AUTHORIZATION TO WORK IN THE PUBLIC RIGHT -OF-WAY  
(OFFSITE PERMIT)  
APPLICATION

When approved, this permit will constitute written authorization to perform specified work within the public right-of-way, and any public utility easements under control of the City. The City does not assume any responsibility for accidents or damages resulting from the activities of the permittee, other than reasonable observation of the work to ensure that the permit conditions are being followed. Insurance, compliance with the Blue Stake Laws, and work zone safety are the sole responsibility of the permittee. The permittee agrees to these conditions as a part of submitting this application.

Name of permittee/agent: Arizona Water Company

Contractor License #: Will be supplied when contract is awarded

Print Name: Mike Loggins

Signature:  Date: 5/19/06

Business Address: 3805 North Black Canyon Highway

City: Phoenix State AZ Zip 85015

Telephone number: 602-240-6860 ext. 222

Fax number: 602-240-6878

Nature of the work to be performed in the public right-of-way/easement: Installation of 9,240 L.F. of 12" D.I.P.

Exact location/s of work: Phillips Road from Sunland Gin Road to Toltec Buttes Road

Will barricades and/or traffic detours be required? (Barricades are required in City right-of-ways.

Barricades are at the expense of the permittee)

All work to be done in dirt, but if traffic control plan is required, the contractor will submit it

What are the desired work dates and times? \_\_\_\_\_

FILE COPY

Required submittals:

- (1) Proof of insurance for \$1,000,000 in total liability (attach).
- (2) Traffic control plan (for any re-routing or barricading of streets).
- (3) Description or materials and methods to be used to ensure the integrity or the utility connections to be made (attach).
- (4) Description of materials and methods for restoring pavement or other surface improvements disturbed by the work (attach).
- (5) Name of Company/Agent Arizona Water Company Date 5/19/06  
(For administrative purposes only)

This permit is approved/not approved (circle one) on (date) \_\_\_\_\_ (time) \_\_\_\_\_ a.m./p.m.

By \_\_\_\_\_, CITY ENGINEER/P.W. DIRECTOR

NOTE: ALL WORK IN CITY R/W MUST MEET MAG STANDARDS LATEST EDITION.  
ALL TRAFFIC CONTROL MUST MEET MUTCD STANDARDS, LATEST EDITION.

MAG: MARICOPA ASSOCIATION OF GOVERNMENTS

MUTCD: MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES



Client#: 4741

SANGABRI

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 01/11/06
PRODUCER Calco Ins Brokers & Agents Inc Lic #0B29370 (714) 937-1824 One City Blvd W, #700 Orange, CA 92668	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Arizona Water Company (United Resources) P.O. Box 29006 Phoenix AZ 85038	INSURERS AFFORDING COVERAGE INSURER A: American Alternative Ins Corp INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSURANCE CLASSIFICATION	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROPT <input type="checkbox"/> LOC	SD1SSK91021802	12/31/05	12/31/06	EACH OCCURRENCE	\$1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
					MED EXP (Any one person)	\$10,000
					PERSONAL & ADV INJURY	\$3,000,000
					GENERAL AGGREGATE	\$3,000,000
					PRODUCTS - COMP/OP AGG	\$3,000,000
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					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
					AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$	SD1SSX92006052	12/31/05	12/31/06	EACH OCCURRENCE	\$10,000,000
					AGGREGATE	\$10,000,000
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						\$
					WC STATUTORY LIMITS	\$
					OTL	\$
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Certificate holder is additional insured per Public Right of Way Offsite Permit.

<b>CERTIFICATE HOLDER</b>  City of Eloy Attn: John Mitchell, P.E. 1137 West Houser Rd. Eloy, AZ 85231	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
---	--

**ARIZONA WATER COMPANY**

REMITTANCE ADVICE

PLEASE DETACH BEFORE DEPOSIT

INVOICE DATE	INVOICE NO.			NET AMOUNT
17-May-06	123628			1,158.00
CHECK NO. 89377	VENDOR NO. 20127	TOTALS		\$1,158.00



**ARIZONA WATER COMPANY**

GENERAL ACCOUNT  
3805 N. BLACK CANYON HIGHWAY  
POST OFFICE BOX 29006  
PHOENIX, ARIZONA 85038-9006

91-170  
1221

No. 089377

DATE May 19, 2006

PAY  
TO THE  
ORDER  
OF

ONE THOUSAND ONE HUNDRED FIFTY EIGHT AND NO/100 DOLLARS \$ 1,158.00

CITY OF ELOY  
RIGHT OF WAY DEPARTMENT  
226 N MAIN ST  
ELOY AZ 85231

ARIZONA WATER COMPANY - GENERAL ACCT.

*Richard W. Henderson*

BANK OF AMERICA

⑈089377⑈ ⑆122101706⑆

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# CITY OF ELOY

## Public Works Department

May 26, 2006

Mike Loggins  
3805 N. Black Canyon Highway  
Phoenix, AZ 85015

**RECEIVED**

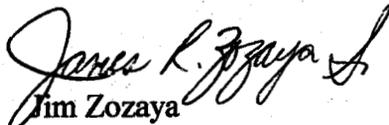
JUN 06 2006

ARIZONA WATER COMPANY  
PHOENIX OFFICE

RE: Right of Way Permits

Dear Mr. Loggins:

This letter is to inform you the plans for the water line project on Phillips Road were not reviewed by the Public Works Department and construction is not to begin until Arizona Water Company enters into a Franchise Agreement with the City of Eloy. When the Franchise Agreement with the City is in place Arizona Water Company may resubmit the drawings for review and approval. I do apologize for the inconvenience this may cause you. If you have, any questions do not hesitate to contact me at (520) 466-3082 - X-226.

  
Jim Zozaya  
Public Works Superintendent  
[jzozaya@ci.elyo.az.us](mailto:jzozaya@ci.elyo.az.us)  
(520) 466-3082

JZ/mb



# CITY OF ELOY

ARIZONA

AZ CORP COMM  
Director Utilities

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## EXTRACT OF MINUTES OF THE HONORABLE MAYOR AND CITY COUNCIL CITY OF ELOY, ARIZONA

The Mayor and Council of the City of Eloy met in regular session in the Council Chambers at City Hall of the City of Eloy, Arizona, at 7:00 o'clock p.m. on the 23<sup>rd</sup> day of October, 2006, all members having been notified of the time and place hereof.

**PRESENT:** Jesse Rosel; Joel Belloc; Frank Acuña; Byron Jackson; Etta Ruth Amerson

**ABSENT:** Bill Culp; J.W. Tidwell

Was a quorum declared? xxx Yes \_\_\_ No

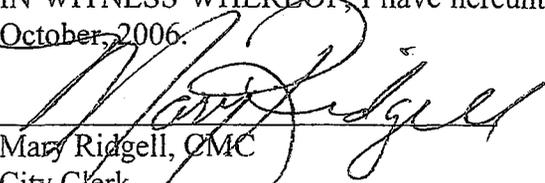
\*\*\*\*\*  
**ACTION TAKEN:**

### MOTION TO DENY A PROPOSED FRANCHISE AGREEMENT BETWEEN ARIZONA WATER COMPANY AND THE CITY OF ELOY, ARIZONA

Motion by Vice Mayor Acuña, seconded by Council Member Belloc, to disapprove a proposed franchise agreement between Arizona Water Company and the City of Eloy, passed unanimously.

\*\*\*\*\*  
I, Mary Ridgell, the duly qualified and appointed City Clerk for the City of Eloy, County of Pinal, State of Arizona, do hereby certify that the foregoing is a true and correct extract from the original minutes of the meeting of the Mayor and Council of said City held on the 23<sup>rd</sup> day of October, 2006, insofar as said minutes relate to matters set forth in the extract above and that a quorum was present at said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said City this 27<sup>th</sup> day of October, 2006.

  
Mary Ridgell, CMC  
City Clerk

SEAL