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Re: Evidence for Docket No. WS-04235A-06-0303

David Hitesman and Dennis Jones of Bellemont, AZ, submit to the Arizona Corporation Commission the following evidence pertaining to **Docket No. WS-04235A-06-0303**. We propose that the proposed Water Use Rate Increase of Utility Source, LLC should not be approved for the following reasons:

1. The proposed rate increase is not reasonable as required by ARS 40-361.A¹
2. The endorsement of said increase would be a direct conflict of interest for the Arizona Corporation Commission due to the fact that the power to adjust Water Use Rates for certain Utility Source, LLC customers currently resides with a separate corporation (Flagstaff Meadows Property Owner's Association²) that is also governed by the Arizona Corporation Commission.

The proposed rate increase by Utility Source, LLC is not reasonable. Per ARS 40-361.A, Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful. ¹

The proposed rate increase is not reasonable for the following reasons:

1. Residents of Flagstaff Meadows in Bellemont, AZ (all customers of Utility Source, LLC) moved to the community bound by the Declaration of Covenants, Conditions and Restrictions (CCRs) for Flagstaff Meadows Property Owner's Association. Article III, Section 3.10., Part H states:

The Water Use Assessment each Lot on which a building permit for a residence has been issued shall be \$15.00 per month, plus \$1.00 for each 1,000 gallons of water consumed. The Wastewater Use Assessment to such Lot shall be \$15.00 per month.²

Under these terms, a lot consuming 5,000 gallons of water per month would have a combined water / wastewater use bill of \$45 per month.^{3A} It is reasonable for residents of the community to assume that their water use bill would be bound by these terms.

2. Current Utility Source, LLC Water Rates amount to a \$6.48 base charge, \$2.83 per thousand gallons (1-5000 gallons), \$3.32 per thousand gallons (5000+ gallons) and \$2.73 per thousand gallons for wastewater.⁴ Under the current water use rates, a lot consuming 5,000 gallons of water per month would have a combined water / wastewater use bill of \$36.73 per month. The proposed water use rate increase is a 197% increase over current rates and a 142% increase over rates dictated by the CCRs^{3A}. The customers of Utility Source, LLC do not find a rate increase in excess of 140% to be reasonable. This is supported by the petition signed by more than 100 Utility Source, LLC customers that was submitted with the Motion to Intervene dated November 7, 2006.
3. The Average Household Income for Coconino County is \$40,040.⁵ Assuming a 28% Federal Income Tax Rate and a 4% Arizona State Income Tax Rate, the net AHl per month is \$2,269. The proposed rate increase is 3.18% of the monthly AHl over current rates and 2.82% over rates specified in the CCRs.^{3B} 2.8-3.2% of net household income is significant – and not reasonable – for the customers of Utility Source, LLC.

4. Utility Source LLC currently services 326 residential customers. However, plans underway to increase customer base by 274 residential customers to a total of 600 residential customers. This increase will bring economies of scale to the Utility Source LLC operations, reducing the need for a significant rate increase.
5. The following chart shows the average water use and wastewater use rates of the City of Flagstaff, the State of Arizona and Coconino County^{3C, 6}, compared to the proposed rate increase for Utility Source, LLC.

	City of Flagstaff	State of Arizona	Coconino County	Utility Source, LLC ^{3A}
Water Use, 5000 Gallons	20.63	\$24.46	\$35.76	\$68
Wastewater Use, 5000 Gallons	16.89	\$21.43	\$22.60	\$34.51
Water Increase – Proposed	230%	178%	90%	
Wastewater Increase - Proposed	104%	61%	53%	

The proposed water use increase of 90-230% over other state utilities is not reasonable.
The proposed wastewater use increase of 53-104% over the other state utilities is not reasonable.

6. Utility Source well capacity far exceeds City of Flagstaff when considered per residential customer. Utility Source, LLC well capacity is approximately 2111 gpd for based upon 326 residential customers^{3D, 7}. The City of Flagstaff water capacity is approximately 1263 gpd^{3D, 8} based upon 15,300 residential customers⁹.

Utility Source, LLC's water capacity per residential customer is 67% higher than the City of Flagstaff's water capacity per residential customer. This would suggest that the relative assets of Utility Source, LLC are sufficient to negate the need for a rate increase at this time, in addition to the fact that there is no long-term water supply issue.

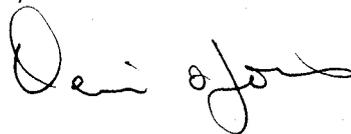
In addition to the fact that the proposed water rate increase is not reasonable as required by law, the proposed increase should not be permitted because the increase is in direct conflict with the Declaration of Covenants, Conditions and Restrictions (CCRs) for Flagstaff Meadows Property Owner's Association (the Association) for the following reasons:

1. The CCRs are legal, current and valid.
2. Article III, Section 3.10 Part H specifies the Water Use Assessment for the Association and delegates authority for changing the Water Use Assessment specifically to the Board of Directors of the Association.²
3. Article IV, Section 4.3 and 4.4 specify the regulation of Water and Wastewater Service by the Association.²
4. The CCRs are a legal document per ARS 33-1802¹⁰ and the Flagstaff Meadows Property Owner's Association is an official Corporation regulated by the Arizona Corporation Commission. It would be a conflict of interest for the Arizona Corporation to order or approve a rate increase for Utility Source, LLC, when said increase would be in direct conflict with the CCRs of another corporation (Flagstaff Meadows Property Owner's Association) that is governed by the same agency.

Signed this 15th Day of January, 2007 by:



David Hitesman



Dennis Jones

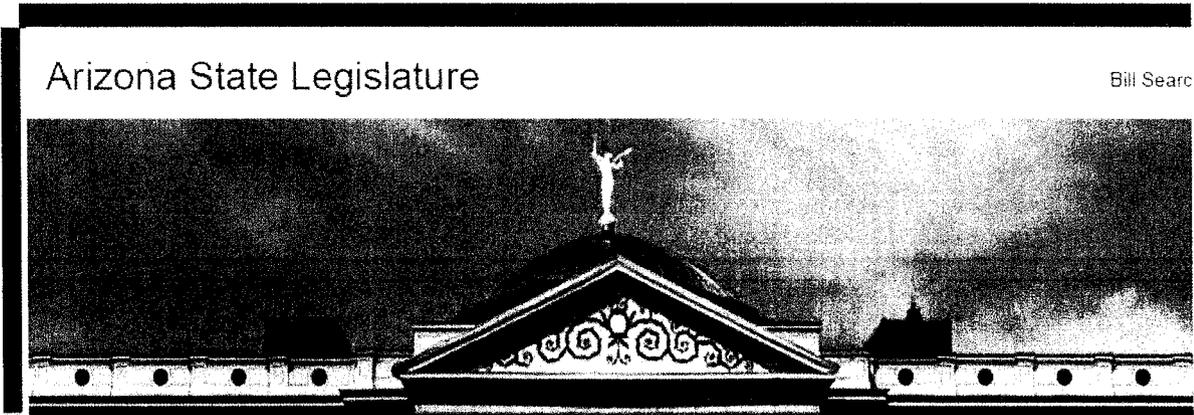
C: Arizona Corporation Commission (15)
Utility Source, LLC (1)

Appendix Summary

1. Copy of ARS 40-361
2. Copy of Declaration of Covenants, Conditions and Restrictions for Flagstaff Meadows Property Owner's Association, Article III, Section 3.10., Part H; Article IV, Section 4.3 and 4.4
3. Water Rate Scenario Spreadsheet
4. Current Utility Source, LLC Water Bill
5. United States Bureau of the Census, Small Area Income & Poverty Estimates Program, 2004
6. Water and Wastewater Use Rates of the City of Flagstaff, the State of Arizona and Coconino, County.
7. HydroSystems Inc. Bellemont, AZ Water Supply Analysis.
8. City of Flagstaff Water Source Summary
9. Number of Flagstaff Residential Customers
10. Copy of ARS 33-1802

Appendix 1: ARS 40-361

Source: Arizona State Legislature Web Site



Forty-eighth Legislature - First Regular Session

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40-361. Charges by public service corporations required to be just and reasonable; service and facilities required to be adequate, efficient and reasonable; rules and regulations relating to charges or services required to be just and reasonable

- A. Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful.
- B. Every public service corporation shall furnish and maintain such service, equipment and facilities as to promote the safety, health, comfort and convenience of its patrons, employees and the public, and such service in all respects adequate, efficient and reasonable.
- C. All rules and regulations made by a public service corporation affecting or pertaining to its charges or services to the public shall be just and reasonable.

Appendix 2: Declaration of Covenants, Conditions and Restrictions for Flagstaff Meadows Property Owner's Association; Article III, Section 3.10., Part H; Article IV, Section 4.3 and 4.4

about the first of each month (or such other frequency as the Association may establish), the Association, or its contract management person or company, shall read all water meters of Owners receiving water service. The Association will thereafter bill each Owner receiving water service as set forth below a Water Use Assessment. This Water Use Assessment is due upon presentation and delinquent five (5) days after mailing. In the event the Water Use Assessment is not paid in a timely fashion, in addition to the "Nonpayment and Enforcement" provisions of Section 3.14, the Association retains the right to disconnect water service to the Owner's Lot. If the Association is forced to terminate service, it shall further assess the Owner the cost the Association incurs for the disconnect/reconnect procedure. Additionally, in the event the Water Use Assessment is not paid as contemplated herein, the Owner's voting rights under Section 3.4 shall be suspended until full payment is received by the Association.

G. The Association shall, upon request of the Owner, install or cause to be installed, one and only one, collection line to each Lot, pursuant to Section 3.10.C. On or about the first of each month (or such other frequency as the Association may establish), the Association, or its contract management person or company, shall bill each Owner receiving wastewater service as set forth below a Wastewater Service Assessment. This Wastewater Service Assessment is due upon presentation and delinquent five (5) days after mailing. In the event the Wastewater Service Assessment is not paid in a timely fashion, in addition to the "Nonpayment and Enforcement" provisions of Section 3.14, the Association retains the right to disconnect wastewater service to the Owner's Lot. If the Association is forced to terminate service, it shall further assess the Owner the cost the Association incurs for the disconnect/reconnect procedure.

H. The Water Use Assessment each Lot on which a building permit for a residence has been issued shall be \$15.00 per month, plus \$1.00 for each 1,000 gallons of water consumed. The Wastewater Use Assessment to such Lot shall be \$25.00 per month. These Use Assessments shall be evaluated each year by the Board of Directors to determine if all costs incurred by the Association associated with water and wastewater service have been recovered. The Board of Directors shall adjust these Use Assessments annually based on a budget of the projected years revenues and expenses, adjusted by any short fall or excess from the prior years operations. The Board of Directors may include reasonable operating reserves in that budget. These adjusted rates shall then be the basis for the water and wastewater Use Assessments.

I. In the event it is determined by the Board of Directors that it is in the best interest of the Declarant and the Owners that the Association not provide water or wastewater service to the Owners, but that said service can better be provided by another entity, then and in that event the Board shall discontinue all Water Use Assessment and the Wastewater Service Assessments authorized under this Section, provided, however, that any obligations created hereunder are expressly assigned to and assumed by the entity that will provide the subject water and wastewater service. If not so assumed, such assessments will continue to fulfill any remaining obligation of the Association related to water and wastewater service.



4.3 Regulation of Water Service.

A. Conservation. Each Lot Owner shall practice good conservation of water in use of all water on Owner's Lot. Specific conservation practices may be established by the Board and adopted in the Bylaws as rules and regulations of the Association. These rules and regulations shall specify the type and quantity of trees, plants and ground cover permissible on each lot.

B. Termination of Service for Violation of Water or Wastewater Rules and Regulations. The Association is authorized to discontinue water and/or wastewater service to any person connected to its water system who violates the Association's water or wastewater rules, regulations, policies or procedures.

4.4 Regulation of Wastewater Service.

A. Service Subject to Regulation. The Association will provide wastewater service using treatment and collection facilities that are regulated by numerous county, state and federal Statutes and Regulations. Those Regulations include limitations on the type of wastewater that may be discharged into the system by any person directly or indirectly connected to the plant.

B. Wastes Limitation. The Association shall in its By-laws, or Policies and Procedures as duly adopted, establish permissible limits of concentration for various specific substances, materials, waters, or waste that can be accepted in the sewer system, and specify those substances, materials, waters, or waste that are prohibited from entering the sewer system. Each permissible limit so established shall be placed on file in the business office of the Association. No person shall discharge, or cause to be discharged, any new sources of inflow into the sanitary sewer including, but not limited to, storm water, surface water, groundwater, roof runoffs, subsurface drainage, cooling water, or unpolluted industrial process waters.

C. Inspection and Right of Entry. Inspections of every facility that is involved directly or indirectly with the discharge of wastewater to the Plant may be made by the Association as it deems necessary. These facilities shall include but not be limited to sewers; sewage pumping plants; all processes; devices and connection sewers; and all similar facilities. Inspections may be made to determine that such facilities are maintained and operated properly and are adequate to meet the provisions of these rules. Inspections may include the collection of samples. Authorized personnel of the Association shall be provided immediate access to all of the above facilities or to other facilities directly or indirectly connected to the Plant at all reasonable times including those occasioned by emergency conditions. Any permanent or temporary obstruction to easy access to the user's facility to be inspected shall promptly be removed by the facility user or Owner at the written or verbal request of the Association and shall not be replaced. No person shall interfere with, delay, resist or refuse entrance to an authorized Association representative attempting to inspect any facility involved directly or indirectly with a discharge of wastewater to the Plant. Adequate identification shall be provided by the Association for all inspectors and other authorized personnel and these persons shall identify themselves when entering any property for inspection purposes or inspecting the work of any contractor.



Appendix 3: Water Rate Scenario Spreadsheet

Section A

	Current	CCRs	Proposed	% Inc Current	% Inc CCRs
Base Charge	\$ 6.48	\$ 15.00	\$ 6.48		
Water Rate - 5000 gallons	\$ 16.60	\$ 5.00	\$ 68.00		
Sewer Rate - 5000 gallons	\$ 13.65	\$ 25.00	\$ 34.51		
Total	\$ 36.73	\$ 45.00	\$ 108.99	197%	142%

Section B

500 Gallons \$Difference	\$	% of AHI / Month
Proposed - Current	72.26	3.18%
Proposed - CCR Rate	63.99	2.82%

Coconino County AHI	\$40,040
Monthly AHI	\$3,336.67
Monthly AHI after 32% Income Tax	\$2,268.93

Section C

	City of Flagstaff	State of Arizona	Coconino County	Utility Source, LLC
Water Use, 5000 Gallons	20.63	\$24.46	\$35.76	\$68
Wastewater Use, 5000 Gallons	16.89	\$21.43	\$22.60	\$34.51
Water Increase - Proposed	230%	178%	90%	
Wastewater Increase - Proposed	104%	61%	53%	

Section D

Utility Source, LLC Well Capacity	Gallons Per Day	Gallons Per Residential Customer Per Day
Well 1	15,840	
Well 2	33,120	
Well 3	105,120	
Well 4	534,240	
Total	688,320	2111
City of Flagstaff Water Capacity		
Inner Basin Wells and Springs	820,000	
Lake Mary Surface Water*	7,500,000	
Lake Mary Wellfield	5,000,000	
Woody Mountain Wellfield	5,000,000	
Local Wells	1,000,000	
Total	19,320,000	1263
% More Available Water Per Customer		67%

Assumptions: 15,3000 Residential Customers - City of Flagstaff
 326 Residential Customers - Utility Source, LLC

Appendix 4: Utility Source, LLC Bill (showing current rates)

Utility Source
 721 E. San Pedro
 Gilbert, AZ 85234
 866-768-3500

Service Type	Previous Reading	Current Reading	Usage in Gallons	Rate per 1000 Gallons	Charge
Base Charge: 3/4" meter	63900	65890			\$6.48
Sewer:			1990	\$2.73	\$5.43
Water: 0-5000			1990	\$2.83	\$5.63
Water: 5000-15000			0	\$3.32	\$0.00
Water: Over 15000			0	\$4.71	\$0.00
Total Water:			1990		\$5.63

Balance as of 11/10/2006: \$19.78

Payments:

Payment of \$19.78 on 12/1/2006

New Charges

Base, Water, and Sewer fees: \$17.54

Tax (for base charge and water): \$0.79

Total Amount Due: \$18.33

Due Date: 01-05-2007

Return Lower Portion with payment

Billing Date: 12-15-2006
Due Date: 01-05-2007
 Account:
 Total Due: \$18.33

Utility Source
 721 E. San Pedro
 Gilbert, AZ 85234
 866-768-3500

Appendix 5: Average Household Income, Coconino County
Source: Bureau of Labor Statistics



Data Sets

County-Level Unemployment and Median Household Income for

Go to the map to select a state

Arizona

Go to Arizona State Fact Sheet

Click a column name to sort the table by that column.

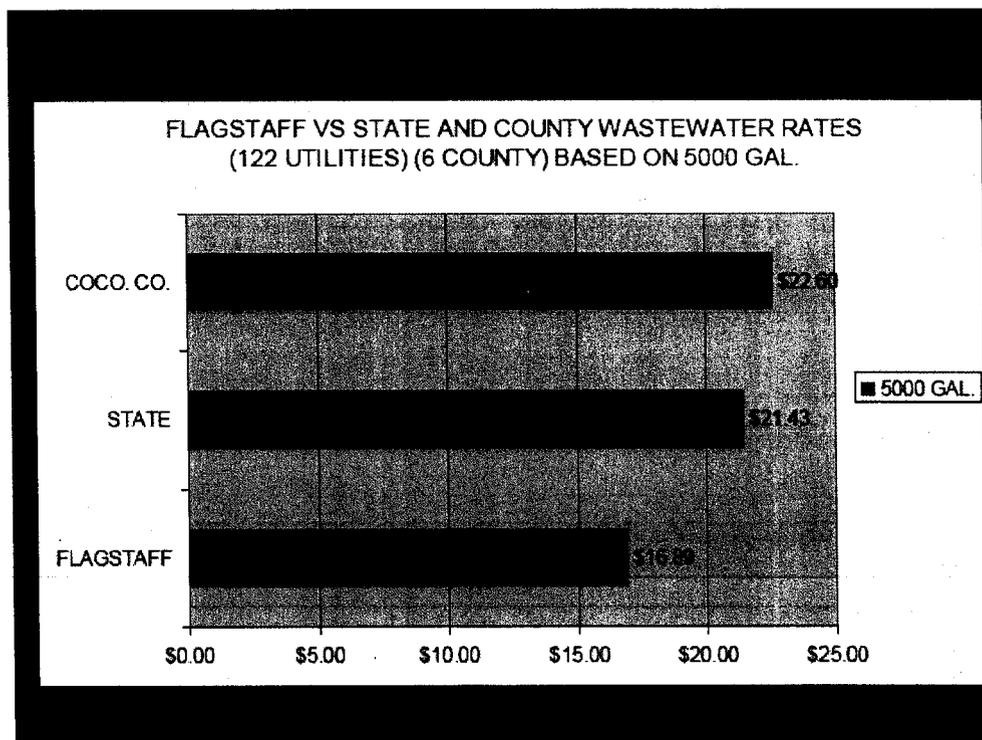
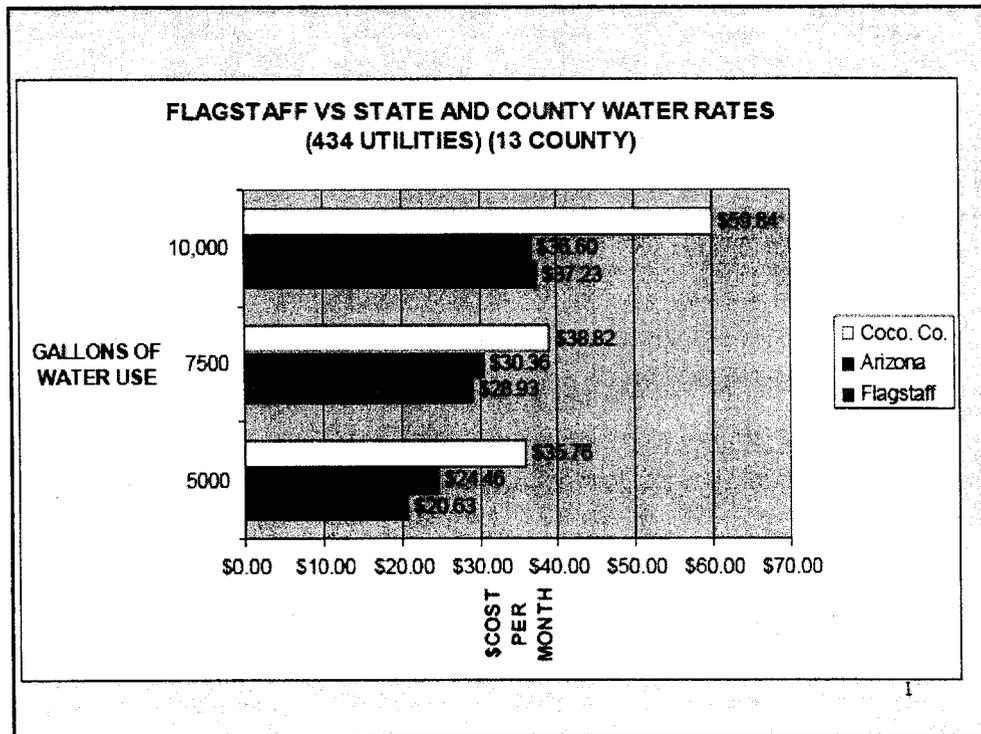
FIPS*	Name	Unemployment Rate (percent)									Median Household Income (2004)	% of State Median HH Income
		1998	1999	2000	2001	2002	2003	2004	2005			
1 04000	Arizona	4.3	4.5	4.0	4.7	6.1	5.7	5.0	4.7	\$43,696	100.0%	
2 04001	Apache County	16.2	14.3	9.2	9.7	11.5	12.5	12.1	11.5	\$26,592	60.9%	
3 04003	Cochise County	7.1	5.8	4.3	4.9	5.9	5.7	5.8	4.9	\$36,585	83.7%	
4 04005	Coconino County	7.7	6.9	4.5	4.8	5.6	5.9	5.5	5.3	\$40,040	91.6%	
5 04007	Gila County	7.8	7.3	5.2	5.7	7.5	7.4	6.5	6.2	\$33,412	76.5%	
6 04009	Graham County	9.0	8.7	5.5	6.4	7.9	7.4	7.1	6.6	\$31,387	71.8%	
7 04011	Greenlee County	8.5	8.9	4.3	7.2	7.9	7.6	5.8	5.7	\$43,095	98.6%	
8 04012	La Paz County	8.7	8.2	6.2	6.5	6.8	7.1	6.7	6.9	\$26,722	61.2%	
9 04013	Maricopa County	2.8	3.0	3.3	4.2	5.6	5.2	4.4	4.1	\$48,304	110.5%	
10 04015	Mohave County	4.6	4.8	4.4	4.6	5.4	4.7	4.1	4.0	\$34,126	78.1%	
11 04017	Navajo County	14.3	13.5	7.3	7.7	8.6	8.8	8.7	8.5	\$31,554	72.2%	
12 04019	Pima County	2.9	3.2	3.7	4.3	5.6	5.3	4.6	4.6	\$38,687	88.5%	
13 04021	Pinal County	4.4	5.6	4.6	5.3	7.2	6.8	5.7	5.4	\$40,255	92.1%	
14 04023	Santa Cruz County	18.6	17.0	8.3	8.8	10.2	9.8	9.7	9.0	\$32,901	75.3%	
15 04025	Yavapai County	3.5	3.5	3.9	4.2	5.1	4.8	4.3	4.1	\$37,309	85.4%	
16 04027	Yuma County	29.0	30.1	16.5	16.5	16.9	17.0	15.6	16.0	\$34,230	78.3%	

Sources: Bureau of Labor Statistics, Local Area Unemployment Statistics (LAUS) data.

Bureau of the Census, Small Area Income & Poverty Estimates Program

Appendix 6: Water Utility Rates for City of Flagstaff, State of Arizona, Coconino County

Source: Presentation to Flagstaff City Council; November 7, 2006.



Appendix 7: Utility Source, LLC Water Sources
Source: HydroSystems Inc. Web Site



Water Supply

Bellemont, AZ

HSI aided Utility Source, LLC in applying to the Arizona Department of Water Resources (ADWR) for a Permit to Drill (PAD) and later an expanded PAD to prove that groundwater resources are available to meet the Convenience and Necessity (CCN). In 2004, ADWR approved a PAD of approximately 110 acre-feet per year. Currently, 446 acre-feet per year is currently under review by the Arizona Corporation Commission. This demand is expected to increase as requests for water supplies from potential users.

A surface geophysical survey using the controlled source audio-frequency magnetotellurics (CSAMT) method was used to determine subsurface geologic structure beneath the property. The CSAMT method has been an extremely useful tool for identifying fractures, which may not be seen on the ground surface or because the faults usually dip at an angle to the surface. This methodology allows the wells to be sited to intersect the fault beneath the regional aquifer, which is over 1,500 feet deep in northern Arizona. Using the geophysical information, HSI located Deep Well 3 to intersect the Belmont Fault and Deep Well 4 to intersect an unnamed fault trending northwest that also intersects the Belmont Fault on 20-acres of land in the Belmont Development. HSI provided oversight of the drilling of Deep Wells 3 and 4, as well as aquifer testing and groundwater sampling. Both wells successfully produced excellent quality water. Deep Well 3 was drilled to 2,825 feet and produced about 73 gpm, whereas Deep Well 4 was drilled to a depth of 2,908 feet and was pumped (conducted at approximately 600 acre-feet per year) for seven days as part of the testing. This is in vast contrast to Deep Well 1 in the regional aquifer but outside of a fault zone. These wells only produce approximately 11 and 23 gpm respectively. The combined capacity of the four deep wells drilled in the regional aquifer is sufficient to serve the current and next 100 years.

Appendix 8: City of Flagstaff Water Sources

Source: City of Flagstaff Web Site

Water Quality

Q. Where does our water come from?

A. Our water comes from five different sources:

Inner Basin wells and springs

This water is only available seasonally, June through October. Approximately 2 million gallons per day is produced during the season.

Lake Mary surface water

Water from Upper Lake Mary is treated at the Lake Mary Water Treatment Plant. Surface water is used extensively when the lake is above 50% capacity. Up to 7 1/2 million gallons per day may be available.

Lake Mary wellfield

The Lake Mary wellfield has 6 producing wells. The water is high in calcium hardness and the water is mixed with treated surface water at the water plant before entering the distribution system. The wellfield is capable of approximately 5 million gallons per day.

Woody Mountain wellfield

The Woody Mountain wellfield has 10 producing wells and is capable of producing approximately 5 million gallons per day.

Local wells

The City has 2 wells located in the Rio de Flag corridor, one in the Foxglenn Park area near the Continental Little League fields. They are capable of approximately 1 million gallons per day.

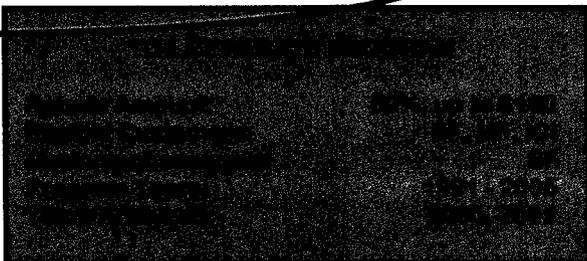
Appendix 9: City of Flagstaff Residential Water Customers

Source: WaterCasa.Org Web Site

The City of Flagstaff Water Utility serves the community of Flagstaff, AZ, a city of 61,000 people located in northern Arizona. The city's economy includes a sizeable tourism industry and a state university. Median household income was \$37,586 as of 1999.¹

UTILITY DEMOGRAPHICS

As of December 2003, the City of Flagstaff Water Utility had 16,937 connections, 89.5% of which were residential. Of their total connections, 12,553 were single family residential, 2,000 were multifamily residential, 1,492 were commercial, 40 were manufacturing, and 252 were landscaping meters. The City of Flagstaff is 64.4 square miles. As of 2004, the City of Flagstaff's residential water use, in gallons per capita per day (gpcd) was 125. The utility's total water deliveries in 2004 were 8,249.2 AF.²



UTILITY RATE STRUCTURE AND PRICES

The City of Flagstaff has a tiered rate structure. The monthly base rate for service is \$6.48 for single family customers, which includes zero gallons of water. The fee structure for water consumption for 3/4 inch meters is as follows:

Usage	Price
0 – 5,000 gallons	\$2.83 per 1,000 gallons
5,001 – 15,000 gallons	\$3.32 per 1,000 gallons
15,000+ gallons	\$4.71 per 1,000 gallons

CURRENT CAPACITY AND WATER SOURCES

The City of Flagstaff has a capacity of 20.5 million gallons per day, 13 million gallons per day, or 63.4%, of which comes from local wells. The remaining 7.5 million gallons per day, or 36.6%, comes from local surface water.

FUTURE PLANS TO MEET DEMAND

The population within the City of Flagstaff's service grew at an average rate of 4.0% per year between 2000 and 2004.³ For short- to mid-term needs, additional groundwater wells may be drilled. Long-term needs may require the acquisition of surface water rights from farms, and the use of Central Arizona Project (CAP) water. Conservation and reuse are currently the main strategies by which the city is working to ensure the future water supply.

¹ U.S. Census Bureau, American Fact Finder

² 2004 Consumer Confidence Report. City of Flagstaff Water Utility.

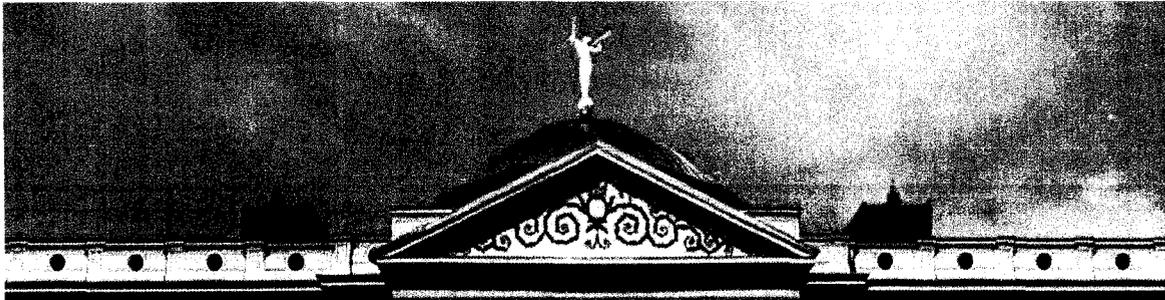
³ Population Change – 2000 Census to July 1, 2004 Estimate for Arizona, Counties, and Incorporated Places. Arizona Department of Economic Security.

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Appendix 10: ARS 33-1802
Source: Arizona State Legislature

Arizona State Legislature

Bill Search



Forty-eighth Legislature - First Regular Session

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33-1802. Definitions

In this chapter and in the community documents, unless the context otherwise requires:

1. "Association" means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to require association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
3. "Declaration" means any instruments, however denominated, that establish a planned community and are subject to those instruments.
4. "Planned community" means a real estate development which includes real estate owned and operated by a corporation or unincorporated association of owners that is created for the purpose of managing, maintaining, and improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. Planned community does not include a timeshare association that is governed by chapter 20 of this title.