

OPEN MEETING ITEM



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COMMISSIONERS  
MARC SPITZER - Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: July 2, 2003

DOCKET NO: SW-04026A-01-0499

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

BENSCH RANCH UTILITIES, LLC  
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 14, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 22 AND 23, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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JAMES G. JAYNE  
INTERIM EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 JIM IRVIN  
5 WILLIAM A. MUNDELL  
6 JEFF HATCH-MILLER  
7 MIKE GLEASON

8 IN THE MATTER OF THE APPLICATION OF  
9 BENSCH RANCH UTILITIES, LLC FOR A  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY TO PROVIDE SEWER SERVICE.

DOCKET NO. SW-04026A-01-0499

DECISION NO. \_\_\_\_\_

12 OPINION AND ORDER

13 DATE OF HEARING:

April 16, 2003

14 PLACE OF HEARING:

Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

16 APPEARANCES:

Mr. Joshua J. Meyer on behalf of Bensch Ranch  
Utilities, LLC; and

Mr. Jason Gellman, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the  
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 FINDINGS OF FACT.

21 1. On June 21, 2001, Bensch Ranch Utilities, LLC ("Bensch Ranch" or "Company")  
22 filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of  
23 Convenience and Necessity ("Certificate" or "CC&N") to provide wastewater service in Yavapai  
24 County, Arizona.

25 2. On July 18, 2001, the Commission's Utilities Division Staff ("Staff") filed a letter  
26 notifying the Company that its application was administratively insufficient. The Company filed an  
27 amendment to its application on January 15, 2002, and on November 27, 2002, Staff notified the  
28 Company that the application was administratively sufficient. On November 29, 2002, Staff filed a  
Staff Report on the application recommending approval subject to certain conditions.

1           3.     By Procedural Order issued December 5, 2002, this matter was scheduled for hearing  
2 on February 19, 2003. The December 5, 2002 Procedural Order required the Company to publish  
3 notice of the hearing, and to cause the notice to be mailed to all property owners and all entities with  
4 contracts pending to purchase real property in the requested CC&N area, by January 10, 2003.

5           4.     By Procedural Order issued February 14, 2003, the hearing was rescheduled for April  
6 16, 2003 due to the Company's failure to provide notice. The Company published notice of the new  
7 hearing date, and the hearing was held as scheduled on April 16, 2003. Following the hearing, the  
8 intervention deadline was extended to May 23, 2003 to allow notice to be mailed to property owners.  
9 No public comment was received prior to the hearing, no members of the public appeared to make  
10 public comment at the hearing, and no requests for intervention or public comments were filed  
11 following the May 8, 2003 mailing of notice to property owners.

12           5.     Bensch Ranch is seeking a Certificate to provide sewer service to two planned  
13 residential developments known as Bensch Ranch Estates, LLC ("BR Estates") and Spring Valley,  
14 both of which are located within the community of Mayer, in Yavapai County. At build out, BR  
15 Estates will consist of 411 residential units, and Spring Valley is planned to consist of 50 residential  
16 units and two commercial properties, a small hotel and a convenience store. The legal description of  
17 the proposed service area for Bensch Ranch is set forth in Exhibit A attached to this Order.

18           6.     Staff states that there is no capacity available at the existing wastewater plants in the  
19 Mayer area to serve the proposed development service area at this time. Engineering Staff found that  
20 the facility proposed by Bensch Ranch will have adequate treatment capacity to serve the proposed  
21 area within the conventional five-year planning period, and that the Company can reasonably be  
22 expected to develop necessary capacity for the final build-out.

23           7.     Bensch Ranch is an Arizona limited liability company formed in November 2000. The  
24 members of Bensch Ranch, John Clingman, Dwight Zemp, Jason Williamson, and Joshua J. Meyer,  
25 are also the members of Pine Meadows Utilities, LLC, which is authorized to provide wastewater  
26 service in portions of Gila County, Arizona pursuant to authority granted by the Commission in  
27 Decision No. 64599 (March 4, 2002). In addition, Bensch Ranch's members are officers and  
28 directors of Sweetwater Creek Utilities, Inc., which provides sewer utility service near Yuma in

1 Yuma County, Arizona pursuant to authority granted by the Commission in Decision No. 59916  
2 (December 10, 1996); and of Verde Santa Fe Wastewater Company, Inc., which was granted  
3 authority to provide wastewater service in various parts of Yavapai County, Arizona in Decision No.  
4 60779 (April 8, 1998).

5 8. According to the application, Pivotal Utility Management, LLC, a Colorado limited  
6 liability company ("Pivotal"), will operate and manage Bensch Ranch. Bensch Ranch's members  
7 John Clingman, Jason Williamson and Dwight Zemp are also the members of Pivotal. Pivotal also  
8 operates and manages Pine Meadows Utilities, LLC, Sweetwater Creek Utilities, Verde Santa Fe  
9 Wastewater Company, and Verde Santa Fe Water Company in Arizona. Pivotal does not currently  
10 have authority to do business in Arizona. Bensch Ranch's witness at the hearing, Jason Williamson,  
11 who is also Pivotal's Executive Director, stated that as a condition of the requested Certificate for  
12 Bensch Ranch, Pivotal is willing to obtain authority to do business in Arizona.

13 9. The Company plans to construct the necessary facilities to serve the requested area  
14 with a combination of debt, equity and contributions in aid of construction. Mr. Williamson testified  
15 that the Company will contribute \$100,000 in equipment, \$85,000 in cash, and approximately  
16 \$24,000 in the form of principal payments on an equipment finance agreement Bensch Ranch has  
17 entered into with Pivotal.

18 10. The developers of BR Estates and Spring Valley will construct the necessary  
19 wastewater collection infrastructure and contribute it and the land in their respective developments to  
20 the Company.

21 11. The planned Spring Valley development is owned by Ray Runyon.

22 12. BR Estates is an Arizona limited liability company formed in 1999. Its managing  
23 members are Lester O. Smith, Jr., Earl A. Petznick, William Fain, and Dale R. Smith. Other  
24 members include Windmill Investments Limited Partnership and Fain Signature Group, LLC. Mr.  
25 Williamson testified that BR Estates is offering lots ranging in size from  $\frac{1}{4}$  acre to  $1\frac{1}{2}$  acres, and  
26 homes on lots for prices ranging from \$300,000 to \$500,000.

27 13. In Decision No. \_\_\_\_\_ (July \_\_\_\_\_, 2003), the Commission fined American  
28 Public Service Company/Lester O. Smith \$136,500 based on their demonstrated total disregard for

1 the public health and safety in the violation of Commission Orders, rules, and regulations, and  
2 ordered that Staff refer Lester Smith and American Public Service Company to the Maricopa County  
3 Attorney or Arizona Attorney General for review and prosecution of possible misdemeanor and  
4 felony violations.

5 14. The Company stated that Lester Smith has no ownership interest or interest in the  
6 profits of the Company. Mr. Williamson stated that part of the reason that BR Estates hired Bensch  
7 Ranch and Pivotal to develop the wastewater facilities for BR Estates is because BR Estates is aware  
8 of the problems Lester Smith has had with the Commission and the Arizona Department of  
9 Environmental Quality ("ADEQ"), and wanted to create a clear delineation between the developer  
10 BR Estates and the entity applying for the CC&N.

11 15. Mr. Williamson testified that the collection lines for the initial phase of BR Estates are  
12 already in the ground, and stated that Bensch Ranch would be willing to provide the Commission  
13 with a copy of ADEQ's Verification of General Permit Conformance (formerly called Approval of  
14 Construction) for that portion of the BR Estates wastewater collection system.

15 16. Staff believes that it is not in the public interest for Lester Smith to be involved in a  
16 certificated utility in the State of Arizona, as he has had two Certificates in the past, both of which  
17 have resulted in protracted environmental and regulatory concerns.

18 17. Staff indicated that the Company's wastewater treatment plant will be constructed in  
19 three phases of 58,650 gallons of capacity each, resulting in a total treatment capacity of  
20 approximately 179,950 gallons at build out. The treatment facilities will consist of wastewater  
21 collection, a Santec four-stage biological oxidization-nitrification process, sludge digestion, sludge  
22 disposal, and effluent disposal.

23 18. Mr. Williamson testified that Bensch Ranch has received a permit from ADEQ  
24 authorizing discharge of the treated effluent into Big Bug Creek.

25 19. According to Staff, wastewater treatment plants at the high level of environmental  
26 sophistication contained in Bensch Ranch's proposal usually cost between \$6.00 to \$8.00 per gallon.  
27 In this instance, the Company has projected the wastewater plant cost for Phase I to be \$360,199, or  
28 \$6.14 per gallon, and an additional build-out cost of \$525,582, or \$5.31 per gallon, divided equally in



SERVICE CHARGES:

Establishment	\$35.00	\$35.00
Reconnection (Delinquent)	30.00	30.00
Deposit (Residential)	2 × flat rate	*
Deposit (Commercial)	2 × flat rate	*
Deposit Interest (per annum)	3.5%	**
Re-establishment (Within 12 Months)	***	***
NSF Check	25.00	15.00
Late Payment Penalty (per month)	1.50%	****

\* Per Commission rule A.A.C. R14-2-603(B)(7) and (8).

\*\* Per Commission rule A.A.C. R14-2-603(B)(3).

\*\*\* Months off system times the monthly minimum per Commission rule A.A.C. R14-2-603(D)(1).

\*\*\*\* Per Commission rule A.A.C. R14-2-608(F)(3).

23. ADEQ issued its Decision to Issue an Aquifer Protection Permit to Bensch Ranch Wastewater Treatment Plant on June 7, 2002.

24. Based on the entirety of its review, Staff recommended that the Commission grant Bensch Ranch's application for a CC&N to provide wastewater services, and further recommended the following:

- a. That the Commission authorize Bensch Ranch to charge the rates and charges proposed by Staff on Schedule JF-1 attached to the Staff Report (as set forth above);
- b. That the Commission find the fair value of the Bensch Ranch's property devoted to wastewater service to be \$352,760;
- c. That the Commission require Bensch Ranch to notify the Commission within 15 days of providing service to its first permanent customer;
- d. That the Commission require Bensch Ranch to file a rate application no later than three months following the fifth anniversary of the date the Company begins providing service to its first customer;
- e. That the Commission require Bensch Ranch to maintain its books and records in accordance with the NARUC Uniform System of Accounts for wastewater utilities; and
- f. That the Commission require Bensch Ranch to file all related franchise agreements within 365 days of the effective date of this Decision.

25. Staff has developed typical and customary depreciation rates within a range of anticipated equipment life for water and wastewater utilities. Staff recommends that the Commission require Bensch Ranch to use the depreciation rates by individual NARUC category, as set forth in Schedule LH-1 attached to the November 29, 2002 Staff Report.

1           26.     Staff's recommendations, as described above, are reasonable and shall be adopted.

2           27.     The fair value of the Bensch Ranch's property devoted to wastewater service is  
3 \$352,760. Staff's recommended initial rates are just and reasonable based on this fair value finding.

4           28.     Bensch Ranch is proposing that Pivotal operate its facilities. Based on the fact that  
5 Bensch Ranch and Pivotal share ownership, we will require Staff to examine the cost effects of the  
6 ownership and management structure in its analysis of the Company's upcoming rate application.

7           29.     As a condition to granting a CC&N to Bensch Ranch, we will require Bensch Ranch  
8 to file with the Commission, within 90 days of the effective date of this Decision, proof that Pivotal is  
9 registered to do business in Arizona. Failure to file such proof within 90 days of the effective date of  
10 this Decision will result in the Certificate conditionally granted herein becoming null and void  
11 without further Order of the Commission.

12          30.     BR Estates is constructing a portion of the wastewater collection system and will  
13 contribute it to Bensch Ranch. A member of BR Estates, Lester Smith, has been found by the  
14 Commission to have demonstrated a total disregard for the public health and safety in violation of  
15 Commission Orders, rules and regulations.

16          31.     The formation of Bensch Ranch allowed BR Estates to avoid the need to itself seek a  
17 CC&N to provide sewer service to its development.

18          32.     Accordingly, as a condition to granting a CC&N to Bensch Ranch, we will require  
19 Bensch Ranch to file with the Commission, within 90 days of the effective date of this Decision,  
20 verification that BR Estates' member Lester Smith's outstanding fine levied by Commission Decision  
21 No. \_\_\_\_\_ has been paid. Failure to file such verification within 90 days of the effective date of this  
22 Decision will result in the Certificate conditionally granted herein becoming null and void without  
23 further Order of the Commission.

24          33.     As a condition to granting a CC&N to Bensch Ranch, we will require Bensch Ranch  
25 to file with the Commission, within 90 days of the effective date of this Decision, a copy of ADEQ's  
26 Verification of General Permit Conformance (formerly called Approval of Construction) for the  
27 initial phase of the BR Estates wastewater collection system. Failure to file such verification within  
28 90 days of the effective date of this Decision will result in the Certificate conditionally granted herein

1 becoming null and void without further Order of the Commission.

2 **CONCLUSIONS OF LAW**

3 1. Bensch Ranch is a public service corporation within the meaning of Article XV of the  
4 Arizona Constitution and A.R.S. §§40-281 and 40-282.

5 2. The Commission has jurisdiction over Bensch Ranch and the subject matter of the  
6 application.

7 3. Notice of the application was provided in accordance with law.

8 4. There is a public need and necessity for sewer service in the proposed service territory  
9 as set forth in Exhibit A attached hereto.

10 5. Bensch Ranch is a fit and proper entity to receive a Certificate to provide sewer  
11 service in the proposed service area.

12 6. No used and useful determination for ratemaking purposes may be inferred from this  
13 Decision.

14 7. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

15 8. It is reasonable and in the public interest to require, as a condition to granting a  
16 Certificate to Bensch Ranch, that Bensch Ranch file with the Commission, within 90 days of the  
17 effective date of this Decision, proof that Pivotal is registered to do business in Arizona.

18 9. It is reasonable and in the public interest to require, as a condition to granting a  
19 Certificate to Bensch Ranch, that Bensch Ranch file with the Commission, within 90 days of the  
20 effective date of this Decision, a copy of ADEQ's Verification of General Permit Conformance  
21 (formerly called Approval of Construction) for the initial phase of the BR Estates wastewater  
22 collection system.

23 10. It is reasonable and in the public interest to require, as a condition to granting a  
24 Certificate to Bensch Ranch, that Bensch Ranch file with the Commission, within 90 days of the  
25 effective date of this Decision, verification that BR Estates' member Lester Smith's outstanding fine  
26 levied by Commission Decision No. \_\_\_\_\_ has been paid.

27 11. It is reasonable and in the public interest that the Certificate conditionally granted  
28 herein will become null and void without further Order of the Commission in the event that Bensch

1 Ranch does not file the proof and verifications upon which the Certificate granted herein is  
2 conditioned.

3 **ORDER**

4 IT IS THEREFORE ORDERED that the application of Bensch Ranch Utilities, LLC for a  
5 new Certificate of Convenience and Necessity to provide sewer service to the area in Yavapai  
6 County, Arizona described in Exhibit A hereto is approved, subject to the condition that it file with  
7 the Commission, within 90 days, proof that Pivotal Utility Management, LLC has authority to do  
8 business in Arizona; and subject to the condition that it file with the Commission, within 90 days, a  
9 copy of the Verification of General Permit Conformance (formerly called Approval of Construction)  
10 issued by the Arizona Department of Environmental Quality for the initial phase of the Bensch Ranch  
11 Estates, LLC wastewater collection system; and subject to the condition that it file with the  
12 Commission, within 90 days, verification that Bensch Ranch Estates, LLC's member Lester Smith's  
13 outstanding fine levied by Commission Decision No. \_\_\_\_\_ has been paid.

14 IT IS FURTHER ORDERED that failure by Bensch Ranch Utilities, LLC to comply with the  
15 above conditions within the specified time frames set forth above shall render the Certificate of  
16 Convenience and Necessity conditionally granted herein null and void without further Order of the  
17 Commission.

18 IT IS FURTHER ORDERED that Bensch Ranch Utilities, LLC shall notify the Director of  
19 the Commission's Utilities Division in writing within 15 days of providing service to its first  
20 permanent customer.

21 IT IS FURTHER ORDERED that Bensch Ranch Utilities, LLC shall file a rate application no  
22 later than three months following the fifth anniversary of the date it begins providing service to its  
23 first customer.

24 IT IS FURTHER ORDERED that Staff shall, in its analysis of the above-ordered rate  
25 application, examine the cost effects of the fact that Bensch Ranch Utilities, LLC, which owns the  
26 sewer facilities, and Pivotal Utility Management, LLC, which will operate and manage the sewer  
27 facilities, share ownership.

28 IT IS FURTHER ORDERED that Bensch Ranch Utilities, LLC shall file all required

1 franchise agreements related to this application with the Director of the Commission's Utilities  
2 Division within 365 days.

3 IT IS FURTHER ORDERED that Bensch Ranch Utilities, LLC shall maintain its books and  
4 records in accordance with the NARUC Uniform System of Accounts for wastewater utilities.

5 IT IS FURTHER ORDERED that Bensch Ranch Utilities, LLC shall use the depreciation  
6 rates set forth in Schedules LH-1 attached to the November 29, 2002 Staff Report in this docket.

7 IT IS FURTHER ORDERED that Bensch Ranch Utilities, LLC shall charge the following  
8 initial rates and charges:

9 MONTHLY USAGE CHARGES:

10 Residential – Flat Rate	\$47.00
11 Commercial – Flat Rate	Unit Daily
	Design Flow
	pursuant to
	A.A.C. Title 18,
	Chapter 9,
	Table 1 ÷ one
	Single Family
	Equivalent of
	250 gpd ×
	residential flat
	rate

17 SERVICE CHARGES:

18 Establishment	\$35.00
19 Reconnection (Delinquent)	30.00
20 Deposit (Residential)	*
21 Deposit (Commercial)	*
22 Deposit Interest (per annum)	6.0%
23 Re-establishment (Within 12 Months)	**
24 NSF Check	15.00
25 Late Payment Penalty (per month)	1.50%

26 \* Per Commission rule A.A.C. R14-2-603(B)(7) and (8).

27 \*\* Months off system times the monthly minimum per  
28 Commission rule A.A.C. R14-2-603(D)(1).



1 SERVICE LIST FOR:

BENSCH RANCH UTILITIES, LLC

2 DOCKET NO.

SW-04026A-01-0499

3

4 Joshua Meyer  
11593 S. Fortuna Rd.  
Yuma, Arizona 85367  
5 Attorney for Bensch Ranch Utilities, LLC

6 Jason Williamson  
Executive Director  
7 Pivotal Utility Management  
6845 East Tennessee Ave., Ste. 401  
8 Denver, Colorado 80224

9 Christopher Kempley, Chief Counsel  
Legal Division  
10 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director  
Utilities Division  
13 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
14 Phoenix, Arizona 85007

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TRACTS N & O, SPRING VALLEY, UNIT II, ACCORDING TO THE PLAT OF RECORD IN BOOK 16 OF MAPS, PAGES 72-74, RECORDS OF YAVAPAI COUNTY, ARIZONA.

EXCEPT ALL GAS, OIL, METALS AND MINERAL RIGHTS AS RESERVED FROM SAID LAND.

ALSO EXCEPT ALL URANIUM, THORIUM, OR ANY OTHER MATERIALS WHICH IS OR MAY BE PARTICULARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS AS RESERVED FROM SAID LAND.

AND ALSO EXCEPTING THEREFROM THAT PORTION OF TRACT O, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 852, SPRING VALLEY, UNIT II;

THENCE NORTH 61 DEGREES, 39 MINUTES, 28 SECONDS WEST, 400.00 FEET;

THENCE SOUTH 28 DEGREES, 20 MINUTES, 34 SECONDS WEST, 100.00 FEET;

THENCE SOUTH 61 DEGREES, 39 MINUTES, 26 SECONDS EAST, 400.00 FEET;

THENCE NORTH 28 DEGREES, 20 MINUTES, 34 SECONDS EAST, 100.00 FEET TO THE POINT OF BEGINNING.

PARCEL I:

G.L.O. Lots 2, 3 and 4, the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter and the Northwest quarter of the Southeast quarter and the Southeast quarter of the Southwest quarter and the Southwest quarter of the Southeast quarter and the Southwest quarter of Northeast quarter, all in Section 6, Township 11 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

PARCEL II:

A portion of G.L.O. Lot 1, Section 6, Township 11 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 6;

Thence North 89 degrees, 35 minutes, 12 seconds West along the North line of said Section 6, a distance of 1215.03 feet to the TRUE POINT OF BEGINNING;

Thence South 00 degrees, 24 minutes, 48 seconds West, a distance of 60.00 feet to a point on the South line of the North 60.00 feet of said Lot 1;

Thence North 89 degrees, 35 minutes, 12 seconds West, along said South line, a distance of 112.84 feet to the West line of said Lot 1;

Thence North 00 degrees, 03 minutes, 34 seconds West along said West line, a distance of 60.00 feet to the Northwest corner of said Lot 1;

Thence South 89 degrees, 35 minutes, 12 seconds East along the North line of said Lot 1, a distance of 113.33 feet to the TRUE POINT OF BEGINNING;

PARCEL III:

G.L.O. Lots 5, 6, 7 and 8 (shown as the South half of the South half in document, recorded in Book 2876 of Official Records, Page 598, records of Yavapai County, Arizona) of Section 31, Township 12 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

EXCEPT any portion lying within State Highway 69 as set forth in instruments recorded in Book 2530 of Official Records, Page 863 and in Book 2536 of Official Records, pages 130 and 134.

ALSO EXCEPTING THEREFROM the following:

A portion of Lot 8, Section 31, Township 12 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the Southeast corner of said Section 31;

Thence North 89 degrees, 35 minutes, 12 seconds West along the South line of Section 31, a distance of 640.80 feet to the TRUE POINT OF BEGINNING;

Thence continuing North 89 degrees, 35 minutes, 12 seconds West along said South line, a distance of 221.33 feet;

Thence North 20 degrees, 12 minutes, 09 seconds East, a distance of 94.57 feet;

Thence South 64 degrees, 24 minutes, 42 seconds East, a distance of 209.18 feet to the TRUE POINT OF BEGINNING.

PARCEL IV:

G.L.O. Lot 1 (shown as the Northeast quarter of the Northeast quarter in document, recorded in Book 2810 of Official Records, Page 683, records of Yavapai County, Arizona) of Section 6, Township 11 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

EXCEPT any portion lying within State Highway 69 as set forth in instruments recorded in Book 2549 of Official Records, pages 321 and 324.

AND EXCEPT a portion of said Lot 1, of Section 6, Township 11 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 6;

Thence North 89 degrees, 35 minutes, 12 seconds West along the North line of said Section 6, a distance of 1215.03 feet to the TRUE POINT OF BEGINNING;

Thence South 00 degrees, 24 minutes, 48 seconds West, a distance of 60.00 feet to a point on the South line of the North 60.00 feet of said Lot 1;

Thence North 89 degrees, 35 minutes, 12 seconds West along said South line, a distance of 112.84 feet to the West line of said Lot 1;

Thence North 00 degrees, 03 minutes, 34 seconds West along the West line of said Lot 1, a distance of 60.00 feet to the Northwest corner of said Lot 1;

Thence South 89 degrees, 35 minutes, 12 seconds East along the North line of said Lot 1, a distance of 113.33 feet to the TRUE POINT OF BEGINNING.

PARCEL V:

A portion of G.L.O. Lot 8, Section 31, Township 12 North, Range 2 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the Southeast corner of said Section 31;

Thence North 89 degrees, 35 minutes, 12 seconds West along the South line of Section 31, a distance of 640.80 feet to the TRUE POINT OF BEGINNING;

Thence continuing North 89 degrees, 35 minutes, 12 seconds West along said South line, a distance of 221.33 feet;

Thence North 20 degrees, 12 minutes, 09 seconds East, a distance of 94.57 feet;

Thence South 64 degrees, 24 minutes, 52 seconds East, a distance of 209.18 feet to the TRUE POINT OF BEGINNING.

PARCEL VI:

The Southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter all in Section 6, Township 11 North, Range 2 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

EXCEPT all coal and other minerals as reserved in Patent to said land.