



0000067422

MEMORANDUM

RECEIVED

2002 NOV 29 P 12: 01

TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

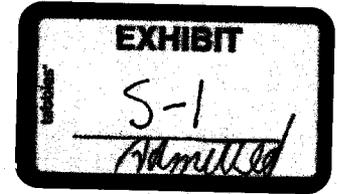
RECEIVED

AZ CORP COMMISSION
DOCUMENT CONTROL

NOV 29 2002

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

DATE: November 27, 2002



RE: STAFF REPORT FOR BENSCH RANCH UTILITIES, L.L.C. APPLICATION FOR
A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR WASTEWATER
SERVICES (DOCKET NO. SW-04026A-01-0499)

Attached is the Staff Report for Bensch Ranch Utilities, L.L.C.'s application for a
Certificate of Convenience and Necessity for wastewater services. Staff recommends approval.

EGJ:JEF:nms

Originator: Jim Fisher

Attachment: Original and fifteen copies

Service List for: Bensch Ranch Utilities, L.L.C.
Docket No. SW-04026A-01-0499

Mr. Jason Williamson
Executive Director
Pivotal Utility Management
6845 East Tennessee Avenue, Suite 401
Denver, Colorado 80224

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

Mr. Ernest G. Johnson
Director, Utilities 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

**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

BENSCH RANCH UTILITIES, L.L.C.

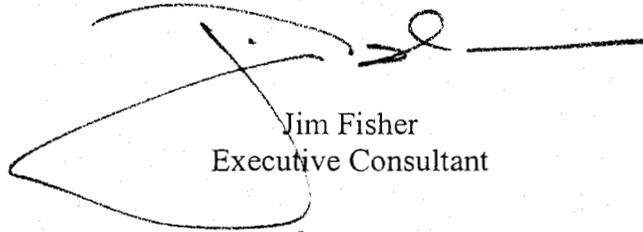
DOCKET NO. SW-04026A-01-0499

**APPLICATION FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY**

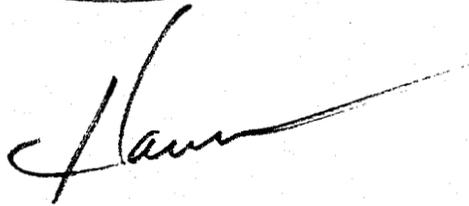
NOVEMBER 2002

STAFF ACKNOWLEDGMENT

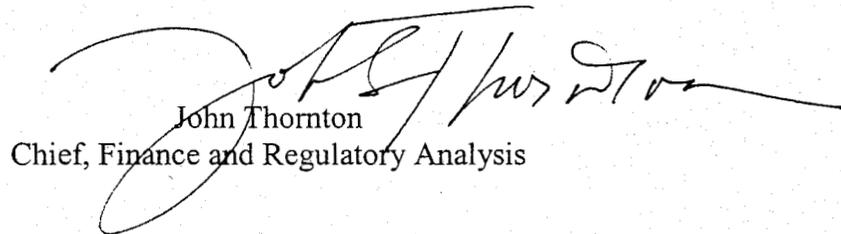
The Staff Report for Bensch Ranch Utilities, L.L.C., Docket No. SW-04026A-01-0499 was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analyses of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis. John Thornton was responsible for the rate review analysis of the Company's application.



Jim Fisher
Executive Consultant



Lyndon Hammon
Engineering Consultant



John Thornton
Chief, Finance and Regulatory Analysis

EXECUTIVE SUMMARY
BENSCH RANCH UTILITIES, L.L.C.
DOCKET NO. SW-04026A-01-0499

On June 21, 2001, Bensch Ranch Utilities, L.L.C. ("BR Utilities") filed with the Arizona Corporation Commission ("ACC" or "Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in portions of Yavapai County, Arizona. BR Utilities is seeking authorization to provide service to Bensch Ranch Estates ("BR Estates"), a planned residential development within the community of Mayer, Arizona.

BR Utilities is proposing to construct a wastewater system that will consist of a Santec four-stage biological oxidation-nitrification process, sludge digestion, sludge disposal, effluent disposal and wastewater collection. The system will serve approximately 165 customers within the first five years and treat about 45,000 gallons per day.

Staff has determined that the proposed wastewater water system will have adequate treatment to serve the proposed CC&N area. No "used and useful" determination of the proposed plant in service can be made, and no conclusions should be inferred for ratemaking purposes.

The Company will finance the facilities through a combination of debt, equity and contributions in aid of construction. BR Estates has agreed to construct and convey the collection system to BR Utilities. The collection plant is estimated to cost \$579,975.

Staff recommends that BR Utilities be required to file within 12 months of the effective date of the final decision and order for this CC&N application, a copy of the "Preliminary Decision To Issue Permit" issued by the Arizona Department of Environmental Quality. In the event the copies of the "Preliminary Decision To Issue Permit" are not filed in a timely manner, then the final decision and order in this matter shall become null and void without further order of the Commission, unless the Commission grants an extension of time for this requirement.

BR Utilities proposes a \$47 per month flat rate for residential service and a usage sensitive monthly commercial rate, based on daily sewer flow relative to residential rates.

Staff further recommends that the Company be ordered to use depreciation rates shown on Schedule LH-1.

Staff further recommends that the Commission order Bensch Ranch Utilities, L.L.C. 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.

Staff further recommends that the Commission require Bensch Ranch Utilities, L.L.C. to file all related franchise agreements within 365 days of the effective date of the decision in this case.

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
BACKGROUND	1
TREATMENT CAPACITY	1
COST ANALYSIS.....	1
FINANCE OF UTILITY FACILITIES.....	2
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY	2
DEPRECIATION RATES.....	2
PROPOSED RATES	3
FAIR VALUE RATE BASE	3
RECOMMENDATIONS.....	3

SCHEDULES

SCHEDULE JF-1.....	5
SCHEDULE JF-2.....	6
SCHEDULE LH-1	7

ATTACHMENT

MAP	8
-----------	---

Introduction

On June 21, 2001, Bensch Ranch Utilities L.L.C. ("BR Utilities") filed with the Arizona Corporation Commission ("ACC" or "Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in portions of Yavapai County, Arizona. On July 18, 2001, Staff informed BR Utilities the application was insufficient for administrative purposes. BR Utilities subsequently provided additional information perfecting the application for administrative review. On July 9, 2002, BR Utilities provided additional documentation on its receipt of related approvals.

Background

BR Utilities is seeking authorization to provide service to Bensch Ranch Estates, ("BR Estates"), a planned residential development within the community of Mayer, Arizona. BR Estates requested that BR Utilities provide service.

BR Utilities is a limited liability company, owned in part by Jason Williamson who is also the Executive Director of Pivotal Utility Management. In Decision No. 64599, March 4, 2002, the ACC authorized Mr. Williamson and Pivotal Utility Management, via their association with Pine Meadows Utilities, L.L.C., a CC&N to provide service to two similarly situated residential developments as proposed in this application.

BR Utilities is proposing to construct a wastewater system that will consist of a Santec four stage biological oxidation-nitrification process, sludge digestion, sludge disposal, effluent disposal and wastewater collection. The system will be built in phases. The system will serve approximately 165 customers within the first five years and treat about 45,000 gallons per day.

Currently, there is no capacity at the existing wastewater plants in the Mayer area to serve the proposed development. Furthermore, no certificated providers are able to serve the development at this time. This plant will be an interim plant and will operate until such time as interceptors and capacity are made available at a publicly owned wastewater facility.

Treatment Capacity

Engineering Staff found that the proposed wastewater water system will have adequate treatment to serve the proposed CC&N area within the conventional five-year planning period. Staff also found the Company can reasonably be expected to develop the needed treatment capacity for the final build out.

Cost Analysis

Wastewater treatment plants at this high level of environmental sophistication usually cost between six and eight dollars per gallon, excluding effluent disposal costs. The Company has projected the wastewater plant cost at \$360,199 for Phase I and an additional build-out cost of \$525,582 divided equally in year 3 and year 6 for a total of \$885,781. This figure is reflective of a build-out capacity of 175,950 gallons. The overall per gallon cost would then be \$5.03,

which is within a reasonable and customary cost range. However, approval of this CC&N application does not imply any particular future treatment for the rate base. No "used and useful" determination of the proposed plant in service was made, and no conclusions should be inferred for rate making or rate base purposes.

Finance of Utility Facilities

The Company will finance the required collection and treatment facilities through a combination of debt, equity and contributions in aid of construction. Contributions in aid of construction are often in the form of line extension agreements. Line extension agreements are a standard industry practice. Arizona Administrative Codes R14-2-406 and R14-2-606 established the minimal acceptable criteria for line extension agreements between water and wastewater utilities and private parties. Line extension agreements generally require the developer to design, construct and install (or cause to be) all facilities to provide adequate service to the development. Upon acceptance of the facilities by the utility, the developer will convey the wastewater facilities by way of a warranty deed. The utility will refund ten percent of the annual wastewater revenue associated with development for a period of ten years.

In this application, BR Estates has agreed to construct and convey the collection system to BR Utilities. The collection plant is estimated to cost \$579,975, and will be treated as a Contribution in Aid of Construction.

BR Utilities executed a memorandum of understanding, dated December 20, 2001, with Pivotal Utility Management for an equipment financing agreement. According to the memorandum of understanding, \$250,000 in principle will be financed for ten years at nine and one half percent interest. The parties agree that the first 18 payments will not be billed to BR Utilities, and that the owners of BR Utilities shall make payments totaling \$24,191 to Pivotal Utility Management. The owners of BR Utilities will recognize the \$24,191 as other paid capital (equity) to ensure the financial stability of the utility during the 18 month payment period.

Arizona Department of Environmental Quality ("ADEQ")

Staff recommends that BR Utilities be required to file within 12 months of the effective date of the final decision and order for this CC&N application, a copy of the "Preliminary Decision to Issue Permit" issued by the ADEQ. In the event the copies of the "Preliminary Decision to Issue Permit" are not filed in a timely manner, then the final decision and order in this matter shall become null and void without further order of the Commission, unless the Commission grants an extension of time for this requirement.

Depreciation Rates

Staff has developed typical and customary depreciation rates within a range of anticipated equipment life. These rates are presented in Schedule LH-1, and it is recommended that the Company use the depreciation rates by individual National Association of Regulatory Utility Commissions ("NARUC") category, as delineated in the attached Schedule LH-1

Proposed Rates

The application indicates that there are presently no customers taking service in the area of the requested CC&N. At build-out, the requested CC&N area is expected to serve 165 customers. BR Utilities projects build-out to occur in its fifth year of operation.

Residential Rates: BR Utilities proposes \$47 per month flat rate for residential service. (See Schedule JF-1).

Commercial Rates: BR Utilities proposes a usage sensitive the monthly commercial rate which would be calculated on each commercial customer by dividing the expected design daily sewer flow, as prescribed in Arizona Administrative Code, Title 18, Chapter 9, by one Single Family Equivalent ("SFE"). One SFE would be equal to 250 gallons per day. The resulting factor would be multiplied by the approved residential flat rate to determine the appropriate commercial rate.

Staff recommends approval of commercial and residential rates as shown in Schedule JF-1. Staff further recommends that the Company be ordered to use depreciation rates shown on Schedule LH-1.

Fair Value Rate Base

Staff has reviewed the Company's revenues, expenses and plant values. By nature, these amounts are estimates, based on estimated lot sales, plant investments, meter connections and wastewater flows. However, as justification for the initial rates, the Company's estimated plant investment, revenues and expenses appear reasonable. Based on the Company's plant investment, Staff recommends that the Commission find that the fair value of the Company's property devoted to public service is \$352,760, as shown in Schedule JF-2. The rates and charges recommended herein are just and reasonable based on the recommended fair value finding.

Recommendations

Staff recommends that the Commission approve Bensch Ranch Utilities, L.L.C.'s application for a Certificate of Convenience and Necessity to provide wastewater services consistent with the conditions and recommendations in this Report.

Staff further recommends that Bensch Ranch Utilities, L.L.C. be required to file within two years from the effective date of the final decision and order for this CC&N application, a copy of the "Preliminary Decision to Issue Permit" issued by the ADEQ.

Staff further recommends, that in the event the copy of the ADEQ "Preliminary Decision To Issue Permit" is not filed in a timely manner, then the final decision and order in this matter shall become null and void without further order of the Commission, unless the Commission grants an extension of time for this requirement.

Staff further recommends that the Commission authorize Bensch Ranch Utilities, L.L.C. the rates and charges shown on Schedule JF-1.

Staff further recommends that Bensch Ranch Utilities, L.L.C. be ordered to use the depreciation rates as shown on Schedule LH-1.

Staff further recommends that the Commission find that the fair value of the Bensch Ranch Utilities, L.L.C. property devoted to waste water service is \$352,760.

Staff further recommends that Bensch Ranch Utilities, L.L.C. be ordered to notify the Commission within 15 days of providing service to its first permanent customer.

Staff further recommends that the Bensch Ranch Utilities, L.L.C. be ordered 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.

Staff further recommends that Bensch Ranch Utilities, L.L.C. be ordered to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Wastewater Utilities.

Staff further recommends that the Commission require Bensch Ranch Utilities, L.L.C. to file all related franchise agreements within 365 days of the effective date of the decision in this case.

Schedule JF-1

Wastewater Service Tariff

	Proposed Rates	
	Company	Staff
Monthly Usage Charge		
Residential	\$47.00	\$47.00
Commercial	\$47.00 per SFE	\$47.00 per SFE
Service Charges		
Establishment	\$35.00	\$35.00
Reconnection/Delinquent	\$30.00	\$30.00
Deposit (Residential)	\$94.00	*
Deposit (Commercial)	*	*
Deposit Interest	**	**
Reestablishment w/in 12 Months	Months off System	***
NSF	\$25.00	15.00
Check		
Late Payment Penalty	1.50%	****

Staff Footnotes:

- *Per A.A.C. R14-2-603 (B) (7) and (8)
- ** Per A.A.C. R14-2-603 (B) (3)
- ***Per A.A.C. R14-2-603 (D) (1)
- **** Per A.A.C. R14-2-608 (F) (3)

Applicant Note: Single Family Equivalent ("SFE") shall equal 250 gallons per day. The monthly commercial usage charge is to be calculated individually for each commercial customer by dividing the expected design daily sewer flow rate by one SFE. The resulting factor will be multiplied by the approved residential flat rate to determine the commercial monthly flat rate.

RATE BASE & RATE OF RETURN COMPUTATION

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Plant in Service	\$ 937,476	\$ 947,844	\$ 958,987	\$ 971,770	\$ 967,332
Less: Accumulated Depreciation	(5,375)	(11,537)	(17,777)	(24,013)	(30,434)
Net Plant	932,101	936,307	941,210	947,757	936,898
Less: Advances in Aid of Construction	(579,341)	(576,331)	(571,096)	(563,829)	(554,533)
Original Cost Rate Base	\$ 352,760	\$ 359,976	\$ 370,114	\$ 383,928	\$ 382,365
Operating Income (Loss)	\$ (19,864)	\$ (11,393)	\$ 4,041	\$ 15,966	\$ 25,140
Rate of Return	-5.63%	-3.16%	1.09%	4.16%	6.57%
Number of Customers - Residential	15	51	87	123	159
-Commercial	1	3	3	3	3
AIAC	\$ 579,976	\$ 579,341	\$ 576,331	\$ 571,096	\$ 563,829
Less: Refund 10% of Revenues	(635)	(3,010)	(5,236)	(7,266)	(9,297)
Net AIAC	\$ 579,341	\$ 576,331	\$ 571,096	\$ 563,829	\$ 554,533

Schedule LH-1
Wastewater Depreciation Rates

NARUC Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
354	Structures & Improvements	30	3.33
355	Power Generation Equipment	20	5.00
360	Collection Sewers – Force	50	2.0
361	Collection Sewers- Gravity	50	2.0
362	Special Collecting Structures	50	2.0
363	Services to Customers	50	2.0
364	Flow Measuring Devices	10	10.0
365	Flow Measuring Installations	10	10.00
366	Reuse Services	50	2.00
367	Reuse Meters & Meter Installations	12	8.33
370	Receiving Wells	30	3.33
371	Pumping Equipment	8	12.50
374	Reuse Distribution Reservoirs	40	2.50
375	Reuse Transmission & Distribution System	40	2.50
380	Treatment & Disposal Equipment	20	5.0
381	Plant Sewers	20	5.0
382	Outfall Sewer Lines	30	3.33
389	Other Plant & Miscellaneous Equipment	15	6.67
390	Office Furniture & Equipment	15	6.67
390.1	Computers & Software	5	20.0
391	Transportation Equipment	5	20.0
392	Stores Equipment	25	4.0
393	Tools, Shop & Garage Equipment	20	5.0
394	Laboratory Equipment	10	10.0
395	Power Operated Equipment	20	5.0
396	Communication Equipment	10	10.0
397	Miscellaneous Equipment	10	10.0
398	Other Tangible Plant	----	----

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION

1
2 WILLIAM A. MUNDELL

Chairman

3 JIM IRVIN

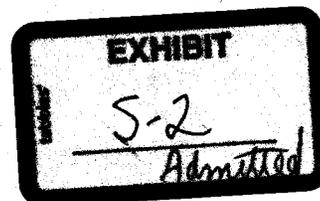
Commissioner

4 MARC SPITZER

Commissioner

2002 SEP 23 P 12: 45

AZ CORP COMMISSION
DOCUMENT CONTROL



6 UTILITIES DIVISION STAFF,

7 Complainant

8 v.

9 AMERICAN PUBLIC SERVICE COMPANY,

10 Respondent

11 LESTER O. SMITH and Jane Doe Smith,

12 Respondent

13 LITCHFIELD PARK SERVICE COMPANY,

14 Respondent

DOCKET NO. SW-02422A-02-0720
SW-01428A-02-0720

COMPLAINT;

PETITION FOR ORDER TO
SHOW CAUSE; AND

PETITION FOR INTERIM
RELIEF

15
16
17 Staff ("Staff") of the Utilities Division ("Division") of the Arizona Corporation Commission
18 ("ACC" or the "Commission"), for its Complaint, Petition for Order to Show Cause; and Petition for
19 Interim Relief against AMERICAN PUBLIC SERVICE COMPANY ("APSC"); LESTER O. SMITH
20 and Jane Doe Smith (Lester individually and/or Lester and Jane collectively, "Smith"); and
21 LITCHFIELD PARK SERVICE COMPANY ("LPSCO") alleges:

22 JURISDICTION

23 1. The Commission has jurisdiction to hear complaints against public service
24 corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate
25 public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the
26 Arizona Revised Statutes.

27 ...

28 ...

1
2 **RESPONDENTS**

3 2. Respondent APSC is a public service corporation that operates the Casitas Bonitas
4 sewer system located in Maricopa County. APSC was granted a Certificate of Convenience and
5 Necessity to provide sewer service by the Commission in Decision 47474 (1976), which has been
6 modified from time to time thereafter.

7 3. Respondent Smith is the President, Secretary, and principal shareholder of APSC.

8 4. Respondent LPSCO is a public service corporation that operates a water and sewer
9 system located in Maricopa County. LPSCO was granted a Certificate of Convenience and Necessity
10 by the Commission in Decision 28660 (1955), which has been modified from time to time thereafter.

11 **BACKGROUND**

12 5. APSC's sewage treatment plant is outdated, and APSC is incapable of complying with
13 the requirements of the Commission, the Maricopa County Environmental Services Department
14 ("MCESD"), and the Arizona Department of Environmental Quality ("ADEQ").

15 6. On January 17, 1996, APSC filed an application for a rate increase, ACC Docket SW-
16 02422A-96-0151. On July 3, 1996 the Hearing Division issued a Recommended Opinion and Order
17 ("ROO") in Docket SW-02422A-96-0151. On July 10, 1996, APSC filed for bankruptcy in the
18 United States Bankruptcy Court for the District of Arizona, Docket No. B-96-07169-PHX-RGM (Ch.
19 11). The Commission considered the ROO at its open meeting on July 17, 1996 and determined that
20 the matter should be held for further consideration in light of the bankruptcy filing.

21 7. At its open meeting on August 7, 1996, the Commission suspended consideration of
22 this matter indefinitely due to the pending bankruptcy proceeding and ongoing discussions between
23 Staff, the MCESD, and the City of Goodyear. A Procedural Order was issued on August 7, 1996
24 finding that the bankruptcy filing and other events constituted an extraordinary event and indefinitely
25 extending the deadline for entry of a final order in Docket SW-02422A-96-0151.

26 8. On May 10, 1999, a Procedural Order was issued noting that APSC's reorganization
27 plan was confirmed by the Bankruptcy Court and directing Staff to file a supplemental staff report.
28 On June 25, 1999 Staff filed its supplemental staff report. On January 11, 2001, APSC filed a
Motion to Continue the deadlines established by the December 1, 2000 procedural order. APSC's

1 Motion noted that "continued operation of the facility in the status quo" was not contemplated, and
2 that a rate case would accordingly be "futile". On February 7, 2001, a Procedural Order was issued
3 ordering APSC to file updated information and setting the matter for hearing.

4 9. On March 9, 2001, APSC filed a "Final Plan Regarding Handing Over Operation and
5 Ownership of Casitas Bonitas System and Request for Continuance of Other Procedural Deadlines"
6 (the "Final Plan"). The Final Plan provided that First National Management Incorporated ("First
7 National"), would assume management of the system on an interim basis. The Final Plan
8 contemplated the formation of a "Community Facilities District" which would acquire the Casitas
9 Bonitas System. The Final Plan also requested that the rate case proceeding be suspended and
10 continued.

11 10. On May 3, 2001, APSC filed an Agreement for Management and Billing Services
12 between APSC and First National. The Agreement provided that either party may terminate the
13 Agreement after the first year upon 30 days written notice. First National has given notice of its
14 intent to terminate the Agreement. First National's president, Mr. Fred T. Wilkinson, has repeatedly
15 expressed considerable frustration to Staff at the slow pace of events, the uncooperative nature of Mr.
16 Smith, and the potential liability faced by First National. In Mr. Wilkinson's opinion, First National
17 has been performing a public service by operating the Casitas Bonitas System for a considerable
18 period of time for little compensation. Staff shares Mr. Wilkinson's opinion in this regard, and is
19 deeply thankful for his considerable efforts to date.

20 11. On or about June 12, 2002, the Maricopa County Board of Supervisors approved the
21 formation of a Community Facilities District to acquire and operate the Casitas Bonitas System.

22 12. On June 12, 2002, APSC, by and through its attorneys, met with Staff; Mr. Wilkinson
23 and Mr. Ernie Lucke, President of Adobe West Construction, Inc ("Adobe"). Mr. Lucke presented a
24 plan whereby Adobe would pay for a force main and lift station to connect the Casitas Bonitas
25 System with the system of LPSCO. LPSCO has recently constructed a new sewage treatment plant in
26 the area and has available capacity. Under Adobe's plan, the force main and lift station would
27 transport sewage from the Casitas Bonitas System and from a small, 28-lot development proposed by
28 Adobe to LPSCO. By letter dated June 24, 2002, LPSCO declined Adobe's offer.

1 Community Facilities District. Accordingly, the Manager should be given full authority to explore,
2 negotiate, and implement any such long-term solution, subject to Commission approvals required by
3 law.

4 **Third Count**

5 18. Upon information and belief, Smith conducts all the affairs of APSC and makes all
6 decisions on behalf of APSC and treats APSC as his alter ego. Accordingly, the Commission may
7 find Smith personally responsible for the actions or inaction of APSC.

8 **Fourth Count**

9 19. LPSCO's rejection of Adobe's offer was unjust and unreasonable. Pursuant to A.R.S.
10 §§ 40-202; 40-203; 40-321; 40-322, the Commission may prohibit unjust and unreasonable service.
11 Accordingly, LPSCO should be ordered to accept Adobe's offer or any other similar offer. Pursuant
12 to A.R.S. §§ 40-331 and 40-332, the Commission may require additions and improvements to the
13 facilities of a public service corporation, and may require the joint use of the facilities of a public
14 service corporation. Accordingly, LPSCO should be ordered to construct facilities to interconnect
15 with the Casitas Bonitas System or enter into an agreement to have these facilities constructed.

16 **RELIEF**

17 **WHEREFORE**, Staff prays that the Commission issue:

18 20. An ORDER TO SHOW CAUSE directing APSC to show cause (1) why its service
19 should not be found unjust and unreasonable as described herein; (2) why a Manager should not be
20 appointed as described herein; and (3) why APSC should not indemnify the Manager as described
21 herein.

22 21. An ORDER TO SHOW CAUSE directing Smith to show cause (1) why Smith should
23 not be found to be the alter ego of APSC; (2) why Smith should not be held personally responsible
24 for the actions or inaction of APSC; and (3) why Smith should not indemnify the Manager as
25 described herein.

26 22. An ORDER TO SHOW CAUSE directing LPSCO to show cause (1) why its rejection
27 of the Adobe offer was not unjust and unreasonable; and (2) why it should not be ordered to construct
28 appropriate facilities to interconnect with the Casitas Bonitas System.

1 Chairman William A. Mundell
2 Commissioner Jim Irvin
3 Commissioner Marc Spitzer
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Lyn Farmer, Chief Administrative Law Judge
8 Hearing Division
9 Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, Arizona 85007

12 Ernest Johnson
13 Director, Utilities Division
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

17 Copies of the foregoing were delivered to Hawkins &
18 Campbell this 23rd day of September, 2002 for service upon:

19 Mariscal Weeks McIntyre and Friedlander, P.A.
20 Attn: Kenneth A. Hodson, Esq.
21 2901 N. Central Avenue, Ste. 200
22 Phoenix, Arizona 85012
23 Statutory Agent and Attorneys for American Public Service Company

24 Steven A. Hirsch, Esq.
25 Bryan Cave LLP
26 Two North Central Avenue, Ste. 2200
27 Phoenix, Arizona 85004
28 Attorneys for American Public Service Company

Mr. Lester O. Smith, Jr.
221 E. Southgate
Phoenix, Arizona 85040
Individually and as President and
Secretary of American Public Service Company

CT Corporation System
3225 N. Central Avenue
Phoenix, Arizona 85012
Statutory Agent for Litchfield Park Service Company

Richard L. Sallquist, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Circle
Phoenix, Arizona 85016-2129
Attorneys for Litchfield Park Service Company

1 Copies of the foregoing were mailed this 23rd day of September 2002
2 by certified mail, return receipt requested, to:

3 Mr. Fred T. Wilkinson
4 National Management Incorporated
5 P.O. Box 2899
6 459 N. Gilbert Road, Ste. B-130
7 Gilbert Arizona 85234

8 Mr. Ernie Lucke
9 Adobe West Construction, Inc.
10 4623 W. Myrle
11 Glendale, Arizona 85301

12 Laurie A. Woodall, Esq.
13 Office of the Attorney General
14 1275 W. Washington
15 Phoenix, Arizona 85007
16 Attorneys for the ADEQ

17 Mr. Mike Traubert
18 Manager, Water Quality Compliance Section
19 Arizona Department of Environmental Quality
20 1110 W. Washington
21 Phoenix, Arizona 85007

22 Maricopa County Environmental Services Department
23 Water and Wastewater Management Division
24 1001 N. Central, Ste. 150
25 Phoenix, Arizona 85007

26 Copies of the foregoing were faxed
27 this 23rd day of September, 2002 to:

28 Kenneth A. Hodson, Esq.
Fax No. 602.285.5100

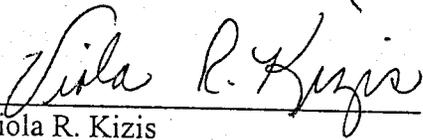
Steven A. Hirsch, Esq.
Fax No. 602.364.7070

Richard L. Sallquist, Esq.
Fax No. 602.224.9366

Laurie A. Woodall, Esq.
Fax No. 602.542.7798

Mr. Ernie Lucke
Fax No. 623.934.8174

1 Mr. Fred T. Wilkerson
2 Fax No. 480.677.6082

3
4
5 

6 Viola R. Kizis
7 Secretary to Timothy J. Sabo

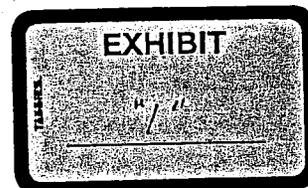
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman

JIM IRVIN
Commissioner

MARC SPITZER
Commissioner



UTILITIES DIVISION STAFF,
Complainant

v.

AMERICAN PUBLIC SERVICE COMPANY,
Respondent

LESTER O. SMITH,
Respondent

LITCHFIELD PARK SERVICE COMPANY,
Respondent

DOCKET NO. SW-02422A-02-0720
SW-01428A-02-0720

AFFIDAVIT OF MARLIN SCOTT, JR.

Marlin Scott, Jr., having been duly sworn, deposes and says:

1. I am a Utilities Engineer employed in the Engineering Section of the Utilities Division ("Division") of the Arizona Corporation Commission ("Commission"). I have been employed by the Commission for 14 years.

2. I have substantial education and experience in evaluating water and sewer systems in the State of Arizona.

3. I am familiar with the Casitas Bonitas System owned by Respondent American Public Service Company and I have monitored developments concerning said system for a number of years.

4. I performed the engineering analysis of the Casitas Bonitas System for the 1996 and 1999 Staff Reports in Docket No. SW-02422A-96-0151.

5. I conducted a field inspection of the Casitas Bonitas System on September 20, 2002.

6. I am familiar with the requirements of the Maricopa County Environmental Services Department ("MCESD") and the Arizona Department of Environmental Quality ("ADEQ")

1 7. In my professional opinion, the sewage treatment plant ("plant") for the Casitas
2 Bonitas System is completely outdated and thoroughly inadequate. In my professional opinion, it is
3 not possible to operate the plant without violating the requirements of MCESD and ADEQ.

4 8. The Casitas Bonitas System serves approximately 129 customers. This is an
5 extremely small number for a sewer system, and based on my experience and professional judgement
6 it would not be economically or technically feasible for American Public Service Company to
7 construct an adequate and safe new sewage treatment plant for a system the size of the Casitas
8 Bonitas System.

9 9. Without the resources of the existing manager, First National Management,
10 Incorporated, I do not believe that American Public Service Company possesses the technical
11 capabilities to operate its existing plant without committing severe and immediate violations of
12 MCESD and ADEQ requirements of the type that would constitute a clear and present danger to the
13 public health and safety.

14 10. ADEQ requires that each water or sewer system have a "certified operator" licensed
15 by ADEQ. First National Management, Incorporated currently provides such a certified operator,
16 but, to the best of my knowledge, American Public Service Company does not have a certified
17 operator available to operate the Casitas Bonitas System.

18 11. I am also familiar with the system of Litchfield Park Service Company ("LPSCO"). I
19 preformed the engineering analysis of the LPSCO system in the ongoing LPSCO rate case in Docket
20 Nos. W-01427A-01-0487 and WS-01428A-01-0487. LPSCO has adequate capacity to offer
21 wholesale sewage treatment service for the Casitas Bonitas System.

22 12. To the best of my knowledge, LPSCO has a sewer main approximately 1300 feet from
23 the Casitas Bonitas System. Designing and constructing a force main and lift station to connect the
24 Casitas Bonitas System with the LPSCO sewer main would be a relatively simple matter. In my
25 professional opinion, an interconnection between the LPSCO System and Casitas Bonitas System is
26 the only reasonable and practical solution to the crisis facing the Casitas Bonitas System.

27 ...

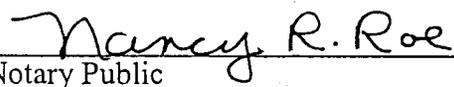
28 ...

1 Further affiant sayeth not.

2

3
4 
5 MARLIN SCOTT, JR.

6 Subscribed and sworn before me this
7 23rd day of September, 2002

8
9 
10 Notary Public
11 My commission expires:



14

15

16

17

18

19

20

21

22

23

24

25

26

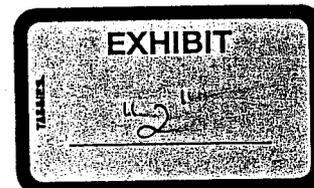
27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner



UTILITIES DIVISION STAFF,
Complainant

DOCKET NO. SW-02422A-02-0720
SW-01428A-02-0720

v.

AMERICAN PUBLIC SERVICE COMPANY,
Respondent

AFFIDAVIT OF RONALD E.
LUDDERS

LESTER O. SMITH,
Respondent

LITCHFIELD PARK SERVICE COMPANY,
Respondent

Ronald E. Ludders, having been duly sworn, deposes and says:

1. I am a Public Utilities Analyst V employed in the Financial and Regulatory Analysis Section of the Utilities Division ("Division") of the Arizona Corporation Commission ("Commission"). I have been employed by the Commission for 13 years.

2. I have substantial education and experience in auditing and financial analysis of water and sewer systems in the State of Arizona.

3. I am familiar with the Casitas Bonitas System owned by Respondent American Public Service Company ("APSC") and I have monitored developments concerning said system for a number of years.

4. I performed the financial and accounting analysis of the Casitas Bonitas System for the 1996 and 1999 Staff Reports in Docket No. SW-02422A-96-0151.

5. I have read Staff's Complaint, Petition for Order to Show Cause and Petition for

1 Interim Relief, and to the best of my knowledge the allegations therein are true and correct.

2 6. I have reviewed materials relating to the financial affairs of APSC, including materials
3 in Docket No. SW-02422A-96-0151 and the 2001 Division Annual Report filed by APSC.

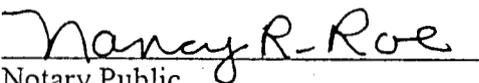
4 7. Without the resources of the existing manager, First National Management,
5 Incorporated, I do not believe that American Public Service Company possesses the managerial or
6 financial capabilities to operate Casitas Bonitas System.

7 8. In many years of dealing with Respondent Lester O. Smith, I am not aware of Mr.
8 Smith observing corporate formalities. Mr. Smith has always acted as though he and APSC were the
9 same.

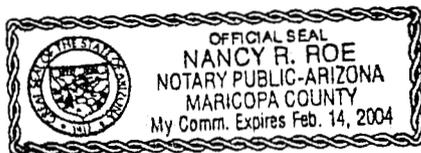
10 Further affiant sayeth not.

11
12
13 
14 RONALD E. LUADDERS

15
16 Subscribed and sworn before me this
17 23rd day of September, 2002

18
19 
20 Notary Public

21 My commission expires:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner



UTILITIES DIVISION STAFF,
Complainant

DOCKET NO. SW-02422A-02-0720
SW-01428A-02-0720

v.

AMERICAN PUBLIC SERVICE COMPANY,
Respondent

DECISION NO. _____

LESTER O. SMITH and Jane Doe Smith,
Respondent

**ORDER TO SHOW CAUSE AND
ORDER FOR INTERIM RELIEF**

LITCHFIELD PARK SERVICE COMPANY,
Respondent

BY THE COMMISSION:

On September 23, 2002, Staff ("Staff") of the Utilities Division ("Division") of the Arizona Corporation Commission ("ACC" or the "Commission"), filed a "Complaint, Petition for Order to Show Cause; and Petition for Interim Relief" against AMERICAN PUBLIC SERVICE COMPANY ("APSC"); LESTER O. SMITH and Jane Doe Smith (Lester individually and/or Lester and Jane collectively, "Smith"); and LITCHFIELD PARK SERVICE COMPANY ("LPSCO"). Staff's filing was supported by the affidavits of Ronald E. Ludders and Marlin Scott, Jr. Staff seeks various relief, including the issuance of an Order to Show Cause against the Respondents and the issuance of an Order for Interim Relief.

Staff asserts that APSC's sewage treatment plant is outdated, and APSC is incapable of complying with the requirements of the Commission, the Maricopa County Environmental Services Department ("MCESD"), and the Arizona Department of Environmental Quality ("ADEQ").

On March 9, 2001, APSC filed in Docket No. SW-02422A-96-0151 a "Final Plan Regarding

1 Handing Over Operation and Ownership of Casitas Bonitas System and Request for Continuance of
2 Other Procedural Deadlines" (the "Final Plan"). The Final Plan provided that First National
3 Management Incorporated ("First National"), would assume management of the system on an interim
4 basis. The Final Plan contemplated the formation of a "Community Facilities District" which would
5 acquire the Casitas Bonitas System. The Final Plan also requested that the rate case proceeding be
6 suspended and continued.

7 On May 3, 2001, APSC filed an Agreement for Management and Billing Services between
8 APSC and First National. The Agreement provided that either party may terminate the Agreement
9 after the first year upon 30 days written notice. First National has given notice of its intent to
10 terminate the Agreement. First National's president, Mr. Fred T. Wilkinson, has repeatedly expressed
11 considerable frustration to Staff at the slow pace of events, the uncooperative nature of Mr. Smith,
12 and the potential liability faced by First National. In Mr. Wilkinson's opinion, First National has
13 been performing a public service by operating the Casitas Bonitas System for a considerable period
14 of time for little compensation. Staff shares Mr. Wilkinson's opinion in this regard, and is deeply
15 thankful for his considerable efforts to date.

16 On or about June 12, 2002, the Maricopa County Board of Supervisors approved the
17 formation of a Community Facilities District to acquire and operate the Casitas Bonitas System.

18 On June 12, 2002, APSC, by and through its attorneys, met with Staff; Mr. Wilkinson and Mr.
19 Ernie Lucke, President of Adobe West Construction, Inc ("Adobe"). Mr. Lucke presented a plan
20 whereby Adobe would pay for a force main and lift station to connect the Casitas Bonitas System
21 with the system of LPSCO. LPSCO has recently constructed a new sewage treatment plant in the
22 area and has available capacity. Under Adobe's plan, the force main and lift station would transport
23 sewage from the Casitas Bonitas System and from a small, 28-lot development proposed by Adobe to
24 LPSCO. By letter dated June 24, 2002, LPSCO declined Adobe's offer.

25 Various meetings have occurred since June 24, 2002. Mr. Wilkinson has prepared and
26 submitted a grant application on behalf of the Community Facilities District. However, the situation
27 remains largely unchanged. Mr. Wilkinson again contacted Staff, and notified Staff that he will
28 discontinue his management of the Casitas Bonitas System.

1 The Affidavit of Marlin Scott, Jr. states that the Casitas Bonitas System treatment plant is
2 inadequate, does not meet modern standards, and is incapable of complying with applicable health
3 and safety regulations. Mr. Scott's Affidavit also states that without First National, APSC does not
4 have a certified operator as required by ADEQ.

5 The Affidavit of Ronald E. Ludders states that APSC does not have the financial, managerial
6 or technical capabilities to operate the Casitas Bonitas System without the assistance of First
7 National.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes and orders that:

11 **FINDINGS OF FACT**

12 1. On January 17, 1996, APSC filed an application for a rate increase, ACC Docket SW-
13 02422A-96-0151. On July 3, 1996 the Hearing Division issued a Recommended Opinion and Order
14 ("ROO") in Docket SW-02422A-96-0151. On July 10, 1996, APSC filed for bankruptcy in the
15 United States Bankruptcy Court for the District of Arizona, Docket No. B-96-07169-PHX-RGM (Ch.
16 11). The Commission considered the ROO at its open meeting on July 17, 1996 and determined that
17 the matter should be held for further consideration in light of the bankruptcy filing.

18 2. At its open meeting on August 7, 1996, the Commission suspended consideration of
19 this matter indefinitely due to the pending bankruptcy proceeding and ongoing discussions between
20 Staff, the MCESD, and the City of Goodyear. A Procedural Order was issued on August 7, 1996
21 finding that the bankruptcy filing and other events constituted an extraordinary event and indefinitely
22 extending the deadline for entry of a final order in Docket SW-02422A-96-0151.

23 3. On May 10, 1999, a Procedural Order was issued noting that APSC's reorganization
24 plan was confirmed by the Bankruptcy Court and directing Staff to file a supplemental staff report.
25 On June 25, 1999 Staff filed its supplemental staff report. On January 11, 2001, APSC filed a
26 Motion to Continue the deadlines established by the December 1, 2000 procedural order. APSC's
27 Motion noted that "continued operation of the facility in the status quo" was not contemplated, and
28 that a rate case would accordingly be "futile". On February 7, 2001, a Procedural Order was issued

1 ordering APSC to file updated information and setting the matter for hearing.

2 4. On March 9, 2001, APSC filed a "Final Plan Regarding Handing Over Operation and
3 Ownership of Casitas Bonitas System and Request for Continuance of Other Procedural Deadlines"
4 (the "Final Plan"). The Final Plan provided that First National Management Incorporated ("First
5 National"), would assume management of the system on an interim basis. The Final Plan
6 contemplated the formation of a "Community Facilities District" which would acquire the Casitas
7 Bonitas System. The Final Plan also requested that the rate case proceeding be suspended and
8 continued.

9 5. On May 3, 2001, APSC filed an Agreement for Management and Billing Services
10 between APSC and First National. The Agreement provided that either party may terminate the
11 Agreement after the first year upon 30 days written notice. First National has given notice of its
12 intent to terminate the Agreement. First National's president, Mr. Fred T. Wilkinson, has repeatedly
13 expressed considerable frustration to Staff at the slow pace of events, the uncooperative nature of Mr.
14 Smith, and the potential liability faced by First National. In Mr. Wilkinson's opinion, First National
15 has been performing a public service by operating the Casitas Bonitas System for a considerable
16 period of time for little compensation. Staff shares Mr. Wilkinson's opinion in this regard, and is
17 deeply thankful for his considerable efforts to date.

18 6. On or about June 12, 2002, the Maricopa County Board of Supervisors approved the
19 formation of a Community Facilities District to acquire and operate the Casitas Bonitas System.

20 7. On June 12, 2002, APSC, by and through its attorneys, met with Staff, Mr. Wilkinson
21 and Mr. Ernie Lucke, President of Adobe West Construction, Inc ("Adobe"). Mr. Lucke presented a
22 plan whereby Adobe would pay for a force main and lift station to connect the Casitas Bonitas
23 System with the system of LPSCO. LPSCO has recently constructed a new sewage treatment plant in
24 the area and has available capacity. Under Adobe's plan, the force main and lift station would
25 transport sewage from the Casitas Bonitas System and from a small, 28-lot development proposed by
26 Adobe to LPSCO. By letter dated June 24, 2002, LPSCO declined Adobe's offer.

27 8. Various meetings have occurred since June 24, 2002. Mr. Wilkinson has prepared and
28 submitted a grant application on behalf of the Community Facilities District. However, the situation

1 remains largely unchanged. Mr. Wilkinson again contacted Staff, and notified Staff that he will
2 discontinue his management of the Casitas Bonitas System.

3 9. The operation by APSC of the Casitas Bonitas System without the assistance of First
4 National constitutes a clear and present danger to the public health and safety. The threat of such
5 operation is imminent.

6 10. It appears that Smith conducts all the affairs of APSC and makes all decisions on
7 behalf of APSC and treats APSC as his alter ego.

8 11. It appears that they only reasonable and practical solution to the problems facing the
9 Casitas Bonitas System is an interconnection with the system of LPSCO.

10 12. Staff requests that we issue an Order for Interim Relief (1) appointing First National,
11 or another qualified manager selected by Staff, as the manager ("Manager") of the Casitas Bonitas
12 System, upon reasonable terms and conditions agreed between Manager and Staff, with full authority
13 to conduct the business and affairs of the Casitas Bonitas System; and (2) directing LPSCO to file
14 within 30 days a detailed plan for the construction of appropriate facilities to interconnect with the
15 Casitas Bonitas System; such plan to include a construction timetable, cost estimate, pro forma
16 calculation of fair value and rates for the interconnection and proposed tariff for the interconnection.

17 13. Staff requests that we issue an Order to Show Cause directing APSC to show cause (1)
18 why its service should not be found unjust and unreasonable as described herein; (2) why the
19 appointment of the Manager should not continue indefinitely; and (3) why APSC should not
20 indemnify the Manager for all claims related to its management of the Casitas Bonitas System.

21 14. Staff requests that we issue an Order to Show Cause directing Smith to show cause (1)
22 why Smith should not be found to be the alter ego of APSC; (2) why Smith should not be held
23 personally responsible for the actions or inaction of APSC; and (3) why Smith should not indemnify
24 the Manager for all claims related to its management of the Casitas Bonitas System.

25 15. Staff requests that we issue an Order to Show Cause directing LPSCO to show cause
26 (1) why its rejection of the Adobe offer was not unjust and unreasonable; and (2) why it should not be
27 ordered to construct, or enter into an agreement to construct, appropriate facilities to interconnect
28 with the Casitas Bonitas System.

1 16. Staff's requests described in Findings of Fact 12, 13, 14, and 15 are reasonable.
2

3 **CONCLUSIONS OF LAW**

4 1. APSC and LPSCO are public service corporations within the meaning of Article XV
5 of the Arizona Constitution and are subject to the jurisdiction of the Commission.

6 2. Probable cause exists to believe that Smith is the alter ego of APSC. If Smith is the
7 alter ego of APSC, Smith will be subject to the jurisdiction of the Commission to the same extent as
8 APSC. Sufficient evidence exists to support issuance of an order to show cause against Smith as
9 described in Finding of Fact 14.

10 3. The Commission has jurisdiction over the subject matter of Staff's Complaint, Petition
11 for Order to Show Cause, and Petition for Interim Relief.

12 4. Notice of this proceeding has been given in accordance with law.

13 5. The operation of the Casitas Bonitas System in a manner that presents a clear and
14 present danger to the public health and safety as found in Finding of Fact 9 constitutes unjust and
15 unreasonable service. Pursuant to A.R.S. §§ 40-202; 40-203; 40-321; 40-322, and Article XV § 3 of
16 the Arizona Constitution, the Commission may prohibit unjust and unreasonable service. Because
17 there is an imminent threat of such unjust and unreasonable service, the Commission may grant the
18 requested interim relief against APSC described in Finding of Fact 13.

19 6. Probable cause exists to believe that LPSCO's rejection of Adobe's offer was unjust
20 and unreasonable. Pursuant to A.R.S. §§ 40-202; 40-203; 40-321; 40-322, the Commission may
21 prohibit unjust and unreasonable service.

22 7. Pursuant to A.R.S. §§ 40-331 and 40-332, the Commission may require additions and
23 improvements to the facilities of a public service corporation, and may require the joint use of the
24 facilities of a public service corporation.

25 8. It is lawful and in the public interest to issue the requested Order to Show Cause
26 against the Respondents described in Findings of Fact 13, 14, and 15.

27 9. It is lawful and in the public interest to issue the requested Order for Interim Relief as
28 described in Finding of Fact 12.

ORDER

1
2 IT IS THEREFORE ORDERED that APSC shall appear and show cause at a time and place
3 designated by the Hearing Division (1) why its service should not be found unjust and unreasonable
4 as described herein; (2) why the appointment of the Manager should not continue indefinitely; and (3)
5 why APSC should not indemnify the Manager for all claims related to its management of the Casitas
6 Bonitas System.

7 IT IS FURTHER ORDERED that Smith shall appear and show cause at a time and place
8 designated by the Hearing Division (1) why Smith should not be found to be the alter ego of APSC;
9 (2) why Smith should not be held personally responsible for the actions or inaction of APSC; and (3)
10 why Smith should not indemnify the Manager for all claims related to its management of the Casitas
11 Bonitas System.

12 IT IS FURTHER ORDERED that LPSCO shall appear and show cause at a time and place
13 designated by the Hearing Division (1) why its rejection of the Adobe offer was not unjust and
14 unreasonable; and (2) why it should not be ordered to construct, or enter into an agreement to
15 construct, appropriate facilities to interconnect with the Casitas Bonitas System.

16 IT IS FURTHER ORDERED that First National, or another qualified manager selected by
17 Staff, is hereby appointed as the interim manager ("Interim Manager") of the Casitas Bonitas System,
18 upon reasonable terms and conditions agreed to between the Interim Manager and Staff.

19 IT IS FURTHER ORDERED that the Interim Manager shall have full authority to conduct the
20 business and affairs of the Casitas Bonitas System.

21 IT IS FURTHER ORDERED that the appointment of the Interim Manager shall be in effect
22 while proceedings in this docket are pending or until otherwise ordered by the Commission.

23 IT IS FURTHER ORDERED that APSC may apply at any time for the termination of the
24 appointment of the Interim Manager upon a showing that APSC has acquired sufficient technical,
25 financial, and managerial capabilities to operate the Casitas Bonitas System and that such application
26 shall be heard as soon as reasonably practicable.

27 IT IS FURTHER ORDERED that if APSC, Smith, and LPSCO intend to appear and show
28 cause as ordered above they shall each file within 10 days of the effective date of this order a

1 preliminary statement describing how they will make the showing of cause. Said filing shall include
2 an Answer to Staff's Complaint if the Respondent has not yet filed an Answer.

3 IT IS FURTHER ORDERED that the Hearing Division shall schedule further appropriate
4 proceedings.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

8
9
10
11
12 CHAIRMAN

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Secretary of the Arizona Corporation Commission, have
15 hereunto, set my hand and caused the official seal of this
16 Commission to be affixed at the Capitol, in the City of
17 Phoenix, this ____ day of _____ 2002.

18 _____
19 BRIAN C. McNEIL
20 Executive Secretary

21 DISSENT: _____
22
23
24
25
26
27
28

SERVICE LIST for

1 Docket No. SW-02422A-02-0720
SW-01428A-02-0720

2
3 Lyn Farmer, Chief Administrative Law Judge
4 Hearing Division
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

CT Corporation System
3225 N. Central Avenue
Phoenix, Arizona 85012
Statutory Agent for Litchfield Park Service
Company

8 Ernest Johnson
9 Director, Utilities Division
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

Richard L. Sallquist, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Circle
Phoenix, Arizona 85016-2129
Attorneys for Litchfield Park Service
Company

13 Christopher C. Kempley
14 Chief Counsel
15 Legal Division
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

Mr. Fred T. Wilkinson
National Management Incorporated
P.O. Box 2899
459 N. Gilbert Road, Ste. B-130
Gilbert Arizona 85234

19 Mariscal Weeks McIntyre and Friedlander,
20 P.A.
21 Attn: Kenneth A. Hodson, Esq.
22 2901 N. Central Avenue, Ste. 200
23 Phoenix, Arizona 85012
24 Statutory Agent and Attorneys for American
25 Public Service Company

Mr. Ernie Lucke
Adobe West Construction, Inc.
4623 W. Myrle
Glendale, Arizona 85301

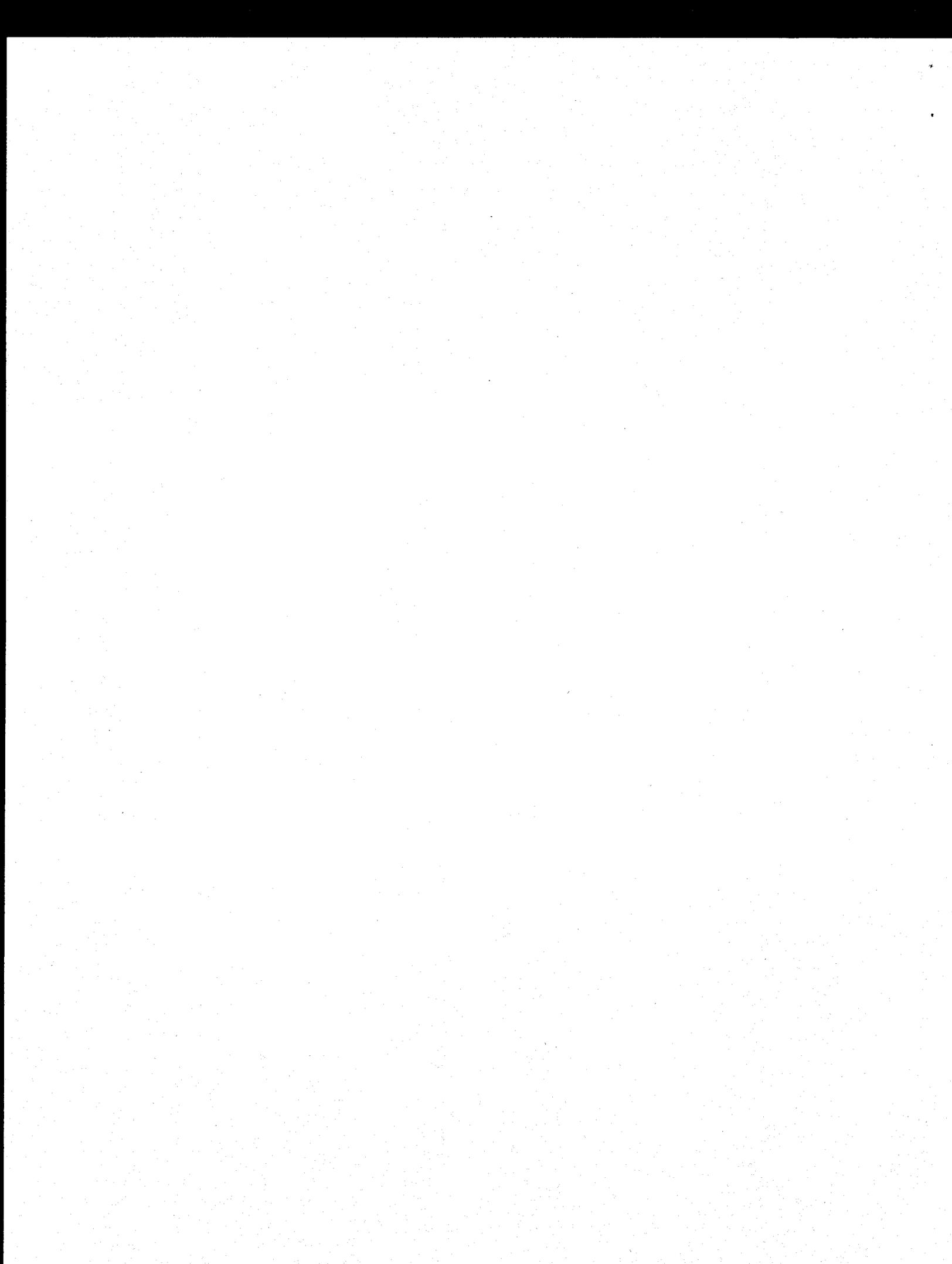
26 Steven A. Hirsch, Esq.
27 Bryan Cave LLP
28 Two North Central Avenue, Ste. 2200
Phoenix, Arizona 85004
Attorneys for American Public Service
Company

Laurie A. Woodall, Esq.
Office of the Attorney General
1275 W. Washington
Phoenix, Arizona 85007
Attorneys for the ADEQ

Mr. Lester O. Smith, Jr.
221 E. Southgate
Phoenix, Arizona 85040
Individually and as President and
Secretary of American Public Service
Company

Mr. Mike Traubert
Manager, Water Quality Compliance Section
Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, Arizona 85007

Maricopa County Environmental Services
Department
Water and Wastewater Management Division
1001 N. Central, Ste. 150
Phoenix, Arizona 85007





Jane Dee Hull
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schaier
Director

June 7, 2002

Mr. Jason Williamson
Bensch Ranch Utilities LLC
6825 E. Tennessee Avenue, Suite 401
Denver, CO 80224
(303) 333-1250

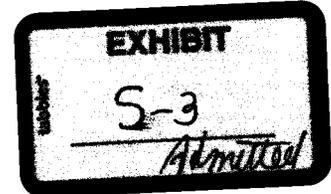
Re: Bensch Ranch Wastewater Treatment Plant (WWTP)
Decision To Issue an Aquifer Protection Permit (APP) # 105001 LTF # 22901

Dear Mr. Williamson:

The Arizona Department of Environmental Quality (ADEQ) has completed the public notice of the permit action applied to the above referenced facility and has made a final decision to issue an APP pursuant to Arizona Administrative Code (A.A.C.) R18-9-A201.E. You will soon receive an invoice for the final bill or a refund check for an amount if any initial fee paid exceeds the billable costs for processing your permit application. The permit will be signed and mailed to you upon receipt of the payment for the final bill.

The review of your APP application was subject to the requirements of the licensing time frames statute under Arizona Revised Statute (A.R.S.) § 41-1072 through 41-1079. Therefore, this letter is the written notification of the ADEQ licensing decision required under (A.R.S.) § 41-1076 and Arizona Administrative Code (A.A.C.) R18-1-507(A). This determination may be an appealable agency action under A.R.S. § 41-1092(3) or a contested case under A.R.S. § 41-1001(4). You have the right to request a hearing on an appealable agency action or a contested case and to request formal settlement conference under A.R.S. § 41-1092.06 and A.A.C. R18-1-203. To obtain a hearing on an appealable agency action or a contested case, you must file a notice of appeal within 30 days after receiving this letter.

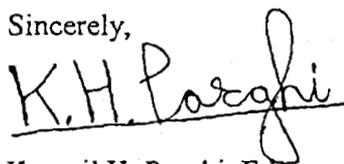
As a courtesy I am also enclosing the executive summary, modification document and the final modified draft permit as it will be signed by the ADEQ Water Quality Division Director.



Mr. Jason Williamson
Page 2
June 7, 2002

If you have any questions regarding this permit or the facility, please feel free to contact me at 602-207-4578 or at khp@ev.state.az.us on email.

Sincerely,



Kaumil H. Parghi, E.E.
Wastewater, Recharge, & Reuse Unit
Water Permits Section, Water Quality Division

cc: Asif Majeed, Supervisor, Wastewater, Recharge, & Reuse Unit
Tito Comparan, Hydrologist, Wastewater, Recharge, & Reuse Unit
Lynne Dekarske, Administrative Assistant, Water Permits Section

Enclosures(2): Final Draft Permit and Executive Summary

MWR02:0451