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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

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2 COMMISSIONERS

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- 3 MIKE GLEASON, Chairman
- 4 WILLIAM A. MUNDELL
- 5 JEFF HATCH-MILLER
- 6 KRISTIN K. MAYES
- 7 GARY PIERCE

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AZ CORP COMMISSION
DOCUMENT CONTROL

8 IN THE MATTER OF THE APPLICATION OF
9 DESERT HILLS WATER COMPANY FOR
10 APPROVAL OF TRANSFER OF ITS UTILITY
11 ASSETS TO THE TOWN OF CAVE CREEK,
12 PURSUANT TO A.R.S. § 40-285 AND FOR
13 CANCELLATION OF ITS CC&N.

DOCKET NO. W-02124A-06-0717

STAFF'S CLOSING BRIEF

14 **I. INTRODUCTION**

15 On November 8, 2006, the Desert Hills Water Company ("Desert Hills") submitted an
16 application for approval to transfer its utility assets to the town of Cave Creek, Arizona ("Town")
17 pursuant to A.R.S. §40-285. The Town seeks approval of the transfer agreement and cancellation of
18 Desert Hills' Certificate of Convenience and Necessity.

19 This application was preceded by what could only be characterized as the worst period in
20 Desert Hills' history. Staff filed a Complaint and Petition for Order to Show Cause ("Complaint")
21 against Desert Hills on June 6, 2006. The Complaint alleged numerous violations of Arizona law,
22 Commission Rules and Orders. The alleged violations described in the eight counts of the Complaint
23 can be categorized into 3 categories: (i) Desert Hills' failure to provide adequate service to existing
24 customers; (ii) Desert Hills' failure to promptly and adequately process main extension requests; and
25 (iii) the failure of Desert Hills to promptly respond to customer complaints and Staff inquires. The
26 Commission issued an Order to Show Cause in Decision No. 68780 on June 19, 2006 ("OSC"). A
27 hearing was held on August 21, 2006. Staff presented testimony that for more than a year, Desert
28 Hills was unable to provide adequate service to its service territory and did not meet its obligations as
a certificated public service corporation. A lack of planning, poor oversight of its operations, an over-
reliance on temporary emergency water supplies based on an apparent desire to enhance profits led to
a serious public health and safety crisis for its customers, particularly those located in a approximately
one-square mile area.

1 Desert Hills agreed that it had failed to consistently deliver water to customers; that customers
2 had experienced low pressure and water outages and it had failed to respond timely to customer
3 complaints; had failed to respond to lawful customer requests for service; failed to process main line
4 extensions in a timely manner; self imposed a moratorium on new service connections without
5 Commission authorization; and had failed to approve applications for main extensions to plan as
6 required by ACC 14-2-406 (B)(2).

7 Staff recommended several non-monetary and monetary penalties, which included a
8 moratorium on new connections and the imposition of a series of critical event deadlines which Desert
9 Hills had to meet or face the appointment of an interim manager. Proposed conditions included the
10 receipt of the approval of construction of the Cloud Road booster station; compliance with the
11 Maricopa County Environmental Services Division; a demonstration of adequate long term permanent
12 water supplies; rate adjustment for customers in the one square mile area for the inadequate service
13 they received and the submittal of a remedial plan to improve communications with its customers and
14 with Staff.

15 On September 12, 2006 the Town, by resolution, purchased the assets, including real and
16 personal property, and stock of Desert Hills, for a price not to exceed \$2.5 Million and declared an
17 emergency. The Commission held a Special Open Meeting on September 14, 2006 to discuss whether
18 emergency action on the part of the Commission was necessary. At that Open Meeting the Town
19 indicated that it had purchased the stock of Desert Hills and the purchase had closed on September 14,
20 2006. The Town indicated that it intended to immediately liquidate the assets and thereby take control
21 of those assets to provide water service to Desert Hills' customers. The Commission took emergency
22 action to preserve the status quo and to ensure that the health and safety of Desert Hills' customers
23 would be protected until the approval of the transfer. The OSC is still pending; until approval of the
24 transfer of assets, the Commission still has some jurisdiction over Desert Hills. However, it should be
25 noted that once the transfer is approved, there will no longer be a holder of a certificate of convenience
26 and necessity against which the Commission could enforce the pending OSC.

27 At the evidentiary hearing concerning the subject application held on February 22, 2007, the
28 Town testified that it was committed to maintaining the current rates of the Desert Hills customers.

1 The Town indicated that it would form an advisory committee to provide a voice for the Desert Hills
2 customers who reside outside of the Town boundaries. The Town testified that it is working with an
3 engineering firm to develop a master plan for the Desert Hills and the Cave Creek areas. The Town
4 has hired Arizona American to manage the system. For the 189 affected residents of the one square
5 mile, the Town has agreed to provide credit for the monthly minimum charges for water service
6 assessed during the period of the outages. To improve communications with its customers, the Town
7 will develop a website. They have committed to continue to work with the Maricopa County
8 Environmental Service Department and the Arizona Department of Environmental Quality on
9 ensuring compliances with applicable rules and regulations. They have committed to continue efforts
10 to address long-term water supply needs for customers previously served by Desert Hills. The Town
11 has memorialized these commitments in a transfer agreement that accompanied its application to the
12 Commission.

13 During the hearing, the Administrative Law Judge and Commissioner Mayes requested several
14 issues be briefed by the parties; the nature of the Commission's role and the responsibility of a
15 municipality in the sale of assets of a private public service corporation to a municipality; the
16 responsibility of municipal utilities to its nonresident customers; and, a summary of previous
17 Commission decisions involving the sale of assets of a private public service corporation to a
18 municipality.

19 **II. THE COMMISSION'S ROLE IN THE SALE OF ASSETS OF A PRIVATE PUBLIC**
20 **SERVICE CORPORATION TO A MUNICIPALITY**

21 The Attorney General addressed the Commission's jurisdiction over transfers of assets of a
22 public utility to a municipality in Opinion Number 62-7. The Commission had requested an opinion
23 from the Attorney General on whether the Commission had jurisdiction to hold hearings regulating the
24 transfer of assets from a privately owned water utility to a municipality and to enter an order
25 approving or disproving the transfer. Further, the Commission wanted to know that in the event it was
26 determined that there was jurisdiction, if the Commission, during the course of a hearing, could
27 inquire into the terms and conditions of the sale, the reasonableness of the terms and conditions of the
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1 payments and the reasonableness of the amount of the sale. Finally the Commission inquired as to the
2 effect of A.R.S. § 9-516(C) upon the Commission's jurisdiction.

3 The Commission had recently held hearings concerning the transfer of the assets of the
4 Government Heights Water Company to the City of Tucson. The foregoing questions were raised at
5 the hearing, which prompted the Commission to request an opinion from the Attorney General.

6 The Attorney General concluded that A.R.S. § 40-285 requires a privately owned public utility
7 to obtain the approval of the commission prior to disposing of its assets regardless of whether the
8 proposed purchaser is a private company or a municipality. A.R.S. § 40-285(A), "Disposition of plant
9 by public service corporations; acquisition of capital stock of public service corporation by other
10 public service corporation," states in part:

11 A...water corporation shall not sell, lease, assign, mortgage or otherwise
12 dispose of or encumber the whole or any part of its...system, necessary or
13 useful in the performance of its duties to the public, or any franchise or
14 permit or any right thereunder, ... *without first having secured from the
commission an order authorizing it so to do . (emphasis added)*

15 The opinion further stated that the voluntary agreement by a municipality to purchase a privately
16 owned public utility does not subject that municipality to the jurisdiction of the Commission. The
17 seller-utility must obtain Commission approval to make the transfer, the purpose being to permit the
18 Commission to make sure that the rights of the customers of the utility will be adequately protected.
19 The duties and powers of the commission are limited to the necessary hearings and orders to make
20 sure that sale by the utility will not leave persons without service by the utility or the municipality.
21 The opinion concluded that by virtue of A.R.S. § 9-516, the Commission still retains jurisdiction over
22 the utility and the utility still has an interest as holder of a certificate of convenience and necessity,
23 until the sale has been approved and the municipality is servicing the entire area and there is no area
24 requiring certification or service by any private utility. The Attorney General concluded that a
25 municipality is bound to honor the order of the Commission with respect to the sale and that the
26 Commission may not enter an order denying the public utility the right to dispose of its assets except
27 upon the grounds that the utility is not in fact terminating its function in the service of its customers,
28 the effect of A.R.S. § 40-285(C). If the municipality refuses to serve customers in the area taken over,

1 the Commission retains the power to investigate such refusals and issue a new certificate if necessary
2 to provide service.

3 It is Staff's position that this opinion allows the Commission to retain some of its authority to
4 remedy a situation after the sale of assets to a municipality if nonresident customers of a municipal
5 system are being refused service.

6 **A. Responsibility of a Municipal Utility to its Nonresident Customers**

7 A.R.S. § 9-516 was enacted, in part, by the legislature to govern water service to non-residents
8 by a municipality. The statute prohibits a city from discontinuing water service to non-residents. The
9 statute provides in part:

10 C. A city or town acquiring the facilities of a public service
11 corporation rendering utility service without the boundaries of such city or
12 town, or which renders utility service without its boundaries, shall not
13 discontinue such service, once established, as long as such city or town
owns or controls such utility.

14 The court in *Jung v City of Phoenix*, 160 Ariz. 38, 770 P.2d 342 (1989), interpreted A.R.S. § 9-
15 516(C) to hold a municipality to a reasonableness standard in the setting of rates. In *Jung*, the
16 plaintiffs were nonresident customers of the City of Phoenix water department, challenging the
17 validity of an ordinance that was enacted in 1985, which doubled water rates for those residing outside
18 of the geographical boundaries of the city.

19 The court in *Jung*, following the example set by the regulation of public service corporations
20 by the Commission, found that the implication of reasonable rates must be read into A.R.S. § 9-516
21 (C). If there were no reasonableness standard, the court argued, a city could charge any rate it wished
22 despite its effect on the non-residents' need for utility service. The statute places upon a city the legal
23 duty to continue water service to non-residents. The court held, "as a consequence of that duty, we
24 hold that the City must provide water service at a reasonable rate." *Jung*, 160 Ariz. at 40; 770 P.2d at
25 344.

26 The reasonableness standard was codified by A.R.S. § 9-511.01(D), which states: "Any
27 proposed water or wastewater rate or rate component, fee or service charge adjustment or increase
28 shall be just and reasonable." Further, A.R.S. § 9-511.01 describes the steps a municipality must take

1 before it imposes a rate increase. Rate increases must be justified in a written report made available to
2 the public and a public hearing must be held.

3 Thus, nonresident customers are protected by statute from being charged unreasonable rates.
4 The protections under A.R.S. §§ 9-511.01 and 9-516 coupled with the retention of certain powers by
5 the Commission pursuant to Atty. Gen. Op. 62-7 provide nonresident customers with a continuity of
6 service and the guarantee of a reasonable rate structure in the event of a sale of assets of a water utility
7 to a municipality.

8 **B. Protection of Desert Hills Customers**

9 The Desert Hills customers are outside the boundaries of the Town. Mr. Abujbarah, the Town
10 manager, testified on behalf of the Town, that it intends to form a citizens advisory board, consisting
11 of residents of the Desert Hills area and from the town of Carefree (an area that is being served by
12 Cave Creek Water, soon to be purchased by the Town), to give those residents a voice. (Tr. at 40: 11-
13 25; Tr. at 41:1-8). It is the Town's intention to model its board after the Citizens Water Advisory
14 Committee of the City of Tucson.

15 The City of Tucson, as a part of its overall water management strategy, created the Citizens
16 Water Advisory Committee (Tucson Code, Sec. 27-60 et. seq.). The Committee advises and assists
17 the Mayor and city Council in the development of policies and the setting of rates. City residency is
18 not required and the members are appointed by the Mayor and Council and are also nominated by the
19 City Manager. If the Town models its board after the Tucson model, the non-resident customers of its
20 water systems should have an adequate voice to promote the concerns of the non-residents and to
21 assist in assuring that the water system delivers high quality, safe water to all of the Town's
22 customers.

23 **III. PREVIOUS COMMISSION DECISIONS INVOLVING THE SALE OF ASSETS OF A** 24 **PRIVATE UTILITY TO A MUNICIPALITY**

25 The Commission has considered and approved the sale of assets of a private water company to
26 a municipality on more than one occasion. Most recently, in 2005, in Decision No. 68334,¹ the sale of

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28 ¹ *In The Matter of the Application Of Cottonwood Water Works, Inc. For Approval of the Transfer of Assets and
For Cancellation of the Certificate of Convenience and Necessity, Decision No. 68334, Docket No.
W-01045A-05-0578, Dec. 9, 2005.*

1 the assets of Cottonwood Water Works ("CWW") to the City of Cottonwood and the Town of
2 Clarkdale was approved by the Commission.

3 CWW was a public service corporation, serving approximately 4900 customers. CWW
4 spanned the Town of Clarkdale and the City of Cottonwood. The Town of Clarkdale and the City of
5 Cottonwood had embarked on a mission to purchase the water companies in the area in order to
6 consolidate the service and add necessary improvements. The record in the matter indicated that
7 CWW has provided quality service to its customers. Steve Horton, City Attorney with Cottonwood,
8 gave public comment that the service area for CWW that was outside of the municipal boundaries of
9 Cottonwood and Clarkdale would be served by Cottonwood through its municipal water utility
10 (Decision No. 68334 at 4, FOF No. 13). The Order required CWW to file as a compliance item within
11 60 days of the date of closing of the transaction, certification that all customers' deposits have been
12 credited and within 30 days of the closing of the transaction, certification that the transaction was
13 completed.

14 In its water management plans, the City of Tucson commenced the purchase of small water
15 companies near it, some at the request of the small water companies, some by annexation, and some in
16 an effort to consolidate water services in order to increase efficiencies and improve the quality of
17 service. The City of Tucson estimates that in the last 60 years it has acquired over 100 small water
18 companies and their wells. (City of Tucson Water Plan 2000-2050 at Appendix A-1) Several of the
19 sales to the City have been approved by the Commission.

20 In 1992, the Commission in Decision No. 57744,² approved the sale of Metropolitan Water
21 Company ("Metropolitan") to the City of Tucson. Metropolitan served over 11,000 connections in an
22 area northwest of Tucson; Tucson's service area surrounded Metropolitan on the north, south and east.
23 Metropolitan was ordered to make refunds of customer deposits through an escrow account and to
24 notify the Commission at the conclusion of the sales transaction. The Commission noted that some of
25 the Metropolitan customers would see a rate increase as a result of the transaction, but noted that

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28 ² *In the Matter of the Application of Metropolitan Water Company for Approval of the Sale of Assets
and Cancellation of the Certificate of Convenience and Necessity*, Decision No. 57744, Docket No.
W-01836A-91-0226, Feb. 21, 1992.

1 customers will have an opportunity to be heard if they choose to attend the Citizens' Water Advisory
2 Committee meetings. (Decision 57744 at 10:26-28). Subsequent to the sale, in 1992, the Pima
3 County Board of Supervisors created the Metropolitan Domestic Water Improvement District
4 ("MDWID") and the City of Tucson resold Metropolitan to MDWID.

5 The Commission also considered and approved the sale and transfer of assets and deletion of a
6 portion of the CC&N in Decision No. 65984.³ Forty Niner Water Company ("Forty Niner") provided
7 water service to certain portions of Pima County, located northeast of the City of Tucson, servicing an
8 estimated 375 customers. Forty Niner sought Commission approval to sell its "non-golf course
9 distribution system" to the City of Tucson. Forty Niner had major problems with well production
10 capacity and water quality. Because Forty Niner pumped from a shallow aquifer, during the summer
11 of 2002, it experienced water shortages that required it to purchase water from the City of Tucson to
12 meet the needs of its customers. Forty Niner sought to retain its water production, storage and
13 distribution system used to provide service to Forty Niner Golf and Country Club because the City of
14 Tucson has (and continues to have) a water use policy that does not allow the use of potable water for
15 irrigating golf courses. During subsequent negotiations, the City of Tucson agreed to purchase the
16 golf course and its water distribution system as well. The Golf Club agreed to provide over \$1 million
17 to assist in the construction of an effluent line to the course, allowing Forty Niner to cap its wells.

18 In that Decision, the Commission ordered Forty Niner to provide the Commission with
19 evidence that the sale had been consummated and to provide evidence within 30 days of the closing of
20 the sale, that all customer and meter deposits were refunded or credited to its customers.

21 In Decision No. 66239,⁴ the Commission approved the sale of the assets of Midvale Farms
22 Water Company ("Midvale") to the City of Tucson. Midvale was a small water company servicing
23 only 22 customers. Midvale had a long relationship with the City of Tucson as it had no water
24 production of its own and purchased all of its requirements from the City of Tucson. Midvale agreed

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26 ³ *In the Matter of the Application of Forty Niner Water Company for Approval of the Sale of Assets and
27 Transfer of Its Certificate of Convenience and Necessity and Application for Approval of the Deletion
28 of a Portion of the CC&N*, Decision 65984, Docket No. W-01777A-02-0175, June 17, 2003.

⁴ *In the Matter of the Application of Midvale Farms Water Company for Approval of the Sale of Assets
and Cancellation of Its Certificate of Convenience and Necessity*, Decision No. 66239, Docket No.
W-02375A-03-0217, Sept. 16, 2003.

1 to transfer its rights to its Central Arizona Project water allocation. Midvale was ordered to provide
2 evidence that all customer deposits were refunded.

3 The Commission has also considered the transfer of a wastewater system to a municipality. In
4 Decision Nos. 67987⁵ and 68746,⁶ Southland Sanitation (Southland) requested and was granted
5 permission to delete its CC&N to provide sewer service in Cochise County, adjacent to the City of
6 Sierra Vista. In Decision No. 68746, the City of Sierra Vista agreed to acquire Southland's entire
7 CC&N area. In order to service the entire area, additional facilities were needed and the property
8 owner of a portion of the land in the certificated area agreed to build the necessary facilities and
9 transfer it to the City. The City of Sierra Vista agreed to charge the current Southland customers the
10 current Southland rates, which are higher than the City rates, in order to recoup the purchase price and
11 not pass the cost of the system to current city customers. Once the costs were recovered, the
12 Southland customers would then be charged the City rates. The City also agreed to refund 20 security
13 deposits. Southland was also ordered to provide a copy of the sales agreement.

14 The Commission has also approved the sale of assets to improvement districts and municipal
15 corporations. The Town of Oro Valley used a municipal property corporation to finance its
16 acquisition of the Canada Hills Water Company and the Rancho Vistoso Water Company system
17 assets. The proceedings were consolidated and the Commission approved the transfer of assets in
18 Decision No. 59603⁷ ("Canada Hills") and Decision No. 59604⁸ ("Rancho Vistoso"). Most recently,
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22 ⁵ *In the Matter of the Application of Southland Sanitation Co. for Deletion of Part of its Certificate of*
23 *Convenience and Necessity to Provide Wastewater Service in Cochise County*, Decision No. 67987,
Docket No. SW-02390A-05-0097, July 18, 2005.

24 ⁶ *In the Matter of the Application of Southland Sanitation Co. for Deletion of Part of its Certificate of*
25 *Convenience and Necessity to Provide Wastewater Service in Cochise County*, Decision No. 68746,
Docket No. SW-02390A-05-0796, June 5, 2006.

26 ⁷ *Application for Extinguishment of the CC&N and to Transfer Certain Water Assets to the Town of*
27 *Oro Valley Municipal Property Corporation*, Decision No. 59603, Docket No. W-02348A-96-0073,
Apr. 24, 1996.

28 ⁸ *Application for Extinguishment of the CC&N and to Transfer Certain Water Assets to the Town of*
Oro Valley Municipal Property Corporation, Decision No. 59604, Docket No. W-02342A-96-0104,
Apr. 24, 1996.

1 the Commission approved the sale of assets of Green Valley Water Company to the Green Valley
2 Domestic Water Improvement District, Decision No. 65855.⁹

3 **IV. CUSTOMER COMPLAINTS; COMMENTS REGARDING THE SALE**

4 As Staff noted in its testimony, the number of complaints received by Consumer Services
5 concerning the Desert Hills system has decreased dramatically (Tr. at 28:12; 200:1). From November
6 28, 2006 until March 12, 2007, Consumer Services has lodged nine inquiries/complaints concerning
7 Desert Hills, summarized in the following table:

Date	Nature
12/1/06	Billing/Leak
12/5/06	Construction Water
12/20/06	Main Extension Agreement
12/21/06	Outage
12/22/06	Against rate increase
1/25/07	Water quality strong chlorine smell/sale (pressure was strong but wondered if it would decrease once sale was approved)
1/25/07	Main Extension Agreement
1/26/07	Easement Issue
3/2/07	Water Quality

17 **V. THE TRANSFER IS IN THE PUBLIC INTEREST**

18 **A. The Town is Resolving the Issues Raised in the Commission's Order to Show**
19 **Cause Against Desert Hills Water Company.**

20 **1. The Town Has Taken Steps to Assure An Adequate Supply of Water**

21 The primary issue raised in the OSC against the Desert Hills was its failure to ensure an
22 adequate long-term water supply for its customers. This lack of planning, in part, lead to severe
23 shortages last summer, particularly in what has become known as the "one square mile area" of Desert
24 Hills service territory.

28 ⁹ *Application for Approval of the Sale of Assets and/or the Cancellation of the CC&N*, Decision No. 65855, Docket No. W-02025A-02-0378, Apr. 23, 2003.

1 The Town's Manager, Usama Abjubarah, testified at the hearing that the Town is proactively
2 working toward ensuring an adequate long-term water supply for Desert Hills customers for the
3 approaching summer peak period as well as for non-peak periods as well.

4 First, the Town has hired CH2M HILL, an engineering firm with over 60 years of experience
5 in water and waste water engineering. (Tr. at 165). Mr. Tom McLean, an engineer with CH2M HILL,
6 testified that they are preparing a water master plan for both the Desert Hills and Cave Creek Water
7 systems, at the request of the Town. The firm is looking at any available supplies of water, and its
8 long-range effort will include both surface water and ground water, as well as conservation strategies
9 and reuse water strategies. (Tr. at 168). The master plan is using land use and population projections
10 to at least 2030, which coincides with the build-out for these areas. (Tr. at 170-71). The firm then
11 utilizes a computerized hydraulic model of each system. (*Id.*). Mr. McLean also testified that they
12 will consider both long and short-term needs and make sure that they can find the best avenues to
13 solutions that provide the best economy and most strategic solutions for customers. (Tr. at 172). Once
14 they have identified the needed improvements, Mr. McLean testified that they would be looking at a
15 collaborative effort with the town, the operator, and the customers of the systems in going forward.
16 (*Id.*). The firm intends to submit the master plan to the Town in the later part of March. (Tr. at 184).

17 Most importantly, from Mr. McLean and Town Manager Abjubarah's perspective is the recent
18 acquisition of Cave Creek Water Company by the Town. The Cave Creek Water Company is adjacent
19 to Desert Hills. The Cave Creek Water Company has a CAP allocation of 1,600 acre feet of water per
20 year. (Tr. at 168). Cave Creek has also recently acquired an additional 200 acre feet per year of water
21 through a purchase which brings the total to 1,800 acre feet. (*Id.*). Mr. McLean also testified that
22 there are also some activities currently under way that will provide another 800 acre feet of water. (Tr.
23 at 168-69). These issues surrounding the additional 800 acre feet of water should be resolved by the
24 end of 2007. (*Id.*). That would bring the total CAP allocation available up to 2,600 acre feet. (*Id.*).
25 Cave Creek Water Company utilizes approximately 1,600 acre feet per year. (*Id.*).

26 Both Mr. McLean and Town Manager Abjubarah testified that they believe adequate short-
27 term supplies should also be available to accommodate the summer peak period which is quickly
28 approaching. (Tr. at 148; 191). The Cloud Road booster station has been constructed and is

1 operational as well as an additional 250,000 gallons of storage. This was not in place last year.
2 There's also a 38th Street booster that has been installed on the Cave Creek system side that provides
3 additional pressure to the western portion of that service area right near the interconnect of Cave Creek
4 Water Company. (Tr. at 191-92). The Town will keep the temporary connection with the Anthem
5 system in place to ensure an adequate water supply for the summer months. (Tr. at 54). The Town is
6 also finalizing a longer-term water supply contract with Arizona American for up to two million
7 gallons of water a day to Desert Hills and Cave Creek. (*Id.*). The Town does not intend to rely upon
8 this interconnection long-term; however the interconnection could eventually be used to wheel water
9 from other sources, including the City of Phoenix. (Tr. at 68, 78). The current agreement will remain
10 in place after April 1st until the agreement under negotiation is completed. (Tr. at 66). Finally, it will
11 also be beneficial to have both the Cave Creek Water Company and Desert Hills operated by the same
12 system operator.

13 On a longer term basis, in addition to the strategies set forth in the master plan, current plans
14 are now to make improvements to both the Cave Creek and Desert Hills systems. The Town has filed
15 an application with the Water Infrastructure Finance Authority for \$4 million to start capital
16 improvements immediately to the Desert Hills water delivery system. (Tr. at 63). Improvements are
17 also being planned on the Cave Creek side of the integrated system. (Tr. at 82). The Town intends to
18 make improvements to the interconnection between the two systems which is currently at four inches.
19 (Tr. at 75). The Town is looking at increasing the interconnection to eight inches. (*Id.*). The Town is
20 also looking at increasing water storage on the Cave Creek side of the integrated system so increased
21 water supplies will be available to Desert Hills. (*Id.*). The master plan will attempt to prioritize the
22 capital improvements that are needed to bring the systems to par. (*Id.*).

23 **2. The Town Is Resolving Issues with The Maricopa Department of**
24 **Environmental Quality**

25 Town Manager Abjubarah testified that the existing Maricopa County Environmental Services
26 Department ("MCESD") Notice of Violation ("NOV") had been resolved. (Tr. at 80). The MCESD
27 still has concerns with the above-ground connection between Desert Hills and Anthem; however they
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1 understand that the Town will need to rely upon the above-ground connection through the peak period
2 in order to meet demand for the summer months. (*Id.*). After that, the Town intends to replace the
3 above-ground connection with a permanent under-ground connection. (Tr. at 76).

4 **3. The Town's Transfer Agreement Provides Benefits for Customers**

5 The Town has made a number of very important commitments in its Transfer Agreement. The
6 Town has committed to providing a credit in the amount of the monthly service charge for the 189
7 customers who received inadequate service last summer for the months in which they received such
8 low-pressure. (Tr. at 19). The Town expects to make these credits within 30 days of a Commission
9 Order approving the Transfer Agreement in this proceeding. (Tr. at 95).

10 The Town has provided for the proper disposition of contractual obligations. It will be making
11 repayments under the line extension agreements and will also honor meter deposits and will be
12 making refunds of those as well. (Tr. at 18). The amount of customer deposits and advances in aid of
13 construction appear on Staff Exhibit 2. (Tr. at 97). The Town should be required to file a notice with
14 the Commission once the refunds are complete giving both the amount of the refund and the date
15 made.

16 The Town has committed to maintain the present rates for at least a year. The Town has no
17 current plans to raise rates at all in the foreseeable future but cannot commit beyond a year because it
18 is an elected public body. (Tr. at 18).

19 The Town has committed to continue to work with the MCESD on maintaining compliance
20 with the ADEQ rules and regulations.

21 The Town has committed to continue efforts to address long-term water supply needs for
22 customers previously served by Desert Hills, and has working diligently and proactively to ensure
23 adequate supplies, since it acquired the stock of Desert Hills.

24 The Town has committed to insure that the Town's web-site is soon available to give Desert
25 Hills and Cave Creek customers important information in the future about their water service. (Tr. at
26 27). In summary, the Transfer Agreement provides many important benefits to Desert Hills customers.

1 4. **The Town is Taking Steps to Ensure Better Communications with**
2 **Customers and to Resolve Customer Concerns**

3 The Town is in the process of establishing an advisory committee in connection with the future
4 operations of the integrated water system. (Tr. at 40). The Town intends to establish an advisory
5 group to represent the whole area from the Desert Hills area to Cave Creek to neighboring Carefree
6 where about 25% of the Cave Creek Water Company customers reside. (*Id.*). Desert Hills customers
7 will be represented on this advisory committee. The advisory group will be in control of all
8 recommendations to the council about the water policies and capital improvements needed for the
9 water system in the future. (Tr. at 40). The Town Manager testified that other municipalities have
10 utilized such groups when a portion of the territory they were serving fell outside of their jurisdiction.
11 (Tr. at 41). The City of Tucson has used this concept and it has worked very well, according to Mr.
12 Abjubarah. (*Id.*).

13 The Town has also committed to maintaining the current office within the Desert Hills service
14 territory for the time being. (*Id.*).

15 In addition, if there are any rate changes, the Town has committed to holding a public hearing
16 in regard to the rate changes. (*Id.*). With regard to any rate increases, Mr. Abjubarah testified that the
17 municipality is not allowed to treat customers outside of their jurisdiction in a different way than
18 customers within their jurisdiction. Thus, if they have to increase the rates in this case, they have to be
19 consistent and would have to increase the rates for everybody within and outside their jurisdiction,
20 according to Mr. Abjubarah. (Tr. at 88).

21 **B. The Transfer Meets the Criteria Set forth in Attorney General Opinion 62-7.**

22 Staff believes that the transfer to the Town meets all of the criteria set forth in Attorney
23 General Opinion 62-7. In that opinion, the Attorney General addressed the Commission's jurisdiction
24 over transfers of assets of a public utility to a municipality. The Attorney General opined that the
25 Commission's jurisdiction extended to examining the future acts and duties of the private utility and to
26 the customers who will be served thereby after purchase or acquisition of the utility's properties by the
27 municipality.
28

1 The Commission also has jurisdiction to review the duties and obligations of the privately-
2 owned public utility and the conditions surrounding the disposition of any Certificate of Convenience
3 and Necessity held by the utility. So the Commission essentially examines whether there is
4 appropriate provision for water service to customers in the Desert Hills service territory and whether
5 there is provision for proper disposition of contractual obligations as well as whether all customer of
6 Desert Hills will have adequate service in the future.

7 The Staff believes that through the Transfer Agreement and other commitments of the Town
8 discussed above, the criteria identified in Attorney General Opinion 62-7 have been met and that the
9 transfer to the Town is in the public interest.

10 RESPECTFULLY SUBMITTED this 19th day of March, 2007.

11
12 
13 Maureen A. Scott, Senior Staff Counsel
14 Robin Mitchell, Attorney
15 Legal Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007
19 (602) 542-3402

20 Original and Thirteen (13) copies
21 of the foregoing filed this 19th day
22 of March, 2007 with:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007

27 Copies of the foregoing mailed this
28 19th day of March, 2007 to:

Marvin S. Cohen, Esq.
SACKS TIERNEY P.A.
4250 North Drinkwater Blvd., 4th floor
Scottsdale, AZ 85251-3693

