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April 6, 2007

**BY HAND DELIVERY**

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

Arizona Corporation Commission  
**DOCKETED**

**APR 06 2007**

DOCKETED BY

Re: RW-00000B-07-0051 - Water Rulemaking  
RSW-00000A-07-0051 - Sewer Rulemaking

Dear Mr. Johnson:

I am submitting these written comments on behalf of DMB Associates, Inc. ("DMB") in response to your letter to interested parties dated March 6, 2007, in the above-captioned matters. DMB is a major developer and seller of land to homebuilders in Arizona, and deals with private water and wastewater utilities on a daily basis. DMB appreciates this opportunity to participate in the Arizona Corporation Commission's ("Commission") review of administrative rules governing certificates of convenience and necessity ("CC&N").

These comments do not include an exhaustive review of the proposed changes, but rather focus on two issues specific to private water utilities – the proposal to require detailed water use on golf courses, ornamental lakes and aesthetic water features, as well as a water conservation plans, with each application for a new or extended water CC&N. See Proposed Rule A.A.C. R14-2-402(A)(2)(q) and (r). The responsibility to develop and design such plans would, in most cases, fall directly upon developers requesting service. DMB is concerned that these provisions are related to water use characteristics that the Arizona Department of Water Resources ("ADWR") regulates under its water conservation and assured water supply requirements, as well as certain infrastructure and construction standards regulated by Arizona Department of Environmental Quality ("ADEQ").

# FENNEMORE CRAIG, P.C.

Ernest Johnson, Director

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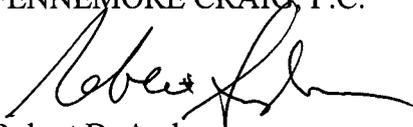
The requirement that plans for water use and water conservation *must* accompany a CC&N application (otherwise, the application will be deemed insufficient) indicates a broader policy shift by the Commission than perhaps intended. Developers are certainly aware of the Commission's adoption of certain water use conditions when granting a new or extended CC&N. However, in the past such issues have been addressed on a case-by-case basis, and restrictions imposed based on evidence establishing that such measures are in the public interest.

By contrast, Commission Staff has proposed a regulatory approval process that would make the details concerning water use and conservation measures to be documented for each and every new or extended CC&N – absent a showing that such plans would not serve the public interest. This would be an incredibly difficult presumption to overcome, especially if the Commission adopts policies or rules that are inconsistent with other administrative agencies. Responsibility for broader water use policies rests with ADWR, and to the extent that a developer designs and master plans new subdivisions consistent with ADWR's own rules and regulations, the extension of water utility service should not be held hostage to anything inconsistent with the ADWR position in applying its rules to a particular development. DMB encourages the use of appropriate water conservation measures. However, with respect to CC&N applications, finding the appropriate application of water use and conservation strategies for a particular development should be made during the course of the discovery process and evidentiary hearing – on a case-by-case basis – and not as a filing requirement for purposes of sufficiency.

Thank you for your time and consideration of these written comments submitted on behalf of DMB. Should you have any questions or concerns, please do not hesitate to call.

Sincerely,

FENNEMORE CRAIG, P.C.



Robert D. Anderson

cc: Docket Control

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