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OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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2007 JUN 12 P 3: 27

DATE: JUNE 12, 2007

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO: W-01445A-03-0559

TO ALL PARTIES:

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

**ARIZONA WATER COMPANY
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 21, 2007

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

JUNE 26, 2007 AND JUNE 27, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

JUN 12 2007

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA WATER COMPANY TO EXTEND ITS
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY IN CASA GRANDE, PINAL
12 COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING:

November 21, 2005 and April 12, 2006
(Procedural Conferences); July 10 and 11, 2006
(Hearing)

11 PLACE OF HEARING:

Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

13 APPEARANCES:

14 Steven A. Hirsch, Bryan Cave, LLP, on behalf of
15 Arizona Water Company;

16 Jeffrey W. Crockett, Snell & Wilmer, LLP, on
17 behalf of Cornman Tweedy 560, LLC; and

18 David Ronald, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

19 **BY THE COMMISSION:**

20 On April 6, 2004, Decision No. 66893 was issued in this matter. Decision No. 66893
21 conditionally granted an application filed on August 12, 2003 by Arizona Water Company ("Arizona
22 Water" or "Company" or "AWC") for an extension of its existing Certificate of Convenience and
23 Necessity ("CC&N") in Casa Grande, Pinal County, Arizona.

24 Decision No. 66893 placed two conditions on its approval of Arizona Water's August 12,
25 2003 application. Arizona Water was ordered to file: (1) a copy of the Developers' Certificate of
26 Assured Water Supply ("CAWS") for both the Post Ranch development and the Florence Country
27 Estates development with the Arizona Corporation Commission ("Commission") within 365 days of
28 the Decision; and (2) a main extension agreement associated with the extension area within 365 days

1 of the Decision. Decision No. 66893 included an Ordering Paragraph stating that in the event the
2 Company failed to meet those conditions within the time specified, the Decision would be deemed
3 null and void without further Order of the Commission.

4 On March 30, 2005, prior to the April 6, 2005 deadline for the compliance filing requirements
5 in Decision No. 66893, Arizona Water filed a Request for Additional Time to Comply with Filing
6 Requirement.

7 On April 7, 2005, Cornman Tweedy 560, LLC ("Cornman") filed a letter in this docket
8 alleging that because Arizona Water failed to timely satisfy the compliance conditions of Decision
9 No. 66893, the CC&N extension conditionally granted was automatically null and void. The letter
10 stated that Cornman is the owner of approximately 1,120 acres located in the extension area
11 conditionally granted to Arizona Water in Decision No. 66893, and that all but approximately 160
12 acres of that property is included in the EJ Ranch Master Planned Community ("EJ Ranch") being
13 developed by Robson Communities, Inc. ("Robson"). The letter stated that Cornman does not desire
14 to have its property included in Arizona Water's CC&N area. The letter further indicated that
15 Cornman had requested water utility service from its affiliate Picacho Water Company ("Picacho
16 Water"), and that Cornman would prefer to have water service from its affiliate. Cornman stated that
17 Cornman, Picacho Water, and Picacho Sewer Company ("Picacho Sewer") are all affiliates of
18 Robson.

19 Picacho Water and Cornman filed a request to intervene on May 19, 2005, and on October 5,
20 2005, Picacho Water filed a Motion to Consolidate its application for extension of its CC&N filed in
21 Docket No. W-03528A-05-0281 with this docket.

22 After responsive and reply filings, by Procedural Order issued November 14, 2005,
23 intervention was granted to Cornman and denied to Picacho Water. After responsive and reply
24 filings, the Motion to Consolidate was denied by Procedural Order issued March 22, 2006.

25 On April 11, 2005, the Commission's Utilities Division Staff ("Staff") recommended that
26 Arizona Water's request for an extension of time to comply with Decision No. 66893 be scheduled
27 for additional evidentiary proceedings on the merits of Arizona Water's request and Robson
28 Communities' objection to that request.

1 By Procedural Order issued March 22, 2006, an evidentiary hearing was set for the purpose of
2 taking evidence on the circumstances and events that have resulted in Arizona Water not complying
3 with the time periods established in Decision No. 66893. The March 22, 2003 Procedural Order
4 stated that the setting of a hearing for that purpose did not reopen the Decision granting Arizona
5 Water a CC&N and that the hearing would not address whether a different water utility should be
6 providing service to the extension area.

7 The hearing commenced as scheduled before an Administrative Law Judge of the
8 Commission on July 10, 2006, and concluded on July 11, 2006. Arizona Water, Cornman and Staff
9 each appeared through counsel, presented evidence, and cross-examined witnesses. On July 14,
10 2006, and August 18, 2006, Arizona Water filed Certificates of Filing of Compliance Items. Arizona
11 Water, Cornman and Staff filed briefs on September 15, 2006, and response briefs on October 6,
12 2006. The matter was taken under advisement pending the submission of a Recommended Opinion
13 and Order to the Commission.

14 After consideration of the evidence presented, we conclude that Arizona Water could not
15 comply with the time periods established in Decision No. 66893 because the developer of a portion of
16 the extension area withdrew its Arizona Department of Water Resources ("ADWR") CAWS
17 application as directed by Cornman. This circumstance and event was beyond Arizona Water's
18 control, and made it impossible for Arizona Water to comply with the condition in Decision No.
19 66893 that it file a copy of the CAWS for the Florence Country Estates development. However, the
20 area in which the Florence Country Estates development was located is included in an Analysis of
21 Assured Water Supply issued by ADWR on March 2, 2005, for the EJR Ranch development. The
22 issuance of the ADWR Analysis of Assured Water Supply satisfies the objective of the condition in
23 Decision 66893 for submission of a CAWS for the Florence Country Estates development that
24 adequate physical water supplies exist for the development. We therefore find that for purposes of
25 compliance, the conditions placed on Arizona Water's CC&N extension in Decision No. 66893 have
26 been fulfilled.

27 * * * * *

28 Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

- 3 1. Arizona Water is an Arizona public service corporation certificated to provide water
4 utility service in eight Arizona counties. Arizona Water operates a total of 18 water systems, serving
5 approximately 72,000 customers.
- 6 2. On August 12, 2003, Arizona Water filed with the Commission an application for an
7 extension of its existing CC&N in Casa Grande, Pinal County, Arizona to include an overall area of
8 11 square miles. The extension area is depicted in Exhibit A, which is a copy of Hearing Exhibit
9 MJW-32 from the instant proceeding, attached hereto and incorporated herein by reference.
- 10 3. On April 6, 2004, the Commission issued Decision No. 66893 in this docket.
- 11 4. Decision No. 66893 found that the requested extension area is adjacent to the eastern
12 boundary of Arizona Water's existing Casa Grande CC&N and the western boundary of Arizona
13 Water's existing Tierra Grande CC&N, and would serve to interconnect the two existing service
14 areas.
- 15 5. Decision No. 66893 conditionally granted the entire extension area shown on Exhibit
16 A.
- 17 6. Decision No. 66893 found that Arizona Water's August 12, 2003 application was
18 based on two requests for service. Harvard Investments requested that Arizona Water provide water
19 service to an approximately 480 acre development to be known as Post Ranch located in Section 29
20 on Exhibit A. Core Group Consultants Ltd. ("Core Group") requested that Arizona Water provide
21 water service to approximately 240 acres located in Sections 26 and 27 on Exhibit A to serve a
22 development to be known as Florence Country Estates.
- 23 7. Decision No. 66893 adopted Staff's recommendation at the hearing to place two
24 conditions on its approval of Arizona Water's August 12, 2003 application. Arizona Water was
25 ordered to file (1) a copy of the Developers' CAWS for both the Post Ranch development and the
26 Florence Country Estates development with the Commission within 365 days of the Decision and (2)
27 a main extension agreement associated with the extension area within 365 days of the Decision.
28 Decision No. 66893 included an Ordering Paragraph stating that in the event the Company failed to

1 meet those conditions within the time specified, the Decision would be deemed null and void without
2 further Order of the Commission.

3 8. Notice of the August 12, 2003 application and the hearing on the application was
4 provided in accordance with the law.¹

5 9. No intervention requests were filed, and no objections to Arizona Water's application
6 were received.

7 10. Decision No. 66893 found that there are no other public service corporations or
8 municipally owned water systems authorized to provide or providing water service in the requested
9 extension area.

10 11. Decision No. 66893 found that there is a public need and necessity for water utility
11 services in the proposed extension area.

12 12. Decision No. 66893 found that Arizona Water is a fit and proper entity to receive an
13 extension of its CC&N to encompass the requested extension area.

14 13. On March 30, 2005, prior to the deadline for the compliance filing requirements in
15 Decision No. 66893, Arizona Water filed a Request for Additional Time to Comply with Filing
16 Requirement. Arizona Water's filing stated the following: "Harvard Investments and Core Group
17 Consultants, Ltd., the developers for the expansion areas, have informed the Company that
18 development in the areas they propose to develop will be delayed for another year.² For this reason,
19 the Company requests that it be given an additional 365 days to file a copy of the Developer's
20 certificate of assured water supply and the main extension agreements. This request should not
21 prejudice any other party, as the Company was the only applicant for a certificate of convenience and
22

23 ¹ In a letter docketed on April 21, 2004, two trustees of the Dermer Family Trust claimed that they had no record of
24 receiving notice of the application; that due to the recent illness and death of a principal of the Dermer Family Trust, the
25 two trustees were not aware of the application and were unfamiliar with the ramifications and effect of the application on
26 the Dermer property; and the two trustees did not desire that the Dermer property be subject to Decision No. 66893. The
27 Dermer property was located in the extension area and was subsequently purchased by Cornman (Direct Testimony of
28 Jim Poulos at 8-9). Arizona Water confirmed that a copy of the notice of the hearing was mailed via First Class United
States Mail to the address available from the records of the Pinal County Assessor for the Dermer property, and was never
returned to the Company as being undeliverable because of an incorrect address, or for any other reason (Rebuttal
Testimony of William Garfield at 4).

² Arizona Water's witness Garfield testified that the Company's assessment of the status of the developers' projects in
their approvals led the Company to believe that additional time was needed (Tr.at 151), but that "it was an overstatement
to say that we were informed" (*Id.*).

1 necessity for the areas to be served.”

2 14. On April 5, 2005, a Procedural Order was issued directing Staff to respond to Arizona
3 Water’s request on or before April 11, 2005.

4 15. On April 7, 2005, Cornman filed a letter in this docket signed by Robson’s general
5 counsel, Brian Gerstman. The letter stated that Cornman is the owner of approximately 1,120 acres
6 located in the extension area conditionally granted to Arizona Water in Decision No. 66893, and that
7 all but approximately 160 acres of that property is included in the EJR Ranch development. The
8 letter alleged that because Arizona Water failed to timely satisfy the compliance conditions of
9 Decision No. 66893, the CC&N extension conditionally granted was automatically null and void.
10 Cornman’s April 7, 2005 letter further stated that Cornman does not desire to have its property
11 included in Arizona Water’s CC&N area. The letter indicated that Cornman had requested water
12 utility service from its affiliate, Picacho Water, and that Cornman would prefer to have water service
13 from its affiliate. Cornman stated that Cornman, Picacho Water, and Picacho Sewer are all affiliates
14 of Robson, the developer of EJR Ranch. Cornman stated that it would prefer to receive water and
15 sewer service from the Robson affiliates “for reasons of cost, convenience, timing, avoidance of
16 confusion and avoidance of unnecessary duplication of facilities.” Cornman stated that if Picacho
17 Water’s CC&N is extended to include Cornman’s property, the CC&N areas for Picacho Water and
18 Picacho Sewer will be the same.

19 16. On April 7, 2005, Cornman requested water service from Picacho Water (Direct
20 Testimony of Jim Poulos at 13), and on April 15, 2007, Picacho Water filed an application for an
21 extension of its CC&N to include the EJR Ranch property located within the Arizona Water
22 extension area, in Docket No. W-03258A-05-0281.

23 17. On April 11, 2005, Staff filed a memorandum in which it stated the following: “In
24 light of the change in circumstances in facts supporting the Commission’s decision, Staff
25 recommends Arizona Water Company’s request for an extension of time to comply with Decision
26 No. 66893 be scheduled for additional evidentiary proceedings on the merits of Arizona Water’s
27 request and Robson Communities’ objection to that request.”

28 18. On April 15, 2005, in Docket No. W-03528A-05-0281, Picacho Water filed an

1 application to extend its CC&N to include property owned by its affiliate Cornman. The extension
2 area requested by Picacho Water in that docket is depicted in Exhibit B, attached hereto and
3 incorporated herein by reference. Exhibit B is a copy of an exhibit from Picacho Water's application
4 in that docket. The extension area Picacho Water requested in Docket No. W-03528A-05-0281 is
5 located within the extension area conditionally granted to Arizona Water in Decision No. 66893.³

6 19. On April 20, 2005, Arizona Water filed its Response to Staff's Recommendation for
7 Additional Evidentiary Proceedings. Arizona Water argued that its request for additional time should
8 be approved because Staff presented no reason why it should not be approved.

9 20. On May 10, 2005, a Recommended Order was docketed.

10 21. On May 19, 2005, Robson filed, on behalf of Cornman and Picacho Water, a Motion
11 to Intervene and Request for Leave to File Reply to AWC's Response to Staff Recommendation for
12 Additional Evidentiary Proceedings and Exceptions to ALJ's Proposed Order.

13 22. Also on May 19, 2005, Cornman, Picacho and Robson filed exceptions to the May 10,
14 2005 Proposed Order.

15 23. On May 23, 2005, Arizona Water filed its Response to both May 19, 2005 filings
16 made by Cornman, Picacho Water, and Robson.

17 24. The Recommended Order docketed on May 10, 2005 was considered at the May 24-
18 25, 2005 Open Meeting of the Commission, but no vote was taken on it.

19 25. On September 28, 2005, a Procedural Order was issued directing the Commission's
20 Legal Staff to file, by October 14, 2005, a legal memorandum or brief on the issue of whether the
21 extension of Arizona Water's CC&N conditionally granted in Decision No. 66893 is void.

22 26. On October 5, 2005, Picacho Water filed the following: (1) Notice of Appearance of
23 Counsel; (2) Motion to Consolidate; (3) Request to File Brief on the Issue of Whether Arizona Water
24 Company's CC&N is Null and Void and Request for Oral Argument; and (4) Request for Ruling on
25 Motion for Intervention.

26 27. On October 14, 2005, Arizona Water filed its Response to Picacho Water Company's

27 ³ On June 26, 2006, Picacho Water filed a letter in Docket No. W-03528A-05-0281, stating that there is no longer a need
28 for service in the area, and stating that Picacho Water "withdraws" its application. There has been no ruling on the June
26, 2006 withdrawal request.

1 Motion to Consolidate, Request to File Brief and Request for a Ruling.

2 28. On October 24, 2005, Picacho filed its Reply in Support of its Motion to Consolidate,
3 Request to File Brief, and Request for Ruling on Motion to Intervene.

4 29. On November 14, 2005, a Procedural Order was issued setting a procedural
5 conference on November 21, 2005, for the taking of oral argument and discussion of procedural
6 issues in this matter. The November 14, 2005 Procedural Order granted Cornman's Motion to
7 Intervene, and specified that Cornman's intervention is limited to the issue of whether the CC&N
8 issued in Decision No. 66893 is void and whether the requested extension of time should be granted.
9 The November 14, 2005 Procedural Order denied Picacho Water's Motion to Intervene.

10 30. The Procedural Conference was held as scheduled on November 21, 2005.

11 31. On November 22, 2005, Staff filed, pursuant to the September 28, 2005 Procedural
12 Order, its Legal Memorandum on the issue of the validity of the CC&N granted in Decision No.
13 66893.

14 32. On November 23, 2005, a Procedural Order was issued setting procedural deadlines
15 for Cornman to file additional arguments on Picacho's Motion to Consolidate, for filing responses to
16 Staff's Legal Memorandum, and for Staff to file a reply to the responses.

17 33. On November 28, 2005, Snell & Wilmer filed a Notice of Appearance of Counsel on
18 behalf of Cornman.

19 34. On December 7, 2005, Arizona Water filed its Adoption of Previous Briefing
20 Regarding Cornman Tweedy, LLC.

21 35. On December 19, 2005, Arizona Water filed its Joinder in and Response to Staff's
22 Legal Memorandum.

23 36. On December 19, 2005, Cornman filed its Joinder in and Response to Staff's Legal
24 Memorandum.

25 37. On January 9, 2006, Staff filed its Reply Pursuant to the November 23, 2005
26 Procedural Order.

27 38. On February 17, 2006, Cornman docketed its first set of data requests to Arizona
28 Water.

1 39. On February 24, 2006, Cornman filed a Request to Set Hearing Date.

2 40. On March 7, 2006, Cornman filed a Motion to Compel Discovery.

3 41. On March 16, 2006, Arizona Water filed its (1) Response to Intervenor Cornman
4 Tweedy's Request to Set Hearing Date; (2) Response to Motion to Compel and Alternative Motion
5 for Protective Order; (3) Motion for Procedural Conference; and (4) Request for Additional Time to
6 Comply with Filing Request.

7 42. On March 22, 2006, a Procedural Order was issued denying the Motion to
8 Consolidate; finding that Arizona Water's Request for Additional Time to Comply and the
9 Procedural Order issued April 5, 2005 stayed Decision No. 66893's time for compliance with the
10 conditions of that Decision and ordering that Arizona Water's CC&N for the extension area remained
11 valid and in effect until a Commission Ruling on the Request for Additional Time to Comply; setting
12 a Procedural Conference for the purpose of discussing discovery issues and setting a hearing date;
13 and stating that the hearing would not be a reopening of the Decision granting Arizona Water a
14 CC&N, but that instead, the scope of the hearing would be limited to the circumstances and events
15 that resulted in Arizona Water not complying with the time periods established in Decision No.
16 66893.

17 43. On March 28, 2006, Arizona Water filed a Motion to Vacate and Reschedule
18 Procedural Conference. On March 30, 2006, Cornman filed a Response to Arizona Water's Motion,
19 and also on March 30, 2006, a Procedural Order was issued rescheduling the Procedural Conference,
20 which subsequently convened on April 12, 2006.

21 44. On April 19, 2006, a Procedural Order was issued setting a hearing for July 10, 2006,
22 and setting associated procedural deadlines.

23 45. On June 12, 2006, Staff filed its Staff Report.

24 46. On June 13, 2006, Arizona Water filed the direct testimony of its witness Michael J.
25 Whitehead.

26 47. On July 5, 2006, Staff filed the rebuttal testimony of Steve Olea.

27 48. On July 6, 2006, Arizona Water filed the rebuttal testimony of William M. Garfield.

28 49. On July 6, 2006, Cornman filed the rebuttal testimony of Jim Poulos.

1 50. The hearing convened as scheduled on July 10, 2006, before an Administrative Law
2 Judge of the Commission. Arizona Water, Cornman and Staff each appeared through counsel,
3 presented evidence, and cross-examined witnesses. The hearing concluded on July 11, 2006.

4 51. On July 14, 2006, and August 18, 2006, Arizona Water filed Certificates of Filing of
5 Compliance Items.

6 52. Arizona Water, Cornman and Staff filed briefs on September 15, 2006, and response
7 briefs on October 6, 2006. The matter was taken under advisement pending the submission of a
8 Recommended Opinion and Order to the Commission.

9 53. Michael J. Whitehead testified on behalf of Arizona Water to describe and summarize
10 the contacts the Company had with developers in this case both before and after the issuance of
11 Decision No. 66893, and the Company's efforts to obtain main extension agreements from the
12 developers in the extension area. Exhibits admitted into evidence at the hearing document numerous
13 contacts between entities representing developers planning and executing developments within the
14 extension area.

15 54. The Company maintains, and regularly amends, a Master Plan for its Pinal Valley
16 operations, which includes its Casa Grande, Stanfield, Tierra Grande, Arizona City and Coolidge
17 systems (Whitehead Direct Testimony at 5).

18 55. The Company plans its water system based on development needs and the overall
19 engineering plan for construction of storage facilities, transmission mains and other physical plant, in
20 terms of future water supplies, water quality and treatment, fire suppression requirements, and
21 efficient water delivery to present and future customers (*Id.* at 5-6).

22 56. The purpose of the CC&N extension request in this docket was not only to serve the
23 Post Ranch and Florence Country Estates developments, both of which requested service prior to the
24 Company's filing of the CC&N extension request, but also to facilitate the completion of a grid
25 distribution system to tie the Casa Grande system to the Tierra Grande system in order to efficiently
26 serve entities that would be constructing developments along Florence Boulevard east of Interstate 10
27 (*See Tr.* at 44-45).

28 57. On November 9, 2005, Arizona Water received from the Arizona Department of

1 Environmental Quality (“ADEQ”) an Approval to Construct (“ATC”) for the “Tierra Grande
2 Interconnect’ – consisting of installing approximately 35,000 feet of 16” DI [ductile iron]
3 transmission mains along Florence Blvd. to connect water systems of Tierra Grande and Casa
4 Grande” (Ex. MJW-13). The ATC states that it is void if construction has not started within one year
5 of issuance, but that upon receipt of a written request for an extension of time, ADEQ may grant an
6 extension (*Id.*). Mr. Whitehead testified that Arizona Water intends to request an extension of time
7 for the ATC at the proper time (Tr. at 45). An extension of time for an ATC may be, and generally
8 is, requested after the expiration date (Tr. at 65-66).

9 58. Arizona Water has been contacted regarding the provision of water utility service to
10 the following planned developments located in the extension area: Florence Country Estates, Post
11 Ranch, Hacienda Estates, Hacienda Highlands, Storey Farms, Springwater Pointe, JBC Development,
12 and Rose Law. The locations of the developments are shown on Exhibit A, which is a copy of
13 Hearing Exhibit MJW-32, attached hereto and incorporated herein by reference.

14 59. The extension area includes a total of 11 sections, as shown in Exhibit A: Sections 19,
15 20, 21, 23, the west ½ of 24, the west ½ of 25, 26, 27, 28, 29 and 30, Township 6 South, Range 7
16 East. Sections 19 and 30 are contiguous to Arizona Water’s existing certificated area for its Casa
17 Grande system, and the west half of Section 24 and the west half of Section 25 are contiguous to
18 Arizona Water’s existing certificated area for its Tierra Grande system, as the east half of Sections 24
19 and the east half of Section 25 are already included in the Company’s Tierra Grande CC&N area.
20 The extension area is bounded on the north by Storey Road, and on the south by Earley Road.
21 Florence Boulevard also runs east/west and bisects the extension area, between Storey Road and
22 Earley Road.

23 60. The Post Ranch development, located within Section 29, requested that Arizona Water
24 extend its CC&N into the Post Ranch area on May 24, 2003. ADWR issued a CAWS to Harvard
25 Casa Grande Ventures, LLC for the Post Ranch development on February 22, 2006 (Ex. WMG-3).

26 61. The Hacienda Estates and Hacienda Highlands developments, both located in a
27 portion of Section 30, have requested service from Arizona Water. These two projects applied for a
28 CAWS on March 20, 2006, and Arizona Water has signed a notice of intent to serve (“NOI”) for the

1 two projects (Tr. at 196-198; Ex. AWC-4).

2 62. The Storey Farms development, located in portions of Sections 20 and 21, requested
3 service from Arizona Water on May 19, 2006.

4 63. The Springwater Pointe development is located in a portion of Section 30. On August
5 16, 2006, the Company docketed a copy of a Main Extension Agreement between the Company and
6 Springwater Pointe, LLC. This project applied for a CAWS on April 27, 2006 (Tr.at 196-198; Ex.
7 AWC-4).

8 64. The JBC Development is located in a portion of Section 23. Arizona Water obtained
9 an ATC from ADEQ for the development on March 9, 2006 (Ex. MJW-34). On July 14, 2006, the
10 Company docketed a copy of a main extension agreement between the Company and JBC
11 Development.

12 65. The Rose Law (AG Robertson) development, located in portions of Sections 22, 23,
13 26 and 27, requested service from Arizona Water on October 26, 2005.

14 66. The Florence Country Estates development, located in portions of Section 26 and 27,
15 requested that Arizona Water extend its CC&N into the Florence Country Estates area by letter dated
16 June 17, 2003, from Core Group. The letter requested that the line extension agreement process be
17 initiated for its proposed off-site water main, and informed Arizona Water that Florence Country
18 Estates had submitted an application to ADWR for a CAWS.

19 67. After correspondence between Core Group and the Company regarding water plans
20 for the Florence Country Estates development, the Company mailed a copy of its standard Main
21 Extension Agreement to Core Group on October 9, 2003.

22 68. Arizona Water received an ATC from ADEQ for an off-site water main extension and
23 on-site water distribution system to serve Florence Country Estates on January 8, 2004. The ATC
24 states that it is void if construction has not started within one year of issuance, but that upon receipt
25 of a written request for an extension of time, ADEQ may grant an extension.

26 69. William M. Garfield, President of Arizona Water, presented testimony on behalf of the
27 Company regarding the process necessary for a developer to obtain a CAWS.

28 70. The basic requirements for obtaining a CAWS include demonstrating that the

1 developer's subdivision has sufficient supplies of water available to meet the development's full
2 water demands for a term of 100 years, and that such water supplies are continuously, physically and
3 legally available to serve the development (Garfield Direct at 4). If the development is located in an
4 active management area ("AMA"), the developer must also prove that water use within the
5 development complies with ADWR's management plan for the AMA within which the development
6 is located, and that water use complies with ADWR's management goal for the AMA (*Id.*). The
7 developer must work with ADWR staff to determine the water demand for the development at full
8 buildout, and the developer must provide some form of financial assurance that the facilities needed
9 to serve the water needs for the development will be constructed, typically in the form of construction
10 assurance (*Id.* at 5).

11 71. Municipal jurisdictions also have a role in the CAWS process, such as approvals of
12 preliminary and final development plats (*Id.* at 4).

13 72. In order to issue a CAWS for a development to be served by a water company, ADWR
14 requires that the development be located within a water company's certificated area, and that the
15 water company sign a NOI (*Id.* at 6).

16 73. In the Pinal AMA, where the extension area is located, ADWR has determined that
17 125 gallons of water per capita per day can be used from groundwater, and that all usage above this
18 amount must come from renewable sources (*Id.*). Typically, developers comply with the AMA's
19 management goal by enrolling their development with the Central Arizona Groundwater
20 Replenishment District ("CAGR") (*Id.*). A development with irrigation grandfathered groundwater
21 rights can also meet the management goal requirements by extinguishing such rights and pledging
22 them to the development (*Id.*). A water company participates with the developer in executing
23 agreements with the Central Arizona Water Conservation District ("CAWCD"), which oversees the
24 CAGR, for enrollment of the development in the CAGR (*Id.* at 6).

25 74. In regard to the Florence Country Estates development, Arizona Water approved one
26 or more NOIs for the development; executed and reported an annual reporting agreement between the
27 Company, the developer and the San Carlos Irrigation and Drainage District; and executed the
28 standard municipal provider reporting agreement with the CAWCD, because the development was

1 being enrolled in the CAGR (Id. at 7-9).

2 75. Water companies have little control over when a CAWS will be issued by ADWR.

3 76. Arizona Water completed all the requirements for a water provider in the CAWS
4 process for the Florence Country Estates development.

5 77. Jim Poulos, Vice President of Cornman, testified on behalf of Cornman regarding
6 Cornman's role in the CAWS process for the Florence Country Estates development.

7 78. On October 18, 2004, an application for an Analysis of Assured Water Supply for EJR
8 Ranch was submitted to ADWR, signed by signatories on behalf of trustees of the Dermer Family
9 Trust, Hwy 287 Florence Blvd. Inc., Sun Lakes - Casa Grande Development LLC, and Cornman (See
10 Ex. WMG-13). The October 18, 2004 application was prepared at the direction of Mr. Poulos (Tr. at
11 234), listed Arizona Water and Picacho Water as the water provider, and included Sections 26 and
12 27, the Florence Country Estates development property (Id.). The application did not include a NOI
13 from either Arizona Water or Picacho Water, but instead requested that ADWR complete the analysis
14 without the NOI forms.

15 79. Robson did not notify Arizona Water that it would be listed as a water provider for
16 EJR Ranch on the October 18, 2004 application for an Analysis of Assured Water Supply for EJR
17 Ranch (Tr. at 234-235), and did not ask Arizona Water to provide a NOI for the application, but
18 instead stated that an NOI was not yet available (Tr. at 235). At the hearing, Mr. Poulos agreed that
19 Arizona Water would have provided a NOI, but that in effect, EJR Ranch was requesting that ADWR
20 process the application for an Analysis of Assured Water Supply for EJR Ranch without the necessity
21 of requesting an NOI from Arizona Water (Tr. at 236).

22 80. On October 29, 2004, at the request of Cornman, Core Group made a request of
23 ADWR in writing that the file concerning the application for a CAWS for Florence Country Estates
24 be closed (Ex. CT-10A, Revised Rebuttal Testimony of Jim Poulos at 6, 8; 9; Ex. WMG-12; Ex. CT-
25 17, CT-18, CT-19, CT-20). Cornman at that time told Brian Carpenter of HWY-Florence Boulevard,
26 Inc., and Madison Diversified 882 Corp., that he should withdraw the CAWS application for
27 Florence Country Estates because the pending CAWS for Florence Country Estates would be
28 inconsistent with the land plan Cornman was developing (Ex. CT-10A, Revised Rebuttal Testimony

1 of Jim Poulos at 6).

2 81. Mr. Poulos' original pre-filed testimony was that the first time Cornman was aware
3 that a CAWS application had been filed and then withdrawn by the sellers of the Florence Country
4 Estates property was when Mr. Poulos read the prefiled direct testimony of Arizona Water's witness
5 Mr. Garfield in this proceeding (Ex. CT-10). However, after being informed on the evening of June
6 10, 2006, of the existence of email documentation regarding this issue (Tr. at 250-254), Mr. Poulos
7 redacted and added detail to his testimony at the hearing, stating that he had informed associate
8 counsel for Robson that the Florence Country Estates property CAWS should be revoked (Tr. at 210,
9 250-262). Mr. Poulos also sponsored a Hearing Exhibit showing that on October 28, 2004,
10 Cornman's Vice President Steve Soriano instructed the same associate counsel for Robson via e-mail,
11 copied to Mr. Poulos, that the owners of the Florence Country Estates property should "pull their
12 application and close the file." (Ex. CT-20).

13 82. At the hearing, Mr. Poulos testified that Robson's general counsel, Mr. Gerstman, was
14 present during the first day of the hearing (Tr. at 206). Mr. Poulos stated that following the cross-
15 examination of Arizona Water's witness Mr. Garfield regarding the withdrawal of the CAWS by the
16 owners of the Florence Country Estates property owners, Mr. Gerstman asked the Vice President of
17 Cornman to review Cornman files to confirm the accuracy of the statements in Mr. Poulos' original
18 testimony regarding the issue (Tr. at 207). Mr. Poulos testified that documents marked and admitted
19 as Hearing Exhibits CT-17, CT-18, CT-19 and CT-20, consisting of emails regarding the Florence
20 Country Estates property CAWS, were subsequently found in Mr. Soriano's e-mail archives (Tr. at
21 206-211).

22 83. Cornman closed on its acquisition of the Florence Country Estates development
23 property on December 17, 2004 (Direct Testimony of Jim Poulos at 6). Mr. Poulos testified that
24 Robson does not plan to develop the Cornman property in the near term, but instead hold the property
25 as an investment for tax purposes (*Id.* at 8-11).

26 84. Sections 26 and 27, the area in which the Florence Country Estates development was
27 located, are included in an Analysis of Assured Water Supply issued by ADWR on March 2, 2005,
28 for the EJ Ranch development. The Analysis of Assured Water Supply concludes that the projected

1 demands for the entire EJR Ranch development will be physically and continuously available for 100
2 years.

3 85. The extension area conditionally granted in Decision No. 66893 lies between two
4 existing areas certificated to Arizona Water, the Casa Grande system to the west, and the Tierra
5 Grande system to the east.

6 86. Arizona Water's Master Plan calls for the completion of a grid distribution system
7 across the extension area to tie the Casa Grande system to the Tierra Grande system in order to
8 efficiently serve entities that will be constructing developments in the extension area.

9 87. The March 2, 2005 issuance of the ADWR Analysis of Assured Water Supply for the
10 area including the Florence Country Estates development satisfies the objective of the condition in
11 Decision 66893 for submission of a CAWS for the Florence Country Estates development that
12 adequate physical water supplies exist for the development.

13 88. In its Opening Brief, Staff states that there are several reasons why the time extension
14 should be granted in this case, and several reasons why it should not.

15 89. Staff believes that facts in favor of granting the extension include the following: Staff
16 states that Arizona Water is capable and willing to serve the extension area, and remains a fit and
17 proper entity to serve the extension area, as the Commission found in Decision No. 66893. Staff
18 notes that one of Staff's major concerns, making sure enough water is available to serve planned
19 development, has been satisfied with the ADWR Analysis of Assured Water Supply for the extension
20 area. In addition, Staff notes that the configuration of Arizona Water's master distribution plan,
21 which includes the extension area, would benefit customers (Staff Opening Br. at 2).

22 90. Staff believes that facts not in favor of granting the extension include the following:
23 Staff states that the current property owner, Cornman, does not wish to be served by Arizona Water;
24 Cornman's development plan timeframe for EJR Ranch has been extended beyond the one year
25 requirement in Decision No. 66893; and there is another provider in the area (*Id.* at 2-3).

26 91. Staff states that if the Commission grants Arizona Water a time extension in this case,
27 it is Staff's position that the time extension should not include the Cornman property, but the rest of
28 the extension area should remain in Arizona Water's CC&N territory (*Id.* at 3).

1 92. We find that the factors Staff cites in favor of granting the time extension significantly
2 outweigh the facts presented in this proceeding in support of not granting the extension of time.

3 93. We find that the factors set forth by Staff in support of not granting the time extension
4 do not justify denying the time extension solely for the Cornman property. While we recognize, as
5 did Staff, that Cornman has extended its planned development timeframe beyond that originally
6 planned by the owners of the Florence Country Estates property, the development timeframe for other
7 properties within the extension area has likewise been extended further than originally foreseen.
8 Development has proceeded in the extension area, and no party has recommended that other
9 undeveloped properties in the extension area be excluded from an extension of time. Nor should they
10 be excluded, because to do so could have the effect of eroding public reliance on the certainty of the
11 Commission's CC&N process.

12 94. We also recognize, as does Staff, that Cornman would prefer that its affiliate Robson
13 provide water utility service to its entire planned development located within the Arizona Water
14 CC&N extension area. However, this proceeding is not the proper venue for determining whether a
15 different provider will provide service to Cornman's development. As stated in the Procedural Order
16 issued March 22, 2006, this evidentiary hearing was set for the purpose of taking evidence on the
17 circumstances and events that have resulted in Arizona Water not complying with the time periods
18 established in Decision No. 66893. The evidence presented has clearly demonstrated that Cornman's
19 actions resulted in Arizona Water being unable to comply with that Decision. As stated in the
20 Procedural Order, this proceeding did not reopen the Decision granting Arizona Water a CC&N
21 extension, and did not address whether a different water utility should be providing service to the
22 extension area. This proceeding was not noticed as a request for deletion from a CC&N territory.

23 95. This Commission found in Decision No. 66893 that Arizona Water is a fit and proper
24 entity to serve the extension area, and that there is a need for service in the extension area. Staff's
25 witness testified at the hearing that Arizona Water continues to be a fit and proper entity to serve the
26 extension area, and is capable and willing to serve it (Tr. at 310).

27 96. Robson's strategy as testified to by Mr. Poulos of delaying development of its
28 property within the extension area does not alter our finding in Decision No. 66893 that there is a

1 need for service in the extension area.

2 97. The evidence presented in this hearing demonstrates that Arizona Water could not
3 comply with the time periods established in Decision No. 66893 because the developer of Sections 26
4 and 27 withdrew its ADWR CAWS application at the direction of Cornman. This circumstance and
5 event was caused by Cornman and was beyond Arizona Water's control. Cornman directed that
6 action be taken which made it impossible for Arizona Water to file a copy of the CAWS for the
7 Florence Country Estates property.

8 98. The availability of water quantity for the extension area has been proven by the March
9 2, 2005 issuance of the ADWR Analysis of Assured Water Supply for the area including the Florence
10 Country Estates development, and the objective of the condition in Decision 66893 for submission of
11 a CAWS for the Florence Country Estates development that adequate physical water supplies exist
12 for the development has been satisfied.

13 99. We find that for purposes of compliance, the conditions placed on Arizona Water's
14 CC&N extension in Decision No. 66893 have been fulfilled.

15 100. It is in the public interest to extend the deadline for compliance with the conditions of
16 Decision 66893 to the date of this Decision.

17 CONCLUSIONS OF LAW

18 1. Arizona Water Company is a public service corporation within the meaning of Article
19 XV of the Arizona Constitution and A.R.S. § 40-281 *et seq.*

20 2. The Commission has jurisdiction over Arizona Water Company and the subject matter
21 of this proceeding

22 3. The need for water utility service in the extension area, as established in Decision No.
23 66893, remains.

24 4. As established in Decision No. 66893, Arizona Water Company is a fit and proper
25 entity to provide water utility service to the extension area.

26 ORDER

27 IT IS THEREFORE ORDERED that for purposes of compliance, the conditions set forth in
28 Decision No. 66893 have been fulfilled.

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IT IS FURTHER ORDERED that the deadline for compliance with the conditions of Decision 66893 is hereby extended to the date of this Decision.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

TW:db

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