

**ORIGINAL
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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY TO
EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
CASA GRANDE, PINAL COUNTY,
ARIZONA

DOCKET NO. W-01445A-03-0559

**EXCEPTIONS OF CORNMAN
TWEEDY 560, LLC**

Cornman Tweedy 560, LLC ("Cornman Tweedy"), an affiliate of Robson Communities, Inc., ("Robson"), through counsel undersigned, hereby files these Exceptions to the June 12, 2007, Recommended Opinion and Order ("ROO") issued in the above-captioned matter. These Exceptions apply only to that portion of the ROO which erroneously finds that Arizona Water Company ("AWC") complied with conditions imposed in Decision 66893 (April 6, 2004) ("Decision 66893" or the "Decision") related to property now owned by Cornman Tweedy (the "Robson Property" or "Property") within the conditional extension area ("Conditional Extension Area") covered by the Decision. The Robson Property is part of a master planned development referred to as EJR Ranch. More than half of EJR Ranch is within the water Certificate of Convenience and Necessity ("CC&N") of Robson's affiliate, Picacho Water Company, and is contiguous to the Conditional Extension Area. All of EJR Ranch is within the sewer CC&N of Robson's affiliate Picacho Sewer Company. Robson submits that the ROO is in error because it improperly ignores: (i) material changed circumstances regarding the need and necessity for water service on the Robson Property; (ii) the recommendation of Staff that the Robson Property be deleted from AWC's Certificate of Consumer and Necessity ("CC&N"); (iii) other relevant evidence presented at the July 2006 hearing; and

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1 (iv) established Arizona Corporation Commission ("Commission") policies. For the
2 reasons set forth herein, Cornman Tweedy urges that the conditional CC&N issued to
3 AWC be declared null and void as it relates to the Robson Property.¹

4 **I. INTRODUCTION.**

5 AWC's application for the extension of its CC&N covered 11 Sections in Pinal
6 County, Arizona, as shown on the map attached hereto as Exhibit A.² Like other
7 applications filed by AWC in recent years, the expansive 7,040-acre extension request
8 was supported by only two requests for service covering only 720 acres: Post Ranch (480
9 acres) and Florence Country Estates (240 acres). Cornman Tweedy is a successor owner
10 to the Florence Country Estates property, and has acquired other property within the
11 Conditional Extension Area which, when combined with the Florence Country Estates
12 Property, totals 1,138 acres. At issue in this case is Cornman Tweedy's request that the
13 Commission deny AWC's requested deadline extension with respect to the Robson
14 Property and exclude Cornman Tweedy's 1,138 acres (comprising approximately the
15 north half of EJR Ranch) from the Conditional Extension Area.

16 Decision 66893 ordered that AWC file, within 365 days of the Decision: (1) a copy
17 of the Certificates of Assured Water Supply ("CAWS") for both the Post Ranch and
18 Florence Country Estates properties; and (2) a main extension agreement ("MXA")
19 associated with the extension area. The Decision further stated that if AWC failed to meet
20 these conditions within the time specified, the Decision would be deemed null and void
21 without further order of the Commission. One week before the compliance deadline was
22 set to expire, AWC filed a Request for Additional Time to Comply with Filing
23 Requirements ("Request"). While AWC stated in its Request that the developers of Post
24 Ranch and Florence Country Estates informed AWC that development would be delayed

25
26 ¹ Cornman Tweedy does not object to the ROO insofar as it grants an extension of the compliance deadline
for areas other than the 1,138-acre Robson Property.

27 ² The 1,138-acre Robson Property is highlighted in pink on Hearing Exhibit CT-1 attached to the Direct
28 Testimony of Jim Poulos and attached hereto as Exhibit A. EJR Ranch is outlined in blue on the exhibit
and AWC's Conditional Extension Area is outlined in orange.

1 for another year, the evidence at the July 2006 hearing demonstrated that the developers
2 made no such communications. *See* ROO at 5, footnote 2. More than three years after the
3 issuance of the Decision, no CAWS and no MXA have been submitted for the Florence
4 Country Estates property (because neither exists), and no MXA has been submitted for
5 Post Ranch.³ Yet, the ROO reaches a strained conclusion that for purposes of compliance,
6 the conditions of the Decision have been fulfilled. Such a conclusion is contrary to the
7 evidence.

8 Instead of focusing on achieving a result which will serve the public interest, the
9 ROO narrowly and erroneously focuses on AWC's ability—or inability—to comply with
10 the conditions of the Decision. The relevant issue, however, is whether current
11 circumstances support a CC&N covering the Robson Property. The uncontroverted
12 evidence in this case shows that they do not. As discussed below, the ROO: (1) ignores
13 material changed circumstances regarding the need and necessity for water service to the
14 Robson Property; (2) ignores Staff's recommendation that the Robson Property be
15 excluded from AWC's CC&N; (3) ignores other relevant evidence presented at the July
16 2006 hearing; and (4) ignores established Commission policies regarding the
17 Commission's:

- 18 • preference for integrated water and wastewater providers over stand-
19 alone providers;
- 20 • insistence that requests for service accompany applications for
21 extensions of CC&Ns;
- 22 • consideration of the wishes of the property owner regarding the
23 provision of utility services to his or her property; and
- 24 • aversion to multiple providers serving the same development.

25 Cornman Tweedy requests that the Commission amend the ROO to correctly
26 acknowledge that AWC did not timely meet the conditions set forth in Decision 66893

27 ³ On July 14, 2006, AWC filed a copy of a CAWS for Post Ranch issued February 4, 2006. AWC also
28 filed copies of MXAs with JBC Development (filed July 14, 2006) and Springwater Pointe, L.L.C. (filed
August 16, 2006), but neither of these MXAs pertain to the Post Ranch or Florence Country Estates
properties.

1 with specific regard to the Robson Property, that the request for the extension of time to
2 comply with the Decision be denied with regard to the Robson Property, and that the
3 Robson Property thereby be excluded from AWC's CC&N, consistent with Staff's
4 recommendation in this case.

5 **II. THE ROO IGNORES MATERIAL CHANGED CIRCUMSTANCES**
6 **REGARDING THE ROBSON PROPERTY.**

7 There are several material changed circumstances regarding the Robson Property which
8 the ROO failed to properly consider. They are as follows:

- 9 • **There is no planned development for the Robson Property for at least**
10 **the next five years.**

11 Robson witness Jim Poulos testified that that the business plan for the Robson
12 Property changed 180 degrees since December 2004. Cornman Tweedy purchased the
13 Robson Property with the plan of developing the Property in a strong real estate market,
14 and Robson commenced the process of entitling the Property. However, Robson did not
15 anticipate the tremendous appreciation in the value of the Property which occurred after
16 the acquisition, nor did Robson anticipate the subsequent decline in the Arizona real estate
17 market which commenced in late 2005. As a result of the unexpected, tremendous
18 appreciation in the value of the Robson Property, the tax implications associated with
19 developing and selling the Property dictated a change in the business plan from
20 developing the Property to holding the Property as an investment. Robson ceased further
21 development activities, but allowed certain pending entitlement activities to continue that
22 could be expeditiously completed. Mr. Poulos testified that there are significant tax
23 benefits in holding the Property as a long-term investment in order to obtain capital gains
24 treatment on Cornman Tweedy's income taxes. *Poulos Direct Testimony at 7-8.*

25 Mr. Poulos also testified that home sales slowed dramatically in Arizona beginning
26 in late 2005. Robson currently has approximately 24,000 lots which are being readied for
27 sale in its core retirement community business, so the EJ Ranch (which will be a
28 conventional development project) is not needed for inventory. As a result of these

1 circumstances, Robson has no plans to develop the Property in the near term. The
2 Property has been shelved. *Id.* at 8, lines 4-10.

3 Assistant Director Olea acknowledged the changed circumstances regarding the
4 Robson Property stating in his testimony that “[a]ccording to what has been filed and what
5 I have heard in the last two days of this hearing, there’s no planned development for
6 what’s been now termed the Cornman Tweedy property at least for the next five years.”
7 *Trans. Vol. II* (July 11, 2006) at 309, lines 22-25.

8 • **Robson has not requested water service from AWC.**

9 The initial request for service for the 240-acre Florence Country Estates property was by
10 Core Group Consultants Ltd. (“Core Group”), the previous owner of the property. However,
11 subsequent to the issuance of Decision 66893, the Florence County Estates property was
12 purchased by Cornman Tweedy. Robson has never requested water service from AWC for the
13 Florence Country Estates property or for the balance of the Robson Property. Moreover, Robson
14 has its own integrated water and wastewater utilities which could serve EJR Ranch, and Robson
15 does not want water service from AWC. Recognizing this fact, Mr. Olea testified at the July
16 2006 hearing that one reason for not granting the time extension related to the Robson Property is
17 because “the current property owner [Cornman Tweedy] does not want to be served by Arizona
18 Water.” *Trans Vol. II* (July 11, 2006) at 309; *Staff Opening Brief* at 2.

19 • **No need and necessity for water service on the Robson Property.**

20 Given the facts that (i) Robson has no present plans to develop EJR Ranch, and
21 (ii) Robson does not want AWC as its water provider, there is absolutely no support for a
22 finding of “need and necessity” for a CC&N covering the Robson Property. One of the
23 two findings the Commission must legally make before extending an existing CC&N is
24 that there is a demonstrated “need and necessity” for the utility service.⁴ Where there is
25 entitlement work (zoning, permitting, CAWS, MXAs, etc.) for a landowner to do between
26 the time a CC&N extension is approved and the time that water service will be required,
27 the Commission often attaches conditions to ensure, among other things, that the “need

28 ⁴ The other finding, of course, is that the applicant for the CC&N is “fit and proper.”

1 and necessity" is real and on-going, and not simply an attempt by the landowner to
2 enhance the value of its property for speculative purposes by including land in a water
3 company CC&N. In the June 12, 2006 Staff Report, Mr. Olea stated that "[t]he basic
4 reason to require a time limit for the submission of both the developer's CAWS and the
5 MXA is to help ensure that there is truly a necessity for the service being provided." *Staff*
6 *Report* at 1 (June 12, 2006). If these conditions are not satisfied within the relevant
7 timeframe, no need and necessity is deemed to exist and the CC&N extension is rendered
8 null and void.

9 Decision 66893 ordered that AWC file copies of the CAWS for both the Post Ranch and
10 Florence Country Estates properties and an MXA associated with the Conditional Extension
11 Area. One week before the compliance deadline was set to expire, AWC filed its Request for
12 Additional Time to Comply with Filing Requirements. However, in order for the Commission to
13 grant the Request, the Commission must find that a need and necessity still exists today for a
14 CC&N covering the Robson Property. In this case, the uncontroverted evidence shows that no
15 CAWS has ever been issued and no MXA has ever been executed for the Robson Property (or the
16 240-acre Florence Country Estates property). Whether these circumstances are the result of
17 something that AWC did or did not do is not the issue, and the focus on AWC's actions misses the
18 point. The relevant inquiry is whether circumstances have changed since the Decision
19 such that there is no longer a need and necessity for a CC&N on the Robson Property.
20 This is consistent with the way Staff views requests to extend compliance deadlines, as
21 evidenced by the following exchange between AWC's legal counsel and Mr. Olea at the
22 July 2006 hearing:

23 Hirsch: [W]ouldn't it be Staff's position that as long as the utility is
24 doing everything reasonably within its power to comply that
it would be appropriate to grant a continuance?

25 Olea: And that if none of the circumstances had changed from the
26 time the original CC&N was issued.

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And in that memo we stated because of the changed circumstances, there was a new property owner that was now objecting to the time extension, and not just the time extension but to being served by Arizona Water, that based on that Staff believed that this should go back to an evidentiary hearing to determine if the time extension should be granted. *Trans. Vol. II* (July 11, 2006) at 322, lines 9-24 (*Emphasis added*).

The fact is that if AWC applied for a CC&N extension today covering the Robson Property, the Commission would not approve the application based on the evidence presented at the July 2006 hearing. Therefore, it is not appropriate to extend the deadline for compliance. Finding of Fact No. 94 in the ROO states that “[t]he evidence presented has clearly demonstrated that Cornman Tweedy’s actions resulted in Arizona Water being unable to comply with that Decision.” However, such a statement erroneously focuses on *the reason* for non-compliance *and not the changed circumstances* which clearly show that there is no need and necessity for the CC&N today.

- **The Robson Property can be served in the future by integrated water and wastewater providers Picacho Water Company and Picacho Sewer Company.**

The evidence shows that Robson has the capability to provide intergrated water and wastewater service to the EJ Ranch. This is another changed circumstance resulting from Cornman Tweedy's acquisition of the Robson Property. Assistant Director Olea testified:

[I]f there ever is development in that area, that property can be served by someone other than Arizona Water, and that would be the Picacho Water Company. And, also, if this is served eventually by Picacho Water, it can also be served by Picacho Sewer Company, which would make the water and sewer basically provided by the same entity. *Trans Vol. II* (July 11, 2006) at 309.

The provision of integrated water and wastewater within a CC&N is certainly the Commission’s preference. This opportunity will be lost if the Robson Property is not deleted from the Conditional Extension Area.

III. THE ROO IGNORES STAFF'S RECOMMENDATION THAT THE ROBSON PROPERTY BE EXCLUDED FROM AWC’S CC&N.

The circumstances which existed on April 6, 2004, when the Commission issued Decision

1 66893 have changed substantially and materially in the more than three years since the Decision.
2 Staff properly acknowledges the changed circumstances with respect to the Robson Property and
3 supports Cornman Tweedy's request, stating that even "[i]f the Commission grants AWC a time
4 extension in this case, it is Staff's position that the time extension should not include the Cornman
5 Tweedy property." *Staff's Opening Brief* at 3, lines 10-11. The Commission should follow
6 Staff's recommendation in this case.

7 **IV. THE ROO IGNORES OTHER RELEVANT EVIDENCE PRESENTED AT THE**
8 **JULY 2006 HEARING.**

9 The ROO ignores other relevant evidence presented at the July 2006 hearing, including
10 the following:

- 11 • **Assistant Director Olea testified that an Analysis of Assured**
12 **Water Supply does not satisfy the requirement of a Certificate of**
13 **Assured Water Supply.**

14 Decision 66893 required the submission of a CAWS for the Florence County
15 Estates property. The evidence is uncontroverted that no CAWS has been obtained for the
16 240-acre Florence Country Estates property. With regard to evaluating AWC's
17 compliance with the Decision, Mr. Olea testified that Staff must follow the Decision to the
18 letter:

19 Staff cannot change an order that has been written by this Commission, and
20 it has to be followed to the letter. And so the certificate of assured water
21 supply is what is required in this case. So unless that is submitted or unless
22 the order is amended to allow either a PAD or an analysis, Arizona Water is
23 not in compliance with that order. *Trans. Vol. II* (June 11, 2006) at 317-
24 318.

25 The ROO erroneously accepts an Analysis of Assured Water Supply as a substitute
26 for a CAWS, which is inconsistent with the express language of the Decision. The
27 evidence at the July 2006 Hearing showed that there are material differences between a
28 CAWS and an analysis. While the Commission certainly has the authority to modify the
condition to allow an analysis in lieu of a CAWS through an A.R.S. §40-252 proceeding
(as discussed below), no request for such a modification has been noticed in this case.
The ROO's conclusion that the CAWS condition has been satisfied with respect to the

1 Robson Property is not supported by the express language of the Decision or the evidence,
2 and is therefore not appropriate.

- 3 • **There is no main extension agreement for the Florence Country**
4 **Estates property.**

5 The ROO simply ignores the fact that no MXA has been submitted for either of the
6 Post Ranch or Florence Country Estates properties. With regard to the Robson Property,
7 when specifically asked by AWC at the hearing whether Robson had any intention of
8 entering into a main extension agreement for the Property, Mr. Poulos testified “[n]ot at
9 this time. That is correct.” *Trans. Vol. II* (July 11, 2006) at 229, lines 4-8. Clearly, this
10 condition of Decision 66893 has not been satisfied.

- 11 • **There is no prejudice or harm to AWC in excluding the Robson**
12 **Property from its Conditional Extension Area.**

13 Because there has been no development of the Robson Property, and AWC can still
14 construct its facilities to serve the balance of the Conditional Extension Area, AWC is not
15 prejudiced or harmed in any way by the exclusion of the Robson Property from the
16 Conditional Extension Area. By AWC’s own admission, the denial of AWC’s extension
17 request regarding the Robson Property will not adversely affect the construction of the
18 Florence Boulevard transmission main (related to the provision of water utility service to
19 the other areas of the Conditional Extension Area), as evidenced by the following
20 exchange between Cornman Tweedy’s legal counsel and AWC witness Mr. Whitehead:

21 Crockett: Whether or not the Cornman Tweedy property was in your
22 [AWC] CC&N, you would still have the ability to run the
23 Florence Boulevard line extension or the line extension; is
24 that correct?

25 Whitehead: True. *Trans. Vol. I* (July 10, 2006) at 49 lines 8-13.

26 Moreover, AWC testified that it has the legal authority to construct a transmission
27 line through the CC&N of another private water company if necessary, as evidenced by
28 the following exchange between Cornman Tweedy’s legal counsel and Mr. Whitehead:

Crockett: And do you know whether, in fact, Arizona Water Company
has the legal authority to construct a water line through the
CC&N of another certificated water provider?

1 The relevant issue is that development has not proceeded in the Extension Area
2 related to the Robson Property and that Cornman Tweedy *has* objected to inclusion of *its*
3 *Property* in the CC&N. This should have no bearing on the public reliance upon the
4 Commission's CC&N process with respect to the Robson Property as Cornman Tweedy's
5 position has no impact on any other party or their request for service. Moreover,
6 Cornman Tweedy is certainly not depending upon water service from AWC. The fact
7 that no other property owner has sought to have its property excluded from the
8 Conditional Extension Area is irrelevant.⁵

- 9 • **Robson has no obligation to assist AWC in meeting the conditions of the**
10 **Decision.**

11 What is interesting about the two conditions at issue in this case is that in most
12 circumstances, the customer requesting service from the utility must demonstrate to the
13 utility (and to the Commission through the utility's compliance filing) its continuing need
14 and necessity for service by obtaining a CAWS and entering into a MXA with the utility.
15 If the customer does not cooperate with the utility to complete these two requirements
16 within the time period established by the Commission, it is the customer that is penalized
17 because the utility is under no obligation, nor does it have the legal authority, to provide
18 the service to the customer as the CC&N covering the customer's property is deemed null
19 and void. These conditions actually protect the utility by bounding its legal obligation to
20 serve within a timeframe and putting the burden on the customer requesting service to
21 meet these requirements. The utility's compliance with the conditions is customer driven
22 and are as much a customer obligation as a utility obligation.

23 In the instant case, the ROO inappropriately reverses the obligations and finds that
24 AWC has somehow fulfilled these developer-driven conditions and is, therefore, entitled
25 to serve the Robson Property despite the lack of need and necessity for service. Finding
26 of Fact No. 94 states that "[t]he evidence presented has clearly demonstrated that

27 _____
28 ⁵ There is no evidence in the record to suggest that other property owners even knew about this proceeding
and could have made such request.

1 Cornman Tweedy's actions resulted in Arizona Water being unable to comply with that
2 Decision." This implies that Cornman Tweedy was under some kind of an obligation to
3 assist AWC, even though Cornman Tweedy had no need and necessity for service nor had
4 Cornman Tweedy requested service from AWC. It is inappropriate to suggest that AWC
5 should be granted a CC&N over the Robson Property because Cornman Tweedy exercised
6 its prerogative as the owner of the Property to not go forward to secure a CAWS or MXA
7 when it had no need for water utility service.

8 **V. THE ROO IGNORES SEVERAL ESTABLISHED COMMISSION POLICIES.**

9 Finding of Fact No. 94 of the ROO states that the March 22, 2006 Procedural
10 Order governing this matter established that the scope of the hearing would be
11 circumstances and events that have resulted in AWC not complying with the timeframes
12 established in the Decision. Robson submits, however, that in order to make a
13 determination, the Commission must take into consideration whether granting AWC's
14 request under these circumstances is consistent with established Commission policies
15 regarding the granting of CC&Ns. The ROO ignores the following established policies of the
16 Commission:

- 17 • **The Commission has a preference for integrated water and**
18 **wastewater providers over stand-alone providers.**

19 It is the Commission's preference that customers be served by an integrated water
20 and wastewater provider. At such time that there is a need and necessity for service,
21 Robson, through its affiliates Picacho Water Company and Picacho Sewer Company, both
22 of which are already certificated to provide water and wastewater service respectively,
23 intend to apply for CC&N extensions to cover the Robson Property. If the Commission
24 were to ultimately grant Picacho Water Company's extension requests, customers of EJR
25 Ranch would be served by an integrated water and wastewater provider consistent with
26 Commission policy. AWC does not provide integrated water and wastewater service. If
27 the Commission does not grant AWC's request to serve the Robson Property at this time,
28 AWC would still be free to file a competing CC&N application at such time there is a

1 request for service. This is another example of why AWC would not be prejudiced by not
2 including the Robson Property in its CC&N at this time and under these circumstances.

- 3 • **The Commission requires that requests for service accompany**
4 **applications for extensions of CC&Ns.**

5 Ironically, if AWC was to apply today for a CC&N extension to cover the Robson
6 Property, that application would certainly be denied as there is no request for service
7 pending for this area. Consistent with Mr. Olea's testimony set forth above, the
8 Commission has been denying applications relating to CC&Ns because of a lack of need
9 and necessity.⁶

- 10 • **The Commission gives appropriate consideration to the wishes**
11 **of the property owner regarding the provision of utility services**
12 **to his or her property.**

13 Cornman Tweedy is the owner of the Robson Property. In developing its Property,
14 consistent with the successful business model that it has used for other developments,
15 Robson prefers to use its own utilities to provide integrated water and wastewater service
16 to be in a position to "control its destiny" and to provide the best quality service to its
17 homebuyers. AWC is attempting to thwart Robson's desire to potentially use its own
18 utilities in the development of its property. The Commission has consistently taken into
19 consideration the desire of property owners when possible with respect to the utilities that
20 will serve their property once a request for service is made. One reason Staff witness
21 Olea cited for not granting AWC's Extension Request with regard to the Robson Property
22 is that the "current property owner does not want to be served by Arizona Water." *Trans.*
23 *Vol. II* (July 11, 2006) at 309, lines 20-22.

24 In adopting Decision 68453 (February 2, 2006) in a fairly recent case involving
25 applications filed by AWC and Woodruff Water Company (Docket No. W-04264A-04-
26 0438), former Commissioner Spitzer repeated comments of Commissioner Gleason that
27 the desire of a landowner is relevant in certificating a public utility to serve the

28 ⁶ See, Decision 59396 (Nov. 28, 1995); Decision 68453 (Feb. 2, 2006); Decision 68445 (Feb. 2, 2006);
Decision 68247 (Oct. 25, 2005); and Decision 64062 (Oct. 4, 2001).

1 landowner's property: "Commissioner Gleason alluded to it very early that the property
2 owner ought to have some say in how utility service is provided...the rights of the
3 property owner ought to be accorded some degree of respect." *Transcript of Open*
4 *Meeting* at 109 (Jan. 27, 2006). Robson does not want AWC as its water provider for the
5 northern half of EJ Ranch.⁷ The Commission should respect the rights of Robson and
6 amend the ROO to deny AWC's extension request with regard to the Robson Property.

- 7 • **The Commission's has an aversion to multiple providers serving**
8 **the same development.**

9 If the Commission does not exclude the Robson Property from the Conditional
10 Extension Area, the EJ Ranch property will be served by two different water providers.
11 The Commission's preference has always been to avoid this scenario where reasonably
12 possible. Exhibit A clearly illustrates how this development would be inappropriately
13 split between Picacho Water Company and AWC if the Commission adopts the ROO.

14 **VI. BY FINDING THAT AWC HAS COMPLIED WITH THE CONDITIONS, THE**
15 **ROO HAS MODIFIED A COMMISSION DECISION IN VIOLATION OF A.R.S. §**
16 **40-252.**

17 As discussed above, it is uncontroverted that AWC has not provided a CAWS
18 relating to the Robson Property nor has it entered into a MXA to serve the Property. Mr.
19 Olea testified that Staff must follow the Decision to the letter:

20 Staff cannot change an order that has been written by this Commission, and
21 it has to be followed to the letter. And so the certificate of assured water
22 supply is what is required in this case. So unless that is submitted or unless
23 the order is amended to allow either a PAD or an analysis, Arizona Water is
24 not in compliance with that order. *Trans. Vol. II* (July 11, 2006) at 317-318
25 (*emphasis added*).

26 The ROO has found compliance with Decision 66893 by substituting AWC's
27 submittal of an Analysis of Assured Water Supply in lieu of a CAWS and a MXA not
28 related to the Robson Property. The result of these actions constitutes a modification of

⁷ It should be noted that a parcel of land was excluded from AWC's requested extension area in Docket W-01445A-05-0469 because the landowner revoked his request for service and AWC honored the landowner's request. *Decision* 68607 at FOF 13 (March 23, 2006). AWC should likewise honor the landowner's request in this case.

1 the Decision which requires notice and a proceeding pursuant to A.R.S. § 40-252. The
2 purpose of the current proceeding was to determine why AWC had failed to comply with
3 the conditions of the conditional CC&N. For the Commission to find that AWC *has*
4 complied with the conditions based upon the rationale as set forth in the ROO, the
5 Commission will be modifying the requirements of a Commission decision. Cornman
6 Tweedy submits that if the Commission is going to adopt the ROO as it relates to the
7 conditions applicable to the Robson Property, it must first hold a 252 proceeding in
8 accordance with Arizona law.

9 **VII. CONCLUSION.**

10 By simply reviewing Exhibit A, and taking into consideration that there is no
11 pending request for utility service to the Robson Property, there is no need at this time for
12 the Commission to go out of its way to find that AWC somehow complied with the
13 conditions of the Decision in order for it to hold a CC&N for the Robson Property. The
14 overriding issue, as more fully described above, is whether the public interest is being
15 served by the granting of a CC&N to include the Robson Property at this time. The
16 overwhelming evidence is to the contrary. Moreover, AWC is not harmed in any way if
17 the Robson Property is excluded from the Conditional Extension Area as it will not
18 adversely affect the construction of the Florence Boulevard transmission main by AWC
19 related to the provision of water utility service to the other areas of the Conditional
20 Extension Area, and AWC would still have an opportunity in the future to apply to serve
21 this area when a request for service is made by the landowner.

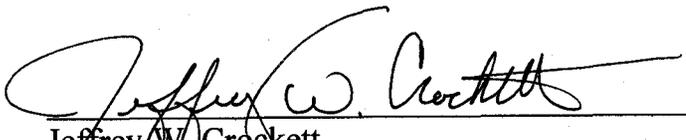
22 For Commission conditions to be meaningful, the Commission must have an
23 opportunity to examine whether circumstances have changed before a non-compliant
24 conditional CC&N is made permanent, or whether all or part of it should become null and
25 void. The situation that arose in the instant case clearly demonstrates the very reason the
26 Commission imposes such conditions in its orders.

27 For the foregoing reasons, Cornman Tweedy requests that the ROO be amended to
28 find that with respect to the Robson Property, AWC did not comply with the conditions

1 set forth in the Decision, and deny the request for an extension of time thereby deleting
2 the Robson Property from the CC&N extension conditionally granted in the Decision.

3 RESPECTFULLY SUBMITTED this 21st day of June, 2007.

4 SNELL & WILMER L.L.P.

5 

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Attorneys for Cornman Tweedy 560, LLC

10 ORIGINAL and 13 copies of the foregoing
11 filed this 21st day of June, 2007, with:

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, Arizona 85007

15 COPY of the foregoing hand-delivered this
16 21st day of June, 2007, to:

17 Teena Wolf, Administrative Law Judge
18 Hearing Division
19 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
20 Phoenix, Arizona 85007

21 Christopher Kempley, Chief Counsel
22 Legal Division
23 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
24 Phoenix, Arizona 85007

25 Ernest G. Johnson, Director
26 Steve Olea, Assistant Director
27 Utilities Division
28 ARIZONA CORPORATION COMMISSION
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COPY of the foregoing mailed this
21st day of June, 2007, to:

Robert W. Geake
ARIZONA WATER COMPANY
P.O. Box 29006
Phoenix, Arizona 85038

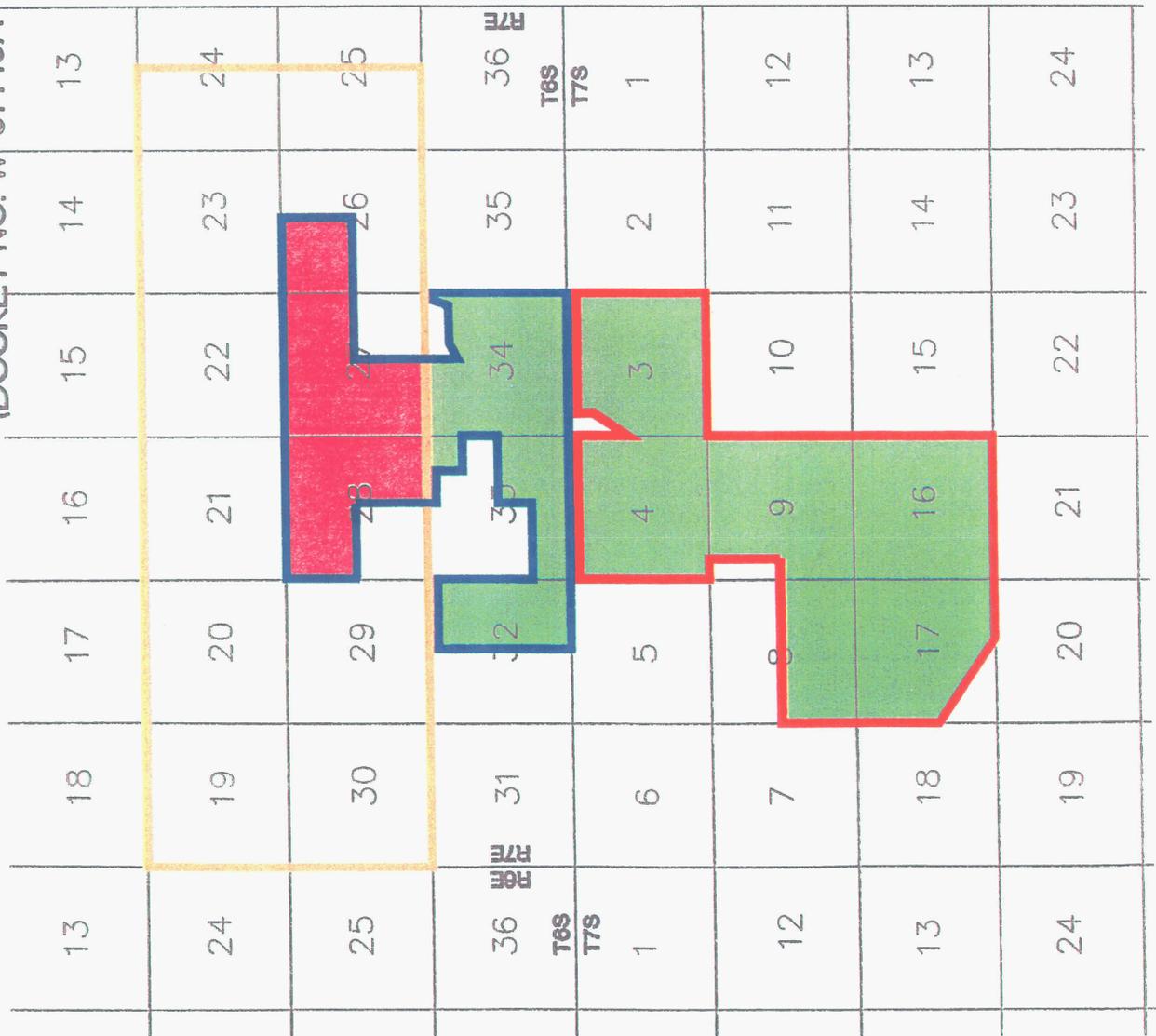
Steven A. Hirsch
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Phoenix, Arizona 85004-4406



2011167.3

EXHIBIT A

ARIZONA WATER COMPANY CC&N EXTENSION
(DOCKET NO. W-01445A-03-0559)



- EJR RANCH
- ROBSON RANCH
- ARIZONA WATER COMPANY EXTENSION AREA
- PICACHO WATER CO. CC & N AREA
- CORNMAN TWEEDY PROPERTY WITHIN ARIZONA WATER COMPANY EXTENSION AREA

