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MEMORANDUM

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Arizona Corporation Commission ^{305m}

FROM: Ernest G. Johnson
Director
Utilities Division

2007 JUL 10 A 9:58

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: July 9, 2007

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RE: NORTHERN SUNRISE WATER COMPANY AND SOUTHERN SUNRISE WATER COMPANY - MOTION FOR EXTENSION OF COMPLIANCE FILING DATES (DOCKET NOS. W-20453A-06-0247, W-20454A-06-0248, W-20453A-06-0251, W-20454A-06-0251, W-01646A-06-0251, W-01868A-06-0251, W-02235A-06-0251, W-02316A-06-0251, W-02230A-06-0251, W-01629A-06-0251, AND W-02240A-06-0251)

On April 13, 2006, Northern Sunrise Water Company and Southern Sunrise Water Company ("Northern", "Southern" or collectively, "the Company") each filed applications for new Certificates of Convenience & Necessity ("CC&Ns") to serve territories in Cochise County, Arizona. Simultaneous to those filings, Northern and Southern filed a joint application for approval of the sale of assets and cancellation of the CC&Ns of Miracle Valley Water Company, Cochise Water Company, Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado Estates Water Company and Sierra Sunset Water Company (collectively, "the former McLain Systems").

In Decision No. 68826, dated June 29, 2006, the Arizona Corporation Commission ("A.C.C." or "Commission") approved the joint application of Northern and Southern for approval of the sale and transfer of water utility assets and cancellation of the CC&Ns of the McLain Systems. Decision No. 68826 ultimately authorized that the former McLain Systems would be served by Northern and Southern based on a geographical separation.

As part of Decision No. 68826, the Commission ordered Northern and Southern to comply with the following compliance items:

"...complete the improvements listed in Exhibit B and the installation of an additional 30,000 gallons of storage for Sierra Sunset, by August 25, 2007."

"...file general rate cases in 2008, and that Decision No. 68667 is hereby modified to allow the Companies to employ a 2007 Test Year."

On May 30, 2007, Northern and Southern filed a "motion to extend time to comply with Decision No. 68826" and the above requirements. The motion identifies that the current due date for the system improvements is August 25, 2007, and states that Decision No. 68826 amended Decision No. 68667 to authorize Northern and Southern to file a rate case using the test year of December 31, 2007. The application then states the following about Decision No. 68826:

“However, in the Decision, the Commission also concluded that “If there is good cause, Northern Sunrise Water Company, Inc. and Southern Sunrise Water Company, Inc. may file a request for extension of time to complete the referenced improvements. Any such requests for extension of time shall detail the good cause and be submitted no later than June 30, 2007.”

Based on the above language from Decision No. 68826, the Company’s May 30, 2007 motion requests the following in their current application for extension:

“For good cause, Applicants respectfully request that the Commission grant this motion to extend the deadline for completing the system improvements. In addition, Applicants request that they be allowed to use a Test Year ending June 30, 2008 in the rate case required under Decision No. 68826. Both requests are made as a result of delay in the McLain bankruptcy proceedings.”

The application provides a discussion of each of the above mentioned compliance items and provides a conclusion that good cause exists that the system improvements due date should be extended from August 25, 2007, to February 19, 2008, and that the rate cases should be filed no later than December 31, 2008, using a June 30, 2008 Test Year. According to the application, both of the above requests are being specifically made as a result of the delay in the McLain bankruptcy proceedings.

System Improvements

Northern and Southern currently have obligations to provide system improvements to the former McLain Systems. The listing of improvements ordered by Decision No. 68826 is included as Exhibit 1 to the Northern and Sunrise application which was docketed on May 30, 2007.

In the application, Northern and Southern argue that the August 25, 2007 deadline was founded on “an optimistic expectation that the McLain Systems bankruptcy proceedings would close within sixty (60) days of the Commission’s final decision”. And, thus, the “applicants voluntarily agreed to complete the system improvements within twelve (12) months of the closing of the sale”. However, the bankruptcy closing did not occur within 60 days of the Commission’s final decision. Instead, the Bankruptcy Court allowed more time to debtor lien holders that were not properly notified and added a few additional assets that were used in the former McLain Systems but were not originally included in the bankruptcy. Consequently, the application states that the sale did not actually close until February 19, 2007.

Because, they argue, the “applicants could not commence the large capital projects until the transaction was finalized, there is good cause to extend the deadline to complete the remainder of improvements listed in Exhibit 1” of the application. Per the application, extending the deadline for the required system improvements from, August 25, 2007 to February 19, 2007, is consistent with the “good cause” portion of the decision.

The application further asserts that current personnel performed many repair and maintenance items in anticipation of acquiring the McLain System assets. Further, they provide a

list of "pre-acquisition system maintenance activity" and an explanation of efforts to improve the systems since the closing.

In summary, the application states that Northern and Southern have "in good faith pursued system repair and maintenance" despite the delay in the closing which was caused by the delay in the Bankruptcy Court proceedings.

General Rate Cases

In addition to extending the system improvements deadline due to the McLain bankruptcy delay, the Applicants have also requested an extension of the test year requirement that Decision No. 68826 set regarding the filing of 2008 rate cases. As shown below, Decision No. 68826 ordered Northern and Southern to file rate cases in 2008 and modified a previous decision (Decision No. 68667, dated April 20, 2006) to allow the applicants to employ a 2007 test year in doing so. In the current application, Northern and Southern request that they be allowed to use a test year ending June 30, 2008, in the 2008 rate cases as shown below.

The Company states that because of the six month delay in transferring the McLain assets, the test year for the 2008 rate cases should be extended by the same approximate timeline, until June 30, 2008.

Staff Recommendations

Staff concurs with the Company position that regular and minor maintenance was completed prior to ownership and that the large system improvements would only be completed after the change in ownership.

The Commission's Legal Division confirmed that the bankruptcy proceedings were more lengthy than expected and, further, that nothing in the delays that was attributable to failures by Northern and Southern. Additionally, the Legal Division stated that delays in the proceedings could constitute good cause for extending compliance requirements on items that depended on the close of the sale, such as the system improvements and the rate case due date / test year.

In summary, it appears that the Company's assertion that the McLain bankruptcy proceedings were prolonged and took longer than was initially expected is correct. This clearly would have effected the sale date and, therefore, Northern and Southern's system improvement construction schedule. In turn, this would flow into the date for the rate case and the associated test year. Based on all of the above, Staff has no objection to the Company's six month time extension request which would result in the system improvements being completed by February 19, 2008, and the rate case being filed no later than December 31, 2008 utilizing a June 30, 2008 test year.

EGJ:BKB:lmh

Originator: Brian K. Bozzo

SERVICE LIST FOR: NORTHERN SUNRISE WATER COMPANY
SOUTHERN SUNRISE WATER COMPANY

DOCKET NOS. W-20453A-06-0247, W-20454A-06-0248, W-20453A-06-0251, W-20454A-06-0251, W-01646A-06-0251, W-01868A-06-0251, W-02235A-06-0251, W-02316A-06-0251, W-02230A-06-0251, W-01629A-06-0251, AND W-02240A-06-0251

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AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED
MAY 30 2007

DOCKETED BY
KK

Attorneys for Northern Sunrise Water Company
and Southern Sunrise Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION OF
10 NORTHERN SUNRISE WATER COMPANY FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER UTILITY
13 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

12 IN THE MATTER OF THE APPLICATION OF
13 SOUTHERN SUNRISE WATER COMPANY FOR A
14 CERTIFICATE OF CONVENIENCE AND
15 NECESSITY TO PROVIDE WATER UTILITY
16 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

15 IN THE MATTER OF THE JOINT APPLICATION
16 OF NORTHERN SUNRISE WATER COMPANY
17 AND SOUTHERN SUNRISE WATER COMPANY
18 FOR THE APPROVAL OF SALE AND TRANSFER
19 OF WATER UTILITY ASSETS, AND
20 CANCELLATION OF CERTIFICATES OF
21 CONVENIENCE AND NECESSITY, FOR
22 MIRACLE VALLEY WATER COMPANY,
23 COCHISE WATER COMPANY, HORSESHOE
24 RANCH WATER COMPANY, CRYSTAL WATER
25 COMPANY, MUSTANG WATER COMPANY,
26 CORONADO ESTATES WATER COMPANY, AND
SIERRA SUNSET WATER COMPANY, LOCATED
IN COCHISE COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251
W-20454A-06-0251
W-01646A-06-0251
W-01868A-06-0251
W-02235A-06-0251
W-02316A-06-0251
W-02230A-06-0251
W-01629A-06-0251
W-02240A-06-0251

**MOTION TO EXTEND TIME TO
COMPLY WITH DECISION NO.
68826**

23 Northern Sunrise Water Company and Southern Sunrise Water Company ("Applicants")
24 hereby submit this Motion to Extend Time to Comply with Decision No. 68826 (June 29, 2006)
25 in the above-captioned matter.

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DISCUSSION

Decision No. 68826 requires Applicants to complete certain improvements to water systems purchased through bankruptcy proceedings for Miracle Valley Water Company, Cochise Water Company, Horseshoe Ranch Water Company, Mustang Water Company, Coronado Estates Water Company and Sierra Sunset Water Company (“McLain Systems”) by August 25, 2007. Decision No. 68826 at Ordering Paragraph ¶ 21. A complete list of the McLain System improvements is attached hereto as **Exhibit 1**. In addition, the Commission simultaneously amended Decision No. 68667 (April 20, 2006) to allow Applicants to file a general rate application using a calendar test year ending December 31, 2007. *Id.* at Ordering Paragraph ¶ 10.

However, in the Decision, the Commission also concluded that “If there is good cause, Northern Sunrise Water Company, Inc. and Southern Sunrise Water Company, Inc. may file a request for extension of time to complete the referenced improvements. Any such requests for extension of time shall detail the good cause and be submitted no later than June 30, 2007.” *Id.* at Ordering Paragraph ¶ 21. For good cause, Applicants respectfully request that the Commission grant this motion to extend the deadline for completing the system improvements. In addition, Applicants request that they be allowed to use a Test Year ending June 30, 2008 in the rate case required under Decision No. 68826. Both requests are made as a result of delay in the McLain bankruptcy proceedings.

I. The Deadline to Complete System Improvements Should Be Extended to February 19, 2008.

As stated, Applicants are currently required to finalize the improvements listed in **Exhibit 1** by August 25, 2007. This deadline was based on the optimistic expectation that the McLain Systems bankruptcy proceedings would close within sixty (60) days of the Commission’s final decision. Applicants voluntarily agreed to complete the system improvements within twelve (12) months of closing of the sale. *Id.* at ¶ 51. Unfortunately, this did not occur. The Bankruptcy

1 Court allowed additional time to newly identified debtor lien holders who were not properly
2 notified to respond, and added a few additional assets that were used in the McLain Systems that
3 were not originally part of the bankruptcy proceedings. As a result, the sale did not close until
4 February 19, 2007. Copies of the closing documents are attached as **Exhibit 2**. Because
5 Applicants could not commence the large capital projects until the transaction was finalized, there
6 is good cause to extend the deadline to complete the remainder of improvements listed in
7 **Exhibit 1**. Extending the deadline until February 19, 2008 is consistent with the original intent in
8 Decision No. 68826 to have the improvements completed within 12 months of the closing of the
9 sale of assets, as well as Ordering Paragraph ¶ 21, which anticipates this very application.

10 Applicants wish to emphasize that during the approximate six (6) month delay, company
11 personnel performed many repair and maintenance tasks in preparation of improving the McLain
12 Systems once the physical assets were acquired. Attached hereto as **Exhibit 3** is the affidavit of
13 Matthew Garlick, Regional Operations Manager of the Infrastructure Division of Algonquin
14 Water Resources, LLC, which contains a summary list of the pre-acquisition system maintenance
15 activity. In addition, Mr. Garlick provides a detailed explanation of Applicants' efforts to
16 improve the McLain Systems since the closing. Applicants believe that despite the delay caused
17 by the Bankruptcy Court proceedings, they have in good faith pursued system repair and
18 maintenance to the extent possible to ensure safe and reliable water service to their customers.
19 *See* Garlick Affidavit at ¶ 6-7.

20 **II. Applicants Should Be Allowed to File General Rate Applications by December 31,**
21 **2008, Employing a Test Year Ending June 30, 2008.**

22 Decision No. 68826 modified an earlier order of the Commission directed at the then-
23 existing water utilities, i.e., the McLain Systems and the Commission's prior contract operator—
24 ASUA. The modification allowed Applicants to employ a 2007 Test Year as part of rate
25 applications to be filed in 2008. A 2007 Test Year reflected Staff's recognition that, due to the
26 extensive repairs and necessary construction, a 2007 Test Year would better reflect the ongoing

1 level of investment and expenses than a 2006 Test Year, and result in rates that more accurately
2 reflect costs incurred by Applicants to improve the system. Decision No. 68826 at ¶ 83.

3 Applicants still intend to file rate applications by December 31, 2008. However,
4 Applicants wish to move forward in completing the system improvements with the tacit
5 understanding that the delay caused by the bankruptcy proceedings will not unduly prejudice
6 them in their respective rate applications. Because of the six month delay in transferring the
7 assets, the test year should be extended by approximately the same timeframe – to June 30, 2008
8 – to accurately reflect the level of investment and expenses, as outlined by Staff in supporting the
9 calendar 2007 Test Year. Applicants seek approval to use a test year ending June 30, 2008 in the
10 filing of rate applications on or before December 31, 2008.

11 CONCLUSION

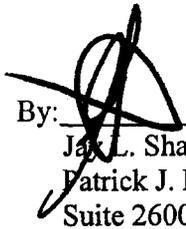
12 Despite approximately six months of delay caused by the bankruptcy proceedings to close
13 the sale, Applicants continued to repair, operate and maintain the McLain Systems so that
14 customers would receive safe and reliable water. Once the sale transaction closed on
15 February 19, 2007, Applicants began addressing the more complex system improvements
16 identified in Exhibit 1. However, more time is required. Based on the circumstances of the
17 delay, Applicants assert that there is good cause to grant this motion. Finally, in order to make
18 matters consistent with the intent of the Decision No. 68826, Applicants should be allowed to
19 utilize a Test Year ending June 30, 2008, in order to capture as much capital investment in new
20 infrastructure and known and measurable operating expenses as possible.

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RESPECTFULLY SUBMITTED THIS 30th day of May, 2007.

FENNEMORE CRAIG, P.C.

By: 

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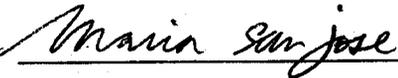
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this 30th day of May, 2007 to:

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Tucson, AZ 85701

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