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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 PERKINS  
MOUNTAIN WATER COMPANY FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN MOHAVE COUNTY.

DOCKET NO. W-20380A-05-0490

IN THE MATTER OF THE  
APPLICATION OF PERKINS  
MOUNTAIN UTILITY COMPANY FOR  
A CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN MOHAVE  
COUNTY.

DOCKET NO. SW-20379A-05-0489

**RESPONSE OF PERKINS MOUNTAIN WATER COMPANY AND PERKINS MOUNTAIN UTILITY COMPANY TO REQUEST TO RE-OPEN THE RECORD**

On July 18, 2007, the Administrative Law Judge ("ALJ") issued a procedural order that ordered Perkins Mountain Water Company and Perkins Mountain Utility Company (collectively the "Applicants") to file a response to letters by Commissioners Mundell and Mayes requesting that the record be reopened in the above-captioned matters. For the reasons set forth herein, Applicants respectfully submit that the already extensive record should not be reopened and that the Applicants' applications ("Applications") for Certificates of Convenience and Necessity ("CC&Ns") should proceed to the issuance of a Recommended Opinion and Order ("ROO") and a final determination as expeditiously as possible.

PROCEDURAL HISTORY

The extensive procedural history, evidentiary record and legal briefing in this case is particularly relevant in considering whether to reopen the record at this late date. On July 7, 2005, the Applicants filed with the Arizona Corporation Commission

Snell & Wilmer

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1 (“Commission”) their respective Applications for CC&Ns to provide integrated water  
2 and wastewater services to proposed master planned developments in Mohave County  
3 known as Golden Valley South and The Villages at White Hills. Notice of the  
4 Applications and the hearing date was published in the *Kingman Daily Miner* on October  
5 9, 2005. On November 10, 2005, the Commission’s Utilities Division Staff (“Staff”)  
6 filed its Staff Report recommending approval of the Applications with 31 conditions  
7 between the two Applicants. A hearing was held on December 5, 2005 and closing  
8 briefs were filed January 6, 2006.

9 A ROO was issued by the ALJ on January 31, 2006 finding that “[t]here is a  
10 public need and necessity for water and wastewater utility service in the proposed  
11 service area” and that the Applicants “are fit and proper entities to receive water and  
12 wastewater CC&Ns.” The ALJ also recommended that the CC&Ns be approved subject  
13 to the conditions listed in the ROO. The ROO was scheduled for consideration by the  
14 Commission at the February 14, 2006 Open Meeting.

15 One of the conditions in the ROO required Perkins Mountain Water Company “to  
16 file with Docket Control as a compliance item, copies of the developer’s Letter of  
17 Adequate Water Supply demonstrating the availability of adequate water for the  
18 requested areas within 24 months after the effective date of the order granting this  
19 application.” (ROO at 13, Finding of Fact 24(m)). Rather than waiting until after the  
20 effective date of the order—and believing it would be supportive of its Application and  
21 helpful to the Commission—Perkins Mountain Water Company filed on February 10,  
22 2006, a copy of an Analysis of Adequate Water Supply issued by the Arizona  
23 Department of Water Resources (“ADWR”) dated October 19, 2005, stating that “9,000  
24 acre-feet per year of groundwater will be physically available” for Golden Valley  
25 South.<sup>1</sup> However, as a result of this filing, the ROO was withdrawn from the February

26  
27 <sup>1</sup> A second Analysis of Adequate Water Supply for Golden Valley South was issued by ADWR on  
28 August 14, 2006 for an additional 2,895.69 acre-feet per annum of treated effluent, bringing the total  
groundwater and treated effluent physically available to serve Golden Valley South to 11,895.69 acre-  
feet per annum, which is less than the current estimated water demand for the development of 11,566

1 14, 2006 Open Meeting agenda because questions were raised regarding the significance  
2 of the ADWR letter in the context of the adequacy of water for the two master planned  
3 developments.

4 On February 17, 2006, Commissioner Mayes filed a letter with Docket Control  
5 raising questions about the Analysis of Adequate Water Supply because the 9,000 acre-  
6 feet of groundwater physically available was less than the estimated demand for Golden  
7 Valley South at the time of the initial filing with ADWR. The Applicants responded  
8 with a letter to Commissioner Mayes dated March 6, 2006. The Applicants also filed a  
9 Motion for an Expedited Procedural Conference on March 6, 2006. The motion was  
10 filed because the ROO was scheduled to be heard at the March 15, 2006 Open Meeting  
11 and the Applicants were seeking "direction from the ALJ how best to supplement the  
12 record" to answer the Commissioners' questions regarding steps taken by the developer  
13 to secure an adequate water supply. A procedural order was issued on March 13, 2006  
14 ordering a procedural conference on March 17, 2006. On March 16, 2006, former  
15 Commissioner Marc Spitzer filed a letter requesting that the record also be supplemented  
16 with additional information regarding the Applicants' litigation history and business  
17 dealings, and those of their affiliated entities or individuals. At the procedural  
18 conference, several Commissioners had questions regarding the adequacy of the water  
19 supply for the developments, and the ALJ ordered an additional evidentiary hearing in  
20 the case. A second evidentiary hearing in the case was scheduled for July 31, 2006.

21 On March 13, 2006, Applicants filed copies of their respective water and  
22 wastewater franchise agreements issued by the Mohave County Board of Supervisors.  
23 At the request of the Commissioners, public comment sessions were scheduled and held  
24 in Lake Havasu City and Kingman on April 10, 2006.

25 On March 29, 2006, Staff sent data requests to the Arizona Geological Survey,  
26 the United States Geological Survey, ADWR, and the Mohave County Planning and

27 \_\_\_\_\_  
28 acre-feet per annum. A copy of the August 14, 2006, analysis was submitted to Docket Control with a  
letter to Commissioners Mundell and Mayes dated September 13, 2006.

1 Zoning Department. On March 31, 2006, Staff sent its first set of data requests  
2 comprised of 25 questions to the Applicants. Notice of the July 31, 2006 hearing date  
3 was published in the *Kingman Daily Miner* on April 27, 2006.<sup>2</sup>

4 On June 26, 2006, Staff filed a request to modify the procedural schedule to  
5 provide Staff with additional time to review the Applicants' responses to Staff's data  
6 requests. On July 12, 2006, Staff sent its second set of data requests to the Applicants.

7 On July 20, 2006, Commissioner Mayes filed a letter requesting oral argument on  
8 issues outlined in her June 19, 2006 letter and, specifically, whether the Applicants or  
9 Rhodes Homes Arizona, LLC, ("Rhodes Homes Arizona") were acting as public service  
10 corporations in violation of A.R.S. §40-281 by commencing with the construction and  
11 installation of utility infrastructure prior to the issuance of CC&Ns by the Commission.<sup>3</sup>

12 A procedural order was issued on July 26, 2006, postponing the July 31, 2006  
13 evidentiary hearing and replacing it with oral argument on the issues raised by  
14 Commissioner Mayes in her July 20, 2006, letter. On July 27, 2006, the Applicants filed  
15 an Emergency Request for Continuance of Oral Argument so that the parties would have  
16 an opportunity to brief the issues. In a Procedural Order dated July 31, 2006, the ALJ  
17 identified nine issues to be addressed at oral argument and in briefing. Opening briefs  
18 were filed by the Applicants and Staff on August 14, 2006, and a response brief was  
19 filed by the Applicants on August 28, 2006. Oral argument on the issues raised by  
20 Commissioner Mayes and outlined in the Procedural Order was held on August 30,  
21 2006.

22 On August 4, 2006, Staff sent its third set of data requests to the Applicants, and  
23 on August 24, 2006, Staff sent its fourth set of data requests to Applicants.

24 On September 13, 2006, the Applicants provided written responses to questions

25 \_\_\_\_\_  
26 <sup>2</sup> This was the second public notice published in the case.

27 <sup>3</sup> In response to a question from Commissioner Mayes at the February 8, 2007, prehearing conference  
28 regarding whether Staff had resolved the issue of whether Rhodes Homes Arizona is acting as a public  
service corporation, the Commission's Staff Attorney stated that "Staff has evaluated that, and we've  
made a preliminary determination, based on the evidence that we've seen so far, that we don't believe  
that it is acting as a public service corporation at this time...." (Prehearing Tr. at 30-31 Feb. 8, 2007)).

1 asked by Commissioners Mundell and Mayes at the August 30, 2006 oral argument  
2 which could not be answered at the time of the oral argument.

3 On October 4, 2006, Perkins Mountain Utility Company filed a signed copy of  
4 Mohave County Resolution 2006-574 and the accompanying October 2, 2006, Mohave  
5 County Board of Supervisors Meeting Agenda evidencing the adoption of an amendment  
6 to the Mohave County Areawide Water Quality Management Plan (*i.e.*, 208 Plan  
7 Amendment) by adding the Golden Valley South Area Plan as a service area to be  
8 served by interim and permanent wastewater treatment plants.

9 On December 5, 2006, Staff and Applicants filed a joint proposed procedural  
10 schedule requesting an evidentiary hearing on February 15-16, 2007.

11 On December 15, 2006, Staff filed its 114-page Staff Report Addendum  
12 recommending (consistent with the November 10, 2005 Staff Report) approval of the  
13 Applications for CC&Ns with conditions for a majority of Golden Valley South and  
14 approval of an order preliminary for the remainder of Golden Valley South and all of  
15 The Villages at White Hills. The Staff Report Addendum included as attachments,  
16 among other things, the following: (i) a December 13, 2006, Engineering Report on  
17 Perkins Mountain Water Company; (ii) a June 26, 2006 Engineering Report on Perkins  
18 Mountain Utility Company; (iii) a December 15, 2006, Staff Field Inspection Report for  
19 a field inspection of Perkins Mountain Water Company and the Rhodes Homes Arizona  
20 construction sites for Golden Valley Ranch conducted by Staff on September 21, 2006;  
21 (iv) a December 15, 2006, Staff Report on the ownership structure of Perkins Mountain  
22 Water Company and Perkins Mountain Utility Company; (v) copies of judgments  
23 pertaining to Jim Rhodes or companies controlled by Mr. Rhodes; and (vi) copies of  
24 various newspaper articles and other information regarding Mr. Rhodes or companies  
25 controlled by Mr. Rhodes.

26 Notice of the February 15, 2007 hearing date was published in the *Kingman Daily*  
27  
28

1 *Miner* on December 29, 2006.<sup>4</sup> On January 24, 2007, the Applicants filed their response  
2 to the Staff Report Addendum. On January 31, 2007, February 1, 2007, February 9,  
3 2007, February 15, 2007, February 16, 2007, and February 26, 2007, Staff filed  
4 additional documentation to be considered at the evidentiary hearing including  
5 correspondence from ADWR and the Nevada State Contractors Board and various court  
6 decisions, records and correspondence totaling more than 350 pages.

7 Additional evidentiary hearing days in this case were held February 15, 16, 20,  
8 and 26, 2007, and March 2, 6 and 8, 2007, bringing the total number of hearing days to  
9 eight. At the request of the ALJ and the Commissioners, Jim Rhodes appeared before  
10 the Commission to answer questions regarding his ownership and involvement with the  
11 Applicants, as well as questions regarding various litigation matters, newspaper articles  
12 and his plans for the developments. Mr. Rhodes was on the witness stand all day and  
13 answered, to the best of his ability, every question posed to him by the Commissioners,  
14 the ALJ and Staff.

15 On March 14, 2007, Staff filed an additional Staff Report on the credit ratings  
16 pertaining to The Rhodes Companies. On March 30, 2007, Applicants filed their  
17 Closing Brief and, together with various late-filed exhibits that were filed in the docket,<sup>5</sup>  
18 the record was closed and the matter was submitted to the ALJ for consideration of a  
19 ROO.

20 On July 3, 2007, Commissioner Mundell filed a letter requesting that the record  
21 be reopened and that Jim Rhodes, and perhaps other persons associated with the  
22 Applicants, be required to appear and give sworn testimony with respect to recent news  
23 stories regarding alleged payments by Mr. Rhodes to former Clark County, Nevada  
24 Commissioner Erin Kenney. Attached to the request were various newspaper articles.  
25 On July 5, 2007, Commissioner Mayes filed a letter joining in Commissioner Mundell's  
26

27 <sup>4</sup> This was the third public notice published in the case.

28 <sup>5</sup> The late-filed exhibits include, among other things, a copy of transcript of deposition of Jim Rhodes before the Federal Elections Commission.

1 request to reopen the record. By procedural order dated July 18, 2007, Applicants were  
2 ordered to file their response.

3 **THE RECORD IS EXTENSIVE AND SHOULD NOT BE REOPENED**

4 **A. Mr. Rhodes' connection to Ms. Kenny has no bearing on the Applicants.**

5 In his request to reopen the record, Commissioner Mundell states that "recent  
6 [newspaper] articles have raised some additional issues that I feel need to be addressed,  
7 particularly the alleged payments from developer Jim Rhodes to former Clark County  
8 Commissioner Erin Kenny." The request further states that additional questioning  
9 regarding Mr. Rhodes' connection to Ms. Kenny will be necessary in order for  
10 Commissioner Mundell to make a determination as to whether the Applicants are fit and  
11 proper to operate in Arizona. Similarly, Commissioner Mayes' request concurs with  
12 Commissioner Mundell regarding Mr. Rhodes' connection to Ms. Kenny and further  
13 states that Mr. Rhodes should appear under oath to answer questions as to "whether Ms.  
14 Kenny will have any official role in the proposed Arizona utilities."

15 To address the concerns of Commissioners Mundell and Mayes, Mr. Rhodes  
16 through his counsel undersigned represents to the Commission as follows:

- 17 1. Since early 2003, Ms. Kenny provided consulting services for  
18 compensation to Mr. Rhodes on real estate investment and business  
strategy and related matters;
- 19 2. The consulting services provided by Ms. Kenny occurred after Ms. Kenny  
20 left the Clark County Commission;
- 21 3. Ms. Kenny is no longer being compensated for consulting services by Mr.  
Rhodes or any of the companies he controls;
- 22 4. Ms. Kenny is not now nor has she ever been an employee, officer, director  
23 or shareholder of Sagebrush Enterprises, The Rhodes Companies, Rhodes  
24 Homes Arizona, Perkins Mountain Water Company, Perkins Mountain  
Utility Company, or any affiliate of these entities.
- 25 5. Ms. Kenny has had no involvement whatsoever with Perkins Mountain  
26 Water Company or Perkins Mountain Utility Company, nor will she have  
any involvement whatsoever with these companies in the future.<sup>6</sup>

27 \_\_\_\_\_  
28 <sup>6</sup> This is consistent with a July 18, 2007, *East Valley Tribune* news article by Mark Flatten regarding  
Ms. Kenny's sentencing in Nevada. In that article, Mr. Flatten states that "[t]here is no indication Kenny

1 The Applicants believe that the information provided above responds to the  
2 questions raised by Commissioners Mundell and Mayes in their recent letters, and is  
3 supported by the attached signed and notarized Affidavit of James Michael Rhodes  
4 (attached as Exhibit "A"). Applicants, therefore, submit that in light of this information,  
5 there is no need to further delay this proceeding to reopen the record.

6 **B. Information regarding Mr. Rhodes' connection to Ms. Kenny was in the**  
7 **Staff Report Addendum filed prior to the 2007 hearing in this matter.**

8 On December 15, 2007, Staff filed its Staff Report Addendum regarding the  
9 Applications. The Staff Report Addendum states on page 7 the following:

10 During its review, Staff came across numerous articles discussing  
11 commendable and philanthropic efforts of Mr. Rhodes and/or affiliated  
12 entities as well as articles discussing questionable business practices of Mr.  
13 Rhodes and/or affiliated entities. Staff recognizes that news reports can be  
14 subjective in nature and generally are not conclusive on any point.  
15 However, news reports may provide information, or raise issues which may  
16 lead to relevant information. It is Staff's intention to provide the  
17 Commission with relevant information. Therefore, Staff has attached for  
18 INFORMATION PURPOSES ONLY articles which if found during its  
19 review. Staff is satisfied that the Commission will accord this information  
20 appropriate weight as it considers the matter.

21 Attachment H to the Staff Report Addendum contained two articles from the *Las*  
22 *Vegas Review-Journal* regarding Mr. Rhodes that discuss Ms. Kenny. The first is a  
23 March 30, 2004 article regarding a legal dispute wherein a court-appointed arbitrator  
24 entered a judgment against Mr. Rhodes. After describing the judgment, the article stated  
25 the following:

26 ... In March 2003, with ex-County Commissioner Erin Kenny working on  
27 his behalf, Rhodes purchased 2,400 acres atop Blue Diamond Hill on the  
28 border of the Red Rock National Conservation Area for 450 million.  
Rhodes then ran into difficulty gaining the approval to develop the land to  
his satisfaction, and she was netted in a federal political corruption probe.  
She since pleaded guilty to felony charges.

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was involved in any of Rhodes' Arizona projects, which include development of the Apache Junction  
land and his plans to build more than 130,000 homes in Mohave County."

1 The second article included in the Staff Report Addendum is dated March 10,  
2 2006 and discussed Mr. Rhodes' Federal Election Commission settlement which was a  
3 topic of extensive discussion at the hearings. The article discusses federal bribery and  
4 wire fraud charges against former Clark County Commissioners Mary Kincaid-  
5 Chauncey and Lance Malone, and mentions that Ms. Kenny "pleaded guilty and  
6 cooperated with federal prosecutors."

7 At the hearing, Mr. Rhodes was questioned about various news articles, although  
8 he received no questions regarding Ms. Kenny. Mr. Rhodes came to Arizona from  
9 Nevada at the Commission's request to make himself available to testify and answer all  
10 questions. There were no limitations placed on the scope of his questioning, and  
11 information regarding Ms. Kenny and her connection to Mr. Rhodes was in the record at  
12 the time Mr. Rhodes testified. The hearing concluded over four months ago and closing  
13 briefs were filed over three months ago. To further delay a decision on these  
14 Applications by reopening the record at this late stage, based upon news stories  
15 regarding Ms. Kenny, is unfair to the Applicants, especially since the information was  
16 already in the record. The news articles cited in the request to reopen the record add no  
17 new relevant information. Moreover, Mr. Rhodes has now explained through his  
18 affidavit his connection to Ms. Kenny. Further testimony would serve no beneficial  
19 purpose and would only result in significant additional delay.

20 **CONCLUSION**

21 Since filing the Applications in 2005, there have been at least seven different  
22 Staff Reports, eight days of hearings, multiple rounds of legal briefing, the issuance of  
23 an initial ROO and thousands of pages of supporting documentation filed in the docket.  
24 The Applicants have diligently worked with the Commission and Staff to answer every  
25 question posed and to timely provide the requested information necessary for a  
26 determination on the Applications. For the reasons stated herein, Applicants respectfully  
27 request that the record in this matter not be reopened and that the matter proceed to the  
28

1 issuance of a ROO as expeditiously as possible. To the extent the Commission has any  
2 lingering concern regarding the Applicants, the numerous conditions that the Applicants  
3 have already agreed to meet (including the unprecedented posting of \$5 million in  
4 performance bonds or letters of credit) will ensure that ratepayers are adequately  
5 protected and that the public interest is served.

6 RESPECTFULLY SUBMITTED this 23rd day of July, 2007.

7 SNELL & WILMER L.L.P.

8  
9 By:   
10 Jeffrey W. Crockett  
11 One Arizona Center  
12 400 East Van Buren  
13 Phoenix, Arizona 85004-2202  
14 Attorneys for Perkins Mountain Water  
15 Company and Perkins Mountain Utility  
16 Company

17 ORIGINAL and 15 copies filed this  
18 23rd day of July, 2007, with:

19 Docket Control  
20 Arizona Corporation Commission  
21 1200 West Washington  
22 Phoenix, Arizona 85007

23 COPY of the foregoing hand-delivered  
24 this 23rd day of July, 2007, to:

25 Dwight Nodes, Administrative Law Judge  
26 Hearing Division  
27 Arizona Corporation Commission  
28 1200 West Washington  
Phoenix, Arizona 85007

Keith Layton, Staff Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Snell & Wilmer

LLP.  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

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COPY mailed this 23rd day of  
July, 2007, to:  
  
Booker T. Evans, Jr.  
Kimberly A. Warshawski  
Greenberg Traurig, L.L.P.  
2375 East Camelback Road, Suite 700  
Phoenix, Arizona 85016  
  
Scott Fisher  
Sports Entertainment  
808 Buchanan Blvd., Ste. 115-303  
Boulder City, Nevada 89005



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CARROLB\PHX\2024669.1

**Snell & Wilmer**  
LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

# **EXHIBIT A**

**AFFIDAVIT OF JAMES MICHAEL RHODES**

STATE OF NEVADA            )  
  ) ss.  
County of Clark             )  
\_\_\_\_\_                          )

I, James Michael Rhodes, being first duly sworn upon my oath, do state as follows:

1. I am over 18 years of age and have personal knowledge of the matters set forth in this affidavit.
2. My business address is 4730 S. Fort Apache Road. Las Vegas, Nevada, 89147.
3. I am the President and sole shareholder of Sagebrush Enterprises, Inc., a Nevada corporation.
4. Perkins Mountain Water Company and Perkins Mountain Utility Company are each 100% owned and controlled by Rhodes Homes Arizona. LLC, which is 100% owned and controlled by The Rhodes Companies, LLC, which is 100% owned and controlled by Sagebrush Enterprises, Inc.
5. I am personally acquainted with former Clark County, Nevada, Commissioner Erin Kenny.
6. Since early 2003, Ms. Kenny has provided consulting services to me for compensation on real estate investment and business strategy and related matters.
7. The consulting services provided to me by Ms. Kenny occurred after Ms. Kenny left the Clark County Commission.
8. Ms. Kenny is no longer being compensated for such consulting services by me or by any of the companies that I control.
9. Ms. Kenny is not now nor has she ever been an employee, officer, director or shareholder of Sagebrush Enterprises, The Rhodes Companies, Rhodes Homes Arizona, Perkins Mountain Water Company, Perkins Mountain Utility Company, or any affiliate of these entities.

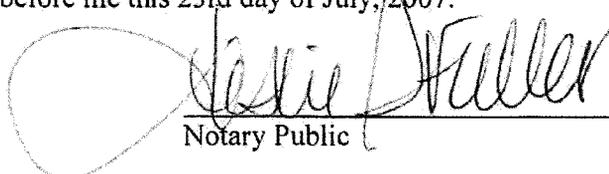
\* \* \* \*  
\* \* \* \*  
\* \* \* \*  
\* \* \* \*  
\* \* \* \*

10. Ms. Kenny has had no involvement whatsoever with Perkins Mountain Water Company or Perkins Mountain Utility Company, nor will she have any involvement whatsoever with these companies in the future.

Further Affiant sayeth not.

  
\_\_\_\_\_  
JAMES MICHAEL RHODES

SUBSCRIBED and sworn to before me this 23rd day of July, 2007.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

