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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUL 30 2007

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

DOCKETED BY [Signature]

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

DECISION NO. 69722

OPINION AND ORDER

DATE OF HEARING:

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

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

APPEARANCES:

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

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

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

BY THE COMMISSION:

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

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

1 the Decision; and (2) a main extension agreement associated with the extension area within 365 days  
2 of the Decision. Decision No. 66893 included an Ordering Paragraph stating that in the event the  
3 Company failed to meet those conditions within the time specified, the Decision would be deemed  
4 null and void without further Order of the Commission.

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

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

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

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

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

1 Communities' objection to that request.

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

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

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

28

1 After considering the evidence in this matter, we are concerned that there may not be a current  
2 need or necessity for water service in the portions of the extension area that are owned by Cornman.  
3 We also recognize that Cornman does not wish to have its property included in Arizona Water's  
4 CC&N at this time. We believe that these issues bear further examination and that they may have  
5 some relevance to the best interests of the area ultimately to be served.

6 We also recognize that the proceeding before us is limited to relatively narrow issues:  
7 whether, for purposes of compliance, Arizona Water should be granted an extension of time to fulfill  
8 the conditions of Decision No. 66893 and whether, in fact, those conditions have been fulfilled. We  
9 have concluded that these conditions have been fulfilled, and we therefore recognize that, by the  
10 terms of Decision No. 66893, Arizona Water holds a CC&N for the extension areas at issue in this  
11 proceeding.

12 Nonetheless, regarding the property that is owned by Cornman, we would like an opportunity  
13 to consider the overall best interests of the Cornman area and of the public. We will therefore reopen  
14 the record in this matter pursuant to A.R.S. § 40-252 and remand this case to the Hearing Division for  
15 further proceedings regarding whether Arizona Water should continue to hold a CC&N for the  
16 Cornman extension area at this time. We recognize that Arizona Water, as the CC&N holder, is  
17 entitled to appropriate notice and an opportunity to be heard. We therefore officially place Arizona  
18 Water on notice that our subsequent proceeding on remand will be for the purpose of considering  
19 whether the Cornman property should be deleted from the CC&N extension granted to Arizona Water  
20 by Decision No. 66893. The Hearing Division is directed to conduct further evidentiary proceedings  
21 in this matter, including appropriate opportunities for intervention and an appropriate opportunity for  
22 Arizona Water to present its case.

23 While the matter currently before us presented relatively narrow issues, we view the  
24 proceeding on remand as broad in scope so that the Commission may develop a record to consider the  
25 overall public interest underlying service to the Cornman property that is included in the extension  
26 area granted by Decision No. 66893. By identifying these issues and requiring further proceedings,  
27 we are not prejudging this matter in any way; instead, we merely desire an opportunity to consider the  
28 broader public interests implicated herein.

\* \* \* \* \*

1  
2 Having considered the entire record herein and being fully advised in the premises, the  
3 Commission finds, concludes, and orders that:

4 **FINDINGS OF FACT**

5 1. Arizona Water is an Arizona public service corporation certificated to provide water  
6 utility service in eight Arizona counties. Arizona Water operates a total of 18 water systems, serving  
7 approximately 72,000 customers.

8 2. On August 12, 2003, Arizona Water filed with the Commission an application for an  
9 extension of its existing CC&N in Casa Grande, Pinal County, Arizona to include an overall area of  
10 11 square miles. The extension area is depicted in Exhibit A, which is a copy of Hearing Exhibit  
11 MJW-32 from the instant proceeding, attached hereto and incorporated herein by reference.

12 3. On April 6, 2004, the Commission issued Decision No. 66893 in this docket.

13 4. Decision No. 66893 found that the requested extension area is adjacent to the eastern  
14 boundary of Arizona Water's existing Casa Grande CC&N and the western boundary of Arizona  
15 Water's existing Tierra Grande CC&N, and would serve to interconnect the two existing service  
16 areas.

17 5. Decision No. 66893 conditionally granted the entire extension area shown on Exhibit  
18 A.

19 6. Decision No. 66893 found that Arizona Water's August 12, 2003 application was  
20 based on two requests for service. Harvard Investments requested that Arizona Water provide water  
21 service to an approximately 480 acre development to be known as Post Ranch located in Section 29  
22 on Exhibit A. Core Group Consultants Ltd. ("Core Group") requested that Arizona Water provide  
23 water service to approximately 240 acres located in Sections 26 and 27 on Exhibit A to serve a  
24 development to be known as Florence Country Estates.

25 7. Decision No. 66893 adopted Staff's recommendation at the hearing to place two  
26 conditions on its approval of Arizona Water's August 12, 2003 application. Arizona Water was  
27 ordered to file (1) a copy of the Developers' CAWS for both the Post Ranch development and the  
28

1 Florence Country Estates development with the Commission within 365 days of the Decision and (2)  
2 a main extension agreement associated with the extension area within 365 days of the Decision.  
3 Decision No. 66893 included an Ordering Paragraph stating that in the event the Company failed to  
4 meet those conditions within the time specified, the Decision would be deemed null and void without  
5 further Order of the Commission.

6 8. Notice of the August 12, 2003 application and the hearing on the application was  
7 provided in accordance with the law.<sup>1</sup>

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

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

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

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

17 13. On March 30, 2005, prior to the deadline for the compliance filing requirements in  
18 Decision No. 66893, Arizona Water filed a Request for Additional Time to Comply with Filing  
19 Requirement. Arizona Water's filing stated the following: "Harvard Investments and Core Group  
20 Consultants, Ltd., the developers for the expansion areas, have informed the Company that  
21 development in the areas they propose to develop will be delayed for another year.<sup>2</sup> For this reason,  
22

23 <sup>1</sup> 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).

<sup>2</sup> 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 the Company requests that it be given an additional 365 days to file a copy of the Developer's  
2 certificate of assured water supply and the main extension agreements. This request should not  
3 prejudice any other party, as the Company was the only applicant for a certificate of convenience and  
4 necessity for the areas to be served."

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

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

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

26 17. On April 11, 2005, Staff filed a memorandum in which it stated the following: "In  
27 light of the change in circumstances in facts supporting the Commission's decision, Staff  
28 recommends Arizona Water Company's request for an extension of time to comply with Decision

1 No. 66893 be scheduled for additional evidentiary proceedings on the merits of Arizona Water's  
2 request and Robson Communities' objection to that request."

3 18. On April 15, 2005, in Docket No. W-03528A-05-0281, Picacho Water filed an  
4 application to extend its CC&N to include property owned by its affiliate Cornman. The extension  
5 area requested by Picacho Water in that docket is depicted in Exhibit B, attached hereto and  
6 incorporated herein by reference. Exhibit B is a copy of an exhibit from Picacho Water's application  
7 in that docket. The extension area Picacho Water requested in Docket No. W-03528A-05-0281 is  
8 located within the extension area conditionally granted to Arizona Water in Decision No. 66893.<sup>3</sup>

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

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

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

16 22. Also on May 19, 2005, Cornman, Picacho and Robson filed exceptions to the May 10,  
17 2005 Proposed Order.

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

20 24. The Recommended Order docketed on May 10, 2005 was considered at the May 24-  
21 25, 2005 Open Meeting of the Commission, but no vote was taken on it.

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

25 26. On October 5, 2005, Picacho Water filed the following: (1) Notice of Appearance of  
26 Counsel; (2) Motion to Consolidate; (3) Request to File Brief on the Issue of Whether Arizona Water

27 <sup>3</sup> 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 Company's CC&N is Null and Void and Request for Oral Argument; and (4) Request for Ruling on  
2 Motion for Intervention.

3 27. On October 14, 2005, Arizona Water filed its Response to Picacho Water Company's  
4 Motion to Consolidate, Request to File Brief and Request for a Ruling.

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

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

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

14 31. On November 22, 2005, Staff filed, pursuant to the September 28, 2005 Procedural  
15 Order, its Legal Memorandum on the issue of the validity of the CC&N granted in Decision No.  
16 66893.

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

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

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

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

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

28 37. On January 9, 2006, Staff filed its Reply Pursuant to the November 23, 2005

1 Procedural Order.

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

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

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

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

10 42. On March 22, 2006, a Procedural Order was issued denying the Motion to  
11 Consolidate; finding that Arizona Water's Request for Additional Time to Comply and the  
12 Procedural Order issued April 5, 2005 stayed Decision No. 66893's time for compliance with the  
13 conditions of that Decision and ordering that Arizona Water's CC&N for the extension area remained  
14 valid and in effect until a Commission Ruling on the Request for Additional Time to Comply; setting  
15 a Procedural Conference for the purpose of discussing discovery issues and setting a hearing date;  
16 and stating that the hearing would not be a reopening of the Decision granting Arizona Water a  
17 CC&N, but that instead, the scope of the hearing would be limited to the circumstances and events  
18 that resulted in Arizona Water not complying with the time periods established in Decision No.  
19 66893.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 56. The purpose of the CC&N extension request in this docket was not only to serve the  
26 Post Ranch and Florence Country Estates developments, both of which requested service prior to the  
27 Company's filing of the CC&N extension request, but also to facilitate the completion of a grid  
28 distribution system to tie the Casa Grande system to the Tierra Grande system in order to efficiently

1 serve entities that would be constructing developments along Florence Boulevard east of Interstate 10  
2 (*See* Tr. at 44-45).

3 57. On November 9, 2005, Arizona Water received from the Arizona Department of  
4 Environmental Quality ("ADEQ") an Approval to Construct ("ATC") for the "Tierra Grande  
5 Interconnect" – consisting of installing approximately 35,000 feet of 16" DI [ductile iron]  
6 transmission mains along Florence Blvd. to connect water systems of Tierra Grande and Casa  
7 Grande" (Ex. MJW-13). The ATC states that it is void if construction has not started within one year  
8 of issuance, but that upon receipt of a written request for an extension of time, ADEQ may grant an  
9 extension (*Id.*). Mr. Whitehead testified that Arizona Water intends to request an extension of time  
10 for the ATC at the proper time (Tr. at 45). An extension of time for an ATC may be, and generally  
11 is, requested after the expiration date (Tr. at 65-66).

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

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

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

1           61.    The Hacienda Estates and Hacienda Highlands developments, both located in a  
2 portion of Section 30, have requested service from Arizona Water. These two projects applied for a  
3 CAWS on March 20, 2006, and Arizona Water has signed a notice of intent to serve ("NOI") for the  
4 two projects (Tr. at 196-198; Ex. AWC-4).

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

7           63.    The Springwater Pointe development is located in a portion of Section 30. On August  
8 16, 2006, the Company docketed a copy of a Main Extension Agreement between the Company and  
9 Springwater Pointe, LLC. This project applied for a CAWS on April 27, 2006 (Tr. at 196-198; Ex.  
10 AWC-4).

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

15           65.    The Rose Law (AG Robertson) development, located in portions of Sections 22, 23,  
16 26 and 27, requested service from Arizona Water on October 26, 2005.

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

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

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

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

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

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

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

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

28           74. In regard to the Florence Country Estates development, Arizona Water approved one

1 or more NOIs for the development; executed and reported an annual reporting agreement between the  
2 Company, the developer and the San Carlos Irrigation and Drainage District; and executed the  
3 standard municipal provider reporting agreement with the CAWCD, because the development was  
4 being enrolled in the CAGR (Id. at 7-9).

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

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

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

10 78. On October 18, 2004, an application for an Analysis of Assured Water Supply for EJR  
11 Ranch was submitted to ADWR, signed by signatories on behalf of trustees of the Dermer Family  
12 Trust, Hwy 287 Florence Blvd. Inc., Sun Lakes – Casa Grande Development LLC, and Cornman (See  
13 Ex. WMG-13). The October 18, 2004 application was prepared at the direction of Mr. Poulos (Tr. at  
14 234), listed Arizona Water and Picacho Water as the water provider, and included Sections 26 and  
15 27, the Florence Country Estates development property (Id.). The application did not include a NOI  
16 from either Arizona Water or Picacho Water, but instead requested that ADWR complete the analysis  
17 without the NOI forms.

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

25 80. On October 29, 2004, at the request of Cornman, Core Group made a request of  
26 ADWR in writing that the file concerning the application for a CAWS for Florence Country Estates  
27 be closed (Ex. CT-10A, Revised Rebuttal Testimony of Jim Poulos at 6, 8; 9; Ex. WMG-12; Ex. CT-  
28 17, CT-18, CT-19, CT-20). Cornman at that time told Brian Carpenter of HWY-Florence Boulevard,

1 Inc., and Madison Diversified 882 Corp., that he should withdraw the CAWS application for  
2 Florence Country Estates because the pending CAWS for Florence Country Estates would be  
3 inconsistent with the land plan Cornman was developing (Ex. CT-10A, Revised Rebuttal Testimony  
4 of Jim Poulos at 6).

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

16 82. At the hearing, Mr. Poulos testified that Robson's general counsel, Mr. Gerstman, was  
17 present during the first day of the hearing (Tr. at 206). Mr. Poulos stated that following the cross-  
18 examination of Arizona Water's witness Mr. Garfield regarding the withdrawal of the CAWS by the  
19 owners of the Florence Country Estates property owners, Mr. Gerstman asked the Vice President of  
20 Cornman to review Cornman files to confirm the accuracy of the statements in Mr. Poulos' original  
21 testimony regarding the issue (Tr. at 207). Mr. Poulos testified that documents marked and admitted  
22 as Hearing Exhibits CT-17, CT-18, CT-19 and CT-20, consisting of emails regarding the Florence  
23 Country Estates property CAWS, were subsequently found in Mr. Soriano's e-mail archives (Tr. at  
24 206-211).

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

1           84.     Sections 26 and 27, the area in which the Florence Country Estates development was  
2 located, are included in an Analysis of Assured Water Supply issued by ADWR on March 2, 2005,  
3 for the EJR Ranch development. The Analysis of Assured Water Supply concludes that the projected  
4 demands for the entire EJR Ranch development will be physically and continuously available for 100  
5 years.

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

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

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

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

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

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

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

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

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

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

26           95. This Commission found in Decision No. 66893 that Arizona Water is a fit and proper  
27 entity to serve the extension area, and that there is a need for service in the extension area. Staff's  
28 witness testified at the hearing that Arizona Water continues to be a fit and proper entity to serve the

1 extension area, and is capable and willing to serve it (Tr. at 310).

2 96. 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 97. 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 98. 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 99. It is in the public interest to extend the deadline for compliance with the conditions of  
16 Decision No. 66893 to the date of this Decision.

17 100. There may not be a current need or necessity for water service in the portions of the  
18 extension area that are owned by Cornman, and Cornman does not wish to have its property included  
19 in Arizona Water's CC&N at this time. These issues bear further examination and may have some  
20 relevance to the best interests of the area ultimately to be served.

21 101. It is in the public interest to remand this case to the Hearing Division for further  
22 proceedings regarding whether Arizona Water should continue to hold a CC&N for the Cornman  
23 extension area at this time.

24 102. As the CC&N holder, Arizona Water is entitled to appropriate notice and an  
25 opportunity to be heard. Our subsequent proceeding on remand will be for the purpose of  
26 considering whether the Cornman property should be deleted from the CC&N extension granted to  
27 Arizona Water by Decision No. 66893.

28



1 IT IS FURTHER ORDERED that Arizona Water Company is hereby on notice that the  
2 Commission's subsequent proceeding on remand will be for the purpose of considering whether the  
3 Cornman property should be deleted from the CC&N extension granted to Arizona Water Company  
4 by Decision No. 66893.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7  
8 *James J. Gleason*  
9 CHAIRMAN

*William P. Mudd*

COMMISSIONER

10 *Debra H. Hatch-Miller*  
11 COMMISSIONER

*Jim*

COMMISSIONER

*Gary Stein*

COMMISSIONER

12  
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Director of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 30<sup>th</sup> day of JULY, 2007.

18 *Brian C. McNeil*  
19 BRIAN C. McNEIL  
20 EXECUTIVE DIRECTOR

21 DISSENT \_\_\_\_\_

22 DISSENT \_\_\_\_\_

TW:db

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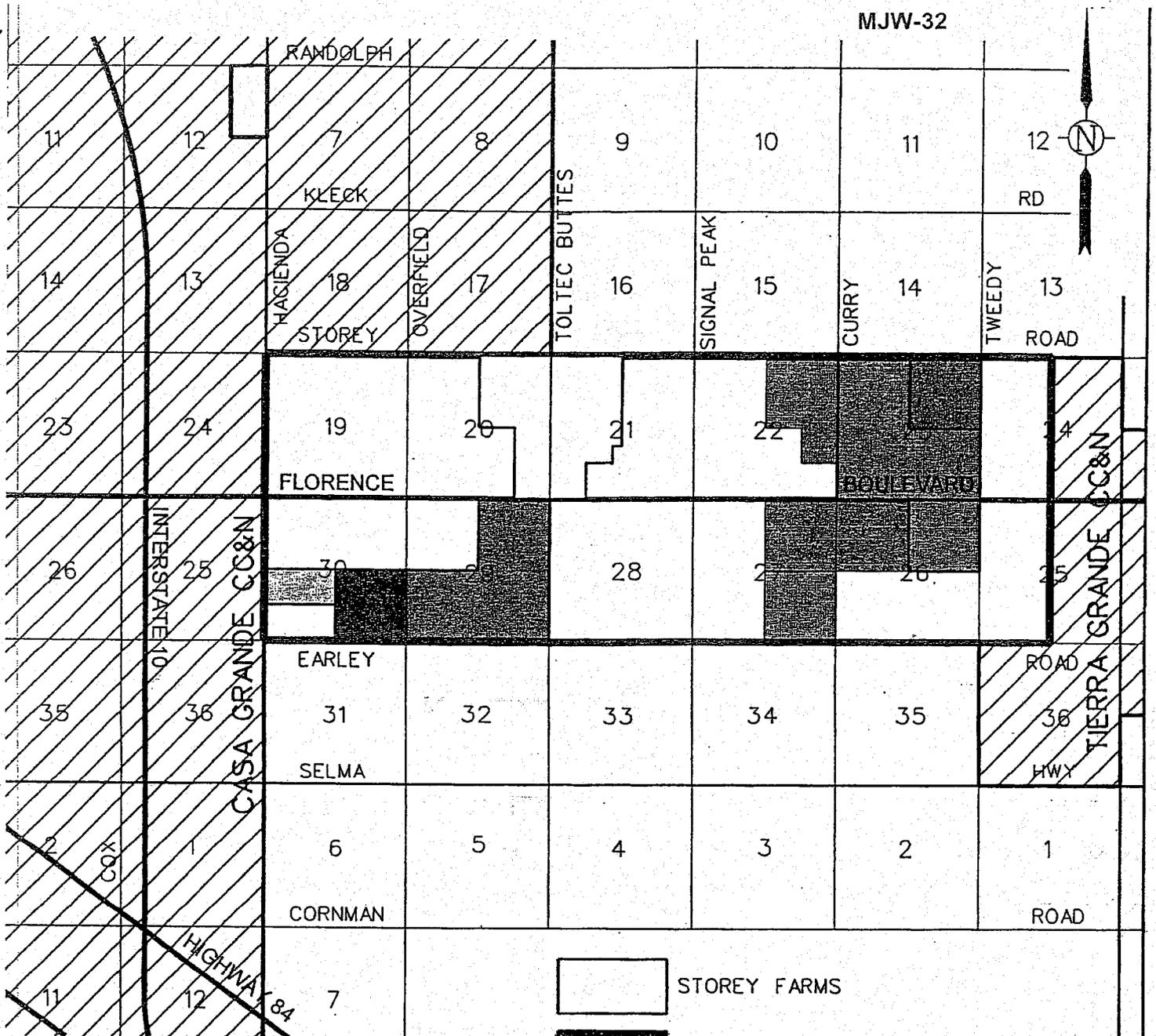
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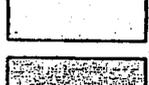
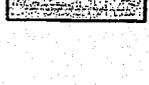
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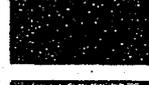
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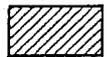
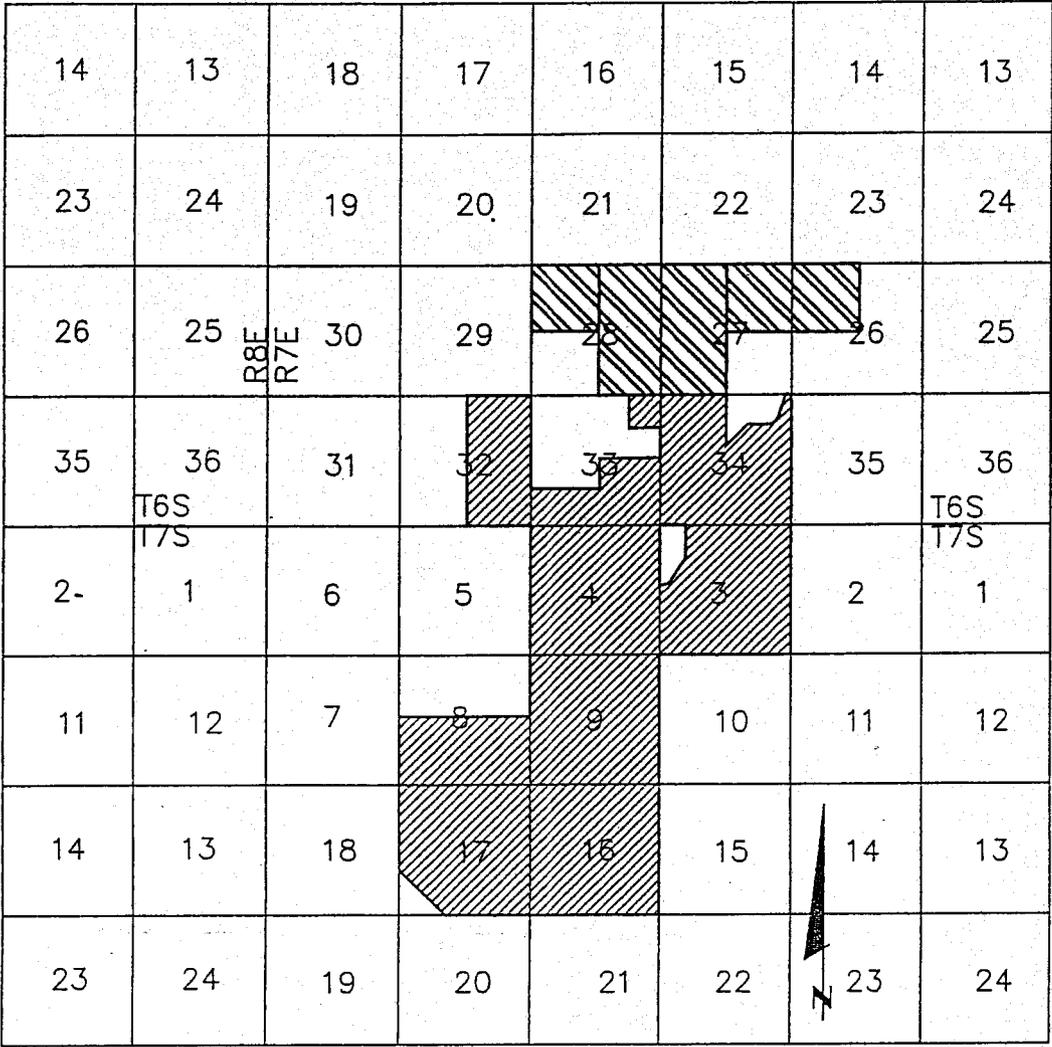
28



-  CC&N granted per Decision 66893
-  FLORENCE COUNTRY ESTATES
-  POST RANCH (HARVARD INV.)
-  HACIENDA ESTATES
-  HACIENDA HIGHLANDS

-  STOREY FARMS
-  SPRINGWATER POINTE
-  JBC DEVELOPMENT
-  ROSE LAW (AG ROBERTSON)

<b>ARIZONA WATER COMPANY</b>		
DESCRIPTION: DEVELOPMENTS WITHIN ARIZONA WATER COMPANY CASA GRANDE CC&N		
LOCATION: TOWNSHIP 6 SOUTH, RANGE 7 EAST		
DATE: 05.19.2006	SCALE: 1" = 1 Mile	DRAWN BY: CB



PICACHO WATER CO CC & N AREA



PICACHO WATER CO CC & N EXPANSION AREA

PICACHO WATER CO CC & N  
APRIL, 2005