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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2007 AUG 23 P 3: 02
AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF:

ARIZONA WATER COMPANY, AN ARIZONA CORPORATION,

Complainant,

vs.

GLOBAL WATER RESOURCES, LLC, A FOREIGN LIMITED LIABILITY COMPANY; GLOBAL WATER RESOURCES, INC., A DELAWARE CORPORATION; GLOBAL WATER MANAGEMENT, LLC, A FOREIGN LIMITED LIABILITY COMPANY; SANTA CRUZ WATER COMPANY, LLC, AN ARIZONA LIMITED LIABILITY CORPORATION; PALO VERDE UTILITIES COMPANY, LLC, AN ARIZONA LIMITED LIABILITY CORPORATION; GLOBAL WATER – SANTA CRUZ WATER COMPANY, AN ARIZONA CORPORATION; GLOBAL WATER – PALO VERDE UTILITIES COMPANY, AN ARIZONA CORPORATION; JOHN AND JANE DOES 1-20; ABC ENTITIES I-XX,

Respondents.

DOCKET NO. W-01445A-06-0200
SW-20445A-06-0200
W-20446A-06-0200
W-03576A-06-0200
SW-03575A-06-0200

Arizona Corporation Commission
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PROCEDURAL ORDER

BY THE COMMISSION:

On March 29, 2006, Arizona Water Company (“AWC”) filed a complaint against Global Water Resources, LLC, Global Water Resources, Inc., Global Water Management, LLC, Santa Cruz Water Company, LLC, Palo Verde Utilities Company, LLC, Arizona Global Water – Santa Cruz Water Company and Arizona Global Water – Palo Verde Utilities Company (collectively “Respondents”).

On October 6, 2006, the Commission’s Utilities Division (“Staff”) filed a Staff Report in Docket No. W-00000C-06-0149 (*In the Matter of the Commission’s Generic Evaluation of the Regulatory Impact From the Use of Non-Traditional Financing Arrangements by Water Utilities and*

1 *Their Affiliates*) (“Generic Docket”) addressing the Comments that had been received regarding
2 regulatory treatment of non-traditional funding mechanisms.

3 A number of filings have been made in this docket by the parties and procedural conferences
4 have been conducted.

5 During a procedural conference held on August 14, 2007, rulings were made regarding
6 ongoing discovery disputes and the parties were directed to negotiate a protective order that was
7 acceptable to all parties.

8 On August 22, 2007, the parties filed a Notice of Filing Form of Protective Order and
9 requested that a procedural order be issued adopting the stipulated protective order.

10 IT IS THEREFORE ORDERED that in order to facilitate the disclosure of documents and
11 information during the course of this proceeding and to protect confidential information, the
12 Commission issues the following Protective Order (“Order”).

13 **1. Confidential Information**

14 (a) **Designation of Confidential Information.** All documents, data, studies and
15 other materials furnished pursuant to any requests for information, subpoenas or other modes of
16 discovery (formal or informal), and including depositions, and other requests for information, that are
17 claimed to be proprietary or confidential (herein referred to as “Confidential Information”), shall be
18 so marked by the providing party by stamping the same with a “Confidential” designation.
19 Confidential Information provided in a computer-readable data file shall be so-labeled on the face of
20 any disk containing the file and in any e-mail transmitting the file, and the data itself shall be
21 identified in a conspicuous manner as containing “Confidential Information” to the extent reasonably
22 practicable. All notes or other materials that refer to, derive from, or otherwise contain parts of the
23 Confidential Information will be marked by the receiving party as Confidential Information. Access
24 to and review of Confidential Information shall be strictly controlled by the terms of this Order.

25 (b) **Use of Confidential Information.** All persons who may be entitled to review,
26 or who are afforded access to any Confidential Information by reason of this Order shall neither use
27 nor disclose the Confidential Information for purposes of business or competition, or any purpose
28 other than the purpose of preparing written filings and presenting information in the above-captioned

1 docket, the Certificate Docket, and in all subsequent appeals of those dockets. The parties shall keep
2 the Confidential Information secure as confidential or proprietary information and in accordance with
3 the purposes, intent and requirements of this Order.

4 **(c) Persons Entitled to Review.** Each party that receives Confidential
5 Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys
6 employed or retained by the party in the proceedings and the attorneys' staff; (2) non-employee
7 experts, consultants and advisors retained by the party who need access to the material to assist the
8 party in the proceedings; (3) only those employees or shareholders of the party who are directly
9 involved in the proceedings as witnesses or in consulting with counsel for the party to assist them in
10 case preparation.

11 **(d) Access to Confidential Information.** Prior to reviewing any Confidential
12 Information, any eligible individual shall first be required to read a copy of this Order and certify by
13 executing Exhibit A of this Order that he/she has reviewed the Order and has consented to be bound
14 by its terms. Exhibit A of this Order shall contain the signatory's full name, business address,
15 employer, and the signatory's position or role in this proceeding. Upon their execution, all Exhibit
16 A's shall be promptly provided to counsel for all parties providing Confidential Information. Should
17 any portion of a deposition transcript contain Confidential Information, Court reporters shall also be
18 required to sign an Exhibit A and comply with the terms of this Order.

19 **2. Notes.**

20 **(a) Notes from Confidential Information.** Limited notes regarding Confidential
21 Information may be taken by counsel and experts for the express purpose of preparing pleadings,
22 cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case
23 of persons designated in section 1(c) of this Order, to prepare for participation in this proceeding.
24 Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be
25 destroyed after the conclusion of the proceedings in accordance with subsection 2(b) below.

26 **(b) Destruction.** All notes, to the extent they contain Confidential Information
27 and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed
28 after the conclusion of this proceeding and any appeals arising there from. The party destroying such

1 has consented to be bound by its terms.

2 Parties seeking disclosure of Highly Confidential Information may only designate a
3 reasonable number of outside counsel and outside experts to review materials marked as "Highly
4 Confidential." Only those employees or shareholders of the party who are directly involved in the
5 proceedings as witnesses or in consulting with counsel for the party to assist them in case preparation
6 may review materials marked as "Highly Confidential." However, the preceding sentence shall not
7 apply to Staff. Staff may designate a reasonable number of in-house counsel and in-house experts to
8 review Highly Confidential Information. Exhibit B shall contain the signatory's full name, business
9 address, employer, the signatory's position, and shall describe in detail the job duties or
10 responsibilities of the signatory in the proceeding. Upon their execution, all Exhibit B's shall be
11 promptly provided to counsel for all parties providing Highly Confidential Information or,
12 alternatively, filed in this docket.

13 **4. Objections to Designation of Individual to be Given Access to Confidential or**
14 **Highly Confidential Information.**

15 Any party providing either Confidential Information or Highly Confidential Information may
16 object to the designation of any individual as a person who may review Confidential Information
17 and/or Highly Confidential Information. Such objection shall be made promptly in writing to counsel
18 submitting the challenged individual's Exhibit "A" or "B". Any such objection must demonstrate
19 good cause to exclude the challenged individual from the review of the Confidential Information or
20 Highly Confidential Information. Written response to any objection shall be made within five (5)
21 business days after receipt of an objection. If, after receiving a written response to a party's
22 objection, the objecting party still objects to disclosure of either Confidential Information or Highly
23 Confidential Information to the challenged individual, the Commission shall determine whether
24 Confidential Information or Highly Confidential Information must be disclosed to the challenged
25 individual.

26 Copies of Highly Confidential Information may only be provided to persons who are eligible
27 to sign an "Exhibit B" and who have in fact signed Exhibit "B".

28 Persons authorized to review the Highly Confidential Information will maintain the

1 documents and any notes reflecting their contents in a secure location to which only designated
2 counsel and experts have access. No additional copies will be made, except for use during hearings
3 and then such disclosure and copies shall be subject to the provisions of Section 8. Any testimony or
4 exhibits prepared that reflect Highly Confidential Information must be maintained in the secure
5 location until removed to the hearing room for production under seal. Unless specifically addressed
6 in this section, all other sections of this Order applicable to Confidential Information also apply to
7 Highly Confidential Information.

8 **5. Objections to Admissibility.** The furnishing of any document, data, study or other
9 materials pursuant to this Order shall in no way limit the right of the providing party to object to its
10 relevance or admissibility in proceedings before this Commission.

11 **6. Challenge to Confidentiality.** This Order establishes a procedure for the expeditious
12 handling of information that a party claims is Confidential or Highly Confidential. It shall not be
13 construed as an agreement or ruling on the confidentiality of any document. Any party may
14 challenge the characterization of any information, document, data or study claimed by the providing
15 party to be confidential in the following manner:

16 **(a)** A party seeking to challenge the confidentiality of any materials pursuant to
17 this Order shall first contact counsel for the providing party and attempt to resolve any differences by
18 stipulation.

19 **(b)** In the event that the parties cannot agree as to the character of the information
20 challenged, any party challenging the confidentiality shall do so by appropriate pleading. This
21 pleading shall designate the document, transcript or other material challenged in a manner that will
22 specifically isolate the challenged material from other material claimed as confidential.

23 **(c)** A ruling on the confidentiality of the challenged information, document, data
24 or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be
25 conducted under circumstances such that only those persons duly authorized hereunder to have access
26 to such confidential materials shall be present. This hearing shall commence no earlier than five (5)
27 business days after service on the providing party of the pleading required by Subsection 6(b) above.
28 The providing party shall bear the burden of showing that the Confidential Information is in fact of a

1 trade secret, proprietary or confidential nature entitled to be protected according to the terms of this
2 Protective Order.

3 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL --
4 UNDER PROTECTIVE ORDER IN DOCKET Nos. W-01445A-06-0200, W-01445A-06-0199, et
5 al." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or
6 Order of the Administrative Law Judge and in that event shall be separately bound, segregated,
7 sealed, and withheld from inspection by any person not bound by the terms of this Order.

8 (e) In the event that the Administrative Law Judge should rule that any
9 information, document, data or study should be removed from the restrictions imposed by this Order,
10 no party shall disclose such information, document, data or study or use it in the public record for
11 five (5) business days unless authorized by the providing party to do so. The provisions of this
12 subsection are intended to enable the providing party to seek a stay or other relief from an order
13 removing the restriction of this Order from materials claimed by the providing party to be
14 confidential.

15 **7. Judicial Proceedings Related to Denials of Disclosure.**

16 Where the Commission, ALJ or Staff determine that disclosure is not appropriate, in any
17 judicial action against the Commission and/or Commissioners by the party seeking disclosure of the
18 information, unless specifically named, the party that designated the information as "Confidential" or
19 "Highly Confidential", as the real party in interest (the "Real Party In Interest"), shall join in the
20 action as a co-defendant. The Real Party In Interest also agrees to indemnify and hold the
21 Commission harmless from any assessment of expenses, attorneys' fees or damages under A.R.S.
22 Section 39-121.02 or any other law, resulting from denial of access by the Commission to the
23 information, data, records or study subsequently found to be non-confidential.

24 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
25 request for documents, subpoena, civil investigative demand or similar process) to disclose any of the
26 Confidential or Highly Confidential Information, the Commission shall provide the party providing
27 such information with prompt written notice of such requirement so that such party may seek an
28 appropriate remedy and/or waive compliance. The party to be providing the information agrees that

1 upon receipt of such notice, it will either undertake to oppose disclosure of the Confidential or Highly
2 Confidential Information or waive compliance with this Order. In the event that disclosure of the
3 Confidential or Highly Confidential Information is ordered, the Commission agrees to furnish only
4 that portion of the Confidential or Highly Confidential Information that is legally required.

5 **8. Use during proceedings.**

6 **a. Receipt into Evidence.** Provision is hereby made for receipt into evidence in
7 this proceeding materials claimed to be confidential in the following manner:

8 i. Prior to the use of or substantive reference to any Confidential
9 Information or Highly Confidential Information in a public hearing, the parties intending to use such
10 Information shall make that intention known to the providing party.

11 ii. The requesting party and the providing party shall make a good-faith
12 effort to reach an agreement so the Information can be used in a manner which will not reveal its
13 confidential or proprietary nature.

14 iii. If such efforts fail, the providing party shall separately identify which
15 portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

16 iv. Only one (1) copy of the documents designated by the providing party
17 to be placed in a sealed record shall be made.

18 v. The copy of the documents to be placed in the sealed record shall be
19 tendered by counsel for the providing party to the Commission, and maintained in accordance with
20 the terms of this Order.

21 **b. Seal.** While in the custody of the Commission, materials containing
22 Confidential Information shall be marked "CONFIDENTIAL -- UNDER PROTECTIVE ORDER IN
23 DOCKET NO. W-01445A-06-0200, W-01445A-06-0199, et al" and Highly Confidential Information
24 shall be marked "HIGHLY CONFIDENTIAL - USE RESTRICTED PER PROTECTIVE ORDER
25 IN DOCKET NO. W-01445A-06-0200, W-01445A-06-0199, et al" and shall not be examined by any
26 person except under the conditions set forth in this Order.

27 **c. In Camera Hearing.** Any Confidential Information or Highly Confidential
28 Information that must be orally disclosed during a public hearing to be placed in the sealed record in

1 this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have
2 access to the information under this Order. Similarly, any cross-examination on or substantive
3 reference to Confidential Information or Highly Confidential Information (or that portion of the
4 record containing Confidential Information or Highly Confidential Information or references thereto)
5 shall be received in an in camera hearing, and shall be marked and treated as provided herein.

6 **d. Access to Record.** Access to sealed testimony, records and information shall
7 be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons
8 who are entitled to review Confidential Information or Highly Confidential Information pursuant to
9 sections 1 (c) and 3 above and have signed an Exhibit "A" or "B", unless such information is released
10 from the restrictions of this Order either through agreement of the parties or after notice to the parties
11 and hearing, pursuant to the ruling of a Administrative Law Judge, the order of the Commission, or
12 final order of a court having final jurisdiction.

13 **e. Appeal/Subsequent Proceedings.** Sealed portions of the record in the
14 proceedings may be forwarded to any court of competent jurisdiction for purposes of an appeal or
15 collateral review, but under seal as designated herein. If a portion of the record is forwarded to a
16 court, the providing party shall be notified which portion of the sealed record has been designated by
17 the appealing party as necessary to the record on appeal.

18 **f. Return or Destruction.** Unless otherwise ordered, Confidential Information
19 and Highly Confidential Information, including transcripts of any depositions to which a claim of
20 confidentiality is made, shall remain under seal, shall continue to be subject to the protective
21 requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for
22 the providing party, or destroyed by the receiving party, within ninety (90) days after final settlement
23 or conclusion of these proceedings and any appeals arising therefrom. If the providing party elects
24 to have Confidential Information or Highly Confidential Information destroyed rather than returned,
25 counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

26 **9. Use in Pleadings.** Where references to Confidential Information or Highly
27 Confidential Information in the sealed record or with the providing party is required in pleadings,
28 briefs, arguments, comments or motions (except as provided in Section 8), it shall be by citation of

1 title or exhibit number or some other description that will not disclose the substantive Confidential
2 Information or High Confidential Information contained therein. Any use of or substantive
3 references to Confidential Information or Highly Confidential Information shall be placed in a
4 separate section of the pleading or brief and submitted to the Administrative Law Judge or the
5 Commission under seal. This sealed section shall be served only on counsel of record and parties of
6 record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B". All of the
7 restrictions afforded by this Order apply to materials prepared and distributed under this section.

8 **10. Summary of Record.** If deemed necessary by the Commission, the providing party
9 shall prepare a written summary of the Confidential Information or Highly Confidential Information
10 referred to in the Order to be placed on the public record.

11 **11. No Admission of Privileged or Confidential Status.** No party subject to this Order
12 shall be deemed to have admitted or agreed that any of the materials or communications designated
13 as "Confidential" or "Highly Confidential" Information are, either in fact or as a matter of law, a
14 trade secret or of a proprietary, confidential or legally protected nature. The party providing the
15 confidential information or highly confidential information shall have the burden of proof at all times
16 to demonstrate that any information it has designated as confidential information is either in fact or as
17 a matter of law, a trade secret or of a proprietary, confidential, or legally protected nature.

18 **12. Effectiveness.** This Protective Order shall continue in force and effect after this
19 Docket is closed.

20 **13. Breach of Order.** The party designating any information as "Confidential" or
21 "Highly Confidential" hereunder, in any legal action or complaint it files in any court alleging breach
22 of this Order shall, at the written request of the Commission, name the Arizona Corporation
23 Commission as a Defendant therein.

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28 ...

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 Dated this 23rd day of August, 2007

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7 DWIGHT D. NODES
8 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

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13 Copies of the foregoing mailed/delivered
14 this 23rd day of August, 2007, to:

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By: 
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Secretary to Dwight D. Nod