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MEMORANDUM

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TO: Docket Control Center  
FROM: Brian K. Bozzo *BKB*  
Manager, Compliance and Enforcement  
Utilities Division

2008 JAN 15 A 11: 26

Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: January 15, 2008

DOCKETED BY *[Signature]*

RE: ICR WATER USERS ASSOCIATION, INC. - COMPLIANCE REQUIREMENT  
TRANSFER ISSUE OF WELLS FROM HARVARD SIMON I, L.L.C. TO UTILITY  
PER DECISION NO. 64360. (DOCKET NO. W-02824A-01-0450)

In Decision No. 64360, dated January 15, 2002, the Arizona Corporation Commission ("A.C.C." or "Commission") approved the application of ICR Water Users Association, Inc. ("ICR" or "Company") for an extension of its Certificate of Convenience and Necessity ("CC&N"). In issuing its decision, the Commission ordered the Company to provide a filing relating the advance of certain wells from Harvard Simon I, L.L.C.

Specifically, Decision No. 64360 ordered the following:

"...as an additional condition for the extension of the Certificate herein, as part of the Agreement, Harvard should include in its advance, the wells which it has drilled for the purpose of providing water to the extension area described in Exhibit A to ensure that the utility has adequate water for its customers and to ensure that they are not subject to relying for their water on a third party over which the Commission lacks jurisdiction."

"We believe that this additional condition can be met by amending the Agreement between the parties and we shall require ICR to file a copy of the relevant documents transferring ownership of the wells and related water production facilities to ICR within 365 days of the effective date of this Decision ..."

The original due date for this item was January 15, 2003. The Company requested a sixty day extension of time to comply and was granted, via Procedural Order of the Commission, until March 12, 2003, to comply with the above requirement.

On March 7, 2003, the Company filed a document titled "ICR Water Users Association, Inc. Notice of Compliance" which purported compliance with the above requirement. The filing was formatted as a compliance filing, referred to amending the advance/main extension agreement ("MXA") as ordered in the decision above, and specifically amended the "Off-Site Facilities" section of the MXA to include the two production wells. The item was marked as complied in the Compliance database and has continued to maintain that classification. As it was marked as complied in the database, this item did not register as a delinquency during a recent compliance

check requested by Engineering Staff. Staff subsequently communicated that this item was not delinquent and Engineering Staff relied on this information in a November 30, 2007 Engineering Report filed in relation to a current rate case.

Staff has conducted a current review of the Company's March 7, 2003 filing relating to the transfer of the ownership of the wells. Specifically, Staff reviewed Exhibit A, the "First Amendment to the Main Extension Agreement" ("First Amendment Agreement") within the filing and compared it to the requirement outlined in Decision No. 64360. Upon inspection of the First Amendment Agreement, Staff determined that the Company has not complied with the well ownership transfer issue as ordered by the Commission.

As outlined in Decision No. 64360, the Company was given 365 days to include the wells in the MXA and "file a copy of the relevant documents transferring ownership of the wells and related water production facilities to ICR". The decision required the Company to transfer two wells within that timeframe. Staff compared this requirement with the actions of the Company in this regard as highlighted in the First Amendment Agreement document. A closer inspection of the "Transfer of Ownership" section (Section 1 (c)) of the First Amendment Agreement shows that the language calls for the second well to be transferred "on or before the date that the Company provides water service to the 800<sup>th</sup> single-family residence". This qualification on the timing of transfer for the second well is contrary to the specific language and the intent of Decision No. 64360.

There is no doubt that Decision No. 64360 required the transfer of the second well, as Finding of Fact No. 20 clearly states that "Harvard will utilize the second well as a back-up emergency well". Further, the due date applied by the Commission on the transfer of the wells was a specific date which did not include any variable element. Staff saw nothing in its current review to indicate that the Commission's intent was to base the due date on any specific level of construction or number of residential customers served. Rather, the Commission imposed due date was based on an actual and specific calendar date.

Based on all of the above, Staff has determined that the First Amendment Agreement did not result in the timely transfer of two wells to ICR and therefore the Company did not achieve compliance as outlined and required in Decision No. 64360. This memorandum has been docketed to correct previous information provided to Engineering Staff and to communicate to the parties Staff's determination that the Company is not in compliance with the Commission's requirement relating to the transfer of the two wells.

EGJ:BKB:lhm

Originator: Brian K. Bozzo

Attachment

SERVICE LIST FOR: ICR WATER USERS ASSOCIATION, INC.  
DOCKET NO. W-02824A-01-0450

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Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
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Phoenix, Arizona 85007

Mr. Christopher C. Kempley  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER  
Chairman

Arizona Corporation Commission

JIM IRVIN  
Commissioner

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WILLIAM A. MUNDELL  
Commissioner

MAR - 7 2003

MIKE GLEASON  
Commissioner

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JEFF HATCH-MILLER  
Commissioner

IN THE MATTER OF THE APPLICATION  
OF ICR WATER USERS ASSOCIATION,  
INC. FOR AN EXTENSION FOR ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

Docket No: W-02824A-01-0450

**ICR WATER USERS  
ASSOCIATION, INC.'S  
NOTICE OF COMPLIANCE**

On June 1, 2001, ICR Water Users Association, Inc. ("ICR") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("CC&N") to provide public water utility service to various parts of Yavapai County. That application included a copy of the Main Extension Agreement with Harvard Simon I, L.L.C. ("Harvard") dated March 5, 2001.

On January 15, 2002, the Commission issued Decision No. 64360, granting ICR's request for an extension of its CC&N, subject to certain conditions. These conditions are:

1. That ICR file with the Director of the Commission's Utilities Division within 365 days of the effective date of Decision No. 64360:

1 a. a copy of the developer's water adequacy report for Phase I which is  
2 to be issued by the Arizona Department of Water Resources;

3 b. a copy of the developer's Certificate of Approval to Construct with  
4 the appropriate main extension agreement;

5 c. a copy of ICR's Yavapai County franchise for the extension area; and

6 d. an amended agreement between ICR and Harvard which provides that  
7 ownership of the wells which Harvard has drilled for the purpose of providing water to the  
8 extension area be transferred to ICR.

9 On June 14, 2002, Intervenor Harvard filed a copy of the water adequacy  
10 report for Phase I of Talking Rock Ranch, issued by the Arizona Department of Water  
11 Resources.

12 On January 13 2003, ICR filed with the Commission the developer's  
13 Approval to Construct and ICR's franchise agreement with Yavapai County. ICR also  
14 requested an extension of sixty (60) days from the January 15, 2003 deadline to file an  
15 amendment to its Main Extension Agreement with Harvard providing, in part, for the  
16 advance of production wells from Harvard to ICR, and to file a copy of the relevant  
17 documents transferring ownership of the production wells from Harvard to ICR as  
18 required by Commission Decision No. 64360.

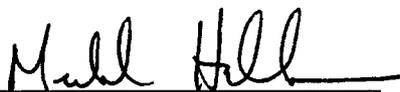
19 In a Procedural Order dated March 3, 2003, the Administrative Law Judge  
20 granted that extension.

21 ICR hereby submits a copy of the First Amendment to Main Extension  
22 Agreement dated February 25, 2003, attached as Exhibit A, and the amended Well  
23 Agreement dated February 25, 2003, attached as Exhibit B.

24  
25  
26

1 RESPECTFULLY SUBMITTED this 7th day of March, 2003.

2 LEWIS AND ROCA LLP

3  
4 By: 

5 Thomas H. Campbell

6 Michael T. Hallam

7 40 N. Central Avenue

8 Phoenix, Arizona 85004

9 Attorneys ICR Water Users Association, Inc.

10 Original and thirteen (13) copies of  
11 the foregoing hand-delivered  
12 this 7th day of March, 2003, to:

13 ARIZONA CORPORATION COMMISSION  
14 Docket Control  
15 1200 W. Washington Street  
16 Phoenix, Arizona 85007

17 Copy of the foregoing hand-delivered  
18 this 7th day of March, 2003, to:

19 Marc E. Stern, Administrative Law Judge  
20 Hearing Division

21 ARIZONA CORPORATION COMMISSION  
22 1200 W. Washington Street  
23 Phoenix, Arizona 85007

24 Patrick Williams, Compliance Manager  
25 Utilities Division

26 ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
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Ernest Johnson, Director  
Utilities Division

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Phoenix, Arizona 85007

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

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Copy of the foregoing mailed  
this 7th day of March, 2003, to:

Jay Shapiro  
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*Attorneys for Harvard Simon I, L.L.C.*



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EXHIBIT A

## FIRST AMENDMENT TO MAIN EXTENSION AGREEMENT

25<sup>th</sup> THIS FIRST AMENDMENT TO MAIN EXTENSION AGREEMENT is made this day of February, 2003, by and between ICR WATER USERS ASSOCIATION, an Arizona public service corporation ("Company"), and HARVARD SIMON I, L.L.C., an Arizona corporation ("Developer"), for the purposes and consideration hereinafter set forth.

### RECITALS

A. Company and Developer previously entered into that certain Main Extension Agreement, dated March 5, 2001 ("the Agreement"), pertaining to the extension of water utility service to 3470 acres of real property generally situated in Yavapai County, Arizona ("the Property").

B. Subsequent to execution of the Agreement, on January 15, 2002 the Arizona Corporation Commission ("Commission") issued Decision No. 64360 extending Company's CC&N conditioned upon Developer transferring ownership of certain wells and related water production facilities to the Company.

C. Based on the Commission's Order, the parties desire to amend and modify certain provisions of the Agreement, as set forth below.

NOW, THEREFORE, in consideration of the following covenants and agreements, and other good and valuable consideration, Company and Developer hereby agree to amend the Agreement, as follows:

1. Amendment to Agreement.

(a) Off-Site Facilities. Paragraph 1(a) of the Agreement is amended to provide that the "Facilities" include two production wells that have been installed and constructed by Developer and are described as Production Well 3 and Production Well 2 in that Well Agreement to be executed by Company, Developer and Talking Rock Golf, L.L.C. concurrently with the execution of this Agreement (the "Well Agreement"). A Revised Exhibit "C" reflecting the actual costs of the two production wells is attached hereto and incorporated herein by this reference.

(b) Utility's Use of the Facilities. Paragraph 1(b) of the Agreement is amended to provide that Company covenants and agrees that Company shall use and operate the production wells installed and constructed by Developer and transferred to Company pursuant to the Well Agreement only in accordance with the use restrictions contained in the Well Agreement and the conditions and restrictions contained in that Special Warranty Deed from Bluegreen West Corporation to Talking Rock Land dated January 26, 2001 and recorded on January 26, 2001 in book 3807, page 626, records of Yavapai County, Arizona, pursuant to which Developer's affiliate acquired the location of the production wells.

(c) Transfer of Ownership. Paragraph 5(a) of the Agreement is amended to provide that, pursuant to the Well Agreement, (i) immediately after the approval of this First

Amendment by the Commission or its staff, Developer will transfer and convey Production Well 3 to the Company, via Bill of Sale in form attached to the Well Agreement; and (ii) on or before the date that the Company provides water service to the 800<sup>th</sup> single-family residence at the Property, Developer's affiliate, Talking Rock Golf, will transfer and convey Production Well 2 to the Company, via Bill of Sale in form attached to the Well Agreement. All other Facilities shall be conveyed in accordance with the terms of the Agreement.

(d) Determination of Amount of Developer Advances. Paragraph 8 of the Agreement is amended to provide that the actual costs of Production Well 3 and Production Well 2, including all equipment, pumps, motors, valves, pipes, electrical system and other appurtenances installed and constructed by Developer and transferred and conveyed by Developer or by Talking Rock Golf to Company, shall constitute an advance in aid of construction and shall be refundable to Developer in accordance with paragraph 9 of the Agreement.

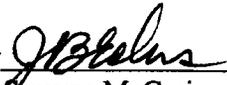
(e) Agreement Submission. Paragraph 13(a) of the Agreement is amended to provide that the Company shall be responsible for promptly seeking Commission approval of this First Amendment.

2. Inconsistencies; Governing Agreement. With regard to Production Well 3 and Production Well 2, in the event of any inconsistencies between the terms and provisions of the Well Agreement and the terms and provisions of the Agreement, the terms and provisions of the Well Agreement shall govern and prevail.

3. Effect on the Agreement. Except as otherwise expressly provided herein, all terms, covenants and conditions of the Agreement shall remain in full force and effect and be binding upon the parties.

IN WITNESS WHEREOF, ICR WATER USERS ASSOCIATION and HARVARD SIMON I, L.L.C., have caused this First Amendment to Main Extension Agreement to be executed on their behalf by their duly authorized representatives as of the day and year first above written.

ICR WATER USERS ASSOCIATION

By   
\_\_\_\_\_  
J. Swayze McCraine, President

HARVARD SIMON I, L.L.C., an Arizona limited liability company,

By: Harvard Talking Rock, L.L.C.  
Its Operating Member

By: Harvard Investments, Inc., an  
Nevada corporation  
Its Manager

By   
Its President

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