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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MAR 20 2008

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

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IN THE MATTER OF THE APPLICATION OF
LITTLE PARK WATER COMPANY, INC. FOR
APPROVAL OF AN EXTENSION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE IN
YAVAPAI COUNTY, ARIZONA.

DOCKET NO. W-02192A-07-0326

DECISION NO. 70208

**OPINION AND ORDER GRANTING
ORDER PRELIMINARY**

DATE OF HEARING: November 7, 2007

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey¹

APPEARANCES: Mr. Richard L. Sallquist, SALLQUIST, DRUMMOND
& O'CONNOR, P.C., on behalf of Little Park Water
Company, Inc.; and

Ms. Kenya Collins, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On May 24, 2007, Little Park Water Company, Inc. ("Little Park") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("CC&N") to provide water utility service in Yavapai County, Arizona.

On June 26, 2007, the Commission's Utilities Division Staff ("Staff") filed a Sufficiency Letter in this docket indicating that Little Park's application had met the sufficiency requirements outlined in the Arizona Administrative Code ("A.A.C.").

On July 30, 2007, Little Park filed a corrected legal description for the requested CC&N extension area.

On August 3, 2007, a Procedural Order was issued setting the hearing in this matter for

¹ Administrative Law Judge Yvette B. Kinsey conducted the hearing in this matter. The Recommended Opinion and Order was drafted by Administrative Law Judge Sarah N. Harpring.

1 September 24, 2007, and establishing other procedural deadlines.

2 On August 7, 2007, counsel for Little Park filed a Motion to Continue requesting that the
3 hearing be continued because Little Park's President and sole witness, Stevan Gudovic, was
4 unavailable on September 24, 2007. The Motion also stated that Staff had no objection to a
5 continuance of at least 30 days and stipulated to an extension of the time clock under A.A.C. R14-2-
6 411(C) for the number of days of the continuance.

7 On September 5, 2007, an Amended Procedural Order was issued continuing the hearing in
8 this matter to November 7, 2007; establishing other procedural deadlines; and extending the time
9 clock accordingly.

10 On October 1, 2007, Staff filed its Staff Report recommending that the Commission issue an
11 Order Preliminary, rather than a CC&N extension, to Little Park because Little Park's water supply
12 does not comply with the current U.S. Environmental Protection Agency ("EPA") maximum
13 contaminant level ("MCL") for arsenic, and Little Park had not yet received from the Arizona
14 Department of Environmental Quality ("ADEQ") an exemption from the arsenic MCL.

15 On October 15, 2007, Little Park filed an Affidavit of Mailing and Publication showing that
16 notice of the application and November 7, 2007, hearing date had been mailed to all customers of
17 record as of October 12, 2007, and that public notice had been published in the *Sedona Red Rock*
18 *News* on September 19, 2007.

19 On October 23, 2007, in response to a recommendation in the Staff Report, Little Park filed a
20 proposed Curtailment Tariff.

21 On November 7, 2007, a full public hearing was held before a duly authorized Administrative
22 Law Judge ("ALJ") of the Commission at its offices in Phoenix, Arizona. Little Park and Staff
23 appeared through counsel and presented evidence and testimony. No members of the public appeared
24 to give public comment. At the hearing, the ALJ requested that Little Park file three late-filed
25 exhibits and that Staff file one late-filed exhibit. At the close of the hearing, the ALJ took the matter
26 under advisement pending receipt of the late-filed exhibits.

27 On November 8, 2007, Little Park filed the three late-filed exhibits requested by the ALJ: (1)
28 an August 29, 2007, letter to ADEQ; (2) a November 5, 2007, letter to ADEQ; and (3) a revised

1 Curtailment Tariff.

2 On November 19, 2007, counsel for Staff filed a Notice of Filing of Late-Filed Exhibits,
3 including the language of an agreed-upon revision to recommendation number 2 in the Staff Report
4 and stating that Staff had found Little Park's revised Curtailment Tariff acceptable and recommended
5 approval.

6 On December 3, 2007, counsel for Little Park filed a letter clarifying that the corrected legal
7 description filed on July 30, 2007, was only intended to replace the legal description for the
8 Residential Parcel, not the School Parcel, and that Little Park's intention is to have both the
9 Residential Parcel and the School Parcel included in the CC&N extension area.

10 On December 11, 2007, a Procedural Order was issued requesting Little Park to file, by
11 January 10, 2008, a document supporting or correcting certain testimony provided at the evidentiary
12 hearing and requiring Staff to respond, by January 31, 2008, to Little Park's filing.

13 On January 9, 2008, Little Park filed a document supporting Little Park's testimony.

14 On January 31, 2008, Staff filed a response revising its recommended compliance item related
15 to Little Park's ADWR Designation of Adequate Water Supply.

16 On February 13, 2008, a Recommended Opinion and Order was filed, and on February 20,
17 2008, Little Park filed its exceptions to the Recommended Opinion and Order.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. Little Park is an Arizona public service corporation providing water utility service to
23 approximately 69 residential single-family-unit customers in an approximately one-half square mile
24 area near the Village of Oak Creek, just south of the City of Sedona, in Yavapai County, Arizona.
25 Little Park's CC&N was initially granted to two individuals doing business as Little Park Water
26 Company in Commission Decision No. 42264 (August 1, 1972) and was transferred to Little Park
27 Water Company, Inc. in Commission Decision No. 51435 (October 9, 1980).

28 2. Little Park is an Arizona corporation in good standing with the Commission's

1 Corporations Division and, according to Staff, is in compliance with previous Commission
2 Decisions.

3 3. On May 24, 2007, Little Park filed with the Commission an application to extend its
4 CC&N to provide service to the existing Verde Valley School ("School").

5 4. The CC&N extension area, the legal description for which is attached hereto as
6 Exhibit A, includes a 72.769 acre parcel and a 78.790 acre parcel, for a total of 151.559 acres,
7 slightly less than one-quarter square mile. The eastern boundary and part of the northern boundary of
8 the proposed CC&N extension area abut Little Park's current CC&N area, as shown in a map
9 prepared by Staff, attached hereto as Exhibit B.

10 5. Little Park included with its application a copy of its Franchise Agreement approved
11 by the Yavapai County Board of Supervisors on August 16, 1999, which includes the proposed
12 CC&N extension area and is effective until August 16, 2014.

13 6. Little Park had notice of the application and November 7, 2007, hearing date
14 published in *The Sedona Red Rock News* on September 19, 2007, and mailed notice of the application
15 and hearing to all customers of record and the School on October 12, 2007. Per the Amended
16 Procedural Order issued on September 5, 2007, the deadline for Little Park to mail this notice was
17 September 28, 2007. Although Little Park failed to mail notice in a timely manner, the late-mailed
18 notice did not prejudice Little Park's customers or the School because newspaper publication had
19 been made in a timely manner, and notice was mailed 26 days before the hearing date.

20 7. Little Park's water system consists of two active wells producing a total of 128 gallons
21 per minute ("GPM"), three storage tanks totaling 27,600 gallons, and a distribution system serving 69
22 service connections as of November 7, 2007. Little Park's water system is interconnected, with an 8-
23 inch water main for fire flow protection and a 2-inch by-pass master-meter capable of providing
24 flows up to 160 GPM, to the water system of Big Park Water Company, which shares common
25 ownership and serves approximately 3,000 customers.

26 8. Little Park submitted with its application a Water Facilities Line Extension Agreement
27 ("Agreement") entered into on April 12, 2007, with the School. Under the Agreement, the School
28 will pay all of the costs to construct, install, and connect the water facilities necessary for Little Park

1 to provide water utility services to the School.

2 9. According to Staff, the School, a preparatory academy and boarding school, has been
3 in existence since 1948 and currently provides its own water service from an existing well, with an
4 average water demand of 16,600 gallons per day ("GPD"). The School has an enrollment of
5 approximately 120 students and operates nine months out of the year, closing for the summer months.

6 10. Based on historical growth rates, Staff anticipates that Little Park's current CC&N
7 area could grow to approximately 85 connections at the end of five years. Using the School's
8 estimated average water demand of 16,600 GPD (equal to 15 connections), Staff estimates a
9 projected total customer base of approximately 100 at the end of five years.

10 11. Staff believes that Little Park's existing system has adequate water sources and
11 storage capacity to serve the existing CC&N area and proposed CC&N extension area within a
12 conventional five-year planning period and can reasonably be expected to develop additional
13 production and storage as required in the future.

14 12. Stevan Gudovic, President of Little Park, testified that Little Park can meet the
15 demand for water in the proposed CC&N extension area using only one of Little Park's wells except
16 during the summer months, when the demand doubles and the second well will be needed. (Tr. at 28,
17 lines 5-15.)

18 13. Staff stated that the School uses a tank and leach field system for sewer service.

19 14. According to Mr. Gudovic, the School will use its own well water for irrigation
20 purposes, and Little Park will provide water only for domestic purposes and fire protection. (Tr. at
21 10, lines 6-10.) The Agreement, however, requires construction and installation of "all water
22 facilities necessary to provide adequate water service for domestic, fire and irrigation" to the School.
23 (Ex. A-1, Att. B, at 1.)

24 15. Little Park estimates the total cost for the new water facilities to serve the School at
25 \$366,754, \$277,504 of which will be funded through refundable advances in aid of construction
26 ("AIAC") and \$89,250 of which will be funded through non-refundable contributions in aid of
27 construction ("CIAC"). Staff believes that the estimated cost is reasonable and has stated that Staff
28 will further evaluate the estimated cost when Little Park submits the Agreement for Commission

1 approval in the future.

2 16. Mr. Gudovic testified that the construction of the water facilities will be completed in
3 August to November 2008, (Tr. at 10, lines 11-14), but that the School had not yet received an
4 Approval to Construct² from ADEQ, (Tr. at 22, lines 10-13). Mr. Gudovic estimated that the School
5 will receive an Approval to Construct from ADEQ in approximately February to May 2008. (Tr. at
6 22, lines 10-14.) On February 20, 2008, Little Park filed a copy of an Approval to Construct for the
7 plant facilities needed to serve the School.³

8 17. According to Mr. Gudovic, Little Park will charge the rates authorized under its
9 current tariffs for service provided in the CC&N extension area, will provide the same level of
10 service as is provided to its existing customers, and will comply with Commission rules and
11 regulations. (Tr. at 22, lines 15-23.)

12 18. During the pendency of this matter, in response to a recommendation in the Staff
13 Report, Little Park filed in this docket a proposed Curtailment Tariff. At the hearing, Staff testified
14 that there were deficiencies in Little Park's proposed Curtailment Tariff, (Tr. at 48-51), and Little
15 Park agreed through counsel to remedy those deficiencies in a revised Curtailment Tariff, (Tr. at 54,
16 lines 17-19). Little Park filed a revised Curtailment Tariff as a late-filed exhibit. Staff has reviewed
17 Little Park's revised Curtailment Tariff and has stated that it is acceptable and should be approved.

18 19. Little Park has an approved backflow prevention tariff that became effective on July 8,
19 1992.

20 **Compliance with Arizona Department of Water Resources ("ADWR") Requirements**

21 20. According to Staff, Little Park's CC&N area is not located within an Active
22 Management Area and is not subject to any ADWR reporting and conservation requirements.

23 21. Little Park holds a Designation of Adequate Water Supply ("Designation") for its
24 service area, issued by ADWR in November 2000. Mr. Gudovic testified that, because the CC&N
25 extension area is considered to be commercial property, ADWR does not require Little Park to
26

27 ² ADEQ requires an Approval to Construct before a public water system may begin modification of an existing system,
including an extension to an existing system. (A.A.C. R18-5-505(B).)

28 ³ The Approval to Construct was apparently issued by the Yavapai County Development Services Environmental Unit on
January 25, 2008, although it is misdated as having been approved on January 25, 2007.

1 modify the service area boundaries for its Designation, but only to report regularly the water
2 consumed for both the service area and the CC&N extension area. (Tr. at 16, lines 7-25; Tr. at 17,
3 lines 1-16.) In addition, Mr. Gudovic testified that Little Park cannot request a modification of its
4 Designation because the CC&N extension area is commercial property. (Tr. at 17, lines 7-16.)

5 22. In light of Mr. Gudovic's testimony, Staff eliminated its recommendation that Little
6 Park be required to file a letter from ADWR indicating that the CC&N extension area is included
7 within Little Park's Designation. At the hearing, Staff and Little Park agreed to revised language for
8 that recommendation. (Tr. at 54, lines 20-25; Tr. at 55, lines 1-25; Tr. at 56, line 1.) In a late-filed
9 exhibit filed on November 19, 2007, Staff included the revised language, which recommended that
10 Little Park be required to file with Docket Control, as a compliance item in this docket, within two
11 years of the effective date of an Order in this proceeding, a letter indicating that the CC&N extension
12 area's water consumption is reported with Little Park's annual Designation report to ADWR.

13 23. Because A.A.C. R12-15-715(D) provides that a designated provider may request a
14 modification of a Designation of Adequate Water Supply at any time pursuant to A.A.C. R12-15-714,
15 a Procedural Order was issued on December 11, 2007, requiring Little Park to file, by January 10,
16 2008, a document either supporting or correcting Mr. Gudovic's testimony related to Little Park's
17 duties related to its Designation and Little Park's ability to have its Designation modified. The
18 Procedural Order also required Staff to file a response to Little Park's filing by January 31, 2008.

19 24. On January 9, 2008, Little Park filed a document stating that there is no ADWR statute
20 or rule that requires Little Park's Designation to be modified because there is neither a subdivision
21 that requires a Letter of Adequacy nor a related distribution system, and the total water demand for
22 the existing area and the CC&N extension area does not exceed the Designation's allocation. Little
23 Park's filing also asserted that Doug Dunham, Deputy Assistant Director for Water Management for
24 ADWR, had confirmed the accuracy of Mr. Gudovic's testimony that although there is no
25 requirement to change the Designation, the water sold to the School will need to be reported in Little
26 Park's annual reporting of sales to ADWR under the Designation. Little Park requested that the
27 CC&N extension be issued without any requirement or condition pertaining to additional ADWR
28 approvals.

1 25. On January 31, 2008, Staff filed a response to Little Park's filing, stating that Staff is
2 still of the opinion that Little Park should demonstrate to the Commission that the CC&N extension
3 will not adversely affect Little Park's Designation. Staff recommended that the previous
4 recommendation from its late-filed exhibit be revised to include a recommendation that Little Park be
5 required to file with Docket Control, as a compliance item in this docket, within two years after the
6 effective date of the order in this proceeding (1) a letter indicating that the CC&N extension area's
7 water consumption is reported with Little Park's annual Designation report to ADWR and (2) a letter
8 from ADWR stating that Little Park's Designation continues in effect.

9 **Compliance with Arizona Department of Revenue Requirements**

10 26. Mr. Gudovic testified that Little Park is current on both its state property taxes and
11 sales taxes. (Tr. at 21, lines 21-24.)

12 **Compliance with ADEQ Requirements**

13 27. According to Staff, Little Park's water system has no deficiencies, and ADEQ has
14 determined that the system is currently delivering water that meets the water quality standards
15 required by A.A.C. Title 18, Chapter 4.

16 **Arsenic in the Water Supply**

17 28. At the hearing, Mr. Gudovic testified that the School requested Little Park to provide
18 water utility services to the School so that the School would not have to bring the water from the
19 School's well into compliance with the new EPA MCL for arsenic.⁴ (Tr. at 38, lines 16-25; Tr. at 39,
20 lines 1-4.) According to the Staff Report, Little Park reported that the School entered into the
21 Agreement with Little Park to resolve its fire flow and arsenic requirements.

22 29. The new EPA MCL for arsenic is 10 parts per billion ("ppb"). According to Staff, the
23 water from the School's well has tested at 25 ppb for arsenic.

24 30. Little Park has an approved Arsenic Impact Hook-Up Fee ("Arsenic HUF") Tariff that
25 became effective on June 1, 2005, in Commission Decision No. 67886. The Arsenic HUF Tariff
26 authorizes Little Park to charge an Arsenic HUF for each new service connection, with the Arsenic

27 ⁴ According to an ADEQ Fact Sheet, when the EPA changed the MCL for arsenic, it also newly applied the arsenic
28 MCL to non-transient, non-community water systems such as stand-alone schools and businesses. ADEQ Fact Sheet:
Arsenic Information for Arizona Public Water Systems, Pub. No. FS 05-19.

1 HUF to be treated as CIAC to pay for arsenic treatment facilities. The Arsenic HUF per service
2 connection ranges from \$1,650 to \$66,000, depending on meter size. The Agreement states that
3 Little Park will charge the School an Arsenic HUF of \$66,000.

4 31. According to ADEQ, the EPA MCL for arsenic is designed to protect the public health
5 by reducing exposure to high levels of arsenic in water, which has been linked to both carcinogenic
6 and non-carcinogenic diseases. (ADEQ Fact Sheet: Arsenic Information for Arizona Public Water
7 Systems, Pub. No. FS 05-19.)

8 32. As of April 2007, the arsenic level for the water from each of Little Park's wells was
9 23 ppb. (Tr. at 18, lines 13-17.)

10 33. Marlin Scott, Jr., Utilities Engineer for the Commission's Utilities Division, testified
11 that ADEQ has established a December 31, 2007, deadline for water systems to come into
12 compliance with the EPA MCL for arsenic. (Tr. at 58, lines 4-9; Tr. at 61, lines 5-9.)

13 34. As of the hearing date, Little Park had not commenced construction of any arsenic
14 treatment facilities, (Tr. at 42, lines 11-14), although Little Park had collected \$16,500 in Arsenic
15 HUFs, (Tr. at 20, lines 2-3).

16 35. Rather than immediately reducing the arsenic levels for its water, Little Park intends to
17 obtain from ADEQ an exemption from the arsenic MCL, (Tr. at 31, lines 16-19), which will extend
18 Little Park's time to comply, (A.A.C. R18-4-111(B)). On August 29, 2007, Little Park submitted a
19 letter to ADEQ requesting that ADEQ grant Little Park an exemption from the arsenic MCL pursuant
20 to A.A.C. R18-4-111⁵. (Tr. at 19, lines 2-8.) Little Park submitted a follow-up letter to ADEQ on
21 November 5, 2007. (Tr. at 19, lines 8-10.) Although Little Park had not received a response from

22 _____
23 ⁵ A.A.C. R18-4-111 allows ADEQ to grant a public water system an exemption from a MCL if the public water system
24 demonstrates, among other things, that it is unable to comply with the MCL because of compelling factors, which may
25 include economic factors, and that the grant of an exemption will not result in an unreasonable risk to public health.
26 (A.A.C. R18-4-111(A).) ADEQ is required to provide written notice of its preliminary decision to grant or deny an
27 exemption within 90 days after receipt of a request. (A.A.C. R18-4-111(G).) If the preliminary decision is to grant an
28 exemption, the public water system must provide public notice of the preliminary decision to persons served by the public
water system. (*Id.*) In addition, ADEQ must provide notice and an opportunity for a hearing on a proposed exemption.
(A.A.C. R18-4-111(H).) ADEQ may condition the granting of an exemption from a MCL on the public water system's
using bottled water, a point-of-use treatment device, or a point-of-entry treatment device to avoid an unreasonable risk to
health. (A.A.C. R18-4-111(J).) When ADEQ grants an exemption, ADEQ also establishes a schedule for the public
water system to come into compliance with the MCL through the installation of treatment or the development of an
alternate source and establishes any interim control measures deemed necessary. (A.A.C. R18-4-111(B).)

1 ADEQ as of the hearing date, Mr. Gudovic testified that he had a "strong belief" that Little Park
2 would obtain the exemption by the end of 2007. (Tr. at 19, lines 10-13.)

3 36. Little Park has not filed with Docket Control a copy of any exemption from the arsenic
4 MCL issued by ADEQ.

5 37. Mr. Gudovic testified that the current estimated cost to equip the first well with arsenic
6 treatment facilities is approximately \$100,000. (Tr. at 20, lines 17-21.) If the cost of the arsenic
7 treatment facilities for the first well exceeds the Arsenic HUFs collected to date and to be collected
8 from the School, Little Park intends to fund any shortfall with the company's equity or through debt
9 from the local bank. (Tr. at 30, lines 2-13.) Staff believes that Little Park could make up the shortfall
10 either through financing or an additional investment in Little Park by the owner. (Tr. at 65, lines 16-
11 21.) Linda Jaress, Executive Consultant III for the Commission's Utilities Division, also testified that
12 there are Water Infrastructure and Finance Authority of Arizona ("WIFA") loans available for arsenic
13 treatment. (Tr. at 65, lines 19-20.)

14 38. Mr. Gudovic testified that Little Park has not yet applied to ADEQ for an Approval to
15 Construct for arsenic treatment facilities, but intends to do so after the Agreement is approved by the
16 Commission in a separate docket and the Arsenic HUF is collected from the School. (Tr. at 20, lines
17 22-25; Tr. at 21, lines 1-5.) Mr. Gudovic estimates that Little Park will apply to ADEQ for an
18 Approval to Construct in March or April of 2008 and that the arsenic treatment facilities would take
19 approximately six months to complete and should be finished in the third quarter of 2008. (Tr. at 21,
20 lines 6-15.)

21 39. Mr. Gudovic testified that Little Park does not currently have the funds to provide
22 arsenic treatment facilities for the second well, the cost for which he estimated at \$100,000. (Tr. at
23 27, lines 20-21.)

24 40. Mr. Gudovic testified that the closest water utility service, Arizona Water Company,
25 does not have sufficient capacity to provide water to blend with Little Park's water to lower the
26 arsenic level for the water provided to Little Park's customers, because Little Park's system is
27 connected to Big Park's system, which has more than 3,000 customers. (Tr. at 33, lines 1-12.) Mr.
28 Gudovic testified that because the area between Little Park's CC&N area and the Arizona Water

1 Company CC&N area is U.S. Forest Preserve land owned by the Bureau of Land Management, it
2 would be almost impossible to interconnect the two, and the cost of doing so would exceed the cost
3 of the arsenic treatment facilities for the second well. (Tr. at 40, lines 5-20.) Mr. Gudovic also
4 testified that there is no other water system near Little Park that could be interconnected. (Tr. at 34,
5 lines 20-25; Tr. at 35, lines 1-3.)

6 41. Little Park does not currently provide its customers with bottled water. Mr. Gudovic
7 testified that, although customers are aware of the arsenic in the water, he has not received any
8 complaints from Little Park's or Big Park's customers concerning the arsenic levels of the water
9 being provided, and customers are supportive of what Little Park is doing in the Village of Oak
10 Creek. (Tr. at 36, lines 3-19.)

11 42. Mr. Gudovic testified that blending treated water from the first well with the untreated
12 water from the second well to serve customers during the peak demand summer months would result
13 in substantially lower arsenic levels, although the level still might be above the arsenic MCL of 10
14 ppb. (Tr. at 41, lines 10-23.)

15 43. Mr. Scott testified that most of the water companies in the geographic area in which
16 Little Park is located have sources that exceed the arsenic MCL and that the only option is to treat the
17 water to bring the arsenic level below the MCL. (Tr. at 52, lines 1-14.) Mr. Scott also testified that
18 only two of the water systems in the area are currently trying to meet the arsenic MCL through
19 treatment. (Tr. at 59, lines 1-6.)

20 44. Staff does not believe that it is in the public interest for the Commission to give its
21 final approval of the requested CC&N extension until Little Park has either resolved its arsenic
22 problem or received an exemption for the arsenic MCL from ADEQ.

23 45. Ms. Jaress testified that granting Little Park the CC&N extension will put Little Park
24 in a better position to utilize its Arsenic HUF Tariff and will help to ensure that the School's arsenic
25 situation is also remedied. (Tr. at 64, lines 4-15). If the Commission were to deny the CC&N
26 extension, Ms. Jaress said, the School would be on its own to remedy its arsenic situation. (Tr. at 64,
27 lines 8-11.) Ms. Jaress further testified that, in order to obtain a Final Order from the Commission,
28 Little Park would have to address the arsenic issue either by receiving approval for and constructing

1 the arsenic treatment plant or by obtaining an extension of time to meet the arsenic MCL standard
2 from ADEQ. (Tr. at 64, line 25; Tr. at 65, lines 1-5.) Ms. Jaress added that she assumes ADEQ
3 would not grant an extension if it were not safe to do so. (Tr. at 65, lines 5-7.)

4 46. Mr. Gudovic testified that the owner of the School is in negotiations to sell a parcel of
5 the School's land to be used for a summer camp that would serve approximately 120 disabled
6 children during the months when the School is closed. (Tr. at 24, lines 2-20; Tr. at 25, lines 4-11.) If
7 this land sale occurs, Mr. Gudovic hopes that Little Park would also enter into a line extension
8 agreement with, and thus would collect an Arsenic HUF from, the summer camp. (Tr. at 27, lines 23-
9 25; Tr. at 28, lines 1-4.) Mr. Gudovic said that, depending on the size of the camp, the Arsenic HUF
10 may be sufficient to finance arsenic treatment facilities for the second well. (Tr. at 28, lines 1-4.)

11 47. According to Staff, the Yavapai County Board of Supervisors approved a Use Permit
12 for the School to construct the camp in August 2007. Staff stated that the camp is planned to serve
13 children with special medical needs, serving approximately 120 campers and 60 staff and volunteers
14 at one time. Staff also stated that the camp facilities would include a 1.5 acre lake, the water for
15 which would be obtained from the School's own well.

16 48. Mr. Gudovic testified that, if Little Park enters into a line extension agreement to
17 provide service to the summer camp, Little Park will only provide water for domestic purposes and
18 fire protection. (Tr. at 24, lines 21-24.)

19 49. Mr. Gudovic testified that the second well's arsenic treatment system will not be ready
20 for the summer of 2008, when it is anticipated that the summer camp will start. (Tr. at 28, lines 16-
21 19.)

22 **Staff's Recommendations**

23 50. Ms. Jaress testified that Little Park is fit and proper to provide water utility services
24 and that granting Little Park the requested CC&N extension would serve the public interest, (Tr. at
25 63, lines 8-15), because it should lead to remedying the arsenic situation for both Little Park and the
26 School, (Tr. at 64, lines 4-11).

27 51. Mr. Scott testified that Staff recommends an Order Preliminary rather than denial of
28 the CC&N extension because Staff believes that including the requirement for arsenic treatment in an

1 Order is one way to have the high arsenic levels resolved. (Tr. at 60, lines 16-25; Tr. at 61, lines 1-4.)

2 52. Staff recommends that the Commission issue an Order Preliminary and require Little
3 Park to comply with the following compliance items before a final CC&N extension is issued:

4 a. By December 31, 2008, file with the Commission's Docket Control a copy of
5 an ADEQ Certificate of Approval of Construction⁶ for the installation of the arsenic treatment
6 systems for the two existing wells or a copy of an approved exemption from the arsenic MCL
7 standard issued by ADEQ; and

8 b. Within two years of the effective date of an Order in this proceeding, file with
9 the Commission's Docket Control:

10 i. A letter indicating that the CC&N extension area's water consumption
11 is reported with Little Park's annual Designation report to ADWR,

12 ii. A letter from ADWR stating that Little Park's Designation continues in
13 effect, and

14 iii. A copy of an Approval to Construct issued by ADEQ for the plant
15 facilities needed to serve the CC&N extension area.

16 53. Staff stated that Little Park should file a request for a Final Order from the
17 Commission after satisfying the compliance items listed in Finding of Fact No. 52.

18 **Other Recommendations**

19 54. Although ADEQ may provide Little Park an exemption from the arsenic MCL that
20 will extend Little Park's deadline for complying with the arsenic MCL, we find that Little Park
21 should begin construction of the arsenic treatment systems for its two existing wells as soon as
22 possible. We are concerned about adding customers, especially children, potentially even children
23 with medical ailments, to Little Park's system when arsenic treatment has not yet begun. We are also
24 concerned about Little Park's receiving substantial Arsenic HUF funds from the School, and
25 potentially the Camp, and not immediately commencing construction of the arsenic treatment systems
26

27 ⁶ ADEQ prohibits operation of a newly constructed facility until an Approval of Construction has been issued by ADEQ.
28 A.A.C. R18-5-507(A). ADEQ will issue an Approval of Construction for a newly constructed public water system; an extension to an existing public water system; or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or operational performance. See A.A.C. R18-507(B).

1 because the incentive to comply has been removed as the result of an ADEQ exemption. We also
2 believe that Little Park should be required to provide evidence of having applied for a WIFA loan, or
3 of having arranged another form of financing, to make up the estimated shortfall in funding for the
4 arsenic treatment systems for both wells. Thus, we are modifying Staff's recommendation in Finding
5 of Fact No. 52(a).

6 55. In the event that ADEQ grants an exemption from the arsenic MCL and requires in the
7 exemption that Little Park provide bottled water to its customers, Little Park should file a Bottled
8 Water Tariff for Commission approval.

9 56. Finally, we believe that Little Park's projected timeline for completion of the plant
10 facilities to serve the CC&N extension area, as stated in Finding of Fact No. 16, is appropriate and
11 should be followed so that the School will receive water that complies with the arsenic MCL as soon
12 as possible.

13 57. Therefore, we find that Little Park should be required to file the following with the
14 Commission's Docket Control, as compliance items, within the deadlines provided, before Little Park
15 may file a request with the Commission to receive a Final Order for a CC&N extension:

16 a. By May 1, 2008, either of the following to demonstrate how Little Park intends
17 to fund construction of the arsenic treatment systems for both wells:

18 i. An application for Commission approval of financing under A.R.S. §
19 40-285 along with evidence of having applied for a WIFA loan or another form of
20 financing, to be filed in a separate docket, with a copy to this docket; or

21 ii. A document evidencing an equity infusion by the owner, to be filed in
22 this docket;

23 b. By June 1, 2008, a copy of an Approval to Construct issued by ADEQ for the
24 arsenic treatment systems for both wells;

25 c. By June 30, 2009:

26 i. A copy of a Certificate of Approval of Construction issued by ADEQ
27 for the installation of the arsenic treatment systems for the two existing wells, and

28 ii. A copy of a Certificate of Approval of Construction issued by ADEQ

1 for the plant facilities needed to serve the CC&N extension area; and

2 d. By May 1, 2010:

3 i. A letter showing that the CC&N extension area's water consumption is
4 reported with Little Park's annual Designation report to ADWR, and

5 ii. A letter from ADWR stating that Little Park's Designation continues in
6 effect.

7 58. In its exceptions to the Recommended Opinion and Order, Little Park indicated that
8 ADEQ has forwarded its application for exemption from the arsenic MCL to the EPA and that it does
9 not know when the exemption will be obtained. Little Park proposed that it be required to file the
10 exemption from the EPA within 30 days after receipt. We believe that Little Park's request is
11 reasonable in light of this new information and that Little Park should be required to file a copy of the
12 decision on its application for exemption, whether received from the EPA or ADEQ, within 30 days
13 after its receipt by Little Park. In addition, if that decision requires Little Park to provide its
14 customers bottled water during any period, Little Park should file a Bottled Water Tariff with the
15 Commission in a separate docket, with a copy to this docket, within the same timeframe.

16 59. Because an allowance for property tax expense is included in Little Park's rates and
17 will be collected from its customers, the Commission seeks assurances from Little Park that any taxes
18 collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the
19 Commission's attention that a number of water companies have been unwilling or unable to fulfill
20 their obligation to pay the taxes that were collected from ratepayers, some for as many as 20 years. It
21 is reasonable, therefore, that as a preventive measure Little Park shall annually file, as part of its
22 annual report, an affidavit with the Utilities Division attesting that Little Park is current in paying its
23 property taxes in Arizona.

24 60. In recent months, the Commission has become increasingly concerned about the
25 prolonged drought in Central Arizona. Therefore, we believe Little Park should be required to
26 conserve groundwater and that Little Park should be prohibited from selling groundwater for the
27 purpose of irrigating any future golf courses within the certificated expansion area or any ornamental
28 lakes or water features located in the common areas of the proposed new development within the

1 certificated expansion areas.

2 **CONCLUSIONS OF LAW**

3 1. Little Park is a public service corporation within the meaning of Article XV of the
4 Arizona Constitution and A.R.S. § 40-281.

5 2. The Commission has jurisdiction over Little Park and the subject matter of the
6 application.

7 3. Notice of the application was provided in accordance with the law.

8 4. There is a public need and necessity for water utility services in the requested CC&N
9 extension area described in Exhibit A, attached hereto and incorporated herein.

10 5. Little Park is a fit and proper entity to receive an Order Preliminary to provide water
11 utility service in the requested CC&N extension area described in Exhibit A.

12 6. The requirements set forth in Findings of Fact Nos. 57-60 are reasonable and should
13 be adopted.

14 **ORDER**

15 IT IS THEREFORE ORDERED that, pursuant to A.R.S. § 40-282, Little Park Water
16 Company, Inc., is granted an Order Preliminary allowing it to provide water utility service in the area
17 described in Exhibit A, conditioned upon compliance with the requirements in Finding of Fact No.
18 57.

19 IT IS FURTHER ORDERED that upon satisfying the requirements of Finding of Fact No. 57,
20 Little Park Water Company, Inc. shall file in this docket a motion for the issuance of a Final Order
21 for approval of an extension of its Certificate of Convenience and Necessity authorizing it to provide
22 water utility service in the area described in Exhibit A.

23 IT IS FURTHER ORDERED that, upon the Motion of Little Park Water Company, Inc., and
24 verification by Staff that Little Park Water Company, Inc., has complied with the requirements
25 contained in Finding of Fact No. 57, Staff shall prepare for Commission approval and docket a Final
26 Order granting Little Park Water Company, Inc., an extension of its Certificate of Convenience and
27 Necessity for water utility services to include the area described in Exhibit A.

28

1 IT IS FURTHER ORDERED that Little Park Water Company, Inc. shall, within 30 days after
2 receipt, file with the Commission's Docket Control a copy of ADEQ's or EPA's approval or denial of
3 an exemption from the arsenic MCL.

4 IT IS FURTHER ORDERED that if ADEQ or EPA has granted an exemption from the
5 arsenic MCL and required therein that Little Park Water Company, Inc. provide bottled water to its
6 customers, Little Park Water Company, Inc. shall, within 30 days after receipt of the decision
7 granting the exemption, file with the Commission's Docket Control a Bottled Water Tariff, in a
8 separate docket, with a copy in this docket.

9 IT IS FURTHER ORDERED that Little Park Water Company, Inc., shall charge its
10 authorized rates and charges in the area described in Exhibit A.

11 IT IS FURTHER ORDERED that Little Park Water Company, Inc., shall annually file, as part
12 of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its
13 property taxes in Arizona.

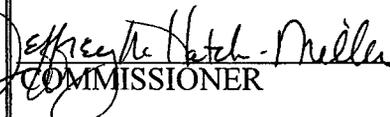
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1 IT IS FURTHER ORDERED that, in light of the ongoing drought conditions in Central
2 Arizona and the need to conserve groundwater, Little Park Water Company, Inc., is prohibited from
3 selling groundwater for the purpose of irrigating any future golf courses within the certificated
4 expansion area or any ornamental lakes or water features located in the common areas of the
5 proposed new development within the certificated expansion area.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8
9  
10 CHAIRMAN COMMISSIONER

11   
12 COMMISSIONER COMMISSIONER COMMISSIONER

13
14 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this 20th day of March, 2008.

19 
20 DEAN S. MILLER
21 INTERIM EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____

24 SNH:db

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SERVICE LIST FOR:

LITTLE PARK WATER COMPANY, INC.

DOCKET NO.:

W-02192A-07-0326

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1200 West Washington Street
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Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

EXHIBIT A

DESCRIPTION OF RESIDENTIAL PARCEL AT VERDE VALLEY SCHOOL,
3511 VERDE VALLEY SCHOOL ROAD, YAVAPAI COUNTY, ARIZONA

A portion of the South half of Section 35, Township 17 North, Range 5 East and a portion of the North half of Section 10, Township 16 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at a USDAFS Aluminum Cap set in concrete marking the Northwest corner of the Northeast quarter of the Southwest quarter of the Southwest quarter of said Section 35 from which a USDAFS Aluminum Cap marking the Southwest corner of the Southeast quarter of the Southwest quarter of the Southeast quarter of the Southwest quarter of said Section 35 bears South 00 degrees 53 minutes 55 seconds West 2057.45 feet said line being the basis of bearings for this description;

THENCE South 89 degrees 02 minutes 05 seconds East 1439.52 feet to the POINT OF BEGINNING;

THENCE continuing South 89 degrees 02 minutes 05 seconds East 477.24 feet to the beginning of a non-tangent curve to the right the center of which bears South 05 degrees 36 minutes 30 seconds West 368.30 feet;

THENCE along the arc of said non-tangent curve to the left through a central angle of 60 degrees 38 minutes 34 seconds, an arc distance of 389.81 feet;

THENCE South 23 degrees 44 minutes 59 seconds East 6.36 feet to the beginning of a tangent curve to the left having a radius of 1382.40 feet;

THENCE along the arc of said curve through a central angle of 11 degrees 17 minutes 40 seconds, an arc distance of 272.51 feet;

THENCE South 35 degrees 02 minutes 39 seconds East 244.68 feet to the beginning of a tangent curve to the right having a radius of 622.96 feet;

THENCE along the arc of said curve through a central angle of 15 degrees 33 minutes 55 seconds, an arc distance of 169.24 feet;

THENCE South 19 degrees 28 minutes 44 seconds East 570.56 feet to the beginning of a tangent curve to the right having a radius of 299.11 feet;

THENCE along the arc of said curve through a central angle of 26 degrees 46 minutes 10 seconds, an arc distance of 139.75 feet;

THENCE South 07 degrees 17 minutes 26 seconds West 169.75 feet to the beginning of a tangent curve to the left having a radius of 268.31 feet;

THENCE along the arc of said curve through a central angle of 43 degrees 25 minutes 05 seconds, an arc distance of 203.32 feet; <

DESCRIPTION OF RESIDENTIAL PARCEL AT VERDE VALLEY SCHOOL,
3511 VERDE VALLEY SCHOOL ROAD, YAVAPAI COUNTY, ARIZONA

THENCE South 36 degrees 07 minutes 39 seconds East 217.00 feet to the South line of the Southeast quarter of said Section 35;
THENCE South 89 degrees 58 minutes 04 seconds West 28.72 feet along said South line;
THENCE South 00 degrees 08 minutes 18 seconds East 298.94 feet to the Southeast corner of GLO Lot 5 of said Section 10;
THENCE South 89 degrees 49 minutes 54 seconds West 1319.45 feet along the South line of said Lot 5 to the Southeast corner of GLO Lot 6 of said Section 10;
THENCE South 89 degrees 48 minutes 13 seconds West 329.86 feet along the South line of said Lot 6;
THENCE South 00 degrees 12 minutes 21 seconds East 330.55 feet;
THENCE South 89 degrees 47 minutes 38 seconds West 516.92 feet;
THENCE North 00 degrees 31 minutes 17 seconds East 330.67 feet;
THENCE North 89 degrees 48 minutes 13 seconds East 217.28 feet to the Southerly extension of the North-South Mid-Section line of said Section 35;
THENCE North 00 degrees 31 minutes 17 seconds East 978.04 feet along said Mid-Section line;
THENCE North 61 degrees 30 minutes 14 seconds East 524.32 feet;
THENCE North 00 degrees 31 minutes 17 seconds East 1107.77 feet to the POINT OF BEGINNING.

COMPRISING 78.790 acres or 3,432,075 square feet more or less, subject to all easements of record.

DESCRIPTION OF SCHOOL PARCEL FOR VERDE VALLEY SCHOOL,
3511 VERDE VALLEY SCHOOL ROAD, YAVAPAI COUNTY, ARIZONA

A portion of the South half of Section 35, Township 17 North, Range 5 East and a portion of the North half of Section 10, Township 16 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

BEGINNING at a USDAFS Aluminum Cap set in concrete marking the Northwest corner of the Northeast quarter of the Southwest quarter of the Northeast quarter of the Southwest quarter of said Section 35 from which a USDAFS Aluminum Cap marking the Southwest corner of the Southeast quarter of the Southwest quarter of the Southeast quarter of the Southwest quarter of said Section 35 bears South 00 degrees 53 minutes 55 seconds West 2057.45 feet said line being the basis of bearings for this description;

THENCE South 89 degrees 02 minutes 05 seconds East 1439.52 feet;

THENCE South 00 degrees 31 minutes 17 seconds West 1107.77 feet;

THENCE South 61 degrees 30 minutes 14 seconds West 524.32 feet to the North-South Mid-Section line of said Section 35;

THENCE South 00 degrees 31 minutes 17 seconds West 978.04 feet along said North-South Mid-Section line and its Southerly extension to the South line of GLO Lot 6 of said Section 10;

THENCE South 89 degrees 48 minutes 13 seconds West 217.28 feet along said South line;

THENCE South 00 degrees 31 minutes 17 seconds West 330.67 feet;

THENCE South 89 degrees 47 minutes 38 seconds West 472.43 feet;

THENCE South 89 degrees 48 minutes 06 seconds West 330.34 feet;

THENCE North 00 degrees 12 minutes 34 seconds West 637.14 feet to the Northeast corner of GLO Lot 7 of said Section 10;

THENCE North 89 degrees 56 minutes 45 seconds East 33.58 feet along the North line of said GLO Lot 7 to a USDAFS Aluminum Cap marking the Southwest corner of the Southeast quarter of the Southwest quarter of the Southeast quarter of the Southwest quarter of said Section 35;

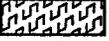
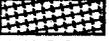
THENCE North 00 degrees 53 minutes 55 seconds East 2057.45 feet to the POINT OF BEGINNING.

COMPRISING 72.769 acres or 3,169,833 square feet more or less, subject to all easements of record.

EXHIBIT B

COUNTY: *Yavapai*

RANGE 5 East

-  W-1445 (5)(3)
Arizona Water Company (Sedona)
-  W-1624 (2)
Big Park Water Company
-  W-4131 (1)
Cross Creek Ranch Water Company
-  W-2192 (2)
Little Park Water Company
-  W-2624 (1)
Michaels Ranch Water Users' Assoc.
-  W-1392 (1)
Oak Creek Water Company No. 1
-  WS-3449 (1)  Sewer
MHC Operating Limited Partnership
dba Sedona Venture Water & Sewer Company
-  W-4291 (1)
Aerie Conservancy
Adjudicated 'Not a Public Service Corporation'
-  (1)
City of Sedona (Nonjurisdictional)
-  (1)
Red Rock Crossing Mobile Village, Inc.
(Nonjurisdictional)
-  (1)
Red Rock Water Cooperative, Inc.
Adjudicated 'Not a Public Service Corporation'
-  (2)
Little Park Water Company
Docket No. W-02192A-07-0326
Application for Extension

