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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE AMENDMENT OF  
DECISION NO. 43808 TO CORRECT THE  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY BOUNDARY OF VALLEY  
UTILITIES WATER COMPANY, INC.

DOCKET NO. W-01412A-08-0161

**STAFF'S MOTION FOR ENTRY OF  
ORDER NUNC PRO TUNC  
CORRECTING DECISION NO. 43808**

After investigating a customer inquiry about the chronology of Certificates of Convenience and Necessity ("CC & N") issued to the Valley Utilities Water Company ("VUWC"), Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") discovered a discrepancy in the boundaries of VUWC's CC & N. Staff's investigation indicates that a clerical error made in Decision No. 43808 (November 28, 1973) has resulted in VUWC possessing a certificate for a particular subsection. However, the subsection is actually served by another entity, Litchfield Park Service Company ("LPSCO") which also possesses an earlier CC & N to serve the area at issue. Staff has discussed the matter with representatives of both VUWC and LPSCO, and determined that the record is clear that LPSCO was intended to be the entity with the actual certificate to serve the area and that the error was purely clerical in nature. Staff therefore requests entry of order *Nunc Pro Tunc* to correct Decision No. 43808 to reflect that VUWC is not the entity certificated to serve the area in question.

DISCUSSION

Based on a customer inquiry, Staff examined VUWC's CC & N chronology. The chronology reveals that VUWC's predecessor, a partnership dba Valley Utilities, first obtained a CC & N in Decision No. 28487 (October 29, 1954). LPSCO filed a complaint against Valley Utilities for deletion of the "S 1/2 of the SW 1/4 of Section 10, Township 2 North, Range 1 West, [illegible], Maricopa County, Arizona" from Valley Utilities' CC & N. The Commission initiated an Order to

1 Show Cause why the territory should not be deleted, and issued Decision No. 38249 (December 21,  
2 1965) ordering the deletion of that territory from Valley Utilities' CC & N. In Decision No. 38250,  
3 filed the same day as Decision No. 38249, the Commission granted LPSCO "the South Half of the  
4 Southwest Quarter of Section 10."

5 In 1973, two of the partners in Valley Utilities incorporated the VUWC. Valley Utilities then  
6 made an application to the Commission to sell and transfer its assets to VUWC. The application was  
7 approved in Decision No. 43808. In addition, the decision transferred Valley Utilities' CC & N to  
8 VUWC and included a description of the CC & N territory. In pertinent part, Decision No. 43808  
9 granted VUWC all of Section 10 except a portion from the Northeast corner of the Northeast Quarter.  
10 Copies of Decision Nos. 38249, 38250, and 43808 are attached as Exhibits A, B, and C, respectively.

11 There has been no Commission decision ordering the deletion of the South half of the  
12 Southwest quarter of Section 10 from LPSCO's CC & N. Thus the grant of the entirety of Section 10  
13 (except the northeastern most section) to VUWC has created uncertainty as to which entity holds the  
14 certificate for the South half of the Southwest quarter of Section 10.

15 Staff has inquired, and determined that LPSCO is in fact serving customers in that referenced  
16 area. Further, Staff has discussed the issue with representatives from LPSCO and VUWC and all are  
17 in agreement that the record clearly indicates that the grant of the entirety of Section 10 to VUWC in  
18 Decision No. 43808 represents a clerical oversight of the fact that LPSCO already held the CC & N  
19 for the subsection at issue.

20 Therefore, Staff recommends a correction of Decision No. 43808 *Nunc Pro Tunc* pursuant to  
21 Rule of Civil Procedure, Rule 58 to reflect that VUWC does not have a certificate for the South half  
22 of the Southwest quarter of Section 10. Due to the clerical nature of the mistake, and the fact that  
23 LPSCO is in fact the utility serving customers in the affected area, *Nunc Pro Tunc* is appropriate. For  
24 the convenience of the Commission, Staff offers the proposed language to correct Decision No.  
25 43808.

26 ...

27 ...

28 ...

1 On Page 2, under the Ordering Paragraph beginning at Parcel 3,  
2 Parcel 3: Section 10, except that part thereof described as follows:

3 ***INSERT:***

4 The South 1/2 of the Southwest 1/4 of Section 10, Township 2 North, Range 1  
5 West, G&SRB&M; and

6 RESPECTFULLY submitted this 28<sup>th</sup> day of March, 2008.

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9 \_\_\_\_\_  
10 Charles H. Hains, Attorney  
11 Legal Division  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007  
14 (602) 542-3402

12 Original and thirteen (13) copies  
13 of the foregoing were filed this  
14 28<sup>th</sup> day of March, 2008 with:

14 Docket Control  
15 Arizona Corporation Commission  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007

17 Copy of the foregoing mailed  
18 this 28<sup>th</sup> day of March, 2008 to:

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20 3003 N. Central Ave., Suite 2600  
21 Phoenix, AZ 85012  
22 Attorney for Litchfield Park Service Company

Bob Prince, President  
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Glendale, AZ 85307

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24 12725 W. Indian School Rd., Ste. D101  
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\_\_\_\_\_

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28 Tempe, AZ 85282  
Attorney for Valley Utilities Water Company,  
Inc.

# EXHIBIT A

BEFORE THE ARIZONA CORPORATION COMMISSION

MILTON J. HUSKY  
Chairman  
E. T. "REDDIE" WILLIAMS, JR.  
Commissioner  
DECK HERRBERT  
Commissioner

IN THE MATTER OF THE APPLICATION OF MITCHELFIELD PARK SERVICE COMPANY, MITCHELFIELD PARK LAND & DEVELOPMENT COMPANY AND GOOD-YEAR FARMS, ALL BEING ARIZONA CORPORATIONS, FOR RESCISSION OR AMENDMENT OF CERTIFICATES OF CONVENIENCE AND NECESSITY PREVIOUSLY ISSUED TO JOSEPH WEBER, DBA VALLEY UTILITIES, UNDER DECISION NO. 28487, DATED OCTOBER 29, 1954, AND DECISION NO. 31298, DATED DECEMBER 15, 1958 AS AMENDED BY DECISION NO. 31320, DATED DECEMBER 22, 1958, ALL IN DOCKET NO. U-1412, AND FOR THE DELETION OR WITHDRAWAL OF LANDS FROM SAID CERTIFICATES.

DOCKET NO. U-1412

DECISION NO. 38249

OPINION AND ORDER

BY THE COMMISSION:

The Commission on the 5th day of November, 1965, caused to be issued an Order to Appear and Show Cause directed to Joseph Weber, dba Valley Utilities, and based on the complaints of Mitchfield Park Service Company, et al, for rescission, alteration or amendment of Commission orders 28487 and 31298 (amended by 31320), Docket No. U-1412, granting certificates of public convenience and necessity to Respondent herein.

Respondent appeared in person at the time and place set, and Complainants appeared by Paul Wentworth and Edward Jacobson, attorneys.

Evidence was adduced upon the complaint and in response thereto, and from that evidence the Commission finds as follows:

1) That Joseph Weber, in Decision No. 31320, agreed to abide by the subsequent deletion of properties in excess of 40 acres covered by that order upon petition of the owners of such parcels, and that Goodyear Farms, one of the Complainants, is the owner of more than 40 acres in the area certificated to Joseph Weber.

2) That with respect to the area certificated to Joseph Weber pursuant to Decision No. 28487, Joseph Weber has never protected his operating rights and, specifically, has never been granted a franchise by the Board of Supervisors of Maricopa County within the S $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 10, Township 2 North, Range 1 West, G&SR&M, Maricopa County, Arizona.

3) That the public interest would be best served by the rescission, alteration or amendment of Decision 31298, as amended in Decision No. 31320, and of Decision No. 22487, to exclude those areas set forth hereinafter.

WHEREFORE, IT IS ORDERED that the matters complained of by Litchfield Park Service Company, et al, herein be found for Complainant, and the following described areas deleted from the certificate of public convenience and necessity granted Joseph Weber under any order of this Commission, to wit:

The SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 9, Township 2 North, Range 1 West, COCHISE, Maricopa County, Arizona, comprising approximately 240 acres, granted by this Commission in Decision No. 31298 as amended by Decision No. 31320, Docket No. U-1412,

and

The S $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 10, Township 2 North, Range 1 West, COCHISE, Maricopa County, Arizona, comprising approximately 80 acres, granted by this Commission in Decision No. 22487, Docket No. U-1412.

IT IS FURTHER ORDERED that this order shall in no wise operate or be taken to diminish or alter the rights of Joseph Weber in other areas certificated to him under the above or other orders of this Commission, and those orders shall have their prior effect in areas not set out above.

IT IS FURTHER ORDERED, on motion of Counsel, that Litchfield Park Land & Development Company be eliminated as a party to the complaint herein, and paragraph 3 of the complaint deleted.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, GEORGE S. LIVERMORE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed, at the Capitol in the City of Phoenix, this 21st day of December, 1965.

GEORGE S. LIVERMORE  
EXECUTIVE SECRETARY

# EXHIBIT B

BEFORE THE ARIZONA CORPORATION COMMISSION

MILTON J. HUSKY  
Chairman  
E. T. "EDDIE" WILLIAMS, JR.  
Commissioner  
DICK HERBERT  
Commissioner

IN THE MATTER OF THE APPLICATION OF LITCHFIELD PARK SERVICE COMPANY, AN ARIZONA CORPORATION, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING IT TO CONDUCT AND CARRY ON A BUSINESS OF DISTRIBUTING AND SELLING DOMESTIC WATER IN CERTAIN AREAS OF MARICOPA COUNTY, ARIZONA, OR FOR AN ORDER PRELIMINARY TO THE ISSUANCE OF SUCH A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING SUCH SERVICE UPON THE FILING OF A PROPER FRANCHISE, IN THE AREA AS SET FORTH HEREIN.

DOCKET NO. U-1427

DECISION NO. 38250

OPINION AND ORDER

BY THE COMMISSION:

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission sitting at Phoenix, Arizona, on November 16th, 1965.

Applicant appeared by Paul Wentworth and Edward Jacobson, attorneys, and William Barnes, attorney for the City of Avondale appeared and subsequently withdrew his appearance in opposition to the granting of the rights applied for.

Evidence was adduced upon the application, and from that evidence the Commission is of the opinion that the Applicant has complied with the laws of the State of Arizona, and the Rules, Regulations and Orders of the Commission, for the issuance of a Certificate of Public Convenience and Necessity for the operation of a public water system.

WHEREFORE, IT IS ORDERED that the application be, and it hereby is, approved; and this order shall constitute a Certificate of Public Convenience and Necessity within the provisions of Title 40, §281 of the Arizona Revised Statutes, authorizing Applicant to construct, operate and maintain, in conformity with the Laws of this State, and the Rules, Regulations and Orders of the Commission, as each may now or in the future be, a public water system within the additional area described as:

All of Section 19; All of Section 20; the West Half of the West Half of Section 21; the East

*2 W*  
*1 W*

Half of Section 22; the Northeast Quarter of the Northeast Quarter, West Half of the East Half, East Half of the West Half, Southwest Quarter of the Northwest Quarter, and the West Half of the Southwest Quarter of Section 23; the South Half of the Southeast Quarter and the West Half of Section 26; the East Half and the Southwest Quarter of Section 27; the South Half and the West Half of Northwest Quarter of Section 28; all of Section 29; all of Section 30; all of Section 31; all of Section 33. Except the South 205 Ft. of the East 300 ft. of the Southwest Quarter of the Southeast Quarter of said Section 33; all of Section 34; the West Half of the West Half, Northeast Quarter of the Northwest Quarter and the Southeast Quarter of Southwest Quarter of Section 35; all in Township 2 North, Range 1 West; and the Northeast Quarter, Northwest Quarter, and the North Half of Southwest Quarter of Section 3; the East Half of the East Half of Section 4 lying East of Southern Pacific Railroad; the Northwest Quarter of Section 6; all in Township 1 North, Range 1 West; and the Northeast Quarter, Northwest Quarter, Southwest Quarter Except 3.94 acres located in the Southwest corner of the Southwest Quarter of the Southwest Quarter of Section 1, Township 1 North, Range 2 West; and all of Section 24; all of Section 25; all of Section 36; all in Township 2 North, Range 2 West; and all of Southeast Quarter lying Southeast of Luke Air Force runways in Section 8; the Southeast Quarter and the North Half of the Southwest Quarter of Section 9; the South Half of the Southwest Quarter of Section 10; the Northwest Quarter of the Northeast Quarter and North Half of the Northwest Quarter of Section 15; the Southwest Quarter of the Northwest Quarter; North Half of the Northeast Quarter, Northeast Quarter of the Northwest Quarter and the West Half of the Southwest Quarter; the East 252.79 feet of Northwest Quarter of the Northwest Quarter and the South 47 feet of the North 80 feet of the West 1052 feet of the Northwest Quarter of the Northwest Quarter of Section 16; Southeast Quarter of Section 17; all in Township 2 North, Range 1 West, G&SRB&M., Maricopa County, Arizona.

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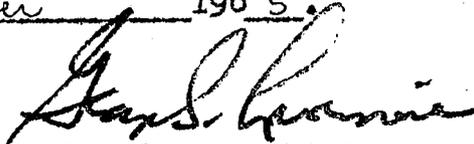
IT IS FURTHER ORDERED that the rates and charges authorized within such additional area shall be as authorized within areas heretofore certificated to Applicant.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

DOCKET NO. U-1427

DECISION NO. 38250

IN WITNESS WHEREOF, I, GEORGE S. LIVERMORE,  
Secretary of the Arizona Corporation Commission,  
have hereunto set my hand and caused the official  
seal of this Commission, to be affixed at the  
Capitol in the City of Phoenix, this 21st day  
of December 196 5.



GEORGE S. LIVERMORE  
SECRETARY

# EXHIBIT C

*WPA Room*

BEFORE THE ARIZONA CORPORATION COMMISSION

AL FARON  
Chairman  
ERNEST GARFIELD  
Commissioner  
CHARLES H. GARLAND  
Commissioner

IN THE MATTER OF THE PETITION ) DOCKET NO. U-1412  
OF JOSEPH WEBBER AND DORIS WEBBER, )  
HIS WIFE, AND CONRAD PRINCE AND )  
BETTY PRINCE, HIS WIFE dba VALLEY )  
UTILITIES, A PUBLIC SERVICE WATER )  
UTILITY BUSINESS, AND VALLEY UTI- )  
LITIES, WATER COMPANY, INC. AN ) DECISION NO. 43808  
ARIZONA CORPORATION, FOR AUTHORITY )  
OF THE UTILITIES TO SELL AND TRANS- )  
FER ITS WATER PLANT AND SYSTEM TO )  
VALLEY UTILITIES WATER, INC., AN )  
ARIZONA CORPORATION. ) OPINION AND ORDER

On August 10, 1973, and after appropriate notice had been given to all interested parties, the above-captioned matter was heard before Hearing Officer, Lawrence J. Evans, Jr; a transcript of that hearing has been prepared and submitted to the Commission.

John E. Savoy, of the firm of Hill & Savoy, appeared as counsel on behalf of the applicant; Conrad Prince, president and general manager of Valley Utilities Water Company, appeared and offered testimony in support of the application.

Barney Paulsen, Assistant Director of the Utilities Division, appeared on behalf of the Arizona Corporation Commission.

There were no other witnesses, or protestants or intervenors to the application at the hearing.

After having read the transcript and having considered thoroughly the evidence presented, the Commission finds and concludes as follows:

FINDINGS OF FACT

1. Joseph Webber and Doris Webber, his wife, and Conrad Prince and Betty Prince, his wife, dba Valley Utilities was formerly a partnership.
2. Conrad Prince, Leslie T. Peart and Betty Prince have

since organized a corporation under the name of Valley Utilities Water Company, Inc.

3. On July 12, 1973 a Purchase and Sale Agreement was consummated between Joseph and Doris Webber and Conrad and Betty Prince to sell all of the right, title and interest in the partnership owned water utility system known as Valley Utilities to Valley Utilities Water, Inc.

4. The Board of Directors of Valley Utilities Water Company, Inc. passed a corporate resolution on July 17, 1973 authorizing the purchase of the certificate of convenience and necessity presently held by the former partnership.

5. Under the terms of the Purchase and Sale Agreement, Valley Utilities Water Company has assumed and agreed to pay all obligations of Valley Utilities pursuant to the rules of the Corporation Commission on domestic water companies by first applying the guarantee deposits against the water bills and refunding any difference when applicable.

6. The Board of Supervisors of Maricopa County, on July 16, 1973, approved the transfer of the county franchise, presently held by Valley Utilities to Valley Utilities Water Company, Inc.

7. The proposed transferee, Valley Utilities Water Company, Inc., has agreed to continue the present rates authorized for Valley Utilities by this Commission.

8. The proposed transferee, Valley Utilities Water Company, Inc., has agreed to assume all existing line extension, meter and guarantee deposit obligations of the transferor.

9. The Utilities Division of this Commission has examined the financial statement of the new corporation as it is capitalized and is satisfied that it will be financially capable of assuming the obligations of the certificate of convenience and necessity.

10. The Utilities Division of this Commission has had pre-

vious dealings with the primary shareholder of the new corporation as is satisfied that the new corporation will be a fit and proper entity under Mr. Conrad Prince's directorship.

CONCLUSIONS OF LAW

1. The transfer of the certificate of convenience and necessity presently held by Joseph Webber and Doris Webber, his wife, and Conrad Prince and Betty Prince, his wife, dba Valley Utilities to Valley Utilities Water Company, Inc. is in the best interests of all parties concerned, including the future consumers in the territory delineated in the application.

2. Valley Utilities Water Company, Inc. is a fit and proper entity to assume the obligations of the certificates of convenience and necessity presently held by Valley Utilities.

WHEREFORE, IT IS ORDERED: that the certificate of convenience and necessity presently held by Valley Utilities to construct, operate and maintain a public utility water system within the area described as; all within Township 2 North, Range 1 West, G&SRB&M:

PARCEL 1: All of Section 1;

PARCEL 2: Section 3, except the Northeast quarter and the South 660 feet of the East 442 feet of the Southeast quarter;

PARCEL 3: Section 10, except that part thereof described as follows:

Beginning at the Northeast corner of the Northeast quarter; Thence West along the North line of the Northeast quarter to the Northwest corner of the Northeast quarter; Thence South along the center line of said Section 10 a distance of 1,150 feet; Thence South 89° 10' 45" East a distance of 1,657.96 feet; Thence North 441.93 feet; Thence East to a point on the East line of the Northeast quarter; Thence North approximately 708 feet to the point of beginning;

PARCEL 4: Section 11, except the Southeast quarter of the Southeast quarter thereof;

PARCEL 5: Section 12, except the West half of the Northwest quarter, the Southeast quarter of the Northwest quarter, the North half of the Southwest quarter and the Southeast quarter of the Southwest quarter;

*Portion of Sec 9 & 10 are missing*

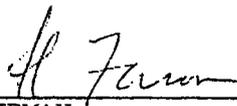
be and hereby is transferred to Valley Utilities Water Company, Inc.

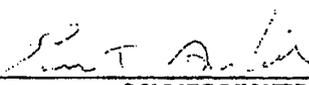
IT IS FURTHER ORDERED: that the present rate schedule followed by Valley Utilities with respect to its presently certificated area shall be employed by Valley Utilities Water Company, Inc.

IT IS FURTHER ORDERED: that all services shall be metered at the time of the initial connection.

IT IS FURTHER ORDERED: that water rates shall not be adjusted to reflect increases or decreases in taxes or other governmental impositions, including ad valorem property taxes, but that future adjustments to the above-approved water rates will only be approved after proper application, review, public hearing, decision and order of this Commission.

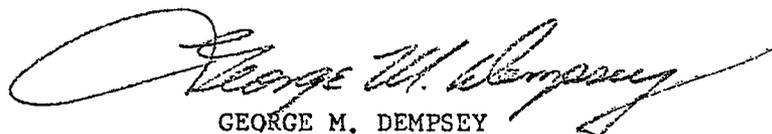
BY ORDER OF THE ARIZONA CORPORATION COMMISSION

  
CHAIRMAN

  
COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, GEORGE M. DEMPSEY, Secretary of the Arizona Corporation Commission have hereunto set my hand and caused the official seal of the Arizona Corporation Commission to be affixed at the Capitol, in the City of Phoenix, this 28th day of November, 1973.

  
GEORGE M. DEMPSEY  
S E C R E T A R Y