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Arizona Corporation Commission 5

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AZ CORP COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY FOR AN  
EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

Docket No. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION  
OF PALO VERDE UTILITIES COMPANY  
FOR AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

Docket No. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION  
OF SANTA CRUZ WATER COMPANY FOR  
AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

Docket No. W-03576A-05-0926

IN THE MATTER OF THE APPLICATION  
OF PALO VERDE UTILITIES COMPANY  
FOR AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

Docket No. SW-03575A-07-0300

IN THE MATTER OF THE APPLICATION  
OF SANTA CRUZ WATER COMPANY FOR  
AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

Docket No. W-03576A-07-0300

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1 Complainant Arizona Water Company and the Global Water Respondents in this  
2 docket, as well as Francisco Grande Utility Company and CP Water Company (collectively,  
3 “the Moving Parties”), consistent with the statements made at the procedural conference in  
4 Docket No. W-01445A-06-0200 (the “Complaint Proceeding”) on June 2, 2008, jointly  
5 move to consolidate the “Complaint Proceeding” with Docket Nos. W-01445A-06-0199,  
6 SW-03575A-05-0926, W-03576A-05-0926, W-03576A-07-0300 and SW-03575A-07-0300  
7 (which are already consolidated in the W-01445A-06-0199 docket) (collectively, the “CCN  
8 Proceedings”) and Docket Nos. WS-01775A-07-0485, SW-03575A-07-0485, W-02442A-  
9 07-0485 and W-03576A-07-0485 (the “Francisco Grande/CP Water Proceedings”).  
10 Consolidation of these dockets under this 0200 docket is appropriate under A.A.C. R14-3-  
11 109(H) of the Arizona Corporation Commission’s (the “Commission”) Rules of Practice  
12 and Procedure, as well as Rule 42(a), Arizona Rules of Civil Procedure. The Moving Parties  
13 urge the Commission to consolidate the above-listed dockets in the manner requested.

#### 14 I. BACKGROUND

15 On March 29, 2006, Arizona Water Company filed a complaint against various  
16 Global Water entities in the Complaint Proceeding. In parallel proceedings, both Arizona  
17 Water Company and various Global Water entities had applied for extensions of their  
18 Certificates of Convenience and Necessity (“CCN”) to provide utility services in various  
19 areas of Pinal County, including areas in which the applications overlapped. The CCN  
20 Proceedings, summarized above, were consolidated under Docket No. W-01445A-06-0199  
21 by procedural order dated April 21, 2006 in that docket. In the consolidated CCN  
22 Proceedings, the Moving Parties proceeded to conduct discovery and submit prefiled  
23 testimony in preparation for hearings of their consolidated CCN applications. By  
24 procedural order dated March 9, 2007, a stay of the CCN Proceedings that had been entered  
25 from the bench at a February 28, 2007 pre-hearing conference was confirmed, pending the  
26 outcome of the disputes raised in the Complaint Proceeding.

27 In the meantime, a Global Water-sponsored application for transfer of CCNs from  
28 Francisco Grande Utility Company and CP Water Company to certain Global Water

1 entities, Docket Nos. WS-01775A-07-0485, SW-03575A-07-0485, W-02442A-07-0485 and  
2 W-03576A-07-0485 (described above as the Francisco Grande/CP Water Proceedings) was  
3 pending.

4 For the past year or so, the Moving Parties have concentrated their efforts in these  
5 dockets in preparing this Complaint Proceeding for hearing. The Moving Parties conducted  
6 discovery, briefed discovery disputes, and ultimately filed their prefiled testimony. As part  
7 of the discovery process, the Complaint Proceeding and the CCN Proceedings were  
8 essentially consolidated for discovery purposes, with discovery rulings in the Complaint  
9 Proceeding governing both proceedings. In addition, it was agreed that discovery from the  
10 Complaint Proceeding could be used in the CCN Proceedings, and likewise discovery from  
11 the CCN Proceedings could be used in the Complaint Proceeding.

12 As the Complaint Proceeding neared its hearing date, the Moving Parties engaged in  
13 intensive negotiations that ultimately led to the execution of a Settlement Agreement dated  
14 May 15, 2008 (the "Settlement Agreement"). The Settlement Agreement was docketed in  
15 this proceeding on May 16, 2008 as part of a Notice of Status of the Parties' Settlement  
16 Discussions, as requested by the Commission.

17 As discussed in the June 2, 2008 procedural conference, the Settlement Agreement  
18 contemplates a number of procedural steps. The Settlement Agreement provides as an  
19 initial step for amended CCN applications to be filed in the CCN Proceedings to reflect the  
20 agreements reached in the Settlement Agreement as to the respective areas that would be the  
21 subject of those amendments. The scope of those amended CCN application boundaries is  
22 illustrated on a Settlement Map attached to and incorporated into the Settlement Agreement  
23 as Exhibit "B." The Settlement Agreement also provides that the Complaint Proceeding  
24 should be dismissed pursuant to the conditions in the Settlement Agreement. Accordingly,  
25 the Moving Parties agree that the CCN Proceedings and the Francisco Grande/CP Water  
26 Proceedings should be consolidated with the Complaint Proceeding so that they can be  
27 efficiently and consistently processed in the least amount of time, while avoiding the danger  
28 of inconsistent rulings at different times by different Administrative Law Judges. Because

1 (as illustrated on the Settlement Map) the Moving Parties' respective amended CCN  
2 application boundaries and the planning areas incorporated therein present a coherent and  
3 unified approach to utility planning in this area of Pinal County, the Moving Parties agree  
4 that the Commission should, and urge it to, order consolidation of all the affected dockets  
5 into the Complaint Proceeding.

6 **II. THE ISSUES OF LAW AND FACT OF THE PROCEEDINGS TO BE**  
7 **CONSOLIDATED ARE SUBSTANTIALLY THE SAME, AND THE RIGHTS**  
8 **OF THE PARTIES WILL NOT BE PREJUDICED BY CONSOLIDATION.**

9 A. As set forth in the Settlement Agreement, the factual and legal issues in the  
10 dockets to be consolidated are substantially the same.

11 The Commission or its Administrative Law Judge may "consolidate two or more  
12 proceedings in one hearing when it appears that the issues are substantially the same and  
13 that the rights of the parties will not be prejudiced by such proceedings." A.A.C. R14-3-  
14 109(H). Consolidation of the requested dockets into the Complaint Proceeding is fully  
15 justified under this standard.

16 As set forth above, the basis of the Moving Parties' historic Settlement Agreement is  
17 a "laying down of arms" concerning their disputes over CCN expansion areas. Resolution  
18 of these affected dockets is in the public interest, and will allow the Moving Parties, the  
19 Commission staff, and the Commission to save considerable time and expense. Settlement  
20 of these disputes and establishment of planning area boundaries will provide future certainty  
21 as among these parties, lead to more effective utility and resource planning practices,  
22 enhance the utilities' working relationships with the relevant governmental entities,  
23 including the cities of Casa Grande and Maricopa, as well as Pinal County, and greatly  
24 benefit the public interest.

25 The CCN extension or transfer issues contained in each of the listed dockets are  
26 closely interrelated. All of the CCN expansion areas involved are within the areas depicted  
27 on the Settlement Map as part of the Settlement Agreement. Just as the CCN Proceedings  
28 were earlier consolidated, recognizing their common issues of fact and law, the Francisco

1 Grande/CP Water Proceedings should be consolidated, now that they are incorporated into  
2 the Settlement Agreement.

3 Because many of the CCN issues are subsumed within the Complaint Proceeding, the  
4 Moving Parties agree that all of the cases referenced in this motion are appropriate for  
5 consolidation in this docket. Moreover, the Administrative Law Judge in this docket has  
6 been the Administrative Law Judge most directly and recently involved with, and is most  
7 familiar with, the current state of the record in these cases.

8 In summary, not only is this Complaint Proceeding the appropriate place for  
9 consolidation of the dockets, but consolidation of the cases is appropriate because of their  
10 common issues of law and fact, as well as the need to resolve them in a single, uniform and  
11 efficient proceeding.

12 B. Not only will the rights of all parties not be prejudiced by such proceedings,  
13 all parties join in the request and mutually urge the Commission to grant the  
14 consolidation.

15 Often, disputes over consolidation turn on the second of the two consolidation factors  
16 under the Rule: whether the rights of the parties will be prejudiced by consolidation. Here,  
17 not only is there no argument of any prejudice to the Moving Parties, they are jointly  
18 requesting this relief and acknowledge that, in fact, consolidation avoids the prejudice that  
19 would result if the underlying matters were not consolidated.

20 For the reasons explained above, *not* consolidating these matters would prejudice all  
21 parties. Consolidation in this docket guarantees the efficient and consistent handling of the  
22 CCN Proceedings and the Complaint Proceeding before a single Administrative Law Judge  
23 so the goals and objectives of the Settlement Agreement may be achieved.

### 24 III. CONCLUSION.

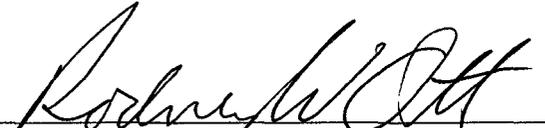
25 For the foregoing reasons, the Moving Parties urge the Commission to consolidate  
26 the Complaint Proceeding, the CCN Proceedings, and the Francisco Grande/CP Water  
27 Proceeding under this Complaint Proceeding for all future purposes. At the June 2, 2008  
28 procedural conference, Commission Staff did not express objection to this result. Since

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1 there is no opposition, accelerated consideration of the motion is requested so that the  
2 pending amended CCN applications may be filed in a single, consolidated docket. The  
3 Moving Parties are willing to submit this motion on this brief, or to attend an accelerated  
4 procedural conference to discuss the issues if that is what the Commission directs.  
5

6 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of June, 2008.

7 BRYAN CAVE LLP

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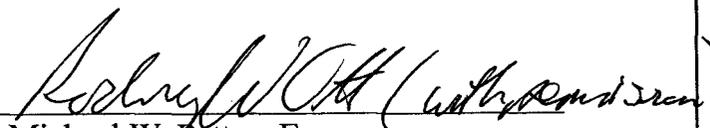
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