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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG - 6 2008

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

DOCKETED BY *MM*

IN THE MATTER OF THE OF THE  
APPLICATION OF VERNON VALLEY  
WATER, INC. FOR AN EXTENSION OF  
ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY FOR THE PROVISION  
OF WATER SERVICE IN PORTIONS OF  
APACHE COUNTY, ARIZONA.

DOCKET NO. W-20540A-08-0178

DECISION NO: 70464

OPINION AND ORDER

DATE OF HEARING: June 30, 2008  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Mark Grapp, President, Vernon Valley Water, Inc.; and  
Mr. Kevin Torrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 28, 2008, Vernon Valley Water, Inc. ("Applicant" or "Company") filed an application for an extension of its existing Certificate of Convenience and Necessity ("Certificate") with the Arizona Corporation Commission ("Commission") to provide public water service in various parts of Apache County, Arizona.

On April 28, 2008, the Commission's Utilities Division ("Staff") issued a Notice of Sufficiency which indicated that the Company's application had met the sufficiency requirements of A.A.C. R14-2-411(C).

On April 29, 2008, by Procedural Order, the above-captioned matter was scheduled for hearing on June 30, 2008, and Applicant was ordered to provide notice of the application and hearing thereon.

1 Pursuant to the Commission's Procedural Order, the Company filed notice that it had  
2 provided public notice.

3 On June 9, 2008, Staff filed its report which recommended approval of the Company's  
4 application for an Order Preliminary for the extension area.

5 On June 30, 2008, a full public hearing was convened before a duly authorized Administrative  
6 Law Judge of the Commission at its offices in Phoenix, Arizona. The Company appeared through its  
7 president and Staff appeared with counsel. At the conclusion of the hearing, the matter was taken  
8 under advisement pending submission of a Recommended Opinion and Order to the Commission.

9 \* \* \* \* \*

10  
11 Having considered the entire record herein and being fully advised in the premises, the  
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 1. Pursuant to authority granted by the Commission, the Company is an Arizona  
15 corporation engaged in the business of providing public water service in an area approximately 18  
16 miles east of Show Low, Apache County, Arizona pursuant to Decision No. 69963 (October 30,  
17 2007).<sup>1</sup>

18 2. On March 28, 2008, the Company filed an application for an extension of its existing  
19 Certificate in order to provide water service to an area which is marked Exhibit A, attached hereto  
20 and incorporated herein by reference.

21 3. Public notice of the application was provided in accordance with the law.

22 4. With its application, the Company is seeking an extension of its Certificate to provide  
23 public water service to approximately 253 acres of land which are being developed as a residential  
24 subdivision, Sepulveda Creek Estates, which is to consist of 185 residential lots and one commercial  
25 lot. There are no plans for golf courses or ornamental water uses.

26 5. The land is owned and being developed by a company from Flagstaff. The parcel is

27  
28 <sup>1</sup> Prior to Decision No. 69963, Applicant's president, Mark Grapp, had acquired the Company's assets in approximately 1991 and operated the utility as a sole proprietorship pursuant to Decision No. 57852 (May 14, 1992).

1 located approximately one mile north of the Company's existing certificated service area, which is  
2 located outside of an Active Management Area ("AMA").

3 6. There are no municipal water utilities or public service corporations to provide water  
4 service in the proposed extension area.

5 7. At present, the Applicant is providing public water service to approximately 19  
6 customers in its existing certificated service area.

7 8. According to the Staff Report, the Company has one well which produces  
8 approximately 37 gallons per minute ("GPM") of water, and 10,000 gallons of storage to serve its  
9 existing certificated service area.

10 9. The developer will fund the cost of a stand-alone system for the extension area with  
11 advances in aid of construction totaling approximately \$720,807 through a main extension agreement  
12 which will be submitted for approval by the Commission. The system will include a new 10-inch  
13 well, a 250,000 gallon storage tank and the necessary distribution facilities for the Company.

14 10. Concurrently with its application, the Company submitted copy of its Apache County  
15 Franchise for the extension area.

16 11. The Company has previously had its Curtailment Tariff approved by the Commission  
17 in 2004.

18 12. On May 29, 2008, Applicant filed with the Arizona Department of Water Resources  
19 ("ADWR") its System Water Plan which includes the following: a water supply plan; draught  
20 preparedness plan; and water conservation plan. ADWR is to then issue a letter which indicates  
21 whether the Company's System Water Plan meets ADWR requirements.<sup>2</sup>

22 13. On June 9, 2008, Staff filed its report which recommends approval of the Company's  
23 application for an Order Preliminary for the requested extension area described in Exhibit A.

24 14. According to the Arizona Department of Environmental Quality ("ADEQ"), the  
25 Company has no major deficiencies and is delivering water which meets the requirements of the Safe  
26

27 <sup>2</sup> The Company's System Water Plan was filed with ADWR under its former name, Mark Grapp dba Serviceberry Water  
28 Company, but since the Commission approved the transfer of Mr. Grapp's Certificate and assets to the Company, he will  
secure and file a copy of the ADWR letter in the name of the Applicant.

1 Drinking Water Act. Additionally, the Company's water currently meets the new arsenic standard  
2 established by the U.S. Environmental Protection Agency.

3 15. According to the Staff Report, the Company has no compliance issues with the  
4 Commission, and the Company is also current on the payment of its sales and property taxes.

- 5 16. Staff is also recommending the following conditions:
- 6 • that the Company be required to charge its authorized rates and charges in the  
7 extension area;
  - 8 • that the Company file with the Commission's Docket Control, as a  
9 compliance item in this docket, no later than December 31, 2008, a copy of  
10 the letter issued by ADWR indicating that the Company's System Water Plan  
11 has met ADWR requirements;
  - 12 • that the Company file, within two years of the effective date of this Decision,  
13 with the Commission's Docket Control, as a compliance item in this docket, a  
14 copy of the Approval to Construct ("ATC") for Sepulveda Creek Estates  
15 which is to be issued by ADEQ;
  - 16 • that the Company file, within two years of the effective date of this Decision,  
17 with the Commission's Docket Control, as a compliance item in this docket, a  
18 copy of an Analysis of Adequate Water Supply or a Physical Availability  
19 Determination which is to be issued by ADWR which demonstrates the  
20 availability of adequate water for the Sepulveda Creek Estates subdivision;  
21 and
  - 22 • that the Company, upon complying with the second, third, and fourth  
23 conditions above, make a compliance filing, and within thirty days of this  
24 filing, Staff shall file a response in the form of an Order to be placed on the  
25 Commission's agenda for a vote to approve a Certificate as soon as possible  
26 after Staff's filing that confirms the Company's compliance with the second,  
27 third and fourth conditions listed above. In the event that the Company fails  
28 to comply with any one of the second, third and fourth conditions above, the  
Order Preliminary shall be null and void and this docket closed.

17. Because an allowance for the property tax expense of the Company is included in the  
Company's rates and will be collected from its customers, the Commission seeks assurances from the  
Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
authority. It has come to the Commission's attention that a number of utilities have been unwilling or  
unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as  
many as twenty years. It is reasonable, therefore, that as a preventive measure, the Company should  
annually file, as part of its Annual Report, an affidavit with the Utilities Division attesting that the  
Company is current in paying its property taxes in Arizona.

1 18. We believe Applicant should be required to conserve groundwater and that the  
2 Company should be prohibited from selling groundwater for the purpose of irrigating any future golf  
3 courses within the certificated expansion areas or any ornamental lakes or water features located in  
4 the common areas of the proposed new developments within the certificated expansion areas.

5 19. We find that Staff's recommendations, as set forth in Findings of Fact Nos. 13 and 16  
6 are reasonable and should be adopted.

7  
8 **CONCLUSIONS OF LAW**

9 1. Applicant is a public service corporation within the meaning of Article XV of the  
10 Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-252.

11 2. The Commission has jurisdiction over the Company and of the subject matter of the  
12 application.

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

14 4. There is a public need and necessity for water utility service in the proposed service  
15 area described in Exhibit A.

16 5. The Company is a fit and proper entity to receive an Order Preliminary prior to the  
17 issuance of a Certificate.

18 6. The application by the Company to extend its Certificate for the area described in  
19 Exhibit A should be granted for an Order Preliminary as recommended by Staff in Findings of Fact  
20 Nos. 13 and 16.

21 **ORDER**

22 IT IS THEREFORE ORDERED that pursuant to A.R.S. § 40-282, the application of Vernon  
23 Valley Water, Inc. for an extension of its Certificate of Convenience and Necessity for the operation  
24 of water utility in the area more fully described in Exhibit A is hereby approved for an Order  
25 Preliminary provided that Vernon Valley Water, Inc. complies with the conditions set forth in  
26 Findings of Fact No. 16.

27 IT IS FURTHER ORDERED that upon Vernon Valley Water, Inc. satisfying the second, third  
28 and fourth conditions of Findings of Fact No. 16, it shall file a Motion in this docket for the issuance

1 of a Certificate of Convenience and Necessity authorizing it to construct, maintain and operate  
2 facilities to provide water utility service to the public in the area more fully described in Exhibit A.

3 IT IS FURTHER ORDERED that upon the Motion of Vernon Valley Water, Inc., and  
4 verification of satisfaction of the requirements for the issuance of Vernon Valley Water, Inc.'s  
5 Certificate of Convenience and Necessity, Staff shall prepare and file, within 30 days of Vernon  
6 Valley Water, Inc.'s Motion, an Order for Commission approval that grants the Certificate of  
7 Convenience and Necessity for the area described in Exhibit A.

8 IT IS FURTHER ORDERED that Vernon Valley Water, Inc. shall charge water customers in  
9 the areas more fully described in Exhibit A its tariffed rates and charges as authorized previously by  
10 the Commission.

11 IT IS FURTHER ORDERED that Vernon Valley Water, Inc. shall annually file, as part of its  
12 Annual Report, an affidavit with the Utilities Division attesting that the Company is current in paying  
13 its property taxes in Arizona.

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1 IT IS FURTHER ORDERED that in light of the need to conserve groundwater, Vernon  
2 Valley Water, Inc. is prohibited from selling groundwater for the purpose of irrigating any future golf  
3 courses within the certificated expansion area or any ornamental lakes or water features located in the  
4 common areas of the proposed new developments within the certificated expansion area.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
7

8  
9 Lance S. Gleason  
CHAIRMAN COMMISSIONER

10  
11 Jeffrey H. Hatch Paul M. ... Gary ...  
COMMISSIONER COMMISSIONER COMMISSIONER

12  
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Director of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 6<sup>th</sup> day of Aug., 2008.

18 Brian C. McNeil  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

19  
20 DISSENT \_\_\_\_\_

21  
22  
23 DISSENT \_\_\_\_\_  
MES:db

1 SRVICE LIST FOR: VERNON VALLEY WATER, INC.

2 DOCKET NO.: W-20540A-08-0178

3 Thomas Grapp  
4 VERNON VALLEY WATER, INC.  
5 P.O. Box 1270  
6 Show Low, AZ 85902

7 Janice Alward, Chief Counsel  
8 Legal Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
11 Phoenix, AZ 85007

12 Ernest G. Johnson, Director  
13 Utilities Division  
14 ARIZONA CORPORATION COMMISSION  
15 1200 West Washington  
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## EXHIBIT "A"

LEGAL DESCRIPTION - SEPULVEDA PARCELS 1 THRU 4

A Parcel of land located in the East Half of Section 9, T.10 N., R.25 E., G. & S.R.M., Apache County, Arizona, more particularly described as follows:

BEGINNING at an aluminum cap marking the South Quarter Corner of Section 9, T.10 N., R.25 E., G. & S.R.M., Apache County, Arizona; thence North  $0^{\circ} 17' 40''$  West along the mid-section line, a distance of 1,325.78 feet to an aluminum cap accepted as the C-S 1/16 corner; thence North  $0^{\circ} 10' 52''$  East along the mid-section line, a distance of 2,888.85 feet; thence South  $89^{\circ} 24' 47''$  East a distance of 2,626.20 feet to a point on the east boundary of Section 9; thence South  $0^{\circ} 10' 52''$  West along said boundary, a distance of 1,568.49 feet to an aluminum cap marking the East Quarter Corner of Section 9; thence South  $0^{\circ} 02' 40''$  West and continuing along the east boundary of Section 9, a distance of 2,619.68 feet to an aluminum cap marking the Southeast corner of Section 9; thence North  $89^{\circ} 59' 23''$  West along the south boundary of Section 9, a distance of 2,621.40 feet to the TRUE POINT OF BEGINNING.

Containing 253.32 Acres, more or less.

Subject to any existing easements and or rights-of-way.