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6 Attorneys for Northern Sunrise Water Company  
and Southern Sunrise Water Company

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9  
10 IN THE MATTER OF THE APPLICATION OF  
NORTHERN SUNRISE WATER COMPANY FOR A  
11 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER UTILITY  
12 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

13 IN THE MATTER OF THE APPLICATION OF  
SOUTHERN SUNRISE WATER COMPANY FOR A  
14 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER UTILITY  
15 SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

16 IN THE MATTER OF THE JOINT APPLICATION  
OF NORTHERN SUNRISE WATER COMPANY  
17 AND SOUTHERN SUNRISE WATER COMPANY  
FOR THE APPROVAL OF SALE AND TRANSFER  
18 OF WATER UTILITY ASSETS, AND  
CANCELLATION OF CERTIFICATES OF  
19 CONVENIENCE AND NECESSITY, FOR  
MIRACLE VALLEY WATER COMPANY,  
20 COCHISE WATER COMPANY, HORSESHOE  
RANCH WATER COMPANY, CRYSTAL WATER  
21 COMPANY, MUSTANG WATER COMPANY,  
CORONADO ESTATES WATER COMPANY, AND  
22 SIERRA SUNSET WATER COMPANY, LOCATED  
23 IN COCHISE COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251  
W-20454A-06-0251  
W-01646A-06-0251  
W-01868A-06-0251  
W-02235A-06-0251  
W-02316A-06-0251  
W-02230A-06-0251  
W-01629A-06-0251  
W-02240A-06-0251

**RESPONSE TO STAFF REPORT**

24 Pursuant to the procedural order dated November 10, 2008, Northern Sunrise Water  
25 Company and Southern Sunrise Water Company ("Applicants") hereby submit this Joint  
26 Response to the June 27, 2008 Staff Report filed in the above-captioned matter. Applicants

1 generally support the findings in the Staff Report, and the recommended conditions placed upon  
2 the extension of Applicants' respective certificates of convenience and necessity ("CC&N").  
3 However, for the reasons more fully addressed below, Applicants oppose Staff's proposed  
4 Condition No. 2 – that Applicants be placed on notice that any future CC&N extension  
5 applications will not be deemed sufficient without documentation from the Arizona Department  
6 of Water Resources stating there is a 100-year adequate water supply for the then existing CC&N.

### 7 DISCUSSION

8 As noted in the Staff Report, Decision No. 68826 (June 29, 2006) required Applicants to  
9 file for an extension of their existing CC&Ns in order to rectify a situation created by the previous  
10 owner of the McLain water systems.<sup>1</sup> Staff Report at 10. The previous owner had extended  
11 water service to areas outside the CC&Ns without Commission authorization, and at the time  
12 Applicants received their original CC&Ns, a certain number of customers receiving water service  
13 were located outside the CC&N boundaries. This proceeding is intended to rectify this situation.  
14 However, Staff has recommended that as a condition of approval, Applicants be "put on notice"  
15 that any future CC&N extension applications will be deemed insufficient without documentation  
16 from ADWR stating that there is an 100-year adequate water supply to serve areas within the then  
17 existing CC&N.

18 Applicants assert that approval of this Staff recommendation would: (1) unduly burden  
19 existing ratepayers with the expense of hydrological studies and reports required to establish the  
20 100-year adequate water supply, with no apparent benefit, (2) place an additional requirement on  
21 Applicants for CC&N extension that are not included in the Commission's newly revised CC&N  
22 rules applied equally to all water companies, and (3) be a collateral attack of Commission  
23 Decision No. 68826.

24 \_\_\_\_\_  
25 <sup>1</sup> The McLain Systems included Miracle Valley Water Company, Cochise Water Company, Horseshoe Ranch Water  
26 Company, Crystal Water Company, Mustang Water Company, Coronado Estates Water Company, and Sierra Sunset  
Water Company. Algonquin agreed to purchase the assets from bankruptcy court, and then take over operating these  
systems and make capital expenditures needed to provide adequate and reliable water service to McLain's customers.

1 **I. Adopting Staff Condition No. 2 Would Not Benefit Existing Ratepayers**

2 In order to comply with Staff's proposed Condition No. 2, Applicants would be required  
3 to hire water consultants to perform the hydrological studies and reports necessary to obtain  
4 documentation from ADWR establishing a 100-year water supply in their existing CC&Ns. The  
5 existing CC&Ns encompass large service areas where water service has been provided for several  
6 years. Since taking over the McLain water systems, Applicants have invested capital to construct  
7 new (and repair existing) facilities to improve water utility service for the benefit of their  
8 customers. Applicants contend that the capital required to complete the hydrological studies and  
9 reports required by ADWR to obtain either an Analysis of Assured Water Supply, or Physical  
10 Availability Determination, for their entire CC&N areas would not provide similar benefits to  
11 their customers.<sup>2</sup> In fact, the Staff Report supports this conclusion:

12 With the completion of the capital plant improvements for the Cochise, Horseshoe  
13 Ranch, Mustang, Crystal and Miracle Valley Systems, Staff concludes that all of  
14 these systems have adequate well and storage capacities to serve the existing and  
15 proposed CC&N extension areas. Although the Sierra Sunset and Coronado  
Estates Systems did not request a CC&N extension at this time, these systems  
along with the proposed Babocomari project will have adequate well and storage  
capacities.

16 Id. at 9.

17 As Staff points out, the Applicants' water systems have adequate and well storage  
18 capacities to serve the existing area, including the proposed Babocomari development. In fact,  
19 several moratoria have been lifted because of the capital improvement projects followed in  
20 compliance of Decision No. 68826. As a result, Applicants do not understand how spending  
21 ratepayer dollars to obtain documentation from ADWR that the existing CC&N has a 100-year  
22 adequate water supply will benefit existing customers.

23  
24  
25 <sup>2</sup> In a letter addressed to Commissioner Mayes dated November 28, 2008, Applicants provide evidence that  
26 hydrological studies required to determine water availability and well impacts on existing wells could cost between  
\$200,000 and \$500,000 dollars.

1 **II. The Commission's New CC&N Rules for Water Companies Do Not Require**  
2 **Adequacy Determinations for Existing CC&Ns in Order for An Application for an**  
3 **Extension of a CC&N to be Deemed Sufficient.**

4 In Decision No. 70625 (November 19, 2008), the Commission recently adopted new  
5 administrative rules for the establishment of new, or the extension of existing, CC&Ns. A.A.C.  
6 R14-2-402(5)(ff) requires that a water company include in its application to extend an existing  
7 CC&N a copy of a Physical Availability Determination, Analysis of Adequate Water Supply, or  
8 Analysis of Assured Water Supply issued by ADWR for the *proposed extension area*, or if not  
9 yet obtained, the status of the application for such approval. By contrast, Staff Condition No. 2  
10 would require Applicants to file the same documentation for the *existing* CC&N as well. This  
11 condition is unduly burdensome, and would have the effect of establishing filing standards for  
12 Applicants that are different and more stringent than those for similarly situated water companies.  
13 As noted above, Staff has already concluded that Applicants have the necessary well and storage  
14 capacity needed to serve customers within the existing CC&N.

15 **III. Staff Condition No. 2 is a Collateral Attack on Decision No. 68826.**

16 One of the two major issues addressed by the Commission in adopting Decision No.  
17 68826 centered on the inclusion of the proposed Babocomari development within Northern  
18 Sunrise Water Company's CC&N. On June 21, 2006, the hearing division issued a recommended  
19 opinion and order ("ROO"). The ROO contained the following pertinent language:

20 FINDING OF FACT NO. 38. In our view, whether the Commission can condition  
21 the obligation or not, it is not in the public interest, nor is it good public policy to  
22 grant a CC&N where there is no demonstration of adequate water supply. ROO at  
23 8.

24 IT IS FURTHER ORDERED that Northern Sunrise Water Company shall file  
25 with Docket Control as a compliance item in this docket, a copy of the  
26 Babocomari Developer's Letter of Water Adequacy that indicates that there is  
sufficient water to serve the Babocomari development within three years from the  
effective date of this Decision. ROO at 30.

IT IS FURTHER ORDERED that if the Letter of Adequacy is not docketed with  
three years, the Certificate of Convenience and Necessity for the Babocomari  
development shall be considered null and void after due process. ROO at 30.

1 In their June 26, 2006, Exceptions to the ROO, Applicants made it clear that these  
2 proposed requirements were not constructive to resolving the issues created by the prior owner's  
3 mismanagement of the various water systems. "However, the modifications to the ROO outlined  
4 by Applicants in these exceptions are necessary if the goal of Applicants acquiring the McLain  
5 Systems and taking over service to those customers is to be accomplished." See Applicants' June  
6 26, 2006, Exceptions at 4-5 and 8.

7 During the Open Meeting discussion that occurred on June 27, 2006, there was  
8 considerable debate over these particular requirements set forth in the ROO. Members of  
9 Applicants' parent corporation, Algonquin Water Resources of America, Inc. ("Algonquin"),  
10 reiterated to the Commissioners that such conditions would prevent the Applicants from  
11 purchasing the McLain water systems out of bankruptcy proceedings. The Commissioners  
12 present passed verbal amendments deleting Findings of Fact No. 38, and the two ordering  
13 paragraphs referenced above. It is clear from these actions that the Commission rejected Staff's  
14 proposal to condition the CC&N extension on the filing of a Letter of Adequacy for the  
15 Babocomari development within 3 years of the Decision. Adopting Staff Condition No. 2 would  
16 essentially re-impose this requirement.

### 17 CONCLUSION

18 The adoption of Staff Condition No. 2 would impose a filing burden on Applicants not  
19 applicable to other water CC&N holders, and make future CC&N extensions unduly burdensome  
20 to the Applicants. In addition, Applicants assert that the economic burden associated with  
21 complying with Staff Condition No. 2 would not provide any benefits to ratepayers within the  
22 CC&N area; as noted in the Staff Report, Applicants currently have sufficient well and storage  
23 capacity to serve not only existing customers, but the proposed Babocomari development as well.  
24 The purpose of this proceeding is to merely "rectify" a situation created by the previous owner –  
25 the unauthorized connection of customers outside the CC&N. As such, Applicants do not oppose  
26 the balance of Staff's recommendations, which all go towards the purpose of identifying the

1 proper boundaries of Applicants' CC&N. However, Staff Condition No. 2 goes beyond this  
2 purpose, and seeks to impose a condition that the Commission has already rejected in Decision  
3 No. 68826.

4 RESPECTFULLY SUBMITTED this 19th day of December, 2008.

5 FENNEMORE CRAIG, P.C.

6  
7 By: 

8 Jay L. Shapiro  
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12 **ORIGINAL and 17 copies filed**  
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