



0000093664

**ORIGINAL**

MEMORANDUM

TO: Docket Control  
FROM: Ernest G. Johnson  
*EGJ* Director  
Utilities Division

Date: February 11, 2009

RE: STAFF REPORT FOR CROSS CREEK RANCH COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, - APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION (DOCKET NO. W-20619A-08-0470)

AND

CROSS CREEK RANCH WATER COMPANY – APPLICATION FOR APPROVAL OF ASSIGNMENT AND TRANSFER OF ASSETS TO CROSS CREEK RANCH COMMUNITY ASSOCIATION AND FOR CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY (DOCKET NOS. AND W-04131A-08-0471 AND W-20619A-08-0471)

Attached is the Staff Report for Cross Creek Ranch Community Association’s application for Adjudication Not a Public Service Corporation and Cross Creek Ranch Water Company’s application for approval of assignment and transfer of its Assets to Cross Creek Ranch Community Association and for cancellation of its Certificate of Convenience and Necessity for water service. Staff is recommending approval with conditions.

EGJ:BNC:red

Originator: Blessing Chukwu

Arizona Corporation Commission

**DOCKETED**

FEB 11 2009

DOCKETED BY *EGJ*

AZ CORP COMMISSION  
DOCKET CONTROL

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Service List for: Cross Creek Ranch Community Association and Cross Creek Ranch Water Company

Docket Nos. W-20619A-08-0470, W-04131A-08-0471 and W-20619A-08-0471

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

CROSS CREEK RANCH COMMUNITY ASSOCIATION  
AN ARIZONA NON-PROFIT CORPORATION  
APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION  
(DOCKET NO. W-20619A-08-0470)

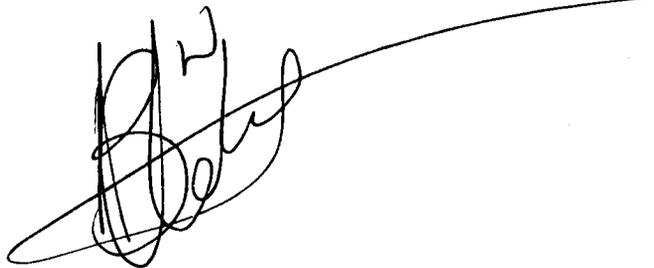
AND

CROSS CREEK RANCH WATER COMPANY  
APPLICATION FOR APPROVAL OF ASSIGNMENT AND TRANSFER OF ASSETS TO  
CROSS CREEK RANCH COMMUNITY ASSOCIATION  
AND FOR CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY  
(DOCKET NOS. W-04131A-08-0471 AND W-20619A-08-0471)

FEBRUARY 11, 2009

## STAFF ACKNOWLEDGMENT

The Staff Report for Cross Creek Ranch Community Association and Cross Creek Ranch Water Company (Docket Nos. W-20619A-08-0470, W-04131A-08-0471 and W-20619A-08-0471) was the responsibility of the Staff members signed below. Blessing Chukwu was responsible for the review and analysis of the applications. Del Smith was responsible for the engineering and technical analysis.

A handwritten signature in black ink, appearing to be 'Blessing Chukwu', written in a cursive style. The signature is positioned above the printed name and title.

Blessing Chukwu  
Executive Consultant

A handwritten signature in black ink, appearing to be 'Del Smith', written in a cursive style. The signature is positioned above the printed name and title.

Del Smith  
Engineer Supervisor

**EXECUTIVE SUMMARY**  
**CROSS CREEK RANCH COMMUNITY ASSOCIATION**  
**AND CROSS CREEK RANCH WATER COMPANY**  
**DOCKET NOS. W-20619A-08-0470, W-04131A-08-0471 AND W-20619A-08-0471**

On October 8, 2008, Cross Creek Ranch Community Association ("CCRCA", "Association" or "Transferee") an Arizona Non-Profit Corporation filed an application with the Arizona Corporation Commission ("ACC" or "Commission"), in Docket No. W-20619A-08-0470, for Adjudication Not a Public Service Corporation. On the same date, Cross Creek Ranch Water Company ("CCRWC" or "Water Company" or "Transferor") filed an application with the Commission in Docket Nos. W-04131A-08-0471 and W-20619A-08-0471, for Approval of Assignment and Transfer of its Assets to Cross Creek Ranch Community Association and for cancellation of its Certificate of Convenience and Necessity ("CC&N") for water service in Yavapai County, Arizona.

Cross Creek Ranch Water Company is authorized by the Commission to provide water utility services to certain portions of Yavapai County, Arizona. The Water Company was formed to provide water service to Cross Creek Ranch ("Cross Creek") Subdivision, a 210 acre parcel with 84-lots, in Yavapai County, Arizona. Currently, the Water Company serves 14 residential customers and four irrigation or non-residential customers. The Water Company is requesting for Commission's Approval for Assignment and Transfer of its Assets to CCRCA (an Arizona Non-Profit Corporation) and Cancellation of its CC&N.

Cross Creek Ranch Community Association is an Arizona Non-Profit Corporation that was established in August 13, 2002, for the purpose of representing homeowners who reside in Cross Creek Ranch Subdivision. The Association is the sole shareholder of the Water Company and has the same officers as the Water Company. The Association is requesting a determination that it is not a public service corporation.

Based on Staff's review and analysis of the applications, Staff believes the existing system has adequate production and storage capacity and that the proposed transfer would enable CCRCA to benefit from opportunities to receive grants, subsidized loans, tax benefits, and lower costs for professional services. If the proposed transfer of the Water Company to CCRCA is approved, the provision of both water and wastewater services in the transfer area will be under one entity which should provide economies of scale and other system benefits.

The criteria to determine that a water provider is not a public service corporation within the meaning of Article XV; Section 2 of the Arizona Constitution was reviewed by the Arizona Supreme Court in Natural Gas Service v. Serv-U Cooperative, Inc. The court provided an eight point review criteria for the Commission to review. Subsequently the Commission issued a policy directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568 which consisted of a seven (7) review criteria.

CCRCA filed documents that comply with two (2) of the Commission's seven (7) criteria for adjudication. As such, Staff recommends that CCRCA file documentation to comply with the remaining criteria within 180 days of any decision in this matter as noted in the Recommendation Section of this report. The Association is a non-profit corporation with a resolution from the Members/Owners of the Association to request adjudication.

Staff recommends the Commission approve CCRWC's application for approval of assignment and transfer of its assets to CCRCA; and CCRCA's application for adjudication not a public service company subject to compliance with the following conditions:

1. That CCRWC file with Docket Control, as a compliance item in this docket, the appropriate Arizona Department of Water Resources ("ADWR") documentation, that shows the well is owned by CCRCA, within 180 days of the effective date of the decision in this case.
2. That CCRWC be required to file with Docket Control, as a compliance item in this docket, copies of all documentation transferring ownership of CCRWC's water system and assets to CCRCA, within 180 days of the effective date of a decision in this matter.
3. That CCRCA be required to file with Docket Control, as a compliance item in this docket, within 180 days of any decision in this matter, a copy of the revised Bylaws which mirror the wording in Section 3.7 and Section 5.7 of the First Amendment to the Covenants, Conditions and Restrictions ("CC&R") that every customer is a member/owner with equal voting rights and that each member is or will be a customer.
4. That CCRCA be required to file with Docket Control, as a compliance item in this docket, within 180 days of any decision in this matter, a copy of the revised Bylaws which mirror the required criteria found in Section 3.2 of the First Amendment to the CC&R that the service area involved encompasses a fixed territory.
5. That CCRCA be required to file with Docket Control, as a compliance item in this docket, a copy of its First Amendment to its CC&R recorded with Yavapai County, which complies with Directives No. 3, 4, 5, 6, and 7, within 180 days of the effective date of a decision in this matter.

Staff further recommends that the Commission's Decision granting the approval of assignment and transfer of CCRWC's assets to CCRCA; and adjudication not a public service company to CCRCA be considered null and void after due process should CCRWC and CCRCA fail to meet the conditions listed above within the times specified.

Staff also recommends that within 45 days of completion of the requirements listed above, that CCRWC be required to file a motion in this docket requesting that the Commission cancel its CC&N for water service within portions of Yavapai County, Arizona. Staff further

recommends that within 30 days after CCRWC files its motion, and upon Staff's verification that the Water Company has satisfied the requirements listed above, that Staff prepare and docket a Recommended Order cancelling the CC&N for Commission approval.

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## **INTRODUCTION**

On October 8, 2008, Cross Creek Ranch Community Association (“CCRCA”, “Association” or “Transferee”) an Arizona Non-Profit Corporation filed an application with the Arizona Corporation Commission (“ACC” or “Commission”), in Docket No. W-20619A-08-0470, for Adjudication Not a Public Service Corporation.

On the same date, Cross Creek Ranch Water Company (“CCRWC” or “Water Company” or “Transferor”) filed an application with the Commission in Docket Nos. W-04131A-08-0471 and W-20619A-08-0471, for Approval of Assignment and Transfer of its Assets to Cross Creek Ranch Community Association and for cancellation of its Certificate of Convenience and Necessity (“CC&N”) for water service in Yavapai County, Arizona.

On December 17, 2008, the Administrative Law Judge issued a Procedural Order, which consolidated Docket Nos. W-20619A-08-0470, W-04131A-08-0471, and W-20619A-08-0471 for purposes of hearing.

On December 24, 2008, Utilities Division Staff (“Staff”) filed a Sufficiency Letter indicating that the applications had met the sufficiency requirements of the A.A.C.

## **BACKGROUND**

CCRWC is an Arizona Corporation, in good standing with the Commission’s Corporation Division. CCRWC is authorized to provide water utility services to certain portions of Yavapai County, Arizona, pursuant to the Commission’s Decision No. 65978, issued on June 17, 2003, in Docket No. W-04131A-02-0615. According to ACC’s records, the Company was formed to provide water service to Cross Creek Ranch (“Cross Creek”) subdivision, a 210 acre parcel with 84-lots, in Yavapai County, Arizona. Cross Creek is located approximately two miles southwest of Sedona, Arizona and adjacent to Oak Creek, Red Rock State Park and U.S. Forest Service land. The Water Company provides water utility service to 14 residential customers and four irrigation or non-residential customers.

CCRCA is an Arizona Non-Profit Corporation, in good standing with the Commission’s Corporation Division. The Association, established on August 13, 2002, was formed for the purpose of representing homeowners who reside in Cross Creek Ranch Subdivision. The Association is the sole shareholder of the Water Company and has the same officers as the Water Company. Mr. Paul Claus is the President, Mr. Ed Hanley is the Vice President, and Ms. Sandra D’Andrea is the Secretary.

## **THE WATER SYSTEM**

CCRWC’s water system consists of a well having a production capacity of 1,000 gallons per minute (“GPM”), a 250,000 gallon storage tank, a small pressure tank, booster pumps, 27 fire

hydrants and a distribution system serving 16 one-inch metered connections.<sup>1</sup> The average annual growth rate since 2004 has been modest with 2 to 3 connections added annually.<sup>2</sup> Staff concludes that this system has adequate production and storage capacity.

According to well records filed with the Arizona Department of Water Resources ("ADWR") the well serving the Water Company (ADWR Well Registration Number 55-200896) is owned by Cachet Western II LLC, the owner and developer of the Cross Creek Ranch subdivision. Staff recommends that the Water Company file the appropriate documents with ADWR transferring ownership of the well to CCRCA. Staff further recommends that the Water Company file ADWR documentation with Docket Control, as a compliance item in this docket, that shows the well is owned by CCRCA. This documentation shall be filed within 180 days after the effective date of the decision in this case.

CCRCA provides wastewater service to its members/customers in Cross Creek Ranch Subdivision.<sup>3</sup>

## **THE TRANSACTION**

CCRWC is certificated to provide water service in a portion of Yavapai County, Arizona.

The Water Company filed an Application with the Commission for Approval of Assignment and Transfer of its Assets to CCRCA (an Arizona Non-Profit Corporation) and Cancellation of its CC&N. CCRCA filed a concurrent Application with the Commission for Adjudication Not a Public Service Corporation.<sup>4</sup> As the sole shareholder of the Water Company, the Association has effectively provided water service to its members/customers through management of the Water Company. The Association is seeking these changes because the operation and management of a for profit water company exposes it and its members to certain fees, taxes and operational expenses that is counter to the purpose of a non-profit organization like the Association.<sup>5</sup> The Association will continue to provide service to all Water Company customers.

The proposed transfer should enable CCRCA to benefit from opportunities to receive grants, subsidized loans, tax benefits, and lower costs for professional services. If the proposed transfer of the Water Company's assets to CCRCA is approved, the provision of both water and

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<sup>1</sup> Per 2007 Annual Report data included with application.

<sup>2</sup> Historical growth rate based on number of connections added during the years 2004 thru 2007 per Commission annual report data. The Water Company provided supplemental information to Staff which listed 14 residential meters (11 are currently serving water, three meters serve homes that are under construction) and four meters that are irrigation or non-residential meters. As of January 22, 2009, a total of 18 metered connections had been installed.

<sup>3</sup> The CCRCA wastewater system is operated as a non-profit corporation and therefore is not subject to Commission jurisdiction. (See Decision No. 65978, Page 2, Paragraph 13)

<sup>4</sup> The Administrative Law Judge issued a Procedural Order on December 17, 2008, which consolidated these Dockets for purposes of hearing. Staff issued its sufficiency letters on December 24, 2008.

<sup>5</sup> See CCRCA adjudication application at Page 2, Line 24.

wastewater services in the transfer area will be under one entity which should provide economies of scale and other system benefits.

According to the application, there are no refunds due on Main Extension Agreements; all customer security deposits (a total of \$960.00) and all refunds that are due on meter and service line installations (a total of \$8,580.00) will be refunded by the Water Company upon Commission approval of the transfer to the Association.

The assets that CCRWC would be transferring consist of booster pumps, storage and pressure tanks, main and distribution pipe, fire hydrants, meters and a building which houses the pumps and emergency generator.<sup>6</sup>

Staff does not believe that the proposed assignment and transfer of assets from CCRWC to CCRCA will have an adverse effect on service quality or operation of the water system. Key management and certified operator personnel will not change as a result of the transfer.

Staff recommends that CCRWC be required to file with Docket Control, as a compliance item in this docket, copies of all documentation transferring ownership of CCRWC's water system and assets to CCRCA, within 180 days of the effective date of a decision in this matter.

#### **THE REQUESTED ADJUDICATION**

As stated above, CCRCA filed a concurrent Application with the Commission for Adjudication Not a Public Service Corporation.<sup>7</sup>

The criteria to determine that a water provider is not a public service corporation within the meaning of Article XV; Section 2 of the Arizona Constitution, was reviewed by the Arizona Supreme Court in Natural Gas Service v. Serv-U Cooperative, Inc. The Court provided an eight review criteria for the Commission to review.

1. What the corporation actually does.
2. Whether the service is dedicated to public use.
3. That the articles of incorporation evidence authorization and purposes.
4. Whether the corporation is dealing with the service of a commodity in which the public has been generally held to have an interest.
5. Whether the corporation is monopolizing or intending to monopolize a territory with a public service commodity.

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<sup>6</sup> Water Company response dated October 29, 2008, to Staff Letter of Insufficiency.

<sup>7</sup> The Administrative Law Judge issued a Procedural Order on December 17, 2008, which consolidated these Dockets for purposes of hearing. Staff issued its sufficiency letters on December 24, 2008.

6. Whether the corporation is accepting of substantially all requests for service.
7. That service is under contract and reserving the right to discriminate is not always controlling.
8. Whether the corporation will have actual or potential competition with other corporations whose business is clothed with the public interest.

The Commission issued a directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. Staff was directed to ensure that all such applications complied with the following seven criteria.

1. Adjudication applications must be submitted by non-profit homeowners associations.
2. The application for adjudication not a public service corporation is a bonafide request by a majority of the membership of the association through a petition signed by 51 percent or more of the then existing members.
3. That all such associations making such application have complete ownership of the system and necessary assets.
4. That every customer is a member/owner with equal voting rights and that each member is or will be a customer.
5. That the service area involved encompasses a fixed territory, which is not within the service area of a municipal utility or public service corporation; or if in such territory, that municipal utility or public service corporation is unable to serve.
6. That there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.
7. That the membership is restricted to a fixed number of customers, actual or potential.

#### **COMPLIANCE TO DIRECTIVE 1 AND 2**

CCRCA incorporated as a non-profit corporation on August 13, 2002, thus complies with Directive 1.

At a Special Meeting of the CCRCA held on May 15, 2008, a majority of the members of the Association voted to authorize the Board of Directors to amend the Declaration of Covenants, Conditions and Restrictions ("CC&R") to, among other things, dissolve the Water

Company and to assume all duties and obligations of the Water Company to provide water services to the Lots in Cross Creek Ranch as the effective date of the First Amendment to the CC&R. Approximately 87 percent of the members voted in favor of the proposal. (See Exhibit 5 and 6 of the Application for adjudication not a public service corporation.) The First Amendment will become effective once recorded with Yavapai County, and upon Commission approval of the application. As a result of the Special Meeting, the Board of Directors was given the authority to file the instant applications. Therefore, the application complies with Directive 2.

### **NON-COMPLIANCE TO DIRECTIVE 3**

Paragraph 4 (Section 2.2) of the First Amendment to the CC&R for the Association states: "On and after the Effective Date, the Water System shall be owned and operated by the Association in accordance to the laws, rules and regulations promulgated by the applicable governmental authorities. The Association shall contract with qualified persons or companies to manage, operate, and maintain the Water System for the benefit of the Association. The cost of owning, maintaining and operating the Water System shall be paid for by the Association through Water Operating Assessments as set forth in Section 6.5 of the Declaration." Therefore, Staff recommends that CCRWC be required to file with Docket Control, as a compliance item in this docket, copies of all documentation transferring ownership of CCRWC's water system and assets to CCRCA, within 180 days of the effective date of a decision in this matter.

### **NON-COMPLIANCE TO DIRECTIVE 4**

Paragraphs 6 (Section 3.7) and 8 (Section 5.7) of the First Amendment to the CC&R indicates that each lot owner must be a customer of the CCRCA and that each lot owner have one vote on all matters related to water service, regardless of the number of lots owned. This is consistent with the required criteria that every customer is a member/owner with equal voting rights and that each member is or will be an owner. Notwithstanding, Staff was unable to locate this information in the Bylaws, which exactly mirrors the wording in Section 3.7 and Section 5.7 of the First Amendment to the CC&R. In response to Staff's November 28, 2008 Insufficiency Letter, the Association proposed to amend its Bylaws to include the required language, upon Commission approval of this application. Staff therefore recommends the Association be required to amend its Bylaws to make the aforementioned inclusion to the Bylaws which mirror the required criteria. Staff further recommends that the changes be filed with Docket Control, as a compliance item in this docket, with the required inclusion, within 180 days of any decision in this matter.

### **NON-COMPLIANCE TO DIRECTIVE 5**

Paragraph 7 (Section 3.2) of the First Amendment to the CC&R is in compliance with this directive that states that "the service area involved encompasses a fixed territory which is not within the service area of a municipal utility or public service corporation". The CCRCA's Bylaws does not contain the same information. Staff has determined that the service area is not

within the service area of a municipal utility or public service corporation. Therefore, Staff recommends that CCRCA file with Docket Control, as a compliance item in this docket, a revised Bylaws which includes the required criteria that “the service area involved encompasses a fixed territory” within 180 days of any decision in this matter.

#### **NON-COMPLIANCE TO DIRECTIVE 6**

The Association intends to prohibit further subdivision of the existing lots as evidenced by Paragraph 7 (Section 3.2) of the First Amendment to the CC&R. This meets the requirement to this directive. However, the First Amendment has not yet been recorded with Yavapai County. CCRCA intends to record the First Amendment to its CC&R with Yavapai County upon Commission approval of the application. Therefore, Staff recommends that CCRCA be required to file with Docket Control, as a compliance item in this docket, a copy of its First Amendment to its CC&R recorded with Yavapai County, within 180 days of the effective date of a decision in this matter.

#### **NON-COMPLIANCE TO DIRECTIVE 7**

According to CCRCA’s December 5, 2008 Response to Letter of Insufficiency “Section 1.29 of the Declaration will be amended, upon requisite approvals, by adding the following sentence: “Membership in the Association shall be limited to 84 Members, actual or potential. The Association shall only provide domestic water services to the 84 Members, actual or potential, also known as water customers.” The Association also proposes to add the same language to Article 1.9 of its Bylaws. Therefore, Staff recommends that CCRCA be required to file with Docket Control, as a compliance item in this docket, a copy of its First Amendment to its CC&R recorded with Yavapai County, within 180 days of the effective date of a decision in this matter.

#### **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (“ADEQ”) COMPLIANCE**

CCRWC’s water system is considered a semi-public water system. As such, the water system is not regulated by ADEQ.<sup>8</sup> A public water system regulated by ADEQ is a system for the distribution of water to the public for human consumption which serves 15 or more service connections or which serves an average of at least 25 persons per day for at least 60 days a year.

#### **ARIZONA DEPARTMENT OF WATER RESOURCES (“ADWR”) COMPLIANCE**

The Water Company is not within an Active Management Area (“AMA”). ADWR has determined that Water Company is currently in compliance with departmental requirements governing water providers and/or community water systems.<sup>9</sup>

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<sup>8</sup> Cross Creek Ranch Water Company (Public Water System Identification No.13-256) will be listed as “inactive” in the ADEQ database until it meets the required parameters defined in 40 CFR 141.2.

<sup>9</sup> Per ADWR Water Provider Compliance Status Report dated September 15, 2008.

## ACC COMPLIANCE

A check of the Utilities Division Compliance Database showed no delinquent compliance items for the Water Company<sup>10</sup>.

## RECOMMENDATIONS

Staff recommends the Commission approve CCRWC's application for approval of assignment and transfer of its assets to CCRCA; and CCRCA's application for adjudication not a public service company subject to compliance with the following conditions:

1. That CCRWC file with Docket Control, as a compliance item in this docket, the appropriate Arizona Department of Water Resources ("ADWR") documentation, that shows the well is owned by CCRCA, within 180 days of the effective date of the decision in this case.
2. That CCRWC be required to file with Docket Control, as a compliance item in this docket, copies of all documentation transferring ownership of CCRWC's water system and assets to CCRCA, within 180 days of the effective date of a decision in this matter.
3. That CCRCA be required to file with Docket Control, as a compliance item in this docket, within 180 days of any decision in this matter, a copy of the revised Bylaws which mirror the wording in Section 3.7 and Section 5.7 of the First Amendment to the Covenants, Conditions and Restrictions ("CC&R") that every customer is a member/owner with equal voting rights and that each member is or will be a customer.
4. That CCRCA be required to file with Docket Control, as a compliance item in this docket, within 180 days of any decision in this matter, a copy of the revised Bylaws which mirror the required criteria found in Section 3.2 of the First Amendment to the CC&R that the service area involved encompasses a fixed territory.
5. That CCRCA be required to file with Docket Control, as a compliance item in this docket, a copy of its First Amendment to its CC&R recorded with Yavapai County, which complies with Directives No. 3, 4, 5, 6, and 7, within 180 days of the effective date of a decision in this matter.

Staff further recommends that the Commission's Decision granting the approval of assignment and transfer of CCRWC's assets to CCRCA; and adjudication not a public service

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<sup>10</sup> Per compliance status check dated September 23, 2008.

company to CCRCA be considered null and void after due process should CCRWC and CCRCA fail to meet the conditions listed above within the times specified.

Staff also recommends that with 45 days of completion of the requirements listed above, that CCRWC be required to file a motion in this docket requesting that the Commission cancel its CC&N for water service within portions of Yavapai County, Arizona. Staff further recommends that within 30 days after CCRWC files its motion, and upon Staff's verification that the Water Company has satisfied the requirements listed above, that Staff prepare and docket a Recommended Order cancelling the CC&N for Commission approval.

**MEMORANDUM**

DATE: January 26, 2009

TO: Blessing Chukwu  
Executive Consultant III

FROM: Del Smith   
Engineering Supervisor

RE: IN THE MATTER OF THE APPLICATION OF CROSS CREEK RANCH  
COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION,  
FOR AN ADJUDICATION NOT A PUBLIC SERVICE CORPORATION (Docket  
NO. W-20619A-08-0470)

IN THE MATTER OF THE APPLICATION OF CROSS CREEK RANCH WATER  
COMPANY FOR THE TRANSFER OF SALE OF ITS ASSETS TO CROSS  
CREEK RANCH COMMUNITY ASSOCIATION AND CANCELLATION OF ITS  
CERTIFICATE OF CONVENIENCE AND NECESSITY (Docket Nos. W-04131A-  
08-0471 and W-20619A-08-0471)

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**Introduction**

Cross Creek Ranch Water Company ("Water Company") has applied to the Arizona Corporation Commission ("Commission") for Approval of the Transfer of its Assets and Cancellation of its Certificate of Convenience and Necessity ("CC&N"). The Company proposes to transfer its assets to Cross Creek Ranch Community Association ("CCRCA") an Arizona non-profit corporation. CCRCA has filed a concurrent application with the Commission for Adjudication Not a Public Service Corporation.<sup>1</sup> As the sole shareholder of the Water Company, CCRCA has effectively provided water service to its members through management of the Water Company. CCRCA is seeking these changes because the operation and management of a for profit water company exposes CCRCA and its members to certain fees, taxes and operational expenses that is counter to the purpose of a non-profit organization like CCRCA.<sup>2</sup> CCRCA will continue service to all Water Company customers.

The Water Company provides water utility service to its customers pursuant to a CC&N granted by the Commission in Decision No. 65978 (dated June 17, 2003). The Water Company was formed to provide water service to Cross Creek Ranch, a 210 acre parcel developed as an 84-lot subdivision located approximately two miles southwest of Sedona in Yavapai County, Arizona.

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<sup>1</sup> The Administrative Law Judge issued a Procedural Order on December 17, 2008, which consolidated these Dockets for purposes of hearing. Staff issued its sufficiency letters on December 24, 2008.

<sup>2</sup> See CCRCA adjudication application at Page 2, Line 24.

CCRCA provides wastewater service to its members in the Cross Creek Ranch Subdivision.<sup>3</sup> The Water Company assets that would be transferred consist of booster pumps, storage and pressure tanks, main and distribution pipe, fire hydrants, meters and a building which houses the pumps and emergency generator.<sup>4</sup>

### **Water Company System**

The Water Company system consists of a well having a production capacity of 1,000 gallons per minute ("GPM"), a 250,000 gallon storage tank, a small pressure tank, booster pumps, 27 fire hydrants and a distribution system serving 16 one-inch metered connections.<sup>5</sup> The average annual growth rate since 2004 has been modest with 2 to 3 connections added annually.<sup>6</sup> Staff concludes that this system has adequate production and storage capacity.

According to well records filed with the Arizona Department of Water Resources ("ADWR") the well serving the Water Company (ADWR Well Registration Number 55-200896) is owned by Cachet Western II LLC, the owner and developer of the Cross Creek Ranch subdivision. Staff recommends that the Company file the appropriate documents with ADWR transferring ownership of the well to CCRCA. Staff further recommends that the Company file ADWR documentation with Docket Control, as a compliance item in this docket, that shows the well is owned by CCRCA. This documentation shall be filed within 180 days after the effective date of the decision in this case.

The proposed sale should enable CCRCA to benefit from opportunities to receive grants, subsidized loans, tax benefits, and lower costs for professional services. If the proposed transfer of the Water Company to CCRCA is approved the provision of both water and wastewater services in the transfer area will be under one entity which should provide economies of scale and other system benefits.

Staff understands that the proposed transfer will not have an adverse effect on service quality or operation of the Company. Key management and certified operator personnel will not change as a result of the transfer.

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<sup>3</sup> According to the application, the Commission determined in Decision No. 65978 that because the wastewater system would be operated as a non-profit corporation it was not subject to Commission jurisdiction.

<sup>4</sup> Water Company response dated October 29, 2008, to Staff Letter of Insufficiency.

<sup>5</sup> Per 2007 Annual Report data included with application.

<sup>6</sup> Historical growth rate based on number of connections added during the years 2004 thru 2007 per Commission annual report data. The Water Company provided supplemental information to Staff which listed 14 residential meters (11 are currently serving water, three meters serve homes that are under construction) and four meters that are irrigation or non-residential meters. As of January 22, 2009, a total of 18 metered connections had been installed.

### **Arizona Department of Environmental Quality (“ADEQ”) Compliance**

The Water Company system is not regulated by ADEQ because it is considered a semipublic water system.<sup>7</sup> A public water system regulated by ADEQ is a system for the distribution of water to the public for human consumption which serves 15 or more service connections or which serves an average of at least 25 persons per day for at least 60 days a year.

### **Arizona Department of Water Resources (“ADWR”) Compliance**

The Water Company service area is not located within any Active Management Area (“AMA”). ADWR has determined that Water Company is currently in compliance with departmental requirements governing water providers and/or community water systems.<sup>8</sup>

### **Commission Compliance**

A check of the Utilities Division Compliance Database showed no delinquent compliance items for the Water Company<sup>9</sup>.

### **Summary**

### **Conclusions**

1. Staff concludes that this system has adequate production and storage capacity.
2. Staff concludes that the proposed transfer will not have an adverse effect on service quality or operation of the Company. Key management and certified operator personnel will not change as a result of the transfer.
3. The Water Company system is not regulated by ADEQ because it is considered a semipublic water system.
4. The Water Company service area is not located within any AMA. ADWR has determined that Water Company is currently in compliance with departmental requirements governing water providers and/or community water systems.
5. A check of the Utilities Division Compliance Database showed no delinquent compliance items for the Company.

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<sup>7</sup> Cross Creek Ranch Water Company (Public Water System Identification No.13-256) will be listed as “inactive” in the ADEQ database until it meets the required parameters defined in 40 CFR 141.2.

<sup>8</sup> Per ADWR Water Provider Compliance Status Report dated September 15, 2008.

<sup>9</sup> Per compliance status check dated September 23, 2008.

**Recommendations**

1. Staff recommends that the Company file the appropriate documents with ADWR transferring ownership of the well to CCRCA. Staff further recommends that the Company file ADWR documentation with Docket Control, as a compliance item in this docket, that shows the well is owned by CCRCA. This documentation shall be filed within 180 days after the effective date of the decision in this case.

**MEMORANDUM**

TO: Blessing Chukwu  
Executive Consultant III  
Utilities Division

FROM: Barb Wells *bw*  
Information Technology Specialist  
Utilities Division

THRU: Del Smith *DS*  
Engineering Supervisor  
Utilities Division

DATE: October 21, 2008

RE: **CROSS CREEK RANCH COMMUNITY ASSOCIATION (DOCKET NO. W-20619A-08-0470)**

Cross Creek Ranch Community Association has filed an application for adjudication "not a public service corporation." The area they are requesting has been plotted using the legal description provided with the application (a copy of which is attached).

Attached is a copy of the map for your files.

:bsw

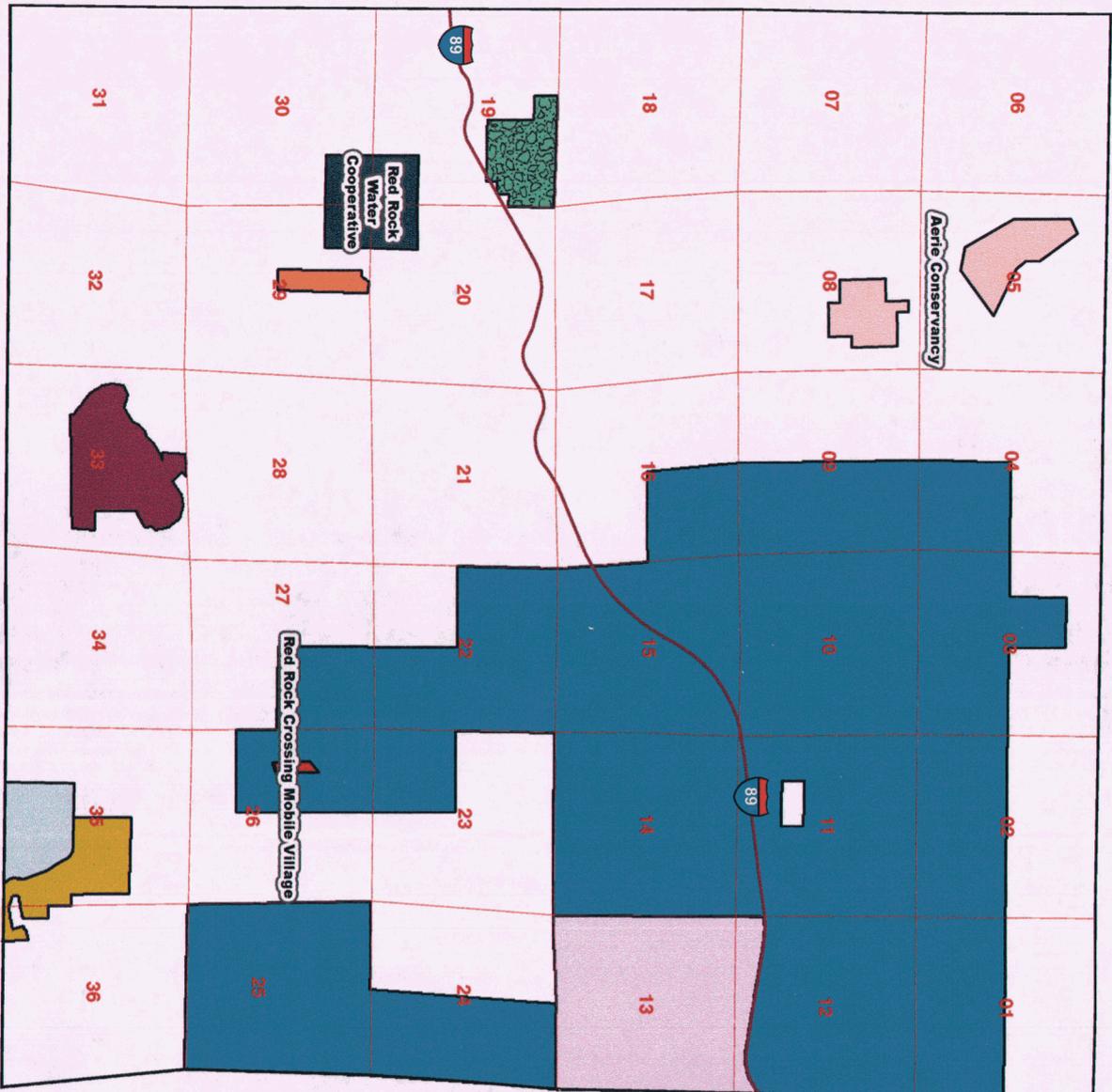
Attachment

cc: Mr. Patrick Black  
Ms. Deb Person (Hand Carried)  
Mr. Del Smith

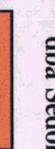
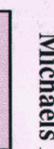
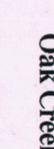
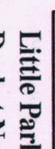
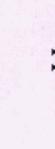
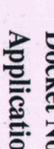
# YAVAPAI COUNTY

Map No. 36

## RANGE 5 East



## TOWNSHIP 17 North

-  W-1445 (5) (3)  
Arizona Water Company
-  W-4131 (1)  
Cross Creek Ranch Water Company
-  W-2192 (2)  
Little Park Water Company
-  WS-3449 (1)  
MHC Operating Limited Partnership  
dba Sedona Venture Water & Sewer Company
-  W-2624 (1)  
Michaels Ranch Water Users' Association
-  W-1392 (1)  
Oak Creek Water Company No. 1
-  (2)  
Little Park Water Company  
Docket No. W-02192A-07-0326  
Application for Extension
-  Cross Creek Ranch Water Company  
Docket No. W-04131A-08-0471  
Application to Transfer to
-  Cross Creek Ranch Community Association  
Docket No. W-20619A-08-0471
-  Cross Creek Ranch Community Association  
Docket No. W-20619A-08-0471  
Application for Adjudication

## LEGAL DESCRIPTION

### Cross Creek Ranch Property

A parcel of land lying within Section 33, Township 17 North, Range 5 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at the quarter corner common to Sections 28 and 33 of the above referenced township, marked by a BLM brass cap;  
Thence along the north line of Section 33 South 87°56'46" West a distance 328.54 feet to the E-E-W 1/256 corner of Sections 28 and 33, as monumented with a rebar and cap marked "LS19853"; thence South 3°14'02" West a distance of 664.39 feet to the C-E-NE-NW 1/256 corner of Section 33, as monumented with a rebar and cap marked "LS19853"; thence North 88°18'23" East a distance of 221.45 feet to a point monumented with a rebar and cap marked "LS12535"; thence South 66°47'18" West, a distance of 166.25 feet; thence South 58°15'47" West, a distance of 367.20 feet; thence South 50°02'52" West, a distance of 344.43 feet; thence South 68°33'24" West, a distance of 114.13 feet; thence South 47°47'24" West, a distance of 305.46 feet; thence South 27°29'24" West, a distance of 165.61 feet; thence South 57°58'21" West, a distance of 215.29 feet; thence South 58°06'18" West, a distance of 236.38 feet; thence North 76°10'00" West, a distance of 413.39 feet; thence South 66°06'39" West, a distance of 281.57 feet; thence South 09°23'39" West, a distance of 335.31 feet; thence South 08°35'21" East, a distance of 301.72 feet; thence South 36°28'19" East, a distance of 432.64 feet; thence South 52°23'19" East, a distance of 500.70 feet; thence South 47°21'19" East, a distance of 99.54 feet; thence South 51°53'19" East, a distance of 150.84 feet to a point on the north-south centerline of the southwest quarter of said Section 33; thence along the north-south centerline of the southwest quarter of said Section 33, South 02°40'19" West, a distance of 101.51 feet to the C-N-SW 1/64 corner of Section 33; thence along the east-west centerline of the northeast quarter of the southwest quarter of said Section 33, North 88°59'04" East, a distance of 1306.97 feet to the C-N-S 1/64 of said Section 33, as monumented by a rebar with cap marked "LS16558"; thence along the east-west centerline of the northwest quarter of the southeast quarter of said Section 33, North 89°05'27" East, a distance of 1347.40 feet to the C-N-SE 1/64 corner of Section 33 monumented with a rebar and cap marked "LS16558"; thence along the east-west centerline of the northeast quarter of the southeast quarter, North 89°06'50" East, a distance of 673.83 feet to the NE-SE 1/64 corner of Section 33, monumented by a rebar and cap; thence along the north-south centerline of the northeast quarter of the southeast quarter of Section 33, North 04°22'51" East, a distance of 670.78 feet to the C-E-E 1/64 corner of said Section 33, monumented by a rebar and cap marked "LS16558"; thence along the east-west centerline of the section, South 88°43'01" West, a distance of 559.95 feet; a point monumented by a 1/2 inch rebar; thence North 00°09'51" East, a distance of 1207.19 feet; thence North 64°45'37" East, a distance of 109.15 feet; thence North 63°30'36" East, a distance of 414.82 feet; thence

North  $05^{\circ}44'16''$  West, a distance of 236.70 feet; thence North  $61^{\circ}16'15''$  East, a distance of 122.25 feet; thence North  $10^{\circ}22'37''$  West, a distance of 183.60 feet; thence North  $13^{\circ}28'37''$  West, a distance of 221.97 feet; thence North  $36^{\circ}12'37''$  West, a distance of 171.35 feet; thence North  $31^{\circ}55'37''$  West, a distance of 131.32 feet; thence North  $37^{\circ}57'37''$  West, a distance of 90.34 feet; thence North  $75^{\circ}38'37''$  West, a distance of 420.53 feet; thence South  $77^{\circ}59'37''$  West, a distance of 309.05 feet; thence South  $62^{\circ}39'37''$  West, a distance of 107.38 feet; thence South  $56^{\circ}25'57''$  West, a distance of 358.43 feet; thence North  $42^{\circ}24'23''$  West, a distance of 380.73 feet to a point of cusp; thence through a left curve from which the radius point bears North  $39^{\circ}11'35''$  West, northeasterly a distance of 166.96 feet along the curve concave to the northwest, having a radius of 727.01 feet and a central angle of  $13^{\circ}09'31''$  to a point of cusp which lies on the northerly line of Section 33; thence along the section line South  $88^{\circ}05'55''$  West, a distance of 324.33 feet to the point of BEGINNING.

Containing 220.98 acres, more or less.

## MEMORANDUM

TO: Blessing Chukwu  
Executive Consultant III  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: October 21, 2008

RE: **CROSS CREEK RANCH WATER COMPANY (DOCKET NO. W-04131A-08-0471)**  
**CROSS CREEK RANCH COMMUNITY ASSOCIATION (DOCKET NO. W-20619A-08-0471)**

Cross Creek Ranch Water Company has filed an application to transfer its CC#N to Cross Creek Ranch Community Association.

Attached is a copy of the map for your files.

:bsw

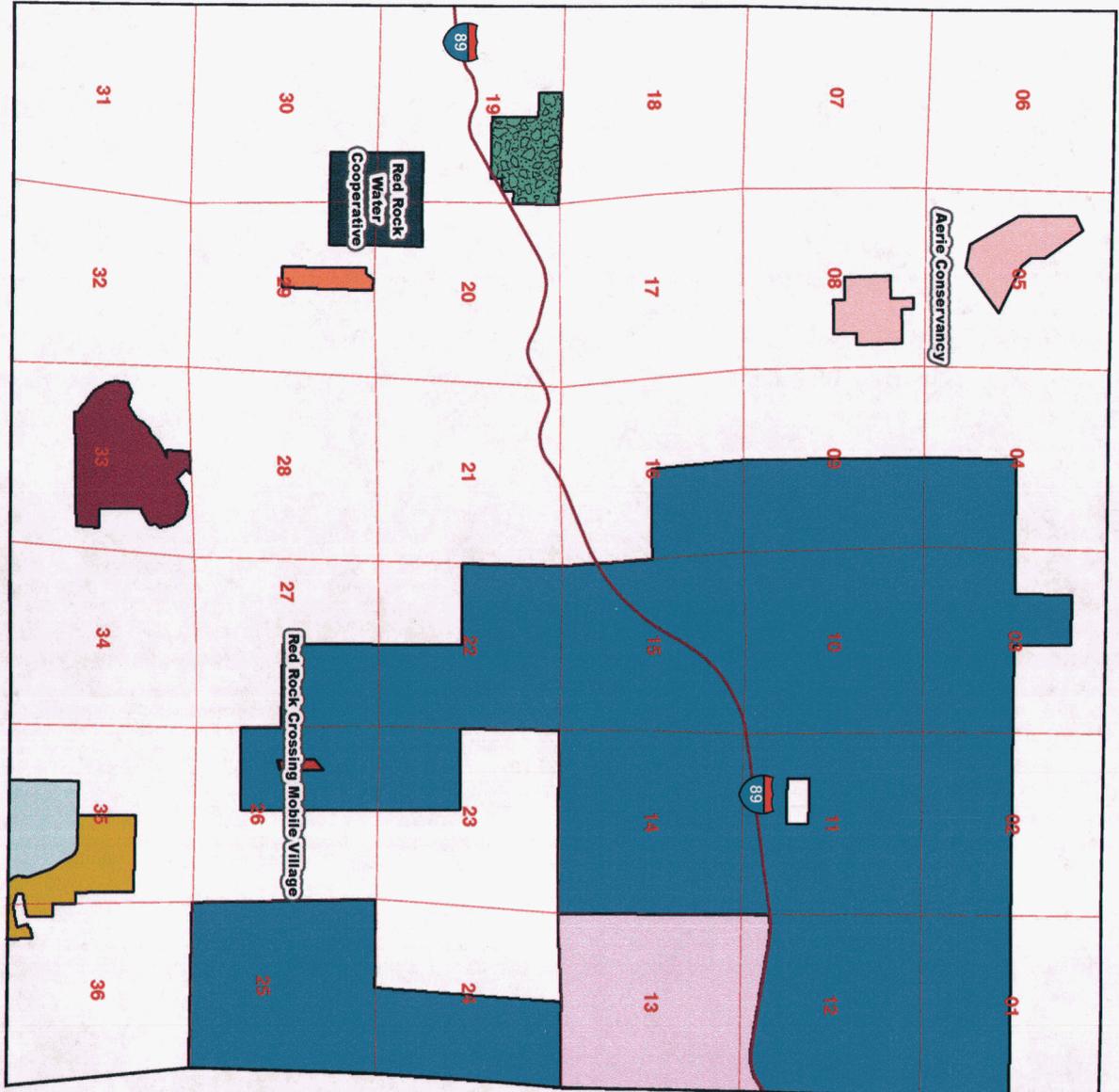
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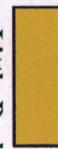
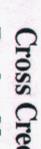
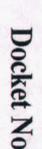
# YAVAPAI COUNTY

## Map No. 36

### RANGE 5 East



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-  Cross Creek Ranch Community Association  
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-  Cross Creek Ranch Community Association  
Docket No. W-20619A-08-0470  
Application for Adjudication

Pursuant to ARS § 39-121.03 this map is 'Not for Commercial Use'