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IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN CASA GRANDE, PINAL COUNTY, ARIZONA

Docket No. W-01445A-03-0559

ARIZONA WATER COMPANY'S RESPONSE TO CORNMAN TWEEDY'S INITIAL CLOSING BRIEF AND RENEWED MOTION TO STRIKE IRRELEVANT TESTIMONY AND EXHIBITS

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Commission Decision No. 69722 (7/30/07) remanded this matter to the hearing division to consider whether the property owned by Cornman Tweedy 560, LLC ("Cornman Tweedy") should be deleted from Arizona Water Company's existing Certificate of Convenience and Necessity ("CC&N"). Cornman Tweedy's Initial Closing Brief ("Closing Brief"), however, attempts to distort the Commission's remand order into something it is not and legally cannot be: an initial application for a CC&N in an uncertificated area. Cornman Tweedy's arguments ignore the requirements of established Arizona law and the facts that are relevant to a deletion proceeding, as well as the fact that Arizona Water Company is ready, willing and able to provide service to the Cornman Tweedy property, which is within the Company's Commission-approved CC&N area. Cornman Tweedy also completely

1 ignores its own attempts at procedural manipulation that compelled the Commission to hold
2 that Arizona Water Company holds a final and unconditional CC&N for the subject area.

3
4 Taken together, Commission Decisions Nos. 66893 (4/6/04) and 69722 fully and
5 finally determined that Arizona Water Company is a fit and proper entity able to provide
6 service to the property at issue. See Decision No. 69722, ¶¶ 12, 98. Despite Cornman
7 Tweedy's lengthy and irrelevant rhetoric, this is a deletion proceeding on remand. Under
8 Arizona law, Arizona Water Company's CC&N can only be deleted in compliance with the
9 standards set forth in *James P. Paul Water Company v. Arizona Corporation Commission*,
10 137 Ariz. 426, 671 P.2d 404 (1983). Cornman Tweedy ignores those standards and instead
11 asks the Commission to consider evidence on topics such as integrated water and
12 wastewater providers, temporary cessation of development and reopening the already-
13 decided question of necessity of service, all issues which cannot be considered in a deletion
14 proceeding, and consideration of which would be a substantial violation of Arizona Water
15 Company's rights. Cornman Tweedy does so because it has previously conceded that under
16 the applicable standards for deletion of a CC&N, the Commission cannot delete Arizona
17 Water Company's CC&N for the Cornman Tweedy property. See Cornman Tweedy's
18 Application for Rehearing (8/17/2007) at 3 n.5. The Commission should reject Cornman
19 Tweedy's irrelevant arguments and confirm in this remand proceeding its previous holding
20 that Arizona Water Company is the fit and proper entity to provide water service to the
21 Cornman Tweedy property.

22 Because of Cornman Tweedy's inappropriate focus on matters that are legally
23 irrelevant in this proceeding, and now that briefing is taking the place of a live hearing with
24 witnesses in this matter, Arizona Water Company also reurges its prior motion to strike
25 certain aspects of Cornman Tweedy's testimony and exhibits cited in the Closing Brief as if
26 those objections were being made in the open hearing.¹

27
28 ¹ Arizona Water Company incorporates the arguments and authorities found in its
previously filed pleadings, including but not limited to its Motion to Strike dated

1 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

2 Cornman Tweedy’s recitation of background facts is grossly distorted. It ignores the
3 shenanigans by which Cornman Tweedy’s parent entity, Robson Communities, attempted to
4 place its utility subsidiary, Picacho Water Company (“Picacho”) into Arizona Water
5 Company’s shoes as the certificated water provider after Arizona Water Company already
6 had been awarded the CC&N. Cornman Tweedy’s version of the facts also attempts to
7 create the impression that Arizona Water Company’s CC&N for the subject CC&N area is
8 somehow still open to collateral challenge. It is not.

9 **A. The Original CC&N Extension.**

10 The original extended CC&N area involved in this docket, including the Cornman
11 Tweedy property, is located between Arizona Water Company’s Casa Grande and Tierra
12 Grande service areas in Pinal County, immediately adjacent to Arizona Water Company’s
13 existing CC&Ns for those service areas and within Arizona Water Company’s Pinal Valley
14 Master Plan for service. Decision No. 66893, Findings of Fact (“FOF”), ¶ 20. In this brief,
15 this original extension area will be referred to as the “extended CC&N area.” In 2002 and
16 2003, Arizona Water Company received requests for water service from two developers
17 located within the extended CC&N area, one of which was Cornman Tweedy’s immediate
18 predecessor in interest, Florence Country Estates. *Id.*, FOF, ¶¶ 11-12; Decision No. 69722,
19 FOF, ¶¶ 6, 66, 83. Based on these requests for service and its ongoing master planning
20 process, Arizona Water Company sought an extension of its existing CC&N to serve the
21 proposed developments as well as future developments along Florence Boulevard east of
22 Interstate 10. *See* Arizona Water Company’s Application to Extend Existing Certificate of
23 Convenience and Necessity (8/12/2003). The request sought the extension of Arizona
24 Water Company’s CC&N to an additional 11 sections of land forming a connecting link
25 between Arizona Water Company’s existing Casa Grande and Tierra Grande CC&Ns. *See*
26
27 February 7, 2008, by reference, but will, in accordance with the procedural order governing
28 the present submission, restate its specific objections and Motion to Strike in this brief.

1 Decision No. 69722, FOF, ¶¶ 55-56, 59, Ex. A. In extending its CC&N to those 11
2 sections, Arizona Water Company sought to complete an orderly, interconnected water
3 distribution system in accordance with its Master Plan. *Id.*

4 Arizona Water Company filed its application to extend its CC&N, including the
5 Cornman Tweedy property, nearly six years ago, on August 12, 2003. Following
6 appropriate notice and public hearing, the Arizona Corporation Commission granted
7 Arizona Water Company's request in Decision No. 66893 dated April 6, 2004. Decision
8 No. 66893 at 6. No one—including Robson Communities, Picacho or Cornman Tweedy—
9 sought to intervene at that juncture, and no members of the public attended the public
10 hearing held on February 17, 2004. *See id.*, FOF, ¶¶ 8, 10. Following the issuance of
11 Decision 66893, no one—including Robson Communities, Picacho or Cornman Tweedy—
12 sought a rehearing or challenged the Commission's Decision in court. Decision No. 66893
13 thereby became final and immune from collateral attack, no matter what "changed
14 circumstances" another public service corporation or its developer parent might attempt to
15 create.

16 **B. Cornman Tweedy's Improper Collateral Attacks On Arizona Water**
17 **Company's CC&N.**

18 In late 2004, after Decision No. 66893 became final following the judicial review
19 period, Cornman Tweedy purchased real property located within the extended CC&N area.
20 Cornman Tweedy then embarked on a secret effort to obstruct and frustrate Arizona Water
21 Company's compliance with the conditions contained in Decision No. 66893 with a plan of
22 engineering a set of facts that would provide an opening for its affiliated utility, Picacho, to
23 purloin a portion of Arizona Water Company's existing CC&N area. *See* Decision No.
24 69722, FOF, ¶¶ 15-28, 77-83. Specifically, Cornman Tweedy set in motion a scheme
25 designed to make it impossible for Arizona Water Company to provide a Certificate of
26 Assured Water Supply ("CAWS") within the time frame provided by Decision No. 66893,
27 and then using this purported failure to argue for an automatic extinguishment of Arizona
28 Water Company's entire extended CC&N area, including the Cornman Tweedy property, so

1 that Picacho could then sweep in and attempt to take all of the extended CC&N area from
2 Arizona Water Company. The details of this plot were fully explored in the initial hearing
3 of this matter in 2006 (the “2006 hearing”), and formed the basis of the Decision confirming
4 that the earlier decision to award the extended CC&N area to Arizona Water Company
5 would be final and unconditional.

6 First, Cornman Tweedy purchased approximately 240 acres of property within the
7 subject CC&N area from one of the developers that had requested service from Arizona
8 Water Company. *Id.*, FOF, ¶ 83. Next, Cornman Tweedy secretly conspired with the
9 developer to withdraw its pending application for a CAWS from the Arizona Department of
10 Water Resources (a procedure that only the developer, not the water company, controls).
11 *Id.*, FOF, ¶ 80. Neither Cornman Tweedy nor the developer informed Arizona Water
12 Company of this action, and Arizona Water Company continued to be listed as a water
13 provider to the area. *See id.*, FOF, ¶¶ 78-83, 96. As a result of these actions, it was
14 impossible for Arizona Water Company to provide the Commission with a copy of the
15 developer’s CAWS within one year of Decision No. 66893. *Id.*, FOF, ¶ 96. Seizing upon
16 this event which it singularly had created, and despite the pendency of Arizona Water
17 Company’s request for an extension of time to comply with the conditions stated in
18 Decision No. 66893, *on the 366th day following entry of Decision No. 66893*, Cornman
19 Tweedy swooped in and demanded that the Commission immediately declare Arizona
20 Water Company’s entire extended CC&N null and void in order to allow its affiliated
21 utility, Picacho, to instead provide water service to the Cornman Tweedy property. *See*
22 *Docketed Letter from Peter M. Gerstman to the Commission (4/7/2005)*.

23 Confirming Cornman Tweedy’s intentions to prevent Arizona Water Company from
24 providing water service within the subject CC&N area, and in furtherance of this scheme,
25 Picacho then filed its own application seeking to extend its CC&N into Arizona Water
26 Company’s extended CC&N area. *See Application to Extend Water Certificate of*
27 *Convenience and Necessity in Docket No. W-03528A-05-281 (4/15/2005)*, signed by Jim
28

1 Poulos (the same witness who now presents the comparative factors and other arguments for
2 deletion on behalf of Cornman Tweedy in this hearing). Next, both Cornman Tweedy and
3 Picacho sought to intervene in the present matter. *See* Cornman Tweedy and Picacho's
4 Motion to Intervene and Request for Leave to File Reply to Arizona Water Company's
5 Response to Staff Recommendation for Additional Evidentiary Proceedings and Exceptions
6 to ALJ's Proposed Order (5/19/2005). Picacho further sought to consolidate its request to
7 extend its CC&N to the Cornman Tweedy property with this docket. *See* Picacho Water
8 Company's (1) Notice of Appearance of Counsel; (2) Motion to Consolidate; (3) Request to
9 File Brief on Issue of Whether Arizona Water Company's CC&N is Null and Void and
10 Request for Oral Argument; and (4) Request for Ruling on Motion for Intervention
11 (10/5/2005).

12 In a procedural order dated November 14, 2005, the Commission granted limited
13 intervention only to Cornman Tweedy: "As a landowner in the area certificated in Decision
14 No. 66893, Cornman does have an interest in receiving service from a certificated provider.
15 Accordingly, Cornman should, if it still desires to participate, be granted intervention in this
16 docket's proceeding to determine if the CC&N is void" Procedural Order (11/15/2004)
17 at 3-4. In its Closing Brief, Cornman Tweedy ignores the key fact that the Commission
18 ordered that "the Motion to Intervene by Cornman is granted, and *such intervention is*
19 *limited to the issue of whether the CC&N issued in Decision No. 66893 is void* and whether
20 the requested extension of time should be granted." *Id.* at 4 (emphasis added).

21 The Commission *denied* Picacho's request to intervene in this matter, holding that
22 "Picacho is not directly affected. Picacho is not a landowner or customer in the area.
23 Picacho's intervention in this docket would be for a purpose which is beyond the scope of
24 this proceeding, and would unduly broaden the issues. . . . Picacho's motion to intervene is
25 denied." *Id.* Picacho never sought to renew its motion to intervene on remand and therefore
26 is not a party to this docket, although virtually every word and argument in Cornman
27 Tweedy's Closing Brief is written on behalf of and for the ultimate benefit of Picacho.
28

1 In a procedural order dated March 22, 2006, the Commission further denied
2 Picacho's motion to consolidate this matter with Docket No. W-03528A-05-0281, Picacho's
3 separate application to extend its CC&N to the Cornman Tweedy property. Procedural Order
4 (3/22/2006) at 4. In the same procedural order, the Commission ordered that a hearing take
5 place on this matter limited to the specific question of the circumstances and events that had
6 resulted in Arizona Water Company's inability to strictly comply with the conditions in
7 Decision No. 66893, but ruled that the hearing would *not* reopen the decision granting the
8 CC&N extension. *Id.* at 6. The 2006 hearing, in which Robson Communities' and
9 Picacho's plans were revealed, then followed, leading to Decision No. 69722.

10
11 **C. The Remaining Issues On Remand.**

12 On July 30, 2007, the Commission issued Decision No. 69722. In that Decision, the
13 Commission held that Cornman Tweedy itself had created the circumstances preventing
14 Arizona Water Company from strictly complying with the CC&N extension conditions,
15 Decision No. 69722, FOF, ¶ 94, and that "for purposes of compliance, the conditions placed
16 on Arizona Water's CC&N extension in Decision No. 66893 have been fulfilled." *Id.*, ¶ 98.
17 The Commission further recognized that Arizona Water Company remained a fit entity to
18 serve the extended CC&N area. *Id.*, FOF, ¶ 89; Conclusions of Law ("COL"), ¶ 3.

19 The Commission directed, however, that this matter be remanded solely "for the
20 purpose of considering whether the Cornman property should be deleted from the CC&N
21 extension granted to Arizona Water Company by Decision No. 66893." *Id.*, FOF, ¶ 102
22 (this remaining CC&N area at issue in this remand proceeding will be referred to as the
23 "subject CC&N area" or the "Cornman Tweedy property"). While the Commission
24 indicated that the remand hearing "should be broad in scope so that the Commission may
25 develop a record to consider the overall public interest underlying service to the Cornman
26 property that is included in the extension area granted by Decision No. 66893," *id.*, ¶ 104,
27 the Commission made no provision for any further hearings on the fitness of Arizona Water
28 Company or whether Picacho or some other entity should hold the CC&N to the subject

1 area instead; nor did it grant intervention to Picacho, Robson Communities, or any other
2 party to present such evidence or arguments. The Commission expressly recognized that
3 “this proceeding is not the proper venue for determining whether a different provider will
4 provide service to Cornman’s development.” *Id.*, FOF, ¶ 94. Based on the Commission’s
5 findings, the September 5, 2008 Procedural Order in this case further recognized that this
6 remand proceeding “is not a proceeding to judge the relative merits of two alternative
7 providers as might be considered in an application for an initial grant of a CC&N.”
8 Procedural Order (9/5/2008) at 9.

9
10 Cornman Tweedy filed an application for a rehearing and reconsideration of Decision
11 No. 69722 on August 17, 2007. In that pleading (and subsequently filed testimony),
12 Cornman Tweedy conceded that *James P. Paul Water Company v. Arizona Corporation*
13 *Commission*, 137 Ariz. 426, 671 P.2d 404 (1983), would limit matters in the remand
14 proceeding to whether Arizona Water Company “can provide adequate service to the
15 Cornman Tweedy property at reasonable rates.” Cornman Tweedy’s Application for
16 Rehearing at 1. Cornman Tweedy further conceded that “if the [remand] proceeding is
17 limited to the narrow issue of whether [Arizona Water Company] can provide adequate
18 service at reasonable rates, it would be pointless to even proceed with the remand
19 proceeding.” *Id.* at 3 n.5. Cornman Tweedy asked the Commission to modify Decision No.
20 69722 to defer any decision on whether the conditions subsequent in the prior decision had
21 been fulfilled. *Id.* at 4. The Commission denied Cornman Tweedy’s Application for
22 Rehearing by refusing to act on it within 20 days as provided under A.R.S. § 40-253(A).
23 Cornman Tweedy then failed to seek any further relief from Decision No. 69722 in the
24 superior court. Decision No. 69722 therefore is final as to the issues of public need and
25 necessity for Arizona Water Company’s CC&N in the subject area, and it is dispositive as to
26 the issues Cornman Tweedy has raised in this remand proceeding.

27 At a procedural conference on October 16, 2007, the parties discussed the issues to
28 be considered on remand. In a procedural order filed November 8, 2007, the Commission

1 ruled as follows:

2 The Commission previously determined that it is in the public interest
3 for AWC to hold the CC&N for the Cornman extension area, and that
4 AWC is a fit and proper entity to provide water utility service to the
5 Cornman extension area at issue in this remand proceeding. The
6 Commission also determined, in Decision No. 69722, that it is in the
7 public interest to reopen the record in this matter. Decision No. 69722
8 included a finding that there may not be a current need or necessity for
9 water service in the Cornman extension area, and that those issues bear
10 further examination and may have some relevance to the best interests
11 of the area ultimately to be served. The Commission's determination in
12 Decision No. 69722 that additional proceedings should be held
13 regarding whether AWC should continue to hold a CC&N for the
14 Cornman extension area at this time did not place the burden of proof
15 on AWC regarding whether AWC should continue to hold a CC&N for
16 the Cornman extension area, but included a finding that as the CC&N
17 holder, AWC is entitled to appropriate notice and an opportunity to be
18 heard.

19 Thus, both Decision No. 69722 and the Procedural Order of November 8, 2007 make
20 it clear that no issue exists in this remand proceeding as to Arizona Water Company's
21 fitness to serve the Cornman Tweedy property, which is now unconditionally within
22 Arizona Water Company's CC&N. Likewise, no relevant issue exists in this remand
23 proceeding concerning the comparative fitness of some other water utility to serve the
24 Cornman Tweedy property, even though that is the subject of the entirety of Cornman
25 Tweedy's 20-page Closing Brief. Decision No. 69722, FOF, ¶ 94. Rather, the sole
26 remaining issue is a determination as to whether or not Arizona Water Company's CC&N
27 for the Cornman Tweedy property may be legally deleted under controlling Arizona law.
28 *Id.*, FOF, ¶¶ 101, 102.

24 **II. RENEWED MOTION TO STRIKE.**

25 On February 7, 2008, Arizona Water Company moved to strike portions of the pre-
26 filed testimony and exhibits filed by Cornman Tweedy on remand. Following briefing, that
27 motion was denied. In the procedural order denying Arizona Water Company's Motion to
28 Strike dated September 5, 2008, ALJ Wolfe reserved judgment on the relevancy of the

1 challenged evidence until the record was more fully developed in the evidentiary hearing in
2 this matter. However, due to unfortunate health circumstances of various Cornman Tweedy
3 witnesses, the parties ultimately agreed to submit this matter on the previously-filed
4 pleadings and testimony in lieu of a live hearing. *See* Docketed Joint Motion of Cornman
5 Tweedy 560 L.L.C. and Arizona Water Company for Submission of Matter on the Pleadings
6 (3/6/2009). In a procedural conference held on February 6, 2009, ALJ Wolfe noted that had
7 she known the record was “not going to be more fully developed [*i.e.*, through cross
8 examination of Cornman Tweedy’s witnesses], then the ruling on the motion to strike
9 [might] well have been different.” Transcript (2/6/2009) at 9:10-12. Now that this briefing
10 is taking the place of the hearing in this matter on remand, Arizona Water Company reurges
11 its Motion to Strike and, in accordance with the April 16, 2009 procedural order, restates its
12 motion and objections here as if they were being made during the course of a live hearing in
13 this matter.

14 **A. Much of the Testimony And Evidence Offered On Behalf Of Cornman**
15 **Tweedy Should Be Stricken.**

16 By failing to appear and seek intervention in the original proceedings that led to
17 Decision No. 66893, failing to seek a rehearing of that Decision pursuant to A.R.S. § 40-
18 253, and failing to seek further redress after its petition for rehearing of Decision No. 69722
19 was denied, Cornman Tweedy has waived any right to challenge the original grant of the
20 CC&N in the subject area to Arizona Water Company, or the Commission’s finding that
21 Arizona Water Company was the fit and proper entity to hold the CC&N for the subject
22 area. Because of the limited issues that are legally appropriate for consideration in this
23 remand proceeding, the bulk of the direct and rebuttal testimony and exhibits, as well as the
24 Closing Brief arguments offered by Cornman Tweedy, are irrelevant, and the Commission
25 should refuse to consider such testimony and exhibits and should strike them from the
26 record.

1 **1. Mr. Poulos' Direct And Rebuttal Testimony Relied On By**
2 **Cornman Tweedy Is Irrelevant To The Issues In This Remand**
3 **Proceeding, Is Improperly Proffered On Behalf Of Entities That**
4 **Are Not Parties, And Should Be Stricken.**

5 Although Mr. Poulos purports to offer testimony on behalf of Cornman Tweedy,
6 much of his testimony concerns – and clearly speaks on behalf of – Robson Communities
7 and Picacho, neither of which are parties to this case. For example, pages 1-4 of Mr.
8 Poulos' direct testimony concern his duties as general manager of ten public utilities owned
9 by Robson, none of which has a pending application to provide service to Cornman
10 Tweedy's property. None of this material has any relevance to the question of whether or
11 not a portion of Arizona Water Company's CC&N should be deleted. Likewise, Mr.
12 Poulos' discussion of Robson's development business and master-planned communities
13 such as SaddleBrooke Ranch on pages 4-5 has no relevance to the issues in this remand
14 proceeding. Moreover, the majority of Mr. Poulos' rebuttal testimony and exhibits
15 (including a law review article by an individual Commissioner) consists of legal arguments,
16 and should be stricken on that basis, as well as for the fact that those arguments have
17 nothing to do with any proper grounds for deleting Arizona Water Company's CC&N in the
18 subject area.

19 On page 9 of his direct testimony, Mr. Poulos identifies five topics that he alleges the
20 Commission should address as "public policy issues" in this docket. Only the first three of
21 these topics have even remote relevance to the matters at issue in this remand proceeding.
22 Mr. Poulos' fourth topic (that is, whether a single water provider should serve an entire
23 development) and fifth topic (that is, whether the Commission should "opt for an integrated
24 water and wastewater provider") are totally irrelevant to this proceeding – in which the
25 Commission has already *twice* held that Arizona Water Company is the fit and proper entity
26 to provide water service to the Cornman Tweedy property – and no other utility, integrated
27 or otherwise, has a pending application to serve the area. *See* Decision No. 66893, COL, ¶
28 5; Decision No. 69722, COL, ¶ 3. Mr. Poulos' discussion of these topics and his related
 discussion of the organization of Picacho, Poulos' Direct Testimony at 16-19, have no

1 relevance, are improper in this proceeding, and should be stricken. Similarly, Mr. Poulos'
2 testimonial to Cornman Tweedy's other witnesses, Dr. Goldman and Mr. Hendricks, at page
3 9-10, should also be stricken because those witnesses testify exclusively about irrelevant
4 topics and because their testimony is provided on behalf of entities that lack standing or
5 were denied standing in this proceeding.

6 Much of Mr. Poulos' direct testimony on his topic two (the alleged lack of request for
7 service) and topic three (Cornman Tweedy's desire to have its land deleted) are also
8 irrelevant. For example, to support his claim that the property owner should control the
9 Commission's decision to grant a CC&N, Mr. Poulos refers to a "split" in water service to
10 EJR Ranch and Robson's alleged unhappiness with working with Arizona Water Company.
11 Poulos' Direct Testimony, page 15-16. Because the Commission has already decided that
12 Arizona Water Company is the fit and proper entity to serve that portion of the Cornman
13 Tweedy property within its CC&N, these arguments are irrelevant to these remand
14 proceedings. Moreover, it is incontrovertible that Robson manufactured the underlying
15 circumstances in order to make these arguments on behalf of its wholly-owned utility,
16 Picacho, in an effort to attempt to take over a portion of Arizona Water Company's CC&N
17 area. The only issue to be decided in this remand proceeding is whether Cornman Tweedy
18 has met its burden of proving that Arizona Water Company has either failed or refused to
19 provide service at a reasonable rate to the Cornman Tweedy property. The testimony of
20 these witnesses does not even address that issue and therefore should be stricken.

21 In summary, Arizona Water Company moves that the following portions of Mr.
22 Poulos' 2008 testimony, as well as those portions of the Closing Brief citing to that
23 testimony, be stricken as not relevant to the topics at issue in this remand proceeding:

24 Direct Testimony

25 Page 1, line 14 through page 5, line 7;

26 Page 9, line 10 through page 10, line 7; and

27 Page 15, line 7 through page 19, line 16.
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Rebuttal Testimony

The entirety of Mr. Poulos’ rebuttal testimony.

Poulos’ Exhibit 1 (a list of Robson-owned utilities) should also be stricken as irrelevant because no other water utility has a pending application to serve the Cornman Tweedy property, and the rebuttal exhibits should be stricken as irrelevant to the issues on remand.

2. Dr. Goldman’s Direct And Rebuttal Testimony Is Irrelevant To The Issues In This Remand Proceeding, Is Improperly Proffered On Behalf Of Entities That Are Not Parties, And Should Be Stricken.

Dr. Fred Goldman is an engineer who has previously designed water and wastewater systems for Robson developments. See Goldman’s Direct Testimony, pages 1-2. Cornman Tweedy offered Dr. Goldman to testify concerning the alleged “public policy and cost issues that arise from an engineering and design standpoint by splitting the water service to EJR Ranch between two different water providers.” *Id.* at 3. Dr. Goldman then contends that Picacho could serve the Cornman Tweedy property “more efficiently,” *id.* at 4, even though Cornman Tweedy also is claiming that there is no need for service and Picacho does not have a pending application to serve the area. Dr. Goldman contends that Picacho “plans to service the Cornman property,” *id.* at 4, and compares “projections” on wells and other infrastructure between Picacho and Arizona Water Company. *Id.* at 5. Dr. Goldman contends that service by Picacho will save money, *id.* at 9, and be more reliable and efficient than Arizona Water Company. *Id.* at 10-11.

Arizona Water Company disputes the assumptions and conclusions in Dr. Goldman’s direct testimony, and similar conclusions in his rebuttal testimony. See Pre-filed Rebuttal Testimony of Fredrick K. Schneider, PE (filed February 5, 2008) (“Pre-filed Schneider Remand Rebuttal”) at 6:8-9:24 (discussing the erroneous assumptions made by Dr. Goldman). However, even aside from his dubious assertions, Dr. Goldman’s direct testimony is completely irrelevant to every topic at issue in this remand proceeding and is improper as a matter of law. See *James P. Paul*, 137 Ariz. at 431, 671 P.2d at 409 (treating

1 competing applicant for established CC&N as equally situated with certificate holder is
2 inappropriate). Cornman Tweedy, from one side of its mouth, contends that its property
3 does not need water service *at all*, and from the other side says it wants water service from
4 Picacho. But Picacho has no pending application to provide any service to any of the
5 Cornman Tweedy property, inside or outside of Arizona Water Company's CC&N area.
6 Picacho is not a party to this remand proceeding and has no standing to make any arguments
7 (itself or indirectly through its proxy, Dr. Goldman) as to its alleged plans to serve the
8 Cornman Tweedy property. Most significantly, however, the Commission has already *twice*
9 decided that Arizona Water Company is the fit and proper entity to serve the Cornman
10 Tweedy property. *See* Decision No. 66893, COL, ¶ 5; Decision No. 69722, COL, ¶ 3. Dr.
11 Goldman's arguments for and on behalf of Picacho serving the Cornman Tweedy property
12 amount to an impermissible collateral attack on final decisions by the Commission,
13 prohibited by A.R.S. § 40-252. Therefore, all of Dr. Goldman's direct testimony, as well as
14 his Exhibits A-C and the references to that material in the Closing Brief should be stricken
15 and not considered.

16
17 **3. Mr. Hendricks' Direct Testimony Is Irrelevant To The Issues In**
18 **This Remand Proceeding, Is Improperly Proffered On Behalf Of**
19 **Entities That Are Not Parties, And Should Be Stricken.**

20 Mr. Paul Hendricks has managed some water and wastewater systems owned by
21 Robson Communities. *See* Hendricks' Direct Testimony at 1-3. Cornman Tweedy offered
22 testimony by Mr. Hendricks on the alleged "operational benefits" of "integrated water and
23 wastewater systems," *id.* at 4, including bill collection, groundwater management, and
24 wastewater treatment issues. *Id.* at 4-11. Mr. Hendricks contends that "integrated" water
25 and wastewater systems save money, *id.* at 11-14, and asserts that an alleged "integrated"
26 provider is "always preferable" to Arizona Water Company's service model. *Id.* at 15. As
27 with Cornman Tweedy's other witnesses, these arguments and testimony are out of bounds
28 in this case.

As with Dr. Goldman's direct testimony, Mr. Hendricks' direct testimony attempts to

1 raise issues which are not relevant to this remand proceeding and are barred by A.R.S. § 40-
2 252 as an impermissible collateral attack on final Commission decisions. No “integrated”
3 water and wastewater utilities are parties to this case or have applications pending to serve
4 the Cornman Tweedy property, and the Commission has already decided twice that Arizona
5 Water Company is the fit and proper entity to provide public water utility service to the
6 Cornman Tweedy property. Because Mr. Hendricks’ direct testimony and his exhibit do not
7 address the narrow appropriate issues in this proceeding, they should be stricken from
8 consideration, along with all references to that material in the Closing Brief.

9
10 **III. RESPONSIVE ARGUMENT.**

11 **A. Deletion Of A Portion Of Arizona Water Company’s CC&N Is
12 Inappropriate Under Arizona Law.**

13 Commission Decision No. 69722 explicitly remanded this matter “for the purpose of
14 considering whether the Cornman property should be deleted from the CC&N extension
15 granted to Arizona Water by Decision No. 66893.” Decision No. 69722, FOF, ¶ 102.
16 While Cornman Tweedy spends a great deal of time focusing on other language in that
17 decision, the simple fact remains that the Commission is now engaged in determining
18 whether to delete a portion of Arizona Water Company’s unconditional CC&N located in
19 Pinal County, not whether a competing service provider exists, whether a different provider
20 would be more advantageous, or whether Picacho should receive an extension of its own
21 CC&N.² See Decision No. 69722, FOF, ¶¶ 94, 101-02; Procedural Order (9/5/2008) at 9.

22 ² Cornman Tweedy confirms throughout the Closing Brief that it desires to have its
23 affiliated water utility, Picacho, provide service to the Cornman Tweedy property. See
24 Closing Brief at 17 (Cornman Tweedy property could be served by Picacho). Indeed, most
25 of Cornman Tweedy’s arguments and evidence are based on the unsupported assumption
26 that Picacho would provide superior service to the property at issue. Because the Cornman
27 Tweedy property is contained within Arizona Water Company’s current CC&N, the only
28 way Picacho can provide service to that property is if a portion of Arizona Water
Company’s CC&N is deleted in this proceeding and Picacho then demonstrates that the
public interest mandates that Picacho provide service to the affected area. Cornman
Tweedy, however, entirely ignores the initial question as to whether or not its property
should be deleted from Arizona Water Company’s CC&N and seeks to focus entirely on the

1 The Commission refused to consider whether a portion of Arizona Water Company's
2 CC&N should be deleted in Decision No. 69722 because the proceeding leading to that
3 decision was strictly limited to the issue of whether or not Arizona Water Company should
4 be granted an extension of time in which to comply with the conditions found in Decision
5 No. 66893 and whether those conditions had been met. Decision No. 69722, FOF, ¶ 42.
6 Apparently as a result of Cornman Tweedy's continued assertions of its desire to have a
7 portion of the CC&N deleted, the Commission inserted language in Decision No. 69722
8 providing formal notice to Arizona Water Company that the Commission would consider
9 whether to delete a portion of Arizona Water Company's CC&N in a full deletion
10 proceeding on remand, without the necessity of a new docket being opened. *Id.*, FOF,
11 ¶ 102.

12 Cornman Tweedy then sought a rehearing of Decision No. 69722 pursuant to A.R.S.
13 § 40-253, conceding that the *James P. Paul* case limited deletion proceedings to a
14 consideration of whether Arizona Water Company could provide adequate service to the
15 affected property at reasonable rates. Cornman Tweedy's Application for Rehearing at 1. If
16 the Commission felt otherwise, it could have accepted rehearing and changed its decision. It
17 did not. Cornman Tweedy did not appeal Decision No. 69722. Thus, both Decisions No.
18 66893 and 69722 are now final and immune to collateral attack.

19 Although Decision No. 69722 stated that this remand proceeding "should be broad in
20 scope so that the Commission may develop a record to consider the overall public interest
21 underlying service to the Cornman property," Decision No. 69722, FOF, ¶ 104, and
22 Cornman Tweedy focuses on that passage, this deletion proceeding must also comply with
23 Arizona law. It is beyond dispute that the Commission must act consistent with Arizona law
24 and its constitutional and statutory authority. This remand proceeding is therefore
25

26 purported service advantages of its own affiliated water utility that has no pending
27 application to serve any part of the Cornman Tweedy property. Because there is no
28 evidence in this record that deletion would be appropriate, Cornman Tweedy's arguments to
that effect are simply irrelevant to this proceeding.

1 controlled by the standards set out in *James P. Paul*. According to that decision:

2
3 Once granted, the [CC&N] confers upon its holder an exclusive right to
4 provide the relevant service for so long as the grantee can provide
5 adequate service at a reasonable rate. If a [CC&N] within our system
6 of regulated monopoly means anything, it means that its holder has the
7 right to an opportunity to adequately provide the service it was certified
8 to provide. *Only upon a showing that a certificate holder, presented
with a demand for service which is reasonable in the light of projected
need, has failed to supply such service at a reasonable cost to
customers, can the Commission alter its certificate. Only then would it
be in the public interest to do so.*

9 137 Ariz. at 429, 671 P.2d at 407 (emphasis added). Thus, the only permissible issues
10 allowed by Arizona law in this proceeding are those questions raised by the Supreme Court:
11 which are whether Arizona Water Company (1) can provide adequate service to the
12 Cornman Tweedy property and (2) do so at a reasonable rate?

13 The answers to those questions are incontrovertible, and are dispositive as to the
14 appropriate result of this hearing. As recognized by the Commission, Arizona Water
15 Company is a fit service provider. Decision No. 69722, COL, ¶ 3. The evidence is further
16 uncontroverted that Arizona Water Company stands ready, willing and able to provide
17 service to the Cornman Tweedy property. See Pre-filed Direct Testimony of William M.
18 Garfield (filed January 4, 2008) (“Pre-filed Garfield Remand Direct”) at 4:9-12 (Arizona
19 Water Company remains ready, willing and able to serve Cornman Tweedy property), 6:10-
20 7:4; Pre-filed Schneider Rebuttal at 12:5-16 (similar). In fact, Arizona Water Company
21 specifically obtained the extension of its CC&N, in part, to provide service to the Cornman
22 Tweedy property pursuant to a request for service from the property owner, Cornman
23 Tweedy’s immediate predecessor in interest. Decision No. 69722, FOF, ¶ 56.

24 Since that time, Arizona Water Company has undertaken additional preparations,
25 including updating its Physical Availability Determination to increase the total water supply
26 available to serve its CC&N area, completing its Central Arizona Project (“CAP”) Water
27 Treatment Plant Utilization Plan and Conceptual Design Project to allow for full treatment
28 and utilization of Arizona Water Company’s Casa Grande and Coolidge CAP allocations,

1 and continuing work on the interconnection of the company's Casa Grande and Coolidge
2 service areas, to provide service not only to the Cornman Tweedy property but also to the
3 remainder of its CC&N. Pre-filed Garfield Remand Direct at 4:1-25, Exs. WMG-15, 16 and
4 17 (attached to Pre-filed Garfield Remand Direct). More importantly, Arizona Water
5 Company has never refused service to the Cornman Tweedy property, Pre-filed Garfield
6 Remand Direct at 6:21-7:4, has never been "presented with a demand for service" by
7 Cornman Tweedy, and has never "failed to supply such service at a reasonable cost to
8 customers."³ *Id.* at 429, 671 P.2d at 407. By ignoring and sidestepping the standards and
9 questions set forth in *James P. Paul* (and through explicit admissions in earlier filings),
10 Cornman Tweedy concedes there is no evidence to the contrary. *See* Cornman Tweedy
11 Application for Rehearing at 3 n.5. Therefore, no grounds exist under Arizona law to permit
12 the deletion of any portion of Arizona Water Company's existing CC&N.

13
14 **B. Deletion of Arizona Water Company's CC&N Is Improper Even Under
Cornman Tweedy's Proposed Expanded Scope of Inquiry.**

15 Even if the Commission decides to consider the improper and irrelevant testimony
16 and evidence presented by Cornman Tweedy on remand, which it should not, deletion of a
17 portion of Arizona Water Company's CC&N is still improper. Cornman Tweedy ignores
18 the overwhelming evidence in the record that the public interest requires a finding in favor
19 of Arizona Water Company. Cornman Tweedy instead improperly equates its own self-
20 interest (and that of its affiliates) with that of the general public.⁴ An examination of the
21 totality of evidence presented in this docket reveals that even under the analysis proposed by
22 Cornman Tweedy, Arizona Water Company remains the fit and proper entity entitled to
23 hold the CC&N for the Cornman Tweedy property.

24
25 ³ In Decision No. 66893, the Commission also ordered that Arizona Water Company apply
its Commission-approved water rates, which the Commission has already deemed to be
26 reasonable as a matter of law.

27 ⁴ In *James P. Paul*, the Arizona Supreme Court expressly rejected use of the public interest
28 standard applicable to the initial grant of a CC&N to a deletion proceeding. 137 Ariz. at
430, 671 P.2d at 408.

1 While the evidence and testimony set forth below demonstrate that Arizona Water
2 Company is the proper entity to serve the property at issue, Arizona Water Company
3 expressly reserves its right to challenge the inappropriate re-application of the initial public
4 interest standard to this deletion proceeding, and does not waive that argument by now
5 addressing Cornman Tweedy's arguments from the perspective of the hearing being an
6 initial CC&N extension case into an uncertificated area between two competing applicants,
7 which it is not.

8
9 **1. Cornman Tweedy's Purported Lack Of Need For Service Cannot
Justify Deletion of Arizona Water Company's CC&N.**

10 Cornman Tweedy places great emphasis on the purported lack of current need for
11 service to its property to justify deletion of a portion of Arizona Water Company's CC&N.
12 However, an examination of the evidence and sound public policy reveal that the purported
13 lack of current need emphasized by Cornman Tweedy does not justify deletion of any
14 portion of Arizona Water Company's CC&N. As an initial matter, the alleged lack of a
15 current need for service to the Cornman Tweedy property cannot support deletion of
16 Arizona Water Company's existing CC&N as a matter of law. Neither *James P. Paul* nor
17 any other Arizona case provides that a recession or a temporary ebb in development within
18 the area of an existing CC&N is a legitimate basis for a CC&N deletion where, as here, the
19 CC&N has already been granted and that grant is final in every respect. In fact, Arizona
20 courts have explicitly rejected that position.

21 In *James P. Paul*, the Arizona Supreme Court held that deletion of a certificate
22 holder's CC&N without a demonstration that the certificate holder had been presented with
23 a demand for service and had failed to supply such service at reasonable cost to customers
24 would be "antithetical to the public interest for several reasons." *James P. Paul*, 137 Ariz.
25 at 429, 671 P.2d at 407. Among the reasons enumerated by the Court (all of which apply
26 here) was that such a deletion would discourage service to presently sparsely populated
27 areas because CC&N holders would not be assured of the future opportunity to provide
28 service as development occurred. *Id.* at 430, 671 P.2d at 408. Implicit in the Court's

1 concern was a recognition that the grant of a CC&N is appropriate even though there may
2 not be any current demand for service, especially where, as here, the area bridges two
3 existing CC&N areas and the existing utility has been planning to provide service on a long-
4 term basis to the area as part of a regional master plan. The Court further explicitly found
5 that the Commission's decision to delete a portion of a CC&N holder's existing CC&N and
6 award it to a competing service provider based on the fact that the CC&N had been granted
7 before there was a "public need and necessity for that certificate" was improper, observing
8 that the lack of public need and necessity could not justify the deletion of an existing
9 CC&N. *Id.* at 430 n.3, 671 P.2d at 408 n.3. Despite this binding precedent, Cornman
10 Tweedy still seeks the same result in this case. Its request should be rejected as a matter of
11 law.

12 Furthermore, while the Commission stated that there may not be a "current need or
13 necessity" for service for the Cornman Tweedy property in Decision No. 69722, FOF, ¶ 100
14 (a condition that was presented by Mr. Poulos only on the eve of the 2006 hearing), the
15 evidence actually demonstrates (and the Commission found) that there is a public need for
16 water service in all of the extended CC&N area, Decision No. 66893, COL, ¶ 4, which not
17 only included the Cornman Tweedy property but nine other sections of land, including the
18 property adjoining the Cornman Tweedy property. *See* Decision No. 69722, FOF, ¶¶ 58,
19 59, Ex. A; Pre-filed Schneider Remand Rebuttal at 12:5-16 (Arizona Water Company has
20 committed to provide service to "a number of additional nearby developments"); *See* Pre-
21 filed Rebuttal Testimony of William M. Garfield (filed February 5, 2008) ("Pre-filed
22 Garfield Remand Rebuttal") at 3:18-4:26 (similar). Portions of each of those sections either
23 currently require water service or will require water service in the future. *See* Decision No.
24 66893, COL, ¶ 4; *see also* Decision 69722, Ex. A; Pre-filed Direct Testimony of Michael J.
25 Whitehead (filed June 12, 2006) ("Pre-filed Whitehead Direct") at 11:20-14:11 (setting out
26 requests received from other property owners/developers within CC&N boundaries).

27 At the time the Commission granted the CC&N to Arizona Water Company,
28

1 Cornman Tweedy's immediate predecessor in interest had requested water service from
2 Arizona Water Company. Decision No. 66893, FOF, ¶ 12; Decision No. 66792, FOF, ¶ 6,
3 58. Cornman Tweedy purchased its property with the knowledge that Arizona Water
4 Company's CC&N was in place. *See id.*, FOF, ¶ 83. Following Decision No. 66893,
5 Arizona Water Company received requests for service from five other
6 developers/landowners in the extended CC&N area. Pre-Filed Whitehead Direct at 11:20–
7 14:11. One of the developers, AG Robertson, requested service for properties surrounding
8 portions of the land now owned by Cornman Tweedy. Pre-Filed Whitehead Direct at
9 13:24–14:2; Decision No. 69722, Ex. A (AG Robertson property is in the shaded areas to
10 the South, East and North of Cornman Tweedy property). Arizona Water Company
11 prepared plans for construction of the system to service AG Robertson's development,
12 entered into a main extension agreement with AG Robertson, and received approval to
13 construct the water system for that development. Pre-Filed Whitehead Direct at 13:11-18.
14 Whatever Cornman Tweedy's current plans are for its property, the evidence in this docket
15 clearly demonstrates a continuing public need and necessity justifying the grant of the
16 subject CC&N area to Arizona Water Company.⁵

17 Moreover, the result sought by Cornman Tweedy would constitute horrific public
18 policy, as illustrated by present circumstances. Allowing CC&Ns to be revoked or deleted
19 based on the schemes of developers who engineer facts in an attempt to poach existing
20 CC&N areas, as well as economic recessions and the inevitable ebbs and flows of the
21 housing market, would result in ever-changing CC&N configurations that would open and
22

23 ⁵ The Commission does not (and should not in practice) require a request for service related
24 to every acre of land in a proposed extension area before approving a CC&N extension. *See*
25 Pre-filed Garfield Remand Rebuttal at 3:18-24. Mr. Poulos cites no binding precedent for
26 his sweeping characterization to the contrary in his testimony. Such a policy would clearly
27 do violence to the public interest and would leave behind a patchwork of tattered chards of
28 uncertificated property, greatly discourage further development of water service to such
areas, and would frustrate the efficient, long-term planning for utility service to a regional
area, a result that is much more consistent with sound public policy.

1 close over time depending on local demands and economic conditions. No utility could
2 make any meaningful plans or invest in infrastructure with any certainty because, if
3 Cornman Tweedy had its way, CC&Ns could suddenly develop gaps and perforations based
4 on the variable plans of landowners and developers and variable economic cycles outside of
5 the utility's control. Such a result would destroy the very purpose for the Commission's
6 grant of a CC&N, and such an argument rightfully has no place in a deletion proceeding.
7 *James P. Paul*, 137 Ariz. At 429-30, 671 P.2d at 407-08; *see also* Decision No. 69722, FOF,
8 ¶ 94.

9 Here, deletion of Cornman Tweedy's property from Arizona Water Company's
10 CC&N so that Picacho can serve an isolated peninsula of land that juts into and is
11 surrounded by Arizona Water Company's water system would result in inefficiencies,
12 needless duplication of water facilities, a loss of reliability and the loss of economies of
13 regional scale. *See* Pre-filed Garfield Remand Direct at 5:24-6:8. Contrary to Mr. Poulos'
14 and Dr. Goldman's unsupported assertions, the deletion would also injure Arizona Water
15 Company and its CC&N, as Arizona Water Company would be left to develop and operate a
16 water system that surrounds the Cornman Tweedy property, but with that property served by
17 a separate stand-alone water system lacking the capacity and resources Arizona Water
18 Company brings to its CC&N. Decision No. 69722, Ex. A; Pre-filed Schneider Rebuttal at
19 6:8-7:19, 9:11-24. Such a result would disrupt the orderly interconnection of Arizona Water
20 Company's Pinal Valley CC&N areas and the provision of service to neighboring
21 properties. *See, e.g.*, Garfield Remand Rebuttal at 7:16-8:7 (detailing ongoing work on
22 interconnection of systems that would service Cornman Tweedy property), Ex. WMG-17
23 (current Pinal Valley Master Plan).

24 Finally, Cornman Tweedy's insistence that its sudden and suspiciously-timed
25 decision to postpone development of its property supports deleting a portion of Arizona
26 Water Company's CC&N is belied by the testimony of its own witnesses and its own
27 actions. Approximately two weeks before the initial evidentiary hearing in this docket,
28

1 Cornman Tweedy informed Arizona Water Company that Cornman Tweedy did not intend
2 to develop its property within the subject CC&N area for at least five years. Pre-Filed
3 Direct Testimony of Jim Poulos (filed July 6, 2006) (“Pre-filed Poulos Direct (7/6/2006)”)
4 at 7:16-8:10. However, at that initial evidentiary hearing, Cornman Tweedy admitted that a
5 CC&N should not be deleted simply because there are no immediate plans for development.
6 Transcript of Proceedings (7/11/2006) at 285:6-22 (Picacho not seeking to delete *its* CC&N
7 for the adjacent Cornman Tweedy property); 287:16-21 (Mr. Poulos would not contend
8 from a public policy standpoint that a CC&N area should be deleted simply because
9 development was not imminent). The record demonstrates that, in fact, Cornman Tweedy
10 was then in the process of obtaining a CAWS for its property just south of Arizona Water
11 Company’s CC&N in order to satisfy the Commission’s decision in a separate docket and
12 confirm its affiliate Picacho’s extension of its own CC&N to that property, even though that
13 property was also not slated for imminent development. *Id.* at 283:15-284:1; Closing Brief
14 at 17 (since Decision No. 66893, Picacho has obtained a CC&N for contiguous Cornman
15 Tweedy property that is not planned for immediate development). If a lack of current need
16 truly mandated deletion of an existing CC&N, as suggested by Cornman Tweedy, then
17 Picacho’s CC&N for the remaining portion of Cornman Tweedy’s property would likewise
18 have to be deleted – a result that Cornman Tweedy and its affiliate Robson Communities
19 have consistently rejected. *See* Garfield Remand Rebuttal at 9:12-10:5 (Robson
20 Communities has not sought deletion of its affiliate’s CC&N in similar circumstances). As
21 the saying goes, “what is sauce for the goose is sauce for the gander,” and Cornman Tweedy
22 and its affiliates cannot have it both ways.

23
24 **2. Cornman Tweedy’s Interest Is Not Synonymous With Nor
Determinative Of The “Public Interest.”**

25 Cornman Tweedy also spends a great deal of time arguing that its desire to see its
26 property served by its affiliated water utility, Picacho, justifies deletion of a portion of
27 Arizona Water Company’s CC&N. Cornman Tweedy’s motivations to better its affiliated
28 utility’s business aside, such an argument cannot support deletion of an existing CC&N

1 area. As noted above, the Commission has already found that Arizona Water Company
2 received requests for water service from the property owners in the extended CC&N area,
3 including the owner of a portion of the Cornman Tweedy property at the time the
4 Commission granted the CC&N to Arizona Water Company. Decision No. 66893, FOF,
5 ¶¶ 11, 12; Decision No. 69722, FOF, ¶¶ 6, 58, Ex. A. Thus, the grant of the CC&N to
6 Arizona Water Company was in accordance with the desires of the existing property owner,
7 which is the governing fact. Cornman Tweedy knew what it was getting into when it
8 bought the Florence Country Estates property with the Arizona Water Company CC&N in
9 place.

10 Cornman Tweedy, instead, would have the Commission delete property from an
11 existing CC&N upon the demand of an entity that later buys the property. Closing Brief at
12 12-14. Such a result runs afoul of sound public policy and common sense. The self-serving
13 desires of a new owner who buys property in the area cannot be relevant, much less
14 dispositive, in these circumstances, where the Commission has already granted an existing
15 CC&N. As with development plans and market conditions, a property owner's desires (and
16 ownership) can be transitory. In this case, Cornman Tweedy initially intended to "cooperate
17 with Arizona Water Company for service" to its property, until Cornman Tweedy saw an
18 opportunity to challenge the Commission's grant of the CC&N for the area to Arizona
19 Water Company. Transcript (7/11/2006) 244:3-15 (Mr. Poulos emphasized that Cornman
20 Tweedy "had every intention of having Arizona Water Company be the provider" until it
21 believed it could obstruct and try to void Arizona Water Company's CC&N). Cornman
22 Tweedy's change in heart, based solely on a self-serving desire to better the business
23 position of its affiliated utility, has now resulted in over four years of needless proceedings
24 before the Commission.

25 Allowing a patchwork of pockets of an existing CC&N to be deleted based on
26 nothing more than the whims of a new owner would undercut the sound public policy
27 purpose of granting a CC&N. See Decision No. 69722, FOF, ¶ 93 ("no party has
28

1 recommended that the undeveloped properties in the extension area be excluded from an
2 extension of time. *Nor should they be excluded, because to do so could have the effect of*
3 *eroding public reliance on the certainty of the Commission's CC&N process*") (emphasis
4 supplied). If Cornman Tweedy's arguments were adopted, no water service provider could
5 properly plan for service or make the investments necessary to provide adequate service in a
6 timely manner. See Pre-filed Garfield Remand Rebuttal at 4:9-18 (Cornman Tweedy's
7 proposed course is a "manifest disservice to the greater public interest"). As a result, the
8 property owner's self-interest cannot be dispositive, especially when, as in the present case,
9 a property owner acquires a parcel knowing that it is already contained within an existing
10 CC&N. *Id.*

11
12 **3. Cornman Tweedy's Alleged Preference For An Integrated Water**
13 **And Wastewater Provider Does Not Justify Deletion Of A Portion**
14 **Of Arizona Water Company's Existing CC&N.**

15 Cornman Tweedy's arguments about the alleged benefits of "integrated" water and
16 wastewater providers also do not constitute permissible grounds for deletion of Arizona
17 Water Company's CC&N. Under *James P. Paul*, the question of integration cannot be a
18 material consideration in a deletion proceeding where the governing deletion criteria have
19 not been met. Even if it were, however, the evidence in the present docket demonstrates
20 that the purported benefits (illusory though they are) touted by Cornman Tweedy cannot
21 justify deletion of Arizona Water Company's CC&N.

22 Rather than demonstrating any actual benefit to the public in the present case arising
23 from the integration of water and wastewater service, Cornman Tweedy relies on arguments
24 about the benefits of such arrangements generally and extensive quotation from an article
25 drafted by an individual Commissioner.⁶ Closing Brief at 7-11. Cornman Tweedy simply

26 ⁶ Cornman Tweedy relies on an article authored by an individual Commissioner, and its
27 references to the *Woodruff Water Company* proceeding, for the proposition that the
28 Commission has a preference for awarding CC&Ns to integrated service providers. Closing
Brief at 8-9. But this case is not *Woodruff*; here, a CC&N has already been granted to
Arizona Water Company, as opposed to a situation where there were two competing
applicants to the same uncertificated area, as addressed in *Woodruff*. Accordingly, the

1 ignores inconvenient facts demonstrating the invalidity of its position and relies on
2 assumptions that are untrue in the present case.

3
4 Cornman Tweedy lists several purported benefits arising from the integration of the
5 wastewater and water service provider. Closing Brief at 10. Of these purported benefits,
6 several are not benefits to the public at all. For instance, the alleged ability of an integrated
7 water provider to leverage or coerce the sewer provider's collection of past due accounts
8 bears no relation to the public interest. Moreover, as noted in Mr. Schneider's prefiled
9 rebuttal testimony, the remaining purported advantages of an integrated approach, as alleged
10 by Cornman Tweedy, are illusory at best. As Mr. Schneider, who has extensive experience
11 with planning and operating both integrated and non-integrated systems, explains, Arizona
12 Water Company's comprehensive regional approach to water service and planning is "far
13 superior to developer-operated, project-specific, and regionally limited operations."
14 Schneider Remand Rebuttal at 10:11-13.

15 While some cost savings may be possible when integrating small, stand-alone non-
16 viable sewer systems, those savings are simply not comparable to the economies of scale
17 available via a regional water supply approach, such as that employed by Arizona Water
18 Company's Pinal Valley Master Plan. *Id.* at 10:15-18. Arizona Water Company's Pinal
19 Valley system has over 19 wells and 15 million gallons of storage capacity. *Id.* at 6:8-27.
20 That system affords a level of reliability and service unavailable to two separately organized
21 companies like Picacho Water Company and Picacho Sewer Company, which provide
22 separate and distinctly different services that for obvious public health reasons can never be
23 combined or integrated. *Id.* Moreover, the supposed benefits and savings which Cornman
24 Tweedy argues are associated with integration are offset by operational realities. The

25 passages in the article relied upon by Cornman Tweedy have no relevance to the issues on
26 remand. *See supra.* at 10-11. Moreover, as the cited article itself notes, the Commission's
27 purported preference has not been formally adopted by the Commission, is not dispositive
28 on the public interest question, and only applies to "[c]ompanies competing for the right to
serve..." which is not the issue in this case. Closing Brief at 8 (citation omitted).

1 existence of public health risks posed by cross contamination, and differing requirements as
2 to certifications and security, require the separation of operational staff between water and
3 wastewater operations. *Id.* at 10:17-26. That mandated separation negates many, if not all,
4 of the supposed savings Cornman Tweedy claims. *Id.* Arizona Water Company, on the
5 other hand, is uniquely situated to provide safe and reliable water service at a reasonable
6 rate because of its experience and the nature of its wide-scale regional operations.⁷ *See id.*
7 at 9:11-24 (ratepayers benefit because Arizona Water Company's business is the reliable
8 and efficient provision of water utility service).

9
10 As Cornman Tweedy notes, Picacho Sewer Company holds the CC&N to provide
11 sewer service for the entirety of the Cornman Tweedy property. Closing Brief at 17. But
12 Picacho Sewer Company is not hindered from reclaiming and using effluent generated from
13 the entirety of the Cornman Tweedy property, including the property in Arizona Water
14 Company's CC&N, to benefit Cornman Tweedy's proposed development. "Integration" is
15 nothing more than a red herring. Having Arizona Water Company as the existing water
16 provider and Picacho Sewer Company as the existing sewer provider presents no
17 impediment to the beneficial use of reclaimed water within the proposed development.
18 Garfield Remand Rebuttal at 5:2-20 (Arizona Water Company provides reclaimed water
19 through its non-integrated Superstition system and is willing to work with Picacho to do so
20 within Arizona Water Company's CC&N area here), 6:26-7:14.

21 Further, the realities of the present situation clearly reveal that the public interest in

22 ⁷ With respect to Cornman Tweedy's allegation that allowing Arizona Water Company to
23 provide service to the Cornman Tweedy property will increase both the costs to Cornman
24 Tweedy and the costs to ratepayers, Mr. Schneider notes that the allegation is based on the
25 erroneous assumption that Arizona Water Company will have to build a stand-alone system
26 servicing the Cornman Tweedy property. Schneider Remand Rebuttal at 6:8-7:8. It will
27 not. *Id.* Similarly, the additional costs Mr. Poulos alleges would result from working with
28 Arizona Water Company would be more than offset by the savings obtained by being part of
an interconnected, established regional water system. *Id.* at 4:25-5:18 (several million
dollars were saved on prior project involving Arizona Water Company and Robson
Communities).

1 maximizing the conservation of groundwater would, contrary to Cornman Tweedy's
2 assertions, actually be harmed by the proposed deletion of the Cornman Tweedy property
3 from Arizona Water Company's CC&N. That is because among the water sources Arizona
4 Water Company has available for its CC&N area are its CAP water allocations. See
5 Garfield Remand Direct at 5:9-22. Arizona Water Company's development of that surface
6 water supply (and construction of an expandable treatment plant to treat CAP and other
7 available surface water supplies) allows for corresponding reductions in groundwater
8 pumping in the area and maximizes the use of renewable water supplies. *Id.* Picacho
9 cannot provide that benefit. *Id.* Cornman Tweedy and Picacho would rely solely on the
10 continued, undiminished mining of local groundwater. See Pre-filed Rebuttal Testimony of
11 Jim Poulos (filed February 5, 2008) at 11:1-8 (highlighting Robson Communities' and
12 Picacho's entire reliance on non-renewable groundwater sources). As a result, deletion of
13 the Cornman Tweedy property from Arizona Water Company's CC&N would hinder the
14 widest possible use of renewable water sources and lead to more, not less, groundwater
15 pumping. Such a result would conflict with longstanding public policy and is not in the
16 public interest.

17 The purported advantages of an integrated service provider in this instance do not
18 survive scrutiny. Accordingly, the Commission should reject Cornman Tweedy's position
19 and find that Arizona Water Company should remain the CC&N holder for the Cornman
20 Tweedy property.

21
22 **4. The Overall Public Interest Is Best Served By Arizona Water
23 Company Continuing To Hold The CC&N For The Cornman
Tweedy Property.**

24 Cornman Tweedy has failed to demonstrate, as required by *James P. Paul*, that its
25 property should be deleted from Arizona Water Company's CC&N. Even accepting for the
26 sake of argument the expanded scope of inquiry proposed by Cornman Tweedy, which
27 Arizona Water Company does not accept, Cornman Tweedy has failed to show any
28 compelling public interest justifying deletion of any portion of Arizona Water Company's

1 CC&N. Instead, Cornman Tweedy has merely reiterated its tired, self-serving refrain that it
2 does not desire to have Arizona Water Company provide service to its property (without
3 stating that the true motivation for its request is so that its affiliate, Picacho, can take over
4 Arizona Water Company's CC&N area).

5 An examination of the record in this docket, however, reveals that (1) there is a
6 public need for water service in Arizona Water Company's CC&N, including the Cornman
7 Tweedy property and the immediately surrounding areas, (2) Arizona Water has taken the
8 steps necessary to provide that service in justifiable reliance on the Commission's Decision
9 Nos. 66893 and 69722, (3) Arizona Water Company's provision of service to the area will
10 not impose improper costs on ratepayers but will permit regional economies of scale
11 unavailable to any competing service provider, and (4) Arizona Water Company's proposed
12 utilization of renewable surface water resources maximizes the reliability of water service
13 available to Arizona Water Company's customers. Against these concrete benefits to the
14 public, Cornman Tweedy pits its desire to have its affiliated water utility provide service to
15 its future development and alleges that changes in circumstances attributable solely to its
16 knowing acquisition of property located within Arizona Water Company's existing CC&N
17 somehow justifies deletion of the Cornman Tweedy property from that CC&N. In taking
18 that position, Cornman Tweedy misrepresents its own self-interest as the public interest. As
19 is clear from the record presented, the public interest does not justify deletion of any portion
20 of Arizona Water Company's CC&N, and strongly suggests that the concluding chapter of
21 this scheme by Cornman Tweedy that began in 2006 must now be written.

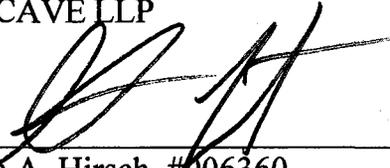
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1 **III. CONCLUSION.**

2 For the foregoing reasons, the Commission should strike the portions of the direct
3 and rebuttal testimony and exhibits of Jim Poulos, Dr. Fred Goldman and Paul Hendricks,
4 and find, consistent with its prior decisions and Arizona law, that deletion of the Cornman
5 Tweedy property from Arizona Water Company's CC&N is inappropriate.

6 Respectfully submitted this 19th day of June, 2009.

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