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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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2 COMMISSIONERS

- 3 KRISTIN K. MAYES - Chairman
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8 IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY FOR AN EXTENSION TO ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01445A-06-0199

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

DOCKET NO. SW-03575A-05-0926

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

DOCKET NO. W-03576A-05-0926

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

DOCKET NO. SW-03575A-07-0300

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

DOCKET NO. W-03576A-07-0300

23 ARIZONA WATER COMPANY, AN  
 24 ARIZONA CORPORATON,  
 25  
 26 COMPLAINANT,  
 27  
 28 VS.

- DOCKET NO. W-01445A-06-0200
- DOCKET NO. SW-20445A-06-0200
- DOCKET NO. W-20446A-06-0200
- DOCKET NO. W-03576A-06-0200
- DOCKET NO. SW-03575A-06-0200

27 GLOBAL WATER RESOURCES, LLC, A  
 FOREIGN LIMITED LIABILITY COMPANY;  
 28 GLOBAL WATER RESOURCES, INC., A  
 DELAWARE CORPORATION; GLOBAL

Arizona Corporation Commission

DOCKETED

AUG - 3 2009

DOCKETED BY	
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1 WATER MANAGEMENT, LLC, A FOREIGN  
2 LIMITED LIABILITY COMPANY; SANTA  
3 CRUZ WATER COMPANY, LLC, AN  
4 ARIZONA LIMITED LIABILITY  
5 CORPORATION; GLOBAL WATER – PALO  
6 VERDE UTILITIES COMPANY, AN  
7 ARIZONA CORPORATION; JOHN AND  
8 JANE DOES I-20; ABC ENTITIES I-XX,

RESPONDENTS.

7 IN THE MATTER OF THE JOINT  
8 APPLICATION OF CP WATER COMPANY  
9 AND FRANCISCO GRANDE UTILITIES  
10 COMPANY TO TRANSFER THEIR  
11 CERTIFICATES OF CONVENIENCE AND  
12 NECESSITY AND ASSETS TO PALO VERDE  
13 UTILITIES COMPANY AND SANTA CRUZ  
14 WATER COMPANY.

DOCKET NO. WS-01775A-07-0485  
DOCKET NO. SW-03575A-07-0485  
DOCKET NO. W-02442A-07-0485  
DOCKET NO. W-03576A-07-0485

12 **STAFF'S INITIAL POST-HEARING BRIEF**

13 **I. INTRODUCTION**

14 This application presents a number of challenging issues that have been further complicated  
15 by an arduous procedural journey. Where there were initially competing applications for extensions  
16 of certificates of convenience and necessity ("CC&N), the two applicants have come forward with a  
17 request to approve a settlement that divides the requested extension area between them. The  
18 settlement also asks the Arizona Corporation Commission ("Commission") to approve planning areas  
19 that extend well beyond the bounds of the requested extension areas. The settlement likewise  
20 proposes to resolve issues relating to a complaint between the parties.

21 The above-captioned application began on December 28, 2005 with a filing by Palo Verde  
22 Utilities Company ("PVUC") and Santa Cruz Water Company ("SCWC") (collectively the "Global  
23 Utilities") to the Commission for a CC&N to serve areas to the west of Casa Grande in Pinal County.  
24 Docket Nos. W-03575A-05-0926 and W-03576A-05-0926. Subsequently on March 29, 2006,  
25 Arizona Water Company ("AWC") filed an application to extend its water CC&N in largely the same  
26 area as was requested in the Global Utilities' application. Docket No. W-01445A-06-0199. Shortly  
27 after filing its competing application, AWC also filed a complaint against the Global Utilities that  
28 alleged that Global Water Resources, LLC and Global Water Resources, Inc., (collectively "Global

1 Parent”), the parent companies of the Global Utilities, were illegally conducting business as public  
2 service corporations, were using illegal financing arrangements and fee demands, and were  
3 interfering with AWC’s customers and CC&N. Docket Nos. W-20446A-06-0200, W-03575A-06-  
4 0200, W-03576A-06-0200, W-01445A-06-0200. The Global Utilities filed an additional request to  
5 extend their CC&Ns on May 17, 2007, for another area within the region of the original application  
6 in Pinal County. Docket Nos. W-03575A-07-0300 and W-03576A-07-0300. Finally, on August 20,  
7 2007, Francisco Grande Utilities Company (“Francisco Grande”) and CP Water Company (“CP  
8 Water”) filed applications for the transfer of their CC&Ns and assets to the Global Utilities.

9 During oral argument at a prehearing conference on February 28, 2007, the CC&N  
10 applications were stayed pending further order of the Commission. February 28, 2007 Pre-hearing  
11 Conf. Tr. at 59. The various CC&N applications were consolidated by procedural order on  
12 December 20, 2007. However, the AWC and the Global Utilities continued to develop matters  
13 related to the complaint. These activities culminated in a proposed settlement that deals with several  
14 issues related to both the complaint and the CC&N applications.

15 As related to the complaint, the settlement would require AWC to file for dismissal of the  
16 complaint following Commission approval of the settlement agreement. With regard to the CC&N  
17 applications, the settlement divides the requested areas between AWC and the Global Utilities along  
18 parameters first described by Commission Utilities Division Staff (“Staff”) in one of three alternative  
19 recommendations made in the October 26, 2006 Staff Report. Further, the settlement requests  
20 Commission approval of planning areas for both the Global Utilities and AWC.

21 Staff reviewed the respective applications and the proposed settlement and voiced several  
22 concerns. Owing to the span of time between the filing of the original applications and the hearing,  
23 Staff requested various updated information in support of the respective CC&N applications. Of  
24 significant interest were updated requests for service. Based on the updated information that was  
25 received, Staff recommended approval of CC&N extensions for less than the entirety of the requested  
26 areas. Exhibit S-1, Attachment RGG-2, at 3-4. Further, Staff recommended against approval of the  
27 planning areas. Exhibit S-2, attached Memorandum of Linda Jaress at 4.

28 ...

1 **II. REQUESTS FOR SERVICE**

2 The importance of requests for service is one of the principal issues in contention in this  
3 proceeding. In the original CC&N application filed by the Global Utilities, there were requests for  
4 service accounting for all of the requested extension areas. AWC's competing CC&N application  
5 included requests for service to AWC for a substantially lower percentage of the total requested  
6 extension area. Following the settlement, AWC has apparently adopted, with Global Utilities'  
7 approval, requests for service directed to the Global Utilities for an additional 19,373 acres. Exhibit  
8 A-1 at 25:21-24. As part of providing a Staff report that was responsive to the proposed settlement,  
9 Staff requested updated requests for service for all requested extension areas. Neither AWC nor the  
10 Global Utilities was able to provide refreshed requests for service for the entire extension areas.

11 Staff has taken a position in this proceeding that parties should receive extensions for only  
12 parcels that have current requests for service. Consequently, Staff recommends approval of limited  
13 CC&N extensions for both AWC and the Global Utilities. These areas are generally described in  
14 Exhibit S-1, Attachment RGG-7, Exhibits S-8 and S-9. Staff has also considered the updated request  
15 for service filed by the Global Utilities as a late-filed exhibit on June 30, 2009, and Staff recommends  
16 approval of the PVUC request area described therein as the west half of Section 25, Township 6  
17 South, Range 3 East as well. Staff Memorandum filed July 29, 2009.

18 **A. Approving CC&N Extensions Requires Examining The Public Interest.**

19 The present applications came before the Commission as competing bids for monopoly  
20 service territory. As various cases have made clear, determining the appropriateness of granting a  
21 CC&N requires an examination of where the public interest lies. *James P. Paul Water Co. v. Ariz.*  
22 *Corp. Comm'n*, 137 Ariz. 426, 430, 671 P.2d 404, 408 (1983); *Ariz. Corp. Comm'n v. Arizona Water*  
23 *Co.*, 111 Ariz. 74, 77, 523 P.2d 505, 508 (1974); *Pacific Greyhound Lines v. Sun Valley Bus Lines,*  
24 *Inc.*, 70 Ariz. 65, 72, 216 P.2d 404, 409 (Ariz. 1950).

25 The manner in which the public interest is demonstrated may vary with the circumstances. In  
26 recent years, it has become clear that the Commission has focused extensively on the presence of a  
27 request for service as a strong indication of a need for an extending utility service. A number of  
28 recent Commission determinations have granted certificate extensions only for the territory for which

1 an applicant has provided a request for service. For example, AWC has made several applications for  
2 extension of CC&Ns which were only granted for portions where there was a request for service.  
3 *See, e.g.*, Decision No. 69163 (December 5, 2006) (granting AWC extension of its CC&N to only  
4 portions of parcels for which it presented requests for service); Decision No. 69386 (March 22, 2007)  
5 (granting AWC a CC&N extension to only 7,889 acres of 20,225 acres requested due to no requests  
6 for service or requests to be excluded). Also, the significance of requests for service has played a  
7 role in CC&N extension determinations for non-water utilities as well. *See e.g.* Decision No. 69382  
8 (March 22, 2007)(Commission declined to extend CC&N for Trico Electric Cooperative for State  
9 Land for which there was no request for service).

10 In contrast, AWC contends that there are other ways to demonstrate a need for service and  
11 that the absence of a request for service does not undermine the contention that a need exists for the  
12 utility service. Tr. at 120:12-25, 187-189. In support of this position, AWC has referenced past Staff  
13 recommendations that included a nine factor analysis. These nine factors include: (1) whether  
14 inclusion of the area could reasonably be expected to contribute to operational efficiencies; (2)  
15 whether exclusion of the area could reasonably be expected to result in operational inefficiencies; (3)  
16 whether there is a competing application for the area; (4) whether a customer in the area requests to  
17 be excluded and the nature of the request; (5) whether the area is contiguous to the company's current  
18 service territory; (6) whether the requested area 'squares off' the service territory or fills in holes in  
19 the service territory; (7) whether the company is financially sound; (8) whether the company at issue  
20 is in compliance with the requirements of the Commission, ADEQ, and ADWR; and (9) other  
21 showings by the company at issue that it is in the public interest to approve the extension. Exhibit A-  
22 1 at 26-27; Exhibit A-2 at 12-13. AWC argues that it has made significant capital investments to  
23 provide service in the area and that granting its certificate extension would secure the natural  
24 progression of AWC's growth. Exhibit A-1 at 27.

25 AWC likewise contends that it is inappropriate to use matching requests for wastewater utility  
26 service as a prerequisite for the grant of a CC&N extension for water utility service. Exhibit A-2 at  
27 6:4-11. Although AWC does not provide wastewater utility service and did not seek requests for  
28 wastewater service for the areas for which it seeks to provide water service, it argues that the

1 provision of wastewater service is resolved by the existence of approved Federal Clean Water Act  
2 Section 208 (Public Law 92-500 § 208, codified as 33 U.S.C. 1288) plan providers in the form of  
3 PVUC and the City of Casa Grande. Exhibit A-2 at 8:19-9:7. Consequently, AWC disputes the  
4 appropriateness of denying a CC&N extension for water due to the absence of matching requests for  
5 wastewater service to the same parcels. *Id.* at 9:11-19.

6 The Global Utilities' arguments regarding requests for service relate to the need to provide  
7 relatively current requests in support of an application. Exhibit G-1 at 12-13. The Global Utilities  
8 provided requests for service for 100 percent of the area within their initial CC&N extension  
9 applications. However, by the time of the evidentiary hearing the Global Utilities were only able to  
10 obtain refreshed requests for service for approximately 77.5 percent of the requested extension area.  
11 Exhibit G-2 at 6:22-24; *See also* Exhibit G-27 (the Global Utilities obtained refreshed requests with  
12 varying degrees of success for the combined utilities as opposed to just for the wastewater.)  
13 Following the hearing, an additional request for service was provided that changed the percentage of  
14 updated requests for service to PVUC from 66 percent at the time of hearing to 68 percent. Exhibit  
15 G-27; Motion to Admit Late Filed Exhibit filed June 30, 2009. The Global Utilities argue that a strict  
16 requirement for a current request for service would eliminate those properties from regional planning  
17 initiatives. Exhibit G-1 at 13:11-13. The Global Utilities also argue that the Commission has  
18 demonstrated a willingness to grant full CC&Ns where there are requests for service that account for  
19 a substantial majority of the subject extension area. Exhibit G-2 at 6:9-20 referring to Decision No.  
20 70381 (June 13, 2008).

21 As was noted during the hearing, Staff's recommendations generally conform to the recent  
22 trend in Commission decisions, as both utilities acknowledge. Tr. at 151:20-152:5, 282:23-283:9.  
23 Consequently, Staff suggests that a request for service should be required for all properties within a  
24 CC&N extension request. Staff agrees that it has at times used a nine factor guideline for  
25 determining whether to recommend CC&N extensions. Tr. at 320:16-22. Moreover, Staff agrees  
26 that factors other than requests for service may indicate a need for utility service. *Id.*

27 The determination of the relevant factors supporting any particular grant of a CC&N falls to  
28 the Commission. "It is clear that only the Corporation Commission is authorized to grant certificates

1 of convenience and necessity and cannot lawfully delegate the power to anyone..." *Walker v.*  
2 *Deconcini*, 86 Ariz. 143, 151, 341 P.2d 933, 938 (1959). The Commission has not specifically  
3 adopted the Staff generated nine factor analysis as the measure to determine the appropriateness of  
4 granting CC&N extensions. Tr. at 149:2-12, 320:16-19. Instead, Staff's recommendation in this case  
5 reflects factors that the Commission has considered in several recent determinations, which placed an  
6 emphasis on requests for service. Consequently, Staff's recommendation is more consistent with the  
7 policies that the Commission has employed of late to guide the public interest in granting CC&Ns.

8 The Commission has made clear the significance that it places on requests for service. It has  
9 issued several determinations in recent years that have permitted the extension of a CC&N to only  
10 properties with a matching request for service. *See* Decision Nos. 69163, 69386, and 69382. In  
11 addition to the treatment of the issue in recent orders, the Commission has also increased the  
12 prominence of requests for service in the recent CC&N rule changes. Docket Nos. RW-00000B-07-  
13 0051 and RSW-00000A-07-0051. These changes require that substantial and specific written notice  
14 be provided for each property owner who has not requested service when there is an application for a  
15 CC&N extension. *See* Decision No. 70625 (November 19, 2008), Attachment A, p.3559, R14-2-  
16 402(B)(3) and p.3563, R14-2-602(B)(3).

17 **B. Requests For Service Contribute To A Demonstration That The Public Interest**  
18 **Supports Extending A CC&N.**

19 Staff's recommendations in this application contemplate more than the provision of requests  
20 for service. In light of the three and a half years between the initial application and the evidentiary  
21 hearing in this matter, Staff requested refreshed requests for service and recommended not extending  
22 CC&Ns for areas where the request for service was not renewed. Exhibit S-1, Attachment RGG-3 at  
23 3. Staff recommended against treating requests for service for only a counterpart service, or to a  
24 specific provider, as sufficient demonstration of need to justify the certificate extension.  
25 Consequently, Staff opposes extending CC&Ns for areas where there are not matching water and  
26 wastewater requests for service or matching service providers already certificated. "These are areas  
27 where utilities are available to provide both water and wastewater service, and the lack of an updated  
28

1 request for service for both classes of utility service raise[s] the question of whether an extension of  
2 CC&Ns to these areas is necessary.” *Id.*

3 Restricting the extension of CC&Ns to only those properties that request service is consistent  
4 with the prevailing weight of recent Commission CC&N determinations. A request for service shows  
5 that there is a need for service that is sufficiently tangible and that can be articulated. As Staff  
6 witness Bob Gray related with regard to the concern about stale requests for service, “changed  
7 economic conditions where certainly development did not move forward as it was anticipated in  
8 years past certainly raises an additional amount of questions as to who will really want and need  
9 service going forward.” Tr. at 334:12-16. In that vein, a request for service is the literal public  
10 necessity component that justifies a CC&N.

11 In response to the arguments of the Global Utilities regarding refreshed requests for service,  
12 Staff believes that it is appropriate to confirm that a need for service still exists. Staff’s position is  
13 consistent with the interest in demonstrating actual need for utility service, which current requests for  
14 service confirm. As all parties acknowledged, there has been an unprecedented downturn in the  
15 economy that has impacted the pace of development in Arizona.

16 Well, I think there is a little bit of flux going on with property ownership out there,  
17 and the housing market right now is quite slow. I would almost say negative in some  
18 ways; customer losses rather than customer growth. So they are not really engaged to  
a great degree in some respects.

19 Tr. at 155:10-16. Many planned developments have since stalled and this development begs an  
20 inquiry into how the need for new certificated service territory has changed as a result.

21 And I think in this particular microclimate of the environment that we have right now  
22 where there is a – there are questions, which way is the economy going to go? *I don’t*  
23 *think anybody is really spending a lot of money, certainly on the development side, of*  
*trying to entitle land or make sure that it is developable.*

24 Tr. at 269:24-270:4. Confining the extension of CC&Ns to only those areas where there are updated  
25 requests for service appropriately prevents against the premature grant of CC&N before a need exists.

26 The nexus between need for water utility service and the developer’s commitment to follow  
27 through with planned development is at its most apparent where the lingering question remains: how  
28 will the development obtain the necessary wastewater utility service? The lack of a response to this

1 vital inquiry casts significant doubt on the firmness of any plans to develop and hence undermines the  
2 suggestion that a tangible need exists. Lack of a clear means to provide for the associated utility  
3 service has played a role in the denial of an extension of CC&Ns before.

4       Decision No. 68453 (February 2, 2006) was an instance where AWC had filed a competing  
5 request for a water CC&N for a development known as Sandia. This area was originally requested  
6 by the water and wastewater CC&N applications of the Woodruff utilities. In that application, AWC  
7 argued that it was unnecessary to consider the benefits of the Woodruff utilities' startup wastewater  
8 utility as a factor in favor of pairing it with an allied water utility, because the City of Coolidge would  
9 be able to provide the necessary wastewater service. As the evidence in the underlying hearing  
10 demonstrated, the City of Coolidge had no intention of extending wastewater service to the Sandia  
11 development. Decision No. 68453 at 11:4-9. The absence of a clear sewer service provider under  
12 AWC's approach contributed in part to the Commission's ultimate determination not to extend  
13 AWC's CC&N to Sandia in favor of the Woodruff utilities' startup operation. As the Commission  
14 stated, among the reasons it approved the Woodruff application over AWC's was that Woodruff  
15 presented an integrated water and wastewater approach. *Id.* at 29:4-6.

16       In this case, AWC has some properties for which it has obtained requests for water service but  
17 not for sewer service. AWC also has properties for which the original requests for service submitted  
18 to the Global Utilities for sewer service have not been updated. Staff recommends against granting  
19 an extension of CC&N for only water service to these areas. The Commission will be without any  
20 knowledge or certainty about how necessary sewer service will be provided to these properties  
21 without a request for sewer utility service, without prior certification of an existing sewer service  
22 provider, or without an alternative plan to deal with the issue, such as a plan to employ septic tanks.

23       AWC contends that matching sewer requests for service are unnecessary because the Global  
24 Utilities and the City of Casa Grande have approved Section 208 plans to provide service. Exhibit A-  
25 2 at 8:19-9:7. Staff does not believe that being within a Section 208 plan area is a sufficient  
26 indication of certainty that wastewater service will be provided. It is unclear whether the obligations  
27 under Section 208, (33 U.S.C. 1288), rise to the level of creating a like obligation to serve as exists  
28 under a CC&N. Rather, the obligation under Section 208 is for the appropriate planning agency (in

1 this instance the Central Arizona Association of Governments) to create a plan for how anticipated  
 2 wastewater needs over an area will be met. 33 U.S.C. 1288(b)(1)(A). Likewise, as was confirmed  
 3 by various witnesses, Section 208 plans are subject to potential amendment. Tr. 106:6-9, 338:18-20.  
 4 Staff believes it is inappropriate to assume that necessary parallel services will be provided and  
 5 therefore recommends against granting AWC a CC&N extension for areas where it has a request for  
 6 water service but neither a request for sewer service to the Global Utilities or some written  
 7 commitment by the City of Casa Grande that sewer service will be extended to the area.

8 **C. Staff's Recommendations Are In The Public Interest.**

9 Based on a review of the applications of AWC and the Global Utilities, Staff concludes that  
 10 both are ably suited to provide service to the requested CC&N extension areas. Both entities have  
 11 sufficient technical expertise to meet growth as it arrives in the requested areas. Staff further believes  
 12 that both have adequate financial wherewithal to fund necessary capital improvements to extend  
 13 service within the extension territories. Although Staff does have some concerns about the financial  
 14 status of the Global Utilities, as explained by Ms. Linda Jaress, Staff believes that the present rate  
 15 case application for the Global Utilities in consolidated rate case docket Docket No. SW-20445A-09-  
 16 0077 should improve the Global Utilities' financial strength. Exhibit S-2 attached memorandum of  
 17 Linda Jaress at 3.

18 Based on the application of Staff's recommended criteria for the extension of CC&Ns, and a  
 19 review of the record evidence provided by AWC and the Global Utilities, Staff estimates that its  
 20 recommendation would approve CC&N extensions for AWC for approximately 3,449 acres out of  
 21 the 15,152 acres for which AWC received requests for service.<sup>1</sup> With respect to the Global Utilities,  
 22 Staff has attempted to perform a similar calculation but encountered difficulty differentiating the  
 23 PVUC-only extension parcels that met all of Staff's recommendation criteria. Staff's best  
 24 approximation is that its recommendation would approve CC&N extensions for PVUC of  
 25 approximately 12,256 acres as of the time of hearing, and 12,556 acres<sup>2</sup> following the June 30 late

26 \_\_\_\_\_  
 27 <sup>1</sup> The acreage corresponds to the sum of the acres for parcels 4, 5, 6, 7, 8, 9, 12, 15, and 19 as described in Exhibit S-8.

28 <sup>2</sup> The acreage figure is based on the sum of the 8,897 acres for which there is a matching SCWC request, the 3,449 acres for which there is a matching AWC request less the 90 acres within the Brimhall Properties for which City of Casa Grande will provide sewer service, and the post-hearing addition of the 300 acres of the Dugan property within AWC's existing Stanfield CC&N. See Exhibits S-8 and G-27; Motion to Admit Late-Filed Exhibit dated June 30, 2009.

1 filed exhibit. The extension areas that Staff recommends granting to SCWC amount to approximately  
2 8,897 acres. Staff also recommends that the Global Utilities receive CC&N extensions for the DHR  
3 Horton Legends development which is a further 7,143 acres for both PVUC and SCWC. Staff's  
4 recommendation supports extension of CC&Ns only for those areas that have 1) current requests for  
5 service and 2) either a request for service for both water and wastewater or a preexisting provider for  
6 the parallel service.

7       Whereas AWC has current requests for service for only approximately 15,152 acres out of the  
8 56,215 acres requested,<sup>3</sup> the Global Utilities provided updated requests for a substantial majority of  
9 the territory that it is requesting, and originally had requests for all of the territory that it was applying  
10 for. On that basis, the Global Utilities argue that it would be appropriate and consistent with prior  
11 Commission determinations, Decision No. 70381 (June 13, 2008) in particular, to grant them the  
12 entire area of their extension request.

13       In Decision No. 70381, the Global Utilities made an application for a CC&N extension where  
14 they likewise had obtained 100 percent requests for service for all land within the extension area.  
15 However, between the filing of the original application and the hearing only 71 percent of the  
16 landowners responded with updated requests for service. "Staff testified that the concerns regarding  
17 the request for service were raised as a matter of policy for the Commission to discuss 'how old, is  
18 too old, for a request and does it matter who the request is addressed to.'" Decision No. 70381 at  
19 8:22-24. The Commission determined that the "Applicants have demonstrated that there is a need for  
20 service in the proposed extension area through requests for service, and no property owner or  
21 developer expressed a desire not to be included in the extension area." *Id.* at 10:5-7. On that basis,  
22 the Commission approved extension of the CC&N to all areas for which there had originally been a  
23 request for service.

24       The instant application presents an opportunity to focus specifically on how to construe "how  
25 old is too old." In the circumstances surrounding the application in Decision No. 70381, the original  
26 application was made in mid-2006 and the matter proceeded to a hearing by December of 2007. The  
27 requests for service in that application dated back to 2005, however. *Id.* at 5:22-23. The clear focus

28 \_\_\_\_\_  
<sup>3</sup> Supplemental Affidavit of Frederick K. Schneider filed July 9, 2009 at 3.

1 of the Staff position in Decision No. 70381 was on the length of time between when the requests  
2 were made and when the matter proceeded to a hearing.

3 The circumstances are somewhat different in the present application. Certainly more time has  
4 transpired; three and a half years have lapsed between when the Global Utilities made the original  
5 application and when this matter proceeded to an evidentiary hearing. During that time, however,  
6 economic tumult of an unprecedented scope and severity has occurred to disrupt development  
7 activities across the state and nation. Tr. at 155:10-16, 313:10-21. Staff believes this fact  
8 distinguishes the present application from the one considered in Decision No. 70381.

9 [In Decision No. 70381] there is a two-year difference between the original requests  
10 for service. And the updated requests for service in this case it's a longer period of  
11 time. In this case there wasn't – it hadn't been through a full economic upheaval as  
12 we have been through this year. So as I discussed with Mr. Hirsch, there is maybe  
more a question as to whether an old request for service is still viable than there would  
be in the case dealt with in [Decision No. 70381].

13 Tr. at 367:14-22. In both applications, Staff's review has centered on whether a need exists for the  
14 requested service. The course of events on the larger economic stage makes all the more apparent the  
15 appropriateness of taking the pulse of parties requesting service to determine if there remains any life  
16 in the assertions of need. As it is contrary to the public interest to extend service where there is no  
17 need, it would be particularly inappropriate to discount the importance of updated requests for service  
18 under the present circumstances.

### 19 **III. APPROVAL OF THE SETTLEMENT**

20 In addition to the issues related to requests for service, both AWC and the Global Utilities  
21 have called on the Commission to approve a settlement agreement that was entered into between  
22 them. The settlement agreement purports to resolve matters relating to the complaint aspect of this  
23 proceeding by requiring AWC to file for dismissal of its complaint. However, this requirement is  
24 contingent upon the Commission approving the settlement agreement. With respect to the CC&N  
25 issues, the settlement agreement proposes the division of requested extension areas and resolves the  
26 competing applications for the same territory. Exhibit A-1 at 5-7. Additionally, the settlement  
27 agreement contains planning areas for the utilities that are parties to the agreement.  
28

1 Staff has reviewed the settlement agreement and recommends against approving it. Although  
2 Staff sees benefits to resolving the complaint and aiding efforts to plan capital improvements, Staff  
3 has concerns regarding approval of the planning areas. Exhibit S-2, Attached Memorandum of Linda  
4 Jaress at 1-2. On the basis of vague, general assertions regarding the promotion of conservation of  
5 scarce water resources and efficient planning of costly infrastructure, AWC and the Global Utilities  
6 claim that it is necessary to obtain Commission confirmation that sweeping areas are part of the  
7 utilities' respective planning areas. The request is reminiscent of another, seemingly innocuous  
8 request for only so much land as could be covered by an ox hide which ultimately paved the way for  
9 the founding of Carthage.<sup>4</sup> In a similar sense, AWC and the Global Utilities suggest that approving  
10 the planning areas would be a trivial matter for the Commission, yet the only discernible benefit to  
11 the planning areas is their potential contribution to perfecting eventual claims to the area or the  
12 investments made to serve the area.

13 As was identified in the prefiled testimony of Ms. Jaress, approval of the planning areas gives  
14 rise to a number of regulatory concerns.

15 [O]ne of the disadvantages of Commission approval of the Agreement and planning  
16 areas would be the implicit reservation of service territories for Global and Arizona  
17 Water. Approval could also imply approval of the accompanying costs of regional  
18 planning and even approval of excess capacity in rate cases.

19 *Id.* at 2. Likewise, there is a host of problems that arise if these concerns prove correct.

20 They include; growth of development in unexpected locations within the planning  
21 areas resulting in higher costs if the planning areas are enforced; Global or Arizona  
22 Water could evolve into companies which are no longer fit or proper to provide  
23 service to new areas; a utility with lower costs than either Arizona Water or Global  
24 may desire to serve part of the planning areas; and there could be disputes over the  
25 planning areas which might require the Commission to act as an arbitrator.

26 *Id.*

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27 <sup>4</sup> In ancient mythology, Carthage was founded through the ingenuity of the Phoenician Queen Dido as she sought refuge  
28 on the Libyan coast. Seeking to make her request for a colony seem palatable, she asked the local rulers for only so much  
land as could be covered by an ox hide. Upon receiving approval of her request, she promptly sliced the ox hide into  
small slivers and had her followers each carry a piece and run in different directions. Bound by their agreement, the local  
inhabitants ceded to Dido the covered territory which would become the city-state of Carthage. Edmund Fuller,  
*Bullfinch's Mythology, A Modern Abridgement*, 209-10, Dell Publishing, 1959.

1 AWC and the Global Utilities may argue that Staff's concerns are misplaced to the extent that  
2 approval of planning areas does not lock out competitors nor does it guarantee that future CC&N  
3 extensions will be granted. See Exhibit A-2 at 19:6-9; Exhibit G-2 at 3:14-17. Likewise, the utilities  
4 have suggested that the Commission would still be able to arrive at independent determinations  
5 regarding recovery of costs and other rate case matters. Exhibit A-2 at 22:15-23:13. The  
6 counterarguments posited by the utilities do not synchronize with the purported benefits of the  
7 planning areas, however. When asked if there would be benefits to AWC of having a planning area  
8 without the Commission approving it, AWC president Bill Garfield responded:

9 There are always benefits by having a planning area, but I believe having a  
10 Commission-approved planning area provides a greater level of certainty *and at least*  
*the Commission views that the planning area is reasonable and prudent.*

11 Tr. at 127:24-128:3 (emphasis added). Clearly, the utilities anticipate some implication of prudence  
12 to attach to company decisions made within approved planning areas.

13 In addition to Staff's position that approval of the agreement and the planning areas may lead  
14 to regulatory dilemmas, the fact remains that it is unnecessary for the Commission to approve the  
15 planning areas to advance the interests identified by the utilities. Staff pointed to the service territory  
16 agreement between Johnson Utilities, Inc. and Diversified Water Company that the Commission had  
17 no part in approving as an example of this phenomenon. Exhibit S-2, Attached Memorandum of  
18 Linda Jaress at 2.

19 The utilities may argue that restricting themselves to not apply for territory in each other's  
20 planning area is anti-competitive. Tr. at 130:14-18. That argument is not compelling as the  
21 suggested treatment would not forestall nonparties from applying for service territory within the  
22 planning areas. Likewise, even with an approval of the agreement and planning areas, the utilities  
23 contend that competitors could be certificated within the planning area regardless. Exhibit A-2 at  
24 28:23-29:2; Exhibit G-2 at 3:14-17. Consequently, there is no tangible purpose served by approving  
25 the agreement that the utilities are not able to obtain through their own devices.

26 Moreover, both utilities acknowledge that there are benefits to each of having the planning  
27 areas even if the Commission does not approve them. In the following colloquy between ALJ Nodes  
28

1 and Mr. Garfield, AWC concedes that there are benefits to the settlement even without Commission  
2 approval of the prudence of the underlying components.

3 ALJ Nodes: And, you know, whether the Commission approves the agreement or  
4 not, there still are advantages to both Global and Arizona Water by  
5 continuing to honor the agreement in the sense that you have from your  
6 primary competitor now entered into an agreement that allows you to  
7 plan with some additional assurance as to where future investment  
8 should go and those sort of things; correct?

9 Garfield: I would say, Your Honor, that the level of certainty and prudence of the  
10 Commission's approval to the settlement agreement – are there benefits  
11 achieved without Commission approval, I believe probably so.

12 Tr. at 147:21-148:6. The testimony of Mr. Graham Symmonds on behalf of the Global Utilities  
13 echoes this acknowledgement.

14 ALJ Nodes: And so if the Commission does not formally approve the proposed  
15 planning areas, in your opinion, would it be in the best interest of your  
16 company, Global, to continue to abide by the terms of the agreement  
17 assuming that Arizona Water does as well?

18 Symmonds: I think that is true.

19 Tr. at 282:5-10.

20 Clearly, both utilities perceive benefits to continuing the agreement regardless if the  
21 Commission formally approves it. Further, absent any official reservation of future service areas to  
22 either AWC or the Global Utilities, there is little discernible benefit to approving the settlement  
23 agreement or the planning areas that the utilities cannot obtain on their own. The touted public  
24 interests that the agreement advances can be achieved without Commission approval of the planning  
25 areas and as such, Staff recommends against approving either the agreement or the planning areas.

26 ...

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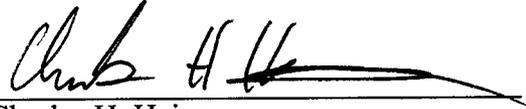
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1 **IV. CONCLUSION**

2 For all the above stated reasons, Staff believes that its recommendations are reasonable and  
3 should be adopted.

4 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of August, 2009.

5 

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