

ORIGINAL

OPEN MEETING ITEM



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EXECUTIVE DIRECTOR

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

SEP - 2 2009

DATE: SEPTEMBER 2, 2009
DOCKET NOS.: W-02309A-09-0095 and W-03293A-09-0095
TO ALL PARTIES:

DOCKETED BY [Signature]

Enclosed please find the recommendation of Administrative Law Judge Belinda A Martin. The recommendation has been filed in the form of an Opinion and Order on:

DIABLO VILLAGE WATER COMPANY AND THIM UTILITY CO.
(SALE OF ASSETS/CANCELLATION OF CC&NS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

SEPTEMBER 11, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 22, 2009 and SEPTEMBER 23, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE JOINT APPLICATION
OF DIABLO VILLAGE WATER COMPANY AND
THIM UTILITY CO. FOR AUTHORIZATION TO
SELL AND TRANSFER WATER SYSTEM
ASSETS TO METROPOLITAN DOMESTIC
WATER IMPROVEMENT DISTRICT AND
CANCELLATION OF CERTIFICATES OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02309A-09-0095
W-03293A-09-0095

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: July 30, 2009
PLACE OF HEARING: Tucson, Arizona
ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
APPEARANCES: Larry V. Robertson, Esq., on behalf of Diablo Village
Water Company and Thim Utility Co., and
Kevin Torrey, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 2, 2009, Diablo Village Water Company ("DVWC") and Thim Utility Co.
("TUC," and together with DVWC, the "Applicants"), filed with the Commission an application for
approval to sell certain of their assets and operations to Metropolitan Domestic Water Improvement
District and to cancel the Applicants' applicable Certificates of Convenience and Necessity upon
consummation of the sale ("Application").

2. TUC is comprised of three separate water systems: the Three Points system, the E &
T system, and the Lazy B system. Under the initial Application, TUC sought to sell only the E & T

1 system.¹

2 3. On April 2, 2009, the Commission's Utilities Division Staff ("Staff") filed an
3 Insufficiency Letter in this docket.

4 4. On April 20, 2009, the Applicants filed their responses to Staff's Insufficiency Letter.

5 5. On May 13, 2009, the Applicants filed additional responses to Staff's Insufficiency
6 Letter.

7 6. On May 19, 2009, Staff filed a Sufficiency Letter in this docket indicating the
8 Application had met the sufficiency requirements as outlined in the Arizona Administrative Code
9 ("A.A.C.").

10 7. On June 9, 2009, a Procedural Order was issued setting the hearing in this matter for
11 July 30, 2009, and establishing deadlines.

12 8. On July 2, 2009, the Applicants filed an Affidavit attesting that they had mailed notice
13 of the hearing to their respective customers on June 18, 2009, and published notice in *The Arizona*
14 *Daily Star* on June 19, 2009.

15 9. On July 8, 2009, Staff filed its Staff Report in this docket recommending approval of
16 the Application subject to certain conditions.

17 10. On July 14, 2009, the Applicants filed their Comments on the July 8, 2009, Staff
18 Report.

19 11. On July 17, 2009, the Applicants filed the Arizona Department of Environmental
20 Quality ("ADEQ") Drinking Water Compliance Status Reports for DVWC and TUC's E & T and
21 Lazy B systems.

22 12. During conversations with Staff, the Applicants stated that they had inadvertently
23 omitted the sale of the Lazy B system from the Application and they would be filing an amended
24 application to add the Lazy B system.

25 13. On July 21, 2009, Staff filed correspondence requesting that the Applicants provide
26 evidence that TUC has the authority to make the request for transfer of the Lazy B water system
27

28 ¹ The Application was amended later to include the sale of the Lazy B system as well.

1 assets.²

2 14. On July 23, 2009, the Applicants filed a copy of Commission Decision No. 60974
3 (June 19, 1998), granting a CC&N to TUC covering the Lazy B system.

4 15. On July 24, 2009, the Applicants filed an Amended Joint Application for inclusion of
5 the Lazy B system in the sale to Metro.

6 16. Because Lazy B was not included in the initial Application, Staff was concerned about
7 whether the Lazy B customers and property owners within the proposed area who are not Lazy B
8 customers had received adequate notice of the Application, the amended Application adding Lazy B,
9 and the hearing.

10 17. On July 24, 2009, TUC hand-delivered copies of a revised notice to all Lazy B
11 customers and published the revised notice in *The Arizona Daily Star* on July 27, 2009.³ The form
12 and content of the revised notice was agreed upon by the Applicants and Staff.

13 18. Due to the late notification, the revised notice stated that those customers or property
14 owners who wished to intervene, make public comments, or request that the hearing be re-opened,
15 had until August 31, 2009, to do so. This notice gave individuals an additional 31 days beyond the
16 scheduled hearing date to act on the revised notice.

17 19. On July 29, 2009, Staff filed an Addendum to Staff Report revising its prior
18 recommendations and recommending approval of the Application.

19 20. On July 30, 2009, a public hearing was held and the parties appeared through counsel.
20 No member of the public appeared for public comment. At the conclusion of the hearing, the record
21 was held open until August 31, 2009, pending the receipt of comments, requests for intervention, or
22 requests to have the hearing re-opened.

23 21. No comments, requests for intervention, or requests to have the hearing re-opened
24 were received in response to either the original or revised notice.

25 ...

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27 ² See Footnote No. 8 for discussion of this issue.

28 ³ See Exhibit JA-3, July 27, 2009, Affidavit of Publication of Special Notice of Joint Application and Hearing, and Exhibit JA-4, July 27, 2009, Affidavit of Hand-Delivery of Special Notice of Joint Application and Hearing.

1 **The Parties**

2 22. Robin Thim is the president and director of DVWC and TUC and also owns all the
3 issues and outstanding shares of both companies.⁴ Mr. Thim testified on behalf of the Applicants.

4 23. According to Mr. Thim, he desires to sell the systems because he is considering
5 retirement and because there is expected to be significant growth in the area. Mr. Thim believes that
6 Metro is in a better position to manage the anticipated growth.⁵

7 **DIABLO VILLAGE WATER COMPANY**

8 24. DVWC is an Arizona corporation engaged in the business of providing water utility
9 service pursuant to a CC&N granted by the Commission in Decision No. 48266 (September 14,
10 1977).⁶ See Exhibit 'A' for plat map of the DVWC CC&N area to be transferred.

11 25. DVWC serves approximately 1,000 residential customers one mile northwest of the
12 Pascua Yaqui tribal land southwest of Tucson, Pima County, Arizona. DVWC's service area
13 encompasses approximately 3.5 square miles.

14 26. Staff noted that DVWC is in good standing with the Commission's Corporations
15 Division and that the Utilities Division Compliance Section found that DVWC has no outstanding
16 Commission compliance issues.

17 27. DVWC's water system consists of one well with a capacity of 400 gallons per minute
18 ("GPM"), one 20,000 gallon capacity storage tank, and is also interconnected to the City of Tucson
19 water system. Staff concluded that DVWC's water system has adequate storage and well production
20 to service its existing customers.

21 28. In its July 8, 2009, Staff Report, Staff noted that an ADEQ compliance status report
22 for DVWC concluded that the company was not in compliance with ADEQ requirements. As such,
23 Staff recommended that as a condition to approval of the sale and transfer to Metro, DVWC must file
24 an updated ADEQ status report indicating that DVWC is in compliance with ADEQ requirements.

25 29. On July 17, 2009, the Applicants filed an ADEQ Drinking Water Compliance Status

26 ⁴ Transcript, at 10.

27 ⁵ Transcript, at 40-41. The anticipated growth is related to an extension of CC&N granted to DVWC to accommodate the
planned Pomegranate Farms subdivision, approved in Decision No. 69206 (December 21, 2006). Transcript, at 45-46.

28 ⁶ DVWC received CC&Ns for extensions in Decision No. 62089 (November 19, 1999), Decision No. 65131 (August 22,
2009), and Decision No. 69206 (December 21, 2006).

1 Report dated July 14, 2009, indicating that DVWC is delivering water that meets water quality
2 standards required by A.A.C. Title 18, Chapter 4.

3 30. Based on this filing, Staff, in its Addendum to Staff Report, noted that its previous
4 condition has been met and withdrew the filing recommendation.

5 31. DVWC is located in the Arizona Department of Water Resources' ("ADWR") Tucson
6 Active Management Area ("AMA"). Staff noted it had received a Compliance Status Report from
7 ADWR indicating that DVWC is in compliance with its requirements governing water providers.

8 THIM UTILITY CO.

9 32. TUC is an Arizona corporation engaged in the business of providing water in three
10 service areas. As noted earlier, the three systems are the Three Points system, the E & T system, and
11 the Lazy B system. TUC is seeking to transfer its E & T and Lazy B systems, but will retain the
12 Three Points system. See Exhibit 'B' for a plat map of the E & T CC&N area to be transferred. See
13 Exhibit 'C' for plat map of the Lazy B CC&N area to be transferred.

14 33. The Commission approved TUC's purchase of the E & T system in Decision No.
15 60388 (August 29, 1997).⁷

16 34. The E & T system serves approximately 310 residential customers located near the
17 Tucson, Arizona, airport, in an area approximately three-quarter square mile. Its system consists of
18 two wells with 300 GPM production capacity and has 50,000 gallons of storage capacity. Staff
19 concluded that the E & T system has adequate storage and well production to serve its existing
20 customers.

21 35. The Commission granted TUC its CC&N for the Lazy B system in Decision No.
22 60974 (June 19, 1998).⁸

23 _____
24 ⁷ The Commission granted the original CC&N for the E & T system in Decision No. 28483 (October 29, 1954), and
25 granted CC&N extensions in Decision No. 31972 (December 16, 1959), and Decision No. 63196 (November 30, 2000).

26 ⁸ Prior to June 1998, the area was served by the Lazy B Water Company, which is owned by Myron Weinberg, A.K.A.
27 John Baker, d/b/a Lazy B Water Company. In Decision No. 60263 (July 1, 1997), the Commission issued an Order to
28 Show Cause against the Lazy B Water Company and directed Staff to assign an interim operator for the Lazy B Water
Company because of ongoing neglect and mismanagement of the system by the company's owner. Subsequently, TUC
became Lazy B Water Company's interim operator. In Decision No. 60896 (May 22, 1998), the Commission fined Lazy
B Water Company \$5,000 and TUC remained the Interim Operator. Lazy B Water Company does not hold a CC&N for
its service area.

On October 29, 1997, TUC filed an application for an extension of its CC&N to include the area served by Lazy B
Water Company. In Decision No. 60974, the Commission granted the CC&N, but required TUC to install its own plant.

1 36. The Lazy B system serves approximately 29 residential customers located 12 miles
2 west of Tucson, Arizona. The system consists of one well with 26 GPM production capacity and has
3 11,000 gallons of storage capacity. Staff concluded that the Lazy B system has adequate storage and
4 production to serve its existing customers.

5 37. Staff noted that TUC is in good standing with the Commission's Corporations
6 Division and the Utilities Division Compliance Section found that there are no outstanding
7 Commission compliance issues.

8 38. On July 17, 2009, the Applicants filed an ADEQ Drinking Water Compliance Status
9 Reports dated July 14, 2009, indicating that TUC systems are delivering water that meets water
10 quality standards required by A.A.C. Title 18, Chapter 4.

11 39. The TUC systems are located within the ADWR's Tucson AMA. Staff noted it had
12 received a Compliance Status Report from ADWR indicating that TUC is in compliance with its
13 requirements governing water providers.

14 METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT

15 40. Metro is a municipal corporation providing water service to over 18,300 customers in
16 the Tucson, Arizona, metropolitan area. Mr. Mark Stratton, Metro's General Manager, testified on
17 behalf of Metro.

18 41. According to the Staff Report, Staff received an ADEQ status report for Metro
19 indicating that Metro is in compliance with ADEQ requirements and is currently delivering water that
20 meets water quality standards required by A.A.C., Title 18, Chapter 4.

21 42. Metro is located within ADWR's Tucson AMA and is in compliance with ADWR
22 requirements governing water providers.

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27 At hearing on the instant matter, the witness for TUC testified that TUC is using the system it installed to serve its
28 customers, and that none of the plant owned or installed by Lazy B Water Company is in use. Staff's recommendations
in this matter regarding the Lazy B assets relate solely to the sale and transfer of those assets owned by TUC. Transcript,
at 92-93. See also Transcript, at 36-38.

1 **The Transaction**

2 43. On February 13, 2009, DVWC, TUC, and Metro entered into a purchase agreement
3 (“Purchase Agreement”) whereby Metro will purchase the water utility assets of DVWC and TUC’s
4 E & T and Lazy B systems.

5 44. The close of escrow is conditioned upon the Commission’s cancellation of the
6 CC&N’s for DVWC and TUC’s E & T and Lazy B systems.

7 45. The purchase price is \$2.75 million, plus payment by Metro of a New Customer
8 Premium calculated pursuant to the terms of Section 4.1.3 of the Purchase Agreement.⁹

9 46. Mr. Stratton stated that Metro intends to finance its acquisition of DVWC and TUC’s
10 E & T and Lazy B systems through a loan from the Water Infrastructure Finance Authority of
11 Arizona.¹⁰

12 47. According to the Purchase Agreement, all refunds due on Main Extension Agreements
13 will be assumed by Metro. All customer security deposits and refunds due on meter and service line
14 installations will be refunded by the Applicants.

15 48. According to the Application, the Applicants have nine employees and Metro has 51
16 employees. Mr. Thim testified that employment arrangements have been made for those employees
17 who will be affected by the sale and transfer.¹¹

18 49. Upon completion of the sale, Metro’s employees will assume the responsibilities of
19 operation and maintenance of the systems. The Applicants and Metro do not anticipate any material
20 changes in the operation and maintenance of the water systems being sold.

21 50. Mr. Thim testified that TUC will assist in an orderly transfer of customers to Metro
22 and aid Metro in maintaining at least the same level of customer service.¹²

23 51. Mr. Stratton testified that Metro will undertake an outreach program for the transferred
24 customers consisting of a mailing to provide information about Metro and possibly holding a public
25 meeting in the area to answer customer questions.¹³

26 ⁹ See Exhibit JA-7, page 7.

27 ¹⁰ Transcript, at 66.

¹¹ Transcript, at 25.

¹² Transcript, at 32-33.

28 ¹³ Transcript, at 62.

1 52. Mr. Stratton also noted that Metro will charge the transferred customers its current
2 rates and charges, which are lower than those of the Applicants'. According to Mr. Stratton, the
3 average DVWC customer uses 7,900 gallons per month, for an average bill of \$43.07. Under
4 Metro's rates, these customers will pay \$31.06 for the same usage. The average E & T customer uses
5 9,200 gallons per month and under the current rates, these customers pay \$39.12. Under Metro's
6 rates they will pay \$34.07. Finally, the average Lazy B customer uses 6,200 gallons per month, for
7 an average bill of \$54.18. Under Metro's rates, these customers will pay \$27.34.¹⁴ Mr. Stratton
8 testified further that, although Metro is anticipating an approximately four percent rate increase in
9 October, he believes that the transferred customers' rates will still be below what they currently are.¹⁵

10 **Staff Recommendations**

11 53. In its Addendum to Staff Report, Staff recommended that the Applicants be required
12 to file with Docket Control, as a compliance item in this docket, copies of all documentation
13 transferring ownership of their respective water systems and assets to Metro, within 90 of DVWC
14 filing the ADEQ compliance status report.

15 54. At the hearing, the Applicants noted that they had already filed the ADEQ status
16 report on July 17, 2009. Given the timing of the Decision in this matter and the nature of the
17 transaction, the Applicants expressed concern over their ability to close the transaction within 90 days
18 of July 17, 2009.

19 55. Staff's witness, Ms. Blessing Chukwu, revised Staff's recommendation at the hearing
20 to require the Applicants to file copies of the closing documents with Docket Control, as a
21 compliance item in this docket, within 120 days of the effective date of this Decision.¹⁶

22 56. Staff also recommended that the sale and transfer of assets to Metro and the
23 cancellation of the CC&Ns be considered null and void, after due process, should the Applicants fail
24 to comply with the above condition.

25 57. Staff recommendations are reasonable and shall be adopted.

26
27 ¹⁴ Transcript, at 65.

28 ¹⁵ Transcript, at 66.

¹⁶ Transcript, at page 85-86.

CONCLUSIONS OF LAW

1
2 1. DVWC and TUC are a public service corporations within the meaning of Article XV
3 of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

4 2. The Commission has jurisdiction over DVWC and TUC and the subject matter of the
5 Application.

6 3. Notice of the Application was provided as required by law.

7 4. There is a continuing need for water utility service in DVWC's currently certificated
8 area and TUC's currently certificated E & T and Lazy B systems areas.

9 5. Metro is a fit and proper entity that is ready, willing and able to assume the
10 responsibility of providing water utility service within DVWC's currently certificated area and
11 TUC's currently certificated E & T and Lazy B systems areas.

12 6. Staff's recommendations are reasonable and should be adopted.

13 **ORDER**

14 IT IS THEREFORE ORDERED that the joint application of Diablo Village Water Company
15 to sell its assets, and of Thim Utility Co. to sell its E & T and Lazy B systems assets, to the
16 Metropolitan Domestic Water Improvement District and to cancel their Certificates of Convenience
17 and Necessity, is hereby approved, and the cancellations will be effective upon the closing of the sale
18 and transfer of the assets to the Metropolitan Domestic Water Improvement District.

19 IT IS FURTHER ORDERED that Thim Utility Co.'s Certificate of Convenience and
20 Necessity for its Three Points system is not cancelled and remains in effect.

21 IT IS FURTHER ORDERED that Diablo Village Water Company and Thim Utility Co. shall
22 file with Docket Control, as a compliance item in this docket, copies of the closing documents within
23 120 days of the effective date of this Decision.

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1 IT IS FURTHER ORDERED that that the sale and transfer of Diablo Village Water
2 Company's assets and Thim Utility Co.'s E & T and Lazy B systems assets to Metropolitan Domestic
3 Water Improvement District and the cancellation of the CC&Ns be considered null and void, after
4 due process, should Diablo Village Water Company and Thim Utility Co. fail to comply with the
5 above condition.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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10 CHAIRMAN _____ COMMISSIONER _____

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12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

13
14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this _____ day of _____, 2009.

19 _____
20 ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

21 DISSENT _____

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23 DISSENT _____

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SERVICE LIST FOR:

DIABLO VILLAGE WATER COMPANY
AND THIM UTILITY CO.

DOCKET NOS.:

W-02309A-09-0095 and W-03293A-09-0095

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Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

EXHIBIT "A"

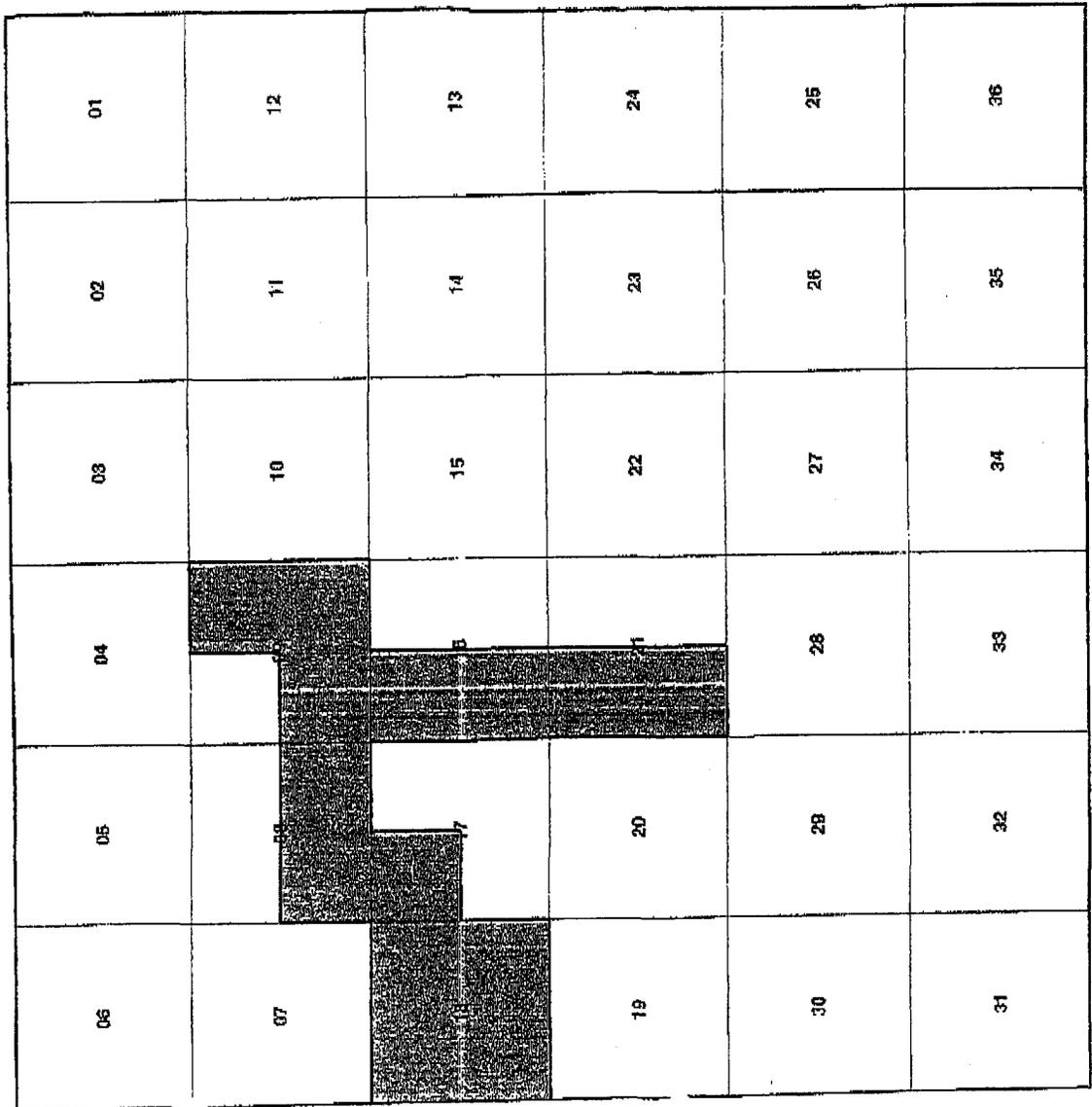
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W-02309A (1)
 Diablo Village Water Company

 Diablo Village Water Company
 Docket No. W-02309A-09-0095
 Application to Cancel - To Metropolitan
 Domestic Water Improvement District

TOWNSHIP 15 South

RANGE 12 East



PIMA COUNTY

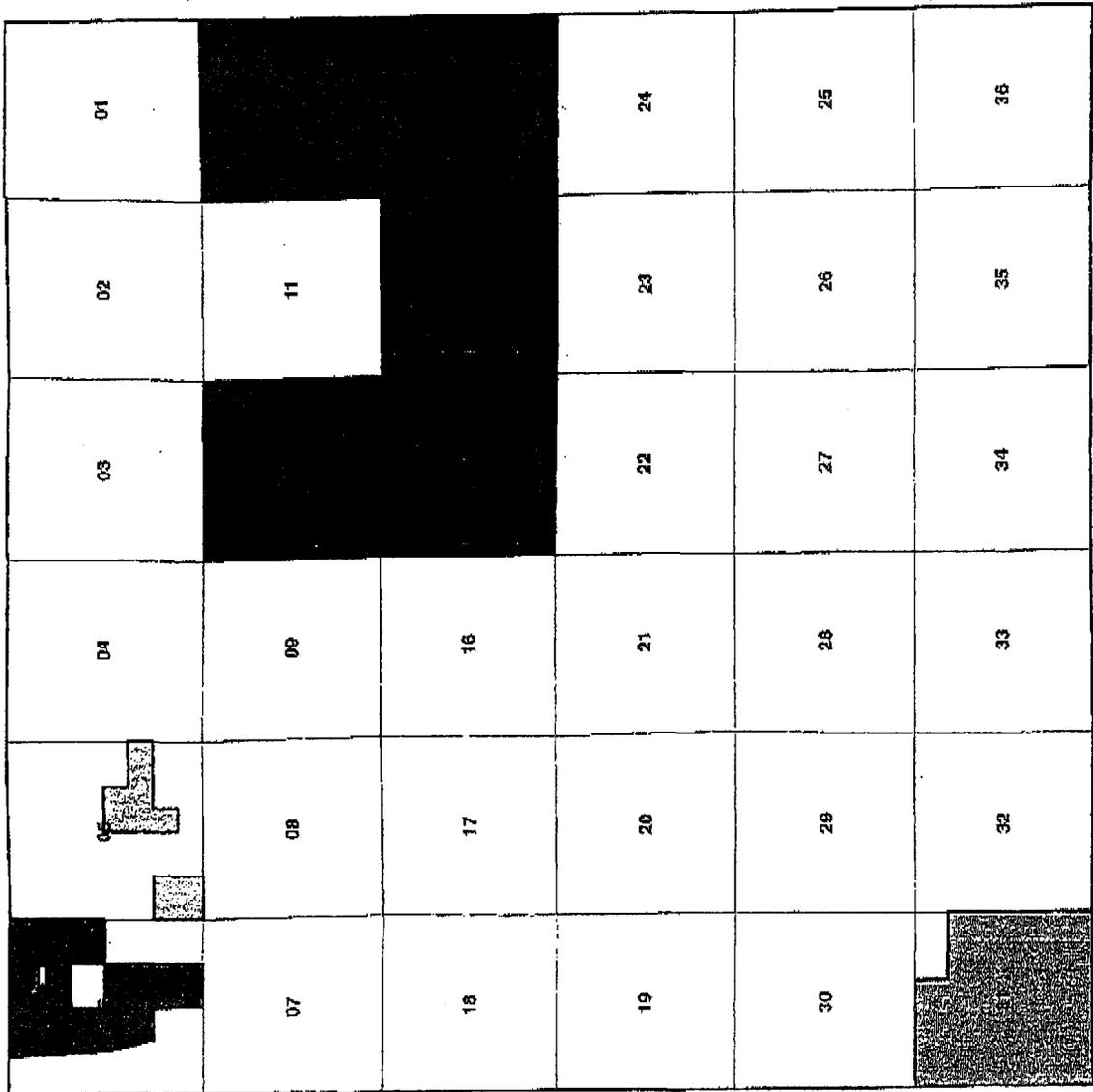
EXHIBIT "B"

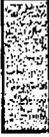
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PIMA COUNTY

↓ **RANGE 14 East**

TOWNSHIP 16 South



-  W-01654A (6)
Farmers Water Company
-  W-02542A (1)
La Casita Water Company, Inc.
-  WS-04245A (1)
Red Rock Utilities, LLC
-  W-03293A (4)
Thim Utility Company
- Thim Utility Company
Docket No. W-03293A-09-0095
Application to Cancel - To Metropolitan
Domestic Water Improvement District

DECISION NO. _____

EXHIBIT "C"

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W-03293A (4)

Thim Utility Company

Thim Utility Company
Docket No. W-03293A-09-0095
Application to Cancel - To Metropolitan
Domestic Water Improvement District

TOWNSHIP 14 South

RANGE 12 East

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PRIMA COUNTY

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