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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

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

2010 MAY -6 P 3: 52

AZ CORP COMMISSION
DOCKET CONTROL

26

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS ANTHEM WATER DISTRICT AND ITS SUN CITY WATER DISTRICT, AND POSSIBLE RATE CONSOLIDATION FOR ALL OF ARIZONA-AMERICAN WATER COMPANY'S DISTRICTS.

DOCKET NO. W-01303A-09-0343

Arizona Corporation Commission
DOCKETED

MAY - 6 2010

DOCKETED BY	<i>mm</i>
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IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS ANTHEM/AGUA FRIA WASTEWATER DISTRICT, ITS SUN CITY WASTEWATER DISTRICT AND ITS SUN CITY WEST WASTEWATER DISTRICT, AND POSSIBLE RATE CONSOLIDATION FOR ALL OF ARIZONA-AMERICAN WATER COMPANY'S DISTRICTS.

DOCKET NO. SW-01303A-09-0343

PROCEDURAL ORDER AND PROTECTIVE ORDER

On July 2, 2009, Arizona-American Water Company ("Arizona-American" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for rate increases for its Anthem Water District, Sun City Water District, Anthem/Agua Fria Wastewater District, Sun City Wastewater District, and Sun City West Wastewater District.

Intervention in this matter has been granted to the Residential Utility Consumer Office ("RUCO"); Anthem Community Council; Sun City West Property Owners and Residents Association ("PORA"); W.R. Hansen; the Water Utility Association of Arizona; the Camelback Inn, Sanctuary on Camelback Mountain, the Intercontinental Montelucia Resort and Spa, and the Scottsdale Cottonwoods Resort and Suites (collectively the "Resorts"); the Town of Paradise Valley; the

1 Anthem Golf and Country Club; Marshall Magruder; DMB White Tank, LLC; ; Mashie, LLC dba
2 Corte Bella Golf Club; Larry D. Woods;¹ and Philip H. Cook. Intervention has been conditionally
3 granted to Scottsdale Citizens for Sustainable Water.

4 During Phase 1 of the hearing in this proceeding, the Company indicated that it wished to
5 present rebuttal testimony of an expert witness in regard to the application of financial accounting
6 standards to ratemaking treatment recommended by the Anthem Community Council, and that the
7 testimony might be of a confidential nature. The Company was directed to request a telephonic
8 procedural conference during the week following, in order to coordinate the scheduling of the rebuttal
9 witness during the time scheduled for Phase 2 of this proceeding.

10 On May 3, 2010, the Company contacted the Hearing Division to arrange a telephonic
11 procedural conference for 10 a.m. on Wednesday, May 5, 2010, and notified all the intervenors in
12 Phase 1 of this proceeding of the date and time and means of participation.

13 On May 4, 2010, the Company filed a Motion for Protective Order. Therein, the Company
14 requested that a protective order be issued to govern the exchange of confidential information and the
15 submission of confidential testimony in this proceeding. The Company requested that the form of
16 protective order be similar to that issued in Docket Nos. RT-00000H-97-0137 and T-00000D-00-
17 0672 on February 5, 2009, with six suggested changes.

18 On May 5, 2010, the telephonic procedural conference was convened as scheduled. The
19 Company, Anthem Community Council, the Anthem Golf and Country Club, RUCO and Staff
20 appeared through counsel. The parties discussed changes to the form of protective order and how the
21 protective order would operate. The parties also discussed scheduling of the Company's rebuttal
22 witness and the possible scheduling of a reply witness for Anthem Community Council. The
23 Company agreed to file a form of protective order no later than May 6, 2010.

24 On May 5, 2010, the Company filed a Notice of Filing Form of Protective Order.

25 The form of protective order filed by the Company on May 5, 2010 incorporates comments
26 made by the parties present at the May 5, 2010 telephonic procedural conference, and is reasonable.

27 _____
28 ¹ Mr. Woods, who was authorized to represent PORA in the first phase of this proceeding, wishes to participate in the second phase of this proceeding on his own behalf, and not on behalf of PORA.

1 It is reasonable and appropriate to adopt the Protective Order attached hereto as Exhibit 1 for this
2 proceeding.

3 IT IS THEREFORE ORDERED that the Protective Order attached hereto as Exhibit 1 and
4 incorporated herein by reference, is approved and shall apply to these proceedings until further Order
5 of the Commission.

6 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
7 Communications) continues to apply to this proceeding and shall remain in effect until the
8 Commission's Decision in this matter is final and non-appealable.

9 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
10 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
11 hearing.

12 DATED this 6th day of May, 2010.

13
14 
15 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered
17 this 6th day of May, 2010 to:

18 Thomas H. Campbell
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26 Attorney for Anthem Community Council

27 Daniel Pozefsky
28 RUCO
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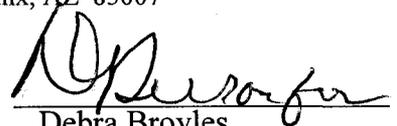
By: 
Debra Broyles
Secretary to Teena Wolfe

EXHIBIT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS ANTHEM WATER DISTRICT AND ITS SUN CITY WATER DISTRICT, AND POSSIBLE RATE CONSOLIDATION FOR ALL OF ARIZONA-AMERICAN WATER COMPANY'S DISTRICTS.

DOCKET NO. W-01303A-09-0343

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS ANTHEM/AGUA FRIA WASTEWATER DISTRICT, ITS SUN CITY WASTEWATER DISTRICT AND ITS SUN CITY WEST WASTEWATER DISTRICT, AND POSSIBLE RATE CONSOLIDATION FOR ALL OF ARIZONA-AMERICAN WATER COMPANY'S DISTRICTS.

DOCKET NO. SW-01303A-09-0343

PROTECTIVE ORDER

1. (a) **Confidential Information.** All pre-filed testimony, documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the

1 Confidential Information will be marked by the receiving party as Confidential Information. Access
2 to and review of Confidential Information shall be strictly controlled by the terms of this Order.

3 A party shall memorialize in writing any Confidential Information that it verbally discloses to
4 Staff or another party within five (5) business days of its verbal disclosure, and the writing shall be
5 marked by the party with the appropriate designation.

6 A party agrees that it will carefully consider the basis upon which any information is claimed
7 to be trade secret, proprietary, confidential, or otherwise legally protected. A party shall designate as
8 Confidential Information only such information as it may claim in good faith to be legally protected.
9 Where only a part of a document, or only a part of an informational submittal may reasonably be
10 considered to be trade secret, proprietary, confidential, or otherwise legally protected, a party shall
11 designate only that part of such information submittal as Confidential Information under this
12 Agreement. Information that is publicly available from any other source shall not be claimed as
13 Confidential Information under this Agreement. Any party shall have the right to challenge at any
14 time a party's designation of any document or portion thereof as "Confidential" in accordance with
15 the procedures described in Section 6 of this Agreement.

16 (b) **Use of Confidential Information - Proceeding.** All persons who may be
17 entitled to review, or who are afforded access to any Confidential Information by reason of this Order
18 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
19 any purpose other than the purpose of preparation for and conduct of proceedings in the above-
20 captioned docket and all subsequent appeals, and shall keep the Confidential Information secure as
21 confidential or proprietary information and in accordance with the purposes, intent and requirements
22 of this Order.

23 (c) **Persons Entitled to Review.** Each party that receives Confidential
24 Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys
25 employed or retained by the party in these proceedings and the attorneys' staff; (2) experts,
26 consultants and advisors who need access to the material to assist the party in these proceedings; (3)
27 only those employees of the party who are directly involved in these proceedings, provided that
28 counsel for the party represents that no such employee is engaged in the sale or marketing of that

1 party's products or services. In addition, access to Confidential Information may be provided to
2 Commissioners and all Commission Administrative Law Judges, and Commission advisory staff
3 members and employees of the Commission to whom disclosure is necessary. Where Commission
4 Staff acts as an advocate in a trial or adversarial role, disclosure of Confidential Information to Staff
5 members and consultants employed by the Staff shall be under the same terms and conditions as
6 described herein for parties.

7 (d) **Nondisclosure Agreement.** Any party, person, or entity that receives
8 Confidential Information pursuant to this Order shall not disclose such Confidential Information to
9 any person, except persons who are described in section 1(c) above and who have signed a
10 nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A".
11 Court reporters shall also be required to sign an Exhibit "A" and comply with terms of this Order.
12 Commissioners, Administrative Law Judges, and their respective Staff members are not required to
13 sign an Exhibit "A" form.

14 The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is
15 to be made to read a copy of this Protective Order and to certify in writing that they have reviewed
16 the same and have consented to be bound by its terms. The agreement shall contain the signatory's
17 full name, employer, job title and job description, business address and the name of the party with
18 whom the signatory is associated. Such agreement shall be delivered to counsel for the providing
19 party before disclosure is made, and if no objection thereto is registered to the Commission with in
20 three (3) business days, then disclosure shall follow. An attorney who makes Confidential
21 Information available to any person listed in subsection (c) above shall be responsible for having each
22 person execute an original Exhibit "A" and a copy of all such signed Exhibit "A's" shall be circulated
23 to all other counsel of record promptly after execution.

24 2. (a) **Notes.** Limited notes regarding Confidential Information may be taken by
25 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,
26 motions and argument in connection with this proceeding, or in the case of persons designated in
27 section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall
28 then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the

1 final settlement or conclusion of these proceedings in accordance with subsection 2(b) below.

2 (b) **Return.** All notes, to the extent they contain Confidential Information shall
3 be destroyed after the final settlement or conclusion of these proceedings. The party destroying such
4 Confidential Information shall advise the providing party of that fact within a reasonable time from
5 the date of destruction.

6 Any party providing Confidential Information may object to the designation of any individual
7 as a person who may review Confidential Information. Such objection shall be made in writing to
8 counsel submitting the challenged individual's Exhibit "A" within three (3) business days after
9 receiving the challenged individual's signed Exhibit "A." Any such objection must demonstrate
10 good cause to exclude the challenged individual from the review of the Confidential Information or
11 Highly Confidential Information. Written response to any objection shall be made within three (3)
12 business days after receipt of an objection. If, after receiving a written response to a party's
13 objection, the objecting party still objects to disclosure of either Confidential Information or Highly
14 Confidential Information to the challenged individual, the Commission shall determine whether
15 Confidential Information must be disclosed to the challenged individual.

16 Execution of this Agreement by the parties and performance of their obligations hereunder
17 shall not result in waiver of any claim, issue, or dispute concerning the trade secret, proprietary,
18 confidential, or legally protected nature of the Confidential Information provided.

19 3. **Objections to Admissibility.** The furnishing of any document, data, study or other
20 materials pursuant to this Protective Order shall in no way limit the right of the providing party to
21 object to its relevance or admissibility in proceedings before this Commission.

22 4. **Challenge to Confidentiality.** This Order establishes a procedure for the expeditious
23 handling of information that a party claims is Confidential. It shall not be construed as an agreement
24 or ruling on the confidentiality of any document. Any party may challenge the characterization of
25 any information, document, data or study claimed by the providing party to be confidential in the
26 following manner:

27 (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order
28

1 shall first contact counsel for the providing party and attempt to resolve any
2 differences by stipulation;

3 (b) In the event that the parties cannot agree as to the character of the information
4 challenged, any party challenging the confidentiality shall do so by appropriate
5 pleading. This pleading shall:

6 (1) Designate the document, transcript or other material challenged in a manner
7 that will specifically isolate the challenged material from other material
8 claimed as confidential; and

9 (2) State with specificity the grounds upon which the documents, transcript or
10 other material are deemed to be non-confidential by the challenging party.

11 (c) A ruling on the confidentiality of the challenged information, document, data or study
12 shall be made by an Administrative Law Judge after proceedings in camera, which
13 shall be conducted under circumstances such that only those persons duly authorized
14 hereunder to have access to such confidential materials shall be present. This hearing
15 shall commence no earlier than five (5) business days after service on the providing
16 party of the pleading required by subsection 4(b) above.

17 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL – SUBJECT
18 TO PROTECTIVE ORDER IN DOCKET NOS. W-01303A-09-0343 AND SW-
19 01303A-09-0343." Court reporter notes of such hearing shall be transcribed only
20 upon agreement by the parties or Order of the Administrative Law Judge and in that
21 event shall be separately bound, segregated, sealed, and withheld from inspection by
22 any person not bound by the terms of this Order.

23 (e) In the event that the Administrative Law Judge should rule that any information,
24 document, data or study should be removed from the restrictions imposed by this
25 Order, no party shall disclose such information, document, data or study or use it in
26 the public record for five (5) business days unless authorized by the providing party to
27 do so. The provisions of this subsection are intended to enable the providing party to
28 seek a stay or other relief from an order removing the restriction of this Order from
materials claimed by the providing party to be confidential.

5. (a) **Receipt into Evidence.** Provision is hereby made for receipt into evidence in
this proceeding materials claimed to be confidential in the following manner:

(1) Prior to the use of or substantive reference to any Confidential
Information, the parties intending to use such Information shall make
that intention known to the providing party.

(2) The requesting party and the providing party shall make a good-faith
effort to reach an agreement so that the Information can be used in a
manner which will not reveal its confidential or proprietary nature.

- 1 (3) If such efforts fail, the providing party shall separately identify which
2 portions, if any, of the documents to be offered or referenced shall be
3 placed in a sealed record.
4 (4) Only one (1) copy of the document designated by the providing party to
5 be placed in sealed record shall be made.
6 (5) The copy of the documents to be placed in the sealed record shall be
7 tendered by counsel for the providing party to the Commission, and
8 maintained in accordance with the terms of this Order.

9 (b) **Seal.** While in the custody of the Commission, materials containing
10 Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE
11 ORDER IN DOCKET NOS. W-01303A-09-0343 AND SW-01303A-09-0343" and shall not be
12 examined by any person except under the conditions set forth in this Order.

13 (c) **In Camera Hearing.** Any Confidential Information that must be orally
14 disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing,
15 attended only by persons authorized to have access to the information under this Order. Similarly,
16 any cross-examination on or substantive reference to Confidential Information (or that portion of the
17 record containing Confidential Information or references thereto) shall be received in an in camera
18 hearing, and shall be marked and treated as provided herein.

19 (d) **Access to Record.** Access to sealed testimony, records and information
20 shall be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and
21 persons who are entitled to review Confidential Information pursuant to subsection 1(c) above and
22 have signed Exhibit "A," unless such information is released from the restrictions of this Order either
23 through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of an
24 Administrative Law Judge, the order of the Commission an/or final order of a court having final
25 jurisdiction.

26 (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in this
27 proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal but
28 under seal as designated herein for the information and use of the court. If a portion of the record is

1 forwarded to a court or the providing party shall be notified which portion of the sealed record has
2 been designated by the appealing party as necessary to the record on appeal.

3 (f) **Judicial Proceedings Related to Nonparty's Request for Disclosure.**

4 Where the Commission, Administrative Law Judge, or Staff determines that disclosure is not
5 appropriate, a party as the real party in interest shall join as a co-defendant in any judicial action
6 brought against the Commission and/or Commissioners by the party seeking disclosure of the
7 information, unless the party is already specifically named in the action. Each such party also agrees
8 to indemnify and hold the Commission harmless from any assessment of expenses, attorneys' fees, or
9 damages resulting from the Commission's denial of access to the information found to be non-
10 confidential.

11 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
12 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of
13 the Confidential Information, the Commission shall provide the affected party with prompt written
14 notice of such requirement so that said party may seek an appropriate remedy and/or waive
15 compliance.

16 (g) **Return.** Unless otherwise ordered, Confidential Information, including
17 transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal,
18 shall continue to be subject to the protective requirements of this Order, and shall, at the providing
19 party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party,
20 within thirty (30) days after final settlement or conclusion of these proceedings. If the providing
21 party elects to have Confidential Information destroyed rather than returned, counsel for the receiving
22 party shall verify in writing that the material has in fact been destroyed.

23 6. **Use in Pleadings.** Where references to Confidential Information or Highly
24 Confidential Information in the sealed record or with the providing party is required in pleadings,
25 briefs, arguments or motions (except as provided in section 4), it shall be by citation of title or exhibit
26 number or some other description that will not disclose the substantive Confidential Information or
27 Highly Confidential Information contained therein. Any use of or substantive references to
28 Confidential Information shall be placed in a separate section of the pleading or brief and submitted

1 to the Administrative Law Judge or the Commission under seal. This sealed section shall be served
2 only on counsel of record and parties of record who have signed the nondisclosure agreement set
3 forth in Exhibit "A." All of the restrictions afforded by this Order apply to materials prepared and
4 distributed under this section.

5 7. Summary of Record. If deemed necessary by the Commission, the providing party
6 shall prepare a written summary of the Confidential Information referred to in the Order to be placed
7 on the public record.

8 8. Breach of Agreement. A party, in any legal action or complaint that it files in any
9 court alleging breach of this Agreement shall, at the written request of the Commission, name the
10 Arizona Corporation Commission as a Defendant therein.

11 9. Non-Termination. The provisions of this Agreement shall not terminate at the
12 conclusion of this proceeding.

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**EXHIBIT A
CONFIDENTIAL INFORMATION**

I have read the foregoing Protective Order dated _____, 2010, in Docket No. W-01303A-09-0343, ET AL. (Consolidated) and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job title and Job Description

Business Address

Party

Signature

Date

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