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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
ADAMAN MUTUAL WATER COMPANY FOR
APPROVAL TO ISSUE STOCK

Docket No. W-01997A-09-0297

POST HEARING BRIEF

Adaman Mutual Water Company, an Arizona non-profit corporation (“Adaman”) submits this Post Hearing Brief (“Brief”) in accordance with the hearing officer’s request for additional briefing on certain questions raised at the August 17, 2010 Hearing in this matter.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGALITY OF PURPOSE UNDER A.R.S. § 40-301.C

Under Arizona Revised Statutes (“A.R.S.”) § 40-301.C, the Arizona Corporation Commission (the “Commission” or the “ACC”) may not enter an order authorizing the issuance of stock by a public service corporation unless the ACC finds that the issuance is, among other things, for “lawful purposes which are within the corporate powers of the applicant....” Here, Adaman is applying to the ACC to approve the issuance of stock in order to consummate Adaman’s plan of corporate reorganization - an action that was approved by Adaman’s members and is authorized under Adaman’s corporate powers and Arizona law. Adaman will be the same

¹ August 17, 2010 Hearing Transcript (“Tr.”) at 278:20-280:25.

1 legal entity both before and after the reorganization.² As discussed below, an order authorizing
2 Adaman's issuance of stock falls well within the "lawful purpose" requirement set forth in
3 A.R.S. § 40-301.C.

4 **A. What is a Reorganization?**

5 A reorganization is nothing more than a reshuffling of corporate interests either through a
6 merger or recapitalization. See Black's Law Dictionary 1412-1413 (9th ed. 2009). "[It] has
7 been correctly said that the term [reorganization] as employed in this connection 'may generally
8 be taken as signifying (a) an arrangement whereby the stock, bonds or other securities of a
9 corporation are readjusted as to amount, income or priority, or (b) an agreement of all
10 stockholders ... to change and increase or decrease the capitalization or debt to the corporation,
11 or both. *United Gas Improvement Co. v. Commissioner of Internal Revenue*, 142 F.2d 216, 218
12 (3rd Cir., 1943), citing *Mertens Law of Federal Income Taxation: Treatise and Rulings*, § 20.78.
13 A "recapitalization" is "an adjustment or recasting of a corporation's capital structure – that is,
14 its stocks, bonds or other securities – through an amendment of the articles of incorporation or
15 merger with a parent or subsidiary." Black's Law Dictionary 1382 (9th ed. 2009).

16 Corporate reorganizations have long been recognized as authorized and lawful under both
17 state and federal law. See AMJUR Corporations § 2306; see also 26 U.S.C. § 368(a). How the
18 reorganization is structured is generally governed by state law. See AMJUR Corporations §
19 2307. Whether the reorganization is considered "tax free" is determined by federal and state
20 law. See generally 26 U.S.C. § 368;³ see also Section III, below.

21 Here, Adaman's reorganization (in the form of a recapitalization) is accomplished by
22 amending the corporation's Articles of Incorporation to authorize it to act as a for-profit
23 corporation, and implementing a member-approved plan to exchange membership interests for
24 shares in the same corporation.² As is explained in more detail below, under both state and
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27 ² Adaman's reorganization simply changes Adaman's Articles of Incorporation, tax status and the manner in which it is
28 owned (stock versus membership interests), but does not change the entity, which is the same corporation. See generally
Hearing Exhibits A-8, A-14, A-16, A-17.

³ Arizona corporate tax law largely follows federal tax law.

1 federal law, issuing stock pursuant to a plan or reorganization plainly falls within the realm of a
2 “lawful purpose” under A.R.S. § 40-301.C. Furthermore, as discussed below, Adaman’s
3 reorganization, and issuance of stock pursuant to the reorganization, is not only within
4 Adaman’s corporate powers, but is also the most beneficial structure for Adaman’s members
5 and future shareholders.

6 **B. Purpose of Issuance of Stock – Consummate Reorganization**

7 1. Authority for Reorganization

8 Adaman is seeking ACC consent to issue stock in exchange for membership interests in
9 order to complete its reorganization from a nonprofit to a for-profit corporation.⁴ Adaman
10 currently exists under Arizona law as a nonprofit member corporation. As such, its interests are
11 held in the form of membership interests that are owned proportionately by Adaman’s member
12 landowners.⁵ Adaman is seeking to reorganize to become a for-profit corporation so that it may,
13 among other things, continue its business more efficiently and benefit its members.⁶ A critical
14 element in Adaman’s reorganization from a nonprofit to for-profit entity is the exchange of the
15 members’ existing membership interests for shares of common stock of Adaman. These shares
16 of common stock represent the same voting rights, and have similar economic attributes, but are
17 more favorable, as the membership interests for which the shares are exchanged.⁷ Thus,
18 Adaman’s members, once the reorganization is complete, will become shareholders of Adaman
19 and will own the same proportion of shares of common voting stock as they did when they were
20 members holding voting membership interests.⁸

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25 ⁴ First Amended Application for Approval to Issue Stock pursuant to the Agreement and Plan of Reorganization, docketed
June 12, 2009, as amended by the Motion to Amend Application, docketed March 22, 2010 (as so amended, the
“Application”).

26 ⁵ See Exhibit A-8; Tr. at 37:16-40:18.

27 ⁶ See generally Application; Tr. at 41:23-73:23, 151:13-158:21.

28 ⁷ See Exhibits A-14 and A-15 (summarizing attributes of reorganization); see also Exhibit A-8, A-16, and A-17.

⁸ Exhibits A-8, A-15, A-16, and A-17; Tr. at 155:21-156:19 (continuity of interest in reorganization).

1 grounds the corporation lacks or lacked power to act,” except in extraordinarily limited
2 circumstances not applicable here.

3 The Arizona Attorney General has long recognized the right of for-profit corporations to
4 reorganize into a nonprofit corporation without being reincorporated. Op. Att’y Gen. 62-55-L
5 (1962) (stating that where Arizona statutes give corporations the right to amend their articles of
6 incorporation, if the articles of incorporation of a for-profit corporation are amended as to
7 conform with the statutory requirements of a nonprofit corporation, such a corporation will
8 become a legally constituted nonprofit corporation).

9 In the 1990s, many area hospitals utilized this method to accomplish the reverse -
10 reorganize from nonprofit to for-profit entities. See James J. Fishman, Checkpoints on the
11 Conversion Highway: Some Trouble Spots in the Conversion of Nonprofit Health Care
12 Organizations to For-Profit Status, 23 J. Corp. L. 701 (1998). This type of reorganization is
13 commonly referred to as a “conversion in place.” *Id.* A conversion in place is effected when
14 “the board recommends an amendment to the corporation’s articles of incorporation, deleting its
15 nonprofit aspects and adding for-profit powers.” *Id.* at 714. In other words, a “conversion in
16 place” occurs when an exempt corporation “amends its articles of incorporation and bylaws to
17 remove the nonprofit, tax-exempt aspects of its organization, adopting instead provisions that
18 comply with the state business corporation act.” Lawrence E. Singer, The Conversion
19 Conundrum: The State and Federal Response to Hospitals’ Changes in Charitable Status, 23
20 Am. J.L. & Med. 221, 233 (1997).

21 While not all states allow a conversion in place, numerous authorities recognize that
22 Arizona is one of the states that do. Fishman, *supra* at n. 76. See also Douglas M. Mancino and
23 Frances R. Hill, Converting an Organization’s Status From Nonprofit to For-Profit, 13 Tax’n of
24 Exempts 155 (2002) (stating that several states, including Arizona, permit conversions in place
25 from nonprofit to for-profit status). Because Arizona law governs Adaman’s corporate
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1 existence, Adaman is well within its corporate powers to reorganize from a nonprofit to a for-
2 profit corporation by amending and restating its articles of incorporation.¹¹

3 Therefore, because the reorganization is lawful and within Adaman's corporate power to
4 effect, Adaman's proposed reorganization fully satisfies the "lawful purpose" requirement of
5 A.R.S. § 40-301.C.

6 **II. PRUDENCY OF REORGANIZATION STRUCTURE – TAX FREE**
7 **TRANSACTION**

8 **A. Reorganizing by "Conversion in Place" is Prudent**

9 As discussed in Section I, above, Adaman has demonstrated that its proposed
10 reorganization satisfies the "lawful purpose" and "corporate powers" requirements of A.R.S. §
11 40-301.C. A.R.S. § 40-301.C further requires that the proposed stock issuance must be
12 compatible with "sound financial practices." Consequently, the second prong of Adaman's
13 analysis - what method is most prudent to effect the reorganization under the federal Internal
14 Revenue Code, is discussed below. Adaman believes that reorganizing by conversion in place is
15 the most prudent restructuring because this type of reorganization is tax free under the Code and
16 imposes no burden on Adaman or its members.

17 1. Adaman's Proposed Reorganization Constitutes a "Recapitalization" under
18 26 U.S.C. § 368(a)(1)(E)

19 The Internal Revenue Service ("IRS") has ruled on two separate occasions that a
20 corporation's conversion under state law from a nonprofit corporation to a for-profit corporation
21 constitutes a recapitalization as set forth in 26 U.S.C. § 368(a)(1)(E). *See* I.R.S. Priv. Ltr. Rul.
22 ("PLR") 95-45-014 (August 16, 1995); *see also* PLR 03-17-019 (January 22, 2003).

23 In PLR 95-45-014, as part of a larger transaction, a nonprofit nonstock public benefit
24 corporation converted from a non-profit corporation to a for-profit stock corporation by
25 amending its Articles of Incorporation under state law (and was considered same legal entity
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28 ¹¹ Importantly, Adaman's existing Articles of Incorporation and Bylaws do not prohibit the amendment of either document or
any form of reorganization transaction.

1 both before and after the conversion). Based upon the representations of the company that,
2 among other things (i) following the conversion, the company would continue the same business
3 as before the conversion and (ii) the conversion was not part of a plan to increase the
4 proportionate interest of any shareholder in the assets or earnings and profits of the company,
5 the IRS found that the conversion of the company constituted a reorganization within the
6 meaning of Code § 368(a)(1)(E), that no gain or loss was to be recognized by the company and
7 that the company's basis in its assets, holding period for its assets, earnings and profits, annual
8 accounting period and its accounting methods would not be affected by the conversion. *See*
9 *PLR 95-45-014.*

10 In *PLR 03-17-019*, also as part of a larger transaction, a nonprofit nonstock parent
11 corporation converted under state law to a for-profit corporation. The parent company
12 continued in the same business after the conversion as before and, under state law, was
13 considered to be the same legal entity after the conversion as before. (This is the same case as
14 *Adaman*.) Additionally, the parent company continued to own the assets it held prior to the
15 conversion (with an exception for a transfer to a new entity formed as part of the larger
16 transaction). Finally, the parent company, as converted, issued stock to two separate entities,
17 which then exchanged the stock for shares in a newly formed parent company.

18 The IRS ruled that the conversion of the parent company from a nonprofit nonstock
19 corporation to a for-profit stock corporation constituted a reorganization within the meaning of
20 Code § 368(a)(1)(E) (a "recapitalization"). The IRS further ruled that no gain or loss was
21 recognized by the converting company, and that the basis in its assets, holding period for its
22 assets, earnings and profits, annual accounting period and its accounting methods are not
23 affected by the conversion. Nor was any gain or loss recognized by the separate entities upon
24 their receipt of the parent company's shares in connection with the conversion. *See PLR 03-17-*
25 *019.*

26 It is clear, under published IRS rulings, that regardless of whether a conversion is a
27 separate transaction, or part of a larger reorganization, the conversion from a nonprofit
28 corporation to a for-profit corporation pursuant to which the proportionate share of members'

1 interests remains the same will be treated by the IRS as a recapitalization under Code §
2 368(a)(1)(E), and thus a tax-free reorganization, as discussed below. In this case, Adaman will
3 maintain ownership interests identical before and after the reorganization, and therefore its
4 conversion will be considered a Code § 368(a)(1)(E) recapitalization.

5 2. Adaman's Reorganization will be Tax Free

6 Under the Code, no gain or loss will be recognized if stock or securities¹² in a corporation
7 a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for
8 stock or securities in such corporation. 26 U.S.C. § 354(a). A reorganization is defined as,
9 among other things, a "recapitalization." 26 U.S.C. § 368(a)(1)(E). While neither the Code nor
10 the related regulations further define "recapitalization," as discussed above, the IRS has ruled
11 that the conversion of a company from a nonstock nonprofit corporation to a for-profit stock
12 corporation constitutes a Code § 368(a)(1)(E) reorganization. PLR 09-545-014; PLR 03-17-
13 019. Furthermore, to qualify as a tax-free reorganization, the transaction (or series thereof) set
14 forth in a "plan of reorganization" must not only fall within the language of 26 U.S.C. § 368(a),
15 but must be undertaken for "reasons germane to the continuance of the business of a corporation
16 a party to the reorganization." 26 C.F.R. § 1.368-2(g).

17 Here, Adaman's conversion from a nonprofit to for-profit corporation under state law
18 will constitute a recapitalization under Code § 368(a)(1)(E). Furthermore, the transaction will
19 meet the business purpose requirements of 26 C.F.R. § 1.368-2(g), as the reorganization has a
20 business purpose of allowing Adman to conduct and pursue its same business more efficiently
21 and to engage in the Goodyear water contract, that is critical to financing Adaman's new water
22 treatment facility.¹³ Moreover, both before and after the transaction: (i) Adaman will continue to
23 own the same assets; (ii) Adaman's ownership will remain the same; and (iii) each member or
24 shareholder's proportionate interest in Adaman will remain the same.⁷ In other words,
25 ownership interests are the same before and after the recapitalization, and no member's rights
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27 ¹² "Securities" is a broad term and encompasses, among other things, nonprofit corporation membership interests and limited
liability company membership interests.

28 ¹³ Tr. at 49:23-53:20; 59:9-14; 62:16-63:12; 157:3-10; Exhibit A-12.

1 will be disproportionately changed. Therefore, Adaman's recapitalization meets all of the
2 requirements and will constitute a tax-free reorganization under the Code.¹⁴

3 **B. Adaman Need Not Obtain a Private Letter Ruling**

4 As discussed in Section II.A, above, it is clear that Adaman's reorganization will be
5 considered tax-free under the Code, under all existing tax guidance. Dr. LaBarre's request that
6 the ACC should stay proceedings until Adaman obtains a private letter ruling again ruling on a
7 subject that it has twice ruled upon is inappropriate. The IRS has ruled, in far more complex
8 transactions than the one presented here, that a nonprofit corporation's conversion to a for-profit
9 corporation under state law is a tax-free reorganization as defined in section 368(a)(1)(E) of the
10 Code. Asking the IRS to reiterate its ruling, once again, is simply not necessary and is wasteful
11 of both Adaman's and the IRS's resources.

12 Obtaining a Private Letter Ruling is also not as simple as Dr. LaBarre asserts. Not only
13 must Adaman comply with the highly technical revenue procedures that govern obtaining a
14 letter ruling, Adaman has no guaranty when the IRS may rule on this matter. *See* Jonathan D.
15 Ackerman, *How to Get a Private Letter Ruling-The Ten Commandments of the Letter Ruling*
16 *Process* (2003), www.ackermanlaw.net/Article6NCPG.DOC. Adaman will have to wait at least 60-
17 90 days for a ruling, and it is not uncommon for delays in obtaining rulings to extend for more
18 than six to nine months, unnecessarily delaying the reorganization. *See id.* Finally, not only
19 would Adaman need to hire professionals to prepare and submit the request, it must also pay a
20 fee to the IRS, up to about \$14,000.00, depending on the category this matter falls under. *See*
21 *Rev. Proc. 2010-1, Appendix A*. Adaman has already incurred significant professional fees, not
22 only for obtaining tax advice from its own accountants and lawyers about its reorganization, but
23 also for pursuing ACC approval regarding a matter that was approved by a large majority of
24 Adaman's members, and that has been objected to by only one Intervenor. Adaman should not
25 be required to incur any further costs.

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¹⁴ Tr. at 155:21-158:1.

1 As shown above, requiring Adaman to obtain a private letter ruling would create
2 unnecessary cost and delay, waste Adaman's (and the IRS's) valuable and limited resources and
3 time, and provide substantially no greater certainty than already exists in published tax
4 literature.

5 **III. PRUDENCY OF REORGANIZATION STRUCTURE – SHAREHOLDER**
6 **DIVIDEND/DISTRIBUTION FLEXIBILITY**

7 **A. Distributions or Liquidations under State Corporate Law**

8 Adaman's desire to implement its plan of reorganization is driven by several practical
9 considerations that were discussed at the Hearing, including the increased flexibility to distribute
10 funds to shareholders as a for-profit corporation.¹⁵ Except in certain circumstances involving
11 dissolution, Arizona law absolutely prohibits a nonprofit corporation from making any
12 distributions to members. A.R.S. § 10-11301. Arizona law defines a distribution in this context
13 as:

14 A direct or indirect transfer of money or other property or incurrence
15 of indebtedness by a corporation to or for the benefit of its members
16 in respect of any of its membership interests. A distribution may be
in the form of . . . a declaration of payment of a dividend . . .

17 A.R.S. § 10-3140(22). Therefore, under Arizona corporate law, as a nonprofit corporation
18 today, Adaman may not make any distributions to its members. For example, even if fairness
19 dictated that the membership should benefit from proceeds received by Adaman in consideration
20 of its assets being condemned, state law firmly prohibits Adaman as a nonprofit corporation
21 from distributing the proceeds to members. On the other hand, if Adaman is found to be
22 governed by A.R.S. § 10-11405(A)(7), then Adaman may make distributions to its members, but
23 only upon its dissolution; however, Adaman's ability to make these distributions is limited
24 under federal tax law, as discussed below. Thus, it is clear that today Adaman could not make
25 dividend payments to its members, for example, from a partial condemnation of its property, or
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¹⁵ Tr. at 60:5-13; 71:22-73:19; 143:9-23; 158:2-160:25.

1 from excess revenues obtained by selling water. Adaman's Board of Directors determined that
2 these limitations could be avoided by reorganizing Adaman as a for-profit corporation.

3 Upon dissolution of a nonprofit corporation, if no provision has been made in the
4 corporation's governing documents for liquidation of assets, then if it is not organized for
5 charitable, benevolent or similar purposes, it may transfer its assets to its members. See A.R.S.
6 § 10-11405(A)(6)-(7). However, the interplay between A.R.S. § 10-11301, which prohibits the
7 payment of dividends to members of a nonprofit corporation, and A.R.S. § 10-11405.A(7) is not
8 absolutely clear, and no interpretation or reconciliation of these sections exists under Arizona
9 law. Moreover, the interplay between A.R.S. § 10-11405.A(6) and (7) is also unclear.¹⁶
10 Adaman, by changing its status to a for-profit corporation, avoids all of these uncertainties,
11 while maintaining the same voting rights and ownership of members.

12 **B. Distributions or Liquidations under Federal Tax Law**

13 Adaman is currently tax exempt under Code § 501(c)(12). This statute provides that
14 organizations that are mutual ditch or irrigation companies, or like organizations, are exempt
15 from taxation, *but only if 85 percent or more of the income consists of amounts collected from*
16 *members for the sole purpose of meeting losses and expenses.* 26 U.S.C. §§ 501(a) and
17 501(c)(12). Adaman is tax exempt under this provision; however, the Goodyear water sale
18 contract necessary to finance Adaman's new water treatment facility would cause Adaman to
19 violate the Section 501(c)(12) 85% limitation.¹⁷

20 While under the Code there is no blanket prohibition on making distributions to
21 Adaman's members, federal tax regulations mandate that distributions only be made in certain
22 circumstances and in certain amounts. For example, Adaman may only distribute accumulated
23 savings to members in proportion to the amount of business that each member has conducted
24 with Adaman. See Rev. Rul. 72-36, 1972-1 CB 151 *modified by* Rev. Rul. 81-109, 1981-1 CB
25 347; *Puget Sound Plywood, Inc. v. Comm'r*, 44 T.C. 305 (1965). Furthermore, gains realized
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27 ¹⁶ A.R.S. §10-11405.A.6 appears to be intended to apply only to charitable organizations, but the language of the statute is
not precise.

28 ¹⁷ Tr. at 61:16-63:12.

1 from the sale of an asset or upon dissolution of the organization must also only be distributed to
2 each member in proportion to the amount of business done by the member during the period the
3 asset was held. Rev. Rul. 72-36, 1972-1 CB 151 *modified by* Rev. Rul 81-109, 1981-1 CB 347.
4 Importantly, Code § 501(c)(12) refers to the members of a mutual irrigation company as
5 “patrons,” and to such distributions as “patronage refunds.”

6 Thus, federal tax law provides Adaman, in its present form under state law, cannot pay
7 dividends in proportion to the beneficial membership interests in Adaman, and, under federal tax
8 law, may only make distributions to its members out of accumulated savings, and then only in
9 the form of patronage refunds, which means that all distributions must be in proportion to the
10 amount of business each member conducts with Adaman.¹⁸

11 These limitations have serious practical consequences for Adaman. If Adaman obtained
12 any condemnation proceeds today, as discussed above, under state corporate law Adaman, as a
13 nonprofit entity, may not distribute the proceeds to its membership in any amount or form, even
14 if it does not need to use the income to sustain its operations. Even if Adaman could make
15 distributions to its members, as long as Adaman is a tax exempt organization under section
16 501(c)(12) of the Code, Adaman’s ability to make distributions would be severely constrained.
17 Furthermore, if Adaman was dissolved today, any gains realized from an appreciated asset
18 would have to be distributed to each member in proportion to the amount of business each
19 member conducted with Adaman during the time the asset was owned by Adaman, rather than
20 on the basis of ownership.

21 Regardless of the distributions allowable under federal tax law, Adaman is constrained by
22 both the federal tax law (which limits what types of income can be earned, and what monies
23 may be distributed or retained), as well as Arizona’s blanket prohibition on distribution to its
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25 ¹⁸ If Adaman was also a charitable organization, the so-called “private inurement doctrine” would prohibit the distribution of
26 Adaman’s assets to its members in its entirety. The private inurement doctrine *does not* apply to Adaman because Adaman
27 is tax exempt as a mutual company under Code § 501(c)(12), which does not condition tax exempt status on restricting
28 beneficial transfers to members. Rather, tax exempt organizations to which the private inurement doctrine is applied are
generally charitable organizations that are not granted tax exempt status unless “no part of the net earnings of such entity
inures to the benefit of any private shareholder or individual.” *See* Code § 501(c)(3). Thus, any discussion regarding the
application of the private inurement doctrine to Adaman’s reorganization has no application for Adaman.

1 members. Following Adaman's reorganization to a taxable for-profit corporation, these
2 limitations will be removed, and Adaman will have the flexibility to not only retain funds as it
3 sees fit, but also to make distributions to members, subject to compliance with Arizona law.
4 This change will allow Adaman to use any excess profits to benefit its shareholders by, among
5 other things, in appropriate cases, paying dividends to its shareholders. By reorganizing as a
6 taxable for-profit corporation, Adaman will also eliminate the uncertainty that presently exists as
7 to what, if any, distributions Adaman may make to shareholders under existing law, and the
8 change will allow Adaman to operate outside the confines of conflicting and restrictive state and
9 federal corporate and tax laws applicable to Adaman as a nonprofit corporation.

10 **IV. ADAMAN'S REORGANIZATION DOES NOT REQUIRE A CC&N CHANGE**

11 At the Hearing, a question was raised whether Adaman's Certificate of Convenience and
12 Necessity ("CC&N") must be transferred or changed as a result of the reorganization.
13 Adaman's CC&N is not affected by the reorganization or the ACC's approval of the issuance of
14 stock in this matter because Adaman will remain the same entity after both actions. Adaman is
15 not proposing any action that would draw into question its continued status as a fit and proper
16 entity to continue to provide water service within its service territory. In fact, Adaman's future
17 ability to provide adequate service at a reasonable rate to its customers should be improved by
18 the changes.

19 1. Adaman will be the Same Company

20 One highly beneficial attribute of reorganizing by conversion in place is that the
21 reorganizing entity remains the same entity before and after the conversion.

22 In a conversion in place the legal entity remains in place, the "xyz
23 charitable corporation" merely becomes the "xyz business
24 corporation." Existing contractual relationships remain.

24 Fishman, *supra* at 714¹⁹, and see A.R.S. § 10-11009 (article amendments do not affect any
25 requirement or limitation imposed on the corporation or any property held by it). "The entity
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27 ¹⁹ Although the Fishman example refers to a "charitable organization," Adaman is not a charitable organization. Instead, it is
28 a nonprofit mutual water company. Compare Code § 501(c)(3) with Code § 501(c)(12). See III(B), above, for further
discussion.

1 after conversion is treated as the same entity it was before conversion for corporate law
2 purposes.” Mancino, *supra* at 155. The fact that Adaman remains the same legal entity both
3 before and after conversion has many practical attributes. Contracts do not have to be re-
4 executed or property re-titled. Assets and liabilities remain exactly as they were before the
5 reorganization. Only Adaman’s Articles of Incorporation and tax status will change, along with
6 the manner in which Adaman is owned (shares rather than membership); however, ownership
7 percentages will remain exactly the same before and after the reorganization.

8 2. Adaman is Still a Fit and Proper Entity to Provide Water Service

9 If it were necessary to examine the effect of the reorganization on Adaman’s status as a
10 fit and proper entity (Adaman asserts it is not necessary), then the proposed changes should
11 improve Adaman’s future financial status. There will be no change to Adaman’s technical
12 competence resulting from the corporate reorganization since it will be controlled by the same
13 people with the same percentage interests as before the reorganization. In fact, Adaman now
14 will have increased access to technical assistance from the City of Goodyear.²⁰ Adaman’s ability
15 to provide water meeting federal arsenic standards will be substantially improved. As was
16 explained at the Hearing and in this Brief, Adaman’s revenues are expected to improve
17 significantly as a result of the matters discussed at the Hearing, benefitting ratepayers. No
18 evidence was presented of customer complaints relating to the quality of Adaman’s water
19 service, and Adaman is not aware of any. Although it is not necessary to examine whether the
20 reorganization affects Adaman’s status as a fit and proper entity to continue to provide water
21 service within its CC&N, Adaman will remain a fit and proper entity.

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²⁰ Tr. at 54:15-24.

1 DATED this 17th day of September, 2010.

2 RYLEY CARLOCK & APPLEWHITE

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15 2010 with:

16 Docket Control
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20 Copies of the foregoing hand delivered
21 this 17th day of September, 2010 to:

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1 Copy of the foregoing mailed
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