

OPEN MEETING ITEM



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ORIGINAL



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

RECEIVED Executive Director

ARIZONA CORPORATION COMMISSION

2010 NOV 29 P 2:22

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DATE: NOVEMBER 29, 2010

DOCKET NO.: W-01445A-03-0559

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Order on:

ARIZONA WATER COMPANY  
(REMAND FROM DECISION NO. 69722)

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:

DECEMBER 8, 2010

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:

DECEMBER 14, 2010 and DECEMBER 15, 2010

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.

Arizona Corporation Commission

DOCKETED

NOV 29 2010

DOCKETED BY

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3  
4 KRISTIN K. MAYES - Chairman  
5 GARY PIERCE  
6 PAUL NEWMAN  
7 SANDRA D. KENNEDY  
8 BOB STUMP

9 IN THE MATTER OF THE APPLICATION OF  
10 ARIZONA WATER COMPANY TO EXTEND ITS  
11 CERTIFICATE OF CONVENIENCE AND  
12 NECESSITY IN CASA GRANDE, PINAL  
13 COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

DECISION NO. \_\_\_\_\_

**ORDER ON REMAND FROM  
DECISION NO. 69722**

14 Open Meeting  
15 December 14 and 15, 2010  
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 **Background and Procedural History of Proceeding**

19 On April 6, 2004, Decision No. 66893 was issued in this docket.<sup>1</sup> Decision No. 66893  
20 conditionally granted an application filed on August 12, 2003 by Arizona Water Company ("Arizona  
21 Water" or "AWC") for an extension of its existing Certificate of Convenience and Necessity  
22 ("CC&N") in Pinal County, Arizona.

23 Decision No. 66893 placed two conditions on its approval of Arizona Water's August 12,  
24 2003 application. Arizona Water was ordered to file: (1) a copy of the Developers' Certificate of  
25 Assured Water Supply ("CAWS") for both the Post Ranch development and the Florence Country  
26 Estates development with the Arizona Corporation Commission ("Commission") within 365 days of  
27 the Decision; and (2) a main extension agreement associated with the extension area within 365 days  
28 of the Decision. Decision No. 66893 included an Ordering Paragraph stating that in the event the  
Company failed to meet those conditions within the time specified, the Decision would be deemed  
null and void without further Order of the Commission.

<sup>1</sup> For ease of reference, the underlying record and proceeding that resulted in the issuance of Decision No. 66893 may be referred to as "Phase 1" of this docket.

1 On March 30, 2005, prior to the April 6, 2005 deadline for the compliance filing requirements  
2 in Decision No. 66893, Arizona Water filed a Request for Additional Time to Comply with Filing  
3 Requirement.

4 On April 7, 2005, Cornman Tweedy 560, LLC ("Cornman" or "Cornman Tweedy") filed a  
5 letter in this docket alleging that because Arizona Water failed to timely satisfy the compliance  
6 conditions of Decision No. 66893, the CC&N extension conditionally granted was automatically null  
7 and void. The letter stated that Cornman is the owner of approximately 1,120 acres located in the  
8 extension area conditionally granted to Arizona Water in Decision No. 66893, and that all but  
9 approximately 160 acres of that property is included in the EJR Ranch Master Planned Community  
10 ("EJR Ranch") being developed by Robson Communities, Inc. ("Robson"). The letter stated that  
11 Cornman does not desire to have its property included in Arizona Water's CC&N area. The letter  
12 further indicated that Cornman had requested water utility service from its affiliate Picacho Water  
13 Company ("Picacho Water"), and that Cornman would prefer to have water service from its affiliate.  
14 Cornman stated that Cornman, Picacho Water, and Picacho Sewer Company ("Picacho Sewer") are  
15 all affiliates of Robson.

16 Picacho Water and Cornman filed a request to intervene in this docket on May 19, 2005, and  
17 on October 5, 2005, Picacho Water filed a Motion to Consolidate its application for extension of its  
18 CC&N filed in Docket No. W-03528A-05-0281 with this docket.

19 After responsive and reply filings, by Procedural Order issued November 14, 2005,  
20 intervention was granted to Cornman and denied to Picacho Water. After responsive and reply  
21 filings, the Motion to Consolidate was denied by Procedural Order issued March 22, 2006.

22 On April 11, 2005, the Commission's Utilities Division Staff ("Staff") recommended that  
23 Arizona Water's request for an extension of time to comply with Decision No. 66893 be scheduled  
24 for additional evidentiary proceedings on the merits of Arizona Water's request and Robson  
25 Communities' objection to that request.

26 By Procedural Order issued March 22, 2006, an evidentiary hearing was set for the purpose of  
27 taking evidence on the circumstances and events that resulted in Arizona Water not complying with  
28 the time periods established in Decision No. 66893. The March 22, 2003 Procedural Order stated

1 that the setting of a hearing for that purpose did not reopen the Decision granting Arizona Water a  
2 CC&N and that the hearing would not address whether a different water utility should be providing  
3 service to the extension area.

4 The hearing commenced as scheduled before an Administrative Law Judge of the  
5 Commission on July 10, 2006, and concluded on July 11, 2006. Arizona Water, Cornman and Staff  
6 each appeared through counsel, presented evidence, and cross-examined witnesses. On July 14,  
7 2006, and August 18, 2006, Arizona Water filed Certificates of Filing of Compliance Items. Arizona  
8 Water, Cornman and Staff filed briefs on September 15, 2006, and response briefs on October 6,  
9 2006. The matter was taken under advisement pending the submission of a Recommended Opinion  
10 and Order to the Commission.

11 On July 30, 2007, Decision No. 69722 was issued<sup>2</sup> finding that Arizona Water was not able to  
12 comply with the time periods established in Decision No. 66893 because the developer of a portion of  
13 the extension area withdrew its Arizona Department of Water Resources ("ADWR") CAWS  
14 application as directed by Cornman. That Decision stated that circumstances and events beyond  
15 Arizona Water's control made it impossible for Arizona Water to comply with the condition in  
16 Decision No. 66893 that it file a copy of the CAWS for the Florence Country Estates development.  
17 However, because the area in which the Florence Country Estates development was located is  
18 included in an Analysis of Assured Water Supply issued by ADWR on March 2, 2005 for the EJ  
19 Ranch development, the Commission concluded that the issuance of the ADWR Analysis of Assured  
20 Water Supply satisfied the objective of the condition in Decision No. 66893 for submission of a  
21 CAWS for the Florence Country Estates development, that adequate physical water supplies exist for  
22 the development. Decision No. 69722 therefore found that, for purposes of compliance, the  
23 conditions placed on Arizona Water's CC&N extension in Decision No. 66893 had been fulfilled.

24 Decision No. 69722 went on to state that, regarding the property that is owned by Cornman,  
25 the Commission desired an opportunity to consider the overall best interests of the Cornman area and  
26 of the public. Accordingly, we reopened the record in this matter pursuant to A.R.S. § 40-252, and

27 \_\_\_\_\_  
28 <sup>2</sup> The underlying record and proceedings that resulted in the issuance of Decision No. 69722 may be referred to as "Phase  
2" of this docket.

1 remanded the case to the Hearing Division for further proceedings regarding whether Arizona Water  
2 should continue to hold a CC&N for the Cornman extension area at this time. We also stated that  
3 Arizona Water, as the CC&N holder, was entitled to appropriate notice and an opportunity to be  
4 heard regarding deletion of the Cornman property from the CC&N, and therefore placed Arizona  
5 Water on notice that the proceeding on remand would be for the purpose of considering whether the  
6 Cornman property should be deleted from the CC&N extension granted to Arizona Water by  
7 Decision No. 66893. The Hearing Division was directed to conduct further evidentiary proceedings,  
8 including appropriate opportunities for intervention and an appropriate opportunity for Arizona Water  
9 to present its case.

10 Decision No. 69722 also stated that although the prior phase of the proceeding presented  
11 relatively narrow issues, the Commission viewed the proceeding on remand as broad in scope so that  
12 a record would be developed to consider the overall public interest underlying service to the Cornman  
13 property that is included in the extension area granted by Decision No. 66893. The Commission  
14 indicated that by identifying those issues and requiring further proceedings, it was not prejudging the  
15 matter in any way; but instead merely desired an opportunity to consider the broader public interests  
16 implicated therein.

17 On August 17, 2007, Cornman filed an Application for Rehearing and Reconsideration of  
18 Decision No. 69722. The Commission did not act on the request for rehearing and it was therefore  
19 denied by operation of law pursuant to A.R.S. §40-253.

20 By Procedural Order issued September 21, 2007, as modified by Procedural Order issued  
21 October 4, 2007, a procedural conference was scheduled for October 16, 2007 to discuss procedural  
22 issues related to the remand proceeding.

23 The October 16, 2007 procedural conference was held as scheduled.

24 By Procedural Order issued November 8, 2007, a hearing was scheduled for February 14,  
25 2008, and dates for filing testimony by the parties were established.

26 On January 4, 2008, Cornman filed the direct testimony of Jim Poulos, Fred Goldman, and  
27 Paul Hendricks.

28 On January 4, 2008, Arizona Water filed the direct testimony of William Garfield.

1 On January 18, 2008, Staff filed the rebuttal testimony of Steve Olea.

2 On February 4, 2008, a telephonic procedural conference was convened at the request of the  
3 parties.

4 By Procedural Order issued February 4, 2008, the requested filing dates were granted and the  
5 hearing was rescheduled for February 15, 2008.

6 On February 5, 2008, AWC filed the rebuttal testimony of Mr. Garfield and Frederick  
7 Schneider.

8 On February 6, 2008, Cornman filed the rebuttal testimony of Mr. Poulos and Dr. Goldman.

9 On February 7, 2008, Arizona Water filed a Motion to Strike Cornman Tweedy's Irrelevant  
10 Testimony and Exhibits.

11 On February 8, 2008, Corman filed a Motion for Modification of Procedural Schedule.

12 By Procedural Order issued February 12, 2008, the remand hearing was continued pending  
13 the issuance of a subsequent Procedural Order; oral argument was scheduled for February 22, 2008  
14 regarding the Motion to Strike; and other filing dates were established.

15 On February 15, 2008, Staff filed its Pre-Hearing Brief and Response to AWC's Motion to  
16 Strike; AWC filed its Pre-Hearing Brief; and Cornman filed its Response to AWC's Motion to Strike  
17 and Pre-Hearing Brief on Legal Issues.

18 On February 19, 2008, AWC filed a Reply in Support of Motion to Strike Cornman Tweedy's  
19 Irrelevant Testimony and Exhibits.

20 The February 22, 2008 oral argument was conducted as scheduled.

21 By Procedural Order issued September 5, 2008, AWC's Motion to Strike was denied, and a  
22 procedural conference was scheduled for September 17, 2008.

23 On September 17, 2008, a procedural conference was held as scheduled to discuss potential  
24 hearing dates.

25 On September 18, 2008, a Procedural Order was issued setting the hearing ordered by  
26 Decision No. 69722 to commence on December 15, 2008.

27 On December 15, 2008, the hearing convened as scheduled, but due to the unavailability of  
28 counsel for Arizona Water on that date, the parties agreed to continue the hearing to commence on

1 January 29, 2009.

2 On January 23, 2009, Cornman filed a Motion to Continue Hearing Date.

3 By Procedural Order issued January 26, 2009, the Motion to Continue Hearing Date was  
4 granted, and a procedural conference was set to convene on February 6, 2009, for the purpose of  
5 determining and scheduling an appropriate hearing date.

6 On February 6, 2009, a procedural conference convened as scheduled.

7 On March 6, 2009, Cornman and Arizona Water jointly filed a Motion for Submission of  
8 Matter on the Pleadings, proposing a procedure for processing the application without a hearing.

9 By Procedural Order issued April 16, 2009, the procedure proposed by Cornman and Arizona  
10 Water was found to be reasonable. The Procedural Order also established filing dates for the  
11 submission of initial and responsive briefs by the parties.

12 On May 15, 2009, Cornman filed its Initial Closing Brief.

13 On June 19, 2009, Arizona Water filed its Response to Cornman Tweedy's Initial Closing  
14 Brief and Renewed Motion to Strike, and Staff filed its Reply Brief.

15 On July 17, 2009, Corman filed a Reply to the Response Briefs of Arizona Water and Staff.

16 \* \* \* \* \*

17 Having considered the entire record herein and being fully advised in the premises, the  
18 Commission finds, concludes, and orders that:<sup>3</sup>

19 **FINDINGS OF FACT**

20 1. Arizona Water is an Arizona public service corporation certificated to provide water  
21 utility service in eight Arizona counties. Arizona Water operates a total of 18 water systems, serving  
22 approximately 72,000 customers.

23 2. On August 12, 2003, Arizona Water filed with the Commission an application for an  
24 extension of its existing CC&N in Casa Grande, Pinal County, Arizona to include an overall area of  
25 11 square miles. The extension area is depicted in Exhibit A, which is a copy of Hearing Exhibit  
26

27 <sup>3</sup> The underlying record and filings related to this Remand Order may be referred to as "Phase 3" or the "remand  
28 proceeding" of this docket. Due to the duration of this docket and the passage of time, many of the Findings of Fact from  
Phase 2 of this proceeding that were included in Decision No. 69722 are repeated herein for purposes of providing  
context and for ease of understanding.

1 MJW-32 from Phase 2, attached hereto and incorporated herein by reference.

2 3. On April 6, 2004, the Commission issued Decision No. 66893 in this docket.

3 4. Decision No. 66893 found that the requested extension area is adjacent to the eastern  
4 boundary of Arizona Water's existing Casa Grande CC&N and the western boundary of Arizona  
5 Water's existing Tierra Grande CC&N, and would serve to interconnect the two existing service  
6 areas.

7 5. Decision No. 66893 conditionally granted the entire extension area shown on Exhibit  
8 A.

9 6. Decision No. 66893 found that Arizona Water's August 12, 2003 application was  
10 based on two requests for service. Harvard Investments requested that Arizona Water provide water  
11 service to an approximately 480 acre development to be known as Post Ranch located in Section 29  
12 on Exhibit A. Core Group Consultants Ltd. ("Core Group") requested that Arizona Water provide  
13 water service to approximately 240 acres located in Sections 26 and 27 on Exhibit A to serve a  
14 development to be known as Florence Country Estates.

15 7. Decision No. 66893 adopted Staff's recommendation at the hearing to place two  
16 conditions on its approval of Arizona Water's August 12, 2003 application. Arizona Water was  
17 ordered to file (1) a copy of the Developers' CAWS for both the Post Ranch development and the  
18 Florence Country Estates development with the Commission within 365 days of the Decision and (2)  
19 a main extension agreement associated with the extension area within 365 days of the Decision.  
20 Decision No. 66893 included an Ordering Paragraph stating that in the event the Company failed to  
21 meet those conditions within the time specified, the Decision would be deemed null and void without  
22 further Order of the Commission.

23 8. Notice of the August 12, 2003 application and the hearing on the application was  
24 provided in accordance with the law.<sup>4</sup>

25 <sup>4</sup> In a letter docketed on April 21, 2004, two trustees of the Dermer Family Trust claimed that they had no record of  
26 receiving notice of the application; that due to the recent illness and death of a principal of the Dermer Family Trust, the  
27 two trustees were not aware of the application and were unfamiliar with the ramifications and effect of the application on  
28 the Dermer property; and the two trustees did not desire that the Dermer property be subject to Decision No. 66893. The  
Dermer property was located in the extension area and was subsequently purchased by Cornman (Phase 2 Direct  
Testimony of Jim Poulos at 8-9). Arizona Water confirmed that a copy of the notice of the hearing was mailed via First  
Class United States Mail to the address available from the records of the Pinal County Assessor for the Dermer property,

1           9.     No intervention requests were filed, and no objections to Arizona Water's application  
2 were received.

3           10.    Decision No. 66893 found that there are no other public service corporations or  
4 municipally owned water systems authorized to provide or providing water service in the requested  
5 extension area.

6           11.    Decision No. 66893 found that there is a public need and necessity for water utility  
7 services in the proposed extension area.

8           12.    Decision No. 66893 found that Arizona Water is a fit and proper entity to receive an  
9 extension of its CC&N to encompass the requested extension area.

10          13.    On March 30, 2005, prior to the deadline for the compliance filing requirements in  
11 Decision No. 66893, Arizona Water filed a Request for Additional Time to Comply with Filing  
12 Requirement. Arizona Water's filing stated the following: "Harvard Investments and Core Group  
13 Consultants, Ltd., the developers for the expansion areas, have informed the Company that  
14 development in the areas they propose to develop will be delayed for another year.<sup>5</sup> For this reason,  
15 the Company requests that it be given an additional 365 days to file a copy of the Developer's  
16 certificate of assured water supply and the main extension agreements. This request should not  
17 prejudice any other party, as the Company was the only applicant for a certificate of convenience and  
18 necessity for the areas to be served."

19          14.    On April 5, 2005, a Procedural Order was issued directing Staff to respond to Arizona  
20 Water's request on or before April 11, 2005.

21          15.    On April 7, 2005, Cornman filed a letter in this docket signed by Robson's general  
22 counsel, Brian Gerstman. The letter stated that Cornman is the owner of approximately 1,120 acres  
23 located in the extension area conditionally granted to Arizona Water in Decision No. 66893, and that  
24 all but approximately 160 acres of that property is included in the EJR Ranch development. The  
25 letter alleged that because Arizona Water failed to timely satisfy the compliance conditions of

26 and was never returned to the Company as being undeliverable because of an incorrect address, or for any other reason  
27 (Phase 2 Rebuttal Testimony of William Garfield at 4).

28 <sup>5</sup> Arizona Water's witness Garfield testified that the Company's assessment of the status of the developers' projects in  
their approvals led the Company to believe that additional time was needed (Phase 2 Tr. at 151), but that "it was an  
overstatement to say that we were informed." (*Id.*)

1 Decision No. 66893, the CC&N extension conditionally granted was automatically null and void.  
2 Cornman's April 7, 2005 letter further stated that Cornman does not desire to have its property  
3 included in Arizona Water's CC&N area. The letter indicated that Cornman had requested water  
4 utility service from its affiliate, Picacho Water, and that Cornman would prefer to have water service  
5 from its affiliate. Cornman stated that Cornman, Picacho Water, and Picacho Sewer are all affiliates  
6 of Robson, the developer of EJR Ranch. Cornman stated that it would prefer to receive water and  
7 sewer service from the Robson affiliates "for reasons of cost, convenience, timing, avoidance of  
8 confusion and avoidance of unnecessary duplication of facilities." Cornman stated that if Picacho  
9 Water's CC&N is extended to include Cornman's property, the CC&N areas for Picacho Water and  
10 Picacho Sewer will be the same.

11 16. On April 7, 2005, Cornman requested water service from Picacho Water (Phase 2  
12 Direct Testimony of Jim Poulos at 13), and on April 15, 2007, Picacho Water filed an application for  
13 an extension of its CC&N to include the EJR Ranch property located within the Arizona Water  
14 extension area, in Docket No. W-03258A-05-0281.

15 17. On April 11, 2005, Staff filed a memorandum in which it stated the following: "In  
16 light of the change in circumstances in facts supporting the Commission's decision, Staff  
17 recommends Arizona Water Company's request for an extension of time to comply with Decision  
18 No. 66893 be scheduled for additional evidentiary proceedings on the merits of Arizona Water's  
19 request and Robson Communities' objection to that request."

20 18. On April 15, 2005, in Docket No. W-03528A-05-0281, Picacho Water filed an  
21 application to extend its CC&N to include property owned by its affiliate Cornman. The extension  
22 area requested by Picacho Water in that docket is depicted in Exhibit B, attached hereto and  
23 incorporated herein by reference. Exhibit B is a copy of an exhibit from Picacho Water's application  
24 in that docket. The extension area Picacho Water requested in Docket No. W-03528A-05-0281 was  
25 located within the extension area conditionally granted to Arizona Water in Decision No. 66893.<sup>6</sup>

26 19. On April 20, 2005, Arizona Water filed its Response to Staff's Recommendation for  
27

28 <sup>6</sup> On June 26, 2006, Picacho Water filed a letter in Docket No. W-03528A-05-0281, stating that there is no longer a need for service in the area, and stating that Picacho Water "withdraws" its application.

1 Additional Evidentiary Proceedings. Arizona Water argued that its request for additional time should  
2 be approved because Staff presented no reason why it should not be approved.

3 20. On May 10, 2005, a Recommended Order was docketed.

4 21. On May 19, 2005, Robson filed, on behalf of Cornman and Picacho Water, a Motion  
5 to Intervene and Request for Leave to File Reply to AWC's Response to Staff Recommendation for  
6 Additional Evidentiary Proceedings and Exceptions to ALJ's Proposed Order.

7 22. Also on May 19, 2005, Cornman, Picacho and Robson filed exceptions to the May 10,  
8 2005 Recommended Order.

9 23. On May 23, 2005, Arizona Water filed its Response to both May 19, 2005 filings  
10 made by Cornman, Picacho Water, and Robson.

11 24. The Recommended Order docketed on May 10, 2005 was considered at the May 24-  
12 25, 2005 Open Meeting of the Commission, but no vote was taken on it.

13 25. On September 28, 2005, a Procedural Order was issued directing the Commission's  
14 Legal Staff to file, by October 14, 2005, a legal memorandum or brief on the issue of whether the  
15 extension of Arizona Water's CC&N conditionally granted in Decision No. 66893 was void.

16 26. On October 5, 2005, Picacho Water filed the following: (1) Notice of Appearance of  
17 Counsel; (2) Motion to Consolidate; (3) Request to File Brief on the Issue of Whether Arizona Water  
18 Company's CC&N is Null and Void and Request for Oral Argument; and (4) Request for Ruling on  
19 Motion for Intervention.

20 27. On October 14, 2005, Arizona Water filed its Response to Picacho Water Company's  
21 Motion to Consolidate, Request to File Brief and Request for a Ruling.

22 28. On October 24, 2005, Picacho filed its Reply in Support of its Motion to Consolidate,  
23 Request to File Brief, and Request for Ruling on Motion to Intervene.

24 29. On November 14, 2005, a Procedural Order was issued setting a procedural  
25 conference on November 21, 2005, for the taking of oral argument and discussion of procedural  
26 issues in this matter. The November 14, 2005 Procedural Order granted Cornman's Motion to  
27 Intervene, and specified that Cornman's intervention is limited to the issue of whether the CC&N  
28 issued in Decision No. 66893 is void and whether the requested extension of time should be granted.

1 The November 14, 2005 Procedural Order denied Picacho Water's Motion to Intervene.

2 30. The Procedural Conference was held as scheduled on November 21, 2005.

3 31. On November 22, 2005, Staff filed, pursuant to the September 28, 2005 Procedural  
4 Order, its Legal Memorandum on the issue of the validity of the CC&N granted in Decision No.  
5 66893.

6 32. On November 23, 2005, a Procedural Order was issued setting procedural deadlines  
7 for Cornman to file additional arguments on Picacho's Motion to Consolidate, for filing responses to  
8 Staff's Legal Memorandum, and for Staff to file a reply to the responses.

9 33. On November 28, 2005, Snell & Wilmer filed a Notice of Appearance of Counsel on  
10 behalf of Cornman.

11 34. On December 7, 2005, Arizona Water filed its Adoption of Previous Briefing  
12 Regarding Cornman Tweedy, LLC.

13 35. On December 19, 2005, Arizona Water filed its Joinder in and Response to Staff's  
14 Legal Memorandum.

15 36. On December 19, 2005, Cornman filed its Joinder in and Response to Staff's Legal  
16 Memorandum.

17 37. On January 9, 2006, Staff filed its Reply Pursuant to the November 23, 2005  
18 Procedural Order.

19 38. On February 17, 2006, Cornman docketed its first set of data requests to Arizona  
20 Water.

21 39. On February 24, 2006, Cornman filed a Request to Set Hearing Date.

22 40. On March 7, 2006, Cornman filed a Motion to Compel Discovery.

23 41. On March 16, 2006, Arizona Water filed its (1) Response to Intervenor Cornman  
24 Tweedy's Request to Set Hearing Date; (2) Response to Motion to Compel and Alternative Motion  
25 for Protective Order; (3) Motion for Procedural Conference; and (4) Request for Additional Time to  
26 Comply with Filing Request.

27 42. On March 22, 2006, a Procedural Order was issued denying the Motion to  
28 Consolidate; finding that Arizona Water's Request for Additional Time to Comply and the

1 Procedural Order issued April 5, 2005 stayed Decision No. 66893's time for compliance with the  
2 conditions of that Decision and ordering that Arizona Water's CC&N for the extension area remained  
3 valid and in effect until a Commission Ruling on the Request for Additional Time to Comply; setting  
4 a Procedural Conference for the purpose of discussing discovery issues and setting a hearing date;  
5 and stating that the hearing would not be a reopening of the Decision granting Arizona Water a  
6 CC&N, but that instead, the scope of the hearing would be limited to the circumstances and events  
7 that resulted in Arizona Water not complying with the time periods established in Decision No.  
8 66893.

9 43. On March 28, 2006, Arizona Water filed a Motion to Vacate and Reschedule  
10 Procedural Conference. On March 30, 2006, Cornman filed a Response to Arizona Water's Motion.  
11 Also, on March 30, 2006, a Procedural Order was issued rescheduling the Procedural Conference,  
12 which subsequently convened on April 12, 2006.

13 44. On April 19, 2006, a Procedural Order was issued setting a hearing for July 10, 2006,  
14 and setting associated procedural deadlines.

15 45. On June 12, 2006, Staff filed its Staff Report.

16 46. On June 13, 2006, Arizona Water filed the Phase 2 direct testimony of its witness  
17 Michael J. Whitehead.

18 47. On July 5, 2006, Staff filed the Phase 2 rebuttal testimony of Steve Olea.

19 48. On July 6, 2006, Arizona Water filed the Phase 2 rebuttal testimony of William M.  
20 Garfield.

21 49. On July 6, 2006, Cornman filed the Phase 2 rebuttal testimony of Jim Poulos.

22 **Phase 2 Hearing Record**

23 50. The Phase 2 hearing convened as scheduled on July 10, 2006, before an  
24 Administrative Law Judge of the Commission. Arizona Water, Cornman and Staff each appeared  
25 through counsel, presented evidence, and cross-examined witnesses. The hearing concluded on July  
26 11, 2006.

27 51. On July 14, 2006, and August 18, 2006, Arizona Water filed Certificates of Filing of  
28 Compliance Items.

1           52.     Arizona Water, Cornman and Staff filed briefs on September 15, 2006, and response  
2 briefs on October 6, 2006. The matter was taken under advisement pending the submission of a  
3 Recommended Opinion and Order to the Commission.

4           53.     Michael J. Whitehead testified on behalf of Arizona Water to describe and summarize  
5 the contacts the Company had with developers in this case both before and after the issuance of  
6 Decision No. 66893, and the Company's efforts to obtain main extension agreements from the  
7 developers in the extension area. Exhibits admitted into evidence at the hearing documented  
8 numerous contacts between entities representing developers planning and executing developments  
9 within the extension area.

10          54.     Arizona Water maintains, and regularly amends, a Master Plan for its Pinal Valley  
11 operations, which includes its Casa Grande, Stanfield, Tierra Grande, Arizona City and Coolidge  
12 systems. (Phase 2 Whitehead Direct Testimony at 5.)

13          55.     Arizona Water plans its water system based on development needs and the overall  
14 engineering plan for construction of storage facilities, transmission mains and other physical plant, in  
15 terms of future water supplies, water quality and treatment, fire suppression requirements, and  
16 efficient water delivery to present and future customers. (*Id.* at 5-6.)

17          56.     The purpose of the CC&N extension request in this docket was not only to serve the  
18 Post Ranch and Florence Country Estates developments, both of which requested service prior to the  
19 Company's filing of the CC&N extension request, but also to facilitate the completion of a grid  
20 distribution system to tie the Casa Grande system to the Tierra Grande system in order to efficiently  
21 serve entities that would be constructing developments along Florence Boulevard east of Interstate  
22 10. (*See* Phase 2 Tr. at 44-45.)

23          57.     On November 9, 2005, Arizona Water received from the Arizona Department of  
24 Environmental Quality ("ADEQ") an Approval to Construct ("ATC") for the "'Tierra Grande  
25 Interconnect' - consisting of installing approximately 35,000 feet of 16" DI [ductile iron]  
26 transmission mains along Florence Blvd. to connect water systems of Tierra Grande and Casa  
27 Grande." (Phase 2 Ex. MJW-13.) The ATC states that it is void if construction has not started within  
28 one year of issuance, but that upon receipt of a written request for an extension of time, ADEQ may

1 grant an extension. (*Id.*) Mr. Whitehead testified that Arizona Water intends to request an extension  
2 of time for the ATC at the proper time. (Phase 2 Tr. at 45.) An extension of time for an ATC may be,  
3 and generally is, requested after the expiration date. (*Id.* at 65-66.)

4 58. Arizona Water has been contacted regarding the provision of water utility service to  
5 the following planned developments located in the extension area: Florence Country Estates, Post  
6 Ranch, Hacienda Estates, Hacienda Highlands, Storey Farms, Springwater Pointe, JBC Development,  
7 and Rose Law. The locations of the developments are shown on Exhibit A, which is a copy of Phase  
8 2 Hearing Exhibit MJW-32, attached hereto and incorporated herein by reference.

9 59. The extension area includes a total of 11 sections, as shown in Exhibit A: Sections 19,  
10 20, 21, 23, the west ½ of 24, the west ½ of 25, 26, 27, 28, 29 and 30, Township 6 South, Range 7  
11 East. Sections 19 and 30 are contiguous to Arizona Water's existing certificated area for its Casa  
12 Grande system, and the west half of Section 24 and the west half of Section 25 are contiguous to  
13 Arizona Water's certificated area for its Tierra Grande system, as the east half of Sections 24 and the  
14 east half of Section 25 are already included in the Company's Tierra Grande CC&N area. The  
15 extension area is bounded on the north by Storey Road, and on the south by Earley Road. Florence  
16 Boulevard also runs east/west and bisects the extension area, between Storey Road and Earley Road.

17 60. The Post Ranch development, located within Section 29, requested that Arizona Water  
18 extend its CC&N into the Post Ranch area on May 24, 2003. ADWR issued a CAWS to Harvard  
19 Casa Grande Ventures, LLC for the Post Ranch development on February 22, 2006. (Phase 2 Ex.  
20 WMG-3.)

21 61. The Hacienda Estates and Hacienda Highlands developments, both located in a  
22 portion of Section 30, also requested service from Arizona Water. These two projects applied for a  
23 CAWS on March 20, 2006, and Arizona Water signed a notice of intent to serve ("NOI") for the two  
24 projects. (Phase 2 Tr. at 196-198; Ex. AWC-4.)

25 62. The Storey Farms development, located in portions of Sections 20 and 21, requested  
26 service from Arizona Water on May 19, 2006.

27 63. The Springwater Pointe development is located in a portion of Section 30. On August  
28 16, 2006, AWC docketed a copy of a Main Extension Agreement between AWC and Springwater

1 Pointe, LLC. This project applied for a CAWS on April 27, 2006. (Phase 2 Tr. at 196-198; Ex.  
2 AWC-4.)

3 64. The JBC Development is located in a portion of Section 23. Arizona Water obtained  
4 an ATC from ADEQ for the development on March 9, 2006. (Phase 2 Ex. MJW-34.) On July 14,  
5 2006, AWC docketed a copy of a main extension agreement with the JBC Development.

6 65. The Rose Law (AG Robertson) development, located in portions of Sections 22, 23,  
7 26 and 27, requested service from Arizona Water on October 26, 2005.

8 66. The Florence Country Estates development, located in portions of Section 26 and 27,  
9 requested that Arizona Water extend its CC&N into the Florence Country Estates area by letter dated  
10 June 17, 2003, from Core Group. The letter requested that the line extension agreement process be  
11 initiated for its proposed off-site water main, and informed Arizona Water that Florence Country  
12 Estates had submitted an application to ADWR for a CAWS.

13 67. After correspondence between Core Group and the Company regarding water plans  
14 for the Florence Country Estates development, the Company mailed a copy of its standard Main  
15 Extension Agreement to Core Group on October 9, 2003.

16 68. Arizona Water received an ATC from ADEQ for an off-site water main extension and  
17 on-site water distribution system to serve Florence Country Estates on January 8, 2004. The ATC  
18 stated that it is void if construction has not started within one year of issuance, but that upon receipt  
19 of a written request for an extension of time, ADEQ may grant an extension.

20 69. William M. Garfield, President of Arizona Water, presented testimony on behalf of  
21 AWC regarding the process necessary for a developer to obtain a CAWS.

22 70. The basic requirements for obtaining a CAWS include demonstrating that the  
23 developer's subdivision has sufficient supplies of water available to meet the development's full  
24 water demands for a term of 100 years, and that such water supplies are continuously, physically and  
25 legally available to serve the development. (Phase 2 Garfield Direct at 4.) If the development is  
26 located in an active management area ("AMA"), the developer must also prove that water use within  
27 the development complies with ADWR's management plan for the AMA within which the  
28 development is located, and that water use complies with ADWR's management goal for the AMA.

1 (*Id.*) The developer must work with ADWR staff to determine the water demand for the development  
2 at full buildout, and the developer must provide some form of financial assurance that the facilities  
3 needed to serve the water needs for the development will be constructed, typically in the form of  
4 construction assurance. (*Id.* at 5.)

5 71. Municipal jurisdictions also have a role in the CAWS process, such as approvals of  
6 preliminary and final development plats. (*Id.* at 4.)

7 72. In order to issue a CAWS for a development to be served by a water company, ADWR  
8 requires that the development be located within a water company's certificated area, and that the  
9 water company sign a NOI. (*Id.* at 6.)

10 73. In the Pinal AMA, where the extension area is located, ADWR has determined that  
11 125 gallons of water per capita per day can be used from groundwater, and that all usage above this  
12 amount must come from renewable sources. (*Id.*) Typically, developers comply with the AMA's  
13 management goal by enrolling their development with the Central Arizona Groundwater  
14 Replenishment District ("CAGRDR"). (*Id.*) A development with irrigation grandfathered groundwater  
15 rights can also meet the management goal requirements by extinguishing such rights and pledging  
16 them to the development. (*Id.*) A water company participates with the developer in executing  
17 agreements with the Central Arizona Water Conservation District ("CAWCD"), which oversees the  
18 CAGRDR, for enrollment of the development in the CAGRDR. (*Id.* at 6.)

19 74. In regard to the Florence Country Estates development, Arizona Water approved one  
20 or more NOIs for the development; executed and reported an annual reporting agreement between the  
21 Company, the developer and the San Carlos Irrigation and Drainage District; and executed the  
22 standard municipal provider reporting agreement with the CAWCD, because the development was  
23 being enrolled in the CAGRDR (*Id.* at 7-9).

24 75. Water companies have little control over when a CAWS will be issued by ADWR.

25 76. Arizona Water completed all the requirements for a water provider in the CAWS  
26 process for the Florence Country Estates development.

27 77. Jim Poulos testified on behalf of Cornman regarding Cornman's role in the CAWS  
28 process for the Florence Country Estates development.

1           78.     On October 18, 2004, an application for an Analysis of Assured Water Supply for EJR  
2 Ranch was submitted to ADWR, signed by signatories on behalf of trustees of the Dermer Family  
3 Trust, Hwy 287 Florence Blvd. Inc., Sun Lakes – Casa Grande Development LLC, and Cornman.  
4 (See Phase 2 Ex. WMG-13.) The October 18, 2004 application was prepared at the direction of Mr.  
5 Poulos (Phase 2 Tr. at 234), listed Arizona Water and Picacho Water as the water provider, and  
6 included Sections 26 and 27, the Florence Country Estates development property. (*Id.*) The  
7 application did not include a NOI from either Arizona Water or Picacho Water, but instead requested  
8 that ADWR complete the analysis without the NOI forms.

9           79.     Robson did not notify Arizona Water that it would be listed as a water provider for  
10 EJR Ranch on the October 18, 2004 application for an Analysis of Assured Water Supply for EJR  
11 Ranch (Phase 2 Tr. at 234-235), and did not ask Arizona Water to provide a NOI for the application,  
12 but instead stated that an NOI was not yet available. (*Id.* at 235.) At the hearing, Mr. Poulos agreed  
13 that Arizona Water would have provided a NOI, but that in effect, EJR Ranch was requesting that  
14 ADWR process the application for an Analysis of Assured Water Supply for EJR Ranch without the  
15 necessity of requesting an NOI from Arizona Water. (*Id.* at 236.)

16           80.     On October 29, 2004, at the request of Cornman, Core Group made a request of  
17 ADWR in writing that the file concerning the application for a CAWS for Florence Country Estates  
18 be closed. (Phase 2 Ex. CT-10A, Revised Rebuttal Testimony of Jim Poulos at 6, 8; 9; Ex. WMG-12;  
19 Ex. CT-17, CT-18, CT-19, CT-20.) Cornman at that time told Brian Carpenter of HWY-Florence  
20 Boulevard, Inc., and Madison Diversified 882 Corp., that he should withdraw the CAWS application  
21 for Florence Country Estates because the pending CAWS for Florence Country Estates would be  
22 inconsistent with the land plan Cornman was developing. (Phase 2 Ex. CT-10A, Revised Rebuttal  
23 Testimony of Jim Poulos at 6.)

24           81.     Mr. Poulos' original pre-filed testimony indicated that the first time Cornman was  
25 aware that a CAWS application had been filed and then withdrawn by the sellers of the Florence  
26 Country Estates property was when Mr. Poulos read the prefiled direct testimony of Arizona Water's  
27 witness Mr. Garfield in this proceeding (Phase 2 Ex. CT-10). However, after being informed on the  
28 evening of June 10, 2006, of the existence of email documentation regarding this issue (Phase 2 Tr. at

1 250-254), Mr. Poulos redacted and added detail to his testimony at the hearing, stating that he had  
2 informed associate counsel for Robson that the Florence Country Estates property CAWS should be  
3 revoked. (*Id.* at 210, 250-262.) Mr. Poulos also sponsored a Hearing Exhibit showing that on  
4 October 28, 2004, Cornman's Vice-President Steve Soriano instructed the same associate counsel for  
5 Robson via e-mail, copied to Mr. Poulos, that the owners of the Florence Country Estates property  
6 should "pull their application and close the file." (Phase 2 Ex. CT-20.)

7 82. At the hearing, Mr. Poulos testified that Robson's general counsel, Mr. Gerstman, was  
8 present during the first day of the hearing. (Phase 2 Tr. at 206.) Mr. Poulos stated that following the  
9 cross-examination of Arizona Water's witness, Mr. Garfield, regarding the withdrawal of the CAWS  
10 by the owners of the Florence Country Estates property owners, Mr. Gerstman asked the Vice-  
11 President of Cornman to review Cornman files to confirm the accuracy of the statements in Mr.  
12 Poulos' original testimony regarding the issue. (*Id.* at 207.) Mr. Poulos testified that documents  
13 marked and admitted as Phase 2 Hearing Exhibits CT-17, CT-18, CT-19 and CT-20, consisting of  
14 emails regarding the Florence Country Estates property CAWS, were subsequently found in Mr.  
15 Soriano's e-mail archives. (Phase 2 Tr. at 206-211.)

16 83. Cornman closed on its acquisition of the Florence Country Estates development  
17 property on December 17, 2004. (Phase 2 Direct Testimony of Jim Poulos at 6.) Mr. Poulos testified  
18 that Robson does not plan to develop the Cornman property in the near term, but instead hold the  
19 property as an investment for tax purposes. (*Id.* at 8-11.)

20 84. Sections 26 and 27, the area in which the Florence Country Estates development was  
21 located, were included in an Analysis of Assured Water Supply issued by ADWR on March 2, 2005,  
22 for the EJR Ranch development. The Analysis of Assured Water Supply concluded that the projected  
23 demands for the entire EJR Ranch development will be physically and continuously available for 100  
24 years.

25 85. The extension area conditionally granted in Decision No. 66893, and approved  
26 unconditionally in Decision No. 69722, lies between two existing areas certificated to Arizona Water,  
27 the Casa Grande system to the west, and the Tierra Grande system to the east.

28 86. Arizona Water's Master Plan calls for the completion of a grid distribution system

1 across the extension area to tie the Casa Grande system to the Tierra Grande system in order to  
2 efficiently serve entities that will be constructing developments in the extension area.

3 87. Decision No. 69722 found that the March 2, 2005 issuance of the ADWR Analysis of  
4 Assured Water Supply for the area including the Florence Country Estates development satisfied the  
5 objective of the condition in Decision No. 66893 for submission of a CAWS for the Florence Country  
6 Estates development that adequate physical water supplies exist for the development.

7 88. In its Phase 2 Opening Brief, Staff stated that there are several reasons why the time  
8 extension should be granted in this case, and several reasons why it should not.

9 89. Staff stated that facts in favor of granting the extension of time included the following:  
10 Arizona Water is capable and willing to serve the extension area, and remains a fit and proper entity  
11 to serve the extension area, as the Commission found in Decision No. 66893. Staff noted that one of  
12 its major concerns, making sure enough water is available to serve planned development, has been  
13 satisfied with the ADWR Analysis of Assured Water Supply for the extension area. In addition, Staff  
14 indicated that the configuration of Arizona Water's master distribution plan, which includes the  
15 extension area, would benefit customers. (Phase 2 Staff Opening Br. at 2.)

16 90. Staff indicated that facts not in favor of granting the extension of time included the  
17 following: the current property owner, Cornman, does not wish to be served by Arizona Water;  
18 Cornman's development plan timeframe for EJR Ranch has been extended beyond the one year  
19 requirement in Decision No. 66893; and there is another provider in the area. (*Id.* at 2-3.)

20 91. Staff concluded that if the Commission granted Arizona Water a time extension, it was  
21 Staff's position that the time extension should not include the Cornman property, but the rest of the  
22 extension area should remain in Arizona Water's CC&N territory. (*Id.* at 3.)

23 **Findings From Phase 2 (Decision No. 69722)**

24 92. In Decision No. 69722, we found that the factors Staff cited in favor of granting the  
25 time extension significantly outweighed the facts presented in support of not granting the extension  
26 of time.

27 93. We also found that the factors set forth by Staff in support of not granting the time  
28 extension did not justify denying the time extension solely for the Cornman property. We

1 recognized, as did Staff, that Cornman had extended its planned development timeframe beyond that  
2 originally planned by the owners of the Florence Country Estates property, but the development  
3 timeframe for other properties within the extension area had likewise been extended further than  
4 originally foreseen. We indicated that development had proceeded in the extension area, and no party  
5 recommended that other undeveloped properties in the extension area be excluded from an extension  
6 of time; nor should they be excluded, because to do so could have the effect of eroding public  
7 reliance on the certainty of the Commission's CC&N process.

8       94. We also recognized that Cornman preferred that its affiliate Robson provide water  
9 utility service to its entire planned development located within the Arizona Water CC&N extension  
10 area. However, we indicated that the Phase 2 proceeding was not the proper venue for determining  
11 whether a different provider should provide service to Cornman's development. As stated in the  
12 Procedural Order issued March 22, 2006, the Phase 2 evidentiary hearing was set for the purpose of  
13 taking evidence on the circumstances and events that resulted in Arizona Water not being able to  
14 comply with the time periods established in Decision No. 66893. We found that the evidence  
15 presented clearly demonstrated that Cornman's actions resulted in Arizona Water being unable to  
16 comply with that Decision, and stated that the Phase 2 proceeding did not reopen the Decision  
17 granting Arizona Water a CC&N extension, and did not address whether a different water utility  
18 should be authorized to provide service to the extension area. We pointed out that the Phase 2  
19 proceeding was not noticed as a request for deletion from a CC&N territory.

20       95. The Commission found in Decision No. 66893 that Arizona Water is a fit and proper  
21 entity to serve the extension area, and that there was a need for service in the extension area. Staff's  
22 witness testified at the Phase 2 hearing that Arizona Water continues to be a fit and proper entity to  
23 serve the extension area, and is capable and willing to serve it. (Phase 2 Tr. at 310.)

24       96. As described in Decision No. 69722, the evidence presented in the Phase 2 hearing  
25 demonstrated that Arizona Water could not comply with the time periods established in Decision No.  
26 66893 because the developer of Sections 26 and 27 withdrew its ADWR CAWS application at the  
27 direction of Cornman. We stated that this circumstance and event was caused by Cornman and was  
28 beyond Arizona Water's control.

1           97.     In Decision No. 69722, we also found that the availability of water for the extension  
2 area was proven by the March 2, 2005 issuance of the ADWR Analysis of Assured Water Supply for  
3 the area including the Florence Country Estates development, and the objective of the condition in  
4 Decision No. 66893 for submission of a CAWS for the Florence Country Estates development that  
5 adequate physical water supplies exist for the development was therefore satisfied.

6           98.     We therefore found that, for purposes of compliance, the conditions placed on Arizona  
7 Water's CC&N extension in Decision No. 66893 were fulfilled, and it was in the public interest to  
8 extend the deadline for compliance with the conditions of Decision No. 66893 to the date of Decision  
9 No. 69722.

10          99.     Decision No. 69722 went on to state that there may not be a current need or necessity  
11 for water service in the portions of the extension area that are owned by Cornman, and Cornman does  
12 not wish to have its property included in Arizona Water's CC&N at this time. The Decision  
13 indicated that those issues warranted further examination and may have some relevance to the best  
14 interests of the area ultimately to be served.

15          100.    Decision No. 69722 further stated that it was in the public interest to remand this case  
16 to the Hearing Division for further proceedings regarding whether Arizona Water should continue to  
17 hold a CC&N for the Cornman extension area at this time.

18          101.    Decision No. 69722 stated that, as the CC&N holder, Arizona Water was entitled to  
19 appropriate notice and an opportunity to be heard and that the subsequent proceeding on remand  
20 would be undertaken for the purpose of considering whether the Cornman property should be deleted  
21 from the CC&N extension granted to Arizona Water by Decision No. 66893.

22          102.    We therefore directed the Hearing Division to conduct further evidentiary  
23 proceedings, including allowing appropriate opportunities for intervention and an appropriate  
24 opportunity for Arizona Water to be heard regarding whether the Cornman property should be  
25 deleted from AWC's CC&N.

26          103.    Finally, Decision No. 69722 indicated that the proceeding on remand should be broad  
27 in scope so that the Commission may develop a record to consider the overall public interest  
28 underlying service to the Cornman property that is included in the extension area granted by Decision

1 No. 66893. Decision No. 69722 concluded that, by identifying these issues and requiring further  
2 proceedings, the Commission was not prejudging this matter in any way; instead, the Commission  
3 merely desired an opportunity to consider the broader public interests implicated therein.

4 **Phase 3 Procedural History**

5 104. On August 17, 2007, Corman filed an Application for Rehearing and Reconsideration  
6 of Decision No. 69722. The Commission did not act on the request for rehearing and it was therefore  
7 denied by operation of law pursuant to A.R.S. §40-253.

8 105. By Procedural Order issued September 21, 2007, as modified by Procedural Order  
9 issued October 4, 2007, a procedural conference was scheduled for October 16, 2007 to discuss  
10 procedural issues related to the remand proceeding.

11 106. At the October 16, 2007 procedural conference, AWC and Cornman expressed  
12 disagreement regarding the need for the presentation of additional facts in the remand proceeding.  
13 Whereas AWC believed that the record was factually complete, Cornman wished to present  
14 additional evidence that it believed was relevant to the remand issues referenced in Decision No.  
15 69722. AWC took the position that dispositive facts under Arizona law were already in the record,  
16 but acknowledged the Commission's stated desire in Decision No. 69722 for broader proceedings  
17 and a full record.

18 107. AWC and Cornman also disagreed regarding the burden of proof in the remand  
19 proceeding. AWC asserted that Cornman, or any party seeking deletion of the Cornman property  
20 from AWC's CC&N territory, bears the burden of proof. Cornman disagreed that it bears the full  
21 burden of proof in the remand proceeding. Cornman conceded, however, that it is in part up to  
22 Cornman to provide evidence in order to create a fully developed record to inform the Commission's  
23 decision.

24 108. By Procedural Order issued November 8, 2007, a ruling on the scope of the remand  
25 proceeding indicated that the Commission's determination in Decision No. 69722 that additional  
26 proceedings should be held regarding whether AWC should continue to hold a CC&N for the  
27 Cornman extension area did not place the burden of proof on AWC regarding whether AWC should  
28 continue to hold a CC&N for the Cornman extension area, but included a finding that as the CC&N

1 holder, AWC is entitled to appropriate notice and an opportunity to be heard. That Procedural Order  
2 also stated that although Decision No. 69722 did not directly address whether Cornman bears the  
3 burden of proof, it was appropriate to allow Cornman ample opportunity to present additional  
4 relevant evidence that Cornman believes may be necessary to inform the Commission's decision in  
5 this remand proceeding regarding whether AWC should continue to hold a CC&N for the Cornman  
6 extension area. The Procedural Order also scheduled a hearing for February 14, 2008, and  
7 established dates for filing testimony by the parties.

8 109. On January 4, 2008, Cornman filed the direct testimony of Jim Poulos, Fred Goldman,  
9 and Paul Hendricks.

10 110. On January 4, 2008, Arizona Water filed the direct testimony of William Garfield.

11 111. On January 18, 2008, Staff filed the rebuttal testimony of Steve Olea.

12 112. On February 4, 2008, a telephonic procedural conference was convened at the request  
13 of the parties. Counsel for AWC, Cornman, and Staff participated through counsel. Counsel for  
14 AWC and Cornman stated that they had agreed to extend the date for the filing of rebuttal testimony  
15 from February 1, 2008, to February 5, 2008. Counsel for Staff stated that Staff did not object to the  
16 filing extension. AWC also requested that the date for commencement of the remand hearing be  
17 continued from February 14, 2008, to February 15, 2008, due to its counsel's hearing conflict in a  
18 Federal court proceeding. Counsel for Cornman and Staff stated that they did not object to the  
19 continuance.

20 113. By Procedural Order issued February 4, 2008, the requested filing dates were granted  
21 and the hearing was rescheduled to February 15, 2008.

22 114. On February 5, 2008, AWC filed the rebuttal testimony of Mr. Garfield and Frederick  
23 Schneider.

24 115. On February 6, 2008, Cornman filed the rebuttal testimony of Mr. Poulos and Dr.  
25 Goldman.

26 116. On February 7, 2008, Arizona Water filed a Motion to Strike Cornman Tweedy's  
27 Irrelevant Testimony and Exhibits.

28 117. On February 8, 2008, Corman filed a Motion for Modification of Procedural Schedule.

1 118. By Procedural Order issued February 12, 2008, the remand hearing was continued  
2 pending the issuance of a subsequent Procedural Order; oral argument was scheduled for February  
3 22, 2008 regarding the Motion to Strike; and other filing dates were established.

4 119. On February 15, 2008, Staff filed its Pre-Hearing Brief and Response to AWC's  
5 Motion to Strike; AWC filed its Pre-Hearing Brief; and Cornman filed its Response to AWC's  
6 Motion to Strike and Pre-Hearing Brief on Legal Issues.

7 120. On February 19, 2008, AWC filed a Reply in Support of Motion to Strike Cornman  
8 Tweedy's Irrelevant Testimony and Exhibits.

9 121. The February 22, 2008 oral argument was conducted as scheduled.

10 122. By Procedural Order issued September 5, 2008, AWC's Motion to Strike was denied,  
11 and a procedural conference was scheduled for September 17, 2008.

12 123. On September 17, 2008, a procedural conference was held as scheduled to discuss  
13 potential hearing dates.

14 124. On September 18, 2008, a Procedural Order was issued setting the hearing ordered by  
15 Decision No. 69722 to commence on December 15, 2008.

16 125. On December 15, 2008, the hearing convened as scheduled, but due to the  
17 unavailability of counsel for Arizona Water on that date, the parties agreed to continue the hearing to  
18 commence on January 29, 2009.

19 126. On January 23, 2009, Cornman filed a Motion to Continue Hearing Date.

20 127. By Procedural Order issued January 26, 2009, the Motion to Continue Hearing Date  
21 was granted, and a procedural conference was set to convene on February 6, 2009, for the purpose of  
22 determining and scheduling an appropriate hearing date.

23 128. On February 6, 2009, a procedural conference convened as scheduled. Counsel for  
24 Arizona Water and Cornman jointly proposed that the hearing be vacated and that a Recommended  
25 Order be submitted to the Commission based not on an evidentiary hearing, but on the prefiled  
26 testimony docketed in anticipation of the hearing. At the procedural conference, Arizona Water and  
27 Cornman were directed to make their request in writing, keeping in mind that Arizona Water had  
28 filed a motion requesting that certain portions of Cornman's prefiled testimony be stricken, and that

1 the motion had been denied based in part on the premise that Cornman should have the opportunity,  
2 at hearing, to develop its factual positions.

3 129. On March 6, 2009, Cornman and Arizona Water jointly filed a Motion for Submission  
4 of Matter on the Pleadings, proposing a procedure for processing the application without a hearing.  
5 The jointly proposed procedure included admission of the prefiled testimony into evidence subject to  
6 specific objections of the parties either previously stated in the pleadings, or to be raised in their  
7 respective closing briefs.

8 130. By Procedural Order issued April 16, 2009, the procedure proposed by Cornman and  
9 Arizona Water was found to be reasonable, with the caveat that at any time, either prior to the  
10 submission of a recommended order to the Commission, or thereafter, the matter may be set for  
11 hearing if deemed necessary by the Hearing Division or the Commission. The Procedural Order also  
12 established filing dates for the submission of initial and responsive briefs by the parties.

13 131. On May 15, 2009, Cornman filed its Initial Closing Brief.

14 132. On June 19, 2009, Arizona Water filed its Response to Cornman's Initial Closing  
15 Brief and Renewed Motion to Strike, and Staff filed its Reply Brief.

16 133. On July 17, 2009, Cornman filed a Reply to the Response Briefs of Arizona Water and  
17 Staff.

### 18 **Phase 3 Testimony and Arguments**

19 134. As discussed above, the parties agreed that the Decision in this remand proceeding  
20 should be based on the pre-filed testimony of their respective witnesses and the legal arguments made  
21 in the parties' briefs, without the need for a hearing. The proposed procedure was found to be  
22 acceptable by the administrative law judge and the additional record in the remanded Phase 3 of this  
23 docket will therefore be considered without cross-examination of witnesses.<sup>7</sup>

24

25 <sup>7</sup> We note that AWC reasserted its previous request to strike a substantial portion of the Phase 3 pre-filed testimony  
26 submitted by Cornman's witnesses, on the basis that the identified testimony was irrelevant to the issue of whether the  
27 Cornman property should be deleted from AWC's CC&N. After reconsidering AWC's renewed Motion to Strike, we  
28 find that the administrative law judge's prior ruling denying AWC's motion should be followed. In the September 5,  
2008 Procedural Order, the administrative law judge ruled that it would not be in the spirit of the Decision No. 69722  
remand to strike the Cornman testimony and "Cornman should have the opportunity to develop its factual and legal  
positions..." (*Id.* at 9.) Consistent with the prior ruling, we find that the testimony filed by Cornman's witnesses should  
be considered as part of the record in this proceeding.

1           **Cornman Tweedy's Position**

2           135. Cornman claims that the Commission's intent in adopting the remand language of  
3 Decision No. 69722 was to reconsider whether the Cornman property should remain within AWC's  
4 CC&N. Cornman cites specifically to the following language from that Decision to support its  
5 argument that the remand proceeding was intended to effectively reopen consideration of whether it  
6 is in the public interest for AWC to retain the CC&N for that area:

7                         [W]e are concerned that there may not be a current need or necessity for  
8 water service in the portions of the extension area that are owned by  
9 Cornman. We also recognize that Cornman does not wish to have its  
10 property included in Arizona water's CC&N at this time. We believe that  
these issues bear further examination and that they may have some  
relevance to the best interests of the area ultimately to be served.

11                         \* \* \*

12                         [R]egarding the property that is owned by Cornman, we would like an  
13 opportunity to consider the overall best interests of the Cornman area and  
of the public. We will therefore reopen the record in this matter pursuant  
14 to A.R.S. §40-252 and remand this case to the Hearing Division for further  
proceedings regarding whether Arizona Water should continue to hold a  
CC&N for the Cornman extension area at this time.<sup>8</sup>

15           136. Cornman contends that the explicit language in Decision No. 69722 requires  
16 adjudication of what is in the best interests of the Cornman area and the public, including: (1) Is the  
17 public interest best served by a Commission preference for integrated water and wastewater providers  
18 over stand-alone water providers; (2) Is there a current need and necessity for water service for the  
19 Cornman property; (3) What weight should be accorded to the desire of Cornman not to be included  
20 in AWC's CC&N; and (4) Is the public interest served by inclusion of the Cornman property in  
21 AWC's CC&N. (Cornman Initial Brief, at 2.)

22           137. On the first point, Cornman argues that the Commission has made clear its preference  
23 for integrated water and wastewater providers, as opposed to stand-alone water companies such as  
24 Arizona Water, due to alleged efficiencies and operational benefits that are presented through  
25 integrated companies. Cornman witness Paul Hendricks stated that integration is beneficial in a  
26 number of ways, including allowing collection of delinquent wastewater bills; enhanced groundwater  
27

28                         <sup>8</sup> Decision No. 69722, at 4.

1 management; greater system design flexibility; enhanced security; customer convenience; and  
2 operational cost savings. (Phase 3 Hendricks Direct Testimony, at 4-15.)

3 138. With respect to the current need and necessity for service, Cornman witness Jim  
4 Poulos indicated that after Robson's acquisition of the Cornman property there was a dramatic  
5 increase in the property's value, followed by a precipitous decline in value and in the demand for new  
6 residential housing. (Phase 3 Poulos Direct Testimony, at 10.) As a result of current real estate  
7 market conditions, Mr. Poulos claimed that development plans for the property have been shelved  
8 indefinitely and there is no need or necessity for water service to the Cornman property. (*Id.*)  
9 Cornman argues that the lack of a current need for service to its property is uncontroverted and, in  
10 accordance with the Commission's express interest in considering the issue of current need for  
11 service on remand, Cornman asserts that its property should not be included in AWC's CC&N.

12 139. Cornman next argues that because it does not wish to have its property included in  
13 AWC's CC&N, and there is no current request for water service by any provider, the property should  
14 be deleted from AWC's CC&N. Cornman contends that since its acquisition of the property, it has  
15 consistently requested not to be included in AWC's CC&N. Cornman claims that the wishes of the  
16 property owner should always be considered by the Commission as one of the public interest  
17 considerations regarding CC&Ns, as well as whether a request for service exists for the property.  
18 (Cornman Initial Brief, at 12-14.)

19 140. Cornman also asserts that the overall public interest is not served by continuing to  
20 allow inclusion of the Cornman property in AWC's CC&N area. Cornman witness Poulos stated that  
21 a premature granting of a CC&N could frustrate development plans of landowners; result in a  
22 potential split of water providers within a single development; foreclose the ability of developers to  
23 obtain integrated services; and would be inconsistent with the Commission's current policy of  
24 requiring requests for service for CC&N extensions. (Phase 3 Poulos Direct Testimony, at 14.)  
25 Cornman claims that circumstances have changed materially since the Commission's original  
26 decision to grant AWC's conditional CC&N extension in Decision No. 66893, including: a change in  
27 ownership of the Cornman property; the ongoing opposition by Cornman to being served by AWC;  
28 the change in development plans for the property; the ability of Cornman's affiliate companies to

1 provide integrated utility service to the property; and the Commission's movement to generally  
2 requiring requests for service before granting CC&N extensions. (*Id.* at 6-10, 14.)

3 141. With respect to the legal arguments raised by AWC and Staff, Cornman asserts that  
4 the Commission gave a clear directive in Decision No. 69722 that there should be further evidentiary  
5 proceedings to consider whether the Cornman property should be deleted from the CC&N extension  
6 granted to AWC in Decision No. 66893; and further that the remand proceeding should be "broad in  
7 scope so that the Commission may develop a record to consider the overall public interest underlying  
8 service to the Cornman property. . . ." (Decision No. 69722, at 4.) Cornman argues that the  
9 Commission can and should consider and weigh all relevant evidence which bears upon the overall  
10 public interest underlying utility service to the subject property. Cornman asserts the testimony of  
11 Mr. Poulos, Dr. Goldman, and Mr. Hendricks goes directly to the issues the Commissioners wished  
12 to consider in this remand proceeding, and Cornman argues that the Commissioners rejected any  
13 notion that the Arizona Supreme Court's *James P. Paul* opinion<sup>9</sup> limits the scope of the remand  
14 proceeding.

15 142. Cornman asserts that, in light of the Commission's prior determination in Decision  
16 No. 69722 that AWC is fit and proper, and that AWC has made clear that it is willing to serve the  
17 Cornman property, AWC's argument that the scope of the proceeding must be limited to whether  
18 AWC remains fit and willing to serve the Cornman property is inconsistent with the Commissioners'  
19 expressed intent. Cornman attached to its brief a transcript of the discussion at the July 24, 2007  
20 Open Meeting, which Cornman claims supports its position that the remand proceeding was intended  
21 to be much broader than a narrow consideration of AWC's ability and willingness to serve the  
22 Cornman property. (*See*, Cornman Reply Brief, Attach. D.) Cornman argues the Commission has  
23 directed a broad remand proceeding to specifically address: (1) whether there is "a current need or  
24 necessity for water service in the portions of the extension area that are owned by Cornman" and (2)  
25 the reasons why "Cornman does not wish to have its property included in Arizona water's CC&N at  
26 this time." (Decision No. 69722 at 4.) Cornman argues further that its Phase 3 testimony supports the  
27

28 <sup>9</sup> *James P. Paul Water Company v. Arizona Corp. Comm'n*, 137 Ariz. 426, 671 P.2d 404 (1983).

1 lack of a need and necessity for utility service at the Cornman property, as well as the reasons why  
2 Cornman does not want AWC to provide water service to the property. Cornman contends that the  
3 broad scope of the remand proceeding, as described in Decision No. 69722, supports its argument  
4 that the testimony presented by the Cornman witnesses is relevant to the Commission's consideration  
5 of the public interest issues raised in this case.

6 143. Cornman also argues that even if the scope of the remand proceeding was intended to  
7 be as narrow as suggested by AWC and Staff, the *James P. Paul* case is not applicable to the current  
8 proceeding because the underlying facts are distinguishable. Cornman argues that the more  
9 applicable case is *Arizona Corp. Comm'n v. Arizona Water Co.*, 111 Ariz. 74, 523 P.2d 505 (1974),  
10 which the court cited and distinguished in the *James P. Paul* decision. The earlier *Arizona Water*  
11 case involved the initial grant of a CC&N rather than a request to delete a portion of a CC&N. The  
12 court in *James P. Paul* stated that, for an initial CC&N the public interest is determined by comparing  
13 the capabilities and qualifications of competitors vying for the exclusive right to provide service, as  
14 well as "[t]he amounts of time and money competitors must spend (at the consumers' ultimate  
15 expense). . . ." *James P. Paul*, 137 Ariz. at 430, 671 P.2d at 408. Cornman argues the  
16 circumstances in the proceeding before the Commission now are more akin to those in *Arizona Water*  
17 than *James P. Paul* because the remand proceeding is simply a continuation of Docket No. W-  
18 01445A-03-0559, wherein the Commission is considering an *initial* issuance of a CC&N for the area.  
19 Thus, Cornman asserts the legal standard set forth in *James P. Paul* does not apply here, and the  
20 Commission may consider the broader public interest relevant in the grant of an initial CC&N as  
21 discussed in the *Arizona Water* case. Cornman also asserts there is no need and necessity or request  
22 for service on the Cornman property at this time. Cornman states it is not asking the Commission to  
23 delete the CC&N and give it to a competitor; rather it is requesting only that the property be deleted  
24 from AWC's CC&N.

25 **Arizona Water's Position**

26 144. Arizona Water points out that there is no dispute in the remand proceeding as to  
27 fitness or willingness to serve the Cornman property. Nor, according to AWC, is there an issue  
28 concerning the fitness of another water utility to serve the property as there is no competing water

1 utility with a pending application. AWC contends that the sole issue in the remand proceeding is  
2 whether the Cornman portion of AWC's CC&N may be deleted and, consistent with Arizona law,  
3 requires only an inquiry into whether AWC has either failed or refused to provide service to the  
4 subject property.

5 145. AWC argues that much of Cornman witness Poulos' Phase 3 testimony is irrelevant to  
6 the question of whether the Cornman property should be deleted from what is now AWC's  
7 unconditional CC&N for the area. Arizona Water also asserts that of Mr. Poulos' identified "public  
8 policy issues," the fourth (whether a single water provider should serve an entire development) and  
9 fifth (whether the Commission should opt for an integrated water and wastewater provider) are  
10 irrelevant considerations since it is undisputed that AWS is a fit and proper provider and there is no  
11 competing utility.

12 146. Arizona Water argues that, contrary to Cornman's assertions, the legal standard for  
13 whether the Cornman property should be deleted from AWC's CC&N is governed by the standards  
14 set forth in *James P. Paul*. AWC claims that pursuant to *James P. Paul*, the only relevant  
15 consideration in this remand proceeding is whether AWC failed to provide adequate service at  
16 reasonable rates.

17 147. AWC also asserts Cornman's efforts to distinguish *James P. Paul* lack merit. AWC  
18 argues that even though the Commission directed the remand proceeding to be "broad in scope," the  
19 Commission must still comply with applicable Arizona law, including the binding standard  
20 determined by the Arizona Supreme Court for deletion of a utility provider's CC&N area.

21 **Staff's Position**

22 148. Staff claims that, because Decision No. 69722 confirmed that AWC has completely  
23 fulfilled the requirements for holding the CC&N granted in Decision No. 66893, the scope of the  
24 remand proceeding must be consistent with the requirements of a deletion case; in other words,  
25 whether AWC is presently willing and able to provide service at reasonable rates.

26 149. According to Staff, the consideration of whether a portion of AWC's CC&N may be  
27 deleted must necessarily be narrower in scope than advocated by Cornman. According to Staff,  
28 *James P. Paul* found that it is insufficient to show that the public need and necessity has not arisen

1 yet as a basis for deleting a CC&N. *James P. Paul*, 137 Ariz. at 430, fn. 3, 671 P.2d at 408. Staff  
2 asserts that demonstrating the public interest is against permitting AWC to even begin providing  
3 service would require some showing that AWC is somehow incompetent to hold a CC&N, which  
4 focuses the inquiry on whether AWC is fit and proper to hold a CC&N - an issue that is not contested  
5 by any party.

6 150. Staff contends that the Arizona Supreme Court has clearly delineated the standards to  
7 be applied with respect to a request for deletion from a valid CC&N, and that Cornman's failure to  
8 show that AWC is unwilling or unable to serve the Cornman property must necessarily result in  
9 AWC's retention of the CC&N extension granted conditionally by Decision No. 66893, and later  
10 unconditionally by Decision No. 69722.

11 **Discussion and Analysis**

12 151. In Decision No. 69722, the Commission found that AWC is a fit and proper entity to  
13 provide water utility service to the extension area, including the Cornman property; that for purposes  
14 of compliance, AWC had satisfied the conditions set forth in Decision No. 66893; and that the matter  
15 should be reopened pursuant to A.R.S. § 40-252 for further proceedings regarding whether AWC  
16 should continue to hold a CC&N for the Cornman property.

17 152. As Cornman points out, Decision No. 69722 indicated that the Commission wished to  
18 consider in the remand proceeding a broader scope of issues related to the inclusion of the Cornman  
19 property in AWC's CC&N, including the overall best interests of the Cornman area and of the public,  
20 whether there is a current need and necessity for service for the Cornman property, and the import of  
21 Cornman's desire to be excluded from AWC's CC&N. (Decision No. 69722, at 4.) That Decision  
22 also indicated that "Arizona Water Company is hereby on notice that *the Commission's subsequent*  
23 *proceedings on remand will be for the purpose of considering whether the Cornman property should*  
24 *be deleted from the CC&N extension granted to Arizona Water Company by Decision No. 66893."*  
25 (*Id.* at 21 (emphasis added)).

26 153. Based on the language contained in Decision No. 69722, the remand proceeding was  
27 intended to, on the one hand, take into consideration a range of issues related to the landowner's  
28 ability to choose its utility provider, the current need for such service, and the broader public interest

1 in general, while, on the other hand, after having removed the conditional component of AWC's  
 2 CC&N for the Cornman property, determining whether and under what circumstances that property  
 3 may be deleted from the CC&N. The inherent tension between these seemingly competing goals was  
 4 discussed during the July 24, 2007 Open Meeting.<sup>10</sup>

5 154. After considering the pre-filed testimony and exhibits submitted in the remand  
 6 proceeding, as well as the arguments made by the parties, we conclude that the applicable criteria  
 7 pertaining to a request for deletion from a CC&N, as described by the Arizona Supreme Court in  
 8 *James P. Paul*, requires a finding that the Cornman property should remain in Arizona Water's  
 9 CC&N absent a showing that it is unable or unwilling to provide water utility service upon receiving  
 10 a *bona fide* request.

11 155. We find that the Commission's broadening of the issues to be considered in the  
 12 remand proceeding does not supersede the requirements for deletion from a CC&N expressed by the  
 13 Arizona Supreme Court; and having perfected AWC's CC&N for the Cornman property in Decision  
 14 No. 69722 by the explicit removal of the prior conditions, Arizona Water is entitled to serve that  
 15 property absent an inability or unwillingness to provide service.

16 156. In *James W. Paul*, the court found that despite the deletion petitioner's ownership of  
 17 facilities in closer proximity to the location where water service was required, the holder of the  
 18 CC&N had the right to serve the area as long as it could deliver adequate service at a reasonable rate.  
 19 As the court stated:

20 If a certificate of convenience and necessity within our system means  
 21 anything, it means that its holder has the right to an opportunity to  
 22 adequately provide the service it was certified to provide. Only upon a  
 23 showing that a certificate holder, presented with a demand for service  
 24 which is reasonable in light of projected need, has failed to supply such  
 service at a reasonable cost to customers, can the Commission alter its  
 certificate. Only then would it be in the public interest to do so.

25 <sup>10</sup> Cornman recognized that treating the remand proceeding as, in effect, a petition for deletion, while at the same time  
 26 broadening the scope of the inquiry to include factors that would typically be considered in the context of an initial  
 27 CC&N case, was cause for concern. For example, during the discussion of former Commissioner Gleason's Amendment  
 28 No. 3 (which was ultimately adopted and resulted in the insertion of the language in Decision No. 69722 that is at the  
 center of the dispute), counsel for Cornman stated that "it seems to us somewhat inconsistent for the Commission to [say]  
 in this amendment and in this decision that the conditions have been met and the area should be certificated to Arizona  
 Water Company, and then immediately turn around and remand the case and consider...whether or not the - the land  
 should remain in the Arizona Water CC&N." (Cornman Reply Brief, Attach. D, at 4-5.)

1 *James W. Paul*, 137 Ariz. at 429, 671 P.2d at 407. The court went on to state that a system that does  
2 not allow the holder of a CC&N to have an opportunity to provide service “would be antithetical to  
3 the public interest” because such a system would: encourage price competition between public  
4 service corporations, contrary to the legislature’s intent in allowing CC&Ns; encourage over-  
5 extensive development of facilities by public service corporations, which costs would be borne  
6 ultimately by ratepayers; fail to reward a public service corporation for taking on the risks and  
7 obligations of receiving a certificate, including the obligation to build facilities and to serve an area  
8 upon request; and discourage the provision of service in more sparsely populated areas. *Id.* at 429-30,  
9 671 P.2d at 407-08.

10 157. In this case, Cornman relies primarily on a host of factors that may be relevant to  
11 consideration of competing requests for an initial CC&N, but not for a determination regarding the  
12 deletion from an existing CC&N. For example, Cornman contends that AWC should not continue to  
13 hold the CC&N for the Cornman property because AWC does not provide integrated water and  
14 wastewater service, there is not a current need for water service for the Cornman property, and public  
15 interest is not served by continuing to allow AWC to hold the certificate. However, the Arizona  
16 Supreme Court expressly rejected the assertion that the same considerations are relevant in the  
17 determination of initial CC&Ns and subsequent CC&N deletion requests. In *James W. Paul*, the  
18 court discussed the case of *Arizona Corporation Commission v. Arizona Water Co.*, 111 Ariz. 74, 523  
19 P.2d 505 (1974), which presented a challenge to the Commission’s initial grant of a CC&N. In  
20 distinguishing the applicable standards to be applied for considering initial and deletion requests, the  
21 court in *James W. Paul* stated that while in an initial CC&N request “the public interest is determined  
22 by comparing the capabilities and qualifications of competitors vying for the exclusive right to  
23 provide the relevant service,” in the case of a request for deletion from an existing CC&N area, “the  
24 public interest requires that that corporation be allowed to retain its certificate until it is unable or  
25 unwilling to provide needed service at a reasonable rate.” *James W. Paul*, 137 Ariz. at 430, 671 P.2d  
26 at 408.

27 158. With respect to the issue of whether there exists a current need or necessity for  
28 service, an issue raised by Cornman as a basis for deletion, the court disagreed that need was a proper

1 5. Based on the totality of the record, including the pre-filed testimony, exhibits, and  
2 legal briefs submitted in the remand proceeding, Arizona law as set forth in the Arizona Supreme  
3 Court's Opinion in *James W. Paul* prohibits the deletion of Arizona Water Company's CC&N for the  
4 Cornman property absent an inability or unwillingness to serve the property by Arizona Water  
5 Company.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity extension  
8 granted to Arizona Water Company by Decision Nos. 66893 and 69722 is hereby reaffirmed on  
9 remand.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12  
13  
14 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

15  
16 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

17 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
18 Executive Director of the Arizona Corporation Commission,  
19 have hereunto set my hand and caused the official seal of the  
20 Commission to be affixed at the Capitol, in the City of Phoenix,  
21 this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

22 \_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_

24  
25 DISSENT \_\_\_\_\_

26  
27  
28

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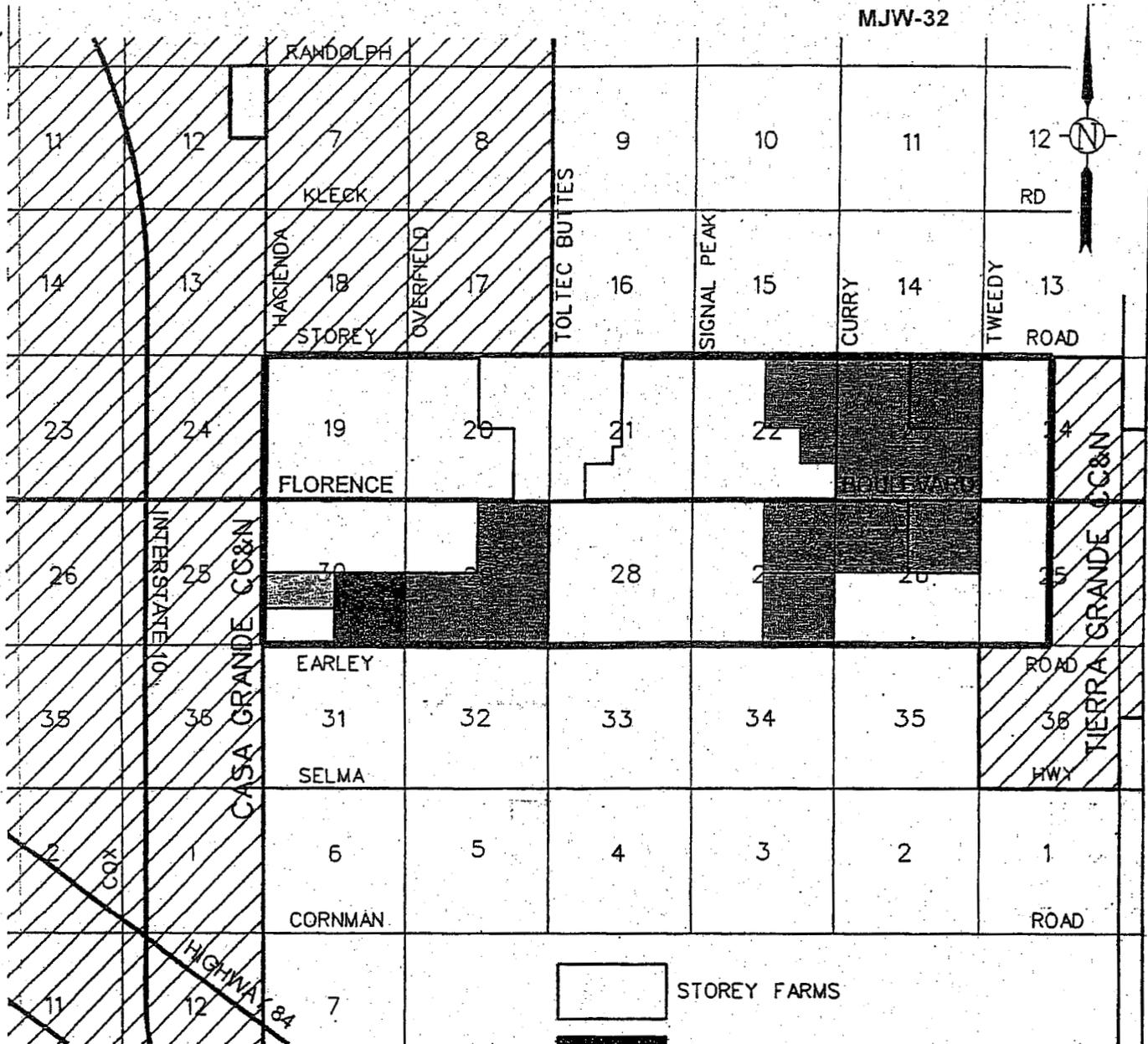
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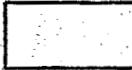
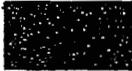
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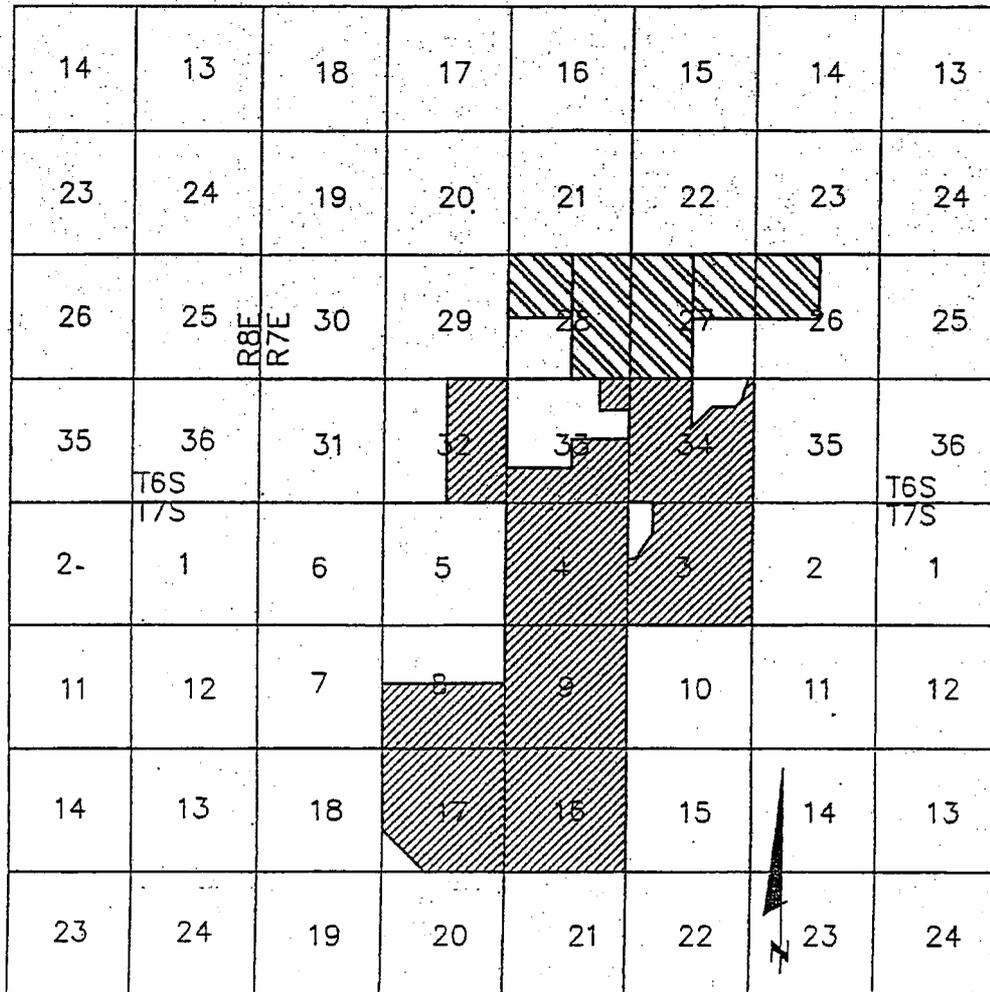
MJW-32



-  CC&N granted per Decision 66893
-  FLORENCE COUNTRY ESTATES
-  POST RANCH (HARVARD INV.)
-  HACIENDA ESTATES
-  HACIENDA HIGHLANDS

-  STOREY FARMS
-  SPRINGWATER POINTE
-  JBC DEVELOPMENT
-  ROSE LAW (AG ROBERTSON)

<b>ARIZONA WATER COMPANY</b>		
DESCRIPTION: DEVELOPMENTS WITHIN ARIZONA WATER COMPANY CASA GRANDE CC&N		
LOCATION: TOWNSHIP 6 SOUTH, RANGE 7 EAST		
DATE: 05.19.2006	SCALE: 1" = 1 Mile	DRAWN BY: CB



PICACHO WATER CO CC & N AREA



PICACHO WATER CO CC & N EXPANSION AREA

PICACHO WATER CO CC & N  
APRIL, 2005