

ORIGINAL  
OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

2010 DEC 21 P 2:54

DATE: DECEMBER 21, 2010

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKET NO.: W-02886A-10-0369

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

KOHL'S RANCH WATER COMPANY  
(EMERGENCY RATES)

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 30, 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:

JANUARY 11, 2011 and JANUARY 12, 2011

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

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DEC 21 2010

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[Signature]

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF  
9 KOHL'S RANCH WATER COMPANY FOR AN  
EMERGENCY RATE INCREASE.

DOCKET NO. W-02886A-10-0369

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

OPINION AND ORDER

10 DATE OF HEARING: November 3, 2010

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

13 APPEARANCES: Ms. Margaret B. LaBianca and Ms. Maribeth M. Klein,  
14 POLSINELLI SHUGHART PC, on behalf of Kohl's  
Ranch Water Company;

15 Mr. Grady Gammage, Jr., GAMMAGE & BURNHAM,  
16 P.L.C., on behalf of Kohl's Ranch Tonto Creek  
Subdivision Homeowners Association, Inc.; and

17 Ms. Bridget A. Humphrey, Staff Attorney, Legal  
18 Division, on behalf of the Utilities Division of the  
Arizona Corporation Commission.

19 **BY THE COMMISSION:**

20 This case involves an application for an interim emergency rate increase filed with the  
21 Arizona Corporation Commission ("Commission") on September 2, 2010, by Kohl's Ranch Water  
22 Company ("Kohl's Ranch"), a water utility providing service to Kohl's Ranch Lodge and to 124  
23 residences in the area of Payson, Arizona. Kohl's Ranch's current rates were adopted in 1972. The  
24 Commission's Utilities Division ("Staff") has recommended that Kohl's Ranch be granted an interim  
25 emergency rate increase.

26 \* \* \* \* \*

27 Having considered the entire record herein and being fully advised in the premises, the  
28 Commission finds, concludes, and orders that:

**FINDINGS OF FACT****Background**

1  
2  
3 1. Kohl's Ranch is a Class D water company providing utility service to Kohl's Ranch  
4 Lodge ("the Lodge") and to 124 residences in a service area located in the Tonto National Forest  
5 area, in the vicinity of Payson, Arizona, and bordered by U.S. Forest Service ("USFS") land. (Ex. S-  
6 1; Tr. at 39.) Kohl's Ranch received a Certificate of Convenience and Necessity ("CC&N") to  
7 operate as a water utility in Decision No. 35149 (April 2, 1964).<sup>1</sup>

8 2. Kohl's Ranch is wholly owned by ILX Resorts Incorporated ("ILX"), which acquired  
9 Kohl's Ranch and the Lodge in approximately June 1995. (Ex. A-1; Tr. at 29, 38.) ILX has been  
10 subsidizing the operations of Kohl's Ranch for the more than 15 years since the acquisition. (Tr. at  
11 41, 75-76.) ILX chose to subsidize Kohl's Ranch's operations rather than seeking a rate increase  
12 because of the high costs and time and effort believed to be necessary for a rate case. (Tr. at 76.)

13 3. On March 2, 2009, ILX and 15 of its subsidiaries initiated a bankruptcy proceeding in  
14 the U.S. Bankruptcy Court under Chapter 11 of the U.S. Bankruptcy Code. (Tr. at 37; Ex. S-1.)  
15 Kohl's Ranch was not one of the subsidiaries involved in the bankruptcy proceeding. (*Id.*) On  
16 September 1, 2010, the U.S. Bankruptcy Court order became effective, requiring the sale of  
17 substantially all of the assets of ILX and the 15 subsidiaries. (Tr. at 35-36, 38.) The purchaser, ILX  
18 Acquisitions, Inc., is a special purpose affiliate of Diamond Resorts created to purchase the assets.  
19 (Tr. at 62.) The Lodge is among the assets sold, but the assets necessary to operate Kohl's Ranch  
20 were specifically carved out of the order and were not sold. (Tr. at 38.) ILX is currently engaged in  
21 a wind down of its operations and is no longer able to subsidize the operations of Kohl's Ranch. (Tr.  
22 at 36.) ILX is currently using funds provided by ILX's secured creditor, Textron Financial, to fund  
23 the operations of Kohl's Ranch, but the funds are limited to \$30,000 and are available for only a  
24 limited time (until November 29, 2010) to assist in the transition of Kohl's Ranch to a self-supporting

25  
26  
27  
28  
<sup>1</sup> Official notice is taken of Decision No. 35149 (April 2, 1964) and of Decision No. 59214 (August 8, 1995). Previously, the CC&N had been held by an individual doing business as Kohl's Ranch Water Company. (Decision No. 35149 (April 2, 1964).) From approximately December 1988 to approximately August 25, 1994, Kohl's Ranch did not exist as a corporate entity due to expiration of the period of its duration provided in its articles of incorporation. (See Decision No. 59214 (August 8, 1995). The current Kohl's Ranch was incorporated on approximately August 25, 1994. (*Id.*) The original Kohl's Ranch's CC&N and assets were transferred to the current Kohl's Ranch pursuant to Decision No. 59214 (August 8, 1995).

1 entity. (See Tr. at 36, 63.) When ILX winds up its business operations, it must turn over all of its  
2 remaining assets, including the Kohl's Ranch and its assets, to the liquidating trustee approved by the  
3 court. (Tr. at 36.)

4 4. Kohl's Ranch's current rates were adopted in Decision No. 42881 (October 12, 1972),  
5 and include a base rate of \$5.75 per month per customer, which includes 5,000 gallons of water, and  
6 a commodity rate of \$0.50 per 1,000 gallons for all water used in excess of 5,000 gallons.<sup>2</sup> The same  
7 rates apply regardless of meter size.

8 5. Kohl's Ranch desires the emergency rate increase so that Kohl's Ranch is able to pay  
9 its expenses before it goes to the liquidating trustee. (Tr. at 79.) Kohl's Ranch hopes to have the  
10 Commission appoint an interim manager and believes that will not happen unless there are sufficient  
11 revenues to cover operating expenses. (Tr. at 37, 96-97.) ILX will cease to exist after Kohl's Ranch  
12 is transferred to the liquidating trustee. (Tr. at 79.) The ultimate goal is for the liquidating trustee to  
13 find a permanent buyer for Kohl's Ranch. (Tr. at 82-83.)

14 6. ILX currently has four full-time employees and six part-time employees. (Tr. at 80.)  
15 All four of the full-time employees, and two of the part-time employees perform duties related to  
16 Kohl's Ranch. (*Id.*) The employees, including ILX and Kohl's Ranch President Nancy Stone, are  
17 currently being paid for their work pursuant to a provision in the bankruptcy order that allows for the  
18 payment of salaries during the wind-down of ILX's affairs. (*Id.*) ILX currently has no source of  
19 income. (*Id.*) Any cash that ILX has on hand after the wind down of its affairs will go to the  
20 liquidating trustee to pay unsecured creditors. (Tr. at 81.)

21 7. Kohl's Ranch has 125 customers—the Lodge and 124 residential customers, one of  
22 whom also has a stables. (Tr. at 39.) The Lodge is served by a six-inch meter, and the residential  
23 customers are served by 5/8" x 3/4" meters. (Tr. at 97.) Only approximately 20 of Kohl's Ranch's  
24 residential customers have usage every month.<sup>3</sup> (Tr. at 116.) Most of Kohl's Ranch's residential  
25 customers have average monthly water usage below the 5,000 gallons included with the minimum

26 <sup>2</sup> Official notice is taken of Decision No. 42881 (October 12, 1972).

27 <sup>3</sup> Many of the residences served by Kohl's Ranch are vacation cabins, used only on weekends, and many are not used  
28 at all during the winter months. (See Tr. at 210.) Only approximately nine or 10 of the residences are used full-time year  
round, and Ms. Tucker-Gasser estimated that as many as 20 have seen no use in the six years that she has owned her  
cabin. (Tr. at 209.)

1 monthly charge of \$5.75, which results in average usage for all residential customers of 2,270 gallons  
2 per month.<sup>4</sup> (See Ex. A-5 at SSR-5.) Only 18 residential customers have average monthly usage  
3 exceeding 5,000 gallons, with usage averaging 8,121 gallons per month.<sup>5</sup> (*Id.*) The 2009 bill count  
4 shows that 53.27 percent of residential bills have monthly usage no higher than 500 gallons; that  
5 86.65 percent of residential bills have monthly usage no higher than 5,000 gallons; that there are  
6 residential customers who regularly use as much as 22,500 gallons per month; and that there is at  
7 least one residential customer who has had monthly usage as high as 55,000 gallons. (Late-Filed  
8 Exhibit (“LFE”) A-8.) For 2009, the Lodge’s monthly usage ranged from 85,000 gallons to  
9 approximately 131,480 gallons, with its average monthly usage at 124,567 gallons. (LFE A-8.)

10 8. Kohl’s Ranch has two separate but interconnected water systems that obtain water  
11 from two separate sources—a Spring System and a Well System. (Tr. at 39.) The Spring System is  
12 fed by a spring originating on U.S. Forest Service (“USFS”) land, from which it flows into a cistern,  
13 travels to a filter building and a chlorinator building,<sup>6</sup> and then to the residential customers’  
14 properties. (Tr. at 39.) The Spring System is the primary system serving the residential customers.  
15 (*Id.*) The spring is used under a permit from the USFS, issued to ILX, which is working with the  
16 USFS to get the rights to the spring transferred to Kohl’s Ranch. (Tr. at 67-68.) Ms. Stone testified  
17 that the only meters on the Spring System are those at the residences and that there is not a meter  
18 measuring the water drawn from the spring. (Tr. at 84.) Staff Utilities Engineer Katrin Stukov  
19 testified that she had been informed that there is a meter at the Spring System’s chlorinator building  
20 and also a meter at the interconnection point between the Spring System and the Well System,  
21 although she did not personally verify the existence of those meters through a site inspection. (See  
22 Tr. at 223, 225, 227, 228.) Ms. Stukov determined that Kohl’s Ranch’s two water systems have  
23 adequate capacity to serve its customers. (Ex. S-1.)

24  
25 <sup>4</sup> Six residential customers had zero usage during 2009, and a number of others have very low usage that suggests that  
they are only using water during a small amount of the time, such as only on weekends. (See Tr. at 190-91.)

26 <sup>5</sup> The cabins range from approximately 800 square feet to approximately 2,400 square feet in size, averaging  
approximately 1,200 square feet. (See Tr. at 208-09.) Only approximately five or six of the residences have lawns. (Tr.  
27 at 209.) The HOA does not use any water in common areas. (Tr. at 211.) None of the residential properties have  
swimming pools. (Tr. at 222.)

28 <sup>6</sup> Staff testified that the spring water flows by gravity to the chlorination system, then to the filtration system, and then  
to the distribution system. (Tr. at 234.)

1           9.       The Well System includes a well located on Lodge property, a 200,000-gallon storage  
 2 tank also on Lodge property, and a distribution system serving the Lodge. (Tr. at 40.) The Well  
 3 System provides water as a back up to the Spring System when needed and is also used for fire  
 4 suppression. (*Id.*) Ms. Stone testified that the only meter on the Well System is a recently installed  
 5 compound six-inch meter that measures all of the water pumped from the well.<sup>7</sup> (*See* Tr. at 85-86.)  
 6 None of the buildings at the Lodge are separately metered. (Tr. at 117.) Ms. Stone is not aware of  
 7 any meter measuring water that flows into the Spring System from the interconnection with the Well  
 8 System. (Tr. at 86-87.) Ms. Stukov testified that there is a 1.5-inch well meter installed on the Well  
 9 System, which was indicated on Kohl's Ranch's plant description provided in this case and also  
 10 confirmed by one of the operators. (Tr. at 227-28.) The Well System assets were not sold with the  
 11 Lodge, (Tr. at 40), and ILX is taking steps to ensure that all of the land and the fixed assets needed  
 12 for both water systems are transferred to Kohl's Ranch,<sup>8</sup> (*see* Tr. at 68-69).

13           10.       From June 1995 to September 1, 2010, the daily and monthly tasks necessary to  
 14 operate Kohl's Ranch (checking system operations, water testing, customer service, meter reading,  
 15 billing, bookkeeping, etc.) were carried out by ILX employees working at the Lodge. (Tr. at 42.)  
 16 Under ILX, the monthly testing of each system required by the Arizona Department of  
 17 Environmental Quality ("ADEQ") was performed by a third-party certified operator; the same third-  
 18 party certified operator is still performing the monthly ADEQ-required sample testing. (Tr. at 43-44,  
 19 46.) ILX wind-down staff continues to handle billing, collections, customer service issues unrelated  
 20 to water quality, regulatory inquiries, legal matters, and decisions regarding repairs and maintenance.  
 21 (Tr. at 45-47.) Because Lodge employees are no longer employees of ILX and are now unavailable  
 22 to assist with Kohl's Ranch operations, since September 1, 2010, Kohl's Ranch's daily system  
 23

24 <sup>7</sup> The new meter replaced an old meter that was located further along the line on the system. (Tr. at 86.) Ms. Stone  
 25 believes that the old meter was an eight-inch meter. (Tr. at 87.) The new meter was installed so as to capture all of the  
 26 water being used by the Lodge, as the old meter did not capture all usage due to its location. (Tr. at 87-88.) The  
 27 September 2010 water usage by the Lodge was 96,000 gallons higher than the usage for September 2009, which Ms.  
 28 Stone believes is attributable to the new meter's capturing all usage. (*See* Tr. at 88-89.) Ms. Stone acknowledges that she  
 does not know whether there have also been operational changes that would result in higher water usage. (Tr. at 90.)

<sup>8</sup> The process of transferring the property for the Well System is being delayed by the need for Kohl's Ranch to obtain  
 easements necessary to access the property, which is landlocked within the Lodge property, but the Lodge and Kohl's  
 Ranch are in agreement about the easements. (Tr. at 119.) Access to the Spring System is also obtained through ILX  
 land, and it also needs to be transferred. (Tr. at 119-20.)

1 operations and testing and monthly meter reading have been handled by a third-party daily operator,  
2 who is paid \$1,750 per month.<sup>9</sup> (Tr. at 45-46, 121.) Minor repairs and maintenance are completed by  
3 the daily operator, for additional compensation of \$25 per hour. (Tr. at 46, 121.) To stand alone,  
4 Kohl's Ranch will need to engage third-party sources to perform the tasks currently being done by  
5 ILX wind-down staff. (Tr. at 47.)

6 11. Kohl's Ranch is in compliance with ADEQ and Arizona Department of Water  
7 Resources ("ADWR") requirements. (Ex. S-1.) Kohl's Ranch is not located in an ADWR Active  
8 Management Area. (*Id.*) Ms. Stone testified that Kohl's Ranch has not received any notices of  
9 violation from ADEQ or ADWR since being obtained by ILX in 1995. (Tr. at 41.) Ms. Stone also  
10 testified that no customer complaints have been lodged against Kohl's Ranch with the Commission  
11 since ILX acquired Kohl's Ranch in 1995. (Tr. at 41.) A check of the Commission's records for the  
12 period of January 1, 2007, through October 13, 2010, show no complaints. (Ex. S-1.) A check of the  
13 Commission's compliance database also revealed that there are currently no delinquencies for Kohl's  
14 Ranch. (*Id.*)

15 12. ILX Acquisitions has been operating the Lodge since September 1, 2010. (Tr. at 62.)  
16 Kohl's Ranch has been billing ILX Acquisitions for the Lodge's water usage since September 1,  
17 2010. (Tr. at 63.) Kohl's Ranch also billed the Lodge for its water use when both the Lodge and  
18 Kohl's Ranch were owned by ILX. (Tr. at 117.)

19 13. The Lodge has 66 units and is used both by traditional hotel-type guests and by  
20 timeshare-owner guests. (Tr. at 64.) Most of the units (approximately 41) are hotel-type rooms with  
21 full baths, and the remaining units are either one-bedroom or two-bedroom units (some cabins),  
22 approximately 12 of which have two bathrooms. (*See* Tr. at 65.) The Lodge also has a swimming  
23 pool, restaurant, saloon, turf areas, a nine-hole putting course, and commercial laundry facilities used  
24 by the housekeeping staff.<sup>10</sup> (Tr. at 65-67.)

25 14. Because Kohl's Ranch's operations were substantially subsidized by ILX, there is not

26 <sup>9</sup> Kohl's Ranch's daily operator checks the functioning of both the Spring System and the Well System each day, tests  
27 the water from both systems for chlorination each day, takes customer calls as they come, and reads the meters one day  
per month. (Tr. at 107.) The daily operator is a third-party contractor and works 365 days per year. (*Id.*)

28 <sup>10</sup> Ms. Stone clarified that the information she provided was based on operations at the Lodge prior to its sale on  
September 1, 2010. (Tr. at 66.)

1 historical test year data available for most of Kohl's Ranch's operating expenses. Instead, Kohl's  
 2 Ranch has provided actual expenses from Kohl's Ranch's books and records, where available;  
 3 estimated expenses for those expenses covered by ILX, based upon the hours spent and hourly rates  
 4 for the ILX employees who performed the tasks; and pro forma adjustments to estimate the expenses  
 5 for the same tasks to be performed by third-parties, who will also charge travel expenses and will  
 6 pass on other overhead costs. (Tr. at 50-51.)

7 15. Kohl's Ranch does not have its own office. (Tr. at 55.) Kohl's Ranch is currently  
 8 operating out of ILX's office space, which will be eliminated when ILX ceases operations. (Tr. at  
 9 112.) Ms. Stone does not know what location Kohl's Ranch will use as its base after ILX winds  
 10 down and ceases to exist. (*Id.*) Ms. Stone also does not know how Kohl's Ranch could continue to  
 11 operate after ILX winds down if there is not sufficient revenue obtained through Kohl's Ranch's  
 12 rates.<sup>11</sup> (Tr. at 113.) Ms. Stone also expressed concern that ILX will not be able to transfer the  
 13 Kohl's Ranch stock to the liquidating trustee if Kohl's Ranch is operating at a loss. (Tr. at 113-14.)

14 16. Staff is not aware of any interim operator who may be willing and able to take over the  
 15 operation of Kohl's Ranch. (Tr. at 239.) Ms. Stone is not aware of any potential interim manager for  
 16 Kohl's Ranch. (Tr. at 111.) Ms. Rowell requested a list of potential interim managers for Kohl's  
 17 Ranch, but Staff was unable to provide such a list before the hearing and instead referred Ms. Rowell  
 18 to Greg Patterson, with the small water company association. (Tr. at 274-75.)

### 19 Procedural History

20 17. On September 2, 2010, Kohl's Ranch<sup>12</sup> filed an application for an interim emergency  
 21 rate increase, asserting that Kohl's Ranch needs to operate as a stand-alone entity, without the support  
 22 of ILX, and thus requires a rate increase to enable it to collect revenues that can cover its operating  
 23 costs. (Ex. A-1.) Kohl's Ranch asserted that an emergency exists because ILX is no longer in a  
 24 position to subsidize Kohl's Ranch's operations, and the revenues generated under the tariff  
 25 authorized in 1972 are insufficient to sustain Kohl's Ranch. (*Id.*) In its application, Kohl's Ranch

26 <sup>11</sup> Ms. Stone was asked whether she, as the President of Kohl's Ranch, intends to continue operating Kohl's Ranch after  
 27 ILX winds down even if there is not sufficient revenue, and she responded, "There would be no source; we could not pay  
 28 the bills." (Tr. at 113.) When asked if she would just walk away, she responded, "I don't know what the solution is.  
 That's why we are here. . . . [T]here aren't any funds to operate with the tariffs that are in place now." (*Id.*)

<sup>12</sup> The application was filed by ILX on behalf of Kohl's Ranch. (*See* Ex. A-1.)

1 proposed that each residential customer be assessed a monthly surcharge of \$36.00 and that the  
2 Lodge be assessed a monthly surcharge of \$2,160.00, for a total expected increase in annual revenue  
3 of \$79,488. (*Id.*)

4 18. On September 16, 2010, a Procedural Order was issued scheduling a telephonic  
5 procedural conference for September 20, 2010.

6 19. On September 20, 2010, a telephonic procedural conference was held at which Kohl's  
7 Ranch and Staff appeared through counsel, and the schedule for this matter and the notice to be  
8 provided by Kohl's Ranch were discussed. It was determined that Kohl's Ranch would make a filing  
9 identifying several public locations in its service area at which notice of this proceeding could be  
10 posted. Kohl's Ranch was also directed to seek permission to post notice on the website for Kohl's  
11 Tonto Creek Subdivision Homeowners Association, Inc. ("the HOA").

12 20. On September 21, 2010, a Procedural Order was issued scheduling the hearing in this  
13 matter for November 3, 2010, and establishing other procedural requirements and deadlines.

14 21. On September 21, 2010, Staff issued Staff's First Set of Data Requests to ILX.

15 22. On September 29, 2010, Kohl's Ranch filed Certification of Public Notice stating that  
16 public notice had been mailed to its customers, including the new owner of the Lodge, on September  
17 24, 2010; that public notice had been posted on September 27, 2010, in the three public locations  
18 specified in the Procedural Order; and that notice had been posted on the HOA's website on  
19 September 27, 2010. (Ex. A-2.) The customer notices were mailed to the same addresses used for  
20 the customers' monthly water bills. (Tr. at 32.)

21 23. On October 20, 2010, a Motion to Intervene was filed by the HOA, as was a  
22 Memorandum in Support of the Motion to Intervene.

23 24. On October 21, 2010, Staff filed a Staff Report, in which, *inter alia*, Staff  
24 recommended that each residential customer be assessed a monthly surcharge of \$26.37 and that the  
25 Lodge be assessed a monthly surcharge of \$2,200.00, for a total expected increase in annual revenue  
26 of \$65,639.

27 25. On October 22, 2010, a Procedural Order was issued scheduling a telephonic  
28 procedural conference on October 25, 2010, to discuss the HOA's Motion to Intervene and the

1 procedural schedule for this matter.

2 26. On October 25, 2010, a telephonic procedural conference was held, at which Kohl's  
3 Ranch, the HOA, and Staff appeared through counsel. Kohl's Ranch and Staff both stated that they  
4 had no objections to the HOA's intervening, although they were concerned about any resulting delay  
5 or broadening of the issues in the case. The HOA's Motion to Intervene was granted; the HOA was  
6 instructed to file its response to the Staff Report by October 29, 2010; and the HOA confirmed that it  
7 would be ready to proceed with the hearing as scheduled. The parties also identified the witnesses  
8 that they intended to call at hearing.

9 27. On October 27, 2010, Kohl's Ranch filed its Response to the Staff Report, in which it  
10 objected to Staff's recommended surcharges and other Staff recommendations. Kohl's Ranch also  
11 provided revised information on the gallons used by the Lodge and revised schedules showing  
12 changes to both revenues and expenses and proposed revised surcharges of \$28.50 for residential  
13 customers and \$3,200.00 for the Lodge. (Ex. A-4.)

14 28. On October 28, 2010, the HOA filed its Response to Staff Report and to Kohl's  
15 Ranch's Amended Proposal, the crux of which was that the residential customers should bear less of  
16 the surcharge burden than proposed by Kohl's Ranch or recommended by Staff. (See Ex. I-3.) The  
17 HOA proposed surcharges of \$17.00 for residential customers and \$3,250.00 for the Lodge. (*Id.*)

18 29. On November 1, 2010, Kohl's Ranch filed Responses to the HOA's Motion to  
19 Intervene and Response to Staff Report.

20 30. On November 2, 2010, Staff filed a Supplement to the Staff Report, in which it revised  
21 its revenue and expense figures in response to Kohl's Ranch's Response to the Staff Report and  
22 recommended surcharges of \$19.09 for residential customers and \$3,200.00 for the Lodge. (Ex. S-2.)

23 31. On November 3, 2010, a full evidentiary hearing was held before a duly authorized  
24 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.  
25 Kohl's Ranch, the HOA, and Staff appeared through counsel and presented testimony and exhibits.  
26 Kohl's Ranch presented the testimony of Nancy Stone, President of Kohl's Ranch and of ILX, and of  
27 Sonn Rowell, CPA, Desert Mountain Analytical Services, acting as a consultant for Kohl's Ranch's  
28 emergency rate application. The HOA presented the testimony of Shari Tucker-Gasser, President of

1 the HOA. Staff presented the testimony of Katrin Stukov, Utilities Engineer, and Crystal Brown,  
2 Public Utility Analyst V. Public comment was received from four customers who characterized the  
3 surcharges proposed as unreasonably high.<sup>13</sup> Public comment slips were also submitted by four  
4 customers who declined to speak, three of whom indicated on their comment slips that they were  
5 opposed to the emergency rate increase. At the conclusion of the hearing, Kohl's Ranch was directed  
6 to file several late-filed exhibits ("LFEs"), to which Staff indicated a desire to respond, and the HOA  
7 was provided an opportunity to respond. Kohl's Ranch was also provided an opportunity to respond  
8 to any responses made by the other parties.

9 32. On November 10, 2010, Kohl's Ranch filed its LFEs, which included 2009 bill counts  
10 ("LFE A-8"), October 2010 and partial November 2010 water usage for the Lodge ("LFE A-9"), and  
11 supporting documentation regarding Exhibit A-6 ("LFE A-10").

12 33. On November 22, 2010, Staff filed a Second Supplement to the Staff Report ("LFE S-  
13 3"), including revised figures for several expense categories, as a result of Staff's scrutinizing the  
14 supporting documentation filed by Kohl's Ranch, and recommending surcharges of \$21.88 for  
15 residential customers and \$3,200.00 for the Lodge. (LFE S-3.)

16 34. On December 1, 2010, Kohl's Ranch filed a Response to the Second Supplement to  
17 the Staff Report, in which it continued to advocate its position related to outside services expense and  
18 rate case expense and also newly requested that it be authorized to impose a reestablishment charge  
19 equal to the number of months for which service was discontinued (if less than 12 months) times the  
20 total of the base rate plus the approved monthly emergency surcharge. Kohl's Ranch also requested  
21 that its annual surcharge revenue be no less than \$80,808.

22 35. On December 7, 2010, Kohl's Ranch filed a Motion for Expedited Recommended  
23 Opinion and Order.<sup>14</sup>

24 36. On December 15, 2010, Staff filed a Notice of Errata ("LFE S-4") stating that a  
25 portion of one of its schedules in LFE S-3 had been omitted and providing the schedule in its entirety.

26 <sup>13</sup> One of the commenters was the General Manager of the Lodge, who indicated that the surcharge proposed would be  
27 a hardship for the Lodge and who was unable to say why the owner of the Lodge did not choose to participate as a party  
in the case.

28 <sup>14</sup> The parties were informed at the hearing that it would be unlikely for a Recommended Opinion and Order to be  
issued any earlier than for the January 2011 Open Meeting.

1           37.     Between October 4 and November 1, 2010, comments in opposition to the proposed  
2 interim emergency rate increase were filed by 19 customers of Kohl's Ranch, all of whom  
3 characterized the proposed increase as excessive, and some of whom expressed concern about the  
4 ownership of water system assets and about water quality and service issues.

5 **Parties' Revenue Requirement and Surcharge Proposals**

6           38.     In 2009, Kohl's Ranch had total operating revenue of \$10,011<sup>15</sup> and total direct  
7 operating expenses of \$16,685, for an operating loss of \$6,674. (Ex. A-4 at SSR-1.) ILX paid an  
8 additional \$51,953 in expenses toward the operations of Kohl's Ranch, however, which results in  
9 total operating expenses of \$68,638 and an operating loss of \$58,627. (*See id.*)

10 **Kohl's Ranch**

11           39.     Kohl's Ranch estimates that it will incur an additional \$20,641 in annual expenses due  
12 to its new status as a stand-alone entity and inability to obtain labor from ILX employees. (*See id.*)  
13 These additional expenses would result in total operating expenses of \$89,279 and an operating loss  
14 of \$79,268. (*See id.*) Kohl's Ranch proposes surcharge revenue of at least \$80,808. (*See Ex. A-4 at*  
15 *SSR-3.*)

16           40.     Kohl's Ranch proposes a monthly surcharge of \$28.50 per residential customer and of  
17 \$3,200.00 for the Lodge, which is estimated to produce annual surcharge revenue of \$80,808. (Ex.  
18 A-4 at SSR-3.) This would result in approximately 52.5 percent of the surcharge revenue coming  
19 from residential customers, and 47.5 percent of the surcharge revenue coming from the Lodge. (*Id.*)

20           41.     Per its schedules, Kohl's Ranch's requested annual surcharge revenue of \$80,808  
21 would result in operating income of \$2,101. (Ex. A-4 at SSR-1.) Ms. Stone testified, however, that  
22 she does not believe Kohl's Ranch would have any operating income, or even break even, because  
23 Kohl's Ranch must pay for other items not included as expenses in its schedules, such as capital  
24

25 <sup>15</sup> Kohl's Ranch proposed a pro forma adjustment of \$560 to reflect additional water usage by the Lodge, estimated  
26 based on the Lodge's much higher water usage of 213,000 gallons in September 2010. (Ex. A-4 at SSR-1, SSR-2, SSR-  
27 4.) We do not adopt that pro forma adjustment herein because Kohl's Ranch's LFE A-9 showed that the Lodge's water  
28 usage in October 2010 was 124,878 gallons. (LFE A-9.) This is consistent with the Lodge's 2009 average monthly  
usage. (*See LFE A-8.*) A Lodge meter reading of 34,101 gallons for the period of November 1 through November 8 was  
also provided by Kohl's Ranch. (LFE A-9.) When extrapolation as to usage for a 30-day period is made based on either  
a 7-day or 8-day divisor, the resulting monthly usage is 146,147 gallons or 127,879 gallons, respectively, which is also  
relatively consistent with the Lodge's 2009 average monthly usage.

1 items that Kohl's Ranch needs to buy. (*See* Tr. at 125.)

2           42. Kohl's Ranch's proposed surcharges would result in a bill of \$34.25 for a residential  
3 customer with monthly usage between 0 gallons and 5,000 gallons; in a bill of \$36.75 for a residential  
4 customer with monthly usage of 10,000 gallons; and in a bill of \$59.25 for a residential customer  
5 with monthly usage of 50,000 gallons. For the Lodge, Kohl's Ranch's proposed surcharges would  
6 result in a bill of \$3,205.75 for monthly usage between 0 gallons and 5,000 gallons; in a bill of  
7 \$3,230.75 for monthly usage of 50,000 gallons; in a bill of \$3,255.75 for monthly usage of 100,000  
8 gallons; and in a bill of \$3,455.75 for monthly usage of 500,000 gallons.

9 HOA

10           43. The HOA stated that it is not in a position to challenge individual expense items and  
11 that it relies upon Staff's expertise in scrutinizing such information and is willing to accept the  
12 ultimate decision from the Commission on those issues. (*See, e.g.,* Ex. I-3.) The HOA asserts,  
13 however, that only 40 percent of the surcharge revenue should come from the residential customers,  
14 while the remaining 60 percent of the surcharge revenue should come from the Lodge. (Ex. I-3.)  
15 Ms. Tucker-Gasser testified that a surcharge of \$17.47 per month for residential customers would be  
16 reasonable. (Tr. at 219-20.) The HOA proposed a surcharge of \$3,250 for the Lodge. (Ex. I-3.) The  
17 HOA's ultimate concerns are that Kohl's Ranch can continue to provide service and that there is an  
18 "equitable split" in the way the surcharge is assessed. (*See* Ex. I-3; Tr. at 213-14.) The HOA asserts  
19 that the Commission should consider not only how much water is used by the respective customer  
20 classes, but also the manner in which the water is used, which for the Lodge includes irrigation of a  
21 golf course and other turf and a swimming pool. (*See, e.g.,* Tr. at 211-14.)

22           44. The HOA's proposed residential surcharge would result in a bill of \$23.22 for a  
23 residential customer with monthly usage between 0 gallons and 5,000 gallons; in a bill of \$25.72 for a  
24 residential customer with monthly usage of 10,000 gallons; and in a bill of \$45.72 for a residential  
25 customer with monthly usage of 50,000 gallons. For the Lodge, the HOA's proposed surcharge  
26 would result in monthly bills \$50 higher than the bills with Kohl's Ranch's proposed surcharge.

27 Staff

28           45. Staff recommends disallowance of some of the expenses estimated by Kohl's Ranch.

1 Overall, Staff recommends reductions totaling \$7,759 in purchased power, repairs and maintenance,  
2 outside services, water testing, rate case expense, and income taxes. (LFE S-4.) This would bring  
3 Kohl's Ranch's operating expenses to \$81,520 and, if the pro forma adjustment to revenue of \$560  
4 were accepted,<sup>16</sup> would bring its operating deficiency to \$70,949.

5 46. Staff recommends a monthly surcharge of \$21.88 per residential customer and of  
6 \$3,200.00 for the Lodge, which is estimated to produce annual surcharge revenue of \$70,957. (LFE  
7 S-4.) Staff asserts that annual surcharge revenue of \$70,957 would allow Kohl's Ranch to break  
8 even. (LFE S-4 at CSB-1, CSB-2.) Staff's recommended surcharges would result in 46 percent of  
9 surcharge revenue being produced by the residential customer surcharge and 54 percent of the  
10 surcharge revenue being produced by the Lodge surcharge. (See LFE S-4.)

11 47. Staff's recommended residential surcharge would result in a bill of \$27.63 for a  
12 residential customer with monthly usage between 0 gallons and 5,000 gallons; in a bill of \$30.13 for a  
13 residential customer with monthly usage of 10,000 gallons; and in a bill of \$50.13 for a residential  
14 customer with monthly usage of 50,000 gallons. For the Lodge, Staff's proposed surcharge would  
15 result in the same monthly bills as would Kohl's Ranch's proposed surcharge.

16 **Emergency Ratemaking Standard**

17 48. As described in Arizona Attorney General Opinion No. 71-17 (May 25, 1971), it is  
18 appropriate to grant interim rates as an emergency measure when (1) sudden change brings hardship  
19 to a company, (2) the company is insolvent, (3) the condition of the company is such that its ability to  
20 maintain service pending a formal rate determination is in serious doubt, or (4) the Commission will  
21 be unable to grant permanent rate relief within a reasonable time. In *Scates v. Arizona Corporation*  
22 *Commission*, the Arizona Court of Appeals recognized this standard and, additionally, that (1) a bond  
23 must be posted to protect the company's customers and allow for refund in the event that the interim  
24 rates are excessive, and (2) the granting of interim rates must be followed by a full rate case in which  
25 just and reasonable rates are established after the fair value of the company's property is  
26  
27

28 <sup>16</sup> Staff accepted the \$560 pro forma adjustment. (See LFE S-4.)

1 determined.<sup>17</sup> The *Scates* test was cited with approval in *Residential Utility Consumer Office v.*  
 2 *Arizona Corporation Commission*, 20 P.3d 1169, 1173 (Ariz. App. 2001) (“*Rio Verde*”).

3 49. The evidence establishes that Kohl’s Ranch’s ability to maintain service pending a  
 4 formal rate determination is in serious doubt. Thus, an emergency exists that makes it appropriate to  
 5 grant an interim rate adjustment to ensure that Kohl’s Ranch can maintain service until a  
 6 determination can be made in a permanent rate case.

7 **Staff Recommendations**

8 50. Staff recommends:

9 (a) That Kohl’s Ranch’s be authorized to assess a monthly emergency interim  
 10 surcharge of \$21.88 to each residential customer and of \$3,200.00 to the Lodge;

11 (b) That Kohl’s Ranch be required to file an application for a permanent rate case  
 12 no later than April 30, 2012, using a test year of either calendar year 2011 or another relatively recent  
 13 test year;<sup>18</sup>

14 (c) That the interim rates stay in effect until an order is issued in the permanent  
 15 rate case;<sup>19</sup>

16 (d) That the interim rates cease on July 31, 2012, if Kohl’s Ranch’s permanent rate  
 17 case application is not found to be sufficient by July 31, 2012;<sup>20</sup>

18 (e) That the interim rates be subject to refund pending the Decision resulting from  
 19 the permanent rate case;

20 (f) That Kohl’s Ranch be required either:

21 (i) To post a performance bond or irrevocable sight draft letter of credit  
 22

23 <sup>17</sup> 578 P.2d 612, 616 (Ariz. App. 1978).

24 <sup>18</sup> See Tr. at 265. Ms. Brown elaborated, testifying that because approximately 75 percent of Kohl’s Ranch’s operating  
 25 expenses are attributable to outside services, once it has its outside service contracts in place and knows those costs, it  
 should be able to file a rate case. (Tr. at 266-67.) Ms. Brown testified that if Kohl’s Ranch wants to have income, then it  
 can file its rate case sooner than April 30, 2012. (Tr. at 267.)

26 <sup>19</sup> Tr. at 278-79.

27 <sup>20</sup> Ms. Brown testified that this recommendation was made because in the past some water companies have not been  
 28 motivated to file rate case applications and, if Staff found deficiencies with applications, did not correct those  
 deficiencies. (Tr. at 279.) Ms. Brown testified that she believes Kohl’s Ranch is motivated to have a permanent rate case,  
 but that its motivation could change if it is able to operate with lower expenses than what it is able to collect through  
 emergency surcharges. (Tr. at 279, 281.)

1 (“ISDLOC”) in the amount of \$147,828<sup>21</sup> prior to implementing the  
 2 emergency rate increase authorized in this docket, to ensure that there  
 3 is sufficient money available to refund customers if the Commission  
 4 determines in the permanent rate case that the emergency rate increase  
 5 was not needed or was too large; or

6 (ii) To post a cashiers check for \$10 prior to implementing the emergency  
 7 rate increase authorized in this docket, as was permitted for Park Water  
 8 Company in Decision No. 66389;

9 (g) That Kohl’s Ranch be directed to file with Docket Control, within 30 days of  
 10 the Decision, as a compliance item in this docket, a revised rate schedule reflecting the emergency  
 11 rate increase;

12 (h) That Kohl’s Ranch be required to notify its customers of the emergency  
 13 surcharges, and the effective date, in a form acceptable to Staff, by means of an insert in its next  
 14 regularly scheduled billing;

15 (i) That Kohl’s Ranch be required, in future Annual Reports and rate filings, to  
 16 report data, including but not limited to its water use and plant description data, separately for each of  
 17 its individual systems, by PWS, as defined by ADEQ;

18 (j) That Kohl’s Ranch be required, by January 31, 2011, to install an appropriately  
 19 sized meter on the spring source serving the Kohl’s Ranch water system; and

20 (k) That Kohl’s Ranch be required, by January 31, 2011, to meter gallons obtained  
 21 from the spring source and gallons obtained from the interconnection with the Well System and  
 22 report this information on its Water Use Data Sheet in future Annual Reports and rate filings.<sup>22</sup>

23 51. Ms. Stukov testified that metering the water from the spring is important because it  
 24 allows Staff to evaluate the capacity of the system and also to determine whether there is any water  
 25 loss on the system. (Tr. at 229.) In addition, Ms. Stukov testified, Kohl’s Ranch is required to

26 <sup>21</sup> This amount was originally \$145,800. (Ex. S-1.) The \$147,828 is the amount resulting from Staff’s revised  
 27 surcharge recommendations of \$21.88 and \$3,200.00 and is based on Ms. Brown’s explanation of the formula for  
 determining the bond/ISDLOC amount. (See Tr. at 257-58.)

28 <sup>22</sup> Staff also advised that Kohl’s Ranch should coordinate the reading of its source meters and of its customer meters  
 each month so that an accurate accounting of water pumped and water delivered to customers is determined. (Ex. S-1.)

1 include the water pumped information in its annual report and in a permanent rate case. (Tr. at 229.)  
 2 Ms. Stukov testified that if there is an operational meter installed at the spring source, that would  
 3 suffice, and Kohl's Ranch would not need to install a new meter. (*Id.*)

4 52. Ms. Stukov testified that Kohl's Ranch does not need to take any action now related to  
 5 any of the service-related issues raised in customer comments, both because this case is an  
 6 emergency rate case and because Kohl's Ranch is in compliance with ADEQ requirements. (Tr. at  
 7 239.)

### 8 Contested Expense Items

#### 9 Purchased Power Expense

10 53. Kohl's Ranch is unable to provide accurate historical data for its purchased power  
 11 expense because its facilities are not metered separately by Arizona Public Service Company  
 12 ("APS") from facilities owned by the Lodge.<sup>23</sup> (*See* Tr. at 98-100.) Kohl's Ranch proposes a  
 13 purchased power expense of \$2,397, calculated based on adjusted 2009 water usage of 5,993,100 for  
 14 both systems and a purchased power cost of \$0.40 per thousand gallons. (Ex. A-4 at SSR-1, SSR-2,  
 15 SSR-4; Tr. at 100, 174.) Ms. Rowell testified that she estimated purchased power expense by using  
 16 the formula of \$0.40 per thousand gallons because the commingling of the areas served by the  
 17 electric meters resulted in no reliable data on the actual purchased power needs for Kohl's Ranch.  
 18 (Tr. at 174.) Ms. Rowell explained her understanding that the Spring System, even though it is  
 19 gravity fed, still requires electricity for its chlorination system and heating a building and other  
 20 things, although she was unable to compare that power need to the power need for a well pump. (Tr.  
 21 at 175-76.) Ms. Stone believes that the actual purchased power expense is higher than the expense  
 22 being requested. (Tr. at 100.)

23 54. Staff accepted Kohl's Ranch's formula for determining purchased power expense, but  
 24 deducted the gallonage for the Spring System, because it is gravity fed rather than pumped, and then  
 25

26 <sup>23</sup> The electric meter for the well pump also measures the electricity used for the lights on the Lodge's sports court. (Tr.  
 27 at 98-99.) ILX is still paying for the power for both the well pump and the lights. (*Id.*) However, ILX Acquisitions is  
 28 paying for the power to run the chlorinator and for the building housing the chlorinator, because the chlorinator building  
 is on ILX Acquisition's meter. (*Id.*) ILX is working with ILX Acquisitions to have APS separately meter the sports court  
 lights and the chlorinator building. (*See* Tr. at 99-100.) No money is being exchanged among ILX, Kohl's Ranch, and  
 ILX Acquisitions to compensate for power usage. (Tr. at 101-02.)

1 added a flat \$1,000 to reflect estimated expense to power the chlorinator, heat the chlorinator building  
2 in the winter, and light the chlorinator building. (Ex. S-2 at CSB-1; Tr. at 245-46.) This resulted in a  
3 purchased power expense of \$2,046. (Ex. S-2 at CSB-1.)

4 55. We find that Staff's purchased power expense is reasonable, and we will adopt it. In  
5 light of the water usage data provided for the Lodge for October 2010 and the first part of November  
6 2010, we do not find that Kohl's Ranch's adjustment to the Lodge's 2009 water usage (adding  
7 1,120,747 gallons) is appropriate, and we will not adopt it. When the formula used by the parties is  
8 applied to the adjusted residential gallons<sup>24</sup> and the actual Lodge gallons for 2009, the result is an  
9 expense of \$1,948.94, which is \$97.06 less than the amount recommended by Staff. In light of the  
10 uncertainty regarding the Lodge's volume usage and the actual expense of purchased power for the  
11 two systems, we find that it is reasonable to allow an additional \$97.06 in purchased power  
12 expense.<sup>25</sup>

13 Outside Services; Legal Expenses

14 56. Kohl's Ranch requests \$65,000 in outside services expenses, which it broke down as  
15 \$21,000 for the daily operator; \$36,000 for billing/accounting/management; \$2,000 for annual  
16 reporting/tax returns; and \$6,000 for legal expenses. (Ex. A-4 at SSR-1, SSR-2.) Ms. Stone testified  
17 that ILX incurred legal fees each year, both for inside counsel and outside counsel. (Tr. at 102.) The  
18 legal expenses are based on an estimate of 20 hours per year at a rate of \$300 per hour rather than  
19 upon any invoices. (Tr. at 102-03.) Ms. Rowell testified that the \$6,000 in legal fees seems like a  
20 very small amount for a utility that does not really have an owner and further that the legal fees are  
21 necessary because Kohl's Ranch will now need to pay attorneys directly rather than relying on ILX  
22 attorneys. (Tr. at 180-81.) Ms. Rowell further testified that small water companies routinely need to  
23 engage counsel and that the legal expenses amount requested is lower than the actual estimate  
24 originally provided to her by Ms. Stone. (Tr. at 181, 194-95.)

25  
26 \_\_\_\_\_  
27 <sup>24</sup> Residential gallons were adjusted downward by 176,450 gallons to remove excess usage attributed to a large leak at  
one residence and to eliminate 23,460 in inexplicable negative usage, an adjustment that we find to be reasonable and  
appropriate. (See Ex. A-4 at SSR-4.)

28 <sup>25</sup> Applying the formula used by the parties, \$97.06 would equate to an additional 242,650 gallons of water usage,  
which should provide a cushion if there is some additional water usage by the Lodge.

1           57. Staff originally disallowed the entire \$6,000 for legal expenses because Staff believed,  
2 due to a misunderstanding, that the legal costs were attributable to the bankruptcy and were not an  
3 ongoing expense. (Ex. S-2 at CSB-1; Tr. at 269.) At hearing, however, Ms. Brown testified that the  
4 legal expenses should be disallowed because there is no concrete evidence to support them, which  
5 could have been submitted by Kohl's Ranch after the Staff Report was issued, even in the context of  
6 an emergency rate case. (Tr. at 249.) Ms. Brown testified that the legal expenses were disallowed  
7 because they are not based on documentation, they are not known and measurable, and Staff does not  
8 believe that ratepayers should pay a cost that was not actually incurred or that may not be needed at  
9 all and from which they will receive no benefit. (Tr. at 270-71, 273.)

10           58. Staff recommends that \$63,050 of outside services expense be allowed, which reflects  
11 an allowance for all of the expenses requested by Kohl's Ranch except the legal expenses, plus an  
12 additional \$4,050 in certified operator expense that was added by Staff after reviewing Kohl's  
13 Ranch's LFEs. (See LFE S-4 at CSB-1; LFE S-3.)

14           59. We find that an outside services expense of \$66,050 is reasonable and appropriate, as  
15 it is almost certain that Kohl's Ranch will incur some legal expenses each year. Because the \$6,000  
16 in legal expenses requested is speculative, but legal expenses are almost certain to be incurred, we are  
17 allowing only 50 percent of the amount requested by Kohl's Ranch.

18 Rate Case Expense

19           60. Kohl's Ranch requests \$1,250 in rate case expense. (Ex. A-4 at SSR-1.) Ms. Rowell  
20 testified that the \$1,250 in rate case expense represents her initial fee divided by two. (Tr. at 182.)

21           61. Staff recommends disallowance of the rate case expense as non-essential and not an  
22 ongoing expense, further stating that a normalized level of rate case expense will be provided for in  
23 Kohl's Ranch's permanent rate case. (Ex. S-2 at CSB-1.) Ms. Brown did not dispute that Kohl's  
24 Ranch actually incurred the rate case expense in pursuing this case. (Tr. at 267.)

25           62. While we understand that rate case expense generally is not expressly permitted in an  
26 emergency rate case,<sup>26</sup> we also are cognizant that Kohl's Ranch has incurred rate case expense to

27 <sup>26</sup> There was testimony during the hearing suggesting that rate case expense has been allowed by the Commission in  
28 past emergency rate cases, although there was also testimony indicating that the issue was not expressly litigated in those  
cases. (See Tr. at 182-83; 255-56.)

1 bring this emergency rate case before the Commission and will incur additional rate case expense to  
2 bring the permanent rate case expense before the Commission. We also understand that Kohl's  
3 Ranch does not have any employees who are able to prepare the filings necessary to file a sufficient  
4 permanent rate case application and participate in a permanent rate case and, unless it hires an  
5 employee who can do so, will need to rely upon the expertise of a third person, such as Ms. Rowell.  
6 Thus, we find that it is reasonable and appropriate to allow \$1,250 in rate case expense as a known  
7 and measurable ongoing expense for Kohl's Ranch.

#### 8 Water Testing

9         63. Kohl's Ranch proposes a water testing expense of \$5,835, which it broke down as  
10 \$2,805 attributable to the Spring System and \$3,030 attributable to the Well System. (Ex. A-6; LFE  
11 A-10.) Ms. Rowell was not aware whether the water testing expense includes laboratory costs or  
12 labor, although she asserted that it is based on actual payments made by Kohl's Ranch for water  
13 testing services. (Tr. at 183-84, 196.) Ms. Rowell further testified that she believed a statement to  
14 the contrary in Kohl's Ranch's Response to the Staff Report was inaccurate. (Tr. at 185.)

15         64. Ms. Stukov testified that her preliminary rough estimate for lab testing fees was  
16 \$2,000 per year for both systems, including MAP testing. (Tr. at 230-31.) Ms. Stukov based her  
17 estimate on an ADEQ report specifying the testing requirements for each system, including how  
18 many tests and of what type. (Tr. at 237.) Ms. Stukov also explained that for engineering purposes,  
19 water testing expenses include only laboratory costs. (Tr. at 233.)

20         65. In LFE A-10, Kohl's Ranch provided invoices to support the water testing figures  
21 previously provided in Ex. A-6 and in its rebuttal schedules, which invoices actually totaled \$6,445.  
22 Staff reviewed the invoices and, in LFE S-3, broke down the expenses as follows: \$275 for  
23 chemicals expense; \$130 for repairs and maintenance; \$4,050 for outside services (certified operator);  
24 \$1,970 in water testing expense; and \$20 in late fees. (LFE S-3.) Staff recommended that all of these  
25 amounts, other than the late fees, be allowed in their respective expense categories and that Kohl's  
26 Ranch also be allowed an additional \$445 for MAP testing and an additional \$306 for other necessary  
27 water tests to be conducted at a later date, for a total water testing expense of \$2,721. (*Id.*)

28

1           66. We find that Staff's adjustment to water testing expense and to the other expense  
2 categories resulting from Staff's review of LFE A-10, as described above, are reasonable and  
3 appropriate and should be adopted.

4 Repairs and Maintenance

5           67. ILX estimates repairs and maintenance expenses of \$7,315 for Kohl's Ranch operating  
6 on a stand-alone basis, based on \$4,315 in materials and some third-party labor in 2009, an additional  
7 \$2,004 in labor expense based on the amount of labor expended by ILX employees in 2009, and an  
8 additional \$996 in estimated labor cost based on a higher hourly rate for labor obtained from a third  
9 party rather than in house from ILX. (Tr. at 104-05.) Ms. Stone believes that 2009 was a typical year  
10 for repairs and maintenance and stated that Kohl's Ranch's system is old and regularly has things  
11 break. (Tr. at 105.) Ms. Rowell testified that third-party labor is more expensive than in-house labor.  
12 (Tr. at 177.) Ms. Rowell did not review any documents indicating the nature of any of the repairs  
13 done.<sup>27</sup> (Tr. at 178-79.)

14           68. Staff recommends disallowance of the \$996 adjustment made by Kohl's Ranch to  
15 reflect estimated additional third-party labor expenses. (Ex. S-2 at CSB-1.) Ms. Brown testified that  
16 she does not agree that it always costs more for a water company to hire a third party than it would  
17 for the water company to have its own employees do work. (Tr. at 273.) Ms. Brown also expressed  
18 some doubt that the entire amount allowed by Staff should be expensed, as some may reflect capital  
19 costs, something that would have been determined in an audit but that was not determined in the  
20 emergency rate case context. (Tr. at 247-48.)

21           69. We find that Staff's adjustment to requested repairs and maintenance expense is  
22 reasonable and appropriate, as it is very likely that at least some portion of the repairs and  
23 maintenance expense requested by Kohl's Ranch is attributable to items that should be capitalized  
24 rather than expensed, and the additional amount of repairs and maintenance cost attributable to third-  
25 party labor is speculative.

26  
27  
28 <sup>27</sup> Ms. Rowell clarified that she does not review invoices in an emergency rate case, although she does use her own judgment and expertise and test for reasonableness. (Tr. at 194-95.) Ms. Stukov testified that Staff also does not generally review invoices in an emergency rate case. (Tr. at 230.)

1 Resolution

2 70. The adjustments that we are adopting herein result in total annual operating expenses  
3 of \$85,770.<sup>28</sup> Because we are not adopting the \$560 pro forma adjustment to Kohl's Ranch's 2009  
4 revenues, this results in a need for surcharge revenue of \$75,759 for Kohl's Ranch to break even.

5 Determining the Appropriate Surcharge Amounts

6 71. Kohl's Ranch's requested surcharge amounts were determined in an effort to make the  
7 per gallon charge similar among all users, both the Lodge and residential users. (Tr. at 105-06.) Ms.  
8 Rowell testified that she designed the proposed surcharge in an attempt to distribute the cost of the  
9 increase fairly amongst the customers so that their cost per thousand gallons of water was similar,  
10 while also trying to match as closely as possible the amount of surcharge revenue generated by the  
11 customer class with the percentage of water used by the customer class. (Tr. at 147.) The proposed  
12 surcharge does not attempt to promote water conservation, Ms. Rowell explained, because doing so  
13 would destroy the demand and the funds needed to operate a utility that is in a critical position,  
14 thereby defeating the purpose of the emergency surcharge. (Tr. at 147-48.) Ms. Rowell testified that  
15 emergency surcharges usually are a flat charge because the utility is considered to need the money  
16 consistently to survive. (Tr. at 148.) Ms. Rowell testified that the proposed surcharges are  
17 "extremely fair" to the residential customers, because the residential customers use most of the water  
18 and, due to their numbers, also require most of the administrative work for billing, collecting, and  
19 customer service as well as requiring most of the distribution lines. (Tr. at 148.) Kohl's Ranch  
20 reduced its proposed residential customer surcharge and increased its proposed Lodge surcharge  
21 because of the revised gallonage figure for the Lodge.<sup>29</sup> (Tr. at 149.)

22 72. Ms. Rowell testified that the residential customer surcharge proposed by Staff is unfair  
23 because it would give a big break to residential users, resulting in the residential users generating  
24 only 42 percent of the surcharge revenue while using 56 percent of the water. (Tr. at 150-51.) Ms.

25 <sup>28</sup> The analysis of Kohl's Ranch's operating expenses herein is limited to the context of this emergency rate case and is  
26 not intended and is not to be interpreted as a Commission determination of Kohl's Ranch's necessary and appropriate  
27 operating expenses in the context of its permanent rate case, in which Staff will audit Kohl's Ranch's records in a manner  
28 that is not possible in the context of an emergency rate case, and the data provided by Kohl's Ranch will be more firmly  
based upon historical information than is the data in this case.

<sup>29</sup> Kohl's Ranch originally proposed a surcharge of \$36.00 for residential customers and of \$2,160 for the Lodge. (Ex.  
A-1.)

1 Rowell testified that ILX does not really care how the surcharge revenue is allocated between the  
2 residential customers and the Lodge, but she believes that all parties that receive water need to pay  
3 their fair share so that small water companies can remain viable. (Tr. at 152.) Ms. Rowell also  
4 testified that it is reasonable to expect the residential customers to pay some portion of the costs  
5 attributed to the Well System because they rely upon it as a back-up water supply and for fire  
6 suppression. (Tr. at 193-94.)

7 73. Ms. Tucker-Gasser testified that the HOA members want Kohl's Ranch to be able to  
8 function. (Tr. at 213.) The HOA members' primary concern is just that the surcharge is equitably  
9 split between the Lodge and the residential customers. (Tr. at 214.) Ms. Tucker-Gasser testified that  
10 the residential customers feel that they have "tolerated a lot of stuff because the rates were so low."  
11 (Tr. at 214.) Ms. Tucker-Gasser acknowledged that she expects the water to be on when she arrives  
12 at her cabin and to be available any time she wants to use it, every month of the year. (Tr. at 216.)  
13 Ms. Tucker-Gasser expressed skepticism concerning Kohl's Ranch's breakdown of water usage,  
14 which shows that the residential customer class uses more water annually than does the Lodge. (*See*  
15 Tr. at 220-22.)

16 74. Ms. Brown testified that Staff's recommended surcharge amount for the residential  
17 customers was determined as a compromise between Kohl's Ranch's proposal and the HOA's  
18 proposal. (Tr. at 259.) Staff accepted Kohl's Ranch's proposed surcharge for the Lodge and then  
19 calculated the residential customer surcharge necessary to produce Staff's recommended revenue  
20 requirement. (*Id.*) Staff did not consider structuring the interim rates so that the increased revenue  
21 would be collected through a reduced flat surcharge plus a commodity surcharge because a  
22 commodity surcharge would not guarantee that Kohl's Ranch would generate the revenue  
23 requirement recommended by Staff. (Tr. at 276.) Ms. Brown also testified that a flat surcharge is  
24 better for a company with a great deal of seasonal use because the company will still collect the same  
25 surcharge amount even when usage is at its lowest, such as during the winter months. (Tr. at 276-  
26 77.) Ms. Brown testified that Staff's rate design is fair because Staff's surcharge is designed to  
27 recover the cost of having service at all, which is one of the reasons the revenue requirement is set at  
28

1 a break-even level, and is not designed to reflect the amount of water that a customer uses—just the  
2 payment for a minimum level of plant needed to have the ability to get water to the tap. (Tr. at 277.)

3 75. While we understand that Kohl's Ranch needs a consistent revenue stream to survive;  
4 that each customer must pay at least a minimum amount each month just for the ability to obtain  
5 water, even if it is not used; and also that it is not common for the Commission to impose surcharges  
6 through commodity rates in interim rate cases, we also find that this case is utterly unique in several  
7 important ways. First, Kohl's Ranch has not had its rates adjusted since late 1972, and currently has  
8 rates that are extraordinarily low for any user, and are especially low for a commercial user with a  
9 six-inch meter (formerly an eight-inch meter) and with annual usage of approximately 1.5 million  
10 gallons per year, a portion of which is used to irrigate turf and a small golf course. Second, because  
11 Kohl's Ranch appears never to have stood on its own as a business operation, instead always relying  
12 upon its parent company for financial support, the expenses accepted herein, while based on educated  
13 estimates, are less concrete than is usual for even an emergency interim rate case. Third, and perhaps  
14 most importantly, there are wildly varying water usage patterns among residential customers, as a  
15 vast majority of the monthly bills for residential users have usage of less than 5,000 gallons per  
16 month, but there are also users who have monthly bills ranging from 22,500 to 55,000 gallons, which  
17 is extremely high usage for a residential customer served by a 5/8" x 3/4" meter. In light of these  
18 unique characteristics, we find that it is appropriate to impose a flat monthly surcharge on each  
19 customer, plus three-tiered surcharge commodity rates, starting with usage over 5,000 gallons. This  
20 type of rate design, while generally viewed primarily as a conservation rate design, is also a means of  
21 ensuring that those customers who use a great deal of water pay significantly more than those  
22 customers who use no water or very little water. Under the unique circumstances in this case, it  
23 would be fundamentally unfair, for example, to charge the residential customer who uses 0 or 500  
24 gallons of water in a month the same surcharge paid by the residential customer who uses 55,000  
25 gallons of water in a month. We are obligated by the Arizona Constitution to adopt rates that are just  
26 and reasonable, and we find that adopting a base monthly surcharge plus surcharge commodity rates  
27 is the best means of doing so under these very unusual circumstances.

28

76. Kohl's Ranch has requested that its tariff be revised to include a reestablishment fee that factors into the calculation of the reestablishment fee under A.A.C. R14-2-403(D) the amount of the customer's monthly surcharge. We find that this is reasonable and appropriate, as it will deter customers from shutting down their service temporarily so as to avoid paying their fair share of surcharge revenues to keep Kohl's Ranch afloat. We also find, however, that it is necessary and appropriate to address other service charges that were not addressed in the Commission Decision granting Kohl's Ranch its rates in 1972. We do not believe that these additional service charges would result in unjust enrichment of Kohl's Ranch, because they are essentially designed to cover the costs of actual administrative or technical tasks that must be done only occasionally by a worker laboring for Kohl's Ranch as a result of a request from a customer or a customer-to-be or as a result of a customer's failure to fulfill the customer's own duties.

77. We find that the following surcharges and service charges are just and reasonable and in the public interest, under the unique circumstances of this emergency rate case,<sup>30</sup> and we adopt them:

**MONTHLY USAGE SURCHARGE**

5/8" x 3/4" Meter	\$ 17.50
The Lodge (6" Meter)	\$2900.00

**COMMODITY RATE SURCHARGE**

**(Per 1,000 Gallons):**

**All Classes**

1 to 5,000 Gallons	None
5,001 to 25,000 Gallons	\$3.00
25,001 to 60,000 Gallons	\$4.50
Over 60,000 Gallons	\$6.00

**SERVICE CHARGES:**

Establishment	\$25.00
Establishment (After Hours)	35.00
Reconnection (Delinquent)	35.00
Reconnection (Delinquent, After Hours)	45.00

<sup>30</sup> Our determination of the just and reasonable surcharges and service charges to be adopted herein is limited to the context of this emergency rate case and is not intended and is not to be interpreted as a Commission determination of the rate design ultimately to be adopted in the context of Kohl's Ranch's permanent rate case, in which the Commission will determine the fair value of Kohl's Ranch's necessary and useful plant and will fully scrutinize Kohl's Ranch's operations in a manner that is not possible in the context of an emergency rate case.

1	Meter Test	35.00
	Deposit Requirement	(a)
2	Deposit Interest	6.00%
	Re-Establishment (Within 12 Months)	(b)
3	Re-Establishment (After Hours)	(b)
	NSF Check	\$25.00
4	Deferred Payment, Per Month	1.50%
	Meter Re-read	\$15.00
5	Late Charge per Month	(c)

- 6
- 7 (a) Residential – two times the average bill  
Non-residential – two and one-half times the average bill
- 8 (b) Months off the system x monthly minimum bill, which shall include monthly usage  
surcharge while the surcharge is effective
- 9 (c) 1.50 percent of the unpaid balance

10 In addition to the collection of regular rates, the utility will collect from its customers a  
11 proportionate share of any privilege, sales, use, and franchise tax, per Commission Rule R14-  
2-409(D)(5).

12 78. If the water usage for the Lodge and the residential customers is consistent with their  
13 water usage in 2009, with the adjustment accepted herein for the leak and negative usage in the  
14 residential customer class, the surcharges adopted herein would result in surcharge revenue of  
15 \$75,892.05, produced as follows:

		Percentage of Surcharge Revenue
17	Residential base surcharge revenue:	\$26,040.00 42.8% of base
	Lodge base surcharge revenue:	\$34,800.00 57.2% of base
18	Residential commodity surcharge revenue:	\$7,793.25 51.78% of commodity
	Lodge commodity surcharge revenue:	\$7,258.80 48.2% of commodity
19	<b>Total:</b>	<b>\$75,892.05</b>

20 79. The surcharges adopted herein will result in the following bill impacts, as compared to  
21 the current bill amounts and the surcharges proposed by Kohl's Ranch, Staff, and the HOA:

22 **Residential Customers**

23	Monthly Use (gallons)	Current Rates	Kohl's Ranch	HOA	Staff	ROO
24	0 to 5,000	\$5.75	\$34.25	\$23.22	\$27.63	\$23.25
	10,000	\$8.25	\$36.75	\$25.72	\$30.13	\$40.75
25	15,000	\$10.75	\$39.25	\$28.22	\$32.63	\$58.25
	50,000	\$28.25	\$56.75	\$45.72	\$50.13	\$218.25
26	100,000	\$53.25	\$81.75	\$70.72	\$75.13	\$528.25

**The Lodge**

Monthly Use (gallons)	Current Rates	Kohl's Ranch	HOA	Staff	ROO
0 to 5,000	\$5.75	\$3,205.75	\$3,255.75	\$3,205.75	\$2,905.75
50,000	\$28.25	\$3,228.25	\$3,278.25	\$3,228.25	\$3,100.75
100,000	\$53.25	\$3,253.25	\$3,303.25	\$3,253.25	\$3,410.75
500,000	\$253.25	\$3,453.25	\$3,503.25	\$3,453.25	\$6,010.75

**Metering of Spring Source and Interconnection**

80. It is unclear from the testimony in this matter whether there are currently meters measuring the water flowing from the spring into the Spring System or between the Well System and the Spring System (when the Well System provides back-up or fire flow water for the Spring System). Ms. Stone testified that there are no such meters. (Tr. at 84, 86-87.) Ms. Stukov testified that she was informed by Kohl's Ranch's daily operator that there are such meters, but that she was not informed what size they are. (Tr. at 227.)

81. Metering water at its source and then again as it is provided to customers is crucial because the monitoring of such information allows a water utility to detect leaks, thefts, and malfunctions in meters or other facilities. If there are currently no meters measuring the water flowing into the Spring System or between the Well System and the Spring System, it is necessary for Kohl's Ranch to ensure that such meters are obtained and installed within 30 days after the effective date of this Decision. If there are currently such meters, it is necessary for Kohl's Ranch to make itself aware of this fact. Once the presence of such meters is assured or obtained, it is necessary for Kohl's Ranch to provide the Commission documentation confirming that such meters exist, identifying the meter size at each location, and attesting that Kohl's Ranch has begun to take regular readings from the meters and will continue to do so. We are cognizant that this may necessitate the purchasing of up to two meters, something about which Kohl's Ranch has expressed concern,<sup>31</sup> but remind Kohl's Ranch that it is its own failure to track its water system facilities and operations appropriately that results in the necessity for the Commission to impose this requirement.

<sup>31</sup> Ms. Stone did not research what meter size would be needed to measure the water from the Spring source, but did volunteer that meters are expensive, as Kohl's Ranch paid more than \$7,000 for the new compound meter to measure the Lodge's water use, with another \$1,000 spent on labor. (Tr. at 114-15.) Ms. Stukov also testified that she did not know what meter size would be appropriate to meter the water flowing from the spring, if there is not already a meter on the Spring System. (Tr. at 238.)

1 **Performance Bond/ISDLOC**

2 82. Ms. Stone testified as to her belief that there would not be a creditor willing to provide  
3 Kohl's Ranch a \$145,000 performance bond/ISDLOC because Kohl's Ranch operates at a loss and  
4 has no significant source of income. (Tr. at 115-16.) Kohl's Ranch did not actually attempt to obtain  
5 quotes from lenders regarding the availability or cost of such a performance bond/ISDLOC. (*See id.*)

6 83. Ms. Brown testified that the recommended bond/ISDLOC amount was based on the  
7 emergency surcharge's being in effect until permanent rates go into effect and is designed to enable a  
8 refund of any excess surcharge payments, if it is determined in the permanent rate case that the  
9 surcharge payments were excessive. (*See Tr. at 256-58.*) Ms. Brown explained that to determine the  
10 bond/ISDLOC amount, she multiplied the recommended surcharge amount to be collected each  
11 month times 25 months; thus the bond/ISDLOC amount recommended changes with any change in  
12 the recommended surcharge amounts. (*See Tr. at 257-58.*) Ms. Brown also testified that Staff was  
13 cautious in the expenses it allowed because Kohl's Ranch is proposing to post only a \$10  
14 bond/ISDLOC, which would not enable the refund of any excess payments, and Staff believed it thus  
15 was necessary to mitigate the extent to which the surcharge payments collected would be excessive.  
16 (*See Tr. at 256-57.*) Ms. Brown acknowledged that the Commission has allowed water companies to  
17 give customers credit on their bills going forward, but did not believe that it had ever done so in the  
18 context of an emergency rate case and was unsure whether it had been done to refund overcharges.  
19 (Tr. at 268-69.)

20 84. Pursuant to *Scates*, a bond must be posted to protect Kohl's Ranch's customers and to  
21 allow for a refund if the interim rates are later determined to be excessive. The Commission often  
22 finds that a bond in a *de minimis* amount is appropriate. In this case, Staff's main recommendation is  
23 to require posting of a bond/ISDLOC in an amount equal to the entire amount of the surcharge to be  
24 collected. In light of Ms. Stone's testimony that Kohl's Ranch would be unable to obtain such a  
25 bond/ISDLOC, however, which we find to be credible, we believe that it is more appropriate to  
26 follow Staff's alternate recommendation and require the posting of a letter of credit in the amount of  
27 \$10. While Kohl's Ranch's customers would, in theory, be protected by a higher bond/ISDLOC  
28 amount, such as that recommended by Staff, imposing a bond/ISDLOC requirement with which

1 Kohl's Ranch cannot comply will result in Kohl's Ranch's inability to charge any surcharge  
2 authorized herein and in its inability to continue providing its customers with water utility service,  
3 which would harm its customers.

4 **Resolution**

5 85. As stated previously, we find that adopting the surcharges and service charges set  
6 forth in Findings of Fact No. 77 is just and reasonable and in the public interest.

7 86. We find that Staff's recommendations set forth in Findings of Fact No. 50(c), (d), (e),  
8 (f)(ii), (g), (h), and (i) are reasonable and appropriate and should be adopted.

9 87. We further find that Staff's recommendation set forth in Findings of Fact No. 50(b),  
10 modified to clarify that Kohl's Ranch may use a test year that includes six months of actual historical  
11 data from its stand-alone operations along with six months of projected data based on the actual  
12 historical data, is reasonable and appropriate and should be adopted.

13 88. We further find that Staff's recommendations set forth in Findings of Fact No. 50(j)  
14 and (k), modified to require the actions to take place within 30 days of the effective date of this  
15 Decision rather than by January 31, 2011, and to allow for the possibility that meters may already be  
16 present, and to require confirmation of the required actions, are reasonable and appropriate and  
17 should be adopted.

18 89. We are concerned that Ms. Stone may not fully understand that Kohl's Ranch has a  
19 legal duty to serve its customers while it continues to hold a CC&N to provide water utility service in  
20 Arizona and may not understand that Kohl's Ranch cannot transfer its CC&N or any of its other  
21 assets necessary or useful in the performance of its duties to the public without prior Commission  
22 authorization. Thus, we admonish Kohl's Ranch that it has this legal duty, under A.R.S. §§ 40-285  
23 and 40-321 and Arizona Administrative Code Title 14, Chapter 2, Article 4, and further advise  
24 Kohl's Ranch that the Commission has legal authority, under A.R.S. § 40-425, to impose penalties on  
25 public service corporations that violate or fail to comply with Commission statutes, orders, rules, or  
26 requirements.

27 90. In order to ensure that Kohl's Ranch pursues its permanent rate case application in  
28 earnest, we will also require Staff to file an Order to Show Cause to install an interim manager and

1 address any other appropriate remedies, such as penalties, should Kohl's Ranch fail to bring its  
2 permanent rate case application to sufficiency by July 31, 2012.

3 **CONCLUSIONS OF LAW**

4 1. Kohl's Ranch is a public service corporation within the meaning of Article XV of the  
5 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

6 2. The Commission has jurisdiction over Kohl's Ranch and the subject matter of the  
7 application.

8 3. Notice of the application was provided as prescribed by law.

9 4. Kohl's Ranch is facing an "emergency" within the definition set forth in Arizona  
10 Attorney General Opinion No. 71-17, as discussed and approved in the *Scates* and *Rio Verde* cases  
11 cited herein.

12 5. The standard for approval of a request for interim rate relief requires the existence of  
13 an emergency, the posting of a bond or letter of credit by the applicant, and the subsequent filing of a  
14 permanent rate application.

15 6. Approval of Kohl's Ranch's application for emergency interim rate relief, as described  
16 herein, is consistent with the Commission's authority under the Arizona Constitution, applicable  
17 statutes, and applicable case law.

18 7. It is just and reasonable to provide Kohl's Ranch emergency interim rate relief,  
19 through monthly base surcharges and commodity surcharges, as set forth herein, to be added to each  
20 metered customer's monthly bill, upon Kohl's Ranch's meeting the conditions precedent required in  
21 the ordering paragraphs below.

22 **ORDER**

23 IT IS THEREFORE ORDERED that Kohl's Ranch Water Company is authorized to assess  
24 the following emergency interim surcharges each month and, as applicable, the following service  
25 charges, as conditioned in the ordering paragraphs below:

26 **MONTHLY USAGE SURCHARGE**

27 5/8" x 3/4" Meter	\$ 17.50
28 The Lodge (6" Meter)	\$2900.00

**COMMODITY RATE SURCHARGE****(Per 1,000 Gallons):**All Classes

1 to 5,000 Gallons	None
5,001 to 25,000 Gallons	\$3.00
25,001 to 60,000 Gallons	\$4.50
Over 60,000 Gallons	\$6.00

**SERVICE CHARGES:**

Establishment	\$25.00
Establishment (After Hours)	35.00
Reconnection (Delinquent)	35.00
Reconnection (Delinquent, After Hours)	45.00
Meter Test	35.00
Deposit Requirement	(a)
Deposit Interest	6.00%
Re-Establishment (Within 12 Months)	(b)
Re-Establishment (After Hours)	(b)
NSF Check	\$25.00
Deferred Payment, Per Month	1.50%
Meter Re-read	\$15.00
Late Charge per Month	(c)

(a) Residential – two times the average bill  
Non-residential – two and one-half times the average bill

(b) Months off the system x monthly minimum bill, which shall include monthly usage surcharge while the surcharge is effective

(c) 1.50 percent of the unpaid balance

In addition to the collection of regular rates, the utility will collect from its customers a proportionate share of any privilege, sales, use, and franchise tax, per Commission Rule R14-2-409(D)(5).

IT IS FURTHER ORDERED that the emergency interim surcharges shall not become effective, and Kohl's Ranch Water Company shall not bill for or collect the emergency interim surcharges, until the first day of the month after Kohl's Ranch Water Company has posted a letter of credit in the amount of \$10 with the Commission by providing the original letter of credit to the Commission's Business Office and filing copies with Docket Control, as a compliance item in this docket.

IT IS FURTHER ORDERED that Kohl's Ranch Water Company shall file, as a compliance item in this docket, within 30 days after the effective date of this Decision, a revised rate schedule reflecting the emergency interim surcharges and service charges authorized herein.

1 IT IS FURTHER ORDERED that Kohl's Ranch Water Company shall notify its customers of  
2 the emergency interim surcharges and service charges and their effective date, in a form acceptable to  
3 the Commission's Consumer Services Section, by means of an insert in Kohl's Ranch Water  
4 Company's next regularly scheduled billing after the emergency interim surcharges and service  
5 charges become effective.

6 IT IS FURTHER ORDERED that Kohl's Ranch Water Company shall file a permanent rate  
7 case application with the Commission no later than April 30, 2012, using a test year of calendar year  
8 2011 or a test year that includes at least six months of actual historical data from Kohl's Ranch Water  
9 Company's stand-alone operations with the remaining months' data projected based on the actual  
10 historical data.

11 IT IS FURTHER ORDERED that, if Kohl's Ranch Water Company's permanent rate case  
12 application is found to be sufficient by July 31, 2012, the emergency interim surcharges shall remain  
13 in effect until an order is issued in the permanent rate case.

14 IT IS FURTHER ORDERED that, if Kohl's Ranch Water Company's permanent rate case  
15 application is not found to be sufficient by July 31, 2012, the emergency interim surcharges shall  
16 remain in effect only until July 31, 2012, and Staff shall file an Order to Show Cause to install an  
17 interim manager and address any other appropriate remedies, such as penalties.

18 IT IS FURTHER ORDERED that the emergency interim surcharge revenues collected by  
19 Kohl's Ranch Water Company are subject to refund pending the decision resulting from the  
20 permanent rate case application required by this Decision.

21 IT IS FURTHER ORDERED that Kohl's Ranch Water Company shall, within 30 days after  
22 the effective date of this Decision, ensure that appropriately sized meters are obtained, if necessary,  
23 and are installed to measure the water flowing from the spring source into the Spring System and  
24 flowing between the Well System and the Spring System.

25 IT IS FURTHER ORDERED that, within 60 days after the effective date of this Decision,  
26 Kohl's Ranch Water Company shall file with the Commission's Docket Control, as a compliance  
27 item in this docket, documentation confirming that such meters are installed, identifying the meter  
28 size at each location, and attesting that Kohl's Ranch Water Company has begun to take regular

1 readings from the meters and will continue to do so.

2 IT IS FURTHER ORDERED that Kohl's Ranch Water Company shall, in future Annual  
3 Reports and rate filings, report data, including but not limited to its water use and plant description  
4 data, separately for the Spring System and the Well System and that Kohl's Ranch Water Company  
5 shall include in such filings data showing the water flowing from the spring source into the Spring  
6 System and the water flowing between the Well System and the Spring System through the  
7 interconnection between the two systems.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
9

10  
11 CHAIRMAN

COMMISSIONER

12  
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14  
15 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
16 Executive Director of the Arizona Corporation Commission,  
17 have hereunto set my hand and caused the official seal of the  
18 Commission to be affixed at the Capitol, in the City of Phoenix,  
19 this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

21 DISSENT \_\_\_\_\_  
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23 DISSENT \_\_\_\_\_  
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SERVICE LIST FOR: KOHL'S RANCH WATER COMPANY

DOCKET NO.: W-02886A-10-0369

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