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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN 27 2011

COMMISSIONERS

- GARY PIERCE - Chairman
- BOB STUMP
- SANDRA D. KENNEDY
- PAUL NEWMAN
- BRENDA BURNS

DOCKETED BY	nr
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IN THE MATTER OF THE APPLICATION OF
 COMMUNITY WATER COMPANY OF GREEN
 VALLEY FOR A DETERMINATION THAT THE
 "AGREEMENT FOR PAST CAP M&I WATER
 SERVICE CAPITAL CHARGES (INSTALLMENT)"
 WITH CENTRAL ARIZONA WATER
 CONSERVATION DISTRICT IS NOT AN
 EVIDENCE OF INDEBTEDNESS REQUIRING
 COMMISSION APPROVAL UNDER A.R.S. §§
 40-301 AND 40-302; OR, IN THE ALTERNATIVE,
 APPROVAL OF THE AGREEMENT.

DOCKET NO. W-02304A-09-0575

DECISION NO. 72435

ORDER

Open Meeting
 June 21 and 22, 2011
 Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

Procedural History

1. Community Water Company of Green Valley ("CWCGV" or "Company") is a
 member-owned, non-profit water utility cooperative serving mostly residential customers located in
 an unincorporated area of Pima County and the Town of Sahuarita.

2. CWCGV's current rates were approved in Decision No. 71478 (February 3, 2010). In
 that proceeding, CWCGV was classified as a Class B utility.

3. The Arizona Corporation Commission ("Commission") granted CWCGV its initial
 Certificate of Convenience and Necessity ("CC&N") to provide water service in Pima County,

1 Arizona, pursuant to Decision No. 47912 (May 1, 1977). The Commission granted CC&N
2 extensions to CWCGV in Decision Nos. 57549 (September 9, 1991), 63310 (January 11, 2001),
3 70164 (February 27, 2008), and 70551 (October 23, 2008). CWCGV also acquired the CC&N of
4 New Pueblo Water pursuant to Decision No. 60082 (February 20, 1997).

5 4. On September 3, 2009, the Commission issued Decision No. 71259, approving
6 \$2,810,000 of new debt financing for CWCGV.

7 5. In the proceeding that led to Decision No. 71259, Staff reviewed the Company's
8 financial information and learned of an agreement entered into by the Company and the Central
9 Arizona Water Conservation District ("CAWCD") for past Central Arizona Project ("CAP")
10 municipal and industrial priority ("M&I") water service capital charges ("Agreement"). CWCGV
11 and the Commission's Utilities Division ("Staff") were not able to agree regarding whether the
12 Agreement is subject to A.R.S §§ 40-301 and 40-302. In that proceeding, CWCGV argued that the
13 Agreement does not qualify as long-term debt because CWCGV can cease making payments to
14 CAWCD at any time and is not subject to any penalty for doing so. CWCGV characterized the
15 Agreement as more akin to a purchase agreement than a loan agreement, because there is no
16 encumbrance on CWCGV's assets. CWCGV asserted that Commission approval of the Agreement is
17 not necessary. Staff recommended that CWCGV be required to file a separate application regarding
18 the necessity of Commission approval of the Agreement pursuant to A.R.S §§ 40-301 and 40-302.

19 6. A determination regarding whether the Agreement requires Commission approval was
20 not necessary to the Commission's determination on the \$2,810,000 of new debt financing.
21 Therefore, Decision No. 71259 approved the \$2,810,000 of new debt financing, and adopted Staff's
22 recommendation that CWCGV be required to file a separate application regarding the necessity of
23 Commission approval of the Agreement pursuant to A.R.S §§ 40-301 and 40-302. Decision No.
24 71259 ordered CWCGV to file the application within 120 days.

25 7. On December 22, 2009, in compliance with Decision No. 71259, CWCGV filed its
26 application for a determination that the Agreement is not an evidence of indebtedness requiring
27 Commission approval under A.R.S. §§ 40-301 and 40-302; or, in the alternative, approval of that
28 agreement ("Application").

1 8. On July 13, 2010, CWCGV filed an Affidavit of Publication indicating that it
2 published notice of the Application in the *Green Valley News and Sun* on July 11, 2010.

3 9. No public comment or intervention requests were filed.

4 10. On August 17, 2010, Staff filed its Staff Report in this matter.

5 11. On August 26, 2010, CWCGV filed its Response to the Staff Report.

6 12. On September 10, 2010, Staff filed its Response to Company's Response to the Staff
7 Report.

8 13. On October 20, 2010, a Procedural Order was issued setting a procedural conference
9 for the purpose of determining the necessity of a hearing on the Application.

10 14. The procedural conference convened as scheduled. The Company and Staff appeared
11 through counsel. During the procedural conference, the parties agreed that because the issues
12 addressed by the Application are legal rather than factual, no hearing is necessary.

13 15. A Procedural Order was issued on January 4, 2011, directing the Company and Staff
14 to file Supplemental Response Briefs.

15 16. On February 4, 2011, Staff and the Company filed simultaneous Supplemental
16 Response Briefs.

17 17. On April 14, 2011, CCWGV filed a Notification of Final Payment.

18 **Background**

19 18. In 1987, CWCGV entered into a subcontract for the delivery of 1,337 acre-feet per
20 year of CAP M&I water (Contract No. 07-07-30-W0151) with the United States of America acting
21 through the Secretary of the Interior and the CAWCD.

22 19. On August 25, 2006, the Secretary of the Interior published a decision that reallocated
23 previously uncontracted for CAP M&I water to various M&I water providers.¹ The reallocation
24 decision allocated 1,521 additional acre-feet per year of CAP M&I water to CWCGV ("Additional
25 Entitlement") pursuant to the Arizona Water Settlements Act of 2004² and the recommendation of the
26 Arizona Department of Water Resources.

27 _____
28 ¹ Water Allocations, 71 Fed. Reg. 50449 – 50442 (August 25, 2006).

² 118 Stat. 3478, Pub. L. 108–451, December 10, 2004.

1 20. CWCGV subsequently entered into an Amended Subcontract with the United States of
2 America and CAWCD for an annual entitlement of 2,858 acre-feet of CAP M&I water. This amount
3 includes the 1,521 acre-feet Additional Entitlement, in addition to CWCGV's original CAP
4 entitlement of 1,337 acre-feet.

5 21. The Amended Subcontract includes three conditions requiring satisfaction before the
6 Amended Subcontract would become effective. The Agreement set forth conditions as follows: (1)
7 that the Amended Subcontract be validated by a court of competent jurisdiction; (2) that the Secretary
8 of the Interior publish a statement of findings in the Federal Register; and (3) that CWCGV pay or
9 provide for payment of past CAP M&I water service capital charges associated with the Additional
10 Entitlement.

11 22. CAWCD gave CWCGV the option of paying the past M&I water service capital
12 charges associated with the Additional Entitlement either in one lump sum by December 1, 2007, or
13 on a five year levelized payment plan with the first installment due December 1, 2007.

14 23. CWCGV chose the second payment option.

15 24. The Secretary of the Interior published the statement of findings in the Federal
16 Register on August 25, 2006.

17 25. The Amended Subcontract was validated by a court of competent jurisdiction, the
18 Superior Court of Pima County, on November 15, 2007.

19 26. CWCGV has paid for all past CAP M&I water service capital charges associated with
20 the Additional Entitlement.

21 27. The Amended Subcontract has become effective.

22 **Agreement**

23 28. On November 21, 2007, CWCGV and CAWCD entered into the Agreement to make
24 arrangements for timely payment of the past M&I water service capital charges associated with the
25 Additional Entitlement, in order to satisfy the third condition required for the Amended Subcontract
26 to become effective and secure CWCGV's right to the Additional Entitlement. CWCGV attached a
27 copy of the Agreement to the Application. For ease of reference, a copy is attached hereto and
28 incorporated herein as Exhibit A.

1 29. The Agreement requires CWCGV to make five annual installment payments of
2 \$222,995, beginning on December 1, 2007 and ending on December 1, 2011.

3 30. The Agreement provides that if CWCGV is in arrears on the payment of any of the
4 installments due, CWCGV has no right to delivery of the Additional Entitlement until the delinquent
5 payment is made, plus any applicable late charges as set forth in the Agreement.

6 **Staff Report**

7 31. In the Staff Report, Staff concluded that the Agreement is a note evidencing
8 indebtedness, requiring Commission approval pursuant to A.R.S. § 40-301 *et seq.* Staff asserted that
9 CWCGV's obligation to make five annual installment payments of \$222,995 in order to avoid losing
10 its right to 1,521 acre-feet of CAP water is appropriately classified as "Other Long-Term Debt" in
11 Account No. 224 of the National Association of Regulatory Utility Commissioners ("NARUC")
12 Uniform System of Accounts ("USOA"). Staff stated that classification as debt is appropriate
13 because the installment payment plan of the Agreement meets the criteria of "other obligations
14 maturing more than one year from date of issuance and assumption," and asserted that from a
15 financial perspective, the installment payment plan of the Agreement meets the criteria of a debt
16 obligation.

17 32. Staff stated that the five annual installment payments of \$222,995 provided for an
18 effective annual interest rate of 5.2 percent.

19 33. Because Staff concluded that CWCGV's obligation under the Agreement constitutes
20 debt, Staff performed a debt service coverage ratio ("DSC")³ financial analysis for the Company.
21 Staff based its analysis on CWCGV's audited financial information for the year ended December 31,
22 2009, and Staff included the \$413,000 balance on the five installment payments that existed at the
23 time. Staff found that CWCGV had a DSC of 1.38 for the year ended December 31, 2009. With pro
24 forma adjustments to account for the rate increase granted in Decision No. 71259, Staff found a DSC
25 of 3.10. Based on its analysis, Staff determined that CWCGV could meet all obligations with cash

26 _____
27 ³ DSC represents the number of times internally generated cash will cover required principal and interest payments on
28 short term and long-term debt. A DSC greater than 1.0 indicates that cash flow from operations is sufficient to cover debt
obligations. A DSC less than 1.0 means that debt service obligations cannot be met by cash generated from operations
and that another source of funds is needed to avoid default.

1 generated from operations.

2 34. Staff concluded that CWCGV incurred the payment obligations in the Agreement for
3 appropriate purposes and that incurring the payment obligations is within CWCGV's corporate
4 powers, compatible with the public interest, consistent with sound financial practices and that it
5 would not impair CWCGV's ability to provide services.

6 35. Staff recommended that the Commission retroactively authorize CWCGV to incur an
7 obligation to pay five annual payments of \$222,995 beginning December 1, 2007, and ending
8 December 1, 2011, as provided for in the Agreement, and that CWCGV be authorized to engage in
9 any transaction and to execute any documents necessary to effectuate the authorization granted.

10 **CWCGV's Response to the Staff Report**

11 36. In response to the Staff Report, CWCGV states that it understands that from a
12 financial perspective, Staff considers the Agreement as debt. CWCGV argues, however, that as a
13 matter of law, the Agreement is not the type of obligation that qualifies as evidence of indebtedness
14 under A.R.S §§ 40-301 and 40-302. CWCGV further argues that even if the Commission considers
15 the Agreement to be debt under those statutes, under the doctrine of implied preemption, state
16 regulatory oversight of the Agreement is effectively preempted.

17 37. CWCGV asserts that conflict preemption would occur if the Commission were to
18 reject the Agreement or impose conditions that would make it impossible for CWCGV to comply
19 with both state and federal law. CWCGV also argues that federal law on the Colorado River and
20 CAP is so extensive, complex and pervasive, that it is reasonable to infer that Congress left no room
21 for the State to supplement it. CWCGV asserts that both conflict preemption and field preemption
22 apply to Commission review of the Agreement.

23 38. In support of its argument that the Agreement does not constitute debt under A.R.S §§
24 40-301 and 40-302, CWCGV asserts that the definition of debt that Staff uses in the Staff Report is
25 not the only possible definition of debt, and may be overbroad. CWCGV asserts that the Agreement
26 is more akin to a lease arrangement than to a debt, and argues that using Staff's definition of debt
27 would result in every obligation over twelve months qualifying as a debt, including, for example, the
28 leasing of vehicles or office equipment. CWCGV asserts that such a definition would require utilities

1 to file applications requesting Commission approval for such items, resulting in an increased burden
2 both on utilities and the Commission.

3 39. CWCGV states that it did not borrow money from the CAWCD, and is not promising
4 to pay CAWCD, as it would be with a promissory note. CWCGV asserts that the Agreement is
5 neither a bond nor a note, and is not a fixed and certain obligation. CWCGV argues that instead, the
6 Agreement is a five-year installment payment option subject to the CAP relinquishment policy,
7 which allows the Company to receive a full refund if it relinquishes the Additional Entitlement.
8 CWCGV attached a copy of the CAP relinquishment policy to the Application. For ease of
9 reference, a copy is attached hereto and incorporated herein as Exhibit B. CWCGV argues that the
10 CAP relinquishment policy is not in dispute, and that due to the relinquishment policy, the
11 Agreement is not an instrument containing an express and absolute promise to pay a definite sum of
12 money at a specified time.

13 40. CWCGV asserts that the fact that the Agreement was categorized in NARUC USOA
14 Account No. 224 on its books should not be dispositive on the issue of whether it constitutes long-
15 term debt. CWCGV states that this account appears to be a catch-all category to include items not
16 appropriately categorized anywhere else. CWCGV contends that the terms of the Agreement itself,
17 including the CAP relinquishment policy, provide more compelling evidence concerning the nature
18 of the Agreement than the account in which it was recorded.

19 41. CWCGV notes that Avra Water Cooperative, Inc. ("Avra") entered an agreement to
20 pay CAWCD for a CAP allocation over a five year period commencing in January 2008, as was
21 described in Findings of Fact No. 33 in Decision No. 69681 (June 28, 2007). CWCGV notes that
22 Decision No. 69681 neither required Avra to seek approval of its agreement as debt, nor determined
23 Avra's agreement to constitute debt.⁴

24 42. In its Response to the Staff Report, CWCGV states that in the event the Commission
25 disagrees with CWCGV's arguments and determines that the Agreement does constitute debt, and
26 that Commission review and analysis is not implicitly preempted by federal law, CWCGV requests
27

28 ⁴ CWCGV concedes that Commission Decisions do not create binding precedent in the way caselaw does.

1 that the Commission approve the Agreement as being in the public interest and not impairing
2 CWCGV's ability to provide water service to its customers.

3 **Staff's Response to CWCGV's Response to Staff Report**

4 43. In Staff's Response to CWCGV's Response to Staff Report, Staff states that
5 CWCGV's arguments do not acknowledge one of the purposes of A.R.S. § 40-301, which is to
6 ensure the financial health of a public service corporation by Commission oversight to ensure that
7 service to the public is not impacted by the amount of debt the public service company maintains.
8 Staff urges the Commission to reject CWCGV's arguments that the Agreement does not constitute
9 debt pursuant to A.R.S §§ 40-301 and 302, as well as its alternative arguments that the Commission
10 is implicitly preempted from review and analysis of the Agreement. Staff recommends that the
11 Commission instead approve the Agreement pursuant to A.R.S §§ 40-301 and 302, as Staff outlines
12 in the Staff Report.

13 44. Staff does not argue that the Agreement is a stock, bond, or note. However, Staff
14 cautions against a narrow reading of A.R.S § 40-301 that would limit the types of financing
15 arrangements and mechanisms that may be considered an evidence of indebtedness. Staff notes that
16 the Commission declined in the past to issue a declaratory order requested by Arizona Public Service
17 Company ("APS"), that would have granted APS a blanket exemption from seeking Commission
18 approval for certain financing activities falling outside traditional evidences of indebtedness, and
19 which would have excluded such non-traditional evidences of indebtedness from the utility's debt
20 limits.⁵

21 45. Staff does not agree with CWCGV that the doctrine of implied preemption precludes
22 the Commission from reviewing the underlying financial transaction that is the subject of the
23 Agreement. In regard to CWCGV's conflict preemption assertion, Staff asserts that no conflict exists
24 between the purposes of A.R.S. § 40-301 *et seq.* and the federal law associated with the Colorado
25 River, because there is no state or federal requirement that mandates CWCGV to take a CAP
26 allocation. Staff further asserts that it has not recommended that the Commission take any action that

27
28 ⁵ Staff cited to Docket No. E-01345A-06-0779. The Commission issued Decision No. 69947 in that docket on October 30, 2007. The requests at issue in Decision No. 69947 included capital leases.

1 would prevent CWCGV from complying with any term or condition of the Agreement, and that Staff
2 cannot envision what type of conditions the Commission would impose in regard to the Agreement
3 that would make it impossible for CWCGV to comply with federal or state law. Staff also disagrees
4 with CWCGV's arguments that preemption is implied because federal law is so pervasive in regard to
5 the agreement that there is no room for state regulation. Staff asserts that the "field" at issue in this
6 case is not the federal law of the Colorado River, but is instead the regulation of certain financial
7 transactions of Arizona public service corporations.

8 **CWCGV's Supplemental Response Brief**

9 46. In its Supplemental Response Brief, CWCGV posits that the overarching question in
10 this case is whether CWCGV's request for a declaratory order impairs the Commission's ability to
11 protect ratepayers. CWCGV argues that granting its request would not restrict the Commission's
12 ability to protect the public and ensure the financial health of CWCGV, because its request is solely
13 for a determination that the Agreement is not subject to A.R.S. §§ 40-301 and 302.

14 47. CWCGV responds to Staff's reliance on Decision No. 69947 for its position that
15 Commission approval of the Agreement is required. CWCGV states that unlike APS's request
16 considered in Decision No. 69947, CWCGV is not making a blanket request for a general
17 authorization. CWCGV states that it is instead making a request in regard only to the specific
18 Agreement. CWCGV further states that the Agreement is not a capital lease, like those at issue in
19 Decision No. 69947. CWCGV argues that Commission Decision No. 69681, which also involved
20 installment payments for a CAP allocation, and which did not require Avra to seek Commission
21 approval of its agreement, is more applicable to this matter than is Decision No. 69947.

22 48. CWCGV also reiterates its argument that to consider the Agreement an evidence of
23 indebtedness under A.R.S §§ 40-301 and 302 would mean that any utility obligation exceeding
24 twelve months would be subject to Commission approval, and would thus inhibit utilities' ability to
25 conduct their day-to-day operations.

26 **Staff's Supplemental Response Brief**

27 49. In Staff's Supplemental Response Brief, Staff addressed the difference in the
28 Commission's treatment of the Avra CAP allocation payments referenced in Decision No. 69681 and

1 Staff's recommendation in this case. Staff states that in its evaluations of financing and other debt
2 arrangements, Staff is mindful of prior Commission determinations, but conducts an independent
3 review of each application and makes its recommendations accordingly. Staff states that there
4 appears to have been some confusion as to the nature of the CAP transaction and costs in the Avra
5 rate case that resulted in Decision No. 69681.

6 50. Staff states that the Commission is not preempted from review of the Agreement, and
7 Staff continues to recommend Commission approval of the Agreement and rejection of CWCGV's
8 request for a determination that the Agreement is not subject to A.R.S §§ 40-301 and 302.

9 **Conclusion**

10 51. Commission oversight of CWCGV's financial transactions is not preempted by federal
11 law in this case. The Agreement involves the law of the Colorado River because it serves as a
12 vehicle for CWCGV to receive an additional CAP allocation. However, as Staff argued, there is no
13 state or federal requirement that mandates CWCGV to take a CAP allocation, and further, the "field"
14 at issue in this case is not the federal law of the Colorado River, but is instead the regulation of
15 Arizona public service corporations. Neither conflict preemption nor field preemption are implied
16 under the facts of this case.

17 52. A.R.S. § 40-301 requires the Commission to oversee the issuance of stocks, stock
18 certificates, bonds, notes and other evidences of indebtedness, and the creation of liens on the
19 property of public service corporations. An Arizona public service corporation may issue stocks,
20 stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than
21 twelve months only when authorized by the Commission.

22 53. The dispute between CWCGV and Staff is whether the Agreement constitutes "other
23 evidence of indebtedness." Staff asserts that classification of the Agreement as long-term debt is
24 appropriate because the Agreement's installment payment plan for payment of past M&I water
25 service capital charges associated with the Additional Entitlement meets the NARUC USOA
26 "Account No. 224 - Other Long-Term Debt" criteria of "other obligations maturing more than one
27 year from date of issuance and assumption." CWCGV argues that the Agreement is not a fixed and
28 certain obligation, but that instead, the Agreement is a five-year installment payment option subject

1 to the CAP relinquishment policy, which would allow the Company to receive a full refund if it
2 relinquishes the Additional Entitlement.

3 54. Due to the protections provided by the CAP relinquishment policy, CWCGV's
4 member/ratepayers were shielded from the risk of CWCGV being unable to pay the annual
5 installments for the Additional Entitlement set forth in the Agreement. The CAP relinquishment
6 policy would allow the Company to receive a full refund if it relinquishes the Additional Entitlement
7 at any time. The installment payment plan set forth in the Agreement did not constitute an
8 "obligation" from a financial perspective, and the Agreement therefore did not constitute an evidence
9 of indebtedness requiring Commission approval pursuant to A.R.S. § 40-301.

10 55. We note that CWCGV advanced arguments that the Agreement more closely
11 resembles a purchase agreement than a loan agreement, and that the Agreement is more like a lease
12 arrangement than a debt. We find neither argument persuasive. Our determination herein is based
13 solely on the existence of the unique CAP relinquishment policy, which effectively insulates
14 CWCGV's member/ratepayers from the risks that would accompany a financial obligation to pay a
15 definite sum of money at a specified time.

16 56. The findings and conclusions herein are limited to the particular facts of this case.

17 **CONCLUSIONS OF LAW**

18 1. Community Water Company of Green Valley is a public service corporation within
19 the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-285, 40-301, 40-302, and
20 40-303.

21 2. The Commission has jurisdiction over Community Water Company of Green Valley
22 and the subject matter of the Application.

23 3. Notice of the Application was provided in accordance with the law.

24 4. For the reasons stated herein, neither conflict preemption nor field preemption are
25 implied under the facts of this case.

26 5. Due to the CAP relinquishment policy, Community Water Company of Green Valley
27 was not financially obligated to make the installment payments required under the Agreement.

28 6. The Agreement did not constitute an evidence of indebtedness requiring Commission

1 approval pursuant to A.R.S. § 40-301 *et seq.*

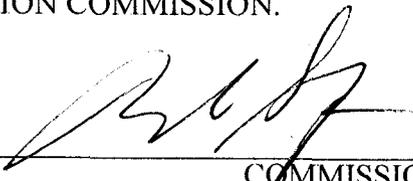
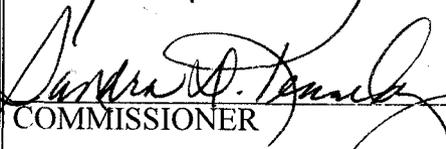
2 7. The findings and conclusions herein are limited to the particular facts of this case.

3 **ORDER**

4 IT IS THEREFORE ORDERED that Community Water Company of Green Valley was not
5 required to obtain Commission approval to enter into the Agreement.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8
9
10  CHAIRMAN  COMMISSIONER
11  COMMISSIONER  COMMISSIONER  COMMISSIONER
12

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 27th day of June, 2011.

18 
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____

24 TJ:db

1 SERVICE LIST FOR: COMMUNITY WATER COMPANY OF GREEN VALLEY

2 DOCKET NO: W-02304A-09-0575

3 Jason D. Gellman
4 Michael W. Patten
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13 Janice Alward, Chief Counsel
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EXHIBIT A



P.O. Box 43020 • Phoenix, AZ 85080-3020
23636 N. 7th Street • Phoenix, AZ 85024

623-869-2333 • www.cap-az.com

CWC
1121
Control #

November 21, 2007

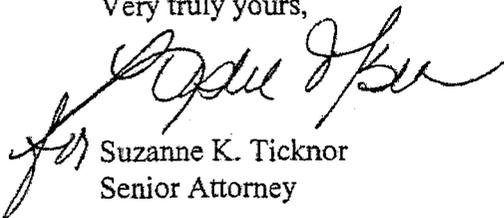
Mr. Art Gabaldon
General Manager
Community Water Company of Green Valley
1501 S. LaCanada Drive
Green Valley, Arizona 85614

Subject: Agreement for Payment of Past CAP M&I Water Service Capital Charges

Dear Mr. Gabaldon:

Enclosed for your files is a fully executed original of the Agreement for Payment of Past M&I Water Service Charges. If you have any questions about this matter, please contact Sheila Brennemann at 623-869-2368.

Very truly yours,


for Suzanne K. Ticknor
Senior Attorney

wpdocs\lo\sb\gabaldon.2ltr
Enclosure
232.01

**AGREEMENT FOR PAYMENT OF
PAST CAP M&I WATER SERVICE
CAPITAL CHARGES
(INSTALLMENT)**

THIS AGREEMENT (Agreement) is made and entered into this 21st day of November, 2007, by and between Central Arizona Water Conservation District (CAWCD) and Community Water Company of Green Valley.

RECITALS

A. On or about March 11, 1987, the United States of America (United States) acting through the Secretary of the Interior (Secretary), CAWCD and the Community Water Company of Green Valley entered into a subcontract for the delivery of Central Arizona Project (CAP) municipal and industrial (M&I) priority water, titled "Subcontract Among the United States, the Central Arizona Water Conservation District and the Community Water Company of Green Valley, Providing for Water Service, Central Arizona Project", Contract No. 07-07-30-W0151.

B. On August 25, 2006, the Secretary published his final reallocation decision for Central Arizona Project water. That decision reallocated previously uncontracted for CAP M&I priority water to various M&I water providers in accordance with section 104(b) of the Arizona Water Settlements Act of 2004, Pub. L. 108-451, (the Act) and the recommendation of the Arizona Department of Water Resources. In the final reallocation decision, 1,521 acre-feet of additional CAP M&I priority water was allocated to the Community Water Company of Green Valley.

C. In accordance with the Act, the United States and CAWCD have offered the Community Water Company of Green Valley an amended subcontract for CAP M&I priority water, (Amended Subcontract). The Amended Subcontract provides for an annual entitlement of 2,858 AF, which includes the Community Water Company of Green Valley's original CAP entitlement in the amount of 1,337 AF/year, and the additional entitlement recently reallocated to the Community Water Company of Green Valley in the amount of 1,521 AF/year (the Additional Entitlement).

D. The Amended Subcontract has been fully executed by the United States, CAWCD and the Community Water Company of Green Valley. Article 4.2 of the

Amended Subcontract provides that it does not become effective until three conditions have been satisfied:

1) The Amended Subcontract is validated by a court of competent jurisdiction, as described in A.R.S. sections 48-3731 through 48-3734;

2) The Secretary publishes in the Federal Register the statement of findings described in Section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478; and

3) Community Water Company of Green Valley pays or provides for payment of past M&I water service capital charges associated with the Additional Entitlement.

E. CAWCD has given the Community Water Company of Green Valley the option of paying the past M&I water service capital charges associated with the Additional Entitlement in one lump sum by December 1, 2007 (Payment Option 1) or on a five-year levelized payment plan with the first installment due December 1, 2007 (Payment Option 2)

F. Community Water Company of Green Valley has elected Payment Option 2.

G. The Parties desire to make arrangements for the timely payment of past M&I water service capital charges associated with the Additional Entitlement. The Parties also desire to provide for the refund of any such payments in the event that the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as set forth in Section 207(c)(2) of the Act, or such other date as that Section 207(c)(2) is amended to state.

AGREEMENT

1. Community Water Company of Green Valley agrees to make payment of past M&I water service capital charges associated with the Additional Entitlement in the amounts and on the dates set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit 1.

2. On or before October 25, 2007, CAWCD shall submit a written invoice to the Community Water Company of Green Valley for the first installment of past M&I

water service capital charges associated with the Additional Entitlement, consistent with Exhibit 1.

3. On or before December 1, 2007, Community Water Company of Green Valley shall pay CAWCD the first installment of past M&I water service charges as invoiced by CAWCD.

4. On or before October 25, of each year, from 2008 through and including 2011, CAWCD shall submit a written invoice to the Community Water Company of Green Valley for the annual installment amount due under the levelized payment plan for past M&I water service charges, consistent with Exhibit 1.

5. On or before December 1 of each year, from 2008 through and including 2011, Community Water Company of Green Valley shall pay CAWCD the past M&I water service charges as invoiced by CAWCD.

6. If Community Water Company of Green Valley is in arrears in the payment of any of the installments due CAWCD under this Agreement, Community Water Company of Green Valley shall have no right to delivery of the Additional Entitlement until such delinquent payment is made, plus any applicable late charges pursuant to Paragraph 7 below.

7. Community Water Company of Green Valley shall pay a late payment charge on installments that are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

8. If the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as necessitated by Section 207(c)(2) of the Act, or by such other date established by that Section 207(c)(2) of the Act under a future

amendment, then CAWCD shall refund the first installment of the past M&I water service capital charges paid by the Community Water Company of Green Valley pursuant to Section 2 of this Agreement, with interest accrued at the prevailing local government investment pool rate, to the Community Water Company of Green Valley on or before sixty days after such date.

9. Governing Law, Forum. This Agreement shall be governed by the law of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.

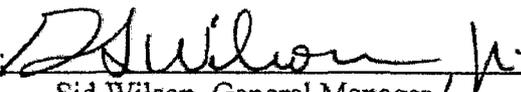
10. Integration. All rights and obligations of the parties shall be governed by the terms of this Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be construed as consent to any suit or waiver of any defense in a suit brought against the other party in any state or federal court.

11. Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party, without penalty, pursuant to the provisions of A.R.S. § 38-511.

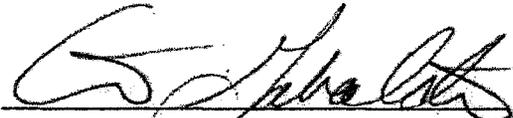
12. Waiver; Severability. The parties agree that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal or unenforceable, that declaration shall not affect the remaining provisions of this Agreement.

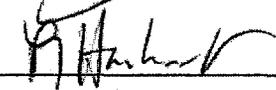
IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: 
Sid Wilson, General Manager

**COMMUNITY WATER COMPANY
OF GREEN VALLEY**

By: 

Attest: 

Arizona Water Settlement Act
Allocation of 1,521 Acre-Feet
Payment Schedule for
Community Water Company of Green Valley

<u>Payment Due Date</u>	<u>Amount</u>
December 1, 2007	\$222,994.93
December 1, 2008	\$222,994.93
December 1, 2009	\$222,994.93
December 1, 2010	\$222,994.93
December 1, 2011	\$222,994.93

EXHIBIT B

ADOPTED BY CAWCD BOARD 9/5/96

**CAWCD Policy Regarding the Relinquishment and Transfer of
CAP M&I Subcontract Allocations Within the CAP Service Area**

The Board of Directors of the CAWCD recognizes that from time to time a subcontractor may desire to relinquish some or all of its M&I subcontract allocation. The Arizona Department of Water Resources (ADWR) is the state entity with the responsibility to recommend allocations, reallocations and, subsequently, the reassignment of CAP water supplies. The Board recognizes that ADWR has developed a policy and guidelines for such reassignments and pledges to coordinate and cooperate with ADWR in its process.

The Board has adopted this policy to establish the necessary elements required for CAWCD approval of any transfers of CAP subcontract allocations. The CAWCD has a primary interest in ensuring that the financial obligations associated with a CAP subcontract are fulfilled. In addition, the CAWCD wishes to ensure that sound public policy is considered before completing the transfer process. With these considerations in mind, the following elements will guide the CAWCD staff in processing the proposed transfers. Final approval will be by Board action.

1. Any transfer of a CAP M&I subcontract allocation must be accomplished with no profit to the relinquishing entity. All financial transactions must be fully disclosed. The only payment to the relinquishing entity will be made by CAWCD and will consist of reimbursement of CAP capital charges that were paid by that entity plus 5% of that amount as compensation for costs associated with the CAP subcontract. Reimbursement for the Arizona State Land Department will be as provided in A.R.S. § 37-106.01(c). A "cost of money" payment will also be made. Such payment will consist of interest beginning on the date the original payment was received by CAWCD using a simple annual interest rate equal to the weighted average rate earned by CAWCD for that calendar year less 1%. No payment will be made for capital payments associated with any water delivered from October 1, 1993 through the date of relinquishment.

The entity that receives the subcontract allocation will be required to pay CAWCD 1) the amount CAWCD paid to the relinquishing entity with interest from the date payment was made by CAWCD; 2) any outstanding payments due under the subcontract with interest from the due date; and 3) any charges paid by CAWCD to the United States associated with the transfer. Interest paid by the receiving entity will be simple annual interest at a rate equal to the weighted average rate earned by CAWCD for each calendar year or portion of a calendar year.

In those instances where the assignment and transfer is made to a successor-in-interest that will serve the original subcontract service area, payment for certain administrative, legal, or engineering fees may be permitted. CAWCD will review and approve these situations on a case by case basis and will facilitate those financial transactions directly between the involved entities.

2. The ADWR will determine who ultimately is reassigned any relinquished allocations. CAWCD will cooperate and coordinate with ADWR in the reassignment of CAP M&I subcontract allocations.