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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCUMENT CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

6 IN THE MATTER OF THE EMERGENCY)
7 APPLICATION OF VAIL WATER)
8 COMPANY FOR AN EXTENSION OF ITS)
9 CERTIFICATE OF CONVENIENCE AND)
10 NECESSITY)

DOCKET NO. W-01651B-99-0018

11 IN THE MATTER OF THE APPLICATION)
12 OF VAIL WATER COMPANY FOR AN)
13 INCREASE IN ITS WATER RATES FOR)
14 CUSTOMERS WITHIN PIMA COUNTY,)
15 ARIZONA)

DOCKET NO. W-01651A-99-0406

APPLICANT'S RESPONSE TO
MOTION FOR CONSOLIDATION

16 Vail Water Company (hereinafter "Vail" or the "Company"), hereby responds to Staff's
17 Motion to Consolidate the above-captioned proceedings. Vail is opposed to such consolidation
18 for several reasons:

19 1. The Motion misstates the nature of the proceedings. The Certificate of Convenience and
20 Necessity (CC&N) contains no request to include CAP related facilities or costs in the proposed
21 advances by property owners. The basis for the proposed capital charges are clearly set forth in
22 Paragraph 2 of the "Annexation Participation Agreement", an example of which is attached
23 hereto as Exhibit A.

24 2. The Rate Application is seeking only increases in the monthly rates for the services it
provides, and the related commodity charges. No increase in "Other Charges" applicable to new
service connections is proposed by the Company.

3. There are no common parties to these proceedings. The parties to the CC&N Application are the property owners and certain members of the Commission Staff who participate in CC&N Applications. The witness on behalf of the Company will be Doug Noll, the President of the Company. The CC&N Application has certain property owners who have intervened.

4. The parties to the Rate Application are the Company's existing customers and the Staff's Rate Section witnesses. The Company's witness will be Ronald L. Kozoman. Mr. Kozoman is not participating in the CC&N Application. The Rate Application has no intervenors as of today, but the Company anticipates that the Residential Utility Consumer Intervention (RUCO) will intervene. RUCO has no statutory authority to intervene in the CC&N Application.

5. The Company's CC&N Application was filed by and will be handled by Hugh Holub, Esq., 1180 Circulo Canario, Rio Rico, Arizona 85648.

6. The Company's Rate Application was filed by and will be handled by the undersigned counsel.

7. The Rate Application will be processed under the "time clock" regulations, and will most likely be decided in March, 2000. The CC&N Application is much less involved and typically would be approved within five to six months from the date of the Application.

8. There is an urgency to completing the CC&N Application as customers are in need of service and certain facilities must be constructed. Those customers should not be required to await the determination of the Rate Application before receiving service.

Based upon the above, it is evident: (1) the issues are not substantially related, (2) there are no common issues in these proceedings, (3) there are no common witnesses for the Company or Staff in these proceedings, (4) there are different attorneys handling the matters for the Company, (5) consolidation would substantially delay the Commission's decision in the CC&N Application, (6) there is an urgent and public need to process the CC&N Application as quickly

as possible, and (7) the Rate Application would be unduly complicated by including the CC&N Application.

WHEREFORE, the Applicant respectfully requests that the Staff's Motion to Consolidate be denied.

Respectfully submitted this 27th day of July, 1999.

SALLQUIST & DRUMMOND, P.C.

By 

Richard L. Sallquist
2525 East Arizona Biltmore Circle, Suite 117
Phoenix, Arizona 85016
Attorney for Vail Water Company

Original and ten copies of the foregoing filed this 27th day of July, 1999, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing faxed/hand delivered this 27th day of July, 1999 to:

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Hearing Division
Arizona Corporation Commission
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Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

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ANNEXATION PARTICIPATION AGREEMENT

THIS AGREEMENT is made on this 30th day of March ¹⁹⁹⁹ by and between VAIL WATER COMPANY, an Arizona corporation (hereinafter referred to as "Utility") and

BETTY BRITTON

(hereinafter referred to as "Owner") relating to inclusion of that certain parcel of land more specifically described on Exhibit "A" attached hereto and made a part hereof (hereinafter the "Property") on the following terms and conditions:

WHEREAS, Owner desires to have the Property included in the Certificate of Convenience and Necessity ("CC&N") of Utility; and

WHEREAS, Utility is willing to apply to the Arizona Corporation Commission ("ACC") to expand its CC&N to include lands located in Sections 3 and 34, Township 16 South Range 16 East, G&SRB&M, Pima County, Arizona including the Property, subject to certain terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. ANNEXATION OF TERRITORY:

1.1 The area proposed to be included in the Vail Water Company CC&N would be as shown on Exhibit 1 attached hereto and made a part hereof (hereinafter the "Annexation Area"). Owner's Property is located within the Annexation Area

1.2 Utility will apply to the ACC to expand the CC&N and to expand its Pima County Franchise (if necessary) to include the Annexation Area.

1.3 Utility will seek an addition to its 100 year Assured Water Supply, which includes a hydrology study update, application to the Arizona Department of Water Resources and the Central Arizona Groundwater Replenishment District (CAGRDR) to include the Annexation Area.

2. CONTRIBUTIONS OF COSTS: In consideration of this Agreement:

2.1 Owner shall contribute the sum of \$ 2,303.⁰⁰ payable to Vail Water Company or the Vail Annexation Group upon execution of this Agreement which shall cover the Annexation Costs. The Annexation Costs include:

(a) Owner's non-refundable advance in aid of construction contribution of \$ 1,822.¹⁹ towards the costs of Water Facilities to be constructed by Utility to increase the water availability of Utility (the "Water Facility Contribution");

(b) plus the non-refundable contribution of \$ 260.³¹ to cover Utility's costs of

seeking the approval of the ACC for the annexation (the "Application Cost Contribution");

(c) plus the contribution of \$ 230.00 for Utility expanding the 100 year assured water supply service area (the "Assured Water Supply Contribution").

2.2 Owner is a member of a group of property owners seeking the Annexation (hereinafter referred to as the "Vail Water Annexation Group").

2.3 Utility's obligation to apply for the annexation of the Property into its CC&N shall be subject to the following conditions:

2.3.1 As a condition precedent for Utility to apply to the ACC for the annexation, Vail Water Annexation Group shall pay to Utility a total of \$175,000.00 (the "Water Facility Costs") to pay for upgrades to wells 3 and 6 and shall provide the trenching to loop the two wells plus the costs of any boosters, pumps, electrical and water required to complete the upgrades. This also includes any attorney fees, engineering fees and administration fees. Owner agrees that its/his Water Facility Contribution is a fair share portion of the Water Facility Costs. Utility shall deposit the contributions for Water Facilities Costs in an escrow account to be managed by the Vail Water Annexation Group until the annexation is approved. In the event the Annexation is not approved by the ACC, the Water Facility Costs contributions received by Vail Water Annexation Group shall be refunded to the Owners contributing. In the event the ACC approves the annexation, the Water Facility Costs contributions shall become non-refundable advances in aid of construction. In the event the Water Facilities Costs are more than the estimated \$175,000.00, Owner agrees to contribution additional funds based on the same proration as his original contribution, upon written request of Utility. In the event the Water Facilities Costs are less than the estimated \$175,000.00, Vail Water Annexation Group agrees to refund the excess cost based on the same proration as his contribution.

2.3.2 As a further condition precedent before Utility applies to the ACC for the annexation, Vail Water Annexation Group shall pay to Utility is estimated costs for legal fees and all of any consultants fees associated with the annexation and obtaining inclusion of the Annexation Area into Utility's 100 year assure water supply designation. Estimated legal and consulting costs are \$25,000.00 ("Application Cost Contributions"). Owner agrees that its/his Application Cost Contribution is a fair share portion of the Application Cost. All Application Cost Contributions shall be non-refundable and Utility shall have the right to expend these funds for the application process.

2.3.3 An additional fee of \$45.00 per acre shall be required payable by Owner to Utility for the annexation into Utility's assured water supply ("Assured Water Supply Contribution"). Payment of the Assured Water Supply Contribution must accompany this Agreement. The Vail Water Annexation Group shall deposit the Assured Water Supply Contribution into an escrow account and shall hold the funds until the annexation is completed. Upon completion of the annexation and inclusion of the Property in Utility's assured water supply service area, the Assured Water Supply

Contribution shall be non-refundable and shall be paid to TEM Corporation. In the event the Property is not included in the CC&N and the assured water supply service area, Vail Water Annexation Group shall refund the Assured Water Supply Contribution.

3. TERMS AND CONDITIONS FOR WATER SERVICE:

3.1 Owner understands and agrees that the Property shall be subject to all terms and conditions of the Rules and Regulations of the ACC for water utility service, together with the approved rates and tariffs of Utility.

3.2 Owner expressly understands and agrees that Utility's Offsite Facilities Hookup Fee Tariff (the "Offsite Fee") shall apply to the Property. Owner acknowledges that he has been provided a copy of Utility's Offsite Fee Tariff.

3.3 Owner has been provided with a copy of Utility's Line Extension Agreement for Unsubdivided Land, and expressly understands and agrees that he shall be responsible, at his sole cost and expense, to install any and all Water Facilities within his Property to obtain water service, to execute Utility's Line Extension Agreement, to pay to Utility upon execution of the Line Extension Agreement the Utility's Offsite Fee, and to execute a Covenant, Condition and Restriction to be recorded against his Property requiring any subsequent owners who seek connections to Utility's Water Facilities to also pay an Offsite Fee.

4. CONSENT TO ANNEXATION:

4.1 Owner shall simultaneously with the execution of this Agreement execute a Consent to Annexation, attached hereto and made a part hereof as Exhibit "B". The Consent to Annexation will be filed by Utility with the ACC as part of Utility's application for expansion of its CC&N. This Agreement shall not be filed with the ACC and Owner understands and agrees that the ACC has no jurisdiction over this Agreement or its terms. In the event Owner objects to this Agreement not being filed with the ACC, this Agreement shall be null and void.

4.2 Utility makes no warranty, express or implied, as to the potential for success in the annexation effort. The annexation of the Property and the Annexation Area is subject to the jurisdiction of the ACC, which may refuse the annexation.

4.3 Owner may be asked to participate in the proceedings for the annexation held before the ACC, and Owner agrees to do so at his sole cost and expense.

5. MISCELLANEOUS

5.1 This instrument contains the sole and only agreement of the parties relating to this Agreement and correctly sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. This instrument contains the entire agreement between the parties, and it shall not be amended, altered or changed, except by written agreement signed by the

parties.

5.2 This Agreement is entered into under and shall be governed by the laws of the State of Arizona.

5.3 This Agreement has been arrived at by negotiation and shall not be construed against any party to it or against the party who prepared the last draft.

5.4 Captions and headings are for index purposes only and shall not be used on construing this Agreement.

5.5 The remedies provided in this Agreement in favor of Utility shall not be deemed its exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by Utility of any breach by Owner of any provision of this Agreement nor any failure by Utility to insist on strict performance by Owner of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by Owner or bar the right of Utility to insist on strict performance by Owner of the provisions of this Agreement in the future.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

"Utility"
VAIL WATER COMPANY,
an Arizona corporation

By: [Signature]
Its: Chief Executive Officer

"Owner"
[Signature]

By: _____
Its: _____

VAIL WATER ANNEKATION GROUP

By: [Signature]
By: [Signature]

ACKNOWLEDGMENT

STATE OF ARIZONA)
COUNTY OF Pima) ss.

This instrument was acknowledged before me this 31 day of March, 1999 by

Betty Button as _____ of _____
as Owner.

Joann M. Canzone
Notary Public

My Commission Expires:
October 31, 1999

