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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2011 NOV 30 P 12:40

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

NOV 30 2011

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IN THE MATTER OF THE APPLICATION OF  
BRADSHAW WATER COMPANY, INC. FOR  
APPROVAL OF A RATE INCREASE.

DOCKET NO. W-02476A-10-0495

**STAFF'S RESPONSE TO  
PROCEDURAL ORDER**

**I. Introduction**

The Arizona Corporation Commission ("Commission") approved a rate increase in the above captioned application in Decision No. 72584 (September 15, 2011). Decision No. 72584 specifically ordered that the issue of an impact fee / system capacity charge ("Impact Fee") charged by Bradshaw Water Company ("Bradshaw" or "Company") on behalf of Prescott Valley Water District ("PVWD") pursuant to an Agreement for Recovery of Effluent Storage Credits ("Agreement") be further evaluated in a second phase proceeding. Following a procedural conference held on October 24, 2011, Administrative Law Judge Sarah Harpring issued a procedural order dated and docketed on October 24, 2011, directing Commission Utilities Division Staff ("Staff") to provide an analysis of a number of issues related to the second phase in the evaluation of the above captioned application. Staff hereby provides its response to the procedural order.

**II. Background**

Before the Agreement, Bradshaw required supplementation of its water supply in order to serve an expansion of its service territory. In order to obtain that additional water supply, the Company, Shamrock Water Company ("Shamrock") and the developer entered into an Agreement for the Purchase and Sale of Groundwater ("Inter-Tie Agreement"). The Inter-Tie Agreement was adopted in Decision No. 58435 (October 18, 1993) and contemplated improving Bradshaw's water supply in order to provide water service to developments known as Creekside Phases 1 and 2 for which the developer obtained a Certificate of Assured Water Supply ("CAWS").

1 In order to develop Creekside Phase 3, constituting an additional 25 residential lots, the  
2 developer, North Nugget Development, LLC ("North Nugget"), required an additional CAWS from  
3 Arizona Department of Water Resources. Obtaining the necessary CAWS required a means to obtain  
4 Effluent Storage Credits. PVWD, the successor to Shamrock, proved willing to oblige and entered  
5 the Agreement with North Nugget and Bradshaw so as to sell the necessary credits generated from  
6 PVWD's Water Storage Permit No. 73-528737.0000 to North Nugget in 2002. Agreement at 2.  
7 Likewise, the Agreement provided for the designation of one of PVWD's wells as a recovery well.  
8 *Id.* Additionally, the Agreement provided that the 1993 Inter-Tie Agreement would remain in full  
9 force and effect. *Id.* at 3. However, the Agreement also requires the Company to collect the Impact  
10 Fee on behalf of PVWD. *Id.* at 4.

11 The Agreement has been in place since 2002, but since that time Staff has been informed that  
12 the Town of Prescott Valley ("Town") has dissolved PVWD and has assumed the rights and  
13 responsibilities of PVWD in the ongoing performance of the Agreement. The Agreement has never  
14 previously been submitted for Commission approval for collection of the Impact Fee.

### 15 **III. Legal Analysis of Impact Fee**

16 Staff was ordered to provide a legal analysis of whether the arrangement and Agreement  
17 under which Bradshaw has been collecting the \$1,650 Impact Fee for PVWD constitutes a violation  
18 of A.R.S. §§ 40-361, -334 or -374. Staff believes that the collection of the Impact Fee does constitute  
19 a violation of A.R.S. §§ 40-334 and -361. However, Staff does not believe that the collection of the  
20 Impact Fee is a violation of A.R.S. § 40-374.

#### 21 **A. Collection of the Impact Fee Violates A.R.S. § 40-361**

22 Staff believes that collection of the Impact Fee does violate the prohibitions of A.R.S. § 40-  
23 361. A.R.S. § 40-361 provides in pertinent part that

- 24 (A) Charges demanded or received by a public service corporation for any  
25 commodity or service shall be just and reasonable. Every unjust or  
unreasonable charge demanded or received is prohibited and unlawful.

26 The purpose of A.R.S. § 40-361 is to provide the Commission with an opportunity to review for  
27 fairness the rates the public service corporation is charging its ratepayers. *American Cable*  
28 *Television, Inc. v. Arizona Public Service Co.*, 143 Ariz 273, 278 , 693 P.2d 928, 933 (App. Div 1

1 1983). The Commission determines what rates are just and reasonable and to be collected by the  
2 public service corporation pursuant to Ariz. Const. Art. XV Sect. 3.

3 The Impact Fee charged by Bradshaw is a rate that the Commission did not establish.  
4 Consequently, it has not been approved as just and reasonable. The charging of the Impact Fee thus  
5 represents a violation of A.R.S. § 40-361. The Commission could now determine that the Impact Fee  
6 is appropriate, however, by determining that the Impact Fee is just and reasonable. Until the  
7 Commission reaches such a decision, Bradshaw's collection of the Impact Fee is unjust and  
8 unreasonable.

9 **B. Collection of the Impact Fee Violates A.R.S. § 40-334**

10 Likewise, Staff believes that A.R.S. § 40-334 has been violated under the present  
11 circumstances. A.R.S. § 40-334 provides that

12 (A) A public service corporation shall not, as to rates, charges, service, facilities or  
13 in any other respect, make or grant any preference or advantage to any person  
or subject any person to any prejudice or disadvantage.

14 (B) No public service corporation shall establish or maintain any unreasonable  
15 difference as to rates, charges, service, facilities or in any other respect,  
either between localities or between classes of service.

16 (C) The commission may determine any question of fact arising under this  
17 section.

18 A violation of A.R.S. § 40-334 would be due to the charging of discriminatory rates. Generally,  
19 discriminatory rates amounts to the charging of different amounts to similarly situated ratepayers for  
20 the same service that is arbitrary or without a reasonable factual justification.

21 In the present circumstance, the Company is charging only customers within a single  
22 development, Creekside Phase 3, for the Impact Fee. Ratepayers in other developments were charged  
23 a \$100 one-time new connection fee set by the Commission in Decision No. 58435 by the adoption of  
24 the Inter-Tie Agreement. *See* Inter-Tie Agreement at 5, Attached as Exhibit 2. Consequently, there  
25 is a distinction being drawn between customers based solely on the development in which the  
26 customer resides and that distinction is being used as the basis to charge a separate rate for  
27 establishment of service. Moreover, the Commission did not approve the distinction.

28

1           However, insofar as the Commission may determine what constitutes an appropriate  
2 distinction between classes of ratepayers pursuant to A.R.S. § 40-334(C), the Commission may,  
3 within this rate case docket, determine that the distinction is appropriate. As described in the Staff  
4 Engineering Memorandum attached to the Staff Report filed on April 6, 2011 (“Staff Report”),  
5 Bradshaw is dependent on the additional water supplied through the inter-tie in order to provide water  
6 service to its entire customer base. The Impact Fee is a cost of service associated with securing water  
7 supplies to serve new customers within Creekside Phase 3. Therefore, Staff believes that the  
8 Agreement evidences a reasonable factual basis for the establishment of a distinction between  
9 otherwise similarly situated customers should the Commission decide to approve the collection of the  
10 Impact Fee.

11           **C.       Collection of the Impact Fee Does Not Violate A.R.S. § 40-374**

12           With respect to A.R.S. § 40-374, Staff does not believe that a violation has occurred. A.R.S.  
13 § 40-374 pertains to the charging of non-approved rates for the transportation by a public service  
14 corporation of persons, property, products, commodities or any service rendered. Staff believes that  
15 A.R.S. § 40-374 primarily relates to the charges approved for common carrier public service  
16 corporations. However, Bradshaw is not a public service corporation because its operations are that  
17 of a common carrier but because its operations are that of a private water utility. It does not transport  
18 water for customers that customers purchased directly from the Town. Rather, the Company has  
19 purchased the water from the Town to supplement its total water supply and individually meters  
20 water sales to Bradshaw’s customers. Consequently, Staff believes that A.R.S. § 40-374 is likely  
21 inapplicable to the present circumstances.

22           **IV.     Impact of Terminating Collection of Impact Fee on Bradshaw’s Water Supply**

23           Staff is uncertain as to whether the termination of collecting the Impact Fee will jeopardize  
24 the continued provision of water from the Town. To the extent that collection of the Impact Fee is a  
25 requirement under the Agreement in the event that any new customers are added to the Creekside  
26 Phase 3 development, Staff believes that Bradshaw ceasing to collect the Impact Fee would breach  
27 the Agreement. Communications between Staff and the Town Attorney for the Town confirm that  
28 the Town would view non-collection of the Impact Fee as a breach of the Agreement

1 for any new connection implemented in Creekside Phase 3. *See* Email dated November 17 from Ivan  
2 Legler, Town Attorney for Prescott Valley, attached as Exhibit 1.

3         However, the Company could request a moratorium on new connections pending Commission  
4 approval of Bradshaw's pass through charging of the Impact Fee. Consequently, it is not necessarily  
5 the case that terminating the collection of the Impact Fee would breach the Agreement so long as  
6 there are no new connections occurring within the Creekside Phase 3 development that would trigger  
7 the Impact Fee requirement.

8         Absent such moratorium the Company is subject to an obligation to serve within its  
9 Certificate of Convenience and Necessity and must connect a new customer where it is physically  
10 and financially feasible to do so. In light of the risk to the water supply for the entire system, an  
11 argument could be made that it would not be physically or financially feasible to extend service to  
12 new customers within the Creekside Phase 3 development until the Commission approves the  
13 collection of the Impact Fee.

14         Based on Staff's engineering evaluation of the Company's water supply, Staff believes that  
15 the Company's system would have insufficient water supply to meet the demands of its current  
16 customer base without the water supplied through the inter-tie. As discussed in the Staff Engineering  
17 Report attached to the Staff Report, Bradshaw's water system has three active water wells with a total  
18 production capacity of 43 gallons per minute ("GPM"). The wells are shallow and the production is  
19 unreliable. The inter-tie has a capacity of 100 GPM and is the main source of water for Bradshaw and  
20 most of the water sold to Bradshaw customers is purchased water from the Town. Based on the water  
21 use data provided by Bradshaw for the Test Year, Staff concludes that without the purchased water,  
22 the Company system's total available water supply capacity of 43 GPM would not be adequate to  
23 serve the present customer base.

24 ...  
25 ...  
26 ...  
27 ...  
28 ...

1 **V. Procedural Recommendations**

2 Staff does not believe that a hearing is necessary to resolve the issues related to the Impact  
3 Fee. Staff does believe that it would be appropriate to have a proposed order prepared for the  
4 consideration of the Commission. Staff would recommend that the Commission approve the  
5 collection of the Impact Fee to be paid to the Town and require Bradshaw to file a tariff, as a  
6 compliance item in this docket, for Staff approval.

7 RESPECTFULLY SUBMITTED this 30th day of November, 2011.

8 

9 Charles H. Hains  
10 Attorney, Legal Division  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007  
13 (602) 542-3402

14 Original and thirteen (13) copies  
15 of the foregoing were filed this  
16 30th day of November, 2011 with:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21 Copy of the foregoing mailed this  
22 30th day of November, 2011 to:

23 Don Bohler  
24 BRADSHAW WATER COMPANY  
25 P.O. Box 12758  
26 Prescott Valley, Arizona 86304

27 Ivan Legler  
28 Legal Department  
TOWN OF PRESCOTT VALLEY  
7501 East Civic Circle  
Prescott Valley, Arizona 86314

Neil Wadsworth  
Utilities Department  
TOWN OF PRESCOTT VALLEY  
7501 East Civic Circle  
Prescott Valley, Arizona 86314



# Exhibit 1

## Charles Hains

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**From:** Crystal Brown  
**Sent:** Friday, November 18, 2011 9:34 AM  
**To:** Charles Hains  
**Subject:** FW: Legler E-Mail

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**From:** Ivan Legler [mailto:ilegler@pvaz.net]  
**Sent:** Thursday, November 17, 2011 4:06 PM  
**To:** Crystal Brown  
**Cc:** Cordell Compton; John Munderloh; Ryan Judy; Bill Kauppi  
**Subject:** RE: Bradshaw Water

Ms. Brown:

We appreciate your contacting us. When Mr. Bohler recently provided us with a copy of the Procedural Order dated Oct 24, 2011 (W-02476A-10-0495), we anticipated needing to send a formal letter with information needed to assist the Administrative Law Judge in her final determination. Hopefully, this e-mail can take the place of the anticipated letter.

### As background -

Bradshaw Water Company, Lynx Creek Ranch, Inc., and Shamrock Water Company entered into an "Agreement for the Purchase and Sale of Groundwater" back on Mar 8, 1993. Among other things, that 1993 Agreement was intended to let Lynx Creek Ranch develop additional units of a residential development located in Yavapai County known as Lynx Mountain View Estates. Shamrock would provide groundwater to Bradshaw and Bradshaw, in turn, would provide water service to individual customers. Among the requirements of the 1993 Agreement was collection and payment by Bradshaw to Shamrock of a one-time "Service Connection Charge" of \$100.00 for each home connected to the Bradshaw system. Failure by Bradshaw to make this and other payments to Shamrock was one of the bases listed in the 1993 Agreement for termination by Shamrock.

Shamrock also provided water service to most of Prescott Valley and, after many years, the Town was successful in acquiring Shamrock on Jan 21, 1999. This involved forming a community facilities district per ARS §48-701 et seq. which sold revenue bonds and purchased all of Shamrock's stock, changed Shamrock to a non-profit company with the District as the sole member, and called it the Prescott Valley Water Company. Eventually, the federal tax reasons for this arrangement were satisfied and the District and Company were dissolved on Mar 13, 2008. From that time forward, the water system was owned and operated by the Town of Prescott Valley. In the meantime, the 1993 Agreement applied to Shamrock's successors (first the District/Company, and then the Town).

Later units of Lynx Mountain View Estates were eventually known as "Creekside" and were developed by a group known as "North Nugget Development, LLC". In accordance with the 1993 Agreement, a Certificate of Assured Water Supply had been issued by ADWR to build Creekside units 1 and 2, but there was no certificate for the 25 residential lots in unit 3. Since effluent from Creekside units 1 and 2 was delivered to the City of Prescott for treatment and storage in accordance with ARS §§45-801.01 et seq (and effluent from unit 3 would also be delivered to Prescott), Prescott was willing to enter into a "Sale and Purchase of Effluent Storage Credits" agreement with Bradshaw and North Nugget under Water Storage Permit No. 73-528737.0000 to assign the needed credits to North Nugget for a CAWS for phase 3. In turn, Bradshaw approached the District/Company for an agreement "supplemental" to the 1993 Agreement whereby the District/Company would arrange with ADWR to designate one of its wells as a "recovery" well and deliver the effluent credits to Bradshaw for actual delivery to customers in phase 3. Such a supplemental agreement was eventually reached on Feb 28, 2002, and was called an "Agreement for Recovery of Effluent Storage Credits". Under this supplemental agreement, North Nugget would (among other things) inform each lot owner in unit 3 that, prior to connection to the Bradshaw system, the owner would pay to Bradshaw (as a pass-through to the District/Company) an amount equal to the District/Company's Water System Capacity Charge (as adopted from time to time). At that time, the Charge was \$1,650.00. Today, it is \$1,311.00. Town records indicate that, between Oct 2004 and Jul 2009, thirteen payments of \$1,650.00 have been received from Bradshaw under the supplemental agreement.

**To answer your questions below -**

Yes, failure by Bradshaw to collect an amount equal to the Town's current Water System Capacity Charge applicable to that area (located outside the Town limits) for any home in Creekside unit 3 would certainly result in a breach of the supplemental agreement. A remedy available to the Town for that breach would be termination of the supplemental agreement (referring back to the 1993 Agreement), which would mean no further delivery of water to Bradshaw for purposes of supplying Creekside unit 3. The District/Company (now the Town) would not have accommodated North Nugget and Bradshaw back in 2002 to assist them in assuring development of Creekside unit 3 if it had not been assured that those customers would be paying the same costs applicable to nearby customers within the District/Company service area.

If you have further questions, please feel free to contact me.

Sincerely,

Ivan Legler  
Town Attorney

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**From:** Crystal Brown [mailto:CBrown@azcc.gov]  
**Sent:** Thursday, November 17, 2011 11:43 AM  
**To:** Ivan Legler  
**Subject:** Bradshaw Water

Hello Mr. Legler,

In regards to the Town of Prescott Valley \$1,650 Fee that Bradshaw has been collecting, would you please answer the following questions at your earliest convenience:

1. Would ceasing to collect the \$1,650 Fee have any impact on Bradshaw's water supply?
2. If the answer to question number 1 is "yes," please explain.
3. If the answer to question number 1 is "no," please explain.

Crystal Brown  
Public Utilities Analyst V  
Financial and Regulatory Analysis  
602-542-0864

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This footnote confirms that this email message has  
been scanned to detect malicious content. If you experience problems, please e-mail [postmaster@azcc.gov](mailto:postmaster@azcc.gov)  
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# Exhibit 2

EXHIBIT 12

AGREEMENT FOR THE  
PURCHASE AND SALE OF GROUNDWATER

THIS AGREEMENT for the purchase and sale of groundwater ("Agreement") is entered into this 8 day of March, 1993, among SHAMROCK WATER COMPANY, an Arizona corporation ("Shamrock"), BRADSHAW WATER COMPANY, an Arizona corporation ("Bradshaw") and LYNX CREEK RANCH, INC., an Arizona corporation ("Lynx Creek").

RECITALS

A. Both Shamrock and Bradshaw are public service corporations as defined in Article 15, Section 2 of the Arizona Constitution, and as such, each is regulated by the Arizona Corporation Commission ("Commission").

B. Bradshaw holds a Certificate of Convenience and Necessity ("CC&N") that covers portions of Sections 27, 33 and 34, Township 14 North, Range 1 West, Yavapai County, Arizona, which area is more particularly described in Commission Decision No. 55018 (Docket No. U-2476-85-350). A map of Bradshaw's CC & N is attached hereto as Exhibit "A" and by this reference incorporated herein.

C. Bradshaw is a wholly owned subsidiary of Lynx Creek, and Bradshaw was formed to provide water service to lands being developed by Lynx Creek within Bradshaw's CC&N and adjacent thereto. This development is known as Lynx Mountain View Estates.

D. Shamrock holds a CC&N for territory contiguous and adjacent to Bradshaw's CC&N.

E. Shamrock and Bradshaw each own certain water mains, pipelines and related water distribution facilities (referred to as "Shamrock's Water Distribution Facilities" and "Bradshaw's Water Distribution Facilities," respectively) through which each provides domestic water service to customers within their respective CC&Ns.

F. As part of Shamrock's Water Distribution Facilities, Shamrock constructed and currently operates a twelve inch diameter transmission main ("Transmission Main") that runs from a five-acre storage site ("Storage Site") to a point of delivery ("Point of Delivery") located near the midpoint of the western section line of Section 22, Township 14 North, Range 1 West. The legal description of the Storage Site is more particularly described on Exhibit "B," which is attached hereto and by this reference incorporated herein. Bradshaw has not yet constructed an intertie ("Intertie") between the Point of Delivery and Bradshaw's existing Water Distribution Facilities.

G. The Transmission Main currently has sufficient excess capacity to convey the groundwater sold hereunder to the Point of Delivery.

H. The water provided by Shamrock and Bradshaw to their customers is groundwater pumped from the Prescott Active Management Area ("Prescott AMA"). The pumping of groundwater in the Prescott AMA is regulated by the Arizona Department of Water Resources ("AZDWR").

I. In accordance with A.R.S. § 45-576 through § 45-578, Lynx Creek has acquired from AZDWR a Certificate of Assured Water Supply for 121 single family dwelling units located in Units I through IV of its Lynx Mountain View Estates. These 121 units are within Bradshaw's CC&N, and therefore are, or following construction will be, provided with water service by Bradshaw.

J. AZDWR has determined that Bradshaw must acquire additional sources of groundwater in order to meet assured water supply requirements if Lynx Creek develops an additional 151 single family dwelling units in Units V through VII of Lynx Mountain View Estates. Bradshaw has determined that it is more practical to purchase additional groundwater from Shamrock than to drill supplemental wells.

K. Shamrock currently has groundwater supplies that exceed the current demands of Shamrock's existing customers.

L. Pursuant to the terms, conditions and limitations set forth herein, Bradshaw desires to purchase from Shamrock, and Shamrock desires to sell to Bradshaw, groundwater to supplement Bradshaw's groundwater supply so that Lynx Creek can acquire a Certificate of Assured Water Supply for the development of an additional 151 units.

#### TERMS AND CONDITIONS

NOW, THEREFORE, for and in consideration of the following covenants and promises, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Sale of Water to Bradshaw.

Subject to the terms and conditions set forth in this Agreement, Shamrock shall use its best efforts to deliver to Bradshaw an amount of groundwater sufficient for Bradshaw to provide water service to the additional 151 single family dwelling units to be built by Lynx Creek in Units V through VII of Lynx Mountain View Estates.

2. Assured Water Supply.

The intent of this Agreement is to provide Bradshaw with a continually accessible groundwater supply of adequate quality in an amount which will meet all of the water demands for an additional 151 single family dwelling units located in Units V through VII of Lynx Mountain View Estates for one hundred years.

3. Construction of Additional Water Distribution Facilities by Bradshaw or Shamrock.

3.1 The parties hereto agree that Bradshaw shall not be required to construct the Intertie and related water distribution facilities until such time as Bradshaw is actually serving 121 single family dwelling units within Lynx Mountain View Estates. In addition to the Intertie, Bradshaw agrees that, as part of Bradshaw's Water Distribution Facilities, it will also construct or install at the Point of Delivery a freeze-proof back-flow prevention valve sufficient to prevent the groundwater delivered hereunder from flowing back into Shamrock's Water Distribution Facilities, and adequate booster pumps or boosting stations sufficient to lift the groundwater delivered hereunder to points of use within Bradshaw's CC&N. Bradshaw agrees that the Intertie, back-flow valve, booster pumps and related Water Distribution Facilities constructed by it shall be constructed in accordance with all applicable state and federal standards, or with Shamrock's standards if such standards are more stringent than those of applicable state and federal agencies.

3.2 In the event that Bradshaw or Lynx Creek causes a taxable event to occur to Shamrock through the funding of the construction by Shamrock of new or supplemental Water Distribution Facilities constructed to serve Bradshaw pursuant to the terms and conditions of this Agreement, then Bradshaw and/or Lynx Creek also agrees to pay to Shamrock a "grossed up tax amount" in accordance with the policy of the Commission.

3.3 Bradshaw hereby disclaims any ownership interest in Shamrock's Water Distribution Facilities and the Transmission Main used by Shamrock to convey groundwater to the Point of Delivery.

3.4 Shamrock hereby disclaims any ownership interest whatsoever in, or responsibility for, Bradshaw's Water Distribution Facilities, including but not limited to the Intertie, back-flow valve and booster pumps used to convey groundwater from the Point of Delivery to Bradshaw's customers.

3.5 To the extent that Bradshaw is required to construct its Water Distribution Facilities within Shamrock's CC&N from the

Point of Delivery to Bradshaw's CC&N and points of use therein, Shamrock hereby consents to Bradshaw's ownership and operation of such Water Distribution Facilities. Shamrock further agrees to cooperate with Bradshaw in the acquisition of all necessary easements and right-of-ways within Shamrock's CC&N; provided, however, that Bradshaw shall be solely responsible for the costs and expenses associated with acquiring necessary easements from the Point of Delivery to Bradshaw's CC&N, and for constructing and maintaining thereon its Water Distribution Facilities in accordance with the purposes of this Agreement. As consideration for Shamrock's consent, as set forth hereunder, Bradshaw agrees that Shamrock shall have the right to tap into Bradshaw's Water Distribution Facilities in order to serve the property located in Sections 22 and 27, Township 14 North, Range 1 West and within Shamrock's CC&N; provided, however, that Shamrock's use of Bradshaw's Water Distribution Facilities shall not interfere with Bradshaw's use of the same.

4. Installation and Maintenance of Water Meter.

4.1 The parties agree that a water meter ("Meter") shall be installed to measure the quantity of groundwater delivered to Bradshaw by Shamrock at the Point of Delivery. Bradshaw shall pay for the purchase and installation of the Meter.

4.2 Shamrock shall test the Meter, or any replacement Meter, annually commencing on the first anniversary of the installation of the Meter to verify the accuracy of the Meter. If the Meter is found to be in error, Shamrock may repair or replace the Meter at its sole discretion; provided, however, that Bradshaw shall bear the cost of the annual Meter test and any costs associated with the repair or replacement of the Meter as set forth herein. Subject to the foregoing, if at any time either party to this Agreement believes that the Meter is in error, that party may, at its sole expense, test the accuracy of the Meter.

4.3 Shamrock shall maintain the Meter in good working order and shall have exclusive authority to direct the maintenance and repair of the Meter. Maintenance may include replacement of the Meter, if necessary, as determined by Shamrock in its sole discretion.

4.4 Shamrock shall include the cost of the annual Meter test, and the cost of any necessary repairs, maintenance or replacement on the first monthly invoice sent to Bradshaw following the particular test, repair, maintenance or replacement.

. . . .  
. . . .  
. . . .

5. Charges for Water Supplied to Bradshaw.

5.1 For purposes of securing supplemental sources of groundwater to meet the additional water demands imposed on Shamrock by virtue of this Agreement, at the time that water service is first initiated by Shamrock to Bradshaw, Bradshaw shall pay to Shamrock a one time connection charge of One Hundred and No Hundredths Dollars (\$100.00) for each and every existing connection served by Bradshaw at the time that water service to Bradshaw is initiated. Thereafter, on an annual basis, Bradshaw shall pay to Shamrock a one time service connection charge of One Hundred and No Hundredths Dollars (\$100.00) for each and every new connection served by Bradshaw where service to such new connections has been initiated during the preceding year. At any time prior to the initiation of water service hereunder, Shamrock may require Bradshaw to post a bond or letter of credit in an amount sufficient to guarantee the amounts to be paid pursuant to this subsection.

5.2 On a monthly basis, Bradshaw shall pay Shamrock a minimum service charge ("Minimum Service Charge") calculated by multiplying the total number of service connections within Bradshaw's CC&N, as indicated by billing records for the preceding month, by Five and Sixty Hundredths Dollars (\$5.60) and then multiplying the resulting product by a fraction, the denominator of which is the number of gallons supplied by Bradshaw to its customers during the preceding month and the numerator of which is the number of gallons delivered by Shamrock to Bradshaw as measured at the Meter in the preceding month. [The fraction set forth herein may equal but shall not exceed one (1)]. By way of illustration only, if Bradshaw has 25 service connections, delivers 165,000 gallons of water to these connections during the preceding month, and receives 95,000 gallons of groundwater from Shamrock, the Minimum Service Charge would be calculated as follows:

$$25 \times \$5.60 \times (95,000/165,000) = \$80.61$$

5.3 In addition to the Minimum Service Charge, Bradshaw shall pay Shamrock a gallonage charge ("Gallonage Charge") of one dollar and eighty cents (\$1.80) per thousand gallons of groundwater delivered to Bradshaw as measured at the Meter.

5.4 In addition to the Minimum Service Charge and the Gallonage Charge, Bradshaw shall pay all applicable withdrawal fees, franchise fees, transaction privilege taxes and/or gross receipt taxes ("Fees and Taxes") associated with the delivery of groundwater to Bradshaw.

5.5 Shamrock shall render a monthly invoice to Bradshaw specifying: the connection charges, if applicable, in accordance with Subparagraph 5.1, above; the Minimum Service Charge; the

Gallage Charge; any associated Fees and Taxes; and Meter testing, repair, maintenance or replacement costs for the preceding month. Each monthly invoice shall be due and payable within thirty (30) days from the date of the invoice.

5.6 Bradshaw is solely responsible for all costs incurred in the conveyance, treatment and storage of groundwater delivered by Shamrock after it takes possession of such groundwater at the Point of Delivery.

5.7 In the event that Shamrock obtains the Commission's approval to raise its rates, Bradshaw agrees to pay the rates approved by the Commission for groundwater delivered to Bradshaw or, if no specific rate is approved, an increased rate equal to the current rate, times one (1) plus the overall average percentage increase granted Shamrock by the Commission. By way of illustration only, if the Commission grants a 10% rate increase, and no specific rate increase is specified for the sale of groundwater hereunder, then Bradshaw's rates shall be increased by multiplying the existing rates by a factor of 1.10.

#### 6. Contingencies.

This Agreement is contingent upon the following events. If any of these events fails to occur, this Agreement shall be null and void and of no force or effect whatsoever:

- (i) Approval by the Commission and the AzDWR. This Agreement is contingent upon its approval by the Commission and the AzDWR. Shamrock shall be responsible for submitting the Agreement to obtain the written approval of this Agreement by the Commission and the AzDWR. In the case of the Commission, such approval shall also include concurrent approval of a rate making treatment of the costs and revenues associated with this Agreement that is acceptable to Shamrock, in Shamrock's sole discretion. If any of the above agencies refuse to approve this Agreement, or Shamrock's requested rate treatment thereof, then the parties hereto agree to use their best efforts to revise this Agreement so that it is acceptable to such agency or agencies and yet still conforms to the intent of the parties. If the parties hereto are unable to so revise this Agreement, this Agreement shall be deemed null and void, and neither party hereto shall thereafter assert any right or be subject to any obligation imposed hereunder. In such event, however, Bradshaw shall remain responsible to Shamrock for repayment of any and all costs and fees (including legal fees) incurred by Shamrock in the preparation of this Agreement (or any attempted revisions) or attempts to secure the necessary regulatory approvals.

- (ii) Payment of Costs and the Release of Amounts Previously Paid to Shamrock in Lieu of a Security Deposit. At the time that the parties hereto execute this Agreement, Bradshaw shall reimburse Shamrock for Shamrock's costs, including but not limited to Shamrock's reasonable engineering costs and attorneys' fees, incurred in preparing this Agreement and in securing its approval by the Commission and the AZDWR, up through and including the date of execution of this Agreement.

7. Effective Date and Duration.

This Agreement shall become effective on the date first written above ("Effective Date") and thereafter shall remain in full force and effect, unless terminated in accordance with Section 11 of this Agreement. However, Shamrock shall have no obligation to deliver groundwater to Bradshaw until such time as all contingencies referred to in Section 6 hereto are satisfied.

8. Limitation on Shamrock's Delivery of Groundwater for fire protection.

Under no circumstances shall Shamrock be responsible for or otherwise guarantee adequate water pressure or water volume for fire protection purposes. In no event shall Bradshaw represent to its customers that Shamrock has guaranteed or warranted that Bradshaw will have the adequate pressure or volume of water for fire protection purposes by virtue of this Agreement.

9. Limitations on Bradshaw's Use of Groundwater.

Unless this Agreement is amended or modified, Bradshaw agrees that it will not serve more than a total of 272 single family dwelling units (consisting of the 121 units that can be served under the existing Certificate of Assured Water Supply issued to Lynx Creek, together with the 151 additional units that are the subject of this Agreement); provided, however, that notwithstanding the foregoing, Bradshaw may provide water service to additional single family dwelling units if: (i) it acquires water sources that are separate and apart from the groundwater that is the subject of this Agreement, and (ii) AZDWR issues a Certificate of Assured Water Supply for such additional units.

10. Additional Representations and Agreements.

10.1 In the event that Shamrock files for or otherwise requests a rate increase from the Commission, Bradshaw agrees not to oppose such filing or request, and Bradshaw further agrees not

to oppose Shamrock's efforts to expand or extend the area within Shamrock's CC&N.

10.2 Within fifteen (15) days after receiving a request for information from Shamrock, Bradshaw agrees to provide to Shamrock any information so requested on Bradshaw's Water Distribution Facilities, number of service connections, use of water, etc.

10.3 Both Shamrock and Bradshaw warrant and represent that each is in good standing with the Commission; that each has the power and authority to enter into this Agreement, subject only to the approvals necessary hereunder; and that no other agreements exist that would threaten or impair either Shamrock's or Bradshaw's ability to comply with the terms and conditions set forth herein.

10.4 Bradshaw shall provide to Shamrock its written corporate resolution ratifying or otherwise authorizing its officers' execution of this Agreement within ten (10) days after the execution hereof.

10.5 Within ten (10) days after receiving a request for payment from Shamrock, and in addition to the amounts due Shamrock under Section 5 hereto, Bradshaw agrees to reimburse Shamrock for the costs and attorneys' fees incurred by Shamrock in obtaining all required regulatory approvals of this Agreement.

#### 11. Termination of Agreement.

This Agreement shall terminate without further need for Commission action or approval on the one hundred twentieth (120th) day after both Bradshaw and the Commission receive written notice from Shamrock indicating the basis for such termination if either of the following events occur:

- (a) A filing by Bradshaw, or creditors of Bradshaw, of a petition, complaint or similar pleading that seeks to have Bradshaw declared bankrupt, insolvent or otherwise unable to pay its debts, or that requests the appointment of a receiver.
- (b) Bradshaw's failure to pay amounts due to Shamrock within thirty (30) days of the receipt of an invoice, billing or similar statement specifying the amounts owed to Shamrock under the terms and conditions of this Agreement.

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## 12. Remedies.

12.1 In the event that Shamrock defaults in the performance of its obligations hereunder, Bradshaw shall be entitled to seek ordinary damages; provided, however, that in no event shall such ordinary damages, including attorneys' fees and costs, exceed ten thousand dollars (\$10,000.00). Furthermore, Bradshaw shall not be entitled to assert or otherwise claim or demand special, incidental or consequential damages which may be otherwise attributable to any default by Shamrock.

12.2 In the event that Bradshaw defaults in the performance of any obligation hereunder, Shamrock shall have available to it any remedy in law or equity, provided however, that Shamrock shall have no right to terminate water service hereunder except for the reasons set forth in Section 11, above. Except for the foregoing, nothing set forth herein shall be deemed to limit Shamrock's right to claim damages or seek any remedy available to it in law or equity, or to seek indemnification from Bradshaw pursuant to Section 13 hereto for injuries or damages suffered by it where such injuries or damages arise under the terms and conditions of this Agreement, which rights to indemnification shall survive such termination of this Agreement.

## 13. Warranties, Indemnification and Insurance.

13.1 Shamrock makes no representations or warranties, express or implied, that it has legal title to the groundwater delivered to Bradshaw hereunder.

13.2 Shamrock makes no representations or warranties, express or implied, concerning the quality or quantity of the groundwater delivered to Bradshaw hereunder, nor of the fitness of such water for any particular use or purpose.

13.3 Shamrock shall not be liable to Bradshaw, nor to any of Bradshaw's customers, nor to any other person, firm or corporation whatsoever, for or on account of any interruption or failure in the delivery of groundwater in accordance with this Agreement, or for or on account of any loss, injury or damage occasioned thereby, where such interruption or failure, either directly or indirectly, is caused by or results from any of the following:

- (i) Fire, lightning, flood, windstorm, Act of God, invasion or force majeure;
- (ii) Compliance with any orders, rules, regulations or determinations, whether valid or invalid, of any governmental authority or agency, including but not limited to, determinations as to the status or

ownership of groundwater and curtailment plans adopted by the Commission;

- (iii) Strikes, lockouts or labor disputes;
- (iv) Breakdown, repair or replacement of any well, machinery, equipment, transmission line, pipeline or other facility;
- (v) Shortage of any fuel, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Shamrock or not reasonably within its control; or
- (vi) Any action or omission on the part of Shamrock which is not grossly negligent or is the result of willful misconduct.

If an interruption or failure shall be occasioned by any cause specified above, Shamrock will endeavor to remedy or eliminate such cause as expeditiously as is possible. In the event claims or causes of action are instituted by third parties as a result of any interruptions or failures as hereinabove specified, Bradshaw shall indemnify and hold Shamrock harmless against all liability or loss.

13.4 Bradshaw shall include Shamrock as an additional named insured on any policy of general liability insurance maintained by Bradshaw.

13.5 Bradshaw and its successors and assigns agree to indemnify and hold Shamrock and its officers, directors or shareholders harmless from any civil or criminal penalty, fine, cost, liability or damages (including attorneys' fees) imposed upon Shamrock for violation of any statute, regulation or rule which regulates or affects the use of groundwater within the Prescott AMA or the sale, storage or delivery of groundwater hereunder, including but not limited to the management plans for the Prescott AMA, that arises under the terms and conditions of this Agreement.

13.6 Bradshaw and its successors and assigns agree to indemnify and hold Shamrock harmless from any and all costs, charges, assessments, obligations, claims, damages, judgments or other such liabilities (collectively, "Liabilities") where such Liabilities arise under this Agreement and are attributable to any actual or threatened dispute, lawsuit or proceeding brought by persons or entities not subject to this Agreement; provided, however, that Shamrock shall not be entitled to such indemnification where such Liabilities are attributable to a wantonly reckless or intentional act, or a failure to act, of

Shamrock.

14. Miscellaneous Provisions.

14.1 Attorney's Fees, Jurisdiction and Venue. Subject to the limitations set forth in Subsection 13.1 hereto, the prevailing party in any lawsuit, appeal or other proceeding brought to enforce or to otherwise implement the terms and conditions of this Agreement shall be entitled to an award of attorneys' fees and costs. To the extent that the dispute or action does not fall within the exclusive jurisdiction of the Commission, the parties hereto consent to jurisdiction and venue in the Superior Court of Yavapai County, Arizona.

14.2 Construction. This Agreement shall be construed in accordance with the laws of the State of Arizona. This Agreement is intended to represent the mutual agreement of the parties hereto and shall not be strictly construed against either party. This instrument shall be given a reasonable construction so that the intention of the parties to contract for the purchase and sale of groundwater as available is implemented.

14.3 No Agency Relationship or Third Party Beneficiaries. Nothing set forth herein shall imply any agency or partnership between the parties, nor shall third persons who are not parties to this Agreement, including but not limited to customers of Bradshaw, be entitled to claim that they are third party beneficiaries of the rights and obligations set forth hereunder.

14.4 Recordation. In its sole and exclusive discretion, Shamrock may elect to record this Agreement. In no event shall Bradshaw record this Agreement, or any abstract or summary hereof, without first obtaining Shamrock's prior written consent.

14.5 Binding Effect. This Agreement, and each and every term and condition hereof, shall be binding and inure to the benefit of the successors and assigns of Shamrock and Bradshaw. Bradshaw shall not assign its interests hereunder to any such successor or assign without first obtaining Shamrock's prior written consent. In the event that Bradshaw attempts to assign its rights hereunder to a successor or assignee without first obtaining Shamrock's prior written consent, this Agreement shall automatically terminate and all rights and obligations set forth hereunder shall be of no force or effect whatsoever.

14.6 Amendments. No oral modification of this Agreement shall be effective unless the modification is reduced to writing, signed and notarized by all parties hereto.

14.7 Notice. Any notice given pursuant to this Agreement shall be in writing, and shall be personally delivered or

deposited in the United States mail, postage prepaid, certified and return receipt requested, to the parties as follows:

SHAMROCK WATER COMPANY  
HC 36, Box 420  
Dewey, Arizona 86327

BRADSHAW WATER COMPANY

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LYNX CREEK RANCH, INC.

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Notices shall be deemed given when personally delivered or two (2) days after deposit in the United States mail as provided above. Any party hereto may give written notice of a change of address to the other party as provided above. Monthly invoices sent in accordance with Section 5.4 hereto may be sent first class mail.

14.8 Counterparts. The parties hereto agree that this Agreement may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instrument. Any such executed Agreement shall be binding upon each party who may sign a counterpart of this Agreement.

14.9 Rules and Regulations. This Agreement, and all rights and obligations in regard to groundwater delivered to Bradshaw, shall be subject to the applicable rules and regulations of the Commission and the AzDWR, as may be currently in effect and amended from time to time.

14.10 Waiver. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, that such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

14.11 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner so as to be valid under applicable law, but if any provision of this Agreement shall be invalidated or prohibited, then such provision shall be ineffective to the extent of such prohibition or invalidation, but shall not invalidate the remainder of such

provision or the remaining provisions of this Agreement.

14.12 Reliance. All prior written or oral covenants, agreements, representations and warranties between Shamrock and Bradshaw shall be deemed to have been merged into this Agreement. This Agreement, including the attached Exhibits, constitutes the complete, exclusive and final expression of the parties' intent and, as such, it supersedes all prior arrangements, understandings and representations made by either party to the other prior to the execution of this Agreement.

14.13 Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

SHAMROCK WATER COMPANY, an  
Arizona corporation

By: *Thomas W. Fain, II*  
Its: *President*

BRADSHAW WATER COMPANY,  
an Arizona corporation

By: *[Signature]*  
Its: *[Signature]*

LYNX CREEK RANCH, INC.,  
an Arizona corporation

By: *[Signature]*  
Its: *[Signature]*

02/28/93  
Bradshaw

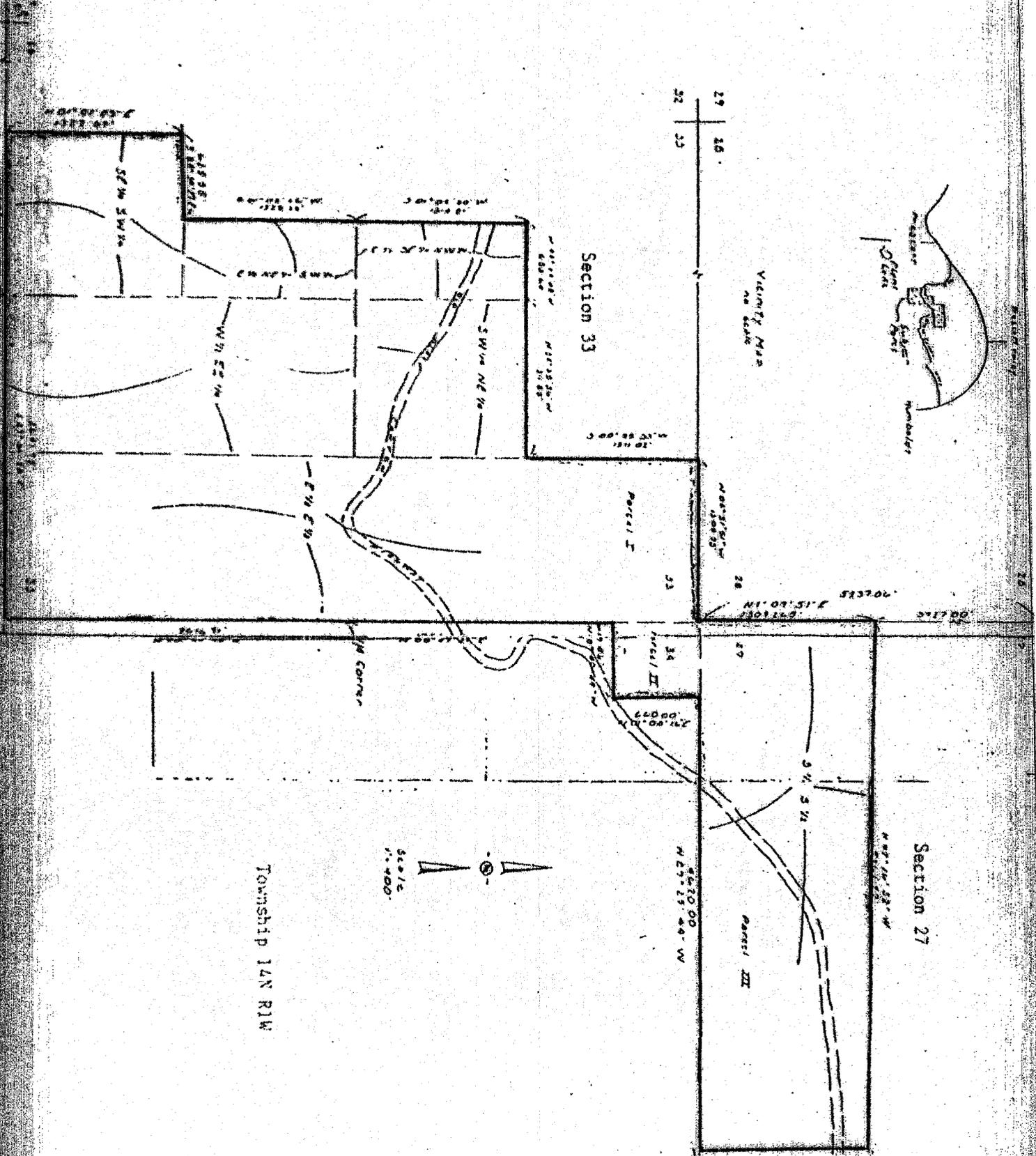
EXHIBIT LIST

Exhibit "A"--Map of Bradshaw's Certificate of Convenience and Necessity ("CC&N") as set forth in Arizona Corporation Commission Decision No. 55018 (Docket No. U-2476-85-350).

Exhibit "B"--The legal description of the Storage Site (already prepared by Shamrock).

EXHIBIT "A"

Map of Bradshaw Water Company Certificate of Convenience and Necessity  
as set forth in Arizona Corporation Commission Decision No. 55018  
(Docket No. U-2476-85-350).



DESCRIPTION CONTINUED - Page 2

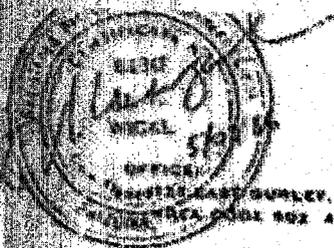
Subdivision, with the said East line of Section 16, said point of intersection lying North Zero degree 05 minutes 13 seconds East, along the said East line of Section 16, distant 3,745.95 feet from the said Southeast corner of Section 16;

thence North 89 degrees 54 minutes 47 seconds West, along the said South Right-of-Way line distant 585.50 feet;

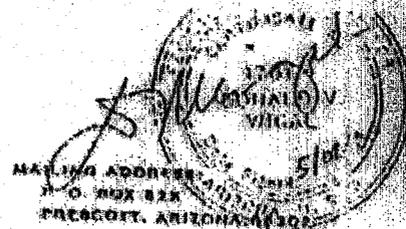
thence South 67 degrees 35 minutes 13 seconds West distant 2,054.16 feet to a point in the said East line of the above described parcel of land, said point lying North Zero degree 05 minutes 13 seconds East distant 219.82 feet from the said Southeast corner of the above described parcel of land; said Right-of-Way contains an area of 1.5148776 acres.



EXHIBIT "B"



DON V. WIGAL  
PROFESSIONAL CIVIL ENGINEER  
PRESCOTT, ARIZONA



DESCRIPTION FOR WATER STORAGE TANK SITE:

DESCRIPTION: A five (5) acres parcel of land situate in the North Half (NH) of Section Sixteen (16), Township Fourteen (14) North, Range One (1) West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 16, as shown in the West line of Castle Canyon Mesa Unit Two Subdivision, according to the plat of record in the office of the Recorder of Yavapai County, Arizona, in Book 16 of Maps and Plats at Page 58;

thence North Zero degree 05 minutes 13 seconds East along the East line of said Section 16 and the West line of said Castle Canyon Mesa Unit Two Subdivision and the West line of Castle Canyon Mesa Unit Three Subdivision, according to the plat of record in the office of the Recorder of Yavapai County, Arizona in Book 16 of Maps and Plats at Page 49, distant 2,973.13 feet;

thence North 89 degrees 54 minutes 47 seconds West distant 2,483.19 feet to the true POINT OF BEGINNING;

thence South Zero degree 05 minutes 13 seconds West along the East line of said parcel of land, parallel with the said East line of Section 16, distant 233.35 feet to the Southeast corner of said parcel of land;

thence North 89 degrees 54 minutes 47 seconds West distant 466.69 feet;

thence North Zero degree 05 minutes 13 seconds East, parallel with the said East line of Section 16, distant 466.69 feet;

thence South 89 degrees 54 minutes 47 seconds East distant 466.69 feet;

thence South Zero degree 05 minutes 13 seconds West along the East line of said parcel of land, parallel with the said East line of Section 16, distant 233.34 feet to the Point of Beginning; said Parcel of land contains an area of 5.0 acres;

TOGETHER WITH A RIGHT-OF-WAY for water transmission pipe line and ingress and egress to and from said parcel of land and said Castle Canyon Mesa Unit Three Subdivision, said Right-of-Way being twenty-five (25) feet in total width, the South line of said Right-of-Way being more particularly described as follows:

BEGINNING at the point of intersection of the center line of Antelope Lane, a dedicated street in said Castle Canyon Mesa Unit Three