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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

GARY PIERCE, Chairman
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DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
JUN 11 2012

DOCKETED BY JM

IN THE MATTER OF THE APPLICATION) DOCKET NO. W-03783A-12-0023
OF MICHAEL W. SCHULTZ AND PAMELA)
J. SCHULTZ DBA RINCON CREEK WATER) APPLICANTS' COMMENTS ON
COMPANY FOR APPROVAL OF THE) COMMISSION STAFF'S JUNE 1,
CANCELLATION OF CERTIFICATE OF) 2012 STAFF REPORT
CONVENIENCE AND NECESSITY.)

Pursuant to the Commission's May 2, 2012 Procedural Order in the above-captioned and above-docketed proceeding, Applicants¹ hereby respond to the Commission Staff's June 1, 2012 Staff Report ("Staff Report"), as filed in said proceeding.

DISCUSSION

A. Reasons Why Existing CC&N Should be Cancelled

Applicants concur with and support the Commission Staff's recommendation that the Commission should approve the requested cancellation of Rincon Creek Water Company's ("Rincon Creek") CC&N for various reasons discussed within the aforesaid Staff Report. However, Applicants wish to clarify what appears to be a misunderstanding as to the nature of the January 19, 2012 Well Sharing Agreement ("Agreement") entered into among Shirley, Donald Crater and David Surzyn.² In that regard, as of that date, Shirley and Messrs. Crater and Surzyn were the only remaining parties receiving water service through Rincon Creek's distribution system.

¹ Pursuant to a January 17, 2012 Limited Power of Attorney, Michael W. Schultz and Pamela J. Schultz authorized William Shirley and Gretchen Shirley (collectively "Shirley") to act as Applicants' attorney-in-fact with respect to the requested cancellation of the certificate of convenience and necessity ("CC&N") of Rincon Creek Water Company, which is the subject of the instant proceeding; and, undersigned counsel is acting with respect to this matter pursuant to the direction of Shirley.

² An executed copy of the January 19, 2012 Well Sharing Agreement is attached to these Comments as Appendix "A" and incorporated herein by this reference.

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1 More specifically, the Agreement contemplates and provides that Messrs. Crater and
2 Surzyn shall have the right to withdraw, transport and use water from a well owned by Shirley.
3 In that regard, unless terminated pursuant to the terms thereof, the Agreement “runs with the
4 lands benefitted” thereby, meaning the lands owned by the aforesaid signatory parties; and, the
5 Agreement “is binding upon and inures to the benefit of the heirs, executors and assigns of the
6 Parties” thereto.³ But, the Agreement does not convey an ownership interest to Messrs. Crater
7 and Surzyn in the well (owned by Shirley), which the Staff Report appears to assume.⁴
8 However, Applicants believe that the aforesaid clarification does not necessitate a change in the
9 Commission Staff’s conclusion that Rincon Creek’s CC&N should be cancelled.

10 In that regard, and supportive of this conclusion, is the discussion set forth at pages 3 and
11 4 of Applicants’ January 23, 2012 Application in the instant proceeding, which pertained to an
12 application of the Serv-Yu factors to the factual circumstances now surrounding Rincon Creek.
13 Those circumstances have not since changed, and they support a determination by the
14 Commission that Rincon Creek no longer need be regulated as a public service corporation.

15 In addition, and as indicated during the May 2, 2012 Procedural Conference conducted in
16 the instant proceeding, Messrs. Crater and Surzyn were provided notice of Applicants’ aforesaid
17 January 23, 2012 Application and their request for cancellation of Rincon Creek’s CC&N; and,
18 Messrs. Crater and Surzyn have neither objected to such request, nor sought to intervene in the
19 instant proceeding. Thus, there is no due process or lack of notice impediment to a Commission
20 decision granting Applicant’s CC&N cancellation request.

21 **B. Clarification of “With Conditions” Language**

22 The last sentence in the Staff Report’s Executive Summary states that Commission Staff
23 recommends cancellation of Rincon Creek’s CC&N, and such recommendation is consistent
24

25 ³ Included among the “benefit(s)” for Messrs. Crater and Surzyn are the following. First, the Agreement provides
26 them with access to a potable water supply at virtually no cost other than their pro-rated share of power and other
27 costs therein enumerated, and only if the latter costs exceed a certain threshold. Otherwise, Shirley bears all costs
28 and responsibilities as the owner of the well which is the subject of the Agreement. Second, the Agreement
addresses the installation and operation of meters, reading of meters, maintenance and operation of the well,
capacity of the well and extraordinary repairs. Thus, in many ways, Messrs. Crater and Surzyn are effectively
receiving the benefits of well ownership without the concomitant responsibilities.

⁴ In that regard, see (i) the first sentence in the last paragraph of the Staff Report’s Executive Summary, and (ii) the
second and third sentences in the first paragraph under the “Application” section on page 1 of the Staff Report.

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1 with the seeming principal intent of the Staff Report. Conversely, the June 1, 2012
2 Memorandum transmitting the Staff Report from the Utilities Division to the Commission's
3 Docket Control states that "Staff recommends approval with conditions." [emphasis added]
4 However, a careful reading of the Staff Report indicates that those "conditions" would apply
5 only in the event that the Commission does not grant Applicants' CC&N cancellation request.

6 **C. Proposed "Conditions" Support Request for Cancellation of CC&N**

7 It must be remembered that Rincon Creek is currently servicing no customers; and, the
8 owners of Rincon Creek have no intention of seeking any customers in the future. In addition,
9 other than (i) the two former customers who disconnected from Rincon Creek's system
10 subsequent to the December 10, 2010 evidentiary hearing in Docket No. W-03783A-10-0172,
11 and (ii) Messrs. Crater and Surzyn, and Shirley, who now receive water under the Agreement,
12 Rincon Creek has not received a request for water service from anyone located within its
13 certificated service area for years. Nor, does it anticipate receiving such a request in the future,
14 given the remote, rural and sparsely populated nature of the area. Accordingly, to impose the
15 burden of the Commission Staff's recommended "Conditions" upon an "empty shell" public
16 service corporation makes no sense, and supports a cancellation of Rincon Creek's CC&N in the
17 circumstances of the instant proceeding.

18 **CONCLUSION**

19 For the reasons discussed in the Staff Report, and for the reasons discussed in their
20 January 23, 2012 Application and these Comments, Applicants believe that the Commission can
21 and should enter an appropriate form of order at this time cancelling Rincon Creek's CC&N.

22
23 Dated this 8th day of June 2012.

24 Respectfully submitted,

25 

26 Lawrence V. Robertson, Jr., Of Counsel
Munger Chadwick, PLC

27 Attorney for William Shirley and Gretchen
28 Shirley, Attorney-In-Fact for Michael W.
Schultz and Pamela J. Schultz

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1 The original and thirteen (13) copies of
2 the foregoing will be filed the 11th
3 day of June 2012 to:

4 Docket Control Division
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 A copy of the same will be served by
9 e-mail or first class mail on the 11th
10 day of June 2012 to:

11 Steven M. Olea, Director
12 Utilities Division
13 Arizona Corporation Commission
14 1200 West Washington
15 Phoenix, AZ 85007

16 Janice Alward, Chief Counsel
17 Scott Hesla Legal Division
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, AZ 85007

21 Michael W. Schultz
22 Rincon Creek Water Company
23 1102 North Anita Avenue
24 Tucson, AZ 85705

25 William and Gretchen Shirley
26 Rincon Creek Ranch
27 P.O. Box 1160
28 Vail, Arizona 85641



Appendix “A”

**June 8, 2012 Comments on Staff Report
Rincon Creek Water Company
Docket No. W-03783A-12-0023**

When recorded, return to:
William and Gretchen Shirley
8987 E. Tanque Verde Road
#309-213
Tucson, AZ 85749

WELL SHARING AGREEMENT

This Well Sharing Agreement (the "Agreement") is entered into this 19th day of January, 2012 ("Effective Date"), by and between William Shirley and Gretchen Shirley (collectively, "Well Site Landowner") and David Surzyn, and Donald Crater (collectively "Recipients"). These individuals and/or entities are referred to herein, individually and collectively, as "Party" or "Parties."

RECITALS

A. The Parties each own parcels of real property in Pima County which are either adjacent to or in close proximity to one another. The Well Site Landowner owns the parcel described in Exhibit 1 attached hereto ("Well Site Landowner's Property") and Recipients own the parcels described in Exhibits 2 through 3 attached hereto ("Recipients Property").

B. The Well Land Owners are developing a Type 1 Minor Resort on their property in accordance with Pima County Zoning Code 18.13.030B6 and as designated by Pima County Development Plan P1210-017 approved by Pima County on February 28, 2011. The Well Land Owners also have their personal residence and stable on the property and have an Irrigation Grandfathered Groundwater Right Certificate 58-106521.0001 covering specified acreage of their property. The Recipients have single family residences only with no intent of subdividing, constructing additional residences, or irrigating.

C. The Well Land Owners have had the well and water system reviewed by a Professional Civil Engineer, registered in the State of Arizona, and have been advised that the Well Land Owner's well capacity is sufficient to provide for the Well Land Owner's Development, the Well Land Owner's Irrigation Grandfathered Groundwater Right, and the Recipients allotted Groundwater share.

D. The Recipients desire to receive water from the Well Site Landowner's groundwater well located on the Well Site Landowner's Property. That well is registered with the Arizona Department of Water Resources ("ADWR") as Well No. 55-620931 ("Well").

E. This Agreement clarifies the Parties' relative rights to ownership and use of the Well.

F. As part of this Agreement, and in furtherance of their collective interests in their respective properties, the Parties desire to (a) establish and clarify their respective rights to the use of water from the Well and (b) establish and clarify the Recipient's rights to access and use the Well and all related facilities for the purposes of carrying out the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Agreement to provide Groundwater from Well.

a. Subject to the terms and conditions contained herein, the Well Site Landowner does hereby grant to Landowners a non-exclusive, limited, right to withdraw and use water from the Well.

b. Each Recipient agrees that it shall not at any time withdraw or use any amount of water from the Well greater than that which is allowed pursuant to this Agreement.

c. Each Party further agrees that, if the capacity of the Well is for any reason not sufficient to produce the combined amount of water allowed to be withdrawn pursuant to this Agreement, each Party shall bear a pro-rata share of the burden of such insufficiency, such that each Party's withdrawal right shall be reduced on an equal percentage basis.

2. Grant of Easements for Access to Well and Well Site.

a. Upon receipt of request, the Well Site Landowner, within twenty-four hours, shall grant Recipients, access across the Well Site Landowner's Property to the Well and the associated well site for purposes of carrying out the terms of this Agreement. Such access shall be limited to access along, over, and across all roadways, access paths, water mains, lines, ditches, gates, pump sites, well sites, and all other water delivery and pumping facilities, whether now existing or in use on the Well Site Landowner's Property or which are hereafter constructed for use on the Well Site Landowner's Property (i) for the purpose of transporting water across the Well Site Landowner's Property by mains, lines, or ditches, and (ii) for the construction, repair, and maintenance at any time of such mains, lines, ditches, and other facilities or equipment as and when deemed necessary by the Parties for the transportation of water.

b. In the event of an emergency, such as a water delivery outage, or observation of ruptured or leaking supply line, Recipient is granted immediate access for investigating the Recipient's supply system, or closing supply line valves to prevent water loss, and shall notify Well Site Landowner immediately of the emergency.

c. Landowners hereby agree to exercise reasonable use of the right of access granted herein in order to not unreasonably interfere with, obstruct or delay the use of the Well Site Landowner's Property by the Well Site Landowner.

d. At any time, the Well Site Landowner may, at its discretion, cause a survey to be performed at its own expense by a licensed surveyor to specifically designate an exact location for an access easement upon the Well Site Landowner's Property. Such designation shall provide reasonable access to Recipients. Recipients agree that they will, upon the Well Site Landowner's request, each execute such formal written grant of easement specifically describing the location of such easement as designated by the survey and thereafter,

the access easement will be limited to the exact location as stated in the written grant of easement.

3. Installation and Operation of Meters.

a. The Well Site Land Owner, at his own expense, shall initially provide appropriate meters and valving to measure the water flowing from the Well to each Recipient. Recipients shall, at their own expense, install the meters in appropriate valve boxes. The meters shall be installed on the Well Site Landowners property, on the Recipient's supply line immediately before the supply line crosses onto the Recipient's property. Meters shall remain the property of the Well Site Landowner. Meters shall be of the type and quality necessary to satisfy the accuracy requirements established by the ADWR as provided in Section 45-604 of the Arizona Revised Statutes and any regulations promulgated thereunder, as those statutes and regulations may be from time to time amended, regardless of whether Section 45-604 otherwise applies to the Well.

b. If installation of the meter can not reasonably be located on the Well Land Owner's property, the Parties may agree to install the meter on the Recipient's property. If so installed, the meter shall become the property of the Recipient, and the Recipient shall be solely responsible for the repair and maintenance of the meter associated with the delivery of water to its property in a condition adequate to satisfy the requirements established by ADWR, as specified in Section 3(a) hereof. Recipient agrees to allow access for purposes of inspecting the meter and reviewing the general condition of all water delivery components and facilities along, over, and across all roadways, access paths, lines, ditches, gates, whether now existing or in use on the Recipients property.

b. Following initial installation of such meters on the Well Land Owner's property, the Well Land Owner shall be responsible for the repair and maintenance of the meter associated with the delivery of water to Recipient's property. The Well Land Owner agrees to maintain said meter in a condition adequate to satisfy the requirements established by ADWR, as specified in Section 3(a) hereof. No Recipient shall be required to incur any responsibility or expense for the repair or maintenance of any other Recipient or Well Land Owner's meter.

c. Either Party may, at its sole and separate expense, inspect the meter of the other Party. This right of inspection shall include the right to inspect by the Party itself and the right to have the device inspected by a professional qualified in the inspection of such devices; provided, that the Party whose meter is to be inspected shall be given advance notice of such inspection and the right to be in attendance at such time.

4. Reading of Meters.

a. On the first day of each month, each Party or its designated representative shall read the meter associated with the water delivery to its property and shall report that reading, in writing, to the Well Site Landowner within five (5) days thereafter.

b. The Well Site Land owner shall retain the right to read the meters associated with all Recipient's deliveries.

c. The relative amount of water used by each Recipient shall be calculated by subtracting the meter reading at the beginning of the month from the meter reading at the beginning of the preceding month. The relative amount of water used by each Recipient during that month shall constitute that Recipient's relative water usage for that month ("Relative Water Share").

d. In event of any dispute regarding the meter reading for any Recipient, the Parties shall confer and attempt to resolve the dispute. If the Parties cannot resolve the dispute, the Well Site Landowner shall have authority to determine each Recipient's Relative Water Share for the month, provided, however, that the Relative Share assigned by the Well Site Landowner for any Recipient pursuant to this Section 4(d) may not exceed that Recipient's Relative Water Share for the prior month by more than twenty percent (20%).

e. If any Recipient's meter malfunctions or fails to accurately measure that Recipient's water usage in any given month, that Recipient's Relative Water Share shall be set at one hundred twenty percent (120%) of that Recipient's Relative Water Share for the immediately preceding month in which such meter was functioning properly.

5. Limitations on Water Usage. No Recipient shall use more than Thirty-Five Thousand (35,000) gallons of water from the Well in any three-month period, unless agreed to in writing by the Parties.

6. Routine Well Operation and Maintenance.

a. The Well Site Landowner and Recipients shall be mutually responsible for the routine operation and maintenance of the Well. The Well Site Landowner shall perform, or arrange for the performance of, all day-to-day activities necessary to maintain the Well in a proper condition in order to carry out the purposes of this Agreement. The Well Site Landowner also shall be responsible for contracting the energy necessary to operate the Well for the purposes provided in this Agreement.

b. The Well Land Owner shall be responsible for the operation and maintenance expenses of the Well unless the Recipient's share of the expenses for any particular month, calculated by taking the total operation and maintenance expenses for the Well that month multiplied by the Recipients Relative Water Share for that month and divided by the total water usage from the Well for that month, exceeds thirty dollars (\$ 30.00). In such event, then the Recipient shall bear full responsibility for that Recipient's share of that month's expenses, unless otherwise agreed to, in writing, by the Well Land Owner.

c. If applicable under paragraph 6(b), on or before the tenth (10th) day of each month, the Well Site Landowner shall submit to Landowners a written invoice of their respective share of the operation and maintenance expenses for the Well for the prior month. Such expenses shall be allocated to Recipients in proportion to their Relative Water Share for that month, determined according to Section 6(a) hereof. Upon request of one (1) or more Recipients, the Well Site Landowner shall provide an itemized statement showing in reasonable detail the amount and purposes of each expenditure.

d. If applicable under paragraph 6(b), within five (5) days after receipt of any written invoice from the Well Site Landowner stating any amounts due for routine operation and maintenance expenses, Recipients shall remit the stated sum to the Well Site Landowner. Payment of any such amount shall be by check, and all checks shall be made payable to the Well Site Landowner or such other party as specified by the Well Site Landowner.

7. Extraordinary Repairs and Maintenance.

a. The need for any extraordinary repair and non-routine maintenance to the Well shall be determined by the Well Site Landowner, with notice to Recipients.

b. If the Well Site Landowner determines that extraordinary repair or non-routine maintenance of the Well is necessary, the Recipient's share of the costs of such repair or maintenance shall be calculated by multiplying their Relative Water Shares for the immediately preceding twelve (12) months, or the amount of time since the Effective Date of this Agreement, whichever time period is less, by the total cost of the extraordinary repair or non-routine maintenance of the Well, and dividing by the total water usage from the well for the immediately preceding twelve (12) months, or the amount of time since the Effective Date of this Agreement, whichever time period is less. The Recipient shall not be responsible for the cost of any extraordinary repair and non-routine maintenance to the Well, unless the Recipient's share as calculated herein exceeds Four Hundred Dollars (\$400.00).

c. The Well Site Landowner shall perform, or arrange for the performance of, all extraordinary repairs or non-routine maintenance of the Well determined necessary pursuant to this Section 7. If applicable under paragraph 7(b), the Well Site Landowner shall submit to Recipients a written invoice for their respective share(s) of the expenses of such repair or maintenance, determined pursuant to Section 7(b) hereof. Within fifteen (15) days after receipt of any written invoice from the Well Site Landowner stating any amounts due for extraordinary repairs or non-routine maintenance expenses, Recipients shall remit the stated sum to the Well Site Landowner. Payment of any such fees shall be by check, and all checks shall be made payable to the Well Site Landowner or such other party as specified by the Well Site Landowner. The Well Site Landowner shall be responsible for remitting such amounts to the appropriate entities as may be necessary for payment in full for performing such repairs and maintenance.

d. Improvements and Upgrades needed and constructed by the Well Site Owner in connection with its ongoing Type 1 Minor Resort Development Plan shall not constitute an extraordinary repair or be deemed non-routine maintenance. The Well Site Owner shall solely bear the costs of all such improvements and upgrades. Recipients agree that the Well Land Owner is entitled to make all improvements necessary for the completion of its Type 1 Minor Resort Development Plan, or enterprise of its undertaking, and agree not to interfere, hinder, obstruct, or delay the Well Site Owner's improvements or upgrades to the Well or water delivery system.

8. Delinquent Payments.

a. Any payment that is required pursuant to this Agreement and not paid when due shall accrue a late fee of ten dollars (\$10) per day.

b. In the event a Recipient is late in a payment required pursuant to this Agreement, all of that Recipient's rights and privileges granted herein, including without limitation its right(s) of access to and use of water from the Well, shall be suspended indefinitely until payment is made as required, including any late fees accrued.

9. Reporting of Water Withdrawals and Use.

a. The Parties hereby each hereby appoint the Well Site Landowner, and the Well Site Landowner hereby accepts such appointment, as the "reporting party" for purposes of any ADWR or other governmental requirements with respect to the Well. Recipients agree to promptly provide all necessary information to the Well Site Landowner for purposes of compiling and submitting any and all required reports and fees regarding the Well to any governmental entity with jurisdiction over the Well or its operations.

b. The Recipients share of any fees due to any governmental entity for any groundwater regulation fee with respect to the Well, shall be calculated by multiplying the fees by their Relative Water Shares for the immediately preceding twelve (12) months, or the amount of time since the Effective Date of this Agreement, whichever time period is less, and dividing by the total water usage from the well for the immediately preceding twelve (12) months, or the amount of time since the Effective Date of this Agreement, whichever time period is less. The Recipient shall not be responsible for the fees due to any governmental entity for any groundwater regulation fee with respect to the Well, unless the Recipient's share as calculated herein exceeds Fifty dollars (\$50.00).

c. If applicable under paragraph 9(b), within five (5) days after receipt of any notice from the Well Site Landowner stating any amounts due to any governmental entity for any groundwater regulation fee with respect to the Well, Recipient's shall remit the stated sum to the Well Site Landowner for submission to such governmental agency. Payment of any such fees shall be by check, and all checks shall be made payable to the Well Site Landowner for the amount specified by the Well Site Landowner. Nothing contained in this subsection shall prevent any Party from contesting at its cost and expense any such fee for which it is responsible in any appropriate manner, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded the contesting Party shall promptly pay all such fees determined to be owing, together with all interest, penalties, and costs thereon in order to ensure the Well is in compliance with all applicable governmental rules and regulations.

10. Indemnity to the Well Site Landowner.

a. Landowners hereby agree to indemnify and hold harmless the Well Site Landowner for any damage or loss arising from performance of its duties under Sections 4(c), 4(d), 6(a), 6(b), 6(c), 7(a), 7(b), 7(c), 7(d), 9(a), 9(b) and 9(c) hereof, except to the extent that such damage or loss arises from intentional misconduct or gross negligence by the Well Site Landowner. Each Party agrees to indemnify and hold harmless the other Party for any damage or loss arising from the first Party's failure to comply with any applicable law or regulation.

b. The Parties agree that the Well Site Landowner's acceptance of the duties pursuant to Sections 4(c), 4(d), 6(a), 6(b), 6(c), 7(a), 7(b), 7(c), 7(d), 9(a), 9(b) and 9(c) hereof is voluntary and subject to change. The Well Site Landowner retains the unilateral right to withdraw from such duties, and appoint a successor, at any time, with ten (10) days advance written notice to the Parties. In the event that the Well Land Owner has not appointed a successor, the Parties shall appoint a successor to carry out the duties assigned to the Well Site Landowner pursuant to the aforesaid sections. All rights and duties assigned to the Well Site Landowner herein shall thereafter inure to the benefit of its duly appointed successor.

11. Termination.

a. This Agreement shall terminate in full only under the following conditions:

(1) By unanimous written agreement of the Parties; or

(2) If water from the Well becomes unfit for the purposes for which it is intended.

b. If a Recipient subdivides its property, drills and constructs a well on its property, or builds an additional residence on the property, this Agreement shall terminate as to that Recipient's right(s) of access to and receipt of water from the Well. The Well Site Landowner may subdivide its property or build an additional residence or residence(s) on its property; provided, however, Recipient's shall retain their right(s) of access to and receipt of water from the Well pursuant to this Agreement.

c. Any Recipient may terminate his participation in this Agreement at his sole discretion by release of all claims, including, but not limited to, his rights to receive water from the Well Land Owner, and his right to access to the Well Land Owner's property by written notice to the Well Land Owner, and complying with paragraph 11(d).

d. In the event that the Arizona Corporation Commission does not issue an opinion and order granting the request of Michael Schultz and Pamela Schultz D/B/A Rincon Creek Water Company, to (i) cancel the Certificate of Convenience and Necessity previously granted to Rincon Creek water Company and (ii) declare Rincon Creek water Company not a public service corporation under Arizona law.

e. Upon complete or partial termination of this Agreement, the affected Party shall execute and acknowledge an appropriate release of this Agreement in recordable form to be recorded in Pima County.

12. Liability. Each Party agrees to indemnify and hold harmless the other Party from any damage or loss to the other Party resulting from the first Party's intentional or negligent acts.

13. Water Quality. No guarantees, representations or warranties, express or implied, are made regarding the quality of water withdrawn from the Well. Each Party accepts water

from the Well "as is," and each Party agrees to hold the other Party harmless for any injury or damage to any person, real property, or personal property arising from the quality of water withdrawn from the Well.

14. Disclosure to Prospective Purchasers. The Parties agree (a) that they will fully disclose this Agreement and its terms and conditions to any prospective purchasers, lenders, or owners of their respective properties and (b) that the transfer of this Agreement (and assumption of rights and obligations hereunder) shall be included as an express condition of sale or exchange of deed in connection with any subsequent change in ownership of any of said properties, with all terms and conditions set forth herein to be thereafter binding and enforceable upon the succeeding owner thereof.

15. Binding Agreement. This Agreement runs with the lands benefited hereby and is binding upon and inures to the benefit of the heirs, executors, successors, and assigns of the Parties, subject to the termination provisions of Section 11 hereof.

16. No Waiver. Any waiver at any time by any Party of its rights with respect to a default, breach, or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default, breach or matter.

17. Controlling Law, Jurisdiction, and Venue. This Agreement shall be interpreted and construed according to Arizona law. The Parties hereby agree that jurisdiction and venue in any action to enforce the provisions of this Agreement shall be proper in the Pima County, Arizona Superior Court.

18. Attorneys' Fees and Costs. In any dispute or action arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein.

19. Entire Agreement. This Agreement constitutes the entire understanding of the Parties and supersedes any previous agreement or understandings between the Parties on the subjects discussed herein. It may not be modified or amended except in writing executed by the Parties.

20. Notice; Change of Name or Address.

a. All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth (5th) business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

(1) If to the Well Site Landowner:

William and Gretchen Shirley
14545 E. Rincon Creek Ranch Road
Tucson, AZ 85747

(2) If to Recipient David Surzyn:

David Surzyn
14590 E. Rincon Creek Ranch Road
Tucson, AZ 85747

(3) If to Recipient Don Crater:

Don Crater
14500 E. Rincon Creek Ranch Road
Tucson, AZ 85747

b. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee or address in conformity with the provisions of this Section 20 for giving notice.

21. Amendments. Any amendment, modification or termination of this Agreement shall be effected only by a written instrument referring hereto, executed and acknowledged by each of the Parties, and recorded with the County Recorder of Pima County, Arizona.

22. Time of Essence. Time is of the essence under this Agreement. Any extension of time for performance under this Agreement by either Party must be in writing. No extension will be deemed a waiver of this paragraph with respect to any future performance by a Party.

23. Severability. If any provision or any portion of a provision of this Agreement is deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement, as each provision of this Agreement shall be deemed to be severable from all other provisions hereof.

24. Not Partners or Joint Ventures. Neither this Agreement, nor any activity of the Parties in connection herewith shall constitute the Parties as partners or joint ventures for any purposes whatsoever.

25. Interpretation. The Parties hereby acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and that this Agreement is the result of arms' length negotiations between the Parties. In the event of any ambiguity in or dispute regarding the interpretation of Agreement, the interpretation shall not be resolved by any rule of interpretation providing for the interpretation against the party who caused the uncertainty to exist or against the draftsman.

26. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

27. Transactions Costs. Each Party expressly agrees to bear its own attorneys' fees and other costs associated with the preparation, review, execution, and implementation of this Agreement.

28. Recording. Any Party may record this Agreement in the records of the County Recorder in Pima County, Arizona.

IN WITNESS HEREOF, this Agreement is executed by the Parties and made effective on the date first written above.

WELL SITE LANDOWNER

By: William Shirley and Gretchen Shirley

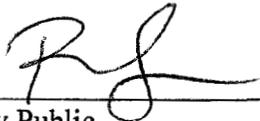
RECIPIENTS (COLLECTIVELY)

By: Donald Crater

By: David Surzyn

STATE OF ARIZONA)
) ss.
County of Pima)

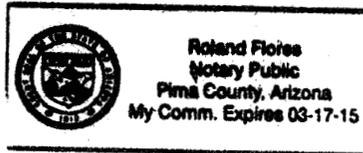
The foregoing instrument was acknowledged before me this 19th day of January, 2012,
by [William Shirley, Well Site Landowner].



Notary Public

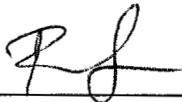
My commission expires:

3/17/2015



STATE OF ARIZONA)
) ss.
County of Pima)

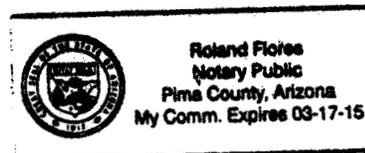
The foregoing instrument was acknowledged before me this 19th day of January, 2012,
by [Gretchen Shirley, Well Site Landowner].



Notary Public

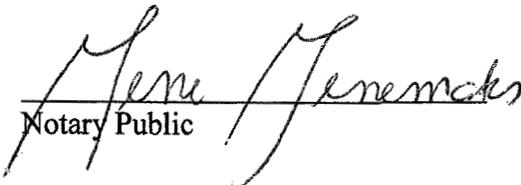
My commission expires:

3/17/2015



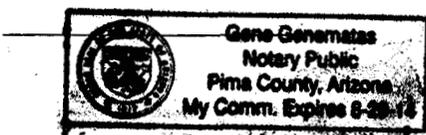
STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 20 day of January, 2012,
by David Surzyn [Water Recipient].



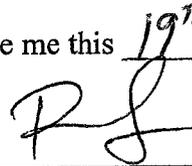
Notary Public

My commission expires:



STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 19th day of January, 2012,
by Donald Crater [Water Recipient].



Notary Public

My commission expires:

3/17/2015

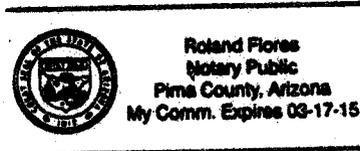


Exhibit 1

Well Site Landowner's (William and Gretchen Shirley's) Property:

Those portions of the S1/2 of the S1/2 of Section 14 and the N1/2 of the N1/2 of Section 23 in Township 15 South, Range 16 East of the Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as Pima County Assessor Parcels 205-75-0200, 205-75-0160, 205-86-0340, 205-86-0350, and 205-86-0390, shown below:

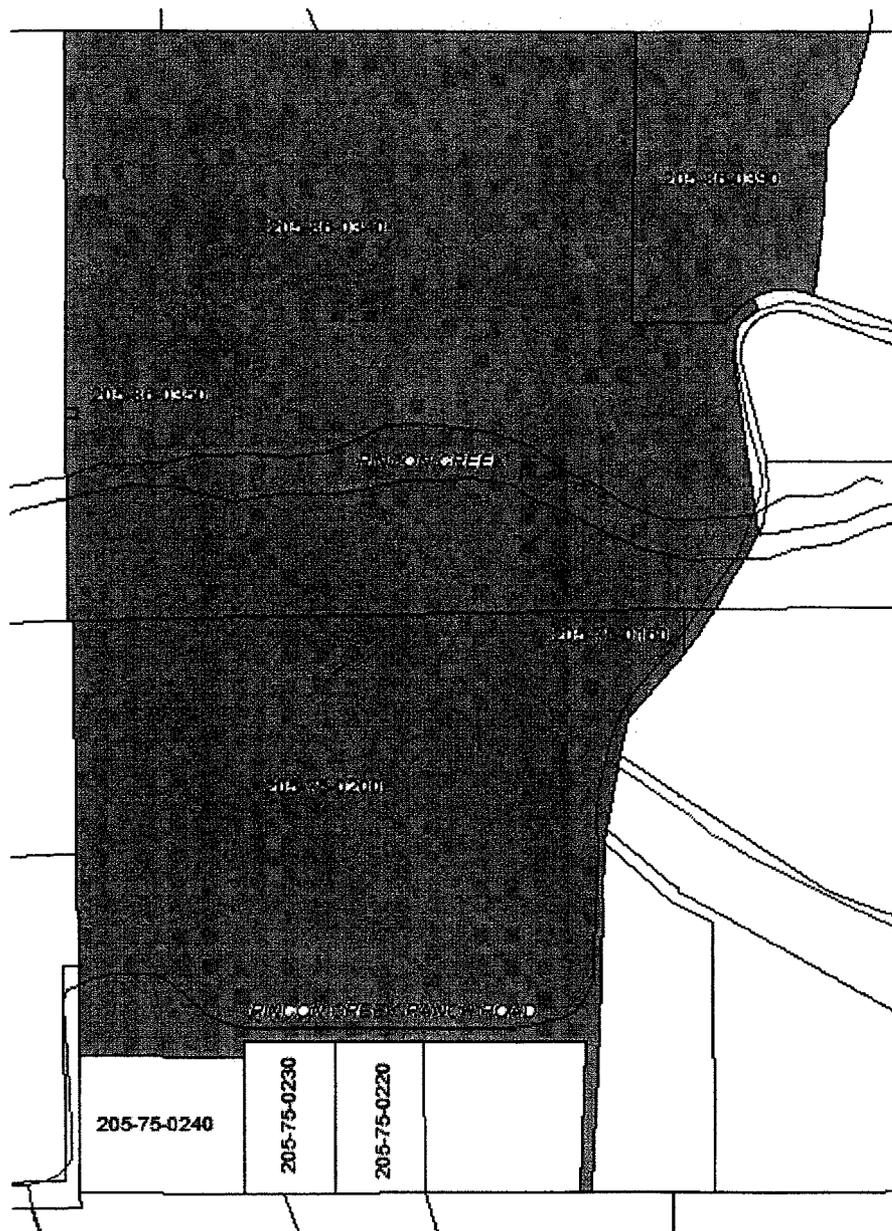


Exhibit 2

Water Recipient's (David Surzyn's) Property:

Those portions of the N1/2 of the NW1/4 of Section 23 of Township 15 South and Range 16 East of the Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as Pima County Assessor Parcel Numbers 205-75-0220 and 205-75-0230, shown below:

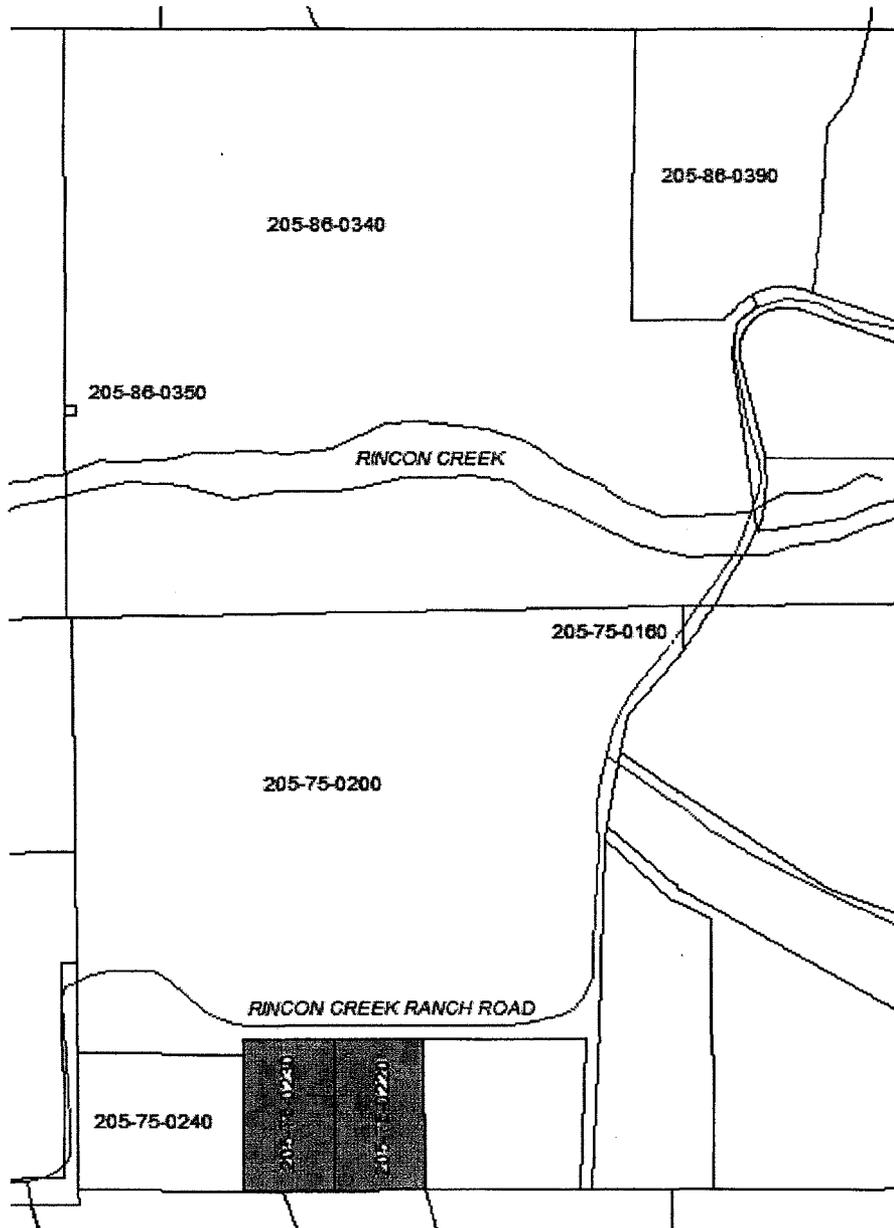


Exhibit 3

Water Recipient's (Donald Crater's) Property:

That portion of the N1/2 of the NW1/4 of Section 23 of Township 15 South and Range 16 East of the Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as Pima County Assessor Parcel Number 205-75-0240, shown below:

