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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
MICHAEL W. SCHULTZ & PAMELA J.
SCHULTZ DBA RINCON CREEK WATER
COMPANY FOR APPROVAL TO CANCEL
THEIR CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. W-03783A-12-0023

**STAFF'S NOTICE OF FILING
CLARIFYING COMMENTS**

On June 1, 2012, the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") filed a Staff Report ("Staff Report") in the above-referenced matter. On June 11, 2012, Rincon Creek Water Company ("Rincon Creek" or "Company") filed comments to the Staff Report addressing, *inter alia*, a possible misunderstanding of Staff as to the legal effect of the Well Sharing Agreement ("Agreement"). Specifically, the Company noted that the Staff Report appeared to incorrectly assume that the Agreement conveyed an ownership interest in the well to Messrs. Crater and Surzyn.

In order to clarify the foregoing issue raised by the Company in its comments, Staff hereby provides notice of filing the following clarifying comments to the Staff Report.

I. DISCUSSION.

For clarification purposes, Staff did not intend to imply that the parties to the Agreement shared an ownership interest in the well. Rather, Staff intended to acknowledge the fact that Messrs. Crater and Surzyn each hold a property interest relating to use of the well vis-à-vis the Agreement. That Agreement provides Messrs. Crater and Surzyn with equal rights to withdraw water from the well and obligates Messrs. Crater and Surzyn to contribute their pro-rata share of certain costs associated with operating and maintaining the well. The practical effect of the Agreement is that, as noted by the Company, Messrs. Crater and Surzyn are receiving the benefits of well ownership.¹

¹ See Applicants' Comments on Commission Staff's June 1, 2012 Staff Report (June 11, 2012) at footnote 3.

1 Staff notes that this clarification does not change Staff's recommendations. Based on the
2 circumstances present in this case, Staff continues to recommends that the Commission declare that
3 Rincon Creek is no longer acting as a public service corporation and approve the cancellation of
4 Rincon Creek's certificate of convenience and necessity ("CC&N").

5 In addition, Staff notes that the circumstances surrounding Rincon Creek are similar to those
6 present in *Arizona Water Company v. Arizona Corp. Comm'n*, 161 Ariz. 389, 778 P.2d 1285 (App.
7 1989). In *Arizona Water*, several joint well-owners were providing water service to two individuals
8 who did not own any ownership interest in the well. The court in *Arizona Water*, relying on *Natural*
9 *Gas Service Co. v. Serv-Yu Cooperative*, 70 Ariz. 235, 219 P.2d 324 (1950), held that the owners of
10 the shared well did not become a public service corporation by extending service to two persons,
11 neither of whom held any ownership interest in the well.

12 Here, Rincon Creek is similarly providing water service to two individuals, neither of whom
13 have an ownership interest in the well, but do have a property interest. As a result, Staff does not
14 believe that Rincon Creek is a public service corporation under *Arizona Water*.

15 **II. CONCLUSION.**

16 Staff continues to recommend approval of the Company's application. Alternatively, in the
17 event that the Commission denies the Company's application, Staff continues to recommend that
18 such denial be accompanied by the conditions set forth more fully in the Staff Report.

19 RESPECTFULLY SUBMITTED this 15th day of June, 2012.

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25 Original and thirteen (13) copies
26 of the foregoing filed this
15th day of June, 2012 with:

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Docket Control
Arizona Corporation Commission
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