



0000147366

1 Steve Wene, State Bar No. 019630
2 MOYES SELLERS & HENDRICKS LTD.
3 1850 N. Central Ave., Suite 1100
4 Phoenix, Arizona 85004
5 Telephone: 602-604-2141
6 Attorneys for Picacho Peak Water Company

RECEIVED

2013 AUG 15 P 1:06

AZ CORP COMMISSION
DOCKET CONTROL

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9
10 **COMMISSIONERS**

11 BOB STUMP, CHAIRMAN
12 GARY PIERCE
13 BRENDA BURNS
14 SUSAN BITTER SMITH
15 BOB BURNS

Arizona Corporation Commission

DOCKETED

AUG 15 2013

DOCKETED BY *nr*

16 **IN THE MATTER OF PICACHO PEAK**
17 **WATER COMPANY, INC.'S RATE**
18 **APPLICATION**

Docket No. W-02351A-11-0231

STATUS REPORT

19
20 Pursuant to Decision No. 70558, Picacho Peak Water Company, Inc. ("Company")
21 is filing its biannual status report. In that decision, the Arizona Corporation Commission
22 ("Commission") ordered the Company to file each January and July, a report covering the
23 previous six months that contains all activities regarding the Arizona Department of
24 Environmental Quality ("ADEQ") Consent Order ("Consent Order"). This status report
25 is filed to meet the Company's compliance requirements for a July 2013 report.
26
27
28

1 Over the past six months, there have been two significant occurrences. First,
2 ADEQ has issued its Approval of Installation Certificate for the point of use treatment
3 devices. This means the Company has proven to ADEQ's satisfaction that the
4 installation meets all federal and state laws associated with the water treatment and the
5 water now meets the Safe Drinking Water requirements. A copy of the pertinent
6 documents is set forth in Attachment 1.
7

8
9 Second, the owners of the Picacho Peak RV Park ("RV Park") have agreed to
10 install centralized treatment. The RV Park is in the process of permitting and
11 constructing the system pursuant to agreements with the Company. See Attachment 2.
12 However, the Company notes that it has not yet approved the RV Park construction plans
13 and the waste disposal plans.
14

15 Finally, the remaining issue is the repair and/or replacement of the treatment
16 system serving water to the Dairy Queen. The Company is awaiting the engineering
17 design plans, which the Company thought it would have received by this time and was
18 awaiting to include in this report. However, the delivery of these plans has been pushed
19 back and the Company believes it is prudent to file the status report with no further delay.
20
21

22 RESPECTFULLY SUBMITTED on August 15, 2013.

23 **MOYES SELLERS & HENDRICKS**

24 
25 _____
26 Steve Wene
27 Attorneys for Picacho Peak Water Co.
28

1 Original and 13 copies of the foregoing
2 filed August 15, 2013, with:

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

7 Copy of the foregoing mailed
8 August 15, 2013 to:

9 Compliance Section
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Donnelly Herbert
14
15
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17
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23
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25
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27
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Attachment 1



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin
Director

July 17, 2013

Ms. Danna Cogburn-Barrett
Picacho Peak Water System
P.O. Box 1100
Red Rock, Arizona 85145

RECEIVED

AUG 05 2013

Moyes Sellers & Hendricks

Re: Picacho Peak Water System
Arizona Point of Use Compliance Program
PWS No. AZ04-11-038, ADEQ File No. 20120242

Dear Ms. Cogburn-Barrett

The Technical Engineering Unit (TEU) of the Arizona Department of Environmental Quality (ADEQ) has reviewed your Point of Use (POU) Application of the Picacho Peak Water System located in Picacho, Arizona, for acceptance into the Arizona Point of Use Compliance Program (Program). The Program allows water systems to utilize POU Treatment devices as a means for compliance with drinking water maximum contaminant levels (MCL).

We are pleased to inform you that your POU Application has been accepted and an Approval of Installation (AOI) Certificate has been issued. The AOI Certificate certifies that the water system met criteria set forth in the Federal and State Laws and Arizona Point of Use Compliance Program Guidance Document (Guidance Document) and suitable for acceptance into the Program.

The following document and forms are provided with Program acceptance:

AOI Certificate:

- The AOI Certificate certifies that the installation of the proposed number of POU Units has been completed, and that the installation meets all Federal and State Laws associated with POU Treatment and Arizona Point of Use Compliance Program Guidance Document. Furthermore, this certificate signifies that the Water System has been fully accepted into the Program.

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

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- The AOI Certificate also shows the dates when the initial laboratory samples were collected and analyzed and the name of the certified laboratory that conducted the analysis.

Notification of Changes/Additions Form:

- If the approved "Monitoring Plan" changes due to the addition or removal of POU Unit(s), the "Notification of Changes/Additions to Approved Point of Use Treatment Plan" form must be completed and returned so that the "Monitoring Plan" may be up-dated.

Program Monitoring Plan:

- The agreed upon "Monitoring Plan" has been provided for reference purposes. The Plan shows that each POU unit installed must be sampled quarterly and analyzed by an AZ Certified Laboratory or Hach Nitrate Test Strip until June of 2017 when annual monitoring will begin. This "Monitoring Plan" was designed to provide water system with operational experience as to when maintenance is required.

(Future) Annual Monitoring Schedule Notification Forms:

- The "Annual Monitoring Schedule Notification" form must to be submitted each year at-least one month prior to sampling (**BEGINNING JUNE 2017**). Please remember that samples should be collected during a specific month of the year pursuant to the "Monitoring Plan" and overall water system compliance is determined, in part, on this data. These forms are required because the number of samples may change from year to year according to the "Monitoring Plan". Consequently, ADEQ records must be updated accordingly. Additional "Annual Monitoring Schedule Notification" forms are provided.

If you have any questions or concerns, I can be reached at (602) 771-4237 or fms@azdeq.gov.

Sincerely,



Frank M. Smaila
ADEQ Water Quality Division
Engineering Review Section
Drinking Water Facilities Review Unit

cc: ADEQ File No: 20120242
Pinal County Health Department
Robert Casey, ADEQ Sr Enforcement Case Mgr
Mr. Bill McCabe, President, 150 Louisiana NE, Albuquerque, NM 87108



Janice K. Brewer
Governor

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Henry R. Darwin
Director

POINT-OF-USE/ENTRY PROGRAM APPROVAL OF INSTALLATION

Project Description: Picacho Peak Water Company. AOI Certificate of the Installation of Nine (9) Point-of-Use Treatment Devices for Nitrate Compliance. To Serve Treated Drinking Water to Employee Housing and Residential Homes in Picacho, AZ.

Project Location/County: Picacho, AZ/Pinal County

Public Water System: Picacho Peak Water Company, c/o Ms. Danna Cogburn-Barrett

PWS Address: P.O. Box 1100, Red Rock, AZ 85145

The Arizona Department of Environmental Quality (ADEQ) hereby issues an Approval of Installation for the above-described facility based on the following provisions of Arizona Administrative Code (A.A.C.) R18-4-218, Federal Law 42 U.S.C. 300g.1(b)(4)(E)(ii) et seq and ADEQ Point-of-Use Compliance Program Guidance Document.

On April 4, 2013, ADEQ issued a Certificate of Approval to Install for the referenced project.

On June 28, 2013 Bill McCabe, President, certified the following:

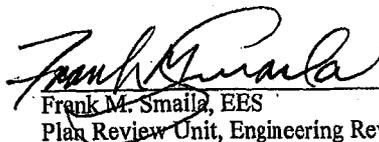
- Number of POU Devices installed? 9
- All the POU Devices applied for in the Approval To Install application were installed;
- That a sufficient number of devices have been installed to ensure every person served by the system is protected; and
- The referenced project was installed according to the manufacturer specifications and ADEQ's Certificate of Approval to Install.

Laboratory samples were collected on June 11 & 12, 2013 and analyzed on June 12, 2013 by Turner Laboratories, Inc., ADHS License No. AZ0066. The sample results were below the MCL for the non-compliant contaminant.

This Approval of Installation authorizes the owner to begin operating the above-described facilities as represented in the approved plan on file with the ADEQ. Be advised that A.A.C. R18-5-124 requires the owner of a public water system to maintain and operate all water production, treatment and distribution facilities in accordance with ADEQ Safe Drinking Water Rules. *Owner must contact ADEQ Drinking Water Monitoring & Protection Unit in writing annually one month prior to sampling and declare the total number of POU laboratory samples that will be taken in that year.*

FMS

PWS No.: 11-038

 7/17/2013
Frank M. Smalls, EES Date/Approved
Plan Review Unit, Engineering Review Section

c: TEU File No.: 20120242
CRO Approval of Construction File
Pinal County Health Department
ADEQ Enforcement Unit, Mr. Robert Casey
ADEQ DW Monitoring & Protection, Ms. Janell Goatson
ADEQ Utilities Field Services Unit, Mr. Daniel Czecholinski

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NOTIFICATION OF CHANGES/ADDITIONS TO
APPROVED POINT OF USE (POU) TREATMENT PLAN

ADEQ File No. 20120242

Picacho Peak Water System

AZ04-11-038

PWS NAME:

PWS ID NO:

The Public Water System (PWS) named above hereby confirms that it has made the following changes to its previously approved POU treatment plan. The PWS also certifies that these changes are related to the size and/or scope of the distribution system and do not include changes to the type of technology used in the POU treatment (i.e., the POU units themselves). The PWS understands that changing the approved treatment technology (e.g., a different type or manufacturer of POU unit) would require a new POU application and written approval from ADEQ before any installation could proceed.

[] Additions to existing distribution system. Describe additions briefly (e.g., new residential connections, new businesses, development build-out). Use an additional sheet, if necessary.

Horizontal lines for describing additions to existing distribution system.

No. of New Installation(s) - , Total No. of Installations including these addition(s) -

[] Contraction of existing distribution system. Describe changes briefly (e.g., closed business, demolished buildings, cessation of water service). Use an additional sheet, if necessary.

Horizontal lines for describing contraction of existing distribution system.

No. of Units Contracted - , Total No. of Operating Installations -

PLEASE NOTE: You must include an amended map of your distribution system and a revised monitoring schedule for the changes described above. This notification will not be accepted without this additional information.

Certified By: Name: Signature:

Title:

Phone No: Fax No: Date:

Mail Notification Form to: ADEQ Engineering Review Section
Mail Code 5415B-2
1110 W. Washington Street
Phoenix, AZ 85007, Direct Phone 602-771-4677

**PICACHO PEAK WATER COMPANY
POINT-OF-USE PROGRAM MONITORING PLAN
(9 Potential POU UNITS)**

Year 1 (Sept 2013 - June 2014)		Year 2 (Sept 2014 - June 2015)		Year 3 (Sept 2015 - June 2016)		June 2017, 18, 19, 20, 21 & 22	
POU Designation	POU Sample Analyzation Type	POU Designation	POU Sample Analyzation Type	POU Designation	POU Sample Analyzation Type	POU Designation	POU Sample for Laboratory ²
All Installed POU Units	Sept 2013 - Sample using Field Test Kit ³	All Installed POU Units	Sept 2014 - Sample using Field Test Kit ³	All Installed POU Units	Sept 2015 - Sample using Field Test Kit ³	1	SAMPLE FOR LABORATORY ONLY, NO LOTS WILL BE SAMPLED AND ANALYZED BY TEST STRIPS
All Installed POU Units	Dec 2013 - Sample Sent to Laboratory ¹	All Installed POU Units	Dec 2014 - Sample Sent to Laboratory ¹	All Installed POU Units	Dec 2015 - Sample Sent to Laboratory ¹	2	
All Installed POU Units	Mar 2014 - Sample using HACH Test Kit ³	All Installed POU Units	Mar 2015 - Sample using HACH Test Kit ³	All Installed POU Units	Mar 2016 - Sample using HACH Test Kit ³	3	
All Installed POU Units	June 2014 - Sample Sent to Laboratory ¹	All Installed POU Units	June 2015 - Sample Sent to Laboratory ¹	All Installed POU Units	June 2016 - Sample Sent to Laboratory ¹	4	
						5	
						6	
						7	
						8	
						9	

**PICACHO PEAK WATER
COMPANY, 11-038
POINT OF USE TREATMENT
NITRATE MONITORING PLAN**

ADEQ File No. 20120242 April 2013

1 - Send samples to Certified Laboratory and provide results to ADEQ by the end of designated Month
 2 - Send samples to Certified Laboratory and provide results to ADEQ by June 30 of each year.
 3 - If Water System chooses, Samples may be tested utilizing HACH Nitrate Test Strips (Product No. 2745425) and results sent to ADEQ.

NOTE: When sampling, label laboratory samples per POU Designation. Example: POU # 2.



Janice K. Brewer
Governor

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Benjamin H. Grumbles
Director

POINT-OF-USE (POU) PROGRAM ANNUAL MONITORING SCHEDULE NOTIFICATION FORM

Public Water System Name: PICACHO PEAK

PWS ID & ADEQ File Numbers: AZ04-11-038 & 20120242

Name of Contact Person / Title: Mr. Bill McCabe, President

Telephone / Email: 505-266-5985 BMcCabe@bowlintc.com

Date of POU Program Approval: 07/17/2013

Monitoring Month/Year:	<u>June 2017</u>
Total number of POU's installed to-date:	_____
Number of POU samples to be lab tested:	_____
Analyte:	<input type="checkbox"/> Arsenic <input type="checkbox"/> Fluoride <input checked="" type="checkbox"/> Nitrate <input type="checkbox"/> Other _____

I hereby certify that the number of POU samples to be submitted for laboratory analysis, as indicated above, is in accordance with the ADEQ approved POU Monitoring Plan/Schedule for this water system. Furthermore, I understand that any proposed changes to the established POU Monitoring Plan/Schedule must be submitted to ADEQ for approval.

Water System Owner/Representative (Print)	Signature	Date
--	-----------	------

THIS FORM MUST BE SENT TO ADEQ ONE MONTH PRIOR TO SAMPLING.

Please send completed form to: ADEQ Drinking Water Section, Drinking Water Monitoring & Protection Unit, 1110 W. Washington St., Mail Code 5415B-2, Phoenix, AZ 85007 or via fax to (602) 771-4634.



Janice K. Brewer
Governor

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Benjamin H. Grumbles
Director

POINT-OF-USE (POU) PROGRAM ANNUAL MONITORING SCHEDULE NOTIFICATION FORM

Public Water System Name: PICACHO PEAK

PWS ID & ADEQ File Numbers: AZ04-11-038 & 20120242

Name of Contact Person / Title: Mr. Bill McCabe, President

Telephone / Email: 505-266-5985 BMcCabe@bowlintc.com

Date of POU Program Approval: 07/17/2013

Monitoring Month/Year:	<u>June 2018</u>
Total number of POU's installed to-date:	_____
Number of POU samples to be lab tested:	_____
Analyte:	<input type="checkbox"/> Arsenic <input type="checkbox"/> Fluoride <input checked="" type="checkbox"/> Nitrate <input type="checkbox"/> Other _____

I hereby certify that the number of POU samples to be submitted for laboratory analysis, as indicated above, is in accordance with the ADEQ approved POU Monitoring Plan/Schedule for this water system. Furthermore, I understand that any proposed changes to the established POU Monitoring Plan/Schedule must be submitted to ADEQ for approval.

Water System Owner/Representative (Print)	Signature	Date
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Director

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Public Water System Name: PICACHO PEAK

PWS ID & ADEQ File Numbers: AZ04-11-038 & 20120242

Name of Contact Person / Title: Mr. Bill McCabe, President

Telephone / Email: 505-266-5985 BMcCabe@bowlintc.com

Date of POU Program Approval: 07/17/2013

Monitoring Month/Year:	<u>June 2019</u>
Total number of POU's installed to-date:	_____
Number of POU samples to be lab tested:	_____
Analyte:	<input type="checkbox"/> Arsenic <input type="checkbox"/> Fluoride <input checked="" type="checkbox"/> Nitrate <input type="checkbox"/> Other _____

I hereby certify that the number of POU samples to be submitted for laboratory analysis, as indicated above, is in accordance with the ADEQ approved POU Monitoring Plan/Schedule for this water system. Furthermore, I understand that any proposed changes to the established POU Monitoring Plan/Schedule must be submitted to ADEQ for approval.

Water System Owner/Representative
(Print)

Signature

Date

THIS FORM MUST BE SENT TO ADEQ ONE MONTH PRIOR TO SAMPLING.

Please send completed form to: ADEQ Drinking Water Section, Drinking Water Monitoring & Protection Unit, 1110 W. Washington St., Mail Code 5415B-2, Phoenix, AZ 85007 or via fax to (602) 771-4634.



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Benjamin H. Grumbles
Director

POINT-OF-USE (POU) PROGRAM ANNUAL MONITORING SCHEDULE NOTIFICATION FORM

Public Water System Name: PICACHO PEAK

PWS ID & ADEQ File Numbers: AZ04-11-038 & 20120242

Name of Contact Person / Title: Mr. Bill McCabe, President

Telephone / Email: 505-266-5985 BMcCabe@bowlintc.com

Date of POU Program Approval: 07/17/2013

Monitoring Month/Year:	<u>June 2020</u>
Total number of POU's installed to-date:	_____
Number of POU samples to be lab tested:	_____
Analyte:	<input type="checkbox"/> Arsenic <input type="checkbox"/> Fluoride <input checked="" type="checkbox"/> Nitrate <input type="checkbox"/> Other _____

I hereby certify that the number of POU samples to be submitted for laboratory analysis, as indicated above, is in accordance with the ADEQ approved POU Monitoring Plan/Schedule for this water system. Furthermore, I understand that any proposed changes to the established POU Monitoring Plan/Schedule must be submitted to ADEQ for approval.

Water System Owner/Representative (Print)	Signature	Date
--	-----------	------

THIS FORM MUST BE SENT TO ADEQ ONE MONTH PRIOR TO SAMPLING.

Please send completed form to: ADEQ Drinking Water Section, Drinking Water Monitoring & Protection Unit, 1110 W. Washington St., Mail Code 5415B-2, Phoenix, AZ 85007 or via fax to (602) 771-4634.

Attachment 2

AGREEMENT

FOR

DEVELOPER INSTALLED WATER TREATMENT FACILITIES

This Agreement is between Picacho Peak Water Company, an Arizona non-profit corporation ("Company"), with its address at PO Box 1100, Red Rock, AZ, 85145, and Camelhead, Associates, LLC ("Developer"), with its address at 220 S. River Dr., Tempe, AZ, 85281.

RECITALS

- A. Company is a public service corporation within the meaning of Article 15, Section 2, of the Arizona Constitution, and is authorized to provide potable water service within portions of Pinal County, Arizona, in accordance with a Certificate of Convenience and Necessity ("CC&N") granted by the Arizona Corporation Commission ("Commission").
- B. Company is obligated to provide safe and affordable water service to the public.
- C. Company's water operations are governed by numerous federal and state statutes and regulations, and are subject to regulation by numerous federal and state agencies.
- D. Company's groundwater source contains nitrate levels exceeding 10 parts per billion, which exceeds applicable drinking water standards. Company is under order by the Arizona Department of Environmental Quality to treat its source water so it no longer exceeds applicable drinking water standards.
- E. Developer is proposing to rezone, in part, a commercial recreational vehicle park commonly referred to as the Picacho Peak RV Resort, which Developer avows is 41 acres, and additional commonly owned property nearby ("Development"), at 17065 E. Peak Ln, Red Rock, AZ 85145, as described and mapped in Attachment 1. Developer has requested that the Company provide assurances to Pinal County that the Company will provide adequate water service to the Property. Notwithstanding the zoning matter, Developer understands that it is in Developer's best interest to assist Company in providing water that meets the applicable drinking water standards for use by the current and future Development customers.
- F. Company is willing to provide such assurances to the Developer and agrees to meet additional water demands of the Development provided Developer agrees to, at Developer's cost, design, permit, construct, and install centralized water treatment equipment and related facilities, including wastewater disposal facilities (collectively, the "Facilities") to serve the Development's potable water demand in an operationally efficient manner. The Facilities are described in Attachment 2, and incorporated herein.

G. After designing, permitting, constructing, and installing the Facilities, Developer wants to transfer the Facilities to Company.

H. So long as the Facilities are properly designed, permitted, constructed, installed, and approved by the Company and regulating authorities, Company believes accepting the Facilities and serving the Development promotes Company's and the public's interests, health, and welfare.

AGREEMENT

Understanding that the Recitals are incorporated into the terms of this Agreement, the Parties agree as follows:

1.0 Developer's General Obligations

1.1. Developer will design, permit, purchase, transport, construct, test, install, connect, bond, secure approvals, and insure the Facilities at no cost to Company.

1.1.1. The estimated cost of construction of the subject plant as more fully detailed in Attachment 3, attached hereto and incorporated herein by reference, is estimated to be \$60,000 to \$80,000.

1.1.2. The Parties acknowledge that the cost to complete the project may differ from this estimate, in which case, Developer shall not be excused from performance hereunder.

1.2. Developer must follow good utility practices and the applicable governmental rules, regulations, and policies when designing, permitting, constructing, installing, and connecting the Facilities.

1.3. Within 30 days of the date of Operational Acceptance (as defined below), Developer will execute all documents reasonably necessary to transfer to Company:

1.3.1 Facilities; and

1.3.2 Easements, rights-of-way, fixtures, as well as rights and privileges pertaining to property including access and use ("Real Property Interests") reasonably required by Company to operate and maintain the Facilities.

1.4. Developer will transfer the Facilities and Real Property Interests to Company at no cost.

2.0 Company's General Obligations

2.1. If Developer has met its obligations, then Company will:

2.1.1. Promptly review, inspect, and, if appropriate, approve the Facilities;

2.1.2. Approve and accept the Facilities and the Real Property Interests reasonably required to operate and maintain the Facilities; and

2.1.3. Assist Developer to secure necessary regulatory approvals including the Arizona Department of Environmental Quality ("ADEQ").

2.2. After the date of Operational Acceptance, Company will operate and the Facilities subject to the warranty provisions described below.

3.0 Construction Timing

3.1. Developer estimates construction will start on October 1, 2012, and will be completed by April 30, 2013.

3.2. If Developer does not begin construction within nine months from the date of this Agreement, Developer will be in material breach of this Agreement.

3.3. If the Facilities are not constructed by December 31, 2013, Developer will be in material breach of this Agreement.

3.4. Developer shall act diligently to obtain the necessary rezoning, special use permits, building permits, and any other governmental approvals required to site the Facilities (collectively, the "Governmental Approvals").

4.0 Plans, Specifications and Testing

4.1. Developer will prepare Facilities plans and specifications by an appropriately licensed and qualified engineer registered in Arizona ("Plans and Specifications").

4.2. Developer will submit the ^{ADEQ approved *BM*} Plans and Specifications to Company for approval. Company will promptly review the Plans and Specifications and issue, in writing, its review comments or approval, as appropriate.

4.3. If the Plans and Specifications are not approved by Company, then Developer will modify the Plans and Specifications to address Company's comments and resubmit the Plans and Specifications for Company's review and approval.

4.4. If Developer begins Facilities construction before Company approves the Plans and Specifications, this construction will be at Developer's sole risk and subject to repair, alteration or reconstruction at Developer's expense as directed by Company.

4.5. Upon substantial completion of the Facilities, Developer will take water samples and promptly disclose the water quality data and documents to Company. If the water exceeds 70% of the maximum permissible level for a contaminant in drinking water as promulgated by the United States Environmental Protection Agency or ADEQ (the "Standard"), the Facilities shall

not be accepted and Developer shall make all repairs and reconstruction necessary to meet the Standard.

5.0 Construction Risk, Insurance, and Bonding

5.1 Developer shall carry on all work on the Facilities or otherwise required hereunder at its own risk until the same is fully completed and accepted by the Company and will, in case of accident, destruction or injury to the work of material before such final completion and acceptance, replace or repair forthwith any materials so injured, damaged or destroyed, in accordance with the original approved plans and specifications and to the satisfaction of the Company and at Developer's own expense.

Developer hereby assumes the entire responsibility and liability for injury or death of any person, or loss for damage to any property contributed to or caused by the active or passive negligence of Developer, its agents, servants, employees, or subcontractors incurred during the course of construction of the Facilities. Accordingly, DEVELOPER WILL IDEMNIFY AND HOLD HARMLESS the Company, its officers, directors, engineers, agents, and employees from and against such claims or expenses, including penalties and assessments, to which they or any of them may be subjected by reason of such injury, death, loss, claim, penalty, assessment or damage, and in case any suit or other proceeding shall be brought on account thereof, Developer will assume the defense at Developer's own expense and will pay all judgments rendered therein. Developer's indemnity obligation hereunder shall terminate upon expiration of the warranty period except with respect to any claim for indemnification then pending by the Company against Developer.

5.2 Developer agrees to produce and maintain all insurances described below. Certificates of insurance shall be provided to the Company before the commencement of actual construction.

5.2.1 Workmans' compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.

5.2.2 Comprehensive general liability insurance, with minimum combined single limits of \$1,000,000.00, and including operations and protective liability coverage's. When the work to be performed requires blasting, Developer's insurance shall specifically cover that risk.

5.2.3 Comprehensive automobile liability insurance with minimum combined single limits of \$1,000,000.00, and covering all owned and non-owned automobiles or trucks used by or on behalf of Developer, in connection with the work.

5.3 To ensure project completion, within 90 days after the execution of this Agreement, Developer must furnish a performance bond in the amount of \$80,000 issued by an Arizona surety company that is satisfactory to Company. The real person owners of the Developer will also issue guarantees acceptable to Company insuring that the Facilities will be constructed and installed pursuant to this Agreement. Developer may offer alternative forms of assurances of

performance only if approved by Company in writing, which approval may be withheld in Company's absolute and sole discretion.

6.0 Real Property Interests Provided to Company

6.1. Developer will grant Company reasonable easements and/or rights-of-way for Company to access, operate, repair, and maintain Facilities.

6.2. The parties acknowledge that Company must be able to legally access all Facilities sites from public roadways and that easements or rights-of-way must accommodate the siting of the Facilities as well as heavy equipment used to operate and maintain the Facilities. Accordingly, Developer shall secure and grant to Company easements sufficient for these purposes.

6.3. Developer understands and agrees that the Company is entitled to specific enforcement of the provisions granting the Company real property interests in Developers' real property. If Developer fails to perform and if Company elects to construct some or all of the Facilities, which election is left to the absolute and sole discretion of the Company, Company will be entitled to select an adequately sized parcel of Developer's land or location under Developer's control to site, construct, operate, and maintain such facilities. All Real Property interests, easements and rights-of-way, obtained by the Company via exercise of provisions of Section 6.3 hereof, shall be permanent in nature and shall be binding on all successors of interest in the property.

7.0 Operational Acceptance.

7.1. Before Company will determine whether to accept the Facilities and Real Property Interests, Developer must provide Company the following to the reasonable satisfaction of Company:

7.1.1. Lien waivers and releases from contractors, subcontractors, and vendors for all Facilities' materials, equipment, supplies, and construction;

7.1.2. Receipts, showing amounts paid by Developer to all contractors, subcontractors, and vendors for all Facilities' materials, equipment, supplies, labor, and other costs for design and construction of the Facilities ("Construction Costs");

7.1.3. "As-built" drawings certified as to correctness by an engineer registered in the State of Arizona;

7.1.4. Documents confirming the Facilities transfer to Company;

7.1.5. Documents confirming the Developer is transferring Real Property Interests to Company; and

7.1.6. All required permits, approvals, or authorizations from regulatory agencies.

7.2. If Company has determined that the Facilities have been constructed according to the approved Plans and Specifications and will satisfactorily treat the water to the levels described herein, in an operationally cost efficient manner, then Company will accept the Facilities, subject to Developer's correction of any outstanding punch list items and continual adequate water treatment. Such acceptance is referred to herein as the Operational Acceptance.

7.2.1 For the period of 12 months following final acceptance of the Facilities by Company, the Developer will be responsible for causing any improvements or repairs to the Facilities to meet the standards set forth in paragraph 4.6.

8.0 Refund

8.1. Subject to the qualifications below, for the period of 10 years after the date of Operational Acceptance, Company shall pay Developer annually 10% of the payments received from bona fide customers supplied with treated water from the Facilities (the "refund payments").

8.2. If Developer is entitled to any refund payments, then there will be 10 consecutive refund years. Refund year 1 will begin on July 1 after the date of Operational Acceptance and will end on the next June 30. Refund years 2 through 10 will each date from July 1 to June 30. Company will make any refund payments owed to Developer for the previous refund year by August 31. The refund may, at the Company's option, be in the form of a credit to the Developer's active account on the Company's records.

8.3. The refund payments shall not exceed the total amounts advanced by Developer for the Facilities. Accordingly, Developer must furnish invoices to Company to receive the refund. Developer must furnish receipts showing amounts paid by Developer to all contractors, subcontractors, and vendors for all Facilities' materials, equipment, supplies, labor, and other costs incurred for the construction of the Facilities.

8.4. Any balance advanced for the Facilities remaining at the end of the 10-year refund period is nonrefundable. No interest will be owed on any amount advanced.

9.0 Assignment

9.1. Neither Company nor Developer may assign its rights or obligations under this Agreement without the other party's prior written consent. This consent may not be unreasonably withheld by either party.

10.0 Binding Agreement

10.1. This Agreement binds, and inures to the benefit of, the parties, and their respective legal representatives, administrators, executors, agents, successors, and assigns.

10.2. If Pinal County denies Developer's request to revise the zoning and/or permitted uses on the Property in its entirety, then this Agreement will be void. If any part of the Property zoning

and/or permitted uses is changed from its current status, however, then Developer is obligated to meet the terms set forth in this Agreement.

11.0 Applicable Law

11.1. Arizona law governs this Agreement and its performance is subject to regulation by the State of Arizona as well as federal, state, and local regulatory agencies with jurisdiction.

11.2. By signing below, Developer acknowledges that the Company provided Developer a copy of the Arizona Corporation Commission rules governing extension agreements.

12.0 Waivers

12.1. Either party may waive any provision in this Agreement intended for its benefit.

12.2. Any waiver must be in writing.

12.3. No waiver of a provision will operate to waive any other provision.

12.4. If either party fails to require the other to perform any term of this Agreement, that failure does not prevent the party from later enforcing that term.

13.0 Communications

13.1. Communications under this Agreement should be should be addressed as follows:

Company:

Developer:

Picacho Peak Water Company
Attention Bill McCabe
150 Louisiana NE
Albuquerque, NM 87108

Camelhead Associates, LLC
Attention Mike Wirth
220 S. River Dr.
Tempe, AZ 85281

14.0 Address Changes

14.1. A party changing their address will notify the other party in writing.

15.0 Further Documentation

15.1. Each party agrees in good faith to execute any additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

16.0 Counterparts

16.1. This Agreement may be executed in counterparts.

17.0 Additional Terms

17.1 Any provision of this Agreement or any portion thereof which now or hereafter is contrary to any law, order, regulation, ordinance or requirement of any governmental unit or subdivision, whether the same are now in force or are enacted or promulgated in the future, or is otherwise invalid, shall be deemed stricken from this Agreement, which shall not invalidate or impair the remainder of such provision or the remaining provisions of this Agreement.

17.2 This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona. The Parties agree that any action to enforce the terms and provisions of this Agreement may be brought in the Superior Court in and for Pinal County, Arizona, and each Party hereby consents to jurisdiction in that court for purposes of such actions.

17.3 The prevailing Party in any action to enforce the terms and provisions of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action, in addition to any other remedies allowed under applicable law.

17.4 The Parties agree to execute, acknowledge and deliver such further documents as may be necessary or proper to carry out the purpose and intent of this Agreement.

17.5 Time is of the essence of this Agreement and each and every provision hereof.

17.6 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 able from all other provisions hereof.

17.7 This Agreement contains the entire understanding among the parties. This Agreement may be amended only by an instrument in writing signed by all parties. All amendments to this Agreement must be in writing and signed by the Parties.

Signed by the parties as of Aug 7, 2017:

[Signatures on the following pages]

ATTACHMENT 1

MAP AND LEGAL DESCRIPTION OF DEVELOPMENT

ATTACHMENT 2

ENGINEERING PLAN OF WATER UTILITY PLANT

ATTACHMENT 3

ESTIMATED COST OF FACILITIES

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Refundable</u>	<u>Non-Refundable</u>	<u>Total</u>
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Engineer, Company supervision, inspection and professional fees

TOTAL ADVANCE/CONTRIBUTION \$.000.

The size and quantity of the required facilities and the cost of those facilities will be subsequently revise in accordance with the approved engineering plans. Thereafter, this Attachment and Agreement shall be revised to reflect actual cost.

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JOHNSON BANK.

Escrow Agreement Dated March 22, 2013

Camelhead Associates, LLC ("Owner") and the Picacho Peak Water Company ("Water Company") named below hereby request that Johnson Bank act as Escrow Agent ("Escrow Agent") in accordance with this Escrow Agreement and the attached Terms (together, the "Escrow Agreement"). The Owner and the Water Company have entered into a contract dated August 7, 2012 ("Contract") covering the design, permitting, construction and installation of centralized water treatment equipment and related facilities.

Upon execution of the Escrow Agreement by all of the parties below, the Owner shall deposit \$80,000 (the "Escrow Amount") with the Escrow Agent in an account titled as **Camelhead Associates, LLC (Money Market)** (the "Escrow Account").

The Escrow Agent shall pay out the proceeds of the Escrow Account in accordance with a Request for Payment in the form attached (the "Request for Payment"), including the referenced time schedule and conditions, delivered to the Escrow Agent upon Water Company acceptance of the Facilities as defined in the Contract by December 31, 2013 (the "Expiration Date"). The Request for Payment and any notices, changes or amendments relating to the Escrow Agreement shall be signed on behalf of each of the Owner and the Water Company by any one of the respective authorized signers designated below (*unless more than one required signature is specified*).

Michael L. Wirth, Manager, Camelhead Associates, LLC

Michael L. Wirth

Specimen Signature of Authorized Signer

Bill McCabe

Bill McCabe, President (Signer for Water Co.)

Specimen Signature of Authorized Signer

The undersigned have entered into this Escrow Agreement as of the first date set forth above.

Camelhead Associates, LLC (Owner)

Address: 220 South River Drive
Tempe, AZ 85281

By *Michael L. Wirth*

(Michael L. Wirth, Manager)

Picacho Peak Water Company

Address: P.O. Box 1100
Red Rock, AZ 85145

By *Bill McCabe*

(Bill McCabe, President)

Johnson Bank Escrow Agent

Address: 8700 N. Gainey Center Drive
Scottsdale, AZ 85258

By *Stephen Humphrey*

(Stephen Humphrey, Senior Vice President)



JOHNSON
BANK
Terms of Escrow Agreement

The following terms apply to and are made a part of the attached Escrow Agreement dated March 22, 2013, among Johnson Bank as Escrow Agent, Camelhead Associates, LLC as Owner and Picacho Peak Water Company as Water Company.

The Owner and the Water Company hereby agree:

1. **(Fees)** Owner will pay the Escrow Agent fees in the amount of Eighty Dollars (\$80.00) plus all applicable and customary account and service fees and out-of-pocket expenses, including legal fees, incurred by the Escrow Agent in administering the Escrow Account (the "Escrow Fees"). The Escrow Agent may debit the Escrow Account for any Escrow Fees unless they are paid directly to the Escrow Agent by the Owner. Owner will pay Water Company fees in the amount of \$1,000, incurred by the Water Company for legal services, to be withdrawn from the Escrow Account.
2. **(Indemnification)** To indemnify and hold the Escrow Agent harmless from and against all actions, claims, losses, damages, expenses, costs and other liabilities relating to or arising out of or in connection with the Escrow Agreement or the Contract except for any liability resulting solely from the willful misconduct of the Escrow Agent. For purposes of this section, the Escrow Agent shall include Johnson Bank and its shareholders, directors, employees, affiliates, agents and attorneys.
3. **(Escrow Agent Duties)** The Escrow Agent's duties shall be limited to those specified in the Escrow Agreement. The Escrow Agent shall have no duty or responsibility to be familiar with, to monitor or otherwise to be involved with the Contract or other matters relating thereto.
4. **(Escrow Account)** The Escrow Amount shall be deposited with the Escrow Agent in Camelhead Associates, LLC Money Market Account # 1001873130 and shall accrue interest from time to time at the applicable rate. Subject to the approval of the Escrow Agent, the type of investment may be changed at any time to any other account offered by the Escrow Agent by written notice to the Escrow Agent signed by the Owner and the Water Company.
5. **(Tax Reporting)** For income tax reporting purposes, any income earned on the Escrow Account shall be considered as income of the Owner and its taxpayer identification number shall be used for the Escrow Account. The Owner and the Water Company shall provide the Escrow Agent with such information as it shall request in order to comply with IRS and / or other regulatory requirements. The Escrow Agent shall have the right to withhold such amounts as required by law. The Escrow Agent shall not be responsible for paying any taxes or preparing or filing any tax forms or reports other than a single annual report of interest on Form 1099.

6. **(Termination)** The Owner and the Water Company may terminate the Escrow Agreement at any time by written notice to the Escrow Agent signed by the Owner and the Water Company. The Escrow Agent may resign at any time and at its sole discretion. Notwithstanding any termination or resignation, the Escrow Agent shall continue to be entitled to receive the rights and benefits provided by the Escrow Agreement until the Escrow Agent has paid out all of the proceeds from the Escrow Account and any and all payments due, pending or accruing, including those covered by Sections 1 and 2 above, have been paid to the Escrow Agent or otherwise satisfactorily resolved in favor of the Escrow Agent.
7. **(Court Orders)** The Escrow Agent may comply with any order or process issued by any court or government regulator or agency with respect to the Escrow Account without any determination of such jurisdiction or authority of such court, regulator or agency. Following the Expiration Date of the Escrow Agreement or in the event the Escrow Agent determines that any dispute, disagreement or legal claim or action exists in connection with or relating to the Escrow Account or the performance of the Escrow Agent under the Escrow Agreement, the Escrow Agent may file an interpleader or other action in any state or Federal court located in the State selected in Section 8. The Escrow Agent may deposit with the court all funds held in the Escrow Account minus such amounts that the Escrow Agent may withhold in order to pay any outstanding Escrow Fees and estimated expenses to cover costs and legal fees associated with the court action. Thereafter, the Escrow Agent shall be fully released and discharged of all obligations under the Escrow Agreement.
8. **(Governing Law)** The Escrow Agreement shall be governed by the laws of the State of Arizona.



JOHNSON BANK®

Request for Payment

This is a Request for Payment pursuant to the Escrow Agreement dated March 22, 2013 by and among Johnson Bank, as Escrow Agent, Camelhead Associates, LLC, as Owner, and Picacho Peak Water Company, as Water Company.

The Escrow Agent is hereby directed to pay the balance of the Escrow Amount in the Escrow Account as follows:

TO WATER COMPANY IF:

- WORK NOT COMPLETED AND APPROVED BY THE COMPANY BY December 31, 2013 per Section 7 of the Contract between Camelhead Associates, LLC and Picacho Peak Water Company dated August 7, 2012;
- REPAIRS ARE REQUIRED TO THE FACILITIES; OR

PRESENTED WITH LEGAL SERVICE INVOICES for services related to this Escrow Agreement (amount paid shall not exceed \$1,000).

TO DEVELOPER IF:

- ALL WORK COMPLETED per the Contract between Camelhead Associates, LLC and Picacho Peak Water Company dated August 7, 2012, and subject to the following schedule and conditions.

Upon construction completion, the water will be tested and if it shows nitrate levels less than 7 ppm, then the Company will enter Operational Acceptance. The Company will conduct tests 30 days and 60 days after Operational Acceptance. If the levels remain below 7 ppm and levels have not increased more than 25% over those 60 days, then the Escrow Officer will release 75% of the money held in the Escrow Account. Six months thereafter, if the nitrate levels are still below 7 ppm and all punch list and repair items are resolved, the remainder of the holdback will be released.

The Owner hereby authorizes the Escrow Agent to debit the Escrow Account for the amount of its unpaid Escrow Fees before making disbursement of funds as directed above.

Upon disbursement of the balance of the Escrow Account, the obligations of the Escrow Agent under the Escrow Agreement shall terminate and the Escrow Agreement shall expire except for the provisions of Sections 1 and 2 of the Terms of Escrow Agreement (concerning payment of fees and indemnification of the Escrow Agent) which shall remain in effect.

Camelhead Associates, LLC, Owner

Date 4/7/13

By Michael L. Wirth
(Michael L. Wirth, Manager)

Picacho Peak Water Company, Water Company

Date 7/2/13

By Bill McCabe
(Bill McCabe, President)