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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF VALENCIA WATER COMPANY—TOWN DIVISION FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-01212A-12-0309**

Arizona Corporation Commission  
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OCT 18 2013

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IN THE MATTER OF THE APPLICATION OF GLOBAL WATER-PALO VERDE UTILITIES COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. SW-20445A-12-0310**

IN THE MATTER OF THE APPLICATION OF WATER UTILITY OF NORTHERN SCOTTSDALE FOR APPROVAL OF A RATE INCREASE.

**DOCKET NO. W-03720A-12-0311**

IN THE MATTER OF APPLICATION OF WATER UTILITY OF GREATER TONOPAH FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-02450A-12-0312**

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IN THE MATTER OF THE APPLICATION OF VALENCIA WATER COMPANY—GREATER BUCKEYE DIVISION FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-02451A-12-0313**

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER—SANTA CRUZ WATER COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-20446A-12-0314**

IN THE MATTER OF THE APPLICATION OF WILLOW VALLEY WATER COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

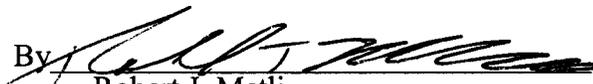
**DOCKET NO. W-01732A-12-0315**

**NOTICE OF FILING SIERRA NEGRA RANCH, LLC AND SIERRA NEGRA MANAGEMENT, LLC'S INITIAL CLOSING BRIEF**

Sierra Negra Ranch, LLC and Sierra Negra Management, LLC hereby provides notice of filing their Initial Closing Brief.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of October, 2013.

MUNGER CHADWICK, P.L.C.

By   
Robert J. Metli  
Attorneys for Sierra Negra Ranch LLC  
and Sierra Negra Management LLC

1 Original + 13 copies of the foregoing  
2 filed this 18<sup>th</sup> day of October, 2013, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Copies of the foregoing mailed/mailed  
8 this 18<sup>th</sup> day of October, 2013, to:

9 All Parties of Record  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
SUSAN BITTER SMITH  
BOB BURNS

IN THE MATTER OF THE APPLICATION OF  
VALENCIA WATER COMPANY—TOWN  
DIVISION FOR THE ESTABLISHMENT OF  
JUST AND REASONABLE RATES AND  
CHARGES FOR UTILITY SERVICE  
DESIGNED TO REALIZE A REASONABLE  
RATE OF RETURN ON THE FAIR VALUE OF  
ITS PROPERTY THROUGHOUT THE STATE  
OF ARIZONA.

**DOCKET NO. W-01212A-12-0309**

IN THE MATTER OF THE APPLICATION OF  
GLOBAL WATER-PALO VERDE UTILITIES  
COMPANY FOR THE ESTABLISHMENT OF  
JUST AND REASONABLE RATES AND  
CHARGES FOR UTILITY SERVICE  
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IN THE MATTER OF THE APPLICATION OF VALENCIA WATER COMPANY—GREATER BUCKEYE DIVISION FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-02451A-12-0313**

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER—SANTA CRUZ WATER COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-20446A-12-0314**

IN THE MATTER OF THE APPLICATION OF WILLOW VALLEY WATER COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.

**DOCKET NO. W-01732A-12-0315**

**INITIAL CLOSING BRIEF**

**ON BEHALF OF  
SIERRA NEGRA RANCH, LLC AND SIERRA NEGRA MANAGEMENT, LLC  
OCTOBER 18, 2013**

1 Sierra Negra Ranch (“SNR”), by and through undersigned counsel, hereby files its initial  
2 Closing Brief in the above captioned matter. SNR is not a signatory to the Settlement Agreement  
3 entered into between various parties to this Docket.

4 **I. INTRODUCTION**

5 SNR owns approximately 2700 acres of entitled land in Maricopa County currently  
6 known as Silver Water Ranch and Silver Springs Ranch developments. (“SNR Developments”).  
7 (SNR-1 at 7). SNR is an owner of zoned residential property and the SNR Developments are  
8 located in the water CC&N of Water Utility of Greater Tonopah (“WUGT”). (*Id.*). In order to  
9 obtain utility service, SNR was told that its only realistic option for them to obtain utility services  
10 was to enter into an Infrastructure, Coordination, Finance and Option Agreement<sup>1</sup> (“ICFA”) with  
11 the parent of WUGT, Global Water Resources, L.L.C. (“GWR”).<sup>2</sup> At the time the ICFA was  
12 entered into with GWR, Maricopa County mandated Regional Infrastructure to support zoning.  
13 (*Id.*). Even GWR testified that it was aware that the Arizona Department of Environmental  
14 Quality (“ADEQ”) and the Arizona Department of Water Resources (“ADWR”) were requiring  
15 regional solutions. (Transcript Vol. I at 112 [Fleming Testimony]). In fact, SNR and New World  
16 Properties, Inc. (“NWP”) were specifically told by Maricopa County planning and zoning  
17 authorities that developers needed to provide a regional and consolidated approach to water and  
18 wastewater utilities to their properties or such developments would not be approved. (Transcript  
19 Vol. II at 295 [Jellies Testimony]).

20 In addition, in order to proceed with entitlements, Maricopa County demanded a regional  
21 solution and mandated that SNR have a water provider and an approved 208 Permit. (SNR-1 at  
22 7). The only option presented to SNR (and NWP) was either to become a utility themselves or  
23 sign an ICFA with GWR. (*Id.*). At the time, GWR told SNR that the ICFA was part of a regional

24 \_\_\_\_\_  
25 <sup>1</sup> See, Infrastructure, Coordination, Finance and Option Agreement entered into between Global Water  
Resources, LLC, and Sierra Negra Ranch, LLC, dated July 10, 2006, SNR-1, Exhibit 2.

26 <sup>2</sup> Global Water Resources L.L.C. was subsequently reorganized along with Global Water Management,  
L.L.C. to form Global Water Resources, Inc. (SNR-4 at 5).

1 water and wastewater infrastructure development plan supported by the Arizona Corporation  
2 Commission (“Commission”). (*Id.*). Neither SNR nor NWP was ever offered a conventional  
3 Main Extension Agreement or Master Utility Agreement by GWR to provide utility services to  
4 their properties. (Transcript Vol. II at 314 [Jellies Testimony]). In fact, both SNR and NWP were  
5 specifically told that they must enter into an ICFA because of the financing need for GWR to  
6 acquire Western Maricopa Combine Inc., (“WMC”) an Arizona corporation and the holding  
7 company for five regulated water utilities including WUGT and Hassayampa Utility Company  
8 (“HUC”). (Transcript Vol. II at 314 [Jellies Testimony]).

9 By entering into the ICFA with SNR, GWR would be able to move forward with  
10 acquisitions necessary to provide services on a regional basis as required by Maricopa County.  
11 (SNR-1 at 7). Through the ICFAs, SNR and NWP paid significant upfront monies to GWR to  
12 acquire WMC, which was intended to provide SNR and NWP with a “regional” integrated sewer,  
13 water and reclaimed water service required. (*Id.*). As a result, SNR believed that the only option  
14 for them to obtain utility services to the SNR Developments was to enter into an ICFA so that  
15 GWR would coordinate and provide such services. (*Id.*).

16 In an effort to refute the assertion made by SNR and NWP that they had no other option  
17 but to enter into an ICFA with GWR, GWR responded that four other options were available: (1)  
18 SNR and NWP could have worked with the prior owners of WMC; (2) SNR and NWP could have  
19 obtained wastewater service from Balterra Sewer Corp; (3) SNR and NWP could have formed  
20 their own utility company; and (4) SNR and NWP could have contracted with any other provider,  
21 including any of the national private water and wastewater utilities to serve their properties. (A-20  
22 at 3-4).

23 Although SNR and NWP did meet with the prior owners of WMC, WMC did not meet  
24 and push towards consolidation and regionalized infrastructure that the Commission and the  
25 County was looking for, nor did WMC have any desire to do regional planning. (Transcript Vol.  
26 II at 295 [Jellies Testimony]). In addition, WMC service territory did not incorporate all of the

1 lands owned by SNR and NWP and a piecemeal approach to utility service would have been  
2 necessary. (*Id.*).

3 Because SNR's and NWP's properties are bifurcated by Interstate 10, using Balterra as a  
4 wastewater provider would have resulted in a situation where SNR and NWP had one wastewater  
5 provider servicing the north properties and one wastewater provider servicing the south  
6 properties. (Transcript Vol. II at 296 [Jellies Testimony]). In addition, neither SNR nor NWP  
7 believed that Balterra met the regionalization standard that was required to be pursued by the  
8 County. (*Id.*). Finally, at the time SNR and NWP was considering this option, Balterra's CC&N  
9 application and 208 permit application were pending (GWR filed a competing 208 application  
10 which SNR and NWP supported due to the regional nature of GWR). (Transcript Vol. II at 296-  
11 297 [Jellies Testimony]).

12 Although forming their own utility company was also considered, SNR and NWP were  
13 told unequivocally by the Commission that they were not necessarily looking to have small water  
14 companies formed. (*Id.*). The Commission was looking to consolidate water companies. (*Id.*).  
15 Given WMC had portions of SNR's and NWP's properties within its CC&N, this option was not  
16 seriously pursued. (*Id.*).

17 Finally, SNR and NWP did consider other providers but given the fact that GWR was  
18 already in the area with the largest master plan and was interested in acquiring WMC, it appeared  
19 that GWR met all the criteria related to a regional and consolidated approach to utilities.  
20 (Transcript Vol. II at 299 [Jellies Testimony]).

### 21 ICFAs

22 An ICFA is an unorthodox or unconventional long-term financing agreement entered into  
23 between developers and GWR, a thus far unregulated entity, in which GWR contracts for and  
24 takes responsibility to coordinate the provision of utility services, by GWR's regulated, owned  
25 and controlled affiliates, to land owned by developers. (SNR-1 at 6). Specifically, the ICFA was  
26 intended to facilitate and arrange the provision of a regional solution for water, wastewater and

1 reclaimed water services ("Utility Services") to SNR (as well as NWP and others) through  
2 WUGT and HUC. (SNR-1 at 5). The ICFA provides:

3 *Coordinator intends to coordinate and facilitate water utility service to the Land*  
4 *through WUGT and any and all of Landowner's obligations under this Agreement*  
5 *relating to water utility service are contingent on final closing of the acquisition*  
*of WMC and WUGT.*

6 (See, SNR-1, Exhibit 2 at 1-2). The ICFA provides that GWR warrants and represents that no  
7 regulatory approval is needed and further guarantees that GWR has the financial capacity and  
8 experience to oversee and financially guarantee to SNR and others, that WUGT and HUC has and  
9 will have sufficient financial resources to provide the Utility Services contracted for under the ICFA.  
10 (SNR-1 at 6). The ICFA further states:

11 *Coordinator represents and warrants: (1) that the acquisition of WMC and*  
12 *WUGT does not require approval of the Arizona Corporation Commission*  
13 *("ACC"); (2) that Coordinator has full power to carry out the transactions*  
14 *provided for in this Agreement; (3) that Coordinator is not a party to any*  
15 *bankruptcy or similar proceeding, nor to the best of Coordinator's knowledge, are*  
16 *there any other matters pending which would adversely affect Coordinator's*  
17 *ability to perform the services set forth in this Agreement; (4) and that*  
*Coordinator has the financial capacity and experience to oversee and financially*  
*guarantee and hereby does guarantee to Landowner that Coordinator's*  
*subsidiaries will have sufficient financial resources to provide the Utility Services*  
*described in this Agreement.*

18 (SNR-1, Exhibit 2 at 2).

19 The funds paid under the ICFA were to be utilized to provide for and assure SNR and  
20 others in the region that there would be a regional utility solution as agreed to and as required by  
21 Maricopa County. (SNR-1 at 8). Under the ICFA, SNR contracted with GWR to provide 8,622  
22 "equivalent dwelling unit," (EDU's) at a cost of \$5,500 per EDU plus a CPI factor, or  
23 approximately \$47.5 million dollars (exclusive of CPI factor). (*Id.*). These sums were to be paid  
24 upon GWR or SNR reaching certain milestones including filing of CC&N by regulated entity,  
25 Commission approval of CC&N, approval of MAG 208 plan amendment, start work notice, and  
26

1 final plat approval. (*Id.*). To date, SNR has paid GWR approximately \$6 million dollars.<sup>3</sup> (SNR-  
2 1 at 8-9). SNR was told that a portion of the monies due under the ICFA (\$500 per EDU or  
3 \$4,311,000) would be used by GWR to acquire troubled water and other sewer utilities, which  
4 would not have occurred but for SNR and other developers entering into ICFAs and providing  
5 money for the GWR acquisition(s). (SNR-1 at 9). The ICFA provides:

6 *It is further recognized, acknowledged and agreed that \$500 per EDU of the*  
7 *Landowner Payment described in subsection 4.1 will be allocated toward the*  
8 *acquisition purchase price of WMC and all its subsidiaries.*

9 (SNR-1, Exhibit 2 at 6).

10 Thereafter, the bulk of the funds (90%) collected under the ICFA were to be utilized to  
11 ensure that WUGT or HUC provide all engineering, design, construction, licensing, permitting,  
12 payment and financing for all Utility Services as specifically contracted for under the ICFA.

13 (SNR-1 at 9). The ICFA provides:

14 *Under this Agreement, Coordinator, WUGT and HUC shall be responsible for*  
15 *any and all engineering, design, construction, licensing, permitting, payment and*  
16 *financing for and of any and all water, wastewater, and reclaimed water plant,*  
17 *production, treatment, storage, pumping, and delivery facilities constructed on or*  
18 *off the Land or on Coordinator's, WUGT's or HUC's properties to the Delivery*  
19 *Points as defined below (the "Off-Site Facilities"), necessary to provide water,*  
20 *reclaimed water, and wastewater service to the Land, and shall hold Landowner*  
21 *harmless from any liens or additional charges on the Land resulting from*  
22 *Coordinator's, WUGT's, and HUC's provision of services to the Delivery Points*  
23 *as set forth in this Agreement.*

24 (SNR-1, Exhibit 2 at 3).

25 The ICFAs also require a tie-in arrangement compelling SNR to enter into main extension  
26 agreements with WUGT, to grant WUGT various easements, and to eventually grant WUGT any  
and all water rights and wells on the affected properties. (SNR-1 at 9). In addition, the ICFAs  
further require that they shall be recorded with the County Recorder (generally Pinal County, but

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<sup>3</sup> SNR was forced into bankruptcy as GWR was/is forcing a land sale for immediate payment. GWR has been unwilling to allow for a payment plan to satisfy an arbitration judgment. SNR intends to pay the judgment as defined by the Nevada Bankruptcy Court and has filed a plan for the Bankruptcy approval. (SNR-1 at 9).

1 also Maricopa County). (SNR-1 at 9-10).

2 As summarized by Staff Chief Accountant James R. Armstrong, GWR's obligations under  
3 the ICFA are as follows:

- 4 1. Coordinate construction of services for water and wastewater treatment facilities;
- 5 2. Finance and assume responsibility for the carrying costs associated with regional  
6 infrastructure investments;
- 7 3. Arrange and coordinate the provision of utility services to the property;
- 8 4. Obtain "will serve" letters for the provision of utility service to the property;
- 9 5. Where applicable, help facilitate including landowner's property in an expanded  
10 CC&N;
- 11 6. Execute line and main extension agreements with developers;
- 12 7. Develop master utility plans; and,
- 13 8. Facilitate water and wastewater service acquisitions and consolidations.

14 (S-2 at 8).

15 In addition, Mr. Armstrong also noted the following important considerations related to  
16 understanding the structure and function of the ICFA:

- 17 1. The ICFA arrangements only have value because of the underlying ACC- authorized  
18 Certificates of Convenience and Necessity ("CCN") and the agreements contain  
19 express provisions for termination if the Commission does not grant the underlying  
20 regulated global utilities a CCN for the area covered by the ICFA. (S-2 at 3).
- 21 2. ICFAs are structured to take responsibility for water planning away from  
22 developers/homebuilders; (S-2 at 4).
- 23 3. The structure of the ICFA contracts arguably blurs the line between the Global Parent  
24 holding company and the Global Parent Utilities; (*Id.*).
- 25 4. Global Parent has never contended that ICFAs are non-jurisdictional to the ACC;  
26 (*Id.*).
5. Many of these Global Parent responsibilities (Under ICFAs) are typically assumed  
directly by the regulated utilities responsible for providing water and/or wastewater to  
the area. (S-2 at 8).
6. The information received from Global Parent suggests that in negotiating the level of  
landowner payment required under any particular ICFA agreement, there was no  
effort made to match up a specific portion of each payment with the resulting  
obligation(s) Global Parent was incurring. (S-2 at 9).
7. The Company's response (to Data requests from Staff) was that the amount of the

1 required landowner payments ultimately agreed to under each separate ICFA  
2 agreement was the result of very high level, or macro level, discussions/analysis, and  
3 that Global Parent did not perform detailed calculations or undertake any detailed  
4 cash-flow analysis in reaching agreement with regards to what would be a reasonable  
5 landowner payment under each agreement. (*Id.*)

6 8. Conversely, the due diligence undertaken by the Global Parent with regards to  
7 possible acquisitions appears to have involved very detailed analysis of economic,  
8 legal, and financial considerations. (S-2 at 12).

9 9. This contrast is startling when we consider the fact that the water system acquisitions  
10 involve less than \$125 million in initial financial commitments, while Global Parent's  
11 direct long-term delivery obligations under the ICFA agreements could exceed \$1.4  
12 billion, since Global Parent has committed to providing infrastructure investments to  
13 make its Total Water Management plans a reality in the areas covered by the ICFAs.  
14 (S-2 at 13).

15 10. The magnitude of Global Parent's ultimate obligations under the ICFAs could be  
16 measured in the billions of dollars when we include both Global Parent's direct  
17 obligations and the infrastructure investments that could be partially supported  
18 through line extension agreements. (*Id.*)

19 11. There is evidence that GWR's management was aware of the fact that GWR faces  
20 significant financial, business, environmental and other risks going forward as  
21 identified and discussed in detail in Global Parent's financial statement footnotes.  
22 They were also identified and discussed in detail in the company's December 16,  
23 2010, common stock placement prospectus. (S-2 at 14).

24 12. It is logical to conclude that the shift of this capital investment risk to Global Parent  
25 is one of the major incentives to developers for entering into ICFA agreements.  
26 Obviously such a transfer of responsibility away from developers increase the level  
of risks being assumed by Global Parent. (*Id.*)

13 13. There is, at best, a blurred line between the Global Parent and the regulated Global  
14 Parent Utilities under the provisions/obligations associated with these ICFA  
15 agreements. Global Parent caused this blurring by including deliverables traditionally  
16 provided by regulated utilities in the list of obligations Global Parent/ICFA  
17 agreement Coordinator. (S-2 at 17).

18 14. Staff believes it is clear that the ICFA agreement obligations of Global Parent have  
19 significant implications for the ACC-regulated entities. (*Id.*)

20 15. Many of the ICFA agreement-related activities assumed by the Global Parent as the  
21 activity Coordinator would traditionally be the responsibility of the underlying  
22 Global Parent Utilities. Since the Global Parent has agreed to assume these  
23 responsibilities, the regulated utilities (and their ratepayers) have a vested interest in  
24 the *Global* Parent completing or meeting these responsibilities in a safe, reliable,  
25 financially responsible, and timely manner. (S-2 at 18).

1 (SNR-1 at 11-12).

2 Furthermore, SNR has never been provided an explanation or breakdown of how the EDU  
3 payments or the CPI adjustor was calculated. (SNR-1 at 15). If in fact the amount of the required  
4 landowner payments ultimately agreed to under each separate ICFA agreement was the result of  
5 very high level, or macro level, discussions/analysis, SNR was not a party to those discussions  
6 and such an analysis was never shared with SNR. (*Id.*). GWR acted at all times as the regulated  
7 utility with the monopoly by demanding payments under the ICFAs for amounts and sums GWR  
8 never truly accounted for, at the time those payments were due or since. (*Id.*).

9 Staff's recommendation in this case was that the Commission direct GWR to cease  
10 entering into new ICFA agreements because in Staff's opinion, there were too many issues, risks,  
11 and unanswered questions related to the continuing reliance on new ICFA agreements as the  
12 means used to financially support regional water and wastewater infrastructure development.  
13 (SNR-1 at 12). Staff's proposal (adopted by the signatory parties under the Settlement  
14 Agreement) establishing HUF in this case and linking such HUF to prospective payments due and  
15 payable under the ICFA goes a long way to alleviate some of the concerns of SNR. (SNR-1 at 5).  
16 However, the Commission needs to go further to ensure that the millions of dollars investments  
17 made by developers under these ICFAs are committed to construct the contracted-for regional  
18 infrastructure committed by GWR to serve Arizona ratepayers and to ensure that GWR and the  
19 regulated utilities serving these ratepayers have the funds available to construct the infrastructure,  
20 contracted for and guaranteed by GWR. (*Id.*).

21 **SNR's Requests**

22 SNR requests that the Commission:

- 23 1. Take jurisdiction over GWR and the ICFAs to ensure that all investments made by  
24 developers under these ICFAs are committed to construct the contracted-for regional  
25 infrastructures in order to not only protect those developers but also the ratepayers for whom that  
26 infrastructure is to be built.



1 transactions that GWR is involved in which, in essence, are providing utility services. (Transcript  
2 Vol. II at 233 [O'Reilly Testimony]). If the Commission determines that GWR is in fact acting as  
3 a utility, then the Commission should regulate GWR as such. If not, SNR requests that the  
4 Commission regulate GWR's transactions and operations related to performance under the ICFA.

5 GWR is, among other things, entering into ICFA agreements under which it collects funds  
6 from developers for fulfilling the obligations of a regulated utility by allegedly being the  
7 "coordinator" of these Utility Services by its subsidiaries. (SNR-1 at 10). GWR is using the  
8 ICFAs to circumvent and evade the Commission's oversight and jurisdiction by collecting fees in  
9 exchange for "facilitating" utility services by GWR owned and controlled regulated subsidiaries  
10 in direct violation of Commission orders and in violation of Article 15, Section 3 of the Arizona  
11 Constitution and A.R.S. section 40-202. (*Id.*). In addition, the recording requirement for the  
12 ICFAs imposes an unreasonable burden on the land by binding future landowners and further  
13 frustrates and interferes with the Commission's authority to oversee and regulate the provision of  
14 utility service to future customers. (*Id.*). It is questionable whether the Commission would have  
15 any authority to effectively remove the obligation recorded against the affected properties  
16 (without Judicial intervention), effectively binding the landowner to an unregulated utility with an  
17 unregulated financing agreement. (*Id.*).

18 GWR currently has entered into approximately 180 ICFAs throughout Arizona. (A-17,  
19 Attachment B to the Settlement Agreement). It appears that the problems and issues identified by  
20 SNR and NWP in this case will not only be limited to SNR's service territory, but may affect all  
21 of GWR's affiliate service territories and the ratepayers that reside there. (SNR-1 at 10). In  
22 addition, developers and ratepayers are not likely to develop or purchase if there is not a  
23 financially solvent fully regulated utility company or companies. (*Id.*). This is particularly true if  
24 the utility is providing a regional solution for multiple utility needs and facilities as is guaranteed  
25 to be done by GWR. (*Id.*). Developers and ratepayers must have the assurance that the ICFA is a  
26 viable financing tool and that the all of the utilities and those controlling the utilities will be fully

1 regulated. If GWR and the ICFAs remain unregulated, there are no such guarantees or assurances  
2 thereby jeopardizing developments in all service territories controlled by GWR. (*Id.*).

3 Furthermore, SNR is opposed to how the Settlement Agreement disregards past payments  
4 (and payments due or paid by December 31, 2012) when calculating payments to HUF. (SNR-1  
5 at 14). Specifically, the Settlement Agreement differentiates between how GWR will treat past  
6 funds received under existing ICFAs and future funds received under existing ICFAs. (*Id.*).  
7 None of the monies already paid to GWR (or were due to be paid under the ICFA prior to  
8 December 31, 2012 and remain outstanding) will be credited to the HUF. (*Id.*).<sup>4</sup> The prior  
9 payments and all payments made during the pendency of this Docket and hereafter must be  
10 protected. (*Id.*). At a minimum, if the Commission decides that past due amounts will not be  
11 credited, the Commission should order that all payments under the ICFA during and after this  
12 Docket should be paid to the regulated utility first, until the HUF is fully funded. (*Id.*).

13 In Docket No. SW-20445A-09-0077, et al., Staff initially raised concerns regarding  
14 ICFAs, associated cash flows and the tracking of ICFA funds. (SNR-1 at 13). In response, GWR  
15 established a separate segregated bank account for the ICFA funds in response to Staff's previous  
16 concerns at the conclusion of that case. (*Id.*). Unfortunately, once the funds were placed in the  
17 segregated ICFA bank accounts, the funds were immediately transferred out of these accounts by  
18 GWR and combined with the Company's general bank account. [*See*, S-2 at 19]. (*Id.*). Despite  
19 Staff's concern about separation of funds, GWR's rationale for immediately withdrawing those  
20 funds was because "there wasn't a decision that required us to keep it segregated at that time."  
21 (Transcript Vol. I at 148 [Fleming Testimony]).

22 Given GWR's challenged financial position as well as its disregard to Staff's initial  
23 concerns, SNR is concerned that monies paid to GWR or its subsidiaries will not be used to

24 \_\_\_\_\_  
25 <sup>4</sup> (*See*, A-17, Settlement Agreement, Section 6.4.5 which states: *All ICFA fees that are not otherwise*  
26 *accounted for under this Agreement will be treated in accordance with Section 6.4.1. This shall not apply*  
*to past due amounts due prior to December 31, 2012, that otherwise would have been paid under the*  
*existing ICFA. These shall be treated in accordance with Section 6.3.6.).*

1 construct infrastructure unless those funds are fully secured and regulated by Order of this  
2 Commission.

- 3  
4 **2. To determine that the ICFAs and HUF as written will not continue to put**  
5 **SNR and other developers that have signed ICFAs at a competitive**  
6 **disadvantage with developers that have not signed ICFAs, thereby**  
7 **jeopardizing development in those areas where developers that have**  
8 **signed ICFAs intend to build.**

9 The Settlement Agreement provides for the establishment of HUF in the WUGT service  
10 area in the amount of \$1,750 for water service and \$1,750 for sewer service or \$3,500 per EDU.  
11 (SNR-1 at 15). Under the ICFA, SNR is required to pay \$5,500 per EDU plus a CPI surcharge.  
12 (*Id.*). By establishing a HUF, the Settlement Agreement inadvertently creates another class of  
13 developer that may subsequently have a competitive advantage over SNR and NWP. (Transcript  
14 Vol. II at 288 [Jellies Testimony]). Builders or developers constructing homes within the same  
15 service area as SNR that have not entered identical ICFAs with GWR will clearly have a cost  
16 advantage. (SNR-1 at 15). On a going forward basis, developers are obligated to pay the HUF  
17 fees in the amount of \$1,750 each for water and wastewater service or \$3,500. (A-17 at 10).  
18 SNR and NWP are obligated to pay \$5,500 under the ICFA. This price disparity is compounded  
19 by the added CPI adjuster that is assessed over and above the \$5,500 per EDU. (SNR-1 at 15).  
20 There is no CPI currently attached to HUFs. (Transcript Vol. VI at 727 [Olea Testimony]). Yet  
21 SNR and NWP have to pay a CPI on not only the amount owed in excess of the HUF (\$2,000),  
22 but are in essence paying a CPI adjustor on the HUF amount as well. (Transcript Vol. II at 301  
23 [Jellies Testimony]). To date, the amount due under the CPI adjustor for NWP and SNR is  
24 approximately 1.7 million and 4 million respectively. (Transcript Vol. I at 127 [Fleming  
25 Testimony]).

26 This disparity of payment for utility services between developers, who have entered into  
ICFA's verses developers who will not, triggered the following question by the ALJ to GWR  
witness Paul Walker:

1  
2 *Well, putting aside the cost of water acquisition, that will be what it is in some*  
3 *future time, and putting aside, you know, your opinion that the Commission can't*  
4 *in any way alter the contract because it is through an unregulated affiliate or*  
5 *parent, why shouldn't there be some tie between the HUF that is proposed in the*  
6 *settlement and what is the obligation under the ICFAs and also tying perhaps the*  
7 *future increases in HUFs to the CPI adjuster?*

8 (Transcript Vol. IV at 643 [Nodes]).

9 In response, Mr. Walker replied:

10 *The Commission, I would think, could put a CPI adjuster on a hookup fee. I would*  
11 *argue, having done a lot of work with water companies and with a trade group*  
12 *that represents water companies, you would see a wave of applications at the*  
13 *Commission wherein water and wastewater companies would say I want a*  
14 *hookup fee and I want to be able to adjust it every year for CPI and I will see you*  
15 *in the next rate case. My guess is that Staff and RUCO wouldn't be thrilled about*  
16 *that.*

17 (Transcript Vol. IV at 644 [Walker Testimony]).

18 As a follow-up question, the ALJ asked Mr. Walker:

19 *And doesn't the fact that you believe Staff and RUCO and probably the*  
20 *Commission would not be particularly amenable to putting CPI adjusters on*  
21 *hookup fees, doesn't that kind of support the argument of the developers in this*  
22 *case, that why should they have to have a CPI adjuster on the funds that they are*  
23 *paying towards getting utility service, when other similarly situated developers*  
24 *will not in the future have to pay similar escalators on their hookup fees?*

25 (Transcript Vol. IV at 645 [Nodes]).

26 In response, Mr. Walker replied:

*I completely agree with, you know, the logic behind I think what your question is.*  
*It is an interesting point to explore.*

(Transcript Vol. IV at 645 [Walker Testimony]).

Finally, the ALJ asks Mr. Walker:

*I guess the question is why, if you have now agreed to a particular level of HUF*  
*fees and you don't know when those are ever going to be collected either, I mean*

1           *it might be 20 years before you have somebody, and maybe that's an*  
2           *exaggeration, but some number of years, but why shouldn't that be the baseline*  
3           *for everyone that then, if, you know, in a subsequent case that HUF is increased,*  
4           *why should the CPI not be somehow tied to whatever level of increase there is in*  
              *a HUF from this point in time to effectively replace or mimic the CPI adjuster so*  
              *that developers are left basically on an equal footing?*

5           (Transcript Vol. IV at 646-647 [Nodes].

6           In response, Mr. Walker replied:

7           *I think I understand exactly your point. And I completely expect that in the next*  
8           *rate case Staff and RUCO are going to want to do exactly that to our hookup fee.*

9           (Transcript Vol. IV at 647 [Walker Testimony].

10           First, it is SNR's position that there should be a tie between the HUF that is proposed in  
11           the settlement and the obligations under the ICFA's including tying future increases in HUFs to  
12           the CPI adjuster. Even GWR concedes that the Commission has such authority. In addition,  
13           SNR agrees that given the fact that Staff, RUCO and probably the Commission would not be  
14           particularly amenable to putting CPI adjusters on hookup fees, this supports SNR and NWP's  
15           argument that they should not have to pay a CPI adjuster on the funds that they are paying  
16           towards getting utility service, when other similarly situated developers will not have to pay  
17           similar escalators on their hookup fees in the future. Finally, SNR believes that given that the  
18           HUF has now been set, that amount should be the baseline for which any increase to the HUF  
19           should be tied to the CPI so that developers are left on an equal footing. SNR does not believe it  
20           is necessary to wait until GWR's next rate case to establish such a tie in as the Commission can  
21           establish such a tie in this rate case.

22           In addition, Section 4 of the ICFA states that "[t]he Parties ... further agree to renegotiate  
23           this CPI Factor in good faith in the event that it results in a Landowner Payment in excess of  
24           related financing requirements." (SNR-1, Exhibit 2 at 15). With the recharacterization of \$3,500  
25           of the Landowner Payment as a HUF under the Settlement Agreement, this amount is no longer  
26           includable as part of the "financing requirements" under the ICFA. Thus, an Order of the

1 Commission modifying the CPI adjustor under the ICFA as it applies to the recharacterized HUFs  
2 would be consistent with the ICFA itself.

3 The ICFA also contains a “Most Favored Nation” clause as follows:

4  
5 *15. Most Favored Nation. Coordinator agrees that for the CC&N expansion and*  
6 *CC&N extension contemplated to commence in the July 2006 timeframe in the*  
7 *area West of the Hassayampa River, that if the Coordinator enters into an*  
8 *Infrastructure Coordination Finance and Option Agreement or an agreement with*  
9 *similar terms with another landowner that lies within the CC&N area of WUGT*  
10 *and HUC as extended (with the exception of Belmont), the Coordinator will not*  
11 *provide pricing, terms, or conditions more favorable to that landowner than*  
12 *provided herein to the Landowner, unless Coordinator amends this Agreement*  
13 *with the written consent of Landowner to include such pricing, terms, or*  
14 *conditions so that this Agreement is at least as favorable to the Landowner as the*  
15 *pricing, terms, and conditions offered to the other landowner.*

16 (SNR-1, Exhibit 2 at 33). The intent of this section is to prevent other entities from receiving a  
17 better deal than SNR. The adoption of the Settlement Agreement without a corresponding  
18 amendment to the CPI adjustor will effectively eviscerate Section 15 of the ICFA. An Order of  
19 the Commission modifying the CPI adjustor is fully consistent with the spirit of Section 15 of the  
20 ICFA. (*Id.*).

21 SNR is hopeful that this Commission will fully regulate GWR and its entities and  
22 determine the correct uniform amount for all to be required to pay. (SNR-1 at 15). At a  
23 minimum, the Commission should increase the HUF in WUGT’s service area to more fully align  
24 with the ICFA payments due. (*Id.*). In addition, the Commission should require GWR to remove  
25 the requirement to pay a CPI adjustor on top of the \$5,500 per EDU due under the ICFA. (SNR-1  
26 at 15-16). The inclusion of a CPI adjustor without Commission oversight and approval in essence  
approves in advance an ever increasing rate without any oversight. (SNR-1 at 16). Whatever the  
correct amount should be, it should be uniform for all landowners and based on a detailed  
regulatory analysis and Commission approval as opposed to a negotiated amount that is not  
uniformly applied. (SNR-1 at 15).

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**3. Order GWR to modify the ICFAs to incorporate the provisions ultimately approved by the Commission in the Settlement Agreement related to the establishment of HUF in order to resolve inconsistencies between the ICFA and the HUF related to payment of such funds that may lead to litigation in the future.**

At Hearing, GWR agreed to enter into a limited amendment to the ICFA to reflect Section 6.4.2 that allows that portion of the ICFA fee attributable to the HUF payment to be paid directly to the applicable water and wastewater companies.<sup>5</sup> (Transcript Vol. III at 468 [Walker Testimony]).

Section 6.1.2 of the Settlement Agreement states as follows:

*Staff and RUCO reserve the right to monitor Global's compliance with this Settlement Agreement and review all ICFA related transactions in future rate applications that Global files, and take appropriate steps, if necessary, to ensure the continued resolution of the issues regarding ICFAs as set forth in this Agreement.*

(A-17 at 6). Although GWR conceded that the reference to “Global's compliance” in that paragraph included GWR (Transcript Vol. III at 494 [Walker Testimony]), there was no discussion during the settlement talks regarding how Staff or RUCO would monitor GWR's compliance with this settlement agreement. (*Id.*). It is GWR's belief that such monitoring would occur through annual compliance filings and the development of a code of conduct. (Transcript Vol. III at 495 [Walker Testimony]). In addition, GWR has agreed that GWR would allow Staff and RUCO full access to the books and records of GWR so that Staff and RUCO can monitor compliance with the Settlement Agreement. (Transcript Vol. III at 496 [Walker Testimony]). This is certainly Staff's position. In response to a question at Hearing regarding whether Staff's concerns regarding having GWR provide detailed case inflow and outflow was addressed in the

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<sup>5</sup> Section 6.4.2 of the Settlement Agreement states as follows: *For amounts due after the effective date of the Commission's order in this docket, Global Parent will agree to accept separate checks for the ICFA fees owed, as follows: (1) a check payable to the applicable water utility in the amount of the water HUF; (2) a check payable to the applicable wastewater utility in the amount of the wastewater HUF; and (3) a check payable to Global Parent for the remainder of the ICFA fee.* (A-17 at 9).

1 Settlement Agreement, the Commission's Utilities Director replied:

2 *Not directly. But I think that's one of the things we are going to be looking at*  
3 *when we look at the code of conduct, to make sure -- basically what we are*  
4 *looking for with the code of conduct is to make sure whatever transactions take*  
5 *place between Global, the parent, the affiliates, the utilities, and each other, it is*  
6 *all transparent so we can go and look at anything we need to look at and it will be*  
7 *easy to find. And if we need to, we can look at the Global Parent books; if we*  
8 *need to look at the affiliate books, we can do that to make sure whatever*  
9 *transaction takes place, we can follow them easily and they are transparent.*

10 (Transcript Vol. IV at 716-717 [Olea Testimony]).

11 Given the complexity of GWR's corporate structure,<sup>6</sup> SNR requests that such monitoring  
12 also include Global Water Resources Corp. ("Global Water"), {incorporated under the Business  
13 Corporations Act (British Columbia) and to actively participate in the management, business and  
14 operations of GWR through its representation on the board of GWR and its shared management  
15 with GWR (Transcript Vol. IV at 613 [Walker Testimony]} and parent of GWR to ensure that  
16 ICFA funds do not flow upstream to the parent. In addition, SNR requests that terms and  
17 conditions of such monitoring, including the expectations identified be specifically spelled out in  
18 the Order as to avoid any ambiguity as to how Staff and RUCO would monitor such compliance.  
19 Finally, SNR requests that any Code of Conduct developed and approved by Staff and RUCO  
20 also apply to Global Water, as well as all other GWR affiliates.

21 In addition, Section 7.3 of the Settlement Agreement states as follows:

22 *As required in Staff's standard form HUF tariff, each Global water and*  
23 *wastewater utility will maintain a separate, segregated bank account for all funds*  
24 *received under the HUF tariff and file annual reports as outlined in the tariffs.*  
25 *The HUF funds may only be used by the Global water and wastewater utilities for*  
26 *the purposes specified in the HUF tariff. Global's Chief Executive Officer or*  
*Chief Financial Officer shall be required to file an affidavit annually which states*  
*that the conditions of this paragraph have been met.*

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24 <sup>6</sup> At year-end 2010, Global Water Resources Corp. closed an initial public offering ("IPO"). (SNR-1 at  
25 16). Global Water is a corporation that was formed to acquire a minority interest in GWR. (*Id.*). On  
26 closing of the IPO, Global Water acquired an approximate 46.4% interest in GWR (which would increase  
to 49.9% if the over-allotment option is exercised in full), with the remaining interest being held by the  
existing shareholders of GWR, including management. (*Id.*).

1 (A-17 at 11). Because the verification requirement of this section specifically addresses this  
2 paragraph alone, GWR has agreed to a provision in the Order that GWR would submit an  
3 affidavit annually attesting to compliance with every aspect of the Settlement Agreement.  
4 (Transcript Vol. III at 517 [Walker Testimony]). Again, SNR would request that such attestation  
5 apply to not only GWR, but Global Water, given its active role in the management of GWR, as  
6 well as all other GWR affiliates.

7  
8 **4. Review in detail and regulate the financial condition of GWR so that it**  
9 **will be capable of fulfilling all of its obligations to the present and future**  
10 **ratepayers under all ICFAs.**

11 Compounding SNR's concerns is GWR's poor financial condition. Throughout this  
12 proceeding, SNR and NWP have raised concerns that based upon the financial condition of  
13 GWR, amounts previously paid to GWR as well as amounts subsequently due or paid to GWR  
14 under these ICFAs, will not be utilized to construct regional utility infrastructure for future SNR  
15 Developments and other planned projects. (SNR-1 at 4-5). GWR's poor financial condition was  
16 reaffirmed by the Commission's Utilities Director who testified that "based upon the information  
17 Staff had in his discussions with Staff, GWR is probably not the healthiest company." (Transcript  
18 Vol. IV at 702 [Olea Testimony]). Even GWR conceded that due to GWR's negative equity  
19 balance and \$85 million net loss, it was reasonable for developers like SNR, who have entered  
20 into long-term contracts with GWR for the construction of utility infrastructure, to have  
21 justifiable concerns regarding performance under such contracts. (Transcript Vol. I at 76  
22 [Fleming Testimony]). In addition, a review of financial statements reveals that GWR is very  
23 short on cash, short on assets and has incurred billions of dollars' worth of financial obligation  
24 under the ICFAs; and, most recently, GWR's pledge that any monies due from SNR would be  
25 used to secure indebtedness Regions Bank that resulted in a potential default or a default from  
26 their loan covenants.<sup>7</sup> (Transcript Vol. II at 233 [O'Reilly Testimony]). GWR conceded that this

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<sup>7</sup> In the fourth quarter of 2012, GWR failed to meet its Fixed Charge Coverage Ration requirement. The

1 potential default was the type of significant financial risks that raised concerns of Staff as to the  
2 financial viability of GWR. (Transcript Vol. I at 156 [Fleming Testimony]). As such, SNR seeks  
3 such relief from the Commission to ensure that monies paid under the ICFAs, including such  
4 monies now pledged to Regions Bank, are in fact sequestered and used for utility infrastructure as  
5 contemplated. (Transcript Vol. II at 234 [O'Reilly Testimony]).

6 Without Commission oversight, SNR has no protection for its investment if GWR is  
7 unable to perform or goes bankrupt. (SNR-1 at 10). Yet, by entering into ICFAs instead of the  
8 more traditional financing mechanisms with regulated entities regulated by this Commission, it  
9 appears that GWR has sought to avoid oversight or regulation by this Commission, even though it  
10 appears to be acting in most respects as a public service corporation. (*Id.*).

11 Because GWR was a critical part of this case, Staff recommended that it become a party to  
12 this proceeding so that the Commission could place requirements on them. (SNR-1 at 12). By  
13 GWR intervening in this rate case, GWR has consented to Commission jurisdiction. (*Id.*). The  
14 Commission has the authority to require GWR to amend ICFAs if they deem it necessary and in  
15 the public interest. (*Id.*).

16 SNR has already paid approximately \$6 million dollars to GWR with additional monies to  
17 be paid at the resolution of the bankruptcy proceedings. (SNR-1 at 13). In fact, out of the 172  
18 ICFAs entered into by GWR, only the ICFAs entered into by SNR and NWP require \$1,000 per  
19 EDU payment before a start work notice was issued. (Transcript Vol. I at 109 [Fleming  
20 Testimony]). Yet despite significant monies already paid to GWR, there have been no homes  
21 constructed at the SNR developments and no utility infrastructure in place to serve such

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22  
23 Company notified Regions Bank of the covenant violation that would have caused an event of default, and  
24 the Company and Regions Bank then entered into an amended 2012 Term Loan agreement (the "Amended  
25 2012 Term Loan") effective December 31, 2012. (SNR-4, GWR, Inc.'s Notes to Consolidated Financial  
26 Statements at 18; see also (Transcript Vol. I at 156 [Fleming Testimony])). The Amended 2012 Term Loan  
contains certain terms, including . . . (v) an emergency capital expenditure reserve fund will be established  
and the proceeds expected to be received from Sierra Negra Ranch LLC pursuant to a certain arbitration  
award will be deposited into the fund with Regions Bank having a first-priority security interest in the  
fund. (SNR-4 at 18).

1 developments. (Transcript Vol. I at 96 [Fleming Testimony]). In addition, SNR is years away  
2 from construction developments in Silver Water Ranch and Silver Springs Ranch and years away  
3 from obtaining any return on its investment. (SNR-1 at 13). That is why it is imperative that this  
4 Commission step in now and assure developers that monies provided to GWR for infrastructure  
5 will be protected. (SNR-1 at 13-14).

6 The Commission should require both GWR and the regulated utilities to guarantee that the  
7 monies paid under the ICFA are used to construct infrastructure contracted for even if the parent  
8 goes bankrupt. (SNR-1 at 16). As described in footnote 7 above: At year-end 2010, Global  
9 Water closed an IPO; Global Water is a corporation that was formed to acquire a minority interest  
10 in GWR; on closing of the IPO, Global Water acquired an approximate 46.4% interest in GWR  
11 (which would increase to 49.9% if the over-allotment option is exercised in full), with the  
12 remaining interest being held by the existing shareholders of GWR, including management. (*Id.*).  
13 GWR, in turn, used the net proceeds of the IPO for repayment of indebtedness and general  
14 corporate purposes, including implementing GWR's growth strategy. (*Id.*). The Commission  
15 will hopefully fully analyze and review this transaction and the use of those funds including for  
16 the purposes of bailing out the GWR former primary financial backer. (*Id.*).

17 In addition, the establishment of HUF accounts, without Commission oversight and  
18 specific direction, gives free reign to GWR and absolutely no assurance to SNR that the ICFA  
19 funds received under these agreements will be available to meet the Company's regional  
20 infrastructure needs going forward.

### 21 III. CONCLUSION

22 SNR respectfully requests that the Commission: (1) Assert jurisdiction over GWR and the  
23 ICFA's to protect the ratepayers; (2) to ensure the ICFA's and the HUF will not put developers at a  
24 competitive disadvantage; (3) ensure GWR modifies the ICFA's to incorporate the provisions of  
25 HUF; and (4) review in detail and regulate the financial condition of GWR so that it will be  
26 capable of fulfilling its obligations under all ICFA's.

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RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of October, 2013.

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