

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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2015 NOV 20 A 11: 44

DATE: NOVEMBER 20, 2015

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO.: W-02312A-14-0325

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Order on:

HALCYON ACRES ANNEX NO. 2 WATER COMPANY, INC.
(ORDER PURSUANT TO A.R.S. § 40-252)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 30, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 8, 2015 AND DECEMBER 9, 2015

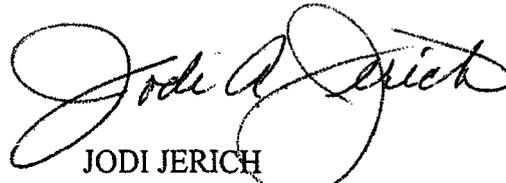
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

NOV 20 2015

DOCKETED BY 


JODI JERICHI
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 DOUG LITTLE

8 IN THE MATTER OF THE APPLICATION OF
9 HALCYON ACRES ANNEX NO. 2 WATER
10 COMPANY, INC. FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO OPERATE
12 A PUBLIC SERVICE UTILITY FOR THE SALE
13 AND DISTRIBUTION OF WATER FOR
14 DOMESTIC USE.

DOCKET NO. W-02312A-14-0325

ORDER PURSUANT TO
A.R.S. § 40-252

15 Open Meeting
16 December 8 and 9, 2015
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 On September 4, 2014, Halcyon Acres Annex No. 2 Water Company, Inc.’s (“Halcyon” or
20 “Company”) filed with the Arizona Corporation Commission (“Commission”) an application pursuant
21 to Arizona Revised Statutes (“A.R.S.”) § 40-252 to amend Decision No. 48650 (January 16, 1978),
22 requesting that the Commission consider revision of the legal description of the Company’s certificated
23 area (“Application”). The Company asserted that the legal description of the Certificate of
24 Convenience and Necessity (“CC&N”) omitted a portion of the area served by the Company and
25 Halcyon desired to have the legal description revised to include the omitted portion.

26 Having considered the entire record herein and being fully advised in the premises, the
27 Commission finds, concludes, and orders that:

28 **FINDINGS OF FACT**

Procedural History

1. The Commission granted a CC&N to Halcyon in Decision No. 48650. The legal
description for the approved certificated area reads as follows:

All that certain property situate, lying and being in the County of Pima and
State of Arizona.

Being lots No. 34 through 79 inclusive of the HALCYON ACRES ANNEX
NO. 2, Tucson, Arizona, being a subdivision of part of the south half of the south

1 half of Sec. 15, T. 14 S. R. 15 E., G&SRB&M, as shown by the map or plat thereof,
2 recorded in the office of the County Recorder of Pima County, Arizona, on May
20th, 1950 in Book 9 of Maps and Plats at Page 39, thereof.

3 EXCEPT, any portion thereof lying Northeasterly of the Northeasterly
Right of Way line of the Old Spanish Trail as established and/or existing.

4 2. On September 20, 2013, Halcyon filed an application for deletion of a portion of its
5 CC&N in Docket No W-02321A-13-0326. During the hearing in that matter, Gene Wilcox, Halcyon's
6 President, testified that he believed that the maps of the Company's certificated area provided by Staff
7 were incorrect, and that Halcyon's service territory included the area northeast of Old Spanish Trail
8 ("Omitted Area").

9 3. In Decision No. 74745 (September 15, 2014), the Commission approved Halcyon's
10 deletion application. The revised legal description for the CC&N attached to the Decision describing
11 the deleted territory still excluded the Omitted Area.

12 4. On September 9, 2014, Halcyon filed with the Commission its Application pursuant to
13 A.R.S. § 40-252 to amend Decision No. 48650, requesting that the Commission revise the legal
14 description of the Company's certificated area to include the portion of the subdivision northeast of
15 Old Spanish Trail.¹

16 5. Attached to the Application is Mr. Wilcox's Affidavit averring that Halcyon has
17 provided water service to the Halcyon Acres Annex No. 2 subdivision, including the Omitted Area,
18 since the area was first developed in the 1950s. Mr. Wilcox also averred that he did not recall why the
19 Commission excluded the Omitted Area.

20 6. The Commission considered the A.R.S. § 40-252 Application on October 16, 2014, and
21 directed the Commission's Hearing Division to set a procedural schedule.

22 7. Pursuant to a Procedural Order issued November 24, 2014, a procedural conference was
23 held on December 16, 2014. During the procedural conference, it was observed that Decision No.
24 48650 had specifically omitted the portion northeast of Old Spanish Trail. The parties, represented
25 through counsel, discussed whether any records existed to explain why this occurred. Staff stated it
26

27
28 ¹ The Company filed the Application after the Open Meeting at which the Commission considered the deletion application,
but before Decision No. 74745 was issued.

1 would try to research the original application and the attorney for the Company indicated he would
2 consult with Halcyon's owner about the issue.

3 8. On January 30, 2015, the parties filed a Joint Status Report stating they were conducting
4 additional research and would file another Status Report when the research had been completed.

5 9. In a Second Joint Status Update docketed February 20, 2015, the parties noted that there
6 was an error in the legal description for the CC&N, and the Company was in the process of revising
7 the description. Halcyon docketed its Amended Legal Description for Application to Amend or Alter
8 Decision No. 48650 on March 5, 2015.

9 10. On March 20, 2015, Staff filed its Staff Report and Request for a Procedural Order.

10 11. Pursuant to a Procedural Order issued March 27, 2015, a procedural conference was
11 held on April 2, 2015, to discuss Staff's findings. The parties were present through counsel. During
12 the procedural conference, the Company was directed to verify that every property owner within the
13 Omitted Area had been notified that Halcyon had applied to have its CC&N revised to include their
14 properties and confirm that each owner wished to have Halcyon as its water service provider.

15 12. On July 15, 2015, Halcyon filed a Status Report confirming that all property owners
16 knew Halcyon was seeking to amend its CC&N and that they wished to continue to receive service
17 from the Company.

18 **Company Background**

19 13. Halcyon serves 36 customers on 106 acres on the east side of Tucson, within the City
20 of Tucson's city limits. The Omitted Area consists of approximately 13 acres, divided into six parcels,
21 serving a total of six customers. The Company states it has served this area since before 1960 at the
22 inception of the subdivision.

23 14. The Company's current rates were set in Decision No. 68921 (August 29, 2006).

24 15. Halcyon's water system consists of one well, one pressure tank, and the distribution
25 system. The Company also has an emergency interconnection with the City of Tucson, which is used
26 to supplement Halcyon's water supply, if needed. Fire flow to the area is provided by the City of
27 Tucson through the City's existing pipelines and fire hydrants located in the area.

28

1 16. An Arizona Department of Environmental Quality compliance status report notes that
2 Halcyon's water system is currently delivering water that meets water quality standards required by 40
3 C.F.R. 14 and Arizona Administrative Code ("A.A.C."), Title 18, Chapter 4.

4 17. Halcyon is within the Tucson Active Management Area and subject to Arizona
5 Department of Water Resources ("ADWR") regulations. An ADWR compliance status report notes
6 that the Company's water system is in compliance with ADWR requirements.

7 18. Halcyon has Commission-approved Curtailment and Backflow tariffs.

8 19. A map provided by Staff shows that there is one water company, Halcyon Acres Water
9 Company, adjacent to Halcyon. In addition, the Omitted Area is within Tucson city limits and Tucson
10 Water has service infrastructure nearby.

11 **Staff Report**

12 20. In its Staff Report docketed March 20, 2015, Staff recommended that the matter proceed
13 pursuant to A.R.S. § 40-252, and that Halcyon's CC&N be amended to include the Omitted Area.

14 21. As part of its investigation, Staff searched Commission records and found the 1977
15 CC&N application, Decision No. 48650, a number of other documents, and maps of the proposed
16 certificated area and the corresponding legal description. The maps and legal description excluded the
17 area of northeast of Old Spanish Trail, but Staff could not find any record discussing why the area was
18 omitted from the CC&N. Based on a review of the documents Staff could find, Staff believes that the
19 exclusion of the Omitted Area from the CC&N was not a typographical error, but, in fact, was
20 contemplated throughout the proceeding. Halcyon advised Staff that the Company does not have any
21 records that might explain the exclusion.

22 22. Nevertheless, Staff concluded that, given the circumstances, the disposition of the
23 Omitted Area should be considered under A.R.S. § 40-252 because of "the fiscal inequities that would
24 follow should the Company and, ultimately, its 36 customers, be required to bear the expense of a full
25 blown application process for a CC&N [extension] under A.A.C. R14-2-402."²

26
27
28 ² Staff's Notice of Filing Staff Report and Request for Procedural Order, dated March 20, 2015, page 1.

1 23. Staff explained that Halcyon has been providing quality water service to the Omitted
2 Area for many years, noting that Mr. Wilcox believed that the service connections within the Omitted
3 Area were a part of the Company's CC&N. In addition, the owners of the six parcels that comprise the
4 Omitted Area have expressly stated that they wish to continue to receive water service from Halcyon.

5 24. Accordingly, Staff believes it is in the public interest to waive the requirements of
6 A.A.C. R14-2-402 in this matter and that, pursuant to A.R.S. § 40-252, Halcyon's CC&N should be
7 amended to include the Omitted Area as described in the legal description attached as Exhibit A.

8 **Conclusion**

9 25. We agree with Staff that because Halcyon has served the Omitted Area for many years,
10 and because all of the property owners in the Omitted Area expressed their desire to continue to have
11 water service provided by Halcyon, it would be an unnecessary financial burden for the Company and
12 its customers to require the Company to file a CC&N application.

13 26. Given the circumstances, we find Staff's recommendation that Decision No. 48650
14 should be amended, as indicated in the legal description in the attached Exhibit A, is reasonable and
15 shall be adopted.

16 27. We further find it is reasonable to require that Halcyon continue to charge its authorized
17 rates and charges in that area.

18 **CONCLUSIONS OF LAW**

19 1. Halcyon is a public service corporation within the meaning of Article XV of the Arizona
20 Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Halcyon and the subject matter of the
22 Application.

23 3. There is a public need and necessity for water service in the Omitted Area.

24 4. It is in the public interest to waive the requirements of A.A.C. R14-2-402.

25 5. Staff's recommendation is reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc.'s Application to Amend Decision No. 48650 is granted.

IT IS FURTHER ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc.'s Certificate of Convenience and Necessity shall be amended to reflect the legal description in the attached Exhibit A.

IT IS FURTHER ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc. shall continue to charge its authorized rates and charges.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
BM:ru

1 SERVICE LIST FOR: HALCYON ACRES ANNEX NO. 2 WATER
2 COMPANY, INC.

3 DOCKET NO.: W-02312A-14-0325

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23
24
25
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27
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PIMA COUNTY

RANGE 15 East

TOWNSHIP 14 South

06	05	04	03	02	01
07	08	09	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

 W-02312A (1)
 Halcyon Acres Annex #2 Water Company, Inc.
 W-01953A (1)
 Halcyon Acres Water Users Association
 (8)
 City of Tucson (Nonjurisdictional)

EXHIBIT A

 W-02312A (1)
 Halcyon Acres Annex #2 Water Company, Inc.
 Docket No. W-02312A-14-0325
 Application to Amend Decision No. 48650
 (Amended Application)



Prepared by:
 Arizona Corporation Commission
 Utilities Division
 Engineering Section/GIS Mapping
 602-542-4251

DECISION NO. _____

EXHIBIT 1: Amended Legal Description, February 25, 2015

1
2 ALL THAT PORTION LYING WITHIN THE SOUTH HALF (S 1/2) OF THE SOUTHWEST
3 QUARTER (SW 1/4) AND WITHIN THE SOUTHWEST QUARTER (SW 1/4) OF THE
4 SOUTHEAST QUARTER (SE 1/4) OF SECTION 15, TOWNSHIP 14 SOUTH, RANGE 15
5 EAST, G&SRM, PIMA COUNTY, ARIZONA EXCEPT AND EXCLUDING THAT
6 PORTION WHICH WAS DELETED BY ORDER OF THE ARIZONA CORPORATION
7 COMMISSION DECISION NO. 74745 LEGALLY DESCRIBED AS:

8 **THE PLACE AT PRESIDIO TRAIL BLOCK 1**, A SUBDIVISION WITHIN THE
9 CITY OF TUCSON, PIMA COUNTY, ARIZONA, RECORDED AT SEQUENCE
10 20122680359, RECORDS OF THE PIMA COUNTY RECORDER, BEING WITHIN
11 THE SOUTH HALF OF SECTION 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
12 GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE
13 PARTICULARLY DESCRIBED AS FOLLOWS:

14 **COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 15 AS
15 MONUMENTED BY A BRASS DISC SURVEY MONUMENT;**

16 THENCE SOUTH 89°26'07" WEST 2645.24 FEET UPON THE SOUTH LINE
17 OF THE SOUTHEAST QUARTER OF SAID SECTION 15 TO THE SOUTH ONE
18 QUARTER CORNER THEREOF, AS MONUMENTED BY ANOTHER BRASS
19 DISC SURVEY MONUMENT;

20 THENCE NORTH 42°48'20" EAST 1032.64 FEET TO THE **POINT OF
21 BEGINNING AT THE MOST EASTERLY CORNER OF SAID THE PLACE AT
22 PRESIDIO TRAIL BLOCK 1** MONUMENTED BY A HALF INCH REBAR WITH
23 IDENTIFICATION TAG, LS 17479;

24 THENCE THE FOLLOWING COURSES UPON THE BOUNDARY OF SAID
25 **THE PLACE AT PRESIDIO TRAIL BLOCK 1;**

26 SOUTH 29°05'08" WEST 422.62 FEET;

27 SOUTH 89°51'50" WEST 619.68 FEET TO A NON-TANGENT CURVE
28 CONCAVE NORTHERLY, THE RADIUS POINT OF SAID CURVE BEARS
NORTH 00°13'14" WEST;

WESTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING
A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 23°18'44", FOR AN
ARC DISTANCE OF 10.17 FEET TO A NON-TANGENT LINE;

NORTH 00°29'11" WEST 595.46 FEET TO A TANGENT CURVE
CONCAVE EASTERLY;

1 NORTHERLY UPON THE ARC OF SAID CURVE TO THE RIGHT,
2 HAVING A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF 27°48'42",
3 FOR AN ARC DISTANCE OF 16.99 FEET TO A TANGENT LINE;

4 NORTH 27°19'31" EAST 165.87 FEET TO A TANGENT CURVE
5 CONCAVE SOUTHERLY;

6 EASTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING
7 A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 84°04'44", FOR AN
8 ARC DISTANCE OF 36.69 FEET TO A TANGENT LINE;

9 SOUTH 68°35'45" EAST 269.55 FEET TO A TANGENT CURVE CONCAVE
10 SOUTHWESTERLY;

11 SOUTHEASTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT,
12 HAVING A RADIUS OF 666.20 FEET AND A CENTRAL ANGLE OF 16°02'39",
13 FOR AN ARC DISTANCE OF 186.55 FEET TO A TANGENT LINE;

14 SOUTH 52°33'06" EAST 192.16 FEET TO A TANGENT CURVE CONCAVE
15 NORTHEASTERLY;

16 AND SOUTHEASTERLY UPON THE ARC OF SAID CURVE TO THE
17 LEFT, HAVING A RADIUS OF 766.20 FEET AND A CENTRAL ANGLE OF
18 14°10'53" FOR AN ARC DISTANCE OF 189.64 FEET TO THE **POINT OF**
19 **BEGINNING.**

20 CONTAINING 10.8 ACRES MORE OR LESS
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