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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

DOUG LITTLE, Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

APR 11 2016

AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY TO  
EXTEND ITS CERTIFICATE OF  
CONVENIENCE AND NECSSITY IN  
CASA GRANDE, PINAL COUNTY,  
ARIZONA.

Docket No. W-01445A-03-0559

ARIZONA WATER COMPANY'S  
POST-HEARING BRIEF

**I. INTRODUCTION.**

No matter how this second remand phase is analyzed -- as a deletion proceeding, as consideration of what is "reasonable" service or through the broadest lens of what is in the public interest -- Cornman Tweedy 560, LLC's ("Cornman Tweedy's") efforts to take control of Arizona Water Company's certificate of convenience and necessity ("CC&N") at issue should come to an end. The evidence presented in this remand phase compels the result under Arizona law that Arizona Water Company should continue to hold its water certificate for the area at issue and Cornman Tweedy's requests for relief should be dismissed with prejudice.

**II. ISSUES PRESENTED IN THIS REMAND HEARING.**

At the February 12, 2016 prehearing conference, Judge Harpring directed the parties to address the following six issues in this second phase of the remand proceeding ("Remand Hearing-Phase II"). The issues are set forth below together with the answers that were proven by the evidence in the remand hearing:

1. The parties' response to the specific inquiry identified by the Commission: "whether a public service corporation, like Arizona Water, in this water challenged area and under the circumstances presented in this case, is providing reasonable service if it is

1 not able or not willing to provide integrated water and wastewater services."

2 Arizona Water Company response: Under Arizona law and Commission precedent  
3 and policy, Yes (although Arizona Water Company is able and willing to provide  
4 integrated water and wastewater service).

5 2. Is a decision in this case intended to be universally applicable to water  
6 utilities in Arizona, or would it apply only to the specific Cornman Tweedy property at  
7 issue?

8 Arizona Water Company response: It is both. The specific relief Cornman  
9 Tweedy seeks is deletion of 1,120 acres of the Company's CC&N; however, a  
10 finding that the lack of integration (even if that were demonstrated in this record,  
11 which it is not) can lead to the deletion of a water company's established CC&N  
12 would have disastrous impacts on the State's 270+ water-only public utility service  
13 providers.

14 3. The status of Arizona Water Company's CC&N on the Cornman Tweedy  
15 property and the standard for revocation of any such authority.

16 Arizona Water Company response: Arizona Water Company holds an  
17 unconditional CC&N for the Cornman Tweedy property. Under Arizona law,  
18 Arizona Water Company's CC&N for the Cornman Tweedy property can only be  
19 deleted in accordance with the standards set forth in *James P. Paul Water Co. v.*  
20 *Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (1983).

21 4. What issues need to be addressed at this stage of this remand and what are  
22 the parties position as to each of these issues?

23 Arizona Water Company response:

24 a. What is reasonable service and what is the proper statutory remedy for  
25 not providing reasonable service?

26 As set forth below, the concept of "reasonable service" is addressed

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in A.R.S. § 40-321. Under this statute, if the Commission were to find evidence of service that was not reasonable, it could then order the certificate holder to cure the deficiency in service following further proceedings, and deletion is not a remedy.

b. Is Arizona Water Company unable to provide integrated service to the Cornman Tweedy property?

No; the record in this case is replete with evidence of Arizona Water Company providing such service or being prepared to provide such service through a wide variety of means, and specific plans were provided for serving the subject property; the only legal reason the Company may not provide sewer service at present is that Cornman's affiliate, Picacho Sewer Company, currently holds the wastewater certificate for that area.

c. Is Arizona Water Company unwilling to provide integrated service to the Cornman Tweedy property?

No--that is absolutely untrue. The uncontroverted evidence proves that the Company is ready, willing and able to do so.

5. What party has the burden of proof as to each of the issues that needs to be addressed at this stage of this remand?

Arizona Water Company response: Cornman Tweedy bears the burden of proof on each of the issues.

6. What standard of proof must be applied to each of the issues that needs to be addressed at this stage of this remand?

Arizona Water Company response: Cornman Tweedy must establish that deletion is appropriate by a preponderance of the evidence.

1   **III.   FACTUAL AND PROCEDURAL BACKGROUND.**

2       **A.   Arizona Water Company.**

3       Arizona Water Company has an over 60-year proven track record of providing  
4   efficient, dependable and reasonable service as a public utility in Arizona, whether it is  
5   providing water service, coordinating wastewater service, or both. *See* Direct Testimony  
6   of William M. Garfield (5/30/2014) ("Garfield Direct-Phase II"), at 3:7-9; *see also*  
7   Decision No. 28794 (3/23/1955) (establishing initial service by the Company). For  
8   decades, the Commission has found Arizona Water Company to be a fit and proper entity  
9   to provide public utility service in numerous decisions. *See* Garfield Direct-Phase II, at  
10   3:11-6:2. Particularly in recent years, the Company's reputation and record of  
11   performance has prompted the Commission to approve significant expansions of the  
12   Company's CC&N areas in the very Pinal Valley Master Water System planning area at  
13   issue here, including the CC&N expansions related to Arizona Water Company's  
14   settlement agreement with Global Water Resources, LLC ("Global") and the Copper  
15   Mountain development. *See* Decision No. 73146 ("AWC-Global Settlement Decision");  
16   Decision No. 73780. These Commission decisions not only show Arizona Water  
17   Company's long history of providing efficient, dependable and reasonable service at  
18   reasonable rates to its customers throughout the State, including its customers located near  
19   the Cornman Tweedy property, but prove that the Commission has been willing in recent  
20   years to grant water service CC&N's in substantial areas where commonly-controlled  
21   entities are not providing water and sewer service. *Id.*; Garfield Direct-Phase II, at 3:11-  
22   6:2. Arizona Water Company also has a long history of compliance with Arizona laws  
23   governing water use and environmental matters. *Id.* at 6:5-18.

24       As a result of its long tenure and its exemplary performance history, Arizona Water  
25   Company is well-regarded throughout the state. Cornman Tweedy's own expert, Dr. Fred  
26   Goldman, stated: "Arizona Water Company is a very famous and historical company in

1 Arizona that has a wonderful operation, reputation. And I have the utmost respect for  
2 Arizona Water Company." Reporter's Transcript of Proceedings (filed 2/26/2016)  
3 ("Transcript"), at 244:22-25; *see also* Transcript, at 245:16-18 ("It is a reputable company  
4 that is regulated by the Corporation Commission and follows the rules and regulations of  
5 the Department of Environmental Quality.").

6 In Pinal County, Arizona Water Company provides public utility water service  
7 pursuant to CC&Ns duly issued by the Commission within the communities of Casa  
8 Grande, Stanfield, Arizona City and Coolidge, among others. *See* Direct Testimony of  
9 Michael J. Whitehead (6/13/2006) ("Whitehead Direct"), at 5:20-22; *see also* Direct  
10 Testimony of William M. Garfield (1/4/2008) ("Garfield Direct-Phase I"), at 2:23-24  
11 (adopting entirety of testimony of Michael J. Whitehead); Garfield Direct-Phase II, at 2:18  
12 (adopting all of his previous testimony in this matter). Arizona Water Company's Pinal  
13 Valley CC&N comprises approximately 172,160 acres or 269 square miles and its Pinal  
14 Valley planning area includes approximately 305,280 acres or 477 square miles. Direct  
15 Testimony of Fredrick K. Schneider (5/30/2014) ("Schneider Direct-Phase II"), at 4:5-8,  
16 Ex. FKS-1.

17 Working closely with the communities it serves, Arizona Water Company has  
18 prepared a Pinal Valley Water System Master Plan (the "Master Plan"). *Id.* at 4:11-5:2.  
19 The Master Plan is a detailed and comprehensive document that describes Arizona Water  
20 Company's existing and planned infrastructure throughout the Pinal Valley planning area  
21 for the next 50 years, and includes the existing and planned water infrastructure facilities  
22 Arizona Water Company will use to serve the Cornman Tweedy property. *Id.* at 5:6-24,  
23 Ex. FKS-2, FKS-3. The Master Plan guides Arizona Water Company's operations in the  
24 region so that it can provide safe and reliable water service to existing and future  
25 customers. *Id.* at 5:6-9. The Master Plan also formed the basis of, and now includes, the  
26 service areas the Commission added in its AWC-Global Settlement Decision, and is

1 integral to the integrated service components of Arizona Water Company's Commission-  
2 approved settlement agreement with Global that was discussed in the record and admitted  
3 into evidence. *Id.*, at 4:17-21, 15:17-23; Docket No. W-01445A-06-0199, Decision No.  
4 73146, FOF, ¶¶ 89-94, 113; *see also* Garfield Direct-Phase II, at Ex. WMG-1.

5 In addition to providing reasonable and efficient water service to its customers,  
6 Arizona Water Company is also committed to managing, preserving and replenishing  
7 Arizona's water resources consistent with the State's groundwater management policies.  
8 Surrebuttal Testimony of William M. Garfield (1/11/2016) ("Garfield Surrebuttal-Phase  
9 II"), at 4:3-10:22. In furtherance of this commitment, Arizona Water Company uses a  
10 portion of its supply of 10,884 acre feet of Central Arizona Project ("CAP") water (a  
11 renewable resource) to serve customers within the Pinal AMA. Surrebuttal Testimony of  
12 Fredrick K. Schneider (1/11/2016) ("Schneider Surrebuttal-Phase II"), at 10:18-13:23, Ex.  
13 FKS-12. Arizona Water Company currently stores CAP water in three Groundwater  
14 Savings Facilities that the Central Arizona Irrigation and Drainage District, Hohokam  
15 Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District  
16 own. *Id.* at 14:7-19. AWC then recovers the stored CAP water through recovery wells,  
17 thereby reducing groundwater use. *Id.*, at 13:24-14:25.

18 By 2019, Arizona Water Company will be using all of its Pinal Valley CAP  
19 allotment to serve its Pinal Valley customers. Arizona Water Company has prepared a  
20 Pinal Valley 2015 CAP Use Plan (Ex. FKS-12) to put the unused portion of its Pinal  
21 Valley CAP allocation to beneficial use. Arizona Water Company is constructing a  
22 recharge facility near Coolidge, where Arizona Water Company will recharge its  
23 allocations of CAP water so that it may store and recover that water for future use by the  
24 customers in the Coolidge and Casa Grande areas, including the Cornman Tweedy  
25 property. Schneider Surrebuttal-Phase II, at 6:14-13:23, Ex. FKS-12. Implementation of  
26 the 2015 CAP Use Plan will reduce the amount of groundwater pumped by 50 per cent

1 annually. *Id.* at 10:20-22, 12:23-13:4.

2 **B. Arizona Water Company's Efforts To Provide Reclaimed Water.**

3 Arizona Water Company, while incorporating renewable resources into the  
4 services it provides its customers in compliance with Arizona's water policies as set forth  
5 in the testimony of Mr. Garfield and Rita Maguire, has invested in efforts to provide  
6 wastewater treatment and reclaimed water delivery within its service areas. As referenced  
7 above, the Company's settlement agreement with Global and subsequent Commission  
8 decisions will provide reclaimed water to Arizona Water Company to serve customers  
9 within the Company's Pinal Valley planning area west of Montgomery Road. Garfield  
10 Direct-Phase II, at 10:16-11:2, Ex. WMG-1; Schneider Direct-Phase II, at 12:12-17,  
11 15:17-23. On May 1, 2012 (importantly, more than one year *after* the remand of this  
12 proceeding for further hearings in February, 2011), the Commission issued the AWC-  
13 Global Settlement Decision, and specifically approved most of Arizona Water Company's  
14 requested CC&N extensions in accordance with the parameters of the AWC-Global  
15 settlement agreement. *See* Decision No. 73146 at p. 48. The AWC-Global Settlement  
16 Decision addresses in depth the greater use of reclaimed water in the planning areas  
17 identified by Arizona Water Company and Global. *Id.* at pp. 18-21; *see also* Transcript, at  
18 647:12-648:2, 651:3-23, 657:1-659:5 (testimony of Paul Walker that benefits of  
19 integration may be achieved by separate utilities through cooperation). The Commission  
20 found that there was a public need and necessity for water utility service in the subject  
21 areas, although certain areas were not yet in active development (*id.*, Conclusion of Law  
22 ("COL"), No. 4), and that Arizona Water Company was a fit and proper entity to receive  
23 the extensions of its CC&N (*Id.*, COL, No. 5).

24 In its Superstition service area, Arizona Water Company obtains and delivers  
25 reclaimed water to its customers by agreement with Gold Canyon Sewer Company.  
26 Arizona Water Company uses this reclaimed water for landscape irrigation, instead of

1 using groundwater or other potable water supplies. Garfield Direct-Phase II, at 3-8, Ex.  
2 WMG-2. The reclaimed water provided by Arizona Water Company, under a tariff  
3 approved by the Commission (*id.*), replaces 100 percent of the potable water that the golf  
4 course had been purchasing from Arizona Water Company. Transcript, at 379:10-380:10.

5 In July 2014, Arizona Water Company and PERC Water Corporation ("PERC")  
6 entered into a memorandum of understanding ("MOU"), which provides, among other  
7 things, for PERC to design and construct facilities necessary for Arizona Water Company  
8 to provide sewer/wastewater service to developments within the Company's CC&Ns  
9 where no other sewer/wastewater provider exists. Schneider Surrebuttal-Phase II, at 5:20-  
10 6:2, Ex. FKS-11; *see also* Schneider Direct-Phase II, at 14:10-15:16.

11 As another example of Arizona Water Company's commitment to put reclaimed  
12 water to beneficial use, Arizona Water Company partnered with the City of Casa Grande  
13 in preparing the City's reclaimed water master plan; prepared the reclaimed water master  
14 plan for Copper Mountain Ranch; and partnered with the City of Coolidge to develop the  
15 Coolidge water resource plan that includes the use of reclaimed water (incorporating the  
16 Company's CAP recharge and recovery plan into the Coolidge Water Resources Plan).  
17 Schneider Direct-Phase II, at 8:13-9:10 (Coolidge), 12:4-11 (regarding the City of Casa  
18 Grande Reclaimed Water Use Conceptual Master Plan), 12:18-13:3, Exs. FKS-6, FKS-8,  
19 FKS-9; *see also* Schneider Surrebuttal-Phase II, at 15:10-19 (summarizing the time and  
20 cost involved in developing these plans).

21 The Reclaimed Water Use Conceptual Master Plan for the City of Casa Grande and  
22 the Arizona Water Company Pinal Valley Planning Area is itself a comprehensive 90-  
23 page planning document that includes 13 different alternatives for Arizona Water  
24 Company to provide reclaimed water service using Casa Grande's reclaimed water in the  
25 area. *See* Schneider Direct-Phase II, at Ex. FKS-8.

26 Arizona Water Company employs twelve ADEQ certified wastewater collection

1 and wastewater treatment operators. Garfield Direct-Phase II, at 8:16-24; Schneider  
2 Direct-Phase II, at 16:15-25; *see also* Schneider Surrebuttal-Phase II, at 6:7-11 ("Since  
3 2014, Arizona Water has increased the number of certified wastewater operators it  
4 employs by more than 20%.")

5 **C. Original CC&N Extension.**

6 The original Extended CC&N Area the Commission awarded to AWC, which  
7 includes the Cornman Tweedy property, is located between Arizona Water Company's  
8 Casa Grande and Tierra Grande service areas in Pinal County, immediately next to  
9 Arizona Water Company's existing CC&Ns for those service areas and within Arizona  
10 Water Company's Pinal Valley Master Plan for service. Decision No. 66893, Findings of  
11 Fact ("FOF"), ¶ 20. In this brief, the original extension area will be referred to as the  
12 "Extended CC&N Area." In 2002 and 2003, Arizona Water Company received requests  
13 for water service from two developers located within the Extended CC&N Area, one of  
14 which was Cornman Tweedy's immediate predecessor in interest, Florence Country  
15 Estates. *Id.*, FOF, ¶¶ 11-12; Decision No. 60722, FOF, ¶¶ 6, 66, 83. Based on these  
16 requests for service and the Company's ongoing master planning process, Arizona Water  
17 Company sought an extension of its existing CC&N to serve the proposed developments  
18 as well as future developments along Florence Boulevard east of Interstate 10. *See*  
19 Arizona Water Company's Application to Extend Existing Certificate of Convenience and  
20 Necessity (8/12/2003). The Extended CC&N Area that Arizona Water Company sought  
21 included an additional 11 sections of land forming a connecting link between Arizona  
22 Water Company's existing Casa Grande and Tierra Grande CC&Ns. *See* Decision No.  
23 69722, FOF, ¶¶ 55-56, 59, Ex. A. In requesting the Extended CC&N Area for those 11  
24 sections, Arizona Water Company sought to complete an orderly, interconnected water  
25 distribution system in accordance with its Master Plan. *Id.*

26 Arizona Water Company filed its application for the Extended CC&N Area,

1 including the Cornman Tweedy property, nearly thirteen years ago, on August 12, 2003.  
2 Following appropriate notice and public hearing, the Arizona Corporation Commission  
3 granted Arizona Water Company's request in Decision No. 66893 dated April 6, 2004.  
4 Decision No. 66893 at 6. No one--including Robson Communities, Inc. ("Robson"),  
5 Picacho Water Company ("Picacho Water"), Picacho Sewer Company ("Picacho Sewer")  
6 or Cornman Tweedy--sought to intervene, and no members of the public attended the  
7 public hearing held on February 17, 2004. *See id.*, FOF, ¶¶ 8, 10. Following the issuance  
8 of Decision 66893, no one--including Robson, Picacho Water, Picacho Sewer or Cornman  
9 Tweedy--sought a rehearing or challenged the Commission's Decision in court. Decision  
10 No. 66893 thereby became final and immune from collateral attack, no matter what  
11 "changed circumstances" another public service corporation or its developer affiliate  
12 might attempt to create or allege.

13 **D. Cornman Tweedy's Improper Collateral Attacks On Arizona Water**  
14 **Company's CC&N.**

15 In late 2004, after Decision No. 66893 became final following the judicial  
16 rehearing period, Cornman Tweedy purchased real property located within the Extended  
17 CC&N Area. Cornman Tweedy then embarked in an effort to obstruct and frustrate  
18 Arizona Water Company's compliance with the condition in Decision No. 66893 that  
19 Arizona Water Company file a copy of the developers' Certificate of Assured Water  
20 Supply ("CAWS") for the Florence Country Estates, which was within the property  
21 purchased by Cornman Tweedy. *See* Decision No. 66893, Ordering Paragraph, at 7.  
22 Specifically, Cornman Tweedy tried to make it impossible for Arizona Water Company to  
23 provide a CAWS within the time frame provided by Decision No. 66893. Then, using this  
24 purported failure, Cornman Tweedy argued for an automatic extinguishment of Arizona  
25 Water Company's entire Extended CC&N Area, including the Cornman Tweedy property,  
26 so that Picacho Water could sweep in and take all of the Extended CC&N Area from

1 Arizona Water Company. The details of this plot were fully exposed in the initial hearing  
2 of this matter in 2006 (the "2006 hearing"), and formed the basis of Decision No. 69722  
3 confirming that Decision No. 66893 awarding the Extended CC&N Area to Arizona  
4 Water Company is final and unconditional. *See* Decision No. 69722, at pp. 1-3 and FOF  
5 ¶¶ 15-16, 18, 66-82.

6 **E. First Remand Proceeding And Result.**

7 On July 30, 2007, the Commission issued Decision No. 69722, which confirmed  
8 that the CC&N area awarded to Arizona Water Company in Decision No. 66893 is final  
9 and unconditional. *See* Decision No. 69722, FOF, ¶¶ 94-99. In that Decision, the  
10 Commission held that Cornman Tweedy itself had created the circumstances preventing  
11 Arizona Water Company from strictly complying with the CC&N extension conditions,  
12 Decision No. 69722, FOF, ¶ 94, and that "for purposes of compliance, the conditions  
13 placed on Arizona Water's CC&N extension in Decision No. 66893 have been fulfilled."  
14 *Id.*, FOF, ¶ 98. The Commission further recognized that Arizona Water Company  
15 remained a fit entity to serve the Extended CC&N Area. *Id.*, FOF, ¶ 95, and COL, ¶ 3  
16 ("As established in Decision No. 66893, Arizona Water Company is a fit and proper entity  
17 to provide water utility service to the extension area.").

18 In that same Decision, the Commission remanded this case solely "for the purpose  
19 of considering whether the Cornman [Tweedy] property should be *deleted* from the  
20 CC&N extension granted to Arizona Water Company by Decision No. 66893." *Id.*  
21 (emphasis added), FOF, ¶ 102. While the Commission indicated that the remand hearing  
22 "should be broad in scope so that the Commission may develop a record to consider the  
23 overall public interest underlying service to the Cornman property that is included in the  
24 extension area granted by Decision No. 66893," *id.*, FOF, ¶ 104, the Commission made no  
25 provision for any further hearings on the fitness of Arizona Water Company or whether  
26 Picacho Water or some other entity should hold the CC&N to the subject area. Nor did it

1 grant intervention to Picacho Water, Robson, or any other party to present such evidence  
2 or arguments. The Commission expressly recognized that "this proceeding is not the  
3 proper venue for determining whether a different provider will provide service to  
4 Cornman's development." *Id.*, FOF, ¶ 94. Based on the Commission's findings, the  
5 September 5, 2008 Procedural Order in this case further recognized that this remand  
6 proceeding "is not a proceeding to judge the relative merits of two alternative providers as  
7 might be considered in an application for an initial grant of a CC&N." Procedural Order  
8 (9/5/2008) at 9.

9 Cornman Tweedy filed an application for rehearing and reconsideration of  
10 Decision No. 69722 on August 17, 2007. In that pleading (and subsequently filed  
11 testimony), Cornman Tweedy conceded that *James P. Paul* limits matters in the remand  
12 proceeding to whether Arizona Water Company "can provide adequate service to the  
13 Cornman Tweedy property at reasonable rates." Cornman Tweedy's Application for  
14 Rehearing at 1. Cornman Tweedy further conceded that "if the [remand] proceeding is  
15 limited to the narrow issue of whether [Arizona Water Company] can provide adequate  
16 service at reasonable rates, it would be pointless to even proceed with the remand  
17 proceeding." *Id.* at 3 n.5. Cornman Tweedy asked the Commission to reverse its ruling  
18 that Arizona Water Company had fulfilled the conditions in the prior decision. *Id.* at 4.  
19 The Commission denied Cornman Tweedy's Application for Rehearing by refusing to act  
20 on it within 20 days as provided under A.R.S. § 40-253(A). Cornman Tweedy then failed  
21 to seek any further relief from Decision No. 69722 in the superior court. Decision No.  
22 69722 therefore is final as to the issues of public need and necessity for Arizona Water  
23 Company's CC&N in the Cornman Tweedy property, and it is dispositive as to the issues  
24 Cornman Tweedy has attempted to raise in this remand proceeding (either in Phase I or  
25 Phase II).

26 At a procedural conference on October 16, 2007, the parties discussed the issues to

1 be considered on remand. In the procedural order filed November 8, 2007, the  
2 Commission ruled as follows:

3 The Commission previously determined that it is in the public interest for  
4 AWC to hold the CC&N for the Cornman extension area, and that AWC is a  
5 fit and proper entity to provide water utility service to the Cornman extension  
6 area at issue in this remand proceeding. The Commission also determined,  
7 in Decision No. 69722, that it is in the public interest to reopen the record in  
8 this matter. Decision No. 69722 included a finding that there may not be a  
9 current need or necessity for water service in the Cornman extension area,  
10 and that those issues bear further examination and may have some relevance  
11 to the best interests of the area ultimately to be served. The Commission's  
12 determination in Decision No. 69722 that additional proceedings should be  
13 held regarding whether AWC should continue to hold a CC&N for the  
14 Cornman extension area at this time did not place the burden of proof on  
15 AWC regarding whether AWC should continue to hold a CC&N for the  
16 Cornman extension area, but included a finding that as the CC&N holder,  
17 AWC is entitled to appropriate notice and an opportunity to be heard.

18 Thus, the sole remaining issue in Phase I was a determination as to whether or not  
19 Arizona Water Company's CC&N for the Cornman Tweedy property may be legally  
20 deleted under controlling Arizona law. *Id.*, FOF, ¶¶ 101, 102.

21 As proposed by Cornman Tweedy and Arizona Water Company, and with the  
22 acceptance of the Commission Staff and Hearing Division, the first remand proceeding  
23 was conducted without a hearing, based upon the admission of the prefiled testimony into  
24 evidence and the submission of closing briefs by each party.

25 After consideration of the testimony and closing briefs, Judge Nodes issued a  
26 Recommended Order on Remand from Decision No. 69722 ("Recommended Order") on  
November 29, 2010. The Recommended Order correctly provided that the *James P. Paul*  
standard for deletion controlled, stating in relevant part:

27 We find the Commission's broadening of the issues to be considered in the  
28 remand proceeding does not supersede the requirements for deletion from a  
29 CC&N expressed by the Arizona Supreme Court; and having perfected  
30 AWC's CC&N for the Cornman property in Decision No. 69722 by the

1 explicit removal of the prior conditions, Arizona Water is entitled to serve  
2 that property absent an inability or unwillingness to provide service.

3 \* \* \*

4 In this case, Cornman relies primarily on a host of factors that may be  
5 relevant to consideration of competing requests for an initial CC&N, but not  
6 for a determination regarding the deletion from an existing CC&N. For  
7 example, Cornman contends that AWC should not continue to hold the  
8 CC&N for the Cornman property because AWC does not provide integrated  
9 water and wastewater service, there is not a current need for water service for  
10 the Cornman property, and public interest is not served by continuing to  
11 allow AWC to hold the certificate. However, the Arizona Supreme Court  
12 expressly rejected the assertion that the same considerations are relevant in  
13 the determination of initial CC&Ns and subsequent CC&N deletion requests.  
14 In *James W. Paul* [sic], the court discussed the case of *Arizona Corporation*  
15 *Commission v. Arizona Water Co.*, 111 Ariz. 74, 523 P.2d 505 (1974), which  
16 presented a challenge to the Commission's initial grant of a CC&N. In  
17 distinguishing the applicable standards to be applied for considering initial  
18 and deletion requests, the court in *James W. Paul* stated that while in an  
19 initial CC&N request "the public interest is determined by comparing the  
20 capabilities and qualifications of competitors vying for the exclusive right to  
21 provide the relevant service," in the case of a request for deletion from an  
22 existing CC&N area, "the public interest requires that the corporation be  
23 allowed to retain its certificate until it is unable or unwilling to provide  
24 needed service at a reasonable rate." *James W. Paul*, 137 Ariz. at 430, 671  
25 P.2d at 408.

18 Recommended Order, at ¶¶ 155, 157. The Recommended Order further found that  
19 Cornman Tweedy had presented "no evidence that Arizona Water is unwilling or unable  
20 to serve the property at a reasonable cost to customers." *Id.* at ¶ 160. The Recommended  
21 Order contained the following ordering paragraph:

22 IT IS THEREFORE ORDERED that the Certificate of Convenience and  
23 Necessity extension granted to Arizona Water Company by Decision Nos.  
24 66893 and 69722 is hereby reaffirmed on remand.

25 *Id.* at 35. Judge Nodes' thorough and well-reasoned Recommended Order correctly sets  
26 forth Arizona law on the standard for deletion, appropriately applies it to the facts and  
circumstances in this case, and reaches the only possible conclusion under the law and

1 facts presented in this matter.

2 The Commission discussed the Recommended Order during Open Meetings on  
3 December 14, 2010 and February 1, 2011, but the Commission did not adopt a decision.  
4 Instead, at the February 1, 2011 Open Meeting, the Commission voted to send the matter  
5 back to the Hearing Division for further proceedings to determine "whether a public  
6 service corporation, like Arizona Water, in this water challenged area and under the  
7 circumstances presented in this case, is providing reasonable service if it is not able or not  
8 willing to provide integrated water and wastewater services."

9 **IV. ARGUMENT.**

10 Not only must the issues in this case be analyzed under the *James P. Paul* deletion  
11 standard, the evidence proved that Arizona Water Company is ready, willing and able to  
12 provide integrated water and wastewater service to the Cornman Tweedy property.

13 **A. Arizona Water Company Holds An Unconditional CC&N For The**  
14 **Cornman Tweedy Property.**

15 For the reasons shown in the record and summarized above, Arizona Water  
16 Company holds an unconditional CC&N for the Cornman Tweedy property.<sup>1</sup> In Decision  
17 No. 69722, the Commission rightfully rejected Cornman Tweedy's attempts to attack  
18 Arizona Water Company's Extended CC&N Area by artificially creating "changed  
19 circumstances." The Commission found as a conclusion of law that, "[a]s established in  
20 Decision No. 66893, Arizona Water Company is a fit and proper entity to provide water  
21 utility service to the extension area." Decision No. 66893, COL, ¶ 3. The Commission  
22 further ordered as follows:

23 IT IS THEREFORE ORDERED that for purposes of compliance, the  
24 conditions set forth in Decision No. 66893 have been fulfilled.

25 IT IS FURTHER ORDERED that the deadline for compliance with

26 <sup>1</sup> Utilities Division Staff is in agreement. See Staff's Closing Brief (4/4/2016), at 3:22-4:2, 4:18-22.

1 the conditions of Decision No. 66893 is hereby extended to the date of this  
2 Decision.

3 Thus, through Decision No. 69722, the Commission perfected Arizona Water Company's  
4 CC&N for the entirety of the Extended CC&N Area, including the Cornman Tweedy  
5 property, by extending the compliance deadline set by Decision No. 66893 and explicitly  
6 deeming the prior conditions satisfied. Arizona Water Company holds, and has held since  
7 April 2004, the CC&N to serve the Cornman Tweedy property. And under Decision No.  
8 69722, the Company's CC&N is unconditional.

9 **B. Under Arizona Law And *James P. Paul*, The Only Relevant**  
10 **Consideration In This Deletion Proceeding Is Whether Arizona Water**  
11 **Company Is Unable Or Unwilling To Provide Adequate Service At**  
12 **Reasonable Rates.**

13 Commission Decision No. 69722 remanded this matter expressly "for the purpose  
14 of considering *whether the Cornman property should be deleted from the CC&N*  
15 *extension granted to Arizona Water Company* in Decision No. 66893." Decision No.  
16 69722, Order (emphasis added). Accordingly, in this proceeding, the Commission must  
17 now decide whether Cornman Tweedy has proven that the Commission should delete a  
18 portion of Arizona Water Company's unconditional CC&N within Pinal County--not  
19 whether a competing service provider exists, whether a different provider would be more  
20 advantageous, or whether Picacho Water should receive an extension of its own CC&N.  
21 See Decision No. 69722, FOF ¶¶ 94, 101-02; Procedural Order (9/5/2008) at 9.

22 The Commission refused to consider whether a portion of Arizona Water  
23 Company's CC&N should be deleted in Decision No. 69722 because the proceeding  
24 leading to that decision was strictly limited to the question of whether or not Arizona  
25 Water Company should be granted an extension of time in which to comply with the  
26 conditions found in Decision No. 66893 and whether those conditions had been met.  
Decision No. 69722, FOF ¶ 42. Because Cornman Tweedy continued to state its desire to

1 have a portion of the Extended CC&N Area deleted, the Commission inserted language in  
2 Decision No. 69722 providing formal notice to Arizona Water Company that the  
3 Commission would consider whether to delete a portion of Arizona Water Company's  
4 CC&N in a full deletion proceeding on remand, without the necessity of a new docket  
5 being opened. *Id.*, FOF ¶ 102; *see also* Procedural Order (9/5/2008), at 9; Procedural  
6 Order (11/8/2007), at 2.

7 Cornman Tweedy sought a rehearing of Decision No. 69722 pursuant to A.R.S. §  
8 40-253, correctly conceding that the *James P. Paul* case limited the matters on remand to  
9 solely whether Arizona Water Company could provide adequate service to the Subject  
10 Property at reasonable rates. Cornman Tweedy's Application for Rehearing at 1. If the  
11 Commission felt otherwise, it could have accepted rehearing and changed its decision.  
12 But it did not. Cornman Tweedy did not challenge the Decision on appeal. Thus, *both*  
13 Decision No. 66893 and 69722 are now final and immune to collateral attack.

14 Thus, this remand proceeding is limited to whether Cornman Tweedy can meet its  
15 burden to prove by a preponderance of evidence that the Cornman Tweedy Property  
16 should be deleted from Arizona Water Company's unconditional CC&N under Arizona  
17 law. As a matter of law, *James P. Paul* controls here.<sup>2</sup> According to the Arizona  
18 Supreme Court:

19 Once granted, the [CC&N] confers upon its holder an exclusive right to  
20 provide the relevant service for so long as the grantee can provide adequate  
21 service at a reasonable rate. If a [CC&N] within our system of regulated  
22 monopoly means anything, it means that its holder has the right to an  
23 opportunity to adequately provide the service it was certified to provide.  
24 *Only upon a showing that a certificate holder, presented with a demand for  
25 service which is reasonable in the light of projected need, has failed to  
26 supply such service at a reasonable cost to customers, can the Commission  
alter its certificate. Only then would it be in the public interest to do so.*

<sup>2</sup> Utilities Division Staff is in agreement. *See* Staff's Closing Brief (4/4/2016), at 4:3-6.

1 *James P. Paul*, 137 Ariz. at 429, 671 P.2d at 407 (emphasis added). The Supreme Court  
2 further held that "[a] system which did not provide certificate holders with an opportunity  
3 to provide adequate service at reasonable rates before deletion of a certificated area could  
4 be made would be antithetical to the public interest for several reasons." *Id.* Among the  
5 reasons the Court listed are that such a system would result in undesirable price  
6 competition and over-extensive development, and would create disincentives to  
7 certification and investment in rural areas, all of which are explored in more detail in  
8 Section IV.E.4, below. *See id.* at 429-30, 671 P.2d at 407-08.

9 Although Decision No. 69722 stated that this remand proceeding "should be broad  
10 in scope so that the Commission may develop a record to consider the overall public  
11 interest underlying service to the Cornman property," Decision No. 69722, FOF, ¶ 104,  
12 these deletion proceedings must comply with Arizona law enunciated in *James P. Paul*. It  
13 is beyond dispute that the Commission must act consistent with Arizona law and its  
14 constitutional and statutory authority. Thus, the only permissible issues allowed by  
15 Arizona law are those specified by the Supreme Court -- that is, can Arizona Water  
16 Company (1) provide adequate service to the Cornman Tweedy Property (2) at a  
17 reasonable rate?

18 The answers to those questions are incontrovertible, and are dispositive as to the  
19 appropriate result of this hearing. As the Commission already recognized, Arizona Water  
20 Company is a fit service provider. Decision No. 69722, COL, ¶ 3. In addition, Cornman  
21 Tweedy's own witnesses openly admit that Arizona Water Company is a fit and proper  
22 service provider. Transcript at 244:4-11, 244:17-25, 245:8-246:7 (Dr. Fred Goldman  
23 testimony); Transcript at 145:21-147:1 (Steve Soriano testimony); Rebuttal Testimony of  
24 Ernest G. Johnson (7/18/2014) ("Johnson Rebuttal"), at 10:5-9.

25 Further undisputed evidence shows that Arizona Water Company stands ready,  
26 willing and able to provide both water and wastewater service to the Cornman Tweedy

1 property. See Garfield Direct-Phase I, at 4:9-12 (Arizona Water Company remains ready,  
2 willing and able to serve Cornman Tweedy property), 6:10-7:4; Garfield Direct-Phase II,  
3 at 8:3-10:2; Rebuttal Testimony of Fredrick K. Schneider (12/5/2008) ("Schneider  
4 Rebuttal-Phase I"), at 12:5-16 (similar); Schneider Direct-Phase II, at 17:1-9. In fact,  
5 Arizona Water Company specifically obtained the extension of its CC&N, in part, to  
6 provide service to the Cornman Tweedy property pursuant to a request for water service  
7 from the property owner, Cornman Tweedy's immediate predecessor in interest. Decision  
8 No. 69722, FOF ¶ 56.

9 Since receiving a request to serve the Cornman Tweedy property, Arizona Water  
10 Company has prepared to serve that property by updating its Physical Availability  
11 Determination to increase the total water supply available to serve its CC&N area,  
12 updating its Master Plan, completing its Pinal Valley CAP Water Use Plan to allow for  
13 full utilization of Arizona Water Company's Casa Grande and Coolidge CAP allocations,  
14 and completing the interconnection of the company's Casa Grande and Coolidge service  
15 areas. Garfield Direct-Phase I, at 4:1-25, Ex. WMG-15; Schneider Surrebuttal-Phase II, at  
16 4:3-19 (regarding completion of the interconnection), 6:14-14:25 (regarding the  
17 company's CAP Use Plan), Ex. FKS-12. Arizona Water Company has never refused  
18 service to the Cornman Tweedy property, Garfield Direct-Phase I, at 6:21-7:4, has never  
19 been "presented with a demand for service" by Cornman Tweedy, and has never "failed to  
20 supply such service at a reasonable cost to customers." *James P. Paul*, 137 Ariz. at 429,  
21 671 P.2d at 407. Cornman Tweedy has utterly failed to address, let alone establish, that  
22 the *James P. Paul* factors for deletion have all been met in this proceeding. See Cornman  
23 Tweedy Application for Rehearing at 3 n.5. Therefore, no grounds exist under Arizona  
24 law to delete the Cornman Tweedy property from the Extended CC&N Area.

1           **C.    Cornman Tweedy Bears The Burden Of Proving By A Preponderance**  
2           **Of The Evidence That Deletion Of The Cornman Tweedy Property**  
3           **From Arizona Water Company's CC&N Is Appropriate Under *James***  
4           ***P. Paul*.**

5           The Commission remanded this case to consider whether to delete a portion of  
6           Arizona Water Company's CC&N in response to Cornman Tweedy's insistence that  
7           "changed circumstances" warranted such a deletion. Decision No. 69722, FOF, ¶ 100; *see*  
8           *also* Direct Testimony of Jim Poulos (6/12/2006), at 14:3-5 ("Specifically, Cornman  
9           Tweedy requests that the Commission exclude the Cornman Tweedy property from  
10          AWC's CC&N for the reasons that are stated in my testimony."); Direct Testimony of Jim  
11          Poulos (1/4/2008), at 7:25-27 ("Since ... April 2005, Cornman Tweedy has sought to have  
12          the Cornman Tweedy Property excluded from AWC's CC&N."), 20:10-14 ("Cornman  
13          Tweedy requests that the Commission exclude the Cornman Tweedy Property from  
14          AWC's CC&N...."); Rebuttal Testimony of Jim Poulos (2/5/2008) (similar).  
15          Accordingly, Cornman Tweedy is the applicant/complainant pursuing deletion. Pursuant  
16          to Arizona Administrative Code § R14-3-109(G), Cornman Tweedy carries the burden of  
17          proof. *See also James P. Paul*, 137 Ariz. at 429, 671 P.2d at 407 ("Only upon a showing  
18          that a certificate holder, presented with a demand for service which is reasonable in light  
19          of projected need, has failed to supply such service at a reasonable cost to customers, can  
20          the Commission alter its certificate.").

21          Further, Cornman Tweedy must establish by a preponderance of the evidence that  
22          deletion is justifiable under the standard set forth in *James P. Paul*. *See, e.g.*, Decision  
23          No. 67112, FOF, ¶ 9 ("In a Complaint proceeding, the burden of proof is on the  
24          Complainant to go forward and establish, by a preponderance of the evidence, that he has  
25          a valid complaint for which relief can be granted.").<sup>3</sup>

26          <sup>3</sup> Utilities Division Staff agrees that Cornman Tweedy bears the burden of proving  
deletion is appropriate by a preponderance of the evidence. *See* Staff's Closing Brief  
(4/4/2016), at 12:3-13:11.

1           **D. The Analysis Relevant To An Initial CC&N Determination, Such As**  
2           **Was Applied In *Woodruff*, Does Not Apply Here.**

3           Arizona Water Company holds an unconditional CC&N for the Cornman Tweedy  
4           property. In seeking to delete that CC&N, Cornman Tweedy improperly asserts that the  
5           Commission must consider evidence and weigh the relative attributes of Arizona Water  
6           Company and Picacho Water as if it were deciding between two competitors vying for an  
7           uncertificated area, which is not the case here. In doing so, Cornman Tweedy argues that  
8           the Commission has expressed a view that integrated water and wastewater providers are  
9           superior to standalone providers and relies upon the Woodruff matter in support of that  
10          assertion. *See* Johnson Rebuttal, at 19:22-30; Rejoinder Testimony of Ernest G. Johnson  
11          (2/1/2016), at 19:22-20:3.

12          In 2004, Woodruff Water Company, Inc. ("WWC") and Woodruff Utility  
13          Company, Inc. (collectively "Woodruff") filed applications for CC&Ns with the  
14          Commission to provide public water and public wastewater service to a 3,200 acre parcel,  
15          referred to as the "Sandia parcel." Consolidated Docket Nos. W-04265A-04-0439, SW-  
16          04265A-04-0439, and W-01445A-04-0755, Decision No. 68453, FOF, ¶ 1. Also in 2004,  
17          Arizona Water Company filed an application to, in part, extend its CC&N for the Sandia  
18          parcel and other surrounding parcels. *Id.*, FOF, ¶ 4. Prior to these applications, no one  
19          held a CC&N for the Sandia parcel or had provided service to said parcel. *Id.*, FOF, ¶ 7.  
20          The *competing* CC&N applications of Woodruff and Arizona Water Company were  
21          consolidated and the parties presented evidence in support of their applications through a  
22          5-day hearing before Judge Marc Stern. *Id.*, at 2-5. Ultimately, the Commission granted  
23          the CC&N for the Sandia parcel to Woodruff Water Company.<sup>4</sup> *Id.*, COL, ¶¶ 6, 9. In

24          

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25          <sup>4</sup> In his Recommended Order & Opinion, Judge Stern held that the factors favored  
26          Arizona Water Company and that Arizona Water Company should be granted the CC&N  
        for the Sandia parcel. However, the Commission modified that Recommended Order  
        through amendments offered by then-Chairman Kris Mayes that were approved by a  
        different Commission than exists today.

1 making that determination, the Commission found "that the competing applications of  
2 WWC and AWC have approximately equal merit." Decision No. 68453, FOF, ¶ 129.  
3 The Commission, however, elected to grant the certificate to WWC. *Id.*, FOF, ¶¶ 129.2,  
4 129.5.

5 The present case is clearly distinguishable from the Woodruff case. This matter  
6 does not involve competing CC&N applications between utilities because Arizona Water  
7 Company already holds an unconditional CC&N for the Cornman Tweedy property. The  
8 Commission already determined that Arizona Water Company is a fit and proper provider  
9 of service for the Cornman Tweedy property and that it would serve the public interest to  
10 grant Arizona Water Company an extension of its CC&N. As the Supreme Court  
11 explained in *James P. Paul*, the only material inquiry here is whether Arizona Water  
12 Company is unable or unwilling to provide adequate service at reasonable rates.

13 **E. Deletion of Arizona Water Company's CC&N Is Not Justifiable Even**  
14 **Under The Current Remand Inquiry Set Forth In The February 10,**  
15 **2011 Procedural Order.**

16 Even if the Commission considers the improper and irrelevant testimony and  
17 evidence presented by Cornman Tweedy on remand, which it should not, deletion of a  
18 portion of Arizona Water Company's CC&N is still improper. In *James P. Paul*, the  
19 Arizona Supreme Court expressly rejected use in a deletion proceeding of the public  
20 interest standards that are applicable to the initial grant of a CC&N. 137 Ariz. at 430, 671  
21 P.2d at 408. Rather, the Arizona Supreme Court made clear that the public interest  
22 requires that the holder of a CC&N maintain it for as long as the grantee can provide  
23 adequate service at a reasonable rate. *Id.* at 429, 671 P.2d at 407. Yet Cornman Tweedy  
24 improperly urges the application of the standards related to an initial CC&N grant in  
25 asserting that deletion of the Cornman Tweedy property from the Extended CC&N Area  
26 is appropriate on grounds that Cornman Tweedy is not interested in having Arizona Water  
Company serve that property, there is no present need for service, and its captive utilities

1 could provide integrated water and wastewater service. Cornman Tweedy's self-interest  
2 (and that of its captive utilities) is not equivalent to the general public interest relevant  
3 under *James P. Paul*. See also Surrebuttal Testimony of Paul Walker (1/11/2016)  
4 ("Walker Surrebuttal"), at 11:20-15:20. Regardless, an examination of the totality of the  
5 evidence presented in this docket reveals that Arizona Water Company remains the fit and  
6 proper entity entitled to hold the CC&N for the Cornman Tweedy property.<sup>5</sup>

7 **1. Although the Cornman Tweedy property Is Located within a**  
8 **Water Challenged Area, Arizona Water Company's Stewardship**  
9 **Helps Replenish and Preserve the Aquifer.**

10 It is undisputed that the Pinal AMA, which includes the Cornman Tweedy  
11 property, is a water challenged area. The Pinal AMA has a long history of groundwater  
12 overdraft, shown by declining groundwater levels and land subsidence. Garfield  
13 Surrebuttal-Phase II, at 4:15-16; Direct Testimony of Rita P. Maguire (5/30/2014)  
14 ("Maguire Direct"), at 6:3-23. Although the Pinal AMA is primarily an agricultural  
15 region, it is expected to experience rapid population growth over the next several decades.  
16 Maguire Direct, at 9:10-22. The Pinal AMA has a generous groundwater allowance,  
17 which reduces groundwater replenishment obligations there and minimizes incentives for  
18 new developments to use renewable water supplies in lieu of pumping groundwater.  
19 Surrebuttal Testimony of Rita P. Maguire (1/11/2016) ("Maguire Surrebuttal"), at 4:9-16.  
20 As a consequence, there is a rapidly increasing drawdown of groundwater supplies in  
21 Pinal Valley aquifers. Maguire Direct, at 9:10-11:13. "Without the importation of CAP  
22 water into the AMA and a commensurate replenishment obligation to replace pumped  
23 groundwater supplies with renewable water supplies, very real concerns exist that

24 <sup>5</sup> While the evidence and testimony prove that Arizona Water Company is the proper  
25 entity to serve the Cornman Tweedy property, Arizona Water Company expressly  
26 reserves its challenge of the inappropriate re-application of the initial public interest  
standard to this deletion proceeding, and does not waive that argument by now addressing  
Cornman Tweedy's arguments from the perspective of the hearing being an initial CC&N  
extension case into an uncertificated area between two competing applicants, which it is  
not.

1 'physically available groundwater' as defined by the Assured Water Supply ("AWS")  
2 program will soon be exhausted in parts of the Pinal AMA." Maguire Surrebuttal, at 4:19-  
3 23. Long term drought conditions and reductions in the CAP Agricultural Pool are  
4 expected to exacerbate the drawdown of groundwater supplies in the Pinal AMA over the  
5 next several years. *Id.* at 4:23-5:4.

6 As explained by Rita Maguire, "the only way to ensure a long-term sustainable  
7 supply of water in a declining aquifer, [such as the Pinal AMA], is to import a new source  
8 of water for use in the basin." Maguire Surrebuttal, at 3:4-6. The evidence shows that  
9 Arizona Water Company holds two contracts for CAP water within the Pinal AMA and  
10 that Arizona Water Company will use that renewable resource to recharge the aquifer. *Id.*  
11 at 3:19-4:5; Schneider Surrebuttal-Phase II, at 10:10-22, Fig. 3, 13:24-14:25. The  
12 evidence further shows that Arizona Water Company's importation of CAP water into the  
13 Pinal AMA will reduce its use of groundwater by 50% by 2019. 11:13-13:23, Ex. FKS-  
14 12. By contrast, the evidence in the record shows that Robson-affiliated utilities rely  
15 primarily on groundwater for their initial water supply and that any reclaimed water those  
16 utilities use to recharge the aquifer replace some, but not all, of the groundwater initially  
17 withdrawn to serve their customers. *See, e.g.,* Garfield Surrebuttal-Phase II, at 5:18-7:16,  
18 8:22-9:19; Transcript at 103:16-133:12. "This business model does not stop the decline of  
19 the water table in an over-subscribed basin." *See* Maguire Surrebuttal, at 2:15-3:8.

## 20 **2. Arizona Water Company Provides Reasonable Service.**

21 In remanding this case back to the Hearing Division for further proceedings, the  
22 Commission directed that the proceedings should determine, in part, whether a public  
23 service corporation, like Arizona Water Company, is providing "reasonable" service "if it  
24 is not able or not willing to provide integrated water and wastewater services." Procedural  
25 Order (2/10/2011), at 2. Of course, the record in this case clearly shows that Arizona  
26 Water Company provides reasonable service and that Arizona Water Company is ready,

1 willing and able to provide integrated water and wastewater service to the Cornman  
2 Tweedy property.

3 As recognized by the Hearing Division, the language used by the Commission  
4 "does not derive directly from any provision of the Arizona Constitution or from any of  
5 the statutes or rules governing the Commission's granting, revocation, or alteration of  
6 CC&Ns." Procedural Order (12/9/2015), at 12. Rather, under *James P. Paul*, the  
7 applicable standard for deletion of an existing CC&N is whether the public service  
8 corporation is providing "adequate" service at reasonable rates. 137 Ariz. at 429, 671 P.2d  
9 at 407. The only Arizona statute that addresses the reasonableness or unreasonableness  
10 of service is A.R.S. § 40-321, which provides as follows:

11 A. When the commission finds that the equipment, appliances, facilities or  
12 service of any public service corporation, or the methods of manufacture,  
13 distribution, transmission, storage or supply employed by it, are unjust,  
14 unreasonable, unsafe, improper, inadequate or insufficient, the commission  
15 shall determine what is just, reasonable, safe, proper, adequate or sufficient,  
16 and shall enforce its determination by order or regulation.

17 The typical § 40-321 proceeding usually arises by the Commission issuing an order  
18 to show cause. Then, the Commission issues corrective orders that address the unjustness  
19 or impropriety or inadequacy of service, and provides that the public service corporation  
20 will furnish such services, in this case water, within the time and upon the conditions  
21 proscribed. *See, e.g., In re Truxton Canyon Water Co., Ariz. Corp. Comm'n, Docket No.*  
22 *W-02168A-10-0247* (investigating failure to comply with Commission rules and  
23 regulations); *In re Carl Harvey d/b/a Golden Corridor Water Co., Ariz. Corp. Comm'n,*  
24 *Docket No. W-02497A-06-0580* (same); *In re Desert Hills Water Co., Inc., Ariz. Corp.*  
25 *Comm'n, Docket No. W-02124A-06-0379* (same); *Ariz. Corp. Comm'n v. Holiday Hills*  
26 *Water Co., Ariz. Corp. Comm'n, Docket No. W-01638A-97-0311* (complaint proceedings  
for, among other things, violations of A.R.S. § 40-321). Here, no one has presented any  
evidence of any improprieties, nor has any order to show cause been issued or directives

1 issued by Staff or the Commission requiring Arizona Water Company to take any  
2 particular actions to remedy a service issue. In fact, the record shows that Arizona Water  
3 Company has met all the conditions necessary to hold the CC&N for the Cornman  
4 Tweedy property, that Arizona Water Company is a fit and proper entity to serve the  
5 Extended CC&N Area (which includes the Cornman Tweedy property), and that Arizona  
6 Water Company has prepared comprehensive plans for providing adequate service at  
7 reasonable rates to the Cornman Tweedy property. Decision No. 69722, FOF, ¶¶ 95, 98-  
8 99; Schneider Direct-Phase II, at 4:1-13:17, Exs. FKS-2, FKS-3, FKS-5; Schneider  
9 Rebuttal-Phase II, at 15:1-19. A.R.S. § 40-321 does not provide an avenue for Cornman  
10 Tweedy or its affiliates to request the Commission to delete the Cornman Tweedy  
11 property from Arizona Water Company's CC&N.

12 To the extent the term "reasonable" is intended to be synonymous with "adequate,"  
13 the record also shows that Arizona Water Company is able and willing to provide  
14 reasonable service to the Cornman Tweedy property. The Commission already made that  
15 determination, and reaffirmed it. Decision No. 66893; Decision No. 69722. Cornman  
16 Tweedy's own witnesses acknowledge that Arizona Water Company is able to provide  
17 reasonable water service. Transcript, at 216:16-21 (Testimony of Paul Hendricks: "Q:  
18 And where a stand-alone water company is not able to integrate because there is another  
19 sewer utility operating there, ... is there any reason why a stand-alone water company  
20 wouldn't be able to provide reasonable service? A. For water service, no."); Transcript, at  
21 245:8-246:7 (Testimony of Dr. Fred Goldman).

22 Furthermore, the question of whether a public service corporation, like Arizona  
23 Water Company, is providing "reasonable" service in this water challenged area, is best  
24 answered by determining how the public service corporation deals with water supply  
25 challenges in compliance with the State of Arizona's statewide water management  
26 policies. As explored at length below, Arizona Water Company has consistently

1 demonstrated its ability to address water supply issues consistent with Arizona's  
2 statewide water management policies and in a manner that exceeds the basic requirements  
3 of Arizona statutes and regulations, while at the same time providing safe, reliable, and  
4 adequate service at reasonable rates to its customers.

5 **3. Arizona Water Company Is Ready, Willing and Able to Provide**  
6 **Integrated Water and Wastewater Service to the Cornman**  
7 **Tweedy property.**

8 **a. Integration-related issues raised by these proceedings.**

9 As summarized above, Arizona Water Company has extensive experience  
10 cooperating with other utilities to provide water and wastewater services in a manner that  
11 meets Arizona's statewide water policy goals. As a further example, Arizona Water  
12 Company cooperates with Mountain Pass Utility Company (a Robson utility) to ensure  
13 that reclaimed water is used at the Saddlebrooke Ranch development, which is located  
14 entirely within Arizona Water Company's CC&N and to which Arizona Water Company  
15 provides water utility service. *Id.* at 11:9-11.

16 The evidence in the record shows that Arizona Water Company is ready, willing  
17 and able to provide wastewater service in those areas where it provides water service,  
18 where there is a need for wastewater service, and where there is no existing capable or  
19 certificated wastewater provider already established. Like many parts of the state, there  
20 are qualified wastewater providers already providing wastewater service within Arizona  
21 Water Company's Pinal Valley service area. Thus, to date, because wastewater providers  
22 already exist in each area in its Pinal Valley service area, there has been no need for  
23 Arizona Water Company to furnish wastewater service. Schneider Direct-Phase II, at 14,  
24 Ex. FKS-10.

25 As shown by the evidence in the record, Arizona Water Company, even when  
26 acting as a stand-alone water utility, is able to provide reasonable, safe, and reliable water  
service (whether surface water, ground water, reclaimed water, or CAP water, or a

1 combination of all of those) to its customers in a manner that embraces Arizona's water  
2 policies and protects Arizona's scarce groundwater resources. Seen through this  
3 perspective, integration is not necessary for Arizona Water Company to provide  
4 reasonable service in a water-challenged area like the Pinal AMA. *See* Maguire Direct, at  
5 16:13-25.

6 Moreover, as the evidence in the record proves, developer-owned utilities,  
7 including those that purport to provide integrated water and wastewater services, do not  
8 always behave in a manner consistent with the State's water policies and best water  
9 management practices. Maguire Direct, at 13:16-16:12.

10 For instance, Robson's Quail Creek development, located in Sahuarita, receives  
11 water service from the Robson-affiliated water utility Quail Creek Water Company  
12 ("Quail Creek Water") and the Robson-affiliated development entity Robson Ranch Quail  
13 Creek, LLC ("RRQC"). In 2014, Quail Creek Water used 544.21 acre feet of groundwater  
14 and RRQC used 664.23 acre feet of groundwater, for a total of 1,208.44 acre feet of  
15 groundwater used at Quail Creek. Transcript, at 354:13-355:17, Ex. AWC-18; Garfield  
16 Surrebuttal-Phase II, at 6:16-7:6, Ex. WMG-4. Approximately 700 acre feet of that total  
17 was used for turf within the development. Transcript, at 355:21-22, Ex. AWC-18.  
18 However, in 2014, RRQC also purchased 1,496.20 acre feet of reclaimed water from Pima  
19 County. Transcript, at 356:6-24, Ex. AWC-18. The amount of reclaimed water  
20 purchased by RRQC could have met the turf water requirements for Quail Creek twice  
21 over in 2014. But instead, RRQC put 100 per cent of that reclaimed water into storage.  
22 For 2014, neither Quail Creek Water nor RRQC reported recovering any reclaimed water  
23 or directly delivering reclaimed water to Quail Creek, or recovering reclaimed water to  
24 offset the use of groundwater for the benefit of Quail Creek Water Company's customers,  
25 even though RRQC had 16,745.22 acre-feet of available reclaimed water in storage as of  
26 December 31, 2014. Transcript, at 356:6-357:19, Ex. AWC-18; Garfield Surrebuttal-

1 Phase II, at 6:16-7:6; *see also* Transcript, at 110:23-111:9 (Testimony of Cornman  
2 Tweedy witness Steve Soriano: "Q. Is any drop of the water we see in 1:55 or any of the  
3 other Quail Creek lakes treated effluent? A. No. Q. Okay. So everyone of the lakes we  
4 have seen at Quail Creek is 100 percent filled and maintained by mined groundwater,  
5 correct? ... A. It is groundwater."). All of the water requirements for Quail Creek were  
6 met with groundwater in 2014. The sole benefits of holding the RRQC water in storage  
7 went to Robson's private business interests, not to Robson's water or wastewater  
8 customers.

9         Meanwhile, also in 2014, RRQC sold 414 acre-feet of water storage credits to  
10 Robson Ranch Mountains LLC, the Robson affiliate who owns the golf course at  
11 Saddlebrooke Ranch. Transcript, at 357:21-358:7, Ex. AWC-18. The Saddlebrooke  
12 Ranch development, including the golf course, is enrolled as a member land in the Central  
13 Arizona Groundwater Replenishment District ("CAGRDR") and, as a result, any  
14 groundwater delivered to the golf course must be replenished at a cost of \$615 per acre-  
15 foot (as of 2015). Although Robson Ranch Mountains served the Saddlebrooke Ranch  
16 golf course with water pumped from the aquifer beneath it, it avoided its CAGRDR  
17 replenishment fees by buying credits from RRQC at a lower cost, which were credits that  
18 RRQC had obtained by storing water at the Quail Creek development in an aquifer 50  
19 miles away from Saddlebrooke Ranch. Transcript, at 117:17-119:15, 122:6-125:12  
20 (testimony of Cornman Tweedy witness Steve Soriano admitting these facts).

21         In touting the benefits of integrated water and wastewater service, Cornman  
22 Tweedy also held up Robson Ranch Sun Lakes development ("Sun Lakes"), near  
23 Chandler, as the "model" of what integrated water and wastewater utilities can achieve.  
24 *See* Soriano Rebuttal-Phase II, at 5:2-16; Soriano Rejoinder-Phase II, at 4:18-5:4;  
25 Goldman Direct-Phase II, at 8:8-24; Poulos Direct-Phase I (1/4/2008), at 9:24-26 ("[T]he  
26 Pima Utility Company model at Sun Lakes should be emulated whenever possible....").

1 Pima Utility is the utility provider for Sun Lakes for both water and wastewater.  
2 Transcript, at 129:6-8. In 2014, Pima Utility pumped 5,982.13 acre-feet of groundwater  
3 and produced 1,174.13 acre-feet of reclaimed water. Transcript, at 360:4-361:24, Ex.  
4 AWC-19; Garfield Surrebuttal-Phase II, at Ex. WMG-3. With respect to the reclaimed  
5 water, Pima Utility put 651.45 acre-feet to direct use and sent the balance of 522.68 acre-  
6 feet to storage, where, as of December 31, 2013, Pima Utility had 3,245.33 acre-feet of  
7 reclaimed water in storage. Transcript, at 361:25-362:7, Ex. AWC-19. Of the reclaimed  
8 water it had in storage, Pima Utility only recovered 68.34 acre-feet in 2014 for use in Sun  
9 Lakes. Transcript, at 362:9-11, Ex. AWC-19. It transferred 52 acre-feet of the Sun Lakes  
10 credits to another Robson development located in Goodyear known as Pebble Creek to  
11 allow Pebble Creek to pump groundwater for use in its lakes. Transcript at 132:8-12  
12 (Testimony of Steve Soriano: "Q. Okay. The credits we talked about that Pima Utility  
13 has accrued or stored, some of those credits are conveyed or sold to Pebble Creek to allow  
14 PebbleCreek to pump groundwater for use in these lakes, correct? A. Correct."); 690:18-  
15 20, 691:1-6 (testimony from Steve Soriano confirming credits sold to Pebble Creek). Sun  
16 Lakes' total turf water use (both groundwater and reclaimed water) for 2014 was 3,060.66  
17 acre-feet. Transcript, at 364:13-18, Ex. AWC-19. Of that total, 717.79 acre-feet was  
18 reclaimed water (either direct use or recovered). Thus, despite representations that  
19 "Robson Communities are designed to operate using effluent to fill, to irrigate the golf  
20 course and fill the lakes," *see, e.g.* Transcript at 127:23-128:4 (S. Soriano testimony), the  
21 development produces less than 25 percent of the total supply of water needed for turf  
22 from reclaimed water at full buildout--the balance comes from groundwater. *Id.* at 166:6-  
23 16, 364:23-365:1. Moreover, Pima Utility fails to use all of its credits to offset pumping  
24 at Sun Lakes, opting instead to save them or transfer credits over to another Robson-  
25 affiliated entity outside of the area for Robson's private business gain. *Id.* at 365:2-15.

26 Importantly, Cornman Tweedy utterly failed to rebut Mr. Garfield or Ms. Maguire's

1 testimony concerning these credits and transfers and how these machinations flout  
2 Arizona water policy.

3 The evidence here proves that the developer-owned utility model can create  
4 incentives that are contrary to Arizona's water management policy because of competing  
5 interests--maximizing the value of the development on the one hand versus sound water  
6 policy on the other. Robson especially has exploited this model for its own economic  
7 benefit. These conflicting interests rarely place a priority on best water management  
8 practices. Transcript, at 561:7-562:14 (testimony of R. Maguire opining that the Robson-  
9 affiliated businesses' water usage is not consistent with good Arizona water policy  
10 management). As demonstrated by the examples of Pebble Creek and Quail Creek,  
11 Robson-affiliated entities had the ability to offset their use of groundwater through stored  
12 reclaimed water for the benefit of customers of their captive water companies, but chose  
13 not to do so. In a water challenged area like the Pinal AMA, with a history of  
14 groundwater overdraft and land subsidence, the Robson-affiliated utilities have a proven  
15 track record of acting contrary to Arizona's water management policies in favor of their  
16 own bottom line. Transcript, at 594:6-596:5. By comparison, Arizona Water Company  
17 has chosen to go above and beyond bare minimum legal requirements to reduce  
18 groundwater pumping in the Pinal AMA by utilizing its renewable CAP supplies, Maguire  
19 Surrebutal, at 3:20-5:3, and entering into significant regional compacts for integrated  
20 service such as the AWC-Global Settlement Agreement.

21 If Picacho Sewer were willing, Arizona Water Company would be able to  
22 coordinate the use of reclaimed water within the Cornman Tweedy property, much like  
23 Arizona Water Company has coordinated for such service with the City of Casa Grande.  
24 Schneider Direct-Phase II, at 13:4-8. Notably, however, neither Cornman Tweedy, nor  
25 Robson have ever approached Arizona Water Company about providing reclaimed water  
26 or wastewater service. Garfield Direct-Phase II, at 9:23-10:2; Transcript, at 135:4-136:4

1 (Mr. Soriano admits neither he, nor anyone else from Cornman Tweedy or Robson, has  
2 ever approached Arizona Water Company about delivery of Picacho Sewer Company's  
3 reclaimed water within the Cornman Tweedy property). Nor has Cornman Tweedy or  
4 Robson approached Arizona Water Company about an integrated plan of service, such as  
5 the one the Commission found just and reasonable in its AWC-Global Settlement  
6 Decision. Transcript, at 270:12-16 (Dr. Goldman testimony admitting no known  
7 discussions).

8                   **b. Cornman Tweedy and other Robson-affiliated entities**  
9                   **have made it impossible for Arizona Water Company to**  
10                   **perform integrated water and wastewater service at the**  
11                   **Cornman Tweedy property because Picacho Sewer**  
12                   **continues to hold the wastewater CC&N.**

13           The question of whether Arizona Water Company is able or willing to provide  
14 integrated water and wastewater service to the Cornman Tweedy property is largely moot  
15 in any event. Picacho Sewer currently holds the CC&N to provide wastewater service to  
16 the Cornman Tweedy property. *See* Decision No. 67670. Accordingly, unless and until  
17 the Commission deletes Picacho Sewer's CC&N, Arizona Water Company is not  
18 permitted to provide wastewater service to the Cornman Tweedy property. Nonetheless,  
19 if the Commission decides that reasonable service and the public interest require that  
20 Arizona Water Company provide integrated water and wastewater service to the Cornman  
21 Tweedy property, Arizona Water Company is without question both able and willing to do  
22 so. Garfield Direct-Phase II, at 12:1-13; Schneider Direct-Phase II, at 17:1-9.

23                   **4. A Commission Decision to Delete Arizona Water Company's**  
24                   **CC&N for the Cornman Tweedy Property Will Have Far**  
25                   **Reaching Implications that Greatly Harm the Public Interest.**

26           In remanding this matter once again to the Hearing Division, the Commission  
framed the inquiry to apply to "a public service corporation, like Arizona Water."  
Procedural Order (2/10/2011), at 2. Using the generic term "public service corporation,"  
and identifying Arizona Water Company as a mere example through the word "like,"

1 makes clear that the Commission is inquiring generally as to whether a utility in a water  
2 challenged area under like circumstances is providing reasonable service if it is not able or  
3 not willing to provide integrated services, even though the record on remand proves that  
4 the Company is able and willing to do so. Even if the language used by the Commission  
5 is construed narrowly to apply solely to Arizona Water Company (which would constitute  
6 an illogical departure from the plain language), a decision deleting the Cornman Tweedy  
7 property would set a precedent that others would rely upon, much like Cornman Tweedy  
8 has tried to rely on the *Woodruff* case in this proceeding.

9 The issue raised by the Commission is also unique. It appears that there has never  
10 been any prior case in which the Commission considered deleting a CC&N on the grounds  
11 that the utility was not providing integrated water and wastewater service. Direct  
12 Testimony of Paul Walker ("Walker Direct"), at 7:3-8; *see also* Procedural Order  
13 (12/9/2015), at 5. The remand issue from the February 10, 2011 Procedural Order makes  
14 this an all encompassing, precedent-setting decision that will adversely impact 270+  
15 water-only certificated public service corporations.

16 Deleting the Cornman Tweedy property from Arizona Water Company's CC&N --  
17 a result sought by Cornman Tweedy -- would constitute horrific public policy, as  
18 illustrated by present circumstances. Allowing CC&Ns to be revoked or deleted based on  
19 the schemes of private developers who manipulate circumstances in an attempt to poach  
20 existing CC&N areas, as well as economic recessions and the inevitable ebbs and flows of  
21 the housing market, would result in ever-changing and uncertain CC&N configurations  
22 that would open and close over time depending on local demands and economic  
23 conditions, despite the fact that a utility is providing safe, adequate and reliable service.  
24 Walker Direct, at 5:23-8:2. No utility could make any meaningful plans (like Arizona  
25 Water Company's Pinal Valley Water Service Master Plan) or invest in infrastructure with  
26 any certainty because, if Cornman Tweedy had its way, CC&Ns could suddenly be

1 deleted or carved up based on the ephemeral plans of landowners and developers and  
2 variable economic cycles outside of the utility's control. Walker Direct, at 8:3-9; Walker  
3 Surrebuttal, at 9:2-11:1. Such a result would destroy the very purpose for the  
4 Commission's grant of a CC&N, and such an argument rightfully has no place in a  
5 deletion proceeding. *James P. Paul*, 137 Ariz. at 429-30, 671 P.2d at 407-08; *see also*  
6 Decision No. 69722, FOF, ¶ 94.

7 The precedent established by deleting the Cornman Tweedy property from Arizona  
8 Water Company's CC&N will have far-reaching ramifications: "...integrated municipal  
9 providers will target unserved CC&N areas for deletion; developers with plans in water-  
10 only CC&N will also likely do the same; and, frankly, integrated providers will likely start  
11 looking at CC&N areas bordering theirs, serviced by water-only providers, and seriously  
12 considering making similar filings. The result will be, I'm afraid, a host of cases like this  
13 one; all probably heading to the Supreme Court--a vast waste of Commission time,  
14 resources, and its credibility as an entity turning its focus to addressing water issues under  
15 the new Chairman's direction." *See* Walker Surrebuttal, at 11:8-18. The circumstances at  
16 issue here make that particularly likely. *See id.*, at 11:20-15:20.

17 Even limited to the present circumstances, a decision to delete the Cornman  
18 Tweedy property from Arizona Water Company's CC&N is bad policy. Here, deletion of  
19 Cornman Tweedy's property from Arizona Water Company's CC&N so that Picacho  
20 Water can serve an isolated peninsula of land that protrudes into and is surrounded by  
21 Arizona Water Company's water system would result in inefficiencies, needless  
22 duplication of water facilities, a loss of reliability and the loss of economies of regional  
23 scale. *See* Garfield Direct-Phase I, at 5:24-6:8. Deletion would also injure Arizona Water  
24 Company and its CC&N, because Arizona Water Company would be left to develop and  
25 operate a water system that surrounds the Cornman Tweedy property, but with that  
26 property served by a separate stand-alone water system lacking the capacity, resources

1 and scale of operations that Arizona Water Company brings to its CC&N. Decision No.  
2 69722, Ex. A; Schneider Rebuttal-Phase I, at 6:8-7:19, 9:11-24. Such a result would  
3 disrupt the orderly interconnection of Arizona Water Company's Pinal Valley CC&N  
4 areas and the provision of service to neighboring properties. *See, e.g.*, Transcript, at  
5 552:21-553:20; Schneider Direct-Phase II, at Ex. FKS-2 (current Pinal Valley Master  
6 Plan). The result is also unfair as applied to Arizona Water Company, which has  
7 demonstrated throughout the years its support of and adherence to Arizona's statewide  
8 water conservation and water supply management policies.

9 **5. Even if the Commission Were to Consider the Relative Merits**  
10 **between Arizona Water Company and Picacho Water as if this**  
11 **Were an Initial Grant of a CC&N, There Is No Question that**  
12 **Arizona Water Company Is Ready, Willing, and Able to Provide**  
13 **Safe, Reliable, and Reasonable Service to the Cornman Tweedy**  
14 **Property.**

15 Arizona Water Company is a steward of water in the Pinal AMA. For 60 years  
16 now, Arizona Water Company has been the predominant water service provider in that  
17 area, and Arizona Water Company has been a dominant player in all the local, municipal,  
18 regional and state water commissions and boards. Arizona Water Company embraces the  
19 role it plays as a steward of Arizona's water resources and has a proven track record of  
20 wise and beneficial groundwater management in the areas it serves. With respect to the  
21 Pinal AMA in particular, the company's president, William M. Garfield, served as  
22 chairman for the water management subcommittee of the Pinal AMA's Groundwater  
23 Users Advisory Council ("GUAC"), whose conclusions and recommendations led to  
24 modification of the AWS rules to place additional restrictions on subdivision access to  
25 groundwater. Maguire Direct, at 9:23-10:9. In addition, Arizona Water Company holds  
26 two subcontracts for CAP water that represent 70% of municipal and industrial surface  
water deliveries in the Pinal AMA. *Id.* at 11:3-4. Arizona Water Company's CAP  
recharge and recovery plan will reduce the drawdown of groundwater by 50 per cent

1 annually from the sub-basins in which Arizona Water Company's CC&Ns (as well as  
2 Picacho's CC&N) are located. *Id.* at 11:1-13.

3 In the context of "water challenged areas," reasonable service by a water or  
4 wastewater utility means effectively managing and preserving local groundwater supplies  
5 by recharging, storing and recovering renewable water supplies, whether integrated or not.  
6 The evidence shows that Arizona Water Company is in fact reducing the drawdown of  
7 precious local groundwater supplies. The Robson-affiliated entities, by comparison,  
8 continue to draw down the area's already beleaguered groundwater supplies, while  
9 padding their bank of recharge credits in furtherance of their own private business  
10 interests. As Rita Maguire testified: "It is clear that Arizona Water Company has chosen  
11 to exceed the bare minimum legal requirements of the state's Groundwater Management  
12 Code by committing to the use of CAP water in an area where it really makes a difference.  
13 Arizona Water's track record of water supply stewardship in its Pinal Valley service area  
14 is consistent with the state's best water conservation policies. From what I have  
15 researched, the same cannot be said of the Robson-owned water utilities...." Maguire  
16 Surrebuttal, at 5:21-6:7.

17 **F. Cornman Tweedy's Alleged Present Lack Of Need For Service, Or Its**  
18 **Stated Preference For Integrated Water And Wastewater Service,**  
19 **Cannot Justify Deletion.**

20 Cornman Tweedy places great emphasis on the purported present lack of need for  
21 service to its property to justify deleting a portion of Arizona Water Company's CC&N.  
22 However, an examination of the evidence and sound public policy reveal that the  
23 purported lack of current need emphasized by Cornman Tweedy does not justify deleting  
24 any portion of Arizona Water Company's CC&N. As an initial matter, the alleged lack of  
25 a current need for service to the Cornman Tweedy property cannot support deletion of  
26 Arizona Water Company's existing CC&N as a matter of law. Neither *James P. Paul* nor  
any other Arizona case provides that a recession or a temporary ebb in development

1 within the area of an existing CC&N is a legitimate basis for a CC&N deletion where, as  
2 here, the CC&N has already been granted and that grant is final in every respect.

3 In *James P. Paul*, the Arizona Supreme Court held that deletion of a certificate  
4 holder's CC&N without a demonstration that the certificate holder had been presented  
5 with a demand for service and had failed to supply such service at reasonable cost to  
6 customers would be "antithetical to the public interest for several reasons." *James P.*  
7 *Paul*, 137 Ariz. at 429, 671 P.2d at 407. Among the reasons enumerated by the Court (all  
8 of which apply here) was that such a deletion would discourage service to presently  
9 sparsely populated areas because CC&N holders would not be assured of the future  
10 opportunity to provide service as development occurred. *Id.* at 430, 671 P.2d at 408.  
11 Implicit in the Court's concern was a recognition that the grant of a CC&N is appropriate  
12 even though there may not be any current demand for service, especially where, as here,  
13 the area bridges two existing CC&N areas and the existing utility has been planning to  
14 provide service on a long-term basis to the area as part of a regional master plan. The  
15 Court further explicitly found that the Commission's decision to delete a portion of a  
16 CC&N holder's existing CC&N and award it to a competing service provider based on the  
17 fact that the CC&N had been granted before there was a "public need and necessity for  
18 that certificate" was improper, observing that the lack of public need and necessity could  
19 not justify the deletion of an existing CC&N. *Id.* at 430 n.3, 671 P.2d at 408 n.3. Despite  
20 this binding precedent, Cornman Tweedy persists in seeking the same result in this case.  
21 Its request should be rejected as a matter of law.

22 Furthermore, while the Commission stated that there may not be a "current need or  
23 necessity" for service for the Cornman Tweedy property in Decision No. 69722, FOF, ¶  
24 100 (a condition that was presented by Mr. Poulos only on the eve of the 2006 hearing),  
25 the evidence actually proves (and the Commission already found) that there is a public  
26 need for water service in all of the Extended CC&N Area, Decision No. 66893, COL, ¶ 4,

1 which not only includes the Cornman Tweedy property but nine other sections of land,  
2 including the property adjoining the Cornman Tweedy property. *See* Decision No. 69722,  
3 FOF, ¶¶ 58, 59, Ex. A; Schneider Direct-Phase II, at FKS-4 (demonstrative showing  
4 planned developments with Arizona Water Company's CC&N); *see also* Garfield  
5 Rebuttal-Phase I, at 3:18-4:26. Portions of each of those sections either currently require  
6 water service or will require water service in the future. *See* Decision No. 66893, COL, ¶  
7 4; *see also* Decision No. 69722, Ex. A; Schneider Direct-Phase I, at 6:1-8:6; Transcript, at  
8 545:4-547:11 (describing current status regarding PhoenixMart and Post Ranch  
9 developments); Whitehead Direct, at 11:20-14:11 (setting out requests received from  
10 other property owners/developers within CC&N boundaries). Even Cornman Tweedy  
11 admitted that it would be developing the Cornman Tweedy property. Transcript, at  
12 142:12-16 (development of the Cornman Tweedy property will occur in "five to 10  
13 years.").

14 At the time the Commission granted the CC&N to Arizona Water Company,  
15 Cornman Tweedy's immediate predecessor in interest had requested water service from  
16 Arizona Water Company. Decision No. 66893, FOF, ¶ 12; Decision No. 66722, FOF, ¶¶  
17 6, 58. Cornman Tweedy purchased its property with the knowledge that Arizona Water  
18 Company's CC&N was in place. *See id.*, FOF, ¶ 83. Following Decision No. 66893,  
19 Arizona Water Company received requests for service from five other  
20 developers/landowners in the Extended CC&N Area. Whitehead Direct, at 11:20-14:11.  
21 One of the developers, AG Robertson, requested service for properties surrounding  
22 portions of the land now owned by Cornman Tweedy. *Id.* at 13:24-14:2; Decision No.  
23 69722, Ex. A (AG Robertson property is in the shaded areas to the South, East, and North  
24 of the Cornman Tweedy property). Arizona Water Company prepared plans for  
25 construction of the system to serve AG Robertson, and received approval to construct the  
26 water system for that development. Whitehead Direct, at 13:11-18. In 2013, Arizona

1 Water Company updated its Master Plan to accommodate another large project, known as  
2 PhoenixMart, adjacent to and contiguous with the Cornman Tweedy property, which  
3 project represents a significant demand for water service. Schneider Direct-Phase II, at  
4 6:1-19. In addition, the Post Ranch development immediately adjacent to the western  
5 boundary of the Cornman Tweedy property is underway. *Id.*, at 6:20-25. Whatever  
6 Cornman Tweedy's current plans are for its property, the evidence in this docket clearly  
7 shows a continuing public need and necessity justifying the Commission's grant of the  
8 subject CC&N area to Arizona Water Company.

9 Finally, Cornman Tweedy's insistence that its decision to postpone development of  
10 its property supports deleting a portion of Arizona Water Company's CC&N is belied by  
11 the testimony of its own witnesses and its own actions. Approximately two weeks before  
12 the 2006 hearing, Cornman Tweedy informed Arizona Water Company that Cornman  
13 Tweedy did not intend to develop its property within the subject CC&N area for at least  
14 five years. Direct Testimony of Jim Poulos (6/12/2006) at 7:16-8:10. At the recent  
15 hearing, Cornman Tweedy reiterated that there is no pending development within the  
16 foreseeable future (defined as "five to ten years"). Transcript, at 142:12-16. However,  
17 Cornman Tweedy concedes that it will either develop the property or sell the property to  
18 somebody else who plans to develop it. *Id.* at 145:17-20. Thus, it is undisputed that the  
19 Cornman Tweedy property will be developed, and the only question, given that the area is  
20 still rebounding from the recession, is by whom and when.

21 Furthermore, at the 2006 hearing, Cornman Tweedy stated that Picacho Sewer's  
22 CC&N should not be deleted simply because there are no immediate plans for  
23 development. Transcript of Proceedings (7/11/2006), at 285:6-22, 287:16-21. Cornman  
24 Tweedy continues to assert that imminent development is not necessary when it comes to  
25 its affiliate's sewer CC&N. Transcript, at 249:20-24. Robson has never sought deletion  
26 of one of its affiliates' CC&N in similar circumstances. *See* Garfield Rebuttal-Phase I, at

1 9:12-10:5. Cornman Tweedy and its affiliates cannot have it both ways.

2 In addition, the record shows that, at the same time that it was announcing that it  
3 had indefinitely shelved development of the Cornman Tweedy property, Cornman  
4 Tweedy was in the process of obtaining a CAWS for its property just south of Arizona  
5 Water Company's CC&N in order to satisfy the Commission's decision in a separate  
6 docket and confirm its affiliate Picacho's extension of its own CC&N to that property,  
7 even though that property was also not slated for imminent development. *Id.* at 283:15-  
8 284:1.

9 Even more recently, despite repeated assertions that the planned development of  
10 the Cornman Tweedy property is "in the freezer" (Transcript, at 76:4-8), Cornman  
11 Tweedy obtained an Extension of an Analysis of Assured Water Supply ("AAWS") in  
12 January 2015. To obtain that Extension, Cornman Tweedy represented in its extension  
13 application to the Department of Water Resources that it had "made substantial capital  
14 investment in developing the land included in the analysis," and had "made material  
15 progress in developing the land." Hearing on Remand-Phase II, Exhibit AWC-11.  
16 Cornman further represented in that application that the land included in the AAWS "will  
17 be developed for the proposed EJR Ranch Community" and that the "owners of EJR  
18 Ranch [i.e., Robson] have invested in excess of \$2.4 million towards development of the  
19 subject property." *Id.* The \$2.4 million includes, among other costs, an estimated  
20 \$1,225,055 for engineering, master plan, and a preliminary plat. *Id.* Thus, although  
21 Cornman Tweedy is representing to the Commission that the project is in the deep freeze,  
22 it is simultaneously representing to the Department of Water Resources that it has made  
23 substantial progress to develop the property. This evidence, taken in conjunction with  
24 Cornman Tweedy's admission that development will occur, proves that Robson's lack of  
25 need for service is a self-serving circumstance created and controlled by Cornman  
26 Tweedy in its effort to delete Arizona Water Company's CC&N.

1 Cornman Tweedy's desire to see its property served by its affiliated water utility,  
2 Picacho Water, also does not justify deletion of a portion of Arizona Water Company's  
3 CC&N. Cornman Tweedy's motivation to better its affiliated utility's business aside, such  
4 an argument simply fails the legal test and does not support deletion of an existing CC&N  
5 area. As noted above, the Commission has already found that Arizona Water Company  
6 received requests for water service from the property owners in the Extended CC&N  
7 Area, including the owner of a portion of the Cornman Tweedy property at the time the  
8 Commission granted the CC&N to Arizona Water Company. Decision No. 66893, FOF,  
9 ¶¶ 11, 12; Decision No. 69722, FOF, ¶¶ 6, 58, Ex. A. The grant of the CC&N to Arizona  
10 Water Company was in accordance with the desires of the existing property owner, which  
11 is the governing fact. Cornman Tweedy knew what it was getting into when it bought the  
12 Florence Country Estates property (now the Cornman Tweedy property) with the Arizona  
13 Water Company CC&N already in place and approved by the Commission.

14 Cornman Tweedy, instead, would have the Commission delete property from an  
15 existing CC&N upon the demand of an entity that later buys the property. Such a result  
16 runs afoul of Arizona law, sound public policy and common sense. The desires of a new  
17 owner who buys property in the area cannot be relevant, much less dispositive, in these  
18 circumstances, where the Commission has already granted an existing CC&N. As with  
19 development plans and market conditions, a property owner's desires (and ownership) can  
20 be transitory (as were the desires of the developer in the *Woodruff* case). Here, Cornman  
21 Tweedy stated that it intended to "cooperate with Arizona Water Company for service" to  
22 its property until Cornman Tweedy saw an opportunity challenge the Commission's grant  
23 of the CC&N for the area to Arizona Water Company. Transcript (7/11/2006), at 244:3-  
24 15 (Mr. Poulos emphasized that Cornman Tweedy "had every intention of having Arizona  
25 Water Company be the provider" until it believed it could try to void Arizona Water  
26 Company's CC&N): Cornman Tweedy's change in heart, based solely on a desire to

1 better the business position of its own affiliated utility, has now resulted in over ten years  
2 of expensive, time consuming, and needless proceedings before the Commission.

3 Deleting a CC&N based on nothing more than the whims of a new owner would  
4 undercut the sound public policy purpose of granting a CC&N. *See* Decision No. 69722,  
5 FOF, ¶ 93 ("no party has recommended that the undeveloped properties in the extension  
6 area be excluded from an extension of time. *Nor should they be excluded, because to do*  
7 *so could have the effect of eroding public reliance on the certainty of the Commission's*  
8 *CC&N process*") (emphasis added). If Cornman Tweedy's arguments were adopted, no  
9 water service provider could properly plan for service or make the investments necessary  
10 to provide adequate service in a timely manner, as Arizona Water Company has done for  
11 the Cornman Tweedy property and adjacent areas of the Company's CC&N. *See* Garfield  
12 Rebuttal-Phase I at 4:9-18 (Cornman Tweedy's proposed course is a "manifest disservice  
13 to the greater public interest"). As a result, the self-serving interests of the owner of the  
14 Cornman Tweedy property cannot be dispositive, especially when, as in the present case,  
15 a property owner acquires a parcel knowing that it is already contained within an existing  
16 Commission-approved CC&N. *Id.*

17 **G. The Overall Public Interest Is Best Served By Arizona Water Company**  
18 **Continuing To Hold The CC&N For The Cornman Tweedy Property.**

19 Cornman Tweedy has failed to prove, as required by *James P. Paul*, that its  
20 property should be deleted from Arizona Water Company's CC&N. Even accepting for  
21 the sake of argument the expanded scope of inquiry proposed by Cornman Tweedy,  
22 Cornman Tweedy has failed to show any compelling public interest justifying deletion of  
23 any portion of Arizona Water Company's CC&N. Instead, Cornman Tweedy has merely  
24 reiterated its tired, self-serving refrain that it does not desire to have Arizona Water  
25 Company provide service to its property (without stating that the true motivation for its  
26 request is so that its affiliate, Picacho Water, can take over Arizona Water Company's

1 CC&N area).

2 The evidence in the record proves that (1) there is a public need for water service in  
3 Arizona Water Company's CC&N, including the Cornman Tweedy property and the  
4 immediately surrounding areas, (2) Arizona Water has taken the steps necessary to  
5 provide that service in justifiable reliance on the Commission's Decision Nos. 66893 and  
6 69722, (3) Arizona Water Company's provision of service to the area will not impose  
7 costs on ratepayers but will permit regional economies of scale unavailable to any  
8 competing service provider, (4) Arizona Water Company's proposed utilization of  
9 renewable surface water resources maximizes the reliability of water service available to  
10 Arizona Water Company's customers, (5) Arizona Water Company is positioned to  
11 provide reclaimed water service through partnership with Picacho Sewer, municipalities,  
12 and Global to further decrease the over pumping of groundwater, and (6) Arizona Water  
13 Company stands ready, willing, and able to provide wastewater services if the  
14 Commission requires integrated service.

15 Against these concrete benefits to the public, Cornman Tweedy pits its desire to  
16 have its own captive water utility provide service to its development. In taking that  
17 position, Cornman Tweedy confuses and misrepresents its own self-interest as the public  
18 interest. As is clear from the record presented, the public interest does not justify deleting  
19 any portion of Arizona Water Company's CC&N, and the evidence is overwhelming that  
20 the final chapter of the Cornman Tweedy plan to acquire Arizona Water Company's  
21 CC&N, a saga that began in 2006, must now be written.

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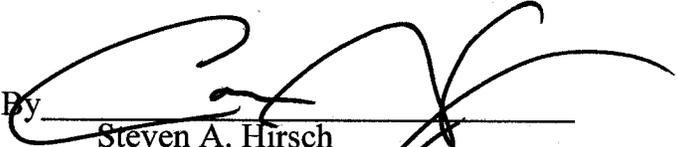
1 **V. CONCLUSION.**

2 For the foregoing reasons, the deletion of the Cornman Tweedy property from  
3 Arizona Water Company's CC&N is not justifiable on this record and as a matter of law.  
4 Cornman Tweedy's remaining claims should be dismissed with prejudice and the  
5 Commission should find and order that Arizona Water Company shall retain the subject  
6 portion of its CC&N unconditionally, in all respects.

7 Respectfully submitted this 11<sup>th</sup> day of April, 2016.

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