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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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

Arizona Corporation Commission

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

DOCKET NO. W-01445A-03-0559
CORNMAN TWEEDY 560, LLC'S
OPENING POST-HEARING BRIEF

Cornman Tweedy 560, LLC, ("Cornman Tweedy"), through counsel undersigned, hereby submits its Opening Post-Hearing Brief. For the reasons set forth herein, Cornman Tweedy submits that the public interest will be served by the exclusion of its property from the Certificate of Convenience and Necessity ("CC&N") of Arizona Water Company ("AWC").

I. INTRODUCTION

Cornman Tweedy was formed for the purpose of assembling the land which makes up an area referred to as EJR Ranch as shown outlined in blue on the map admitted as Exhibit CT-120.¹ On August 12, 2003, AWC filed an application with the Arizona Corporation Commission ("Commission") to extend its CC&N to include eleven square miles in Township 6 South, Range 7 East, Pinal County, Arizona ("Extension Area"). The Extension Area is shown outlined in orange on Exhibit CT-120. AWC's application was based on only two requests for service—one for property referred to as Post Ranch which included approximately 480 acres and the other for property referred to as Florence Country Estates which included approximately 240 acres.²

On December 8, 2004, Cornman Tweedy acquired the 240-acre Florence Country Estates property.³ Cornman Tweedy also acquired other property within the Extension Area which, when combined with the Florence Country Estates property, totaled approximately 1,138 acres

¹ Exhibit CT-102 (Poulos Direct Testimony) at 5, lines 20-21.

² *Id.* at 6, lines 19-22.

³ *Id.* at 6, lines 23-24.

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1 ("Cornman Tweedy Property").⁴ In addition, Cornman Tweedy owns approximately 1,206 acres
2 immediately south of the Cornman Tweedy Property (outside of the Extension Area) for a
3 combined total of approximately 2,344 acres comprising the EJR Ranch property.⁵ Exhibit CT-
4 120 shows that the north half of the EJR Ranch property is located within the Extension Area but
5 the south half is not. While all of the EJR Ranch property is owned by Cornman Tweedy, in this
6 proceeding the parties have referred to the Cornman Tweedy Property as only that portion of the
7 property owned by Cornman Tweedy which is located within the Extension Area.

8 Picacho Sewer Company holds the CC&N for the Cornman Tweedy Property and all of
9 EJR Ranch.⁶ Picacho Water Company holds the CC&N for approximately 4,600 acres adjacent
10 to and immediately south of the Cornman Tweedy Property, including the south half of the EJR
11 Ranch property.⁷ Picacho Water Company and Picacho Sewer Company provide integrated water
12 and wastewater services and are affiliates of Cornman Tweedy.

13 On April 6, 2004, the Commission issued Decision 66893 granting a CC&N with
14 conditions to AWC for the Extension Area, including the Cornman Tweedy Property. On April
15 7, 2005, Cornman Tweedy filed a letter in the docket asserting that Decision 66893 was null and
16 void because AWC had failed to satisfy the conditions by the April 6, 2005 deadline.⁸ The letter
17 further stated that Cornman Tweedy did not desire to have its property included in the Extension
18 Area, that Cornman Tweedy had requested water utility service from Picacho Water Company,
19 and that Cornman Tweedy would prefer to receive integrated water and wastewater service from
20 Picacho Water Company and Picacho Sewer Company for reasons of cost, convenience, timing,
21 avoidance of confusion, and avoidance of unnecessary duplication of facilities.⁹ Since filing the
22 April 2005 letter up to and including this date, Cornman Tweedy has continuously worked to have
23 its property excluded from AWC's CC&N.¹⁰

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25 ⁴ Exhibit CT-102 (Poulos Direct Testimony) at 6, lines 24-26.

26 ⁵ *Id.* at 6-7.

27 ⁶ Exhibit CT-105 (Goldman Direct Testimony) at 3, lines 24-26.

28 ⁷ *Id.* at 4, lines 11-13.

⁸ Exhibit CT-102 (Poulos Direct Testimony) at 7, lines 16-19.

⁹ *Id.* at 7, lines 19-25.

¹⁰ *Id.* at 7, lines 25-27.

1 Cornman Tweedy is also the successor-in-interest to approximately 649 acres within the
2 Extension Area previously owned by the Dermer Family Trust.¹¹ The Dermer Family Trust
3 docketed a letter in this case dated April 21, 2004 stating that due to the illness and death of the
4 trust's principal, the Dermer Family Trust was not aware of AWC's application, did not receive
5 notice of the application, and did not want the trust's 649 acres included in the Extension Area.¹²
6 Since filing the April 2004 letter up to and including this date, the Dermer Family Trust and
7 Cornman Tweedy thereafter have continuously worked to have the Dermer Family Trust property
8 excluded from AWC's CC&N.¹³

9 On July 30, 2007, the Commission issued Decision 69722 stating that for purposes of
10 compliance, the conditions placed on AWC's CC&N extension in Decision 66893 were fulfilled.
11 Crucially, however, the Commission simultaneously remanded the case for additional
12 proceedings to determine whether AWC should continue to hold the CC&N for the Cornman
13 Tweedy Property. Thus, despite finding in 2007 that the conditions of Decision 66893 were
14 deemed fulfilled, AWC's authority with respect to the Cornman Tweedy Property was implicitly
15 restricted until such time as the Commission determined whether AWC should continue to hold
16 the CC&N for that property. In other words, AWC still holds something akin to a conditional
17 CC&N for the Cornman Tweedy Property, notwithstanding any other language contained in
18 Decision 69722.

19 In spite of the lengthy procedural history of this case, the issues to be addressed in this
20 remand proceeding are relatively simple and clearly set forth in Decision 69722. In ordering this
21 remand proceeding, the Commission stated:

22 100. There may not be a current need or necessity for water service in the portions
23 of the extension area that are owned by Cornman, and Cornman does not wish to
24 have its property included in Arizona Water's CC&N at this time. These issues
25 bear further examination and may have some relevance to the best interests of the
26 area ultimately to be served.

27 ¹¹ Exhibit CT-102 (Poulos Direct Testimony) at 7-8.

28 ¹² *Id.* at 8, lines 2-6.

¹³ *Id.* at 8, lines 6-8.

1 101. It is in the public interest to remand this case to the Hearing Division for
2 further proceedings regarding whether Arizona Water should continue to hold a
3 CC&N for the Cornman extension area at this time.

4 *****

5 104. The proceeding on remand should be broad in scope so that the Commission
6 may develop a record to consider the overall public interest underlying service to
7 the Cornman property that is included in the extension area granted by Decision
8 No. 66893. By identifying these issues and requiring further proceedings, we are
9 not prejudging this matter in any way; instead, we merely desire an opportunity to
10 consider the broader public interests implicated herein.¹⁴

11 Following the submission of written testimony and briefing by the parties, a
12 Recommended Order on Remand was issued by the Hearing Division on November 29, 2010.
13 Although the Recommended Order was discussed extensively during the Commission's
14 December 14, 2010 Open Meeting and then again during the Commission's February 1, 2011
15 Open Meeting, it was not adopted. Instead, the Commission remanded the case again with an
16 additional instruction as repeated by Judge Nodes in his February 10, 2011 Procedural Order:

17 [T]he Commission voted to send the matter back to the Hearing Division for further
18 proceedings to determine "whether a public service corporation, like Arizona
19 Water, in this water challenged area and under the circumstances presented in this
20 case, is providing reasonable service if it is not able or not willing to provide
21 integrated water and wastewater services."

22 The scope of this remand proceeding encompasses the directives set forth in Decision
23 69722 with the additional elaboration by the commissioners at the February 1, 2011 Open
24 Meeting as captured by Judge Nodes in his February 10, 2011 Procedural Order.

25 Having now completed a second full hearing in this case, a record has been developed
26 regarding the issues encompassed in the Commission's remand directives in this matter. The
27 evidence shows the following:

- 28 ● It is undisputed that there is no need and necessity for water service for the
Cornman Tweedy property at this time or in the foreseeable future.
- It is undisputed that Cornman Tweedy does not want water service from AWC
for compelling and legitimate reasons that have been extensively detailed by
Cornman Tweedy, including:

¹⁴ Decision 69722 at Findings of Fact 100, 101 and 104.

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- ▶ If AWC serves the Cornman Tweedy Property, then the EJR Ranch property will be split between two water utilizes increasing infrastructure costs for Cornman Tweedy and the public and causing time delays when development occurs in the future. These increased costs result from:
 - Construction of extra wells.
 - Construction of extra water storage and booster pump capacity.
 - Additional land acquisition cost and design costs.
 - Limitation of well siting options due to SCIP restrictions.
 - Additional pressure zone.
 - Time delays.
 - Lost economies of scale.

- ▶ If AWC serves the Cornman Tweedy Property, Cornman Tweedy and the public will lose the benefits of utility service from an integrated water and wastewater provider. These benefits include:
 - Integrated systems provide increased operational efficiencies and cost savings, including the following:
 - Integrated systems are less expensive to operate.
 - Integrated systems enable the water provider to assist the sewer provider in collecting past due balances.
 - Integrated systems save money in the design and construction phases.
 - Integrated systems increase efficiencies and flexibility in dealing with waste streams.
 - Integrated systems improve the customer experience by providing “one-stop” shopping.
 - Integrated systems maximize the use of reclaimed wastewater.

- It is undisputed that AWC has not constructed any water infrastructure within the Cornman Tweedy Property and that AWC will suffer no material harm if the Cornman Tweedy Property is excluded from its CC&N.

- It is undisputed that AWC itself cannot provide integrated water and wastewater service to the Cornman Tweedy Property because AWC does not hold the CC&N to provide sewer service to the property.

- AWC is not providing reasonable service because, under the circumstances of this case, it is not able to provide integrated water and wastewater service to the Cornman Tweedy Property.

Based upon the totality of this evidence, as discussed in Section II.A below, the public interest will be served by excluding the Cornman Tweedy Property from AWC’s CC&N at this time.

1 In considering the weight and relevance of the evidence presented in this case, Cornman
2 Tweedy urges the ALJ to bear in mind three additional points. First, AWC has attempted to direct
3 the focus in this case on the actions of Robson Communities and its affiliates providing water and
4 wastewater services in Arizona. AWC has attempted to discredit or downplay the benefits of
5 integrated water and wastewater service by attacking these Robson-affiliated utilities. However,
6 the Commission has been very clear that the focus of this proceeding is on the 1,138 acres of land
7 owned by Cornman Tweedy that is the subject of this proceeding. Specifically, this proceeding
8 is to determine whether, under the circumstances of this case, the Cornman Tweedy Property
9 should be excluded from AWC's CC&N.

10 Second, AWC has attempted to discredit and downplay the benefits of integrated water
11 and wastewater service by pointing to utilities which do not operate in an integrated fashion. For
12 example, AWC scrutinizes Quail Creek Water Company which provides water service to
13 Robson's Quail Creek community south of Tucson even though sewer service for that community
14 is provided by Pima County. In other words, Quail Creek is not an example of an integrated water
15 and wastewater model. Likewise, AWC addresses Robson's development known as
16 SaddleBrooke Ranch located north of Oracle. In that community, water service is provided by
17 AWC and sewer service is provided by Mountain Pass Utility Company. Again, SaddleBrooke
18 Ranch is not an example of an integrated water and wastewater model.

19 Third, AWC has attempted to limit the focus of this case to the management and
20 conservation of groundwater. While groundwater management and conservation are key benefits
21 of integrating water and wastewater services, the focus of this case is clearly broader. The
22 Commission directed an examination of all of the "circumstances presented in this case" in order
23 to determine the "broader public interests implicated herein."¹⁵ Specifically, this includes the fact
24 that "there may not be a current need or necessity for water service in the portions of the extension
25 area that are owned by Cornman," and the reasons why "Cornman does not wish to have its
26 property included in Arizona Water's CC&N at this time."¹⁶ Thus, all of the relevant
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28 ¹⁵ Decision 69722, Finding of Fact 104; Judge Nodes' February 10, 2011 Procedural Order.

¹⁶ *Id.* at Finding of Fact 100.

1 circumstances of this case should be examined in determining whether or not “Arizona Water
2 should continue to hold a CC&N for the Cornman extension area at this time.¹⁷

3 **II. ISSUED TO BE ADDRESSED IN POST-HEARING BRIEFING**

4 The Administrative Law Judge (“ALJ”) asked the parties to address six questions in post-
5 hearing briefing. Each of these questions are addressed below.

6 **A. What is Cornman Tweedy’s response to the inquiry identified by the Commission
7 for this stage of this remand, which is “whether a public service corporation, like
8 Arizona Water, in this water challenged area and under the circumstances presented
9 in this case, is providing reasonable service if it is not able or not willing to provide
10 integrated water and wastewater services?”**

11 In addressing this question, Cornman Tweedy will begin by discussing the circumstances
12 presented in this case. Then, Cornman Tweedy will explain why AWC is not providing
13 reasonable service because it is not able to provide integrated water and wastewater service to the
14 Cornman Tweedy Property.

15 **1. What Are the Circumstances Presented in this Case?**

16 **a. There Is No Need and Necessity for Water Service for the Cornman Tweedy
17 Property.**

18 The evidence is undisputed that there is no need and necessity for water service for the
19 Cornman Tweedy property at this time or in the foreseeable future. In his Rebuttal Testimony
20 dated February 5, 2008, the late Jim Poulos testified on behalf of Cornman Tweedy that “[t]he
21 showing of a ‘need and necessity’ for service is an essential underpinning of a CC&N, and it is
22 specifically identified in Decision 69722 as one of the considerations in this remand
23 proceeding.”¹⁸ In his Direct Testimony dated January 4, 2008, Mr. Poulos included as Exhibit 3
24 a series of 21 photographs showing the Cornman Tweedy property and the immediate vicinity
25 taken on December 26, 2007.¹⁹ The photos show the Cornman Tweedy property as undeveloped
26 farmland and Mr. Poulos testified at that time that there were “no plans to develop the EJ Ranch

27 ¹⁷ Decision 69722, Finding of Fact 101.

28 ¹⁸ Exhibit CT-103 (Poulos Rebuttal Testimony) at 4, lines 16-18. The Poulos Rebuttal Testimony was adopted by Mr. Soriano.

¹⁹ Exhibit CT-102 (Poulos Direct Testimony), Exhibit 3. The Poulos Direct Testimony was adopted by Mr. Soriano.

1 Property” and that the property had been “indefinitely shelved.”²⁰ A little more than eight years
2 later, Mr. Steve Soriano testified that the photos still accurately depict the condition of the
3 Cornman Tweedy Property today.²¹ Mr. Soriano further testified that there are still no plans to
4 develop the Cornman Tweedy Property in the foreseeable future, that the property is still
5 indefinitely shelved, and that there is still no current need and necessity for water service.²² Thus,
6 regarding the statement in Finding of Fact 100 of Decision 69722 that there “may not be a current
7 need or necessity for water service in the portions of the extension area that are owned by
8 Cornman,” the evidence conclusively establishes that there is not a need and necessity for water
9 service. This is a critical point.

10 Under the circumstances of this case, it would not serve the public interest to allow AWC
11 to continue to hold the CC&N for the Cornman Tweedy Property. Ernest Johnson, the former
12 Director of the Commission’s Utilities Division, testified on behalf of Cornman Tweedy that “the
13 public interest is premised upon the public need and public need initiates public interest.”²³ When
14 the Commission certifies a utility provider in the absence of a need for service, it abdicates its
15 responsibility to consider and then act based upon the public interest when a need actually arises.
16 Mr. Johnson testified that the Commission’s better course of action is to preserve opportunities
17 to act in the public interest:

18 When there is a public need for utility services on the Cornman Tweedy Property
19 at some future date, certificating the provider that best meets the needs of the
20 customers will best serve the public interest. Based on the facts and circumstances
21 of this case, the Commission should not foreclose the opportunity for the future
22 customers of the Cornman Tweedy Property to enjoy the benefits of integrated
23 water and wastewater service.²⁴

24 The evidence is undisputed that there is no need and necessity for water service for the
25 Cornman Tweedy Property. Excluding the property from AWC’s CC&N at this time ensures that
26 the Commission may consider all relevant facts and circumstances in the future when a need arises
27 and then act in a way which serves the public interest.

28 ²⁰ Exhibit CT-102 (Poulos Direct Testimony) at 10, lines 24-25.

²¹ Hearing Transcript Vol. I at 70, lines 9-12.

²² *Id.* at 73, lines 2-14.

²³ Exhibit CT-110 (Johnson Rejoinder Testimony) at 14, lines 11-12.

²⁴ *Id.* at 16, lines 17-22.

1 **b. Cornman Tweedy Does Not Want Water Service from Arizona Water**
2 **Company.**

3 The evidence is also undisputed that Cornman Tweedy does not want water service from
4 AWC and is perhaps best summarized in the Direct Testimony of Mr. Poulos:

5 [S]ince April 2005, Cornman Tweedy has been working to get the Cornman
6 Tweedy Property excluded from AWC's CC&N. Before that, the Dermer Trust (to
7 which Cornman Tweedy is a successor) began working to get its property excluded
8 from AWC's CC&N in April 2004. This case does not only involve a lack of a
9 request for service, but also involves affirmative and relentless efforts to get the
10 Cornman Tweedy Property excluded from AWC's CC&N.²⁵

11 In Finding of Fact 100 in Decision 69722, the Commission acknowledged that "Cornman
12 does not wish to have its property included in Arizona Water's CC&N at this time," adding that
13 "the issue bears further examination and may have some relevance to the best interests of the area
14 ultimately to be served." Cornman Tweedy has provided extensive evidence regarding the
15 reasons why it does not want water service from AWC. First, splitting the EJR Ranch property
16 between two water providers will increase infrastructure costs for Cornman Tweedy and the
17 public that will someday reside within the Cornman Tweedy Property and will cause time delays
18 when development occurs in the future. Second, if AWC serves the Cornman Tweedy Property,
19 Cornman Tweedy and the public will lose the benefits of utility service from an integrated water
20 and wastewater provider. Each of these issues are discussed below.

21 i. **If AWC Serves the Cornman Tweedy Property, the EJR Ranch Property**
22 **will be Split Between Two Water Providers Increasing Infrastructure**
23 **Costs for Cornman Tweedy and the Public and Causing Time Delays**
24 **when Development Occurs in the Future.**

25 Mr. Poulos testified that if AWC is the water provider for the Cornman Tweedy Property,
26 "EJR Ranch will be split into two halves—the north half served by AWC and the south half which
27 will be served by Picacho Water Company."²⁶ He explained that this would necessitate two
28 separate water campuses to serve EJR Ranch instead of a single water campus which would
29 increase infrastructure costs to the developer and ultimately increase water rates to the residents.²⁷
30 Dr. Fred Goldman, an expert in the design and engineering of integrated water and wastewater

²⁵ Exhibit CT-102 (Poulos Direct Testimony) at 13, lines 19-25.

²⁶ *Id.* at 15, lines 8-10.

²⁷ *Id.* at 15, lines 10-14.

1 systems with decades of experience, testified that allowing AWC to serve the Cornman Tweedy
2 Property would add approximately \$4 million in costs that rate payers will be forced to bear for
3 water service.²⁸ Several examples from Dr. Goldman’s testimony are discussed below.

4 **Construction of Extra Wells.** Dr. Goldman explained that Picacho Water Company’s
5 service area is divided into a north service area and a south service area, as shown on Exhibit “B”
6 to his Direct Testimony dated January 4, 2008.²⁹ The Cornman Tweedy Property is located in
7 the north service area. Dr. Goldman testified that the north service area will require three wells
8 plus one backup well for a total of four wells.³⁰ He testified that AWC will require two wells and
9 one backup well to serve the Cornman Tweedy Property, for a total of three wells.³¹ However, if
10 the Cornman Tweedy Property is removed from the north service area, Picacho Water Company
11 will still need two wells and one backup well, for a total of three.³² Thus, Dr. Goldman concludes
12 that “[t]wo extra wells will need to be drilled if the Cornman Property is serviced by AWC,” and
13 “[e]stimating \$1.2 million for a fully equipped new well, the extra cost to ratepayers would be
14 approximately \$2,400,000 for the extra wells.”³³

15 **Construction of Extra Water Storage and Booster Pump Capacity.** Dr. Goldman
16 identified other increased costs that would result from splitting EJR Ranch between AWC and
17 Picacho Water Company. He testified that there is likely to be commercial property in EJR Ranch
18 north and south of Early Road.³⁴ If EJR Ranch is served by a single water provider, then he
19 calculated the fire flow requirement for all of EJR Ranch to be 2,625 gallons per minute for four
20 hours or a volume of 630,000 gallons.³⁵ However, if EJR Ranch is split between two providers,
21 “the fire flow storage requirement would be duplicated resulting in an additional cost of
22 approximately \$400,000.”³⁶ Further, Dr. Goldman testified that “[b]y splitting EJR Ranch
23 between two providers, the required booster pump capacity for the fire flow will also need to be

24 ²⁸ Exhibit CT-105 (Goldman Direct Testimony) at 11, lines 16-201-2.

25 ²⁹ *Id.* at 4-5.

26 ³⁰ *Id.* at 5, lines 17-19.

27 ³¹ *Id.* at 6, lines 9-11.

28 ³² *Id.* at 6, lines 5-8.

³³ *Id.* at 6, lines 15-17 (emphasis added).

³⁴ *Id.* at 7, lines 19-20.

³⁵ *Id.* at 7, lines 20-21.

³⁶ *Id.* at 7, lines 21-24.

1 doubled resulting in an additional cost of approximately \$250,000 which includes the extra
2 electric service and the extra standby power.”³⁷

3 **Additional Land Acquisition Cost and Design Costs.** Dr. Goldman testified that if
4 AWC serves the Cornman Tweedy Property, then AWC will construct one water plant to serve
5 the Cornman Tweedy Property and Picacho Water Company will construct a separate water plant
6 to serve the south half of the north service area.³⁸ He explained that the construction of two water
7 plants will result in additional costs from the duplication of wells, storage tanks, booster pumps,
8 treatment facilities and transmission piping.³⁹ Dr. Goldman conservatively estimated additional
9 design costs on the order of \$200,000 and additional land costs of approximately \$500,000.⁴⁰

10 **Limitation on Well Site Options Due to SCIP Restrictions.** Dr. Goldman identified
11 another important factor to consider. The substantial majority of the Cornman Tweedy Property
12 is located within the San Carlos Irrigation Project (“SCIP”), and new wells within SCIP are
13 prohibited.⁴¹ Thus, there are only limited areas within the Cornman Tweedy Property where new
14 wells can be constructed and the closest land outside of SCIP is a quarter of a mile away north of
15 Florence Highway.⁴² Dr. Goldman testified that if AWC were to serve the property, it “would
16 likely have to locate its wells at least ¼ mile away from the Cornman Property and install extra
17 transmission pipe to deliver water to the storage tank.”⁴³ Thus, this limitation on well site options
18 would make the groundwater supply more expensive if AWC serves the Cornman Tweedy
19 Property.⁴⁴

20 **Additional Pressure Zone.** Dr. Goldman identified yet another increased cost of splitting
21 EJ Ranch between two water providers:

22 I would note also that Mr. Schneider’s Exhibit FKS-3 shows the Cornman Tweedy
23 property divided into two pressure zones. The engineering data does not exist at
24 this time for me to determine the cost impact of two pressure zones, but I would

25 ³⁷ Exhibit CT-105 (Goldman Direct Testimony) at 8, lines 4-7.

26 ³⁸ *Id.* at 9, lines 21-23.

27 ³⁹ *Id.* at 9, lines 23-27.

28 ⁴⁰ *Id.* at 9-10.

⁴¹ *Id.* at 6, lines 2-4.

⁴² *Id.* at 6, lines 3-4 and 26.

⁴³ *Id.* at 7, lines 1-2.

⁴⁴ *Id.* at 6, lines 21-22.

1 expect that the need for pressure reducing valves or booster pumps will increase the
2 cost of the infrastructure to serve the Cornman Tweedy property and complicate
3 fire protection storage requirements. However, if the Cornman Tweedy property
4 and the Robson property to the south are served by a single water provider, the
5 entire development can be served in one pressure zone.⁴⁵

6 **Time Delays.** In addition to the extra infrastructure costs, Cornman Tweedy would incur
7 added costs and time delays in dealing with AWC that it would not incur if Picacho Water
8 Company provided water service to the entire EJ Ranch property. Mr. Poulos explained the
9 reasons in his pre-filed testimony:

10 Cornman Tweedy would incur the added costs of negotiating and administering a
11 master agreement and main extension agreement with AWC. Moreover, Cornman
12 Tweedy would incur added costs related to designing a water system to AWC's
13 standards, criteria and specifications, which vary from those of Picacho Water
14 Company. Cornman Tweedy would also incur added costs of modeling a water
15 master plan to the specifications of AWC, which vary from those of Picacho Water
16 Company.

17 Beyond the added costs outlined above, Cornman Tweedy would certainly
18 experience time delays in dealing with AWC that it would not experience dealing
19 with its affiliate, Picacho Water Company, particularly in light of the frustration
20 Robson has already experienced in dealing with AWC on its SaddleBrooke Ranch
21 project discussed below. It is simply easier and more efficient to deal with your
22 own affiliate—one where you know the design criteria, construction procedures,
23 and business practices. This is particularly true for Robson because the
24 engineering, land department and utilities will report to me.⁴⁶ Robson has a well-
25 established and successful track record of constructing and operating water
26 systems. We are very familiar and comfortable with our design standards and
27 engineering practices with respect to the design and construction of water and
28 wastewater systems. We have an excellent compliance history with ADEQ who
reviews and approves design plans and specifications. Based on my personal
experience, working with AWC is less efficient, more costly, more time-
consuming, and more frustrating, which negatively impacts the ratepayers.⁴⁷

29 **Lost Economies of Scale.** Dr. Goldman described a substantial benefit for Picacho Water
30 Company if the Cornman Tweedy Property is excluded from AWC's CC&N and that is the benefit
31 of improved reliability and efficiency due to greater economies of scale:

32 [T]he effect of someday including the 1,138-acre Cornman Tweedy property in the
33 approximately 4,500-acre existing certificated territory of Picacho Water Company
34 is very substantial. The eventual inclusion of the Cornman Tweedy property would

35 ⁴⁵ Exhibit CT-107 (Goldman Rebuttal Testimony-Remand II) at 6, lines 17-24.

36 ⁴⁶ These departments now report to Mr. Soriano.

37 ⁴⁷ Exhibit CT-102 (Poulos Direct Testimony) at 15-16.

1 increase the size of the existing Picacho Water Company CC&N by approximately
2 25%. An increase of 25% would significantly improve the reliability and efficiency
3 of the Picacho Water Company water system. The economies of scale would be
4 very noticeable....⁴⁸

5 Dr. Goldman further testified that this benefit for Picacho Water Company comes without
6 any detriment to AWC as “[i]t is inconceivable that eliminating the 1,138-acre Cornman Tweedy
7 property from the AWC certificated area would result in any noticeable loss of reliability or
8 efficiency to AWC’s operations” and “[a]ny economies of scale would not even be measurable.”⁴⁹

9 For all of these reasons, it would serve the public interest to exclude the Cornman Tweedy
10 Property from AWC’s CC&N in order to avoid the increased infrastructure costs and time delays
11 resulting from splitting the EJ Ranch property between two water providers.

12 **ii. If AWC Serves the Cornman Tweedy Property, Cornman Tweedy and the**
13 **Public Will Lose the Benefits of Utility Service from an Integrated Water**
14 **and Wastewater Provider.**

15 If AWC is the water provider for the Cornman Tweedy Property, Cornman Tweedy will
16 lose the ability to receive utility services from an integrated water and wastewater provider. The
17 integration of water and wastewater services (a) increases operational efficiencies and cost
18 savings, (b) saves money in the design and construction phases, (c) increases efficiencies and
19 flexibility in dealing with waste streams, (d) enhances the customer experience by providing “one-
20 stop” shopping, and (e) maximizes the use of reclaimed wastewater. Each of these benefits are
21 discussed below.

22 **1. Integrated Systems Provide Increased Operational Efficiencies and**
23 **Cost Savings.**

24 Paul Hendricks, an expert with at least 45 years of experience in developing, planning,
25 permitting, constructing, operating and managing water and wastewater systems,⁵⁰ testified on
26 behalf of Cornman Tweedy that integrated water and wastewater systems provide important
27 operational benefits over stand-alone systems. Specifically, integrated systems are less expensive
28 to operate due to consolidated purchasing and employee training opportunities; shared employees,
certified operators and superintendents; shared office space vehicles and equipment; and reduced

⁴⁸ Exhibit CT-106 (Goldman Rebuttal Testimony) at 2, lines 8-16.

⁴⁹ *Id.* at 2, lines 4-7.

⁵⁰ Exhibit CT-104 (Hendricks Direct Testimony) at 1, lines 11-14.

1 treatment costs through integrated design and operation. Each of these benefits are described
2 below.

3 **Integrated Systems Are Less Expensive to Operate.**

4 Mr. Hendricks testified that integrated systems are less expensive to operate than stand-
5 alone systems for several reasons. Mr. Hendricks explained:

6 ***Cost of Operation*** - An integrated system provides the opportunity to consolidate
7 purchasing of chemicals and delivery of commodities used by the utility. With
8 separate systems, there is no opportunity to consolidate purchasing. This
9 duplication increases costs to the ratepayer. Training of personnel in an integrated
10 system is more efficient than in a separate system. This savings not only reduces
11 cost to the ratepayer, but creates a safer work environment for the employees.

12 ***Shared Employees, Shared Certified Operators and Superintendents*** - Integrated
13 systems have the benefit of economies of scale when it comes to qualified operation
14 and maintenance personnel. The integrated system will have personnel certified in
15 both water and wastewater. A superintendent can cost more than \$100,000 per
16 year. In an integrated system, these costs are shared between the water ratepayer
17 and the sewer ratepayer. In a separate system, there is a superintendent for each
18 system. The integrated system will have personnel at all levels which are dual
19 certified. With the high cost of labor and benefits, an integrated system can save
20 hundreds of thousands of dollars in salaries and benefits through integrated system
21 staffing. The integrated system will be large enough to have locally based
22 personnel thereby reducing travel costs and response time.

23 ***Shared Office Space, Vehicles and Equipment*** - Integration improves utilization
24 of equipment and support systems. Integrated systems have the benefit of
25 economies of scale. The integrated system will use the same office and support
26 staff for both the water and sewer systems. The equipment for excavating and
27 repairing water distribution systems and sewer collection system components can
28 be used for both systems. Without an integrated system, all personnel, equipment,
and support facilities are duplicated.

Reduced Treatment Costs Through Integrated Design and Operation -
Integration can reduce treatment costs when there is a requirement for well head
treatment to meet the potable standards for drinking water. Some treatment systems
that are used to treat a groundwater supply that have high arsenic, fluoride, or TDS
produce a waste stream that has to be processed in a separate wastewater treatment
system and then taken to a landfill. In an integrated system this waste stream can,
in many cases, be discharged to the sewer system and more economically treated at
the wastewater treatment plant. This avoids the capital, operation and maintenance
costs associated with a duplicate wastewater treatment plant. The net result of this
is a lower cost to the ratepayer.⁵¹

⁵¹ Exhibit CT-104 (Hendricks Direct Testimony) at 12-13.

1 Excluding the Cornman Tweedy Property from AWC's CC&N will allow for integration
2 of water and wastewater services, thereby reducing operating costs and ultimately the rates paid
3 by those who will inhabit the Cornman Tweedy Property.

4 **Integrated Systems Enable the Water Provider to Assist the Sewer Provider in**
5 **Collecting Past Due Balances.**

6 Mr. Hendricks testified that there are no provisions in sanitary sewer design for shut-off
7 valves or meters.⁵² Thus, unlike a water company that can simply turn off water service to a non-
8 paying customer, the only way to shut off sewer service to a non-paying customer is to dig up the
9 sewer line and physically disconnect the customer from the sewer system.⁵³ However,
10 disconnecting a sewer line does not necessarily stop a customer from using water, and if the
11 customer continues to use water after the sewer line has been disconnected, the result is a serious
12 health hazard.⁵⁴ Sewer drains will back up into the residence or commercial building and spill
13 raw sewage onto the floor or out into the street and neighboring property, possibly coming in
14 contact with humans and wildlife.⁵⁵ Beyond the serious health hazard that is created, Mr.
15 Hendricks testified that if enough customers are delinquent in paying their sewer bills, a stand-
16 alone sewer company will face financial jeopardy.⁵⁶ In support of that specific point, Mr. Johnson
17 testified that dealing with customers who will not pay their sewer bills is one of the major
18 challenges confronting stand-alone sewer providers.⁵⁷ These problems are effectively eliminated
19 where water and wastewater services are provided by an integrated provider. In fact, customers
20 who receive water and wastewater services from an integrated provider typically do not even
21 consider paying a water bill but not a sewer bill.

22 In a case involving other utilities, Staff identified an additional billing and collection
23 advantage of integrated water and wastewater utilities over stand-alone utilities. That case
24 involved competing CC&N applications filed by AWC and Woodruff Water Company, which
25 provided integrated water and wastewater services with its affiliate Woodruff Utility Company.

26 ⁵² Exhibit CT-104 (Hendricks Direct Testimony) at 4, lines 20-21.

27 ⁵³ *Id.* at 4, lines 22-24.

28 ⁵⁴ *Id.* at 4, lines 24-27.

⁵⁵ *Id.* at 4-5.

⁵⁶ *Id.* at 5, lines 14-16.

⁵⁷ Exhibit CT-109 (Johnson Rebuttal Testimony) at 21, lines 5-7.

1 In its Staff Report recommending that the water CC&N be issued to Woodruff Water Company
2 instead of AWC, Staff noted with approval that “[w]ater use data is readily available to the sewer
3 utility if the sewer company changes its rate structure from a flat rate to a rate structure based on
4 usage.”⁵⁸

5 For the reasons, integrated water and wastewater utilities provide additional advantages
6 when it comes to billing and collection.

7 **2. Integrated Systems Save Money in the Design and Construction** 8 **Phases.**

9 Mr. Hendricks testified that “integrated systems have the benefit of economies of scale
10 when it comes to planning, permitting, designing, constructing and commissioning new
11 facilities.”⁵⁹ For example, the engineering and construction of new water lines can be done at the
12 same time as the sewer lines in an integrated system whereas these functions are duplicated where
13 there are stand-alone utilities.⁶⁰ Mr. Hendricks cites the SCADA system as another example of
14 an area where integrated systems provide cost savings. He explains:

15 The integrated system only requires one Supervisory Control and Data Acquisition
16 (“SCADA”) system for both the water and wastewater systems. This SCADA
17 [system] is a very expensive component of a modern utility. In an integrated
18 system, these costs are shared between the water and sewer companies. In a non-
integrated system, there are duplicate costs for capital, operation and maintenance
of the SCADA systems.⁶¹

19 The evidence shows that integrated water and wastewater utilities save money in the
20 design and construction phases as compared to stand-alone utilities. These savings ultimately
21 benefit the consumers who live in the area served by the integrated utility.

22 **3. Integrated Systems Increase Efficiencies and Flexibility in Dealing** 23 **with Waste Streams.**

24 Mr. Hendricks testified that integration provides greater efficiency and flexibility in
25 addressing waste streams which promotes more cost-effective compliance with environmental

26 ⁵⁸ Staff Report dated March 3, 2005, Attachment A (Engineering Memorandum dated January 19, 2005) at
Section II.C (Consolidated Docket Nos. W-04264A-04-0438, SW-04265A-04-0439 and W-01445A-04-
0755).

27 ⁵⁹ Exhibit CT-104 (Hendricks Direct Testimony) at 11, lines 18-21.

28 ⁶⁰ *Id.* at 11, lines 21-24.

⁶¹ *Id.* at 8, lines 5-10.

1 standards for integrated water and wastewater utilities as compared to stand-alone utilities.⁶² In
2 his Direct Testimony, Mr. Hendricks provided three examples of this fact:

3 **Copper** - At SaddleBrooke, for example, the water was aggressive in nature and
4 had copper levels that exceeded the effluent standards for the wastewater treatment
5 plant. Copper removal at the wastewater plant is very expensive. Because of the
6 integrated system, the water utility was able to feed a low cost stabilizing chemical
7 into the water system that controlled the levels of copper entering the wastewater
8 system. As a result, the sewer company ratepayers did not have the burden of costly
9 treatment at the wastewater plant to meet regulatory requirements. This resolution
10 is not possible with a separate water and sewer company.

11 **Fluoride** - The treatment of groundwater that has high fluoride levels is most
12 economically performed for groundwater with high fluoride using a reverse
13 osmosis treatment process. This produces a waste stream that has to be processed
14 in a separate wastewater treatment system such as an evaporation pond or other
15 capital and operation and maintenance intensive brine management systems. The
16 residuals from this process are then taken to a landfill. In an integrated system this
17 waste stream can, in many cases, be discharged to the sewer system and more
18 economically treated at the wastewater treatment plant. This avoids the capital,
19 operation, and maintenance costs associated with a duplicate wastewater treatment
20 plant. The net result of this is a lower cost to the rate payer. AWC would have to
21 plan, design, permit, capitalize, operate and maintain a separate waste treatment
22 system for any waste stream produced by a groundwater treatment system used to
23 achieve potable standards.

24 **Total Dissolved Solids** - The treatment of groundwater that has high TDS levels is
25 most economically performed for groundwater with high TDS using a Reverse
26 Osmosis treatment process. This produces a waste stream that has to be processed
27 in a separate wastewater treatment system such as an evaporation pond or other
28 capital intensive brine management systems. The residuals from this process are
then taken to a landfill. In an integrated system this waste stream can, in many
cases, be discharged to the sewer system and more economically treated at the
wastewater treatment plant. This avoids the capital, operation, and maintenance
costs associated with a duplicate wastewater treatment plant. The net result of this
is a lower cost to the rate payer. AWC would have to plan, design, permit,
capitalize, operate and maintain a separate waste treatment system for any waste
stream produced by a groundwater treatment system used to achieve potable
standards.⁶³

In the case of stand-alone utilities, there is certainly no financial incentive for one utility
to incur costs in order to help another utility reduce costs. However, this is not the case with
respect to integrated utilities. Thus, another benefit of integration is increased efficiencies and

⁶² Exhibit CT-104 (Hendricks Direct Testimony) at 6, lines 17-20.

⁶³ *Id.* at 6-8.

1 flexibility in dealing with waste streams, which ultimately inures to the benefit of the customers
2 served by the integrated providers in the form of lower rates.

3 **4. Integrated Systems Improve the Customer Experience by Providing**
4 **“One-Stop” Shopping.**

5 Messrs. Hendricks and Johnson each testified that integrated utilities improve the
6 customer experience by providing “one-stop” shopping. This occurs in at least two important
7 ways. First, integrated utilities have the advantage when it comes to customer service. Mr.
8 Hendricks explained that “[t]he integrated system will have shared personnel who are cross-
9 trained, on-site and available to provide a high level of service to the ratepayer.”⁶⁴ Thus,
10 customers who are served by an integrated water and wastewater provider benefit because they
11 have a single point of contact to establish two services, to terminate two services, to pay bills for
12 two services, and so forth.

13 Second, Mr. Hendricks explained that customers of integrated water and wastewater
14 providers have the advantage when it comes to blue-staking:

15 The law requires a utility to Blue Stake a utility system if there is any planned
16 excavation on the area. With separate systems, each utility company will send a
17 separate truck and personnel to mark the utility. In an integrated system, the sewer
18 and water lines are Blue Staked at the same time. This reduces costs to the ratepayer
19 and provides a higher level of certainty for the location the utility lines. If the
20 marking is not done in time and accurately, there is a potential for damage to the
21 system which can interrupt service to the ratepayers and lead to costly repairs of
22 the system.⁶⁵

23 Mr. Johnson, a former utility regulator with more than 25 years of experience, agreed that
24 customers benefit from an integrated water and wastewater utility:

25 In my experience as Utilities Director, having personally received many telephone
26 calls from frustrated and highly agitated customers, it is my opinion that from a
27 qualitative perspective, the customer experience is enhanced by having a single
28 provider, a single point of contact, a single relationship, a single experience and a
single expectation.⁶⁶

⁶⁴ Exhibit CT-104 (Hendricks Direct Testimony) at 10, lines 7-9.

⁶⁵ *Id.* at 10, lines 18-25.

⁶⁶ Exhibit CT-109 (Johnson Rebuttal Testimony-Redacted) at 30, lines 23-26.

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5. Integrated Systems Maximize the Use of Reclaimed Wastewater.

The evidence in this case shows that an integrated water and wastewater system maximize the use of reclaimed wastewater in a way that stand-alone water companies cannot or will not.

Dr. Goldman testified as follows:

Integrated water and wastewater providers plan for the delivery of effluent from day one. Wastewater utilities are keenly aware that there is a continuous flow of effluent discharging from their wastewater treatment plants. This effluent can be delivered to customers, recharged and stored in the aquifer, or discharged (and unavailable for beneficial use in the service area) pursuant to a discharge permit, but it must go somewhere. When a wastewater utility and a water utility work together in an integrated fashion, they can jointly plan for the most efficient use of the effluent. For example, an integrated utility may reduce the price of its effluent in order to find buyers for that effluent. While the sale of the effluent displaces the sale of potable water to those customers, the integrated utility is willing to accept the trade-off in order to manage the effluent. As another example, an integrated utility may implement tariffs, with prior Commission approval, that promote the use of effluent by certain classes of customers. The end result is that effluent is beneficially used within the service territory which reduces the amount of groundwater or surface water that is used in the service territory.

In comparison, a stand-alone water company such as AWC does not have any incentive to promote the sale of effluent (which it does not have) over the sale of groundwater or treated surface water. If a customer wants to purchase potable water, the stand-alone water company is going to supply that water. There is simply no reason for the water company to encourage that customer to buy effluent from the wastewater provider.⁶⁷

Where an area is served by a stand-alone water company, that circumstance works as a large deterrent to the construction of effluent distribution infrastructure by the wastewater provider. Mr. Hendricks testified in support of this fact in his Direct Testimony:

A non-integrated sewer provider may not construct reuse lines to areas served by unaffiliated water providers because there is no certainty that reclaimed wastewater will be sold where potable water is available. This forces companies like AWC to pump groundwater to provide potable water for irrigation. This is an unnecessary competition for groundwater which should be used for potable purposes and therefore discouraged.⁶⁸

More to the point, Cornman Tweedy witness Jim Poulos testified to this fact in his Direct Testimony wherein he affirmatively stated that Picacho Sewer Company would not construct effluent distribution infrastructure to serve the Cornman Tweedy Property if the property remains

⁶⁷ Exhibit CT-107 (Goldman Rebuttal Testimony-Remand II) at 4-5.

⁶⁸ Exhibit CT-104 (Hendricks Direct Testimony) at 6, lines 7-12.

1 within the CC&N of AWC:

2 So long as AWC has the CC&N to serve the Cornman Tweedy Property, Picacho
3 Sewer Company (or any other sewer company for that matter) would not construct
4 infrastructure to supply nonpotable uses within the Cornman Tweedy Property.
5 This is because there is a real risk that AWC could seek a rate below the Picacho
6 Sewer Company rate for reclaimed wastewater and take away customers from
7 Picacho. Under such a scenario, the delivery infrastructure constructed by Picacho
8 Sewer Company would be stranded investment. By comparison, if affiliates
9 Picacho Water Company and Picacho Sewer Company serve the Cornman Tweedy
10 Property, this risk of competition for non-potable customers is eliminated because
11 Picacho Water Company would never seek such a rate below that of Picacho Sewer
12 Company causing it to strand its investment. Picacho Sewer Company would serve
13 the non-potable uses within the Cornman Tweedy Property and Picacho Water
14 Company would provide potable water.

15 I would also add that AWC has only one product to sell—groundwater—whereas
16 the integrated Picacho utilities can sell potable water and reclaimed wastewater.
17 AWC has a financial incentive to maximize the sale of potable water to customers
18 within its CC&N, even if those customers could receive reclaimed water.⁶⁹

19 The Arizona Court of Appeals acknowledged the truth of Mr. Poulos' comments in
20 *Arizona Water Company v. Arizona Corporation Commission*, 177 P.3d 1224, 217 Ariz. 652
21 (App. 2008), a case in which the court considered an appeal by AWC regarding Decision 68453
22 awarding a CC&N to Woodruff Water Company over a competing application by AWC for a
23 planned development in Pinal County known as Sandia. The Court of Appeals commented on
24 evidence supporting the Commission's decision that affiliated water and wastewater companies
25 are more likely to coordinate efforts to maximize the use of effluent:

26 The evidence also demonstrated that the Woodruff Companies would work together
27 to minimize the use of groundwater, which would provide long-term benefits to the
28 public. Mr. Polen, who was in charge of the Woodruff Companies, testified that
the management of the water and sewer systems in Sandia would be connected.
The companies' goal was to reuse 100 percent of the effluent generated for lakes,
parks, and golf courses, using effluent distribution lines that would be constructed
along with the distribution lines for potable water. He further explained that an
integrated system would allow for the coordination of these activities. This
evidence would allow one to conclude that such a coordinated effort in the use of
effluent could result in an overall reduction in the use of groundwater, which would
be a benefit to the public. Although unaffiliated companies could coordinate such
efforts, we cannot fault the Commission for concluding that affiliated companies
would more likely do so. Indeed, evidence before the Commission suggested that

⁶⁹ Exhibit CT-102 (Poulos Direct Testimony) at 17, lines 2-20.

1 such cooperation would not be forthcoming from Arizona Water, which had sued
2 wastewater companies for selling effluent within Arizona Water's service areas.
3 For these reasons, we decide that reasonable evidence supported the Commission's
4 conclusion that Woodruff Water's ability to coordinate efforts with Woodruff
5 Utility would benefit the public. Consequently, the superior court did not err by
6 refusing to vacate the Commission's award for lack of evidence concerning
7 integrated services.⁷⁰

8 While AWC may pay lip service to the beneficial use of effluent, its actions over many
9 years have shown a concerning lack of commitment. In *Arizona Water Company v. City of Bisbee*,
10 172 Ariz. 176, 836 P.2d 389 (App. 1991), the Arizona Court of Appeals considered a lawsuit
11 brought by AWC challenging the right of the City of Bisbee to deliver effluent from the City's
12 wastewater treatment plant to Phelps Dodge for use in its copper leaching operation, which were
13 located within AWC's CC&N. The Court summarized the facts as follows:

14 The city processes sewage through its Mule Gulch Wastewater Treatment Facility,
15 which is located within Arizona Water's service area. In 1986, after the United
16 States Environmental Protection Agency notified the city that the discharge from
17 the facility did not meet federal requirements, the city contracted with [Phelps
18 Dodge ("PD")] to deliver 100,000 to 300,000 gallons of sewage effluent per day to
19 the PD leaching operation. In return, PD leased two pumps and a pipeline to the
20 city for transporting the effluent from the treatment facility to the leaching
21 operation. The effluent contains pathogenic bacteria, fecal coliform bacteria, and
22 metals such as arsenic and cadmium. It is not fit either for irrigation purposes or
23 for human consumption.

24 When Arizona Water learned of the city's effluent delivery, it demanded that the
25 city cease "providing water service" within Arizona Water's service area. After the
26 city refused, Arizona Water filed suit seeking a declaratory judgment, injunctive
27 relief, and damages for inverse condemnation. It then moved for partial summary
28 judgment. At the hearing, the city made an oral motion for summary judgment,
which the trial court later granted.

Arizona Water contends on appeal that the city's delivery of water within Arizona
Water's certificated area constitutes a competing service in violation of A.R.S. §§
9-515 and 9-516. As a result, Arizona Water contends that the city has taken its
property without just compensation.⁷¹

More recently, AWC opposed through litigation an agreement by the City of Casa Grande
to supply effluent to the Desert Basin Generating Station in Casa Grande. AWC witness Paul
Walker discussed this case in footnote 16 of his whitepaper entitled *Total Water Management:*

⁷⁰ *Arizona Water Company v. Arizona Corporation Commission*, 217 Ariz. 652, 177 P.3d 1224, 1233 (App. 2008) (emphasis added).

⁷¹ *City of Bisbee*, 172 Ariz. 176, 177, 836 P.2d 389, 390.

1 *Resource Conservation in the Face of Population Growth and Water Scarcity*, which was admitted
2 as Exhibit CT-116. Like the *City of Bisbee* case, the court ruled against AWC.

3 In marked contrast to AWC's litigious response to anyone who attempts to deliver effluent
4 within its CC&N, compare the commitment to effluent reuse by the integrated water and
5 wastewater utilities serving Robson's Sun Lakes community. Mr. Soriano testified as follows:

6 [C]onsider Robson's Pima Utility Company ("Pima"), which is one of the pioneers
7 of effluent recharge and recovery in Arizona. Pima uses groundwater as its initial
8 source of water supply. Using a system of wells, storage facilities and booster
9 stations, groundwater is distributed to residential and commercial customers
10 throughout Pima's service area. Pima then collects the wastewater generated by its
11 customers and treats that wastewater at its reclamation facility. The reclaimed
12 wastewater, or effluent, is then recycled in the Sun Lakes community through
13 Pima's reclaimed water distribution system. Pima delivers reclaimed water to the
14 Oakwood Golf Course for direct use and to five dual-use recharge and recovery
15 wells for recharge into the local aquifer. Reclaimed effluent is recovered from the
16 recharge and recovery wells for delivery to landscaping and golf course uses in the
17 Sun Lakes community. Pima's fully integrated system directly reduces
18 groundwater pumping by meeting turf and landscaping demands with reclaimed
19 water, and Pima replenishes the aquifer by returning remaining unused effluent to
20 the aquifer.⁷²

21 The evidence is clear that integrated water and wastewater utilities will maximize the use
22 of reclaimed wastewater as compared to stand-alone utilities.

23 **c. Arizona Water Company Will Suffer No Harm if the Cornman Tweedy**
24 **Property is Excluded from its CC&N.**

25 The evidence is also undisputed that AWC has constructed no water infrastructure within
26 the Cornman Tweedy Property. Moreover, AWC has not established that it will suffer any
27 material harm if the Cornman Tweedy Property is excluded from its CC&N and, in fact, it will
28 not suffer any harm. Based on testimony provided by AWC witness Fred Schneider, Dr. Goldman
points out that the Cornman Tweedy Property represents only one-third of one percent⁷³ of
AWC's Pinal Valley planning area. Dr. Goldman explains the effect that excluding the Cornman
Tweedy Property would have on AWC:

⁷² Exhibit CT-100 (Soriano Rebuttal Testimony) at 5, lines 2-16.

⁷³ Exhibit CT-107 (Goldman Rebuttal Testimony-Remand II) at 4, lines 23-25.

1 It is inconceivable that eliminating the 1,138-acre Cornman Tweedy property from
2 the AWC certificated area would result in any noticeable loss of reliability or
3 efficiency to AWC's operations. Any economies of scale would not even be
4 measurable.

5 ****

6 ... Based on my review of AWC's Pinal Valley Water System Master Plan (Exhibit
7 WMG-17) and other information provided by AWC in this docket and in response
8 to data requests, the deletion of the Cornman Tweedy property would have no
9 adverse effect on AWC's water system. The Cornman Tweedy property is located
10 at the southern boundary of the existing certificated territory of AWC. The deletion
11 of this property would require only minor modifications to AWC's plans, and
12 would have no impact on the company's ability to serve its customers.⁷⁴

13 Dr. Goldman's testimony was, in fact, corroborated by AWC witness Schneider at the
14 hearing in this exchange between Mr. Schneider and the ALJ:

15 ALJ: Would it make a difference in terms of how your mains would run
16 if the Cornman Tweedy property were excluded?

17 Schneider: No. We would probably still run a water main down Florence
18 Boulevard. It would only serve the property to the north. ...⁷⁵

19 Further, there is no credible evidence in the record that AWC would suffer material
20 financial harm as a result of excluding the Cornman Tweedy Property from its CC&N, as shown
21 by this exchange between the Mr. Schneider and the ALJ:

22 ALJ: You stated in your testimony that Arizona Water has invested
23 thousands of man hours and over \$1 million planning for water
24 needs in the Pinal Valley water system and planning area, right?

25 Schneider: That is correct, Your Honor.

26 ALJ: Is there any way to determine how much of that is actually
27 attributable to planning to serve the Cornman Tweedy property?

28 Schneider: It would be difficult to parse out that one piece, as our planning is
for the entire area and any of the other related projects that may
come along the way. So it would be a difficult one to parse out.⁷⁶

⁷⁴ Exhibit CT-106 (Goldman Rebuttal Testimony) at 2.

⁷⁵ Hearing Transcript Vol. III at 553-554.

⁷⁶ *Id.* at 552, lines 9-20.

1 The evidence is clear that under the circumstances of this case, AWC will suffer no harm
2 by excluding from its CC&N the Cornman Tweedy Property which represents only one-third of
3 one-percent of its Pinal Valley planning area.

4 **d. AWC itself Cannot Provide Integrated Service to the Cornman Tweedy**
5 **Property because it Does not Hold the Sewer CC&N for the Property.**

6 Picacho Sewer Company holds the CC&N for the Cornman Tweedy Property. Because
7 AWC does not hold the CC&N to provide sewer service to the Cornman Tweedy Property, it is
8 not possible for AWC itself to provide integrated water and wastewater service to the Cornman
9 Tweedy Property. Although AWC asserts that it can nevertheless work with the sewer provider
10 for the Cornman Tweedy Property to provide the benefits of an integrated water and wastewater
11 system, the evidence is clearly otherwise. First, the *City of Bisbee* and *City of Casa Grande* cases
12 contradict AWC's assertion that it is willing to work cooperatively with the sewer utility to
13 provide the benefits of integration to the Cornman Tweedy Property. Second, the examples
14 offered by AWC where it has partnered with entities such as Global Water Resources, PERC
15 Corporation and the City of Casa Grande to provide for the delivery of effluent within its
16 certificated territory are in fact cases where no effluent has been delivered. Ultimately, AWC
17 provides one example of a situation where AWC is providing a minimal amount of effluent to a
18 golf course in the east valley. Thus, the evidence that AWC has delivered effluent or facilitated
19 the delivery of effluent is almost non-existent.

20 **2. AWC is Not Providing Reasonable Service because it is Not Able to Provide**
21 **Integrated Water and Wastewater Service to the Cornman Tweedy Property.**

22 In "consider[ing] the overall public interest underlying service to the Cornman property"
23 as directed in Decision 69722, the ALJ should give substantial weight to the option which
24 provides the best opportunity for integration of water and wastewater services. In an article
25 entitled *Encouraging Conservation by Arizona's Private Water Companies: A New Era of*
26 *Regulation by the Arizona Corporation Commission* published in the Arizona Law Review, 49
27 Ariz. L. Rev. 297 (2007), former Commissioner Mayes discussed the Commission's preference
28 for integrated water and wastewater utilities, stating:

1 In recent months, the Commission has issued decisions indicating a preference that
2 new subdivisions be served, where possible, by integrated water and wastewater
3 companies. These integrated utilities help to achieve economies of scale, encourage
4 conservation efforts, and facilitate the use of effluent for golf course irrigation,
5 ornamental lakes, and other water features. The concept of integrated wastewater
6 and water companies was approved by the 1999 Commission Water Task Force, a
7 working group comprised of Commission Staff, the Residential Utility Consumer
8 Office ("RUCO"), ADEQ, ADWR, and water company stakeholders. Though the
9 Task Force's policy proposals have never been formally adopted by the
10 Commission, the integrated water and wastewater model has been explicitly
11 favored in several recent decisions. One of those cases involved a clash between
12 the Arizona Water Company ("AWC"), a stand-alone water utility, and a competing
13 entity that proposed to serve the area in question with an integrated water and
14 wastewater operation.

15 In *Woodruff*, the Commission was presented with a choice between two water
16 companies that wanted to serve the same 3,200 acre development (called Sandia)
17 in a fast growing area of Pinal County. The Commission's decision was heavily
18 influenced by the question of whether the CC&N should be granted to an entity
19 capable of utilizing effluent. Ultimately, the Commission awarded the CC&N to
20 Woodruff Water and Sewer Companies over AWC. The Commission chose
21 Woodruff despite the fact [that] AWC was a far more experienced water provider.

22 ***

23 Companies competing for the right to serve some of the state's fastest growing areas
24 are advantaged when they present an integrated approach to the Commission, thus
25 allowing Commissioners the opportunity to mandate the use of effluent from the
26 moment the service area is created. (footnotes omitted).⁷⁷

27 Mr. Johnson, the former Director of the Commission's Utilities Division, shares
28 Commissioner Mayes' position that integrated utilities are preferred by the Commission:

29 The Commission clearly expressed its view that integrated providers are superior
30 to standalone providers where the option exists when it granted CC&Ns to
31 integrated provider Woodruff Water Company and Woodruff Utility Company
32 over a competing application by AWC (Consolidated Docket Nos. W-04264A-04-
33 0438, SW-04265A-04-0439 and W-01445A-04-0755). ... I am not aware of any
34 decision since where the Commission has abandoned or backtracked from that
35 view. In my opinion, the fact that AWC has recently entered into collaborative
36 agreements regarding wastewater service is evidence that AWC believes the
37 Commission holds this view.⁷⁸

38 AWC claims that the benefits of integration can be achieved through collaborative
arrangements but there is little if any evidence that this is true in practice, especially in the case

⁷⁷ Exhibit CT-103 (Poulos Rebuttal Testimony), Exhibit 2 at 304-305.

⁷⁸ Exhibit CT-110 (Johnson Rejoinder Testimony) at 19-20 (emphasis added).

1 of AWC. While AWC asserts that it supports the use of effluent, its actions are otherwise as
2 discussed above. Dr. Goldman testified that “AWC’s Pinal Valley CC&N includes 269 square
3 miles yet AWC does not have a CC&N to provide sewer collection and treatment service
4 anywhere in Arizona.”⁷⁹ If AWC truly embraced a commitment to the use of reclaimed water in
5 meeting the water needs of its customers, one would reasonably expect that the company would
6 have sought a sewer CC&N at some point. Actions always speak louder than words.

7 AWC asserts that it has arrangements in place to provide effluent in its service area.
8 However, it does not appear that any of these agreements have gone very far. For example, Mr.
9 Goldman discusses a purported agreement between AWC and the City of Casa Grande in his July
10 18, 2014 Rebuttal Testimony:

11 Item No. 12 at page 64 of the March 2008 Reclaimed Water Use Conceptual Master
12 Plan, a copy of which is attached as Exhibit FKS-8 to Mr. Schneider’s Direct
13 Testimony, is a recommendation that the City of Casa Grande negotiate a
14 Memorandum of Understanding (“MOU”) with AWC regarding (i) AWC’s
15 operation and maintenance of City-owned reclaimed water distribution and
16 recharge facilities; and (ii) cooperation regarding future planning activities
17 designed to maximize the beneficial use of reclaimed water. However, in response
18 to Cornman Tweedy Data Request 6.61 to AWC, AWC reported that the MOU has
19 not been executed and AWC has “no expected date for execution of an agreement.”
20 Further, in response to Comman Tweedy Data Request 6.45, AWC reported that it
21 does not receive any reclaimed water from the Town of Casa Grande. Again, if
22 AWC truly recognized the importance of reclaimed water in meeting the water
23 needs of its customers, I would expect that the company would have completed the
24 MOU that was called for in the conceptual plan prepared in 2008.⁸⁰

25 Another example offered by AWC is a purported agreement with Global Water Resources.
26 Again, however, the arrangement has never gone anywhere as evidences by the following
27 testimony of Mr. Goldman:

28 At page 5, lines 14-16 of the Direct Testimony of William M. Garfield (Hearing on
Remand-Phase 11), Mr. Garfield discusses the settlement agreement (“Settlement
Agreement”) between AWC and Global Water Resources and its subsidiaries and
affiliates (collectively, “Global”), a copy of which is attached to Mr. Garfield’s
testimony as Exhibit WMG-1. Section 7(a) of the Settlement Agreement states that
Global “shall enter into an agreement with Arizona Water Company to supply
available reclaimed water to Arizona Water Company, if requested, to be sold and
delivered by Arizona Water Company within its CCN and Planning Area.”

⁷⁹ Exhibit CT-107 (Goldman Rebuttal Testimony-Remand II) at 7, lines 17-19 (footnote omitted).

⁸⁰ *Id.* at 8, lines 10-23.

1 However, in response to Cornman Tweedy Data Request 6.43, AWC concedes that
2 no such agreement has been drafted because “there is no current demand from
3 customers for such services.” Once again, if AWC truly recognized the importance
4 of reclaimed water in meeting the water needs of its customers, I would expect that
5 the company would have completed the agreement with Global that was called for
6 in the 2008 settlement agreement.⁸¹

7 In yet another unfulfilled opportunity, Mr. Schneider states in his Direct Testimony that
8 AWC was in discussions with PERC Water Corporation (“PERC”) whereby PERC would permit,
9 design and construct wastewater facilities in areas where AWC is the water provider and where
10 no wastewater provider exists.⁸² Again, nothing has materialized with respect to PERC.

11 Mr. Johnson acknowledged in his testimony the unwillingness of AWC to provide
12 wastewater service within its CC&N and its hostility toward the attempts of others to use effluent
13 within its CC&N:

14 In my experience at the Commission, AWC has generally used a different business
15 model and, to my recollection, has always resisted providing wastewater service in
16 Arizona. Additionally, AWC has opposed the efforts of others to distribute effluent
17 within its service area as evidenced by the lawsuits AWC filed against the Town of
18 Bisbee and the Town of Casa Grande.⁸³

19 In stark contrast to AWC, Mr. Soriano testified that “Robson enthusiastically believes in
20 the benefits of integrated water and wastewater utilities.”⁸⁴ He explains:

21 An integrated water and wastewater utility does not treat the delivery of potable
22 water, the collection and treatment of wastewater and the distribution of effluent as
23 separate unrelated activities. Rather, an integrated water and wastewater utility
24 recognizes that the provision of water service is substantially interrelated to the
25 provision of wastewater service. An integrated utility recognizes that groundwater
26 is a scarce resource and that the efficient use of reclaimed water for turf/landscape
27 irrigation and recharge of the aquifer are critical to the long-term sustainable
28 provision of water and wastewater services to its customers.⁸⁵

AWC clearly cannot provide reasonable service to the Cornman Tweedy Property under
the facts of this case because it is not able to provide integrated water and wastewater service to
the property. In recognition of this truth, Mr. Johnson aptly described the public interest
considerations that underpin this case:

⁸¹ Exhibit CT-107 (Goldman Rebuttal Testimony-Remand II) at 9, lines 9-22.

⁸² Exhibit AWC-3 (Schneider Direct Testimony-Remand Phase 2) at 14, lines 12-17.

⁸³ Exhibit CT-109 (Johnson Rebuttal Testimony) at 16, lines 5-9.

⁸⁴ Exhibit CT-100 (Soriano Rebuttal Testimony) at 4, lines 20-21.

⁸⁵ *Id.* at 4-5.

1 Efficiently utilizing scarce resources (groundwater and effluent) through an
2 integrated water and wastewater provider is the most reasonable, practical, policy
3 and public interest-based outcome that can come out of this proceeding. This
4 proceeding affords the ACC the opportunity to clearly recognize that in the water
5 challenged area affected by this proceeding, maximizing the efficient use of both
6 groundwater and effluent is providing reasonable service to customers, and is the
7 best public interest outcome. I would add also that removing the Cornman Tweedy
8 Property from AWC's CC&N does not result in a decision today regarding the
9 water service provider for the property, but it leaves all options on the table for the
10 Commission once development proceeds at some future time.⁸⁶

11 ****

12 In circumstances where no quality integrated water and wastewater option exists,
13 standalone service providers must be used. However, that is not the case here, and
14 we certainly don't need to foreclose the option for an integrated provider when
15 there is no present need or necessity for water or wastewater service on the
16 Cornman Tweedy Property.⁸⁷

17 ****

18 [AWC witness] Walker tries to make the case that through the use of a so-called
19 collaborative arrangement between AWC and wastewater providers, AWC can
20 approximate the benefits that can be achieved by an integrated provider. It may be
21 the case that a collaborative arrangement can help approximate some of the benefits
22 of an integrated water and wastewater provider where there is no option for an
23 integrated provider. However, where there is an option for an integrated provider,
24 as is the case here, the Commission should not settle for an approximation of some
25 of the benefits through collaborative arrangements between standalone providers.⁸⁸

26 Mr. Johnson summarizes his conclusions as follows:

- 27 • Standalone water service would not constitute reasonable service where quality
28 integrated service is an option;
- Integrated water and wastewater service would constitute reasonable service;
- The broad public interest supports excluding the Cornman Tweedy property from
AWC's CC&N; and
- "Reasonable" service must be determined on a case-by-case basis.⁸⁹

⁸⁶ Exhibit CT-110 (Johnson Rejoinder Testimony) at 4, lines 11-19.

⁸⁷ *Id.* at 5, lines 15-18.

⁸⁸ *Id.* at 5, lines 15-18.

⁸⁹ Exhibit CT-109 (Johnson Rebuttal Testimony) at 32, lines 9-15.

1 **B. What is the significance and scope of a Commission decision regarding this inquiry?**
2 **Is it intended to be universally applicable, or would it be applicable only to Arizona**
3 **Water Company as to the specific Cornman Tweedy Property?**

4 When the elaboration quoted in Judge Nodes' February 10, 2011 Procedural Order is read
5 in the context of Findings of Fact 100, 101 and 104 of Decision 69722, it is clear that the decision
6 in this case is to apply narrowly and specifically to the Cornman Tweedy Property. Neither AWC
7 nor Cornman Tweedy has asked, nor has the Commission directed, that a policy statement of
8 statewide applicability issue from this case. Rather, this proceeding is to determine whether it
9 serves the public interest for AWC to hold the CC&N for the Cornman Tweedy Property under
10 the circumstances presented in this case. Mr. Johnson, with more than two decades of experience
11 in regulatory policy and policy-making, concurs stating that "[he does] not believe that the
12 Commission is setting policy by excluding the Cornman Tweed property from AWC's CC&N
13 because any such decision will necessarily turn on the unique facts and circumstances of this
14 case."⁹⁰

15 Further, the Commission does not bind itself to the judicial doctrine of *stare decisis* which
16 generally obligates a court of law to follow prior precedents. Rather, the impact of a particular
17 Commission decision is always limited to the specific case that is before the Commission unless
18 the Commission makes the decision more broadly applicable. In other words, the Commission is
19 free to reach a different decision in a different case and it has done so on prior occasions.

20 AWC asserts that a decision to exclude the Cornman Tweedy Property from AWC's
21 CC&N "will alarm every water and wastewater utility in the state."⁹¹ However, the lack of a
22 response from industry clearly shows otherwise. To this point, Mr. Johnson provided the
23 following observation in his testimony:

24 Despite the notice that has been provided in this docket, and despite Mr. Walker's
25 associations with many of the larger water and wastewater utilities in this state, not
26 a single water or wastewater utility has intervened in this proceeding. In my
27 experience, water and wastewater utilities actively protect their interests when they
28 are facing perceived financial harm or when their business interests are at risk.
Thus, it is only logical to conclude that Mr. Walker's perspective is not shared by
other water and wastewater utilities in the state.

⁹⁰ Exhibit CT-109 (Johnson Rebuttal Testimony) at 24, lines 16-18.

⁹¹ Exhibit AWC-7 (Walker Direct Testimony-Remand Phase 2) at 7, lines 13-14.

1 Further, as I discussed above, most private utilities serving in the more populated
2 growth areas of the state already provide integrated water and wastewater service.
3 There has been substantial consolidation within the industry over the past decade
4 with utilities such as Epcor Water, Global Water and Liberty Utilities acquiring
5 smaller stand-alone water and wastewater companies. Thus, I do not believe that
6 a decision to exclude the Cornman Tweedy property would cause alarm among the
7 integrated providers such as Epcor Water Arizona, Global Utilities, Liberty
8 Utilities, Johnson Utilities and the Robson utilities. In fact, these companies may
9 even welcome a decision that would advance the integration of water and
10 wastewater services. In addition, new applications for CC&N's to serve new
11 developments now typically address both water and wastewater services, as in the
12 cases of the Woodruff utilities, the Perkins Mountain utilities, and Southwest
13 Environmental Utilities, to name a few.⁹²

14 Cornman Tweedy submits that the Commission's decision in this case will be limited to
15 the parties in this case and to the four corners of the Cornman Tweedy Property. There is nothing
16 in either Decision 66893 or Decision 69722 which proves otherwise.

17 **C. What is the status of Arizona Water Company's CC&N authority as to the Cornman
18 Tweedy Property and the standard for revocation of any such authority?**

19 With regard to the status of AWC's CC&N with respect to the Cornman Tweedy Property,
20 Cornman Tweedy is not aware of any other case that is remotely similar to this case. Cornman
21 Tweedy witness Ernest Johnson testified in his Rebuttal Testimony that the facts of this case are
22 unprecedented,⁹³ and AWC witness Paul Walker agreed after reviewing all of the CC&N deletion
23 cases he could find in the Commission's records for the past eight years that this is a "unique"
24 case.⁹⁴ Central to the uniqueness of this case is that fact that while the Commission deemed the
25 conditions of Decision 66893 fulfilled in Decision 69722, it also simultaneously remanded the
26 case for further proceedings and put AWC on notice that the Cornman Tweedy property could be
27 excluded from its CC&N at the end of the review. This is a critical point which places this case
28 in a singularly unprecedented category. Without the remand ordered in Decision 69722, Cornman
Tweedy would likely concede that AWC holds an unconditional CC&N to serve the Cornman
Tweedy property. However, the fact that the Commission simultaneously ordered the remand
cannot be disregarded and it distinguishes this case from all other cases where the Commission
has considered either revoking a CC&N or deleting territory from a CC&N. The end result is that

⁹² Exhibit CT-109 (Johnson Rebuttal Testimony) at 22-23 (footnote omitted).

⁹³ *Id.* at 12, lines 12-13.

⁹⁴ Hearing Trans. Vol. III at 634, lines 3-6, and 635, lines 5-6.

1 AWC's authority with respect to the Cornman Tweedy Property has been implicitly restricted by
2 Decision 69722 until such time as the Commission determines whether AWC should continue to
3 hold the CC&N for that property. In other words, AWC holds something akin to a conditional
4 CC&N for the Cornman Tweedy Property, notwithstanding any other language contained in
5 Decision 69722.

6 In determining whether AWC should continue to hold the CC&N for the Cornman
7 Tweedy Property, the standard to be applied in this case is the public interest standard. To provide
8 structure for the Commission's review, Mr. Johnson recommended the following analytical
9 framework:

- 10 ● Recognition that the public interest is a broad concept requiring a broad
11 examination.
- 12 ● The Commission should determine and assess the public interest, utilizing the
13 specific facts present in each case.
- 14 ● The Commission should apply appropriate legal principles applicable to the
15 facts of each case.
- 16 ● The Commission should appropriately balance respective interests.
- 17 ● The Commission should render a regulatory decision, which is fully cognizant
18 of its impact upon end-users.⁹⁵

18 Mr. Johnson then adds that "[r]easonableness must always be considered in determining
19 what is in the public interest."⁹⁶ He explains:

20 The question of reasonableness, and its impact upon the public and the public
21 interest, is front and center in this remand proceeding and must be considered
22 accordingly [*i.e.*, whether AWC "is providing reasonable service if it is not able or
23 not willing to provide integrated water and wastewater services"]. In my view, it
24 is both reasonable and necessary to consider the perspective of the end-user in
25 assessing the public interest and in determining this issue.⁹⁷

26 A decision by the Commission regarding the public interest must be supported by
27 reasonable evidence. So long as the Commission's decision is supported by reasonable evidence,
28 it will not be found to be arbitrary and capricious. As discussed above, in *Arizona Water Company*

⁹⁵ Exhibit CT-109 (Johnson Rebuttal Testimony) at 28, lines 14-23.

⁹⁶ Exhibit CT-110 (Johnson Rejoinder Testimony) at 15, lines 10-11.

⁹⁷ Exhibit CT-109 (Johnson Rebuttal Testimony) at 30, lines 12-16.

1 *v. Arizona Corporation Commission*, 177 P.3d 1224, 217 Ariz. 652 (App. 2008), the Arizona
2 Court of Appeals considered an appeal by AWC regarding Decision 68453 which awarded a water
3 CC&N to Woodruff Water Company over a competing application by AWC. While the *Arizona*
4 *Water Company* case involved two competing applications for a CC&N, whereas this case
5 involves only the application of AWC, the analysis by the Court of Appeals still applies. In that
6 case, AWC argued that the Maricopa County Superior Court erred in upholding the Commission's
7 award of the CC&N to Woodruff Water Company because (i) the common law first-in-the-field
8 doctrine mandated an extension of AWC's CC&N to include the requested territory; and (ii)
9 alternatively, a comparison of the applications of AWC and Woodruff Water Company revealed
10 that the public interest would have been best served by extending AWC's CC&N to include the
11 requested territory.⁹⁸ After ruling that Arizona does not follow the common law first-in-the-field
12 doctrine, the Court of Appeals turned to a comparison of the evidence supporting each of the
13 applications and concluded as follows:

14 In summary, we decide that the superior court correctly ruled that the Commission's
15 decision to award the Sandia CC&N to Woodruff Water was not arbitrary or
16 capricious based on a comparison to Arizona Water's application. Although we
17 recognize that the Commission would have been justified in awarding the Sandia
18 CC&N to Arizona Water, we nevertheless cannot conclude the Commission erred
19 in choosing Woodruff Water. Rather, as did the superior court, we decide that
20 because reasonable evidence supports the Commission's choice, we must defer to
21 the Commission's decision. *Fred Harvey*, 95 Ariz. at 189, 388 P.2d at 238.

22 [B]ecause reasonable evidence supported the Commission's decision to award the
23 Sandia CC&N to Woodruff Water, the superior court did not err by refusing to
24 vacate the Commission's award as arbitrary or capricious. We affirm.⁹⁹

25 Thus, so long as the Commission determines that reasonable evidence supports the
26 decision to remove the Cornman Tweedy property from AWC's CC&N, then the applicable
27 standard has been satisfied.¹⁰⁰

28 ⁹⁸ *Arizona Water Company v. Arizona Corporation Commission*, 217 Ariz. 652, 177 P.3d 1224, 1228 (App. 2008).

⁹⁹ *Id.* 177 P.3d 1224, 1233-1234, 217 Ariz. 652 (emphasis added).

¹⁰⁰ In *Arizona Water Company v. Arizona Corporation Commission*, the Court of Appeals states that "[i]n any action to set aside a Commission decision, the party adverse to the Commission bears the burden of proof and must show by 'clear and satisfactory evidence' that the Commission's decision was unreasonable or unlawful." *Id.* at 1227, 217 Ariz. at ___. Cornman Tweedy notes, however, that this is not an action to set aside a Commission decision and the Commission has not assigned the burden of proof to either party.

1 AWC asserts that this case is simply a CC&N deletion proceeding and that the standard
2 for deletion is set forth in *James P. Paul Water Company v. Arizona Corporation Commission*,
3 137 Ariz. 426, 671 P.2d 404 (1983). In *James P. Paul*, the Arizona Supreme Court ruled that the
4 “public interest is the controlling factor in decisions concerning service of water by water
5 companies.”¹⁰¹ In applying the public interest standard, the court stated that “[o]nce granted, the
6 certificate confers upon its holder an exclusive right to provide the relevant service for as long as
7 the grantee can provide adequate service at reasonable rates.”¹⁰² However, as Mr. Johnson
8 testified, “[t]o cast this case as an inquiry into the ability of AWC to provide safe, adequate and
9 reliable water service misdirects the proper focus of this case and cynically foreordains the
10 outcome.”¹⁰³ In Decision 69722, the Commission found that AWC was “a fit and proper entity
11 to provide water utility service to the extension area.”¹⁰⁴ Thus, it would have been completely
12 nonsensical (not to mention a tremendous waste of time) for the Commission to remand this case
13 to determine whether or not the Cornman Tweedy Property should be excluded from AWC’s
14 CC&N under the deletion standard set forth in *James P. Paul*. Commission decisions should not
15 be interpreted in a way which makes them nonsensical.

16 In construing the Commission’s directives in Decision 69722 and the elaboration quoted
17 in Judge Nodes’ February 10, 2011 Procedural Order, the ALJ may find it helpful to consider as
18 a relevant analogue the principles of statutory construction. In *Mail Boxes v. Industrial*
19 *Commission of Arizona*, 181 Ariz. 119, 888 P.2d 777 (1995), the Arizona Supreme Court
20 explained as follows:

21 The primary rule of statutory construction is to find and give effect to legislative
22 intent. *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d 831, 834 (1990). We look
23 first to the statute’s words. *Kriz v. Buckeye Petroleum Co.*, 145 Ariz. 374, 377, 701
24 P.2d 1182, 1185 (1985). Words have their ordinary meaning unless the context of
25 the statute requires otherwise. *Carrow Co. v. Lusby*, 167 Ariz. 18, 20, 804 P.2d
26 747, 749 (1991). Where language is unambiguous, it is normally conclusive, absent
27 a clearly expressed legislative intent to the contrary. *Corbin v. Pickrell*, 136 Ariz.
28 589, 592, 667 P.2d 1304, 1307 (1983).¹⁰⁵

¹⁰¹ *James P. Paul* at 429, 671 P.2d at 407.

¹⁰² *Id.*

¹⁰³ Exhibit CT-109 (Johnson Rebuttal Testimony) at 10, lines 9-11.

¹⁰⁴ Decision 69722, Conclusion of Law No. 3.

¹⁰⁵ *Mail Boxes v. Industrial Commission of Arizona*, 888 P.2d 777, 779, 181 Ariz. 119 (1995).

1 Likewise, in construing the Commission's directives as set forth in Decision 69722, the
2 ALJ should strive to give effect to the commissioners' intent. There is simply no support for
3 AWC's assertion that the *James P. Paul* deletion standard applies in this case based upon a
4 reading the directives in Decision 69722 and the elaboration quoted in Judge Nodes' February
5 10, 2011 Procedural Order.

6 Further, the courts in Arizona have been clear that a statutory construction which provides
7 an absurd result is to be avoided. In *Knight Transportation, Inc. v. Arizona Department of*
8 *Transportation*, 203 Ariz. 447, 55 P.3d 790 (App. 2002), the Arizona Court of Appeals explained
9 as follows:

10 Generally, in construing a statute, our primary purpose is to give effect to the
11 legislature's intent. *Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10, 990 P.2d 1055,
12 1057 (1999). If an ambiguity exists, we consider the statute as a whole, as well as
13 its context, subject matter, history, consequences, and purpose. *Id.* at 500, ¶ 16,
14 990 P.2d at 1059. Further, we attempt to give a statute "a fair and sensible
15 meaning," *Walter v. Wilkinson*, 198 Ariz. 431, 432, ¶ 6, 10 P.3d 1218, 1219 (App.
16 2000), and to avoid a construction that produces an absurd result. *State v.*
17 *Affordable Bail Bonds*, 198 Ariz. 34, 37, ¶ 13, 6 P.3d 339, 342 (App. 2000). Finally,
18 we consider a statute's meaning in relation to other statutes with the same or similar
19 purpose. *See Keenen v. Biles*, 199 Ariz. 266, 268, ¶ 6, 17 P.3d 111, 113 (App.
20 2001); *U.S. Xpress, Inc. v. Ariz. Tax Court*, 179 Ariz. 363, 366, 879 P.2d 371, 374
21 (App. 1994) (related statutes should be construed as if one law).¹⁰⁶

22 Certainly, accepting AWC's assertion that the *James P. Paul* deletion standard applies in
23 this case would produce an "absurd result" inconsistent with the "fair and sensible meaning" of
24 Decision 69722 and the elaboration quoted in Judge Nodes' February 10, 2011 Procedural Order.

25 Cornman Tweedy would also point out that *James P. Paul* is easily distinguishable from
26 the current case, as Mr. Johnson testified:

27 *James P. Paul* was decided more than 30 years ago in 1983. I believe stand-alone
28 water and wastewater providers were largely the norm at that time. However, most
of the larger utilities in Arizona now provide integrated water and wastewater
services. EPCOR Water Arizona, Global Utilities, Liberty Utilities, Johnson
Utilities and the majority of the Robson utilities are integrated providers, to name
several. Moreover, it is my understanding that utilities formed to serve new
developments are now typically formed as integrated water and wastewater
providers. Woodruff Water Company and Woodruff Utility Company certificated

¹⁰⁶ *Knight Transportation, Inc. v. Arizona Department of Transportation*, 203 Ariz. 447, 55 P.3d 790, 795 (App. 2002).

1 in 2006 (Decision 68453) and Perkins Mountain Water Company and Perkins
2 Mountain Utility Company certificated in 2008 (Decision 70663) are two recent
3 examples. In addition, Southwest Environmental Utilities, L.L.C., filed an
4 application in 2013 [Docket WS-20878A-13-0065] to provide integrated water and
5 wastewater services for a new development in the Town of Florence. AWC is very
6 unique in that it is a large utility, which has persisted in the stand-alone water
7 company model. The question of integration of water and wastewater services was
8 not an issue and was not addressed in *James P. Paul*.¹⁰⁷

9 Furthermore, there are other critical factors distinguishing this case from *James P. Paul*.
10 For example, there was a demonstrated need for water service in *James P. Paul* which is certainly
11 not the case in this docket. Also, James P. Paul Water Company held its CC&N for several years
12 without any condition, unlike AWC which has never held a CC&N for the Cornman Tweedy
13 property free of all restrictions or conditions.

14 For these reasons, the ALJ should reject AWC's assertion that the James P. Paul deletion
15 standard applies in this case.

16 **D. What issues need to be addressed at this stage of this remand and what is the party's
17 position as to each of these issues?**

18 Decision 69722 directs the Hearing Division to "develop a record to consider the overall
19 public interest underlying service to the Cornman property" for the specific purpose of
20 determining "whether Arizona Water should continue to hold a CC&N for the Cornman extension
21 area at this time."¹⁰⁸ Thus, the purpose of this remand proceeding is to determine whether it is in
22 the public interest, under the circumstances presented in this case, to exclude the Cornman
23 Tweedy Property from AWC's CC&N. Cornman Tweedy has identified in this brief the key
24 issues that should be considered by the ALJ in making that determination, the relevant facts and
25 evidence pertaining to those key issues, and its position on each of the key issues.

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

28 Decision 69722 does not assign the burden of proof to either party, but directs the Hearing
Division to "develop a record to consider the overall public interest underlying service to the
Cornman property" for the specific purpose of determining "whether Arizona Water should

¹⁰⁷ Exhibit CT-109 (Johnson Rebuttal Testimony) at 18-19 (citations omitted).

¹⁰⁸ Decision 69722, Findings of Fact 101 and 104.

1 continue to hold a CC&N for the Cornman extension area at this time.”¹⁰⁹ Thus, as discussed in
2 Section II.C above, the ALJ must determine whether it is in the public interest, under the
3 circumstances presented in this case, to exclude the Cornman Tweedy Property from AWC’s
4 CC&N. The role of the parties in that regard is to present evidence which will assist the ALJ in
5 making the determination.

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

8 As discussed in Section II.C above, the standard to be applied in determining whether the
9 Cornman Tweedy Property should be excluded from the CC&N of AWC is the public interest
10 standard. A decision by the Commission regarding the public interest must be supported by
11 reasonable evidence. With respect to any position asserted by a party in this case, that party must
12 support its position with a preponderance of the evidence. A “preponderance of evidence”
13 standard of proof means that the thing asserted by a party is more likely than not to be true, and
14 it is the standard typically applied in civil cases. A preponderance standard is lower than the
15 standard of “clear and convincing evidence.”

16 **III. CONCLUSION**

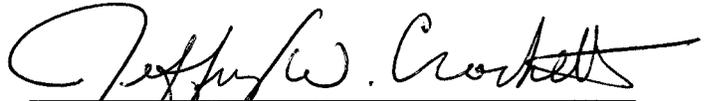
17 The evidence in this case shows that the public interest will best be served by excluding
18 the Cornman Tweedy Property from AWC’s CC&N at this time. It is undisputed that there is no
19 need and necessity for water service for the Cornman Tweedy property at this time or in the
20 foreseeable future. Moreover, Cornman Tweedy does not want water service from AWC for a
21 number of legitimate and compelling reasons as described herein and in the testimony of the
22 Cornman Tweedy witnesses. Specifically, if AWC serves the Cornman Tweedy Property, then
23 the EJ Ranch property will be split between two water providers thereby increasing
24 infrastructure costs for Cornman Tweedy and the public and causing time delays when
25 development does occur in the future. More importantly, if AWC serves the Cornman Tweedy
26 Property, then Cornman Tweedy and the public will lose the recognized benefits of utility service
27 from an integrated water and wastewater provider. The inability to receive integrated water and

28 ¹⁰⁹ Decision 69722, Findings of Fact 101 and 104.

1 wastewater service is unreasonable under the circumstances of this case. Thus, the Cornman
2 Tweedy Property should be excluded from AWC's CC&N in accordance with the directives
3 contained in Decision 69722. Cornman Tweedy notes that AWC has not constructed any water
4 infrastructure within the Cornman Tweedy Property and that it will suffer no material harm if the
5 Cornman Tweedy Property is excluded from its CC&N.

6 RESPECTFULLY submitted this 11th day of April, 2016.

7 CROCKETT LAW GROUP PLLC

8 

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10 2198 E. Camelback Road, Suite 305
11 Phoenix, Arizona 85016-4747
12 Attorney for Cornman Tweedy 560, LLC

13 ORIGINAL plus thirteen (13) copies filed
14 this 11th day of April, 2016, with:

15 Docket Control
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 COPY of the foregoing hand-delivered
20 this 11th day of April, 2016, to:

21 Sarah N. Harpring, Administrative Law Judge
22 Hearing Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, Arizona 85007

26 Janice Alward, Chief Counsel
27 Legal Division
28 ARIZONA CORPORATION COMMISSION
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Thomas M. Broderick, Director
Utilities Division
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1 COPY of the foregoing hand-delivered
2 this 11th day of April, 2016, to:

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A handwritten signature in cursive script, reading "Jeff Crockett", is written over a horizontal line. The signature is positioned to the right of the line numbers 7 through 8.