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BEFORE THE ARIZONA CORPORATION COMMISSION

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2017 JUN 12 P 4: 26

Arizona Corporation Commission

DOCKETED

JUN 12 2017

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IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION INTO THE SETTING AND  
SUBSEQUENT EXTENSION OF COMPLIANCE  
DEADLINES ASSOCIATED WITH CERTIFICATES OF  
CONVENIENCE AND NECESSITY

DOCKET NO. WS-00000A-17-0094

**NOTICE OF FILING**

Global Water Resources, Inc. provides notice of filing the attached presentations made at the Commission workshop in this docket held on June 12, 2017:

- "Historical Background on CC&Ns", Timothy J. Sabo, Snell & Wilmer L.L.P., on behalf of Global Water Resources, Inc.; and
- "Certificates of Convenience and Necessity: Policy", Ron Fleming, President & CEO, Global Water Resources, Inc.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of June, 2017.

SNELL & WILMER L.L.P.

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1 Original +13 copies of the foregoing  
2 filed this 12<sup>th</sup> day of June, 2017, with:

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

7 Copies of the foregoing hand-delivered/mailed  
8 this 12<sup>th</sup> day of June, 2017, to:

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# Historical Background on CC&Ns

ACC CC&N Workshop

June 12, 2017

Docket No. WS-00000A-17-0094


Timothy J. Sabo  
Snell & Wilmer, LLP

On behalf of Global Water Resources, Inc.



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## In the beginning

- Public Service Corporation Act of 1912 (Laws 1912, ch. 50) creates CC&N in Sections 50 & 51
  - “without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction...”
  - ARS § 40-281 now refers to “certificate of public convenience and necessity”
- 



## Statute's Regulated Monopoly Policy

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- Law follows “regulated monopoly” theory *Corp. Comm’n of Arizona v. People’s Freight Line*, 41 Ariz. 158, 167 (1932)
- “policy of the law is controlled and regulated monopoly rather than free competition” *Arizona Corp. Comm’n v. Hopkins*, 52 Ariz. 174, 180 (1938)
- “Public service corporations in Arizona provide services under a regulated monopoly system rather than one borne of free-wheeling competition” *Arizona Water Co. v. Arizona Corp. Comm’n*, 217 Ariz. 652, 656, ¶ 11 (App. 2008)

## No competition once CC&N issued

- New certificate may not be issued without giving existing holder “an opportunity to improve their service.” *Arizona Corp. Comm’n v. Hopkins*, 52 Ariz. 174, 180, 79 P.2d 946, 948 (1938)
- “Once granted, the certificate confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide adequate service at a reasonable rate.” *James P. Paul v. Arizona Corp. Comm’n*, 137 Ariz. 426, 430 (1983)

## Evolution of CC&N orders

- Early - One page (legal size), no conditions
  - Decision No. 17778 (Dec. 8, 1947)(Valencia)
  - Decision No. 35060 (Feb. 26, 1964)
- Middle – 4-5 pages, findings of fact, no conditions
  - Decision No. 47111 (March 3, 1977)
  - Decision No. 54420 (April 1, 1985)
- 2000's – 20 plus pages, numerous conditions
  - Decision 70381 (June 13, 2008)
- Recent – 9 pages, only condition is to charge existing rates
  - Decision No. 75230 (Aug. 26, 2015)





# Historical CC&N Policy Disputes



## 160 acre policy

- Example “in the future anyone owning 160 acres or more and who desires to have his property deleted from the certificated area herein may by written application to the commission in which good cause is shown have his property deleted from this certificate of convenience and necessity” Decision No. 33434 (Oct. 6, 1961)
- ACC policy allowing large landowners to delete their property from CC&N “is repugnant to the underlying philosophy of our public utility law” *Arizona Corp. Comm’n v. Tucson Ins. & Bonding Agency*, 3 Ariz. App. 458, 463 (1966)



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## Economies of Scale

- “A water company's ability, from an economical standpoint, to serve many small property owners may hinge upon the inclusion of a larger parcel of land in its certificate.”
- “A property owner's interests and desires must yield to the public convenience, a public service commission's prime concern.”

*Arizona Corp. Comm'n v. Tucson Ins. & Bonding Agency*, 3 Ariz. App. 458, 463 (1966)

## 5 year vs. entire development dispute

- Staff recommended granting only areas to be developed in first 5-10 years
  - Impacted Global
- Pulte objected, noted need to cover entire development
- Commission grants CC&N that covers Pulte's entire development
  - Decision No. 74786 (Oct. 24, 2014)
- Staff revises its recommendation
  - Decision No. 75691 (Aug. 5, 2016)(Zanjero Trails)



## Integrated provider debate

- “benefits of developing and operating integrated water and wastewater utilities”
  - Decision No. 68453 (Feb. 2, 2006) FOF ¶ 129(4)
- “For these reasons, we decide that reasonable evidence supported the Commission's conclusion that Woodruff Water's ability to coordinate efforts with Woodruff Utility would benefit the public.” *Arizona Water Co. v. Arizona Corp. Comm'n*, 217 Ariz. 652, 661, ¶ 31 (App. 2008)



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## Swiss cheese v. fill in debate

- Should certificates be limited to specific parcels with requests for service (possibly creating weird shapes) or should be by squared off / filled in (e.g. full, half or quarter sections)
- “fill in.. to create a more logical boundary”  
Decision No. 73146 (May 1, 2012)
- CC&N will not be granted w/o request for service
  - Decision No. 68453 (Feb. 2, 2006)(Woodruff/AWC)
  - Decision No. 59396 (Nov. 28, 1995)(Beardsley)



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## CC&N Rules Revision

- 2008 Major overhaul of CC&N rules for water and wastewater
  - Requires notice to landowners if no request for service
  - Regional Planning
    - Requires notice to nearby city
    - Requires map showing nearby utilities
  - Requires description of how water provider will work with wastewater provider “to encourage water conservation”
- Decision 70625 (Nov. 19, 2008)






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## Conclusions

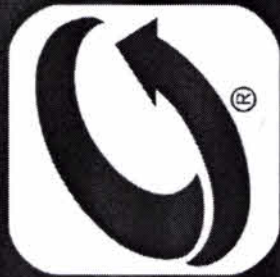
- Arizona law follows regulated monopoly theory – no competition once certificate issued
- Historically, landowner's views and economies of scale are considerations in issuing new CC&N
- Integrated service and water conservation are newer, but important, considerations



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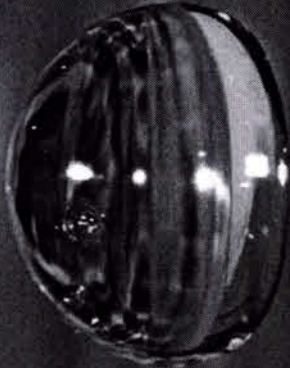




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# Certificates of Convenience and Necessity Policy

Ron Fleming, President & CEO

Water Workshop Presentation

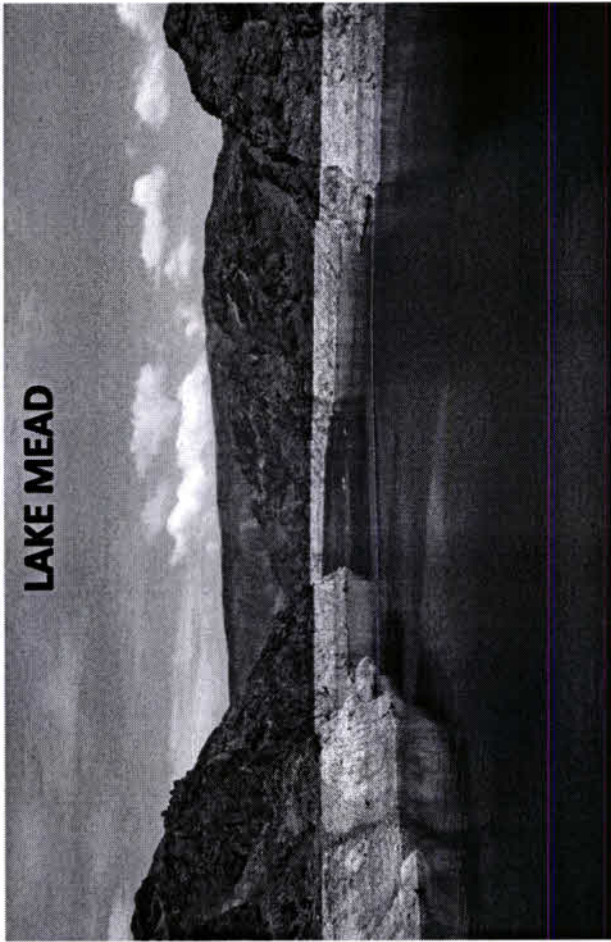
June 12, 2017



**Our reality requires consolidation and effective water resource management, in a cost efficient manner**



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**LAKE MEAD**

## **Increasing Water Demand**



## **Shrinking Water Supply**

## Purpose of Workshop



Global Water Resources

- ☪ We understand the Commission is curious about extensions of time for water and wastewater CC&Ns.
- ☪ In order to help the Commission evaluate the issue we are providing our perspective on the specific issue of the compliance conditions that result in extensions of time and on CC&N policy more broadly.

## What are Compliance Items?



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- CC&N orders have historically included many compliance items.
- During the 2000-2008 time period the amount of compliance items increased substantially, with relatively short deadlines.
- Compliance Items that can cause the Need for Extensions of Time:
  - ADWR Certificate of Assured Water Supply (CAWS)
  - ADWR Designation of Assured Water Supply (DAWS)
  - ADEQ Aquifer Protection Permits (APP)
  - ADEQ Approval to Construct (ATC)
  - ADEQ Approval of Construction (AOC)
  - ADEQ General Permits
  - Rate Case Filings
- Although not Compliance Items, there are other permitting considerations.
  - Example - Association of Governments Clean Water Act Area-Wide 208 Permits (208)



## Why do we see Extension of Time Requests?



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- Both historically, and certainly after the market collapse in 2008, many development plans were put on-hold for an undetermined amount of time.
- Although meaningful capital may have been invested in entitling the land up until that point, it does not make sense to invest substantial additional capital too far in advance of development, which many of the compliance items would require.
- However, in order to maintain the work that was performed and the other benefits of the entitlements in place, utilities have requested extensions of time to the compliance items as a logical and rationale approach.
- This approach limits damages to stakeholders and future customers.

## Are Extensions of Time Harming Anyone?



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- ☉ The Commission has granted many companies multiple extensions of time.
- ☉ We do not see any harm to the public interest from granting those extensions.
- ☉ The developers we work with have all supported the grant of time extensions.
- ☉ We are not aware of any parties in our areas who have questioned the appropriateness of time extensions.
- ☉ To the contrary, it is evident many people rely on the initial CC&N including the utility, landowners, developers, and other regulatory bodies; revoking CC&N can harm these stakeholders.

## Do we need CC&N Compliance Items?



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- Other than the requirement that a utility file a rate case, all of the items listed on the last slide are overseen by government agencies other than the ACC.
- The industry has always wondered why items overseen by other agencies needed to be re-verified by the ACC.
- This does not seem to be common in other states.



## Regional Solutions



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- Global Water has built its business on providing solutions that best address the 3 main issues in our industry:
  - Water Scarcity
  - Fragmentation
  - Cost
- Regional Solutions best address these issues.
- Regional Permitting, including CC&Ns, are at the heart of Regional Planning.
- Thus it is difficult to implement a regional plan if there is uncertainty about CC&Ns.

## The Current System Is Working



- While there may be some old historic CC&Ns with challenges, that issue should not overly influence today's policy as the current system is working.
- Under the current system many utilities were granted new service territory during the development boom from 2000-2008.
- In 2008 we were faced with the largest and most disruptive financial collapse since the Great Depression.
- Development came to a complete halt, however Arizona water and wastewater utilities have weathered the storm.

## The Current System Has Positioned Us Well



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MAXIMIZE WHAT YOU HAVE

- As development picks up, the existing CC&Ns and subsequent planning that occurred puts us in an excellent position to react to the market quickly.
- Were it not for the existing CC&Ns, development would be delayed and this would have implications on many stakeholders and industries.



## What about Competition?



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- Is there a public benefit to opening CC&N territory up to “competition”?
  - Competition occurs, prior to the selection of an initial utility to serve an area and as part of the current process.
  - Beyond this, the Commission should be cautious in promoting competition between utilities.
  - When utilities compete for a contract with a developer, customers may suffer.
- What would “Competition” look like? Utilities can compete in 3 ways:
  - They can be a competent and trustworthy partner that will help solve water scarcity and other industry issues.
  - They can allow the developer to reduce their contribution to utility plant which leads to higher rates for customers.
  - They can offer a lower price to developers by designing a suboptimal system which does not help to solve utility industry issues and causes operational problems and increased costs for customers over time.

## Other Considerations?



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- Developers and home builders develop the land and build the homes and then they move on to their next venture.
- Utilities stay on the land and have to provide service over the long run.
- The utility (and the Commission) will have to deal with the long term implications of any development so it is in their interest to consider the long term interest of the customers.

## Improvements to Current Policy



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- We see no need for major changes to current CC&N practices. However there are some clarifications and adjustments we believe would be helpful:
- The Commission should evaluate whether all of the compliance items commonly required are actually necessary.
  - The Commission should consider requiring that compliance items be filed when available instead of by certain dates.
  - For new CC&Ns (and extensions) the Commission should clarify that it is appropriate to include entire developments within the CC&N. Utilities should not need to file new applications each time a portion of the development moves forward. It should also be clarified that additional compliance items should not be linked to future development time lines.



## Future Policy Considerations



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- ☉ It is unclear how significant changes to current policies will benefit customers.
- ☉ Significant departures from current practices could have significant negative unintended consequences.
- ☉ The Commission should consider minor changes including process improvements discussed above.