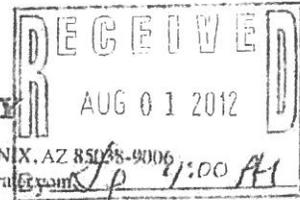


ARIZONA WATER COMPANY

3805 N. BLACK CANYON HIGHWAY, PHOENIX, ARIZONA 85015-5351 • P.O. BOX 29006, PHOENIX, AZ 85068-9006
PHONE: (602) 240-6860 • FAX: (602) 240-6874 • TOLL FREE: (800) 533-6023 • www.azwater.com



August 1, 2012

Ms. Gina Paul, CMC
City Clerk
City of Globe
150 N. Pine Street
Globe, Arizona 85501

Re: Notice of Claim Pursuant to A.R.S. § 12-821.01 regarding provision of water service in violation of A.R.S. § 9-516 and Arizona law; subject to the privileges of Rule 408, Arizona Rules of Evidence

Dear Ms. Paul:

Pursuant to A.R.S. § 12-821.01, Arizona Water Company (the "Company") hereby files with the City of Globe (the "City") this notice of claim as a result of the City's failure to comply with Arizona law including but not limited to, A.R.S. § 9-516 (A) and (B) (the "Statute").

Facts of the Incident and Basis of Liability

The Company makes this claim because the City is providing a competing water utility service in Section 26, (Township 1N, Range 15E) which is in the Company's service area and the City has failed to first acquire the Company's plant, system, and business used and useful in rendering service to that area. The Company is ready, willing and able to provide all public utility water service in that area which is within a Certificate of Convenience and Necessity ("CCN") adopted and issued by the Arizona Corporation Commission on September 20, 1961.

The Statute states:

- "A. It is declared as the public policy of the state that when adequate public utility service under authority of law is being rendered in an area, within or without the boundaries of a city or town, a competing service and installation shall not be authorized, instituted, made or carried on by a city or town unless or until that portion of the plant, system and business of the utility used and useful in rendering such service in the area in which the city or town seeks to serve has been acquired.
- B. The city or town which seeks to acquire the facilities of a public service corporation shall have the right to do so under eminent domain. Such action shall be brought and prosecuted in the same manner as other civil actions."

E-MAIL: mail@azwater.com

On or about February 2, 2012, the Company discovered that the City installed water system facilities within the Section 26 CCN area, and is providing competing water utility service to at least 44 customers in that area. The Company provides adequate public utility water service under authority of law in that area and throughout its CCN area.

Claim For Inverse Condemnation

The City's actions in providing a competing service within the Company's CCN area without first acquiring the Company's plant, system and business in that area violates the Statute, and constitutes a compensable taking of the Company's property and rights including a portion of the Company's CCN. In *Sende Vista Water Company, Inc. v. City of Phoenix*, 127 Ariz. 42, 617 P.2d 1158 (App. 1980), the Arizona Court of Appeals held that the City of Phoenix was not entitled, under the Statute, to provide utility service in a certificated area where it had not first acquired the property interest of the holder of the certificate for the area to be served. Citing with approval *Flecha Caida Water Co. v. City of Tucson*, 4 Ariz. App. 331, 420 P.2d 198 (App. 1966), the Court stated that the requirement to pay just compensation applies even where the holder of the CCN has not yet constructed facilities in the area and even if the only property taken is the CCN itself.

Claim For Past Damages

As a direct and proximate result of the City's actions, the Company has incurred losses and damages for revenues it was entitled to earn from the customers the City has been serving in the Company's CCN area from the date the City started providing the competing water utility services to the present date. The Company is not yet able to determine when such competing service started without examining records exclusively within the custody and control of the City; it is likely that the City's competing water utility service extends back for several years.

Statement of Damages and Demand for Settlement

As a direct and proximate result of the City's actions, the Company has incurred losses and damages, and its property has been taken without the payment of just compensation by the City. As of the date of this claim, the Company's damages caused by the City's actions are:

1. *For the taking of the Company's CCN and Going Concern Value in the Section 26 AWC Service Area: \$ 977,198.*

This sum is based upon the present value of future operating revenue lost from 101 service connections within Section 26 in the Company's CCN area. The supporting calculation is attached as Exhibit "A."

2. *For the past lost net revenue from competing water utility service unlawfully provided by the City in the Company's CCN area from 1980 (estimated) to the present date: \$901,662.*

The supporting calculation is attached as Exhibit "B."

ARIZONA WATER COMPANY

Ms. Gina Paul, CMC
City of Globe

August 1, 2012
Page 3

Accordingly, the City may settle this claim for the amount of \$1,878,860. If the Company must pursue legal action to recover its damages, it will also seek recovery of its attorney's fees and litigation expenses. Also, the Company fully reserves its right to obtain declaratory or injunctive relief, or other available legal and equitable remedies.

We look forward to hearing from the City about this claim and welcome an opportunity to meet with City representatives.

Very truly yours,



Robert W. Geake
Vice President and General Counsel

jrc
Attachment

BY PERSONAL SERVICE

Arizona Water Company
 City of Globe CC&N Encroachment
 CCN and Going Concern Value

Line No.	(A)	(B)	(C)
1.	<u>CCN and Going Concern Valuation</u>		
2.			
3.	2011 Effective Net Revenues - Superstition (including Globe)		\$ 15,075,014
4.			
5.	2011 Actual Customers - Superstition (including Globe)		23,971
6.			
7.	Average Net Revenue per Customer	[C3 / C5]	\$ 628.89
8.			
9.	Number of AWC Customers Served by City of Globe		44
10.			
11.	Number of Remaining Lots		<u>57</u>
12.			
13.	Total Present and Future Customers	[C9 + C11]	101
14.			
15.	Annualized Lost Operating Income	[C7 * C13]	\$ 63,518
16.			
17.	Discount Rate		6.50%
18.			
19.	Total Going Concern Value	[C15 / C17]	<u>\$ 977,198</u>
20.			
21.			
22.			
23.			
24.			
25.			
26.			
27.			
28.			
29.			
30.			

Arizona Water Company
City of Globe CC&N Encroachment
Lost Net Revenues

Line No.	(A)	(B)	(C)
1.	<u>Lost Net Revenue - Actual Customers</u>		
2.			
3.			
4.	2011 Effective Net Revenues - Superstition (including Globe)		\$ 15,075,014
5.			
6.	2011 Actual Customers - Superstition (including Globe)		23,971
7.			
8.	Average Net Revenue per Customer	[C4 / C6]	<u>\$ 628.89</u>
9.			
10.	Average Net Revenue per Month	[C8 / 12]	\$ 52.41
11.			
12.	Number of AWC Customers Served by City of Globe		44
13.			
14.	Lost Net Revenue per Month	[C10 * C12]	\$ 2,306.04
15.			
16.	Number of Months		391
17.	(January 1, 1980 to the date of this valuation)		
18.			
19.	Total Net Revenue Lost	[C14 * C16]	<u><u>\$ 901,662</u></u>
20.			
21.			
22.			
23.			
24.			
25.			
26.			
27.			
28.			
29.			
30.			

ARIZONA WATER COMPANY

3805 N. BLACK CANYON HIGHWAY, PHOENIX, ARIZONA 85015-5351 • P.O. BOX 29006, PHOENIX, AZ 85038-9006
PHONE: (602) 240-6860 • FAX: (602) 240-6874 • TOLL FREE: (800) 533-6023 • www.azwater.com

July 17, 2012

Ms. Gina Paul, CMC
City Clerk
City of Globe
150 N. Pine Street
Globe, AZ 85501

2

Re: City's Request for Franchise Dated May 8, 2012

Dear Ms. Paul:

On May 8, 2012 Arizona Water Company received a letter from former Mayor Fernando Shipley. The letter presented the City of Globe's request that the Company obtain a franchise "or other legally sufficient License Agreement" from the City. Mayor Shipley further requested that the Company contact the City Attorney, Kane Graves, to discuss the matter.

After receiving the letter, Mr. Graves and I tried to arrange a meeting to discuss the matter, but we were not able to do so before Mr. Graves left his position. In his last email to me, Mr. Graves indicated that when a new city attorney is hired, he/she will contact me about a meeting. We have not heard further since from the City on this issue.

We realize that there has been transition in the Mayor and City Attorney offices, but we did not want the brief passage of time since the May 8 letter to be interpreted as any hesitancy by the Company to work with City officials towards reaching agreement on the terms of a franchise. Please contact me to arrange for such a meeting as soon as the City is prepared to do so.

Very truly yours,



Robert W. Geake
Vice President and General Counsel

jrc
VIA CERTIFIED MAIL

E-MAIL: mail@azwater.com

1907 - 2007



City of Globe

150 N. Pine Street
Globe, Arizona 85501

3

CERTIFIED MAIL; RETURN
RECEIPT REQUESTED
No.: 7009 1680 0002 2695 9035

May 7, 2012

Arizona Water Company
c/o Mr. Robert W. Geake
Statutory Agent
3805 North Black Canyon Highway
Phoenix, Arizona 85015

Re: **DEMAND FOR FRANCHISE BY THE CITY OF GLOBE**

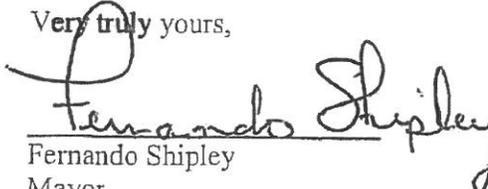
Dear Mr. Geake:

Please take notice that the City of Globe hereby demands that Arizona Water Company obtain a Franchise, or other legally sufficient License Agreement, from the City of Globe in order to continue to operate within the City of Globe. *See, City of Bisbee v. Arizona Water Company*, 214 Ariz. 368, 153 p.3d 389 (Ct. App. 2007). A copy of the proposed Franchise Agreement is attached hereto for your convenience.

We further request that Arizona Water Company set up an escrow account and to deposit the franchise fee (3%) generated from sales within the City of Globe pending final resolution of this matter.

Please contact our City Attorney, Mr. K. Kane Graves at (928) 425-7146x24, in order to discuss this matter further.

Very truly yours,


Fernando Shipley
Mayor

FS/cab
cc: Globe City Council
K. Kane Graves, City Attorney

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Arizona Water Company
 c/o Mr. Robert W. Geake
 Statutory Agent
 3805 N. Black Canyon Highway
 Phoenix, AZ 85015

2. Article Number:
 (Transfer from service #)

7009 1680 0002 2695 9035

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 x Barbi Powell
 B. Received by (Printed Name)
 C. Date of Delivery 5/8/12
 D. Is delivery address different from item 1? Yes No
 If YES, after delivery, address below:



3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

U.S. Postal Service™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

PHOENIX AZ 85015 OFFICIAL USE

Postage	\$ 1.10	0275
Certified Fee	\$2.95	06
Return Receipt Fee (endorsement Required)	\$2.35	
Restricted Delivery Fee (endorsement Required)	\$0.00	
Total Postage & Fees	\$ 6.40	05/07/2012

Sent to

Arizona Water Co. c/o Mr. Robert W. Geake, Statutory Agent
 Street Apt. No. 3805 N. Black Canyon Hwy
 City, State, ZIP+4 Phoenix, AZ 85015

PS Form 3800, August 2006 See Reverse for Instructions

7009 1680 0002 2695 9035

ARIZONA WATER COMPANY
PRELIMINARY COST ESTIMATE

DATE PREPARED:

01-30-2013

PREPARED BY: RDH	APPROVED BY:	SYSTEM: MIAMI	DIVISION: SUPERSTITION
PROJECT LOCATION: SW1/4 SEC26 T1N R15E		PROJECT NUMBER:	REFERENCE MAP:

PROJECT DESCRIPTION:
CONSTRUCT BOOSTER PUMP STATION AND PIPELINES TO SERVE CUSTOMERS IN ARLINGTON HEIGHTS (MIAMI-GLOBE CCN)

MATERIALS AND LABOR

QUANTITY	UNIT	\$/UNIT	DESCRIPTION	ESTIMATED ITEM COST
1	Lot	\$ 80,000	Install Booster Station (1-40hp & 1-5hp booster pump)	\$ 80,000
440	LF	\$ 75	Install 6" DIP to join AWC Tank to Existing System	\$ 33,000
660	LF	\$ 75	Install 6" DIP to Serve Customers on Miami Road	\$ 49,500
1800	LF	\$ 75	Install 6" DIP to join Globe Tank to Exist Globe System	\$ 135,000
1	Lot	\$ 110,000	Install On-site Electrical	\$ 110,000
10	EA	\$ 850	Install Service Tie-Overs	\$ 8,500
				\$ -
				\$ -
				\$ -
				-
				-
				-
(1) SUBTOTAL - MATERIALS AND LABOR				416,000
(2) PERFORMANCE BOND				6,000
(3) SURVEY, R.O.W. PERMITTING, TESTING AND FIELD INSPECTION				10,000
(4) SUBTOTAL - LINES (1), (2) AND (3)				\$ 432,000
(5) OVERHEAD				43,000
SUBTOTAL - LINES (4) and (5)				\$ 475,000
ESTIMATED COST OF CONSTRUCTION				\$ 475,000

AFH

