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NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

2014 AUG 18 P 4: 43

Arizona Corporation Commission

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED

AUG 18 2014

DOCKETED BY

W-01445A-14-0305

DOCKET NO.

PETITION TO AMEND DECISION 33424  
PURSUANT TO A.R.S. § 40-252

IN THE MATTER OF THE PETITION OF  
ARIZONA WATER COMPANY FOR  
INCREASE OF AREA TO BE SERVED AT  
CENTRAL HEIGHTS, ARIZONA

Pursuant to A.R.S. § 40-252, the City of Globe ("Globe" or the "City") hereby petitions the Arizona Corporation Commission (the "Commission") to amend Decision 33424<sup>1</sup>, (the "Decision") dated September 20, 1961, which granted Arizona Water Company ("AWC") a certificate of convenience and necessity ("CC&N") in Gila County in docket No. U-1445. Specifically, the City requests the Commission correct Decision 33424 and remove the area of AWC's CC&N where Globe is the water provider and has provided service that predates the Decision. This area is specifically described in the attached Exhibit. The City understands it is abnormal to correct a decision that is over fifty years old but due to the unique situation of the instant case, the City would respectfully request the Commission grant the relief detailed below.

**BACKGROUND**

The City has provided water and sewer service inside and outside of its municipal boundaries since the early 1900s. Upon information and belief, AWC has been providing

<sup>1</sup> Attached as Exhibit A are all of the decisions issued under Docket No U-1445.

1 only water service in the area near Globe since March of 1955 when AWC purchased the  
2 CC&N of Triangle Development Corporation. AWC has expanded its CC&N several  
3 times since the initial transfer, including the September 1961 expansion, which is the basis  
4 for this Petition. In docket number U-1445, AWC, through its counsel, requested  
5 extension of four different areas near AWC's existing service area, two in Gila County  
6 and two in Pinal County.<sup>2</sup> A hearing was held on September 11, 1961 in front of the  
7 Commissioners.<sup>3</sup> At that hearing, the Salt River Valley Water Users Association made an  
8 appearance in opposition.<sup>4</sup> The Decision states "[t]estimony was presented . . . and from  
9 the testimony, files and records the Commission is of the opinion that applicant has  
10 complied with the statutes of Arizona . . . for the issuance of a [CC&N]."<sup>5</sup> The Decision  
11 goes on to say "[i]t further appears that the application does not conflict with any person  
12 or corporation furnishing a service of like character within the additional area sought to be  
13 certificated."<sup>6</sup> This, however, was not true with respect to the area served by Globe.

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17 A copy of the Decision that was received from Utilities Division Staff shows the  
18 handwritten service list for the Decision.<sup>7</sup> The service list is comprised of AWC, its  
19 counsel, Gila County and Pinal County Boards of Supervisors, Bureau of Indian Affairs  
20 San Carlos, Salt River Valley Water Users Association ("SRVWUA"), the Secretary of  
21 the ACC and Docket.<sup>8</sup> The City of Globe did not receive notification of this Decision, as  
22 evidenced by the service list.  
23

24  
25 <sup>2</sup> See Decision Nos. 33421, 33422, 33423 and 33424. The Decisions are exactly the same except  
for the legal descriptions of the areas to be served.

26 <sup>3</sup> Id.

27 <sup>4</sup> Id.

28 <sup>5</sup> Id. Unfortunately the evidentiary record referenced in the Decision is no longer available.

<sup>6</sup> Id.

<sup>7</sup> Decision 33424 with handwritten service list attached as Exhibit B.

<sup>8</sup> Id.

1 Over the years, Globe and AWC had several business transactions. In the 1970s,  
2 AWC sold land to the City, upon which the City located a water tank. As will be  
3 discussed below, the area this water tank serves is the disputed area. Additionally, Globe  
4 and AWC have an interconnection agreement. These entities coexisted cooperatively  
5 until the last few years when a previous City Manager had some concerns regarding  
6 AWC's service and lack of a franchise in the City and started a dialogue with AWC  
7 regarding those topics. During the course of these conversations, it was determined that  
8 Globe was serving an area, Arlington Heights, ("Southern Area") which was included in  
9 the CC&N granted in the Decision. The Southern Area is not within the corporate limits  
10 of Globe but has been served by the City since at least the early 1910's. Shortly after it  
11 was discovered that the Southern Area was in AWC's CC&N, AWC served a Notice of  
12 Claim ("NOC SA") against the City for \$1,878,860 lost revenue and incurred losses and  
13 damages.<sup>9</sup> AWC does not now, nor has it ever had, have any infrastructure or customers  
14 in the Southern Area.  
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18 The City, upon receipt of the NOC SA, instructed members of City Staff to  
19 determine when the City first provided service to the Southern Area and to enter into a  
20 tolling agreement with AWC regarding its claim. As this exercise was taking place, City  
21 Staff realized that the Decision granted AWC a CC&N over the City's wastewater  
22 treatment plant and areas inside the corporate boundaries that the City had served for  
23 years ("Northern Area"). Again, it is important to note that AWC does not now, nor has it  
24 ever had, any customers in the Northern Area. During a meeting between AWC and the  
25 City where counsel for both sides was present, the City advised AWC of this new  
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28 <sup>9</sup> Attached as Exhibit C.

1 information. On June 3, 2014, AWC served the City Manager with a Notice of Claim for  
2 the Northern Area (“NOC NA”)<sup>10</sup>. The NOC NA was for \$3,798,158. for past lost  
3 revenue and \$2,008,600 for the “cost of connecting affected customers to the Company’s  
4 water system.”<sup>11</sup>

5  
6 After receipt of the NOC NA, Globe decided to engage an experienced,  
7 independent researcher outside services to determine when the City first started water  
8 service in both of the disputed areas. This independent researcher is in the process of  
9 producing a report that shows Globe was serving water in both areas before 1961.<sup>12</sup> The  
10 information seen thus far proves unequivocally that the City was providing water service  
11 before the Decision.  
12

13  
14 **REQUESTED RELIEF**

15 The City respectfully request the Commission correct Decision 33424 and remove  
16 the portion of AWC’s CC&N where Globe currently serves water customers by amending  
17 the Decision in accordance with A.R.S. § 40-252. Attached to this petition is a map  
18 prepared by the City that shows where its customers are located.<sup>13</sup>  
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26 <sup>10</sup> Attached as Exhibit D.

<sup>11</sup> Id.

27 <sup>12</sup> Tierra Right of Way, the entity hired by Globe, has found information that shows water was  
28 being provided in the Southern Area in the 1910s and in the Northern Area the City started a  
rudimentary wastewater treatment plant in 1917.

<sup>13</sup> Attached as Exhibit E.

1 A.R.S. § 40-252 states:

2 The commission may at any time, upon notice to the  
3 corporation affected, and after opportunity to be heard as upon  
4 a complaint, rescind, alter or amend any order or decision  
5 made by it. When the order making such rescission, alteration  
6 or amendment is served upon the corporation affected, it is  
7 effective as an original order or decision. In all collateral  
8 actions or proceedings, the orders and decisions of the  
9 commission which have become final shall be conclusive.

10 This statute has been the subject of several cases, some of which involve AWC.<sup>14</sup> The  
11 Court has long held that this statute is the proper way to correct a CC&N.<sup>15</sup>

12 Additionally, even though the Decision was issued over fifty years ago, the Arizona  
13 Supreme Court has said "the [CC&N] monopoly is tolerated only because it is to be  
14 subject to vigilant and continuous regulation by the Corporation Commission, and is  
15 subject to rescission, alteration or amendment *at any time* upon proper notice when the  
16 public interest would be served by such action."<sup>16</sup> The courts have ruled that 40-252 is the  
17 proper vehicle to grant Globe the relief requested once the Commission has determined it  
18 would be in the public interest to do so.<sup>17</sup>

## 19 PUBLIC INTEREST

20 It is in the public interest to correct Decision 33424 and remove the requested area  
21 because it was a mistake to grant the CC&N in the initial Decision, the expense of

22 <sup>14</sup> See *Ariz. Corp Comm v. Arizona Water Company*, 111 Ariz. 74 (1974).

23 <sup>15</sup> See e.g. *Davis v. Corp Comm*, 96 Ariz 215 (1964); *Tonto Creek Estates v. Corp Comm*, 177  
24 Ariz. 49 (1993).

25 <sup>16</sup> *Davis v. Corp Comm*, 96 Ariz 215, 218 (1964)(emphasis added).

26 <sup>17</sup> While AWC may argue the James P. Paul (137 Ariz 426 (1983)) standard would apply, the Paul  
27 case is easily distinguishable since Globe's request goes to the initial grant of the CC&N. 137  
28 Ariz 426, 430.

1 transferring customers to AWC would be borne by not only the customers in the disputed  
2 areas but every citizen of Globe, and AWC is not capable of providing adequate service to  
3 the area.

#### 4 **Initial Decision was Granted in Error**

5 As stated above, the Decision states “[i]t further appears that the application does  
6 not conflict with any person or corporation furnishing a service of like character within  
7 the additional area sought to be certificated.”<sup>18</sup> This is not accurate. Globe has now  
8 determined that it was providing water service in both the Northern Area and Southern  
9 Area at the time the Decision was issued. Globe has found, through its consultant,  
10 documentation that proves the Southern Area was being served back to the 1910s as well  
11 as minutes of the Globe City Council from the 1920s, which discussed replacing water  
12 lines in the Southern area. As it relates to the Northern Area, the consultant has found an  
13 ADOT map from 1957 showing Globe water lines to various businesses in the area. As  
14 mentioned above, Globe has had a wastewater treatment plant in the Northern Area since  
15 the 1910s. The Commission could not have legally granted a CC&N to a public service  
16 corporation where a municipality was already providing service. Thus, it would stand to  
17 reason that no one at the Commission knew where the exact CC&N boundaries were at  
18 the time of the Decision.  
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23 Additionally, AWC was not aware of its exact boundaries of their CC&N until,  
24 especially for the Northern Area, it was told by representatives of Globe in December of  
25 2013. As to the Southern Area, AWC sold Globe land in the 1970s so that Globe could  
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28 <sup>18</sup> Decision 33424.

1 build infrastructure to serve the very area in dispute today. Clearly, AWC was not aware  
2 of its CC&N boundaries at the time of the Decision or for decades after.

3 Another section of the Decision that shows the Commission was unaware that the  
4 area being served by Globe was included in the CC&N says “[t]estimony was presented . .  
5 . and from the testimony, files and records the Commission is of the opinion that applicant  
6 has complied with the statutes of Arizona . . . for the issuance of a [CC&N]”.<sup>19</sup> A.R.S. §  
7 40-282 in 1961 required that “[e]very applicant for a certificate shall submit to the  
8 commission such evidence as required by the commission to show that such applicant has  
9 received the required consent, franchise or permit of the proper county, city and county,  
10 municipal or other public authority.”<sup>20</sup> AWC does not have and has never had a franchise  
11 from Globe. The City has just recently referred a franchise to a vote of its citizens on the  
12 November 2014 ballot. Since the Southern Area has never been a part of the municipal  
13 boundaries of Globe, it would have been covered by the valid franchise of Gila County.  
14 The Northern Area has been in Globe’s municipal boundaries since the City was formed.  
15 As mentioned above, Globe was not on the service list or notification list of the Decision.  
16 Certainly, the Commission could not have legally concluded that AWC complied with all  
17 statutes if the very statute that allows for granting a certificate was not met.  
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22 Finally, the caption itself leads to the conclusion that granting a CC&N over the  
23 area Globe serves was in error. The Caption reads “an increase of area to be served at  
24 Central Heights, Arizona”<sup>21</sup> Locally, Central Heights is known as the area between two  
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26  
27 <sup>19</sup> Id.

<sup>20</sup> Walker v De Concini, 86 Ariz. 143, 150 (1959). This same language is substantially the same  
in the current version of the statute and dates back to 1939.

28 <sup>21</sup> Decision 33424.

1 ridgelines located to the east of the unincorporated area of Claypool and West of Globe.<sup>22</sup>  
2 AWC currently serves in the central heights area today. The disputed areas are on the  
3 Globe side of the eastern ridgeline. It is very likely that AWC and the Commission  
4 assumed the legal description matched the commonly known description of Central  
5 Heights.  
6

7 The public interest can only be served when Commission decisions are complete  
8 and accurate, which instill public confidence in the decisions. Moreover, it is not in the  
9 public interest to reward AWC (which has no plant or customers in the contested area)  
10 based upon an obvious mistake made by the Commission in 1961.  
11

#### 12 **Expense of Transferring Customers and Infrastructure**

13 In AWC's demand letter, not only does it want the City's customers, it also wants  
14 the City to pay millions of dollars to connect those customers to AWC's existing  
15 infrastructure.<sup>23</sup> There is absolutely no basis in fact or in equity to support such a demand.  
16 AWC does not have any customers or distribution infrastructure in the disputed area. This  
17 is analogous to the situation when AWC sued the Commission in 1974 in regard to a  
18 deletion of its CC&N.<sup>24</sup> In that case, the Commission granted AWC a CC&N to serve in  
19 the Heber area over a competing utility, Holiday Forest Water Company, ("HWC") but  
20 later rescinded the CC&N after HWC filed a request for a rehearing.<sup>25</sup> The court, citing  
21 the Davis decision, determined that the Commission's actions must be in the public  
22 interest in order to rescind a CC&N.<sup>26</sup> The Court went on further to discuss why it was in  
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26 <sup>22</sup> Attached as Exhibit F is a map produced by the local chamber of commerce. While this is not  
an engineered map, it is used to show the area known as Central Heights.

27 <sup>23</sup> Exhibit C and D.

28 <sup>24</sup> Ariz. Corp Comm v. Arizona Water Company, 111 Ariz. 74 (1974).

<sup>25</sup> Id.

<sup>26</sup> Id at 76.

1 the public interest to have AWC become the certificate holder.<sup>27</sup> The Court identified  
2 three things that factored into what was the public interest: 1) The source of supply for  
3 AWC was from three interconnected wells, compared to one from HWC; 2) AWC had a  
4 CC&N on three sides with a 4" main on side and a 2" main extending into the disputed  
5 area; and 3) AWC had a substantial investment in wells, mains and water facilities  
6 adjacent to the disputed area.<sup>28</sup> The Court upheld the trial court ruling that it was in the  
7 public interest for AWC to have the certificate based upon its existing infrastructure and  
8 the reduced cost to serve the area.<sup>29</sup> The trial court held that deleting the CC&N would  
9 "cause a duplication of facilities and be costly and detrimental to water consumers in the  
10 area."<sup>30</sup>  
11

12  
13 Using the same basis the court used in the AWC case, it is in the public interest to  
14 correct the Decision and allow Globe to continue to serve. Globe has all of the  
15 infrastructure necessary to provide adequate service to its customers. Additionally,  
16 failure to correct the Decision would cause a duplication of facilities and be costly to not  
17 only the customers but to all the citizens of Globe. It is in the public interest to correct the  
18 Decision and allow Globe to continue serving its customers.  
19

### 20 21 22 **Adequate Service**

23 There is another reason to grant Globe's Petition, during the course of this dispute,  
24 it has been brought to the City's attention that AWC is not providing adequate service to  
25 several areas of the City. Specifically, AWC does not have adequate fireflow to meet the  
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27 <sup>27</sup> Id.

28 <sup>28</sup> Id.

29 <sup>29</sup> Id at 76-77.

30 <sup>30</sup> Id. At 77.

1 standards set out by the International Fire Code. This came up when the fire marshal  
2 advised a local company that it would be unable to acquire a building permit without  
3 substantial water system improvements because of a failed hydrant (fire flow) test. The  
4 fire marshal then checked several hydrants in AWC's service area and found that of the  
5 eleven locations tested, nine hydrants performed below the minimum commercial  
6 standard of 1,500 gallons per minute (gpm). In fact, flows were as low as 475 gpm in  
7 some areas currently serving existing homes and businesses.<sup>31</sup> AWC's inadequate service  
8 currently requires the City to respond to fire emergencies with water trucks (Tenders) in  
9 certain areas of AWC's territory. The ability to provide adequate service is a basic tenet  
10 for having a monopoly. Since AWC cannot provide adequate service in its undisputed  
11 area, it is not in the public interest to allow AWC to serve in an area where Globe is  
12 currently providing adequate service.  
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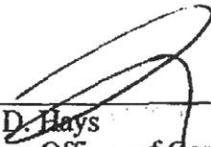
## 16 17 **CONCLUSION**

18 Based upon the above, Globe respectfully requests the Commission reopen  
19 Decision 33424 and send it to the Hearing Division who would establish a procedural  
20 schedule for an evidentiary hearing where Globe could present evidence in support of its  
21 request to correct Decision 33424 and remove the areas served by Globe from AWC's  
22 CC&N.  
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28 <sup>31</sup> Attached as Exhibit G is a map showing where the fire flow tests occurred and the amount of the flow observed.

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RESPECTFULLY submitted this 18<sup>th</sup> day of August, 2014.

  
Garry D. Hays  
The Law Offices of Garry D. Hays, PC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
ghays@lawgdh.com  
Attorney for City of Globe

ORIGINAL and thirteen (13) copies of the foregoing filed this 18<sup>th</sup> day of August, 2014, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered/mailed This 18<sup>th</sup> day of August, 2014, to:

Lyn Farmer, Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
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8 Susan Bitter Smith, Commissioner  
ARIZONA CORPORATION COMMISSION  
9 1200 West Washington Street  
Phoenix, Arizona 85007

10  
11 COPY of the foregoing sent via e-mail and first  
class mail this 18<sup>th</sup> day of August, 2014, to:

12  
13 Steve Hirsch  
Bryan Cave LLP  
14 One Renaissance Square  
2 North Central Ave., Suite 2200  
Phoenix, Az. 85004-4406

15  
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17  
18 

19 By: Chantelle Herget

# Exhibit A

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY FOR INCREASE OF AREA TO BE SERVED AT MIAMI, ARIZONA IN THE AREA AS HEREINAFTER DESCRIBED.

DOCKET NO. U-1445

ARIZONA CORPORATION COMMISSION NO. 33421  
DOCKETED

OPINION AND ORDER

BY THE COMMISSION:

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission sitting in Phoenix, Arizona on September 11, 1961.

Applicant was represented by its attorney, Arthur M. Johnson, of the law firm, Fennemore, Craig, Allen & McClennen. Appearance in opposition was made by Robert Moore, for and on behalf of the Salt River Valley Water Users Association.

Testimony was presented, both oral and documentary, and from the testimony, files and records in the matter the Commission is of the opinion that applicant has complied with the statutes of Arizona and with the rules and regulations of the Commission for the issuance of a certificate of convenience and necessity.

It further appears that the application does not conflict with any other person or corporation furnishing a service of like character within the additional area sought to be certificated and that a need and demand has been established and exists for the proposed service supporting a finding of convenience and necessity therefore.

WHEREFORE, IT IS ORDERED that the application be, and it is hereby, approved and this order shall constitute and be a certificate of convenience and necessity as contemplated by the provisions of Section 30-281, A. T.R. S., authorizing applicant herein to construct, operate and maintain a public water system within the additional area described as beginning at the NE corner of Section 30, T 1 N, R 15 E; thence westerly approximately 3 miles; thence southerly approximately 1-1/2 miles; thence westerly approximately 1 mile; thence southerly approximately 1/2 mile; thence westerly approximately 1-1/2 miles to the NW corner of Section 4, T 1 S, Range 14 East; thence southerly to the SE corner of the NW 1/4 of Section 9, T 1 S, R 14 E; thence easterly to the SE corner of the NE 1/4 of Section 10, T 1 S, Range 14 East; thence northerly to the NW corner

DOCKET NO. U-1445

DECISION NO. 33421

OF Section 11, T 1 S, Range 14 East; thence easterly to the Southeast corner of Section 1, T 1 S, Range 14 East; thence northerly approximately 1/4 mile; thence westerly approximately 1 1/2 miles to the Southwest corner of Section 6, T 1 S, R 13 East; thence northerly to the point of beginning.

The rates and charges heretofore approved for this Company, shall be in full force and effect for this area.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission, to be affixed at the Capitol in the City of Phoenix, this 20th day of September 1931.

*Francis J. Byrnes*  
FRANCIS J. BYRNES  
SECRETARY

CHAIRMAN

COMMISSIONER

COMMISSIONER

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, A CORPORATION, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING THE EXTENSION, CONSTRUCTION AND OPERATION OF A WATER SYSTEM IN THE AREA AS NEARLY AS

DOCKET NO. U-1445

DOCKETED 9/22

OPINION AND ORDER

SEP 27 1961

BY THE COMMISSION:

DOCKETED

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission sitting in Phoenix, Arizona on September 11, 1961.

Applicant was represented by its attorney, Arthur M. Johnson, of the law firm, Fenemore, Craig, Allen & McCleunen. Appearance in opposition was made by Robert Moore, for and on behalf of the Salt River Valley Water Users Association.

Testimony was presented, both oral and documentary, and from the testimony, files and records in the matter the Commission is of the opinion that applicant has complied with the statutes of Arizona and with the rules and regulations of the Commission for the issuance of a certificate of convenience and necessity.

It further appears that the application does not conflict with any other person or corporation furnishing a service of like character within the additional area sought to be certificated and that a need and demand has been established and exists for the proposed service supporting a finding of convenience and necessity therefore.

WHEREFORE, IT IS ORDERED that the application be, and it is hereby, approved and this order shall constitute and be a certificate of convenience and necessity as contemplated by the provisions of Section 40-281, A. R. S., authorizing applicant herein to construct, operate and maintain a public water system within the additional area described as: Beginning at the Southeast corner of Section 36, Township 9 South, Range 15 East; thence Northerly to the Northeast corner of Section 36, thence westerly to the Southeast corner of Section 26, thence Northerly to the East Quarter (E $\frac{1}{4}$ ) Corner of Section 26, thence westerly to the West Quarter (W $\frac{1}{4}$ ) Corner of Section 30, Township 9 South, Range 15 East; thence Southerly to the East Quarter (E $\frac{1}{4}$ ) Corner of Section 25, thence westerly to the West Quarter (W $\frac{1}{4}$ ) Corner of Section 25, thence Southerly to the Northeast Corner of Section 35, thence westerly to the Northwest Corner of Section 35, thence Southerly to the East Quarter (E $\frac{1}{4}$ ) corner of Section 34,

thence Westerly to the West Quarter (W $\frac{1}{4}$ ) corner of Section 14, Township 9 South, Range 14 East; thence Southerly to the Northeast corner of Section 4, thence Westerly to the Northwest corner of Section 4, thence Southerly to the East Quarter (E $\frac{1}{4}$ ) corner of Section 5, thence Westerly to the West Quarter (W $\frac{1}{4}$ ) corner of Section 5, thence Southerly to the Northeast corner of Section 18, thence Westerly to the Northwest corner of Section 18, thence Southerly to the Southwest corner of Section 19, thence Easterly to the Southeast corner of Section 20, thence Northerly to the Southwest corner of Section 9, thence Easterly to the Southeast corner of Section 9, thence Northerly to the West Quarter (W $\frac{1}{4}$ ) corner of Section 10, thence Easterly to the East Quarter (E $\frac{1}{4}$ ) corner of Section 10, thence Northerly to the Southwest corner of Section 2, thence Easterly to the Southeast corner of Section 2, thence Northerly to the West Quarter (W $\frac{1}{4}$ ) corner of Section 1, thence Easterly to the East Quarter (E $\frac{1}{4}$ ) corner of Section 1, Township 10 South, Range 14 East; thence Northerly to the Southwest corner of Section 31, thence Easterly to the Southeast corner of Section 36, Township 9 South, Range 15 East, the point of beginning, all lying in the GCSRBGM., Pinal County, State of Arizona.

The rates and charges heretofore approved for this Company, shall be in full force and effect for this area.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission, to be affixed at the Capitol in the City of Phoenix, this 14 day of September 1961.

*Francis J. Byrnes*  
 FRANCIS J. BYRNES  
 SECRETARY

CHAIRMAN

COMMISSIONER

COMMISSIONER

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO SERVE THE VICINITY OF FLORENCE JUNCTION, ARIZONA DESCRIBED AS BEGINNING AT THE NE CORNER OF SECTION 1, T 2 S, R 10 E; THENCE WESTERLY TO THE NW CORNER OF SECTION 1, T 2 S, R 9 E; SOUTHERLY TO THE SW CORNER OF SECTION 36, T 2 S, R 9 E; THENCE EASTERLY TO THE SE CORNER OF SECTION 36, T 2 S, R 10 E; THENCE NORTHERLY TO THE POINT OF BEGINNING ALL ~~AS SHOWN~~, PINAL COUNTY, ARIZONA.

DOCKET NO. U-1445

33423  
DOCKETED  
ARIZONA CORPORATION COMMISSION

OPINION AND ORDER

BY THE COMMISSION:

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission sitting in Phoenix, Arizona on September 11, 1961.

Applicant was represented by its Attorney, Arthur H. Johnson, of the law firm, Kennemore, Craig, Allen & McCleunen. There was no appearance in opposition to the granting of the application.

Testimony was presented, both oral and documentary, and from the testimony, files and records in the matter the Commission is of the opinion that applicant has complied with the statutes of Arizona and with the rules and regulations of the Commission for the issuance of a certificate of convenience and necessity.

It further appears that the application does not conflict with any other person or corporation furnishing a service of like character within the additional area sought to be certificated and that a need and demand has been established and exists for the proposed service supporting a finding of convenience and necessity therefore.

WHEREFORE, IT IS ORDERED that the application be, and it is hereby, approved and this order shall constitute and be a certificate of convenience and necessity as contemplated by the provisions of Section 40-281, A. R. S., authorizing applicant herein to construct, operate and maintain a public water system within the additional area described as beginning, at the Northwest corner of Sec. 1, T 2 South, Range 10 East; thence westerly to the Northwest corner of Section 1, Township 2 South, Range 9 East; thence southerly to the Southwest corner of Section 36, Township 2 South, Range 9 East; thence easterly to the Southeast corner of Section 36, Township 2 South, Range 10 East; thence northerly to the point of beginning, all ~~AS SHOWN~~ <sup>PINAL</sup> County, Arizona.

The rates and charges heretofore approved for this Company, shall be in full force and effect for this area.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission, to be affixed at the Capital in the City of Phoenix, this 20th day of September, 1961.

*Francis J. Byrnes*  
FRANCIS J. BYRNES  
SECRETARY

CHAIRMAN

*George J. Boyd*  
COMMISSIONER

*George J. Boyd*  
COMMISSIONER

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE PETITION OF ARIZONA WATER COMPANY FOR INCREASE OF AREA TO BE SERVED AT CENTRAL HEIGHTS, ARIZONA DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE WESTERLY TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 26, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE NORTHERLY TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SEC. 16, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE EASTERLY TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER SECTION 16, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE SOUTHERLY TO THE POINT OF BEGINNING, ALL GERBAM., GERMANY COUNTY, ARIZONA.

DOCKET NO. U-1443

DEC 16 1961  
83434  
DOCKETED

OPINION AND ORDER

SEP 20 1961  
DOCKETED BY [initials]

BY THE COMMISSION:

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission sitting in Phoenix, Arizona on September 11, 1961.

Applicant was represented by its attorney, Arthur M. Johnson, of the law firm, Fennemore, Craig, Allen & McClennen. Appearance in opposition was made by Robert Moore, for and on behalf of the Salt River Valley Water Users Association.

Testimony was presented, both oral and documentary, and from the testimony, files and records in the matter the Commission is of the opinion that applicant has complied with the statutes of Arizona and with the rules and regulations of the Commission for the issuance of a certificate of convenience and necessity.

It further appears that the application does not conflict with any other person or corporation furnishing a service of like character within the additional area sought to be certificated and that a need and demand has been established and exists for the proposed service supporting a finding of convenience and necessity therefore.

WHEREFORE, IT IS ORDERED that the application be, and it is hereby, approved and this order shall constitute and be a certificate of convenience and necessity as contemplated by the provisions of Section 40-281, A. S., authorizing applicant herein to construct, operate and maintain a public water system within the additional area described as beginning at the Southeast corner of the Southwest Quarter (SW<sup>1</sup>) of Section 26, Township 1 North, Range 15 East; thence westerly to the Southwest corner of the Southwest Quarter of the Southwest Quarter (SW<sup>4</sup>), of Section 26, Township 1 North, Range 15 East, thence Northerly to the

DOCKET NO. U-1445

DECISION NO. 33424

Northwest Corner of the Northeast Quarter (NE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 16, Township 1 North, Range 15 East; thence westerly to the Northeast corner of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 14, Township 1 North, Range 15 East; thence southerly to the point of beginning, all GILBERT, Gila County, Ariz.

The rates and charges heretofore approved for this Company, shall be in full force and effect for this area.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission, to be affixed at the Capital in the City of Phoenix, this 26th day of September 1961.

*Francis J. Byrnes*  
FRANCIS J. BYRNES  
SECRETARY

CHAIRMAN

*George Thomas*  
COMMISSIONER

*John B. Boyd*  
COMMISSIONER

# Exhibit B

GILA

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE PETITION OF ARIZONA WATER COMPANY FOR INCREASE OF AREA TO BE SERVED AT CENTRAL HEIGHTS, ARIZONA DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE WESTERLY TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 28, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE NORTHERLY TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SEC. 16, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE EASTERLY TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER SECTION 14, TOWNSHIP 1 NORTH, RANGE 15 EAST; THENCE SOUTHERLY TO THE POINT OF BEGINNING, ALL G&SR&M., GILA COUNTY, ARIZONA.

DOCKET NO. U-1445

DECISION NO. 33424

OPINION AND ORDER

SEP 20 1961

BY THE COMMISSION:

Notice having been given as provided by law, the above entitled matter came on for hearing before the Commission sitting in Phoenix, Arizona on September 11, 1961.

Applicant was represented by its attorney, Arthur M. Johnson, of the law firm, Fannemora, Craig, Allen & McClanmen. Appearance in opposition was made by Robert Moore, for and on behalf of the Salt River Valley Water Users Association.

Testimony was presented, both oral and documentary, and from the testimony, files and records in the matter the Commission is of the opinion that applicant has complied with the statutes of Arizona and with the rules and regulations of the Commission for the issuance of a certificate of convenience and necessity.

It further appears that the application does not conflict with any other person or corporation furnishing a service of like character within the additional area sought to be certificated and that a need and demand has been established and exists for the proposed service supporting a finding of convenience and necessity therefore.

WHEREFORE, IT IS ORDERED that the application be, and it is hereby, approved and this order shall constitute and be a certificate of convenience and necessity as contemplated by the provisions of Section 40-281, A. R. S., authorizing applicant herein to construct, operate and maintain a public water system within the additional area described as beginning at the Southeast corner of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 26, Township 1 North, Range 15 East; thence Westerly to the Southwest corner of the Southeast Quarter of the Southwest Quarter (SW $\frac{1}{4}$ ), of Section 28, Township 1 North, Range 15 East; thence Northerly to the

DOCKET NO. U-1445

DECISION NO. 33424

Northwest Corner of the Northeast Quarter (NE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 16, Township 1 North, Range 15 East; thence easterly to the Northeast corner of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 14, Township 1 North, Range 15 East; thence southerly to the point of beginning, all G&SRB&M., Gila County, Ariz.

The rates and charges heretofore approved for this Company, shall be in full force and effect for this area.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission, to be affixed at the Capitol in the City of Phoenix, this 20th day of September 1961.

*Francis J. Byrnes*

FRANCIS J. BYRNES  
SECRETARY

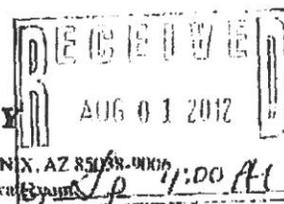
*Copies mailed 9-20-61 to:*

- Walter E. Craig*
- Arizona Water Co. att. Carl Schmidt*
- Yuma Co. Bd. Sup.*
- Gila Co. Bd. of Sup.*
- Bureau, San.*
- Salt River Water Users - H. R. Moore*
- Secretary*
- Sacket*

# Exhibit C

# ARIZONA WATER COMPANY

3805 N. BLACK CANYON HIGHWAY, PHOENIX, ARIZONA 85015-5351 • P.O. BOX 29006, PHOENIX, AZ 85068-0006  
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: [mnl@azwater.com](mailto:mnl@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 158 (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**

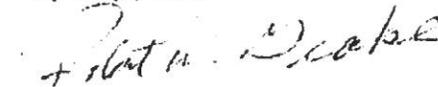
Ms. Gina Paul, CMC  
City of Globe

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

# Exhibit D

# 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

June 3, 2014

Ms. Shelly Salazar  
City Clerk  
City of Globe  
150 N. Pine St.  
Globe, AZ 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

Dear Ms. Salazar:

Pursuant to A.R.S. § 12-821.01, Arizona Water Company (the "Company") hereby serves the City of Globe (the "City") with 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"). This notice of claim is separate from and independent of the notice of claim dated August 1, 2012, related to competing water service in other areas of the City.

The Company makes this claim because the City is providing competing water utility service to residential and commercial customers located in the western halves of Sections 23 and 26 of Township 1 North, Range 15 East, in two places which are within the boundaries of the Company's Certificate of Convenience and Necessity ("CCN") adopted and issued by the Arizona Corporation Commission on September 20, 1961, in Decision No. 33424, as follows:

1. Adjoining U.S. Highway 60 located near an interconnection point between the Company's and the City's water systems.
2. To a customer or customers situated near Pinaleno Pass Road, Pinal Creek Road, and the railroad tracks northwest of the City's wastewater treatment plant, which itself is located north of U.S. Highway 60 between Pinal Creek Road and the railroad tracks.

A map of the general area showing the boundaries of the Company's CCN, showing the section line boundaries, and showing the general areas where the City is unlawfully providing competing public utility water service is attached as Exhibit A. A map more specifically showing the locations where we are aware that the City is unlawfully providing competing water utility service to residential and commercial customers adjoining U.S. Highway 60 and showing where the City is unlawfully providing competing water utility service to a customer or customers northwest of the City's wastewater treatment plant is attached as Exhibit B. The customers the City is serving are located within the boundaries of the Company's existing CCN. These facts first came to the Company's attention when a City representative disclosed them during a meeting on December 5, 2013, at the Company's offices in Phoenix. Brent Billingsley,

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E-MAIL: [mail@azwater.com](mailto:mail@azwater.com)

Globe's City Manager, was present at the December 5, 2013 meeting and participated in the discussions regarding these facts.

The Company already provides adequate public utility water service under authority of law in its CCN area and is ready, willing, and able to provide all public utility water service in these areas.

#### Facts of the Incident and Basis of Liability

The Statute provides:

*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.*

The Company installed a six-inch water main along the north side of U.S. Highway 60 in 1976 which, together with other required water supply facilities, was to provide service in the subject area. The City has repeatedly represented to the Company and others that it provides no water service to customers in the Company's service area. In a December 5, 2000 letter to Mr. Udon McSpadden of McSpadden Ford, Inc., the City Manager, Manoj Vyas, stated:

"Our legal research has found that the City of Globe will not be able to provide water to any parcels of land for the western halves of sections 23 and 26 of Township 1 North, Range 15 East, which includes your property adjoining Highway 60 as well as other undeveloped parcels of land. This finding is based on the Arizona Water Company's Certificate of Necessity boundaries established and approved by the Arizona Corporation Commission years ago."

The half-sections referred to above lie within the Company's CCN and include the subject area in which the City is providing unlawful, competing water service.

In a November 8, 2003 Emergency Connections Agreement, Recital B, the City also stated that "[t]he City provides water service to the areas within the incorporated City limits of Globe which are not in the Company's CCN."

More recently, on April 28, 2010, Globe City Manager, Kane Graves, requested that the City be allowed to provide service to the subject area along U.S. Highway 60, and provided a map showing the requested area of service within Arizona Water Company's CCN area. By letter dated June 1, 2010, Arizona Water Company, through its President, William M. Garfield, declined the request and reminded the City that the Company had an existing water main adjacent to the area, that it was able to meet the area's water service needs, that the area was within the Company's CCN, and that the Company looked forward to working with persons wishing to develop property in the area.

Contrary to the City's assertion in the December 5, 2013 meeting that it began providing water service to the subject area before 1962, a map of the City's water system dated December 10, 1980, shows that the City provided no water service to the area at that time. Based on the map and the foregoing representations by the City, clearly the City began providing water service to the subject area after 1980 and perhaps in some areas as recently as 2011 to some of the subject area.

#### **Claim for Past Damages**

As a direct and proximate result of the City's actions, the Company has incurred and is incurring losses and damages, including the lost net revenues the Company was entitled to receive from the customers the City unlawfully serves in the Company's CCN, from the date the City started providing the infringing water utility services to the present date. The Company also has other causes of action against the City, including intentional interference with prospective economic advantage, intentional interference with the Company's contractual relations, trespass, and inverse condemnation.

#### **Statement of Damages and Offer to Settle**

The City continues to unlawfully provide water utility service to the Property in direct violation of A.R.S. § 9-516(A). Therefore, the Company demands that the City cease its service to the Property and take all steps and action needed to connect the affected customers to the Company's water system immediately. Should the City not reconnect the affected customers to the Company's water system at the City's expense, the Company will do so and will seek to recover the costs for that work from the City.

As a direct and proximate result of the City's actions, the Company has incurred (or will incur) the following losses and damages:

1. *For the past lost net revenues from service provided by the City to the customers in the Company's CCN from 1980 (estimated) to the present date: \$3,798,158.*

This sum is based upon the calculations set forth in the attached Exhibit C. If the City has reliable evidence showing it began providing the unlawful, competing water service

Ms. Shelly Salazar  
City of Globe

June 3, 2014  
Page 4

later than 1980, the Company will consider such evidence and, if justified, adjust its damages claim accordingly.

2. *For the cost of connecting affected customers to the Company's water system: \$2,008,600.*

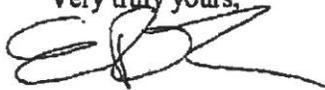
This sum is based upon the calculations set forth in the attached Exhibit "D." Claim is made for this sum in order to terminate future damages arising from the City's further provision of water service to the designated locations within the Company's CC&N areas.

Accordingly, the City may settle this claim by paying the Company its Lost Revenues of \$3,798,158 and by connecting the affected customers to the Company's water system at the City's own expense or by paying the Company's costs of \$2,008,600 to do so.

If the Company must pursue legal action to recover its damages, it will also seek recovery of its attorney's fees and litigation expenses. The Company expressly reserves its right to seek and obtain declaratory or injunctive relief, and all other applicable legal or equitable remedies, including accruing damages going forward.

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

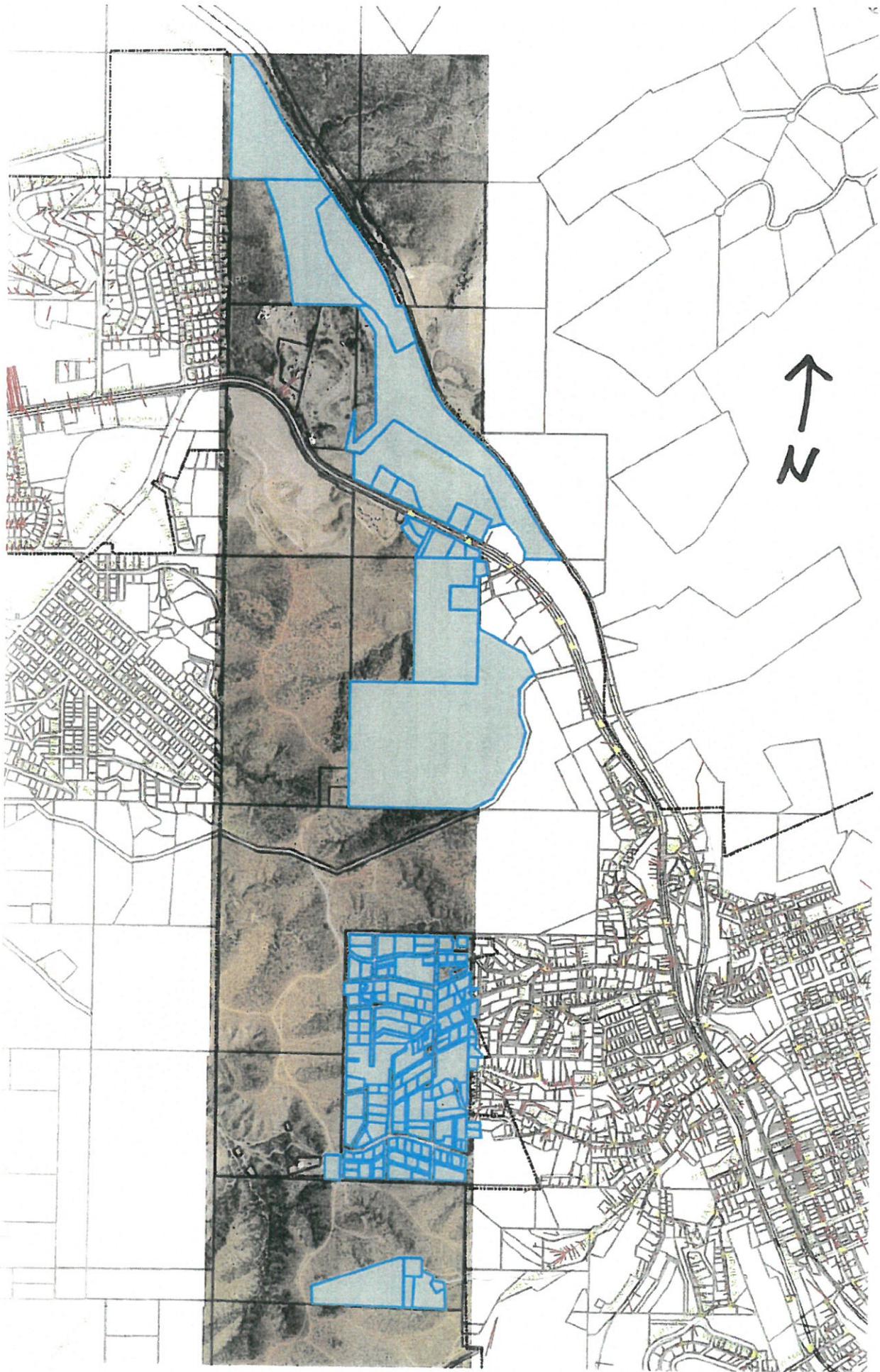
Very truly yours,



Robert Spear  
General Counsel

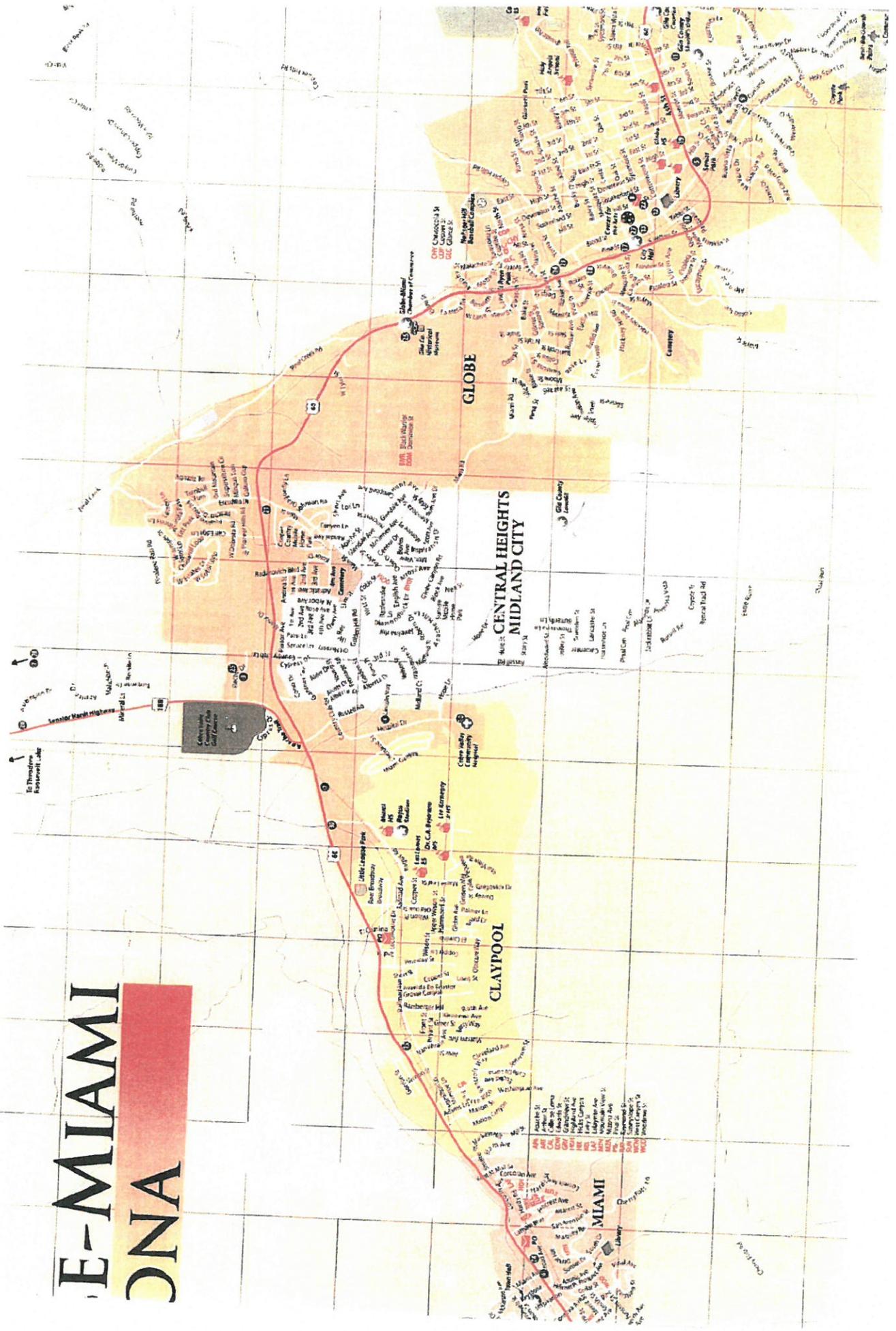
hac  
VIA PERSONAL SERVICE

# Exhibit E



# Exhibit F

# E-MIAMI DNA



# Exhibit G

