

ARIZONA WATER COMPANY

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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,

E-MAIL: 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

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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.

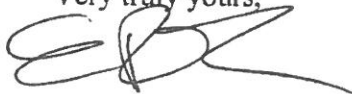
This sum is based upon the calculations set forth in the attached Exhibit "D." Claim is made for this sum in order to terminate future damages arising from the City's further provision of water service to the designated locations within the Company's CC&N areas.

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,

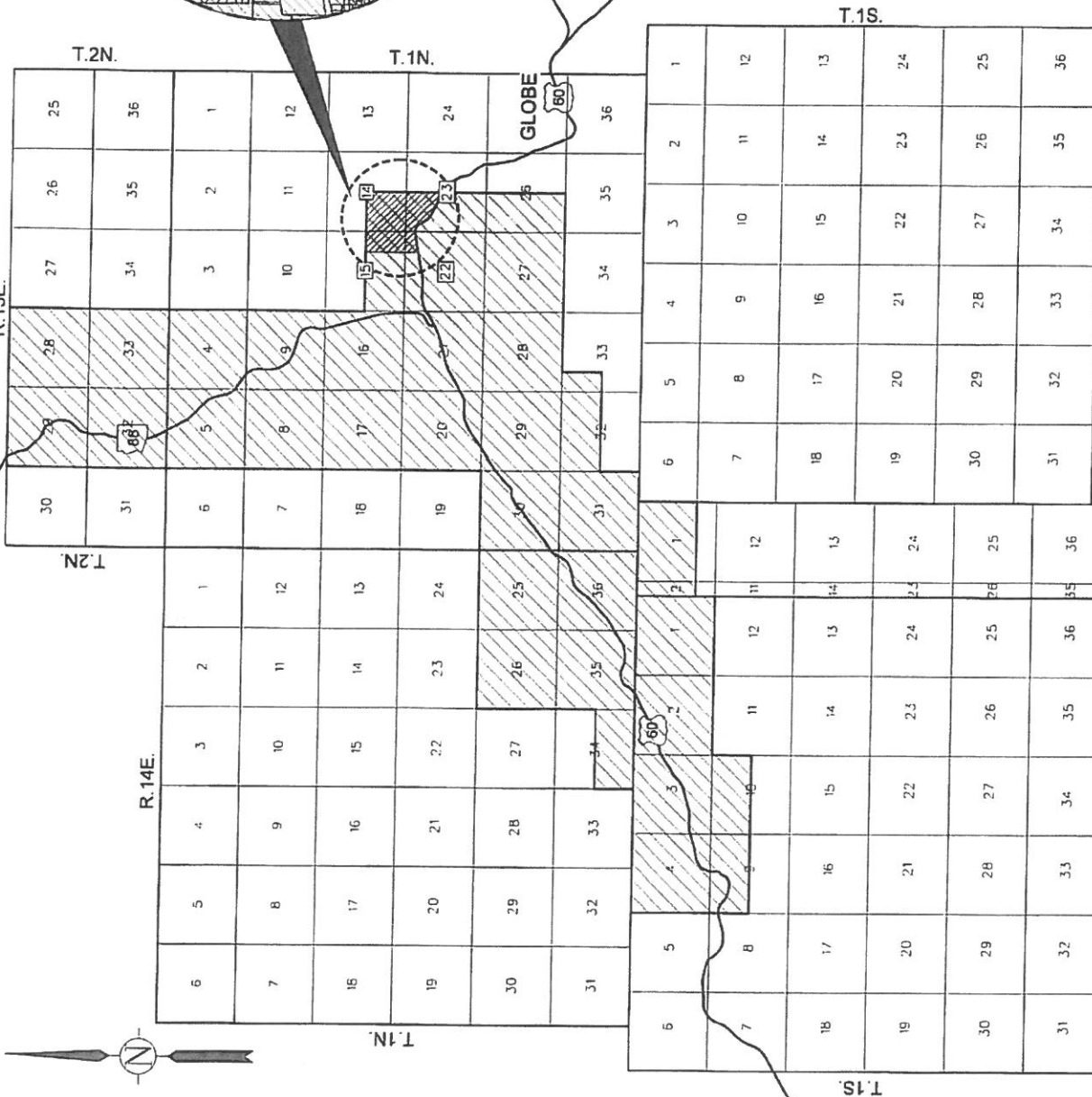
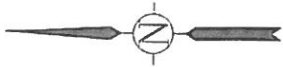


Robert Spear
General Counsel

hac
VIA PERSONAL SERVICE

EXHIBIT A

SECTIONS 14/23 DETAIL



- A Portion of Arizona Water Company CCN
- A Portion of City of Globe
- Areas with Competing Water Utility Service

EXHIBIT A

ARIZONA WATER COMPANY		
MIAMI-GLOBE VICINITY MAP		
DATE	April 25, 2012	SCALE
		NONE

EXHIBIT B

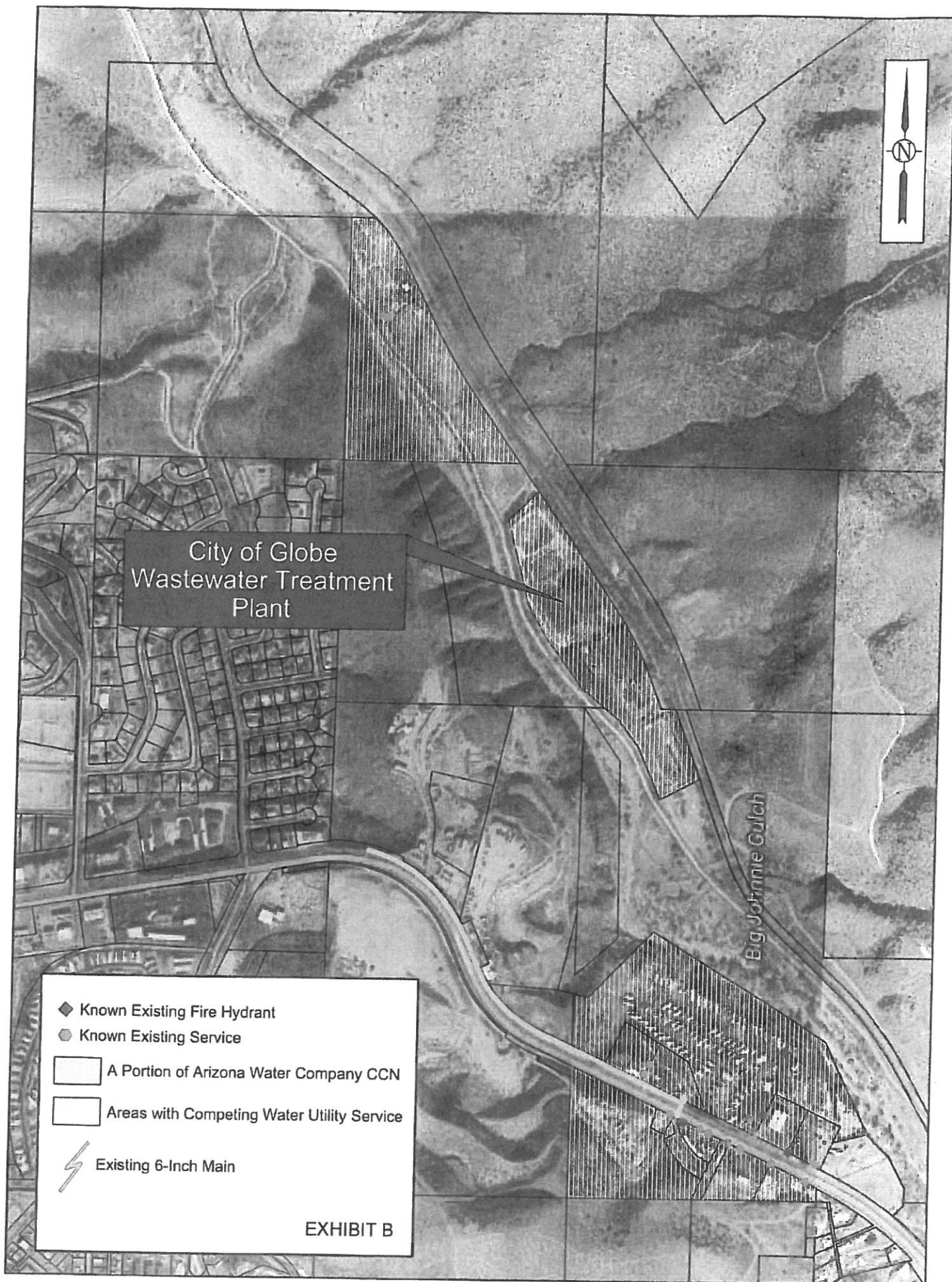


EXHIBIT C

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

Line No.	(A)	(B)	(C)	(D)
1.	<u>Lost Revenues</u>		<u>Residential</u>	<u>Commercial</u>
2.				
3.	2013 Effective Net Revenues - Superstition (including Globe)		\$ 12,682,720	\$ 3,106,714
4.				
5.	2013 Actual Customers - Superstition (including Globe)		23,133	1,018
6.				
7.	Average Net Revenue per Customer	[Line 3 / Line 5]	\$ 548.25	\$ 3,051.78
8.				
9.	Number of AWC Customers Served by City of Globe		3	13
10.				
11.	Number of Remaining Lots		<u>0</u>	<u>0</u>
12.				
13.	Total Present and Future Customers	[Line 9 + Line 11]	3	13
14.				
15.	Annualized Lost Operating Income	[Line 7 * Line 13]	\$ 1,645	\$ 39,673
16.				
17.	Lost Revenues	[Line 15 * 34 Years]	\$ 55,922	\$ 1,348,887
18.	(January 1, 1980 to the date of this valuation)			
19.				
20.	Total Revenues Lost	[C17 + D17]		<u>\$ 1,404,809</u>
21.				
22.	Interest Component	At Weighted Cost of Capital		2,393,349
23.				
24.	Total Lost Revenue and Interest	[Line 20 + Line 22]		<u><u>\$ 3,798,158</u></u>
25.				
26.				
27.				
28.				
29.				
30.				

EXHIBIT D

EXHIBIT D

ARIZONA WATER COMPANY				DATE PREPARED:	
PRELIMINARY COST ESTIMATE				5/30/14	
PREPARED BY:		APPROVED BY:		SYSTEM:	
AJH				SUPERSTITION (MI)	
NAME OF APPLICANT:			PE #		DIVISION:
					SUPERSTITION
PROPERTY DESCRIPTION:					
CONSTRUCT PIPELINES AND NEW SERVICE CONNECTIONS TO SERVE CUSTOMERS ALONG HIGHWAY 60 (MIAMI-GLOBE CCN)					
MATERIALS AND LABOR			ESTIMATED PROJECT COST		
ACCOUNT	QUANTITY	DESCRIPTION	ADVANCE FOR CONSTRUCTION	NON-REFUNDABLE CONTRIBUTION	
	2,000 LF	Construct 12-inch water main along Hwy 60	\$ 520,000		
	6,500 LF	Construct 8-inch water main	942,500		
	1	Construct fire hydrant		10,000	
	1	Construct fire hydrant (bore Hwy 60)		50,000	
	2	Construct 5/8-inch service connection	8,000		
	8	Construct 5/8-inch service connection (bore Hwy 60)	80,000		
	1	Construct 1-inch service connection (bore Hwy 60)	11,000		
	2	Construct 2-inch service connection	18,000		
	1	Construct 6-inch service connection	20,000		
	1	Construct 6-inch fire line service connection	20,000		
(1) SUBTOTAL - MATERIALS AND LABOR			\$ 1,619,500	\$ 60,000	
(2) PERFORMANCE BOND @ 3 % OF LINE (1)			48,600	1,800	
(3) SURVEY, R.O.W. PERMITTING, TESTING AND FIELD INSPECTION			41,300	6,000	
(4) SUBTOTAL - LINES (1), (2) AND (3)			\$ 1,709,400	\$ 67,800	
(5) OVERHEAD - 12 % OF LINE (4)			205,200	8,200	
(6) PREPARATION OF DETAILED PLANS, SPECIFICATIONS, AND COST ESTIMATES			16,000	2,000	
SUBTOTAL - LINES (4), (5) AND (6)			\$ 1,930,600	\$ 78,000	
ESTIMATED COST OF CONSTRUCTION			\$ 2,008,600		

AFH