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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

MAR 25 2002

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2 WILLIAM A. MUNDELL  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 MARC SPITZER  
COMMISSIONER  
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DOCKETED BY

6 IN THE MATTER OF THE APPLICATION OF ICR  
WATER USERS ASSOCIATION, INC. TO  
7 EXTEND ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO. W-02824A-01-0900

DECISION NO. 64667

**OPINION AND ORDER**

8  
9 DATE OF HEARING: February 12, 2002  
10 PLACE OF HEARING: Phoenix, Arizona  
11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
12 APPEARANCES: Mr. Michael A. Parham, Attorney at Law, on behalf of  
ICR Water Users Association, Inc.;;  
13 Ms. Janice M. Alward, Assistant Chief Counsel, Legal  
14 Division, on behalf of the Arizona Corporation Utilities  
Division.

15 **BY THE COMMISSION:**

16 On November 13, 2001, ICR Water Users Association, Inc. ("ICR" or "Applicant") filed with  
17 the Arizona Corporation Commission ("Commission") an application for an extension of its  
18 Certificate of Convenience and Necessity ("Certificate") to provide public water utility service to  
19 various parts of Yavapai County, Arizona.

20 On January 8, 2002, by Procedural Order, the above-captioned matter was scheduled for a  
21 hearing on February 12, 2002, and Applicant was ordered to publish notice of the application and  
22 hearing thereon.

23 On January 31, 2002, ICR filed notice that it provided notice pursuant to the terms of the  
24 Commission's Procedural Order.

25 On February 5, 2002, the Commission's Utilities Division ("Staff") filed its Staff Report in  
26 this matter.

27 On February 12, 2002, a full public hearing was convened before a duly authorized  
28 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ICR and Staff

1 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement  
2 pending submission of a Recommended Opinion and Order to the Commission.

3 \* \* \* \* \*

4 Having considered the entire record herein and being fully advised in the premises, the  
5 Commission finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 1. Pursuant to authority granted by the Commission, ICR is engaged in providing water  
8 service to approximately 90 residential customers approximately 12 miles northwest of Prescott,  
9 Yavapai County, Arizona.

10 2. ICR's initial Certificate area contained approximately 300 residence sized lots<sup>1</sup>.

11 3. While ICR's existing plant includes 110,000 gallons of storage and is valued at  
12 \$250,000, it presently does not own a well.

13 4. After ICR drilled six wells and they were found to be unproductive to serve its initial  
14 certificated area, ICR signed a 100-year water purchase agreement to purchase water for \$.15 per  
15 1,000 gallons from Pierce Properties ("Pierce"), a nearby property owner that owns property adjacent  
16 to ICR's certificated service area. ICR represents this agreement was recorded and provides ICR  
17 with up to 250 gallons per minute ("GPM") of water from Pierce's well that has a pumping capacity  
18 of 1,200 GPM.

19 5. On November 13, 2001, ICR filed an application for the second extension of its  
20 Certificate in order to provide water service to approximately 800 acres of land adjacent to its  
21 existing certificated service area which is more fully described in Exhibit A attached hereto.

22 6. ICR has requested the above-described extension of its Certificate because it has  
23 received a request from a developer, Whispering Canyon, L.L.C., to provide water service to the area  
24 described in Exhibit A for a planned residential development, Whispering Canyon, which will  
25 contain approximately 400 residences when it is entirely built out.

26 \_\_\_\_\_  
27 <sup>1</sup> On January 15, 2002, the Commission issued Decision No. 64360 which approved the first application by ICR to extend  
28 its Certificate to provide service to approximately 1,500 more residential lots and a golf course. Under the terms of that  
Decision, within one year of the effective date of that Decision, the developer of the extension area must convey a well  
site it has developed or the extended Certificate will be rendered null and void.

1           7.       In order to provide service to the extension area, ICR and the developer of Whispering  
2 Canyon have entered into a Main Extension Agreement ("Agreement"), which was subsequently  
3 amended to include refund provisions. Pursuant to the amended Agreement, the developer will  
4 construct all of the required facilities necessary to serve Whispering Canyon and advance them to  
5 ICR which in turn will refund to the developer, over a period of 25 years, 15 percent of the revenues  
6 derived from the provision of service to the extension area. However, refund payments will not start  
7 until three years after ICR first provides service in the extension area.

8           8.       Pursuant to the terms of the Agreement, the facilities will be constructed in conformity  
9 with the rules of the Yavapai County Environmental Services Department and the Arizona  
10 Department of Environmental Quality ("ADEQ").

11          9.       In the event that any of the facilities are not located in the public rights of way, the  
12 developer of Whispering Canyon will convey permanent easements and rights-of-way to ICR to  
13 allow for access to its facilities in the future.

14          10.      Any unpaid balance at the end of the 25-year term of the Agreement will become a  
15 non-refundable contribution to ICR.

16          11.      There are no other public water utilities in the area to provide water service to the area  
17 sought to be certificated herein by ICR.

18          12.      ICR has indicated that it will charge those customers in the expansion area its existing  
19 rates and charges of \$20 per month for its base rate and \$2 per 1,000 gallons for water usage.

20          13.      During the proceeding, Mr. Swayze McCraine, the president of ICR, testified that ICR  
21 will comply with all conditions recommended by Staff in its report, except for the recommendation  
22 that ICR require the developer to transfer a back-up well to ICR that was to be constructed by the  
23 developer.

24          14.      According to the Agreement, the facilities to be constructed in phases will be worth  
25 approximately \$3,600,000 at build out.

26          15.      In order to provide Whispering Canyon with adequate water, the developer proposes  
27 to fund the cost of upsizing Pierce's well pump. Additionally, ICR has secured an amendment to its  
28 100 year water purchase contract to increase, by 150 GPM, its water allotment from Pierce to 400

1 GPM. The amended contract will also be recorded by ICR.

2 16. Although ICR and Staff had discussed the upgrading of the Pierce well and the  
3 addition of a second back-up well that would be transferred by the developer to ICR, because Pierce  
4 will not sell the property where the well is or could be located, the plan for a second well did not  
5 come to fruition.

6 17. According to ICR's manager, water hydrology tests indicate that there is more than  
7 ample water available utilizing the Pierce well for ICR's proposed extension for Whispering Canyon  
8 and ICR will provide the Commission with a copy of the developer's letter of water adequacy from  
9 the Arizona Department of Water Resources ("ADWR") upon its receipt.

10 18. As the additional utility plant is constructed and phased into service to serve  
11 Whispering Canyon, ICR expects additional water storage capacity to be added which will enable the  
12 system to be converted from a pressurized system to a more economical gravity system.

13 19. Subject to reservations about the control of ICR's water sources, Staff recommended  
14 approval of ICR's application even though ICR did not follow through on the development of the  
15 back-up well.

16 20. Since ICR's certificated service area and the extension area are located outside of the  
17 Prescott Active Management Area, Applicant will not be required to file a copy of the developer's  
18 Certificate of an Assured Water Supply. Instead, Staff is recommending that ICR file a copy of the  
19 letter of water adequacy to be issued by ADWR to the developer.

20 21. Staff believes that ICR's existing rates and charges will enable it to continue viable  
21 operations because much of ICR's projected additional expenses will be related to non-cash  
22 depreciation expenses.

23 22. Applicant is in compliance with the rules of ADEQ and is providing water which does  
24 not exceed any MCLs and meets the water quality standards of the Safe Drinking Water Act.

25 23. Applicant is current on the payment of its property and sales taxes.

26 24. Applicant has previously obtained a Yavapai County franchise for the extension area.

27 25. Staff is recommending approval of ICR's application herein subject to the following  
28 conditions:

- 1
- 2 • that Applicant file, with the Director of the Commission's Utilities Division,
- 3 within 365 days of the effective date of this Decision, a copy of the developer's
- 4 letter of water adequacy for Phase I which is to be issued by ADWR;
- 5 • that ICR file, with the Director of the Commission's Utilities Division, within 365
- 6 days of the effective date of this Decision, a copy of the developer's Certificate of
- 7 Approval to Construct with the appropriate main extension agreement, if not
- 8 previously filed;
- 9 • that ICR file, with the Director of the Commission's Utilities Division, copies of
- 10 all documents of conveyance from the developer of Whispering Canyon; and
- 11 • that Applicant continue to charge its existing rates and charges in the extension
- 12 area.

13 26. Staff is further recommending that, in the event that ICR fails to meet the above  
14 recommendations of Staff in a timely fashion, the approval granted hereinafter shall be null and void  
15 without further Order by the Commission.

16 27. In its Staff Report, Staff recommended that the developer of Whispering Canyon  
17 transfer the "back-up" well to ICR. However, at hearing, there was testimony that it would not be  
18 constructed because Pierce would not sell the property for the well site. Staff continues to  
19 recommend approval of ICR's application because ICR must provide evidence of water adequacy or  
20 the Certificate approved hereinafter will become null and void.

21 28. Under the circumstances herein, we believe that Staff's recommendations on balance  
22 are reasonable and should be adopted.

23 29. However, we are concerned with the fact that ICR does not own or have its own water  
24 production facilities and that the issue was not addressed adequately by ICR. The public health and  
25 safety require that ICR's sole source of water not be within the control of a third party over which the  
26 Commission lacks jurisdiction. To remain consistent with Decision No. 64360, we believe that, as an  
27 additional condition for the extension of the Certificate herein, as part of the Agreement, the  
28 developer of Whispering Canyon should include in its advance, a well(s) producing sufficient water  
to serve the extension area described in Exhibit A at full build-out. This will ensure that the utility

1 adequate water for its customers and ensure that they are not subject to relying for their water on a  
2 third party over which the Commission lacks jurisdiction.

3 30. We believe that this condition can be met by amending the Agreement between the  
4 parties and we shall require ICR to file a copy of the relevant documents transferring ownership of  
5 the well and related water production facilities to ICR within 365 days of the effective date of this  
6 Decision or the approval granted herein shall be rendered null and void without further Order by the  
7 Commission.

8 **CONCLUSIONS OF LAW**

9 1. Applicant is a public service corporation within the meaning of Article XV of the  
10 Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-282.

11 2. The Commission has jurisdiction over Applicant and of the subject matter of the  
12 application.

13 3. Notice of ICR's application as described herein was given in the manner prescribed by  
14 law.

15 4. The public convenience and necessity require and the public would benefit by the  
16 extension of ICR's Certificate so that its certificated service area includes the area more fully  
17 described in Exhibit A.

18 5. Applicant is a fit and proper entity to receive an amended Certificate which  
19 encompasses the area more fully described in Exhibit A.

20 6. ICR's application for the extension of its Certificate should be approved as  
21 recommended by Staff in Findings of Fact Nos. 25 and 26 and consistent with Findings of Fact Nos.  
22 29 and 30 hereinabove.

23 **ORDER**

24 IT IS THEREFORE ORDERED that the application of ICR Water Users Association, Inc. for  
25 an extension of its Certificate of Convenience and Necessity for the operation of water facilities in  
26 the area more fully described in Exhibit A be, and is hereby approved, as conditioned herein.

27 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall comply with all  
28 conditions as described in Findings of Fact Nos. 25, 26, 29 and 30 and Conclusion of Law No. 6

1 hereinabove.

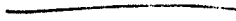
2 IT IS FURTHER ORDERED that the approval granted herein to ICR Water Users  
3 Association, Inc. shall be conditioned upon ICR Water Users Association, Inc. complying with the  
4 conditions as set forth in Findings of Fact Nos. 25, 26, 29 and 30 and Conclusion of Law No. 6  
5 hereinabove or the approval granted herein shall be rendered null and void without further Order of  
6 the Commission.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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11 CHAIRMAN

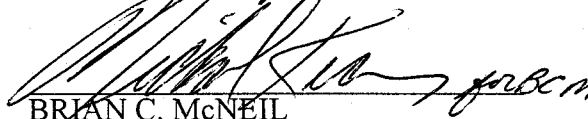
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11 COMMISSIONER

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11 COMMISSIONER

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13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Secretary of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 25<sup>TH</sup> day of MARCH, 2002.

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18 BRIAN C. McNEIL  
19 EXECUTIVE SECRETARY

19 DISSENT \_\_\_\_\_

20 MES:mlj

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1 SERVICE LIST FOR: ICR WATER USERS ASSOCIATION, INC.

2 DOCKET NO. W-02824A-01-0900

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## Exhibit A

A portion of Sections 33 and 34, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the corner common to Sections 27, 28, 33 and 34 of Township 16 North, Range 3 West of the Gila and Salt River Base and Meridian, monumented with a brass cap stamped, "W.J. Check; P.E. NO. 2398";

Thence along the line common to Sections 33 and 34, South 00 degrees 23 minutes 28 seconds West, 382.57 feet;

Thence departing the line common to Sections 33 and 34, South 53 degrees 49 minutes 36 seconds West, 5,126.57 feet;

Thence South 89 degrees 47 minutes 13 seconds West, 1,051.14 feet, to the West line of Section 33;

Thence along the West line of Section 33, South 00 degrees 12 minutes 47 seconds East, 1,992.80 feet, to the Southwest corner of Section 33, monumented with a General Land Office Survey brass cap;

Thence along the South line of Section 33, South 89 degrees 38 minutes 18 seconds East, 2,710.90 feet, to the South quarter corner of Section 33, monumented with a General Land Office Survey brass cap;

Thence continuing along the South line of Section 33, South 89 degrees 43 minutes 13 seconds East, 2,703.54 feet, to the Southeast corner of Section 33 and the Southwest corner of Section 34, monumented with a General Land Office Survey brass cap;

Thence along the South line of Section 34, South 87 degrees 44 minutes 28 seconds East, 2,693.48 feet, to the South quarter corner of Section 34, monumented with a General Land Office Survey brass cap;

Thence continuing along the South line of Section 34, South 87 degrees 50 minutes 49 seconds East, 1,547.40 feet;

Thence departing the South line of Section 34, North 43 degrees 32 minutes 06 seconds East, 249.67 feet;

Thence North 46 degrees 27 minutes 13 seconds East, 227.64 feet;

Thence North 28 degrees 06 minutes 24 seconds West, 95.72 feet;

Thence North 40 degrees 18 minutes 23 seconds West, 149.00 feet;

Thence North 57 degrees 38 minutes 52 seconds West, 261.34 feet;

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EXHIBIT A

DECISION NO. \_\_\_\_\_

Thence North 51 degrees 03 minutes 55 seconds West, 98.30 feet;

Thence North 23 degrees 31 minutes 58 seconds West, 107.03 feet;

Thence North 39 degrees 49 minutes 43 seconds West, 576.55 feet;

Thence North 89 degrees 59 minutes 59 seconds West, 332.00 feet;

Thence North 57 degrees 35 minutes 51 seconds West, 111.89 feet;

Thence North 31 degrees 49 minutes 09 seconds West, 253.35 feet;

Thence North 23 degrees 51 minutes 50 seconds East, 96.11 feet;

Thence North 68 degrees 53 minutes 54 seconds East, 385.86 feet;

Thence North 33 degrees 26 minutes 09 seconds East, 493.93 feet to the Southwesterly line of the Western Power authority electrical power transmission line;

Thence along said Southwesterly line, North 31 degrees 52 seconds 34 minutes West, 957.74 feet;

Thence departing said Southwesterly line North 64 degrees 52 minutes 55 seconds East, 453.56 feet;

Thence North 25 degrees 09 minutes 04 seconds East, 559.18 feet;

Thence North 78 degrees 37 minutes 30 seconds East, 520.03 feet;

Thence North 58 degrees 10 minutes 11 seconds East, 813.86 feet;

Thence South 84 degrees 51 minutes 52 seconds East, 90.87 feet to a point on the Westery right of way of Williamson Valley Road (a.k.a. Prescott-Summons Highway), per the map filed and recorded in Book 10 of Maps, page 17 in the Office of the Recorder of Yavapai County, said point being a point of curvature;

Thence along the Westery right of way, along a curve to the right, having a chord bearing North 05 degrees 02 minutes 17 seconds West, a chord length of 642.38 feet, a radius of 1,959.86 feet, a central angle of 18 degrees 51 minutes 53 seconds and an arc length of 645.29 feet (recorded as having a radius of 1,959.86, a central angle of 18 degrees 52 minutes and an arc length of 645.35 feet);

Thence continuing along the West right of way, North 04 degrees 24 minutes 08 seconds East, (recorded as North 04 degrees 21 minutes East) 554.93 feet, to a point on the North line of Section 34;

Thence along the North line of Section 34 North 88 degrees 21 minutes 20 seconds West, 2,488.09 feet, to the North quarter corner of Section 34 monumented with brass cap stamped "W.J. Check; P.E. NO. 398";

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DECISION NO. \_\_\_\_\_

Thence continuing along the North line of Section 34, North 88 degrees 20 minutes 49 seconds West,  
2,738.88 feet to the POINT OF BEGINNING.

EXCEPT the Northerly 100 feet of the Westerly 100 feet of the Northwest quarter of said Section 34.