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BEFORE

COMMISSION

Arizona Corporation Commission

DOCKETED

AUG 22 2003

COMMISSIONERS

MARC SPITZER - Chairman
TIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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STAFF of the Utilities Division,

Complainant,

v.

JOHNNY A. MCLAIN, dba Miracle Valley
Water Company, Cochise Water Company,
Horseshoe Ranch Water Company, Crystal Water
Company, Mustang Water Company, Coronado
Estates Water Company & Sierra Sunset Water
Company, an individual and JOHNNY A. AND
LINDA M. MCLAIN, a marital community,

Respondents,

MIRACLE VALLEY WATER COMPANY,
INC., an Arizona Corporation.

Respondent.

DOCKET NOS. W-01646A-03-0601
W-01868A-03-0601
W-02235A-03-0601
W-02316A-03-0601
W-02230A-03-0601
W-01629A-03-0601
W-02240A-03-0601

COMPLAINT;

**PETITION FOR ORDER TO
SHOW CAUSE; AND**

**PETITION FOR ORDER FOR
INTERIM RELIEF**

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint, Petition for Order to Show Cause; and Petition for Order for Interim Relief against JOHNNY A. MCLAIN doing business as ("dba") MIRACLE VALLEY WATER COMPANY, COCHISE WATER COMPANY, HORSESHOE RANCH WATER COMPANY, CRYSTAL WATER COMPANY, MUSTANG WATER COMPANY, CORONADO ESTATES WATER COMPANY AND SIERRA SUNSET WATER COMPANY, JOHNNY A. MCLAIN AND LINDA M. MCLAIN (Johnny A. McLain individually or Johnny A. and Linda M. McLain collectively as a marital community, "McLain"), and MIRACLE VALLEY WATER COMPANY, INC., an Arizona Corporation, alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate

1 public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the
2 Arizona Revised Statutes.

3 RESPONDENT(S)

4 JOHNNY A. MCLAIN dba MIRACLE VALLEY WATER COMPANY and
5 MIRACLE VALLEY WATER COMPANY, INC.

6
7 2. Miracle Valley Water Company has been a public service corporation that operated a
8 public water system located in the area of Sierra Vista, Cochise County, Arizona. Miracle Valley
9 Water Company serves approximately 276 customers. The original owner(s) of Miracle Valley Water
10 company were granted a Certificate of Convenience and Necessity ("CC&N") to provide water
11 service by the Commission in Decision No. 31741 (August 12, 1959).

12 3. Thereafter, Miracle Valley Water Company underwent several transformations and
13 changes in ownership. The previous Miracle Valley Water Company had its charter revoked in 1980,
14 but continued to serve customers through 1986. A newer version of Miracle Valley Water Company
15 was incorporated in 1986 as Miracle Valley Water Company, Inc., with the principal directors being
16 Silbert Koritan and Patricia Scott Koritan, who was also the sole equity holder of 100 shares of
17 Miracle Valley Water Company. No application for approval of a transfer of a CC&N or an
18 application for issuance of equity was filed with the Commission at that time.

19 4. At the time the previous Miracle Valley Water Company's charter was revoked in
20 1980, the Koritans had borrowed \$50,000 from Mr. and Mrs. Harry Ransom to operate Miracle
21 Valley Water Company. The Koritans defaulted on the loan. To resolve the above default, the
22 Koritans entered into an agreement with the Ransoms where the outstanding equity in Miracle Valley
23 Water Company owned by Patricia Scott Koritan would be transferred to Ranwest Investments
24 ("Ranwest") owned by the Ransoms. Ranwest would assume all the debt owed by Miracle Valley
25 Water Company. Ranwest would also pay property taxes owed by Miracle Valley Water Company,
26 approximately \$23,255. The transfer and equity issuance was retroactively approved by the
27 Commission in Decision No. 56007 (June 13, 1988). McLain never received Commission approval to
28

1 have the assets transferred to him in that decision, although he was involved in the preliminary stages
2 of that process.

3 5. McLain dba Miracle Valley Water Company (“Miracle Valley”) is currently operating
4 the Miracle Valley water system. The system serves approximately 276 customers. There has been no
5 Commission Decision approving the transfer of assets and CC&N from Ranwest to McLain. McLain
6 has never been granted a CC&N for Miracle Valley. However, McLain has signed the most recent
7 Utilities Division Annual Report of Miracle Valley as “Owner”. This is contrary with the latest
8 Corporation Annual Report and Certificate of Disclosure for Miracle Valley Water Company, Inc.,
9 submitted on January 3, 2003, where Harry Ransom and Barbara Ransom are the sole shareholders of
10 Miracle Valley Water Company, Inc. McLain is not listed as a shareholder or an officer of Miracle
11 Valley Water Company, Inc., in that report. Both reports deal with the same assets (i.e. the actual
12 Miracle Valley water system).

13 **JOHNNY A. MCLAIN DBA COCHISE**
14 **AND HORSESHOE RANCH WATER COMPANIES**
15

16 6. Johnny A. McLain dba Cochise Water Company (“Cochise”) is a public service
17 corporation that operates a public water system located in the area of Sierra Vista, Cochise County,
18 Arizona. Cochise serves approximately 280 customers. The original owner of the Cochise water
19 system, J. R. Sharp, was granted a CC&N to provide water service by the Commission in Decision
20 No. 34147 (October 31, 1962). Johnny A. McLain dba Horseshoe Ranch Water Company
21 (“Horseshoe Ranch”) is a public service corporation that operates a public water system located in the
22 area of Sierra Vista, Cochise County, Arizona. Horseshoe Ranch serves approximately 220
23 customers. The original owners of Horseshoe Ranch’s water system (then known as the Ranch Water
24 Company) were granted a CC&N to provide water service by the Commission in Decision No. 43538
25 (August 3, 1973). Cochise and Horseshoe Ranch are located contiguous to one another and both
26 entities have been inter-related for several years.

27 7. It appears that the sole original owner of Cochise was J. R. Sharp. According to
28 correspondence date April 10, 1969 all of the outstanding stock of Cochise was acquired by several

1 persons from J. R. Sharp, including D. Cameron Peck (12.5%), F. W. Shackelford (12.5%), S. M.
2 Brown (12.5%), Richard E. Conley (25.0%), James L. Jarvise (6.25%), Lawrence Fowler (6.25%),
3 Edgar L. Foedish (6.25%), Dr. A.C. van Ravenswaay (9.375%) and John Black (9.375%), in May of
4 1968. It does not appear that any application for transfer of assets w'as ever filed with the
5 Commission.

6 8. According to Cochise's annual report dated April 29, 1982, McLain was the owner of
7 Cochise. No Commission Decision has been issued approving the transfer of assets and CC&N to
8 McLain. McLain has signed the most recent Utilities Division Annual Report of Cochise as "Owner".
9 There is no Corporations Division Annual Report for Cochise.

10 9. The owners of Ranch Water Company (Horseshoe Ranch's predecessor) were
11 Maurice M. Sinks and E. Elizabeth Sinks. Commission Decision No. 55878 authorized the transfer of
12 Ranch Water Company's assets and CC&N to Horseshoe Ranch on February 3, 1988. William Fink
13 and John D. Meijer were the only stockholders and officers of Horseshoe Ranch at the time of the
14 transfer. William Fink was the President at Horseshoe Ranch at that time.

15 10. In Commission Decision No. 57740 issued on February 2, 1992, Mr. Robert E. Bolt
16 was listed as the President of Horseshoe Ranch. There does not appear to be any Commission
17 Decision authorizing the transfer of assets and CC&N to Mr. Bolt from Messieurs Fink and Meijer.
18 Additionally, there has been no Commission Decision approving any transfer of the assets and
19 CC&N of Horseshoe Ranch to McLain. However, McLain has signed the most recent Utilities
20 Division Annual Report of Horseshoe Ranch as "Owner". There is no Corporations Division Annual
21 Report for Horseshoe Ranch.

22 **JOHNNY MCLAIN DBA CRYSTAL, MUSTANG**

23 **AND CORONADO ESTATES WATER COMPANIES**

24 11. Johnny A. McLain dba Crystal Water Company ("Crystal") is a public service
25 corporation that operates a public water system located in the area of Cochise County, Arizona.
26 Crystal serves approximately 54 customers. It had been operating as an uncertificated water company
27 for some fifteen years previous to Decision No. 49539. A CC&N was issued to Crystal in
28 Commission Decision No. 50757 (March 18, 1980). Clair Iverson was the owner of Crystal at that

1 time. The CC&N was transferred to McLain in Decision No. 53467 (March 3, 1983), subject to
2 certain conditions which were met as of April 11, 1983. McLain has signed the most recent Utilities
3 Division Annual Report of Crystal as “Owner”.

4 12. Johnny A. McLain dba Mustang Water Company (“Mustang”) is a public service
5 corporation that operates a public water system located in the area of Cochise County, Arizona.
6 Mustang serves approximately 50 customers. Mustang was originally granted a CC&N in
7 Commission Decision No. 43533 (August 1, 1973). Mustang was, at that time, a partnership between
8 Ronald W. Barnett, Jack W. Wright and Charles J. Randolph. Mustang was transferred to McLain
9 and Troy L. Mansker in Decision No. 51178 (July 23, 1980). On September 21, 1981, McLain had
10 filed an application to transfer the CC&N to his sole possession. That application was dismissed by
11 the Commission for failure to meet several requirements and for several omissions not included in the
12 application in Decision No. 53133 (July 26, 1982). There has been no subsequent application by
13 McLain to transfer the CC&N to his sole possession. However, McLain has signed the most recent
14 Utilities Division Annual Report of Mustang as “Owner” and “Sole Proprietor”.

15 13. Johnny A. McLain dba Coronado Estates Water Company (“Coronado”) is a public
16 service corporation that operates a public water system located in the area of Cochise County,
17 Arizona. Coronado serves approximately 160 customers. Coronado was originally granted a CC&N
18 in Commission Decision No. 31504 (April 27, 1959). Coronado was transferred to McLain and Troy
19 L. Mansker in Decision No. 51176 (July 23, 1980). On September 21, 1981, McLain had filed an
20 application to transfer the CC&N to his sole possession. That application was dismissed by the
21 Commission for failure to meet several requirements and for several omissions not included in the
22 application in Decision No. 53132 (July 26, 1982). There has been no subsequent application by
23 McLain to transfer the CC&N to his sole possession. McLain has signed the most recent Utilities
24 Division Annual Report of Coronado as “Owner”.

25 **JOHNNY A. MCLAIN DBA SIERRA SUNSET WATER COMPANY**

26 14. Johnny A. McLain dba Sierra Sunset Water Company (“Sierra Sunset”) is a public
27 service corporation that operates a public water system located in the area of Cochise County,
28 Arizona. Coronado serves approximately 29 customers. Sierra Sunset does not have a valid CC&N.

1 A CC&N was granted to Marion Rosalie Tourtillotte dba Sierra Sunset Water Company in
2 Commission Decision No. **49106** (June **26, 1978**). Ms. Tourtillotte died and Mr. D.A. Peardon
3 inherited the Sierra Sunset water system. McLain made an attempt to have the CC&N transferred to
4 him, but that application to transfer was dismissed in Commission Decision No. **53666** (July **27,**
5 **1983**). Pursuant to an order to show cause (“OSC”), the Commission rescinded the CC&N of Sierra
6 Sunset in Commission Decision No. **53919** (February 8, **1984**). There has been no Commission
7 Decisions granting a new CC&N for Sierra Sunset nor has there been any approval of the sale of
8 assets to McLain. There is no Utilities Division Annual Report for Sierra Sunset.

9 **JOHNNY A. MCLAIN**

10 15. According to the most recent Utilities Division Annual Reports for Cochise,
11 Horseshoe Ranch, Crystal, Mustang and Coronado Water Companies, McLain is presently the sole
12 owner of those entities. McLain also appears to be the **sole** owner of Sierra Sunset. Regarding
13 Miracle Valley, according to the most recent Utilities Division Annual Report, McLain is the sole
14 owner. However, this is contrary to the most recent Corporations Annual Report, which lists Harry
15 and Barbara Ransom as the sole shareholders. McLain is also the manager/operator of all of the
16 above entities. McLain’s Operator Certification Compliance Status, according to the Arizona
17 Department of Environmental Quality (“**ADEQ**”), is in violation for the operations of Miracle Valley,
18 Cochise and Horseshoe Ranch; McLain is operating those water systems without having the proper
19 distribution operator certification status (he is only grade one certified and needs to be grade two
20 certified to operate Miracle Valley, Cochise and Horseshoe Ranch). ADEQ also notes that McLain is
21 operating facilities in violation of federal or state law and operating facilities in a manner
22 endangering the public health, safety or welfare.

23 16. McLain has filed a voluntary petition for bankruptcy where he listed himself dba
24 Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset Water
25 Cos. as a debtor under Bankruptcy Petition **4-03-03209-EWH** filed June **13, 2003**. The filing was
26 made in the United States Bankruptcy Court in Tucson, Arizona. That bankruptcy filing was
27 dismissed on July **23, 2003**. There had been a previous bankruptcy filing in **1997** by McLain in the
28 same U.S. District Court (Bankruptcy Petition **97-01731-SV-LO**), which was also dismissed without

1 prejudice on July 7, 2000. There has been another bankruptcy filing by McLain on July 30, 2003
2 listing the same entities as a debtor (Bankruptcy Petition 4-03-04125-Em). The Arizona
3 Department of Revenue ("ADOR") is listed as a creditor in the July 30, 2003 filing. McLain may be
4 under investigation by the ADOR over failure to pay property and/or other taxes. Furthermore, no
5 Corporations Division Annual Reports have been filed for Cochise, Horseshoe Ranch, Crystal,
6 Mustang, Coronado or Sierra Sunset and these entities do not appear to be incorporated, according to
7 the Corporations Division database. Cochise, Horseshoe Ranch, Crystal, Mustang and Coronado are
8 listed as sole proprietorships per their respective most recent Utilities Division Annual Reports. In
9 addition, while Miracle Valley is still an Arizona Corporation, per its most recent Corporations
10 Division Annual Report, McLain appears to be operating and managing Miracle Valley as if it were a
11 sole proprietorship.

12 BACKGROUND OF MIRACLE VALLEY

13 17. Commission Decision No. 56428 (March 23, 1989) was the most recent rate case for
14 Miracle Valley/Miracle Valley Water Company, Inc. That Decision required the installation of a
15 30,000 gallon storage tank, two SHP booster pumps and meters to all un-metered customers to the
16 Miracle Valley water system. That Decision also required taking \$3.00 per customer per month and
17 put into a separate account to fund all of the above improvements. (See Decision No. 56428 at
18 Findings of Fact 7, 9).

19 18. McLain, listed as the manager and acting as the owner/operator of Miracle Valley,
20 applied for an extension of its CC&N on March 23, 2000. Commission Decision No. 62863
21 conditioned the approval of the extension on several requirements. McLain is listed in that decision
22 as the Manager of Miracle Valley. As of August 25, 2000, the date that Decision No. 62863 was
23 issued, none of the improvements required by Decision No. 56428 had been done for the Miracle
24 Valley water system. (Decision No. 62863 at Findings of Fact 10 through 12). The Commission
25 modified the requirements of Decision No. 56428 in realization that the ADEQ was now requiring
26 the installation of a 50,000 gallon storage tank, instead of a 30,000 gallon storage tank, to the Miracle
27 Valley water system. (Decision No. 62863 at Findings of Fact 18, 19). That decision also required
28 Miracle Valley/Miracle Valley Water Company, Inc. to file a rate case within sixty days of

1 Commission approval of the CC&N extension and must be in compliance with all ADEQ
2 requirements within ninety days, with written confirmation of such within one-hundred twenty days.
3 Decision No. 62683 at Findings of Fact 17, 20). To date: compliance has not been achieved. While
4 McLain did file rate applications for Miracle Valley on November 15, 2000, February 7, 2001, and
5 May 3, 2001, none of those applications were sufficient.

6 19. Decision No. 62683 notes that "ADEQ cannot determine if [the Miracle Valley water
7 system] is providing water that meets the quality standard of the safe drinking water act." (Decision
8 No. 62683 at Finding of Fact 14). That Decision indicated that no monitoring for lead, copper or
9 nitrates had been conducted since 1987 and no radiochemical monitoring had been done since 1988.
10 d. ADEQ has issued Notices of Violation ("NOV") on several occasions for violations including no
11 microbiological site sampling plan ("MSSP"), no storage, no backflow prevention program ("BPP"),
12 no emergency operation plan ("EOP"), and/or no approval to construct ("ATC") (August 12, 1997;
13 September 18, 1998; August 12, 1999; October 17, 2001). ADEQ also notes a four-day water outage
14 in June of 2003. On June 30, 2003, ADEQ issued an NOV against Miracle Valley for no emergency
15 notification, no new source approval tests, no EOP, no approval to construct for a new source, no
16 AOC for a new source and system pressure below 20 pounds per square inch ("psi"). To date,
17 compliance has not been achieved with ADEQ requirements. On June 30, 2003, ADEQ issued an
18 NOV against Miracle Valley for connecting an unapproved water well without getting source
19 approval and failing to maintain a pressure of 20 psi. ADEQ's Compliance Status Report dated July
20 1, 2003 for the Miracle Valley water system notes major deficiencies, including inadequate storage
21 and insufficient water pressure.

22 20. Staff had inspected the Miracle Valley water system prior to the issuance of Decision
23 No. 62683. Staff visited two well sites. The first well site contained a 300 gallon-per-minute ("gpm")
24 turbine well pump and 5,000 gallon pressure tank and the second site contained a well with what the
25 Company reported is a 100 gpm pump and a 15,000-gallon pressure tank. McLain, representing
26 himself as the Manager of Miracle Valley, argued that the installation of the second well negated the
27 need for storage facilities (Decision No. 62683 at Finding of Fact 12). However the second well and
28 pump did not receive ADEQ approval (Decision No. 62638 at Finding of Fact 11). There was no

1 modification to Decision No. 56428 negating the requirement of the construction of a storage tank
2 and ADEQ was still requiring that a 50,000 gallon storage tank be constructed.

3 21. McLain has further argued in past proceedings that he has had inadequate funds to
4 finance improvements to the Miracle Valley water system. This is the basis for the Commission
5 requirement in Decision No. 62863 that Miracle Valley submit a rate filing within sixty days of
6 Commission approval. (Decision No. 62863 at Finding of Fact 20). While McLain filed three rate
7 applications, as described above, McLain failed to make any of those applications sufficient per
8 Commission regulations.

9 **CLAIMS AGAINST MIRACLE VALLEY**

10 **Count One**

11 **(unjust and unreasonable service)**

12 22. Staff incorporates the allegations of paragraphs 1-5 and 17-21 into this count.

13 23. As set forth in the Affidavit of John A. Chelus (attached as Exhibit 1), the quality
14 and/or quantity of water being produced by Miracle Valley and/or Miracle Valley Water Company,
15 Inc. is inadequate to provide safe, reasonable, sufficient and/or adequate water service to its
16 customers.

17 24. As set forth in the Affidavits of Reg Lopez and Claudio M. Fernandez (attached as
18 Exhibits 2 and 3), Miracle Valley and/or Miracle Valley Water Company, Inc. does not have the
19 financial or managerial capabilities to safely and reasonably operate the Miracle Valley water system
20 without the assistance of an appropriate manager.

21 25. McLain has repeatedly demonstrated that he is incapable of delivering safe and
22 adequate quantities of water to the customers of Miracle Valley. Accordingly, McLain's operation of
23 the Miracle Valley water system constitutes unjust and unreasonable service to the public. Under
24 A.R.S. §§ 40-202; 40-203; 40-321; and 40-322 the Commission may prohibit unjust and
25 unreasonable service. Moreover, under Article XV § 3 of the Arizona Constitution, the Commission
26 may enter "orders for the convenience, comfort, and safety, and preservation of the health" of the
27 customers of a public service corporation. Therefore, the Commission should order that
28 Southwestern Utility Management Inc. ("Southwestern"), or another manager selected by Staff, be

1 appointed by the Commission as the interim manager (the "Manager") of Miracle Valley's water
2 system, upon reasonable terms and conditions agreed between the Manager and Staff, with full
3 authority to conduct the business and affairs of Miracle Valley's water system. Moreover, McLain,
4 Miracle Valley, and/or Miracle Valley Water Company, Inc. should be ordered to cooperate with and
5 indemnify, defend and hold harmless the Manager for all claims related to its management of Miracle
6 Valley's water system.

7 **Count Two**

8 **(inadequate managerial and planning capability)**

9 26. Staff incorporates the allegations of paragraphs 1-5 and 17-25 into this count.

10 27. Miracle Valley and/or Miracle Valley Water Company, Inc. have proven incapable of
11 devising a long-term solution to the problems of the Miracle Valley water system. For instance,
12 despite complaints about inadequate funding to make necessary improvements, McLain, Miracle
13 Valley and/or Miracle Valley Water Company, Inc. has failed to make any subsequent rate
14 application for Miracle Valley sufficient since rates were last approved in Commission Decision No.
15 5428 (March 23, 1989). Miracle Valley and/or Miracle Valley Water Company, Inc. have
16 continually been noncompliant with ADEQ requirements and have failed to follow Commission
17 orders, despite numerous opportunities to do so. This failure further constitutes unjust and
18 unreasonable service to the public.

19 **Count Three**

20 **(violation of A.A.C. R14-2-407.A)**

21 28. Staff incorporates the allegations of paragraphs 1-5 and 17-27 into this count.

22 29. Under A.A.C. R14-2-407.A, each public service company that provides water service
23 is "responsible for providing potable water to the customer's point of delivery."

24 30. Miracle Valley's and/or Miracle Valley Water Company, Inc.'s failure to provide
25 adequate quantities of water violates A.A.C. R14-2-407.A.

26 **Count Four**

27 **(violation of A.A.C. R14-2-407.C)**

28 31. Staff incorporates the allegations of paragraphs 1-5 and 17-30 into this count.

1 32. Under A.A.C. R14-2-407.C, each public service corporation that provides water
2 service must “make reasonable efforts to supply a satisfactory and continuous level of service.”

3 33. Miracle Valley’s and/or Miracle Valley Water Company, Inc.’s failure to provide safe
4 and adequate water violates A.A.C. R14-2-407.C.

5 **Count Five**

6 **(violation of Commission Decision No. 62863)**

7 34. Staff incorporates the allegations of paragraphs 1-5 and 17-33 into this count.

8 35. Per Commission Decision No, 62863, Miracle Valley and/or Miracle Valley Water
9 Company, Inc. was to “comply with all ADEQ testing requirements within 90 days of the effective
10 date of this Decision and shall provide within 120 days of this Decision written documentation from
11 the Arizona Department of Environmental Quality that the Company is providing water that meets
12 the quality standard of the Safe Drinking Water Act.”

13 36. Miracle Valley and/or Miracle Valley Water Company Inc. are still in violation of
14 ADEQ testing requirements.

15 37. The failure to comply with ADEQ testing requirements constitutes a violation of
16 Commission Decision No. 62863.

17 **Count Six**

18 **(violation of Commission Decision No. 62863)**

19 38. Staff incorporates the allegations of paragraphs 1-5 and 17-37 into this count.

20 39. Per Commission Decision No. 62863, Miracle Valley was to “file a rate case within 60
21 days of the effective date of this Decision.”

22 40. Miracle Valley and/or Miracle Valley Water Company, Inc. did not file a rate
23 application until November 15, 2000 and failed to make that, or any subsequent application,
24 sufficient per Commission regulations.

25 41. The failure to file a sufficient rate application within sixty days of August 25, 2000,
26 constitutes a violation of Commission Decision No. 62863.

27 .

28 ...

1 **Count Seven**

2 **(failure to properly transfer assets, including the CC&N, of Miracle Valley)**

3 42. Staff incorporates the allegations of paragraphs 1-5 and 17-41 into this count.

4 43. Per A.R.S. § 40-285, Commission approval is required before a public service
5 corporation may sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any
6 part of plant or system necessary or useful in the performance of its duties to public.

7 44. There is no Commission Decision approving the transfer of assets, including the
8 CC&N from Ranwest to McLain.

9 45. Miracle Valley failed to have its assets properly transferred to McLain from Ranwest.
10 A.R.S. § 40-285 requires a public service corporation to have Commission approval prior to the
11 transfer of assets. The Commission should appoint an interim manager as described in paragraph 25
12 to have the assets, including the CC&N, transferred in accordance with Arizona law. The interim
13 manager should also have the ability to straighten out the discrepancy between the Corporation's and
14 Utilities' annual reports for the Miracle Valley water system.

15 **Count Eight**

16 **(failure to obtain a valid CC&N to operate Miracle Valley)**

17 46. Staff incorporates the allegations of paragraphs 1-5 and 17-45 into this count.

18 47. Per A.A.C. R14-2-402.A, a public service corporation intending to operate must
19 obtain a CC&N prior to the construction of any facilities.

20 48. Since McLain has never properly transferred the CC&N to him to operate Miracle
21 Valley, McLain is operating in violation of R14-2-402.A. The Commission should appoint an interim
22 manager as described in paragraph 25 to obtain a valid CC&N to operate in accordance with Arizona
23 law.

24 **BACKGROUND OF COCHISE AND HORSESHOE RANCH**

25 49. On June 2, 1989 Commission Decision No. 56496 approved a wholesale water supply
26 agreement between Cochise and Horseshoe Ranch. Horseshoe Ranch needed the water supply
27 agreement with Cochise in order to have an adequate water supply to serve its present customers.
28 This Decision allowed Horseshoe Ranch to issue common stock up to \$45,000 so that it could fund

1 the building of facilities to allow it to take water from a well located within Cochise's service
2 territory. This well was located close to the border between Cochise's and Horseshoe Ranch's
3 service territories; its primary purpose would be to supply Horseshoe Ranch with water. Cochise was
4 authorized to charge Horseshoe Ranch \$150 for up to 50,000 gallons of water and \$1.50 for every
5 1,000 gallons thereafter. Decision No. 56496 required Cochise to file a rate case within twelve
6 months of the order.

7 50. As of July 16, 1991, Cochise had failed to file a rate case. The last rate case order for
8 Cochise was Commission Decision No. 54603 approved on June 19, 1985. The last general rate case
9 order for Horseshoe Ranch was approved in Commission Decision No. 55630 on July 2, 1987. To
10 date, Cochise has not filed a rate case.

11 51. On October 18, 1991, Robert Bolt on behalf of Horseshoe Ranch filed a complaint
12 before the Commission against Cochise regarding a security deposit and use of the well that was the
13 source for Cochise supplying Horseshoe Ranch pursuant to the water supply agreement that was the
14 subject of Decision No. 56403. The Commission resolved that dispute in Decision No. 57740
15 (February 21, 1992). McLain was listed as President of Cochise in that decision.

16 52. ADEQ has issued several notices of violation against both Cochise and Horseshoe
17 Ranch. ADEQ has issued NOV's to Cochise on several occasions for violations including no MSSP,
18 insufficient storage, no BPP, no EOP, and/or no AOC (August 12, 1997; March 23, 1998; August 12,
19 1999; March 15, 2000; October 17, 2001; March 15, 2002; March 6, 2003). A consent order was
20 issued on November 22, 2002, for no MSSP and insufficient storage. On June 12, 2003, ADEQ
21 issued an NOV against Cochise for system pressure below 20 psi, no ATC and no AOC. To date,
22 Cochise is still not in compliance with ADEQ requirements. ADEQ's Compliance Status Report
23 dated July 1, 2003, for Cochise notes major deficiencies, including inadequate storage, insufficient
24 water pressure and an inability to determine that Cochise is delivering water that meets water quality
25 standards. That report notes that ADEQ has not been receiving the required number of coliform
26 samples, lead or copper samples and has no record of asbestos sampling,

27 53. ADEQ has issued NOV's to Horseshoe Ranch on several occasions for violations
28 including insufficient storage, system pressure below 20 pounds per square inch ("psi"), no MSSP, no

1 3PP, no EOP, and no Grade 2 Certified Operator (June 24,1998; August 12, 1999;October 17,2001;
2 February 20, 2003). On May 21, 2003, ADEQ issued an NOV against Horseshoe Ranch for no
3 Grade 2 Certified Operator, insufficient storage, and system pressure below 20 psi. ADEQ notes
4 frequent complaints from customers about water outages. To date, Horseshoe Ranch is still not in
5 compliance with ADEQ requirements. ADEQ's Compliance Status Report dated July 1, 2003 for
6 Horseshoe Ranch notes major deficiencies including inadequate storage and insufficient water
7 pressure.

8 54. During the three-year period ending on July 21, 2003, Staff received 19 informal
9 complaints against Cochise; 14 of those complaints dealt with water outages and/or inadequate water
10 pressure. During the same three-year period, Staff received 69 informal complaints against
11 Horseshoe Ranch; 67 of those complaints dealt with water outages and/or inadequate water pressure.
12 Despite promises to Staff and ADEQ from McLain that a 160,000 gallon storage tank would be
13 installed, as of August 10,2003, that storage tank has yet to be properly installed.

14 **CLAIMS AGAINST COCHISE AND HORSESHOE RANCH**

15 **Count Nine**

16 **(unjust and unreasonable service)**

17 55. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-54 into this count.

18 56. As set forth in the Affidavit of John A. Chelus (attached as Exhibit 1), the quality of
19 water being produced by Cochise and/or Horseshoe Ranch are inadequate to provide safe water
20 service to its customers.

21 57. As set forth in the Affidavits of Reg Lopez and Claudio M. Fernandez (attached as
22 Exhibits 2 and 3), Cochise and/or Horseshoe Ranch do not have the financial or managerial
23 capabilities to safely and reasonably operate the Cochise and/or Horseshoe Ranch water systems
24 without the assistance of an appropriate manager.

25 58. McLain has repeatedly demonstrated that he is incapable of delivering safe and
26 adequate quantities of water to the customers of Cochise and/or Horseshoe Ranch. Accordingly,
27 McLain's operation of the Cochise and/or Horseshoe Ranch water systems constitute unjust and
28 unreasonable service to the public. Under A.R.S. §§ 40-202; 40-203; 40-321; and 40-322 the

1 Commission may prohibit unjust and unreasonable service. Moreover, under Article XV § 3 of the
2 Arizona Constitution, the Commission may enter "orders for the convenience, comfort, and safety,
3 and preservation of the health" of the customers of a public service corporation. Therefore, the
4 Commission should order that Southwestern, or another manager selected by **Staff**, be appointed by
5 the Commission as the interim manager (the "Manager") for both the Cochise and Horseshoe Ranch
6 water systems, upon reasonable terms and conditions agreed between Manager and Staff, with full
7 authority to conduct the business and affairs of the Cochise and/or Horseshoe Ranch water systems.
8 Moreover, Cochise and/or Horseshoe Ranch, and McLain should be ordered to cooperate with and
9 indemnify, defend and hold harmless the Manager for all claims related to its management of Cochise
10 and/or Horseshoe Ranch's water systems.

11 **Count Ten**

12 **(inadequate managerial and planning capability)**

13 59. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-58 into this count.

14 60. McLain has proven incapable of devising a long-term solution to the problems of the
15 Cochise and/or Horseshoe Ranch water systems. Neither Cochise nor Horseshoe Ranch have been in
16 for a rate case to address funding issues to serve adequate quantities and qualities of water. Cochise
17 and/or Horseshoe Ranch have both been continually noncompliant with ADEQ requirements.
18 McLain has failed to file a rate case for Cochise in violation of Commission Decision No. 56496.
19 These failures further constitute unjust and unreasonable service to the public.

20 **Count Eleven**

21 **(violation of A.A.C. R14-2-407.A)**

22 61. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-60 into this count.

23 62. Under A.A.C. R14-2-407.A, each public service company that provides water service
24 is "responsible for providing potable water to the customer's point of delivery."

25 63. McLain's failure to operate Cochise and/or Horseshoe Ranch water systems such that
26 they provide adequate quantities of water violates A.A.C. R14-2-407.A.

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Count Twelve

(violation of A.A.C. R14-2-407.C)

64. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-63 into this count.

65. Under A.A.C. R14-2-407.C, each public service corporation that provides water service must “make reasonable efforts to supply a satisfactory and continuous level of service.”

66. McLain’s failure to operate Cochise and/or Horseshoe Ranch such that it provides safe and adequate water violates A.A.C. R14-2-407.C.

Count Thirteen

(violation of A.A.C. R14-2-407.E)

67. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-66 into this count.

68. Under A.A.C. R14-2-407.E, each public service corporation that provides water must ‘maintain a minimum standard delivery pressure of 20 pounds per square inch gauge (PSIG) at the customer’s meter of point of delivery.’”

69. McLain’s failure to maintain 20 psi for Cochise and/or Horseshoe Ranch violates A.A.C. R14-2-407.E.

Count Fourteen

(violation of Commission Decision No. 56496)

70. Staff incorporates the allegations of 1, 6-10 and 49-69 into this count.

71. Per Commission Decision No. 56496, Cochise, “after twelve months of actual billings of the wholesale rates [pursuant to the water supply agreement between Cochise and Horseshoe Ranch], shall file a rate application.”

72. Cochise has not filed a rate case since September 17, 1984.

73. McLain’s failure to file a rate case for Cochise constitutes a violation of Commission Decision No. 56496.

Count Fifteen

(failure to properly transfer assets, including the CC&N, of Cochise)

74. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-73 into this count.

1 manager as described in paragraph 58 to obtain a valid CC&N to operate in accordance with Arizona
2 aw.

3 **Count Eighteen**

4 **(failure to obtain a valid CC&N to operate Horseshoe Ranch)**

5 83. Staff incorporates the allegations of paragraphs 1, 6-10 and 49-82 into this count.

6 84. Per A.A.C. R14-2-402.A, a public service corporation intending to operate must
7 obtain a CC&N prior to the construction of any facilities.

8 85. Since McLain has never properly transferred the CC&N to him to operate Horseshoe
9 Ranch, McLain is operating in violation of R14-2-402.A. The Commission should appoint an interim
10 manager as described in paragraph 58 to obtain a valid CC&N to operate in accordance with Arizona
11 law.

12 **BACKGROUND OF CRYSTAL, MUSTANG AND CORONADO**

13 86. Crystal, Mustang and Coronado have had similar regulatory histories before the
14 Commission since the early 1980s. Commission Decision No. 53193 (August 26, 1982) issued an
15 order to show cause (“OSC”) against Crystal for failure to pay regulatory assessments, and OSCs
16 against Mustang and Coronado for failure to file annual reports. These OSCs were dismissed in
17 Commission Decision No. 53475 (March 3, 1983). At the time of Decision No. 53475, McLain
18 appeared to be acting as if he were the sole owner of Crystal, Mustang and Coronado.

19 87. On March 28, 1984, the Commission authorized interim rate increases for Mustang,
20 Coronado and Crystal in Decision Nos. 53961, 53962 and 53964 respectively. On July 19, 1985, the
21 Commission authorized permanent rate increases for Coronado, Crystal and Mustang in Commission
22 Decision Nos. 54596, 54597 and 54598 respectively. The ordering paragraphs for all three entities are
23 similar, except that there were additional ordering paragraphs in Decision No. 54597 for Crystal.
24 This is because not all of Crystal’s customers were metered at the time of Decision No. 54567. That
25 order required that all Crystal’s customers be metered within six months from the effective date of
26 Decision No. 54567 and authorized temporary un-metered rates for only that six month time period.
27 It appears that all of Crystal’s customers are, at present, metered customers. No rate cases have been
28 filed for Crystal, Mustang or Coronado since July 19, 1985.

1 88. ADEQ has issued several NOVs against Crystal, Mustang and Coronado. ADEQ has
2 issued NOVs to Crystal for violations including no MSSP, insufficient storage, no BPP and no EOP
3 (October 17, 2001; March 15, 2002). ADEQ also notes an unapproved connection from Crystal to
4 Mustang (PWS 02-054). To date, Crystal is still not in compliance with ADEQ requirements.
5 ADEQ's Compliance Status Report dated July 1, 2003, for Crystal notes inadequate storage, which is
6 a major deficiency. On July 17, 2003, ADEQ issued **an** NOV against Crystal for no MSSP,
7 insufficient storage, no EOP, no approval to construct and no AOC.

8 89. ADEQ has issued NOVs to Mustang for violations including no MSSP, insufficient
9 storage, no BPP and no EOP (October 17, 2001; March 15, 2002). ADEQ also notes an unapproved
10 connection from Crystal to Mustang (PWS 02-046). To date, Mustang is still not in compliance with
11 ADEQ requirements. ADEQ's Compliance Status Report dated July 1, 2003, for Mustang notes
12 major deficiencies, including inadequate storage and an inability to determine that Mustang is
13 delivering water that meets water quality standards. The report notes that ADEQ has no record of
14 nitrate or nitrite results and that Mustang has not submitted an adequate number of lead and copper
15 samples. On July 14, 2003, ADEQ issued an NOV against Mustang for no MSSP, insufficient
16 storage, no EOP, no approval to construct and no AOC.

17 90. ADEQ has issued NOVs to Coronado on several occasions for violations including no
18 MSSP, no storage, no BPP, no EOP, incorrect installation of a backflow prevention device, and no
19 Grade 2 Certified Operator (September 24, 1997; January 7, 1999; August 12, 1999; March 15, 2000;
20 October 17, 2001; March 15, 2002; January 17, 2003; March 19, 2003). A consent order was signed
21 by McLain for all of the above-listed violations on June 11, 2003. To date, Coronado is still not in
22 compliance with ADEQ requirements. ADEQ's Compliance Status Report dated July 1, 2003 for
23 Coronado notes major deficiencies, including inadequate storage and insufficient water pressure.

24 **CLAIMS AGAINST CRYSTAL, MUSTANG AND CORONADO**

25 **Count Nineteen**

26 **(unjust and unreasonable service)**

27 91. Staff incorporates the allegations of paragraphs 1, 11-13 and 86-90 into this count.
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1 92. As set forth in the Affidavit of John A. Chelus (attached as Exhibit 1), the quality
2 and/or quantity of water being produced by Crystal, Mustang and/or Coronado is inadequate to
3 provide safe, reasonable, sufficient and/or adequate water service to its customers.

4 93. As set forth in the Affidavits of Reg Lopez and Claudio M. Fernandez (attached as
5 Exhibits 2 and 3), McLain does not have the financial or managerial capabilities to safely and
6 reasonably operate the Crystal, Mustang and/or Coronado water systems without the assistance of an
7 appropriate manager.

8 94. McLain has repeatedly demonstrated that he is incapable of delivering safe and
9 adequate quantities of water to its customers. Accordingly, McLain's operation of the Crystal,
10 Mustang and/or Coronado water systems constitute unjust and unreasonable service to the public.
11 Under A.R.S. §§ 40-202; 40-203; 40-321; and 40-322 the Commission may prohibit unjust and
12 unreasonable service. Moreover, under Article XV § 3 of the Arizona Constitution, the Commission
13 may enter "orders for the convenience, comfort, and safety, and preservation of the health" of the
14 customers of a public service corporation. Therefore, the Commission should order that
15 Southwestern, or another manager selected by Staff, be appointed by the Commission as the interim
16 manager (the "Manager") for the Crystal, Mustang and/or Coronado water systems, upon reasonable
17 terms and conditions agreed between Manager and Staff, with full authority to conduct the business
18 and affairs of the Crystal, Mustang and/or Coronado water systems. Moreover, Crystal, Mustang,
19 Coronado and/or McLain should be ordered to cooperate with and indemnify, defend and hold
20 harmless the Manager for all claims related to its management of the water systems of Crystal,
21 Mustang and Coronado.

22 **Count Twenty**

23 **(inadequate managerial and planning capability)**

24 95. Staff incorporates the allegations of paragraphs 1, 11-13 and 86-94 into this count.

25 96. McLain has proven incapable of devising a long-term solution to the problems of the
26 Crystal, Mustang and/or Coronado water systems. Crystal, Mustang and/or Coronado have not been
27 in for a rate case since July 19, 1985, to address funding issues to serve adequate quantities and/or
28

1 qualities of water. Crystal, Mustang and/or Coronado have been continually noncompliant with
2 ADEQ requirements. These failures further constitute unjust and unreasonable service to the public.

3 **Count Twenty-One**

4 **(violation of A.A.C. R14-2-407.A)**

5 97. Staff incorporates the allegations of paragraphs 1, 11-13 and 86-96 into this count.

6 98. Under A.A.C. R14-2-407.A, each public service company that provides water service
7 s "responsible for providing potable water to the customer's point of delivery."

8 99. McLain's failure to operate the Crystal, Mustang and/or Coronado water systems such
9 ;hat they provide adequate quantities of water violates A.A.C. R14-2-407.A.

10 **Count Twenty-Two**

11 **(violation of A.A.C. R14-2-407.C)**

12 100. Staff incorporates the allegations of paragraphs 1, 11-13 and 86-99 into this count.

13 101. Under A.A.C. R14-2-407.C, each public service corporation that provides water
14 service must "make reasonable efforts to supply a satisfactory and continuous level of service."

15 102. McLain's failure to operate Coronado such that it provides safe and adequate water
16 violates A.A.C. R14-2-407.C.

17 **BACKGROUND OF SIERRA SUNSET**

18 103. ADEQ has issued NOVs to Sierra Sunset on several occasions for violations including
19 no MSSP, no storage, no BPP, and no EOP (September 24, 1997; August 12, 1999; March 15, 2000;
20 October 17, 2001; March 15, 2002). To date, Sierra Sunset is still not in compliance with ADEQ
21 requirements. ADEQ's Compliance Status Report dated July 1, 2003, for Coronado notes that Sierra
22 Sunset has inadequate storage, a major deficiency. On July 14, 2003, ADEQ issued ~~an~~ NOV against
23 Sierra Sunset for no MSSP, no storage, and no EOP.

24 104. Sierra Sunset is currently operating without a CC&N. In addition, McClain is the
25 owner of Sierra Sunset without Commission approval for the sale of assets from the previous owner.

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CLAIMS AGAINST SIERRA SUNSET

Count Twenty-Three

(unjust and unreasonable service)

105. Staff incorporates the allegations of paragraphs 1, 14-15 and 103-104 into this count.

106. As set forth in the Affidavit of John A. Chelus (attached as Exhibit 1), the quality
6 and/or quantity of water being produced by Sierra Sunset is inadequate to provide safe, reasonable,
sufficient and/or adequate water service to its customers.

107. As set forth in the Affidavits of Reg Lopez and Claudio M. Fernandez (attached as
9 Exhibits 2 and 3), McLain does not have the financial or managerial capabilities to safely and
10 reasonably operate the Sierra Sunset water system without the assistance of an appropriate manager.

108. McLain has repeatedly demonstrated that he is incapable of delivering safe and
12 adequate quantities of water to the customers of Sierra Sunset. Accordingly, McLain's operation of
13 the Sierra Sunset water system constitutes unjust and unreasonable service to the public. Under
14 **A.R.S.** §§ 40-202; 40-203; 40-321; and 40-322 the Commission may prohibit unjust and
15 unreasonable service. Moreover, under Article XV § 3 of the Arizona Constitution, the Commission
16 may enter "orders for the convenience, comfort, and safety, and preservation of the health" of the
17 customers of a public service corporation. Therefore, the Commission should order that
18 Southwestern, or another manager selected by Staff, be appointed by the Commission as the interim
19 manager (the "Manager") for the Sierra Sunset water system, upon reasonable terms and conditions
20 agreed between Manager and Staff, with full authority to conduct the business and affairs of the
21 Sierra Sunset water system. Moreover, Sierra Sunset and McLain should be ordered to cooperate
22 with and indemnify, defend and hold harmless the Manager for all claims related to its management
23 of the water system of Sierra Sunset.

Count Twenty-Four

(inadequate managerial and planning capability)

109. Staff incorporates the allegations of paragraphs 1, 14-15 and 103-108 into this count.

110. McLain has proven incapable of devising a long-term solution to the problems of the
28 Sierra Sunset water system. Sierra Sunset has never been in for a rate case to address funding issues

1 o serve adequate quantities and/or qualities of water. Its authorized rates were approved when the
2 CC&N had been issued on June 26, 1978. Sierra Sunset is operating without a valid CC&N. Sierra
3 Sunset has been continually noncompliant with ADEQ requirements. These failures further constitute
4 unjust and unreasonable service to the public.

5 **Count Twenty-Five**

6 **(violation of A.A.C. R14-2-407.A)**

7 111. Staff incorporates the allegations of paragraphs 1, 14-15 and 103-110 into this count.

8 112. Under A.A.C. R14-2-407.A, each public service company that provides water service
9 s "responsible for providing potable water to the customer's point of delivery."

10 113. McLain's failure to operate the Sierra Sunset water system such that it can provide
11 idequate quantities of water violates A.A.C. R14-2-407.A.

12 **Count Twenty-Six**

13 **(violation of A.A.C. R14-2-407.C)**

14 114. Staff incorporates the allegations of paragraphs 1, 14-15 and 103-113 into this count.

15 115. Under A.A.C. R14-2-407.C, each public service corporation that provides water
16 service must "make reasonable efforts to supply a satisfactory and continuous level of service."

17 116. McLain's failure to operate Sierra Sunset such that it provides safe and adequate water
18 violates A.A.C. R14-2-407.C.

19 **Count Twenty-Seven**

20 **(failure to obtain a valid CC&N)**

21 117. Staff incorporates the allegations of paragraphs 1, 14-15, 103-116 into this count.

22 118. Per A.A.C. R14-2-402.A, a public service corporation intending to operate must
23 obtain a CC&N prior to the construction of any facilities.

24 119. Sierra Sunset has not had a valid CC&N since February 8, 1984 but has continued to
25 serve customers since that time. McLain's failure to obtain a valid CC&N for Sierra Sunset violates
26 A.R.S. § 40-281 and A.A.C. R14-2-402.A. The Commission should appoint an interim manager as
27 described in paragraph 108 to obtain a valid CC&N in accordance with Arizona law.

28 ...

1 **Count Twenty-Eight**

2 **(failure to properly transfer assets of Sierra Sunset)**

3 120. Staff incorporates the allegations of paragraphs 1, 14-15, 103-119 into this count.

4 121. Per A.R.S. § 40-285, Commission approval is required before a public service
5 corporation may sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any
6 part of plant or system necessary or useful in the performance of its duties to public.

7 122. There is no Commission Decision approving the transfer of assets, including the
8 CC&N to McLain.

9 123. McLain failed to obtain Commission approval for the sale of assets of Sierra Sunset to
10 him from the previous owners. A.R.S. § 40-285 requires a public service corporation to have
11 Commission approval prior to the transfer of assets. The Commission should appoint an interim
12 manager as described in paragraph 108 to have the assets transferred in accordance with Arizona law.

13 **CLAIMS AGAINST MCLAIN**

14 **Count Twenty-Nine**

15 **(unjust and unreasonable service)**

16 124. Staff incorporates the allegations of paragraphs 1-123 into this count.

17 125. McLain is operating the Miracle Valley, Cochise and Horseshoe Ranch water systems
18 while he does not have the proper distribution operator certification. McLain is operating water
19 systems in a manner violating state law and he is operating water systems in a manner that endangers
20 the public health, safety, and welfare.

21 126. Therefore, McLain's operation of the Miracle Valley, Cochise and Horseshoe Ranch
22 water systems, given his current status, constitutes unjust and unreasonable service to the public and
23 further ustifies the need for an interim manager for the above-mentioned water entities.

24 **Count Thirty**

25 **(piercing the corporate veil)**

26 127. Staff incorporates the allegations of paragraphs 1-126 into this count.

27 128. In the alternative, if the Commission should find that Cochise, Horseshoe Ranch,
28 Crystal, Mustang, Coronado and Sierra Sunset are incorporated as Arizona Corporations, then upon

1 information and belief, McLain conducts all the affairs of Cochise, Horseshoe Ranch, Crystal,
2 Mustang, Coronado, and Sierra Sunset and makes all decisions on behalf of Cochise, Horseshoe
3 Ranch, Crystal, Mustang, Coronado, and Sierra Sunset and treats those entities as his alter egos.
4 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado, and Sierra Sunset all appear to be
5 undercapitalized, and McLain does not appear to observe corporate formalities. Furthermore, per the
6 most recent bankruptcy filing by McLain, McLain is listed as the principal debtor dba Cochise,
7 Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset. Accordingly, the Commission may
8 disregard the corporate veil and find McLain personally responsible for the actions or inaction of
9 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset. Furthermore, because
10 Miracle Valley Water Company, Inc. is an Arizona Corporation and since McLain has managed and
11 operated Miracle Valley for some time and acted as a sole proprietorship, upon information and
12 belief, McLain conducts all the affairs of Miracle Valley and makes all decisions on behalf of Miracle
13 Valley and treats this entity as his alter ego. Miracle Valley appears to be undercapitalized, and
14 McLain does not appear to observe corporate formalities for Miracle Valley. Further more, per the
15 most recent bankruptcy filing by McLain, McLain is listed as the principal debtor dba Miracle
16 Valley. Accordingly the Commission may disregard the corporate veil and find McLain personally
17 responsible for the actions or inaction of Miracle Valley, should the Commission find that McLain
18 owns Miracle Valley Water Company, Inc. as an incorporated entity.

19 **RELIEF**

20 **WHEREFORE**, Staff prays that the Commission issue:

21 129. **An ORDER TO SHOW CAUSE** directing McLain dba Miracle Valley Water
22 Company, Cochise Water Company, Horseshoe Ranch Water Company, Crystal Water Company,
23 Mustang Water Company, Coronado Estates Water Company and Sierra Sunset Water Company to
24 show cause:

25 (1) why their service should not be found unjust and unreasonable as described herein;

26 (2) why a Manager should not be appointed as described in paragraphs 25, 58, 94 and

27 108;

28 ...

1 (3) why McLain should not cooperate with and indemnify, defend and hold harmless
2 the Manager as described in paragraphs 25, 58, 94 and 108;
3 (4) why the Manager should not be given the authority to explore, negotiate, and
4 implement a long-term solution for all of the above-mentioned water companies; and
5 (5) why the Certificates of Convenience and Necessity for Miracle Valley, Cochise,
6 Horseshoe Ranch, Crystal, Mustang and Coronado should not be revoked, and why
7 McLain should not be ordered to find a fit and proper entity to assume the Certificates
8 of Convenience and Necessity and acquire the assets of all the above-mentioned
9 companies and Sierra Sunset, subject to the approval of the Commission as required
10 by law.

11 130. An **ORDER TO SHOW CAUSE** directing Miracle Valley Water Company, Inc., to
12 show cause:

13 (1) why its service should not be found unjust and unreasonable as described herein;
14 (2) why a Manager should not be appointed as described in paragraph 25;
15 (3) why Miracle Valley Water Company, Inc., should not cooperate with and
16 indemnify, defend and hold harmless the Manager as described in paragraph 25;
17 (4) why the Manager should not be given the authority to explore, negotiate, and
18 implement a long-term solution for Miracle Valley Water Company, Inc.; and
19 (5) why the Certificate of Convenience and Necessity for Miracle Valley Water
20 Company, Inc., should not be revoked, and why Miracle Valley Water Company, Inc.,
21 should not be ordered to find a fit and proper entity to assume the Certificate of
22 Convenience and Necessity and acquire the assets of Miracle Valley Water Company,
23 Inc., subject to the approval of the Commission as required by law.

24 131. An **ORDER TO SHOW CAUSE** directing McLain to show cause:

25 (1) why McLain should not be found to be the alter ego of Cochise, Horseshoe Ranch,
26 Crystal, Mustang, Coronado and/or Sierra Sunset, in the alternative, should it be
27 discovered that any of the entities are incorporated;

1 (2) why McLain should not be found to be the alter ego of Miracle Valley, in the
2 alternative, should it be discovered that McLain owns the Miracle Valley water system
3 as an incorporated entity;

4 (3) why McLain should not be held personally responsible for the actions or inaction
5 of the above-mentioned entities, in the alternative; and

6 (4) why McLain should not indemnify, defend and hold harmless the Manager as
7 described in paragraphs 25, 58, 94 and 108, in the alternative.

8 132. An **ORDER FOR INTERIM RELIEF** appointing Southwestern Utility Management
9 Inc., or another qualified manager selected by Staff, as the Manager of the Miracle Valley, Cochise,
10 Horseshoe Ranch, Crystal, Mustang, Coronado, and Sierra Sunset water systems with the powers
11 described in Paragraphs 25, 58, 94 and 108, and ordering Miracle Valley/Miracle Valley Water
12 Company, Inc., Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset Water
13 Companies to indemnify, defend and hold harmless the Manager.

14 133. After the conclusion of appropriate proceedings, a final **OPINION AND ORDER:**

15 (1) finding that service of Miracle Valley/Miracle Valley Water Company, Inc.,
16 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset is unjust
17 and unreasonable;

18 (2) finding that the above-mentioned entities have violated A.A.C. R14-2-407.A;

19 (3) finding that McLain dba Cochise and Coronado have violated A.A.C. R14-2-
20 407.C;

21 (4) finding that Miracle Valley/Miracle Valley Water Company, Inc., Cochise and
22 Horseshoe Ranch Water Companies have failed to obtain Commission approval for
23 transfer of their respective CC&Ns and their respective sales of assets as required by
24 law;

25 (5) finding that Miracle Valley/Miracle Valley Water Company, Inc., Cochise,
26 Horseshoe Ranch and Sierra Sunset Water Companies are operating without a valid
27 CC&N as required by law.
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1 (6) continuing the appointment of the Manager indefinitely for all of the above-
2 mentioned entities;

3 (7) ordering Miracle Valley/Miracle Valley Water Company, Inc., Cochise, Horseshoe
4 Ranch, Crystal, Mustang, Coronado and Sierra Sunset Water Companies to cooperate
5 with and indemnify, defend and hold harmless the Manager;

6 (8) in the alternative, finding McLain to be the alter ego of the above-mentioned
7 entities and personally responsible for their actions;

8 (9) imposing an administrative penalty against McLain dba Cochise and Horseshoe
9 Ranch jointly and severally, \$2,000 for each instance of inadequate service due to
10 water outages and/or inadequate water pressure set forth in the informal complaints
11 against Cochise and Horseshoe Ranch, for a total penalty of \$28,000 against Cochise
12 and \$134,000 against Horseshoe Ranch;

13 (10) imposing a total fine, pursuant to Article XV, Section 19 of the Arizona
14 Constitution and A.R.S. § 40-425 of up to \$5,000 per count for Counts 1 through 8
15 against McLain dba Miracle Valley/Miracle Valley Water Co., Inc., jointly and
16 severally if McLain and/or Miracle Valley Water Company, Inc. do not allow for the
17 sale of the water system. Additional fines may be imposed if McLain dba Miracle
18 Valley and/or Miracle Valley Water Co., Inc., fails to cooperate with the transfer of
19 documents and assets to the interim manager.

20 (11) imposing a total fine, pursuant to Article XV, Section 19 of the Arizona
21 Constitution and A.R.S. § 40-425 of up to \$5,000 per count for Counts 9 through 27
22 against McLain dba Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and
23 Sierra Sunset Water Companies, if McLain does not allow for the sale of the water
24 systems. Additional fines may be imposed if McLain dba Cochise, Horseshoe Ranch,
25 Crystal, Mustang, Coronado and Sierra Sunset Water Companies fails to cooperate
26 with the transfer of documents and assets to the interim manager.

27 (12) revoking the Certificates of Convenience and Necessity of Miracle
28 Valley/Miracle Valley Water Company, Inc., Cochise, Horseshoe Ranch, Crystal,

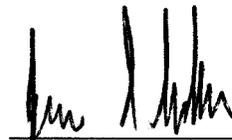
1 Mustang and Coronado ordering McLain to find a fit and proper entity to assume the
2 Certificates of Convenience and Necessity and acquire the assets of the above-
3 mentioned entities and Sierra Sunset, subject to the approval of the Commission as
4 required by law;

5 (13) ordering that the Manager, in its capacity as the manager of the Miracle Valley,
6 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado, and Sierra Sunset water
7 systems and entities, is authorized to execute a Bill of Sale, Quitclaim deed, or any
8 other appropriate documentation to effect the transfer of the water system assets to an
9 appropriate entity deemed fit and proper.

10 (14) ordering such other relief as the Commission may find just and reasonable.

11 **134.** A proposed order incorporating the recommendations of Paragraphs **29-44** is attached
12 hereto as Exhibit **4**.

13 **RESPECTFULLY SUBMITTED** this 22nd day of August, 2003.
14

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16 

17 _____
18 Jason D. Gellman
19 Attorney, Legal Division
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007
23 (602) 542-3402

24 The original and fifteen (15) copies of
25 the foregoing were filed this 22nd day of
26 August, 2003 with:

27 Docket Control
28 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing were
hand-delivered this 22nd day
of August 2003 to:

...

1 Chairman Marc Spitzer
2 Commissioner Jim Irvin
3 Commissioner William A. Mundell
4 Commissioner Jeff Hatch-Miller
5 Commissioner Mike Gleason

6 Lynn Fanner, Chief Administrative Law Judge
7 Hearing Division
8 Arizona Corporation Commission
9 1200 West Washington
10 Phoenix, Arizona 85007

11 Ernest Johnson
12 Director, Utilities Division
13 Arizona Corporation Commission
14 1200 West Washington
15 Phoenix, Arizona 85007

16 Copies of the foregoing were mailed
17 by certified mail, return receipt requested
18 (and where indicated, faxed and emailed)
19 on his 22nd day of August 2003 to:

20 Johnny A. McLain
21 7110 Jaxel Road
22 Hereford, AZ 85615
23 (address as listed in the most recent
24 Utilities Division Annual Report for
25 Miracle Valley, Cochise, Horseshoe Ranch,
26 Crystal and Coronado under Management
27 Information and/or Statutory Agent).

28 Johnny A. McLain
29 5161 Hereford Road
30 Hereford, AZ 85615
31 (Local Office Address for Miracle Valley
32 in the most recent Utilities Division Annual Report).

33 Miracle Valley Water Company, Inc.
34 % Harry B. Ransom
35 1197 5th Street
36 Imperial Beach, CA 91932

37 Harry B. Ransom
38 President and Treasurer
39 Miracle Valley Water Company, Inc.
40 1801 East Tropicana #9
41 Las Vegas, NV 89119

42 .

1 Barbara J. Ransom
Secretary and Vice President
2 Miracle Valley Water Company, Inc.
1801 East Tropicana #9
3 Las Vegas, NV 89119

4 Debra Booth
5 9332 East Paraiso Drive
Scottsdale, **AZ** 85255
6 (Statutory Agent for Miracle Valley Water Company, Inc.
7 as listed in the 2003 Corporations Division Annual Report)

8 Copies of the foregoing were
mailed by first class mail this
9 22nd day of August 2003 to:

10 Johnny A. McLain dba
11 Miracle Valley Water Company,
Cochise Water Company,
12 Horseshoe Ranch Water Company,
Crystal Water Company,
13 Mustang Water Company, Coronado Estates Water Company and
14 Sierra Sunset Water Company
P.O. Box 2903
15 Sierra Vista, AZ 85636
(address as listed in the most recent
16 Utilities Division Annual Reports under
17 Company Information for all entities but Sierra Sunset)

18 Johnny A. McLain
7110 Jaxel Road
19 Hereford, AZ 85615
(address as listed in the most recent Utilities
20 Division Annual Report for Miracle Valley,
21 Cochise, Horseshoe Ranch, Crystal and Coronado
under Management Information and/or Statutory Agent).

22 Johnny A. McLain
23 5161 Hereford Road
Hereford, **AZ** 85615
24 (Local Office Address for Miracle Valley
25 in the most recent Utilities Division Annual Report).

26 Miracle Valley Water Company, Inc.
% Harry B. Ransom
27 1197 5th Street
Imperial Beach, CA 91932
28

1 Harry B. Ransom
President and Treasurer
2 Miracle Valley Water Company, Inc.
1801 East Tropicana#9
3 Las Vegas, NV 89119

4 Barbara J. Ransom
5 Secretary and Vice President
Miracle Valley Water Company, Inc.
6 1801 East Tropicana#9
7 Las Vegas, NV 89119

8 Debra Booth
9332 East Paraiso Drive
9 Scottsdale, AZ 85255
(Statutory Agent for Miracle Valley Water Company, Inc.
10 as listed in the 2003 Corporations Division Annual Report)

11 Laurie A. Woodall, Esq.
12 Office of the Attorney General
1275 W. Washington
13 Phoenix, Arizona 85007
14 Attorney for ADEQ

15 Mr. John Eyre
Environmental Engineer/Compliance Officer
16 ADEQ
400 W. Congress Street, Ste 433
17 Tucson, Arizona 85701

18 Martin D. McCarthy, P.E.
19 Manager, Compliance Programs Unit
ADEQ
20 Southern Regional Office
400 W. Congress Street, Ste. 433
21 Tucson, Arizona 85701

22 Cochise County Board of Supervisors
23 1415 Melody Lane
Building B
24 Bisbee, Arizona 85603

25
26 
27 Angela S. Bennett
Secretary to Jason D. Gellman
28

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

STAFF of the Utilities Division,

Complainant,

v.

JOHNNY A. MCLAIN, dba Miracle Valley
Water Company, Cochise Water Company,
Horseshoe Ranch Water Company, Crystal Water
Company, Mustang Water Company, Coronado
Estates Water Company & Sierra Sunset Water
Company, an individual and JOHNNY A. AND
LINDA M. MCLAIN, a marital community,

Respondents,

MIRACLE VALLEY WATER COMPANY,
INC., an Arizona Corporation.

Respondent.

DOCKET NOS. W-01646A-03-
W-01868A-03-
W-02235A-03-
W-02316A-03-
W-02230A-03-
W-01629A-03-
W-02240A-03-

AFFIDAVIT OF JOHN A. CHELUS

John A. Chelus, having been duly sworn, deposes and says:

1. I am a resident of Maricopa County and I am over 18 years old.
2. I am employed as an engineer in the Engineering Section of the Utilities Division of the Arizona Corporation Commission ("Commission"). I have a bachelor's degree in civil engineering from the Rochester Institute of Technology and a master's degree in environmental engineering from Oklahoma State University. I have 30 years of experience in water systems engineering, construction and operations.
3. I have inspected the water systems of Johnny A. McLain doing business as Miracle Valley Water Company, Cochise Water Company, and Horseshoe Ranch Water Company. I have reviewed the service history of the water systems of Johnny A. McLain doing business as Miracle Valley Water Company, Cochise Water Company, Horseshoe Ranch Water Company, Crystal Water

1 Company, Mustang Water Company, Coronado Estates Water Company and Sierra Sunset Water
2 Company ("Companies") as described in the records of the Commission and the Arizona Department
3 of Environmental Quality ("ADEQ").

4 **4.** In my professional opinion, the water production, storage, and distribution capabilities
5 of the Companies are not sufficient to meet the service needs of its customers. The problems for the
6 Companies appear to have been ongoing for more than **10** years.

7 **6.** McLain has been unable to develop an appropriate plan for alleviating any of the
8 problems with the systems of any of the Companies.

9 **7.** All of the Companies are in noncompliance with ADEQ water quality and/or water
10 quantity standards and/or state regulations. McLain does not have the proper certification to operate
11 some of the water systems of the Companies.

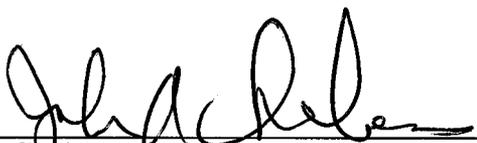
12 **8.** I recommend that an interim manager ("Manager") be appointed to take over
13 operation of the Companies.

14 **9.** The failure to provide adequate water service is a recognized danger to the public
15 health and safety.

16 **10.** I am familiar with Southwestern Utility Management, Inc. ("Southwestern") and its
17 President, Ezra H. "Buck" Lewis. I believe Southwestern possesses sufficient technical capability to
18 plan and take the necessary steps to correct the Companies' water production problems (if a solution
19 is possible). I accordingly believe that either Southwestern Utility Management, Inc. is an
20 appropriate entity to be appointed the Manager.

21 **11.** The Manager should explore all possible opportunities to ensure safe, adequate and
22 reasonable water service for all of the Companies, including purchase of the assets of the Companies
23 by a fit and proper entity or entities.

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25 Further affiant sayeth not.

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28 John A. Chelus

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Subscribed and sworn before me this 19
day of August 2003.

Nancy R. Roe
Notary Public



My Commission expires _____

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER - Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 STAFF of the Utilities Division,
9
10 Complainant,

11 v.

12 JOHNNY A. MCLAIN, dba Miracle Valley
13 Water Company, Cochise Water Company,
14 Horseshoe Ranch Water Company, Crystal Water
15 Company, Mustang Water Company, Coronado
16 Estates Water Company & Sierra Sunset Water
17 Company, an individual and JOHNNY A. AND
18 LINDA M. MCLAIN, a marital community,

19 Respondents,

20 MIRACLE VALLEY WATER COMPANY,
21 INC., an Arizona Corporation.

22 Respondent.

DOCKET NOS. W-01646A-03-
W-01868A-03-
W-02235A-03-
W-02316A-03-
W-02230A-03-
W-01629A-03-
W-02240A-03-

AFFIDAVIT OF REG LOPEZ

23 Reg Lopez, having been duly sworn, deposes and says:

- 24 1. I am a resident of Pima County and I am over 18 years old.
- 25 2. I am employed as a Public Utilities Consumer Analyst II in the Consumer Services
26 Section of the Arizona Corporation Commission. I primarily work at the Commission's offices in
27 Tucson. I have been employed by the Commission for more than 7 years.
- 28 3. I have reviewed the relevant information of the Consumer Services Section for Johnny
A. McLain doing business as ("dba") Miracle Valley Water Company, Cochise Water Company,
Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado
Estates Water Company and Sierra Sunset Water Company (the "Companies").
4. The Consumer Services Section has received 14 informal complaints against Johnny
A. McLain dba Cochise Water Company ("Cochise") regarding inadequate water quantity or pressure
in the 3 year period up through July 21, 2003.

1 5. The Consumer Services Section has received 67 informal complaints against Johnny
2 A. McLain dba Horseshoe Ranch Water Company (“Horseshoe Ranch”) regarding inadequate water
3 quantity or pressure in the 3 year period up through July 21, 2003.

4 6. I have spoken with Mr. Johnny A. McLain regarding the operation of Cochise and
5 Horseshoe Ranch, and to the customers of those systems. Mr. McLain has repeatedly promised to fix
6 the problems with those systems, but has failed to do so.

7 7. I have spoken with Mr. John Eyre of ADEQ, who has indicated that repairs are needed
8 for all of the Companies and that repairs have been needed for sometime. Mr. Eyre has indicated to
9 me that Mr. McLain has failed to make those needed repairs to any of the systems for the Companies.

10 8. Mr. McLain does not appear to have the capability to actively manage the affairs of
11 any of the Companies.

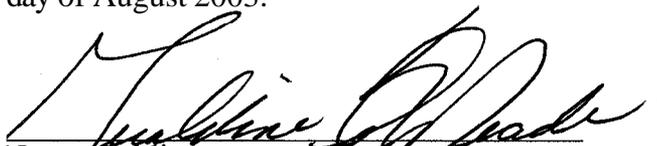
12 9. Based on the foregoing, I do not believe that any of the Companies have adequate
13 managerial capabilities to address the problems they face.

14 10. I believe that the appointment of an interim manager is necessary and I recommend
15 that an interim manager be appointed to take over operation of the Companies.

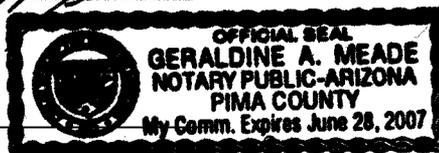
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19 Further affiant sayeth not.

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21 
22 _____
23 Reg Lopez

24 Subscribed and sworn before me this 19th
25 day of August 2003.

26 
27 _____
28 Notary Public

My Commission expires _____
CATEMPOLOPEZA-4.DOC



3

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER - Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 STAFF of the Utilities Division,
9
10 Complainant,

11 V.

12 JOHNNY A. MCLAIN, dba Miracle Valley
13 Water Company, Cochise Water Company,
14 Horseshoe Ranch Water Company, Crystal Water
15 Company, Mustang Water Company, Coronado
16 Estates Water Company & Sierra Sunset Water
17 Company, an individual and JOHNNY A. AND
18 LINDA M. MCLAIN, a marital community,

19 Respondents,

20 MIRACLE VALLEY WATER COMPANY,
21 INC., an Arizona Corporation.

22 Respondent.

DOCKET NOS. W-01646A-03-
W-01868A-03-
W-02235A-03-
W-02316A-03-
W-02230A-03-
W-01629A-03-
W-02240A-03-

**AFFIDAVIT OF CLAUDIO M.
FERNANDEZ**

23 Claudio M. Fernandez, having been duly sworn, deposes and says:

24 1. I am a resident of Maricopa County and I am over 18 years old.

25 2. I ~~am~~ employed as a Manager in the Financial and Regulatory Analysis Section of the
26 Utilities Division of the Arizona Corporation Commission. I have been employed by the
27 Commission for more than 14 years.

28 3. Based on my review of the Utilities Division Annual Reports filed by Johnny A.
McLain dba Miracle Valley Water Company ("Miracle Valley"), it does not appear that Miracle
Valley possesses adequate financial resources to address the problems it faces.

4. Based on my review of the Utilities Division Annual Reports filed by Johnny A.
McLain dba Cochise Water Company ("Cochise"), it does not appear that Cochise possesses
adequate financial resources to address the problems it faces.

5. Based on my review of the Utilities Division Annual Reports filed by Johnny A.

1 McLain dba Horseshoe Ranch Water Company ("Horseshoe Ranch"), it does not appear that
2 Horseshoe Ranch possesses adequate financial resources to address the problems it faces.

3 6. Based on my review of the Utilities Division Annual Reports filed by Johnny A.
4 McLain dba Crystal Water Company ("Crystal"), it does not appear that Crystal possesses adequate
5 financial resources to address the problems it faces.

6 7. Based on my review of the Utilities Division Annual Reports filed by Johnny A.
7 McLain dba Mustang Water Company ("Mustang"), it does not appear that Mustang possesses
8 adequate financial resources to address the problems it faces.

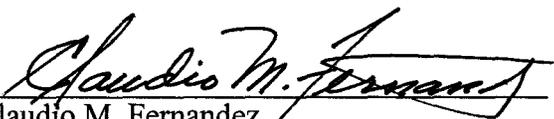
9 8. Based on my review of the Utilities Division Annual Reports filed by Johnny A.
10 McLain dba Coronado Estates Water Company ("Coronado"), it does not appear that Coronado
11 possesses adequate financial resources to address the problems it faces.

12 9. I believe that an interim manager is necessary at this time and I recommend that an
13 interim manager be appointed.

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16 Further affiant sayeth not.

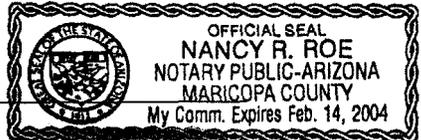
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Claudio M. Fernandez

21 Subscribed and sworn before me this 21
22 day of August 2003.

23 
24 Notary Public

25 My Commission expires _____



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4

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER - Chairman
4 TIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 STAFF of the Utilities Division,
9 Complainant,

10 v.

11 JOHNNY A. MCLAIN, dba Miracle Valley
12 Water Company, Cochise Water Company,
13 Horseshoe Ranch Water Company, Crystal Water
14 Company, Mustang Water Company, Coronado
15 Estates Water Company & Sierra Sunset Water
16 Company, an individual and JOHNNY A. AND
17 LINDA M. MCLAIN, a marital community,

18 Respondents,

19 MIRACLE VALLEY WATER COMPANY,
20 INC., an Arizona Corporation.

21 Respondent.

DOCKET NOS. W-01646A-03-
W-01868A-03-
W-02235A-03-
W-02316A-03-
W-02230A-03-
W-01629A-03-
W-02240A-03-

DECISION NO. _____

**ORDER TO SHOW CAUSE AND
ORDER FOR INTERIM RELIEF**

22 **BY THE COMMISSION:**

23 On August 22, 2003, Staff ("Staff") of the Utilities Division ("Division") of the Arizona
24 Corporation Commission ("ACC" or the "Commission"), filed a Complaint, Petition for Order to
25 Show Cause; and Petition for Order for Interim Relief ("Petition") against JOHNNY A. MCLAIN
26 doing business as ("dba") MIRACLE VALLEY WATER COMPANY, COCHISE WATER
27 COMPANY, HORSESHOE RANCH WATER COMPANY, CRYSTAL WATER COMPANY,
28 MUSTANG WATER COMPANY, CORONADO ESTATES WATER COMPANY AND SIERRA
SUNSET WATER COMPANY, JOHNNY A. MCLAIN AND LINDA M. MCLAIN (Johnny
McLain individually or Johnny A. and Linda M. McLain collectively as a marital community,
"McLain"), and MIRACLE VALLEY WATER COMPANY, INC., an Arizona Corporation. Staffs
filing was supported by the affidavits of John A. Chelus, Reg Lopez and Claudio M. Fernandez.

1 Staff seeks various relief, including the issuance of an Order to Show Cause against the Respondents
2 and the issuance of an Order for Interim Relief.

3 According to the Petition and its supporting affidavits, the water systems owned and/or
4 operated by McLain are not providing safe, sufficient, adequate and reasonable water service. The
5 Arizona Department of Environmental Quality (“ADEQ”) has issued several notices of violations
6 (“NOVs”) against all of the above water systems operated by McLain. There have been 14 informal
7 complaints against McLain dba Cochise Water Company (“Cochise”) and 67 informal complaints
8 against McLain dba Horseshoe Ranch Water Company (“Horseshoe Ranch”) for water outages
9 and/or inadequate water pressure. Cochise, Horseshoe Ranch, McLain dba Sierra Sunset Water
10 Company (“Sierra Sunset”) and McLain dba Miracle Valley Water Company (“Miracle Valley”) are
11 currently operating without valid Certificates of Convenience and Necessity (“CC&Ns”). While the
12 most recent Utilities Division Annual Report for Miracle Valley indicates that McLain is the owner,
13 the most recent Corporations Division Annual Report lists Harry and Barbara Ransom as the sole
14 equity holders in Miracle Valley. The present management has failed to rectify the above matters and
15 is not capable of addressing the situations with any of the water systems. Staff accordingly seeks the
16 issuance of an Order to Show Cause and an Order for Interim Relief appointing an interim manager.
17 In the past, we have appointed managers for Diamond Valley Water User’s Corporation (Decision
18 53547), American Public Service Company (for its Casitas Bonitas wastewater system) (Decision
19 55236), Sabrosa Water Company (Decision 63136), and Sonoita Valley Water Company, Inc.
20 (Decision 65858). We remain mindful that the appointment of an interim manager is an
21 extraordinary remedy which should only be employed when no other option is viable. We find that
22 this standard is satisfied in this case, and we will accordingly grant Staffs requests.

23 * * * * *

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

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FINDINGS OF FACT

1
2 1. Miracle Valley Water Company, Inc. has been a public service corporation that
3 operated a public water system located in the area of Sierra Vista, Cochise County, Arizona. Johnny
4 A. McLain dba Miracle Valley Water Company (“Miracle Valley”) currently is managing and
5 operating the Miracle Valley water system and purports to be the owner of the Miracle Valley water
6 system per the most recent Utilities Division Annual Report filed for Miracle Valley. The Miracle
7 Valley water system serves approximately 276 customers. The original owner(s) of the Miracle
8 Valley water system were granted a Certificate of Convenience and Necessity (“CC&N”) to provide
9 water service by the Commission in Decision No. 31741 (August 12, 1959). The CC&N for Miracle
10 Valley has never been transferred to McLain and the Commission has never approved the sale of
11 assets of Miracle Valley to McLain.

12 2. While McLain has listed himself as the owner of Miracle Valley in the most recent
13 Utilities Division Annual Report and listed himself dba Miracle Valley as a debtor in voluntary
14 petitions for bankruptcy filed on June 13, 2003 and July 30, 2003 (Bankruptcy Petitions 4-03-03209-
15 EWH and 4-03-04125-EWH respectively in the United States District Court in Tucson, Arizona), the
16 most recent Corporations Division Annual Report for Miracle Valley Water Company, Inc. lists
17 Harry and Barbara Ransom as the sole shareholders. The two reports are referring to the same assets
18 (i.e. the water system for Miracle Valley).

19 3. Johnny A. McLain dba Cochise Water Company (“Cochise”) is a public service
20 corporation that operates a public water system located in the area of Sierra Vista, Cochise County,
21 Arizona. Cochise serves approximately 280 customers. The original owner of the Cochise water
22 system, J. R. Sharp, was granted a CC&N to provide water service by the Commission in Decision
23 No. 34147 (October 31, 1962). The CC&N for Cochise has never been transferred to McLain and the
24 Commission has never approved the sale of assets of Cochise to McLain.

25 4. Johnny A. McLain dba Horseshoe Ranch Water Company (“Horseshoe Ranch”) is a
26 public service corporation that operates a public water system located in the area of Sierra Vista,
27 Cochise County, Arizona. Horseshoe Ranch serves approximately 220 customers. The original
28 owners of Horseshoe Ranch’s water system (then known as the Ranch Water Company) were granted

1 CC&N to provide water service by the Commission in Decision No. 43538 (August 3, 1973). The
2 CC&N for Horseshoe Ranch has never been transferred to McLain and the Commission has never
3 approved the sale of assets of Horseshoe Ranch to McLain.

4 5. Johnny A. McLain dba Crystal Water Company ("Crystal") is a public service
5 corporation that operates a public water system located in the area of Cochise County, Arizona.
6 Crystal serves approximately 54 customers. It had been operating as an uncertificated water company
7 for over fifteen years previous to Decision No. 50757. A CC&N was issued to Crystal in Commission
8 Decision No. 50757 (March 18, 1980). Clair Iverson was the owner of Crystal at that time. The
9 CC&N was transferred to McLain in Decision No. 53467 (March 3, 1983), subject to certain
10 conditions which were met as of April 11, 1983.

11 6. Johnny A. McLain dba Mustang Water Company ("Mustang") is a public service
12 corporation that operates a public water system located in the area of Cochise County, Arizona.
13 Mustang serves approximately 50 customers. Mustang was originally granted a CC&N in
14 Commission Decision No. 43533 (August 1, 1973). Mustang was, at that time, a partnership between
15 Ronald W. Barnett, Jack W. Wright and Charles J. Randolph. Mustang was transferred to McLain
16 and Troy L. Mansker in Decision No. 51178 (July 23, 1980).

17 7. Johnny A. McLain dba Coronado Estates Water Company ("Coronado") is a public
18 service corporation that operates a public water system located in the area of Cochise County,
19 Arizona. Coronado serves approximately 160 customers. Coronado was originally granted a CC&N
20 in Commission Decision No. 31504 (April 27, 1959). Coronado was transferred to McLain and Troy
21 L. Mansker in Decision No. 51176 (July 23, 1980).

22 8. Johnny A. McLain dba Sierra Sunset Water Company ("Sierra Sunset") is a public
23 service corporation that operates a public water system located in the area of Cochise County,
24 Arizona. Coronado serves approximately 29 customers. Sierra Sunset does not have a valid CC&N.
25 A CC&N granted to Marion Rosallie Tourtillote dba Sierra Sunset Water Company in Decision No.
26 49106 (June 26, 1978) was rescinded in Decision No. 53666 (July 27, 1983).

27 9. McLain is the operator and manager of all seven water systems. Per the most recent
28 Utilities Division Annual Reports for Cochise, Horseshoe Ranch, Crystal, Mustang and Coronado, all

1 ire sole proprietorships where McLain is the owner. McLain has filed a voluntary petition for
2 bankruptcy where he listed himself dba Miracle Valley, Cochise, Horseshoe Ranch, Crystal,
3 Mustang, Coronado and Sierra Sunset Water Cos. as a debtor under Bankruptcy Petitions 4-03-
4 33209-EWH and 4-03-04125-EWH on June 13, 2003 and July 30, 2003 respectively. Those filings
5 were made in the United States Bankruptcy Court in Tucson, Arizona. The voluntary bankruptcy
6 petition of June 13, 2003 (Bankruptcy Petition 4-03-03209-EWH) has been dismissed.

7 10. ADEQ has issued several NOVs against all seven water systems owned and/or
8 operated by McLain. The violations include: no microbiological site sampling plan (“MSSP”),
9 insufficient or no storage, no backflow prevention programs (“BPP”), no emergency operating plan
10 (“EOP”), no approvals to construct (“ATC”) and/or no approvals of construction (“AOC”), ADEQ
11 notes that McLain is operating the Miracle Valley, Cochise and Horseshoe Ranch water systems
12 without the proper certification and that his operation is in violation of state law and is endangering
13 the public health, safety or welfare. Compliance Status Reports were issued by ADEQ for all seven
14 water systems on July 1, 2003, and all of the reports noted major deficiencies with all seven water
15 systems.

16 11. During the three year period ending July 13, 2003, Staff received 67 informal
17 complaints against Horseshoe Ranch regarding water outages and/or inadequate water pressure. For
18 the same time period, Staff received 14 informal complaints against Cochise regarding water outages
19 and/or inadequate water pressure. Despite assurances from McLain to Staff and ADEQ, the problems
20 with water quantity and water pressure have yet to be resolved. Staff is concerned that without any
21 remedial action, the customers of all seven water systems will not receive adequate service.

22 12. Staff believes that the appointment of an interim manager is necessary to ensure that
23 all seven water entities will be able to provide proper service in the future. Staff proposes that
24 Southwestern Utility Management, Inc. (“Southwestern”) be appointed as the interim manager(s) for
25 all seven water systems. Southwestern, and its President, Ezra H. “Buck” Lewis, possess substantial
26 experience in the operation of small water systems.

27 13. Without the assistance of an interim manager, Staff believes that the operation by
28 McLain of Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra

1 sunset constitutes a clear and present danger to the public health and safety. The threat of such
2 peration is imminent.

3 14. It appears that the only reasonable and practical solution to the problems facing
4 Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado, and Sierra Sunset is the
5 appointment of an interim manager as requested by Staff.

6 15. Staff requests the issuance of an Order for Interim Relief appointing Southwestern, or
7 nother qualified manager selected by Staff, as the manager ("Manager") of the water systems for
8 Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset, upon
9 reasonable terms and conditions agreed between Manager and Staff, with full authority to conduct the
10 business and affairs of the above-mentioned water system; and ordering McLain and Miracle Valley
11 Water Company, Inc. to indemnify, defend and hold harmless the Manager for all claims relating to
12 its management of Miracle Valley's water system; and ordering McLain to indemnify, defend and
13 hold harmless the Manager for all claims relating to its management of the water systems of Cochise,
14 Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset.

15 16. Staff requests that we issue an Order to Show Cause directing McLain dba Miracle
16 Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset, to show cause:

- 17 (1) why its service should not be found unjust and unreasonable as described herein;
18 (2) why a Manager should not be appointed as described in paragraph 15;
19 (3) why McLain should not indemnify, defend and hold harmless the Manager as
20 described in paragraph 15;
21 (4) why the Manager should not be given the authority to explore, negotiate, and
22 implement a long-term solution; and
23 (5) why the existing Certificates of Convenience and Necessity should not be revoked,
24 and why McLain should not be ordered to find a fit and proper entity to assume the
25 Certificates of Convenience and Necessity and acquire the assets of the Company,
26 subject to the approval of the Commission as required by law.

27 17. Staff also requests the issuance of an Order to Show Cause directing Miracle Valley
28 Water Company, Inc. to show cause:

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- (1) why its service should not be found unjust and unreasonable as described herein;
- (2) why a Manager should not be appointed as described in paragraph 15;
- (3) why Miracle Valley Water Company, Inc. should not indemnify, defend and hold harmless the Manager as described in paragraph 15;
- (4) why the Manager should not be given the authority to explore, negotiate, and implement a long-term solution; and
- (5) why the existing Certificates of Convenience and Necessity should not be revoked, and why Miracle Valley Water Company, Inc. should not be ordered to find a fit and proper entity to assume the Certificates of Convenience and Necessity and acquire the assets of the Company, subject to the approval of the Commission as required by law.

18. Staff further requests that we issue an Order to Show Cause directing McLain to show

cause:

- (1) why McLain should not be found to be the alter ego of Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and/or Sierra Sunset, in the alternative, should it be discovered that any of the above entities are incorporated;
- (2) why McLain should not be found to be the alter ego of Miracle Valley Water Company, Inc., in the alternative, should it be discovered that McLain owns the Miracle Valley water system as an incorporated entity;
- (2) why McLain should not be held personally responsible for the actions or inaction of Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset, in the alternative; and
- (3) why McLain should not indemnify, defend and hold harmless the Manager as described in paragraph 15, in the alternative.

19. Staffs requests described in Findings of Fact 15, 16, 17, and 18 are reasonable.

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CONCLUSIONS OF LAW

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1. McLain dba Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset are public service corporations within the meaning of Article XV of the Arizona Constitution and are subject to the jurisdiction of the Commission.

2. Miracle Valley Water Company, Inc. is a public service corporation within the meaning of Article XV of the Arizona Constitution and is subject to the jurisdiction of the Commission.

3. The Commission has jurisdiction over the subject matter of Staffs Complaint, Petition or Order to Show Cause, and Petition for Interim Relief.

4. Notice of this proceeding has been given in accordance with law.

5. The operation of the water systems of Miracle Valley/Miracle Valley Water Company, Inc., Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset are in a manner that presents a clear and present danger to the public health and safety as found in Finding of Fact 13 constitutes unjust and unreasonable service. Moreover, failure to provide water or to provide adequate water pressure constitutes unjust and unreasonable service. Pursuant to A.R.S. §§ 40-202; 40-203; 40-321; 40-322, and Article XV § 3 of the Arizona Constitution, the Commission may prohibit unjust and unreasonable service. Because there is an imminent threat of such unjust and unreasonable service, the Commission may grant the requested interim relief against Miracle Valley/Miracle Valley Water Company, Inc., Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset described in Finding of Fact 15.

6. It is lawful and in the public interest to issue the requested Order to Show Cause against the Respondents as described in Findings of Fact 16, 17 and 18.

7. It is lawful and in the public interest to issue the requested Order for Interim Relief as described in Finding of Fact 15.

8. Probable cause exists to believe that McLain is acting as the alter ego of Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and/or Sierra Sunset, in the alternative, should it be found that the those entities are incorporated. If McLain is the alter ego of the above-listed entities, McLain will be subject to the jurisdiction of the Commission to the same extent as Cochise,

1 horseshoe Ranch, Crystal, Mustang, Coronado, and Sierra Sunset. Sufficient evidence exists to
2 support issuance of an order to show cause against McLain, in the alternative, as described in Finding
3 of Fact 18.

4 9. Should it be found that McLain is the owner of Miracle Valley as an incorporated
5 entity, then probable cause also exists to find that McLain is acting as the alter ego of Miracle Valley,
6 in the alternative, and that McLain is will be subject to the jurisdiction of the Commission to same
7 extent as Miracle Valley and that sufficient evidence exists to support issuance of an order to show
8 cause against McLain, in the alternative, as described in Finding of Fact 18.

9 **ORDER**

10 IT IS THEREFORE ORDERED that McLain dba Miracle Valley, Cochise, Horseshoe Ranch,
11 Crystal, Mustang, Coronado and Sierra Sunset shall appear and show cause at a place designated by
12 the Hearing Division:

- 13 (1) why its service should not be found unjust and unreasonable as described herein;
- 14 (2) why a Manager should not be appointed as described in paragraph 15;
- 15 (3) why Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and
16 Sierra Sunset should not indemnify, defend and hold harmless the Manager as
17 described in paragraph 15;
- 18 (4) why the Manager should not be given the authority to explore, negotiate, and
19 implement a long-term solution; and
- 20 (5) why the existing Certificates of Convenience and Necessity should not be revoked,
21 and why McLain should not be ordered to find a fit and proper entity to assume the
22 Certificates of Convenience and Necessity and acquire the assets of Miracle
23 Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset,
24 subject to the approval of the Commission as required by law.

25 IT IS FURTHER ORDERED that McLain shall appear and show cause, at a place and time
26 designated by the Hearing Division:

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- (1) why McLain should not be found to be the alter ego of Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and/or Sierra Sunset, in the alternative, should it be discovered that any of the entities are incorporated;
- (2) why McLain should not be found to be the alter ego of Miracle Valley Water Company, Inc., should McLain own Miracle Valley as an incorporated entity, in the alternative;
- (3) why McLain should not be held personally responsible for the actions or inaction of Miracle Valley, Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset; and
- (4) why McLain should not indemnify, defend and hold harmless the Manager as described in paragraph 15.

IT IS FURTHER ORDERED that Miracle Valley Water Company, Inc., shall appear and show cause at a place designated by the Hearing Division:

- (1) why its service should not be found unjust and unreasonable as described herein;
- (2) why a Manager should not be appointed as described in paragraph 15;
- (3) why Miracle Valley Water Company, Inc., should not indemnify, defend and hold harmless the Manager as described in paragraph 15;
- (4) why the Manager should not be given the authority to explore, negotiate, and implement a long-term solution; and
- (5) why the existing Certificate of Convenience and Necessity should not be revoked, and why Miracle Valley Water Company, Inc. should not be ordered to find a fit and proper entity to assume the Certificate of Convenience and Necessity and acquire the assets of Miracle Valley Water Company, Inc., subject to the approval of the Commission as required by law.

IT IS FURTHER ORDERED that Southwestern, or another qualified manager selected by Staff, is hereby appointed as the Manager of the water systems for Miracle Valley/Miracle Valley Water Company, Inc., Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset, upon reasonable terms and conditions agreed to between Manager and Staff.

1 IT IS FURTHER ORDERED that the Manager shall have full authority to conduct the
2 business and affairs of the water systems of Miracle Valley/Miracle Valley Water Company, Inc.,
3 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset.

4 IT IS FURTHER ORDERED that the appointment of the Manager shall be in effect while
5 proceedings in this docket are pending or until otherwise ordered by the Commission.

6 IT IS FURTHER ORDERED that Miracle Valley/Miracle Valley Water Company, Inc.,
7 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset or McLain may apply at
8 any time for the termination of the appointment of the Manager upon a showing that Miracle
9 Valley/Miracle Valley Water Company, Inc., Cochise, Horseshoe Ranch, Crystal, Mustang,
10 Coronado and Sierra Sunset have acquired sufficient technical, financial, and managerial capabilities
11 to operate the respective water systems and that such application shall be heard as soon as reasonably
12 practicable.

13 IT IS FURTHER ORDERED that if Miracle Valley/Miracle Valley Water Company, Inc.,
14 Cochise, Horseshoe Ranch, Crystal, Mustang, Coronado and Sierra Sunset intend to appear and show
15 cause as ordered above they shall each file within 10 days of the effective date of this order a
16 preliminary statement describing how they will make the showing of cause. This filing must include
17 an Answer to Staffs Complaint if the filing respondent has not yet filed an Answer.

18 IT IS FURTHER ORDERED that the Hearing Division shall forthwith schedule further
19 appropriate proceedings.

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

22 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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25 CHAIRMAN COMMISSIONER COMMISSIONER

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IN WITNESS WHEREOF, I, JAMES G. JAYNE, Interim Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of September, 2003.

JAMES G. JAYNE
INTERIM EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____
DG:ab

1 ohnny A. McLain dba
2 Miracle Valley Water Company,
3 Cochise Water Company,
4 Horseshoe Ranch Water Company,
5 Crystal Water Company,
6 Mustang Water Company, Coronado Estates Water Company and
7 Sierra Sunset Water Company
8 P.O. Box 2903
9 Sierra Vista, AZ 85636

10 Johnny A. McLain
11 7110 Jaxel Road
12 Hereford, AZ 85615

13 Johnny A. McLain
14 5161 Hereford Road
15 Hereford, AZ 85615

16 Miracle Valley Water Company, Inc.
17 1/2 Harry B. Ransom
18 1197 5th Street
19 Imperial Beach, CA 91932

20 Harry B. Ransom
21 President and Treasurer, Miracle Valley Water Company, Inc.
22 1801 East Tropicana #9
23 Las Vegas, NV 89119

24 Barbara J. Ransom
25 Secretary and Vice President, Miracle Valley Water Company, Inc.
26 1801 East Tropicana #9
27 Las Vegas, NV 89119

28 Debra Booth
29 9332 East Paraiso Drive
30 Scottsdale, AZ 85255

31 Laurie A. Woodall, **Esq.**
32 Office of the Attorney General
33 1275 W. Washington
34 Phoenix, Arizona 85007
35 Attorneys for the ADEQ

36 Mr. John Eyre
37 Environmental Engineer/Compliance Officer
38 ADEQ
39 400 W. Congress Street, Ste 433
40 Tucson, Arizona 85701

1 Martin D. McCarthy, P.E.
2 Manager, Compliance Programs Unit
3 ADEQ
4 Southern Regional Office
5 400 W. Congress Street, Ste. 433
6 Tucson, Arizona 85701
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