

When recorded, deliver to:

Marian Sheppard, Chief Deputy Clerk
Board of Supervisors



RESOLUTION NO. 09-08-03

BEFORE THE BOARD OF SUPERVISORS

GILA COUNTY, STATE OF ARIZONA

In the Matter of:)
)
Application of TONTO CREEK UTILITY CO.)
) FRANCHISE
and TONTO CREEK WATER COMPANY, L.L.C.)
)
for the transfer of a water franchise.)
_____)

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF GILA COUNTY, STATE OF ARIZONA, THAT:

WHEREAS, PAM FISHER d/b/a TONTO CREEK UTILITY COMPANY AND JAMES REA d/b/a TONTO CREEK WATER COMPANY, L.L.C. ("Franchisee") on July, 9, 2009, presented to the Gila County Board of Supervisors applications petitioning that the Board grant the transfer of a non-exclusive water franchise for public utility purposes pursuant to A.R.S. §40-283 to enter upon all present and future public highways, roads, streets, alleys, thoroughfares (except state highways and except within the present confines of any incorporated city or town) within the unincorporated area of Gila County known as Tonto Creek Estates subdivision and Tonto Rim Ranch subdivision to construct, operate and maintain water system facilities along, over, under and across said public highways, roads, streets, alleys and thoroughfares for the provision of water utility service; and,

WHEREAS, a legal description and map of the proposed water service area is attached hereto as Exhibits A and B; and,

WHEREAS, in 1994 the Arizona Corporation Commission approved the sale of the Tonto Creek Estates Water System and the transfer of the



Certificate of Convenience and Necessity (CC&N) to Tonto Creek Utility Company even though an application to transfer said franchise was not submitted to Gila County; and,

WHEREAS, these applications are being submitted to simultaneously transfer the water utility franchise from Tonto Creek Estates Water System to Tonto Creek Utility Company to Tonto Creek Water Company, L.L.C.; and,

WHEREAS, Tonto Creek Utility Company and Tonto Creek Water Company, L.L.C. have a current co-application with the Arizona Corporation Commission for approval of the sale and a transfer of the CC&N to Tonto Creek Water Company (Docket Nos. W-02784A-09-0276 and W20682A-09-0276.); and,

WHEREAS, upon filing of said applications, the Board of Supervisors ordered the public notice of the intention of the Board to make such a grant by publication in the *Arizona Silver Belt*, once a week, three times consecutively on July 29, 2009, August 5, 2009, and August 12, 2009, with one publication in the *Payson Roundup* on July 28, 2009, and noticing that on Monday, August 17, 2009, the Gila County Board of Supervisors would consider the applications at the courthouse at 1400 E. Ash Street in Globe; and,

WHEREAS, the *Arizona Silver Belt*, the official newspaper of Gila County, has provided the Gila County Board of Supervisors with an affidavit that the notice had been published at least once a week for three consecutive weeks in the newspaper; and,

WHEREAS, notice was also regularly given pursuant to A.R.S. §38-431; and,

WHEREAS, this matter appeared before the Gila County Board of Supervisors on August 17, 2009, and no one appeared in opposition thereto; and,

WHEREAS, it appears that it will benefit the public safety, health or welfare in the granting of this franchise transfer and that the Franchisee has complied with all necessary laws to enable it to receive such a franchise.

NOW, THEREFORE, IT IS RESOLVED that the transfer of this franchise be granted from Tonto Creek Estates Water System to Tonto Creek Utility Company to Tonto Creek Water Company, L.L.C. for the purpose of entering all present and future public highways, roads, streets, alleys, thoroughfares (except state highways and except within the present confines



of any incorporated city or town) through June 25, 2015, unless earlier terminated, to construct, operate and maintain water service facilities within the unincorporated areas of Gila County, specifically providing, however, that:

1. All rights hereunder are granted under the express condition that the Board of Supervisors of Gila County shall have the power at any time to impose such restrictions and limitations and to make such regulations on such highways, roads, streets, alleys and thoroughfares as may be deemed best for the public safety, welfare and convenience.

2. All rights hereunder are granted on the express condition that the Franchisee shall bear all expenses, including damage and compensation, for any alteration of the direction, surface grade or alignment of a county road or any other such highway, road, street, alley, or thoroughfare occasioned by the exercise of its franchise rights. If such road improvements are necessary and the Franchisee fails to make such improvements or bear all expenses necessary within 45 days after notification by Gila County, this grant shall be immediately rescinded and without any force or effect. Franchisee shall erect and maintain all necessary safety precautions throughout the period of the improvements.

3. All rights hereby granted shall be exercised so as not to interfere or conflict with any easement or right-of-way heretofore granted by said Board of Supervisors. Before Franchisee enters upon any highway, road, street, alley or thoroughfare that requires a right-of-way permit from the Gila County Public Works Division pursuant to Ordinance 97-3, Franchisee shall apply for and receive such a permit.

4. All water system facilities constructed, operated and maintained pursuant to this franchise shall be placed, removed or relocated, initially and throughout the term of this franchise, along, in, or, under, over and across the said highways, roads and thoroughfares in such manner and location as the Board of Supervisors or its duly authorized agents may approve. Such placement, removal or relocation shall be done at the sole expense of the Franchisee upon a determination by the Board of Supervisors of Gila County that such facilities interfere unduly with vehicular traffic over any such highway, road, street, alley, or thoroughfare. In all other instances, the costs incurred in relocating such facilities shall be borne by and added to the costs of the public or private improvement causing or resulting in such relocation.

5. Franchisee shall indemnify, defend, and save harmless Gila County from all costs, expenses and liabilities in connection with the grant of this franchise and exercise of the same by Franchisee.

6. The franchise granted herein shall not be deemed exclusive and the Board of Supervisors expressly reserves the right to grant from time to time similar franchises over the same territory, highways, roads, streets, alleys and thoroughfares.



7. The right, privilege and franchise granted herein shall be binding upon and inure to the benefit of Franchisee, its successors and assigns; provided, however, that no transfer or assignment shall be made without prior written notice to the Board of Supervisors.

8. In the event Gila County takes action to dispose of unnecessary public roadways in accordance with the provisions of Arizona Revised Statutes 28-7201, et seq., Gila County shall recognize and preserve each of Grantee's prior rights-of-way, easements, and rights under this Franchise which are affected thereby, as they existed prior to such disposition.

9. This franchise is granted upon the express condition that a Certificate of Convenience and Necessity be acquired from the Arizona Corporation Commission within twelve (12) months of the date of this transfer of franchise and if such Certificate is not acquired within twelve (12) months from this date, this franchise shall be null and void.

10. A copy of the Certificate of Convenience and Necessity must be submitted to the Clerk of the Board of Supervisors within the twelve (12) month period.

IN WITNESS THEREOF the Board of Supervisors of Gila County, State of Arizona, by its chairman and clerk, have hereunto set their hand and caused its official seal to be affixed this 17th day of August 2009.

Shirley L. Dawson
Shirley L. Dawson, Chairman
Gila County Board of Supervisors

Steven L. Besich Chief Deputy Clerk
for Steven L. Besich, Clerk
Gila County Board of Supervisors

APPROVED AS TO FORM:

Bryan Chambers
Bryan Chambers
Chief Deputy County Attorney



The foregoing terms and conditions are hereby accepted by the Franchisee.

By JCR
Title VICE PRESIDENT
Date 8/20/09

EXHIBIT A TO GILA COUNTY RESOLUTION NO. 09-08-03

Docket No. U-1630-94-230 ET AL

EXHIBIT A
LEGAL DESCRIPTION
TONTA CREEK ESTATES AND TONTA RIM RANCH

BEGINNING AT THE WEST QUARTER CORNER OF SECTION 7,
TOWNSHIP 11 NORTH, RANGE 12 EAST, GILA COUNTY;

THENCE NORTH 85° 18' EAST, A DISTANCE OF 10800.24 FEET TO
CORNER #1 OF HOMESTEAD ENTRY #137 AND POINT OF BEGINNING;

THENCE NORTH 26° 02' EAST, A DISTANCE OF 2604.41 FEET TO
CORNER #2;

THENCE SOUTH 55° 57' EAST, A DISTANCE OF 1125.97 FEET;

THENCE SOUTH 17° WEST, A DISTANCE OF 176.59 FEET;

THENCE SOUTH 40° 44' WEST, A DISTANCE OF 193.90 FEET;

THENCE SOUTH 41° 58' WEST, A DISTANCE OF 100.00 FEET;

THENCE SOUTH 38° 25' WEST, A DISTANCE OF 100.00 FEET;

THENCE SOUTH 50° 47' EAST, A DISTANCE OF 127.17 FEET;

THENCE SOUTH 30° 25' WEST, A DISTANCE OF 805.88 FEET;

THENCE SOUTH 55° 26' EAST, A DISTANCE OF 181.07 FEET;

THENCE SOUTH 55° 26' EAST, A DISTANCE OF 150.00 FEET;

THENCE SOUTH 34° 13' 45" WEST, A DISTANCE OF 1503.32 FEET TO
CORNER #4;

THENCE NORTH 42° 15' WEST, A DISTANCE OF 1311.42 FEET TO POINT
OF BEGINNING;

EXCEPT for the following described parcel:

BEGINNING AT CORNER #4 OF HOMESTEAD ENTRY #137;

THENCE NORTH 42° 15' WEST, A DISTANCE OF 205.05 FEET TO
POINT OF BEGINNING;

THENCE NORTH 42° 15' WEST, A DISTANCE OF 210.61 FEET;

THENCE NORTH 35° 30' EAST, A DISTANCE OF 38 FEET;

THENCE NORTH 29° 30' EAST, A DISTANCE OF 158 FEET;

THENCE SOUTH 60° 30' EAST, A DISTANCE OF 30 FEET;

THENCE NORTH 40° 35' EAST, A DISTANCE OF 107.40 FEET;

THENCE NORTH 14° 08' EAST, A DISTANCE OF 69 FEET;

THENCE SOUTH 74° 13' EAST, A DISTANCE OF 225 FEET;

THENCE SOUTH 33° 04' WEST, A DISTANCE OF 468 FEET TO
POINT OF BEGINNING.

Decision No. 58936

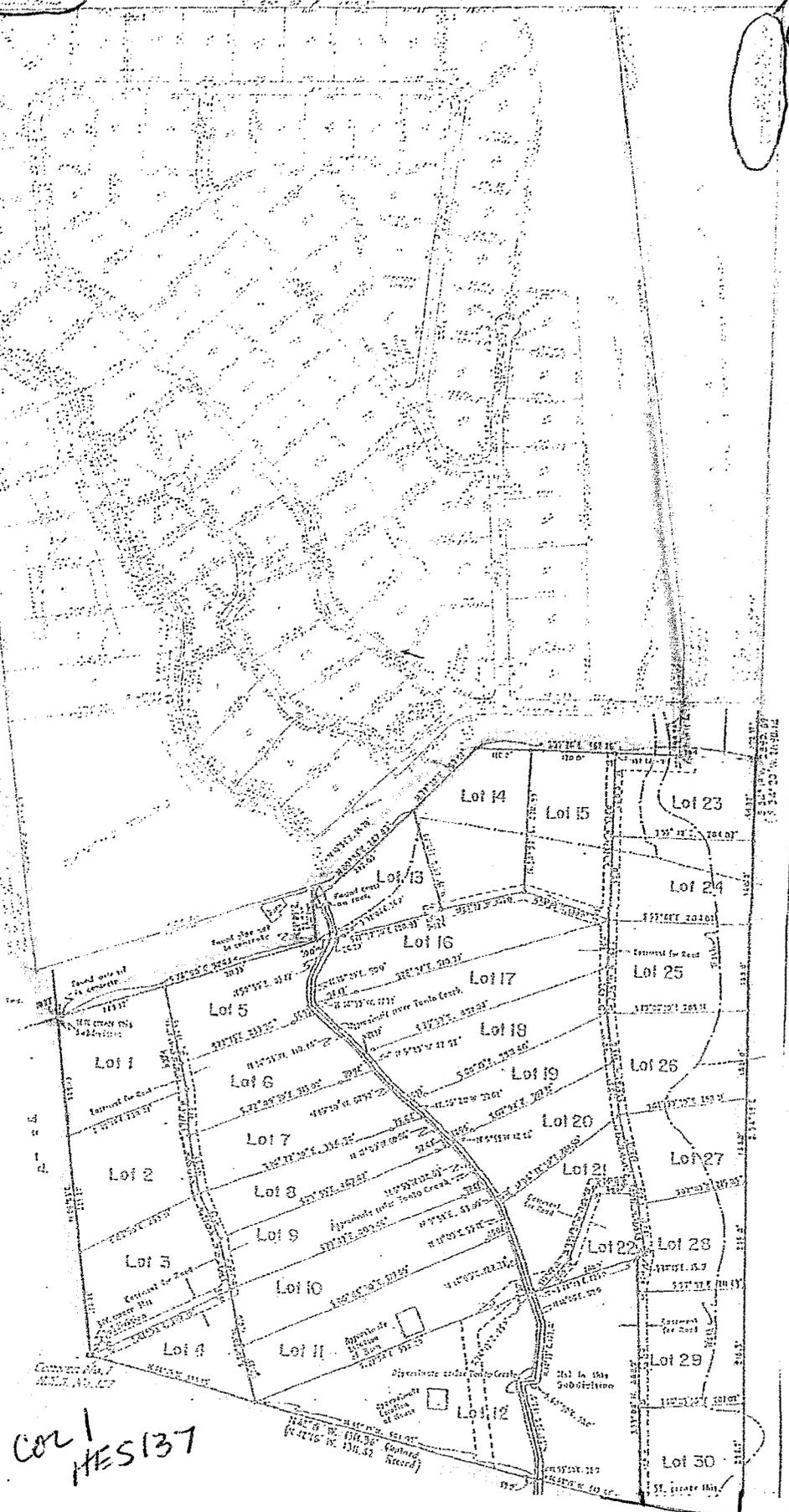


EXHIBIT B TO GILA COU.



LOT 2 HES 137

COR 3 HES 137



COR 1 HES 137

COR 4 HES 137

TONTIC RIM RANCH
TONTIC CREEK EST.