

RESOLUTION NO. 33-90

A RESOLUTION GRANTING TO ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC PLACES IN THAT PORTION OF NAVAJO COUNTY, ARIZONA, DESCRIBED BELOW, WATER LINES, PLANT AND SYSTEM, INCLUDING MAINS, LATERALS, PUMPS, MANHOLES, METERS, REGULATOR STATIONS AND RELATED EQUIPMENT, FACILITIES AND APPURTENANCES, FOR THE PURPOSE OF SUPPLYING WATER TO SAID AREA OF SAID COUNTY, FOR ALL PURPOSES, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS IN RESPECT THERETO: AND REPEALING CONFLICTING RESOLUTIONS.

BE IT RESOLVED by the Board of Supervisors, County of Navajo, State of Arizona:

NOW, THEREFORE,

SECTION 1. There is hereby granted to Arizona Water Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona, its successors and assigns (hereinafter called "Grantee"), the right, privilege and franchise to construct, maintain and operate upon, over, along, across and under the present and future streets, avenues, alleys, highways, bridges, public roads and other public places in that portion of the County of Navajo, State of Arizona, described in Section 2, hereof, water lines, plant and system, including mains, laterals, pumps, manholes, meters, regulator stations and related equipment, facilities and appurtenances, for the purpose of supplying water for all purposes to said area.

SECTION 2. The area for which a franchise is granted to Grantee is particularly described as follows:

Sections 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33 and 34 in Township 12 North, Range 17 East; and Sections 13, 14, 23, 24, 25, 26, 35 and 36 in Township 12 North, Range 16 East, G. & S.R.B. & M.; and

SECTION 3. All facilities to be constructed pursuant to this franchise shall be constructed and maintained in accordance with established practices with respect to such streets, avenues, alleys, highways, bridges,

public roads and public places of the County of Navajo. Prior to such construction, a map showing the location of such facilities shall be submitted to such persons as may be designated by said Board of Supervisors.

SECTION 4. In the event that any lines or related facilities installed or constructed pursuant to this franchise shall at any time be found to interfere unduly with vehicular and pedestrian traffic over such streets, avenues, alleys, highways, bridges, public roads and other public places, the Grantee hereby agrees that it will, at its own expense, and within a reasonable time after notice thereof by said Board of Supervisors, remove or relocate said lines, or related facilities so as to minimize said interference. In all other instances the costs incurred in removing or relocating any lines or facilities shall be borne by and added to the cost of the public or private improvement causing or resulting in such removal or relocation. Arizona Water Company shall bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of a county road, made for the purpose of the franchise.

SECTION 5. In the event that said Board of Supervisors, acting on behalf of the County of Navajo, takes action to dispose of unnecessary public roadways in accordance with the provisions of Arizona Revised Statutes §28-1901, et seq., said Board of Supervisors agrees to recognize each of Grantee's prior rights-of-way and/or easements and rights under this franchise which are affected thereby, as they existed prior to such disposition, by including specific and appropriate language for that purpose in any legal instrument utilized for the purpose of accomplishing such disposition.

SECTION 6. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, planting or ground cover resulting from Grantee's action pursuant to this franchise, Grantee shall, in a manner entirely

satisfactory to said Board of Supervisors and the department having appropriate jurisdiction, replace and restore the paving, sidewalk, driveway, surfacing, planting or ground cover of any street, alley or other public way or place so disturbed in as good condition as it was prior to said disturbance. All such work shall be completed with due diligence.

Further, to avoid duplication of effort and untimely destruction of the street, Grantee will use its best efforts to coordinate its construction and replacement plans pursuant to this franchise with said department having appropriate jurisdiction.

SECTION 7. Grantee shall save the County of Navajo harmless from expenses, claims and liability arising by reason of the exercise of this franchise by Grantee.

SECTION 8. This franchise shall continue and exist for a period of twenty-five (25) years from the date of acceptance by the Board of Supervisors. The Board of Supervisors shall have the right only during each ninety (90) day period immediately prior to the fifth (5th), tenth (10th), fifteenth (15th) and twentieth (20th) anniversaries of the acceptance date of this franchise to review this franchise. When such review is made, the Board shall conduct the same in accordance with all applicable law. When such review is to be made, the Board shall provide Grantee written notice at least sixty (60) days before the Board holds a public hearing, at which time the Board may consider whether adequate grounds exist to impose any restrictions and limitations upon the use of the public roads, pursuant to Arizona Revised Statutes §40-283(B). Upon conclusion of the hearing, the Board may act pursuant to law.

If the Board does not exercise its right to review this franchise or if the Board imposes no restrictions or limitations upon the use of the public

roads, pursuant to Arizona Revised Statutes §40-283(B), this franchise remains effective as granted until at least the next specified time for review.

The franchise, if awarded, will not be effective until Arizona Water Company signs the Settlement Agreement (including all exhibits thereto) in the form the parties thereto agreed to on _____, 19__.

SECTION 9. The right, privilege and franchise hereby granted shall inure to the benefit of, and be binding upon, Grantee, its successors and assigns.

SECTION 10. All resolutions and parts of resolutions in conflict with the provisions hereof are hereby repealed to the extent applicable to a franchised public service corporation.

SECTION 11. If any section, paragraph, subdivision, clause, phrase or provision of this resolution shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this resolution as a whole or any part of the provisions hereof other than the part so adjudged to be invalid and unconstitutional.

SECTION 12. Upon the termination of this franchise, if Grantee shall not have acquired an extension or renewal thereof and accepted the same, it may continue operating its facilities and system within the County of Navajo until a new franchise can be effected with the County of Navajo.

Dated this 30th day of April 1990.

Malin J. Gillespie
Chairman, Board of Supervisors
Navajo County, Arizona

ATTEST:

Sharon A. Seens
Clerk of Board of Supervisors
Navajo County, Arizona