



MEMORANDUM

Date: October 19, 2022

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner 
County Administrator

Re: **City of Tucson Differential Water Rate Lawsuit Update**

On [August 17, 2022](#) I informed you that three of the five lawsuit counts were moving forward. Discovery is also proceeding with the City submitting Requests for Admission and Non-Uniform Interrogatories. Please find attached the County response to these requests (Attachments 1 and 2).

Additionally, please find attached Pima County's first set of Non-Uniform Interrogatories (Attachment 3) and Requests for Admission (Attachment 4). Also attached is the County's third supplemental disclosure statement (Attachment 5). To obtain copies of any of the documents referenced in these attachments, please contact Senior Advisor Yves Khawam.

Depositions in the case are scheduled to start next month and complete by end of calendar year with final dispositive motions scheduled for February 21, 2023. Following this date, the Court will set a trial setting conference with the trial date expected to start late spring or summer 2023.

Finally, I received an inquiry regarding costs related to this lawsuit. To date, the County has incurred \$186,209 in attorney fees.

Please let me know if you have any questions.

JKL/dym

Attachments

c: Carmine DeBonis, Jr., Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator and Chief Medical Officer
Steve Holmes, Deputy County Administrator
Yves Khawam, PhD, Senior Advisor, Pima County Administrator's Office

ATTACHMENT 1

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11
12 *Attorneys for Plaintiff Pima County*

13
14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 PIMA COUNTY, a body politic in the State
of Arizona,

No. CV2022-001141

17 Plaintiff,

18 v.

**PLAINTIFF'S OBJECTIONS AND
RESPONSES TO DEFENDANTS
FIRST SET OF REQUESTS FOR
ADMISSION**

19 CITY OF TUCSON, a municipal
corporation of the State of Arizona,
20 REGINA ROMERO, in her official
capacity as the Mayor of Tucson, LANE
21 SANTA CRUZ, in her official capacity as
Tucson City Councilmember, PAUL
22 CUNNINGHAM, in his official capacity as
Tucson City Councilmember, KEVIN
23 DAHL, in his official capacity as Tucson
City Councilmember, NIKKI LEE, in her
24 official capacity as Tucson City
Councilmember, RICHARD FIMBRES, in
25 his official capacity as Tucson City
Councilmember, STEVE KOZACHIK, in
26 his official capacity as Tucson City
Councilmember, and MICHAEL
27 ORTEGA, in his official capacity as
Tucson City Manager,

Assigned to Hon. Randall Warner

28 Defendants.

1 Pursuant to Arizona Rule of Civil Procedure 36, Plaintiff Pima County (“Pima” or
2 “County”) hereby objects and responds to Defendants’ (“City” or “Tucson”) First Set of of
3 Requests for Admission. Pima reserves the right to further supplement or amend these
4 responses as discovery progresses.

5 GLOBAL OBJECTIONS

6 1. Pima objects to each Request for Admission to the extent that it purports to
7 impose any requirement or discovery obligation greater than or different from those under
8 the Arizona Rules of Civil Procedure and the applicable Rules and Orders of the Court

9 2. Pima objects to each Request for Admission to the extent it asks Pima to
10 identify documents protected from disclosure by the attorney-client privilege, attorney work
11 product doctrine, or any other applicable privilege.

12 3. Pima incorporates by reference every general objection set forth above into
13 each specific response set forth below. A specific response may repeat a general objection
14 for emphasis or some other reason. The failure to include any general objection in any
15 specific response does not waive any general objection to that request.

16 REQUESTS FOR ADMISSION

17 **REQUEST NO. 1:** Admit that various other Arizona cities that serve water customers
18 outside the city limits charge differential (higher) rates to those customers that range from
19 approximately 10% to approximately 50%.

20 **PIMA’S RESPONSE: QUALIFIED ADMIT**

21 **Objection:** Pima objects to this Request on the grounds that it asks Pima to admit or
22 deny facts outside of its knowledge, possession, or control—namely, whether or not
23 “various” Arizona cities charge differential rates between “approximately” 10% to
24 “approximately” 50%. Pima objects to this Request on the grounds that it is vague and
25 ambiguous. The Requests asks Pima to admit or deny whether unidentified “various other
26 Arizona cities” charge differential rates to their customers ranging from “approximately
27 10% to approximately 50%”—without more specificity, Pima cannot fairly respond to this
28 allegation. Further, the phrases “approximately 10%” and “approximately 50%” are vague

1 in this context—it is not clear whether a 9.9% rate, a 9% rate, an 8% rate, a 7% rate, or all
2 four would qualify as “approximately 10%.” It is also unclear whether RFA No. 1 is asking
3 for the “range” as it is commonly used in mathematics (i.e., the difference between the
4 lowest and highest values) or the term “range” simply means that some differential rates
5 fall within that range. For purpose of this Response, Pima assumes that RFA #1 is asking
6 Pima to admit or deny whether the Arizona cities listed in CITY 1286-12194 charge a
7 differential rate to outside city customers, and that some of these rates fall in between 10%
8 and 50%.

9 **Response:** Subject to and without waiving these objections and clarifications, Pima
10 **admits** that: (1) “various” other Arizona cities serve water outside of city limits, (2)
11 Chandler’s differential is approximately 33.4% depending on service type; (3) Flagstaff’s
12 differential ranges from approximately 6.9% to approximately 9.7%, depending on service
13 type; (4) Glendale’s differential is approximately 26.087%, depending on service type; (5)
14 Phoenix’s differential is 50%;¹ (6) Scottsdale charges a “surcharge up to fifteen percent” of
15 stock base fee and commodity rates to outside city customers; (7) Tempe’s differential is
16 approximately 26.1% depending on service type; and (8) Yuma City’s differential ranges
17 from approximately 26% to 28%, depending on service type. Pima clarifies, however, that
18 Tucson, Phoenix, and Tempe do not charge differential rates to all outside city customers:
19 Tucson does not charge a differential rate to the Town of Marana, the Town of Oro Valley,
20 the Tohono O’odham Nation, Pascua Yaqui Tribe, and the Tucson Unified School District;
21 Phoenix does not charge a differential rate to the Town of Paradise Valley; and Tempe does
22 not charge a differential rate to the Town of Guadalupe.

23 Pima further states that, on information and belief, at least 36 water service
24 municipalities in Arizona do not charge a differential rate to outside customers, at all.
25 [PIMA000534; *see also* CITY005712 (explaining that of the 24 largest municipal water
26 providers in Arizona, only 11 (45%) charge a differential rate)] Pima further states that, on

27 _____
28 ¹ Although Phoenix charges a 50% differential, its water rates are very low relative to other
municipal providers. [See CITY005729.]

1 information and belief, no municipal water utility has as many customers living outside the
2 City as Tucson does. [See CITY 005729.] Indeed, for many provide water services, the
3 percent of outside city customers is *far* lower than the percent of Tucson Water users living
4 unincorporated areas. [See CITY 005731 (noting that the percent of outside customers in
5 Phoenix is .5%, in Scottsdale is 1.7%, in Chandler is 1.9%, and in Glendale is 1.2%, but
6 that the percent of outside customers in Tucson is 34%).]

7 Pima also states that it is currently investigating the basis for the differential rates
8 imposed by Flagstaff, Glendale, Scottsdale, Tempe, Yuma City, and other municipal water
9 providers. For instance, Pima suspects that unlike Tucson, the differential rates imposed by
10 many municipal water providers were based on legitimate cost of service studies. [See CITY
11 005729-30.] Pima also suspects that municipal Central Arizona Project (“CAP”) water
12 allocations in other Counties are not tilted towards a single utility and that therefore Central
13 Arizona Water Conservation District (“CAWCD”) property taxes in those Counties are
14 more evenly shared between in-city and out-of-city customers (unlike in Tucson, where
15 unincorporated customers are responsible for the majority of CAWCD taxes, *see*
16 CITY005720). Pima therefore reserves the right to supplement this response with
17 additional information as it becomes available.

18
19 **REQUEST NO. 2:** Admit that the attached water rate schedules (CITY 12186-12194) are
20 true and genuine.

21 **PIMA’S RESPONSE: ADMIT**

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DATED this 18th day of October, 2022.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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Attorneys for Plaintiff Pima County

The foregoing was mailed via
USPS and e-mailed this
18th day of October to:

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/s/ Tracy Hobbs

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12 *Attorneys for Plaintiff Pima County*

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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 PIMA COUNTY, a body politic in the State
of Arizona,

No. CV2022-001141

17 Plaintiff,

18 v.

19 CITY OF TUCSON, a municipal
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26 his official capacity as Tucson City
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27 ORTEGA, in his official capacity as
Tucson City Manager,

**PLAINTIFF'S OBJECTIONS AND
RESPONSES TO DEFENDANTS
FIRST SET OF NON-UNIFORM
INTERROGATORIES**

Assigned to Hon. Randall Warner

28 Defendants.

1 Pursuant to Arizona Rule of Civil Procedure 33, Plaintiff Pima County (“Pima” or
2 “County”) hereby objects and responds to Defendants’ (“City” or “Tucson”) First Set of of
3 Non-Uniform Interrogatories. Pima reserves the right to further supplement or amend these
4 responses as discovery progresses.

5 **GLOBAL OBJECTIONS**

6 1. Pima objects to each Interrogatory to the extent that it purports to impose any
7 requirement or discovery obligation greater than or different from those under the Arizona
8 Rules of Civil Procedure and the applicable Rules and Orders of the Court.

9 2. Pima objects to each Interrogatory that is overly broad, unduly burdensome,
10 duplicative and/or not relevant to the parties claims or defenses and not proportional to the
11 needs of the case, the parties’ relative access to relevant information, the parties’ resources,
12 the importance of the discovery in resolving the issues, and whether the burden or expense
13 of the proposed discovery outweighs its likely benefit, in violation of Rule 26(b)(1)(A).

14 3. Pima objects to each definition, instruction, and Interrogatory, to the extent
15 that it seeks information protected from disclosure by the attorney-client privilege, attorney
16 work product doctrine, executive privilege, or any other applicable privilege. Should any
17 such disclosure by Pima occur, it is inadvertent and shall not constitute a waiver of any
18 privilege.

19 4. Pima incorporates by reference every general objection set forth above into
20 each specific response set forth below. A specific response may repeat a general objection
21 for emphasis or some other reason. The failure to include any general objection in any
22 specific response does not waive any general objection to that request.

23
24 **NON-UNIFORM INTERROGATORIES**

25 **NON-UNIFORM INTERROGATORY NO. 1:** If any of your responses to the requests
26 for admission served herein, either herewith or in the future, is anything other than an
27 unqualified admission, state in detail each and every fact, opinion, contention and belief
28 upon which each such response is based.

1 **PIMA’S RESPONSE:**

2 **Objection:** Pima objects to this Interrogatory on the basis that a request to “state in
3 detail each and every fact, opinion, contention and belief” is overly broad and unduly
4 burdensome. *See e.g., Milke v. City of Phoenix*, No. CV-15-00462-PHX-ROS, 2016 WL
5 5346364, at *2 (D. Ariz. July 6, 2016) (“[C]ontention interrogatories may be used but they
6 should not require a party to provide the equivalent of a narrative account of its case,
7 including every evidentiary fact, details of testimony of supporting witnesses, and the
8 contents of supporting documents.”) (internal quotations omitted)); *Hanford Executive*
9 *Mgmt. Employee Ass’n v. City of Hanford*, 2013 WL 5671460 (E.D. Cal. Oct. 17, 2013)
10 (“Parties are not tasked with laying out every jot and tittle of their evidentiary case in
11 response to interrogatories”); *S.E.C. v. Berry*, 2011 WL 2441706 (N.D. Cal. June 15, 2011)
12 (“Contention interrogatories asking for ‘each and every fact,’ or application of law to fact,
13 that supports particular allegations in an opposing pleading may be held overly broad and
14 unduly burdensome”); *In re eBay Seller Antitrust Litigation*, 2008 WL 5212170 (N.D. Cal.
15 December 11, 2008) (finding interrogatories that ask for “all facts” to be overbroad and
16 unduly burdensome on their face); *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316,
17 321 (D. Kan. 1998) (finding “each and every fact” interrogatories are overly broad and
18 unduly burdensome and explaining that such interrogatories “too often require a laborious,
19 time consuming analysis, search and description of incidental, secondary, and perhaps
20 irrelevant and trivial details.”).

21 Further, because this Interrogatory incorporates by reference Request for Admission
22 Number 1, Pima objects to this Interrogatory on the same grounds it objected to RFA No.
23 1. Namely, Pima objects to this Interrogatory to the extent it seeks information outside of
24 Pima’s knowledge, possession, or control—*e.g.*, the water rates for unidentified “various
25 other Arizona cities that serve water customers outside the city limits.” Pima objects to this
26 Interrogatory on the grounds that it is vague and ambiguous. RFA No. 1 (which is
27 incorporated in this Interrogatory) asks Pima to admit or deny whether unidentified “various
28 other Arizona cities” charge differential rates to their customers ranging from

1 “approximately 10% to approximately 50%”—without more specificity, Pima cannot fairly
2 respond to this allegation. Further, the phrases “approximately 10%” and “approximately
3 50%” are vague in this context—it is not clear whether a 9.9% rate, a 9% rate, an 8% rate,
4 a 7% rate, or all four would qualify as “approximately 10%.” For purpose of this Response,
5 Pima assumes that the “various other Arizona cities” referenced in RFA No. 1 are limited
6 to the Arizona cities listed in CITY 1286-12194.

7 **Response:** Pima provided a qualified “admit” to Request for Admission Number 1.
8 As stated in the RFA, Pima admits that: (1) “various” Arizona cities serve water to
9 customers outside of city limits; (2) Chandler’s differential is approximately 33.4%
10 depending on service type; (3) Flagstaff’s differential ranges from approximately 6.9% to
11 approximately 9.7%, depending on service type; (4) Glendale’s differential is
12 approximately 26.087%, depending on service type; (5) Phoenix’s differential is 50%;¹ (6)
13 Scottsdale charges a “surcharge up to fifteen percent” of stock base fee and commodity
14 rates to outside city customers; (7) Tempe’s differential is approximately 26.1% depending
15 on service type; and (8) Yuma City’s differential ranges from approximately 26% to 28%,
16 depending on service type. Pima clarifies, however, that Tucson, Phoenix, and Tempe do
17 not charge differential rates to all outside city customers: Tucson does not charge a
18 differential rate to the Town of Marana, the Town of Oro Valley, the Tohono O’odham
19 Nation, Pascua Yaqui Tribe, and the Tucson Unified School District; Phoenix does not
20 charge a differential rate to the Town of Paradise Valley; and Tempe does not charge a
21 differential rate to the Town of Guadalupe.

22 Pima further states that, on information and belief, at least 36 water service
23 municipalities in Arizona do not charge a differential rate to outside customers, at all.
24 [PIMA000534; *see also* CITY005712 (explaining that of the 24 largest municipal water
25 providers in Arizona, only 11 (45%) charge a differential rate)] Pima further states that, on
26 information and belief, no municipal water utility has as many customers living outside the
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28 ¹ Although Phoenix charges a 50% differential, its water rates are very low relative to other
municipal providers. [See CITY005729.]

1 City as Tucson does. [See CITY 005729.] Indeed, for many provide water services, the
2 percent of outside city customers is *far* lower than the percent of Tucson Water users living
3 unincorporated areas. [See CITY 005731 (noting that the percent of outside customers in
4 Phoenix is .5%, in Scottsdale is 1.7%, in Chandler is 1.9%, and in Glendale is 1.2%, but
5 that the percent of outside customers in Tucson is 34%).]

6 Pima also states that it is currently investigating the basis for the differential rates
7 imposed by Flagstaff, Glendale, Scottsdale, Tempe, Yuma City, and other municipal water
8 providers. For instance, Pima suspects that unlike Tucson, the differential rates imposed by
9 many municipal water providers were based on legitimate cost of service studies. [See CITY
10 005729-30.] Pima also suspects that municipal Central Arizona Project (“CAP”) water
11 allocations in other Counties are not tilted towards a single utility and that therefore Central
12 Arizona Water Conservation District (“CAWCD”) property taxes in those Counties are
13 more evenly shared between in-city and out-of-city customers (unlike in Tucson, where
14 unincorporated customers are responsible for the majority of CAWCD taxes, *see*
15 CITY005720). Pima therefore reserves the right to supplement this response with additional
16 information as it becomes available.

17
18 **NON-UNIFORM INTERROGATORY NO. 2:** List all of Pima County’s accounts with
19 Tucson Water (by account number) that are subject to a differential rate.

20 **PIMA’S RESPONSE:**

21 **Objection:** No objection

22 **Response:** The answer to this interrogatory can be determined by evaluating the list
23 of Pima County’s accounts with Tucson Water, which is being concurrently produced at
24 PIMA000530-533. *See* Ariz. R. Civ. P. 33(d).

25
26 **NON-UNIFORM INTERROGATORY NO. 3:** List all water companies other than
27 Tucson Water that supplied water to Pima County at any time during the period of
28 December 1, 2021 to the date of your answer.

1 **PIMA’S RESPONSE:**

2 **Objection:** No objection

3 **Response:** The answer to this interrogatory can be determined by evaluating the list
4 of Pima County’s non-Tucson Water accounts, which are being concurrently produced at
5 PIMA000527-529. *See* Ariz. R. Civ. P. 33(d).

6
7 **NON-UNIFORM INTERROGATORY NO. 4:** State the rates charged by each water
8 company other than Tucson Water that supplied water to Pima County at any time during
9 the period of December 1, 2021 to the date of your answer.

10 **PIMA’S RESPONSE:**

11 **Objection:** No objection

12 **Response:** The answer to this interrogatory can be determined by evaluating the list
13 of Pima County’s non-Tucson Water accounts, which are being concurrently produced at
14 PIMA000527-529. *See* Ariz. R. Civ. P. 33(d).

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DATED this 18th day of October, 2022.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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Attorneys for Plaintiff Pima County

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USPS and e-mailed this
18th day of October to:

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Attorneys for Defendants

/s/ Tracy Hobbs

ATTACHMENT 3

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12 *Attorneys for Plaintiff Pima County*

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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 PIMA COUNTY, a body politic in the State
17 of Arizona,

18 Plaintiff,

19 v.

20 CITY OF TUCSON, a municipal
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21 REGINA ROMERO, in her official
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City Councilmember, NIKKI LEE, in her
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26 his official capacity as Tucson City
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27 his official capacity as Tucson City
Councilmember, and MICHAEL
28 ORTEGA, in his official capacity as

No. CV2022-001141

**PLAINTIFF PIMA COUNTY'S
FIRST SET OF NON-UNIFORM
INTERROGATORIES TO
DEFENDANTS**

Assigned to Hon. Randall Warner

1 Tucson City Manager,
2 Defendants.

3
4 **TO: DEFENDANTS CITY OF TUCSON, REGINA ROMERO, LANE SANTA**
5 **CRUZ, PAUL CUNNINGHAM, KEVIN DAHL, NIKKI LEE, RICHARD FIMBRES,**
6 **STEVE KOZACHIK, AND MICHAEL ORTEGA:**

7 Pursuant to Rule 33 of the Arizona Rules of Civil Procedure, Plaintiff Pima County,
8 by and through undersigned counsel, hereby issues its First Set of Non-Uniform
9 Interrogatories. Pima request that you respond to this First Set of Non-Uniform
10 Interrogatories **within thirty (30) days**. With regard to these Interrogatories, the following
11 General Instructions and Definitions apply.

12 **GENERAL INSTRUCTIONS**

13 1. In responding to these interrogatories, you must divulge all information in
14 your possession, custody, or control, or in the possession, custody, or control of any
15 attorney, agent, employee, or other representative.

16 2. If you cannot answer an interrogatory in full, explain to the fullest extent
17 possible the specific facts concerning your inability to answer the interrogatory, and supply
18 whatever information or knowledge you have concerning the unanswered portion of the
19 interrogatory.

20 3. If your answer to any interrogatory is “unknown,” “not applicable,” or any
21 similar phrase or answer, state the following:

- 22 a) Why the answer to that interrogatory is “unknown”;
23 b) The efforts made to obtain answers to the particular interrogatory; and
24 c) The name and address of any person who may know the answer.

25 4. Where an interrogatory calls for an answer which involves more than one
26 part, each part of the answer should be clearly set out so that it is understandable.

27 5. If you contend that any interrogatory is privileged or otherwise objectionable,
28 in whole or in part, state the reason for the objection and identify each person, if any, with

1 knowledge of the factual basis for the objection.

2 6. After completing the answers to the questions, return the answers to the
3 undersigned attorney.

4 7. These interrogatories are intended to be continuing, which requires that you
5 supplement your answers as additional information becomes available.

6 **DEFINITIONS**

7 (a) “Defendants,” “You,” and “Your,” refers to Defendants City of Tucson,
8 Regina Romero, Lane Santa Cruz, Paul Cunningham, Kevin Dahl, Nikki Lee, Richard
9 Fimbres, Steve Kozachik, and Michael Ortega, and their agents, attorneys, employees,
10 managers, independent contractors, and/or persons or entities under its supervision and
11 control.

12 (b) “Plaintiff” and “Pima” refers to Plaintiff Pima County.

13 (c) “GRG/Raftelis” refers to Galardi Rothstein Group and Raftelis Financial
14 Consultants, Inc.

15 (d) “Ordinance No. 11881” refers to Tucson City Ordinance No. 11881, as
16 referenced in, *e.g.*, Paragraphs 1, 3, 59-72 of the Complaint.

17 (e) “Cost of Service Studies” refers to the Phase I and Phase II Cost of Service
18 Studies authored by GRG/Raftelis, as referenced in, *e.g.* Paragraphs 4-7, 53, 56, 116-142 of
19 the Complaint.

20 (f) “Differential Rate” refers to the water rates for Tucson Water customers
21 living in unincorporated areas found in Ordinance No. 11881, as referenced in Paragraphs
22 62-67.

23 (g) “Document” shall mean any writings, recordings, computer files, electronic
24 data or communications (including emails), or photographs, and includes, without
25 limitation, the original or a copy of handwriting, typewriting, printing, photographing and
26 every other means of recording upon any tangible thing or form of communication or
27 representation, including letters, words, pictures, sounds or symbols, or a combination
28 thereof and all drafts and file copies thereof. “Documents” include, but are not limited to,

1 papers, agreements, contracts, notes, emails, text messages, applications, memoranda,
2 correspondence, studies, letters, telegrams, invoices, personal diaries, reports, records,
3 books, proposals, forms, logs, drawings, graphs, charts, photographs, sound or videotapes
4 or recordings, computer printouts, any information stored on electronic media such as a
5 computer hard drive, a computer disk or diskette, electronic mail software, word processing
6 software, accounting software, algorithm software, spreadsheet software or any other media
7 that allows the information to be transmitted electronically, investigation reports,
8 appointment books, desk calendars, pocket calendars, “daytimers,” opinions or reports of
9 consultants, brochures, pamphlets, advertisements, circulars, press releases, minutes,
10 telephone logs, telephone message slips, and all other tangible things which constitute or
11 contain a writing. If a document has been prepared in more than one copy and such copies
12 are no longer identical by reason of subsequent additions or deletions, each non-identical
13 copy is a separate document.

14 (h) Any pronoun shall mean the masculine, feminine, or neutral gender.

15 (i) The singular shall include the plural and vice versa.

16 (j) “Any,” “each,” and “all” shall be read to be all-inclusive and to require the
17 enumeration of each and every item responsive to all or any part of each request for
18 production in which such term appears.

19 (k) “And” and “or” and any other conjunctions or disjunctions used herein shall
20 be read both conjunctively and disjunctively so as to require the enumeration of all
21 information responsive to all or any part of each request for production in which any
22 conjunction or disjunction appears.

23 (l) The term “person” covers not only natural persons but also firms,
24 corporations, associations, partnerships, trusts, organizations, or other entities.

25 (m) The term “agent” shall mean any agent, employee, officer, director, attorney,
26 independent contractor or any other person acting at the direction of or on behalf of another.

27 (n) “Relates to” or “relating to” shall mean mentioning, discussing, including,
28 summarizing, describing, reflecting, supporting, containing, referring to, relating to,

1 depicting, connected with, embodying, evidencing, constituting, concerning, reporting or
2 pertaining to, in whole or in part.

3 (o) “Identify” or “explain” as used with respect to a document shall be read to
4 require a statement of the document’s title, nature of subject matter, date, author or authors,
5 recipient or recipients, and intended recipients, file number or other identifying mark or
6 code, location and identification of custodian. If used with respect to a portion of a
7 document, it shall be read to require a statement of the page number, paragraph number and
8 subparagraph number, if applicable, and a quotation of the applicable language where the
9 referenced subject matter can be found.

10 (p) The terms “identify in detail” or “describe in detail” means to give a full and
11 complete narrative account of the information requested without omission to any relevant
12 facts, whether deemed material by you or not, and without omission of information which
13 could lead to all relevant facts, all within the spirit of the discovery rules.

14 **NON-UNIFORM INTERROGATORIES**

15 **NON-UNIFORM INTERROGATORY NO. 1:** Describe in detail how, if at all, peaking
16 data was used in calculating the Differential Rate.

17
18 **NON-UNIFORM INTERROGATORY NO. 2:** Describe in detail how peaking data was
19 allocated to “outside” customers versus “inside” customers in the COSS.

20
21 **NON-UNIFORM INTERROGATORY NO. 3:** Describe in detail how, if at all, taxes paid
22 by County residents to the Central Arizona Water District were used in calculating the
23 Differential Rate.

24
25 **NON-UNIFORM INTERROGATORY NO. 4:** Describe in detail how, if at all, City sales
26 taxes were used in calculating the Differential Rate.
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28

1 **NON-UNIFORM INTERROGATORY NO. 5:** Describe in detail how, if at all,
2 groundwater protection fee monies were used in calculating the Differential Rate.

3
4 **NON-UNIFORM INTERROGATORY NO. 6:** Describe in detail how, if at all, the value
5 of reclaimed water provided to Tucson from Pima County was used in calculating the
6 Differential Rate.

7
8 **NON-UNIFORM INTERROGATORY NO. 7:** Described in detail how, if at all, the costs
9 for Tucson Water capital improvement projects were used in calculating the Differential
10 Rate.

11
12 **NON-UNIFORM INTERROGATORY NO. 8:** Described in detail how water usage data
13 was allocated to “outside” customers versus “inside” customers in the COSS.

14
15 **NON-UNIFORM INTERROGATORY NO. 9:** Explain the basis for Defendants’
16 contention that Tucson Water customers living in incorporated areas face greater financial
17 risks related to Tucson Water than customers living in unincorporated areas. In so doing,
18 please identify any analyses performed by Tucson Water or GRG/Raftelis, or any other
19 Tucson employee or agent, that quantifies investments risks between “inside” and “outside”
20 customers.

21
22 **NON-UNIFORM INTERROGATORY NO. 10:** Describe in detail how revenues from
23 the Differential Rate are allocated.

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DATED this 5th day of October, 2022.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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12 *Attorneys for Plaintiff Pima County*

13
14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 PIMA COUNTY, a body politic in the State
17 of Arizona,

18 Plaintiff,

19 v.

20 CITY OF TUCSON, a municipal
corporation of the State of Arizona,
21 REGINA ROMERO, in her official
capacity as the Mayor of Tucson, LANE
22 SANTA CRUZ, in her official capacity as
Tucson City Councilmember, PAUL
23 CUNNINGHAM, in his official capacity as
Tucson City Councilmember, KEVIN
24 DAHL, in his official capacity as Tucson
City Councilmember, NIKKI LEE, in her
25 official capacity as Tucson City
Councilmember, RICHARD FIMBRES, in
26 his official capacity as Tucson City
Councilmember, STEVE KOZACHIK, in
27 his official capacity as Tucson City
Councilmember, and MICHAEL
28 ORTEGA, in his official capacity as

No. CV2022-001141

**PLAINTIFF PIMA COUNTY'S
FIRST SET OF REQUESTS FOR
ADMISSION TO DEFENDANTS**

Assigned to Hon. Randall Warner

1 Tucson City Manager,
2 Defendants.
3

4 **TO: DEFENDANTS CITY OF TUCSON, REGINA ROMERO, LANE SANTA**
5 **CRUZ, PAUL CUNNINGHAM, KEVIN DAHL, NIKKI LEE, RICHARD FIMBRES,**
6 **STEVE KOZACHIK, AND MICHAEL ORTEGA:**

7 Pursuant to Rule 36 of the Arizona Rules of Civil Procedure, Plaintiff Pima County,
8 by and through undersigned counsel, hereby issues its First Set of Requests for Admission.
9 Pima request that you respond to this First Set of Requests for Admission **within thirty**
10 **(30) days.** The matter is admitted unless, by February 18, 2022 you serve your written
11 answers or objections. If you object, state your reasons for the objection. Your answers
12 must specifically deny the matter or set forth in detail the reasons why you cannot
13 truthfully admit or deny the matter. A denial must fairly meet the substance of the
14 requested admission. In good faith, you can qualify an answer or deny part of it, but you
15 must admit any truth and qualify or deny the remainder. In doing so, you must detail your
16 reasons.

17 You may not assert a lack of information or knowledge as a means of avoiding an
18 admission or denial, unless you include a statement that you reasonably inquired and that
19 the information known or readily obtainable by you is insufficient to enable you to admit
20 or deny the matter in question. If you fail to admit the truth of any matter requested and
21 that matter is later proven, you may have to pay reasonable expenses and attorneys' fees
22 incurred in proving the truth of that matter. If you consider a Request for Admission to
23 present a genuine issue for trial, you may not, on that ground alone, object to the request.
24 You may, subject to the provisions of Ariz. R. Civ. P. 37(e), deny the matter or set forth
25 reasons why you cannot admit or deny such matter.

26 With regard to these Requests for Admission, the following Definitions apply.
27
28

DEFINITIONS

1
2 (a) “Defendants,” “You,” and “Your,” refers to Defendants City of Tucson,
3 Regina Romero, Lane Santa Cruz, Paul Cunningham, Kevin Dahl, Nikki Lee, Richard
4 Fimbres, Steve Kozachik, and Michael Ortega, and their agents, attorneys, employees,
5 managers, independent contractors, and/or persons or entities under its supervision and
6 control.

7 (b) “Plaintiff” and “Pima” refers to Plaintiff Pima County.

8 (c) “GRG/Raftelis” refers to Galardi Rothstein Group and Raftelis Financial
9 Consultants, Inc.

10 (d) “Ordinance No. 11881” refers to Tucson City Ordinance No. 11881, as referenced
11 in, *e.g.*, Paragraphs 1, 3, 59-72 of the Complaint.

12 (e) “Cost of Service Studies” refers to the Phase I and Phase II Cost of Service
13 Studies authored by GRG/Raftelis, as referenced in, *e.g.* Paragraphs 4-7, 53, 56, 116-142 of the
14 Complaint.

15 (f) “Differential Rate” refers to the water rates for Tucson Water customers living in
16 unincorporated areas found in Ordinance No. 11881, as referenced in Paragraphs 62-67.

17 (g) “Document” shall mean any writings, recordings, computer files, electronic
18 data or communications (including emails), or photographs, and includes, without
19 limitation, the original or a copy of handwriting, typewriting, printing, photographing and
20 every other means of recording upon any tangible thing or form of communication or
21 representation, including letters, words, pictures, sounds or symbols, or a combination
22 thereof and all drafts and file copies thereof. “Documents” include, but are not limited to,
23 papers, agreements, contracts, notes, emails, text messages, applications, memoranda,
24 correspondence, studies, letters, telegrams, invoices, personal diaries, reports, records,
25 books, proposals, forms, logs, drawings, graphs, charts, photographs, sound or videotapes
26 or recordings, computer printouts, any information stored on electronic media such as a
27 computer hard drive, a computer disk or diskette, electronic mail software, word processing
28 software, accounting software, algorithm software, spreadsheet software or any other media

1 that allows the information to be transmitted electronically, investigation reports,
2 appointment books, desk calendars, pocket calendars, “daytimers,” opinions or reports of
3 consultants, brochures, pamphlets, advertisements, circulars, press releases, minutes,
4 telephone logs, telephone message slips, and all other tangible things which constitute or
5 contain a writing. If a document has been prepared in more than one copy and such copies
6 are no longer identical by reason of subsequent additions or deletions, each non-identical
7 copy is a separate document.

8 (h) Any pronoun shall mean the masculine, feminine, or neutral gender.

9 (i) The singular shall include the plural and vice versa.

10 (j) “Any,” “each,” and “all” shall be read to be all-inclusive and to require the
11 enumeration of each and every item responsive to all or any part of each request for
12 production in which such term appears.

13 (k) “And” and “or” and any other conjunctions or disjunctions used herein shall
14 be read both conjunctively and disjunctively so as to require the enumeration of all
15 information responsive to all or any part of each request for production in which any
16 conjunction or disjunction appears.

17 (l) The term “person” covers not only natural persons but also firms,
18 corporations, associations, partnerships, trusts, organizations, or other entities.

19 (m) The term “agent” shall mean any agent, employee, officer, director, attorney,
20 independent contractor or any other person acting at the direction of or on behalf of another.

21 (n) “Relates to” or “relating to” shall mean mentioning, discussing, including,
22 summarizing, describing, reflecting, supporting, containing, referring to, relating to,
23 depicting, connected with, embodying, evidencing, constituting, concerning, reporting or
24 pertaining to, in whole or in part.

25 **REQUESTS FOR ADMISSION**

26 1. Admit that the costs of treating and conveying water containing
27 contaminants—such as per- and poly-fluoroalkyl substances (aka “PFAs”) and 1,4-
28 Dixoane—were not used in calculating the Differential Rate.

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Admit _____ Deny _____

2. Admit that the Cost of Service Studies did not evaluate average customer elevation data.

Admit _____ Deny _____

3. Admit that Tucson Water’s service area includes areas in unincorporated Pima County subject to the Differential Rate.

Admit _____ Deny _____

4. Admit that the costs for Tucson Water capital improvement projects were not used in calculating the Differential Rate.

Admit _____ Deny _____

5. If your response to RFA 4 was “DENY,” admit that the COSS did not consider the location of Tucson Water capital improvement projects in calculating the Differential Rate.

Admit _____ Deny _____

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DATED this 5th day of October, 2022.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 PIMA COUNTY, a body politic in the State
17 of Arizona,

18 Plaintiff,

19 v.

20 CITY OF TUCSON, a municipal
corporation of the State of Arizona,
21 REGINA ROMERO, in her official
capacity as the Mayor of Tucson, LANE
22 SANTA CRUZ, in her official capacity as
Tucson City Councilmember, PAUL
23 CUNNINGHAM, in his official capacity as
Tucson City Councilmember, KEVIN
24 DAHL, in his official capacity as Tucson
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25 official capacity as Tucson City
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26 his official capacity as Tucson City
Councilmember, STEVE KOZACHIK, in
27 his official capacity as Tucson City
Councilmember, and MICHAEL
28 ORTEGA, in his official capacity as

No. CV2022-001141

**PLAINTIFF PIMA COUNTY'S
RULE 26.1, ARIZ. R. CIV. P. THIRD
SUPPLEMENTAL DISCLOSURE
STATEMENT**

Assigned to Hon. Randall Warner

1 Tucson City Manager,
2 Defendants.

3
4 Plaintiff Pima County provides its Third Supplemental Disclosure Statement in
5 accordance with Ariz. R. Civ. P. 26.1. **Updated information in this supplemental**
6 **disclosure is indicated in bold, italic type. Deleted information is indicated in bold type**
7 **with a strikethrough.** This disclosure is based on information currently in Pima County’s
8 possession and reasonably available to it. Pima County will supplement this disclosure in
9 accordance with Ariz. R. Civ. P. 26(f)(2) as additional information becomes available.

10 **I. FACTUAL BASIS FOR CLAIMS**

11 **A. Overview of the Case**

12 This case concerns Tucson City Ordinance No. 11881, which increases water rate
13 charges for certain Tucson Water Department (“Tucson Water”) customers living in
14 unincorporated areas. Pima County’s Complaint alleges that these differential rates are not
15 tethered to the actual cost of service of water or to any other legitimate political goal. Rather,
16 Defendant City of Tucson enacted these rates in order to penalize Pima County citizens
17 living in unincorporated areas for refusing to support incorporation into the City or other
18 municipalities within Pima County.

19 Pima County asserts five causes of action: (1) the differential rates established in
20 Ordinance No. 11881 are not “just and reasonable” as required by A.R.S. § 9-511.01(A);
21 (2) the differential rates established in Ordinance No. 11881 unreasonably discriminate
22 against similarly situated customers, in violation of the common law governing municipal
23 entities; (3) the differential rates established in Ordinance No. 11881 discriminate against
24 similarly situated customers, in violation of the 14th Amendment of the United States
25 Constitution and Art. II, § 13 of the Arizona Constitution; (4) the differential rates
26 established in Ordinance No. 11881 discriminate on the basis of race, in violation of the 14
27 Amendment of the United States Constitution and Art. II, § 13 of the Arizona Constitution;
28 and (5) Ordinance No. 11881 is a special law, in violation of Art. IV, Pt. 2, § 19 of the

1 Arizona Constitution.

2 **B. Relevant Background and Ordinance 11881**

3 **1. Historically, Tucson Has Provided Regional and Equitable Water**
4 **Services.**

5 While many municipal water utilities charge differential rates to unincorporated
6 customers, Tucson Water is unique. From the 1970's onward, Tucson Water has served as
7 a regional—rather than municipal—water supplier. The City has always treated its
8 customers equally, whether located in incorporated or unincorporated areas.

9 Historically, the City and County water systems were funded through ad valorem
10 and sales taxes in the City, and ad valorem taxes in the County. [PIMA000010.] The federal
11 Environmental Protection Agency (“EPA”) determined that this set up potentially violated
12 the Clean Water Act and other regulatory provisions because it was inequitable: “two large
13 non-users of the sewer system (vacant land and the mines) account for over 40 percent of
14 the assessed violation.” [*Id.*] In other words, paying for the water system using ad valorem
15 and sales taxes resulted in certain customers bearing disproportionate costs in relation to
16 their water use. [*Id.*]

17 In 1974 the then-serving Mayor of Tucson, Tucson City Council, and the Pima
18 County Board of Supervisors released a joint policy statement expressing their desire that
19 there be a “total basin-wide control over water quality; water allocation; regional and local
20 water systems; regional and local wastewater facilities and solid waste disposal systems...”
21 [PIMA000008.] There were three principles behind this policy statement: “[1] We endorse
22 the concept of regional management of our water, wastewater and solid waste resource; [2]
23 We agree in principal to equal representation of the Mayor and Council and the Board of
24 Supervisors on a regional policy board; [3] We support the establishment of an equitable
25 system of funding those services on behalf of the residents of Tucson, South Tucson and
26 Pima County.” [PIMA000008-9 (emphasis added).]

27 On July 8, 1974 the then-Mayor of Tucson, Tucson City Council, and the Pima
28 County Board of Supervisors established the Metropolitan Utilities Management Agency

1 (“M.U.M.”) via an intergovernmental agreement. [PIMA000009.] M.U.M. was established,
2 in part, “to establish a regional water resource management and planning agency to
3 effectively manage and plan water use and wastewater reuse programs designed to ensure
4 water quality and availability in the Tucson basin.” [PIMA000010 (quoting former City
5 Manager Joel Valdez).] The Tucson resolution approving the intergovernmental agreement
6 establishing the M.U.M. explains that Tucson has an obligation to provide water to residents
7 in Pima County, because a “substantial number” of these residents “are provided water by
8 the City.” [PIMA000009.]

9 The M.U.M. was dissolved on June 7, 1976. [PIMA000009-10.] Even after the
10 M.U.M. was dissolved, however, City and County officials re-affirmed their commitment
11 to regional and equitable water distribution. [PIMA000010.] Then-County Manager
12 Scharman informed the Board of Supervisors that because of the EPA’s ruling, “the fee
13 structure must be equitable to users within the identifiable region that is being served.”
14 [PIMA000011.] County Manager Scharman also explained that the region would continue
15 to receive federal funding for wastewater treatment facilities as long as the City and County
16 did not “deviate from the joint setting of an equitable fee system on a regional basis.” [*Id.*]

17 After the M.U.M. was dissolved, it was generally accepted that Pima County would
18 be the regional wastewater provider and that Tucson would be the regional water provider.
19 [*Id.*]

20 In November 1977, Tucson sued Pima in the case captioned *City of Tucson v. Pima*
21 *County et al.*, Case No. 170727 in Pima County Superior Court, over a dispute related to
22 wastewater effluent. [PIMA000167-173; *see also* PIMA000011-12.] In the Complaint,
23 Tucson alleged that it “owns and operates a municipal water utility which serves all of the
24 metropolitan Tucson area *without respect to corporate boundaries* with the exception of the
25 areas served by franchised private water companies.” [PIMA000168 (emphasis added).] In
26 the Complaint, Tucson also raised concerns that if Pima prevailed, it might result in
27 differential rates: “Implementation of the County position would result in the County
28 charging the sewer users for the cost of treatment and again charging the City and the water

1 utility water rate payers of the City for the same costs of such treatment.” [PIMA000171.]

2 In 1979, Tucson and Pima County finalized a “Sewer Merger Intergovernmental
3 Agreement” (the “1979 IGA”), which formally resolved *City of Tucson v. Pima County et*
4 *al.*, No. 170727. [PIMA000174-206; PIMA000013-14.] According to Article 1 of the 1979
5 IGA, the agreement’s purpose was to create “guidelines for the orderly and timely transfer
6 of the City of Tucson’s sewerage system . . . to Pima County.” [PIMA000176.] The 1979
7 IGA therefore has Articles related to, among other things: “Treated and Reclaimed Water
8 (Effluent)” (Article III); “Assumption of Sewer System Financing and Liabilities” (Article
9 IV); constructing wastewater storage facilities (Article V); and transferring City sewer
10 department employees to the County (Article IX). [PIMA000178-186, 191-194.]

11 The 1979 IGA also re-asserted the County and City’s commitment to regional water
12 and wastewater services. In particular, Article III.A of the 1979 IGA states: “As a basis for
13 agreements on effluent, the City and County agree that effluent is a major water resource
14 that must be controlled by the City of Tucson in order to maintain management of total
15 water resources of the Santa Cruz and adjacent water basins. It is further agreed that the
16 City will endeavor to use effluent in such a manner as to preserve the underground water
17 supply and to minimize costs to water rate payers in the *City and County*.” [PIMA000178.]
18 Article IV of the 1979 IGA states “Pima County as the single management entity, is
19 committed to the concept of equal service for all users of the metropolitan system without
20 regard to jurisdictional location.” [PIMA000186.]

21 On February 7, 2000, Pima County and Tucson entered into a “Supplemental
22 Intergovernmental Agreement Relating to Effluent.” (the “2000 Supplemental IGA”).
23 [PIMA000207-308.] The purpose of the 2000 Supplemental IGA was merely to
24 “supplement the 1979 IGA.” [PIMA000211.] Some of these “supplements” include
25 provisions granting the county greater control over wastewater effluent generated in non-
26 metropolitan areas (Section 4); creating a pool of wastewater effluent for certain riparian
27 projects (Section 5); and providing provisions for coordinating wastewater treatment
28 between the City and County (Section 10)—among other things. [PIMA000214-215, 220-

1 221.] Nothing in the 2000 Supplemental IGA departs from Pima and Tucson’s well-
2 established commitment to equitable, regional, water and wastewater service. *To this day,*
3 *Tucson Water’s service zone includes areas in unincorporated Pima County.*

4 **2. Despite Substantial Pushback, the City Adopted Ordinance 11881**
5 **through a Haphazard and Rushed Process.**

6 Beginning in January 2021, Tucson took rapid steps to implement, for the first time,
7 an inequitable rate structure for Tucson Water customers located in unincorporated areas.
8 The process used by the City to implement these rates illustrates a basic truth of this case:
9 the differential rates are not supported by any cost of service study.

10 The Tucson Mayor and City Council discussed implementing a differential rate
11 structure for water customers located in unincorporated areas for the first time on or around
12 January 5, 2021. The City received immediate pushback on this idea. After discussing the
13 issue at a series of meetings (on February 2, 2021 and March 3, 2021), the City of Tucson
14 Citizen’s Water Advisory Committee (“CWAC”) opposed the proposed differential rates in
15 a letter sent to Tucson’s Mayor and Councilmembers on March 30, 2021. [PIMA000309-
16 311.] Similarly, on March 16, 2021 Pima County Administrator Chuck Huckelberry sent a
17 letter to the Pima County Board of Supervisors detailing at length the issues with Tucson’s
18 justification for differential rates.

19 Notwithstanding these concerns, on April 6, 2021 the Mayor and City Council
20 adopted a notice of intent to implement a differential rate, and set June 8, 2021 as the date
21 for public hearing. Critically, at this point, no cost-of-service study had been performed to
22 determine whether it is actually more expensive to deliver water to Tucson Water customers
23 in unincorporated areas. This is made clear, for example, in a May 10, 2021 letter from
24 Timothy Thomure, Interim Tucson Assistant City Manager, which provided the County
25 updated “justifications” for differential rates in incorporated versus unincorporated areas.
26 [PIMA000320-331.] None of these “justifications” involved cost of service.

27 On April 8, 2021, the Pima County Board of Supervisors adopted Resolution No.
28 2021-09, in which the County formally “oppos[ed] differential water rate fees for Tucson

1 Water customers residing in unincorporated Pima County.”

2 On June 15, City Principal Attorney Chris Avery sent a letter to Interim Tucson
3 Water Director John Kmiec, indicating that the City process for adopting a differential rate
4 was at risk because the differential rate was not supported by a cost study. Notwithstanding
5 this, on June 22, 2021 the City adopted Ordinance No. 11846, which set forth differential
6 water rates for customers in unincorporated areas, without a cost of service study.
7 [PIMA000460-64.] Of note, Ordinance No. 11846 also did not exempt Native American
8 Tribes living in unincorporated areas or TUSD campuses.

9 However, despite passing Ordinance No. 11846, in response to City Attorney’s
10 Avery advice the City also contracted with a consultant to provide a cost of service study
11 and readopted a notice of intent to implement a differential rate structure, with a public
12 hearing set for October 19, 2021. *The City’s goal in commissioning the cost of service*
13 *study was to “substantiate” the City’s previously-made decision to impose differential*
14 *rates. [CITY005520-5521 (brainstorming possible expenses that might be higher for*
15 *unincorporated users).]* Accordingly, on July 26, Galardi Rothstein Group and Raftelis
16 Financial Consultants, Inc. (“GRG/Raftelis”) sent a Phase 1 Cost of Service study to Interim
17 Tucson Water Director John Kmiec. [PIMA000334-344.]

18 As detailed in more depth *infra*, the Phase 1 Cost of Service study suffered from a
19 variety of flaws. These were noted by Assistant County Administrator for Public Works,
20 Dr. Yves Khawam, in a detailed memorandum sent to CWAC on July 30, 2021.
21 [PIMA000345-348.] In general, Dr. Khawam’s analysis explained that the Phase 1 study
22 had improperly applied a “private utility profit model to a municipal utility” and ignored
23 many key factors contributing to cost of service. [*Id.*] On August 30, 2021, GRG/Raftelis
24 responded to Dr. Khawam’s letter. Dr. Khawam replied on September 8, 2021.
25 [PIMA000349-351.]

26 On September 15, 2021, the City and GRG/Raftelis released a Phase 2 Cost of
27 Service Study. [PIMA000352-365.] The second phase of the cost of service study did not
28 address Pima County’s concerns. *Ultimately, the Phase 2 Cost of Service Study concluded*

1 *that there is a “cost-based differential of approximately 5%” between incorporated and*
2 *unincorporated areas, “driven by the higher peak demands of the Outside City Customers*
3 *as well as the greater relative cost of constructing, operating, and maintain the*
4 *distribution system that serves the Outside City Customers.” [PIMA000360.]*

5 On September 22, 2021, County Administrator Huckelberry sent a communication
6 to the Pima Board of Supervisors identifying deficiencies with the Phase 1 and Phase 2 cost
7 of service studies. [PIMA000366-368.] County Administrator Huckelberry stated that the
8 cost of service study “failed to demonstrate an increased cost to providing service in the
9 unincorporated County since they have only selected factors in the analysis that support
10 their case and ignored others that do not.” [PIMA000366.]

11 Thomas J. Bourassa, CPA, has also conducted an analysis of the Phase 1 and Phase
12 2 cost of service studies. [PIMA000369-72.] The Bourassa study independently confirmed
13 the County’s prior analysis.

14 **3. Ordinance 11881**

15 In reliance of the Phase 1 and Phase 2 Cost of Service Studies, on October 19, 2021,
16 the City repealed Ordinance No. 11846 and adopted Ordinance No. 11881, which similarly
17 established differential rates for unincorporated areas. [PIMA000001-6.]

18 Section 1 of Ordinance No. 11881 amends Tucson Code, Chapter 27, Article 2, §§
19 27-32 and 27-33. In particular, Ordinance No. 11881 amends Section 27-32 to state in part:
20 “Charges for water utility service for customers within unincorporated Pima County, but
21 not within lands placed into trust for a Native American tribal nation, will be set in
22 proportion to costs, plus a reasonable differential.” [PIMA000001-2.] Amended Section
23 27-32 further states that “In addition to cost of service considerations, the differential
24 charged to customers within unincorporated Pima County may be established and structured
25 to advance critical policy considerations, including but not limited to supporting annexation
26 and incorporation; and promoting environmental sustainability and water conservation,
27 particularly in areas outside the city limits where the City has limited powers to promote
28 those interests.” [PIMA000001-2.]

1 The actual differential rates are found in amended Section 27-33. [PIMA000002-3.]
2 Specifically, Ordinance No. 11881 amended Section 27-33(1) to establish a “Monthly
3 Service Charge for Unincorporated Pima County,” based on the service size in inches.
4 [PIMA000002.] These charges “shall be charged whether or not any water is provided.”
5 [Id.] Section 27-33(2) was amended to establish “Rate Schedules by Customer Classes for
6 Unincorporated Pima County.” [PIMA000002-4.] These charges are “in addition to the
7 service charge,” “shall be applicable to each service connection,” and “shall be per [centum
8 cubic feet (“Ccf”)] and vary with customer classification and volumes. . .” [PIMA000002.]
9 Section 27-33(3) was amended to state the “Central Arizona Project surcharge shall be in
10 addition to the service charge and water use charges for all customers classes and apply to
11 all monthly water use at the rate of seventy-seven cents (\$0.77) per Ccf..” [PIMA000004.]
12 Section 27-33(4) was amended to state that the “conservation charge shall be in addition to
13 the service charge and water use charges for all potable water customer classes and apply
14 to all monthly water use at the rate of eleven cents (\$0.11) per Ccf..” [PIMA000005.]
15 ***Although the COSS found, at maximum, a 5% differential in cost between the two areas,***
16 ***the differential rate actually imposed by Ordinance No. 11881 is 10% on base rates (to***
17 ***both the monthly service charge and usage charges) plus an additional fee based on***
18 ***“escalating tiers” (10% for tier 1, 20% for tier 2, 30% for tier 3, and 40% for tier 4). [See***
19 ***PIMA000564.] The City also recently proposed further increasing the differential rates***
20 ***by around 4% through 7%—these increases would be on top of the differential rates***
21 ***already imposed by Ordinance No. 11881. [PIMA000559.]***

22 In addition to these code-changes, Section 3 of Ordinance No. 11881 contains a
23 supposed “find[ing]” that “implementing the differential rate structure as provided in this
24 Ordinance results in reasonable differential rates and advances critical policy
25 considerations. . .” [Id.] The “critical policy considerations” listed in Ordinance No. 11881
26 are: (1) “the rate structure supports and rewards annexation and incorporation, providing
27 economic benefit and increased state shared revenues for the City and the region;” (2) the
28 rate structure recognizes that the City, as owner of Tucson Water, bears financial risks and

1 liabilities that are not shared by the unincorporated county, including the City’s financial
2 backstopping of the utility;” and (3) “the rate structure promotes environmental
3 sustainability and water conservation, particularly in areas outside the city limits where the
4 City has limited powers to promote those interests.” [*Id.*] In addition, “[t]he Mayor and
5 Council further find that: [1] the rate structure is common among other Arizona municipal
6 water providers for similar policy reasons; and [2] the rate structure is supported by the Cost
7 of Service Phase 1 and Cost of Service Phase 2 studies authored in recent months by Galardi
8 Rothstein Group and Raftelis.” [*Id.*]

9 On information and belief, the City has also entered into intergovernmental
10 agreements with Tucson Unified School District, exempting the District from paying the
11 differential rates in schools located in unincorporated areas.

12 The differential rates for unincorporated customers went into effect on December 1,
13 2021. [*Id.*] ***In the first year the differential rate was imposed, it generated \$4,776,938.81***
14 ***in revenue. [PIMA000595.] The revenues were split 33% each between three categories:***
15 ***(1) “infrastructure upgrades and replacements to ensure water delivery for areas outside***
16 ***the city limits” (2) “climate resiliency and water sustainability for recharge, retention,***
17 ***and reclamation projects and enhancing the tree canopy throughout the entire Tucson***
18 ***Water system”; and ” (3) “financial resiliency in the form of expansion of low-income***
19 ***program and a one-time pay down of eligible delinquent accounts that have been***
20 ***negatively impacted by COVID.” [CITY000663.]***

21 C. **Tucson’s Policy and Cost-Based Explanations Do Not Justify Imposing**
22 **Discriminatory Differential Rates on Unincorporated Customers.**

23 The City has espoused five *official* justifications for implementing differential rates
24 for customers in unincorporated areas: (1) it will increase annexation, which in turn will
25 provide economic benefits through state shared revenues for the City and the region; (2)
26 Tucson bears financial risks and liabilities not shared by the unincorporated county; (3)
27 environmental sustainability and water conservation; (4) differential rates are supported by
28 the Phase 1 and Phase 2 Cost of Service studies authored by Galardi Rothstein Group and

1 Raftelis Financial Consulting, Inc.; and (5) other Arizona municipal water providers have
2 differential rates for customers outside of city limits.¹ [See *id.*] None of these five
3 justifications, however, are actually supported by the facts or evidence.

4 **1. Incentivizing Annexation or Incorporation Does Not Justify**
5 **Differential Rates.**

6 To start, because Tucson Water is a *regional* water provider, it is inappropriate for
7 Tucson to attempt to advance its *own* interests—like “reward[ing]” annexation or
8 incorporation—in setting rates for Tucson Water. Annexation requires the consent of “one-
9 half or more in value of the real and personal property and more than one-half of the persons
10 owning real and personal property that would be subject to taxation by the city or town in
11 the event of annexation.” A.R.S. § 9-471(A)(4). Although the City has openly attempted to
12 annex as much of unincorporated Pima County as possible, many residents of
13 unincorporated Pima County have resisted annexation by the City. Because the City has
14 failed to achieve annexation through democratic means, it has apparently now resorted to
15 differential water rates to achieve these political goals. Using water to achieve political
16 directives is not “just or reasonable.” See A.R.S. § 9-511.01(D).

17 Perhaps realizing this, the City has claimed that economic benefits will redound to
18 the region if annexation increases. Not so. Although annexation might increase the region’s
19 state-shared revenues, “these statewide tax revenues are shared, meaning an increase
20 through annexation results in decreases for all other existing cities and towns.”
21 [PIMA000382; see also PIMA000391.] Moreover, the region “would see losses in state-
22 shared revenue in categories that rely on unincorporated population as a distribution factor,
23 such as Vehicle License Tax.” [PIMA000382.] In addition “cities with populations similar
24 to unincorporated Pima County have annual budgets that far exceed” the revenue increase
25

26 ¹ *City Councilmember Paul Cunningham has also stated that differential rates are*
27 *justified because unincorporated areas have a higher average family income than*
28 *incorporated areas. [See PIMA000604-605 (quoting Cunningham as stating “Vail has a*
median income of \$85,000 per household, Cat Foot (Catalina Foothills) \$93,000, Tanque
Verde Valley \$101,000 and Tucson \$43,000. This now becomes a social equity issue. This
isn't just a county or state tax equity issue”).]

1 that could be accomplished by annexation. [*Id.* see also PIMA000391-393.] Thus, “new
2 communities or annexed areas would need to rely on increased taxes” to pay for necessary
3 services like law enforcement. [PIMA000382; PIMA000391-393.]

4 The City has also suggested that Pima County has an unusually high unincorporated
5 population, which in turn has resulted in a significant tax burden that could be reduced if
6 annexation increases. [PIMA000389.] Wrong again. Pima County “ranks sixth among all
7 [Arizona Counties] for total taxes per capita, third for property taxes and fourth for sales
8 taxes...” [PIMA000394-395.] Regardless, the population of individuals living in
9 unincorporated Pima County has increased each decade from 1970 to 2020, without any
10 decrease due to annexation or incorporation. [PIMA000390.] In fact, Marana and Oro
11 Valley incorporated in the 1970’s, the decade that experienced the highest growth of
12 unincorporated population. [*Id.*]

13 2. The City Does Not Bear Disproportionate Financial Risk.

14 Again, because Tucson Water is a regional water provider, it is inappropriate for
15 Tucson to attempt to advance its own interests—like reducing financial risk—in setting
16 rates for Tucson Water. Even setting this aside however, the City does not bear “financial
17 risks” not shared by unincorporated customers. For one, because Tucson Water is a regional
18 water provider, it is a “monopoly service provider with captive customers.” [PIMA000371.]
19 Thus, customers do not have the “option of leaving the system” and therefore all *equally*
20 “bear the same responsibilities for cost.” [*Id.*; see also PIMA000349 (explaining that if
21 Tucson Water were to default, the City would secure mitigating debt against future revenues
22 generated by ratepayers, which include ratepayers in unincorporated areas).]

23 In fact, Tucson Water’s unincorporated customers actually *subsidize* in-city
24 customers. [*E.g.* PIMA000376-380; PIMA000014-16; PIMA000313.] Tucson receives
25 around 78.45% of all water delivered to Pima County from the “Central Arizona Project”
26 (“CAP”). [PIMA000014.] CAP water is delivered by the Central Arizona Water
27 Conservation District (“CAWCD”), which is supported by ad valorem and water storage
28 taxes levied in counties that receive CAP water. [*E.g., id.*] In 2021, taxpayers from

1 unincorporated areas contributed 41.089% of these property taxes assessed in Pima County.
2 [PIMA000015; PIMA000396.] In contrast, taxpayers in the City of Tucson only contributed
3 40.868%. [PIMA000396.] Thus, although City residents are the largest beneficiary of CAP
4 water in Pima County: (1) CAP costs are borne by all Pima County property owners and
5 (2) City residents pay *less* for CAP allocations than unincorporated property owners.
6 [PIMA000376-379.]

7 Further, as the region’s wastewater servicer, Pima County produces recycled water
8 suitable for either indirect or direct potable reuse treatment and provides it to Tucson free
9 of charge. [PIMA000380.] It costs Pima approximately \$3,265 to treat and produce an acre-
10 foot of Class A+ reclaimed water. [*Id.*] In 2019, Pima County produced 26,401 acre-foot of
11 effluent for Tucson at a cost of \$86.2 million. [*Id.*] In other words, Pima County subsidized
12 \$86.2 million of costs that Tucson otherwise would have incurred to treat recycled water
13 for potable reuse. [*Id.*]

14 Finally, even if it were true that the City bore disproportionate financial risk
15 associated with Tucson Water, this does not explain why Native American Tribes, Tucson
16 Unified School District campuses in unincorporated areas, the City of South Tucson, the
17 Town of Marana, and the Town of Oro Valley are all exempted from the differential rate
18 structure.

19 **3. Environmental Sustainability and Water Conservation Do Not**
20 **Justify Jurisdictional-Based Differential Rates.**

21 Contrary to the City’s position, differential rates imposed on only water users living
22 in unincorporated counties will not promote environmental sustainability or water
23 conservation. A sustainable water use policy would instead increase charges based on
24 *consumption*, rather than geographic location. [PIMA000314 (explaining that “[t]here are
25 environmentally-minded extremely low water users in the unincorporated areas just as there
26 are extreme water users in the City”).] In fact, Tucson Water already utilizes a tiered
27 consumption payment structure whereby if a customer is using more water, they pay higher
28 rates. [PIMA000501-503.] If the real policy goal behind Ordinance No. 11881 was to

1 discourage water overuse, the obvious way to achieve this goal would be to create more
2 tiers and higher rates for high consumption users.

3 The City has also suggested that differential rates will help sustainability because
4 “32% of County customers . . . are not connected to a sewer system” (i.e., use a septic
5 system) and that therefore “[t]he water delivered by the City is used only once.”
6 [PIMA000322.] However, “reclaimed water is not used as a potable source by the City.”
7 [PIMA000313.] Instead, Tucson uses reclaimed water for “landscape irrigation and
8 recharge.” [Id.] Septic systems are more efficient at irrigation and recharge than reclaimed
9 water because effluent from septic systems “infiltrates directly into the ground, either
10 reaching the aquifer (recharge) or is available for tree root irrigation and reduction of heat
11 island effect through evapotranspiration.” [Id.] Because septic systems require less energy
12 for on-site recharge and irrigation, septic systems are just as, if not more, environmentally
13 sustainable as centralized treatment systems. [See id.] Indeed, the EPA has explained that
14 septic systems have many benefits, including “remov[ing] pollution from surface water,
15 recharg[ing] groundwater, and replenish[ing] aquifers.” [Id.] Thus, by penalizing
16 unincorporated customers for utilizing septic tanks, the City’s differential rate perversely
17 *hurts* environmental sustainability.

18 The City also alleges that unincorporated customers use 43% more water than City
19 customers. [PIMA000323.] Assuming this is true, however, this just means that County
20 customers *generate substantially more revenue* than the average City customer.
21 [PIMA000314.] Thus, this fact actually rebuts any notion that the City bears
22 “disproportionate” financial risks.

23 Finally, even if differential rates for unincorporated areas did increase water
24 conservation and environmental sustainability (and they do not), this does not explain why
25 TUSD campuses and Native American tribal lands in unincorporated areas are exempted
26 from the differential rate structure. The City’s avowed goals to increase “environmental
27 sustainability” and promote “water conservation” also cannot justify why rate increases
28 have been applied solely to unincorporated areas, rather than Tucson Water customers in

1 incorporated towns like Oro Valley. This further shows that the City’s principal purpose in
2 imposing differential rates is to coerce unincorporated Pima County residents to incorporate
3 or consent to annexation by the City or other municipalities in Pima County.

4 **4. The Phase 1 and Phase 2 Cost of Service Studies are Severely**
5 **Flawed.**

6 Because the Phase 1 and Phase 2 Cost of Service Studies (collectively, “COSS”)
7 were commissioned in order to justify a predetermined result—that unincorporated water
8 users are somehow more expensive to service than water users within City limits—they
9 unsurprisingly suffer from several, fatal, defects:

10 ***First***, the COSS employed an “equity-based investment approach” which is designed
11 to “evaluate rates for private utilities predicated on a return paid to owners of the utility to
12 recover costs from ratepayers and generate profits for owners.” [PIMA000346.] Equity-
13 based investment approaches thus assume the existence of “owners” and “non-owners” —
14 with the “owners” primarily responsible for financial risk. [PIMA000369-370.] This
15 “ownership concept therefore serves as a *fundamental basis* for determining differences in
16 the cost of service, including the allocation of risk, between owner-customers and non-
17 owner customers.” [PIMA000370 (emphasis added).]

18 However, there is no basis to apply this profit model to Tucson Water, because it has
19 no cost-based identified owners. [PIMA000346.] Rather, *all* Tucson Water customers bear
20 its financial risks. [See PIMA000349-350.]

21 In applying its analysis, the COSS also considered all “Inside City Customers” as
22 “owners” of Tucson Water, while considering all “Outside City Customers” (i.e., customers
23 in unincorporated areas) non-owners. Yet, the studies defined “Inside City Customers” to
24 include: (1) any customer “located in an incorporated area of Pima County;” (2) any
25 customer “within tribal lands controlled by the Pascua Yaqui and the Tohono O’Odham;”
26 and (3) TUSD campuses. [PIMA000370; PIMA000367.] This means that customers in
27 areas *outside* the City of Tucson were considered “Inside City Customers” (i.e., “owners”)
28 for purposes of the COSS. [PIMA000370; PIMA000367.] Because “these customer groups

1 are clearly not customers located with the City of Tucson boundaries and are not customer-
2 owners under the concept of ownership,” it is “improper to assign greater risk to the Inside
3 City Customers class in the COSS.” [PIMA000370.]

4 **Second**, the COSS failed to consider many key factors that contribute to the true cost
5 of service, including:

- 6 a. The fact that unincorporated customers subsidize CAP waters used by the
7 City by paying a disproportionate amount of CAWCD taxes.
8 [PIMA000347; PIMA000367.]
- 9 b. The fact that unincorporated customers subsidize the costs of treating and
10 conveying water containing contaminants, like perfluoroalkyl substances
11 (aka “PFAS”).² [PIMA000347; PIMA000367.]
- 12 c. The fact that unincorporated customers subsidize recycled water produced
13 by Pima County and provided at no charge to the City. [See PIMA000347;
14 PIMA000367.]
- 15 d. The COSS used consumption as the basis for cost-of-service, but included
16 certain fixed-costs not tied to consumption, like director’s office, billing,
17 metering, and financial and engineering. [PIMA000347; PIMA000367.]
- 18 e. The COSS did not evaluate average customer elevation data, despite the
19 fact that elevation is a significant contributor to the cost of service.
20 [PIMA000367.]
- 21 f. The fact that all Tucson Water bills include City sales tax and groundwater
22 protection fees, which only benefit Tucson. [Id.]
- 23 g. The COSS allocates 100% of the Utility Tax to “Inside City Customers,”
24 but unincorporated customers also pay these taxes.
- 25 h. ***The COSS did not consider the location or cost of Capital Improvement***

26 ² For instance, Tucson Water ratepayers are the principal source of funding for the City’s
27 pilot Central Tucson PFAs Project. *See generally, New Pilot Project Sets Stage for Full-
28 Scale System to Remove PFAs*, City of Tucson (April 26, 2022),
[https://www.tucsonaz.gov/water/water-matters/may2022/CTPP?utm_medium=email
&utm_source=govdelivery](https://www.tucsonaz.gov/water/water-matters/may2022/CTPP?utm_medium=email&utm_source=govdelivery)

1 *Projects, which have a sizable impact on the actual cost of service of*
2 *water.*

3 ***Third***, the COSS did not conduct a customer demand study, rather it used
4 “production data” as an alternative to customer demand. [PIMA000370.] Using production
5 data requires “making assumptions about class demand patterns and peaking factors;” these
6 assumptions were not disclosed in the COSS. [*Id.*] There are therefore “serious concerns”
7 as to whether costs are accurately reflected in the COSS. [*Id.*]

8 ***Fourth***, in order to evaluate the differential rate, the COSS applied a higher required
9 “rate of return” to unincorporated customers—apparently to reflect additional risks
10 supposedly borne by “Inside City Customers.” [PIMA000371; *see also* PIMA000367.]
11 However, the COSS does not explain the basis for the difference in “risk” associated
12 between “Inside City Customers” and “Outside City Customers.” [PIMA000371.] Nor does
13 the COSS attempt to quantify risk differential between “Inside City Customers” and
14 “Outside City Customers.” [*Id.*] To the contrary, as stated *supra*, there are no additional
15 risks associated with “Outside City Customers.” [PIMA000349-350; PIMA000371.]
16 Rather, according to the COSS, the “choice of an appropriate rate of return differential is a
17 *policy decision.*” [PIMA000360; *see also* PIMA000367 (noting that GRG/Raftelis officials
18 admitted that the rate of return was a policy decision at a September 18, 2022 CWAC
19 meeting).]

20 ***Fifth***, the COSS did not evaluate whether the exceptions for Native American tribal
21 lands and TUSD campuses impacted the overall cost-of-service.

22 Finally, there is at least one additional reason to be skeptical of the COSS: Other
23 water utilities that serve the unincorporated area and the City—such as Metropolitan
24 Domestic Water Improvement District—do *not* charge a differential rate to unincorporated
25 customers. [PIMA000016.]

26 ***Even if the COSS were legitimate (and it is not), the City still could not claim that***
27 ***the differential rates imposed by Ordinance No. 11881 are “justified” by the COSS. This***
28 ***is because the COSS determined that there was, at most, a 5% difference in cost of service***

1 *between inside and outside areas but Ordinance No. 11881 imposes a 10% differential on*
2 *base rates and an additional 10% to 40% cost on usage fees, depending on tier. Tucson*
3 *has not provided a single justification—beyond amorphous “policy” concerns—*
4 *justifying the substantial difference between the 5% difference calculated by*
5 *GRG/Raftelis and the actual differential rates imposed by Ordinance No. 11881. The*
6 *rates in the Ordinance are therefore, by definition, not reasonably related to the cost of*
7 *service that was calculated in the (flawed) COSS.*

8 **5. Tucson Water is Not Analogous to Other Municipal Utilities**

9 As to Tucson’s argument that “other” Arizona municipal water suppliers charge
10 differential rates, Tucson Water is not analogous to “other” municipalities. As stated in
11 Section I.B.1 *supra*, Tucson Water serves as a *regional* water source, with a captive
12 consumer base. Thus, while it may be appropriate for “other” municipalities to charge
13 differing rates to unincorporated customers, it is not appropriate here. Moreover, even in
14 “other” jurisdictions, differential rates are only appropriate if they are supported by a
15 legitimate cost-of-service study. No legitimate cost-of-service study supports the
16 differential rates here.

17 *Further, based on information downloaded from the Water Infrastructure*
18 *Finance Authority of Arizona,³ at least 36 water service municipalities in Arizona do not*
19 *charge a differential rate to outside customers, at all. [PIMA000534; see also*
20 *CITY005712 (explaining that of the 24 largest municipal water providers in Arizona, only*
21 *11 (45%) charge a differential rate)] Pima further states that, on information and belief,*
22 *no municipal water utility has as many customers living outside the City as Tucson does.*
23 *[See CITY 005729.] Indeed, for many provide water services, the percent of outside city*
24 *customers is far lower than the percent of Tucson Water users living unincorporated*
25 *areas. [See CITY 005731 (noting that the percent of outside customers in Phoenix is .5%,*
26 *in Scottsdale is 1.7%, in Chandler is 1.9%, and in Glendale is 1.2%, but that the percent*
27 *of outside customers in Tucson is 34%).] Further, on information and belief, many (if*

28 ³ *The data is maintained by the University of North Carolina.*

1 *not all) of the other municipal water providers that charge differential rates also keep*
2 *revenues generated by the rates within the utility. [See CITY008661.] Here, however, the*
3 *City is using revenues from the differential rates to support a variety of projects outside*
4 *of the utility, see supra Section I.B.3.*

5 **6. The Exceptions for Native American Tribes and Tucson Unified**
6 **School District Campuses Results in Obvious Discrimination**
7 **Among Similarly Situated Customers.**

8 Ordinance No. 11881 is additionally flawed because there is no rationale or
9 justification explaining why Native American Tribes and Tucson Unified School District
10 campuses in unincorporated areas are exempt from the differential rates.

11 As detailed in an October 6, 2021 memorandum sent by County Administrator
12 Huckelberry to the Pima County Board of Supervisors, hundreds of unincorporated
13 customers live within 1,000 feet of exempted Native American lands or Tucson Unified
14 School sites. [PIMA000401-408.] For instance, there are over one hundred water meters
15 within 1,000 feet of exempted Collier Elementary School and Sabino High School.
16 [PIMA000405.] Similarly, there are well over fifty water meters within 1,000 feet of
17 exempted John E. White Elementary School and the Tohono O’odham Nation San Xavier
18 District. [PIMA000408.] Moreover, other school districts that are Tucson Water customers
19 and that are located within unincorporated areas are not exempted from the differential
20 rates. This includes Marana and Catalina Foothills School Districts. [PIMA000401.]

21 In short, “[t]here is no logical reason to explain the exemption other than
22 discriminatory intent.” [*Id.*]

23
24 **II. LEGAL THEORIES RELATED TO THE COMPLAINT**

25 The factual and legal basis for Defendants’ defenses presently known by Defendants
26 are described in part above, and in more detail below. At this early stage, prior to the onset
27 of formal discovery, Defendants are without information as to the availability and
28 applicability of any other defenses in addition to those described below and, therefore,

1 reserve the right to amend this disclosure at a later time to assert any defenses that may be
2 revealed as discovery progresses.

3 **A. The Differential Rates are Not “Just and Reasonable” (Count I)**

4 Municipalities that “engag[e] in a domestic water or wastewater business” must set
5 all water service rates, rate components, fees, service charge adjustments, or increases at a
6 “just and reasonable” price. *See* A.R.S. § 9-511.01(A), (C). “Every unjust or unreasonable
7 rate or charge demanded or received by a municipality is prohibited and unlawful.” A.R.S.
8 § 9-511.01(E).

9 The differential rates imposed on unincorporated customers by Ordinance No.
10 118881 are not “just and reasonable.” First, as discussed *supra* Section I.C, the differential
11 rates established in Ordinance No. 11881 are not tied to actual cost of service to
12 unincorporated areas. *See generally Scates v. Arizona Corp. Comms ’n*, 118 Ariz. 531, 534
13 (App. 1978) (explaining that “just and reasonable” rates required by Ariz. Const. art. XV,
14 § 3 generally must be based on operating costs); *cf. Jung v. City of Phoenix*, 160 Ariz. 38,
15 40-41 (1989) (suggesting in dicta that municipalities may charge differential rates to
16 unincorporated customers when doing so is supported by a cost of service study). Second,
17 again explained *supra* Section I.C., the differential rates established in Ordinance No. 11881
18 are not tethered to the City’s other “policy” justifications and treat similarly situated Tucson
19 Water customers dramatically differently. And, even assuming that differential rates do
20 further the City’s political goals (like annexation), these political goals are not sufficient to
21 establish a “just and reasonable” rate. *See Scates*, 118 Ariz. at 534 (holding that while there
22 is no set formula to establish a just and reasonable rate, at minimum must “*meet the overall*
23 *operating costs of the utility* and produce a reasonable rate of return” (emphasis added)).

24 It is expected that the City will rely on *Jung v. City of Phoenix*, 160 Ariz. 38 (1989)
25 for the proposition that municipalities may charge differential water rates to unincorporated
26 customers under A.R.S. § 9-511.01(C). This reliance is misplaced. For one, *Jung* did not
27 actually hold this; rather, it upheld the Court of Appeals finding that the Plaintiffs could not
28 challenge unequal water rates under 42 U.S.C. § 1983. *See Jung*, 160 Ariz. at 345. Although

1 some dicta in *Jung* suggests that municipalities may charge differential rates to
2 unincorporated customers, the rationale supporting that dicta is not present here. The *Jung*
3 court theorized that a municipality *might* be able to charge differential rates to
4 unincorporated customers for two reasons: (1) in-city customers “pay for the municipal plan
5 directly. . . and therefore have a preferred claim to the benefits resulting from ownership;”
6 or (2) there was some “[p]roof that service of nonresidents involves *greater expenses*.” *Id.*
7 (emphasis added). As explained above however, Tucson Water has no “owners” — rather
8 *all* customers of Tucson Water bear risk and costs equally. The differential rates are also
9 not supported by a legitimate cost of service study. *Jung*’s dicta is therefore inapplicable to
10 this case.

11 **B. The Differential Rates Treat Similarly Situated Customers Differently,**
12 **in Violation of the Common Law (Count II)**

13 Under the common law, municipal utilities are not permitted to charge
14 discriminatory rates to similarly situated customers. *Town of Wickenburg v. Sabin*, 68 Ariz.
15 75, 77-78 (1948) (“A public service corporation is impressed with the obligation of
16 furnishing its service to each patron at the same price it makes to every other patron for the
17 same or substantially the same or similar service.”) (quoting McQuillian Municipal
18 Corporations, 2d Ed., Vol. 4 § 1829); *Miller v. Salt River Val. Water Users’ Ass’n*, 11 Ariz.
19 App. 256, 260 (1970) (holding that public service corporations are obligated “to provide
20 impartial service and rates to all its customers similarly situated”).

21 This concept is illustrated in *Sabin*. There, the Town of Wickenburg was the owner
22 of the municipal water and electric utilities with an “exclusive monopoly in these fields
23 within the boundaries of the town.” *Sabin*, 68 Ariz. at 76. The customary fee for water and
24 electricity was \$5.00. *Id.* But, because Sabin lived in a “tent house”— and notwithstanding
25 that “the water distributing system and the electric lines had been previously extended by
26 [the Town] into the immediate area adjacent to [Sabin’s home]”—the Town refused to
27 provide utility services unless he made a \$50,000 deposit “to guarantee the building of a
28 permanent residence on the lot.” *Id.* The Supreme Court held that the \$50.00 deposit was

1 discriminatory. *Id.* at 78-79. Of note, the Court placed significant weight on the fact that
2 the Town already provided water and electricity services to the area, and that therefore the
3 Town’s claims that the cost of service was higher were unpersuasive. *Id.* at 79.

4 As in *Sabin*, so too here. First, water users in unincorporated areas are similarly
5 situated to other Tucson Water users that happen to live within city limits. Water users in
6 unincorporated areas are also similarly situated to other water uses in unincorporated
7 areas—like TUSD and Native American Tribes—that have been exempted from the
8 differential rates in Ordinance No. 11881. *See* Section I.C. Second, again, the differential
9 rates established in Ordinance No. 11881 are not tied to actual cost of service to
10 unincorporated areas or even to the Town’s political justifications for differential rates, *see*
11 Section I.C. Indeed, the City has long provided water services to unincorporated areas at
12 the *same rates* as services to in-city customers, without claiming that the cost to do so is
13 somehow higher than providing services to in-city users. *See Sabin*, 68 Ariz. at 79. This is
14 pure rate discrimination, invalid under *Sabin*.

15 C. **The Differential Rates Treat Similarly Situated Customers Differently,**
16 **in Violation of Equal Protection (Count III)**⁴

17 The 14th Amendment to the United States Constitution provides: “No state shall . .
18 . deny to any person within its jurisdiction the equal protection of the laws.” Article II,
19 Section 13 of the Arizona Constitution provides: “No law shall be enacted granting to any
20 citizen, class of citizens, or corporation other than municipal, privileges or immunities
21 which, upon the same terms, shall not equally belong to all citizens or corporations.” The
22 effects of these provisions are “‘essentially the same,’ . . . each generally requiring the law
23 treat all similarly situated persons alike.” *State v. Panos*, 239 Ariz. 116, 119 ¶ 8 (2016)
24 (quoting *Sate v. Lowery*, 230 Ariz. 536, 541 ¶ 13 (App. 2012)). Where a challenged law
25 does not impact a suspect classification or fundamental rights, “rational basis” review
26 applies. *Big D. Cons. Corp. v. Court of Appeals*, 163 Ariz. 560, 566 (1990). “Under the
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28 ⁴ *Count III was dismissed on August 17, 2022 but is included here to preserve the issue for potential appeal.*

1 rational basis test, a statute must be rationally and reasonably related to furthering some
2 legitimate governmental interest.” *Id.* Ordinance No. 11881 violates these equal protection
3 requirements.

4 First, Ordinance No. 11881 plainly discriminates between several groups of similarly
5 situated ratepayers: (1) Tucson Water customers living in incorporated areas are treated
6 differently than Tucson Water customers living in unincorporated areas; (2) Tucson Water
7 customers living in Native American tribal lands in unincorporated areas are treated
8 differently than Water customers living on non-tribal land; and (3) TUSD campuses in
9 unincorporated areas are treated differently than Tucson Water customers living in
10 unincorporated areas, including other school districts. Because the actual cost of service to
11 *all* of these identified groups is equal, and because none of the policy justifications for
12 Ordinance No. 11881 (like promoting conservation) are remotely related to these groups,
13 these ratepayers are identical in “all relevant respects” and are similarly situated for
14 purposes of this case. *See e.g., Reinebold v. Bruce*, 18 F. 4th 922, 925-926 (7th Cir. 2021).

15 Second, when stripped of its public relations gloss, the City’s true reason for
16 implementing the differential rates in Ordinance No. 11881 becomes clear: it is attempting
17 to use its control over the region’s water source to force customers living in unincorporated
18 areas to vote in favor of annexation. Exploiting water resources to harm customers living in
19 unincorporated areas for purely political reasons is not a legitimate governmental interest.
20 *See U.S Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (“[A] bare congressional
21 desire to harm a politically unpopular group cannot constitute a legitimate governmental
22 interest.”). This is especially true given that the City has exempted certain, apparently
23 favored, political groups—TUSD campuses and Native American groups—from Ordinance
24 No. 11881’s oppressive rates. *See id.*

25 Third, even assuming that the City’s espoused justifications for the differential
26 rates—cost of service, incentivizing annexation, disproportionate financial risks,
27 environmental sustainability, and staying consistent with other municipal water utilities—
28 are not rationally related to differential rates, for all the reasons stated *supra* Section I.C and

1 Section II.A-B. These justifications are also not rationally related to the exceptions in
2 Ordinance No. 11881 for Native American tribal lands or to the City’s intergovernmental
3 agreement exempting TUSD campuses from the differential rates. *See supra* Section I.C.

4 **D. The Differential Rates Discriminate on the Basis of Race, in Violation of**
5 **Equal Protection (Count IV)**⁵

6 The 14th Amendment to the United States Constitution provides: “No state shall . .
7 . . deny to any person within its jurisdiction the equal protection of the laws.” Article II,
8 Section 13 of the Arizona Constitution provides: “No law shall be enacted granting to any
9 citizen, class of citizens, or corporation other than municipal, privileges or immunities
10 which, upon the same terms, shall not equally belong to all citizens or corporations.” The
11 effects of these provisions are “‘essentially the same,’ . . . each generally requiring the law
12 treat all similarly situated persons alike.” *Panos*, 239 Ariz. at 119 ¶ 8 (quoting *Lowery*, 230
13 Ariz. 541 ¶ 13). By treating Tucson Water users residing on Native American tribal lands
14 differently than other Tucson Water customers in unincorporated areas, Ordinance No.
15 11881 violates this principle.

16 **1. Strict Scrutiny Applies to Ordinance No. 11881’s Classifications**
17 **between Tribal Members and Non-Tribal Members.**

18 As a preliminary matter, because Ordinance No. 11881 discriminates between
19 Tucson Water users living on Native American lands and other Tucson Water users living
20 on non-Native American land, strict scrutiny applies. *See Tafoya v. City of Albuquerque*,
21 751 F.Supp. 1527, 1529-1531 (D.N.M. 1990) (applying strict scrutiny to city ordinance that
22 “allows only New Mexico residents who are members of federally recognized tribes or
23 pueblos, or of the Navajo Nation, to sell wares in Old Town” Albuquerque); *see also Ariz.*
24 *Downs v. Ariz. Horsemen’s Found.*, 130 Ariz. 550, 555 (1981) (holding that strict scrutiny
25 applies to laws that discriminate among individuals based on a “suspect class”).

26 To be sure, Courts have held that laws treating Native American tribes differently
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28 ⁵ *Count IV was dismissed on August 17, 2022 but is included here to preserve the issue for potential appeal.*

1 from other individuals are not subject to strict scrutiny analysis on the theory that
2 “regulation of Indian tribes . . . is governance of once-sovereign political communities; it is
3 not to be viewed as legislation of a ‘racial’ group consisting of ‘Indians.’” *United States v.*
4 *Antelope*, 430 U.S. 641, 646 (1977) (quoting *Morton v. Mancari*, 417 U.S. 535, 553 n. 24
5 (1974)). However, this analysis generally only applies to *federal* legislation, because of
6 “Congress’ unique obligation” to “further the cause of Indian self-government” and because
7 of long-standing political relationships between Congress and Tribes. *See Morton*, 417 U.S.
8 at 554-555. However, States and local government “do not enjoy [the] same unique
9 relationship with Indians” as the federal government. *Washington v. Confederated Bands*
10 *& Tribes of Yakima Indian Nation*, 439 U.S. 463, 500-501 (1979); *Tafoya*, 751 F. Supp. at
11 1530 (distinguishing *Morton v. Mancari*, 471 U.S. 535 on the grounds that, unlike the
12 federal government, “the City of Albuquerque does not have comparable power to treat
13 members of federally recognized Indian tribes. . . differently than other groups of Indians
14 or non-Indians.”). Thus, “States or units of local government” may create laws benefitting
15 Native Americans without implicating strict scrutiny analysis only “in two relatively narrow
16 situations: in the first, the state acts under a particularized, state-specific congressional
17 delegation of jurisdiction; in the second, the state acts to accommodate federal supremacy
18 in the field by enforcing congressionally created federal obligations toward Indian tribes
19 that the federal government would otherwise enforce on its own.” *Malabed v. N. Slope*
20 *Borough*, 70 P.3d 416, 423 (Alaska 2003); *see also Artichoke Joes California Grand Casino*
21 *v. Norton*, 353 F.3d 712, 734 (9th Cir. 2003) (“[W]hen a state law applies in Indian country
22 as a result of the state’s participation in a federal scheme that ‘readjusts’ jurisdiction over
23 Indians, that state law is reviewed as if it were federal law.” (emphasis added)).

24 Here, Ordinance No. 11881 was not enacted as part of a “congressional delegation
25 of jurisdiction” or in order to “enforce[e] congressionally created federal obligations toward
26 Indian tribes that the federal government would otherwise enforce on its own.” Indeed, the
27 five “critical policy considerations” listed in Ordinance No. 11881 justifying differential
28 rates—supporting annexation, covering disproportionate financial risks, environmental

1 sustainability, cost of service, and staying consistent with other municipalities—have
2 absolutely nothing to do with federal-Tribal relations. *See Tafoya*, 751 F.Supp. at 1530
3 (noting that the federal government’s obligation to further Indian self-government “should
4 be contrasted with the stated legislative intent of the Albuquerque Ordinance ‘to preserve,
5 protect and promote the educational cultural and artistic interest’” of Old town
6 Albuquerque). This is made evident by the City’s first attempt to implement differential
7 rates in Ordinance No. 11846—which did *not* contain an exemption for Native American
8 Tribes.

9 Thus, strict scrutiny applies here.

10 **2. Ordinance No. 11881 Fails Strict Scrutiny**

11 Under strict scrutiny, Courts will “uphold the statute only if it is necessary to promote
12 a compelling state interest.” *Ariz. Downs*, 130 Ariz. at 555. Ordinance No. 11881 fails to
13 meet this “rigorous standard.” *See U.S. Chovan*, 735 F.3d 1127, 1149 (9th Cir. 2013); *see*
14 *also Bernal v. Fainter*, 467 U.S. 216, 219 n. 6 (1984) (“Only rarely are statutes sustained in
15 the face of strict scrutiny.”).

16 *First*, there is no “compelling” interest justifying the exception in Ordinance No.
17 11881 for Tribes. As mentioned, the five justifications for differential rates found in
18 Ordinance No. 11881 make no mention of Tribal-governmental relations, and, unlike the
19 federal government, the City of Tucson “does not have comparable power to treat members
20 of federally recognized Indian tribes. . . differently than other groups of Indians or non-
21 Indians.” *Tafoya*, 751 F. Supp. at 1530.

22 *Second*, even if there is some compelling reason for exempting Tucson Water uses
23 in Native American tribal lands from the differential rates found in Ordinance No. 11881
24 (and there is not), exempting tribal lands is not “necessary” to promote that interest. As
25 explained *supra* Section I.C., none of the espoused justifications for differential rates in
26 Ordinance No. 11881 have any connection to Native American tribal lands.

27 **E. Ordinance No. 11881 is an Impermissible Special Law**

28 Article IV, Part 2, Section 19(20) of the Arizona Constitution prohibits governments

1 from enacting “special laws ... *where a general law can be made applicable.*” See also
2 *Sherman v. City of Tempe*, 202 Ariz. 339, 341-342 ¶¶ 22-27 (2002) (applying Art. IV, pt. 2,
3 § 19 to city ordinance); *Bonito Partners, LLC v. City of Flagstaff*, 229 Ariz. 75, 82 ¶¶ 24-
4 26 (App. 2012) (same). “The purpose of proscribing special or local legislation is to prevent
5 the legislature from providing benefits or favors to certain groups or localities.” *State*
6 *Compensation Fund v. Symington*, 174 Ariz. 188, 192 (1993). Courts apply a three-part
7 test to decide if a law is an improper special law: (1) the law must have a rational
8 relationship to a legitimate governmental objective (2) the classification the law makes must
9 be legitimate, encompassing all members that are similarly situated, and (3) “the
10 classification must be elastic, allowing ‘other individuals or entities to come within’ and
11 move out of the class.” *Gallardo v. State*, 236 Ariz. 84, 88 ¶ 11 (2014) (quotation omitted).
12 “If *one* of these three requirements is *not* met, the legislation is invalid.” *State*
13 *Compensation Fund*, 174 Ariz. at 192 (emphasis added).

14 Here, as explained *supra* Section II.C, Ordinance No. 11881 lacks any rational
15 relationship to a legitimate government purposes. Similarly, as explained *supra* Section I.C,
16 the classifications in Ordinance No. 11881—distinguishing between Tucson Water users
17 living in incorporated areas, users living in unincorporated areas, users on Native American
18 tribal land, and TUSD campuses—do not encompass all similarly situated members.
19 Because the cost of service is the same to all of these groups, they are “similarly situated”
20 for purposes of water rates. Because Ordinance No. 11881 fails the first two elements of
21 the special laws analysis, it is invalid under Article IV, Part 2, Section 19.⁶ See *State*
22 *Compensation Fund*, 174 Ariz. at 192.

23 **IV. WITNESSES EXPECTED TO BE CALLED AT TRIAL**

24 At this early stage, Pima County has not yet identified witnesses it expects to call at
25 trial but anticipates calling some of the persons identified in Section V, below, as witnesses.

26 **V. PERSONS WITH RELEVANT KNOWLEDGE AND INFORMATION**

27 The following persons are expected to have knowledge regarding the circumstances

28 ⁶ Pima County does not dispute that the classifications in Ordinance No. 11881 are elastic.

1 surrounding this litigation.

- 2 1. Regina Romero
3 c/o Gust Rosenfeld P.L.C.
4 One East Washington Street, Suite 1600
5 Phoenix, Arizona 85004

6 Regina Romero is the Mayor of Tucson and a named Defendant in this action. She
7 is expected to have knowledge about the facts underlying Pima County’s complaint. In
8 particular, Mayor Romero is expected to have knowledge related to: (1) Tucson Water’s
9 role as regional water supplier; (2) the five alleged justifications for differential water rates
10 included in Ordinance No. 11881 (increasing annexation, disproportionate financial risk,
11 environmental sustainability, cost of service, and staying consistent with other municipal
12 utilities); (3) the City of Tucson’s ongoing efforts to increase annexation and/or
13 incorporation into the City; (4) the exception in Ordinance No. 11881 for Tucson Water
14 users on Native American tribal lands; and (5) the intragovernmental agreement between
15 TUSD campuses and the City, exempting TUSD campuses in unincorporated areas from
16 differential rates.

- 17 2. Lane Santa Cruz
18 c/o Gust Rosenfeld P.L.C.
19 One East Washington Street, Suite 1600
20 Phoenix, Arizona 85004

21 Lane Santa Cruz is a Tucson City Councilmember for Ward One and is a named
22 Defendant in this action. She is expected to have knowledge about the facts underlying Pima
23 County’s complaint. In particular, Councilmember Cruz is expected to have knowledge
24 related to: (1) Tucson Water’s role as regional water supplier; (2) the five alleged
25 justifications for differential water rates included in Ordinance No. 11881 (increasing
26 annexation, disproportionate financial risk, environmental sustainability, cost of service,
27 and staying consistent with other municipal utilities); (3) the City of Tucson’s ongoing
28 efforts to increase annexation and/or incorporation into the City; (4) the exception in
Ordinance No. 11881 for Tucson Water users on Native American tribal lands; and (5) the
intragovernmental agreement between TUSD campuses and the City, exempting TUSD

1 campuses in unincorporated areas from differential rates.

- 2 3. Paul Cunningham
3 c/o Gust Rosenfeld P.L.C.
4 One East Washington Street, Suite 1600
5 Phoenix, Arizona 85004

6 Paul Cunningham is a Tucson City Councilmember for Ward Two and a named
7 Defendant in this action. He is expected to have knowledge about the facts underlying Pima
8 County's complaint. In particular, Councilmember Cunningham is expected to have
9 knowledge related to: (1) Tucson Water's role as regional water supplier; (2) the five alleged
10 justifications for differential water rates included in Ordinance No. 11881 (increasing
11 annexation, disproportionate financial risk, environmental sustainability, cost of service,
12 and staying consistent with other municipal utilities); (3) the City of Tucson's ongoing
13 efforts to increase annexation and/or incorporation into the City; (4) the exception in
14 Ordinance No. 11881 for Tucson Water users on Native American tribal lands; and (5) the
15 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
16 campuses in unincorporated areas from differential rates.

- 16 4. Kevin Dahl
17 c/o Gust Rosenfeld P.L.C.
18 One East Washington Street, Suite 1600
19 Phoenix, Arizona 85004

20 Kevin Dahl is a Tucson City Councilmember for Ward Three and a named Defendant
21 in this action. He is expected to have knowledge about the facts underlying Pima County's
22 complaint. In particular, Councilmember Dahl is expected to have knowledge related to: (1)
23 Tucson Water's role as regional water supplier; (2) the five alleged justifications for
24 differential water rates included in Ordinance No. 11881 (increasing annexation,
25 disproportionate financial risk, environmental sustainability, cost of service, and staying
26 consistent with other municipal utilities); (3) the City of Tucson's ongoing efforts to
27 increase annexation and/or incorporation into the City; (4) the exception in Ordinance No.
28 11881 for Tucson Water users on Native American tribal lands; and (5) the
intragovernmental agreement between TUSD campuses and the City, exempting TUSD

1 campuses in unincorporated areas from differential rates.

- 2 5. Nikki Lee
3 c/o Gust Rosenfeld P.L.C.
4 One East Washington Street, Suite 1600
5 Phoenix, Arizona 85004

6 Nikki Lee is a Tucson City Councilmember for Ward Four and a named Defendant
7 in this action. She is expected to have knowledge about the facts underlying Pima County's
8 complaint. In particular, Councilmember Lee is expected to have knowledge related to: (1)
9 Tucson Water's role as regional water supplier; (2) the five alleged justifications for
10 differential water rates included in Ordinance No. 11881 (increasing annexation,
11 disproportionate financial risk, environmental sustainability, cost of service, and staying
12 consistent with other municipal utilities); (3) the City of Tucson's ongoing efforts to
13 increase annexation and/or incorporation into the City; (4) the exception in Ordinance No.
14 11881 for Tucson Water users on Native American tribal lands; and (5) the
15 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
16 campuses in unincorporated areas from differential rates.

- 16 6. Richard Fimbres
17 c/o Gust Rosenfeld P.L.C.
18 One East Washington Street, Suite 1600
19 Phoenix, Arizona 85004

20 Richard Fimbres is a Tucson City Councilmember for Ward Five and a named
21 Defendant in this action. He is expected to have knowledge about the facts underlying Pima
22 County's complaint. In particular, Councilmember Fimbres is expected to have knowledge
23 related to: (1) Tucson Water's role as regional water supplier; (2) the five alleged
24 justifications for differential water rates included in Ordinance No. 11881 (increasing
25 annexation, disproportionate financial risk, environmental sustainability, cost of service,
26 and staying consistent with other municipal utilities); (3) the City of Tucson's ongoing
27 efforts to increase annexation and/or incorporation into the City; (4) the exception in
28 Ordinance No. 11881 for Tucson Water users on Native American tribal lands; and (5) the
 intragovernmental agreement between TUSD campuses and the City, exempting TUSD

1 campuses in unincorporated areas from differential rates.

2 7. Steve Kozachik
3 c/o Gust Rosenfeld P.L.C.
4 One East Washington Street, Suite 1600
5 Phoenix, Arizona 85004

6 Steve Kozachik is a Tucson City Councilmember for Ward Six and a named
7 Defendant in this action. He is expected to have knowledge about the facts underlying Pima
8 County’s complaint. In particular, Councilmember Kozachik is expected to have knowledge
9 related to: (1) Tucson Water’s role as regional water supplier; (2) the five alleged
10 justifications for differential water rates included in Ordinance No. 11881 (increasing
11 annexation, disproportionate financial risk, environmental sustainability, cost of service,
12 and staying consistent with other municipal utilities); (3) the City of Tucson’s ongoing
13 efforts to increase annexation and/or incorporation into the City; (4) the exception in
14 Ordinance No. 11881 for Tucson Water users on Native American tribal lands; and (5) the
15 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
16 campuses in unincorporated areas from differential rates.

16 8. Michael Ortega
17 c/o Gust Rosenfeld P.L.C.
18 One East Washington Street, Suite 1600
19 Phoenix, Arizona 85004

20 Michael Ortega is the Tucson City Manager. He is expected to have knowledge about
21 the facts underlying Pima County’s complaint. In particular, Mr. Ortega is expected to have
22 knowledge related to: (1) Tucson Water’s role as regional water supplier; (2) the five alleged
23 justifications for differential water rates included in Ordinance No. 11881 (increasing
24 annexation, disproportionate financial risk, environmental sustainability, cost of service,
25 and staying consistent with other municipal utilities); (3) the City of Tucson’s ongoing
26 efforts to increase annexation and/or incorporation into the City; (4) the exception in
27 Ordinance No. 11881 for Tucson Water users on Native American tribal lands; and (5) the
28 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
campuses in unincorporated areas from differential rates.

9. Rex Scott

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c/o Snell & Wilmer L.L.P.
One South Church Ave., Suite 1500
Tucson, Arizona 85701

Rex Scott is a Pima County Supervisor for District 1. He is expected to have knowledge about the facts underlying Pima County’s complaint. In particular, Supervisor Scott is expected to have knowledge related to: (1) Tucson Water’s role as regional water supplier; (2) the five alleged justifications for differential water rates included in Ordinance No. 11881 (increasing annexation, disproportionate financial risk, environmental sustainability, cost of service, and staying consistent with other municipal utilities); (3) the City of Tucson’s ongoing efforts to increase annexation and/or incorporation into the City; (4) the exception in Ordinance No. 11881 for Tucson Water users on Native American tribal lands; (5) the intragovernmental agreement between TUSD campuses and the City, exempting TUSD campuses in unincorporated areas from differential rates; (6) the impact that differential rates has on Tucson Water customers in unincorporated areas, including the County.

10. Matt Heinz
c/o Snell & Wilmer L.L.P.
One South Church Ave., Suite 1500
Tucson, Arizona 85701

Matt Heinz is a Pima County Supervisor for District 2. He is expected to have knowledge about the facts underlying Pima County’s complaint. In particular, Supervisor Heinz is expected to have knowledge related to: (1) Tucson Water’s role as regional water supplier; (2) the five alleged justifications for differential water rates included in Ordinance No. 11881 (increasing annexation, disproportionate financial risk, environmental sustainability, cost of service, and staying consistent with other municipal utilities); (3) the City of Tucson’s ongoing efforts to increase annexation and/or incorporation into the City; (4) the exception in Ordinance No. 11881 for Tucson Water users on Native American tribal lands; (5) the intragovernmental agreement between TUSD campuses and the City, exempting TUSD campuses in unincorporated areas from differential rates; (6) the impact that differential rates has on Tucson Water customers in unincorporated areas, including the

1 County.

2 11. Sharon Bronson
3 c/o Snell & Wilmer L.L.P.
4 One South Church Ave., Suite 1500
5 Tucson, Arizona 85701

6 Sharon Bronson is a Pima County Supervisor for District 3 and the Chair of the Pima
7 County Board of Supervisors. She is expected to have knowledge about the facts underlying
8 Pima County's complaint. In particular, Supervisor Bronson is expected to have knowledge
9 related to: (1) Tucson Water's role as regional water supplier; (2) the five alleged
10 justifications for differential water rates included in Ordinance No. 11881 (increasing
11 annexation, disproportionate financial risk, environmental sustainability, cost of service,
12 and staying consistent with other municipal utilities); (3) the City of Tucson's ongoing
13 efforts to increase annexation and/or incorporation into the City; (4) the exception in
14 Ordinance No. 11881 for Tucson Water users on Native American tribal lands; (5) the
15 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
16 campuses in unincorporated areas from differential rates; (6) the impact that differential
17 rates has on Tucson Water customers in unincorporated areas, including the County.
18 Supervisor Bronson is also expected to have knowledge regarding the 1979 IGA and the
19 2000 Supplemental IGA.

20 12. Steve Christy
21 c/o Snell & Wilmer L.L.P.
22 One South Church Ave., Suite 1500
23 Tucson, Arizona 85701

24 Steve Christy is a Pima County Supervisor for District 4. He is expected to have
25 knowledge about the facts underlying Pima County's complaint. In particular, Supervisor
26 Christy is expected to have knowledge related to: (1) Tucson Water's role as regional water
27 supplier; (2) the five alleged justifications for differential water rates included in Ordinance
28 No. 11881 (increasing annexation, disproportionate financial risk, environmental
sustainability, cost of service, and staying consistent with other municipal utilities); (3) the
City of Tucson's ongoing efforts to increase annexation and/or incorporation into the City;

1 (4) the exception in Ordinance No. 11881 for Tucson Water users on Native American tribal
2 lands; (5) the intragovernmental agreement between TUSD campuses and the City,
3 exempting TUSD campuses in unincorporated areas from differential rates; (6) the impact
4 that differential rates has on Tucson Water customers in unincorporated areas, including the
5 County.

6 13. Adelita Grijalva
7 c/o Snell & Wilmer L.L.P.
8 One South Church Ave., Suite 1500
9 Tucson, Arizona 85701

10 Adelita Grijalva is a Pima County Supervisor for District 5 and is the Vice Chair of
11 the Pima County Board of Supervisors. She is expected to have knowledge about the facts
12 underlying Pima County's complaint. In particular, Supervisor Grijalva is expected to have
13 knowledge related to: (1) Tucson Water's role as regional water supplier; (2) the five alleged
14 justifications for differential water rates included in Ordinance No. 11881 (increasing
15 annexation, disproportionate financial risk, environmental sustainability, cost of service,
16 and staying consistent with other municipal utilities); (3) the City of Tucson's ongoing
17 efforts to increase annexation and/or incorporation into the City; (4) the exception in
18 Ordinance No. 11881 for Tucson Water users on Native American tribal lands; (5) the
19 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
20 campuses in unincorporated areas from differential rates; (6) the impact that differential
21 rates has on Tucson Water customers in unincorporated areas, including the County.

22 14. Jan Lesher
23 c/o Snell & Wilmer L.L.P.
24 One South Church Ave., Suite 1500
25 Tucson, Arizona 85701

26 Jan Lesher is the Pima County Administrator. She is expected to have knowledge
27 about the facts underlying Pima County's complaint. In particular, Ms. Lesher is expected
28 to have knowledge related to: (1) Tucson Water's role as regional water supplier; (2) the
five alleged justifications for differential water rates included in Ordinance No. 11881
(increasing annexation, disproportionate financial risk, environmental sustainability, cost
of service, and staying consistent with other municipal utilities); (3) the City of Tucson's

1 ongoing efforts to increase annexation and/or incorporation into the City; (4) the exception
2 in Ordinance No. 11881 for Tucson Water users on Native American tribal lands; (5) the
3 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
4 campuses in unincorporated areas from differential rates; (6) the impact that differential
5 rates has on Tucson Water customers in unincorporated areas, including the County.

6 15. C.H. ("Chuck") Huckelberry⁷
7 c/o Snell & Wilmer L.L.P.
8 One South Church Ave., Suite 1500
9 Tucson, Arizona 85701

10 Chuck Huckelberry is a former Pima County Administrator. In this role, Mr.
11 Huckelberry drafted a series of correspondence criticizing the City's proposed differential
12 rate structure and explaining why the City's espoused justifications did not justify
13 differential rates. Thus, Mr. Huckelberry is expected to have knowledge related to: (1)
14 Tucson Water's role as regional water supplier; (2) the reasons why the five alleged
15 justifications for differential water rates included in Ordinance No. 11881 (increasing
16 annexation, disproportionate financial risk, environmental sustainability, cost of service,
17 and staying consistent with other municipal utilities) do not support differential rates for
18 certain customers in unincorporated areas; (3) the many defects with the GRG/Raftelis
19 Phase 1 and Phase 2 Cost of Service Studies; (4) the City of Tucson's ongoing efforts to
20 increase annexation and/or incorporation into the City; (5) the reason why the espoused
21 rationales for differential water rates in Ordinance No. 11881 do not justify exempting
22 Native American tribal lands or TUSD campuses; and (6) the impact that differential rates
23 has on Tucson Water customers in unincorporated areas, including the County. Mr.
24 Huckelberry is also expected to have knowledge regarding the 1979 IGA and the 2000
25 Supplemental IGA.

26 16. Dr. Yves Khawam
27 c/o Snell & Wilmer L.L.P.
28 One South Church Ave., Suite 1500
Tucson, Arizona 85701

⁷ Mr. Huckelberry is currently dealing with a serious medical issue that may impact his availability to testify in this action.

1 Dr. Yves Khawam is the *former* Assistant County Administrator for Public Works
2 for Pima County *and currently a Senior Advisor to the County Administrator*. In ~~this~~
3 *these* roles, Dr. Khawam drafted a series of correspondence criticizing the City's proposed
4 differential rate structure and the GRG/Raftelis Phase 1 and Phase 2 Cost of Service Studies.
5 Thus, Dr. Khawam is expected to have knowledge related to: (1) Tucson Water's role as
6 regional water supplier; (2) the reasons why the five alleged justifications for differential
7 water rates included in Ordinance No. 11881 (increasing annexation, disproportionate
8 financial risk, environmental sustainability, cost of service, and staying consistent with
9 other municipal utilities) do not support differential rates for certain customers in
10 unincorporated areas; (3) the many defects with the GRG/Raftelis Phase 1 and Phase 2 Cost
11 of Service Studies; (4) the reason why the espoused rationales for differential water rates in
12 Ordinance No. 11881 do not justify exempting Native American tribal lands or TUSD
13 campuses; (5) the impact that differential rates has on Tucson Water customers in
14 unincorporated areas, including the County.

15 17. Thomas Bourassa
16 Thomas J. Bourassa, CPA
17 139 W. Wood Drive
18 Phoenix, Arizona 85029

18 Thomas Bourassa is a certified public accountant. In this role, Mr. Bourassa drafted
19 an analysis criticizing the GRG/Raftelis Phase 1 and Phase 2 Cost of Service Studies for
20 the Southern Arizona Home Builders Association. Thus, Mr. Bourassa is expected to have
21 knowledge related to the many defects with the GRG/Raftelis Phase 1 and Phase 2 Cost of
22 Service Studies.

23 18. Harold Smith
24 Raftelis Financial Consultants, Inc.
25 5619 DTC Parkway, Suite 850
26 Greenwood Village, Colorado 8011

26 Harold Smith is a Vice President of Raftelis Financial Consultants, Inc. On
27 information and belief, Mr. Smith either drafted or supervised the GRG/Raftelis Phase 1
28 and Phase 2 Cost of Service Studies. Mr. Smith is thus expected to have knowledge related

1 to those studies.

2 19. Deborah Galardi
3 Galardi Rothstein Group
4 7327 SW Barnes Road, Unit 224
5 Portland, Oregon 97225

6 Deborah Galardi is a Principal at Galardi Rothstein Group. On information and
7 belief, Ms. Galardi either drafted or supervised the GRG/Raftelis Phase 1 and Phase 2 Cost
8 of Service Studies. Ms. Galardi is thus expected to have knowledge related to those studies.

9 20. Mark Taylor
10 Citizens' Water Advisory Committee
11 P.O. Box 27210
12 Tucson, Arizona 85726

13 Among other positions, Mark Taylor is the Chair of the Citizen Water Advisory
14 Committee. In this role he co-drafted a memorandum to the Tucson City Council and Mayor
15 raising a litany of concerns with then-proposed (and subsequently adopted) differential rate
16 structure for Tucson Water customers living in unincorporated areas. Accordingly, Mr.
17 Taylor is expected to have knowledge regarding the City's alleged justifications for
18 differential water rates included in Ordinance No. 11881 (increasing annexation,
19 disproportionate financial risk, environmental sustainability, cost of service, and staying
20 consistent with other municipal utilities).

21 21. John Kmeic
22 Tucson Water Department
23 310 W. Alameda Street
24 Tucson, Arizona 85701

25 John Kmeic is Tucson Water's acting director. Mr. Kmeic is expected to have
26 knowledge related to: (1) Tucson Water's role as regional water supplier; (2) the five alleged
27 justifications for differential water rates included in Ordinance No. 11881 (increasing
28 annexation, disproportionate financial risk, environmental sustainability, cost of service,
and staying consistent with other municipal utilities); (3) the GRG/Raftelis Phase 1 and
Phase 2 Cost of Service Studies ; (4) the exception in Ordinance No. 11881 for Tucson
Water users on Native American tribal lands; (5) the intragovernmental agreement between
TUSD campuses and the City, exempting TUSD campuses in unincorporated areas from

1 differential rates; and (6) the impact that differential rates has on Tucson Water customers
2 in unincorporated areas.

3 22. Alison Jones
4 Citizens' Water Advisory Committee
5 P.O. Box 27210
6 Tucson, Arizona 85726

7 Among other positions, Alison Jones is the Vice-Chair of the Citizen Water Advisory
8 Committee. In this role she co-drafted a memorandum to the Tucson City Council and
9 Mayor raising a litany of concerns with then-proposed (and subsequently adopted)
10 differential rate structure for Tucson Water customers living in unincorporated areas.
11 Accordingly, Ms. Jones is expected to have knowledge regarding the City's alleged
12 justifications for differential water rates included in Ordinance No. 11881 (increasing
13 annexation, disproportionate financial risk, environmental sustainability, cost of service,
14 and staying consistent with other municipal utilities).

15 23. Timothy Thomure
16 City of Tucson
17 City Manager's Office, City Hall, 10th Floor
18 255 W. Alameda
19 Tucson, Arizona 85701

20 Timothy Thomure is current Tucson Assistant City Manager and was formerly the
21 Director of Tucson Water. In his role as Tucson Assistant City Manager, Mr. Thomure
22 drafted a document titled "Fiscal Year 21-22 Water Rates" which listed supposed
23 justifications for differential water rates to be imposed on Tucson Water users living in
24 unincorporated areas. Mr. Thomure is expected to have knowledge regarding the City's
25 alleged justifications for differential water rates included in Ordinance No. 11881
26 (increasing annexation, disproportionate financial risk, environmental sustainability, cost
27 of service, and staying consistent with other municipal utilities).

28 24. Carmine DeBonis, Jr.
c/o Snell & Wilmer L.L.P.
One South Church Ave., Suite 1500
Tucson, Arizona 85701

Carmine DeBonis Jr. is Pima County's Deputy County Administrator for Public

1 Works. In this role, Mr. DeBonis was “cc’d” on several memorandums related to Tucson’s
2 proposed differential rates. Mr. DeBonis is expected to have knowledge related to: (1)
3 Tucson Water’s role as regional water supplier; (2) the reasons why the five alleged
4 justifications for differential water rates included in Ordinance No. 11881 (increasing
5 annexation, disproportionate financial risk, environmental sustainability, cost of service,
6 and staying consistent with other municipal utilities) do not support differential rates for
7 certain customers in unincorporated areas; (3) the many defects with the GRG/Raftelis
8 Phase 1 and Phase 2 Cost of Service Studies; (4) the City of Tucson’s ongoing efforts to
9 increase annexation and/or incorporation into the City; (5) the reason why the espoused
10 rationales for differential water rates in Ordinance No. 11881 do not justify exempting
11 Native American tribal lands or TUSD campuses; and (6) the impact that differential rates
12 has on Tucson Water customers in unincorporated areas, including the County.

13 25. Jackson Jenkins
14 c/o Snell & Wilmer L.L.P.
15 One South Church Ave., Suite 1500
16 Tucson, Arizona 85701

16 Jackson Jenkins is the Director of Pima County’s Regional Wastewater Reclamation
17 Department. In this role, Mr. Jenkins was “cc’d” on several memorandums related to
18 Tucson’s proposed differential rates. Mr. Jenkins is expected to have knowledge related to:
19 (1) Tucson Water’s role as regional water supplier; (2) the many defects with the
20 GRG/Raftelis Phase 1 and Phase 2 Cost of Service Studies.

21 26. Kathy Chavez
22 c/o Snell & Wilmer L.L.P.
23 One South Church Ave., Suite 1500
24 Tucson, Arizona 85701

24 Kathy Chavez is the Pima County’s Water Policy Manager. In this role, Ms. Chavez
25 was “cc’d” on several memorandums related to Tucson’s proposed differential rates. Ms.
26 Chavez is expected to have knowledge related to: (1) Tucson Water’s role as regional water
27 supplier; (2) the many defects with the GRG/Raftelis Phase 1 and Phase 2 Cost of Service
28 Studies.

27. Silvia Amparano

1 Tucson Water Department
2 310 W. Alameda Street
3 Tucson, Arizona 85701

4 Silvia Amparano is a Deputy Director of Tucson Water. Ms. Amparano is expected
5 to have knowledge regarding: (1) Tucson Water’s role as regional water supplier; (2) the
6 five alleged justifications for differential water rates included in Ordinance No. 11881
7 (increasing annexation, disproportionate financial risk, environmental sustainability, cost
8 of service, and staying consistent with other municipal utilities); (3) the GRG/Raftelis Phase
9 1 and Phase 2 Cost of Service Studies ; (4) the exception in Ordinance No. 11881 for Tucson
10 Water users on Native American tribal lands; (5) the intragovernmental agreement between
11 TUSD campuses and the City, exempting TUSD campuses in unincorporated areas from
12 differential rates; and (6) the impact that differential rates has on Tucson Water customers
13 in unincorporated areas.

14 28. Karin Uhlich
15 Current Address Unknown

16 Karin Uhlich was a Tucson City Councilmember for Ward Three during times
17 relevant to this litigation. She is expected to have knowledge about the facts underlying
18 Pima County’s complaint. In particular, Ms. Uhlich is expected to have knowledge related
19 to: (1) Tucson Water’s role as regional water supplier; (2) the five alleged justifications for
20 differential water rates included in Ordinance No. 11881 (increasing annexation,
21 disproportionate financial risk, environmental sustainability, cost of service, and staying
22 consistent with other municipal utilities); (3) the City of Tucson’s ongoing efforts to
23 increase annexation and/or incorporation into the City; (4) the exception in Ordinance No.
24 11881 for Tucson Water users on Native American tribal lands; and (5) the
25 intragovernmental agreement between TUSD campuses and the City, exempting TUSD
26 campuses in unincorporated areas from differential rates.

27 29. Belinda Oden
28 520-204-6125
Current Address Unknown

Belinda Oden is a former Tucson Water employee. She is expected to have

1 knowledge related to the justifications (or lack thereof) for differential rates in
2 unincorporated areas.

3 30. Paul Bucky
4 10206 E. Placita Cresta Mia
5 Tucson, Arizona 85749
6 520-204-6125

7 Paul Bucky is a Tucson Water customer living in unincorporated Pima County. He
8 has been negatively impacted by Ordinance No. 11881's differential rate. As such, he is
9 expected to have knowledge related to the impact that that ordinance has had on
10 unincorporated Tucson Water customers. *He is also expected to have knowledge related to
11 the City's justifications for implementing differential rates.*

12 31. Scott Welsh
13 Dswelchs77@gmail.com
14 520-885-1861
15 Current Address Unknown

16 Scott Welsh is a Tucson Water customer living in unincorporated Pima County.
17 Because of the differential rates contained in Ordinance No. 11881, Mr. Welsh currently
18 pays around \$139 more per month for water than his in-city neighbor. As such, he is
19 expected to have knowledge related to the impact that that ordinance has had on
20 unincorporated Tucson Water customers.

21 32. *Mike Czechowski*
22 *City of Tucson, Economic Initiatives Office*
23 *255 W. Alameda St., 5th Floor West*
24 *Tucson, Arizona 85701*
25 *520-837-4058*

26 *Mike Czechowski is an Annexation Project Manager for the City of Tucson. Mr.
27 Czechowski is expected to have knowledge regarding the City's claim that imposing
28 differential rates will increase annexation into the City. Mr. Czechowski is also expected
to have knowledge regarding the City's claims that annexation would be economically
beneficial to the City.*

29 **V. WITNESS STATEMENTS**

30 Pima County is not presently aware of any statements that satisfy the definitions set

1 forth in Ariz. R. Civ. P. 26(b)(3)(C)(i) and (ii).

2 **VI. EXPERT WITNESSES**

3 Pima County has not yet identified the expert witnesses it intends to call at trial. Pima
4 County will supplement this disclosure as necessary in accordance with the Arizona Rules
5 of Civil Procedure and the schedule established by the Court.

6 **VII. DAMAGES**

7 Pima County does not seek monetary damages in this action. However, Pima County
8 reserves the right to seek its attorneys' fees and costs to the extent allowable by law.

9 **IX. TRIAL DOCUMENTS**

10 Pima County has not yet determined what documents it plans to use as trial exhibits,
11 but anticipates using several documents identified in Section X, below, and will supplement
12 this disclosure as necessary in accordance with the Arizona Rules of Civil Procedure and
13 the schedule established by the Court.

14 **X. POTENTIALLY RELEVANT DOCUMENTS**

15 Pima County identifies the following documents within its possession, custody, or
16 control that are relevant or potentially relevant to this litigation:

- 17 1. Tucson City Ordinance No. 11881. [PIMA000001-6.]
- 18 2. Memorandum from Pima County Board of Supervisors to Tucson Mayor
19 Regina Romero re: Differential Water Rates for Unincorporated Tucson Customers (Aug.
20 13, 2021). [PIMA000007-17.]
- 21 3. Exhibits cited in Memorandum from Pima County Board of Supervisors to
22 Tucson Mayor Regina Romero re: Differential Water Rates for Unincorporated Tucson
23 Customers (Aug. 13, 2021) [PIMA000018-166.]
- 24 4. Complaint, *City of Tucson v. Pima County et al.*, No. 17027 (Super. Ct. Nov.
25 17, 1977). [PIMA000167-173.]
- 26 5. Intergovernmental Agreement entered into between Pima County and the City
27 of Tucson on June 26, 1979. [PIMA000174-206.]
- 28 6. Supplement Intergovernmental Agreement "Relating to Effluent" entered

1 into between Pima County and the City of Tucson on February 8, 2000, with subsequent
2 addendums. [PIMA000207-308.]

3 7. Letter from Mark Taylor, CWAC Chair, and Alison Jones, CWAC Vice
4 Chair, to Tucson Mayor and City Council (Mar. 30, 2021). [PIMA000309-311.]

5 8. Letter from Chuck Huckelberry, County Administrator, to Pima County
6 Board of Supervisors (May 10, 2021). [PIMA000312-333.]

7 9. GRG/Raftelis Phase 1 Cost of Service Study. [PIMA334-344.]

8 10. Letter from Dr. Yves Khawam to CWAC (July 30, 2021). [PIMA000345-
9 348.]

10 11. Letter from Dr. Yves Khawam to CWAC (Sept. 8, 2021). [PIMA000349-
11 351.]

12 12. GRG/Raftelis Phase 2 Cost of Service Study. [PIMA000352-365.]

13 13. Letter from Chuck Huckelberry, County Administrator, to Pima County
14 Board of Supervisors (Sept. 22, 2021). [PIMA000366-3768]

15 14. Memorandum from Thomas J. Bourassa, CPA to David Godlewski,
16 President, Southern Arizona Home Builders Association (Oct. 18, 2021). [PIMA000369-
17 372.]

18 15. Memorandum from Chuck Huckelberry, County Administrator, to Pima
19 County Board of Supervisors re: City of Tucson Water Policy Related to Differential Rates,
20 (Mar. 16, 2021). [PIMA000373-386.]

21 16. Memorandum from Chuck Huckelberry, County Administrator, to Pima
22 County Board of Supervisors re: Whitepaper Regarding Annexation and Incorporation and
23 the Impact on State Shared Revenues and other Related Issues (Apr. 30, 2021).
24 [PIMA000387-400.]

25 17. Memorandum from Chuck Huckelberry, County Administrator, to Pima
26 County Board of Supervisors re: Tucson Water Proposed Discriminatory Water Rates (Oct.
27 6, 2021). [PIMA000401-408.]

28 18. Memorandum from George Brinsko, Director of Pima County Wastewater

1 Management Department, to James E. Riley, Assistant County manager, re: Briefing on
2 Effluent Ownership and Effluent Use (Feb. 5, 1985). [PIMA000409-411.]

3 19. June 24, 1985 Mayor and Council Communication re: Amendment to Mayor
4 and Council Water Policies – Effluent Policies. [PIMA000412-426.]

5 20. Intergovernmental Agreement Between Pima County and the City of Tucson
6 for Implementation of the Conservation Effluent Pool. [PIMA000427-441.]

7 21. June 22, 2021 Mayor and Council Communication re: Public Hearing:
8 Amending Tucson Code to Implement a Differential rate Structure for Tucson Water
9 Customers Located in Unincorporated Pima County (Outside City) (Continued from June
10 8, 2021 Meeting). [PIMA000442-447.]

11 22. Attachment A to June 22, 2021 Mayor and Council Communication.
12 [PIMA000448.]

13 23. Attachment C to June 22, 2021 Mayor and Council Communication.
14 [PIMA000449-450.]

15 24. Mayor and Council June 22, 2021 Regular Meeting Minutes. [PIMA000451-
16 459.]

17 25. Tucson Ordinance No. 11846. [PIMA000460-464.]

18 26. Letter from Michael Ortega, City Manager, to C.H. Huckelberry, County
19 Administrator re: Your letter dated June 24, 2021/Participation in the Proposed City Cost
20 of Service Study Associated with Providing Water Service to Unincorporated Residents
21 (July 9, 2021). [PIMA000465-466.]

22 27. Letter from C.H. Huckelberry, County Administrator, to Michael Ortega, City
23 Manager, re: City of Tucson Differential Water Rates and Cost of Service Study (July 12,
24 2021) [PIMA000467.]

25 28. October 19, 2021 Mayor and Council Communication re: Public Hearing:
26 Amending Tucson Code to implement a differential rate structure for Tucson Water
27 customers located in unincorporated Pima County and adoption of proposed changes to the
28 Tucson City Code Sections 27-32 and 27-33 relating to charges for water services; Adoption

1 of Ordinance. (Outside City). [PIMA000468-473.]

2 29. Memorandum from Mark Taylor, CWAC Chair, and Alison Jones, CWAC
3 Vice Chair to Tucson Mayor and Council Members re: CWAC Deferment
4 Recommendation (June 2, 2021). [PIMA000474-475.]

5 30. Memorandum from Chris Avery, Principal Assistant City Attorney, to John
6 Kmiec, Interim Director Tucson Water, re: Whether A.R.S. § 9-511.01 or Tucson Code §
7 27-32 Preclude the City from Adopting a Differential Rate for Customers Outside of
8 Municipal Boundaries (June 15, 2021). [PIMA000476-477.]

9 31. Memorandum from Michael LeBlanc, Deputy County Attorney, to C.H.
10 Huckelberry, County Administrator re: Legal Options Available to Challenge the
11 Differential Water Rates Adopted by the City on June 22, 2021 (July 28, 2021).
12 [PIMA000478-486.]

13 32. Memorandum from C.H. Huckelberry, County Administrator, to Sam Brown,
14 Chief Civil Deputy County Attorney re: Litigation Options Associated with the City of
15 Tucson Adoption of Differential Water Rates (Oct. 21, 2021). [PIMA000487-486.]

16 33. Memorandum from Michael LeBlanc, Deputy County Attorney, to C.H.
17 Huckelberry, County Administrator re: Legal Issues Raised by the City of Tucson's
18 Proposal to Adopt Differential Water Rates on June 8, 2021 (May 26, 2021).
19 [PIMA000492-496.]

20 34. Tim Steller, *Tim Steller's opinion: Big annexations an unrealistic solution for*
21 *Tucson*, Arizona Daily Star (Aug. 21, 2019). [PIMA000497-500.]

22 35. City of Tucson, *Residential Rates and Charges*. [PIMA000501-503.]

23 36. November 27, 2000 Mayor and Council Memorandum re: Discussion of
24 Public Policy Considerations Regarding Transfer of CAP Allocations (City-wide and
25 Outside the City). [PIMA000504-526.]

26 37. Documents produced by Raftelis in response to subpoena duces tecum.
27 [RAFTELIS000001-2487.]

28 38. Documents produced by Tucson in response to Pima's First Set of Requests

1 for Production.

2 39. Documents produced by Tucson as part of its Rule 26.1 Initial Disclosure
3 Statement.

4 40. Documents produced by GRG in response to subpoena duces tecum.
5 [GRG000001-256.]

6 41. *Pima's Response to Tucson's First Set of Requests for Admission*

7 42. *Pima's Response to Tucson's First Set of Non-Uniform Interrogatories*

8 43. *List Pima County's water accounts that are not with Tucson Water.*
9 *[PIMA000527-529.]*

10 44. *List of Pima County's accounts located in unincorporated areas subject to*
11 *the differential rates. [PIMA000530-533.]*

12 45. *Water Infrastructure Finance Authority of Arizona table of municipal*
13 *water rates. [PIMA000534.]*

14 46. *Fiscal Year 21-22 Water Rates Presentation by Timothy Thomure.*
15 *[PIMA000535-549.]*

16 47. *Tucson Water FY2023-FY2027 Water Rate Revision Process and Proposal.*
17 *[PIMA000550-563.]*

18 48. *FY23-27 Financial Plan, Cost of Service, and Rate Design Presentatoin by*
19 *the CWAC (Sept. 7, 2022). [PIMA000571-593.]*

20 49. *Memorandum from John Kmiec, Director of Tucson Water, to the Tucson*
21 *Mayor and City Council re: FY22 Year End Differential Rate Revenue Collection and*
22 *Program Expenditures Update (August 8, 2022). [PIMA000594-596.]*

23 50. *Adopted Schedule of Differential Rates. [PIMA00564.]*

24 51. *Steve Jess, Tucson considers higher water rates for non-residents, Arizona*
25 *Public Media (Apr. 6, 2021). [PIMA000603-604.]*

26 52. *Tim Steller, No good reason for Tucson to raise water rates for some,*
27 *Arizona Daily Star (May 29, 2021). [PIMA000597-602.]*

28 53. *Paul Cunningham and Steve Arnquist, Councilman Cunningham:*

1 ***Differential water rates are equitable, Arizona Daily Star (Apr. 1, 2021). [PIMA000565-***
2 ***570.]***

3 The County also identifies the following documents that are relevant or potentially
4 relevant to this matter:

- 5 1. All documents produced by any part in this matter;
- 6 2. All deposition exhibits;
- 7 3. All deposition transcripts; and
- 8 4. All documents any party has submitted to the Court in connection with
9 pleadings or other briefing.

10 **X. INSURANCE AGREEMENTS**

11 Pima County is not aware of any applicable an insurance policy, indemnity
12 agreement, or suretyship agreement that would satisfy a potential judgment in this lawsuit.

13 DATED this 18th day of October, 2022.

14 SNELL & WILMER L.L.P.

15 By: /s/ Brett W. Johnson

16 Brett W. Johnson
17 Ian R. Joyce
18 One Arizona Center
19 400 E. Van Buren, Suite 1900
20 Phoenix, Arizona 85004-2202

21 Jeffrey Willis
22 Courtney L. Hansen
23 One South Church Ave., Suite 1500
24 Tucson, Arizona 85701-1630

25 *Attorneys for Plaintiff Pima County*

1 ORIGINAL of the foregoing emailed this
18th day of October, 2022 to:

2
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4 Christopher Avery
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17 *Attorneys for Defendants*

18 /s/ Tracy Hobbs