

OPEN MEETING ITEM
ORIGINAL



0000031554

22

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

DATE: October 3, 2005
DOCKET NO: W-04137A-05-0286 et al.
~~SW-04136A-05-0287~~
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

SANTA ROSA WATER COMPANY
(CC&N Extension)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

OCTOBER 12, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 18 AND 19, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

RECEIVED

2005 OCT -31 P 3:38

AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF IN THE MATTER OF THE
9 APPLICATION OF SANTA ROSA WATER
10 COMPANY FOR AN EXTENSION OF ITS
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER SERVICE IN
13 PINAL COUNTY, ARIZONA.

DOCKET NO. W-04137A-05-0286

14 IN THE MATTER OF THE APPLICATION OF
15 SANTA ROSA UTILITY COMPANY FOR AN
16 EXTENSION OF ITS CERTIFICATE OF
17 CONVENIENCE AND NECESSITY TO PROVIDE
18 WASTEWATER SERVICE IN PINAL COUNTY,
19 ARIZONA.

DOCKET NO. SW-04136A-05-0287

DECISION NO. _____

20 OPINION AND ORDER

21 DATE OF HEARING:

August 1, 2005

22 PLACE OF HEARING:

Phoenix, Arizona

23 ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

24 APPEARANCES:

Jim Poulos, General Manager, Santa Rosa Water
Company and Santa Rosa Utility Company; and

25 David Ronald, Staff Attorney, Legal Division,
26 on behalf of the Utilities Division of the Arizona
27 Corporation Commission.

28 **BY THE COMMISSION:**

On April 18, 2005, Santa Rosa Water Company ("SRWC") filed with the Arizona Corporation Commission ("Commission") an application for approval to extend its Certificate of Convenience and Necessity ("Certificate") to provide water service to an area located five miles northwest of the town of Stanfield in Pinal County.

On April 18, 2005, Santa Rosa Utility Company ("SRUC") additionally filed an application for approval to extend its Certificate to provide wastewater service to the above mentioned area in Pinal County.

1 On May 12, 2005, the Commission's Utilities Division Staff ("Staff") filed a letter in both
2 dockets indicating that SRWC and SRUC's applications had met the sufficiency requirements
3 outlined in Arizona Administrative Code.

4 On May 25, 2005, SRWC and SRUC filed a Motion to Consolidate the above referenced
5 dockets which was granted by Procedural Order on the same date.

6 On May 25, 2005, a Procedural Order was issued setting the hearing on August 1, 2005 on the
7 applications and also setting associated procedural deadlines including the publication of notice of the
8 hearing.

9 On June 22, 2005, SRWC and SRUC filed its Certification of Publication and Proof of
10 Mailing.

11 On June 27, 2005, Staff filed its Staff Report recommending approval of the applications to
12 extend the CC&Ns to provide wastewater and water services, subject to certain conditions.

13 On July 12, 2005, SRWC and SRUC filed their Response to Staff's Report requesting to
14 modify the language in some of Staff's proposed conditions.

15 On August 1, 2005, a full public hearing was convened before a duly authorized
16 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. SRWC and SRUC
17 appeared and Staff appeared with counsel and presented evidence and testimony. No members of the
18 public appeared to give public comment. At the hearing the parties agreed to file late-filed exhibits
19 regarding the several compliance issues that were raised by Staff. Staff was ordered to respond to the
20 late-filed exhibit. All matters were taken under advisement at the conclusion of the hearing.

21 On August 3, 2005, SRWC and SRUC filed its late-filed exhibit regarding the compliance
22 issues.

23 On August 15, 2005 Staff filed its Response to the late-filed exhibit.

24 * * * * *

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

27
28

FINDINGS OF FACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Pursuant to authority granted by the Commission, SRWC and SRUC are Arizona corporations engaged in the business of providing wastewater and water services in Pinal County, Arizona.

2. SRUC and SRWC are Arizona S corporations, in good standing with the Commission's Corporation's Division and were originally granted authority to provide wastewater and water services, respectively, in Decision No. 65753 (March 20, 2003), to Rancho Sierra, a planned residential development within Pinal County.

3. SRUC and SRWC's wastewater and water systems are not currently in operation.

4. On April 18, 2005, SRUC and SRWC filed applications seeking Commission authority to add approximately 473 acres to their existing 3,536 acres of certificated area. The combined acres are a part of a planned area development which will be comprised of 17,144 residential units, a golf course, open spaces, 209 acres of commercial space, 64 acres of office complexes, and 120 acres of business parks.

5. According to the applications, utilities affiliated with SRUC and SRWC through overlapping principals and management provide wastewater and water services to approximately 30,000 customers in other areas of Arizona.

6. The extension area is located approximately five miles northwest of the town of Stanfield, just south of the Ak-Chin Indian Reservation in Pinal County. The legal description for SRWC is set forth as Exhibit A and the legal description for SRUC is set set forth as Exhibit B attached hereto and incorporated herein by reference.

7. According to the SRUC and SRWC's applications the proposed wastewater and water systems will be financed through a combination of debt and/or shareholder equity.

...
...

1 **WATER SYSTEM**

2 8. The SRWC water system proposes the use of 10 of 14 existing wells on the property.
3 Each well will produce 1,250 gallons per minute and provides sufficient water for build out. The
4 proposed design also includes two storage tanks totaling 4.8 million gallons and will provide
5 sufficient storage for build out. Additionally, the system will be designed to meet fire flow demand
6 by pumping and distributing 2,250 gallons per minute.

7 9. Staff concluded that the proposed water system will have adequate production and
8 storage capacity to serve the new CC&N area within a conventional five year planning period or can
9 reasonably be expected to develop the needed storage and production.

10 10. Since SRWC's water system is not operational there is no historical compliance data
11 for the Arizona Department of Environmental Quality ("ADEQ").

12 11. SRWC is located in the Pinal Active Management Area ("AMA") and according to
13 Staff's Report is in compliance with AMA's requirements.

14 12. Staff recommended that SRWC file a copy of the developer's Certificate of Assured
15 Water Supply, for the extension area within one year of the effective date of a Decision in this matter.
16 Prior to the hearing, the parties agreed to modify Staff's recommendation to accommodate for the
17 project being built in phases. The modified language is reflected in Staff's recommendation at
18 Finding of Fact No. 16, condition number one.

19 13. According to Staff's Report, the Utilities Division Compliance Section, found no
20 outstanding compliance issues for SRWC.

21 14. According to Staff's Report, SRWC tested one of its 14 existing irrigation wells for
22 water quality. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic maximum
23 containment level ("MCL") from 50 micrograms per liter ("ug/l") or parts per billion ("ppb") to 10
24 ug/l by January 23, 2006. SRWC's testing showed that the one well tested was below 5ug/l and met
25 EPA's standards. Staff recommended that SRWC file with Docket Control within 30 days of a
26 Decision in this matter documentation verifying the date(s) of its next required arsenic monitoring
27 test on all wells SRWC plans to use in serving the extension area. Staff further recommended that if
28 SRWC's next required arsenic test results show levels exceeding EPA's new MCL that SRWC

1 should be required to file with Docket Control a plan of action for addressing the arsenic issue, within
2 60 days of receiving that result.

3 15. Staff reviewed all other water quality parameters tested for SRWC and found them to
4 be below the MCL, except for nitrates. Staff reported that SRWC plans to install blank casing over
5 the nitrate zones in its wells to reduce the nitrate levels. Staff recommends that SRWC submit to
6 Docket Control by June 30, 2006, documentation from ADEQ demonstrating that this method of
7 nitrate control is satisfactory. Staff further recommends that if SRWC cannot meet the June 30th
8 deadline, it should submit to Docket Control an Approval of Construction from ADEQ for nitrate
9 removal. Prior to the hearing Staff agreed to modify its recommendation because they believed that
10 nitrates were showing up in the water due to the casing issue and once SRWC changed to a different
11 casing the problem would not exist. Staff's modified language is reflected in Finding of Fact No. 16,
12 condition number three.

13 16. Staff recommends approval of the SRWC application for an extension of its CC&N to
14 provide water service, subject to the following conditions:

- 15
- 16 1. That SRWC charge its authorized existing rates and charges in the extension area.
 - 17 2. That SRWC file with Docket Control a copy of the developer's first Certificate of Assured Water Supply ("CAWS") for the extension area, stating that there is adequate water supply, where applicable or when required by statute, within 365 days of the effective date of a Decision in this matter. SRWC shall also file with Docket Control copies of all subsequent developer's CAWS in the extension area as they are issued and prior to providing service in these areas.
 - 18 3. That SRWC in the event the next required nitrate monitoring result shows that its water exceeds ADEQ's MCL, SRWC shall be required to file with Docket Control a plan of action for addressing the nitrate issue, within 60 days of receiving that result.
 - 19 4. That SRWC file with Docket Control within 30 days of a Decision in this matter documentation verifying the date(s) of its next required arsenic monitoring test on all the wells SRWC plans to use in serving the extension area.
 - 20 5. That SRWC in the event its next required arsenic monitoring result shows that its arsenic levels exceed the EPA's new MCL, SRWC should file with
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
 - 27
 - 28

1 Docket Control a plan of action for addressing the arsenic issue, within 60
2 days of receiving the result.

3 6. That SRWC file a copy of the Pinal County Franchise agreement for the
4 extension area with Docket Control, within 365 days of the Decision in this
5 matter.

6 7. That SRWC comply with all requirements and conditions set forth in
7 Decision No. 65753 issued March 20, 2003, that have not already been
8 met.

9 17. Staff further recommended that the Commission's Decision granting the requested
10 CC&N extension to SRWC be considered null and void without further Order from the Commission
11 should SRWC fail to meet the conditions set forth above within the time specified.

12 18. SRWC asserted in its late-filed exhibit that it had complied with filing its water
13 franchise and Staff concurred in its Response. Therefore, Staff's recommendation that SRWC file its
14 water franchise is unnecessary.

15 19. Staff's recommendations in Findings of Fact Nos. 16 and 17 are reasonable, with the
16 exception that SRWC has already complied with Staff's condition No. 6.

17 **WASTEWATER SYSTEM**

18 20. With respect to SRUC's wastewater system, Staff indicated SRUC has 4.31 million
19 gallons per day ("MGD") authorized capacity approved under the Central Arizona Council of
20 Governments §208 plan and that the Company has applied for an Aquifer Protection Permit from
21 ADEQ and plans on starting construction by the end of 2005. The treatment plant will be constructed
22 in three phases. The treatment facilities will be conventional activated sludge with an anoxic zone
23 providing nitrogen removal. The effluent will be further improved to tertiary standards and then
24 disinfected by ultraviolet radiation. Noise and odor control are also included in the design.

25 21. Disposal of the treated effluent will be accomplished by reuse on the golf course,
26 parks and common areas. Staff states that any excess water will be recharged and that the planned
27
28

1 wastewater facility appears to be appropriate and adequate for the proposed development.

2 22. According to Staff's Report, the Utilities Division Compliance Section, reported no
3 outstanding compliance issues for SRUC.

4 23. SRUC will provide service to the extension area at its existing rates and charges on
5 file with the Commission for Pinal County.

6 24. Staff recommends that SRUC be required to file a copy of its franchise agreement
7 from Pinal County with Docket Control within 365 days of the Decision in this matter. However, in
8 SRUC's late-filed exhibit SRUC asserted it had already complied with that condition and Staff's
9 review confirmed its compliance. Therefore, Staff's recommended condition has been met and is
10 deleted.
11

12 25. Staff recommends approval of the SRUC application for an extension of its CC&N to
13 provide wastewater service, subject to the following conditions:

14 1. That SRUC charge its authorized existing rates and charges in the
15 extension area.

16 2. That SRUC comply with all requirements and conditions set forth in
17 Decision No. 65753 issued March 20, 2003 that have not already been met.

18 26. Staff further recommends that the Commission's Decision granting the requested
19 CC&N extension to SRUC should be considered null and void without further order from the
20 Commission if SRUC fails to meet the conditions set forth above within the time specified.

21 27. Staff's recommendations in Findings of Fact Nos. 25 and 26 are reasonable.

22 28. In regards to outstanding compliance issues relating to Decision No. 65753, on August
23 3, 2005, SRWC and SRUC docketed its exhibit showing it had complied with filing both its water
24 and sewer franchise agreements, the initial water Approval to Construct issued by ADEQ, the State
25 Aquifer Protection Permit and its Central Arizona Association of Governments plan.
26

27 29. In its Response, Staff concurred that SRWC and SRUC were in compliance with the
28

1 above referenced items; however, Staff noted that there were other outstanding compliance items
2 ordered in Decision No. 65753. Staff recommends that the following conditions in Decision No.
3 65753 continue to apply to SRWC and SRUC:

- 4 1. That SRWC and SRUC notify the Commission within 15 days of providing
5 service to its first customer;
- 6 2. That SRWC and SRUC file a rate application no later than three months
7 following the fifth anniversary of the date the Company begins providing
8 service to its first customer;
- 9 3. That SRWC and SRUC maintain its books and records in accordance with
10 NARUC Uniform System of Accounts for water facilities;
- 11 4. That SRWC file a Curtailment Plan for approval by the Utilities Division
12 Director within 30 days of providing service to its first customers.

13 30. Staff's recommendations set forth in Finding of Fact No. 29 are reasonable.

14 CONCLUSIONS OF LAW

15 1. SRWC and SRUC are public service corporations with the meaning of Article XV of
16 the Arizona Constitution and A.R.S. §§40-281 and 40-282.

17 2. The Commission has jurisdiction over SRWC and SRUC and the subject matter of the
18 applications.

19 3. Notice of the applications was provided in accordance with the law.

20 4. There is a public need and necessity for water and wastewater service in the proposed
21 service territory as set forth in Exhibit A attached hereto and incorporated herein by reference.

22 5. SRWC and SRUC are fit and proper entities to receive Certificates to provide water
23 and wastewater service in the proposed service area.

24 6. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

25 ORDER

26 IT IS THEREFORE ORDERED that the applications of Santa Rosa Water Company and
27 Santa Rosa Utility Company to extend their Certificates of Convenience and Necessity to provide
28 water and wastewater services in Pinal County as described in Exhibits A and B attached hereto and
incorporated herein by reference are approved subject to the conditions and requirements

1 recommended by Staff, in the following ordering paragraphs.

2 IT IS FURTHER ORDERED that Santa Rosa Water Company and Santa Rosa Utility
3 Company shall charge their existing rates and charges that are on file with the Commission in the
4 extension area until further Order of Commission.

5 IT IS FURTHER ORDERED that Santa Rosa Water Company shall file with Docket Control
6 a copy of the developer's first Certificates of Assured Water Supply for the extension area, stating
7 there is adequate water supply, where applicable or when required by statute within 365 days of the
8 effective date of this Decision.

9 IT IS FURTHER ORDERED that Santa Rosa Water Company shall also file with Docket
10 Control all subsequent developer's Certificate of Assured Water Supply in the extension area as they
11 are issued and prior to providing service in these areas.

12 IT IS FURTHER ORDERED that in the event its next required nitrate monitoring result
13 shows that its water exceeds the Arizona Department of Environmental Quality's maximum
14 containment level, Santa Rosa Water Company shall file with Docket Control a plan of action for
15 addressing the nitrate issue, within 60 days of receiving that result.

16 IT IS FURTHER ORDERED that Santa Rosa Water Company shall file with Docket Control
17 within 30 days of this Decision, documentation verifying the dates of its next required arsenic
18 monitoring test on all of the wells Santa Rosa Water Company plans to use in serving the extension
19 area.

20 IT IS FURTHER ORDERED in the event its next required arsenic monitoring result shows
21 that its arsenic levels exceeds the Environmental Protection Agency's new maximum containment
22 level, Santa Rosa Water Company shall file with Docket Control a plan of action for addressing the
23 arsenic issue, within 60 days of receiving the result.

24 IT IS FURTHER ORDERED that Santa Rosa Water Company and Santa Rosa Utility
25 Company shall comply with all requirements and conditions set forth in Decision No. 65753 that
26 have not already been met.

27 ...

28 ...

1 IT IS FURTHER ORDERED that failure by Santa Rosa Water Company and Santa Rosa
2 Utility Company to comply with Staff's recommendations, within the specified time frames, set forth
3 above, will render the Certificates null and void without further order of the Commission.

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

5

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7

8

9 CHAIRMAN _____ COMMISSIONER _____

10

11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

12

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2005.

16

17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

18

19 DISSENT _____

20

21 DISSENT _____

22

23

24

25

26

27

28

1 SERVICE LIST FOR: Santa Rosa Water Company and Santa Rosa Utility
2 Company

3 DOCKET NOS.: W-04137A-04-0286 and SW-04136A-05-0287

4 Jim Poulos
5 9532 East Riggs Road
6 Sun Lakes, Arizona 85248

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17
18
19
20
21
22
23
24
25
26
27
28

LEGAL DESCRIPTION

Santa Rosa Water Company
Proposed Addition to CC&N Area

March 29, 2005
Revised April 14, 2005

PARCEL NO. 1 (Portion of Section 25)
The East Half of the Southeast Quarter of Section 25, Township 5 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

EXCEPTING therefrom the North Half of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of said Section 25.

The above-described parcel contains 3,328,313 square feet or 76.41 acres, more or less.

PARCEL NO. 2 (Portion of Section 25)
The Southwest Quarter of Section 25, Township 5 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

The above-described parcel contains 7,524,575 square feet or 172.74 acres, more or less.

PARCEL NO. 3 (Portion of Section 26)
The West Half of the Southeast Quarter and the East Half of the Southwest Quarter of Section 26, Township 5 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

The above-described parcel contains 7,352,797 square feet or 168.80 acres, more or less.

PARCEL NO. 4 (Portion of Section 2)
The East 1,084.58 feet of the Northeast Quarter of Section 2, Township 6 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

EXCEPTING therefrom the north 1,313.89 feet.

The above-described parcel contains 2,393,937 square feet or 54.96 acres, more or less.

LEGAL DESCRIPTION

Santa Rosa Water Company
Proposed Addition to CC&N Area (Cont.)

March 29, 2005
Revised April 14, 2005

PARCEL NO. 5 (Portion of Section 25)

That part of the Southeast Quarter of Section 25, Township 5 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

BEGINNING at the South Quarter corner of said Section 25;

THENCE North 00 degrees 34 minutes 53 seconds East, along the North-south midsection line, a distance of 1,580.97 feet;

THENCE South 01 degree 14 minutes 54 seconds East, a distance of 1,584.79 feet, to a point on the South line of said Section 25;

THENCE North 86 degrees 00 minutes 46 seconds West, a distance of 50.69 feet to the Point of Beginning.

The above-described parcel contains 39,999 square feet or 0.92 acres, more or less.

The aggregate area of the above-described parcels is 473.83 acres.



LEGAL DESCRIPTION

Santa Rosa Utility Company
Proposed Addition to CC&N Area

March 29, 2005
Revised April 14, 2005

PARCEL NO. 1 (Portion of Section 25)

The East Half of the Southeast Quarter of Section 25, Township 5 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

EXCEPTING therefrom the North Half of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of said Section 25.

The above-described parcel contains 3,328,313 square feet or 76.41 acres, more or less.

PARCEL NO. 2 (Portion of Section 25)

The Southwest Quarter of Section 25, Township 5 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

The above-described parcel contains 7,524,575 square feet or 172.74 acres, more or less.

PARCEL NO. 3 (Portion of Section 26)

The West Half of the Southeast Quarter and the East Half of the Southwest Quarter of Section 26, Township 5 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

The above-described parcel contains 7,352,797 square feet or 168.80 acres, more or less.

PARCEL NO. 4 (Portion of Section 2)

The East 1,084.58 feet of the Northeast Quarter of Section 2, Township 6 South, Range 3 East, Gila and Salt River Meridian, Pinal County, Arizona.

EXCEPTING therefrom the north 1,313.89 feet.

The above-described parcel contains 2,393,937 square feet or 54.96 acres, more or less.

LEGAL DESCRIPTION

Santa Rosa Utility Company
Proposed Addition to CC&N Area (Cont.)

March 29, 2005
Revised April 14, 2005

PARCEL NO. 5 (Portion of Section 25)

That part of the Southeast Quarter of Section 25, Township 5 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

BEGINNING at the South Quarter corner of said Section 25;

THENCE North 00 degrees 34 minutes 53 seconds East, along the North-south midsection line, a distance of 1,580.97 feet;

THENCE South 01 degree 14 minutes 54 seconds East, a distance of 1,584.79 feet, to a point on the South line of said Section 25;

THENCE North 86 degrees 00 minutes 46 seconds West, a distance of 50.69 feet to the Point of Beginning.

The above-described parcel contains 39,999 square feet or 0.92 acres, more or less.

The aggregate area of the above-described parcels is 473.83 acres.

