

OPEN MEETING ITEM



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ORIGINAL



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

ARIZONA CORPORATION COMMISSION

DATE: November 21, 2005

DOCKET NO: W-02481A-05-0446

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:

MARK GRAPP, dba SERVICEBERRY WATER COMPANY
(CC&N DELETION)

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:

NOVEMBER 30, 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:

DECEMBER 6 AND 7, 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.

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AZ CORP COMMISSION
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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 THE APPLICATION OF
9 MARK GRAPP dba SERVICEBERRY WATER
10 COMPANY FOR APPROVAL TO DELETE A
11 PORTION OF ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY TO PROVIDE
13 WATER SERVICE TO FLYING W RANCH.

DOCKET NO. W-02481A-05-0446

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: October 25, 2005
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
17 APPEARANCES: Mark Grapp, on behalf of Serviceberry Water Company;
18 and
19 Keith Layton, Staff Attorney, Legal Division on behalf
20 of the Utilities Division of the Arizona Corporation
21 Commission.

22 **BY THE COMMISSION:**

23 On June 21, 2005, Mark Grapp, dba Serviceberry Water Company (“Company” or
24 “Serviceberry” or “Applicant”), filed with the Arizona Corporation Commission (“Commission”) an
25 application for authority to delete a portion of its Certificate of Convenience and Necessity
26 (“Certificate” or “CC&N”). The area which the Company proposes to delete has been used for dry
27 farming purposes by Flying W Ranch. Flying W Ranch has requested deletion from the Applicant’s
28 service area because the area is located closer to the Vernon Water Improvement District facilities.
The Company’s application further states that it has no facilities or customers in the proposed deleted
service area, and that it is willing to delete the area from its Certificate.

On August 17, 2005, the Staff of the Commission’s Utilities Division (“Staff”) filed a letter
indicating that Applicant’s application has met the sufficiency requirements as outlined in the
Arizona Administrative Code.

1 On September 1, 2005, by Procedural Order, a hearing was scheduled for October 25, 2005.

2 On September 28, 2005, Staff filed its Staff Report recommending approval subject to certain
3 compliance issues.

4 On October 20, 2005, Serviceberry filed an updated legal description for the deletion area.

5 On October 25, 2005, a full public hearing was held before a duly authorized Administrative
6 Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant appeared and gave
7 testimony. Staff appeared with counsel and presented evidence and testimony. No members of the
8 public were present to give public comment. At the conclusion of the hearing, the matter was taken
9 under advisement pending submission of a Recommended Opinion and Order to the Commission.

10 * * * * *

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

13 **FINDINGS OF FACT**

14
15 1. Pursuant to the authority granted by the Commission, Serviceberry is an Arizona
16 corporation which provides water service in Apache County.

17 2. On June 21, 2005, Serviceberry filed an application for authority to delete a portion of
18 its CC&N, in Apache County which is more fully described in Exhibit A, attached hereto and
19 incorporated herein by reference. The proposed deletion area consists of one-sixteenth square mile of
20 the Applicant's existing certificated area, which comprises roughly two square miles.

21
22 3. Serviceberry is located approximately sixteen miles east of Show Low in Apache
23 County.

24 4. Serviceberry has no facilities or customers in the deletion area.

25 5. Flying W. Ranch, a potential customer, has requested deletion from Applicant's
26 service territory because the area is located closer to the Vernon Water Improvement District facility.

27 6. According to Staff's Report, Serviceberry has one well in existence that has a total
28

1 production capacity of 25 gallons per minute, 10,000 gallons of storage capacity, booster pumps, a
2 pressure tank and a distribution system serving 22 connections.

3 7. Based on historical growth rates, Staff believes that the existing service area would
4 have 32 total customers at the end of five years.

5 8. Staff believes that Serviceberry has adequate system production and storage capacity
6 to serve its existing customer base.

7 9. According to Staff's Report, the Arizona Department of Environmental Quality
8 ("ADEQ") reported major deficiencies regarding Serviceberry's monitoring and reporting status. Due
9 to those deficiencies ADEQ could not determine if the Serviceberry system was delivering water that
10 meets water quality standards as required by the Arizona Administrative Code¹.

11 10. At the hearing, Serviceberry's witness testified that in reviewing the issue, he believed
12 that the testing had been done in a timely manner; however, he could not verify that reports had been
13 submitted to ADEQ as required. He further testified that since Staff's Report the Company had
14 forwarded all testing reports to ADEQ.
15

16 11. Staff's witness testified that Staff had not received updated information from ADEQ,
17 regarding Applicant's missing reports; therefore, Staff could not verify that the test results had been
18 submitted as Applicant's witness testified.
19

20 12. Staff's Report recommended that Serviceberry file with the Commission's Docket
21 Control its monthly lab results for the total coliform analysis required by ADEQ, for a period of 24-
22 months following the effective date of the Commission's Decision in this matter and that each
23 monthly filing occurs within 45 days from the end of the month reported.
24

25 13. Based on the testimony from both Applicant and Staff, it is unclear whether
26 Serviceberry is in compliance with ADEQ's coliform reporting requirements. Additionally, because
27

28 ¹ Arizona Administrative Code, Title 18, Chapter 4.

1 of the potential risk to the public due to Serviceberry's failure to submit its coliform test results to
2 ADEQ in a timely manner, we find that Staff's recommendation that Serviceberry docket its coliform
3 test results for 24 months is reasonable.

4 14. Serviceberry is in compliance with the new arsenic standard of 10 micrograms per
5 liter, which becomes effective on January 23, 2006.

6 15. Serviceberry is not within any Active Management Area, and is not subject to
7 reporting and conservation rules.

8 16. Staff reported that the Utilities Division Compliance Section found no outstanding
9 compliance issues for the company.

10 17. Serviceberry has an approved Curtailment Tariff that has been in effect since August
11 25, 2004.

12 18. Staff believes that the approval of the application would be in the public interest, as it
13 would facilitate the potential customer's request that it be served by the Vernon Water Improvement
14 District facility.

15 19. Because an allowance for the property tax expense of Serviceberry is included in the
16 Company's rates and will be collected from its customers, the Commission seeks assurances from the
17 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
18 authority. It has come to the Commission's attention that a number of water companies have been
19 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
20 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure
21 Serviceberry shall annually file, as part of its annual report, an affidavit with the Utilities Division
22 attesting that the company is current in paying its property taxes in Arizona.

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26 **CONCLUSIONS OF LAW**

27 1. Serviceberry is a public service corporation within the meaning of Article XV of the
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1 Arizona Constitution and A.R.S. § 40-252, 40-281 and 40-282.

2 2. The Commission has jurisdiction over Serviceberry and the subject matter of the
3 application.

4 3. The public convenience and necessity require that the public would benefit from the
5 deletion of the area described in Exhibit A.

6 4. Notice of the application and hearing thereon was given in accordance with the law.

7
8 5. The recommendations set forth in Findings of Fact No. 12 are reasonable and should
9 be adopted.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the application of Mark Grapp dba Serviceberry Water
12 Company for a deletion of the lands encompassed with its Certificate of Convenience and Necessity
13 as described in Exhibit A be, and is hereby, approved.

14 IT IS FURTHER ORDERED that Mark Grapp, dba Serviceberry Water Company shall, for
15 24-months following the effective date of this Order, docket with the Commission's Docket Control,
16 as a compliance item, its monthly lab results for the total coliform analysis required by the Arizona
17 Department of Environmental Quality and each monthly filing shall be docketed within 45 days from
18 the end of the month reported.
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1 IT IS FURTHER ORDERED that Mark Grapp, dba Serviceberry Water Company shall
2 annually file as part of its annual report, an affidavit with the Utilities Division attesting that the
3 Company is current in paying its property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9 CHAIRMAN

COMMISSIONER

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12 COMMISSIONER

COMMISSIONER

COMMISSIONER

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.

18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21 DISSENT _____
22

23 DISSENT _____
24

25 YK.mj
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1 SERVICE LIST FOR: SERVICEBERRY WATER COMPANY

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DOCKET NO.: W-02481A-05-0446

Mark Grapp
Serviceberry Water Company
P.O. Box 1270
Show Low, AZ 85902

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
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Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
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Serviceberry Water Co.

PO Box 1270, Show Low, AZ 85902 (928) 537-8739

HEARING

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October 17, 2005

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Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix Arizona 85007

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OCT 20 2005

ARIZONA CORPORATION COMMISSION
HEARING DIVISION

RE: CC&N Deletion Docket No. W-02481A-05-0446.

Dear Commission,

This letter is to provide another updated legal description. Legal description provided last did not go the correct directions. This is for a CC&N deletion filed under Docket No. W-02481A-05-0446.

Starting at the Northeast corner of Section 21, T10N R25E, thence S 89°14' 12" W, 1183.88 feet his being the Point of Beginning. Thence continue on that same bearing 956.58 feet, Thence S00°07'24"E, 1341.32 feet, thence N88°58'03"E, 943.73 feet, thence N00°25'43"E, 1336.80 feet, back to the Point of Beginning

Any questions or comments please call me. Thank you.

Sincerely,



Mark Grapp