

ORIGINAL

THIS AMENDMENT:

_____ Passed _____ Passed as amended by _____

_____ Failed _____ Not Offered _____



0000038264

6000

SPITZER PROPOSED AMENDMENT #1

TIME/DATE PREPARED: 2:00 p.m. / January 11, 2006

COMPANY: Miracle Valley Water Company et al.

AGENDA ITEM NO. U-1

DOCKET NOS. W-01646A-05-0506,
W-01868A-05-0506, W-02235A-05-0506,
W-02316A-05-0506, W-02230A-05-0506,
W-01629A-05-0506, W-02240A-050-506

OPEN MEETING DATE: January 13, 2006

RECEIVED
2006 JAN 11 P 2:35
AZ CORP COMMISSION
DOCUMENT CONTROL

At Page 8, line 21,

DELETE: Finding of Fact No. 41.

INSERT: New Finding of Fact No. 41:

“41. After weighing all of the evidence, the Administrative Law Judge (“ALJ”) concluded that the Fair Current Value of the real property is a reasonable estimate of the value of the real property of the McLain Water Systems and should be utilized in determining the rate bases of the McLain Water Systems. The ALJ recommended the following rate bases for the McLain Water Systems to be used to assist the Bankruptcy Court:”

At Page 9, line 13,

INSERT:

"ANALYSIS

This proceeding is extraordinary in that the Commission is compelled to determine rate bases for a pending sale of utility assets. This unique circumstance poses an inherent contradiction. "Rate base" determinations are a regulatory construct, while the sales price(s) of assets are derived from market forces, supply and demand. The Commission is asked herein to exercise its regulatory authority to consummate a sale between a buyer and a seller under the authority of a Federal court. More quixotic still, the record in this case indicates a disconnect between (1) The price of a judicially approved (we hope) transaction that includes a valuation of the “intangibles” inherent in a going

concern and (2) An accurate regulatory rate basing of utility assets.

While the record is incomplete regarding the fair market value of the assets of the McLain Water Systems and related "intangibles", we agree with the Administrative Law Judge ("ALJ") that in this unique case the Fair Current Value of the real property is a reasonable estimate of their value within those systems and should be utilized in determining their rate bases. However, fairness also demands we consider other portions of the record in this case which makes it clear that poor service quality has plagued those systems due to Mr. McLain's failure to properly operate the water companies. There is ample evidence to conclude that each system lacks an "intangible" known as goodwill. The Commission is convinced that the inactions of Mr. McLain, especially to pay property taxes, and his dereliction of duty to his customers as an owner of the water systems, has forced those customers to endure frequent outages and poor service quality that, especially during the summer, are unprecedented and unconscionable. We find that the lack of goodwill, although somewhat difficult to measure, is clearly evidenced in the record. Further, the lack of goodwill and the unprecedented poor service has been born by the ratepayers over many years.

Not only is there an absence of goodwill, the record is clear there exists genuine (and deserved) hostility toward Mr. McLain and his companies. These factors, along with the dilapidated condition of the water systems, lead us to conclude that the rate base should be appropriately adjusted downward from the figure recommended by the ALJ in the Recommended Opinion and Order ("ROO").

It is imperative that the proposed transaction go forward in Bankruptcy Court. We therefore concur with the adjustments the ALJ made to Staff's recommendations delineated in the ROO. However, despite the urgency, we cannot ignore that the ratepayers will again be financially responsible for taxes they have already paid, the wide swath of negative goodwill associated with

these systems, the systems' overall state of unprecedented disrepair and the aggregate impact of those factors on ratepayers.

We are tasked with finding the proper rate base of these systems. We are also responsible to ensure that the utilities we regulate are operated in a safe, reasonable and prudent manner. After weighing and balancing the issues presented in this case, especially focusing on the plight of the ratepayers who will be financially responsible not only to restore these systems but ultimately to rebuild them, equity demands that the rate base recommended in the ROO be reduced. Therefore, we find that a reduction of \$52,141.26 is appropriate. The reduction represents a 5% deduction per system for the lack of goodwill, with the exception of the assets of Horseshoe Ranch Water System. The record in this case compels a 15% reduction to the rate base of the Horseshoe Ranch Water System assets, due to the more serious and repeated service quality issues endured by those customers. Therefore, we find that, for purposes of assisting the Bankruptcy Court, the rate base for the assets of the McLain Water Systems to be as follows:

	<u>Rate Base</u>
Mustang Water Company	\$24,008.81
Crystal Water Company	\$19,003.18
Sierra Sunset Water Company	\$18,583.75
Coronado Estates Water Company	\$29,988.84
Miracle Valley Water Company, Inc.	\$22,798.78
Horseshoe Ranch Water Company	\$124,920.98
Cochise Water Company	<u>\$457,447.80</u>
Total	\$696,752.14"

At Page 9, line 21,

DELETE: "Finding of Fact No. 41".

INSERT: "our Analysis".

At Page 10, line 2,

DELETE:

"IT IS THEREFORE ORDERED that for the purpose of assisting the Bankruptcy Court in determining a purchase price for the McLain Water Systems, the Arizona Corporation Commission adopts the rate base finding set forth herein."

INSERT:

"IT IS THEREFORE ORDERED that for the purpose of assisting the Bankruptcy Court in determining a purchase price for the McLain Water Systems, the Arizona Corporation Commission adopts the following rate bases:

	<u>Rate Base</u>
Mustang Water Company	\$24,008.81
Crystal Water Company	\$19,003.18
Sierra Sunset Water Company	\$18,583.75
Coronado Estates Water Company	\$29,988.84
Miracle Valley Water Company, Inc.	\$22,798.78
Horseshoe Ranch Water Company	\$124,920.98
Cochise Water Company	<u>\$457,447.80</u>
Total	\$696,752.14"

Make all conforming changes.

Miracle Valley Water Company, et al.

Spitzer Proposed Amendment #1 Exhibit

<u>ROO Rate Base</u>	<u>Spitzer Adjustment</u>	<u>New Rate Base</u>	<u>Difference</u>
\$ 25,272.43	0.95	\$ 24,008.81	\$ (1,263.62)
\$ 20,003.35	0.95	\$ 19,003.18	\$ (1,000.17)
\$ 19,561.84	0.95	\$ 18,583.75	\$ (978.09)
\$ 31,567.20	0.95	\$ 29,988.84	\$ (1,578.36)
\$ 23,998.72	0.95	\$ 22,798.78	\$ (1,199.94)
\$ 146,965.86	0.85	\$ 124,920.98	\$ (22,044.88)
<u>\$ 481,524.00</u>	0.95	<u>\$ 457,447.80</u>	<u>\$ (24,076.20)</u>
\$ 748,893.40		\$ 696,752.14	\$ (52,141.26)