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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

FEB 02 2006

DOCKETED BY	<i>[Signature]</i>
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IN THE MATTER OF THE APPLICATION OF
WATER UTILITY OF GREATER TONOPAH,
INC. FOR APPROVAL TO EXTEND OR
TRANSFER ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02450A-05-0430

DECISION NO. 68451

OPINION AND ORDER
RETROACTIVE CORRECTION TO
DECISION NO. 54419

DATE OF HEARING: September 12, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

APPEARANCES: Mr. William P. Sullivan, Curtis, Goodwin, Sullivan,
Udall & Schwab, on behalf of Water Utility of Greater
Tonopah; and

Mr. Keith Layton, Staff Attorney, Legal Division on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On June 10, 2005, Water Utility of Greater Tonopah ("WUGT" or "Applicant") filed with the Arizona Corporation Commission ("Commission"), an application to transfer from West Phoenix Water Company, Inc., ("West Phoenix") to WUGT the remaining portion of its Certificate of Convenience and Necessity ("Certificate" or "CC&N"). WUGT's application stated that a portion of the Certificated lands ("the lands") had been inadvertently omitted from the legal description when the Commission granted the original transfer from West Phoenix to WUGT in Commission Decision No. 54419 (April 1, 1985). The application describes the omitted sections of land as the West half of Section 30 and all of Section 31, Township 2 North, Range 6 West, Maricopa County, Arizona.

On August 17, 2005, Staff filed its Staff Report recommending an order to make a retroactive

1 correction stating it believed a clerical error had occurred when Commission Decision No. 54419
2 (April 1, 1985) was entered. Alternatively, Staff recommended approval of WUGT's application to
3 transfer the CC&N, subject to conditions.

4 On September 12, 2005, a full public hearing was convened before a duly authorized
5 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff
6 appeared through counsel at the hearing and presented evidence and testimony in the matter. No
7 members of the public appeared to give public comment. At the conclusion of the hearing, pending
8 late-filed exhibits by Staff and the Applicant, the matter was taken under advisement.

9 On October 3, 2005, an Application to Intervene by Sierra Negra Ranch, LLC ("Sierra") was
10 docketed in the above referenced matter.

11 On October 5, 2005, Sierra additionally filed, an Application to Intervene and Request to
12 Supplement the Record.

13 On October 12, 2005, a Procedural Order was issued ordering WUGT to Respond to Sierra's
14 Application to Intervene and Application to Supplement the Record. Additionally, it ordered Staff to
15 file a Supplemental Staff Report addressing the issues raised in Sierra's Application to Intervene and
16 Request to Supplement the Record.

17 On October 12, 2005, WUGT filed its response objecting to intervention by Sierra and
18 asserting among other things that Sierra's request to intervene was untimely.

19 On November 21, 2005, Staff filed its Supplemental Staff Report addressing Sierra's
20 intervention.

21 * * * * *

22 Having considered the entire record herein and being fully advised in the premises, the
23 Arizona Corporation Commission finds, concludes, and orders that:

24
25 **FINDINGS OF FACT**

26 1. On June 10, 2005, WUGT filed with the Commission an application to transfer from
27 West Phoenix Water Company, Inc., ("West Phoenix") to WUGT the remaining portion of its
28 Certificate of Convenience and Necessity ("Certificate" or "CC&N"). WUGT's application stated

1 that a portion of the Certificated lands had been inadvertently omitted from the legal description
2 when West Phoenix transferred its CC&N to WUGT in Commission Decision No. 54419 (April 1,
3 1985). The application describes the omitted sections of land as the West half of Section 30 and all of
4 Section 31, Township 2 North, Range 6 West, Maricopa County, Arizona.

5 2. On July 12, 2005, Staff filed a Sufficiency Letter stating that the Company's
6 application met the sufficiency requirements set forth in the Commission's rules.

7 3. On July 18, 2005, a Procedural Order was issued setting the hearing to commence on
8 September 12, 2005 on the application and also setting associated procedural deadlines including the
9 publication of notice of the hearing.

10 4. On August 12, 2005, WUGT filed its Affidavit of Publication and Proof of Mailing.

11 5. On August 17, 2005, Staff filed its Staff Report recommending an order to make a
12 retroactive correction stating it believed a clerical error had occurred when Commission Decision No.
13 54419 (April 1, 1985) was entered. Alternatively, Staff recommended approval of WUGT's
14 application to transfer the CC&N, subject to conditions.

15 6. On September 12, 2005, a full public hearing was convened before a duly authorized
16 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff
17 appeared through counsel at the hearing and presented evidence and testimony in the matter. No
18 members of the public appeared to give public comment. At the conclusion of the hearing, pending
19 late-filed exhibits by Staff and the Applicant, the matter was taken under advisement.

20 7. On October 3, 2005, an Application to Intervene by Sierra was docketed in the above
21 referenced matter. Sierra's application indicated it is located within the transfer area requested by
22 WUGT. Further, Sierra stated that it had not requested water or wastewater service from WUGT and
23 that it had concerns regarding the technical and financial capability of WUGT to service future
24 development within Sierra and the surrounding areas.

25 8. On October 5, 2005, Sierra additionally filed an Application to Intervene and Request
26 to Supplement the Record. In its filing Sierra stated it did not receive notice of the September 12,
27 2005 hearing and that it objected to the inclusion of its land within WUGT's CC&N.

28 9. On October 12, 2005, a Procedural Order was issued ordering WUGT to respond to

1 Sierra's Application to Intervene and Application to Supplement the Record. Additionally, it ordered
2 Staff to file a Supplemental Staff Report addressing the issues raised in Sierra's Application to
3 Intervene and Request to Supplement the Record.

4 10. On October 12, 2005, WUGT filed its response objecting to intervention by Sierra and
5 asserting that Sierra's request to intervene was untimely because the Procedural Order setting the
6 matter for hearing ordered that all Motions to Intervene were to be submitted by August 24, 2005 and
7 that Sierra had not only missed the deadline, but had filed its Motion 21 days after the evidentiary
8 hearing was held.

9 11. WUGT further asserted that it had informed Sierra on four separate occasions that it
10 would be seeking Commission approval to correct the legal description in Commission Decision No.
11 54419 (April 1, 1985) due to a clerical error and that Sierra had not raised concerns over the proposed
12 application. Additionally, WUGT submitted an affidavit from Mr. John Mihlik, Chief Financial
13 Officer for WUGT, stating specific times that he had met with or spoken to representatives from
14 Sierra in which the pending application was discussed. His affidavit asserts that during the time he
15 had discussions with Sierra regarding the area of land that is the subject of this application he
16 believed that Sierra was conducting due diligence research regarding a potential purchase or
17 development in the transfer area.

18 12. The Applicant also asserted that it used information obtained from the Assessor's
19 website to cause notice to be mailed first class to the nine property owners located within the transfer
20 area, but that the land that Sierra claims it owns was listed as being owned by Phoenix I-10 LLC.

21 13. On November 21, 2005, Staff filed its Supplemental Staff Report addressing Sierra's
22 intervention. Staff stated that it believed the notice issue was moot as Sierra admitted in its Motion to
23 Intervene that its representative was notified directly by Mr. Mihlik regarding the pending transfer.
24 Regarding Sierra's claim that it objects to being included in WUGT's CC&N, Staff noted that the
25 geographic area at issue in this application, except for the width of a quarter-section, is completely
26 surrounded by WUGT's current service territory, making it virtually "land locked" and highly
27 unlikely that another provider would want to service the area. Further, Staff stated that even though
28 Sierra objected to being included in WUGT's CC&N neither Sierra nor any other party had come

1 forward with a competing application.

2 14. Sierra raised concerns that WUGT did not have the technical and financial ability to
3 provide adequate water service. In its Supplemental Staff Report, Staff responded by stating that
4 Commission Decision No. 68307 (November 14, 2005) had recently granted approval to WUGT for
5 extension of its CC&N to serve approximately 6,000 connections on 2,000 acres in the Hassayampa
6 Ranch master-planned community. Although Staff conducted no technical and financial analysis for
7 the transfer area in this docket because there is no proposed subdivision or water system on which to
8 base such an analysis, Staff asserted that the Commission's recent approval in Decision No. 68307
9 (November 14, 2005) which deemed WUGT a fit and proper entity to provide utility service was
10 evidence that WUGT has the technical and financial ability to provide utility service in the transfer
11 area.

12 15. Regarding Sierra's preference to be served by an "integrated" utility, Staff found that
13 Sierra presented no evidence that that an "integrated" utility would be in the public interest, as well
14 as, no integrated utility has come forward to request to serve this area.

15 16. Staff's Supplemental Staff Report stated that it believed allowing Sierra to intervene
16 would unduly broaden the issues in this docket beyond whether a clerical error had been made in
17 Commission Decision No. 54419 (April 1, 1985) or what compliance was necessary if a transfer was
18 granted.

19 17. Finally, Staff reaffirmed its position that a clerical error had occurred in Commission
20 Decision No. 54419 (April 1, 1985) and that it should be corrected in this Docket.

21 18. Here, Sierra claims that it did not receive notice of the hearing in this matter. Sierra
22 stated in its Supplement to Application to Intervene and Request to Supplement Record that "Mr.
23 Mihlik orally expressed an intention earlier to pursue a transfer to a representative of Sierra", WUGT
24 published Notice of the pending application along with the hearing date in the *West Valley View*
25 *Newspaper* on August 12, 2005 and WUGT also mailed notice to the nine land owners on file with
26 the Assessor's office website. We find that Sierra had actual notice when WUGT published notice
27 and mailed notice to the nine land owners in the transfer area. We also find that Sierra had
28 constructive notice when it engaged in discussions with WUGT concerning the proposed transfer.

1 Therefore, we find that Sierra had both constructive and actual notice of the pending transfer.

2 19. Sierra also asserted that it did not desire to be included in WUGT's CC&N because it
3 did not believe WUGT had the technical and financial ability to provide water service and that they
4 would be better served by an "integrated" utility. Staff asserted that although Sierra objects to
5 inclusion in WUGT's CC&N no other provider has come forward with a competing application and
6 given Sierra's "land locked" position within WUGT's current Certificated area it was highly unlikely
7 that another provider would desire to serve the area at issue in this docket. Additionally, Staff
8 asserted that although analysis of whether WUGT was a fit and proper entity in this docket was not
9 addressed, WUGT had recently been found to be a fit and proper entity to provide utility service in
10 Commission Decision No. 68307 (November 14, 2005) which extended its CC&N to include 6,000
11 new connections was evidence that WUGT had the technical and financial ability to provide utility
12 service in the transfer area. Staff further stated that Sierra's claim that it would be best served by an
13 "integrated" utility was unsupported by evidence that an "integrated" utility was in the public interest
14 and that no integrated utility had filed a request to serve this area. We find Staff's position
15 reasonable.

16 20. Finally, Sierra asserts that allowing it intervention would not unduly broaden the
17 issues in this docket. Staff's position as set forth above is that this docket involves correcting a clerical
18 error and in the alternative involves compliance issues associated with the transfer. Sierra's request
19 revolves around a deletion from WUGT's CC&N, which requires a different analysis than the issues
20 in this docket. Therefore, we find that Sierra's intervention would unduly broaden the issues in this
21 docket. Our finding does not prejudice Sierra from pursuing a request for deletion at some future
22 date.

23 21. Based on the findings set forth above and pursuant to A.A.C. R14-3-105(B) Sierra's
24 Application to Intervene should be denied.

25 History

26 22. In Commission Decision No. 33434 (October 6, 1961) the Commission granted a
27 Certificate to Tonopah Water Company ("Tonopah") which authorized it to construct, operate and
28 maintain a public water system in the area described as:

1
2 All of Section 6, Township 1 North, Range 6 West; the East half of Section 18, the
3 Northwest quarter of Section 19, **the West half of Section 30, and all of Section 31**
4 **in Township 2 North, Range 6 West** [emphasis added]; the East half of Section 2, all
5 of Section 4, all of Section 5 and all of Section 13, the Northeast quarter and the South
6 half of Section 14, the North half of Section 15, all of Section 16 all of Sections 20,
21, 22, 23, and 24 and all of Sections 25, 26, 27, 28, and 29 and all of Sections 32, 33,
34 and 35 and all of Section 36 in Township 2 North, Range 7 West, G&SRB&M,
Maricopa County, Arizona.

7 The area is more fully described in Exhibit A, attached hereto and incorporated herein by reference.

8 23. In subsequent Commission Decision No. 39759 (December 5, 1968), the Commission
9 approved Tonopah's application to transfer all of its CC&N to West Phoenix. The transfer area is
10 more fully described in Exhibit B, attached hereto and incorporated herein by reference.

11 24. On April 1, 1985, the Commission issued Decision No. 54419 (April 1, 1985) which
12 granted West Phoenix and Sunshine Water Company ("SWC") authority to transfer their Certificates
13 to West Buckeye Water Company, Inc. ("West Buckeye"). See Exhibit C, attached hereto and
14 incorporated herein by reference.

15 25. On July 31, 1985, West Buckeye changed its name to Water Utility of Greater
16 Tonopah.

17 26. In the instant case, WUGT has asserted that a clerical error occurred when the
18 Commission granted Decision No. 54419 (April 1, 1985) which transferred the CC&N from West
19 Phoenix and SWC to West Buckeye and as a result 1 ½ sections of land were inadvertently omitted
20 from the Order and legal description.

21 27. In its Staff Report, Staff stated that it also believed that a clerical error occurred, which
22 omitted 1 ½ sections of land, when the Commission granted the transfer of CC&N in Decision No.
23 54419 (April 1, 1985). Additionally, Staff stated that West Phoenix would be the proper applicant to
24 transfer the omitted portions of the CC&N, but because West Phoenix has been dissolved for more
25 than 19 years, Staff believes an order retroactively correcting Decision No. 54419 (April 1, 1985) is
26 the proper mechanism to correct the legal description and to have the omitted portions of land
27 included in WUGT's CC&N.

28 28. At hearing, WUGT agreed with Staff's recommendation that a retroactive order was

1 the proper procedural mechanism to correct Decision No. 54419 (April 1, 1985).

2 **Discussion and Resolution**

3 29. As discussed above, WUGT has requested, and Staff has recommended, that the
4 Commission issue, pursuant to A.R.S. § 40-252, an order to retroactively correct Decision No. 54419
5 (April 1, 1985) to include the West half of Section 30, and all of Section 31 in Township 2 North,
6 Range 6 West, in WUGT's CC&N, or in the alternative, to grant the transfer of the lands to WUGT's
7 CC&N subject to conditions. A.R.S. § 40-252 provides:

8
9 The Commission may at any time, upon notice to the corporation affected,
10 and after opportunity to be heard as upon a complaint, rescind, alter or
11 amend any order or decision made by it. When the order making such
rescission, alteration or amendment is served upon the corporation
affected, it is effective as an original order or decision.

12 Additionally, A.R.C.P. Rule 58 (a) provides that on such notice as justice may require, the court may
13 direct the entry of a judgment *nunc pro tunc*, and the reasons for such direction shall be entered of
14 record. Further, A.R.C. P. Rule 60 (a) provides:

15
16 Clerical mistakes in judgments, orders, or other parts of the record and
17 errors therein arising from oversight or omission may be corrected by the
court any time of its own initiative or on motion of any party and after
such notice, if any, as the court orders.

18 Arizona courts have held that the purpose of a retroactive order is to "make the record reflect
19 the intention of the parties or the court at the time the record was made." *State v. Johnson*, 113 Ariz.
20 506, 509, 557 P.2d 1063, 1066 (1976). Further, Arizona courts have consistently held that the
21 function of a retroactive order "is to make the record speak the truth and that such power is inherent
22 in the court." (*Black v. Industrial Comm'n*, 83 Ariz. 121, 125, 317 P.2d 553, 555-556 (1957).

23 In the instant case, Commission records show that the lands were included in Tonopah's
24 original CC&N and were not deleted in subsequent transfers of the CC&N. In Decision No. 33434
25 (October 6, 1961) the lands were included in the Tonopah's original CC&N. Additionally, an
26 independent search of Commission records revealed no Decisions deleting the lands from Tonopah's
27 CC&N. Further, in Decision No. 39759 (December 5, 1968), the Commission authorized Tonopah to
28

1 transfer and assign all of its right, title and interest in and to its CC&N to West Phoenix. On April 1,
2 1985, in Decision No. 54418 the Commission granted West Phoenix authority to transfer a portion of
3 its CC&N to Northwest Buckeye Water Company, Inc. On the same date the Commission also
4 granted authority to West Phoenix and Sunshine Water Company (Decision No. 54419 (April 1,
5 1985)) to transfer the remaining portions of West Phoenix's and all of Sunshine Water Company's
6 CC&N to West Buckeye. Based on the fact that a series of transfers have occurred in this case, and
7 in some instances, neither the application nor the Commission Decision included a legal description,
8 it appears that when West Phoenix and Sunshine Water Company filed to transfer its CC&Ns to West
9 Buckeye the 1 ½ sections of land in question were omitted through clerical error in the application
10 and subsequently omitted when the Commission entered Decision No. 54419 (April 1, 1985).

11 We find Staff's analysis and conclusions that a clerical error occurred in the transfer of the
12 CC&Ns supportive of WUGT's claims. In Staff's Report, Staff states that the area at issue, except for
13 the width of one quarter section, is completely surrounded on three sides by WUGT's current CC&N,
14 which makes the land virtually "land-locked" and highly unlikely that the area would be served by
15 another company. Based on the location of the lands in reference to WUGT's current CC&N, Staff
16 believes it is in the public interest to have the lands included in WUGT's CC&N. Staff's Report
17 further stated, that according to the Commission's mapping records the lands in question comprise all
18 that is left of West Phoenix's former CC&N lending support to the fact that a clerical error occurred
19 in the legal description when WUGT filed its application and when the Commission entered Decision
20 No. 54419 (April 1, 1985) . Staff's witness testified that after reviewing the Commission records
21 Staff could not find an apparent reason for why the lands would not have been included in the legal
22 description when Decision No. 54419 (April 1, 1985) was entered.

23 We also find persuasive the testimony of WUGT's witness, Mr. John Mihlik.¹ Mr. Mihlik
24 testified that he was president of West Phoenix at the time the 1985 transfer occurred. He further
25 testified that it was the intent of West Phoenix to transfer all of its CC&N to WUGT in 1985, but that
26 West Phoenix inadvertently omitted the 1 ½ sections in its application.

27 ¹ Mr. Mihlik is Chief Financial Officer for Water Utility of Greater Tonopah. He also was the president of West Phoenix
28 Water Company at the time that the transfer of CC&N was made from West Phoenix and Sunshine Water Company to
West Buckeye.

1 Based on the evidence presented, we find that a clerical error or mistake occurred when West
2 Phoenix filed to transfer its CC&N to WUGT. On April 1, 1985, the Commission entered Decision
3 Nos. 55418 and 55419 which divided West Phoenix's CC&N between Northwest Buckeye Water
4 Company and West Buckeye (now WUGT). The sections of land in those transfers were extensive
5 and the legal descriptions were lengthy and detailed. Therefore, we find that the 1 ½ sections of land
6 in question were inadvertently omitted when West Phoenix filed its application and in the legal
7 description when the Commission entered Decision No. 54419 (April 1, 1985). Further, we find that
8 it was the intent of the parties and the Commission to transfer all of West Phoenix's Certificated area.
9 We also find that a retroactive order is the proper procedural mechanism for correcting Decision No.
10 54419 (April 1, 1985) to reflect the intent of the parties and not a transfer of the omitted lands. We
11 agree with Staff that the proper party in interest to file for a transfer of the omitted sections of land is
12 West Phoenix and not WUGT and because West Phoenix was dissolved more than 19 years ago,
13 WUGT cannot file to transfer the lands. We also agree with Staff that the inclusion of the 1 ½
14 sections of land in WUGT's CC&N is in the public interest given its land-locked position.

15 Therefore, pursuant to A.R.C.P. 58(a) and 60(a), WUGT's request for a retroactive order
16 correcting Findings of Fact No. 4 in Decision No. 54419 (April 1, 1985) should be granted, to include
17 the West half of Section 30, and all of Section 31 in Township 2 North, Range 6 West in Maricopa
18 County. Aside from the change in Finding of Fact No. 4 of Decision No. 54419 (April 1, 1985),
19 attached hereto and incorporated herein by reference as Exhibit C, all other Findings of Fact and
20 Conclusions of Law set forth in Decision No. 54419 (April 1, 1985) shall remain otherwise
21 unchanged.

CONCLUSIONS OF LAW

23 1. Water Utility of Greater Tonopah is a public service corporation within the meaning of
24 Article XV of the Arizona Constitution and A. R.S. §§ 40-281 and 40-282.

25 2. The Commission has jurisdiction over Water Utility of Greater Tonopah and the
26 subject matter of the application.

27 3. It is in the public interest to correct Findings of Fact No. 4 in Decision No. 54419
28 (April 1, 1985), for the sole purpose of including the West half of Section 30, and all of Section 31 in

1 Township 2 North, Range 6 West in Water Utility of Greater Tonopah's CC&N.

2 **ORDER**

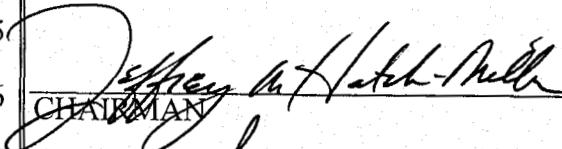
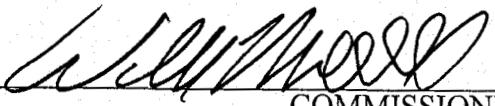
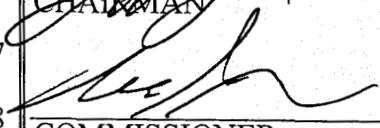
3 IT IS THEREFORE ORDERED that the legal description in Commission Decision No.
4 54419 (April 1, 1985) shall be, and is hereby corrected retroactively, to include the west half of
5 Section 30, and all of Section 31 in Township 2 North, Range West in Water Utility of Greater
6 Tonopah's Certificate of Convenience and Necessity.

7 IT IS FURTHER ORDERED that the authorizations approved in Commission Decision No.
8 54419 (April 1, 1985), the associated filing requirements, and all other Findings of Fact, Conclusions
9 of Law, and ordering paragraphs set forth in Decision No. 54419 (April 1, 1985), shall remain
10 otherwise unchanged.

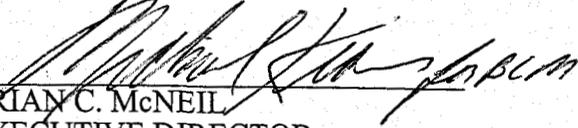
11 IT IS FURTHER ORDERED that Sierra Negra Ranch's, LLC Application to Intervene is
12 hereby denied.

13 IT IS FURTHER ORDERED this Decision shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15			
16	CHAIRMAN	COMMISSIONER	
17			
18	COMMISSIONER	COMMISSIONER	COMMISSIONER

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20
21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Director of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
24 Commission to be affixed at the Capitol, in the City of Phoenix,
25 this 2nd day of Feb., 2006.

26 
27 BRIAN C. McNEIL
28 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: WATER UTILITY OF GREATER TONOPAH

DOCKET NO.: W-02450A-05-0430

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Water Utility of Greater Tonopah
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EXHIBIT A

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF TOMOPAH WATER COMPANY, A PARTNERSHIP CONSISTING OF R. M. MACKINSON, R. S. SPOON, JOHN A. MURPHY, JOHN M. SCOTT AND EARL P. SNODDY, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO CONSTRUCT, OPERATE AND MAINTAIN A PUBLIC UTILITY WATER SYSTEM IN THE AREA DESCRIBED AS SECTIONS 19, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35 AND 36 OF TOWNSHIP 2 NORTH, RANGE 7 WEST, AND SECTIONS 1, 2, 3, 4, 5 AND 12 OF TOWNSHIP 14 NORTH, RANGE 7 WEST, SECTIONS 18, 19, 30 AND 31 OF TOWNSHIP 2 NORTH, RANGE 6 WEST, AND SECTION 6, TOWNSHIP 1 NORTH, RANGE 6 WEST, GASHBAM, MARICOPA COUNTY, ARIZONA.

DOCKET NO. U-1648

OPINION AND ORDER

BY THE COMMISSION:

Notice having been given as provided by law the above entitled matter came on for hearing before the Commission on February 4, 1960 in Phoenix, Arizona, after having been continued from June 19, 1959 on motion of James E. Smith, attorney for and on behalf of applicants.

Applicants were represented by their attorney, James E. Smith, of the law firm of Stahl, Murphy & Blakely. Appearances in opposition were entered by J. Lamar Shelley, attorney for and on behalf of the League of Arizona Cities and Towns, Patrick Burke on behalf of the City of Phoenix, and numerous landowners in their own behalf.

During the hearing Applicants through their attorney requested and was given permission to amend their application by deleting therefrom the West Half ($W\frac{1}{2}$) of Section 18, Township 2 North, Range 6 West; Lots 1, 2, 3, 4 and the East Half ($E\frac{1}{2}$) of the West Half ($W\frac{1}{2}$) of Section 18, Township 2 North, Range 6 West and the Northwest Quarter ($NW\frac{1}{4}$) of Section 14, Township 2 North, Range 7 West, the South Half ($S\frac{1}{2}$) of Section 19, Township 2 North, Range 7 West; the South Half ($S\frac{1}{2}$) and the Northeast Quarter ($NE\frac{1}{4}$) of Section 19, Township 2 North, Range 6 West; the East Half ($E\frac{1}{2}$) of Section 30, Township 2 North, Range 6 West; the West Half ($W\frac{1}{2}$) of Section 2, Township 1 North, Range 7 West, Section 6, Township 1 North, Range 7 West.

The State Land Department entered its opposition to the granting of the certificate over and against State land which

General No. U-1042DECISION NO. 68451

was included in the application.

In an Executive Session held on August 9, 1961 it was the decision of the Commission that the application be granted subject to stipulations entered into and deletions requested.

~~WHEREFORE~~, IT IS ORDERED that this order shall constitute and be a certificate of convenience and necessity pursuant to §40-281, Arizona Revised Statutes, authorizing applicants herein to construct, operate and maintain a public water system to serve domestic water to the residents and commercial establishments in the area described as all of Section 6, Township 1 North, Range 6 West; the East Half (E $\frac{1}{2}$) of Section 18, the Northwest Quarter (NW $\frac{1}{4}$) of Section 19, the West half (W $\frac{1}{2}$) of Section 30, and all of Section 31 in Township 2 North, Range 6 West; the East Half (E $\frac{1}{2}$) of Section 2, all of Section 4, all of Section 5 and all of Section 12 in Township 1 North, Range 7 West; all of Section 13, the Northeast Quarter (NE $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of Section 14, the North Half (N $\frac{1}{2}$) of Section 15, all of Section 16, all of Sections 20, 21, 22, 23 and 24 and all of Sections 25, 26, 27, 28, and 29, and all of Sections 32, 33, 34 and 35 and all of Section 36 in Township 2 North, Range 7 West, ~~Coconino~~, Maricopa County, Arizona.

IT IS FURTHER ORDERED that the rates approved and which shall apply are \$4.00 minimum charge per month for the first 6,000 gallons or less per consumer, and \$0.40 per 1,000 gallons in excess of the first 6,000 gallons minimum. All other rates and charges shall be all in accordance with General Order No. U-4, Rules and Regulations for Domestic Water Companies.

IT IS FURTHER ORDERED that before any construction is commenced by Applicants, plans and specifications of the system must be submitted to the Bureau of Sanitation of the State Health Department for approval of same and said approval must be obtained. Otherwise, this certificate of convenience and necessity, shall be null and void.

DOCKET NO. U-1648

DECISION NO. 33434

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction over this matter and in the future anyone owning 160 acres or more and who desires to have his property deleted from the certificated area herein may by written application to the commission in which good cause is shown have his property deleted from this certificate of convenience and necessity.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

IN WITNESS WHEREOF, I, FRANCIS J. BYRNES, Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed, at the Capitol in the City of Phoenix, this 6 day of Oct, 1901.

FRANCIS J. BYRNES
SECRETARY

Francis J. Byrnes

[Signature]

CHAIRMAN

COMMISSIONER

COMMISSIONER

EXHIBIT B

21

BEFORE THE ARIZONA CORPORATION COMMISSION

E. T. "BOB" WILLIAMS, JR.

Chairman

DEAN HUBBARD

Commissioner

WILLIAM J. HUBBARD

Commissioner

IN THE MATTER OF THE APPLICATION OF TONOPAH WATER COMPANY FOR
ADJUSTMENT OF RATE, TRANSFER AND ASSIGN ALL OF ITS RIGHT, TITLE
AND INTEREST IN AND TO THE CERTIFICATE OF CONVENIENCE AND
NECESSITY THEREFORE ISSUED BY THIS COMMISSION TO WEST PHOENIX
WATER CO., AN ARIZONA CORPORATION.

U-1683
DOCKET NO. H-2667

DECISION NO. 39759

OPINION AND ORDER

BY THE COMMISSION:

The above entitled matter came on for hearing before
the Commission at Phoenix, Arizona on October 10, 1966.

DEC 5 - 1966

John A. Murphy appeared on behalf of Tonopah Water
Company and Frank B. Salisbury represented West Phoenix
Water Co. Evidence was adduced and from that evidence it is
found:

1. That applicant desires to sell, transfer and assign all of its right, title and interest to West Phoenix Water Co., a corporation.
2. That such sale and transfer is in the public interest.

IT IS FURTHER ORDERED that the rates and charges for water sold shall be:

MONTHLY SERVICE CHARGE

5/8" Meters	\$ 4.00
3/4" "	5.00
1" "	7.00
1 1/2" "	12.00
2" "	18.00

75¢ per thousand gallons for all water consumed.

WHEREFORE, IT IS ORDERED that the application be, and the same is hereby, granted as prayed for.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

SECRET

DECISION NO. 39159

IN WITNESS WHEREOF, I, CHARLES D. HADLEY,
Secretary of the Arizona Corporation Commission,
have hereunto set my hand and caused the official
seal of this Commission, to be affixed at the
Capital in the City of Phoenix, this 5th day
of October, 1968.

Charles D. Hadley
CHARLES D. HADLEY
SECRETARY

Robert Herbert *William H. ...*
CHAIRMAN COMMISSIONER COMMISSIONER

EXHIBIT C

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Arizona Corporation Commission
DOCKETED

BEFORE THE ARIZONA CORPORATION COMMISSION

APR 1 1985

1 RICHARD KIMBALL
2 CHAIRMAN
3 MARCIA WEEKS
4 COMMISSIONER
5 RENEZ D. JENKINGS
6 COMMISSIONER

DOCKETED BY *Land*

7 IN THE MATTER OF THE APPLICATION OF)
8 SUNSHINE LAND AND CATTLE CORP. dba)
9 SUNSHINE WATER COMPANY AND WEST PHOENIX)
10 PROPERTIES, INC. dba WEST PHOENIX)
11 WATER CO., INC. FOR A TRANSFER OF)
12 CORPORATE ASSETS TO WEST BUCKEYE WATER)
13 CO. (U-2450))

DOCKET NO. U-2107-84-183
U-2067-84-183

DECISION NO. 54419

OPINION AND ORDER

14 DATE OF HEARING: February 7, 1985
15 PLACE OF HEARING: Phoenix, Arizona
16 PRESIDING OFFICER: Jerry L. Radabaugh
17 APPEARANCES: Christopher Kempley, Attorney for the Legal
18 Division, on behalf of the Arizona Corporation
19 Commission Staff
20 Cunningham, Goodson & Tiffany, Ltd., by John F.
21 Goodson, Attorneys for the Applicants.

BY THE COMMISSION:

22 On July 24, 1984, West Phoenix Properties, Inc. dba West Phoenix Water
23 Company, Inc. ("West Phoenix"), Sunshine Land and Cattle Corporation dba
24 Sunshine Water company ("Sunshine"), and West Buckeye Water Company ("West
25 Buckeye") filed an Application with the Arizona Corporation Commission
26 ("Commission") seeking authorization to transfer to West Buckeye a portion of
27 West Phoenix's and all of Sunshines' Certificate of Public Convenience and
28 Necessity ("Certificates") and the corresponding corporate assets.

Pursuant to Notice dated January 24, 1985, the Application came on for
hearing before a duly authorized Hearing Officer of the Commission at its
offices in Phoenix, Arizona, on February 7, 1985. West Phoenix, Sunshine, West
Buckeye, and the Commission's Utilities Division Staff ("Staff") appeared
through counsel. Evidence was presented in support of the Application and

U-2067-84-182
U-2167-84-181

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1 after a full public hearing, the matter was adjourned pending submission of a
2 recommended Opinion and Order by the Presiding Officer to the Commission.

3 DISCUSSION

4 In 1970, West Phoenix and Sunshine were granted Certificates to provide
5 water service to large areas on both sides of the I-10 Freeway, north of the
6 Palo Verde Nuclear Generating Plant ("Palo Verde") and the Town of Buckeye
7 ("Town"). The development of the area has lagged due to delays in completion
8 of the freeway into Phoenix as well as the scare resulting from the Three Mile
9 Island Nuclear accident. As discussed in West Phoenix's companion
10 application, (Docket No. U-2067-84-182), the primary purpose of the transfers
11 was to bring in persons with financial capabilities to assist development as
12 needed and to divide the areas to be serviced into two discrete areas separated
13 by the Hassayampa River ("River")

14 The proposed area to be transferred is located west of the River and
15 primarily north of Palo Verde with a center near the Town of Tonopah. It
16 encompasses approximately 50 or 60 square miles. There are currently twelve
17 customers being served by either West Phoenix and Sunshine.

18 Because of the very large area involved, two members of the Tonopah Valley
19 Association asserted that many of the people in the area were unaware whether
20 their land was in the certificated area. One of the members, Mr. Richard
21 Wrublick requested that his land holdings be deleted from the certificated area
22 to be transferred to West Buckeye. At the request of Mr. Wrublick, West
23 Buckeye agreed to provide a map showing the certificated area to the Tonopah
24 Valley Association for its monthly newsletter. Further, West Buckeye agreed to
25 allow land owners to be removed from its requested certificated area if they
26 notify West Buckeye within 60 days of the Tonopah newsletter. Although West
27 Buckeye and the landowners might be in agreement as to delation, the
28 Commission can not approve/disapprove any delations until a determination is

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1 made on the overall affect to the public in the current and remaining
 2 certificated areas. Furthermore, that determination can not be made until
 3 those parties desiring deletion request and have a hearing.

4 * * * * *

5 Having considered all the evidence herein and being fully advised in the
 6 premises, the Commission finds, concludes and orders that:

7 FINDINGS OF FACT

8 1. West Phoenix and Sunshine are Arizona corporations certificated by
 9 this Commission in 1970 pursuant to Decision Nos. 40701 and 41072 respectively
 10 to provide water utility service in certain portions of Maricopa County
 11 Arizona.

12 2. On July 24, 1984, West Phoenix, Sunshine, and West Buckeye filed an
 13 Application with the Commission seeking authorization to transfer to West
 14 Buckeye a portion of West Phoenix's and all of Sunshine's Certificates and the
 15 corresponding corporate assets.

16 3. The area proposed to be transferred from Sunshine is as follows:

- 17 A) Phoenix Valley West, Unit I
 18 T18, R5W
 Section 6:: E 1/2, SW 1/4 &
 19 W 1/2, SE 1/4
 Section 7: All E 1/2 Except
 20 NW 1/4, SW 1/4
 Section 7: W 1/2, E 1/2 &
 21 SE 1/4, SW 1/4
- 22 B) Phoenix Valley West, Unit II
 T18, R5W, Sec. 4 SE 1/4
- 23 C) Township 1 North, Range 6 West
 24 Section 24: W 1/2, SW 1/4
 25 25: E 1/2, SE 1/4
 26 26: W 1/2, NE 1/4
- 27 D) Township 1 South, Range 6 West
 28 Section 1: SW 1/4

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- 1 E) Township 1 North, Range 5 West
Section 30: S 1/2, NW 1/4 and
N 1/2, SW 1/4
- 2 Section 31: W 1/2, NE 1/4
- 3 F) Township 1 South, Range 5 West
- 4 Section 6: N 1/2, NE 1/4 and
SW 1/4, NE 1/4 and
NE 1/4, NW 1/4
- 5 Section 5: NE 1/4, NW 1/4
SW 1/4 & SE 1/4,
SE 1/4 & E 1/2
E 1/2, SE 1/4 &
NW 1/4, NE 1/4,
SW 1/4
- 6 Section 8: All
- 7 Section 3: All S 1/2 lying South of Hasskyspa
right of way and North of Ward Road right of way.
- 8 Section 10: NW 1/4 lying North of Ward Road right of way
- 9
- 10
- 11 4. The area proposed to be transferred from West Phoenix is as follows:
- 12 A) West Phoenix Estates, Unit I
T2N, R7W, Sec. 20, SW 1/4
- 13 B) West Phoenix Estates, Unit II
T2N, R7W, Sec. 20, NW 1/4
- 14 C) West Phoenix Estates, Unit III
T2N, R7W, Sec. 22 N 1/2
- 15 D) West Phoenix Estates, Unit V
T2N, R7W, Sec. 15, NE 1/4
- 16 E) West Phoenix Estates, Unit VII
T2N, R6W, Sec. 29, S 1/2
- 17 F) Rose View Estates, Units I & II
T1N, R8W, Sec. 6, W 1/2
- 18 G) Township 2 North, Range 7 West
- 19 Section 13: All
- 20 14: S 1/2 and NE 1/4
- 21 15: N 1/2
- 22 16: All
- 23 20: E 1/2
- 24 21: All
- 25 22: All
- 26 23: All except E 1/2, SE 1/4
- 27 24: All
- 28 25: All
- 29 26: All
- 30 27: All
- 31 28: All

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29: All
32: All
33: All
34: All
35: All
36: All

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H) Township 1 North, Range 7 West
Section 2: E 1/2

5

4: All
5: All
12: All

6

7

I) Township 2 North, Range 6 West
Section 18: E 1/2

8

19: NW 1/4
20: S 1/2
21: W 1/2

9

10

22: All
23: All Except NW 1/4

11

26: All
27: All
28: All Except NE 1/4

12

29: All
32: All

13

33: All
34: All

14

35: All

15

J) Township 1 North, Range 6 West
Section 3: S 1/2 and S 1/2, NW 1/4 and SW 1/4, NE 1/4

16

4: All
5: All

17

6: All
7: All

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8: All
9: All

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10: All
11: All

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14: All
15: All

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17: All
18: All Except W 1/2, NW 1/4 and SW 1/4, SE 1/4

22

19: NE 1/4, NE 1/4 and S 1/2, NE 1/4, SE 1/4
20: All

23

21: All
22: All Except SW 1/4, SE 1/4

24

23: All Except NW 1/4

25

5. Maricopa County Board of Supervisors has consented to the transfer of franchises from West Phoenix and Sunshine to West Buckeye for the area proposed to be transferred.

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6. There are no other water companies servicing the area.

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1 7. The assets to be transferred include five wells and three operating
2 systems including storage tanks, pumping facilities and water lines in the
3 area.

4 8. There will be no effect on the rates established for the area
5 proposed to be transferred.

6 9 West Buckeye anticipates a large amount of growth in the area which
7 will require a substantial amount of capital.

8 10. West Buckeye's stockholders are individuals who are capable of
9 generating sizeable amounts of capital and loans necessary to enlarge the
10 existing water utility facilities.

11 11. The existing customers of Sunshine and West Phoenix were notified of
12 the proposed transfer.

13 12. Notice of the proposed transfer was published in the Tonopah Valley
14 Association newsletter.

15 13. There is one outstanding line extension agreement and it will be
16 assumed by West Buckeye.

17 CONCLUSIONS OF LAW

18 1. West Phoenix and Sunshine are public service corporations within the
19 meaning of Article IV of the Arizona Constitution and A.R.S. §40-281, §40-282,
20 and §40-285.

21 2. The Commission has jurisdiction over West Phoenix, Sunshine and West
22 Buckeye and of the subject matter of the Application.

23 3. There is a continuous need for a domestic water utility company to
24 service present and future customers in the certificated area.

25 4. West Buckeye is a fit and proper entity to receive a Certificate for
26 providing of water utility service to the area to be transferred.

27 . . .

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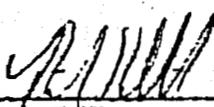
ORDER

WHEREFORE, IT IS ORDERED: That West Phoenix Water Company, Inc. and Sunshine Water Company are hereby authorized to transfer their Certificates of Public Convenience and Necessity for the area west of the Hassayampa River as described in Finding of Facts No. 3 and 4 and their corresponding corporate assets to West Buckeye Water Company, Inc.

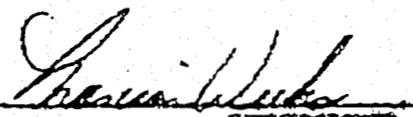
IT IS FURTHER ORDERED: That the rates to be charged by West Buckeye Water Company, Inc. to the area west of the Hassayampa River shall remain the same as rates for West Phoenix Water Company, Inc. and Sunshine Water Company and their former corresponding areas.

IT IS FURTHER ORDERED: That this Decision shall be effective immediately.

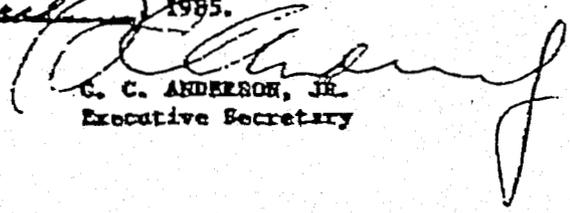
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, C. C. ANDERSON, JR., Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 14th day of April, 1985.


C. C. ANDERSON, JR.
Executive Secretary

DISSENT _____
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