

WILLIAM A. MUNDELL
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COMMISSIONER

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ARIZONA CORPORATION COMMISSION

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DATE: October 10, 2001
DOCKET NO: W-02497A-01-0073
TO ALL PARTIES:

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

JOHN C. CRAWFORD v. GOLDEN CORRIDOR WATER COMPANY
(COMPLAINT)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon** on or before:

OCTOBER 19, 2001

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 Working Session and Open Meeting to be held on:

OCTOBER 23 AND 24, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

OCT 10 2001

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

6 IN THE MATTER OF:

7 JOHN C. CRAWFORD,
8 Complainant,

9 vs.

10 CARL HARVEY dba GOLDEN CORRIDOR
WATER COMPANY,
11 Respondent.

DOCKET NO. W-02497A-01-0073

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: March 28, 2001

13 PLACE OF HEARING: Phoenix, Arizona

14 PRESIDING ADMINISTRATIVE
15 LAW JUDGE: Marc E. Stern

16 APPEARANCES: Mr. John C. Crawford, In Propria Persona;
17 Mr. Carl Harvey dba Golden Corridor Water
Company, In Propria Persona; and
18 Mr. Devinti Williams, Staff Attorney, Legal --
19 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

20 **BY THE COMMISSION:**

21 On January 23, 2001, Mr. John C. Crawford ("Complainant") filed with the Arizona
22 Corporation Commission ("Commission") a Complaint against Golden Corridor Water Company
23 ("Company" or "Respondent")¹.

24 On February 6, 2001, the Company filed a response to the Complaint in which it indicated
25 that the Company was willing to arbitrate the dispute to resolve the Complaint without a formal
26 hearing, if possible. Respondent did not file an Answer to the Complaint as such, but subsequently
27

28 ¹ Respondent is operated as a sole proprietorship by Mr. Carl Harvey.

1 did so in the event that arbitration did not resolve the Complaint.

2 On February 12, 2001, by Procedural Order, a hearing was scheduled for March 7, 2001, if
3 the arbitration was not successful. The parties were unable to resolve the Complaint in arbitration
4 and the matter proceeded to a formal hearing. However, on March 7, 2001, the Respondent was
5 unable to attend the hearing on that date and requested a continuance telephonically. Subsequently,
6 the proceeding was continued until March 28, 2001.

7 On March 28, 2001, a full public hearing was held before a duly authorized Administrative
8 Law Judge of the Commission at its offices in Phoenix, Arizona. Complainant appeared In Propria
9 Persona. Mr. Harvey appeared on behalf of the Company. The Commission's Utilities Division
10 ("Staff") appeared and was represented by counsel. At the conclusion of the hearing, the matter was
11 taken under advisement pending submission of a Recommended Opinion and Order to the
12 Commission.

13 * * * * *

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

16 **FINDINGS OF FACT**

17 1. Pursuant to authority granted by the Commission, the Company is a sole
18 proprietorship owned and operated by Mr. Harvey who provides public water service to a certificated
19 service area which is located in the vicinity of Casa Grande, Pinal County, Arizona.

20 2. On January 23, 2001, Mr. Crawford filed a Complaint against the Company wherein it
21 was alleged that he had purchased a parcel of land and a residence at 2892 East Mopar Drive, Casa
22 Grande, Arizona, in May 1999 and at that time the property had running water. Mr. Crawford stated
23 further that Mr. Harvey cut off the water to the property and informed Mr. Crawford that he would
24 have to pay the Company \$17,000 for a line extension to his property if he wished to receive water
25 from the Company.

26 3. The house is located on a landlocked parcel of land that originally consisted of 4.27
27 acres of land which Mr. Crawford has subsequently subdivided into three parcels, each of which is
28 slightly less than one and one-half acres in size.

1 4. Mr. Crawford's property is located within the Company's certificated service area and
2 was originally owned by Mr. Harvey as part of a forty-acre parcel which he purchased in 1978 from
3 Golden Corridor Land Enterprises. At that time, the entire property was quite isolated, undeveloped,
4 and, as it turns out, landlocked².

5 5. In April 1980, Mr. Harvey sub-divided the 40-acre parcel, splitting off 4.27 acres (the
6 Crawford parcel now) in order to have a modular home constructed for himself.

7 6. In order to fund the construction on the 4.27-acre parcel in April 1980, Mr. Harvey
8 took out a mortgage with a mortgage company for \$75,000 which enabled him to have a modular
9 home, and a five-car garage constructed, along with a septic system installed by the end of May.
10 Although the property had no electrical or telephone service, Mr. Harvey was able to provide himself
11 with these facilities by utilizing a 15 kW generator and a car phone. Although a water co-op was
12 providing water service in the area, Mr. Harvey insisted that he did not have public water service, but
13 instead, in May 1980, he purportedly had a storage tank constructed on the property and hauled water
14 to the tank for his water usage.

15 7. According to Mr. Harvey, before the end of May, his mortgage company exercised a
16 "due on sale clause" against Security Title Company ("Security"), which had insured the title on the
17 4.27-acre parcel, because Security had failed to disclose that his property was landlocked when he
18 took out his mortgage and, as a result, Security had been required to pay off his \$75,000 mortgage.
19 Shortly thereafter, Mr. Harvey was required to vacate the premises by the title company, but he was
20 permitted to use the modular home for storage purposes and was permitted to use the garage to store
21 his cars in the ensuing 20 years.

22 8. Mr. Harvey currently resides on the remainder of the 40-acre parcel which he
23 acquired in 1978 in a home on a hill slightly to the south of Mr. Crawford's parcel. Mr. Harvey's
24 property receives water service from the Company by means of a two-inch water line which is
25 extended approximately 600 feet from a four-inch distribution main of the Company. The two-inch
26 line ends at Mr. Harvey's meter approximately 100 feet from Mr. Crawford's parcel, and Mr. Harvey

27 _____
28 ² To this day, Mr. Harvey's property is landlocked with ingress and egress made by either driving in utility easements or
across neighboring desert properties.

1 has a service line from his meter that extends up the hill to his home approximately 1,000 feet away.

2 9. A Sheriff's Deed, recorded on April 26, 1984, confirms that Security acquired Mr.
3 Harvey's 4.27-acre parcel for the sum of \$75,000.

4 10. According to Exhibit R-5, by Quitclaim Deed dated May 3, 1999, Security
5 quitclaimed to the Hills Office Complex, L.L.C., the former Harvey 4.27-acre parcel which was then
6 transferred to Mr. Crawford in its landlocked state.

7 11. According to Mr. Crawford, when he purchased the property in May 1999, the
8 property was in such terrible condition that he hired a family friend, Mr. Douglas Wolner, to renovate
9 Mr. Harvey's old modular home that had been vacant for approximately 19 years.

10 12. Mr. Crawford insists that when he purchased the property, the home had running water
11 that was provided by the Company.

12 13. Mr. Crawford's wife, Velma, testified credibly that subsequent to purchasing the
13 property, she and her husband went into the house and saw that there was running water in the sinks
14 and toilets.

15 14. No one resided in the house until approximately November 1999, at which time Mr.
16 Crawford rented the house out, but at that time the water service had been discontinued to the
17 property so he had to purchase a small 300-gallon water storage tank and haul water for the tenants.

18 15. Currently, Mr. Crawford indicated that his daughter and her husband reside in the
19 house and are supplied with water from the 300-gallon storage tank.

20 16. Following Mr. Crawford's request to establish water service, Mr. Harvey told him he
21 would need to pay for a main extension and presented him with a quotation from Tee Pee
22 Contractors, Inc. dated December 9, 1999. It contained a price of approximately \$20,000 for the
23 installation of a main consisting of approximately 700 feet of six-inch main and 700 feet of eight-inch
24 main. Mr. Harvey also presented him with an alternate quotation for 1,400 feet of six-inch main for
25 approximately \$17,500.

26 17. According to the Crawfords, they did not see any signs of Mr. Harvey's storage tank
27 on the property when they purchased the parcel in May 1999. They believed that water was being
28 provided to Mr. Harvey's old house by means of an old service line.

1 18. On or about January 2, 2001, Mr. Harvey provided Mr. Crawford with an additional
2 main extension agreement which quoted a price of approximately \$14,650.

3 19. Mr. Crawford acknowledged that, prior to purchasing the property, he did not inspect
4 the interior of the house.

5 20. According to Mr. Wolner, he visited the property shortly before Mr. Crawford
6 purchased it in May 1999, but did not start the clean-up and repair work until around August.

7 21. Mr. Wolner testified that the old house was in a state of general disrepair and he was
8 required to board up the doors and windows in the early part of the summer. He observed that the
9 yard was full of old washers, dryers and vehicles and that the house contained some old console TV
10 sets, books and other personal items belonging to Mr. Harvey. He also saw the garage in which Mr.
11 Harvey had been storing old cars.

12 22. Mr. Wolner described in detail that he ran water in sinks in the house and flushed at
13 least one toilet. He stated that there was water dripping from two hose bibs by the house and that the
14 five car garage had a washing machine hooked up in front of it which was regularly being used by
15 two individuals who lived in a small trailer on Mr. Harvey's adjacent property as "security people"
16 who washed their clothes in the washing machine.

17 23. Mr. Wolner recalled a conversation with Mr. Harvey in May with respect to Mr.
18 Harvey leaving the water on while he painted and cleaned around the house. Mr. Wolner testified
19 that Mr. Harvey assured him that it would remain on.

20 24. Mr. Wolner advised Mr. Harvey that he could have two or three months to remove his
21 personal belongings from the house before Mr. Wolner began repairs to the house.

22 25. Mr. Wolner recalled that as late as August, when he began making repairs, there was
23 still water available at the house, but while repairs were being made, at some point, the water was
24 turned off and Mr. Crawford spoke to Mr. Harvey about the water situation.

25 26. Mr. Wolner remembered a conversation in approximately June 1999 with Mr. Harvey
26 who indicated that he could connect Mr. Crawford's property to the Company's distribution system
27 for approximately \$750 which would cover the establishment fee, the cost of the installation of a
28 meter and a double check valve.

1 27. According to Mr. Wolner, approximately a two-inch water line used to run from a
2 point on Mr. Harvey's property where there was a shut-off valve to Mr. Crawford's property, but at
3 some point during the month of October 1999 he noticed that the valve assembly, which had been
4 located behind a small brown building on Mr. Harvey's adjacent property had been disassembled and
5 at an unknown location, the service line had "been dug up and cut."

6 28. Mr. Wolner further testified that the service line had "been unearthed" and that it
7 ultimately ran back towards Mr. Crawford's property in the direction of the "little brown building".

8 29. There is some evidence that a prescriptive easement or right-of-way now exists by
9 means of which service can be provided to the property now owned by Mr. Crawford.

10 30. Mr. Harvey denied that the Company ever provided water service to Mr. Crawford's
11 parcel.

12 31. Mr. Harvey maintained that "the landowner next door" to Mr. Crawford's had run a
13 temporary water supply to the area of the garage "in order to keep the fire hazard down."

14 32. Mr. Harvey posed an incredible theory lacking any support whatsoever that the so-
15 called "landowner" had run hoses back and forth and stolen water from his property (Mr. Harvey's)
16 and used the water on Mr. Crawford's parcel.

17 33. Mr. Harvey further claimed that the only water supply that the house ever had was
18 from his purported storage tank when he owned the house in 1980. However, there is no visible
19 evidence today to establish that was ever the case.

20 34. There are no dedicated roadways adjacent to either the Crawford's or Mr. Harvey's
21 properties³. Until, on March 15, 2001, when Mr. Harvey granted an easement to the Crawfords, so
22 that they could have ingress and egress from their property by means of a utility easement, the
23 Crawford's parcel was landlocked.

24 35. The easement giving Mr. Crawford ingress and egress to the utility easement was the
25 result of a mediation process between the Crawfords and Mr. Harvey that was conducted by the
26 Arizona Attorney General's office.

27 _____
28 ³ It appears that the closest dedicated roadway to the Crawford's property is Cornman Road located approximately one
mile away due north of their property by way of the utility easement.

1 36. It is the Company's position that the nearest distribution main to Mr. Crawford's
2 property is the four-inch main approximately 700 feet away and not the two-inch line extended to Mr.
3 Harvey's parcel from the four-inch main.

4 37. Another alternative main extension arrangement subsequently suggested by Mr.
5 Harvey is for Mr. Crawford to secure an easement from a neighbor on his property located
6 immediately to the north which would allow the Company to construct approximately a 700-foot six-
7 inch main to Mr. Crawford's service line at a cost of approximately \$8,400.

8 38. Mr. Harvey pointed out that he is insisting on a six-inch main because this is what is
9 required by ADEQ and this size conforms with the Commission's rules. It would also appear
10 necessary if service is extended in the future to either of the two lots created by Mr. Crawford.

11 39. According to Mr. Harvey, the Company constructed an approximately 600 foot long
12 two-inch distribution line to his meter from the four-inch distribution main in 1982 when, at that
13 time, the water utility was owned by what he termed a "co-op". In 1984, he stated that he signed
14 papers to buy the water utility and became certificated by the Commission to provide water service in
15 Decision No. 56088 (August 17, 1988).

16 40. Mr. Harvey's meter is located on his property approximately 100 feet east of Mr.
17 Crawford's property line. From the Company's meter, he installed a two-inch service line to his
18 house located approximately 400 to 500 feet away on a small hill to the south of the Crawford parcel.

19 41. During the proceeding, Mr. Harvey argued that a utility easement does not exist
20 between the area where his meter is connected to the Company's distribution line on his property and
21 Mr. Crawford's property. Because of this factor, Mr. Harvey argued that there is no way that the
22 two-inch line which serves his property could be extended to serve Mr. Crawford's property.

23 42. Mr. Harvey disputed Mr. Wolner's recollection of his conversation with him insisting
24 that he had told Mr. Wolner that it was only a temporary connection providing water to Mr.
25 Crawford's property when he first inspected it.

26 43. Mr. Harvey denied telling Mr. Wolner that Mr. Crawford could have his property
27 connected to the Company's distribution system for \$750.

28 44. During cross-examination, Mr. Harvey admitted that a so-called "temporary" water

1 line had been extended from the vicinity of his water meter to the area of the garage on Mr.
2 Crawford's property.

3 45. Mr. Harvey argued that the two-inch line serving the Crawford parcel should be
4 classified as a service line and not a distribution line.

5 46. A Utilities Division ("Staff") engineer, Mr. Marlin Scott, Jr., testified that he had
6 visited the area in question involved in the Complaint and, after listening to the testimony presented
7 during the hearing, had formed an opinion on the status of the two-inch water line.

8 47. In Mr. Scott's his opinion, the two-inch water line to Mr. Harvey's parcel constitutes
9 "a main line", and once connected to the service line on the Crawford's property, constituted a valid
10 service connection.

11 48. Mr. Scott, in part, based his opinion on what he discerned as a "scar" which he pointed
12 out in a photograph in evidence where the two-inch line had been extended west from the area of Mr.
13 Harvey's meter to what is presently Mr. Crawford's property where it had been connected to the
14 services lines on the property.

15 49. It is Staff's position that metered service should be restored by the Company to Mr.
16 Crawford's parcel by means of the two-inch distribution main upon payment of all tariffed fees.

17 50. Under the circumstances herein, after a thorough review of the evidence, we conclude
18 that the service connection which was extended from Mr. Harvey's property to what is presently Mr.
19 Crawford's parcel was an illegal connection which, in normal circumstances, would have justified a
20 public utility terminating service to that customer who permitted such a connection. However, since
21 Mr. Harvey is both the water utility and the customer, obviously it suited him to permit this condition
22 to exist until Mr. Crawford purchased the property.

23 51. Based on the record, we believe that the Company has been providing service to its
24 owner, Mr. Harvey, the customer, by means of an under-sized distribution main. This distribution
25 main should be upgraded in size in order to meet the requirements of the Arizona Department of
26 Environmental Quality ("ADEQ") and to meet the requirements of Commission Rule R14-2-406, if
27 additional connections beyond those existing when Mr. Crawford acquired his parcel are made.
28 Therefore, we shall order hereinafter that the Company either reconnect its existing distribution main

1 to Mr. Crawford's service line upon payment of all lawful tariffed fees and a meter has been set, or
2 enter into a main extension agreement with Mr. Crawford for the construction of a main which is
3 approved by ADEQ. The cost of such main extension shall be proportionately borne by Mr. Harvey
4 to the point on his property where his meter is currently situated as of the date of hearing. Mr.
5 Crawford shall be responsible for that portion of the ADEQ approved main extending from Mr.
6 Harvey's property where his meter is currently situated to the Crawford service connection.

7 **CONCLUSIONS OF LAW**

8 1. The Company is a public service corporation within the meaning of Article XV of the
9 Arizona Constitution and A.R.S. § 40-246.

10 2. The Commission has jurisdiction over the Company as described hereinabove.

11 3. The Company should extend service to Mr. Crawford's parcel consistent with Finding
12 of Fact No. 51.

13 4. If the Company elects to construct an upgraded distribution main, it should enter into a
14 Commission approved main extension agreement consistent with A.A.C. R14-2-406 and file a copy
15 of ADEQ's Certificate of Approval to Construct with the Commission upon its issuance and a copy
16 of the Certificate of Approval of Construction upon the completion of construction.

17 5. The costs of the aforementioned upgraded main extension, if constructed, should be
18 shared proportionately between Mr. Crawford and Mr. Harvey consistent with Findings of Fact No.
19 51.

20 **ORDER**

21 IT IS THEREFORE ORDERED that Mr. Carl Harvey, dba Golden Corridor Water Company
22 shall either reconnect its existing distribution main to a meter set at Mr. Crawford's service line upon
23 payment of all lawful tariffed fees or enter into a Commission approved line extension agreement
24 consistent with A.A.C. R14-2-406 with the costs of the main extension agreement to be shared
25 proportionately between Mr. Crawford and Mr. Harvey as discussed hereinabove in Findings of Fact
26 No. 51 and Conclusions of Law Nos. 3 and 5.

27 IT IS FURTHER ORDERED that Golden Corridor Water Company shall file, within 30 days
28 of their issuance, with the Director of the Commission's Utilities Division, copies of all approvals of

1 construction issued by the Arizona Department of Environmental Quality with respect to the
2 aforementioned main extension agreement if the distribution main is upgraded.

3 IT IS FURTHER ORDERED that in the event that Mr. Crawford does not, within 365 days of
4 the effective date of this Decision, either pay the tariffed fees and have a meter set at his service line,
5 which shall be connected to the existing distribution line, or enter into the main extension agreement
6 described hereinabove, then the above authorized relief shall be rendered null and void without
7 further order of the Commission.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

MES:mlj

1 SERVICE LIST FOR: JOHN C. CRAWFORD

2 DOCKET NO. W-02497A-01-0073

3 Carl Harvey
4 GOLDEN CORRIDOR WATER CO.
2886 E. Mopar Drive
5 Casa Grande, Arizona 85222-8537

6 John C. Crawford
7 16680 W. Val Vista, Lot 332
Casa Grande, Arizona 85222

8 Christopher Kempley, Chief Counsel
9 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
10 Phoenix, Arizona 85007

11 Steve Olea, Acting Director
12 Utilities Division
ARIZONA CORPORATION COMMISSION
13 1200 W. Washington Street
14 Phoenix, Arizona 85007

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