

ORIGINAL NEW APPLICATION



0000041265

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Our File Number 42424-00008

March 16, 2006

VIA FEDERAL EXPRESS

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

W-01816A-06-0177
W-01790A-06-0177

Re: Spanish Trail Water Company - W-01816A
Saguaro Water Company – W01790A

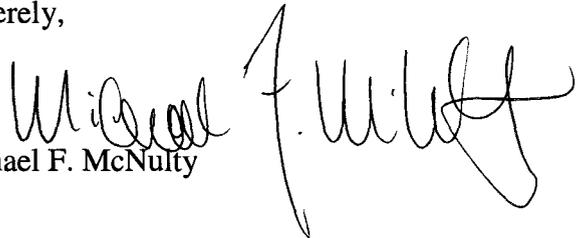
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AZ CORP COMMISSION
DOCUMENT CONTROL

Attached is an original application (plus 13 copies) to modify the existing Certificates of Convenience and Necessity involving the above-referenced water companies.

Please contact me at MMcNulty@lrlaw.com, or at (520) 629-4453 in Tucson with any questions or if any additional documentation is required. We would be happy to provide the Commission with any additional background information it may wish to see.

Your assistance in this matter is greatly appreciated.

Sincerely,


Michael F. McNulty

MFM/hib
Enclosure [Original plus 13]

cc: Spanish Trail Water Company w/ Enclosure
Saguaro Water Company w/ Enclosure

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
CHAIRMAN

WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES
COMMISSIONERS

IN THE MATTER OF THE APPLICATION)
OF SPANISH TRAIL WATER CO. AND) Docket No. W-01816A
SAGUARO WATER CO. TO MODIFY) AND
THEIR EXISTING CERTIFICATES OF)
CONVENIENCE AND NECESSITY) Docket No. W-01790A

Saguaro Water Company ("Saguaro") and Spanish Trail Water Company ("Spanish Trail") each hold Certificates of Convenience and Necessity ("CC&N") to provide water utility services in eastern Pima County, Arizona. Pursuant to the terms of the agreement attached hereto as Exhibit "A" (the "Transfer Agreement"), Saguaro has agreed to transfer to Spanish Trail such portion of its CC&N as encompasses a sixty-nine (69) acre undeveloped portion of its certificated area (the "Property", a map and a legal description of which are attached to the Transfer Agreement).

The owner of the Property, which has consented to this partial transfer of Saguaro's CC&N pursuant to that Exhibit No. 2 to the Transfer Agreement, is developing a 5,000 acre master planned community, 98% of which falls within the CC&N of Spanish Trail. Because the provision of water utilities to such a minute portion of that project would impose an economically unreasonable burden upon the property owner, Saguaro and

1 Spanish Trail have mutually agreed to substitute Spanish Trail for Saguaro as the water
2 utility that will serve the entire development, subject to Commission approval. Saguaro
3 owns no facilities on the Property, which is raw desert. While it is expected that the
4 developer of the Property will advance funds to construct the infrastructure necessary to
5 serve the entire development, if water must be obtained from both Saguaro and Spanish
6 Trail, the developer will have to contemporaneously supplement the infrastructure of both
7 companies, duplicating costs and effort, which is not in the public interest.

8 Both Saguaro and Spanish Trail believe this transfer is in the public interest, and
9 that it will promote the efficient provision of water utility services within their respective
10 service territories. Spanish Trail therefore requests that the Commission approve the
11 transfer of Saguaro's right to provide water utility services to the Property to Spanish
12 Trail, thereby amending the certificated areas of both companies. Both companies believe
13 that a hearing in this case would be wasteful, and hereby request that the Commission
14 decide this matter based on this pleading; in the alternative an expedited hearing is hereby
15 requested.

16
17 RESPECTFULLY SUBMITTED this 16th day of March, 2006.

18 LEWIS AND ROCA

19
20 

21 Michael F. McNulty
22 Lewis and Roca, LLP
23 One South Church Avenue, Suite 700
24 Tucson, Arizona 85701-1611
25 520-629-4453

26 Attorneys for Spanish Trail Water Company and
Saguaro Water Company

LEWIS
AND
ROCA
LLP

LAWYERS

1 ORIGINAL and thirteen (13) copies
2 of the foregoing delivered via
3 overnight courier (Federal Express)
4 this 16th day of March, 2006, to:

4 Arizona Corporation Commission
5 Utilities Division – Docket Control
6 1200 W. Washington Street
7 Phoenix, Arizona 85007

8 COPY of the foregoing
9 delivered via U. S. Mail
10 this 16th day of March, 2006, to:

11 Spanish Trail Water Company
12 Camp Lowell Corporate Center
13 4572 East Camp Lowell Drive
14 Tucson, AZ 85712

14 Saguaro Water Company
15 Camp Lowell Corporate Center
16 4572 East Camp Lowell Drive
17 Tucson, AZ 85712

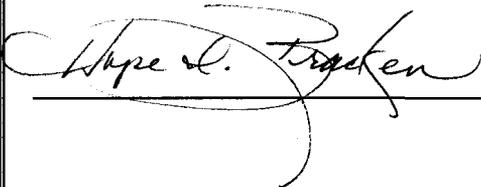
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EXHIBIT A

TRANSFER AGREEMENT

SPANISH TRAIL WATER COMPANY AND SAGUARO WATER COMPANY

THIS TRANSFER AGREEMENT (this "Agreement") is entered into as of the 23 day of February, 2006, by and between SAGUARO WATER COMPANY, an Arizona public service corporation ("Seller"), and the SPANISH TRAIL WATER COMPANY, an Arizona public service corporation ("Buyer").

RECITALS

A. A sixty-nine acre parcel located within Seller's Certificated Area adjacent to Buyer's Certificated Area (the "Property" a legal description of which is attached hereto as Exhibit "A"), lacks any existing water utility infrastructure, and neither Seller nor Buyer have existing production or storage capacity adequate to serve the Property.

B. Seller and Buyer each hold a Franchise from the Pima County Board of Supervisors, and a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission ("ACC") authorizing each of them to provide water utility services as a public service corporation within their Certificated Areas.

C. The owner of the Property has requested that the Buyer be allowed to provide water utility services to the Property.

D. In order to provide water utility services to the Property, Buyer is desirous of purchasing and Seller is desirous of selling the right to provide water utility services within the Property.

NOW THEREFORE, IN CONSIDERATION of the foregoing Recitals, the mutual promises, covenants and agreements hereinafter contained, each act of the parties hereto, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Section 1 Definitions.

Agreement: This Transfer Agreement.

Buyer: Spanish Trail Water Company, an Arizona public service corporation.

Seller: Saguaro Water Company, an Arizona public service corporation.

Seller's Certificated Area: That certain area where Seller is authorized to provide public water utility services pursuant to a CC&N issued by the ACC.

Buyer's Certificated Area: That certain area where Buyer is authorized to provide public water utility services pursuant to a CC&N issued by the ACC.

ACC: The Arizona Corporation Commission.

CC&N: Those Certificates of Convenience and Necessity issued by the Arizona Corporation Commission, authorizing Buyer and Seller to operate as public service corporations in the sale of water for domestic, commercial and other uses in their Certificated Areas.

Franchise Right: The right to use the public rights of way of Pima County.

Property: That certain approximately 69 acre portion of Seller's Certificated Area which is legally described on Exhibit No. 1 attached hereto.

Section 2. Covenants

- 2.1 Seller assigns and transfers to Buyer, upon approval of this Agreement by the ACC, Seller's right to provide water utility services pursuant to Seller's CC&N on that portion of Seller's Certificated Area which constitutes the Property.
- 2.2 Seller assigns and transfers to Buyer, upon approval of this Agreement by Pima County, Seller's Franchise Right to utilize the public rights of way to provide water utility services for the Property.
- 2.3 After approval of this Agreement by the ACC, Seller shall be relieved of any obligation or liability to provide water utility services to the Property.
- 2.4 This agreement is contingent upon approval by the ACC and Pima County. Should either approval not be obtained, this Agreement is null and void.

Section 3. Administrative Provisions

- 3.1 This Agreement shall inure to the benefit of, and shall be binding upon, Sellers and their successors and assigns and Buyer and its successors and assigns. However, no party may assign or delegate any of its rights or obligations under this Agreement without the prior written consent of the other party, except for the ability of Buyer to designate an entity as the transferee of AWC shares.
- 3.2 The terms, covenants and conditions contained in this Agreement are severable. Neither the invalidity nor the unenforceability of any term, covenant or condition of this Agreement shall affect any other term, covenant or condition. This Agreement shall remain in full force and effect and be construed in all respects as if such invalid or unenforceable provision were omitted.
- 3.3 This Agreement shall be governed in all respects by the laws of the State of Arizona.

- 3.4 The prevailing party in litigation or other proceeding brought concerning or relating to this Agreement or the enforcement thereof, shall be entitled to recover its reasonable attorneys' fees and cost.
- 3.5 Time is of the essence of this Agreement and each and all of its provisions.
- 3.6 This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 3.7 Any notice required hereunder will be deemed to have been given when received, either by mail, facsimile or electronically to the parties' address as designated above.
- 3.8 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged in this Agreement.
- 3.9 Each party represents to the other with respect to itself that the execution and performance of this Agreement have been duly authorized by all necessary laws, resolutions, corporate and other actions, and this Agreement constitutes the valid and enforceable obligations of the representing party in accordance with its terms, conditions and covenants. Each party acknowledges entering into this Agreement as its free and voluntary act, under no duress or undue influence.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Seller:

SAGUARO WATER CO., an Arizona public service company

By:  2-23-06
 Its Treasurer Month/Day/Year

Buyer:

SPANISH TRAIL WATER CO., an Arizona public service company

By:  2-23-06
 Its Vice President Month/Day/Year

ATTACHMENTS

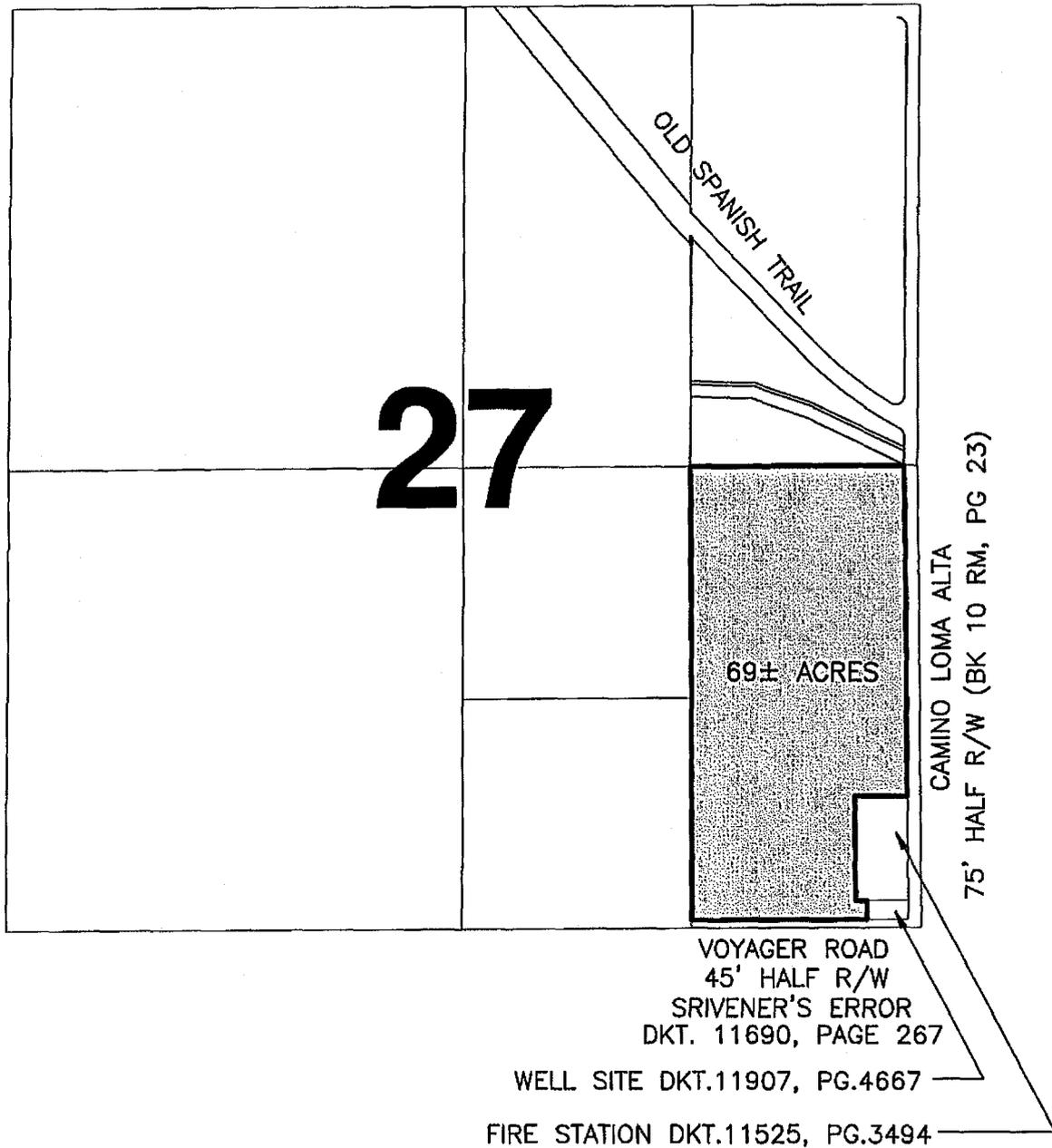
- Exhibit No. 1 - Legal Description of the Property
- Exhibit No. 2 - Consent of Landowner

Exhibit No. 1

LEGAL DESCRIPTION



SCALE: 1" = 1000'



SPANISH TRAIL WATER CO. ADDITION AREA -
CAMINO LOMA ALTA

EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 15 SOUTH,
RANGE 16 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.
EXCLUDING AREAS AS SHOWN

LEGAL DESCRIPTION

Addition to Spanish Trail Water Company Service Area – Camino Loma Alta

The East one-half of the Southeast one-quarter of Section 27, Township 15 South, Range 16 East, Gila and Salt River Meridian, Pima County, Arizona.

EXCLUDING:

Well site parcel recorded in Docket 11907 at Page 4667, Records of Pima County, Arizona.

FURTHER EXCLUDING:

Fire station parcel recorded in Docket 11525 at Page 3494, Records of Pima County, Arizona.

FURTHER EXCLUDING:

Camino Loma Alta right-of-way recorded in Book 10 of Road Maps at Page 23, Records of Pima County, Arizona.

AND FURTHER EXCLUDING:

Voyager Road right-of-way recorded in Book 54 of Maps and Plats at Page 35 and amended by scrivener's error recorded in Docket 11690 at Page 267, Records of Pima County, Arizona.

Remaining portion of said Section 27 contains 69 Acres, more or less.

Exhibit No. 2

CONSENT

The Property (legally described in Exhibit No. 1 to the Transfer Agreement) is owned by Fidelity National Trust No. 30,096. The undersigned beneficiary of that trust does hereby consent to have the Property transferred from Saguaro Water Company's certificated area to Spanish Trail Water Company's certificated area. In order to avoid the duplication of water supply infrastructure, the owners desire that their real estate holdings be served exclusively by the Spanish Trail Water Company. The owners believe that if the Arizona Corporation Commission agrees to allow this consolidation, that it will result in lower ultimate costs to the customers within the territory, and that the public convenience and necessity will be best served by doing so.

Owner:

FIDELITY NATIONAL TRUST NO. 30096

By: Rocking K Holdings Limited Partnership
Its Sole Beneficiary


By: Diamond Ventures, Inc., General Partner
Its President

2-23-06
Date