

OPEN MEETING ITEM



0000042216

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



**ORIG
RECEIVED**

ARIZONA CORPORATION COMMISSION

2003 DEC 30 P 12:27

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: DECEMBER 30, 2003

DOCKET NO: W-02014A-01-0742

10
02104A

TO ALL PARTIES:

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

**VOYAGER WATER COMPANY
(CC&N EXTENSION)**

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 **4:00** p.m. on or before:

JANUARY 8, 2004

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:

JANUARY 13, 2004 and JANUARY 14, 2004

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 Secretary's Office at (602) 542-3931

Arizona Corporation Commission

DOCKETED

DEC 30 2003

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

www.cc.state.az.us

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail YMcFarlin@cc.state.az.us

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 VOYAGER WATER COMPANY FOR AN
EXTENSION OF THE SERVICE AREA UNDER
ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
WATER UTILITY SERVICE.

DOCKET NO. W-02104A-01-0742

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: October 29, 2003

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Teena Wolfe

13 APPEARANCES: LEWIS & ROCA, LLP, by Ms. Mary Beth Savel, on
14 behalf of Applicant Voyager Water Company; and
15 Mr. David M. Ronald, Staff Attorney, Legal Division,
on behalf the Utilities Division of the Arizona
16 Corporation Commission.

BY THE COMMISSION:

17 * * * * *

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

20 FINDINGS OF FACT

21
22 1. Voyager Water Company ("Voyager" or "Company") is an Arizona corporation that
23 provides water utility service to a portion of Pima County, Arizona. Voyager was granted its
24 Certificate of Convenience and Necessity ("CC&N") in Decision No. 53284 (November 9, 1982).
25 Voyager's certificated area is located near I-10 and Kolb Road in Pima County.

26
27 2. On January 31, 2002, the Commission issued Decision No. 64406, which granted
28 Voyager an extension of its service territory under its CC&N, conditioned upon Voyager filing, by

1 January 31, 2002, copies of either a Certificate of Assured Water Supply ("CAWS") or a
2 Designation of Assured Water Supply ("Designation") issued by the Arizona Department of Water
3 Resources ("ADWR"), and the Approvals to Construct issued by the Arizona Department of
4 Environmental Quality ("ADEQ") for water system improvements necessary to serve the
5 developments in the requested extension area. Decision No. 64406 provides that if Voyager fails to
6 timely file the required compliance documentation, the conditionally granted Certificate extension
7 will be deemed denied without further Order of the Commission.
8

9 3. On November 18, 2002, Voyager requested an extension of time to November 1,
10 2003, to file the CAWS and ADEQ Approvals to Construct required by Decision No. 64406. The
11 Commission's Utilities Division Staff ("Staff") had no objection to Voyager's request. By
12 Procedural Order dated December 24, 2002, Voyager was authorized an extension of time to
13 November 1, 2003 to make the filings.
14

15 4. On June 27, 2003, Voyager filed a request to modify or amend Decision No. 64406.
16 Therein, Voyager requested modifications to Decision No. 64406 including the elimination of a
17 CAWS filing requirement and the elimination of all the time limits in Decision No. 64406
18 ("Request").

19 5. On August 5, 2003, by Procedural Order, Staff was ordered to file a response to
20 Voyager's Request.

21 6. On August 18, 2003, Staff filed a response, stating it had no objection to Voyager's
22 Request.
23

24 7. On September 12, 2003, Voyager and Staff filed a Stipulation for Hearing on
25 Applicant's Request to Modify or Amend Decision No. 64406. The stipulation states that
26 subsequent to the filing of Staff's response to the Request, Voyager and Staff had conferred, and
27 stipulated and agreed to a hearing on the Request, at which Voyager would provide evidence
28

1 substantiating the Request and demonstrating the existence of a reasonable basis for granting the
2 requested relief.

3 8. On September 22, 2003, a Procedural Order was issued setting the matter for hearing.

4 9. A hearing was held as scheduled. Voyager and Staff appeared through counsel and
5 presented evidence. Following the hearing, the Request was taken under advisement pending the
6 submission of a Recommended Opinion and Order to the Commission.

7 10. Voyager's June 27, 2003 filing, as modified and clarified at the hearing, requests the
8 following:
9

- 10 a. that the Commission take into account the extended timing and practical reality
11 of phased master-planned development and modify Decision No. 64406;
- 12 b. that the Commission accept the October 11, 2002 Analysis of Assured Water
13 Supply from ADWR, covering the entire requested CC&N extension area,
14 instead of requiring a CAWS from ADWR that covers the entire requested
15 extension area by November 1, 2003;
- 16 c. that the Commission eliminate the requirement that developers submit to the
17 Commission a CAWS for individual subdivision plats;
- 18 d. if the CAWS submittal requirement is not eliminated, that the Commission
19 remove the submission of the CAWS as a condition of the CC&N extension
20 granted in Decision No. 64406, but instead require that future subdivision
21 developers obtain and submit their own CAWS issued by ADWR for
22 individual subdivision plats as development proceeds;
- 23 e. that the Commission require that individual subdividers file ADEQ Approvals
24 to Construct along with line extension agreements which will include legal
25 descriptions for the area covered by each ADEQ Approval to Construct for the
26 individual subdivisions as development proceeds in phases; and
- 27 f. that the Commission eliminate the conditional time limits currently in effect in
28 Decision No. 64406, which would have the effect of approving the CC&N
extension unconditionally, while ordering compliance filings instead.

11. Voyager presented two witnesses; Mr. Doug Dunham, Manager of the Office of
Assured Water Supply at the Arizona Department of Water Resources, and Mr. Mark Weinberg,
Vice President of Development for Diamond Ventures and Project Manager for the Voyager Project.

1 12. Mr. Dunham stated that an Analysis of Assured Water Supply, such as the one ADWR
2 issued on the October 11, 2002 for the extension area, is designed to allow developers of large
3 master-planned communities to submit evidence of any number of the various elements required to
4 receive a CAWS, without having the full detail needed to receive a CAWS, including recordable
5 plats. Mr. Dunham stated that in most cases very large developments are not fully engineered to the
6 point where they have recordable plats. Mr. Dunham testified that a recordable plat must be
7 reviewed prior to issuance of a CAWS, and that if there are changes to the plat after the CAWS
8 issuance, it can invalidate the CAWS and the applicant could have to re-apply, because in most
9 cases, changes in plats impact water demand.
10

11 13. Mr. Dunham stated that there are five basic requirements for a CAWS: 1) proof of
12 physical, legal and continuous availability of the water supply for 100 years; 2) proof of adequate
13 water quality; 3) proof that the subdivision demands meet the plan for the Active Management Area
14 (“AMA”); 4) evidence that the subdivision meets the goal of the AMA; and 5) proof of ownership.
15

16 14. According to Mr. Dunham, the Analysis of Assured Water Supply that ADWR issued
17 on October 11, 2002 for the Voyager expansion showed: 1) proof of physical, legal and continuous
18 availability of the water supply for 100 years; 2) proof of adequate water quality; 3) consistency
19 with the Tucson AMA management plan; and 4) a plan consistent with the Tucson AMA
20 management goal.
21

22 15. Mr. Dunham explained that in order to meet the CAWS requirement for consistency
23 with the Tucson AMA management goal, which is safe yield by 2025, a landowner is generally
24 required to enroll in the Groundwater Replenishment District (“GRD”) as a “member land.” GRD
25 “member land” members are responsible for paying replenishment costs to the GRD only for their
26 land. The ultimate landowner pays these costs through the property tax bill on each lot.
27
28

1 16. Mr. Dunham testified that a major difference between a CAWS and a Designation of
2 Assured Water Supply ("Designation") is that for a Designation, the system overall must meet all
3 the assured supply criteria, whereas for a CAWS, only the individual landowner/developer must
4 meet the criteria. To receive a Designation in the Tucson AMA, if the water provider will use
5 groundwater, the provider would need to become a member of the GRD as a "member area." GRD
6 "member area" members must pay the replenishment costs for their entire area to the GRD. Mr.
7 Dunham testified that in his experience, private water companies seeking a Designation have had
8 difficulty being able to show enough financial capability, either through a rate structure or pass
9 through cost, to recover funds needed to pay the GRD replenishment costs associated with joining a
10 GRD as a "member area."
11

12 17. Mr. Dunham stated that it is ADWR's preference, in the case of a large, master-
13 planned community, that the master developer obtain an Analysis of Assured Water Supply and that
14 subsequently, the home builders who actually market the lots obtain the CAWS.
15

16 18. Voyager's second witness, Mr. Mark Weinberg, Vice President of Development for
17 Diamond Ventures and Project Manager for the Voyager Project, testified that at this point,
18 Voyager's requested extension area has been rezoned for 900 lots. He stated that the initial plats
19 would be submitted to the City of Tucson in about four months, and that the developer would then
20 expect to get an approved tentative plat from the city about six months later, at which point the
21 developer could begin designing subdivision improvement plans, and subsequently prepare a final
22 subdivision plat for recording. Mr. Weinberg estimated the total time necessary to get all necessary
23 approvals for the final plats at 12 to 18 months.
24

25 19. Mr. Weinberg testified that the developer commissioned a water modeling study to
26 determine the size of water mains, the reservoir, and the booster station that Voyager must construct
27 to serve the new development area. At the time of the hearing, Voyager had received from the Pima
28

1 County Department of Environmental Quality a Certificate of Approval to Construct a 12-inch water
2 line to serve the extension area. Mr. Weinberg also testified, however, that because there are six and
3 a half miles of streets in the Voyager Project, it is unrealistic at this point to be able to obtain
4 Certificates of Approval to Construct for every single water line in the project.

5 20. Mr. Weinberg testified that he believed two to three years was a reasonable and
6 achievable time frame for the builders to obtain individual CAWS.

7 21. At the hearing, Staff agreed that the Commission should take into account the
8 extended timing and practical reality of phased master-planned development, and supported the
9 Company's request that the Commission modify Decision No. 64406. Staff's recommendations at
10 the hearing regarding the Request were as follows:
11

- 12 a. that the Commission accept the October 11, 2002 Analysis of Assured Water
13 Supply from ADWR, covering the entire requested CC&N extension area,
14 instead of requiring a CAWS from ADWR that covers the entire requested
15 extension area by November 1, 2003;
- 16 b. that the Commission not eliminate the requirement that developers submit to
17 the Commission a CAWS for individual subdivision plats;
- 18 c. that the Commission remove the submission of the CAWS as a condition of
19 the CC&N extension granted in Decision No. 64406, but instead require that in
20 addition to the Company's submission of the October 11, 2002 Analysis of
21 Assured Water Supply, future subdivision developers obtain and submit their
22 own CAWS issued by ADWR for individual subdivision plats as development
23 proceeds, with all CAWS to be submitted within two years of January 2003;
- 24 d. that the Commission require that individual subdividers file ADEQ Approvals
25 to Construct along with main extension agreements which will include legal
26 descriptions for the area covered by each ADEQ Approval to Construct for the
27 individual subdivisions as development proceeds in phases, and that there be
28 no time frame requirement on main extension agreements and Approvals to
Construct; and
- e. that the Commission not eliminate all the conditional time limits currently in
effect in Decision No. 64406, which would have the effect of approving the
CC&N extension unconditionally, while ordering compliance filings instead.

1 IT IS FURTHER ORDERED that Voyager Water Company shall file copies of the Approvals
2 to Construct required by Decision No. 64406 along with line extension agreements entered into with
3 individual subdividers as the planned development proceeds in phases, and that the line extension
4 agreements shall include legal descriptions for the area covered by each Approval to Construct.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN COMMISSIONER COMMISSIONER

10
11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2004.

17
18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE SECRETARY

21 DISSENT _____

22 DISSENT _____

23
24
25
26
27
28

1 SERVICE LIST FOR: VOYAGER WAATER COMPANY

2 DOCKET NO.: W-02104A-01-0742

3
4 Michael F. McNulty
5 Mary Beth Savel
6 LEWIS AND ROCA, LLP
7 One South Church Avenue, Ste. 700
8 Tucson, AZ 85701-1611
9 Attorneys for Voyager Water Company

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

10 Ernest G. Johnson, Director
11 Utilities Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28