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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

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IN THE MATTER IF THE JOINT) DOCKET NO. W-01656A-98-0577
APPLICATION OF SUN CITY WATER) SW-02334A-98-0577
COMPANY AND SUN CITY WEST)
UTILITIES COMPANY FOR APPROVAL OF)
CENTRAL ARIZONA PROJECT WATER) **SUN CITY TAXPAYERS**
UTILIZATION PLAN AND FOR AN) **ASSOCIATION'S COMMENTS**
ACCOUNTING ORDER AUTHORIZING A) **ON RECREATION CENTERS**
GROUNDWATER SAVINGS FEE AND) **AGREEMENTS**
RECOVERY OF DEFERRED CENTRAL)
ARIZONA PROJECT EXPENSES.)

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The Sun City Taxpayers Association, Inc. ("SCTA") hereby files its comments on: 1) the Agreement between Sun City Water Company and the Recreation Centers of Sun City, dated October 30, 2000 (the Sun City Agreement); and 2) the Agreement between Sun City West Utilities Company and the Recreation Centers of Sun City West, dated October 20, 2000 (the Sun City West Agreement) (or collectively the "Agreements").

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A. INTRODUCTION.

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Citizens, has filed two incomplete and illusory agreements permitting, but not requiring, the "exchange" of water between the Recreation Centers and the water companies. An "exchange" is fundamentally different than a "groundwater savings project." A "groundwater savings project," the terminology consistently used by Citizens prior to the submittal of the

1 Agreements, is governed by A.R.S. § 45-801.01, et seq., requires the savings
2 facility, storage and recovery to be separately permitted and provides an
3 opportunity for the public to object to each permit. For example, A.R.S. § 45-
4 812.01 requires an applicant for a savings facility permit to demonstrate all the
5 following apply:
6

- 7 1. Operation of the facility will cause the direct reduction or
8 elimination of groundwater withdrawals;
- 9 2. The delivered water will be used on a gallon-for-gallon
10 substitute basis directly in lieu of groundwater that
11 otherwise would have been pumped;
- 12 3. The in-lieu water is the only reasonably available source of
13 water for the recipient other than groundwater;
- 14 4. The water delivered would not have been a reasonable
15 alternative source of water for the recipient except through
16 the operation of the groundwater savings facility; and
- 17 5. The applicant has submitted a plan on how to prove the
18 amount of groundwater saved each year.

19 In contrast, an “exchange” is governed by A.R.S. § 45-1001, et
20 seq. A notice, as set forth in A.R.S. § 45-1051, must be filed and then the
21 exchange may be initiated, subject only to the minimal restrictions set forth in
22 A.R.S. § 10-1052 and the annual reporting requirements set forth in A.R.S. §
23 45-1004. An “exchange” need not satisfy any of the requirements of A.R.S. §
24 45-812.01. In particular, an “exchange” does not require a direct reduction or
25 elimination of groundwater use. Finally, an “exchange” provides no
26 opportunity for members of the public to object.

1 Under an "exchange," it is impossible to accrue storage credits, so
2 no asset is created that can be used or sold for the benefit of the ratepayers. No
3 protectable right is created by an "exchange," whereas "stored" water is entitled
4 to protection under A.R.S. § 45-856.01. Any groundwater left in the ground
5 due to the "exchange" (i) may be pumped and used by others (including an
6 expanding Aqua Fria Division), and (ii) may be used to demonstrate the
7 physical availability of an Assured Water Supply. This only aids new
8 development, not existing ratepayers.
9

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11 Additionally, although the withdrawals of "exchanged" water may
12 be accounted for by Citizens as CAP water, the ADWR's Third Management
13 Plan still mandates the CAP water so withdrawn be counted against the water
14 companies' conservation requirements. Citizens will still face the identical
15 fines and penalties whether or not the exchange ever takes place. Citizens has
16 provided no justification for pursuing an "exchange" instead of a groundwater
17 "savings" facility.
18

19 B. THE FILINGS ARE INCOMPLETE.

20 Decision No. 62293 required Citizens to file "binding
21 commitments from golf course, public and private, and conditions related
22 thereto." Decision at p. 21. Yet, the Agreements served on the parties did not
23 include Exhibit A (showing the locations of use and points of delivery) or
24 Exhibit B (the Operating Agreement). These exhibits define material terms and
25 conditions under which water is proposed to be delivered to the Recreation
26

1 Centers. In order for the "exchange" to comply with A.R.S. § 45-1051 the
2 information anticipated by Exhibit A is mandatory. Further, the Agreements
3 are not truly binding as they may be unilaterally terminated by either party if no
4 operating Agreement is executed by December 31, 2000. Agreements at
5 Section 6. Other grounds for unilateral termination set forth in Section 6 of the
6 Agreements include:
7

- 8 1. Failure to secure Arizona Department of Water Resources
9 permits or approvals on or before March 31, 2001;
- 10 2. Failure of the Recreation Centers to secure authority to
11 withdraw groundwater on or before December 31, 2000; and
- 12 3. Failure to secure ACC approval of the preliminary
13 Engineering Report on the Groundwater Savings Plan
14 submitted by Citizens (the "Plan").

15 As Citizens, has not complied with Decision No. 62293 requiring it to submit
16 commitments including the terms and conditions related thereto, the rejection of
17 the Agreements and Citizens' Plan is, therefore, mandatory.
18

19 C. THE AGREEMENTS ARE ILLUSORY.

20 In addition to permitting the parties four separate basis for
21 unilaterally terminating the Agreements, nothing in either Agreement commits
22 the Recreation Centers, or any particular golf course, to take or pay for a
23 minimum amount of CAP water annually. The Agreements, therefore, provide
24 neither Citizens or its ratepayers any guaranteed income stream, or any other
25 benefit, in return for Citizens' promise to construct a \$15 million golf course
26 distribution system. The Agreements contain only a vague provision whereby

1 the Recreation Centers “agree to use [their] best efforts to use...CAP water on
2 [the] golf courses each year, consistent with best golf course management
3 practices and legal requirements” up to the full amount of CAP water allocated
4 to the particular system. See, Section 9 of the Agreement. If, at any time, either
5 or both Recreation Centers determine the best golf course “management
6 practices” mandate they take no CAP water (e.g., because of salinity issues),
7 they may unilaterally cease ordering CAP water even if Citizens has committed
8 to take it under its CAP subcontracts.¹
9
10

11 The Agreements provide no assurance one drop of water will
12 actually be exchanged or any revenue will be generated. The Agreements are
13 illusory and therefore they, like Citizens’ Plan, must be rejected.

14 D. THE PRICE CHARGED TO THE GOLF COURSES
15 CONSTITUTES AN UNREASONABLE SUBSIDY.

16 As SCTA demonstrated in its comments to the Preliminary
17 Engineering Report (“Citizens’ Plan”), the Recreation Centers need to pay at
18 least \$1.42 per 1,000 gallons to recover the costs related to the construction and
19 operation of the Dedicated Golf Course Delivery System (assuming every
20 allocated acre foot is purchased). In contrast, the Agreements require the
21 Recreation Centers to pay only for CAP water actually received, if any, and
22 then only at “an amount equal to 80% of the Recreation Centers’ average per
23 acre foot cost of purchased power for pumping groundwater during the calendar
24
25
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¹ Citizens’ CAP subcontracts with CAWCD require an annual order be placed in October of each year on a take or pay basis.

1 year Water Company delivers waters to the Recreation Centers.” *See*,
2 Agreements at Section 10 (emphasis added). The failure to include the cost of
3 power in the Agreements renders calculation of the amounts to be paid by the
4 Recreation Centers impossible. However, the CAP Task Force Report
5 estimates 80% of the average cost of Citizens to pump groundwater (a figure
6 which should include more than just power costs) might generate approximately
7 \$221,000 per year or 10.3 cents per 1,000 gallons (assuming all 6,561 acre feet
8 are delivered). As a result, the Agreements provide CAP water to the
9 Recreation Centers at approximately \$1.32 per 1,000 gallons below the cost of
10 the CAP water.
11
12

13 Citizens has made it clear it intends to impose these deficiencies on
14 its ratepayers in Sun City and Sun City West. As set forth in Exhibit 1 attached
15 hereto, the burdens on ratepayers will remain unconscionable, even after
16 applying the maximum revenues that might be generated by the Agreements.
17 Based upon Citizens last rate case, the annual revenue requirement in Sun City
18 would increase \$3,342,972 (or 61.23%), in Sun City West \$1,198,640 (or
19 44.38%) with a combined increase of \$4,541,612 (or 55.65%). In return for
20 shouldering this unreasonable burden, Citizens’ ratepayers will receive no
21 direct benefits and a distribution system that has no use other than for delivering
22 CAP water to the golf courses. The Agreements, like Citizens’ Plan, must be
23 rejected.
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1 E. INSUFFICIENT COMMITMENTS HAVE BEEN SUBMITTED
2 TO RENDER CITIZENS' PROPOSAL FEASIBLE.

3 Citizens' Preliminary Engineering Report indicates that "without
4 the participation of the two private course in Sun City West (Hillcrest Golf Club
5 and Briarwood Country Club) the Groundwater Savings Project ("GSP") will
6 not be operationally feasible." Report at A-4. The Report continues: "Hillcrest
7 Golf Club and Briarwood Country Club play important roles in the Sun City
8 West GSP. Golf course demands in Sun City West are not large enough to
9 allow for a 100% use of the CAP allocation intended for use in Sun City West
10 based on the timing of demands and limitation of the non-potable distribution
11 system." *Id.*

12
13
14 Citizens' has not submitted binding commitments with the
15 Hillcrest Golf Club and Briarwood Country Club. Thus, according to its own
16 analysis, the project "will not be operationally feasible". Therefore, the
17 Agreements that have been submitted and Citizens' Plan must be rejected.

18
19 F. THE AGREEMENTS OBLIGATE CITIZENS TO CONSTRUCT
20 THE DEDICATED GOLF COURSE DISTRIBUTION SYSTEM,
21 TO MAINTAIN THE EXISTING EFFLUENT DISTRIBUTION
22 SYSTEM AND TO DELIVER WATER SUITABLE FOR
23 IRRIGATING GOLF COURSES.

24 By the Agreements, Citizens obligates itself to construct the
25 Pipeline to deliver CAP water to the Recreation Centers' golf courses (Recital L
26 of Sun City Agreement and Recital J of Sun City West Agreement); to
"maintain the pipes and valves" in Sun City West's Recreation Center's

1 existing effluent distribution system (Paragraph 9 of Sun City West
2 Agreement); and to “deliver water to Recreation Centers suitable for use for
3 irrigating golf courses at the Point of Deliver” (Paragraph 12 of both
4 Agreements). Only the costs associated with undertaking the first obligation
5 are included in Citizens’ Preliminary Engineering Report. Citizens has
6 provided no estimates of the potential cost of maintaining the existing effluent
7 distribution system in Sun City West or the potential liability associated with
8 promising to make CAP water suitable for golf course purposes. The
9 assumption of these obligations is unreasonable, requiring the Agreements and
10 Citizens’ Plan be rejected.
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12

13 G. THE AGREEMENTS MAY NOT BE PROPERLY
14 AUTHORIZED.

15 Members of SCTA are also members of the Recreation Centers of
16 Sun City and have regularly attended the Board meetings of the Recreation
17 Centers of Sun City. The members of SCTA, however, are unaware of the Sun
18 City Agreement being approved by the Board of Directors of the Sun City
19 Recreation Centers.
20

21 Additionally, the Recreation Centers of Sun City Articles preclude
22 the conveyance of any substantial part of its assets without the affirmative vote
23 of a majority of its membership. Article VIII, Section 7. By exchanging water,
24 the Recreation Centers are conveying assets in the form of water to Citizens.
25 Water is critical to the operation of the golf courses and the conveyance of
26 water to Citizens constitutes “a substantial part” of the Recreation Centers

1 assets, requiring the Agreements to be approved by a majority vote of the
2 membership. Although members of the Recreation Centers of Sun City, SCTA
3 members have never been asked to approve the Sun City Agreement.
4

5 Article X of the Recreation Centers of Sun City's Articles of
6 Incorporation also requires any indebtedness in excess of \$750,000 be
7 authorized by three-fourths of the members present at a meeting of the
8 membership duly called and noticed for that purpose. The Agreements obligate
9 Citizens to construct a \$15 million Dedicated Golf Course Distribution System
10 that will be paid for by the Recreation Centers' members as ratepayers of
11 Citizens. No vote has been taken. The execution of the Agreements violates
12 the spirit, if not the letter, of the prohibition against the Recreation Centers
13 obligating its membership to large indebtedness without first securing the
14 affirmative vote of three fourths of its membership.
15

16 Furthermore, since Citizens does not currently serve the golf
17 courses, both the Central Arizona Water Conservation District and the Bureau
18 of Reclamation may need to approve the exchange, and an environmental
19 assessment may be required.
20

21 Even if the Commission could otherwise ignore the Plan's
22 enormous shortfalls and outrageous cost (all as more fully set forth in SCTA's
23 comments to Citizens' Plan), the \$15 million construction project must not be
24 approved unless and until Citizens affirmatively demonstrates that the
25 Agreements have received all required approvals to be legally binding. Further,
26

1 the ACC must recognize the intent behind Articles VII and X of the Recreation
2 Centers Articles of Incorporation by referring the issue to the ratepayers of
3 Citizens (who for the most part are also members of the Recreation Centers).
4
5 Until the Agreements have been duly authorized and approved by a vote of the
6 ratepayers (or Recreation Centers membership), the Agreements, like Citizens'
7 Plan, must be rejected.

8 H. THE AGREEMENTS VIOLATE DECISION NO. 60172.

9
10 In Decision No. 60172, the Commission approved a rate for
11 supplying raw untreated CAP water to golf courses. The approved rate is \$0.50
12 per 1,000 gallons with the infrastructure being constructed through main
13 extension agreements. In contrast, the Agreements provide CAP water for a
14 rate of approximately \$0.10 per 1,000 and with Citizens financing, on the backs
15 of its ratepayers, the Dedicated Golf Course Distribution System. Clearly, the
16 Agreements constitute a change in the existing rates and charges applicable to a
17 class of service already approved by this Commission. Such a change can only
18 be approved in a context of a full rate case. See, *Scates v. Arizona Corporation*
19 *Commission*, 118 Ariz. 531, 578 P.2d 612 (App. 1978).

20
21 I. CONCLUSION

22 The two private golf courses designated by the Preliminary
23 Engineering Report as "critical" for the operational feasibility of the project
24 have not executed any commitments. The Agreements that were tendered are
25 incomplete, lacking Exhibits A and B, and are illusory. Either party may
26

1 unilaterally terminate the Agreements if they do not agree to an Operating
2 Agreement (and for three other reasons). There is no assurance the Recreation
3 Centers will take or pay for one drop of CAP water, although the Agreements
4 commit Citizens to construct a \$15 million Dedicated Golf Course Distribution
5 System for the sole use of the golf courses. Assuming the Recreation Centers
6 ever order CAP water the rate they have agreed to pay (i) substantially deviates
7 from the rates and charges approved for this type of service in Decision No.
8 60172; (ii) results in an unconscionable subsidy; and (iii) places an
9 unreasonable burden on ratepayers. Significant questions exist regarding
10 whether the Agreements have been properly approved by the respective parties
11 and all interested agencies. The Recreation Centers' Articles of Incorporation
12 require, either legally or equitably, membership consent of the Agreements.
13
14

15 Finally, the "exchange" does not create a bookable or protectable
16 asset. Rather, the groundwater "saved" by the Plan is available for use by any
17 and all the surrounding water providers, including the Aqua Fria Division. The
18 ratepayers will be asked to pay an enormous cost that will assist development of
19 surrounding communities, but will not offset alleged past, present or future
20 violations of their conservation requirements.
21

22 For the forgoing reasons, the Commission should summarily reject
23 the Agreements, as well as the entire Citizens' Groundwater Savings Plan
24 (which is now an "exchange") and halt the collection of deferred and on-going
25 CAP charges immediately. In the alternative, the Agreements and Plan should
26

1 be referred to the vote of the ratepayers and set for hearing so that the
2 Commission can thoughtfully and thoroughly review the many issues raised by
3 SCTA to Citizens' Plan and the Agreements with the Recreation Centers.
4

5 RESPECTFULLY submitted this 15th day of November, 2000.

6 MARTINEZ & CURTIS, P.C.

7
8 By: 

9 William P. Sullivan

10 Paul R. Michaud

11 2712 North Seventh Street

12 Phoenix, Arizona 85006-1090

13 Attorneys for Sun City Taxpayers Association

14 **An original and ten (10) copies
15 of the foregoing are filed
16 this 15th day of November, 2000 with:**

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 **A copy of the foregoing is hand-delivered
22 this 15th day of November, 2000 to:**

23 Robert Metli, Esq.
24 Legal Division
25 Arizona Corporation Commission
26 1200 West Washington
Phoenix, Arizona 85007

Jerry L. Rudibaugh
Chief Administrative Law Judge
Hearings Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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**A copy of the foregoing is mailed
this 15th day of November, 2000 to:**

Scott Wakefield
RUCO
2828 North Central Avenue, Suite 1200
Phoenix, Arizona 85004

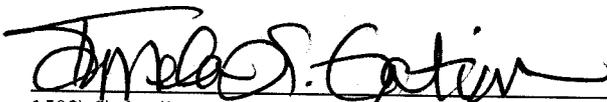
Craig A. Marks
Citizens Utilities Company
2901 North Central Avenue, Suite 1660
Phoenix, Arizona 85012

Barbara R. Goldberg
Steptoe & Johnson, LLP
Two Renaissance Square
40 North Central Ave, 24th Fl.
Phoenix, Arizona 85004-4453

Walter W. Meek, President
Arizona Utility Investors Association
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004

William G. Beyer
5632 W. Alameda Road
Glendale, Arizona 85310
Attorney for Recreation Centers
of Sun City and Recreation Centers of Sun City West

Ray Jones
General Manager
Sun City Water Company
Post Office Box 1687
Sun City, Arizona 85372



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EXHIBIT 1

	<u>SUN CITY</u>	<u>SUN CITY WEST</u>	<u>COMBINED</u>
RATE BASE			
OCLD (T.Y.)	13,675,576	6,235,619	
Golf Course System	<u>11,729,685</u>	<u>2,961,162</u>	
	25,405,261	9,196,781	34,602,042
REVENUES			
T.Y.	5,731,330	2,898,832	
Rate Adjustment	(271,221)	(197,907)	
	<u>141,440</u>	<u>79,560</u>	<u>221,000</u>
	5,601,549	2,780,485	8,382,034
EXPENSES			
T.Y.	4,369,060	2,232,815	
G.C. Dep. (@2.3%)	276,134	69,710	
G.C. O&M	65,563	21,512	
CAP Water (@\$115/af)	481,735	272,780	
CAP Deferred	<u>160,195</u>	<u>75,541</u>	
	5,352,687	2,672,358	8,025,045
Increased Income taxes	<u>55,162</u>	<u>31,028</u>	<u>86,190</u>
Net Op. Inc.	193,700	77,099	270,799
Rev. Req. (@8.73%)	2,217,879	802,879	3,020,758
Rev. Def.	2,024,179	725,780	2,749,959
Conv. Factor	1.65152	1.65152	1.65152
Req. Increase	<u>3,342,972</u>	<u>1,198,640</u>	<u>4,541,612</u>
	61.23%	44.38%	55.65%

Note, "T.Y." figures are for the test year ending March 31, 1995 as set forth in Decision No. 60172. This exhibit demonstrates the impact of the Dedicated Golf Course Delivery System on the Sun City and Sun City West ratepayer by imposing the system's rate base, operating costs, depreciation expense (all as set forth in Citizens' Plan) and CAP water costs, including the annual cost of recovering deferred CAP costs, assuming the Agreements with Sun City and Sun City West Recreation Centers produce 221,000 annually (which is unlikely). Where Citizens' Plan did not specifically allocate plant, costs or revenues between systems, the CAP allocation ratio of 64% for Sun City and 36% for Sun City West was used.