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IN THE MATTER OF THE JOINT APPLICATION OF SUN CITY WATER COMPANY AND SUN CITY WEST UTILITIES COMPANY FOR APPROVAL OF CENTRAL ARIZONA PROJECT WATER UTILIZATION PLAN AND FOR AN ACCOUNTING ORDER AUTHORIZING A GROUNDWATER SAVINGS FEE AND RECOVERY OF DEFERRED CENTRAL ARIZONA PROJECT EXPENSES.

Docket Nos.: W-01656A-98-0577  
SW-02334A-98-0577

**SUN CITY WATER COMPANY'S  
AND SUN CITY WEST  
UTILITIES COMPANY'S  
MOTION TO STRIKE**

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Sun City Water Company and Sun City West Utilities Company ("Citizens")

move to strike (1) portions of Dennis Husted's direct testimony filed on behalf of the Sun City Taxpayers Association ("SCTA") and (2) the supplemental testimony of Marylee Diaz Cortez on behalf of the Residential Utility Consumers Office ("RUCO"). Specifically, Citizens moves to strike §§ II, III (page, lines 13-15), IV, VI, VII, VIII, IX and XVI of Mr. Husted's testimony; and, all of Ms. Cortez's testimony.

**I. BRIEF STATEMENT OF THE MOTION.**

In the June 3, 2001 procedural order, the Hearing Officer set an August 15, 2001 hearing in this matter to "determine whether the Applicants' Preliminary Engineering Report complies with Decision No. 62293." See 6/3/2001 Procedural Order, p. 2. That order was consistent with the Commissioners' remand discussion at the May 11, 2001 special open meeting. Under Decision No. 62293, the Commission directed Citizens to perform an engineering analysis to address *three limited issues*--(1) "the feasibility of a joint facility with the

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1 Agua Fria Division including the timeframe for any such joint facility;” (2) “the need for all  
2 major elements of [the] proposed plan (e.g., storage and booster stations);” and (3) “binding  
3 commitments from golf courses, public and private, and terms and conditions related thereto.”  
4 See Decision No. 62293, pp. 20-21. *Those three issues are what the August 15 hearing is about.*

5 Put another way, the only issues presented for review are whether Citizens  
6 conducted an adequate engineering analysis to determine the feasibility of a joint project with the  
7 Agua Fria Division and the need for major elements of the GSP; and, whether Citizens obtained  
8 binding commitments from the golf courses. Nothing more, nothing less. Throughout this case,  
9 however, SCTA and RUCO have attempted to debate, reopen and collaterally attack numerous  
10 issues definitively decided by the Commission in Decision Nos. 60172 and 62293.

11 Continuing that tactic, SCTA and RUCO have proffered testimony from Dennis  
12 Hustead and Marylee Diaz Cortez challenging the Commission’s decision to approve the concept  
13 of the Groundwater Savings Project recommended by the CAP Task Force for various reasons.  
14 As a matter of law and fact, the Hearing Officer should strike substantial portions of Mr.  
15 Hustead’s direct testimony and all of Ms. Cortez’s supplemental testimony because they exceed  
16 the proper scope of this docket, raise issues previously decided by final Commission decisions,  
17 ignore the bounds of the open meeting remand and have no bearing on the limited PER issues at  
18 stake in this proceeding.

19 **II. THE HEARING OFFICER SHOULD PREVENT SCTA AND RUCO FROM**  
20 **EXCEEDING THE SCOPE OF CITIZENS’ PRELIMINARY ENGINEERING REPORT**  
21 **AND CHALLENGING ISSUES ALREADY DECIDED BY THE COMMISSION.**

22 In Decision No. 62993 (issued February 1, 2000), the ACC approved the concept  
of the GSP as a means for Citizens to utilize its CAP water allocations in the Sun Cities. As part  
of that decision, the ACC required Citizens to submit a preliminary engineering report (“PER”) focusing on three issues: (1) the feasibility of a joint facility with Citizens’ Agua Fria division;

1 (2) the need for all major elements of the project; and (3) binding commitments from the golf  
2 courses. See Decision No. 62293, pp. 20-21.

3 The focus and scope of the PER was not whether to implement the GSP, but  
4 rather should it include a joint facility with the Agua Fria division, are all major elements of the  
5 GSP justified and have sufficient binding commitments from the golf courses been obtained to  
6 support the GSP. SCTA's and RUCO's testimony goes well beyond those issues.

7 SCTA's and RUCO's testimony addresses issues already decided in Decision  
8 Nos. 60172 and 62293. In Decision No. 60172, for example, the ACC made several findings  
9 that are not subject to challenge:

- 10 • "We find that the Company's decision to obtain allocation of CAP water was a  
11 prudent planning decision." See Decision No. 60172, p. 9.
- 12 • "We find...that the Company contracted for CAP [water] in order to meet the  
13 continuing groundwater requirements for its existing customers... provided that  
14 the CAP allocation will ultimately be used. The existing customers will benefit.  
15 The new customers will also benefit from the CAP allocation by contributing to  
16 the use of renewable sources of water that will be used in the Northwest Valley to  
17 prevent diminished water quality, well failures and future additional land  
18 subsidence, and therefore protect their economic investment in the area." Id.
- 19 • "We will, however, allow Citizens to defer capital costs for future recover from  
20 ratepayers when the CAP allocation has been put to beneficial use for Citizens'  
21 ratepayers." Id. at p. 10.

22 Neither SCTA nor RUCO filed a Superior Court appeal of Decision No. 60172.  
That Decision became final and conclusive as a matter of law. By law, SCTA and RUCO can't  
collaterally attack any of the issues, findings and legal conclusions contained in Decision No.  
60172 in this docket. See Kunkle Transfer & Storage Co. v. Superior Court, 22 Ariz. App. 315,  
526 P.2d 1270 (1974). "In all collateral actions or proceedings, the orders or decisions of the  
Commission shall be conclusive." See Ariz. Rev. Stat. § 40-252. After Decision No. 60172  
became final, SCTA and RUCO simply can't contest issues relating to whether contracting for

1 and retaining the CAP allocation was a prudent decision or whether the GSP will benefit Sun  
2 City customers. Nor can they raise “rate shock” or other rate-related issues. Those issues  
3 already have been decided and go beyond the scope of this proceeding.

4 In Decision No. 62293, the Commission reiterated that “the decision of Citizens  
5 to obtain allocations of CAP water was a prudent planning decision.” See ACC Decision No.  
6 62293, p. 18. The ACC also adopted several key findings made by the CAP Task Force:

- 7 • “It was in the public interest to obtain the CAP water allocation of 6,561 acre  
8 feet.” See Decision No. 62293, p. 5.
- 9 • “The ratepayers would pay for the deferred CAP charges.” Id.
- 10 • “The ratepayers would pay for the on-going CAP costs.” Id.
- 11 • “The long term solution is to deliver CAP water to the Sun Cities through a non-  
12 potable pipeline where the water is used to irrigate golf courses that have  
13 historically used groundwater.” Id.

14 The Commission then determined that the use of CAP water in the Sun Cities was necessary to  
15 prevent “groundwater depletion of the aquifer, land subsidence and other environmental  
16 damage.” Id. at p. 18. And the ACC found that the “Groundwater Savings Project will provide  
17 direct benefits to the Sun City areas.” Id. at p. 19. Finally, the ACC considered SCTA’s and  
18 RUCO’s various “rate shock” and cost-related arguments, and approved the GSP concept  
19 recommended by the CAP Task Force:

20 “While there are clearly less costly options...we will approve the concept of the  
21 Groundwater Savings Project and approve the reasonable costs associated with  
22 the completion of the preliminary design/update cost estimate.” Id. at p. 16.

For the reasons of law noted above, SCTA and RUCO can’t collaterally attack Decision No.  
62293 or any of those findings and conclusions of law in this docket.

1 **III. THE HEARING OFFICER SHOULD STRIKE §§ II, III (PAGE 6, LINES 13-15), IV,**  
2 **VI, VII, VIII, IX AND XVI OF DENNIS HUSTEAD'S DIRECT TESTIMONY.**

3 Much of Dennis Husted's testimony offered by the SCTA relates to many of  
4 those issues already decided by the Commission. Specifically, the Hearing Officer should strike  
5 the following portions of Mr. Husted's direct testimony--§§ II, III (page 6, lines 13-15), IV, VI,  
6 VII, VIII, IX and XVI.

7 **A. The Hearing Officer Should Strike § II of Mr. Husted's Direct Testimony.**

8 The Hearing Officer should strike § II of Mr. Husted's testimony because that  
9 testimony doesn't speak to the limited issues surrounding the PER. For example, on page 4,  
10 lines 10-24 of his testimony, Mr. Husted addresses how he would have designed a groundwater  
11 savings concept and is critical of the PER for failing to evaluate and analyze the benefits  
12 provided to the aquifer. The ACC previously determined that the GSP will benefit the aquifer  
13 and the Sun Cities. Those issues already have been decided and the focus of this proceeding is  
14 not whether to re-evaluate the costs, benefits and wisdom of the GSP concept.

15 **B. The Hearing Officer Should Strike § III (Page 6, Lines 13-15) and § IV of Mr.**  
16 **Husted's Direct Testimony.**

17 In § III (page 6, lines 13-15) and § IV of his testimony, Mr. Husted offers  
18 opinions related to a GSP concept based on "recharge" options. He then offers testimony critical  
19 of the PER for failing to address recharge and use it for comparison purposes. But Mr.  
20 Husted's testimony misses the mark legally and factually.

21 The ACC and CAP Water Task Force already addressed both recharge and the  
22 GSP concept. The purpose of this proceeding is not to reconsider CAP water options. In  
Decision No. 62293, the Commission evaluated recharge as an interim solution. See Decision  
No. 62293, p. 6 (characterizing recharge as "short-term" solution). By contrast, the ACC  
concluded that the GSP is the permanent, long-term solution. Id. at p. 16. The scope of this

1 proceeding does not include reconsidering recharge versus the GSP as the permanent CAP water  
2 use plan. Any such testimony has no bearing on the PER issues and constitutes an improper  
3 collateral attack on Decision No. 62293.<sup>1</sup>

4 **C. Similarly, the Hearing Officer Should Strike § VI Of Mr. Hustead's Direct Testimony.**

5 In § VI of his testimony, Mr. Hustead addresses the lack of hydrological analysis  
6 to evaluate and quantify impacts on the Sun City aquifer. Evaluating benefits to the aquifer  
7 was not the purpose of the PER. Decision No. 62293 speaks for itself regarding the purpose and  
8 scope of the PER. There is no mention of a hydrologic analysis. Such an analysis has absolutely  
9 nothing to do with the feasibility of a joint facility with Citizens' Agua Fria division, the need for  
10 all major elements of the project and/or binding commitments from the golf courses.

11 Further, the ACC and the CAP Task Force already determined that the GSP will  
12 benefit the aquifer. The Commission determined that the use of CAP water in the Sun Cities  
13 was necessary to prevent "groundwater depletion of the aquifer, land subsidence and other  
14 environmental damage." See Decision No. 62293, p. 18. The ACC found that the "Groundwater  
15 Savings Project will provide direct benefits to the Sun City areas." Id. at p. 19. That issue  
16 already has been decided and Mr. Hustead's testimony in § VI should be stricken.

17 **D. Next, the Hearing Officer Should Strike § VII Of Mr. Hustead's Direct Testimony.**

18 In § VII of his testimony, Mr. Hustead comments on additional "benefits"  
19 accruing to the golf courses or Citizens as a result of the GSP and, again, offers testimony  
20 regarding benefits to the aquifer. But such testimony has nothing to do with the two limited

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21 <sup>1</sup> It also bears emphasis that Mr. Hustead offered testimony relating to recharge as a  
22 project concept before the ACC issued Decision No. 62293 on February 1, 2000. See, e.g.,  
Surrebuttal Testimony of Dennis Husted, pp. 3-5 docketed October 1, 1999. Mr. Husted raised  
the same issues then that he raises now.

1 PER issues and determining whether binding commitments from the golf courses have been  
2 obtained. Mr. Husted is doing nothing more than offering his personal, subjective opinions  
3 about the approved concept of the GSP. Such testimony has no bearing on the PER issues  
4 presented in this proceeding.

5 **E. The Hearing Officer Should Strike § VIII Of Mr. Husted's Direct Testimony.**

6 In § VIII of his testimony, Mr. Husted addresses the PER's alleged failure to  
7 evaluate use of Citizens sewer treatment plant and underground storage facility. But, again,  
8 those issues were not part of the PER's scope. By the ACC's directive, the PER was undertaken  
9 to address only a potential joint project with Aqua Fria, all necessary elements of the proposed  
10 GSP and whether binding commitments from the golf course were obtained.

11 By contrast, Mr. Husted's testimony primarily is aimed at proposing other  
12 concepts--such as combination sewer treatment or underground storage use--besides the GSP  
13 that could have been considered. But the ACC already has approved the GSP concept based on  
14 mountains of testimony and evidence about potential CAP water options evaluated by the  
15 community-based CAP Task Force. Mr. Husted's testimony goes well beyond the scope of  
16 these proceedings. As a result, § VIII should be stricken in its entirety.

17 **F. The Hearing Officer Should Strike § IX Of Mr. Husted's Direct Testimony.**

18 In § IX of his testimony, Mr. Husted raises issues regarding Citizens' current use  
19 of stored water and water credits. Those issues have absolutely nothing to do with the PER and  
20 binding commitments from the golf courses. This case has nothing to do with stored water and  
21 water credits. The Hearing Officer should strike such testimony and limit Mr. Husted to the  
22 proper scope of issues presented.

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1           **G.     The Hearing Officer Should Strike § XVI of Mr. Husted's Direct Testimony.**

2                         Finally, in § XVI, Mr. Husted offers various conclusory recommendations  
3 against the GSP concept. Once again, his opinions simply are an effort to re-argue the GSP  
4 concept. On page 28, lines 23-24, for example, Mr. Husted opines that the Commission should  
5 require "Citizens to continue to recharge the CAP water." The Commission already has rejected  
6 recharge and approved the GSP. Mr. Husted's testimony in § XVI should be stricken for the  
7 reasons noted above.

8                         **IV.     THE HEARING OFFICER SHOULD STRIKE THE SUPPLEMENTAL**  
9                         **TESTIMONY OF MARYLEE DIAZ CORTEZ ENTIRELY.**

10                        On July 10, 2001, RUCO filed supplemental testimony from Marylee Diaz Cortez  
11 addressing only two issues. First, Ms. Cortez claims that the GSP should be rejected because of  
12 potential rate shock to Sun City ratepayers. See Cortez Supplemental Testimony, pp. 2-3. Mr.  
13 Cortez simply raises the same rate arguments that have been raised and decided in Decision Nos.  
14 60172 and 62293. Second, Ms. Cortez offers her opinion that the "water exchange agreement  
15 with the Maricopa Water District" should continue to be utilized because the cost of the GSP is  
16 "simply too high." Id. at pp. 4-5.

17                        In her testimony, Ms. Cortez doesn't even attempt to address the feasibility of a  
18 joint facility with Citizens' Agua Fria division, the need for all major elements of the GSP or  
19 binding commitments from the golf courses. RUCO attempts to reargue whether the CAP  
20 allocation should be retained or relinquished because of ratepayer costs. Those issues already  
21 have been decided and the Hearing Officer should exclude all of Ms. Cortez's testimony.

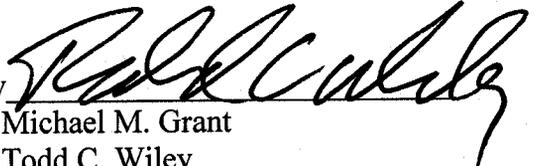
22                        **V.     CONCLUSION**

                          For the reasons set forth above, the Hearing Officer should strike §§ II, III (page,  
lines 13-15), IV, VI, VII, VIII, IX and XVI of Mr. Husted's direct testimony offered on behalf

1 of SCTA; and, all of Ms. Cortez's supplemental testimony offered on behalf of RUCO.

2 DATED this 23 day of July, 2001.

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