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BEFORE THE ARIZONA CORPORATION COMMISSION 2: 33

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARK SPITZER
COMMISSIONER

Arizona Corporation Commission **AZ CORP COMMISSION**
DOCKETED DOCUMENT CONTROL

SEP 24 2002

DOCKETED BY

IN THE MATTER OF THE APPLICATION)	
OF SUN CITY WATER COMPANY AND)	DOCKET NO. W-01656A-98-0577
SUN CITY WEST UTILITIES COMPANY)	DOCKET NO. SW-02334A-98-0577
FOR APPROVAL OF CENTRAL)	
ARIZONA PROJECT WATER)	SUN CITY TAXPAYERS
UTILIZATION PLAN AND FOR AN)	ASSOCIATION'S COMMENTS AND
ACCOUNTING ORDER AUTHORIZING A)	SUGGESTIONS REGARDING
GROUNDWATER SAVINGS FEE AND)	FUTURE PROCEEDINGS IN THIS
RECOVERY OF DEFERRED CENTRAL)	MATTER
ARIZONA PROJECT EXPENSES.)	

The Sun City Taxpayers Association (the "Taxpayers") hereby submits its response to the inquiries of Administrative Law Judge Dwight Nodes and Chairman William Mundell regarding whether the Taxpayers plan to pay for and submit a hydrologic study evaluating the impacts of the Agua Fria Recharge Facility on the Sun Cities. For the reasons set forth below, the Taxpayers respectfully decline the invitation to submit a hydrologic study at this time.

I. BACKGROUND

In March 1994, Citizens Utilities Company ("Citizens") completed a water resources planning study that recommended that Citizens pursue development of additional water resources to supplement its water supplies, noting that the most technically and legally feasible alternative was development and use of CAP water. Decision No. 62293 at p. 3, ll. 1-6. Since then, Citizens and its successor in interest,

1 Arizona-American Water Company and its subsidiaries, Sun City Water Company
2 and Sun City West Utilities Company (collectively the "Company") have spent eight
3 years attempting to convince this Commission to pre-approve a CAP utilization plan.
4 The Company has continuously argued that the Commission's failure to adopt its then
5 current proposal will leave the Company "no choice" but to dispose of their rights to
6 the CAP allocations or halt pursuit of CAP utilization. Decision No. 60172, p. 6, ll.
7 13-16; Decision No. 62293, p. 15, ll. 2-7.

8 The Commission initially rejected Citizens' attempts for pre-approval.
9
10 In Decision No. 60172, the Commission reasoned:

11 "As pointed out by [various Parties], the Company has
12 held its CAP allocation for more than eleven years, but has
13 not delivered or put to beneficial use any CAP water, and
14 currently has no final plan for its use. . . . Because Citizens is
15 not utilizing CAP water in the provision of service to its
16 customers, its CAP allocation by definition is not "used and
17 useful". Therefore, the costs of Citizens' CAP capital charges
18 should not be borne by the ratepayers. Furthermore, because
19 Citizens has no definite plans to use the CAP water, its
20 proposal to use its CAP allocation is speculative and the use
21 of this water cannot be considered to be a known and
22 measurable event. Therefore, Citizens' request for M&I
23 Capital Charges should be denied. * * * If CAP water is not
24 implemented by December 31, 2000, then Citizens will lose
25 its ability to defer future costs." Id., p. 10, ll. 4-17.

26 Prior to December 31, 2000, Citizens submitted a revised proposal to
utilize its CAP allocation. This time instead of relying on a recharge facility that did
not yet exist, Citizens' committed to commence recharge immediately (prior to
December 31, 2000) at the existing Maricopa Water District ("MWD") Recharge
Facility. Citizens further requested Commission approval of a longer-term utilization

1 plan it called the Groundwater Savings Plan ("GSP"). The Hearing Division set the
2 matter for hearing and the Taxpayers presented expert testimony regarding unneeded
3 components of the GSP, as well as various alternatives Citizens had failed to explore.
4 The Taxpayers further argued that there should be no recovery of CAP-related costs
5 from Citizens' ratepayers until Citizens has, at a minimum: a) presented a viable,
6 least-cost alternative for putting CAP water to use on the golf courses in Sun City;
7 and b) demonstrated that the benefits to the ratepayers from implementation of the
8 plan are equal to, or greater than, the costs associated therewith. Decision No. 62293,
9 pp. 13-14, ll. 5-4. Citizens has never met this criteria.

11 By Decision No. 62293 the Commission found recharge at MWD
12 satisfied the requirement in Decision No. 60172 that CAP water be put to beneficial
13 use prior to recovery from ratepayers. *Id.*, p. 6, ll. 17-18. The approval was
14 contingent upon any "water credits" not being utilized in a manner than would result
15 in additional groundwater depletion in the Sun Cities area. *Id.*, ll. 20-22.

16 Unfortunately, in Decision No. 62293 the Commission also embarked
17 on its current odyssey of evaluating long-term alternatives available to the Company.
18 Much like the water industry in general that initially claimed a Commission order
19 approving the recovery of CAP costs was an essential predicate to execution of a CAP
20 subcontract, "Citizens indicated it was unwilling to spend any more money to begin
21 preliminary design work until the Commission finds the Project to be acceptable" and
22 further contended that it needed "an order from the Commission approving the
23 Groundwater Savings Project before the Company can invest the necessary capital."
24 *Id.*, p. 15, ll. 4-7. The Commission did not provide the assurances demanded by
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1 Citizens. Instead, the Commission merely "approve[d] the concept of the
2 Groundwater Savings Project and approve[d] the reasonable and prudent costs
3 associated with the completion of the preliminary design/updated cost estimate." Id.,
4 p. 16, ll. 20-22.¹ The Commission also required that the preliminary design/cost
5 estimate be submitted to the Commission within six months addressing: a) the
6 feasibility of a joint facility with the Agua Fria Division including the timeframe for
7 any such joint facility; b) the need for all major elements of its proposed plan (e.g.,
8 storage and booster stations); and c) binding commitments from golf courses, public
9 and private, and the terms and conditions related thereto. Id., ll. 22-26. The parties
10 were provided 60 days to file any comments/objections/recommendations regarding
11 the preliminary design/updated cost estimates. Since Citizens failed to submit binding
12 commitments from the golf course within the six-month period, the time for filing
13 comments/objections/recommendations regarding the preliminary design/updated cost
14 estimates was likewise extended.

15
16 The Taxpayers timely filed comments and objections and subsequently
17 requested a hearing on the preliminary design/updated cost estimates, which was
18 granted. The Taxpayers again presented expert evidence regarding the insufficiencies
19 and inaccuracies of the preliminary design/updated cost estimates. Thereafter, ALJ
20 Nodes filed his Recommendation and Order. The Recommendation not only finds the
21 Preliminary Engineering Report as compliant with Decision No. 62293, but further
22 unnecessarily and improvidently purports to "approve" the Groundwater Savings
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26 ¹ Even this limited approval was based upon the representation of the Task Force that "there is
general agreement in the Sun City areas for the Groundwater Savings Project." Id., ll. 19-20. The
Commission is now well aware that the "agreement" was not nearly as "general" as contended by
the Task Force.

1 Project recommended in the Preliminary Engineering Report, as modified and
2 clarified by the Supplemental Engineering Report and testimony from Company
3 witnesses. Recommendation, p. 25, ll. 24-26.

4 **II. THE TAXPAYERS' EXCEPTIONS**

5 In addition to setting forth the problems with the Exchange Agreements
6 and the Preliminary Engineering Report, the Taxpayers' Exceptions objected to the
7 Recommendation's specific approval of the GSP and suggested language that would
8 preserve the Commission's ability to truly scrutinize the GSP in a future rate
9 proceeding. Additionally, the Taxpayers, who had been actively monitoring the
10 progress of the Agua Fria Recharge Facility (the "Facility"), emphasized that much
11 has happened since the CAP Task Force narrowly recommended a groundwater
12 savings concept over recharge, including the commencement of operations of the
13 Facility. The Taxpayers attached the relevant portion of the Facility's Fourth Quarter
14 Report and 2001 Annual Monitoring Report to demonstrate that the Facility was
15 operational and that hydrologic responses were being detected after approximately
16 three months as far as four miles downstream of the blow-off structure. The
17 Taxpayers also indicated that a second recharge facility was being pursued in close
18 proximity to the Sun Cities, which together with the Aqua Fria Recharge Facility
19 should address the same concerns that led to the GSP in the first instance. Based
20 upon these factors, the Taxpayers urged the Commission to take "no further action
21 authorizing the [Company] to pursue the GSP . . . until the re-evaluation is complete."
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24 Exceptions, pp. 4-5.

1 analysis requested by the Commissioners. The Staff memorandum submitted July 26,
2 2002 suggested no in-depth study was needed to answer the questions posed by
3 Chairman Mundell, but an analysis regarding when the benefit can be expected to
4 materialize and whether the benefit will be substantial would take up to take up to six
5 months to perform and cost up to \$100,000. Staff requested clarification as to how to
6 proceed.

7
8 In response, the Taxpayers retained Phil Briggs to review the Staff's
9 estimates. Based upon Mr. Briggs' review, the Taxpayers secured two groundwater
10 models from the public record and filed Comments stating that an experienced
11 hydrologist should be available to evaluate the impact of the Agua Fria Recharge
12 Facility on the Sun Cities in less than a month at a cost of less than \$15,000. The
13 Taxpayers requested the Commission to direct its Staff to hire an independent
14 consultant to evaluate the impacts of the Agua Fria recharge project on the Sun Cities.
15 A second Procedural Conference was conducted September 6, 2002.

16 At the Procedural Conference, Chairman Mundell, for the first time,
17 stated that he only suggested charging Staff with the responsibility of securing an
18 independent hydrological analysis because he understood the Taxpayers had not
19 retained an expert to do so. It was suggested that the Taxpayers should come forward
20 with their own analysis regarding when and to what extent recharge at the Agua Fria
21 Facility will benefit the Sun Cities. The Taxpayers requested time to consider the
22 suggestion and report back to the Commission. The Staff was directed to file a Report
23 on the questions of whether hydrologic responses are being detected as far as four
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1 miles downstream of the Agua Fria Recharge Facility blow-off structure and whether
2 recharge at the Facility would ultimately benefit the Sun Cities.

3 **V. THE STAFF'S SUPPLEMENTAL MEMORANDUM**

4 The Staff's Supplemental Memorandum confirms the Taxpayers'
5 contention that hydrologic responses are being detected as far as four miles
6 downstream of the Agua Fria Recharge Facility blow-off structure. Staff points out
7 that the Facility extends as far as five miles beyond the blow-off structure. Staff
8 further indicates that it is undisputed that the Facility will ultimately have a positive
9 effect on the aquifer underlying the Sun Cities.
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11 **VI. THE TAXPAYERS' DECLINE, AT THIS TIME, TO SECURE AN**
12 **ANALYSIS THAT WILL NOT BE TREATED AS**
13 **INDEPENDENT AND WILL RESULT IN FURTHER**
14 **PROLONGING OF THIS MATTER.**

15 After due deliberation of the status of this matter and the options
16 available to it, the Taxpayers' Board of Directors has voted not to fund an
17 independent analysis at this time. This decision was reached in large part because the
18 Taxpayers agree with Staff that this case has become a classic example of why utility
19 commissions conduct prudence review after-the-fact. The Taxpayers wholeheartedly
20 support Staff in urging the Commission to follow that traditional model and place the
21 management decision where it belongs, with the Company, by declining to approve
22 the GSP at this time.

23 Secondly, the Taxpayers believe the Company has failed to come
24 forward with any evidence that its proposed plan will meet the objectives that it is
25 suppose to address (water quality degradation, subsidence, and higher pumping costs),
26 or to provide substantial evidence that the benefits of the Company's proposal (which

1 are yet to be quantified), justify the estimated \$15.3 million construction budget.
2 Therefore, it is patently unfair to require an Intervenor to present such evidence
3 regarding, a much less costly alternative, use of the CAP water. Furthermore, the
4 Taxpayers have already presented substantial evidence supporting rejection of the
5 GSP at this time.

6 The Taxpayers remain supportive of the Commission securing an
7 independent analysis regarding when and to what extent recharge at the Agua Fria
8 Facility will benefit the aquifer underlying the Sun Cities. The Taxpayers support
9 having the analysis also examine when and to what extent the Company's proposal
10 will benefit the aquifer underlying the Sun Cities. Such analyses should examine both
11 the benefits and the costs to the Company's ratepayers of not only these two
12 alternatives, but all other viable alternatives available to the Company at the time it
13 decides to alter the manner in which it is putting its CAP allocation to use. This is
14 one of the reasons it is better to evaluate the proposal after-the-fact, because only then
15 will we know what alternatives actually existed when the Company made its
16 management decision. Furthermore, the analyses should not be viewed in isolation,
17 but rather in the context of the actions being taken by the communities surrounding
18 the Sun Cities to meet their respective water supply needs. The actions of the
19 surrounding communities (including the Company's Agua Fria Division) can have far
20 greater impacts on the Sun Cities than the utilization of 6,561 acre feet of CAP water
21 by the Company, whether through recharge or direct delivery.
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24 The Taxpayers understood the Chairman intended to minimize the time
25 and cost of a contested proceeding by securing a truly independent analysis. In
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1 furtherance of this goal, the Taxpayers suggested that each party's expert confer with
2 the independent expert retained by the Commission in an effort to agree on as many
3 assumptions as possible and to agree on the runs that would be necessary to illustrate
4 the impacts if various assumptions were changed. The Taxpayers remain willing to
5 participate in this type of cooperative effort, if there is some assurance that a highly
6 contentious and prolonged proceeding can be avoided thereby. The Company, the
7 CAP Task Force and Staff, however, have opposed the cooperative approach
8 advocated by the Taxpayers. As a result, the Taxpayers are convinced that the timely
9 and cost-effective proceeding envisioned by Chairman Mundell's July 3, 2002 letter
10 will not be possible, especially if no independent analysis is presented in the first
11 instance.
12

13 While the Taxpayers have been informed that an analysis can be
14 performed for approximately \$15,000, this estimate does not include the cost of
15 preparing pre-filed testimony and participating in a contested hearing. The Taxpayers
16 simply do not have the financial resources to participate in yet another fully contested
17 Commission hearing on the GSP concept being proposed by the Company.²

18 The Taxpayers also considered approaching the ADWR and the
19 CAWCD to secure their independent opinion. However, the agencies have already
20 expressed their hesitancy to become involved in this contested proceeding and there is
21 no reason to believe that a subpoena issued by the Commission at the request of the
22 Taxpayers would secure any greater cooperation.
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25 ² The Taxpayers continue to pursue its judicial remedies regarding the Recreation Centers'
26 authority to enter into the Exchange Agreement and has other pursuits that it must continue to fund.

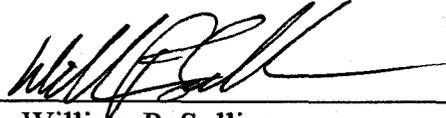
1 The Taxpayers also considered suggesting limiting the evidentiary
2 proceeding to the presentation of competing affidavits, with no cross-examination, but
3 there would be no way to test the credibility of the avowals. Therefore, this approach
4 was rejected.

5 **VII. CONCLUSION**

6 The Taxpayers are grateful to Chairman Mundell for his desire to
7 further evaluate the Agua Fria Recharge option. An independent Staff analysis,
8 especially if pursued in the cooperative manner proposed by the Taxpayers, holds
9 significant promise for an expedited and financially manageable examination of the
10 cost/benefits of the Company's proposal as compared to other alternatives. In
11 contrast, requiring the Taxpayers to prepare such an analysis will not provide the
12 prompt and cost-effective proceeding envisioned by Chairman Mundell's July 3, 2002
13 letter. Therefore, while the Taxpayers continue to support the suggestion as set forth
14 in Chairman Mundell's letter, it must respectfully decline the invitation to conduct the
15 analysis on its own at this time.
16

17 Respectfully submitted this 24th day of September, 2002.

18 MARTINEZ & CURTIS, P.C.

19
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