



0000046433

308R

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

1
2 WILLIAM A. MUNDELL
Chairman
3 JIM IRVIN
Commissioner
4 MARC SPITZER
Commissioner
5

2002 OCT -9 P 2:43

AZ CORP COMMISSION
DOCUMENT CONTROL

6 IN THE MATTER OF THE JOINT)
7 APPLICATION OF SUN CITY WATER)
8 COMPANY AND SUN CITY WEST)
9 UTILITIES COMPANY (APPLICATION)
10 NOW ASSUMED BY ARIZONA-AMERICAN)
11 WATER COMPANY) FOR APPROVAL OF)
12 CENTRAL ARIZONA PROJECT WATER)
13 UTILIZATION PLAN AND FOR)
14 ACCOUNTING ORDER AUTHORIZING A)
15 GROUNDWATER SAVINGS FEE AND)
16 RECOVERY OF DEFERRED CENTRAL)
17 ARIZONA PROJECT EXPENSES)
18 _____)

DOCKET NO. W-01656A-98-0577
SW-02334A-98-0577

**STAFF'S RESPONSE TO THE SUN
CITIES TAXPAYERS ASSOCIATION'S
COMMENTS AND SUGGESTIONS
REGARDING FUTURE PROCEEDINGS**

Arizona Corporation Commission

DOCKETED

OCT 09 2002

DOCKETED BY

15 Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission
16 ("Commission") hereby submits its response to the pleading submitted by the Sun Cities Taxpayers
17 Association ("SCTA") filed on September 24, 2002. Given that the SCTA has chosen to forego the
18 opportunity to undertake a hydrologic study, Staff believes it is fair and appropriate to proceed to
19 open meeting. In the alternative, Staff suggests that the SCTA be given one additional opportunity to
20 present evidence to support the assertions made in its exceptions.

21 **I. PROCEDURAL HISTORY SINCE THE RECOMMENDED OPINION AND ORDER.**

22 On May 29, 2002, the SCTA filed exceptions to the proposed recommended opinion and
23 order approving the Preliminary Engineering Report, as modified and clarified by the Supplemental
24 Engineering Report and previous testimony. In its exceptions, SCTA indicated that the Central
25 Arizona Water Conservation District ("CAWCD") Agua Fria Recharge Facility has become
26 "operational and show[s] great promise for benefiting the aquifer underlying the Sun Cities."¹ The
27

28 ¹ See Sun City Taxpayers Association's Exceptions to Administrative Law Judge's Recommendation and Request for Rescission or Amendment of Decision 62293 at 2.

1 SCTA claimed that these "changed circumstances" support reopening the record. On July 3, 2002,
2 Chairman William A. Mundell indicated his desire to reopen the record to address issues raised by
3 the SCTA's exceptions. Consequently, Staff was directed to obtain an independent expert to testify
4 on the issues raised by the SCTA in its exceptions.

5 Staff, in a memorandum filed on July 26, 2002 indicated its understanding of the scope of the
6 issues and the results of its preliminary discussions. Staff identified two explicit issues that were to
7 be answered in this limited proceeding:

- 8 1. Are hydrologic responses being detected as far as four miles from the Agua Fria
9 Recharge facility blow-off structure?
- 10 2. Will the Agua Fria Recharge Facility ultimately provide a benefit to the Sun Cities'
11 aquifer?

11 Staff also identified a third issue that was implicit in Chairman Mundell's letter:

- 12 3. When could the Sun Cities expect a benefit from the Agua Fria Recharge Facility and
13 would the benefit be substantial?

14 Staff spoke with representatives from the Central Arizona Water Conservation District
15 ("CAWCD") and the Arizona Department of Water Resources ("ADWR") about all of the issues
16 above prior to filing the July 26, 2002 memorandum. In that memorandum, Staff detailed the
17 prospects of having a representative from the ADWR testify as well as the likely timetable and cost
18 of hiring an expert witness, depending on the level of analysis needed. The SCTA responded on
19 August 8, 2002, expressing misgivings about Staff's suggested course of action. Specifically, the
20 SCTA opposed having a representative from ADWR as a witness and opposed a Staff Report as a
21 means to address the issues. While objecting to Staff's proposals, the SCTA nonetheless continued to
22 advocate requiring Staff to hire the expert and fund further analysis.

23 At the next procedural conference, held on September 6, 2002, the SCTA was directed to
24 come forward with evidence to support the claims made in its exceptions². Chairman Mundell stated
25 that the SCTA has to be in a position to "back up" statements made in the pleading with testimony
26 (T.R. at 60). Administrative Law Judge ("ALJ") Dwight Nodes directed the SCTA to determine
27 whether it would be willing and able to go forward with presenting evidence justifying its exceptions

28 _____
² See September 6, 2002 Procedural Conference Transcript ["T.R."] at 54-55.

1 of May 29, 2002. (T.R. at 85)

2 **II. ADDITIONAL FACTS PROVIDED BY STAFF ADDRESS THE TWO EXPLICIT**
3 **QUESTIONS POSED BY CHAIRMAN MUNDELL, AND EVIDENCE ON THE**
4 **RECORD SUGGESTS ANSWERS TO THE THIRD QUESTION.**

5 On September 18, 2002, Staff docketed its memorandum in response to the two explicit
6 questions posed by Chairman Mundell. Staff indicated that hydrologic responses are being detected
7 as far as four miles from the Agua Fria Recharge Facility blow-off structure because that is where the
8 managed facility is located and where Central Arizona Project ("CAP") water is actually being
9 recharged. Staff also stated that the Agua Fria Recharge Facility will ultimately provide a benefit to
10 the Sun Cities' aquifer. However, the remaining issue implicit in Chairman Mundell's July 3, 2002
11 remains unanswered.

12 However, earlier exhibits that are already on the record address this issue, at least in part. For
13 instance, the report by Herbert Schumann and introduced by the CAP Task Force entitled
14 "Utilization of Central Arizona Project Water in Sun City and Sun City West" admitted previously
15 indicates that the benefit to the Sun Cities would be a one foot water-level change over twenty years
16 if 100,000 acre-feet/year were recharged over that timeframe³. This assumes no withdrawals from
17 the recharge basin by any parties who have deposited water into the facility. The West Salt River
18 Valley CAP Subcontractor Planning Process ("WESTCAPS") report, admitted during the prior
19 hearings, states that only a net total of 100,000 acre-feet could be guaranteed over twenty years, if up
20 to ninety-five percent of the water can be legally recovered, assuming 100,000 acre-feet/year is
21 recharged into the Agua Fria Recharge Facility⁴. These studies still indicate what the timing and
22 impact of the benefit to the Sun Cities may be.

23 **III. SINCE SCTA WILL NOT CARRY ITS BURDEN TO GO FORWARD AND**
24 **PRESENT EVIDENCE JUSTIFYING ITS ASSERTIONS, THIS MATTER SHOULD**
25 **NOW PROCEED TO OPEN MEETING.**

26 The SCTA has left the entire proceeding, the Commission, and all of the other parties in a bit
27 of a quandary. On the one hand, the SCTA wants to present a case about how the new developments

28 ³ Referring to the CAP Task Force's rebuttal testimony of Dess Chappellear, marked as Exhibit TF-2 and admitted as part of
the hearings prior to the issuance of Decision No. 62293. That proceeding occurred under the same docket numbers as the
current hearing. (See Transcript of Proceedings, October 19, 1999, at 202).

⁴ Referring to the WESTCAPS report, which was evidence submitted by the SCTA, marked as Exhibit SCTA-9 and
admitted during hearings for the current proceeding. (See Transcript of Proceedings, January 10, 2002, at 435).

1 at the Agua Fria Recharge Facility lessen the ample justification supporting the Groundwater Savings
2 Project ("GSP") already on the record. On the other hand, the SCTA is not willing to go forward
3 with any affirmative evidence at this time supporting its position. In its most recent pleading, SCTA
4 has indicated that it will decline the "invitation" to submit its own hydrologic study. Unfortunately,
5 this was not all that the SCTA was asked to do. The SCTA was asked to present evidence to support
6 the claims made in its exceptions. Developing a hydrologic study is one way, but not the only way, to
7 back up its claims. The SCTA must have had some factual basis underlying its exceptions. The
8 Commission has now given the SCTA the opportunity to back up its exceptions and present its
9 factual basis on the record. If the SCTA chooses not to proceed with its case, neither Staff nor any
10 other party should be required to develop the SCTA's case. Instead, the matter should proceed to
11 Open Meeting.

12 Staff believes that, based on the SCTA's rejection of the Commission's invitation,
13 proceeding to open meeting is the most fair and expeditious next step for all of the parties involved.
14 There is no reason to prevent these proceedings from going to open meeting if SCTA chooses not to
15 support its assertions and assume its duty to go forward. Going to open meeting would not preclude
16 the SCTA from making arguments to justify its position and would give the remaining parties the
17 opportunity to rebut the same and gain finality in these proceedings. The Staff report submitted as
18 part of the limited reopening already serves to provide guidance and substance to the two explicit
19 issues raised in Chairman Mundell's letter of July 3, 2002. As described above, evidence on the
20 record indicates that the benefit of putting the CAP water into the Agua Fria Recharge Facility would
21 be minimal and would not occur for a significant period of time. Evidence already exists on the
22 record from previous proceedings as to the direct benefits of the GSP. Therefore, Staff believes that
23 sufficient evidence does exist on the record to give the Commission ample justification to approve
24 the GSP and adopt the recommended opinion and order, despite the SCTA's recent arguments to the
25 contrary.

26 Should the Commission wish to give the SCTA a further opportunity to make its case, Staff
27 would recommend that the ALJ set a deadline for the SCTA to provide additional pre-filed testimony
28 regarding the issues it has raised in its exceptions. The SCTA would obviously have the option of

1 hiring an expert witness to perform further analysis, subpoenaing appropriate experts from CAWCD
2 or ADWR, or utilizing some other method to present testimony and evidence supporting its position.
3 Given that it was the SCTA that affirmatively raised these new found issues after the hearing, it is
4 appropriate that the duty to come forward with evidence supporting the SCTA's assertions lies with
5 the SCTA. (See T.R. at 55, 60, 91, 95-96).

6 The SCTA has suggested that Staff could still hire an expert to perform further analysis, if
7 such is still desired by the Commission. This alternative was discussed extensively at the September
8 6, 2002 Procedural Conference. However, since the SCTA raised the issues about the new
9 developments at the Agua Fria Recharge Facility, it is only reasonable that the duty to go forward
10 rests with the SCTA. The assertions are the SCTA's to make and to justify. The SCTA, like any
11 other party, should embrace its obligation to present evidence on the record to support the affirmative
12 factual assertions it makes. If the SCTA has provided no evidence, then it should not rely on others
13 to gather evidence for it. If the SCTA is unable to back up its claims on the record, then the
14 assertions should be ignored, and the proceeding be allowed to go forward to Open Meeting.

15 **IV. CONCLUSION**

16 Based on the failure of the SCTA to take the steps necessary to support the assertions in its
17 exceptions filed on May 29, 2002, Staff believes the most equitable and most expeditious way to
18 proceed is to schedule this item for an Open Meeting. In the alternative, the ALJ could set forth a
19 deadline by which the SCTA must submit pre-filed testimony supporting its assertions. Should the
20
21
22
23
24
25

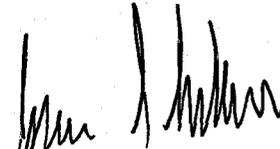
26 ...

27 ...

28 ...

1 SCTA fail to provide pre-filed testimony by the deadline, this item should then proceed to Open
2 Meeting. Staff still supports the recommended opinion and order issued by ALJ Nodes and would
3 request this Commission to adopt that order.

4
5 RESPECTFULLY SUBMITTED this 9th day of October, 2002.

6
7 
8 Janet Wagner, Attorney
9 Jason D. Gellman, Attorney
10 Legal Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007
14 (602) 542-3402

11 The original and fifteen (15)
12 copies of the foregoing filed
13 this 9th day of October, 2002, with:

14 Docket Control
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 COPIES of the foregoing was
19 mailed this 9th day of October, 2002 to:

20 Michael M. Grant, Esq.
21 Todd C. Wiley, Esq.
22 Gallagher & Kennedy
23 2575 East Camelback Road
24 Phoenix, AZ 85016-9225

25 Walter W. Meek
26 Arizona Utility Investors Association
27 Suite 210
28 2100 North Central Avenue
Phoenix, Arizona 85004

Daniel Pozefsky, Esq.
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007

William G. Beyer, Esq.
10211 West Thunderbird Road, Suite 201
Sun City, Arizona 85351-3100

...

1 William P. Sullivan, Esq.
2 Martinez & Curtis, P.C.
3 2712 North 7th Street
4 Phoenix, Arizona 85006-1090

5 Christopher Kempley
6 Chief Counsel, Legal Division
7 Arizona Corporation Commission
8 1200 West Washington Street
9 Phoenix, Arizona 85007

10 Ernest Johnson
11 Director, Utilities Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Honorable Dwight Nodes
16 Administrative Law Judge
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 
20 Angela L. Bennett

21
22
23
24
25
26
27
28