

OPEN MEETING ITEM



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



ORIGINAL

ARIZONA CORPORATION COMMISSION

22

Arizona Corporation Commission

DOCKETED

DEC 26 2006

DATE: DECEMBER 26, 2006

DOCKET NO: W-03067A-06-0117

TO ALL PARTIES:

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| DOCKETED BY | |
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Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

BEAVER DAM 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 4, 2007

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 16, 2007 and JANUARY 17, 2007

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.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE APPLICATION OF
BEAVER DAM WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-03067A-06-0117

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: October 30, 2006
PLACE OF HEARING: Phoenix, Arizona Corporation Commission
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Bob Frisby, on behalf of Beaver Dam Water Company; and
Ms. Robin Mitchell, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 1, 2006, Beaver Dam Water Company ("Beaver Dam") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate" or "CC&N").

On March 30, 2006, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter listing the areas in the application that Staff determined did not meet the sufficiency requirements set forth in the Arizona Administrative Code ("A.A.C.").

On June 15, 2006, Beaver Dam filed additional information in support of its application.

On August 22, 2006, Staff filed a Sufficiency Letter in this docket indicating that the Applicant's application has met the sufficiency requirements as outlined in the A.A.C.

On August 31, 2006, by Procedural Order, the evidentiary hearing was scheduled to commence on October 30, 2006 and other procedural deadlines were set.

On September 22, 2006, Staff filed its Staff Report recommending an order preliminary.

1 On October 4, 2006, Beaver Dam filed its Affidavit of Publication and Notice of Mailing.

2 On October 24, 2006, Beaver Dam filed an Amended Legal Description for its application.

3 On October 30, 2006, a full public hearing was convened before a duly authorized
4 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Mr. Bob Frisby,
5 Manager of Beaver Dam, appeared and gave testimony. Staff appeared through counsel and
6 presented evidence and testimony. No members of the public appeared to give public comment. At
7 the conclusion of the hearing, all matters were taken under advisement pending a Recommended
8 Opinion and Order submitted to the Commission.

9 On November 30, 2006, Beaver Dam filed public comment regarding the Wind River
10 Resources, LLC application with ADWR.

11 * * * * *

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

14 **FINDINGS OF FACT**

15 1. Pursuant to authority granted by the Commission, Beaver Dam is an Arizona
16 Corporation engaged in the business of providing water utility services to an area located in the far
17 northwest corner of Arizona, less than ten miles from both the Nevada and Utah borders.

18 2. Beaver Dam is corporation in good standing with the Commission's Corporation
19 Division.

20 3. On March 1, 2006, Beaver Dam filed an application seeking Commission authority to
21 extend its CC&N by 141 acres. In its application, Beaver Dam provided requests for service from
22 Mr. Allen Stewart of Construction Design Group, Inc., for a subdivision at Hamilton Ranch and from
23 Blair Adamson of Bowler Realty for another subdivision of 75 lots.

24 4. Subsequently, Beaver Dam filed an amended legal description deleting the proposed
25 service area for Beaver Ranch, LLC at the company's request to be deleted. The amended legal
26 description, attached hereto and incorporated herein, as Exhibit A, reduced the proposed extension
27 area from 141 acres to 26 acres. The extension area is adjacent to the current certificated area.

28 5. According to Staff's Report, Beaver Dam had assets of \$795,008 and a net loss of

1 \$13,880 for the year ending December 31, 2006.

2 6. At hearing, Beaver Dam's witness testified that there are no proposed golf courses or
3 ornamental water features planned for the proposed extension area.

4 **Water System**

5 7. Beaver Dam operates three water systems in Arizona. According to Staff's Report,
6 systems #1 and #2 have been consolidated to serve an area in the community of Littlefield, Arizona
7 and is called the Beaver Dam #1 system.

8 8. The Beaver Dam #1 system is comprised of three wells which, in total, produce 436
9 gallons per minute ("GPM"), three storage tanks, with a total capacity of 194,000 gallons and a
10 distribution system serving 257 connections.

11 9. According to Staff's Report, the other system is a distribution system which
12 distributes water received from the Virgin Valley Water District ("VVWD") located in Mesquite,
13 Nevada. Staff's Engineering Report states that the VVWD provides the source supply through a 12-
14 inch by 6-inch compound master-meter and has an estimated flow of 3,000 GPM. Staff also states
15 this system serves 30 customers.

16 10. Beaver Dam proposes to construct plant facilities to the requested area using main
17 extension agreements ("MXAs").

18 11. Based on the existing well production and storage capacities, the combined water
19 systems can serve approximately 1,000 connections and Staff concludes Beaver Dam has adequate
20 production and storage to serve the proposed extension area within a five year planning period.

21 12. According to Staff's Report, ADEQ has determined that Beaver Dam is currently
22 delivering water that meets the water quality standards required by the A.A.C.

23 13. Staff's Report noted that Beaver Dam has not acquired from ADEQ the Certificate of
24 Approval to Construct ("ATC") for the facilities needed to serve the extension area and Staff
25 recommends that Beaver Dam be required to file with Docket Control, as a compliance item in this
26 docket, a copy of the ATC for the water facilities needed to service the proposed extension area
27 within two years of the effective date of a decision in this matter.

28 14. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic MCL

1 from 50 parts per billion ("ppb") to 10 ppb as of January 23, 2006. Staff reported that Beaver Dam is
2 in compliance with new arsenic standards for its water systems.

3 15. Beaver Dam is not located in any Active Management Area ("AMA") and therefore is
4 not subject to reporting and conservation requirements.

5 16. Staff reported that Beaver Dam does not have a Certificate of Assured Water Supply
6 or any other documentation from ADWR indicating there is sufficient water available to serve the
7 proposed extension area. Therefore, Staff believes it is in the public interest that Beaver Dam obtain
8 a Certificate of Assured Water Supply as evidence there is a sufficient water supply; even though
9 Beaver Dam would not be required to because it is not located in an AMA.

10 17. Staff's Report also noted that although Beaver Dam has in the past filed a letter from
11 ADWR (the last one in 2003) stating that Beaver Dam Resort had an adequate water supply; Staff
12 stated that it is unsure if the letter refers to the proposed extension area in this docket and if ADWR
13 would be of the same opinion today. Further, Staff recommended that the Commission issue an
14 Order Preliminary until Beaver Dam obtains a Certificate of Assured Water Supply from ADWR.

15 18. At hearing, Beaver Dam's witness indicated the company would abide by Staff's
16 recommendation regarding the Certificate of Assured Water Supply.

17 19. Staff further recommends that Beaver Dam file, within two years from the Order
18 Preliminary, documentation from ADWR that there is an adequate water supply for the extension
19 area whether in the form of another letter or a Physical Availability Determination.

20 20. According to Staff's Report, the Utilities Division Compliance Section found no
21 outstanding compliance issues for Beaver Dam.

22 21. Every applicant for a CC&N and/or CC&N extension is required to submit to the
23 Commission evidence showing that the applicant has received the required consent, franchise or
24 permit from the proper authority. According to Staff's Report, Beaver Dam has provided proof of its
25 Franchise Agreement with Mohave County which covers the proposed service area.

26 22. Staff recommends the Commission issue an Order Preliminary to Beaver Dam for an
27 extension of its CC&N to provide water service, subject to compliance with the following conditions:

28 a. That Beaver Dam be required to file with Docket Control, as a compliance

1 item in this docket, a copy of the ATC for the water facilities needed to service
2 the area within two years of the effective date of the Order Preliminary in this
3 proceeding.

4 b. That Beaver Dam file, within two years from the issuance of an Order
5 Preliminary, documentation from ADWR that there is adequate water to serve
6 the proposed extension area.

7 23. Staff's recommendations set forth above are reasonable and should be adopted.

8 24. At hearing, Staff's witness stated it was aware of the Nevada-based Wind River
9 Resources, LLC's application with ADWR, and that communications with ADWR have been
10 initiated and that Staff will continue to monitor the proceedings. (Tr. Pg. 58, lines 8-20)¹

11 25. Because an allowance for the property tax expense of Beaver Dam Water Company is
12 included in the Company's rates and will be collected from its customers, the Commission seeks
13 assurances from the Company that any taxes collected from ratepayers have been remitted to the
14 appropriate taxing authority. It has come to the Commission's attention that a number of water
15 companies have been unwilling or unable to fulfill their obligation to pay the taxes that were
16 collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a
17 preventive measure Beaver Dam Water Company shall annually file, as part of its annual report, an
18 affidavit with the Utilities Division attesting that the company is current in paying its property taxes
19 in Arizona.

20 CONCLUSIONS OF LAW

21 1. Beaver Dam is a public service corporation with the meaning of Article XV of the
22 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

23 2. The Commission has jurisdiction over Beaver Dam and the subject matter of the
24 application.

25 3. Notice of the application was give in a manner described herein.

26 4. There is a public need and necessity for water utility service and this requires issuance
27

28 ¹ On October 13, 2006, Commissioner Mayes docketed a letter concerning the Wind River application and on October 18, 2006, Commissioner Gleason docketed a letter.

1 of an Order Preliminary prior to the approval of an extension of Beaver Dam's CC&N authorizing
2 them to construct, operate and maintain facilities to provide water service in the area described in
3 Exhibit A.

4 5. Beaver Dam is a fit and proper entity to receive an Order Preliminary for the extension
5 area.

6 6. The application by Beaver Dam to extend its CC&N should be granted subject to an
7 Order Preliminary being issued prior to a Certificate subject to the conditions set forth in Staff's
8 recommendations described above.

9 **ORDER**

10 IT IS THEREFORE ORDERED that, pursuant to A.R.S. §§ 40-282, this Order Preliminary to
11 the issuance of the Certificate of Convenience and Necessity is granted and upon completion of the
12 requirements contained in Findings of Fact No. 22, Beaver Dam Water Company, Inc., shall file a
13 motion in this docket for the issuance of a Certificate of Convenience and Necessity authorizing it to
14 construct, maintain and operate facilities to provide water utility service to the public in the area more
15 fully described as Exhibit A.

16 IT IS FURTHER ORDERED that upon the Motion of Beaver Dam Water Company, Inc., and
17 verification of satisfaction of the requirements for the issuance of Beaver Dam Water Company,
18 Inc.'s Certificate of Convenience and Necessity, Staff shall prepare and docket an Order that grants
19 the Certificate of Convenience and Necessity for Commission approval.

20 IT IS FURTHER ORDERED that Beaver Dam Water Company, Inc., shall file with Docket
21 Control, as a compliance item in this docket, a copy of the Approval to Construct for the water
22 facilities needed to service the area described in Exhibit A, within two years of the effective date of
23 this Decision.

24 IT IS FURTHER ORDERED that Beaver Dam Water Company, Inc., shall file with Docket
25 Control, as a compliance item in this docket, within two years of the effective date of this Decision, a
26 copy of the developer's Letter of Adequate Water Supply or a Physical Availability Determination
27 for the extension area.

28 IT IS FURTHER ORDERED that Beaver Dam Water Company, Inc., shall charge its

1 authorized rates and charges in the extension area.

2 IT IS FURTHER ORDERED that Beaver Dam Water Company, Inc., shall file as part of its
3 annual report, an affidavit with the Utilities Division attesting that it is current on paying its property
4 taxes in Arizona.

5 IT IS FURTHER ORDERED that in the event Beaver Dam Water Company, Inc., does not
6 timely comply with the above ordering paragraphs, the Order Preliminary approved here in shall be
7 deemed null and void, after due process. In such event, Staff shall file a memorandum to close this
8 docket.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN

COMMISSIONER

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15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2007.

22
23 _____
24 BRIAN C. McNEIL
25 EXECUTIVE DIRECTOR

26
27
28
29 DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: BEAVER DAM WATER COMPANY

2 DOCKET NO.: W-03067A-06-0117

3

4 Bob Frisby
BEAVER DAM WATER COMPANY
P.O. Box 550
5 Beaver Dam, AZ 86432

6 Christopher Kempsey, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, AZ 85007

9 Ernest G. Johnson, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington
11 Phoenix, AZ 85007

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EXHIBIT A

BEAVER DAM WATER COMPANY
DOCKET NO. W-03067A-06-0117
AMENDED LEGAL DESCRIPTION

Beginning at the Northwest Corner of Section 5, Township 40 North, Range 15 West, Gila and Salt River Base and Meridian;

THENCE North 89° 58' 55" East, a distance of 1317.93 feet to the **POINT OF BEGINNING**;

THENCE North 89° 58' 59" East, a distance of 170.43 feet;

THENCE North 89° 59' 34" East, a distance of 6.41 feet;

THENCE South 38° 45' 12" East, a distance of 164.80 feet to the beginning of a curve concave to the northeast with a radius of 736.35 feet and a length of 104.07 feet;

THENCE South 46° 51' 05" East, a distance of 452.00 feet to the beginning of a curve concave to the northeast with a radius of 488.75 feet and a length of 158.41 feet;

THENCE South 65° 25' 19" East, a distance of 344.75 feet to the beginning of a curve concave to the northeast with a radius of 1057.91 feet and a length of 205.19 feet;

THENCE South 00° 05' 24" East, a distance of 510.12 feet;

THENCE North 89° 55' 40" West, a distance of 1318.77 feet;

THENCE North 00° 03' 14" West, a distance of 1322.38 feet to the **POINT OF BEGINNING**.

Beginning at the North Quarter Corner of Section 5, Township 40 North, Range 15 West, Gila and Salt River Base and Meridian;

THENCE South 89° 58' 55" West, a distance of 677.90 feet to the **POINT OF BEGINNING**;

THENCE South 29° 30' 55" West, a distance of 300.29 feet;

THENCE North 46° 51' 05" West, a distance of 146.41 feet to the beginning of a curve to the right with a radius of 676.35 feet, a length of 95.59 feet and an angle of 08° 05' 53";

THENCE North 38° 45' 12" West, a distance of 116.69 feet;

THENCE North 89° 58' 55" East, a distance of 392.70 feet to the **POINT OF BEGINNING**.