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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
 WILLIAM A. MUNDELL  
 MIKE GLEASON  
 KRISTIN K. MAYES  
 GARY PIERCE

IN THE MATTER OF THE APPLICATION OF  
 HAROLD AND MARY FRARER DBA F&F  
 WATER COMPANY FOR APPROVAL TO SELL  
 ASSETS AND TRANSFER ITS CERTIFICATE OF  
 CONVENIENCE AND NECESSITY TO ST.  
 DAVID SPRINGS, LLC.

DOCKET NO. W-01898A-06-0326  
 DOCKET NO. W-20460A-06-0326

DECISION NO. 69257

OPINION AND ORDER

November 29, 2006

Tucson, Arizona

Jane L. Rodda

Mr. Michael F. McNulty, Lewis and  
 Roca, PLC, on behalf of F&F Water Co.  
 and St. David Springs, LLC; and

Mr. Kevin Torrey, Staff Attorney, Legal  
 Division, on behalf of the Utilities  
 Division of the Arizona Corporation  
 Commission.

DATE OF HEARING:

PLACE OF HEARING:

ADMINISTRATIVE LAW JUDGE:

APPEARANCES:

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the  
 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 10, 2006, Harold and Mary Frarer dba F&F Water Company ("F&F,"  
 "Company," or "Transferor") filed an application with the Commission for approval to sell assets  
 and transfer its Certificate of Convenience and Necessity ("CC&N" or "Certificate") to St. David  
 Springs, LLC ("St. David Springs" or "Transferee").

2. On June 9, 2006, Commission Utility Division Staff ("Staff") notified the Company

1 that the application was not sufficient under the requirements of the Arizona Administrative Code.

2 3. The Company filed additional supporting documents on July 31, 2006, and August 9,  
3 2006.

4 4. Staff filed a second notice of insufficiency on August 29, 2006.

5 5. The Company filed additional supplemental documents on September 1, 2006.

6 6. On September 28, 2006, Staff notified the Company that its application was sufficient  
7 pursuant to the Arizona Administrative Code.

8 7. By Procedural Order dated October 6, 2006, procedural guidelines were established  
9 and the matter was set for hearing on November 29, 2006.

10 8. On October 26, 2006, F&F filed an affidavit of mailing indicating that public notice of  
11 the hearing was mailed as required by the October 6, 2006 Procedural Order.

12 9. On November 13, 2006, Staff filed its Staff Report, recommending approval of the  
13 application with conditions.

14 10. The hearing convened on November 29, 2006, before a duly authorized  
15 Administrative Law Judge. Mr. Rodger Ford testified on behalf of the Transferee and Ms. Blessing  
16 Chukwu and Mr. Del Smith testified on behalf of Staff.

17 11. F&F is a partnership that provides water utility service to two customers and the  
18 Frasers' own property near the town of St. David in Cochise County, Arizona. The Commission  
19 granted F&F its CC&N in Decision No. 46638 (December 31, 1975). The Company's certificated  
20 area encompasses approximately 40 acres in the southeast quarter of Section 28 of Township 18  
21 South, Range 21 East.

22 12. F&F has entered into a sales agreement with Enclave Saint David, LLC ("Enclave") to  
23 sell the Company's assets as well as 27 acres owned by the Frasers.

24 13. Enclave is an Arizona limited liability company in good standing the Commission.  
25 Enclave has assigned its interest in the water company assets to St. David Springs. St. David Springs  
26 is an Arizona limited liability company in good standing with the Commission's Corporations  
27 Division.

28 14. Enclave is the sole member of St. David Springs. Enclave will hold and develop real

1 estate, while St. David Springs will own and operate the water company assets. Enclave owns an  
2 additional approximate 800 acres in the vicinity of the town of St. David. In the near future, St.  
3 David Springs plans to file an application to extend its CC&N to encompass the rest of Enclave's real  
4 estate holdings. Enclave does not yet have specific development plans for its holdings, and estimates  
5 that development of the property is two or three years in the future.

6 15. St. David Springs will install a new water system to serve the development. There are  
7 residences in the vicinity of the F&F CC&N, which are currently served by private wells, that St.  
8 David Springs believes may seek service from the water company in the future.

9 16. Mr. Ford, the principal of Enclave and St. David Springs, is an experienced  
10 businessman and real estate developer with sufficient managerial and financial resources to own and  
11 operate the F&F assets.

12 17. The St. David Water Improvement District is located approximately two miles north  
13 of the F&F CC&N, but no other water providers are located in the area.

14 18. The F&F system consists of one well, a 10,000 gallon storage tank, a pressure tank  
15 and a distribution system. Staff believes that the Company has adequate production and storage  
16 capacity, but was unable to independently verify production capacity because the Company did not  
17 provide adequate water use data.

18 19. F&F has not been reading its well meter or customer meters on a regular basis. In  
19 addition to needing meter information for billing purposes, such information is also necessary to  
20 determine if the system is suffering from unacceptable water loss. Staff recommends that the  
21 Transferee be required to read its well meter and individual customer meters on a monthly basis in  
22 order to accurately complete plant summary and water use data sheets. Staff further recommends that  
23 the completed plant summary and water use data sheets be filed with Docket Control as a compliance  
24 item in this case within 12 months of the effective date of the Decision in this matter.

25 20. The F&F system is not regulated by the Arizona Department of Environmental  
26 Quality ("ADEQ") because it is a semi-public system.

27 21. F&F is not located in an Active Management Area ("AMA") and is not subject to  
28 Arizona Department of Water Resource ("ADWR") reporting and conservation rules.

1           22.     Staff reports that there are no delinquent Commission compliance items for F&F.

2           23.     Because F&F is a semi-public system, the U.S. Environmental Protection Agency  
3 (“EPA”) arsenic maximum contaminant level does not apply.

4           24.     A Curtailment Plan Tariff (“CPT”) is an effective tool to allow a water company to  
5 manage its resources during periods of shortages due to pump breakdowns, droughts, or other  
6 unforeseeable events. F&F does not have a CPT.

7           25.     Staff recommends that the Transferee file a curtailment tariff within 45 days of the  
8 effective date of the Decision in this matter. Staff states the CPT should be docketed as a compliance  
9 item in this docket for the review and certification of Staff. Staff further recommends that the tariff  
10 should generally conform to the sample tariff found on the Commission’s website at  
11 [www.cc.state.az.us/utility/forms/Curtailment-std.pdf](http://www.cc.state.az.us/utility/forms/Curtailment-std.pdf). Staff recognizes that the Transferee may need  
12 to make minor modifications to the sample tariff according to their specific management, operations  
13 and design requirements as necessary and appropriate.

14           26.     On October 11, 2006, Transferee filed, in the docket, a copy of its Cochise County  
15 franchise encompassing the F&F service area.

16           27.     Staff recommends that the Commission approve F&F’s application to sell its assets  
17 and transfer its CC&N for water service to St David Springs subject to the following conditions:

18                 (a) St. David Springs shall charge F&F’s authorized rates and charges in the transfer  
19 area;

20                 (b) St. David Springs shall read its well meter and individual customer meters on a  
21 monthly basis and shall file completed plant summary and water use data sheets with Docket Control  
22 as a compliance item in this case within 12 months of the effective date of the Decision in this matter;

23                 (c) St. David Springs shall file a conforming CPT, as discussed herein, for Staff review  
24 and certification within 45 days of the effective date of this Decision;

25                 (d) St. David Springs shall file a rate application no later than six month following the  
26 fifth anniversary of the effective date of the Decision in this matter; and

27                 (e) Staff further recommends that the Decision granting approval of the sale of assets  
28 and transfer of the CC&N be considered null and void, after due process, should St. David Springs

1 fail to meet the preceding conditions with the times specified.

2 28. Because an allowance for the property tax expense of F&F is included in the  
3 Company's rates and will be collected from its customers, the Commission seeks assurances from the  
4 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
5 authority. It has come to the Commission's attention that a number of water companies have been  
6 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,  
7 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Farmers  
8 should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that  
9 the company is current in paying its property taxes in Arizona.

10 **CONCLUSIONS OF LAW**

11 1. F&F is a public service corporation within the meaning of Article XV of the Arizona  
12 Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. St. David Springs will be a public service corporation within the meaning of Article  
14 XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282, upon approval of this application.

15 3. The Commission has jurisdiction over F&F and St. David Springs and the subject  
16 matter of the application.

17 4. Notice of the application was provided in accordance with law.

18 5. There is a public need and necessity for water service in F&F's service area.

19 6. St. David Springs is a fit and proper entity to receive a CC&N to provide water service  
20 in the F&F service area.

21 7. Staff's recommendations contained in Findings of Fact Nos. 19, 25 and 27 are  
22 reasonable and should be adopted.

23 **ORDER**

24 IT IS THEREFORE ORDERED that the application of Harold and Mary Frarer dba F&F  
25 Water Company for approval of the sale of assets and transfer of the Certificate of Convenience and  
26 Necessity to St. David Springs, LLC is approved as conditioned herein.

27 IT IS FURTHER ORDERED that St. David Springs, LLC shall charge the existing rates and  
28 charges of Harold and Mary Frarer dba F&F Water Company.

1 IT IS FURTHER ORDERED that St. David Springs, LLC shall read its well meter and  
2 individual customer meters on a monthly basis in order to accurately complete plant summary and  
3 water use data sheets, and shall file the completed plant summary and water use data sheets with  
4 Docket Control as a compliance item in this case within 12 months of the effective date of this  
5 Decision.

6 IT IS FURTHER ORDERED that within 45 days of the effective date of this Decision, St.  
7 David Springs, LLC shall file with Docket Control as a compliance item in this docket, a Curtailment  
8 Plan Tariff for Staff's review and certification. Such tariff shall generally conform to the sample  
9 tariff found on the Commission website at [www.cc.state.az.us/utility/foprms/curtailment-std.pdf](http://www.cc.state.az.us/utility/foprms/curtailment-std.pdf).

10 IT IS FURTHER ORDERED that St. David Springs LLC shall file a rate application no later  
11 than six months following the fifth anniversary of the effective date of this Decision.

12 IT IS FURTHER ORDERED that this Decision granting the requested sale of assets and  
13 transfer shall be considered null and void, after due process, should St. David Springs LLC fail to  
14 meet the above conditions within the times specified.

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1 IT IS FURTHER ORDERED that St. David Springs LLC shall annually file as part of its  
2 annual report, an affidavit with the Utilities Division attesting that it is current in paying its property  
3 taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6 Jeffrey M. Hatch-McNeil Will Miller  
7 CHAIRMAN COMMISSIONER

8 Lowell S. Sloan [Signature] [Signature]  
9 COMMISSIONER COMMISSIONER COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
12 Director of the Arizona Corporation Commission, have  
13 hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this 19<sup>th</sup> day of Jan., 2007.

16 [Signature]  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

17 DISSENT \_\_\_\_\_

19 DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR:

HAROLD & MARY FRARER DBA F&F WATER  
COMPANY  
ST. DAVID SPRINGS LLC

2  
3 DOCKET NOS.:

W-01898A-06-0326 and W-20460A-06-0326

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