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

ORIGINAL



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

APR 20 2007

22

DATE: APRIL 20, 2007
DOCKET NO: W-01816A-06-0177 ET AL.

DOCKETED BY
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

SPANISH TRAIL WATER COMPANY
AND SAGUARO WATER COMPANY
(PARTIAL TRANSFER OF CC&N)

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:

APRIL 30, 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:

MAY 8, 2007 and MAY 9, 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

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

IN THE MATTER OF THE APPLICATION OF
SPANISH TRAIL WATER COMPANY AND
SAGUARO WATER COMPANY TO MODIFY
THEIR EXISITING CERTIFICATES OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01816A-06-0177
DOCKET NO. W-01790A-06-0177

OPINION AND ORDER

DATE OF HEARING: March 6, 2007
PLACE OF HEARING: Tucson, Arizona
ADMINISTRATIVE LAW JUDGE: Teena Wolfe
APPEARANCES: Michael F. McNulty, LEWIS AND ROCA, on behalf of Applicants Spanish Trail Water Company and Saguaro Water Company; and
Kevin O. Torrey, Staff Attorney, Legal Division, on behalf of the Commission's Utilities Division Staff.

BY THE COMMISSION:

On March 17, 2006, Spanish Trail Water Company ("Spanish Trail") and Saguaro Water Company ("Saguaro") (collectively "Companies" or "Applicants") filed a joint application to transfer a portion of Saguaro's service territory under its Certificate of Convenience and Necessity ("CC&N" or "Certificate") to Spanish Trail.

On April 12, 2006, Commission Utility Division Staff ("Staff") notified the Applicants that the application was not sufficient under the requirements of the Arizona Administrative Code.

On May 26, 2006, the Companies filed a Response to the Insufficiency Letter, providing answers to Staff's request for additional information.

On June 20, 2006, Staff sent a Second Notice of Insufficiency.

1 On September 14, 2006, Applicants filed a Response to Staff's Second Letter of
2 Insufficiency.

3 On October 12, 2006, Staff notified the Applicants that their application was sufficient.

4 On December 5, 2006, Applicants agreed to extend the timeclock deadline by seventy-five
5 days.

6 On December 13, 2006, a Procedural Order was issued setting this matter for hearing and
7 setting associated procedural deadlines, including mailing of notice of the application and hearing.
8 No requests for intervention were filed.

9 On March 6, 2007, the hearing on the application was held as scheduled. No members of the
10 public appeared to provide public comment. Applicants and Staff appeared through counsel and
11 presented evidence. On March 16, 2007, Applicants filed the Affidavit of Chad Kolodisner, the legal
12 representative of the sole property owner in the area Applicants are requesting be transferred from
13 Saguaro to Spanish Trail. The affidavit attested that the property owner received notice of the
14 application and of the hearing, and waives its right to have had the same notice delivered by U.S.
15 Mail, as required by the Procedural Order issued December 12, 2006. The matter was then taken
16 under advisement pending the issuance of a Recommended Opinion and Order.

17 * * * * *

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

20 **FINDINGS OF FACT**

21 1. Saguaro is an Arizona public service corporation authorized to provide water utility
22 service to the public in an area located southeast of Tucson in Pima County, Arizona. The
23 Commission granted Saguaro's CC&N in Decision No. 55291 (November 13, 1986). Saguaro
24 currently provides water utility service to approximately 700 customers in a service area of
25 approximately 2,400 acres.

26 2. Spanish Trail is an Arizona public service corporation authorized to provide water
27 utility service to the public in an area located southeast of Tucson in Pima County, Arizona. The
28 Commission granted Spanish Trail's CC&N in Decision No. 56815 (February 21, 1989). Spanish

1 Trail currently provides water utility service to approximately 387 customers in a service area of
2 approximately 6,400 acres.

3 3. On March 17, 2006, Saguario and Spanish Trail jointly filed the above-captioned
4 application. Attached to the application is a copy of an agreement between the two companies
5 whereby Saguario has agreed to transfer a 69 acre undeveloped portion of its CC&N service territory
6 (“Transfer Area”) to Spanish Trail. The owner of the Transfer Area¹ is developing a 5,000 acre
7 master planned community, 98 percent of which is located within the service area of Spanish Trail.
8 Applicants state that granting the application would allow the entire master-planned development to
9 be served by one water service provider. The Transfer Area is fully described in Exhibit A, attached
10 hereto and incorporated herein by reference.

11 4. Saguario and Spanish Trail have common ownership interests. Saguario is owned by
12 Donald Diamond (50 percent) and WE7, Inc. (50 percent). Spanish Trail is owned by Donald
13 Diamond (90 percent) and William Estes (10 percent). Mr. Estes is President of WE7, Inc.

14 5. On April 12, 2006, Staff informed the Companies that the application was insufficient.

15 6. On May 16, 2006, the Companies filed an amended legal description.

16 7. On May 26, 2006, the Companies filed a Response to Letter of Insufficiency.

17 8. On September 14, 2006, the Companies filed an additional Response to Letter of
18 Insufficiency.

19 9. On October 12, 2006, Staff notified the Applicants that its application was sufficient.

20 10. On December 5, 2006, Applicants agreed to extend the timeclock deadline by seventy-
21 five days.

22 11. On December 13, 2006, a Procedural Order was issued setting this matter for hearing
23 and setting associated procedural deadlines, including mailing of notice of the application and
24 hearing.

25 12. No requests for intervention were filed.

26
27 ¹ According to the affidavit filed on March 16, 2007, the owner of the Transfer Area is Fidelity National Trust No. 30096,
28 and the sole beneficiary of Fidelity National Trust No. 30096 is Rocking K Holdings Limited Partnership, an Arizona
limited partnership (“Rocking K”). Testimony at the hearing indicated that Rocking K is primarily owned by Diamond
Ventures, which is a master-planned community developer, and Donald Diamond (Tr. at 10).

1 13. On March 6, 2007, the hearing on the application was held as scheduled. No members
2 of the public appeared to provide public comment. Applicants and Staff appeared through counsel
3 and presented evidence.

4 14. Following the hearing, Applicants filed an affidavit attesting that the sole property
5 owner in the area concerned by the application had received notice of the application and hearing.
6 The matter was then taken under advisement pending the issuance of a Recommended Opinion and
7 Order.

8 15. The Staff Report indicates that Saguaro's water system consists of three wells which
9 produce a total of 930 gallons per minute ("gpm"), and 500,000 gallons of storage capacity. Staff
10 states that Saguaro's existing water system has adequate infrastructure to serve its approximately 700
11 customers.

12 16. Spanish Trail operates three separate water systems: the Barn system, which serves
13 249 connections; the York system, which serves 17 connections; and the Academy Village system,
14 which serves 121 connections.

15 17. Spanish Trail's Academy Village system currently operates as a consecutive water
16 system to Saguaro. While Spanish Trail operates this system, its water supply comes from Saguaro.
17 In 2005, Spanish Trail's Academy Village system purchased 6,036,600 gallons of water from
18 Saguaro. Applicants' witness testified that with current infrastructure construction plans, Spanish
19 Trail will be supplying its own water supply to the Academy Village system by approximately 2011
20 (Tr. at 18).

21 18. The Transfer Area is undeveloped, and no customers will be impacted by the
22 requested transfer. The Staff Report indicates that the estimated start date for construction in the
23 Transfer area is in 2011, and is currently anticipated to have approximately 250 residential units at
24 build-out.

25 19. Staff stated in the Staff Report that it believes that consolidation of the service areas of
26 Saguaro and Spanish Trail could result in operational efficiencies and economies of scale, because
27 the two companies share common borders, have common ownership interests, and Spanish Trail
28 already purchases water from Saguaro.

1 20. Staff recommends that the application be approved, subject to the following
2 conditions:

- 3
- 4 1) That Spanish Trail be required to charge its authorized rates and charges in the
 Transfer Area;
 - 5 2) That Spanish Trail be required to file with Docket Control, as a compliance item in
6 this docket, a copy of its Pima County franchise agreement for the Transfer Area
7 within 365 days of this Decision; and
 - 8 3) That Saguaro and Spanish Trail be required to file with Docket Control, by December
9 31, 2007, a report explaining why Saguaro and Spanish Trail's CC&N areas should
 not be consolidated into one.

10 21. Staff further recommends that this Decision be considered null and void, after due
11 process, should Spanish Trail fail to meet Staff's proposed condition numbers 2 and 3 listed above
12 within the time specified.

13 22. At the hearing, Mr. Richard Williamson, the general manager for Saguaro and Spanish
14 Trail testified on behalf of the Applicants. Mr. Williamson stated that the Companies are not
15 opposed to Staff's proposed conditions. He stated that the Companies have discussed combining
16 their service areas.

17 23. Mr. Williamson testified that Spanish Trail can assimilate the Transfer Area into its
18 current infrastructure plans at much less expense than Saguaro.

19 24. Mr. Williamson testified that Spanish Trail holds a Designation of Assured Water
20 Supply ("DAWS") from the Arizona Department of Water Resources ("ADWR") due to the fact that
21 it holds a contract for Central Arizona Project ("CAP") water (Tr. at 11-12). Mr. Williamson testified
22 that Spanish Trail's CAP allocation is primarily assigned to the anticipated master-planned
23 development (Tr. at 31). He further testified that customers in Saguaro's service territory are not
24 included in Spanish Trail's DAWS (Tr. at 15), but that customers in the Transfer Area would enjoy
25 the benefits of the DAWS if it were transferred to Spanish Trail as requested in the application (Tr. at
26 12).

27 25. Mr. Williamson also testified that in order for Saguaro to serve the planned
28 development in the Transfer Area, it would likely need to drill a new well and install additional

1 storage.

2 26. Saguaro and Spanish Trail are located in the Tucson Active Management Area
3 (“AMA”) and are currently in compliance with Arizona Department of Water Resources (“ADWR”)
4 reporting and conservation rules.

5 27. According to the Commission’s Utilities Division Compliance Section, Saguaro and
6 Spanish Trail have no outstanding ACC compliance issues.

7 28. Based on a Compliance Status Report from the Arizona Department of Environmental
8 Quality (“ADEQ”) dated July 5, 2006, Saguaro had no deficiencies and was delivering water that
9 meets the water quality standards required by Title 18, Chapter 4 of the Arizona Administrative
10 Code.

11 29. Based on a Compliance Status Report from ADEQ dated September 25, 2006, Spanish
12 Trail had no deficiencies and was delivering water that meets the water quality standards required by
13 Title 18, Chapter 4 of the Arizona Administrative Code.

14 30. Effective January, 2006, the United States Environmental Protection Agency (“EPA”)
15 reduced the arsenic maximum containment level (“MCL”) in drinking water from 50 micrograms per
16 liter (“ $\mu\text{g/l}$ ”) or parts per billion (“PPB”) to 10 $\mu\text{g/l}$ or ppb.

17 31. The most recent lab analysis provided by Saguaro indicated that all three of its wells
18 are at or below the MCL for arsenic.

19 32. Spanish Trail reported its arsenic concentrations for the Rocking K Well, the Barn
20 Well, and the York Well at 1 ppb, below the MCL for arsenic. Spanish Trail also reported the arsenic
21 concentration of source supply from Saguaro for its Academy Village system to be 1 ppb, below the
22 MCL for arsenic.

23 33. Saguaro and Spanish Trail each have a curtailment tariff on file with the
24 Commission’s Utilities Division.

25 34. Applicants’ witness testified that both Companies are up to date on their property tax
26 payments. Because an allowance for the property tax expense is included in Saguaro’s and Spanish
27 Trail’s rates and will be collected from its customers, the Commission seeks assurances from Saguaro
28 and Spanish Trail that any taxes collected from ratepayers have been remitted to the appropriate

1 taxing authority. It has come to the Commission's attention that a number of water companies have
2 been unwilling or unable to fulfill their obligation to pay the taxes that were collected from
3 ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive
4 measure Saguaro and Spanish Trail shall annually file, as part of their annual reports, an affidavit
5 with the Utilities Division attesting that each Company is current in paying its property taxes in
6 Arizona.

7 35. Staff's recommendations are reasonable and should be adopted.

8 **CONCLUSIONS OF LAW**

9 1. Spanish Trail Water Company and Saguaro Water Company are public service
10 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-
11 282, and 40-285.

12 2. The Commission has jurisdiction over Applicants and the subject matter of the
13 application.

14 3. Notice of application was provided in accordance with the law.

15 4. There is a continuing public necessity for water utility service in the Transfer Area.

16 5. The requested transfer of the Transfer Area from Saguaro to Spanish Trail is in the
17 public interest, subject to the conditions adopted herein.

18 6. The application should be granted subject to the conditions set forth in Findings of
19 Fact Nos. 20 and 21 above.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the joint application of Saguaro Water Company and
22 Spanish Trail Water Company requesting the transfer of the Transfer Area described in Exhibit A,
23 attached hereto and incorporated herein by reference, is hereby granted as conditioned by the
24 following two Ordering Paragraphs.

25 IT IS FURTHER ORDERED that as a condition of approval of the application, Spanish Trail
26 Water Company shall file with Docket Control, as a compliance item in this docket, a copy of its
27 Pima County franchise agreement for the Transfer Area described in Exhibit A, attached hereto and
28 incorporated herein by reference, within 365 days of this Decision.

1 IT IS FURTHER ORDERED that as a condition of approval of the application, Saguaro
2 Water Company and Spanish Trail Water Company shall jointly file with Docket Control, by
3 December 31, 2007, a report explaining why Saguaro Water Company's and Spanish Trail Water
4 Company's certificated areas should not be consolidated.

5 IT IS FURTHER ORDERED that this Decision shall be null and void, after due process,
6 should Saguaro Water Company and Spanish Trail Water Company fail to timely comply with the
7 conditions set forth in the two above Ordering Paragraphs.

8 IT IS FURTHER ORDERED that Spanish Trail Water Company shall charge its existing
9 rates and charges in the Transfer Area.

10 IT IS FURTHER ORDERED that Saguaro Water Company and Spanish Trail Water
11 Company shall each annually file, as part of their annual reports, an affidavit with the Utilities
12 Division attesting that each Company is current in paying its property taxes in Arizona.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
15

16 CHAIRMAN _____ COMMISSIONER

18 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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

23
24 _____
25 BRIAN C. McNEIL
26 EXECUTIVE DIRECTOR

25 DISSENT _____

27 DISSENT _____

28 TW: db

1 SERVICE LIST FOR: W-01816A-06-0177 and W-01790A-06-0177

2 DOCKET NO.: SPANISH TRAIL WATER COMPANY AND
3 SAGUARO WATER COMPANY

4 Michael F. McNulty
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20 Phoenix, AZ 85007

21 Ernest Johnson, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
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25 Phoenix, AZ 85007

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LEGAL DESCRIPTION

The East one-half of the Southeast one-quarter of Section 27, Township 15 South, Range 16 East, Gila and Salt River Meridian, Pima County, Arizona.

EXCLUDING:

The North 110 feet of the South 155 feet of the West 235 feet of the East 310 feet.

FURTHER EXCLUDING:

The North 600 feet of the South 755 feet of the West 300 feet of the East 375 feet.

FURTHER EXCLUDING:

The East 75 feet.

AND FURTHER EXCLUDING:

The South 45 feet.

Remaining portion of said Section 27 contains 69 Acres, more or less.