

ORIGINAL



0000076552

BEFORE THE ARIZONA CORPORATION

19

COMMISSIONERS

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

ARIZONA WATER COMPANY, an Arizona corporation,

Complainant,

vs.

GLOBAL WATER RESOURCES, LLC, a foreign limited liability company; GLOBAL WATER RESOURCES, INC., a Delaware corporation; GLOBAL WATER MANAGEMENT, LLC, a foreign limited liability company; SANTA CRUZ WATER COMPANY, LLC, an Arizona limited liability corporation; PALO VERDE UTILITIES COMPANY, LLC, an Arizona limited liability corporation; GLOBAL WATER - SANTA CRUZ WATER COMPANY, an Arizona corporation; GLOBAL WATER - PALO VERDE UTILITIES COMPANY, an Arizona corporation; JOHN AND JANE DOES 1-20; ABC ENTITIES I - XX,

Respondents.

DOCKET NO. W-01445A-06-0200
SW-20445A-06-0200
W-20446A-06-0200
W-03576A-06-0200
SW-03575A-06-0200

MOTION TO ADOPT DISCOVERY PLAN

(Expedited Ruling Requested)

RECEIVED
2007 AUG 31 P 4: 15
AZ CORP COMMISSION
DOCKET CONTROL

Santa Cruz Water Company, LLC; Palo Verde Utilities Company, LLC; Global Water - Santa Cruz Water Company; Global Water - Palo Verde Utilities Company (the "Global Utilities") and Global Water Resources, LLC ("Global Parent")(collectively "Respondents" or "Global") respectfully request that the Commission adopt the discovery plan described below.

Arizona Corporation Commission

DOCKETED

AUG 31 2007

DOCKETED BY [signature]

1 **I. Preliminary Statement.**

2 The parties have not been successful in resolving discovery disputes in a timely manner. In
3 addition, a huge amount of information is subject to discovery, including tens of thousands of
4 emails. A discovery plan is a practical way forward. The discovery plan should include the
5 following elements:

- 6 ● A special master to address all discovery disputes
- 7 ● An 24 hour-a-day “on-site” review process that is limited to one week
- 8 ● Use of sampling techniques to review ICFA drafts and emails
- 9 ● Clear time limits and deadlines for discovery
- 10 ● Endorsement of the existing scheduled hearing date

11 **II. Background.**

12 The parties have been pursuing discovery in two separate cases: this case (the “complaint
13 case”) and the contested CC&N case¹ (the “CC&N case”). The parties have agreed that the
14 discovery from the CC&N case can be used in the complaint case, and vice versa.

15 In the fall of 2006, Global and AWC sent each other numerous data requests. Each side
16 objected to a number of the data requests from the other party. In December 2006, the parties met
17 to attempt to resolve their discovery disputes. Subsequently, the parties exchanged letters in a
18 further attempt to resolve the discovery disputes. The parties were not able to reach agreement.
19 Neither party filed a motion to compel, and the hearing for the CC&N case was scheduled for two
20 weeks starting March 5, 2007. Shortly before the hearing, AWC moved to stay the hearing based
21 on the pending discovery issues. Judge Kinsey stayed the CC&N case until the Commission issues
22 a final order in the complaint case.

23 On May 1, 2007, Judge Nodes then scheduled a hearing in the complaint case to commence
24 on October 15, 2007. The parties conducted additional discovery. For example, at Global’s
25 offices, AWC reviewed the accounting records for the equity of Santa Cruz Water Company. This
26

27 _____
¹ Docket No. W-01445-06-0199.

1 review amounted to an on-site audit that extended over several days. In addition, Global's
2 witnesses were deposed in June. AWC filed a motion for a protective order to exempt its
3 witnesses from depositions, which Judge Nodes largely denied.

4 In June, AWC filed a motion to compel in the CC&N case, covering about 40 specific data
5 requests dating from the fall of 2006. Global then filed a cross-motion to compel, and the parties
6 filed various responses and replies. At Judge Nodes' request, these motions were then re-filed in
7 the complaint case. On August 14, Judge Nodes ordered Global to provide AWC with various
8 materials, including: (1) correspondence and emails (including attached drafts) with developers
9 regarding ICFAs; and (2) financial and accounting records of Global Water Resources, LLC
10 (GWR) relating to equity or ICFA fees. Judge Nodes also ordered AWC to provide financial and
11 accounting information about its affiliates and parent companies. In addition, both parties must
12 disclose relevant hydrological reports to the other party. Judge Nodes' orders were conditioned on
13 the entry of a protective order to limit the disclosure of confidential information. The parties filed
14 a stipulated form of protective order on August 22, and Judge Nodes signed the protective order on
15 August 23.

16 **III. The Problem: slow, unfocused discovery and a massive volume of information.**

17 AWC filed its complaint in March 2006. In the more than 500 days that followed, a
18 problem with the discovery process became clear. The discovery process in this case has been
19 slow and unfocused. Both sides failed to resolve their discovery disputes with each other in a
20 timely manner. This case will likely become a slow, wasteful quagmire with no end in sight unless
21 firm steps are taken to correct this problem. Moreover, given the history of this case, it is likely
22 that further discovery disputes will arise in the future. It would therefore be prudent to provide for
23 a speedy process to resolve these disputes, while also preserving the limited resources of the
24 Commission.

25 A further problem is the massive volume of information that is subject to discovery. The
26 best example of this problem is the number of emails between Global and developers about
27 ICFAs. Global estimates that there may be tens of thousands of such emails. Cindy Liles, and her

1 paralegal, Jennie Critchfield, are responsible for communicating with developers about ICFAs.
2 Ms. Liles conducted a preliminary review of her emails and roughly estimates that she has 500
3 emails with developers whose names start with “A” and “B”. A further review would be necessary
4 to determine which of the 500 emails relates to ICFAs. Ms. Liles has a further 100,000 emails to
5 review. Thus, Global likely has tens of thousands of emails with developers. A one-at-a-time
6 review of all of these emails would take months.

7 Likewise, both sides have sought a substantial amount of parent-level financial information
8 from the other party. In large part, this information can only be obtained by reviewing journal
9 entries and other detailed accounting data. Thus, something similar to an audit will be necessary.
10 However, each party likely has a very large number of journal entries. Thus, these audits could
11 become sprawling, endless reviews unless some limits and focus are imposed.

12 **IV. Discovery Plan.**

13 These problems could be addressed by adopting a discovery plan. The plan would provide
14 for a focused process for each party to obtain the information they need to present their case. The
15 discovery plan should include the following elements.

16 **A. Special Master for Discovery.**

17 Given the large amount of information subject to discovery requests, and the contentious
18 nature of this case, it is highly likely that the parties will have further discovery disputes.
19 Therefore, a new, faster and more efficient way of resolving discovery disputes is needed. Global
20 proposes the appointment of a special master to control discovery.

21 A judge may appoint a special master to oversee certain aspects of a case. The Arizona
22 Rules of Civil Procedure (Civil Rules) state that a judge can appoint a special master to “address
23 pretrial... matters that cannot be addressed effectively and timely by an available... judge.” Civil
24 Rule 53(a). Upon appointment, the special master has power to “regulate all proceedings and take
25 all appropriate measures to perform fairly and efficiently the assigned duties.” Civil Rule 53(c).
26 The Commission’s rules do not specifically mention special masters. However, the Commission’s
27 rules do incorporate the Civil Rules by reference. A.A.C. R14-3-101(A). And during the so-

1 called "Qwest 271" case, the Commission did use outside consultants and experts in a manner
2 somewhat like a special master. A special master would be able to closely supervise discovery and
3 keep the process on track, without wasting the limited resources of the Commission on such
4 disputes. Global seeks the appointment of a special master only with respect to discovery issues
5 and not in connection with other aspects of either the complaint case or the CC&N case.

6 **B. On-site inspection.**

7 As noted above, there may be tens of thousands of emails with developers relating to
8 ICFAs. It would be impractical to copy and physically deliver these documents to AWC.
9 Therefore, some type of on-site review would be more appropriate. The on-site review should
10 include the emails (and attachments) with developers concerning ICFAs. In addition, the on-site
11 review should include the parent-level financial and accounting information. The previous on-site
12 review of Santa Cruz's records provides an example of how the on-site review could be done. As
13 AWC's counsel stated: the "standard practice is simply to allow counsel to come over and go
14 through the documents, on our dime, and at our expense; put us in a room... just give us the
15 documents and let us go through them."² A never-ending on-site review would not be an
16 improvement. But if the review was restricted to a certain time period, the parties would focus
17 their efforts on the most-relevant and useful data. A limit of one week would be appropriate. If
18 the on-site review is limited to one week, Global is willing to provide 24 hour-a-day access.

19 **C. Advance notice and representative sampling to review emails.**

20 The proposal for on-site review of documents is based on the concept that for each day of
21 review, AWC would provide advance notice (72 hours) of the specific documents to be reviewed
22 that day. As Judge Nodes noted, a "heads-up" regarding the requested documents is appropriate
23 and helps the responding party "be better prepared to produce the documents."³ For accounting
24 records, such advance notice would largely solve the problems encountered during AWC's review
25 of Santa Cruz's accounting records.

26
27 ² October 14, 2007 Tr. at 36:7-12.

³ October 14, 2007 Tr. at 40:21-24.

1 For this concept to work for the emails (and attached drafts) regarding ICFAs, the scope of
2 each day's requests would have to be limited. In other words, AWC should not be able to request
3 all emails regarding 50 specific ICFAs during one day. Rather, for each day of inspection, AWC
4 would have to select one or two particular ICFAs, and AWC would receive emails with developers
5 only relating to those specific ICFAs. In total, AWC should be limited to looking at emails related
6 to perhaps 10 ICFAs. As an alternative sampling method, AWC could select emails from a certain
7 time period (for example, all emails between Global and Developers for the first week of October
8 2006).

9 AWC may object that a sampling process does not provide enough data. However, during
10 the oral argument on the motion to compel, AWC mentioned only a single purpose for reviewing
11 the emails. When asked about the value of the emails, AWC's counsel responded that reviewing
12 the emails was necessary to "vigorously test the credibility of Ms. Liles' assertion"⁴ that Global
13 does not solicit landowners to sign ICFAs. AWC has yet to provide any evidence to dispute Ms.
14 Liles' testimony. A random sample – of AWC's choosing – of ICFAs would serve to test Ms.
15 Liles' testimony.

16 AWC argued that a review of "each and every one"⁵ of the emails should be part of the
17 "discovery game."⁶ But "discovery is not a game." *Bryan v. Riddell*, 178 Ariz. 472, 477, 875 P.2d
18 131, 136 (1994). Instead, it is a process whose goal is "the preparation of cases for trial or
19 settlement." *Id.*

20 AWC's claim that ICFAs are solicited is, at best, a side issue. It does not bear directly on
21 the merits or legality of the ICFAs, or the related accounting and ratemaking issues. Given the
22 limited value of this information, and the extraordinary burden of sorting through tens of thousands
23 of emails, a sampling process is appropriate. Discovery may be limited if it is "unduly
24 burdensome or expensive, given the needs of the case, the amount in controversy, limitations on
25

26 _____
27 ⁴ October 14, 2007 Tr. at 34:21.

⁵ October 14, 2007 Tr. at 33:21.

⁶ October 14, 2007 Tr. at 34.

1 the parties' resources, and the importance of the issues at stake in the litigation."⁷ Such is the case
2 here, now that the extent of the burden is known.

3 **D. Discovery deadlines.**

4 The discovery plan should include clear deadlines for all discovery activities. Global
5 proposes following schedule:

- 6 • Parties exchange supplemental written responses September 7
- 7 • Appointment of Special Master for Discovery September 7
- 8 • Staff Direct Testimony September 14
- 9 • On-site inspection of records at Global's offices September 17-21
- 10 • For each day of on-site inspection, specific description of documents to be reviewed
11 to be provided 72 hours in advance of inspection
- 12 • Global / AWC Rebuttal Testimony September 25
- 13 • Depositions of Global and AWC Witnesses September 26-28
- 14 • On-site inspection of records at AWC's offices October 1-5
- 15 • Global / AWC / Staff Sur-rebuttal Testimony October 5
- 16 • Last Day for Discovery October 5
- 17 • Hearing Starting October 15

18 **V. Conclusion.**

19 A discovery plan with features described above would allow this case to move forward in a
20 timely fashion, and it would provide a practical solution to address the enormous volume of
21 documents and slow pace of discovery.

22
23
24
25
26
27

⁷ Arizona Rules of Civil Procedure, Rule 26(b)(1).

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 RESPECTFULLY SUBMITTED this 31st day of August 2007.

2 ROSHKA DEWULF & PATTEN, PLC

3
4 By 
5 John E. DeWulf
6 Michael W. Patten
7 Timothy J. Sabo
8 One Arizona Center
9 400 East Van Buren Street, Suite 800
10 Phoenix, Arizona 85004

10 Original and 21 copies of the foregoing
11 filed this 31st day of August 2007 with:

12 Docket Control
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Copy of the foregoing hand-delivered/mailed
17 this 31st day of August 2007 to:

18 Dwight D. Nodes, Esq.
19 Asst. Chief Administrative Law Judge
20 Hearing Division
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24 Christopher C. Kempley, Esq.
25 Chief Counsel, Legal Division
26 Arizona Corporation Commission
27 1200 West Washington
Phoenix, Arizona 85007

Ernest G. Johnson, Esq.
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Robert W. Geake, Esq
Arizona Water Company
3805 North Black Canyon Highway
Phoenix, Arizona 85015

1 Steven A. Hirsch, Esq.
Rodney W. Ott, Esq.
Bryan Cave LLP
2 Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004
3

4
5 By Mary Appolito
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800