



BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF
BACA FLOAT WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY FOR
WATER SERVICE.

DOCKET NO. WS-01678A-07-0116
DECISION NO. 69949

OPINION AND ORDER

DATE OF HEARING: September 5, 2007
PLACE OF HEARING: Tucson, Arizona
ADMINISTRATIVE LAW JUDGE: Jane L. Rodda¹
APPEARANCES: Ms. Marcie Shuman and Mr. Jeffrey
Crockett, Snell & Wilmer, LLP, on
behalf of Baca Float Water Company;
and
Mr. Kevin Torrey, Staff Attorney, Legal
Division, on behalf of the Utilities
Division of the Arizona Corporation
Commission.

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 February 23, 2007, Baca Float Water Company ("Baca Float" or "Company")
filed an Application to Extend its Certificate of Convenience and Necessity ("CC&N" or
"Certificate") to provide water service in Santa Cruz County.

2. Baca Float is seeking Commission authority to extend its service territory to include

¹ Administrative Law Judge Jane Rodda presided at the hearing in this matter; Administrative Law Judge Belinda Martin prepared the Recommended Opinion and Order.

1 approximately 1,300 acres within its service area.

2 3. On March 22, 2007, the Commission's Utilities Division Staff ("Staff") notified the
3 Company that its application was not sufficient pursuant to the Arizona Administrative Code.

4 4. On April 5, 2007, and May 24, 2007, Baca Float responded to Staff's Insufficiency
5 Letter.

6 5. On June 18, 2007, Staff notified the Company that its application was sufficient.

7 6. By Procedural Order dated July 2, 2007, the matter was set for hearing at the
8 Commission's offices in Tucson, Arizona, and procedural guidelines and deadlines were established.

9 7. On August 3, 2007, the Company filed with the Commission a revised legal
10 description of the proposed extension area.

11 8. On August 10, 2007, Staff filed its Staff Report recommending approval of the
12 extension of the CC&N to include the requested acreage, contingent upon the Company's compliance
13 with certain conditions.

14 9. On August 13, 2007, Baca Float filed an affidavit certifying that it mailed notice of the
15 hearing to the owners of the affected property on July 16, 2007, and that Notice was published in the
16 *Nogales International* on July 24, 2007, as directed by the July 2, 2007 Procedural Order.

17 10. On August 27, 2007, Baca Float filed its Response to the Staff Report requesting
18 certain modifications to Staff's recommended conditions.

19 11. On September 5, 2007, at the time set forth for the hearing, Staff provided its modified
20 recommendations.

21 12. On September 5, 2007, the hearing in this matter convened before a duly authorized
22 Administrative Law Judge.

23 13. Baca Float is an Arizona corporation, in good standing with the Commission's
24 Corporations Division, and provides water and sewer service to approximately 300 customers near
25 the Village of Tubac, Santa Cruz County.

26 14. The Commission approved the original CC&N for Baca Float in Decision No. 32233
27 (May 31, 1960).

28 15. Baca Float received a request for service in the proposed extension area from W&M

1 Tenants in Common, by correspondence dated January 4, 2006, and Presidio de Tubac, LLC, by
2 correspondence dated February 21, 2007. The legal description of the proposed extension area is
3 attached hereto as Exhibit 'A'.

4 16. The current application is for water service only; the Company will be negotiating
5 with Rio Rico Utilities, Inc. for the provision of sewer service to the extension area.

6 17. Baca Float's existing water system consists of two wells producing a combined total
7 of 800 gallons per minute ("GPM"), recently constructed above-ground storage tanks with a total
8 storage capacity of 160,000 gallons, a distribution system currently serving approximately 300
9 connections, three booster pumps, and an onsite gas generator.

10 18. Baca Float expects to serve up to 475 residential units in the extension area at build
11 out. The testimony of the Company is that, although the extension area is contiguous to the current
12 certificated area, the Company is not planning on interconnecting the two systems, but rather,
13 constructing new wells and backbone for the new area.

14 19. At the time Staff filed its Staff Report, the above-ground storage tanks had not been
15 completed and Staff deemed the Company's system without the storage tanks as insufficient.

16 20. With the addition of the 160,000 gallons of above-ground storage, Staff believes the
17 system would have production and storage capable of serving approximately 800 service connections.
18 Given that Baca Float has since installed the storage tanks, Staff recommended that the Company file
19 with Docket Control, as a compliance item in this docket, a copy of the Arizona Department of
20 Environmental Quality ("ADEQ") Approval of Construction ("AOC") for the new storage facilities
21 within one year of the effective date of the Decision in this case.

22 21. Baca Float intends to finance the construction of the utility facilities needed to serve
23 the extension area by advances in aid of construction and possibly hook-up fees in accordance with
24 Commission regulations and Baca Float's applicable tariffs, as well as pursuant to the terms of any
25 main extension agreement between the Company and the proposed developer of the land, Baca Float
26 Land Development Limited Partnership. The estimated starting date for the construction of the first
27 phase of the development is November 1, 2008, with completion of the entire build out anticipated by
28 2014.

1 22. The costs of the proposed facilities to serve the extension area are estimated at \$1.6
2 million. Staff reviewed the costs estimated by the Company for facilities to serve the extension area
3 and found them to be reasonable.

4 23. Baca Float has not submitted its application for an ADEQ Certificate of Approval to
5 Construct ("ATC") for the facilities needed to serve the requested extension area.

6 24. Staff recommends that Baca Float be required to file with Docket Control, as a
7 compliance item in this docket, a copy of the ATC for the water facilities needed to serve the first
8 phase of the development in the extension area within two years of the effective date of this Decision.

9 25. Baca Float's existing system is regulated by ADEQ under ADEQ Public Water
10 System I.D. #12-037. The Company's system has no deficiencies and ADEQ has determined that this
11 system is currently delivering water that meets water quality standards required by Arizona
12 Administrative Code, Title 18, Chapter 4.

13 26. Baca Float is located within the Santa Cruz Active Management Area and is in
14 compliance with its reporting and conservation requirements with the Arizona Department of Water
15 Resources ("ADWR").

16 27. The Company holds a Designation of Assured Water Supply ("Designation") for its
17 existing service area. In its Response to Staff Report, the Company filed a copy of an email from
18 ADWR which states that the Designation is intended to cover Baca Float's existing service area as
19 well as any expansions and, as such, the Company is not required to seek a modification of the
20 Designation for the purposes of the extended CC&N.

21 28. Staff recommends that Baca Float be required to file with Docket Control, as a
22 compliance item in this docket, a copy of the Company's ADWR service area map updated to include
23 the CC&N extension area within two years of the effective date of this Decision. Additionally, Staff
24 recommends that the Company file with Docket Control, as a compliance item in this docket, a letter
25 from ADWR indicating that the CC&N extension area is included within Baca Float's Designation,
26 within two years of the effective date of this Decision.

27 29. According to the Utilities Division Compliance Section, Baca Float has no outstanding
28 Commission compliance issues.

1 30. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
2 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter ("µg/l") to 10
3 µg/l. The date for compliance with the new MCL was January 23, 2006.

4 31. The Staff Report indicates that the arsenic levels in both of the Company's wells
5 exceed 10 µg/l. However, Baca Float's testimony at the hearing indicates that permitted blending of
6 the water puts the arsenic levels at just below 10 µg/l. Nevertheless, Baca Float has constructed an
7 arsenic treatment system and will bring the system online once it is approved by ADEQ. The
8 Company has applied for the AOC for the arsenic treatment plant, but has yet to receive it.

9 32. Staff recommends that the Company file with Docket Control, as a compliance item in
10 this docket, a copy of the AOC for the arsenic treatment plant from ADEQ within one year from the
11 effective date of this Decision.

12 33. A Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to
13 manage its resources during periods of shortages due to pump breakdowns, droughts, or other
14 unforeseeable events.

15 34. Baca Float does not have a CPT. Therefore, Staff recommends that the Company file
16 a curtailment tariff within 45 days of the effective date of the Commission's Decision in this case.
17 Staff states that the tariff should be docketed as a compliance item under this docket number for the
18 review and certification of Staff. Staff further recommends that the tariff should generally conform
19 to the sample tariff found on the Commission's website. Staff recognizes that the Company may
20 need to make minor modifications to the sample tariff according to its specific management,
21 operational, and design requirements as necessary and appropriate.

22 35. Baca Float has an approved Backflow Prevention Tariff.

23 36. As described in the Staff Report, Staff's review of the Company's books and records
24 revealed some anomalies which caused Staff to suspect that the Company is combining revenues and
25 expenses for its water and sewer operation, but not the plant. In addition, Baca Float's current rates
26 have been in effect for at least ten years. Because Staff is concerned about the Company's accounting
27 methods, the reliability of its financial statements and the suitability of its rates, Staff recommends
28 that Baca Float file a rate case by May 31, 2009, using a 2008 Test Year. Staff believes that a rate

1 case will appropriately allocate costs across customer classes, will address growth issues, and will
2 insure that Baca Float's rates recover its costs and provide a fair return.

3 37. Every applicant for a CC&N and/or CC&N Extension is required to submit to the
4 Commission evidence showing that the applicant has received the required consent, franchise or
5 permit from the proper authority. If the applicant operates in an unincorporated area, the company
6 has to obtain a franchise from the county. The proposed extension area is included within the
7 boundaries of Baca Float's present Santa Cruz County franchise for water.

8 38. Staff further recommends that the CC&N granted in this case be null and void, after
9 due process, if Baca Float fails to comply with Staff's recommendations within the time frames
10 specified.

11 39. The Company has agreed to all of Staff's revised recommendations.

12 40. Staff's revised recommendations are reasonable and should be adopted.

13 41. Baca Float should be required to conserve groundwater and that Baca Float should be
14 prohibited from selling groundwater for the purpose of irrigating any future golf courses within the
15 certificated expansion area, as well as any ornamental lakes or water features located in the common
16 areas of the proposed new development within the expansion area. We find Staff's recommendations
17 reasonable and should be adopted.

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

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CONCLUSIONS OF LAW

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2 1. Baca Float is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Baca Float and the subject matter of the
5 application.

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

7 4. There is a public need and necessity for water service in the proposed revised
8 extension area as set forth in Exhibit 'A.'

9 5. Baca Float is a fit and proper entity to receive a CC&N to provide water service in the
10 proposed extension area.

11 6. Staff's recommendations as set forth herein are reasonable and should be adopted.

ORDER

12
13 IT IS THEREFORE ORDERED that the application of Baca Float Water Company for an
14 extension of its Certificate of Convenience and Necessity to provide water service in Santa Cruz
15 County for that property described in Exhibit 'A' hereto, is approved.

16 IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control
17 as a compliance item in this docket, a copy of the ADEQ Approval to Construct the facilities needed
18 to serve the first phase of development in the requested area within two years of the effective date of
19 this Decision.

20 IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control
21 as a compliance item in this docket, a copy of an updated ADWR service area map to include the
22 extension area within two years of the effective date of this Decision.

23 IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control
24 as a compliance item in this docket, a letter from ADWR indicating that the CC&N extension area is
25 included within the Company's Designation of Assured Water Supply, within two years of the
26 effective date of this Decision.

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1 IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control
2 as a compliance item in this docket, a copy of the Approval of Construction for the installation of the
3 storage tanks, within one year of the effective date of this Decision.

4 IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control
5 as a compliance item in this docket, a copy of the Approval of Construction for the installation of the
6 arsenic treatment system, within one year of the effective date of this Decision.

7 IT IS FURTHER ORDERED that Baca Float Water Company shall file in this docket, as a
8 compliance item, a curtailment tariff within 45 days of the effective date of this Decision, for the
9 review and certification of Staff. The tariff shall generally conform to the sample tariff found on the
10 Commission's website, but Baca Float Water Company may need to make minor modifications to the
11 sample tariff according to its specific management, operational, and design requirements as necessary
12 and appropriate.

13 IT IS FURTHER ORDERED that Baca Float Water Company shall file a rate case with the
14 Commission by May 31, 2009, using a 2008 Test Year.

15 IT IS FURTHER ORDERED that this Decision granting the requested CC&N extension be
16 considered null and void, after due process, should Baca Float Water Company fail to meet the above
17 conditions within the times specified.

18 IT IS FURTHER ORDERED that in light of the on-going drought conditions in Arizona and
19 the need to conserve groundwater, Baca Float is prohibited from selling groundwater for the purpose
20 of irrigating any future golf courses within the certificated expansion area, as well as any ornamental
21 lakes or water features located in the common areas of the proposed new development within the
22 expansion area.

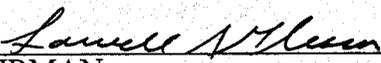
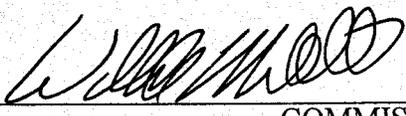
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IT IS FURTHER ORDERED that Baca Float Water Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its property taxes in Arizona.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
CHAIRMAN	COMMISSIONER

	COMMISSIONER		COMMISSIONER
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IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of Oct., 2007.



 DEAN S. MILLER
 INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

BACA FLOAT WATER COMPANY

2 DOCKET NO.:

WS-01678A-07-0116

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EXHIBIT A

Description of Proposed C.C. & N. Area
Within Baca Float No. 3

All that portion of the Baca Float No. 3, as said Baca Float No. 3 is shown on the Official Plat thereof, approved by the U.S. Surveyor General's Office on Nov. 23rd, 1906, described as follows;

Being portions of Protracted Sections 16, 17, 20, 21 and 28, Township 21 South, Range 13 East, G. & S.R.B. & M., Santa Cruz County, Arizona, described as follows;

Beginning at the point of intersection of the Section line common to said Sections 17 and 20 with the easterly right-of-way line of the Tucson-Nogales Railroad, from which the one-quarter corner common to said Sections bears South 89°46'59" East, 1583.43 feet, more or less; said point of beginning is further described as being the southwest corner of that certain parcel of land described as the 6th parcel in the Decree of Distribution of the Estate of Pearl E. Clark, recorded in the Office of the Recorder of Santa Cruz County, Arizona, in Docket 160 at Page 554, hereinafter referred to as DR #7 (Deed Reference No. 7) and is further described as being a point on the north line of that certain parcel of land described in the Bargain and Sale Deed from O.J. Bennett and Margaret Bennett to Thomas Casanega, recorded in the Office of said Recorder in Book 5 of Deeds at Page 190, hereinafter referred to as DR # 8;

Thence, from said point of beginning, along the westerly line of said DR #7 and along the easterly right-of-way of said Railroad, the following three (3) courses;

1. North 04°23'24" East 543.35 feet, more or less,
2. North 85°36'36" West 50 feet, more or less, and
3. North 04°23'24" East 1980.27 feet, more or less, to the northwest corner of DR #7; said point is further described as being the southwest corner of that certain parcel of land described as the 4th parcel in the Executor's Deed (Estate of Franklin T. Clark) to Clyde F. Lewis and Marie W. Lewis, recorded in the Office of said Recorder in Book 33 of Deeds at Page 221, hereinafter referred to as DR # 16; said point being also the southwest corner of the parcel described in Tract No. 2 of the "Franchise to: Baca Float Water Co. Inc.", recorded in the Office of said Recorder in Docket 21 at page 419, hereinafter referred to as DR # 14;

Thence, along the line common to DR # 7, DR # 16 and DR # 14, the following three (3) courses;

1. North 82°04'45" East 1757.27 feet,

2. **North 02°55'23" East 18.49 feet,**
3. **North 87°47'23" East 73.35 feet** to the southeast corner of said DR # 16, being also a point on the westerly line of that certain parcel of land described in the Deed from Baca Float Ranch, Inc. to E.R. Clark and Pearl E. Clark, recorded in the Office of said Recorder in Book 27 of Deeds at Page 247, hereinafter referred to as DR #2;

Thence, along the line common to DR # 2 and DR # 16, and continuing along the southerly line of DR # 14, **North 07°12'20" East 57.35 feet**, more or less, to the northwest corner of DR # 2, being also the southwesterly corner of that certain parcel of land described in the Deed from Baca Float Ranch, Inc. to Everett S. Sholes, recorded in the Office of said Recorder, in Book 23 of Deeds at Page 39, hereinafter referred to as DR #1, and being also the southwest corner of that certain Record of Survey entitled Tubac Ranch Estates, recorded in the Office of said Recorder in Book 1 of Surveys at Pages 20 & 21, hereinafter referred to as DR #15;

Thence, along the line common to said DR # 2, DR # 1 and DR # 15, and continuing along the southerly line of DR # 14, **North 89°22'04" East 7020.24 feet**, more or less, to the southeast corner of DR # 1, DR # 15 and DR # 14, being also the northeast corner of DR # 2 and being also a point on the westerly line of that certain Record of Survey entitled Tubac Foothills Ranch III, recorded in the Office of said Recorder in Book 2 of Surveys at Page 102,

Thence, along the easterly and southerly lines of DR #2 and along the westerly line of said Tubac Foothills Ranch III, and along the westerly line of that certain Record of Survey entitled Tubac Foothills Ranch I, recorded in the Office of said Recorder in Book 2 of Surveys at Page 64, and along the westerly and northerly lines, of Rio Rico Estates No. 16, the Official Plat of which is recorded in the Office of said Recorder in Book 3 of Maps and Plats at Page 18, the following two (2) courses;

1. **South 00°42'18" East 8726.71 feet**, and
2. **South 89°27'50" West 4390.70 feet**, more or less, to the southwesterly corner of DR # 2, being also the southeasterly corner of that certain parcel of land described in the Deed from the Sheriff of Santa Cruz County, Arizona to The American Exchange National Bank, recorded in the Office of said Recorder in Book 15 of Deeds at Page 506 (known as the Weldon Bailey Parcel), hereinafter referred to as DR #6;

Thence, along the common line between DR # 2 and DR #6, the following four (4) courses;

1. **North 00°51'49" East 4544.91 feet**, more or less,
2. **South 89°20'38" West 1849.83 feet**, more or less,

3. **North 00°43'37" West 1313.16 feet, more or less, and**
4. **North 89°41'48" West 815.09 feet more or less to the point of beginning of said DR # 2. Said point is further described as being a point on the north line of DR # 8, and is further described as being southeast corner of DR# 7, from which the one-quarter section corner common to said Sections 17 & 20 bears North 89°41'48" West 505.59 feet more or less;**

Thence, along the westerly line of said DR # 2, being also the easterly line of said DR # 7, the following two (2) courses,

1. **North 23°15'07" East 781.00 feet, more or less, and**
2. **North 11°05'25" East 260 .31 feet, more or less to the southwest corner of that certain parcel of land described as "EXCEPT FROM" in the Deed from E.R. and Pearl E. Clark to R.L. and Joyce W. Kettenbach, recorded in the office of said Recorder in Docket 17 at Page 156, hereinafter referred to as DR # 10, being also the southwest corner of that certain Parcel of land described in the Deed from Myron Clark to Maynard Clark, recorded in the office of said Recorder in Docket 280 at Page 149, hereinafter referred to as DR # 11;**

Thence, along the south line of said DR # 10 and DR #11, **North 88°49'14" East 1328.79 feet, more or less to the southeast corner of said DR # 10 and DR #11;**

Thence, along the northerly line of said DR # 11, **North 67°28'11" West 1371.90 feet, more or less, to the westerly terminus of that certain course delineated as North 67°05'18" West " in the Special Warranty Deed from Tres Alamos Land & Cattle Co., LLC to Presidio de Tubac, LLC, recorded in the Office of said Recorder in Instrument No. 2006-16413; hereinafter referred to as DR # 12**

Thence, along the southerly and easterly lines of said DR # 12, and along the northerly and westerly lines of that certain parcel of land described as the Total Parcel in the Deed from Myron D. Clark to Myron D. Clark and Katherine Clark, recorded in the office of said Recorder in Docket 830 at Page 867, hereinafter referred to as DR # 13, the following four (4) courses;

1. **South 89°39'54" West 270.68 feet,**
2. **South 02°59'42" West 198.63 feet,**
3. **South 89°38'38" West 1040.21 feet, and**
4. **South 04°51'48" West 1319.79 feet, more or less, to the southwesterly corner of said DR # 13, being also a point on the section line common to Sections 17 and 20, from which the south one-quarter corner common to said Sections 17 and 20 bears South 89°46'59" East 507.84 feet, more or less,**

Thence, along the south line of said DR # 7 and along the north line of said DR # 8, and along the section line common to Sections 17 and 20, North 89°46'59" West 1075.59 feet, more or less, to the point of beginning.

Containing 1168.30 Acres of land, more or less

July 27, 2007
J.N. 3315-10