

ORIGINAL
EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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OPEN MEETING AGENDA ITEM

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2008 MAR -6 P 4: 49

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER - **SANTA CRUZ WATER COMPANY** FOR A WAIVER UNDER A.A.C. R14-2-806 RELATING TO CERTAIN FUTURE ACQUISITIONS BY GLOBAL WATER, INC.

Docket Nos. W-20446A-07-0595
Docket Nos. W-03576A-07-0595

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER - **PALO VERDE UTILITIES COMPANY** FOR A WAIVER UNDER A.A.C. R14-2-806 RELATING TO CERTAIN FUTURE ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. SW-03575A-07-0595

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER - **HASSAYMPA UTILITY COMPANY** FOR A WAIVER UNDER A.A.C. R14-2-806 RELATING TO CERTAIN FUTURE ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. SW-20422A-07-0595

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER - **PICACHO COVE WATER COMPANY, INC. and PICACHO COVE UTILITIES COMPANY** FOR A WAIVER UNDER A.A.C. R14-2-806 RELATING TO CERTAIN FUTURE ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. W-03528A-07-0595
Docket No. SW-03709A-07-0595

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER - **CP WATER COMPANY, INC. and FRANCISCO GRANDE WATER COMPANY** FOR A WAIVER UNDER A.A.C. R14-2-806 RELATING TO CERTAIN FUTURE ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. WS-01775A-07-0595
Docket No. W-02442A-07-0595
Docket No. SW-03575A-07-0595
Docket No. W-03576A-07-0595

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER - **WILLOW VALLEY WATER COMPANY** FOR A WAIVER UNDER A.A.C. R14-2-806 RELATING TO CERTAIN FUTURE ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. W-01732A-07-0595

GLOBAL'S EXCEPTIONS

Arizona Corporation Commission

DOCKETED

MAR 6 2008

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1 IN THE MATTER OF THE APPLICATION
2 OF GLOBAL WATER – **WATER UTILITY**
3 **OF NORTHERN SCOTTSDALE, INC.**
4 FOR A WAIVER UNDER A.A.C. R14-2-806
5 RELATING TO CERTAIN FUTURE
6 ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. W-03720A-07-0595

4 IN THE MATTER OF THE APPLICATION
5 OF GLOBAL WATER – **VALENCIA**
6 **WATER COMPANY** FOR A WAIVER
7 UNDER A.A.C. R14-2-806 RELATING TO
8 CERTAIN FUTURE ACQUISITIONS BY
9 GLOBAL WATER, INC.

Docket No. W-01212A-07-0595

7 IN THE MATTER OF THE APPLICATION
8 OF GLOBAL WATER – **WATER UTILITY**
9 **OF GREATER BUCKEYE, INC** FOR A
10 WAIVER UNDER A.A.C. R14-2-806
11 RELATING TO CERTAIN FUTURE
12 ACQUISITIONS BY GLOBAL WATER, INC.

Docket No. W-02451A-07-0595

10 IN THE MATTER OF THE APPLICATION
11 OF GLOBAL WATER – **WATER UTILITY**
12 **OF GREATER TONOPAH** FOR A WAIVER
13 UNDER A.A.C. R14-2-806 RELATING TO
14 CERTAIN FUTURE ACQUISITIONS BY
15 GLOBAL WATER, INC.

Docket No. W-02450A-07-0595

GLOBAL'S EXCEPTIONS

16 Global Water¹ respectfully submits these exceptions to the proposed order submitted by
17 Staff.

21 ¹ The applicants in this case are as follows: Global Water – Santa Cruz Water Company (“Santa
22 Cruz”), Global Water – Palo Verde Utilities Company (“Palo Verde”), Hassayampa Utility
23 Company, Inc., Global Water – Picacho Cove Water Company, Global Water – Picacho Cove
24 Utilities Company, CP Water Company, Francisco Grande Utility Company, Willow Valley Water
25 Company, Inc., Water Utility of Northern Scottsdale, Inc., Valencia Water Company, Inc., Water
26 Utility of Greater Buckeye, Inc., Water Utility of Greater Tonopah, Inc. (collectively, the “Global
27 Utilities”) and Global Water Resources, LLC, Global Water, Inc., and West Maricopa Combine,
Inc. (the “Holding Company Applicants”, and together with the Global Utilities, the “Applicants”
or “Global Water”).

1 **I. Introduction.**

2 Global Water seeks a waiver under A.A.C. R14-2-806 to allow it to acquire small water
3 and wastewater utilities without prior Commission approval. Global Water believes that its track
4 record in Arizona, and the Commission's unquestioned authority and oversight of utilities and
5 their holding companies, in and of themselves support the granting of a waiver. But there is a
6 more important factor: the Commission's long-standing goal of consolidation, which has only
7 been made more urgent by record growth and a long-term drought.

8 Granting the waiver will support the consolidation of small utilities and ensure that
9 regional water recycling can be implemented in high-growth areas. Granting the waiver to Global
10 Water should only be the first step in this process – Global Water believes the Commission should
11 grant similar waivers to other utility holding companies that demonstrate regulatory compliance,
12 ability to attract capital at reasonable rates and terms, and that pursue regional water conservation.
13 Granting such waivers will ignite the sector and finally achieve the Commission's goal in 1999, to
14 encourage the consolidation of water and wastewater utilities in Arizona.

15 Granting the waiver to Global Water (and other companies in the future) does not change
16 the playing field, it levels the playing field. Several utility holding companies operate in Arizona,
17 but do not own Class A utilities, thus avoiding the burden of compliance with Rule 806.

18 Lastly, Global Water seeks the waiver because a case-by-case review process is simply
19 unjustified for small acquisitions, and the administrative and financial burden of such a process is
20 in itself enough to deter certain types of small acquisitions.

21 Staff argues that a limited waiver would constitute an abrogation of the Commission's
22 responsibility. Staff's argument does not take into account the Commission's purpose in adopting
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1 the Affiliate Rules², the interpretation of those rules by the Arizona Supreme Court, or the history
2 of the Commission's application of the rules.

3 **II. Overview of proposed waiver and past acquisitions.**

4 Global Water's proposed waiver would apply only to the acquisition of small utilities in
5 Arizona. Global Water proposed the following conditions to the waiver:

- 6 a. That the waiver be limited to Arizona public service corporations regulated
7 by the Commission.
- 8 b. That the waiver be limited to utilities classified as "Class C", "Class D" or
9 "Class E" under the A.A.C. R14-2-103.
- 10 c. The Commission already requires that Santa Cruz formally file a notice of
11 acquisition activity on a quarterly basis, and within 30 days of any
12 acquisition. Specifically, Santa Cruz is required to submit an "Acquisition
13 Schedule" within 30 days of each acquisition as required by Decision No.
14 67240 (September 23, 2004) and Decision No. 67830 (May 5, 2005). The
15 waiver should be conditioned on Santa Cruz continuing to file Acquisition
16 Schedules in accordance with Decisions Nos. 67240 and 67830. As always,
17 the Commission could request additional information for any particular
18 acquisition.
- 19 d. That this waiver not apply to the acquisition of "Class A" or "Class B"
20 utilities.

21 The proposed waiver would essentially continue the procedures in place under Decision
22 No. 67240 (September 23, 2004) and Decision No. 67830 (May 5, 2005). Under those procedures,
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25 ² A.A.C. R14-2-801 et seq. We will refer to R14-2-801 as "Rule 801", R14-2-802 as "Rule 802"
26 and so on.

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1 after an acquisition, Global Water - Santa Cruz must file an "Acquisition Schedule" within 30 days
2 reporting the acquisition to the Commission.

3 Under the Acquisition Schedule process, Global Water was able to acquire a number of
4 utilities. The utilities acquired by Global Water generally had limited managerial, technical or
5 financial capabilities. After the acquisition, those utilities could draw on the strengths of Global
6 Water's more than 100 employees, which include 10 professional engineers and many certified
7 operators. They also gained access to Global Water's substantial financial resources.

8 **III. The Public Interest Supports Adoption of the Waiver**

9 From 1998 to 2000, the Commission established a "Water Task Force" to review policy
10 towards water companies. The Commission approved the Task Force Report in Decision No.
11 62993 (Nov. 3, 2000). The Task Force agreed on five goals for the Commission:

- 12 • Reduce the number of small, non-viable water systems through new rules and
13 procedures.
- 14 • Strengthen the financial capacity of the water utility industry.
- 15 • Provide greater emphasis on simplifying, shortening, and reducing the cost of the
16 ratemaking process.
- 17 • Improve consumer education.
- 18 • Increase interagency coordination.³

19 Global Water has focused intently on the last two of those items – its education campaign
20 has won Crescordia awards and Addy Awards for consumer education on utility and conservation
21 themes. Global has signed Public-Private Partnerships and accords with the cities it serves, the
22 Native American Communities it borders, and has partnered with the University of Arizona,
23 Central Arizona College, the U.S. Department of Agriculture, and the Arizona Water Institute.

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26 ³ Decision No. 62993, Page 2, Lines 6.5 to 12
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1 Global Water respectfully submits that the Commission has not yet achieved success on the first
2 three goals.

3 By allowing a waiver under Rule 806 for Global Water – and subsequently for other well-
4 run, well-capitalized, water-conserving companies – the Commission will take a very large step
5 towards the achievement of those goals. Those goals were important in 1999, but now, 9 years
6 further into the drought, after the explosion of growth in the first half of this decade, after
7 numerous studies showing that the Colorado River was overallocated and its flows are less
8 predictable than ever assumed, today those goals have morphed from goals to imperatives.

9 A good example of the impact of growth and water scarcity is the West Maricopa Combine
10 (WMC), a collection of small water utilities that Global Water acquired in the Summer of 2006.
11 Several of the WMC companies are located in western Maricopa County, directly in the path of
12 future growth, but were unprepared for that growth. Their approach to growth and water
13 management was simply to have developers drill wells, lay pipe, and hand the resulting
14 “infrastructure” over to the utility to operate. Global Water has invested heavily – in money and
15 time – to fix storage and production deficiencies, arsenic issues, and other infrastructure problems
16 in these West Valley companies. More remains to be done. The most telling metric is this: the
17 labor cost per connection in the WMC region is more than three times the cost in Global’s
18 Maricopa region.⁴ Global Water also addressed significant infrastructure issues in Willow Valley
19 Water Company, a WMC company in Mohave County. The WMC companies are being put on a
20 sound footing, water resources are being protected in the context of decades-long planning, and
21 consumers are benefiting.

22 Furthering that vision, Global Water formed a new wastewater utility that will serve a large
23 part of the future WMC service areas – customers in those areas will have access to integrated
24 water, wastewater, and recycled water services. Global Water has also committed to build

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26 ⁴ Labor cost/connection in WMC area is \$5.15; \$1.50 in Maricopa area.

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1 advanced water recycling in the large Belmont subdivision, served by a WMC company.
2 Advanced water recycling will provided recycled water to residential lots for use in irrigation of
3 yards. Residential irrigation accounts for a substantial amount of water use – and in Belmont that
4 water will be recycled water. Before Global Water, WMC had neither the inclination nor the
5 resources to pursue such projects. That has all changed.

6 In sum, customers of acquired utilities benefit by improved infrastructure, access to
7 economies of scale, and access to greater managerial, technical and financial resources. The State
8 of Arizona benefits by reducing the number of regulated utilities, enabling regional planning and
9 construction, encouraging investment in utilities and utility infrastructure, and achieving water
10 conservation on a regional scale – the most effective approach available. By any standard, the
11 acquisitions have clearly been in the public interest. But after these acquisitions occurred, one of
12 the Global Utilities became a “Class A” utility, and thus subject to the Affiliate Rules.

13 Future acquisitions will require Commission approval, unless a waiver is granted.
14 Approval of the waiver will re-instate, for small acquisitions, the Acquisition Schedule process
15 under Decision No. 67240 (September 23, 2004) and Decision No. 67830 (May 5, 2005), which
16 was effective in allowing consolidation while still preserving Commission oversight.

17 **IV. The waiver will promote consolidation.**

18 Arizona has hundreds of water companies. Many of them are small companies, with small
19 staffs, limited technical and managerial capabilities, that face great difficulty raising debt or equity
20 capital. Further, small companies do not benefit from economies of scale, causing higher rates. In
21 addition, small utilities seem to be more prone to problems, and some small utilities have had
22 serious reliability or compliance issues (e.g. Desert Hills, the McLain companies, Hacienda Acres,
23 Sabrosa).

24 Thus, the Commission has long supported the consolidation of utilities. Consolidation was
25 one of the main goals of the Commission’s Water Task Force report. More recently, the
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1 Commission stated: “policy supports... consolidation of small water companies or systems. The
2 Commission has previously found that this policy leads to economies of scale in the provision of
3 utility service and is in the best interest of the public rather than promoting numerous small
4 systems with limited opportunities for growth.”⁵

5 Global Water’s proposed waiver was designed with these concerns in mind. It applies only
6 to small utilities, which cause the Commission the greatest concern. Approving the waiver will
7 signal the Commission’s continued support for consolidation, and will facilitate future
8 consolidation by Global Water.

9 **V. Practical concerns support granting the waiver.**

10 **A. The waiver will allow Global Water to compete on an even playing field.**

11 Several other holding companies exist that acquire utilities but are not subject to the
12 Affiliated Interest Rules, such as Utilities, Inc. and Southwest Water Company. These companies
13 have historically not had “Class A” utilities in Arizona and are thus not under the Affiliate Rules.
14 They are nevertheless sizable, multi-state operations. They could use their immunity from the
15 Affiliate Rules as a selling point in their favor when courting potential acquisitions. Global Water
16 should be able to compete on the same terms.

17 Of course, some large water companies are subject to the Affiliated Interest Rules (e.g.
18 Arizona-American, Arizona Water). But those companies have not recently been engaged in
19 acquiring other utilities. Global Water would support similar waivers being granted to those
20 companies, should they request it.

21 **B. The waiver will save time and money.**

22 Pursuing Rule 803 approvals can be costly, even when the approval is ultimately
23 uncontested. It is not unusual for such cases to cost tens of thousands of dollars. There is no
24 reason for utilities to incur such expenses for individualized case-by-case reviews, when

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26 ⁵ Decision No. 67583 (February 15, 2005) at Finding of Fact No. 35.
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1 consolidation of small water and wastewater companies is so clearly in the public interest.
2 Moreover, the costs of such reviews must be factored into a company's decision whether to pursue
3 an acquisition. For small "tuck-in" acquisitions with limited economic appeal, regulatory costs
4 could be high enough to make the deal uneconomic. The cost of individualized review of each
5 transaction exceeds any benefits.

6 In addition, Commission review takes time and resources. A good example is Global
7 Water's Balterra acquisition, which is on the agenda for this open meeting.⁶ Balterra is a
8 developer-owned wastewater utility with no plant or staff. Global Water already owns the water
9 utility for the area, as well as a wastewater utility in the vicinity. The Balterra acquisition will
10 allow Global Water to offer integrated service to the Balterra customers, and it will provide
11 opportunities for economies of scale that Balterra could not achieve on its own. No one has ever
12 questioned that the acquisition is in the public interest. Yet it has taken 6 months to get to this
13 point. That is actually relatively fast for a Rule 803 case – a reflection that Staff was willing to
14 expedite its review at Global Water's request, which is much appreciated. But an individualized
15 review – and the resultant 6 month delay – was not necessary in the first place. Moreover, Staff
16 has a heavy workload, and there is no reason to add to that burden with unnecessary case-by-case
17 reviews of small utility acquisitions by a large, capable operator.

18 **VI. Staff's analysis contravenes the history and purpose of Affiliate Rules.**

19 In its memorandum, Staff asserts that A.R.S. § 40-285 provides that the Commission "must
20 approve" such transactions. Staff then states that based on this supposed statutory responsibility,
21 "each event should be reviewed." Indeed, Staff's proposed order states that to do otherwise would
22 amount to Commission "vacate[ing] its responsibility."

23 The premise of Staff's argument is flawed. The Affiliate Rules are based on the
24 Commission's exclusive ratemaking authority under the Arizona Constitution, and not on A.R.S. §

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26 ⁶ Docket No. W-20446A-07-0596 et al.
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1 40-285. In its final rulemaking order for the Affiliate Rules, the Commission stated that the “rules
2 are a direct exercise of the Commission’s ratemaking power pursuant to Section 3” of the Arizona
3 Constitution.⁷ In discussing its power to adopt the rules, the Commission did not mention A.R.S.
4 § 40-285. Likewise, in upholding the Affiliate Rules, the Arizona Supreme Court relied solely on
5 the Commission’s constitutional rate powers.⁸ The Commission is presented not with a rigid
6 statutory requirement, but with its broad and flexible rate powers.

7 Rule 806 expressly allows the Commission to grant a waiver upon a showing that the
8 waiver is in the public interest. Nothing prevents the Commission from finding that a category of
9 transactions is in the public interest. Staff does not point to any differences between small utility
10 acquisitions that would require individualized attention or that would produce different results.
11 Consolidation of small utilities is in the public interest, and a waiver should be granted for this
12 category of transactions.

13 Moreover, when adopting the rules, the Commission was concerned with utilities and
14 utility holding companies acquiring unregulated businesses, such as the infamous MeraBank
15 fiasco.⁹ In contrast, here the holding company seeks to acquire additional regulated utilities, which
16 will remain fully subject to the Commission’s authority.

17 Under Staff’s interpretation, Rule 806 essentially becomes a dead letter, and each
18 transaction must be reviewed individually under Rule 803. The Commission added Rule 806 for a
19 reason, and the Commission has used this rule to approve a multitude of waivers in the past.¹⁰
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21 ⁷ Decision No. 56844 (March 14, 1990) at Attachment B, page 5.

22 ⁸ *Arizona Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 295-97, 830 P.2d 807, 816-18
(1992).

23 ⁹ See Decision No. 56844 (March 14, 1990) at Attachment B, pages 1-2 (explaining reasons for
rules).

24 ¹⁰ See e.g. Decision No. 58164 (Feb. 4, 1993)(Citizens Utilities); Decision No. 58262 (April 21,
25 1993)(Alltel); Decision No. 58258 (April 8, 1993)(AT&T); Decision No. 58232 (March 24,
26 1993)(Contel of the West); Decision No. 58257 (April 8, 1993)(MCI); Decision No. 58228 (March
27 24, 1993)(Metro Mobile CTS); Decision No. 58256 (April 8, 1993)(Sprint); Decision No. 58087

1 Many of these waivers were designed to avoid the need for Commission approval of small
2 transactions.¹¹ Such is the case here.

3 **VII. Conclusion.**

4 Consolidation of small utilities is in the public interest, as the Commission has recognized
5 for many years – those benefits include:

- 6 • Streamlined regulatory processes,
- 7 • Reduced number of small cases and companies,
- 8 • Increased regionalization benefits such as ability to blend water, centralize
9 treatment, access surface water and CAP water,
- 10 • Improved economies of scope and scale,
- 11 • Increased access to capital, and
- 12 • Ability to maximize water conservation through integrated provision of water,
13 wastewater and reclaimed water.

14 Approving this waiver for small acquisitions will promote consolidation and will allow
15 Global Water to react quickly to acquisition opportunities. The Commission would still review
16 larger acquisitions on a case-by-case basis. The waiver will save time and money, and it will
17 conserve Staff's limited resources. Staff has not identified any differences between potential
18 acquisitions that would justify individual case-by-case review. There is no legal requirement for
19 individualized review of each transaction, and the Commission is free to conclude that a specific
20 category of transactions is in the public interest, as it has done several times in the past. Global
21 Water's proposed category is acquisitions of small utilities, and such acquisitions are clearly in the
22

23 (Nov. 23, 1993)(U S West Communications); Decision No. 58229 (March 24, 1993)(Gila River
24 Cellular et al); Decision No. 62582 (May 17, 2000) (Cox Arizona L.L.C.); Decision No. 64243
25 (Nov. 29, 2001) (Morenci Water and Electric); Decision No., 65434 (December 3, 2002)(APS)
26 ¹¹ Decision No. 58262 at Finding of Fact No. 11; Decision No. 58258 at Finding of Fact No. 14;
27 Decision No. 64243(Nov. 29, 2001) Decision No. 58063 (Nov. 3, 1992).

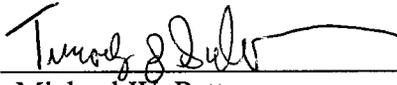
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1 public interest. Accordingly, Global Water requests that the Commission approve the waiver.
2 Proposed language to amend Staff's proposed order is attached as Exhibit A.

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RESPECTFULLY SUBMITTED this 6th day of March 2008.

ROSHKA DEWULF & PATTEN, PLC

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18 *Subbo Ammal*

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Exhibit A

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- (1) DELETE Finding of Fact No. 4 (Page 3, lines 14-19)
- (2) INSERT new Finding of Fact No. 4 (Page 3, line 14) as follows: “We have repeatedly noted the benefits of consolidation of small utilities. Consolidation promotes economies of scale and provides access to greater resources and technical expertise. We therefore find the proposed waiver to be in the public interest.”
- (3) INSERT new Finding of Fact No. 5 as follows: “The applicants (collectively, “Global Water”) propose the following conditions:
 - a. That the waiver be limited to Arizona public service corporations regulated by the Commission.
 - b. That the waiver be limited to utilities classified as “Class C”, “Class D” or “Class E” under the A.A.C. R14-2-103.
 - c. The waiver should be conditioned on Santa Cruz continuing to file Acquisition Schedules in accordance with Decisions Nos. 67240 and 67830.
 - d. That this waiver not apply to the acquisition of “Class A” or “Class B” utilities. The proposed conditions are reasonable and should be adopted.”
- (4) Page 3, line 25 (Conclusion of Law No. 3) DELETE “not”.
- (5) Page 4, lines 2-4 DELETE ordering paragraph and INSERT new ordering paragraph as follows: “IT IS THEREFORE ORDERED that the application by Global Water for a waiver under A.A.C. R14-2-806 is granted, subject to the conditions in Finding of Fact No. 5.”