

ORIGINAL

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
**DOCKETED**

MAR 21 2008

DATE: MARCH 21, 2008  
DOCKET NO: SW-02573A-07-0650 AND SW-20492A-06-0766

DOCKETED BY

TO ALL PARTIES:

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

**KINGS RANCH UNIT II TREATMENT PLANT AND  
KINGS RANCH UNIT II DOMESTIC WASTEWATER IMPROVEMENT DISTRICT  
(SALE OF ASSETS/ CANCEL 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:

MARCH 31, 2008

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:

APRIL 8, 2008 AND APRIL 9, 2008

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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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 KINGS RANCH UNIT II TREATMENT PLANT  
10 FOR APPROVAL TO SELL ITS ASSETS AND TO  
11 CANCEL ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY.

DOCKET NO. SW-02573A-07-0650

12 IN THE MATTER OF THE ESTABLISHMENT OF  
13 THE KINGS RANCH UNIT II DOMESTIC  
14 WASTEWATER IMPROVEMENT DISTRICT.

DOCKET NO. SW-20492A-06-0766

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

12 DATE OF HEARING: March 13, 2008  
13 PLACE OF HEARING: Phoenix, Arizona  
14 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes  
15 APPEARANCES: Philip and Jeane Albins, on behalf of Kings Ranch Unit  
16 II Treatment Plant;  
17 Virginia Gray, on behalf of Kings Ranch Unit II  
18 Domestic Wastewater Improvement District;  
19 Robin Mitchell, Staff Attorney, Legal Division, on  
20 behalf of the Utilities Division of the Arizona  
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 On December 8, 2006, Docket No. SW-20492A-06-0766 ("Improvement District Case") was  
24 opened by the Arizona Corporation Commission ("Commission") *In the Matter of the Establishment*  
25 *of the Kings Ranch Unit II Domestic Wastewater Improvement District.*

26 On December 13, 2006, the Yavapai County Board of Supervisors filed an Order of  
27 Establishment for the Kings Ranch Unit II Domestic Wastewater Improvement District ("District"),  
28 located near Black Canyon City, in Yavapai County, Arizona.

On November 6, 2007, Kings Ranch Unit II Treatment Plant ("Kings Ranch" or "Company")  
filed with the Commission in Docket No. SW-02573A-07-0650 ("Asset Sale Case") an application

1 for approval to sell its assets to the District and to cancel its Certificate of Convenience and Necessity  
2 (“CC&N”) to provide wastewater treatment service.

3 On December 13, 2007, Kings Ranch filed an Affidavit of Publication in the Asset Sale Case.

4 On December 14, 2007, the Commission’s Utilities Division (“Staff”) filed a Sufficiency  
5 Letter in the Asset Sale Case indicating that the application met the sufficiency requirements as  
6 outlined in the Arizona Administrative Code (“A.A.C.”).

7 On December 19, 2007, a Procedural Order was issued scheduling a hearing for February 4,  
8 2008, in the Asset Sale Case, ordering Kings Ranch to mail notice to property owners and publish  
9 notice of the hearing, and establishing other procedural filing dates.

10 On December 21, 2007, Staff filed a Motion to Extend Time to file its Staff Report until  
11 February 7, 2008, to change the due dates for intervention and other procedural deadlines, and to  
12 reschedule the hearing for March 13, 2008. Staff’s Motion indicated that Kings Ranch was agreeable  
13 to the requested extension.

14 On December 21, 2007, Staff also filed a Motion to Consolidate the above-captioned dockets,  
15 pursuant to A.A.C. R14-3-109(H).

16 By Procedural Order issued January 3, 2008, the above-captioned dockets were consolidated,  
17 the hearing in the consolidated cases was rescheduled for March 13, 2008, and other procedural  
18 deadlines were established. In addition, Kings Ranch was directed to amend the Notice set forth in  
19 the December 19, 2007, Procedural Order to reflect the revised hearing date and procedural schedule,  
20 and to mail and publish the Notice in accordance with the prior Procedural Order’s directives.

21 On January 28, 2008, Staff filed a letter sent to Mr. Albins requesting responses to several  
22 questions related to non-compliance with Arizona Department of Environmental Quality (“ADEQ”)  
23 requirements. A letter dated January 17, 2008, from ADEQ to Staff, indicated that there were 29  
24 items related to Kings Ranch that were not in compliance with ADEQ regulations.

25 On January 29, 2008, the Commission’s Hearing Division received from the principals of  
26 Kings Ranch (Philip and Jeane Albins) the revised Notice ordered by the December 19, 2007, and  
27 January 3, 2008, Procedural Orders. However, the Notice did not contain an affidavit indicating  
28 whether Kings Ranch had complied with the mailing and publication requirements contained in the

1 prior Procedural Orders.

2 By Procedural Order issued January 29, 2008, Kings Ranch was directed to comply with the  
3 mailing and publication requirements by no later than February 7, 2008 (if it had not already done  
4 so), and to file certification of mailing and publication by February 29, 2008.

5 On February 7, 2008, Staff filed its Staff Report recommending approval of the applications  
6 subject to resolving all ADEQ compliance issues.

7 On February 26, 2008, the requisite certification of publication was filed with the  
8 Commission.

9 A hearing was held, as scheduled, on March 13, 2008, before a duly authorized  
10 Administrative Law Judge. Jeane Albins testified on behalf of Kings Ranch and Virginia Gray  
11 testified on behalf of the District. The operator of the treatment plant also provided testimony. Staff  
12 appeared through counsel, and provided testimony by Robert Gray and Marlin Scott, Jr. No members  
13 of the public appeared at the hearing.

14 \* \* \* \* \*

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

17 **FINDINGS OF FACT**

18 1. Kings Ranch is a sole proprietorship, owned by Philip and Jeane Albins, engaged in  
19 the provision of wastewater utility service to approximately 32 customers in Yavapai County, in an  
20 area east of Black Canyon City, Arizona. The Company's CC&N was granted by Decision No.  
21 57447 (July 10, 1991).

22 2. The Kings Ranch Unit II wastewater treatment system consists of a Santec extended  
23 aeration plant with a nominal capacity of 9,000 gallons per day. Secondary effluent from the plant is  
24 disinfected, de-chlorinated, and then discharged into the Agua Fria River. The collection system is  
25 comprised of approximately 5,000 feet of mains, a single lift station, 29 manholes, and 5 cleanouts  
26 (Ex. S-1, Engineering Report)

27 3. In Kings Ranch's most recent rate case (Decision No. 68655, issued April 12, 2006),  
28 the Commission directed Staff to "contact representatives of the Kings Ranch Unit II Treatment Plant

1 and its customers, within 60 days of this Decision, to determine if creation of a wastewater  
2 improvement district represents a viable option to current ownership.” The Decision further stated  
3 that “absent creation of a wastewater improvement district, Kings Ranch Unit II Treatment Plant  
4 shall, prior to its next rate case filing, take every possible action to bring its costs under control, while  
5 maintaining safe and reliable service.” These directives were based on the Commission’s concern  
6 with the Company’s ongoing financial difficulties and revenue losses (Ex. S-1, at 1).

7 4. On November 6, 2006, the Yavapai County Board of Supervisors voted unanimously  
8 to approve formation of the Kings Ranch Unit II Domestic Wastewater Improvement District. On  
9 December 13, 2006, the Yavapai County Board of Supervisors filed an Order of Establishment for  
10 the District.

11 5. On December 8, 2006, the Improvement District Case was opened by the Commission  
12 *In the Matter of the Establishment of the Kings Ranch Unit II Domestic Wastewater Improvement*  
13 *District* (Docket No. SW-20492A-06-0766).

14 6. On November 6, 2007, Kings Ranch filed in the Asset Sale Case an application for  
15 approval to sell its assets to the District and to cancel its CC&N to provide wastewater treatment  
16 service (Docket No. SW-02573A-07-0650).

17 7. On December 13, 2007, Kings Ranch filed an Affidavit of Publication in the Asset  
18 Sale Case.

19 8. On December 14, 2007, Staff filed a Sufficiency Letter in the Asset Sale Case  
20 indicating that the application met the sufficiency requirements as outlined in the Arizona  
21 Administrative Code.

22 9. On December 19, 2007, a Procedural Order was issued scheduling a hearing in the  
23 Asset Sale Case, ordering Kings Ranch to mail notice to property owners and publish notice of the  
24 hearing, and establishing other procedural filing dates.

25 10. On December 21, 2007, Staff filed a Motion to Consolidate the above-captioned  
26 dockets, pursuant to A.A.C. R14-3-109(H).

27 11. By Procedural Order issued January 3, 2008, the above-captioned dockets were  
28 consolidated, the hearing in the consolidated cases was rescheduled for March 13, 2008, and other

1 procedural deadlines were established. In addition, Kings Ranch was directed to amend the Notice  
2 set forth in the December 19, 2007, Procedural Order to reflect the revised hearing date and  
3 procedural schedule, and to mail and publish the Notice in accordance with the prior Procedural  
4 Order's directives.

5 12. On January 28, 2008, Staff filed a letter sent to Mr. Albins requesting responses to  
6 several questions related to non-compliance with ADEQ requirements. A letter dated January 17,  
7 2008, from ADEQ to Staff, indicated that there were 29 items related to Kings Ranch that were not in  
8 compliance with ADEQ regulations.

9 13. By Procedural Order issued January 29, 2008, Kings Ranch was directed to comply  
10 with the mailing and publication requirements by no later than February 7, 2008 (if it had not already  
11 done so), and to file certification of mailing and publication by February 29, 2008.

12 14. On February 7, 2008, Staff filed its Staff Report recommending approval of the  
13 applications subject to resolving all ADEQ compliance issues.

14 15. On February 26, 2008, the requisite certification of publication was filed with the  
15 Commission.

16 16. At the hearing conducted on March 13, 2008, Ms. Albins and Ms. Gray stated that the  
17 transaction to transfer ownership of the treatment plant occurred in the summer of 2007, and that the  
18 District assumed operational control of the wastewater system on July 1, 2007. The District retained  
19 the prior operator of the system, Dale Hernandez, who also testified at the hearing.

20 17. In response to concerns raised by Staff regarding ADEQ compliance, Mr. Hernandez  
21 explained that he met at the treatment facility with ADEQ inspector James Jones on February 8,  
22 2008, and reconciled the non-compliance issues. Mr. Hernandez stated that the violations cited in the  
23 letter to Staff were related to simple mathematical errors involving misplacement of decimal points.  
24 He testified that the reports submitted to ADEQ had been calculated using "milligrams per unit"  
25 rather than "micrograms per unit," which caused ADEQ to find the plant to be out of compliance.

26 18. On February 14, 2008, ADEQ issued a report stating that the system had no major  
27 deficiencies, and that the only minor deficiencies were related to the mathematical errors. The  
28 ADEQ report added the following recommendations for the plant operator, but did not specify a

1 deadline for compliance with the recommendations: 1) the plant should have a flow meter<sup>1</sup>; 2) the de-  
 2 chlorinator did not appear to have any tablets at the time of inspection<sup>2</sup>; and 3) the wet well lift  
 3 station did not sound "healthy<sup>3</sup>."

4 19. On behalf of the District, Ms. Gray testified that the members of the District have a  
 5 significant vested interest in the proper operation of the wastewater system and the members are  
 6 prepared to take all necessary action to ensure continued compliance with applicable regulations. She  
 7 stated that the District was budgeting to satisfy the ADEQ recommendations, and that the District  
 8 was very satisfied with Mr. Hernandez' work as the plant operator. She claims that the transfer of  
 9 operations to the District has been seamless and members of the District are supportive of the  
 10 transfer.

11 20. Staff witnesses Robert Gray and Marlin Scott, Jr., testified that approval of the  
 12 applications is in the public interest. Although Staff initially recommended that approval should be  
 13 conditioned on compliance with ADEQ non-compliance issues, at the hearing Mr. Gray stated that  
 14 Staff is now satisfied that the matters cited by ADEQ were related to mathematical errors rather than  
 15 operational violations. Mr. Scott testified that he discussed the non-compliance issue with the ADEQ  
 16 inspector, who confirmed that the previously cited violations were rectified by recalculated reports  
 17 from the operator. Accordingly, Staff recommends approval of the asset transfer, and deletion of the  
 18 Kings Ranch CC&N, without condition.

19 21. Staff's recommendation for approval of the transfer of assets to the District, and  
 20 deletion of the Kings Ranch CC&N, is reasonable.

### 21 CONCLUSIONS OF LAW

22 1. Kings Ranch is a public service corporation within the meaning of Article XV of the  
 23 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

24 2. The Commission has jurisdiction over Kings Ranch and the subject matter of the  
 25 application.

26 <sup>1</sup> According to the ADEQ report, the flow is currently estimated using a stopwatch and a container.

27 <sup>2</sup> District Chairperson Victoria Gray disputed this contention, stating that plant operator, Mr. Hernandez, or one of his  
 employees, checks the plant on a daily basis to ensure proper operation.

28 <sup>3</sup> Mr. Hernandez testified that the lift station pump is "noisy" and probably needs new bearings, but is still operational at  
 this time.

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- 3. Notice of the applications was provided as required by law.
- 4. There is a continuing need for wastewater utility service in Kings Ranch's certificated area.
- 5. The District is a fit and proper entity that is ready, willing and able to assume the responsibility of providing wastewater utility service within Kings Ranch's presently certificated area.
- 6. Staff's recommendation for approval of the applications should be adopted.

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**ORDER**

IT IS THEREFORE ORDERED that the application of Kings Ranch Unit II Treatment Plant to sell its assets to the Kings Ranch Unit II Domestic Wastewater Improvement District and to cancel its Certificate of Convenience and Necessity is hereby approved.

IT IS FURTHER ORDERED that Kings Ranch Unit II Treatment Plant shall file within 30 days of the effective date of this Decision, as a compliance item in this docket, documentation showing completion of the sale and transfer of assets to the Kings Ranch Unit II Domestic Wastewater Improvement District.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, 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 day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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SERVICE LIST FOR:

KINGS RANCH UNIT II TREATMENT PLANT and  
KINGS RANCH UNIT II DOMESTIC  
WASTEWATER IMPROVEMENT DISTRICT

DOCKET NOS.:

SW-02573A-07-0650 and SW-20492A-06-0766

Philip and Jeane Albins  
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Virginia Gray, Chairperson  
KINGS RANCH UNIT II WASTEWATER  
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