

ORIGINAL



0000085285

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COMMISSIONERS

Mike Gleason, Chairman  
William A. Mundell  
Jeff Hatch-Miller  
Kristin K. Mayes  
Gary Pierce

RECEIVED

2008 JUN 16 P 4: 28

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUN 16 2008

DOCKETED BY *MM*

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE JOINT  
APPLICATION OF CP WATER COMPANY  
AND FRANCISCO GRANDE UTILITIES  
COMPANY TO TRANSFER THEIR  
CERTIFICATES OF CONVENIENCE AND  
NECESSITY AND ASSETS TO PALO  
VERDE UTILITIES COMPANY AND  
SANTA CRUZ WATER COMPANY

Docket No.: WS-01775A-07-0485  
Docket No.: SW-03575A-07-0485  
Docket No.: W-02442A-07-0485  
Docket No.: W-03576A-07-0485

BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000

Complainant Arizona Water Company and the Global Water Respondents in this docket, as well as Francisco Grande Utility Company and CP Water Company (collectively, "the Moving Parties"), consistent with the statements made at the procedural conference in Docket No. W-01445A-06-0200 (the "Complaint Proceeding") on June 2, 2008, jointly move to consolidate the Complaint Proceeding with Docket Nos. W-01445A-06-0199, SW-03575A-05-0926, W-03576A-05-0926, W-03576A-07-0300 and SW-03575A-07-0300 (which are already consolidated in the W-01445A-06-0199 docket) (collectively, the "CCN Proceedings") and Docket Nos. WS-01775A-07-0485, SW-03575A-07-0485, W-02442A-07-0485 and W-03576A-07-0485 (the "Francisco Grande/CP Water Proceedings"). Consolidation of these dockets under this 0200 docket is appropriate under A.A.C. R14-3-109(H) of the Arizona Corporation Commission's (the "Commission") Rules of Practice and Procedure, as well as Rule 42(a), Arizona Rules of Civil Procedure. The Moving Parties urge the Commission to consolidate the above-listed dockets in the manner requested.

1 **I. BACKGROUND**

2 On March 29, 2006, Arizona Water Company filed a complaint against various  
3 Global Water entities in the Complaint Proceeding. In parallel proceedings, both Arizona  
4 Water Company and various Global Water entities had applied for extensions of their  
5 Certificates of Convenience and Necessity ("CCN") to provide utility services in various  
6 areas of Pinal County, including areas in which the applications overlapped. The CCN  
7 Proceedings, summarized above, were consolidated under Docket No. W-01445A-06-0199  
8 by procedural order dated April 21, 2006 in that docket. In the consolidated CCN  
9 Proceedings, the Moving Parties proceeded to conduct discovery and submit prefiled  
10 testimony in preparation for hearings of their consolidated CCN applications. By  
11 procedural order dated March 9, 2007, a stay of the CCN Proceedings that had been entered  
12 from the bench at a February 28, 2007 pre-hearing conference was confirmed, pending the  
13 outcome of the disputes raised in the Complaint Proceeding.

14 In the meantime, a Global Water-sponsored application for transfer of CCNs from  
15 Francisco Grande Utility Company and CP Water Company to certain Global Water  
16 entities, Docket Nos. WS-01775A-07-0485, SW-03575A-07-0485, W-02442A-07-0485 and  
17 W-03576A-07-0485 (described above as the Francisco Grande/CP Water Proceedings) was  
18 pending.

19 For the past year or so, the Moving Parties have concentrated their efforts in these  
20 dockets in preparing this Complaint Proceeding for hearing. The Moving Parties conducted  
21 discovery, briefed discovery disputes, and ultimately filed their prefiled testimony. As part  
22 of the discovery process, the Complaint Proceeding and the CCN Proceedings were  
23 essentially consolidated for discovery purposes, with discovery rulings in the Complaint  
24 Proceeding governing both proceedings. In addition, it was agreed that discovery from the  
25 Complaint Proceeding could be used in the CCN Proceedings, and likewise discovery from  
26 the CCN Proceedings could be used in the Complaint Proceeding.

27 As the Complaint Proceeding neared its hearing date, the Moving Parties engaged in  
28 intensive negotiations that ultimately led to the execution of a Settlement Agreement dated

1 May 15, 2008 (the "Settlement Agreement"). The Settlement Agreement was docketed in  
2 this proceeding on May 16, 2008 as part of a Notice of Status of the Parties' Settlement  
3 Discussions, as requested by the Commission.

4 As discussed in the June 2, 2008 procedural conference, the Settlement Agreement  
5 contemplates a number of procedural steps. The Settlement Agreement provides as an  
6 initial step for amended CCN applications to be filed in the CCN Proceedings to reflect the  
7 agreements reached in the Settlement Agreement as to the respective areas that would be the  
8 subject of those amendments. The scope of those amended CCN application boundaries is  
9 illustrated on a Settlement Map attached to and incorporated into the Settlement Agreement  
10 as Exhibit "B." The Settlement Agreement also provides that the Complaint Proceeding  
11 should be dismissed pursuant to the conditions in the Settlement Agreement. Accordingly,  
12 the Moving Parties agree that the CCN Proceedings and the Francisco Grande/CP Water  
13 Proceedings should be consolidated with the Complaint Proceeding so that they can be  
14 efficiently and consistently processed in the least amount of time, while avoiding the danger  
15 of inconsistent rulings at different times by different Administrative Law Judges. Because  
16 (as illustrated on the Settlement Map) the Moving Parties' respective amended CCN  
17 application boundaries and the planning areas incorporated therein present a coherent and  
18 unified approach to utility planning in this area of Pinal County, the Moving Parties agree  
19 that the Commission should, and urge it to, order consolidation of all the affected dockets  
20 into the Complaint Proceeding.

21 **II. THE ISSUES OF LAW AND FACT OF THE PROCEEDINGS TO BE**  
22 **CONSOLIDATED ARE SUBSTANTIALLY THE SAME, AND THE RIGHTS**  
23 **OF THE PARTIES WILL NOT BE PREJUDICED BY CONSOLIDATION.**

24 A. As set forth in the Settlement Agreement, the factual and legal issues in the  
25 dockets to be consolidated are substantially the same.

26 The Commission or its Administrative Law Judge may "consolidate two or more  
27 proceedings in one hearing when it appears that the issues are substantially the same and  
28 that the rights of the parties will not be prejudiced by such proceedings." A.A.C. R14-3-

1 109(H). Consolidation of the requested dockets into the Complaint Proceeding is fully  
2 justified under this standard.

3 As set forth above, the basis of the Moving Parties' historic Settlement Agreement is  
4 a "laying down of arms" concerning their disputes over CCN expansion areas. Resolution  
5 of these affected dockets is in the public interest, and will allow the Moving Parties, the  
6 Commission staff, and the Commission to save considerable time and expense. Settlement  
7 of these disputes and establishment of planning area boundaries will provide future certainty  
8 as among these parties, lead to more effective utility and resource planning practices,  
9 enhance the utilities' working relationships with the relevant governmental entities,  
10 including the cities of Casa Grande and Maricopa, as well as Pinal County, and greatly  
11 benefit the public interest.

12 The CCN extension or transfer issues contained in each of the listed dockets are  
13 closely interrelated. All of the CCN expansion areas involved are within the areas depicted  
14 on the Settlement Map as part of the Settlement Agreement. Just as the CCN Proceedings  
15 were earlier consolidated, recognizing their common issues of fact and law, the Francisco  
16 Grande/CP Water Proceedings should be consolidated, now that they are incorporated into  
17 the Settlement Agreement.

18 Because many of the CCN issues are subsumed within the Complaint Proceeding, the  
19 Moving Parties agree that all of the cases referenced in this motion are appropriate for  
20 consolidation in this docket. Moreover, the Administrative Law Judge in this docket has  
21 been the Administrative Law Judge most directly and recently involved with, and is most  
22 familiar with, the current state of the record in these cases.

23 In summary, not only is this Complaint Proceeding the appropriate place for  
24 consolidation of the dockets, but consolidation of the cases is appropriate because of their  
25 common issues of law and fact, as well as the need to resolve them in a single, uniform and  
26 efficient proceeding.  
27  
28

1 B. Not only will the rights of all parties not be prejudiced by such proceedings,  
2 all parties join in the request and mutually urge the Commission to grant the  
3 consolidation.

4 Often, disputes over consolidation turn on the second of the two consolidation factors  
5 under the Rule: whether the rights of the parties will be prejudiced by consolidation. Here,  
6 not only is there no argument of any prejudice to the Moving Parties, they are jointly  
7 requesting this relief and acknowledge that, in fact, consolidation avoids the prejudice that  
8 would result if the underlying matters were not consolidated.

9 For the reasons explained above, *not* consolidating these matters would prejudice all  
10 parties. Consolidation in this docket guarantees the efficient and consistent handling of the  
11 CCN Proceedings and the Complaint Proceeding before a single Administrative Law Judge  
12 so the goals and objectives of the Settlement Agreement may be achieved.

13 **III. CONCLUSION.**

14 For the foregoing reasons, the Moving Parties urge the Commission to consolidate  
15 the Complaint Proceeding, the CCN Proceedings, and the Francisco Grande/CP Water  
16 Proceeding under this Complaint Proceeding for all future purposes. At the June 2, 2008  
17 procedural conference, Commission Staff did not express objection to this result. Since  
18 there is no opposition, accelerated consideration of the motion is requested so that the  
19 pending amended CCN applications may be filed in a single, consolidated docket. The  
20 Moving Parties are willing to submit this motion on this brief, or to attend an accelerated  
21 procedural conference to discuss the issues if that is what the Commission directs.  
22  
23  
24  
25  
26  
27  
28

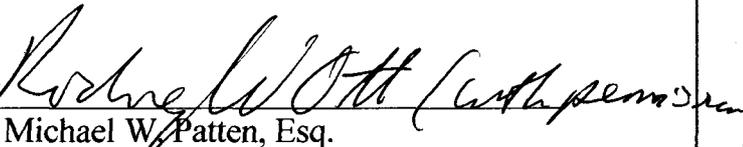
BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000

1 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of June, 2008.

2 BRYAN CAVE LLP

3  
4 By   
5 Steven A. Hirsch, #006360  
6 Rodney W. Ott, #016686  
7 Two N. Central Avenue, Suite 2200  
8 Phoenix, AZ 85004-4406  
9 Attorneys for Arizona Water Company

10 ROSHKA DEWULF & PATTEN, PLC

11  
12 By   
13 Michael W. Patten, Esq.  
14 Timothy J. Sabo, Esq.  
15 One Arizona Center  
16 400 E. Van Buren St., Suite 800  
17 Phoenix, AZ 85004  
18 Attorneys for Respondents

19  
20 **ORIGINAL and 13 COPIES** of the foregoing  
21 filed this 16<sup>th</sup> day of June, 2008 with:

22 Docket Control Division  
23 Arizona Corporation Commission  
24 1200 W. Washington  
25 Phoenix, AZ 85007  
26  
27 ...  
28 ...

1 **COPY** of the foregoing hand-delivered  
2 this 16<sup>th</sup> day of June, 2008 to:

3 Dwight D. Nodes  
4 Administrative Law Judge  
5 Hearing Division  
6 Arizona Corporation Commission  
7 1200 W. Washington  
8 Phoenix, AZ 85007

9 Maureen A. Scott  
10 Robin R. Mitchell  
11 Legal Division  
12 Arizona Corporation Commission  
13 1200 W. Washington  
14 Phoenix, AZ 85007

15 Ernest G. Johnson  
16 Director, Utilities Division  
17 Arizona Corporation Commission  
18 1200 W. Washington  
19 Phoenix, AZ 85007

20 Steve Olea  
21 Arizona Corporation Commission  
22 1200 W. Washington  
23 Phoenix, AZ 85007

24 Bob Gray  
25 Arizona Corporation Commission  
26 1200 W. Washington  
27 Phoenix, AZ 85007

28 Lyn A. Farmer, Esq.  
Chief Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

1 Yvette B. Kinsey, Esq.  
2 Administrative Law Judge  
3 Hearing Division  
4 Arizona Corporation Commission  
5 1200 W. Washington  
6 Phoenix, AZ 85007

7 Janice Alward, Esq.  
8 Chief Counsel, Legal Division  
9 Arizona Corporation Commission  
10 1200 W. Washington  
11 Phoenix, AZ 85007

12 **COPY** of the foregoing mailed this  
13 16<sup>th</sup> day of June, 2008, to:

14 Michael W. Patten, Esq.  
15 Roshka DeWulf & Patten, PLC  
16 One Arizona Center  
17 400 E. Van Buren St., Suite 800  
18 Phoenix, AZ 85004  
19 Attorneys for Applicants  
20 Santa Cruz Water Company, L.L.C.  
21 and Palo Verde Utilities Company, L.L.C.

22 Ken Franks, Esq.  
23 Rose Law Group, PC  
24 6613 N. Scottsdale Road, Ste. 200  
25 Scottsdale, AZ 85250  
26 Attorneys for Bevnorm Olive, LLC and  
27 Hampden & Chambers LLC

28 Jeffrey W. Crockett, Esq.  
Marcie Montgomery, Esq.  
Snell & Wilmer LLP  
One Arizona Center  
400 East Van Buren Street  
Phoenix, Arizona 85004

1 Kenneth H. Loman  
2 Manager  
3 KEJE Group, LLC  
4 7854 West Sahara  
5 Las Vegas, Nevada 89117

6 Craig Emmerson, Manager  
7 Anderson & Val Vista 6, LLC  
8 8501 North Scottsdale Road, Suite 260  
9 Scottsdale, Arizona 85253

10 Brad Clough  
11 Anderson & Barnes 580 LLP  
12 Anderson & Miller 694, LLP  
13 8501 North Scottsdale Road, Suite 260  
14 Scottsdale, Arizona 85253

15 Phillip J. Polich  
16 Gallup Financial, LLC  
17 8501 North Scottsdale, #125  
18 Scottsdale, Arizona 85253

19 Graham Symmonds  
20 Senior Vice President  
21 Global Water Management  
22 21410 N. 19<sup>th</sup> Avenue, Suite 201  
23 Phoenix, AZ 85027

24  
25  
26  
27  
28  
