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OPEN MEETING ITEM



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Executive Director

ARIZONA CORPORATION COMMISSION

20 JUL 11 P 3:14

AZ CORP COMMISSION
DOCKET CONTROL

DATE: JULY 11, 2008

DOCKET NO: W-02074A-07-0616

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

**BEARDSLEY WATER COMPANY
(CC&N EXTENSION)**

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:

JULY 21, 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:

JULY 29, 2008 and JULY 30, 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 Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

JUL 11 2008

DOCKETED BY

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF APPLICATION OF
BEARDSLEY WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02074A-07-0616

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: June 5, 2008
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Steven A. Hirsch, BRYAN CAVE, LLP, on behalf of Beardsley Water Company;
Ms. Danielle D. Janitch, OSBORN MALEDON, on behalf of the City of Surprise; and
Ms. Robin Mitchell, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On October 24, 2007, Beardsley Water Company ("Applicant" or "Beardsley") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide domestic water service to the Peak View Ranch Developments Units 4 and 5 in Maricopa County, Arizona.

On November 21, 2007, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter in this docket.

On January 29, 2008, Applicant filed its Response to Staff's Insufficiency Letter.

On February 28, 2008, Staff filed a second Insufficiency Letter in this docket.

On March 7, 2008, the City of Surprise ("City") filed a Motion to Intervene stating that the City owns City of Surprise Water Service Department and is the Maricopa Association of

1 Government ("MAG") 208 designated sewer provider for the proposed extension area.

2 On March 14, 2008, Applicant filed its Response to Staff's second Insufficiency Letter.

3 On April 14, 2008, Staff filed a Sufficiency Letter in this docket indicating Beardsley's
4 application had met the sufficiency requirements as outlined in the Arizona Administrative Code
5 ("A.A.C."). On that same date, Staff filed a Request for Information directed to the City.

6 On April 28, 2008, by Procedural Order, the evidentiary hearing was scheduled to begin June
7 5, 2008, filing deadlines were established and the City of Surprise was granted intervention in this
8 proceeding.

9 On May 9, 2008, Staff filed its Staff Report recommending approval of Beardsley's
10 application, subject to conditions.

11 On May 13, 2008, Beardsley filed its Affidavit of Publication in accordance with the law.

12 On May 14, 2008, Beardsley filed a copy of its Franchise Agreement issued by Maricopa
13 County for the proposed extension area.

14 On May 29, 2008, Beardsley filed an amendment to its application, requesting to delete a
15 portion of the requested CC&N extension area and providing modified costs related to the
16 construction needed in the proposed area.

17 On May 29, 2008, the City filed its response to Staff's data request.

18 On June 2, 2008, Beardsley filed an additional amendment to its application and a revised
19 legal description.

20 On June 5, 2008, a full public hearing was convened before a duly authorized Administrative
21 Law Judge of the Commission at its office in Phoenix, Arizona. Beardsley, the City of Surprise and
22 Staff appeared through counsel. At the conclusion of the hearing, the Staff was directed to file, as a
23 late-filed exhibit, a Supplemental Staff Report addressing issues raised in the Applicant's amended
24 application.

25 On June 6, 2008, by Procedural Order, Staff was directed to file its Supplemental Staff Report
26 on or before June 20, 2008, and the time clock was extended accordingly.

27 On June 20, 2008, Staff filed its Supplemental Staff Report, continuing to recommend
28 approval of Beardsley's application with conditions.

1 After receipt of the late-filed exhibit, the matter was taken under advisement pending
2 submission of a Recommended Opinion and Order to the Commission.

3 * * * * *

4 Having considered the entire record herein and being fully adviseid in the premises, the
5 Commission finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 1. Beardsley is an Arizona public service corporation in good standing with the
8 Commission's Corporation Division.

9 2. Beardsley is authorized to provide water utility service within portions of Maricopa
10 County, Arizona.

11 3. On September 10, 2007, Beardsley received a request for service, to provide water
12 service to some 400 acres in the Wittmann area of Maricopa County from Valley Realty Advisors,
13 LLC. (Exhibit A-3)

14 4. Valley Realty Advisors is the only property owner in the proposed extension area.

15 5. On October 24, 2007, Beardsley filed an application with the Commission to extend
16 its CC&N to include a property known as Peak View Ranch Unit 4 & 5, in Maricopa County,
17 Arizona.¹

18 6. On June 2, 2008, Beardsley filed an amendment to its application and revised the legal
19 description. The amended application deleted a 40 acre parcel (county assessor #503-30-017B) from
20 the requested extension area. Mr. Fred Wilkinson, President of First National Management, which
21 owns and operates Beardsley, testified that because the 40 acre parcel is located within a floodplain
22 the developer felt it was not economically feasible to develop it. (Tr. Pg. 16, lines 11-20)

23 7. On June 20, 2008, Staff filed an Amended Staff Report addressing the changes
24 presented in Beardsley's amended application. Staff's Amended Staff Report included the change in
25 the name of the development, the number of customers to be served, the total number of acres in the
26 extension area and the revised construction costs for the proposed water system.

27 _____
28 ¹ Subsequent to the filing of the application in this docket, the name of the development changed to Asante West Estates.
See Exhibit A-4.

1 8. The proposed amended extension area is contiguous to Beardsley's existing CC&N
2 area and will add approximately 352 acres to Beardsley's existing 5,792 acres of Certificated area.

3 9. The proposed amended extension area is located on the west side of Grand Avenue
4 and north of Deer Valley Road in Northwest Maricopa County, and is more fully described in Exhibit
5 A, attached hereto and incorporated herein.

6 10. Beardsley anticipates adding 262 new customers in the proposed extension area in the
7 first five years.

8 11. On June 20, 2008, Staff filed its Amended Staff Report continuing to recommending
9 approval of Beardsley's amended application subject to the following conditions:

10 1. That Beardsley file with Docket Control, as a compliance item in this docket,
11 a copy of the Approval to Construct ("ATC") issued by the Maricopa County
12 Environmental Services Department ("MCESD") for water plant facilities
needed to serve the requested extension area, within two years of the effective
date of a Decision in this matter.

13 2. That Beardsley file with Docket Control, as a compliance item in this docket,
14 a copy of the developer's Certificate of Assured Water Supply ("CAWS"), for
15 the requested extension area, within two years of the effective date of a
16 Decision in this matter.

17 3. That Beardsley charge its existing rates and charges on file with the
18 Commission in the requested extension area.

19 12. Staff further recommends that any Commission Decision granting Beardsley's request
20 to extend its CC&N be considered null and void, after due process, if Beardsley fails to meet the
21 conditions outlined above.

22 13. The City filed for intervention in this docket, stating the proposed extension area is
23 located within the City's planned annexation area and the City owns the City of Surprise Water and
24 Wastewater Service Department.²

25 14. On April 28, 2008, the City's intervention was granted by Procedural Order.

26 15. On June 2, 2008, the City docketed its response Staff's data requests, stating that the
27 proposed extension area is within the City's General Planning Area ("GPA") and that the City is the
28 designated MAG 208 wastewater service provider for the entire Surprise GPA. (City Data Response)

² According to counsel for the City, the City provides water service to approximately 14,000 residents and 45,000
wastewater residents within the City's general planning area.

1 16. The City's data response also stated that the City has scheduled workshops to discuss
2 making changes to its annexation policy and once the new annexation policy is developed, the City
3 stands ready to annex the affected areas as soon as the property owners are ready. (City Data
4 Response)

5 17. Counsel for the City appeared during the hearing and stated that the City intervened in
6 a cooperative effort to begin a dialogue with the developer and Beardsley in planning for future
7 growth in the proposed extension area. She further stated that the City would like to explore various
8 issues with Beardsley and the developer such as: planning sewer services, integration of water and
9 sewer services, fire flow protection, and the possibility of the parties entering into various partnership
10 agreements for mutual aid. (Tr. Pg. 7, lines 2-14)

11 18. Both the Applicant and the developer agreed at the hearing to meet with the City to
12 discuss planning for future growth.

13 19. Douglas E. Smith, the developer for the proposed extension area, described Asante
14 West Estates as a part of the larger master planned development known as Peak View Ranch. He
15 stated that Valley Realty Advisors, LLC., acquired the property through foreclosure about a year ago.
16 (Tr. Pg. 31, lines 1-8)

17 20. According to Mr. Smith, the Asante West Estates development will consist of
18 residential, one acre lots, with open spaces and trails. There are no planned water features, lakes or
19 golf courses proposed for the development. (Tr. Pg. 38, lines 7-14) He further stated that the
20 development will be designed with "meandering walkways" for hiking and will consist of natural
21 desert, xeriscape landscaping and that the landscape proposals have already been submitted to
22 ADWR for approval (Tr. Pg. 45, lines 4- 14)

23 21. Mr. Smith further testified that water usage in the development will be subject to
24 ADWR oversight and approval. (Tr. Pg. 45, lines 15-22)

25 22. Mr. Smith further testified that similar developments near the extension area consist of
26 single family homes, on one acre lots, ranging from approximately 2,500 square feet. (Tr. Pg. 42,
27 lines 22-25 and Pg. 43, lines 1-6)

28 ...

1 23. Mr. Smith testified that he has been in preliminary discussions with the Maricopa
2 County Planning and Zoning Department and that he expects to submit preliminary plats for approval
3 at the end of June or July 2008. He further testified that he expects to have preliminary plat
4 approvals within seven to nine months, final plat approval within 15 months and begin pre-
5 development construction and build out following the County approvals. (Tr. Pg. 33, lines 10-18 and
6 Pg. 34, lines 1-5) Mr. Smith also testified that he believes that the first residents in the extension area
7 could be phased in within 24 months from the date of the hearing. (Tr. Pg. 35, lines 10-13)

8 24. Mr. Smith further stated that because the property was acquired through foreclosure he
9 is motivated to get development moving forward. (Tr. Pg. 33, lines 19-25)

10 **Existing and Proposed Water Systems**

11 25. Beardsley currently operates five water systems, which include Public Water Systems
12 (“PWS”) 07-007, 07-509, 07-511, 07-517 and 07-528.

13 26. Beardsley plans to construct a new water system to serve the proposed extension area.
14 The stand alone system will consist of a 250 gallon per minute (“GPM”) production well; a 5,000
15 gallon pressure tank; booster station; water distribution system; and a 250,000 gallon storage facility.³

16 27. The new water system will be constructed in the southeastern part of the proposed
17 extension area.⁴ The new water system will be designed to meet Maricopa County Planning and
18 Zoning Department requirements for fire protection of 1,000 gallons a minute for two hours and will
19 include approximately 50 fire hydrants. (Tr. Pg. 24, lines 21-25)

20 28. Beardsley plans to eventually connect the new system with its PWS #07-528, which
21 currently serves the Park View Ranch Unit 1 development. The Park View Ranch Unit 1
22 development is fully built out and has 81 homes constructed on 93 total lots. (Data Response)

23 29. Beardsley expects to serve 120 customers during the first year of service and 262
24 customers by the end of the fifth year in the proposed extension area.⁵

25 30. Staff concluded that Beardsley’s proposed water system will have adequate well
26 production and storage capacities to serve the requested extension area, within a conventional five

27 ³ Staff’s Amended Engineering Report.

28 ⁴ Ibid.

⁵ Ibid.

1 year planning period, and that Beardsley can reasonably be expected to develop additional well
2 production and storage capacities as required in the future.

3 31. Beardsley anticipates that the costs of the new water system will be over \$1.3 million
4 and Beardsley will fund the proposed plant facilities by advances in aid of construction ("AIAC")
5 through the use of main extension agreements.⁶

6 32. Staff concluded that Beardsley's cost estimates for proposed plant facilities to be used
7 in the requested extension areas are reasonable. However, Staff made no "used and useful"
8 determination for the proposed plant facilities and no particular treatment should be inferred for rate
9 making or rate base purposes.

10 33. Per the Arizona Department of Environmental Quality ("ADEQ"), Beardsley is
11 delivering water that meets water quality standards as required by the A.A.C.⁷

12 34. Beardsley has not obtained the ATC for the proposed water plant facilities.⁸ Mr. Smith
13 testified that until he believed the application for the ATC will be filed in about six months and that
14 until the preliminary plats are approved by Maricopa County, the application cannot be filed. (Tr. Pg.
15 42, lines 1-1-8)

16 35. The proposed extension area is located within the Phoenix Active Management Area
17 ("AMA"). Per ADWR Compliance Status Report dated February 27, 2008, Beardsley is in
18 compliance with the Phoenix AMA reporting and conservation requirements.

19 36. The developer for the proposed extension area has not received its CAWS for the
20 proposed extension area from ADWR. Mr. Smith testified that the first step of the CAWS application
21 was submitted to ADWR in March 2008 and that he does not anticipate there will be any problems
22 with the application. (Tr. Pg. 42, lines 9-18, Tr. Pg. 39, lines 16-25)

23 37. On May 14, 2008, Beardsley docketed a copy of its Maricopa County Franchise
24 Agreement for the proposed extension area.⁹

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27 ⁶ Staff's Amended Engineering Report.

⁷ Ibid.

⁸ Ibid.

28 ⁹ Exhibit A-5.

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ORDER

IT IS THEREFORE ORDERED that the amended application of Beardsley Water Company for an extension of its Certificate of Convenience and Necessity to provide water services to Asante West Estates, as described in Exhibit A, attached hereto and incorporated herein by reference, is hereby approved, subject to the conditions and requirements in the following Ordering paragraphs.

IT IS FURTHER ORDERED that Beardsley Water Company shall file with Docket Control, as a compliance item in this docket, a copy of the Approval to Construct issued by the Maricopa County Environmental Services Department, for water plant facilities needed to serve the extension area described herein, within two years of the effective date of this Decision.

IT IS FURTHER ORDERED that Beardsley Water Company shall file with Docket Control as a compliance item in this docket, a copy of the developer's Certificate of Assured Water Supply, for the extension area described herein, within two years of the effective date of this Decision.

IT IS FURTHER ORDERED that if Beardsley Water Company fails to meet any of the above outlined timeframes, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

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

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1 IT IS FURTHER ORDERED that Beardsley Water Company shall charge its authorized rates
2 and charges on file with the Commission in the extension area described herein, until further Order of
3 the Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7

8 CHAIRMAN _____ COMMISSIONER

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10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____, 2008.

17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

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1 SERVICE LIST FOR: BEARDSLEY WATER COMPANY

2 DOCKET NO.: W-02074A-07-0616

3

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EXHIBIT A

LEGAL DESCRIPTION

A PART OF SECTIONS 21 AND 22 OF TOWNSHIP 5 NORTH, RANGE 3 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 21, EXCEPT THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 21;

AND THE NORTHEAST QUARTER OF SAID SECTION 21, EXCEPT THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 21;

AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 21;

AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 22.