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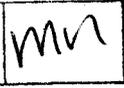
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AZ CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION
OF ICR WATER USERS ASSOCIATION,
INC., FOR DETERMINATION OF THE
CURRENT FAIR VALUE OF ITS UTILITY
PLANT AND PROPERTY AND FOR
INCREASES IN ITS RATES AND
CHARGES FOR UTILITY SERVICES

DOCKET NO. W-02824A-07-0388

**ICR'S RESPONSE TO MOTION
REQUESTING PROCEDURAL
CONFERENCE**

ICR Water Users Association, Inc. ("ICR") hereby files its Response to the Motion Requesting Procedural Conference filed by Intervenor Dane Taylor. Although ICR has no objection to a procedural conference, ICR believes that it is premature at this time for the reasons set forth herein. In addition, ICR would like to take this opportunity to update the parties and the Commission on the status of the case, to address certain issues raised by Mr. Taylor, and to propose that the parties meet and confer and jointly file a proposed procedural schedule for the Administrative Law Judge ("ALJ") to consider.

On April 16, 2008, a Procedural Conference was held in this case. At that time, counsel for ICR laid out an anticipated procedural schedule to address the outstanding issues in the case. However, due to the difficulty of attempting to develop mutually agreeable solutions to several complicated issues in the case, together with limitations on the availability of persons involved in the case arising from summer vacation schedules, progress has not been made as quickly as originally anticipated. Notwithstanding, ICR has been working diligently to address the concerns raised by Staff and the Intervenor, and provides this overview and summary to the parties, the ALJ and Commission as to

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1 the case status. In addition, ICR is compelled to address the serious allegations of
2 Intervenor and several customers of ICR that ICR and the Golf Course/Developer have
3 attempted to circumvent the Commission's authority and have violated Decision No.
4 64360, both of which are unfounded and untrue. To address these allegations, we will
5 provide a brief review of the relevant case history.

6 Case History.

7 On May 31, 2001, ICR filed an application ("Application") with the Arizona
8 Corporation Commission ("Commission") requesting approval for an extension of its
9 certificate of convenience and necessity ("CC&N") to include an additional 3,700 acres
10 to be developed as the master planned community of Talking Rock Ranch ("Talking
11 Rock Ranch"). In connection with the Application, ICR entered into a Main Extension
12 Agreement ("MXA") with the property owner and developer, Harvard Simon I, L.L.C
13 ("Harvard") dated March 5, 2001. Pursuant to the MXA, Harvard was required to
14 advance certain water facilities needed to serve Talking Rock Ranch at an estimated cost
15 of \$15,398,078. A copy of the MXA was filed with the Commission as an exhibit to the
16 Application.

17 When the Application was filed, the parties contemplated that Harvard would
18 supply water to ICR for Talking Rock Ranch from wells drilled and owned by Harvard
19 pursuant to the terms and conditions of a separate Water Purchase Agreement dated
20 April 27, 2001. That Harvard would retain ownership of the wells used to supply water
21 for Talking Rock Ranch was not novel to ICR. ICR already supplied water to its then-
22 existing service area from a well owned by a third party pursuant to a water purchase
23 agreement. Thus, Harvard agreed to transfer to ICR all water infrastructure necessary to
24 serve Talking Rock Ranch except for the wells.

25 In addition to retaining ownership of the wells, the MXA allowed Harvard to
26 supply its own water to the Talking Rock Ranch golf course for landscape irrigation, the
27 filling of lakes and other non-potable purposes. Specifically, Section 12(c) of the MXA
28 provided as follows:

1 Utility acknowledges that Developer intends to construct the Golf Course.
2 Utility further acknowledges that Developer intends to supply water to the
3 Golf Course for landscape irrigation, the filling of lakes and other non-
4 potable purposes and hereby provides its unconditional consent for
5 Developer to supply water to the Golf Course for such purposes. Utility
6 further agrees to provide water utility service to the Golf Course for
7 landscape irrigation, the filling of lakes and other non-potable purposes at
8 a future date but only upon receipt of Developer's written request at which
9 time such service would be provided consistent with the rules and
10 regulations of the Commission and Utility's Commission approved tariffs.
11 (*MXA* at 10, attached to the Application as Exhibit 1).

12 On August 2, 2001, Utilities Division Staff ("Staff") filed its report ("Staff
13 Report") recommending approval of the Application. With specific reference to the
14 wells, the Staff Report stated as follows:

15 Harvard also informed the ACC that "the parties have also entered into a
16 Water Purchase Agreement whereby Harvard will be providing water to
17 ICR at costs lower than the utility's current cost of water."

18 On August 1, 2001, Harvard provided Staff with a copy of the April 27,
19 2001, Water Purchase Agreement between ICR and Harvard. Harvard has
20 drilled a well in the proposed extension territory and has entered into an
21 agreement with ICR to sell water to ICR at \$0.15 per 1,000 gallons, for
22 resale to the ICR customers in Harvard's development. (*Staff Report* at 2).

23 The Commission approved the Application in Decision 64360 (Docket W-
24 02824A-01-0450) dated January 15, 2002. However, the Commission ordered that the
25 parties modify the terms of the *MXA* so that ICR would own the wells used to supply
26 water to Talking Rock Ranch. Specifically, Finding of Fact 34 required that "Harvard
27 should include in its advance, the wells which it has drilled for the purpose of providing
28 water to the extension area described in Exhibit A to ensure that the utility has adequate
water for its customers and to ensure that they are not subject to relying for their water
on a third party over which the Commission lacks jurisdiction." The Commission went
on to state in Finding of Fact 35 that "[w]e believe that this additional condition can be
met by amending the Agreement between the parties," and required that ICR "file a copy
of the relevant documents transferring ownership of the wells and related infrastructure

1 within 365 days of the effective date of this Decision." The Commission did not require
2 the modification of Section 12(c) which permitted Harvard to supply its own water to
3 the golf course for landscape irrigation, the filling of lakes and other non-potable
4 purposes.

5 After receiving a short extension of the deadline for compliance, ICR's former
6 legal counsel filed a Notice of Compliance to Decision 64360 on March 7, 2003. As
7 part of the Compliance filing, ICR submitted a First Amendment to the Main Extension
8 Agreement dated February 25, 2003, ("First Amendment") which provided for the
9 immediate transfer of Well No. 2 to ICR and the transfer of Well No. 3 to ICR upon the
10 800th hookup in the Talking Rock Development. Concurrently with the execution of the
11 First Amendment, ICR and Harvard entered into a Well Agreement dated February 25,
12 2003 ("Well Agreement") which set forth the terms and conditions governing the
13 delivery of water to the golf course, which entailed Harvard wheeling water through
14 ICR's system in exchange for paying ICR a wheeling fee and a percentage of the costs
15 associated with running the water system. The Well Agreement incorporated the
16 provisions of the Main Extension Agreement and the First Amendment. The Well
17 Agreement was filed with the Commission as part of the Notice of Compliance.

18 No objections were ever filed by Staff to the Notice of Compliance. Staff
19 approved the Main Extension Agreement and First Amendment on September 19, 2003.
20 Given that (i) ICR filed copies of the MXA, the First Amendment and the Well
21 Agreement in the docket as part of its Notice of Compliance; (ii) Staff never filed any
22 objection to the Notice of Compliance; and (iii) Staff approved the MXA and First
23 Amendment on September 19, 2003, ICR reasonably believed that it was in full
24 compliance with Decision 64360. In fact, the Commission's compliance database
25 showed ICR to be in full compliance at the time ICR filed its rate case in this docket.¹
26

27 ¹ It was not January 15, 2008, that Staff first issued a letter of non-compliance in Docket W-02824A-01-
28 0450, asserting that ICR had not timely complied with Decision 64360 because Harvard failed to transfer a
second well to ICR. We note that a second well was transferred from Harvard to ICR on May 21, 2008.

1 Since September 19, 2003, ICR has operated in good faith under the terms of the MXA,
2 the First Amendment and the Well Agreement.

3 Rate Case Filing.

4 On June 26, 2006, ICR filed a rate application (“Rate Application”) in this docket
5 and received a letter of sufficiency thirty days later. A hearing on the Rate Application
6 was scheduled for January 8, 2008. Staff filed Direct Testimony and Surrebuttal
7 Testimony on November 30, 2007, and December 21 2007, respectively. Based upon
8 these filings by Staff, ICR and Staff were in substantial agreement—but for rate
9 design—and were prepared for hearing on January 8, 2008.

10 On December 21, 2007, less than three weeks before the start of the hearing,
11 Dayne Taylor filed a Motion to Intervene. Mr. Taylor's motion was granted on January
12 8, 2008, the day that the hearing was to start. The hearing was continued until April 16,
13 2008, in order that the parties could file testimony related to issues raised by Mr. Taylor.
14 On April 3, 2008, Harvard was granted intervention.

15 Current Status.

16 In an effort to resolve issues raised by Staff and Mr. Taylor in the rate case, and
17 to avoid a potential legal battle with Harvard over the MXA, the First Amendment and
18 Well Agreement, ICR and Harvard agreed to discuss a special contract for water
19 supplied to the golf course which would modify and supersede the existing suite of
20 agreements which govern the relationship. If the two parties could agree on the terms of
21 a special contract, it would be submitted to the Commission for consideration and
22 approval as part of this rate case.

23 As an initial step toward a special contract, ICR and Harvard negotiated and
24 executed a non-binding letter of understanding (“LOU”) dated April 18, 2008. The
25 purpose of the LOU was to set forth and outline certain basic terms of a special contract,
26 which would be incorporated into a definitive document executed by the two parties. On
27 May 20, 2008, representatives of the ICR Board of Directors met with Mr. Taylor and a
28 group of residents in Prescott to discuss the LOU. Thereafter, on May 29, 2008,

1 representatives of ICR met with Mr. Taylor and Staff in Phoenix to discuss the LOU.
2 On June 3, 2008, the ICR Board of Directors held a Special Meeting to give customers a
3 presentation regarding the LOU and the Board's rationale for pursuing a special contract
4 with Harvard. The Board of Directors also provided Mr. Taylor an opportunity to make
5 his own presentation at that meeting regarding the LOU.

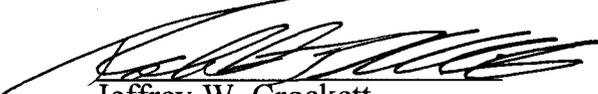
6 Throughout the summer, ICR and Harvard have had discussions in order to
7 determine whether the parties could reach agreement on a special contract. On June 9,
8 2008, Harvard presented a first draft of a special contract to ICR, which was deemed
9 insufficient in the form presented. On July 21, 2008, ICR sent a substantially modified
10 version of the draft special contract to Harvard for consideration. On August 4, 2008,
11 Harvard returned to ICR a modified version of the draft special contract. Negotiations
12 between ICR and Harvard have proceeded diligently, but at a somewhat slower pace due
13 to the summer schedules of the parties involved and the complexity of the issues.

14 The ICR Board of Directors deemed it imprudent to provide a draft of a special
15 contract to Staff and Mr. Taylor until the Board believed that an agreement could be
16 reached with Harvard on terms acceptable to ICR. It has always been—and remains—
17 ICR's intent to seek out substantive input from Staff and Mr. Taylor regarding the
18 special contract if and when ICR determined that such an agreement was achievable
19 with Harvard. ICR and Harvard have made genuine progress on a special contract, and
20 ICR anticipates that it will be ready to present a draft to Staff and Mr. Taylor for their
21 substantive review and comment within the next two weeks. At the time ICR provides a
22 draft of a special contract to Staff and Mr. Taylor, ICR will contact those parties to
23 schedule a meeting to discuss the special contract and a procedural schedule for moving
24 the case forward. The parties can then present to the ALJ a joint recommendation on a
25 procedural schedule to move the case forward.

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27
28

1 RESPECTFULLY submitted this 6th day of August, 2008.

2 SNELL & WILMER

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4 
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10 ORIGINAL AND THIRTEEN (13) copies
11 filed this 6th day of August, 2008, with:

12 Docket Control
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16 COPIES of the foregoing hand-delivered
17 this 6th day of August, 2008, to:

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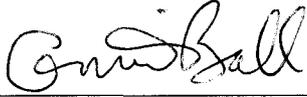
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