



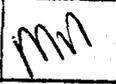
1 **8BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

Arizona Corporation Commission
DOCKETED

AUG - 6 2008

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

DOCKETED BY 

8 IN THE MATTER OF THE APPLICATION OF
9 FARMERS WATER CO. FOR AN EXTENSION
10 OF ITS EXISTING CERTIFICATE OF
11 CONVENIENCE AND NECESSITY FOR WATER
12 SERVICE.

DOCKET NO. W-01654A-07-0603

DECISION NO. 70462

OPINION AND ORDER

10 DATE OF HEARING:

May 30, 2008

11 PLACE OF HEARING:

Tucson, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

13 APPEARANCES:

Warren E. Culbertson, Chief Executive
Officer, Farmers Water Co., on behalf of
Farmers Water Co.; and

Mr. Kevin Torrey, Staff Attorney, Legal
Division, on behalf of the Utilities
Division of the Arizona Corporation
Commission.

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On October 18, 2007, Farmers Water Co. ("FWC" or "Company") filed an
23 application to extend its Certificate of Convenience and Necessity ("CC&N" or "Certificate") to
24 extend its provision of water service to an unincorporated portion of Pima County, Arizona
25 ("Application").

26 2. On November 16, 2007, the Commission's Utilities Division Staff ("Staff") notified
27 the Company that its Application was not sufficient pursuant to the Arizona Administrative Code
28

1 (“Insufficiency Letter”).

2 3. On January 28, 2008, FWC responded to Staff’s Insufficiency Letter.

3 4. On February 26, 2008, Staff notified the Company that its Application was sufficient.

4 5. By Procedural Order dated March 18, 2008, the matter was set for hearing at the
5 Commission’s offices in Tucson, Arizona, and procedural guidelines and deadlines were established.

6 6. On April 14, 2008, Staff filed its Staff Report recommending approval of the CC&N
7 extension contingent upon the Company’s compliance with certain conditions.

8 7. On May 9, 2008, a hearing was convened for the purpose of hearing public comment
9 in this matter. No members of the public appeared at the hearing to offer comment.

10 8. On May 30, 2008, the hearing in this matter convened before a duly authorized
11 Administrative Law Judge.

12 9. On June 4, 2008, FWC filed a late-filed exhibit containing an affidavit certifying that
13 the Company published notice of the hearing on April 16, 2008, in the *Green Valley News and Sun*.
14 The Company also filed a Corporate Resolution authorizing Warren E. Culbertson, Chief Executive
15 Officer of FWC, to represent the Company at the hearing.

16 10. On June 10, 2008, Staff filed a Notice of Late-Filed Exhibit in which Staff noted that
17 FWC filed a Backflow Prevention Tariff for all four of its systems on April 29, 2008. Staff reviewed
18 the tariff and on June 2, 2008, certified that the Backflow Prevention Tariff became effective by
19 operation of law on May 29, 2008.

20 11. The Commission approved FWC’s original CC&N in Decision No. 32055 (January
21 28, 1960).

22 12. FWC is an Arizona corporation in good standing with the Commission’s Corporations
23 Division. According to the Staff Report, the Company’s 2006 Annual Report states that FWC
24 provides water service to approximately 1,955 customers in unincorporated portions of Pima County.
25 However, the Company testified that it now serves between 2200 and 2300 service connections. (Tr.
26 at 20.) FWC’s current certificated area consists of 19.5 square miles of land served by four water
27 systems known as the Continental, Sahuarita, Santa Rita Springs and Sahuarita Highlands systems.

28 13. FWC received a request for water service in the proposed extension areas from Canoa

1 Preserve Partners II, L.L.C. by correspondence dated December 3, 2007, for approximately 650
2 acres, and from Santa Rita Ranch, by correspondence dated August 30, 2007, for approximately
3 seven acres. The legal description of the proposed extension areas is attached hereto as Exhibit 'A'.
4 The area sought to be included is approximately one square mile and is contiguous to the Company's
5 current certificated area.

6 14. The current application is for water service through the Company's Continental
7 system. According to the Company, sewer service in the area will be through use of septic systems.

8 15. FWC's Continental water system consists of three wells producing a combined total of
9 1,335 gallons per minute ("GPM"), four storage tanks with a total storage capacity of 1,583,000
10 gallons, and a distribution system. According to the Company's late-filed exhibit, the Continental
11 system currently serves 823 connections.

12 16. FWC expects to serve up to 50 residential units in the extension area at the end of five
13 years. However, Canoa Preserve II will have approximately 153 residential lots at full build out. The
14 Santa Rita Ranch parcel will not be subdivided and will be served by one six-inch connection. The
15 Company expects that the land owners will be using the water to support livestock.

16 17. According to the Staff Report, based on the existing well production and storage
17 capabilities, FWC's Continental system can serve approximately 1,900 service connections.

18 18. The Company's representative testified that the owners of the parcels will not be using
19 the water for high-use water features.

20 19. FWC intends to finance the construction of the utility facilities needed to serve the
21 extension area by advances in aid of construction pursuant to the terms of any main extension
22 agreements between the Company and the developers. The estimated starting date for the
23 construction of the development is early 2009.

24 20. The costs of the proposed facilities to serve the extension area are estimated at
25 \$1,387,772 for the Canoa Preserve II and at \$15,000 for Santa Rita Ranch. Staff reviewed the costs
26 estimated by the Company for facilities to serve the extension area and found them to be reasonable.
27 However, Staff concluded that no "used and useful" determination of the proposed plant facilities has
28 been made and, as such, no particular treatment should be inferred for rate-making or rate base

1 purposes.

2 21. FWC has not submitted its application for an Arizona Department of Environmental
3 Quality ("ADEQ") Certificate of Approval to Construct ("ATC") for the facilities needed to serve the
4 requested extension area.

5 22. Staff recommends that FWC be required to file with Docket Control, as a compliance
6 item in this docket, a copy of the ADEQ ATC for the facilities needed to serve the Canoa Preserve II
7 development within two years of the effective date of this Decision.

8 23. FWC's existing system is regulated by ADEQ under ADEQ Public Water System I.D.
9 #10-049. The Company's system has no deficiencies and ADEQ has determined that this system is
10 currently delivering water that meets water quality standards required by Arizona Administrative
11 Code, Title 18, Chapter 4.

12 24. FWC is located within the Tucson Active Management Area and is in compliance with
13 its reporting and conservation requirements with the Arizona Department of Water Resources
14 ("ADWR").

15 25. The developer has applied to ADWR for its Certificate of Assured Water Supply, but
16 has not yet received it. Staff recommends that FWC be required to file with Docket Control, as a
17 compliance item in this docket, a copy of the developer's Certificate of Assured Water Supply for the
18 Canoa Preserve II development within two years of the effective date of the Decision.

19 26. According to the Utilities Division Compliance Section, FWC has no outstanding
20 Commission compliance issues.

21 27. The Company has approved Curtailment Tariffs for all four of its water systems.

22 28. At the time Staff filed its Staff Report, FWC did not have an approved Backflow
23 Prevention Tariff ("BPT") and Staff recommended that the Company should file a BPT as a
24 compliance item in this matter. However, on June 10, 2008, Staff filed a late-filed exhibit
25 demonstrating that the Company had filed a BPT and on May 29, 2008, the tariff became effective by
26 operation of law. As such, Staff's recommendation has been satisfied.

27 29. Every applicant for a CC&N and/or CC&N Extension is required to submit to the
28 Commission evidence showing that the applicant has received the required consent, franchise or

1 permit from the proper authority. If the applicant operates in an unincorporated area, the company
2 has to obtain a franchise from the county. The proposed extension area is included within the
3 boundaries of FWC's present Pima County license agreement for water.

4 30. Staff recommends that FWC be required to charge its authorized rates and charges in
5 the extension area.

6 31. Staff further recommends that the CC&N granted in this case be null and void, after
7 due process, if FWC fails to comply with Staff's recommendations within the time frames specified.

8 32. Staff's recommendations are reasonable and should be adopted.

9 33. Because an allowance for the property tax expense is included in FWC's rates and will
10 be collected from its customers, the Commission seeks assurances from FWC that any taxes collected
11 from ratepayers have been remitted to the appropriate taxing authority. It has come to the
12 Commission's attention that a number of water companies have been unwilling or unable to fulfill
13 their obligation to pay the taxes that were collected from its ratepayers, some for as many as twenty
14 years. It is reasonable, therefore, that as a preventive measure FWC shall annually file, as part of its
15 annual report, an affidavit with the Utilities Division attesting that the company is current in paying
16 its property taxes in Arizona.

17 **CONCLUSIONS OF LAW**

18 1. FWC is a public service corporation within the meaning of Article XV of the Arizona
19 Constitution and A.R.S. §§ 40-281 and 40-282.

20 2. The Commission has jurisdiction over FWC and the subject matter of the Application.

21 3. Notice of the Application was provided in accordance with law.

22 4. There is a public need and necessity for water service in the proposed revised
23 extension area as set forth in Exhibit 'A.'

24 5. Subject to the conditions set forth herein, FWC is a fit and proper entity to receive a
25 CC&N to provide water service in the proposed extension area.

26 6. Staff's recommendations as set forth herein are reasonable and should be adopted.

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ORDER

1
2 IT IS THEREFORE ORDERED that the Application of Farmers Water Co. for an extension
3 of its Certificate of Convenience and Necessity to provide water service in Pima County for that
4 property described in Exhibit 'A' attached hereto is approved, subject to the conditions and
5 requirements in the following ordering paragraphs.

6 IT IS FURTHER ORDERED that Farmers Water Co. shall file with Docket Control, as a
7 compliance item in this docket, a copy of the ADEQ Approval to Construct the facilities needed to
8 serve the Canoa Preserve II development within two years of the effective date of this Decision.

9 IT IS FURTHER ORDERED that Farmers Water Co. shall file with Docket Control, as a
10 compliance item in this docket, a copy of the developer's Certificate of Assured Water Supply for the
11 Canoa Preserve II development within two years of the effective date of this Decision.

12 IT IS FURTHER ORDERED that this Decision granting the requested CC&N extension be
13 considered null and void, after due process, should Farmers Water Co. fail to meet the above
14 conditions within the times specified.

15 IT IS FURTHER ORDERED that Farmers Water Co. charge its authorized rates and charges
16 in the extension area.

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

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6

7 *Lowell S. Mason*
8 CHAIRMAN COMMISSIONER

9 *Jeffrey M. Hatch-Neller* *R. M. [unclear]* *Gary A. Stein*
10 COMMISSIONER COMMISSIONER COMMISSIONER

11
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 6th day of Aug., 2008.

17 *Brian C. McNeil*
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

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1 SERVICE LIST FOR: FARMERS WATER COMPANY

2 DOCKET NO.: W-01654A-07-0603

3 Warren E. Culbertson
4 FARMERS WATER COMPANY
5 P.O. Box 7
6 Sahuarita, Arizona 85629

7 Janice Alward, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007
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EXHIBIT "A"

- FARMERS WATER COMPANY -
DOCKET NO. W-01654A-07-0603
SECOND AMENDED LEGAL DESCRIPTION

CANOA PRESERVE II

A PORTION OF SECTIONS 35 AND 36, TOWNSHIP 18 SOUTH, RANGE 13 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 36;

THENCE S 02° 16' 04" E ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 2457.63 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 36;

THENCE S 00° 06' 37" W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 2084.55 FEET TO A POINT LYING 552.36 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 36;

THENCE S 89° 00' 13" W A DISTANCE OF 552.35 FEET;

THENCE S 00° 06' 37" W A DISTANCE OF 552.35 FEET TO A POINT LYING ON THE SOUTH LINE OF SAID SOUTHEAST QUARTER, SAID POINT LYING S 89° 00' 13" W A DISTANCE OF 552.35 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 36;

THENCE S 89° 00' 13" W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 2108.21 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 36;

THENCE N 89° 57' 08" W ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36, A DISTANCE OF 2636.41 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 36, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID SECTION 35;

THENCE S 89° 56' 05" W ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 35, A DISTANCE OF 1180.47 FEET TO THE CLOSING CORNER OF SAID SECTION 35 AND SECTION 2, TOWNSHIP 19 SOUTH, RANGE 13 EAST, SAID CLOSING CORNER ALSO LYING ON THE EAST LINE OF THE NORTH HALF OF THE SAN IGNACIO DE LA CANOA PRIVATE LAND GRANT AS MADE BY THE UNITED STATES SURVEYOR GENERAL ON MARCH 10, 1901;

THENCE N 23° 02' 50" E ALONG THE EAST LINE OF SAID LA CANOA LAND GRANT, A DISTANCE OF 2500.57 FEET TO A POINT BEING THE "20 ½ MILE MONUMENT";

THENCE N 22° 55' 22" E ALONG SAID EAST LINE, A DISTANCE OF 510.11 FEET TO THE CLOSING CORNER OF SECTIONS 35 AND 36, TOWNSHIP 18 SOUTH, RANGE 13 EAST;

THENCE N 23° 02' 04" E ALONG SAID EAST LINE, A DISTANCE OF 2216.55 FEET TO A POINT BEING THE "21 MILE MONUMENT";

THENCE N 22° 58' 35" E, A DISTANCE OF 517.92 FEET TO THE CLOSING CORNER OF SECTIONS 25 AND 36, TOWNSHIP 18 SOUTH, RANGE 13 EAST;

THENCE S 89° 49' 59" E ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36, A DISTANCE OF 1560.73 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 36;

THENCE S 86° 47' 21" E ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 2580.18 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 27,619,839 SQUARE FEET OR 634.06 ACRES, MORE OR LESS.

ALONG WITH A 7 ACRE PARCEL OF LAND FOR SANTA RITA RANCH LLC DESCRIBED AS FOLLOWS:

THE SOUTH 552.35 FEET OF THE EAST 552.35 FEET OF SECTION 36, TOWNSHIP 18 SOUTH, RANGE 13 EAST.

EXHIBIT "A"

DECISION NO. 70462