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1 FENNEMORE CRAIG
 2 Jay L. Shapiro (No. 014650)
 3 Patrick J. Black (No. 017141)
 4 3003 N. Central Ave.
 5 Suite 2600
 6 Phoenix, Arizona 85012
 7 Attorneys for Talking Rock Golf Club, LLC

7000 NOV 14 P 2:30
 ARIZONA CORPORATION COMMISSION
 DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE APPLICATION
 8 OF ICR WATER USERS ASSOCIATION, AN
 9 ARIZONA CORPORATION, FOR A
 10 DETERMINATION OF THE CURRENT
 11 FAIR VALUE OF ITS UTILITY PLANT AND
 12 PROPERTY AND FOR INCREASES IN ITS
 13 RATES AND CHARGES FOR UTILITY
 14 SERVICE

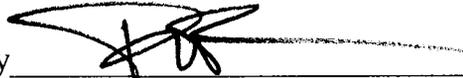
DOCKET NO: W-02824A-07-0388

NOTICE OF FILING

12 Talking Rock Golf Club, LLC ("TRG") hereby provides notice of filing the
 13 Supplemental Testimony of Craig L. Krumwiede to Support Request for Approval of
 14 Water Service Agreement, signed and filed with Docket Control on September 12, 2008.

DATED this 14th day of November, 2008.

FENNEMORE CRAIG, P.C.

18 By 
 19 Jay L. Shapiro
 20 Patrick J. Black
 21 3003 North Central Avenue, Suite 2600
 22 Phoenix, Arizona 85012
 23 Attorneys for Talking Rock Golf Club, LLC

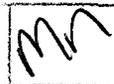
22 ORIGINAL and thirteen (13) copies of the
 23 foregoing were delivered
 24 this 14th day of November, 2008 with:

24 Docket Control
 25 Arizona Corporation Commission
 26 1200 W. Washington St.
 Phoenix, AZ 85007

Arizona Corporation Commission

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COPY of the foregoing hand delivered
this 14th day of November, 2008 to:

Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Kevin Torrey
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

COPY of the foregoing mailed and/or emailed
this 14th day of November, 2008 to:

Robert M. Busch
ICR Water Users Association, Inc.
P.O. Box 5669
Chino Valley, AZ 86323

Jeff Crockett
Robert J. Metli
Marcie A. Shuman
Snell & Wilmer, LLP
One Arizona Center
400 East Van Buren Street
Phoenix, AZ 85004-2202

Dayne Taylor
13868 North Grey Bears Trail
Prescott, AZ 86305

By: *Maria San Jose*

2133117.1

1 FENNEMORE CRAIG
Jay L. Shapiro (No. 014650)
2 Patrick J. Black (No. 017141)
3003 N. Central Ave.
3 Suite 2600
Phoenix, Arizona 85012
4 Attorneys for Talking Rock Golf Course, LLC

5 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 IN THE MATTER OF THE APPLICATION
8 OF ICR WATER USERS ASSOCIATION, AN
9 ARIZONA CORPORATION, FOR A
10 DETERMINATION OF THE CURRENT
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SERVICE

DOCKET NO: W-02824A-07-0388

12
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14
15 **SUPPLEMENTAL TESTIMONY**
16 **OF**
17 **CRAIG L. KRUMWIEDE**
18 **TO SUPPORT REQUEST FOR APPROVAL OF**
19 **WATER SERVICE AGREEMENT**
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1 **I. INTRODUCTION, PURPOSE AND SUMMARY OF TESTIMONY.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. Craig L. Krumwiede, 17700 North Pacesetter Way, Scottsdale, AZ 85255.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Harvard Investments, Inc. as President. In that capacity, I am
6 responsible for and oversee all planning, acquisition, development and sale of
7 Harvard's (and its affiliates' and subsidiaries') real estate investments, including
8 the Talking Rock master planned community in Yavapai County, Arizona.
9 Harvard Investments, Inc. is the manager of Harvard Talking Rock, LLC, which is
10 the operating member of Harvard Simon I, LLC, which is the sole member and
11 manager of Talking Rock Land LLC and Talking Rock Golf Club, LLC.

12 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS**
13 **PROCEEDING?**

14 A. Yes. My testimony was filed on April 14, 2008 on behalf of intervener Talking
15 Rock Golf Club, LLC ("TRGC"). My earlier testimony presented an overview of
16 the Talking Rock master-planned community and discussed the existing
17 agreements between ICR Water Users Association ("ICRWUA") and TRGC (and
18 its affiliates). I also provided a response to the positions of Staff and Mr. Taylor as
19 expressed in their prefiled testimony to date, and made recommendations to the
20 Arizona Corporation Commission ("Commission") in this proceeding on behalf of
21 TRGC.

22 **Q. WHY ARE YOU FILING SUPPLEMENTAL TESTIMONY AT THIS**
23 **TIME?**

24 A. A lot has happened since my testimony was filed on April 14, 2008, and those
25 events impact TRGC's positions in this proceeding and our recommendations to
26 the Commission. Most notably, a Water Service Agreement ("WSA") between

1 ICRWUA and TRGC was signed on September 12, 2008 and a copy filed with the
2 Commission on the same date, along with ICRWUA's request for approval. TRGC
3 joins in ICRWUA's request for approval of the WSA.

4 **Q. PLEASE SUMMARIZE WHY YOU JOIN IN AND SUPPORT ICRWUA'S**
5 **REQUEST THAT THE COMMISSION APPROVE THE WSA.**

6 A. It is in our interest as both developer and golf course owner/operator to have a
7 financially healthy water utility. To that end, the WSA addresses many of the
8 concerns that have been raised in this rate case and strikes a balance between the
9 needs and interests of the utility, the developer, and the golf course such that
10 ICRWUA can be financially sound without having to seek a substantial increase in
11 residential rates. At the same time, TRGC can move forward with certainty as to
12 its cost for irrigation water for the golf course that is a central part of the Talking
13 Rock Community. I will discuss what we believe are specific benefits of the WSA
14 in more detail in this testimony.

15 **II. THE WATER SERVICE AGREEMENT.**

16 **Q. PLEASE DESCRIBE THE EVENTS LEADING UP TO THE EXECUTION**
17 **OF THE WSA.**

18 A. TRGC entered into a Letter of Understanding ("LOU") with ICRWUA on
19 April 18, 2008. The LOU set forth a framework for a Special Contract to govern
20 the parties' prospective relationship by largely superseding prior agreements and
21 addressing issues that have been raised in this rate case. The LOU was non-
22 binding. Nevertheless, under the LOU we agreed to immediately transfer a second
23 well, Well No. 2, to ICRWUA, despite the existing Commission approved Main
24 Extension Agreement ("MXA") that called for that transfer to take place when
25 ICRWUA extended service to the 800th lot in Talking Rock. The transfer of Well
26 No. 2 was recorded on May 27, 2008.

1 After the LOU was executed, we began efforts to negotiate a special
2 contract. Given ICRWUA's deteriorating financial situation, we would have
3 preferred to complete the agreement sooner than late August; however, given the
4 importance of this agreement to all parties, we wanted to get it right. This led to
5 lengthy negotiations between the parties where the concerns and issues that had
6 been raised were discussed and all of that took a great deal of time and effort.

7 **Q. WERE MR. TAYLOR AND STAFF INVOLVED IN THE**
8 **NEGOTIATIONS?**

9 A. Not directly, but their input was sought early on in the process. I personally
10 participated in a meeting with several members of the Commission Staff and
11 Mr. Taylor on May 29, 2008. I also attended ICRWUA's presentation to its
12 customers on June 3, 2008, during which ICRWUA presented the LOU and its
13 reasons for pursuing a special contract with TRGC to its customers, including
14 Mr. Taylor. Many customers provided comments, and I believe that input
15 influenced the negotiations. The final draft agreement was provided to Staff and
16 Mr. Taylor on August 29, 2008, two weeks before it was executed.

17 **Q. THE WSA IS BETWEEN ICRWUA AND TRGC, AND TWO OTHER**
18 **PARTIES, TALKING ROCK LAND AND HARVARD SIMON I. WHO**
19 **ARE THESE OTHER ENTITIES AND WHY ARE THEY ALSO PARTIES**
20 **TO THE AGREEMENT?**

21 A. These two other entities are affiliates of TRGC and are involved in the
22 development of Talking Rock. In order to effectuate the intent of the WSA,
23 including superseding prior agreements and transferring assets, these other entities
24 needed to join in the WSA. I will refer to the three Talking Rock parties to the
25 WSA collectively as the "TR Parties" in this testimony.

26

1 Q. WOULD YOU PLEASE SUMMARIZE WHAT YOU VIEW TO BE THE
2 CRITICAL TERMS OF THE WSA?

3 A. Yes, the critical provisions are summarized as follows:

- 4 • Well Transfers, Well Improvements and Warranties-under the WSA, the
5 remaining Talking Rock well, Well No. 1, will be transferred to ICRWUA
6 following Commission approval. Additionally, we have agreed to replace
7 the pump on Well No. 2, and to warranty Well Nos. 1 and 2.
- 8 • Water Service for Landscape Irrigation, Lake Fill, Construction and Other
9 Non-Potable Purposes; Residential Priority-under the WSA, TRGC and its
10 affiliates will retain the right to a maximum of 525 acre-feet of water
11 annually for these non-potable purposes. However, in times of water
12 shortage, ICRWUA will have the right to curtail deliveries of water under
13 the WSA to ensure sufficient water is available for residential deliveries.
14 WSA at §§ 4, 5.
- 15 • Payment for Water Service-the WSA establishes two charges for water
16 service—a System Reservation charge that will be paid annually for 10
17 years irrespective of the amount of water delivered; and a Commodity
18 Charge, a per gallon charge based on cost of service methodology and
19 designed to allow ICRWUA to recover the cost of providing water service
20 under the WSA, plus a reserve margin. The WSA further contains
21 mechanisms to adjust the Commodity Charge on a going-forward basis.
22 WSA at § 6.
- 23 • Financial Assistance-under the WSA, TRGC has agreed to provide
24 ICRWUA \$80,000 to help defray the costs incurred to reach an agreement
25 and seek Commission approval. \$30,000 of this amount has already been
26 paid, and the remaining \$50,000 will be paid upon receipt of Commission
approval of the WSA. WSA at § 7.
- Prior Agreements-with limited exceptions dealing primarily with the
transfer of water utility infrastructure the TR Parties finance and construct,
the WSA will supersede the parties' existing agreements. In addition,
ICRWUA now has the right to characterize substantial amounts of
infrastructure transferred by the TR Parties as CIAC rather than AIAC if it
believes such characterization is more favorable to its ratepayers. WSA at §
9.
- Conservation-under the WSA, we have agreed to continue to make
reasonable efforts to promote conservation and limit the use of groundwater
for non-potable purposes within Talking Rock. Notably, TRGC has already
reduced its water use over the past year by approximately 15%.

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I would note, however, that the WSA remains a proposed agreement that will not become effective until it is approved by the Commission. I will discuss this approval further in the last section of this testimony.

III. CONCERNS ADDRESSED BY THE WATER SERVICE AGREEMENT.

Q. YOU TESTIFIED ABOVE THAT THE WSA ADDRESSES MANY OF THE CONCERNS THAT HAVE BEEN EXPRESSED IN THIS RATE CASE. WHAT DO YOU MEAN?

A. There are a number of concerns that have been raised in the rate proceeding by Mr. Taylor, ICRWUA’s customers, Commission Staff, Judge Stern and the Commissioners. We do not agree with all of the concerns that have been raised. Nevertheless, in negotiating the LOU first and then the WSA, the goal was to enter into an agreement that would address these concerns to the greatest extent possible.

Q. CAN YOU PROVIDE EXAMPLES OF THE CONCERNS THAT THE WSA INTENDS TO ADDRESS?

A. Yes. Seemingly, the two primary concerns continue to be compliance with Decision No. 64360 (January 15, 2002) and whether TRGC is supposed to be a customer of ICRWUA subject to tariffed rates.

Regarding the first, Staff concluded that ICRWUA was out of compliance with Decision No. 64360 because only one well had been transferred by the TR Parties. As I explained in my testimony, we do not agree with this claim. Testimony of Craig L. Krumwiede (“Krumwiede Dt.”) at 13-15. Nonetheless, as explained above, upon execution of the LOU we agreed to transfer Well No. 2 to ICRWUA. That well transfer was completed a short time later on May 27, 2008. See Additional Supplemental Testimony of Robert M. Busch (“Busch St.”) at 6.

1 Q. IF THE LOU WAS NON-BINDING, WHY DID YOU AGREE TO
2 TRANSFER A SECOND WELL BEFORE ENTERING INTO A BINDING
3 AGREEMENT WITH ICRWUA?

4 A. Because we wanted to demonstrate our desire to work with ICRWUA in good faith
5 to address concerns that have been voiced since this proceeding was initiated,
6 including the claim that ICRWUA was not in compliance with Decision No.
7 64360. Again, while we do not agree with this position, by transferring a second
8 well, we believe we have eliminated this issue.

9 Q. WHAT ABOUT MR. TAYLOR'S CLAIM THAT ICRWUA AND THE TR
10 PARTIES CIRCUMVENTED DECISION NO. 64360 BY NOT
11 TRANSFERRING A SECOND WELL EARLIER?

12 A. I don't find this allegation credible. Candidly, Mr. Taylor appears to believe that
13 we tried to mislead the Commission. *See* Taylor Response to TRGC Data Request
14 1.7, copy attached hereto as **Krumwiede Supplemental Testimony Exhibit 1**
15 (First Amendment submitted on a "false basis"). The First Amendment to the
16 Main Extension Agreement and the Well Agreement were submitted by ICRWUA
17 to the Commission for approval. Each of these agreements explicitly called for
18 the transfer of two wells: the first, Well No. 3, was effective immediately; and the
19 second, Well No. 2, was to be effective when ICRWUA established service to the
20 800th lot in Talking Rock. If ICRWUA and the TR Parties were engaged in a
21 scheme to circumvent the Commission's decision, we certainly wouldn't have
22 submitted the agreements to the same body whose orders we were allegedly trying
23 to thwart.

24 It also bears remembering that Staff approved the First Amendment along
25 with the MXA in September 2003, and ICRWUA was only found to be out of
26 compliance several years later when Staff changed its position earlier this year after

1 Mr. Taylor complained in this rate case. Busch St. at 5. We had no idea there was
2 an issue, but that does not mean that we attempted to pull one over on the
3 Commission.

4 **Q. HASN'T MR. TAYLOR ALSO CLAIMED THAT TRGC WAS REQUIRED**
5 **TO TRANSFER THE WELL KNOWN AS WELL NO. 1 TO ICRWUA?**

6 A. Yes, although we also do not agree with this claim. According to Mr. Taylor, at
7 the time Decision No. 64360 was issued, only one well had been drilled in the
8 Talking Rock well field. See Taylor Response to TRGC Data Request 1.17, copy
9 attached hereto as **Krumwiede Supplemental Testimony Exhibit 1**. Since the
10 Commission ordered that two wells be transferred at a time only one well existed, I
11 do not see how they could have specified which wells were to be transferred. In
12 fact, because the Commission was aware that it was always intended that additional
13 wells would be drilled for Talking Rock (Decision No. 64360 at 4), I think it makes
14 sense to conclude that the Commission was simply directing that two Talking Rock
15 wells be transferred so that ICRWUA would have ownership of the wells it would
16 use to serve the residents in Talking Rock.

17 Additionally, I believe two other points need to be made. First, for several
18 years now, ICRWUA has had operational control over all three of the Talking
19 Rock wells, including the two wells owned by the TR Parties. Second, if the
20 Commission approves the WSA as requested, Well No. 1 will also be transferred to
21 ICRWUA. WSA at § 2. This means that, in addition to operational control,
22 ICRWUA would also have ownership of all three of the wells, rendering
23 Mr. Taylor's complaint moot.

24 **Q. WOULD YOU PLEASE EXPLAIN HOW THE WSA PROPOSES TO**
25 **ADDRESS THE ISSUE OF TRGC BEING A "CUSTOMER"?**

26 A. Throughout this proceeding, Mr. Taylor has steadfastly maintained that Decision

1 No. 64360 made TRGC a customer of ICRWUA subject to the Commission-
2 approved tariffed rates. I addressed why I do not believe this claim is accurate in
3 my direct testimony, including noting the Commission's recognition that we would
4 only become a tariffed customer upon our written request to ICRWUA.
5 Krumwiede Dt. at 15-16 *citing* Decision No. 64360 at 3. *See also id.* at 6; Busch
6 St. at 3-4. Despite his claims in this proceeding, Mr. Taylor has now admitted this
7 to be the case. *See* Taylor Responses to TRGC Data Requests 2.11(a) and 2.11(b),
8 copies attached hereto as **Krumwiede Supplemental Testimony Exhibit 1**.

9 From the time we began developing Talking Rock, it has been our intent to
10 use our own water sources to irrigate the golf course and provide for other non-
11 potable uses like construction water. When we built the transmission line that
12 would deliver water from the Talking Rock well field to the golf course and to the
13 subdivision for construction water, it was with the understanding that there would
14 be a cost sharing arrangement between ICRWUA and the TR Parties with respect
15 to use of that line and the pumping of the wells. This agreement was reflected in
16 Section 12 (c) of the March 2001 MXA, which Commission Staff approved, and
17 then further memorialized in Section 5 of the parties' February 2003 Well
18 Agreement. Both of these agreements reflect that, because we owned our own
19 water supply, TRGC would not become a customer of ICRWUA subject to tariffed
20 rates unless we made a specific request, which, again, the Commission
21 acknowledged in Decision No. 64360. As Mr. Busch notes in his testimony, the
22 Commission had section 12 of the MXA before it and did not require any change.
23 Busch St. at 4-5. Therefore, I do not see how Mr. Taylor can possibly argue that
24 Decision No. 64360 made TRGC a tariffed customer of ICRWUA. Prior to the
25 execution of the WSA, which is not yet effective, none of the TR Parties has ever
26 requested to be a "customer" subject to tariffed rates.

1 **Q. BUT MR. KRUMWIEDE, ISN'T THE GOLF COURSE GETTING WATER**
2 **UTILITY SERVICE FROM ICRWUA?**

3 A. No. ICRWUA wheels our water to our golf course through the transmission line
4 we built for the purposes of delivering water from our water source for irrigation
5 and other non-potable uses.

6 **Q. IS THIS THE SAME TRANSMISSION LINE THAT ICRWUA USES TO**
7 **SERVE ITS CUSTOMERS IN TALKING ROCK?**

8 A. Yes, the line we built and conveyed to ICRWUA. With regard to the golf course
9 and construction water, there is a cost sharing arrangement with respect to the use
10 of that line. In this way, we pay our share of the costs of operating the line, just as
11 we have paid our share of the costs of pumping the wells so we can get water from
12 our water source.

13 **Q. WHY DIDN'T YOU JUST BUILD SEPARATE TRANSMISSION LINES?**

14 A. Because it would have been significantly more expensive at the time we planned
15 the subdivision, planned for a means of irrigating the golf course, and entered into
16 agreements with ICRWUA. It wasn't until Mr. Taylor intervened in the rate case
17 that anyone complained about the cost sharing arrangement with respect to the
18 transmission main.

19 **Q. IF ALL THE OTHER CUSTOMERS ARE SUBJECT TO THE**
20 **COMMISSION'S RATEMAKING PROCESS, WHY SHOULDN'T TRGC**
21 **ALSO BE SUBJECT TO THE RATEMAKING PROCESS?**

22 A. Because, as I discussed above, I believe the Commission recognized in Decision
23 64360 that we would not be a "customer" of ICRWUA unless we asked in writing
24 to be made a customer. Furthermore, we are here now asking the Commission to
25 approve a "Special Contract" relationship between ICRWUA and the TR Parties,
26 including, the mechanism for determining the amounts to be charged by ICRWUA

1 for services provided under the WSA, as such charges will be adjusted from time-
2 to-time over the life of the WSA.

3 Beyond that, it must be remembered that the TR Parties have built and paid
4 for all of the water utility infrastructure that we use to obtain water to irrigate the
5 golf course, the same facilities used by ICRWUA to provide residential water
6 utility service to Talking Rock. We also have considerable rights under the
7 existing agreements, including the Commission approved MXA. We have invested
8 tens of millions of dollars in the Talking Rock community in express reliance on
9 the existing agreements that explicitly reserve the TR Parties' rights to obtain water
10 from the Talking Rock well field for landscape irrigation, lake fill, construction and
11 other non-potable purposes.

12 As expressed in the proposed WSA, we are willing to modify, and to a great
13 extent, reduce our existing rights in order to provide ICRWUA with ownership and
14 control of the water sources, as well as all the other consideration provided to
15 ICRWUA under the WSA, but only in exchange for long-term certainty that we
16 will be able to continue to obtain water for non-potable purposes at a rate that
17 reflects ICRWUA's costs of service.

18 **Q. SO THE WSA MAKES TRGC A CUSTOMER OF ICRWUA IF THE WSA**
19 **IS APPROVED BY THE COMMISSION?**

20 A. Yes, TRGC would be a "Special Contract" customer of ICRWUA if the WSA
21 receives the requested approval from the Commission. WSA at Recital O, § 1.

22 **Q. WHAT DOES "SPECIAL CONTRACT" MEAN?**

23 A. I am not a regulatory expert, although I have certainly learned more than I ever
24 thought I would in this process. I understand "special contracts" are used when
25 special circumstances warrant an arrangement that would not be subject to the
26 uncertainty of repeated ratemaking. We believe our circumstances fit this type of

1 arrangement for the reasons I have explained—we built the facilities, we have
2 relied on our right to serve ourselves, we have significant rights that we are giving
3 up in the WSA with respect to our interest in the Talking Rock wells, and we are a
4 large user of water that has and will continue to subsidize the rates paid by
5 ICRWUA's other customers.

6 **Q. EXCUSE ME MR. KRUMWIEDE, BUT YOU'RE TESTIFYING THAT**
7 **TRGC, WHICH IS NOT YET A CUSTOMER, HAS BEEN SUBSIDIZING**
8 **SERVICE BY ICRWUA TO ITS RATEPAYERS?**

9 A. My understanding is that this is the conclusion reached by Mr. Bourassa in his cost
10 of service study. Supplemental Rebuttal Testimony of Thomas J. Bourassa at 20.
11 Mr. Bourassa testified that the cost sharing arrangement we have been utilizing has
12 provided ICRWUA with a substantial operating margin, more than 40%. *Id.*

13 **Q. YOU TESTIFIED THAT YOU WILL PAY ICRWUA'S COST OF SERVICE**
14 **UNDER THE WSA. DOESN'T THIS MEAN THE SUBSIDIZATION WILL**
15 **END IF THE WSA IS APPROVED?**

16 A. No. The Commodity Charge is based on cost of service and intended to ensure that
17 ICRWUA recovers its cost of service, plus a reserve margin. In addition, for the
18 first ten years, TRGC will pay the System Reservation Charge which will place our
19 costs above ICRWUA's cost of service. Additional Supplemental Testimony of
20 Thomas J. Bourassa ("Bourassa Add. St.") at 5, 8-9.

21 **Q. WHY WOULD TRGC AGREE TO RATES THAT SUBSIDIZE ICRWUA'S**
22 **OTHER CUSTOMERS?**

23 A. Because, as I testified, we share an interest in a healthy and viable water utility
24 service. By agreeing to the System Reservation Charge for a period of ten years at
25 a total cost of \$340,000, in addition to the annual Commodity Charge, we will
26 make ICRWUA such a water utility.

1 **Q. BUT WHY NOT LET THE COMMISSION REVIEW AND RESET THE**
2 **RATES AT A LEVEL IT DETERMINES TO BE APPROPRIATE EACH**
3 **TIME ICRWUA FILES A RATE CASE?**

4 A. We understand and accept the Commission's role in setting rates in Arizona.
5 However, in order for the TR Parties to relinquish their existing rights, we require
6 long-term certainty that our costs will be based on ICRWUA's cost of service, as
7 was the case under the existing agreements. We mean no disrespect to the
8 Commission, but we simply cannot accept the risk that the Commission will set
9 rates for irrigation and other non-potable service based on other factors that might
10 lead to substantially higher costs to TRGC and its 505 paying members. As
11 evidenced by the terms of the WSA, we have gone a long way already and believe
12 that we cannot go any further.

13 **Q. IF THE COMMISSION APPROVES THE COMMODITY CHARGE**
14 **METHODOLOGY, WILL IT BE A FIXED CHARGE FOR THE LIFE OF**
15 **THE AGREEMENT?**

16 A. No, there are several adjustment mechanisms proposed in the WSA. Mr. Bourassa
17 explains these in his testimony in support of ICRWUA's request for approval of
18 the WSA. Bourassa Add. St. at 4-5.

19 **Q. THANK YOU. ARE THERE OTHER CONCERNS THAT HAVE BEEN**
20 **RAISED IN THIS PROCEEDING THAT THE PARTIES HOPE TO**
21 **ADDRESS IF THE WSA IS APPROVED?**

22 A. Yes, as I have discussed in this testimony, by paying more than ICRWUA's cost of
23 service under the WSA, we are subsidizing service. This subsidy will lead to a
24 lower increase in rates for the other customers. Bourassa Add. St. at 11-12.
25 Certainly, the magnitude of the rate increases ICRWUA requires is of concern to
26 all of the stakeholders.

1 Additionally, the WSA creates a residential priority and allows ICRWUA to
2 curtail irrigation and construction water service in the event of a shortage. Water
3 shortage was a concern that the Commission first noted in Decision No. 64360 (at
4 3-4) and it is being addressed by the WSA.

5 **Q. DO YOU BELIEVE THAT THE PROVISION FOR CURTAILMENT**
6 **SATISFIES ANY CONCERNS OVER THE LACK OF RESIDENTIAL**
7 **PRIORITY?**

8 A. Yes. As proposed, Section 5 of the WSA states that in times of water shortage,
9 which is defined as insufficient water to meet both residential demand and demand
10 from the TR Parties under the WSA, residential customers shall have priority as
11 long as such shortage lasts. WSA at § 5. Unfortunately, Mr. Taylor is still not
12 satisfied. See Taylor Response to TRGC Data Request 1.37, copy attached hereto
13 as **Krumwiede Supplemental Testimony Exhibit 1**. But Mr. Taylor's belief that
14 no one has priority is unfounded. The point of this provision is that residential
15 customers have priority when there is not enough water to go around. I fail to see
16 how this does not protect ICRWUA's residential customers.

17 **IV. REQUEST FOR APPROVAL OF THE WSA.**

18 **Q. IS THE WSA CONSISTENT WITH THE FRAMEWORK ESTABLISHED**
19 **IN THE LOU?**

20 A. Yes, however, ICRWUA has actually obtained even greater concessions from us
21 than were contemplated in the LOU.

22 **Q. WHY WOULD YOU AGREE TO MORE CONSIDERATION THAN THE**
23 **LOU REQUIRED?**

24 A. As I explained at the beginning of this testimony, we share an interest in having a
25 financially viable water provider to serve Talking Rock with ICRWUA and its
26 ratepayers. In order to achieve this common goal, we have elected to provide

1 ICRWUA with a great deal of consideration, even more than envisioned in the
2 LOU. In exchange, we have asked for long-term certainty that our costs for water
3 for landscape irrigation and other non-potable purposes will remain closely tied to
4 the cost of providing such service. Given our significant investment in the
5 infrastructure, and our existing rights, we believe this arrangement is more than
6 reasonable.

7 **Q. WHAT APPROVAL DOES TRGC SEEK FROM THE COMMISSION**
8 **WITH RESPECT TO THE WSA?**

9 A. Under the WSA, TRGC joins ICRWUA in asking the Commission to approve the
10 agreement without material change or, in the alternative, to approve the rates and
11 charges and methodology for adjustment for the term of the WSA. WSA at §11.
12 *See also* Busch St at 2.

13 **Q. WHY DO THE PARTIES REQUIRE APPROVAL WITHOUT MATERIAL**
14 **CHANGE?**

15 A. From the TR Parties' perspective, we are giving up significant rights and providing
16 ICRWUA with substantial consideration. In exchange, we require long-term
17 certainty regarding our rights and the cost of water for irrigation and other non-
18 potable purposes. The WSA would provide us this certainty if approved as
19 requested.

20 **Q. COULD THE COMMISSION DETERMINE THAT THE WSA SHOULD**
21 **NOT BE APPROVED AS REQUESTED?**

22 A. Yes, and we understand that the Commission must exercise its discretion
23 independent of the express language of the WSA. As a result, the parties have
24 provided for the possibility of a material change to the WSA, and thereafter, the
25 parties will have the right to accept the WSA as modified. WSA at § 11.b.ii.
26 However, if the critical terms and conditions of the WSA are rejected, it is unlikely

1 that we would be able to accept the WSA as modified, for the reasons I have
2 discussed in this testimony.

3 **Q. WHAT HAPPENS IF THE PARTIES DO NOT ACCEPT CHANGES TO**
4 **THE WSA, OR IF THE COMMISSION DOES NOT APPROVE THE**
5 **AGREEMENT AS REQUESTED?**

6 A. The WSA will not become effective, the TR Parties will retain ownership of Well
7 No. 1, and continue to provide their own water for irrigation and other non-potable
8 purposes under the parties' existing agreements, which we will expect ICRWUA to
9 honor without change.

10 **Q. MR. KRUMWIEDE, DO YOU HAVE ANYTHING ELSE TO ADD TO**
11 **YOUR TESTIMONY IN SUPPORT OF APPROVAL OF THE WSA AT**
12 **THIS TIME?**

13 A. Just that we join ICRWUA in urging the Commission to approve the WSA, without
14 material change, as soon as possible. A lot of effort by a number of capable and
15 well-intentioned persons went into the agreement, and while no agreement is ever
16 "perfect", I can state without reservation that the WSA is an equitable agreement
17 that serves the interests of the parties, and the public interest at large.

18 **Q. DOES THAT CONCLUDE YOUR TESTIMONY IN SUPPORT OF**
19 **APPROVAL OF THE WSA?**

20 A. Yes.

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**KRUMWIEDE
SUPPLEMENTAL TESTIMONY
EXHIBIT 1**

Docket No. W-02824A-07-0388
Dayne Taylor Response to TRGC's Data Request

TRGC DR 1.7

Admit that the ACC Approved First Amendment to Main Extension Agreement, which agreement is dated February 25, 2003, required the Talking Rock Parties to transfer the two wells known as Well No. 2 and Well No. 3 to ICRWUA.

Response:

I agree that the First Amendment to the Main Extension Agreement was approved by the Commission and that this agreement required Harvard, not the Talking Rock parties, to transfer Well 2 and 3. I also believe that the First Amendment was submitted to the Commission in a manner that indicated that the First Amendment met the requirements of Decision 64360 and was accepted by the Commission on this false basis. As stated in Mr. Bozzo's non-compliance letter to ICRWUA of January 15, 2008, the Agreement was submitted by ICRWUA in a document titled "ICR Water Users Association, Inc. Notice of Compliance" which purported compliance with the requirement for well transfer. The item was marked as complied in the Compliance data base and has continued to maintain that classification until recently.

Docket No. W-02824A-07-0388
Dayne Taylor Response to TRGC's Data Request

TRGC DR 1.17 How many of the Talking Rock wells were drilled before January 15, 2002? Explain the bases for your answer.

Response: An examination of the State's Well Records shows that only well 1 (the same well as in 1.16 above) was drilled by Harvard before January 15, 2002.

Docket No. W-02824A-07-0388
Dayne Taylor Response to TRGC's Data Request

TRGC DR 1.37

Admit that the WSA provides for residential priority?

Response:

I don't agree that the issue of priority is as factual or straight forward as you state. If curtailment can only occur when there is insufficient water to meet both demands then given the manner that the well field is operated, one way to view the issue of priority is that this can only be determined once both demands are not met. For this time period, no one has priority. The question then becomes how one determines that there is an insufficient amount of water.

Docket No. W-02824A-07-0388
Dayne Taylor Response to TRGC's Data Request

TRGC DR 2.11

For this data request, please refer to the following language from the MXA you referenced in your response to TRGC Data Request 1.30.

“(c) Water Supply to Golf Course. Utility acknowledges that Developer intends to construct the Golf Course. Utility further acknowledges that Developer intends to supply water to the Golf Course for landscape irrigation, the filling of lakes and other non-potable purposes and hereby provides its unconditional consent for Developer to supply water to the Golf Course for such purposes. Utility further agrees to provide water utility service to the Golf Course for landscape irrigation, the filling of lakes and other non-potable purposes at a future date but only upon receipt of Developer’s written request at which time such service would be provided consistent with the rules and regulations of the Commission and Utility’s Commission approved tariffs.”

a. Admit that this provision of the MXA contains ICRWUA’s consent to Developer providing its own water to the Golf Course for irrigation landscape, lake fill and other non-potable services.

Response:

I agree.

Docket No. W-02824A-07-0388
Dayne Taylor Response to TRGC's Data Request

TRGC DR 2.11

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b. Admit that this provision of the MXA contains ICRWUA’s consent to only provide water utility service to the Golf Course upon receipt of Developer’s written request?

Response:

I admit that is what is written in the MXA Paragraph 12 (c).