

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

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MIKE GLEASON, Chairman
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2008 DEC -1 A 9:43

AZ CORP COMMISSION
DOCKET CONTROL

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

NOTICE OF FILING FIRST AMENDMENT TO WATER SERVICE AGREEMENT

ICR Water Users Association, Inc. ("ICR") hereby files the First Amendment to Water Service Agreement dated December 1, 2008..

RESPECTFULLY submitted this 1st day of December, 2008.

SNELL & WILMER

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Robert J. Metli
One Arizona Center
Phoenix, Arizona 85004-2202
Attorneys for ICR Water Users Association, Inc.

ORIGINAL AND THIRTEEN (13) copies filed this 1st day of December, 2008, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

DEC - 1 2008

COPY of the foregoing hand-delivered this 1st day of December, 2008, to:

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10 COPY of the foregoing e-mailed/mailed
11 this 1st day of December, 2008, to:

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FIRST AMENDMENT TO WATER SERVICE AGREEMENT

On September 12, 2008, that certain Water Service Agreement ("Agreement") was executed between ICR Water Users Association, Inc., an Arizona public service corporation ("ICRWUA"), Harvard Simon I, LLC ("Harvard Simon"), Talking Rock Land, L.L.C., an Arizona limited liability company ("TRL"), and Talking Rock Golf Club, L.L.C., an Arizona limited liability company ("TRGC"). The parties may be referred to collectively herein as the "Parties" or individually as a "Party," and one, two or all three of "Harvard Simon," "TRL" and "TRGC" may be referred to collectively as the "Talking Rock Parties." By this First Amendment to Water Service Agreement ("First Amendment") dated this 1st day of December, 2008, the Parties now desire to amend the Agreement, as provided herein.

1. Effective Date. This First Amendment shall be effective as of the Effective Date defined in amended Section 11(c) of the Agreement as set forth in this First Amendment.
2. Statement of Purpose and Extent of Amendment. This First Amendment is entered into by the Parties as a further effort to address and resolve issues raised in ACC Docket No. W-02824A-07-0388 (the "Docket") and to further set forth agreements that will govern their relationship on a going-forward basis. The further agreements between the Parties set forth in this First Amendment are expressly intended by the Parties to make their agreements more consistent with the recommendations by ACC Utilities Division Staff ("Staff"), including the recommended special commodity rate set forth in Staff's November 14, 2008, filing in the Docket, and to further address issues raised by the interveners in the Docket and through public comment. This First Amendment amends only those provisions of the Agreement that are specifically addressed herein, and the Parties hereby agree that those provisions of the Agreement not specifically addressed herein remain materially unaffected by this First Amendment. "Materially Unaffected" shall mean that the provisions of this First Amendment shall supersede any provision of the Agreement that is inconsistent with this First Amendment.
3. Recital O. Recital "O" of the Agreement is hereby deleted.
4. Section 4. Section 4 of the Agreement is hereby amended by deleting the following sentence from Section 4:

The Talking Rock Parties shall not be required to take any minimum amount of water under this Agreement, and retain the right to provide their own water supply without any provision by ICRWUA as long as such self-supply is not in violation of Arizona and/or federal law; provided, however, that ICRWUA shall remain solely responsible for supplying water to customers of ICRWUA within Talking Rock requesting water service from ICRWUA.
5. Section 6. Section 6 of the Agreement is hereby deleted in its entirety and replaced with the following:

6. Commodity Charge; Meter Reading; Access to Meters; Point of Contact; No Other Charges.

a. Commodity Charge. During the Term of this Agreement, the Talking Rock Parties shall pay the "special commodity" rate ("Special Commodity Rate") set forth in ICRWUA's tariff on file with the ACC for all water delivered by ICRWUA for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes. In the Docket, Staff recommended an initial Special Commodity Rate of \$1.40 per one-thousand gallons of water as set forth in the Direct Testimony of Charles R. Myhlhousen dated November 14, 2008. In the event the ACC approves a Special Commodity Rate that is greater than \$1.40 per one-thousand gallons or that is otherwise inconsistent with this First Amendment in the Docket, then this First Amendment and the Agreement shall not become effective, shall have no force and effect, and the Parties' existing agreements shall remain in full force and effect. Subject to Section 6(a)(ii) below, the Talking Rock Parties acknowledge that the Special Commodity Rate is subject to change by the ACC in future rate case proceedings.

i. No Monthly Minimum Charge or Monthly Meter Charge. The Talking Rock Parties shall not be required to pay a monthly minimum charge or monthly meter charge for water delivered by ICRWUA for Landscape Irrigation, Lake Fill, Construction and other non-potable purposes.

ii. Moratorium on Increases in Rate and Charges. ICRWUA agrees that it will not file with the ACC any application or other request to increase any rate or charge, including but not limited to the Special Commodity Rate, which increase would become effective before the date which is five (5) years from the date of a final decision in the Docket (the "Moratorium Period"). This Section 6(a)(ii) shall terminate immediately upon the date that the Talking Rock Parties cease taking water from ICRWUA for Landscape Irrigation and/or Lake Fill, and ICRWUA shall thereafter have the unrestricted right to file with the ACC to increase any rate or charge.

iii. Obligation to Purchase Water. The Talking Rock Parties shall not be required to take any minimum amount of water under this First Amendment or the Agreement; provided, however, that the Talking Rock Parties agree that during the Moratorium Period, the Talking Rock Parties shall purchase all water required for Landscape Irrigation, Lake Fill, Construction and other non-potable purposes from ICRWUA, less available effluent that the Talking Rock Parties may use for Landscape Irrigation, Lake Fill, Construction and other non-potable purposes. The Parties further acknowledge and agree that the Talking Rock Parties may leave the ICRWUA water system at any time consistent with Arizona law.

iv. New Treatment Requirement; Contamination. The Talking Rock Parties acknowledge that ICRWUA might be required to seek interim rate relief from the ACC during the Moratorium Period in the event that: (a) a Federal, State or County entity (excluding any special taxing district established under A.R.S. Title 48) imposes upon ICRWUA a new rule, requirement, regulation, ordinance, judgment, order or similar decree (collectively, a "New Treatment Requirement"); and/or (2) the groundwater withdrawn by ICRWUA from the Talking Rock Wells becomes contaminated ("Contamination") with any pollutant regulated by any Federal, State or County entity (excluding any special taxing district established under A.R.S. Title 48), and such New Treatment Requirement or Contamination requires additional treatment and/or remediation ("Treatment and/or Remediation") by ICRWUA which: (a) increases ICRWUA's capital and/or operational costs of delivering water through the Talking Rock water system; and (b) was not required as of the Effective Date of this Agreement. In the event that ICRWUA is required to seek interim rate relief during the Moratorium Period, ICRWUA hereby agrees not to seek to increase any rates, including but not limited to the Special Commodity Rate, beyond that needed to recover from all of its customers the costs of the Treatment and/or Remediation on the same cost-of-service basis ICRWUA has employed in the Docket.

b. Meter Readings; Access to Meters. On a monthly basis, ICRWUA shall provide the Talking Rock Parties with meter readings of all meters measuring the delivery of water for Landscape Irrigation, Lake Fill and Construction Purposes. The Talking Rock Parties shall allow representatives of ICRWUA reasonable access to property owned and/or controlled by the Talking Rock Parties as necessary for ICRWUA to read the water meters. The Talking Rock Parties may request that ICRWUA calibrate and adjust the meter recording devices under this Agreement not more frequently than once per calendar year, at the cost of the Talking Rock Parties, unless the meter is found to be in error by more than 3%, in which event no costs of the meter reading and repair shall be charged to the Talking Rock Parties.

c. Point of Contact. The Talking Rock Parties shall identify a single point of contact ("Point of Contact") for receipt of all invoices to the Talking Rock Parties under this Agreement and shall notify ICRWUA in writing of the identity of the Point of Contact at the address set forth in Section 14(f) below. The Point of Contact shall be responsible for remitting payment on behalf of the Talking Rock Parties for all invoices received by the Talking Rock Parties. Late fees shall be assessed in accordance with ICRWUA's tariff.

d. No Other Charges. ICRWUA agrees that it will not bill or otherwise require payment from the Talking Rock Parties for water for purposes of Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable

purposes except as provided for in this Agreement. This Agreement does not relate to or impact the rates and charges for water service by ICRWUA to other customers of the Talking Rock water system, including for example, the Talking Rock health and fitness center and clubhouse.

6. Section 8. Section 8 of the Agreement is hereby deleted in its entirety.

7. Section 11 Section 11 of the Agreement is hereby deleted in its entirety and replaced with the following:

a. Cooperation of the Parties; ACC Approval. The Parties agree to cooperate fully and in good-faith to take all steps necessary and reasonable to seek ACC approval of the Special Commodity Rate defined in Section 6(a) of this First Amendment. The Parties further agree to seek approval of the Agreement and First Amendment, however, the Parties agree that unless the ACC specifically approves the Agreement and First Amendment without material change, each of the Parties shall submit either a Statement of Acceptance or a Statement of Non-Acceptance within ten (10) business days of the ACC decision in the Docket becoming final and non-appealable. If any of the Parties submits a Statement of Non-Acceptance, such statement shall specify the reason for non-acceptance of the ACC order approving the Agreement and, thereafter, the Parties shall meet within ten (10) business days to discuss whether the reason for non-acceptance can be cured. If the Statement of Non-Acceptance is not withdrawn as a result of such meeting and a Statement of Acceptance issued, the Parties hereby agree that the Agreement and this First Amendment shall not become effective, shall have no force and effect, and that the Parties' existing agreements shall remain in full force and effect.

b. Effective Date. The Agreement has been executed as the date first included therein, and this First Amendment has been executed as of the date included above. However, the Parties agree that the Agreement and First Amendment shall not be effective until the effective date ("Effective Date"), which shall be defined for purposes of this Agreement as the date upon which all Parties have submitted a Statement of Acceptance indicating that the final and non-appealable ACC decision approving the Agreement is acceptable.

c. Term. The Term of the Agreement, as amended, shall be thirty-five (35) years unless terminated earlier by the Parties.

8. Section 14(a). Section 14(a) is hereby deleted in its entirety and replaced with the following:

a. No Right to Challenge Withdrawal of Groundwater. The Talking Rock Parties hereby waive on behalf of themselves and their respective

successors and assigns any right to challenge ICRWUA's withdrawal of water from the Talking Rock Wells. It is the Parties' mutual understanding and good faith belief that ICRWUA has the legal right and authority to withdraw groundwater from the Talking Rock Wells, and once groundwater is withdrawn from such wells, ICRWUA is the owner of such groundwater.

9. Section 14(d). Section 14(d) of the Agreement is hereby amended by deleting the words "or any Additional Well(s)" where those words appear on the fifth line and the seventh line of the section.

10. Section 14(e)(vi). Section 14(e)(vi) of the Agreement is hereby deleted in its entirety.

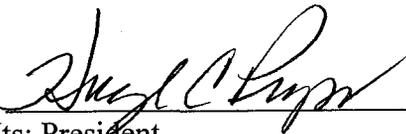
11. Non-Opposition. Subject to the limitations contained in Section 3(a) of the Agreement and the amended Section 6(a)(iii) set forth above in this First Amendment, ICRWUA shall not oppose the construction of a well or wells and/or a water transmission main by the Talking Rock Parties to enable the Talking Rock Parties to supply their own water for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes. ICRWUA shall provide such cooperation as may reasonably be requested by the Talking Rock Parties in connection with this Section; provided, however, that in no event shall such cooperation require the expenditure of money by ICRWUA unless such costs are reimbursed by the Talking Rock Parties.

12. Emergency Temporary Back-Up Supply. Not later than one hundred twenty (120) days after the Effective Date of the Agreement, as amended, the Parties shall agree upon a Second Amendment to the Agreement whereby ICRWUA shall provide emergency temporary back-up water on a bulk basis to the Talking Rock Parties for Landscape Irrigation and Lake Fill in the event the Talking Rock Parties cease to obtain water from ICRWUA under the tariff and require emergency temporary back-up water.

13. Additional Notifications. ICRWUA shall provide the Talking Rock Parties notice of the filing of any request with the ACC that could impact the Special Commodity Rate at least ninety (90) days before such filing is made. The Talking Rock Parties shall provide ICRWUA notice at least ninety (90) days before ceasing to take water from ICRWUA during the Moratorium Period.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to the Water Service Agreement to be executed as of the day and year first above written.

ICR WATER USERS ASSOCIATION, INC.

By 
Its: President

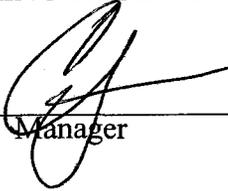
HARVARD SIMON I, L.L.C.

By  _____
Its: Manager

TALKING ROCK LAND, LLC

By:  _____
Its: Manager

TALKING ROCK GOLF CLUB, LLC

By:  _____
Its: Manager