

ORIGINAL

OPEN MEETING ITEM



0000095314

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

APR 10 2009

DATE: APRIL 10, 2009
DOCKET NO.: W-02824A-07-0388
TO ALL PARTIES:

DOCKETED BY [Signature]

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

ICR WATER USERS ASSOCIATION, INC.
(RATES)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

APRIL 20, 2009

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 Open Meeting to be held on:

APRIL 28, 2009 and APRIL 29, 2009

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.

RECEIVED
2009 APR 10 A 9:52
AZ CORP COMMISSION
DOCKET CONTROL

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF ICR
9 WATER USERS ASSOCIATION, INC., FOR A
PERMANENT RATE INCREASE.

DOCKET NO. W-02824A-07-0388

DECISION NO. _____

OPINION AND ORDER

10 DATES OF HEARING: January 8, April 16, and December 1, 2, and 3, 2008

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern¹

13 IN ATTENDANCE: Kristin K. Mayes, Commissioner

14 APPEARANCES: Mr. Jeffrey W. Crockett, Mr. Robert J. Metli, and Ms.
15 Marcie A. Shuman, SNELL & WILMER, LLP, on
behalf of ICR Water Users Association, Inc.;

16 Mr. Jay L. Shapiro, FENNEMORE CRAIG, P.C., on
17 behalf of Talking Rock Golf Club, LLC;

18 Mr. Dayne Taylor, in propria persona; and

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

21 **BY THE COMMISSION:**

22 This case involves an application for a permanent rate increase filed with the Arizona
23 Corporation Commission ("Commission") by ICR Water Users Association, Inc. ("ICR"), an Arizona
24 nonprofit corporation engaged in providing water utility service near Prescott in portions of Yavapai
25 County, Arizona. ICR's current rates were established in Decision No. 59263 (August 30, 1995),
26 which also granted its Certificate of Convenience and Necessity ("CC&N").

27 _____
28 ¹ Administrative Law Judge Marc E. Stern presided over all of the proceedings in this matter. The Recommended
Opinion and Order was drafted by Administrative Law Judge Sarah N. Harpring.

* * * * *

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

FINDINGS OF FACT

1. ICR is an Arizona member-owned nonprofit corporation authorized to provide water utility service to customers in portions of Yavapai County, Arizona, pursuant to a CC&N granted in Decision No. 59263 (August 30, 1995), which also established ICR's current rates and charges.

2. During the 2006 test year, ICR provided water utility service to approximately 364 residential and commercial customers through two completely independent water systems, identified as the Inscription Canyon Ranch System ("ICR System") and the Talking Rock System ("TR System"). According to ICR, it also "wheeled" water to an 18-hole golf course owned and operated by Talking Rock Golf Club, LLC ("TRGC") pursuant to agreements with TRGC and Harvard Simon I, LLC ("Harvard"), the developer for the area served by the TR System and an affiliate of TRGC. ICR and TRGC both assert that TRGC is not currently and has not been a customer of ICR, as it only receives "wheeling"² services rather than water utility services from ICR. (*See, e.g.*, Tr. at 290.)

3. The ICR System currently serves approximately 280 primarily residential customers in three subdivisions located on one side of Williamson Valley Road: (1) Inscription Canyon Ranch, (2) Whispering Canyons, and (3) The Preserve at the Ranch. (Tr. at 249.) All of the water for the ICR System comes from two wells owned by ICR and located on the same side of the road as the three subdivisions served by them. (Tr. at 152-53, 249-50.) Although ICR owns the two wells serving the ICR System, it does not own the land on which they sit. (Tr. at 153.)

4. The TR System, located on the other side of Williamson Valley Road, currently serves approximately 170 primarily residential customers and an 18-hole golf course in a subdivision known as Talking Rock Ranch ("TR Ranch") through three wells located on that side of the road. (Tr. at 251.) At build-out, TR Ranch is expected to have approximately 1,600 homes. (Tr. at 292.)

5. At the time of application, ICR owned only one of the wells serving the TR System.

² Official notice is taken of the following definition of water wheeling: "Water wheeling uses a water supplier's transportation system for delivery of water not owned or controlled by that agency." American Water Works Association, *Groundwater* 37 (3rd ed. 2002).

1 (Ex. ICR-3.) However, ICR has been providing water from all three wells to its customers and
 2 TRGC's golf course, with TRGC paying a wheeling charge and a pro rata share of operation,
 3 maintenance, and repair expenses for the TR System pursuant to a Well Agreement. (*Id.*) The Well
 4 Agreement,³ which has an initial term of 120 years, was entered into by ICR, Harvard, and TRGC on
 5 February 25, 2003. Among other things, the Well Agreement provides for the immediate transfer to
 6 ICR of Well #3 and related facilities, provides for the transfer to ICR of Well #2 and related facilities
 7 upon ICR's providing water service to the 800th single-family residence at TR Ranch, provides ICR
 8 easements for the wellsite, places restrictions upon the production capacity for the wells once
 9 transferred to ICR, and places restrictions upon the amount of water ICR can withdraw and the
 10 maximum flow rate for water withdrawn to serve customers once the wells are transferred to ICR.
 11 The restrictions do not apply to water wheeled to the golf course or wheeled to TR Ranch for
 12 construction purposes. The Well Agreement provides that TRGC will deliver to the golf course, for
 13 landscape irrigation and lake fill, water from Well #1 and (until transferred to ICR) Well #2. The
 14 Well Agreement requires ICR, as "agent" for TRGC and Harvard, to allow water from the wells
 15 transferred to ICR to be delivered to the golf course for landscape irrigation and lake fill during hours
 16 when unused production capacity is available and to be delivered to Harvard for construction
 17 purposes (regardless of unused production capacity) and requires TRGC to share the costs of
 18 operation, maintenance, and repair of the well/s to the extent such use occurs. The Well Agreement
 19 establishes a wheeling charge of \$10 per acre foot, to be increased annually based on the Consumer
 20 Price Index, and provides that neither TRGC nor Harvard has any obligation to pay anything else for
 21 the water wheeled. The Well Agreement also allows Harvard, TRGC, or Talking Rock Land, LLC
 22 ("TR Land") to drill and equip additional wells to supply water for TR Ranch construction or for golf
 23 course irrigation and lake fill. TRGC is required to pay its share of the operation, maintenance, and
 24 repair costs through a fixed monthly well fee, a fixed pump station fee, and a fixed treatment fee, all
 25 of which are adjustable annually and are subject to true-up to actual annual costs. The Well
 26 Agreement specifically provides that it replaces and supersedes a prior Water Purchase Agreement

27
 28

³ The Well Agreement was included in the record as exhibit 1 to Ex. ICR-5.

1 entered into by ICR and Harvard.

2 **This Proceeding**

3 6. On June 26, 2007, ICR filed with the Commission an application for a permanent rate
4 increase, using calendar year 2006 as its test year and requesting an increase in revenues of \$86,899,
5 or 32.43 percent over its adjusted and annualized test year revenues of \$267,931. ICR stated that the
6 increase in revenues was designed to provide a 15-percent operating margin, which would be
7 sufficient to cover ongoing operating expenses, help fund capital repairs and improvements, and
8 maintain financial stability. ICR proposed a fair value rate base ("FVRB") equal to its adjusted
9 original cost rate base ("OCRB") of negative \$554,252. ICR stated that it had no long-term debt, but
10 had recently filed a financing application for a line of credit up to \$100,000, as an offensive measure
11 to help ICR with its cash flows until new rates became effective.⁴ The rates and charges ICR
12 proposed in its application would have resulted in an increase of \$13.05 per month, or 35.24 percent,
13 for a residential customer served by a 5/8" x 3/4" meter with average consumption of 7,085 gallons
14 per month.

15 7. On July 26, 2007, the Commission's Utilities Division Staff ("Staff") issued a Letter
16 of Sufficiency classifying ICR as a Class C utility.

17 8. On August 9, 2007, a Procedural Order was issued scheduling a hearing for January 8,
18 2008, and establishing other procedural deadlines and requirements.

19 9. ICR had notice of the January 2008 hearing published in the *Prescott Courier* on
20 August 29, 2007, and mailed notice to each of its customers on or around August 30, 2007. (Tr. at
21 85-86.)

22 10. Staff direct testimony was filed on November 30, 2007; revised rate design schedules
23 were filed by Staff on December 5, 2007; ICR rebuttal testimony was filed on December 14, 2007;
24 and Staff surrebuttal testimony was filed on December 21, 2007.

25 11. In its initial direct testimony, Staff determined that ICR's original cost rate base
26 ("OCRB") was negative \$576,986, due to disallowance of cash working capital, and that for the test

27 ⁴ In Decision No. 70038 (December 4, 2007), the Commission granted ICR authority to encumber its assets and enter
28 into a one-year line of credit not to exceed \$50,000, at an interest rate not to exceed 0.5 percent above the *Wall Street Journal* prime rate, for the purposes of acquiring a backup generator and constructing a security fence.

1 year, ICR had adjusted revenue of \$268,099, expenses of \$303,106, and an operating loss of \$35,007.
2 Staff also stated that the golf course was not receiving or purchasing any water from ICR and was
3 providing itself water through its own wells. Staff recommended an increase of \$88,547, or 33.03
4 percent over test year adjusted revenues, resulting in total annual operating revenue of \$356,646 and
5 operating income of \$53,540, for a 15.01 percent operating margin. Staff further recommended:

- 6 a. That Staff's rates and charges be approved;
- 7 b. That a provision be included in ICR's tariff to allow for the flow-through of all
8 appropriate state and local taxes, as provided for in A.A.C. R14-2-409(D)(5);
- 9 c. That any increase in rates and charges approved in this matter not become
10 effective until Staff receives notice that the ICR water systems are in total
11 compliance with ADEQ regulations;
- 12 d. That Staff's average annual cost of \$4,029 be adopted for the water testing
13 expense in this proceeding;
- 14 e. That ICR use Staff's depreciation rates by individual National Association of
15 Regulatory Utility Commissioners ("NARUC") category, as shown in Staff's
16 Table E-1, on a going-forward basis;
- 17 f. That ICR's proposed installation charges be accepted, along with an
18 installation charge of "At Cost" for meter sizes of 8-inch and larger, as shown
19 in Staff's Table F-1; and
- 20 g. That ICR be required to separate the Water Use Data (including customer
21 count information, construction water use data, and golf course water use data)
22 and plant summary information for each of its water systems in future Annual
23 Reports. (Ex. S-1; Ex. S-2.)

24 12. In his rebuttal testimony, Robert M. Busch, contracted manager for ICR, testified that
25 ICR delivers water to the golf course from all three wells on the TR System pursuant to the Well
26 Agreement, under which the golf course pays wheeling charges and a pro rata share of the operation,
27 maintenance, and repair expenses of the water system. (Ex. ICR-3.)

28 13. On December 21, 2007, Dayne Taylor, an ICR member/customer residing in

1 Inscription Canyon Ranch and a sitting Board member for the ICR Sanitary District,⁵ filed a Motion
2 to Intervene.

3 14. On January 8, 2008, a hearing convened at the Commission's offices in Phoenix,
4 Arizona. ICR and Staff appeared through counsel, and Mr. Taylor appeared on his own behalf.
5 During the hearing, Mr. Taylor was granted intervention, over ICR's opposition;⁶ it was determined
6 that the hearing would be continued until April 16, 2008; filing deadlines were established for
7 additional testimony; and the Commission's time frame in this matter was suspended until further
8 order. In addition, public comment was taken from three ICR member/customers, including Mr.
9 Taylor,⁷ one of whom supported the rate increase and two of whom expressed concerns that
10 commercial users were being subsidized by residential customers. Mr. Taylor also raised the issue of
11 ICR's noncompliance with Decision No. 64360 (January 15, 2002). Both of these issues are
12 discussed further below. On the same date, a Procedural Order was issued memorializing the new
13 hearing date and the other new filing requirements and deadlines, which were subsequently modified
14 pursuant to requests from both Staff and ICR.

15 15. On January 15, 2008, Staff Compliance and Enforcement Manager Brian K. Bozzo
16 issued a memorandum stating that, based on a current review of a March 2003 compliance filing
17 made by ICR, ICR was not in compliance with Decision No. 64360's requirement for the transfer of
18 two wells to ICR. (Ex. S-8.)

19 16. On February 1, 2008, Mr. Taylor filed direct testimony.⁸

20 17. On March 14, 2008, Staff filed amended direct testimony, and ICR filed supplemental
21 rebuttal testimony.

22 18. In Staff's amended direct testimony, Staff revised its prior testimony in light of the
23 information provided by Mr. Busch concerning the golf course's receiving water from ICR and the
24 information filed by Staff related to ICR's noncompliance with Decision No. 64360. Staff

25 ⁵ The ICR Sanitary District serves the entire service area, including both the ICR System and the TR System. (Tr. at
26 252.)

27 ⁶ ICR objected to Mr. Taylor's intervention both because it was filed after the filing deadline for Motions to Intervene
and because ICR asserted that it would expand the scope of the proceeding.

28 ⁷ Mr. Taylor provided public comment before the decision was rendered granting him intervention.

⁸ Mr. Taylor's direct testimony was not offered as an exhibit and thus is not part of the evidentiary record for this
matter.

1 determined that ICR's test year revenues should be increased by \$114,290 to impute revenue that
 2 should have been collected from TRGC for water delivered to the golf course from ICR's well and
 3 that ICR's test year expenses should be increased by \$44,886, mostly to reflect the loss of
 4 reimbursement from TRGC for expenses that should have been paid by ICR. As a result, Staff
 5 determined ICR's test year operating income to be \$35,605, resulting in an operating margin of 9.31
 6 percent, and that ICR should receive no increase over adjusted test year revenue of \$382,389. Staff
 7 stated that an operating margin between 9 and 14 percent generally provides sufficient operating
 8 income. In addition, Staff recommended:

- 9 a. That Staff's revised rates and charges be approved;
- 10 b. That ICR charge TRGC the tariff rate in effect at the time of delivery for all
 11 water received by the golf course from ICR's well;
- 12 c. That ownership of the second well be transferred to ICR within 30 days of a
 13 Decision in this matter;
- 14 d. That an Order to Show Cause be filed if ICR fails to provide Staff with proof
 15 of the transfer of the well within the deadline; and
- 16 e. That any increase in rates and charges approved in this matter not become
 17 effective until the month after ICR submits documentation to Docket Control
 18 verifying that ICR has achieved total compliance with Decision No. 64360.
 19 (Ex. S-7.)

20 19. On April 2, 2008, Mr. Taylor filed supplemental testimony.⁹

21 20. On April 3, 2008, TRGC filed an Application for Leave to Intervene on the grounds
 22 that TRGC could be directly and substantially impacted by the Commission's Decision in this matter
 23 as a result of issues raised by Mr. Taylor. TRGC asserted that ICR, Mr. Taylor, and Staff had all
 24 consented to TRGC's intervention. TRGC was granted intervention by a Procedural Order issued on
 25 April 3, 2008. Subsequently, on April 9, 2008, Mr. Taylor filed a motion requesting that TRGC's
 26 intervention be denied.

27 _____
 28 ⁹ Mr. Taylor's supplemental testimony was not offered as an exhibit and thus is not part of the evidentiary record for this matter.

1 21. On April 14, 2008, TRGC filed testimony.

2 22. On April 15, 2008, a telephonic procedural conference was held at the parties' request.
3 ICR, TRGC, and Staff appeared through counsel, and Mr. Taylor appeared on his own behalf. The
4 parties explained that ICR and TRGC were engaged in ongoing settlement negotiations and requested
5 a continuance of the hearing scheduled for April 16, 2008. The parties were instructed to address at
6 hearing the issue of ICR's noncompliance with Decision No. 64360; Mr. Taylor renewed his
7 objection to TRGC's intervention and was told that TRGC was a necessary party to resolve some of
8 Mr. Taylor's issues; and it was agreed that the evidentiary portion of the April 16, 2008, hearing
9 would be continued, but that the hearing would proceed for public comment and any necessary
10 discussion of procedural matters.

11 23. On April 16, 2008, a public comment proceeding was held, at which ICR, TRGC, and
12 Staff appeared through counsel, and Mr. Taylor appeared on his own behalf. Comments were
13 received from three ICR customers who expressed concern regarding ICR's noncompliance with
14 Decision No. 64360 and ICR's agreements with Harvard. Scheduling of further proceedings was
15 discussed; ICR stated that it was negotiating with TRGC toward resolving issues that had been raised
16 in the case; and Commissioner Mayes informed ICR and TRGC that she wanted them to provide
17 mitigation and conservation plans, such as Arizona Department of Water Resources ("ADWR") best
18 management practices, that could be implemented regarding the groundwater used for the golf
19 course. Finally, a fourth ICR customer provided comment, requesting that ICR provide its customers
20 with preliminary copies of any proposed agreement with TRGC before any member/customer
21 meeting at which voting was to take place. ICR responded that it intended to circulate the agreement
22 for review before the meeting took place and also agreed to docket it. The hearing was recessed, with
23 direction to the parties to file a status report and request for dates of proceeding and/or a public
24 comment session when the parties were ready to go forward.

25 24. On May 14, 2008, ICR filed a Status Report explaining that ICR and TRGC had
26 entered into a nonbinding Letter of Understanding ("LOU") and had agreed to work in good faith
27 toward execution of a special contract to govern their future relationship and amend their existing
28 agreements. ICR stated that the LOU and a Comparison of Rates and Settlement Schedules had been

1 provided to the parties for review on May 2, 2008, and to all ICR member/customers by mail on May
2 12, 2008, along with a notice of a special members meeting to be held at a local school on the
3 evening of June 3, 2008. ICR also stated that notice of the special members meeting would be
4 published in the *Prescott Courier* on May 16-18, 2008, and that a meeting of the parties would be
5 scheduled to discuss the LOU and a procedural schedule for this matter.

6 25. On May 14, 2008, ICR filed Arizona Department of Environmental Quality
7 (“ADEQ”) Compliance Status Reports dated April 25, 2008, showing that neither the ICR System
8 nor the TR System had any major deficiencies and that both were delivering water meeting the water
9 quality standards required by Arizona Administrative Code (“A.A.C.”), Title 18, Chapter 4. (Ex.
10 ICR-11.)

11 26. On June 5, 2008, ICR filed the LOU, Comparison of Rates and Settlement Schedules,
12 and notice of special members meeting with the Commission.

13 27. On July 31, 2008, Mr. Taylor filed a Motion for Procedural Conference, to which ICR
14 and Staff both responded. By a Procedural Order issued on August 18, 2008, a status conference was
15 scheduled to be held on September 18, 2008. The date of the status conference was subsequently
16 changed to September 25, 2008.

17 28. On September 8, 2008, a member/customer filed extensive comments supporting
18 ICR’s position and questioning the validity of assertions made by Mr. Taylor.

19 29. On September 11, 2008, ICR filed copies of a member/customer petition, which ICR
20 stated contained 206 signatures of current member/customers. The petition stated that the signers
21 supported the ICR Board’s efforts and supported a reasonable rate increase in an amount to be
22 determined by the Commission.

23 30. On September 12, 2008, ICR filed a Water Service Agreement (“WSA”) that had been
24 entered into that day between ICR and Harvard, TR Land (an affiliate of Harvard and TRGC), and
25 TRGC (collectively the “TR entities”). (Ex. ICR-9.) The WSA, which has an initial term of 35
26 years, states that it was entered into for the purpose of seeking Commission approval to resolve
27 concerns regarding existing agreements between ICR and the TR entities and compliance with
28 Decision No. 64360, to supersede and replace all existing agreements between ICR and the TR

1 entities, and to govern the relationship of ICR and the TR entities from the time of Commission
2 approval until expiration of the WSA. The WSA states that Harvard's rights and interests under the
3 Well Agreement were assigned to TR Land in October 2003; that Harvard transferred Well #3 to ICR
4 on October 23, 2003; that ICR and TR Land entered into an amendment to the Well Agreement in
5 September 2005, in which TR Land agreed to provide additional water supply at its own expense if
6 Well #3 were inadequate to meet demand in TR Ranch before service was extended to the 800th
7 home; and that TRGC transferred Well #2 to ICR on May 21, 2008. Among other things, the WSA
8 would make TRGC a special contract customer of ICR; would require the TR entities to transfer Well
9 #1 to ICR within 15 days after the effective date of the WSA; would require the TR entities to pay up
10 to \$50,000 to purchase and install a new pump motor at Well #2; would require the TR entities to
11 provide warranties for Well #1 and Well #2 and the air production of Well #1 and Well #2; would
12 waive prior restrictions on the amount and flow rate of water pumped by ICR from Well #2 and Well
13 #3; would have the TR entities retain ownership of the real property containing Well #1, Well #2, and
14 Well #3 ("Well Field Property"), but would provide ICR a perpetual right of entry to the Well Field
15 Property to operate, test, inspect, repair, replace, and maintain the wells; would require the TR
16 entities not to construct or permit construction of any additional wells or the equipping and use of the
17 existing fourth well on the Well Field Property by anyone other than ICR, subject only to ICR's right
18 to drill replacement wells on the Well Field Property; would require ICR to deliver up to 525 acre
19 feet of water per year to the TR entities (up to 400 acre feet for use at the golf course and up to 125
20 acre feet for construction in TR Ranch); would not require the TR entities to take any water from ICR
21 and would allow the TR entities to provide their own water supply; would prioritize the residential
22 delivery of water from Well #1, Well #2, and Well #3 ("TR Wells") over all other uses; would
23 provide for curtailment of water for non-residential uses during a water shortage; would require the
24 TR entities to pay ICR a system reservation charge of \$340,000 over a period of 10 years and to pay a
25 commodity charge for water delivered, initially set at \$1.00 per 1,000 gallons, but subject to annual
26 adjustment and adjustment due to increased costs resulting from new treatment requirements or
27 contamination; would allow for a cost of service study upon request after seven years to determine
28 the appropriateness of the commodity charge; would require annual notice to the Commission for

1 changes in the commodity charge; would require the TR entities to pay ICR \$30,000 upon signing the
2 WSA and \$50,000 upon the effective date of the WSA, to help defray the costs to negotiate and
3 obtain approval of the WSA; would allow the TR entities to drill and equip additional wells to be
4 used solely to supply water for landscape irrigation, lake fill, construction, and other non-potable
5 purposes in TR Ranch, without residential priority and curtailment limitations; would allow the TR
6 entities to interconnect such additional wells to the TR System with ICR consent; would require the
7 TR entities to transfer to ICR all utility infrastructure constructed to serve TR Ranch and not
8 previously transferred; would require the TR entities to continue to use reasonable efforts to promote
9 conservation in TR Ranch and to minimize the use of groundwater for landscape irrigation, lake fill,
10 and other non-potable purposes; would require TRGC to complete, by February 1, 2009, construction
11 of an additional planned storage pond with an estimated capacity of 25 million gallons; would require
12 ICR and the TR entities to seek Commission approval of the WSA without material change or, if the
13 Commission determined that it lacked authority to approve the WSA, Commission approval of the
14 rates and charges in the WSA; would become effective upon the filing of statements of acceptance by
15 ICR and the TR entities after the Commission approved either the WSA itself or the rates and charges
16 in the WSA, with only changes that ICR and the TR entities found acceptable;¹⁰ and would require
17 the TR entities to waive the right to challenge ICR's withdrawal of water from the TR Wells and any
18 additional well under ICR's control.

19 31. On September 25, 2008, a status conference was held at the Commission's offices in
20 Phoenix, Arizona. ICR, TRGC, and Staff appeared through counsel, and Mr. Taylor appeared on his
21 own behalf. At the status conference, ICR asserted that the WSA addressed all of the outstanding
22 issues in the case and would allow the rate case to proceed; TRGC asserted that the WSA was a good
23 solution and should be approved; and Mr. Taylor asserted that the WSA would not benefit ICR's
24 member/customers. ICR's compliance status regarding Decision No. 64360 was also discussed.
25 Staff was urged to review the WSA thoroughly, ICR was directed to hold its next Board meeting in a
26 location that would accommodate member/customers desiring to comment on the WSA, Mr. Taylor

27 _____
28 ¹⁰ The WSA also states, however, at ¶ 11(d), that it shall become effective after statements of acceptance are submitted indicating that the final and non-appealable Commission Decision approving the WSA is acceptable.

1 was directed to file a request if he desired for the Commission to hold a public comment session in
2 the Prescott area, and testimony and hearing dates were established. In addition, public comment was
3 received from a member/customer who questioned the value of the member/customer petition filed
4 by ICR and had concerns regarding the WSA's allowance for non-tariffed construction water for
5 Harvard and a 25 million gallon storage lake for the golf course.

6 32. More than 40 written public comments were filed in this matter, the vast majority of
7 them from member/customers who expressed dissatisfaction with the positions taken by ICR's Board
8 vis à vis the TR entities and with the ICR Board's practices. Many of the commenters submitted
9 more than one set of comments.

10 33. On September 26, 2008, a Procedural Order was issued scheduling a hearing to
11 commence on December 1, 2008, and establishing additional procedural requirements and deadlines.

12 34. On October 10, 2008, Mr. Taylor filed a request for a public meeting to be held with
13 Commissioners in the Prescott area.

14 35. On October 15, 2008, ICR filed additional supplemental testimony.

15 36. ICR had notice of the December 2008 hearing published in the *Prescott Courier* on
16 October 26, 2008, and mailed to each of its member/customers on or around the same date. (Tr. at
17 86.)

18 37. On November 6, 2008, ICR filed a document stating that ICR had held a
19 member/customer meeting to discuss the WSA at a local fire station on the evening of October 28,
20 2008, which meeting was attended by approximately 50 people and lasted approximately 2.5 hours.

21 38. On November 14 and 21, 2008, additional testimony was filed by Staff, TRGC, Mr.
22 Taylor, and ICR. In addition, TRGC filed a legal memorandum regarding groundwater law.

23 39. In Staff's testimony dated November 14, 2008, Staff stated that Staff believed the third
24 well should be transferred to ICR because the golf course receives most of the water from the TR
25 Wells. Staff also made the following recommendations:

- 26 a. That Staff's rates and charges, including a tariffed special commodity charge
27 of \$1.40 per 1,000 gallons for the golf course, be approved;
- 28 b. That a provision be included in ICR's tariff to allow for the flow-through of all

1 appropriate state and local taxes as provided for in A.A.C. R14-2-409(D)(5);

2 c. That the Well Field Property be transferred and deeded to ICR; and

3 d. That the Commission deny approval of the WSA. (Ex. S-6.)

4 40. In his last two rounds of written testimony, Mr. Busch testified that a major benefit
5 of the WSA is that TRGC will remain on ICR's water system to produce revenue that substantially
6 reduces the size of the rate increase requested in this matter. (Ex. ICR-8.)¹¹ Mr. Busch also testified
7 that he doubted TRGC would remain on ICR's system if Staff's recommendations were approved.
8 (*Id.*) Mr. Busch further testified that if the WSA were not approved, many of the beneficial
9 concessions contained therein would not occur, and ICR would still have in place a Main Extension
10 Agreement ("MXA") with Harvard, dated March 5, 2001; a First Amendment to the MXA, dated
11 February 25, 2003; and the Well Agreement. (*Id.*) Mr. Busch testified that these three agreements,
12 which set forth the current terms and conditions governing the delivery of water to TRGC's golf
13 course and entitle Harvard to wheel water through ICR's system in exchange for paying ICR a
14 wheeling fee and a percentage of the costs associated with running the water system, conflict with
15 Staff's recommendations regarding the transfer of Well #1 and having TRGC pay a tariffed rate for
16 the water to serve the golf course. (*Id.*)

17 41. On December 1, 2, and 3, 2008, a full evidentiary hearing was held at the
18 Commission's offices in Phoenix, Arizona. ICR, TRGC, and Staff appeared through counsel, and
19 Mr. Taylor appeared on his own behalf. At the beginning of the hearing, public comment was
20 received from 10 ICR member/customers, five of whom supported the WSA, and five of whom
21 opposed the WSA. Testimony for ICR was received from Mr. Busch and Thomas J. Bourassa, a self-
22 employed Certified Public Accountant and consultant hired by ICR for the rate case. Testimony for
23 TRGC was received from Craig L. Krumwiede, who described himself as "head wrangler for the
24 president" of Harvard Investments, an affiliate of the TR entities; Mr. Taylor presented testimony on
25 his own behalf; and testimony for Staff was received from Jian W. Liu, Staff Engineer; Charles R.
26 Myhlhousen, Staff Public Utilities Analyst III; and Mr. Bozzo.

27 _____
28 ¹¹ Official notice is taken of the third page of Mr. Busch's supplemental rebuttal testimony filed on November 21, 2008,
as Exhibit ICR-8 is missing that page.

1 42. On the first day of hearing, Mr. Busch testified that ICR's ADEQ noncompliance
2 issues had concerned maximum residual disinfectant level ("MRDL") reporting requirements and
3 lead and copper monitoring requirements and that ICR had come into complete compliance with
4 ADEQ requirements by providing ADEQ copies of reports for MRDL and by conducting additional
5 lead and copper monitoring testing, (Tr. at 90-91), as evidenced by the May 2008 ADEQ Compliance
6 Status Reports showing no major deficiencies in ICR's systems, (Tr. at 91-92; Ex. ICR-11).

7 43. Mr. Busch also testified about the First Amendment to the WSA ("First
8 Amendment"), which had been signed by ICR and the TR entities on the first day of hearing. (Tr. at
9 96-97.) Mr. Busch testified that the First Amendment would make TRGC a customer that would pay
10 a tariffed special commodity rate; would make the amended WSA effective upon the filing of
11 statements of acceptance by ICR and the TR entities after the Commission issues its decision in this
12 matter, not upon the Commission's approval of the WSA; would obligate the TR entities to purchase
13 all water needed, less effluent, from ICR and thus would prohibit the TR entities from supplying
14 themselves groundwater; would adopt Staff's recommended commodity rate for the golf course of
15 \$1.40 per 1,000 gallons, without a monthly minimum charge; would establish a moratorium on ICR's
16 filing for a rate increase that would take effect within five years after the date of the decision in this
17 matter; would terminate the moratorium if the TR entities were to cease taking water from ICR;
18 would allow a rate case during the moratorium if a new treatment requirement or contamination
19 resulted in increased operating expenses; would require the TR entities to provide ICR 90 days'
20 notice if the TR entities intended to leave the system; would eliminate language in the WSA allowing
21 the TR entities to connect an additional well to ICR's system and to supply water to the golf course;
22 would require the TR entities to waive any right to challenge ICR's withdrawal of water from the TR
23 Wells; would require that no additional wells be connected to the system; would delete the system
24 reservation charge; would require ICR not to oppose the TR entities' constructing their own water
25 line to the golf course, if the TR entities were to leave the system; would allow the TR entities to
26 request water from ICR wells as a backup in the event the TR entities had disconnected from the
27 system but needed emergency water; and would require ICR to notify the TR entities if ICR intended
28 to file with the Commission anything that might affect the special commodity rate. (Tr. at 97-132.)

1 Mr. Busch testified that the First Amendment was primarily intended to adopt Staff's recommended
2 commodity rate for the golf course while still allowing ICR to obtain the benefits afforded by the
3 WSA. (Tr. at 133.)

4 44. Mr. Busch testified that ICR agreed with the rate design set out in Staff's November
5 2008 testimony, including the special commodity rate, which Mr. Busch believed to apply to
6 construction water as well as golf course water, and agreed with Staff's recommendation for flow-
7 through of taxes. (Tr. at 134-36, 154.) Mr. Busch testified that ICR disagreed with Staff's
8 recommendation to have the Well Field Property transferred to ICR, because ICR does not have the
9 ability to control whether the land is transferred, but that ICR would not object to having the land
10 transferred to ICR. (Tr. at 136-37.) Mr. Busch further testified that there is no effective difference
11 between owning the Well Field Property outright versus the rights provided under the WSA and First
12 Amendment. (Tr. at 139.) Regarding Staff's recommendation that the Commission not approve the
13 WSA, Mr. Busch testified that he believed Staff did not want to recommend approval because of
14 Staff's uncertainty regarding the Commission's jurisdiction over the WSA, not because of any
15 provisions in the WSA. (Tr. at 142.) Mr. Busch testified that ICR would like to have Staff recognize
16 the benefits of and support the WSA and First Amendment, but would not object to the
17 Commission's concluding that it lacks jurisdiction to approve the WSA and First Amendment. (Tr. at
18 143.)

19 45. Regarding Staff's recommendations related to compliance with Decision No. 64360,
20 compliance with ADEQ requirements, and reporting of water use data to the Commission, Mr. Busch
21 testified that ICR is in compliance with the requirements of Decision No. 64360 because the second
22 well was transferred to ICR on May 21, 2008; that ICR is now in full compliance with ADEQ
23 requirements; and that ICR has and will provide to the Commission separate data for each of its water
24 systems. (Tr. at 145-46, 148-49.)

25 46. During the hearing, it was revealed that Mr. Busch had authorized ICR to implement a
26 special water rate of \$10 per 1,000 gallons for hydrant water, although that rate is not included on
27 ICR's tariff, has not been approved by the Commission, and has not even been approved by ICR's
28 Board. (Tr. at 184.) Mr. Busch testified that the hydrant rate is charged for water from two metered

1 fire hydrants, from which water is drawn by water haulers and for construction purposes. (Tr. at 187-
2 88.) The meters were installed to try to encourage people to obtain water legally rather than through
3 theft, which had been a problem, and Mr. Busch set the rate at a level that he thought was reasonable
4 under the circumstances. (*Id.*) Mr. Busch testified that there is not a lot of such use and was unable
5 to state whether ICR was requesting approval of the hydrant rate in this matter.¹² (Tr. at 188-89.)
6 Mr. Busch was informed that ICR is prohibited from charging the special hydrant rate without
7 Commission approval. (Tr. at 189-90.)

8 47. A lengthy recess was taken during the second day of hearing, during which time the
9 parties engaged in discussions toward reaching an additional agreement to resolve outstanding issues
10 in the case. At the conclusion of the second day of hearing, the parties indicated that those
11 discussions would continue and that the parties hoped to bring forth another agreement the following
12 day.

13 48. At the commencement of the third day of hearing, the parties stated that they had
14 melded the WSA and First Amendment and further modified the melded document into an Amended
15 and Restated Water Services Agreement (“New Agreement”) that had been entered into by ICR and
16 the TR entities and that was supported by Mr. Taylor and Staff. (Tr. at 229-31.)

17 49. Mr. Busch testified that Staff’s recommended rates and charges are incorporated into
18 the New Agreement and that the New Agreement requires the transfer to ICR of the Well Field
19 Property. (Tr. at 237-38.) Mr. Busch also testified that ICR does not object to Staff’s
20 recommendation for ICR’s tariff to allow for the flow through of all appropriate state and local taxes.
21 (Tr. at 238.) Mr. Busch further testified that he is satisfied with the terms of the New Agreement and
22 that ICR will abide by the terms of the New Agreement and the recommended rates and charges and
23 follow the tariff accordingly. (Tr. at 255-57.)

24 50. Mr. Bourassa testified that the rates and charges recommended by Staff and
25 incorporated into the New Agreement would result in the TR entities’ covering their cost of service
26 plus a reasonable reserve margin and are sufficient for ICR based on the test year. (Tr. at 274-75,
27

28 ¹² ICR’s proposed rate design does not include a special hydrant rate, but does include a standpipe rate.

1 282.) Mr. Bourassa further testified that the New Agreement is in the best interest of ICR at this
2 time. (Tr. at 283.)

3 51. Mr. Krumwiede testified on behalf of TRGC that he supports the New Agreement and
4 desires for the Commission to approve the provisions of the New Agreement that are within the
5 Commission's authority. (Tr. at 286-87.) Mr. Krumwiede testified that the changes in the New
6 Agreement were made in discussions involving himself, ICR, Mr. Taylor, and a representative of
7 Staff and are intended to address concerns and issues raised by Mr. Taylor in this matter. (Tr. at
8 289.) Mr. Krumwiede testified that the TR entities will be transferring Well #1 and the Well Field
9 Property to ICR; will make additional system repairs to some of the wells, including addressing
10 aeration through a pump replacement;¹³ and will be a customer of ICR, paying tariffed rates, rather
11 than a non-customer receiving "wheeling" services. (Tr. at 289-90.) Mr. Krumwiede further testified
12 that the \$1.40 special commodity rate is appropriate and that the TR entities made concessions to
13 reach the New Agreement because they believe that ICR's success is important to support future
14 development, and they desire to support ICR's efforts to be a viable utility company. (Tr. at 290-91.)
15 Mr. Krumwiede testified that the TR entities agree with Staff's rates and charges as they are
16 incorporated into the New Agreement and are happy to enter into and fully support the New
17 Agreement. (Tr. at 304, 309.)

18 52. Mr. Taylor testified that he supports the New Agreement and is satisfied with its
19 terms. (Tr. at 313.) Mr. Taylor further testified that he intervened in part to address better use of
20 groundwater and is satisfied that the TR entities are taking steps to conserve and ensure better use of
21 groundwater. (Tr. at 314.) Mr. Taylor confirmed that he does not desire for the Commission to enter
22 any relief different from what the TR entities and ICR are now requesting and that he agrees with
23 Staff's rates and charges and that they have been incorporated into the New Agreement. (Tr. at 316-
24 17.)

25 53. A member/customer and ICR Board member who, in his individual capacity, provided
26 public comment to oppose the WSA and First Amendment on the first day of hearing, again provided

27 ¹³ Mr. Busch testified that the pump for Well #2 is to be replaced with a smaller pump because the current pump may
28 be over-pumping the well and pulling in air that results in too much air in the water and could cause deterioration of the
motor. (Tr. at 209.)

1 public comment on the final day of hearing, urging the Commission to approve the New Agreement.
2 (Tr. at 318.)

3 54. Mr. Liu testified that, based on the April 2008 ADEQ Compliance Status Reports,
4 Staff no longer recommends that any increase in rates and charges not become effective until Staff
5 receives notice of total compliance with ADEQ regulations. (Tr. at 321-22.) Mr. Liu further testified
6 that, based on Mr. Bozzo's November 2008 memorandum, Staff no longer recommends that any
7 increase in rates and charges not become effective until the month after ICR files documentation
8 verifying total compliance with Decision No. 64360 (Tr. at 323-24.)

9 55. Mr. Myhlhousen testified that Staff recommends the adoption of the rates and charges
10 included in Staff's written testimony of November 14, 2008, which Mr. Myhlhousen stated are
11 incorporated into the New Agreement. (Tr. at 329, 332.) Mr. Myhlhousen clarified that the \$1.40
12 special commodity rate is intended to apply to groundwater purchased for golf course irrigation and
13 lake fill and groundwater purchased for construction purposes. (Tr. at 330-31.) Mr. Myhlhousen also
14 testified that Staff believes the terms of the New Agreement resolve the issues disputed earlier in this
15 matter and are in the public interest and that Staff is not recommending Commission approval of the
16 New Agreement because Staff believes that private parties' contracts should not be approved by the
17 Commission, not because Staff disagrees with the substance of the New Agreement. (Tr. at 331,
18 333.)

19 56. ICR's current rates and charges and the rates and charges recommended by Staff in
20 Staff's written testimony of November 14, 2008,¹⁴ and now supported by ICR and TRGC are as
21 follows:

| <u>MONTHLY USAGE CHARGE:</u> | <u>Present Rates</u> | <u>Staff Recommended</u> |
|------------------------------|----------------------|--------------------------|
| 5/8" x 3/4" Meter | \$ 20.00 | \$ 20.00 |
| 3/4" Meter | 20.00 | 20.00 |
| 1" Meter | 50.00 | 50.00 |
| 1 1/2" Meter | 100.00 | 100.00 |
| 2" Meter | 160.00 | 160.00 |
| 3" Meter | 300.00 | 300.00 |
| 4" Meter | 500.00 | 500.00 |

28 ¹⁴ These rates reflect Mr. Myhlhousen's correction of a typographical error at hearing and his clarification at hearing that the Golf Course commodity rate is also intended to apply to construction water.

| | | | |
|----|---|----------|----------|
| 1 | 6" Meter | 1,000.00 | 1,000.00 |
| 2 | Gallons included in Minimum | 1,000 | 0 |
| 3 | <u>Commodity Rates (Per 1,000 Gallons)</u> | | |
| 4 | <u>All Meter Sizes</u> | | |
| 5 | Per 1,000 gallons in excess of monthly minimum | \$2.80 | |
| 6 | <u>5/8" x 3/4" & 3/4" Meter</u> | | |
| 7 | 1 to 4,000 Gallons | N/A | \$2.80 |
| 8 | 4,001 to 9,000 Gallons | N/A | 4.00 |
| 9 | Over 9,000 Gallons | N/A | 5.00 |
| 10 | <u>1" Meter</u> | | |
| 11 | 1 to 22,500 Gallons | N/A | \$4.00 |
| 12 | Over 22,500 Gallons | N/A | 5.00 |
| 13 | <u>1 1/2" Meter</u> | | |
| 14 | 1 to 45,000 Gallons | N/A | \$4.00 |
| 15 | Over 45,000 Gallons | N/A | 5.00 |
| 16 | <u>2" Meter</u> | | |
| 17 | 1 to 72,000 Gallons | N/A | \$4.00 |
| 18 | Over 72,000 Gallons | N/A | 5.00 |
| 19 | <u>3" Meter</u> | | |
| 20 | 1 to 144,000 Gallons | N/A | \$4.00 |
| 21 | Over 144,000 Gallons | N/A | 5.00 |
| 22 | <u>4" Meter</u> | | |
| 23 | 1 to 225,000 Gallons | N/A | \$4.00 |
| 24 | Over 225,000 Gallons | N/A | 5.00 |
| 25 | <u>6" Meter</u> | | |
| 26 | 1 to 450,000 Gallons | N/A | \$4.00 |
| 27 | Over 450,000 Gallons | N/A | 5.00 |
| 28 | <u>Golf Course and Construction Water</u> | | |
| 29 | Per 1,000 Gallons—All Gallons | N/A | \$1.40 |
| 30 | <u>Standpipe/Bulk</u> | | |
| 31 | Per 1,000 Gallons—All Gallons | \$2.80 | \$5.00 |
| 32 | ... | | |
| 33 | ... | | |
| 34 | ... | | |

SERVICE LINE AND METER INSTALLATION CHARGES:

(Refundable pursuant to A.A.C. R14-2-405)

STAFF RECOMMENDED

| | <u>Present</u> | <u>Service Line Charge</u> | <u>Meter Installation</u> | <u>Total</u> |
|-------------------|----------------|----------------------------|---------------------------|--------------|
| 5/8" x 3/4" Meter | \$ 250.00 | \$ 385.00 | \$ 135.00 | \$ 520.00 |
| 3/4" Meter | 250.00 | 385.00 | 215.00 | 600.00 |
| 1" Meter | 300.00 | 435.00 | 255.00 | 690.00 |
| 1 1/2" Meter | 450.00 | 470.00 | 465.00 | 935.00 |
| 2" Turbine Meter | 625.00 | 630.00 | 965.00 | 1,595.00 |
| 2" Compound Meter | 625.00 | 630.00 | 1,690.00 | 2,320.00 |
| 3" Turbine Meter | 825.00 | 805.00 | 1,470.00 | 2,275.00 |
| 3" Compound Meter | 825.00 | 845.00 | 2,265.00 | 3,110.00 |
| 4" Turbine Meter | 1,450.00 | 1,170.00 | 2,350.00 | 3,520.00 |
| 4" Compound Meter | 1,450.00 | 1,230.00 | 3,245.00 | 4,475.00 |
| 6" Turbine Meter | 3,100.00 | 1,730.00 | 4,545.00 | 6,275.00 |
| 6" Compound Meter | 3,100.00 | 1,770.00 | 6,280.00 | 8,050.00 |
| 8" Meter | N/A | At Cost | At Cost | At Cost |
| 10" Meter | N/A | At Cost | At Cost | At Cost |
| 12" Meter | N/A | At Cost | At Cost | At Cost |

SERVICE CHARGES:

| | <u>Present</u> | <u>Staff Recommended</u> |
|---|-----------------------|--------------------------|
| Establishment | \$25.00 | \$25.00 |
| Establishment (After Hours) | 50.00 | 50.00 |
| Reconnection (Delinquent) | 20.00 | 20.00 |
| Reconnection (After Hours) | 20.00 | 40.00 |
| Meter Test (Calibration or leak deception) | 20.00 | 20.00 |
| Deposit Requirement (Residential/Commercial) | Per Rule ¹ | * |
| Deposit Interest | Per Rule ² | 6.00% |
| Reestablishment (Within 12 Months) | ** | ** |
| NSF Check | 15.00 | 15.00 |
| Deferred Payment Per Month | 1.50% | 1.50% |
| Meter Re-Read (If Correct) | 10.00 | 10.00 |
| Late Charge Per Month | N/A | *** |
| Monthly Service Charge for Fire Sprinkler (All Sizes) | N/A | **** |

* Per Commission rule (R-14-2-403(B)).

** Months off system times the monthly minimum (R14-2-403(D)).

*** 1.50 percent of the unpaid balance per month.

**** 1.0 percent of monthly minimum for a comparably sized meter connection, but no less than \$5.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

¹ Per A.A.C. R14-2-403(B)(7).

² Per A.A.C. R14-2-403(B)(3).

1 57. Staff's recommended rates and charges would increase the monthly bill for a customer
2 with average usage of 7,085 gallons by \$6.50, or 17.55 percent, from \$37.04 to \$43.54, and would
3 increase the monthly bill for a customer with median usage of 4,500 gallons by \$3.40, or 11.41
4 percent, from \$29.80 to \$33.20. (Ex. S-6.)

5 58. During the test year, ICR served 364 customers, 256 of whom were served by the ICR
6 System and 108 of whom were served by the TR System. (Ex. S-1.) The vast majority of these
7 customers (337 of 364) were residential customers served by 5/8" x 3/4" meters. (*Id.*) Staff projects
8 that ICR could have approximately 575 customers by December 2010. (*Id.*)

9 59. ICR requested to use its OCRB as its FVRB. (Ex. ICR-1.) Staff determined ICR's
10 OCRB to be negative \$576,986 after eliminating \$22,374 in cash working capital allowance proposed
11 by ICR based on the formula method. (Ex. S-7.) Staff eliminated the cash working capital allowance
12 because ICR is a Class C utility, and Staff believes that it is inappropriate to include a cash working
13 capital allowance for a Class A, B, or C utility in the absence of justification through a lead-lag study,
14 which was not provided in this case. (*See* Ex. S-2.) ICR agreed with Staff's OCRB figure. (Ex.
15 ICR-6.) We find ICR's FVRB to be negative \$576,986. We also find that because ICR's FVRB is
16 negative, no rate of return can be calculated, and rates should be established based upon operating
17 margin.

18 60. ICR and Staff now agree on adjusted test year revenues of \$391,950 and operating
19 expenses of \$396,811, resulting in an operating loss of \$4,861 for the test year. (Ex. ICR-6; Ex. S-6.)
20 To reach these figures, among other adjustments, golf course revenues characterized as "other water
21 revenues" were decreased by \$51,123; revenues of \$175,026 to be realized from the New
22 Agreement¹⁵ were added; purchased power costs of \$79,492 were added to reflect that ICR will now
23 be incurring all of these costs; property taxes were increased by \$4,214; and rate case expense was
24 increased by \$10,000. (Ex. ICR-6; Ex. S-6.) ICR and Staff agree on these adjustments, (Ex. ICR-6;
25 Ex. S-6), and we find that they are appropriate and should be adopted.

26 61. ICR and Staff also now agree on proposed total operating revenue of \$445,855 and

27 ¹⁵ This revenue was originally conceived to be received under the WSA, but would now be received under the New
28 Agreement, which is expected to generate equivalent revenues from service to the TR entities based on Staff's
recommended special commodity rate. (Tr. at 273.)

1 operating income of \$49,044, which represents an operating margin of 11.00 percent, (Ex. ICR-6; Ex.
2 S-6), and would provide an increase in revenues of \$53,905, or 13.75 percent over adjusted test year
3 revenues of \$391,950. We find that the proposed total operating revenue, total operating income, and
4 operating margin are appropriate and should be adopted.

5 62. ICR's service area is not located within an Active Management Area and thus is not
6 subject to ADWR reporting and conservation rules. (Ex. S-1.)

7 63. ICR has no employees. (Tr. at 246.) It has been managed by Mr. Busch since
8 approximately mid-2005 pursuant to a contract with MDI Financial Services, by whom Mr. Busch is
9 employed. (Tr. at 83, 247-48.) ICR's certified operator is employed by A Quality Water Company,
10 with whom ICR contracts for operator services. (Tr. at 84.)

11 64. ICR is currently in full compliance with ADEQ requirements and is providing water
12 that meets the requirements of the Safe Drinking Water Act. (Tr. at 263-64.)

13 65. During this proceeding, Mr. Taylor expressed concern that ICR's residential
14 customers have been subsidizing the TR entities. In response, ICR had a Cost of Service Study
15 ("COSS") completed and then supplemented after the WSA was executed. The COSS and
16 Supplemental COSS both show that, from a cost-of-service perspective, the TR entities have been
17 subsidizing residential ICR customers. (Ex. ICR-5; Ex. ICR-6.) The Supplemental COSS shows,
18 based on ICR's present rates and charges and test year data, total operating expenses of \$219,362
19 attributable to residential customers with 5/8" x 3/4" meters, with total revenue of \$151,542
20 generated by those customers, resulting in a deficit of \$67,820. (Ex. ICR-6 at Sched. G-1.) In
21 contrast, the Supplemental COSS shows total operating expenses of \$111,178 attributable to serving
22 the TR entities for the golf course and construction, with total revenues of \$180,658 generated by the
23 TR entities, resulting in income of \$69,480, or a 38.46 percent operating margin. (*Id.*) Using the
24 rates and charges under the WSA, the Supplemental COSS shows total operating expenses of
25 \$219,155 attributable to residential customers with 5/8" x 3/4" meters, with total revenue of
26 \$185,481, resulting in a deficit of \$33,674, and total operating expenses of \$110,857 attributable to
27 the TR entities, with total revenue of \$175,804, resulting in income of \$64,947, or a 36.94 percent
28 operating margin. (*Id.*) Mr. Bourassa testified that the Supplemental COSS is still valid using the

1 New Agreement rates and charges, which are expected to generate the same revenues as the rates and
2 charges under the WSA. (Tr. at 273-75.) We find that Mr. Taylor's concerns related to residential
3 customers' subsidization of the TR entities have not been substantiated.

4 66. According to Staff, non-account water should be 10 percent or less and never more
5 than 15 percent. For the TR System in the 2006 test year, ICR provided data showing 148,867,000
6 gallons pumped and 134,532,390 gallons sold, resulting in water loss of 14,334,610 gallons or 9.63
7 percent, which is just within acceptable limits. (Ex. ICR-14.) Staff reported a much lower water loss
8 percentage for the two systems combined (approximately 2 percent) and recommended that ICR be
9 required to separate out the water use data (including customer count information, construction water
10 use data, and golf course water use data) and plant summary information for each of its water systems
11 in future Annual Reports. (Ex. S-1.) In response to Staff's recommendation, ICR stated that it can
12 provide, on a monthly basis, (1) amount of water pumped from each system, (2) amount of water
13 pumped to the golf course, (3) amount of water used by the TR entities for construction, (4) amount
14 of water used by customers (excluding the golf course), (5) amount of unaccounted for water, and (6)
15 total number of customers. (Ex. ICR-3.) In addition, ICR stated that it can provide a plant summary
16 for each system on an annual basis. (*Id.*) ICR stated that if this information conforms to Staff's
17 recommendation, ICR does not object to Staff's recommendation. (*Id.*) In response, Staff testified
18 that this information would satisfy Staff's recommendation, but that water use information needs to
19 be provided separately for the ICR System and the TR System. (Ex. S-4.) Staff's recommendation
20 is reasonable and should be adopted.

21 67. The U.S. Environmental Protection Agency has reduced the arsenic maximum
22 contaminant level ("MCL") for drinking water from 50 parts per billion ("ppb") to 10 ppb. ICR
23 reports that the arsenic level of the water from each well used to provide water service to its
24 member/customers is 2.3 ppb, which is well within the current MCL of 10 ppb. (*See* Ex. ICR-1.)

25 68. Southwest Groundwater Consultants ("SGC"), hydrologists hired by the TR entities
26 with respect to development of TR Ranch, prepared a well field evaluation report in December 2007,
27 based on three days of testing conducted in October 2007, concluding that the Well Field Property is
28 capable of producing 940 gallons per minute ("GPM") for extended periods of time with all three

1 wells pumping during the nonpeak pumping season and approximately 854 GPM with all three wells
 2 pumping during the peak pumping season. (Tr. at 242-43; Ex. TRGC-3 at 12.) SGC further
 3 concluded that pumping more than one well directly and immediately impacts the water levels in all
 4 other wells in the Well Field Property¹⁶ and that water levels recover rapidly once pumping stops.
 5 (Tr. at 243, Ex. TRGC-3 at 12.)

6 69. Mr. Busch testified that another report concerning the three-day test was prepared and
 7 provided to ICR and concluded that during peak periods once build-out is achieved in TR Ranch, the
 8 TR Wells may provide an insufficient yield to serve both TR Ranch's residential customers and the
 9 golf course. (Tr. at 192-93, 203.) Mr. Busch testified that this would mean that another water source
 10 would be needed. (Tr. at 203.) Mr. Busch further testified that he believes the Well Field Property
 11 does not produce the yield described in the Well Agreement, that there is not enough capacity in the
 12 TR Wells, and that another water source ultimately will need to be found. (Tr. at 204-05.) Mr.
 13 Busch was unable to state at what point the yield from the TR Wells will become inadequate to meet
 14 both the golf course and the residential needs for TR Ranch. (Tr. at 205-06.) Mr. Busch also
 15 testified, however, that the availability of increased quantities of effluent with community growth will
 16 lower the golf course's need for groundwater. (Tr. at 241.)

17 70. The TR entities believe that at full build-out, the TR Wells will still be sufficient to
 18 serve both the homeowners and the golf course because of the availability of effluent and the ability
 19 to store effluent for use during the peak season summer months. (Tr. at 307-08.)

20 71. Staff has determined that ICR's systems have adequate production capacity and
 21 storage capacity to serve their existing connections. (Ex. S-1.)

22 72. ICR has a Commission-approved Curtailment Plan Tariff on file with the
 23 Commission. (Tr. at 159.)

24 73. ICR is current on payment of its property and sales taxes. (Tr. at 264.)

25 74. ICR is in good standing with the Commission's Corporations Division.

26 ...

27
 28 ¹⁶ SGC showed that there is a fourth observation well ("Well #4") that lacks pumping equipment. (Ex. TRGC-3 at 12.)

1 **Compliance With Decision No. 64360**

2 75. ICR's CC&N service area was extended in Decision No. 64360 (January 15, 2002) to
3 include approximately 3,070 acres of land, the area now known as TR Ranch. In Decision No.
4 64360, the Commission determined that ICR and Harvard had entered into a Main Extension
5 Agreement ("MXA") under which Harvard would construct and advance to ICR all of the facilities
6 necessary to serve TR Ranch, and TR Ranch would refund to Harvard, over a period of 25 years,
7 beginning 5 years after ICR first provided service in the extension area, 15 percent of the revenues
8 derived from the provision of service to the extension area, with any unpaid balance at the end of the
9 25-year term becoming a non-refundable contribution to ICR. (Decision No. 64360 at 2-3.) Under
10 the MXA, the value of the facilities at build out was stated as approximately \$15,160,578. (Decision
11 No. 64360 at 3.) The MXA provided that ICR consented to Harvard's using water from Harvard's
12 well to provide its golf course and storage lakes with water and that ICR agreed to provide water to
13 the golf course at the lawful tariffed rate upon a future written request from Harvard. (*Id.*) The
14 Commission found that Harvard had drilled two test wells, one of which produced approximately 700
15 GPM, but had had its water production lowered to 525 GPM to be in line with the projected build-out
16 demand for TR Ranch of 523 GPM. (Decision No. 64360 at 4.) The Commission found that Harvard
17 planned to use the second well as a back-up emergency well and had the ability to add a third well, if
18 needed. (*Id.*) The Commission also found that Harvard's well site was located slightly outside of the
19 extension area, on property owned by Harvard, and that Harvard did not wish to transfer its well site
20 to ICR. (*Id.*) The Commission expressed concern that ICR did not own or have its own water
21 production facilities and addressed its concern as follows:

22 34. However, we are concerned with the fact that ICR does not
23 own or have its own water production facilities and that the issue was not
24 addressed adequately. We believe that, as an additional condition for the
25 extension of the [CC&N] herein, as part of the [MXA], **Harvard should**
26 **include in its advance, the wells which it has drilled for the purpose of**
27 **providing water to the extension area . . . to ensure that the utility has**
28 **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.

35. We believe that this additional condition can be met by
amending the [MXA] between the parties and **we shall require ICR to**
file a copy of the relevant documents transferring ownership of the
wells and related water production facilities to ICR within 365 days of

1 the effective date of this Decision or the approval granted herein shall be
2 rendered null and void without further Order by the Commission.¹⁷

3 The Decision ordered ICR to comply with the conditions in Findings of Fact Nos. 34 and 35 and
4 conditioned the approval of the CC&N extension upon such compliance.

5 76. ICR received a 60-day extension of the MXA amendment filing requirement and, on
6 March 7, 2003, filed with the Commission a Notice of Compliance along with a copy of a First
7 Amendment to Main Extension Agreement ("MXA Amendment") and a copy of the Well
8 Agreement, both dated February 25, 2003. (Ex. S-8.) The MXA Amendment defined "facilities" to
9 include two production wells installed and constructed by Harvard and described as Production Well
10 3 ("Well #3") and Production Well 2 ("Well #2") and stated that Well #3 would be transferred and
11 conveyed to ICR by Harvard immediately after approval of the MXA Amendment by the
12 Commission or Staff and that Well #2 would be transferred and conveyed to ICR by TRGC on or
13 before the date ICR provides water service to the 800th single-family residence at the property. (*Id.*)
14 The MXA Amendment further stated that the actual costs of Well #2 and Well #3 were to constitute a
15 refundable advance in aid of construction. (*Id.*)

16 77. In response to ICR's Notice of Compliance, Staff marked the item as complied in
17 Staff's Compliance database. (Ex. S-8.) ICR's status in Staff's Compliance database did not change
18 until after Staff scrutinized the filing in this matter as a result of Mr. Taylor's assertions that ICR was
19 not in compliance with Decision No. 64360. (*Id.*)

20 78. In a January 15, 2008, memo, Mr. Bozzo stated that the qualification on the timing of
21 transfer for the second well was "contrary to the specific language and the intent of Decision No.
22 64360" and that ICR was not in compliance with the Decision. (*Id.*)

23 79. TRGC transferred Well #2 to ICR on May 21, 2008. (Ex. ICR/TRGC-1.)

24 80. In a November 21, 2008, memo, Mr. Bozzo stated that ICR had come into compliance
25 with Decision No. 64360's requirement for two wells to be transferred to ICR, as a result of the
26 transfer of Well #2 to ICR. (Ex. S-9.) Mr. Bozzo stated that Decision No. 64360 did not specifically
27 identify any particular well and that it was only clear that the Commission had ordered that two wells

28 ¹⁷ Decision No. 64360 at 5-6 (emphasis added).

1 be transferred. (*Id.*)

2 81. At hearing, Mr. Bozzo testified that the transfer to ICR of Well #1 and the Well Field
3 Property will also move to satisfy the requirements of Decision No. 64360. (Tr. at 337-38.)

4 82. Mr. Busch testified that the failure to have the two wells transferred did not harm
5 ICR's operations, as ICR has never run out of water to service its residential customers or to wheel to
6 the golf course. (Tr. at 156.)

7 83. We find that Decision No. 64360 clearly required Well #1 to be transferred to ICR
8 because Well #1 was the only well that had been completed at the time of the Decision, which was
9 issued on January 15, 2002. (*See* Ex. T-8 at ex. 2-6 (showing that Well #1 was constructed in
10 January-February 2001, that Well #2 was constructed in March-April 2002, and that Well #3 was
11 constructed in May 2002).) We further find that ICR is not currently in compliance with Decision
12 No. 64360 because Well #1 has not yet been transferred to it, but that ICR will come into substantial
13 compliance¹⁸ with Decision No. 64360 once Well #1 is transferred to it.

14 Water Use and Conservation Efforts

15 84. Water use data¹⁹ for the TR System, including the Golf Course, for 2004-2007 show
16 the following:

| Year | Total GW Sold | Golf Course GW Use | Residential GW Use | Golf Course Effluent Use |
|--------------------|---------------|--------------------------|--------------------|--------------------------|
| 2004 | 138,824,940 | 137,295,000 | 1,529,940 | No data |
| 2005 | 132,724,154 | 128,818,000 | 3,906,154 | 5,475,000 |
| 2006 | 134,532,390 | 125,026,000 | 9,506,390 | 9,745,011 |
| 2007 | 149,365,437 | 138,863,000 | 10,502,437 | 13,287,576 |
| 2008 ²⁰ | No data | 95,137,000 ²¹ | No data | 10,684,032 |

22 85. Regarding the increased water use in 2007, Mr. Krumwiede explained that the three-

24 ¹⁸ ICR cannot come into full compliance with Decision No. 64360 because the transfer of Well #1 will occur more than seven years later than ordered, and Decision No. 64360 has not been amended to extend the deadline to this extent.

25 ¹⁹ The data were taken from both Ex. ICR-14 and Ex. TRGC-4. The exhibits are largely consistent, but have an inconsistency for 2005 groundwater use for the golf course, which is shown as 128,798,000 on Ex. TRGC-4. Because Ex. ICR-14 also shows residential use and total volume sold, and those figures balance with the 2005 figure shown for golf course use, we use the 2005 figure from Ex. ICR-14.

26 ²⁰ Data shown are for January 1, 2008, through October 31, 2008.

27 ²¹ For the same period in 2006, the groundwater use was 115,609,000 gallons. (*See* Ex. TRGC-4.) Using Mr. Krumwiede's estimate of an average of 10 million gallons of groundwater use per month year-round, the projected final
28 figure for all of 2008 would be 115,137,000. (*See* Tr. at 307.)

1 day water pumping test conducted in October 2007 resulted in the use of a great deal of extra
2 groundwater on the golf course and driving range because the storage lake could not store all of the
3 water from the three days of continuous pumping. (Tr. at 298-99.) According to Mr. Krumwiede,
4 the golf course received approximately 9,267,213 gallons of extra groundwater due to the three-day
5 test. (Tr. at 299; Ex. TRGC-4.) Deducting this extra groundwater from the 2007 groundwater use for
6 the golf course shown above would result in 2007 groundwater use of 129,595,787 gallons.

7 86. During this proceeding, Commissioner Mayes expressed concern regarding the use of
8 a great deal of groundwater for non-potable purposes and a desire to receive information related to
9 conservation measures and best management practices that the TR entities have implemented and
10 plan to implement to conserve groundwater.

11 87. Mr. Krumwiede testified that although groundwater is still the primary source of water
12 for the golf course, TRGC uses all of the effluent that is available. (Tr. at 293.) In addition, every lot
13 in TR Ranch is subject to a set of design guidelines that requires the area outside of each home's
14 individual building envelope to be kept in a natural, unirrigated state and allows homeowners to use
15 only certain low water native plants inside the individual building envelope. (Tr. at 293-94.)
16 According to Mr. Krumwiede, the design guidelines are intended to reduce the requirement for
17 irrigation water in the community and seem to have had that effect. (Tr. at 294.) In the clubhouse,
18 TRGC uses all low flow motion detector faucets and low flow toilets. (*Id.*) TRGC also wet washes
19 the golf course maintenance equipment only once per week, using high pressure sprayers that
20 minimize water use, and air cleans it the rest of the time. (*Id.*) Mr. Krumwiede testified that the TR
21 entities also do lots of recycling throughout TR Ranch and are very focused on minimizing their
22 impact on the environment. (*Id.*) Mr. Krumwiede further testified that the golf course itself was the
23 first in Arizona to be designed using concepts from *Sustainable Strategies for Golf in the*
24 *Environment, Environmental Principles for Golf Courses in the U.S.* (Tr. at 295.) According to Mr.
25 Krumwiede, the TR entities are in the process of replacing the existing sewer plant for the ICR
26 Sanitary District with a new sewer plant that will generate "A" quality effluent, the first phase of
27 which will be 250,000 GPD, and which will be expandable to 500,000 GPD and even 1 million GPD.
28 (Tr. at 295-96, 306.) Mr. Krumwiede testified that if the sewer plant reaches a volume of 500,000

1 GPD, it will generate effluent far in excess of what the golf course currently uses. (Tr. at 306.) The
2 TR entities believe that at full build-out, there will be sufficient effluent produced to eliminate
3 groundwater use for the golf course. (*See id.*)

4 88. The New Agreement requires the TR entities to continue to use reasonable efforts to
5 maximize the use of effluent, a change that Mr. Krumwiede testified was made in response to Mr.
6 Taylor's concern that the WSA and First Amendment did not adequately address the use of effluent.
7 (Tr. at 297.) According to Mr. Krumwiede, the new storage pond is being built to store effluent,
8 which is generated at a relatively constant rate throughout the year, so that it is available for use on
9 the golf course during the high-water-use summer months. (*Id.*) The storage pond is intended to help
10 the TR entities further reduce their use of groundwater. (Tr. at 298.)

11 89. Mr. Krumwiede testified that the TR entities have reduced the amount of turf on the
12 golf course by 10 acres, with great results, and that the groundwater use on the golf course in 2008
13 was greatly reduced. (Tr. at 299.) Mr. Krumwiede also testified that the golf course irrigation system
14 is computerized and tied to an on-site weather station that provides data on precipitation,
15 transpiration, evaporation, and other factors, thereby allowing the superintendent of the golf course to
16 monitor conditions. (Tr. at 301-02.) The golf course superintendent uses only 80 percent of the
17 water that the computerized program recommends and actually remotely monitors and can adjust
18 each individual sprinkler head on the golf course to ensure that the water is directed where it needs to
19 go. (Tr. at 302.) At the time of hearing, TRGC was in the process of switching to a more efficient
20 sprinkler head design that would use less water. (Tr. at 302.) Mr. Krumwiede testified that TRGC is
21 also considering using a different kind of turf on the driving range. (Tr. at 309.) According to Mr.
22 Krumwiede, TRGC is committed to constantly assessing how it can conserve water, because it is in
23 TRGC's best interests to do so to save money, and will continue to consider implementation of
24 additional conservation measures/best management practices as they become available. (*See Tr. at*
25 *302, 309.*)

26 The New Agreement

27 90. The New Agreement is supported by all of the parties to this proceeding as a
28 reasonable resolution of the issues raised during the proceeding. Staff has testified that the New

1 Agreement is in the public interest.

2 91. The New Agreement has a term of 35 years. If it goes into effect, Well #1 would be
3 transferred to ICR within 15 days; the TR entities would pay up to \$50,000 to purchase and install a
4 new pump motor for Well #2; the TR entities would provide warranties for Well #1, Well #2, and the
5 air production in water withdrawn from them; existing restrictions on the amount and rate of water
6 ICR can pump from Well #2 and Well #3 would be waived; the Well Field Property would be
7 transferred to ICR within 90 days; the TR entities would be prohibited from constructing or
8 permitting construction of any new well or the equipping and use of any existing well on the Talking
9 Rock Real Property,²² the approximately 5-acre parcel in which the Well Field Property is located;
10 ICR would be wholly responsible to operate and maintain all three wells at its own expense; ICR
11 would be required to provide water to the TR entities for golf course irrigation, lake fill, and other
12 non-potable purposes up to a maximum of 400 acre feet per year (approximately 130,340,400
13 gallons), and for construction in an amount reasonably requested by the TR entities for the
14 development of TR Ranch; residential delivery of water would have priority over all other uses, with
15 curtailment occurring only in the event of a water shortage; the TR entities would pay the special
16 commodity rate of \$1.40 per 1,000 gallons for golf course and construction water; ICR would be
17 prohibited from applying for a rate increase that would take effect sooner than five years from the
18 effective date of this Decision, unless new treatment requirements or contamination cause increased
19 costs or the TR entities cease to take water from ICR for the golf course; the TR entities would be
20 required to purchase from ICR all water, less available effluent, required for the golf course and
21 construction purposes; the TR entities could leave the TR System at any time; the TR entities would
22 pay ICR \$50,000 within 30 days;²³ all prior agreements would be superseded and replaced except as
23 specifically set forth in the New Agreement; the TR entities would convey to ICR within 60 days all
24 utility infrastructure constructed to serve TR Ranch and not previously transferred to ICR; ICR could
25 elect to characterize utility infrastructure from the TR entities as either advances in aid of
26 construction ("AIAC") or contributions in aid of construction ("CIAC") as long as at least 30 percent

27 ²² We believe this is intended to mean that no one may construct a new well or equip and operate an existing well on
28 the Talking Rock Real Property other than the Well Field Property.

²³ The \$30,000 payment to ICR upon execution has already been made. (Tr. at 123.)

1 is characterized as AIAC; the TR entities would continue to use reasonable efforts to promote
 2 conservation within TR Ranch and to minimize the use of groundwater for the golf course; the TR
 3 entities would complete construction of the 25 million gallon storage pond by May 1, 2009; ICR
 4 would not oppose the TR entities' constructing their own well/s and/or water transmission main to
 5 enable them to supply their own water for the golf course; the TR entities' right to challenge ICR's
 6 withdrawal of water from the TR Wells would be waived; ICR would be required to provide the TR
 7 entities notice at least 90 days before filing with the Commission anything that could impact the
 8 special commodity rate; and the TR entities would be required to provide ICR notice at least 90 days
 9 before ceasing to take water from ICR during the five-year ratemaking moratorium period. In the
 10 New Agreement, ICR and the TR entities agree to seek Commission approval of the New Agreement
 11 and agree that unless the Commission approves the New Agreement without material change,²⁴ they
 12 will each submit either a statement of acceptance or a statement of non-acceptance within 10 business
 13 days after the Commission's Decision in this matter becomes final and non-appealable. The New
 14 Agreement is to become effective on the date on which ICR and the TR entities have all submitted
 15 statements of acceptance indicating that the Commission Decision approving the New Agreement²⁵ is
 16 acceptable.

17 92. Although we do not believe that it would be appropriate to approve the New
 18 Agreement itself, we do recognize that the provisions of the New Agreement requiring the transfer to
 19 ICR of Well #1 and the Well Field Property, requiring the TR entities to pay for a new pump for Well
 20 #2, restricting the construction of new wells and the equipping and operation of existing wells on the
 21

22 _____
 23 ²⁴ The New Agreement specifically states that it will not become effective if the Commission approves a special
 24 commodity rate greater than \$1.40 per 1,000 gallons or otherwise inconsistent with the new Agreement. In the New
 Agreement, the TR entities acknowledge that the special commodity rate is subject to change by the Commission in future
 rate case proceedings.

25 ²⁵ We note that although the parties have testified that the effective date for the New Agreement is not contingent upon
 26 Commission approval, the New Agreement contains language inconsistent with that testimony in its first paragraph, in
 27 Recital paragraph P, in paragraph 13(a), and in paragraph 13(b). In addition, Attachment 2 to the New Agreement is
 28 labeled as the Well Field Property Legal Description, but appears to include legal descriptions for both the Talking Rock
 Real Property as a whole and the Well Field Property. We also note that paragraph 3(f), read literally, would require the
 TR entities to prohibit ICR from constructing or using any well on the Well Field Property, which is a portion of the
 Talking Rock Real Property and would be transferred to ICR under the New Agreement. We trust that this is not the
 parties' intent and have based our decision in part on our understanding. We suggest that the parties may desire to modify
 the language of the New Agreement to address these inconsistencies.

1 Talking Rock Real Property,²⁶ capping the water to be supplied to the TR entities for the golf course,
2 prioritizing the delivery of water for residential uses, requiring the TR entities to pay a tariffed rate,
3 and requiring the TR entities to transfer to ICR the infrastructure used to serve TR Ranch that has not
4 already been transferred are all in the public interest. We also believe that ICR's residential
5 customers benefit from ICR's providing water to the TR entities because the revenue thereby
6 generated results in lower rates for the residential customers.

7 **Resolution**

8 93. Staff's recommended rates and charges set forth in Findings of Fact No. 56 and its
9 recommendations set forth in Findings of Fact Nos. 11(d)-(g) and 39 are just and reasonable and
10 should be adopted. In addition, ICR should be required to ensure that Well #1 and all utility
11 infrastructure constructed to serve TR Ranch and not already transferred to ICR are transferred to it
12 by a date certain.

13 94. We are concerned that Mr. Busch unilaterally adopted and had ICR implement a
14 special hydrant rate and caution both Mr. Busch and ICR that ICR could be subjected to adverse
15 action should such an unauthorized rate be implemented in the future. As a reminder, we will order
16 ICR to ensure that it charges only those rates and charges specifically authorized in its Commission-
17 approved tariffs.

18 95. We are concerned with the large amount of groundwater that TRGC's golf course has
19 been using and will continue to use until sufficient effluent is produced to serve its needs. However,
20 we are also encouraged by the measures to conserve groundwater that TRGC has implemented, and
21 we encourage the TR entities to continue to seek out and implement water conservation measures for
22 use at the golf course and throughout TR Ranch.

23 96. The Commission continues to be concerned about the prolonged drought in Central
24 Arizona. Therefore, we believe that ICR should be required to conserve groundwater and that ICR
25 should be prohibited from selling groundwater for the purpose of irrigating any future golf courses
26 within the certificated area or any future ornamental lakes or water features located in the common
27

28 ²⁶ We believe this is intended to mean that no one may construct a new well or equip and operate an existing well on the Talking Rock Real Property other than the Well Field Property.

1 areas of the developments within the certificated area.

2 97. Because an allowance for property tax expense will be included in ICR's rates and
3 will be collected from its customers, the Commission seeks assurances from ICR that any taxes
4 collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the
5 Commission's attention that a number of water companies have been unwilling or unable to fulfill
6 their obligation to pay the taxes that were collected from ratepayers, some for as many as 20 years. It
7 is reasonable, therefore, that as a preventive measure, ICR shall annually file, as part of its annual
8 report, an affidavit with the Utilities Division attesting that ICR is current in paying its property taxes
9 in Arizona.

10 **CONCLUSIONS OF LAW**

11 1. ICR is a public service corporation within the meaning of Article XV of the Arizona
12 Constitution and A.R.S. §§ 40-250, 40-251, and 40-256.

13 2. The Commission has jurisdiction over ICR and the subject matter of the application.

14 3. Notice of the application and the proceedings in this matter was provided in
15 accordance with the law.

16 4. The rates and charges authorized herein are just and reasonable and should be
17 approved.

18 5. Staff's recommended rates and charges set forth in Findings of Fact No. 56 and its
19 recommendations set forth in Findings of Fact Nos. 11(d)-(g) and 39 are just and reasonable and
20 should be adopted. In addition, ICR should be required to ensure that Well #1 and all utility
21 infrastructure constructed to serve TR Ranch and not already transferred to ICR are transferred to it
22 by a date certain.

23 **ORDER**

24 IT IS THEREFORE ORDERED that ICR Water Users Association, Inc. is hereby directed to
25 file with Docket Control, as a compliance item in this docket, on or before June 1, 2009, revised rate
26 schedules setting forth the following rates and charges:

27 ...

28 ...

1

2

MONTHLY USAGE CHARGE:

3

5/8" x 3/4" Meter \$ 20.00

4

3/4" Meter 20.00

5

1" Meter 50.00

6

1 1/2" Meter 100.00

7

2" Meter 160.00

3" Meter 300.00

4" Meter 500.00

6" Meter 1,000.00

8

Commodity Rates (Per 1,000 Gallons)

9

5/8" x 3/4" & 3/4" Meter

1 to 4,000 Gallons \$2.80

10

4,001 to 9,000 Gallons 4.00

11

Over 9,000 Gallons 5.00

12

1" Meter

1 to 22,500 Gallons \$4.00

13

Over 22,500 Gallons 5.00

14

1 1/2" Meter

1 to 45,000 Gallons \$4.00

15

Over 45,000 Gallons 5.00

16

2" Meter

1 to 72,000 Gallons \$4.00

17

Over 72,000 Gallons 5.00

18

3" Meter

19

1 to 144,000 Gallons \$4.00

20

Over 144,000 Gallons 5.00

21

4" Meter

1 to 225,000 Gallons \$4.00

22

Over 225,000 Gallons 5.00

23

6" Meter

1 to 450,000 Gallons \$4.00

24

Over 450,000 Gallons 5.00

25

Golf Course and Construction Water

26

Per 1,000 Gallons—All Gallons \$1.40

27

Standpipe/Bulk

28

Per 1,000 Gallons—All Gallons \$5.00

SERVICE LINE AND METER INSTALLATION**CHARGES:**

(Refundable pursuant to A.A.C. R14-2-405)

| | <u>Service</u> | <u>Meter</u> | <u>Total</u> |
|-------------------|--------------------|---------------------|--------------|
| | <u>Line Charge</u> | <u>Installation</u> | |
| 5/8" x 3/4" Meter | \$ 385.00 | \$ 135.00 | \$ 520.00 |
| 3/4" Meter | 385.00 | 215.00 | 600.00 |
| 1" Meter | 435.00 | 255.00 | 690.00 |
| 1 1/2" Meter | 470.00 | 465.00 | 935.00 |
| 2" Turbine Meter | 630.00 | 965.00 | 1,595.00 |
| 2" Compound Meter | 630.00 | 1,690.00 | 2,320.00 |
| 3" Turbine Meter | 805.00 | 1,470.00 | 2,275.00 |
| 3" Compound Meter | 845.00 | 2,265.00 | 3,110.00 |
| 4" Turbine Meter | 1,170.00 | 2,350.00 | 3,520.00 |
| 4" Compound Meter | 1,230.00 | 3,245.00 | 4,475.00 |
| 6" Turbine Meter | 1,730.00 | 4,545.00 | 6,275.00 |
| 6" Compound Meter | 1,770.00 | 6,280.00 | 8,050.00 |
| 8" Meter | At Cost | At Cost | At Cost |
| 10" Meter | At Cost | At Cost | At Cost |
| 12" Meter | At Cost | At Cost | At Cost |

SERVICE CHARGES:

| | |
|---|---------|
| Establishment | \$25.00 |
| Establishment (After Hours) | 50.00 |
| Reconnection (Delinquent) | 20.00 |
| Reconnection (After Hours) | 40.00 |
| Meter Test (Calibration or leak deception) | 20.00 |
| Deposit Requirement (Residential/Commercial) | * |
| Deposit Interest | 6.00% |
| Reestablishment (Within 12 Months) | ** |
| NSF Check | 15.00 |
| Deferred Payment Per Month | 1.50% |
| Meter Re-Read (If Correct) | 10.00 |
| Late Charge Per Month | *** |
| Monthly Service Charge for Fire Sprinkler (All Sizes) | **** |

* Per Commission rule (R-14-2-403(B)).

** Months off system times the monthly minimum (R14-2-403(D)).

*** 1.50 percent of the unpaid balance per month.

**** 1.0 percent of monthly minimum for a comparably sized meter connection, but no less than \$5.00 per month. The service charge for fire sprinklers is only applicable for service lines separate and distinct from the primary water service line.

IT IS FURTHER ORDERED that the above rates and charges shall be effective for all services provided on and after June 1, 2009.

1 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall notify its
2 customers of the rates and charges authorized hereinabove and their effective date, in a form
3 acceptable to the Commission's Utilities Division Staff, by means of an insert in its next regular
4 scheduled billing.

5 IT IS FURTHER ORDERED that, in addition to collecting its regular rates and charges, ICR
6 Water Users Association, Inc. shall collect from its customers a proportionate share of all appropriate
7 state and local taxes as provided for in A.A.C. R14-2-409(D)(5).

8 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall use, on a going-
9 forward basis, the depreciation rates by individual National Association of Regulatory Utility
10 Commissioners category set forth in Table E-1 of Exhibit S-1 in this matter.

11 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall ensure that all
12 future Annual Reports submitted to the Commission's Utilities Division include separate information
13 for each of its water systems, including customer count information, construction water use data, golf
14 course water use data, and plant summary information.

15 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall ensure that
16 ownership of Well #1 is transferred to ICR and that ICR files, within 120 days after the effective date
17 of this Decision, as a compliance item in this docket, documentation establishing that such transfer
18 has taken place.

19 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall ensure that
20 ownership of the approximately one-acre parcel of land on which Well #1, Well #2, and Well #3 are
21 located, known as the Well Field Property, is transferred and deeded to ICR and that ICR files, within
22 120 days after the effective date of this Decision, as a compliance item in this docket, documentation
23 establishing that such transfer has taken place.

24 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall ensure that
25 ownership of all utility infrastructure constructed to serve TR Ranch and not already transferred to
26 ICR Water Users Association, Inc. is transferred to ICR and that ICR files, within 120 days after the
27 effective date of this Decision, as a compliance item in this docket, documentation establishing that
28 such transfer has taken place.

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

4 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. is prohibited from
5 selling groundwater for the purpose of irrigating any future golf courses within its certificated area or
6 any future ornamental lakes or water features located in the common areas of developments within its
7 certificated area.

8 IT IS FURTHER ORDERED that ICR Water Users Association, Inc. shall ensure that it
9 charges only those rates and charges that are specifically authorized by its Commission-approved
10 tariffs.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14
15 CHAIRMAN

COMMISSIONER

16
17 COMMISSIONER

COMMISSIONER

COMMISSIONER

18
19 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
20 Executive Director of the Arizona Corporation Commission,
21 have hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this _____ day of _____, 2009.

24 _____
MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

25 DISSENT _____

26
27 DISSENT _____

28

1 SERVICE LIST FOR: ICR WATER USERS ASSOCIATION, INC.

2 DOCKET NO.: W-02824A-07-0388

3
4 Robert M. Busch
5 ICR WATER USERS ASSOCIATION, INC.
6 P.O. Box 5669
7 Chino Valley, Arizona 86323-0466

8 Jeffrey W. Crockett
9 Robert J. Metli
10 Marcie A. Shuman
11 SNELL & WILMER, L.L.P.
12 One Arizona Center
13 400 East Van Buren Street
14 Phoenix, Arizona 85004-2202
15 Attorneys for ICR Water Users Association, Inc.

16 Dayne Taylor
17 13868 North Grey Bears Trail
18 Prescott, Arizona 86305-1516

19 Jay L. Shapiro
20 FENNEMORE CRAIG, P.C.
21 3003 North Central Avenue, Suite 2600
22 Phoenix, Arizona 85012-2913
23 Attorneys for Talking Rock Golf Course, LLC

24 Janice Alward, Chief Counsel Legal Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, Arizona 85007

28 Ernest Johnson, Director Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

21
22
23
24
25
26
27
28