OPEN MEETING AGENDA ITEM

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AZ CORP COMMISSION
DOCKET CONTROL

August 24, 2009

Commissioner Kristen K. Mayes, Chairman
Commissioner Gary Pierce
Commissioner Paul Newman
Commissioner Sandra D. Kennedy
Commissioner Bob Stump
Arizona Corporation Commission
Docket Control
1200 W. Washington Street, Rm. 108
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED
AUG 24 2009
DOCKETED BY

Subject: Docket No. W-02304A-09-0153

Dear Ladies and Gentlemen:

The purpose of this letter is to provide background relating to the Agreement for Payment of Past CAP M&I Water Service Capital Charges Between the Central Arizona Water Conservation District ("CAWCD") and Community Water Company of Green Valley ("Community Water"), dated November 21, 2007, (the "Payment Agreement"). The Payment Agreement is the subject of ACC Staff's recommendation at line 16 page 5 of the recommended opinion and order in the above referenced docket.

The Payment Agreement arose from the historic CAP Water Settlement, which was approved by Congress as the Arizona Water Settlements Act of 2004, Pub. L. 108-451 (the "Settlements Act"). Among other things, the Settlements Act provided for the Secretary of the Interior ("Secretary") to reallocate to 20 specific water providers within CAP's three-county service area 65,647 acre-feet of CAP M&I water that had not been previously under contract. On August 25, 2006, in accordance with section 104(b) of the Settlements Act and the recommendation of the Arizona Department of Water Resources, the Secretary published his final reallocation decision for CAP water. Furthermore, Section 104(d) of the Settlements Act directed the Secretary to offer amended CAP subcontracts for the additional CAP M&I Priority water.

In the final reallocation decision, 1,521 acre-feet of additional CAP M&I Priority water was allocated to Community Water. In accordance with the Settlements Act, CAWCD and the United States offered Community Water an amended CAP subcontract for an additional 1,521 acre-feet of CAP M&I Priority water (the "Amended Subcontract"). The Amended Subcontract was signed by Community Water, CAWCD and the United States and, pursuant to A.R.S. §48-3731, Community Water 's Amended Subcontract was validated by the Superior Court of Pima County on November 15, 2007.

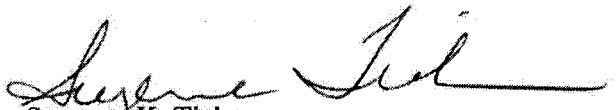
Article 4.2 of the Amended Subcontract provides that it will not become effective until three conditions are satisfied. One of the conditions is that Community Water must pay or provide for payment of the past CAP M&I water service capital charges associated with this new entitlement to CAP M&I priority water. (The past CAP M&I water service capital charges represent the annual CAP capital charges that should have been paid since 1986 but were not because the CAP M&I water was not held under contract by a subcontractor.)

In accordance with the final reallocation decision, all water providers that received an allocation of CAP M&I priority water that was not previously under contract were offered an amended CAP subcontract, and were given an option by CAWCD regarding satisfaction of the condition to pay or provide for payment of past CAP M&I capital charges. These entities had the option to either pay the past M&I capital charges in one lump sum on or before December 1, 2007, or they could elect to pay such charges on a five-year payment plan, with the first installment due on December 1, 2007. All entities were also required to sign an Agreement for Payment of Past CAP M&I Water Service Capital Charges with CAWCD to make arrangements for the timely payment of their past M&I water service capital charges. Execution of the payment agreement was a condition precedent to the effectiveness of the amended CAP subcontracts.

Community Water elected the installment payment option for payment of the past CAP M&I water service capital charges, and, as a condition precedent to the effectiveness of the Amended Subcontract validated by the Superior Court on November 15, 2007, Community Water executed its Payment Agreement on November 21, 2007. If Community Water had not executed the Payment Agreement, its Amended Subcontract would not have become effective.

Thank you for the opportunity to provide this background on Community Water's Payment Agreement. If you have any questions, you may contact me at 623-869-2410.

Sincerely,



Suzanne K. Ticknor
Senior Attorney

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Cc: Jason Gellman, Roshka DeWulf & Patten, PLC