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BEFORE THE ARIZONA CORPORATION COMMISSION

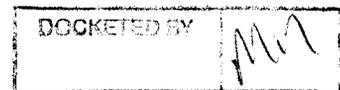
7 IN THE MATTER OF THE APPLICATION
 8 OF ARIZONA-AMERICAN WATER
 9 COMPANY, AN ARIZONA CORPORATION,
 10 FOR A DETERMINATION OF THE
 11 CURRENT FAIR VALUE OF ITS UTILITY
 12 PLANT AND PROPERTY AND FOR
 13 INCREASES IN ITS RATES AND CHARGES
 BASED THEREON FOR UTILITY SERVICE
 BY ITS ANTHEM WATER DISTRICT AND
 ITS SUN CITY WATER DISTRICT, AND
 POSSIBLE RATE CONSOLIDATION FOR
 ALL OF ARIZONA-AMERICAN
 COMPANY'S DISTRICTS.

DOCKET NO. W-01303A-09-0343

Arizona Corporation Commission

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 BY ITS ANTHEM/AGUA FRIA
 WASTEWATER DISTRICT, ITS SUN CITY
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 CITY WEST WASTEWATER DISTRICT,
 AND POSSIBLE RATE CONSOLIDATION
 FOR ALL OF ARIZONA-AMERICAN
 COMPANY'S DISTRICTS.

DOCKET NO. SW-01303A-09-0343

**CORTE BELLA'S
OPENING BRIEF**

22
 23 Mashie, LLC (Mashie), an Arizona limited liability company doing business as
 24 Corte Bella Golf Club ("Corte Bella"), hereby submits the following post-hearing opening
 25 brief in the above-captioned rate case.
 26

1 **I. INTRODUCTION**

2 Corte Bella urges the Arizona Corporation Commission (“Commission”) to adopt
3 an effluent water rate of \$250.00 per acre foot for the Agua Fria Wastewater District.
4 Corte Bella offers the following rationale in support of this position:

5 (1) Sound water conservation policy dictates that water users be encouraged to use
6 non-potable water, including effluent, thereby reducing demand on potable
7 water. The \$250.00 per acre foot rate will encourage effluent use.

8 (2) Arizona-American has not established how its proposed \$533 effluent rate will
9 impact revenues and has consequently not established that this high effluent
10 rate is warranted.

11 (3) The rate proposed by DMB White Tank, LLC (“DMB”) is fair, within the
12 market range, and affordable to turf irrigators.

13 This case gives the Commission a critical opportunity to establish effluent pricing that
14 encourages effluent use by turf irrigators. In recent years, new non-potable water rates
15 told turf irrigators – perhaps unintentionally – to cease using effluent and instead pump
16 groundwater. This was an outcome that no one, including the Commission, intended.
17 With this rate case, however, the Commission can return to rates that maximize effluent
18 use, thereby not diminishing (or making more costly) the supply of potable water
19 available to other users.

20 **II. BACKGROUND**

21 Mashie owns and operates the Corte Bella Golf Club (“Corte Bella”), which is
22 located within the Agua Fria Wastewater District and receives water services from the
23 applicant in this rate case, Arizona-American Water Company (“Arizona-American”).¹
24 Corte Bella is surrounded by approximately 1,650 homes and was constructed, along with

25 _____
26 ¹ Corte Bella’s Motion to Intervene in Phase Two (Rate Design and Rate Consolidation) p. 2,
Docket No. W-1303A-09-0343 (April 14, 2010).

1 the surrounding residences, by Del Webb Corporation in 2004.²

2 To serve Corte Bella, Arizona-American pumps non-potable water from two
3 irrigation wells, which were given to Arizona-American by Del Webb in exchange for
4 Arizona-American's written agreement to irrigate the golf course with non-potable water
5 ("Agreement").³ All water delivered to Corte Bella is offset by recharge of CAP water in
6 the year of pumping. To date, 100% of the water delivered to Corte Bella is considered to
7 be a fully renewable water use by the Arizona Department of Water Resources. The
8 Agreement does not dictate what type of "non-potable" water is delivered to Corte Bella
9 for use on the golf course. However, given the location of the golf course near the
10 Northwest Valley Regional Treatment Facility and the recharge credits available to
11 Arizona-American through that facility, Arizona-American has the flexibility to
12 categorize the Corte Bella water use as effluent use.⁴ With respect to the amount paid to
13 Arizona-American for the water (however characterized), the Agreement provides that
14 water will be delivered by Arizona-American subject to rates and tariffs filed with the
15 Commission.⁵

16 Prior to December of 2009, turf irrigators including Corte Bella paid \$0.62 per
17 thousand gallons or \$202.00 per acre foot to Arizona-American for non-potable water
18 under the Agua Fria Water District Tariff.⁶ Pursuant to Commission Decision No. 71410
19 (Dec. 8, 2009), the rate for non-potable water in the Agua Fria Water District jumped to
20 \$2.7280 per thousand gallons or \$889.00 per acre foot. This four-fold increase in the rate

21
22 ² *Id.*

23 ³ Pleasant Valley Country Club Non-Potable Water Agreement (August 5, 2002) (Intervenor
24 Corte Bella recognizes that this Agreement is not in evidence and offers this background
information only for the limited purposes of describing how Corte Bella receives water from
Arizona-American and to confirm that the arrangement is subject to the rates and tariffs approved
by the Commission.).

25 ⁴ HR TR 190 (Broderick). Throughout this brief "HR TR" references the Phase II Hearing
Transcript.

26 ⁵ Agreement p. 6.

⁶ HR TR 707 (Kelly).

1 (from \$.62 to \$2.72) made the operation of Corte Bella financially unsustainable.⁷ In
2 response to an application under A.R.S. §40-252 from Corte Bella, the Commission
3 reduced the Agua Fria Water District non-potable water rate to \$1.24, or \$414 per acre
4 foot, effective June 10, 2010.⁸ Corte Bella is now paying \$1.24 for non-potable water
5 purchased in the Agua Fria District from Arizona-American.

6
7 **III. DISCUSSION**

8 **A. The Commission Should Create An Effluent Tariff for the Agua**
9 **Fria/Anthem Wastewater District.**

10 Currently, the Agua Fria/Anthem Wastewater District does not have an effluent
11 tariff or an effluent rate.⁹ The record indicates that such a rate was initially proposed in
12 the DMB's Motion to Intervene filed on April 6, 2010.¹⁰ In the past, turf irrigators
13 purchased effluent (as non-potable water) from the Agua Fria Water District tariff even
14 though the effluent was a product of wastewater collected and treated by the Wastewater
15 District. By allowing the effluent revenue to be collected by the Wastewater district the
16 Commission would reunite costs (plant and facilities) and revenues (from effluent)
17 Wastewater District. Whether the Commission should set an effluent rate in this
18 proceeding is not seriously disputed. DMB has actively promoted such a rate,¹¹ no party
19 has opposed the creation of an effluent rate, and the Arizona-American witness testified
20 that Arizona-American "can accept a Commission order establishing a new effluent tariff
21
22

23 ⁷ See Corte Bella's A.R.S. §40-252 Application to Amend the Agua Fria District Non-Potable
Water Rate, Exhibit 4 (Docket No. SW-01303A-08-0227) (Afft. of Gordon Petrie) (6/7/2010).

24 ⁸ Procedural Order issued in Docket SW-01303A-08-0227 (June 17, 2010).

25 ⁹ HR TR at 185 (Broderick).

26 ¹⁰ See DMB White Tank, LLC's Motion to Intervene in Phase Two (Rate Design and Rate
Consolidation) p. 3.

¹¹ DMB-1 (Kelly Direct) p. 3; TR HR 703 (Kelly); see also AGCC-2 (Howe Direct) pp. 5-6 and
Summary of Testimony of Desi Howe (May 17, 2010).

1 for [the Agua Fria/Anthem] *wastewater* district.”¹² In sum, establishing a separate
2 effluent tariff for the Agua Fria/Anthem Wastewater District makes sense, has strong
3 support, and has encountered no opposition.

4 **B. The Commission Should Adopt an Effluent Rate of \$250.00 per Acre**
5 **Foot.**

6 Arizona-American has proposed a price of \$1.65 per 1,000 gallons, or \$533 per
7 acre foot for effluent for the Agua Fria/Anthem wastewater district.¹³ DMB has proposed
8 a rate of roughly \$.77 per 1,000 gallons or \$250 per acre foot.¹⁴ The Commission Staff
9 does not have an opinion regarding the appropriate rate for effluent in the Agua Fria
10 Wastewater District.¹⁵ RUCO agrees that the effluent rate should be set at a level that
11 encourages the use of effluent for turf irrigation, but has not advocated a particular rate.¹⁶
12 The Anthem Golf and Country Club has not suggested a specific rate, but has argued that
13 the current rate does not reflect cost of service and revenue flowing from the rate may
14 duplicate revenue already recovered by Arizona-American through wastewater rates.¹⁷
15 For the reasons articulated below, Corte Bella supports the effluent rate of \$250.00 per
16 acre foot proposed by DMB.

17 **1. Encouraging Effluent Use Is Good Public Policy.**

18 The Arizona Commission has for years promoted the use of effluent for turf
19 irrigation as a means to ensure the long term availability of water in Arizona.¹⁸ Indeed,
20 the Commission has, in a number of certification cases, prohibited private water
21

22 ¹² A-39 (Broderick Rate Design Rebuttal) at 2; HR TR 187 (Broderick).

23 ¹³ A-39 (Broderick Rate Design Rebuttal) at 2.

24 ¹⁴ DMB-1 (Kelly Direct) p. 4-5.

25 ¹⁵ HR TR 1292 (Michlik).

26 ¹⁶ HR TR 1175 (Jerich).

¹⁷ AGCC-2 (Howe Direct) pp. 5-6.

¹⁸ See Kris Mayes, *Encouraging Conservation by Arizona's Private Water Companies: A New Era of Regulation by the Arizona Corporation Commission*, 49 Ariz. L. Rev. 297, 305-306 (2007).

1 companies from selling groundwater for use on golf courses.¹⁹ Such certification orders
2 include language similar to the following:

3
4 [i]n light of the on-going drought conditions in central Arizona and the
5 need to conserve groundwater, [the company] is prohibited from selling
6 groundwater for the purpose of irrigating any future golf courses within
7 the certificated expansion areas or any ornamental lakes or water
developments within the certificated expansion areas.²⁰

8 This overall Commission goal of using effluent for turf irrigation and other non-potable
9 purposes is entirely undercut if effluent is priced above the cost of alternate water
10 supplies. Turf irrigators will not purchase effluent that is priced significantly above cost
11 and above the cost of utilizing alternate water sources. The above-market price will result
12 in a change in consumption preferences whenever an alternate source exists.²¹ This is
13 particularly true when the effluent purchasers have already implemented water
14 conservation measures. Both witnesses for turf irrigators at the hearing testified that water
15 costs have already motivated conservation measures and further increases in effluent costs
16 would not result in further conservation gains.²² A low effluent rate, which encourages
17 effluent consumption whenever possible, is a critical component of Commission policies
18 advancing sound water management.

19 Affordably priced effluent is also good public policy from a public health and
20 welfare perspective. If effluent is tarified above the market rate, potential effluent

21 ¹⁹ *E.g.* In the Matter of the Application of Arizona Water Company for an Extension of its
22 Certificate of Convenience and Necessity at Casa Grande in Pinal County, Docket No. W-
01445A-06-0059, at 14 (December 5, 2006).

23 ²⁰ *Id.* at 14.

24 ²¹ *See* DMB White Tank, LLC's Motion to Intervene in Phase Two (Rate Design and Rate
Consolidation) p. 7 ("DMB will now rely far more heavily on groundwater for golf course
irrigation and other non-potable uses. This is not what DMB would prefer to do, but we have no
choice due to the relative cost of groundwater, effluent and CAP water.").

25 ²² HR TR at 694-695 (testimony of Anthem Golf and Country Club witness Desi Howe), and
26 711-712 (testimony of DMB witness Daniel Kelly) ("When you own a turf facility, there are
physical limits to what you can do with water").

1 consumers may choose alternate supplies and leave the effluent producer with additional
2 costs and disposal problems that threaten public health, safety and welfare. This very
3 situation is pending today before the Commission. The Sante Fe Wastewater Company
4 has been unable to find an effluent buyer at the high tariffed effluent rate of \$2.00 per
5 \$1,000 gallons.²³ A nearby golf course is willing to purchase the effluent for \$0.23 per
6 \$1,000 gallons, but \$0.23 is not the lawfully approved rate.²⁴ The Sante Fe Wastewater
7 Company had no formal contingency plan for the disposal of effluent apart from the golf
8 course. Action by the Commission in this matter is pending, although Commission Staff
9 has recommended interim approval of the \$0.23 per gallon rate with conditions. Effluent
10 disposal problems are not at issue in this rate case, nonetheless, reducing the number of
11 available effluent users harms effluent producers generally and could ultimately adversely
12 impact the public welfare.

13 **2. The Revenue Impact of Arizona-American's Proposed Effluent Rate** 14 **is Unknown**

15 Arizona-American has proposed a rate of \$1.65 per 1,000 gallons, or \$533 per acre
16 foot.²⁵ This rate is substantially higher than the prior well-used non-potable Agua Fria
17 Water District non-potable rate of \$0.62 per \$1,000 gallons or \$202 per acre foot. The
18 Arizona-American \$533 per acre foot rate is not based on a cost of service study prepared
19

20 ²³ See In the Matter of the Application of Sante Fe Wastewater Company for the Approval of a
21 Revised Tariff Reducing the Commodity Rate for Effluent Sales, Docket No. SW-03437A-09-
0493 (Proposed Order dated April 13, 2010).

22 ²⁴ *Id.*

23 ²⁵ A-39 (Broderick Rate Design Rebuttal) at 2-3. The final schedules submitted by Arizona-
24 American on June 25, 2010, do not include an effluent rate for the Agua Fria/Anthem Wastewater
25 District. In its "Notice of Filing Rate Schedules" filed June 25, 2010, Arizona-American states
26 that "The Company is no longer requesting the Commission establish – in this case – the non-
potable tariff as a wastewater tariff." It is unclear whether Arizona-American is withdrawing its
proposed effluent tariff rate in the Wastewater District and now opposing the concept of an
effluent rate for the Wastewater District. For purposes of this brief, Corte Bella presumes (based
on hearing testimony) that Arizona-American is advocating the \$533 per acre foot rate for *effluent*
proposed in Mr. Broderick's rebuttal testimony.

1 for this rate case.²⁶ In fact, Arizona-American does not contend the rate is cost based.
2 Instead, Arizona-American argues that because “we are in an era of rising water rates”
3 “water rates and wastewater and effluent rates are going to be going up.”²⁷ This circular
4 reasoning does not support the proposed effluent rate of \$533 per acre foot. The
5 Commission has authority to increase Arizona-American’s rates only after “considering
6 the impact of the increase on the overall financial condition of the utility and, specifically
7 [after] taking into account the rate base and the impact of the increase on the rate of
8 return.”²⁸ Arizona-American has not demonstrated, through rate schedules or testimony,
9 how the proposed \$533 rate will impact revenues. Arizona-American has not offered
10 evidence through testimony or schedules that the \$533 rate will bring more revenue to
11 Arizona-American than the \$250 rate proposed by DMB.²⁹ It is just as plausible that turf
12 irrigators would choose not to purchase effluent at the \$533 rate (thus not adding
13 revenue), but would purchase effluent at \$250.00 per acre foot (thus adding revenue).
14 Given water purchase alternatives currently available to turf irrigators participating in this
15 case, it is possible that no irrigator would purchase effluent at \$533 per acre foot.³⁰
16 Arizona-American has the burden of demonstrating how the proposed rate will impact
17 revenues and has not met that burden in this case.

18 **3. The \$250 per Acre Foot Rate Is an Equitable Rate.**

19 DMB has offered evidence that the market rate for effluent served by private water
20 companies in Arizona is very close to the \$250.00 rate proposed by DMB. Exhibit DK-2

21
22 ²⁶ HR TR 168-69 (Broderick).

23 ²⁷ HR TR 189 (Broderick)

24 ²⁸ *Scates v. Ariz. Corp. Comm’n*, 118 Ariz. 531, 537, 587 P.2d 612, 618 (App. 1978)

25 ²⁹ As a practical matter, all revenue under either proposal will be new revenue for the Agua
26 Fria/Anthem *wastewater* district.

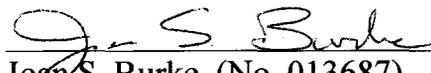
³⁰ Corte Bella currently buys non-potable water from the Agua Fria Water district Tariff at a rate
of roughly \$404 per acre foot; DMB witness, Dan Kelly, testified that DMB would used alternate
sources priced at roughly \$250 per acre foot and would not purchase effluent at \$533 per acre foot
(HR TR 705-706); Anthem Golf and Country Club purchases water from the Anthem Water
District Non-Potable Tariff at \$466 per acre foot (a rate which is subject to review in this case).

1 to Mr. Kelly's Direct Testimony contains a sampling of the effluent rates from a dozen
2 private water companies in Arizona. The average effluent rate based on that sample (after
3 omitting the single highest and single lowest rate) is roughly \$225 per acre foot. DMB's
4 proposed rate is 10% higher than this average. For years now, Corte Bella has been
5 accustomed to paying \$202 per acre foot for turf irrigation water. Arizona-American's
6 proposed rate of \$533 per acre foot is more than double this prior rate. Water is a
7 substantial fixed expense for Corte Bella and operations would be difficult to sustain if
8 such a large increase were implemented.

9 **C. Conclusion**

10 For the reasons set forth above, Corta Bella urges the Commission to adopt an
11 effluent rate of \$250 per acre foot for the Agua Fria Wastewater District. This rate will
12 encourage the use of effluent by turf irrigators and advance state-wide water management
13 goals.

14 RESPECTFULLY SUBMITTED this 16th day of July, 2010.

15
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