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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION
OF KOHL'S RANCH WATER COMPANY
FOR AN EMERGENCY RATE INCREASE.

Docket No. W-02886A-10-0369

**APPLICANT KOHL'S RANCH
WATER COMPANY'S COMBINED
RESPONSES TO KOHL'S RANCH
TONGO CREEK SUBDIVISION
HOMEOWNER'S ASSOCIATION'S
(1) MOTION TO INTERVENE AND
(2) RESPONSE TO STAFF REPORT**

Kohl's Ranch Water Company (KRWC) files this response to two filings made by Kohl's Ranch Tonto Creek Subdivision Homeowner's Association's, also known as Kohl's Ranch Homeowner's Association, (HOA): (1) Motion to Intervene (HOA Motion), and (2) Response to Staff Report and to KRWC Amended Proposal (HOA Response).

I. Introduction

KRWC has no objection to HOA's intervention in proceedings concerning KRWC's application for an emergency rate increase. As customers of KRWC, HOA members have important interests in assuring that KRWC's application result in a reasonable and effective temporary surcharge and, ultimately, a fair permanent rate structure. KRWC strongly objects, however, to HOA's injection of erroneous and irrelevant assertions that include baseless attacks on KRWC and/or ILX.

1 In addition, KRWC regrets that HOA has opted to intervene (as opposed to
2 submitting written comments to the record or making comments at the hearing) without
3 investing the effort to understand the law and facts involved in an emergency rate case.
4 Certainly, intervention is HOA's right but without fully engaging, HOA's intervention
5 comes at significant cost to the ACC and KRWC without much benefit to the effectiveness
6 of the proceeding.
7

8 Particularly troubling is HOA's argument that KRWC's proposed emergency rates
9 are unfair based on a cursory presentation of the base rates of other nearby water
10 companies. (HOA Motion p. 5) As discussed in Section III(B) of this Response, the
11 comparison is apples to oranges. It is unclear whether HOA make this argument out of a
12 failure to sufficiently research the mechanics of rate making or out of an intent to mislead
13 the ACC -- but it is disturbing and costly in either case.
14

15 Moreover, KRWC admits confusion as to why customers who have received water
16 service at their remote mostly seasonal homes¹ at an unheard of discount for almost 40
17 years, and who claim to want such service, go to such effort to attack KRWC and block
18 KRWC's ability to continue operations. HOA admits that "year in and year out service has
19 been maintained and has been extremely inexpensive," and that "it is not in a good
20 position" to dispute the costs KRWC claims. (HOA Motion at 6; HOA Response p.2) And
21 yet, HOA shows no compunction about and expends considerable energy attempting to
22 blame KRWC management for the fact that KRWC customers must now pay a just and
23 reasonable rate for its water. HOA refers to the emergency surcharge as 'penalizing'
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28 ¹ According to HOA, all but 10 of the 124 residential customers use their homes in the KRWC service areas as weekend and/or summer homes.

1 residential customers. (HOA Motion p.6) (Strikingly, on the other hand, HOA contends the
2 ACC should require KRWC's one commercial customer, the Kohl's Ranch Lodge (Resort)
3 to pay a penalty to the benefit of residential customers, although for what wrongdoing is not
4 clear.) All this considered, it is difficult to avoid the conclusion that HOA's opposition
5 arises primarily out of resentment that ILX is no longer available to subsidize KRWC at a
6 level that has provided these second-home owners some of the lowest water rates in the
7 state.
8

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10 The purpose of this Response is twofold: first, to review the basic legal framework
11 of the emergency rate case so as to outline the bounds of what issues and facts are relevant
12 to this proceeding and to note where the parties agree and disagree on key issues; and,
13 second, to respond to some of the erroneous and baseless statements made in the HOA
14 Motion and HOA Response.²
15

16 **II. Legal Framework**

17 An emergency rate increase requires two primary findings by the ACC. First, the
18 ACC must find there is an "emergency" as defined in Attorney General Opinion No. 71-17.
19 Second, the ACC must find that the rate increase is just and reasonable.
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21 **A. The ACC must determine whether there is an emergency.**

22 For purposes of an emergency rate increase, an emergency exists in three
23 circumstances: (1) when sudden change brings hardship to a company; (2) when the
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26 ² To the extent KRWC does not here respond in full to every assertion in the HOA
27 Motion and HOA Response, such omission should not be interpreted as a waiver of
28 KRWC's disagreement with the assertion, or a waiver of KRWC's opportunity to respond
in full. In addition, KRWC does not here repeat its response to matters in the HOA Motion
and HOA Response that KRWC has addressed in KRWC's Response to Staff Report.

1 company is insolvent; and (3) when the condition of the company is such that its ability to
2 maintain service pending a formal rate determination is in serious doubt.³ KRWC has
3 demonstrated in its filings, and ACC Staff has concurred, that KRWC's current rates do not
4 generate sufficient revenue for KRWC to continue to maintain service. (Staff Report, Exec.
5 Sum. p. 1) It appears HOA also agrees there is an emergency. (HOA Response p. 1 ("The
6 Association also recognizes the existing rate schedule is insufficient for the continued
7 operation of the utility."))
8

9
10 **B. The ACC must determine what is a just and reasonable emergency**
11 **surcharge.**

12 The ACC will allow only a just and reasonable emergency surcharge. The principles
13 underlying whether a surcharge is just and reasonable is whether total revenue, including
14 income from rates and charges, are sufficient to meet a utility's operating costs. Due to the
15 underlying emergency condition, an emergency rate case is not meant to require the
16 elaborate process of a normal rate proceeding.⁴
17

18 Differences regarding operating costs are the primary focus of the Staff Report on
19 KRWC's application and of KRWC's Response to Staff Report. For its part, HOA
20 concedes that it "is not in a good position to analyze these projected costs, and is willing to
21 accept the ultimate ACC determination." (HOA Response p. 2) Thus, by its own
22 assessment, HOA has no relevant information as to KRWC costs.
23

24
25 ³ Attorney General Opinion No. 71-17.

26 ⁴ See *In re Application of Indiada Water Company for an Emergency Rate Increase*,
27 2009 WL 3722695 *5 (Ariz. C.C. Oct. 30, 2009) ("for purposes of its review of an
28 emergency surcharge application, Staff performs its evaluation based on financial
information submitted by a company, rather than conducting a full audit of a company's
financial status").

1 HOA does have opinions on the share of the emergency surcharge to be paid by the
2 residential customers as compared to the Resort.⁵ But its assertions in this respect are
3 incorrect and unsupported and, therefore, irrelevant. For example, HOA starts off with the
4 completely baseless statement that KRWC reached its originally-proposed surcharge based
5 on 60 rooms in the Resort multiplied by the residential surcharge amount. (HOA Response
6 p. 3) While it is true that the initial proposed surcharge amount for the Resort was 60 times
7 the amount proposed for the residential users, it is not due to the number of rooms at the
8 Resort.
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11 HOA then contends the Resort uses more water than the 124 residential customers
12 combined and, therefore, the Resort should bear more of the surcharge than residential
13 customers. The entire argument is irrelevant. First it is simply wrong; as discussed in
14 Section III(A) of this Response, the residential customers combined use more water than the
15 Resort.
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17 Second, it is not relevant because it is based upon the erroneous assumption that it is
18 the amount of water usage that drives KRWC's costs.⁶ Whether or not KRWC's residential
19 customers opt to visit their second homes, KRWC must, for example, read meters monthly,
20 send out bills, do accounting and banking, inspect and test the systems, make repairs and
21 prepare tax returns. All of this must be done so that when customers decide to enjoy a
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25 ⁵ HOA claims the "need for additional revenue should be much more heavily placed
26 on the Resort since it is the primary user of the water system, since it operates year round,
27 and since its use is much more for landscaping." (HOA Motion p. 6)

28 ⁶ In some circumstances, large water users require capital improvements that would
not otherwise be necessary but this is not KRWC's current circumstance.

1 weekend in their homes in a remote swath of Arizona forest, they can turn their tap and
2 receive water. All of this convenience and reliability requires ongoing costs.⁷

3
4 **III. Corrections of Some of HOA's Erroneous and Misleading Assertions**

5 **A. Residential Customers together use more water than the Resort.**

6 Based upon actual 2009 numbers adjusted to include the Additional Resort Gallons
7 presented in KRWC's Response to Staff Report, residential customers combined used
8 3,377,853 gallons and the Resort used 2,615,247 gallons. (Response to Staff Report p. 9)
9
10 HOA opines that it does not find KRWC's numbers to be "credible" but gives no showing
11 that KRWC has misrepresented the numbers or an explanation as to why KRWC would
12 provide false numbers. (HOA Response p. 3)

13
14 HOA also opines that the average monthly use by residential customers of 2,270
15 "seems high." (HOA Response p. 3) But 2,270 gallons per month is a very low average
16 usage amount, and it clearly reflects the summer home status of some of the residential
17 customers. In addition, it should be noted that 2,270 gallons per month is an *average*
18 among residential customers. Many customers demand very little water while others
19 demand a lot. In 2009, six residential meters showed no usage. On the other hand, 18
20 customers had an average usage in excess of the 5,000 gallons included in the monthly
21 minimum charge with the largest residential customer using an average of 17,969 per
22 month. There were 47 residential customers that used more than the 5,000 gallons included
23
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26 ⁷ Illustratively, the ACC has recognized that servicing seasonal homes costs utilities
27 throughout the year. In the case a customer stops service when it is not using its residence
28 a "re-establishment charge" to reestablish service that equates to the number of months off
the system times the monthly minimum charge.

1 in the monthly minimum at least once during 2009, with the highest one-month use at
2 56,270 gallons in October 2009. Total residential usage during May, June, July and August
3 of 2009 exceeded 500,000 gallons each month.
4

5 **B. HOA's comparison to other companies' base rates has no**
6 **relevance.**

7 HOA's comparison of KRWC rates to other water companies represents either an
8 alarming lack of understanding of rate making in a party that has intervened in a rate case or
9 a brazen attempt to excite and confuse. HOA compares KRWC's total cost per customer to
10 the other companies' base rates and neglects to inform the ACC of other key information
11 such as the commodity rates, the average monthly cost for customers, or the number of
12 customers on the system.
13

14 KRWC maintains that discussion of other companies' rates are irrelevant to the
15 proceeding but as a courtesy to HOA and in an attempt to put these comparisons to rest,
16 KRWC provides the following information about the other companies -- all of which this is
17 publically-available.
18

19 **Tonto Village Water Company**

- 20
- 21 • The utility has 198 customers to share the costs.
 - 22 • The utility filed a rate case on December 27, 2007 requesting that the monthly
23 minimum charge be raised from \$10.00 to \$24.00, based upon a 2006 test year.
 - 24 • The commodity tiers are \$1.05 per thousand for the first 3,000 gallons, \$2.15 for the
25 next 4,000 gallons, and \$3.50 for each 1,000 gallons in excess of 7,000.
 - 26 • A financing application followed in April 2008.
 - 27 • The case has been riddled with problems. The last activity was in July 2009 and
28 appears to be stalled due to a stale test year.
 - Many poor service complaints have been filed against the utility.

27 **Tonto Creek Water Company**

- 28
- The utility has 71 customers.
 - The utility was sold in 2009 right after new rates were authorized.

- 1 • The current monthly minimum is \$24.00.
- 2 • The commodity tiers are \$1.70 per thousand for the first 3,000 gallons, \$3.40 for the
- 3 next 4,000 gallons, and \$6.00 for each 1,000 gallons in excess of 7,000

4 **Christopher Creek/Utility System/Gardner Water**

- 5 • The utility has 266 customers.
- 6 • Christopher Creek Haven Water Company and Gardner Water Company were both
- 7 sold to Utility Systems, LLC.
- 8 • Rate cases for both systems were filed in 2008 and the systems consolidated into
- 9 one.
- 10 • The owner of the consolidated utility was dissatisfied with the ACC Decision on the
- 11 rate cases. ACC Decision 71446, page 35, includes the following statement:
"Utility Systems states that should the Commission adopt Staff's
- 12 rates and charges, Utility Systems will most likely face
- 13 bankruptcy, and the Companies will be foreclosed upon and
- 14 repossessed by the previous owner."
- 15 • The ACC suggested the purchaser did not conduct proper due diligence prior to the
- 16 purchase of the small water companies.
- 17 • The current monthly minimum is \$18.80.
- 18 • The commodity tiers are \$4.00 per thousand for the first 2,000 gallons, \$5.00 for the
- 19 next 6,000 gallons, and \$7.00 for each 1,000 gallons in excess of 8,000.

20 **Brook Utilities – Tonto Basin**

- 21 • Brook Utilities-Tonto Basin has 799 customers, but as part of the larger United
- 22 Utilities, LLC, spreads its costs among 9,240 customers.
- 23 • Settlement rates in the United Utilities, LLC sale applied the same rates to Payson,
- 24 Strawberry, and Tonto Basin (3,872 total customers).
- 25 • The current monthly minimum is \$16.00, set in 1999.
- 26 • The commodity tiers are \$1.55 per thousand for the first 4,000 gallons, and \$2.33 for
- 27 each 1,000 gallons in excess of 4,000.

28 In addition, KRWC appends to this filing Schedule SSR-5 that provides a detailed
comparison of KRWC's rates with those of the utilities referenced by HOA and data from a
public document published by WIFA that compares water rates across Arizona for all entity
types. As can be readily seen by reviewing this information, KRWC's proposed surcharge
puts rates well within the parameters charged by other companies.

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C. ILX, not the Resort, has subsidized KRWC.

In apparent disregard of the plain statements in KRWC's filings, HOA continually confuses the Resort with ILX. It is ILX that has subsidized KRWC, not the Resort, which was one of many other properties, including KRWC, owned and/or managed by ILX prior to its bankruptcy. At least since 1995, when ILX purchased the Resort and KRWC, the Resort never subsidized KRWC. Thus, HOA's many statements about the Resort getting some unfair advantage on past water costs due to its subsidization of KRWC are nonsensical and irrelevant.

D. KRWC has met its public filing obligations.

HOA repeatedly asserts that the past common ownership of KRWC and the Resort has somehow interfered with the ability of KRWC's residential customers to access information about KRWC to which they are entitled. The assertion is irrelevant to these proceedings but it is also unfounded. KRWC is a corporation regulated by the ACC, the Arizona Department of Water Resources (ADWR) and the Arizona Department of Environmental Quality (ADEQ). KRWC makes all of the public filings required of any private water company. HOA has not demonstrated otherwise.

E. KRWC is not entitled to be subsidized in perpetuity.

For reasons not clear to KRWC, HOA seems to assume that if the Resort and KRWC had continued under the same ownership, then residential customers would continue to be subsidized. KRWC is aware of no reason to believe that if the new owner of the Resort had also purchased the assets of KRWC, that the new owner would not also have sought a rate increase to make KRWC able to stand alone.

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F. Assets necessary for the operation of KRWC are intact.

HOA contends that there is “complete confusion of what the water company actually owns.” (HOA Motion p.1) It appears HOA prefers to inflame rather than figure out the facts. KRWC’s filings in this case list the equipment utilized by KRWC and informs the ACC that the sale of ILX assets pursuant to bankruptcy proceedings did not include the assets related to the operation of KRWC.⁸

G. The proposed surcharge does not provide for capital improvements.

HOA incorrectly states that KRWC’s requested emergency surcharge allows for capital improvements but it does not. Indeed, ACC rules require that capital improvements be placed into service before a rate case is filed to recover the cost of that asset. As is usually the case, Staff did not here recommend an expenditure for capital improvements. In fact, to the contrary, Staff Recommendation 9 contends KRWC should install a meter to track the water from the spring system, yet did not provide for the cost of the meter and installation, or depreciation expense, in Staff’s recommended surcharge.

H. HOA and the Resort pay the same rates for water, as required by the tariff.

Based upon HOA’s assertions, it bears repeating that all KRWC customers, including the Resort, pay the same rates for water established by the 1972 tariff:

- \$5.75 per month for the first 5,000 gallons
- \$0.50 per thousand gallons in excess of 5,000

⁸ Relatedly, ILX is currently in discussions with the United States Forest Service regarding the special use permit that allows the spring system to cut across Forest Service land. While it is true that the permit itself is not transferable, the Forest Service has a routine process for transferring an existing permit to a new owner of the assets.

1 According to these rates, in 2009, the Resort paid an average of about \$65 per month.
 2 However, HOA makes several difficult-to-follow-numerical assertions regarding what the
 3 Resort paid or should have paid. For example, HOA states that the Resort “should have
 4 paid” approximately \$4,000 to \$5,000 for water during 2009. (HOA Response p.4) But
 5 based on the usage by the Resort, and the current extremely low rates for water, this would
 6 be near impossible. In any event, the Resort’s past payments and whether the Resort as a
 7 high water user should bear more of the revenue burden on the high water users are issues
 8 for the permanent rate case, and not relevant here. Table A shows the revenue distribution
 9 for 2009 between residential customers and the Resort:
 10
 11

Residential Users: \$5.75 monthly minimum X 124 connections X 12 months/year	\$ 8,556
Gallons in excess of 5,000 included in monthly minimum divided by 1,000 1,338.82 X \$0.50	\$ 669
Resort: \$5.75 monthly minimum X 12 months/year	\$ 69
Gallons in excess of 5,000 included in monthly minimum divided by 1,000 1,434.50 X \$0.50	\$ 717
2009 Revenue	\$10,011

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Table A

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I. Percentage increase numbers are misleading.

HOA has asserted an assortment of three-digit percentage numbers as representing the percent increase to residential customers' rates. Here again, it is difficult to avoid the feeling that such statements are only meant to inflame, as percentage increase is intrinsically relative. When beginning with a 1972-based minimum charge that includes a 5000 gallons usage, it is not difficult to have a percentage increase in the hundreds. But looking at the material terms, a monthly rate of less than \$35 is very reasonable under the circumstances, and is temporary until a permanent rate case is filed and new rates are established according to ACC procedure.

IV. Conclusion

In the past, ILX has subsidized KRWC; now it cannot. In order to continue service, KRWC must generate sufficient revenue to cover its operating costs. Delaying or preventing KRWC's reasonable interim rate increase so it can operate as a stand-alone entity, ultimately, will impact service and infrastructure.

Dated this 1st day of November, 2010.

POLSINELLI SHUGHART PC

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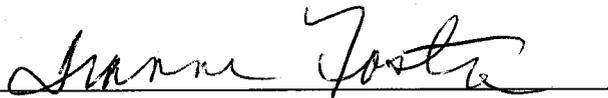
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SCHEDULE SSR-5

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KOHL'S RANCH WATER COMPANY, INC.
COMPARISON OF RATES
DOCKET NO W-02886A-10-0369

Amounts in Gallons	Kohls Ranch		Tonto Village Water	Tonto Creek Water	Utility System LLC	Brooke Utility - Tonto Bsn	Arizona 2009 Average*	Municipal 2009 Average*	District 2009 Average*	Investor 2009 Average*	Assoc. 2009 Average*
	Current	Proposed									
KRW/C Total Average - 2,270 ¹	\$ 5.75	\$ 34.25	\$ 12.38	\$ 27.86	\$ 28.15	\$ 19.52	\$ 28.75	\$ 20.85	\$ 39.06	\$ 28.91	\$ 28.67
5,000	5.75	34.25	17.45	35.90	41.80	24.53	28.75	20.85	39.06	28.91	28.67
7,500	7.00	35.50	23.50	45.70	54.30	30.36	35.97	25.86	50.46	35.89	36.19
KRW/C High Average - 8,121 ²	7.31	35.81	25.67	49.43	57.65	31.80	35.97	25.86	50.46	35.89	36.19
10,000	8.25	36.75	32.25	60.70	70.80	36.18	43.52	31.47	62.85	43.01	44.13

* Figures taken from Exhibit B, Page 25 of the Water Infrastructure Finance Authority of Arizona (WIFA) 2009 Water and Wastewater Residential Rate Survey for the State of Arizona

¹ KRW/C Total Average is the average monthly usage of all the water customers on the spring (residential) system.

² KRW/C High Average is the average monthly usage of only the 18 customers whose total annual 2009 usage exceeds 60,000 gallons. (5,000 X 12 months) (1,754,090 gallons divided by 18 customers = 97,449.44 divided by 12 months = 8,120.79)

Water Infrastructure Finance Authority of Arizona



2009

Water and Wastewater

Residential Rate Survey for the State of Arizona

Water Infrastructure Finance Authority of Arizona

1110 West Washington, Suite 290

Phoenix, Arizona 85007

Telephone: 602.364.1310

Toll Free: 877.298.0425

Website: www.azwifa.gov

EXHIBIT B
2009 RESIDENTIAL RATE SURVEY
STATISTICAL SUMMARY



ARIZONA DRINKING WATER SYSTEMS - 2009

Monthly Charges - Varying Levels of Usage by Ownership

	Average Monthly Charge	Median Monthly Charge	Highest Monthly Charge	Lowest Monthly Charge
Municipal				
5,000 Gallons	\$20.85	\$20.53	\$66.25	\$6.64
7,500 Gallons	\$25.86	\$25.23	\$74.38	\$7.71
10,000 Gallons	\$31.47	\$29.67	\$82.50	\$11.50
Districts				
5,000 Gallons	\$39.06	\$34.24	\$123.26	\$12.75
7,500 Gallons	\$50.46	\$40.25	\$201.78	\$19.13
10,000 Gallons	\$62.85	\$49.00	\$310.50	\$25.30
Investors				
5,000 Gallons	\$28.91	\$27.50	\$83.00	\$5.00
7,500 Gallons	\$35.89	\$33.97	\$102.90	\$5.00
10,000 Gallons	\$43.01	\$40.50	\$133.90	\$5.00
Associations				
5,000 Gallons	\$28.67	\$27.81	\$68.50	\$7.50
7,500 Gallons	\$36.19	\$35.22	\$86.00	\$10.00
10,000 Gallons	\$44.13	\$42.53	\$105.00	\$12.50
Arizona Survey Total				
5,000 Gallons	\$28.75	\$26.74	\$123.26	\$5.00
7,500 Gallons	\$35.97	\$32.96	\$201.78	\$5.00
10,000 Gallons	\$43.52	\$39.14	\$310.50	\$5.00

