

ORIGINAL



0000124989

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2011 MAY -3 A 10: 10

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION OF
PALO VERDE UTILITIES COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION OF
SANTA CRUZ WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

IN THE MATTER OF THE APPLICATION OF
PALO VERDE UTILITIES COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. SW-03575A-07-0300

IN THE MATTER OF THE APPLICATION OF
SANTA CRUZ WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-07-0300

ARIZONA WATER COMPANY, AN ARIZONA
CORPORATION,

COMPLAINANT,

DOCKET NO. W-01445A-06-0200
DOCKET NO. SW-20445A-06-0200
DOCKET NO. W-20446A-06-0200
DOCKET NO. W-03576A-06-0200
DOCKET NO. SW-03575A-06-0200

VS.

GLOBAL WATER RESOURCES, LLC, A
FOREIGN LIMITED LIABILITY COMPANY;
GLOBAL WATER RESOURCES, INC., A
DELAWARE CORPORATION; GLOBAL
WATER MANAGEMENT, LLC, A FOREIGN
LIMITED LIABILITY COMPANY; SANTA
CRUZ WATER COMPANY, LLC, AN ARIZONA
LIMITED LIABILITY CORPORATION; PALO
VERDE UTILITIES COMPANY, LLC, AN
ARIZONA LIMITED LIABILITY

Arizona Corporation Commission
DOCKETED

MAY 3 2011

DOCKETED BY

1 CORPORATION; GLOBAL WATER – SANTA
2 CRUZ WATER COMPANY, AN ARIZONA
3 CORPORATION; GLOBAL WATER – PALO
4 VERDE UTILITIES COMPANY, AN
5 ARIZONA CORPORATION; JOHN AND JANE
6 DOES 1-20; ABC ENTITIES I-XX,

7 RESPONDENTS.

8 IN THE MATTER OF THE JOINT
9 APPLICATION OF CP WATER COMPANY
10 AND FRANCISCO GRANDE UTILITIES
11 COMPANY TO TRANSFER THEIR
12 CERTIFICATES OF CONVENIENCE AND
13 NECESSITY AND ASSETS TO PALO VERDE
14 UTILITIES COMPANY AND SANTA CRUZ
15 WATER COMPANY.

DOCKET NO. WS-01775A-07-0485
DOCKET NO. SW-03575A-07-0485
DOCKET NO. W-02442A-07-0485
DOCKET NO. W-03576A-07-0485

PROCEDURAL ORDER

16 On December 22, 2010, the Arizona Corporation Commission’s (“Commission”) Hearing
17 Division issued its Recommended Opinion and Order (“ROO”) in the above-captioned matter. Upon
18 issuance of the ROO, exceptions were due to be filed by January 3, 2011, and the ROO was
19 tentatively scheduled to be considered at the Commission’s January 11 and 12, 2011, Open Meeting.

20 On December 30, 2010, Arizona Water Company (“AWC”), Global Water-Santa Cruz, and
21 Global Water-Palo Verde (collectively “the Utilities”)¹ filed a Request for an Extension of Time to
22 File Exceptions to the ROO and Request for Accelerated Consideration (“Request”). The Utilities’
23 Request sought an extension of time, until February 21, 2011, to file exceptions to the ROO and
24 stated that the Utilities desire that the ROO be placed on the Commission’s March 1 and 2, 2011,
25 Open Meeting.

26 On January 11, 2011, by Procedural Order, the Utilities’ Request for an extension of time,
27 until February 21, 2011, to file exceptions to the ROO, was granted.

28 On February 16, 2011, Global Water-Santa Cruz and Global Water–Palo Verde (collectively
“Global Utilities”) filed a Motion to Withdraw the Francisco Grande Transfer Application
 (“Motion”). The Global Utilities’ Motion states that Global Water, Inc. (“Global”), the parent
 company for the Global Utilities, entered into a stock purchase agreement (“SPA”) with Francisco
 Grande Utilities Company (“Francisco”) whereby Global Water Inc., purchased the stock of

¹ In Decision No. 69920 (September 27, 2007), the Commission approved the requests of Palo Verde Utilities Company, LLC, and Santa Cruz Water Company, LLC, to transfer their respective assets and CC&Ns to the newly formed corporations known as Global Water-Palo Verde and Global Water-Santa Cruz.

1 Francisco. According to the Global Utilities, new stock certificates were issued for Global, but the
2 shares and the purchase price were held in escrow pending regulatory approvals, subject to an August
3 19, 2010, deadline. The Global Utilities state that the SPA expired and the stock reverted back to the
4 prior owner and the owner contested the reversion. The Global Utilities stated that on February 7,
5 2011, an arbitration panel ruled in favor of Global and ownership of Francisco remained with the
6 prior owner and therefore, the Global Utilities are seeking to withdraw the transfer application.

7 On February 16, 2011, Craig A. Marks, Esq. filed a Notice of Substitution of Counsel on
8 behalf of Francisco.

9 On February 22, 2011, Francisco filed a request for an extension of time to file exceptions to
10 the ROO. Francisco's request states that it needs additional time to file exceptions to the ROO
11 because the record is no longer accurate, in that Global no longer owns Francisco; Francisco no
12 longer supports the Settlement Agreement approving planning areas for AWC and the Global
13 Utilities; and that it is likely Francisco will seek to withdraw the transfer application, but needs
14 additional time to determine its position.

15 On the same date, Francisco filed a response to the Global Utilities' motion to withdraw the
16 transfer application. Francisco's response states that originally Francisco and the Global Utilities
17 were co-applicants in the transfer matter along with CP Water Company. However, because Global
18 no longer owns Francisco it cannot act on Francisco's behalf by filing a motion to withdraw the
19 transfer application and that the Commission should deny the Global Utilities' Motion.

20 On February 24, 2011, the Global Utilities filed a reply to Francisco's response to the motion
21 to withdraw. The Global Utilities stated that they agree that they cannot act on behalf of Francisco;
22 that the Motion was submitted on behalf of the Global Utilities and CP Water Company; that as co-
23 applicants they have standing to request withdrawal of the application; and that because the
24 application seeks to transfer the assets of Francisco to the Global Utilities, the Global Utilities'
25 consent is necessary. The Global Utilities reiterate their request for withdrawal of the application.

26 On the same date, the Global Utilities filed a Response in Opposition to Francisco's Motion
27 for an Extension of Time. The Global Utilities assert that granting Francisco an extension of time is
28 unnecessary because Francisco was aware of the ROO shortly after it was issued; that counsel for

1 Francisco discussed the ROO during the arbitration proceedings; that the arbitration award was issued
2 two weeks prior to the deadline for docketing exceptions to the ROO; and that no cause exists for
3 extending the deadline a second time.

4 On February 24, 2011, Francisco filed a Motion to Reopen Record to Hear Additional
5 Testimony. Francisco's motion argues that the record is inaccurate because Global no longer owns
6 Francisco; that Francisco no longer supports the Settlement Agreement; and that due process
7 demands that Francisco have an opportunity to present evidence and legal arguments regarding the
8 designated planning areas.

9 On March 4, 2011, the Global Utilities filed a response to Francisco's motion to reopen the
10 record in this proceeding. The Global Utilities' response states there are no grounds for re-opening
11 the record; no facts are in dispute; and Francisco's due process rights or rights under its CC&N are
12 not being harmed.

13 On March 7, 2011, the Commission's Utilities Division ("Staff") filed a response to the
14 Global Utilities' motion to withdraw the Francisco application. Staff states that as co-applicants in
15 the transfer application, Staff believes the Global Utilities may seek to withdraw the transfer
16 application, and that Staff has no objection to the Motion.

17 On March 8, 2011, Francisco filed a Reply to Staff's Response to Global's Motion to
18 Withdraw Francisco Grande Application. Francisco states that it no longer objects to Global's
19 motion to withdraw the transfer application, subject to Francisco's rights not being affected as a full
20 party to this matter.

21 On the same date, Francisco filed a Reply to Global Utilities Response to Motion to Reopen
22 Record. Francisco states it opposes the Settlement Agreement, specifically the proposed planning
23 areas; that there are facts in dispute; and that Francisco's rights under its CC&N could be affected by
24 being included in the proposed planning areas. Further, Francisco objects to the Global Utilities'
25 suggestion to alternatively sever the transfer docket from the remaining dockets.

26 On March 18, 2011, by Procedural Order, a procedural conference was scheduled on March
27 22, 2011, for the purpose of discussing the pending motions.

28

1 On March 22, 2011, the procedural conference was held as scheduled. Staff, AWC, Global,
2 and Francisco appeared through counsel. During the procedural conference, Francisco stated that it
3 does not oppose Global's motion to withdraw the transfer application,² that Francisco's motion for
4 additional time to file exceptions to the ROO is moot,³ and that Francisco desires to remain a full
5 party to the consolidated proceedings.⁴ Francisco continued to urge the Commission to grant its
6 motion to reopen the proceeding to take testimony on the narrow issue of the proposed planning
7 areas,⁵ and to correct the Recommended Order which states Francisco supports the settlement
8 agreement. Francisco argued that it has a fundamental due process right to present testimony on the
9 issue because the designation of planning areas could affect Francisco's property rights under its
10 CC&N.

11 AWC and Global object to Francisco remaining a full party to the consolidated proceeding
12 after withdrawal of the transfer application. Global and AWC argue that Francisco was a party and
13 co-applicant in only the transfer docket, that Francisco was not an applicant or granted intervention in
14 the other remaining dockets, and that once the transfer application is withdrawn Francisco should no
15 longer remain a party to the consolidated proceeding.⁶

16 Staff stated that it does not oppose Global's motion to withdraw the transfer application.
17 However, Staff believes that because the matters have been consolidated and there are interrelated
18 issues running throughout the dockets Francisco should be allowed to remain a party to the remaining
19 proceedings.⁷

20 Francisco further contends that it should remain a party to the remaining proceedings because
21 the motion to consolidate the above dockets was a joint motion filed by all the parties including
22 Francisco. Francisco also asserts it should remain a party because Francisco participated in the
23 settlement agreement, which is a core issue in these proceedings.⁸

24 Francisco asserts that the record in the consolidated proceeding should be reopened for the
25

26 ² Tr. at 5, lines 10-13.

³ Tr. at 10, lines 9-15.

⁴ Tr. at 5, lines 20-25.

⁵ Tr. at 13, lines 7-11.

⁶ Tr. at 6-7.

⁷ Tr. at 9.

⁸ Tr. at 8.

1 limited purpose of allowing Francisco to present testimony concerning the planning area issue.⁹
2 Francisco contends the planning areas are a fundamental issue in this matter.¹⁰ Francisco argues that
3 it has a due process right to present testimony on the planning areas because the designation of
4 planning areas could affect its property rights and its CC&N designation.¹¹

5 Global and AWC oppose reopening the record in the consolidated proceeding. Global argues
6 that there are no issues in dispute and that reopening the record for additional testimony is
7 unnecessary. Global contends that no party to this matter disputes that Francisco opposes the
8 settlement agreement and the proposed planning areas, but Global believes the two issues are policy
9 matters that can be addressed in a pleading, or before the Commission, or both.¹² AWC states that
10 because Francisco no longer opposes withdrawal of the transfer application, and the planning area
11 concept involves AWC and Global exclusively, there is no reason to reopen the record.¹³

12 Staff states although it believes this matter is procedurally in the position where it can move
13 forward, Staff does not oppose reopening the record.¹⁴

14 Based on the arguments presented and pleadings filed, it is appropriate to grant Global's
15 motion to withdraw the transfer application. Further, Francisco's motion for an extension of time to
16 file exceptions to the ROO is moot and it is unnecessary for the Commission to address the motion.

17 Francisco's position has changed and Francisco now opposes the proposed planning areas and
18 the settlement agreement. Francisco has requested to reopen the record in this proceeding to allow it
19 to present testimony on the narrow issue of the proposed planning areas. No party disputes that
20 Francisco's position has changed and that Francisco now opposes the planning areas and no longer
21 supports the settlement agreement. Given that the ROO does not recommend Commission approval
22 of the proposed planning areas or settlement agreement, it is unnecessary to reopen the record at this
23 time to allow Francisco to present testimony in opposition to the settlement and planning areas.

24 In the event the Commission adopts an amendment to the ROO that approves the proposed
25

26 ⁹ Tr. at 12-13.

27 ¹⁰ Id.

¹¹ Id.

¹² Tr. at 14-15.

¹³ Tr. at 16-17.

28 ¹⁴ Tr. at 18.

1 planning areas, Francisco may renew its argument that the record should be reopened to consider
2 testimony opposing the planning areas. Until such an amendment is approved, however, there is no
3 need for additional testimony on the issue of the planning areas.

4 The motion to consolidate these dockets was jointly filed by the parties to the proceeding.
5 Therefore, it is appropriate to allow Francisco to remain a party to these consolidated proceedings.

6 IT IS THEREFORE ORDERED that **Global's motion to withdraw the transfer application**
7 **filed in Docket Nos. WS-01775A-07-0485 et al. is hereby granted.**

8 IT IS FURTHER ORDERED that **Docket Nos. WS-01175A-07-0485 et al. shall be**
9 **administratively closed.**

10 IT IS FURTHER ORDERED that **Francisco's motion to reopen the record in this**
11 **proceeding is hereby denied.**

12 IT IS FURTHER ORDERED that **Francisco shall remain a party to the remaining**
13 **consolidated proceedings.**

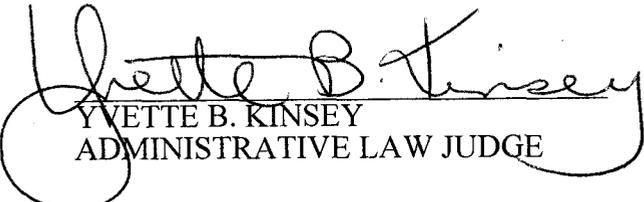
14 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
15 Communications) continues to apply to this proceeding and shall remain in effect until the
16 Commission's Decision in this matter is final and non-appealable.

17 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
18 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
19 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
20 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for
21 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
22 Law Judge or Commission.

23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 DATED this 3rd day of May, 2011.

4
5
6 
7 YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered
9 this 3rd day of May, 2011 to:

10 Robert W. Geake
11 ARIZONA WATER COMPANY
12 3805 North Black Canyon Highway
13 Phoenix, AZ 85015
14 rgeake@azwater.com

15 Steven A. Hirsch
16 Rodney W. Ott
17 BRYAN CAVE, LLP
18 Two North Central Avenue, Suite 2200
19 Phoenix, AZ 85004
20 Attorneys for Arizona Water Company
21 sahirsch@bryancave.com
rwott@bryancave.com

22 Timothy J. Sabo
23 Michael W. Patten
24 ROSHKA DEWULF & PATTEN, PLC
25 One Arizona Center
26 400 East Van Buren Street, Suite 800
27 Phoenix, AZ 85004
28 Attorneys for Global Water Entities
tsabo@rdp-law.com
mpatten@rdp-law.com

Craig A. Marks
CRAIG A. MARKS, PLC
10645 North Tatum Blvd., Ste. 200-676
Phoenix, Arizona 85028
Craig.Marks@azbar.org
Attorney for Francisco Grande Utilities Co.

Mayor Chuck Walton
CITY OF CASA GRANDE
510 East Florence Boulevard
Casa Grande, AZ 85222

1 Graham Symmonds, Senior Vice President
GLOBAL WATER MANAGEMENT
2 21410 North 19th Avenue, Suite 201
Phoenix, AZ 85027
3

4 Ken Franks
ROSE LAW GROUP, PC
6613 North Scottsdale Road, Suite 200
5 Scottsdale, AZ 85250

6 Brad Clough
ANDERSON & BARNES 580, LLP
7 ANDERSON & MILLER 694, LLP
8501 North Scottsdale Road, Suite 260
8 Scottsdale, AZ 85253

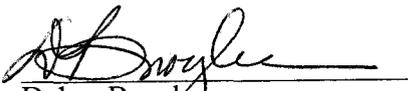
9 Marcie Montgomery
SNELL & WILMER
10 400 East Van Buren Street
Phoenix, AZ 85004
11 Attorneys for CHI Construction Company,
CP Water Company, Robson Utilities
12

Craig Emmerson
13 ANDERSON & VAL VISTA 6, LLC
7595 East McDonald Drive, #150
14 Scottsdale, AZ 85250

15 Philip J. Polich
GALLUP FINANCIAL, LLC
16 5040 East Shea Boulevard, No. 254B
Scottsdale, AZ 85254
17

18 Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
Phoenix, AZ 85007
20

21 Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
Phoenix, AZ 85007
23

24 By: 
25 Debra Broyles
26 Secretary to Yvette B. Kinsey
27
28