

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



ARIZONA CORPORATION COMMISSION

22

Arizona Corporation Commission

DOCKETED

DEC 21 2006

DATE: DECEMBER 21, 2006
DOCKET NOS: W-01898A-06-0326 and W-20460A-06-0326
TO ALL PARTIES:

DOCKETED BY	<i>MM</i>
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Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

**HAROLD AND MARY FRARER DBA F & F WATER COMPANY
(SALE/TRANSFER CC&N)**

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 2, 2007

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 Working Session and Open Meeting to be held on:

JANUARY 16, 2007 and JANUARY 17, 2007

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 Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCUMENT CONTROL

[Signature]
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE APPLICATION OF
HAROLD AND MARY FRARER DBA F&F
WATER COMPANY FOR APPROVAL TO SELL
ASSETS AND TRANSFER ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO ST.
DAVID SPRINGS, LLC.

DOCKET NO. W-01898A-06-0326
DOCKET NO. W-20460A-06-0326

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:

November 29, 2006

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Mr. Michael F. McNulty, Lewis and
Roca, PLC, on behalf of F&F Water Co.
and St. David Springs, LLC; and

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

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 10, 2006, Harold and Mary Frarer dba F&F Water Company ("F&F,"
"Company," or "Transferor") filed an application with the Commission for approval to sell assets
and transfer its Certificate of Convenience and Necessity ("CC&N" or "Certificate") to St. David
Springs, LLC ("St. David Springs" or "Transferee").

2. On June 9, 2006, Commission Utility Division Staff ("Staff") notified the Company

1 that the application was not sufficient under the requirements of the Arizona Administrative Code.

2 3. The Company filed additional supporting documents on July 31, 2006, and August 9,
3 2006.

4 4. Staff filed a second notice of insufficiency on August 29, 2006.

5 5. The Company filed additional supplemental documents on September 1, 2006.

6 6. On September 28, 2006, Staff notified the Company that its application was sufficient
7 pursuant to the Arizona Administrative Code.

8 7. By Procedural Order dated October 6, 2006, procedural guidelines were established
9 and the matter was set for hearing on November 29, 2006.

10 8. On October 26, 2006, F&F filed an affidavit of mailing indicating that public notice of
11 the hearing was mailed as required by the October 6, 2006 Procedural Order.

12 9. On November 13, 2006, Staff filed its Staff Report, recommending approval of the
13 application with conditions.

14 10. The hearing convened on November 29, 2006, before a duly authorized
15 Administrative Law Judge. Mr. Rodger Ford testified on behalf of the Transferee and Ms. Blessing
16 Chukwu and Mr. Del Smith testified on behalf of Staff.

17 11. F&F is a partnership that provides water utility service to two customers and the
18 Frarers' own property near the town of St. David in Cochise County, Arizona. The Commission
19 granted F&F its CC&N in Decision No. 46638 (December 31, 1975). The Company's certificated
20 area encompasses approximately 40 acres in the southeast quarter of Section 28 of Township 18
21 South, Range 21 East.

22 12. F&F has entered into a sales agreement with Enclave Saint David, LLC ("Enclave") to
23 sell the Company's assets as well as 27 acres owned by the Frarers.

24 13. Enclave is an Arizona limited liability company in good standing the Commission.
25 Enclave has assigned its interest in the water company assets to St. David Springs. St. David Springs
26 is an Arizona limited liability company in good standing with the Commission's Corporations
27 Division.

28 14. Enclave is the sole member of St. David Springs. Enclave will hold and develop real

1 estate, while St. David Springs will own and operate the water company assets. Enclave owns an
2 additional approximate 800 acres in the vicinity of the town of St. David. In the near future, St.
3 David Springs plans to file an application to extend its CC&N to encompass the rest of Enclave's real
4 estate holdings. Enclave does not yet have specific development plans for its holdings, and estimates
5 that development of the property is two or three years in the future.

6 15. St. David Springs will install a new water system to serve the development. There are
7 residences in the vicinity of the F&F CC&N, which are currently served by private wells, that St.
8 David Springs believes may seek service from the water company in the future.

9 16. Mr. Ford, the principal of Enclave and St. David Springs, is an experienced
10 businessman and real estate developer with sufficient managerial and financial resources to own and
11 operate the F&F assets.

12 17. The St. David Water Improvement District is located approximately two miles north
13 of the F&F CC&N, but no other water providers are located in the area.

14 18. The F&F system consists of one well, a 10,000 gallon storage tank, a pressure tank
15 and a distribution system. Staff believes that the Company has adequate production and storage
16 capacity, but was unable to independently verify production capacity because the Company did not
17 provide adequate water use data.

18 19. F&F has not been reading its well meter or customer meters on a regular basis. In
19 addition to needing meter information for billing purposes, such information is also necessary to
20 determine if the system is suffering from unacceptable water loss. Staff recommends that the
21 Transferee be required to read its well meter and individual customer meters on a monthly basis in
22 order to accurately complete plant summary and water use data sheets. Staff further recommends that
23 the completed plant summary and water use data sheets be filed with Docket Control as a compliance
24 item in this case within 12 months of the effective date of the Decision in this matter.

25 20. The F&F system is not regulated by the Arizona Department of Environmental
26 Quality ("ADEQ") because it is a semi-public system.

27 21. F&F is not located in an Active Management Area ("AMA") and is not subject to
28 Arizona Department of Water Resource ("ADWR") reporting and conservation rules.

1 22. Staff reports that there are no delinquent Commission compliance items for F&F.

2 23. Because F&F is a semi-public system, the U.S. Environmental Protection Agency
3 (“EPA”) arsenic maximum contaminant level does not apply.

4 24. A Curtailment Plan Tariff (“CPT”) is an effective tool to allow a water company to
5 manage its resources during periods of shortages due to pump breakdowns, droughts, or other
6 unforeseeable events. F&F does not have a CPT.

7 25. Staff recommends that the Transferee file a curtailment tariff within 45 days of the
8 effective date of the Decision in this matter. Staff states the CPT should be docketed as a compliance
9 item in this docket for the review and certification of Staff. Staff further recommends that the tariff
10 should generally conform to the sample tariff found on the Commission’s website at
11 www.cc.state.az.us/utility/forms/Curtailment-std.pdf. Staff recognizes that the Transferee may need
12 to make minor modifications to the sample tariff according to their specific management, operations
13 and design requirements as necessary and appropriate.

14 26. On October 11, 2006, Transferee filed, in the docket, a copy of its Cochise County
15 franchise encompassing the F&F service area.

16 27. Staff recommends that the Commission approve F&F’s application to sell its assets
17 and transfer its CC&N for water service to St David Springs subject to the following conditions:

18 (a) St. David Springs shall charge F&F’s authorized rates and charges in the transfer
19 area;

20 (b) St. David Springs shall read its well meter and individual customer meters on a
21 monthly basis and shall file completed plant summary and water use data sheets with Docket Control
22 as a compliance item in this case within 12 months of the effective date of the Decision in this matter;

23 (c) St. David Springs shall file a conforming CPT, as discussed herein, for Staff review
24 and certification within 45 days of the effective date of this Decision;

25 (d) St. David Springs shall file a rate application no later than six month following the
26 fifth anniversary of the effective date of the Decision in this matter; and

27 (e) Staff further recommends that the Decision granting approval of the sale of assets
28 and transfer of the CC&N be considered null and void, after due process, should St. David Springs

1 IT IS FURTHER ORDERED that St. David Springs, LLC shall read its well meter and
2 individual customer meters on a monthly basis in order to accurately complete plant summary and
3 water use data sheets, and shall file the completed plant summary and water use data sheets with
4 Docket Control as a compliance item in this case within 12 months of the effective date of this
5 Decision.

6 IT IS FURTHER ORDERED that within 45 days of the effective date of this Decision, St.
7 David Springs, LLC shall file with Docket Control as a compliance item in this docket, a Curtailment
8 Plan Tariff for Staff's review and certification. Such tariff shall generally conform to the sample
9 tariff found on the Commission website at www.cc.state.az.us/utility/foprms/curtailment-std.pdf.

10 IT IS FURTHER ORDERED that St. David Springs LLC shall file a rate application no later
11 than six months following the fifth anniversary of the effective date of this Decision.

12 IT IS FURTHER ORDERED that this Decision granting the requested sale of assets and
13 transfer shall be considered null and void, after due process, should St. David Springs LLC fail to
14 meet the above conditions within the times specified.

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IT IS FURTHER ORDERED that St. David Springs LLC shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that it is current in paying its property taxes in Arizona.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: HAROLD & MARY FRARER DBA F&F WATER
2 COMPANY
ST. DAVID SPRINGS LLC

3 DOCKET NOS.: W-01898A-06-0326 and W-20460A-06-0326

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