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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 17 2011

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

DOCKETED BY
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IN THE MATTER OF THE APPLICATION OF
GROOM CREEK WATER USERS ASSOCIATION
FOR APPROVAL OF AN EXTENSION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-01865A-11-0057

DECISION NO. 72527

OPINION AND ORDER

DATE OF HEARING: May 26, 2011
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Jerry D. Hodgson, on behalf of Groom Creek Water Users Association; and
Ms. Ayesha Vohra, Staff Attorney, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On January 31, 2011, Groom Creek Water Users Association ("Groom Creek" or "Association") filed with the Arizona Corporation Commission ("Commission") an application for approval of an extension of its Certificate of Convenience and Necessity ("CC&N"). Groom Creek's application states that Groom Creek is requesting authority to extend its CC&N to include areas adjacent to its current service area. The proposed extension area includes Groom Creek Estates No. 1 and No. 2, portions of the Webfoot Lode Mining Claim Subdivision, and a park site in Yavapai County, Arizona.

On February 16, 2011, Groom Creek filed an affidavit of public notice showing that notice of the CC&N application had been published on February 10, 2011, in *The Daily Courier*, a daily newspaper in the proposed extension area.

On March 1, 2011, the Commission's Utilities Division ("Staff") filed a Sufficiency Letter in this docket stating that Groom Creek's application had met the sufficiency requirements as outlined

1 in the Arizona Administrative Code (“A.A.C.”).

2 On March 8, 2011, Groom Creek filed an amended legal description for the CC&N extension
3 area.

4 On March 21, 2011, by Procedural Order, the hearing date was scheduled for May 26, 2011,
5 and other procedural deadlines were established.

6 On April 11, 2011, Groom Creek filed an affidavit that legal notice of the proceeding had
7 been published in the *Prescott Courier* on April 6, 2011. Additionally, individual notices were
8 mailed to the residents on the same date.

9 On April 18, 2011, Staff filed a Staff Report recommending issuance of an Order Preliminary
10 in this matter.

11 On May 2, 2011, Staff filed a Supplement to the Staff Report (“Supplement”) additionally
12 recommending approval of the Arizona Department of Water Resources’ (“ADWR”) Best
13 Management Practices (“BMPs”) Tariffs in this proceeding.

14 On May 5, 2011, Groom Creek filed Objections to Staff Report and Supplement.

15 On May 26, 2011, a full public hearing was held as scheduled before a duly Authorized
16 Administrative Law Judge (“ALJ”) of the Commission at its offices in Phoenix, Arizona. Staff
17 appeared through counsel and presented testimony and evidence. Mr. Jerry Hodgson, president of the
18 board of directors, Mr. Kal Miller, secretary, and Margie Good, office manager for Groom Creek,
19 appeared on behalf of Groom Creek and presented testimony and evidence. No members of the
20 public appeared to give public comment. Based on discussions during the hearing, Staff was directed
21 to file a late-filed exhibit revising the proposed language of the proposed BMP Tariffs.

22 On May 27, 2011, Staff filed a Notice of Filing Late-Filed Exhibit, which included revised
23 BMP Tariffs.

24 On July 7, 2011, Staff filed a Notice of Filing revising its recommendation that the
25 Commission issue an Order Preliminary in this matter.

26 Upon receipt of the late-filed exhibit, the matter was taken under advisement pending
27 submission of a Recommended Opinion and Order to the Commission.

28 * * * * *

1 Association's filing showing compliance with the AOC requirements, a Staff response to the
2 Company's filing, in the form of a Proposed Order confirming compliance and granting an extension
3 of the Company's CC&N to correct its existing CC&N boundaries to serve its customer base. Staff
4 stated that the Proposed Order confirming compliance would be scheduled as soon as possible for a
5 Commission vote after the filing of Staff's response.

6 10. On May 3, 2011, Staff filed a Supplement to its Staff Report ("Supplement"). In the
7 Supplement, Staff stated that in 2008 ADWR began a regulatory program, called the Modified Non-
8 Per Capita Conservation Program ("Modified NPCCP") for active management areas ("AMAs"),
9 which requires large municipal water providers (serving more than 250 acre-feet per year) that do not
10 have a Designation of Assured Water Supply ("DAWS"), and are not regulated, to implement water
11 conservation measures that will result in water use efficiency in their service areas. Under the
12 program, water providers are required to implement BMPs that include a Public Education Program
13 and one or more additional BMPs based on the water provider's size.¹ The BMPs are a mix of
14 technical, policy, and information conservation efforts. Staff states that although implementation of
15 the Modified NPCCP is only required for large municipal water providers within an AMA, the
16 Commission has adopted the BMPs for implementation by large and small Commission regulated
17 water companies. Staff recommended three proposed BMPs for implementation by Groom Creek.²

18 11. On May 6, 2011, Groom Creek filed objections to the Staff Report and Supplement.³
19 Groom Creek opposed Staff's recommendation of the issuance of an Order Preliminary and Staff's
20 recommendation for approval of the ADWR BMP Tariffs in this proceeding.⁴

21 12. At hearing, Groom Creek's witness testified that the Association's basic objection to
22 the BMPs was that they may require the Association to hire additional personnel or to incur
23 additional expenses for implementation.⁵ However, if the Association could execute the BMPs
24 within its existing operations, for example, using its existing newsletter to meet the requirements of
25

26 ¹ The number of BMPs is based on the number of water service connections served by the water provider.

27 ² Supplement at Attachments.

28 ³ Exhibit A-1.

⁴ Id.

⁵ Tr. at 16-17.

1 BMP 1.1, then the Company did not object.⁶

2 13. At hearing, Staff proposed revised language for the BMP Tariffs to clarify and address
3 the Association's concerns.⁷ At the conclusion of the hearing, Staff was directed to file a late-filed
4 exhibit encompassing the revised BMP language.

5 14. On May 27, 2011, Staff docketed as a late-filed exhibit, the revised language for the
6 BMP Tariffs agreed upon by Staff and the Association, attached hereto and incorporated herein as
7 Exhibit A.

8 **Compliance Issues**

9 15. On November 19, 2008, the Commission issued Decision No. 70627, which
10 authorized an increase in rates for Groom Creek to make needed upgrades and repairs to its water
11 system and authorized Groom Creek to obtain a Water Infrastructure Financing Authority ("WIFA")
12 loan in an amount not to exceed \$1.6 million to fund its capital improvement projects ("Rate/Finance
13 Docket").⁸ Decision No. 70627 required, among other things, that Groom Creek file with Docket
14 Control, as a compliance item, all approvals of construction by December 31, 2010, related to its
15 capital improvement projects.⁹ On October 16, 2009, Groom Creek docketed documents indicating
16 that its \$1.6 million WIFA loan was finalized on August 14, 2009.¹⁰

17 16. On April 15, 2011, Groom Creek filed (in the Rate/Finance Docket) a request for an
18 extension of time, until October 31, 2011, to file all approvals of construction in compliance with
19 Decision No. 70627 ("Request").¹¹ The Request stated that additional time was needed because
20 construction was not complete or operational by the December 31, 2010 deadline.¹² The Request also
21 stated that at the time Decision No. 70627 was issued, Groom Creek had no way of knowing what the
22 construction schedule would be and therefore whether the deadline was reasonable.¹³ Groom Creek
23 also stated that it was unaware that it needed to apply for a date extension prior to the expiration of
24

25 ⁶ Tr. at 17-19.

⁷ Exhibit S-3 and Staff's late-filed exhibit (dated May 27, 2011).

26 ⁸ See, Docket No. W-01865A-07-0385 et. al.

⁹ Decision No. 70627 at 24.

27 ¹⁰ See, Docket No. W-01865A-07-0385 et. al.

¹¹ Request docketed April 15, 2011.

¹² Id.

28 ¹³ Id.

1 the deadline.¹⁴

2 17. On May 11, 2011, Staff filed a Memorandum (in the Rate/Finance Docket) in response
3 to Groom Creek's request for an extension of time to comply with Decision No. 70627.¹⁵ Staff stated
4 that it did not object to an extension of time, until October 31, 2011, for Groom Creek to file all the
5 approvals of construction as ordered in Decision No. 70627.¹⁶

6 18. On June 30, 2011, Groom Creek docketed (in the Rate/Finance Docket) the Arizona
7 Department of Environmental Quality ("ADEQ") approval of construction (dated June 21, 2011), for
8 its new 65,000 storage tank and the Yavapai County Approval to Operate (dated June 2, 2011) for its
9 new booster station.¹⁷ On July 6, 2011, Groom Creek filed the Yavapai County Approval to Operate
10 (November 10, 2010) for its new distribution system line.¹⁸

11 19. On July 7, 2011, Staff docketed a Notice of Filing in this docket, revising its
12 recommendation that the Commission issue an Order Preliminary, and instead recommended that the
13 Commission grant approval of Groom Creek's CC&N extension. Staff's filing confirmed that
14 Groom Creek has complied with all the requirements ordered in Decision No. 70627 by filing the
15 approvals of construction in the Rate/Finance Docket.

16 20. ADEQ has determined that Groom Creek's water system is delivering water that
17 meets water quality standards required by the A.A.C., and that Groom Creek is in compliance with
18 ADEQ.

19 21. Groom Creek is not located within any ADWR designated AMA. Based on an ADWR
20 Water Provider Compliance Report, dated April 13, 2011, ADWR has determined that the
21 Association's water system is currently compliant with departmental requirements governing water
22 providers and/or community water systems.

23 22. The Commission's Utilities Division Compliance Section indicated Groom Creek's
24 delinquency with Decision No. 70627; however, based on the above discussion Groom Creek is in
25 compliance with the A.C.C.

26 ¹⁴ Request docketed April 15, 2011.

27 ¹⁵ See, Staff Memorandum filed May 11, 2011 (Docket No. W-01865-07-0385 et. al.)

28 ¹⁶ Id.

¹⁷ See, Docket No. W-01865-07-0385 et. al.

¹⁸ Id.

1 Existing Water System

2 23. After the completion of Groom Creek’s capital projects, Groom Creek’s water system
3 consists of two wells (with a capacity of 60 gallons per minute); three storage tanks (totaling 153,000
4 gallons); a new booster system, with three pumps with a 2,500 gallon pressure tank; a new
5 distribution system, replacing the old asbestos cement pipes with 6-inch polyvinyl chloride pipes for
6 a total of 18,500 feet; and new transmission main from Well Site #2 to Well Site #1 that pumps
7 directly into a new 65,000 gallon storage tank.¹⁹ In addition, Groom Creek installed new meters and
8 meter boxes for all 221 customers, plus another 43 stub-outs for future customers, and 13 fire
9 hydrants.²⁰

10 24. Staff concluded after the completion of the capital projects Groom Creek’s new water
11 system is capable of serving Groom Creek’s existing customer base plus reasonable growth in the
12 future as well as providing fire flow protection for its customers.

13 25. Because an allowance for property tax expense is included in Groom Creek’s rates and
14 collected from its customers, the Commission seeks assurances from Groom Creek that any taxes
15 collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the
16 Commission’s attention that a number of water and wastewater companies have been unwilling or
17 unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as
18 many as twenty years. It is reasonable, therefore, that as a preventive measure Groom Creek shall
19 annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the
20 Company is current in paying its property taxes in Arizona.

21 26. Staff’s recommendations, as described herein, are reasonable and should be adopted.

22 27. Although Groom Creek’s service area is located outside an AMA, it should
23 nonetheless be required to comply with some of the conservation goals and management practices of
24 the ADWR and the Commission. Therefore, we will require Groom Creek to implement, within 90
25 days of the effective date of this Decision, the BMP Tariffs attached hereto and incorporated herein
26 as Exhibit A, in accordance with Staff’s recommendation.

27 _____
28 ¹⁹ Staff Report at 2.
²⁰ Id.

CONCLUSIONS OF LAW

1
2 1. Groom Creek Water Users Association is a public service corporation within the
3 meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and 40-285.

4 2. The Commission has jurisdiction over Groom Creek Water Users Association and the
5 subject matter of the application.

6 3. Notice of the application was provided in accordance with the law.

7 4. There is a public need and necessity for water utility service in the proposed extension
8 area.

9 5. Groom Creek Water Users Association is a fit and proper entity to receive an
10 extension of its CC&N.

11 6. It is in the public interest to grant Groom Creek Water Users Association an extension
12 of its CC&N.

13 7. Staff's recommendations, as described herein, are reasonable and should be adopted.
14

15 **ORDER**

16 IT IS THEREFORE ORDERED that Groom Creek Water Users Association is hereby
17 granted an extension of its Certificate of Convenience and Necessity to include the extension area
18 described in Exhibit B, attached hereto and incorporated herein.

19 IT IS FURTHER ORDERED that Groom Creek Water Users Association shall implement,
20 within 90 days of the effective date of this Decision, the Arizona Department of Water Resources
21 Best Management Practices Tariffs, described in Exhibit A, attached hereto and incorporated herein.

22 IT IS FURTHER ORDERED that Groom Creek Water Users Association shall charge its
23 authorized rates and charges in the extension area, until further Order of the Commission.

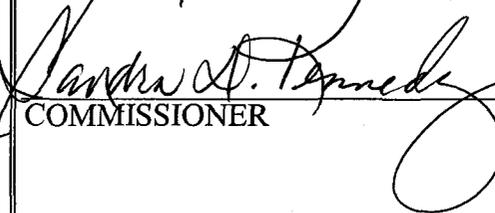
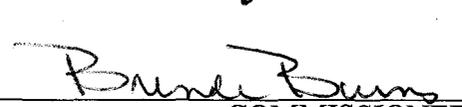
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1 IT IS FURTHER ORDERED that Groom Creek Water Users Association shall annually file
2 as part of its annual report, an affidavit with the Utilities Division attesting that it is current on paying
3 its property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7  CHAIRMAN  COMMISSIONER

8
9  COMMISSIONER  COMMISSIONER  COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 17th day of August, 2011.

17 
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 YBK:db

23
24
25
26
27
28

1 SERVICE LIST FOR: GROOM CREEK WATER USERS ASSOCIATION

2 DOCKET NO.: W-01865A-11-0057

3
4 Jerry D. Hodgson, President
5 Kal Miller, Secretary
6 GROOM CREEK WATER USERS ASSOCIATION
7 P.O. Box 3897
8 Prescott, AZ 86302

9
10 Janice Alward, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

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16 Steven M. Olea, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007

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EXHIBIT A

Company: _____

Decision No.: _____

Phone: _____

Effective Date: _____

WATER SYSTEM TAMPERING TARIFF – BMP 5.2**PURPOSE**

The purpose of this tariff is to promote the conservation of groundwater by enabling the Company to bring an action for damages or to enjoin any activity against a person who tampers with the water system.

REQUIREMENTS:

The requirements of this tariff are governed by Rules of the Arizona Corporation Commission, specifically Arizona Administrative Code ("AAC") R14-2-410 and the Arizona Department of Water Resources' Required Public Education Program and Best Management Practices in the Modified Non-Per Capita Conservation Program.

1. In support of the Company's water conservation goals, the Company may bring an action for damages or to enjoin any activity against a person who: (1) makes a connection or reconnection with property owned or used by the Company to provide utility service without the Company's authorization or consent; (2) prevents a Company meter or other device used to determine the charge for utility services from accurately performing its measuring function; (3) tampers with property owned or used by the Company; or (4) uses or receives the Company's services without the authorization or consent of the Company and knows or has reason to know of the unlawful diversion, tampering or connection. If the Company's action is successful, the Company may recover as damages three times the amount of actual damages.
2. Compliance with the provisions of this tariff will be a condition of service.
3. The Company shall provide to all its customers, upon request, a complete copy of this tariff and AAC R14-2-410. The customers shall follow and abide by this tariff.
4. If a customer is connected to the Company water system and the Company discovers that the customer has taken any of the actions listed in No. 1 above, the Company may terminate service per AAC R14-2-410.
5. If a customer believes he/she has been disconnected in error, the customer may contact the Commission's Consumer Services Section at 1-800-222-7000 to initiate an investigation.

DECISION NO. 72527

Company: _____

Decision No.: _____

Phone: _____

Effective Date: _____

Customer High Water Use Inquiry Resolution Tariff – BMP 3.6

PURPOSE

A program for the Company to assist its customers with their high water-use inquiries and complaints (Modified Non-Per Capita Conservation Program BMP Category 3: Outreach Services 3.6: Customer High Water Use Inquiry Resolution).

REQUIREMENTS

The requirements of this tariff are governed by Rules of the Arizona Corporation Commission and were adapted from the Arizona Department of Water Resources' Required Public Education Program and Best Management Practices in the Modified Non-Per Capita Conservation Program.

1. The Company shall handle high water use inquiries as calls are received.
2. Calls shall be taken by a customer service representative who has been trained on typical causes of high water consumption as well as leak detection procedures that customers can perform themselves.
3. Upon request by the customer or when the Company determines it is warranted, a trained Field Technician or Water Operator shall be sent to the customer's residence to conduct a leak detection inspection and further assist the customer with water conservation measures.
4. The Company shall follow up in some way on every customer inquiry or complaint and keep a record of inquiries and follow-up activities.

Company: _____

Decision No.: _____

Phone: _____

Effective Date: _____

Local and/or Regional Messaging Program Tariff – BMP 1.1

PURPOSE

A program for the Company to actively participate in a water conservation campaign with local or regional advertising (Modified Non-Per Capita Conservation Program BMP Category 1: Public Awareness/Public Relations 1.1: Local and/or Regional Messaging Program).

REQUIREMENTS

The requirements of this tariff are governed by Rules of the Arizona Corporation Commission and were adapted from the Arizona Department of Water Resources' Required Public Education Program and Best Management Practices in the Modified Non-Per Capita Conservation Program.

1. The Company or designated representative shall actively participate in water conservation campaign with local and/or regional advertising.
2. The campaign shall promote ways for customers to save water.
3. The Company shall facilitate the campaign through one or more of the following avenues (not an all inclusive list):
 - a. Websites
 - b. Promotional materials
 - c. Vehicle signs
 - d. Bookmarks
 - e. Magnets
 - f. Newsletter
4. The Company shall keep a record of the following information and make it available to the Commission upon request.
 - a. A description of the messaging program implemented and program dates.
 - b. The number of customers reached (or an estimate).
 - c. Costs of Program implementation.

GROOM CREEK WATER USERS ASSOCIATION
DOCKET NO. W-01865A-11-0057
AMENDED LEGAL DESCRIPTION

A portion of Section 26, in Township 13 North, Range 2 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona:

Groom Creek Estates No. 1 and Groom Creek Estates No. 2 further described as:

BEGINNING at the intersection of 112° 26' 25.1W, 34° 28' 58.1N;
THENCE S 02° 47' 30" W for a distance of 369.17 feet;
THENCE S 02° 47' 30" W for a distance of 966.60 feet;
THENCE S 88° 16' W for a distance of 855.21 feet;
THENCE N 39° 20' E for a distance of 398.64 feet;
THENCE N 47° 50' W for a distance of 392.20 feet;
THENCE N 59° 29' E for a distance of 25.71 feet;
THENCE N 65° 25' W for a distance of 85.17 feet;
THENCE N 47° 52' W for a distance of 191.01 feet;
THENCE N 39° 22' 40" E for a distance of 333.19 feet;
THENCE N 38° 55' 20" W for a distance of 393.00 feet;
THENCE N 88° 05' E for a distance of 1,196.04 feet to the POINT OF BEGINNING.

Parcel No. 104-19-008 further described as:

BEGINNING at the intersection of 112° 26' 33.9 W, 34° 28' 48.7 N;
THENCE to the intersection of 112° 26' 32.8 W, 34° 28' 47.9 N;
THENCE to the intersection of 112° 26' 35.4 W, 34° 28' 45.5 N;
THENCE to the intersection of 112° 26' 36.4 W, 34° 28' 46.1 N
THENCE to the intersection of 112° 26' 33.9 W, 34° 28' 48.7 N to the POINT OF BEGINNING.

Parcel No. 104-19-006B further described as:

BEGINNING at the intersection of 112° 26' 38 W, 34° 28' 50.5 N;
THENCE to the intersection of 112° 26' 37.5 W, 34° 28' 50.9 N;
THENCE to the intersection of 112° 26' 37.3 W, 34° 28' 50.7 N;
THENCE to the intersection of 112° 26' 36.3 W, 34° 28' 50.4 N;
THENCE to the intersection of 112° 26' 36.5 W, 34° 28' 50.2 N;
THENCE to the intersection of 112° 26' 38 W, 34° 28' 50.5 N to the POINT OF BEGINNING.

Parcel No. 104-16-226 further described as:

BEGINNING at the intersection of 112° 26' 35.4 W, 34° 28' 31.4 N;
THENCE to the intersection of 112° 26' 34.6 W, 34° 28' 31.4 N;
THENCE to the intersection of 112° 26' 34.7 W, 34° 28' 34.7 W;
THENCE to the intersection of 112° 26' 35.6 W, 34° 28' 29.7 N;
THENCE to the intersection of 112° 26' 35.4 W, 34° 28' 31.4 N to the POINT OF BEGINNING.