

ORIGINAL  
MEMORANDUM



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AZ CORP COMMISSION  
DOCKET CONTROL

TO: Docket Control Center

Arizona Corporation Commission

DOCKETED

FROM: Steven M. Olea  
Director  
Utilities Division

NOV 1 2011

DOCKETED BY	
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DATE: October 31, 2011

RE: VAIL WATER COMPANY (DOCKET NOS. W-016518-99-0351 AND W-016518-99-0406)

In Decision No. 62450, dated April 14, 2000, the Arizona Corporation Commission ("Commission") approved the application of Vail Water Company ("Vail" or "Company") for a rate increase and authority for financing.

Compliance Requirements and Enforcement Letters

Pursuant to Decision No. 62450, Vail was ordered to comply with Finding of Fact ("FOF") 25 within the decision. Specifically, in FOF 25 (f), (g), (h), (j) and (k) the Commission ordered that:

- (f) ***"Final plans for the direct use of CAP water within Vail's service territory are to be submitted to the Commission no later than December 31, 2010."***
- (g) ***"Vail must directly use the CAP allocation within its service territory by December 31, 2015."***
- (h) ***"No time extensions will be allowed for any reason."***
- (j) ***"If Vail does not comply with either of the timeframes in f or g, all CAP charges will cease at that time and any monies remaining in the CAP account shall be refunded in a manner to be determined by the Commission at that time;"***
- (k) ***"The Commission shall allow Staff to automatically impose fines and/or other sanctions against Vail if the timeframes in item f or g are not met;"***

Based on its compliance review, Staff concluded that the Company did not comply with the above Commission requirement 25 (f) to provide the "Final plans" by the December 31, 2010 due date. Staff contacted the Company about the required filing and spoke with Mr. Christopher T. Volpe, Vice President, who confirmed that the "Final plans" had not been submitted.

On June 21, Staff sent a formal Compliance Notification Letter stating that the Company had failed to meet the Commission requirement of making the "Final plans" filing by December 31, 2010. This Letter notified the Company that its failure to meet the Commission deadline rendered the

Company in violation of both Decision No. 62450 and Arizona Revised Statute ("A.R.S.") §40-202 which requires the Company to comply with every "order, decision, rule or regulation" of the Commission. Staff's Compliance Notification Letter also notified the company of FOF 25 (j) which states that that CAP charges should cease and remaining monies refunded when the Company failed to timely provide the "Final plans" filing in FOF 25 (f). For further information, please see Staff's June 21, 2011 Letter which is attached to this memorandum for reference purposes.

On August 2, 2011, Staff sent a second letter titled Compliance Status Notification #2 to reiterate the collection and refunding obligations of CAP charges found in Decision No. 62450's FOF 25 (j). This second letter is also attached to this memorandum and advised the Company of the following:

*"... consistent with Finding of Fact 25 (j), the Company should immediately cease CAP collections and propose to the Commission a mechanism to refund any monies remaining in the CAP account. This proposal should be submitted to the Commission by August 19, 2011. Further the Company is notified that any CAP funds collected since January 1, 2011 were collected in violation of a Commission order."*

The Company did not comply with Staff's deadline for providing the proposed refunding mechanism.

#### **Requests for Extension of Time**

On June 30, 2011, in response to Staff's June 21, 2011 initial Compliance letter, the Company submitted a single page letter requesting an extension of time until November 30, 2011, for the provision of the "Final plans". This request for extension of time was ultimately withdrawn by the Company in a letter docketed on August 17, 2011.

On August 19, 2011, Vail docketed a subsequent request for extension of time until June 30, 2013 to provide the "Final plans" for direct use of CAP water. In its application, the Company suggests that while the City of Tucson Water Department ("the City") had the intention of "becoming a wholesale CAP delivery utility", this did not happen. Only recently, in June 2011, did the City and the Town of Oro Valley execute an "intergovernmental agreement for wheeling CAP water that the City anticipates will serve as a model for providing similar services" to other firms such as the Company. The Company is now "entirely confident" that it can reach a wheeling agreement with the City which will allow them to make direct use of CAP water in its service territory.

The application states that a great deal of money has been spent attempting to make a renewable water supply available but the City was not previously available as a "willing partner to wheel CAP water across the Tucson valley". Given that the direct use of CAP remains the Company's preferred goal, and based on what the Company calls a "new water policy regime in effect" at the City, Vail requests that the December 31, 2010 deadline for the provision of "Final plans" for direct use of CAP water be extended until **June 30, 2013**.

**Summary and Recommendation**

In summary, a review of this matter indicates that Vail is in violation of Commission Decision No. 62450 via the failure to provide "Final plans", failure to cease collection of CAP charges and failure to refund monies remaining in the CAP account. The Company is also in violation of Arizona Revised Statute §40-202 and Staff's enforcement efforts to receive a Company filing on a proposed refunding mechanism. Staff concludes that the facts in this matter preclude it from recommending an extension of time in this case.

Also, Staff notes that there was no extension of time request made prior to the December 31, 2010 due date in this matter. Staff is concerned that the request for extension of time was filed approximately 6 months after the due date on this ten year old requirement and then only after Staff notified the Company of the compliance violation.

Based on all of the above, Staff recommends denial of the Company's request for extension of time for provision of the "Final plans" filing outlined in Decision No. 62450. In order to clarify and enhance the record, Staff further recommends that Vail docket a status update by November 15, 2011 clarifying the following:

- Whether the Company has ceased collecting CAP charges and an explanation why not, if not.
- What refunding mechanism the Company proposes and why none was proposed by Staff's due date.
- Whether refunds have started and an explanation why not, if not.
- An accounting of the total amount of funds in the CAP account to be refunded.

Finally, regarding the fines and other sanctions mentioned in FOF 25 (k), Staff reserves the right to make further recommendations based on the quality and timeliness of the Company's November 15, 2011 status update.

SMO:BKB:lhmm

Originator: Brian K. Bozzo

Attachments

SERVICE LIST FOR:  
DOCKET NO.

VAIL WATER COMPANY  
DOCKET NOS. W-01651A-99-0351 & W-01651A-99-0406

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Lewis and Roca, LLP  
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Phoenix, Arizona 85004  
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National Bank Plaza  
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2011 AUG - 2 - 10 11  
COMPLIANCE  
NOTIFICATION  
AZ CORP COMMISSION  
DOCKET CONTROL

W-016518-99-0351  
W-016518-99-0406

June 21, 2011

Arizona Corporation Commission  
DOCKETED

AUG 2 2011

**CERTIFIED MAIL**

Mr. Christopher T. Volpe  
Vice President  
Vail Water Company  
1010 North Finance Center Drive, Suite 200  
Tucson, Arizona 85710

DOCKETED BY

RE: VAIL WATER COMPANY – COMPLIANCE STATUS NOTIFICATION  
DECISION NO. 62450

In Decision No. 62450, dated April 14, 2000, the Arizona Corporation Commission (“A.C.C.” or “the Commission”) approved Finding of Fact 25(f), which included the following order of the Commission:

*“Final plans for the direct use of CAP water within Vail’s service territory are to be submitted to the Commission no later than December 31, 2010.”*

Based on previous year annual reports and on the most recent June 14, 2011 annual report update provided by the Company, Vail Water Company (“Vail” or “Company”) remains to this day in the same status of “investigating alternative plans” for CAP water use. This status extends all the way back to the year of 2004 and prior.

As such, the Company has not, as of this date, provided the “final plans” for direct use of CAP water and is therefore considered in violation of Decision No. 62450. Failure to comply with the decision further places the Company in violation of Arizona Revised Statute (“A.R.S.”) §40-202, which states:

*“A public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business as a public service corporation, and shall do everything necessary to secure compliance with and observance of every such order, decision, rule or regulation.”*

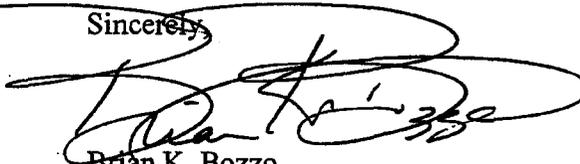
The Company has previously dealt with Compliance Staff via telephone regarding this matter. This writing is meant to formally notify Vail that the Company has not met the required compliance that was ordered by the Commission. The Company should do so immediately.

Vail Water Company  
Compliance Status Letter  
June 21, 2011  
Page 2

Finally, the Company is further notified that Decision No. 62450 also sets forth that all CAP charges will cease and remaining CAP monies shall be refunded in the event that the Company fails to meet the requirements of the decision.

If you believe our conclusions are in error, please submit a detailed explanation as to why you believe Staff's conclusions are in error. Please submit this explanation by July 1, 2011. You may also contact the Utilities Division at (602) 542-4251 or reach me at (602) 542-0852 if you require any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian K. Bozzo", with a large, sweeping flourish extending to the left.

Brian K. Bozzo  
Compliance and Enforcement Manager  
Utilities Division

BKB:lmh

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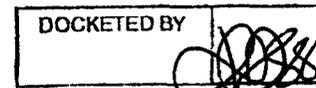
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Arizona Corporation Commission  
DOCKETED

AUG 2 2011

August 2, 2011

Mr. Christopher T. Volpe  
Vice President  
Vail Water Company  
1010 N. Finance Center Dr., Suite 200  
Tucson, Arizona 85710



RE: VAIL WATER COMPANY – COMPLIANCE STATUS NOTIFICATION # 2  
DOCKET NOS. W-01651B-99-0351 & W-01651B-99-0406  
DECISION NO. 62450

On June 22, 2011, Staff issued a letter (Compliance Notification) informing Vail Water Company (“Company”) of its obligation to comply with Commission Decision No. 62450, dated April 14, 2000. Pursuant to this order, Findings of Fact 25(f), 25(g) and 25(j) respectively, state:

- (f) *“Final plans for the direct use of CAP water within Vail’s service territory are to be submitted to the Commission no later than December 31, 2010;”*
- (g) *“Vail must directly use the CAP allocation within its service territory by December 31, 2015;”*
- (j) *“If Vail does not comply with either of the timeframes in f or g, all CAP charges will cease at that time and any monies remaining in the CAP account shall be refunded in a manner to be determined by the Commission at that time;”*

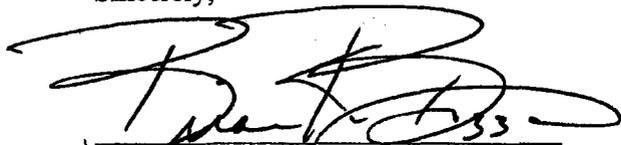
As stated in the June 22, 2011 letter, the Company has failed to comply with Finding of Fact 25(f) of Decision No. 62450 and this current letter serves as a second notification and a reminder that the Company has failed to meet that deadline associated with the “final plans” requirement.

In our previous telephone conversation, you stated that the Company has neither ceased collecting nor refunded the referenced Central Arizona Project (“CAP”) monies. This letter is to advise you that, consistent with Finding of Fact 25(j), the Company should immediately cease CAP collections and propose to the Commission a mechanism to refund any monies remaining in the CAP account. This proposal should be submitted to the Commission by August 19, 2011. Further, the Company is notified that any CAP funds collected since January 1, 2011 were collected in violation of a Commission order.

Vail Water Company  
Compliance Status Letter # 2  
Page 2

If you have any questions, please feel free to contact me at (602) 542-0852.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian K. Bozzo", written over a horizontal line.

Brian K. Bozzo  
Compliance and Enforcement Manager