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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
VAIL WATER COMPANY FOR AUTHORITY
TO ISSUE PROMISSORY NOTE(S) AND
OTHER EVIDENCE OF INDEBTEDNESS
PAYABLE AT PERIODS OF MORE THAN
TWELVE MONTHS AFTER THE DATE OF
ISSUANCE.

DOCKET NO. W-01651B-99-0351

IN THE MATTER OF THE APPLICATION OF
VAIL WATER COMPANY FOR A RATE
INCREASE.

DOCKET NO. W-01651B-99-0406

The Utilities Division ("Staff") of the Arizona Corporation Commission ("ACC") hereby files
the Direct Testimony of Staff Witness Brian Bozzo in the above-referenced matter.

RESPECTUFLLY SUBMITTED this 23rd day of January, 2012.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-01651B-99-0351
VAIL WATER COMPANY FOR AUTHORITY TO)
ISSUE PROMISSORY NOTE(S) AND OTHER)
EVIDENCE OF INDEBTEDNESS PAYABLE AT)
PERIODS OF MORE THAN TWELVE MONTHS)
AFTER THE DATE OF ISSUANCE.)

_____))
IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-01651B-99-0406
VAIL WATER COMPANY FOR A RATE)
INCREASE)
_____)

DIRECT
TESTIMONY
OF
BRIAN K. BOZZO
COMPLIANCE AND ENFORCEMENT MANAGER
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

JANUARY 23, 2011

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**EXECUTIVE SUMMARY
VAIL WATER COMPANY.
DOCKET NO. W-01651B-99-0351
DOCKET NO. W-01651B-99-0406**

Vail Water Company ("Company" or "Vail") is a public service corporation engaged in the business of providing public utility water service in Pima County.

The purpose of my testimony is to present Staff's position on certain compliance and enforcement issues relating to Decision No. 62450 and specifically to Finding of Fact 25 within the decision.

The Company was ordered to have final plans for direct use of Central Arizona Project ("CAP") water no later than December 31, 2010. Vail failed to meet that compliance requirement and the decision therefore required that all CAP charges would cease and that monies remaining in the CAP account would be refunded.

On August 19, 2011, after being contacted by Staff, the Company then sought an extension of time to comply with the final plans requirement. Staff reviewed the application and ultimately recommended denial of that request. Staff's position is that the Commission order was clear regarding the cessation of CAP collections and the refunding of remaining CAP monies.

1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Brian K. Bozzo. My business address is 1200 West Washington Street,
4 Phoenix, Arizona 85007.

5
6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Arizona Corporation Commission (“Commission” or “A.C.C.”) in
8 the Utilities Division (“Staff”) as the Compliance and Enforcement Manager.

9
10 **Q. Please describe your education and work experience.**

11 A. I obtained a Bachelor of Science degree in Business Administration from the University of
12 Arizona. In 1991, I joined Staff as a rate analyst. I have been responsible for conducting
13 case preparation/analysis and serving as a Commission witness in rate proceedings,
14 finance authorizations and Certificate of Convenience and Necessity (“CC&N”)
15 proceedings, among others. During the course of these duties, I attended numerous
16 seminars on utility rate-making including courses presented by the National Association of
17 Regulatory Utility Commissioners (“NARUC”) and New Mexico State University.

18
19 Since July 2003, I have been the manager of Compliance and Enforcement in the
20 Compliance Section of the Utilities Division. In the course of these duties, I conduct
21 analyses of numerous compliance matters, document compliance findings and make
22 recommendations on compliance status.

23

1 **Q. In general, what is the responsibility of the Compliance Section of the Utilities**
2 **Division in the Commission?**

3 A. Compliance is the section within the Utilities Division of the Commission that is devoted
4 to the identification, collection and documentation of company filings ordered by the
5 A.C.C.

6
7 **Q. What is the purpose of your testimony in this proceeding?**

8 A. The purpose of my testimony is to present Staff's position on certain compliance and
9 enforcement issues ordered in Decision No. 62450, to comment on Vail Water Company's
10 ("Company" or "Vail") continuing request for an extension of time and, specifically, to
11 address the cessation of Central Arizona Project ("CAP") fees and the refunding of
12 remaining CAP funds as outlined in Finding of Fact ("FOF") 25 within the decision.

13
14 **Q. Are the nature and dates of Vail Water Company's compliance filings within the**
15 **scope of your duties?**

16 A. Yes. The Compliance section monitors and tracks Compliance ordered by the
17 Commission and the Compliance filings ordered in Decision No. 62450 are a subset of the
18 overall compliance ordered by the Commission.

19
20 **Q. In the scope of your duties, do you communicate compliance status and complete**
21 **testimony, Complaints or Order to Show Cause ("OSC") filings on the compliance**
22 **status of Arizona utility companies?**

23 A. Yes. I have composed and presented various work documents regarding compliance on
24 Arizona utility firms. In addition, one of the major responsibilities of the Compliance
25 Section is providing information on the compliance ordered by the Commission and on the
26 Company performance in meeting those Commission requirements.

1 **Q. Are the Staff members who originally conducted the casework on this item currently**
2 **employed at the Commission?**

3 A. No. Given the 1999 docket date, the individuals originally assigned to the matter are no
4 longer employed by the Commission. I was assigned to this matter to provide Staff's
5 current testimony in lieu of those individuals. Although I did not work on this matter
6 originally, I did author the October 31, 2011 Staff response to the Company request for
7 extension of time.

8

9 **JANUARY 26TH HEARING**

10 **Q. What is your understanding of the specific purpose of the January 26, 2012 hearing?**

11 A. The purpose of the initial hearing is to present direct and rebuttal testimony and discuss
12 the issues surrounding the question of "whether CAP funds currently held in trust may be
13 used to make CAP payments due in March 2012."

14

15 **Q. Does the language in Decision No. 62450 suggest that Vail should be allowed use the**
16 **CAP funds to make a CAP payment due in March 2012?**

17 A. No. FOF 25 in Decision No. 62450 is very clear on this issue. Pursuant to Decision No.
18 62450, Vail was ordered to comply with individual ordering paragraphs in Finding of Fact
19 ("FOF") 25(f), 25(g) and 25(j). Those FOF 25 sections read as follows:

20

21 (f) *"Final plans for the direct use of CAP water within Vail's service territory*
22 *are to be submitted to the Commission no later than December 31, 2010."*

23

24 (g) *"Vail must directly use the CAP allocation within its service territory by*
25 *December 31, 2015."*

26

27 (j) *"If Vail does not comply with either of the timeframes in f or g, all CAP*
28 *charges will cease at that time and any monies remaining in the CAP account*
29 *shall be refunded in a manner to be determined by the Commission at that*
30 *time;"*

31

32

1 **Q. Consistent with FOF 25(f), did the Company comply with the requirement to submit**
2 **“final plans” by December 31, 2010?**

3 A. No. The Company failed to meet the Commission requirement and has admitted that fact
4 before the Commissioners in Open Meeting.
5

6 **Q. Discuss the ramifications of failing to comply with FOF 25(f).**

7 A. The ramifications are clear and significant. Having failed to comply with the requirement
8 to provide “final plans” associated with FOF 25(f), the Company was, on January 1, 2011,
9 subject to the conditions of FOF 25(j) which requires that all CAP charges cease and
10 remaining CAP account monies be refunded.
11

12 **Q. Since Decision No. 62450 stated that the monies must be refunded, should they be**
13 **used by Vail to make a March 2012 CAP payment?**

14 A. No. Staff believes that the upcoming CAP bill should be paid with other funds and the
15 remaining CAP monies should be refunded to customers in accordance with Decision No.
16 62450.
17

18 **FEBRUARY 29TH HEARING**

19 **Extension of time**

20 **Q. Has Staff provided a memorandum regarding the Company’s original request for**
21 **extension of time?**

22 A. Yes. On November 1, 2011, Staff docketed a memorandum responding to the Company
23 request for extension of time. I authored that memorandum which provided information
24 about the Company performance regarding Decision No. 62450 and the manner in which
25 the Company came to apply for their extension of time. Staff recommended denial of the
26 Company request for extension of time.

1 **Q. In spite of Staff's denial recommendation, is the Company currently seeking**
2 **consideration for an extension of time in this matter?**

3 A. Yes.
4

5 **Q. Did the Company docket a request for extension of time at any time prior to the**
6 **"final plans" requirement due date of December 31, 2010?**

7 A. No.
8

9 **Q. Did the Company proactively contact Staff after the "final plans" were delinquent in**
10 **January 2011 to inform Staff of the delinquency, of the impact of the FOF 2(j)**
11 **language and of the requirement to cease CAP collections and refund CAP monies?**

12 A. No. Staff was the party that identified that the Company had failed to meet the "final
13 plans" requirement and ultimately informed the Company that it was in violation of
14 Decision No.62450. Frankly, it is unclear when or if the Company would have addressed
15 the issue if it had not been notified by Staff of being in violation of the decision.
16

17 **Q. Please discuss how Staff notified the Company about these issues.**

18 A. On June 21, 2011, Staff sent a formal Compliance Notification Letter stating that the
19 Company had failed to meet the Commission requirement of making the "Final plans"
20 filing by December 31, 2010. This Letter notified the Company that its failure to meet the
21 Commission deadline rendered the Company in violation of Decision No. 62450. Staff's
22 Compliance Notification Letter also notified the company of FOF 25 (j) which states that
23 that CAP charges should cease and remaining monies be refunded when the Company
24 failed to timely provide the "Final plans" filing in FOF 25 (f).
25

1 **Q. Did Staff provide Vail with a second Compliance letter on this issue?**

2 A. Yes. On August 2, 2011, Staff sent a second letter titled Compliance Status Notification #
3 2 to reiterate the collection and refunding obligations of CAP charges found in Decision
4 No. 62450's FOF 25 (j). The second letter advised the Company of the following:

5
6 *"... consistent with Finding of Fact 25 (j), the Company should immediately*
7 *cease CAP collections and propose to the Commission a mechanism to refund*
8 *any monies remaining in the CAP account. This proposal should be submitted*
9 *to the Commission by August 19, 2011. Further the Company is notified that*
10 *any CAP funds collected since January 1, 2011 were collected in violation of*
11 *a Commission order."*
12

13 **Q. Did the Company comply with Staff's August 19, 2011 deadline for providing the**
14 **proposed refunding mechanism?**

15 A. No.
16

17 **Q. Did the Company make another filing on August 19, 2011?**

18 A. Yes. On August 19, 2011, the Company chose to docket an extension of time request
19 titled "Application To Extend Time For CAP Planning".
20

21 **Q. Please summarize Staff's position on the Company performance in this regard.**

22 A. The following outlines the Company performance prior to Staff identifying and notifying
23 the Company of its delinquency and violation of Decision No.62450:

- 24 • The Company failed to docket a request for extension of time in a timely manner
25 (prior to the required due date).
- 26 • The Company failed to file the "final plans" by the December 31, 2010 due date as
27 ordered by Decision No. 62450.
- 28 • The Company failed to identify its own delinquency and the subsequent
29 ramifications of the delinquency during almost the entire first half of 2011.

- 1 • The Company failed to notify Staff of the delinquency and Decision No. 62450
2 enforcement language.
3 • The Company failed to cease collection of CAP charges per Decision No. 62450.
4 • The Company failed to refund the remaining monies in the CAP account.
5

6 **Q. Does Staff's position preclude the Company from continuing the CAP water plan?**

7 A. No.
8

9 **Q. What other options does or did Vail have for assuring funds exist or existed for
10 pursuing the CAP water goal?**

11 A. The Company could long ago have docketed and application for a rate increase and/or
12 docketed an application for financing and/or sought to assure that adequate shareholder
13 funds existed to fund the CAP plan. Staff's concern is that the Company has been
14 consistently been reactive rather than proactive regarding these administrative and
15 planning requirements that are/were necessary to meet the CAP water goal.
16

17 **Q. If the Commission grants an extension of time to Vail in this proceeding, is there any
18 condition that should be included in the Commission decision?**

19 A. Yes. Because of the extension of time and the potential effect of the CAP issue on the
20 Company, if the Commission grants an extension of time it should also order Vail to file a
21 rate application within 60 days of a Commission decision in this matter.
22

23 **Q. Is Staff changing its recommendation provided in the November 1, 2011 Staff
24 memorandum which responded to the Company request for extension of time?**

25 A. No. Staff continues to recommend that the Company's performance in the matter does not
26 warrant the Commission granting an extension of time. In summary, the funding set forth

1 in Decision No. 62450 for financing the CAP water project is now forfeit by the
2 Company. The current decision cannot fund CAP water plans as those monies should be
3 refunded to customers. In the absence of some modifying decision, the Company should
4 utilize alternate funds to finance the CAP project.

5
6 **Decision No. 62450 Language**

7 **Q. Has any question been raised about the language in Decision No. 62450?**

8 A. Yes. The Company attorney pointed out to Staff that FOF 7 within the Conclusions of
9 Law section of the decision does not correspond with the ordering paragraph and/or FOF
10 25 language that Staff discussed in its extension of time memorandum on November 1,
11 2011.

12
13 **Q. Please highlight the relevant language in the ordering section and FOF 25(h) and
14 FOF 25(k) of Decision No. 62450.**

15 A. That information is as follows, with the ordering paragraph shown first and FOF 25(h) and
16 25(k) following:

17 *"IT IS FURTHER ORDERED that Vail Water Company shall comply with the*
18 *recommendations, as modified, set forth in Findings of Fact Nos. 25, 26, 27*
19 *and 29.*

20 (h) *"No time extensions will be allowed for any reason."*

21
22 (k) *"The Commission shall allow Staff to automatically impose fines*
23 *and/or other sanctions against Vail if the timeframes in item f or g are*
24 *not met;"*

25
26 **Q. Please highlight the relevant language in the "conclusions of law" section of Decision
27 No. 62450 to which the Company attorney was referring.**

28 A. That language is as follows:

1 “Staff’s recommendations set forth in Findings of Fact Nos. 25, 26, 27 and 29
2 and Finding of Fact No. 28 are reasonable, except that paragraph 25k is not
3 warranted and pursuant to paragraph 25d, funds collected from the CAP
4 Hook-up Fees may be used for CAP-related capital projects; and paragraph
5 25h should be modified to provide no time extensions will be allowed absent a
6 showing of good cause.”

7
8 **Q. Please summarize the issue relating to this language.**

9 A. Staff’s November 1, 2011 memorandum stated that the Commission order approved FOF
10 25(h) and FOF 25(k). However, the ordering paragraph states that the Company should
11 comply with the FOF’s “as modified” and the Company believes the language in the
12 “Conclusion of Law” section is the modification referred to in the ordering paragraph.

13
14 **Q. Was this language issue identified by any party in the previous meetings with the**
15 **Commission?**

16 A. No, I do not recall this language issue mentioned previously.

17
18 **Q. Is the language in the “Conclusion of Law” section actually the modification referred**
19 **to in the decision’s ordering paragraph?**

20 A. I was not involved in the original casework in this matter to know with any certainty, but,
21 since the ordering paragraph includes the words “as modified” and the “Conclusions of
22 Law” section has language that essentially modifies FOF 25(h) and FOF 25(k), it appears
23 that could be the modification referenced.

24

1 **Q. What is the result of this modification issue to Staff's position?**

2 A. This issue relates to FOF 25(h) and FOF 25(k) of Decision No. 62450. The first result of
3 the modification language issue is that FOF 25(k) was "not warranted" and is not ordered
4 by the Commission. Therefore, Staff could not automatically impose fines and/or other
5 sanctions against Vail. The second result is that FOF 25(h) would be modified such that
6 no time extensions would be allowed *absent a showing of good cause*.

7
8 **Q. Did Staff automatically impose fines and/or other sanctions against Vail in its**
9 **November 1, 2011 Staff response memorandum to the Company request for**
10 **extension of time?**

11 A. No. Staff did not. Staff did reserve the right to make further recommendations to the
12 Commission regarding fines and sanctions but made no automatic "fines or other
13 sanctions" of its own.

14
15 **Q. Staff originally interpreted FOF 25(h) as stating that extension of time would not be**
16 **allowed "for any reason" rather than "absent a showing of good cause". Was the**
17 **original interpretation the reason for denying the extension of time?**

18 A. No. It was presented as one item amongst many - as shown on page one and in the
19 summary section of the November 1, 2011 Staff response memorandum.

20
21 **Q. What was the basis of Staff's denial of the Company request for extension of time in**
22 **Staff's November 1, 2011 memorandum?**

23 A. Staff's summary and recommendation section read as follows:

24
25 "In summary, a review of this matter indicates that Vail is in violation of
26 Commission Decision No. 62450 via the failure to provide "Final plans",
27 failure to cease collection of CAP charges and failure to refund monies
28 remaining in the CAP account. The Company is also in violation of Arizona

1 Revised Statute §40-202 and Staff's enforcement efforts to receive a
2 Company filing on a proposed refunding mechanism. Staff concludes that the
3 facts in this matter preclude it from recommending an extension of time in this
4 case.

5
6 Also, Staff notes that there was no extension of time request made prior to the
7 December 31, 2010 due date in this matter. Staff is concerned that the request
8 for extension of time was filed approximately 6 months after the due date on
9 this ten year old requirement and then only after Staff notified the Company
10 of the compliance violation.

11
12 Based on all of the above, Staff recommends denial of the Company's request
13 for extension of time for provision of the "Final plans" filing outlined in
14 Decision No. 62450.
15

16 **Q. Does Staff believe that the summary listed above shows good cause for not**
17 **granting a time extension?**

18 A. Yes.

19
20 **Q. In total, does the issue of the modification language change Staff's**
21 **recommendation regarding this matter?**

22 A. No.

23
24 **Q. Does this conclude your direct testimony regarding the Vail Water Company**
25 **rehearing matter?**

26 A. Yes, it does.
27