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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF BLACK MOUNTAIN
SEWER CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: SW-02361A-08-0609
**NOTICE OF FILING RESPONSE
TESTIMONY (PHASE 2)**

Black Mountain Sewer Corporation hereby files the Response Testimony of
Gregory S. Sorensen (Phase 2).

RESPECTFULLY SUBMITTED this 6th day of April, 2012.

FENNEMORE CRAIG, P.C.

By

Jay L. Shapiro
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ORIGINAL and thirteen (13) copies
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this 6th day of April, 2012, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Arizona Corporation Commission

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5 6895888/016040.0038

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7
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DOCKET NO: SW-02361A-08-0609

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14
15 **RESPONSE TESTIMONY OF**
16 **GREGORY S. SORENSEN**

17
18 **(PHASE 2)**

19 **April 6, 2012**
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1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Greg Sorensen. My business address is 12725 W. Indian School Road,
4 Suite D-101, Avondale, AZ 85392.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. On behalf of Black Mountain Sewer Corporation (“BMSC” or “Company”).

7 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
8 **PROCEEDING?**

9 A. Yes. My prefiled direct, rebuttal, and rejoinder testimonies were entered into
10 evidence in the first phase of this docket, and I testified during the hearings before
11 the Commission that preceded Decision No. 71865 (September 1, 2010) (the
12 “Decision”). I’ve also submitted direct testimony in the second phase of this
13 docket.

14 **Q. WHAT IS THE PURPOSE OF THIS (PHASE 2) RESPONSE TESTIMONY?**

15 A. I have reviewed the direct testimony filed by the Boulders Resort (the “Resort”) on
16 March 16, 2012 in this proceeding and I will provide the Company’s response.

17 **II. THE RESORT’S POSITION IN THIS PROCEEDING LACKS SUPPORT**
18 **AND APPEARS TO BE BASED ON A FALSE PREMISE.**

19 **Q. THE RESORT CLAIMS THAT ORDERING THE PLANT CLOSED**
20 **TRAMPLES ON ITS CONTRACTUAL RIGHTS. IS THAT TRUE?**

21 A. No. I am not a lawyer, but at paragraph 6 of the Effluent Delivery Agreement the
22 parties specifically contemplated that there might be an order (or law, regulation, or
23 regulatory requirement) preventing operation of the plant. The parties expressly
24 agreed that an order closing the plant would “terminate” the Company’s obligation
25 under that agreement to deliver effluent to the Resort. So, when Ms. Madden
26 testifies or implies that BMSC has an obligation to supply or pay for an alternative

1 source of irrigation water to the Resort in the event of an ordered plant closure, she
2 is simply wrong.

3 Similarly, the Resort is wrong when it claims that the Commission would be
4 trampling on the Resort's contractual rights by ordering plant closure. First, the
5 Commission is not a party to the Effluent Delivery Agreement. Second, the parties
6 to the Effluent Delivery Agreement specifically contemplated that there very well
7 might be an order closing the plant and expressly agreed that the Company's
8 obligation to supply effluent would then cease.

9 In other words, the Resort knew at the outset of the Effluent Delivery
10 Agreement that it might need to find an alternative effluent source before 2021 and
11 pay for it. The effect of an order closing the plant should not come as a surprise to
12 the Resort, nor does it trample on their alleged rights; represented by counsel, they
13 voluntarily struck a bargain with the Company that in the event of an ordered plant
14 closure they would not have any more rights to effluent from BMSC.

15 **Q. WHAT ABOUT THE RESORT'S CLAIM THAT THE COMPANY AND**
16 **BHOA ARE ESSENTIALLY MISLEADING THE COMMISSION INTO**
17 **CLOSING THE PLANT AND THE RESORT "NEEDS TO BE HEARD"?**

18 A. I recently attended the depositions of the Resort's witnesses — Ms. Madden,
19 Mr. McCann, and Mr. Hunter. Each works on the Resort property near the plant.
20 They were questioned and heard. None of them could identify what the Company
21 or BHOA has allegedly done wrong or how they have misled the Commission. To
22 the contrary, each of the Resort representatives admitted that the Company was
23 properly operating the plant, complying with the Effluent Delivery Agreement, and
24 acting in good faith in its dealings with the Resort and in its attempts to find a
25 solution. It is also clear that the Resort is the *only* person or entity that wants the
26 plant open and that the plant is situated in the middle of a residential community

1 that wants it closed because of, among other things, normal operating odors emitted
2 by the plant.

3 In addition, as described below, even though the Resort recognizes, or
4 should recognize, that it has the onus to find a solution to its *alleged* effluent
5 shortage upon plant closure, it has done shockingly little to seek such a solution.

6 **III. THE RESORT'S NEED FOR OUR EFFLUENT DOES NOT APPEAR TO**
7 **BE CRITICAL.**

8 **Q. DOES THE RESORT PURCHASE ALL OF THE EFFLUENT**
9 **GENERATED BY THE COMPANY'S TREATMENT OF WASTEWATER?**

10 A. Yes, and it is roughly 130 to 135 acre-feet annually as the Resort's witnesses
11 testified.

12 **Q. MR. HUNTER TESTIFIES THAT THE RESORT "COULD NOT**
13 **OPERATE AT THE SAME LEVEL" WITHOUT EFFLUENT FROM THE**
14 **COMPANY. HOW DOES THE COMPANY RESPOND?**

15 A. We respectfully disagree based on the facts provided by the Resort. According to
16 the Resort, our effluent covers only 15 percent of their water irrigation needs and
17 approximately 10 percent of their irrigation water capacity.¹ Further, it appears the
18 need is really limited in time to when the golf course is "overseeding" during a
19 portion of September and October.²

20 **Q. WHAT IS "OVERSEEDING"?**

21 A. Based upon my familiarity with golf, "overseeding" generally refers to a
22 maintenance process on golf courses in which grass seed is spread on top of the
23 existing grass to promote new growth or to swap out seasonal turfs, replacing one
24 type of grass with another. And it makes sense that during those times when they

25 ¹ See Direct Testimony of Dean Hunter ("Hunter DT") at 3:11-14.

26 ² *Id.* at 5:4-5.

1 are basically growing new grass, their water needs would increase. What doesn't
2 make sense to us though is why the Resort can't manage this seasonal increase in
3 water demand by emplacing and using additional storage.

4 **Q. WOULD YOU PLEASE EXPLAIN WHAT YOU MEAN?**

5 A. Prudent and reasonable water utilities and water users utilize storage to manage
6 water resources. Sometimes the demand in a given time frame outpaces the source,
7 such as a well. We deal with that demand spike by storing water during times
8 when supply is greater than demand, ensuring that water is available for periods
9 when demand exceeds supply. In fact, in the water industry we don't call them
10 lakes; we call them water retention structures – yes, they're pretty, but their
11 purpose is to hold water until it's needed for irrigation purposes. In other words,
12 proper use of water storage extends the use of available water supplies.

13 **Q. COULD ADDITIONAL STORAGE REPLACE THE RESORT'S NEED**
14 **FOR EFFLUENT FROM THE COMPANY?**

15 A. The Resort does not seem to think so but I do not find their analysis adequate.³
16 And when we have suggested this to them as the most cost-effective and
17 responsible way of dealing with their long-term need for water during their annual
18 seasonal overseeding, they rejected it without a basis or further dialogue.

19 **Q. IS THAT WHY YOU BELIEVE THE RESORT HAS NOT GIVEN**
20 **ADEQUATE CONSIDERATION TO STORAGE OPTIONS?**

21 A. Yes. I have seen no analysis from them, mathematical or otherwise, demonstrating
22 why additional storage, either a new lake/reservoir or deepening existing ones,
23 would not work.

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³ *Id.* at 5:16-26.

1 Q. WHAT WOULD YOU HAVE EXPECTED TO SEE IF THE RESORT HAD
2 ADEQUATELY ANALYZED THIS OPTION?

3 A. I can only explain how I would do it if I were in their position: I would start with
4 the 10-year daily water supply from both BMSC's effluent and the RWDS line,
5 that would give me my baseline supply of effluent, let's call that E. Then I would
6 determine the total daily capacity I could safely withdraw from my own storage,
7 let's call that St, so I would know how much water I could access on any given
8 day, it would be E + St. I would plot that data on a line over the course of a year.

9 Next, I would look at 10-years of daily water usage data and overlay that
10 data with the E + St line of accessible daily water. With those two lines, the usage
11 line and the accessible daily water line, I would be able to identify all the peaks and
12 valleys – the times I have more than I need, and the times I have less than I need.

13 I would then look at my existing storage, plus various levels of additional
14 storage that I could construct to determine whether I could use storage to meet my
15 water shortfalls on any days they exist. I would perform that analysis both with
16 BMSC effluent being available, and without it.

17 And I would do all of this not just because the plant is at issue right now in
18 2012 – with a potential to close in the next year or two – but because as key parts
19 of a world-class resort in the Arizona desert, facing drought pressures and CAP
20 challenges, and with a contract certain to expire no later than 2021, I would be
21 focused on ensuring the golf courses had available, affordable water options.

22 Another analysis that can be performed is to compare the daily water supply
23 from the RWDS line versus daily water demands (plus evaporation losses) during
24 overseeding, determine the daily deficit, and then sum the daily deficits to
25 determine the required amount of storage necessary to get through an overseeding
26

1 period. To determine the required lake surface area, perhaps, they also would have
2 set parameters around how much variability in lake levels would be acceptable.

3 **Q. WHAT ABOUT THEIR CONCERN THAT LOW LAKE LEVELS WOULD**
4 **DAMAGE LINERS OR BE UNATTRACTIVE TO GOLFERS?**

5 A. While I understand that this could be a valid concern, it's also my understanding
6 that irrigation water at the Resort is transferred between lakes via pumps. They do
7 not utilize gravity lines, so additional storage can be easily managed and
8 transferred between lakes. This means lakes would not sit empty for extended
9 periods of time. Lake levels would only lower during overseeding periods when
10 demand exceeds supply. As to odor, many golf courses utilize lakes for storage of
11 water without odor issues. The new facilities would be using the same water as the
12 existing facilities, which to my knowledge don't currently "smell." It should also
13 be noted that this could address the Resort's long-term water issue, beyond the
14 termination of the Effluent Delivery Agreement.

15 **Q. DO YOU AGREE WITH MR. HUNTER'S ARGUMENT THAT**
16 **ADDITIONAL CONSERVATION MEASURES WOULD NOT BE**
17 **ADEQUATE?**

18 A. I don't think we can agree with that conclusion either because it appears that it isn't
19 a matter of additional conservation not working. Instead, it appears that the Resort
20 has rejected additional conservation measures based on other factors, namely their
21 perception of what makes their business most attractive at the lowest cost.

22 **Q. HOW DID YOU REACH THAT CONCLUSION?**

23 A. From Mr. Hunter's testimony. He testifies that reducing turf and other vegetation
24 wouldn't be "acceptable" for aesthetic reasons.⁴ He also testifies that the Resort

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⁴ *Id.* at 4:1-14, 5:6-15.

1 rejected the idea of using a more water efficient irrigation system, primarily
2 because it's too costly.⁵ I was surprised that the Resort doesn't already have the
3 most efficient irrigation system it can have in place. First, this is not a small golf
4 course trying to compete with bigger entities – this is two world-class golf courses
5 at a world-class Waldorf Astoria resort owned by Hilton Worldwide, a Fortune 500
6 company. Often when we talk about conservation, one of the first challenges is
7 helping the customer pay the upfront costs to capture the long term gains – in this
8 case the customer is vastly larger than Liberty and its parent, APUC.

9 The second thing that surprises me is this is the desert, and good corporate
10 stewardship would seem to dictate such measures be taken by golf courses in the
11 ordinary course of business. The same can be said of the additional 2-3 percent
12 water reductions the Resort says it could make, but apparently chooses not to,
13 because the result won't be enough to replace our effluent.⁶ Maybe it is a
14 difference of perspective but operating water utilities in Arizona and Texas – two
15 states at the heart of U.S. water supply challenges – has taught us to vigorously
16 pursue every opportunity to save water.

17 **Q. ARE YOU SUGGESTING THAT THE RESORT ACTUALLY CAN**
18 **OPERATE AT THE SAME LEVEL WITHOUT THE COMPANY'S**
19 **EFFLUENT BY BUILDING MORE STORAGE AND ADOPTING**
20 **ADDITIONAL CONSERVATION MEASURES?**

21 **A.** Yes, I am suggesting that, or at least that it might be possible, but we do not know
22 with certainty due to the Resort deciding to abandon the cooperative search for
23 resolution last summer in favor of threatened litigation. After having read the
24 Resort's filing and sitting through the depositions, I can honestly say I wish we had

25 ⁵ *Id.* at 4:15-22.

26 ⁶ *Id.* at 4:22-25.

1 been given the opportunity to continue evaluating options like storage and
2 additional conservation in tandem. The Resort has every right to make its own
3 business decisions, but their actions and their inactions have left the Company, its
4 customers and the Commission unable to take steps that have already been
5 determined to be in the public interest.⁷

6 What's more difficult to understand is why the Resort continues to take
7 these positions given that we are talking about how to help them resolve *their* water
8 challenges, including their long-term supply issues. We are trying to work with
9 them to provide *them* with the ability to operate their business – even the Resort
10 recognizes that this water will not be available to them forever.

11 **IV. THE RESORT IS GOING TO HAVE TO INVEST IN ITS FUTURE IF IT**
12 **WANTS TO CONTINUE TO OPERATE AT THE SAME LEVEL.**

13 **Q. BUT MR. SORENSEN, ISN'T THE RESORT'S CONCERN HAVING TO**
14 **PAY TO SOLVE SOMEONE ELSE'S PROBLEM, I.E., THE**
15 **HOMEOWNERS?**

16 **A.** I can't speak for the Resort. What I am saying is that the Resort needs to realize
17 that this is their problem and they are going to have to spend money to continue to
18 "operate at the same level." The only real questions are: when, on what, and how
19 much? And we are further away from answering those questions than we hoped to
20 be because of the Resort's business decision last summer. In fact, all we seem to
21 be doing now is spending money on legal proceedings.

22 I think the issue needs to be dealt with now because water isn't going to get
23 cheaper in Arizona. The EPA fight over the Navajo Generating Station could,
24 according to the CAP's public messages, double the price of CAP water. And that

25
26 ⁷ See Decision at 49:13-18.

1 puts more demand on reclaimed water supplies that are already limited, so their
2 market value will go up as well. And with supplies limited and prices increasing,
3 conservation becomes an economic imperative. So what I'm saying is: this is the
4 Resort's problem, now is the time to deal with it, and storage and conservation are
5 the very best ideas we have for them today – and they simply reject them without
6 basis or dialogue.

7 **Q. THEN HOW DO YOU RESPOND TO MS. MADDEN'S TESTIMONY**
8 **THAT THE RESORT "EXPECTS BMSC TO CONTRIBUTE**
9 **FINANCIALLY TO A SOLUTION"?**

10 A. The immediate and most obvious answer is that we are making a substantial
11 financial contribution to further the public's interest in removing our fully
12 compliant and used and useful wastewater treatment plant. And we are making
13 significant contributions in the amount of time, resources, and effort we have put
14 into this everlasting process of trying to convince them to work with us on finding
15 a solution for their water problem.

16 **Q. TRUE, BUT ISN'T MS. MADDEN REFERRING TO WHAT SHE**
17 **BELIEVES TO BE THE COMPANY'S OBLIGATION TO REPLACE THE**
18 **EFFLUENT PER THE TWO PARTIES' AGREEMENT?**

19 A. She may be. It is difficult to understand where she is coming from given that the
20 express terms of the Effluent Delivery Agreement contemplate that an order
21 closing the plant terminates the Company's obligation to deliver effluent.
22 Nevertheless, the Company is trying in good faith – as acknowledged by each of
23 the Resort's principal witnesses in their depositions – to resolve the situation. And
24 that's why I have testified here that the Resort needs to realize that this is their
25 problem and they are going to have to spend money to continue to “operate at the
26 same level.” The Resort has enjoyed purchasing relatively inexpensive effluent

1 from the Company over the past decade, and has profited from this practice. I am
2 suggesting that time is rapidly coming to an end because of what is best for the
3 public interest – an interest the Resort is willfully ignoring.

4 **Q. BUT WHY SHOULD THE RESORT JUST “ROLL OVER”?**

5 A. I think the best way to illustrate my point is to look at the two possible outcomes to
6 this situation. Scenario one, the Commission or the court in the Marshall lawsuit,
7 or both, orders us to close the plant and we write a letter to the Resort telling them
8 that our agreement has been terminated by that action of the court or Commission,
9 or both. I discussed the relevant contract language earlier in my testimony.⁸

10 **Q. AREN'T YOU CONCERNED THAT THE RESORT WILL SUE THE**
11 **COMPANY?**

12 A. Absolutely. They have already threatened to do so.⁹ That threat or, more
13 specifically, the mere possibility that they might go through with it, is exactly why
14 we are asking the Commission to ensure that our customers who want the ACC to
15 order the plant closed indemnify us from the one customer who doesn't. Just
16 because the Resort's suit would lack merit does not mean it won't add to the cost of
17 closing the plant.

18 **Q. WHAT DO YOU MEAN WHEN YOU SAY “INDEMNIFY”?**

19 A. That the reasonable and prudent costs of closing the plant, which in this case
20 includes litigation costs, be part of our rate base and, ultimately, our revenue
21 requirement. We understand these costs will be subject to scrutiny. But we don't
22 think we are wrong in expecting to recover the costs of furthering what the
23 Commission finds to be in the public interest. That's how regulation works.

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25 ⁸ Section II, *supra*.

26 ⁹ Direct Testimony of Gregory S. Sorensen (“Sorensen DT”) at Exhibit GS-DT2-B.

1 **Q. WHAT WILL THE RESORT DO IF THE PLANT IS ORDERED CLOSED?**

2 A. I have no idea. What I do know is this: a lawsuit isn't going to water the golf
3 course. I do not see that the Resort has *any* sort of back-up plan in the event
4 BMSC's effluent becomes unavailable for whatever reason. In fact, they admitted
5 as much during their depositions. They had no plan for contract termination now
6 or in March 2021. At best, the Resort might receive our effluent until March 2021.
7 But the agreement itself expressly contemplates and authorizes the possibility of
8 termination prior to 2021. Therefore, if our effluent really is critical to their
9 business, one would think they would have a back-up plan. Instead, it appears that
10 the Resort, having ignored what the contract says, has assumed that the plant will
11 be there as long as they need it to be to produce effluent for their needs.

12 **Q. COULD IT BE THAT THEY EXPECT YOU TO BUILD ANOTHER PLANT
13 TO REPLACE THIS ONE SOMETIME BEFORE 2021?**

14 A. I hope not because, among other things, it is not technically feasible or fiscally
15 preferable. The costs and logistics make it very impractical, and the neighboring
16 property owners may make it impossible. In addition, we have the opportunity to
17 buy treatment capacity from the City of Scottsdale at \$6 per gallon through 2016.
18 That option renders building our own new treatment facility the less preferable
19 option.

20 **Q. WHY WOULD IT BE INFEASIBLE AND IMPRACTICAL?**

21 A. As I explained in my direct testimony, we already evaluated the location mentioned
22 in Ms. Madden's testimony.¹⁰ While it *might* be physically possible to locate a
23 new plant there, we don't think we could get another plant permitted in the midst of
24 the Boulders community. And even if we could, it would be very expensive,
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26 ¹⁰ See Sorensen DT at 3:21 – 4:7; Direct Testimony of Susan Madden at 9:17-27.

1 possibly as much as \$30 per gallon, or \$3.6M just for the plant itself. I don't know
2 how anyone can justify an investment of that magnitude so that the Resort can
3 oversee its golf courses every other year. Certainly our shareholders would
4 require ironclad assurance that they would recover a return on and of that
5 investment before funding a new plant for the Resort.

6 **Q. IS THAT THE ONLY POSSIBLE SITE FOR A NEW TREATMENT**
7 **FACILITY?**

8 A. It is the only site near the Resort of which we are aware. This is a fully developed
9 community and the further we have to go, the more it will cost the Resort for a new
10 effluent delivery system.

11 **Q. THANK YOU. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE**
12 **POSSIBLE OUTCOMES.**

13 A. The second possible outcome is that neither the Commission nor the court orders
14 closure of the plant.

15 **Q. ISN'T THAT WHAT THE RESORT WANTS?**

16 A. Yes, but that may not come without a significant price as well. For starters, the
17 Resort is *the only one of our customers* we are aware of that wants the plant to
18 remain open. Virtually everyone else in the community wants the plant closed. If
19 the plant does not close, we will have a lot of customers seeking other ways to
20 close the plant – we may well see more lawsuits like the Marshall case.
21 Additionally, representatives of the BHOA have already informed us that if the
22 Commission does not order the plant closed, they will seek to force another rate
23 case and ask the Commission to redesign our rates. In sum, not closing the plant
24 will make a bad situation worse.

25

26

1 **Q. REDESIGN THE RATES IN WHAT MANNER?**

2 A. Well, if the plant has to stay open for the Resort, I suspect that the BHOA will
3 assert that the Resort should pay 100 percent of the costs of the plant. If the
4 Commission requires the Resort to pay a rate that recovers all of the hard costs of
5 the plant, i.e., operating costs plus return dollars, and a "community" cost, akin to
6 how the Commission sets water rates in a desert where greater use of water has a
7 "societal" cost, the Resort is going to pay a whole lot more money for our effluent.
8 That's why I testified earlier that the Resort needs to realize that this is their
9 problem too and they are going to have to spend money to solve it.

10 **Q. IS THE COMPANY FOR OR AGAINST CLOSURE OF THE PLANT?**

11 A. Neither. Although our plant is fully compliant and used and useful, because of
12 issues with odor and because the plant is in the middle of a residential community,
13 all but one of our ratepayers wants the plant removed as a matter of public
14 convenience. In that light, we wish to make sure the Commission understands the
15 consequences of ordering closure, and to ensure we are given every opportunity to
16 recover the costs of closing the plant.

17 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

18 A. Yes.

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