

ORIGINAL

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION
RECEIVED
DOCKET CONTROL

DATE: APRIL 25, 2012

2012 APR 25 AM 11 00

DOCKET NO.: W-03718A-07-0687

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

RANCHO SAHUARITA WATER COMPANY, L.L.C.
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 70620)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 4, 2012

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 Open Meeting to be held on:

MAY 22, 2012 and MAY 23, 2012

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

Arizona Corporation Commission
DOCKETED

APR 25 2012

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 RANCHO SAHUARITA WATER COMPANY,
10 L.L.C. FOR THE TRANSFER OF ITS
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO SAHUARITA WATER
13 COMPANY, L.L.C. AND EXTENSION OF THE
14 CERTIFICATE OF CONVENIENCE AND
15 NECESSITY FOR WATER SERVICE.

DOCKET NO. W-03718A-07-0687

DECISION NO. _____

**ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70620**

16 Open Meeting
17 May 22 and 23, 2012
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

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

22 **FINDINGS OF FACT**

23 1. On November 19, 2008, the Commission issued Decision No. 70620, granting Rancho
24 Sahuarita Water Company, L.L.C.'s request for the transfer of its water service Certificate of
25 Convenience and Necessity ("CC&N") to Sahuarita Water Company, L.L.C. ("Sahuarita" or
26 "Company") and extension of the CC&N.

27 2. Pursuant to that Decision, Sahuarita was required to file within three years of the
28 Decision's effective date, "copies of the Approval to Construct from the Arizona Department of
Environmental Quality for well(s), storage tanks(s), booster pump station(s), and the distribution
system necessary to serve the initial subdivision in the extension area."¹ Based on the effective date
of the Decision, the Approval to Construct ("ATC") would have been due to be filed with the
Commission on or about November 19, 2011.

¹ Decision No 70620, page 11.

1 3. On November 4, 2011, Sahuarita filed with the Commission a Motion for Further
2 Extension of Compliance Filing Deadline (“Motion”)² requesting an extension of time to file the
3 ATC to November 19, 2013.

4 4. The approved CC&N extension covered three parcels each owned by a different
5 entity. At the time the Commission issued Decision No. 70620, Mission Peaks 4000, L.L.C.³ was the
6 owner of the largest parcel, and it intended to construct a development called Mission Peaks Master
7 Planned Community (“Mission Peaks”). The second parcel is owned by Sahuarita Mission Partners,
8 L.L.C. (“SMP”) and the third is owned by the Arizona State Land Department (“ASLD”). According
9 to the Decision, the plan was to develop Mission Peaks first and the other parcels later. Some of the
10 Mission Peaks water plant was to be used to support water service to the two smaller parcels.⁴

11 5. According to the Motion, the 2008 economic downturn affected the timing of the
12 development of the Mission Peaks parcel, and, in turn, the plans for development of the SMP and
13 ASLD parcels. Subsequently, Mission Peaks 4000, L.L.C. sold the Mission Peaks acreage to
14 Freeport-McMoRan Copper & Gold’s Sierrita Division. (“Freeport-McMoRan”), and terminated the
15 development project. As a result, SMP and ASLD have had to re-evaluate the development of their
16 respective parcels and their plans have not been finalized. These circumstances also require
17 Sahuarita to consider how the designs for its water system must be changed and constructed to best
18 accommodate the two remaining parcels.⁵

19 6. In its Motion, Sahuarita stated that it was in discussions with Freeport-McMoRan
20 about the type of water service Freeport-McMoRan might need from the Company for the purchased
21 parcel. As such, Sahuarita acknowledged that it did not yet know what water facilities and
22 infrastructure design would be appropriate to serve that parcel.⁶

23 7. Attached to the Motion are letters from SMP and ASLD indicating that they would
24 like for Sahuarita to remain the future water provider for their respective parcels and they support the
25

26 ² Although the Motion is styled as a “Motion for Further Extension,” there have been no prior extensions of deadlines for
Decision No. 70620.

27 ³ Mission Peaks 4000, L.L.C. holds an ownership interest in Sahuarita. Decision No. 70620, page 3.

28 ⁴ Decision No. 70620, page 6.

⁵ Motion, pages 2-3.

⁶ *Id.*

1 Motion.⁷ Also attached to the Motion is a letter from Freeport-McMoRan stating, “Although
2 [Freeport-McMoRan] does not have any immediate plans for development in the area, we do not
3 oppose any request to extend the [ATC] deadline by two years.”⁸ Sahuarita stated that it still wished
4 to provide water service within the extension areas.⁹

5 8. Sahuarita noted that it has satisfied all other requirements of the Decision, including a
6 Modification of Designation of Assured Water Supply and approval by the Commission of its Best
7 Management Practices in Decision No. 72177 (February 11, 2011).¹⁰

8 9. Sahuarita requested that the Commission grant its Motion and extend the time for
9 filing the required ATC for “the water system facilities necessary to provide the initial phase of
10 service to and within the Freeport-McMoRan, [SMP] and/or ASLD land area(s), from November 19,
11 2011 to November 19, 2013.”¹¹

12 10. On January 3, 2012, the Commission’s Utilities Division Staff (“Staff”) filed its Staff
13 Report confirming that the Company is in compliance with the requirements of Decision No. 70620
14 except for the ATC filing requirement. Based on the information provided by the Company, Staff
15 recommended approval of Sahuarita’s Motion to extend the ATC filing deadline from November 19,
16 2011, to November 19, 2013.¹²

17 11. Pursuant to a Procedural Order Filed January 18, 2012, a procedural conference on the
18 Company’s Motion was held on March 1, 2012. Present at the procedural conference were counsel
19 for Staff and Sahuarita, as well as Cortlandt Chalfant, Sahuarita’s president, and Michael Bowman, a
20 representative of SMP.

21 12. During the procedural conference, Mr. Chalfant stated that Sahuarita had spoken with
22 representatives of Freeport-McMoRan, who indicated that Freeport-McMoRan had purchased the
23 Mission Peaks parcel to serve as a buffer between its mining activities and nearby residential and
24 commercial areas. Mr. Chalfant does not believe Freeport-McMoRan will need water service in the
25

26 ⁷ Motion, Appendices B and C.

27 ⁸ Motion, Appendix A.

28 ⁹ Motion, page 3.

¹⁰ *Id.*

¹¹ Motion, page 4.

¹² Staff Report, page 2.

1 foreseeable future.¹³ Mr. Chalfont also stated that he had spoken with a Deputy State Land
2 Commissioner at ASLD and Mr. Chalfont believes that ASLD plans to put its parcel up for auction
3 within the next year and ASLD still desires that Sahuarita be the water utility for the parcel.¹⁴ Mr.
4 Bowman related that SMP plans to proceed with development of a residential subdivision and desires
5 to receive water service from Sahuarita, but SMP does not yet have a development schedule for the
6 parcel.¹⁵

7 13. Staff stated they have no concerns about the circumstances underlying the Motion and
8 continue to recommend approval of the Motion.¹⁶

9 14. Given the circumstances, and based on the information provided by the Company, we
10 find that Staff's recommendation is reasonable and we adopt it.

11 **CONCLUSIONS OF LAW**

12 1. Sahuarita is a public service corporation within the meaning of Article XV of the
13 Arizona Constitution and A.R.S. §§40-281 and 40-282.

14 2. The Commission has jurisdiction over Sahuarita and the subject matter of the Motion
15 for extension for time to comply with Commission Decision No. 70620.

16 3. Staff's recommendation is reasonable and should be adopted.

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27 ¹³ Transcript of March 1, 2012, Procedural Conference, page 17. (Hereinafter, "PCTR at ____.")
¹⁴ PCTR at 20; Motion, Appendix C.
¹⁵ PCTR at 15; Motion, Appendix B.
28 ¹⁶ PCTR at 22-23.

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ORDER

IT IS THEREFORE ORDERED that Sahuarita Water Company, L.L.C.'s Motion for extension of time to comply with Decision No. 70620 is granted, extending the compliance deadline for filing the Arizona Department of Environmental Quality Approval to Construct to November 19, 2013.

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, ERNEST G. JOHNSON, 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 _____, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: SAHUARITA WATER COMPANY, L.L.C.

2 DOCKET NO.: W-03718A-07-0687

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