



0000137363

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUN - 5 2012

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

DOCKETED BY [nr]

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

DECISION NO. 73218

OPINION AND ORDER

DATE OF HEARING:

January 26, 2012, and March 29, 2012

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Mr. Michael Hallam and Mr. Matt Bingham,  
LEWIS AND ROCA, LLC, on behalf of Vail  
Water Company; and

Ms. Bridget A. Humphrey, Staff Attorney, Legal  
Division, on behalf of the Utilities Division of  
the Arizona Corporation Commission.

BY THE COMMISSION:

\* \* \* \* \*

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

FINDINGS OF FACT

1. On December 1, 2011, the Commission voted to reopen Docket No. W-01651B-99-  
0406 and Decision No. 62450 (April 14, 2000) for the purpose of taking evidence to determine the

1 following: 1) a plan for the direct use of Central Arizona Project (“CAP”) water in Vail Water  
 2 Company’s (“VWC”) service area; 2) whether funds collected from Hook-up Fees and a CAP  
 3 Surcharge authorized in Decision No. 62450 should be refunded; 3) whether the Company should be  
 4 assessed penalties for failing to comply with Decision No. 62450; and 4) whether to grant the  
 5 Company’s request for an extension of the deadline in Decision No. 62450 to file Final Plans for the  
 6 direct use of CAP water.

7 Background

8 2. In Decision No. 62450 the Commission granted VWC a rate increase, and approved  
 9 the Company’s request for authority to borrow from the Arizona Water Infrastructure Finance  
 10 Authority (“WIFA”) to finance system improvements. As part of Decision No. 62450, the  
 11 Commission authorized VWC to implement a CAP Hook-up Fee and a CAP surcharge.

12 3. The Commission conditioned the CAP Hook-up Fee and Surcharge on the following:<sup>1</sup>

- 13 a. The tariff would apply to all new subdivisions and line extension  
 14 agreements that are approved for the north system from the end of  
 15 1998 TY forward. Once the interconnection between the north and  
 16 south systems is completed, the tariff would apply to all new  
 17 subdivisions and line extension agreements in the combined north and  
 18 south systems;
- 19 b. VWC must be recharging CAP water within 6 months of this  
 20 Decision;<sup>2</sup>
- 21 c. All CAP Hook-Up Fees and CAP Service charges are to be placed in a  
 22 separate interest bearing account;
- 23 d. Revenue collected from the CAP Hook-up Fee and CAP Service  
 24 Charge can be used for paying the CAP holding fee and Municipal and  
 Industrial (“M&I”) costs, and the Hook-up Fees could also be used for  
 CAP-related capital projects;<sup>3</sup>
- e. The CAP Service Charge shall be identified as a separate line item  
 charge on the customer bill;
- f. Final plans for the direct use of CAP water within VWC’s service

25 <sup>1</sup> Decision No. 62450 at Findings of Fact (“FOF”) No. 25 and Conclusions of Law (“COL”) No. 7.

26 <sup>2</sup> Decision No. 62450 contemplated that until VWC could use its CAP allocation to provide water to its customers, it  
 would recharge the water. VWC has been recharging its CAP allocation in Marana near the CAP canal at a recharge  
 27 facility operated by Kai Farms. The recharge facility is over 30 miles from VWC’s service area. *See* Transcript of the  
 January 26, and March 29, 2012 hearings (“Tr.”) at 45.

28 <sup>3</sup> Staff’s recommendations as set forth in FOF 25 originally would have limited the use of the Hook-up Fees and  
 Surcharge to the CAP holding fees and M&I costs, but the Commission expanded the permissible uses of the funds when  
 it adopted Decision No. 62450. *See* Decision No. 62450 at COL No. 7.

territory are to be submitted to the Commission no later than December 31, 2010;

- g. VWC must directly use the CAP allocation within its service territory by December 31, 2015;
- h. Time extensions would only be allowed for good cause;<sup>4</sup>
- i. VWC shall submit annual reports to the Utilities Division Director detailing the progress of plans to use CAP water directly in its service territory and plans for actual construction of any necessary facilities. The reports shall be submitted each July 1, beginning in 2001;
- j. If VWC 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 items f or g are not met;
- l. If VWC does not comply with the timeframes in items f or g and it sells its CAP allocation, any net profit shall be distributed to the customers in a manner to be determined by the Commission; and
- m. VWC should submit annual reports regarding the amount of CAP Hook-up Fee and CAP Service Fees collected. The reports should be submitted by each January 31 and cover the previous calendar year. The first report should be submitted by January 31, 2001, and should contain the following information:
  - i. The name of each entity paying a CAP Hook-up Fee;
  - ii. The amount of CAP Hook-up Fee each entity paid;
  - iii. The amount of CAP Service Charge collected;
  - iv. The balance in the CAP trust account;
  - v. The amount of interest earned in the CAP trust account;
  - vi. The amount of money spent from the CAP trust account; and
  - vii. A description of what was paid for with monies from the CAP trust account.

4. VWC did not file Final Plans for the direct use of CAP water within its service territory by December 31, 2010.

5. On June 21, 2011, Staff sent a formal Compliance Notification Letter to VWC, stating that the Company failed to meet requirement (f) when it did not file Final Plans by December 31, 2010. This letter stated that the Company's failure to meet the deadline rendered the Company in violation of both Decision No. 62450 and Arizona Revised Statute ("A.R.S.") §40-202 which

<sup>4</sup> *Id.* Staff originally recommended that no time extensions be allowed.

1 requires the Company to comply with every “order, decision, rule or regulation” of the Commission.  
2 The letter also notified the Company that pursuant to FOF 25 (j), when the Company failed to file the  
3 Final Plans by the deadline, the CAP charges should cease and the remaining monies refunded.

4         6.         On June 30, 2011, the Company submitted a request for an extension until November  
5 30, 2011, to file the Final Plans. The Company stated that a viable solution for delivering CAP water  
6 to VWC had not been available until June 2011, when the City of Tucson entered into an agreement  
7 with Oro Valley to wheel CAP water. VWC believed the Oro Valley wheeling agreement would  
8 serve as a template for an agreement between Tucson and other providers, such as VWC. VWC  
9 stated that although it would approach the City of Tucson for its own wheeling agreement as soon as  
10 the Oro Valley Agreement was finalized, some time would be needed to negotiate and approve the  
11 agreement so VWC was requesting until November 30, 2011, to file the Final Plans.

12         7.         On August 2, 2011, Staff sent a second letter to the Company entitled “Compliance  
13 Status Notification #2.” In this letter, Staff wrote:

14                 “... consistent with Finding of Fact 25 (j), the Company should  
15 immediately cease CAP collections and propose to the Commission a  
16 mechanism to refund any monies remaining in the CAP account. This  
17 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.”

18         8.         On August 17, 2011, VWC filed a request to withdraw its earlier request for extension.

19         9.         On August 19, 2011, VWC filed an Application to Extend Time for CAP Planning. In  
20 its Application, the Company requested an extension until June 30, 2013, to provide the Final Plans  
21 for direct use of CAP water. VWC indicated that in 2010, Tucson Water approved the Joint Water  
22 Infrastructure Supply and Planning Study which lead to the adoption of the City/County 2011-2015  
23 Action Plan for Water Sustainability in November 2010. According to VWC, the Action Plan  
24 reaffirmed the goal of enabling Tucson Water to become a CAP wheeling entity in the Tucson  
25 valley.<sup>5</sup> VWC also stated that following the approval of the Tucson/Oro Valley wheeling agreement  
26 in June 2011, it contacted Tucson Water and negotiations began in earnest. Tucson Water estimated  
27

28 <sup>5</sup> See [www.tucsonpimawaterstudy.com](http://www.tucsonpimawaterstudy.com).

1 that the process to develop a wheeling agreement would take between six and twelve months.<sup>6</sup> The  
2 Company explained it was seeking the Commission's permission to provide the Final Plans by June  
3 30, 2013, and that it was not asking for an extension of the 2015 deadline for the direct delivery of  
4 CAP water to VWC. The Company asserted that although it was unable to have a solution for the  
5 direct use of CAP water by the end of 2010, the direct use of CAP remains a goal that the  
6 Commission should encourage; that the millions of dollars already spent to secure the CAP supply  
7 will have been wasted if the deadline to file Final Plans was not adjusted "to comport with Tucson  
8 Water's availability"; and that the Company needed the City to be a willing partner which meant that  
9 the Company could not have exclusive control of the terms or timing of any Final Plans.

10 10. On November 1, 2011, Staff filed a Memorandum setting forth Staff's conclusions and  
11 recommendations. Staff believed that VWC was in violation of Decision No. 62450 by not providing  
12 Final Plans, failing to cease collection of CAP charges, and failing to refund monies remaining in the  
13 CAP account. In addition, Staff claimed that the Company was also in violation of A.R.S. § 40-202  
14 for not filing a proposed refunding mechanism. Staff expressed concern that the request for the  
15 extension was filed approximately six months after the due date, and only after Staff notified the  
16 Company of the compliance violation. Staff concluded that it could not recommend granting the  
17 Company's request for an extension of the deadline to file the Final Plans. Staff recommended that  
18 VWC file a status update by November 15, 2011, that clarifies: 1) whether the Company has ceased  
19 collecting CAP charges and if not, an explanation why not; 2) what refunding mechanism the  
20 Company proposes and why none was proposed earlier; 3) whether refunds have started, and if not,  
21 an explanation of why not; and 4) an accounting of the funds in the CAP account. Staff reserved the  
22 right to make further recommendations based on the quality and timeliness of the Company's status  
23 update.

24 11. On November 15, 2011, VWC filed a Status Update. VWC claimed that after  
25 receiving Staff's second compliance notice, it contacted Staff and was told that it should withdraw its  
26 request for an extension and seek an amendment of Decision No. 62450. The Company states that it  
27

28 <sup>6</sup> Exhibit B to VWC's August 19, 2011, Application to Extend Time of CAP Planning.

1 intended its August 19, 2011, Application to be a request to amend Decision No. 62450. In addition,  
2 VWC responded to Staff's inquiries as follows: 1) VWC suspended billing for CAP Service Charges  
3 in November 2011, and if the Commission so directs, will also suspend collections of CAP Hook-up  
4 Fees; 2) within thirty days, VWC will have refunded all CAP Service Charges collected since the  
5 beginning of 2011 as credits against the customer's November water bills, and will if the  
6 Commission directs, refund unexpended CAP Hook-up Fees and other CAP Service Charges; 3)  
7 VWC believed that the Commission would not lightly abandon the objective of using CAP water in  
8 its service area by 2015, and that it believed it was acting in good faith to extend the 2010 deadline to  
9 submit engineering plans; and 4) it provided a report of the revenues and expenditures in the CAP  
10 account through November 14, 2011. VWC also described its efforts to work with Tucson Water and  
11 re-iterated the importance of importing CAP water into the Tucson Active Management Area  
12 ("Tucson AMA").

13       12. On November 30, 2011, VWC filed a Status Update. The Company clarified that  
14 based on the language of Decision No. 62450 that provides that refunds would be accomplished "as  
15 determined by the Commission," the Company would wait for direction from the Commission before  
16 refunding any amounts in the CAP account.

17       13. On December 1, 2011, the Commission voted to reopen Docket No. W-01651B-99-  
18 0406 and Decision No. 62450, in order to refer the matter to the Hearing Division to take testimony  
19 on the following topics: 1) a plan to accomplish the direct use of CAP water in VWC's service area;  
20 2) whether there should be a refund of CAP surcharges; 3) whether penalties should be assessed  
21 against the Company for the violation of Commission Order; and 4) to consider the Company's  
22 request for a time extension to file its final plans for direct use of the CAP water. The Commission  
23 directed that all CAP charges collected that remain in the CAP account should be held in constructive  
24 trust until further order of the Commission.

25       14. By Procedural Order dated December 2, 2011, a Procedural Conference convened on  
26 December 14, 2011 to discuss the procedures and timeline for the proceeding. The Company  
27 requested a quick resolution in order to have the matter resolved before payments to the CAP were  
28 due in the Spring of 2012. Both parties thought that pre-filed testimony would be beneficial, but

1 Staff's availability did not allow a complete hearing in January 2012. The parties agreed to a  
2 bifurcated proceeding.<sup>7</sup>

3 15. By Procedural Order dated December 15, 2011, the matter was bifurcated for purposes  
4 of a hearing, with a hearing set for January 26, 2012, to address the limited issue of the Company's  
5 request to use the CAP funds held in constructive trust for annual payments related to its CAP  
6 allocation due in March 2012; and a second hearing on February 29, 2012, to address all of the other  
7 issues in the Commission's December 1, 2011 directive.

8 16. On January 6, 2012, VWC filed Certification that it mailed public notice of the  
9 hearings to its customers as a bill insert on December 30, 2011, as directed by the Commission's  
10 Procedural Order.

11 17. On January 23, 2012, VWC filed the Direct Testimony of Kip Volpe, the Company's  
12 Vice President, and Staff filed the Direct Testimony of Brian Bozzo, the Commission's Utilities  
13 Division Compliance and Enforcement Manager.

14 18. The hearing on the Company's request to use funds in its CAP account for payments  
15 to the CAP convened as scheduled before a duly authorized Administrative Law Judge ("ALJ") on  
16 January 26, 2012, at the Commission's Tucson offices.

17 19. During the January 26, 2012, hearing, the Company requested that the Commission  
18 authorize it to use funds in its CAP account to make the following payments to the CAP: \$75,500 due  
19 on February 20, 2012; \$89,500 due on March 20, 2012; and \$75,500 due on April 20, 2012.<sup>8</sup> The  
20 Company argued that the direct use of CAP water in VWC's service territory remains a viable goal  
21 that will benefit VWC ratepayers, the Tucson AMA and the state of Arizona because the costs of  
22 providing CAP water to the area will be less than the cost of acquiring recharge credits from the  
23 Central Arizona Groundwater Replenishment District ("CAGR")<sup>9</sup> and VWC's CAP allocation  
24 allows CAP water to benefit the Tucson valley and will help protect Arizona's claim on Colorado  
25 River water.<sup>10</sup>

26  
27 <sup>7</sup> See Transcript of December 14, 2011, Procedural Conference.

<sup>8</sup> Ex A-1, Volpe Dir at 7.

<sup>9</sup> Tr. at 18 and 42.

<sup>10</sup> Ex A-1 at 5 and Tr. at 24.

1           20.       At the January 2012 hearing, based on the language of Decision No. 62450, Staff  
2 recommended that the Company not be allowed to use the funds remaining the CAP account to make  
3 the requested payments.<sup>11</sup> Staff argued that the up-coming payments could be paid with other funds,<sup>12</sup>  
4 or that the payments could be made late after the Commission has made a final determination in this  
5 proceeding.<sup>13</sup>

6           21.       At the end of the January 26, 2012 hearing, the parties discussed whether additional  
7 information concerning project costs and financing options would be necessary in order to determine  
8 whether refunding amounts already collected for the CAP project would be in the public interest.  
9 The parties agreed that after the parties had an opportunity to confer, a Procedural Conference to  
10 discuss the scope of Phase II would be beneficial.<sup>14</sup>

11           22.       On February 3, 2012, a telephonic Procedural Conference convened.<sup>15</sup> The Company  
12 indicated that it wished to engage in discussions with Staff the following week, and proposed keeping  
13 the hearing date of February 29, 2012, but extending the date to file Rebuttal Testimony from  
14 February 13, 2012, until February 20, 2012, to give the parties time to confer. Staff did not object to  
15 the extension of time, but indicated that if the scope of Phase II was to discuss issues beyond  
16 compliance, Staff would not have time to file testimony about how to finance the CAP project in time  
17 for a February 29, 2012 hearing. By Procedural Order dated February 6, 2012, the deadline for filing  
18 Rebuttal Testimony was extended until February 22, 2012.

19           23.       On February 17, 2012, VWC and Staff participated in another telephonic Procedural  
20 Conference during which they requested a continuance of the hearing date by approximately 30 days  
21 to give Staff time to evaluate a proposal made by the Company that could resolve some or all of the  
22 pending issues. By Procedural Order dated February 22, 2012, the February 29, 2012 hearing was  
23 continued until March 29, 2012, and the deadline to file rebuttal testimony was extended until March  
24 22, 2012. The Procedural Order provided that because the matter had already been noticed to VWC  
25 customers, the February 29, 2012, date would be utilized for taking public comment.

---

26 <sup>11</sup> Ex S-3, Bozzo Dir at 4.

27 <sup>12</sup> *Id.*

28 <sup>13</sup> Tr. at 93.

<sup>14</sup> Tr. at 89-90.

<sup>15</sup> Tr. at 93-94.



1 (d) On or before July 31, 2012, VWC will file a rate case using a test year of  
2 December 31, 2011 ("Rate Case"), and both parties agree that filing the Rate Case will satisfy the  
3 provision of Decision No. 62450 concerning the filing of a rate case.<sup>17</sup> As part of the Rate Case,  
4 VWC will propose a surcharge to address costs relating to the CAP Project in an attempt to avoid the  
5 need for filing another rate case immediately after the Rate Case. Staff expressed general support for  
6 the concept of a surcharge for amounts to be paid Tucson Water under a Wheeling Agreement, M&I  
7 and delivery charges, and for other CAP-related costs, however, the agreement provides that Staff's  
8 final recommendation on such a surcharge will be formed following examination of the surcharge  
9 application and other financial information presented in the Rate Case.

10 (e) The deadline for submitting Final Plans for the direct use of CAP water in VWC's  
11 service territory as set forth in Decision No. 62450 is extended to June 30, 2013.

12 (f) VWC may use the funds collected from the CAP Surcharge and Hook-up fees (as  
13 well as the Hook-up fees that continue to be collected) in the manner intended by Decision No.  
14 62450, including, but not limited to: permit, design, engineer, and construct and/or to acquire plant  
15 and equipment necessary to have CAP water delivered to its water system and to pay for on-going  
16 CAP M&I and delivery charges, legal fees, and costs associated with recharging water. These CAP  
17 funds are not subject to refund solely as a result of the Company's failure to submit Final Plans by  
18 December 31, 2010, but Staff reserves the right to examine the need for the use of the funds as part of  
19 the Rate Case and to continue to examine the prudence of all expenditures made from these funds.

20 (g) Staff will not recommend that the Commission impose any penalty or fine solely  
21 as a result of VWC's failure to make the Final Plan submission by December 31, 2010, subject to  
22 VWC meeting the June 30, 2013, deadline.

23 30. VWC has accumulated approximately \$4.5 million in its CAP account from 2000 until  
24 December 2011, and over the same period has expended approximately \$2.7 million on expenses  
25 related to maintaining its rights to the CAP allocation.<sup>18</sup> As of December 31, 2011, VWC had

26  
27 <sup>17</sup> Decision No. 62450 orders VWC to file a rate case no earlier than twelve months or later than eighteen months after the  
28 completion of the plant to be installed pursuant to that Order. Decision No. 62450 at 20. The Order does not indicate  
which plant's completion would trigger the rate case.

<sup>18</sup> See Amended Report of CAP Hookup Fees and CAP Service Fees Collected, filed on February 24, 2012.

1 approximately \$1.9 million in its CAP account.<sup>19</sup>

2 31. Through December 31, 2011, approximately 75 percent of the funds added to the CAP  
3 account were provided by developers in the form of Hook-up Fees, and 25 percent was provided by  
4 ratepayers via the \$0.32 per 1,000 gallons surcharge.<sup>20</sup>

5 32. Both parties continue to support the direct use of CAP water in VWC's service area,  
6 and believe that the Settlement Agreement resolves the issues raised in this docket in a fair and  
7 reasonable manner, and that its approval will advance the Commission's directive to devise a plan to  
8 move forward to achieve the direct use of CAP water in VWC's service area.<sup>21</sup>

9 33. We agree that the Settlement Agreement is a fair and reasonable resolution of all of  
10 the issues raised in this proceeding. There is no dispute that the direct use of VWC's CAP allocation  
11 in its service area will benefit the Company, the ratepayers and the Tucson AMA. The collection of  
12 the Hook-up Fees and the CAP Surcharge functioned as conceived, and the fund will allow VWC to  
13 proceed quickly to bring CAP water to its area as soon as it can finalize an agreement with Tucson  
14 Water. The Company was dependent on the City of Tucson's schedule for negotiating the CAP  
15 wheeling agreement, and it appears that the City is now ready to proceed. In addition to allowing the  
16 CAP project to proceed, the Settlement Agreement requires a rate case which will allow the  
17 Commission to consider the best way to finance the CAP project going-forward, as well as re-  
18 examine rates in light of the significant growth in the Vail area since 2000.<sup>22</sup>

19 34. The Company admits that it should have sought Commission amendment of Decision  
20 No. 62450 prior to the December 31, 2010, deadline. Mr. Volpe testified that he didn't file a request  
21 for an extension of time to file the Final Plans by December 31, 2010, because at that time, the City  
22 of Tucson was not offering a solution, and he did not know what the Final Plan would look like, or  
23 how long it would take to be able to file it.<sup>23</sup>

24 35. Although the Company should have sought an extension to file the Final Plans prior to  
25

---

26 <sup>19</sup> *Id.*

<sup>20</sup> *Id.*; *also* Tr. at 129

<sup>21</sup> Tr. at 105-06, 109.

<sup>22</sup> At the time of the last rate case, VWC had 770 customers. Decision No. 62450 at 2. Currently, VWC has approximately 3900 customers. Tr. at 35.

<sup>23</sup> Tr. at 18.

1 the deadline, and without requiring Staff to expend the time and energy that was required in this  
 2 matter, the Company's failure does not appear motivated by a disregard of its obligations under  
 3 Commission Orders, but rather a lack of understanding of how to modify the deadline, and a strong  
 4 belief that all parties supported the CAP project as being in the public interest.<sup>24</sup> The Company's  
 5 lack of understanding or its technical failure to file the Final Plans should not penalize ratepayers.  
 6 Thus, we agree the negotiated solution that would termination the CAP Surcharge pending a rate case  
 7 and not require refund at this time is in the public interest.

8           36. Staff feels that the Company now understands its obligations and has demonstrated  
 9 progress toward the ultimate goal, and does not recommend administrative penalties at this time.<sup>25</sup>  
 10 There is no indication the CAP funds were misused or that ratepayers suffered any harm from the  
 11 failure to file the Final Plans. The Company could not comply until the City of Tucson was ready to  
 12 enter into the wheeling agreement. Consequently, we adopt Staff's recommendation not to impose  
 13 administrative penalties at this time.<sup>26</sup>

#### CONCLUSIONS OF LAW

14  
 15           1. VWC is a public service corporation within the meaning of Article XV of the Arizona  
 16 Constitution and A.R.S. §§40-202, 40-203, 40-251, 40-301 and 40-302.

17           2. The Commission has jurisdiction over VWC and the subject matter of this proceeding.

18           3. Notice was provided as required by law.

19           4. The Settlement Agreement attached as Exhibit A resolves the issues raised in this  
 20 docket in a fair and reasonable manner, and its adoption is in the public interest.

#### ORDER

21  
 22           IT IS THEREFORE ORDERED that the Settlement Agreement entered into between Vail  
 23 Water Company and the Commission's Utility Division Staff, attached hereto as Exhibit A, is hereby  
 24 approved.

25           IT IS FURTHER ORDERED that Vail Water Company may utilize the funds in its CAP

26  
 27 <sup>24</sup> Tr. at 130-31.

<sup>25</sup> Tr. at 150.

28 <sup>26</sup> The Company has incurred costs associated with resolving this dispute. Ratepayers should not be held responsible for the costs of this proceeding or any late fees that may be owed the CAP.

1 account for the purposes identified in the Settlement Agreement.

2 IT IS FURTHER ORDERED that any late fees associated with a delay in making 2012 CAP  
3 payments shall not be made using funds in the CAP account, and ratepayers shall not be held  
4 responsible for any such late fees.

5 IT IS FURTHER ORDERED that the deadline established in Decision No. 62450 for Vail  
6 Water Company to file Final Plans for the direct use of CAP water in its service area is hereby  
7 extended until June 30, 2013.

8 IT IS FURTHER ORDERED that Vail Water Company shall file a rate case no later than July  
9 31, 2012, using a test year of December 31, 2011, and that such filing will be deemed to have  
10 satisfied the requirements of Decision No. 62450 to file a rate case.

11 ...  
12 ...  
13 ...  
14 ...  
15 ...  
16 ...  
17 ...  
18 ...  
19 ...  
20 ...  
21 ...  
22 ...  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that Vail Water Company is authorized to collect the CAP  
2 Hook-up Fees authorized in Decision No. 62450, but that the CAP Surcharge is terminated, both  
3 effective immediately.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

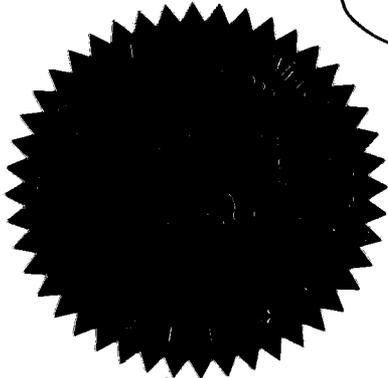
6  
7   
8 CHAIRMAN

  
COMMISSIONER

9   
10 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 5<sup>th</sup> day of June 2012.

17   
18 ERNEST G. JOHNSON  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR:

VAIL WATER COMPANY

2 DOCKET NOS.:

W-01651B-99-0351 and W-01651B-99-0406

3

4 Michael McNulty  
5 Michael Hallam  
6 LEWIS AND ROCA, LLP  
7 40 N. Central Avenue  
8 Phoenix, Arizona 85004  
9 Attorneys for Vail Water Co.

7 Janice Alward, Chief Counsel  
8 LEGAL DIVISION  
9 ARIZONA CORPORATION COMMISSION  
10 1200 W. Washington Street  
11 Phoenix, Arizona 85007

10 Steve Olea, Director  
11 UTILITIES DIVISION  
12 ARIZONA CORPORATION COMMISSION  
13 1200 W. Washington Street  
14 Phoenix, Arizona 85007

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

RECEIVED

MAR 29 2012

**SETTLEMENT AGREEMENT**

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

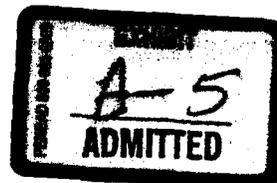
The purpose of this Settlement Agreement ("Agreement") is to settle issues related to Arizona Corporation Commission Docket Nos. W-01651B-99-0351 and W-01651B-99-0406, as reopened by the Arizona Corporation Commission ("Commission") on December 1, 2011. This Agreement is entered into by Vail Water Company ("Vail") and the Arizona Corporation Commission Utilities Division ("Staff"). Vail and Staff may be referred to as a "Party" and collectively, as the "Parties."

**Terms And Conditions**

In consideration of the promises and agreements contained herein, the Parties agree that the following numbered sections and subsections comprise the Parties' Agreement.

**1. Recitals**

- 1.1 On December 1, 2011, the Commission voted to reopen this docket and Decision No. 62450 in order to defer the matter to the Hearing Division to take testimony to consider the Company's request for an extension of time to file its final plans for direct use of CAP water; to determine a plan to accomplish the direct use of CAP water in Vail's service area; to determine whether there should be any refund of CAP surcharges; and to determine whether to impose any penalties for violation of Decision No. 62450 for failure to file final plans by December 31, 2010.
- 1.2 By Procedural Order dated December 19, 2011, the Administrative Law Judge scheduled two hearing dates to address the different issues for which this docket and Decision No. 62450 was reopened.
- 1.3 On January 26, 2012, a hearing was held to address whether Vail should be authorized to use the surcharge funds currently held in trust to make upcoming CAP payments.
- 1.4 Following the January 26, 2012 hearing, Vail and Staff determined that discussions to discuss a resolution of the issues in this docket would be beneficial.
- 1.5 On February 8, 2012, the parties met in good faith at the Commission's offices to further discuss this matter and to exchange information relating to Vail's plans for direct use of CAP water in its service area and other issues relating to this docket.
- 1.6 By Procedural Order dated February 23, 2012, the second hearing date was rescheduled to March 29, 2012, to allow the parties additional time to discuss a possible resolution of this matter.
- 1.7 Following further telephonic discussions regarding this matter, the Parties again met in good faith on March 6, 2012, to continue to discuss a resolution of the issues for which this docket was reopened.



1.8 The Parties agree and represent their belief that the terms and conditions of this Agreement will serve the public interest by providing a just and reasonable resolution of the issues presented by this case.

## 2. Terms of Settlement

2.1 Staff and Vail continue to support direct use of CAP water in Vail's service area as contemplated by Decision No. 62450.

2.2 Vail will not re-instate the currently authorized \$0.32 per thousand gallons CAP surcharge (unless such surcharge is reinstated as part of the Rate Case addressed in Section 2.4 below).

2.3 Vail will re-instate the currently authorized CAP hook-up fee. *upon decision*

2.4 On or before July 31, 2012, Vail will file a rate case using a test year for the 12 months ending December 31, 2011 (the "Rate Case"). This filing will comply with the rate case filing provision of Decision No. 62450. As part of the Rate Case, Vail will propose a surcharge to address costs relating to the CAP project in an effort to avoid the need for the filing of another rate case immediately after the conclusion of the Rate Case. Staff generally supports the concept of such a surcharge for amounts to be paid Tucson Water under a Wheeling Agreement, M&I and delivery charges, as well as other CAP-related cost components; however, Staff's final recommendation on such a surcharge is subject to Staff's examination of the actual surcharge application filed by Vail and Vail's financial information as part of the Rate Case.

2.5 The deadline for submission of final plans for the direct use of CAP water in Vail's service territory set forth in Decision No. 62450 will be extended to June 30, 2013.

2.6 Vail may use the surcharge and hook up fee funds currently held by Vail (and those future hook up fees to be collected as stated in Section 2.3) in the manner intended by Decision No. 62450, including, but not limited to: to permit, design, engineer, and construct and/or to acquire plant and equipment necessary to have CAP water delivered to its water system and to pay for on-going annual CAP M&I and delivery charges, legal fees, and costs associated with recharging water. These funds will not be subject to refund solely as a result of the Company's failure to file final plans by December 31, 2010; however, Staff reserves the right to examine the need for the use of these funds as part of the Rate Case and to continue to examine the prudence of all expenditures made from these funds.

2.7 Staff will not recommend that the Commission impose any penalty or fine solely as a result of Vail's failure to make the final plan submission by December 31, 2010, subject to Vail meeting the June 30, 2013 deadline as indicated above.

## 3. Commission Approval

3.1 The Parties acknowledge and agree that the terms of this Agreement require Commission approval, and that the Commission will independently consider and evaluate the

terms of this Agreement. With respect to approval of this Agreement, the Parties agree as follows:

- (a) To support and defend the Agreement by providing testimony as required by the Administrative Law Judge, appearing at any and all hearings, open meetings or other proceedings in the docket related to the Agreement, and taking any and all other steps reasonably necessary to obtain Commission adoption of the material terms of the Agreement.
- (b) That a final, non-appealable Commission order adopting the material terms of this Agreement shall constitute Commission approval of the Agreement for purposes of the Agreement.

3.2 The Parties further agree that in the event the Commission fails to issue an order adopting all material terms of this Agreement or modifies or adds material terms to this Agreement, any or all of the Parties may withdraw from this Agreement, and such Party or Parties may pursue their respective remedies at law without prejudice. For the purposes of this Agreement, whether a term is material shall be left to the reasonable discretion of the Party choosing to withdraw from the Agreement.

#### 4. Miscellaneous Provisions

4.1 With respect to the Parties' Agreement as set forth herein, the Parties further agree to the following general terms and conditions of their agreement:

- (a) Each person whose signature appears below is fully authorized and empowered to execute this Agreement.
- (b) Each Party is represented by competent legal counsel and that they understand all of the terms of this Agreement, that it has had an opportunity to participate in the drafting of this Agreement and fully review this Agreement with its counsel before signing, and that it executes this Agreement with full knowledge of the terms of the Agreement.
- (c) Nothing in this Agreement shall be construed as an admission by any of the Parties that any of the positions taken by any Party in this proceeding is unreasonable or unlawful. In addition, acceptance of this Agreement by any of the Parties is without prejudice to any position taken by any party in these proceedings.
- (d) This Agreement represents the Parties' mutual desire to compromise and settle in good faith certain issues in a manner consistent with the public interest. The terms and provisions of this Agreement apply solely to and are binding only in the context of the circumstances and those purposes. None of the positions taken in this Agreement by the Parties may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except in furtherance of this Agreement.

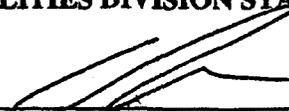
- (e) All negotiations relating to this Agreement are privileged and confidential. No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. The Parties expressly agree that evidence of conduct or statements made in the course of negotiating this Agreement shall not be offered and are not admissible before this Commission, any other regulatory agency, or any court.
- (f) Each of the terms and conditions of the Agreement is in consideration and support of all other terms. Accordingly, the terms are not severable except upon express consent of the Parties.
- (g) This Agreement may be executed in counterparts. This Agreement also may be executed electronically or by facsimile.

Executed this 23<sup>rd</sup> day of March, 2012.

**VAIL WATER COMPANY**

By:   
Its: President

**ARIZONA CORPORATION COMMISSION  
UTILITIES DIVISION STAFF**

By:   
Its: Utilities Division Rep. for