

OPEN MEETING AGENDA ITEM



0000150196

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2014 FEB -4 P 4:55

AZ CORP COMMISSION  
DOCKET CONTROL

COMMISSIONERS

- BOB STUMP - Chairman
- GARY PIERCE
- BRENDA BURNS
- BOB BURNS
- SUSAN BITTER SMITH

ORIGINAL

IN THE MATTER OF THE APPLICATION  
OF VALENCIA WATER COMPANY—  
TOWN DIVISION FOR THE  
ESTABLISHMENT OF JUST AND  
REASONABLE RATES AND CHARGES  
FOR UTILITY SERVICE DESIGNED TO  
REALIZE A REASONABLE RATE OF  
RETURN ON THE FAIR VALUE OF ITS  
PROPERTY THROUGHOUT THE STATE  
OF ARIZONA.

**DOCKET NO. W-01212A-12-0309**

Arizona Corporation Commission

**DOCKETED**

FEB 04 2014

DOCKETED BY	
-------------	--

IN THE MATTER OF THE APPLICATION  
OF GLOBAL WATER-PALO VERDE  
UTILITIES COMPANY FOR THE  
ESTABLISHMENT OF JUST AND  
REASONABLE RATES AND CHARGES  
FOR UTILITY SERVICE DESIGNED TO  
REALIZE A REASONABLE RATE OF  
RETURN ON THE FAIR VALUE OF ITS  
PROPERTY THROUGHOUT THE STATE  
OF ARIZONA.

**DOCKET NO. SW-20445A-12-0310**

IN THE MATTER OF THE APPLICATION  
OF WATER UTILITY OF NORTHERN  
SCOTTSDALE FOR APPROVAL OF A  
RATE INCREASE.

**DOCKET NO. W-03720A-12-0311**

IN THE MATTER OF APPLICATION OF  
WATER UTILITY OF GREATER  
TONOPAH FOR THE ESTABLISHMENT  
OF JUST AND REASONABLE RATES AND  
CHARGES FOR UTILITY SERVICE  
DESIGNED TO REALIZE A REASONABLE  
RATE OF RETURN ON THE FAIR VALUE  
OF ITS PROPERTY THROUGHOUT THE  
STATE OF ARIZONA.

**DOCKET NO. W-02450A-12-0312**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 IN THE MATTER OF THE APPLICATION  
2 OF VALENCIA WATER COMPANY—  
3 GREATER BUCKEYE DIVISION FOR THE  
4 ESTABLISHMENT OF JUST AND  
5 REASONABLE RATES AND CHARGES  
6 FOR UTILITY SERVICE DESIGNED TO  
7 REALIZE A REASONABLE RATE OF  
8 RETURN ON THE FAIR VALUE OF ITS  
9 PROPERTY THROUGHOUT THE STATE  
10 OF ARIZONA.

**DOCKET NO. W-02451A-12-0313**

7 IN THE MATTER OF THE APPLICATION  
8 OF GLOBAL WATER—SANTA CRUZ  
9 WATER COMPANY FOR THE  
10 ESTABLISHMENT OF JUST AND  
11 REASONABLE RATES AND CHARGES  
12 FOR UTILITY SERVICE DESIGNED TO  
13 REALIZE A REASONABLE RATE OF  
14 RETURN ON THE FAIR VALUE OF ITS  
15 PROPERTY THROUGHOUT THE STATE  
16 OF ARIZONA.

**DOCKET NO. W-20446A-12-0314**

12 IN THE MATTER OF THE APPLICATION  
13 OF WILLOW VALLEY WATER  
14 COMPANY FOR THE ESTABLISHMENT  
15 OF JUST AND REASONABLE RATES AND  
16 CHARGES FOR UTILITY SERVICE  
17 DESIGNED TO REALIZE A REASONABLE  
18 RATE OF RETURN ON THE FAIR VALUE  
19 OF ITS PROPERTY THROUGHOUT THE  
20 STATE OF ARIZONA.

**DOCKET NO. W-01732A-12-0315**

19 **NOTICE OF FILING COMMENTS OF NEW WORLD PROPERTIES, INC.,**  
20 **ON BEHALF OF FIRST AMERICAN TITLE COMPANY TRUST NO. 8559**  
21

22 **February 4, 2014**  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Table of Contents

<b>I.</b>	<b>Introduction.....</b>	<b>2</b>
<b>II.</b>	<b>Any So-Called Complexity Associated with ICFAs Was Caused by Global.....</b>	<b>4</b>
<b>III.</b>	<b>Elimination of the CPI Adjuster on ICFA Funds that are Recharacterized as HUFs is Necessary to Alleviate the Discriminatory Impact between Developers with ICFAs and those Without. ....</b>	<b>4</b>
<b>IV.</b>	<b>The CPI Condition Will Benefit Rate Payers.....</b>	<b>8</b>
<b>V.</b>	<b>The CPI Adjuster Condition will not Entangle the Commission in Future ICFA Disputes but will Ensure that Developers with ICFAs and those Without are Treated in a Non-Discriminatory Manner.....</b>	<b>9</b>
<b>VI.</b>	<b>The CPI Condition Is Fully Consistent with Established Law.....</b>	<b>9</b>
<b>VII.</b>	<b>Conclusion.....</b>	<b>12</b>

1 New World Properties, Inc., (“NWP”), on behalf of First American Title Company Trust  
2 No. 8559, submits its comments regarding Global’s Exceptions dated January 30, 2014.

3 **I. Introduction.**

4 On August 13, 2013, a Proposed Settlement Agreement was filed in the above-captioned  
5 consolidated rate case dockets signed by Global,<sup>1</sup> Utilities Division Staff (“Staff”), the  
6 Residential Utility Consumer Office (“RUCO”), various intervenor homeowners associations, and  
7 the Town of Maricopa. Although they actively participated in the settlement discussions that  
8 produced the Settlement Agreement, neither NWP nor Sierra Negra Ranch, LLC and Sierra Negra  
9 Management, LLC (collectively, “SNR”) were able to support the Settlement Agreement because  
10 it fails to address critical concerns which they raised in this case.<sup>2</sup>

11 On January 21, 2014, Deputy Chief Administrative Law Judge Nodes docketed a  
12 recommended opinion and order (“ROO”). The ROO concludes that “the terms of the  
13 [Settlement] Agreement will produce rates that are just and reasonable in the context of this case,  
14 as long as several additional requirements are imposed as a condition of approval of the  
15 Settlement.”<sup>3</sup> One of the additional four conditions is as follows:

16 [I]n order to level the playing field between competing landowners/developers,  
17 the CPI adjuster will not be applied to funds received from developers for HUFs.  
18 This condition is necessary to alleviate the discriminatory impact that would  
19 occur between developers that have signed ICFA’s and those future developers  
20 that would be required to pay only the then-applicable HUF fees without a CPI  
21 adjuster.”<sup>4</sup>

22 In its exceptions, Global opposes this condition and asks that it be eliminated from the  
23 final order. However, Judge Nodes’ well-reasoned analysis in the ROO is precisely on point and  
24 the CPI adjuster condition is absolutely essential to ensure that the rates and charges approved by  
25 the Commission in this case are “just and reasonable” and that “no discrimination in charges,  
26 service, or facilities [is] made between persons or places for rendering a like and

26 <sup>1</sup> As used herein, the term “Global” refers collectively to Global Water Resources, Inc., its utility  
27 affiliates and non-utility affiliates.

27 <sup>2</sup> Intervenor Willow Valley Club Association, likewise, did not sign the Settlement Agreement.

28 <sup>3</sup> ROO at 29, lines 21-23 (emphasis added).

<sup>4</sup> ROO at 30, lines 14-18.

1 contemporaneous service.”<sup>5</sup> The Commission should adopt the ROO as written with all four of  
2 the additional conditions recommended by Judge Nodes.

3 Global witness Paul Walker testified at the hearing that the imputation of funds received  
4 by Global Water Resources under 172 Infrastructure Coordination and Finance Agreements  
5 (“ICFAs”) in Global’s last rate case caused an \$85 million net loss for Global Parent in 2010,<sup>6</sup>  
6 which Global witness Ron Fleming described as a “major blow to Global’s consolidated balance  
7 sheet.”<sup>7</sup> If the Settlement Agreement is adopted, the imputation of CIAC from the last rate case  
8 will be reversed and Global Parent’s balance sheet will be “restored.”<sup>8</sup> Under Section 6.3 of the  
9 Settlement Agreement, \$58,245,656 of CIAC (net of amortization) imputed under Decision  
10 71878 will be reversed and restored to rate base.<sup>9</sup> Further, under Section 6.3.6 of the Settlement  
11 Agreement, an additional \$8,897,600 in ICFA funds received by Global since December 31,  
12 2008, will not be imputed or treated as CIAC. Certainly, these are tremendous and generous  
13 benefits which bail Global out of a financial hole of its own making, yet Global reaches for even  
14 greater economic benefits by seeking to apply a CPI adjuster to ICFA funds that are redefined as  
15 hook-up fees (“HUFs”) under the Settlement Agreement.

16 Contrary to the assertions of Global, the Settlement Agreement will fundamentally alter  
17 the operation of the ICFAs and the treatment of developer monies received under those  
18 agreements. Allowing Global to apply a CPI adjuster under the ICFAs to fees that are redefined  
19 as HUFs will place tens if not hundreds of millions of additional dollars in the pockets of Global  
20 Water Resources, an unregulated entity. The Commission’s Utilities Division Director testified at  
21 the hearing that he is not aware of any HUF which includes a CPI adjuster.<sup>10</sup> Judge Nodes is  
22 absolutely correct in finding that “[b]y eliminating the CPI from the HUF portion of the fees,  
23 current and future landowners/developers will be treated on an equal basis because all developers  
24 would be required to pay whatever HUF charge is in effect at the time of development, which

25 <sup>5</sup> ROO at 30, lines 18-21 (*citing* Article 15, Section 12 of the Arizona Constitution)

26 <sup>6</sup> ROO at 28, footnote 7.

27 <sup>7</sup> Global’s Post-Hearing Brief (October 18, 2013) at 8, lines 3-6 (citations omitted).

28 <sup>8</sup> Global’s Post-Hearing Brief (October 18, 2013) at 9, line 6.

<sup>9</sup> Global’s Post Hearing Brief at 17, lines 1-15.

<sup>10</sup> Hearing Transcript Vol. IV at p. 727, lines 9-11.

1 would reflect the Commission's determination of the appropriate landowner contribution at any  
2 given time."<sup>11</sup> Therefore, NWP asks the Commission to approve the ROO as written.

3 **II. Any So-Called Complexity Associated with ICFAs Was Caused by Global.**

4 In reference to ICFAs and the Settlement Agreement, Global states in its Exceptions that  
5 "[s]uch a widely supported resolution of such a complex issue should not be changed."<sup>12</sup>  
6 However, as the Commission considers the Settlement Agreement, it should bear in mind that it  
7 was Global—and Global alone—that created any complexity surrounding the ICFAs. Global  
8 could have (and should have) obtained prior Commission approval before recklessly launching an  
9 untested scheme for funding utility acquisitions and backbone plant construction—a scheme  
10 which is officially rejected in the Settlement Agreement. Yet, for reasons that have never been  
11 disclosed, Global chose not to seek Commission approval.<sup>13</sup> Judge Nodes rightly concludes in  
12 the ROO that "Global Parent's decision to enter into ICFAs without Commission approval, with  
13 the promise of, among other things, the provision of utility infrastructure and service by its  
14 subsidiaries, necessitates that it be precluded from imposing discriminatory rates, charges or  
15 services on customers as well as landowners/developers."<sup>14</sup>

16 **III. Elimination of the CPI Adjuster on ICFA Funds that are Redefined as HUFs is**  
17 **Necessary to Alleviate the Discriminatory Impact that would Otherwise Occur**  
18 **between Developers with ICFAs and those Without.**

19 Judge Nodes correctly concludes that elimination of the CPI adjuster on ICFA funds that  
20 are recharacterized as HUFs under the Settlement Agreement is necessary to alleviate the  
21 discriminatory impact that would otherwise occur between developers that are subject to ICFAs  
22 and those developers that would be required to pay only the applicable HUF fees, without a CPI  
23 adjuster.<sup>15</sup> By way of illustration, NWP and SNR each owe landowner fees of \$5,500 per  
24 equivalent dwelling unit ("EDU") under their respective ICFAs, and these fees are subject to a  
25 CPI adjuster, whereas the HUFs approved under the Settlement Agreement for the water and

26 <sup>11</sup> ROO at 31, lines 1-4 (emphasis added).

27 <sup>12</sup> Global Exceptions at 1, lines 16-17.

28 <sup>13</sup> Hearing Transcript Vol. I at 151-153.

<sup>14</sup> ROO at 30, lines 24-27.

<sup>15</sup> ROO at 30, lines 16-18.

1 sewer utilities that serve their developments total only \$3,500 per unit, with no CPI adjuster.  
2 Global has entered into 172 ICFAs,<sup>16</sup> and Section 6.4.1 of the Settlement Agreement  
3 fundamentally changes the treatment of the landowner fees received by Global under each one of  
4 the 172 ICFAs by redefining a substantial portion of the landowner fees as HUFs. Because  
5 Section 6.2.1 of the Settlement Agreement prohibits Global and any of its affiliates from entering  
6 into any more ICFAs, backbone utility infrastructure will hereafter be funded through HUFs.

7 While there is no CPI adjuster applicable to HUFs under the Settlement Agreement,  
8 Global witness Fleming acknowledges that the CPI adjuster in the ICFAs “pertains to the HUF ...  
9 component as well.”<sup>17</sup> This discriminatory treatment creates an unlevel playing field, and Judge  
10 Nodes rightly concluded that “in order to level the playing field between competing  
11 landowners/developers, the CPI adjuster will not be applied to funds received from developers for  
12 HUFs.”<sup>18</sup>

13 Global makes a number of arguments in its Exceptions which are wholly lacking in merit.  
14 First, Global argues that “[t]he current developers will pay the *same amount* of HUF as every  
15 other developer—the excess amount of the ICFA will not be considered a HUF.”<sup>19</sup> Such a  
16 nonsensical argument is analogous to a shopkeeper who charges customer Smith \$3.00 for a loaf  
17 of bread and customer Jones \$5.00, and then asserts that he has charged both customers the same  
18 amount for the bread, because the “excess amount paid by customer Jones will not be considered  
19 part of the purchase price.” Global witness Fleming acknowledged at the hearing that in the case  
20 of NWP, the CPI adjuster in the ICFA has already added an additional \$449.43 per EDU to the  
21 \$5,500-per-EDU landowner payment as of the date of the hearing, or approximately \$1.685  
22 million in total based upon the 3,750 EDUs in NWP’s development.<sup>20</sup> Moreover, that \$1.685  
23 million will continue to increase until NWP completes its payments under its ICFA. In stark  
24 contrast, developers who do not have an ICFA—and there will be no new ICFAs if the Settlement  
25 Agreement is approved—will pay a HUF with no CPI adjuster.

26 <sup>16</sup> Hearing Transcript Vol. I at p. 86, lines 9-11.

27 <sup>17</sup> Hearing Transcript Vol. I at 100, lines 22-24.

28 <sup>18</sup> ROO at 30, lines 14-16.

<sup>19</sup> Global Exceptions at 4, lines 3-4 (emphasis in original).

<sup>20</sup> Hearing Transcript Vol. I at 125-127.

1 Global next argues that NWP and SNR are sophisticated developers that should pay the  
2 amounts they promised to pay in the ICFAs. Perhaps if all of the developers within Global's  
3 serving areas were subject to ICFAs, this argument would have merit. However, the Settlement  
4 Agreement fundamentally changes how funds received by Global under the ICFAs are allocated.  
5 In so doing, it creates two classes of developers—those without ICFAs which pay HUFs with no  
6 CPI adjuster and those with ICFAs which pay HUFs with a CPI adjuster. This is precisely the  
7 type of unfair and discriminatory result that is prohibited under Article 15, Section 12 of the  
8 Arizona Constitution and A.R.S. § 40-334 as Judge Nodes has correctly written.

9 Global also argues that ICFAs and HUFs are not “like and contemporaneous” because the  
10 ICFA “includes numerous provisions and obligations on Global Parent not found in a HUF.”<sup>21</sup>  
11 However, at the hearing Judge Nodes appropriately recognized the fact that the obligations of  
12 Global Water Resources under the ICFAs are “like” those of a regulated utility, as shown in the  
13 following exchange with the Utilities Division Director:

14 Q. [By Judge Nodes] Right. But those are, the actions or the activities that the  
15 parent agreed to undertake, weren't they essentially acting  
16 in the capacity of a utility company? And isn't that one of  
Staff's primary concerns, at least up until this point?

17 A. [By Mr. Olea] That's correct. And that's, I think, if you look at Mr.  
18 Armstrong's testimony, he talked about the blurred lines. What we believe the settlement agreement does is unblur  
19 the line, make it a real, definite demarcation. The parent company, you do what you do. Utility, you do what you  
20 do. The parent company, don't be doing utility stuff. That's why no more ICFAs.

21 Q. [By Judge Nodes] On a going forward basis.

22 A. [By Mr. Olea] Correct.<sup>22</sup>

23 Global argues that “[a]t the time SNR and NWP came to Global and asked for an ICFA,  
24 there was no certificated wastewater provider in the area, and the water provider was ramshackle  
25 and run-down.”<sup>23</sup> There is great irony in this argument as NWP actually funded the acquisition of  
26

27 <sup>21</sup> Global Exceptions at 4, lines 12-13.

28 <sup>22</sup> Hearing Transcript Vol. IV at 729-730 (emphasis added).

<sup>23</sup> Global Exceptions at 4-5 (citations omitted).

1 the Water Utility of Greater Tonopah (“WUGT”) by Global Water Resources with the payment of  
2 landowner fees under its ICFA. That acquisition will benefit developers without ICFAs  
3 (including NWP’s competitors) who develop within the massive WUGT service territory, as well  
4 as the customers who will live in those developments.

5 Global tries to make it appear as though it has done everything it is required to do under  
6 the ICFA for the benefit of NWP, but that NWP has failed to perform. Global’s assertion that  
7 NWP “failed to pay” is neither fair nor accurate.<sup>24</sup> Global is well aware that NWP has paid every  
8 dollar of what is currently owed under its ICFA. Moreover, every action that Global asserts was  
9 taken to benefit NWP also benefitted Global.

10 Global would have the Commission believe that there are few, if any, competing  
11 developments within the company’s serving areas that are not subject to ICFAs. The truth is that  
12 there are far more acres within the Global serving areas which are not subject to ICFAs than acres  
13 which are subject to ICFAs. Global conveniently ignores the point that current and future  
14 developers throughout Global’s vast service territory (and not just those developments that are  
15 planned or approved today) will have a substantial advantage under the Settlement Agreement  
16 because they can now pay HUFs without any CPI adjuster added. The CPI adjuster condition is  
17 essential if the Settlement Agreement is approved to maintain a level playing field among  
18 competing developers, current and future.

19 Finally, Global asserts that NWP and SNR are the only developers to claim  
20 discrimination. This is no surprise given that Global mailed a letter to all entities with ICFAs on  
21 or about August 27, 2013 stating that “the settlement agreement discusses ICFAs but does not  
22 change the terms of your agreement with Global in any way and does not require you to take any  
23 action.”<sup>25</sup> Global’s assertion is disingenuous and self-serving and should be rejected.

24 Global Exceptions at 5, lines 10-11.

25 Hearing Exhibit NWP-5 (Letter from Global Water to First American Title Insurance Company, Trust No. 8559 dated August 27, 2013).

1 **IV. The CPI Adjuster Condition Will Benefit Rate Payers.**

2 In its Exceptions, Global asserts as follows:

3 A key factor that the Commission may consider in setting future HUFs will be the  
4 increased level of the ICFA fees, due to inflation reflected in the CPI clause. In  
5 essence, as ICFA fees increase for inflation under the CPI clause, that will create  
6 a pool of funds that can be used to pay future HUFs.<sup>26</sup>

7 However, this is simply not the case. If Global is permitted to apply the CPI adjuster to  
8 ICFA fees that are redefined as HUFs under the Settlement Agreement, the additional monies  
9 collected through the CPI adjuster will go to Global Water Resources and would then be available  
10 for Global to invest in its utility affiliates as equity. In other words, the CPI adjuster monies  
11 invested by Global would not be treated as CIAC, which would reduce rates, but as equity which  
12 would ultimately increase rates.

13 Further, there is no support for Global's assertion that CPI adjuster monies would be  
14 available to pay future HUFs. To the contrary, Section 6.4.3 of the Settlement Agreement makes  
15 clear that ICFA monies remaining after the payment of HUFs, which would include monies from  
16 the CPI adjuster, belong to Global Water Resources to be used for the purposes set forth in the  
17 ICFAs.

18 Staff witness James Armstrong testified that Global Water Resources "could be entitled to  
19 receive (over several decades) as much as \$1.476 billion of ICFA fees under the provisions of  
20 these existing agreements." If a CPI adjuster is charged on the HUF portion of that \$1.476  
21 billion dollars in fees, it will generate tens of millions in additional payments to Global Water  
22 Resources. If Global Water Resources invests those additional payments into its regulated  
23 utilities as equity under Section 6.4.3 of the Settlement Agreement, which requires that payments  
24 be used "only in accordance with the terms of the applicable ICFA" (*i.e.*, to fund and finance the  
25 construction of utility infrastructure), the impact on future rates will be very considerable.  
26  
27

28 <sup>26</sup> Global Exceptions at 6, lines 17-19.

1 **V. The CPI Adjuster Condition will not Entangle the Commission in Future ICFA**  
2 **Disputes but will Ensure that Developers with ICFAs and those Without are Treated**  
3 **in a Non-Discriminatory Manner.**

4 Global would have the Commission believe that adoption of the CPI adjuster condition  
5 will cause the sky to fall, entangling the Commission “in an ICFA morass for years to come.”<sup>27</sup>  
6 Global conjures up scenarios where the ROO could “potentially” be interpreted as overriding an  
7 ICFA, and then speculates that the Commission could see a “flurry of lawsuits” by developers.  
8 The truth is that the Settlement Agreement was needed to address the adverse effects of an ill-  
9 conceived experiment by Global that was never authorized by the Commission. Global asserts  
10 that “the Settlement Agreement is designed to comprehensively resolve all issues regarding  
11 ICFAs.”<sup>28</sup> That is, all issues except for the application of the CPI adjuster to landowner fees  
12 redefining as HUFs under the Settlement Agreement. There can be no doubt that the  
13 recharacterization of ICFA fees as HUFs marks a fundamental change in the operation of the  
14 ICFAs. Judge Nodes correctly concluded that “[b]y eliminating the CPI from the HUF portion of  
15 the fees, current and future landowners/developers will be treated on an equal basis because all  
16 developers would be required to pay whatever HUF charge is in effect at the time of  
17 development, which would reflect the Commission’s determination of the appropriate landowner  
18 contribution at any given time.”<sup>29</sup> He also appears to have anticipated the dire divinations of  
19 Global when he included the following declaration:

20 We wish to make clear that we are not addressing any of the other terms of the  
21 ICFAs but, rather, we believe it is necessary to require the conditions discussed  
22 above in the context of the Settlement Agreement to ensure that just and  
23 reasonable rates are established for all customers, present and future.<sup>30</sup>

24 **VI. The CPI Condition Is Fully Consistent with Established Law.**

25 Global argues that the CPI adjuster condition in the ROO will “impair the obligations of a  
26 contract” in violation of Article 2, Section 25 of the Arizona Constitution.<sup>31</sup> However,

27 Global Exceptions at 7, line 20.

28 Global Exceptions at 7, line 8.

29 ROO at 31, lines 1-4.

30 ROO at 31, lines 10-13.

31 Global Exceptions at 8, lines 9-11.

1 conspicuously absent from Global’s Exceptions is any analysis at all addressing how the CPI  
2 condition violates the contract clause of the Arizona Constitution. Thus, this argument should be  
3 summarily rejected.

4 Global next argues, citing Staff, that the Commission “cannot change or modify a contract  
5 that was voluntarily entered into between two private parties.”<sup>32</sup> However, this mischaracterizes  
6 the effect of the ROO. In this case, Global has presented the Settlement Agreement to the  
7 Commission for approval. Two of the core elements of the Settlement Agreement are (i) the  
8 establishment of HUFs for the first time and (ii) the recharacterization of landowner fees paid  
9 under the ICFAs as HUFs. After considering all of the evidence in this case, Judge Nodes found  
10 that the CPI adjuster condition “is necessary to alleviate the discriminatory impact that would  
11 occur between developers that have signed ICFAs and those future developers that would be  
12 required to pay only the then-applicable HUF fees without a CPI adjuster.”<sup>33</sup> Global misses the  
13 mark in arguing that the “CPI condition, if approved, arguably<sup>34</sup> invalidates part of the CPI  
14 clauses of 172 contracts....”<sup>35</sup> Rather, the ROO provides that if Global wants the benefits of the  
15 Settlement Agreement (*i.e.*, restoration of its balance sheet, among other things), then it must  
16 accept the CPI adjuster condition contained in the ROO. If Global cannot accept that condition,  
17 then it can opt out of the Settlement Agreement and proceed with a litigated case.

18 Notwithstanding the discussion above, it bears noting that the Settlement Agreement  
19 includes several provisions which effectively modify the ICFAs, including the following:

- 20 • Global Water Resources cannot amend any existing ICFA to “increase the dollar  
21 amount of the ICFA funds to be paid to Global [Water Resources] or any of its  
22 affiliates.” (Section 6.2.1)
- 23 • “Any associated funds or infrastructure (or land associated with the infrastructure  
24 conveyed to Global [which includes Global Water Resources]) used to provide  
25 water or wastewater service will be segregated to or owned by the Global Water  
and Wastewater Utilities, Hassayampa, Picacho Water or Picacho Utilities.  
(Section 6.2.3)

26 <sup>32</sup> Global Exceptions at 8, lines 11-13 (citation omitted).

27 <sup>33</sup> ROO at 30, lines 16-18.

28 <sup>34</sup> Global’s use of the word “arguably” suggests that Global is not itself convinced of its own  
argument.

<sup>35</sup> Global Exceptions at 8, lines 14-15.

- 1 • A portion of the funds received by Global Water Resources “will be paid to the  
2 associated utility as a hook-up fee (“HUF”) to be established in accordance with  
3 this Agreement....” (Section 6.4.1)
- 4 • Global Water Resources “will agree to accept separate checks for the ICFA fees  
5 owed....” (Section 6.4.2)
- 6 • Global Water Resources “is prohibited from using HUF monies for any purpose.”  
7 (Section 6.4.2.1)
- 8 • Global Water Resources “shall use the HUF monies solely for the purposes set  
9 forth in the Commission approved HUF tariffs.” (Section 6.4.2.1)

10 Clearly, the Commission can require Global Water Resources to further modify the terms  
11 of the ICFAs, including NWP’s ICFA, as a condition of approving the Settlement Agreement, and  
12 it should do so in this case.

13 Additionally, the Commission should bear in mind that Global Water Resources willingly  
14 submitted the ICFAs to the jurisdiction of the Commission in this proceeding as demonstrated by  
15 the following exchange between counsel for NWP and Global witness Paul Walker:

16 Q. [By Mr. Hays] ... Do you believe the Commission has jurisdiction over  
17 the ICFAs?

18 A. [By Mr. Walker] I think the Commission has jurisdiction over the Global  
19 Utilities and I think it has sort of an implied jurisdiction  
20 over Global Parent. And we have always said that we are  
21 not going to argue that the ICFAs are nonjurisdictional  
22 because we understand there is significant concern and  
23 interest in them from the Commission. So we weren't  
24 going to dispute whether they had legal jurisdiction or  
25 not.<sup>36</sup>

26 Because Global Water Resources has conceded jurisdiction, the *General Cable* and *Trico*  
27 cases that it cites in its Exceptions are simply not relevant.

28 Finally, the Commission should bear in mind that Global Water Resources willingly  
intervened as a party in these consolidated proceedings, thereby submitting itself to the  
Commission’s jurisdiction. Moreover, Global Water Resources is itself a party to the Settlement

---

<sup>36</sup> Hearing Transcript Vol. IV at pp. 574-575 (emphasis added).

1 Agreement, signing on page 16 of that document.<sup>37</sup> Thus, both the ICFAs and Global Water  
2 Resources are subject to the Commission's jurisdiction in these consolidated rate cases.

3 **VII. Conclusion.**

4 The application of a CPI adjustor under the ICFAs to landowner fees recharacterized as  
5 HUFs pursuant to the Settlement Agreement and the lack of any CPI adjustor on HUFs payable  
6 by developers without ICFAs creates an unlevel playing field that competitively disadvantages  
7 developers with ICFAs. This unfair and discriminatory result is directly attributable to the  
8 Settlement Agreement. While the Settlement Agreement bestows a tremendous benefit upon  
9 Global Water Resources in the form of a restored balance sheet, it fails to address the competitive  
10 disadvantage that will beset NWP, SNR and the other developers with ICFAs. This failure is  
11 remedied by requiring the elimination of the CPI adjustor as it applies to landowner fees that are  
12 recharacterized as HUFs under the Settlement Agreement. Without such a condition, approval of  
13 the Settlement Agreement is not in the public interest. For all of the reasons set forth herein,  
14 NWP requests that the Commission approve the ROO as written.

15 RESPECTFULLY submitted this 4<sup>th</sup> day of February, 2014.

16 

17 Jeffrey W. Crockett, Esq.  
18 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
19 One East Washington Street, Suite 2400  
20 Phoenix, Arizona 85004

21 and

22 Garry D. Hays, Esq.  
23 THE LAW OFFICES OF GARRY D. HAYS, PC  
24 1702 East Highland Avenue, Suite 204  
25 Phoenix, Arizona 85016

26 Attorneys for New World Properties, Inc., on behalf  
27 Of Trust No. 8559

28 <sup>37</sup> Hearing Exhibit A-17 at p. 16.

1 ORIGINAL and thirteen (13) copies  
2 filed this 4<sup>th</sup> day of February, 2014, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 COPIES of the foregoing hand-delivered  
8 this 4<sup>th</sup> day of February, 2014, to:

9 Maureen Scott  
10 Wesley Van Cleve  
11 Legal Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

15 Lyn Farmer  
16 Hearing Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Steve Olea, Director  
21 Utilities Division  
22 ARIZONA CORPORATION COMMISSION  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 COPIES of the foregoing sent via e-mail and/or first  
26 class mail this 4<sup>th</sup> day of February, 2014, to:

27 Lawrence V. Robertson, Jr.  
28 Attorney at Law  
P.O. Box 1448  
Tubac, Arizona 85646

Daniel Pozefsky  
RESIDENTIAL UTILITY CONSUMER OFFICE  
1110 W. Washington Street, Suite 220  
Phoenix, Arizona 85007

Barry Becker  
Bryan O'Reilly  
SNR Management LLC  
50 S. Jones Boulevard, Suite 101  
Las Vegas, Nevada 89107

1 Michael W. Patten, Esq.  
2 Timothy J. Sabo, Esq.  
3 ROSHKA DEWULF & PATTEN, PLC  
4 One Arizona Center  
5 400 East Van Buren Street, Suite 800  
6 Phoenix, Arizona 85004

7 Michele Van Quathem  
8 Sheryl A. Sweeney  
9 Ryley Carlock & Applewhite  
10 One North Central Avenue, Suite 1200  
11 Phoenix, Arizona 85004-4417

12 Steven P. Tardiff  
13 44840 W. Paitilla Lane  
14 Maricopa, Arizona 85139

15 Willow Valley Club Association  
16 c/o Gary McDonald, Chairman  
17 1240 Avalon Avenue  
18 Havasu City, Arizona 86404

19 Dana L. Jennings  
20 42842 W. Morning Dove Lane  
21 Maricopa, Arizona 85138

22 Andy and Marilyn Mausser  
23 20828 N. Madison Drive  
24 Maricopa, Arizona 85138

25 Denis M. Fitzgibbons, Esq.  
26 Fitzgibbons Law Offices, PLC  
27 1115 E. Cottonwood Lane, Suite 150  
28 Casa Grande, Arizona 85122

Robert J. Metli, Esq.  
Munger Chadwick, PLC  
2398 E. Camelback Road, Suite 240  
Phoenix, Arizona 85016

24   
25 \_\_\_\_\_  
26 016098\0001\10998608.1