



0000158957

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

BOB STUMP, CHAIRMAN
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

2014 DEC 18 P 3:45

AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

STAFF OF THE UTILITIES DIVISION,

COMPLAINANT,

VS.

AMERICAN REALITY & MORTGAGE CO.,
INC. DBA HACIENDA ACRES WATER
SYSTEM.

RESPONDENT.

Docket No. W-02258A-07-0470

Arizona Corporation Commission

NOTICE

DOCKETED

DEC 18 2014

DOCKETED BY

Global Water – Santa Cruz Water Company (“Santa Cruz”)¹, provides this notice that the Maricopa Mountain Domestic Water Improvement District (“District”) has commenced providing service to the former service area of American Realty & Mortgage Co., Inc., d/b/a Hacienda Acres Water System (“Hacienda Acres”). There was no interruption in service to customers. The District began providing service on November 7, 2014.

Santa Cruz was appointed as the Interim Manager of the Hacienda Acres system by Commission Staff in accordance with authority granted by the Commission in Decisions Nos. 69865, 70609 and 73233. Santa Cruz served as interim manager for over seven years. During these seven years, Santa Cruz incurred substantial expense, especially after the Hacienda Acres well failed.

Santa Cruz filed a notice of resignation as interim manager on October 7, 2014, and the resignation became effective November 6, 2014. Despite resigning as interim manager, Santa Cruz has agreed to provide ongoing financial assistance to the District in the following ways:

¹ Where the context requires, “Santa Cruz” also includes Santa Cruz Water Company, the predecessor to Global Water – Santa Cruz Water Company.

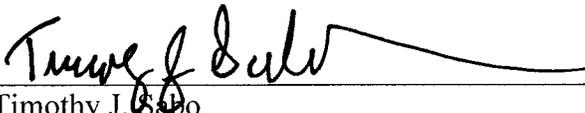
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- (1) Santa Cruz provided the District with a water hauling truck to be used to haul water to the former Hacienda Service Area. Santa Cruz retains an option to repurchase the truck after the District completes the extension of its service lines to the former Hacienda Service Area, or after three years.
- (2) Santa Cruz agreed to reimburse the District for the expense of providing bottled water to the former Hacienda Service Area, until the District completes the extension of its service lines to the former Hacienda Service Area, or three years at maximum.
- (3) Santa Cruz agreed to reimburse the District, for a period of time, for certain Nitrate sampling costs associated with using the District's well #4 to provide water to the former Hacienda customers.

Santa Cruz made these commitments in order to ensure the customers continued to receive service, and in order to assist the District. A copy of the agreement with the District is attached as Exhibit 1.

RESPECTFULLY SUBMITTED this 18th of day of December 2014.

ROSHKA DEWULF & PATTEN, PLC

By 

Timothy J. Sabo
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Attorneys for Global Water – Santa Cruz Water Company.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Original +13 copies of the foregoing
filed this 18th of day of December 2014, with:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
1200 West Washington
4 Phoenix, Arizona 85007

5 Copies of the foregoing hand-delivered/mailed
this 18th of day of December 2014 to:

6 Lyn A. Farmer, Esq.
7 Chief Administrative Law Judge
Hearing Division
8 Arizona Corporation Commission
1200 West Washington
9 Phoenix, Arizona 85007

10 Janice Alward, Esq.
Chief Counsel, Legal Division
11 Arizona Corporation Commission
1200 West Washington
12 Phoenix, Arizona 85007

13 Steve Olea
Director, Utilities Division
14 Arizona Corporation Commission
1200 West Washington
15 Phoenix, Arizona 85007

16 Joseph W. Lee
P.O. Box 640
17 Wittmann AZ 85361

18 Alma R. Lee, Jr.
19 AMERICAN REALTY AND MORTGAGE COMPANY, INC.
32241 South Center Street
20 Wittmann, AZ 85361

21 Alma R. Lee, Jr.
22 ALMERIAN REALTY AND MORTGAGE COMPANY, INC.
P.O. Box 232
23 Wittmann, AZ 85361

24

25

26

27

By

Jaelyn Howard

AGREEMENT

This agreement between Global Water – Santa Cruz Water Company (“Santa Cruz”) and the Maricopa Mountain Domestic Water Improvement District (“District”) (collectively, the “Parties” and each a “Party”) is entered into this 2nd day of November, 2014.

Recitals

A. Santa Cruz is a public service corporation regulated by the Arizona Corporation Commission (“ACC”). Santa Cruz is authorized to provide regulated water utility service to portions of Pinal County, Arizona, including the City of Maricopa pursuant to a Certificate of Convenience and Necessity (and extensions thereof) issued by the ACC.

B. The District is a political subdivision of the State of Arizona organized and authorized to provide water service to portions of Pinal County, Arizona.

C. American Realty & Mortgage Co., Inc. d/b/a Hacienda Acres Water Company (“Hacienda”) formerly operated a water system (“Hacienda System”) servicing the Hacienda Acres area in Pinal County (the “Hacienda Service Area”). Hacienda formerly held a Certificate of Convenience and Necessity from the ACC to serve the Hacienda Service Area, but the Certificate has been revoked by the ACC.

D. Pursuant to ACC Decisions Numbers 69865 (August 23, 2007), 70609 (November 19, 2008) and 73233 (June 20, 2012), Santa Cruz serves as the ACC-appointed interim manager of the Hacienda System.

E. In Decision No. 73233 (June 20, 2012), the ACC made the following findings of fact:

4. Pursuant to Decision No. 44444, issued August 1, 1974, Hacienda Acres received a Certificate of Convenience and Necessity (“CC&N”) from the Commission to provide water service in Pinal County. As a condition of its CC&N, Hacienda Acres was required to comply with Arizona law, Commission Orders, and Commission Rules and Regulations.

5. Hacienda Acres serves approximately 24 residential lots and an apartment complex with 11 apartments. The system contained two well sites, with each site containing a storage tank, pressure tank, and booster system. One well site had been disconnected due to nonpayment of a lease.
6. On October 21, 2011, Hacienda Acres' other well ceased to function, and Global has been forced to haul water in order to provide Hacienda Acres' customers with water.
7. In Decision No. 69865, issued August 23, 2007, the Commission authorized Commission Staff to appoint an interim manager and ordered Hacienda Acres to cooperate with the interim manager. Thereafter, the Commission Staff entered into a letter agreement with Global to establish Global as the interim manager as an interim measure until a more permanent solution could be found.
8. On November 19, 2008, the Commission issued an order (Decision No. 70609) revoking the CC&N held by Hacienda Acres. The revocation was the result of an enforcement proceeding initiated against Hacienda Acres due to the Company's abandonment of service to its customers and violation of various Arizona statutes and Commission rules, as outlined in the Complaint and Petition for an Order to Show Cause filed by Commission Staff on August 14, 2007.
9. As a result of this revocation, Hacienda Acres no longer holds a CC&N to serve this area.
10. In Decision No. 70609, referenced above, the Commission determined that it was appropriate to revoke the Company's CC&N because the Company's conduct had endangered the public health and safety of its customers. The Commission continued the authorization for the interim manager and fined Hacienda Acres \$41,000 for the violation of numerous Commission rules and other regulatory requirements.
11. The Decision [70609] made numerous findings of fact, including the following:

The evidence is undisputed that Joseph Lee and two men acting as his agents vandalized the water system by damaging the well head by severing the well discharge pipe to the storage tank; damaging the power supply and circuit breaker box by severing the well motor electrical cable and tearing apart the electrical service; damaging the storage tank by cutting a valve and emptying water from the tank; removing the booster pumps and hydropneumatic tanks; and removing residential service meters

and causing damage to service laterals. This damage left Respondent's customers without a water supply or water service.

12. [Hacienda] filed a "Notice of Surrender of Water Franchise of American Realty and Mortgage Co., Inc.", signed by Joseph W. Lee as attorney, stating that the water company had ceased operations and had provided its customers a "Notice of Termination of Water Service".
13. Hacienda Acres filed Articles of Dissolution on September 27, 2007, and the dissolution was completed on August 1, 2008.
14. While the Commission retains jurisdiction over the Company for enforcement purposes (such as the imposition of fines or other penalties), there is no longer a CC&N for this service area. As a result, there is no entity subject to the Commission's jurisdiction which is entitled to maintain monopoly service in the former certificated service area of Hacienda Acres.
15. Although certain interim measures to provide for water service, including the appointment of an interim manager, have been in place since approximately 2008, these measures were not intended to be a permanent solution.
16. On October 21, 2011, Hacienda Acres' well ceased to function, and Global has been forced to haul water in order to provide Hacienda Acres' customers with water.
17. After the well failure, it is not economically feasible to operate the physical water system of Hacienda Acres.
18. Currently, there is no Commission-certificated provider of water service for this area. The customers in Hacienda Acres' service area would benefit from the entry of an entity that would provide reasonable and adequate water service on a permanent basis.
19. Decision No. 70609 found that engaging an interim manager was appropriate until such time as a permanent solution could be established, at which time terminating the interim manager authority would be appropriate.
20. Global has identified the District as the most logical long-term water provider for Hacienda Acres' customers. The District has a near-by potable water system that provides customers with hauled water service, and the District is interested in becoming a piped water supplier to the area. Accordingly, the District is in a position to develop a new well source and extend potable piped water service to the former Hacienda Acres service area.
21. The District is planning to build a new distribution system to serve the former Hacienda Acres customers. In doing so, it will not use any of the former plant
Agreement between Global Water – Santa Cruz Water Company and
the Maricopa Mountain Domestic Water Improvement District

or equipment of the Company. As a result, there will be no need to purchase any assets from Mr. Lee or Hacienda Acres.

22. Ultimately, the District's ability to extend service to the Company's service area is contingent on a grant and loan issued by the United States Department of Agriculture.
23. The District has the legal authority to provide potable water service, within or without the boundaries of the District. The public interest will be served by the District extending service to the current customers of Hacienda Acres.
24. Having lost its CC&N, Hacienda Acres has no basis to prevent another service provider approved by the Commission or the District from providing service to the current customers of Hacienda Acres. Hacienda Acres is not currently providing adequate public utility service.

F. Most of the landowners previously served by Hacienda Acres petitioned for inclusion within the District, and the petition was approved by the District Board of Directors.

G. The District is continuing to work on obtaining a grant or loan to fund the extension of its physical, piped water system to the Hacienda Service Area. Until the physical infrastructure is constructed, the District is willing to provide hauled water to the Hacienda Service Area.

H. Santa Cruz and the District now desire to enter into this Agreement to govern the District's assumption of service to the Hacienda Service Area and the termination of Santa Cruz's activities as interim manager.

Agreement

1. **Incorporation of recitals.** The above recitals are incorporated into this Agreement.
2. **Commencement of Water Service.** On November 7, 2014 ("District Takeover Date"), the District will commence hauling water to the Hacienda Service Area, operating the existing water system as required to provide pressurized service, billing customers in the

Agreement between Global Water – Santa Cruz Water Company and
the Maricopa Mountain Domestic Water Improvement District

Hacienda Service Area, and undertaking all other activities involved in providing domestic water service to the Hacienda Acres Service. On the District Takeover Date, all of Santa Cruz's obligations as interim manager will cease and Santa Cruz's authority as interim manager will terminate.

3. **Responsibility for water service.** From and after the District Takeover Date, the District will assume all operational responsibility for providing water service to the Hacienda Service Area, and the District will indemnify and hold harmless Santa Cruz, its affiliates, and their officers, agents, employees, and contractors for any and all claims, liability, loss or damage they may suffer as a result of any claims, demands, costs or judgments against any of them arising out of or related to the Hacienda Service Area or the provision of water service therein, arising from or after the District Takeover Date. Santa Cruz will indemnify and hold harmless the District, its affiliates, and their officers, agents, employees, and contractors for any and all claims, liability, loss or damage they may suffer as a result of any claims, demands, costs or judgments against any of them arising out of or related to the Hacienda Service Area or the provision of water service therein, arising prior to the District Takeover Date.

4. **Transfer of water hauling truck; option to repurchase.** Santa Cruz uses a water hauling truck ("Truck") to haul water to the Hacienda Service Area. Santa Cruz agrees to transfer title to the Truck to the District on or before the District Takeover Date for the purchase price of one dollar (\$1). The District grants Santa Cruz the exclusive right of repurchasing the Truck for one dollar (\$1), which right may only be exercised after the earlier of: (1) the District completing the extension of its physical, piped water system to the Hacienda Service Area; or (2) the second anniversary of the District Takeover Date. If the completion of the extension of the physical, piped water system to the Hacienda Service Area is not complete by the second

anniversary of the District takeover date, Santa Cruz is willing to amend paragraph #4 of this agreement in good faith to allow for a maximum of one additional year of use of the Truck. Such an extension may occur only if the District demonstrates to Santa Cruz that the District has funding for the pipeline project and an approved consent order extension from the ADEQ to allow for this agreement to be extended for a third year. The District will provide notice to Santa Cruz upon completing the extension of its physical, piped water system to the Hacienda Service Area. The sale and transfer of title to the District, and any repurchasing of the Truck by Santa Cruz, will be strictly on a "AS IS" basis, without any warranties.

5. **Bottled Water Reimbursement.** Because the Hacienda System is not capable of providing potable water, Santa Cruz currently provides bottled water to each customer of Hacienda in the Hacienda Service Area. That service will cease upon the District Takeover Date. However, Santa Cruz will continue to pay any uncovered costs pertaining to the bottled water service to each customer of the District in the Hacienda Service Area. Such costs shall be billed monthly to Santa Cruz by the District, and should remain similar or less than historical costs. Santa Cruz will discontinue reimbursing the District for the bottled water service upon the earlier of: (1) the date the District establishes new rates or a new rate schedule that includes the cost of providing bottled water service to the Hacienda Service Area; (2) the extension of the District's physical, piped water system to the Hacienda Service Area; or (3) the second year anniversary of the District Takeover Date; (4) the completion of a potable water kiosk for customers to fill five gallon bottles, to be completed by Santa Cruz at Santa Cruz's discretion to complete. If the completion of the extension of the physical, piped water system to the Hacienda Service Area is not complete by the second anniversary of the District takeover date, Santa Cruz is willing to amend paragraph #5 of this agreement in good faith to allow for a maximum of one

additional year of reimbursements. Such an extension may occur only if the District demonstrates to Santa Cruz that the District has funding for the pipeline project and an approved consent order extension from the ADEQ to allow for this agreement to be extended for a third year.

6. **Nitrate Sampling.** The District is being required by ADEQ through a consent order to test nitrate levels at well #4 on a monthly basis. Santa Cruz will reimburse the District for the cost of one monthly nitrate sample associated with well #4. Santa Cruz will discontinue reimbursing the District for nitrate sampling costs associated with well #4 upon the earlier of: (1) the extension of the District's physical, piped water system to the Hacienda Service Area; or (2) the second year anniversary of the District Takeover Date. If the completion of the extension of the physical, piped water system to the Hacienda Service Area is not complete by the second anniversary of the District takeover date, Santa Cruz is willing to amend article #6 of this agreement in good faith to allow for a maximum of one additional year of reimbursement. Such an extension may occur only if the District demonstrates to Santa Cruz that the District has funding for the pipeline project and an approved consent order extension from the ADEQ to allow for this agreement to be extended for a third year.

7. **Certain assets and rights.** As interim manager of the Hacienda System, Santa Cruz has no title to any of the assets of Hacienda, and this Agreement does not purport to transfer title to any such property or assets. However, to the extent Santa Cruz has any title or interest in the improvements it constructed during its time as interim manager, which are set forth in Attachment 1, Santa Cruz quit claims any such interest to the District.

8. **Full Capacity and Authority.** The Parties represent and warrant that: (i) the person(s) signing this Agreement have full authority and representative capacity to execute this

Agreement on behalf of themselves and all other persons, estates, corporations, or entities for whom they purport to act as stated herein; and (ii) this Agreement has been duly executed and delivered and constitutes the valid and binding obligations of the Party signing such Agreement.

9. **Integrated Agreement.** This Agreement contains the entire agreement and understanding among the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions and understandings regarding such matters. The Parties acknowledge and represent that they have not relied on any promise, inducement, representation, or other statement made in connection with this Agreement that is not expressly contained herein. The terms of this Agreement are contractual and not a mere recital.

10. **No Oral Modification.** This Agreement cannot be altered, amended or modified in any respect, except by a writing duly executed by the Parties.

11. **Joint Drafting.** This Agreement shall be construed without regard to the Party or Parties responsible for its preparation, and shall be deemed to have been prepared collectively by the Parties. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any Party hereto on the basis that a Party prepared or drafted a particular provision of this Agreement.

12. **Headings.** The headings of sections of this Agreement are solely for the convenience of the Parties and are not part of this Agreement. The headings may not be sued for the interpretation or determination of the validity of this Agreement or any section or provision of this Agreement.

13. **Choice of Law.** The law of the State of Arizona (without regard to its conflict of laws provisions) shall govern the interpretation and enforcement of this Agreement.

14. **Severability of Parts.** If any portion, provision, or part of this Agreement is held, determined or adjudicated by any court of competent jurisdiction to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions or parts of this Agreement, and such determination or adjudication shall not affect the validity or enforceability of the remaining portions, provisions or parts.

15. **Notice.** Any notice made under this Agreement shall be sent as follows:

To the District:

Maricopa Mountain Domestic Water Improvement District
Attention: Nancy Criswell
727 North Amarillo Valley Road
Maricopa, AZ 85139

with a copy to:

Steve Wene, Esq.
Moyes Sellers & Hendricks Ltd
1850 N Central Ave Ste 1100
Phoenix, AZ 85004-4527

To Santa Cruz:

Global Water – Santa Cruz Water Company
Attention: Ron Fleming, President
21410 North 19th Avenue, Suite 201
Phoenix, AZ 85027

with a copy to:

Timothy J. Sabo, Esq.
Roshka, DeWulf, & Patten, PLC
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, AZ 85004

16. **Cooperation of Parties.** The Parties agree to cooperate to accomplish the purpose of this Agreement and to execute any and all supplementary documents and to take all additional actions not inconsistent with the terms set forth in this Agreement that are necessary and appropriate to give full force and effect to the terms and intent of this Agreement.

17. **Advice of Counsel.** The Parties have been fully advised by their respective counsel regarding this Agreement and having been so advised, freely and voluntarily sign this Agreement.

18. **Execution by Counterpart.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and any counterpart will have the same effect as if all Parties had executed the same counterparts. Facsimile and e-mailed signatures will have the same force and effect as original signatures.

19. **Each party to bear their own costs and fees.** Each Party shall bear that Party's own costs and attorney's fees regarding the negotiation, execution and performance of this Agreement.

20. **Relationship of the Parties.** Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any other association between the District and Santa Cruz.

21. **Time of Essence.** Time is of the essence for all purposes of this Agreement.

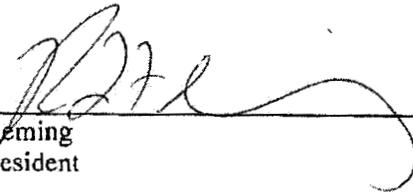
22. **Conflict of Interest.** This Agreement is subject to the conflict of interest provisions set forth in A.R.S. § 38-511.

23. **Immigration Compliance.** The parties warrant and represent they are in compliance with the Federal Immigration and Nationality Act and A.R.S. §§ 41-4401 and 23-214.

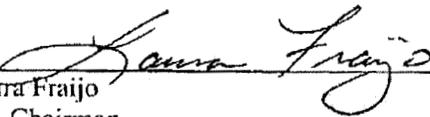
[Signatures on the next page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

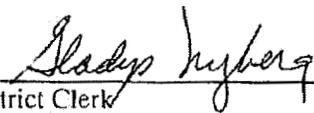
GLOBAL WATER – SANTA CRUZ WATER COMPANY,
an Arizona corporation

By: 
Ron Fleming
Its: President

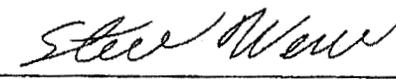
MARICOPA MOUNTAIN DOMESTIC WATER IMPROVEMENT DISTRICT,
a political subdivision of the State of Arizona

By: 
Laura Fraijo
Its: Chairman

Attest:

By: 
District Clerk

Approved as to form:

By: 
Legal Counsel to the District