

ORIGINAL OPEN MEETING ITEM



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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION
DOCKET CONTROL

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DATE: JULY 25, 2016
DOCKET NOS.: W-03994A-16-0025
SW-20769A-16-0026

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

WICKENBURG RANCH WATER, LLC. AND WICKENBURG RANCH
WASTEWATER, LLC.
(SALE OF ASSETS/CANCELLATION OF CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 3, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 9, 2016 AND AUGUST 10, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI A. JERICHI
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED
JUL 25 2016

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 DOUG LITTLE – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION OF
9 WICKENBURG RANCH WATER, LLC, AN
10 ARIZONA LIMITED LIABILITY COMPANY, FOR
11 APPROVAL OF THE SALE OF ASSETS AND FOR
12 CANCELLATION OF THE CERTIFICATE OF
13 CONVENIENCE AND NECESSITY

DOCKET NO. W-03994A-16-0025

14 IN THE MATTER OF THE APPLICATION OF
15 WICKENBURG RANCH WASTEWATER, LLC, AN
16 ARIZONA LIMITED LIABILITY COMPANY, FOR
17 APPROVAL OF THE SALE OF ASSETS AND FOR
18 CANCELLATION OF THE CERTIFICATE OF
19 CONVENIENCE AND NECESSITY

DOCKET NO. SW-20769A-16-0026

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: June 23, 2016
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
17 APPEARANCES: Mr. Steve Wene, Moyes Sellers & Hendricks, LTD, on
18 behalf of Wickenburg Ranch Water, LLC and
19 Wickenburg Ranch Wastewater, LLC;
20 Mr. William P. Sullivan, Law Offices of William P.
21 Sullivan, P.L.L.C., on behalf of the Town of Wickenburg;
22 and
23 Mr. Matthew Laudone, Staff Attorney, Legal Division,
24 on behalf of the Utilities Division of the Arizona
25 Corporation Commission.

26 **BY THE COMMISSION:**

27 Pursuant to authority granted by the Arizona Corporation Commission (“Commission”),
28 Wickenburg Ranch Water, LLC (“WRW”) and Wickenburg Ranch Wastewater, LLC (“WRWW”) were each granted a Certificate of Convenience and Necessity (“Certificate”) to provide public water and wastewater service, respectively, in Yavapai County, in the vicinity of the Town of Wickenburg,

1 Arizona ("Town").¹

2 On January 25, 2016, WRW and WRWW ("Applicants") each filed an Application requesting
3 approval from the Commission for the sale of their assets and cancellation of their respective
4 Certificates.

5 On February 3, 2016, the Commission's Utilities Division ("Staff") filed a Motion to
6 Consolidate the above-captioned proceedings pursuant to Arizona Administrative Code ("A.A.C.")
7 R14-3-109(H) because of interrelated issues in both proceedings and because the parties would not be
8 prejudiced by consolidation.

9 On February 8, 2016, counsel for the Applicants filed a response stating their agreement with
10 Staff's Motion.

11 On February 9, 2016, by Procedural Order, the above-captioned proceedings were consolidated.

12 On February 24, 2016, Staff issued a Letter of Insufficiency, which was subsequently amended
13 on February 25, 2016, which notified WRW and WRWW that Staff needed additional information to
14 determine sufficiency requirements and included a list of information that was required.

15 On March 24, 2016, WRW and WRWW filed an Affidavit of Mailing stating that notice of
16 their Applications had been mailed to their customers on March 17, 2016.

17 Additionally, on March 24, 2016, WRW and WRWW filed a Response to Staff's Insufficiency
18 Letter, and included several attachments.

19 On April 20, 2016, WRW and WRWW filed a Notice of Publication showing that notice of the
20 Applications had been published in the *Wickenburg Sun* on April 6, 2016.

21 On April 21, 2016, Staff issued a Sufficiency Letter stating that Staff had determined that
22 WRW's and WRWW's Applications, with the additional documents filed on March 24, 2016, met the
23 minimum sufficiency requirements of the A.A.C.

24 On April 25, 2016, by Procedural Order, a hearing was scheduled for June 23, 2016.

25 On May 19, 2016, Staff filed its Staff Report and recommended approval of the Applications.
26 Additionally, the Town filed a Motion to Intervene in the proceeding. There were no objections filed
27

28 ¹ See Decision No. 64252 (December 4, 2001) for WRW and Decision No. 72488 (July 25, 2011) for WRWW.

1 to the Town’s Motion.

2 On May 31, 2016, by Procedural Order, the Town was granted intervention.

3 On June 23, 2016, a full public hearing was convened before a duly authorized Administrative
4 Law Judge of the Commission at its offices in Phoenix, Arizona. WRW and WRWW, the Town and
5 Staff were present with counsel. At the conclusion of the proceeding, the matter was taken under
6 advisement pending submission of a Recommended Opinion and Order to the Commission.

7 * * * * *

8 Having considered the entire record herein and being fully advised in the premises, the
9 Commission finds, concludes, and orders that:

10 **FINDINGS OF FACT**

11 1. Pursuant to authority granted by the Commission, WRW and WRWW provide public
12 water utility service and public wastewater utility service, respectively, in the vicinity of the Town in
13 Yavapai County, Arizona pursuant to Decision Nos. 64252 and 72488.

14 2. According to the Staff Report, WRW and WRWW provide public water and wastewater
15 utility service to approximately 110 customers in a master-planned development known as Wickenburg
16 Ranch that is located in Yavapai County approximately five miles north of the Town, which is located
17 in Maricopa County.

18 3. On January 25, 2016, WRW and WRWW each filed an Application requesting approval
19 from the Commission for the sale of their assets to the Town and for the cancellation of their respective
20 Certificates. The proceedings were subsequently consolidated pursuant to A.A.C. R14-3-107 (H) for
21 purposes of hearing.

22 4. On February 5, 2014, the developers of Wickenburg Ranch, the Applicants, and the
23 Town entered into a Pre-Annexation and Development Agreement (“PADA”) in order to facilitate the
24 annexation, comprehensive planning, zoning designation and development of the Wickenburg Ranch
25 development.

26 5. On March 24, 2016, WRW and WRWW filed an Affidavit of Mailing stating that notice
27 of their Applications had been mailed to their customers on March 17, 2016.

28 6. On April 20, 2016, WRW and WRWW filed Notice of Publication showing that notice

1 of the Applications had been published in the *Wickenburg Sun* on April 6, 2016.

2 7. On April 21, 2016, Staff issued a Sufficiency Letter which stated that Staff had
3 determined that WRW's and WRWW's Applications met the minimum sufficiency requirements of
4 the A.A.C.

5 8. On May 19, 2016, the Town filed a Motion to Intervene in the proceeding that was
6 subsequently granted.

7 9. On May 19, 2016, Staff filed its Report which recommended approval of the
8 Applications of WRW and WRWW for the sale of their assets and cancellation of their respective
9 Certificates.

10 10. Mr. Thomas Warley, the Director of Land Development for the developers of
11 Wickenburg Ranch, testified in support of the Applications for WRW and WRWW.

12 11. Mr. Warley, described Wickenburg Ranch as a 160-acre master planned community.
13 (Tr.7:7-12)

14 12. According to Mr. Warley, he has been involved in all stages of the development of the
15 property, including working with the Town in regards to the operating agreements. He also acts as the
16 manager of the utilities. (Id. at 7)

17 13. Mr. Warley stated that there are currently 113 customers, of which 53 are owner-
18 occupied homes, and the remainder represent homes being constructed on properties where meters have
19 been set. (Id. at 9)

20 14. Mr. Warley stated that WRW and WRWW are in agreement with Staff's
21 recommendations. (Id. at 10)

22 15. Mr. Warley stated that the certificated service areas of WRW and WRWW were
23 annexed by the Town in April 2014. (Id. at 10)

24 16. According to Mr. Warley, when the assets of the two utility companies are transferred
25 to the Town, no money will be transferred. The owners of the development will be compensated by
26 either connection fees which are subsequently collected from future property owners, or they will be
27 compensated through the formation of a community facilities district which would be formed by the
28 Town to fund the acquisition of WRW's and WRWW's assets. (Id. at 11)

1 17. Mr. Warley further testified that, at full build out, it is anticipated that there will be 3,129
2 single-family residential units constructed in Wickenburg Ranch. (Id. at 11)

3 18. According to Mr. Warley, the Town is currently operating the water and wastewater
4 facilities for the developers including collecting deposits and payments for service from homeowners.

5 19. Upon the transfer of the assets of the utilities, revised rate structures from the Town
6 provide that rates will actually be reduced for homeowners in the subdivision. Present estimates for the
7 build out of the Wickenburg Ranch development are estimated between 12 to 18 years.

8 20. Mr. Warley estimated that the total cost for the construction of water and wastewater
9 facilities will be approximately \$18,000,000. (Id. at 14)

10 21. According to Mr. Warley, both the water and wastewater systems are compliant with
11 ADEQ regulations and also are compliant with the regulations of the Commission. (Id. at 14)

12 22. Mr. Warley, believes that it would be in the best interest of the customers for the Town
13 to take over the utility systems of WRW and WRWW. (Id. at 16)

14 23. Mr. Warley estimates that, upon the Commission's approval of the Applications by
15 WRW and WRWW, the actual transfer of the assets will occur within 90 to 120 days after the
16 Commission's action. (Id. at 16)

17 24. Mr. Warley indicated that the documentation of the transaction between the Applicants
18 and the Town would be filed within 30 days from the date of the conclusion of the transaction. (Id. at
19 19)

20 25. Although Staff was unable to locate any documentation from the Arizona Department
21 of Water Resources ("ADWR") that WRW has a designation of adequate water supply, the
22 representative for WRW agreed to late-file documentation from ADWR that WRW has a designation
23 of adequate water supply.²

24 26. Del Smith, the Chief of the Engineering Section for Staff, testified that the Town has
25 the technical capacity to operate the water and wastewater utilities which it is to acquire from WRW
26 and WRWW. (Id. at 25)

27 _____
28 ² On June 24, 2016, WRW filed documentation from ADWR that establishes that WRW has a designation of adequate
water supply. (Ex. S-4)

1 27. Mr. Smith stated that although ADWR had no record for the WRW system, he believed
2 that it was merely a paperwork problem. (Id. at 26)³

3 28. Ms. Blessing Chukwu reviewed the Applications by WRW and WRWW on behalf of
4 Staff and prepared the Staff Report which recommends their approval by the Commission. (Id. at 28-
5 29)

6 29. According to Ms. Chukwu, the Town is a fit and proper entity to receive the assets of
7 WRW and WRWW. Ms. Chukwu further stated that Staff believes that the Town has the financial and
8 managerial capability to operate the systems and that the transfer of the assets to the Town would be in
9 the public interest. (Id. at 29-30)

10 30. Ms. Chukwu stated that from January 1, 2013 through May 2016, the Commission has
11 not received any complaints or opinions with respect to either the water utility or the wastewater
12 utility.(Id. at 31)

13 31. Ms. Chukwu further stated that WRW and WRWW are in good standing with the
14 Commission. (Id. at 31)

15 32. According to the Staff Report, customers of the utilities will not experience any adverse
16 impacts, and the consolidation of their systems with the Town's "will eliminate customer confusion
17 that is caused by having multiple utility providers and provide economies of scale."

18 33. Staff is recommending approval of the Applications by WRW and WRWW herein
19 subject to the following:

- 20 • that the Commission approve the Applications by WRW and WRWW for the sale of
21 their assets to the Town and for the cancellation of their Certificates;
- 22 • that the Applicants be authorized to engage in any transactions and to execute or cause
23 to be executed any documents necessary to effectuate the authorizations requested with
24 the Applications, including authorizations to waive or, where necessary, refund to
25 customers transferred to the Town, security deposits, disconnection fees or a new
26 connection/establishment fee charged in association with the transfers; and

27 _____
28 ³ As stated above, Exhibit A-4, which was filed after the hearing by WRW, indicated that the water utility has a designation of having an adequate water supply.

- 1 • that the Applicants be required to file all pertinent documents evidencing the
2 consummation of this transaction, no later than 30 days from the effective date of the
3 transaction.

4 34. Based on the evidence, we believe that the Applications by WRW and WRWW for
5 authority to sell and transfer their water and wastewater utility assets to the Town, and to cancel their
6 Certificates, are in the public interest and should be approved, subject to compliance with Staff's
7 recommendations as described hereinabove.

8 **CONCLUSIONS OF LAW**

9 1. WRW and WRWW are public service corporations within the meaning of Article XV
10 of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

11 2. The Commission has jurisdiction over WRW and WRWW and of the subject matter of
12 the Applications.

13 3. Notice of the Applications was provided in the manner required by law.

14 4. There is a continuing need for water utility service and wastewater utility service in the
15 certificated areas of WRW and WRWW.

16 5. The Town is a fit and proper entity that is ready, willing and able to assume the
17 responsibility of providing public water and wastewater utility service within the Applicants' presently
18 certificated service areas.

19 6. Staff's recommendations as described above are reasonable and should be adopted.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the Applications of Wickenburg Ranch Water, LLC, and
22 Wickenburg Ranch Wastewater, LLC, for approval to sell their assets to the Town of Wickenburg and
23 to cancel their Certificates and Convenience and Necessity are hereby approved, and that the
24 Certificates' cancellation will be effective upon the closing of the sale and transfer of assets to the
25 Town of Wickenburg.

26 IT IS FURTHER ORDERED that Wickenburg Ranch Water, LLC, and Wickenburg Ranch
27 Wastewater, LLC, shall file, within 30 days of the completion of the sale, with the Commission's
28 Docket Control, as a compliance item in this docket, documentation of the completion of the sale of

1 the assets of the utilities to the Town of Wickenburg.

2 IT IS FURTHER ORDERED that Wickenburg Ranch Water, LLC, and Wickenburg Ranch
3 Wastewater, LLC, are hereby authorized to engage in any transaction and to execute or cause to be
4 executed any documents necessary to effectuate the authorizations requested by the Applications,
5 including authorization to waive or, where necessary, refund to customers transferred to the Town of
6 Wickenburg, security deposits, disconnection fees or a new connection/establishment fee charged in
7 association with the transfer.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10
11
12 CHAIRMAN LITTLE

COMMISSIONER STUMP

13
14 COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

15
16 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive
17 Director of the Arizona Corporation Commission, have hereunto
18 set my hand and caused the official seal of the Commission to be
19 affixed at the Capitol, in the City of Phoenix, this
20 _____ day of _____ 2016.

21 JODI A. JERICH
22 EXECUTIVE DIRECTOR

23 DISSENT _____

24
25 DISSENT _____
MS:aw

26
27
28

1 SERVICE LIST FOR: WICKENBURG RANCH, LLC and WICKENBURG RANCH WASTEWATER, LLC

2 DOCKET NO.: W-03994A-16-0025 AND SW-20769A-16-0026

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