

A Conflict between Golf Course and Residential Water Supply at the Talking Rock Ranch Subdivision

A 2-Year, Still Unresolved Fight Over Water And Its Cost

by

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- In June 2007, the ICR Water Users Association, a water company that serves Inscription Canyon Ranch, Whispering Canyon, Preserve at the Ranch, and Talking Rock Ranch (TRR) sub-divisions and the TRR golf course filed for a rate increase with the Arizona Corporation Commission. The rate request morphed into issues that included questions about:
 - Whether the water company or Talking Rock Golf Club, L.L.C. (TRGC), an Arizona limited liability company, would own and control the source of water for servicing the TRR sub-division and golf course.
 - Whether member-owners of the water company are subsidizing the golf course in terms of the company's charge for golf course water.
 - Whether the rate charged for water sent to the TRR golf course is subject to regulation by the Arizona Corporation Commission (ACC).
- These issues are among the main issues raised by a member-owner of the water company that was granted intervener status in the rate case in January 2008.

- Although an accord was reached between the intervener, the water company and TRGC in December 2008 that gives the ICR Water Users Association control and ownership of the water source and makes the golf course rate subject to ACC approval, the Administrative Law Judge hearing the case and the Commission have yet to rule.
- Both rulings are hoped for in the next several months.
- An interesting aspect of the rate case is that, although ICR Water Users Association is asking to increase its rates for residential service, no one has objected to this.

Some Background

1995

- The ICR Water Users Association, a member-owned, not-for-profit, water corporation is formed to service the Inscription Canyon Ranch sub-division.

2001

- The water company, in concurrence with Harvard Simon I, L.L.C. (Harvard), developer of TRR, petitions the ACC to extend its service area to include the Talking Rock sub-division.
- Harvard and the water company sign a Main Extension Agreement that the ACC approves in 2003. The agreement sets the conditions whereby the water company will provide water utility service to TRR.
- The Main Extension Agreement also states that Harvard intends to construct a golf course and supply water to it. The Agreement requires the water company to provide water for irrigation of the golf course at Commission approved tariffs if, and when, Harvard request this service in writing.

2002

- ACC grants the water company's request to extend its service area with conditions that must be met within one year or the extension becomes null and void without further action by the Commission.
 - These conditions include a requirement for Harvard to transfer ownership of two wells to the water company, and,
 - a requirement for the water company to charge its existing rates to TRR customers.
- There seems to be an apparent assumption in the ACC decision that the TRR golf course has its own water supply independent of the sub-division.
- The water supply for both residential and golf course demand, however, comes from three wells; Harvard transfers ownership of one of the three wells to the water company in 2003 and ownership of a second well in 2008 per the Commission's mandate.
- Despite the statement in the Main Extension Agreement that Harvard will supply its own water to the golf course, with the transfer of well ownership, it also comes from company wells without a written request, and it must also come through infrastructure owned by the water company.

2003

- The water company, Harvard and TRGC sign an agreement that among other things
 - transfers ownership of two of the three wells in the TRR well field to the water company,
 - Establishes a method for determining the cost the golf course pays for water rather than Commission approved rates.
- This agreement, known as the Well Agreement, becomes a central feature in the rate case.

2007

- Demand at the TRR well field from June through mid-July requires pumping two of the three wells at the TRR well field nearly 24 hours per day and the third well as much as 15 hours per day. Demand slackens with the onset of the monsoon.
- Because this demand is mainly associated with the golf course and the residential demand will increase from about 130 homes in 2007 to about 1,600 homes at full build out of Talking Rock, a question is raised about the capacity of the well field to meet golf course and residential demand at or near full buildout of TRR during the pre-monsoon season.
- The water company files a rate request with the ACC in June.
- A three day test of the TRR well field is conducted in October to identify well field capacity.

2008

- January - at a scheduled Hearing for the rate case, a member-owner of the water company is granted intervener status based on a claim that the company and Harvard have failed to meet the requirements of the ACC decision that allowed the company to extend its service area into TRR.
- March - the Commission staff submits amended testimony stating that the water company failed to charge the Commission approved rate for water delivered to the golf course in the rate case test year (2006).

2008

- April 3 - TRGC asks for and is granted intervener status in the rate case.
- April 16 - at a Hearing held in Phoenix, the water company asks for a delay in the rate case to allow the company and TRGC time to negotiate an agreement that reportedly would address the compliance issues and other issues that have surfaced.
- September 12 - the water company, Harvard, TRGC, and Talking Rock Land L.L.C. (the latter three known as the Talking Rock Parties) docket a new agreement asking for ACC approval.
- November 14 - Commission staff and the member-owner intervener docket responses that are critical of the new agreement. Commission staff recommends that the Commission deny approval.

2008 continued

- December 1-3, Rate case hearing is held in Phoenix
- Dec 1 - the water company and the Talking Rock Parties docket a revised agreement for Commission approval prior to the hearing.
- Dec 2 – A meeting between the water company, the Talking Rock Parties, the member-owner intervener, and the Commission attorney resolves outstanding differences in the revised agreement.
- December 3 – the water company and Talking Rock Parties docket an amended revised agreement that incorporates terms that all parties agree to for Commission approval.

Rate Case Status

- Administrative Law Judge will write a recommendation for consideration by the Commission. No date scheduled for completion.
- Commission Hearing and Decision. No date scheduled for hearing.

ICR - Talking Rock Sub-divisions

- Originally planned as one sub-division (Inscription Canyon Ranch) on both sides of Williamson Valley Road.
- Instead of being completed as planned, the developer sells some of the property to Harvard that becomes Talking Rock Ranch sub-division and includes the TRR golf course. Most of this development is planned for the east side of Williamson Valley Road.
- The remaining 900 acres on the west side of Williamson Valley Road is the Inscription Canyon Ranch sub-division.



The Talking Rock Golf Course

- The golf course was approved by Yavapai County with the understanding that it would ultimately be irrigated with effluent, although ground water would be the initial source of water.
- Even so, the county approves Harvard's use of up to 400 acre-feet per year of ground water for irrigation of the golf course.



Management of ICR Water Users Association

- From its inception in 1995 until 2002 the water company was managed by a Board of Directors consisting of the developers of ICR.
- After this the company has been managed by a Board of Directors consisting of five members elected from the company's service area.
- In addition to providing water utility service to ICR and Talking Rock, ICR Water Users Association also provides water to Whispering Canyon and Preserve at the Ranch sub-divisions located immediately south of ICR.

The ICR Water Users Association obtains water from two separate well fields, the ICR and the TRR well fields.

- The ICR well field, serves ICR, Whispering Canyon, and Preserve at the Ranch sub-divisions.
- The well field is located west of Williamson Valley Road in the Mint Creek flood plain.
- It consist of two wells owned by ICR Water Users Association on land owned by the Aqua Meadows.

The ICR Well Field



TRR Well Field

- The TRR well field serves the TRR sub-division and golf course.
- The well field is located immediately east of Williamson Valley Road in the Mint Creek flood plain.
- It consists of three wells on land owned by TRGC.
- Two of the three wells are owned by ICR Water Users Association.
- The third well is owned by TRGC.



- ICR Water Users Association currently serves about 451 customers.
- The ICR Well Field presently serves about 280 customers:
 - 226 residential customers in ICR
 - 50 residential customers at Whispering Canyon, and
 - 2 residential customers at Preserve at the Ranch.
- The TRR Well Field presently serves about 171 customers:
 - 155 residential customers at TRR; TRR common areas, clubhouse, restaurant, swimming pool, tennis courts, a health and fitness center, and
 - The TRR golf course.



At full build-out

- The ICR Water Users Association will serve about 2,410 customers
- The ICR Well Field will serve about 794 residential customers
 - 356 residential customers at ICR
 - 400 residential customers at Whispering Canyon, and
 - 38 residential customers at Preserve at the Ranch.
- While the TRR Well Field will have to serve about 1600 residential customers as well as
 - common areas,
 - a ranch compound with a clubhouse, restaurant, swimming pool, tennis courts,
 - a health and fitness center, and
 - last, but not least, the golf course.

- The results of the October 2007 TRR well field test indicated that the well field can meet residential demand at Talking Rock throughout the year or golf course demand throughout the year, but it cannot meet both demands at all times of the year at or near full build-out of TRR.
- As discussed later, both the water company and Harvard undertake immediate steps to address the issue.

Requirements for the Extension of ICR Water Users Association CC&N to Include TRR

- In 2001 when the water company sought approval to include TRR in its service area it did not own a water supply for meeting the new demand created by the sub-division. Only one well existed in the TRR well field. This, well constructed in 2001, was owned by Harvard.
- By agreement with Aqua Meadows, water from the ICR well field cannot be used to service TRR.
- In the Hearings that resulted in the ACC's 2002 decision to approve the extension request, a representative of Harvard testified that Harvard had drilled two wells for the purpose of servicing Talking Rock.

Requirements for the Extension of ICR Water Users Association CC&N to Include TRR

- The representative further testified that the yield from one of the two wells was sufficient to meet golf course and residential demand and that the other well would serve as a backup.
- Given this testimony, the Commission's decision to allow the water company to extend its service area included a requirement for Harvard to transfer ownership of the wells it had drilled to ICR Water Users Association.
- The Commission's requirement for transfer of well ownership was to ensure that the water company had control and ownership of its own water supply for meeting the demand at Talking Rock and was not subject to relying for their water on a third party (Harvard) over which the Commission lacked jurisdiction.
- Failure on the part of Harvard and the water company to transfer ownership of the wells would render the Commission's decision null and void without further notice.

- As an additional condition in allowing the water company to include Talking Rock Ranch in its service area, the ACC required the company to charge its existing rates to all new customers within Talking Rock.
- Failure to do so would render the ACC decision null and void without further action by the ACC.
- As stated previously, the Main Extension agreement signed by Harvard and the water company in 2001 that was approved by the ACC also required the water company to provide water for irrigation of the golf course at Commission approved tariffs if, and when, Harvard requested this service in writing.

- In 2003 Harvard, TRGC, and the water company signed another agreement, commonly referred to as the Well Agreement. Among other things the agreement:
 - transferred ownership of two wells Harvard drilled several months after the ACC decision rather than the two wells Harvard's representative testified to.
 - Did not transfer ownership of the land the two wells are located on.
 - retaining ownership of the land allowed Harvard and subsequently TRGC to retain ownership and control of the water even though the water company owned the wells.
 - This allows Harvard to limit the amount of water that can be withdrawn for residential purposes from the transferred wells and allows Harvard to require that surplus water is used on the golf course.
 - According to test conducted by Harvard's hydrologic consultant in 2001 and 2002. the capacity of the three wells combined far exceeds the potential residential and golf course demand at TRR.
 - Establishes a method for determining the cost the golf course pays for water rather than Commission approved rates.

- In effect, by my calculations, this method resulted in TRGC paying about 18 percent of company expenses in the rate case year (2006) whereas the golf course used approximately 54 percent of the water pumped from company wells. Cost to TRGC per thousand gallons for water from wells owned by both parties was about \$0.97 whereas residential cost per thousand gallons was \$2.80.
- The method used in the Well Agreement for calculating golf course cost for water sent to it is not based on cost per thousand gallons, however, and could conceptually allow TRGC to pay nothing for water utility service to the golf course. This has never happen however.
- Many member-owners of the water company believe they are subsidizing the golf course. Others, as well as a CPA hired by the water company during the rate case, claim it is the other way around.
- The community within the water company's service area becomes bitterly divided over the issues raised by the intervener.

- The Well Agreement was submitted to the Commission but was never acted upon by them.
- Rather than pursuing the matter, the water company has abided by the agreement.
- The Commission's failure to respond to the well agreement apparently resulted from the fact that the water company sent it to the Commission as a document titled "ICR Water Users Association, Inc. Notice of Compliance" causing the Commission to accept and file it without further examination.
- The Failure of the Board of Directors to follow up seems to have resulted from a loss of corporate memory as new Directors replaced previous ones.

- On June 26, 2007, ICR Water Users Association filed an application with the Commission for an increase in its permanent rates and charges.
 - The requested increase is only for residential customers and the company is asking for an increase in rates that would raise the average customers charge by \$13.05 per month, an increase of approximately 35.24 percent.
 - The Commission is under the assumption that the golf course supplies it own water.
- On August 9, 2007, a Procedural Order was issued scheduling a hearing on January 8, 2008.

- At the January 2008 hearing a member-owner of the water company is granted intervention status claiming, among other things, that the company had failed to comply with some of the requirements imposed by the Commission's 2002 decision.
- Among the principal issues brought forward by the intervener are:
 - 1) That Harvard had failed to transfer ownership of the correct wells to ICR Water Users Association,
 - 2) That the combined yield of the TRR well field will not be able to meet both residential and golf course demand throughout the year at or near full build out of TRR,
 - 3) That residential demand lacks priority over the golf course,
 - 4) That the golf course receives water from the water company's well and that the rate the water company is charging TRGC is not the Commission approved tariff.
- The hearing is recessed to allow the Administrative Law Judge presiding over the Hearing and the Commission staff to evaluate the latter claim after which the member-owner is granted intervener status.

The water company's response to the intervener's claims is that the Well Agreement is a valid, legally binding document that

- transfers ownership of the correct wells to the water company, and
- establishes a legally binding methodology for establishing the cost TRGC pays for water.
- provides residential demand priority over golf course demand.

With regard to the first issue raised by the member-owner intervener, i.e., that Harvard had failed to transfer ownership of the correct wells to the water company, lawyers for the company argued that

- the Commission's 2002 decision did not require Harvard to transfer ownership of the two wells Harvard owned at the time of the decision, and
- that the transfer of ownership of the two wells drilled after the decision fulfills the Commission requirement with regard to this issue.

The Commission staff would ultimately agree with the position of the Company's lawyers.

- The member-owner intervener's second issue, that the TRR well field cannot meet residential and golf course demand throughout the year at or near full build out of TRR, is being successfully addressed by measures undertaken or planned by Harvard that include:
 - Reducing the demand of the golf course through turf reduction and other water saving measures at the golf course,
 - Construction of a 25 million gallon pond that will reduce the pre-monsoon ground water demand of the course to a point that the well field can meet all demands throughout the year, and
 - Construction of additional wells that will directly supply the golf course.
- Collectively, the first two measures combined with an increase in effluent as the four subdivisions are built out fully alleviate the problem while the third measure eliminates the issue altogether.

- With regard to the fourth issue raised by the intervener, i.e., that the rate that the water company is charging TRGC for water sent to the golf course is not the Commission approved tariff:
 - Commission staff filed amended testimony to the rate case on March 14, 2008 stating that the water company had failed to charge the Commission approved rate for water delivered to the golf course in the rate case test year (2006).
 - According to Staff, this failure resulted in lost income to the company during the rate case test year of \$114,290.
- If Staff's amended testimony is adopted by the Commission, the water company would have failed to charge TRGC the correct rate from 2003, when the company first began supplying water to the golf course to the present time, thereby resulting in a loss of several hundreds of thousands of dollars or more to the water company
- On April 3, 2008, slightly more than two weeks after the filing of Staff's amended testimony, TRGC asks for and is granted intervener status in the rate case on the basis that it has a direct and substantial interest in the proceeding.

- On April 16, 2008 the water company asked for a delay in the rate case to allow it and TRGC time to negotiate an agreement that reportably would address the compliance issues and other issues that have surfaced during the rate case.
- On September 12, 2008 the water company docketed an agreement between them and the Talking Rock Parties now know as the Water Services Agreement (WSA). Some of the major features of the WSA that would last for 35 years called for:
 - Transfer of ownership of the third well in the TRR well field to the water company;
 - Removal of all restrictions on the amount of water that the company can withdraw from the wells;
 - The water company to provide water for irrigation of the golf course from the well field.
 - A special rate of \$1.00 per thousand gallons for water sent to the golf course based on a cost of service analysis preformed by a consultant hired by the water company.
 - A system reservation charge beginning at \$50,000 for the first year declining to zero after the tenth year of the WSA.

The Water Services Agreement also:

- Gives residential demand priority over other demands.
- Continues TRGC's ownership of the land the wells in the TRR well field are located on, although the water company is granted a perpetual right to unlimited use of the wells
- Removes the Commission from its State mandated role of setting the rate the water company charged for water sent to the golf course over the 35 year life of the agreement after Commission approval of the initial rate, and process for setting the initial rate.
- Provides the Talking Rock Parties a principle role in setting it's own rate during the 35 year life of the agreement.
- Requires ACC approval to become effective.

In addition the Water Service Agreement requires:

- The water company to allow the Talking Rock Parties to connect additional wells and/or additional transmission facilities owned by the Talking Rock Parties to the TRR water system for delivery of water from the wells to the golf course provided that such use does not unreasonably interfere with the water company's operations.
- TRGC to pay the special rate of \$1.00 per thousand gallons for this water even though it comes from wells they own.
- The water company to accept financial responsibility for operating, testing, inspecting, repairing and maintaining the additional wells and transmission facilities even though the wells and facilities are owned by Talking Rock Parties and the primary use of the water is for the golf course.

- In return, the water company is granted the right to pump the additional well(s) and withdraw groundwater without any charge for the groundwater withdrawn, as long as such pumping does not interfere with the use of the additional wells by Talking Rock Parties .
- As seen by the member-owner intervener and myself, the above terms resulted in the water company accepting financial liability for operating, testing, inspecting, repairing and maintaining the additional wells and transmission facilities owned by Talking Rock Parties without knowledge of:
 - the cost associated with this commitment,
 - the actual yield of the additional wells, and
 - without a means to be fully reimbursed by Talking Rock Parties for incurring this unknown cost,
 - all in order to obtain potential, but restricted use of a water supply the TRR well field test indicates is not needed.

- On November 14, 2008 Commission staff and the member-owner intervener docket testimony concerning the Water Service Agreement.
- Major conclusions of the staff include:
 - The WSA leaves the Talking Rock Parties in control of water delivery to the golf course and what the water company can and cannot do in respect to this delivery and the Talking Rock Parties.
 - The WSA takes the Commission out of regulating the company as to conditions of service for the golf course and the charge for water sold to the Talking Rock Parties. This would not be in the public interest.
 - The WSA would only transfer the third well to the water company upon approval by the Commission. Staff believes the third well should be transferred to the water company since the golf course receives the majority of the water pumped from the well field.

- Major conclusions of the staff continued:
 - The WSA would only transfer the wells and not the land. Staff believes the land should be transferred and deeded to ICR.
 - Instead of the \$1.00 special rate recommended by the WSA, staff recommends an initial special rate for golf course water of \$1.40 per thousand gallons that is subject to future change by the ACC.
 - Staff believes that the WSA should be denied by the Commission.
- Many, if not all of the same points are made by the member-owner intervener.

- Although the water company provides a rebuttal on November 21 the position of the Commission staff does not change and on December 1, 2008, the morning of the Hearing, the water company and Talking Rock Parties docket a new agreement titled “First Amendment to the Water Services Agreement.”
- This agreement:
 - accepts ACC control over the rate the water company charges the golf course.
 - accepts staff’s recommendation of \$1.40 for the golf course.
 - deletes the System Reservation Charge.
 - deletes the requirement that the water company allow additional wells and transmission facilities to be connected to the water company’s infrastructure.
 - transfers the third well in the TRR well field to the water company.
 - TRGC still owns the land underlying the TRR well field but removes all restrictions on the amount of water the company can withdraw and waives its right to challenge this withdrawal.
 - priority for residential demand over other demands is maintained.
 - requires the water company to wait at least 5 years except before asking for another rate increase, except in the case of an emergency.
 - requires Commission acceptance of the special rate to be valid.

- On the afternoon of December 2, 2008 the hearing is temporarily recessed while the water company, the Talking Rock Parties, the member-owner, and the Commission's lawyer negotiate during which additional terms are agreed upon.
 - Among the new terms is a requirement that the Talking Rock Parties transfer ownership of the land the TRR wells are located on at no cost to the water company.
- This agreement, known as the Amended and Restated Water Service Agreement is docketed on the morning of December 3.
- The agreement is contingent on Commission approval of the special rate of \$1.40 per thousand gallons.

Assuming that the Commission approves the special rate of \$1.40 per thousand gallons for the golf course as specified in the “Amended and Restated Water Service Agreement” the remaining terms resolve the initial concerns of the member-owner intervener by:

- Transferring ownership of all three wells in the TRR well field and the land the wells are located on to ICR Water Users Association, thereby giving the water company ownership and control of the water source it needs to meet the demand of the TRR sub-division;
- Giving priority of water use to residential demand;
- Resolving the potential lack of water for both residential and golf course demand during the pre-monsoon period, and,
- Subjecting the rate the golf course pays for water to ACC regulation.

With regard to ICR Water Users Association request for a rate increase, the instrument that started all this:

- The water company's initial proposed rate increase
 - would have raised the average residential bill by approximately 35 percent.
 - there was no request for a rate increase for the golf course since this charge was controlled by the Well Agreement.
 - Under the Well Agreement TRGC's 2006 cost was about \$0.97 per thousand gallons.
- The rate schedule currently proposed by Commission staff
 - increases the average residential bill by 17.55 percent.
 - includes a special rate for the golf course of \$1.40 per thousand gallons, an increase of about 44 percent.

Rate Case Status

- Administrative Law Judge will write a recommendation for consideration by the Commission. No date scheduled for completion.
- Commission Hearing and Decision. No date scheduled for hearing.