

## ACC Open Hearing, 28 April, 2009

Chairman Mayes (CM): We'll move on to ICR Water Users' Association. Could we have Mr. Taylor, Mr. Shapiro, and Mr. Crockett sitting at counsel's table, please? And we will start with Judge Harpin.

Judge Harpin (JH): Good morning, Madam Chairman, Commissioners, this is Sarah Harpin for the hearing division. This case has a somewhat lengthy and convoluted history, but ultimately, it is a rate making case for ICR Water Users Association, Inc., ICR, which staff has classified as a Class C water utility. ICR's current rates were established in 1995, in the same decision in which it received its CC&N, and it used 2006 test year. ICR is an Arizona member owned, non-profit corporation, authorized to provide service in portions of Yavapai County near Prescott. ICR provides service through two completely independent water systems identified as the Inscription Canyon Ranch System, referred to as the ICR System and the Talking Rock system, referred to as the TR System. The two systems serve customers in subdivisions located on two different sides of Williamson Valley Road, with the ICR system currently serving approximately 280 primarily residential customers in three subdivisions, and the TR system currently serving approximately 170 primarily residential customers and an 18 hole golf course in a subdivision known as Talking Rock Ranch, which was referred to as TR Ranch in the ROO. The golf course is owned and operated by Talking Rock Golf Club, LLC, which is referred to as "TRGC," and ICR and TRGC do not consider the golf course to be a customer of ICR at this time, as it only receives wheeling services rather than water utility services. The case has two interveners, Mr. Dayne Taylor, who is a customer served by the ICR system and who serves on the Board for the ICR Sanitary District, and the other is TRGC. As a result of Mr. Taylor's involvement in this case, it was determined by staff that ICR was out of compliance with Decision No. 64360 from 2002, in which ICR's CC&N was expanded to include the area known as TR Ranch, and in which the Commission ordered ICR to have the developer for the area, Harvard Simon I, LLC, referred to as Harvard in the ROO, transfer to ICR the wells that Harvard had drilled to provide water to the area. ICR made a compliance filing in March 2003, in response to which ICR was marked as compliant in staff's compliance database. Staff determined in this matter, however, that ICR had not actually complied because only one well was initially transferred and transfer of the second well was impermissibly conditioned on providing service to the 800<sup>th</sup> metered customer in TR Ranch. During the pendency of this matter, a second well was transferred to ICR. However, the ROO finds that ICR is still not in compliance with the decision because the decision clearly required that Well No. 1 be transferred and that has not yet occurred. The ROO also finds that ICR charged a special hydrant rate that was not authorized by its tariff. Negotiations during the pendency of this matter resulted in three different agreements, the last of these, the Amended and Restated Water Services Agreement, referred to as the New Agreement in the ROO, was entered into by ICR and TRGC, Harvard, and TR Land, who are referred to collectively as "the TR entities." The New Agreement is supported by Mr. Taylor and staff. The ROO finds that a number of its provisions are in the public interest, although it also states that it would not be appropriate for the Commission to approve the New Agreement itself. Among the provisions that are in the public interest are requirements for Well No. 1 to be transferred to ICR, for the well field property which is approximately one acre on which Wells 1, 2, and 3 are located, to be transferred to ICR. For all utility infrastructure constructed TR Ranch and not already transferred to ICR, to be transferred to ICR, and for the TR entities to pay a tariff special commodity rate for the water received from ICR for golf course and construction purposes.

The rates and charges that ICR initially proposed in this case would have resulted in an increase of \$13.05 per month, or 35.24% for a residential customer served by a 5/8 X 3/4" meter, with average consumption of 7,085 gallons per month. The rates and charges recommended by staff and now supported by ICR and TRGC would increase this same average customer bill by \$6.50, or 17.55%, from \$37.04 to \$43.54, and would increase the monthly bill for a customer with median usage of 4,500 gallons by \$3.40, or 11.41%, from \$29.80 to \$33.20.

Staff and ICR have agreed on original cost rate base, fair value rate base, adjusted test year revenues, operating expenses, and proposed total operating revenue of \$445,855, resulting in operating income of \$49,044, which represents an operating margin of 11% and would provide an increase in revenues of \$53,905, or 13.75% over the adjusted test year revenues. Fair value rate base was not used. Well, it's negative, so no rate of return can be calculated. The ROO adopts staff's and ICR's proposed figures. The ROO also adopts staff's recommendations, including the recommended rates and charges and the recommendation for ICR to be required to have the well field property transferred to it. The ROO also requires that Well No. 1 and all of the utility infrastructure to serve TR Ranch and not already transferred to ICR be transferred by a date certain, and prohibits ICR from selling groundwater for the purpose of irrigating any future golf courses within the certificated area or any future ornamental lakes or water features located in the common areas of developments within the certificated area. It also requires ICR to insure that it charges only those rates and charges that are authorized in its Commission-approved tariffs.

Mr. Taylor has filed exceptions to the ROO. I have prepared a hearing division amendment in response to Mr. Taylor's exceptions, and Chairman Mayes has proposed three amendments.

CM: Thank you Judge. Do any of the parties or interveners have any statements to make about the Order, and then we'll go to staff.

Jeff Crockett (JC): Chairman Mayes, Jeff Crockett, appearing on behalf of ICR Water Users Association. No, we don't. We think the Administrative Law Judge has done an exceptionally good job at preparing a recommended Order on a case that's got a lot of history behind it and a lot of moving parts, so we support the Order.

CM: Mr. Shapiro, and then Mr. Taylor.

Jay Shapiro (JS): Thank you, good morning Commissioners. Jay Shapiro on behalf of the intervener, Talking Rock Golf Club, and I will simply echo Mr. Crockett's comments. It's a very thorough Order in a very difficult, complex case, and we support it.

CM: Mr. Taylor.

Dayne Taylor (DT): Dayne Taylor, intervener. One of the questions – I think I heard the Judge say that you had made three amendments to the Order.

JH: Commissioner Mayes has proposed three amendments, and the Hearing Division has proposed one.

CM: Mr. Taylor, have you not seen those yet?

DT: I've seen those late last night.

CM: Okay. You do have all of them?

DT: Yes, ma'am. I did write my response to the opinion of Order. There are things in that Order that I do have some problems with. I'm sorry.

CM: No, that's okay, and I read your exceptions, and I wrote at least one amendment based on them. I know one of your concerns – well, we'll come back to you. Does Staff have anything that it wants to add before we launch into questions? Okay. Mr. Taylor, let me preface this by saying that it has been a long case. I appreciate all the hard work on it by everyone. And, for me, this case actually, the

issues in this case pre-date the case itself. I can remember when I was first appointed to the Commission, not long after that, Mr. Taylor and others came to me to talk to me, frankly, about the golf course issue, and the water use. The use of what I believe to be an unconscionable and unacceptable amount of water on a golf course in Prescott. Right outside of Prescott, right outside of an AMA. Because of Mr. Taylor's decision to come down and talk to me and also get involved in this case, we now know exactly how much water, and that's in a table on Page 27 of this case. More than 100,000,000 gallons of ground water a year are being pumped and dumped onto a golf course outside of an AMA. Frankly, it all started with a decision by this Commission, not this Commission, but one in 1998 or 1999, I believe. Mr. Taylor, if I'm not mistaken, maybe before that.

DT: 1995.

CM: 1995, in which this Commission allowed a water company to be formed, this water company, but did not place any restrictions on use of the water from the water company and the groundwater, and that water started to be pumped onto the golf course without any restrictions, as I said. The prediction in the case – I went back and read the case, and I believe there is some language in that early case, 1995, that said, “Oh, Commission, don't worry about it. We're gonna build this puppy out and we're gonna have enough effluent to put on this golf course. Don't worry about it. Growth is going to happen in Prescott because growth always happens in Prescott.” Well, I'm from Prescott and yes, growth has happened in Prescott, but guess what. It didn't happen on the order that was predicted by the developer. So, we don't have enough effluent to put on the golf course and the result is we're putting, at one point, 137,000,000 gallons of groundwater onto this golf course. So, that was one of my major concerns in this case. It continues to be – I'm not sure how much we can do about it at this point except require the Company to engage in as much conservation as it can. I know the developer is doing some, taking some measures. But anyway, by way of preface to the case, I want to thank Mr. Taylor for his involvement. I want to thank the judges for their involvement in the case. It started with Judge Stern and Judge Harpin. Because of Mr. Taylor's involvement and then Judge Stern's questioning, we also learned that the Company apparently violated a Commission Order way back when the Company was ordered to transfer wells – at least one well – possibly more than one well. There's some dispute about that, so that apparently never occurred. The wells were not transferred by the developer to the Water Company. We also have this hydrant issue – another possible violation of a Commission Order or regulation. So, my question to the judges, the panel of judges that we have, is were Commission Orders violated and if they were, why don't we have an Order to Show Cause in front of us?

JH: Well, the ROO does find that Decision 64360 was violated. That it did require that two wells be transferred. One well was transferred relatively promptly thereafter. Another was planned to be transferred, but there was a condition on that transfer that had resulted in it not occurring yet because it had to do with build-out essentially, extension of service. Why do we not have an Order to Show Cause? It's a rate case. It came to us as a rate case. And staff has not filed for an Order to Show Cause as of this time. As for the hydrant rate issue, Judge Stern actually told the Company during the hearing that what they were doing was impermissible and that they needed to stop.

CM: Right, and I recall that. And certainly, I'll pose that question to the Company. I'm not sure whether the rates that are outlined in the case on Page 34 envision a hydrant tariff, so under the construction water provision – let me just get to the bottom of this, and maybe this is a question for the intervener for the parties and for the judges, but we believe that this Agreement is in the public interest because it ultimately keeps the golf course on the water system as a customer. I mean, there's a number of provisions in here that make it in the public interest in your eyes. One of those provisions is the golf course remains on the water system which keeps rates lower, but also ensures that they're not just pumping groundwater with impunity from some well that might drop and just water the golf

course, I assume. I mean, at least they are using effluent and we can monitor them, I guess, is the point.

JH: One of the benefits, certainly, is that the golf course becomes an acknowledged customer that will pay a tariff rate. The golf course's status as a customer – the revenue that's been received from ICR by the golf course has enabled ICR to have much lower rates for its residential users. The cost of service study did show that there is what you could call a subsidy to residential users as a result of the golf course's revenue, golf course generated revenue. Certainly, the transfer of Well No. 1 is in the public interest, as is the transfer of the well field property and of the infrastructure that has not been transferred that's serving the TR Ranch subdivision. There is also a cap on the golf course water and a commitment to maximize the use of effluent, so there are a number of aspects of the Agreement that are beneficial.

CM: Within the Agreement, there's an agreement to maximize the use of effluent?

JH: I believe – I don't remember exactly what it says, but I believe that it said that they will use all the effluent that's produced.

CM: Nevertheless, the Order points out that the Company was unable to tell the Commission when it believes it will have enough effluent to service the entire golf course.

JH: I don't believe – they don't know.

CM: So, by my estimation, this Company could have put more than a billion gallons of groundwater on that golf course by the year 2012 - - - did a back of the envelope calculation on an airplane ride to D.C. when I was reading this case - - - more than a billion gallons of Prescott groundwater on a golf course, correct?

JH: I suspect that you're right, yes.

CM: Okay, Commissioner Newman.

Commissioner Newman (CN): My first golf course case. I know that this is the Prescott area, Madam, and all the judges have been in on it for a long time. I don't intend to adding anything, but it is curious to me --- they must have an idea, the Company, when there will be water that they can use that's not coming out of the groundwater. It would seem to me that if --- one of the concerns of the case was the amount of water that was being pumped, but even the existence of the golf course for that matter, in it's current layout as --- I take it this is not a desert-like golf course. It must have a lot of grass. If you're doing that --- has anybody ever talked about, you know, re-designing the golf course to use less water? In Cochise County, we don't even allow golf courses anymore, and the existing golf courses have to be in sewage and have to change their map. You can have grass on greens, but it becomes --- I just want to know what we're doing as a Commission with these kinds of cases.

JH: I'll take a crack at that first, Chairman Mayes and Commissioner Newman. The ROO did find that per the golf course representative's testimony, they have eliminated ten acres of turf, but I think that probably, Mr. Shapiro would be a better source for additional information on that.

CN: Okay, I'd like to know a little bit more before I sign off on this - - on the specifics of mitigation. And also, I understand why you can't have an affirmative plan to go off of groundwater at a certain point in time. Prescott certainly is growing. You may have to get water from another place, to pump it there.

JS: Thank you, Madam Chairperson, Commissioner Newman. Let me answer your direct question first. We don't know when we'll have enough effluent because we don't know when growth is going to continue given the downturn in the economy, which has obviously affected the number of homes being sold in Talking Rock. Mr. Taylor, who is the generator of effluent with his sanitary district, I believe would echo the same thing. What I can tell you is the things that are being done. Number one, all the effluent that's generated now is being used by the golf course. Number two . . .

CN: And how much is that?

JS: I don't know if Mr. Taylor has that exact number or if my client does. I do not know the current gallons. Do you know, Mr. Taylor?

DT: Approximately 35,000 a day (inaudible)

CN: Okay. Thank you.

JS: And a new treatment plant is being built by the developer for the sanitary district and then, as indicated, I believe it's on Page 27, and as Judge Harpin said, there are a number of things that the golf course has already done to maximize groundwater conservation, and I'd be happy to have Mr. Krumwiede, who is a representative for the developer and golf course owner, speak to some of those specifics, if you would like.

CN: Yeah, I would.

JS: Okay.

CN: Like I said, I'm not here to overcome the Order. I just want for purpose of the record to understand what kind of mitigation is going on here because that is an awful lot of water in a very needy water place, Yavapai County.

Craig Krumwiede (CK): I'm Craig Krumwiede. I'm with the developer. As the Order noted, I'm the head wrangler. What we've done is, first of all, in the '95 case that you talked about, we weren't involved in the property at that time. That was somebody else. So we bought the property and developed it. We developed the golf course with AMA Guidelines in mind and that was part of our County zoning course case, so we started out with approximately the same amount of turf that would be allowed in an AMA. We've recently cut that by about ten acres, which is a little more than 10%, and we've had good effects to that. Throughout the development, we've really tried to keep water usage in mind, and then I'll circle back to golf, but we have design guidelines that limit the amount of - - - you have to keep your natural area outside of your building envelope. It's very specific - - - outside of that's natural. We have design guidelines that limit the kinds of plantings that you can make to keep low water use. In the clubhouse, we've done lots to use all the water flow fixtures, we have hot water re-circulation, we have guidelines that help us use how we wash the equipment. I'm just looking down my list here. The golf course was the first course in Arizona that was built using the concepts from the sustainable strategies for golf and environmental principles for golf. We recently switched to a new type of sprinkler head that reduces water usage. We're constantly looking at ways to reduce the water usage. It's in our best interests to do so. We're very focused on this. It's been made very clear to me what you guys want us to do and we're doing it. We're continuing to look at new ideas and new strategies.

CN: Thank you.

CM: Commissioner Stump?

Commissioner Stump: Thank you, Madam Chair. Mr. Krumwiede, I had read that a new storage pond is being built to store effluent and there was a May 1 completion date. Is that still on tap and on target?

CK: We're waiting to get this all done. We have the plans all done. We will have it built by this winter to fill it when the low water usage \_\_\_\_\_.

Commissioner Stump: And you have an irrigation system that's computerized and, perhaps for the sake of the new Commissioners, are these in widespread use in Arizona or is that something that is specific to your . . .

CK: Not to my knowledge, and that's a good point. I'm trying to read the list here. It's in paragraph form and I'm not very good at it, but every sprinkler head can be adjusted from our base computer. We have a weather station that guides us in how much water to put out. We actually use less water than the weather station guides us to. And then each head can be adjusted for where to spray and how to spray and the head greenskeeper does that from his office and out in the field. It's not common in Arizona.

Commissioner Stump: And was that put in place due to your enormous use of groundwater?

CK: It was just how we designed the course to be efficient from day one.

CM: Thank you, Commissioner. Mr. Krumwiede, first of all, is your light on there?

CK: The green light?

CM: There you go. Can you give us the groundwater usage for the golf course in 2008?

CK: The groundwater usage was 95 million gallons.

CM: In 2008?

CK: I believe so, yes. You asked me for 2009?

CM: No, the footnote on this says data shown are for January 1 through October 31.

CK: We typically use very little water in November and December, but I don't have that data in front of me.

CM: Is it going to be significantly less than 138 million?

CK: Oh, yes.

CM: Is it going to be significantly less than 125 million?

CK: Yes.

CM: I'm trying to get a sense of whether you are decreasing your usage.

CK: We definitely are and we're on track this year, ahead of last year, and we would have used very little water in November and December. Very little is required in those months.

CM: Okay. And do you have any idea at this stage when you will be off groundwater?

CK: No. It depends on how fast homes get built, Commissioner.

CM: And what's happening right now in terms of sales?

CK: In Talking Rock, we've sold a total of about 1/3 of our lots. There are 120 plus or minus homes that have been built. There are quite a few in process. It has slowed down in the last year, obviously.

CM: Okay, thank you. I appreciate that. Mr. Taylor, you live in Inscription Canyon Ranch. Is that correct?

DT: Yes, ma'am, I do.

CM: Okay, so you live in the Williamson Valley area. From my colleagues, this is the valley that's basically in the shadows of Granite Mountain. Beautiful area. Can you give us a sense of what's going on in terms of sales, and when do you think this golf course will be off of its addiction to groundwater?

DT: I am a member of the ICR Sanitary District. We are currently working on our 09-10 budget. Our forecast is for very little growth in the 09-10 year. There is no activity in the Inscription Canyon, what I call the 303 service area. What is going on in Talking Rock, I really don't have good information on that. The Sanitary District does have record of when a builder or anyone pulls a permit, so we have a good knowledge of what's going on, and we have had, in the last six months, maybe three new starts in our service area.

CM: You were the person who uncovered the fact that this Company had violated a Commission Order and had not, in fact, transferred the wells to ICR. How did you come about that information and can you lay that out for us? It's not very often that we have a citizen intervener who discloses and uncovers the fact that a company has violated a Commission rule, so it's very interesting to me.

DT: My wife and I bought our land in 1998. We started building our house in 2000, and I just had a real interest in both the water and sanitary service for our area. So, I started attending meetings, being able to have access to documents. I learned to use the docket for the Commission.

CM: Our docket?

DT: Your docket. And read the docket, knew what was transpiring in the meetings, and that is the basis of how I became aware of it. I have been on the Sanitary Board - - - in my fifth year on the Board - - - and so it's somewhat my chemistry to look into what's going on in the best interest of my neighbor, really. That's just the way I am. I don't have any soapbox. It's just that I would like to see the right thing done for whomever.

CM: You originally opposed the proposal made by the Company and now you support the Agreement that was arrived at, as I understand it, basically in the middle of the hearing, the Judge took a break. The parties got together, including you. I know early on, you were not happy with the degree to which they were consulting with you. If I recall correctly, why do you now support the Agreement? Why should the Commission approve this? Or is that overstating things?

DT: That is overstating.

CM: Alright. I apologize.

DT: No problem. I support most of it because we did win some things that we really needed to win.

CM: What were those things?

DT: The well property. The fact that there was no limitation to it. That part of it was important to, as far as the business as a resident, that was important as a shareholder that I would be able to say those wells belong to the water company or to the shareholders.

CM: Rather than the developer.

DT: That's correct. I had problems with the math, the arithmetic, with the cost of service study from day one. I cannot agree with it. My background is facilities management and so the numbers just don't work. So, I have to qualify that there are parts of that Agreement that I do not agree with.

CM: What other aspects of the Agreement do you think are in the public interest? I mean, I'm specifically thinking of the wheeling issue that the golf course as a customer issue.

DT: Well, from the decision by the Commission to adopt 64360, that would look to be a very appropriate document. Everything was moved forward with that, but then the document known as the "well agreement" came into existence. I don't want to use the term inappropriately adopted, but it was implemented by the Water Users Association and so that rate changed to a wheeling rate. Of course, I'm not an attorney, so I don't understand all those terms directly, but that cost that was put on the shareholders for the operation of it, the cost of service study never had the power cost or operation of the water system for Talking Rock in the cost of service, so all of those aspects of how things were in the \$1.40 rate that is being recognized as an acceptable rate.

CM: And to that point, I want to talk to you about that. On Page 34, the Order states that the price for serving the golf course will be \$1.40 per 1,000 gallons. That is more than the prior wheeling rate?

DT: Yes, except the cost of providing that water because Talking Rock was paying for the electrical costs and they were paying some operational costs, as far as having all of those numbers clearly stated, what we call the four cents per 1000 gallons, what it was it was so much an acre foot is how they were paying for the wheeling rate - - - so that amount of money is definitely a lot different, but there's more to the calculation because of the operating cost, the power cost, the O & M cost is what I call it, are not included or were not tracked in a manner that you can compare those rates from 2006 to 2009, with the implementation of this rate.

CM: Well, I would just point out while I guess it would appear that the \$1.40 the golf course is going to be paying more, we think, for water, it's still half of what customers are paying for their water, which I find utterly ridiculous in this state. I mean, my God, how could we charge a golf course less than we charge residential consumers, by half? That's an editorial comment, but unfortunately, the laws of this state are such that if we don't allow this rate to go through, this Water Company has the right to go off the Water Company, drop a well and pump even more groundwater onto this golf course than they are now, and that's how screwed up the groundwater laws are in the state of Arizona. Would you agree, Mr. Taylor?

DT: Exactly.

CM: And again, I appreciate all the hard work that's gone into the crafting of this Agreement, understanding the realities of Arizona law, and that we are hemmed in by some bad law that needs to be changed by maybe some policymakers would have some courage, so do we have any other

questions on this item? Commissioner Stump's question --- the pond that has not been built, do we know - - - I heard an answer that suggested --- what happened to the date?

JS: Madam Chairperson, Commissioners, it's April 28, so we don't have approval until essentially the deadline that we had agreed to. And given the timing and the use of water, we've agreed with ICR that obviously, we can't get it done by May 1 because we didn't have approval by May 1, and there is an agreement between them to just postpone it and I think Mr. Krumwiede just said that they intend to start it this winter. Part of the issue is balancing how much water there is available, or how much effluent is available, to be stored vs. when you need the effluent when it goes right onto the ground vs. in storage. That's also a seasonal issue, as well, so we have the issue of not getting an Order in time to build it before the May 1 deadline, and now the seasonality, but as Mr. Krumwiede stated here before you, they intend to start construction in the winter and have it built.

CM: Mr. Taylor, do you care to respond to that issue or comment on it?

DT: Thank you, Chairman Mayes. Yes, I would like to respond. Currently, we provide about a million gallons a month of effluent. Typically, the golf course has approximately four months of no water use for ground water, but in order to store 4 million gallons, they do have a lake, a water feature, at the golf course. To this date, I've never been able to get the capacity of that water feature, but to me, this is a significant item that should be constructed because of having that resource available to store that water rather than to put it on - - - I use the term improperly - - - put it on the golf course.

CM: Okay. Well, I think we've probably talked it through. We want to move the item, Commissioners?

Commissioner \_\_\_\_: Thank you Madam Chair. I move Item U9.

CM: Item U9 has been moved. Why don't we do the hearing division amendment first. Judge Harpin.

JH: This Amendment was designed to alleviate Mr. Taylor's concern, my perception of Mr. Taylor's concern, that his testimony hadn't been adequately considered. I want to make it very clear that the testimony that he provided, which included numerous attachments, was actually considered. This is the testimony that he had included as an exhibit in his request.

CM: So, does this mean that we are acknowledging his exhibits as exhibits and as evidence?

JH: It means that the Exhibit T8, which was called Additional Supplemental Testimony of Dayne Taylor Opposing the Request for the Water Service Agreement, which was his last set out of three sets of testimony, was considered. That probably didn't help at all, did it?

CM: Not so much

JH: I'm sorry. Okay. Mr. Taylor filed three different sets of testimony. Two of them were filed relatively early and one was filed much closer to the actual hearing in this case. The last set is the set that Mr. Taylor specifically asked during the hearing to have included as an exhibit, as part of the evidentiary record. That set of testimony, which included 12 attachments, was part of the evidentiary record, was considered, and actually is even cited in the ROO. This amendment is simply designed to make it clear to Mr. Taylor that that was the case.

CM: Okay, and I want to make sure that we acknowledge Mr. Taylor's participation in this case. I was going to have an amendment that addressed this by labeling what didn't get offered officially as an

exhibit for whatever reason, as public comment. So, I would just personally take notice of his other exhibits, at the very least, public comment, and then this Amendment does make sure that we are acknowledging what he did get properly admitted into evidence as evidence.

JH: Yes, and that it was considered.

CM: Okay. And just for the future, we don't have too many cases where we have citizens come down and participate as wholesomely as Mr. Taylor did, but when we do, I think it would be important for staff or someone here at the Commission to make sure that the rules of engagement are clearly laid out so that those interveners can get their evidence put into the record. I think that may be what happened here. Mr. Taylor didn't know exactly how to offer an exhibit as an exhibit until the end. Is that how it happened?

JH: Well, he had seven exhibits admitted, so I did sort of make an assumption, which was apparently incorrect, that he had had admitted what he wanted to have admitted. Apparently, that was not the case.

CM: Mr. Taylor, do you want to make a comment on that?

DT: That is true because my direct testimony and my rebuttals were not --- it's not apparent to me that they were included in my testimony to the evaluation of the ROO.

CM: Does this Amendment offered by the Hearing Division alleviate some of your concerns?

DT: That is correct, some.

CM: But not all. Okay. Well, that being said, why don't we . . .

Commissioner \_\_\_\_\_: Chair, I move the Hearing Amendment.

CM: Hearing Division of Amendment No. 1 has been moved. All those in favor, say ay.

All: Ay.

CM: Opposed. Okay, we'll go to Mayes Proposed Amendment No. 1, which is basically our conservation amendment that we've been adopting in cases outside of active management areas and, in particular, in cases where we're very concerned about water supplies. This by no means will make up for the 100,000,000+ gallons of groundwater that are being pumped onto the golf course at Talking Rock, but it is an effort to require the Company to offer conservation measures to its customers and to aggressively conserve water, given the Commission's longstanding concern about groundwater use in Arizona and the evidence in this case, specifically the evidence in this case about the use of groundwater from this Water Company for the Talking Rock Golf Course. Commissioner Pierce?

Commissioner Pierce (CP): I'm just wondering how --- this is a small company --- if they were within an AMA, how many BMP's would be required? The question is how many BMP's would we require in a company this size if they were in an AMA.

\_\_\_\_\_: Commissioner Pierce, that would be one.

CP: One?

\_\_\_\_\_: Yes.

CP: Thank you.

CM: Commissioner Newman?

CN: Yes, Madam Chair, I support your Amendment and in this case, it's interesting that it's not an AMA area just outside of an AMA area, which allows for the types of predicaments that you were talking about before of being able to dig a well and pump inordinate amount of groundwater in an area that is really struggling to maintain its groundwater levels, and it's elemental beauty --- not to say that this development is not beautiful or the golf course is not beautiful --- but I would think that if the laws of Arizona were more balanced, that we would be looking at situations like this a lot more carefully. The fact that it's outside AMA boundaries, your Amendment is the least that we could do under the circumstances and I fully support it.

CM: Thank you, Commissioner Newman. I appreciate that and I agree with you. I mean, I think, you know, I wish more areas of Arizona were doing what Cochise County is doing, and like you said, this is the bare minimum that we could do to try to deal with the situation. I appreciate Commissioner Pierce's comment or question and what he's getting at, but this is just not an ordinary situation. I mean, again, a billion gallons of groundwater gone to a golf course. I don't even know what to say to that. As a native Prescottonian, it makes me ill. It makes me ill. And I know the people of this area are concerned about it and so I offer this Amendment. I offer Mayes' Revised Amendment No. 1. Does everybody have that version? I apologize, there was a small change. I took out a comma and added a couple of words. So, I offer Mayes' Revised Amendment No. 1. All those in favor, say ay.

Commissioners: Ay.

CM: Opposed.

\_\_\_\_\_: No.

CM: Okay, Mayes Revised Amendment No. 1 has passed. I will go Mayes' No. 2. I thought the language in the Order on the violations of Commission Order was a little bit weak and I don't mean that as a criticism to the judges. I just wanted to make it clear to the Company, to the golf course, to the developer --- obviously especially the Company because that's who we regulate --- that the failure to transfer the well was unacceptable, the failure to file the \_\_\_\_\_ charge is unacceptable, and that if such violations occur in the future, we will take action because, frankly, I think we very well could propose or recommend to staff that an Order to Show Cause be filed in this case. So, in some sense, the Company is --- we are being lenient with the Company under this Order.

\_\_\_\_\_: I support your Amendment.

CM: Okay. Any other thoughts or comments? Judge, any comments or concerns with this?

JH: No, I have nothing to add. Thank you.

CM: The Company?

JC: Chairman Mayes, I would just add that the Company representatives are here. We hear what you say and take it to heart. I would say that not by way of excuse, but way of explanation, that this is a non-profit company that is run by its members, and the Board of Directors are elected from the customers of the Water Company, so it's a volunteer Board. I've been working with them for a couple of years now. I believe that they have always attempted to follow the will of the Commission and to

do things the right way. But they acknowledge the seriousness of the obligation to comply with the Commission rules and with the statutes, and they take that to heart.

CM: And this may be a question for the developer, but this Order orders the transfer of the wells. That will be done?

JS: Pursuant to the agreement of the parties, yes.

CM: Pursuant to the Order, Mr. Shapiro.

JS: Well, the Order does not apply directly to the golf course. The golf course's obligation to transfer the well comes from the agreement. We fully intend to honor that agreement 100%.

CM: Well, I guess the Water Company better be darned sure that they do or you're going to be in front of us, Mr. Crockett.

JC: Chairman Mayes, I hear that. I would say that our experience with the developer, again, it has been their desire to come into complete compliance with the Commission's requirements. They transferred the second well as part of this process. They've committed to transfer the third well. They've agreed to do a number of things that are beneficial to the Water Company, and so I personally have no doubt and I will vouch to Chairman, that we will proceed ahead and make sure that these items are done and buttoned up as per the agreement between the parties and as per the Order that is before you.

CM: I offer Mayes' Proposed Amendment No. 2. Any other questions or comments?

CN: Yeah, just a comment. I noted some very interesting dialogue regarding the golf company. It's true. We can't assert our jurisdiction over golf courses, but this whole conversation makes one believe that somebody at the legislature ought to be looking at the water used in developing golf courses. I'm not at the legislature now, but if Howie Fisher were here today, he should be writing about the amount of water used by this particular golf company and somebody from the legislature ought to take account. And that's my response to the jurisdictional argument of us having no power over this golf course, but certainly having power over the Water Company.

CM: Okay. Mayes' Proposal Amendment No. 2 has been moved. All those in favor, say aye.

All: Aye.

CM: Opposed? Okay, Mayes No. 2 passes. Mayes' Proposed Amendment No. 3. You know, I guess I'm just not a trusting individual because I know that the Order --- especially when it comes to big monopolies and small monopolies --- the Order says no more groundwater for golf courses, no more groundwater shall be used for additional golf courses in the service territory. I know Mr. Krumwiede said that some of the turf was taken off of the golf course, and I think that's a good thing, but I wanted to make sure that the turf isn't --- that water isn't added or used for the golf course if that turf is added back by some future golf course owner, and that future additions to the golf course wouldn't be irrigated with groundwater, given the historical use of groundwater on the golf course. Mr. Shapiro, even though you're not regulated by us, do you want to say something?

JS: Maybe what I should do is share with all the Commissioners that I don't think we would be here today in the capacity we are if Mr. Krumwiede and his Company hadn't shown the conciliations and the dedication to making this work and conserving groundwater. What I did not intend to do, and if I did I apologize, give the impression we intend to ignore this Order. It's merely a legal sliver, a

reed, a slender reed, as you point, as to why we're going to do this thing. But I think the fact that we're not opposing any of these Amendments --- it's not often that I sit here mute throughout this much discussion of the Commission on behalf of a client --- that the Agreement that has changed three times to its current form --- all those things show the commitment of this developer/golf course owner to work with this Company for the long term benefit of the community. We will do what we are required to do to make this work. Including not adding turf to the golf course.

CM: Okay. As we saw, Mr. Shapiro and Mr. Crockett, with the 1995 Order, words matter. Orders matter. And the language that are in the Orders matters. I'll offer Mayes' Proposed Amendment No. 3. Any questions or comments. All those in favor, say aye.

All: Aye.

CM: Opposed. Alright, we passed Mayes' Proposed No. 3.

CN: I know we're in lunchtime, but I was going to ask this one question. Mr. Taylor has been very diplomatic and has a beautiful smile when he asks \_\_\_\_\_ everything here, is how he would like --- I did read his opinion and order. Is there any other thing that this body didn't take up --- I just wanted to know --- I could have asked you earlier, but I think this is an appropriate time to ask it as well.

DT: Thank you, Mr. Newman. I have a real dilemma about the subject of construction water --- metered hydrant water --- that is a problem in our area. Our area covers approximately 14 square miles, which is --- we have a lot of areas where trucks can come in there and do their thing. I find nothing in the Order that allows or disallows what I call temporary service or hydrant meter application --- no rates for that situation. There's a term of using standpipe or bulk water. The logistics of that in that community is very difficult. I bring this to the Commission because as part of the community, but the Board to be able to manage this in some way. And I do not see a provision in the Order that is clear to me that if I were a Board member, I would come back to the Commission and say, "what do we do?"

CM: Commissioner Newman, and I really appreciate the pause in the action here, because, frankly, this is one issue that I forgot to bring up. And maybe for the Company and Mr. Crockett, actually, I raised it earlier. I had a question when I read Page 34 and this issue was on Page 34 of the Order, (a) whether the Company intends to file that hydrant charge. I think the judges made it clear that that needs to be done, but it's not clear from reading the list of tariffed rates that the Company intends to have a hydrant charge. So, Mr. Crockett, can you answer Mr. Taylor's questions on this point?

JC: Well, the answer is that this current Order before you proposes a standpipe charge that would apply to what I think Mr. Taylor describes as temporary service.

CM: From hydrants.

JC: From hydrants. Correct.

CM: And so when you file your compliance tariffs with the Commission on June 1, you will then tell us what you will charge for hydrants and also for renting meters at the hydrants and standpipes or construction?

JC: Chairman Mayes, I think the answer to the question is yes. In talking to the Company before the meeting today, they are still formulating the policy on how they will deal with this standpipe water, and that will be considered at an upcoming Board meeting, so they don't have a definitive decision in terms of how this will be implemented. What this Order obviously does is it approves a rate for the

service, and so in terms of the mechanics of it, that will be worked out and addressed through a tariff filing.

CM: Okay, so Mr. Olea, here's my concern. Obviously, there's a concern in the community that water is essentially be taken out of their system, at the fire hydrants for free, which is to their detriment, obviously. How does the Commission make sure that that water is metered and that the hydrants have a tariffed rate if it's not explicitly laid out in this Order.

Mr. Olea: First of all, there shouldn't be any water being given away for free, period. That's just a violation of our rules and how we operate here.

CM: It would appear, though, that it's happening. I think this came out during the case.

Mr. Olea: And if that is happening, how it would be picked up by us in a future rate case, that would be water loss.

CM: I don't want to wait until the next rate case. We need to resolve it either today or at the June 1 compliance filing, right?

Mr. Olea: Well, as far as the tariffs, yes, but you said, how can we ensure that there's no water being given away? Well, there's no way we can unless we have people out there all the time. But as far as any free water, there should be no free water. And right now, there are two rates here that actually, to me, are confusing. You have what's called construction water at \$1.40 and bulk water at \$5.00, and in my mind, I don't see a difference between the two. So, it should either be all bulk water at \$5.00, which includes construction water, or it should all be construction water at \$1.40, and that would be up for the Commissioners. But the only water that should be at \$1.40 is the water going to the golf course.

CM: So, construction water should actually be labeled under standpipe bulk.

Mr. Olea: Correct.

CM: And that should be \$5.00. Mr. Crockett.

JC: Chairman Mayes, if I can respond to that. That's not exactly correct. The agreement between the developer and the utility company provided that water for the golf course and for construction activities by the developer within Talking Rock would be sold at the \$1.40 rate. That agreement, the Amended and Restated Water Service Agreement, was worked out and negotiated while the hearing was going on by the parties, and staff was represented by counsel and was a party to that part of the discussion, that that rate would apply. Now, I will respond to a couple of things. First of all, the Company is not aware that water is being given away. The issue that was raised at the hearing . . .

CM: I see some very incredulous faces in the audience, Mr. Crockett. I thought this was raised by Mr. Taylor during the case, but I could be mistaken.

JC: Chairman Mayes, the issue that was raised during the case was that standpipe water was being sold out of a hydrant at, I believe, the rate was \$10.00 per thousand, and there was no authorized rate for standpipe water sales. According to the Company, the standpipe sales that we're talking about have amounted to approximately \$800 in revenue, and as I do the math, we're talking about 80,000 gallons of water. Now, to the extent that there is theft from fire hydrants within the system, that would show up in lost and unaccounted for water. The Company will do its very best to prevent theft of water from its system. With respect to the sale of water from a hydrant now, we will have an approved

tariffed rate at \$5.00 per thousand, but the rate for construction water to the developer is specifically per the agreement to be at \$1.40 per thousand gallons.

CM: Mr. Taylor, do you want to respond to that issue?

DT: When I said that not all the things in the Water Service Agreement I agreed with, the \$1.40 rate for construction water for one exclusive, you know, the developer, but there are numerous other contractors who come into the community to do land work, earth work, which use water. We have two different situations here, but in the Order, we see that word "construction" and how is that differentiated between Joe the contractor over here, or Talking Rock or Harvard? It's not clear in the Order how this is to be done. So, this \$1.40 rate for using the term "construction" is very difficult to implement when it comes to the entity that would be having that commodity.

CM: Is Joe the plumber paying anything right now?

DT: Well, I will say that there was one project in the neighborhood who did have a meter on the hydrant. They were, to my knowledge, yes, they were paying, but there are other times in the past that I have --- I'm very aware of contractors not paying for their water, and so that's why I would like to request some consideration to using the term "standpipe." Have one place in the community where they purchase their water from. I don't know if that's something the Commission can make that decision, but it's a recommendation to the Company that there would be one place, always, for the contractor to get their water.

CM: Mr. Olea, can you shed some light on this?

Mr. Olea: Yes, Madam Chair and Commissioners. As far as just having one location, that's not usually done by water companies. They usually have, you know, the construction water is taken from the nearest hydrant. They put a meter on it. But what I have not seen in the past is where you have two different sets of rates. One set of construction water for a particular developer, and one set of construction water for everybody else. If that's what the Commission wants to approve, that's fine, but for compliance tracking purposes for our staff, on Line 26 there for the construction water, it that's just for a particular developer, it should say so in the tariff so that a year from now when somebody complains to us that they're getting construction water at \$5.00 instead of \$1.40, we can tell them why.

CM: So, basically, this is a deal that the developer managed to finagle out of the negotiations. Is that what happened, Mr. Crockett? Because it does seem disparate to me. You know, you guys are getting basically a sweetheart deal while everybody else is getting something else.

JC: Chairman Mayes, I'll respond to that. I would not use the term "finagle out of the deal."

CM: You worked it out.

JC: Let me just explain the options that the Water Company had. The Water Company had two options here. Option one was to negotiate a deal that was mutually acceptable between the Water Company and the developer to have the developer remain on the system. There are a lot of reasons that we wanted the developer to remain on the system, and probably the biggest reason is that it reduces the cost of water to everyone else on the system by having the developer there. We believe that that and many of the other benefits that are detailed in the agreement were in the best interests of the Water Company. That was a concession that was made in the negotiation process to make this deal. The other option is that the developer exits the system and when Mr. Barassa did his calculation of the rates that would need to be in effect with the developer off the system, we were looking at a 60% rate increase for the customers of the system. So, yes, the intent of the arrangement is that Harvard, for

its construction purposes, could purchase water at the same rate that it purchases water for the golf course, at \$1.40 per thousand. But everyone else that was purchasing standpipe or construction water would purchase that water at the \$5.00 per thousand rate.

JH: May I interject?

CM: Yes, Judge.

JH: I'd like to point out that staff actually testified during the hearing that the \$1.40 rate was intended to apply both to the golf course water and groundwater purchased for golf course irrigation, lake fill, and for construction purposes. It's actually consistent with staff's recommendation. It's on Page 18 in Finding of Fact No. 55.

CM: So, construction by anybody but Harvard? Is that the deal?

JH: Construction by Harvard?

CM: By Harvard. So Harvard gets the deal. Everybody else gets the \$5.00.

JH: I believe that is consistent with staff's recommendation, yes.

CN: I want to do something on this issue and I think we've just explicated that other construction people should be doing the \$5.00 deal. I'm probably going to let it go, but Madam Chair, I wanted you to understand that this negotiation --- you know, I heard Mr. Crockett say, that yes, it's to the benefit of everybody in the community to have the Water Company in the system - - - there's no doubt about that. Now the question becomes, and ultimately, I'm going to have to vote on this in two minutes --- this is really the question I have about this --- if we want this to do be a less turf golf course, if we want to be less than 1,000,000 gallons a year, why are we really establishing a sweetheart totally subsidized price of  $\frac{3}{4}$  less than what the other residents have to pay --- not  $\frac{3}{4}$ , well, yeah, approximately 75% less --- than what the other customers have to pay. If we were trying to establish policy on golf courses in non AMA areas, even though everyone's happy right now with this agreement, I'm not sure how I'm going to vote on it because of this incredible amount of the sweetheart deal on this price. Shouldn't this Commission, and is it within the power of the Commission, to say we know you'd like to get \$1.40, but are we really looking out for the public interest here?

CM: That's a good question, and I think if we were setting policy on golf courses, this wouldn't be the case. But we're stuck with a set of really bad circumstances and I've struggled over this case for several years now. I've been nauseated for multiple years over the amount of groundwater being used on the golf course. And I'm probably going to vote for this Order because I think it's the best we can do. And the parties have worked through the issue. Mr. Taylor's involvement has made it better, but I agree with you. I'm not happy about the treatment of the construction water or the treatment of the golf course water. It doesn't make much sense, but it makes even less sense to open the situation up to --- basically, we have a gun to our heads. And the developer is saying, "we're gonna leave this water system and leave these consumers high and dry," and the golf course is saying, "we're gonna leave the water system and we'll pump as much groundwater as we want to if you don't approve this order." And the question that we have in front of us is do we want that to happen or do we want to try to continue to work through these issues and pass an order that at least moves part of the way toward resolving some of them? And I think that's where I come down on this case. And the reason I asked staff about the hydrant issue in the compliance filing, was I want to make sure that they do have that hydrant tariff filed at the Commission, and I want to make sure that they are metering all of their hydrants. So, I guess, Mr. Olea, again, is that where we can do that? I know that's a separate issue from the \$5.00 vs. \$1.40, and which developer gets the better deal on the construction water.

Mr. Olea: For construction water, if it's going to come from a hydrant or from a standpipe or whatever, your rates are set. They cannot give water away for free for construction. So, it's up to them to meter it. If it's going to be . . .

CM: And they would be violating a Commission Order or rule if they didn't meter it?

Mr. Olea: Yes, because there is no other way to charge for the water unless you meter it and you know how much you're actually selling to a particular applicant.

CM: So, if these residents see them giving water away out of the fire hydrants, they can document that and bring it to the Commission, and we can issue an Order to Show Cause against the Company?

Mr. Olea: Yes. The only use from a fire hydrant that should not be metered is use by any kind of fire district either for practice or to put out an actual fire. Any other use of the fire hydrant should be metered.

CM: So, the answer is yes. That would be a violation.

Mr. Olea: Yes. And Madam Chair and Commissioners, I would just add one thing, and again, this is for our own compliance people and for our consumer services section, on Line 25.5 there, on Page 34, after the words "construction water," I would add for Harvard Simon I, LLC, so there's no confusion to our consumer services people in the future as to who should be getting construction water at \$1.40

CM: Mr. Olea, can you say that again? It's Page 34 . . .

Mr. Olea: Page 34, Line 25.5, after the words "construction water," you would add the words "for Harvard Simon I, LLC."

JH: May I interject?

CM: Judge.

JH: I believe it's actually TRGC and Talking Rock Land.

JS: Yeah, Harvard Simon I is really no longer in the picture. TRGC is the golf course entity, so they wouldn't be using construction water. The entity would be Talking Rock Land, LLC as Judge Harpin just said.

CP: I understand that we can move this around. But I think it's important to know because we've been down this road before with what state statutes allow, what the constitution allows, and what we can do. And we may feel like we have a gun to our head because --- the reason that statement is said is because it becomes the only logical choice based on the circumstances we have. That if, in fact, a developer sinks their own well that a big user then comes off and the rate payers then end up with all of it. All of the expense, all of that. So, there is a balance there to try to make sure that you don't lose the golf course to their own device and at the same time, thereby protecting the rate payers because they will end up with an extraordinary amount of infrastructure that actually the golf course pays for. So, if in fact we rejected this today and the golf course did their thing, and the Company would file for rates and come in here and say, "look, we need to spread this just on our few hundred rate payers now," and that would be a really undesirable event for us as Commissioners, because those rates would be significantly high and then if they were to reject them at that time, off to court they would go, and previous cases have told us that they are entitled to things, and so not only would the rate payers have

to pay the new rates, they'd have to pay for the court battle. That's the way it all ends up working out, so it's better to come up with an agreement that keeps everybody kind of in a status quo, a fair amount, right at that edge, and move on. It ends up being out of pocket the best for the rate payers, and I thought I would lay that out. Because it will happen again. We'll see these same set of circumstances again because that's how state statute is.

\_\_\_\_\_: Mr. Pierce's words are very well taken and they're sort of in response to what I said before about the price, and I appreciate that, and it's true. Except I think that golf courses should be treated differently for legislative purposes given our water situation in Arizona. It's only bound to get worse in future years as we're in a drought and Lake Mead is even drying up, so we need to do something about this. To that point, this comes from my family's business background in New Jersey, and so this is my New Jersey cynical question. What's to prevent Talking Rock Company from getting the water for bulk and just giving it over to all the other contractors at that rate?

JS: Well, obviously, they have a whole different worry in New Jersey since they have lots of water, as well as Bruce Springsteen. Again, I guess if the language that Mr. Oleaa proposed was adopted, then we would be in violation of a Commission Order as a customer of the utility. We'd be doing something wrong if we turned around and resold the water. I could come up with a number of problems with that. Again, I think to some extent, and I understand your concerns, but you have to rely on this developer's track record in this particular case. The amount of construction water is not a significant amount relative to the golf course use. You can see that by the levels of available water, and I can only tell you that Harvard has no intention of going in the resale water business. It will use it for its projects, for its purposes, pursuant to its agreement and consistent with the tariff on file and that's our intent. We don't control what other contractors or developers do throughout the service area.

CM: Okay, Mr. Olea, so you want us to actually add the name of the developer to the tariff sheet?

Mr. Olea: Madam Chair, yes, because I can see that after this gets approved, our consumer services gets a call from another contractor, who says, "hey, I'm getting water at \$5.00, but the tariff says \$1.40. How come I'm not getting \$1.40?"

CM: Okay, well then . . .

CP: Should we make that verbal, Madam Chair?

CM: Sure:

CP: On Page 34, Line 25.5 of the Order, after golf course and construction water, add "for Talking Rock Land, LLC."

JH: May I interject again?

CM: Your Honor.

JH: I would suggest that it might be appropriate to add after "golf course," in addition to what Commissioner Pierce just said, "water for Talking Rock Golf Club, LLC," because it is, as I understand it, two different, although related, entities. Talking Rock Golf Club, LLC is getting the water for the golf course, and Talking Rock Land, LLC is getting the water for the actual development. Do you want me to read the whole thing then?

CM: Yeah.

JH: It would be, "golf course water for Talking Rock Golf Club, LLC and construction water for Talking Rock Land, LLC."

CP: And Madam Chair, that would be my motion.

CM: All those in favor of the Pierce verbal amendment, say aye.

All: Aye.

CM: Opposed? Okay.

CP: I move Item U9 as amended.

CM: Are there any other questions? Mr. Taylor, do you want to make a comment, and then we've really got to vote on this one.

DT: I've become aware of a letter from Harvard Investments regarding the 25,000,000 gallon lake, that it was to be completed by December 31, 2010. That's 15, 17 months away. I have a concern about that. In the Order, it said it was supposed to have been done on May 1, and so I feel that we are a moving target. I am concerned about the long term storage or availability of storing the effluent to be efficient for the use of groundwater.

CM: Okay. Mr. Krumwiede, Mr. Shapiro, that's not what we were told earlier, so what's the deal?

JS: Commissioners, the deal is Mr. Taylor's behind in his paperwork. There is a subsequent request by ICR to complete it by December 31, 2009, which has been agreed to by Talking Rock. Mr. Taylor just isn't familiar with that.

CM: Is that in the record?

JS: I guess it is now. It's not, but we can file something in the record after this if you'd like us to do that.

CM: It's not in the record just because you stand up and say it, Mr. Shapiro. When I ask --- you're an attorney --- I asked you, is that in the record? I mean the record of this case.

JS: If you mean the evidentiary record, no because it wasn't an issue at that time. It has come up after the hearings and after the ROO was issued.

CM: The pond was an issue at that time, was it not?

JS: The storage pond is a provision of the agreement.

CM: Which is the issue of this Order. Correct?

JS: Correct.

CM: So, you're saying that there is an agreement now between ICR and Talking Rock Golf Club, LLC to complete the pond by December 31, 2009?

CK: There was just flat out a typo there. I agreed from day one to have it completed by December 31, 2009. That went out when I was out of town. And the mistake was pointed out to me and I corrected it.

CM: Okay. Can you file that in this docket, Mr. Krumwiede, the new date?

CK: Yes.

CM: Okay. Thank you, Mr. Taylor, for raising that. U9 has been moved. ICR Water Users Association as amended. Madam Secretary, call the role.

CK: Madam Chairman, I might explain my vote. I think I have seen and heard it all today. There has been quite a bit of discussion. I support the three Mayes' Amendments and the verbal amendment that was made by Commissioner Pierce, but in the end, I think the residential customers here are getting the raw deal, and I'm just not comfortable and at this time, I'm going to vote no.

CN: I struggled with this and I thought I was going to take your lead on it because I know you've been working on it for a number of years, and I am taking your lead on it. It probably is the best decision under the circumstances. I am comforted in knowing there will be a lake that gets into this process that will be using treated water that the golf course will be off the groundwater that's been really recklessly used. And there are situations like this all over the state right now, by the way, where golf courses are using, in non-AMA areas, groundwater because their developments have not gone according to their plans. One of them is an incredible place in Cochise Stronghold, believe it or not, where they developed a golf course without houses, nobody's using the golf course, and no houses are coming because housing costs are like 2 or 3 million dollars. So, this is a big problem, but on this case, under the circumstances, I am going to vote yes and I just thank the staff and the judges, the judicial panel, for working on this and I think it is a good compromise and I thank Mr. Taylor, the intervener, for bringing all these issues to the fore, and with that, I vote yes.

CP: These are often tough issues that we face over and over again, especially in rural water issues. And often, it has to do with how much effluent can you get out of a development. And I think that it is appropriate for strict water use in golf courses and in all golf courses in Arizona in the future. The Best Management Practice issue is one that I struggle with somewhat because we have active management areas which are set and the legislature has policy on that. And so I feel like we should be in agreement to move where we need to, but I think sometimes we can go too far, but I'm not saying that we've necessarily done that here. In principle, those things concern me. I do believe that when a golf course can sink a well, and that seems to be the one that has gotten several times up here where we're dealing with something and the golf course can sink its own well, and that has created difficulties for us. That's a statutory problem that I think can probably be resolved because we need to have the golf course side of it coming to the agreement without such strong leverage on their side. And not that they needed to be treated unfairly in the rates, but that strength out there is probably inappropriate as far as water policy is concerned in Arizona. I vote aye.

CS: I vote aye.

(Note: Continued next page)

Chairman Mayes: I want to thank Mr. Taylor, our staff, judges in the case, for their hard work. I want to thank Mr. Reed, who's sitting in the back of the ROOM, who was one of the people who first brought the issue of the groundwater use for this golf course to me with Mr. Taylor many years ago. You might not know this, the people sitting in the ROOM might not know this, but this case changed the way this Commission deals with golf courses in every case that we hear. When Mr. Taylor and Mr. Reed brought this issue to me and told me, and I didn't believe them at first, that this golf course was using hundreds of millions of gallons of ground water for a year, well, 150 million a year, I didn't believe them at first. And then it proved out to be true and I started looking at the issue systematically and realized that there were lots of golf courses that were hooked up to water companies in Arizona that were using similar quantities of groundwater. There were water companies that were being formed by developers to serve the development, but also to serve golf courses that those developers just insisted that had to be built to lure people in because people won't move to Arizona without a golf course. Well, I don't believe that, but it turned out to be true that that was happening. And so, we have offered --- I have offered --- as an amendment in every single one of those cases, an amendment that says you shall not use groundwater for a golf course. We had a case, and it's now worked its way into most of our cases, if it doesn't get offered in the case, then I offer it as an amendment. We did have a case recently in Mojave County involving a developer named Jim Rhodes, who objected to my amendment. He's now in bankruptcy, but he objected to my amendment. I voted against the case because he came to this Commission and he said, "I'm going to drop a well if you impose that requirement on me as a developer. I'll just drop a well. And I'll pump as much groundwater onto that golf course as I want to because I can do that under state law." And so, I voted against that case. It's not worth it. I'm not going to put my name as a Commissioner on this case, but there are those who say we shouldn't include the golf course prohibition in all of our cases because it goes too far or because developers can just sink a well. But it's my view that the Commission has to take a stand. In this case, I think that it is important to do what we can. It was important to do what we could to make a very bad situation a little bit better. And I think that's what Mr. Taylor's intervention did in this case. He raised issues that led to my amendments. And the rate is less than it would have been if you hadn't been in this case. A violation of a Commission Order has been rectified or will be rectified as a result of your intervention in this case. It never would have been discovered if you hadn't intervened in the case. It would have been a violation of a Commission Order forever. Those wells are now in the hands of the people of this water company, or they will be. One of them will be that should have been. So, I think that on par, it's a bad situation. I call on the golf course, the owners of the golf course, to continue to reduce that turf because it is utterly unconscionable that you are using that much groundwater for that golf course, and the only reason that it's allowed to happen is because you're outside of an AMA and you have no restrictions. So, for all of those reasons, I am going to vote aye, but I look forward to our staff's continued monitoring of this case and I look forward to the compliance filings to make sure that the hydrant issue is resolved. I vote aye. By your vote of four ayes and one no, you have passed Item U9, and we'll take a lunch break until 2:00.