

The RCSC entered into an agreement with Sun City Water Company (“Water Company”) the predecessor to Arizona-American Water Company (“Az-Am”) to exchange the RCSC’s use

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2001-006415

03/29/2005

of its Type II groundwater rights for the use of the Water Company's Central Arizona Project (CAP) water. The RCSC used its right to pump groundwater for its eight golf courses. The Exchange Agreement stated that the CAP water would be used on the same eight golf courses. Subsection G states "This Agreement is intended to 1) provide CAP water to golf courses to replace their use of groundwater thereby preserving groundwater supplies under Sun City and benefiting the entire community;...".

Az-Am's Keith Larson testified that Az-Am would benefit from the exchange because the RCSC would no longer be pumping 4189 acre feet of groundwater. Therefore, Az-Am would have contributed to the preservation of groundwater. Mark Frank from the Arizona Department of Water Resources (AWDR) explained that Az-Am has a limit of the amount of groundwater it may pump. This limit is called a conservation requirement and is quantified as a Gallons Per Capita Per Day (GPCD) limit. Mr. Frank stated that the Exchange Agreement would not permit Az-Am to pump an additional 4189 acre feet of groundwater. Instead the net effect will be to save 4189 acre feet of groundwater that would otherwise have been pumped by RCSC.

RCSC did not lease or sell its right to use groundwater to the Water Company in the Exchange Agreement. The Agreement states, "Nothing in this Agreement shall be construed to limit the Association's legal right to pump groundwater pursuant to its permits if Water Company is unable to deliver the amounts of CAP water anticipated by this Agreement" (paragraph 9, page 7 of the Agreement). Scott Halver, an appraiser, testified for Plaintiffs that the value of the 4189 acre feet of the Type II groundwater rights exchanged in October, 2000, was \$4,660,000. Mr. Halver used a sales approach. He compared other bulk sales of groundwater rights in arms-length transactions. The Court gave less weight to his opinion because the exchange in this case was not a sale or lease.

The Court concludes that the specific conveyance in this unique case did not involve conveying a substantial part of its assets. The purpose of Article VIII section 7 is to provide for a vote of the membership before a substantial part of the assets are conveyed. This Court infers that the use of the words "substantial part of its assets" is intended to prevent any significant diminution in the assets of the RCSC without a vote of the membership. In this case the value of the assets of RCSC were not diminished. The right to use groundwater on golf courses was conveyed in exchange for the right to use CAP water on the golf courses. The practical effect of the exchange is that RCSC lost nothing. The RCSC golf courses will be watered. The RCSC is protected if the Water Company cannot deliver CAP water. Therefore the Court assigns no value to the trade of the RCSC's right to use groundwater to water golf courses for the right to use CAP water on the same golf courses. The testimony from witnesses Mark Clark and John Snyder (the golf course management experts) did not conclude that there were any significant differences between CAP water and groundwater on golf courses.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2001-006415

03/29/2005

Defendants have prevailed on a matter that arises out of contract, the RCSC Articles of Incorporation. Defendants will submit a form of judgment, application for attorney fees, and statement of taxable costs by April 19, 2005. Plaintiffs may respond by May 3, 2005. Defendants may reply by May 13, 2005.