

## **SUMMARY OF FACTS PERTINENT TO THE QUESTIONS AND ANSWERS**

1. **MANY (not all) OF THE FOLLOWING QUESTIONS ARE FRAMED IN SUCH A WAY AS TO IMPLY THAT ICRWUA HAS DONE SOMETHING WRONG OR IMPROPER AND MAKES THEM QUITE DIFFICULT TO ANSWER** (the “when did you stop beating your wife?” type). The Company does not agree with these implications and recognizes that answers provided may prompt yet another series of like questions. None the less, it has responded in an attempt to clarify the Company’s position or actions. **The Company asks that the reader to take into account the framing and nature of the questions posed, when reading the answers provided.**

2. ORIGINAL WELL AGREEMENT was entered into on February 25, 2003. Parties to that Agreement were Harvard Simon I, L.L.C. and Talking Rock Golf, L.L.C. the Developer of Talking Rock Ranch, and ICR Water Users Association. At the time the Request for Expansion of the ICRWUA territory was before the ACC, the expansion of territory matter was under the control of the developers

3. ICRWUA HAS TWO SEPARATE WATER SYSTEMS. One system services Inscription Canyon Ranch, Whispering Canyons and the Preserve. That water comes from two wells in the area of Mint Creek Wash. The other system services Talking Rock Ranch ONLY, and the wells and water rights are located on land owned by the TRR developers. At the time the present rate case was filed, TRR owned two of three wells on the property and ICRWUA owned the third well. TRR developers have never charged ICRWUA for water that ICRWUA sells to TRR residents. THE TWO WATER SYSTEMS (ICR and TRR) ARE NOT CONNECTED.

4. TALKING ROCK RANCH DEVELOPER PAID FOR THE ENTIRE INFRASTRUCTURE IN TRR.

In exchange for transferring the infrastructure to the water company, TRGC was allowed to use that infrastructure to deliver the water they owned from the wells they owned to the Golf Course they owned for a delivery fee, PLUS payment of a share of expenses. Under the Main Extension Agreement, Talking Rock will get back a portion of the cost of their investment though payments of a share of revenue received from customers in the TRR subdivision.

5. THE PRESENT BOARD AND PRIOR BOARDS HAVE BELIEVED IN GOOD FAITH THAT THE WELL AGREEMENT HAD BEEN APPROVED BY THE ACC. There is an ACC Approval stamp dated September 19, 2003 on the First Amendment to the Main Extension Agreement to which the Well Agreement was attached when submitted to the ACC. For the ensuing five years, all Boards have operated the water company pursuant to those agreements.

6. THE BOARD HAS RECOGNIZED FOR SOME TIME THAT THE WELL AGREEMENT IS NOT A PERFECT DOCUMENT AND NEEDED TO BE CHANGED. It contains many provisions that were of concern to the board, not the least of which was the well production supposedly available from the wells, and whether or not the well field is capable of supplying water for both the water company needs at full build out of the subdivision and for the golf course- as contemplated in the agreement. The company first approached Harvard about these matters over a year ago. A new agreement based on the LOU will resolve these issues and more.

## Log of Questions at the ICRWUA Special Meeting of 6/3/2008

### 1. Questions Concerning ACC Decision 64360

**Category: ACC #:1 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Re: ACC Decision 64360 01/15/2002

It is further ordered ICR Users ... “.. shall comply with all conditions as described in Findings of fact Nos. 30,31,34 and 35 and Conclusion of Law No. 6...”

Finding of Fact 30 required “.. Applicant continue to charge its existing rate and charges in the extension area.”

Question for Mr. Meyer: Has the Water Company collected the same rate and charges from all water consumers in the extension area?

*Response: Decision 64360, Finding of Fact No. 16 specifically states, “Under the terms of the Agreement, ICR consents to Harvard using water from its well to provide its gold course and storage lakes within the Ranch subdivision with water. There is also a provision in the Agreement which states that ICR agrees to provide water at the lawful tariff rate to the golf course upon written request from Harvard in the future, consistent with the rules of the Commission.” This provision was never modified by the Commission in Decision 64360. The Company has collected the same rates and charges from all its customers in the “Extension Area”. This does not include Talking Rock Golf Course, as TRGC is not/has not been considered a customer. TRGC owned its own wells and we distribute their water through our infrastructure. Excess water pumped from the ICRWUA well, not needed for residential use is delivered to the golf course. TRGC pays a “nominal pumping charge” plus a share of the expense to operate the system. Charges and expense reimbursements for TRGC are covered in the Well Agreement.*

**Category: ACC #:2 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Re: ACC Decision 64360 01/15/2002

It is further ordered ICR Users ... “.. shall comply with all conditions as described in Findings of fact Nos. 30,31,34 and 35 and Conclusion of Law No. 6...”

Question for Mr. Meyer: By what authority and what legal counsel did ICR water company enter into a Well agreement which was contrary to ACC decision 64360?

*Response: In Decision 64360, Finding of Fact No. 34, the ALJ ordered a modification to the terms of the Main Extension Agreement to require Harvard to “transfer wells which it has drilled for the purpose of providing water to the extension area. . . to ensure that the utility has adequate water for its customers and to ensure that they are not subject to relying for their water on a third party over which the Commission lacks jurisdiction. The Company entered into the Well Agreement in response to the ACC’s desire that the Company should own its own well. Since three wells pump water into a common system, some sort of agreement was necessary to allocate the costs for operating the wells. The Well Agreement was established to provide a way to operate a system that has two well owners contributing varying amounts of water into a common system. The agreement is not contrary to Decision 64360. In March 2003, ICR filed a Notice of Compliance in the docket of Decision No. 64360 in which it provided to the Commission the First Amendment to the Main Extension Agreement as well as the Well Agreement. The First Amendment to the main Extension Agreement modified the initial Main Extension Agreement by providing that Harvard would transfer Well #3 immediately to ICR and transfer Well #2 on or before the date that the Company provides water service to the 800<sup>th</sup> single-family residence. The portion of the original Main Extension Agreement which provided that the developer would supply water to the golf course through the ICR water system remained unmodified. The ACC approved the Main Extension Agreement and the First Amendment to the Main Extension Agreement on or about September 19, 2003 Thereafter, ICR was operating under the belief that they were in compliance with Decision No. 64360. Five years later, after a review of specific terms of well transfer provisions did the Commission determine those provisions did not comply with. Decision No. 64360 because a second well should have been transferred immediately. An additional well was transferred to ICR in May 2008.*

**Category: ACC #:3 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Will the Board require Harvard (or whichever Harvard legal entity claims ownership) to transfer Well #1 to the Company in compliance with Decision 64360 and , if so when? If not why not?

*Response:* Decision 64360 does not specify which wells should be transferred. The order specified that the transfer was necessary “to ensure that the utility has adequate water for its customers and to ensure that they are not subject to relying for their water on a third party over which the Commission lacks jurisdiction.” .Harvard has transferred Well #2 to ICR in satisfaction of the requirement to transfer a second well to ICR. The transfer of Well# 1 is proposed under the Letter of Understanding (LOU). If implemented, ICR will receive Well #1, and will own the entire well field..

**Category: ACC #:4 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

In 2002, Decision 64360 was issued by the ACC. Why weren't the “wells” the transferred to ICRWUA as ordered?

*Response:* See Responses to Nos. 2 and 3 above. Since the actual persons who negotiated the agreement are no longer associated with the parties, it is not possible to determine “why” the agreement is structured as it is. It is and has been the Company's belief that the Agreement was negotiated in good faith by the parties and that it complied with Decision 64360. In fact, the Well Agreement and the Amendment to the Main Extension Agreement was filed with the Commission as a compliance item (see above) and was never challenged.

**Category: ACC #:5 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

In 2003, the Board of ICRWUA entered into a “well agreement” which violated 64360. Why?

*Response:* See responses above.

**Category: ACC #:6 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Does the ACC now consider ICRWUA in non-compliance of Decision 64360? Why?

*Response:* In January 2008, after a review of the Well Agreement, the ACC Staff is of the opinion that the Well Agreement does not comply with Decision# 64360 as to the provisions for well transfers. In May of 2008, Harvard transferred well# 2 to ICR in satisfaction of that determination. No response has yet been received from the ACC Staff in regard to that transfer. The Commission itself has not opined on whether the Well Agreement and the First Amendment to the Main Extension Agreement does in fact satisfy the conditions of Decision 64360.

**Category: ACC #:7 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Re: ACC Decision 64360 01/15/2002

It is further ordered ICR Users ... “.. shall comply with all conditions as described in Findings of fact Nos. 30,31,34 and 35 and Conclusion of Law No. 6...”

Three places in the Decision 64360 language says to the effect, .. conditioned approval.. null and void without further order..”

Question for Mr. Meyer: Since the ICR/TRGC proposed LOU is not compliant with Decision 64360, how do you avoid “null and void” as stated in Decision 64360? You propose continuing to be non-compliant!

*Response:* The LOU is a proposed settlement of the issues in the rate case and is intended to exceed the conditions set forth in Decision 64360. Specifically, Harvard will agree to be a customer of ICR and pay a contract rate under a “Special Contract” which will need to be approved by the Commission. In addition, Harvard will agree to transfer all three wells. Neither of these concessions are required by Decision No. 64360. If Special Contract is approved by the ACC, previous contested issues in the case will be considered resolved, subject to any conditions imposed by the ACC in this case.

**Category: ACC #:8 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. Why are you holding this meeting when the ACC said you are not to do so until all open issues have been settled with all involved parties?
2. Who owns Well #1 and when will it be transferred to the ICRWUA per order 64360?
3. What is the evaporation rate of the TRGC pond?

*Response:* 1. The meeting was held in order to provide an opportunity for members to hear the issues in the case and hear the terms of the LOU. It was also held as suggested by the Adm. Law Judge in the case.

2. See Response ACC #3

3. ICR has no responsibility for the golf course pond.

**Category: ACC #:9 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Re: ACC Decision 64360 01/15/2002

It is further ordered ICR Users ... “.. shall comply with all conditions as described in Findings of fact Nos. 30,31,34 and 35 and Conclusion of Law No. 6...”

**Finding of Fact 34** required “... Harvard include in its advance, the wells which it has drilled for the purpose of providing water to the extension area .... “

Question for Mr. Meyer, then a follow-up response from Mr. Taylor

When was the following well transferred to ICRWUA? If not, why not?

As described in **Finding of Fact 20**, “... produces approximately 700 gallons per minute (gpm), ... reduced to deliver 525 gpm, ... the Ranch’s demand at full build out ... (projected at 523 gpm) including the golf course, ...etc...”

*Response: Question unclear.*

**Category: ACC #:10 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. Why has our board ignored 64360 – why was Harvard permitted to ignore this?
2. What is the usage of effluent water vs. ground water usage for the golf course?
3. Why do we even have a Golf Course in the high desert? Suggestion CLOSE IT! And continue with build-out.

*Response: 1. The board and the ACC considered ICR to be in compliance until January 2008. Note that although Staff is of the opinion that ICR is out of compliance, there has been no determination yet by the ACC as to whether they agree.*

*2. ICR has no responsibility for the Sanitary District and has information regarding use of effluent on the golf course.*

*3. ICR has no control of the TRGC nor responsibility for its creation or approval by governmental agencies. ICR’s sole responsibility is to provide water service to customers and to the TRGC per the Well Agreement.*

**Category: ACC #:11 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why has 64360 not been completed? (i.e. Transfer of Well #1)

*Response: See Response- ACC# 3 above.*

**Category: ACC #:12 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

It seems to me, from a review of documents provided by all parties involved with the rate case, that ICRWUA is not in compliance with Dec. 64360. I believe that TRR Well #1 should already have been transferred to ICRWUA. Can you explain why the well in question is still owned by TRGC? It seems that ICRWUA must own the resources it is supposed to manage.

*Response: Provisions for well transfer are covered in the Well Agreement. See Responses ACC # 2 & 3 above.*

**Category: ACC #:13 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

How can the ACC enforce order 64360 compliance if it so determines non-compliance?

*Response: Note that although Staff is of the opinion that ICR is out of compliance, there has been no determination yet by the ACC as to whether they agree. In addition, even if the ACC does determine that ICR is not in compliance, legal challenges by ICR and Harvard are available and may proceed through a Superior Court action. ICR is not in a position to predetermine ACC potential courses of action.*

**Category: ACC #:14 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why do we keep talking “well agreement” and now LOU? What happened to 64360?

*Response: The LOU is a proposed settlement of the contested issues in the rate case. See Response ACC# 7 above.*

**Category: ACC #:15 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why was Well #3 transferred to ICRWUA instead of Well #1?

When will ICRWUA comply with order 64360?

*Response: See Response ACC# 3 & 4 above.*

**Category: ACC #:16 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What does the ACC think of their order being ignored? Shouldn’t we seek remedy for TRR not fulfilling Well #1 transfer as well as appropriate rate payment?

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*Response: Note that although Staff is of the opinion that ICR is out of compliance, there has been no determination yet by the ACC as to whether they agree. The Order was not ignored. The ACC approved the Well Agreement in Sept. 2003 and the company operated accordingly. It was not until January 2008 that the ACC Staff issued a finding that the Well Agreement provisions for transfer of wells did not comply with its January 2002 Decision# 64360. The parties are attempting to resolve the issues as part of this rate case. It is the Company's belief that the parties acted in good faith entering into the agreements, and that ICR was in compliance.*

**Category: ACC #:17 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Re: ACC Decision 64360 01/15/2002

It is further ordered ICR Users ... "... shall comply with all conditions as described in Findings of fact Nos. 30,31,34 and 35 and Conclusion of Law No. 6..."

1. When was the back-up well transferred to ICR
2. Why does the ICR/TRGC continually refer to the Well agreement, created over 13 months following Decision 64360, when that document is contrary to the public policy stated in ACC Decision 64360?

*Response: 1. A second well, Well# 2 was transferred to ICR in May, 2008.*

2. *The Well Agreement was entered into by the parties within the time period provided for by Decision 64360. The document was approved by the ACC in September 2003. It is a legal and valid contract. The ACC Staff's determination that the Agreement's provisions for well transfer do not comply with Decision 64360 does not invalidate the entire contract. In addition, although Staff is of the opinion that ICR is out of compliance, there has been no determination yet by the ACC as to whether they agree.*

### **3. Questions Concerning Letter of Understanding (LOU)**

**Category: LOU #:1 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What was the benefit of ICR to enter into the MXA in the first place?

How much water does the TRR well field provide or is needed to service TRR, WC, Preserve?

*Response: ICR entered into the MXA in order to provide service to customers in the TRR subdivision. Among other things, the MXA provides that the developer is to install the water system infrastructure at no initial cost to ICR. ICR is to repay the developer by paying 15% of gross revenues received from Talking Rock Ranch customers beginning in 2008 and continuing for 25 years. If not fully repaid in 25 years, no further payment is required.*

*The TRR well field provides water ONLY to the TRR subdivision and TRGC. The TRR well field DOES NOT provide water to ICR, WC or Preserve subdivisions. In 2006, the TRR well field met the needs of the system in providing 368 acre feet of water to all users within the Talking Rock Subdivision..*

**Category: LOU #:2 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What would be legally owed by TRGC if they paid the rate required by the ACC Order 64360? It sounds like they (TRR) owe money in arrears.

*Response: The ACC has not determined that Decision 64360 required ICR to charge TRGC tariff rates. If TRGC were to have paid tariff rates for water delivered to the golf course and construction water in 2006, it would have paid over \$204,000. This is highly theoretical, as the Well Agreement provides the charges for TRR. TRR reimbursed or paid on behalf of ICRWUA over \$145,000 in 2006. Clearly, if the ACC were to require ICR to charge tariff rates, legal action would likely ensue to resolve the question of charging tariff rates AND enforcing terms of the Well Agreement.*

**Category: LOU #:3 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

How much would TRGC have to pay if we charged tariff rates proposed by the AZ Corp Comm.?

*Response: See Response LOU #2 above.*

**Category: LOU #:4 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

If the LOU is approved, does this mean Homeowners will pay \$3.13 per 1000 gallons of water when TRGC and Harvard Dev, will only pay \$1 per 1000 gallons of the same water and then receive a 15% kickback?

*Response: The rate set under the LOU has not been determined or agreed to by the parties as yet, however it is proposed to be less than that proposed for homeowners. It is not uncommon for a utility Company to*

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*have a “turf rate” for golf course customers. For example, Arizona American has a turf rate in its Paradise Valley Water District of \$1.00 per 1000 gallons. In addition, the ACC approved a Special Contract for the Paradise Valley Country Club in which it receives a 15% discount off the turf rate or pays \$ .85 per 1000 gallons. The answer to the second part of the question is that TRGC (Harvard) does not receive a “kickback”, which is an unethical or perhaps illegal form of payment. What Harvard does receive, is a form of repayment for having constructed all the water system infrastructure AT NO INITIAL COST to ICR. Payment is based upon a percentage of revenue collected from TRR customers served by the infrastructure. In return, ICR is to repay the developer out of receipts from customers in the TRR subdivision (15% of gross revenues from TRR customers) over 25 years. In fact, the Company has determined that only a fraction of the original cost of the system will actually be repaid by the end of 25 years. This arrangement is covered in the Main Extension Agreement. See Response: LOU #1 above. Under the Special Contract, payments by Harvard will be excluded from the percentage calculation.*

**Category: LOU #5 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Based on the Board approved agreement for a reimbursement to the developer for 15% of total gross annual operating revenues for 25 years, does not the proposed total payment to ICRWUA of \$175,000 in the first year actually become an amount of \$148,750 after the required 15% reimbursement to the developer is factored into the process further discounting our service to the developer?

*Response: No, it has been discussed by the parties to the LOU that the proposed payments under the LOU would be explicitly excluded from inclusion in the determination of gross revenues subject to the repayment provision .*

**Category: LOU #6 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. How does this LOU completely satisfy Decision 64360, as Judge Stern has requested?
2. Why was Dayne Taylor not involved in the discussions with the ICRWUA BOD and TRGC on the LOU, as the Judge directed?
3. Why does the well agreement circumvent the ACC Decision 64360 – which was written before the well agreement?

*Response: 1. See Response: ACC # 14 above.*

*2. The parties have not finalized the agreement as yet. Input from Mr. Taylor will be considered.*

*3. See Response: ACC #2 above.*

**Category: LOU #7 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Please explain for everyone the contractual agreement between ICRWUA and Harvard for our non-profit water company to repay the for-profit developer their infrastructure development costs in excess of \$15.3 million. It appears that our non-profit ICRWUA is scheduled to reimburse the for-profit developer for the infrastructure at Talking Rock Ranch through a payment to Harvard of 15% of gross annual operating revenues from sales within the Talking Rock Ranch development for 25 years?

*Response: The Main Extension Agreement signed by ICR and Harvard provides that the developer is to construct all the water system infrastructure in the TRR subdivision at NO INITIAL COST to ICR. ICR is to repay the developer 15% of the gross revenue received from TRR customers for the next 25 years. If the full amount is not repaid in the time, no further repayment is to be made. ICR has projected that it is likely it will repay approximately \$2.5 million over 25 years. This is FAR short of the full investment in infrastructure required in the subdivision. Of course growth rates and tariff rates in the next 25 years will affect the final amount, but it will still be a fraction of the full investment.*

As a matter of information, ICR executed a similar agreement with the developer of Whispering Canyons.

**Category: LOU #8 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Understanding that the rates found on the proposed rate schedule has been provided to us with the Letter of Understanding, have been developed using a complex process, however, put in very simple terms the rates are actually developed through a breakeven cost analysis then adding a Commission approved or acceptable margin. With that said, how is it that we are able to provide pricing under the “Special Contract” at a rate below the settlement rates shown?

*Response: ICR commissioned a cost study that determined that from a cost viewpoint, it costs ICR less PER GALLON to provide water to a high volume user than to a low volume user. This outcome is not*

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*surprising. Discounts for high volume purchases are common throughout business. Considering the amount TRGC has reimbursed ICR or paid in ICR's behalf in 2006, the golf course is ICR's MOST PROFITABLE user. NOT providing a discounted rate for the golf course could mean losing them as a user of ICR services. IF ICR loses its most profitable user, unlike a competitive business where the business owner or investor suffers the loss, ICR will have to make up the difference from among existing customers by seeking higher rates. It is not uncommon for a utility Company to have a "turf rate" for golf course customers. For example, Arizona American has a turf rate in its Paradise Valley Water District of \$1.00 per 1000 gallons. In addition, the ACC approved a Special Contract for the Paradise Valley Country Club in which it receives a 15% discount off the turf rate or pays \$.85 per 1000 gallons.*

**Category: LOU #:9 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Board continues to maintain that based on agreements between Harvard and the ICRWUA Board, not Commission documents, that Talking Rock Golf Club is not a customer. While not agreeing with the position, let's just say for the moment that we leave the golf club and its currently permitted maximum groundwater draw for irrigation of the golf course of its 130 million plus gallons.

Can anyone please explain how and why it is being proposed that we are now going to allow the for-profit developer, Harvard/Talking Rock Development or any of its affiliated to apparently not be a tariffed customer by providing to the affiliates discounted services for another 40 million plus gallons of groundwater under the "Special Contract" at the proposed discount rate? I might add that according to the LOU, all other builders/developers will be expected to pay the proposed Commission controlled tariff rates.

*Response: See Response: LOU #8 above. It is important to recognize that the majority of the 130 million gallons referred to was water pumped from wells OWNED by TRGC, and distributed through the ICRWUA system. A discounted rate was therefore appropriate. Other builder/developers do not have their own water sources and must buy our water PLUS distribution services. TRGC would pay an increase rate under the LOU. In addition, regarding the last comment in the question, other developers, (ie Whispering Canyon, since it is the only one still planning additions infrastructure) would pay tariff rates for construction water. This is a fraction of the amount of water delivered annually to the golf course.*

**Category: LOU #:10 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. Why would you create a well agreement and later an LOU that is non-binding? You already had Order 64360 in place.
2. Why didn't you insist on Well #1 instead of accepting Well #3 immediately after Order 64360 was issued?

*Response: See Response: ACC# 2,3,7 & 14 above.*

**Category: LOU #:11 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why should we trust TRGC when they have proven their word is worthless? Well #1 was to have been transferred to ICRWUA quite awhile ago, but is now part if the offer in the LOU.

*Response: TRGC has abided by the terms of the Well Agreement executed by BOTH parties. See Response: ACC# 7 & 14 above.*

**Category: LOU #:12 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why won't Harvard turn over Well # 1 as it was ordered 6 years ago?

*Response: See Response: ACC # 2,3,4,6 & 14 above*

**Category: LOU #:13 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. Why hasn't TRRG turned over Well #1 to the water company?
2. How do you justify TRRG paying such a disproportionate fee for the water?
3. Tiered rate for everyone – including TRRGC!
4. Why accept a dysfunctional well?

*Response: 1. See Response: 2,3,4,6 & 14 above.*

*2. See Response: LOU# 8 above.*

*3. See Response: LOU# 8 above.*

*4. See Response: ACC# 3 above. If the LOU is implemented, TRGC will pay the cost of retrofitting well#2 will a smaller pump to improve its performance and life.*

**Category: LOU #:14 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Are any provisions in place to insure any new wells meet minimum quality standards?

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*Response: Under the proposed LOU, ICR's consent would be required to add additional well(s). In addition, TRGC would pay a proportionate share of costs of any special water treatment needed for water from existing wells if it should become necessary. NO such provisions are contained in the present Well Agreement.*

**Category: LOU #:15**      **Lives In: TRR** **ICR** **WC PR**      **Addressed to: Meyer Taylor**

Should ICRWUA agree to the wheeling of water for the golf course from any new wells, would the water be treated and by whom before it enters the system?

*Response: See Response LOU# 14 above.*

**Category: LOU #:16**      **Lives In: TRR** **ICR** **WC** **PR**      **Addressed to: Meyer Taylor**

What effect will the LOU have on the water supply needs now and in the future of ICR and WC as it builds out?

Can TR and TRGC pull water from ICR & WC wells if their wells fail or not supply enough water for TR & TRGC?

*Response: The LOU does not impact the water supply to the ICR, WC or Preserve subdivisions. Those subdivisions are served by a separate well field. The LOU will assure that ICRWUA has sufficient water to serve the TRR subdivision at full build out. The LOU provides that ICRWUA will obtain ownership of all three wells in the well field and have priority for residential users. Presently, the Company does not own wells that will produce sufficient water to supply the subdivision at full build out. Because of existing agreements and deed restrictions, the Company cannot interconnect the well fields.*

**Category: LOU #:17**      **Lives In: TRR** **ICR** **WC PR**      **Addressed to: Meyer Taylor**

Based on the test year of 2006, doesn't TRGC and Harvard owe the Water Assoc. between \$600,000 - \$750,000 in back water charges based on paying the ACC established Tariff Rate?

*Response: No.*

**Category: LOU #:18**      **Lives In: TRR** **ICR** **WC PR**      **Addressed to: Meyer Taylor**

Does the representative of Harvard agree with your interpretation of the LOU?

*Response: Thus far, the parties have agreed to the terms of the LOU. A final agreement is yet to be finalized.*

**Category: LOU #:19**      **Lives In: TRR** **ICR** **WC PR**      **Addressed to: Meyer Taylor**

Isn't the remediation for Well #2 limited by TRR to \$50,000?

*Response: The cost of replacement of the pump is limited to \$50,000. Other remediation that might be required, ie air removal or special water treatment are not subject to that provision.*

**Category: LOU #:20**      **Lives In: TRR** **ICR** **WC PR**      **Addressed to: Meyer Taylor**

Why does this LOU indicate that Harvard Dev. will pay \$1.00 per 1000 gals. and all other developers pay the Tariff Rate?

*Response: See Response: LOU# 8 & 9 above. It is not uncommon for a utility Company to have a "turf rate" for golf course customers. For example, Arizona American has a turf rate in its Paradise Valley Water District of \$1.00 per 1000 gallons. In addition, the ACC approved a Special Contract for the Paradise Valley Country Club in which it receives a 15% discount off the turf rate or pays \$ .85 per 1000 gallons.*

**Category: LOU #:21**      **Lives In: TRR** **ICR** **WC PR**      **Addressed to: Meyer Taylor**

Why have we not been provided the details of the "Special Contract" related to the shared operating and maintenance costs?

As we all know, the convoluted shared expense issue clearly has been a point of confusion for the Board when computing the amounts owed by Harvard to the company. This issue was raised at the Annual meeting in February for a previous year billing that had gone unpaid for an extended period of time. This again became an issue on an invoice sent to Harvard on February 18<sup>th</sup> in the amount of \$58,681.77. For some reason it had to be negotiated with Harvard according to Mr. Busch and subsequently reduced to an amount of \$39,411.64 that was apparently only paid sometime in May. Now, understanding the time value of money, why are there not interest or penalties assessed for late payments from Harvard, monthly payments or annual true-up? Secondly, why is not the generation of invoicing for Harvard a mechanical exercise where when an accurate is generated and does not have to be negotiated and reduced?

*Response: The question apparently refers to the Well Agreement by use of the term "Special Contract". The shared operating and maintenance cost provisions are called out in the Well Agreement. They are somewhat complex and less than than ideal. They are also somewhat subject to interpretation. The Well Agreement provides*



*for remedies for non-payment of annual true-up amounts, but it does not provide for late fees or non payment. Because Harvard has paid the electrical power costs for all equipment in the TRR system during 2007, the calculated true up amount was adjusted to credit TRGC for payment of the ICR portion of the electric power. The resulting amount, \$39,411.64 was promptly paid by TRGC.*

#### 4. Questions Concerning Water Rates

**Category: Rates #:1 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

April 16, 2008 ICR Rate Case Hearing

Judge Stern advised:

... goes back to the decision in January 2002... I heard the case ... wrote the decision... Mr. Taylor, you will have to be involved ... you can't just say, we are the water company and we are the golf course and we are going to make an agreement ... I'm concerned about ramming this thing through.

... I want the parties ... to file essentially a status report ... I will wait for a filing from applicant and other parties... that are ready to go forward ... that you have reached an agreement, a written agreement ... to present to people.

Question for Mr. Taylor:

Were you a party to the filing of the status report? Do you agree with it?

Three part Question for Mr. Meyer:

What is the rate contained in the written agreement?

In fact, where is the definitive written agreement?

The agreement has not been presented, the case cannot go forward, so, why are we having this meeting?

*Response: (to questions addressed to the Company)*

*(a) The rate formula referred to in the LOU has not been agreed upon, only the amount it is to generate based on 2006.*

*(b) The definitive document has not been agreed to by the parties. It is only in under development based on terms in the LOU.*

*(c) The final agreement will reflect the terms of the LOU. The meeting was held to provide an opportunity for the Company to present the LOU to membership.*

**Category: Rates #:2 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

In 2002, Why wasn't Harvard and TRGC charged the Tariff rates prescribed by the ACC?

*Response: The Company believed that charges to TRGC were covered under the Well Agreement and the TRGC was not a "customer" of ICR. TRGC situation is unique, in that, it owns its own wells and ICR was distributing water from its own wells. ALL other "customers" buy our water in our services.*

**Category: Rates #:3 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Will the Board charge all customers, including the golf course, the same tariff rates for water usage?

*Response: The Company will charge tariffs and rates approved and authorized by the ACC in this rate case. It is not uncommon for a utility Company to have a "turf rate" for golf course customers. For example, Arizona American has a turf rate in its Paradise Valley Water District of \$1.00 per 1000 gallons. In addition, the ACC approved a Special Contract for the Paradise Valley Country Club in which it receives a 15% discount off the turf rate or pays \$.85 per 1000 gallons.*

**Category: Rates #:4 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What range of dollar values will the TRGC Commodity Rate be?

*Response: The rate is to be cost based, and to provide \$125,000 in revenue for 2006. Considering the TRGC Water use in 2006 and expenses for the year, the commodity rate is expected to be in the range of \$1.00 per 1000 gallons, plus or minus 20%.*

**Category: Rates #:5 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Isn't the cost per gallon to ICR less for a high user than for a low quantity user?

*Response: YES See Response: LOU# 8 above.*

**Category: Rates #:6 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Water rates seem to be an issue, well ownership seems to be an issue.

*Response: This is not a question, but the observation is correct.*

**Category: Rates #:7 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Questions and Responses

With the new rates, how will the bottom line be affected for the Income/Expense Budgets?

*Response: The Company has asked for rates that will generate a surplus of revenue over expenses, a situation that has not existed in all the years ICR has been in existence. The amount of that surplus will finally be determined by an ACC Order establishing tariffs. The Company has asked for rates that will generate a surplus (profit- if ICR were a for profit company) of approximately \$53,000 per year (Subrebuttall Testimony 3/14/08). The Commission Staff has other ideas. That is one reason for the protracted case.*

**Category: Rates #:8 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What would the BREAK EVEN "Tariff Rate" be for the entire service area if TRR and TRGC were to pay the "Tariff Rate" for construction water and golf course water?

*Response: Before determining a "break even" rate, one must consider that the monthly minimum charge accounts for 35-40% of the water company revenues, and includes the first 1000 gallons use. This is to minimize risk to the water company of high fluctuations in water use, very typical in our area from winter to summer. An estimate of the "break even" rate could be determined by:*

- assuming 400 customers for the year, and all uses pay the same rate
- using 179,515,000 gallons delivered in 2006 (less 400x1000x12 or 4.8million gallons for assumed minimum monthly use)
- Using 40% as the total contribution of monthly minimum fees to total revenues
- Using \$301,105 as total company expenses (adjusted expenses determined for the test year 2006)
- Then water usage would have to generate \$180,663 of revenue to "break even" (60% of \$301,105). The other 40% would be generated by the monthly minimum charge.
- Then 174,715,000 gallons would have to generate \$180,663, or \$1.034 per 1,000 gallons above the minimum monthly fees to "break even".

*Again, this assumes that each gallon of water delivered is charged the same rate. Current ACC policy is for companies to utilize "reverse tier" residential rates, (the higher the use, the higher rate per gallon is charged) so every gallon is not charged at the same rate.*

**Category: Rates #:9 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why doesn't the board seek criminal charges against thieves that steal water from the company? It would be more of a deterrent than having to pay for it IF you get caught.

*Response: Although this question has no bearing on the rate case, the Company has pursued persons and companies that have unlawfully taken water. The Company has a number of options available in dealing with the issue, including but not limited to criminal charges.*

**Category: Rates #:10 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Is it possible our water Co. can go bankrupt because of the legal costs which have been incurred because of a few individuals?

*Response: It is possible for the Company to go bankrupt. Legal costs for this rate case have been MUCH more than anticipated. If the Company is faced with additional delays in settlement of the case or is faced with litigation following an ACC decision, the Company may well not survive.*

**Category: Rates #:11 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

How much reserve cash is left in the Water Company acct. and how many more legal fees are outstanding?

How much has this rate case and "whistle blowers" intervention cost ICR Water Users since Nov 07?

*Response: The company's actual cash on hand changes each month. During the summer, when use is greatest, the Company receives more in revenue. During winter months, expenses far exceed revenues. As of July, the Company owes approximately \$123,000 for professional services through May '08 in connection with the rate case; more than it currently has in the bank. The Company has incurred approximately \$152,000 in professional services since the intervention occurred in December 07.*

**Category: Rates #:12 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

On the rate increase – would people using large amounts of water pay a higher rate for the water used?

Questions and Responses

*Response: Yes. It has been the policy of the Az Corp. Commission in the past few years to require “reverse tier” residential rates in connection with all rate cases. This means the higher the use, the higher RATE is charged.*

**Category: Rates #:13 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why can't we have our meters read every 3 or 4 months to save money?

*Response: Although this question has no bearing on the rate case, there is no record to indicate if this matter has been considered by the Board. However, the two primary concerns would be that the company would receive no revenue for two or three months until the meters were read for the first time, then again for another three months, etc. The Company can't afford to go two or three months without revenue right now. In addition, bills could become quite large for some customers, and could be a burden on the customer and on ICR attempting to collect.*

**Category: Rates #:14 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. Why do water rates differ for different meter sizes?

2. Why are customers with 5/8" meters being subsidized?

*Response: 1. Presently, the usage rate is the same, regardless of meter size. The monthly minimum is greater for larger meters. Monthly minimums are used to minimize risk of drastic fluctuations in revenue due to usage variations. Larger meters can deliver larger volumes of water and hence a higher potential variation. So, higher monthly minimums for larger meters covers the risk.*

*2. Historically, rates set by the ACC have favored “typical” residential users (those with 5/8" meters) over customers with larger meters.*

### 5. Questions Concerning Golf Course

**Category: Golf Course #:1 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

How can you ethically justify using 150 million gallons of some of the purest water in the USA, and possibly some of the most precious groundwater to irrigate a golf course for the self interest of a few?

*Response: ICR is not responsible for the golf course. ICR's responsibility and OBLIGATION is to provide water to our customers and to TRGC under the Well Agreement.*

**Category: Golf Course #:2 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Does Well #1 produce enough water to supply both residential Talking Rock Ranch to full build out AND the golf course?

Can you make available to us any analysis that has been done to support your answer?

*Response: Well# 1 does not produce enough water to supply either residential and golf course needs now OR at full build out. As shown by analyses performed by both, Southwest Groundwater, Inc., and by Bill Meyer, a hydrologist and member of the board, Well #1 cannot produce enough water at full build out to supply both residential Talking Rock Ranch AND the golf course. The reader may find both reports filed in rate case testimony at edockett.azcc.gov and entering w-02824A-07-0338 in the search field.*

**Category: Golf Course #:3 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

The TRGC holding “pond” will require restoration of water due to evaporation. What is the calculation?

*Response: ICR is not responsible for the golf course or for golf course storage ponds/lakes. ICR is obligated to supply water to its customers. The question should be directed to an engineer or to TRGC.*

**Category: Golf Course #:4 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Isn't the Golf Course the most profitable user now?

Why should ICR Co do anything to lose this account?

*Response: YES, TRGC is the most profitable user, see Response: LOU# 8 above.*

**Category: Golf Course #:5 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What is the intent of the Survey? How are the survey results to be used?

How do those not attending get their views included in Survey results, or, must they forward their views directly to the ACC Commissioners?

When will the TRGC Golf Course be 100% on effluent for its water needs? 50% on effluent?

When will a transcript of this meeting be available for review or distribution?

*Response: The survey will be used to determine if those in attendance understood the issues better as a result of the meeting, and to determine their opinion of the LOU as a settlement vehicle.*

*See Response: Golf Course# 3 above.*

**Category: Golf Course #6 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What percentage is the effluent from the Sanitary District vs. fresh water to TRGC?

*Response: see Response Golf Course# 1 & 3 above.*

**Category: Golf Course #7 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why is TRGC not paying their TOTAL Cost for the water they use?

Why are we subsidizing them at all?

It seems that we are all forced to pay for the golf course and few of us use it.

*Response: TRGC is paying the share of expenses as call for in the Well Agreement.*

*“We” are not subsidizing the golf course. The golf course is paying more than its share of costs as determined by the study commissioned by the Board. In fact, the golf course is subsidizing “us”.*

**Category: Golf Course #8 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why is TRGC not a customer when they use the most water?

*Response: It is the Company’s view that the Well Agreement did not contemplate the TRGC was to be a*

*“customer” of ICR. The relationship spelled out in the agreement is clearly different than the relationship between ICR and its residential customers.*

**Category: Golf Course #9 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

If TRGC is not a customer, why are they receiving water from ICRWUA?

*Response: TRGC owns the land where the well field is located. TRGC presently owns one of the wells. They have rights to the water under this well field. All three wells were drilled and equipped at TRGC expense. They still own well#1 and are receiving water from its OWN well and from ICR, all in accordance with the Well Agreement. See Response: Golf Course# 9 above.*

**Category: Golf Course #10 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

How is the Golf Course going to change so it uses less water - go to smaller fairways, reduce watered area to 50% or less!

*Response: Although ICR is not responsible for the golf course, the Company is aware of TRGC’s plan to reduce turf irrigation by 10%, a process already underway. Usage for the first six month of 2008 is significantly less than for the same period in 2007.*

**Category: Golf Course #11 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why wasn’t the use of recycled effluent water discussed?

This should significantly reduce the amount of water for Golf Course and Construction use.

*Response: Question addressed to Mr. Taylor. ICR is not responsible for the golf course or the amount of effluent used by the golf course, nor does the issue have any bearing on the rate case. That said, the golf course does currently use effluent from all subdivisions, ICR, WC, Preserve and TRR for golf course irrigation. As more homes are constructed, more effluent will be available for use.*

## 6. Questions Concerning Board

**Category: Board #1 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

What is the recall process for the ICR Water Assn. Board of Directors, either on an individual OR total basis?

*Response: ICRWUA Bylaws do not contain a recall provision. The bylaws contains the following provision for removal of a Director:*

*“Any Director or Officer may be removed with or without cause at any time by the affirmative vote of the Board of Directors at a special meeting called for that purpose or at a general meeting after notice has been given to the Officer or Director to be removed”.*

**Category: Board #2 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

1. What is the procedure for removing any or all members of the Water Board?

2. Why wouldn’t the Board give the opposition a list of shareholders?

*Response: 1. See Response: Board# 2 above.*

Questions and Responses

*2. Customer lists are private information and considered confidential. The Company does not provide lists of its customers to anyone for circulation.*

**Category: Board #3 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why has the Board not changed the bylaws to reflect the changes in the community?

Examples of changes in the bylaws would include a term limit for Board members, proportionate representation on the Board to reflect the water customer populations in each of the 4 communities served by the Company, and enabling owners of the company to change the bylaws (versus the status quo which only permits the Board to change the bylaws).

*Response: The Board has discussed the need for revisions to the bylaws and has even presented a list of needed changes to an attorney. However, matters in the rate case have caused that matter to be tabled.*

**Category: Board #4 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Is it true that the "Taylor" contingent recommended to the ACC to dissolve the Water Board and the "Taylor" contingent take control, without any petition or vote of the ICR members?

Isn't this an attempted coup?

*Response: Question is addressed to Mr. Taylor.*

**Category: Board #5 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

When (or if) can I expect an answer of my letter to the board of January 30, 2008? Jack McGowan

**Category: Board #6 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

How many members of the ICRWUA Board are members of the Talking Rock Golf Course?

Have they recused themselves because of apparent conflict of interest?

*Response: There are presently four members of the board who are members of the TRGC. It is the Board's view, and that of its attorneys that membership in TRGC does not present a conflict of interest*

**Category: Board #7 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Why did ICRWUA agree to associate with TRR to begin with?

*Response: The parties involved in the decision are no longer available, so a specific response is not possible.*

*However, it would appear that:*

*(1) the developer did not want the responsibility for a water company for any number of years*  
*(2) the ACC, which must approve creation of a new water company, frowns on creating small water companies adjacent to one another.*

*(3) the combination of TRR and the other subdivisions creates a larger and potentially more stable company than a small one.*

## 7. Questions Concerning Other Items

**Category: Other #1 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

Aqua Meadows -

Who are they? Who are the owners? What is the business relationship to ICRWUA, TRGC, Harvard Investments or other parties involved in this case?

*Response: Aqua Meadows is the name of the company with whom ICR has an agreement concerning withdrawal of water for customers in the ICR, WC and Preserve subdivisions. Although ICR owns the wells, Aqua Meadows owns the land and the water. ICR pays for the water it withdraws from the wells under an agreement. The company is owned by Steve and Michael Pierce.*

**Category: Other #2 Lives In: TRR ICR WC PR Addressed to: Meyer Taylor**

It has been beneficial for everyone here to have seen ACC Commissioner Mayes' public record June 2006 PowerPoint presentation on the subject of Private Water Company Regulation by the Arizona Corporation Commission. The presentation is excellent and very informative. It helps explain why the Commission is using tiered rates, including conservation. Her presentation also gives insight on the Commission's position for the use of groundwater on golf courses. It may also be helpful to distribute the letter authored by Commissioner Mayes on 9/28/07 on the subject of Commission Policy on Prohibition of Groundwater for use on Golf Courses.

Maybe the ICRWUA Board could distribute at least the letter in their next mailing to the owners of the Association.