

SCHOA v. ARIZONA CORPORATION COMMISSION APPEAL

Status & Summary

Most of you are aware SCHOA has pending an Appeal from a decision of The Arizona Corporation Commission concerning the forced consolidation of Waste Water Districts. What does this all mean to you, the Sun City homeowner? SCHOA has led the efforts to stop the forced consolidation of wastewater and water districts, which result in significantly higher rates to the Sun City homeowner. With consolidation, we (Sun City) are subsidizing the other districts. Our focus was to protect our district from unfair rate hikes. Every house and condo in Sun City has already seen wastewater rate increases that are not justified by costs in our district. We continue to oppose such forced consolidation.

The issue is larger, and potentially impacts every resident of Arizona, not just Sun City. SCHOA will continue to do all that is possible in this matter. Underlining the fact that this is a community effort, the Property Owners and Residents Association (PORA) in Sun City West and the Recreation Centers of Sun City (RCSC) are working with us and we are grateful for their past and present support. Also, thanks to all of you who have contributed toward the costs of this effort through your membership and additional special contributions.

This is the status of our Appeal and a brief history of how we got there:

On February 21, SCHOA petitioned the Arizona Supreme Court to review the 2-1 decision of the Arizona Court of Appeals denying SCHOA's appeal from the Corporation Commission's decision to consolidate districts. The appeal was pending for over a year when the Court of Appeals issued its split decision upholding consolidation. SCHOA's Petition asks the Arizona Supreme Court to accept the case for review and reverse the Court of Appeals decision (and effectively the consolidation of EPCOR's wastewater districts).

In the Arizona court system, a party who loses a utility decision before the Commission has the right to appeal the Commission's ruling to the Court of Appeals, which SCHOA did. However, further review of a Court of Appeals decision to the Supreme Court is discretionary, rather than a right. The Supreme Court must agree to accept it. In this sense, Arizona's judicial system mirrors the Federal system: with rare exceptions, the US Supreme Court must agree to hear an appeal from a lower court.

The procedural rules for petitions to the Arizona Supreme Court allow other parties to the Commission's proceedings to intervene in the Petition process. That was done here by EPCOR WATER ARIZONA, INC and VERRADO COMMUNITY ASSOCIATION, INC., who supported consolidation and want to uphold the Commission's (and Court of Appeals') rulings.

The procedural rules also allow filing of *amicus curiae* (Latin for "friend of the court") briefs on behalf of interested third parties who take a position on the issues presented in the case. Amicus briefs are designed to provide the Supreme Court with expertise, perspective, or insight on the case's implications for future cases. Amicus briefs are usually filed by organizations or individuals who wish to further a particular legal, constitutional or social issue. Here, GLOBAL WATER RESOURCES, INC and THE ARIZONA WATER COMPANY have filed amicus briefs in opposition to SCHOA's petition. FREEPORT

MINERALS, INC. and THE GOLDWATER INSTITUTE have filed amicus briefs in support of SCHOA's petition. Like EPCOR, ARIZONA WATER, and GLOBAL WATER are public utilities. FREEPORT is a major commercial utility customer in Arizona, and GOLDWATER is a public policy and research foundation.

The "petition stage" of the Arizona Supreme Court briefing has ended, and now the parties are awaiting word from the court on whether it will hear the case. There is no deadline, but we are optimistic that the court will make that decision soon. If the court grants review, a second round of briefing in the "merits stage" may follow. SCHOA, GOLDWATER, and FREEPORT all believe that the case raises significant questions of Arizona constitutional law, particularly the amount of deference Arizona appellate courts give to Commission decisions. Hopefully, the Supreme Court will agree.

Again, Thanks to all of you who have contributed toward the costs of this effort through your membership and special contributions.

George Courtot
Board of Directors Vice President
SCHOA