



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
September 20, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:

BASIC WATER COMPANY,  
  
Debtor.

Case No.: 22-13252-MKN

Chapter 11

*Jointly Administered with:*

Affects All Debtors

In re Basic Water Company SPE 1, LLC,  
Case No.: 22-13253-MKN

Affects Basic Water Company

Date: September 13, 2023  
Time: 9:30 a.m.

Affects Basic Water Company  
SPE 1, LLC

**ORDER ON BASIC WATER COMPANY’S OBJECTION TO PROOF OF CLAIM OF SAGUARO POWER COMPANY, A LIMITED PARTNERSHIP [CLAIM NO. 13]<sup>1</sup>**

On September 13, 2023, the court heard Basic Water Company’s Objection to Proof of Claim of Saguaro Power Company, a Limited Partnership [Claim No. 13] (“BWC Claim Objection”), brought in the above-captioned proceeding. Appearances were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 On September 10, 2022, Chapter 11 proceedings were commenced by Basic Water  
2 Company (“BWC”) and Basic Water Company SPE 1, LLC (“SPE”) (collectively “Debtors”).  
3 The cases are jointly administered.

4 On January 11, 2023, proof of claim number 13 (“POC-13”) was filed by Saguario Power  
5 Company (“Saguario”) in the amount of \$701,165.83, plus liquidated damages.

6 On July 10, 2023, Debtors filed a proposed Disclosure Statement to accompany a  
7 separately filed proposed Chapter 11 plan (“Plan”). (ECF Nos. 421 and 422).

8 On July 30, 2023, Debtor filed the instant BWC Claim Objection as to POC-13. (ECF  
9 No. 445).

10 On August 25, 2023, an order was entered approving a stipulation for the BWC Claim  
11 Objection to be heard on September 13, 2023. (ECF No. 480).

12 On August 28, 2023, an order was entered conditionally approving the Disclosure  
13 Statement and scheduling a hearing on confirmation of the Plan for October 10, 2023. (ECF No.  
14 479).

15 On August 30, 2023, Saguario filed a response to the BWC Claim Objection (“Saguario  
16 Response”). (ECF No. 497).

17 On September 6, 2023, Debtors filed a reply. (ECF No. 499).

18 **DISCUSSION**

19 A claim for which a proof of claim is filed, “is deemed allowed, unless a party in  
20 interest...objects.” 11 U.S.C. §502(a). POC-13 is signed under penalty of perjury and  
21 constitutes prima facie evidence of the validity and amount of Saguario’s claim. See FED. R.  
22 BANKR.P. 3001(f). An objecting party must overcome the presumption of validity by presenting  
23 sufficient evidence of probative force equal to the allegations of the proof of claim. See *Burke v.*  
24 *Reno-Sparks Indian Colony (In re Affordable Patios & Sunrooms)*, 2022 WL 1115413, at \*3  
25 (B.A.P. 9th Cir. Apr. 22, 2022); *Reger v. Essex Bank (In re Landes)*, 626 B.R. 531, 545 (Bankr.  
26 E.D. Cal. 2021).

27 In this instance, Debtors object to POC-13 so that it will not be deemed allowed. Debtors  
28 object to POC-13 based on the materials that Saguario attached to its claim as well as another

1 undisputed document for which judicial notice is requested. Based on the language of the  
 2 documents, Debtors maintain that Saguaro is not in privity with the Debtors and therefore has no  
 3 claim that would be enforceable against the Debtors. See 11 U.S.C. §502(b)(1). In essence, the  
 4 materials on which the Debtors rely, i.e., the documents attached to POC-13, have probative  
 5 force equal to that of Saguaro, i.e., the same documents.

6 In response to the BWC Claim Objection, Saguaro does not offer an affidavit or  
 7 declaration providing any testimony (percipient, expert, or otherwise), nor any other  
 8 documentary evidence, which would support a finding or conclusion that it has an enforceable  
 9 claim against BWC or SPE. Instead, Saguaro suggests that scheduling an evidentiary hearing,  
 10 including a period for discovery, may be appropriate to address any factual disputes.<sup>2</sup> Absent an  
 11 evidentiary hearing, Saguaro proposes that the BWC Claim Objection be heard on October 10,  
 12 2023, along with plan confirmation, or, that the BWC Claim Objection be overruled based on the  
 13 record before the court. See Saguaro Response at 7:7-13. As to the latter, the court has reviewed  
 14 and considered the materials attached to the subject proof of claim. As required by FRBP  
 15 3001(c)(1), POC-13 includes copies of the writings on which it is based.<sup>3</sup> To explain the basis  
 16 for its claim, Saguaro attaches four exhibits:

- 17 A. Assignment of Water Rights and Rights for Water Service  
 dated November 22, 1991 (“1991 Assignment”).
- 18 B. Producing Companies Water Delivery Contract dated January  
 19 2, 2007 (“2007 Delivery Contract”).

20  
 21 <sup>2</sup> At the hearing, the court inquired as to the disputed facts for which an evidentiary  
 22 hearing and discovery would be required. Apparently, Saguaro does not have certain assignment  
 23 documents in its possession concerning the loss of water services on which its claim is based. If  
 24 such documents are necessary evidence of the validity or amount of its own claim, however, it is  
 25 not clear why they were not obtained before POC-13 was ever filed. More important, no  
 26 suggestion was made that any such assignment documents would involve a water delivery  
 contract between the Debtors and Saguaro. None of the three documents on which POC-13 is  
 based suggests or mentions such an assignment or contract, and none of the Invoices attached to  
 the proof of claim reflect transactions between the Debtors and Saguaro, rather than between  
 Olin and Saguaro.

27 <sup>3</sup> POC-13 also includes a “Statement itemizing interest, fees, expenses, or other charges  
 28 required by Bankruptcy Rule 3001(c)(2)(A)...” which applies in an “Individual Debtor Case”  
 rather than the current non-individual Debtors.

1 C. Agreement for Temporary Potable Water Service dated June  
2 13, 2022 (“2022 Temporary Potable Agreement”).

3 D. Invoices (“Invoices”).

4 The court also takes judicial notice of Contract No. 14-06-300-2083 entitled the “Contract for  
5 Delivery of Water to Basic Management, Inc.” dated September 18, 1969” with the U.S.  
6 Department of the Interior, Bureau of Reclamation (“1969 Contract”).<sup>4</sup>

7 Through the 1969 Contract, Debtors are permitted to receive from the federal government  
8 a limited amount of water from Lake Mead, located in Southern Nevada. The 1969 Contract  
9 does not specify the use of all of the waters supplied by the United States, but Article 1 thereof  
10 does identify certain “Producing Companies”<sup>5</sup> for which the Debtors’ predecessor is obligated  
11 under Article 4(c) to redeliver water that is delivered by the United States. The water  
12 entitlements provided by the 1969 Contract are not owned by the Debtors, but the Debtors  
13 simply act as a carrier for the waters through its delivery systems. Article 17 authorizes the  
14 rights under the 1969 Contract to be transferred, but only by written approval of the United  
15 States.

16 After the 1969 Contract was entered, the parties or their successors in interest entered  
17 into a variety of water delivery contracts that allocated the water entitlements provided by the  
18 1969 Contract. Those parties or their successors in interest include the City of Henderson, the  
19 Southern Nevada Water Authority, and the successors to the Producing Companies. Under those  
20 subsequent water delivery contracts, Debtors agreed with specific Producing Companies to  
21 redelivery of the water supplied by the United States under the 1969 Contract.

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22 <sup>4</sup> A copy of the 1969 Contract is attached as Exhibit “1” to the Omnibus Declaration of  
23 Stephanie Zimmerman in Support of Debtors’ Petitions, First Day Motions, and Related Relief,  
24 filed September 10, 2022. (ECF No. 7).

25 <sup>5</sup> Those Producing Companies were identified as American Potash & Chemical  
26 Corporation, The Flintkote Company, Titanium Metals Corporation of America, and Stauffer  
27 Chemical Company. The current successors in interest or name for each of the original  
28 Producing Companies are EMD Acquisitions LLC dba Borman Specialty Metals (successor to  
American Potash & Chemical Corporation), Pioneer Americas LLC dba Olin Chlor Alkali  
Products (successor to Stauffer Chemical Company), Lhoist North America of Arizona, Inc.  
(successor to The Flintkote Company), and TIMET (successor to Titanium Metals Corporation  
of America).

1 One of those water delivery contracts is the 2007 Delivery Contract. The parties to that  
2 contract are Olin and BWC. Consistent with the 1969 Contract, BWC committed to supply an  
3 allocated amount of water received from the United States to Olin as a successor to Stauffer  
4 Chemical Company. Nothing in the language of the 2007 Delivery Contract requires BWC to  
5 deliver water to any party other than Olin.

6 Prior to the 2007 Delivery Contract between Olin and BWC, the 1991 Assignment was  
7 entered between Olin's predecessor (Pioneer Chlor Alkali Company, Inc.) and Saguaro Power  
8 Company, a Limited Partnership ("Saguaro"). The 1991 Assignment referenced the 1969  
9 Contract as one of several "Pioneer Agreements." That assignment includes two important  
10 primary obligations by Olin to Saguaro: (1) Olin will deliver to Saguaro or cause to be delivered  
11 water and the right to delivery of water in an amount "up to eight hundred (800) gallons of water  
12 per minute, of which up to thirty (30) gallons of water per minute will be potable;" and (2) "in  
13 order to effectuate the assignment and transfer set forth in [(1)]," Olin assigns "its right, title and  
14 interest under the Pioneer Agreements." The 1991 Assignment is executed solely on behalf of  
15 Olin and Saguaro.

16 Along with the 1991 Assignment and the 2007 Delivery Contract, the other writing on  
17 which POC-13 is based is the 2022 Temporary Potable Water Agreement.<sup>6</sup> The Temporary  
18 Potable Water Agreement is designated as contract #26526. The agreement provides for the City  
19 of Henderson ("COH") to deliver certain amounts of potable water to two and only two  
20 customers: BWC and SPE. In other words, COH, BWC, and SPE are the only parties to the  
21 Temporary Potable Water Agreement.<sup>7</sup> The parties agreed that the potable water received from  
22 COH will be redelivered only to the Producing Companies (or their successors) required under  
23

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24 <sup>6</sup> The Temporary Potable Water Agreement reached in June 2022 was necessary because  
25 of the declining water level in Lake Mead. Prolonged drought conditions caused levels to go  
26 below the elevation necessary for the Debtors to draw water. Debtors then turned to COH to  
obtain potable water on a temporary basis to meet their obligations to the Producing Companies  
under the existing water delivery contracts.

27 <sup>7</sup> The Temporary Potable Water Agreement identifies the Las Vegas Valley Water  
28 District ("District") as a separate entity that distributes potable water in the City of Las Vegas  
and parts of Clark County (in which COH is a part).

1 the 1969 Contract.<sup>8</sup> The Temporary Potable Water Agreement expressly provides that no third-  
2 party beneficiary rights are created. Accompanying the Temporary Potable Water Agreement is  
3 a document (“Acknowledgement”) signed by all of the Producing Companies, as well as  
4 Saguaro, acknowledging the terms of the Temporary Potable Water Agreement.

5 The Acknowledgement identifies only BWC and SPE as the “Customer” of COH who  
6 receive water under the Temporary Potable Water Agreement designated as contract #26526.  
7 The Acknowledgment also identifies the Producing Companies as “End Users” consistent with  
8 the 1969 Contract. The Acknowledgement further specifies that an End User is not a water  
9 customer of the COH or the District.

10 Having considered each of the documents attached to POC-13, the court concludes that  
11 its prima facie validity has been overcome through the instant BWC Claim Objection. There is  
12 no privity of contract between the Debtors and Saguaro arising from the 1969 Contract. There is  
13 no privity of contract between the Debtors and Saguaro arising from the 1991 Assignment.  
14 There is no privity of contract between the Debtors and Saguaro arising from the 2007 Delivery  
15 Contract. There is no privity of contract between the Debtors and Saguaro arising from the 2022  
16 Temporary Potable Water Agreement.

17 Privity of contract does exist between Olin and Saguaro under 1991 Assignment. Privity  
18 does exist between BWC and Olin under the 2007 Delivery Contract. Privity does exist between  
19 COH, BWC, and SPE under the 2022 Temporary Potable Water Agreement. None of these  
20 documents suggests that Saguaro was intended to be a third-party beneficiary. To the contrary,  
21 Section 4.2 of the Temporary Potable Water Agreement is expressly entitled “No Third-Party  
22 Beneficiaries” and specifically provides that it “does not create any rights, benefits or causes of  
23 action for any other person..., including an End User.” Additionally, Section 20 of the  
24 Acknowledgement likewise provides that the Temporary Potable Water Agreement “is only  
25 intended to benefit the City [COH] and the Customer [BWC and SPE]...and neither the  
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27 <sup>8</sup> A separate Interlocal Agreement (“ILA”) was reached between COH and the District to  
28 permit COH to immediately provide potable water to the Customer (BWC and SPE) due to the  
proximity of available infrastructure. The ILA was designated as contract #26525.

1 Agreement nor the 2022 ILA [between COH and the District] shall be deemed to be for the  
2 benefit of any person who is not a named party to the particular agreement.”<sup>9</sup>

3 The absence of privity between the Debtors and Saguario is confirmed by the Invoices  
4 attached to POC 4-1 offered by Saguario in support the amount of its claim. All of the Invoices  
5 are from Olin to Saguario rather than from the Debtors to Saguario. Included in the Invoices are  
6 invoices from BWC to Olin in 2022, but not from BWC to Saguario. In other words, the Invoices  
7 confirm that Olin continued to receive water from the Debtors under the 2007 Delivery Contract,  
8 and Olin continued to supply water to Saguario under the 1991 Assignment.

9 Saguario has presented no evidence to demonstrate that it ever was in privity of contract  
10 with the Debtors. Because the Debtors have overcome the prima facie validity of POC 4-1 by  
11 evidence of equal probative value, Saguario is required to provide some evidentiary basis to  
12 support the validity and amount of its claim. It simply has not done so.

13 **IT IS THEREFORE ORDERED** that Basic Water Company’s Objection to Proof of  
14 Claim of Saguario Power Company, a Limited Partnership [Claim No. 13], brought in the above-  
15 captioned proceeding, Docket No. 445, be, and the same hereby is, **SUSTAINED**.

16  
17 Copies sent via CM/ECF ELECTRONIC FILING

18 Copies sent via BNC to:  
19 BASIC WATER COMPANY  
20 BASIC WATER COMPANY SPE 1, LLC  
21 875 WEST WARM SPRINGS ROAD  
22 HENDERSON, NV 89011-4063

23 FORCE TEN PARTNERS, LLC  
24 6671 S. LAS VEGAS BLVD.  
25 BLDG. D., STE 210  
26 LAS VEGAS, NV 89119

27 NANCY RIBAUDO, ESQ.  
28 KELLY HART & HALLMAN LLP  
201 MAIN STREET, SUITE 2500  
FORT WORTH, TX 76102

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<sup>9</sup> Section 20 of the Acknowledgement also provides that the ILA “is only intended to benefit the City and the District.”