

**Liquid Assets:  
Enron's Dip into Water  
Business Highlights Pitfalls of  
Privatization**

A special report by

**Public Citizen's  
Critical Mass Energy and Environment Program**

**Washington, D.C.  
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# Liquid Assets: Enron's Dip into Water Business Highlights Pitfalls of Privatization

## Executive Summary

The story of Enron Corp.'s failed venture into the water business serves as a cautionary tale for consumers and policymakers about the dangers of turning publicly operated water systems and resources over to private corporations and creating a private "market" system in which water can be traded as a commodity, as Enron did with electricity and tried to do with water.

Enron's water investments, which contributed to the company's spectacular collapse, would not have been permitted had the Public Utility Holding Company Act (PUHCA) been properly enforced and not continually weakened by the deregulation initiatives advocated by Enron and other energy companies. Rather than strengthen enforcement of this Depression-era law, which protects consumers by limiting speculative investments by electric and natural gas companies, Congress is now considering abolishing it altogether. Such a move would encourage risky investments by utility companies that serve essential consumer needs, at a time when utilities are moving to consolidate assets across various sectors, such as electricity, natural gas, telecommunications and water. Such "convergence" could subject the most important public resource – water – to the vagaries of a marketplace that could be manipulated by unscrupulous or incompetent operators.

The following report demonstrates how Enron's brief tenure in the water business highlights many risks of water privatization: poor contract performance, political corruption and influence peddling, environmental violations, prospects of water commodification, and uncertainty about the financial stability of private contractors.

- In **Buenos Aires Province, Argentina**, Azurix's concession was plagued by lengthy service interruptions, inferior water quality, and failure to adequately treat wastewater effluent, forcing the local regulatory agency to impose sanctions and levy fines exceeding \$1 million total. At one point, the agency prohibited the company from charging its users because their water was unfit to drink and required Azurix to make truck deliveries of water. In the face of these problems and red ink, Azurix defaulted on the 30-year contract two years into it, even though the concession was the company's second largest asset.
- In **Madera County, California**, Azurix purchased a ranch in hopes of developing a water bank in the underlying aquifer to store and sell water. To win over the locals that overwhelmingly opposed the project, Azurix launched an elaborate public relations effort. It also expressed willingness to help the county with a multimillion-dollar government center construction project. Meanwhile, Enron and Azurix made large contributions to a group that advocated passage of a \$1.9 billion state water bond issue, funds from which could potentially be used for the Madera project, and to California Gov. Gray Davis, who appoints the head of

the agency responsible for allocating these funds. The project was never approved.

- In **Florida**, Azurix offered to help restore the Everglades if allowed to sell some of the Glades' water. Because in Florida, water could not be bought or sold, Azurix lobbied to change the law. It hired the former manager of the South Florida Water Management District, the local sponsor of the Everglades restoration project, and used the services of two other former district officials to lobby the governor and state Legislature. At one point Azurix's representatives met with Gov. Jeb Bush to discuss the company's objectives. However, the bill that reflected Azurix's causes never made it out of the committee.
- In **Fulton County, Georgia**, a controversy over the bidding process surrounded Azurix's bid to design, build and operate a water plant. The selection committee's recommendation favored Azurix in part because the company proposed ultraviolet treatment instead of chlorine. In its communication with the state's Environmental Protection Division two years prior, the county's Public Works director said that ultraviolet treatment would be used at the plant. However, the document requesting bids did not mention the preference. Also, the selection committee favored Azurix's willingness to assume full liability, even though the company's financial future was uncertain. Azurix's partner in another Georgia project was a member of the consortium that participated in the selection process. After a heated debate, the county commissioners voted to give the contract to Azurix, even though the runner-up submitted a lower bid and had more experience.
- In **Houston, Texas**, Azurix became engulfed in another controversy over a similar contract. A persistent rumor took root that Azurix, a hometown player with significant connections to Mayor Lee Brown's administration, would get the contract. The city officials acknowledged that the conflict-of-interest policy targeted Azurix's main competitor. The mayor admitted to holding Azurix stock at one point, and a heated argument ignited between the city attorney and the chair of the government corporation awarding the contract over selection procedure changes that would play against Azurix. Despite the company's hiring of Brown's former fund raiser and other prominent public figures to lobby for the contract, it lost the competition.
- In **Ghana**, Azurix's bid to operate a water system in the Accra metropolitan area led to allegations of bribery. The World Bank withdrew its pledge to contribute \$100 million to a \$285 million water pipeline project, citing suspicions of corruption and documents showing a \$5 million upfront payment by Azurix.
- In **Ontario, Canada**, Azurix pleaded guilty to 19 charges levied by Ontario's Ministry of Environment under environmental statutes and then received another fine for using an uncertified operator at one of its plants.

The story of water privatization is being written today. Enron's dealings in the water business should lead policymakers to second-guess the wisdom of transferring

the government's responsibility of providing the public with safe and affordable drinking water to private corporations, which are accountable not to the public but to their shareholders. And as the Enron scandal has shown, a corporation can be on top one day and in a bankruptcy court the next.

## **Introduction**

### ***Oil of the 21<sup>st</sup> Century***

In the late 1990s, water became a hot investment – one spurred by predictions of colossal profits from the “oil of the 21<sup>st</sup> century,” policies of international financial institutions that encouraged privatization, and changes in the U.S. tax code that allowed municipalities to enter 20-year operation contracts with private companies without losing their ability to issue tax-exempt bonds. Previously regarded as slow-growth, stable and hardly thrilling, the water sector sprung up with a new life and high expectations.

The World Bank predicted that by 2025 two-thirds of the world’s population would run short of drinking water. And, with 85 percent of the U.S. population and a significant majority of the world’s population receiving its water from public providers, the potential for privatizing water systems drove speculation to a fever pitch.

Almost overnight, the water sector assumed a significant role on Wall Street. Companies merged with such great speed that tracking their ownership became a challenge in itself. Before long, the wave of consolidation left only a handful of companies in control of most of the private water market. Even French entertainment company Vivendi Universal, owner of Universal Studios, built up its holdings to the point of becoming the largest water company in the world.

At the same time, international financial institutions, led by the World Bank and the International Monetary Fund, issued loans to developing nations on the condition that they privatize their water and wastewater services. This helped water companies expand their customer base and revenues.

In the United States, the late 1990s brought the realization that century-old water and wastewater pipes, pumps and other equipment had reached the point of obsolescence. To comply with enhanced drinking water and wastewater standards, old treatment facilities had to be upgraded or replaced. An increasing number of municipalities, pushed by a federal government reluctant to accept financial responsibility for crumbling infrastructure, began to consider privatization in the hope of saving money and improving service. Despite the privatization’s brief record and the risks it involved, the privatization movement grew rapidly.

Still, privatization of water and wastewater services is a relatively new phenomenon in the United States. Since the early 1900s, water service generally has been regarded as a public responsibility, and public providers have served most of the United States. Today, public utilities provide reliable water service to 85 percent of the country’s population. But a 1997 change in tax procedures opened the door for long-term privatization contracts. Consequently, some communities have entered into 10- and 20-year privatization contracts.

Privatization advocates argue — usually with little supporting evidence — that private-sector operation of water systems will lead to greater economic efficiency and that the positive effects will percolate through the economy by way of stabilized rates,

reduced public debt and improved budgetary management. Proponents argue that public-private partnerships, a euphemism for privatization, can foster savings and improve service. However, because not one of these long-term contracts has been in place for more than five years, it is impossible to determine whether these claims are sound. The growing body of evidence is challenging the aforementioned assertions.

Pitfalls to privatization are many. Promised cost savings, for instance, could be neutralized by change orders – reimbursement requests for services not enumerated in a contract. And in the pursuit of lower operational costs and higher profits, private companies could neglect maintenance, especially if a contract is close to expiration.

When city officials who are closely involved in original contract negotiations are no longer in office, disputes over contract language could end up in court. In the end, the city may not receive what it paid for. Further, a community's growth and economic development could potentially be paralyzed because a private water company refuses to extend water lines or provide adequate and reasonably priced services to the new businesses.

Financial stability of private companies is also a concern. A company's filings may not reflect its financial situation and its debt-to-equity ratio. An incredible pace of consolidation in the water industry over the past five years makes one question whether water companies have the means to satisfy all terms of their contracts over the long term. If a company becomes insolvent, users' access to adequate water service could be jeopardized and the taxpayers could be forced to pick up the tab.

The creation of water markets, with speculators buying and selling water rights, has become another fashionable topic in the water industry as water shortages have become more acute in areas such as California, Texas and Florida. Allowing such an essential resource to become the subject of private speculation could lead to a potential disaster. Energy deregulation in California, for example, led to astronomical price hikes and rolling blackouts as private companies created artificial shortages to manipulate prices. If water follows on the heels of energy deregulation, low-income people could lose access to affordable water service, water resources could be devastated, and ecosystems they support could be destroyed.

Profits and shareholder value are key priorities for private companies – not public or environmental interest. And because market analysts continue to project profits from privatizing water infrastructure and resources, the private presence in water sector is expanding.

### ***Convergence and Public Utility Holding Company Act***

Energy companies were among the first to eye water profits. "Multi-utility" and "integrated solutions" became the buzzwords of the "convergence" movement as marriages of energy, water, and telecommunication companies took place. In 1998, Enron bought British Wessex Water. In 2000, German energy giant RWE AG purchased Thames Water, the largest water company in the United Kingdom. Meanwhile, French Suez and Vivendi, which are contesting the title of the world's largest water company, already provide energy services through their subsidiaries Tractebel and Dalkia, and

waste services through SITA and Onyx . Vivendi also provides transportation services through Connex. Pennsylvania-based water utility AquaSource is owned by DQE, an energy company.

Convergence does not reflect the interest of the consumer, however. Companies in some cases charge higher rates to current customers to finance expansion, thereby transferring the risk of precarious investments onto the shoulders of their users. Also, when a single company gains control of the key services – water, energy, waste and telecommunications – the newly created monopoly allows it to manipulate rates and bully local governments.

The Public Utility Holding Company Act of 1935 (PUHCA) was designed to protect consumers from the risks of convergence. It allows private energy utilities to invest only in physically interconnected utilities and prohibits expansion into unconnected areas and other sectors. The law was passed in response to pyramiding schemes the utility companies implemented in 1920s that allowed them to overcharge their customers and mislead investors. The pyramids eventually collapsed, in a manner similar to Enron, costing investors billions and contributing to the stock market crash of 1929 and the Great Depression.

However, PUHCA has been eroded over the decades as a result of deregulation and poor enforcement. This created conditions that permitted Enron to deceive its consumers and investors. It allowed the company to make ill-advised investments in overseas power plants, in water companies and concessions, and in telecommunications. Unfortunately, instead of learning from the Enron debacle and strengthening the consumer and investor protections, lawmakers are proposing to repeal the law.

Ironically, Enron was brought to its knees by excesses made possible by a weakened PUHCA and deregulation policies that the company aggressively sought. Enron's failed investment in the water sector, which would not have been permitted under a loophole-free and properly enforced PUHCA, became a major contributor to the company's demise, costing investors hundreds of millions of dollars and jeopardizing its customers' water service.

## **Enron Dips Into Water**

Eager to exploit new profit opportunities, Enron aggressively ventured into the water business. Its executives believed that the company's experience and expertise in the energy sector would give the tools to master the water business and realize quick returns on investment. Enron, once a pipeline operator, became the world's largest energy wholesaler after energy markets were deregulated. The company played a central role in California's energy "crisis" where electricity prices tripled after deregulation allowed energy firms to create artificial shortages.

Enron went to extreme lengths to bring about electricity deregulation, making large campaign contributions to elected officials and forging ties with regulators. Seventy-one U.S. Senators and 186 House members reported receiving money from the company since 1989. Enron contributed nearly \$6 million to federal parties and

candidates, including George W. Bush, between 1989 and 2001.<sup>i</sup> The company was counting on deregulation of water by the states and lack of federal assistance for infrastructure to give its new water venture a boost.

In January 1998, Enron formed Azurix Inc. with the stated goals of owning and managing water and wastewater assets, providing water and wastewater related services, and developing and managing raw water resources. Incorporated in Delaware, with its headquarters in Houston, Azurix was a holding company that conducted its operations through several subsidiaries.<sup>ii</sup> Rebecca Mark, an Enron executive who transformed the company's international operations into a successful division, was appointed to lead Azurix.

In its brief, three-year run in the water industry, Enron highlighted many risks that privatization of water resources and infrastructure carries. The company tried to turn water into a tradable commodity and to make money on its speculation, as it did with energy. It defaulted on a contract to provide water and wastewater services to 2.5 million people in the Buenos Aires Province, Argentina, under fire from the local regulatory agency for service interruptions and inadequate water and wastewater treatment. It was accused of making improper payments in Ghana, causing the World Bank to refuse a promised loan to the African country. In Ontario, Canada Azurix was fined for a number of environmental and operational violations. In Fulton County, GA and in Houston, it became engulfed in controversies over contract awards.

In the fall of 2001, when Enron's questionable accounting was exposed and its stock tumbled, the company collapsed in what became the largest corporate bankruptcy to this day. Thousands of workers watched their retirement accounts evaporate when Enron's stock hit the rock bottom, though the company's executives cashed in their lucrative stock options when the share prices were still high. And the lenders were left wondering how much investment could be salvaged.

Members of Congress, many of whom were beneficiaries of Enron's generous campaign contributions, responded to the company's collapse with hearings. Regulatory agencies launched investigations. Journalists produced analyses of the corporate culture that led to the collapse and exposed weaknesses in accounting standards and other consumer and investor safeguards. Even President Bush, who had borrowed Enron's corporate jet during his campaign and whose friend Kenneth Lay, Enron's chairman, raised hundreds of thousands of dollars for the presidential campaign, jumped on the reform bandwagon.

The proposals ranged from rewriting accounting standards and reviewing different Wall Street practices to enhancing the enforcement powers of the Securities and Exchange Commission and protecting workers' pension plans.

Meanwhile, a bill introduced in the U.S. Senate by Senators Bob Graham (D-Fla.), James Jeffords (I-Vt.), Michael Crapo (R-Idaho) and Robert Smith (R-N.H.) in February 2002 promoted privatization of country's water systems. Instead of reflecting on Enron's performance in water business and realizing that private water service provision entails significant risks, the bill's authors wanted to make federal funding for water infrastructure conditional on the recipient's consideration of privatization.<sup>iii</sup>

A closer look at Enron's water endeavor will do much good for those who are eagerly jumping on the privatization and deregulation bandwagon to solve the nation's water infrastructure and service problems.

### ***Accounting, Enron Style***

Enron created Azurix in 1998. To prevent Azurix-related debt from becoming a drag on Enron's books and credit rating, Azurix concocted an elaborate financial scheme that kept its debt off of Enron's balance sheet. Key to the strategy was Enron's creation of Atlantic Water Trust, in which it owned a 50 percent stake. The other 50 percent was acquired by Marlin Water Trust.<sup>iv</sup>

Consisting of institutional investors, Marlin Water Trust itself was created by Enron to issue \$1.24 billion in debt and use the proceeds to purchase its 50 percent stake in Atlantic Water. The interest on the debt was backed by Enron, but principal payments were to come from proceeds from Azurix's initial public offering or a private equity placement. If these funds were not available repay the debt, Enron was committed to do so via an equity offering.<sup>v</sup>

By the end of 1999, Atlantic Water had cobbled together more than 50 subsidiaries and limited partnerships in the Cayman Islands.<sup>vi</sup> In addition to avoiding taxes, basing their operations in the Caymans also enabled Azurix and Enron to better hide liabilities and losses from investors.

### ***Building the Empire***

Enron's equity acquisition began in October 1998, when the company paid \$2.4 billion for Wessex Water Ltd., which formed the backbone of Azurix's operations. The British water and wastewater outfit became and, to this day remains, Azurix's largest asset. Wessex provides water services to more than 1 million people and wastewater services to 2 million people in southwestern England.<sup>vii</sup> Enron expected Wessex, one of the most efficient water utilities in the United Kingdom, to help get its water and wastewater business off the ground.

In May 1999, Azurix bought Philip Utilities Management Corp., a Canadian water and wastewater service company based in Hamilton, Ontario. Together with several smaller companies purchased later, Philip Utilities formed what is now Azurix North America.

In addition, Azurix won several long-term concession contracts in Latin America. In 1998 Enron, in partnership with French water company SAUR, submitted the winning bid to acquire a controlling interest in Obras Sanitarias Mendoza S.A.<sup>viii</sup> – a privatized water company with a 95-year exclusive concession in Mendoza Province, Argentina.

In June 1999, Azurix bid \$438 million to gain another concession in Argentina – this time a 30-year contract to operate the water and wastewater systems in parts of Buenos Aires Province.<sup>ix</sup> Many market analysts later suggested that the bid was

unreasonably high. Facing fines from the local regulatory agency for poor performance, Azurix decided to withdraw from the contract two years later.<sup>x</sup>

Azurix went on to expand into Mexico, acquiring 49.9 percent interest in the Cancun and Isla Mujeres concession, owned by Desarrollos Hidraulicos de Cancun, S.A. and 49 percent of the holding company that owns Industrias del Agua, a Mexican water and wastewater services company.<sup>xi</sup>

Further expanding its Latin American holdings, Azurix in September 1999 purchased three Brazilian water companies operating mainly in the states of Rio de Janeiro and Sao Paulo. Eike Batista, head of Azurix's Brazilian operations, publicly boasted that water resources offered returns on investment exceeding 30 percent, telling a Houston newspaper: "I won't tell you our [profit] margin because you're going to attract competition."<sup>xii</sup>

In the United States, Enron pursued two prime objectives. The first was to expand its share of water and wastewater assets and service contracts via Azurix North America. Azurix, however, had only limited success in winning contracts, facing stiff competition from multinationals Suez, Vivendi and Thames. By early 2000, Azurix abandoned competition for large, showpiece contracts and began targeting smaller, less-costly deals, where it had a better chance of winning.

The second objective in Enron's strategy was more ambitious: to acquire water rights and develop raw water resources, which could then be traded. By doing so, Enron hoped to replicate its success in the energy trading business. Azurix's key acquisition was 13,600 acres of land in Madera County, Calif., for \$31.5 million,<sup>xiii</sup> with the goal of constructing, owning and operating a water bank to store surplus water during the wet years and then sell it to willing buyers. Making the deal juicier was the property's close proximity to existing canals and aqueducts.<sup>xiv</sup>

### ***The Walls Tumble***

In June 1999, Azurix completed an initial public offering of about third of the company's common stock at \$19 per share. Atlantic Water Trust retained the remaining two-thirds of the shares, thus giving Enron a direct, one-third interest in Azurix.<sup>xv</sup>

As a result of Azurix's poor financial performance, the stock tumbled. After a peak of \$23.88 on July 9, 1999, the company's stock price went into a free-fall. On October 23, 2000, soon after Azurix announced a worse-than-projected financial performance, the stock closed at \$3.44 per share.<sup>xvi</sup> Several class action suits against Azurix and its officers followed, alleging that the company had misrepresented and omitted information related to its performance between June 1999 and August 2000. The lawsuits have since been consolidated into one case, which is being heard in the U.S. District Court for the Southern District of Texas.<sup>xvii</sup>

In fall 2000, after Azurix CEO Rebecca Mark resigned amid the financial meltdown, Enron started looking for buyers for Azurix. None of the three offers that came in, however, exceeded \$4 per share.<sup>xviii</sup> The following March, Enron took Azurix

private, buying the outstanding shares and regaining a majority interest. Unable to get the price it wanted for the entire company, Enron broke it up for piecemeal sale.

In November 2001, American Water Works, the largest private water company in the United States, bought Azurix North America along with its 2 million customer ratepayer roll in the U.S. and Canada for \$155.9 million. Earlier that fall, Azurix's directors voted to divest the company's holdings in Argentina, Brazil and Mexico, which they predicted to occur by June 2002.<sup>xix</sup> Wessex Water is expected to be sold in spring 2002.

Because the Marlin Water debt was backed by Enron, it came due two years earlier than scheduled, in November 2001, when Enron's stock tumbled and credit agencies downgraded the company's rating. Almost immediately thereafter, Enron filed for bankruptcy.

## **International Operations**

### ***Argentina***

"Latin America should be a sweet spot for Azurix," Debra Coy, a leading water industry analyst with Charles Schwab & Co., cheerfully predicted in January 2000.<sup>xx</sup> Unfortunately for Enron and Azurix, Coy's prognosis did not materialize. It didn't even come close. In less than two years, Azurix was pulling up stakes in Argentina - 28 years ahead of schedule.

Azurix's concession in the province of Buenos Aires was one of the company's principal asset, second only to Wessex Water. Having laid out \$438 million for the contract, Azurix expected to generate solid profits over the deal's 30-year term. Under the contract, Azurix would provide water and wastewater services to 2.5 million people in 49 districts within the province, including the cities of Bahia Blanca and La Plata. In the first five years, Azurix promised to increase the population's access to drinking water access from 52 percent to 82 percent, and access to sewer service from 38 percent to 68 percent.<sup>xxi</sup> It never achieved that goal.

Serious problems cropped up almost immediately. In March 2000, government authorities considered leveling sanctions against the company because of very low water pressure.<sup>xxii</sup> One month later, residents of Bahia Blanca began complaining that their water stunk and was brown. "It smells and tastes like a pesticide," remarked city spokesman Carlos Rossi. "When you take a hot shower, the odor is overwhelming."<sup>xxiii</sup>

Bahia Blanca leaders were quick to warn residents to avoid using tap water, which officials said contained bacteria that caused skin irritation and possibly neurological damage.<sup>xxiv</sup> Angry city residents took to the streets, carrying banners reading "This water is going to kill us," and demanding government action.<sup>xxv</sup> They were soon instructed to drink bottled water, and to take shorter showers and baths.<sup>xxvi</sup>

"I've worked here for 25 years and this is the worst water crisis I've ever seen," Bahia Blanca public health chief Ana Maria Reimers told a Houston newspaper.<sup>xxvii</sup>

The provincial regulatory agency, Organismo Regulador de Aguas Bonaerenses (ORAB), ordered Azurix to deliver free potable water to hospitals, sanatoriums, health centers, first aid facilities, schools and all people affected by the emergency until water quality met contractual standards.<sup>xxviii</sup> ORAB also required Azurix to keep chlorine levels high enough to guarantee the microbiological safety of water.<sup>xxix</sup> The situation grew so severe that ORAB prohibited Azurix from charging users in Bahia Blanca and Punta Alta for the period between April 12 and May 31, 2000.<sup>xxx</sup>

Tests conducted by Azurix and the provincial government did not find toxic substances in the water. The source of the smell and odor was determined to be higher-than-usual algae levels in a government-operated reservoir. In response, Azurix claimed that the government was required to build algae-removing equipment, which the company said had not been done at the time of the problems. Accordingly, Azurix asked to be reimbursed for costs stemming from the snafu.<sup>xxxi</sup> The dispute did not have a clear resolution. The province refused to reimburse Azurix but allowed the company to reduce the amount it was required to invest under the contract.

Problems continued. Most of La Plata did not have water service for several days in the summer of 2000-01.<sup>xxxii</sup> A review of ORAB documents for the period of Azurix's operations reveals that the agency spent the bulk of its time dealing with Azurix's contract. Throughout the company's presence in the province, ORAB systematically confronted Azurix about water pressure and service availability problems, and levied heavy fines for the company's failure to provide reliable water service, which the contract required.

In less than a year, Azurix's sweet spot had soured to the point that, in December 2000, ORAB fined the company \$250,000 for breach of contract. ORAB cited interruption of sanitary services due to Azurix's operation errors. In May 2000, three cities experienced a two-day interruption of service. Two months later, service was interrupted again in two of these cities.<sup>xxxiii</sup>

Azurix's poor performance prompted Buenos Aires' public works minister to declare that the company was "not fulfilling the expectations of users," and to call for an urgent solution to water quality and availability problems.<sup>xxxiv</sup>

In January 2001, provincial Governor Carlos Ruckauf, who would later become the country's foreign minister, asked legislators to cancel the contract: "We are talking about a company that is not functioning as it should. It is performing badly in Bahia Blanca, in several areas in the interior of the province, and here, in La Plata, it has had the audacity to demand a rates increase..."<sup>xxxv</sup>

Argentinean Economy Minister Jose Luis Machinea was reported to oppose canceling the contract because a bank that provided capital for the country's economic rescue package held an interest in Azurix.<sup>xxxvi</sup>

In February 2001, Azurix reached a settlement with the provincial government that allowed the company to invest significantly less than the \$350 million that was originally promised.

Six months later, Azurix was fined another \$250,000 for improper billing, including over-billing 3,800 customers.<sup>xxxvii</sup> Six more fines followed in November and December: \$50,000 for releasing untreated effluent<sup>xxxviii</sup>; three \$50,000 fines for exceeding permitted effluent levels<sup>xxxix</sup>; \$100,000 for a 30-hour service interruption<sup>xl</sup>; and yet another \$250,000 fine for a 50-hour service interruption.<sup>xli</sup>

Finally, in October 2001, Azurix announced plans to withdraw from the contract altogether, accusing the province with failing to live up to its end of the deal. Azurix complained that it couldn't earn enough money and adequately serve customers because the province would not allow the company to charge rates specified in the contract and would not deliver promised capital improvements.<sup>xlii</sup> The province countered with its own claims of contract breaches by Azurix.

Azurix then filed a claim with the World Bank's International Centre for Settlement of Investment Disputes under the provisions of a treaty that allows investors from one country to pursue arbitration proceedings against foreign governments. Azurix claimed that Argentina had appropriated its investment and sought to recover damages in excess of \$600 million.<sup>xliii</sup>

After announcing that it would default on the contract and discontinue operating the systems by January 2002, Azurix announced it would provide services through March in an effort to facilitate a smooth transition.<sup>xliv</sup> Yet, even the transition period has not been smooth. In January 2002, ORAB demanded that Azurix provide water free to the Cambaceros neighborhood of Ensenada, in response to persistent water interruptions during the previous four months. Azurix's solution was to have water trucked in.<sup>xlv</sup>

### ***Ontario, Canada***

In July 2001, Ontario's Ministry of the Environment levied eight charges against Azurix North America under the Ontario Water Resources Act. Seven of the charges related to the company's alleged failure to adequately treat sewage between January and December 1999. Another charge alleged that not every operator at one of the company's plants held a proper license between May and December 2000.<sup>xlvi</sup>

In August 2001, Azurix pleaded guilty to 19 charges brought under state and federal statutes and was fined Cnd\$168,000. Three months later, the province's Ministry of Environment fined Azurix Cnd\$16,000 for using an uncertified operator to fix pumps at another plant during a labor dispute in August 1999.<sup>xlvii</sup>

After American Water Works bought Azurix North America in November 2001, the company's problems did not end immediately. In December 2001, a malfunction at an Azurix-operated facility in Haliburton County resulted in a discharge of raw sewage into Kashagawigamog Lake. After an estimated 68,000 liters (18,000 gallons) of raw

sewage flowed into the lake, the regional medical officer advised residents to boil their water for the next two days.<sup>xlvi, xlvii, xlviii, xlix</sup>

In February 2002, Azurix and Terratec Environmental Ltd. were charged with two more environmental offenses. This time, the province's Environment Ministry alleged that the companies applied biosolids, resulting from sewage treatment, too close to residential areas, fouling the air. The companies are scheduled to answer the charges in court in April 2002.<sup>i</sup>

## ***Ghana***

When the government of Ghana, encouraged by the World Bank, decided to privatize water services in Accra, the country's capital and largest city, Azurix jumped at the opportunity.

In 1999, Ghana's Ministry of Works and Housing chose Azurix over two French water giants Suez Lyonnaise des Eaux and Vivendi Environnement. The companies challenged the award. According to Rudolf Amenga-Etego of the Integrated Social Development Centre in Ghana, there were allegations of Enron/Azurix giving \$5 million in kickbacks to certain politicians. Because of significant public protest, the contract offer was withdrawn and the bidding process was started over.<sup>ii</sup>

Peter Harrol, head of the World Bank's operations in Ghana, acknowledged "suspicions of corruption, and a draft schedule of payments by Azurix showed a \$5 [million] upfront payment." Azurix officials denied committing bribery.<sup>iii</sup>

In the wake of the bidding scandal, the World Bank in 2000 backed out of a deal to contribute \$100 million toward a \$285 million water pipeline project in Ghana.

## **Commodification of Water**

### ***Florida***

Florida faces water shortages. With the state's population expected to grow by 5.5 million people by 2025, stress on water resources will mount significantly.

However, what most people see as an environmental and development concern, Enron and Azurix executives viewed as a money-making opportunity. Azurix spent a great deal of time, money and effort to promote the idea of treating water as a commodity that could be traded for profit. The company argued that the "free market" could solve the state's water supply problems because private businesses are more innovative and efficient than government agencies.

Azurix made an ambitious proposal: to help restore the Everglades, a unique wetlands system – the second largest in the world – that for decades has been drained to provide water and dry land for farming and real estate development, and which has been fouled by agricultural runoff. For a state seeking ways to fund its share of the \$7.8 billion project, the proposal was attractive. This was not a free lunch for the

state, however. In return, Azurix wanted the right to sell water from the vast, ecologically sensitive marsh known as the “river of grass.”

To lobby state officials and lawmakers, Azurix hired James Garner III, Florida’s leading water law expert, former chair of the South Florida Water Management District (SFWMD) and former chair of the Governor’s Water Resource Commission.<sup>liii</sup> The company also hired Cathleen C. Vogel, SFWMD’s former director of government and public affairs, as a lobbyist.<sup>liv</sup> Vogel had co-written an article promoting water markets for the think tank Jeb Bush set up after losing the 1994 gubernatorial election. She also donated \$500 to Bush in 1998.<sup>lv</sup> In addition, Azurix hired Jon Wodraska, former executive director of SFWMD, for a top management position. Bringing aboard former SFWMD officials was a wise move for Azurix – the district is the local sponsor of the Everglades restoration.

Florida’s water, in itself, is a free resource. Residents pay only the costs related to treating and delivering it. Utilities, cities, farmers and companies wishing to withdraw water must obtain a permit from one of the state’s five water management districts. In doing so, it must be proven that the use of the water would be reasonable and beneficial. Whatever amount of water that is not used cannot be sold.

Enter Azurix, which wanted to change the status quo and make these permits tradable – a change that would require legislative action initiated, in part, in the state Senate Natural Resources Committee. Enron was no stranger to committee members. In 1998, Enron gave \$1,000 in campaign contributions to Ginny Brown-Waite, who would later become committee chair. James King received \$500 in 1996 and \$500 in 1998. Ken Pruitt received a total of \$1,500 in 1996 and 1997.<sup>lvi</sup>

In March 2000, state Sen. John F. Laurent carried the ball for Azurix, introducing a bill to allow permit holders to lease the already-allocated water within SFWMD’s Southern Water Use Caution Area.<sup>lvii</sup> Parroting Enron’s energy deregulation party line, the bill claimed that “private-sector market approaches could provide the flexibility, innovation and cost efficiency lacking in the current regulatory structure for consumption of water.”<sup>lviii</sup>

The bill also would have freed third parties seeking to lease water from permit holders from the requirement of obtaining individual water permits,<sup>lix</sup> thus bypassing the beneficial and reasonable use test.

Laurent received \$2,000 in campaign contributions from Enron between 1995 and 1997, and \$500 from Vogel in 1998, one year before she became Azurix’s lobbyist.

Azurix’s lobbying strategy was a full-court press. Besides hiring leading water experts with connections to SFWMD, the company also secured a meeting with Gov. Bush, who had previously expressed support for the principle of water privatization. Garner, Rebecca Mark and Jon Wodraska all met with Bush in the fall of 1999.<sup>lx</sup>

Bush's spokesman denied that the governor was behind the idea: "They came, they met, they left and nothing happened. End of story."<sup>lxii</sup> Nevertheless, soon after Azurix came out with its Everglades proposal, Bush appointed Garner to his Commission on Everglades.<sup>lxii</sup>

### ***Madera County, California***

In October 1999, Azurix purchased the 13,600-acre Madera Ranch for \$31.5 million<sup>lxiii</sup> from Heber Perrett, who paid just \$8 million for the land eight years earlier.<sup>lxiv</sup> Perrett bought the property after discovering that the aquifer underneath the property could be used for water storage. When Perrett tried to sell the property to the U.S. Bureau of Reclamation, however, the deal was blocked by local opposition and Congress' refusal to help finance the purchase.

Azurix believed that it could accomplish what Perrett and the Bureau could not: to develop, own and operate a water bank. Azurix executives had so much confidence in the project – and were putting so much hope into their entry into water resource management – that they were willing to invest nearly four times what Perrett paid for the land.

Azurix's idea was to store surplus water during the wet periods – up to 400,000 acre-feet, or 130.5 billion gallons – and sell it during dry periods.<sup>lxv</sup>

In the face of Azurix's confidence, however, state and federal officials doubted the merits of the project, according to documents released under the Freedom of Information Act at the county's request. The U.S. Fish and Wildlife Service pointed out that a report by the Bureau of Reclamation did not adequately address biological issues, such as wildlife habitat protection, and gave superficial treatment to many endangered species.<sup>lxvi</sup>

In March 1999, the Madera County Board of Supervisors voted unanimously to require anyone wanting to extract and export groundwater to buyers outside of the county to apply for and obtain a permit.<sup>lxvii</sup> The ordinance reflected the sentiment among the local farmers, who have long opposed the idea of water bank in Madera.

Azurix launched an elaborate public relations effort to persuade county officials and residents to allow the project to go through. The company did mass mailings. It hosted an "open house." Many residents, however, were not swayed. Signs could be seen along Highway 99 calling to stop Enron and Azurix from buying the county's water.

Azurix executives made many visits, both official and personal, to Denis Prosperi, chair of Madera Ranch Oversight Committee. Prosperi repeatedly told the company to apply for a permit. Azurix never did.<sup>lxviii</sup> The company claimed it was performing expensive engineering studies to demonstrate the project's feasibility and environmental sustainability but never made any such studies public. Some county officials have questioned whether this was a public relations ploy, and whether the company was simply reusing previous studies.

Azurix persisted, suggesting that it would help the county build a new multimillion-dollar government center in return for the county's approval of the water bank. Still, the county did not bend.<sup>lxi</sup>

Some elected officials interceded on Azurix's behalf and asked Prospero to allow the project to go forward. A staff member for one state elected official made it clear to Prospero that there would be a financial reward if he went along.<sup>lxx</sup> "Enron thought they had political muscle to make it go forth," said Prospero, but Madera County would not capitulate.<sup>lxxi</sup>

While fighting the local battle in Madera County, Azurix was also pushing at the state level. In December 1999, Enron, on behalf of Azurix, donated \$25,000 to the group that advocated passage of California's Proposition 13 of 2000<sup>lxxii</sup> – a \$1.9 billion water bond issue intended to finance projects to stabilize California's water supply and help the environment. The bond proceeds potentially could have been used to subsidize Azurix's water bank project.

Earlier that year, Azurix gave \$20,000 in campaign contributions to California Gov. Gray Davis.<sup>lxxiii</sup> Davis appoints the director of the Department of Water Resources, the agency that approves grants and loans for groundwater storage projects under Proposition 13.

Despite the company's aggressive efforts to persuade decision-makers to permit a water bank, local farmers opposed to the project got their way. Madera Ranch became Azurix's another failed investment.

### ***E-Ventures***

In February 2000, Azurix unveiled a new Web-based service to facilitate trading, storing and transporting water – Water2Water.com. Modeled on commodities trading, the Web site was designed to allow water right holders to offer surplus water to willing buyers. Infrastructure owners could offer excess capacity to traders needing to transport or store water. In turn, Azurix would make a commission on each transfer.

Azurix counted on further deregulation of the water industry and development of water markets to make this Web startup a success. Then Azurix's Chairman Rebecca Mark said at the time: "Until now, who gets water has been a government decision. It's time to assign more economic value to the resource, and that's what a market can do. What we're after is the creation of a market."<sup>lxxiv</sup> In July 2000, Water2Water.com was among Forbes' top 200 business-to-business Web sites, and one of the top 10 energy and utility sites.

In August 2000, Azurix began a pilot program aimed at using the Web site to stimulate water transfers in the Lower Rio Grande. The company obtained water rights information from the Rio Grande watermaster, which the Texas Natural Resource Conservation Commission created to enforce water rights compliance, monitor the natural conditions and coordinate diversions.

Azurix, however, erred in calculating that markets were at the stage where they could generate profits relatively quickly. Large transactions are hard to come by; the owners of conveyance infrastructure are not effectively required to permit access to its unused capacity; and the environmental approvals to extract water can be hard to attain. Water2Water.com soon went offline.

WaterDesk.com was another Azurix e-business venture, created to match buyers and sellers of water equipment, chemicals, and services. The startup did not get far. In April 2000, president Chris Wasden resigned, blaming Azurix for refusing to cut the company's ownership of the Web site to below 20 percent, thus compromising neutrality.<sup>lxxv</sup>

## **Controversy in the United States**

### ***Houston, Texas***

In 2000 and 2001, Azurix became engulfed in a controversy over a water treatment deal in Houston. The city sought a private contractor to design, build, maintain and operate a water treatment facility on Lake Houston for approximately \$150 million. The contract could eventually involve as much as \$2.7 billion in construction work.<sup>lxxvi</sup>

The city established the Houston Area Water Corporation, "The Hawk," a government corporation created primarily to get around the state bidding laws. Not long after its creation in August 2000, the group was criticized for being unusually secretive. The *Houston Chronicle* reported that when two City Council members asked to see the company's proposals, staffers asked them not to bring advisers with them, and one council member was told not to take notes.<sup>lxxvii</sup>

A persistent rumor took root that Azurix, a hometown player with significant connections to Mayor Lee Brown's administration, would get the contract. Brown had a good relationship with Kenneth Lay, then Enron's chairman and a board member of Azurix. The rumor was reinforced when city officials acknowledged that the broadly worded conflict-of-interest policy targeted US Filter, one of Azurix's two competitors for the contract.<sup>lxxviii</sup>

Then, according to the *Houston Chronicle*, a reported "hour-long heated argument" ignited at a mayoral fundraiser between Hawk Chair David Berg and City Attorney Anthony Hall over the possibility that Azurix would lose the bid. Hall later claimed that he was critical of a procedural change that would demote Azurix from its number one position atop the list of contenders. Discussions with city officials preempted the change and Azurix was again considered the front-runner.<sup>lxxix</sup>

Azurix assembled an impressive lobbying team to pressure city officials. The company hired Sue Walden, a former Brown fundraiser<sup>lxxx</sup> whose husband is a close political adviser to the mayor. Azurix also hired former City Attorney Gene Locke; Joe B. Allen, a water expert with strong ties to the local Republican Party; and Harris County Commissioner El Franco Lee.<sup>lxxxi</sup>

It was soon discovered that Mayor Brown previously owned stock in Azurix. His portfolio managers bought 1,000 shares in August 2000, just three months after Azurix submitted its proposal to the city's Public Works Department. Brown sold the stock a month later, though he did own the shares when he and City Council created the Hawk. Brown, however, denied knowing about the purchase and said that he sold the stock after realizing the potential conflict.<sup>lxxxii</sup>

In May 2001, after three initial recommendations favoring Azurix, the Hawk awarded the contract to California-based Montgomery Watson. The firm was chosen because its bid was lower and because of uncertainty associated with Enron's impending sale of Azurix North America, the branch that sought the project. The City Council approved the contract the following July.<sup>lxxxiii</sup> During the same meeting, council members also approved an unrelated contract with Azurix to operate and maintain another water treatment plant.<sup>lxxxiv</sup>

Discussing the contract on ABC News this past January, Hawk Chair David Berg said, "I got a sense that Enron thought this contract was theirs as a matter of divine right," adding that the company did not deal straight with the Hawk.<sup>lxxxv</sup>

### ***Fulton County, Georgia***

Azurix became a focus of another controversy in Fulton County, which includes most of Atlanta. The county in 1999 decided to hire an outside company to do design, construction, operations and maintenance work at its Camp Creek Water Reclamation Facility, which was in need of expansion. The county also wanted to outsource operations of the Little Bear Creek Facility and 13 pumping stations.

The bidding documents, which took a year to prepare, were released in September 2000; bids were received the following February. A county committee recommended that Azurix receive the 15-year contract, even though the company's \$126.8 million bid was \$13 million higher than the bid of the first runner-up US Filter.<sup>lxxxvi</sup> Under the committee's rating system, Azurix received 442.75 points, a mere 11 points higher than US Filter's rating.

Fulton County officials and local newspapers suggested that the process may have been tainted. Following a one-month delay caused by the grumblings, the county commissioners voted 5-2 to award the contract to Azurix. County officials explained that they liked Azurix's proposal to use ultraviolet treatment (UV) instead of chlorine, and to accept full liability.

There is more to the UV issue than meets the eye. The county's bidding documents did not state its preference for UV. After the bids were submitted, the public learned that two years earlier, then-Public Works Director Terry Todd told the state's Environmental Protection Division that the county would install a UV system at the Camp Creek facility, even though the state office did not specify its preference for UV or chlorine.<sup>lxxxvii</sup> The bidders were not aware of Todd's communication, and had to rely on the bidding documents, which were neutral on the treatment issue.

Another item in Azurix's proposal that attracted the committee's attention was the company's willingness to accept full liability without any limitation. US Filter proposed a limitation of \$100,000 after one year and \$35,000 in each year following. When Azurix North America submitted its proposal, it acted as its own guarantor. At that time, Azurix had an estimated net worth value of only \$136 million<sup>lxxxviii</sup> and its future was uncertain. Most water consultants and attorneys would be skeptical of a company that guarantees universal coverage, knowing that unless the terms of liability are strictly defined, any significant dispute would end up in court.

No one could miss Azurix's poor financial performance. In October 2000, four months before the company submitted its Fulton County bid, its stock was a mere one-seventh of its peak of \$23.88 in July 1999. A month after Azurix submitted its bid, Enron took the company private and put it up for sale. When the committee recommended Azurix, the company's future was anything but certain.

The *Atlanta Journal-Constitution* introduced another interesting angle to the story. RMJ Construction Managers was one of two consultants hired by the county to help choose the winning bidder. The newspaper reported that RMJ is a consortium of three politically well-connected firms that have received numerous local government contracts.<sup>lxxxix</sup>

Terry Todd, who had since become deputy county manager, explained that although RMJ did not submit a written evaluation, he was sure the consortium was asked to do some work on the review.<sup>xc</sup> One of the firms, Jordan, Jones & Goulding, was Azurix's partner in a joint venture formed to operate a water treatment plant being built in nearby Jackson, Barrow and Oconee counties.<sup>xc</sup>

County Commissioner Emma Darnell was most critical of the decision to award the contract to Azurix. She complained at a commission meeting: "Let me tell you what privatization does. ... It does not benefit the public. We are experiencing that over in Atlanta now with the privatization of the water system... It does not benefit the consumer. It benefits a few. And sometimes they benefit us at election time."<sup>xcii</sup>

Darnell also criticized the consulting attorneys' refusal to fill out disclosure forms to identify any possible conflicts of interest – even though these attorneys de facto participated in the selection. Finally, she brought to the commission's attention the fact that the county's technical consultant, Malcolm Pirnie, identified among Azurix's weaknesses its limited design-build-operate and wastewater experience.

## **Conclusion: Learning from Mistakes**

Water is arguably the planet's most essential public resource. Accordingly, the many lessons that can be gleaned from Enron's brief but "exciting" tenure in the water business should not be overlooked.

Overall, public utilities have a solid record of managing this resource. True, some public agencies have at times performed below expectations. However, because they are accountable directly to the public, problems can be promptly addressed. This

is not the case with private companies. Enron's experience in the water business highlights many issues that could arise if a community chooses to privatize its water services.

The capability and financial stability of a water company is critical to any contract. Capital is needed not only to pay for improvements and upgrades, but also to guarantee liabilities. If a violation of water quality or effluent standards results in fines, the company must be able to pay the fines while also investing to comply with these standards to avoid future violations. Had Azurix North America not been sold to American Water Works, its commitment to assume full liability in Fulton County would have been meaningless now, as the bankrupt Enron can no longer back Azurix's guarantees.

Enron taught us that company financial reports may not accurately reflect critical financial measures such as debt-to-equity ratio. And, the incredible pace of consolidation in the water industry over the past five years poses the question: Do water companies have the means to fulfill contractual promises over the long term? If a company becomes insolvent, customer access to adequate water service could be jeopardized, and the taxpayers most likely would be forced to pick up the tab.

Financial woes are not unique to Enron and Azurix. Tampa Bay Water, a public agency that provides water to customers in Tampa, Fla., is facing fines from the Southwest Florida Water Management District if it does not complete construction of a Tampa Bay desalination plant on time. Stone & Webster, engineering firm hired to design and build the plant went bankrupt, and Covanta Energy, which replaced it, is now in financial turmoil itself. It failed to put up a performance bond as required under the contract, jeopardizing Tampa Bay Water's efforts to obtain financing for the plant.<sup>xciii</sup>

Private operations do not always translate into good service. Just ask Azurix's customers in Argentina, who experienced poor water quality, service interruptions, low pressure and subpar water treatment. Azurix's operations in Ontario brought environmental and operational violations, resulting in fines amounting to nearly Cnd\$200,000.

Simply put, the goal of private companies is to earn profits for shareholders. To maximize profits, they seek to minimize costs. This could come – and has been illustrated to come – at the expense of service quality. On this point, a systematic assessment of the purported merits of water privatization has not been conducted. As a result, many promises by private companies are based on speculations.

Azurix is not the only company with a history of service problems. In Lee County, Fla., county officials in October 2000 chose to return the water and sewer systems to public control after an audit revealed serious problems with the private contractor Severn Trent. Equipment was not maintained in acceptable working condition. Hazardous waste was poorly handled and reported. Preventive maintenance was performed late and some work was not done at all.<sup>xciv</sup> After public control was

restored, the county's utility director estimated the company's failure to properly maintain infrastructure would cost citizens more than \$8 million.

In Atlanta, which contracted out the operation and maintenance of its water system to United Water in 1998, the city soon began receiving complaints of slow service, broken fire hydrants and brown drinking water flecked with debris. A recent audit of the contract reported a growing maintenance backlog, the company's failure to meet its financial obligations, and significantly lower training hours than required by the contract. The company also experienced difficulties meeting performance targets for pH, turbidity and phosphate at one of its plants and took longer than required by the contract to install meters and respond to meter leaks. At the same time, the company asked for almost \$38 million of additional payments through change orders and sought to increase the contract by \$80 million.

Contract disputes pose another significant risk for municipalities. In Argentina, when government officials ruled that Azurix violated its contract, the company disputed the claim and passed the blame on to the government. Disputes over contract language could prove especially problematic when officials who participate in contract negotiations are no longer in office. In the end, cities and their residents may not receive the services they paid for. Even industry consultants agree this could be a problem.

The prospect of privatizing government functions such as water and wastewater systems also raises the possibility of corruption and improper exercise of political influence. Azurix's bids for major contracts ignited controversies in Fulton County and in Houston. This is not a new phenomenon. Executives of leading multinational water companies have been indicted on criminal charges, and, in one case, imprisoned for bribery. In 2000, executives of United Water working under a water contract in Atlanta gave nearly \$10,000 to the brother of Atlanta's mayor, who was running for state auditor in the neighboring North Carolina<sup>xcv</sup> – even though the company had no operations there.

Political influence on the federal level is even more prominent. In its energy business, Enron went to the point of calculating how much new regulations would cost the company and lobbied against them if the figures were too high. Applying this practice to the water industry could jeopardize public health and the environment.

It is also important to consider the experience of Buenos Aires, in the context of World Bank and International Monetary Fund policies that encourage privatization of public services. Late last year, Argentina – once the golden child among countries that embraced these policies – became a victim of an economic and political crisis, resulting in rioting and the resignation of two presidents.

Perhaps the most troubling result of Enron's expansion into the water industry would be the possibility of such a company owning water supplies and speculating on them. To the relief of many citizens, Enron's attempts in Florida and in California did not succeed.

In large part, Enron's failure was a failure to understand that water is different from energy. Developing new water resources for export usually requires in-depth environmental analyses and other studies. Tapping aquifers, for example, can ruin water and air quality, and dry out springs in sensitive ecosystems. Further, water can become inaccessible to other users, and farmers could be hit with higher pumping costs.

Water also differs from energy in that owners of pipes and pumps are not required to allow others to use any excess capacity to transport – or “wheel” – water. For example, when San Diego wanted to use the infrastructure of the Metropolitan Water District of Southern California (MWD) to transport water from the Imperial Irrigation District, the MWD set a prohibitive price to effectively block this initiative.

Finally, there is widespread public discomfort with the notion of private companies wheeling and dealing in water. Profiting from the sale of cheeseburgers, blue jeans and cell phones is one thing. Profiting from the sale of a water is quite another. As such, Enron erred by calculating that water markets had evolved to the point that profits could quickly be realized.

Even though Enron is no longer a potential threat to public water, other private players have designs to trade this resource for profit. In California, Cadiz Inc. wants to sell groundwater to the MWD, making high profits while overdrafting an aquifer that also underlies public lands. In Texas, T. Boone Pickens is looking for a municipal buyer for 65 billion gallons of water per year to which he has rights. At a water investor conference this past March, the CEO of a Los Angeles water resource development company called water rights an investment offering a triple-A credit with junk bond yield.<sup>xvii</sup>

The story of water privatization is being written today. Enron's dealings in the water business make one second-guess the wisdom of transferring the government's responsibility of providing the public with safe and affordable drinking water to private companies, which are accountable not to the public but to their shareholders. And as with Enron, they could be on top one day and in a bankruptcy court the next.

## **Public Citizen Policy Recommendations:**

- Congress must revamp antitrust laws to protect consumers by blocking continued merger activity between energy and water utilities.
- Congress must mandate that the Securities and Exchange Commission strictly enforces the Public Utility Holding Company Act and must appropriate adequate funding to help the SEC comply with the mandate.
- Congress must remove language that encourages privatization of water services and assets from H.R.3930 and S.1961 and preclude inclusion of similar language in the future bills.
- The U.S. Environmental Protection Agency must discontinue advocacy of water privatization and provide an objective assessment of its risks.
- Congress must make appropriations for the State Revolving Fund programs at levels recommended by the Water Infrastructure Network to assure that public utilities have financial capacity to perform upgrades, which ensure compliance with EPA standards and the public's continued access to safe and affordable drinking water.
- Congress must block private utilities' eligibility for the state revolving funds, which represent taxpayer bailouts to businesses that have failed to maintain their assets in adequate condition.
- The IRS must revise its procedures to prohibit local governments from contracting out operations of their utilities to private companies while retaining ability to issue tax-exempt municipal bonds.

## Notes:

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- <sup>i</sup> “Enron and Andersen.” Center for Responsive Politics, 24 January 2002. Available at: <http://www.opensecrets.org/news/enron/index.asp>.
- <sup>ii</sup> Azurix 10-K filings for 1999, Securities and Exchange Commission, 2000.
- <sup>iii</sup> Water Investments Act of 2002. S.1961.
- <sup>iv</sup> Azurix 10-K filings for 1999, Securities and Exchange Commission, 2000.
- <sup>v</sup> “Enron goes to 144A well to fund new water business.” *Investment Dealer’s Digest*, 14 December 1998.
- <sup>vi</sup> Azurix 10-K filings for 1999, Securities and Exchange Commission, 2000.
- <sup>vii</sup> Data from the company’s website. See: [http://www.wessexwater.co.uk/pages/about/fast\\_facts.html](http://www.wessexwater.co.uk/pages/about/fast_facts.html).
- <sup>viii</sup> Azurix 10-K filings for 1999, Securities and Exchange Commission, 2000.
- <sup>ix</sup> “Azurix confirmed as OSBA concession winner – Argentina.” *Business News America*, 16 June 1999.
- <sup>x</sup> “Azurix to give up Buenos Aires waterworks.” WaterTech Online, 8 March 2002. Available at: [http://www.waternet.com/news.asp?N\\_ID=30178&mode=4](http://www.waternet.com/news.asp?N_ID=30178&mode=4).
- <sup>xi</sup> Azurix 10-K filings for 1999, Securities and Exchange Commission, 2000.
- <sup>xii</sup> Moreno, Jenalia. “Azurix testing the waters/Company competing against giant foes in Latin America market.” *Houston Chronicle*, 9 January 2000.
- <sup>xiii</sup> Atlantic Water Trust consolidated statements of income, filed with Securities and Exchange Commission in March 2001.
- <sup>xiv</sup> Azurix 10-K filings for 1999, Securities and Exchange Commission, 2000.
- <sup>xv</sup> *Ibid.*
- <sup>xvi</sup> The Motley Fool Quotes and Data, [www.motleyfool.com](http://www.motleyfool.com).
- <sup>xvii</sup> Personal communication with a staffer at the District Court for the Southern District of Texas, 13 March 2002.
- <sup>xviii</sup> Davis, Michael. “Water under the Bridge / Enron will take Azurix private, sell its assets.” 16 December 2000.
- <sup>xix</sup> Azurix third quarter 10-Q filings for 2001, p. 11. Securities and Exchange Commission, 2001
- <sup>xx</sup> Moreno, Jenalia. “Azurix testing the waters/Company competing against giant foes in Latin America market.” *Houston Chronicle*, 9 January 2000.
- <sup>xxi</sup> “Argentina: Azurix may be sanctioned.” *South American Business Information*, 27 May 2000. Available on Westlaw.com.
- <sup>xxii</sup> Perin, Monica. “Azurix water bugs Argentina.” *Houston Business Journal*, 5 May 2000.
- <sup>xxiii</sup> “Argentine city warns its dwellers of toxic water.” *Orlando Sentinel*, 26 April 2000.
- <sup>xxiv</sup> *Ibid.*
- <sup>xxv</sup> “Argentine city says tap water is toxic.” *U.S. Water News Online*, May 2000.
- <sup>xxvi</sup> Perin, Monica. “Azurix water bugs Argentina.” *Houston Business Journal*, 5 May 2000.
- <sup>xxvii</sup> *Ibid.*
- <sup>xxviii</sup> Organismo Regulador de Aguas Bonaerenses, Resolución 27/2000.
- <sup>xxix</sup> Organismo Regulador de Aguas Bonaerenses, Resolución 27/2000.
- <sup>xxx</sup> Organismo Regulador de Aguas Bonaerenses, Resolución 43/2000.
- <sup>xxxi</sup> Azurix 10-K filings for 2000, p. 38, Securities and Exchange Commission, 2001.
- <sup>xxxii</sup> “Argentina: Azurix may be sanctioned.” *South American Business Information*, 27 May 2000. Available on Westlaw.com.
- <sup>xxxiii</sup> Organismo Regulador de Aguas Bonaerenses, Resolución 95/2000.
- <sup>xxxiv</sup> “Minister: Azurix BA “Not fulfilling expectations” – Argentina.” *Business News Americas*, 29 December 2000.
- <sup>xxxv</sup> “Governor talks tough on Azurix BA – Argentina.” *Business News Americas*, 16 January 2001.

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- xxxvi “Machinea does not want Azurix contract cancelled (Machines no quiere que le cancelen contrato a Azurix.” *Ambito Financiero*, 18 January 2001.
- xxxvii Organismo Regulador de Aguas Bonaerenses, Resolución 37/2001.
- xxxviii Organismo Regulador de Aguas Bonaerenses, Resolución 63/2001.
- xxxix Organismo Regulador de Aguas Bonaerenses, Resolución 64/2001, 72/2001, 77/2001.
- xl Organismo Regulador de Aguas Bonaerenses, Resolución 71/2001.
- xli Organismo Regulador de Aguas Bonaerenses, Resolución 65/2001.
- xlii Azurix third quarter 10-Q filings for 2001, p. 9. Securities and Exchange Commission, 2001.
- xliii *Ibid.* p.8
- xliv “Azurix extends waterworks concession 3 mths.” *Business News Americas*, 2 January 2002.
- xlv “Estudian sanciones por la falta de agua en Ensenada.” *El Día*, La Plata, Buenos Aires, 25 January 2002.
- xlvi “Environment Ministry lays eight charges against Azurix.” Ontario Ministry of the Environment, 6 July 2001.
- xlvii “Azurix fined a total of \$184,000 for environmental violations.” Ontario Ministry of the Environment.
- xlviii Adverse Water Quality Incident Report, Ontario Ministry of Environment, 17 December 2001.
- xlix Olliffe, Cathy. “LKO demands better safeguards in wake of sewage spill.” *The Echo* (Haliburton County), 22 January 2001.
- l “Terratec Environmental and Azurix North America (Canada) Corp. charged for environmental offences.” Ontario Ministry of the Environment, 22 February 2002.
- li Interview of Rudolf Amenga-Etego of the Integrated Social Development Centre by Sara Grusky, currently with the International Water Working Group.
- lii “Companies Finance. The Enron collapse – Enron – over there and overpaying – two faces former chief...” *Financial Times*, 12 Feb 2002.
- liii Florida Lobbyist Registration records and “Garner joins Annis Mitchell. Leading land use and water attorney makes a move.” *BusinessNewsNow.com*, 23 January 2000. Available at: <http://www.businessnewsnow.com/storydetail.asp?storyid=2426>.
- liv Florida Lobbyist Registration records and biographical information from Florida Environmental Network available at: <http://www.flenvironmentalnetwork.com/contributors.html#vogel>.
- lv Data from the candidates’ filings to Florida’s Secretary of State.
- lvi *Ibid.*
- lvii SB 1698
- lviii SB 1698, Section 1, 1(e).
- lix SB 1698, Section 1, 2(c).
- lx Grunwald, Michael. “How Enron sought to tap the Everglades; Water unit lobbied Jeb Bush on privatization bid, but access led nowhere.” *Washington Post*, 8 February 2002.
- lxi Personal Communication with Katie Baur, spokesman for Jeb Bush, via e.mail, 27 Feb 2002.
- lxii “Governor appoints twenty to the Governor’s Commission on Everglades.” Florida Environmental News Bulletin, 13 December 1999.
- lxiii Azurix 10-K filings for 1999, p. 7, Securities and Exchange Commission, 2000.
- lxiv Madera Ranch groundwater bank overview & information. A document file obtained from Denis Prospero, Chair of the Madera Ranch Oversight Committee.
- lxv Azurix 10-K filings for 1999, p. 7, Securities and Exchange Commission, 2000.
- lxvi Letter from Peter Cross, U.S. Fish and Wildlife Service to Dick Whitson, Bureau of Reclamation dated March 23, 1998.
- lxvii An Urgency Ordinance Adding Article V to Title 13 of the Madera County Code Relating to Groundwater Exportation and Groundwater Banking.

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- <sup>lxviii</sup> Phone Conversation with Denis Proseri, Chair of Madera Ranch Oversight Committee, 18 February 2002.
- <sup>lxix</sup> Phone Conversation with Vern Moss, member of Madera County's Board of Supervisors, 27 February 2002.
- <sup>lxx</sup> Phone Conversation with Denis Proseri, Chair of Madera Ranch Oversight Committee, 18 February 2002.
- <sup>lxxi</sup> Ibid.
- <sup>lxxii</sup> Azurix's campaign contributions filings with California's Secretary of State, July 1999 – December 1999.
- <sup>lxxiii</sup> Azurix's campaign contributions filings with California's Secretary of State, January 1999 – June 1999.
- <sup>lxxiv</sup> Smith, Rebecca. "Azurix is launching online exchange for buying and selling water in West." *The Wall Street Journal*, 9 February 2000.
- <sup>lxxv</sup> Anderson Forest, Stephanie. "Paddling as fast as she can. Suddenly, Azurix's Rebecca mark has her hands full trying to keep Enron's water spin-off afloat." *Business Week*, 1 May 2000.
- <sup>lxxvi</sup> Flood, Mary. "Controversy engulfs water panel. 'The Hawk' under fire for secretive handling of plant project." *Houston Chronicle*, 30 January 2001.
- <sup>lxxvii</sup> Ibid.
- <sup>lxxviii</sup> Ibid.
- <sup>lxxix</sup> Flood, Mary. "Pressure rises on panel over water plant project. Bid to shun mayor's pick spurs friction." *Houston Chronicle*, 30 March 2001.
- <sup>lxxx</sup> Flood, Mary. "Houston-based water company vies for contract, announces sale plans." *Houston Chronicle*, 9 April 2001.
- <sup>lxxxi</sup> Williams, John and Mary Flood. "Battle for city's water projects is high-stakes game. Well-heeled players spar for hundreds of millions of dollars." *Houston Chronicle*, 16 April 2001.
- <sup>lxxxii</sup> Schwartz, Matt and Mary Flood. "Brown says he held bidders' stock/Water investment made without his knowledge, then sold." *Houston Chronicle*, 31 January 2001.
- <sup>lxxxiii</sup> Minutes from the Houston City Council meeting, July 3, 2001.
- <sup>lxxxiv</sup> Ibid.
- <sup>lxxxv</sup> "Profile: The shadowy world of Enron's corporate culture." *ABC News: World News Sunday*, 27 January 2002.
- <sup>lxxxvi</sup> Minutes from the Fulton County Commission meeting, November 21, 2001.
- <sup>lxxxvii</sup> Ibid.
- <sup>lxxxviii</sup> Ibid.
- <sup>lxxxix</sup> Pendered, David. "Sewer job raises questions. Lowest bid doesn't get Fulton contract." *The Atlanta Journal-Constitution*, 19 November 2001.
- <sup>xc</sup> Ibid.
- <sup>lxxxi</sup> Reid, Janis. "Azurix to run water facility." *Athens Banner-Herald*, 21 December 2000.
- <sup>lxxxii</sup> Minutes from the Fulton County Commission meeting, November 21, 2001.
- <sup>lxxxiii</sup> Johnson, Neil. "Money for Construction On Desalination Plant Dries Up." *Tampa Tribune*, 26 January 2002.
- <sup>lxxxiv</sup> Lee County Utilities, ST Contract performance Audit Report, Internal Audit Department, Lee County Clerk of Courts, Lee County, October 2000.
- <sup>lxxxv</sup> Judd, Alan. "Campbell kin's N.C. campaign partly fueled by area money. Election: Contributors to state auditor's race include Atlanta's police chief and city attorney." *The Atlanta Constitution*, 25 Oct. 2000.
- <sup>lxxxvi</sup> Water: The Next Oil? An American Ground Water Trust conference held in Houston, TX in March 4-5, 2002.