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MEMORANDUM

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Arizona Corporation Commission

AZ CORP COMMISSION
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FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

Date: February 22, 2005

RE: BEAVER VALLEY WATER COMPANY - APPLICATION FOR APPROVAL
OF THE SALE OF ASSETS AND TRANSFER OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY ("CC&N") DOCKET NO. W-02015A-03-
0724

Attached is the Staff Report for Beaver Valley Water Company, application for the Sale of Assets and Transfer of its Certificate of Convenience and Necessity. Staff recommends denial of the application.

EGJ:JEF:red

Originator: Jim Fisher

Attachment: Original and Thirteen Copies

Arizona Corporation Commission
DOCKETED

FEB 22 2005

DOCKETED BY	<i>KS</i>
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Service List for: Beaver Valley Water Company
Docket No. W-02015A-03-0724

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

BEAVER VALLEY WATER COMPANY

APPLICATION FOR APPROVAL OF THE SALE
OF ASSETS AND TRANSFER OF ITS CC&N

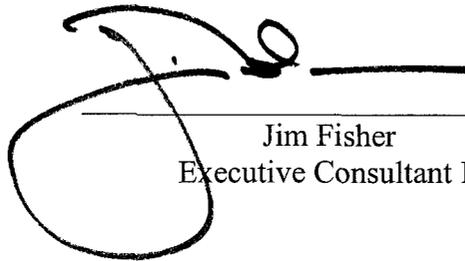
DOCKET NO. W-02015A-03-0724

FEBRUARY 2005

STAFF ACKNOWLEDGEMENT

The Staff Report for Beaver Valley Water Company, Docket No. W-02015A-03-0724 was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analysis of the Company's application. Dorothy Hains was responsible for the engineering and technical analysis. Brian Bozzo was responsible for review of the Staff Report and the overcharge issue.

Contributing Staff:



Jim Fisher
Executive Consultant II



Dorothy Hains
Utilities Engineer



Brian Bozzo
Compliance Manager

**EXECUTIVE SUMMARY
BEAVER VALLEY WATER COMPANY
DOCKET NO. W-02015A-03-0724**

On October 1, 2003, Beaver Valley Water Company, ("Beaver Valley" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting Commission approval of its sale of assets and transfer of its Certificate of Convenience and Necessity ("CC&N") as required in Decision No. 66388 (October 6, 2003).

Beaver Valley is a public service company serving approximately 150 customers about 11 miles northeast of Payson, in Gila County. The Commission authorized its initial CC&N in Decision No. 38565 (July 5, 1966). In Decision No. 55705 (August 26, 1987), Beaver Valley's ownership structure was changed to a partnership owned by Mr. Delaney and Mr. Ward.

Contrary to Decision No. 66388, Beaver Valley began charging customers the higher rates before obtaining approval of the transfer of the CC&N and demonstrating Arizona Department of Environment Quality ("ADEQ") compliance. Staff was contacted by numerous consumers concerning Beaver Valley charging rates without Commission authorization.

On October 14, 2004, ADEQ informed Staff that Beaver Valley was delivering water that meets the water quality standards required by Title 18, Chapter 4 of the Arizona Administrative Code.

Staff recommends that the Commission deny Beaver Valley Water Company, an Arizona Partnership's application for the sale and transfer of its assets to Beaver Valley Water Company, a sole proprietorship.

Staff recommends that the Commission require Beaver Valley Water Company, an Arizona Partnership, to demonstrate compliance with the following conditions:

1. That Beaver Valley Water Company, a sole proprietorship, demonstrate it is transferred free and clear from any unauthorized debts, liens or encumbrances from Beaver Valley Water Company, an Arizona Partnership and file documentation of such in the docket.
2. That Beaver Valley Water Company, a sole proprietorship, agree to refund all meter and security deposits consistent with Commission rules.
3. That Beaver Valley Water Company, a sole proprietorship, agree to refund all existing main extension agreements consistent with Commission rules.
4. That Beaver Valley Water Company, a sole proprietorship, calculate the rate overcharge amount for each customer for each month after the Company ceased charging the authorized rates.
5. That Beaver Valley Water Company, a sole proprietorship, shall notice its customers of the overcharges and the manner in which credits will be applied by means of an

insert in its regular monthly billing. Such notice shall be approved by Staff before mailing.

Staff further recommends that should Beaver Valley Water Company, an Arizona Partnership fail to demonstrate compliance with the above conditions within 90 days of any decision in this matter, the Commission require Beaver Valley Water Company, an Arizona Partnership, to pay monetary penalties or any other Commission approved sanctions for each violation.

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Introduction

On October 1, 2003, Beaver Valley Water Company, ("Beaver Valley" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting Commission approval of its sale of assets and transfer of its Certificate of Convenience and Necessity ("CC&N") as required in Decision No. 66388 (October 6, 2003).

Beaver Valley is currently owned by a partnership of Mr. Delany, a Phoenix attorney, and Mr. Ward. As part of a rate review, the Company disclosed the partnership had sold the utility to Mr. Davoren, a sole proprietorship.

On October 6, 2003, the Commission conditionally authorized Beaver Valley to increase its rates subsequent to Commission approval of a transfer of its assets and CC&N to the new owner, and written documentation from the Arizona Department of Environmental Quality ("ADEQ") stating the utility is serving water that meets the requirements of the Arizona Administrative Code, Title 18, Chapter 4.

On October 15, 2003, Utilities Division Staff ("Staff") informed Beaver Valley that the CC&N transfer application was insufficient for administrative purposes.

On September 14, 2004, Beaver Valley provided evidence of the sale, financial information on the buyer, and evidence regarding the certified operator.

On October 14, 2004, ADEQ informed Staff that Beaver Valley was delivering water that meets the water quality standards required by Title 18, Chapter 4 of the Arizona Administrative Code.

Background

Beaver Valley is a public service company serving approximately 150 customers about 11 miles northeast of Payson in Gila County. The Commission authorized its initial CC&N in Decision No. 38565, (July 5, 1966).

In Decision No. 50919 (May 6, 1980), Beaver Valley was described as a corporation owned by Mr. Delaney and Mr. Ward. In Decision No. 55705 (August 26, 1987), Beaver Valley's ownership structure was changed to a partnership owned by Mr. Delaney and Mr. Ward.

On April 28, 2003, the Company filed an application requesting authority to increase rates and charges. During Staff's review of the application, it was discovered Mr. Davoren, assumed ownership of the utility in January 2003. Mr. Davoren was informed a transfer of utility assets required Commission approval.

On October 6, 2003, in Decision No. 66388, the Commission found Beaver Valley to have a fair value rate base of \$32,763. The Commission adopted Staff's recommended rates which were projected to produce total annual revenue of \$62,033 and annual expense of \$52,713, for operating income of \$9,320.

The revised rate structure was projected to increase the average customer's bill by approximately \$9.50.

Contrary to Decision No. 66388, Beaver Valley began charging customers the higher rates before obtaining approval of the transfer of the CC&N and demonstrating ADEQ compliance. Staff was contacted by numerous consumers concerning Beaver Valley charging rates without Commission authorization.

The Transaction

On October 1, 2003, Beaver Valley filed an application requesting Commission approval of its sale of assets and transfer of its CC&N.

On September 11, 2004, the applicant provided a January 14, 2003 Note of \$196,000, at 7 percent interest, payable by Mr. Davoren to Wardell Properties for real property described as Tract D and apparently secured by the assets of Beaver Valley.

Also provided on September 11, 2004, was an August 15, 2004 amendment to the purchase contract of January 14, 2003, which transferred and conveyed to Mr. Davoren "any and all rights, assets, revenues and obligations of the entity commonly known as Beaver Valley Water Company. Said transfer shall be a part of the real estate transaction reference above and shall require NO additional consideration."

The amendment also stated in part: "Seller and Buyer acknowledge that a majority of the value established in said real estate acquisition is attributable to the business operation referenced herein. It is clearly understood that Buyer would be unable to support the obligation to Seller without full and unrestrained control of revenues and operations derived from Beaver Valley Water Company."

Subsequent to executing the sale and encumbrance of Beaver Valley, Mr. Delaney, one of the current owners informed Staff on December 5, 2003, that Beaver Valley was sold in a stock transaction to Mr. Davoren.

According to the terms of a January 14, 2003, Note, Escrow No. 237-4058156, Mr. Davoren, Beaver Valley operator, agreed to pay Wardell Properties, an Arizona general partnership, \$196,000 in regular month installments of \$1,500. The note has an interest rate of 7 percent.

According to January 14, 2003, agreement, Wardell Properties is comprised of Mr. Delaney and Mr. Ward. The relationship between Wardell Properties and Beaver Valley is unclear. Wardell Properties ability to seemingly encumber the assets of Beaver Valley is also unclear.

According to the August 15, 2004 Note Amendment, "Seller shall have a lien on personal property necessary in the operation of the water company during the term of buyer's unpaid obligation to seller."

Commission records do not reflect any approval for Beaver Valley to encumber its assets as part of a real estate transaction or otherwise. Staff recommends Beaver Valley demonstrate the assets are transferred free of any unauthorized debts, liens or encumbrances.

Staff has repeatedly contacted the parties to facilitate resolution of this case. Staff has filed mandatory Status Reports on June 22, 2004, August 23, 2004 and November 17, 2004, to appraise the Hearing Officer of the case. Unfortunately, despite Staff efforts on what is arguably a simple asset transfer, the parties have not been able to grasp the importance of complying with the Commission's orders.

Staff has attempted to craft a rate refund process to assist the parties demonstrate a good faith effort of compliance. The basis of this rate refund process was to be the Company's calculation of the total rate overcharge amount for each customer. Unfortunately, the Company was unable to make those calculations. Therefore, Staff recommends that the application be denied until such time as compliance is demonstrated, and if timely compliance is not sought, the Commission require Beaver Valley Water Company, an Arizona Partnership, to pay monetary penalties for each violation.

Arizona Department of Environmental Quality ("ADEQ") Compliance

ADEQ regulates the wastewater system under ADEQ Public System I.D. No. 102428. On May 28, 2003, ADEQ reported that the system has a number of reporting deficiencies, but that no compliance or enforcement action is pending.

On October 14, 2004, ADEQ informed Staff that Beaver Valley was delivering water that meets the water quality standards required by Title 18, Chapter 4 of the Arizona Administrative Code.

Recommendations

Staff recommends that the Commission deny Beaver Valley Water Company, an Arizona Partnership's application for the sale and transfer of its assets to Mr. Davoren, a sole proprietorship.

Staff recommends that the Commission require Beaver Valley Water Company, an Arizona Partnership, to demonstrate compliance with the following conditions:

1. That Beaver Valley Water Company, a sole proprietorship, demonstrate it is transferred free and clear from any unauthorized debts, liens or encumbrances from Beaver Valley Water Company, an Arizona Partnership and file documentation of such in the docket.
2. That Beaver Valley Water Company, a sole proprietorship, agree to refund all meter and security deposits consistent with Commission rules.
3. That Beaver Valley Water Company, a sole proprietorship, agree to refund all existing main extension agreements consistent with Commission rules.
4. That Beaver Valley Water Company, a sole proprietorship, calculate the rate overcharge amount for each customer for each month after the Company ceased charging the authorized rates.
5. That Beaver Valley Water Company, a sole proprietorship, shall notice its customers of the overcharges and the manner in which credits will be applied by means of an insert in its regular monthly billing. Such notice shall be approved by Staff before mailing

Staff further recommends that should Beaver Valley Water Company, an Arizona Partnership fail to demonstrate compliance with the above conditions within 90 days of any decision in this matter, the Commission require Beaver Valley Water Company, an Arizona Partnership, to pay monetary penalties or any other Commission approved sanctions for each violation.

MEMORANDUM

DATE February 22, 2005

TO: James E. Fisher

FROM: D. Hains

RE: **Beaver Valley Water Co.**
Application for a Sale of Assets And/Or Transfer of Certificate of
Convenience & Necessity to Provide Water Service
Docket No. W-02015A-03-0724

Introduction

Beaver Valley Water Company ("Beaver Valley" or "Company") has applied to sell its assets and transfer its Certificate of Convenience and Necessity ("CC&N") to provide water service. The Company's service area is near Star Valley in the Tonto National Forest, approximately 11 miles northeast of Payson in Gila County.

During its review of the most recent rate application, Staff learned that the Company had been sold to a new owner without the Commission's approval. In Decision No. 66388, dated October 6, 2003, the Commission conditioned its approval of a general rate increase for Beaver Valley upon the Company first obtaining the Commission approval of an subject application for transfer or sale of the Beaver Valley Water Company assets and transfer of its CC&N to a fit and proper entity.

At the time the Commission issued its Decision regarding Beaver Valley's rate application the Company had monitoring/reporting deficiencies and was not in compliance with the Arizona Department of Environmental Quality (ADEQ) standards. Thus, Decision No. 66388 also conditioned the rates and charges effective subject to Beaver Valley filing with the Director of the Utilities Division, ADEQ documentation stating that the system has no maximum contaminant level violations and is serving water that meets the water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

Capacity

Water System

The Beaver Valley water system consists of an inactive well, a water treatment system, two storage tanks with 20,000-gallons of storage capacity, one pressure tank, and a

distribution system serving 155 customers. The Company has two different sources of water, groundwater (a well) and surface water (the East Verde River). Currently, the well is not connected to the system. The Company pumps the water from the East Verde River and treats it before serving its customers.

ADEQ Compliance

Staff received a compliance status report from ADEQ dated October 14, 2004, in which ADEQ stated that it has determined that the Company is currently delivering water that meets the water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

Arizona Department of Water Resources ("ADWR") Compliance

Beaver Valley is not in any ADWR Active Management Area. Therefore, the Company is not subject to ADWR's gallons per capita per day ("gpcd") limit and conservation rules.

ACC Compliance

For the reasons discussed above, the Utilities Division Compliance Unit records indicate that the Company is not in compliance with Decision No. 66388.

Other Issues

Arsenic

The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter (" $\mu\text{g}/\text{l}$ ") to 10 $\mu\text{g}/\text{l}$. The date for compliance with the new MCL is on January 23, 2006. The most recent lab analysis by the Company indicated that the arsenic levels in the Company's supply are below the new arsenic MCL.

Summary

I. Findings:

1. ADEQ has determined that the water system is currently delivering water that meets water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

2. The Company is not in any ADWR Active Management Area.
3. The Utilities Division Compliance Unit records indicate that the Company is not in compliance with Decision No. 66388.
4. The most recent lab analysis by the Company indicated that the arsenic levels in the Company's supply are below the new arsenic MCL.