

OPEN MEETING ITEM



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ORIGINAL



COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN 28 2005

DATE: June 28, 2005

DOCKET NO: W-02015A-03-0724

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Opinion and Order on:

BEAVER VALLEY WATER COMPANY  
(SALE OF ASSETS/TRANSFER OF CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 7, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 12 AND 13, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION  
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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 BEAVER VALLEY WATER COMPANY FOR  
10 APPROVAL OF THE SALE OF ITS ASSETS AND  
11 FOR THE TRANSFER OF ITS CERTIFICATE OF  
12 CONVENIENCE AND NECESSITY TO MICHAEL  
13 DAVOREN.

DOCKET NO. W-02015A-03-0724

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

10 DATE OF HEARING: May 9, 2005  
11 PLACE OF HEARING: Phoenix, Arizona  
12 ADMINISTRATIVE LAW JUDGE: Amanda Pope  
13 APPEARANCES: Mr. Edgar M. Delaney, on behalf of Beaver Valley  
14 Water Company;  
15 Mr. R.E. Ward, on behalf of Beaver Valley Water  
16 Company;  
17 Mr. Michael Davoren; and  
18 Mr. David Ronald, Staff Attorney, Legal Division, on  
19 behalf of the Utilities Division of the Arizona  
20 Corporation Commission.

21 **BY THE COMMISSION:**

22 On October 1, 2003, Beaver Valley Water Company, a Partnership ("BVWC" or "Applicant")  
23 filed with the Arizona Corporation Commission ("Commission") an application for approval of the  
24 sale of its assets and the transfer of its Certificate of Convenience and Necessity ("Certificate" or  
25 "CC&N") to Michael Davoren, a Sole Proprietorship.

26 On October 14, 2003, Staff filed a letter indicating that BVWC's Application had not met the  
27 sufficiency requirements outlined in the Arizona Administrative Code and specifically requiring (1) a  
28 copy of the sales contract between the parties and (2) evidence of the purchaser's ability to operate a  
public service company.

On December 11, 2003, Edgar Delaney filed a letter with the Commission indicating that "all

1 of the outstanding stock in Beaver Valley Water Co. was sold to Mr. Davoren on January 29, 2003”  
2 and requesting approval of this transfer of outstanding stock to Mr. Davoren.

3 On June 3, 2004, a Procedural Order was issued indicating that no filings had been made in  
4 this docket since Mr. Delaney’s December 2003 filing and ordering Staff to file a Status Report by  
5 June 17, 2004 setting forth its recommendation with regard to the action to be taken on BVWC’s  
6 Application.

7 On June 22, 2004, Staff filed a Status Report, which noted that (1) pursuant to Decision No.  
8 55708 (August 26, 1987), BVWC sought and obtained Commission approval to change from a  
9 corporation to a partnership such that its December 11, 2003 filing was inadequate to explain or  
10 document the legal status of BVWC; and (2) Staff had prepared an Engineering Report on December  
11 23, 2003 that found BVWC to be out of compliance with the Arizona Department of Environmental  
12 Quality (“ADEQ”) based upon monitoring and reporting deficiencies.

13 Consequently, Staff’s June 22, 2004 Status Report indicated that it could not recommend  
14 approval of BVWC’s Application and requested BVWC provide the following information by July  
15 30, 2004: (1) evidence of ADEQ compliance; (2) evidence of the purchaser’s ability to operate the  
16 system; (3) the legal status of the water company at the time of the sale; and (4) the sales contract.

17 On August 17, 2004, a Procedural Order was issued indicating that BVWC had failed to  
18 respond to Staff’s July 30, 2004 deadline for production of information and requiring Staff to submit  
19 a second Status Report by August 31, 2004.

20 On August 23, 2004, Staff filed a Motion to Close Docket/Status Report, which recommended  
21 closure of the docket without prejudice based upon BVWC’s failure to respond to either Staff’s  
22 request or the Procedural Order issued in this matter.

23 On September 7, 2004, a Procedural Order was issued, which required Staff to investigate  
24 BVWC’s current operations, including but not limited to, ADEQ compliance, ownership status, and  
25 operational status as a means of ensuring that BVWC’s noncompliant status with ADEQ did not pose  
26 a threat to public safety.

27 Between the dates of September 13, 2004 and October 8, 2004, seven customers of BVWC  
28 filed letters in the docket expressing concerns relating to the unauthorized increase of rates beginning

1 in October or November of 2003, the poor quality of the water provided, the frequency with which  
2 the water is shut off for extended periods of time, and raising questions about Mr. Davoren's ability  
3 to adequately operate the water company.

4 On October 14, 2004, Staff filed a Notice of Submitting ADEQ Water Compliance Status  
5 Report and Request for Additional Time to Submit Supplemental Findings. By its filing, Staff  
6 referenced and attached an ADEQ Drinking Water Compliance Status Report dated October 14,  
7 2004, which indicated that BVWC was, as of that date, in compliance with ADEQ requirements and  
8 delivering water that meets water quality standards. Additionally, Staff requested 30 days to compile  
9 the remaining information requested in the September 7, 2004 Procedural Order.

10 On November 16, 2004, Staff filed a second Status Report, which indicated that BVWC is not  
11 in compliance with Commission Decision No. 66388 as it began charging the conditionally  
12 authorized rates set forth therein in October of 2003 prior to demonstrating ADEQ compliance and  
13 prior to obtaining Commission approval of the sale of its assets and transfer of its CC&N.

14 By its filing, Staff further indicated that it was working with BVWC to attempt to quantify the  
15 overcharges and facilitate a refund of those charges to the affected customers, and Staff requested 90  
16 days to attempt to effectuate such an agreement.

17 On February 22, 2005, Staff filed its Staff Report recommending denial of the Application.  
18 The Staff report reflected the recommendations of Jim Fisher, Dorothy Hains and Brian Bozzo.

19 On March 7, 2005, a Procedural Order was issued setting the matter for hearing on May 9,  
20 2005 and setting forth various procedural deadlines.

21 On March 9, 2005, a Memorandum in response and objection to Staff's recommendations was  
22 filed by Respondents, comprised of Beaver Valley Water Company, an Arizona Partnership,  
23 Raymond Ward and Edgar Delaney, Partners, Beaver Valley Water Company, a Sole Proprietorship,  
24 Michael Davoren, Proprietor, and Wardell Properties, an Arizona Partnership, Raymond Ward and  
25 Edgar Delaney, Partners, which alleged the following: (1) ADEQ compliance had been provided as  
26 part of the initial rate increase application; and (2) Commission Staff had verbally inferred an  
27 approval of the rate increase which had been implemented in 2003.

28 Additionally, Respondents filed an unexecuted Amendment to Purchase Contract Agreement

1 for the Sale of Business Known as "Beaver Valley Water Company" ("Amendment") as an  
2 attachment to its March 9, 2005 Memorandum. This Amendment dated August 14, 2004 provided  
3 that the transfer of any and all rights, assets, revenues and obligations of Beaver Valley Water  
4 Company from Beaver Valley Water Company, an Arizona Partnership to Michael Davoren shall  
5 become a part of the real estate contract dated February 5, 2003.

6 On April 8, 2005, Gary F. Crisp, a BVWC customer, filed a request for intervention, which  
7 was granted pursuant to a Procedural Order issued on May 2, 2005.

8 Between the dates of April 14 and 19, 2005, three customers of BVWC filed comment in the  
9 docket objecting to the Application to transfer and expressing concerns relating to Mr. Davoren's  
10 fitness to operate the utility.

11 The hearing was held as scheduled on May 9, 2005 before a duly authorized Administrative  
12 Law Judge of the Commission. Counsel for Staff offered Mr. Fisher as its witness and Mr. Delaney,  
13 Mr. Ward, and Mr. Davoren appeared in support of the application with Mr. Davoren and Mr.  
14 Delaney offering testimony. Mr. Crisp was not present for the hearing.

15 Public comment was entered by Mr. Albert Smith, a part-time resident of Beaver Valley. Mr.  
16 Smith stated his belief that the rate increase had been unfair and requested that the Commission show  
17 no leniency in requiring the company to repay the overcharges to the residents.

18 Prior to the commencement of the hearing, it was noted for the record that nothing had been  
19 filed in the docket evidencing compliance with the notice requirements set forth in the March 7, 2005  
20 Procedural Order.

21 Mr. Davoren stated that he had undertaken both publication and mailing of notice as required  
22 and would submit evidence to that effect immediately following the hearing.

23 After a full public hearing, the matter was taken under advisement pending submission of a  
24 recommended Opinion and Order to the Commission

25 On May 16, 2005, Mr. Davoren filed an Affidavit of Publication and a letter certifying that  
26 BVWC's customers were sent notice of the hearing in accordance with the March 7, 2005 Procedural  
27 Order.

28 \* \* \* \* \*

1 Having considered the entire record herein and being fully advised in the premises, the  
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 **Background of BVWC, Ownership**

5 1. BVWC currently provides water utility service to approximately 187 residential  
6 customers in an area approximately 11 miles northeast of Payson in Gila County, Arizona under  
7 authority of a CC&N granted by the Commission in Decision No. 38565 (July 5, 1966).

8 2. In Decision No. 55705 (August 26, 1987), the Commission approved the joint  
9 application of Beaver Valley Water Company, Inc. and Beaver Valley Water Company, a Partnership  
10 for the transfer of Certificate and sale of assets, which essentially effectuated a change in the business  
11 entity that operates the water company from that of a corporation controlled by Edgar Delaney and  
12 R.E.Ward to these individuals as partners.

13 3. BVWC is currently owned by a partnership comprised of two members, Edgar  
14 Delaney and R.E. Ward.

15 4. Mr. Davoren testified that he began working for BVWC in the fall of 2002 and  
16 subsequently purchased BVWC in 2003.

17 5. According to the Staff Report and testimony provided by Mr. Davoren and Staff, the  
18 sale of BVWC took place as a two-part transaction. The underlying real estate described as "Tract  
19 D" was transferred from Wardell Properties<sup>1</sup> to Michael Davoren pursuant to a note dated January 14,  
20 2003 and in the amount of \$196,000, payable to Wardell Properties in regular monthly installments of  
21 \$1,500 and at an interest rate of 7 %.

22 6. The assets of BVWC were subsequently transferred to Mr. Davoren pursuant to the  
23 August 15, 2004 Amendment to the January 14, 2003 purchase contract for no additional  
24 consideration.

25 7. Staff testified and noted in its Staff Report that the terms of the Amendment include a  
26

27 <sup>1</sup> Mr. Delaney testified that Wardell Properties is a partnership comprised of Mr. Ward and himself. Mr. Delaney further  
28 testified that Beaver Valley was established to run the water company, and Wardell Properties was the entity that  
purchased the underlying property from the bankruptcy court and sold the properties in Beaver Valley Estates. According  
to Mr. Delaney, Wardell Properties never owned an interest in the water company.

1 provision whereby the "Seller shall have a lien on personal property necessary in the operation of the  
2 water company during the term of the buyer's unpaid obligation to Seller."

3 8. According to Staff, there is no evidence, however, to demonstrate that the Commission  
4 has granted approval for BVWC to encumber its assets, and accordingly, Staff recommended that  
5 BVWC must demonstrate that it is transferred free and clear from any unauthorized debts, liens or  
6 encumbrances and file documentation of such in the docket. As the manner in which BVWC will  
7 satisfy Staff's recommendation is unclear, we believe that BVWC should be ordered to either  
8 demonstrate that it is transferred free and clear from any unauthorized debts, liens or encumbrances  
9 or file a financing application within 90 days of the effective date of this Decision.

#### 10 **BVWC, Water System**

11 9. Mr. Davoren testified that BVWC is a surface water system with water being pumped  
12 from the East Verde River to a holding pond approximately one acre in size. The water is pumped  
13 from the settling or holding pond to a filtration plant, storage tank, pressure tank and finally to the  
14 customers. Mr. Davoren indicated that the system contains two 10,000 gallon storage tanks.

15 10. Mr. Davoren testified that he currently employs Doug Thorne as a certified operator to  
16 oversee BVWC's operations.

17 11. Mr. Davoren testified that there are neither outstanding customer deposits nor refunds  
18 due on main extension agreements.

19 12. Staff recommended that BVWC demonstrate that all meter and security deposits and  
20 any existing main extension agreements have been refunded, but testified that based upon Mr.  
21 Davoren's testimony, BVWC has satisfied these recommendations.

22 13. Mr. Davoren indicated that BVWC is current on property and sales tax.

23 14. Mr. Fisher testified that based upon Mr. Davoren's ability to come into compliance  
24 with ADEQ and employ a certified operator to maintain that compliance, Staff believes that Mr.  
25 Davoren is fit and proper to own and operate BVWC.

#### 26 **BVWC, Regulatory Requirements**

27 15. In Decision No. 66388 (October 6, 2003), the Commission conditionally granted  
28 BVWC's application for a rate increase. Specifically, the rates set forth therein were to go into effect

1 “on the first day of the month following the date that both of the following have occurred: (1) the  
2 Commission has approved an application for transfer or sale of BVWC’s assets and transfer of its  
3 Certificate of Convenience and Necessity to a fit and proper entity; and (2) BVWC has filed, with the  
4 Director of the Utilities Division, written documentation from the Arizona Department of  
5 Environmental Quality stating that its system has no maximum contaminant level violations and is  
6 serving water that meets the water quality standards required by Arizona Administrative Code, Title  
7 18, Chapter 4.”

8 16. Mr. Davoren testified that BVWC began charging the rates conditionally authorized  
9 pursuant to Decision No. 66388 in November of 2003 based upon the recommendations set forth in  
10 the Staff Report relating to BVWC’s rate application and is currently charging those same rates based  
11 upon his understanding of conversations with various members of Commission Staff.<sup>2</sup>

12 17. Staff testified that it had not instructed Mr. Davoren to continue charging the rates  
13 conditionally approved in Decision No. 66388.

14 18. In its Staff Report and testimony, Staff indicated that it had attempted to work with  
15 BVWC to craft a rate refund process based upon the amortization of a credit representing the average  
16 differential, as recognized in the prior rate case, but that BVWC was unable to calculate the total rate  
17 overcharge amount for each customer.

18 19. Mr. Davoren testified that he had been unwilling to work with Staff to set up a refund  
19 agreement for the overcharges because he was instructed by Commission Staff to continue charging  
20 the conditional rates. Mr. Davoren testified, however, that he has been able to calculate the  
21 overcharges for each customer but that he has neither notified BVWC’s customers nor instituted a  
22 refund of the overcharges.

23 20. Based upon the Staff Report and testimony provided by Staff, evidence that BVWC  
24 was in compliance with ADEQ was obtained as of October 14, 2004, approximately one year after  
25 BVWC began charging the rates conditionally approved in Decision No. 66388.

26 21. Staff testified, however, that based upon the fact that it has been more than six months

27 <sup>2</sup> Mr. Davoren further testified that he has no documentation to verify that Commission Staff instructed him to continue  
28 charging the current rates based upon the fact that the information received from Commission Staff was given during the  
course of several telephone conversations.

1 since ADEQ last certified BVWC's compliance, it would be beneficial to obtain an updated  
2 certification.

3 22. Staff also recommended that BVWC be required to (1) calculate the rate overcharge  
4 amount for each customer for each month after the Company ceased charging the authorized rates;  
5 and (2) notice its customers of the overcharges and the manner in which credits will be applied by  
6 means of an insert in its regular monthly billing, which notice shall be approved by Staff before  
7 mailing. Staff added that compliance with these conditions should be demonstrated within 90 days of  
8 any Decision in this matter.

9 23. During the course of his testimony, Mr. Delaney stated his belief that there had been  
10 unreasonable delays in the processing of BVWC's Application, which warrant a mitigation of any  
11 refunds based upon the fact that ADEQ approval was obtained as of October of 2004.

12 24. Despite Mr. Davoren's mistaken belief that Staff instructed him to charge, and  
13 continue to charge, unauthorized rates, BVWC is not in compliance with Decision No. 66388.  
14 Additionally, it is unclear whether BVWC is currently in compliance with ADEQ as the last ADEQ  
15 Drinking Water Compliance Status Report was obtained in October of 2004. Accordingly, we agree  
16 with Staff's recommendations. We do not believe, however, that mitigation of the amount to be  
17 refunded is warranted as BVWC has not proactively sought to comply with the Orders of this  
18 Commission.

19 **Penalty for Failure to Comply with Arizona Laws and Regulations**

20 25. Mr. Fisher testified that should BVWC satisfy Staff's recommendations within 90  
21 days of a Decision in this matter, Staff would view those actions as material changes to the  
22 Application, which would prompt Staff to file a status report in this matter that would detail the  
23 manner in which those material changes affect Staff's recommendation.

24 26. Staff further recommended that should BVWC fail, however, to comply with Staff's  
25 recommendations within 90 days of the effective date of this Order, that the Commission should  
26 require BVWC to pay monetary penalties or any other Commission approved sanctions for each  
27 violation.

28 27. While we agree that BVWC should be required to comply with Staff's



1 transfer its assets and its Certificate of Convenience and Necessity to Michael Davoren is hereby  
2 granted subject to Beaver Valley Water Company's, an Arizona Partnership, timely compliance with  
3 the following ordering paragraphs.

4 IT IS FURTHER ORDERED that Beaver Valley Water Company, an Arizona Partnership,  
5 shall either demonstrate that it is transferred free and clear from any unauthorized debts, liens or  
6 encumbrances and file documentation of such with the Director of the Utilities Division and the  
7 Commission's Docket Control Center or file a financing application within 90 days of the effective  
8 date of this Decision.

9 IT IS FURTHER ORDERED that Beaver Valley Water Company, an Arizona Partnership,  
10 shall file evidence of ADEQ compliance with the Director of the Utilities Division and the  
11 Commission's Docket Control Center within 90 days of the effective date of this Decision.

12 IT IS FURTHER ORDERED that Beaver Valley Water Company, an Arizona Partnership,  
13 shall calculate the rate overcharge amount for each customer for each month after November 2003  
14 within 90 days of the effective date of this Decision.

15 IT IS FURTHER ORDERED that Beaver Valley Water Company, an Arizona Partnership,  
16 shall notice its customers of the overcharges and the manner in which credits will be applied by  
17 means of an insert in its regular monthly billing within 90 days of the effective date of this Decision.

18 IT IS FURTHER ORDERED that Beaver Valley Water Company, an Arizona Partnership,  
19 shall obtain written approval from the Commission's Utilities Division Staff of the notice to be  
20 mailed to its customers prior to such mailing.

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1 IT IS FURTHER ORDERED that failure to demonstrate compliance with the above stated  
2 conditions within 90 days of the effective date of this Decision shall result in the imposition of a  
3 penalty against Beaver Valley Water Company, an Arizona Partnership, in the amount of \$10,500,  
4 said payment to be made payable to the State of Arizona and presented to the Arizona Corporation  
5 Commission.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
8  
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10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11  
12 COMMISSIONER

COMMISSIONER

13  
14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Secretary of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_ day of \_\_\_\_\_, 2005.

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20 \_\_\_\_\_  
21 BRIAN C. McNEIL  
22 EXECUTIVE SECRETARY

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1 SERVICE LIST FOR:

BEAVER VALLEY WATER COMPANY

2 DOCKET NO.:

W-02015A-03-0724

3 Edgar M. Delaney  
4 Delaney & Melkonoff, P.C.  
5 1013 East Washington  
6 Phoenix, Arizona 85034  
7 **Via First Class Mail and**  
8 **Certified Mail**  
9 **Return Receipt Requested**

10 R.E. Ward  
11 Beaver Valley Water Company  
12 P.O. Box 9031  
13 Phoenix, Arizona 85068  
14 **Via First Class Mail and**  
15 **Certified Mail**  
16 **Return Receipt Requested**

17 Michael Davoren  
18 P.O. Box 421  
19 Payson, Arizona 85541  
20 **Via First Class Mail and**  
21 **Certified Mail**  
22 **Return Receipt Requested**

23 Gary F. Crisp  
24 882 Beaver Trail Road  
25 Payson, Arizona 85541

26 Christopher K. Kempley, Chief Counsel  
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28 ARIZONA CORPORATION COMMISSION  
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