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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

2000  
JIM

ARIZONA CORPORATION COMMISSION,

DOCKET NO. W-02111A-00-0286

Complainant,

DECISION NO. 63136

vs.

SABROSA WATER COMPANY, an Arizona  
corporation,

Respondent.

**OPINION AND ORDER**

DATES OF HEARING: May, 16, June 20, and August 16, 2000  
PLACE OF HEARINGS: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Devinti M. Williams, Staff Attorney, Legal  
Division, on behalf of the Utilities Division of the  
Arizona Corporation Commission.

**BY THE COMMISSION:**

On May 11, 2000, the Arizona Corporation Commission ("Commission") issued Decision No. 62572, a Complaint and Order to Show Cause ("Complaint" or "OSC") in which it was alleged that Sabrosa Water Company ("SWC" or "Respondent") lacked the ability to provide adequate and continued water service to its customers and was in violation of the Rules of the Arizona Department of Environmental Quality ("ADEQ") with respect to water quality.<sup>1</sup> It was further alleged that on or about April 18, 2000, a member of the Commission's Utilities Division ("Staff") and an investigator for the Maricopa County Environmental Services Department ("MCESD") made a visual inspection of SWC's utility plant which resulted in a "Public Notice of Total Coliform" ("Notice") being issued by the MCESD after the inspection.

On May 10, 2000 the Commission, by Procedural Order, scheduled a hearing on the OSC to

<sup>1</sup> The Commission had approved the issuance of the OSC in its Open Meeting on May 9, 2000.

1 commence on May 16, 2000. The Commission mailed copies of the May 10, 2000 Procedural Order  
2 by both ordinary and certified U.S. Mail, return receipt requested, to SWC in care of its president and  
3 statutory agent, Mr. Keith J. Morris, at his last known residential address and at his post office box in  
4 Mesa, Arizona as specified in SWC's Water Utility Annual Report. Copies of the Procedural Order  
5 were also mailed to SWC's corporate secretary in the same manner. The copies mailed to  
6 Respondent's president and statutory agent were returned with postal notations which stated that  
7 "forwarding time expired." The copies mailed to the corporate secretary were not returned and were  
8 presumed delivered. Additionally, the Commission's Legal Division attempted personal service on  
9 SWC and upon its previously described corporate officers and statutory agent; however, the  
10 Commission's process server was unable to complete personal service because Respondent's  
11 corporate officials had failed to provide the Commission with current addresses.

12 On May 16, 2000, pursuant to A.R.S. § 40-246(C), a hearing was convened before a duly  
13 authorized Administrative Law Judge at the Commission's offices in Phoenix, Arizona. Staff  
14 appeared with counsel and presented evidence. SWC did not appear. At the conclusion of  
15 proceeding, the matter was taken under advisement by the presiding Administrative Law Judge to  
16 allow for the preparation of a Temporary Order ("TO") which would protect the public interest and to  
17 continue the balance of the proceeding to a later date to address the other issues raised in the  
18 Complaint.

19 On May 18, 2000, the Administrative Law Judge issued a Temporary Order and Procedural  
20 Order ("TOPO") which directed Staff to retain a qualified management company to operate and do  
21 any and all things necessary to bring SWC into compliance with the lawful operation of a public  
22 water utility and to meet the requirements of the Drinking Water Rules of ADEQ. The matter was  
23 ordered to be reconvened on June 20, 2000 in order to address the remaining allegations contained in  
24 the Commission's Complaint.

25 On June 20, 2000, the proceeding was reconvened with Staff present with counsel. SWC did  
26 not appear. A customer appeared to make public comment.

27 Counsel for Staff presented an overview of the current status of the proceeding and, since  
28 could not be conclusively shown that service of the Commission's initial Procedural Order and the

1 TOPO had not yet been made upon SWC, its corporate officers, or its statutory agent, requested a  
 2 recess in the proceeding in order to secure personal service of the Procedural Order which would  
 3 order the next hearing in the proceeding.

4 On June 21, 2000, by Procedural Order, the proceeding was continued again to allow time for  
 5 Staff to arrange for service of the Procedural Order setting the next hearing date on the Complaint.

6 On August 16, 2000, the proceeding was reconvened at the Commission's offices in Phoenix,  
 7 Arizona. Staff was present with counsel and presented evidence that SWC's corporate secretary had  
 8 been personally served with a copy of the Procedural Order scheduling the proceeding for hearing on  
 9 August 16, 2000. SWC did not appear. Testimony was taken and additional exhibits were admitted  
 10 into evidence with respect to the proceeding. Following the conclusion of the hearing, Staff filed  
 11 post-hearing testimony on September 1, 2000. The matter was then taken under advisement pending  
 12 submission of a Recommended Opinion and Order to the Commission.

13 \* \* \* \* \*

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

16 **FINDINGS OF FACT**

17 1. Pursuant to authority granted by the Commission in Decision No. 41298 (May 17,  
 18 1971), SWC, an Arizona corporation, is engaged in the business of providing water utility service to  
 19 approximately 100 customers in an area located approximately 20 miles north of the City of Phoenix,  
 20 Maricopa County, Arizona.

21 2. In mid-April 2000, SWC's president contacted Maricopa County to haul water to the  
 22 Respondent's storage facilities in order to provide its customers with water because some of them had  
 23 been without water for several days.

24 3. The MCESD notified Staff and as a result on April 18, 2000, an on-site visual  
 25 inspection of Respondent's utility plant was conducted by a member of the Commission's Staff and  
 26 an investigator for MCESD that resulted in a Notice which was immediately issued by the MCESD  
 27 after the inspection.

28 4. The MCESD Notice that was issued to Respondent's customers directed them to find

1 an alternative source of water or to boil water which came from SWC's distribution system due to "  
2 presence of Total Coliform Bacteria Contamination in violation of the ADEQ's Drinking Water  
3 Rules.

4 5. On May 11, 2000, the Commission issued Decision No. 62572, a Complaint against  
5 SWC wherein it was alleged that SWC lacked the ability to provide adequate and continued water  
6 service to its customers and was in violation of the Rules of ADEQ with respect to water quality.

7 6. In the Complaint, Staff is requesting that the Commission order the following:

- 8
- 9 • that SWC remedy its deficiencies and provide adequate service to its
  - 10 • that SWC be sanctioned for violations of Arizona law;
  - 11 • that the Commission authorize Staff to engage a qualified management entity
  - 12 • that the Commission order such other relief as may be appropriate under the

13 7. On May 10, 2000, by Procedural Order, pursuant to A.R.S. § 40-246(C) and due to  
14 public necessity, the Commission scheduled a hearing on the Complaint to commence on May 11  
15 2000.

16 8. Numerous attempts were made by the Commission to serve a copy of the May 10,  
17 2000 Procedural Order by both ordinary and certified U.S. Mail upon SWC, its president and  
18 statutory agent, Mr. Keith J. Morris, at his last known residential address and at his post office box in  
19 Mesa, Arizona as specified in SWC's Water Utility Annual Report. Copies of the Procedural Order  
20 were also mailed to SWC's corporate secretary in the same manner. The copies mailed to Mr. Morris  
21 were returned with a U.S. postal stamp that "Forwarding Time Expired." The copies mailed to the  
22 corporate secretary were not returned and were presumed delivered.

23 9. The Commission's Legal Division retained a professional process server to attempt  
24 personal service on SWC and its officials, but he was unable to complete personal service because  
25 Respondent's corporate officials had failed to provide the Commission with current mailing  
26 addresses.

27 10. On May 16, 2000, pursuant to the Commission's initial Procedural Order, a hearing  
28 was convened at which time SWC did not enter an appearance. Based on the evidence at this

1 hearing, it was established that SWC's customers were in imminent peril when, on or about April 18,  
2 2000, the Commission was notified by the MCESD that most of SWC's customers, many of whom  
3 own livestock, were without water.

4 11. It was also established that Staff was unable to reach Mr. Morris because his telephone  
5 voice mail was "full" or, when messages were left, were not responded to. According to the  
6 Commission's records, this pattern of a lack of responsiveness to either Commission or customer  
7 phone calls had continued for more than five years.

8 12. The record also established that SWC had two outstanding "cease and desist" orders  
9 pending against it which had been issued by the MCESD in 1995 and 1998.

10 13. Staff's investigation revealed that SWC's water shortage problems were not due to a  
11 declining water table, but were caused by plant problems.

12 14. There was also evidence presented in the initial hearing that there were additional  
13 health related violations of the MCESD regulations and ADEQ's Rules.

14 15. At the conclusion of the May 16, 2000 proceeding, Staff recommended that the  
15 Commission authorize it to immediately retain a qualified management company to operate the  
16 system because of the Notice and the discovery of the existence of multiple plant problems. These  
17 problems combined with the lack of access to SWC's officials to have the problems corrected in a  
18 timely fashion resulted in the need for a TOPO while a further hearing was scheduled to address the  
19 other issues raised in the OSC.

20 16. On May 18, 2000, the Commission issued a TOPO which ordered Staff to "seek and  
21 retain a qualified management company to operate and do any and all things necessary to bring  
22 Sabrosa Water Company into compliance with the lawful operation of a public water utility and in  
23 order to provide water for its customers which meets the requirements of the Drinking Water Rules of  
24 the Arizona Department of Environmental Quality". It was also ordered that the hearing be  
25 reconvened on June 20, 2000.

26 17. On June 20, 2000, the proceeding was reconvened with Staff again present with  
27 counsel, but SWC again did not enter an appearance.

28 18. Counsel for Staff presented an overview on the current status of the proceeding and

1 called two Staff witnesses to testify with respect to the status of Staff's efforts to obtain a qualified  
2 management company for the operation of the utility and the initial steps which could be taken to  
3 make SWC's water fit for human consumption.

4 19. Staff indicated that it had contacted Citizens Utilities Company ("CUC") to assume  
5 the management of SWC and was negotiating the terms of a written agreement for its operation, but,  
6 in the interim, CUC was unofficially keeping the pumps running in order to provide water which  
7 could at a minimum be used for bathing, operating toilets, and watering livestock although it  
8 remained unfit for human consumption.

9 20. Following the conclusion of the June 20<sup>th</sup> proceeding, Staff requested an additional  
10 continuance in order to attempt to secure personal service upon SWC or one of the corporate  
11 officials.

12 21. On June 21, 2000, a Procedural Order was issued which scheduled the proceeding to  
13 resume on August 16, 2000.

14 22. On August 16, 2000, the hearing resumed with Staff again present with counsel and  
15 Respondent failed to appear.

16 23. At this proceeding, Staff provided evidence that its process server had made personal  
17 service upon SWC's corporate secretary and had also published notice of the proceeding July 24, 31  
18 and August 1, 2000 in a newspaper of general circulation in Maricopa County.

19 24. Staff again presented evidence that SWC was in violation of the Commission's Rules,  
20 Arizona law and the Rules of the MCESD.

21 25. During the final proceeding, it was indicated that CUC had not yet signed a  
22 management contract, and was continuing to operate SWC on an interim basis in order to provide  
23 water for basic necessities and for livestock, but it was not yet fit for human consumption. Any water  
24 consumed by individuals within SWC's service area continues to be either bottled drinking water or  
25 boiled water if it comes from SWC's system.

26 26. Staff has also arranged for APS to keep the electricity on to keep the pumps running  
27 although it appears that meters are not being read and that customers are not being billed for water  
28 which is used for livestock and basic necessities.



1 407(C)(E) and (F) and R14-2-409(A).

2 5. The Temporary Order that authorized Staff to retain a qualified management company,  
3 to operate and do any and all things necessary to bring SWC into compliance with the lawful  
4 operation of a public water utility and to provide water which meets the requirements of the Drinking  
5 Water Rules of ADEQ should be made permanent.

6 6. A financial penalty of \$5,000 should be imposed jointly and severally upon SWC and  
7 Mr. Morris which sum should be paid on or before the 15<sup>th</sup> day following the effective date of this  
8 Decision and with an additional financial penalty of \$1,000 a day being added to the initial penalty  
9 and accruing against SWC and Mr. Morris until such time as he either sells the water utility and/or its  
10 assets to a third party subject to the Commission's approval or brings the utility into compliance with  
11 Arizona law.

12 7. The financial penalties ordered hereinafter should be waived if, within 60 days of the  
13 effective date of this Decision, SWC and/or its utility assets are sold to a Commission approved third  
14 party that will operate the facility in compliance with Arizona law in the future.

15 8. Staff should be authorized to take any action necessary, including court action, to  
16 remove Mr. Morris, discontinue his salary and engage a qualified management entity to operate and  
17 manage SWC in order to bring the utility into full compliance with Arizona law, the Commission's  
18 Rules and the Commission's Orders if Mr. Morris in any way impedes Staff's action in securing a  
19 qualified management entity to operate the utility.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the Temporary Order dated May 18, 2000 shall be made  
22 permanent and the Commission's Utilities Division shall be authorized to take all lawful action  
23 necessary, including court action, to engage a qualified management entity to operate and manage  
24 Sabrosa Water Company in order to bring the utility into full compliance with Arizona law, the  
25 Commission's Rules and the Commission's Orders.

26 IT IS FURTHER ORDERED that Sabrosa Water Company and Mr. Keith J. Morris shall pay  
27 jointly and severally a penalty of \$5,000 which sum shall be paid within 15 days of the effective  
28 of this Decision.

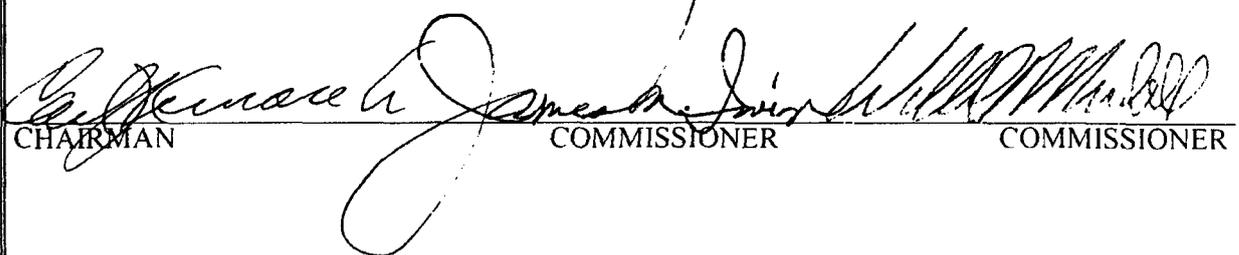
1 IT IS FURTHER ORDERED that Sabrosa Water Company and Mr. Keith J. Morris shall pay  
2 jointly and severally as additional financial penalties the sum of \$1,000 a day from the fifteenth day  
3 following the effective date of this Decision until Mr. Morris either sells the utility and/or its assets to  
4 a Commission approved third party within 60 days of the effective date of this Decision or until he  
5 brings the utility into compliance with Arizona law.

6 IT IS FURTHER ORDERED that the financial penalties ordered hereinabove will be waived  
7 if Sabrosa Water Company and Mr. Keith J. Morris, within 60 days of the effective date of this  
8 Decision, enters into an agreement for sale of the water utility and/or its assets to a Commission  
9 approved third party who will operate the water utility in compliance with Arizona law.

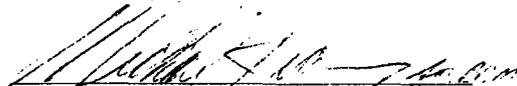
10 IT IS FURTHER ORDERED that in the event that Sabrosa Water Company and/or Mr. Keith  
11 J. Morris fails to cooperate or seeks to interfere in the lawful operation of the utility by a qualified  
12 management entity selected by Staff, the Commission's Legal Division is directed to bring an action  
13 in court to enforce compliance with this Decision.

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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18 CHAIRMAN COMMISSIONER COMMISSIONER

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20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
21 Secretary of the Arizona Corporation Commission, have  
22 hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this 16<sup>TH</sup> day of November, 2000.

25   
26 BRIAN C. McNEIL  
27 EXECUTIVE SECRETARY

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26 DISSENT \_\_\_\_\_  
27 MES:dap

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SERVICE LIST FOR:

ARIZONA CORPORATION COMMISSION  
SABROSA WATER COMPANY

DOCKET NO.

W-02111A-00-0286

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16236 S. 32<sup>nd</sup> Place  
Phoenix, Arizona 85044

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ATTN: Keith J. Morris, President  
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Mesa, Arizona 85211

SABROSA WATER COMPANY  
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