

OPEN MEETING ITEM



0000034021

BRIAN C. McNEIL
Executive Director

22

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



ORIGINAL

ARIZONA CORPORATION COMMISSION

DATE: October 19, 2005
DOCKET NO: W-01646A-05-0509 et al.
TO ALL PARTIES:

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

MIRACLE VALLEY WATER COMPANY et al.

(Moratorium)

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:

OCTOBER 28, 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:

NOVEMBER 8 AND 9, 2005

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

RECEIVED
2005 OCT 19 P 2:53
AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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 DETERMINATION OF
9 A HOOK-UP MORATORIUM FOR MIRACLE
10 VALLEY WATER COMPANY, COCHISE
11 WATER COMPANY, HORSESHOE RANCH
12 WATER COMPANY, CRYSTAL WATER
13 COMPANY, MUSTANG WATER COMPANY,
14 CORONADO ESTATES WATER COMPANY
15 AND SIERRA SUNSET WATER COMPANY,
16 OWNED BY JOHNNY A. MCLAIN.

DOCKET NO. W-01646A-05-0509
DOCKET NO. W-01868A-05-0509
DOCKET NO. W-02235A-05-0509
DOCKET NO. W-02316A-05-0509
DOCKET NO. W-02230A-05-0509
DOCKET NO. W-01629A-05-0509
DOCKET NO. W-02240A-05-0509

11 DECISION NO. _____

12 OPINION AND ORDER

13 DATE OF HEARING: September 15, 2005
14 PLACE OF HEARING: Sierra Vista, Arizona
15 ADMINISTRATIVE LAW JUDGE: Jane L. Rodda
16 IN ATTENDANCE: Chairman Jeff Hatch-Miller
17 Commissioner William Mundell
18 Commissioner Kristin Mayes
19 APPEARANCES: Jason Gellman, Staff Attorney Legal Division,
20 on behalf of the Utilities Division.

21 **BY THE COMMISSION:**

22 The Arizona Corporation Commission ("Commission") directed its Utilities Division Staff
23 ("Staff") to open the above-captioned Dockets to determine the feasibility of a hook-up moratorium
24 for the following water systems located in Cochise County, Arizona: Miracle Valley Water
25 Company, Inc., Cochise Water Co., Horseshoe Ranch Water Company, Crystal Water Company,
26 Mustang Water Company, Coronado Estates Water Company, and Sierra Sunset Water Company, all
27 of which are owned or operated by Johnny A. McLain (collectively "McLain water systems" or
28 "Companies").

On July 14, 2005, Staff filed a Motion to Open Docket and Request for Procedural
Conference. By Procedural Order issued August 2, 2005, a procedural conference convened on

1 August 15, 2005, to discuss procedural guidelines. On August 23, 2005, the parties participated in a
2 joint teleconference to discuss additional issues related to notice and the location of the hearing.

3 Staff filed its Staff Report on August 5, 2005, and recommended that the Commission impose
4 hook-up moratoriums on all of the McLain water systems.

5 By Procedural Order dated August 24, 2005, the matter was set for hearing in Sierra Vista,
6 Arizona. Pursuant to the August 24, 2005 Procedural Order, the Interim Manger of the McLain water
7 systems mailed notice of the hearing to all customers of the Companies, and had the notice published
8 in the local newspaper. In addition, he emailed the notice to all customers who provided him with
9 email addresses.

10 The hearing convened as scheduled on August 15, 2005 in Sierra Vista. The notice of the
11 proceeding allowed for intervention as late as the commencement of the hearing. No person or entity
12 filed for, or requested intervention. A number of individuals appeared at the hearing to make public
13 comment. In addition, the Commission has received phone calls and written comments relating to the
14 imposition of a moratorium on hook-ups. The majority of customer responses favor the imposition of
15 the moratorium. In addition, in a letter dated July 1, 2004, the Cochise County Board of Supervisors
16 has requested that the Commission impose the moratorium. See Docket Nos. W-01646A-03-0601 et
17 al.

18 Mr. Steve Olea, Assistant Director of the Utilities Division and author of the Staff Report,
19 testified at the hearing, as did Mr. Timothy Edwards, on behalf of the Arizona Small Utility
20 Association ("ASUA"), the Interim Manager for the McLain water systems. Mr. Edwards supports
21 Staff's recommendation for the imposition of the moratoria.

22 Background

23 On September 16, 2003, the Commission issued Decision No. 66241, an Order to Show
24 Cause and Order for Interim Relief ("OSC") against the McLain water systems. The OSC was based
25 on ADEQ Notice of Violations ("NOVs") and a July 1, 2004 compliance report that identified
26 numerous and major deficiencies causing the systems to being operated in violation of state law and
27 in manner that endangered the public health, safety or welfare. Among others things, Decision No.
28 66241 authorized Staff to appoint an Interim Manager for the McLain water systems.

1 On October 23, 2003, Johnny and Linda McLain, the Respondents in the OSC action, filed
2 with the Commission a Notice of Bankruptcy, indicating that on July 30, 2003, McLain had filed for
3 relief under Title 11 of the United States Code, initiating a Chapter 13 proceeding. On October 27,
4 2003, Respondents filed with the Commission a Motion to Stay Appointment of Interim Manager,
5 arguing that the automatic stay of the Bankruptcy Code prevented the Commission from appointing
6 an Interim Manager. Following briefing and oral argument on the Motion to Stay, the Commission
7 issued Decision 66897 (April 6, 2004), which determined that the exception to the automatic stay
8 afforded by Section 362(b)(4) of the United States Bankruptcy Code permits the Commission to
9 commence or continue an action to enforce its police and regulatory power, and thus had the ability
10 to appoint the Interim Manager.

11 On May 17, 2004, the Bankruptcy Court granted limited relief from the automatic stay, and
12 found that the Commission had authority to appoint an interim manager to ensure the safe and
13 reasonable operation and management of the McLain water systems. On May 6, 2004, Staff and
14 ASUA entered into an agreement for ASUA to act as the Interim Manager for the McLain water
15 systems.

16 The Bankruptcy Court approved an Asset Purchase Agreement with Algonquin Water
17 Resources. The Bankruptcy Court requires that a rate base value be established by the Commission
18 before the sale of the McLain water systems can close. The Commission has opened another Docket
19 (W-01646A-05-0506) to conduct a reconstructed cost new study and determine a rate base for the
20 McLain water systems.

21 Staff Recommendations Concerning Hook-up Moratorium

22 Staff considers several inter-related factors in evaluating whether or not the Commission
23 should impose a moratorium on new hook-ups. These factors include: 1) water production capacity;
24 2) water storage capacity; 3) the condition of the infrastructure; and 4) the system's compliance with
25 regulatory requirements. According to Staff, even if a system has adequate production capacity, the
26 system as a whole is inadequate if it doesn't have sufficient storage. At a minimum, pursuant to
27 ADEQ rules, a system with one water production source must have a storage capacity equal to the
28 system's average daily water use during the peak month. Lack of storage may or may not render a

1 system inadequate for a system with more than one production source, depending on the condition of
 2 the infrastructure, and the system's ability to provide continuity of service if one or two of the
 3 primary sources of production were out of service. Systems with ample storage may be inadequate if
 4 water production capacity is inadequate. A system with a dilapidated infrastructure, regardless of
 5 production capacity and storage, may not be able to provide adequate and proper service. Staff
 6 analyzed each of the McLain water systems under each of the four factors.

7 Coronado Estates Water Company ("Coronado")

8 Coronado currently has approximately 195 connections. Based on the Water Use Data Sheet
 9 ("WUDS") submitted by ASUA, the peak water use month for Coronado was June 2005 with a water
 10 use of 2,053,320 gallons. Coronado has one well with a production capacity of 300 gallons per
 11 minute ("gpm") and no storage. Based on water usage information, this well can adequately serve
 12 approximately 800 connections. Staff states that with one well, this system should have a minimum
 13 storage capacity equal to the average day water use during the peak month. Staff believes that with
 14 one well, it is preferable to have two to three days worth of storage.

15 Staff recommends that there should be a moratorium on new hook-ups placed on Coronado
 16 until: 1) at least 100,000 gallons of storage is installed on this system¹; 2) a well meter is placed on all
 17 water sources; and 3) the system is in total compliance with all Commission rules, regulations and
 18 Orders and in substantial compliance with ADEQ requirements.

19 Staff also believes that Coronado should consider adding a second well for back-up and
 20 reliability purposes, but that with the addition of 100,000 gallons of storage, Staff does not believe a
 21 second well should be a requirement to lift the moratorium.

22 Crystal Water Company ("Crystal")

23 Crystal currently has approximately 65 connections. Based on the WUDS submitted by
 24 ASUA, the peak water month for Crystal was May 2005, with a water use of 903,110 gallons.
 25 Crystal has one well with a production capacity of 30 gmp and no storage. Based on the water usage

26 ¹ This would provide 1 ½ days worth of storage. Although ADEQ rules only require minimum storage equal to an
 27 average day's use during the peak month, Staff believes it more prudent to operate above the minimum. Staff believes
 28 two or three days of storage would be preferable, but it recommends 1 1/2 days storage for this and each of the McLain
 water systems, after weighing the benefits of the additional storage and the cost of installing such storage and the rate
 impact thereof.

1 during the peak month, Crystal's well can adequately serve approximately 60 connections.

2 Staff believes that this system has both inadequate well production capacity and inadequate
3 storage capacity. Staff recommends that there be a hook-up moratorium until its water production is
4 increased (by means of a second well or a larger capacity pump) and at least 50,000 gallons of water
5 storage is installed. Staff further recommends that the moratorium remain in place until a well meter
6 is placed on all water sources, and until this system is in total compliance with Commission
7 requirements and in at least substantial compliance with ADEQ requirements. Staff opined that
8 Crystal should consider adding a second well for back-up and reliability purposes, although with the
9 addition of 50,000 gallons of storage, the second well would not be a requirement to lift the
10 moratorium.

11 Miracle Valley Water Company ("Miracle Valley")

12 Miracle Valley currently serves approximately 255 connections. Based on the WUDS, the
13 peak water use month for Miracle Valley was April 2005, with water use of 2,740,490 gallons.
14 Miracle Valley has one well with a production capacity of 300 gpm and no storage. Based on water
15 usage during the peak use month, the one well can serve approximately 800 connections. ADEQ
16 regulations provide that this system should have a minimum storage capacity equal to the average
17 daily water usage during the peak month.

18 Staff recommends that a hook-up moratorium be placed on Miracle Valley until at least
19 150,000 gallons (the equivalent of 1 ½ days of storage) be added; a well meter is placed on all water
20 sources; and this system is in total compliance with Commission requirements and in at least
21 substantial compliance with ADEQ requirements. Staff further believes that Miracle Valley should
22 also consider adding a second well for back-up and reliability purposes, although with the addition of
23 150,000 gallons of storage, a second well would not be a requirement to lift the moratorium.

24 Sierra Sunset Water Company ("Sierra")

25 Sierra currently serves approximately 30 connections. Based on the WUDS, the peak water
26 use month for Sierra cannot be determined because the customers are not metered. Sierra has one
27 well with a production capacity of 30 gpm and no storage. Based on a water usage of 0.5 gpm per
28 connection, the one well can adequately serve approximately 60 connections. Staff recommends that

1 a hook-up moratorium be imposed and remain in effect until Sierra: 1) installs 30,000 gallons of
2 storage (equivalent to 1 ½ days usage); 2) all customers receive meters and a well meter is installed
3 on all water sources; and 3) the system is in total compliance with Commission rules, regulations and
4 Orders and is in substantial compliance with ADEQ requirements. Staff further believes that Sierra
5 should consider installing a second well for back-up and reliability purposes, but that with the
6 addition of 30,000 gallons of storage, a second well would not be a requirement to lift the
7 moratorium.

8 Mustang Water Company ("Mustang")

9 Mustang currently serves 70 connections. According to the WUDS, the peak water use month
10 for Mustang was May 2005, with a water usage of 534,000 gallons. Mustang has one well with a
11 production capacity of 60 gpm and no storage. Based on the water usage during the peak use month,
12 the well can adequately serve approximately 215 connections. Staff recommends that there should be
13 a hook-up moratorium be placed on Mustang until it installs at least 30,000 gallons of storage (1 ½
14 days storage); a well meter is placed on all water sources; and the system is in total compliance with
15 Commission rules, regulations and Orders and in substantial compliance with ADEQ requirements.
16 Staff further believes that Mustang should consider adding a second well for back-up and reliability
17 purposes, although with the addition of 30,000 gallons of storage, a second well would not be a
18 requirement to lift the moratorium.

19 Cochise Water Co. ("Cochise") and Horseshoe Ranch Water Company (Horseshoe)

20 Cochise and Horseshoe are physically interconnected, and thus, Staff analyzed them as a
21 single system. These systems currently serve 590 connections. Based on the WUDS, the peak water
22 use month for Cochise/Horseshoe was June 2005, with a water use of 4,251,600 gallons. The
23 Cochise system has four wells with a total production capacity of 155 gpm. Based on water usage
24 during the peak month, Cochise/Horseshoe can adequately serve approximately 620 connections.
25 Cochise/Horseshoe has a combined storage capacity of 200,000 gallons. Staff reports that
26 Cochise/Horseshoe is out of compliance with Commission requirements as it has a long history of
27 water outages and substandard service due to an inadequate infrastructure and lack of maintenance.
28 Until recently, when system upgrades were made, Staff received phone calls or emails almost daily

1 from customers suffering from outages or extreme low pressure due to broken pumps or leaks. Staff
2 recommends that a hook-up moratorium be placed on the Cochise/Horseshoe systems until both
3 systems are in total compliance with Commission requirements and at least in substantial compliance
4 with ADEQ requirements; and a well meter is installed on all water sources. Staff further
5 recommends that Cochise/Horseshoe should also consider adding an additional well or larger pumps
6 in its existing wells because the current customer count is very close the wells service capacity. Staff
7 noted that the Cochise/Horseshoe systems are close to the neighboring Bella Vista Water Co., and
8 could be interconnected with that system.

9 Factors affecting all McLain water systems

10 All of the McLain water systems are in violation of ADEQ requirements. The Interim
11 Manager testified that ADEQ has issued a matrix of 81 violations that affect all of the systems. In
12 addition to deficiencies of inadequate storage and water pressure, the systems have undersized lines
13 and do not appear to be constructed to standard; and they lack microbiological site sampling plans,
14 backflow prevention programs, and emergency operating plans.

15 Staff noted that several of the McLain water systems are in close proximity to each other and
16 could be interconnected. If the systems are interconnected, the combination of water sources and
17 storage facilities could provide redundancies that would require less storage for each of the systems
18 than if they remained separate. As noted above, Algonquin has expressed an interest in purchasing
19 the McLain water systems, and the Bankruptcy court has approved an Asset Purchase Agreement
20 pending a determination of rate base. Staff recommends that the moratorium for each of the systems
21 remain in effect after the systems are acquired until a new owner can show compliance with each of
22 Staff's recommendations.

23 The Interim Manager testified that in the last six months prior to the hearing in this matter,
24 there has been a total of 61 new requests for service for the seven systems, and that some of the
25 requests are still pending. He testified that there is a three to six month waiting period for new
26 connections because the Companies do not have adequate resources. Staff recommends that the
27 moratorium should apply to any new connections after a date certain, and suggested that the
28 moratorium should apply to any property owners who had not obtained a county permit to construct

1 prior to the date of the Staff Report.

2 Analysis and Resolution

3 The unrefuted evidence shows that each of the McLain water systems has numerous
4 deficiencies that adversely affect its ability to provide adequate service to its customers. The
5 imposition of a hook-up moratorium will not solve the problems plaguing these systems, but it will
6 prevent the problems from worsening as more users place demands on deficient systems. The
7 Companies' resources, both monetary and managerial, are strained. The Interim Manager testified
8 that it takes several months to effectuate a hook-up request because it does not have the resources to
9 connect these customers any faster. A moratorium would allow the Companies to focus on investing
10 in and installing capital improvements to bring these systems into compliance with ADEQ and
11 Commission regulations, rather than on connecting new customers.

12 The imposition of a hook-up moratorium is a drastic measure that can have a deleterious
13 effect on property values of the companies involved as well as on customers in the service areas. The
14 Commission does not impose hook-up moratoriums except in exigent and dire circumstances. The
15 circumstances in the instant case warrant the imposition of a hook-up moratorium for each of the
16 McLain water systems. The Commission has received numerous complaints from customers of each
17 of the systems concerning outages and lack of pressure. The Companies have not been able to
18 provide reasonable and adequate service as required by Commission rules. The violations of ADEQ
19 regulations threaten the health and safety of the customers on these systems. We will adopt Staff's
20 recommendations, and impose a hook-up moratorium for each of the McLain water systems until
21 each can demonstrate that it is in the public interest to lift the moratorium. The moratorium will
22 preclude any property owner, who did not receive a county permit to construct prior to the date of this
23 Order to be connected to the any of the systems pending further order of the Commission.

24 There has been significant notice and local participation in this proceeding. We are confident
25 that current property owners within the service areas of the McLain water systems are knowledgeable
26 about the moratoria we are imposing. Our Decision affects future property owners as well as current
27 property owners and we are concerned that any entity contemplating purchasing property that
28 ordinarily would be served by one of the McLain water systems be aware of the existence of the

1 moratoria. We believe that local officials or institutions may be the best parties to address this issue,
2 thus, we will send a copy of this Order to the Cochise County Board of Supervisors. In addition, we
3 expect the McLain water systems to take reasonable efforts to inform prospective customers about
4 the moratoria.

5 * * * * *

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

8 **FINDINGS OF FACT**

9 1. The Commission directed its Staff to open a Docket to determine the feasibility of a
10 hook-up moratorium for the McLain water systems.

11 2. On July 14, 2005, Staff filed a Motion to Open Docket and Request for Procedural
12 Conference.

13 3. By Procedural Order dated August 24, 2005, the matter was set for hearing in Sierra
14 Vista, Arizona.

15 4. Pursuant to the August 24, 2005 Procedural Order, the Interim Manger of the McLain
16 water systems mailed notice of the hearing to all customers of the Companies, and had the notice
17 published in the local newspaper. In addition, he emailed notice to all customers who provided him
18 with email addresses.

19 5. Staff filed its Staff Report on August 5, 2005, and recommends that the Commission
20 impose hook-up moratoriums on all of the McLain water systems.

21 6. The hearing convened as scheduled on August 15, 2005 in Sierra Vista. The notice of
22 the proceeding allowed for intervention as late as the start of the hearing. No person or entity filed or
23 requested to intervene.

24 7. In addition to the public comments received at the commencement of the hearing, the
25 Commission received phone calls and written comments relating to the imposition of a moratorium
26 on hook-ups. The majority of customer response favors the imposition of the moratorium. The
27 Cochise County Board of Supervisors requested that the Commission issue a moratorium order.

28 8. Mr. Steve Olea, Assistant Director of the Utilities Division, author of the Staff Report,

1 testified at the hearing, as did Mr. Timothy Edwards, the Interim Manager for the McLain water
2 systems.

3 9. ADEQ has determined that all of the McLain water systems are in violation of its
4 regulations, for inadequate storage and water pressure; inadequate construction; and failing to have
5 emergency operating plans, backflow prevention plans, and lack of microbiological sampling plans.

6 10. Despite their other deficiencies, ADEQ has determined that the McLain water systems
7 are providing water that meets its quality standards.

8 11. ADEQ regulations require that systems with only one well have minimum storage
9 equal to one day's average use during its peak month of demand.

10 12. Coronado currently has approximately 195 connections and one well with a
11 production capacity of 300 gallons per minute and no storage. Based on water usage information,
12 Coronado's well can adequately serve approximately 800 connections.

13 13. Staff recommends that there should be a moratorium on new hook-ups placed on
14 Coronado until: 1) at least 100,000 gallons of storage is installed on this system; 2) a well meter is
15 placed on all water sources; and 3) the system is in total compliance with all Commission rules,
16 regulations and Orders and in substantial compliance with ADEQ requirements.

17 14. Crystal currently has approximately 65 connections, one well with a production
18 capacity of 30 gpm and no storage. Based on the water usage during the peak month, Crystal's well
19 can adequately serve approximately 60 connections.

20 15. Staff believes that Crystal has both inadequate well production capacity and
21 inadequate storage capacity. Staff recommends that a hook-up moratorium be placed on Crystal until
22 its water production is increased (by means of a second well or a larger capacity pump) and at least
23 50,000 gallons of water storage is installed. Staff further recommends that the moratorium remain in
24 place until a well meter is placed on all water sources and until this system is in total compliance with
25 Commission requirements and in at least substantial compliance with ADEQ requirements.

26 16. Miracle Valley currently serves approximately 255 connections, has one well with a
27 production capacity of 300 gpm and no storage. Based on water usage during the peak use month,
28 the one well can serve approximately 800 connections.

1 17. Staff recommends that a hook-up moratorium be placed on Miracle Valley until at
2 least 150,000 gallons of storage are added; a well meter is placed on all water sources; and this
3 system is in total compliance with Commission requirements and in at least substantial compliance
4 with ADEQ requirements.

5 18. Sierra currently serves approximately 30 connections and has one well with a
6 production capacity of 30 gpm, and no storage. Based on the WUDS, the peak water use month for
7 Sierra cannot be determined because the customers are not metered. Based on a water usage of 0.5
8 gpm per connection, the one well can adequately serve approximately 60 connections.

9 19. Staff recommends that a hook-up moratorium be imposed and remain in effect on
10 Sierra until it: 1) installs 30,000 gallons of storage; 2) all customers receive meters and a well meter
11 is installed on all water sources; and 3) the system is in total compliance with Commission rules,
12 regulations and Orders and is in substantial compliance with ADEQ requirements.

13 20. Mustang currently serves 70 connections, has one well with a production capacity of
14 60 gpm and no storage. Based on the water usage during the peak use month, the well can
15 adequately serve approximately 215 connections.

16 21. Staff recommends that there should be a hook-up moratorium placed on Mustang until
17 it: 1) installs at least 30,000 gallons of storage; 2) a well meter is placed on all water sources; and 3)
18 the system is in total compliance with Commission rules, regulations and Orders and in substantial
19 compliance with ADEQ requirements.

20 22. Cochise and Horseshoe are physically interconnected, and thus, are analyzed as a
21 single system. These systems currently serve 590 connections. The Cochise system has four wells
22 with a total production capacity of 155 gpm. Based on water usage during the peak month,
23 Cochise/Horseshoe can adequately serve approximately 620 connections. Cochise/Horseshoe has a
24 combined storage capacity of 200,000 gallons. Cochise/Horseshoe is out of compliance with
25 Commission requirements to provide adequate service as it has a long history of water outages and
26 inadequate pressure due to substandard infrastructure and lack of maintenance.

27 23. Staff recommends that a hook-up moratorium be placed on the Cochise/Horseshoe
28 systems until both systems are in total compliance with Commission requirements and at least in

1 substantial compliance with ADEQ requirements; and a well meter is installed on all water sources.
2 Staff further recommends that Cochise/Horseshoe should also consider adding an additional well or
3 larger pumps in its existing wells because the current customer count is very close the wells service
4 capacity.

5 24. Miracle Valley, Crystal, Mustang, Coronado and Sierra have only one well and thus
6 no redundancy if that well breaks. These systems are in violation of ADEQ rules regarding minimum
7 storage capacity.

8 25. The Commission has received numerous complaints from customers involving outages
9 or low water pressure for all of the McLain water systems.

10 26. The imposition of a hook-up moratorium will prevent the problems afflicting the
11 McLain water systems from worsening and would allow the Companies to focus on investing in and
12 installing capital improvements to bring these systems into compliance with ADEQ and Commission
13 regulations, rather than on connecting new customers.

14 27. A.R.S. §40-321 provides that when the Commission finds that the equipment,
15 appliances, facilities or service of any public service corporation, or the methods of manufacture,
16 distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe,
17 improper, inadequate or insufficient, the Commission shall determine what is just, reasonable, safe,
18 proper, adequate or sufficient, and shall enforce its determination by order or regulation.

19 28. A.A.C. R14-2-407 provides that public service corporations, have an obligation to
20 supply potable water to their customers at a reasonably satisfactory and continuous level.

21 CONCLUSIONS OF LAW

22 1. The McLain water systems are public service corporations within the meaning of
23 Article XV of the Arizona Constitution and A.R.S. §§ 40-202, 40-205, 40-321, 40-322 and 40-331.

24 2. The Commission has jurisdiction over the McLain water systems and of the subject
25 matter of these Dockets.

26 3. Notice of the proceeding was provided in the manner prescribed by law.

27 4. The McLain water systems have not provided reasonable, continuous or adequate
28 service to their customers in violation of law and Commission rules.

1 IT IS FURTHER ORDERED that the McLain water systems shall take reasonable efforts to
2 inform prospective customers about the moratoria.

3 IT IS FURTHER ORDERED that the moratorium shall remain in effect for each of the
4 systems until further order of the Commission.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8
9

10 _____
CHAIRMAN

COMMISSIONER

11
12
13 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

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

20 _____
BRIAN C. McNEIL
21 EXECUTIVE DIRECTOR

22
23 DISSENT _____

24
25 DISSENT _____

26 JR:mj
27
28

1
2 SERVICE LIST FOR:

MIRACLE VALLEY WATER COMPANY
COCHISE WATER COMPANY
HORSESHOE RANCH WATER COMPANY
CRYSTAL WATER COMPANY
MUSTANG WATER COMPANY
CORONADO ESTATES WATER COMPANY
SIERRA SUNSET WATER COMPANY

3
4
5
6 DOCKET NOS.:

W-01646A-05-0509
W-01868A-05-0509
W-02235A-05-0509
W-02316A-05-0509
W-02230A-05-0509
W-01629A-05-0509
W-02240A-05-0509

7
8
9
10
11 Tim Edwards
Arizona Small Utility Association
210 N. Central Ave., Ste 6B
12 Avondale, Arizona 85323

Johnny McLain
7110 E. Jaxel Road
Hereford, Arizona 85615

13 Jody N. Klein
Cochise County Administrator
14 1415 Melody Lane, Building G
15 Bisbee, Arizona 85603

Michael M. Neal, Esq.
110 S. Church, Suite 4298
Tucson, Arizona 85701-1124

16 Jay Shapiro
Fennemore Craig, PC
17 3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Denise Faulk, Esq.
Arizona Attorney General Office
1275 W. Washington St.
Phoenix, Arizona 85007

18 Martin D. McCarthy, PE
19 Manager, Compliance Programs Unit
ADEQ
20 Southern Regional Office
400 W. Congress Street, Ste. 433
21 Tucson, Arizona 85701

Johnny and Linda McLain
PO Box 2903
Sierra Vista, Arizona 85636

22 Steven L. Wene, Esq.
MOYES STOREY
23 1050 N. Central Ave., Suite 1100
24 Phoenix, AZ 85004

Christopher Kempley, Chief Counsel
LEGAL DIVISION
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

25 Michael W. Baldwin, Esq.
Law Offices of Michael Baldwin, PLC
26 177 N. Church, Ste. 913
27 Tucson, Arizona 85701-1120
28

Ernest Johnson, Director
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007