

OPEN MEETING ITEM  
ORIGINAL



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



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: February 10, 2006  
DOCKET NO: W-02245A-05-0857  
TO ALL PARTIES:

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

LOMA ESTATES WATER COMPANY, LLC  
(CC&N TRANSFER/SALE OF ASSETS)

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:

FEBRUARY 21, 2006

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:

MARCH 2, 2006

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 Director's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF  
LOMA ESTATES WATER COMPANY, LLC FOR  
APPROVAL OF THE SALE OF ASSETS AND  
TRANSFER OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02245A-05-0857

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

**OPINION AND ORDER**

DATE OF HEARING: January 26, 2006  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
APPEARANCES: Ms. Priscilla Klemmedson, on behalf of Loma Estates Water Company, LLC; and  
Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On November 23, 2005, Loma Estates Water Company, LLC (“Loma Estates”, “Applicant” or “Company”) filed with the Arizona Corporation Commission (“Commission”) an application for approval of the sale of its assets and the transfer of its Certificate of Convenience and Necessity (“Certificate” or “CC&N”) to Mark and Julie Baker (“the Bakers”). Loma Estates provides water service to approximately 31 customers in an area near Prescott, Arizona.

On December 5, 2005, the Commission’s Utilities Division (“Staff”) deemed the application administratively complete pursuant to A.R.S. §41-1074 (C). By Procedural Order, a hearing on the application was scheduled for January 26, 2006.

Pursuant to the Procedural Order, the Applicant provided notice of the application in the *Prescott Newspapers*, a newspaper of general circulation, on December 15, 2005.

On January 6, 2006, Staff filed its Staff Report on the application, recommending approval of the sale of assets and the transfer of CC&N subject to certain conditions.

1 On January 26, 2006, a full public hearing was convened before a duly authorized  
2 Administrative Law Judge of the Commission. Ms. Priscilla Klemmedson<sup>1</sup> appeared on behalf of  
3 Applicant, Staff appeared through counsel and both presented testimony and evidence. Mr. Mark  
4 Baker appeared and presented public comment. At the conclusion of the hearing, pending late-filed  
5 exhibits, the matter was taken under advisement.

6 On February 2, 2006, the Applicant filed a late-filed exhibit, waiving the 10-day exception  
7 period.

8 \* \* \* \* \*

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

11 **FINDINGS OF FACT**

12 1. On November 23, 2005, the Applicant filed an application for the sale of its assets and  
13 to transfer its CC&N to the Bakers, stating that Ms. Klemmedson's husband<sup>2</sup> was very ill and, as a  
14 result, the Klemmedsons were unable to manage the company due to his failing health. The  
15 application also stated that the Applicant believed the Bakers are fit and proper to purchase the assets  
16 and operate the Company because Mrs. Baker has computer skills which Ms. Klemmedon does not  
17 have and therefore the Company would be able to avail itself of more on-line information,  
18 specifically with the regulatory agencies. The application further stated that Mr. Baker has previous  
19 experience repairing pumps and wells and that the Bakers were going to retain the current certified  
20 operator for the Company. Finally, the application stated that the Bakers live closer to the system  
21 than the Klemmedsons.

22 2. On December 5, 2005, Staff deemed the application administratively complete  
23 pursuant to A.R.S. §41-1074 (C).

24 3. On December 15, 2005, pursuant to the Procedural Order, the Applicant provided  
25 notice of the application in accordance with the law.

26 4. On January 6, 2006, Staff filed its Staff Report on the application, recommending  
27

28 <sup>1</sup> Ms. Klemmedson is the present owner of Loma Estates.

<sup>2</sup> Mr. Klemmedson passed prior to the hearing in this matter.

1 approval of the sale of assets and transfer of the CC&N subject to certain conditions.

2 5. On January 26, 2006, a full public hearing was convened in this matter.

3 6. Loma Estates' CC&N covers approximately 40 acres and is located in Section 26 of  
4 Township 13 North, Range 2 West.

5 7. The Loma Estates water system serves 31 customers and is comprised of one well  
6 with a capacity of 25 gallons per minute, 20,000 gallons of storage capacity, a booster pump, a  
7 pressure tank and a distribution system.

8 8. According to Staff's Report, growth in the CC&N area has been slow and has  
9 averaged about one new connection per year.

10 9. Staff concluded that the Loma Estates water system has adequate capacity to serve the  
11 existing customer base.

12 10. On January 23, 2006, the U.S. Environmental Protection Agency ("EPA") reduced the  
13 arsenic maximum containment level ("MCL") from 50 micrograms per liter (" $\mu\text{g/l}$ ") or parts per  
14 billion ("ppb") to 10  $\mu\text{g/l}$ . According to Staff's Report, the Loma Estates water system is delivering  
15 water that meets the new arsenic standard.

16 11. According to Staff's Report, the Utilities Division Compliance Section found no  
17 outstanding compliance issues for Loma Estates.

18 12. A Curtailment Plan Tariff is an effective tool for allowing water companies to manage  
19 their resources during periods of shortages due to breakdowns, droughts or unforeseen events. Staff  
20 reported that Loma Estates does not have a Curtailment Plan Tariff on file with the Commission.  
21 Therefore, Staff recommended that Loma Estates file a Curtailment Plan Tariff, for Staff's review  
22 and certification in the form attached as Exhibit A with Docket Control, as a compliance item in this  
23 docket, within 45 days of the effective date of a Decision in this matter.

24 13. According to Staff's Report, water loss should be 10 percent or less and never more  
25 than 15 percent for water systems. Staff stated it is important to be able to reconcile the difference  
26 between water sold and water produced by the source in determining water loss. Further, Staff  
27 reported that being able to account for water loss allows a water company to discern whether water  
28 and revenue losses are due to leakage, theft or flushing. Loma Estates' water loss was calculated at

1 slightly below the 15 percent threshold. Therefore, Staff recommended that Loma Estates install  
2 water level sensors on its storage tank to control the well pump. Staff further recommended that proof  
3 of the installed water level sensors be filed with Docket Control, as a compliance item in this docket,  
4 within 180 days of a Decision in this matter.

5 14. At hearing, Ms. Klemmedson testified that the Company made the decision not to  
6 install automatic water level sensors on its storage tanks, but to use timers to control the water levels.  
7 She further testified that the majority of the homeowners in the service area are seasonal  
8 homeowners. Further, she stated that when there are fewer customers using water during the winter  
9 months the Company adjusts the timers to account for the lower use.

10 15. Mr. Baker provided public comment stating that as the new owners they would not be  
11 able to install the automatic water level sensors within 180 days of an Order in this matter due to  
12 limited funds.

13 16. Staff's witness testified that Staff believed that the conservation of water is an  
14 important goal of the Commission and that the Company should be ordered to install the automatic  
15 water level sensors on its tank for the following reasons:

- 16 (a) That in 1996 it was noted that the Company had a water loss higher than what  
17 would normally be expected for a system of its type. (TR. Pg. 13, lines 19-23)
- 18 (b) In 1996 Staff recommended several long-term recommendations for the Company  
19 to consider to reduce water loss and the water level sensors was one of them (Id.)
- 20 (c) That the Company currently uses a timer system to control the level of water  
21 maintained in its tank and with that system it is more likely that the tank will  
22 overflow or run dry because the Company can't accurately predict customers' use.  
23 Additionally, the automatic water level sensors, unlike the timer system, takes the  
24 guess work out of trying to determine how much water should be maintained in the  
25 tanks; therefore, making the automatic water level sensors more efficient.
- 26 (d) That although Staff did not conduct an economic benefit analysis to determine  
27 what the long-term savings would be, Staff stated that they expected there would  
28 be a savings in the use of electricity to run the system.

1 (e) Finally, that the installation of automatic water level sensors is a standard  
2 recommendation made by Staff where there is a documented water loss by a water  
3 company.

4 17. At the hearing, Staff verbally amended its recommendation to allow the Company 365  
5 days from the effective date of an Order in this matter to install the automatic water level sensors.

6 18. Loma Estates is not located within an Active Management Area and therefore is not  
7 subject to the Arizona Department of Water Resources ("ADWR") reporting and conservation rules.

8 19. According to Staff's Report, the Arizona Department of Environmental Quality  
9 ("ADEQ") reported Loma Estates is currently delivering water that meets the water quality standards  
10 required by the Arizona Administrative Code.

11 20. Staff recommended approval of Loma Estates' application for the sale of its assets and  
12 the transfer of its CC&N, subject to compliance with the following conditions:

13 a. That Loma Estates file a Curtailment Plan Tariff, for Staff's review and  
14 certification, in the form attached hereto as Exhibit A, with Docket  
15 Control, as a compliance item in this docket within 45 days of the  
16 effective date of a Decision in this matter.

17 b. That Loma Estates install automatic water level sensors on its storage  
18 tank to control the well pump and that Loma Estates file with Docket  
19 Control, as a compliance item in this docket, evidence showing that the  
20 required work has been completed within 365 days of the effective date  
21 of a Decision in this matter.

22 21. Staff further recommended that if Loma Estates fails to comply with the above  
23 recommendations that after Loma Estates has been afforded due process, the CC&N shall become  
24 null and void.

25 22. At hearing, the Company agreed to abide by all of Staff's recommendations.

26 23. Staff's recommendations, as set forth above are reasonable.

27 24. Because an allowance for the property tax expense of Loma Estates is included in the  
28 Company's rates and will be collected from its customers, the Commission seeks assurances from the

1 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
2 authority. It has come to the Commission's attention that a number of water companies have been  
3 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,  
4 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Loma  
5 Estates should annually file, as part of its annual reports, an affidavit with the Utilities Division  
6 attesting that the Company is current in paying its property taxes in Arizona.

7  
**CONCLUSIONS OF LAW**

8 1. Loma Estates is a public service corporation within the meaning of Article XV of the  
9 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

10 2. The Commission has jurisdiction over Loma Estates and the subject matter of this  
11 application.

12 3. Notice of the application was provided in accordance with the law.

13 4. There is a public need and necessity for water service in the service territory.

14 5. Subject to compliance with the above-stated conditions, Mark and Julie Baker are fit  
15 and proper entities to receive Loma Estates' CC&N.

16 6. Approval of the sale of Loma Estates' assets and the transfer of its CC&N to Mark and  
17 Julie Baker is in the public interest.

18 7. The sale and transfer application should be granted subject to the conditions set forth  
19 above.

20  
**ORDER**

21 IT IS THEREFORE ORDERED that the application of Loma Estates Water Company, LLC,  
22 for approval of the sale of its assets and the transfer of its CC&N to Mark and Julie Baker is hereby  
23 approved, conditioned upon Loma Estates Water Company, LLC, filing with Docket Control, as a  
24 compliance item in this docket for Staff's review and certification, a Curtailment Plan Tariff in the  
25 form attached hereto as Exhibit A, within 45 days of the effective date of the Decision in this matter.

26 IT IS FURTHER ORDERED that Loma Estates Water Company, LLC, shall install water  
27 level sensors on its storage tank to control the well pump and shall file with Docket Control, as a  
28 compliance item in this docket, evidence showing that the required work has been completed within

1 365 days of the effective date of the Decision in this matter.

2 IT IS FURTHER ORDERED that the authority conditionally granted herein for the sale of  
3 Loma Estates Water Company's assets and transfer of its Certificate of Convenience and Necessity to  
4 Mark and Julie Baker, shall be null and void, after Loma Estates has been afforded due process, if  
5 Loma Estates Water Company, LLC, fails to timely file the compliance filings set forth in the  
6 preceding Ordering Paragraphs.

7 IT IS FURTHER ORDERED that Loma Estates Water Company, LLC, shall file as a part of  
8 its annual report, an affidavit with the Utilities Division attesting that the Company is current on  
9 paying its property taxes in Arizona.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12  
13 CHAIRMAN

COMMISSIONER

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16 COMMISSIONER

COMMISSIONER

COMMISSIONER

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18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
19 Director of the Arizona Corporation Commission, have  
20 hereunto set my hand and caused the official seal of the  
21 Commission to be affixed at the Capitol, in the City of Phoenix,  
22 this \_\_\_\_ day of \_\_\_\_\_, 2006.

23 BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

24 DISSENT \_\_\_\_\_

25  
26 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR:

LOMA ESTATES WATER COMPANY, LLC

2 DOCKET NO.:

W-02245A-05-0857

3 Ms. Priscilla Klemmedson  
4 Loma Estates Water Company, LLC  
12200 E. State, Rt. 69, #371  
5 Dewey, AZ 86327

6 Mark and Julie Baker  
2117 Miramonte Drive  
Prescott, AZ 86301

7 Christopher Kempley, Chief Counsel  
8 Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
9 Phoenix, AZ 85007

10 Ernest G. Johnson, Director  
11 Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
12 Phoenix, AZ 85007

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**TARIFF SCHEDULE**

Utility: \_\_\_\_\_  
 Docket No.: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_

Tariff Sheet No.: 1 of 4  
 Decision No.: \_\_\_\_\_  
 Effective: \_\_\_\_\_

**CURTAILMENT PLAN FOR****(Template 063004)**

ADEQ Public Water System No: \_\_\_\_\_

\_\_\_\_\_ ("Company"), is authorized to curtail water service to all customers within its certificated area under the terms and conditions listed in this tariff.

This curtailment plan shall become part of the Arizona Department of Environmental Quality Emergency Operations Plan for the Company.

The Company shall notify its customers of this new tariff as part of its next regularly scheduled billing after the effective date of the tariff or no later than sixty (60) days after the effective date of the tariff.

The Company shall provide a copy of the curtailment tariff to any customer, upon request.

**Stage 1 Exists When:**

Company is able to maintain water storage in the system at 100 percent of capacity and there are no known problems with its well production or water storage in the system.

Restrictions: Under Stage 1, Company is deemed to be operating normally and no curtailment is necessary.

Notice Requirements: Under Stage 1, no notice is necessary.

**Stage 2 Exists When:**

- a. Company's water storage or well production has been less than 80 percent of capacity for at least 48 consecutive hours, and
- b. Company has identified issues such as a steadily declining water table, increased draw down threatening pump operations, or poor water production, creating a reasonable belief the Company will be unable to meet anticipated water demand on a sustained basis.

Restrictions: Under Stage 2, the Company may request the customers to voluntarily employ water conservation measures to reduce water consumption by approximately 50 percent. Outside watering should be limited to essential water, dividing outside watering on some uniform basis (such as even and odd days) and eliminating outside watering on weekends and holidays.

## TARIFF SCHEDULE

Utility: \_\_\_\_\_  
 Docket No.: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_

Tariff Sheet No.: 2 of 4  
 Decision No.: \_\_\_\_\_  
 Effective: \_\_\_\_\_

Notice Requirements: Under Stage 2, the Company is required to notify customers by delivering written notice door to door at each service address, or by United States first class mail to the billing address or, at the Company's option, both. Such notice shall notify the customers of the general nature of the problem and the need to conserve water.

**Stage 3 Exists When:**

- a. Company's total water storage or well production has been less than 50 percent of capacity for at least 24 consecutive hours, and
- b. Company has identified issues such as a steadily declining water table, increased draw down threatening pump operations, or poor water production, creating a reasonable belief the Company will be unable to meet anticipated water demand on a sustained basis.

Restrictions: Under Stage 3, Company shall request the customers to voluntarily employ water conservation measures to reduce daily consumption by approximately 50 percent. All outside watering should be eliminated, except livestock, and indoor water conservation techniques should be employed whenever possible. Standpipe service shall be suspended.

Notice Requirements:

1. Company is required to notify customers by delivering written notice to each service address, or by United States first class mail to the billing address or, at the Company's option, both. Such Notice shall notify the customers of the general nature of the problem and the need to conserve water.
2. Beginning with Stage 3, Company shall post at least \_\_\_\_ signs showing the curtailment stage. Signs shall be posted at noticeable locations, like at the well sites and at the entrance to major subdivisions served by the Company.
3. Company shall notify the Consumer Services Section of the Utilities Division of the Corporation Commission at least 12 hours prior to entering Stage 3.

Once Stage 3 has been reached, the Company must begin to augment the supply of water by either hauling or through an emergency interconnect with an approved water supply in an attempt to maintain the curtailment at a level no higher than Stage 3 until a permanent solution has been implemented.

## TARIFF SCHEDULE

Utility: \_\_\_\_\_  
 Docket No.: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_

Tariff Sheet No.: 3 of 4  
 Decision No.: \_\_\_\_\_  
 Effective: \_\_\_\_\_

**Stage 4 Exists When:**

- a. Company's total water storage or well production has been less than 25 percent of capacity for at least 12 consecutive hours, and
- b. Company has identified issues such as a steadily declining water table, increased draw down threatening pump operations, or poor water production, creating a reasonable belief the Company will be unable to meet anticipated water demand on a sustained basis.

Restrictions: Under Stage 4, Company shall inform the customers of a **mandatory** restriction to employ water conservation measures to reduce daily consumption. Failure to comply will result in customer disconnection. The following uses of water shall be prohibited:

- ◆ Irrigation of outdoor lawns, trees, shrubs, or any plant life is prohibited
- ◆ Washing of any vehicle is prohibited
- ◆ The use of water for dust control or any outdoor cleaning uses is prohibited
- ◆ The use of drip or misting systems of any kind is prohibited
- ◆ The filling of any swimming pool, spas, fountains or ornamental pools is prohibited
- ◆ The use of construction water is prohibited
- ◆ Restaurant patrons shall be served water only upon request
- ◆ Any other water intensive activity is prohibited

The Company's operation of its standpipe service is prohibited. The addition of new service lines and meter installations is prohibited.

Notice Requirements:

1. Company is required to notify customers by delivering written notice to each service address, or by United States first class mail to the billing address or, at the Company's option, both. Such notice shall notify the customers of the general nature of the problem and the need to conserve water.
2. Company shall post at least \_\_\_\_\_ signs showing curtailment stage. Signs shall be posted at noticeable locations, like at the well sites and at the entrance to major subdivisions served by the Company.
3. Company shall notify the Consumer Services Section of the Utilities Division of the Corporation Commission at least 12 hours prior to entering Stage 4.

## TARIFF SCHEDULE

Utility: \_\_\_\_\_  
Docket No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

Tariff Sheet No.: 4 of 4  
Decision No.: \_\_\_\_\_  
Effective: \_\_\_\_\_

Customers who fail to comply with the above restrictions will be given a written notice to end all outdoor use. Failure to comply within two (2) working days of receipt of the notice will result in temporary loss of service until an agreement can be made to end unauthorized use of outdoor water. To restore service, the customer shall be required to pay all authorized reconnection fees. If a customer believes he/she has been disconnected in error, the customer may contact the Commission's Consumer Services Section at 1-800-222-7000 to initiate an investigation.

Once Stage 4 has been reached, the Company must augment the supply of water by hauling or through an emergency interconnect from an approved supply or must otherwise provide emergency drinking water for its customers until a permanent solution has been implemented.