

URIC



0000068609

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2003 DEC -8 P 4: 04

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

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission
DOCKETED

DEC - 8 2003

DOCKETED BY *CM*

Docket No. W-03263A-00-0470

KEVIN GREIF,
COMPLAINANT

vs.

DIAMOND VALLEY WATER USERS
CORPORATION,
RESPONDENT

STAFF RESPONSE

On October 2, 2003, a full public hearing was held on the above captioned matter. During the course of the hearing, Mr. Greif raised a number of concerns. In a Procedural Order dated October 24, 2003, the Administrative Law Judge ordered the Arizona Corporation Commission Utilities Division ("Staff") to review and respond to those concerns. This filing is in compliance with the October 24, 2003 order.

Mr. Greif voiced the following concerns. Who has ownership of Diamond Valley Water Users Corporation ("DVW") following administrative dissolution of DVW by the Arizona Corporation Commission's Corporations Division? Mr. Greif also asked whether the current management company, Bradshaw Management Corporation ("Bradshaw") is properly handling revenues from operation of DVW; whether Bradshaw is responsible through its appointment by the Commission as interim manager of DVW to make corporate filings with the Arizona Corporation Commission Corporations Division on behalf of DVW, and, what would happen if Bradshaw

1 terminated its management agreement with the Commission?

2 **BACKGROUND**

3 On August 1, 2000 the Commission issued Decision No. 62781, a Complaint and Order to
4 Show Cause ("OSC") against DVW alleging DVW was failing in its duties to the public as a public
5 service corporation. The relief sought in the OSC, among other things, was for an Order authorizing
6 Staff to appoint an interim manager to operate and manage DVW and bring it into compliance with
7 Commission Orders and Regulations. A hearing on the matter was held on October 13, 2000. On
8 April 4, 2000 the Commission issued Decision No. 63547.¹

9 Decision 63547 found that DVW is a non-profit corporation formed in October 1994 by Mr.
10 and Mrs. Guy Emminger and Mr. and Mrs. Robert Seleman to operate Triangle Development
11 Corporation's water utility assets after Triangle filed for Chapter 7 bankruptcy. On September 11,
12 1996 Triangle and DVW entered into an asset purchase agreement selling Triangle's assets to DVW.
13 In Decision 60125 the Commission approved the purchase agreement between Triangle and DVW
14 and the transfer of Triangle's Certificate of Convenience and Necessity to DVW.

15 The Commission, in Decision No. 63547 found that DVW was in violation of A.R.S. §40-
16 321, and Commission Rules A.A.C. R14-2-409(A) and R14-2-411(D). The Commission also found
17 DVW had failed to comply with Decision No. 60125 by failing to make ordered filings with the
18 Commission's Utilities Division, and with Yavapai County. It was also found that DVW was not
19 properly maintaining its books and billing its customers. The Commission authorized Staff to "take
20 all lawful action necessary, including court action, to engage a qualified management entity to
21 operate, manage, and maintain Diamond Valley Water User's Corporation in order to bring the utility
22 into full compliance with Arizona law, the Commission's Rules, and the Commission's Orders." It
23 was further ordered that the manager engaged would file a Progress Report with the Commission
24 Compliance Section 60, 120, 180, 270 and 360 days after taking over the operation of DVW.

25 On April 9, 2001, Staff appointed Bradshaw Interim Manager of DVW. The appointment
26 letter sets forth Bradshaw's duties. In addition to those duties necessary to deliver water and collect

27
28

¹ Attachment No. 1.

1 bills, Bradshaw is required to make timely filing of Annual Reports with the Commission. The
2 appointment also requires Bradshaw to file the Progress Reports required in Decision No. 63547.

3 OWNERSHIP

4 DVW was organized as a non-profit corporation to "carry on the business of a consecutive
5 water service and repair distribution system."² DVW's corporate status has been administratively
6 dissolved because it failed to file its Annual Reports with the Corporations Division. Article IV of
7 DVW's Articles of Incorporation state that DVW "shall be a non-stock corporation and shall be
8 owned by its members..."³ Therefore, upon dissolution of DVW the ownership interest in DVW is
9 held by its members. The Articles do not define the term "member." If "member" is defined to mean
10 the water users for whose benefit the corporation was formed, then those water users now have
11 control over the assets of DVW and can determine how those assets should be treated. If "member"
12 is defined to mean only those individuals listed as forming DVW, then those individuals now have
13 control over the assets of DVW and can determine how those assets should be treated.

14 When used elsewhere in the Articles of Incorporation the term members is used in a way
15 which distinguishes members from those incorporating DVW who are the same individuals as its
16 initial Directors/Officers. Article III addresses "meetings of members of the Corporation and the
17 Board of Directors/Trustees may be held." This appears to divide the Directors and members into
18 separate classes. Article V states that management of the Corporation is "vested in a Board of
19 Directors/Trustees of not less than three (3) nor more than (7) members." Again members and
20 Directors appear to be divided into separate classes. Because of this division of classes, it is
21 reasonable to conclude that the term "members" as used in the description of ownership of DVW is
22 meant in a broader sense than including only the Directors/Officers. The intent of the membership
23 clause appears to be to include all water users as members. Therefore all water users would now
24 share in ownership of DVW and can determine what treatment those assets should receive.

25 BRADSHAW

26 The timely filing of Annual Report requirements contained in the appointment letter refers to

27 _____
28 ² Attachment No. 2. Articles of Amendment to Articles of Incorporation of DVW, dated November 23, 1994.

³ Attachment No. 3. Articles of Incorporation of DVW, dated November 8, 1994.

1 Annual Reports required to be filed with the Utilities Division and not the Annual Reports required to
2 be filed with the Corporations Division under Title 10 of Arizona Revised Statutes. Documents, such
3 as Annual Reports, filed with the Corporations Division are required to be filed by the chairman of the
4 board of directors or by an officer of the corporation. Bradshaw and its owners and employees are
5 not on the boards of directors nor are they officers of DVW. Therefore, Bradshaw is not legally
6 capable of filing documents on behalf of DVW with the Corporations Division.

7 Decision No. 63547 required Bradshaw to file a series of Progress Reports with Staff. The
8 appointment letter followed up on this requirement. All required Progress Reports were received and
9 reviewed by Staff. The last required report was received on April 26, 2002. This report indicated
10 that Bradshaw was in compliance with the duties outlined in the appointment letter and was making
11 proper use of the revenues collected pursuant to its management of DVW. Since the time of the
12 initial appointment, the appointment has been renewed twice. First by a letter dated June 3, 2002,
13 and then by letter dated May 6, 2003.

14 Under terms of the appointment, Bradshaw and Staff are free to terminate the appointment
15 without cause and with 30 days notice. If either Bradshaw or Staff were to exercise the option, Staff
16 would have continued authorization under Decision No. 63547 to appoint a different interim
17 manager, and would do so.

18 RESPECTFULLY SUBMITTED this 8th day of December, 2003.

19 ARIZONA CORPORATION COMMISSION

20
21 By 

22 Gary H. Horton
23 Attorney, Legal Division
24 1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-6026

25 Original and 13 copies of the foregoing filed
26 this 8th day of December, 2003, with:

27 Docket Control
28 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

1 Copy of the foregoing mailed this 8th day
2 of December , 2003, to:

3 Kevin Greif
4 1140 N. Opal Drive
5 Prescott, AZ 86303

6 Nancy Roe

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM

TO: DISTRIBUTION LIST
FROM: DOCKET CONTROL CENTER
DATE: 4/5/01
RE: Decision 63587

The purpose of this Memorandum is to notify you that on April 4, 2001 Arizona Corporation Commission filed a Decision for Diamond Valley with the Docket Numbers of W-03263A-00-0245, W-03263A-00-0251, W-03263A-00-0253, W-03263A-00-0254, W-03263A-00-0301, W-03263A-00-0302, W-03263A-00-0345, and W-03263A-00-0516. This Decision was issued Dec. No. 63587.

However, based upon Staff's subsequent review of the filing the Decision number should have been 63547. Please use this Decision number for future filings.

RECEIVED

APR 6 2001

**LEGAL DIV.
ARIZ. CORPORATION COMMISSION**

ATTACHMENT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

APR 04 2001

DOCKETED BY *ed*

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

HOUSTON T. MAYFIELD,
COMPLAINANT,

vs.

DIAMOND VALLEY WATER USER'S CORP.,
RESPONDENT.

DOCKET NO. W-03263A-00-0245

GEORGE W. DYEKMAN,
COMPLAINANT,

vs.

DIAMOND VALLEY WATER USER'S CORP.,
RESPONDENT.

DOCKET NO. W-03263A-00-0251

MARIO DEMARCO,
COMPLAINANT,

vs.

DIAMOND VALLEY WATER USER'S CORP.,
RESPONDENT.

DOCKET NO. W-03263A-00-0253

RAY R. RODRIGUEZ,
COMPLAINANT,

vs.

DIAMOND VALLEY WATER USER'S CORP.,
RESPONDENT.

DOCKET NO. W-03263A-00-0254

...

...

1 ARTHUR L. BOURQUE,
2 COMPLAINANT,
3 vs.
4
5 DIAMOND VALLEY WATER USER'S CORP.,
6 RESPONDENT.

DOCKET NO. W-03263A-00-0301

7 JERRY PFINGSTON,
8 COMPLAINANT,
9 vs.
10 DIAMOND VALLEY WATER USER'S CORP.,
11 RESPONDENT.

DOCKET NO. W-03263A-00-0302

12 JIM ROBERSON,
13 COMPLAINANT,
14 vs.
15 DIAMOND VALLEY WATER USER'S CORP.,
16 RESPONDENT.

DOCKET NO. W-03263A-00-0340

17 KATHLEEN PARKER,
18 COMPLAINANT,
19 vs.
20 DIAMOND VALLEY WATER USER'S CORP.,
21 RESPONDENT.

DOCKET NO. W-03263A-00-0345

22 IN THE MATTER OF DIAMOND VALLEY
23 WATER USER'S CORP.; COMPLAINT AND
24 ORDER TO SHOW CAUSE.

DOCKET NO. W-03263A-00-0516

25 DECISION NO. 63547

26 OPINION AND ORDER

27 PRE-HEARING CONFERENCES:

August 3, 2000 and October 11, 2000

1 DATE OF HEARING: October 13, 2000
2 PLACE OF HEARING: Prescott Resort, Prescott, Arizona
3 ADMINISTRATIVE LAW JUDGE: Mr. Jerry L. Rudibaugh, Esq.¹
4 APPEARANCES: Ms. Teena Wolfe, Staff Attorney, Legal
5 Division, on behalf of the Utilities Division of
6 the Arizona Corporation Commission;
7 Mr. Jim Roberson, Complainant, in Propria
8 Persona;
9 Mr. Ray R. Rodriguez, Complainant, in Propria
10 Persona;
11 Mr. George W. Dyekman, Complainant, in
12 Propria Persona;
13 Mr. Houston T. Mayfield, Complainant, in
14 Propria Persona;
15 Mr. Ivan Legler, City Attorney, on behalf of
16 Prescott Valley Water Company and Prescott
17 Valley Water District;
18 Mr. Guy Emminger, on behalf of Diamond
19 Valley Water User's Corporation;

16 **BY THE COMMISSION:**

17 On April 17, 2000, Mr. Houston T. Mayfield filed a Complaint ("Customer Complaint")
18 against Diamond Valley Water Users Corporation ("Diamond Valley" or "Respondent") alleging
19 various billing improprieties by Diamond Valley.
20

21 On April 19, 2000, Mr. George W. Dyekman, Mr. Mario DeMarco, and Mr. Ray R.
22 Rodriguez filed similar Customer Complaints against Diamond Valley.

23 On May 3, 2000, Mr. Arthur Bourque and Mr. Jerry Pfingston filed similar Customer
24 Complaints against Diamond Valley.

25 On May 16, 2000, Mr. Jim Roberson filed a similar Customer Complaint against Diamond
26 Valley.

27 _____
28 ¹ Mr. Rudibaugh presided over the public comment and hearing, and this Opinion and Order was prepared by Mr. Stephen Gibelli.

1 On May 18, 2000, Ms. Kathleen Parker filed a similar Customer Complaint against Diamond
2 Valley.

3 On or about June 16, 2000, Diamond Valley filed Answers to each of the Customer
4 Complaints.

5 On July 21, 2000, a Procedural Order was issued consolidating each of the Customer
6 Complaints into a single proceeding and setting a pre-hearing conference.

7 On August 1, 2000, the Arizona Corporation Commission ("Commission") issued Decision
8 No. 62781, a Complaint and Order to Show Cause ("OSC") against Diamond Valley alleging that:

- 9 a. Diamond Valley has failed to file the 1995 Utilities Division Annual Report as required
10 by Decision No. 60125 (March 19, 1997), within 120 days of the effective date of the
11 Decision;
- 12 b. Diamond Valley has failed to file Utilities Division Annual Reports, as required by
13 A.A.C. R14-2-411.D, for the years 1997 through and including 1999;
- 14 c. in contravention of Decision No. 60125, Diamond Valley has failed to file within 60 days
15 of that Decision, a document either describing arrangements with Yavapai County for the
16 payment of back property taxes for the years 1993 through 1996, or advising that
17 Diamond Valley is contesting those taxes;
- 18 d. Diamond Valley has not complied with Decision No. 60125 by failing to file within 90
19 days of any determination of liability for the 1993 through 1996 back property taxes, a
20 status report with respect to the payment schedule made with Yavapai County;
- 21 e. Diamond Valley has failed to allow Staff to verify Diamond Valley's compliance with
22 A.A.C. R14-2-411.D.2 and Decision No. 60125, which ordered Diamond Valley to
23 maintain its books and records in accordance with the National Association of Regulatory
24 Commissioners Uniform System of Accounts. Staff scheduled a visit to verify
25 compliance, but upon arrival at Diamond Valley's offices, Staff was turned away by Mr.
26 Guy Emminger;
- 27 f. Diamond Valley has failed to file, as ordered by Decision No. 60125, within 30 days of
28 that Decision, an affidavit verifying that the sale of assets approved by the Decision has

1 2. On November 1, 1994, the U.S. Bankruptcy Court entered a Stipulated Order of
2 Abandonment which removed Triangle's water utility assets from the bankruptcy estate and thereby
3 allowed continued operation of the water system without further oversight by the Bankruptcy Court.

4 3. On or about December 30, 1994, the attorney for Triangle wrote to Mr. Guy
5 Emminger and authorized Diamond Valley to continue operating the water system on behalf of
6 Triangle as it had already been doing on a defacto basis.

7 4. On September 11, 1996, Triangle and Diamond Valley entered into an asset purchase
8 agreement ("Purchase Agreement") whereby Triangle agreed to sell its assets to Diamond Valley.

9 5. On December 3, 1996, Diamond Valley and Shamrock Water Company
10 ("Shamrock")² entered into a Service Agreement whereby Shamrock agreed to deliver water to a
11 single point of delivery for further distribution by Diamond Valley. Under the Service Agreement,
12 Diamond Valley was to pay Shamrock a monthly service charge of \$1.60 for each active water
13 service, which charge would increase by increments until it was \$5.60 on January 1, 2004. The
14 monthly service charge was \$2.60 until December 31, 2000, when the charge would increase to
15 \$3.60. Diamond Valley was also to pay Shamrock a monthly gallonage rate of \$1.80 per 1,000
16 gallons delivered, subject to increase when and to the extent that Shamrock's gallonage rate
17 increased. Finally, Diamond Valley was to pay Shamrock a one-time facilities charge of \$1,200.00
18 for each new hook-up, payable monthly.

19 6. In Decision No. 60125, the Commission issued an Opinion and Order which, among
20 other things: (a) approved the Purchase Agreement between Triangle and Diamond Valley along with
21 the transfer of Triangle's Certificate of Convenience and Necessity ("CC&N") to Diamond Valley;
22 (b) required Diamond Valley to make arrangements to either pay or contest back ad valorem taxes
23 allegedly owed to Yavapai County for the years 1993 through 1996; (c) required Diamond Valley to
24 maintain its books and records in accordance with the National Association of Regulatory Utility
25 Commissioners Uniform System of Accounts; (d) approved the Service Agreement between
26
27

28 ² Shamrock Water Company provides water to Prescott Valley and other areas outside of Prescott Valley.

1 Diamond Valley and Shamrock; and (e) required Diamond Valley to file with the Commission an
2 application for rate review fifteen (15) months from the effective date of the Decision.

3 7. On September 24, 1998, the Prescott Valley Town Council ("Council") created the
4 Prescott Valley Water District under Art. 6, Chap. 4, Title 48, Arizona Revised Statutes. On October
5 19, 1998, the Council, serving as the District's governing board ("Board"), approved an agreement to
6 acquire Shamrock by purchasing Shamrock's stock. That purchase occurred on January 21, 1999.
7 Shamrock was then changed to a non-profit company with the District as its sole Member, and re-
8 named the Prescott Valley Water Company ("PVWC"). The PVWC's Board of Directors was made
9 up of the members of the Council/Board, with the Town Manager as PVWC Manager, the Town
10 Clerk as PVWC Secretary, and the Town Attorney as PVWC Attorney. The Prescott Valley Water
11 District then entered into a Service Agreement with PVWC to receive all of PVWC's revenues and to
12 use the PVWC's real and personal property to provide PVWC's services to its customers and to
13 otherwise meet PVWC's obligations.

14 8. On October 15, 1998, prior to its purchase by the District, Shamrock had filed with the
15 Commission an application for cancellation of its CC&N, approval of the sale of its stock to the
16 District, and a declaration of non-jurisdiction. The Commission granted that application in Decision
17 No. 61296 of the Commission (December 16, 1998).

18 9. After Shamrock filed its application with the Commission to cancel its CC&N,
19 Diamond Valley expressed concern about the planned increase in PVWC rates as part of the plan to
20 acquire Shamrock. Thereafter, the PVWC entered into a Letter of Understanding with Diamond
21 Valley (November 23, 1998), wherein the PVWC agreed not to apply any gallonage rate increase to
22 Diamond Valley under the Service Agreement until January 15, 2000, or until the Commission
23 granted Diamond Valley a rate increase (whichever came sooner). The PVWC further agreed that
24 any future increases would not be applied to Diamond Valley for nine (9) months or until the
25 Commission granted Diamond Valley a rate increase (whichever came sooner). However, Diamond
26 Valley did not apply to the Commission for a rate increase. Therefore, the PVWC's new gallonage
27 rate of \$2.25 per 1000 gallons was applied to Diamond Valley effective January 16, 2000.

1 10. On April 30, 1997, shortly after the Commission's Decision No. 60125, Diamond
2 Valley filed a request for an emergency rate increase in the form of a \$10.00 per month per customer
3 surcharge. In Decision No. 60394, (September 5, 1997), the Commission voted 2-1 to approve the
4 proposed Opinion and Order which denied Diamond Valley an emergency rate increase. Diamond
5 Valley has not filed an application for a permanent rate increase.

6 11. Diamond Valley has had on-going difficulty living up to the terms of the Service
7 Agreement. Despite several requests from Shamrock, Diamond Valley never provided the monthly
8 report required by the Service Agreement to verify Diamond Valley's compliance with payment
9 requirements ("Report"). That Report was to list (a) the lot number and account number of each
10 customer with active water service, (b) the lot number and account number of each customer with an
11 installed meter (regardless of whether the customer has active water service), and (c) the lot number
12 and account number of customers whose meters have been installed each month. According to
13 PVWC, Diamond Valley reported a number of active water services, and that number fluctuated
14 from month to month, decreasing from a high of 361 to a low of 320. PVWC provided un rebutted
15 testimony that Diamond Valley has at least 424 active water services. Diamond Valley has never
16 reported or paid a \$1,200.00 facilities charge for new hook-ups as required under the Service
17 Agreement.

18 12. Beginning on or around November 1, 1998, Diamond Valley experienced a series of
19 computer problems that impacted its billings when a high voltage power surge destroyed its
20 computer. A new computer was purchased, only to be destroyed as well, in March 1999 as a result of
21 another power surge. A new computer was again purchased. As a result of these events, billing data
22 was apparently lost from hard drives. Also, a software problem is said to have occurred as a result of
23 the year 2000 change, as reported in a letter from Guy Emminger (March 3, 2000).

24 13. Diamond Valley has evolved into essentially a one-man operation since its original
25 incorporation in 1994. Guy Emminger is the President of Diamond Valley, and makes management
26 and operational decisions for Diamond Valley. Mr. Emminger reads the meters, sometimes with the
27 assistance of one or more volunteers.

28

1 14. Beginning roughly in 1998, numerous Diamond Valley customers experienced various
2 billing problems. As examples, a number of customers have never been billed for water service or
3 have been billed only occasionally. Other customers have been billed multiple times for service for
4 which they allegedly have already paid. Other customers have received erratic billings from month
5 to month, often including large billings for amounts of water which they allegedly could not have
6 used in the described period. Other customers have made up-front payments for meters and other
7 services that they have never received.

8 15. During public comment, Diamond Valley customers indicated that they have
9 contacted Staff as well as other state and local entities over inconsistent and confusing billing
10 practices and that Mr. Emminger has made some threats to shut off water service to certain
11 customers.

12 16. Because Diamond Valley did not report the number of active water services to the
13 PVWC beginning in January 1999, PVWC's billings were initially based on 320 customers (the
14 number passed on by Shamrock at the end of 1998). PVWC monthly billings to Diamond Valley
15 were determined by applying the gallonage charge of \$2.25 per thousand to the amount of water
16 delivered to the single delivery point (after accounting for water passed through to other small water
17 systems), multiplying the monthly service charge of \$2.60 by 320, and adding the two products
18 together.

19 17. Diamond Valley stopped paying the PVWC's billings beginning with the April 2000
20 service period. The PVWC's billing for that period was \$6,010.15. The subsequent unpaid PVWC
21 billings to Diamond Valley were \$8,056.30 for May, \$9,509.58 for June, and \$8,522.95 for July.

22 18. Beginning with the August 2000 PVWC billing, 424 active water services were used
23 based on reliable information supplied to the PVWC. Utilizing that number and adding the charge
24 for gallonage, the billing for August was \$7,509.05 and the billing for September was \$8,443.48.
25 The total unpaid balance was then \$48,051.51 for water supplied to Diamond Valley from April
26 through September, 2000. After Diamond Valley paid \$6,010.15 for the April billing just prior to the
27 hearing, Diamond Valley owed a balance of \$42,041.36 to the PVWC for water received from May
28 through September, 2000.

1 19. On August 7, 2000, the PVWC invoiced Diamond Valley for \$81,443.80, representing
 2 (a) the difference between the number of active water services that should have been reported by
 3 Diamond Valley under the Service Agreement from January 1999 through July 2000 and the number
 4 actually used for billing, times the \$2.60 monthly service charge (\$2,243.80), plus (b) the number of
 5 building permits issued in Diamond Valley from December 1996 through July 2000.³

6 20. At the time of the hearing on October 13, 2000, Diamond Valley owed the PVWC
 7 \$123,485.16. That amount increases by thousands of dollars with each new building permit issued in
 8 Diamond Valley and each additional unpaid monthly billing.

9 21. The PVWC's remedies against Diamond Valley under the Service Agreement include
 10 termination of the Service Agreement (with the resulting cessation of water delivery to Diamond
 11 Valley) without further action of the Commission, and bringing contract and other actions in Superior
 12 Court. Such remedies risk ending water service to Diamond Valley customers, are not timely, may
 13 be difficult to implement or collect, and could result in the complication of federal bankruptcy
 14 proceedings and involvement by the Bankruptcy Court.

15 22. Following the October hearing, Staff has read meters with Guy Emminger and has
 16 attempted to mediate billing complaints between complainant customers and Diamond Valley.

17 23. On January 16, 2001, Staff filed a Memorandum indicating that little effort was made
 18 by Guy Emminger to resolve the complaints in this Docket.

19 24. Staff's Memorandum also indicated that from January 1, 2000 to January 11, 2001, the
 20 Commission received a total of one-hundred twenty-two (122) informal complaints and twenty-two
 21 formal complaints.

22 25. Staff has recommended the following relief:

- 23
- 24 (a) That pursuant to Article XV, Section 3 of the Arizona Constitution and A.R.S.
 25 §40-204, the Commission require Respondents to comply with the requirements of
 26 Decision No. 60125; to file Utilities Division Annual Reports for the years 1997
 27 through and including 1999, in compliance with A.A.C. R14-2-411.D.2; and to
 28 properly bill Diamond Valley customers in compliance with A.A.C. R14-2-409.A;

³ 66 x \$1,200 = \$79,200

1 (b) That the Commission declare that Diamond Valley has violated the provisions of
2 the Arizona Administrative Code and Arizona Revised Statutes and shall be
sanctioned appropriately in accordance with Commission rules and State law
(A.R.S. §§ 40-424, 40-425, 40-426, and 40-428);

3 (c) That the Commission authorize Staff to take any action necessary to engage a
4 qualified management entity to operate and manage Diamond Valley to bring the
utility into full compliance; and,

5 (d) That the Commission order such other relief as may be appropriate under the
6 circumstances of this case.

7 26. Diamond Valley has consistently issued incorrect and inflated bills to its customers.

8 27. Diamond Valley has collected funds from at least one customer and has not provided
9 service.

10 28. As presently operated by Guy Emminger and those with whom it may have oral
11 contracts, Diamond Valley has not, and is not, operating its water system in accordance with
12 Decision No. 60125, Commission regulations, and State law. Based on the evidence presented, we
13 conclude that Diamond Valley's current management is not capable of operating its water system in
14 accordance with Decision No. 60125, applicable Commission regulations, and State law.

15 CONCLUSIONS OF LAW

16 1. Diamond Valley is a public service corporation within the meaning of Article XV of
17 the Arizona Constitution and A.R.S §§40-250, 40-251, 40-281, 40-282 and 40-285.

18 2. The Commission has jurisdiction over the Diamond Valley and of the subject matter
19 of the Complaints and OSC.

20 3. The issuance of a Certificate of Convenience and Necessity to a public service
21 corporation imposes a duty upon the certificate holder to operate the utility in a lawful manner, to
22 comply with law, and to provide competent management and adequate service to its customers.

23 4. Diamond Valley is in violation of A.R.S. §40-321, and Commission Rules A.A.C.
24 R14-2-409(A) and R14-2-411(D).

25 5. Diamond Valley has also failed to comply with Decision No. 60125 by:

26 (a) failing to file a 1995 Utilities Division Annual Report within 120 days of the
27 effective date of the Decision;

- 1 (b) failing to file Utilities Division Annual Reports for the years 1997 and
2 including 1999;
- 3 (c) failing to file a document either describing arrangements with Yavapai County
4 for the payment of back property taxes for the years 1993 through 1996 or
5 contesting those taxes within 60 days of that Decision;
- 6 (d) failing to file a status report with respect to the payment schedule made with
7 Yavapai County within 90 days of any determination of liability for the 1993
8 through 1996 property taxes;
- 9 (e) failing to file an affidavit verifying that the sale of assets approved by the
10 Decision has been consummated;
- 11 (f) failing to maintain books and records in accordance with the National
12 Association of Regulatory Utility Commissioners Uniform System of
13 Accounts; and,
- 14 (g) failing to properly bill its customers.

15 6. Diamond Valley attempted to comply with Decision No. 60125, as stated in Count VII
16 of the OSC, by filing for an emergency rate increase on April 30, 1997. However, Decision No.
17 60394 denied Diamond Valley an emergency rate increase and Diamond Valley did not then file an
18 application for a permanent rate increase within 15 months of the date of Decision No. 60125.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the Commission's Utilities and Legal Divisions, shall be
21 authorized to take all lawful action necessary, including court action, to engage a qualified
22 management entity to operate, manage, and maintain Diamond Valley Water User's Corporation in
23 order to bring the utility into full compliance with Arizona law, the Commission's Rules, and the
24 Commission's Orders. The schedule of costs for any such Manager shall be as set forth by agreement
25 between the Utilities Division Director and such Manager, which costs may be reviewed and revised
26 after twelve (12) months of satisfactory service by such Manager.

27 IT IS FURTHER ORDERED that Diamond Valley Water User's Corporation, its present
28 directors, officers, employees and contractors, shall take any and all steps necessary to safeguard the

1 property and operations of Diamond Valley and the Diamond Valley water system so that
2 uninterrupted water service shall continue to be provided to Diamond Valley customers during the
3 transition to operation of the system by any such Manager.

4 IT IS FURTHER ORDERED that said Manager shall file a Progress Report with the Arizona
5 Corporation Commission's Compliance Section as follows: (a) 60 days, (b) 120 days, (c) 180 days,
6 (d) 270 days, and (e) 360 days after taking over the operation, maintenance and management of the
7 Diamond Valley water system. These progress reports shall include information detailing all funds
8 received and funds disbursed by expense category. These progress reports shall also include updates
9 detailing the resolution of all formal customer complaints.

10 IT IS FURTHER ORDERED that in the event that Diamond Valley Water User's Corporation
11 and/or Mr. Guy Emminger fails to cooperate or seeks to interfere in the lawful operation of the utility
12 by a qualified management entity selected by Staff, the Commission's Legal Division is directed to
13 bring an action 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.

17 

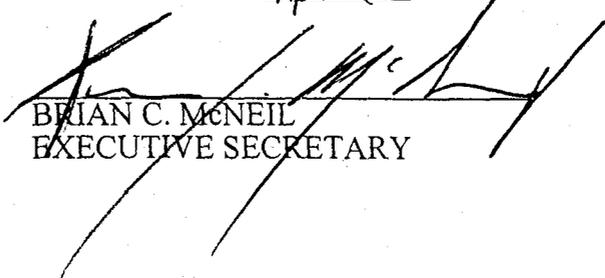
18 CHAIRMAN

18 COMMISSIONER

17 

18 COMMISSIONER

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 4th day of April, 2001.

24 
25 BRIAN C. McNEIL
26 EXECUTIVE SECRETARY

26 DISSENT _____
27 SG:dap

1 SERVICE LIST FOR:

VARIOUS COMPLAINANTS vs. DIAMOND
2 VALLEY WATER USER'S CORP.

3 DOCKET NOS.:

W-03263A-00-0245; W-03263A-00-0251; W-03263A-
4 00-0253; 2-03263A-00-0254; W-03263A-00-0301; W-
5 03263A-00-0302; W-03263A-00-0340; W-03263A-00-
0345; and W-03263A-00-0516

6 Guy Emminger, President
7 Diamond Valley Water User's Corporation
8 4754 East Donna Drive
9 Prescott, Arizona 86301

10 Ivan Legler, Legal Counsel
11 Prescott Valley Water Company
12 Prescott Valley Water District
13 7501 East Civic Circle
14 Prescott Valley, Arizona 86314

15 Houston T. Mayfield
16 4866 Amber Dr.
17 Prescott, Arizona 86301

18 George W. Dyekman
19 4845 Amber Dr.
20 Prescott, Arizona 86301

21 Mario DeMarco
22 4614 Gloria Drive
23 Prescott, Arizona 86301

24 Ray R. Rodriguez
25 1700 E. Jade Circle
26 Prescott, Arizona 86301

27 Arthur L. Bourque
28 4870 E. Diamond Drive
Prescott, Arizona 86301

Jerry Pfingston
5155 E. Diamond Drive
Prescott, Arizona 86301

Jim Roberson
P.O. Box 3821
Prescott, Arizona 86302

1 Kathleen Parker
2 4864 Diamond Drive
3 Prescott, Arizona 86301

4 Kevin Greif
5 1140 North Opal Dr.
6 Prescott, Arizona 86303

7 Christopher Kempley, Chief Counsel
8 Legal Division
9 Arizona Corporation Commission
10 1200 W. Washington Street
11 Phoenix, Arizona 85007

12 Deborah Scott, Director
13 Utilities Division
14 Arizona Corporation Commission
15 1200 W. Washington Street
16 Phoenix, Arizona 85007

17
18
19
20
21
22
23
24
25
26
27
28

8 7 3 7 2 7 0 0 1 1

EXPEDITED
ARIZONA COMMISSION
FILED

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF

Nov 30 9 58 AM '94

APPR. DATE: 11/23/94
TERM: 5/1/94
DAY: _____

0754774-2

DIAMOND VALLEY WATER USER'S CORP.

Pursuant to the provisions of Section 10-1036, Arizona Revised Statutes, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation.

DIAMOND VALLEY WATER USER'S CORP.

SECOND: The amendments adopted.

ARTICLE II

Section 1

This corporation is to carry on the business of a consecutive water service and repair distribution system.

THIRD: The date of the adoption of the amendments.

NOVEMBER 18, 1994

FOURTH: That the amendments were duly adopted by act of the board of directors.

DATED: November 23, 1994

DIAMOND VALLEY WATER USER'S CORP.

By Rhonda M. Eminger
RHONDA M. ENNINGER, President

ATTEST:

Martha J. Seaman
MARTHA J. SELEMAN - Secretary

8 3 0 2 3 . 0 0 1 1

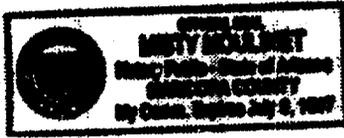
ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 23rd day of November, 1994, by RHONDA N. ERINGER, President, and MARTHA J. SELENAN, Secretary of DIAMOND VALLEY WATER USERS ASSOCIATION, INC., an Arizona corporation, on behalf of the corporation.

Misty Maulmet
Notary Public

My Commission Expires:
July 8, 1997



ARIZONA CORPORATION COMMISSION
CORPORATIONS DIVISION

Phoenix Address 1200 West Washington
Phoenix, Arizona 85007

Tucson Address: 402 West Congress
Tucson, Arizona 85701

CERTIFICATE OF DISCLOSURE
A.R.S. Sections 10-128 & 10-1084

PLEASE SEE REVERSE SIDE

DIAMOND VALLEY WATER USER'S, CORP.
EXACT CORPORATE NAME

CHECK APPROPRIATE BOX(ES) A or B
ANSWER 'C'

THE UNDERSIGNED CERTIFY THAT

A. No persons serving either by elections or appointment as officers, directors, incorporators and persons controlling, or holding more than 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation:

- 1 Have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate
- 2 Have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses, or restraining the trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate
- 3 Have been or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the execution of this Certificate where such injunction, judgment, decree or permanent order:
 - (a) Involved the violation of fraud or registration provisions of the securities laws of that jurisdiction; or
 - (b) Involved the violation of the consumer fraud laws of that jurisdiction; or
 - (c) Involved the violation of the antitrust or restraint of trade laws of that jurisdiction.

B. For any person or persons who have been or are subject to one or more of the statements in items A.1 through A.3 above, the following information MUST be attached.

- 1 Full name and prior name(s) used.
- 2 Full birth name.
- 3 Present home address.
- 4 Prior addresses (for immediate preceding 7-year period)
- 5 Date and location of birth
- 6 Social Security number.
- 7 The nature and description of each conviction or judicial action, date and location, the court and public agency involved and file or cause number of case.

STATEMENT OF BANKRUPTCY, RECEIVERSHIP OR REVOCATION
A.R.S. Sections 10-128.01 and 10-1083

C. Has any person serving (a) either by election or appointment as an officer, director, trustee or incorporator of the corporation or, (b) major stockholder possessing or controlling any proprietary, beneficial or membership interest in the corporation, served in any such capacity or held such interest in any corporation which has been placed in bankruptcy or receivership or had its charter revoked? YES ___ NO AA

IF YOUR ANSWER TO THE ABOVE QUESTION IS "YES", YOU MUST ATTACH THE FOLLOWING INFORMATION FOR EACH CORPORATION:

- 1 Name and address of the corporation.
- 2 Full name, including alias and address of each person involved.
- 3 State(s) in which the corporation:
 - (a) Was incorporated.
 - (b) Has transacted business.
- 4 Dates of corporate operation.
- 5 A description of the bankruptcy, receivership or charter revocation, including the date, court or agency involved and the file or cause number of the case.

R.J.V.
NOV 16 1994

Under penalties of law, the undersigned incorporators/Officers declare that we have examined this Certificate, including any attachments, and to the best of our knowledge and belief it is true, correct and complete.

BY *[Signature]* DATE 11/8/94
TITLE RYN E. EMMINGER, Incorporator

BY *[Signature]* DATE 11/8/94
TITLE RHONDA M. EMMINGER, Incorporator

BY *[Signature]* DATE 11-9-94
TITLE ROBERT J. SELMAN, Incorporator

BY *[Signature]* DATE 11-9-94
TITLE SELMAN, Incorporator

FISCAL DATE: December 31

0 0 1 1 2 0 0 7 6

EXPEDITED
AZ CORP COMMISSION
FILES

ARTICLES OF INCORPORATION

OF

DIAMOND VALLEY WATER USER'S, CORP.

Nov 9 4 23 PM '94

Christine Young

The undersigned, whose addresses appear opposite their respective names below, have this day associated themselves for the purpose of forming a non-profit Corporation under the laws of the State of Arizona, and for that purpose do hereby adopt the following Articles of Incorporation: #0734974-8

ARTICLE I

Name

The name of this Corporation shall be DIAMOND VALLEY WATER USER'S, CORP. (hereinafter referred to as the "Corporation").

ARTICLE II

Business and Purpose

SECTION 1. This Corporation is to carry on the business of acquiring, development and maintaining a water utility.

SECTION 2. Notwithstanding anything herein contained to the contrary, no part of the activities of the Corporation shall be devoted to carrying on propaganda or otherwise attempting to influence legislation and the Corporation shall make no gift, donation, or contribution to any institution or organization engaged in such activities. No part of the net earnings of the Corporation shall inure to the benefit of any private member or individual (than by constructing, or providing management, maintenance of the Common Elements and other than by a rebate). Further, any other provision herein to the contrary notwithstanding, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the Rules and Regulations of the United States Internal Revenue Service promulgated thereunder, as they now exist or as they may hereafter be amended, or by an organization, the contributions to which are deductible under Section 170(c)(2) of such Code, Rules, and Regulations as they now exist or as they may hereafter be amended.

SECTION 3. In the conduct of its business, this Corporation to the extent authorized by its Board of Directors and shall be empowered to do all things that a private person or individual might do under the laws of the State of Arizona.

1 0 2 6

ARTICLE III

Place of Business

The principal place of business and office for the transaction of business of this Corporation shall be located at 4654 East Donna Drive, Prescott, Arizona, but other offices may be established and maintained in such places as the Board of Director/Trustees may designate and where, except as otherwise provided in these Articles of Incorporation or the By-Laws, meetings of members of the Corporation and the Board of Director/Trustees may be held.

ARTICLE IV

Membership

SECTION 1. The Corporation shall be a non-stock corporation and shall be owned by its members, and no dividends or pecuniary profits shall be paid to its members.

ARTICLE V

Board of Directors/Trustees

The control and management of the affairs of this Corporation shall be vested in a Board of Directors/Trustees of not less than three (3) nor more than seven (7) members. The names and addresses of those selected at a meeting held in Phoenix, Arizona on this 8th day of November, 1994, at 9:00 a.m., to serve as Director/Trustees beginning with the incorporation of this Corporation and until their successors shall be chosen are:

DIRECTOR/TRUSTEE/PRESIDENT:

Rhonda M. Emminger
4654 East Donna Drive
Prescott, Arizona 86301

DIRECTOR/TRUSTEE/VICE PRESIDENT:

Robert J. Seleman
Same Address

DIRECTOR/TRUSTEE/CHAIRMAN/TREASURER:

Guy E. Emminger
Same Address

DIRECTOR/TRUSTEE/SECRETARY:

Martha J. Seleman
Same Address

ARTICLE VI

Private Property

The Members, Director/Trustees, and officers of this Corporation shall not be liable for the debts of this Corporation, and the private property of the Members, Director/Trustees, and officers of this Corporation shall be forever exempt from corporate debts of any kind whatsoever.

ARTICLE VII

Statutory Agent

This Corporation does hereby appoint ROBERT MOTHERSHEAD, P.C., 420 West Roosevelt Road, Phoenix, Arizona 85003-1331, its lawful agent in and for the State of Arizona for an on behalf of said Corporation, in any of the courts in said State of Arizona, such service of process or notice, or the acceptance thereof, by said agent endorsed thereon to have the same force and effect as it served upon an officer of the Corporation. The foregoing appointment may be revoked at any time by filing an appointment of a successor agent.

ARTICLE VIII

Indemnification

The Corporation may indemnify any and all of its present or former directors/trustee, officers, employees, or agents to the maximum extent permitted by applicable law. Without limiting the generality of the foregoing, the Corporation may indemnify any and all of its director/trustees and officers, or former director/trustees and officers, against expenses incurred by them, including legal fees, or judgements or penalties rendered or levied against any such persons in a legal action brought against any such person for actions or omissions alleged to have been committed by any such person while acting within the scope of his employment as a director/trustee of officer of the Corporation, provided that the Board of Director/Trustees shall determine in good faith that such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action or omission.

ARTICLE IX

Duration

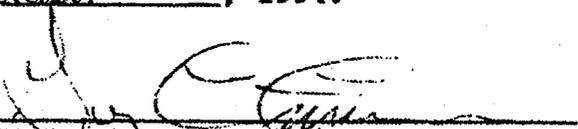
The duration of the Corporation shall be perpetual.

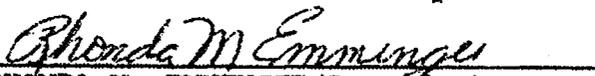
ARTICLE X

Fiscal Year

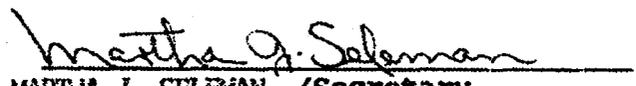
The fiscal year of the Association shall begin on the 1st day of January of each year and shall end on the 31st day of December of each year.

IN WITNESS WHEREOF, we, the undersigned Incorporators, have executed these Articles of Incorporation as of this 8th day of November, 1994.


GUY E. EMMINGER/Chairman/Treasurer


RHONDA M. EMMINGER/President


ROBERT J. SELMAN/Vice President


MARTHA J. SELMAN /Secretary

0 1 1 2 0 0 6
ROBERT MOTHERSHEAD, P.C.

Attorneys at Law
A Professional Corporation
"Roosevelt Historic District"
420 West Roosevelt Road
Phoenix, Arizona 85003-1331

Robert Mothershead
Christine L. Israel

Telephone (602) 253-7300
Facsimile (602) 253-0033

November 8, 1994

Arizona Corporation Commission
P.O. BOX 6019
Phoenix, Arizona 85007

Re: Acceptance of Statutory Agent
For: **DIAMOND VALLEY WATER USER'S, CORP.**

To Whom It May Concern:

Robert Mothershead, P.C., an Arizona Corporation, has been designated to act as statutory agent for the above named corporation, and hereby consents to act in that capacity until removed or a resignation is submitted in accordance with A.R.S. Section 10-0112, et. seq. Process may be served upon the above-referenced corporation at the address above.

Very truly yours,

ROBERT MOTHERSHEAD, P.C.


By Robert Mothershead

RN/mm/corpmp14