

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DEC 23 2008

DATE: DECEMBER 23, 2008

DOCKET NO: W-02034A-08-0008

TO ALL PARTIES:

DOCKETED BY	
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Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

CIENEGA WATER COMPANY, INC.
(COMPLAINT)

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:

JANUARY 6, 2009

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:

JANUARY 13, 2009 AND JANUARY 14, 2009

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

AZ CORP COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

STAFF OF THE UTILITIES DIVISION,

COMPLAINANT,

VS.

CIENEGA WATER COMPANY, INC.,

RESPONDENT.

DOCKET NO. W-02034A-08-0008

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: October 28, 2008
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
APPEARANCES: Ms. Eleanor Stephan, President, Cienega Water Company, on behalf of Respondent; and
Mr. Wes Van Cleve, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On January 7, 2008, the Arizona Corporation Commission's ("Commission") Utilities Division Staff ("Staff") filed with the Commission a Complaint and Petition for Relief ("Complaint") against Cienega Water Company, Inc. ("Cienega" or "Company"). The Complaint alleges that Cienega failed to comply with certain requirements of Decision No. 63751 (June 6, 2001) and that the Company is in violation of Arizona Administrative Code ("A.A.C.") R14-2-407(C).

Procedural conferences were held on April 3, 2008, and May 2, 2008.

On May 8, 2008, a Procedural Order was issued setting the matter for hearing on August 5, 2008, and establishing other filing requirements and deadlines.

On July 9, 2008, Staff filed the Direct Testimony of Brian Bozzo and the exhibits Staff

1 intended to use at the hearing.

2 On July 23, 2008, Cienega filed correspondence requesting a continuance of the August 5,
3 2008, hearing. Staff objected to the continuance.

4 On August 5, 2008, a Procedural Conference was held in lieu of the hearing.

5 On August 6, 2008, a Procedural Order was issued setting the hearing for October 28, 2008,
6 and establishing other filing requirements and deadlines.

7 On September 8, 2008, Cienega filed its Special Meeting Minutes of the Shareholders of
8 Cienega Water Co., Inc., authorizing Company President Eleanor Stephan to represent Cienega
9 before the Commission.

10 On September 19, 2008, Cienega filed the Direct Testimony of Tricia Walker and the exhibits
11 the Company intended to use at the hearing.

12 On October 28, 2008, the hearing in this matter was held before a duly authorized
13 administrative law judge.

14 * * * * *

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

17 **FINDINGS OF FACT**

18 1. Cienega is a Class E public service corporation authorized to provide water service in
19 an area near Parker, La Paz County, Arizona, pursuant to a CC&N issued in Decision No. 38852
20 (March 8, 1967).

21 2. On June 6, 2001, in Decision No. 63751, the Commission granted Cienega's request
22 for a rate increase and approved financing for certain improvements to Cienega's water system.

23 3. The authorized improvements included upgrading all water lines, adding 10,000
24 gallons of water storage capacity, and replacement of the electrical systems serving the water storage
25 tanks and the three well sites.

26 4. The terms of Decision No. 63751 required Cienega to file an Arizona Department of
27 Environmental Quality ("ADEQ") Approval of Construction Certificate(s) ("AOCs") for the
28 improvements on or before December 31, 2002.

1 5. In Decision No. 65916 (May 16, 2003), in which the Company sought additional
2 financing, the Commission found that Cienega had completed all of the system improvements
3 required under the Decision No. 63751.¹

4 6. Although construction of the required projects is complete, Cienega did not file the
5 ordered AOCs.

6 7. Staff contacted the Company regarding the delinquent AOCs and, in turn, Cienega
7 filed for an extension of time to provide them.²

8 8. Staff then contacted ADEQ to inquire about the AOCs and found that Cienega never
9 applied for them. As a result, Staff decided to file the instant Complaint against the Company rather
10 than respond to the extension request.³

11 9. As Staff researched the facts forming the basis of the Complaint, Staff discovered a
12 November 29, 2007, ADEQ Drinking Water Compliance Status Report indicating Cienega has an
13 ongoing fluoride contaminant exceedance level and that the Company failed to provide its required
14 annual lead and copper monitoring report. As such, Staff believes that Cienega is not delivering water
15 meeting water quality standards as required by A.A.C. R14-2-407(C).⁴

16 10. On January 7, 2008, Staff filed its Complaint alleging that 1) Cienega failed to provide
17 the AOCs required by Decision No. 63751, and 2) Cienega is in violation of A.A.C. R14-2-407(C).

18 **COUNT ONE**

19 11. Company President Eleanor Stephan testified on behalf of Cienega.⁵ According to Ms.
20 Stephan, the Company received a letter from ADEQ dated December 17, 2002, which stated, “[p]er
21 Arizona Administrative Code (AAC) R18-4-505.B.3.b., you are exempt from the design review
22 requirements for the distribution lines replacement if the total cost of the project is less than \$50,000
23 including material, equipment, and labor.”⁶

24 _____
25 ¹ Pre-filed Testimony of Brian Bozzo, page 3, lines 14-24.

26 ² *Id.*, page 4, lines 12-17.

27 ³ *Id.*

28 ⁴ *Id.*, page 7, lines 8-17. See also Exhibit 5, Pre-filed Testimony of Brian Bozzo.

⁵ The Company provided pre-filed testimony from Ms. Tricia Walker, accountant and record keeper for Cienega, but Ms. Walker was ill on the day of the hearing. Ms. Stephan testified that she had read Ms. Walker's testimony, was familiar with its contents and could testify to the contents of her own knowledge. Transcript at 6.

⁶ Tr. at 24. See also, Exhibit 1, Pre-filed Testimony of Brian Bozzo.

1 12. Ms. Stephan testified that the improvements were done in increments, i.e., the water
2 lines were replaced and then paid for, and then another improvement was made then paid for. None
3 of these completed improvements individually totaled more than \$50,000. As such, based on the
4 letter from ADEQ, Cienega assumed it was exempt from having the project reviewed and having to
5 obtain an Approval to Construct (“ATC”) or an AOC.⁷

6 13. Ms. Stephan testified that since the filing of the Complaint the Company has been
7 working with ADEQ to obtain the necessary certificates.⁸

8 14. Mr. Brian Bozzo testified on behalf of Staff. Mr. Bozzo stated that Staff is aware that
9 the Company is attempting to work with ADEQ to get the ATC and AOC and recommends that
10 Cienega be ordered to file the AOC with Docket Control no later than March 31, 2009.⁹

11 15. Staff’s recommendation is reasonable and shall be adopted.

12 **COUNT TWO**

13 16. Ms. Stephan testified that that the Company is aware of the existence of fluoride levels
14 above the permitted amounts. However, she stated that over the years Cienega has received mixed
15 information from ADEQ regarding whether or not the Company was required to act on those levels
16 or even whether it was out of compliance with fluoride level requirements.¹⁰

17 17. Cienega is now working toward improving the water quality. It plans to drill a new
18 well and blend the water from the new well with the water from its current wells in order to bring
19 down the fluoride to levels acceptable to ADEQ.¹¹

20 18. Regarding Cienega’s failure to provide its required annual lead and copper monitoring
21 report, Ms. Stephan testified the Company had indeed provided those reports to ADEQ.¹²

22 19. Mr. Bozzo testified that he had contacted ADEQ the morning of the hearing and his
23 contact at ADEQ related that ADEQ staff could not find the reports from Cienega.¹³

24 _____
⁷ Tr. at 24.

25 ⁸ Tr. at 11-14.

26 ⁹ Tr. at 62-63.

27 ¹⁰ See Pre-filed Testimony of Tricia Walker, pages 6-8, and the following Exhibits attached to her testimony: Letter from
Arizona Department of Health dated June 23, 1970; letter from ADEQ dated February 28, 1994; ADEQ Compliance
Status form dated December 20, 2000; and Tr. at 19.

28 ¹¹ Tr. at 19-20.

¹² Tr. at 18.

¹³ Tr. at 61.

1 on or before March 31, 2009.

2 IT IS FURTHER ORDERED that Cienega Water Company, Inc., shall file with Docket
3 Control as a compliance item in the docket, an Arizona Department of Environmental Quality
4 Drinking Water Compliance Status Report indicating that Cienega Water Company, Inc., is in full
5 compliance with Arizona Department of Environmental Quality requirements and regulations on or
6 before December 31, 2009.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Director of the Arizona Corporation Commission, have
hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____, 2009.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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DISSENT _____

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DISSENT _____

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1 SERVICE LIST FOR:

CIENEGA WATER COMPANY, INC.

2 DOCKET NO.:

W-02034A-08-0008

3

4 Eleanor Stephan, President
CIENEGA WATER COMPANY

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