



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JAN 20 2009

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY ne

STAFF OF THE UTILITIES DIVISION,
COMPLAINANT,
VS.
CIENEGA WATER COMPANY, INC.,
RESPONDENT.

DOCKET NO. W-02034A-08-0008

DECISION NO. 70697

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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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).<sup>4</sup>

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.<sup>5</sup> 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.”<sup>6</sup>

24

25 <sup>1</sup> Pre-filed Testimony of Brian Bozzo, page 3, lines 14-24.

26 <sup>2</sup> *Id.*, page 4, lines 12-17.

27 <sup>3</sup> *Id.*

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

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

24 <sup>7</sup> Tr. at 24.

25 <sup>8</sup> Tr. at 11-14.

26 <sup>9</sup> Tr. at 62-63.

27 <sup>10</sup> 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 <sup>11</sup> Tr. at 19-20.

<sup>12</sup> Tr. at 18.

<sup>13</sup> 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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10   
CHAIRMAN

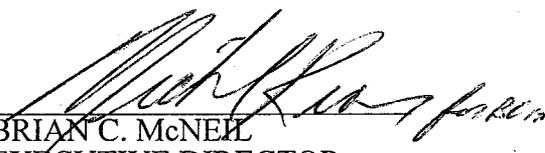
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15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
16 Director of the Arizona Corporation Commission, have  
17 hereunto set my hand and caused the official seal of the  
18 Commission to be affixed at the Capitol, in the City of Phoenix,  
19 this 20th day of JAN, 2009.

20   
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

21 DISSENT \_\_\_\_\_

22

23 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: CIENEGA WATER COMPANY, INC.

2 DOCKET NO.: W-02034A-08-0008

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