

OPEN MEETING ITEM



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



MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

ORIGINAL

Arizona Corporation Commission
DOCKETED

DATE: FEBRUARY 13, 2009

DOCKET NO: W-02105A-07-0510

FEB 13 2009

TO ALL PARTIES:

DOCKETED BY *MM*

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

MOUNT TIPTON WATER COMPANY
(COMPLAINT AND ORDER TO SHOW CAUSE)

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 23, 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:

MARCH 3, 2009 AND MARCH 4, 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.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE COMMISSION ON ITS
9 OWN MOTION INVESTIGATING THE FAILURE
10 OF MOUNT TIPTON WATER COMPANY, INC.
11 TO COMPLY WITH COMMISSION RULES AND
12 REGULATIONS.

DOCKET NO. W-02105A-07-0510

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING:

March 20, 2008

11 PLACE OF HEARING:

Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Sarah N. Harpring

13 APPEARANCES:

14 Mr. Russell Jacoby, then-President, Mount Tipton Water
15 Company, Inc., on behalf of Mount Tipton Water
16 Company, Inc.,¹ and

17 Mr. Charles Hains, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation Commission.

20 **BY THE COMMISSION:**

21 This case involves a Complaint and Order to Show Cause initiated by the Arizona
22 Corporation Commission's ("Commission's") Utilities Division Staff ("Staff") against Mount Tipton
23 Water Co., Inc. ("Mount Tipton") for failure to comply with Commission Decisions, statutes, and
24 rules. The original Complaint and Order to Show Cause included 8 Counts. Upon Staff's motion, all
25 but Counts 4 and 8 were dismissed, and Count 4 was substantially amended. The hearing in this
26 matter proceeded only as to Counts 4 and 8, which allege that Mount Tipton has failed to handle its
27 Off-Site Water Facilities Hook-Up Fee ("HUF") Account as ordered by Decision No. 67162
(August 11, 2004), in violation of that Decision, and that Mount Tipton had maximum contaminant

28 ¹ Mr. Jacoby is no longer President of Mount Tipton or a member of Mount Tipton's Board of Directors. He has been replaced as President by John Janik.

1 level ("MCL") exceedances and failed to provide the appropriate monitoring and reporting to allow
 2 the Arizona Department of Environmental Quality ("ADEQ") to determine whether Mount Tipton
 3 was currently delivering water that met the water quality standards of the Arizona Administrative
 4 Code ("A.A.C."), in violation of A.A.C. R14-2-407(C)'s requirement that each utility supply a
 5 satisfactory and continuous level of service.

6 * * * * *

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

9 **FINDINGS OF FACT**

10 1. Pursuant to a Certificate of Convenience and Necessity ("CC&N") granted in Decision
 11 No. 40644 (May 26, 1970), Mount Tipton provides water service to approximately 750 metered
 12 customers in an approximately 11-square-mile area centered in Dolan Springs, Arizona, which is
 13 approximately 35 miles northwest of Kingman, in Mohave County. Mount Tipton is a non-profit
 14 Arizona corporation and was classified as a Class C utility in its last full rate case in 2004.

15 **Background**

16 2. In Decision No. 60988 (July 15, 1998), Mount Tipton was authorized to incur long-
 17 term debt of up to \$1.2 million from the Water Infrastructure Finance Authority of Arizona
 18 ("WIFA") and the United States Department of Agriculture-Rural Development ("USDA-RD") for
 19 the purpose of installing the off-site facilities needed to integrate the Detrital Well² into Mount
 20 Tipton's system and purchasing and installing a 200,000 gallon storage tank known as the Upper
 21 Zone Storage Tank. Mount Tipton was also authorized to charge non-refundable HUFs to enable
 22 Mount Tipton to service the portion of the debt attributable to integrating the Detrital Well into
 23 Mount Tipton's system. The Decision required Mount Tipton to submit an annual HUF report to
 24 Staff every July 15. The Decision further required that Mount Tipton not secure any of the
 25

26 ² The Detrital Well is owned by the Bureau of Land Management, which has been leasing it to Mount Tipton since
 27 approximately June 1998. (Decision No. 60988 at 6.) The improvement needed to integrate the Detrital Well into Mount
 28 Tipton's system included developing the well and installing eight miles of transmission main, a booster station, and a
 200,000 gallon storage tank. (*Id.* at 5.) At the time of Decision No. 67162 (August 11, 2004), the Detrital Well was
 producing approximately 253 gallons per minute, a greater yield than all of Mount Tipton's other water sources
 combined. (Decision No. 67162 at 12.)

1 authorized debt until it had filed with Staff a Certificate of Construction from ADEQ evidencing that
2 the Chambers Well³ was fully developed, integrated into Mount Tipton's system, and operating.

3 3. In Decision No. 64287 (December 28, 2001), among other things, the Commission
4 approved Mount Tipton's request to cancel the \$1.2 million financing authority granted in
5 Decision No. 60988; approved an \$880,000 WIFA loan for Mount Tipton to purchase Dolan Springs
6 Water Company, Inc. ("Dolan Springs"); approved the transfer of Dolan Springs' CC&N and the sale
7 of its assets to Mount Tipton; ordered Mount Tipton to file a full rate case by April 3, 2003, if it had
8 not already converted to a water improvement district; allowed Mount Tipton to continue collecting
9 HUFs, which were to be evaluated in Mount Tipton's rate case; ordered Mount Tipton to use the
10 HUF funds for capital improvements required to serve new customers; and ordered Mount Tipton to
11 continue to file an annual HUF report with Staff. The Commission found that Mount Tipton's
12 integration of Dolan Springs was to take place in three phases: Phase 1, acquisition of assets; Phase
13 2, interconnection of the systems; and Phase 3, formation of a water improvement district.

14 4. In Decision No. 66732 (January 20, 2004), the Commission granted Mount Tipton an
15 emergency rate increase in the form of monthly surcharges for metered customers and standpipe
16 customers, effective February 1, 2004, for six consecutive months or until permanent rates became
17 effective out of a then-pending permanent ratemaking docket, Docket No. W-02105A-03-0303. The
18 Commission also ordered Mount Tipton to have a performance audit performed, to evaluate its
19 findings, and to seek appropriate relief action if necessary. At the time of the emergency rate case,
20 Mount Tipton was serving approximately 740 metered customers; was \$58,580 in arrears for
21 operating expenses; had depleted its U.S. Department of Agriculture—Rural Development reserve
22 accounts for three separate loans to pay overdue WIFA loan payments;⁴ had expenses that exceeded
23 its unadjusted revenues by approximately \$2,300 per month; owed back property taxes, a substantial
24 portion of which were due to back taxes unpaid by Dolan Springs when Mount Tipton purchased it;
25 had recently failed in its attempts to form a water improvement district, at substantial expense; had

26 ³ The Commission had approved financing for the Chambers Well improvements in Decision No. 60228 (June 12,
27 1997), and the Chambers Well was expected to be placed in service in time for the 1998 summer season. (Decision No.
60988 at 2.)

28 ⁴ Mount Tipton's consultant/manager had ceased making payments on the WIFA loan starting in September 2003.
(Decision No. 66732 at 4.)

1 just seen the election of an entirely new Board and the departure of the consultant/manager who had
2 operated Mount Tipton during the failed attempt to form the water improvement district,⁵ and had
3 recently cut its staff to only two full-time employees to conserve funds.

4 5. In Decision No. 67162 (August 11, 2004), in Docket No. W-02105A-03-0303, the
5 Commission authorized a permanent rate increase for Mount Tipton, effective September 1, 2004,
6 and increased the HUF previously authorized for 5/8" x 3/4" meters to \$800; required that all HUF
7 funds be placed into a separate, interest-bearing trust account; required that the HUF funds be used
8 only to pay the costs of off-site facilities, including repayment of loans obtained for the installation of
9 off-site facilities that would benefit the entire water system; and expressly prohibited use of the HUF
10 funds for repairs, maintenance, plant replacements, or operational purposes. The Commission found
11 that Mount Tipton had improperly booked as revenues \$21,000 in HUF funds and had used those
12 HUF funds to satisfy debt obligations arising from its acquisition of Dolan Springs. The Commission
13 expressly denied Mount Tipton's requests to be permitted to continue using the HUF funds as
14 revenues and not to be required to place the HUF funds in a separate trust account. The Commission
15 did, however, adopt Staff's recommendation that Mount Tipton not be required to replace the
16 \$21,000 in HUF funds, in part because of Mount Tipton's non-profit status. The Commission found
17 that Mount Tipton had become current on the repayment of its WIFA loans, had become current on
18 its 2002 Mohave County franchise taxes and property taxes, and had a payment schedule in place to
19 bring its 2003 Mohave County franchise taxes and property taxes current. The Decision did not
20 speak to tax arrearages for prior years. The Commission also found that Mount Tipton was
21 delivering water that met the water quality standards required by 18 A.A.C. 4. The Commission
22 ordered Mount Tipton to file quarterly HUF reports and ordered Staff to monitor the HUF reports and
23 notify the Commission immediately if HUF funds were used for unauthorized purposes. The
24 Commission also found that Mount Tipton had experienced water loss of 19.42 percent during the
25 test year; ordered Mount Tipton to reduce its water loss to less than 10 percent within 18 months of
26 the effective date of the Decision and to file quarterly water loss reports with Staff; and ordered that

27 _____
28 ⁵ During the course of this individual's employment with Mount Tipton, from November 2002 to November 2003, he
was paid a salary of \$30,000 plus consulting fees in excess of \$100,000. (Decision No. 66732 at 4.)

1 if Mount Tipton did not reduce its water loss to below 15 percent within 18 months after the effective
2 date of the Decision, Mount Tipton would be denied any new main extension agreements until its
3 average water loss for two consecutive quarters was below 15 percent. Finally, the Commission
4 ordered that the requirement in Decision No. 66732, for Mount Tipton to have a performance audit
5 performed, evaluate its findings, and seek appropriate relief action if necessary, remained in effect.⁶

6 6. In December 2004, Staff filed a Complaint against Mount Tipton for failing to provide
7 compliance items that Decision No. 67162 required to be produced within the first few months after
8 the effective date of that Decision.⁷ The Complaint remained open over a period of months as Staff
9 allowed Mount Tipton to come into compliance. On August 9, 2005, a Procedural Order was issued
10 dismissing the Complaint, upon a Staff motion for dismissal, because Mount Tipton had made the
11 filings necessary to come into compliance.

12 7. On September 5, 2007, Staff filed a Complaint and Petition for an Order to Show
13 Cause in this Docket.

14 8. On October 23, 2008, the Commission issued Decision No. 70559, granting Mount
15 Tipton an emergency interim surcharge of \$10.00 per month per metered customer, with the
16 condition that the surcharge would not become effective and could not be billed for or collected until
17 Mount Tipton had (1) posted with the Commission a performance bond or irrevocable sight draft
18 letter of credit ("ISDLOC") in the amount of \$20,000 and (2) filed a Certificate of Good Standing to
19 establish that Mount Tipton had filed its 2008 annual report and come into good standing with the
20 Commission's Corporations Division.⁸ The Commission also ordered Mount Tipton to deposit the
21 funds generated by the emergency interim surcharge into a separate, interest-bearing bank account
22 and prescribed the manner in which Mount Tipton could spend the funds. The Commission found in
23 Decision No. 70559 that Mount Tipton's ability to maintain service pending a formal rate
24 determination was in serious doubt and, thus, that an emergency existed that made it appropriate to
25

26 ⁶ The Commission found that the Director of WIFA had testified that WIFA was assisting Mount Tipton in performing
the audit, which was scheduled to begin on June 21, 2004, and would conclude with a written report that would be shared
27 with Staff. (Decision No. 67162 at 14.)

28 ⁷ The December 2004 Complaint was assigned to Docket No. W-02105A-04-0880.

⁸ Official notice is taken that Commission Corporations Division records show that Mount Tipton is now in good
standing.

1 grant an interim rate adjustment to ensure Mount Tipton could maintain service until a formal rate
2 determination could be made in a permanent rate case. The evidence indicated that Mount Tipton
3 had past due accounts payable, not including property taxes, of \$55,288; had tax arrearages of
4 \$84,559.88; needed to complete repairs and maintenance with a total cost of \$62,888; and was
5 operating at a loss. The Decision ordered Mount Tipton to file a permanent ratemaking application
6 with the Commission no later than April 30, 2009, using calendar year 2008 as its test year, and
7 provided that if Mount Tipton's permanent ratemaking application is not found to be sufficient by
8 July 31, 2009, the emergency interim surcharge shall remain in effect only until July 31, 2009, and
9 Staff shall file an Order to Show Cause to install an interim manager and address any other
10 appropriate remedies. The Decision also ordered Mount Tipton to engage in discussions with
11 Mohave County regarding waiver or forgiveness of and/or a payment plan for its substantial back tax
12 liability and to file, by January 5, 2009, a document describing the outcome of its discussions with
13 Mohave County. Mount Tipton has since received an extension, until March 6, 2009, of the filing
14 date for this document.⁹

15 9. In another pending docket, Docket No. W-02105A-08-0500, Mount Tipton has
16 requested Commission approval of a sale of property, to allow it to sell an office building that is
17 currently not being used in its operations but from which it is receiving rent. In its Staff Report in
18 that docket, Staff recommended that Mount Tipton's application be approved; that any proceeds from
19 the sale be used (1) to repay the HUF Account for unauthorized expenditures and imputed interest
20 earnings, (2) to pay delinquent property taxes, and (3) to reduce Mount Tipton's indebtedness as
21 required by WIFA; that Mount Tipton develop an additional source of water rather than spending any
22 of the proceeds from the sale on constructing a new storage tank; and that Mount Tipton be in full
23 compliance with ADEQ requirements by January 31, 2009.

24 **Complaint and OSC**

25 10. Staff's September 2007 Complaint and Petition for an Order to Show Cause against
26 _____

27 ⁹ This extension was granted at the Open Meeting on February 3, 2009. Official notice is taken that Mr. Janik requested
28 during the Open Meeting that Mount Tipton be permitted to charge the emergency interim surcharge without first having
obtained a \$20,000 performance bond/ISDLOC as required in Decision No. 70559, and Staff was instructed to discuss the
issue with Mount Tipton in the context of A.R.S. § 40-252.

1 Mount Tipton included the following Counts:

2 **Count 1:** Mount Tipton has failed to file quarterly reports on quantity of water pumped and
3 sold each month since December 10, 2004, in violation of Decision No. 67162.

4 **Count 2:** Mount Tipton has failed to provide verification that its water loss has been reduced
5 to less than 10 percent (or that any water loss analysis has been completed), in violation of
6 Decision No. 67162.

7 **Count 3:** Mount Tipton has failed to file a detailed cost analysis (or to identify its water loss
8 percentage as less than 10 percent to avoid making such filing), in violation of Decision No.
9 67162.¹⁰

10 **Count 4:** Mount Tipton has failed to file its quarterly HUF report due on July 15, 2007, in
11 violation of Decision No. 67162.

12 **Count 5:** Mount Tipton has failed to provide evidence of having had a performance audit
13 performed, having evaluated said audit, and having sought appropriate relief, if necessary, all
14 in violation of Decision No. 66732 and Decision No. 67162.

15 **Count 6:** Mount Tipton has failed to maintain its 2005 utility annual report as prescribed by
16 the Commission and has failed to submit its 2006 utility annual report, in violation of A.R.S.
17 § 40-221.

18 **Count 7:** Mount Tipton has failed to submit the annual HUF report due July 15, 2007, in
19 violation of Decision No. 60988.

20 **Count 8:** Mount Tipton has failed to provide a satisfactory and continuous level of service
21 due to ADEQ reporting violations and contaminant exceedances, thereby precluding ADEQ
22 from determining whether Mount Tipton is delivering safe water, in violation of the
23 satisfactory and continuous level of service portion of A.A.C. R14-2-407(C).

24 Mount Tipton was provided notice of the Complaint and Petition for an Order to Show Cause by First
25 Class Mail.

26 11. On September 27, 2007, the Commission issued Decision No. 69913, ordering Mount

27 ¹⁰ Although Decision No. 67162 found that Staff had recommended that Mount Tipton be required, if it found that it
28 could not reduce its water loss to less than 10 percent, to file a detailed cost analysis explaining why water loss reduction
to less than 10 percent was not cost effective, the Commission did not adopt that recommendation in the Decision.

1 Tipton to appear and show cause, at a time and place designated by the Hearing Division, to defend
2 why its actions do not represent a violation of Decision No. 67162, Decision No. 66732, A.R.S. § 40-
3 221, Decision No. 60988, and A.A.C. R14-2-407(C) and why other relief deemed appropriate by the
4 Commission should not be ordered. Decision No. 69913 also ordered Mount Tipton to file, within 10
5 days after the effective date of the Decision, a preliminary statement describing how it would make
6 the showing of cause and an Answer to the Complaint and ordered the Hearing Division to schedule
7 further appropriate proceedings in this matter. Mount Tipton was provided notice of the Decision by
8 First Class Mail.

9 12. A procedural conference was held on October 22, 2007, at the Commission's offices
10 in Phoenix, Arizona. Staff appeared through counsel, and Mount Tipton appeared through Ed
11 Bartlett, then-President of Mount Tipton, who was directed to review A.R.S. § 40-243(B), regarding
12 representation before the Commission, and to have Mount Tipton's Board issue a resolution
13 specifically authorizing him to represent Mount Tipton. Because Mount Tipton had been
14 forthcoming and was attempting to come into compliance, the parties agreed that it would be
15 beneficial to have another procedural conference approximately one month later to allow Mount
16 Tipton additional time to come into compliance and thus potentially resolve some of the Counts of
17 the Complaint before going to hearing. Staff stated that Mount Tipton's only outstanding compliance
18 items at that time were its water loss reports and its performance evaluation review.

19 13. On October 22, 2007, Mount Tipton filed a document responding to Staff's Complaint
20 and the Commission's Order to Show Cause. The document summarized Mount Tipton's filings
21 made to come into compliance with the Commission and with ADEQ subsequent to the Order to
22 Show Cause.

23 14. On November 14, 2007, Mount Tipton filed a November 9, 2007, resolution by its
24 Board appointing Mr. Bartlett as the representative for Mount Tipton's business before the
25 Commission. The resolution showed the following Board members: President—Ed Bartlett;
26 Treasurer—Karl Wetkowski; Secretary—Phyllis Stillwell; and Directors—Rebecca Smith, Tim
27
28

1 Sanders, Dale Beagle, George Lee, and Bruce Huebsch.¹¹

2 15. On November 30, 2007, a procedural conference was held at the Commission's offices
3 in Phoenix, Arizona. Staff appeared through counsel, and Mount Tipton appeared telephonically
4 through Mr. Bartlett. Staff indicated that additional progress had been made to bring Mount Tipton
5 into compliance and to resolve some of the alleged violations, and the parties agreed that it would be
6 beneficial to have another procedural conference approximately one month later before proceeding to
7 hearing.

8 16. On January 4, 2008, Mount Tipton filed an ADEQ Drinking Water Compliance Status
9 Report dated January 3, 2008 ("January 2008 ADEQ Report"), showing that Mount Tipton had major
10 deficiencies overall and as to monitoring and reporting, specifically as to total coliform and nitrate.

11 17. On January 4, 2008, a procedural conference was held at the Commission's offices in
12 Phoenix, Arizona. Staff appeared through counsel, and Mount Tipton appeared telephonically
13 through Bruce Huebsch, identified as Vice President, as Mr. Bartlett's whereabouts were unknown.
14 As Mr. Huebsch had not yet been designated as a representative for Mount Tipton by its Board,
15 Mount Tipton was directed to file such a resolution after the procedural conference. During the
16 procedural conference, Staff stated that review of Mount Tipton's records showed that its HUF funds
17 had not been properly spent. Staff stated that it would be moving to amend Count 4 of the Complaint
18 accordingly. Staff also stated that it would be moving to dismiss Counts 1-3 and 5-7 of the
19 Complaint, as they had been resolved to Staff's satisfaction, and would like to proceed to hearing on
20 only Count 4, as amended, and Count 8. The parties agreed that they would be ready to go to hearing
21 in approximately one month.

22 18. On January 10, 2008, Staff filed a Motion to Amend Count 4 of the Complaint and
23 Voluntarily Dismiss Counts 1-3 and 5-7. Staff requested that Count 4 be amended to reflect that
24 Mount Tipton has not handled the HUF Account as ordered by Decision No. 67162, in violation of
25 that Decision. Staff stated that Mount Tipton has applied HUF funds to the replacement of various
26 plant items, which are not new customer capital improvements. Staff further requested that
27

28 ¹¹ Official notice is taken of this filing directly related to this matter but made by Mount Tipton only in Docket Nos. W-02105A-04-0880 and W-02105A-03-0303.

1 Counts 1-3 and 5-7 be dismissed as Mount Tipton had provided documents resolving the violations
2 described therein.

3 19. On January 11, 2008, a Procedural Order was issued dismissing Counts 1-3 and 5-7 of
4 the Complaint; amending Count 4 to assert that Mount Tipton has not handled the HUF Account as
5 ordered by Decision No. 67162 and has therefore violated Decision No. 67162; requiring Mount
6 Tipton to file, by January 31, 2008, a Board resolution specifically authorizing such of its officers
7 and/or employees as it deemed appropriate to represent it before the Commission, as permitted under
8 A.R.S. § 40-243(B); and scheduling a hearing for February 15, 2008, at the Commission's offices in
9 Phoenix, Arizona.

10 20. On January 17, 2008, Mount Tipton filed a January 10, 2008, Board resolution
11 appointing Mr. Bartlett and Mr. Huebsch as its representatives for Mount Tipton's business before
12 the Commission. The resolution showed the following Board members: President—Ed Bartlett;
13 Vice President—Bruce Huebsch; Treasurer—Karl Wetkowski; and Directors—Tim Sanders,
14 Rebecca Smith, and George Lee.¹²

15 21. On February 13, 2008, Mount Tipton filed a February 4, 2008, Board resolution
16 appointing Russ Jacoby and Tim Sanders as its representatives for Mount Tipton's business before
17 the Commission. The resolution showed the following Board members: President—Russ Jacoby;
18 Vice President—Norton Turchin; Secretary—Tim Sanders; Treasurer—Ken West; and Directors—
19 Ron Dere, Secra Florin, and John Janik.¹³

20 22. On February 14, 2008, at the request of Mount Tipton, a telephonic procedural
21 conference was held in this matter. Staff appeared through counsel, and Mount Tipton appeared
22 through Mr. Jacoby. Mr. Jacoby requested that the hearing scheduled for February 15, 2008, be
23 continued, as neither he nor Mr. Sanders was available that day. Staff did not object to the requested
24 continuance. It was agreed that the hearing would be continued.

25 23. On February 19, 2008, a Procedural Order was issued vacating the hearing of February
26

27 ¹² Official notice is taken of this filing directly related to this matter but made by Mount Tipton only in Docket Nos.
W-02105A-04-0880 and W-02105A-03-0303.

28 ¹³ Official notice is taken of this filing directly related to this matter but made by Mount Tipton only in Docket Nos.
W-02105A-04-0880 and W-02105A-03-0303.

1 15, 2008, and scheduling a hearing for March 20, 2008, at the Commission's offices in Phoenix.

2 24. On March 20, 2008, a full evidentiary hearing was held before a duly authorized
3 Administrative Law Judge of the Commission at the Commission's offices in Phoenix. Staff was
4 represented by counsel and presented evidence and the testimony of Dorothy Hains, Staff Utility
5 Engineer, and Brian Bozzo, Staff Compliance Manager. Mount Tipton was represented by Mr.
6 Jacoby and presented evidence and the testimony of Mr. Jacoby, then-President, and Judith ("Judy")
7 Morgan, then-Manager. During the hearing, Staff stated that it would no longer be pursuing the first
8 half of Count 4, having to do with Mount Tipton's failure to provide quarterly reports on the HUF
9 Account as required under Decision No. 67162. Both Staff and Mount Tipton were ordered to file
10 late-filed exhibits ("LFEs") in this matter by April 11, 2008, and the matter was taken under
11 advisement pending receipt of the LFEs.

12 25. On April 11, 2008, Staff filed LFE S-7 including a Memorandum; the January 2008
13 ADEQ Report; and an ADEQ Drinking Water Compliance Status Report dated March 31, 2008
14 ("March 2008 ADEQ Report"). In its Memorandum, Staff stated that, based on the March 2008
15 ADEQ Report, Staff had determined that Mount Tipton was in full compliance with ADEQ
16 requirements.

17 26. On April 21, 2008, Mount Tipton provided LFE R-3 to Staff. Because LFE R-3
18 included voluminous bank records, only the accompanying cover letter was filed with Docket
19 Control, on May 8, 2008. Staff provided the Hearing Division with a copy of LFE R-3 on
20 May 8, 2008. The cover letter, written by Ms. Morgan, states that Ms. Morgan was fired on
21 April 11, 2008; rehired on April 14, 2008; and expected potentially to be fired again at an emergency
22 Board meeting scheduled for April 18, 2008. (LFE R-3.)

23 27. On May 1, 2008, Mount Tipton filed an April 25, 2008, Board resolution appointing
24 Mr. Janik and Karen Carter as its representatives for Mount Tipton's business before the
25 Commission.¹⁴ The resolution showed the following Board members: President—John Janik; Vice
26 President—Al Shatzel; Treasurer—Karen Carter; Secretary—Bonnie Jones; and Directors—Donald

27 _____
28 ¹⁴ Official notice is taken of this filing directly related to this matter but made by Mount Tipton only in Docket Nos. W-02105A-04-0880 and W-02105A-03-0303.

1 Bertroch and Sandra Beck.

2 28. On May 22, 2008, a Procedural Order was issued requiring Mount Tipton to file, by
3 June 27, 2008, four additional LFEs to clarify information in the record related to HUFs collected,
4 expenditures made using HUF funds, and the number of Mount Tipton customers. The Procedural
5 Order also required Staff to review the information filed by Mount Tipton and to file as a LFE, by
6 August 8, 2008, a document analyzing Mount Tipton's LFEs and making any revisions to Staff's
7 recommendations resulting therefrom; making any revisions to Staff's prior recommendations
8 regarding Count 8, in light of Mount Tipton's ADEQ compliance status; and indicating whether Staff
9 believed additional hearing was warranted.

10 29. On June 27, 2008, Mount Tipton filed a request for an additional two weeks to file its
11 LFEs, asserting that Mount Tipton had not been able to get them done due to system problems and
12 preparations for its emergency rate case.¹⁵

13 30. On July 3, 2008, a Procedural Order was issued extending Mount Tipton's LFE filing
14 deadline to July 18, 2008, and extending Staff's LFE filing deadline to August 29, 2008.

15 31. On July 21, 2008, Ms. Morgan, who was not an authorized representative of Mount
16 Tipton,¹⁶ submitted directly to the Hearing Division a letter requesting an additional three-week
17 extension of Mount Tipton's filing deadline. No ruling was made on the request.

18 32. On August 22, 2008, an ADEQ Sanitary Survey Report dated August 19, 2008
19 ("August 2008 ADEQ Sanitary Survey Report"), was filed. The August 2008 ADEQ Sanitary
20 Survey Report showed that Mount Tipton had major deficiencies both as to physical facilities and as
21 to monitoring and reporting and listed 19 major deficiency items and 9 minor deficiency items.¹⁷

22 _____
23 ¹⁵ Mount Tipton filed the application for an emergency rate increase on May 23, 2008, in Docket No. W-02105A-08-0262 ("Emergency Rate Case Docket").

24 ¹⁶ Official notice is taken of Mr. Janik's statement during a procedural conference held in the Emergency Rate Case
25 Docket on July 21, 2008, that Ms. Morgan was not authorized to represent Mount Tipton before the Commission.
(Emergency Rate Case Docket, Tr. of July 21, 2008, Proc. Conf. at 8.) Mr. Janik and Ms. Carter were instructed and
26 agreed during the procedural conference to ensure that all filings with the Commission were signed by one of them.
(*Id.* at 8-9.)

27 ¹⁷ Official notice is taken of Staff's testimony during the Emergency Rate Case Docket hearing that the August 2008
28 ADEQ Sanitary Survey Report was not an official compliance status report and thus did not provide full information and
could not result in Staff's changing its conclusions as to ADEQ compliance status from what had been provided in the last
official ADEQ compliance status report, although Staff recognized that it meant Mount Tipton was out of compliance to
some extent. (Emergency Rate Case Docket, Tr. at 136-40.) Staff explained that the final compliance status report
sometimes differs from what is in the sanitary survey report. (*Id.* at 140.)

1 33. On August 26, 2008, Staff filed a Motion to Compel, requesting that Mount Tipton be
2 compelled to provide the LFEs initially required by the Procedural Order of May 22, 2008. Staff
3 requested that Mount Tipton be provided 10 days after issuance of a Procedural Order to file its LFEs
4 and that Staff be provided six weeks thereafter to provide its LFE.

5 34. On September 9, 2008, a Procedural Order was issued requiring Mount Tipton to file,
6 by September 18, 2008, the LFEs previously ordered to be filed along with an additional LFE R-8 to
7 include Mount Tipton's response to the August 2008 ADEQ Sanitary Survey Report. Mount Tipton
8 was also directed, if it was unable to comply fully, to file such information as was available along
9 with an explanation of why it was unable to comply fully and a description of the actions it had taken
10 to comply. Staff was ordered to review the information submitted by Mount Tipton and to file as a
11 LFE, by October 30, 2008, a document analyzing the information for compliance with Decision No.
12 67162 (including the HUF Tariff approved therein) and making any revisions and/or additions to
13 Staff's previous recommendations. Mount Tipton and Staff were also directed to indicate whether
14 additional hearing was warranted and, if so, what should be addressed in such additional hearing.
15 Finally, Mount Tipton was ordered to file, by November 10, 2008, any response that it desired to
16 make to Staff's LFE.

17 35. On September 18, 2008, Mount Tipton filed LFEs R-4, R-6, and R-7 in the form of a
18 single spreadsheet showing the HUFs collected from August 23, 2004, through December 31, 2007,
19 identifying for each the date, customer, account number, service address, meter size, and amount.
20 Mount Tipton also included a list of items purchased using HUF funds, including the date, item, and
21 price. Mount Tipton also filed LFE R-5, showing that Mount Tipton had 752 active customers as of
22 September 17, 2008. Mount Tipton stated in the cover letter accompanying the LFEs that "trying to
23 determine what the actual money was spent on is basically an assumption" due to the HUF funds'
24 having been deposited into the general fund account. (Cover letter to LFE R-4/R-6/R-7 and R-5.)
25 Finally, as to LFE R-8, which was to be Mount Tipton's response to the August 2008 ADEQ Sanitary
26 Survey Report, Mount Tipton stated in the cover letter that its Field Operator was working on the
27 items and that Mount Tipton would like to send the Commission quarterly progress reports, starting
28

1 on January 1, 2009, to show its progress towards compliance with the items.¹⁸ (*Id.*) Mount Tipton
 2 stated further that it had hired additional staff to help with meter readings and day-to-day operation of
 3 the pumps and had hired a part-time employee with a water operator license to allow its Field
 4 Operator additional time to work on the ADEQ compliance items. Mount Tipton also stated:

5 We as a company believe we are on the right track as to getting this
 6 company back on its feet and are very proud of the strides that have been
 7 taken not only by the board members but also the employees to see that
 our goals are accomplished. We are very aware of the lapses in the past
 and hope to remedy them as soon as possible.¹⁹

8 In closing the cover letter, Mount Tipton stated that it does not believe an additional hearing is
 9 warranted in this docket.

10 36. On October 30, 2008, Staff filed LFE S-8, including Staff's analysis of the LFEs filed
 11 by Mount Tipton and Staff's revised recommendations. Staff included as an exhibit to LFE S-8 an
 12 ADEQ Drinking Water Compliance Status Report dated September 30, 2008 ("September 2008
 13 ADEQ Report"). Staff also stated that Staff believes no further hearing is required in this matter.

14 37. Mount Tipton did not file a response to LFE S-8.

15 **Count 4: Handling of HUF Account**

16 38. Count 4, as amended, alleges that Mount Tipton has failed to handle the HUF Account
 17 as ordered by Decision No. 67162, in violation of that Decision.

18 39. Decision No. 67162 required Mount Tipton to (1) place all HUF funds in a separate,
 19 interest-bearing trust account; (2) use HUF funds only as described in its approved HUF Tariff; and
 20 (3) submit to Docket Control by the 15th of the month following the end of each calendar quarter a
 21 quarterly report including (a) the balance of the HUF Account and the interest earned on the HUF
 22 Account; (b) whether any HUFs were collected during the quarter; (c) the name of each person/entity
 23 charged an HUF and the amount charged; and (d) a detailed list of plant items purchased from the
 24 HUF Account, including purchase amounts.

25 40. Mount Tipton's HUF Tariff, the language of which was approved in Decision
 26 No. 67162, states that the purpose of the HUFs is "to equitably apportion the costs of constructing
 27 _____

28 ¹⁸ It does not appear that Mount Tipton has commenced filing such quarterly reports.

¹⁹ Cover letter to LFE R-4/R-6/R-7 and R-5.

1 additional facilities to provide water production, storage, and pressure among all new service
 2 connections.” (Decision No. 67162, Ex. A at 1.) The HUF Tariff authorizes Mount Tipton to use
 3 HUF funds only to pay for the capital items of off-site facilities or to repay loans obtained for
 4 installation of off-site facilities and expressly prohibits Mount Tipton from using HUFs for repairs,
 5 maintenance, plant replacements, or operational purposes. The HUF Tariff defines
 6 “Off-site facilities” as follows:

7 “Off-Site Facilities” means wells, storage tanks and related appurtenances
 8 necessary for proper operation, including engineering and design costs.
 9 Off-Site Facilities may also include booster pumps, pressure tanks,
 10 transmission mains and related appurtenances necessary for proper
 11 operation, if these facilities are not for the exclusive use of the Applicant
 12 and these facilities will benefit the entire water system.²⁰

11 41. The HUF Tariff does not speak directly to the use of the interest from the HUF
 12 Account, although it does provide that any funds remaining in the HUF Account after all necessary
 13 and desirable off-site facilities are constructed or the HUF has been terminated by order of the
 14 Commission shall be refunded in a manner determined by the Commission at the time a refund
 15 becomes necessary.

16 42. Mount Tipton established a separate savings account for the HUF funds, but has
 17 consistently deposited the HUF funds into its general fund checking account instead. (Tr. at 90; *see*
 18 LFE R-3.²¹) The separate HUF Account was opened with a \$1,000 deposit on March 11, 2005, and
 19 subsequently had only two additional deposits, \$1,441.90 in April 2006 and \$470 in August 2006.
 20 (*See* LFE R-3.) The only other increases to the HUF Account between March 11, 2005, and February
 21 29, 2008, were interest payments totaling \$57.38. (*See id.*) The HUF Account lost the bulk of its
 22 balance through a transfer out of \$2,900 on February 2, 2007,²² and has been losing money through
 23 \$2.00 per month service fees ever since. (*See id.*) As of February 29, 2008, Mount Tipton had only
 24 \$43.28 in its HUF Account. (*See id.*)

25 43. Mount Tipton collected 51 HUFs totaling \$39,000 between September 1, 2004, the

26 ²⁰ (Decision No. 67162, Ex. A at 1-2.) “Applicant” is defined to mean “any party entering into an agreement with
 27 [Mount Tipton] for the installation of water facilities to serve new service connections.” (Decision No. 67162, Ex. A at 1.)

28 ²¹ LFE R-3 includes Mount Tipton’s general fund checking account bank statements for the period from January 2005 to
 December 2007 and HUF Account bank statements for the period from March 2005 to February 2008.

²² The funds were transferred into Mount Tipton’s general fund checking account.

1 effective date for the rates approved in Decision No. 67162, and December 31, 2007.
 2 (See LFE R-4/R-6/R-7.) Although Decision No. 67162 increased the HUF for a 5/8" x 3/4" meter to
 3 \$800, Mount Tipton collected \$700 HUFs exclusively until April 18, 2005, and sporadically
 4 thereafter until November 30, 2005, otherwise collecting \$800 HUFs. (See *id.*) Mount Tipton shows
 5 that all of these HUFs were collected for 3/4" meters, (See *id.*), which had an HUF of \$840 under the
 6 HUF Tariff. This is most likely a typo, however, as Mount Tipton has historically served the vast
 7 majority of its customers through 5/8" x 3/4" meters.²³ Either way, Mount Tipton repeatedly
 8 collected HUFs (18 in all) in an amount other than the amount authorized by its HUF Tariff, which is
 9 also a violation of Decision No. 67162.

10 44. It is not possible to determine definitively what Mount Tipton did with the HUF funds
 11 collected, as the HUF funds were not segregated from general operating funds as ordered in Decision
 12 No. 67162. Ms. Morgan testified that she believed Mount Tipton had misspent approximately
 13 \$39,863.14 in HUF funds, which she asserted represented the entire amount of accumulated HUF
 14 funds that should have been in the separate HUF Account as of the end of 2007.
 15 (Tr. at 72-73; see Ex. R-1.)

16 45. The following Table shows the items that Mount Tipton reported in LFE R-4/R-6/R-7
 17 as having been purchased using HUF funds in 2005-2007. The last two columns show our
 18 determination of whether each expenditure was for off-site facilities and, if not, the amount of HUF
 19 funds misspent.

Date	HUF Funds Spent	Item Purchased	Off-Site Facility Expense	HUF Funds Misspent
1/31/2005	\$2,399.00	RVS Software	No	\$2,399.00
4/30/2005	\$1,185.27	Copier	No	\$1,185.27
6/15/2005	\$2,850.00	Well Repair	No	\$2,850.00
8/13/2005	\$2,950.00	Chambers Well Drilling	No	\$2,950.00
9/6/2005	\$4,200.00	Bob Duey Drilling Well	Unclear	
9/9/2005	\$3,097.03	Bob Duey Drilling Well	Unclear	
9/19/2005	\$2,451.00	New Well Drilling	Unclear	

27 ²³ Official notice is taken that in Mount Tipton's last permanent rate case, Mount Tipton showed that in 2002, 729 of its
 28 736 customers were served by 5/8" x 3/4" meters. (Docket No. W-02105A-03-0303, August 2003 Amended Application, Schedule E-7.)

1	11/14/2005	\$296.50	Fax Machine	No	\$296.50
	11/14/2005	\$161.56	Lexmark Printer	No	\$161.56
2	3/6/2006	\$3,456.90	Warren Torso Chamber Well Work	No	\$3,456.90
3	6/30/2006	\$2,740.50	T&F Enterprises Install Polly	Unclear	
	7/18/2006	\$1,586.23	Meters and Paint	No	\$1,586.23
4	7/24/2006	\$3,641.60	Warren Torso Pump and Motor	No	\$3,641.60
5	8/17/2006	\$450.08	Payment on Polly	Unclear	
6	8/31/2006	\$97.91	Bob Duey Drilling Final Payment	Unclear	
7	4/17/2007	\$1,196.78	Kepner Meters & Valves	No	\$1,196.78
	6/7/2007	\$403.04	Kepner 1 1/2 Motor	No	\$403.04
8	6/14/2007	\$799.73	Paul Hoffman Hydrant Meter	No	\$799.73
	9/28/2007	\$1,600.00	Pump Repair	No	\$1,600.00
9	10/6/2007 ²⁴	\$4,799.91	1997 Chevy S-10	No	\$4,799.91
10	Total Spent:	\$40,363.04 ²⁵		Total Misspent:	\$27,326.52

11 46. Staff has stated that the following uses do not represent off-site facilities and were not
 12 authorized by the HUF Tariff: software, well repair, fax machine, existing well drilling, copier,
 13 printer, existing well work, pump and motor, meters and paint, a 1997 Chevy S-10, meters and
 14 valves, a Kepner 1 1/2 motor, a hydrant meter, and pump repair. (LFE S-8.) As reflected in the Table
 15 above, we adopt Staff's characterization of which individual expenditures were not made for off-site
 16 facilities items, resulting in a determination that Mount Tipton misspent at least \$27,326.52 in HUF
 17 funds during calendar years 2005-2007.²⁶

18 47. Mount Tipton's HUF reports filed with the Commission for 1st Quarter 2007 and 3rd
 19 Quarter 2007, (Ex. S-3 and S-4), ostensibly included "detail[ed] listing[s] of plan[t] items purchased
 20 from this account" and listed the following expenditures that were not included in Mount Tipton's
 21 LFE R-4/R-6/R-7:

Date	Recipient	Plant Items Purchased	Amount
2/14/07	Alliance Drilling	Field Well #7 & #9 repair	\$1,000.00
3/1/07	Precision Pump, Inc.	Rebuilt Booster Pump	\$1,028.00
3/8/07	Alliance Drilling	Field Well #7 & #9 repair	\$1,000.00
3/15/07	Short Enterprises	Well Repair	\$1,000.00

26 ²⁴ Mount Tipton showed the purchase date for the 1997 Chevy as 10/6/2008, but this must have been a typo, as the LFE
 27 was filed prior to that date.

²⁵ LFE R-4/R-6/R-7.

28 ²⁶ This may be an understatement of the amount misspent for the items shown in the Table, because of the items marked
 as unclear.

9/30/07	Short Enterprises	Well Repair	<u>\$804.99</u>
Total Spent:			\$4,832.99

None of these expenditures were for off-site facilities. Thus, we conclude that Mount Tipton misspent at least another \$4,832.99 in HUF funds, bringing its total amount of HUF funds misspent in 2005-2007 to at least \$32,159.51. We are cognizant that adding this \$4,832.99 to the \$40,363.04 that Mount Tipton reported for its HUF fund expenditures in LFE R-4/R-6/R-7 would result in a finding that Mount Tipton had spent \$45,196.03 in HUF funds during this period, more than it collected. We find that Mount Tipton handled and used the HUF funds with absolutely no regard to the Commission-ordered restrictions on the use of those funds; Mount Tipton has very little idea how the HUF funds were used; and Mount Tipton spent every last penny of the HUF funds collected.

48. Ms. Morgan testified that she began working for Mount Tipton in approximately August 2003; was not provided any training, as the previous manager had been fired and was no longer available; was told that the HUF funds were to be used for plant operation; and was unaware of the restrictions concerning the use of the HUF funds. (Tr. at 70, 83.) Ms. Morgan testified that if she had known how the HUF funds were to be spent, she would not have spent them as she did, but also testified that Mount Tipton really needed the HUF funds to keep its lights on, keep its phones going, keep gas in its trucks, and pay its employees. (Tr. at 82.) Ms. Morgan later testified that the HUF funds were not used for payroll or gasoline for the trucks, only for what Ms. Morgan considered to be repairs and maintenance. (Tr. at 101.) Ms. Morgan also testified that after reading the HUF Tariff, which was sent to Mount Tipton by Staff, she tried to use the HUF funds only for new things, like new replacement meters and a new storage tank. (Tr. at 101.) Ms. Morgan testified that if the HUF funds had not been used to pay for repairs and other expenses, and the general funds had been used instead, either Mount Tipton would have become insolvent, or the repairs would not have been made. (Tr. at 105.)

49. Mount Tipton collected a total of \$40,400.00 in HUFs from August 11, 2004, through December 31, 2007. (LFE R-4/R-6/R-7.) Staff calculated that Mount Tipton would have earned \$6,246.00 in interest during this period, had the HUF funds been deposited into the HUF Account as required by Decision No. 67162 (assuming that no expenditures were made), thus bringing to

1 \$46,646.00 the combined total that should have been in the HUF Account as of December 31, 2007.²⁷
 2 (LFE S-8.) Using Staff's calculation method and interest figures and making adjustments to have the
 3 period begin at September 1, 2004, the effective date for the rates approved in Decision No. 67162,
 4 and to bring each \$700 HUF charged to \$800 to comply with the HUF Tariff, the amount of HUFs
 5 collected would be \$40,800.00, and the imputed interest would be \$6,296.96, bringing the total to
 6 \$47,096.96. As reflected in the Table in Findings of Fact No. 45, however, there were six
 7 expenditures made during this period, totaling \$13,036.52, that we have not determined to have been
 8 for unauthorized items. If legitimate expenditures were made during the period from 2005-2007, the
 9 amount of interest earned would be altered. For this reason, and because the HUF Tariff did not
 10 speak expressly to the use of earned interest, we find that it is more appropriate not to impute interest
 11 in this matter.²⁸

12 50. Decision No. 67162 ordered Staff to monitor Mount Tipton's quarterly HUF reports
 13 and to notify the Commission immediately if HUF funds were being used for purposes other than
 14 those described in the approved HUF Tariff. Mr. Bozzo testified that he had only recently become
 15 aware that improper expenditures may have been made and that the Compliance Unit would have
 16 been aware of the monitoring and notification requirement previously, although he was not.
 17 (Tr. at 50-51.) We note that Mount Tipton's HUF reports, as evidenced by Ex. S-3 and S-4, were
 18 misleading in that they showed positive balances for the HUF Account, making it appear that Mount
 19 Tipton was actually segregating the HUF funds in the separate HUF Account.

20 **Count 8: ADEQ Compliance**

21 51. Count 8 alleges that Mount Tipton has failed to provide a satisfactory and continuous
 22 level of service due to reporting violations and MCL exceedances, in violation of the
 23 A.A.C. R14-2-407(C) requirement for a utility to provide a satisfactory and continuous level
 24 of service.

25 52. A.A.C. R14-2-407(C) provides that "[e]ach utility shall make reasonable efforts to
 26 supply a satisfactory and continuous level of service."

27 ²⁷ This assumes that the HUF account balance started at zero due to the Commission's forgiveness, in Decision
 28 No. 67162, of Mount Tipton's prior unauthorized expenditures using HUF funds.

²⁸ We also note that Staff did not calculate compound interest.

1 53. An ADEQ Drinking Water Compliance Status Report dated August 30, 2007
2 (“August 2007 ADEQ Report”), showed major deficiencies for Mount Tipton’s overall compliance
3 and as to monitoring and reporting. (Ex. S-1.) Specifically, the August 2007 ADEQ Report showed
4 that the system had exceeded the MCL for total coliform in April 2007 and that ADEQ’s database
5 had no records of Mount Tipton’s having filed its 2005 and 2006 consumer confidence reports;
6 having completed 2005 and 2006 annual nitrate analyses for Entry Point to Distribution System 004
7 (“EPDS004”); having completed 2nd, 3rd, and 4th quarter nitrate analyses required after exceeding a
8 trigger for increased nitrate monitoring at EPDS010 on March 29, 2006; having completed 2nd
9 quarter nitrate analyses required after exceeding a trigger for increased nitrate monitoring on
10 February 3, 2004; or having completed 3rd and 4th quarter nitrate analyses required after exceeding a
11 trigger for increased nitrate monitoring at EPDS002 on February 15, 2006. (*Id.*) The August 2007
12 ADEQ Report concluded that, because of the total coliform MCL exceedance and compliance
13 monitoring deficiencies, ADEQ could not determine whether Mount Tipton’s system was delivering
14 water that met the water quality standards of 18 A.A.C. 4. (*Id.*)

15 54. The January 2008 ADEQ Report again showed that Mount Tipton had major
16 deficiencies overall and as to monitoring and reporting, because of problems with total coliform and
17 nitrate. The Report showed that Mount Tipton needed to issue a Public Notice to resolve the April
18 2007 total coliform violation and that ADEQ records did not show that ADEQ had received the
19 required total coliform samples for the month of September 2007. Regarding nitrates, the Report
20 stated that because of the trigger events at EPDS002 on February 3, 2004, and February 15, 2006, and
21 the trigger event at EPDS010 on March 29, 2006, Mount Tipton needed to provide increased nitrate
22 monitoring analyses for four consecutive quarters. ADEQ had not received samples for 4th quarter
23 2007, and samples were needed for 1st and 2nd quarter 2008. Like the August 2007 ADEQ Report,
24 the January 2008 ADEQ Report concluded that, because of the total coliform MCL exceedance and
25 compliance monitoring deficiencies, ADEQ could not determine whether Mount Tipton’s system was
26 delivering water that met the water quality standards of 18 A.A.C. 4.

27 55. Mount Tipton mailed a Public Notice regarding total coliform to all of its customers
28 on March 10, 2008. (Tr. at 80; Ex. R-2.) The Public Notice was also posted in Mount Tipton’s office

1 and published in the local newspaper. (Tr. at 80.) The Public Notice explained that Mount Tipton's
2 system had violated the MCL for total coliform bacteria in December 2006 and April 2007 and had
3 failed to monitor the system for total coliform in September 2007. (Ex. R-2.) The Public Notice also
4 stated that these previous problems had been resolved. (*Id.*)

5 56. During the hearing on March 20, 2008, Staff testified that ADEQ's Compliance
6 Section had informed Staff that Mount Tipton had come into compliance with ADEQ requirements
7 related to total coliform. (Tr. at 22.)

8 57. The March 2008 ADEQ Report showed that Mount Tipton had no major deficiencies
9 and that Mount Tipton was delivering water meeting the water quality standards of 18 A.A.C. 4.
10 (LFE S-7.) The March 2008 ADEQ Report stated that Mount Tipton had begun quarterly monitoring
11 of EPDS002 and EPDS010 for nitrate; that the samples taken on March 27, 2008, were 6.2 mg/L and
12 4.2 mg/L respectively;²⁹ and that a subsequent result over the trigger for EPDS002 did not affect the
13 status of the system. (*Id.*)

14 58. The September 2008 ADEQ Report showed that Mount Tipton had major deficiencies
15 overall, as to monitoring and reporting, and as to operation and maintenance and that ADEQ could
16 not determine if the system was delivering water meeting the water quality standards of 18 A.A.C. 4.
17 (LFE S-8.) The monitoring and reporting deficiencies resulted from Mount Tipton's failure to submit
18 any total coliform samples for May, June, or July 2008. (*Id.*) The operation and maintenance
19 deficiencies resulted from source, treatment, and distribution system problems. (*Id.*) Specifically,
20 ADEQ stated that none of the wells³⁰ located within the Dolan Spring Field had received either
21 source approval or construction approval from ADEQ. (*Id.*) ADEQ stated that the same may be true
22 for Well #5, the Chambers Well, as it was not subject to construction and source approval
23 requirements when it was originally drilled as a private well, but later became subject to the
24 requirements when it was converted to public use by Mount Tipton. (*Id.*) ADEQ requested that
25 Mount Tipton take the steps needed to obtain Approvals to Construct, Approvals of Construction, and
26

27 ²⁹ Official notice is taken that for a community water system, the MCL for nitrate is 10 mg/L. (A.A.C. R18-4-109; 40
28 CFR § 141.62(b)(7).)

³⁰ ADEQ stated that Mount Tipton's system has 10 wells, at least 3 of which are spring wells.

1 Source Approvals for the affected wells.³¹ (*Id.*) ADEQ also stated that the affected wells should be
2 taken off the system until construction and source approvals are obtained. (*Id.*) According to ADEQ,
3 one of the spring wells is already valved off from the system and has been designated as “non-
4 potable” due to coliform contamination. (*Id.*) ADEQ stated that this well should be included in the
5 approval process. (*Id.*)

6 59. Ms. Morgan testified at hearing that ADEQ requirements had “fallen through the
7 cracks” because of turnover in Mount Tipton’s personnel responsible for those requirements and a
8 lack of training for and follow-through by those personnel. (Tr. at 78.) Ms. Morgan testified that the
9 Mount Tipton employee who had been doing the sampling, monitoring, and reporting had quit while
10 Ms. Morgan was away on a medical emergency³² and that Mount Tipton had missed some
11 monitoring as a result. (*Id.*) Mount Tipton subsequently also discovered that the employee had not
12 been completing all of the required monitoring and reporting. (*Id.*) As of the hearing date, Mount
13 Tipton had a Water Operator I, a Field Operator, and an Offsite Water II Certified Operator.
14 (Tr. at 95-96.)

15 60. Mount Tipton was out of compliance with ADEQ requirements in August 2007,
16 January 2008, and September 2008 to such an extent that ADEQ was unable to determine whether
17 Mount Tipton was delivering water meeting the water quality standards of 18 A.A.C. 4. There is
18 nothing in the record to indicate that Mount Tipton has come into compliance with ADEQ
19 requirements since September 2008. Mount Tipton’s repeated failure to comply with ADEQ
20 requirements to such an extent that ADEQ has been unable to determine whether Mount Tipton was
21 delivering water meeting the water quality standards of 18 A.A.C. 4 necessitates a finding that Mount
22 Tipton has failed to provide a satisfactory and continuous level of service to its customers, in
23 violation of A.A.C. R14-2-407(C).

24 **Staff’s Recommendations**

25 61. At hearing, Staff recommended that Mount Tipton be required to reimburse the HUF
26 account, as soon as possible, for any HUF funds spent inappropriately from the date of Decision

27 ³¹ ADEQ stated that the Chambers Well should be included in the construction and source approval process if approval
28 documentation for it cannot be located.

³² Ms. Morgan’s absence due to the medical emergency began in approximately June 2007. (*See* Tr. at 86, lines 8-9.)

1 No. 67162 (August 11, 2004) to the present. (Tr. at 41, 56, 60-61.) Staff did not express a preference
2 for how Mount Tipton chose to do this, as long as it was done in a legal manner. (*See id.*) Staff also
3 did not identify a specific repayment amount, as Staff did not know how much in HUF funds Mount
4 Tipton had collected since Decision No. 67162 and did not know how much in HUF funds Mount
5 Tipton had spent inappropriately. (Tr. at 62.) Staff testified that Mount Tipton had been asked to
6 provide definitive, complete information on the HUFs collected to date, but had been unable to
7 provide that information. (Tr. at 59-60.)

8 62. Staff also recommended at hearing that Mount Tipton be fined a total of \$10,000,
9 \$5,000 for Count 4 and \$5,000 for Count 8, because of the recurring nature of the ADEQ violations
10 and because Mount Tipton had been specifically ordered not to spend the HUF funds in a certain
11 manner and then did so anyway. (Tr. at 42-43.) Staff further recommended that waiver of the fines
12 be granted if Mount Tipton were to come into total compliance with ADEQ requirements and with
13 Commission rules and Decisions, including this Decision, by June 30, 2009. (Tr. at 53-54.) Staff
14 recommended that waiver of the fine for Count 4 be available upon a determination of compliance
15 with the HUF-related requirements of this Decision and that waiver of the fine for Count 8 be
16 available upon a determination of compliance with ADEQ requirements. (*See Tr.* at 58.) Staff
17 recommended that Mount Tipton be required to make a filing, by March 30, 2009, demonstrating
18 Mount Tipton's compliance with ADEQ requirements and with Commission rules and Decisions,
19 including this Decision, and that Staff be required, by June 30, 2009, to determine Mount Tipton's
20 compliance status and to make a recommendation as to waiver of each fine. (Tr. at 54, 58.)

21 63. Although Staff acknowledged that Mount Tipton has had ongoing issues with
22 maintaining consistency in its Board, Staff expressly declined at hearing to recommend an interim
23 manager, stating that interim managers are used more as a last resort in a worst case scenario. (Tr. at
24 43-44.) Staff testified that Mount Tipton has the ability to achieve what it needs to achieve for the
25 Commission and for its customers and that Mount Tipton just needs to be motivated to do so.
26 (Tr. at 44.) Staff also testified that Mount Tipton had contacted Staff to ask about turning Mount
27 Tipton's management over to Staff and that Staff had explained that this is not possible. (Tr. at 44-45.)
28 Staff opined that Mount Tipton should essentially be ordered to perform and that, as evidenced by the

1 Counts of the Complaint that had been resolved, Mount Tipton has the ability to be compliant.
2 (Tr. at 45.)

3 64. Staff also recommended at hearing that Mount Tipton be required to produce a report
4 showing the HUFs collected since August 11, 2004; the HUF fund amount that needed to be
5 reimbursed; and whether Mount Tipton's proposal to reimburse the HUF Account with rental income
6 from its office building would be the best option to reimburse the HUF Account. (Tr. at 57, 61.) Staff
7 recommended that, once Mount Tipton determined the amount to be reimbursed to the HUF Account,
8 Staff should recommend the action to be taken with the funds in the HUF Account, which could
9 include a recommendation for Mount Tipton's customers to be reimbursed or the use of the HUF
10 funds for a project other than the Detrital Well project.³³ (Tr. at 55-56.) Although Staff initially
11 recommended at hearing that the HUF Tariff be cancelled on a going-forward basis, Staff
12 subsequently recommended that another matter be initiated to deal with any revision of the HUF
13 Tariff. (See Tr. at 54-55, 59.)

14 65. Subsequent to the hearing, Staff filed LFE S-8, in which it made the following
15 recommendations:

- 16 a. That Mount Tipton be in compliance with ADEQ by January 31, 2009;
- 17 b. That Mount Tipton take immediate action to seek the required water source
18 approvals from ADEQ;
- 19 c. That Mount Tipton conduct a study to determine the most effective solution for
20 improving its water supply;
- 21 d. That Mount Tipton provide more detailed explanations about the nature of the
22 expenditures made using HUF funds after December 31, 2007;
- 23 e. That Mount Tipton be ordered to replace the funds expended from the HUF
24 Account after Decision No. 67162 (August 11, 2004) and through the end of
25 2007, which replenishment should equal \$40,400 plus lost interest of \$6,246,
26

27 ³³ Ms. Morgan testified that none of the HUF funds were used for the Detrital Well project, that Mount Tipton does not
28 currently use the Detrital Well for its system and has been unsuccessful in its attempts to obtain financing to connect the
Detrital Well to its system, and that Mount Tipton has come to the conclusion that it might be a lot cheaper to go another
route and not use the Detrital Well at all. (Tr. at 70-71.)

1 for a total of \$46,646;

- 2 f. That Mount Tipton be ordered to replace any HUF funds, plus interest, for any
3 post-2007 expenditures for inappropriate items;
- 4 g. That Mount Tipton be formally admonished for its mismanagement of the
5 HUF Account and specifically for the nature of the expenditures of HUF funds
6 made between 2004 and 2007;
- 7 h. That Mount Tipton be formally notified that HUF funds should never have
8 been used on repairs, maintenance, plant replacements, or operational purposes
9 and should never be so used again, on threat of fine;
- 10 i. That Mount Tipton be ordered not to make any further expenditures using its
11 HUF funds until the entire HUF issue is resolved in its upcoming permanent
12 rate case; and
- 13 j. That no further hearing is required before consideration of this issue in the
14 upcoming permanent rate case.

15 66. Staff no longer recommends a fine.³⁴ We find that imposing a fine at this time would
16 not further Mount Tipton's ability to provide competent management and adequate service to its
17 customers. Mount Tipton is in dire financial circumstances, as evidenced by Decision No. 70559
18 (October 23, 2008). Mount Tipton has a different Board President and membership now than it did
19 when the Complaint and OSC were issued, and the current Board President and members, who have
20 been in place since April 2008, appear to be making efforts to come into compliance with
21 Commission requirements. Also, as Mount Tipton is a non-profit corporation, it is ultimately Mount
22 Tipton's customers who would likely suffer if Mount Tipton were required to pay a fine.

23 **Conclusion**

24 **Count 4: Handling of HUF Account**

25 67. Mount Tipton has violated Decision No. 67162 by consistently failing to deposit HUF
26 funds into its separate HUF Account during the period from September 1, 2004, through February

27 ³⁴ Although Staff did not state in LFE S-8 that it no longer recommends fining Mount Tipton, we believe that Staff has
28 dropped its recommendation for a total of \$10,000 in fines, as it was not repeated in LFE S-8, and Staff referenced therein
only the threat of a fine.

1 29, 2008; spending at least \$32,159.51 in HUF funds since September 1, 2004, for items other than
2 off-site facilities as defined in its HUF Tariff approved in Decision No. 67162; and charging HUFs in
3 an amount other than that authorized by Decision No. 67162 and its HUF Tariff on 18 separate
4 occasions after September 1, 2004. These violations, coupled with Mount Tipton's prior failure to
5 handle the HUF funds properly, as determined in Decision No. 67162, lead us to conclude that Mount
6 Tipton historically has lacked either the ability or sufficient desire to comply with restrictions on the
7 use of HUF funds when Mount Tipton has believed that the HUF funds were needed to pay for items
8 other than those authorized. We believe that Mount Tipton has never handled the HUF funds
9 properly, not even after being directed very explicitly in Decision No. 67162 what was permissible
10 and what was not. We also believe that the availability of the HUF funds has resulted in Mount
11 Tipton's failing to take action in the face of obvious shortfalls in operating funds, which is contrary to
12 the public interest. Had Mount Tipton not had what it seems to have viewed as another revenue
13 stream in the form of its HUF funds, we believe that Mount Tipton would have been forced to come
14 to the Commission for ratemaking much earlier, which would have been the right thing for Mount
15 Tipton to do and would have served the public interest. We also believe that the HUF reports filed by
16 Mount Tipton to comply with Decision Nos. 60988 and 67162 have been of dubious quality and
17 reliability and thus questionable value. For all of these reasons, we believe that it is appropriate to
18 suspend Mount Tipton's HUF Tariff and quarterly and annual HUF reports, on a going-forward basis,
19 effective immediately, until further Order of the Commission. It is also appropriate to order Mount
20 Tipton to cease making any further expenditures using the HUF funds already collected, until further
21 Order from the Commission. We will require Staff, in Mount Tipton's permanent ratemaking docket,
22 to analyze and recommend whether the HUF Tariff should be continued and, if so, for what
23 purpose/s, and to provide a rate schedule reflecting rates that would be appropriate if Mount Tipton's
24 HUF Tariff were to be cancelled in the permanent ratemaking docket.

25 68. We find that Mount Tipton should reimburse the HUF Account in the amount of
26 \$40,800.00, which represents the HUF funds that should have been collected and deposited for the
27 period from September 1, 2004, through December 31, 2007. For the reasons provided in Findings of
28 Fact No. 49, we do not adopt Staff's recommendation to require Mount Tipton also to reimburse for

1 imputed interest.

2 Count 8: ADEQ Compliance

3 69. In August 2007, January 2008, and September 2008, Mount Tipton was in violation of
4 ADEQ requirements to such an extent that ADEQ was unable to determine whether Mount Tipton
5 was providing water in compliance with the water quality standards of 18 A.A.C. 4. In light of
6 Mount Tipton's request regarding LFE R-8, we believe that Mount Tipton is still out of compliance
7 with ADEQ requirements. We find that, as a result of its recurring noncompliance with ADEQ
8 requirements such that the quality of its water cannot be determined by ADEQ, Mount Tipton has
9 violated A.A.C. R14-2-407(C).

10 70. It is disturbing that Mount Tipton has allowed compliance with ADEQ requirements
11 to "fall through the cracks" repeatedly, when those requirements are designed to ensure that Mount
12 Tipton's water customers receive a safe water supply. While we agree with Staff that Mount Tipton
13 should already be in compliance with ADEQ requirements, we recognize that coming into
14 compliance with ADEQ requirements will require Mount Tipton to conduct monitoring and reporting
15 and to obtain ADEQ approvals for the wells located in the Dolan Spring Field and possibly for the
16 Chambers Well. Thus, we find that it is appropriate to require Mount Tipton to come into full
17 compliance with ADEQ requirements by July 31, 2009. However, we adopt Staff's recommendation
18 to require Mount Tipton to take immediate action to seek the required water source approvals from
19 ADEQ. We also find that it is appropriate to require Mount Tipton to file with the Commission's
20 Docket Control, by the 15th of each month, beginning on April 15, 2009, as a compliance item in this
21 Docket, a report that (1) describes the actions taken by Mount Tipton during the preceding calendar
22 month to come into compliance with ADEQ and (2) provides an update as to Mount Tipton's
23 compliance status with ADEQ. We direct Mount Tipton that the first report, due on April 15, 2009,
24 should include documentation showing that it has filed with ADEQ applications for the approvals
25 that must be obtained for its Dolan Spring Field wells and, if applicable, the Chambers Well.

26 71. We also find that it is appropriate to require Staff to file with the Commission's
27 Docket Control, in this docket, by the first business day of each month, beginning on May 1, 2009, a
28 report analyzing Mount Tipton's prior month's filing and stating whether Mount Tipton is completing

1 the actions necessary to come into full compliance with ADEQ requirements by July 31, 2009. If
2 Staff determines that Mount Tipton is not completing the actions necessary to come into full
3 compliance with ADEQ requirements by July 31, 2009, Staff shall include such determination and
4 the reasons therefore in its monthly report and shall file a Petition for an Order to Show Cause
5 requesting that an interim manager be installed and any other remedies that Staff believes
6 are appropriate.

7 72. In Decision No. 70559, we ordered Mount Tipton to file a permanent ratemaking
8 application with the Commission by April 30, 2009, using calendar year 2008 as its test year, and
9 ordered that if Mount Tipton's permanent ratemaking application is not found to be sufficient by
10 July 31, 2009, Staff must file an Order to Show Cause to install an interim manager and address any
11 other appropriate remedies. We continue to believe that this timeline is appropriate and that a
12 Petition for an Order to Show Cause to appoint an interim manager would be appropriate if Mount
13 Tipton shows that it is unable to bring its permanent ratemaking application to sufficiency by
14 July 31, 2009.

15 73. Staff should analyze in its written testimony or Staff Report in the permanent
16 ratemaking docket whether Mount Tipton's inappropriately spending HUF funds was related to
17 inappropriately low rates, inappropriately high expenses, improprieties in the handling of Mount
18 Tipton's funds, and/or any other reason and make recommendations concerning how Mount Tipton's
19 operations should be changed or what other actions should be taken to remedy the situation/s that
20 resulted in or contributed to Mount Tipton's spending the HUF funds as it did.

21 74. We agree with Staff that Mount Tipton should be required to conduct a study to
22 determine the most effective solution for improving its water supply and believe that the permanent
23 ratemaking docket is an appropriate matter in which to consider that issue. Thus, we will require
24 Mount Tipton to analyze its water supply shortage, to create a plan proposing what it believes to be
25 the most effective solution for improving its water supply and explaining its rationale, and to file the
26 plan in its permanent ratemaking docket by May 29, 2009. In its written testimony or Staff Report in
27 the permanent ratemaking docket, Staff should analyze Mount Tipton's plan and make specific
28 recommendations regarding how Mount Tipton should improve its water supply and whether the

1 reimbursed HUF funds should be used toward increasing Mount Tipton's water supply.

2 75. Staff has recommended that Mount Tipton be required to provide more detailed
3 explanations about the nature of the expenditures made using HUF funds after December 31, 2007,
4 and that Mount Tipton be ordered to replace any HUF funds, plus interest, for any post-2007
5 expenditures for inappropriate items. Rather than requiring any further information to be filed in this
6 docket regarding the HUFs collected after December 31, 2007, and the use of those HUF funds, we
7 will direct Mount Tipton to file the following in its permanent ratemaking docket by May 29, 2009:
8 (1) a consolidated HUF report that shows for each HUF charged during calendar year 2008 (a) the
9 date on which the HUF was charged, (b) the name of the customer charged the HUF, (c) the service
10 address for which the HUF was charged, (d) the meter size for the service address, and (e) the amount
11 of the HUF charged; and (2) a consolidated HUF expenditures report that includes for each
12 expenditure of HUF funds during calendar year 2008 (a) the date on which the expenditure was
13 made; (b) the amount of the expenditure; (c) a description of what was purchased or paid for; and (d)
14 a copy of the invoice, statement, or receipt showing the item purchased or paid for. In Staff's written
15 testimony or Staff Report in the permanent ratemaking docket, Staff should analyze Mount Tipton's
16 calendar year 2008 HUF and HUF expenditure reports and make specific recommendations regarding
17 whether Mount Tipton's collection of HUFs complied with its HUF Tariff, whether any of the
18 expenditures were for items other than off-site facilities, and whether and to what extent Mount
19 Tipton should be required to further reimburse the HUF Account.

20 76. Finally, we agree with Staff that Mount Tipton should be admonished for its
21 mismanagement of the HUF Account and for spending the HUF funds on items other than off-site
22 facilities, in direct contravention of Decision No. 67162. Mount Tipton should have deposited all of
23 the HUF funds collected into the HUF Account and should never have used HUF funds for repairs,
24 maintenance, plant replacements, or operational purposes. We caution Mount Tipton that further
25 noncompliance with the Commission's Orders in this regard may result in Mount Tipton's being
26 fined or in the appointment of an interim manager to take over operation of the utility. To ensure that
27 Mount Tipton's Board members and employees are aware of the requirements of this Decision, we
28 will require each of them, within 30 days after the effective date of this Decision, to complete and file

1 with the Commission's Docket Control the attestation attached hereto as Exhibit A and incorporated
2 herein.

3 **CONCLUSIONS OF LAW**

4 1. Mount Tipton is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

6 2. The issuance of a CC&N to a public service corporation imposes a duty upon the
7 CC&N holder to operate the utility in a lawful manner, to comply with Arizona law, including
8 Commission rules and Orders, and to provide competent management and adequate service to its
9 customers.

10 3. The Commission has jurisdiction over Mount Tipton and the subject matter of this
11 matter pursuant to Article XV of the Arizona Constitution; A.R.S. §§ 40-202, 40-203, 40-221,
12 40-246, 40-321, 40-322, 40-331, 40-334, 40-361, 40-424, and 40-425; and A.A.C. R14-2-407.

13 4. Notice of the Complaint and Petition for an Order to Show Cause, of the Order to
14 Show Cause issued in Decision No. 69913, and of the evidentiary hearing in this matter was provided
15 in accordance with the law.

16 5. Pursuant to Article XV, Section 16 of the Arizona Constitution and A.R.S. §§ 40-424
17 and 40-425, the Commission has the authority to fine Mount Tipton from \$100 to \$5,000 for each
18 violation of a Commission rule or Order and for each failure to comply with statutory requirements.

19 6. Pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-202, 40-321,
20 40-322, and 40-361, the Commission has the jurisdiction and authority to determine what is just,
21 reasonable, safe, proper, adequate, and sufficient and to enforce its determination by Order or
22 regulation.

23 7. Mount Tipton has violated Decision No. 67162 by failing to deposit its HUF funds
24 into a separate interest-bearing trust account as required by that Decision, by spending its HUF funds
25 on items other than off-site facilities as required by the HUF Tariff approved in that Decision, and by
26 charging HUFs in an amount not authorized by the HUF Tariff approved in that Decision.

27 8. Mount Tipton has failed to supply a satisfactory and continuous level of service, in
28 violation of A.A.C. R14-2-407(C), by failing to maintain compliance with ADEQ requirements in

1 August 2007, January 2008, and September 2008 to such an extent that ADEQ was unable to
2 determine whether Mount Tipton was delivering water meeting the water quality standards of
3 18 A.A.C. 4.

4 9. It is just, reasonable, and in the public interest to require Mount Tipton to complete the
5 actions discussed in Findings of Fact Nos. 67, 68, 70, 74, 75, and 76 and to require Staff to complete
6 the actions discussed in Findings of Fact Nos. 67, 71, 72, 73, 74, and 75.

7 **ORDER**

8 IT IS THEREFORE ORDERED that Mount Tipton Water Co., Inc.'s Off-Site Water
9 Facilities Hook-Up Fee Tariff is suspended, effective immediately. Mount Tipton Water Co., Inc. is
10 prohibited from charging or collecting Hook-Up Fees until further Order of the Commission.

11 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc.'s quarterly and annual
12 Hook-Up Fee report filing obligations imposed by Commission Decision Nos. 60988 and 67162 are
13 suspended, effective immediately, until further Order of the Commission.

14 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall immediately cease
15 making expenditures using the Hook-Up Fee funds already collected under its Off-Site Water
16 Facilities Hook-Up Fee Tariff. Mount Tipton Water Co., Inc. is prohibited from making any
17 expenditures using Hook-Up Fee funds until further Order of the Commission.

18 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall reimburse in the
19 amount of \$40,800.00 the separate, interest-bearing trust account that was established to hold Hook-
20 Up Fee funds as a result of Decision No. 67162.

21 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall come into full
22 compliance with Arizona Department of Environmental Quality requirements by July 31, 2009.

23 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall take immediate action
24 to seek the water source approvals required by the Arizona Department of Environmental Quality for
25 all of Mount Tipton Water Co., Inc.'s wells located in the Dolan Spring Field and, if applicable, the
26 Chambers Well.

27 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall file with the
28 Commission's Docket Control, as a compliance item in this docket, by the 15th of each month,

1 beginning on April 15, 2009, a report that (1) describes the actions taken by Mount Tipton Water Co.,
2 Inc. during the preceding calendar month to come into compliance with Arizona Department of
3 Environmental Quality requirements and (2) provides an update as to Mount Tipton Water Co., Inc.'s
4 compliance status with the Arizona Department of Environmental Quality. Mount Tipton Water Co.,
5 Inc. shall include in its first report, due on April 15, 2009, documentation showing that it has filed
6 with the Arizona Department of Environmental Quality applications for the approvals that must be
7 obtained for the Dolan Spring Field wells and, if applicable, the Chambers Well.

8 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall analyze its water
9 supply shortage, create a plan proposing what it believes to be the most effective solution for
10 improving its water supply and explaining its rationale, and file the plan in its permanent ratemaking
11 docket by May 29, 2009.

12 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall file the following in its
13 permanent ratemaking docket by May 29, 2009: (1) a consolidated Hook-Up Fee report that shows
14 for each Hook-Up Fee charged during calendar year 2008 (a) the date on which the Hook-Up Fee was
15 charged, (b) the name of the customer charged the Hook-Up Fee, (c) the service address for which the
16 Hook-Up Fee was charged, (d) the meter size for the service address, and (e) the amount of the
17 Hook-Up Fee charged; and (2) a consolidated Hook-Up Fee expenditures report that includes for
18 each expenditure of Hook-Up Fee funds during calendar year 2008 (a) the date on which the
19 expenditure was made; (b) the amount of the expenditure; (c) a description of what was purchased or
20 paid for; and (d) a copy of the invoice, statement, or receipt for the item purchased or paid for.

21 IT IS FURTHER ORDERED that each Board member and employee of Mount Tipton
22 Water Co., Inc. shall, within 30 days after the effective date of this Decision, complete and file with
23 the Commission's Docket Control, as a compliance item in this docket, the attestation attached as
24 Exhibit A hereto and incorporated herein, swearing or affirming that the Board member or employee
25 is aware of and understands the requirements imposed on Mount Tipton Water Co., Inc. in this
26 Decision and understands that Mount Tipton Water Co., Inc. must comply with them.

27 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall, in its
28 written testimony or Staff Report in Mount Tipton's permanent ratemaking docket, (1) analyze and

1 recommend whether the Off-Site Water Facilities Hook-Up Fee Tariff should be continued and, if so,
2 for what purpose/s; and (2) provide a rate schedule reflecting rates that would be appropriate if
3 Mount Tipton's Off-Site Water Facilities Hook-Up Fee Tariff were to be cancelled in the permanent
4 ratemaking docket.

5 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall file with the
6 Commission's Docket Control, in this docket, by the first business day of each month, beginning on
7 May 1, 2009, a report analyzing Mount Tipton Water Co., Inc.'s prior month's filing and stating
8 whether Mount Tipton Water Co., Inc. is completing the actions necessary to come into full
9 compliance with Arizona Department of Environmental Quality requirements by July 31, 2009.
10 If Staff determines that Mount Tipton Water Co., Inc. is not completing the actions necessary to come
11 into full compliance with Arizona Department of Environmental Quality requirements by
12 July 31, 2009, Staff shall include such determination and the reasons therefore in its monthly report
13 and shall file a Petition for an Order to Show Cause requesting that an interim manager be installed
14 and any other remedies that Staff believes are appropriate.

15 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall analyze, in
16 its written testimony or Staff Report in the permanent ratemaking docket, whether Mount Tipton
17 Water Co., Inc.'s inappropriately spending Hook-Up Fee funds was related to inappropriately low
18 rates; inappropriately high expenses; improprieties in the handling of Mount Tipton Water Co., Inc.'s
19 funds; and/or any other reason and make recommendations concerning how Mount Tipton's
20 operations should be changed or what other actions should be taken to remedy the situation/s that
21 resulted in or contributed to Mount Tipton Water Co., Inc.'s spending the Hook-Up Fee funds as
22 it did.

23 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall, in its
24 written testimony or Staff Report in the permanent ratemaking docket, analyze Mount Tipton Water
25 Co., Inc.'s plan proposing the solution for improving its water supply and make specific
26 recommendations regarding how Mount Tipton Water Co., Inc. should improve its water supply and
27 whether the reimbursed Hook-Up Fee funds should be used toward increasing Mount Tipton Water
28 Co., Inc.'s water supply.

1 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall, in its
2 written testimony or Staff Report in the permanent ratemaking docket, analyze Mount Tipton's
3 calendar year 2008 Hook-Up Fee and Hook-Up Fee expenditure reports and make specific
4 recommendations regarding whether Mount Tipton's collection of Hook-Up Fees complied with its
5 Off-Site Water Facilities Hook-Up Fee Tariff, whether any of the expenditures were for items other
6 than off-site facilities, and whether and to what extent Mount Tipton Water Co., Inc. should be
7 required to further reimburse the separate, interest-bearing trust account for Hook-Up Fees.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
10
11

12 CHAIRMAN _____ COMMISSIONER

13
14 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

15
16 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
17 Executive Director of the Arizona Corporation Commission,
18 have hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this ____ day of _____, 2009.

21 _____
22 MICHAEL P. KEARNS
23 INTERIM EXECUTIVE DIRECTOR

24 DISSENT _____

25 DISSENT _____

26 SNH:db

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SERVICE LIST FOR: MOUNT TIPTON WATER CO., INC.

DOCKET NO.: W-02105A-07-0510

John Janik, President
MOUNT TIPTON WATER CO., INC.
P.O. Box 38
Dolan Springs, AZ 86441
By Certified Mail

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

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

ATTESTATION**First and Last Name:** _____ **Title:** _____ **Board Member** **Employee***Read the following and complete the attestation below.*

The Arizona Corporation Commission ("Commission") has issued a Decision including the following ordering provisions with which Mount Tipton Water Co., Inc. ("Mount Tipton") is required to comply:

1. Mount Tipton's Off-Site Water Facilities Hook-Up Fee Tariff is suspended, effective immediately, and Mount Tipton is prohibited, until further Order of the Commission, from charging or collecting Hook-Up Fees.
2. Mount Tipton's quarterly and annual Hook-Up Fee report filing obligations, imposed by Commission Decisions Nos. 60988 and 67162, are suspended, effective immediately, until further Order of the Commission.
3. Mount Tipton is prohibited, until further Order of the Commission, from spending the Hook-Up Fee funds already collected under its Off-Site Water Facilities Hook-Up Fee Tariff.
4. Mount Tipton is required to reimburse, in the amount of \$40,800.00, the separate, interest-bearing Hook-Up Fee account that was established as a result of Decision No. 67162.
5. Mount Tipton is required to come into full compliance with Arizona Department of Environmental Quality ("ADEQ") requirements by July 31, 2009.
6. Mount Tipton is required to take immediate action to seek the water source approvals required by ADEQ for all of Mount Tipton's wells located in the Dolan Spring Field and, if applicable, the Chambers Well.
7. Mount Tipton is required to file with the Commission's Docket Control, as a compliance item in this docket, by the 15th of each month, beginning on April 15, 2009, a report that (1) describes the actions taken by Mount Tipton during the prior month to come into compliance with ADEQ requirements and (2) provides an update as to Mount Tipton's compliance status with ADEQ. Mount Tipton's April 15, 2009, report must include documentation showing that it has filed with ADEQ applications for the approvals that must be obtained for the Dolan Spring Field wells and, if applicable, the Chambers Well.
8. Mount Tipton is required to analyze its water supply shortage, create a plan proposing what it believes to be the most effective solution for improving its water supply and explaining its rationale, and file the plan in its permanent ratemaking docket by May 29, 2009.
9. Mount Tipton is required to file the following in its permanent ratemaking docket by May 29, 2009:
 - a. A consolidated Hook-Up Fee report that shows the following for each Hook-Up Fee charged during calendar year 2008:
 - i. The date on which the Hook-Up Fee was charged,
 - ii. The name of the customer charged the Hook-Up Fee,
 - iii. The service address for which the Hook-Up Fee was charged,
 - iv. The meter size for the service address, and
 - v. The amount of the Hook-Up Fee charged; and
 - b. A consolidated Hook-Up Fee expenditures report that includes the following for each expenditure of Hook-Up Fee funds during calendar year 2008:
 - i. The date on which the expenditure was made;

- ii. The amount of the expenditure;
 - iii. A description of what was purchased or paid for; and
 - iv. A copy of the invoice, statement, or receipt for the item purchased or paid for.
10. Each Mount Tipton Board member or employee is required, within 30 days after the effective date of the Decision, to complete and file with the Commission's Docket Control, as a compliance item in this docket, a copy of this Attestation, swearing or affirming that the Board member or employee is aware of and understands the requirements imposed on Mount Tipton in the Decision and understands that Mount Tipton must comply with them.

I hereby attest, under oath or affirmation, that I have read the above requirements imposed on Mount Tipton by Order of the Commission; that I understand the requirements imposed on Mount Tipton; and that I understand that Mount Tipton must comply with them.

Signature: _____ **Date:** _____

State of Arizona
 County of _____

Subscribed and sworn (or affirmed) before me this _____ day of _____, 20_____.

(seal)

 Notary Public