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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUN 16 2009

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

DOCKETED BY	ne
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IN THE MATTER OF THE APPLICATION
OF MOUNT TIPTON WATER CO., INC.
FOR AUTHORITY TO INCUR LONG-TERM
INDEBTEDNESS TO FINANCE WATER
SYSTEM IMPROVEMENTS.

DOCKET NO. W-02105A-09-0145

DECISION NO. 71166

ORDER

Open Meeting
June 11, 2009
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

* * * * *

FINDINGS OF FACT

1. Pursuant to a Certificate of Convenience and Necessity granted in Decision No. 40644 (May 26, 1970), Mount Tipton Water Co., Inc. ("Mount Tipton") provides water service to approximately 740 metered customers in an area centered in Dolan Springs, Arizona, which is approximately 35 miles northwest of Kingman in Mohave County.

2. Mount Tipton is a nonprofit Arizona corporation and was classified as a Class C utility in its last full rate case in 2004.

3. On October 23, 2008, in Decision No. 70559, the Commission granted Mount Tipton emergency rate relief in the form of an emergency interim surcharge of \$10.00 per month per metered customer, with the condition that the surcharge would not become effective and could not be billed for or collected until the first day of the month after Mount Tipton had both posted with the Commission a performance bond or irrevocable sight draft letter of credit ("ISDLOC") in the amount

1 of \$20,000 and filed with the Commission a Certificate of Good Standing¹ to establish that Mount
2 Tipton had come into good standing with the Commission's Corporations Division. In Decision No.
3 70838, issued on March 17, 2009, the Commission amended Decision No. 70559 by reducing the
4 amount of the performance bond or ISDLOC to \$5,000. Mount Tipton filed its ISDLOC with the
5 Commission's Business Office on March 19, 2009, and began collecting the emergency interim
6 surcharge from its customers on April 1, 2009.

7 4. Decision No. 70559 also required Mount Tipton to file an application for a permanent
8 rate case by April 30, 2009, and to bring the application to sufficiency by July 31, 2009. These
9 deadlines have since been extended by the Commission, in Decision No. 70837 (March 17, 2009) and
10 at the Open Meeting of March 3, 2009, to October 2, 2009, and December 31, 2009, respectively.
11 Thus, Decision No. 70559, as amended, now provides that Mount Tipton may collect the emergency
12 interim surcharge until the effective date of the decision in its permanent rate case, unless it fails to
13 bring its permanent rate case application to sufficiency by December 31, 2009, in which case the
14 emergency interim surcharge will expire on that date.

15 5. The emergency interim surcharge is expected to generate revenue of approximately
16 \$89,040 per year. Decision No. 70559 placed restrictions on the use of the funds generated by the
17 emergency interim surcharge, requiring Mount Tipton to deposit the funds into a separate, interest-
18 bearing bank account and allowing Mount Tipton to use the funds only (1) to pay its past due
19 accounts; (2) to make repairs to its system; (3) to replace galvanized pipe as required by the Arizona
20 Department of Environmental Quality ("ADEQ"); (4) to make other system improvements required
21 or recommended by ADEQ; (5) to purchase and install new meters; (6) to refurbish and reinstall
22 existing meters; and (7) to have its books and accounts audited by an Arizona Certified Public
23 Accountant, preferably an accountant with a background in forensic accounting.

24 6. In Decision No. 70837, the Commission determined that Mount Tipton had been in
25 violation of ADEQ requirements in August 2007, January 2008, and September 2008 to such an
26 extent that ADEQ was unable to determine whether Mount Tipton was providing water in
27 compliance with the water quality standards of 18 A.A.C. 4 and thus had violated A.A.C. R14-2-

28 ¹ Mount Tipton filed a Certificate of Good Standing on March 4, 2009.

1 407(C). A September 2008 ADEQ Compliance Status Report had shown that Mount Tipton had both
2 ~~monitoring and reporting deficiencies and operation and maintenance deficiencies resulting from~~
3 source, treatment, and distribution system problems. (Decision No. 70837 at 21.)

4 7. The American Recovery and Reinvestment Act of 2009 ("ARRA") went into effect on
5 February 17, 2009. The Water Infrastructure and Finance Authority of Arizona's ("WIFA's")
6 *Supplemental 2009 ARRA Intended Use Plan* ("WIFA ARRA Plan") shows that the ARRA
7 authorizes WIFA to provide an additional subsidy on loans, which can include forgivable principal
8 and/or additional interest rate subsidies. The WIFA ARRA Plan also asserts that projects receiving
9 ARRA funds must be capable of moving forward quickly.

10 8. On March 23, 2009, Mount Tipton filed with the Commission an application for
11 authorization to execute a loan agreement with WIFA for a loan in the amount of \$140,000. The
12 application was filed to take advantage of the ARRA stimulus funds being administered by WIFA.
13 Thus, it is appropriate for the Commission to consider Mount Tipton's application on an expedited
14 basis.

15 9. On May 8, 2009, Mount Tipton filed proof that notice of the finance application had
16 been published in the *Kingman Daily Miner*, a newspaper of general circulation in Mohave County,
17 on May 4, 2009.

18 10. On May 13, 2009, the Commission's Utilities Division Staff ("Staff") issued a Staff
19 Report recommending approval of Mount Tipton's application, subject to certain conditions.

20 11. Mount Tipton anticipates that \$126,000 of the requested \$140,000 loan will be funded
21 with ARRA funds and designated as forgivable principal and that the other \$14,000 will be funded
22 with WIFA funds and will be repayable indebtedness.² Mount Tipton anticipates receiving a 20-year
23 amortizing loan at 5.25 percent interest per annum, based on the current base interest rate on a WIFA
24 loan of 5.25 percent.³

25 12. According to its application, Mount Tipton requested the \$140,000 loan to finance the
26 testing needed to obtain source approval for its Spring Well, replacement of galvanized piping,

27 ² The application shows that Mount Tipton's project is fourth on the Project Priority List for projects within the ARRA
capitalization grant.

28 ³ The base interest rate is calculated by using the current prime rate of 3.25 percent plus 2.00 percent.

1 replacement of two booster pumps, cleaning of five wells, replacement of five well pumps, and
 2 replacement of meters. Mount Tipton stated that because its wells and pumps have not received
 3 proper maintenance for the past 10 years, the water pumped has diminished to the point that Mount
 4 Tipton is unable to ensure adequate water production during high demand periods. Mount Tipton
 5 also stated that its Spring Well has never been source approved and needs to be tested and brought to
 6 standards and that ADEQ has required removal of the galvanized above-ground pipe, replacement of
 7 two booster pumps, and replacement of meters.

8 13. According to Staff's Engineering Report, Mount Tipton estimates a total construction
 9 cost for its project of \$160,302.34, broken down as follows:

Project Description	Estimated Cost
Well Rehab Program*	
Well pump motor replacement	\$14,303.52
Well pump replacement	16,005.50
Parts (tees, etc.)	2019.85
Pipes	23,111.42
Sub cable	9,802.88
Lighting arrestor	1,043.00
Couplings	1,146.00
Valves	1,491.00
Plumbing	1,050.00
Camera well (rental, labor)	4,900.00
Well cleaning to remove solid deposit in well column (labor, equipment rental, tax)	59,997.11
Shipping and handling (pipes, valves, etc.)	1,750.00
Travel expenses	1,890.00
Tax	4,148.86
Labor	9,643.20
Subtotal	\$152,302.34
New Source Program	
Sampling and Testing to obtain ADEQ source approval for Spring Well	\$6,000.00
Subtotal	\$6,000.00
Water Loss Reduction Program	
Service meter replacement for 100 defective worn- out meters	\$2,000.00
Subtotal	\$2,000.00

Total	\$160,302.34 ⁴
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* The Well Rehab Program includes improvements to Well #1 (DWR #55-6065117, aka "Ironwood Well"), Well #2 (DWR #55-508835, aka "Iron Dr Well"), Well #3 (DWR #55-520733, aka "LDS Well"), Well #5 (DWR #55-510178, aka "Chambers Well"), Well #6 (DWR #55-601846, aka "Field Well"), Well #7 (DWR #55-601847), and Well #9 (DWR #55-601848, aka "Spring Well").

14. Mount Tipton's water system consists of nine drinking water wells, with a combined capacity of 140 gallons per minute, and three storage tanks, with a combined capacity of 627,000 gallons. In September 2008, ADEQ directed Mount Tipton to take off of its system those wells for which construction and source approvals had not yet been obtained and to take the steps needed to obtain Approvals to Construct, Approvals of Construction, and Source Approvals for the affected wells. (Decision No. 70837 at 21-22.)

15. According to Staff, two of Mount Tipton's wells recently failed. As a result, Mount Tipton's water supply was inadequate for periods of high demand. Mount Tipton believes that several of its other wells will also fail if the work described under the Well Rehab Program shown above is not completed, thus leaving Mount Tipton without an adequate water supply during high demand periods. Staff has determined that the Well Rehab Program is needed to ensure that Mount Tipton continues to have an adequate supply of water during periods of high demand.

16. Staff has reviewed Mount Tipton's proposed capital projects and the related estimated costs and found that the proposed capital projects are appropriate and that the related cost estimates are reasonable. Staff did not, however, make any "used and useful" determination regarding the proposed improvements or draw any conclusions for rate base or ratemaking purposes.

17. In an ADEQ compliance status report dated February 27, 2009, ADEQ reported that Mount Tipton was in full compliance with ADEQ requirements and was delivering water meeting the water quality standards of 18 A.A.C. 4.⁵

⁴ The Staff Engineering Report, dated April 3, 2009, stated that Mount Tipton had indicated to Staff that it intended to increase the amount of the loan requested from WIFA and the amount of indebtedness authorized by the Commission to \$160,300, to cover the full estimated cost of the work to be performed. No such request has been made in the docket at this time.

⁵ We believe that this is because Mount Tipton has removed from its system those wells that have not yet received construction and source approvals from ADEQ and because Mount Tipton has come into compliance with monitoring and reporting requirements.

1 18. Mount Tipton is not located in an Active Management Area as designated by the
2 Arizona Department of Water Resources ("ADWR"). In an ADWR compliance status report dated
3 June 16, 2008, ADWR reported that Mount Tipton was in compliance with ADWR requirements
4 governing water providers and community water systems.

5 19. Staff stated that Staff's Compliance Database shows one delinquent compliance item
6 for Mount Tipton—the revised rate schedule reflecting the emergency interim surcharge approved in
7 Decision No. 70559. However, a Notice of Compliance filed in that docket⁶ on April 30, 2009,
8 shows that Mount Tipton's revised tariff, with an effective date of April 1, 2009, has been approved
9 as compliant with Decision No. 70559. Thus, it appears that Mount Tipton currently has no
10 delinquent compliance items.

11 20. In its application, Mount Tipton requested that the Commission authorize it to secure
12 WIFA financing in an amount not to exceed \$140,000. Due to an anticipated \$126,000 of forgivable
13 principal pursuant to WIFA's authority under the WIFA ARRA Plan, Mount Tipton expects
14 repayable indebtedness of only \$14,000, with an anticipated 20-year amortizing loan and an interest
15 rate of 5.25 percent per annum.

16 21. As of December 31, 2008, Mount Tipton's capital structure consisted of 1.5 percent
17 short-term debt, 98.3 percent long-term debt, and 0.2 percent equity. If advances in aid of
18 construction ("AIAC") and net contributions in aid of construction ("CIAC") are considered, Mount
19 Tipton's capital structure as of December 31, 2008, consisted of 1.5 percent short-term debt, 97.6
20 percent long-term debt, 0.2 percent equity, 0.8 percent AIAC, and 0.0 percent CIAC.

21 22. Assuming an increase in annual revenues of \$89,040 resulting from the emergency
22 interim surcharge authorized by Decision No. 70559 and issuance of a 20-year, \$140,000 amortizing
23 loan at 5.25 percent interest per annum, Staff calculated a pro forma capital structure of 1.7 percent
24 short-term debt, 98.1 percent long-term debt, and 0.2 percent equity.

25 23. Staff's financial analysis shows that for the year ending December 31, 2008, Mount
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28 ⁶ Decision No. 70559 was issued in Docket No. W-02105A-08-0262. Official notice is taken of the Notice of Compliance filed therein.

1 Tipton had a negative times interest earned ratio ("TIER")⁷ and a 0.76 debt service coverage ratio
2 ("DSC").⁸ The DSC results show that cash flow from operations in 2008 was not sufficient to cover
3 all existing obligations. Thus, current base revenues are inadequate to provide debt service on the
4 proposed \$140,000 loan.

5 24. Staff determined that if none of the emergency interim surcharge revenue were
6 considered available to pay debt service on the proposed \$140,000 loan, a second surcharge of \$3.40
7 per customer per month would be needed to provide a 1.25 DSC. Considering the same scenario with
8 a loan amount of only \$14,000, resulting from 90% forgivable principal on the \$140,000 loan, Staff
9 determined that a second surcharge of \$1.83 per customer per month would be needed to provide a
10 1.25 DSC. Staff believes, however, that the proposed uses for the WIFA loan proceeds, set forth in
11 Findings of Fact No. 13, are consistent with the authorized uses for the emergency interim surcharge.

12 25. Assuming an additional \$89,040 in annual revenue through the emergency interim
13 surcharge approved in Decision No. 70559 and issuance of the proposed \$140,000 loan amortized for
14 20 years at 5.25 percent, Staff determined that Mount Tipton would have a TIER of 1.84 and a DSC
15 of 2.71. Staff determined that this pro forma DSC shows that Mount Tipton's cash flow with the
16 emergency interim surcharge revenue will be sufficient to cover all obligations, including WIFA's
17 requirement to fund a "Debt Service Reserve Fund" equal to 20 percent of debt service. While we
18 recognize that the emergency interim surcharge will only exist, at the latest, until the effective date of
19 the decision in Mount Tipton's permanent rate case, we also believe that the rates and charges
20 adopted in that decision should take into consideration the cash flow necessary to cover all of Mount
21 Tipton's financial obligations.

22 26. A.A.C. R18-15-104 requires WIFA borrowers to pledge their revenue sources to repay
23 the financial assistance. According to Staff, pledging assets as security typically provides benefits to
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25 ⁷ TIER represents the number of times earnings cover interest expense on short-term and long-term debt. A TIER
greater than 1.0 means that operating income is greater than interest expense. A TIER less than 1.0 is not sustainable in
26 the long-term, but does not mean that debt obligations cannot be met in the short-term.

27 ⁸ DSC represents the number of times internally generated cash will cover required principal and interest payments on
short-term and long-term debt. A DSC greater than 1.0 indicates that cash flow from operations is sufficient to cover debt
28 obligations. A DSC less than 1.0 means that debt service obligations cannot be met by cash generated from operations
and that another source of funds is needed to avoid default.

1 the borrower by increasing access to capital funds or preferable interest rates, and it is often an
2 unavoidable condition for procurement of funds for small or financially stressed entities.

3 27. A.R.S. § 40-285 requires public service corporations to obtain Commission
4 authorization to encumber certain utility assets. Staff states that the statute protects captive customers
5 from a utility's disposing of any of its assets that are necessary for the provision of service and, thus,
6 serves to preempt any service impairment due to disposal of assets essential for providing service.

7 28. Staff believes that issuance of the proposed debt financing for the purposes stated in
8 the application is within Mount Tipton's corporate powers, is compatible with the public interest, will
9 not impair Mount Tipton's ability to provide service, and is consistent with sound financial practices,
10 if a portion of the emergency interim surcharge funds equal to the monthly debt service payment plus
11 an additional 20 percent for the Debt Service Reserve Fund required by WIFA is established as the
12 first priority use of the monthly emergency interim surcharge collections⁹ and as long as Mount
13 Tipton maintains compliance with the terms of the ARRA.

14 29. Staff recommends that Mount Tipton be authorized to incur an 18-to-22 year
15 amortizing loan in an amount not to exceed \$140,000, pursuant to a loan agreement with WIFA that
16 provides for 90 percent of the principal amount to become forgiven principal upon compliance with
17 the ARRA, and further recommends:

- 18 a. That the Commission authorize Mount Tipton to pledge its assets in the State
19 of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104 in connection
20 with the WIFA loan;
- 21 b. That Mount Tipton use best efforts and act in good faith to comply with all the
22 requirements of the ARRA and all requirements of WIFA in order to obtain the
23 90-percent forgivable principal;
- 24 c. That the Commission take the regulatory measures it deems appropriate if
25 Mount Tipton fails to use best efforts and to act in good faith to comply with
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27 ⁹ We understand this to mean that Mount Tipton would, each month, dedicate a portion of the emergency interim
28 surcharge funds collected that month to payment of the loan approved herein, which would leave the remaining
emergency interim surcharge funds collected each month available to pay for items authorized by Decision No. 70559, as
amended.

1 the ARRA, resulting in a reduction in the amount of the loan that would
 2 otherwise qualify as forgivable principal and in detrimental consequences to
 3 ratepayers;

- 4 d. That any authorization to incur debt granted in this proceeding terminate on
 5 December 31, 2012;
- 6 e. That Mount Tipton be authorized to engage in any transaction and to execute
 7 any documents necessary to effectuate the authorizations granted;
- 8 f. That Mount Tipton file with Docket Control, within 60 days of the execution
 9 of any financing transaction authorized herein, as a compliance item in this
 10 docket, a copy of the loan documents; and
- 11 g. That Mount Tipton file with Docket Control, by December 31, 2010, as a
 12 compliance item in this docket, copies of the Certificates of Approval of
 13 Construction issued by ADEQ for the proposed well upgrades and other system
 14 improvements.

15 30. Staff's pro forma analysis indicates that, when the revenues generated by the
 16 emergency interim surcharge are considered, Mount Tipton has the capacity to support the requested
 17 loan.

18 31. Staff's recommendations set forth in Findings of Fact No. 29 are reasonable and
 19 should be followed.

20 32. Mount Tipton historically has had difficulty complying with both Commission and
 21 ADEQ requirements. Because we are concerned that some of this difficulty may have been due to a
 22 lack of understanding on the part of Mount Tipton concerning what those requirements were, we
 23 believe that it is necessary and appropriate to require Mount Tipton to contact and consult with both
 24 WIFA and Staff regarding the ARRA requirements with which Mount Tipton must comply in order
 25 to obtain forgiveness of 90 percent of the principal for the loan approved herein.¹⁰ We also believe
 26 that it is appropriate to require Mount Tipton to file, as a compliance item in this docket, within 90

27 ¹⁰ By this requirement, we intend for Mount Tipton to consult with both WIFA and Staff regarding the ARRA
 28 requirements to the extent needed to make Mount Tipton confident that it understands all of the requirements for
 obtaining principal forgiveness and how it can comply with them.

1 days after the effective date of this Decision, a document detailing the contacts that Mount Tipton has
2 had with both WIFA and Staff and affirming that Mount Tipton is aware of the ARRA requirements
3 with which it must comply in order to obtain the principal forgiveness. We caution Mount Tipton
4 that its failure to use best efforts and to act in good faith to comply could result in its having to repay
5 the entire \$140,000 of the loan and could result in the Commission's disallowing recovery for
6 ratemaking purposes of the amount of the loan that would otherwise have qualified as forgivable
7 principal. Thus, it is imperative that Mount Tipton make every effort to understand the requirements
8 and to comply with them.

9 **CONCLUSIONS OF LAW**

10 1. Mount Tipton is a public service corporation within the meaning of Article XV of the
11 Arizona Constitution and A.R.S. §§ 40-285, 40-301, 40-302, and 40-303.

12 2. The Commission has jurisdiction over Mount Tipton and the subject matter of the
13 application.

14 3. Notice of the application was given in accordance with the law.

15 4. The financing approved herein is for lawful purposes within Mount Tipton's corporate
16 powers, is compatible with the public interest, with sound financial practices, and with the proper
17 performance by Mount Tipton of service as a public service corporation, and will not impair Mount
18 Tipton's ability to perform the service.

19 5. The financing approved herein is for the purposes described in Findings of Fact No. 13
20 and is reasonably necessary and appropriate for those purposes, and those purposes are not, wholly or
21 in part, reasonably chargeable to operating expenses or to income.

22 6. The purposes described in Findings of Fact No. 13 are authorized uses for the funds
23 generated by the emergency interim surcharge authorized by Decision No. 70559. Thus, payment of
24 the monthly debt service for the loan authorized herein, and payment of the additional 20 percent for
25 the Debt Service Reserve Fund required by WIFA, are authorized uses for the funds generated by the
26 emergency interim surcharge authorized by Decision No. 70559.

27 7. Staff's recommendations set forth in Findings of Fact No. 29 are reasonable and
28 should be adopted.

1 generated by the emergency interim surcharge are used only as authorized by Decision No. 70559.

2 IT IS FURTHER ORDERED that the finance authority granted herein is expressly contingent
3 upon Mount Tipton Water Co., Inc.'s use of the proceeds for the purpose of funding the items
4 described in Findings of Fact No. 13.

5 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. is authorized to pledge its
6 assets in the State of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104 in connection with
7 the loan approved herein.

8 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. is authorized to engage in
9 any transaction and to execute any documents necessary to effectuate the authorization granted
10 herein.

11 IT IS FURTHER ORDERED that the authorization to incur debt granted herein to Mount
12 Tipton Water Co., Inc. shall terminate on December 31, 2012.

13 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall, within 60 days after
14 the date of execution, file with Docket Control, as a compliance item in this docket, copies of all
15 executed financing documents related to the authorization granted herein.

16 IT IS FURTHER ORDERED that Mount Tipton Water Co., Inc. shall, by December 31,
17 2010, file with the Commission's Docket Control, as a compliance item in this docket, copies of the
18 Certificates of Approval of Construction issued by the Arizona Department of Environmental Quality
19 for the proposed well upgrades and other system improvements to be funded by the loan authorized
20 herein.

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1 IT IS FURTHER ORDERED that approval of the financing authorized herein does not
2 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
3 proceeds derived thereby for purposes of establishing just and reasonable rates.

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

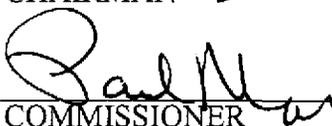
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

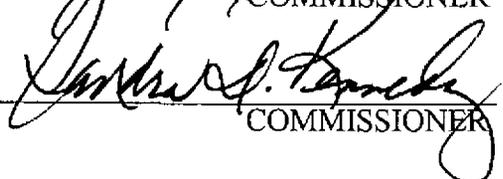


COMMISSIONER

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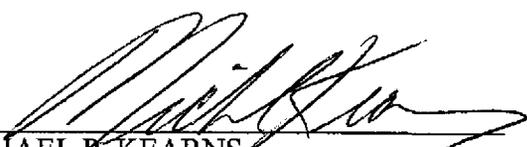
10 COMMISSIONER

COMMISSIONER



COMMISSIONER

11 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 10th day of JUNE, 2009.



16 MICHAEL P. KEARNS
17 INTERIM EXECUTIVE DIRECTOR

18
19 DISSENT _____

20 DISSENT _____

21 SNH:db

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

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3 DOCKET NO.: DOCKET NO. W-02105A-09-0145

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5 John Janik, President
6 Charlotte Cleveland, Business Manager
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