

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

Date: May 5, 2010

RE: **AMENDED STAFF REPORT** FOR CUP OF GOLD WATER COMPANY, INC., AN ARIZONA NON-PROFIT CORPORATION, - APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION (DOCKET NO. W-20637A-08-0560)

Attached is the Amended Staff Report for Cup of Gold's application for Adjudication Not a Public Service Corporation. Staff is recommending approval of this application.

EGJ:KMS:red

Originator: Kiana M. Sears

Arizona Corporation Commission

**DOCKETED**

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ARIZONA CORPORATION COMMISSION  
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Service List for: Cup of Gold Subdivision  
Docket No. W-20637A-08-0560

Mr. Ronald G. Mohney  
PO Box 679  
Sedona, Arizona 86336

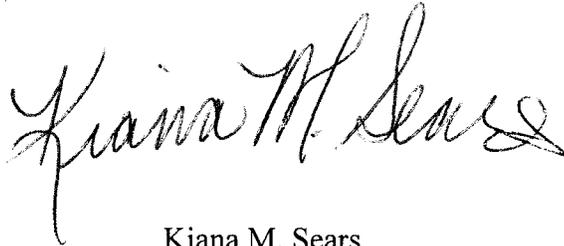
AMENDED STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

CUP OF GOLD WATER COMPANY, INC.  
AN ARIZONA NON-PROFIT CORPORATION  
APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION  
(DOCKET NO. W-20637A-08-0560)

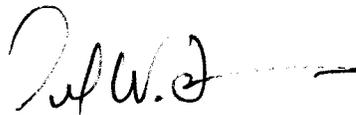
MAY 5, 2010

## STAFF ACKNOWLEDGMENT

The Amended Staff Report for Cup of Gold Water Company, Inc. (Docket No. W-20637A-08-0560) was the responsibility of the Staff members signed below. Kiana Sears was responsible for the review and analysis of the applications. Del Smith was responsible for the engineering and technical analysis.

A handwritten signature in cursive script that reads "Kiana M. Sears".

Kiana M. Sears  
Executive Consultant

A handwritten signature in cursive script that reads "Del Smith".

Del Smith  
Engineer Supervisor

**EXECUTIVE SUMMARY  
CUP OF GOLD WATER COMPANY, INC.  
DOCKET NO. W-20637A-08-0560**

On November 4, 2008, Cup of Gold Water Company, Inc. ("Cup of Gold" or the "Company") an Arizona Non-Profit Corporation filed an application with the Arizona Corporation Commission ("ACC" or "Commission"), in Docket No. W-20637A-08-0560, for Adjudication Not a Public Service Corporation.

Cup of Gold Water Company, Inc. is an Arizona Non-Profit Corporation established on January 10, 1955, for the purpose of serving water to the homeowners who reside in the Cup of Gold Subdivision. The Cup of Gold Subdivision has 39-lots. Twenty-five (25) lots receive service, 11 lots are currently undeveloped, and 3 lots are set aside for the facilities and equipment of the water Company. The homeowners of the Cup of Gold Subdivision are the sole shareholders of the water Company.

On September 1, 2009, Staff filed its Report and a hearing took place on October 28, 2009. During the proceedings the Company was ordered to provide Staff with specific information and supporting documentation so that Staff could further analyze the Company's application. The Company was ordered to provide Staff with the following: (1) Board meeting minutes authorizing the application in this matter, (2) copies of letters circulated to homeowners regarding the application, (3) amended by-laws of Cup of Gold, and (4) the Homeowners Associations Covenants, Conditions, and Restrictions ("CC&Rs"). Staff was also ordered to file an amended staff report analyzing: (1) whether the amended by-laws reflect Staff's recommendations, (2) whether the CC&Rs reflect the language from the Decision No. 55568 directives, (3) whether the articles of incorporation reflect the language from the Decision No. 55568 directives, (4) the Company's voting structure, and (5) whether a petition is sufficient in lieu of voting.

At the hearing the Company requested and Staff agreed to file an amended Staff Report by November 30, 2009. However, on November 24, 2009, because the Company did not provide Staff with sufficient supporting documentation, Staff filed a Motion for Extension of Time to File Amended Staff Report. On November 27, 2009 Staff was granted an extension of time to file the amended staff report until one month after receiving the required documentation and information from Cup of Gold. Staff continued to work with the Company explaining the information the Company needed to provide Staff to allow Staff to complete an amended Staff Report. Because Staff did not receive the necessary information, a formal data request was sent to the Company on December 23, 2009, detailing the required documents and information that remained outstanding.

On April 1, 2010, Staff received, from the Company, documentation that complied with the request from the Administrative Law Judge. The new CC&Rs created by the water Company contain the recommendations made by Staff (and comply with the Decision 55568 directives), including Staff's recommendations regarding reporting compliance. The CC&Rs also include language that directs the reader to the by-laws which clearly explains membership of the water

Company and voting rights. The Company has also provided Staff the amended Articles of Incorporation and restated By Laws. Staff recommends the Commission approve Cup of Gold's application for adjudication not a public service corporation.

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## **INTRODUCTION**

On November 4, 2008, Cup of Gold Subdivision submitted an application on behalf of Cup of Gold Water Company, Inc. ("Cup of Gold" or the "Company") an Arizona Non-Profit Corporation with the Arizona Corporation Commission ("ACC" or "Commission"), in Docket No. W-20637A-08-0560, for Adjudication Not a Public Service Corporation.

## **BACKGROUND**

Cup of Gold is an Arizona Corporation, in good standing with the Commission's Corporation Division. Cup of Gold was established on January 10, 1955, and its purpose as stated in the Cup of Gold Articles of Incorporation is:

*to establish and maintain a water supply and distribution system for the benefit of the residents of Cup of Gold Estates . . . and of such other property near or adjacent thereto as may be designated by the By Laws of this corporation; to aid and assist in the betterment of said properties and the supervision and enforcement of any restrictions and covenants in connection therewith; to perform all lawful acts and things incidental to or in any way connected with said purposes, including the acquisition and disposition of, and other-wise dealing with, real and personal property.<sup>1</sup>*

The homeowners of the Cup of Gold Subdivision are the sole shareholders of the water Company.

## **THE WATER SYSTEM**

The water system consists of a well, storage tanks and distribution system serving 25 metered connections. According to Arizona Department of Water Resources ("ADWR") records attached to the application, water is supplied by a single well equipped with 8-inch casing drilled to a depth of 760 feet having a design pump capacity of 30 gallons per minute. This flow rate should provide the system with adequate capacity.

## **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY ("ADEQ") COMPLIANCE**

ADEQ regulates the water system under Public Water System Identification No. 13-028. ADEQ has determined that this system is in compliance with its requirements and is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4.

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<sup>1</sup> Cup of Gold March 19, 1955 Articles of Incorporation, Article IV (see Company's Application, Attachment 2).

## **ADWR COMPLIANCE**

The water Company is not located within an ADWR Active Management Area (“AMA”), and consequently is not subject to AMA reporting and conservation requirements. ADWR reported that the water Company is currently in compliance with departmental requirements governing water providers and/or community water systems.

## **CUP OF GOLD’S COMPLIANCE WITH COMMISSION’S DIRECTIVES**

The Commission issued a directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. On April 1, 2010, the Company submitted a “Response to AZCC Data Request of 12/23/2009” (“Data Response”). Staff believes this Data Response contains documents meeting the criteria established in the Decision No. 55568 Directives.<sup>2</sup> Staff has evaluated Cup of Gold’s Application and supplemental documentation and finds that the following directives to be sufficiently met.

*Directive 1 – Adjudication was submitted by a non-profit homeowners association.*

Cup of Gold subdivision does not currently have a Homeowners Association. Therefore, the application was submitted by the Cup of Gold Water Company (“The Company” or “The Water Company”) on behalf of the homeowners. The Company is an incorporated non profit corporation is owned and operated by the residents of the Cup of Gold Subdivision.

Staff believes that the Exhibit C, 1970 CC&Rs, the first three paragraphs clearly demonstrates that the Water Company was granted the right to “declare and impose” covenants, restrictions and obligations of the residents of Cup of Gold Subdivision. This document was filed and recorded with Yavapai County, July 7, 1970. Despite the creation and the dissolution of a Property’s Owner Association, the Water Company has remained as the governing body for the Cup of Gold subdivision.

*Directive 2 – The application for adjudication not a public service corporation is a bonafide request by a majority of the membership of the association through a petition signed by 51 percent or more of the then existing members.*

Cup of Gold has submitted a petition with signatures of more than 51 percent of the residents of the Cup of Gold Subdivision.<sup>3</sup> Furthermore, the Water Company has updated its CC&Rs as of February 25, 2010 to reflect the following language found in paragraph 15 of the CC&Rs:

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<sup>2</sup> All exhibits Staff makes reference to in the directives discussion below are in reference to this Data Response.

<sup>3</sup> Data Response, Exhibit L.

*a. Each year during August, commencing in 2010, an officer of the Cup of Gold Water Company, Inc. must file annual certification that the Bylaws have not been changed to allow further subdivision of the 39 lots in the three Cup of Gold subdivisions adjudication area, to allow an increased number of memberships, to allow for expansion of the area to be served, or to change the equal voting requirements. Owners of multiple lots shall have only one vote. Anyone who is not a customer of the Water Company as defined in the Bylaws cannot be a member of the Water Company.*

*b. If, at any time, the bylaws are changed to allow further subdivision of the 39 lots in the adjudication area, to allow an increased number of memberships, to allow for expansion of the area to be serviced, or to change the equal voting requirements, Cup of Gold will file an application for a Certificate of Convenience and Necessity.<sup>4</sup>*

The Company's By Laws were also amended on February 15, 2010, adding the following language to Article XII:

*Anyone who is not a customer of the Cup of Gold Water Company, Inc. as defined in Article II cannot be a member of the Water Company.*

*The Cup of Gold Water Company, Inc. shall not increase its membership to exceed 39 either through subdivision of the existing 39 lots or expansion of the three Cup of Gold subdivisions or inclusion of other area to be served or change in the requirement that each customer as defined in Article II Section 1 has one and only one vote of Company membership representation. Owners with multiple lots shall have only one vote. The Covenants, Conditions and Restrictions of the Cup of Gold subdivision shall comply with this bylaw.<sup>5</sup>*

The Company has also provided the Commission with a copy of the signed petitions in this docket, which exceeds the 51 percent of residents signatures needed.<sup>6</sup> Staff believes the Company has sufficiently met the requirements of Directive 2.

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<sup>4</sup> Data Response, Exhibit D, paragraph 15.

<sup>5</sup> Data Response, Exhibit F, Article XII.

<sup>6</sup> Data Response, Exhibit L.

*Directive 3 – The association has complete ownership of the system and necessary assets.*

Cup of Gold Water Company, Inc. is owned in equal portions by the residents of the Cup of Gold subdivision.<sup>7</sup> Exhibit E of the data request demonstrates that the Water Company has the title to the property of the Water Company.

*Directive 4 – Every customer is a member/owner with equal voting rights and each member is or will be a customer.*

As noted previously in the Directive 2 discussion, the Company amended its by laws to limit ownership and voting rights to customers of the Company who own lots in the subdivision(s). The Company also amended Article II, Section 1 of the Company's By Laws to read:

*Section 1. QUALIFICATIONS. The Members of the corporation shall be all of the Lot Owners of the Cup of Gold subdivisions. There shall be one membership for each Lot. If there is more than one person who has an ownership interest in a Lot, the membership in the corporation attributed to such Lot shall be deemed to be owned by such persons in the same proportion to their ownership or interest in the Lot. If a person owns more than one Lot, such person shall have a membership for each Lot owned. Each Lot Owner shall automatically become a Member of the corporation upon becoming a Lot Owner and shall remain a Member until such time as his, her or its ownership in the Lot ceases. In terms of voting, each distinct lot owning person(s) or entity is deemed a single water company customer whether or not there is an active water connection and regardless of the number of persons owning the lot(s) or living in a house on a lot(s).<sup>8</sup>*

The Restated By Laws also state that the CC&Rs shall comply with the bylaws. Staff finds that the Company has sufficiently complied with Directive 4.

*Directive 5 – The service area involved encompasses a fixed territory, which is not within the service area of a municipal utility or public service corporation.*

Cup of Gold has stated that its service area encompasses a fixed territory which is not within the service area of a municipal utility or public service corporation. Furthermore, Staff has verified the location by the engineering maps attached to the original Staff Report.

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<sup>7</sup> Data Response, Exhibit F, Article XII.

<sup>8</sup> Data Response, Exhibit F, Article II, Section 1.

*Directive 6 – There is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.*

Provision 2 of the new CC&Rs found in Data Response, Exhibit D, prohibits further subdivision and is further supported by the limitations of the membership stated in the Bylaws in Exhibit F, Article XII.

*Directive 7 – Membership is restricted to a fixed number of customers, actual or potential.*

Directive 6 and Directive 7 were areas that Staff was ordered to give further analysis. The concerns included the 3 lots in which the Company's equipment current operates on and the owner, who owns 3 lots.

Exhibit F, Article XII, of the Company's new bylaws limits the membership to a maximum of 39 customers.

Staff finds this maximum acceptable because it allows for the circumstantial changes in the future, while maintaining a reasonable fixed number. There are 39 lots, which include the three lots that contain the Water Company's equipment. The Water Company does not have a vote or membership but the Company could potential sell a lot in the future. Allowing a maximum membership or potential membership of 39 would allow this change without a change to the Bylaws. Also, the owner with multiple lots could sell a property or properties and have the new residents eligible for membership. Currently, there are only 34 members and potential members of the Water Company.

Staff believes the requirements of the seven directives have been satisfied by the Company.

#### **STAFF RECOMMENDATIONS**

1. Staff recommends the Cup of Gold Water Company, Inc. a non-profit corporation be adjudicated not a public service corporation.
2. Staff recommends that Cup of Gold be advised of its continuing obligations under the applicable laws, regulations, and orders of other regulatory agencies, including, but not limited to, the Arizona Department of Environmental Quality, Arizona Department of Water Resources, and Yavapai County.