

OPEN MEETING ITEM



0000117968

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



ARIZONA CORPORATION COMMISSION

EXECUTIVE DIRECTOR
RECEIVED

2010 SEP -7 A 10: 58

DATE: SEPTEMBER 7, 2010

DOCKET NO.: W-01809A-10-0061

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

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

CAYETANO, INC. dba LAKEWOOD WATER COMPANY
(CC&N EXTENSION)

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:

SEPTEMBER 16, 2010

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:

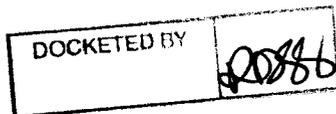
SEPTEMBER 21, 2010 and SEPTEMBER 22, 2010

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.

Arizona Corporation Commission

DOCKETED

SEP 7 2010



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **8BEFORE 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 APPLICATION OF
9 CAYETANO, INC. DBA LAKEWOOD WATER
10 COMPANY FOR AN EXTENSION OF ITS
11 EXISTING CERTIFICATE OF CONVENIENCE
12 AND NECESSITY FOR WATER SERVICE.

DOCKET NO. W-01809A-10-0061

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING:

August 5, 2010

10 PLACE OF HEARING:

Tucson, Arizona

11 ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

12 APPEARANCES:

13 Lawrence V. Robertson, Jr., on behalf of
14 Cayetano, Inc. d/b/a Lakewood Water
15 Company; and

16 Ms. Ayesha Vohra, Staff Attorney, Legal
17 Division, on behalf of the Utilities
18 Division of the Arizona Corporation
19 Commission.

17 **BY THE COMMISSION:**

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

20 **FINDINGS OF FACT**

21 1. On February 19, 2010, Cayetano, Inc. d/b/a Lakewood Water Company ("Lakewood"
22 or "Company") filed an application for a new Certificate of Convenience and Necessity ("CC&N" or
23 "Certificate") for the provision of water service to an unincorporated portion of Santa Cruz County,
24 Arizona ("Original Application").

25 2. On February 26, 2010, the Company filed an Amended Application requesting an
26 extension of its existing CC&N, rather than the issuance of a new Certificate.

27 3. On March 9, 2010, the Company filed its Second Amended Application in order to
28

1 correct an incomplete legal description (the Original Application, the Amended Application and the
2 Second Amended Application shall be collectively referred to as the "Application").

3 4. On March 17, 2010, the Commission's Utilities Division Staff ("Staff") notified the
4 Company that its Application was not sufficient pursuant to the Arizona Administrative Code
5 ("A.A.C.") ("Insufficiency Letter").

6 5. On March 26, 2010, Lakewood filed a copy of an Application and Petition for a
7 Franchise from Santa Cruz County.

8 6. On March 29, 2010, and April 5, 2010, Lakewood responded to Staff's Insufficiency
9 Letter.

10 7. On April 26, 2010, Staff notified the Company that its Application was sufficient.

11 8. By Procedural Order filed May 3, 2010, the matter was set for hearing at the
12 Commission's offices in Tucson, Arizona, and procedural guidelines and deadlines were established.

13 9. On May 7, 2010, the Company filed a Franchise from the Santa Cruz County Board of
14 Supervisors, dated April 28, 2010.

15 10. On May 29, 2010, Lakewood filed an Affidavit of Publication indicating that Notice
16 of the hearing had been published in the *Green Valley News and Sun* on May 19, 2010, and May 23,
17 2010, and also filed an Affidavit of Mailing indicating that the Company had mailed Notice of the
18 hearing to its customers by first class U.S. mail on May 13, 2010. No customer comments were
19 received in response to the Notice.

20 11. On July 1, 2010, Staff filed its Staff Report recommending the issuance of an Order
21 Preliminary to a grant of a CC&N subject to certain conditions.

22 12. On August 5, 2010, the hearing in this matter convened before a duly authorized
23 Administrative Law Judge and the parties appeared through counsel. No members of the public
24 appeared to provide comment. At the conclusion of the hearing, the matter was taken under
25 advisement pending the filing of late-filed exhibits.

26 13. On August 20, 2010, Lakewood filed a late-filed exhibit containing information about
27 the Best Management Practices ("BMPs") the Company proposes to implement in the requested
28 extension area.

1 14. The Commission approved Lakewood's original CC&N in Decision No. 33577
2 (December 19, 1961),¹ and its current rates were approved in Decision No. 68959 (September 21,
3 2006).

4 15. Lakewood is an Arizona 'C' corporation in good standing with the Commission's
5 Corporations Division. It is owned by Mr. Gary Smyth, who also manages Goodman Water
6 Company and who has an application pending before the Commission for purchase of the Tierra
7 Linda Homeowners Association, Inc.'s assets.² Mr. Smyth also owns Smyth Steel Manufacturing
8 d/b/a Smyth Utility Management, as well as Smyth Industries, which construct and install water
9 systems components for other Arizona water companies.³

10 16. According to the Staff Report, Lakewood provides water service to approximately 310
11 customers near the community of Amado in Pima County. Lakewood's current certificated area
12 consists of 485 acres.

13 17. Lakewood received a request for water service in the proposed extension area from
14 CA-TA ENT LLC, owned by John Thompson, by correspondence dated August 5, 2009, for the
15 Amado Business Park development ("Park"),⁴ consisting of approximately 16.54 acres, and located in
16 Santa Cruz County approximately 1.5 miles south of the Company's current certificated area.
17 According to the Company, sewer service in the area will be through use of septic systems.⁵ The
18 legal description of the proposed extension area is attached as Exhibit 'A'. The Park is not located
19 within the municipal boundaries of a city or town and there are no water or wastewater public service
20 corporations with one mile of the Park.⁶

21 18. The Company expects the types of businesses that may occupy the Park might include
22 businesses such as furniture, tile, flooring, Mexican import and plumbing supplies stores.⁷ The
23 owner of the Park will occupy a large lot that will be used for an RV storage business. Mr.

24 _____
25 ¹ The CC&N was transferred to Cayetano, Inc. d/b/a Lakewood Water Company in Decision No. 47461 (November 12,
1976).

26 ² Docket No. W-20689A-09-0327.

27 ³ Company witness Lisa Sullivan, Vice President of Lakewood, testified Mr. Smyth's entities installed the arsenic
treatment facilities for Las Quintas Serenas Water Company. Tr. at 29.

28 ⁴ Exhibit A-9.

⁵ Tr. at 21.

⁶ Exhibit A-1, Original Application, page 8.

⁷ Tr. at 14.

1 Thompson testified that there will be no water hook-up or dump tank facilities for those storing their
2 RVs.⁸ The current design for the Park consists of eleven lots.⁹

3 19. Lakewood's current water system consists of two wells, two 5,000 gallon pressure
4 tanks, and a distribution system. Because the proposed extension area is approximately 1.5 miles
5 south of Lakewood's current certificated area, the Park's system will not be interconnected to
6 Lakewood's current system. The proposed facilities for the Park include one 35 gallons per minute
7 ("gpm") well and appurtenances, one 60,000 gallon storage tank, one 850 gpm booster pump station,
8 8-inch and 6-inch transmission mains and related distribution facilities. Staff concludes that the
9 proposed water system will have adequate production and storage capacity to serve the proposed
10 CC&N extension area.

11 20. The costs of the proposed facilities are estimated at \$318,750. Staff reviewed the cost
12 estimates from the Company for facilities to serve the extension area and found them to be
13 reasonable. However, Staff concluded that no "used and useful" determination of the proposed plant
14 facilities has been made and, as such, no particular treatment should be inferred for rate-making or
15 rate base purposes.

16 21. In order to finance the construction of the water system facilities, Lakewood expects
17 that it will use a combination of funds provided by the developer of the Park in the form of advances
18 in aid of construction and common equity.¹⁰

19 22. According to the Application, the developer is currently in the process of obtaining a
20 service area right of withdrawal pursuant to the Arizona Groundwater Code and the applicable
21 regulations of the Arizona Department of Water Quality ("ADWR"). According to the Application,
22 once this right of withdrawal has been established, the well will be drilled. As stated in the
23 Application, "[a]t present, the developer anticipates that commencement of construction should occur
24 no later than July 1, 2011; and, completion of construction should occur no later than January 1,
25 2012."¹¹

26 _____
27 ⁸ Tr. at 15-17.

⁹ Exhibit A-15.

¹⁰ Exhibit A-1, Original Application, page 4.

¹¹ *Id.*, pages 5-6.

1 23. The developer has also applied with ADWR for a Certificate of Assured Water Supply
2 (“CAWS Application”) for the Park, which is currently being reviewed by ADWR’s Office of
3 Assured and Adequate Water Supply.¹²

4 24. Staff states that Lakewood has not received an Arizona Department of Environmental
5 Quality (“ADEQ”) Certificate of Approval to Construct (“ATC”) for the facilities needed to serve the
6 requested extension area.¹³

7 25. Lakewood’s existing system is regulated by ADEQ under ADEQ Public Water System
8 I.D. #10-063. Staff states, based on a Compliance Status Report dated May 3, 2010, the Company’s
9 system has no deficiencies and ADEQ has determined that this system is currently delivering water
10 that meets water quality standards required by 40 CFR 141/A.A.C., Title 18, Chapter 4.¹⁴

11 26. Lakewood is located within the Santa Cruz Active Management Area. According to
12 Staff, at the time of the Application, Lakewood was not in compliance with ADWR requirements
13 governing water providers and/or community water systems. Staff notes that according to ADWR, as
14 of April 19, 2010, Lakewood had not filed its 2009 Annual Water Withdrawal and Use Reports.¹⁵

15 27. Every applicant for a CC&N and/or CC&N Extension is required to submit to the
16 Commission evidence showing that the applicant has received the required consent, franchise or
17 permit from the proper authority. If the applicant operates in an unincorporated area, the company
18 has to obtain a franchise from the county. At the time the Application was filed, Lakewood had not
19 obtained a Franchise from Santa Cruz County.

20 28. According to the Utilities Division Compliance Section, Lakewood has no outstanding
21 Commission compliance issues.

22 29. The Company has an approved Curtailment Tariff and an approved Backflow Tariff
23 for its existing water system.

24 ...

25 ...

26 _____
27 ¹² *Id.*, page 6.

¹³ Exhibit S-1, Staff Report, Attachment A, page 3.

¹⁴ *Id.*

28 ¹⁵ *Id.*

1 Staff Recommendations

2 30. In its Staff Report, Staff recommended that the Commission issue to Lakewood an
3 Order Preliminary to the extension of its CC&N for the proposed area. According to Staff, the Order
4 Preliminary is necessary in this matter because of the number and timing of the approvals it needs
5 before it can begin construction of the system within an AMA.¹⁶

6 31. Staff recommends that if Lakewood is subsequently granted the CC&N extension, the
7 Company be required to charge its authorized rates and charges in the extension area.

8 32. Staff recommends that before the Commission grant the CC&N extension, Lakewood
9 must comply with the following conditions:

10 a) Lakewood shall file with Docket Control, as a compliance item in this docket,
11 no later than December 31, 2010, a copy of the letter or notice issued by ADWR
12 indicating that the Company is in full compliance with ADWR regulations.

13 b) Lakewood shall file with Docket Control, as a compliance item in this docket,
14 a copy of the developer's Certificate of Assured Water Supply demonstrating that
15 there is adequate water for the requested area, within four years of the effective date of
16 this Decision.

17 c) Lakewood shall file with Docket Control, as a compliance item in this docket,
18 a copy of the ATC for the Park's water system, within four years of the effective date
19 of the Decision.

20 d) Lakewood shall file with Docket Control, as a compliance item in this docket,
21 a copy of Santa Cruz County franchise agreement for the requested area, within four
22 years of the effective date of this Decision.

23 e) Once Lakewood complies with requirements a-d, above, Lakewood shall file a
24 motion in the docket requesting that the Commission grant the CC&N for the
25 requested area. Within 30 days of this filing, and on Staff's verification that
26 Lakewood has satisfied these requirements, Staff shall prepare and docket a
27 Recommended Order granting the CC&N for the requested area for Commission
28 approval. If Lakewood fails to comply with any one of these requirements within the
time specified, the Order Preliminary shall be null and void, and Staff shall file a
memorandum to close this docket.

33. On May 7, 2010, Lakewood filed a Franchise from the Santa Cruz County Board of
Supervisors.¹⁷ At hearing, Staff stated that Lakewood has complied with requirement (d), above, and
Staff withdraws that recommendation.¹⁸

¹⁶ Tr. at 77-78.

¹⁷ Exhibit A-10.

¹⁸ Tr. at 75-76.

1 34. Also at hearing, Lakewood provided a copy of an ADWR Water Provider Compliance
2 Status Report noting that as of August 3, 2010, ADWR has determined that Lakewood Water
3 Company is currently compliant with departmental requirements governing water providers and/or
4 community water systems.¹⁹ Staff testified that Lakewood has complied with requirement (a), above,
5 and Staff withdraws that recommendation.²⁰

6 35. Lakewood stated that it has no objections to Staff's remaining recommendations.

7 36. Staff's remaining recommendations are reasonable and should be adopted.

8 37. Ms. Sullivan testified that there will be no parks, recreation, areas, golf courses, green
9 belts, ornamental lakes or other water features as part of the Park, and the Company does not intend
10 to use any surface water or reclaimed wastewater to serve any of the commercial tenants.²¹

11 38. On August 20, 2010, Lakewood filed a late-filed Exhibit, which is a Memorandum
12 addressing what BMPs the Company proposes to implement within the proposed certificated area.
13 According to the Company, the suggested BMPs are a) Xeriscape landscaping, b) low water use
14 fixtures, c) public education, d) outreach services—customer high water use notification, e)
15 systematic water system audits, and f) tracking unsold and unaccounted for water.²²

16 39. The Commission has become increasingly concerned about the prolonged drought in
17 Arizona. While the Company has stated that its development project will not include any parks,
18 recreation areas, golf courses, green belts, ornamental lakes or other water features, the Commission
19 remains concerned that any future changes to these plans could result in the use of groundwater for
20 these purposes. We believe that in light of the ongoing need to conserve groundwater, Lakewood
21 should be prohibited, in accordance with its stated plans, from selling groundwater for the purpose of
22 irrigating any golf courses within the certificated area or any ornamental lakes or water features
23 located in the common areas of the proposed new developments within the certificated area.

24 40. Although Lakewood is located in the Santa Cruz Active Management Area, because
25 the proposed Amado Business Park project is being subdivided with fewer than 50 lots, the project is

26 _____
27 ¹⁹ Exhibit A-14.

²⁰ Tr. at 75-76.

²¹ Tr. at 40-41.

28 ²² Exhibit A-19

1 exempt from meeting the Consistency with Management Plan requirements within ADWR
 2 application for Certificate of Assured Water Supply.²³ Nevertheless, in light of the prolonged
 3 drought in Arizona, we believe it is reasonable to require Lakewood to implement the six BMPs as
 4 outlined in Exhibit A-19. Therefore, we will require Lakewood to file with Docket Control, as a
 5 compliance item in this docket, within 90 days of the effective date of this Decision, a list identifying
 6 the six BMPs outlined in Exhibit A-19, which it must implement concurrent with commencement of
 7 water service to its first permanent customer.

CONCLUSIONS OF LAW

- 8
- 9 1. Lakewood is a public service corporation within the meaning of Article XV of the
 10 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 11 2. The Commission has jurisdiction over Lakewood and the subject matter of the
 12 Application.
- 13 3. Notice of the Application was provided in accordance with law.
- 14 4. There is a public need and necessity for water service in the proposed service area as
 15 set forth in Exhibit A attached hereto, necessitating the issuance of an Order Preliminary to the
 16 issuance of a CC&N pursuant to A.R.S. § 40-282(D).
- 17 5. Lakewood is a fit and proper entity to receive an Order Preliminary to the issuance of
 18 a CC&N to provide water service in the proposed service area as set forth in the attached Exhibit A.
- 19 6. Staff's recommendations as set forth herein are reasonable and should be adopted.

ORDER

20

21 IT IS THEREFORE ORDERED that, pursuant to A.R.S. § 40-282(D), an Order Preliminary
 22 to the issuance of the Certificate of Convenience and Necessity to Cayetano, Inc. d/b/a Lakewood
 23 Water Company for the proposed extension area described in attached Exhibit A is granted subject to
 24 the terms and conditions stated below.

25 IT IS FURTHER ORDERED that Cayetano, Inc. d/b/a Lakewood Water Company shall file
 26 with Docket Control, as a compliance item in this docket, within four years of the effective date of
 27

28 ²³ *Id.*

1 this Decision, copy of the developer's Certificate of Assured Water Supply demonstrating that there
2 is adequate water for the extension area.

3 IT IS FURTHER ORDERED that Cayetano, Inc. d/b/a Lakewood Water Company shall file
4 with Docket Control, as a compliance item in this docket, within four years of the effective date of
5 this Decision, a copy of the ADEQ Approval to Construct the facilities needed to serve extension
6 area.

7 IT IS FURTHER ORDERED that if Cayetano, Inc. d/b/a Lakewood Water Company fails to
8 comply with the terms set forth in the above ordering paragraphs, this Order Preliminary shall be
9 deemed null and void, and Staff shall file a memorandum to close this docket.

10 IT IS FURTHER ORDERED that upon completion of the requirements contained in the
11 above ordering paragraphs, Cayetano, Inc. d/b/a Lakewood Water Company shall file a motion in this
12 docket requesting that the Commission grant the Certificate of Convenience and Necessity.

13 IT IS FURTHER ORDERED that within 30 days after Cayetano, Inc. d/b/a Lakewood Water
14 Company files it motion requesting the issuance of a CC&N, and on Staff's verification that the
15 Company has satisfied the above conditions, Staff shall prepare and docket for Commission approval
16 a Recommended Order granting the Certificate of Convenience and Necessity.

17 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity issued to
18 Cayetano, Inc. d/b/a Lakewood Water Company in this docket shall be subject to the following
19 conditions stated below.

20 IT IS FURTHER ORDERED that Cayetano, Inc. d/b/a Lakewood Water Company shall
21 charge its authorized rates and charges in the extension area.

22 IT IS FURTHER ORDERED that Cayetano, Inc. d/b/a Lakewood Water Company is hereby
23 prohibited, in accordance with its stated plans, from selling groundwater for the purpose of irrigating
24 any golf courses within the certificated area or any ornamental lakes or water features located in the
25 common areas of the proposed new developments within the certificated area.

26 ...

27 ...

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that Cayetano, Inc. d/b/a Lakewood Water Company shall file with Docket Control, as a compliance item in this docket, within 90 days of the effective date of this Decision, a list identifying the six Best Management Practices outlined by the Company, which it will implement concurrent with commencement of water service to its first permanent customer

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

CAYETANO, INC. DBA LAKEWOOD WATER
COMPANY

2
3 DOCKET NO.:

W-01809A-10-0061

4 Lawrence V. Robertson, Jr.
5 P. O. Box 1448
6 Tubac, AZ 85747

7 Janice Alward, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

12 Steven M. Olea, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007

17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

PARCEL DESCRIPTION

Description based upon the survey depicted in this plan set.

DESCRIPTION of property located on the East side of the East Frontage Road of Interstate 19 in Section 12, Township 20 South, Range 12 East, Gila and Salt River Meridian, Santa Cruz County, Arizona, being a portion of Lot 3 - the fractional Northeast Quarter of the Southeast Quarter of Section 12 - more particularly described as follows:

COMMENCING at a ½" rebar tagged "RLS 32233" at the Southeast corner of said Section 12;

THENCE N 00°23'49" W a distance of 1562.59 feet along the east line of Section 12 to a ½" iron rod tagged "AZ RLS 45856" at the Southeast corner of the parcel being described, said ½" iron rod being the TRUE POINT OF BEGINNING;

THENCE S 84°08'31" W a distance of 962.17 feet to a 1/2" iron rod tagged "AZ RLS 45856", said line passing through a ⅝" iron rod 9.90 feet from its point of commencement;

THENCE N 86°04'28" W a distance of 98.27 feet to a 1/2" iron rod tagged "AZ RLS 45856" on the east line of the East Frontage Road of Interstate 19;

THENCE N 00°27'34" W a distance of 207.24 feet along the east line of the East Frontage Road to a 1/2" iron rod tagged "AZ RLS 45856" at a point of curvature at Station 1490+98.55 of the 1953 Arizona Highway Department Right of Way Layout for the Tucson-Nogales Highway;

THENCE in a northerly direction by a curve concave to the east having a central angle of 02°39'05", a radius of 11,359.17 feet and a length of 525.66 feet along the east line of the East Frontage Road to a point bearing N 89°44'06" E 1.63 feet from a ⅝" iron rod tagged "PE 4670";

THENCE N 89°44'06" E a distance of 1044.53 feet passing through a ⅝" iron pin tagged "PE 4670" to an iron rod tagged "AZ RLS 45856";

THENCE S 00°23'49" E a distance of 632.70 feet along the east line of said Section 12 to the TRUE POINT OF BEGINNING.

The above described parcel contains 16.54 acres more or less.