



BEFORE THE ARIZONA CORPORATION CO.

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COMMISSIONERS

Arizona Corporation Commission

DOCKETED

SEP 28 2010

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

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IN THE MATTER OF THE APPLICATION OF PAYSON WATER COMPANY ON BEHALF OF ITS MESA DEL CABALLO SYSTEM FOR APPROVAL OF A WATER AUGMENTATION SURCHARGE/EMERGENCY RATE TARIFF.

DOCKET NO. W-03514A-10-0116

IN THE MATTER OF THE NOTICE OF FILING OF PAYSON WATER COMPANY'S PROPOSED CHANGES TO ITS CURTAILMENT TARIFF (MESA DEL CABALLO SYSTEM).

DOCKET NO. W-03514A-10-0117

DECISION NO.: 71902

OPINION AND ORDER

- DATE OF PRE-HEARING CONFERENCE: May 17, 2010
- DATE OF HEARING: May 18, 2010
- PLACE OF HEARING: Phoenix, Arizona
- ADMINISTRATIVE LAW JUDGE: Marc E. Stern
- APPEARANCES:
  - Mr. Patrick J. Black, FENNEMORE CRAIG, on behalf of Payson Water Company;
  - Mr. Randy Norman, Co-chairman, Mesa Del Caballo Water Committee, Intervenor; and
  - Ms. Kimberly Ruht, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On March 31, 2010, Payson Water Company ("PWC," "Applicant," or "Company") on behalf of its Mesa Del Caballo System ("MDC") filed with the Arizona Corporation Commission ("Commission") an application for the emergency implementation of a water augmentation surcharge or emergency rate tariff due to water shortages on its MDC System. The Company claims that it can no longer augment the water supply for its MDC System and asserts that, in 2009, the Company absorbed \$59,137 in water hauling costs for the MDC System. The Company seeks a monthly water

1 augmentation surcharge/emergency rate tariff to be charged per 1,000 gallons of water for customers  
2 on the MDC System in order to offset the Company's costs for hauling water. The Company is  
3 investigating two options to solve its water shortages on the MDC System by either drilling a new  
4 deep well to serve the MDC System or by connecting the MDC System to the future C.C. Cragin  
5 Reservoir water pipeline that will serve the Town of Payson ("Town") water system in the future.

6 The Company, concurrently with the aforementioned application, also filed a request for  
7 Commission approval of proposed revisions to its Curtailment Tariff solely for its MDC System. The  
8 Company indicated that the proposed revisions to its Curtailment Tariff are not to go into effect  
9 unless the Commission approves the implementation of the emergency water augmentation surcharge  
10 requested herein.

11 On April 5, 2010, the Company filed a Motion to Consolidate ("Motion") the above-captioned  
12 applications because the two matters are interrelated and could best be addressed by the Commission  
13 in one proceeding. There were no objections filed to the Company's Motion.

14 On April 22, 2010, by Procedural Order, the proceedings were consolidated and a hearing  
15 scheduled for May 18, 2010, to determine if an emergency existed pursuant to Attorney General  
16 Opinion No. 71-17 and whether a water augmentation surcharge/emergency rate should be approved.  
17 It was also ordered that public notice be given of the pending application, the hearing, the right to  
18 intervene and the proposed amount of the surcharge.

19 On April 28, 2010, the Mesa Del Water Committee ("MDWC") filed a Motion to Intervene.

20 On April 30, 2010, by Procedural Order, MDWC was granted intervention.

21 On May 14, 2010, the Company filed certification that it had provided public notice pursuant  
22 to the Commission's April 22, 2010, Procedural Order.

23 On May 18, 2010, a full public hearing was held at the Commission's offices in Phoenix,  
24 Arizona. The Company and Staff appeared with counsel. MDWC appeared and was represented by  
25 its co-chairman. A customer of the Company appeared and gave public comment. Subsequently, it  
26 was determined that although public notice had been given of the proceeding by the Company, the  
27 proposed level of the surcharge was not disclosed to its customers. The presiding Administrative  
28 Law Judge ("ALJ") indicated that the record would remain open and directed Applicant to re-notice

1 customers on the MDC system of the proceeding, their right to intervene, the level of the proposed  
2 surcharge and that the hearing could be re-opened for the taking of additional evidence, if sufficient  
3 reason existed.

4 On May 28, 2010, the Company, after meeting with Staff, filed a proposed form of notice to  
5 be approved by the presiding ALJ prior to its publication and mailing to re-notice customers of the  
6 proceeding.

7 On June 2, 2010, by Procedural Order, the Company was ordered to provide additional notice  
8 to its customers on the MDC System by both publication and by mailing notice to each customer of  
9 the system on or before June 11, 2010, in accordance with the approved form of notice set forth in the  
10 June 2, 2010, Procedural Order. Pursuant to the Procedural Order, persons or entities affected by the  
11 proceeding had until June 25, 2010, to file for intervention.

12 Additionally, on June 2, 2010, the Company filed notice of the filing of a late-filed exhibit  
13 which consisted of revisions to the proposed changes to the Curtailment Tariff for the Company's  
14 MDC System in a form agreed upon between the parties who were in attendance at the hearing on  
15 May 18, 2010. The revisions address Staff's concerns with respect to indoor usage and conservation  
16 by customers.

17 On June 4, 2010, Staff filed what was captioned "Staff's Notice of No Objection" to the  
18 revised Curtailment Tariff which had been late-filed by the Company. Therein, Staff indicated that it  
19 had no objections to the revised Curtailment Tariff filed subsequent to the hearing.

20 On June 18, 2010, the Company filed certification that it had provided public notice by both  
21 publication and by mailing to its customers on the MDC System of the approved form of notice as set  
22 forth in the Commission's June 2, 2010, Procedural Order. Subsequent to the supplemental notice by  
23 the Company, the Commission has received a number of comments from customers of the MDC  
24 System voicing their concerns. The Commission has not received any further requests for  
25 intervention or to re-open the hearing in the proceeding.

26 On July 9, 2010, by Procedural Order, the record in the proceeding was closed and the matter  
27 taken under advisement pending submission of a Recommended Opinion and Order to the  
28 Commission.

1 \* \* \* \* \*

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

4 **FINDINGS OF FACT**

5 1. Pursuant to authority granted by the Commission, the Company provides water service  
6 to an area in the vicinity of Payson, Arizona.

7 2. The Company's present rates and charges were approved by the Commission in  
8 Decision No. 62401 (March 28, 2000).

9 3. MDC is one of nine independent water systems operated by PWC in Gila County and  
10 has approximately 370 service connections on the MDC System.

11 4. On May 5, 2005, the Commission issued Decision No. 67819 and denied a previous  
12 application by PWC for a water augmentation surcharge tariff for all of its systems. However, in  
13 Decision No. 67821, the Commission approved a Curtailment Plan Tariff for all of Applicant's  
14 systems. Decision No. 67821 further authorized the Company under Stages 3, 4 and 5 of its  
15 Curtailment Tariff to disconnect customers who did not conserve water and to impose financial  
16 penalties for reconnection to enforce mandatory conservation of water when more stringent measures  
17 were in effect.

18 5. The Commission denied the previous application by PWC for approval of a water  
19 augmentation surcharge tariff because it concluded that the requested surcharge was not revenue  
20 neutral and could only be considered in the context of a rate case filing.

21 6. On March 31, 2010, the Company filed on behalf of its MCD System an application  
22 for the emergency implementation of a water augmentation surcharge/emergency rate tariff due to  
23 water shortages on its MDC System. Additionally, the Company filed a request for the  
24 Commission's approval of proposed changes to its Curtailment Tariff solely for its MDC System and  
25 increased enforcement penalties for Stages 3, 4 and 5 during a curtailment.

26 7. In its application for the emergency implementation of a water augmentation  
27 surcharge, the Company alleged that it could no longer afford to pay for bulk water purchases and  
28 water hauling for its MDC System and stated that, in 2009, the Company absorbed \$59,137 in water

1 hauling costs for this system.

2 8. The Company is seeking a monthly surcharge which would recover the water hauling  
3 costs based on a customer's water usage in the previous month per 1,000 gallons. The period that the  
4 surcharge could be imposed is to run during the peak summer months from May 1<sup>st</sup> through  
5 September 30<sup>th</sup>.

6 9. On May 10, 2010, Staff, after conducting an investigation of the Company's proposed  
7 water augmentation surcharge and the proposed changes to its Curtailment Tariff, recommended  
8 approval of the water augmentation surcharge tariff on an interim basis until permanent rate relief is  
9 granted by the Commission. Staff further recommended that the Company's proposed changes to its  
10 MDC System Curtailment Tariff be approved subject to Staff's amendments.

11 10. On May 14 and June 18, 2010, the Company filed certification that it had provided  
12 notice of the above-captioned proceedings consistent with the Commission's Procedural Orders.

13 11. According to Myndi Brogdon, the Company's Customer Relations Representative,  
14 MDWC was established by members of the El Caballo Club, which is a club for residents of the  
15 Mesa Del Caballo subdivision, and is located in the MDC service area. The MDWC actively sought  
16 out Ms. Brogdon and Mr. Robert Hardcastle, the Company's president, in the fall of 2009 to address  
17 the problems related to water shortages on the MDC System.

18 12. The MDWC played an active part in the preparation of the changes proposed for the  
19 Curtailment Plan Tariff for the MDC System.

20 13. In order to inform customers on the MDC System of the proposed emergency  
21 augmentation surcharge and the changes to the Company's Curtailment Tariff for the MDC System,  
22 the Company held four meetings with customers on April 8 and 10, 2010.

23 14. During these meetings, discussions were held to inform the customers of what it  
24 would cost the Company to haul water in the event of water shortages.

25 15. According to Ms. Brogdon, the Company will be able to augment its water supply  
26 with water purchased from the Town for approximately seven dollars per 1,000 gallons and the Town  
27  
28

1 has agreed to supply up to 86,400 gallons of water per day, if needed on a temporary basis.<sup>1</sup>

2 16. Ms. Brogdon termed the augmentation surcharge to be a revenue neutral/pass-through  
3 cost.

4 17. In support of its request herein, the Company submitted a petition signed by 96  
5 residents who are customers of the MDC System and who support the Company's efforts to develop  
6 additional water supplies.<sup>2</sup>

7 18. The co-chairman of the MDWC, Mr. Randy Norman, testified in support of the  
8 Company's requests in this proceeding. He believes that the customers of the MDC System  
9 overwhelmingly support the idea of water being available at a higher price if it has to be hauled.

10 19. Mr. Robert Hardcastle, the President of the Company and its parent, Brooke Utilities,  
11 testified that the Company experienced difficulties during the summer of 2009 and water hauling  
12 became necessary costing the Company \$59,137.

13 20. According to Mr. Hardcastle, the Company cannot continue to absorb excessive  
14 expenses due to the cost of water hauling for the MDC System.

15 21. Mr. Hardcastle related that the Company's best long-term option is to construct an  
16 interconnection in the vicinity of the Mesa Del Caballo subdivision with the pipeline from the C.C.  
17 Cragin Reservoir which it is anticipated will be constructed sometime between 2013 and 2015 to  
18 provide water to the Town.

19 22. In terms of a short-term solution, the MDWC and the Company resolved that hauling  
20 water funded by the augmentation surcharge and educating the Company's customers to conserve  
21 their water usage were the best short-term solutions.

22 23. Mr. Hardcastle is requesting that the surcharge coincide with the summer season from  
23 the beginning of May through September. He further requested that the implementation of the  
24 surcharge be made retroactive to May 1, 2010.

25 24. Mr. Hardcastle further related that the Company did not file its application for the  
26

27 <sup>1</sup> Due to the MDC System's proximity to the Town, the Company anticipates that water hauling costs will be reduced this  
year over the costs previously incurred primarily due to the short distance and time required for hauling water.

28 <sup>2</sup> After the re-notification of the proceeding to customers on the MDC System, two residents' names were removed by the  
Company at their request.

1 surcharge until March 31, 2010, because the Company wished to work with the MDWC and this  
2 required a number of meetings and discussions in order to come up with a plan upon which the  
3 parties agreed.

4 25. According to Mr. Hardcastle, MDWC was actively involved in the preparation, review  
5 and drafting of the Company's proposed revisions to its Curtailment Tariff.

6 26. Although the Company had proposed changes to the original Curtailment Tariff  
7 approved in Decision No. 67821 which were more stringent than those originally approved by the  
8 Commission, after meeting and working with Staff and MDWC after the hearing on June 2, 2010, the  
9 Company filed a late-filed exhibit which contains revisions to its proposed Curtailment Tariff for its  
10 MDC System, and which addresses the concerns raised by Staff in its report and discussed during the  
11 hearing. A copy of the amended Curtailment Tariff is marked Exhibit "A," attached hereto, and  
12 incorporated herein by reference.

13 27. The amended Curtailment Tariff for the MDC System that was filed by the Company  
14 incorporates modifications and addresses the parties' concerns as follows:

- 15 • Customers who use 4,000 gallons per month or less based on a 12-month  
16 rolling average are exempt from the mandatory reduction in daily use  
17 requirements triggered in Stages 3, 4 or 5 of any curtailment. The purpose of  
18 this exemption is that customers using 4,000 gallons per month or less are  
19 more likely to have already utilized water conservation measures, and a further  
20 reduction in water use is likely to impact basic water needs.
- 21 • Specific prohibitions against indoor water use have been eliminated. This  
22 addresses Staff's concerns about mandatory reductions in basic water use  
23 needs for the continued health and safety of customers.
- 24 • The requirement that a customer must face automatic fines and penalties for  
25 violation of the Curtailment Tariff has been changed to provide the Company  
26 flexibility in determining whether such fines and penalties are warranted. This  
27 addresses Staff's concerns that a violation of the Curtailment Tariff might be  
28 the result of a water leak, or something else beyond the customer's control,  
making an automatic assessment of fines and penalties unwarranted in certain  
circumstances.
- The definition of 'daily use' has been modified. Under the newly proposed  
language, percentage reductions (based on the applicable Stage) are taken from  
the higher of: (a) the immediately preceding month's actual water  
consumption, or (b) water consumption for the same month in any one of the  
two previous years for the same service location. This language was inserted to  
address Staff's concern over the possible confusion a customer might have  
over the 'daily use' calculation, as well as the potential inequity if applied to  
seasonal use customers. The example provided has also been clarified.

1           28.     On June 4, 2010, Staff filed notice that it did not have any objections with the  
2 amended Curtailment Tariff as set forth in Exhibit "A" and filed by the Company on June 2, 2010.

3           29.     The Company will monitor customers who are identified as high water users and will  
4 contact them to encourage them to conserve water in light of its proposed curtailment plan, since the  
5 Company understands that high water usage creates the need for water hauling and increases the cost  
6 for all customers, not just excessive water users.

7           30.     According to Mr. Hardcastle, MDWC was instrumental in fashioning the proposed  
8 Curtailment Tariff for the MDC System and in determining the reconnection penalty fees in order to  
9 discourage customers from wasting water.

10          31.     Aside from the utilization of the Curtailment Tariff which will be used to encourage  
11 water conservation, the Company also has explored another short-term plan which entails running an  
12 above-ground pipeline from a water source provided under agreement with the Town approximately  
13 1.5 miles away to interconnect with the MDC water system. However, there are numerous problems  
14 with this proposal because the pipeline would have to be routed across lands which are controlled by  
15 the U.S. Forest Service, and this will require a number of studies to be completed taking one to two  
16 years to complete before construction could take place.

17          32.     If the above-ground pipeline is utilized in the future, the Company will rent the  
18 pipeline from a California company, Rain 4 Rent, at a cost of \$9,000 per month for the five month  
19 water augmentation period for a total of \$45,000.

20          33.     Additionally, the Company has looked into the drilling of a well, but it does not yet  
21 have an understanding of the costs involved and what it would require from the Company in the form  
22 of an investment and what it would ultimately cost customers.

23          34.     As of the date of the hearing in this proceeding, May 18, 2010, the Company had not  
24 yet been required to purchase and haul water from the Town.

25          35.     In the past, the Company has collected a few fines from customers who have violated  
26 the Curtailment Tariff and deposited those monies into a segregated impound account for use in water  
27 conservation and water development costs. Additionally, the Company does not oppose any funds  
28 collected from the MDC System's customers as a penalty being deposited and applied to offset any

1 water augmentation costs incurred by the Company in order to reduce the amount of the monthly  
2 surcharge for all MDC System customers.

3 36. According to the Staff Report filed on May 10, 2010, the Company's proposed  
4 revisions to its existing Curtailment Tariff that will be used for the MDC System will not go into  
5 effect unless the Commission approves the water augmentation surcharge/emergency tariff for the  
6 Company.

7 37. With the adoption of Staff's recommended changes to the Company's original  
8 proposal with respect to the revisions to its Curtailment Tariff for the MDC System, Staff is  
9 recommending approval of the revised Curtailment Tariff described in Exhibit "A."

10 38. Staff specifically recommended that the water consumption calculation of "daily use"  
11 in the Company's initial proposal be excluded because Staff found it to be confusing and not easily  
12 understood.

13 39. In the event that the Commission does not approve the revised Curtailment Tariff  
14 which was filed on June 2, 2010, Staff is recommending that the Company's existing Curtailment  
15 Tariff be continued.

16 40. Mr. Marlin Scott, a Staff engineer, testified that one of the short-term solutions for the  
17 MDC System, the 1.5 mile long above-ground interconnection with the Town's water system, is  
18 similar to a situation which previously existed between Arizona Water Company and the Golden  
19 Corridor Water Company near Casa Grande.

20 41. Mr. Scott is familiar with the possible solution posed by the interconnection with the  
21 Town's system once the C.C. Cragin pipeline is completed in several years, and the other proposed  
22 long-term project for the Company to drill a new deep well. However, Staff lacks sufficient  
23 information to form an opinion as to whether the drilling project is feasible.

24 42. The primary reason Staff opposed the "daily use" calculation in the proposed  
25 Curtailment Tariff for the MDC System was because it could involve an implementation of a  
26 curtailment both outside the house, which is usually the case, and in this instance inside the house  
27 where a curtailment is not usually applied.

28 43. According to Mr. Scott, the MDC System's 105,000 gallons of storage capacity is

1 sufficient to serve only 305 connections, and this factor, coupled with the poor water production of  
2 the nine wells on the system, create the Company's water shortages on the MDC System.

3 44. The primary problem which the Company's MDC System faces is its well capacities  
4 since the water production of the Company's nine wells total 59 gallons a minute at peak capacity  
5 and fluctuate down to 19 gallons a minute when production slows. However, even when the wells  
6 are producing at maximum capacity, there is insufficient water available for the customers during the  
7 peak summer months and that is what causes the Company to have to haul water, as was the case last  
8 year.

9 45. Mr. Darak Eaddy, Staff's accounting witness, believes that the Company's proposal to  
10 make the water augmentation surcharge effective retroactively to May 1, 2010, would constitute  
11 retroactive rate making in violation of Arizona law.

12 46. According to Mr. Eaddy, if the Company is required to haul all of its water for  
13 customer usage, a median user who used 3,621 gallons of water would see a 501.2 percent increase in  
14 his bill from \$22.95 to \$137.97. However, Mr. Eaddy pointed out that this is a worst case scenario  
15 and the amount of the proposed surcharge would depend on the availability of the Company's own  
16 water pumped from its wells.

17 47. As described in the Staff Report, if the proposed water augmentation surcharge had  
18 been in effect during the peak months of 2009, a typical customer would have experienced an  
19 increase of \$16.50 for hauled water on their monthly bill.

20 48. It is not possible for Staff to determine the financial impact of the proposed water  
21 augmentation surcharge on the Company's customers because it will be based on a customer's actual  
22 water usage and the amount of water which the Company is required to haul in any given month.

23 49. The Company's present rates for its MDC System were approved by the Commission  
24 in Decision No. 62401 (March 28, 2000), which established a base rate of \$16 a month for 5/8-inch x  
25 3/4-inch meter customers and an excess gallonage charge of \$1.93 per 1,000 gallons for up to the first  
26 4,000 gallons of water usage, and \$2.09 per 1,000 gallons in excess of 4,000 gallons.

27 50. The Company is in compliance with prior Commission orders and has no outstanding  
28 compliance issues with the Commission's Corporations Division.

1           51. Staff believes that the Company meets the requirements of Attorney General Opinion  
 2 No. 71-17 to establish an interim emergency rate pending a formal rate determination. Based on the  
 3 record, Staff is recommending that the Commission approve the Company's application for a water  
 4 augmentation surcharge tariff for its MDC System and amended Curtailment Tariff as set forth in  
 5 Exhibit "A" which was filed by the Company on June 2, 2010. Staff is additionally recommending  
 6 the following:

- 7           • that the water augmentation surcharge tariff not be applied retroactively;
- 8           • that the water augmentation surcharge tariff be interim, subject to refund, and  
 only effective until permanent rate relief is granted by the Commission;
- 9           • that the water augmentation surcharge tariff rate be effective for a five-month  
 10 period, from May 1 through September 30 of any calendar year;
- 11          • that the water augmentation surcharge tariff rate only be effective for the  
 Company's MDC System;
- 12          • that the water augmentation surcharge tariff rate solely cover documented  
 expenses for hauling water to the Company's MDC System;
- 13          • that the Company be ordered to file, within 30 days of the effective date of this  
 14 Decision, a revised rate schedule reflecting the water augmentation surcharge  
 tariff with the Commission's Docket Control, as a compliance item in this  
 15 docket;
- 16          • that the Company provide its customers a copy of the revised water  
 augmentation surcharge tariff and its effective date, in a form acceptable to  
 Staff, by means of an insert in the Company's next regularly scheduled billing;
- 17          • that the Company file a full rate case within 12 months of the effective date of  
 18 this Decision;
- 19          • that if the Company believes that it will need to incur debt in order to solve its  
 20 water shortage problem, that it file a financing application concurrently with its  
 rate application as ordered hereinabove; and
- 21          • that the Company be required to post a bond or irrevocable sight draft letter of  
 22 credit in the amount of \$60,000 to ensure that there is sufficient money  
 available to refund to customers if the Commission determines in the  
 23 permanent rate case that the emergency surcharge was not needed or too large.  
 However, should the Commission choose a minimal bond as it has in some  
 24 recent emergency applications, Staff recommends an additional option of  
 posting a cashier's check with the Commission for a lower amount, e.g. \$100.  
 25 This option is recommended as the Company may be unable to obtain a bond  
 or sight draft letter of credit.

26           52. Following public notice of the proceeding for a second time, with respect to the water  
 27 augmentation surcharge tariff and the proposed Curtailment Tariff, the Commission received a  
 28 number of comments from customers of MDC expressing their concerns about the system, but none

1 requested intervention or requested that the proceeding be reconvened for the taking of additional  
2 evidence. As a result, the record was closed and the matter taken under advisement.

3 53. Under the circumstances, we believe that the Company's application for approval of  
4 an emergency water augmentation surcharge tariff and a revised Curtailment Tariff as set forth in  
5 Exhibit "A" should be approved in order to insure that the Company's customers are able to be  
6 provided with an adequate source of water in the event shortages occur on the system prior to the  
7 Company developing a long-term solution to its water shortage problem. Additionally, we believe  
8 that the Company should be permitted to file a minimal bond in the form of a \$100 cashier's check.

9 54. Because an allowance for the property tax expense of the Company is included in the  
10 Company's rates and will be collected from its customers, the Commission seeks assurances from the  
11 Company that any taxes collected from rate payers have been remitted to the appropriate taxing  
12 authority. It has come to the Commission's attention that a number of Company's have been  
13 unwilling or unable to fulfill their obligation to pay the taxes that were collected from rate payers,  
14 some for as many as 20 years. It is reasonable, therefore, that as a preventive measure the Company  
15 annually file, as part of its Annual Report, an affidavit with the Utilities Division attesting that the  
16 Company is current in paying its property taxes in Arizona.

17 55. Since Mesa Del Caballo is outside of an Active Management Area, it will not be  
18 required to comply with the conservation goals and management practices of the Arizona Department  
19 of Water Resources ("ADWR"). In light of the need to conserve groundwater in Arizona, we believe  
20 it is reasonable to require Mesa Del Caballo to address conservation and submit for Commission  
21 approval within 120 days of the effective date of this Decision, at least five Best Management  
22 Practices ("BMPs") (as outlined in ADWR's Modified Non-Per Capita Conservation Program). The  
23 BMPs shall generally follow the template contained on the Commission's website. A maximum of  
24 two of these BMPs may come from the "Public awareness/PR or Education and Training" categories  
25 of the BMPs. The Company may request cost recovery of actual costs associated with the BMPs  
26 implemented in its next rate case.

27 ...

28

**CONCLUSIONS OF LAW**

- 1  
2 1. Applicant is a public service corporation within the meaning of Article XV of the  
3 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.
- 4 2. The Commission has jurisdiction over the Company and of the subject matter of the  
5 application for approval of a water augmentation surcharge tariff and for approval of the Company's  
6 proposed revisions to its Curtailment Tariff for its MDC System.
- 7 3. Notice of the application and revisions to the Company's Curtailment Tariff was  
8 provided in the manner prescribed by law.
- 9 4. Applicant is facing an "emergency" within the definition set forth in Attorney General  
10 Opinion No. 71-17 as discussed herein.
- 11 5. The standards for approval of a request for interim rate relief require an existence of  
12 an emergency; the posting of a bond or a sight draft letter of credit by the Company; and subsequent  
13 filing of a permanent rate application.
- 14 6. Approval of the Company's application for interim rate relief, as described herein, is  
15 consistent with the Commission's authority under the Arizona Constitution, rate making statutes, and  
16 applicable case law.
- 17 7. The request for approval of an emergency water augmentation surcharge tariff for the  
18 five month period commencing May 1 and ending September 30 of each following year from the  
19 effective date of this Order is just and reasonable, under the specific facts presented in this case, and  
20 should be collected by means of a pass through of the cost of hauling water in the prior month for the  
21 Company based on a customer's water usage during that month, subject to the Applicant complying  
22 with Findings of Fact Nos. 51 and 53 hereinabove.
- 23 8. The Commission, having reviewed the request for approval of the revisions to the  
24 Company's Curtailment Tariff, concludes that it is in the public interest to approve the revised  
25 Curtailment Plan Tariff as set forth in Exhibit "A" attached hereto.

**ORDER**

26  
27 IT IS THEREFORE ORDERED that the application of Payson Water Company, Inc., for  
28

1 approval of an emergency water augmentation surcharge tariff for its Mesa Del Caballo System, be,  
2 and is hereby, approved to the extent described herein.

3 IT IS FURTHER ORDERED that the application of Payson Water Company, Inc., on behalf  
4 of its Mesa Del Caballo System, shall recover its water hauling expenses as discussed hereinabove by  
5 means of a water augmentation surcharge based on the prior month's cost of hauling water and based  
6 on a customer's water usage during that month, but said authorization shall be conditioned upon  
7 Payson Water Company, Inc. complying with the requirements of Findings of Fact No. 51.

8 IT IS FURTHER ORDERED that Payson Water Company, Inc. shall file an application for  
9 permanent rate relief no later than one year from the effective date of this Decision.

10 IT IS FURTHER ORDERED that the emergency water augmentation surcharge approved  
11 herein shall be interim and subject to refund pending the review by Staff of the permanent rate  
12 application.

13 IT IS FURTHER ORDERED that Payson Water Company, Inc., on behalf of its Mesa Del  
14 Caballo System shall, in a form approved by Staff, notify its customers by mail of the emergency  
15 interim water augmentation surcharge authorized herein and the prospective effective date of same at  
16 least 15 days before the expected date of its imposition.

17 IT IS FURTHER ORDERED that Payson Water Company, Inc. shall post a bond in the form  
18 of a cashier's check in the amount of \$100.

19 IT IS FURTHER ORDERED that the emergency interim water augmentation surcharge shall  
20 end when a Commission Decision is issued regarding the Company's permanent rate application.

21 IT IS FURTHER ORDERED that Payson Water Company, Inc. shall annually file as part of  
22 its Annual Report an affidavit with the Utilities Division attesting that the Company is current in  
23 paying its property taxes.

24 IT IS FURTHER ORDERED that Payson Water Company, Inc., on behalf of its Mesa Del  
25 Caballo System, is hereby authorized to implement the revised Curtailment Plan Tariff, a copy which  
26 is attached hereto as Exhibit "A."

27 IT IS FURTHER ORDERED that Payson Water Company, Inc., on behalf of its Mesa Del  
28 Caballo System, shall docket as a compliance item the revised Curtailment Plan Tariff as set forth in

1 Exhibit "A" attached hereto within 30 days of the effective date of this Decision.

2 IT IS FURTHER ORDERED that Payson Water Company, Inc. on behalf of its Mesa Del  
3 Caballo System, submit for Commission consideration within 120 days of the effective date of this  
4 Decision, at least five Best Management Practices (as outlined in Arizona Department of Water  
5 Resources' Modified Non-Per Capita Conservation Program). The Best Management Practices shall  
6 generally follow the template contained on the Commission's website. A maximum of two of these  
7 Best Management Practices may come from the "Public awareness/PR" or "Education and Training"  
8 categories of the Best Management Practices. Payson Water Company, Inc. on behalf of its Mesa  
9 Del Caballo System may request cost recovery of actual costs associated with the Best Management  
10 Practices implemented in its next rate case.

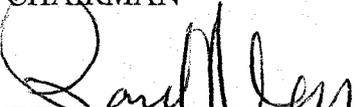
11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

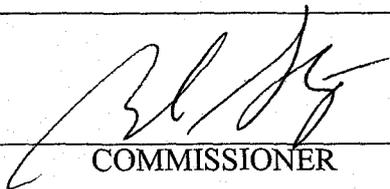
13 

14 CHAIRMAN

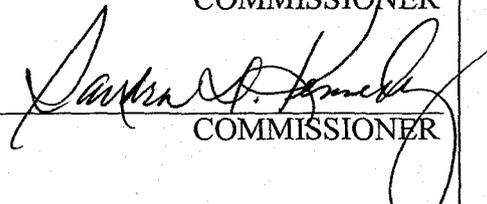
15 COMMISSIONER

16 

17 COMMISSIONER

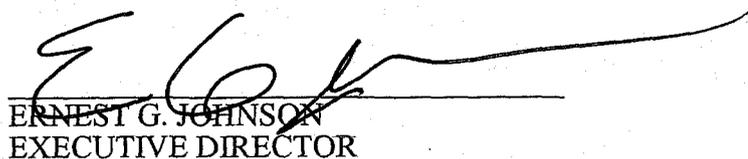
18 

19 COMMISSIONER

20 

21 COMMISSIONER

22 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
23 Executive Director of the Arizona Corporation Commission,  
24 have hereunto set my hand and caused the official seal of the  
25 Commission to be affixed at the Capitol, in the City of Phoenix,  
26 this 28<sup>th</sup> day of Sept., 2010.

27   
28 ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

29 DISSENT \_\_\_\_\_

30 DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR:

PAYSON WATER COMPANY, INC. – MESA  
DEL CABALLO SYSTEM

2 DOCKET NOS.:

W-03514A-10-0116 AND W-03514A-10-0117

3  
4 Patrick J. Black  
5 FENNEMORE CRAIG, PC  
6 3003 North Central Avenue, Suite 2600  
7 Phoenix, AZ 85012-2913  
8 Attorneys for Payson Water Company

9  
10 MESA DEL WATER COMMITTEE  
11 c/o El Caballo Club, Inc.  
12 8119 Mescalero  
13 Payson, AZ 85541

14  
15 Janice Alward, Chief Counsel  
16 Legal Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, AZ 85007

20  
21 Steven M. Olea, Director  
22 Utilities Division  
23 ARIZONA CORPORATION COMMISSION  
24 1200 West Washington Street  
25 Phoenix, AZ 85007

**EXHIBIT A**  
**TARIFF SCHEDULE**

DOCKET NO. W-03514A-10-0116 ET AL.

Utility: Payson Water Company, Inc.  
Docket No. W-03514A-10-0117  
Phone No.: \_\_\_\_\_

Tariff Sheet No.: 1 of 8  
Decision No.: \_\_\_\_\_  
Effective: \_\_\_\_\_

**CURTAILMENT PLAN FOR: PAYSON WATER CO., INC.**

ADEQ Public Water System: Mesa Del Caballo (#04-030)

**APPLICABILITY**

Payson Water Company, Inc. (the "Company") is authorized by the Arizona Corporation Commission to curtail water service to all customers within its certificated area under the terms and conditions listed in this tariff. As needed, this tariff will be implemented by the Company for customers of the Mesa del Caballo water system ("Water System").

The curtailment plan shall become part of the Arizona Department of Environmental Quality Emergency Operations Plan for the Company.

The Company shall notify its customers of this new tariff as part of its next regularly scheduled billing after the effective date of the tariff or no later than sixty (60) days after the effective date of this tariff.

For the purposes of this curtailment plan the term "Peak Season" shall be defined as the period from May 1 through September 30 annually. The term "Off-Peak Season" shall be defined as all other periods not defined as Peak Season.

The Company shall provide a copy of the curtailment tariff to any customer, upon request.

**EXEMPTIONS:** Customers who use 4,000 gallons or less per month based on a twelve (12) month rolling average are exempt from the mandatory reduction in daily use requirements as outlined in Stage 3, Stage 4 and Stage 5 of this Tariff. This is because these customers are already leading a conservative water lifestyle, and mandatory percentage reductions will likely require the loss of use of water essential to health and safety. However, all other restrictions during mandatory conservation periods will still apply.

**STAGES**

**Stage 1 Exists When:**

Water System's storage level is 85% or more of capacity and there are no known problems with production or storage.

DECISION NO. 71902

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
 Docket No. W-03514A-10-0117  
 Phone No.: \_\_\_\_\_

Tariff Sheet No.: 2 of 8  
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Restrictions: Under Stage 1 conditions the water system is deemed to be operating normally and no curtailment is necessary, except as follows: (a) no outside watering is permitted on Mondays; (b) outside water is permitted on Tuesdays, Thursdays, and Saturdays for customers with street addresses ending with an odd number; (c) outside water is permitted on Wednesdays, Fridays, and Sundays for customers with street addresses ending with an even number; (d) during the Peak Season outdoor watering using spray or any form of irrigation shall be conducted only during the hours of 8:00 p.m. and 12:00 Midnight, or during the hours of 3:00 a.m. and 7:00 a.m.

Water Augmentation: Under Stage 1 conditions, no water augmentation is required.

Notice: Under Stage 1 conditions, no notice is required.

**Stage 2 Exists When:**

Water System's storage level is less than 85% of capacity but more than 70% of capacity for at least forty-eight (48) consecutive hours. Further, the Company has identified operational circumstances such as a steadily declining water table, increasing draw down threatening pump operations, or decreasing well production creating a reasonable belief that the Water System will be unable to meet anticipated sustained water demand.

Restrictions: Under Stage 2 conditions **voluntary** conservation measures should be employed by customers to reduce water consumption by at least 20% as measured on a daily use basis. Further water use restrictions shall include: (a) no outside watering is permitted on Monday's, Thursdays, and Fridays; (b) outside water is permitted on Tuesdays and Saturdays for customers with street addresses ending with an odd number; (c) outside water is permitted on Wednesdays and Sundays for customers with street addresses ending with an even number; (d) during the Peak Season outdoor watering using spray or airborne irrigation shall be conducted only during the hours of 8:00 p.m. and 12:00 Midnight, or during the hours of 3:00 a.m. and 7:00 a.m.

Water Augmentation: Under Stage 2 conditions no water augmentation is required.

Notice: Under Stage 2 conditions the Company is required to notify customers by (a) door-to-door delivery of written notices at each service address; or, (b) by changing local water conservation staging signs; or, (c) by means of electronic mail; or, (d) by means of any other reasonable means of notification of customers of the Water System; of the imposition of the Curtailment Tariff, the applicable Curtailment Stage, a general description of conditions leading to Stage 2 conditions, and a need to conserve water.

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
 Docket No. W-03514A-10-0117  
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Tariff Sheet No.: 3 of 8  
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 Effective: \_\_\_\_\_

**Stage 3 Exists When:**

Water System's storage level is less than 70% of capacity but more than 60% of capacity for at least twenty-four (24) consecutive hours. Further, the Company has identified operational circumstances such as a steadily declining water table, increasing draw down threatening pump operations, or decreasing well production creating a reasonable belief that the Water System will be unable to meet anticipated sustained water demand.

Restrictions: Under Stage 3 conditions **mandatory** conservation measures should be employed by customers to reduce water consumption; by at least 30% as measured on a daily use basis. Further water use restrictions shall include: (a) no outside watering is permitted on Mondays, Thursdays, and Fridays.; (b) outside water is permitted on Tuesdays and Saturdays for customers with street addresses ending with an odd number; (c) outside water is permitted on Wednesdays and Sundays for customers with street addresses ending with an even number; (d) during the Peak Season outdoor watering using spray or airborne irrigation shall be conducted only during the hours of 8:00 p.m. and 12:00 Midnight, or during the hours of 3:00 a.m. and 7:00 a.m. Under Stage 3 conditions the Company shall inform customers of the Water System of the **mandatory** restriction to employ water conservation measures to reduce daily consumption by 30%. Failure of customers to comply with this requirement may result in service disconnection as described by this Curtailment Plan. Under Stage 3 conditions, the following uses of water are strictly prohibited: (1) outdoor irrigation of lawns, trees, shrubs, or any plant life, except as otherwise provided herein; (2) washing of any vehicle; (3) use of water for dust control or outdoor cleaning uses; (4) use of outdoor drip irrigation or misting systems of any kind, except as otherwise provided herein; (5) use of water to fill swimming pools, spas, fountain, fish ponds, or ornamental water features; (6) all construction water; (7) restaurant or convenience store patrons shall be served water only on request; and, (8) any other water intensive activity. Under Stage 3 conditions the Water System is prohibited from supplying water to any standpipe and the installation of new water meters and new service lines is prohibited.

Water Augmentation: Under Stage 3 conditions the Company will undertake reasonable measures to augment its well production until such time that Stage 2 conditions are achieved for forty-eight (48) consecutive hours. In all cases where the Company employs water augmentation the Water System's Water Augmentation Surcharge shall become applicable.

Notice: Under Stage 3 conditions the Company is required to notify customers by (a) door-to-door delivery of written notices at each service address; or, (b) by changing local water conservation staging signs; or, (c) by means of electronic mail; or, (d) by means of any other reasonable means of notification of customers of the Water System; of the imposition of the Curtailment Tariff, the applicable Curtailment Stage, a general description of conditions leading to Stage 3 conditions, and a need to conserve water.

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
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Tariff Sheet No.: 4 of 8  
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Enforcement: Once the Company has properly provided notice of Stage 3 conditions, the failure of a customer to comply with this Curtailment Plan within twenty-four (24) hours of receiving notice of its violation of this Curtailment Plan may result in the immediate disconnection of service, without further notice, in accordance with Arizona Administrative Code R14-2-410 (B)(1)(d). The reconnection fee for a violation of a Stage 3 curtailment notice shall be:

First offense:	\$200
Second offense: (see also Reconnection Fees Section)	\$350
Third offense:	\$750

If a customer believes their water service has been disconnected in error, the customer may contact the Commission's Consumer Services Section at (800) 222-7000 to initiate further investigation.

**Stage 4 Exists When:**

Water System's storage level is less than 60% of capacity but more than 50% of capacity for at least twenty-four (24) consecutive hours. Further, the Company has identified operational circumstances such as a steadily declining water table, increasing draw down threatening pump operations, or decreasing well production creating a reasonable belief that the Water System will be unable to meet anticipated sustained water demand.

Restrictions: Under Stage 4 conditions **mandatory** conservation measures should be employed by customers to reduce water consumption; by at least 40% as measured on a daily use basis. Further water use restrictions shall include: (a) no outside watering is permitted on Mondays, Thursdays, Fridays, and Sundays; (b) outside watering is permitted on Tuesdays for customers with street addresses ending with an odd number; (c) outside water is permitted on Wednesdays for customers with street addresses ending with an even number; (d) during the Peak Season outdoor watering using spray or airborne irrigation shall be conducted only during the hours of 8:00 p.m. and 12:00 Midnight, or during the hours of 3:00 a.m. and 7:00 a.m. Under Stage 4 conditions the Company shall inform customers of the Water System's **mandatory** restriction to employ water conservation measures to reduce daily water consumption by 40%. Failure of customers to comply with this requirement may result in service disconnection as described by this Curtailment Plan. Under Stage 4 conditions the following uses of water are strictly prohibited: (1) outdoor irrigation of lawns, trees, shrubs, or any plant life, except as otherwise provided herein; (2) washing of any vehicle; (3) use of water for dust control or outdoor cleaning uses; (4) use of outdoor drip irrigation or misting systems of any kind, except as otherwise provided herein; (5) use of water to fill swimming pools, spas, fountain, fish ponds, or ornamental water features; (6) all construction water; (7) restaurant or convenience store patrons shall be served water only on request; and, (8) any other water intensive activity. Under Stage 4

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
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 Phone No.: \_\_\_\_\_

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conditions the Water System is prohibited from supplying water to any standpipe and the installation of new water meters and new service lines is prohibited.

Water Augmentation: Under Stage 4 conditions the Company will undertake reasonable measures to augment its well production until such time that Stage 3 conditions are achieved for forty-eight (48) consecutive hours. In all cases where the Company employs water augmentation the Water System's Water Augmentation Surcharge shall become applicable.

Notice: Under Stage 4 conditions the Company is required to notify customers by (a) door-to-door delivery of written notices at each service address; or, (b) by changing local water conservation staging signs; or, (c) by means of electronic mail; or, (d) by means of any other reasonable means of notification of customers of the Water System; of the imposition of the Curtailment Tariff, the applicable Curtailment Stage, a general description of conditions leading to Stage 4 conditions, and a need to conserve water.

Enforcement: Once the Company has properly provided notice of Stage 4 conditions, the failure of a customer to comply with this Curtailment Plan within twenty-four (24) hours of receiving notice of its violation of this Curtailment Plan may result in the immediate disconnection of service, without further notice, in accordance with Arizona Administrative Code R14-2-410 (B)(1)(d). The reconnection fee for a violation of a Stage 4 curtailment notice shall be:

First offense:	\$400
Second offense: (see also Reconnection Fees Section)	\$750
Third offense:	\$1,500

If a customer believes their water service has been disconnected in error the customer may contact the Commission's Consumer Services Section at (800) 222-7000 to initiate further investigation.

**Stage 5 Exists When:**

Water System's storage level is less than 50% of capacity for at least twelve (12) consecutive hours. Further, the Company has identified operational circumstances such as a steadily declining water table, increasing draw down threatening pump operations, or decreasing well production creating a reasonable belief that the Water System will be unable to meet anticipated sustained water demand.

Restrictions: Under Stage 5 conditions, **mandatory** conservation measures should be employed by customers to reduce water consumption; by at least 50% as measured on a daily use basis. Under Stage 5 conditions no outside watering is permitted. Under Stage 5 conditions the Company shall inform customers of the Water System's **mandatory** restriction to employ water

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
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conservation measures to reduce daily consumption by 50%. Failure of customers to comply with this requirement may result in service disconnection as described by this Curtailment Plan. Under Stage 5 conditions the following uses of water are strictly prohibited: (1) all outdoor watering; (2) washing of any vehicle; (3) use of water for dust control or outdoor cleaning uses; (4) use of outdoor drip irrigation or misting systems of any kind; (5) use of water to fill swimming pools, spas, fountain, fish ponds, or ornamental water features; (6) all construction water; (7) restaurant or convenience store patrons shall be served water only on request; and, (8) any other water intensive activity. Under Stage 5 conditions the Water System is prohibited from supplying water to any standpipe and the installation of new water meters and new service lines is prohibited.

Water Augmentation: Under Stage 5 conditions the Company will undertake reasonable measures to augment its well production until such time that Stage 4 conditions are achieved for forty-eight (48) consecutive hours. In all cases where the Company employs water augmentation the Water System's Water Augmentation Surcharge shall become applicable.

Notice: Under Stage 5 conditions, the Company is required to notify customers by (a) door-to-door delivery of written notices at each service address; or, (b) by changing local water conservation staging signs; or, (c) by means of electronic mail; or, (d) by means of any other reasonable means of notification of customers of the Water System; of the imposition of the Curtailment Tariff, the applicable Curtailment Stage, a general description of conditions leading to Stage 5 conditions, and a need to conserve water.

Enforcement: Once the Company has properly provided notice of Stage 5 conditions, the failure of a customer to comply with this Curtailment Plan within twelve (12) hours of receiving notice of its violation of this Curtailment Plan may result in the immediate disconnection of service, without further notice, in accordance with Arizona Administrative Code R14-2-410(B)(1)(d). The reconnection fee for a violation of a Stage 5 curtailment notice shall be:

First offense:	\$800
Second offense: (see also Reconnection Fees Section)	\$1,500
Third offense:	\$3,000

If a customer believes their water service has been disconnected in error the customer may contact the Commission's Consumer Services Section at (800) 222-7000 to initiate further investigation.

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
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**NOTICE**

If the Company elects to provide customer water conservation stage notice by use of local sign postings the Company shall post and maintain at least two (2) signs per water system in noticeable locations that include the entrance to major subdivisions indicating the Company is operating under its Curtailment Plan Tariff, beginning with Stage 1. Each signs shall be at least four feet by four feet and color-coded to denote the current stage, as follows:

- Stage 1 – Green
- Stage 2 – Blue
- Stage 3 – Yellow
- Stage 4 – Orange
- Stage 5 – Red

The Company shall notify the Consumer Services Division of the Utilities Division at least;

- Twelve (12) hours prior to entering Stage 2.
- Six (6) hours prior to entering Stage 3.
- Six (6) hours prior to entering Stage 4.
- Four (4) hours prior to entering Stage 5.

**RECONNECTION FEES**

All reconnection fees shall be cumulative for a calendar year regardless of the Stage that an offense occurs. For example, if a customer fails to meet the requirements of a water conservation stage, observe required water conservation measures under a Stage 3 condition, and after receiving notice that a water conservation stage is in effect, the reconnection fee will be \$200. If the same customer in the same calendar year commits an offense under Stage 5 conditions, the reconnection fee shall be \$1,500. By May 15 and October 15 annually, the Company shall provide the Director of the Utilities Division with a list of customers who paid reconnection fees for failure to comply with the mandatory provisions of the Curtailment Plan Tariff.

Any customer who has service disconnected according to this Curtailment Plan Tariff more than once during a calendar year shall have those terminations count against them in the next calendar year for purposes of establishing the reconnection fee, should another disconnection occur.

**TARIFF SCHEDULE**

Utility: Payson Water Company, Inc.  
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**WATER CONSUMPTION CALCULATION OF "DAILY USE"**

For the purpose of calculating "daily use" under the Restriction section of Stage 2, Stage 3, Stage 4, and Stage 5 water conservation conditions, the following definition shall apply:

Daily use is determined by taking the customer water meter reading today and subtracting from the customer's meter reading yesterday. This daily use amount is multiplied by 30 days to obtain a calculated monthly use. This monthly use is then compared to the higher of; (a) the immediately preceding month's actual water consumption, or (b) water consumption for the same month in any one of the two previous years for the same service location, to determine if the customer reduced his/her water consumption by at least the required Stage's percentage. The water customer should reduce their daily water consumption from the higher monthly water consumption of either (a) or (b).

Example: Customer meter reads 986654 today. Customer meter read 986354 yesterday. The difference in meter reads is 300 gallons for one day or 9000 gallons for 30 days. Customer actual use in the immediately preceding month was 7,000 (a) gallons. Customer's actual use in the same month in any one of the two previous years was 6,000 (b) gallons. Customer is in violation of Stage 3 mandatory water conservation conditions because his/her current "daily use" calculation is greater than his/her higher monthly use of (a) 7,000 gallons. Under Stage 3, the customer is required to reduce consumption by 30% of the 7000 gallons or 2,100 gallons, 7,000 - 2,100 is 4,900. So the customers daily use needs to be about 165 gallons per day.