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J. Alan Smith, Private Citizen
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Payson, Arizona 85541
(928) 951-2083 Wk.
In Propria Persona

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Before the Arizona Corporation Commission

COMMISSIONERS

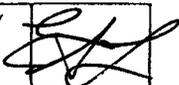
Gary Pierce, Commissioner
Brenda Burns, Commissioner
Bob Stump, Chairman
Susan Bitter Smith, Commissioner
Bob Burns, Commissioner

Arizona Corporation Commission

DOCKETED

JAN 29 2014

ORIGINAL

DOCKETED BY 

J. Alan Smith, Injured Party
Complainant,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.
Respondents.

DOCKET NO. W-03514A-12-0007

**NOTICE OF COMPLAINANT'S
FIFTH DISCOVERY AND
DISCLOSURE
ARCP RULE 26.1 AND
AAC RULE R14-3-109 et. Seq.**

NOW COMES, the Complainant J. Alan Smith to give notice to the Commission and the ACALJ Nodes **for an extreme case on Obstruction of Justice**. This notice includes the Respondents, Jim Pearson, Martin Zabala, Robin Mitchell Legal Staff, Attorneys of Payson Water Co.

1. Right to be Heard, Procedural Due Process:

The adversary hearing goes back to the very origins of Anglo American Law. "When we speak of *audi alteram partem*—Hear the other side—we tap fundamental precepts that are rooted deep in Anglo American legal history".

See: In re Andrea B., 405 N.Y.S. 2d 977. 981 (Fam. Ct. 1978).

That "a party is not to suffer in person or purse without an opportunity of being heard" is the oldest established principle in our administrative law.

See: Painter v. Liverpool Gas Co. 3 Ad. & EI. 433, 449, 11 Eng. Rep. 478, 484 (K.B. 1836)

In 1723, an English judge traced the principle to divine law itself: [E]ven God himself did not pass sentence upon Adam before he was called upon to make his defense. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat?

See: *Rex v. University of Cambridge*, 1 Str. 557, 567, 93 Eng. Rep. 698, 704 (K.B. 1836).

But the right to be heard is more than a principle of natural justice; it is a basic constitutional right. “Audi alteram partem—hear the other side!”

The literal meaning of due process is *fair procedure*. The test of procedural due process is fairness.

See: *Wells v. Children’s Aid Socy.*, 681 P 2d 199, 204 (Utah 1984)

Due process quarantines that the state will treat individuals with fundamental fairness

See: *Zinerman v. Burch*,--U.S.--,(1990). See *similarly Robitaille v. State*. 468 A. 2d 311,313 (Me. 1984)

To say that there is no “right” to a government contract should not mean that an agency may act arbitrarily (substantively or procedurally) against a person or that this person is not entitled to challenge the fairness of the agency in the particular case

See: *Gonzalez v. Freeman*, 334 F 2d at 574-575

The adequacy of procedures for deprivation of a statutorily created interest must ultimately be judged in constitutional terms.

See: *Burgess v. Mayor of Brockton*, 126 N.E. 456 (Mass. 1920); *LaPlante v. State Bd. Of Public Roads* 131 A. 641 (R.I. 1926).

A. DOCUMENTATION ON ADMINISTRATIVE LAW, BERNARD SCHWARTZ 3RD EDITION.

- 1. RULES AND RULE MAKING (LEGAL EFFECT) PAGE 186 & 187;** Rate fixing regulations are vested with statutory effect. In a case that reached the Supreme Court, a carrier agreed to charge shipper less than the rates fixed by the agency and did so for many years. The Court held that this did not bar the carrier from instituting an action to recover the difference between the rate charged and that fixed. Rate-fixing regulations are vested with statutory effect, and they too, must prevail

over inconsistent private agreements. Factual documents support and video recordings in the Gehring docket W-03514A-12-0008 that a private agreement with Rio Verde to haul water for the augmentation period for 2012 and including 2013 increased to \$175.00 per hour.

2. **There are numerous cases in which agencies are held legally bound by their own procedural rules, even when made informally.** It makes no difference that the procedures established by the agency are more generous than is required by the Constitution or statute. “ He that takes the procedural sword shall perish by the sword.” Agency violations of its own procedures is considered arbitrary action that “cannot be reconciled with the fundamental principle that ours is a government of laws”

3. **LEGAL EFFECT PAGE 182&184;** The basic principle governing the legal effect of rulemaking is the “ black- letter principle that properly enacted regulations have the force of law,” which means that that they have the same force and effect as statutes.....the fact that a regulation prescribes patterns of conduct to which those affected must conform just as a statute does. The violator of the regulation, like the violator of the statute, is subject to penal consequences. A precept which lies at the foundation of the modern administrative state is that agencies must abide by their rules and regulations. Under this “venerable principle of law and common sense, so long as the regulation remains in force, the government is bound to respect and enforce it. Otherwise how will people know how to conduct their affairs? Hence, “[a]d hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned.

4. **ULTRA VIRES AND REASONABLENESS; PAGE 171 THUR 173;** An agency.... Is a creature of the legislature. As a corporation is to its charter, the administrative agency is to its enabling legislation. This means that the basic doctrine of administrative law, as of corporation law, is the doctrine of ultra vires. It is not accurate however, to assume that a rule or a regulation is valid simply because it meets the ultra vires test. Even a rule that deals with the subject matter within the agency's delegated authority may be invalid if it is arbitrary or unreasonable; “not must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. The validity of a regulation will be sustained only if it is “reasonably related to the purpose of the enabling legislation”. There must be a

rational connection between the facts found and the choice made; The Supreme Court has called this an axiom of administrative law.

5. **Regulatory Reform Subcommittee Docket No. W-00000C-98-0513;**

In 1997 the Arizona Legislature passed Senate House Bill 1252. This bill was enacted to create a statutory basis for the Arizona Corporation Commission to implement a mechanism under which regulated water utilities may be afforded an opportunity to reflect in rates the effects of changes in specific costs without the necessity in expense of filing a general rate case. The operating cost that may be considered in this procedure are limited to the specific, readily identifiable cost that are subject to the control of another person.....

Brooke Utilities Represented itself as a Water Utility in this Commission's Water Task Force established by the Commission vote on April 24, 1998 and held its first Meeting on September 22, 1998

6. **Arizona Revised Statutes 40-370; Water Utility Surcharge to recover operating cost....** The surcharge shall not exceed ten percent of current rates.

7. **Arizona Revised Statutes 40-321(B);** The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

8. **FINANCIAL IMPACT OF SURCHARGE Docket Nos. W-03514A-10-0116 and 0117; Staff (Darak Eaddy Public Utilities Analyst II, Utilities Division) has computed the rate for Payson to haul water to be \$33.68 per thousand gallons as shown on Schedule DRE-2. This rate represents the maximum volumetric charge the Company could charge its customers to provide water. Staff has computed this rate to depict the worst case scenario for the Company as it assumes that the Company wells provide no water. In researching the Company's Water hauling charges for 2009, Staff has determined that when the company did have to haul water it was at the \$33.68 maximum rate that Staff has determined as the worst case scenario. DRE-2. Truck Rental**

Fee \$150 per hour. Time Required per delivery (in hours) 1.2 Water rate from city of Payson (per thousand gallons) 5.99. Maximum Amount hauled Per Truck (in gallons) 6,500

9. Current rates of the Mesa Del Caballo System during augmentation periods for 2011 thru 2013.

\$1.93 per thousand for the first 4,000 gallons used

\$2.99 per thousand for any gallons used above the 4,000

\$33.68 per thousand gallons to haul water.

10. Math formula approved by staff for augmentation periods 2011 thru 2013;

Total invoice cost to haul water plus Town of Payson water charges including taxes at the graduated rate per thousand gallons as applied as a Town approved rate. All of these charges combined and applied to total consumption. June July 2011 billing period 135,400 gallons purchase price \$863.77 plus \$15,900 dollars total hauling cost. Total applied to customers bills for water hauling plus purchase of water from Town of Payson \$16,793.77. Using this formula customer costs per thousand gallons would be \$124.00 cents per thousand gallons for this billing cycle. Year 2013 JW Water Holdings/PWC Charged \$10,237 for hauling 183,179 gallons of water. Why did the customers of the MDC system pay \$16,793.77 for hauling 135,400 gallons in 2011 and then pay \$10,237 for 183,179 gallons. Staff approved all of the water hauling charges 2011-2013.

11. Maximum Rate Company could charge its customers worst case scenario wells provide no water \$33.68, schedule DRE-2;

Using the maximum rate \$33.68 per thousand gallons as the math formula to purchase 135,400 @ the 1.2 hours delivery time, Payson water rate 5.99 plus 6,500 max hauled is $135.4 \times \$33.68 = \$4,560.27$. Using the formula approved by Staff, Water Co. would see an unauthorized profit of \$12,233.50.

Right to Present Evidence

As far as presentation of evidence was concerned, the courts recognized this principle at an early date. As early as 1896 the Supreme Court disapproved of the practice of railroads in withholding, the larger

Even more important in differentiating the business place from the dwelling house is the fact that the operation of a business in the modern community is subject to regulatory power in the public interest.

Businesses subject to regulation are generally subject to extensive inspection authority on the part of the relevant regulatory agency, which normally includes the power to inspect the premises, books and records of the business concerned.

Factual Evidence Brooke Utilities

- a. Pine Water / Complaint by Pugel, 8/10/2007. Volume V court records page 928. Judge Nodes hearing the case. Brooke Utilities owns water systems throughout the state that we're serving about a little more than 8,000 customers. Brooke Utilities serves more customers than the Town of Payson Does. .
- b. In Docket No. W-03512A-06-0407 Pine Water / Complaint by Pugel, et al, Court Transcript (8/6/2007) by AZRS Vol. VI, page 1244 lines 14-15 Is Payson Water Company owned by Brooke Utilities? Yes it is. So you are buying water from a relative corporation, correct? Correct. This was before Kristin K Mayes Commissioner and Dwight D. Nodes Assistant Chief Law Judge. Robert T Hardcastle testifies in front of Judge Nodes Payson Water Company is owned by Brooke Utilities and identifies it as a corporation. How could the Judge not know? Why would Robert T Hardcastle under oath in these proceedings that Brooke Utilities is not under the Jurisdiction of The Arizona Corporation Commission? So, he lied under oath in front of the same Judge and the Judge is not aware of this? The Complaint by Mr. Pugel contains the same issues in his complaint that have been raised in my complaint.
- c. Robert T Hardcastle testified in front of the Commissioners and Staff of the ACC March 13 2013, while trying to extend the rate hike hearing, **customers suffered no harm!!!!**
- d. The Complainant was given no notice that a ruling had been made by the ACALJ Nodes or Commission that Brooke Utilities is or is not under the Jurisdiction of the ACC, prior to the sale to J.W. Water Holdings.

Trucking Companies

Tampering with evidence, withholding evidence, hiding evidence, falsifying evidence.

- a. Martin Zabala claimed he had no business records and was being harassed.
- b. Jim Pearson did not appear in court with business records (documents) and to be cross examined as commanded by Subpoena.
- c. Jim Pearson produced documentation as evidence and later said it was chicken scratch.
- d. All Trucking Companies have not produced one single document that show what tractor trailer and tanker were used to haul water during the prescribed augmentation period. They also have not produced any document that identifies what hour they left the trucking terminal and returned.
- e. No factual evidence showing payments by "Payson Water Co/Brooke Utilities" to the business financial account (billing invoices) Pearson Transportation 2011.

Robert T Hardcastle on behalf of Water Co

tampering with evidence, withholding, hiding and falsifying evidence.

- a. Brooke Utilities does not provide water service to the customers of Mesa Del. Brooke Utilities is not regulated by the Arizona Corporation Commission. Brooke has never argued before the Commission in support of, or on behalf of itself being considered a public service corporation.
- b. Brooke Utilities does not provide water service to the customers of Mesa Del. Brooke Utilities is not regulated by the Arizona Corporation Commission. Brooke has never argued before the Commission in support of, or on behalf of itself being considered a public service corporation.

Did the ACALJ Nodes allow all relevant evidence to be obtained through the request of subpoenas?

Answer: No.

Question: How many parties that have been served with Subpoena are in contempt of court for failure to comply?

Answer: All parties have been in contempt of court for failure t

Question: Do the wells produce enough water for the community?

Answer: Yes since June 27 2012 in front of ACALJ Nodes evidence shows wells produced more water than community used during the hauling period. May 2011 thru Sept 2011. As of this date, no ruling on the evidence presented at this hearing. The Judge has ignored this evidence.

Question: Did the rate payers of the MDC system see this rate on their water bills? Did the Company disclose this rate in documents as it relates to the how the surcharge would be applied?

Answer: No.

Question: What did the Company provide as information to show how the water hauling charges would be applied?

Answer: 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 and the emergency interim water augmentation surcharge. Calculation- Each customer's monthly surcharge shall be calculated based on the company's prior water hauling cost, and compared to the customers water usage... The only cost recovered by the company through this interim surcharge will be the cost of the water supply and transportation cost; there will be no administrative costs or profit of this surcharge.

Question: Did the ACC allow Brooke Utilities to exceed the regulations imposed by Statute?

Answer: Yes

Question: How did they allow Brooke Utilities to exceed the regulations?

Answer: The ACC used a mathematical formula total water hauling cost plus water purchase from City of Payson including taxes and divided those costs and applied it to total consumption. The staff of the ACC used and approved this formula as the proper accounting method to charge the customers of the MDC system for the years 2011, 2012 and 2013.

Question: Did Brooke Utilities raise the truck rental fee?

Answer: For the hauling period starting in 2012 it started charging customers \$175.00 for truck rental fee via Rio Verde.

Since an administrative regulation has the force of the statute, the same should be true of violation of a regulation backed by criminal sanctions.

See: Richardson v. Gregory. 281 F. 2d 626, 629 (D.C. Cir 1960); Home Ins. Co. v. Hamilton 253 F. Supp. 752 (E.D. Ky 1966).

There are numerous cases in which agencies are held legally bound by their own procedural rules, even when made informally. This principle has been applied to procedural rules governing radio license case, discharge of government employees, deportation proceedings, railroad retirement and Social Security proceedings, regulatory proceedings and other cases.

Rodway v. Department of Agric. 514 F 2d. 809 (D.C. Cir. 1975; Humble Oil Co v. Board of Alderman. 202 S.E. 2d 129. 135 (N.C. 1974); Meeks v. Gagnon. 289 N.W. 2d 357 (Wis. 1980); *But see* American Farm Lines v. Black Ball Freight Serv., 397 U.S. 532, 538 (1970).

In its role as counselor, the administrative agency, like the ordinary citizen, ought to be required to stand by its word honorably.

See: Newman, supra 3.18 note 3, at 389.

***Question:* When the MDC customers complain about the water hauling charges to the ACC and the Company did they release documentation and information?**

Answer: No

See: The Payson Roundup covered complaints filed with the ACC and did a cover story that was released to the Public that Brooke Utilities had done nothing wrong. All water hauling charges had been dismissed due to a misunderstanding. Staff had reviewed the hauling charges and said they were correct.

Fact: community and its customers have asked for documents and records that substantiate the hauling charges they had to pay. In other words the community paid first and then requested the agency and the company to produce those records for public inspection.

Fact: All documentary evidence was refused by the staff of the ACC and the Company by simply saying the charges were correct

Fact: Company would later file a motion with staff that this was a typographical error.

Fact: Customers believed company documents as deceptive and filed many complaints based on this information.

All attempts to collect accurate facts for the payment of water hauling before filing the formal complaint were denied. After filing the formal complaint, the request to collect accurate information, through legal process have been denied by the ACALJ Nodes and Legal Staff Robin Mitchell.

All subpoenas signed by Executive Director of the ACC and served on the parties have not been complied with. Contempt orders have been outstanding since August 1, 2012 for failure to comply with subpoenas.

ACALJ Nodes and Robin Mitchell have on many occasions denied having any legal knowledge on how to enforce subpoenas signed by the Agency.

2005 Staff mandated fines collected from tariff violations go into an interest trust bearing account to pay for water hauling. No accurate accounting has taken place from the revenues collected from customer fines in the 9 water systems. How that revenue was applied to the hauling cost's at the Company's own expense. No record and no indication from staff in 2010 for the Emergency Application that fines collected from customers into the interest trust bearing account offset any hauling cost to haul water to East Verde Park or the MDC System.

All trucking contractors were hauling water from the same location in the Town of Payson to the EVP System and the MDC System. Thereby creating confusion and deceptive actions as to where the water was really being hauled and who was paying for it.

Robert T Hardcastle filed an Emergency Application for the EVP System in July of 2012 that contained Pearson Invoices requested by subpoena of Commission. Robert T Hardcastle refused to disclose those records and hid the documents for well over a year.

Customer J. Alan Smith retains counsel August 2012

The Attorney (Micheal J Harper) refused to comply with clients mandate to issue subpoenas under the jurisdiction of the Gila County Superior Court. This in itself has denied client previous subpoenas for documents which, to this day remains unfulfilled thereby disallowing customer(s) any ability to acquire fact in truth in what is now a futile and very expensive effort.

All attempts to enforce subpoenas with a Lawyer and address other matters resulted in nothing, at a substantial cost to proceed. The Lawyer gave legal advice that going to superior court would cost more money and it would be cheaper because the ACC has the power of a court to enforce the subpoena. Many conversations with Attorney were directed at the refusal of the Judge to rule on any matter. And has commented the Judge will not rule. Therefore having an Attorney has not swayed the ACALJ to rule.

I have long argued with my attorney it is not my job at \$290.00 per hour and then increased to \$315 per hour to educate the ALJ and Robin Mitchell legal staff on how to enforce subpoenas. The ongoing litigation since August 1, 2012 which I gave notice to the ALJ and the Commission that Jim Pearson of Williams, and Brooke Utilities was in contempt by rules of court for non compliance with subpoenas. It has been well over 400 days for the ALJ and Robin Mitchell to figure out how to enforce a subpoena. Arizona Administrative Procedure Act 41-1092-07(c)

I have directed my attorney to address the issue as to why the Judge has not ruled? As a matter of fact many conversations have been directed at my attorney as to why the judge does not rule on any matter. And he has admitted the ALJ will not rule and has not ruled on any matter but yet proceeds to order another Procedure Hearing to address the same issue over and over.

Then I get the surprise at a hearing in 2013 where none other than Patrick Black who sits as legal counsel in front of the Commissioners while Hardcastle testifies rate payers have suffered no harm (in the motion to extend rate hike). Patrick Black now legal counsel for JW Water Holdings (New Owner of Payson Water Co,) tells ALJ Nodes he has no knowledge of this case and asks for time to prepare for the litigation. ALJ Nodes comments on the "new twist".

Then what happens? I am now forced to re-litigate, answer new data request, submit to more settlement discussions and delays. I objected many times to my now departed attorney who said none of this, matters. Jay Shaprio same law firm replaces Patrick Black and has the audacity to claim this complaint is going to damage his client and the rate payers. Then proceeds to tell me I am a pain in the ass.

**TOWN OF PAYSON ADMINISTRATIVE POLICY, MESA DEL CABALLO
SUPPLEMENTAL WATER SUPPLY 2010**

Brooke Utilities, Inc. water company that provides water service to it's customers in the Mesa Del Caballo subdivision approximately one mile north of the Payson town limits has requested that the Town of Payson provide access to seasonal water supply from the Town of Payson. The process of working with Brooke Utilities, Inc. for the establishment of an adequate water supply for the Mesa Del Caballo... Brooke Utilities will be responsible for the transporting of the water to their water production facilities with the Mesa Del Caballo subdivision.

East Verde Park;

It was established by facts in the Gehring and Jones Docket W03514A-12-0008 Brooke Utilities/Payson Water co. using Pearson Transport as the carrier to haul water, hauled water to East Verde Park Via the Town of Payson Administrative Policy for Mesa Del Caballo. This policy was entered into agreement for the use of the Mesa Del Caballo subdivision and does not identify East Verde Park. Documents on the record show invoices from Pearson Transport billing MDC system 2 hours travel time @ \$150.00 per hour but not billing East Verde Park System for 2 hours travel time.

Payson Water Co. passed on a cost to the customers of the MDC system for water hauling to the East Verde Park via travel billing time. East Verde Park customers were not charged travel time for the hauling of water into their system for the 2011 season. Records for 2012 and 2013 via Rio Verde Hauling water to the MDC and East Verde Park are not readily available to compare. It would be fair to assume that this billing practice would continue.

Checks Written to Brooke Utilities for water billing period for current rates & augmentation:

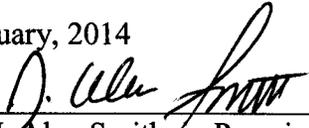
Bank records show deposit into Jaco Oil Company bank account not Payson Water Co. or Brooke Utilities. All customers of the MDC system write checks to Brooke Utilities or were allowed the option to pay in cash at APS where Brooke Utilities was the designated agent to receive payments, not Payson Water Co.

GUEST COMMENTARY (Rim Country Gazette) Brooke president rips “reckless coverage”;

By Robert T Hardcastle Brooke Utilities Wednesday, August 7, 2013 Fact Brooke didn't charge Mesa Del Caballo residents for anything. Payson Water co. serves the residents of Mesa Del.

WHEREFORE, Notice is given to the Commission and the Respondents that the Complainant has filed his Fifth Discovery and Disclosure with Trial Exhibits Attached herewith.

Respectfully submitted this 27th day of January, 2014



J. Alan Smith, in Propria Persona

CERTIFICATE OF SERVICE

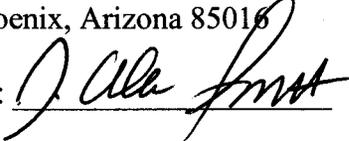
The Original and 13 copies of the foregoing Motion have been mailed this 27th day of JANUARY, 2014 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 27th day of JANUARY, 2014 to the following:

Robert T. Hardcastle
P. O. Box 82218
Bakersfield, Ca. 93380

Fennemore Craig, P.C.
Jay L Shaprio (No. 014650)
2394 E. Camelback Rd Suite 600
Phoenix, Arizona 85016

By: 

TRAIL EXHIBITS

1-18

I. INTRODUCTION

The Commission's Water Task Force was established by Commission vote on April 24, 1998 and held its first meeting on September 22, 1998. The Task Force's members include consumers, water company representatives, and representatives from the Arizona Department of Water Resources (ADWR), Arizona Department of Environmental Quality (ADEQ), and the Central Arizona Conservation District (CAWCD). The Task Force's meetings are open to the public and several individuals who are not official "members" of the Task Force have taken on active roles. The goal of the Task Force is to develop policies to address a wide variety of problems that private water companies and their customers face. The Task Force has divided into three subcommittees: the Regulatory Reform Subcommittee, the Water Supply Subcommittee, and the Conservation Subcommittee.

This report represents the accomplishments of the Task Force to date. The Task Force was able to agree on what the problems facing the water industry in Arizona are. The Task Force members proposed many possible solutions for these problems. Consensus was reached on some of these proposed solutions. However, the Task Force was divided on the appropriateness of many of the proposed solutions. The report that follows summarizes each of the proposed solutions. The positions of the Task Force members will be presented in a pros and cons format. The members whose views are presented in this report fall into four categories: the industry (consisting of representatives from Brooke Utilities, Inc., Arizona Water Company, Big Park Water Company, and Citizens), the Residential Utility Consumer Office (RUCO), the ADWR, and Commission Staff.

II. REGULATORY REFORM SUBCOMMITTEE

The Regulatory Reform Subcommittee reached the consensus that the following five goals would be their focus:

1. Reduce the number of small, non-viable water systems through new rules and procedures.
2. Strengthen the financial capacity of the water utility industry.
3. Provide greater emphasis on simplifying, shortening, and reducing the cost of the ratemaking process.
4. Improve Consumer Education.
5. Increase Interagency Coordination.



Administrative Policy
MESA DEL CABALLO SUPPLEMENTAL
WATER SUPPLY
Water Department – A606mcd

Effective Date:

Feb, 2010

Revised Date:

SUPPLEMENTAL WATER SUPPLY TO MESA DEL CABALLO SUBDIVISION

Summary

The Brooke Utilities, Inc. water company that provides public water service to its customers in the Mesa del Caballo subdivision approximately one mile north of the Payson town limits has requested that the Town of Payson provide access to seasonal water supply from the Town of Payson. This supply is needed to prevent frequent summertime water shortages within the subdivision due to the effects of drought on the company's groundwater wells located throughout the subdivision. The company has expressed interest in working with the Town of Payson on utilization of the Town's proposed CC Cragin water pipeline and water treatment plant as a new source of water supply for the subdivision and an answer to the subdivisions chronic water supply problem. It is the intent of the Town of Payson to work with outlying communities adjacent or near to the proposed pipeline for development of adequate water supplies for those communities.

Process

The process of working with Brooke Utilities, Inc. for the establishment of an adequate water supply for the Mesa Del Caballo subdivision consists of four phases.

Phase One involves the Town of Payson providing up to 86,400 gallons per day of potable water for use by public water system customers within the Mesa del Caballo subdivision. The Payson Water Department will make the water available within the Payson town limits at a point on E. Houston Mesa Road approximately 1,000 feet east of State Route 87. Brooke Utilities will be responsible for transporting the water to their water production facilities with the Mesa del Caballo subdivision.

Some restrictions apply to this water service:

1. Water supply can be discontinued by the Payson Water Department at any time.
2. Temporary service pursuant to this policy is a prelude to permanent water service to the Mesa del Caballo subdivision by use of CC Cragin Reservoir surface water supply delivered to the community via the proposed Payson pipeline and/or Payson Water Treatment Plant.
3. Temporary service pursuant to this policy is subject to progress between the Salt River Project and Brooke Utilities, Inc. on the use of CC Cragin Reservoir water supply for the Mesa del Caballo subdivision and on progress between Brooke Utilities, Inc. and the Town

July 22, 2013

Jason Williamson
Managing Partner

Mesa Del Caballo Water Customers:

As you are aware, JW Water Holdings, LLC purchased the Payson Water Company as of June 1st. The first couple months operating the water systems have been quite eventful. I am writing this advisory as a means of keeping you better informed of the facts. I realize that the high water bills are creating a burden for you, and I want you to know that we are taking this situation seriously, and evaluating the options available to us to solve the problem. In the meantime, I would like to do the best we can to provide you with accurate information.

Below, I've provided a table showing the calculations that we have used to date to calculate the augmentation charge. As you can see, the charge per gallon for this month is 3.67 cents. This compares to 2.2 cents last month. Please note that the primary reason for the higher charge is the reduction in overall amount of consumption during the June-July billing cycle. The total consumption amount (993,050) is an unprecedented low amount of usage for this time of year (see the second table for a historical reference). It was so unusually low that we conducted an investigation of a number of water meters to ensure reads were taken properly, and that the meters were functioning properly. Our investigation did not uncover any discrepancies, so the following numbers appear to be accurate and have been used in this month's billing.

Description	April-May	May-June	June-July
Total Final MDC Consumption (gallons)	1,122,568	1,456,570	993,050
Total Water Hauled (gallons)	183,179	509,160	664,125
Total Cost of Hauled Water (\$\$)	\$10,237	\$28,744	\$34,563
Total Billings Received for TQP water (\$\$)	\$0	\$3,459	\$1,890
Total Cost of Water Hauled	\$10,237	\$32,203	\$36,453
Total Water Augmentation Charge Per Gallon	\$0.00919492	\$0.02210552	\$0.036708091
MDC Historical consumption - July Billing Cycle			
• 2009	1742935 gallons		
• 2010	1400731 gallons		
• 2011	1247054 gallons		
• 2012	1292560 gallons		

- Other facts:
- After being taken offline by the well-owner for approximately 3 weeks, Payson Water Company and a key MDC well owner, arrived at an agreement to bring their well back on-line effective on July 12. Having this source available will increase our production capacity (and therefore decrease hauling demand) by between 100,000 and 120,000 gallons per week.
 - Payson Water Company met with the Arizona Corporation Commission's engineering staff on July 18 to update them on the situation and discuss potential solutions. A representative from the ACC's engineering department will be conducting an on-site survey of the Mesa Del Caballo system, as well as the other systems served by Payson Water Company during the month of August.

I will continue to provide updates as new information comes available.



Jason Williamson

P.O. Box 200695
Denver, CO 80220

Arizona Corporation Commission



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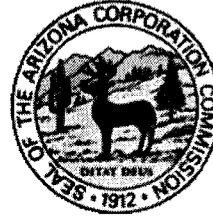
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ARIZONA CORPORATION COMMISSION Corporations Division

1300 West Washington Street
Phoenix, Arizona 85007-2929

400 West Congress Street, Suite 221
Tucson, Arizona 85701-1347

CERTIFICATE OF DISSOLUTION

To:
**ROBERT T HARDCASTLE
& BROOKE UTILITIES
1011 SO. STOVER RD.
PAYSON, AZ 85541**

Effective Date: 01/17/2013

Corporation Name: **BROOKE UTILITIES, INC.**
File Number: **-0776551-6**

The Corporation Commission has determined that the following grounds continue to exist under A.R.S. §§10-1420 & 10-11420 and therefore has administratively dissolved your corporation pursuant to A.R.S. §§10-1421 & 10-11421 on the effective date of this notice.

FAILURE TO FILE ANNUAL REPORT.

IF YOU HAVE MAILED YOUR ANNUAL REPORT WITHIN THE LAST 30 DAYS PLEASE DISREGARD THIS NOTICE.

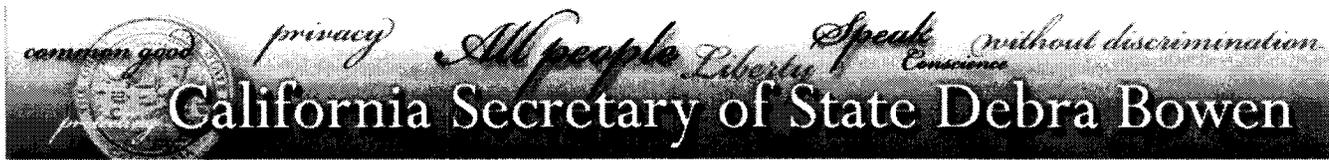
Under A.R.S. §§10-1422 & 10-11422, your corporation may apply to the commission for reinstatement *within six years* after the effective date of this dissolution.



Arizona Corporation Commission
Annual Reports Section
(602) 542-3285

Questions can be directed to:
Phoenix (602) 542-3285 or Toll Free 1-(800) 345-5819 or Tucson (520) 628-6560.
Please ask to speak with an examiner in the Annual Reports Section.

Note: Helpful information can be found on the Commission web site www.azcc.gov



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- **Business Identity Theft**
- **Misleading Business Solicitations**

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, November 19, 2013. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	BROOKE UTILITIES, INC.
Entity Number:	C2156135
Date Filed:	02/26/1999
Status:	ACTIVE
Jurisdiction:	ARIZONA
Entity Address:	<u>3101 STATE RD.</u>
Entity City, State, Zip:	BAKERSFIELD CA 93308
Agent for Service of Process:	LEE JAMIESON
Agent Address:	3101 STATE RD.
Agent City, State, Zip:	BAKERSFIELD CA 93308

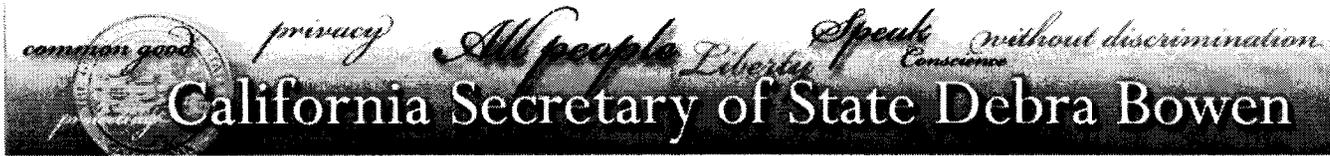
* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Field Descriptions and Status Definitions**.

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- *Select an entity name below to view additional information.* Results are listed alphabetically in ascending order by entity name.
- For information on checking or reserving a name, refer to **Name Availability**.
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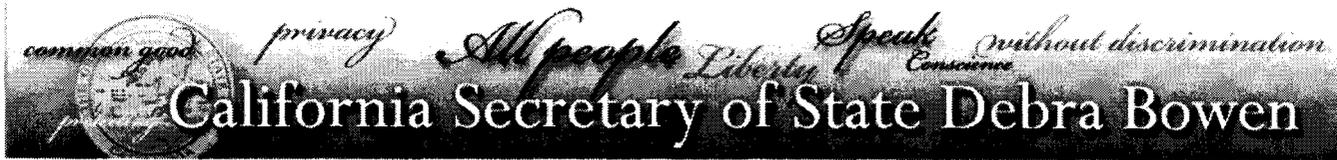
Results of search for " BROOKE UTILITIES " returned 1 entity record.

Entity Number	Date Filed	Status	Entity Name	Agent for Service of Process
C2156135	02/26/1999	ACTIVE	BROOKE UTILITIES, INC.	LEE JAMIESON

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Entity Name:	JACO OIL COMPANY
Entity Number:	C0598541
Date Filed:	05/15/1970
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	POB 82515
Entity City, State, Zip:	BAKERSFIELD CA 93380-2515
Agent for Service of Process:	T J JAMIESON
Agent Address:	<u>3101 STATE RD</u>
Agent City, State, Zip:	BAKERSFIELD CA 93308

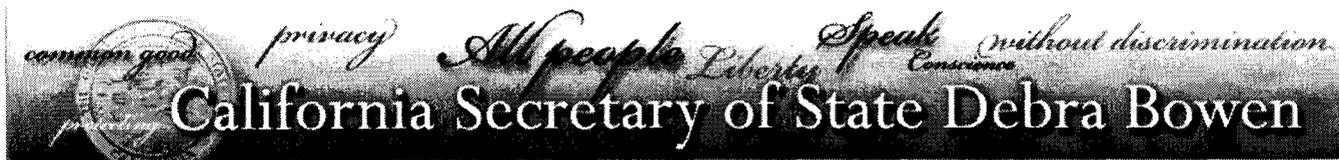
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Results of search for " JACO OIL " returned 1 entity record.

Entity Number	Date Filed	Status	Entity Name	Agent for Service of Process
C0598541	05/15/1970	ACTIVE	JACO OIL COMPANY	T J JAMIESON

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8

READ THE GAZETTE BLOG EVERY DAY



WEDNESDAY, AUGUST 7, 2013

Brooke president rips 'reckless' coverage

GUEST COMMENTARY

'It's why I stopped dealing with and reading the Roundup years ago.'

By Robert T. Hardcastle
Brooke Utilities, Inc.

When one reads a piece of published journalism there are basic assumptions the reader makes. We assume the core facts are accurate. At the very least we assume the writer made a reasonable attempt to learn and corroborate the facts. We assume the use of names is accurate. We assume what we read is not just ink spread on paper to fill space. And certainly not just because of some emotional reaction. "Fill in the blanks" journalism has surely risen to a higher level.

The Editorial published in the August 2, 2013 Payson Roundup ("Another Fine Mess") completely disregards these basic assumptions. For years, it is something I have marveled at, wondering why readers didn't demand higher levels of professional integrity in the Rim Country media. It's why I stopped dealing with and reading the Roundup years ago. When you can't even get headlines accurate, much less the story content, what is the point in reading it at all?

A few mis-stated facts, easily verified, should suffice as an example:

- "...[The Pine Strawberry Water Improvement District] bought out Brooke two years ago..."

Send rants, letters, press releases and notices to peoplesgazette@gmail.com

Labels

- BAD GUYS (29)
BOROWITZ (146)
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LIFE'S OUTTAKES (93)

FACT: The voluntary condemnation transaction of Pine Water and Strawberry Water closed in September 2009.

FACT: Brooke Utilities has never been bought out.

• "Its possible Brooke charged Mesa del residents extortionist rates for water they didn't need".



FACT: Brooke didn't charge Mesa del Caballo residents for anything. Payson Water Co. serves the residents of Mesa del.

FACT: Under sworn testimony, Corporation Commission staff have long since testified that Payson Water charged the water augmentation rates approved by the Commission.



FACT: Under the same sworn testimony Commission staff has stated that the method of calculating water augmentation rates is accurate and consistent with the methodology previously developed by the Commission.

FACT: Water hauling occurs only as dictated by a system of staging levels developed by the Commission. Water hauling MUST occur pursuant to the established system - it's not a matter of choice for the water company. Alternatively, Mesa del residents could easily run out of a water supply.

• "..... quickly struck an agreement with the owner of the disputed well".

FACT: Efforts were regularly under way over a year previously to reach an even more favorable agreement with the disputed well owners.

FACT: The disputed well owner was paid for every gallon of water supplied to the community during the period of agreement negotiations until the new owner's water agreement was reached.

• "..... took advantage of the state-granted monopoly".

FACT: This is a conclusionary statement with no basis, whatsoever, in fact. There has never been a sanction, penalty, fine, assessment, or finding by any Arizona regulatory agency against any of Brooke's water companies. And, certainly not because of some mis-use of state-granted privledges. To conclude otherwise is slanderous, misleading, and

- LOCAL NEWS (492)
- MAIN STREET (43)
- MAKE IT FUN (7)
- MESA DEL CABALLO (80)
- NATIONAL NEWS (544)
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- OPINION (890)
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- RANT AND RAVE (29)
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- SIGN OF THE TIMES (102)
- SPORTS (106)
- STAR VALLEY (83)
- STATE NEWS (678)
- TONTO BASIN (32)
- TOO MUCH (2)
- TRUTH (30)
- WATER (182)
- WEIRD NEWS (96)
- WOMEN (17)

1 Original and thirteen (13) copies of the
2 foregoing filed this 15th day of November,
2013, with:

3 Docket Control
4 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 Copy of the foregoing mailed this 15th
7 day of November, 2013, to:

8 Jay Shapiro
8 FENNEMORE CRAIG, P.C.
9 2394 E. Camelback Road, Suite 600
9 Phoenix, AZ 85016
10 Attorneys for Payson Water Co., Inc.

11 Kathleen M. Reidhead
11 14406 S. Cholla Canyon Dr.
12 Phoenix, AZ 85044

13 Thomas Bremer
13 6717 E. Turquoise Ave.
14 Scottsdale, AZ 85253

15 Bill Sheppard
15 6250 N. Central Ave.
16 Phoenix, AZ 85012

17 J. Stephen Gehring
17 Richard M. Burt
18 8157 W. Deadeye Rd.
18 Payson, AZ 85541

19
20 Monica A. Shultz
21

22
23
24
25
26
27
28

1 **CONSUMER SERVICE**

2 **Q. Please provide a brief history of customer complaints received by the Commission**
3 **regarding Payson.**

4 A. Staff reviewed the Commission's records and found the following, for the years 2010 to
5 2013:

- 6
- 7 • 2013 – 24 complaints (13 billing, 4 quality of service; 7 disconnect/termination);
 - 8 • 2012 – 61 complaints (16 billing, 2 new service; 1 service; 31 quality of service; 9
9 disconnect/termination; 1 rates and tariffs; and 1 other ACC Admin question);
 - 10 • 2011 – 81 complaints (33 billing, 3 new service; 1 service; 30 quality of service; 13
11 disconnect/termination; and 1 other company policy); and
 - 12 • 2010 – 12 complaints (6 billing; 1 deposit; 4 quality of service; 1
13 disconnect/termination)

14

15 ✱ All complaints have been resolved and closed.

16

17 **COMPLIANCE**

18 **Q. Please provide a summary of the compliance status of Payson.**

19 A. A check of the Compliance database indicates that there are currently no delinquencies for
20 Payson.

21

22 **SUMMARY OF PROPOSED REVENUES**

23 **Q. Please summarize the Company's filing.**

24 A. The Company proposes a \$399,785, or 124.73 percent revenue increase from \$320,525 to
25 \$720,310. The proposed revenue increase would produce an operating income of \$72,540
26 for an 11.00 percent rate of return on an original cost rate base ("OCRB") of \$659,457.
27 For the United System, the Company's proposed rates would increase the typical

RICHARD M. BURT
 PH. 928-617-8401
 106 E BONITA ST PMB 6
 PAYSON, AZ 85541

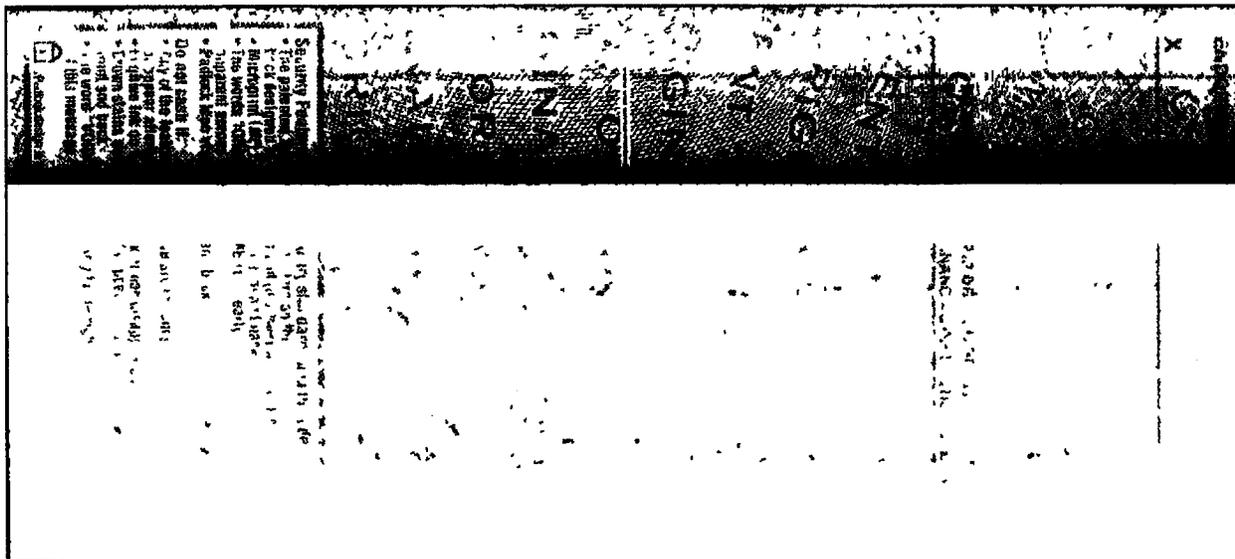
1883
 91-532/1221
 41

Date 1/15/2013

Pay to the Order of BROOKS UTILITY \$ 55.15
7.00 - fine and 15/100 Dollars  Security Features Details on back

 **NATIONAL BANK OF ARIZONA**
 1-800-487-6188
 www.nbatizona.com

For WATER BILL (12/12) Richard M. Burt



Date:01/22/13 Seq #:78008399

ial #:1883 Amount:\$55.15 Dep Seq #:-

RICHARD M. BURT
 PH. 928-517-8401
 106 E BONITA ST PMB 6
 PAYSON, AZ 85541

1903
91-532/1221
41

Date 4/1/2013

Pay to the Order of BROOKS UTILITIES, Inc \$ 25.00

Twenty-five and $\frac{no}{100}$ Dollars

NATIONAL BANK OF ARIZONA
 1-800-487-8108
 www.nbarizona.com

For BILL WATER BILL Richard M Burt

For Deposit only to

Cust: Jaco Oil Co
AG: Waste

Seq: 43
 Dep: 000457
 R/T: 122000661
 Date: 04/04/13

Security Features:
 • The gold-embossed
 • The color-inked
 • The color-inked

Do not scratch:
 • Do not scratch
 • Do not scratch

Security Features and include:
 • The gold-embossed
 • The color-inked
 • The color-inked

Date:04/05/13 Seq #:78012839

Serial #:1903 Amount:\$25.00 Dep Seq #:-

RICHARD M. BURT
~~PH: 602-512-9401~~ **425-474-9159**
 108 E BONITA ST PMB 6
 PAYSON, AZ 86541

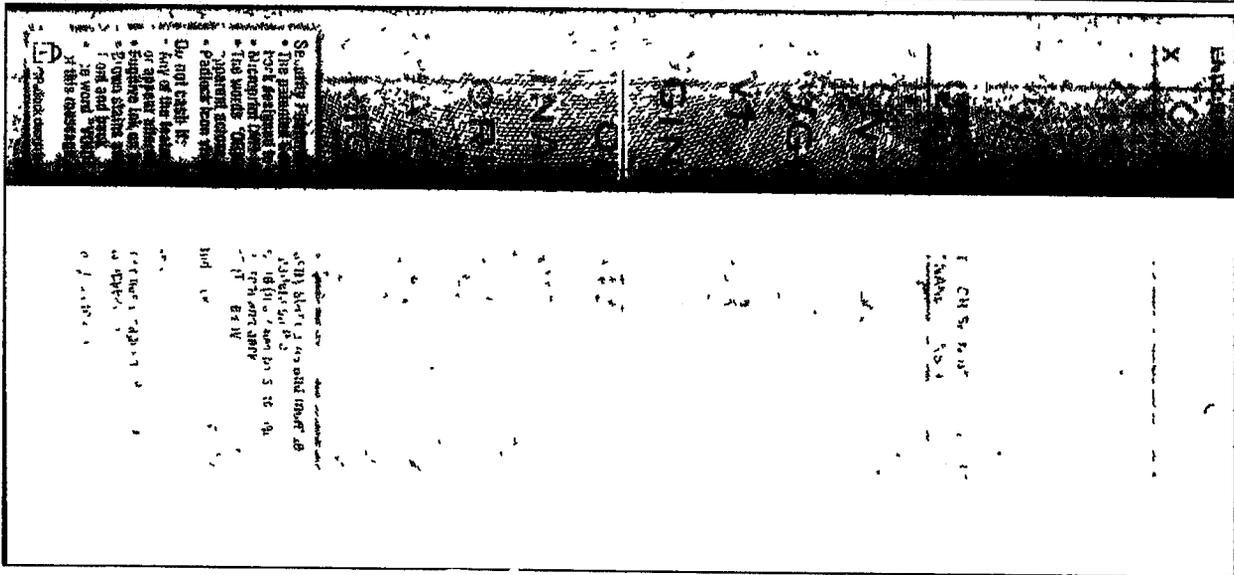
1861
91-832/1221
41

Date 9/28/12

Pay to the Order of Brooks Utility, Inc. \$ 120.00
One hundred - twenty & ⁰⁰/₁₀₀ Dollars

 **NATIONAL BANK OF ARIZONA**
 1-800-457-5188
 www.nberizona.com

For WATER BILL Richard M. Burt



Date:10/03/12 Seq #:78030870

al #:1861 Amount:\$120.00 Dep Seq #:-

