

TO: Docket Control
Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

FROM: Kevin Greif (intervener)

DATE: August 3, 2005

DOCKET No.: W-032623A-05-0330

RE: DIAMOND VALLEY WATER USERS CORP. RATE CASE

On April 4th, 2001, in response to issues raised in Docket No. W-03263A-00-0245, Decision 63547 was approved by the Corporation Commission. The Commissioners “ORDERED that the Commission’s Utilities and Legal Divisions, shall be authorized to take all lawful action necessary, including court action, to engage a qualified management entity to operate, manage, and maintain Diamond Valley Water User’s Corporation in order to bring the utility into full compliance with Arizona law, the Commission’s Rules and the Commission’s Orders.”

Two years after this ORDER, on April 28th, 2003, Diamond Valley Water Users Corporation was administratively dissolved by the Corporation Commission for failing to file an annual report. ARIZONA REVISED STATUTES 10-1622 A. requires that every domestic corporation authorized to transact business in Arizona file an annual report with the Corporation Commission.

ARIZONA REVISED STATUTES 10-1405 states that, “a dissolved corporation continues its corporate existence but shall not carry on any business except that business appropriate to wind up and liquidate its business and affairs...”

This Rate Case is a request from Tim Kylo, as Authorized Representative of Bradshaw Management Corporation for a rate increase for Diamond Valley Water Users Corporation (D VWUC).

Arizona Corporation Commission Staff was in large part responsible for the preparation of this rate case and there has been no participation or endorsement of this case by any Officer, Board Member or General Member of Diamond Valley Water Users Corporation.

The Commission is reviewing a rate case for a dissolved Corporation that is not in compliance with Arizona law, the Commission’s Rules or the Commission’s Orders and which was dissolved with the authority of the Commission while under the control of the Commission. The enforcement of Commissions Rules and Orders needs to occur in a timely manner.

Diamond Valley property owners and residents continue to pay the price for inadequate oversight and regulation of the local water utility.

On February 3, 2005 Mr. Larry Tarkowski, District Manager of Prescott Valley Water District sent a letter to Mr. Tim Kylo, the Interim Manager for Diamond Valley Water Users Corporation. The letter stated that the Water District would be increasing the “gallonge” rate 8.9%. The rate per thousand gallons would increase from \$2.25 to \$2.45 effective March 1, 2005.

On March 25, 2005, Mr. Tim Kylo, Interim Manager for Diamond Valley Water Users Corporation, filed a request to increase the tariff for service line and meter installation charges. The Utilities Division MEMORANDUM dated April 14, 2004 states that the Prescott Valley Water District had increased new connection fees by \$450.00 and implemented a Water Resource Charge of \$1526.00 (Docket No. W-03263A-05-0215). Corporation Commission staff recommended approval of the increased hook-fees and the Commission passed Order No. 67829 granting the emergency increase May 5, 2005.

	Old Rates	Approved increase
Water Connection Charge	\$1200.00	\$1650.00
Water Resource Charge	\$0.00	\$1526.00
Meter and Installation		
Advance in aid of construction	\$450.00	\$0.00
Actual Cost – estimated	\$0.00	\$800.00 - \$2000.00+
TOTAL	<u>\$1650.00</u>	<u>\$3976.00+</u>

On May 27, 2007 Ivan Legler, Prescott Valley City Attorney, spoke with Commissioner Kris Mayes and sent the following detailed Email to Mr. Steve Olea at the ACC. He made it quite clear that the only rate changed by the Prescott Valley Water District that would affect Diamond Valley Water Users was the “gallonge” increase from \$2.25 to \$2.45 per thousand gallons.

Mr. Olea:

I spoke on the phone this afternoon with Commissioner Chris Mayes. She had met earlier with Diamond Valley residents and Yavapai County officials to discuss issues related to Diamond Valley Water User's Corporation. In the course of our conversation, Commissioner Mayes informed me about ACC Order No. 67829, dated May 5, 2005, granting an emergency rate increase for DVWUC. That order is apparently based on information that the Prescott Valley Water District is now applying its water system connection charges to DVWUC, effective March 1, 2005. It turns out that that information is incorrect.

As background, Prescott Valley Water Company is the successor-in-interest to Shamrock Water Company. On January 21, 1999, the District purchased Shamrock's stock, changed the name, and changed the Company to a non-profit corporation with the District as its sole member. The District now operates the Company's water system using Company revenues, and does so through third-party operations agreements with the Town of Prescott Valley and with OMI, Inc. As successor-in-interest to Shamrock, the Company/District is party to a "Restated and Amended Agreement for Water Services" dated December 3, 1996 with DVWUC. Under that Agreement, the Company/District delivers groundwater to DVWUC at a single point of delivery. DVWUC then distributes that water to DVWUC customers. Under the Agreement, DVWUC pays the Company/District a one-time facilities charge of \$1,200.00 for each new hook-up. Each month DVWUC also pays a service charge of \$5.60 for each connection and a gallonge rate tariff of \$2.45 per 1000 gallons metered at the point of delivery.

In 2001, the District participated with Diamond Valley residents in actions before the ACC attempting to resolve serious nonperformance by the operator at that time of DVWUC. The nonperformance included non-payments under the Agreement which threatened discontinuation of water deliveries. Through that process, Bradshaw Management Corporation (Tim Kylo) was appointed to manage DVWUC and a settlement agreement was reached whereby DVWUC would pay its obligations under the Agreement from that time forward, and would pay an additional \$2,300.00 per month towards resolving the acknowledged arrears. On February 3, 2005, District Manager Larry Tarkowski sent Kylo written notice per Subsection 2.7(d) of the Agreement that the District had revised its volume rates, and that this would affect the gallonage component of the water charge to DVWUC under the Agreement. He explained that the District uses tiered rates and that the average had increased from \$2.25 per 1000 gallons to \$2.45 per 1000 gallons. Therefore, the new gallonage rate for DVWUC would be \$2.45 per 1000 gallons effective March 1, 2005. The letter also expressed concern that the District was not receiving reports from DVWUC about new service connections in Diamond Valley, and that DVWUC might again be falling in arrears on the related charges. Tarkowski asked to hear from Kylo on this matter. Kylo responded with a letter dated February 18, 2005 explaining that \$1,200.00 of the \$1,650.00 DVWUC collects for meter sets goes to the District and \$450.00 goes into a liability account for refund to the customer. He complained that DVWUC loses from \$400.00 to several thousand dollars each time a new customer signs up for service. He acknowledged that DVWUC owes the District for approximately 40 facilities charges and asked for an accounting of the facilities charge payments received by the District since May of 2001. In the meantime, Kylo indicated that DVWUC would be asking the ACC for an increase in rates as well as facilities charges.

Some time in March, District Utilities staff began seeing Diamond Valley customers at their counter who said they had been directed to come to the District to pay connection charges directly and to be connected for water service by the District. Laura Giles, Utilities Supervisor, reports at least 7 or 8 customers were seen. In each case, Utilities staff explained that the District simply delivers water to DVWUC for distribution under the Agreement and that DVWUC remains responsible to collect connection charges and make connections to the DVWUC system. Bill Kauppi, Management Services Director, subsequently spoke with Kylo on the phone and reports being told by Kylo that Tarkowski had said the District's connection charges [\$1,650.00 (system capacity charge), \$1,526.00 (water resource charge), and meter costs (depending on size)] would now be applied to DVWUC. Kauppi says he explained to Kylo that this wasn't the case. I've since spoken with Tarkowski and he recollects speaking on the phone with Kylo in March and simply reiterating the need for facilities charges to be kept up-to-date per the Agreement. He does not believe anything was said that could be misconstrued as the District now applying its connection charges to DVWUC. It should be noted that Utilities staff recently received a check from Kylo purporting to pay a facilities charge to the District in the amount of \$3,176.00 instead of \$1,200.00. That check is in the process of being returned.

Aside from having attached a copy of District Resolution 54 (showing all new District fees and charges as of January 1, 2005) to Tarkowski's February 3, 2005 letter, it's unclear how this miscommunication has developed or been perpetuated. At this point in time, the District continues to operate under the Agreement with DVWUC and simply wishes to receive the reports specified in the Agreement which verify the number of connections so that appropriate facilities charges and service charges are paid along with the gallonage charge. The District appreciates continuing to receive the monthly settlement amount and hopes that DVWUC will avoid developing additional arrears with regard to the established (and unchangeable) facilities charge of \$1,200.00.

Feel free to contact myself (928-759-3031), Bill Kauppi (928-759-3127), Laura Giles (928-759-3011), or Larry Tarkowski (928-759-3101) with any additional questions or concerns.

Sincerely,

Ivan Legler
Town Attorney/District Counsel

On June 7, 2005 Commission Staff filed a Sufficiency Letter for the Diamond Valley Water Users Corporation Emergency Rate Case Docket No. W-03263A-05-0330. Commission Staff helped prepare this rate case.

This rate application still uses the incorrect charges and fees that were used in the Tariff Amendment despite the clarification by Mr. Ivan Legler. There is no disclosure by Mr. Kyllo or ACC staff that the information in the Rate Case is erroneous even though they have been made aware of the problem. This is very misleading for anyone trying to analyze the rate case. Further the use of an unaudited test year annual statement that is inconsistent with the prior audited annual statement makes the entire application questionable at best.

In the Rate Application (Docket No. W-03263A-05-0330), the “Company is requesting an increase of revenues in the amount of \$83,344.00”. If you take the proposed rate increases and apply them to the 2004 test year data you end up with a rate increase of approximately \$236,822.00. This is 284% of \$83,344.00, close to three times the requested amount. This represents an increase in total operating revenues of more than 86% using the 2004 test year data provided.

The recent “gallonage” rate increase from Prescott Valley Water District is only 3.11% of Diamond Valley Water Users Corporation operating revenues using the 2004 test year figures.

Not only are the charges used in the application erroneous, but even when those numbers are used to calculate the revenue increase the result is nowhere close to that stated in that Rate Case.

There are three tables on the following page. One shows the result of the rate increases as proposed in the Rate Case. The next table shows the actual effect of the “gallonage” rate increase, which is the only increase made by Prescott Valley Water District. And the third table shows an alternative proposal that will yield something closer to the \$83,344.00 requested by Bradshaw Management in the Rate Application.

The following table shows the proposed rates and the resulting revenue increase based on the information in the Rate Case. **Please note that the Total Increase is almost three times the requested revenue increase.**

Rate increase from Application	Old Rate	Proposed Rate	Increase	Est. # of Meters	Thousand Gallons per year	Revenue Increase
Water Connection Charge	\$1,650.00	\$1,650.00	\$450.00	50	Elimination of Advance in Aid of Construction	\$22,500
Water System Capacity charge Meter and Installation	\$0.00	\$1,526.00	\$1,526.00	50		\$76,300
Advance in Aid of Construction	\$450.00	\$0.00	\$0.00		<i>*Needed to be refunded to customer</i>	\$0
Actual Cost – estimated	\$1,185.00	\$1,185.00	\$1,185.00	50	<i>*Average cost from 2003 annual statement</i>	\$59,250
Basic monthly service charge	\$16.00	\$27.00	\$9.00		Increase X 563 customers X 12 months	\$60,804
Volume rate per thousand gallons	\$5.40	\$6.00	\$0.60		<i>*Average of tiered rate</i> 29947	\$17,968
					Total Increase	\$236,822
					<i>Requested revenue increase</i>	<i>\$83,343</i>

The **TOTAL ACTUAL RATE INCREASE** from Prescott Valley Water District is shown below.

Actual Rate increase from Prescott Valley Water District	Gallons purchased 2004	Cost Increase
Volume rate per thousand gallons	\$2.25	\$2.45
	38536	\$7,707.20

This alternative proposal provides a revenue increase greater than requested amount and minimizes the impact on current ratepayers.

Alternative Proposal	Current Rate	Proposed Rate	Revenue per unit	Est. # of Meters	Requested revenue increase
Capacity Charge.	\$1650.00	\$450.00	\$450.00	50	No Advance in Aid of Construction
Water Resource charge	\$0.00	\$0.00	\$0.00	50	
Meter and Install cost from Tariff amendment	\$0.00	\$1,185.00	\$1,185.00	50	
Basic User fee monthly service charge	\$16.00	\$16.00	\$0.00		6756 (563 customers X 12)
Volume rate per thousand gallons	\$5.40	\$5.70	\$0.30		29947
					Total Increase
					\$90,734.10
					<i>Requested revenue increase</i>
					<i>\$83,343.00</i>

The Volume rate increase in the Alternative Proposal yields \$8984.10 and more than covers the real rate increase from Prescott Valley Water District of \$7707.20. There is no justification given for the requested increase in the monthly service fee. It is only fair that the charge for installation of new meter cover the costs incurred and be paid by the person requesting the new service.

The \$1650.00 charge for installation of a new service has not covered Diamond Valley Water Users cost for many years. \$1200.00 goes to the Prescott Valley Water District and up until the Tariff Amendment this year, the balance of \$450.00 was an Advance in Aid of Construction and is required by Commission rules to be refunded to the customer. That leaves nothing to compensate the Company for the service line construction and meter installation. This situation existed when Bradshaw Management took over in April of 2001. This problem was clearly identified by the RATES AND EXPENSE EXAMINATION dated April 2004 (Docket No. W-03263A-00-0470). It has taken four years for the Interim Manager to take corrective action and once again the ratepayer is being asked to pick up the cost.

There is a considerable discrepancy between the number of “Facilities Charges” that have been paid to the Prescott Valley Water District and the number of customers identified in the rate case. The Prescott Valley Water District shows “Facilities Charges” paid for 495 customers and the rate application shows a minimum of 569 customers that should have paid this charge. This means that there are “Facilities Charges” due for at least 74 customers. This liability is likely more than \$88,000 and is not evident in the rate case “2004 Annual Statement”.

This number of customers is listed on each bill from the Prescott Valley Water District. This discrepancy should have been obvious to the Interim Manager. By not reporting connections as they were made the company also has incurred delinquent monthly “Connection Charges” as well that are not identified in the Rate Case documentation. The Table below gives an estimate of the amount due for 2004. There is probably a balance due for previous years and 2005 as well.

Service Connections			Total Service Connection Charge		
DVWU Rate Case	PV Water Billing	Connection Charge**	Billed by PV Water District	Corrected Charge	Balance due**
538	484	\$3.60	\$1,742.40	\$2,474.80	\$732.40
548	484	\$3.60	\$1,742.40	\$2,520.80	\$778.40
544	484	\$3.60	\$1,742.40	\$2,502.40	\$760.00
546	484	\$3.60	\$1,742.40	\$2,511.60	\$769.20
549	484	\$3.60	\$1,742.40	\$2,525.40	\$783.00
551	484	\$3.60	\$1,742.40	\$2,534.60	\$792.20
552	489	\$3.60	\$1,760.40	\$2,539.20	\$778.80
568	492	\$3.60	\$1,771.20	\$2,612.80	\$841.60
569	492	\$3.60	\$1,771.20	\$2,617.40	\$846.20
564	495	\$3.60	\$1,782.00	\$2,594.40	\$812.40
569	495	\$3.60	\$1,782.00	\$2,617.40	\$835.40
563	495	\$3.60	\$1,782.00	\$2,589.80	\$807.80
Total Due					\$ 9,537.40

** Per agreement, connection charge should have been \$4.60.

Bradshaw Management Corp. with the approval of the ACC has also installed new meters outside the original boundaries of the Diamond Valley Water Users Corporation CN&N. Now the ratepayers are being asked to repay those costs as well. This expansion of service is problematic for a couple of other reasons. The contract between Diamond Valley Water Users and Prescott Valley Water District is for a fixed maximum quantity of water. If the number of customers increases the amount available per customer decreases. This area is also in an ADWR active management area and it is unlikely that the required, assured water supply was obtained for these additional parcels.

There is also a "Water Transportation Agreement" between Diamond Valley Water Users Corporation and Bradshaw Water Company Inc. to supply Prescott Valley Water to the Bradshaw Water Company system using the Diamond Valley Water Users infrastructure. This agreement was made in 1997 and was supposed to expire "on its own terms" in 2002. This puts additional pressure on the aging system and is costing the Company and thereby the ratepayers a considerable amount. Bradshaw Water Co. pays a "Water Transportation Charge" of \$0.20 per thousand gallons and an "Annual Administrative Charge" of \$35.00 per acre-foot of water transported. The same water service that Bradshaw Water Co received in 2004 for \$231.00 would have cost a Diamond Valley Water Users Corp. customer over \$4000.00. The following table shows the estimated impact on the Company.

Net loss/gain from "Water Transportation Agreement" with Bradshaw Water Co - 2004						
Expenses						
	Gal.	Gal.				
	Delivered	Purchased	Difference	Rate		Cost
System Leakage Adjustment (22%)	753,000	965,385	212,385	\$2.42		\$514
Operations & Management	753,000			\$4.77		\$3,589
			Total Expenses			\$4,103
Revenue						
Water Transportation Charge	753,000			\$0.20		\$151
Annual Administrative Charge	753,000			\$35/acre-foot		\$81
			Total Revenue			\$231
Loss to Diamond Valley Water Users - 2004						\$3,871

Water Loss in December of 2004 is listed at 39%. The average system loss for the year was 22%. Presently there is no incentive for the Interim Manager to operate the system efficiently. A reduction of leakage from 22% to 15% would eliminate \$6608.00 in water purchase expense as well as reduce pumping cost and the risk of contamination.

	Number of Customers	Gallons sold (Thousands)	Gallons Purchased (Thousands)	Difference (Thousands)	% Loss
Jan-04	538	1988	2897	909	31%
Feb-04	548	2106	2452	346	14%
Mar-04	544	2018	2654	636	24%
Apr-04	546	2449	2888	439	15%
May-04	549	2649	3233	584	18%
Jun-04	551	2958	4266	1308	31%
Jul-04	552	3342	4103	761	19%
Aug-04	568	2757	3296	539	16%
Sep-04	569	3058	3233	175	5%
Oct-04	564	2559	3225	666	21%
Nov-04	569	2056	3009	953	32%
Dec-04	563	2007	3280	1273	39%
Total		29947	38536	8589	

Percent Average Monthly Water Loss	22%
Cost of Water loss in 2004	\$19,325.25
Cost of Water loss at current rate	\$20,785.38

The “Interim Manager” is supposed to pay the bills and then take the management fee if there are funds available. Instead management fees continue to be paid while Diamond Valley Water Users Corporation debt escalates. This gives the Interim Manager little incentive to deal with problems expeditiously.

The ratepayers in Diamond Valley are not opposed to a rate increase. But the increase should be reasonable. The alternative proposed gives the Company the revenue increase it is asking for without further penalizing the customers.

But the customers also deserve some real action on the other issues raised here. There should be a concrete plan to resolve the ownership issue. There should be some incentives or penalties put in place to reduce leakage, as it is clear the company has been ineffective dealing with this problem. New connections outside the CC&N or expansion of the boundaries should be prohibited. The “Water Transportation Agreement” with Bradshaw Water Company need to be renegotiated immediately or the agreement should expire and the line be shut off.

The Staff Report for Diamond Valley Water Users Corporation as ordered by Decision No. 66733 (Docket No. W-03263A-00-0470) identified the fact that Advances-In-Aid-of-Construction have not been recorded or refunded. It is unclear how much has been collected and if any disbursements have been made as required. An accounting is long overdue for these funds as well as a repayment schedule. The pending Rate Application does not show how or if this problem has been corrected. An audited accounting of Advances-in-Aid-of-Construction collections and a repayment schedule should be required.

An audited report showing facilities charges and payment for each year since the Interim Manager was appointed should be required. Arizona Administrative Code R114-2-411 D. 4. states, "All utilities shall submit an annual report to the Commission on a form prescribed by it. The annual report shall be filed on or before the 15th day of April for the preceding calendar year." This annual report also needs to be audited.

Diamond Valley Water Users Corporation water rates already reflect years of mismanagement and lack of regulatory action. Currently Bradshaw Management is paying Prescott Valley Water District for old debts and simultaneously incurring new ones. There are still back taxes owed to Yavapai County and it is difficult to determine what the present liabilities of the Company are from the financial information provided in the Rate Case Application.

The \$83,000.00 rate increase is probably necessary. It is important that this financial burden fall on those that are generating the expenses. The existing customers have already paid more than once for the service they have received. In the process of granting any rate increase there should be some performance guaranty that quantifies how the funds will be used as well as how and when all current liabilities will be satisfied.

The recent Tariff Amendment that was based on erroneous information, and the questionable financial statement in this Rate Case application, creates real concerns about the quality and integrity of current management. Regulatory oversight is necessary but is useless without enforcement. Diamond Valley Community has dealt with water problems for better than twenty years. It is time to address the problems that exist, including the ownership issue, and correct them.

Kevin Greif
Intervener