



BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**In the Matter of:**  
Arizona American Water Company – Tubac Valley located at 15 Burruel St., Tumacacori , Santa Cruz County, Arizona 85640  
Public Water System Number 12-001

**CONSENT ORDER**

Docket No. DW-50-09

To: Arizona American Water Company (Arizona American) in its capacity as owner and operator of Arizona American Water Company – Tubac Valley located at 15 Burruel St., Tumacacori, Santa Cruz County, Arizona 85640.

**RECITALS**

Arizona American acknowledges that no promise of any kind or nature whatsoever was made to induce it to enter into this Consent Order, and Arizona American has done so voluntarily.

Arizona American acknowledges that by entering into this Consent Order, it does not resolve any liability it may have for civil penalties for violations of any State or Federal environmental law.

By entering into this Consent Order, Arizona American does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to Arizona American under applicable law. Further, Arizona American does not admit, and both the Arizona Department of Environmental Quality (ADEQ) and Arizona American retain the right to controvert in any subsequent proceeding except proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

Initials   *ja*

1 The undersigned representative of Arizona American certifies that he is fully authorized  
2 to execute this Consent Order on behalf of Arizona American and to legally bind Arizona  
3 American to this Consent Order.

4 Arizona American admits to the jurisdiction of the Director of ADEQ.

5 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of  
6 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,  
7 Arizona American consents to the terms and entry of this Consent Order and agrees not to  
8 contest the validity or terms of this Consent Order in any subsequent proceeding.

9 **THEREFORE, IT IS HEREBY ORDERED** as follows:

10 **I. JURISDICTION**

11 The Director of ADEQ has jurisdiction over the subject matter of this action and is  
12 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes (A.R.S.) §§ 49-  
13 354 and 41-1092.07(F)(5).

14 **II. FINDINGS**

15 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
16 **CONCLUSIONS OF LAW:**

17 A. Findings of Fact

18 1. Arizona American owns and/or operates Arizona American Water  
19 Company – Tubac Valley, located at 15 Burruel St., Tumacacori , Santa Cruz County, Arizona  
20 85640, which provides water for human consumption to customers in the Tumacacori area.

21 2. Arizona American Water Company – Tubac Valley is a water system  
22 which serves a population of approximately 1,665 with 534 water connections with groundwater.  
23 ADEQ has assigned this water system Public Water System (PWS) #12-001.

24 3. Analytical results submitted by Arizona American to ADEQ for PWS #12-  
25 100 from a sample taken at Entry Point to the Distribution System (EPDS) #002 on February 9,

1 2009 indicated an arsenic level of 0.025 mg/l, a sample taken at EPDS #004 on February 9, 2009  
2 indicated an arsenic level of 0.037 mg/l, and a sample taken at EPDS #005 indicated an arsenic  
3 level of 0.019 mg/l.

4 B. Conclusions of Law

5 1. Arizona American Water – Tubac Valley is a public water system as  
6 defined in A.R.S. § 49-352(B) and 40 C.F.R. § 141.2 (incorporated by reference at A.A.C. R18-  
7 4-103).

8 2. Arizona American Water – Tubac Valley is a community water system as  
9 defined in 40 C.F.R. § 141.2 (incorporated by reference at A.A.C. R18-4-103).

10 3. Arizona American, as owner and operator of Arizona American Water –  
11 Tubac Valley, is a supplier of water as defined in 40 C.F.R. § 142.2 (incorporated by reference as  
12 A.A.C. R18-4-103).

13 4. The Maximum contaminant level (MCL) as defined in 40 CFR § 141.2  
14 (incorporated by reference as A.A.C. R18-4-103) means the maximum permissible level of a  
15 contaminant in water which is delivered to any user of a public water system. The MCL for  
16 arsenic is 0.010 mg/l as established in 40 CFR § 141.62(b)(16) (incorporated by reference as  
17 A.A.C. R18-4-109).

18 5. By distributing water in excess of the MCL for arsenic, Arizona American  
19 violated 40 C.F.R. § 141.62(b) (incorporated by reference as A.A.C.R18-4-205).

20 **III. COMPLIANCE SCHEDULE**

21 **THE DIRECTOR HEREBY ORDERS** and Arizona American agrees to comply with the  
22 provisions of this Consent Order as follows:

23 A. Beginning on July 10, 2009 and continuing each successive third month  
24 thereafter, Arizona American shall issue a public notice to customers of PWS #12-100 to include  
25 arsenic monitoring information and analytical results for the previous three month period, as

1 required by 40 C.F.R. § 141.203(b)(2) (incorporated by reference at A.A.C. R18-4-119), and  
2 submit a copy of each repeat notice to ADEQ within ten (10) calendar days after the notice is  
3 issued.

4 B. Within thirty (30) calendar days of the effective date of this Order, Arizona  
5 American shall submit to ADEQ an administratively complete Application to Construct (ATC),  
6 pursuant to A.A.C. R18-5-505, for a treatment system using best available technology (BAT) to  
7 achieve compliance with the arsenic MCL in accordance with 40 C.F.R. § 142.62(b)  
8 (incorporated by reference at A.A.C. R18-4-103). Arizona American shall respond to any  
9 deficiencies noted by ADEQ within the time prescribed by ADEQ.

10 C. Within one hundred eighty (180) days after ADEQ issues the ATC, or by January  
11 23, 2010, whichever is later, Arizona American shall complete the construction of the approved  
12 treatment system and submit an administratively complete application for an Approval of  
13 Construction (AOC) for the treatment system described in Section III(B) of this Order.

14 D. Within fifteen (15) calendar days of the effective date of this Order, Arizona  
15 American shall discontinue the use of Well #4 to supply water to PWS #12-100. Arizona  
16 American shall install a valve to separate Well #4 from the distribution system and submit to  
17 ADEQ documentation to confirm that Well #4 is no longer providing water to PWS #12-100. In  
18 the event water from Well #4 is necessary to maintain a minimum pressure of 20 pounds per  
19 square inch (psi) in the distribution system of PWS #12-100, Arizona American may distribute  
20 water from Well #4 into PWS #12-100. Arizona American shall notify ADEQ within 24 hours  
21 of distributing water from Well #4 in PWS #12-100 and shall sample water at EPDS #004  
22 immediately prior to distributing water from Well #4 in PWS # 12-100.

23 E. Within ten (10) calendar days of receiving ADEQ's issuance of the AOC, Arizona  
24 American shall submit a written status report to ADEQ describing the measures taken under  
25 Section III of this Consent Order, and shall certify that requirements of Section III of this Order

1 have been achieved. The report shall be accompanied by evidence of compliance including  
2 photographs of the treatment system and arsenic monitoring reports from samples taken at the  
3 EPDS indicating a reading below the MCL for arsenic of 0.010 mg/l.

4 F. After the treatment system in Section III(C) is installed, Arizona American will  
5 continue to conduct quarterly monitoring for arsenic until the quarterly arsenic sample results  
6 show that the running annual average is below 0.010 mg/l, in accordance with 40 C.F.R. §  
7 141.23(i)(1) (incorporated by reference at A.A.C. R18-4-105).

#### 8 **IV. STATUS REPORTS**

9 A. Arizona American agrees to submit a written status report to ADEQ every thirty  
10 (30) calendar days beginning thirty (30) days from the effective date of this Consent Order, until  
11 termination of this Consent Order. Each written status report shall describe what measures have  
12 been taken under Section III, of this Consent Order, and shall certify when compliance with the  
13 requirements of Section III of this Order has been achieved. Each report shall be accompanied  
14 by evidence of compliance including, as appropriate, submittal of documents, analytical results,  
15 photographs or copies of any other supporting information that Arizona American deems  
16 necessary.

17 B. ADEQ will review the status reports and relay any disputes in writing to Arizona  
18 American. Arizona American shall incorporate all required modifications, changes or other  
19 alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

#### 20 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

21 A. ADEQ and Arizona American agree that if Arizona American commits civil  
22 violations of A.R.S. Title 49, Chapter 2, Article 9 or rules adopted thereunder and fails to comply  
23 with this Consent Order after the applicable compliance dates provided in Section III of this  
24 Order, ADEQ in its sole discretion, but subject to Article 9, shall have the option of either  
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1 collecting stipulated administrative penalties pursuant to this Section, or pursuing statutory  
2 penalties.

3 B. Notwithstanding the foregoing, Arizona American shall be entitled to exercise the  
4 right to respond to any claimed violation by ADEQ and provide evidence to ADEQ that it is in  
5 compliance and that said violation does not exist. If ADEQ determines after reviewing such  
6 evidence that there is no violation of applicable laws, no stipulated administrative penalties shall  
7 be collected.

8 C. If ADEQ elects to collect stipulated administrative penalties, Arizona American  
9 agrees to pay a penalty of \$500.00 per day per violation, up to \$5,000.00 per violation.

10 D. Except as otherwise provided herein, stipulated penalties shall begin to accrue on  
11 the day that performance is due or that a violation of this Consent Order occurs and shall  
12 continue to accrue until correction of the act of noncompliance is completed. Neither issuance  
13 by ADEQ nor receipt by Arizona American of a Notice of Violation of the terms and conditions  
14 of this Consent Order are conditions precedent to the accrual of stipulated penalties.

15 E. The payment of stipulated penalties shall not relieve Arizona American from  
16 compliance with the terms and conditions of this Consent Order or Federal or State laws, nor  
17 limit the authority of the State to require compliance with the Consent Order or State law.

18 **VI. COMPLIANCE WITH OTHER LAWS**

19 A. This Consent Order does not encompass issues regarding releases, contamination,  
20 sources, operations, facilities or processes not expressly covered by the terms of this Consent  
21 Order, and is without prejudice to the rights of the State of Arizona or Arizona American, arising  
22 under any federal or Arizona environmental statutes and rules with regard to such issues.

23 B. Nothing in this Consent Order shall constitute a permit of any kind, or a  
24 modification of any permit of any kind, or an agreement to issue a permit of any kind under  
25 federal, state or local law, or relieve Arizona American in any manner of its obligation to apply

1 for, obtain, and comply with all applicable permits. Nothing in this Consent Order shall in any  
2 way alter, modify or revoke federal, state, or local law, or relieve Arizona American in any  
3 manner of its obligation to comply with such laws. Compliance with the terms of this Consent  
4 Order shall not be a defense to any action to enforce any such permits or laws, except for actions  
5 to enforce the obligations addressed in Section III.

6 **VII. FORCE MAJEURE**

7 A. Arizona American shall perform all the requirements of this Consent Order  
8 according to the time limits set forth herein, unless performance is prevented or delayed by  
9 events which constitute a *force majeure*. *Force majeure*, for the purposes of this Consent Order,  
10 is defined as any event, arising from causes beyond the control of Arizona American or its  
11 authorized representatives which delays or prevents the performance of any obligation under this  
12 Consent Order and which could not have been overcome or prevented by Arizona American.  
13 The financial inability of Arizona American to comply with the terms of this Consent Order,  
14 shall not constitute a *force majeure*.

15 B. In the event of a *force majeure*, the time for performance of the activity affected  
16 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the  
17 delay caused by the *force majeure*. The time for performance of any activity dependent on the  
18 delayed activity shall be similarly extended. In the event of a *force majeure*, Arizona American  
19 shall notify ADEQ in writing within five (5) calendar days after Arizona American or its agents  
20 become aware of the occurrence. The written notice provided to ADEQ shall describe in detail  
21 the event, the anticipated delay, the measures taken and to be taken by Arizona American to  
22 prevent or minimize delay, and a proposed timetable under which those measures will be  
23 implemented. Arizona American shall take all reasonable measures to prevent or minimize any  
24 delay caused by the *force majeure*. Failure of Arizona American to comply with any  
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1 requirements of this paragraph for a particular event shall preclude Arizona American from  
2 asserting any claim of *force majeure* for that event.

3 **VIII. SITE ACCESS**

4 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,  
5 enter upon the premises at the Facility for the purpose of observing and monitoring compliance  
6 with the provisions of this Consent Order. This right of entry shall be in addition to, and not in  
7 limitation of or substitution for, ADEQ's rights under applicable law.

8 **IX. CORRESPONDENCE**

9 All documents, materials, plans, notices, or other items submitted as a result of this  
10 Consent Order shall be transmitted to the addresses specified below:

11 To ADEQ:

12 Arizona Department of Environmental Quality  
13 Water Quality Division  
14 Attention: Vivian Burns, Case Manager  
15 1110 West Washington Street  
16 Phoenix, Arizona 85007-2935  
17 Telephone: (602) 771-4608  
18 Email: [burns.vivian@azdeq.gov](mailto:burns.vivian@azdeq.gov)

16 To Arizona American:

17 Nina Miller, Manager Environmental Compliance  
18 Arizona American Water Company  
19 19820 N 7<sup>th</sup> St.  
20 Phoenix, Arizona 85024-1694

20 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

21 **X. RESERVATION OF RIGHTS**

22 A. This Consent Order is based solely upon currently available information. If  
23 additional information is discovered, which indicates that the actions taken under this Consent  
24 Order are or will be inadequate to protect human health, safety, or the environment, or to  
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1 conform with applicable federal or state laws, ADEQ shall have the right to require further  
2 action.

3 B. ADEQ shall have the right: to pursue civil penalties for violations of any and all  
4 violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring before September  
5 16, 2008; to disapprove of work performed by Arizona American that fails to comply with this  
6 Consent Order; to take enforcement action for any and all violations of this Consent Order; and  
7 to take enforcement action for any and all violations of A.R.S. Title 49, or the rules promulgated  
8 thereunder, occurring after the entry of this Consent Order.

9 **XI. SEVERABILITY**

10 The provisions of this Consent Order are severable. If any provision of this Consent  
11 Order is declared by a court of law to be invalid or unenforceable, all other provisions of this  
12 Consent Order shall remain in full force and effect.

13 **XII. MODIFICATIONS**

14 Any modifications of this Consent Order shall be in writing and must be approved by  
15 both Arizona American and ADEQ.

16 **XIII. EFFECTIVE DATE**

17 The effective date of this Consent Order shall be the date this Consent Order is signed by  
18 ADEQ and Arizona American. If such signatures occur on different dates, the later date shall be  
19 the effective date of this Consent Order.

20 **XIV. PARTIES BOUND**

21 No change in ownership, corporate status, or partnership status relating to the subject of  
22 this Consent Order will in any way alter the responsibilities of Arizona American under this  
23 Consent Order. Arizona American will be responsible, and will remain responsible, for carrying  
24 out all activities required under this Consent Order.

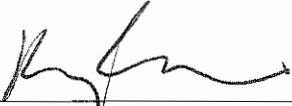
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**XV. TERMINATION**

The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be terminated upon receipt of written notification from ADEQ that Arizona American has demonstrated, to the satisfaction of ADEQ, that all of the terms of this Consent Order have been completed. Any denial of a request for termination from Arizona American will be in writing and describe which terms of the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the right to terminate this Consent Order unilaterally at any time for any reason. Any termination will include a written explanation of the reason(s) for termination.

ISSUED this 23 day of July, 2009.

  
Henry Darwin, Acting Director  
Water Quality Division  
Arizona Department of Environmental Quality

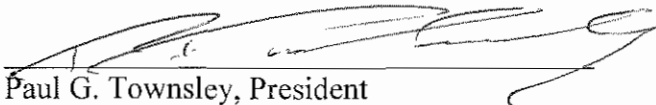
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CONSENT TO ORDER

The undersigned, on behalf of Arizona American, hereby acknowledges that he has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Arizona American will abide by the same and waive any right to appeal therefrom.

DATED this 10<sup>th</sup> day of July, 2009.

ARIZONA AMERICAN WATER COMPANY

  
Paul G. Townsley, President

1 ORIGINAL of the foregoing Consent Order was sent certified mail, return receipt requested,  
this 23 day of July, 2009, to:

2  
3 Paul G. Townsley, President  
4 Arizona American Water Company  
5 19820 N. 7<sup>th</sup> St., Suite 201  
6 Phoenix, Arizona 85024

6 COPY of the foregoing Consent Order was filed this 23 day of July, 2009, with:

7 Arizona Department of Environmental Quality  
8 Office of Administrative Counsel  
9 Attention: Judith Fought, Hearing Administrator  
10 1110 West Washington Street  
11 Phoenix, Arizona 85007-2935

10 COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this 23  
11 day of July, 2009, to the following:

12 Vivian Burns, Case Manager Water Quality Enforcement Unit  
13 Vivian Adams, ADEQ Drinking Water Section  
14 Marty McCarthy, Manager Southern Regional Office

14 Corporation Services Company  
15 Statutory Agent for Arizona American Water Company  
16 2338 W. Royal Palm Rd., Suite-J  
17 Phoenix, AZ 85021

16 Kevin Irvine, Director  
17 Santa Cruz County Health Services Agency  
18 2150 N. Congress Dr.  
19 Nogales, AZ 85621

19 Steve Olea  
20 Utilities Division  
21 Arizona Corporation Commission  
22 1200 W. Washington St.  
23 Phoenix, AZ 85007-2996

22 Patrick Chan, EES-WTR-6  
23 USEPA Region IX  
24 75 Hawthorne Street  
25 San Francisco, California 94105