

OPEN MEETING ITEM
ORIGINAL



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

22

DATE: October 3, 2005
DOCKET NO: SW-02454A-05-0366
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Order on:

BELLA VISTA RANCHES, INC. dba BELLA VISTA SEWER CO.
(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 12, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 18 AND 19, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For more information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION TO
CANCEL THE CERTIFICATE OF
CONVENIENCE AND NECESSITY ISSUED TO
BELLA VISTA RANCHES, INC, dba BELLA
VISTA SEWER CO.

DOCKET NO. SW-02454A-05-0366

DECISION NO. _____

ORDER

Open Meeting
October 18 and 29, 2005
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On May 19, 2005, Bella Vista Ranches, Limited Liability Partnership ("BVR" or "Applicant") filed an application with the Arizona Corporation Commission ("Commission") to cancel the Certificate of Convenience and Necessity ("CC&N") granted to Bella Vista Ranches, Inc. of Arizona dba Bella Vista Sewer Company ("BVSC") to provide wastewater service in portion of Cochise County, Arizona.

2. On June 16, 2005, Commission Utilities Division Staff ("Staff") filed a letter indicating that the application met the sufficiency requirements of A.A.C. R14-2-610(C).

3. On June 28, 2005, the Commission issued a Procedural Order that required the Applicant to provide notice of the application by publishing the notice in a newspaper of general circulation in BVSC's service area and mailing a copy of the notice to property owners in the service

1 area. Given the nature of the request, the notice indicated that the Commission could consider the
2 application without a hearing if no party requests a hearing.

3 4. On July 8, 2005, BVR had the requisite notice published in the *Sierra Vista Herald*
4 and the *Bisbee Daily Review*. The only property owner in the certificated area is BVR.

5 5. On August 26, 2005, Staff filed its Staff Report in this matter recommending approval
6 of the cancellation without a hearing.

7 6. On September 6, 2005, BVR filed Comments to the Staff Report, supporting the Staff
8 Report and concurring that no hearing is required in this matter.

9 7. The Commission authorized BVSC to provide wastewater service in portions of
10 Cochise County in Decision No. 54599 (July 19, 1985). The certificated area encompasses all or
11 portions of Sections 20, 21, and 27-30 located in Township 21 South, Range 21 East, Cochise
12 County, Arizona, and includes approximately 3,000 acres.

13 8. BVSC was incorporated as an Arizona corporation on or about October 8, 1975, and
14 was dissolved on or about October 18, 1988.

15 9. BVSC has never provided wastewater service, and has no plant or customers.

16 10. BVSC was formed to serve a residential development planned by Western Land
17 Development, a division of US Homes Corporation. The planned development never materialized.

18 11. BVR is a separate entity that shares common partners with BVSC. According to the
19 application, three of the five directors and four officers of BVSC are deceased. The two living
20 directors and some of the previous shareholders of BVSC are partners of BVR. BVR states that "[n]o
21 single previous shareholder or group of previous shareholders has been identified that have the
22 apparent authority to act on behalf of the dissolved corporation."

23 12. BVR, or an affiliate, is the current owner of the land encompassed by the CC&N.

24 13. The closest provider of sewer service to BVSC's CC&N area is the City of Sierra
25 Vista which provides wastewater service in the Southwest Quarter of Section 30 in Township 21
26 South, Range 21 East.

27 14. Bella Vista Water Company, Inc., a separate entity, provides water service in BVSC's
28 certificated area and in all or portions of Sections 15, 22, 29, 30-32 located in Township 21 South,

1 Range 21 East. Bella Vista Water Company has no interest in assuming BVSC's CC&N to provide
2 wastewater service.

3 15. Staff received communications from the Arizona Department of Environmental
4 Quality ("ADEQ") and the Arizona Department of Real Estate ("ADRE") indicating that these
5 agencies have no objection to the relief sought by BVR.

6 16. Staff believes that approval of the application would be in the public interest, as it
7 would permit other prospective sewage providers to serve the area and allow its development. Staff
8 believes that denial of the application would hinder future development.

9 17. Staff reports that BVSC has no outstanding compliance issues.

10 18. Staff believes that a hearing on this application is not necessary because it has been 20
11 years since BVSC was granted a CC&N and it still has no customers or plant; the two remaining
12 owners have not requested a hearing; BVR provided notice of the application; and the matter will go
13 to Open Meeting for deliberation.

14 19. No interested person requested an evidentiary hearing and we find that no hearing is
15 required in this matter.

16 **CONCLUSIONS OF LAW**

17 1. BVSC is not currently a public service corporation within the meaning of Article XV
18 of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

19 2. The Commission has jurisdiction over the subject matter of its Application.

20 3. Notice of the application was given in accordance with the law.

21 4. Under the circumstances surrounding this application, no hearing is necessary.

22 5. The recommendations set forth in Findings of Fact Nos. 16 and 18 are reasonable and
23 should be adopted.

24 6. It is in the public interest to cancel the CC&N granted to BVSC in Decision No.
25 54599.

26 ...

27 ...

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ORDER

IT IS THEREFORE ORDERED that the application of Bella Vista Ranches LLLP to cancel the Certificate of Convenience and Necessity granted to Bella Vista Sewer Company in Decision No. 54599 is approved.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

JR:mlj

1 SERVICE LIST FOR: BELLA VISTA SEWER COMPANY

2 DOCKET NO.: SW-02454A-05-0366

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