

EXCEPTION
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Re: Docket No. SW-04026A-01-0499
Bensch Ranch Utilities, L.L.C.

To Whom It May Concern:

Enclosed for filing, please find one (1) original and fourteen (14) copies of the Applicant's Exceptions to Recommendation of Administrative Law Judge Re: Opinion and Order. Please file the original and thirteen copies and return a conformed copy to me.

As always, please call if you have any questions.

Very truly yours,

Joshua J. Meyer

Joshua J. Meyer

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Encl.

EXCEPTION

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Attorney for Applicant

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
BENSCH RANCH UTILITIES, L.L.C. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE SEWER SERVICE

Docket No. SW-04026A-01-0499

APPLICANT'S EXCEPTIONS TO
RECOMMENDATION OF
ADMINISTRATIVE LAW JUDGE RI
OPINION AND ORDER

The Applicant, Bensch Ranch Utilities, L.L.C. ("Bensch Ranch"), by and through undersigned counsel, and pursuant to Arizona Administrative Code R14-3-110(B), hereby files its Exceptions to the recommendation of the Administrative Law Judge regarding the Opinion and Order. The Applicant requests the deletion of Findings of Fact paragraphs 31 and 32, Conclusions of Law paragraph 10, and the portions of the proposed Order which address the fine owed by Lester Smith.

Findings of Fact paragraph 31 should be deleted because it is misleading. It is true that by contracting with the members of Bensch Ranch to provide sewer service to the Bensch Ranch Subdivision, Bensch Ranch Estates, L.L.C. ("BR Estates") avoided the need to obtain a CC&N. But this paragraph suggests that the reason BR Estates contracted with the members of Bensch

1 Ranch was to help Lester Smith avoid the jurisdiction of the Arizona Corporation Commission.
2 If fact, Mr. Smith owns only a minority interest in BR Estates.

3 Instead, there were many reasons why the members of BR Estates wanted the members of
4 Bensch Ranch to own and operate the sewer utility. For example, Mr. Smith's partners knew of
5 his problems with the Commission (as Mr. Williamson testified), and as such, preferred he did
6 not operate the new utility company. In addition, the members of BR Estates may not have
7 wanted the sewer utility for financial reasons, and they knew that the members of Bensch Ranch
8 could operate it more efficiently because they already operated several successful sewer utility
9 companies in Arizona.
10

11 Whatever the motivation of the members of BR Estates, the members of Bensch Ranch
12 negotiated in good faith to provide sewer service to the Bensch Ranch development because they
13 believed it would be financially successful. Although a consequence of the contract was the
14 avoidance of the need for BR Estates, and one of its members Lester Smith, to apply to the
15 Commission for a CC&N, the ownership arrangement was not developed for that purpose.

16 Paragraph 32 provides that before a CC&N will be issued to Bensch Ranch, Lester
17 Smith must pay his outstanding fines the Commission. It is not reasonable to prevent the
18 issuance of a CC&N, and as a result prevent the provision of sewer service to the Bench Ranch
19 subdivision, because one of the members of developer did not pay a fine in a totally unrelated
20 matter. If the Commission is concerned with the collection of its fine, it can simply garnish
21 Mr. Smith's interest in BR Estates.
22

23 This portion of the proposed Opinion and Order is in no way directed at the need to
24 provide efficient and effective sewer service at a reasonable cost. The Administrative Judge
25 concedes that the members of Bensch Ranch have demonstrated their ability to provide that

1 service. The members of Bench Ranch have no connection with Mr. Smith other than the
2 contract the terms of which have been provided to the Commission staff. It is not reasonable
3 to force them to pay Mr. Smith's fine.

4 Applicant respectfully requests that the remaining portions of the Conclusions of Law and
5 Order concerning Mr. Smith and the fines he owes the Commission also be delete from the
6 Opinion and Order for the same reasons as those listed above.

7
8 RESPECTFULLY SUBMITTED this 11th day of July, 2003.

9
10 
11 Joshua J. Meyer
12 Attorney for Applicant

13
14 The original and 13 copies
15 of the foregoing mailed via
16 Federal Express this 11th day
17 of July, 2003 to:

18 Arizona Corporation Commission
19 Docket Control
20 1200 West Washington Street
21 Phoenix, AZ 85007-2927

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24
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26 By: 