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MEMORANDUM
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TO: Docket Control Center
FROM: Ernest G. Johnson
Director
Utilities Division

2008 JUL 24 A 11: 57
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
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DATE: July 24, 2008

RE: **AMENDED** - DIABLO VILLAGE WATER COMPANY - REQUEST FOR
EXTENSION OF COMPLIANCE DEADLINES. DOCKET NO. W-02309A-05-0501

In Decision No. 69206, dated December 21, 2006, the Arizona Corporation Commission ("A.C.C." or "Commission") approved the application Diablo Village Water Company ("Diablo Village" or "Company") for a rate increase. In issuing its decision, the Commission ordered that the Company obtain a Certificate of Assured Water Supply ("CAWS") from the Arizona Department of Water Resources ("ADWR") for the planned community of Pomegranate Farms.

Specifically, Decision No. 69206 ordered that Diablo Village should:

"file a copy of the developer's Certificate of Assured Water Supply for Section 18 from ADWR with Docket Control as a compliance item by June 30, 2008."

On June 13, 2008, Diablo Village filed a motion entitled "request for extension of time period within which to comply with an ordering paragraph in Decision No. 69206" which seeks an additional eighteen (18) months, until December 31, 2009, for completion of the CAWS requirement.

The application states that the Company has had two intervening events that have delayed when the developer could be in a position to file the ADWR application for the Pomegranate Farms project. First, Pima County requested that that the developer increase the number of proposed residential units for the project from 1,500 to approximately 3,000 units and also establish areas for Commercial and other land uses. This resulted in a major change to the Pima County Comprehensive Plan. Second, the Company states that in the same timeframe, due to the formulation of a developer funding plan called the Southwest Infrastructure Plan ("SWIP"), Pima County put "on hold" the processing of land use change requests. This effected the amendment to the Pima County Comprehensive Plan for Pomegranate Farms.

As outlined in the application, the result of these events was a dramatic increase in the nature and timing of the project and the number of residential units projected for the community. During the case requesting the extension of territory, the developer had projected 1500 residential lots for the project. In the attached March 28, 2008 Analysis of Assured Water Supply from ADWR, it is now estimated that the development will include 2799 single family residential lots and 1,109 multi-family units for a total of 3,908 units, an increase of 2,408 units more than the

originally projected 1,500 lots. That report states that ADWR "has determined that sufficient groundwater will be physically and continuously available to meet the annual estimated water demand for the development".

The developer is now moving to prepare a Specific Plan for the redesigned project. Once this had been completed and approved by Pima County, the developer will request rezoning of the Section 18 project area. As such, the developer has not proceeded to request the CAWS from ADWR since the Specific Plan and the rezoning must be accomplished to allow ADWR to make a determination of the demand and authorized groundwater withdrawals necessary for the completion of the CAWS.

Staff contacted Ms. Dawne Wilson at ADWR and was able to verify that the Analysis of Assured Water Supply issued by ADWR allows the developer to reserve water based on the provision of hydrological information. She further outlined that the developer has locked up 141,000 acre feet of water for 100 years for the Pomegranate Farms project. Additionally, she confirmed that ADWR's demand analysis for the CAWS is based on the plat submitted by the Company and that they tell applicants to wait until the plat is very, very final before making formal application for the CAWS. This information is consistent with the information provided by the Company in this application for extension of time. In summary, the Company requests an eighteen (18) month extension, until December 31, 2009, for completion of the requirement to provide the required CAWS on the Pomegranate Farms master planned community.

Based on the application and all of the above, Staff will not object to the Company's request for the 18 month extension of time to provide the required CAWS from ADWR. Facts suggest that the Company is moving forward on the redesign of their project and on the prerequisites to obtain the CAWS. Staff therefore recommends that the due date for the CAWS be extended to December 31, 2009.

EGJ:BKB:lhlm

Originator: Brian K. Bozzo

Attachment

SERVICE LIST FOR:
DOCKET NOS.

DIABLO VILLAGE WATER COMPANY
W-02309A-05-0501

Mr. Robin M. Thim
Diablo Village Water Company
Post Office Box 13145
Tucson, Arizona 85732

Mr. Lawrence V. Robertson, Jr.
Post Office Box 1448
Tubac, Arizona 85646
Attorney for Applicant

Mr. Christopher E. Avery
Principal Asst. City Attorney
Office of the Tucson City Attorney
255 West Alameda – Seventh Floor West
Tucson, Arizona 85701

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Janice M. Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-02309A-05-0501
DIABLO VILLAGE WATER COMPANY FOR AN)
EXTENSION OF ITS CERTIFICATE OF) REQUEST FOR EXTENSION OF
CONVENIENCE AND NECESSITY.) TIME PERIOD WITHIN WHICH
) TO COMPLY WITH AN
) ORDERING PARAGRAPH IN
) DECISION NO. 69206

I.

BACKGROUND

On December 21, 2006 the Commission issued Decision No. 69206 in the above-captioned and above-docketed proceeding. In that decision the Commission approved Diablo Village Water Company's ("Company") Application for an extension of its then existing CC&N to include Section 18, Township 15 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona ("Section 18"). As discussed in Decision No. 69206, Section 18 is the site for a master planned community to be known as Pomegranate Farms, and the developer had requested that the Company seek an extension of its CC&N in order that it might become the water provider to and within Section 18.

At the time that Decision No. 69206 was issued, it was contemplated that the developer of Pomegranate Farms would have received its Certificate of Assured Water Supply ("CAWS") within the following eighteen (18) months. Accordingly, the Fourth Ordering Paragraph of Decision No. 69206 provided that

"...Diablo Village Water Company shall file a copy of the developer's Certificate of Assured Water Supply for Section 18 from ADWR with Docket Control as a compliance item by June 30, 2008." [Decision No. 69206, page 10, lines 14-16]

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tucson, Arizona 85646
(520) 398-0411

1 Subsequent events beyond the control of both the developer and the Company have precluded
2 the developer from obtaining the CAWS as yet; and, in turn, such events have precluded the
3 Company from thus far complying with the aforementioned Fourth Ordering Paragraph.
4 Inasmuch as the Company has concluded that the CAWS in all likelihood will not be issued prior
5 to June 30, 2008, it has determined that it is appropriate to file this Request For Extension of
6 Time Within Which To Comply With An Ordering Paragraph In Decision No. 69206
7 ("Request") with the Commission.

8 **II.**

9 **DESCRIPTION OF SUPERVENING AND ANTICIPATED EVENTS**

10 Subsequent to the issuance of Decision No. 69206, two (2) supervening effects occurred
11 which had the effect of delaying when the developer would be in a position to file an application
12 with the Arizona Department of Water Resources ("ADWR") for the contemplated CAWS for
13 Pomegranate Farms. First, in connection with the Smart Growth initiative, Pima County
14 requested that the developer increase the number of proposed residential units for the
15 Pomegranate Farms master planned community from 1,500 to approximately 3,000 units, as well
16 as to establish areas for commercial and other types of land uses. This change required a major
17 amendment to the Pima County Comprehensive Plan, which the developer subsequently
18 succeeded in obtaining.

19 Second, during this same general time period, Pima County formulated the Southwest
20 Infrastructure Plan ("SWIP") as a means by which to obtain funding from developers that would
21 be used to construct that infrastructure (e.g. roads and flood control) necessary to accommodate
22 future growth projected to occur in the aforesaid area southwest of the City of Tucson. Pending
23 the formulation of SWIP, and the determination of developers' funding responsibilities
24 thereunder, Pima County in effect put "on hold" the processing of and decision upon land use
25 change requests, such as the major amendment to the Pima County Comprehensive Plan for
26 Pomegranate Farms. As noted above, such approval ultimately was forthcoming.

27 The result of the aforesaid major amendment was to dramatically increase the number of
28 residential units projected for the Pomegranate Farms master planned community. As noted in

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

1 Decision No. 69206, at the time of the evidentiary hearings conducted in this proceeding, the
2 developer projected 1,500 residential lots for the project. [Decision No. 69206, Finding Of Fact
3 No. 28, page 4, lines 12-13] As may be noted from the March 28, 2008 Analysis of Assured
4 Water Supply ("Analysis") issued by ADWR, and attached hereto as Appendix "A," it is now
5 anticipated that the Pomegranate Farms project will consist of approximately 3,908 single- and
6 multi-family residential units, or approximately 2,408 units more than originally conceived, plus
7 other types of land use areas, including commercial.

8 With the major amendment now having been obtained, the developer of Pomegranate
9 Farms is currently engaged in preparing a Specific Plan for the project. Once the Specific Plan
10 has been approved by Pima County, it will be necessary for the developer to request a rezoning
11 of the Section 18 acreage.

12 Pending Pima County approval of the Specific Plan and the related rezoning, the
13 developer has not proceeded to request a CAWS from ADWR, because the ultimate Specific
14 Plan and rezoning will determine the number of single- and multi-family parcels which will be
15 shown on the Final Plat for Pomegranate Farms. Once that number is known, ADWR can then
16 quantify the demand and authorized annual groundwater withdrawals which will be included in
17 the CAWS. In that regard, the March 28, 2008 Analysis issued by ADWR indicates that
18 1,410.03 annual acre feet of groundwater is physically available to supply Pomegranate Farms
19 for the statutorily-prescribed 100-year period; and, the forthcoming CAWS will not exceed (nor
20 need exceed) that annual amount.

21 III.

22 REQUEST FOR EXTENSION

23 In view of the foregoing, the Company believes that an eighteen (18) month extension of
24 the deadline for filing the CAWS for Pomegranate Farms is both warranted and appropriate. The
25 March 28, 2008 Analysis is a tangible demonstration that the developer has made material
26 progress towards obtaining the requisite CAWS, and the necessary groundwater supplies to
27 support the projected growth have been shown to be present. Accordingly, the Company hereby
28

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tucson, Arizona 85646
(520) 398-0411

1 requests that the deadline set forth in the Fourth Ordering Paragraph of Decision No. 69206 for
2 filing the CAWS be extended for eighteen (18) months, or until December 31, 2009.

3
4 Dated this 12th of June 2008.

5 Respectfully submitted,
6 *Lawrence V. Robertson, Jr.*
7 Lawrence V. Robertson, Jr.
8 Attorney for Diablo Village Water Company

9 Original and thirteen (13) copies of the
10 foregoing mailed this 12th day of June 2008 to:

11 Docket Control Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 A copy of the same served by e-mail or first
16 class mail this same date to:

17 Judge Jane Rodda
18 Arizona Corporation Commission
19 400 West Congress, Suite 218
20 Tucson, Arizona 85701

21 Janice Alward, Chief Counsel
22 Legal Division
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, Arizona 85007

26 Ernest Johnson, Director
27 Utilities Division
28 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Kevin O. Torrey, Attorney
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Lyn Farmer
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007-2927

Christopher Avery
255 W. Alameda - Seventh Fl.
Tucson, Arizona 85701

ARIZONA DEPARTMENT OF WATER RESOURCES
Office of Assured and Adequate Water Supply
2nd Floor, 3550 N. Central Ave., Phoenix, AZ 85012
Telephone (602) 771-8585
Fax (602) 771-8689



JANET NAPOLITANO
Governor

HERB GUENTHER
Director

ANALYSIS OF ASSURED WATER SUPPLY

March 28, 2008

File Number: 28-700315.0000
Development: Pomegranate Farms
Location: Township 15 South, Range 12 East, Section 18
Pima County, Arizona
Tucson AMA
Land Owner: Pomegranate Farms I, L.L.C., an Arizona limited liability company

The Arizona Department of Water Resources has evaluated the Analysis of Assured Water Supply application for Pomegranate Farms pursuant to A.A.C. R12-15-703. The proposed development includes 2,799 single-family residential lots, 1,109 multi-family units and 245.96 non-residential acres containing: 29.83 acres of neighborhood parks, 73.01 acres of common area, 81.76 acres of natural open space, 56.13 acres of commercial area and a 5.23-acre elementary school site for approximately 250 students. Conclusions of the review are indicated below based on the assured water supply criteria referenced in A.R.S. § 45-576 and A.A.C. R12-15-701 *et seq.*

- **Physical, Continuous, and Legal Availability of Water for 100 Years**
On the basis of the Pomegranate Farms Physical Availability Determination (DWR# 51-402151.0000), hydrologic information submitted by the applicant, and the Department's review, the Department has determined that sufficient groundwater will be physically and continuously available to meet the annual estimated water demand for the development of 1,410.03 acre-feet per year. The development is within 660 ft. of Diablo Village Water Company's existing service area, and within the boundaries of Diablo Village Water Company's Certificate of Convenience & Necessity. Individual Notices of Intent to Serve will be required for each application for a Certificate of Assured Water Supply.
- **Adequate Water Quality**
This requirement will be evaluated according to the criteria in A.A.C. R12-15-719 at the time an application for a Certificate of Assured Water Supply is filed. Prior to preparing an application for a Certificate of Assured Water Supply for an individual subdivision plat, the Office of Assured Water Supply may be contacted for further guidance.
- **Consistency with Management Plan for the Tucson Active Management Area**
The estimated annual water demand for the development is consistent with the Third Management Plan for the Tucson AMA. All plumbing fixtures will comply with the statewide Low Flow Plumbing Code.

- **Consistency with Management Goal of the Tucson Active Management Area**
The Assured and Adequate Water Supply Rules (A.A.C. R12-15-722 through R12-15-727) allocate an allowance of groundwater to each new subdivision in an AMA to allow for the phasing in of renewable supplies. Extinguishing grandfathered groundwater rights may increase this groundwater allowance. Applicants may also demonstrate that groundwater use is consistent with the management goal by enrolling the subdivision as member land in the Central Arizona Groundwater Replenishment District (CAGRDR).

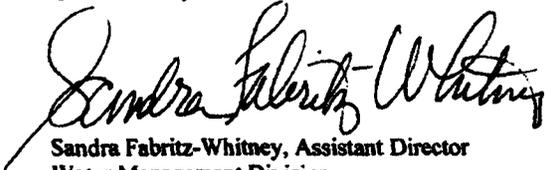
Prior to preparing an application for a Certificate of Assured Water Supply for an individual subdivision plat, the Office of Assured Water Supply may be contacted for further guidance.

- **Financial Capability of the Owner to Construct the Necessary Distribution System**
This requirement will be evaluated according to the criteria in A.A.C. R12-15-720 at the time an application for a Certificate of Assured Water Supply is filed. Prior to preparing an application for a Certificate of Assured Water Supply for an individual subdivision plat, the Office of Assured Water Supply may be contacted for further guidance.

The term of this Analysis of Assured Water Supply is ten years from the date of this letter and may be renewed upon request, subject to approval by the Department. See A.A.C. R12-15-703. Throughout the term of this determination, the projected demand of this development will be considered when reviewing other requests for assured water supply in the area.

Prior to obtaining plat approval by the local platting authority and approval of the public report by the Department of Real Estate, a Certificate of Assured Water Supply must be obtained for each subdivision plat. The findings of this Analysis of Assured Water Supply may be used to demonstrate that certain requirements for a Certificate have been met. This determination may be invalidated if the development plan or other conditions change prior to filing for a Certificate of Assured Water Supply. Changes in the number or locations of wells may impact applicability of this determination to future applications for determinations of assured water supply.

Questions may be directed to the Office of Assured Water Supply at (602) 771-8585.



Sandra Fabritz-Whitney, Assistant Director
Water Management Division

cc: Kenneth Seasholes, Tucson Active Management Area