

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

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- Kristin K. Mayes, Chairman
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2009 MAR 23 P 3: 03

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 23 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF )  
 OF WILLOW VALLEY WATER CO., INC. )  
 FOR AN EXTENSION OF ITS CERTIFICATE OF )  
 CONVENIENCE AND NECESSITY. )

DOCKET NO. W-01732A-05-0532

**CONDITIONAL MOTION  
FOR EXTENSION OF TIME**

McKellips Land Corporation ("McKellips") moves that the LAWS deadline in Decision No. 68610 (March 23, 2006) be extended by an additional year, to March 23, 2010. This motion is conditional on McKellips being granted intervention in this docket in accordance with the Application to Intervene it is filing concurrently with this motion.

Decision No. 68610 granted a CC&N extension to Willow Valley Water Co., Inc. ("Willow Valley") for three parcels owned by McKellips – Parcels A, B, and C. Decision No. 68610 requires Willow Valley to obtain a Letter of Water Adequacy ("LAWS") for the extension area. Included within the three parcels was a subdivision, Willow Valley Estates 20, Tract 4134, which was intended be developed in three phases, Tracts 4134 "A", "B" and "C". McKellips obtained, and Willow Valley submitted to the Commission, the LAWS for Tracts "A" and Tract "B" of the subdivision. McKellips has encountered unexpected difficulties in obtaining the LAWS for Tract "C" (which is now known as Willow Valley Estates 21, Tract 4228).

1 For land to receive an unconditional LAWS from the Arizona Department of Water Resources,  
2 the land must have a permanent water allocation from the Mohave Valley Irrigation & Drainage  
3 District ("MVIDD") which requires a "final plat" approved by the city or county with jurisdiction.  
4 The unexpected delay derives from problems in obtaining the final preliminary and final plats for Tract  
5 "C" of the original subdivision from Mohave County. The problems in obtaining a preliminary and  
6 final plat are described in a letter from McKellips' engineer, attached as Exhibit A. Those problems  
7 include new county policies, litigation involving third parties, and other issues outside of McKellips'  
8 control. One of the reasons for delay was litigation involving the Mohave Valley Irrigation &  
9 Drainage District ("MVIDD"), which has been resolved (see, Exhibit "A"). Now that MVIDD  
10 litigation has been resolved, McKellips has been able to obtain an allocation of surface water from  
11 WVIDD that will be used to serve Tract "C". A copy of that allocation is attached as Exhibit "B".  
12 McKellips engineer believes that Mohave County will grant final plant for Tract "C" within the next  
13 year, as stated in Exhibit "A".  
14

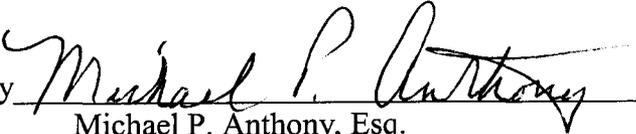
15  
16 Tract "C" is surrounded by other subdivisions served by Willow Valley, as shown on the map  
17 attached as Exhibit "C". Thus, Willow Valley is the only feasible service provider to this area, and  
18 no purpose would be served in revoking the CC&N extension. Further, there is no question that  
19 adequate water will be available for Willow Valley to serve Tract "C", as shown by the allocation of  
20 Colorado River surface water.

21 Moreover, McKellips is concerned that revocation of the CC&N extension would simply result  
22 in more expense and delay. McKellips has diligently pursued the LAWS, and the delays it has  
23 encountered are not the fault of McKellips or Willow Valley. McKellips has been involved in  
24 developing this area for decades, and has successfully built many subdivision phases. We have  
25 conferred with counsel for Willow Valley, and can report that Willow Valley does not oppose this  
26

1 extension of time. Accordingly, McKellips respectfully requests that the Commission extend the  
2 LAWS deadline for an additional year, until March 23, 2010.

3 RESPECTFULLY SUBMITTED this 23rd day of March, 2009.

4 CARSON MESSINGER ELLIOTT LAUGHLIN & RAGAN, P.L.L.C.

5  
6 By 

7 Michael P. Anthony, Esq.

8 State Bar No. 006658

9 Attorneys for McKellips Land Corporation

3300 N. Central Avenue, Suite 1900

Phoenix, Arizona 85021

10 Original and 15 copies of the foregoing  
11 filed this 23rd day of March, 2009 with:

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

14 Copy of the foregoing hand-delivered/mailed  
15 this 23rd day of March, 2009:

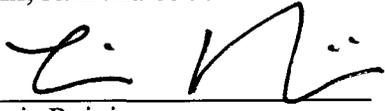
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4 By



Louis Reininger

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# ARQ Engineering, LLC

Engineering and Survey

Willow Valley Water Co., Inc.  
P.O. Box 5620  
Mohave Valley, AZ 86446

March 18, 2009

**Subject:** Willow Valley Estates 20, Tract 4134A, Tract 4134B & Tract 4134C [now Willow Valley Estates 21, Tract 4228]

Dear Sir or Madam:

I am the engineer for McKellips Land Corporation which is the developer ("Developer") of the above referenced subdivisions ("Subdivisions"). I have been requested to provide information to support the application for an extension of the Arizona Corporation Commission ("ACC") Decision described below.

As you know, on March 23, 2006, the Arizona Corporation Commission issued its Decision No. 68610 which approved the application of Willow Valley Water Co., Inc. ("Water Company") for an extension of its Certificate of Convenience and Necessity ("CCN") to provide water utility service to the above referenced Subdivisions. A portion of the land comprising the subdivisions is accretion land and was inadvertently omitted when the Water Company obtained its original CCN for all of the rest of the Developer's property. As a condition to the approval of the CCN extension, the Water Company was ordered to file by March 23, 2007, a copy of a Letter of Adequate Water Supply ("LAWS") for the area, which was to be issued by the Arizona Department of Water Resources. This deadline has been twice extended for good cause.

The Subdivisions were intended to be platted as three phases of Willow Valley Estates 20, Tract 4134. The first two phases (Tracts A and B) have been finished, final plats have been recorded (on August 16, 1996 and March 17, 2005 respectively), line extension agreements were executed and all improvements have been completed, all lots have been sold, homes are being built and LAWS for each phase were issued and water is being served by the Water Company.

However, through no fault of its own, the Developer has had a very difficult time completing the third and final phase and it is the purpose of this letter to attempt to explain the some of the reasons for the delay. Water for the Subdivisions is supplied from the Colorado River, the water rights to which are allocated by the Mohave Valley Irrigation & Drainage District (the "District") pursuant to a contract with the United States Interior Department, Bureau of Reclamation. At the time the Developer first attempted to obtain a water set-aside from the

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EXHIBIT A

District for Tract C the District was in complete disarray and barely functioning. There had been a recall election and a new Board of Directors had been elected. The new Board of Directors ultimately issued a set-aside for Tract C. Thereafter a lawsuit brought by one or more of the former Board members ensued to disqualify the new Board. As with all law suits that proceeding took time including an appeal to the Arizona Supreme Court which ultimately sided with the plaintiff, holding that the new Board members were not qualified to hold the offices to which they have been elected. That called into question the validity of the acts of the previous Board including the set-aside for Tract C to the Developer. Therefore, the Developer had to request an additional set-aside from the new Board once it was reconstituted.

In addition, in order to obtain the LAWS it was necessary for the Developer to obtain a compliance report regarding the Water Company from the Arizona Department of Environmental Quality (in Flagstaff). However, the Water Company (which is now under new ownership and control, Global Water Management, LLC) was then out of compliance for a substantial period of time, preventing the Developer from proceeding.

Tract C was initiated under Mohave County's former subdivision ordinance and was grandfathered in after a new county subdivision ordinance was adopted. As a result of the delays described above in addition to others, the Developer was unable to complete Tract C within the required time, was unable to get an extension and was, therefore, no longer eligible to be grandfathered in under the old subdivision ordinance. As a result the County Planning and Zoning Department required the Developer to begin the entire subdivision process for Tract C all over again under the new ordinance. As a result, Tract C is now known as Willow Valley Estates 21, Tract 4228, but it is exactly the same 24-lot subdivision formerly known as Willow Valley Estates 20, Tract 4134-C, for which a 10.1 acre foot water allocation has been granted by the District. For convenience, though the name has been changed, I will continue to refer to this phase as Tract C.

We have submitted and re-submitted the preliminary plan for this final phase multiple times and each time, the county has been very slow and unresponsive to the Developer's submittals. In addition, it continues to demand additional requirements that were not found to be necessary for the previous approvals of Tract A and Tract B. As an example, the drainage system for all three Tracts utilizes a retention basin located outside the exterior lines of the Subdivisions, and although this was approved for Tracts A and B, the county has recently required as a condition to approving the preliminary plat for Tract C, that the area of the retention basin be dedicated for drainage purposes. In order to do that it is necessary to process the creation and recording of a Parcel Plat showing the split of the proposed 5.79 acres of Tract C, the retention basin and the remaining area of a larger parcel. The parcel platting of this area involves a complicated analysis of a riparian boundary including accretion issues which have presented since the initial Mohave County Court quiet title (accretion lands) Judgment No. 10684 filed January 30, 1976. In addition, in order to accomplish the Parcel Plat processing, it is

Willow Valley Water Co., Inc.

March 18, 2009

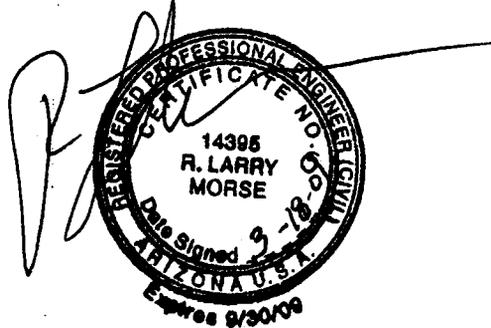
Page 3

necessary to apply to the County Assessor to combine two parcels with different Assessor numbers which will be included in the Parcel Plat. In order to do that it is necessary that the subject parcels be titled in the same name. The parcels happen to be held in two names, the Developer's and Lawyers Title of Arizona as Trustee for the Developer. This requires the Developer to obtain a deed back from the title company Trustee to the Developer. To complicate matters further, Lawyers Title's parent has gone into reorganization and all trusts formerly in its trust department have been assigned to Security Title Agency for administration, and the people familiar with this trust and the property are no longer involved. The Developer is endeavoring to accomplish this and has submitted the appropriate paperwork to the title company to obtain a reconveyance of the property involved.

In our opinion, the resolution of the Parcel Plat requirement prior to the final processing of Tract C is the single largest issue delaying the completion of the project. In addition to having submitted the preliminary subdivision plan, we have prepared a final plat for submittal as soon as the preliminary plan has been approved and we have prepared drafts of some of the improvement plans.

It is our goal to complete Tract C (now Willow Valley Estates 21) by subdivision into the final twenty-four, single-family, 8,000 square foot lots and one public street by the year's end. We are advised that the Developer has secured the necessary construction financing to complete the improvements and is ready to commence immediate construction when the final plat has been recorded.

Respectfully,  
ARQ Engineering, LLC



R. Larry Morse, P.E., R.L.S.,  
President

# Mohave Valley Irrigation & Drianage District

1460 Commercial Street • Mohave Valley, AZ 86440

Phone: 928-768-3325 ♦ Fax: 928-768-5239 ♦ Email: [Mohavevalleyidd@mvidd.net](mailto:Mohavevalleyidd@mvidd.net) ♦ Website: MVIDD.net

October 6, 2008

Mr. Wayne McKellips  
McKellips Land Corpotation  
3300 North Central Avenue, Suite 1900  
PO Box 33907  
Phoenix, AZ 85067

Re: Willow Valley Estates 21, Tract 4228  
Extension

Dear Mr. McKellips;

At the **October 5, 2008**, Regular Board Meeting of the Mohave Valley Irrigation & Drianage District (the District), your request for a **6 month extension of the preliminary water allocation of 10.01 aft for the residential subdivision Willow Valley Estates 21, Tract 4228 located in T18N, R22W, Sec. 21** was approved. **This preliminary allocation will expire on April 4, 2009.**

The District has received payment of the non-refundable fees in the amount of **\$7,200.00** which represents payment of 1/3 of the total fees due of **\$21,600.00**. The outstanding balance due is **\$14,400.00**.

Additional extensions may be requested, but must be accompanied by proof of forward progress in obtaining the approvals required for the development of this property. All extension requests must be made in writing 30 days prior to the expiration date or the water allocation will revert back to the District upon expiration.

When your project is ready to be submitted to the Board of Supervisors for final approval you may request your Conditional Final Allocation from the District. The conditions will be proof of Board of Supervisors final plat approval and recordation of the approved final plat. In order to be placed on the District's agenda you will be required to submit a final allocation request letter, a copy of the plat plan (no larger than 11 x 14) to be submitted to the Board of Supervisors and a check for any outstanding fees. Upon receipt of these items and the approval of the District Board, a letter of Conditional Final Allocation will be submitted to you. The Conditional Final Allocation letter may be used to obtain your approvals from Arizona Department of Water Resources. Once the District has received proof all conditions have been met, an Unconditional Final Allocation letter will be issued.

Upon expiration of the six (6) month period from **October 4, 2008**, and without request for further extension, this preliminary allocation will expire. The current date of expiration for this commercial development is **April 4, 2009**. Upon expiration, the District will be relieved from any commitment there under. Should this happen you will be required to reapply for another preliminary allocation and all fees paid will be forfeit.

Please contact the District Office should you require any further information.

Sincerely,



Theresa M. Currie  
Manager

