

ORIGINAL



LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW

P. O. BOX 1448
TUBAC, ARIZONA 85646

(520) 398-0411
FAX: (520) 398-0412
EMAIL: TUBACLAWYER@AOL.COM

OF COUNSEL TO
MUNGER CHADWICK, P.L.C.

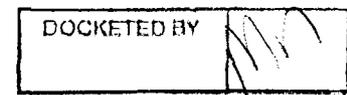
ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLUMBIA

April 15, 2009

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED
APR 16 2009

Re: Empirita Water Company
Docket No. W-03948A-06-0490



To Whom It May Concern:

Enclosed for filing in the above-referenced proceeding are the original and thirteen (13) copies of a Motion For Extension Of Compliance Filing Date Deadline ("Motion") on behalf of Empirita Water Company.

Also enclosed are two (2) additional copies of the Motion. I would appreciate it if you would "filed" stamp the same and return them to me in the enclosed stamped and addressed envelope.

Thank you for your assistance. Please advise me if you have any questions.

Sincerely,
Angela R. Trujillo
Angela R. Trujillo
Secretary
Lawrence V. Robertson, Jr.

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2009 APR 16 A 9:51
AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 APR 16 A 9:51

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION) DOCKET NO. W-03948A-06-0490
OF EMPIRITA WATER COMPANY, L.L.C.)
FOR AN EXTENSION OF ITS CERTIFICATE) MOTION FOR EXTENSION OF
OF CONVENIENCE AND NECESSITY) COMPLIANCE FILING DATE
) DEADLINE

I.

MOTION FOR EXTENSION OF COMPLIANCE FILING DATE DEADLINE

Pursuant to A.A.C. Rule R14-3-106(K), Empirita Water Company, LLC ("Empirita") hereby requests that the Commission enter an appropriate form of order or decision extending from September 3, 2009 to September 3, 2011 the deadline by which Empirita is required to file an Approval of Construction ("AOC") from the Arizona Department of Environmental Quality ("ADEQ") for the water system facilities needed to serve the Redhawk II development in Cochise County, Arizona. The circumstances surrounding this request are set forth below.

II.

CIRCUMSTANCES SURROUNDING MOTION

On March 29, 2007 the Commission issued Decision No. 69399 in the above-captioned and above-docketed proceeding. Therein the Commission granted Empirita an Order Preliminary to extend its pre-existing certificated water service area to provide water service to an additional area in Cochise County and a new area Pima County, in order to meet the water service requirements for anticipated new residential development. Decision No. 69399 specified five (5) compliance conditions that were pre-requisites to the willingness of the Commission to grant Empirita's original July 28, 2006 Application for an Extension of its Certificate of Convenience and Necessity ("CC&N"). Those five (5) compliance conditions were subsequently satisfied by Empirita; and, on September 3, 2008, the Commission issued Decision

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(520) 398-0411

1 No. 70476 in which it granted Empirita the CC&N extension requested by Empirita in the
2 aforementioned July 28, 2006 Application.

3 Decision No. 69399 also contained a post-CC&N extension compliance condition. More
4 specifically, the Tenth Ordering Paragraph of Decision No. 69399 provided as follows:

5 “IT IS FURTHER ORDERED that Empirita Water Company,
6 LLC shall file with Docket Control, as a compliance item in this
7 docket, copies of the AOC issued by ADEQ for the water plant
8 additions needed to serve the Redhawk II development within one
9 year from the effective [i.e. September 3, 2008] date of the order
granting the CC&N.” [Decision No. 69399 at page 12, lines 10-
13]

10 Decision No. 70476, which granted the requested CC&N extension, carried the above-quoted
11 compliance condition forward with the following language in the Third Ordering Paragraph of
12 that decision:

13 “IT IS FURTHER ORDERED that Empirita Water Company,
14 LLC shall file all remaining compliance items in Decision No.
15 69399 in the times specified and if Empirita fails to do so, the
16 CC&N extension described by Exhibit A shall be considered null
17 and void after due process.” [Decision No. 70476 at page 3, lines
18 20-22] [emphasis added]

19 As a consequence, Empirita is currently subject to a compliance condition that it file an AOC
20 from ADEQ for the “water plant additions needed to serve the Redhawk II development” by
21 September 3, 2009.

22 As the Commission is aware, the State of Arizona has recently experienced a dramatic
23 decrease in the rate of new home construction and the development of residential subdivisions.
24 Not surprisingly, that decrease has impacted the previously anticipated development timeline for
25 the Redhawk II subdivision in Cochise County, as attested to by an April 14, 2009 letter from the
26 developer of that project to Empirita. A copy of that letter is attached hereto as Appendix “A,”
27 and is incorporated herein by this reference. As may be noted therefrom, the developer of
28 Redhawk II continues to have a need for water service for that project, and it continues to desire
that Empirita be its water service provider. All that has changed since the filing of Empirita’s
CC&N extension Application on July 28, 2006 is the timeline for development of Redhawk II;

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1 and, the alteration of that timeline has been occasioned by economic circumstances beyond the
2 direct control of both the developer of Redhawk II and Empirita.

3 Despite the foregoing, Empirita has completed construction of the previously
4 contemplated 150,000 gallon storage reservoir, which will ultimately be used to serve the future
5 residents of Redhawk II. A copy of paid invoices attesting to that fact is attached hereto as
6 Appendix "B" and incorporated herein by this reference. However, Empirita believes that it
7 would not be financially prudent to install the booster station and related remaining facilities¹
8 needed to provide service to Redhawk II until an actual demand materializes, which Empirita
9 does not foresee occurring between now and the aforementioned September 3, 2009 compliance
10 due date for filing the AOC from ADEQ.²

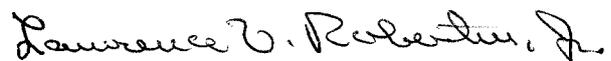
11 **III.**

12 **REQUEST FOR RELIEF**

13 Accordingly, by means of this Motion, Empirita is requesting that the Commission issue
14 an appropriate order or decision extending the deadline date for filing an AOC from ADEQ for
15 the "water plant additions needed to serve the Redhawk II development" from September 3,
16 2009 to September 3, 2011. Empirita recognizes, and hopes, that the contemplated residential
17 development in Redhawk II may begin to occur at an earlier date than indicated above.
18 However, out of an abundance of caution, given the present uncertainties of the state and
19 national economy, and in order to avoid the necessity of seeking a second extension of the
20 compliance filing deadline, Empirita is requesting a two (2)-year extension, rather than a one (1)-
21 year extension of the current September 3, 2009 compliance filing due date.

22 Dated this 15th day of April 2009.

23 Respectfully submitted,

24 

25 Lawrence V. Robertson, Jr.

26 _____
27 ¹ Empirita's existing water system facilities are capable of satisfying the initial demand for service as Redhawk II
begins to develop; and, the above-referenced booster station and related facilities could be installed within 30-60
days following identification of a need for the same.

28 ² In that regard, it is Empirita's understanding that ADEQ does not inspect nor issue AOCs for partially completed
project work.

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P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

Attorney for Empirita Water Company, L.L.C.

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The original and thirteen (13) copies of the foregoing Motion are being mailed this 15th day of April 2009 to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

A copy of the foregoing Motion will be emailed/mailed this same date to:

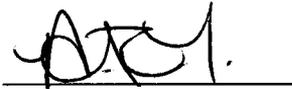
Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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

Jim Vermilyea
Empirita Water Company L.L.C.
2090 N. Kolb Road Suite 120
Tucson, Arizona 85715

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

Kim Battista, Director
Utilities Division Compliance Section
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007



Appendix “A”

Thunder Ranch Estates, L.L.C
2850 E. Skyline, Suite 100
Tucson, Arizona 85708

April ~~14~~, 2009

Jim Vermilyea, Manager
Empirita Water Company, LLC
2090 N. Kolb Road, Suite 100
Tucson, Arizona 85715

Re: Empirita Water Company, LLC
Motion For Extension of Compliance Filing Date Deadline

Dear Mr. Vermilyea:

This letter will confirm our recent discussions regarding the national and local economic circumstances which have affected Thunder Ranch Estates' schedule for development of its Redhawk II subdivision in Cochise County, Arizona. As is the case with other subdivisions throughout the State of Arizona, sales of our single-family residential lots have ceased for the moment; and, we currently do not anticipate any significant resumption in sales activity before mid-2010.

However, Redhawk II continues to have need for a centralized potable water provider to serve the requirements of future residents of Redhawk II; and, Thunder Ranch Estates continues to desire that Empirita Water Company be that water provider.

In that regard, it is our understanding that the water company needs to request of the Arizona Corporation Commission an extension of the deadline by which certain compliance filings must be made related to its provisions of water service to Redhawk II. You may use this letter in support of such request.

Sincerely,



Lou L. Christensen
Thunder Ranch Estates, LLC

Appendix “B”

Cashion Tank & Steel Co.

P O Box 306
12505 West Buckeye Road
Cashion, AZ 85329
USA

INVOICE

Invoice Number: 1987
Invoice Date: Apr 15, 2009
Page: 1

Voice: 623-932-3380
Fax: 623-932-1118

Ship to:

Bill To:

Thunder Ranch Estates Unite IV LLC
2850 E. Skyline Drive
Tucson, AZ 85718
USA

Customer ID

Thunder

State ID

Customer PO

Shipping Method

Courier

Payment Terms

C.O.D.

Ship Date

Due Date

4/15/09

Quantity

Item

Description

Unit Price

Amount

150,000 gallon water storage tank 47'8" x
12' 100% complete
10/17/07 CK# 1134
10/20/08 CK# 1040
11/26/08 CK# 1809

115,000.00
-45,000.00
-69,500.00
-10,500.00

Subtotal

0.00

Sales Tax

Total Invoice Amount

0.00

Payment/Credit Applied

TOTAL

0.00

Check/Credit Memo No:

Cashion Tank & Steel Co.

P O Box 306
 12505 West Buckeye Road
 Cashion, AZ 85329
 USA

INVOICE

Invoice Number: 1933
 Invoice Date: Oct 9, 2008
 Page: 1

Voice: 623-932-3380
 Fax: 623-932-1116

Bill To:
Thunder Ranch Estates Unite IV LLC 2850 E. Skyline Drive Tucson, AZ 85718 USA

Ship to:

Customer ID	Customer PO	Payment Terms	
Thunder		C.O.D.	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Courier		10/9/08

Quantity	Item	Description	Unit Price	Amount
		150,000 gallon water storage tank 47'6" x 12' 85% complete Ck# 1134 Less sandblast and paint		115,000.00 -45,000.00 -10,500.00
Subtotal				59,500.00
Sales Tax				
Total Invoice Amount				59,500.00
Payment/Credit Applied				
TOTAL				59,500.00

Check/Credit Memo No:

PRIMER
EXTERIOR
FINISH
5 FINISH COAT

Lic. No. 75820

CASHION TANK & STEEL CO.

SPECIALIZING IN TANK CONSTRUCTION & ERECTION

P.O. Box 306
Cashion, AZ 85329

Phone: 623-932-3380
FAX: 623-932-1116

October 10, 2007

RE: Red Hawk

Attn: Jim Vermilyea 520-490-1218 520-885-5010 Fax

We propose to furnish labor and materials to build one 150,000 gallon water storage tank to AWWA standards 47'6" diameter by 12' high on your prepared site in Benson, Az .

The tank will include the following:

- | | |
|---|-------------------------|
| 3/16" plate roof | 1/4" plate bottom |
| 3/16" 1 st & 2nd plate ring | Gaugeboard |
| Ladder inside & outside | (1) - 24" top manway |
| Fittings to the first flange | (2) - 30" shell manways |
| Vent | |
| Gravel ring 3/16" x 8" - Customer to haul and install | |

The tank will be sandblasted and painted to AWWA Inside System #1 Epoxy and Outside System #1 with your choice of color outside. **We must have access to at least three sides of the tank and room for a 40' trailer and crane and be able to drive to the site with the same.**

Our price on the tank will be \$115,000.00 with a 40% down payment. On completion of the on-site erection, an additional 85% of the balance is to be paid or as billed. The remaining is to be paid upon completion of the painting.

Cashion Tank & Steel will have liability insurance for at least \$1,000,000 and workmen's compensation as required by State. Customer will supply all permits and clearances.

Sincerely,

ACCEPTED BY:

Shirley Olson
Cashion Tank & Steel

DATE: 10/11/07

Price is subject to price and availability of steel at time of order.

\$59,500
Then
Pro/ance