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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

MAR 17 2010

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

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IN THE MATTER OF THE APPLICATION OF
DEL RIO WATER COMPANY, LLC FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE
IN YAVAPAI COUNTY, ARIZONA.

DOCKET NO. W-04074A-08-0094

DECISION NO. 71517

OPINION AND ORDER

DATES OF HEARING:

July 28, 2008 (Hearing), November 10, 2008 and
November 5, 2009 (Procedural Conferences)

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Messrs. Jeffrey C. Zimmerman and Steve Wene,
MOYES, SELLERS & SIMS, on behalf of Del Rio
Water Company; and

Mr. Kevin Torrey, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On February 15, 2008, Del Rio Water Company, LLC ("Del Rio" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide water service to approximately 3,000 acres in the Town of Chino Valley in Yavapai County, Arizona.

On February 25, 2008, Del Rio docketed a filing stating notice of the application had been provided to all landowners in the proposed CC&N area.

On March 5, 2008, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter, indicating that the application had not met the sufficiency requirements of the Arizona Administrative Code ("A.A.C.").

On March 21, 2008, Del Rio docketed additional information in support of the application.

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1 On April 15, 2008, Del Rio filed supplemental information on the application.

2 On April 21, 2008, Staff filed a Sufficiency Letter in this docket.

3 On April 29, 2008, by Procedural Order, a hearing was set to commence on June 9, 2008, and
4 other procedural deadlines were established.

5 On May 1, 2008, Staff filed a request to extend the deadline for filing the Staff Report and to
6 reschedule the hearing in this matter.

7 On May 12, 2008, by Procedural Order, Staff's request for an extension of time to file the
8 Staff Report was granted, the hearing was rescheduled to July 28, 2008, and the time clock was
9 extended accordingly.

10 On June 17, 2008, Del Rio docketed certification of mailing and publication, stating that
11 notice of the application and hearing date had been mailed to property owners in the requested
12 CC&N area, and published in the *Courier*, a daily newspaper of general circulation in the City of
13 Prescott, on June 2, 2008.

14 On June 30, 2008, Staff filed a Staff Report recommending approval of Del Rio's application
15 with conditions.

16 On July 18, 2008, Del Rio filed comments to the Staff Report objecting to Staff's proposed
17 capital structure, Staff's recommendation for a performance bond, and Staff's proposed timeline for
18 filing a Franchise Agreement from the Town of Chino Valley.

19 On July 28, 2008, a full public hearing was convened before a duly authorized Administrative
20 Law Judge ("ALJ") of the Commission at its offices in Phoenix, Arizona. The Applicant and Staff
21 appeared through counsel. No members of the public appeared to present public comments. At the
22 conclusion of the hearing, Staff and Del Rio were directed to file late-filed exhibits.

23 On August 8, 2008, by Procedural Order, it was determined that additional information was
24 needed in this matter; a second day of hearing was set for November 14, 2008; new filing deadlines
25 were established; and the time clock was suspended.

26 On August 8, 2008, Staff filed, as a late-filed exhibit, amended schedules related to Staff's
27 testimony.

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1 On September 3, 2008, Appaloosa Water Company ("Appaloosa") filed a Motion to
2 Intervene, stating that in 2004 Appaloosa provided an intent to serve letter to Bond Ranch at Del Rio
3 Springs, LLC ("Bond Ranch"), requesting to be the water provider for Bond Ranch's proposed
4 subdivision, which appears to be the same territory requested in Del Rio's application.

5 On September 12, 2008, Del Rio filed a request to delay the November 14, 2008 hearing date
6 to December 13, 2008, or later.

7 On September 18, 2008, by Procedural Order, Del Rio's request to vacate the November 14,
8 2008, hearing date was granted, and a new hearing date was scheduled for December 22, 2008. The
9 Procedural Order also directed Staff to file a Supplemental Staff Report by November 17, 2008, and
10 directed Del Rio to file its response to Staff's Supplemental Staff Report by December 1, 2008. Del
11 Rio and Staff were also directed to file responses to Appaloosa's Motion to Intervene.

12 On September 29, 2008, Staff filed a Response to Appaloosa's Motion to Intervene. Staff
13 recommended that, as a pre-condition to intervention, Appaloosa should be directed to file a formal
14 application for a CC&N satisfying the requirements of A.A.C. R14-2-402. Staff further
15 recommended that Appaloosa should be instructed to file its application in time for it to be deemed
16 sufficient on or before October 31, 2008, so that Appaloosa's intervention will not unduly delay the
17 process. Staff also requested that the hearing date be accelerated and rescheduled for December 18,
18 2008, or sooner, if possible, because Staff's central witness was unavailable for the December 22,
19 2008, hearing date.

20 On October 3, 2008, Del Rio filed a response to Appaloosa's Motion to Intervene and urged
21 denial of Appaloosa's request. Del Rio attached to its response, letters from the two developers for
22 the proposed CC&N area, expressing a desire to be served by Del Rio, and objecting to being
23 included in Appaloosa's CC&N. Del Rio also stated that it does not object to Staff's request to have
24 the hearing slightly accelerated.

25 On October 13, 2008, in Docket No. W-03443A-08-0540, Appaloosa filed an application for
26 an extension of its CC&N to include the proposed CC&N area in this docket.¹

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28 ¹ On January 25, 2010, Staff filed a memorandum recommending administrative closure of Docket No. W-03443A-08-0540, stating Appaloosa had not met the sufficiency requirements set forth in A.A.C.

1 On October 15, 2008, Appaloosa filed a response to Del Rio's request to deny Appaloosa's
2 motion to intervene. Appaloosa continued to urge the granting of its intervention in this matter.

3 On October 22, 2008, Del Rio filed a Request for Extension of Time, requesting that the
4 application in this matter be put on hold until June 30, 2009, and stating that Staff does not oppose
5 Del Rio's request for an extension of time.

6 On October 29, 2008, by Procedural Order, the hearing scheduled to reconvene on December
7 22, 2008, was vacated and a procedural conference was set for November 10, 2008, to discuss the
8 pending pleadings, the procedural posture of this matter, and the related application filed in Docket
9 No. W-03443A-08-0540.

10 On November 10, 2008, the procedural conference was convened as scheduled before a duly
11 authorized ALJ of the Commission at its offices in Phoenix, Arizona. Del Rio and Staff were present
12 through counsel. Mr. Joe Cordovana appeared on behalf of Appaloosa. During the procedural
13 conference, the ALJ ruled on several issues pending in this matter.

14 On December 5, 2008, by Procedural Order, Appaloosa's intervention and Del Rio's request
15 for an extension of time, until June 30, 2009, were granted; Del Rio was ordered to file in this docket,
16 on or before June 30, 2009, a document discussing the status of the Bond Ranch refinancing and
17 stating Del Rio's intent regarding its application in this matter; and the time clock in this matter was
18 suspended indefinitely.

19 On June 30, 2009, Del Rio filed a Statement of Intent and Request for Extension of Time
20 ("Statement"), which stated that Del Rio's sole member, Bond Ranch, was still pursuing refinancing
21 and the development of the Del Rio real estate project. Del Rio requested that its application for a
22 CC&N be put on hold until December 31, 2009.

23 On August 17, 2009, by Procedural Order, Staff and Appaloosa were ordered to file, by
24 September 1, 2009, a response to Del Rio's request for an extension of time. Del Rio was directed to
25 file a reply to Staff's and/or Appaloosa's response by September 18, 2009.

26 On August 27, 2009, Appaloosa filed a response objecting to Del Rio's request for an
27 extension of time.

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1 On August 28, 2009, Staff filed a response to Del Rio's request for an extension of time,
2 recommending that in the absence of a withdrawal of the application by the Company, this docket
3 should be administratively closed.

4 On September 18, 2009, Del Rio filed a reply to Appaloosa's and Staff's responses.

5 On October 23, 2009, by Procedural Order, a procedural conference was set for November 5,
6 2009, to discuss Del Rio's request for an extension of time.

7 On October 30, 2009, Del Rio filed a request to reschedule the November 5, 2009, procedural
8 conference to December 3, 2009. On the same date, Staff filed a Notice of Filing.

9 On November 3, 2009, a telephonic procedural conference was held to discuss Del Rio's
10 request to postpone the procedural conference set for November 5, 2009. During the procedural
11 conference Del Rio's request was denied.

12 On November 5, 2009, a procedural conference was held as scheduled. Staff and Del Rio
13 appeared through counsel. Mr. Joe Cordovana appeared on behalf of Appaloosa. At the conclusion of
14 the procedural conference, Del Rio was granted an extension of time, until December 31, 2009, to
15 provide the Commission with concrete information related to its financing or that this matter would
16 be subject to administrative closure.

17 On December 31, 2009, Del Rio filed a Notice of Withdrawal of Application.

18 On January 20, 2010, Staff filed a response to Del Rio's notice of withdrawal of its
19 application. Staff stated it does not oppose withdrawal of Del Rio's application.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. Del Rio is a Limited Liability Company, in good standing with the Corporations
25 Division of the Commission.

26 2. Del Rio was formed to provide water utility service in a portion of Yavapai County,
27 Arizona.
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1 3. On February 15, 2008, Del Rio filed an application for a CC&N to provide water
2 service to a proposed residential community comprised of approximately 3,000 acres located in the
3 Town of Chino Valley, Arizona. The requested CC&N area is to be comprised of two properties: one
4 owned by The Bond Ranch at Del Rio Springs, LLC (3,055 acres) and the other Del Rio Apartments,
5 LLC (24.82 acres).² Del Rio anticipates serving 720 residential properties within Phase I or the first
6 five years of development.³

7 4. According to Staff, The Bond Ranch at Del Rio Springs, LLC, and Del Rio
8 Apartments, LLC, share partial commonality of ownership. Most of the members of Del Rio
9 Apartments, LLC, are also members of The Bond Ranch at Del Rio Springs, LLC.⁴ The Bond Ranch
10 at Del Rio Springs, LLC, however, has additional members who are not members of Del Rio
11 Apartments, LLC.⁵

12 5. According to the Commission's Corporations Division, The Bond Ranch at Del Rio
13 Springs, LLC is the sole member of Del Rio Water Company.

14 6. On June 30, 2008, Staff filed a Staff Report recommending approval of Del Rio's
15 application, with conditions.

16 7. Notice of the application and hearing date were published in accordance with the law.

17 8. On July 28, 2008, a full evidentiary hearing was held on Del Rio's application. Del
18 Rio and Staff appeared through counsel and presented testimony and evidence. At the conclusion of
19 the hearing, Staff and Del Rio were directed to file late-filed exhibits.

20 9. By Procedural Order issued August 8, 2008, it was determined that additional
21 information was needed and the matter would be set for an additional day of hearing. The Procedural
22 Order directed Del Rio, among other things, to make available for the next hearing date, an officer of
23 Del Rio authorized to testify to Del Rio's organizational structure; the names of its principal officers;
24 the identity of any affiliated entities; a description of any pending law suits and/or complaints;
25 financial information that could be used to determine the source of revenue Del Rio will use to

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27 ²Del Rio Data Response dated March 21, 2008.

28 ³ Id.

⁴ Staff Report, at 1.

⁵ Id.

1 finance the proposed infrastructure in the requested CC&N area; the timeframes projected for
2 development within the proposed CC&N area; estimated timeframes for meeting State, County, and
3 Municipal permit requirements; and a detailed description of the various phases of development,
4 including the timing and size of each proposed phase of development. Further, Staff was directed to
5 obtain additional information from Del Rio as needed and to file a Supplemental Staff Report in this
6 matter. A second day of hearing was scheduled for November 14, 2008.

7 10. On September 12, 2008, Del Rio filed a request to delay the November 14, 2008,
8 hearing to December 13, 2008, or later. The request stated that pursuant to the Procedural Order
9 dated August 8, 2008, Staff had submitted additional data requests to the Applicant, and Del Rio
10 needed more time to complete its answers. The request further stated that Del Rio's sole member,
11 Bond Ranch, was involved in a refinancing which would not be completed in time for Del Rio to give
12 Staff complete answers to the additional data requests. Del Rio also requested an extension of time
13 for Staff to file the Supplemental Staff Report and for Del Rio to file its responses to the
14 Supplemental Staff Report. The request stated that Staff did not object to Del Rio's request to extend
15 the time deadlines.

16 11. By subsequent Procedural Order, Del Rio's request to reschedule the November 14,
17 2008 hearing date was granted and the hearing was set to reconvene on December 22, 2008.

18 12. On October 22, 2008, Del Rio filed a request for an extension of time, until June 30,
19 2009, to pursue its application in this matter. The request stated that Del Rio's sole member, Bond
20 Ranch, is involved in a refinancing, and the instability of the financial markets may influence build
21 out of the development in the proposed CC&N area.

22 13. Subsequently, by Procedural Order, the hearing scheduled to reconvene on December
23 22, 2008, was vacated and a procedural conference was set for November 10, 2008. At the
24 procedural conference, Del Rio and Staff were present through counsel. Mr. Joe Cordovana appeared
25 on behalf of Appaloosa. Del Rio reiterated that it needed an extension of time because its sole
26 member, Bond Ranch, was in the middle of a refinancing when the downturn in the financial markets
27 occurred, and Del Rio needed additional time to evaluate whether the proposed development phases
28 for the CC&N area are still appropriate, or if Del Rio will have to implement development in smaller

1 stages based on the financing that is available. (Tr. at 9) Del Rio also requested that Appaloosa's
2 CC&N extension application be put on hold until Del Rio resolved its financing issues. Del Rio
3 owns the property requested in Appaloosa's CC&N extension application and Del Rio would not
4 consent to being served by Appaloosa. (Id.) At the conclusion of the procedural conference,
5 Appaloosa was granted intervention, and Del Rio's request for an extension of time, until June 30,
6 2009, to provide the additional information needed in its application was granted.

7 14. On June 30, 2009, Del Rio docketed a third request for an extension of time, until
8 December 31, 2009, to pursue the application in this matter. The request stated that Del Rio's sole
9 member, Bond Ranch, was still pursuing refinancing and the development of the Del Rio real estate
10 project. According to the request, Bond Ranch had, in January 2009, successfully received funding
11 from investors to pay off the project's existing financing, had restructured its internal management,
12 but had been unsuccessful in obtaining new financing. However, the request stated that Del Rio was
13 continuing with the entitlement process to facilitate development in the CC&N area.

14 15. Staff filed a response to Del Rio's request for an extension of time, until December 31,
15 2009, to pursue the above-captioned application. Staff's response stated that Del Rio has not timely
16 responded to Staff's data requests and Staff has been unable to complete its review of the application.
17 Staff recommended that Del Rio withdraw its application in this proceeding and re-file its application
18 when Del Rio's financing issues are resolved. Staff further recommended that in the absence of a
19 withdrawal of the application by Del Rio, this docket should be administratively closed.

20 16. Del Rio filed a reply stating that Bond Ranch was finalizing an offering to raise
21 additional capital within the next two weeks and Bond Ranch expected to know by the end of the
22 year whether the offering had been successful.

23 17. On November 5, 2009, a procedural conference was held to discuss Del Rio's third
24 request for an extension of time to pursue the application in this matter. Staff and Del Rio appeared
25 though counsel. Mr. Joe Cordovana appeared on behalf of Appaloosa. During the procedural
26 conference, Del Rio stated that in the last six months Bond Ranch had issued an equity offering (in
27 the amount of \$25 million) to potential investors to raise funds; Del Rio believes that it is in the
28 Commission's and Del Rio's best interest not to start the application process anew; if the

1 Commission grants the extension of time and Del Rio fails to obtain financing, Del Rio will withdraw
2 its application; and Del Rio has continuing concerns regarding Appaloosa's CC&N extension
3 application to serve the Del Rio development. (Tr. at 7) Staff stated it believes it is appropriate for
4 Del Rio to withdraw its application in this matter and, in the alternative, Staff continues to urge that
5 this matter be administratively closed based on Del Rio's admission that there is no guarantee that
6 Bond Ranch will obtain financing. (Tr. at 8) Staff further stated that given the length of time this
7 matter has been pending, it was possible that a new hearing will be necessary even if Del Rio's
8 extension of time was granted. (Tr. at 10) Mr. Cordovana urged administrative closure of this docket
9 and stated that Appaloosa is willing to serve the CC&N area, and there is not a need for an additional
10 water company. (Tr. at 11) Del Rio responded that it was hopeful that the equity offering would be
11 successful. (Tr. at 15) At the conclusion of the procedural conference, Del Rio was granted an
12 extension of time, until December 31, 2009, to provide the Commission with concrete information
13 related to its financing. Del Rio was informed that, if it failed to provide concrete information on its
14 financing, a Recommended Opinion and Order would be submitted to the Commission
15 recommending administrative closure of this docket.

16 18. On December 31, 2009, Del Rio docketed notice of the withdrawal of its application
17 in this matter.

18 19. On January 20, 2010, Staff filed a response to Del Rio's notice of withdrawal of its
19 application. Staff states that this matter has been pending for two years; Del Rio has been
20 unsuccessful in obtaining financing; absent financing there is no need to pursue this application; and
21 Staff has no objection to the withdrawal of Del Rio's application.

22 20. Del Rio has been granted an extension of time three times over the course of two years
23 to obtain financing for the proposed development in the CC&N application. During that time, Del
24 Rio has been unable to obtain the necessary financing to fund development in the requested CC&N
25 area. Therefore, there is no public need or necessity for water utility service in the requested CC&N
26 area at this time, and Del Rio's request to withdraw its application in this matter is appropriate.
27 Further, Staff's recommendation that this docket be administratively closed is reasonable.
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CONCLUSIONS OF LAW

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1. The Commission has jurisdiction over the subject matter of this application.
2. Notice of the application was provided in accordance with the law.
3. At this time, there is no public need and necessity for water utility service in the proposed CC&N area.
4. Staff's recommendation that this docket be administratively closed is reasonable and should be adopted.

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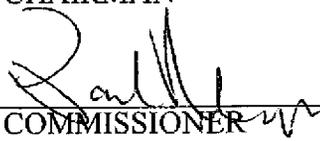
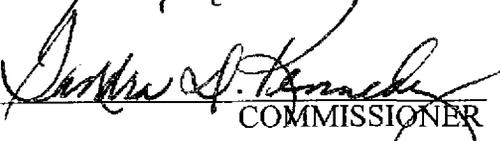
ORDER

IT IS THEREFORE ORDERED that Del Rio Water Company, LLC's request to withdraw its application for a Certificate of Convenience and Necessity to provide water utility service in Yavapai County, Arizona is hereby granted.

IT IS FURTHER ORDERED that the above captioned docket shall be closed.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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| CHAIRMAN | COMMISSIONER | |
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| COMMISSIONER | COMMISSIONER | COMMISSIONER |

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, 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 17th day of March, 2010.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR: DEL RIO WATER COMPANY, L.L.C.

2 DOCKET NO.: W-04074A-08-0094

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