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MEMORANDUM

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FROM: Steven M. Olea
Director
Utilities Division

DATE: June 9, 2010

RE: WILLOW VALLEY WATER COMPANY, INC. - REQUEST FOR EXTENSION OF COMPLIANCE DEADLINES (DOCKET NO. W-01732A-05-0532)

2010 JUN -9 P 4:39

ARIZONA CORPORATION COMMISSION
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In Decision No. 68610, dated March 23, 2006, the Arizona Corporation Commission (“Commission”) approved the application of Willow Valley Water Company, Inc. (“Willow Valley” or “Company”) for an extension of its Certificate of Convenience and Necessity. In issuing its decision, the Commission ordered the Company to provide filings relating to the Developer’s Letter of Adequate Water Supply (“LAWS”). Decision No. 68610 ordered that Willow Valley should file:

“copies of the Developer’s Letter of Adequate Water Supply, stating that there is adequate water, no later than one year after a decision in this docket.”

The original Commission due date on the above item was March 23, 2007.

On March 21, 2007, Willow Valley filed a motion for extension of time to comply with the LAWS requirement. On April 4, 2007, Staff docketed a Staff Report which discussed that the developer was encountering delays obtaining the LAWS due to litigation involving the Mohave Valley Irrigation and Drainage District (“MVIDD”). On April 19, 2007, the Commission issued a Procedural Order that extended the deadline for Willow Valley to file the LAWS from March 23, 2007 to March 23, 2008.

On March 21, 2008, the Company filed a second “Motion for Extension of Time”. The second motion discussed the extension area and a subdivision known as “Willow Valley Estates” which consists of three parcels (tracts), known as Parcel A, Parcel B and Parcel C. The LAWS for Parcel A and Parcel B were obtained by the Company. The LAWS for Parcel C had not been obtained and represented the basis for the request for extension of time. The second motion included a letter from the developer, McKellips Land Corporation, reiterating the need for service and explaining problems it was having with the Mohave County Planning and Zoning Department (“P&Z”) review. On April 16, 2008, Staff docketed a Staff report which did not object to the Company proposed one year extension of time from March 23, 2008 to March 23, 2009. On April 29, 2008, the Commission issued a Procedural Order that extended the deadline for Willow Valley to file the LAWS to March 23, 2009.

On March 23, 2009, McKellips Land Corporation ("MLC") filed two motions pertaining to Willow Valley's CC&N extension. First, MLC filed an application to intervene in Willow Valley's CC&N extension - Docket No. W-01732A-05-0532 based on the fact that MLC owned the land covered by the CC&N extension. Second, MLC filed a third Motion for Extension of Time in this matter, requesting an additional year for the provision of the LAWS requirement. On April 30, 2009, Willow Valley made a filing stating it did not oppose the MLC request extension. Staff filed a response on May 8, 2009, and recommended approval of the motion for extension of time until March 23, 2010. On June 30, 2009, the Commission issued Decision No. 71174 which granted an extension of time, until March 23, 2010, for the provision of the ADWR LAWS for Parcel C.

On March 23, 2010, MLC filed a fourth Motion for Extension of Time in this matter. The motion requests an additional year, until March 23, 2011, to comply with the ADWR LAWS requirement. This represents the second time the developer has filed for an extension of time in this matter. On May 17, 2010, Staff received an e-mail from Mr. Tim Sabo, Willow Valley counsel, confirming that the Company does not oppose MLC's current request for extension of time until March 23, 2011.

According to the application, MLC has encountered a number of unexpected difficulties in obtaining the LAWS for Tract C. Water for Tract C is supplied from the Colorado River and those water rights are allocated by the MVDD. But, MLC claims the district was barely functioning when it first sought water allocation for Tract C. Following a recall election, a new district board of directors granted the necessary water allocation; however, a lawsuit of a former director went to the Arizona Supreme Court and the case resulted in the disqualification of the board and nullification of its acts. This required MLC to reapply to obtain its water allocation. They were forced to do so and ultimately did receive the allocation of Colorado River water for Tract C.

As result of these delays, MLC has not been able to complete Tract C within the required time frame. Further, MLC was unable to get an extension of time from the County. This resulted in the County requiring MLC to commence the subdivision tract process over again under a new ordinance.

The preliminary plat for this subdivision was submitted and resubmitted multiple times for review by the County. MLC states that each time the County has been slow and unresponsive and has demanded additional requirements not required for the previous approvals of Tracts A and B. The most time consuming demand has been the County requirement for the filing of a parcel plat which defines the retention basin which receives storm drainage from Tracts A, B and C. This required a process with the Assessor's office of combining two parcels which had different Assessor parcel numbers. Unfortunately, the individual parcels were held in two names and that fact required MLC to obtain a deed back from the title company. But the title company's parent had gone into reorganization and all its trusts were assigned to another title company that was unfamiliar with the property.

The deed mentioned above was finally obtained and MLC began the task of preparing a parcel plat involving an analysis of riparian boundaries of the property, including accretion issues which arose subsequent to a quit title action completed by MLC in 1976. Further, MLC claims that the survey and engineering for the parcel plat was additionally complicated by the involvement of the Bureau of Indian Affairs who had previously resurveyed and moved Section corners in the north boundary of Section 21, thereby requiring additional reconstruction work by the MLC engineer.

MLC provides that it has have previously presented multiple versions of the parcel plat to the County only to see them rejected by various departments. However, it is believed that all the issues have been recently resolved. The application states that the expected final version of the parcel plat has now been mailed to the MLC for signature. This will move the stalled subdivision process forward and allow MLC to obtain the LAWS in the currently requested extension period. In summary, MLC claims that it has diligently pursued the LAWS and that the delays are the fault of others rather than MLC or Willow Valley. MLC further provides that it has been involved in developing this area successfully since 1959. Finally, MLC confirms that Willow Valley does not oppose the requested extension.

Staff recognizes that the Company and the Developer have made progress in this extension area and notes that the LAWS for Tract "C" is the only outstanding compliance item remaining. Therefore, Staff does not oppose the pending motion for extension of time until March 23, 2011.

Staff once again recommends that no further extensions of time be granted in this case.

SMO:BKB:lh

Originator: Brian K. Bozzo

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DOCKET NO. W-01732A-05-0532

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