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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

MAR 1 2011

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

DOCKET NO. W-01732A-05-0532

**McKELLIPS LAND
CORPORATIONS' MOTION
FOR EXTENSION OF TIME**

McKellips Land Corporation ("MLC") respectfully requests that the Commission extend the LAWS deadline in Decision No. 68610 (March 23, 2006) by an additional year, to March 23, 2012. MLC was granted intervention in this docket by Decision No. 71174 (June 30, 2009).

Decision No. 68610 granted a CC&N extension to Willow Valley Water Co., Inc. ("Willow Valley") for three parcels (A, B and C) owned by MLC, which were specifically described in Exhibit "A" attached to that Decision. Willow Valley had initially received a request to serve the extension area from MLC which was developing three subdivisions within portions of the area, Willow Valley Estates 20, Tracts A, B and C (Tract C has now has been renamed Willow Valley Estates 21, but will continue to be referred to herein as Tract C for continuity and convenience). Decision No. 68610 requires Willow Valley to obtain and file with Docket Control, as a compliance item, copies of the Developer's Letter of Water Adequacy Supply ("LAWS") stating that there is adequate water for the three subdivisions, no later than one year after the decision. MLC obtained, and Willow Valley submitted to the Commission, the LAWS for Willow Valley Estates 20, Tracts A and B. Those tracts have been platted, developed and sold and all homes built within Tracts A and B are being served by Willow Valley. However, MLC encountered several unexpected difficulties in obtaining

1 the LAWS for Tract C. In Decision No. 71174 (June 30, 2009), the Commission extended the
2 deadline for obtaining the LAWS for Tract C until March 23, 2010. In Decision No. 71861
3 (September 1, 2010), the Commission again extended the deadline for obtaining the LAWS for Tract
4 C until March 23, 2011, and further ordered that no additional extension of time should be granted
5 absent extraordinary circumstances. MLC believes such extraordinary circumstances exist as shall
6 hereafter be delineated.

7 Water for Tract C is supplied from the Colorado River, the water rights to which are
8 allocated by the Mohave Valley Irrigation & Drainage District ("District") pursuant to a contract
9 with the United States Bureau of Reclamation. At the time MLC first attempted to obtain a water
10 allocation for Tract C the District was barely functioning. Following a recall election a new Board
11 of Directors had been elected which granted the necessary water allocation. However, a lawsuit
12 brought by one of the former directors, which ultimately reached the Arizona Supreme Court,
13 resulted in disqualification of the board and nullification of its acts, which required MLC to reapply
14 to obtain its water allocation. MLC reapplied and ultimately obtained its allocation of Colorado
15 River water for Tract C.

16 Tract C was initiated under Mohave County's former subdivision ordinance and was
17 grandfathered in after a new ordinance was adopted. However, as a result of the delays just
18 described and others, MLC was not able to complete Tract C within the required time to be
19 grandfathered in and was unable to obtain an extension which resulted in the county requiring MLC
20 to commence the subdivision process all over again for this Tract under the new county ordinance.
21 This resulted in Tract C being renamed Willow Valley Estates 21. The preliminary plat and
22 accompanying documentation for this subdivision was submitted and resubmitted multiple times.
23 The review process of the Mohave County Planning and Zoning Department is laborious. Each
24 submittal of a preliminary plat is reviewed by Planning and Zoning, the Mohave County Health

1 Department, three divisions of the Public Works Department (Roads, Survey and Engineering
2 Design), the local Fire Marshall, Arizona Department of Transportation, and notices soliciting
3 comments are sent to all of the public utilities serving the subdivision. Each time MLC submitted a
4 revised preliminary plat and accompanying documentation, Planning and Zoning and/or one the
5 many departments or utilities reviewing the plat responded with an endless list of additional
6 comments and requirements. Because of the general economic malaise especially in the real estate
7 industry Planning and Zoning is substantially understaffed and overworked and always takes the
8 maximum time it is allowed by law (and more) to review anything. Likewise MLC's engineering
9 company whose primary responsibility it is to process the subdivision is operating with a skeleton
10 crew and is not as responsive to the County's comments and requirements as would be the case in
11 normal economic times.

12 Not only was the county slow and unresponsive but it demanded additional requirements that
13 were not even required for the previous approvals of Tracts A and B. The most time consuming
14 demand in this regard was the county's belated requirement for the filing of a parcel plat defining the
15 retention basin which receives the storm drainage from Tracts A, B and C. In order to provide the
16 required plat MLC was required to complete a process with the Assessor's office of combining two
17 tax parcels with different Assessor parcel numbers. As it happened the parcels were held in two
18 different names, MLC and Lawyers Title of Arizona, as trustee for MLC. That circumstance
19 required MLC to obtain a deed back from the title company. Unfortunately, the parent company of
20 the title company had gone into reorganization and all of its trusts had been assigned to another title
21 company for administration that was unfamiliar with the property and the trust and the title company
22 delayed in signing the required deed. The deed was finally obtained and the engineer for the
23 company began the tedious task of preparing the required parcel plat which, among other things,
24 involved a complicated analysis of the riparian boundaries of the MLC property including accretion

1 issues which arose subsequent to a quiet title action completed by MLC in 1976. The MLC property
2 is all located in partial Section 21, Township 18 North, Range 22 West, G.&S.R.B.&M. The survey
3 and engineering required for the parcel plat was further complicated by the fact that the Bureau of
4 Indian Affairs had some time before resurveyed the north line of Section 21, which is also the south
5 line of a Section included in the Mojave Indian Reservation and (in violation of federal law) moved
6 the Section corners which, of course, required a complicated reconciliation of the north boundary of
7 Section 21 by the MLC engineer. Multiple versions of the parcel plat were prepared and presented
8 to the county and rejected by various departments including the cartography office for a number of
9 issues. Those issues were finally all resolved and the final version of that partial plat has been
10 signed, approved and recorded. Thereafter the subdivision process which had been stalled could be
11 resumed and additional plat revisions have been made and the MLC believes all comments
12 responded to and conditions satisfied.

13 The county has just notified MLC that "we have received all documents of the corrected
14 Preliminary Plat February 11, 2011 and forwarded the submittal to all reviewing agencies on that
15 date. All review comments should be received by March 30, 2011." If comments are received as
16 requested, then MLC will have to satisfy the comments and resubmit giving the county additional
17 time for review. If no comments are received requiring amendment or correction of the previous
18 submission, then the earliest MLC can be on the Board of Supervisor's agenda for approval of the
19 preliminary plat for Tract C would be the middle of June 2011. If and when the Supervisors approve
20 the preliminary plat, MLC expects that it can move quickly to process the final subdivision plat as
21 much of the work on that has been completed along with some of the construction plans. Once the
22 final subdivision plat is approved MLC expects that it can finally obtain the require LAWS within
23 the additional extension time requested.

24 Section 21, wherein these subdivisions lie, is bounded on the west by the Colorado River and

1 on the north and south by the Fort Mojave Indian Reservation. Tract C, is bounded on the west,
2 north and east by other subdivisions served by Willow Valley and on the south by the Indian
3 reservation. Not only is Willow Valley the only feasible service provider for any expansion within
4 this area, it is already providing water to homes within subdivision Tracts A and B, and the
5 surrounding subdivisions. Further, there is no question that adequate water will be available for
6 Willow Valley to serve Tract C, which has been previously demonstrated by the allocation of
7 Colorado River surface water for that Tract by the Mohave Valley Irrigation & Drainage District
8 pursuant to its contract with the Secretary of Interior.¹ A fee of \$26,500.00 has been paid to the
9 irrigation district for this water allocation. An extension of that allocation is expected to be granted
10 at the irrigation district meeting in April.

11 MLC recently negotiated and signed on December 10, 2010, a Water Facilities Extension
12 Agreement (“will serve” agreement”) with Willow Valley. No useful purpose would be served by
13 revocation of the previously granted CC&N extension. Not only would such a revocation result in
14 more expense and delay for MLC and Willow Valley, it would also leave customers of Willow
15 Valley in Tracts A and B outside the certificated area of the company. MLC has diligently pursued
16 the LAWS, and the delays it has encountered are primarily the fault of others and the economy and
17 not that of MLC or Willow Valley. It is expected that the last major hurdles for proceeding with the
18 Tract C subdivision have been overcome and that processing should be capable of being expedited.
19 Without question the Tract C subdivision will eventually be completed. MLC has been involved in
20 developing this area for more than fifty years (since 1959), and has successfully completed every
21 subdivision it has started and has created numerous lots in many subdivision phases, creating a small
22 community extending from the Colorado River to Highway 95 and to areas two miles further to the
23 east of the highway. The entire community which receives water from a utility is serviced by
24

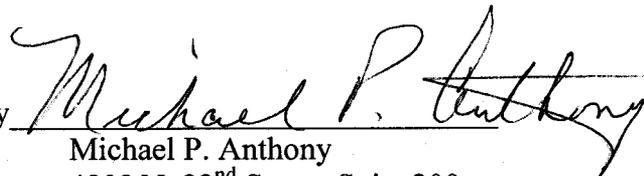
¹ See, Exhibit “B” to MLC’s previous Conditional Motion for Extension of Time

1 Willow Valley, and there is no other utility capable of serving the area.

2 We have conferred with counsel for Willow Valley, and can report that Willow Valley does
3 not oppose this extension of time and would concur in the request. Accordingly, MLC respectfully
4 requests that the Commission extend the LAWS deadline for an additional year, until March 23,
5 2012.

6 RESPECTFULLY SUBMITTED this 1st day of March 2011.

7 CARSON MESSINGER PLLC

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9 By 

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1 Original and 13 copies of the foregoing
filed this day of March, 2011 with:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
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5 Copy of the foregoing ~~hand-delivered~~/mailed
this day of March, 2011

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