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Arizona Corporation Commission 2012 MAR 15 PM 4:16

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IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. W-01732A-05-0532  
OF WILLOW VALLEY WATER COMPANY, INC. )  
FOR AN EXTENSION OF ITS CERTIFICATE OF ) **McKELLIPS LAND**  
CONVENIENCE AND NECESSITY. ) **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, 2013. 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 required 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 has encountered a multitude of unexpected difficulties in

1 obtaining the LAWS for Tract C. In Decision No. 71174 (June 30, 2009), the Commission extended  
2 the deadline for obtaining the LAWS for Tract C until March 23, 2010. In Decision No. 71861  
3 (September 1, 2010), the Commission extended the deadline for obtaining the LAWS for Tract C  
4 until March 23, 2011, In Decision No. 72295 (May 4, 2011) the Commission extended the deadline  
5 for obtaining and filing the LAWS for Tract C until March 23, 2012 (and further ordered that no  
6 additional extension of time should be granted absent extraordinary circumstances). MLC believes  
7 such extraordinary circumstances exist as shall hereafter be delineated.

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

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

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

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

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

16 The county then notified MLC that "we have received all documents of the corrected  
17 Preliminary Plat February 11, 2011, and forwarded the submittal to all reviewing agencies on that  
18 date. All review comments should be received by March 30, 2011." This necessitated the last  
19 request to the Commission for an extension by MLC. Additional comments were received and,  
20 despite having been previously approved for both Tracts A and B of the subdivision, the Planning  
21 Department has now advised that it's hydrology requirements had been revised and that the storm  
22 drainage system previously designed and installed to take care of all three phases of Willow Valley  
23 Estates 20 is no longer sufficient under the new regulations. It is now impractical to remove the old  
24 drainage line and install a new larger one as purchasers of the lots in the first two phases have built

1 improvements over the top of the existing line and its easement. It would cause substantial damage  
2 to those improvements in order to replace the old line with a new enlarged one as well as making the  
3 previous lot purchasers and customers of MLC very unhappy.

4 So, despite the long delay caused by obtaining the County mandated retention basin and  
5 easement for drainage above described for Tract C it is no longer available for Tract C and a new  
6 retention basin will have to be developed. The only feasible solution is to put a new retention basis  
7 on a parcel of bare land south of Tract C and MLC is working with an adjoining landowner (the  
8 property owner's association for the community) to provide a new retention basin and an oral  
9 agreement has been reached. However, now Tract C had to be redesigned to cause storm run-off to  
10 flow south instead of north and the rough grading already completed for Tract C will have to be  
11 redone to cause the drainage to flow in the opposite direction than that originally planned.

12 Some progress has been made, however, and notwithstanding that some further delays by the  
13 Planning Department have occurred caused by the way it improperly noticed for hearing certain  
14 procedural steps, MLC has finally managed to obtain approval of the preliminary subdivision plan  
15 for Tract C and the final plan can be approved once the County approves the design for the revised  
16 storm water system and retention basin. When the final subdivision plat is approved MLC expects  
17 that it can move quickly to obtain the require LAWS within the additional extension time requested.

18 Section 21, wherein these subdivisions lie, is bounded on the west by the Colorado River and  
19 on the north and south by the Fort Mojave Indian Reservation. Tract C is bounded on the west,  
20 north and east by other subdivisions served by Willow Valley and on the south by a small parcel  
21 owned by a third party (where the new retention basis will be located) and to the south of that the  
22 Indian reservation. Not only is Willow Valley the only feasible service provider for any expansion  
23 within this area, it is already providing water to homes within subdivision Tracts A and B, and the  
24 surrounding subdivisions. Further, there is no question that adequate water will be available for

1 Willow Valley to serve Tract C, which has been previously demonstrated by the allocation of  
2 Colorado River surface water for that Tract by the Mohave Valley Irrigation & Drainage District  
3 pursuant to its contract with the Secretary of Interior.<sup>1</sup> A non-refundable fee of \$21,600.00 has been  
4 paid to the irrigation district for this water allocation. An additional extension of that allocation is  
5 expected to be granted at the irrigation district meeting in March, 2012.

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

20 We have conferred with counsel for Willow Valley, and can report that Willow Valley does  
21 not oppose this extension of time and would concur in the request. Accordingly, MLC respectfully  
22 requests that the Commission extend the LAWS deadline for an additional year, until March 23,  
23 2013.

24 \_\_\_\_\_  
<sup>1</sup> See, Exhibit “B” to MLC’s previous Conditional Motion for Extension of Time

1 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of March 2012.

2 CARSON MESSINGER PLLC

3  
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9 Attorneys for McKellips Land Corporation

7 Original and 13 copies of the foregoing  
8 filed this 15<sup>th</sup> day of March, 2012, with:

9 Docket Control  
10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

11 Copy of the foregoing hand-delivered/mailed  
12 this 15<sup>th</sup> day of March, 2012, to:

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By Harold Harding