



0000140008

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

OCT 17 2012

- GARY PIERCE - Chairman
- BOB STUMP
- SANDRA D. KENNEDY
- PAUL NEWMAN
- BRENDA BURNS

DOCKETED BY	nr
-------------	----

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

DOCKET NO. W-01732A-05-0532

DECISION NO. 73560

**ORDER EXTENDING TIME**  
**DEADLINE CONTAINED IN**  
**DECISION NOS. 68610, 71174,**  
**71861 AND 72295**

Open Meeting  
 October 16 and 17, 2012  
 Phoenix, Arizona

BY THE COMMISSION:

\* \* \* \* \*

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

**FINDINGS OF FACT**

1. On March 23, 2006, the Arizona Corporation Commission ("Commission") issued Decision No. 68610 which approved the application of Willow Valley Water Company, Inc. ("Company" or "Applicant") for an extension of its Certificate of Convenience and Necessity ("Certificate") to provide public water utility service to 48 acres of land consisting of Parcels A, B and C in Mohave County, Arizona.

2. As a condition of the Commission's approval, the Company was required to file, by March 23, 2007, copies of the developer's Letter(s) of Adequate Water Supply ("LAWS") which is to be issued by the Arizona Department of Water Resources ("ADWR") for each parcel.

3. On March 21, 2007, the Company filed a Motion for Extension of Time ("Motion") to file copies of the developer's LAWS stating that it needed an additional twelve months, until March

1 23, 2008, to secure and file copies of the LAWS to be issued by ADWR. The developer was  
2 encountering delays due to litigation which involved the Mohave Valley Irrigation and Drainage  
3 District ("MVIDD") and a 2005 recall election in Mohave County ("County") that involved its board  
4 of directors.

5 4. On April 4, 2007, the Commission's Utilities Division ("Staff") filed a Memorandum  
6 which stated that Staff did not object to the Company's Motion and recommended that the requested  
7 extension be approved.

8 5. On April 19, 2007, by Procedural Order, an extension of time was granted for the  
9 Company to file copies of the developer's LAWS by March 23, 2008.

10 6. On March 21, 2008, the Company requested an additional one year extension of time,  
11 until March 23, 2009, in which to file a copy of the developer's LAWS for Parcel C to be issued by  
12 ADWR. The Applicant in the proceeding had secured and filed copies of the developer's LAWS for  
13 Parcels A and B in the extension area.

14 7. In its March 2008 filing, the Company stated that the developer was proceeding with  
15 the development of Parcel C and had experienced some delays with the Mohave County Planning and  
16 Zoning Department ("MCPZD"). At that time, the developer expected to resolve those issues with  
17 the MCPZD after which the developer would secure a LAWS for Parcel C and provide it to the  
18 Company to file with the Commission if an extension was granted.

19 8. On April 16, 2008, Staff filed a Memorandum which recommended approval of the  
20 Company's request for an extension of time, until March 23, 2009, in order to file a copy of the  
21 developer's LAWS for Parcel C.

22 9. On April 29, 2008, by Procedural Order, the Company was granted an extension of  
23 time, until March 23, 2009, in which to file a copy of the developer's LAWS for Parcel C.

24 10. On March 23, 2009, the developer of Parcels A, B and C, McKellips Land  
25 Corporation ("MLC"), filed an Application to Intervene ("Application") in this docket. MLC  
26 described what had happened since the granting of the extension of the Company's Certificate on  
27 March 23, 2006, and requested intervention pursuant A.A.C. R14-3-105(A) because it alleged that it  
28

1 was directly and substantially affected by the Commission's proceedings.

2 11. MLC, in its Application, further indicated that the Company did not oppose its  
3 Application. Additionally, together with its Application, MLC filed a Conditional Motion for  
4 Extension of Time ("Conditional Motion"), until March 23, 2010, in which to secure a LAWS for  
5 Parcel C and provide it to the Company for filing in compliance with the Commission's Decision No.  
6 68610.

7 12. On April 7, 2009, by Procedural Order, Staff and the Company were each ordered to  
8 file a response to MLC's Application and to its Conditional Motion.

9 13. On April 30, 2009, the Company filed its response to MLC's Conditional Motion and  
10 indicated that the Company did not oppose MLC's request for an extension of time on behalf of the  
11 Company.

12 14. On May 8, 2009, Staff filed its response to MLC's Conditional Motion. Staff stated  
13 that "the downturn in the economy has put a damper on much of the development in the state," but  
14 recognized that MLC and the Company "have made significant progress in the extension area" with  
15 the LAWS for Parcel C remaining as the last required compliance item from Decision No. 68610, and  
16 recommended approval of MLC's Conditional Motion.

17 15. Staff further recommended that no further extension of time be granted.

18 16. Neither Staff nor the Company objected to MLC's Application and therefore MLC  
19 was granted intervention for the limited purpose of explaining why additional time for compliance  
20 was necessary. The Commission found that the request for an extension of time was reasonable and  
21 issued Decision No. 71174 (June 30, 2009) which authorized the Company to file a copy of the  
22 LAWS for Parcel C as recommended by Staff by March 23, 2010; however, the Commission placed  
23 the Company on notice that any further requests for an extension of time to comply would have to  
24 demonstrate that extraordinary circumstances existed that would warrant an additional extension.

25 17. On March 23, 2010, MLC filed another Motion in this proceeding requesting an  
26 additional year, until March 23, 2011, for the company to file a copy of the LAWS which would be  
27 issued by ADWR to the developer for Parcel C. Further, MLC indicated in its Motion that the  
28

1 Company did not object to MLC's request and concurred in the Motion.

2 18. MLC, in its Motion, described the difficulties it had encountered in securing the  
3 LAWS for Parcel C. The Motion described the ongoing political and litigation problems which have  
4 been affecting the MVIDD and its board. MLC also claimed to have encountered further  
5 complications with various Mohave County administrative departments and, as a result, MLC was  
6 required to commence the subdivision process all over again "under a new ordinance." MLC  
7 asserted that the preliminary plat for Parcel C was submitted and resubmitted multiple times in order  
8 to meet new county requirements and additional delays were caused by the parent company of the  
9 title company involved in the subdivision process going into reorganization. According to MLC,  
10 these events further delayed the issuance of a deed that would enable MLC to file a parcel plat that  
11 defined a retention basin which receives storm drainage from all three parcels in the extension area  
12 approved in Decision No. 68610.

13 19. According to MLC's Motion, the developer believed that the plat issues had been  
14 resolved and the subdivision process could resume. MLC stated that it "has arranged the financing to  
15 complete the subdivision and has performed rough grading." MLC indicated that the preliminary plat  
16 was complete and the final plat and drafts of the improvement plans had also been completed.

17 20. MLC's Motion also stated that the Company had adequate water to serve Parcel C and  
18 that the Company was the "only feasible service provider" within the expansion area and that it was  
19 already providing water service to homes within Parcels A and B.

20 21. MLC further stated that it "has diligently pursued the LAWS" to be issued by ADWR  
21 and that delays in the process were caused by others and not the fault of MLC or the Company.

22 22. On June 9, 2010, Staff filed its response which indicated that Staff had no objections to  
23 the most recent request by MLC for an extension of time for the Company to have until March 23,  
24 2011, to file a copy of the developer's LAWS for Parcel C. Staff stated that it recognized MLC was  
25 moving forward with the development of Parcel C and the only remaining compliance item from  
26 Decision No. 68610 was for the Company to file a copy of the LAWS for the subject parcel. Therefore,  
27 Staff did not oppose the Motion, but recommended that no further extensions be granted.

28 23. On September 1, 2010, the Commission issued Decision No. 71861, which authorized a

1 further extension of time until March 23, 2011, for the Company to file a copy of the developer's  
2 LAWS for Parcel C, and stated "that no further extension of time to file the aforementioned  
3 document shall be granted absent extraordinary circumstances."

4 24. On March 1, 2011, MLC filed yet another Motion in this proceeding and requested a  
5 further extension of time until March 23, 2012, to file a copy of the developer's LAWS for Parcel C.<sup>1</sup>

6 25. In MLC's Motion, MLC described in great detail what it believed were "extraordinary  
7 circumstances," which had prompted MLC to seek an additional extension of time from the  
8 Commission to enable the Company to file the required compliance documentation that ultimately  
9 would authorize the Company to be the certificated water service provider to Parcel C.<sup>2</sup> Based on  
10 MLC's detailed description of the circumstances, it appeared that MLC was nearing the "finish line"  
11 of a long and difficult race in order to proceed with the development of Parcel C.

12 26. On March 16, 2011, the Company filed a response and indicated that it had no  
13 objections to MLC's Motion.

14 27. On April 8, 2011, Staff filed a memorandum which recognized the economic downturn  
15 that had contributed to the delay in development of Parcel C, but also recognized MLC's ongoing  
16 efforts and financial expenditures which had been made in order to proceed with the development of  
17 Parcel C. Based on these factors, Staff had no objections to MLC's then current Motion and did not  
18 oppose an extension of time until March 23, 2012, for the Company to file a copy of the developer's  
19 LAWS for Parcel C. Staff also recommended that no further extensions be granted.

20 28. On May 4, 2011, the Commission issued Decision No. 72295, which recognized MLC's  
21 ongoing development efforts for Parcel C, and authorized an extension of time until March 23, 2012,

22 \_\_\_\_\_  
23 <sup>1</sup> In MLC's March 2011 Motion, MLC stated Parcel C had been renamed Willow Valley Estates 21, but would continue  
to refer to it as Parcel C for continuity and convenience.

24 <sup>2</sup> MLC described having to reapply and obtain an allocation of water from the MVIDD for Parcel C. MLC also  
25 described the delays and difficulties it had experienced in its dealings with the MCPZD as a result of which parcel C had  
to be put through the subdivision process repeatedly with Parcel C's preliminary plat being submitted to three other  
26 County departments for their approval. MLC further stated that the County's various departments were understaffed and  
overworked due to the economic downturn resulting in extensive delays during the review process. MLC also stated that  
27 it had encountered similar delays with its own engineering company. MLC believed that all plat revisions had been  
completed to the County's satisfaction, and barring unforeseen circumstances, Parcel C should have been on the agenda  
of the County Board of Supervisors for approval of the preliminary plat in June 2011 so that MLC could move quickly to  
28 process the final subdivision plat within the timeframe of the requested extension. MLC further pointed out that it had  
paid \$26,500 to the MVIDD as a fee for Parcel C's water allocation and that it signed a Water Facilities Extension  
Agreement with the Company for Parcel C on December 10, 2010.

1 for the Company to file a copy of the developer's LAWS for Parcel C.

2 29. On March 15, 2012, MLC again filed another Motion in this proceeding and requested  
3 a further extension of time until March 23, 2013, to file a copy of the developer's LAWS for Parcel  
4 C. MLC, in its most recent Motion, again recites the plethora of "major hurdles" which it has had to  
5 overcome to reach the point where it now is on the verge of going forward with its Parcel C  
6 subdivision. MCL states further that, "without question the Parcel C subdivision will eventually be  
7 completed," and points out that it has been involved in developing this area since 1959 completing  
8 every subdivision it has ever started. Additionally, MLC states "that there is no other (water) utility  
9 capable of serving the area."

10 30. On August 17, 2012, the Company filed joinder in MLC's latest Motion stating that  
11 the Company believes "MLC has expended significant resources and efforts in reliance on the CC&N  
12 for Parcel C", and believes that one final extension of time would be appropriate for MLC to secure  
13 the LAWS for Parcel C suggesting the extension run until September 30, 2013. The company further  
14 states that its "...joinder shall serve as Notice under the Main Extension Agreement (Agreement)  
15 between Willow Valley and MLC for Parcel C, that Willow Valley hereby terminates the Agreement  
16 in accordance with Section 11 of the Agreement for failure to complete the project with reasonable  
17 diligence, unless the LAWS is submitted on or before September 30, 2013. This Notice should  
18 ensure that no further extensions are requested by MLC."

19 31. On August 31, 2012, Staff filed a memorandum which states that it does not oppose a  
20 final extension until September 30, 2013, in order for the Company to file a copy of MLC's LAWS  
21 for Parcel C. Staff further recommends that no further extensions be granted.

22 32. Under the circumstances, we find that an extension of time until September 30, 2013,  
23 should be granted as recommended by Staff. However, no further extension of Decision No. 68610  
24 should be granted absent extraordinary circumstances.

25 **CONCLUSIONS OF LAW**

26 1. The Company is a public service corporation within the meaning of Article XV of the  
27 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

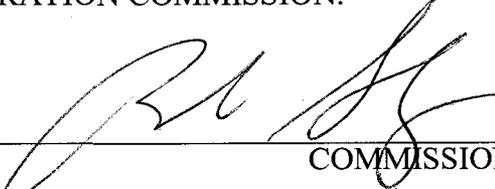
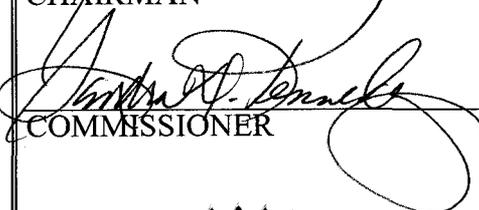
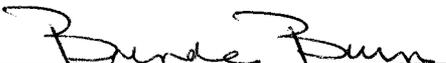


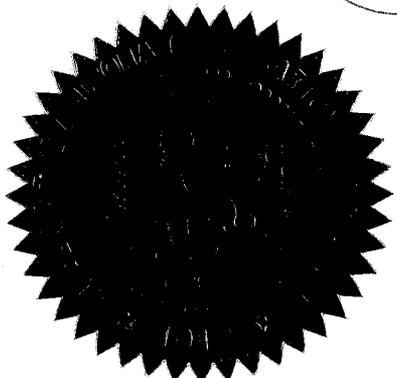
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS FURTHER ORDERED that no further extension of time to file the aforementioned document shall be granted absent extraordinary circumstances.

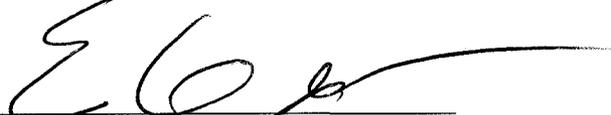
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	
		
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 17<sup>th</sup> day of October, 2012.

  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: WILLOW VALLEY WATER COMPANY

2 DOCKET NO.: W-01732A-05-0532

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Michael W. Patten  
Timothy J. Sabo  
ROSHKA DEWULF & PATTEN, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, AZ 85004  
Attorneys for Willow Valley Water Co.

Michael P. Anthony  
CARSON MESSINGER, PLLC  
4802 North 22<sup>nd</sup> Street, Suite 200  
Phoenix, AZ 85067  
Attorneys for McKellips Land Corp.

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Steven M. Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007