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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE, Commissioner  
BRENDA BURNS, Commissioner  
SUSAN BITTER SMITH, Commissioner  
BOB BURNS, Commissioner

2013 SEP 30 P 1:34

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 30 2013

DOCKETED BY

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

DOCKET NO. W-01732A-05-0532

**McKELLIPS LAND  
CORPORATION'S MOTION  
FOR EXTENSION OF TIME  
AND CONFIRMATION OF  
COMPLIANCE WITH ORDER**

McKellips Land Corporation ("MLC") was previously granted intervention in this docket by Decision No. 71174 (June 30, 2009), pursuant to A.A.C. R14-3-105(A) as an entity "directly and substantially affected by the proceedings". MLC moves the Commission for an order (a) confirming that compliance with the LAWS deadline in Decision No. 68610 (March 23, 2006) has been met as it affects that portion of the expanded CC&N encompassing the Mohave County subdivisions described as Willow Valley Estates 20, Tract 4134-A<sup>1</sup> and Tract 4134-B<sup>2</sup> and (b) extending the LAWS deadline in Decision No. 68610 by an additional six (6) months to March 31, 2014, as it affects that portion of the expanded CC&N encompassing the property described as Willow Valley Estates 21, Tract 4228 (previously known as Willow Valley Estates 20, Tract 4134C or simply as "Tract C" in these proceedings).

Decision No. 32436 (August 23, 1960) granted the Willow Valley Water Co., Inc. ("Willow Valley") a Certificate of Convenience and Necessity covering an area of several sections of property all of which was at one time owned by MLC or its affiliates. A map of the original certificated area

<sup>1</sup> Recorded August 16, 1996 at Fee No. 96-45414 Official Records of Mohave County, Arizona

<sup>2</sup> Recorded March 17, 2005 at Fee No. 2005-27028 Official Records of Mohave, County, Arizona

1 is attached as Exhibit "A". Decision No. 68610 (March 23, 2006) granted a CC&N extension to  
2 Willow Valley for an additional three parcels of accretion land which had been created by shifting  
3 of the Colorado River. These parcels had been fairly well defined and identified by 1954 and MLC  
4 claimed ownership of them but they had been inadvertently omitted from the original Willow  
5 Valley CC&N area granted by Decision No. 32436 (August 23, 1960) which was intended to cover  
6 all of the land then owned by MLC, whose founders were also the founders of Willow Valley.  
7 These additional parcels were identified in these proceedings as Parcels A, B and C and comprised  
8 approximately 48.53 acres. A map portraying these parcels is attached as Exhibit "B". MLC had  
9 been developing an eighty lot subdivision consisting of approximately 21.9 acres in three phases  
10 within portions of Parcels B and C known as Willow Valley Estates 20, Tracts 4134A, B and C.  
11 Tract 4134C was later renamed Willow Valley Estates 21, Tract 4228, but for continuity and  
12 convenience continued to be referred to in these proceeding as "Tract C". MLC had completed  
13 Tract A and was working on Tract B when in 2005 it was discovered that Willow Valley's original  
14 CC&N did not cover all of the area of the subdivisions. MLC notified Willow Valley and requested  
15 that proceedings be initiated to extend the existing CC&N to cover the additional accretion  
16 property, including the area of the subdivisions, which had been inadvertently omitted from the  
17 original CC&N. In reviewing the record in order to prepare this Motion the attorneys for MLC  
18 have determined that there appears to be some confusion in the record between what was identified  
19 as "*Parcel C*" which was added to the CC&N and the subdivision located within Parcels B and C,  
20 which has been referred to "*Tract C*". For clarification a copy of an Assessor's map showing the  
21 completed and proposed subdivision development areas within Parcels B and C is attached hereto as  
22 Exhibit "C". Though it had been considered at one time, no lot development involving MLC was,  
23 or now is, ongoing in the extension area identified as Parcel A or in the portions of Parcel B west of  
24  
25  
26

1 Dike Road as shown on Exhibit "C". A copy of the proposed plat of Willow Valley Estates 21,  
2 Tract 4228 (herein referred to as Tract C) is attached as Exhibit "D".

3 Decision No. 68610 required that Willow Valley obtain and file with Docket Control, as  
4 compliance items (a) a copy of a fully executed main extension agreements for water facilities  
5 within the extension area and (b) copies of the MLC's Letter of Adequate Water Supply ("LAWS")  
6 no later than one year after the decision (March 23, 2007). MLC obtained, and it is believed that  
7 Willow Valley submitted to the Commission, the extension agreements and LAWS for Willow  
8 Valley Estates 20, Tracts 4134A and B<sup>3</sup> and those tracts had been platted, developed and (except for  
9 two lots), all sold by the end of 2005. Since that time a number of homes have been built within  
10 those tracts and all are being served by Willow Valley. However, MLC has encountered a  
11 multitude of unexpected and overwhelming difficulties in obtaining the LAWS for Willow Valley  
12 Estates 21 (formerly known as Tract C of Willow Valley Estates 20) and has had to request or cause  
13 Willow Valley to request a number of extensions from the Commission.  
14

15 On March 21, 2007, at the request of MLC, Willow Valley filed a Motion for Extension of  
16 Time to file the LAWS and on April 19, 2007, by Procedural Order, an extension of time was  
17 granted for the Willow Valley to file the LAWS by March 23, 2008. On March 21, 2008, at the  
18 request of MLC, Willow Valley filed a Motion for an additional extension and on April 29, 2008,  
19 by Procedural Order, Willow Valley was granted an extension of time until March 29, 2009, in  
20 which to file the LAWS. On March 23, 2009, MLC filed an Application to Intervene in this docket  
21 and for an extension of time until March 23, 2010, in which to secure the LAWS and provide it to  
22 Willow Valley and the Commission. In Decision No. 71174 (June 30, 2009) the Commission  
23 found that MLC should be granted intervenor status and the Commission extended the deadline for  
24  
25

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26 <sup>3</sup> MLC intends to contemporaneously with the filing of this motion, file the referenced extension agreements and laws to  
be certain they are in the record.

1 obtaining the LAWS until March 23, 2010. In Decision No. 71861 (September 1, 2010), the  
2 Commission extended the deadline for obtaining and filing the LAWS until March 23, 2011. In  
3 Decision No. 72295 (May 4, 2011), the Commission extended the deadline for obtaining and filing  
4 the LAWS until March 23, 2012. In Decision No. 73560 the Commission extended the deadline for  
5 obtaining and filing the LAWS until September 30, 2013, and further ordered that no additional  
6 extension of time should be granted absent extraordinary circumstances. As an unusual number of  
7 extensions have previously been requested, Willow Valley has been reticent to request any further  
8 extension on MLC's behalf. If a request for extension were solely to benefit Willow Valley, it  
9 would most likely not be made, but Willow Valley is aware that the developer has repeatedly  
10 encountered extraordinary adverse circumstances in its efforts to complete its subdivision and at this  
11 juncture it has advised MLC that it is not opposed to the Commission granting MLC another  
12 extension.  
13

14 MLC believes that it has once again encountered extraordinary adverse circumstances that  
15 warrant an additional extension and that it should be granted this one more extension in order to be  
16 able, at last, to complete this subdivision it has been working on for nearly eight years and obtain  
17 the LAWS for *Tract C* (now Willow Valley Estates, 21, Tract 4228).  
18

19 The line extension agreement for Tract C was executed between Willow Valley and MLC as  
20 of December 2, 2010, and a copy is being filed contemporaneously with this motion, as it is  
21 unknown whether a copy was previously filed or submitted to staff. It is only with respect to *Tract*  
22 *C* that MLC is requesting an extension of time to file the LAWS. There is currently no way to  
23 obtain LAWS for those areas of Parcels A and B of the original CC&N extension which are not  
24 included in the subject subdivisions, though since Willow Valley is the only water company that  
25 could ever service those areas it seemingly makes no sense to be concerned about deleting those  
26

1 small isolated undeveloped areas covering approximately 27 acres from what is an extensive CC&N  
2 covering approximately 2,700 acres.

3 MLC has been developing the Willow Valley Estates subdivisions since 1959, and a  
4 substantial community in the area devoted primarily to recreational and retirement living has been  
5 created. Throughout the history of this development every subdivision has been completed but no  
6 subdivision has been met with the difficulties that have besieged the current Tract C. MLC has  
7 been diligently processing the subdivision but has been met with major obstacles all along the way  
8 that could not possibly have been anticipated or avoided and none of which have been the fault of  
9 MLC as the developer. Attached hereto as Exhibit "E" is a Narrative timeline and Affidavit setting  
10 forth the efforts MLC has made to complete Tract C and obtain the LAWS and the corresponding  
11 difficulties that have been encountered prior to the original Commission deadline and during each  
12 extension thereafter, including the most recent extension which expires this month on September  
13 30<sup>th</sup>.

14  
15 MLC now believes that it has overcome all major obstacles and is close to being able to  
16 complete this subdivision and obtain the necessary LAWS within a short period of time. However,  
17 it is imperative for the subdivision process to be able to be completed that there continue to be in  
18 place the existing line extension agreement and will-serve letter from Willow Valley which,  
19 because of the many extensions and delays, Willow Valley previously threatened to revoke,  
20 apparently, for fear it might jeopardize its standing or relationship with the Commission in some  
21 way if it continues to help MLC and by requesting another extension. Without these items, Mohave  
22 County will not process the subdivision, and due to the peculiar interplay between the Mohave  
23 Valley Irrigation & Drainage District ("MVIDD") which provides a Colorado River water allotment  
24 to the subdivision and the Arizona Department of Water Resources, it is not possible to get a  
25 permanent allocation of water and the final LAWS until the subdivision is approved and a plat  
26

1 recorded. Unless the additional extension is granted and Willow Valley cooperates, processing of  
2 the subdivision will become impossible. We have conferred with Willow Valley, and can report  
3 that at this time Willow Valley has, apparently, withdrawn its previous opposition and does not now  
4 oppose the requested extension of time.

5 As is stated in Exhibit "E", MLC has finally received preliminary subdivision approval,  
6 satisfactorily addressed all comments and requirements of Mohave County and has collected nearly  
7 everything required for a complete submittal in order to request final subdivision approval. On  
8 March 5, 2013, MLC obtained another extension of the water allocation from the MVIDD to April  
9 10, 2014. The last things now needed in order complete the requirements for a subdivision  
10 submittal and obtain final subdivision approval by the county are the necessary ADEQ "approvals  
11 to construct" for both the water and sewer systems. After considerable delay, which is explained in  
12 Exhibit "E", MLC just this past week obtained the required documentation (capacity assurance  
13 letters) from the sewer provider for submittal to the ADEQ with respect to sewer service and, unless  
14 Willow Valley fails to approve the construction plans or takes some action to terminate its existing  
15 line extension agreement and will-serve letter, MLC has obtained all that is required to be submitted  
16 to ADEQ with respect to the water service.

17  
18 MLC has made a tremendous investment of time and money in this subdivision. The funds  
19 necessary for construction of the remaining improvements, estimated at approximately \$370,000.00,  
20 have been secured. The final subdivision plat and the improvements plans have been prepared.  
21 MLC has paid substantial fees to Mohave County, thousands of dollars to its engineers and  
22 attorneys, \$31,500.00 to Willow Valley for administrative and attorney's fees, not including any  
23 additional fees that may be required in connection with this extension, \$21,600 to the MVIDD for a  
24 non-refundable water allocation fee and prepaid hook-up/tap fees to FMTUA currently valued at  
25 \$120,000.00 for sewer service. In addition, MLC has committed to pay substantial improvement  
26

1 costs on land belonging to the Willow Valley Club Association in consideration of its allowing a  
2 new retention basin to be constructed on its property, and MLC has paid for initial grading of the  
3 subdivision site which, unfortunately, will have to be redone because of new flood control  
4 requirements (as explained in Exhibit "E"). Furthermore, each year that the subdivision process has  
5 been, and will further be, delayed it has and will cost MLC additional real property taxes. Tract C  
6 is the last subdivision MLC intends to complete and when it sells the lots in Tract C and the few  
7 odd parcels of property it has remaining it will be closing down its business. In the event the  
8 Commission fails to extend the deadline to obtain the LAWS for this subdivision the result will be  
9 that the processing of the subdivision will be completely terminated until MLC is able to commence  
10 the whole time consuming process of again of requesting an extension of the existing CC&N of  
11 Willow Valley in order to cover this subdivision. If starting over were to be required it is unknown  
12 whether this subdivision could ever be completed. It is questionable whether the existing water  
13 allocation would or could be extended again<sup>4</sup> or what possible additional requirements the county  
14 could impose on the development or what other difficulties will be encountered.

15  
16 To add a personal note to this pleading it should be noted that MLC is not a large major  
17 developer that can absorb substantial financial setbacks. MLC is a small family owned corporation  
18 with only five remaining shareholders, three of whom are now on social security and were looking  
19 forward to finalizing this subdivision and selling the lots to supplement their incomes.

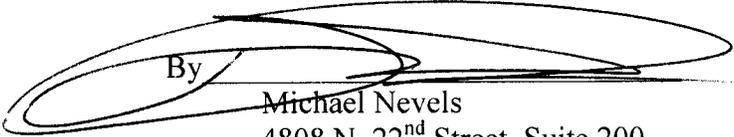
20  
21 Accordingly, MLC respectfully requests that the Commission enter its order (a) confirming  
22 that compliance with the LAWS deadline in Decision No. 68610 (March 23, 2006) has been met as  
23 it affects that portion of the expanded CC&N encompassing the Mohave County subdivisions

24  
25 <sup>4</sup> MVIDD has a government contract for Colorado River water for irrigation and domestic and commercial uses. It has  
26 no more water to allocate for irrigation and although it has set aside some water for subdivisions it is unknown how  
long that will be available. It requires a show of progress in the development of the subdivision in order for it to extend  
its original allocation which MLC could not do if it had to start the process all over again.

1 described as Willow Valley Estates 20, Tract 4134A and Tract 4134B and (b) extending the LAWS  
2 deadline in Decision No. 68610 by an additional six (6) months to March 31, 2014, as it affects that  
3 portion of the expanded CC&N encompassing the property described as Willow Valley Estates 21,  
4 Tract 4228 (previously known as Willow Valley Estates 20, Tract 4134C or simply as "Tract C" in  
5 these proceedings).

6 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of September, 2013.

7 CARSON MESSINGER PLLC

8  
9 By 

10 Michael Nevels  
11 4808 N. 22<sup>nd</sup> Street, Suite 200  
12 P.O. Box 33907  
13 Phoenix, Arizona 85067  
14 Attorneys for McKellips Land Corporation

15 Original and 13 copies of the foregoing  
16 filed this 30<sup>th</sup> day of September, with:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

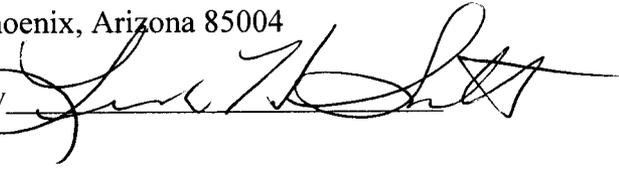
21 Copy of the foregoing hand-delivered and/or mailed  
22 this 30<sup>th</sup> day of September, to:

23 Lyn Farmer, Esq.  
24 Chief Administrative Law Judge  
25 Hearing Division  
26 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Janice Alward, Esq.  
Chief Counsel, Legal Division  
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1 Steven M. Olea  
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3 Arizona Corporation Commission  
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5 Roshka DeWulf & Patten, PLLC  
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7 Phoenix, Arizona 85004

7 By 

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EXHIBIT "A"

Willow Valley Water Company, Inc.  
September 30, 1997  
Page 3

EXHIBIT MSJ-1

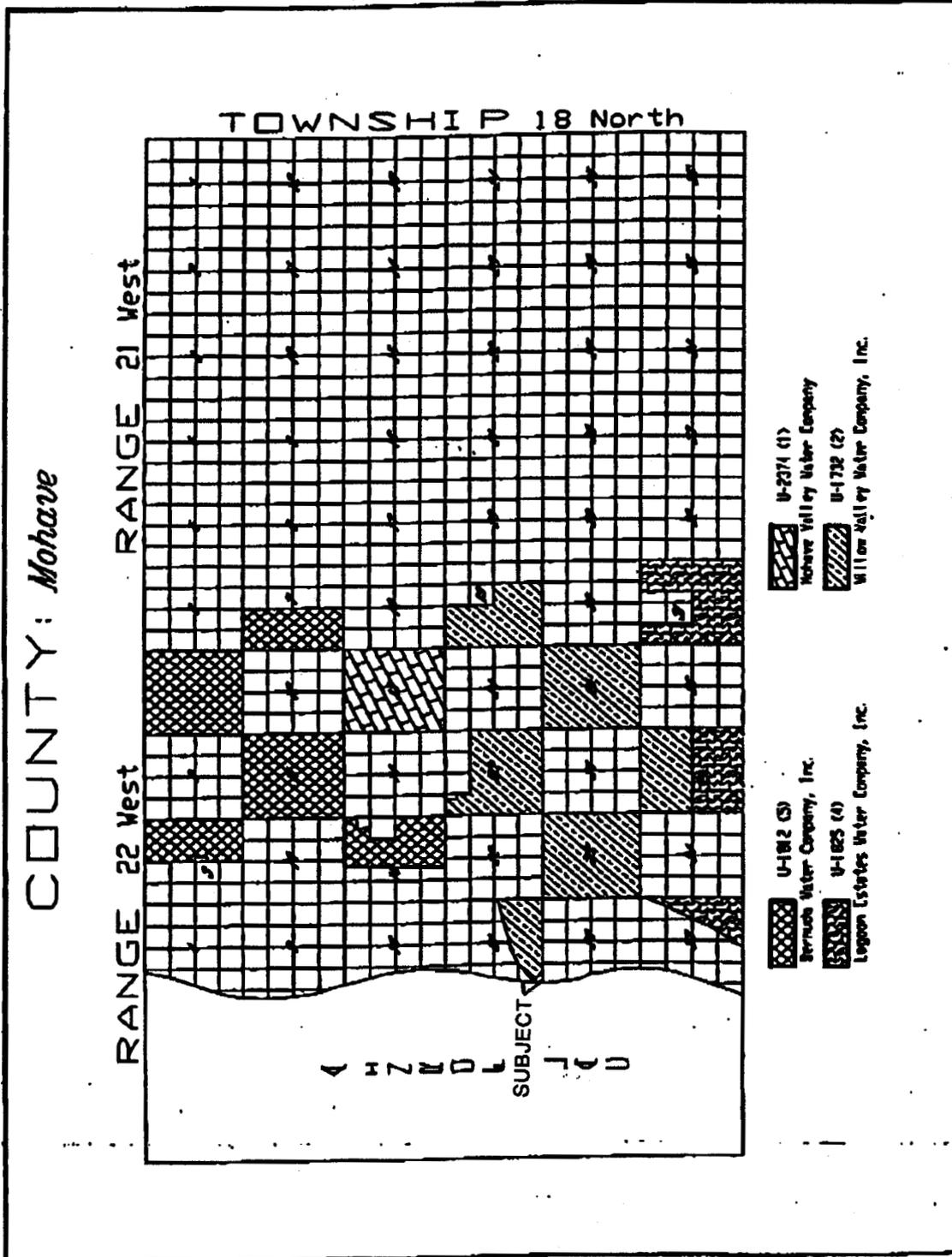


Figure 2. Certified Areas

EXHIBIT "B"

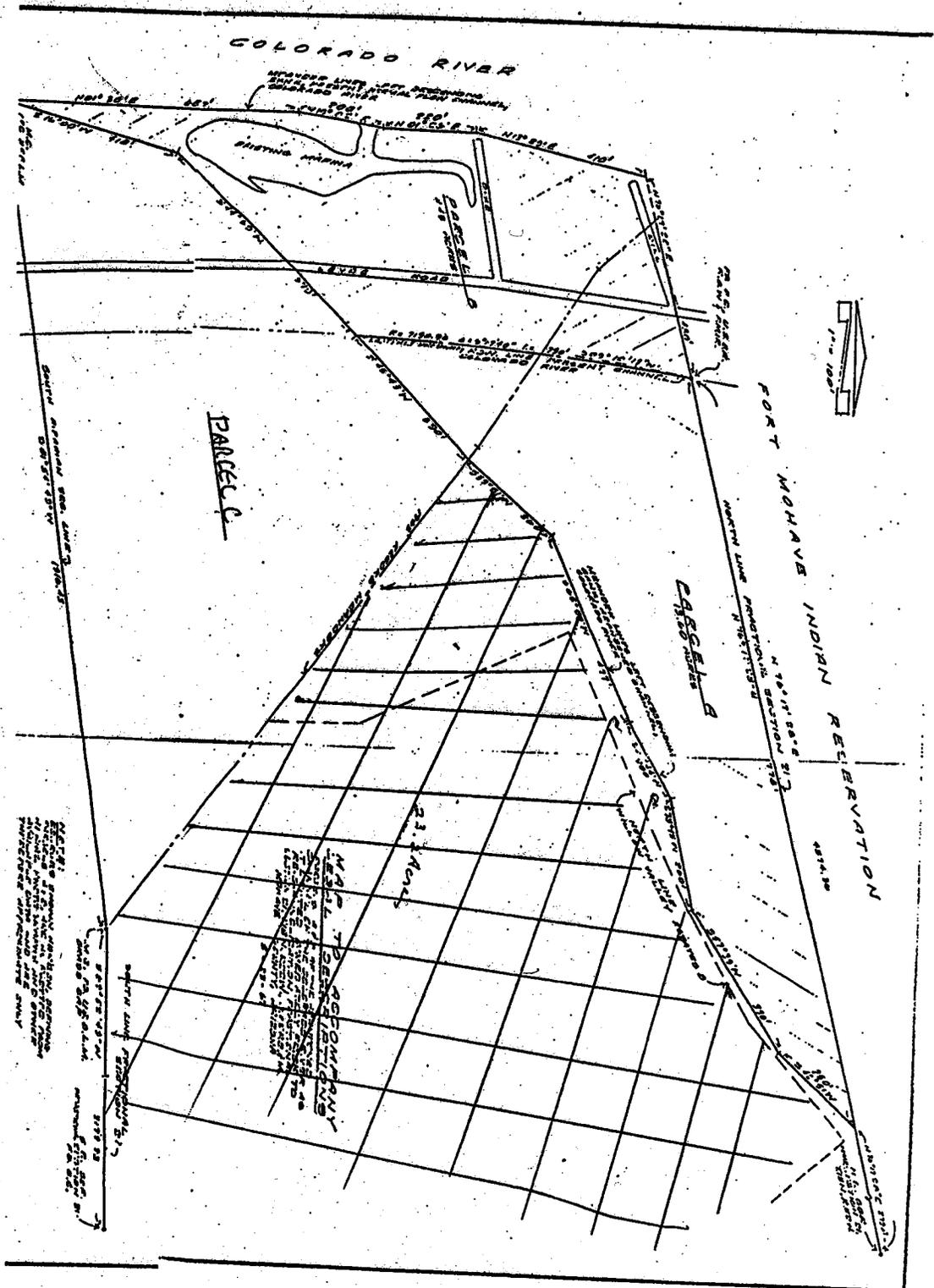


EXHIBIT B

**EXHIBIT "A"**

**Legal Description**

**PARCEL "A"**

All that portion of the abandoned channel of the Colorado River, as it existed immediately prior to re-channelization, that lies South of the North line of fractional Section 21, T18N, R22W, G. &S. R. B. &M., Mohave County, Arizona, and that lies East of the Easterly dredging right of way line of the present channel of the Colorado River, approximately described as follows:

COMMENCING at the Northeast Corner of said fractional Section 21; thence S 76° 17' 28" W, along the North line of said fractional Section 21, 2796 feet more or less to the point of beginning, said point being a point on a meander line of the left descending bank of said abandoned channel;  
thence S 42° 51' W 250 feet to a point;  
thence S 57° 39' W 390 feet to a point;  
thence S 78° 45' W 260 feet to a point;  
thence S 60° 44' W 200 feet to a point;  
thence S 65° 57' W 477 feet to a point;  
thence S 39° 51' W 260 feet to a point;  
thence S 45° 43' W 390 feet to a point on the Easterly dredging right of way line of said present channel;  
thence Northerly along said right of way line, which is a curve to the right, having a tangent that bears N 02° 52' 39" E from the last described point, a radius of 7190.90 feet and a central angle of 6° 17' 40", 790 feet to a point on the North line of said fractional Section 21;  
thence N 76 ° 17' 28" E along the North line of said fractional Section 21, 1778 feet to the true point of beginning.

Containing 13.60 Acres more or less;

**PARCEL "B"**

All that portion of the abandoned channel of the Colorado River, as it existed immediately prior to re-channelization, that lies South of the North line and a Westerly prolongation thereof, of fractional Section 21, T18N, R22W, G. &S. R. B. &M., Mohave County, Arizona, and that is bounded on the East by the Easterly dredging right of way line of the present channel of the Colorado River and is bounded on the South and East by the left descending bank of the abandoned channel of the Colorado River as it existed immediately prior to dredging, and is bounded on the West by the left descending bank of the present normal-flow channel of the Colorado River, approximately described as follows:

COMMENCING at the Northeast Corner of said fractional Section 21; thence S 76° 17' 28" W, along the North line of said fractional Section 21, 4574.36 feet to a point, said point being the intersection of the North line of said fractional Section 21 and said Easterly dredging right of way line of the present channel of the Colorado River;  
thence Southerly along said right of way line, which is a curve to the left having a tangent

that bears S 09° 10' 19" W from the last described point, a radius of 7190.90 feet and a central angle of 6° 17' 40", 790 feet to a point, said point being a point on a meander line of the left descending bank of said abandoned channel;  
thence along a meander line of said abandoned channel S 44° 59' W 579 feet to a point;  
thence along a meander line of said abandoned channel S 16° 00' W 418 feet to a point, said point being on a Westerly prolongation of the South riparian Section line of fractional Section 21 as established by the United States Bureau of Land Management and also being a point on a meander line of the left descending bank of the present normal-flow channel of the Colorado River;  
thence along said left bank of the present normal-flow channel  
N 01° 30' E 680 feet to a point;  
thence N 10° 02' E 200 feet to a point;  
thence N 01° 26' E 220 feet to a point;  
thence N 13° 29' E 410 feet to a point, said point being on a Westerly prolongation of the North line of said fractional Section 21;  
thence along the North line of said fractional Section 21 and a Westerly prolongation thereof N 76° 17' 28" E 480 feet to the true point of beginning.

Containing 11.43 Acres more or less.

#### PARCEL "C"

All of that portion of the alluvium lands of the Colorado River lying West of and adjoining fractional Section 21, T18N, R22W, G. & S. R. B. & M., Mohave County, Arizona, bounded on the Northwest by the meander lines of the left descending bank of said River immediately prior to the re-channelization, bounded on the Northeast by the 1905 GLO Meander line, and bounded on the South by a line that is the South riparian section line and follows an existing line of occupation. Said boundaries being approximately described as follows:

Beginning at the BLM Brass Cap Monument marking the Meander Corner on the South line of said Section 21; thence S 82° 18' 43" W 1512.93 feet to a 1 inch iron pipe tagged RLS 5576, said 1 inch iron pipe being on the Easterly prolongation of an existing fence; thence along said fence S 80° 24' 40" W 421.67 feet to a 1 inch iron pipe tagged RLS 5576, and the Westerly termination of said fence; thence continuing S 80° 24' 40" W 16 feet more or less to a point on the meander line of the left descending bank of the Colorado River immediately prior to the re-channelization, said point also being the most Southerly Corner of Parcel 2 of that certain Judgment filed January 30, 1976, at Pages 47-49 of Book 391 of Official Records of said Mohave County, Arizona; thence along said meander line N 16° 00' E 418 feet; thence N 44° 59' E 579 feet to a point on the Easterly dredging right of way line of the present channel, said point also being the most Southerly Corner of Parcel 1 of the before mentioned Judgment; thence N 45° 43' E 390 feet to a point on the 1905 GLO Meander line shown on the Plat as N 53° 00' W 21.40 chains; thence along said GLO Meander line S 53° 00' E to the point of Beginning.

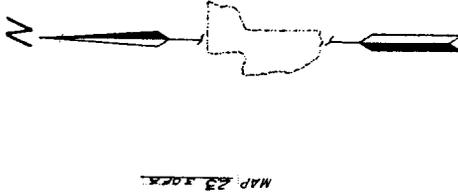
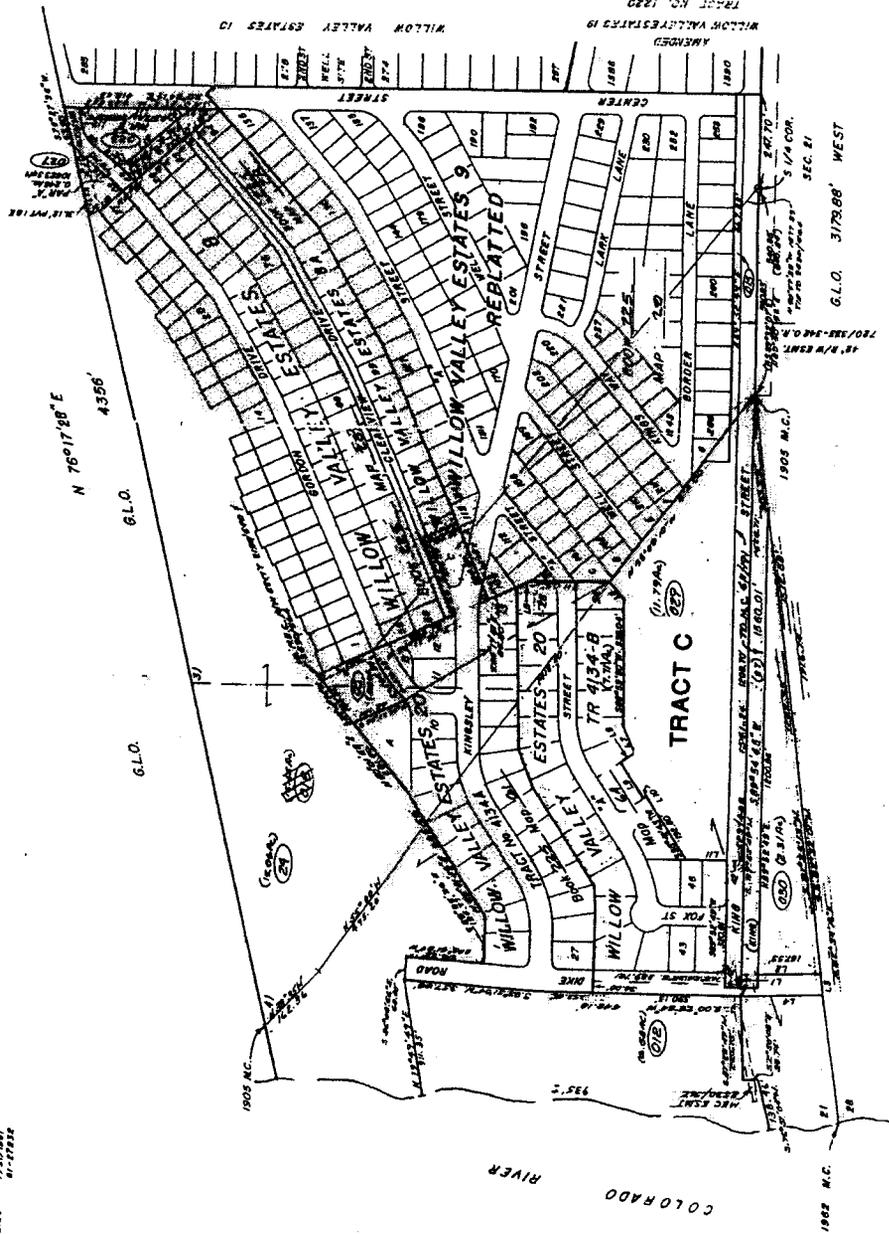
Containing 23.5 acres more or less.

EXHIBIT "C"

Code 1611

| PLAT. NO./LOCATION | REC. DATE/FILE NO. |
|--------------------|--------------------|
| AS 11/18-88        | 1/11/89            |
| SEC 11             | 21-4688            |
| AS 11/18-88        | 8/28/2002          |
| SEC 11             | BOOK-28513         |
| SEC 11             | 11/11/88           |
| SEC 11             | 11/11/88           |

BOOK 225  
 MAP 23



SCALE 1" = 300'

| LINE | CHART                |
|------|----------------------|
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| 100  | 181°07'18.2" 242.83' |

EXHIBIT C

EXHIBIT "D"



EXHIBIT "E"

1 EXHIBIT "E"

2 NARRATIVE

3 Decision No. 68610 (March 23, 2006), the Commission required LAWS to be filed by March 23  
4 2007.

5 McKellips Land Corporation ("MLC") had previously obtained a main extension agreement and  
6 LAWS for Willow Valley Estates 20, Tract 4134A which was provided to Willow Valley. MLC  
7 entered into a main extension agreement with Willow Valley for Willow Valley Estates, Tract  
8 4134B and obtained LAWS for Tract B which was provided to Willow Valley, but MLC was  
9 unable to process the subdivision and obtain the LAWS for Tract C for a multitude of reasons.  
10 MLC had difficulty for a number of months in obtaining a required compliance report regarding  
11 Willow Valley from the Arizona Department of Environmental Quality. More significantly, MLC  
12 encountered substantial difficulty and delay dealing with the Mohave Valley Irrigation & District  
13 ("MVIDD") which provides the contract Colorado River water allocation required for the  
14 development. Prior to and during this period of time MVIDD was in complete disarray. There had  
15 been a recall election in 2005 and a new Board of Directors for the District was elected. MLC  
16 obtained its preliminary allocation/set-aside of water from the new Board in October of 2005.  
17 Thereafter, a lawsuit was filed which dragged on and finally ended up in the Arizona Supreme  
18 Court, resulted in the recall being voided, the newly elected Board being disqualified and all its acts  
19 called into question, including MLC's water set-aside. A new Board took office and on March 6,  
20 2007, just before the Commission imposed deadline, MLC was finally able to obtain a confirmation  
21 of the set-aside and a (retroactive) extension extending the set-aside to April 4, 2007. At a meeting  
22 of MVIDD on April 3, 2007, an additional extension of the water allocation was granted to October  
23 4, 2007, and MLC believed it was then in a position to move forward with the subdivision and  
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1 eventually obtain a Water Adequacy Report from the Arizona Department of Water Resources, but  
2 it was clearly unable to obtain the LAWS by the original Commission ordered deadline.

3 Procedural Order dated April 19, 2007, extended the deadline to file LAWS to March 23, 2008.

4 Tract C of the subdivision was initiated under Mohave County's former subdivision ordinance and  
5 was grandfathered in after a new county subdivision ordinance was adopted. However, because of  
6 various difficulties that had been experienced, including the problem with MVIDD referenced  
7 above, MLC was unable to complete the project within the required time or get an extension at  
8 which point the Mohave County Planning and Zoning Department ("P&Z") required MLC to  
9 completely start over and to resubmit the project under the newly enacted subdivision ordinance and  
10 change the name from the former Willow Valley Estates 20, 4134C to Willow Valley Estates 21,  
11 Tract 4228. In Mohave County the review process of the P&Z is laborious. Each submittal of a  
12 preliminary plat is reviewed by P&Z, Mohave County Health Department, three divisions of the  
13 Public Works Department (Roads, Survey and Engineering Design), the local Fire Marshall, the  
14 Arizona Department of Public Safety, and notices soliciting comments are sent to all of the public  
15 utilities serving the subdivision. Each time MLC submitted a new preliminary plat and  
16 accompanying documentation, P&Z and/or the many departments and utilities reviewing the plat  
17 responded with an endless list of additional comments and requirements, and because of  
18 understaffing and overwork it always takes the maximum 45-day time it is allowed (and much  
19 more) to review anything. MLC completed the second pre-application process at a meeting May  
20 17, 2007, and submitted a new preliminary plan and accompanying documentation. P&Z failed to  
21 provide MCL with the required development agreement until July 5, 2007. On July 27, 2007, P&Z  
22 finally provided MCL with comments and requests for changes to the preliminary plan from the  
23 various county departments to which it must be submitted and a new Tract number. P&Z provided  
24 additional comments and requirements on August 23, 2007, and September 11, 2007. Also,  
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1 pursuant to the application of MCL, on September 11, 2007, MVIDD extended the water allocation  
2 for the subdivision. On December 21, 2007, MCL resubmitted the preliminary plan and addressed  
3 all comments and requirements. P&Z then submitted additional comments and requirements on  
4 February 8, 2008. The engineers immediately commenced work on the additional comments and  
5 requirements but the subdivision was still not close to being able to obtain the LAWS by the March  
6 23, 2008 deadline. During this period MCL's engineers prepared final plans and MCL secured  
7 construction financing for the subdivision and completed some initial grading and infrastructure that  
8 was intended to service the subdivision. Upon application by MLC, on April 1, 2008, MVIDD  
9 granted an additional extension of the water allocation for the subdivision to October 4, 2008.

10  
11 Procedural Order dated April 29, 2008, extended the deadline to file LAWS to March 29, 2009.

12 MLC submitted and resubmitted the preliminary plan for Tract C to P&Z and the county was very  
13 slow and unresponsive to the submittals. In addition, P&Z continued to demand additional time  
14 consuming requirements for Tract C that were not found to be necessary for the previous approvals  
15 of Tracts A and B. For example, the flood control drainage system for all three Tracts was designed  
16 to utilize a retention basin located outside the northerly exterior boundary of the subdivisions (in  
17 Parcel A) and although this was approved for Tracts A and B, the county required, as a condition of  
18 approving the preliminary plat for Tract C, that the area for the retention basin be dedicated for  
19 drainage purposes by a recorded instrument. In order to do that it was necessary to process the  
20 creation and recording of a Parcel Plat showing the split of the proposed acreage in Tract C, the  
21 retention basin and the remaining area of a larger parcel. The parcel platting of this area involved a  
22 complicated analysis by MLC's engineers of a riparian boundary including accretion issues which  
23 had presented after the Arizona Superior Court, Mohave County quieted title to these accretion  
24 lands (Judgment No. 10684 filed January 30, 1976, recorded in Book 391 of Official Records at  
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1 Page 49).<sup>1</sup> The survey issues were further complicated and delayed by the fact that after MLC  
2 obtained title to the subject property the Bureau of Indian Affairs resurveyed the southerly section  
3 line of the Mojave Indian reservation which is also the northerly section line of the section in which  
4 the subject property is located and in violation of federal law moved the section corners.<sup>2</sup> In  
5 addition, and as a further complication to processing the Parcel Plat it became necessary to apply to  
6 the County Assessor to combine two parcels with different Assessor numbers which were to be  
7 included in the plat. In order to do that it was necessary that the affected parcels be titled in the  
8 same name. However, the parcels were held in two names, MLC's and Lawyers title of Arizona as  
9 Trustee for MLC. Therefore, it was necessary to obtain a deed from the trustee back to MLC for the  
10 parcel held in the trustee's name. To complicate matters even further, Lawyers Title's parent  
11 company had gone into reorganization and all trusts formerly in its trust department were assigned  
12 to Security Title Agency for administration and the people who had been familiar with the trust and  
13 the property were no longer involved. In March of 2009, MLC was still endeavoring to obtain a  
14 reconveyance of the trust property and had submitted the required paperwork to the trustee. At the  
15 time it was believed that completing the Parcel Plat and making the required dedication was the last  
16 major impediment that would be imposed to delay processing the project. Upon application of  
17 MLC, on October 5, 2008, MVIDD granted an additional extension of the water allocation to April  
18 4, 2009. On April 7, 2009, MVIDD granted an additional extension to October 4, 2009.

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20  
21 Decision No. 71174 (June 30, 2009), the Commission found MLC should be granted intervenor  
22 status and extended the deadline to file LAWS to March 23, 2010.

23 MLC continued to work on obtaining all the necessary documents for a complete submission of its  
24 subdivision plat including working with the title company trustee to obtain the necessary deed

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26 <sup>1</sup> A subsequent quiet title action in the Arizona Superior Court, Mohave County quieted title to the balance of the accretion lands in question (Judgment No. CV 94-19909, recorded in Book 2524 of Official Records at Page 786).

<sup>2</sup> Once patented land has been conveyed by the government the section corner references may not be moved.

1 referenced above in order to complete the Parcel Plat and dedicate the easement requested by P&Z.  
2 Since the new trustee was unfamiliar with the trust it initially refused to give the required deed  
3 believing that all of the parcels in the trust had previously been reconveyed to MLC. After a period  
4 of more time delay MLC finally was able to convince the trustee to execute and deliver the  
5 appropriate deed, the assessor lot combination process was completed and the Parcel Plat with the  
6 required dedication was finally prepared. However, P&Z was not satisfied with the plat and  
7 multiple versions of the plat were subsequently prepared and presented to the county, and time and  
8 time again rejected by various departments including the cartography office for a number of  
9 reasons. All those issues were finally resolved and the final version of the Parcel Plat was  
10 approved, signed and recorded on April 10, 2010, a few days after the Commission's March 23,  
11 2010, extended deadline. Thereafter the subdivision process which had been completely stalled  
12 could be resumed. Upon application of MLC, on October 6, 2009, MVIDD extended the water  
13 allocation to April 10, 2010. On April 6, 2010, MVIDD extended the water allocation to April 10,  
14 2011.

15  
16 Decision No. 71861 (September 1, 2010), the Commission extended the deadline to file LAWS to  
17 March 23, 2011.

18 MLC continued to process the subdivision with P&Z and gather the necessary documentation for a  
19 final submittal and as a part of the process MLC entered into a new Water Facilities Extension  
20 Agreement with Willow Valley dated December 2, 2010. At the request of P&Z additional  
21 revisions to the subdivision plat were made and MLC believed that all comments and requirements  
22 were responded to and all conditions satisfied. P&Z finally notified MLC that "we have received  
23 all documents of the corrected Preliminary Plat February 11, 2011, and forwarded the submittal to  
24 all reviewing agencies on that date. All review comments should be received by March 30, 2011", a  
25 date which was beyond the then current deadline for filing the LAWS, and yet another request to  
26

1 the Commission for an extension was required. Additional requirements pertaining to Tract C  
2 continued to be received from P&Z including a new request not previously required for Tracts A  
3 and B which were already approved. P&Z advised that during the time that this subdivision was  
4 being processed the county's hydrology requirements had been revised and that the storm drainage  
5 system previously designed, approved and installed to take care of all three phases of the  
6 subdivision (Tracts A, B and C) was no longer sufficient under the new regulations and redesign  
7 and construction would be required in order to process the subdivision. It was now impractical to  
8 remove the old drainage line and replace it with a larger one as purchasers in the first two phases of  
9 the subdivision (Tracts A and B) had built improvements over the easement for the drainage line  
10 and it would cause substantial damage to those improvements and cost to MLC to remove the old  
11 line and replace it with the new one. This would also undoubtedly make the affected lot purchasers  
12 from MLC in Tracts A and B very unhappy and would have created a customer relations nightmare.  
13 At that point, despite all of the trouble and long delay caused by P&Z having previously mandated  
14 the retention basin easement for Tract C north of the property, it was no longer feasible to use it for  
15 Tract C and a new drainage system would have to be designed and a different retention basin  
16 secured. The only reasonable solution was to put a new retention basin on a parcel of bare land  
17 south of Tract C belonging to an adjoining landowner, the Willow Valley Club Association, the  
18 property owner's association for the community (the "Club"). MLC commenced negotiations with  
19 the Club, but as it has many members, is controlled by a Board of Directors and is not an individual  
20 who can make quick decisions, much time would ultimately be consumed with the negotiations and  
21 approval by the Club. In addition, as Tract C now had to be redesigned to cause storm run-off to  
22 flow south instead of north, the improvements plans and the rough grading already completed for  
23 Tract C would have to be redone to cause the drainage to flow in the opposite direction than that  
24 originally planned. Further delays thereafter occurred because P&Z improperly noticed for hearing  
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1 certain procedural steps in the approval process. MLC finally obtained preliminary subdivision  
2 approval and believed that the final plat could be processed when the storm water system and  
3 retention basin plans were approved and the last ADEQ approvals obtained.

4 Decision No. 72295 (May 4, 2011), the Commission extended the deadline to File the LAWS until  
5 March 23, 2012.

6 MLC continued to negotiate with the Club for the use of a portion of its property for the necessary  
7 retention basin and, in consideration of MLC agreeing to perform certain expensive improvements  
8 on the parcel and on an additional parcel owned by the Club and used in connection with its marina  
9 in the Colorado River, the parties finally entered into an easement agreement for the location of the  
10 new retention basin on September 4, 2012, more than five months after the latest extension by the  
11 Commission. Upon successive annual applications of MLC, on April 5, 2011, MVIDD extended  
12 the water allocation an additional year to April 10, 2012, on March 6, 2012, MVIDD extended the  
13 water allocation to April 10 2013 and On March 5, 2013, MVIDD extended the water allocation to  
14 April 10, 2014.

15  
16 Decision No. 73560 (October 17, 2012), the Commission extended the deadline to file LAWS until  
17 September 30, 2013.

18 MLC has continued to work diligently to complete the Tract C subdivision but has not yet been able  
19 to obtain subdivision approval from the county and the LAWS from ADRE. The company has  
20 finally received preliminary subdivision approval, satisfactorily addressed all comments and  
21 requirements of the county and has collected nearly everything required for a complete submittal in  
22 order to request final subdivision approval. On September 4, 2012, the company obtained the  
23 necessary drainage easement from the Club needed to complete construction of the flood control  
24 system and retention basin and has obtained another renewal of the water allocation from the  
25 MVIDD. The only significant remaining things then needed in order to have a complete  
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1 subdivision submittal for final subdivision approval by the county were the necessary ADEQ  
2 "approvals to construct" for both the water and sewer systems. This is where MLC ran into another  
3 roadblock on this unbelievably long journey toward subdivision approval. MLC negotiated over  
4 two major issues for a period extending over several months with the Fort Mojave Tribal Utility  
5 Authority ("FMTUA") which is the provider of the sewer service for this subdivision. First, MLC  
6 had difficulty getting a line extension agreement and "will serve" letter for the sewer because of a  
7 controversy over what, if any, hook-up/tap fees were going to be required to be paid to extend  
8 service to the lots. Several years ago the corporation and a related entity purchased a number of tap  
9 fees in advance from FMTUA to help facilitate its original construction of the sewer plant. MLC  
10 still owned a number of these prepaid tap fees which were sufficient for twenty-three of the twenty-  
11 four lots in this subdivision. However, FMTUA had lost its record of the transaction and wanted  
12 MLC to pay the fees again for all the lots. At today's prices of \$5,000 per lot that would have  
13 amounted to \$120,000.00. MLC also had some difficulty in locating its record of the purchase but  
14 was finally able to provide sufficient documentation to FMTUA to satisfy it that twenty-three of the  
15 required fees had been paid, and the one extra fee that was needed was arranged for. At that point  
16 MLC was required by FMTUA to permanently dedicate to the Tract C subdivision all of the twenty-  
17 four tap fees as a condition to entering into a line extension agreement with the utility. Next, a  
18 controversy arose with FMTUA regarding whether or not the existing sewer pump station intended  
19 to service the subdivision had adequate capacity for the anticipated new users. In order to obtain  
20 the necessary ADEQ "approval to construct" for the sewer system it is required that MLC submit to  
21 ADEQ capacity assurance forms issued by FMTUA certifying that the proposed collection system  
22 within the subdivision and the FMTUA plant are adequate to service this subdivision. The form  
23 with respect to the plant was signed but not delivered, and the form with respect to the system was  
24 withheld. Though he did not design the system, MLC's current engineer believed the system in its  
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1 present state was, in fact, adequate. However, FMTUA asked for an assurance from MLC that if  
2 additional expenditures were necessary for an engineer to perform an extensive evaluation the  
3 system or to improve the system MLC would pay for it. MLC believed this was an unreasonable  
4 request for the following reason. MLC's former engineers designed the system and determined that,  
5 as originally constructed, the system had plenty of capacity to take care of all of Willow Valley  
6 Estates 20, Tracts A, B and C (this subdivision renamed Willow Valley Estates 21). However, a  
7 few years ago, with the consent of the corporation, FMTUA tied into the system in order to service  
8 a number of homes that were built or being built in a subdivision on the Indian reservation located  
9 on property south of the subdivision. Even though MLC's current engineer believed that there still  
10 remained sufficient capacity in the system, if subsequent evaluation were to determine that there  
11 was no longer sufficient capacity, MCL believed it is because of the actions of FMTUA in adding  
12 additional dwellings to the system which were not anticipated when it was originally designed. In  
13 hopes of resolving the issue, MLC delivered to FMTUA a copy of the original easement agreement  
14 for the extension line which showed that MLC's consent for the easement required by FMTUA in  
15 order to hook up to the subdivision system, required FMTUA to reserve adequate capacity in the  
16 system for this subdivision. On September 19, 2013, at a meeting between FMTUA and MLC's  
17 engineers discussing the capacity of the system the Manager for FMTUA finally agreed to provide  
18 the necessary capacity assurance forms, which were provided on September 26, 2013 and  
19 September 27, 2013. At which point there obviously was no longer sufficient time to obtain the  
20 necessary ADEQ approvals and consents, get subdivision approval from the county and the required  
21 LAWS all before the September 30th deadline imposed by the last Commission order. However,  
22 MLC now believes that the last major hurdle to completing processing the subdivision has been  
23 overcome and that a six month extension of the Commission's order will be sufficient to obtain the  
24 LAWS for this subdivision.

1 In addition to the prepaid hook-up/tap fees now valued at \$120,000.00 paid to FMTUA,  
2 MLC has paid substantial fees to Mohave County, thousands of dollars to its engineers and  
3 attorneys, \$31,500.00 to Willow Valley for administrative and attorney's fees, not including any  
4 additional fees that may be required in connection with this extension and \$21,600 to the MVIDD  
5 for a non-refundable water allocation fee. In addition, MLC has committed to pay substantial  
6 improvement costs on land belonging to the Willow Valley Club Association in consideration of its  
7 allowing a new retention basin to be constructed on its property, and MLC has paid for initial  
8 grading of the subdivision site which, unfortunately, will have to be redone because of new flood  
9 control requirements as explained above.

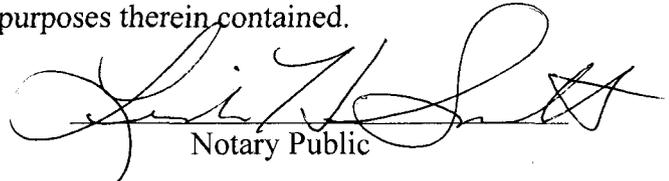
11 AFFIDAVIT

12 STATE OF ARIZONA )  
13 County of Maricopa ) ss.  
14 )

15 G. WAYNE McKELLIPS, JR., being first duly sworn deposes and says: That he is the  
16 President of McKellips Land Corporation, that he has knowledge of the facts contained in the  
17 foregoing Narrative and that such facts are true to the best of his knowledge, information and belief.

18   
19 G. WAYNE McKELLIPS, JR.

20 SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of September, 2013, by G.  
21 WAYNE McKELLIPS, JR., who is a personally known to me and who personally appeared before  
22 me and executed this document for the purposes therein contained.

23   
24 Notary Public

