



BEFORE THE ARIZONA CORPORATIC

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Arizona Corporation Commission

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AZ. CORP COMMISSION  
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MAY 02 2014

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IN THE MATTER OF THE ) DOCKET NO. W-20589A-08-0173  
 APPLICATION OF RIDGELINE )  
 WATER COMPANY, L.L.C. FOR A )  
 CERTIFICATE OF CONVENIENCE ) RIDGELINE WATER COMPANY'S  
 AND NECESSITY FOR WATER ) COMMENTS ON APRIL 25, 2014  
 SERVICE. ) COMMISSION STAFF MEMORANDUM

LAWRENCE V. ROBERTSON, JR.  
 ATTORNEY AT LAW  
 P. O. Box 1448  
 Tubac, Arizona 85646

In its April 25, 2014 Memorandum addressing Ridgeline Water Company, LLC's ("Company") January 7, 2014 Motion for Further Extension of Compliance Filing Deadline Date ("Motion"), the Commission's Utilities Division concludes that

"Staff does not believe granting an additional extension of time for this Order Preliminary would be consistent with Decision No. 73225. Therefore, Staff recommends denial of the Company's request." [emphasis added]

In that regard, in the body of the Staff's aforesaid Memorandum the Staff does not take issue with nor contest the accuracy of the Company's statement as to those circumstances occasioning its request for a further extension of the compliance filing deadline here in question. To the contrary, the Staff recites those circumstances verbatim within the body of its Memorandum, with a reference to the Company's January 7, 2014 Motion:

"... the 2008 financial crisis and subsequent recession severely impacted the real estate market and homebuilding industry in Arizona, and affected the timeline for development of new residential communities such as Ridgeline. While the situation for those sectors of the economy in Arizona since then has improved significantly in the Phoenix metropolitan area, and to a lesser extent in the Tucson metropolitan area, the situation

1           has not materially improved in rural areas of the state (such as  
2           Ridgeline) during the approximately nineteen (19) months  
3           since Decision No. 73225 was issued. Thus, for the Developer  
4           (Pollux Properties, L.L.C.) of Ridgeline, due to circumstances  
5           beyond its control, it has not been economically feasible to date  
6           to commence construction of the water system facilities here in  
7           question.” [Staff Memorandum at page 1] [emphasis added]

8           Thus, what is at issue in connection with the Company’s currently pending request  
9           for a further extension of the compliance filing deadline here in question is what the  
10          Commission intended when it provided in the Second Ordering Paragraph of Decision No.  
11          73225

12                   “. . . that no further extensions of the conditions to the Order  
13                   Preliminary to the issuance of a Certificate of Convenience and  
14                   Necessity shall be granted, absent extraordinary  
15                   circumstances.” [Decision No. 73225 at page 5, lines 6-8]  
16                   [emphasis added]<sup>1</sup>

17          As the Commission is aware, the 2008 financial crisis and the subsequent deep  
18          recession had severe economic effects throughout Arizona and upon a number of  
19          industries, including (i) that portion of Pima County approximately twenty miles southwest  
20          of the City of Tucson where the Ridgeline Estates development would be located and (ii)  
21          the single-family homebuilding industry. That financial crisis and the subsequent deep and  
22          lingering recession would appear to comfortably fit within the concept of “extraordinary  
23          circumstances”; and, in this instance, the above-noted inability of the developer of  
24          Ridgeline Estates to date to move the project forward is a direct result of those  
25          “extraordinary circumstances.” In that regard, as indicated in the Company’s January 7,  
26          2014 Motion, and as uncontested in the Staff’s April 25, 2014 Memorandum, those  
27          “extraordinary circumstances” and the lingering after-effects of the same upon the inability  
28          of Pollux Properties, LLC (“Pollux”) to date to move the Ridgeline Estates project forward  
29          to the commencement of construction are due to circumstances beyond the developer’s

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<sup>1</sup> In that regard, the Company understands that the Staff may not wish to presume to speak for the Commission as to what constitutes “extraordinary circumstances.”

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1 control.

2 Further, and as acknowledged in the Staff's Memorandum, since the issuance of  
3 Decision No. 70748, the Company has spent in excess of \$240,000 on two wells and other  
4 activities related to the provision of water service to Ridgeline Estates; and, the developer  
5 has concluded discussions with the Arizona State Land Department for a second right-of-  
6 way for the Ridgeline Estates residential community. In addition, the Company promptly  
7 satisfied four of the five original compliance conditions set forth in Decision No. 70748;  
8 and, the only remaining compliance condition is the Approval To Construct ("ATC") the  
9 water facilities here in question for the 136 lot Ridgeline Estates subdivision. Thus, it is  
10 not the fault of either the Company or the developer or for lack of effort that neither has  
11 been able to reverse or overcome the aforesaid lingering effects of the 2008 financial crisis  
12 and subsequent resulting recession.

13 Accordingly, a Commission decision at this juncture which in effect would cancel or  
14 extinguish the Order Preliminary previously granted to the Company would be unfair. The  
15 effect of such an order would be to negate all of the expenditures and efforts to date of the  
16 Company and Pollux in furtherance of the Ridgeline Estates project; and, it would require  
17 further expenditures to repeat the water provider authorization process later when  
18 economic circumstances allow the construction of homes in Ridgeline Estates to begin.  
19 Also, a decision of that nature would be unnecessary, inasmuch as there would be no  
20 detriment to anyone by extending the Order Preliminary for an additional period of time.  
21 In fact, the following observation by the Commission at the time of its issuance of Decision  
22 No. 73225 continues to be pertinent:

23 "We note that there are no other water companies in Ridgeline  
24 Estates' vicinity that might provide water service to the  
25 development, so there is no detriment to extending the Order  
26 Preliminary at this time." [Decision No. 73225 at page 3, line  
27 23 – page 4, line 1] [emphasis added]

28 WHEREFORE, for all of the reasons discussed above, the Company respectfully  
requests that the Commission issue an Order granting the Company's request for a further

1 extension of the deadline for filing an ATC for the Ridgeline Estates until February 12,  
2 2017.

4 Dated this 2<sup>nd</sup> of May 2014.

6 Respectfully submitted,

7 Lawrence V. Robertson, Jr.

8 Lawrence V. Robertson, Jr.  
9 Attorney for Ridgeline Water Company, L.L.C.

10 The original and thirteen (13) copies of the  
11 foregoing Comments will be filed  
12 this 2<sup>nd</sup> day of May 2014 with:

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 A copy of the foregoing Comments will be  
18 emailed or mailed this same date to:

19 Lyn A. Farmer,  
20 Chief Administrative Law Judge  
21 Hearing Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 Steve Olea, Director  
26 Utilities Division  
27 Arizona Corporation Commission  
28 1200 West Washington Street  
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