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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )**  
**MAYFIELD SPRINGS WATER COMPANY, )** **CASE NO. MSW-W-08-1**  
**INC. FOR A CERTIFICATE OF PUBLIC )**  
**CONVENIENCE AND NECESSITY )** **COMMENTS WITH RESPECT**  
**)** **TO ORDER No. 30656**  
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The following constitutes the comments of Gerald J. Corvino as intervenor in the application of Mayfield Springs Water Company (aka Idaho Springs Water Company and Arbor Ridge, LLC) (the "Company") for a Certificate of Public Convenience and Necessity (CPCN) to provide water service to the Arrowrock Ranch Subdivision. Specifically these comments relate to the item approved for reconsideration related to hook up fees for new service in Commission Order No. 30656.

"Subdivision" in the following comments refers to Arrowrock Ranch Subdivision Phase I and II. "Developer" refers to Arbor Ridge, LLC and Powder River Development, Inc.

The Company indicated through discovery that all shares and membership interest in Arbor Ridge, LLC, Intermountain Sewer and Water, Inc., Idaho Springs Water, Inc. and Mayfield Springs Water Company are owned by Greg Johnson.

## **Hook Up Fee for New Service**

The following is a brief analysis of the information provided by the Company to the Commission and deemed by the Company to be trade secret, confidential and exempt from public disclosure. We believe the following summary does not violate the intent of that designation based on a discussion with the Company's counsel regarding the reasons for said designation.

From October 17, 2005 through August 29, 2007 the Company collected \$140,000 from the hook up fee of \$2,500 on 56 lots in the Subdivision. This amount represents an excess of \$99,400 over the PUC approved hook up fee of \$725 per Commission Order No. 30628.

There is no need for the PUC to revisit the legal issues regarding the Company operating without a CPCN or application from October 2005 through January 2008 as the 4<sup>th</sup> District Court has already ruled on this matter<sup>1</sup>:

“From the statute and regulations, a certificate of necessity and convenience was required before the construction of the water system at all. The Defendants have gone further than merely commencing construction-construction has been completed. The Defendants have gone even further and have begun to charge customers for its services.”

Further, the Court went on to determine the penalty on August 4<sup>th</sup>, 2008 when the Court ruled in a Memorandum Decision on a request for summary judgment in the same case:

“Thus, the Court finds that there is a clear basis under the law for it to award the Plaintiffs any amounts paid for water services before the Defendants filed their Application for Convenience and Necessity. A water corporation operating illegally cannot collect fees for their “service.”

We respectfully request that the Commission affirm the Court's decision and order refunds of all hook up fees paid prior to the Company filing for a CPCN for the 14 plaintiffs. Further, we request the Commission order the Company to refund \$1,775 (the difference between the \$2,500 charged and the \$725 PUC approved) to the other customers not party to the lawsuit. We believe the

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<sup>1</sup> Case No CVOC0708918, Guy and Lori Bourgeau et al, Plaintiffs versus Greg Johnson et al, Defendants, March 10, 2008

difference between the two amounts is fair and just as the plaintiffs incurred the cost for this action and directly caused the Company to file for a CPCN which it had delayed for over 28 months.

We expect the Company to argue that 36 of the 56 hook up fees were paid by construction companies or others and not directly by the current customer. It is reasonable to assume that this cost was passed on to the buyer of the property as were any building permit fees, other utility connection fees, etc. We also believe it is reasonable and fair to pay those refunds to the current customers.

We expect the Company to argue as it has in the past that the Commission defer to the District Court in the interest of judicial economy. However, only 25% (14 of 56) of the properties are represented in that lawsuit. A Commission decision in this matter could avoid expensive, multiple litigations and reduce the cost to a “small water company with an expected rate of return of \$1,615 annually<sup>2</sup>.” In the absence of such an order, each of the other 42 customers not party to the lawsuit could file separately resulting in a significant expense to the Company.

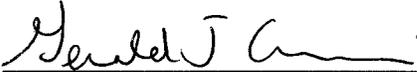
Further, we expect the Company to argue that it has no cash to pay any ordered refund. This argument is irrelevant since the Company is nothing more than a “carve out” of Arbor Ridge, LLC. The Company appears to have been started to simplify accounting issues related to the regulation process. As attested by the Company in discovery, Greg Johnson is the 100% owner of Arbor Ridge and Mayfield Springs Water Company among others. Arbor Ridge collected \$140,000 from the hook up fees in addition to an estimated \$3.5 million on the sale of 50 lots in phase one of the subdivision alone. It is this revenue that the Commission should consider in determining the ability of the Company to pay. This approach would be in line with the Commission’s treatment of contributed capital and the Commission’s Policies and Presumptions for Small Water Companies, IDAPA, 31.36.31.103

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<sup>2</sup> Company “Response to Petition of Reconsideration of Intervenor Gerald J. Corvino”, dated September 22, 2008

Finally, the Commission may be concerned about the viability of the water service to the Subdivision. The Arrowrock Ranch Home Owners Association (HOA) has sufficient financial assets to operate the water service and its members are the only customers other than Intermountain Sewer and Water. Intermountain's customers are also only in the Subdivision. The Company has no employees (disclosed in discovery) and operation, maintenance and billing related services are all contracted out. In addition, the "Amended and Restated Master Declaration of Covenants, Conditions and Restrictions" (CC&R's) for the Arrowrock Ranch Subdivision previously filed with the Commission anticipated the possibility of the HOA operating the water company in Article IX. Section 12, "Transfer of Water System." For these reasons, we believe service would be adequately maintained by the HOA in the event the Company ceases operation.

**DATED** at Kuna, Idaho, this 24th day of November, 2008.

  
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Gerald J. Corvino

Cc: John R. Hammond  
Kris Sasser