

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION</b>	)	
<b>OF MAYFIELD SPRINGS WATER</b>	)	<b>CASE NO. MSW-W-08-01</b>
<b>COMPANY FOR A CERTIFICATE OF</b>	)	
<b>PUBLIC CONVENIENCE AND NECESSITY.</b>	)	<b>ORDER NO. 30628</b>
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On February 5, 2008, Mayfield Springs Water Company<sup>1</sup> filed an Application requesting a Certificate of Public Convenience and Necessity (Certificate; CPCN) to provide water service as a public utility. As part of its Application, the Company also proposed interim monthly rates for water service to its customers. The Application stated that the Company was providing water service within the Arrowrock Ranch Subdivision in Kuna to approximately 38 residential customers, 17 connections taking service during the construction of residential dwellings, and 1 customer taking service to water common areas within the subdivision. Application at 3.

On March 3, 2008, the Commission issued a Notice of Application and set a deadline for intervention. The Commission also approved monthly interim flat rates (for unlimited water consumption) pending a final Order. The interim flat rate was \$25 per month for service on lots where a residential dwelling is under construction; \$50 per month for residential customers; and \$800 per month for water service to common areas within the subdivision. Order No. 30512. The Commission processed this case under Modified Procedure by developing a written record and also holding a public hearing. IDAPA 31.01.01.201.

After reviewing the comments and exhibits of the parties, the testimony at our public hearing and customer written comments, the Commission finds that it is in the public interest to grant Mayfield Springs Water Company's Application for a Certificate of Public Convenience and Necessity. The Certificate will be issued in a separate document. The Commission further

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<sup>1</sup> Since its inception, water service in this case has been provided by several entities operating under different names. The Application stated that "Intermountain Sewer and Water" was initially formed by the developer of Arrowrock Ranch Subdivision, Greg Johnson, to provide water service to the subdivision. The water services were subsequently transferred to "Arbor Ridge, LLC" – "a real estate development firm." The water company assets of Arbor Ridge were later sold to "Idaho Springs Water Company" on February 4, 2008. Application at n.1. Mr. Johnson was both the seller and purchaser. *Id.*, Exh. A. Following the initial filing of its Application, Idaho Springs Water Company changed its name to Mayfield Springs Water Company. The case caption and subsequent references to the water utility have been modified accordingly. See Notice of Name Change (May 12, 2008).

authorizes Mayfield Springs to implement permanent metered rates and charges as outlined in greater detail below.

## **BACKGROUND**

### ***A. Procedural History***

One customer, Gerald Corvino, petitioned and was granted intervention status. Mr. Corvino and other customers had previously filed one formal and several informal complaints against Mayfield Springs' predecessor asserting that the water utility was operating without a CPCN. On March 26, 2008, the Commission Secretary issued a Notice of Parties. The Parties (Mayfield, Commission Staff, and Mr. Corvino) later met informally to devise a schedule to process this case. On April 9, 2008, the Commission adopted the parties' proposed schedule and issued a Notice of Modified Procedure.

On April 25, 2008, the Company filed an Amended Application and proposed permanent metered rates to replace the interim flat rates. Mayfield requested that all customers pay a monthly charge of \$81.60 for the first 10,000 gallons, and \$0.000651 for each gallon in excess of 10,000 gallons. The Company requested that its newly proposed rates become effective on August 1, 2008.<sup>2</sup>

Staff conducted a public workshop for customers in Kuna on May 19, 2008. On May 28, 2008, Staff and Mr. Corvino each filed written comments. The Parties met on June 20, 2008 to determine if they could achieve a settlement. Settlement negotiations were unsuccessful and Mayfield filed its Reply comments on June 26, 2008. Mayfield subsequently filed "clarifying" comments. On July 29, 2008, the Staff filed Supplemental Comments to reflect partial settlement of three previously disputed expense issues between Staff and the Company. The Commission held its public hearing on July 1, 2008 in Kuna.

### ***B. The District Court Case***

In May 2007, 14 couples (all residents of Arrowrock Subdivision and customers of Mayfield Springs) filed suit against Greg Johnson and various associated entities, including Mayfield Springs. Mr. Johnson is the developer of the subdivision and president of the water company. On November 1, 2007, the plaintiffs filed a Second Amended Complaint alleging various claims against the defendants including: Breach of contract; fraud; breach of fiduciary

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<sup>2</sup> On July 30, 2008, the Commission issued Order No. 30609 suspending the effective date for the proposed meter rates for a period of 30 days, or until August 29, 2008.

duty; violations of the Idaho Racketeering Act; violations of the Idaho Consumer Protection Act; breach of the Conditions, Covenants and Restrictions (CC&Rs) for the subdivision; and operating a water utility without a CPCN in violation of *Idaho Code* § 61-526. Corvino Exh. 211, *Bourgeau, et al. v. Greg Johnson, et al.*, Case No. CVOC 0708918 (4<sup>th</sup> Dist. Ct.). The Court explained that the heart of the plaintiffs' complaint was that the defendants misrepresented to the plaintiffs that their annual homeowners' association fees of \$1,200 per year included water and sewer services.<sup>3</sup> Corvino Exh. 211, Memorandum Decision at 3 (March 10, 2008). When the plaintiffs purchased their homes, they were charged \$2,500 for connecting to the water system. *Id.*; Corvino Comments at 2; Exh. 203 (pp. 1, 4-5). The plaintiffs were also charged \$100 per month for water service beginning in January 2007 but this amount was later reduced to \$50 per month and made retroactive to January 2007. Exh. 211 (Memorandum Decision at 3); Corvino Comments at 5; Exh. 203 (p. 5); 205; 207.

On March 10, 2008, the Court issued a Memorandum Decision and granted partial summary judgment to the plaintiffs on the claim that Mayfield had operated as a utility without obtaining a CPCN from the Commission. The Court found that the defendants had violated *Idaho Code* § 61-526. Corvino Exh. 211. This statute provides that no water utility shall "begin the construction of a . . . system, without having first obtained from the commission a certificate. . . ." The defendants subsequently moved the Court to reconsider its decision regarding the Certificate.

On reconsideration and following oral argument, the Court affirmed its initial decision that the utility violated *Idaho Code* § 61-526. The Court also granted the plaintiffs' Motion and ordered refunds of "any amounts paid for water services before the Defendants filed their Application for [a Certificate of Public] Convenience and Necessity." Memorandum Decision at 8 (Aug. 4, 2008). The Court ordered defendants to provide a complete accounting of all charges and amounts paid for water service within 45 days of the date of the decision. *Id.* at 9. The civil case is continuing.

### ***C. The Commission's Public Hearing***

The Commission held its public hearing in Kuna on July 1, 2008. Numerous customers testified at the public hearing, and many submitted written comments. The customers

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<sup>3</sup> The Commission does not regulate sewer service. *Idaho Code* § 61-129.

generally commented that they were misled about the cost of water and sewer services. They asserted that it was represented to them that their homeowners' association fees would include the costs of their water and sewer services. The customers seek reimbursement for water charges and hookup fees they contend were unlawfully charged by the Company prior to its filing for certification by the Commission. The customers also support the assessment of a civil penalty against the utility.

At the public hearing, the Commission requested that Mayfield Springs submit the Covenants, Conditions and Restrictions (CC&Rs) for the Arrowrock subdivision. The CC&Rs were filed on July 22, 2008. Section 9.1 (Water System) provides that each lot "shall have access to the Water System to be constructed by Grantor [i.e., Arbor Ridge, LLC (§ 3.11)] and to be owned and operated by Grantor. . . ." Section 9.12 (Transfer of Water System) states that "[d]uring the development phase of the project, the Water System shall be owned by Grantor; provided, however, Grantor, in its sole discretion, shall convey fee simple title to the Water System to the [homeowners] association or other public or private entity . . . following Grantor's receipt of written authorization for such transfer from the Idaho Department of Environmental Quality." Mayfield Exh. 36.

#### **OVERVIEW OF THE PARTIES' POSITIONS**

Using a 2007 test year, Mayfield claimed a total annual revenue requirement of \$111,864. The Company's request included \$13,080 annually to create a "sinking fund" to be used for future water system needs. To meet this revenue requirement, the Company proposed in its Amended Application to switch from monthly flat rates to metered rates. Mayfield recommended a permanent monthly base charge for all customer classes of \$81.62, with a variable charge of 0.000651¢ for each gallon in excess of 10,000 gallons per month. Amended Application at 4. Mayfield asserted that this uniform rate for all customers was reasonable.

After conducting discovery and performing an audit, Staff calculated Mayfield's total annual revenue requirement to be \$42,035. Staff initially proposed the following rate design:

	Monthly Base Charge	Variable Charge
Residential	\$20 for first 10,000 gallons	\$0.29 per 1,000 gallons > 10,000 gallons
Non-Residential	\$50 for first 10,000 gallons	\$0.29 per 1,000 gallons > 10,000 gallons

Comments at 10-11. Staff calculated total rate base for the Company as \$13,477 and proposed a rate of return of 12%. Staff, Atch. B. Staff's supplemental comments increased the proposed expenses during the test year by an additional \$2,600 per year.

Mr. Corvino generally opposed the following charges: Hookup fees; all expenses related to the pending 4<sup>th</sup> District Court litigation; all expenses related to the sale of assets from Arbor Ridge to Mayfield Springs; and all expenses related to establishing a sinking fund. He also argued that because the Company operated without a CPCN, any monies (in the form of hookup fees and monthly rates) collected from customers prior to the Company's Application for a CPCN should be refunded. Finally, Mr. Corvino requested that the Commission impose a \$1.7 million civil penalty (\$2,000 per day from September 29, 2005 to February 3, 2008) against the Company pursuant to *Idaho Code* §§ 61-706 and 61-707. Comments at 8.

In its reply comments, the Company agreed with some of Staff's proposed adjustments and made several modifications to its initial proposal based on Staff recommendations. The issues resolved during settlement discussions are reflected in Staff's supplemental comments. The Company disputed that it should refund charges previously obtained or that it is liable for a civil penalty. Reply at 12-19.

## **EXPENSE AND RATE BASE ISSUES**

### ***A. Undisputed Issues***

1. Test Year. The Company submitted financial data based upon a 2007 test year. Staff agreed to the use of a 2007 test year.

2. Power Costs. The Company claimed annual power costs for the operation of the well pumps as \$12,981. Staff audited all of the power bills and found that the actual cost for the power used during the year was \$13,495. This power was used to serve an average of 46 customers on the water system throughout 2007. The number of customers now served by the water system has increased. Staff adjusted the power costs on a linear basis to account for the increase in customers. As a result, the test year power cost was increased from \$13,495 to \$15,249.

At the time it filed comments in May 2008, Staff was aware that the cost of electricity was expected to increase. Staff recognized that the percentage of increase in electric rates is dependent upon the outcome of several Idaho Power cases (Power Cost Adjustment, Danskin CT1, DSM Rider) then before the Commission. Staff recommended that the power costs be

increased to reflect the actual percentage increase as determined by the Commission. Staff calculated an escalation factor of 14.5% for inclusion in this case. Therefore, Staff included \$17,461 of annual power costs in rates. The Company, in its reply comments, agreed that Staff's recommendation was reasonable and appropriate.

3. Certified Operator. The Company's contract for operation of the water system with Valley Hydro provides for the basic operating service at \$3,000/year, well maintenance at \$720/year, service connection maintenance at \$1,440/year, and backflow testing at \$1,080/year. This totals \$6,240. Staff agreed that the basic cost of \$6,240 (\$520 per month) is a reasonable cost for the certified operator and that the law requires the Company to have the services of a certified operator for its water system.

4. Extra Labor Charges. Last year the Company used the certified operator for extra services for a total of 36.5 hours. The Company was charged \$35/hour for this extra labor. Staff was satisfied that the amount of extra labor charges incurred by the Company is reasonable. Even though the system is new and extra repairs should not be excessive, 36.5 hours of extra service on the system annually can easily occur. Additionally, Staff insisted the hourly rate of \$35 is reasonable. Staff suggested the total cost of \$1,275 for the extra labor by the certified operator is reasonable and should be included in rates.

5. Meter Reading. The certified operator also received additional compensation for reading the meters. The operator spent 43.5 hours during 2007 reading the meters monthly. The operator charged \$35/hour for this service. Staff believed this is a reasonable time and charge for meter reading on a monthly basis. The total annual cost for this service included in rates is \$1,525.

6. Water Testing. The Company originally included \$8,075 in payments made to the certified operator for water testing. Staff determined the normalized annual costs of water testing for the Company's two wells is \$3,450. Staff Atch. D. Therefore, Staff excluded \$4,625 from the Company's claimed \$8,075 for water testing. In its reply comments, the Company agreed that Staff's recommendation of \$3,450 as an annual cost for water testing was reasonable.

7. Well Inspection Fees. The Company originally included \$526 for well inspection fees. Staff determined that the two wells need to be inspected semi-annually and that a reasonable cost for this inspection is \$170 per inspection. Therefore, Staff included \$340 in

expenses for this service. In its reply comments, the Company agreed that Staff's recommendation of \$340 for annual well inspection expenses was reasonable.

8. Maintenance and Repairs. Mayfield originally included \$1,080 for maintenance and repairs. Upon audit, Staff realized that these expenses were for cutting holes in the meter lids. This does not appear to be a reoccurring expense and should not, therefore, be used as the basis for determining a reasonable amount for annual maintenance and repairs. Staff determined that \$350 is a reasonable amount for maintenance and repairs to include in annual expenses. In its reply comments, the Company agreed that Staff's recommendation of \$350 annually for maintenance and repairs was reasonable.

9. Accounting and Billing. In its 2007 test year, the Company included \$3,603 for accounting and billing expenses. An affiliate of the Company is currently providing the accounting and billing services. These services include the preparation of the monthly statements, the collection of the payments, depositing those payments into the Company's bank account, and providing monthly accountings to the Company. Because an affiliate is providing this service, Staff closely scrutinized the charges to ensure that the affiliate was not including any unrelated costs to the Company. Staff was satisfied that a monthly charge for accounting and billing of \$300 (\$3,600 annually) is reasonable. Staff insisted this is a very competitive price when compared to the same services provided by an unaffiliated party.

10. Professional Fees. Upon examination, Staff determined that all of the costs incurred and recorded in the account for "professional fees" were legal fees. As a result, Staff recommended that none of the professional legal fees be allowed except as noted below. However, Staff included other professional fees that are reasonable and reoccurring. Staff included a normalized amount of \$500 to cover the cost of an accountant to prepare the annual tax return and the Annual Report for the Commission. In its reply comments, the Company found Staff's recommendation reasonable and appropriate.

11. Office Supplies. The Company included \$74.00 as its annual expense for office supplies. Staff included this in expenses at \$75.00.

12. Licenses and Permits Expenses. The Company did not include any costs in its Application or workpapers regarding annual expenses for licenses and permits. However, Staff acknowledged that the Company will have annual licensing obligations to DEQ and the Commission's regulatory fee (*Idaho Code* § 61-1001). Consequently, Staff recommended in its

initial comments that \$300 be included as annual expenses to pay for these costs. Staff Comments at 6. In its reply comments, the Company provided additional information demonstrating that its license and permit expenses amount to \$400 annually. Reply Comments at 5-6. Based on the evidence submitted, Staff agreed \$400 was reasonable for annual license and permit expenses. Supp. Comments at 2.

13. Depreciation Expense. In its audit, Staff included the costs of meters and some of the flexible fittings associated with the meters in the rate base. Placing these items into the rate base means that the Company should recover its annual depreciation expense for these assets in rates. Staff employed a useful-life of 15 years for these capital assets and calculated an annual depreciation expense of \$960. Staff Comments at 6. The Company accepted the Staff's depreciation calculation. Reply at 4.

14. Rate Case Costs. On reply, the Company requested \$1,500 annually (for five years) to cover its rate case costs. Staff agreed in its Supplemental Comments and recommended the inclusion of \$1,500 annually (\$7,500 amortized over five years) as a reasonable amount.

**Commission Finding:** Based upon our review of the undisputed issues set out above and the agreement of the parties, we find the use of a 2007 test year is appropriate. We further find the undisputed test year expenses listed above to be just and reasonable.

15. Rate Base and Rate of Return. The Company and Staff also agreed that the cost of the water system should be considered contributed capital by the developer, and not be included in rate base. Staff, therefore, calculated a total rate base for Mayfield of \$13,477. Using a 12% rate of return, the Staff calculated a return on the rate base of \$1,617. The Company agreed with Staff's recommendations concerning rate base, the rate of return, and the return of \$1,617.

**Commission Finding:** Based upon our review of the record and the agreement of the parties, we find that Mayfield Springs has a rate base of \$13,477. We further find that a 12% rate of return is reasonable. The 12% rate of return is consistent with the returns authorized for other small water companies. We conclude that the return on rate base of \$1,617 is also reasonable.

### ***B. Disputed Issues***

1. Telephone Expenses. In its Application, the Company did not include any telephone expenses. In its comments, Staff included \$300 annually (\$25 per month) for a single



phone line and recommended the Company use it as the method for contacting its customers. Staff's recommendation was based upon the water company and its sewer affiliate using the same phone line.

In its reply comments, the Company asserted that its customer contact line was shared "with its affiliate" (the sewer company) and exceeded \$500 per month. Realizing that an attempt to pass this amount on to ratepayers was unjustifiable, the Company submitted Exhibit 28 as representative of a customer service line charge. The Company asserted that Exhibit 28 is the bill for the customer service line of the sewer company that serves Arrowrock subdivision residents. The bill reflects a monthly charge of \$44.71 for a private business line with "basic" and "optional" services. Relying on this bill, the Company requests \$536 annually for telephone expenses.

**Commission Finding:** Although Mayfield submitted "representative" evidence of charges for a private business line, the Company also acknowledged that its customer contact line is shared with its affiliate. This information, taken at face value, would only justify *half* of the Company's requested telephone expenses. Staff's recommendation is based on customary charges for a single phone line, or about \$268.26. Based upon our review of the parties' comments and the evidence submitted, the Commission finds Mayfield's reasonable telephone expenses to be \$300 per year.

2. Annual Legal Fees. The Company originally requested recovery of \$10,000 per year (\$30,000 in total) for legal fees incurred. After reviewing the legal billing invoices, Staff recommended that legal fees incurred by the defendants in the civil litigation should not be passed on to utility customers. Instead, Staff included a normalized amount of \$750 for annual legal fees. Mr. Corvino likewise insisted that the Company should not recover the fees and costs associated with the civil case.

In its reply comments, the Company reduced its original request of \$10,000 to \$2,750 annually for legal fees. The Company asserted that some of the legal fees (\$1,598 or 7.9 hours) incurred during the civil case concerned matters regarding the Commission's authority, such as CPCN issues.

**Commission Finding:** The Commission declines to allow legal expenses incurred during the civil proceedings to be charged to ratepayers for three reasons. First, as the Court observed, the heart of the 29-count complaint involves representations made by the developer

and the real estate agent regarding the homeowner fees for water/sewer services. Second, Mayfield did not apportion the requested attorney fees among the various defendants or entities. We find it unreasonable to assign the entire amount of attorney costs to the utility – especially given the remaining counts of the complaint and the other defendants. Third, even when Mayfield later sought recovery of the 7.9 hours (about \$1,600) attributable to the Commission’s CPCN authority, we find these legal expenses should be disallowed in rates. Had the utility timely applied for a Certificate and approval of rates, there would have been no basis for “Count 29,” no violation of *Idaho Code* § 61-526, and no attorney expenses in defense of the Company concerning this issue. Therefore, we conclude that none of the legal fees from the civil matter should be included in rates. Consequently, the Commission finds that no more than a normalized amount for annual legal fees (\$750) should reasonably be recovered in rates.

3. Engineering Fees. The Company included \$3,480 for payments made to professional engineers. Staff found that all of these costs were related to the initial installation of the water system and obtaining the required permits from DEQ. Because these are non-reoccurring expenses, they are not appropriate for inclusion in rates as an ongoing annual expense. Staff comments, however, included a normalized amount of \$250 to cover the cost for two hours of engineering expenses that may be incurred on an annual basis. Staff Comments at 5. In its reply, Mayfield submitted a document from the engineering firm employed by the Company which “roughly” estimated that \$2,500 was a “reasonable” amount for annual engineering fees related to maintaining a small water system similar to Mayfield’s. Reply at 7-8. After reviewing the Company’s submission, and following settlement discussions, Staff recommended that \$1,250 in annual engineering fees (10 hours at \$125 per hour) be included in annual expenses.

**Commission Finding:** Based upon the record and evidence submitted by the parties, the Commission finds annual engineering fees of \$1,250 to be reasonable. The initial submission by the Company of \$3,480 was determined by Staff to be initial installation costs. On reply, the Company reduced its request to \$2,500, but based this revised amount on estimates rather than known and measurable factors. Mayfield Springs is a new water system and should not require excessive engineering expenses in the near-term. Consequently, we find that 10 hours at \$125 per hour for engineering fees is just and reasonable.

4. Sinking Fund. The Company requested that \$13,080 be included in the annual revenue requirement to create a “sinking fund” account for future repairs of the water system. Staff opposed the creation of a sinking fund whose purpose is general, nonspecific and for unknown future needs. Staff Comments at 7. Staff noted that the water system has two wells. Well No. 1 has two pumps (one 250 gallons per minute (gpm) and one 1,000 gpm) and well No. 2 has one pump (500 gpm). *Id.* at 8. The Company has also installed a 30 kW backup generator on well No. 1. *Id.* at 9.

In its reply comments, the Company maintained that the \$13,080 figure was based on the cost incurred for replacing two pumps over 10 years. Mayfield urged that a sinking fund would better allow the Company to respond to emergencies, replace failing infrastructure, ensure safe operation of the system, add plant to accommodate growth, and ensure compliance with federal and state drinking water regulations. The Company also proposed that this account would earn interest and withdrawals from the account would require Commission approval. Reply at 8.

***Commission Finding:*** While the Commission is not generally opposed to the concept of a sinking fund, we are not inclined, based on the particular circumstances of this case, to allow Mayfield to create a sinking fund at this time. In this case, the water system is less than three years old and, at present, the three pumps appear sufficient to supply all customers with adequate water. If the largest pump were to fail, we find the additional pumps could operate and maintain water supply to Mayfield’s customers without any service interruption. Consequently, it is unreasonable to have a sinking fund based upon replacing two pumps. In addition, the Company has not been in operation long enough to produce any known and measurable data upon which to base its assumption of the useful lives of its pumps. Further, in the event that the utility should need repair revenue, the Commission has traditionally authorized surcharge rate mechanisms for emergency approval to obtain funds, should circumstances warrant. The Company has not adequately demonstrated a reasonable need for a generic sinking fund based only on its estimate of replacing two pumps over 10 years.

#### **REVENUE REQUIREMENT**

***Commission Finding:*** Based on the undisputed expenses and the adjustments above, we find that Mayfield’s total annual revenue requirement is \$42,035. This amount is sufficient to allow Mayfield to recover its operating costs and earn a reasonable return on its investments.

## RATE DESIGN

1. Monthly Rates. Both the Company and Staff's rate designs are based upon a monthly base charge and variable rate. The Staff's rate design was based upon 54 residential, 1 commercial (the sewer company), and 7 irrigation customers. The table below shows the difference between the Company and Staff proposed rates.

	COMPANY	STAFF*
<b>Residential:</b>		
Monthly Base Charge	\$81.62 for first 10,000 gallons	\$21.75 for first 10,000 gallons
Variable Monthly Charge	.000651¢ for each gallon in excess of 10,000	\$0.29 for each 1,000 gallons in excess of 10,000
<b>Commercial (Sewer):<sup>+</sup></b>		
Monthly Base Charge	Same as residential	\$53.32 for first 10,000 gallons
Variable Monthly Charge		\$0.29 for each 1,000 gallons in excess of 10,000
<b>Common Area Irrigation:</b>	Same as residential	Same as commercial

\* Staff proposed rates based upon the additional expenses allowed in its supplemental comments.

<sup>+</sup> The only commercial customer is the sewer company.

In its reply comments, the Company generally agreed with overall design of Staff's proposed rate structure. It requested that if the Commission finds that a higher revenue requirement above Staff's proposal is warranted, the base rates be increased and the variable charge be left at \$0.29 per 1,000 gallons. This would allow the Company to collect sufficient revenue.

Mr. Corvino proposed a rate design that divided all customers into two classes: "active" and "inactive." "Active" customers would include lots that are connected to the system with water available – regardless of the status of home construction on the lot. "Inactive" customers would include owners of lots within the subdivision not currently connected to the water system and not currently receiving water from the Company. Mr. Corvino offered this rate design with the justification that inactive customers still benefit from the water system's use in common areas, adding value to the inactive property.

Mr. Corvino maintained it would serve no purpose to assess rates to "customers" represented by the seven meters for the common areas and the single meter for the sewer company because homeowners and lot owners within the subdivision already pay for these

services through their homeowners' fees. Consequently, he recommended the common areas and the sewage customer be excluded from rates. Comments at 2. He did not propose rates for each of his two customer classes but recommended that the Commission direct the Staff to construct a rate based on the active and inactive customer classes. *Id.* at 3.

**Commission Finding:** Upon review of the record and the three different rate designs, the Commission finds that the use of a monthly base charge plus a usage charge is an appropriate and reasonable rate structure. While Mr. Corvino's suggestion is innovative, it takes into account considerations outside the Commission's jurisdiction (i.e., the homeowners' association dues and sewer company fees). Moreover, it does not equitably distribute the actual costs incurred for usage by individual "customers" – no matter who is ultimately paying the bill. We find the monthly base charge and usage charge is a reasonable design. Customers who consume more water will pay more.

This design also provides a proper incentive for customers to conserve water – a precious resource. Staff noted that the Company's water permit limits the amount of irrigation for lots and common areas. Staff Comments at 12-13. Non-residential water usage was about 63% of total water consumption. *Id.* at 11. The metered rate design and the monthly charge for usage will encourage the conservation of water.<sup>4</sup>

Staff reported that each residential customer and the sewer company are served by an individual meter with a one-inch service line. Staff Comments at 9. Each of the seven meters used to serve the common areas of the subdivision is equipped with a two-inch service line. Total water usage for the common areas exceeded water usage for residential customers, most notably during the peak month. Staff Comments at 11. Accordingly, we find it appropriate and reasonable to adjust the Staff and Company rate structures and establish rates based on the pipe size of the meter.

Based on an annual revenue requirement of \$42,035, the Commission approves the following rate design:

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<sup>4</sup> Given the water company's name changes, Mayfield Springs should verify that the water rights permits for its system are properly registered in its name.

<b>Category 1 Users:</b> (1 inch meter)	
Monthly Base Charge	\$22 for first 10,000 gallons
Variable Monthly Charge	\$0.30 for each 1,000 gallons in excess of 10,000 gallons
<b>Category 2 Users:</b> (2 inch meter)	
Monthly Base Charge	\$50 for first 20,000 gallons
Variable Monthly Charge	\$0.30 for each 1,000 gallons in excess of 20,000 gallons

We find the monthly base charges and commodity/variable charges set out above to be just and reasonable and appropriately designed to satisfy the Company's revenue requirement.

2. Hookup Fee. The Company requested a non-recurring hookup fee of \$2,500 per customer to recover costs associated with building the water system, meter installation and connection. Staff opposed a \$2,500 hookup fee as unreasonable and argued that the Company failed to provide documentation of such costs. Based on its investigation of engineering specifications and the costs for pipe, meter boxes and other equipment, Staff recommended a hookup fee of \$725 for new homes beginning service.

Mr. Corvino also objected to the hookup fee initially proposed by the Company. He argued that this fee "is an attempt to recover the capital costs of building the system which should be excluded from rate base." Comments at 2. He urged the Commission to reject the higher fee.

In its reply comments, the Company did not disagree with Staff's assessment of costs for new hookups. The Company also withdrew its assertion that the higher hookup fee was supported by a "water capacity" charge assessed by the City of Meridian. Mayfield is not assessed any water capacity charges by the City of Meridian. Clarification at 2.

**Commission Finding:** Based on the arguments and evidence submitted by the parties, the Commission finds \$725 to be a reasonable hookup fee. We find Staff's analysis of plant costs incurred for new homes to be more persuasive.

3. Late Fee. The Company has been imposing a late fee of \$15 (and previously \$30) for delinquent accounts. Staff asserted a flat fee of \$15 is excessive and does not conform to charges approved by the Commission for similar utilities. Staff recommended assessing a late

payment charge of one percent (1%) per month on any balance owing at the end of the next billing cycle as a means of encouraging prompt payment.

**Commission Finding:** Based upon our review of the record, and in consideration of the approved rate design, the Commission finds a \$15 late fee excessive for delinquent accounts. Instead, we find a late fee of 1% per month on the balance owing to be a reasonable means of encouraging prompt payment. The 1% late fee is also consistent with late fees approved for other similarly situated water companies.

## **OTHER ISSUES**

### ***A. Service Territory Certificate***

In its initial Application, the Company sought a Certificate of Public Convenience and Necessity to serve Arrowrock Subdivisions No. 1 and No. 2 and also the surrounding area of approximately 5,584 acres where future development is planned. Staff agreed with the certification request for the improved residential areas included in subdivisions Nos. 1 and 2, but did not concur with granting a CPCN for the extended acreage. Instead, Staff suggested the Company apply for an expansion of its Certificate when the other areas are ready to be developed. Comments at 7. Staff reasoned that applying for an expansion of the certificated service area in the future would allow the Commission to review the adequacy of the water supply system to serve the new areas. Mr. Corvino agreed with Staff's recommendation to limit the Certificate to subdivision Nos. 1 and 2.

In its reply comments, the Company agreed that Staff's recommendation for granting a CPCN only for the existing improved residential areas was reasonable.

**Commission Finding:** We find that the present and future public convenience and necessity require water service in a portion of the requested area. *Idaho Code* § 61-526. Based on the parties' comments, the Commission finds it reasonable to limit the Company's Certificate of Public Convenience and Necessity to the improved residential areas included in Subdivisions No. 1 and No. 2. A Certificate shall be issued in a separate document.

### ***B. The Civil Penalty, Refunds and Collections***

1. Civil Penalty. Mr. Corvino dedicated most of his comments to the explanation of and request for imposition of a civil penalty for the Company and refund to the customers. He contended that the Company built and operated a for-profit water company in violation of Title 61, misrepresented its actions regarding the application for a CPCN, and is subject to a civil

penalty pursuant to *Idaho Code* §§ 61-706 and 61-707. He noted that Mayfield is not exempt from complying with Title 61 because the Company is “not a homeowner’s association, formal water district, municipality or other mutual non-profit organization.” Comments at 4. He urged “the Commission to impose a civil penalty of \$1,716,000 on the Company” (\$2,000 per day from September 29, 2005, through February 3, 2008).<sup>5</sup> He also requested a refund of any and all monies collected while the Company was operating illegally (prior to filing its CPCN Application with the Commission). *Id.* Staff did not take a position on the imposition of a civil penalty or refunds to customers.

**Commission Finding:** We begin by noting that Mayfield Springs is a water corporation providing utility water service to customers for compensation. *Idaho Code* §§ 61-125, 61-129. Based upon the record, Mayfield began charging \$100 for monthly water service in January 2007. Corvino Comments at 5; Exh. 204, p. 3. In May 2007, the Company reduced its water bill to \$50 (retroactive to January 2007). Corvino Comments at 5; Exh. 207. It is clear that Mayfield and its predecessors have been operating as a utility since at least January 2007.

*Idaho Code* § 61-706 generally provides that a public utility that violates any provision of the Idaho Constitution, the Public Utilities Law, a Commission Order or Rule may be subject to a civil penalty of not more than \$2,000 for each offense. *Idaho Code* § 61-707 provides that each day’s continuance of the violation shall be deemed to be a separate and distinct offense. Despite Mr. Corvino’s request that the Commission “impose a penalty,” there are two reasons we decline to do so. First, the Commission is not empowered to assess a civil penalty. The Commission is an agency of limited jurisdiction and we may only exercise that authority delegated to us by the Legislature. Under the Public Utilities Law, the assessment of a civil penalty lies within the province of the District Court. *Idaho Code* §§ 61-701, 61-712. *Idaho Code* §§ 61-701 and 61-712 provide that it is the Commission and the “attorney of the commission” which may bring an action in the District Court for the assessment of a civil penalty. In comparison, the Public Utilities Law allows any person injured or damaged by a utility to file suit in a court of competent jurisdiction. *Idaho Code* § 61-702. Moreover, if the Court were to assess a civil penalty it is to be paid into the State Treasury to the credit of the General Fund. *Idaho Code* § 61-712.

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<sup>5</sup> September 29 is the date the developer (Mr. Johnson) entered into an agreement with the Abercrombies to collect the first \$2,500 hookup fee. Mayfield Springs’ filed its Application for a CPCN on February 5, 2008. *Id.* at 8.



Second, Mayfield is a small water company with a rate base of about \$13,500 and an authorized annual revenue requirement of \$42,000. In the past 25 years there have only been four or five instances where the Commission found that seeking a civil penalty was warranted. The largest civil penalty paid by a utility was \$75,000 against PacifiCorp for its failure to provide customers with a notice of its intent to increase rates.<sup>6</sup> What's more, the statute does not compel a penalty of \$2,000 per day; it authorizes a penalty of "not more than \$2000." *Idaho Code* § 61-706 (emphasis added). We find that the amount of the requested civil penalty in this instance is excessive and not supported by the evidence. *Idaho Code* § 61-712B.

2. Refunds. As previously stated, Mr. Corvino requested that Mayfield issue refunds to customers of any and all monies collected prior to the Company's filing for a CPCN with the Commission. In its reply comments, the Company asserted the Commission is prohibited from awarding refunds for past charges because such action would amount to retroactive ratemaking and/or the equivalent of damages. The Company further reasoned that the current interim flat rate of \$50 per month approved by the Commission is slightly lower than the rate that would result from Staff's proposed revenue requirement based on average customer usage. In other words, customers would not be entitled to any refund of monthly charges. Despite the potential under-collection, the Company maintains that it does not intend to seek additional funds from its customers to make up for this deficiency.

**Commission Finding:** Our primary task in this proceeding is to establish the rates and fees that Mayfield may charge its customers for water service. In Order No. 30512 issued March 2, 2008, the Commission set interim rates in this matter at \$50 per month for unlimited service. Interim rates relate back to the date of the Company's Application on February 5, 2008. In this Order, the Commission establishes prospective meter rates. The new metered rates in this Order will become effective for service rendered on or after August 30, 2008.

Having established the foregoing, we turn to Mr. Corvino's request for refunds of all monies collected prior to the Company's February Application. We note that the District Court in its Memorandum Decision dated August 4, 2008 has essentially granted Mr. Corvino's request for a refund of any and all monies collected before the date Mayfield filed its Application for a Certificate. The Commission, however, is unable to grant similar relief to Mr. Corvino based

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<sup>6</sup> PacifiCorp has an Idaho ratebase of approximately \$475 million and a revenue requirement in excess of \$175 million. Case No. PAC-E-07-05, Exh. 108; *see also* Order No. 30482.

upon Idaho Supreme Court precedent. In *McGuire Estates Water Co. v. Idaho PUC*, our Supreme Court overturned a Commission Order barring a water company “from collecting past due accounts which accrued while the Company was operating as an ‘illegal’ utility. . . .” 111 Idaho 341, 343, 723 P.2d 885, 887 (1986). In *McGuire* the Commission’s Order directed the company “not to collect or attempt to collect for bills that were more than one month in arrears as of the date of the Order ‘because of the obvious inequities involved in billing customers for ten years of service.’” *Id.* at 342, 723 P.2d at 886. The Court found that the Commission lacks the authority “to prohibit a utility, charging reasonable rates, from collecting on its past due accounts.” *Id.* at 343, 723 P.2d 887 (footnote omitted). Thus, we are constrained – unlike the District Court acting in its equity capacity – from prohibiting a utility from collecting reasonable rates that are past due for service rendered before it received a Certificate.

3. Collection of Arrearages. Although it does not intend to seek recovery of any under-collection of customer charges, the Company argues that many customers have not consistently paid their water bills for the last year or longer, putting the Company’s financial health in jeopardy. The Company seeks to recover all past due charges for water service at the authorized interim rates. In addition, the Company requested that the Commission order all delinquent accounts to be brought current within 90 days. After 90 days, the Company seeks authorization to take action to collect these past due amounts “in compliance with all applicable Commission statutes and rules.” Reply Comments at 15.

**Commission Finding:** Consistent with the District Court’s decision and *McGuire Estates*, we find Mayfield may recover the Commission authorized interim charges from February 5, 2008. The Company shall inform customers with arrearages back to February 5 so that they may make reasonable payment arrangement during the next 30 days to bring their accounts current.

#### **ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

We find that Mayfield Springs Water Company is a public utility pursuant to *Idaho Code* §§ 61-124, 61-125, 61-129, and is granted a Certificate of Public Convenience and Necessity pursuant to *Idaho Code* § 61-526.

Having fully reviewed the record in this proceeding, we find that it is just and reasonable for the Company to receive a 12.0% rate of return. The Company is authorized to collect annual revenues of \$42,035.

We conclude that the rates and charges set in this Order are fair, just and reasonable.

### **ORDER**

IT IS HEREBY ORDERED that Mayfield Springs Water Company's request for a Certificate of Public Convenience and Necessity is granted. Certificate No. 478 shall be issued as a separate document.

IT IS FURTHER ORDERED that the Company implement rates and charges as set out in this Order.

IT IS FURTHER ORDERED that the Company shall submit tariffs in compliance with the rates and charges identified in this Order no later than seven (7) days from the service date of this Order. The rates and charges authorized by this Order shall become effective for service rendered on and after August 30, 2008.

IT IS FURTHER ORDERED that Mayfield Springs advise the Commission Staff within 28 days of the service date of this Order whether its water rights permits for the system are held by the utility, Mayfield Springs.

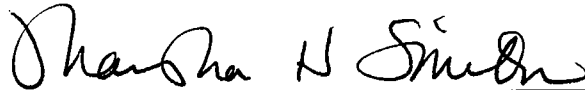
IT IS FURTHER ORDERED that Mr. Corvino's request for the imposition of a civil penalty is denied.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 26<sup>th</sup>  
day of August 2008.



MACK A. REDFORD, PRESIDENT

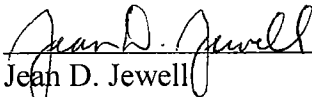


MARSHA H. SMITH, COMMISSIONER



JIM D. KEMPTON, COMMISSIONER

ATTEST:



Jean D. Jewell  
Commission Secretary

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