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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 OF THE  
) INTERVENOR, GERALD J.  
) CORVINO  
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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. Comments are also included regarding the complaints filed against the Company pursuant to the Commission’s decision to include the complaints in the CPCN review process.

“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.

## **Rates and Fees**

The company proposes that it provide water service to the Arrowrock Subdivision exclusively. That limits the customers of the water service to lots and homes within the subdivision, the Arrowrock Ranch Home Owners Association (“HOA”) and Intermountain Sewer and Water (“Intermountain”), collectively the “rate payers”. The HOA maintains the common area, and under the Company’s proposal, would pay for water service. Intermountain provides sewer service exclusively within the subdivision and is also identified as a rate payer by the company based on water meter reading provided in discovery.

Since the HOA and Intermountain derive revenue only from the homeowners and lot owners within the subdivision, there is no added value in passing the water expense through the HOA and Intermountain. In fact, that “pass through” would increase the cost to both the HOA and Intermountain which, being unregulated, would add administrative costs and then pass those increased costs on to the rate payers. Therefore, we recommend that the HOA and Intermountain be excluded from charges for water service.

The Company has requested and previously collected a “hook up” fee of \$2,500. We believe this fee is an attempt by the Company to circumvent Rule 103 of the Commission’s Policies and Presumptions for Small Water Companies, IDAPA, 31.36.31.103 with respect to the presumption of contributed capital. This “hook up” fee is an attempt to recover the capital costs of building the system which should be excluded from the rate base. We recommend the Commission disallow this fee.

In terms of the actual rates, we recommend that the Commission adopt a rate structure based on two types of residential customers, active and inactive. Inactive customers are defined as the owners of lots within the subdivision not currently connected to the water system and not currently receiving water from the Company. Active customers are those lots connected to the system with water available regardless of the status of home construction on the lot.

The following is the current status of the lots within the subdivision by type based on the above definitions:

<b>Type of Customer</b>	<b>Count (as of May 21, 2008)</b>
Active	54
Inactive	46

The active count above includes all lots with houses including two of which are under construction. Eight of the houses appear to be complete including, for the most part, landscaping and have never been occupied. This count does not include Intermountain Water and Sewer based on the discussion above.

Inactive customers should be required to pay for the system since they directly benefit from the availability of the water system. None of the lots have water rights and are precluded by the HOA Covenants, Conditions and Restrictions (CC&Rs) Section 9.1 from providing their own water. The area in Southeastern Idaho where the subdivision is located being essentially a desert, lots without access to water are valueless. In addition, inactive customers benefit in the water provided to the HOA for use in irrigating the common area as the value of the property is enhanced by maintenance of the common area. Therefore, we recommend the Commission direct its staff to construct a rate based on these two customer classes.

### **Expenses**

We recommend that the Commission deny any Company expenses in the following areas:

- Any and all expenses related to the lawsuit brought by fourteen rate payers against Arbor Ridge, LLC (District Court of the 4<sup>th</sup> Judicial District Case No. CVOC0708918, Guy and Lori Bourgeau et al, Plaintiffs versus Greg Johnson et al, Defendants). (See discussion below.)
- Any and all expenses related to the sale of assets from Arbor Ridge, LLC to Mayfield Springs Water Company as this transaction was essential a “transfer” from one company owned one hundred percent (100%) by Greg Johnson to another.

- Any and all expense related to a sinking fund. The entire water system is less than three years old and the owner of the system and the subdivision (being one and the same) has sufficient assets to deal with any maintenance related issues for the foreseeable future.

### **Contributed Capital**

We recommend the Commission reject the Company's request to recover some of the contributed capital and the entire initial cost of the system be excluded from the rate base. The Company's argument is, essentially, they spent the money, recovered some of it in the hook up fee and therefore should get the remainder. We believe the Commission should enforce the Commission's Policies and Presumptions for Small Water Companies, IDAPA, 31.36.31.103 as written.

### **Complaints**

The Commission staff recommended and the Commission decided to incorporate complaints filed with Commission against Arbor Ridge, LLC acting as an unregulated water company. The following discussion relates to those complaints.

The Company operated illegally as a for profit water company from at least September 29, 2005 through February 3, 2008. The Company built a water system, established and modified water rates and charges, billed and collected connection and service fees without Idaho Public Utility Commission (PUC) approval as required by Title 61 and IPUC Rules (IDAPA 31.21.01.000 et seq.) The Company is not exempt from this requirement, as they are not a homeowner's association, formal water district, municipality or other mutual non-profit organization.

During the time the Company operated illegally, it represented that it was working with the PUC on an application for completion in summer 2007. The Company also asserted through affidavits filed in the court case described below that PUC officials "knew and approved their operation without a CPCN. PUC staff knew no later than February 27, 2007 that the Company was operating illegally. In May, 2007, fourteen customers filed suit against the company in part because the Company had

not filed for a CPCN and there was no indication at that time that the Commission would force the Company to apply or, based the Company's actions to date that it would ever apply.

The following reviews the series of events that led up to the filing of the CPCN. We have also included events that occurred shortly after the filing but are related to the CPCN specifically. All documents described in the following were made available to the Commission in Intervenor Exhibits 201 through 211 inclusive.

On July 14, 2005, the Company certified in a letter to Ada County Development Services that Intermountain Sewer and Water, Inc would operate the water system.

On September 13<sup>th</sup>, 2005, the Ada County Board of Supervisors approved the plat for the Arrowrock Ranch Subdivision Number 1. A required condition of that approval was approval by the "Public Utilities Commission regarding the establishment of a non-contiguous service area." Clearly, this condition was never met and Ada County Development Services have been unable to find any document in their files used to certify the completion of this requirement.

On September 29, 2005, the Developer, entered into an agreement with Mark and Amber Abercrombie which required the Abercrombie's to pay a \$2,500 "water hook up fee." We believe this is the earliest date the Company operated as an unregulated water company.

In June of 2006, the Abercrombie family occupied the first home in the subdivision.

On or about January 30th 2007, the Company operating as Arbor Ridge Water Account began billing residents of the subdivision at \$100 per month.

On February 27, 2007, a meeting was held between the Company and members of the PUC Staff. Michael Darrington, then a utility analyst with the PUC, told the Company they were required to file a CPCN.

On March 8th, 2007, Greg Johnson stated in a letter to water service customers that “We, Arbor Ridge Water Account, LLC, have met the PUC, Public Utility Commission, and will be working with them over the next 120 days on setting prices on the water service at Arrowrock Ranch Subdivision.”

In March, 2007, Gerald J. Corvino filed a complaint with the PUC through the PUC website.

On March 26th, 2007, Chris Hecht, Utility Compliance Investigator, Idaho Public Utilities Commission stated in an email to Gerald J. Corvino: “Arbor Ridge has not applied to IPUC even though we have requested that they do so.”

On May 2, 2007, Greg Johnson sent another letter to customers stating: “Water will be reduced to \$50 per month (Retroactive from January 2007) and continue at the \$50 per month rate until such time that we become certified with the PUC. At that time, it will become a metered service.”

On June 14, 2007, Chris Hecht stated in an email to Gerald J. Corvino: “I checked with the other staff members and the IPUC has been in contact with the accountant who is working on the financial part of the application. Progress is being made toward completing the application.”

In July 2007, Gerald Corvino made a public records request of the PUC with respect to all records related to the application of the Company as a water company. The Commission Secretary, Jean D. Jewel responded on July 19, 2007: “A search of our records has not revealed any records relating to an application by Arbor Ridge or Intermountain Sewer and Water to operate as a water company.”

On January 31, 2008, Gerald J. Corvino filed a formal complaint with the PUC as defined in Rule 54 of the PUC Rules of Procedure.

On the morning of February 5, 2008, the Company, doing business as Idaho Springs Water Company filed for a CPCN.

On the afternoon of February 5, the Company's attorney (Spink Butler, LLP) in Case No CVOC0708918, Guy and Lori Bourgeau et al, Plaintiffs versus Greg Johnson et al, Defendants argued before the 4<sup>th</sup> Judicial Court "that the PUC is aware of the Defendants' water service charges and that the PUC has condoned such charges during times when certificate applications are in the process of being completed and approved."

On March 10<sup>th</sup> 2008, the District Court in the case described above ruled in a summary judgment related to the claim that the company operated illegally:

"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."

Clearly from the above events, the Company:

- Built and operated a for profit water company in violation of Title 61 and PUC rules.
- Misrepresented its progress in the CPCN application process to Ada County Development Services.
- Misrepresented its timeframe to file for a CPCN to its customers.
- Argued in 4<sup>th</sup> District Judicial Court that the Commission staff was complicit in its actions as described above.
- Violated Title 61 and IPUC Rules (IDAPA 31.21.01.000 et seq.)
- Is subject to Title 61-706 and Title 61-707 for the violations described above.

We expect the Commission will see more cases of this kind where a developer builds and operates a water system in order to sell lots and homes without the approval of the Commission as required by Idaho statute. The developer will then apply for the CPCN either due to pressure applied by customers through the Commission as in this case or when a significant number of lots in the subdivision have been sold. We also believe the Legislature intended to prevent this kind of behavior by establishing the Commission and setting penalties for violation of Commission rules.

We respectfully request the Commission order the Company to repay to all parties served any and all monies collected including connection and service fees, late charges and any other charges illegally collected during the period of operation prior to the application for the CPCN (February 4<sup>th</sup>, 2008.). In addition, we request the Commission impose a penalty of \$1,716,000 on the Company which represents \$2,000 per day from September 29, 2005 through February 3, 2008 (a period of 858 days) as allowed per Idaho Title 61-706 and Title 61-707.

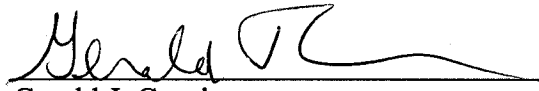
The Company may argue that this penalty is excessive considering the size of the water system and expected revenue. However, the Commission should note that the water service provider and the development company are essentially one and the same. As described above, Greg Johnson is the only beneficial owner of the development companies and the various water companies based on the Company response to discovery request. We further believe the company expects to collect revenues in excess of seven million dollars from the sale of lots in the two phases of the Arrowrock Ranch subdivision. Clearly the "reward" for acting illegally justifies a significant penalty as allowed by Idaho statute.

The Company may also argue that Commission staff was "aware" of their operation. However, the Company has presented no evidence that the Commission staff was aware when the system was built or when the Company told Ada County Development Services that Intermountain Water and Sewer would operate the system or when the Company charged the first customer a hook up fee in September 2005 or when the Company first delivered water for domestic consumption in June of 2006 or when the Company delivered the first bills for service in January 2007.

The Company may further claim that the Commission staff "accepted" their unregulated operation as a small water company. This claim is irrelevant as the Legislature never authorized or intended to authorize the Commission staff to waive regulation of any public utility as defined in Title 61.



**DATED** at Kuna, Idaho, this 27th day of May 2008.

  
Gerald J. Corvino

Cc: John R. Hammond  
Kris Sasser