

# OPEN MEETING ITEM



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**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

## ORIGINAL



### ARIZONA CORPORATION COMMISSION

22

DATE: OCTOBER 3, 2005  
DOCKET NO: SW-04123A-03-0692  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

#### MARTINEZ LAKE SEWER COMPANY (CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 12, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 18, 2005 and OCTOBER 19, 2005

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF  
MARTINEZ LAKE SEWER COMPANY, FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE SEWER SERVICE IN  
YUMA COUNTY, ARIZONA.

DOCKET NO. SW-04123A-03-0692

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING: September 1, 2005  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Wade Noble, NOBLE LAW OFFICES, on behalf of  
Martinez Lake Sewer Company; and  
Mr. Keith Layton, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On September 19, 2003, Martinez Lake Sewer Company ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide wastewater service to various parts of Yuma County, Arizona.

On October 9, 2003, pursuant to A.A.C. R14-2-610(C), the Commission's Utilities Division ("Staff") issued a notice of insufficiency to the Company that the application had not been deemed sufficient.

On July 8, 2005, Staff issued a letter of administrative completeness.

On July 13, 2005, a Procedural Order was issued which set a hearing on the application for September 1, 2005. The Procedural Order also ordered the Company to publish notice of the proceeding at least once in a newspaper of general circulation in its proposed service territory.

On July 29, 2005, the Company filed certification that it had provided public notice pursuant

1 to the Commission's Procedural Order.

2 On August 12, 2005, Staff filed its Staff Report in this matter.

3 On September 1, 2005, a full public hearing was convened before a duly authorized  
4 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff  
5 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement  
6 pending submission of a Recommended Opinion and Order to the Commission.

7 On September 15, 2005, Staff filed an amended Staff Report which contained Staff's  
8 amended recommendations made during the hearing.

9 \* \* \* \* \*

10 Having considered the entire record herein and being fully advised in the premises, the  
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. On September 19, 2003, the Company filed an application for a Certificate in order to  
14 provide sewer service to a planned 25 acre residential subdivision together with 12 adjoining lots  
15 located adjacent to the Martinez Lake Resort ("Resort") which is approximately 30 miles north of the  
16 City of Yuma ("City"), Yuma County, Arizona, which area is more fully described in Exhibit A  
17 attached hereto, and incorporated herein by reference.

18 2. Applicant is an Arizona corporation, which is owned by Mr. and Mrs. John Guth who  
19 have owned the Resort since 1978. The Resort consists of a 110 acre lake with a 107 space marina,  
20 convenience store, cantina and restaurant. The Resort also owns a 25 space RV park and a 156 rental  
21 lots which contain mobile homes, "stick homes" and the like that presently utilize septic system for  
22 waste disposal.

23 3. The Resort is in the process of developing its rental lots as a subdivision for sale to its  
24 tenants. In order to proceed with the development of the property, the Applicant was formed to  
25 replace the existing septic system presently utilized by the Resort and by the rental tenants and to  
26 provide wastewater treatment service to the Resort and the subdivision because county regulations no  
27 longer permit the use of septic systems when development takes place. After the first five years of  
28 development, the Company projects that approximately 200 residential properties will be provided

1 with wastewater service.

2 4. Rental tenants and the Resort receive their water service from Shepard Water  
3 Company ("Shepard"), a public service corporation acquired by the Guths on September 30, 2002,  
4 when Mr. Guth purchased the stock of Shepard from its prior owner who had been supplying the  
5 Resort area with water.<sup>1</sup> However, Mr. Guth has not previously been engaged in the operation of a  
6 wastewater utility.

7 5. After Mr. Guth acquired Shepard and decided to subdivide the Resort parcel, it was  
8 determined that Shepard would be rebuilt and brought into compliance when the sewer and the  
9 electrical system are installed underground and the streets are paved throughout the Resort's  
10 property. In this way, the entire construction project will be built more economically.

11 6. Progress on bringing Shepard into compliance has been delayed while the Company's  
12 sewer application has been pending. However, pursuant to the Commission's Order, Shepard has  
13 secured approval from WIFA for the financing authorized in Decision No. 62091 and has filed the  
14 executed documents with the Commission. During the hearing, Mr. Guth testified that Shepard has  
15 not begun to collect either the first phase surcharge of \$5.00 or the second phase surcharge of \$10.00  
16 approved in Decision No. 62091, and will not do so until the system is rebuilt as planned.

17 7. In Staff's initial report, although Staff found that Shepard has had no consumer  
18 complaints filed against it since Mr. Guth assumed its ownership in September 2002, Staff found that  
19 Shepard had failed to comply with a number of the Commission's orders in Decision No. 62091.  
20 These compliance issues are all related to the rebuilding of the water system.

21 8. Mr. Guth testified that he had not been made aware of the compliance requirements  
22 established in Decision No. 62091 when he acquired the system, but will proceed with the rebuilding  
23 of the Shepard system with the WIFA loan proceeds when work is started on the sewage system and

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24 <sup>1</sup> On November 19, 1999, the Commission issued Decision No. 62091 which approved new rates for Shepard and  
25 authorized financing approval of a Water Infrastructure Financing Authority ("WIFA") loan in the amount of \$299,475  
26 for 20 years to rebuild the entire water system including new wells, storage and distribution system. Shepard's approved  
27 rates included a two phase surcharge in addition to its new base rates. Phase One was for \$5.00 and was to begin after  
28 Shepard had borrowed \$150,950 to proceed with Phase One improvements. Phase Two was for \$10.00 and was to begin  
after Shepard filed a progress report to be reviewed and approved by Staff after which the Phase One surcharge would  
terminate and the Phase Two surcharge was to go into effect to service the remaining debt to WIFA. Shepard's prior  
owner never secured the loan nor started to rebuild the system as planned, and Mr. Guth was unaware of any compliance  
required under Decision No. 62091 until recently.

1 will satisfy the outstanding compliance issues at that time.

2 9. Applicant will hire a certified operator to operate the wastewater system and to  
3 maintain it in compliance with Arizona law.

4 10. The Company stipulated to Staff's recommendations in the amended Staff Report  
5 including Staff's proposed initial rates and charges as set forth in Schedule JJD-3R to the amended  
6 Staff Report which is more fully described in Exhibit B attached hereto, and incorporated herein by  
7 reference.

8 11. The Resort expects that it will sell out its lots to its existing tenants without difficulty.  
9 The 12 existing adjacent lot owners who presently use septic systems within the proposed Certificate  
10 area will not be required to connect to the Company's collection system, but will be offered an  
11 opportunity to connect if they wish to do so.

12 12. Pursuant to the Commission's Procedural Order, Applicant published public notice of  
13 the application and the hearing thereon.

14 13. In order to provide wastewater treatment service to the area described in Exhibit A, the  
15 Company is proposing to construct a collection system that will consist of 6,600 feet of collection  
16 main, 30 manholes, 200 laterals, 1,485 feet of force main and two lift stations at an estimated cost of  
17 \$997,188.

18 14. The wastewater collected by the Company will be transported through the Company's  
19 collection system to the adjacent Fisher's Landing Water and Sewer Works ("Fisher's Landing")  
20 which holds a Certificate to provide wastewater service and water service. Fisher's Landing  
21 presently serves a 211 space RV park and a 111 space mobile home park.

22 15. Fisher's Landing, which has contracted with the Company to treat its wastewater, has  
23 the capacity to treat up to 75,000 gallons of wastewater per day which is sufficient to treat the Resort  
24 subdivision's wastewater. The Contact requires the Company to pay Fisher's Landing a one time  
25 hook-up fee of \$8,000 and to pay \$2.50 per 1,000 gallons for wastewater treatment. Pursuant to the  
26 contract, the treatment charge may only be changed with Commission approval.

27 16. Since the Company will only be operating a collection system for wastewater and not  
28 a treatment plant, the Arizona Department of Environmental Quality ("ADEQ") will not regulate the

1 Company's system. However, ADEQ does regulate Fisher's Landing which is in compliance with  
2 ADEQ's regulations.

3 17. Based on the Company's application, using pro forma revenues and expenses, with a  
4 proposed monthly minimum charge of \$32.12 for sewer service, as recommended by Staff, it is  
5 estimated that the Company should earn a profit in its early years of operations because it appears  
6 that lots will sell rapidly.

7 18. Applicant will not need to secure a county franchise to provide wastewater service for  
8 the area described in Exhibit A because the system will be constructed in private streets in the Resort.

9 19. Other than the sewage facilities to be constructed by the Company, there are no other  
10 public service corporations or municipal utilities authorized to provide wastewater service in the area  
11 requested to be certificated herein.

12 20. Staff expressed concerns in its initial Staff Report that, since Mr. Guth owned  
13 Shepard, which has outstanding compliance issues including its failure to file the following: a rate  
14 application; copies of executed WIFA loan documents; progress reports on its WIFA loan; and  
15 project plans and final design reports as ordered in Decision No. 62091, Mr. Guth might operate  
16 Applicant in a similar fashion. Therefore, Staff initially recommended only that an Order  
17 Preliminary be issued to the Company subject to a number of conditions.

18 21. However, after the executed WIFA documents were filed, and Staff was more fully  
19 apprised of Mr. Guth's overall plans to rebuild Shepard as the Resort is developed, along with his  
20 plans to construct the wastewater system for Applicant, Staff is now recommending the issuance of a  
21 Certificate to the Company to provide wastewater service to the Resort's subdivision described in  
22 Exhibit A and the authorization of Staff's initial rates and charges as set forth in Schedule JJD-3R, as  
23 set forth in Exhibit B attached hereto.

24 22. Additionally, Staff is recommending that the Commission condition the issuance of a  
25 Certificate upon the following:

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1. that the Company file, within 365 days of the effective date of this Decision, with Docket Control as a compliance item, a copy of the Fisher's Landing Aquifer Protection Permit ("APP");

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- 2. that the Company adopt Staff's recommended depreciation rates at Table B of the Engineering Report attached to the Staff Report;
- 3. that the Company file, within 30 days of when it first provides service to any customer, with Docket Control as a compliance item, certification that it has begun to provide service;
- 4. that the company charge Staff's rates and charges shown on Exhibit B attached hereto and collect from its customers a proportionate share of any privilege, sales or use tax, pursuant to A.A.C. R14-2-608;
- 5. that the Company file, within 30 days of the effective date of this Decision, with Docket Control as a compliance item, a tariff consistent with the rates and charges authorized by the Commission hereinafter;
- 6. that the Company file, no later than three months following the fifth anniversary of this Decision, with the Commission, a rate application;
- 7. that the Company maintain its books and records in accordance with the NARUC Uniform System of Accounts for Sewer Utilities;
- 8. that the Company file, within 365 days of the effective date of this Decision, with Docket Control as a compliance item, a copy of its Certificate of Approval to Construct issued by Yuma County; and
- 9. that the Company's fair value of the property devoted to wastewater service will be \$904,631 in its fifth year of operations.

23. Staff further recommends that the Commission's Decision granting this Certificate to the Company be null and void if the Company fails to meet conditions one, five, and eight within the times specified above in Findings of Fact No. 22.

24. Under the circumstances herein, we believe that the Company's application for a Certificate should be approved with Staff's initial rates and charges as set forth in Exhibit B and agreed upon by Applicant. We further find that Staff's additional recommendations should be adopted and complied with by the Company.

**CONCLUSIONS OF LAW**

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and 40-282.

2. The Commission has jurisdiction over the Company and of the subject matter of the

1 application.

2 3. Notice of the Company's application as described herein was given in the manner  
3 prescribed by law.

4 4. The public convenience and necessity require and the public would benefit by the  
5 issuance to the Company of a Certificate to provide certificated sewer service to the area described in  
6 Exhibit A.

7 5. Applicant is a fit and proper entity to provide sewer service and to receive a Certificate  
8 which encompasses the areas more fully described in Exhibit A.

9 6. Applicant should charge the rates and charges as set forth in Exhibit B.

10 7. The Company's application for a Certificate should be approved subject to Staff's  
11 recommendations and the Company's compliance with Findings of Fact No.22.

12 **ORDER**

13 IT IS THEREFORE ORDERED that the application of Martinez Lake Sewer Company for a  
14 Certificate of Convenience and Necessity for the operation of sewage facilities in the areas more fully  
15 described in Exhibit A be, and is hereby, approved.

16 IT IS FURTHER ORDERED that Martinez Lake Sewer Company shall charge those  
17 customers in the areas more fully described in Exhibit A Staff's recommended rates and charges as  
18 set forth in Exhibit B until further order of the Commission.

19 IT IS FURTHER ORDERED that Martinez Lake Sewer Company shall comply in all respects  
20 with the conditions set forth in Findings of Fact No. 22 and Conclusion of Law No. 7 above.

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1 IT IS FURTHER ORDERED that the Commission's Decision granting this Certificate of  
2 Convenience and Necessity to Martinez Lake Sewer Company for the area described in Exhibit A  
3 shall be null and void if Martinez Lake Sewer Company fails to timely file or comply with the  
4 conditions set forth at Findings of Fact No. 22 at conditions numbers one, five, and eight above.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

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11 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

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13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Director of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this \_\_\_\_ day of \_\_\_\_\_, 2005.

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20 BRIAN C. McNEIL  
21 EXECUTIVE DIRECTOR

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DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: MARTINEZ LAKE SEWER COMPANY

2 DOCKET NO.: SW-04123A-03-0692

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4 Wade Nobel  
Martinez Lake Sewer Company  
1405 W. 16<sup>th</sup> Street  
5 Yuma, AZ 85364

6 Christopher Kempley, Chief Counsel  
Legal Division  
7 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
8 Phoenix, Arizona 85007

9 Ernest Johnson, Director  
Utilities Division  
10 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
11 Phoenix, Arizona 85007

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Martinez Lake Sewer Company  
SW-04123A-03-0692

**EXHIBIT "A"**

That portion of Lot 4 of Section 19, Township 5 South, Range 21 West, Gila and Salt River Base and Meridian, Yuma County Arizona, More particularly described as follows:

Beginning at the Southeast corner of Section 19, Township 5 South, Range 21 West; thence North 65 degrees 44 minutes 56 Seconds West a distance of 3,220.64 feet to a point on the North line of Lot 4; Thence along the north line of said Lot 4 South 89 degrees 56 minutes 12 seconds West a distance of 427.32 feet to the TRUE POINT OF BEGINNING; Thence continuing South 89 degrees 56 minutes 12 seconds West a distance of 422.89 feet; Thence South 35 degrees 16 minutes 34 seconds East a distance of 65.00 feet; Thence South 13 degrees 25 minutes 34 seconds East a distance of 83.06 feet; Thence South 71 degrees 07 minutes 47 seconds East a distance of 110.67 feet; Thence South 59 degrees 05 minutes 55 seconds East a distance of 340.39 feet; thence North 00 degrees 57 minutes 07 seconds West a distance of 246.06 feet; thence North 19 degrees 47 minutes 17 seconds West a distance of 78.71 feet; Thence North 00 degrees 00 minutes 43 seconds West a distance of 24.84 feet to the TRUE POINT OF BEGINNING.

Containing 2.0966 Acres more or less.

## EXHIBIT A

**LEGAL DESCRIPTION**

**THAT PORTION OF LOTS 1, 2, AND 3 AND THE SE 1/4, NW 1/4 OF SECTION 19, TOWNSHIP 5 SOUTH, RANGE 21 WEST, G.&S.R.B.&M., YUMA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SE CORNER OF SECTION 19, TOWNSHIP 5 SOUTH, RANGE 21 WEST THENCE WESTERLY A DISTANCE OF 2639.26' TO THE S 1/4 CORNER OF SECTION 19 T.5S., R.21W., THENCE N00°05'00"W A DISTANCE OF 1319.77' TO THE SE CORNER OF LOT 3, BEING THE NE CORNER OF LOT 4 (IN LAKE) AND THE TRUE POINT OF BEGINNING;**

**THENCE N89°57'20"W ALONG THE NORTH LINE OF LOT 4, A DISTANCE OF 1108.68' TO A POINT;  
THENCE N05°30'00"W A DISTANCE OF 523.87' TO A POINT;  
THENCE N29°45'00"W A DISTANCE OF 815.10' TO A POINT;  
THENCE N19°45'00"E A DISTANCE OF 389.40' TO A POINT;  
THENCE N59°45'01"W A DISTANCE OF 576.00' TO A POINT;  
THENCE N29°29'55"W A DISTANCE OF 290.40' TO A POINT;  
THENCE N09°59'55"W A DISTANCE OF 244.20' TO A POINT;  
THENCE N56°51'10"W A DISTANCE OF 521.56' TO A POINT;  
THENCE NORTHERLY A DISTANCE OF 1320.00' TO THE NW CORNER OF LOT 1;  
THENCE S89°56'00"E A DISTANCE OF 1227.60' TO THE NE CORNER OF LOT 1;  
THENCE SOUTHERLY A DISTANCE OF 1320.00' TO THE SE CORNER OF LOT 1;  
THENCE S89°57'00"E A DISTANCE OF 1320.00' TO THE NE CORNER, SE 1/4, NW 1/4;  
THENCE S00°05'00"E A DISTANCE OF 2662.80' TO THE TRUE POINT OF BEGINNING;  
CONTAINING 134.4990 ACRES MORE OF LESS.**

EXHIBIT B

Martinez Lake Sewer Company  
 Docket No. SW-04123A-03-0692

Schedule JJD-3

**PROPOSED RATES**

| <u>Monthly Usage Charge</u>         | -Proposed Rates- |         |
|-------------------------------------|------------------|---------|
|                                     | Company          | Staff   |
| Residential                         | \$31.00          | 32.12   |
| Commercial                          | \$350.00         | 381.11  |
| <u>Service Charges</u>              |                  |         |
| Establishment                       | \$50.00          | \$30.00 |
| Establishment (After Hours)         |                  | \$40.00 |
| Reconnection (Delinquent)           | \$75.00          | \$30.00 |
| Deposit                             | \$50.00          | *       |
| Deposit Interest                    | 6.00%            | *       |
| Re-Establishment (Within 12 Months) | \$100.00         | **      |
| NSF Check                           | \$30.00          | \$25.00 |
| Deferred Payment                    |                  | ***     |
| Late Fee                            | \$5.00           | *       |

- \* Per Commission Rules (R14-2-403.B)
- \*\* Months off system times the minimum (R14-2-403.D)
- \*\*\* 1.5% per month.