

# OPEN MEETING ITEM



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



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ARIZONA CORPORATION COMMISSION

2006 NOV 27 P 2:25

DATE: NOVEMBER 27, 2006

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKET NO: SW-04210A-06-0220

TO ALL PARTIES:

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

THE LINKS AT COYOTE WASH UTILITIES, L.L.C.  
(CC&N EXTENSION)

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:

DECEMBER 6, 2006

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:

DECEMBER 19, 2006 and DECEMBER 20, 2006

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.

Arizona Corporation Commission

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

IN THE MATTER OF THE APPLICATION OF  
THE LINKS AT COYOTE WASH UTILITIES,  
L.L.C., FOR AN EXTENSION OF ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE SEWER SERVICE IN  
YUMA COUNTY, ARIZONA.

DOCKET NO. SW-04210A-06-0220  
DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING: November 6, 2006  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Patrick J. Black, FENNEMORE CRAIG, on behalf  
of The Links at Coyote Wash Utilities, L.L.C., and  
Mr. Kevin Torrey, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On April 14, 2006, the Links at Coyote Wash Utilities, L.L.C. ("Company" or "Applicant")  
filed with the Arizona Corporation Commission ("Commission") an application for an extension of  
its Certificate of Convenience and Necessity ("Certificate") to provide wastewater service to various  
parts of Yuma County, Arizona.

On May 3, 2006, 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 August 31, 2006, Staff issued a letter of administrative completeness.

On September 5, 2006, the Commission issued a Procedural Order which set a hearing on the  
application for November 6, 2006. The Commission also ordered the Company to publish notice of  
the proceeding at least once in a newspaper of general circulation in its proposed service territory.

1 On October 12, 2006, Staff filed its Staff Report in this matter.

2 On November 6, 2006, a full public hearing was convened before a duly authorized  
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff  
4 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement  
5 pending submission of a Recommended Opinion and Order to the Commission.

6 \* \* \* \* \*

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

9 **FINDINGS OF FACT**

10 1. Pursuant to Decision No. 67157 (August 10, 2004), the Company currently provides  
11 public wastewater utility service to approximately 160 customers in the Town of Wellton ("Town"),  
12 Yuma County, Arizona.

13 2. On April 14, 2006, the Company filed an application for an extension of its Certificate  
14 in order to provide sewer service to an adjacent parcel of land consisting of approximately 320 acres  
15 of land which will become part of The Links at Coyote Wash ("Links"), a residential development,  
16 located in the Town, which area is more fully described in Exhibit A attached hereto, and  
17 incorporated herein by reference.<sup>1</sup>

18 3. Applicant is a limited liability company whose sole membership interest is owned by  
19 G-12 L.L.C. ("G-12")<sup>2</sup>. G-12 is developing the Links and formed the Applicant to provide  
20 wastewater treatment service to the development.

21 4. The Company projects having approximately 250 new connections in the extension  
22 area described in Exhibit A in five years.

23 5. Residents and businesses at the Links subdivision receive their water service from the  
24 Town's municipal water system, but since the Town lacks a sewage system, G-12 had to form the  
25 Company to provide the Links with sewage service.

26  
27  
28 <sup>1</sup> Previously, as part of the development plan, the entire Links subdivision was annexed by the Town.

<sup>2</sup> G-12's two membership interests are owned by Glen T. Curtis and the Curtis Family Trust.

1           6.     In November 2005, Applicant hired Pivotal Utility Management (“Pivotal”)<sup>3</sup>, a  
2 Colorado corporation, to operate the utility and keep its books and bill its customers. Subsequently,  
3 Pivotal subcontracted with an Arizona certified operator, Sun State Environmental Services based in  
4 Yuma to operate the wastewater treatment plant (“WWTP”) on a day to day basis and to maintain the  
5 utility compliance with Arizona law.

6           7.     On September 29, 2006, Applicant filed certification that it published notice of the  
7 application and the hearing thereon as ordered in the Commission’s Procedural Order of September 5,  
8 2006.

9           8.     The Company stipulated to Staff’s recommendations in the Staff Report.

10          9.     The Company’s witness, Jason Williamson, an employee of Pivotal, testified that  
11 residential development will take place in the extension area.

12          10.    G-12 invested the funds necessary to construct the Company’s WWTP for the first  
13 phase of the development of the Links.

14          11.    According to the Company’s 2005 Annual Report, the Company has spent  
15 approximately \$549,890 for its utility plant which has the capacity to treat up to 69,300 gallons of  
16 raw sewage per day. Presently, the Company produces approximately 14,000 gallons per day of  
17 treated effluent which it sells to the nine hole golf course that is part of the Links development.

18          12.    The Company is planning for the expansion of its WWTP at an estimated cost totaling  
19 approximately \$1,128,000, as it is needed, to serve the extension area.

20          13.    Applicant has secured a permit in the form of a letter from the Town’s attorney which  
21 allows Applicant “to use the Town’s right-of-ways for its collection system.”  
22

23 <sup>3</sup>     According to the Staff Report, Pivotal owns three wastewater utilities and operates five other wastewater utilities  
24 in Arizona. Two of the principals of Pivotal are the owners of Santec Corporation (“Santec”), a Colorado corporation that  
constructs, operates and manages wastewater facilities. The Company’s WWTP was manufactured by Santec.

25     On October 24, 2001, Santec was implicated in a tragic incident that took place at the Far West Water and Sewer  
26 Company (“Far West”) facility in the Mesa Del Sol Subdivision in Yuma, Arizona. An employee of Santec and an  
employee of Far West died during the course of working on one of Far West’s tanks that had been constructed by Santec.  
27 Santec pled guilty to a Class 6 felony for violations of safety standards and causing the death of an employee. Following  
the Far West incident, Santec has provided training to all of its employees on permit-required confined space entries.  
28 (See Decision No. 68608, issued March 23, 2006). In this proceeding, due to the tragic consequences of Santec’s safety  
violations at Far West, Staff recommended that the Company’s management, employees, and others comply with all  
Arizona Division of Occupational Safety and Health (“ADOSH”) requirements and that the Company file certification of  
compliance with the Commission.

1           14.     Other than the sewage treatment facilities constructed by the Company, there are no  
2 public service corporations authorized to provide wastewater service in the areas requested to be  
3 certificated herein.

4           15.     According to a May 2, 2006, Compliance Status Report from the Arizona Department  
5 of Environmental Quality ("ADEQ"), the Company is in compliance for the operation of a sewer  
6 utility.

7           16.     With the Company's expansion, it will have to obtain a modified Aquifer Protection  
8 Permit ("APP") from ADEQ and a 208 Plan Amendment from the local association of governments.

9           17.     Applicant is current on the payment of its taxes, and is in compliance with the  
10 Commission's rules and prior Orders.

11           18.     Staff is recommending approval of the Company's application for the extension of its  
12 Certificate for the Links subdivision as described in Exhibit A. Additionally, Staff is recommending  
13 that the Commission condition the issuance of the extension of the Company's Certificate as follows:

- 14                   1.     that the Company charge its tariffed rates and charges in the extension area;
- 15                   2.     that the Company file, within two years of the effective date of this Decision,  
16 with Docket Control, as a compliance item in this docket, copies of the  
17 Approval of Construction documentation for the collection line installation  
18 needed to serve the extension area;
- 19                   3.     that the Company file, by December 31, 2007, with Docket Control, as a  
20 compliance item in this docket, a copy of its approved 208 Plan Amendment;
- 21                   4.     that the Company file, by December 31, 2008, with Docket Control, as a  
22 compliance item in this docket, a copy of ADEQ's APP modification;
- 23                   5.     that the Company require all operators, agents or employees including  
24 employees and agents of contractors and/or subcontractors operating or  
25 constructing the Company's facilities to comply with all ADOSH requirements  
26 including any and all training required by ADOSH to operate wastewater  
27 facilities; and
- 28                   6.     that the Company, on an annual basis, on the anniversary date of the Decision  
in this matter, for three years, file in Docket Control, as a compliance item in  
this docket, certification from ADOSH that it has availed itself of ADOSH  
consultation services and that its operators, agents, employees and agents of  
contractor and/or subcontractors operating or constructing the Company's

1 facilities have taken appropriate training.

2 19. Staff further recommends that the Commission's Decision granting this Certificate to  
3 the Company be null and void, after due process, if the Company fails to meet conditions two, three  
4 and four within the times specified.

5 20. Because an allowance for the property tax expense of Applicant is included in the  
6 Company's rates and will be collected from its customers, the Commission seeks assurances from the  
7 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
8 authority. It has come to the Commission's attention that a number of utility companies have been  
9 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,  
10 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, Applicant  
11 should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that  
12 the company is current in paying its property taxes in Arizona.

13 21. Under the circumstances herein, we believe that the Company's application should be  
14 approved. We further find that Staff's additional recommendations should be adopted and complied  
15 with by the Company.

#### 16 CONCLUSIONS OF LAW

17 1. Applicant is a public service corporation within the meaning of Article XV of the  
18 Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-282.

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

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

23 4. The public convenience and necessity require and the public would benefit by the  
24 issuance to the Company of an extension of its Certificate to provide certificated sewer service to the  
25 area described in Exhibit A.

26 5. Applicant is a fit and proper entity to provide sewer service and to receive an  
27 extension of its Certificate which encompasses the area more fully described in Exhibit A.

28 6. The Company's application for an extension of its Certificate should be approved

1 subject to Staff's recommendations and the Company's compliance with Findings of Fact Nos. 18  
2 and 19.

3 **ORDER**

4 IT IS THEREFORE ORDERED that the application of The Links at Coyote Wash Utilities,  
5 L.L.C. for an extension of its Certificate of Convenience and Necessity for the operation of sewage  
6 facilities in the area more fully described in Exhibit A be, and is hereby, approved provided that The  
7 Links at Coyote Wash Utilities, L.L.C. complies with the conditions set forth in Findings of Fact  
8 Nos. 18.

9 IT IS FURTHER ORDERED that the Commission's Decision granting the extension of the  
10 Certificate of Convenience and Necessity to The Links at Coyote Wash Utilities, L.L.C. for the area  
11 described in Exhibit A shall be null and void, after due process, if the Company fails to timely file or  
12 comply with the following conditions as set forth in Findings of Fact No. 18:

- 13
- 14 • that the Company file, within two years of the effective date of this Decision, with
- 15 Docket Control, as a compliance item in this docket, copies of the Approval of
- 16 Construction documentation for the collection line installation needed to serve the
- 17 extension area;
- 18 • that the Company file, by December 31, 2007, with Docket Control, as a compliance
- 19 item in this docket, a copy of its approved 208 Plan Amendment; and
- 20 • that the Company file, by December 31, 2008, with Docket Control, as a compliance
- 21 item in this docket, a copy of ADEQ's APP modification.

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1 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall annually  
2 file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is  
3 current in paying its property taxes in Arizona

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
9

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

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_ day of \_\_\_\_\_, 2006.

17 \_\_\_\_\_  
18 BRIAN C. McNEIL  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_  
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22 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR: THE LINDS AT COYOTE WASH, L.L.C

2 DOCKET NO.: SW-04210A-06-0220

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9 Ernest Johnson, Director  
Utilities Division  
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11 Phoenix, Arizona 85007

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## EXHIBIT A

**LEGAL DESCRIPTION**  
**THE LINKS AT COYOTE WASH SUBDIVISIONS - UNITS 3 & 4**

THOSE PORTIONS OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ ) SECTION 11, THE SOUTHWEST QUARTER (SW $\frac{1}{4}$ ) SECTION 12 AND THE NORTHEAST QUARTER (NE $\frac{1}{4}$ ) SECTION 14, ALL IN TOWNSHIP 9 SOUTH, RANGE 19 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 14;

THENCE S00°22'36"W ALONG THE EAST LINE OF SAID NE $\frac{1}{4}$  OF SECTION 14 A DISTANCE OF 65.03 FEET TO A POINT ON THE CURVE OF THE NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL, SAID POINT HAS A LOCAL TANGENT BEARING OF S84°19'09"W;

THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT OF RADIUS 1,900.00 FEET AN ARC DISTANCE OF 108.80 FEET WITH A CENTRAL ANGLE OF 03°16'51" TO A POINT;

THENCE S87°36'00"W ALONG SAID NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL A DISTANCE OF 2,544.65 FEET TO A POINT ON THE WEST LINE OF SAID NE $\frac{1}{4}$  SECTION 14;

THENCE N00°21'39"E ALONG SAID WEST LINE OF THE NE $\frac{1}{4}$  SECTION 14 A DISTANCE OF 194.50 FEET TO THE NORTHWEST CORNER OF SAID NE $\frac{1}{4}$  SECTION 14, SAID CORNER IS ALSO SOUTHWEST CORNER OF SAID SE $\frac{1}{4}$  SECTION 11.

THENCE N00°30'57"E ALONG THE WEST LINE OF SAID SE $\frac{1}{4}$  SECTION 11 A DISTANCE OF 915.16 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 8;

THENCE N74°35'50"E ALONG SAID SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 8 A DISTANCE OF 2,753.88 FEET TO A POINT ON THE EAST LINE OF SAID SE $\frac{1}{4}$  SECTION 11, SAID POINT IS ALSO ON THE WEST LINE OF SAID SW $\frac{1}{4}$  SECTION 12;

THENCE N74°36'14"E CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 8 A DISTANCE OF 2,090.30 FEET TO A NORTHEAST CORNER OF THE LINKS AT COYOTE WASH SUBDIVISION - UNIT NO. 3 AS RECORDED IN BOOK 22 OF PLATS PAGES 3-6, YUMA COUNTY RECORDS;

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

THENCE S15°23'46"E A DISTANCE OF 196.79 FEET;

THENCE S74°56'54"W A DISTANCE OF 100.00 FEET;

THENCE S15°23'46"E A DISTANCE OF 15.04 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE SOUTHERLY ALONG SAID CURVE OF RADIUS 825.00 FEET AN ARC DISTANCE OF 4.96 FEET WITH A CENTRAL ANGLE OF 00°20'40" TO A POINT;

THENCE N74°56'54"E A DISTANCE OF 83.60 FEET;

THENCE S89°31'03"E A DISTANCE OF 592.89 FEET TO A POINT ON THE EAST LINE OF SAID SW1/4 SECTION 12;

THENCE S00°28'57"W ALONG SAID EAST LINE OF THE SW1/4 SECTION 12 A DISTANCE OF 1205.00 FEET TO A POINT;

THENCE N89°31'03"W A DISTANCE OF 100.00 FEET;

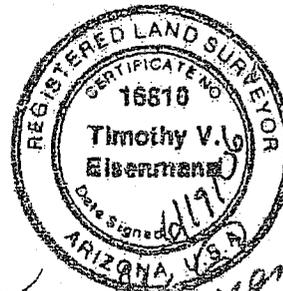
THENCE S00°28'57"W A DISTANCE OF 20.00 FEET;

THENCE S89°31'03"E A DISTANCE OF 100.00 FEET TO A POINT ON SAID EAST LINE OF THE SW1/4 SECTION 12;

THENCE S00°28'57"W ALONG SAID EAST LINE OF THE SW1/4 SECTION 12 A DISTANCE OF 350.95 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL;

THENCE CONTINUING S81°39'24"W ALONG SAID NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL A DISTANCE OF 2,677.74 FEET TO A POINT ON THE WEST LINE OF SAID SW1/4 SECTION 12;

THENCE S00°27'03"W ALONG SAID WEST LINE OF THE SE1/4 SECTION 12 A DISTANCE OF 34.07 FEET TO THE POINT OF BEGINNING.



*Timothy V. Eisenmann*

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