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AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

APR -9 2007

Attorneys for Balterra Sewer Corp.

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BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION
9 OF BALTERRA SEWER CORP. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE WASTEWATER
SERVICE IN MARICOPA COUNTY,
ARIZONA.

DOCKET NO. SW-20403A-05-0586

**MOTION TO EXTEND TIME TO
COMPLY WITH CERTAIN FILING
REQUIREMENTS SET FORTH IN
DECISION NO. 68742**

12 On June 5, 2006, the Arizona Corporation Commission ("Commission") issued Decision
13 No. 68742 ("Order"), approving the application of Balterra Sewer Corp. ("Balterra") for a
14 certificate of convenience and necessity ("CC&N") to provide wastewater service in portions of
15 Maricopa County, Arizona. The Order requires Balterra to file, among other things:

- 16 1. A copy of the Maricopa Association of Governments' approved Section 208 Plan
17 by April 30, 2007;
- 18 2. A copy of an Approval to Construct issued by the Maricopa County
19 Environmental Services Department ("MCESD") by June 30, 2007;
- 20 3. A copy of an Approval of Construction issued by MCESD for the proposed Phase-
21 I wastewater treatment plant by March 31, 2008; and
- 22 4. A copy of an Aquifer Protection Permit and/or Arizona Pollutant Discharge
23 Elimination System permit issued by the Arizona Department of Environmental Quality
24 ("ADEQ") by October 31, 2007.

1 These four documents and/or permits are all interrelated, and without an approved Section
2 208 Plan, Balterra cannot secure the related approvals necessary under the Order. Balterra has
3 been diligent in its approach to comply with the Order in a timely fashion, but certain unforeseen
4 regulatory obstacles have delayed the final processing of Balterra's current MAG Section 208
5 plan amendment. Specifically, before approving a Section 208 plan amendment, ADEQ is now
6 requiring (by written notice to the U.S. Environmental Protection Agency ("EPA")) an
7 explanation of how a private utility applicant will perform the equivalent functions of a
8 Designated Management Agency ("DMA") under the Clean Water Act.

9 On August 21, 2006, ADEQ was sent a copy of the approved MAG 208 Water Quality
10 Management Plan Amendment for the Balterra Wastewater Treatment Facility. A copy of the
11 letter is attached hereto as **Exhibit 1**. Despite the fact that MAG had already approved the
12 Section 208 plan amendment, ADEQ insisted that it would not forward the documents to EPA
13 until Balterra issued a letter describing how it would perform the equivalent functions of a DMA.
14 As a result of this new regulatory requirement, ADEQ did not transmit the final CWA Plan,
15 public participation packet and DMA authority review until January 25, 2007. A copy of
16 ADEQ's cover letter to EPA is attached hereto as **Exhibit 2**.

17 At the time of the Order, neither Balterra nor the Commission was aware of ADEQ's
18 decision to require a DMA authority review letter as part of the information packet sent to EPA to
19 approve Section 208 plan amendments. Compliance with this requirement caused considerable
20 delay in processing the Section 208 plan amendment after MAG approved it in August, 2006.
21 Balterra has been told that EPA should be finished with its review by June 2007 – approximately
22 two months after the Order's deadline to file an approved plan. Because of unanticipated and
23 new regulatory requirements, Balterra respectfully requests that the time to file an approved
24 Section 208 plan amendment be extended to **August 31, 2007**.

25 Furthermore, because the remaining three deadlines are directly affected by the delay in
26 obtaining an approved Section 208 plan amendment, Balterra respectfully requests that the

1 following filing deadlines be extended accordingly:

- 2 - Approval to Construct from June 30, 2007 to **October 30, 2007**;
- 3 - Approval of Construction from March 31, 2008 to **September 30, 2009**;
- 4 - ADEQ approved Aquifer Protection Permit or AzPDES permit from October 31,
5 2007 to **November 30, 2008**.

6 Balterra submits that granting the requested extensions of time to comply with the Order
7 will serve the public interest. With the exception of filing a copy of an Aquifer Protection Permit
8 or AzPDES, the requested extensions range from only three (3) to six (6) months. Balterra has
9 been engaged with Maricopa County planning officials and other interested parties in developing
10 a long-term, regional wastewater treatment and disposal solution to serve growth. The integration
11 of DMA issues into ADEQ's own review and approval process for Balterra's Section 208 Plan
12 Amendment could not have been reasonably anticipated. As such, granting an extension of time
13 to comply with Decision No. 68742 is reasonable, and in the public interest.

14 RESPECTFULLY SUBMITTED this 9th day of April, 2007.

15 FENNEMORE CRAIG, P.C.

16
17 By: 
18 Jay L. Shapiro
19 Patrick J. Black
Attorneys for Balterra Sewer Corp.

20 ORIGINAL and 13 copies hand-delivered
21 this 9th day of April, 2007 to:

22 Docket Control
23 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

24
25
26

1 COPY of the foregoing hand-delivered
2 this 9th day of April, 2007 to:

3 Lyn Farmer, Chief Administrative Law Judge
4 Hearing Division
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, Arizona 85007

8 Chris Kempley, Chief Counsel
9 Legal Division
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, Arizona 85007

13 Kim Battista, Compliance
14 Utilities Division
15 Arizona Corporation Commission
16 1200 W. Washington Street
17 Phoenix, Arizona 85007

18 By *Maria San Jose*
19 /1899720.1/16357.002

20
21
22
23
24
25
26

Exhibit 1



302 North 1st Avenue, Suite 300 • Phoenix, Arizona 85003
Phone (602) 254-6300 • FAX (602) 254-6490
E-mail: mag@mag.maricopa.gov • Web site: www.mag.maricopa.gov

August 21, 2006

Ms. Edwina Vogan
Arizona Department of Environmental Quality
208 Water Quality Management Planning
5th Floor Hydrology Unit
1110 West Washington Street
Phoenix, Arizona 85007

Dear Ms. Vogan:

As the designated Regional Water Quality Management Planning Agency, the Maricopa Association of Governments (MAG) Regional Council approved the MAG 208 Water Quality Management Plan Amendment for the Balterra Wastewater Treatment Facility on July 26, 2006. The State Water Quality Management Working Group then recommended approval of the amendment to the Arizona Department of Environmental Quality (ADEQ) on August 15, 2006. It is now requested that the ADEQ Director approve the Balterra 208 Plan Amendment, certify that it is consistent with the MAG 208 Water Quality Management Plan, and submit the amendment to the U.S. Environmental Protection Agency for approval.

The Balterra Wastewater Treatment Facility would have an ultimate capacity of 15 million gallons per day. The facility would be located in unincorporated Maricopa County in the northeast quadrant of 403rd Avenue and Indian School Road within Section 19 of Township 2 North, Range 6 West and Section 24 of Township 2 North, Range 7 West. Reclaimed water would be disposed of through reuse, recharge, and an Arizona Pollutant Discharge Elimination System (AZPDES) Permit discharge to the adjacent wash (T2N-R6W-30W as identified in the Palo Verde Watershed Zone A Flood Delineation Study). The AZPDES Permit discharge point would be located along the northeast edge of the facility site, near the confluence of the adjacent wash and Winters Wash.

On April 25, 2006, the MAG Water Quality Advisory Committee (WQAC) authorized a public hearing on the Draft Balterra 208 Plan Amendment. The notice of public hearing was advertised in *The Arizona Republic* on May 5, 2006 and the hearing was held on June 27, 2006. At the public hearing, three testimonies were submitted on the Draft Balterra 208 Plan Amendment. In addition, MAG received seven letters with written comments on the draft amendment. Following the public hearing, the WQAC recommended approval of the Draft Balterra 208 Plan Amendment. Following the hearing, Maricopa County prepared a response to public comments received on the Draft Balterra 208 Plan Amendment and the Saddle Mountain Unified School District #90 submitted a letter to MAG in support of the Draft Balterra 208 Plan Amendment.

A Voluntary Association of Local Governments in Maricopa County

City of Apache Junction • City of Avondale • Town of Buckeye • Town of Carefree • Town of Cave Creek • City of Chandler • City of El Mirage • Fort McDowell Yavapai Nation • Town of Fountain Hills • Town of Gila Bend
Gila River Indian Community • Town of Gilbert • City of Glendale • City of Goodyear • Town of Guadalupe • City of Litchfield Park • Maricopa County • City of Mesa • Town of Paradise Valley • City of Peoria • City of Phoenix
Town of Queen Creek • Salt River Pima-Maricopa Indian Community • City of Scottsdale • City of Surprise • City of Tempe • City of Tolleson • Town of Wickenburg • Town of Youngtown • Arizona Department of Transportation

Ms. Edwina Vogan
August 21, 2006
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On July 7, 2006, written comments, the public hearing transcript, the response by Maricopa County to public comments, and the Saddle Mountain Unified School District #90 letter were transmitted to the MAG Management Committee. On July 12, 2006, MAG received two letters with written comments on the Draft Balterra 208 Plan Amendment. The letters were provided to the MAG Management Committee at its July 12, 2006 meeting. At the meeting, four members of the public commented on the Draft Balterra 208 Plan Amendment. The MAG Management Committee recommended approval of the Draft Balterra 208 Plan Amendment. The materials provided to the MAG Management Committee are included in Attachment A.

The materials provided to the MAG Management Committee were included in the agenda packet for the July 26, 2006 MAG Regional Council meeting. On July 26, 2006, MAG received one letter with written comments on the Balterra 208 Plan Amendment (Attachment B). The letter was provided to the MAG Regional Council at its July 26, 2006 meeting. At the meeting, eight members of the public commented on the Balterra 208 Plan Amendment. Following discussion and consideration of public comments, the MAG Regional Council took action to approve the MAG 208 Plan Amendment for the Balterra Wastewater Treatment Facility.

The materials provided to the MAG Regional Council were included in the mailing of the Balterra 208 Plan Amendment to the State Water Quality Management Working Group for its August 15, 2006 meeting. At the meeting, several members of the public commented on the Balterra 208 Plan Amendment. Following discussion and consideration of public comments, the State Water Quality Management Working Group recommended approval of the MAG 208 Plan Amendment for the Balterra Wastewater Treatment Facility to the Arizona Department of Environmental Quality.

Generally, the public comments received on the Balterra 208 Plan Amendment throughout the process were in regard to the service area identified for the Balterra Wastewater Treatment Facility. Figures 2A and 2B in the Balterra 208 Plan Amendment were modified at the request of ADEQ to further clarify the service area for the facility.

At the request of the Arizona Department of Environmental Quality, the meeting minutes from the MAG Water Quality Advisory Committee, MAG Management Committee, and MAG Regional Council detailing committee recommendations on the Balterra 208 Plan Amendment are included in Attachment C. Please note that minutes marked as draft are subject to final approval by the appropriate committees. Three copies of the amendment document; the letter of official request to initiate the process; the legal advertisement for public hearing; an official affidavit of public hearing; a notice to interested parties; a list of locations where documents are available for viewing; the public hearing transcript; and the response by Maricopa County to public comments are provided in Attachment D.

Ms. Edwina Vogan
August 21, 2006
Page 3

Thank you in advance for your assistance. If you have any questions, please contact me at (602) 254-6300.

Sincerely,



Julie A. Hoffman
Environmental Planner II

cc: Dennis Smith, Maricopa Association of Governments
Dale Bodiya, Maricopa County Environmental Services Department
Ken James, Maricopa County Environmental Services Department
Peter Chan, CSA Engineering
John Tyldesley, CSA Engineering
Jim Condit, JF Properties
Paul Gilbert, Beus Gilbert
Felipe Zubia, Beus Gilbert

Exhibit 2



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens
Director

Ms. Alexis Strauss, Director
EPA Region IX, Water Division
75 Hawthorne Street (WTR-1)
San Francisco, CA 94105

Dear Ms. Strauss:

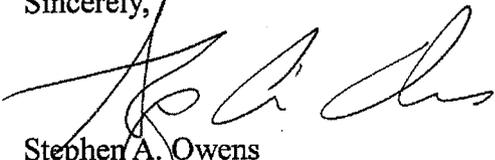
Pursuant to Section 208 of the Clean Water Act and 40 CFR 130.6(e), I certify that the *CWA 208 Plan Amendment for Maricopa County Balterra Wastewater Treatment Facility, November, 2006*, is consistent with both the State of Arizona's and the Maricopa Association of Governments' Water Quality Management Plans.

This amendment covers 24 square miles in an area of western Maricopa County identified by the County as the North Tonopah Planning Area – Southeast. The Balterra Sewer Company (BSC), by virtue of the Certificate of Convenience and Necessity (CC&N) granted to it by the Arizona Corporation Commission, has the ability to construct, operate and maintain the wastewater collection, treatment and disposal system within its CC&N area. There has been opposition to this amendment by other developers who have been working with another utility to provide for a comprehensive solution to water, wastewater and reclaimed water throughout this part of the west valley. While ADEQ has some concerns about how the County addressed the issues, the Balterra Plan meets the technical criteria for approval. ADEQ will continue working with the Arizona Corporation Commission and the County to resolve issues as development commences.

This amendment also includes a legal review, by the proponent, as to the authorities of a private utility to carry out the functions of a Designated Management Agency (DMA) under CWA 208(b)(2), CWA 208(c), and 40 C.F.R. 130.6(c)(5). ADEQ has reviewed the information and believes it addresses the issues raised by EPA in its July 20, 2006 letter.

As the Governor's designee for the State's Water Quality Management program, I hereby transmit this amendment and supporting documentation to EPA for review.

Sincerely,



Stephen A. Owens
Director

Northern Regional Office
1515 East Cedar Avenue • Suite F • Flagstaff, AZ
86004

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ
85701

Ms. Alexis Strauss
Balterra Wastewater Treatment Facility
January 25, 2007

Page 2 of 2

Enclosures: Final CWA 208 Plan, public participation packet, DMA Authority Review

cc: Cheryl McGovern, Water Division, EPA Region IX (WTR-4)
Julie Hoffman, Environmental Planner, MAG
Edwina Vogan, Regional Planning Coordinator, AZPDES Unit, ADEQ