

ORIGINAL

MEMORANDUM



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ARIZONA CORPORATION COMMISSION  
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TO: Docket Control  
FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGJ*

DATE: April 20, 2009

RE: RESPONSIVE STAFF REPORT FOR FISHER'S LANDING WATER AND SEWER WORKS, L.L.C.'S APPLICATION FOR A RATE INCREASE. DOCKET NOS. WS-04047A-07-0708 AND WS-04047A-07-0700

Attached is the Responsive Staff Report for Fisher's Landing Water and Sewer Works, L.L.C.'s application for a wastewater rate increase. The Responsive Staff Report provides Staff's comments on the Company's response to the ten items related to a lease agreement that the March 9, 2009, Procedural Order directed the Company to document. Staff continues to recommend approval of its rates and charges as shown in Supplemental Schedule BCA-S4.

EGJ:GLF:tdp

Originator: Gordon L. Fox

Arizona Corporation Commission  
DOCKETED

APR 20 2009

DOCKETED BY *[Signature]*

Service List for: Fisher's Landing Water and Sewer Works, LLC.  
Docket Nos.: WS-04047A-07-0708, et al

Mr. Don Fisher, Managing Partner  
Fisher's Landing Water & Sewer Works, LLC  
Post Office Box 72188  
Yuma, Arizona 85365

Ms. Janice Alward  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson, Esq.  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer, Esq.  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**SUPPLEMENTAL STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

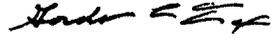
**FISHER'S LANDING WATER AND SEWER WORKS  
DOCKET NOS. WS-04047A-07-0708, ET AL**

**APPLICATION FOR A PERMANENT  
INCREASE IN WASTEWATER RATES**

**APRIL 20, 2009**

## STAFF ACKNOWLEDGMENT

The Responsive Staff Report for Fisher's Landing Water and Sewer Works, L.L.C., Docket Nos. WS-04047A-07-0708, et al, is the responsibility of the Staff members listed below.



Gordon L. Fox  
Public Utilities Analyst Manager

**EXECUTIVE SUMMARY**  
**FISHER'S LANDING WATER AND SEWER WORKS**  
**WASTEWATER**  
**DOCKET NO. WS-04047A-07-0708, ET AL**

Fisher's Landing Water and Sewer Works, L.L.C. ("Fisher's Landing" or "Company") is a for-profit, limited liability corporation and a Class "D" Arizona public service corporation that serves approximately 325 wastewater customers and 425 water customers in an area located along the Colorado River approximately 30 miles northeast of Yuma, in Yuma County, Arizona.

Fisher's Landing filed an application for an increase in wastewater rates on December 19, 2007. On July 25, 2008, Staff docketed its initial report ("Staff Report") regarding the Fisher's Landing's request for a wastewater permanent rate increase. Fisher's Landing did not file a response to the Staff Report and the Administrative Law Judge ("ALJ") issued a recommendation on October 24, 2008. On October 31, 2008, Fisher's Landing filed a letter in the docket taking exception to the recommended original cost rate base ("OCRB"). The Company's exceptions suggested that the new rates should take into consideration "the capitalized cost of lease payments or the value of the 20 acres" at the location of its wastewater evaporating pools. According to the lease agreement, the annual payment is \$79,992. The Company did not include the \$79,992 in operating lease obligations in its original application nor are the lease payments recorded in its utility records.

Pursuant to a Procedural Order, dated November 7, 2008, Staff filed a Supplemental Staff Report on January 30, 2009, that recommended treating the \$79,992 annual lease obligations as an operating expense and revised rates to provide recovery of the lease cost. A Procedural Order, dated March 9, 2009, directed the Company to provide documentation on ten items related to the lease agreement, and it directed Staff to provide its response by April 20, 2009. This report ("Responsive Staff Report") presents Staff's comments on the documentation filed by the Company for these ten items.

Staff directly addresses three (Nos. 1, 4 and 7) of the ten items. Staff has no additional information to support or controvert the Company's responses to the seven other items.

Item No. 1 - The \$79,992 lease cost, a \$67,992 increase since the prior rate case, provides an 8.88 percent annual yield based on the September 2, 2004, \$900,000 purchase price. Staff concludes that the \$79,992 annual lease cost is reasonable.

Item No. 4 - Staff concludes that the Company's lease of a 20-acres parcel, while using approximately 5 acres for its wastewater facilities, is consistent with Arizona Department of Environmental Quality ("ADEQ") Engineering Bulletin 11 that recommends a 1,000-foot setback of an evaporation pond to adjacent property.

Item No. 7 - New West Investment Group, Inc., the successor to Northwest Development Company, applied for authority to conduct business in Arizona on March 30, 2009. The

application is pending review by the Corporations Division of the Arizona Corporation Commission.

Staff continues to recommend approval of its recommended rates and charges as presented in Supplemental Schedule BCA-S4 of its Supplemental Staff Report.

Staff has no objection to a hearing, but does not recommend a hearing.

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## **INTRODUCTION AND BACKGROUND**

Fisher's Landing Water and Sewer Works, L.L.C. ("Fisher's Landing" or "Company") is a for-profit, limited liability corporation and a Class "D" Arizona public service corporation that serves approximately 325 wastewater customers and 425 water customers in an area located along the Colorado River approximately 30 miles northeast of Yuma, in Yuma County, Arizona.

Fisher's Landing filed an application for an increase in wastewater rates on December 19, 2007. On July 25, 2008, Staff docketed its initial report ("Staff Report") regarding the Fisher's Landing's request for a wastewater permanent rate increase. Fisher's Landing did not file a response to the Staff Report and the Administrative Law Judge ("ALJ") issued a recommendation on October 24, 2008. On October 31, 2008, Fisher's Landing filed a letter in the docket taking exception to the recommended original cost rate base ("OCRB"). The Company's exceptions suggested that the new rates should take into consideration "the capitalized cost of lease payments or the value of the 20 acres" at the location of its wastewater evaporating pools. According to the lease agreement, the annual payment is \$79,992. The Company did not include the \$79,992 in operating lease obligations in its original application nor are the lease payments recorded in its utility records.

Pursuant to a Procedural Order, dated November 7, 2008, Staff filed a Supplemental Staff Report on January 30, 2009, that recommended treating the \$79,992 annual lease obligations as an operating expense and revised rates to provide recovery of the lease cost.

## **PURPOSE OF RESPONSIVE STAFF REPORT**

A Procedural Order, dated March 9, 2009, directed the Company to provide documentation on ten items related to the lease agreement, and it directed Staff to provide its response by April 20, 2009. This report ("Responsive Staff Report") presents Staff's comments on the documentation filed by the Company for these ten items.

## **STAFF'S COMMENTS**

The March 9, 2009, Procedural Order states:

**IT IS THEREFORE ORDERED** that the **Company shall file, by March 30, 2009**, documentation (1) explaining and justifying<sup>1</sup> the \$67,992 annual rent increase since the last rate case; (2) explaining why the Warranty Deed provided by the Company shows that the 20-acre parcel was transferred for \$10 consideration; (3) establishing the value of the 20-acre parcel as of June 2002, August 2004, and currently; (4) explaining why the Company is leasing the entire 20-acre parcel rather than only the approximately 5 acres being used for

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<sup>1</sup> The justification should include objective data, such as the lease payments required for other properties in the area with similar improvements.

wastewater facilities; (5) explaining any familial relationship between either of the Browns and either of the Fishers or either of the Fergusons; (6) explaining any involvement either of the Browns had with the Company or Fisher's Landing prior to August 2004, and currently; (7) establishing that NDC is a valid California corporation or other valid legal entity and is either authorized to transact business in the State of Arizona or is not legally required to obtain authorization to transact business in the State of Arizona; (8) providing the names and ownership interests of all owners of NDC and the names and titles of all officers and directors of NDC as of August 31, 2004, and currently; (9) providing the names and ownership interests of all owners of Fisher's Landing and the names and titles of all officers, members, and managers of Fisher's Landing as of August 31, 2004, and currently. (10) providing the names and ownership interests of all owners of the Company and the names and titles of all officers, members, and managers of the Company as of August 31, 2004, and currently. In addition, the Company shall indicate whether it desires a hearing to be held in this matter.

The Company filed its response to these 10 questions on March 30, 2009. Staff has no additional information to support or controvert the Company's responses to item nos. 2, 3, 5, 6, 8, 9 and 10. Accordingly, Staff is providing supplemental information only to item nos. 1, 4 and 7.

*Item No. 1:*

The \$79,992 annual lease cost as specified in the lease agreement represents a \$67,992 increase over the lease cost in the prior rate case, and it provides an 8.88 percent annual yield on the \$900,000 purchase price for the 20-acre parcel for a transaction on the September 2, 2004. The average price per acre for the transaction is \$45,000 ( $\$900,000 \div 20$ ). The Company notes that there are no similar properties within many miles; however, it cites a sale for two 0.92 acre lots for \$1,200,000, or \$652,173 ( $\$1,200,000 \div 1.84$ ) per acre in the vicinity. The Company also cites offered prices for lots of one to 1.37 acres ranging from \$475,000 to \$650,000. The Company's response also indicates that the parties to the transaction are social acquaintances. Differing parcels may vary significantly in value, and personal acquaintances can effect transactions; however, Staff finds no basis to find the purchase price of the land or the lease payments unreasonable. Accordingly, Staff concludes that the \$79,992 annual lease cost is reasonable.

*Item No. 4:*

The Company's lease of a 20-acres parcel, while using approximately 5 acres for its wastewater facilities, is consistent with ADEQ Engineering Bulletin 11 (Attachment A)<sup>2</sup> that recommends a 1,000-foot setback of an evaporation pond to adjacent property.

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<sup>2</sup> Attachment B "ADEQ: Compliance: Small Communities Environmental Compliance Assistance is a printout from ADEQ's website that specifies Bulletin 11 as a useful reference document.

*Item No. 7:*

Item No. 7 – New West Investment Group, Inc., the successor to Northwest Development Company, applied for authority to conduct business in Arizona on March 30, 2009. The application is pending review by the Corporations Division of the Arizona Corporation Commission (See Attachment C).

**CONCLUSIONS AND RECOMMENDATIONS**

Staff concludes that the \$79,992 annual lease cost for the 20-acre parcel is reasonable and should be included in operating expenses.

Staff continues to recommend approval of its recommended rates and charges as presented in Supplemental Schedule BCA-S4 of its Supplemental Staff Report.

Staff has no objection to a hearing, but does not recommend a hearing.

engineering bulletin no. 11

Chapter 6

**SEWAGE  
TREATMENT WORKS  
DESIGN  
CONSIDERATIONS**

ARIZONA DEPARTMENT OF HEALTH SERVICES

JULY 1978

B. PLANT LOCATION.

The treatment works site should be selected after careful analysis and study of the following factors:

- (1) Flood potential
- (2) Noise potential
- (3) Odor potential
- (4) Direction of prevailing winds
- (5) Seasonal accessibility
- (6) Anticipated growth patterns in the vicinity of the proposed plant site
- (7) Possible elimination of sewage pump station upstream of the treatment works
- (8) Disposal of waste solids
- (9) Foundation conditions and topography

To avoid local objections, sewage treatment plants other than individual residential plants shall be located at the distances from contiguous property lines shown in Table VI - 1.

Table VI - 1

PLANT SIZE 10 <sup>3</sup> GPD	Minimum Setback vs. Treatment Plant Size		
	Distance (Feet)		
	(1) No Controls	(2) Aesthetic, Noise & Odor Control or Signature	(3) Enclosure with Noise & Odor Con- trol or Signature
5 - 25	250	100	25
25 - 100	350	200	50
100 - 500	500	300	100
500 - 1	750	500	.
1 MGD	1000	750	.

\*Will be reviewed on each individual project.

Column 1 requires the minimum setback with no controls.

Column 2 requires a minimum setback for a plant with aesthetic controls with the option of additional noise and odor control or the signatures of all property owners within the allowable setback.

Column 3 requires a minimum setback for a plant which is enclosed in a covered structure with the option of additional noise control and odor control or the signatures of all property owners within the allowable setback.

Noise control is defined as a sound level at the nearest existing property line not to exceed 50 db on the A network of a sound level meter. Aesthetic control is defined as landscaping in addition to chainlink fences or earthen berms.

In addition, the approval to operate will not be issued until an operation and maintenance manual is approved by the Department, and a certified plant operator has been employed to operate the facility.

The setback requirements listed above do not apply to lagoons or ponds. These types of treatment plants will be reviewed on an individual basis. It is recommended that wastewater treatment lagoon be located not closer than 1000 feet from the nearest property line.

#### C. EFFLUENT QUALITY.

Selection of the sewage treatment process shall be based upon the method of effluent disposal and the ability of the process to meet the effluent standards presented in Chapter II.

#### D. DESIGN.

1. Type of Treatment - The Engineer should give careful consideration of the type of treatment needed to achieve the goals outlined below before selecting the appropriate treatment process.
  - a. Discharge Standards - The quality of effluent achieved by a given process should be evaluated on the basis of consistency in meeting established effluent standards.
  - b. Operation Supervision - An optimization of manhours necessary to oversee plant operations and assure process balance and consistency in meeting effluent standards is an important part of process selection.

The type of supervision and operation each process must have to achieve the prescribed treatment level should be carefully analyzed. Each process should be evaluated based upon, but not limited to:

- 1) Operator educational level needed,
  - 2) Number of personnel required for proper operation,
  - 3) Sophistication of laboratory monitoring.
- c. Value Engineering - Value engineering is concerned with eliminating or modifying all items that contribute to the cost of a project but is not necessary for needed performance, quality, maintainability, reliability, or interchangeability. Specifically, value engineering should be a systematic creative effort directed toward an analysis of each item in the process to assure that it performs essential functions at the lowest over-all cost. The over-all cost should include, but not be limited to, costs of acquisition, construction, operation, repair, and replacement.

Value engineering should play a major role in equipment and treatment process selection.



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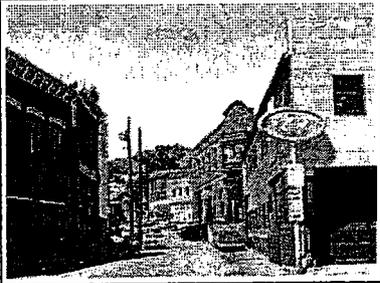
**BROWSE BY CATEGORY**

- About ADEQ
- ADEQ Newsroom
- Assistance
- **Compliance**
- Doing Business with ADEQ
- Education & Outreach
- Employment
- Laws, Rules & Policies
- Permitting
- Publications & Forms

**BROWSE BY PROGRAM**

- Air Quality
- Tank Programs
- Waste Programs
- Water Quality

**COMPLIANCE: SMALL COMMUNITIES ENVIRONMENTAL COMPLIANCE ASSISTANCE**



**A Guide for Developing and Implementing a Small Community Environmental Protection Plan (SCEPP)**  
This manual is designed to be used by small communities and special districts in identifying, prioritizing, correcting, and preventing future environmental compliance problems by addressing all levels of infrastructure.

**New! Appendix B Template Small Community Environmental Protection Plan Instructions, Examples, & Forms**  
The Appendix B Template is a part of A Guide for Developing and Implementing a Small Community Environmental Protection Plan (SCEPP) manual and provides instructions on developing procedures, completed examples, flow diagrams and corresponding blank forms, to aid in the development and implementation of a Small Community Environmental Protection Plan.

Download a quick reference SCEPP presentation in pdf format.

On Nov. 3, 2005, Director Owens announced the Arizona Department of Environmental Quality's program to provide compliance assistance to Arizona's small communities. This effort has been launched with the assistance of a grant from the Environmental Council of States (ECOS) ☺.

ECOS supported three pilot projects to develop and promote sustained comprehensive environmental compliance by small local governments. Grants were awarded to Arizona, South Carolina and Tennessee.

ADEQ is seeking to make it easier for small communities to meet the requirements of the law, especially small communities in rural Arizona. The goal is to provide small communities with the assistance they may need in light of their limited resources. The focal point of this project is ADEQ's policy, entitled "Small Community Policy".

With funding provided by ECOS, a Small Communities Environmental Compliance Assistance brochure has been prepared to inform small communities of the benefits of this program and the assistance which can be provided by ADEQ.

Additional guidance documents and templates for small communities will be made available on-line as they are developed. Small communities are encouraged to visit this site periodically and to contact ADEQ for more information.

**Participating Communities**

- Miami
- Pima
- Safford ☺
- Springerville ☺
- Willcox ☺
- Winslow ☺

**Other Small Community Resources**

- Check Up Program for Small Systems (CUPSS) ☺
- U.S. Environmental Protection Agency's Small Communities ☺ contains links to technical assistance, financial assistance and education and training for small communities.
- The Local Government Environmental Assistance Network ☺ enables local government officials to interact with their peers online.
- The Local Government Environmental Assistance Network Toolbox ☺ is designed to help local governments meet their environmental obligations.
- In partnership with the EPA, Sustainable Earth Initiative (SEI) ☺ offers assistance to public entities with development of Environmental Management Systems to help them realize environmental and economic benefits.

**Community Outreach Program**  
ADEQ's Community Outreach Program was created to better serve the needs of Arizona residents. The program consists of five ADEQ employees: four Community Liaisons, and the agency's Ombudsman. With funding provided by ECOS, an Arizona's Small Communities Outreach Program brochure has been prepared to detail who these ADEQ staff are, what they do and how to contact them.

**Asbestos and Open Burning Resources**

- With funding provided by ECOS, a What Small Communities and Firefighters Need to Know About Asbestos in Buildings brochure has been prepared to inform small communities and fire districts of asbestos requirements for fire training burns.
- What Small Communities Need to Know about Asbestos Demolition and Renovation Practices
- ADEQ's Asbestos page includes information to help small communities, including notification forms and the State of Arizona Asbestos Contact Directory.
- The U.S. Environmental Protection Agency pages include asbestos information ☺.
- Unless specifically exempted by the rule, persons setting outdoor fires must obtain an open burning permit from ADEQ or a delegated permitting authority.

**Drinking Water Resources**  
Arizona's Drinking Water rules have been amended to incorporate the National Primary Drinking Water Regulations by reference. This new rulemaking now comprises Arizona Administrative Code (A.A.C.) Title 18, Chapter 4 ☺.

To assist water system owners and operators, ADEQ has prepared an unofficial version of 18 A.A.C. 4, combining the final state rules with those federal requirements incorporated by reference. This document is entitled Unofficial Combined State and Federal Drinking Water Rules.

- ADEQ Engineering Bulletin No. 8, Disinfection of Water Systems (1978)
- ADEQ Engineering Bulletin No. 10, Guidelines for the Construction of Water Systems (1978)

- o With funding provided by ECOS, a Drinking Water in Small Communities and Special Districts brochure has been prepared with basic information on operating a public water system.
- o With funding provided by ECOS, a lead and copper monitoring and reporting brochure has been prepared to help small communities avoid and/or correct this most common drinking water system violation in Arizona.
- o ADEQ offers water and wastewater workshops for owners and operators of public water systems.
- o Our Safe Drinking Water pages contain forms and guidance documents and other materials for public water system owners and operators.
- o Operator certification information for drinking water treatment and distribution facilities is also available.
- o Educational assistance is available to certified operators of community and nontransient, noncommunity public water systems serving less than 3,300 persons, through Expense Reimbursement Grant workshops.
- o A De Minimus General Permit is available for discharge of pollutants associated with certain potable water system activities.
- o The ADEQ Monitoring Assistance Program was established to collect several types of required samples for small community and non-transient, non-community water systems.
- o The U.S. Environmental Protection Agency's Small Systems Information and Guidance site is a resource for small public water systems.
- o Owners and operators of public water systems, including small community officials, are encouraged to subscribe to ADEQ's Drinking Water/Wastewater Operator Certification mailing list, for periodic e-mail updates on training opportunities, regulatory changes, funding and technical assistance resources, etc.

#### Wastewater Resources

- o ADEQ Engineering Bulletin No. 11, Minimum Requirements for Design, Submission of Plans and Specifications of Sewage Works. While Arizona Administrative Code (A.A.C.) Title 18 Chapter 9 contains the regulatory standards for wastewater treatment facilities, sewage collection systems, etc., Bulletin No. 11 is a useful reference document. Most importantly, wastewater owners and operators should adhere to the standards in A.A.C.
- o With funding provided by ECOS, a Wastewater in Small Communities and Special Districts brochure has been prepared with basic information on permitting and operating a sewer system.
- o ADEQ offers water and wastewater workshops for owners and operators of wastewater facilities.
- o Operator certification information for wastewater collection and treatment facilities is available.
- o Wastewater permitting information can be accessed online. Aquifer Protection Permits (APP) are required for wastewater treatment plants; AZDPES permits are required for discharge to waters of the United States; reclaimed water permits are required for reuse of reclaimed water; and ADEQ approval is required prior to construction of sewage collection systems.
- o ADEQ is the biosolids/sewage sludge program and enforcement authority in Arizona.

#### Brownfields Resources

Brownfields are abandoned or under-used properties with an active redevelopment potential that is complicated by either real or perceived environmental contamination. Brownfields funding assistance is a tool available to small communities.

#### Solid Waste Resources

- o ADEQ offers recycling grants, available to small communities on a competitive basis.
- o Earth 911 can be queried by zip code for recycling opportunities.
- o ADEQ solid waste information.

#### Hazardous Waste Resources

#### Underground Storage Tanks Resources

The Municipal Tank Closure Program assists small communities with removal of abandoned underground storage tanks, and funding is available to reimburse local governments for application costs.

#### Statutes and Rules

- o Federal environmental rules are found in Code of Federal Regulations Title 40.
- o State environmental statutes are found in the Arizona Revised Statutes Title 49, accessible from the Arizona State Legislature. The state environmental rules implementing these statutes are found in Arizona Administrative Code Title 18, and can be accessed from the Arizona Secretary of State.

#### Funding Assistance

ADEQ's Web site contains funding assistance information.

Additionally, water and wastewater funding and technical assistance organizations include the following:

- o Arizona Department of Housing
- o Arizona Small Utilities Association
- o Greater Arizona Development Authority
- o Rural Community Assistance Corporation
- o U.S. Department of Agriculture Rural Development
- o U.S. Environmental Protection Agency Financing for Environmental Compliance
- o Water and Wastewater Capital Improvements and Financing (RWIC)
- o Water Infrastructure Finance Authority

#### ADEQ Compliance Assistance

ADEQ's Web site contains broad compliance assistance resources, including a copy of the Compliance and Enforcement Handbook.

#### Permit Assistance

Small communities can use the ADEQ permitting page to determine which environmental permits are potentially applicable to an operation or activity, and track the status of a permit application.

Small communities should be aware that community based operations may require Air Quality Control Permits from ADEQ. Operations such as water pumping stations, wastewater treatment plants, and sewer lift stations that have electrical generators, including those installed for standby power purposes often require air quality permits. In addition, other equipment such as rock crushing and screening equipment and boilers rated at more than 1 million Btu heat input may also require air quality permits. Small communities seeking to install these types of operations should contact ADEQ's Air Quality Permits Section at (602) 771-2337 or (602) 771-2338, for assistance. Download applications for these types of operations.

Stormwater permits are applicable to small communities:

1. Construction projects anywhere in the state (except on Indian lands) which will disturb at least one acre of land (and those

Arizona Corporation Commission  
State of Arizona Public Access System

04/17/2009

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**Pending File Inquiry**

<b>File Number:</b> F-1515950-0	<b>Reservation Number:</b> 0
<b>Corporation Name:</b> NEW WEST INVESTMENT GROUP, INC	

<b>Designation Type:</b>	FOREIGN CORPORATION
<b>Pending Type Code:</b>	APPLICATION FOR AUTHORITY
<b>Location Code:</b>	TUCSON
<b>Date Received:</b>	03/30/2009
<b>Approval Date:</b>	
<b>Date Returned:</b>	
<b>Reason Returned:</b>	
<b>Corp Type:</b>	BUSINESS
<b>Expedited Date:</b>	
<b>Expiration Date:</b>	07/29/2009

**Contact Information**

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**Documents Waiting To Be Examined**

<b>Date Received</b>	<b>Description</b>	<b>Expedited</b>
03/30/2009	APPLICATION FOR AUTHORITY	No

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