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BEFORE THE ARIZONA CORPORATION COMMISSION

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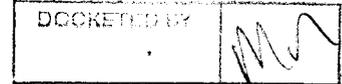
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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

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MAR - 9 2009



IN THE MATTER OF THE APPLICATION OF FISHER'S LANDING WATER AND SEWER WORKS, LLC, FOR APPROVAL OF A RATE APPLICATION FOR WATER COMPANIES WITH ANNUAL GROSS OPERATING REVENUES (INCLUDING REQUESTED RATE RELIEF) OF LESS THAN \$250,000.

DOCKET NO. WS-04047A-07-0700

IN THE MATTER OF THE APPLICATION OF FISHER'S LANDING WATER AND SEWER WORKS, LLC, FOR APPROVAL OF A RATE APPLICATION FOR WASTEWATER COMPANIES WITH ANNUAL GROSS OPERATING REVENUES (INCLUDING REQUESTED RATE RELIEF) OF LESS THAN \$250,000.

DOCKET NO. WS-04047A-07-0708

PROCEDURAL ORDER

BY THE COMMISSION:

On December 19, 2007, Fisher's Landing Water and Sewer Works, LLC, ("Company") filed with the Arizona Corporation Commission ("Commission"), in the above-captioned dockets, separate applications for an increase in water rates and wastewater rates.

On March 24, 2008, the Commission's Utilities Division Staff ("Staff") filed a Letter of Sufficiency in each docket, classifying the Company as a Class D utility for both water and wastewater.

On May 19, 2008, a Procedural Order was issued consolidating the dockets and granting a Staff request to suspend the time clock.

On July 25, 2008, Staff issued a Staff Report in each docket, to which the Company filed no response.

On October 24, 2008, the Hearing Division issued a Recommended Opinion and Order ("ROO") for the consolidated dockets, for consideration at the Open Meeting on November 12 and

1 13, 2008.

2 On October 31, 2008, the Company filed exceptions to the ROO that included new financial
3 information regarding a lease agreement for the wastewater system for which the annual payments
4 total \$79,992. The filing shows that the Company is leasing a 20-acre parcel of land, on which the
5 system's evaporating pools are located, pursuant to an August 2004 lease agreement with Northwest
6 Development Company ("NDC"), identified as a California corporation, and that the Company had
7 previously been occupying the land pursuant to assignment of a lease between Fisher's Landing, Inc.
8 ("Fisher's Landing") (identified previously as the Company's majority owner) and NDC's
9 predecessors in title, Donald and Roberta Fisher and Albert and Louise Ferguson (three of whom are
10 currently listed as officers of Fisher's Landing). The filing explains that NDC is owned by Gregory
11 Brown, who along with his wife, Donna Brown, owns 75 percent of Fisher's Landing; that NDC
12 purchased the 20-acre parcel for \$900,000 in August or September 2004; and that NDC has not
13 required current lease payments but has not forgiven the Company for past due lease payments. The
14 Company had not previously included this information in its wastewater ratemaking application or in
15 its data responses to Staff and provided no real explanation¹ for why this information was omitted
16 until after the ROO had been issued. The Company requested that the capitalized cost of the lease
17 payments or the value of the leased property be considered in setting the Company's rates for
18 wastewater service.

19 On November 6, 2008, Staff filed a Motion to Suspend Time Clock requesting that the time
20 clock in this matter be suspended until Staff had had an opportunity to obtain and evaluate additional
21 information from the Company related to its exceptions.

22 On November 7, 2008, a Procedural Order was issued requiring Staff to file, by January 30,
23 2009, a Supplemental Staff Report setting out its analysis of the new information and any changes in
24 its recommendations resulting therefrom; requiring Staff to provide Staff's procedural
25 recommendation, including whether a hearing is needed to address the new information; requiring the
26 Company to file, by February 23, 2009, any response that it may have to the Supplemental Staff

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28 ¹ The Company stated that the lease had not come to the attention of Staff because the Company had not had the capital or net income to make the payments.

1 Report; and suspending the time clock in this matter indefinitely.

2 On January 30, 2009, Staff filed its Supplemental Staff Report, recommending that the
3 \$79,992 lease payments be treated as an increase in test year operating expenses for the wastewater
4 system and recommending sewer rates that would result in an increase in operating revenue of
5 \$60,330, or 75.6 percent, to bring total operating revenue to \$140,130. Previously, Staff had
6 recommended total operating revenue of \$58,193 and a decrease in rates. Staff did not describe in
7 any detail its analysis of the new information; describe any additional information obtained from the
8 Company regarding the lease; or discuss the apparently other-than-arm's-length nature of the lease
9 arrangement, the value of the land leased, the reasonableness of the lease payments, or the issue of
10 the overdue lease payments that are apparently owed. Staff also did not provide a procedural
11 recommendation or indicate expressly whether a hearing is needed.

12 The Company did not file a response to the Supplemental Staff Report.

13 On February 24, 2009, a Procedural Order was issued requiring Staff to file, by March 6,
14 2009, all of the information that Staff had received from the Company since the Company filed its
15 exceptions on October 31, 2008.

16 On March 6, 2009, Staff filed (1) a copy of the Company's exceptions, with attached lease;
17 (2) a copy of printouts from the Yuma County Assessor's Office showing that the 20-acre parcel was
18 valued at \$700,000 as of October 30, 2008, and was sold for \$900,000 on September 2, 2004; and (3)
19 copies of Staff's Second Set of Data Requests and the Company's responses thereto. The Company's
20 responses include answers to Staff's inquiries; a Final Settlement Statement from the sale of the 20-
21 acre parcel; a Warranty Deed dated August 31, 2004; another copy of the lease agreement; an
22 executed copy of a Master Agreement for Purchase and Sale of Fisher's Landing and Sewer Plant,
23 and for Leaseback ("Master Agreement"); a list of improvements; an unexecuted copy of a Purchase
24 and Sale Agreement and Escrow Instructions ("Purchase and Sale Agreement"); copies of additional
25 Yuma County Assessor's Office printouts; a certificate of liability insurance covering both the
26 Company and Fisher's Landing; and an excerpt from an Arizona Department of Environmental
27 Quality engineering bulletin. Among other things, the information provided by the Company shows
28 that only approximately 5 acres of the 20-acre parcel are actually being used, with the remainder

1 being vacant land; that no rent payments have ever been made for use of the property under the 2004
2 lease; that no effort has ever been made to collect rent payments under the 2004 lease; that the
3 Warranty Deed shows that the 20-acre parcel was sold for only \$10; that the Master Agreement and
4 unexecuted Purchase and Sale Agreement state that the price of the 20-acre parcel was \$900,000 and
5 that the purchase price to buy a 75 percent interest in Fisher's Landing was \$2.6 million, including
6 \$100,000 at close of escrow for purchase of the 20-acre parcel; and that Gregory and Donna Brown
7 ("Browns") and NDC will require Donald and Roberta Fisher ("Fishers"), Albert and Louise
8 Ferguson ("Fergusons"), and Allen and Margaret Allen to vacate their present premises on-site and
9 will provide them with free spaces for double-wide trailers or comparable manufactured or park
10 model homes, including free water and sewer services, for the rest of their lives.

11 The information filed by Staff does not address whether either of the Browns is related in any
12 way to either of the Fishers or either of the Fergusons, does not explain what the Browns'
13 involvement with Fisher's Landing or the Company was before the sale of the 20-acre parcel and the
14 majority of Fisher's Landing's stock, does not provide the value of the 20-acre parcel as of its sale to
15 NDC, does not address why the sale price for the 20-acre parcel should be considered reasonable,
16 does not explain why the rent required under the lease should be considered reasonable, and does not
17 address whether a hearing is warranted or provide Staff's recommendation for how to proceed in this
18 matter.

19 Thus, it is appropriate to require the Company to file additional information in this matter
20 regarding the lease and associated agreements, the entities involved, and the value of the 20-acre
21 parcel and to require Staff to file a response to this additional information before this matter can
22 proceed further. Depending on the information filed, a hearing may be required by a subsequent
23 Procedural Order.

24 IT IS THEREFORE ORDERED that the **Company shall file, by March 30, 2009,**
25 **documentation** (1) explaining and justifying² the \$67,992 annual rent increase since the last rate
26 case; (2) explaining why the Warranty Deed provided by the Company shows that the 20-acre parcel

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28 ² The justification should include objective data, such as the lease payments required for other properties in the area with similar improvements.

1 was transferred for \$10 consideration; (3) establishing the value of the 20-acre parcel as of June 2002,
2 August 2004, and currently; (4) explaining why the Company is leasing the entire 20-acre parcel
3 rather than only the approximately 5 acres being used for wastewater facilities; (5) explaining any
4 familial relationship between either of the Browns and either of the Fishers or either of the
5 Fergusons; (6) explaining any involvement either of the Browns had with the Company or Fisher's
6 Landing prior to August 2004; (7) establishing that NDC is a valid California corporation or other
7 valid legal entity and is either authorized to transact business in the State of Arizona or is not legally
8 required to obtain authorization to transact business in the State of Arizona; (8) providing the names
9 and ownership interests of all owners of NDC and the names and titles of all officers and directors of
10 NDC as of August 31, 2004, and currently; (9) providing the names and ownership interests of all
11 owners of Fisher's Landing and the names and titles of all officers and directors of Fisher's Landing
12 as of August 31, 2004, and currently; and (10) providing the names and ownership interests of all
13 owners of the Company and the names and titles of all officers, members, and managers of the
14 Company as of August 31, 2004, and currently. In addition, the Company shall indicate whether it
15 desires a hearing to be held in this matter.

16 IT IS FURTHER ORDERED that **Staff shall, by April 20, 2009, file a response** to the
17 information filed by the Company as required by this Procedural Order, including Staff's detailed
18 analysis of the implications of the information and any revisions in Staff's recommendations resulting
19 from the information. In addition, Staff shall provide a recommendation as to how this matter should
20 proceed and shall indicate whether Staff believes a hearing should be held in this matter.

21 IT IS FURTHER ORDERED that the **Company shall, by May 11, 2009, file any response**
22 that it may have to Staff's filing.

23 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
24 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

25 Dated this 9th day of March, 2009.

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28 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

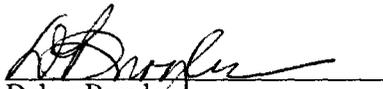
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Copies of the foregoing mailed/delivered
this 9th day of March, 2009, to:

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By: 
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Secretary to Sarah N. Harpring