

ORIGINAL

OPEN MEETING ITEM



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Executive Director

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ARIZONA CORPORATION COMMISSION

2009 DEC 23 11:14

DATE: DECEMBER 23, 2009

DOCKET NO.: SW-20403A-05-0586

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 Order on:

**BALTERRA SEWER CORPORATION
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 68742)**

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 4, 2010

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 Open Meeting to be held on:

JANUARY 12, 2010 and JANUARY 13, 2010

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 Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

DEC 23 2009

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
BALTERRA SEWER CORPORATION FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WASTEWATER
SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. SW-20403A-05-0586

DECISION NO. _____

**ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 68742**

Open Meeting
January 12 and 13, 2010
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

1. On June 5, 2006, the Arizona Corporation Commission ("Commission") issued Decision No. 68742 which approved the application of Balterra Sewer Corporation ("Company" or "Applicant") for a Certificate of Convenience and Necessity ("Certificate") to provide public wastewater utility service to the equivalent of 6,100 residential units at build-out in the vicinity of 411th Avenue and Camelback Road in Maricopa County, Arizona.¹

2. The Commission's approval was conditioned upon the Company filing copies of the following documents in a timely fashion:

- A copy of the Maricopa Association of Governments' ("MAG") approved Section 208 Plan ("208 Plan") Amendment by April 30, 2007;

¹ The Company was acquired by Global Water Resources L.L.C. ("Global") in a transaction approved by the Commission in Decision No. 70310 (April 24, 2008).

- 1 • A copy of an Approval to Construct issued by the Maricopa County
2 Environmental Services Department ("MCESD") for the proposed Phase I
wastewater treatment plant by June 30, 2007;
- 3 • A copy of an Approval of Construction issued by MCESD for the
proposed Phase I wastewater collection system by March 31, 2008; and
- 4 • A copy of an Aquifer Protection Permit ("APP") and/or Arizona Pollutant
5 Discharge Elimination System ("AZPDES") permit issued by the Arizona
Department of Environmental Quality ("ADEQ") by October 31, 2007.

6 3. On April 9, 2007, the Company filed a Motion to Extend Time ("Motion") for filing
7 the above-referenced documents as follows:

- 8 • Approval of the MAG 208 Plan to August 31, 2007;
- 9 • Approval to Construct from June 30, 2007 to October 30, 2007;
- 10 • Approval of Construction from March 31, 2008 to September 30, 2009; and
- 11 • ADEQ approved APP and/or AZPDES permit from October 31, 2007 to
12 November 30, 2008.

13 4. The Company's Motion described how recent changes by ADEQ in the requirement
14 for it to forward the Company's 208 Plan to the Environmental Protection Agency ("EPA") of the
15 United States for the EPA's approval of the 208 Plan under the Clean Water Act ("CWA") had
16 resulted in delays in the processing of the Company's request for approval by the EPA. The
17 Company claimed that, despite the fact that MAG sent its approval of the Company's 208 Plan to
18 ADEQ on August 21, 2006, ADEQ had refused to forward the MAG approval to the EPA for review
19 until January 25, 2007, after the Company had satisfactorily explained how it would perform the
20 equivalent functions of a Designated Management Agency ("DMA") under the CWA. The Company
21 had anticipated the EPA review of its 208 Plan would be concluded by the end of June 2007, and
22 once the EPA's approval was given, the Company would proceed with securing the other
23 documentation in a timely fashion as ordered.

24 5. On April 17, 2007, by Procedural Order, the Commission's Utilities Division ("Staff")
25 was directed to file a response to the Company's Motion.

26 6. On April 30, 2007, Staff filed its response which recommended approval of the
27 Company's Motion indicating that the delay experienced by the Company had been verified and the
28 requested extensions were reasonable under the circumstances. Staff also pointed out that the

1 Company's certificated service area did not yet have a certificated water provider since the Water
2 Utility of Greater Tonopah ("WUGT"), which had applied for an extension of its Certificate to
3 service the area, had not yet had its application deemed sufficient and estimated that WUGT's
4 application would not be fully processed for at least six months.²

5 7. On May 21, 2007, by Procedural Order, the Company's Motion was granted as
6 follows:

- 7 • Approval to file the MAG 208 Plan by August 31, 2007;³
- 8 • Approval to file Approval to Construct by October 30, 2007;⁴
- 9 • Approval to file Approval of Construction by September 30, 2009; and
- 10 • Approval to file Aquifer Protection Permit and/or AZPDES by November 30, 2008.

11 8. On November 26, 2008, the Company filed a copy of its AZPDES as required by
12 Decision No. 68742, and in the alternative requested an additional extension of time until March 31,
13 2009, if Staff required the Company to also file a copy of its APP.

14 9. On December 30, 2008, Staff filed its response. Staff believed that the Company had
15 met the compliance requirement according to the language used in Decision No. 68742 by filing a
16 copy of its AZPDES and indicated that no further filing was necessary with respect to the
17 requirement that the Company file a copy of the APP.

18 10. On February 3, 2009, by Procedural Order, the issue was deemed moot with respect to
19 whether a copy of the Company's APP should be filed, and it was ordered that a copy of the APP was
20 no longer required to be filed.

21 11. On September 30, 2009, the Company filed another Motion which requests an
22 extension of time, until September 30, 2013, in which to file a copy of the Approval of Construction
23 for the proposed wastewater collection system. The timeframe for this compliance filing had been
24 extended only once previously from March 31, 2008, to the date of the filing of the current Motion.

25 12. In the Company's Motion, it states that the delay is being caused by the downturn in

26 ² On December 4, 2007, the Commission issued Decision No. 70037 which approved the extension of WUGT's
27 Certificate to provide water service in the Company's certificated wastewater service area. Global also owns and operates
28 WUGT.

³ This document was filed with the Commission on July 6, 2007.

⁴ This document was filed with the Commission on July 19, 2007.

1 the Arizona housing market and that to build the Phase I facilities before they are needed would be
 2 premature and expensive. The Company represents that the public interest would be best served by
 3 delaying construction until the actual time of development.

4 13. The Company represents further that it is working closely with WUGT, the
 5 certificated water provider for the area, to offer integrated water, wastewater and recycled water to
 6 the service area. Lastly, the Company's Motion states that millions of dollars have been invested to
 7 reach this point.

8 14. On October 29, 2009, Staff filed a Memorandum which contains the following key
 9 concerns:

- 10 • Staff is concerned generally about both the number and relative lengths of
 various utilities' extension requests to meet compliance requirements;
- 11 • Staff is still concerned with Certificates that are being held by firms with
 12 projects where development has been placed on severe hold or which may
 never occur;
- 13 • Staff is concerned that it has been more than three years and four months
 14 since the Decision which generated this compliance requirement;
- 15 • Staff is concerned that the Company's Motion proposes an extension of
 16 time which would result in more than a seven year period in which the
 development in the Company's certificated service area could remain in a
 state of delay;
- 17 • Staff is concerned that the current four year request from September 30,
 18 2009, to September 30, 2013, is in itself excessive for a subsequent
 extension request, especially with the consideration that there appears no
 19 actual need for certificated service in the foreseeable future;
- 20 • Staff is concerned that the Motion did not include requests from the
 21 developer(s) that indicate an ongoing need for service and, despite several
 Staff telephonic requests, the Company has still not provided letters in that
 regard; and
- 22 • Staff is concerned that the original conditions and specific information,
 23 upon which the original rates for the certificated service area were
 developed, are becoming outdated.

24 15. Under the circumstances, Staff is recommending the denial of the Company's Motion
 25 for a further extension of time until September 30, 2013, relating to the production of the required
 26 Approval of Construction for the Phase I wastewater collection system. In the alternative, Staff
 27 recommends that the Commission issue an Order Preliminary utilizing the Company's proposed
 28

1 September 30, 2013, date for compliance.

2 16. Staff has recommended denial of the Company’s request for an extension of time, or
3 in the alternative, granting the Company an Order Preliminary. The recommendation for an Order
4 Preliminary would require the Commission to, pursuant to A.R.S. § 40-252, “rescind, alter or amend”
5 Decision No. 68742. To date, the Commission has not voted to rescind, alter or amend Decision No.
6 68742, pursuant to A.R.S. § 40-252.

7 17. Although the construction timeframes contained in Decision No. 68742 have not or
8 likely will not be met, regional planning takes time, and in light of the economic downturn, it is likely
9 to require more time than the Commission initially thought. We believe that the Company’s Motion
10 for an extension of time to comply with Decision No. 68742 is reasonable and should be granted.

11 **CONCLUSIONS OF LAW**

12 1. The Company is a public service corporation within the meaning of Article XV of the
13 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

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

16 3. The Company’s request for an extension of time should be granted.

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ORDER

IT IS THEREFORE ORDERED that the compliance requirement that Balterra Sewer Corporation file a copy of its Approval of Construction for its Phase I wastewater collection system, as required by Decision No. 68742, shall be extended to September 30, 2013.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: BALTERRA SEWER CORPORATION

DOCKET NOS.: SW-20403A-05-0586

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