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Transcript Exhibit(s)

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Docket #(s): SW-20403A-05-0586

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Exhibit #: A-1, A-2, A-3, A-4, S-1

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Patrick Black  
3003 N. Central Ave.  
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Phoenix, Arizona 85012  
Attorneys for Balterra Sewer Corporation

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

DOCKET NO: SW-20403A-05-0586

**DIRECT TESTIMONY OF  
JAMES L. CONDIT**

**DIRECT TESTIMONY OF  
JAMES L. CONDIT, P.E.**

*Admitted*  
**EXHIBIT A-1**  
WITNESS \_\_\_\_\_  
DATE 4-10-06  
BARBARA ROSADO/RPR

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. James L. Condit, 6720 N. Scottsdale Rd., Suite 250, Scottsdale, Arizona 85253.

3 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

4 A. I am the employed by JF Properties, Inc. as Water and Wastewater Engineer. JF  
5 Properties is in the real estate development business in Arizona and is also  
6 involved in the water and wastewater utility businesses in Colorado. JF Properties  
7 has recently expanded its operations into Arizona, and is an affiliate of Balterra  
8 Sewer Corporation ("Balterra" or the "Company").

9 Q. PLEASE DISCUSS YOUR EDUCATIONAL BACKGROUND?

10 A. I received my Bachelor of Science in Civil Engineering from the University of  
11 Wisconsin in 1985 and my Masters in Civil Engineering from Arizona State  
12 University in 1992. I am a registered Civil Engineer in Arizona and Colorado.

13 Q. PLEASE DISCUSS YOUR EMPLOYMENT HISTORY?

14 A. I have held positions with several firms including Wood, Patel & Associates, Inc.,  
15 where I was a Senior Project Manager II, Community Sciences, Inc., as  
16 Engineering Department Manager, Kleinfelder, Inc., where I held the position of  
17 Environmental Manager, Construction Services Manager, and Business  
18 Development Manager, Dames & Moore as Senior Civil Engineer, and CH2M  
19 HILL where I was Engineering Graphic Services Manager. I also worked for the  
20 City of Scottsdale, Arizona as a Water and Wastewater Engineer.

21 Overall, I have thirty years of municipal and consulting engineering experience,  
22 including engineering business development, proposal and project management,  
23 master planned community planning and design, cost estimating, contract  
24 administration, construction management, environmental site assessment, quality  
25 assurance, planning, design and construction of soil and groundwater remediation,  
26 water distribution, wastewater collection and treatment facilities. I have

1 comprehensive knowledge of master planned community planning and  
2 development at the municipal, regional, departmental levels, as well as large  
3 program and small project management.

4 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES AS THEY RELATE**  
5 **TO BALTERRA.**

6 A. I am in charge of the project's infrastructure utility coordination. My  
7 responsibilities include engineering analysis, design, cost estimation and hydraulic  
8 modeling for civil engineering pertaining to water supply pipelines; advance  
9 potable water and wastewater treatment requiring the supervision of engineering  
10 consultants; project management and technical leadership roles for the preparation  
11 of plans and specifications for water supply and wastewater collection pipelines;  
12 water and wastewater treatment process design, engineering studies, technical  
13 reports, review and selection of process equipment; and engineering cost  
14 estimation. Specifically, I am responsible for planning and designing a wastewater  
15 collection system to serve the master planned community and surrounding school  
16 district in the area that is the subject of this application.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
18 **PROCEEDING?**

19 A. To support Balterra's application and the Company's response to Staff's September  
20 9, 2005 deficiency letter. Specifically, the Company understands and appreciates  
21 that Staff wants as much information as possible in order to analyze the  
22 application. The response to the deficiency letter submitted to Staff provides  
23 substantial technical, financial and other information to support the application.  
24 The purpose of my testimony is to put some "context" on the application and  
25 supporting data.

26

1 **Q. WHAT DO YOU MEAN BY “CONTEXT” MR. CONDIT?**

2 A. Put simply, Balterra’s CC&N application is likely the first mile in a long road to  
3 develop a regional sewer utility provider. The area subject to Balterra’s current  
4 request, which includes a planned residential subdivision and a school district, are  
5 the potential customers who have formally requested sewer utility service as soon  
6 as possible. However, it is and always has been our plan to become a regional  
7 sewer provider that will ultimately serve a much larger area than that requested in  
8 the current application. We are only seeking to provide capacity now for the  
9 immediately identified users.

10 **Q. HAVE OTHER STEPS BEEN TAKEN TOWARDS PLANNING FOR**  
11 **WASTEWATER TREATMENT ON A REGIONAL BASIS?**

12 A. Yes. Besides filing this application, we have been in discussion with the Maricopa  
13 County Environmental Services Water and Waste Management Division regarding  
14 the need for regional wastewater treatment collection and facility planning. The  
15 region does not have any existing wastewater service providers, and Maricopa  
16 County is well aware of the explosive growth taking place west of Phoenix, and  
17 wants to be prepared to accommodate continued growth in the region that includes  
18 Balterra’s requested CC&N.

19 **Q. WHAT “REGION” ARE YOU REFERRING TO IN YOUR TESTIMONY?**

20 A. The “region” referred to includes the area in western Maricopa County that is  
21 surrounding the area requested for in this application. We believe that the area and  
22 the regional sewer provider will develop in several stages as growth continues in  
23 western Maricopa County. Currently, our application and our focus is on the first  
24 stage of development, which includes: (1) a master planned community of  
25 approximately 1,100 acres located between Indian School Road and Camelback  
26 Road, west of 395<sup>th</sup> Avenue and east of 415<sup>th</sup> Avenue; (2) the Ruth Fisher

1 Elementary and Tonopah Valley High School sites located near the south west  
2 corner of 379<sup>th</sup> Avenue and Indian School Road; and (3) a 2.2 MGD wastewater  
3 treatment facility, located on approximately 3.7 acres, to serve the area included in  
4 Balterra's CC&N application. The sewer facilities being planned to serve this area  
5 will be constructed in an unincorporated area of Maricopa County located north of  
6 Interstate-10 and west of 395<sup>th</sup> Avenue. Balterra has worked closely with the  
7 master planned community development team, as well as the school district staff,  
8 in planning what we refer to as "stage one," which is the subject of this CC&N  
9 application.

10 Once the 2.2 MGD wastewater treatment facility is complete, and wastewater  
11 service is being provided to the master planned community and school district,  
12 Balterra intends to expand the wastewater treatment facility in accordance with the  
13 long-term plans of Maricopa County and owners of property in the immediate  
14 vicinity of the initial CC&N area. To date, Balterra has extended its service area  
15 planning efforts by: (1) reviewing preliminary development maps of Maricopa  
16 County, including current and conceptual land uses, (2) attending regional  
17 transportation, water, and wastewater planning meetings conducted by Maricopa  
18 County, (3) conducting follow-up meetings with Maricopa County, (4) discussing  
19 wastewater service area expansion with developers in the general area; and (5)  
20 setting aside 15 acres of land for future wastewater treatment plant expansion.  
21 Additionally, we have conducted geological studies that define the various  
22 wastewater service area basins, and estimate that these basins can realistically serve  
23 a future population of approximately 45,000 residents. Balterra anticipates that the  
24 2.2 MGD wastewater treatment facility will be expanded within the 15-acre site to  
25 eventually serve an area much larger than the area being sought in this CC&N  
26 application.

1 Q. **THANK YOU. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE**  
2 **EFFORTS YOU HAVE TAKEN TO WORK WITH MARICOPA COUNTY?**

3 A. Meetings with the development community have been conducted, along with  
4 Maricopa County staff, at the request of Maricopa County Board of Supervisors  
5 Chairman Max Wilson and Supervisor Mary Rose Wilcox. There is a now general  
6 outline for developing a master wastewater plan for the regional basin. These  
7 efforts will include working with the Maricopa Association of Governments  
8 (MAG), the designated area-wide Water Quality Management Planning Agency for  
9 Maricopa County. The requested CC&N area encompasses an existing MAG 208  
10 Water Quality Management Plan, and will require an amendment to include the  
11 area requested for in this application. A draft amendment will be submitted to  
12 MCESD on December 1, 2005, requesting sponsorship. Balterra will provide Staff  
13 a copy of the amendment application once filed with MAG.

14 Q. **WHAT ABOUT ADDITIONAL TREATMENT CAPACITY TO PROVIDE**  
15 **SEWER SERVICE ON A REGIONAL BASIS?**

16 A. Our planning for the proposed wastewater treatment facility for Balterra reflects  
17 our "regional approach." The current facility is planned for a maximum capacity  
18 of 2.2 MGD. However, it is anticipated that future plant expansion will increase  
19 the ability to treat wastewater flows up to 11.0 MGD on the 15-acre site – which is  
20 well in excess of those wastewater flows anticipated from the area covered by the  
21 present CC&N request.

22 Q. **DO YOU BELIEVE THIS ONGOING PLANNING WILL IMPACT THE**  
23 **CURRENT CC&N APPLICATION?**

24 A. No. There is a near-term need for sewer utility service in the area covered by the  
25 Company's application, and the information submitted in support shows that  
26 Balterra is fit and able to meet that need. Moreover, Balterra can function as a

1 stand alone entity, irrespective of the outcome of our efforts to work with Maricopa  
2 County to establish a regional sewer provider. Of course, potential expansion of  
3 the CC&N service area will also require future action by the Commission.

4 On the other hand, as our long-term regional planning efforts mature, we  
5 anticipate that some aspects of the design and engineering requirements for  
6 developing a sewer collection and treatment system will change. This is, at least in  
7 part, why I suspect some of the technical and financial information we have  
8 provided to Staff in support of the current application was viewed as preliminary or  
9 incomplete.

10 **Q. SHOULD STAFF AND THE COMMISSION BE CONCERNED THAT**  
11 **YOUR PLANNING FOR A SEWER UTILITY SYSTEM TO SERVE THE**  
12 **REQUESTED BALTERRA CC&N IS INSUFFICIENT?**

13 **A.** In my opinion, absolutely not. For starters, we have now provided Staff with all of  
14 the additional technical and financial information they requested. From this  
15 information, Staff and the Commission will have a clear picture of the manner in  
16 which Balterra will provide sewer utility service to master planned community and  
17 school district customers. Perhaps even more importantly, Balterra has to obtain  
18 approval under Section 208 of the Clean Water Act from MAG, and an APP from  
19 the Arizona Department of Environmental Quality. AZNPDES discharge permits  
20 will also be required, although it is not clear at this time whether ADEQ or EPA  
21 will have jurisdiction over these permits. In any event, these agencies will not  
22 issue the requisite approvals unless they are satisfied that the wastewater collection  
23 and treatment system is designed and constructed in a manner that meets all  
24 applicable standards and regulations. In other words, without these approvals, we  
25 can never operate.

26

1 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

2 A. Yes.

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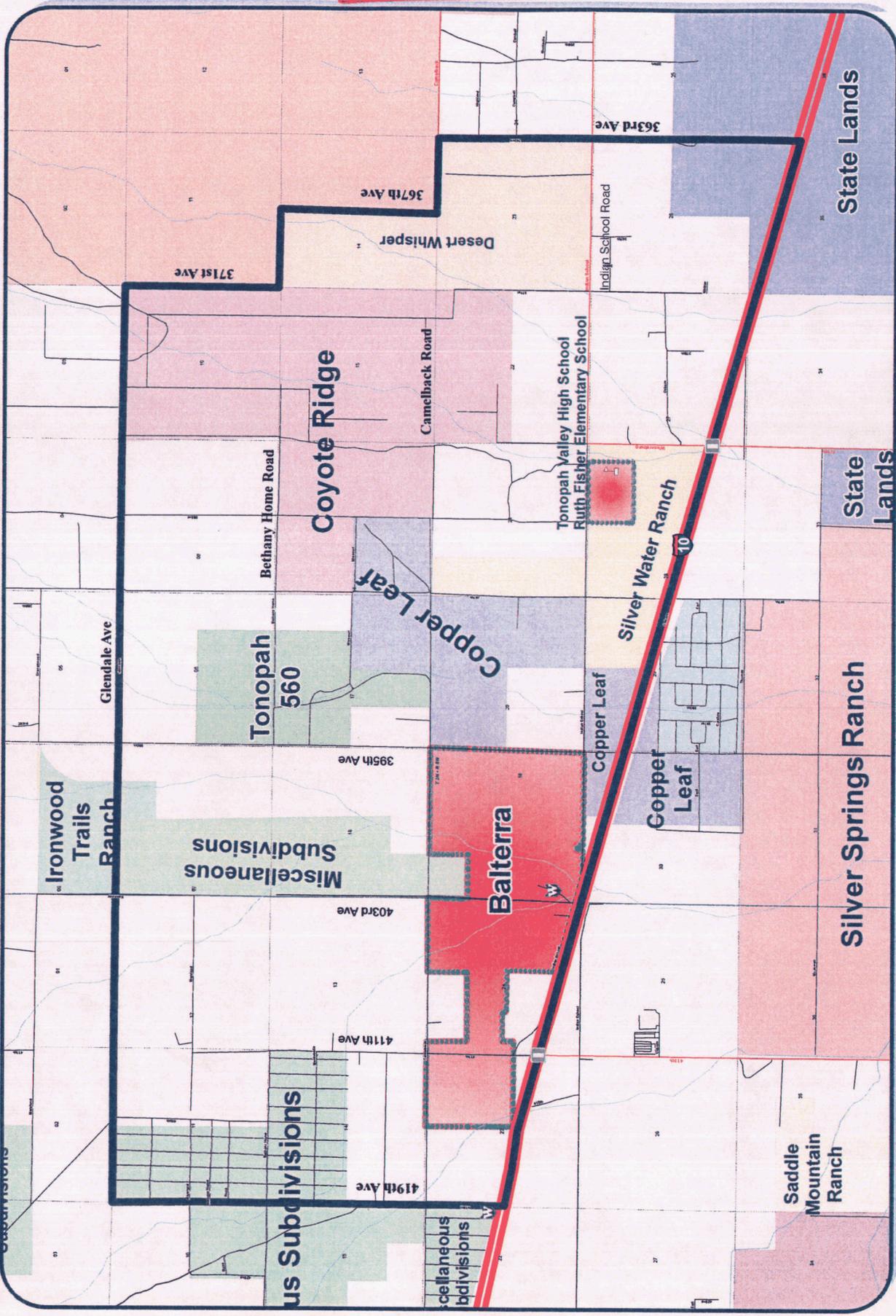
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*Admitted*

**EXHIBIT A-2**

WITNESS \_\_\_\_\_  
DATE 4-10-06  
BARBARA ROSADO/RPR

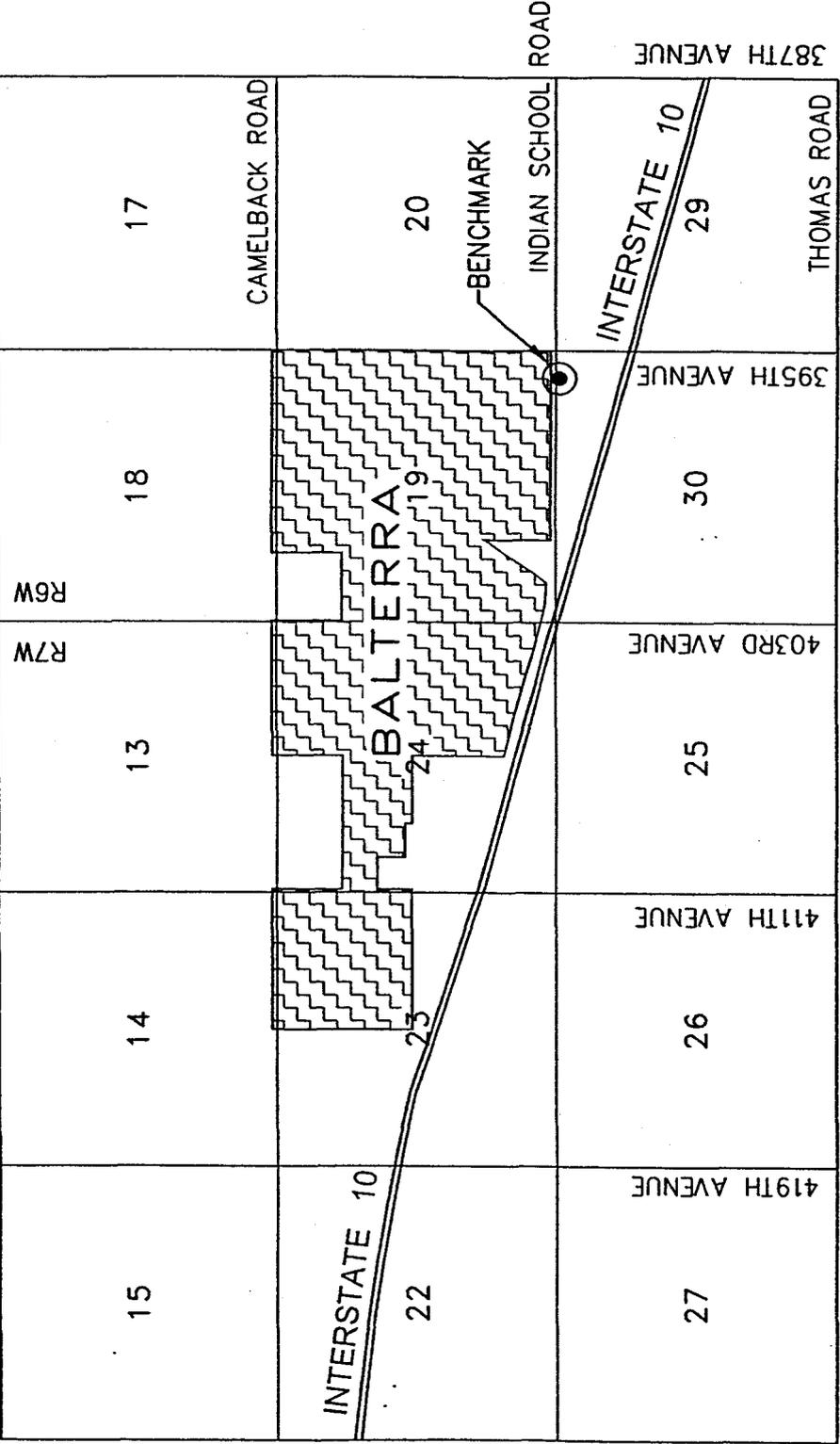
**DM**  
DAVID SWANS  
AND ASSOCIATES, INC.  
2141 East Highland Avenue • Suite 200  
Phoenix, Arizona 85016  
602.975.1101 • www.dmsub.com



**North Tonopah's Southeast 208 Planning Area • Balterra Sewer Corp. Figure 1**



BETHANY HOME ROAD



**LEGEND**

SECTION LINE

BENCHMARK LOCATION

PROJECT BOUNDARY

BENCHMARK:  
 NGS BRASS DISK, DESIGNATED X 475, AT THE  
 NORTHWEST CORNER OF A CONCRETE WELL PAD  
 ON THE SOUTH SIDE OF INDIAN SCHOOL ROAD, 0.1  
 MILES WEST OF THE INTERSECTION WITH 395TH  
 AVENUE. DATUM IS NAVD88. ELEV. = 1107.44'

SCALE:	NTS
SHEET	1 OF 1
JOB NO.:	JFF100000002

**EXHIBIT 1 - BALTERRA  
 VICINITY MAP WITH  
 BENCHMARK LOCATION**

**DAVID EVANS  
 AND ASSOCIATES INC.**  
 2141 East Highland Avenue, Suite 200  
 Phoenix Arizona 85016  
 Phone: 602.678.5151

DRAWN BY:	DCHO
CHECKED BY:	UJR
DATE:	04/05

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5 Attorneys for Balterra Sewer Corp.

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7  
8 IN THE MATTER OF THE APPLICATION  
OF BALTERRA SEWER CORP. FOR A  
9 CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
10 SERVICE IN MARICOPA COUNTY,  
ARIZONA.

DOCKET NO. SW-20403A-05-0586

**BALTERRA SEWER CORP.'S RESPONSE  
TO STAFF REPORT**

11  
12 Balterra Sewer Corp. ("Balterra"), an Arizona corporation, hereby submits this Response  
13 to the Staff Report filed on March 10, 2006, in the above-captioned matter ("Response").  
14 Balterra is appreciative of the Arizona Corporation Commission Staff's ("Staff")  
15 recommendation in this proceeding, and this Response does not place the underlying issue – that  
16 granting a Certificate of Convenience and Necessity ("CC&N") is warranted – in dispute.  
17 However, Staff's proposed condition Nos. 6 and 8 present timing issues for Balterra that warrant  
18 reconsideration. Furthermore, the legal description should be corrected to include the Saddle  
19 Mountain Unified School District No. 90 Ruth Fisher Elementary and Tonopah Valley High  
20 School sites ("District") within the CC&N.

21 1. The Deadline Included in Staff's Proposed Condition No. 6 Should be Extended Three  
22 Months.

23 Staff is proposing that Balterra file, as a compliance item in this docket, a copy of the  
24 Maricopa Association of Governments ("MAG") approved 208 Plan by January 31, 2007.  
25 Balterra does not anticipate that it will be able to meet this deadline. Balterra has been working  
26 closely with the District and the Maricopa County Environmental Services Department

<b>EXHIBIT A-3</b>
WITNESS _____
DATE <u>4-16-06</u>
BARBARA ROSADO/RPR
<i>Admitted</i>

1 (“MCESD”), which is sponsoring Balterra’s efforts to obtain an amendment to the MAG 208 Plan  
2 for approval of its regional wastewater treatment plant. Despite this joint effort, the process for  
3 amending the current MAG 208 Plan will still take considerable time. The current estimated  
4 timetable for approval is as follows:

5	County sponsorship letter to MAG	March 13, 2006
6	MAG Staff Review Comments Due:	March 28, 2006
7	MAG Water Quality Advisory Committee:	April 25, 2006
8	Public Hearing:	May or June 2006
9	MAG Mgmt Committee Meeting:	July 2006
10	MAG Regional Council:	September 2006
11	ADEQ State Water Quality Management Group:	October 2006
12	SWQMG Submittal to ADEQ:	November 2006
13	ADEQ Submittal to EPA, Governor & Director :	December 2006
14	Final App. Notification (120-day EPA approval):	April 2007

15 *See also* Exhibit 1 (MAG Amendment Process). Because Balterra cannot begin providing  
16 wastewater service to its customers until the MAG 208 Plan Amendment is approved, ratepayers  
17 will not be harmed by extending the deadline recommended by Staff by three months, from  
18 January 31, 2007 to April 30, 2007. Furthermore, by extending the deadline now based on an  
19 anticipated schedule of events, the Commission will more than likely avoid having to address this  
20 issue in a future proceeding in this docket.

21 2. The Deadline Included in Staff’s Proposed Condition No. 8 Should be Extended by Eight  
22 Months.

23 Staff is proposing that Balterra file by October 31, 2007, as a compliance item in this  
24 docket, a copy of the Approval of Construction (“AOC”) issued by MCESD for the proposed  
25 Phase I sewer collection system. Staff has also proposed that Balterra file a copy of the Approval  
26 to Construct (“ATC”) in this docket by June 30, 2007. These two deadlines would provide  
Balterra only four months to complete the construction of the sewer collection system *and* obtain  
and file a copy of the AOC, provided the ATC is issued on or close to the June 30, 2007,  
deadline. While Balterra does not take exception to Staff’s proposed ATC deadline, four months

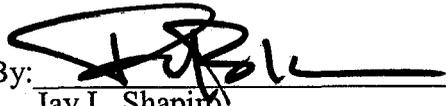
1 leaves very little room for planning flexibility. Conversely, under Chapter II, Section 2,  
2 Regulation 1.f of the Maricopa County Health Code ("Code"), an ATC becomes void if the  
3 holder does not substantially start construction within one year after its issuance, or if there is a  
4 halt in construction of more than one year. See Exhibit 2. Balterra asserts that consistency with  
5 the Code in this regard will provide Balterra, the District and MCESD with a flexible planning  
6 horizon to develop a regional wastewater system, while protecting the public interest by placing a  
7 reasonable limit in which to accomplish this goal. Therefore, it is more reasonable to require that  
8 Balterra file the AOC within one year of the issuance of an ATC, but no later than June 30, 2008.

9 3. The Legal Description in the Staff Report Should Be Amended to Include the District.

10 The Staff Report does not contain a complete legal description consistent with the area  
11 Balterra is requesting to serve and include in its CC&N. Balterra has discussed this oversight  
12 with Staff, and both agree that the District's legal description will be provided as a supplement to  
13 the Staff Report.

14 DATED this 23 day of March, 2006.

15 FENNEMORE CRAIG, P.C.

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

21 ORIGINAL and 13 copies filed  
22 this 23 day of March, 2006:

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

25 COPIES of the foregoing hand-delivered  
26 this 23 day of March, 2006 to:

1 Amy Bjelland, Administrative Law Judge  
Hearing Division  
2 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
3 Phoenix, Arizona 85007

4 Keith Layton  
Legal Division  
5 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
6 Phoenix, Arizona

7 Linda Jaress  
Utilities Division  
8 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
9 Phoenix, Arizona 85007

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11 By: \_\_\_\_\_  
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# **EXHIBIT**

**1**

## MAG 208 WATER QUALITY MANAGEMENT PLAN AMENDMENT PROCESS

1. Request to Amend the MAG 208 Plan - The jurisdiction (MAG member agency) in which the facility would be located initiates a request to include the new wastewater treatment plant in the 208 Plan. Prior to the official request, the jurisdiction may also request an informal review of the draft 208 amendment by MAG staff to ensure that all pertinent items have been addressed in the document.
2. MAG Water Quality Advisory Committee - The MAG Water Quality Advisory Committee reviews the draft 208 Plan amendment and then authorizes a public hearing to be conducted. According to federal regulations, the hearing must be advertised 45 days in advance and the document must be available for public review 30 days prior to the hearing. A hearing notice is also sent to interested parties 30 days prior to the public hearing.

The public hearing is conducted by MAG. A court reporter prepares an official transcript of the hearing. If written or verbal comments are received, a response to comments is prepared by the entity requesting the amendment.

The MAG Water Quality Advisory Committee reviews the response to comments and then makes a recommendation to the MAG Management Committee. In general, the MAG Water Quality Advisory Committee meetings are conducted on an as needed basis.

3. MAG Management Committee - The MAG Management Committee reviews the recommendation from the Water Quality Advisory Committee. The Management Committee then makes a recommendation to the MAG Regional Council. In general, the MAG Management Committee meets on a monthly basis.
4. MAG Regional Council - The MAG Regional Council reviews the recommendation from the Management Committee. The Regional Council then takes official action to approve the 208 Plan amendment. The Regional Council is the decision-making body of MAG. In general, the MAG Regional Council meets on a monthly basis.
5. State Water Quality Management Working Group - The State Water Quality Management Working Group reviews the 208 Plan amendment approved by the MAG Regional Council. The Working Group then makes a recommendation to the Arizona Department of Environmental Quality. In general, the State Water Quality Management Working Group meets on a quarterly basis.
6. Arizona Department of Environmental Quality - The Arizona Department of Environmental Quality submits the 208 Plan amendment to the Environmental Protection Agency for approval.
7. Environmental Protection Agency - The Environmental Protection Agency approves the 208 Plan amendment and notifies the State of the approval action.

# **EXHIBIT**

**2**

**MARICOPA COUNTY HEALTH CODE**

**CHAPTER II**

**SEWAGE AND WASTES**

**SECTION 2**

**SEWERAGE AND WASTE TREATMENT WORKS**

**REGULATION 1. Approval to Construct**

- a. No person shall begin construction of any sewage system, including septic tank systems, treatment works, reclamation systems, or extensions of works or systems, or make any change which affects capacity, quality, flow, location or operational performance of a system, and no person shall install any process, device or equipment, either in whole or in part, prior to receiving an "Approval to Construct" from the Department. Application for an "Approval to Construct" shall be submitted to the Department at least 30 days prior to the date upon which Department approval is desired. For septic tank systems, the application shall be submitted at least five working days prior to the date upon which Department approval is desired.
- b. All applicable fees must accompany the application.
- c. All applications except those for septic tank systems shall be accompanied by the following plan documents in duplicate:
  - (1) Prints or drawings of the work to be done. Sufficient detail shall be shown on the drawings to make clear to the Department the scope of the work.
  - (2) Complete specifications to supplement the drawings.
  - (3) Additional data as may be required by the Department.
- d. The plan documents shall be accompanied by an engineering report, prepared by the design or consulting engineer which presents a description of the project together with all pertinent data upon which the design is based and other information necessary to permit a clear and full understanding of the work proposed to be undertaken.
- e. All plan documents submitted to the Department, except septic systems less than 2,000 gallons per day, must have been prepared by, or under the supervision of a currently registered Arizona professional engineer. The engineer shall affix his signature and Arizona seal of registration to all plans submitted for approval and shall certify in writing that the plan documents comply with these regulations and in principle with the criteria contained in the Engineering Bulletins. A non-registrant may design a wastewater treatment plant, or extensions, additions, modifications or revisions, or extensions to collection systems, if the total cost value of such construction does not exceed two thousand five hundred dollars, as cost estimate for material and labor shall be submitted with plan documents.

- f. Plans and specifications submitted to the Department will be reviewed and, if found satisfactory, the Department will issue an "Approval to Construct". If construction has not substantially started within one year after the date of issuance of the "Approval to Construct", or if there is a halt in construction of more than one year, the "Approval to Construct" will be void, unless an extension of time has been granted in writing by the Department.
- g. All work shall conform to the approved plans and specifications. Should it be necessary or desirable to make any change in the design which will affect capacity or sanitary features of the proposed work, revised plans and specifications, together with a written statement of the reasons for such change, shall be submitted to the Department for review, and approval shall be obtained in writing before the work affected by the change is undertaken. Structural changes or minor revisions not affecting capacity, quality, flow, location, or operation will be permitted during construction without further approval. A set of "as-built" drawings showing all changes made during construction shall be filed with the Department upon completion of the project.
- h. A sewage system owner shall notify the Department of the date when construction will begin on the sewage system, or of any change made which will affect capacity, quality, flow or operational performance of a sewage system, authorized by an "Approval to Construct", and of the date when installation of any process, device, or equipment authorized by an "Approval to Construct" will begin. Notification of completion of construction shall be given to the Department at least ten working days prior to the expected completion date to permit the scheduling of a final inspection. For a septic tank system, the notification shall be given at least five working days prior to the expected completion date.
- i. The Department shall not issue approval for any sewerage system or waste and/or sewage treatment works which is not in conformance with the certified water quality management plan and facility plan that prescribes a particular sewerage system and waste and/or sewage treatment work configuration for sewage management by a designated management agency within a service area. If no facility plan is applicable, the certified water quality management plan shall be utilized by the Department to determine conformance.
- j. The Department may issue an approval for a sewerage system or waste and/or sewage treatment works which is consistent with general plans prepared for an area when no sewerage system and waste and/or sewage treatment works configuration is prescribed in the certified water quality management plan. The Department shall confer with both the designated water quality planning agency for the area and the responsible and impacted governmental units to determine consistency with the general plans.

- a. The following requirements must be satisfactorily met before an approval of construction will be issued by the Department on a newly constructed, altered, or expanded sewerage system or waste and/or sewage treatment works including wastewater reclamation systems, but excluding septic tank systems.
  - (1) A final inspection has been completed:
    - (a) By the Department; or
    - (b) With the approval of the Department, by a Registered Engineer.
  - (2) An Operator, Certified by the State of Arizona pursuant to Rule R18-4-107, is employed to operate the system.
  - (3) An Operation and Maintenance manual is submitted to and approved by the Department for new sewage treatment systems or substantial modifications thereto.
  - (4) Construction conforms to plans and specifications approved by the Department.
- b. Approval of septic tank systems is regulated under Section 8 of this Chapter.

### **REGULATION 3. General Considerations**

- a. All sewerage and disposal systems and waste treatment works shall conform to the applicable general provisions relating to sewerage and waste disposal, listed in Section 1 of this Chapter, and to the specific provisions of this section.
- b. Design, operation and maintenance of sewerage systems shall be in general conformance with criteria contained in Engineering Bulletin No. 11.
- c. Preliminary plans. Design or consulting engineers should confer with the Department before proceeding with detailed designs of major waste treatment works. It is advisable to submit, for preliminary consideration, tentative plans containing a general description of the existing or proposed plant, works, or systems, or proposed changes therein.
- d. Tests and records. The owner or operator of each waste treatment works shall have equipment for and make such tests and keep such records as are necessary to assure efficient operation of the treatment works. Records of plant operation shall be transmitted to the Department monthly on forms approved by the Department and as it may specify.
- e. Operation. All sewage and industrial waste treatment works shall be operated at their highest practical efficiency at all times. If, after investigation by the Department it is determined that any treatment or disposal works is causing unsatisfactory conditions in the waters or stream course or on or under any land into which the effluent is discharged, or is otherwise interfering with the legitimate uses of such waters or lands

or is creating a nuisance or a menace to public health, the owner shall make such changes in the plant or its operation as are necessary to produce satisfactory results. These changes shall be made within such time limits as are set by the Department.

- f. Inspection. Inspections of sewage and industrial waste treatment works and wastewater reclamation systems shall be made by personnel of the Department. Appropriate person or persons shall be notified of any unsatisfactory conditions with recommendations for corrections.
- g. Approval required. No sewage or industrial waste treatment effluents shall be reclaimed without written approval from the Department. The reclamation of sewage or industrial waste treatment effluents for irrigation of crops used for human consumption, watering of cattle, full body contact, or drinking purposes is prohibited. A.A.C. Title 18, Chapter 9, Sections 701 through 707 govern reuse of waste treatment effluent.
- h. Bypassing of untreated sewage from sewage treatment systems is prohibited.

**REGULATION 4. Separation of Water, Reclaimed Wastewater, and Sewer Lines**

- a. In order to protect potable water systems from possible contamination, a sewer or reclaimed wastewater line shall not:
  - (1) Be installed within six feet of either side of a water line and shall not be above, at the same level as, or less than two feet below the bottom of the water line, unless extra protection is provided. Extra protection shall consist of constructing the sewer line with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided or shall consist of encasing both the water and sewer lines in at least six inches of concrete.
  - (2) Under any circumstances, infringe upon an area which is within two feet of either side of or two feet above the water line.
- b. When unusual conditions such as, but not limited to, highway or bridge crossings prevent the water and sewer line separations required by subsection a, above from being met, the Department will review and may approve, requests for authorization to use alternate construction techniques, materials and joints on a case-by-case basis.
- c. No water line shall pass through, or come into contact with any part of a sewer manhole. The minimum horizontal separation between water lines and sewer manholes shall be six feet, measured from the center of the manhole.
- d. The minimum separation between force mains or pressure sewers and water lines shall be two feet vertically and six feet horizontally under all conditions. Where a sewer force

main crosses above, or less than six feet below, a water line, the sewer line shall be encased in at least six inches of concrete for 10 feet on either side of the water line.

- e. Sewer lines (gravity, pressure, force) shall be kept a minimum of 50 feet from drinking water wells, unless the following conditions are met:
  - (1) Gravity sewers, pressure tested in place to 50 psi without excessive leakage, may be used at distances greater than 20 feet from drinking water wells.
  - (2) Sewage force mains and pressure sewers, pressure tested in place to 150 psi without excessive leakage, may be used at distances greater than 20 feet from drinking water wells.
- f. No septic tank/disposal field system shall be constructed within 100 feet of a drinking water well.
- g. All distances are measured horizontally from the outside of the pipelines.
- h. Pipelines conveying a higher quality of water shall be located above pipelines conveying a lower quality of water. That is, potable water lines shall be installed above reclaimed wastewater lines and reclaimed wastewater lines shall be installed above sewer lines.
- i. For the purpose of establishing separation when reclaimed wastewater lines are installed adjacent to potable water lines, the reclaimed wastewater system shall be considered a sewer.
- j. For the purpose of establishing separation when reclaimed wastewater lines are installed adjacent to sewer lines, the reclaimed wastewater system shall be considered potable water.
- k. Horizontal and vertical separations between potable water, sewer, and reclaimed wastewater lines shall be in strict accordance with Engineering Bulletin No. 10 and this Regulation.
- l. These separation requirements do not apply to building plumbing or individual house service connections. These shall conform to the current Uniform Plumbing Code and/or Maricopa Association of Governments (MAG) Standards.

**REGULATION 5. Minimum Requirements For Sewage Systems**

- a. Sewage Systems serving condominiums, mobile home parks, travel trailer parks, shopping centers and recreational vehicle parks may be designed using the requirements of the current Uniform Plumbing Code - excluding the water and sewer main separation requirements. Water and sewer main separations shall conform to this Code.
- b. For systems that treat, or which are designed to treat greater than 10,000 gallons/day, a standby power source shall be provided at all sewage treatment systems and/or pump stations where a temporary power failure may allow a discharge of raw or partially

treated sewage. Standby power may be via a standby generator, separate feeders from separate substations, a loop feeder on separate transformers from a common substation, or a high-level alarm with portable generators. Standby power also shall be provided to any sewage treatment systems and/or pump stations, regardless of size, if a temporary power failure may allow a discharge into surface waters classified as "Unique Waters", by the Arizona Department of Environmental Quality.

- c. The structures and electrical and mechanical equipment of sewage treatment systems and pump stations, shall be protected from physical damage from a 100-year flood if the plans for such were submitted for approval after the effective date of this Regulation. Flood protection shall be designed such that treatment works and pump stations will remain fully operational during a 25-year flood. Walls or berms of adequate size may be constructed where necessary to provide protection. Flood protection approval must be obtained from the appropriate Flood Control District before an approval to construct will be issued.
  
- d. All treatment works with greater than 100,000 gallons/day capacity shall be provided with the necessary equipment to indicate, record and totalize the volume of wastewater being treated. Treatment plants with less than 100,000 gallons/day capacity are required to indicate flow.

RECEIVED

2006 FEB 15 P 2:40

AZ CORP COMMISSION  
DOCUMENT CONTROL

1 FENNEMORE CRAIG, P.C.  
Jay L. Shapiro (No. 014650)  
2 Patrick J. Black (No. 017141)  
3003 North Central Avenue  
3 Suite 2600  
Phoenix, Arizona 85012  
4 Telephone (602) 916-5000

5 Attorneys for Balterra Sewer Corp.

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7  
8 IN THE MATTER OF THE APPLICATION  
OF BALTERRA SEWER CORPORATION  
9 FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE  
10 WASTEWATER SERVICE IN MARICOPA  
COUNTY, ARIZONA.

DOCKET NO. SW-20403A-05-0586

**CERTIFICATION OF PUBLICATION  
AND PROOF OF MAILING**

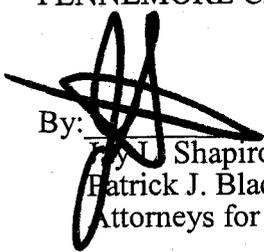
11  
12 Pursuant to the January 26, 2006 Procedural Order, Balterra Sewer Corporation  
13 ("Balterra"), an Arizona Corporation, hereby submits this Certification of Publication and Proof  
14 of Mailing in the above-captioned matter.

15 On February 7, 2006, legal public notice was published in the *West Valley View* and *West*  
16 *Valley View Business*. The affidavit of Elliot Freireich, Publisher of the *West Valley View* and  
17 *West Valley View Business*, is attached hereto as Exhibit 1.

18 On February 8, 2006, Balterra served notice to the property owners within the requested  
19 extension area. A copy of the certified mail receipts is attached hereto as Exhibit 2.

20 DATED this 15<sup>th</sup> day of February, 2006.

FENNEMORE CRAIG, P.C.

21  
22  
23 By: 

Jay L. Shapiro  
Patrick J. Black  
Attorneys for Balterra Sewer Corp.

24  
25  
26 *Admitted*  
**EXHIBIT A-4**  
WITNESS  
DATE 4-10-06  
BARBARA ROSADO/RPR

1 ORIGINAL and 13 copies filed  
this 15<sup>th</sup> day of February, 2006:

2 Docket Control  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
Phoenix, Arizona 85007

5 COPIES of the foregoing hand-delivered  
this 15<sup>th</sup> day of February, 2006 to:

6 Amy Bjelland, ALJ  
7 Hearing Division  
8 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

9 Keith Layton  
10 Legal Division  
11 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona

12 Linda Jaress  
13 Utilities Division  
14 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

15  
16 By: Whitney Oik

17 1762603.1

18  
19  
20  
21  
22  
23  
24  
25  
26

# **EXHIBIT**

**1**

# WEST VALLEY BUSINESS

West Valley View, Inc., 200 W. Wigwam Blvd., Litchfield Park, Az. 85340-4636 ♦ (623) 535-8439

## AFFIDAVIT OF PUBLICATION

State of Arizona

County of Maricopa

I, Elliott Freireich, publisher of West Valley View and West Valley Business, newspapers of general circulation in Avondale, Buckeye, Goodyear, Litchfield Park and Tolleson, Arizona, attest that the legal advertisements for

Balterra Sewer Corporation  
Public Notice - Hearing for a Certificate  
of Convenience and necessity to provide  
waste water service (SW-20403A-05-0586).

will be/has been published on February 7, 2006.

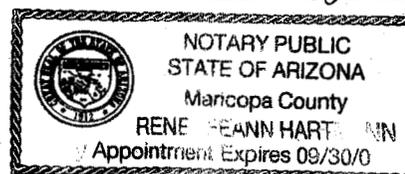
Elliott Freireich  
Elliott Freireich, President, West Valley View, Inc.

February 7, 2006.  
Date

SUBSCRIBED AND SWORN TO BEFORE ME ON THE

7 DAY OF February (Month), 2006 (YEAR)

NOTARY SIGNATURE: Rene Seann Hartman



## Public Notice

**PUBLIC NOTICE OF HEARING  
ON THE  
APPLICATION OF BALTERRA  
SEWER CORPORATION  
FOR A CERTIFICATE  
OF CONVENIENCE AND  
NECESSITY TO PROVIDE  
WASTEWATER SERVICE  
(SW-20403A-05-0586)**

On August 12, 2005, Balterra Sewer Corporation filed an Application with the Arizona Corporation Commission ("Commission") for a Certificate of Convenience and Necessity in the vicinity of 411<sup>th</sup> Avenue and Camelback Road in Maricopa County, Arizona. If the Application is granted, Balterra would be the exclusive provider of wastewater to this area, and would be required by the Commission to provide service under rates and charges and terms and conditions established by the Commission. The Application is available for inspection during regular business hours at the offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona, and at the offices of Balterra Sewer Corporation, 6720 North Scottsdale Road, Suite 250, Scottsdale, Arizona, and on the internet via the Commission website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket function.

The Commission will hold a hearing on this matter beginning on April 10, 2006, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comment will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to the Applicants or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Applicants, a shareholder of the Applicants, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicants or their counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before March 10, 2006. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. Failure to intervene will not preclude any potential customer from appearing at the hearing and making a statement on such person's own behalf. You will not,

however, receive any further notice in a proceeding unless requested by you.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, E-mail [Lhogan@azcc.gov](mailto:Lhogan@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

Published in the West Valley View, and the West Valley Business, on February 7, 2006.

# **EXHIBIT**

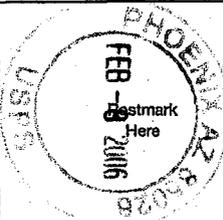
**2**

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

7002 0360 0000 4004 6004 2741

**OFFICIAL USE**

JPM	Postage	\$	39
	Certified Fee		2.40
	Return Receipt Fee (Endorsement Required)		1.85
	Restricted Delivery Fee (Endorsement Required)		
	<b>Total Postage &amp; Fees</b>	<b>\$</b>	<b>4.64</b>



Sent To Keith Watkins, JF Properties Inc.  
 Street, Apt. No.;  
 or PO Box No. 6720 N Scottsdale Rd. #250  
 City, State, ZIP+4  
Scottsdale, AZ, 85253  
 PS Form 3800, January 2001 See Reverse for Instructions

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

7002 0360 0000 4009 6009 2758

**OFFICIAL USE**

JPM	Postage	\$	.39
	Certified Fee		2.40
	Return Receipt Fee (Endorsement Required)		1.85
	Restricted Delivery Fee (Endorsement Required)		
	<b>Total Postage &amp; Fees</b>	<b>\$</b>	<b>4.64</b>



Sent To Ms. Roxanne G. Morris, Superintendent  
Saddle Mountain Unified School District  
 Street, Apt. No.;  
 or PO Box No. 33201 W. Indian School Rd.  
 City, State, ZIP+4  
Tonopah, AZ, 85354  
 PS Form 3800, January 2001 See Reverse for Instructions

Admitted  
EXHIBIT  
5-1  
4-10-06  
ALL-STATE LEGAL®

MEMORANDUM

RECEIVED

MAR 10 2006

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

TO: Docket Control

FROM: Ernest G. Johnson  
*EGJ*  
Director  
Utilities Division

DATE: March 10, 2006

RE: STAFF REPORT FOR THE APPLICATION OF BALTERRA SEWER CORP.  
FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
SEWER SERVICES DOCKET NO. SW-20403A-05-0586

Attached is the Staff Report for the application of Balterra Sewer Corp. for a Certificate of Convenience and Necessity to provide sewer service. Staff recommends approval with compliance requirements.

EGJ:LAJ:tdp

Originator: Linda Jaress

Attachment: Original and Thirteen Copies

RECEIVED

2006 MAR 10 P 3:09

AZ CORP COMMISSION  
DOCUMENT CONTROL

Service List for: Balterra Sewer Corp.  
Docket No. SW-20403A-05-0586

Jay Shapiro  
Fennemore Craig, P.C.  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012-2913

Mr. Christopher C. Kempsey  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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

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

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

BALTERRA SEWER CORP.

DOCKET NO. SW-20403A-05-0586

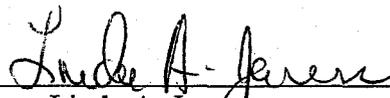
APPLICATION FOR A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE  
SEWER SERVICE IN MARICOPA COUNTY, ARIZONA

March 10, 2006

## STAFF ACKNOWLEDGEMENT

The Staff Report for Balterra Sewer Corp. (Docket No. SW-20403A-05-0586) was prepared by the Staff members listed below. Linda Jaress prepared the Staff Report, Dorothy Hains prepared the Engineering Report and Charles Myhlhousen prepared the Financial and Regulatory Analysis Report.

Contributing Staff:



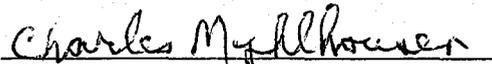
---

Linda A. Jaress  
Executive Consultant II



---

Dorothy Hains  
Utilities Engineer



---

Charles Myhlhousen  
Public Utilities Analyst IV

**EXECUTIVE SUMMARY  
BALTERRA SEWER CORP.  
DOCKET NO. SW-20403A-05-0586**

Balterra Sewer Corp. ("Balterra" or "the Company") filed an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide utility wastewater service in the West Valley of Phoenix in Maricopa County, Arizona. The Company will initially serve a new residential development called Balterra which will be located in the vicinity of 403rd Avenue and Indian School Road near Interstate 10. The requested certificated area covers approximately 1,100 acres.

Staff concludes that approving Balterra's application for a CC&N to provide sewer service is in the public interest. Staff recommends approval of the application. Staff also recommends that the Commission should find a projected fair value rate base in year five is estimated to be \$9,116,397. The Commission's decision on this matter should allow the Company to collect from its customers a proportionate share of any privilege, sales or use tax for effluent sales only; since these type taxes are not collected for the provision of sewer service.

Staff also recommends that the Commission order Balterra to:

1. Charge Staff's recommended rates and charges as shown in Schedule CRM-W-5 on Exhibit 3.
2. File in Docket Control a schedule of its approved rates and charges within 30 days after the Decision in this matter is issued.
3. Maintain its books and records in accordance with the NARUC Uniform System of Accounts.
4. Use the wastewater depreciation rates by individual NARUC category as delineated in Table 1 of the attached Staff Engineering Report.
5. File with Docket Control, as a compliance item in this docket, a copy of the notice issued by ADEQ that the Company's APP and/or AZPDES has been approved no later than October 31, 2007.
6. File with Docket Control, as a compliance item in this docket, a copy of the MAG approved 208 plan no later than January 31, 2007.
7. Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the ATC MCESD issues for the proposed Phase I treatment plant no later than June 30, 2007.

8. Staff further recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the AOC MCESD issues for the proposed Phase I sewer collection system no later than October 31, 2007.
9. File documentation with Docket Control, as a compliance item, a notification of service to its first customer within 15 days of serving its first customer.
10. File a rate application no later than three months following the fifth anniversary of the date the Company begins providing service to its first customer.
11. Regarding safety, Staff recommends that the Commission order that all Balterra's operators, agents, employees or operators including employees and agents of contractors and/or subcontractors operating or constructing the Balterra wastewater facilities must comply with all ADOSH requirements including any and all training required by ADOSH to operate wastewater facilities.
12. Furthermore, Staff recommends that the Commission order that on an annual basis, on the anniversary date of the Decision in this matter, for three years, Balterra must file in Docket Control, as a compliance item, certification from ADOSH that it has availed itself of ADOSH consultation services and its operators, agents, employees including employees and agents of contractors/and or subcontractors operating or constructing the Balterra wastewater facilities have taken appropriate training.

Staff further recommends that the Commission's Decision granting this CC&N to Balterra be considered null and void, after due process, if the Company fails to meet conditions 2, 5, 6, 7 and 8 within the time specified.

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## **Introduction**

On August 12, 2005, Balterra Sewer Corp. ("Balterra" or "the Company") filed an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide utility wastewater service in the West Valley of Phoenix in Maricopa County, Arizona. The Company will initially serve a new residential development called Balterra which will be located in the vicinity of 403rd Avenue and Indian School Road near Interstate 10. The requested certificated area covers approximately 1,100 acres. Water service is expected to be provided by the Water Utility of Greater Tonopah. The legal description and section map of area requested by Balterra is reflected on Exhibit 1, attached.

## **The Proposed Facilities**

The Company plans to install a membrane bioreactor treatment plant designed to treat 2.2 million gallons per day of wastewater flow. The plant will be constructed and installed in phases to accommodate growth in the area. The treated effluent will be disposed of in a surface water impoundment system consisting of a two-cell evaporation/transportation pond structure. Further description of the wastewater system is found in Staff's Engineering Report attached as Exhibit 2.

The Company has estimated a cost of \$18.8 million for the wastewater treatment system for the second phase of the development. This equates to a unit cost of approximately \$17 per gallon of treated effluent. Staff concludes that the estimated costs are reasonable and appropriate for this project. Staff has concluded that the proposed plant will have adequate capacity to serve customers within the requested area and it is reasonable to expect that additional capacity can be developed when needed.

## **Arizona Department of Environmental Quality ("ADEQ") Compliance**

ADEQ requires sewer companies to obtain an Aquifer Protection Permit ("APP") and/or Arizona Pollutant Discharge Elimination System ("AZPDES") permit before the plant can be placed in service. The Company has not yet obtained these permits. Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the notice issued by ADEQ that the Company's APP and/or AZPDES has been approved no later than October 31, 2007.

## **Maricopa County Environmental Services Department ("MCESD")**

The proposed treatment plant and sewage collection system will require ("MCESD") to issue Certificates of Approval to Construct ("ATC") and Approval of Construction ("AOC"). Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the ATC MCESD issues for the proposed Phase I treatment plant no later than June 30, 2007. Staff further recommends that the Company file with Docket Control, as a

compliance item in this docket, a copy of the AOC MCESD issues for the proposed Phase I sewer collection system no later than October 31, 2007.

### **Maricopa Association of Governments ("MAG")**

Approval of an amendment to the MAG Section 208 plan for the sewer system is also required. The Company has submitted its request to MAG for the amendment. Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the MAG approved 208 plan no later than January 31, 2007.

### **Rates and Rate Base**

Attached as Exhibit 3 is the Staff Report from the Utility Division's Finance and Regulatory Analysis Section wherein the plans for five-year revenues, expenses, plant and financing are discussed. The Report concludes that the Commission should find that the projected rate base for the wastewater plant in service is \$9,116,397 at the end of five years.

### **Capital Structure**

Staff reviewed the Company's proposed capital structure for the fifth year of operation. This consists of common equity \$8,696,627 and advances in aid of construction of \$8,331,700 for total capitalization of \$17,028,327. This results in a capital structure of 51.07 percent equity and 48.93 percent advances. Staff recommends approval of the Company's capital structure.

### **Rates**

The Company's projected revenue is derived according to meter size. The wastewater rates requested by the Company are a monthly flat fee. For a 5/8 X 3/4 meter, the monthly rate is \$70. Staff concurs with the Company's proposed rates except for the three inch meter size. The Company proposes \$1,120 and Staff recommends \$1,050 to be consistent with the other meter size percentages. Other rate related recommendations are included in the attached report.

### **Pivotal Utility Management ("Pivotal")**

Pivotal is expected to be retained by Balterra to provide the operations and management functions of the wastewater treatment facility and infrastructure. Pivotal operates and manages other Arizona utilities including: Pine Meadows Utilities, LLC., Sweetwater Creek Utilities, Bensch Ranch Utilities, LLC, Cross Creek Ranch Water Company and Verde Santa Fe Wastewater Company. Its current applications to purchase and finance the wastewater facilities at San Manuel are under consideration by the Commission.

Pivotal is a close affiliate of Santec Corporation ("Santec"), sharing owners and management. Santec is an entity which constructs and upgrades wastewater plants. Santec was involved in the death of two men in a sewage collection tank at Far West Water and Sewer

Company ("Far West") in Yuma, Arizona, on October 25, 2001. On June 30, 2005, Santec and the State of Arizona filed a plea agreement in Superior Court wherein Santec pled guilty to a Class 6 felony, Violating Safety Standard and Causing Death of an Employee. This issue has been addressed by the Commission in the Coronado Utilities CC&N and financing cases, Docket Nos. SW-04305A-05-0086 and SW-04305A-05-0087.

Staff believes the actions and inaction on the part of Santec at Far West regarding safety are relevant to this proceeding due to the common ownership and management of Santec and Pivotal. Thus, Staff recommends that the Commission order that all operators, agents or employees including employees and agents of contractors and/or subcontractors constructing or operating the Balterra wastewater facilities must comply with all Arizona Department of Health and Safety ("ADOSH") requirements including any and all training required by ADOSH to operate wastewater facilities. Furthermore, Staff recommends that the Commission order Balterra to file in Docket Control annually and for three years, certification from ADOSH that it has availed itself of ADOSH consultation services and certification that its operators, agents, employees, including employees and agents of contractors/and or subcontractors operating or constructing the Balterra wastewater facilities, have taken appropriate safety training.

### **Conclusions and Recommendations**

Staff concludes that approving Balterra's application for a CC&N to provide sewer service is in the public interest. Staff recommends approval of the application. Staff also recommends that the Commission should find a projected fair value rate base in year five is estimated to be \$9,116,397. The Commission's decision on this matter should allow the Company to collect from its customers a proportionate share of any privilege, sales or use tax for the sales of any effluent only.

Staff also recommends that the Commission order Balterra to:

1. Charge Staff's recommended rates and charges as shown in Schedule CRM-W-5 on Exhibit 3.
2. File in Docket Control a schedule of its approved rates and charges within 30 days after the Decision in this matter is issued.
3. Maintain its books and records in accordance with the NARUC Uniform System of Accounts.
4. Use the wastewater depreciation rates by individual NARUC category as delineated in Table 1 of the attached Staff Engineering Report.
5. File with Docket Control, as a compliance item in this docket, a copy of the notice issued by ADEQ that the Company's APP and/or AZPDES has been approved no later than October 31, 2007.

6. File with Docket Control, as a compliance item in this docket, a copy of the MAG approved 208 Plan no later than January 31, 2007.
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8. Staff further recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the AOC MCESD issues for the proposed Phase I sewer collection system no later than October 31, 2007.
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10. File a rate application no later than three months following the fifth anniversary of the date the Company begins providing service to its first customer.
11. Regarding safety, Staff recommends that the Commission order that all Balterra's operators, agents, employees or operators, including employees and agents of contractors and/or subcontractors operating or constructing the Balterra wastewater facilities, must comply with all ADOSH requirements including any and all training required by ADOSH to operate wastewater facilities.
12. Furthermore, Staff recommends that the Commission order that on an annual basis, on the anniversary date of the Decision in this matter, for three years, Balterra must file in Docket Control, as a compliance item, certification from ADOSH that it has availed itself of ADOSH consultation services and its operators, agents, employees including employees and agents of contractors/and or subcontractors operating or constructing the Balterra wastewater facilities have taken appropriate training.

Staff further recommends that the Commission's Decision granting this CC&N to Balterra be considered null and void, after due process, if the Company fails to meet conditions 2, 5, 6, 7 and 8 within the time specified.

**MEMORANDUM**

TO: Linda Jaress  
Executive Consultant III  
Utilities Division

FROM: Barb Wells *bw*  
Information Technology Specialist  
Utilities Division

THRU: Del Smith *DS*  
Engineering Supervisor  
Utilities Division

DATE: November 21, 2005

RE: **BALTERRA SEWER CORPORATION (DOCKET NO. SW-20403A-05-0586)**  
**AMENDED LEGAL DESCRIPTION**

The area requested by Balterra for a CC#N for sewer service has been plotted with no complications using an amended legal description, which has been docketed. This legal description is attached and should be used in place of the original description submitted with the application.

Also attached are copies of the maps for your files.

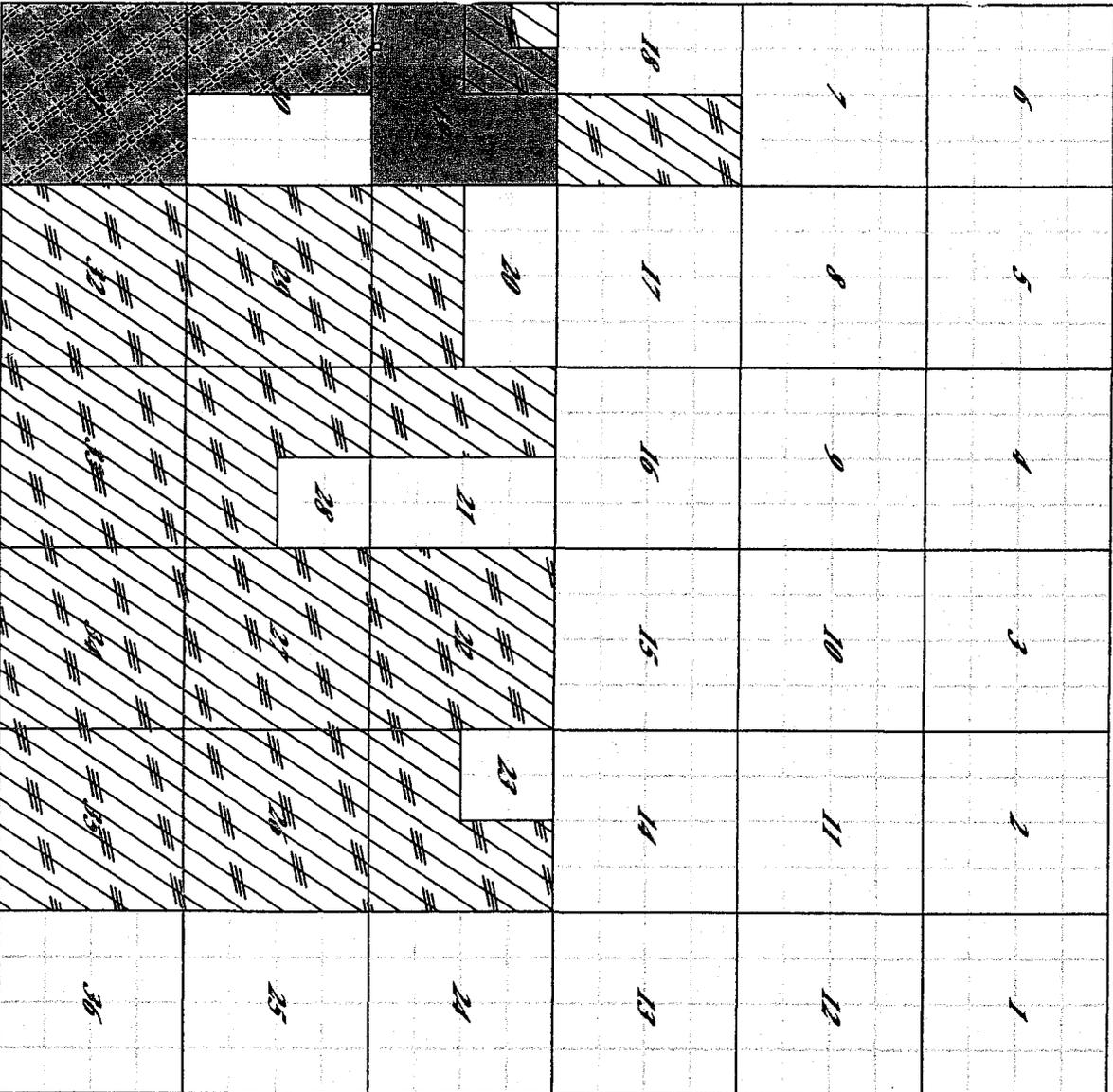
:bsw

Attachments

cc: Docket Control  
Mr. Jay Shapiro  
Ms. Deb Person (Hand Carried)  
File

# COUNTY: Maricopa

## RANGE 6 West



## TOWNSHIP 2 North



W-2450 (11)

Water Utility of Greater Tonopah, Inc.  
(West Phoenix)



W-2067 (1)

West Phoenix Water Company



Water Utility of Greater Tonopah, Inc.  
Docket No. W-2450-05-430  
Application to Transfer from  
West Phoenix Water Company (W-2067)

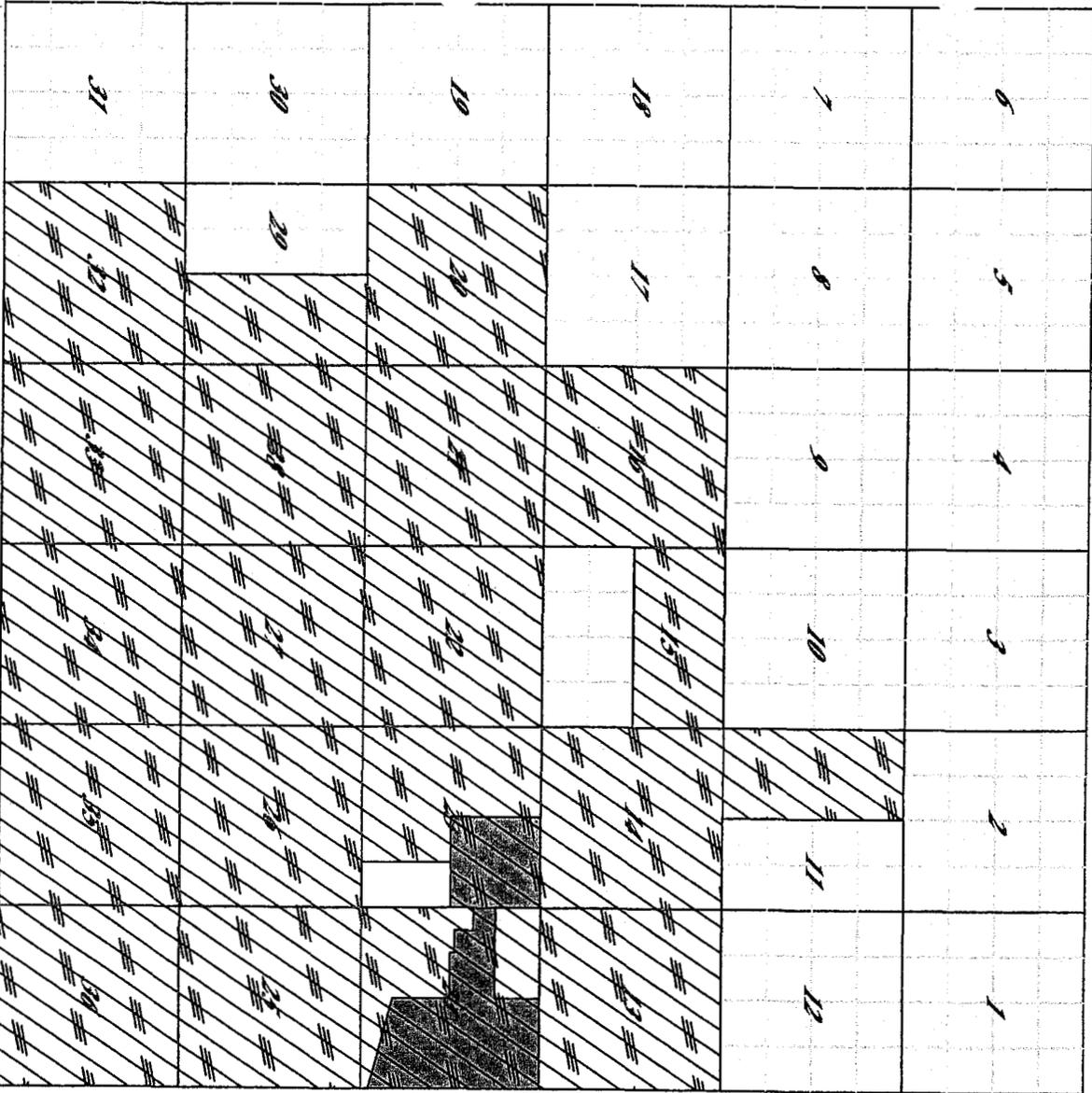


(2)

Balterra Sewer Corporation  
Docket No. SW-20403A-05-0586  
Application for CC&N

# COUNTY OF Maricopa

## RANGE 7 West



## TOWNSHIP 2 North



W-2450 (11)

Water Utility of Greater Tonopah, Inc.  
(Roseview?)



(2)

Balerra Sewer Corporation  
Docket No. SW-20403A-05-0586  
Application for CC&N

## PROPERTY DESCRIPTION

### BALTERRA

THE DESCRIPTION FOR THAT PORTION OF THE PROPERTY DESCRIBED BELOW, LYING WITHIN SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, IS BASED ON AN ALTA/ACSM LAND TITLE SURVEY BY MORRISON MAJERLE, INCORPORATED, DATED SEPTEMBER 22, 2004.

THAT PORTION OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 6 WEST, AND SECTION 24, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19;

THENCE NORTH 89°28'08" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2,640.04 FEET TO A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION 19;

THENCE NORTH 89°28'43" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1,687.12 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 00°31'17" EAST, ALONG THE EAST LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 65.22 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 85°42'56" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 629.08 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°33'19" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 308.20 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT A POINT ON THE WEST LINE OF SAID SECTION 19, ALSO BEING THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 74°32'33" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,142.11 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°32'55" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,300.16 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°32'56" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 294.08 FEET TO A ONE HALF INCH REBAR ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°32'56" EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 1751.55 FEET TO A ONE INCH REBAR AT THE CENTER OF SAID SECTION 24;

THENCE NORTH 89°27'44" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1321.24 FEET TO A FIVE EIGHTHS INCH REBAR AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'08" EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 132.00 FEET TO A HALF INCH REBAR ON THE NORTH LINE OF THE SOUTH 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 89°27'44" WEST, ALONG THE NORTH LINE OF THE SOUTH 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.61 FEET TO A HALF INCH REBAR MARKED "DON MILLER, LS 15335" AT THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'16" EAST, ALONG THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 528.12 FEET TO A HALF INCH REBAR MARKED "DON MILLER, LS 15335" AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 89°27'40" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.59 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'24" EAST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.13 FEET TO A HALF INCH REBAR AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE SOUTH 89°27'36" EAST, ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 2642.28 FEET TO A FIVE EIGHTHS INCH REBAR AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°32'53" EAST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1320.15 FEET TO A HALF INCH REBAR AT THE NORTH QUARTER CORNER OF SAID SECTION 24;

THENCE SOUTH 89°31'19" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 2645.96 FEET TO A GLO BRASS CAP AT THE NORTHEAST CORNER OF SAID SECTION 24;

THENCE SOUTH 00°33'36" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR AT THE SOUTH LINE OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°29'19" EAST, ALONG THE SOUTH LINE OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR AT THE SOUTHEAST CORNER OF THE WEST 1320.00 FEET OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE NORTH 00°33'36" EAST, ALONG THE EAST LINE OF THE WEST 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, ALSO BEING THE NORTHEAST CORNER OF THE WEST 1320.00 FEET OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°29'19" EAST, ALONG THE NORTH LINE OF THE OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1286.27 FEET TO A GLO BRASS CAP AT THE NORTH QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 89°29'54" EAST, ALONG THE NORTH LINE OF THE OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.72 FEET TO A REBAR WITH ALUMINUM CAP MARKED "LS 36563, 2004" AT THE NORTHEAST CORNER OF SAID SECTION 19;

THENCE SOUTH 00°32'10" WEST, ALONG THE EAST LINE OF THE OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.21 FEET TO A REBAR WITH ALUMINUM CAP MARKED "LS 36563, 2004" AT THE EAST QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 00°32'12" WEST, ALONG THE EAST LINE OF THE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.45 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19 AND THE POINT OF BEGINNING;

TOGETHER WITH THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA,

BEING ALSO DESCRIBED AS FOLLOWS:

BEGINNING AT A HALF-INCH REBAR AT THE NORTHEAST CORNER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 00°33'24" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2640.55 FEET TO A GLO BRASS CAP AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE NORTH 89°26'32" WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2636.57 FEET TO A HALF INCH REBAR WITH TAG MARKED "L.S. 12218" AT THE CENTER OF SAID SECTION 23;

THENCE NORTH 00°35'09" EAST, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2641.17 FEET TO A GLO BRASS CAP AT THE NORTH QUARTER CORNER OF SAID SECTION 23;

THENCE SOUTH 89°25'44" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2635.23 FEET TO A GLO BRASS CAP AT THE NORTHEAST CORNER OF SAID SECTION 23 AND THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF SAID SECTION 19 DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP FOUND AT THE SOUTH QUARTER CORNER OF SAID SECTION 19, FROM WHICH AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19 BEARS SOUTH 89°28'08" EAST, A DISTANCE OF 2640.04 FEET; THENCE NORTH 89°28'43" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1482.82 FEET; THENCE NORTH 00°31'17" EAST, A DISTANCE OF 40.00 FEET TO A HALF IN REBAR AT A POINT ON A LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19 AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°31'17" EAST, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT A POINT ON A LINE LYING 240.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°28'43" EAST, ALONG SAID LINE LYING 240.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR;

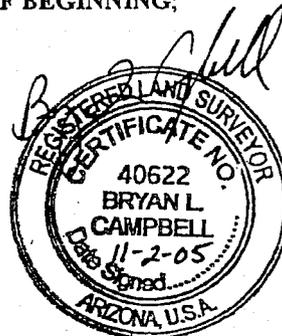
THENCE SOUTH 00°31'17" WEST, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT A POINT ON SAID LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE NORTH 89°28'43" WEST, ALONG SAID LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT THE POINT OF BEGINNING;

SITUATE IN THE COUNTY OF MARICOPA, STATE OF ARIZONA.

CONTAINS 1,110.083 ACRES MORE OR LESS. (GROSS)

CONTAINS 1,082.750 ACRES MORE OR LESS. (NET)



## MEMORANDUM

**DATE:** February 27, 2006

**TO:** Linda Jaress  
Executive Consultant III

Charles Myhlhousen  
Public Utilities Analyst

**FROM:** Dorothy Hains *DH*  
Utilities Engineer

**RE:** New CC&N Application for Balterra Sewer Co.  
Docket No. SW-20403A-05-0586

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### Introduction

Balterra Sewer Company ("Balterra" or "Company") has submitted an application for a new sewer Certificate of Convenience and Necessity ("CC&N"). Balterra is requesting a two square mile service area located near the Town of Tonopah in Maricopa County. Planned development in the proposed CC&N area would consist of 6,100 residential units, 179 acres of commercial/industrial facilities, one elementary school and one high school.

### Proposed Treatment System

The Company proposes to install a wastewater treatment plant located between 403<sup>rd</sup> Avenue and Indian School Road to serve the requested area. The proposed three-phased, membrane bioreactor ("MBR") treatment plant is designed to treat 2.2 million gallons per day ("MGD") of daily wastewater flow. The proposed plant would be equipped with influent pump station, grit removal unit, oxic/anoxic/aeration biological removal units, filtration, sludge removal unit, and ultraviolet ("UV") disinfection unit. The treated effluent will be disposed of in a surface water impoundment system.<sup>1</sup>

The Company will install a 0.275 MGD treatment plant for the Phase I development and extend the plant's treatment capacity to 1.1 MGD in the Phase II development stage which is expected to occur within six years of initial operation of the plant. The 1.1 MGD capacity is designed to serve 3,660 customers. The Company expects to be serving 2,770 customers within five years. Staff has concluded that the proposed plant will have adequate capacity to serve customers

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<sup>1</sup> This water impoundment system would consist of a two-cell evaporation/transpiration pond structure.

within in the requested area and it is reasonable to expect that additional capacity can be developed when needed.

The proposed treatment plant and sewage collection system will require Maricopa County Environmental Services Department ("MCESD") to issue Certificates of Approval to Construct ("ATC") and Approval of Construction ("AOC"). Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the ATC MCESD issues for the proposed Phase I treatment plant no later than June 30, 2007. Staff further recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the AOC MCESD issues for the proposed Phase I sewer collection system no later than October 31, 2007.

### **Arizona Department of Environmental Quality (ADEQ) Compliance**

The Aquifer Protection Permit ("APP") and/or Arizona Pollutant Discharge Elimination System ("AZPDES") discharge permits issued by ADEQ will be required before the plant can be placed in service. At this time, ADEQ has not issued either an APP or an AZPDES for the proposed system. Maricopa Association of Governments ("MAG") Section 208 plan approval will also be needed. The Company has started its MAG approval process which would amend the existing Ruth Fisher School's Section 208 Plan. Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the MAG approved 208 plan no later than January 31, 2007. Staff further recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the notice issued by ADEQ that the Company's APP and/or AZPDES has been approved no later than October 31, 2007.

## Cost Analysis

Staff's recommended adjustments to the Company's cost estimates are listed in the right-hand column of the table below:

NARUC Account	Description	Company's cost estimate (\$) <sup>2</sup>
351	Organization	0
352	Franchise	0
353	Land & Land Rights: Half Parcel of 360'x640'	0
354	Structure & Improvements:	953,311
355	Power Generation Equipment:	65,340
361	Collection Sewer – Gravity fed 11,150' of 30-inch pipe (\$130/ft) 11,121' of 24-inch pipe (\$80/ft) 5,501' of 18-inch pipe (\$70/ft) 16,858' of 12-inch pipe (\$52/ft) 135,771' of 8-inch pipe (\$36/ft). 81 of 5' diameter manholes (\$5,000/unit) 491 of 4' diameter manholes (\$3.742/unit)	10,731,025 <sup>3</sup>
363	Service laterals:	0
364	Flow Measuring Device	24,948
370	Receiving Wells	0
371	Pumping Equipment	107,633
375	Reuse Transmission and Distribution System	0
380	Treatment & disposal Equipment	6,232,250
381	Plant Sewers	378,484
382	Outfall Sewer Line	0
389	Other Plant & Miscellaneous Equipment	201,295
390	Office Furniture	11,880
393	Tools, Shop & Garage Equipment	0
394	Lab equipment	2,970
395	Power Operated Equipment	0
397	Other Plant and Miscellaneous Equipment	0
	<b>Total</b>	<b>18,709,136</b>

<sup>2</sup> The estimates are for Phase I and Phase II expansion within five years.

<sup>3</sup> The Company states that total expenses of five phases are \$10,731,025 and \$7,806,000 of in total expenses belong to Advance In Aid of Construction ("AIAC") account.

The Company's estimated total of \$18,772,962 for a 1.1 MGD wastewater treatment system equates to a unit cost of approximately \$17 per gallon of treated effluent. This cost includes all mains along with the treatment facilities. Staff concludes that the estimated costs are reasonable and appropriate for this project.

The approval of this CC&N application does not imply any particular future treatment for rate base. No "used and useful" determination of the proposed plant in service was made, and no conclusions should be inferred for rate making or rate base purposes.

### **Depreciation Rates**

Staff has developed typical and customary depreciation rates within a range of anticipated equipment life. These rates are presented in Table 1, and it is recommended that the Company use the depreciation rates by individual National Association of Regulatory Utility Commissioners (NARUC) category, as delineated in this table.

**Table 1**  
**DEPRECIATION RATES FOR WASTEWATER SYSTEM**

Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
354	Structures & Improvements	30	3.33
355	Power Generation Equipment	30	3.33
360	Collection Sewers – Force	50	2.00
361	Collection Sewers – Gravity	50	2.00
362	Special Collecting Structures	50	2.00
363	Services to Customers	50	2.00
364	Flow Measuring Devices	10	10.00
365	Flow measuring Installations	20	5.00
366	Reuse Services	50	2.00
367	Reuse Meters and Meter Installations	30	3.33
370	Receiving Wells	30	3.33
371	Pumping Equipment	10	10.00
374	Reuse Distribution Reservoirs	40	2.50
375	Reuse Transmission and Distribution System	50	2.00
380	Treatment and Disposal Equipment	20	5.00
381	Plant Sewers	20	5.00
382	Outfall Sewer Lines	25	4.00
389	Other Plant & Misc Equipment	15	6.67
390	Office Furniture & Equipment	15	6.67
390.1	Computers & Software	5	20.00
391	Transportation Equipment	5	20.00
392	Store Equipment	25	4.00
393	Tools, Shop & Garage Equipment	20	5.00
394	Laboratory Equipment	10	10.00
395	Power Operated Equipment	20	5.00
396	Communication Equipment	10	10.00
397	Miscellaneous Equipment	10	10.00
398	Other Tangible Plant	----	----

## **Summary**

### **I. Conclusions:**

1. Staff concludes that the Company will have adequate treatment capacity to service expected growth in the requested area.
2. Staff concludes that the estimated costs are reasonable and appropriate for this project.

### **II. Recommendations:**

1. Staff recommends that the Company use the depreciation rates delineated in Table 1 for its wastewater system.
2. Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the ATC MCESD issues for the proposed Phase I treatment plant no later than June 30, 2007.
3. Staff further recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the AOC MCESD issues for the proposed Phase I sewer collection system no later than October 31, 2007.
4. Staff recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the MAG approved 208 plan no later than January 31, 2007.
5. Staff further recommends that the Company file with Docket Control, as a compliance item in this docket, a copy of the notice issued by ADEQ that the Company's APP and/or AZPDES has been approved no later than October 31, 2007.

**MEMORANDUM**

TO: Linda Jaress  
Executive Consultant III Utilities Division

FROM: Charles R. Myhlhousen CRM  
Public Utilities Analyst III – Utilities Division

Date: March 6, 2006

RE: BALTERRA SEWER CORPORATION APPLICATION FOR A NEW  
CERTIFICATE OF CONVENIENCE AND NECESSITY  
DOCKET NO. SW-20403A-05-0586

**Introduction**

On August 12, 2005, Balterra Sewer Corporation (“Company”) submitted an application to the Arizona Corporation Commission (“Commission”) for a Certificate of Convenience and Necessity (“CC&N”) to provide public utility wastewater service in Maricopa County, Arizona. The application indicates that there are presently no customers receiving service in the area of the requested CC&N. At the end of five years the Company is projecting to be servicing 2,770 residential customers and one school customer.

**Fair Value Rate Base**

Consistent with Commission rules, the Company’s filing included the required five-year projections for plant values, operating revenues, operating expenses, and the number of customers. Projections and assumptions are necessary to establish a fair value rate of return and initial rates due to the lack of historical information. In this proceeding, original cost rate base is the fair value rate base. Staff reviewed the Company’s projections and found them generally reasonable. Staff reviewed Advances in Aid of Construction and made allowances for its payback at a rate of 10 percent of revenue generated per year for ten years. See Schedule CRM-WW-4.

The original application filed by the Company had only three separate plant in service items indicated. The Company changed the allocation of plant items to include various other plant items. Staff recomputed the depreciation expense and accumulated depreciation amounts. See Schedules CRM-WW-2 and CRM-WW-3 for the correct amounts.

Staff determined the projected rate base for the wastewater plant in service to be \$9,116,397 at the end of five years. See Schedule CRM –WW-1.

### **Equity and Liabilities**

Staff reviewed the Company's proposed equity and liabilities in the fifth year of operation. This consists of the Company common stock of \$7,503,113, retained earnings of \$1,193,514 and advances in aid of construction of \$8,331,700 for a total of \$17,028,327. This results in a capital structure of 51.07 percent equity and 48.93 percent advances. Staff recommends approval of the company's capital structure. See Schedule CRM-6.

### **Revenue and Expenses**

As justification for the initial rates, the Company has estimated its revenue and expenses. The revenue estimate was not adjusted by Staff. Staff has reviewed the expense estimates and made two adjustments. Deprecation expense was adjusted to reflect the new allocation given to plant in service items. Staff adjusted income tax expense as a result of the deprecation expense being adjusted. The projected income statement is depicted at Schedule CRM-WW-1.

### **Rate Design**

The Company's projected revenue is derived from the residential and commercial customer classes. Staff has reviewed the estimates and found them to be reasonable.

The wastewater rates requested by the Company are a monthly flat fee. Staff concurs with the Company on their proposed monthly fees except for the three inch meter size. The Company proposes \$1,120 and Staff recommends \$1,050 which will be consistent with the other meter size percentages.

Staff recommends that the Company's charge for minimum deposit be as per Rule R14-2-403.B. The after hours service charge was changed to \$40.00 per hour to more closely reflect other after hours charges in this tariff. Staff allowed the Company a late payment charge of 1.50% per month on the unpaid balance monthly. Main extension and additional facilities agreement and collection of related taxes are addressed separately in the administrative code and not to be part of the tariff. If the Company wants a tariff for Main Extension, the Company should file for one within the provisions of R-14-2-606-C of the A.C.C. Administrative Code. The other service charges proposed were found reasonable and should be adopted for the Company's initial rates. See Schedule CRM-WW-5.

### **Recommendations**

Staff recommends:

- approval of Staff's rates as shown on Schedule CRM-W-5.

- the Company be required to notify Docket Control within 15 days of providing service to its first customer.
- the Company be required to file a rate application no later than three months following the fifth anniversary of the date the Company begins providing service to its first customer.
- the Company be required to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Wastewater Utilities.
- the Company be required to use the depreciation rates recommended by Staff for wastewater utilities.
- that the Company file with Docket Control a tariff consistent with the rates and charges authorized by the Commission within 30 days of the decision in this matter.
- in addition to collection of its regular rates, the Company may collect from its customers a proportionate share of any privilege, sales or use tax for the sales of any effluent only.

WASTEWATER  
Proforma Income Statement and  
Original Cost Rate Base

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Operating Revenue:	\$132,695	\$481,620	\$910,162	\$1,436,520	\$2,104,418
Operating Expenses:					
Operation and Maintenance	81,150	111,657	156,973	246,769	355,292
Depreciation	180,357	376,328	410,445	476,825	569,752
Property Taxes	4,246	7,968	16,261	30,169	47,478
Income Taxes	50	50	126,965	269,139	442,970
Total Operating Expense	\$265,803	\$496,003	\$710,644	\$1,022,902	\$1,415,492
Operating Income/(Loss)	(\$133,108)	(\$14,383)	\$199,518	\$413,618	\$688,926
Number of Customers					
Residential	300	780	1260	1970	2770
Commercial	0	1	1	1	1
Total	300	781	1261	1971	2771
Plant in Service	\$9,168,266	\$10,729,638	\$12,580,010	\$15,558,569	\$18,772,963
Less: Accumulated Depreciation	180,357	733,336	967,131	1,443,956	2,183,674
Less: Advances in Aid of Construction	1,716,000	2,810,633	4,318,124	5,962,328	7,688,340
Plus: 1/24 Power	248	912	1,724	2,706	3,952
Plus: 1/8 Operation and Maintenance	9,401	11,222	14,449	22,728	32,556
ORIGINAL COST RATE BASE	7,281,558	7,374,454	7,310,928	8,177,719	9,107,423
Rate of Return	-1.83%	-0.20%	2.73%	5.06%	7.56%

**PLANT IN SERVICE - WASTEWATER**

Acc't No.	Description	Cost Year One	Additions Year Two	Additions Year Three	Additions Year Four	Additions Year Five	Plant Total Year Five
351	Organization	\$	\$	\$	\$	\$	\$
352	Franchises						
353	Land and Land Rights						
354	Structures and Improvements	574,529			221,064	157,718	953,311
355	Power Generation Equipment	65,340					65,340
360	Collecting Sewers-Force						
361	Collecting Sewers-Gravity(AIAC)	1,611,000	1,239,000	1,528,000	1,652,000	1,776,000	7,806,000
361	Collecting Sewers-Gravity	1,645,635	322,372	322,372	120,522	577,950	2,988,851
362	Special Collecting Structures						
363	Services to Customers						
364	Flow Measuring Devices	10098.00			8,667	6,183	24,948
365	Flow Measuring Installations						
370	Receiving Wells						
371	Pumping Equipment	47,045			35,360	25,228	107,633
380	Treatment and Disposal Equip.	4,664,159			915,167	652,924	6,232,250
381	Plant Sewers	334,315			25,778	18,391	378,484
382	Outfall Sewer Lines						
389	Other Plant and Misc. Equip.	201,295					201,295
390	Office Furniture and Equip.	11,880					11,880
391	Transportation Equipment						
393	Tools, Shop and Garage Equip.						
394	Lab Equipment	2,970					2,970
395	Power Operated Equipment						
398	Other Tangible Plant						
	Totals	<u>\$9,168,266</u>	<u>\$1,561,372</u>	<u>\$1,850,372</u>	<u>\$2,978,559</u>	<u>\$3,214,394</u>	<u>\$18,772,960</u>

**PLANT IN SERVICE WASTEWATER**

Annual Accumulated Depreciation 0.00

Acc't No.	Description	Staff's PIS Year 5	Staff's Depr. Rat	1st year Acc. Depr.	2nd year Acc. Depr.	3rd year Acc. Depr.	4th year Acc. Depr.	5th year Acc. Depr.	
351	Organization	\$		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
352	Franchises			0.00	0.00	0.00	0.00	0.00	
353	Land and Land Rights			0.00	0.00	0.00	0.00	0.00	
354	Structures and Improvements	953,311	3.33%	9566.00	28698.00	47830.00	70642.00	99761.00	
355	Power Generation Equipment	65,340	5.00%	1634.00	4901.00	8168.00	11435.00	14702.00	
360	Collecting Sewers-Force		2.00%	0.00	0.00	0.00	0.00	0.00	
361	Collecting Sewers-Gravity(AIAC)	7,806,000	2.00%	16,110.00	60,720	133,000	237,080	375,440	
361	Collecting Sewers-Gravity	2,988,851	2.00%	17,382.00	55,372	99,808	148,976	205,650	
362	Special Collecting Structures		2.00%	0.00	0.00	0.00	0.00	0.00	
363	Services to Customers		2.00%	0.00	0.00	0.00	0.00	0.00	
364	Flow Measuring Devices	24,948	10.00%	505.00	1515.00	2525.00	3968.00	6153.00	
365	Flow Measuring Installations		10.00%	0.00	0.00	0.00	0.00	0.00	
366	Reuse Services		2.00%	0.00	0.00	0.00	0.00	0.00	
367	Reuse Meters and Meter Install.		8.33%	0.00	0.00	0.00	0.00	0.00	
370	Receiving Wells		3.33%	0.00	0.00	0.00	0.00	0.00	
371	Pumping Equipment	107,633	12.50%	2940.00	8822.00	14703.00	22793.00	34671.00	
374	Reuse Distrubution Reservoirs		2.50%	0.00	0.00	0.00	0.00	0.00	
375	Reuse Transmission Distribution		2.50%	0.00	0.00	0.00	0.00	0.00	
380	Treatment and Disposal Equip.	6,232,250	5.00%	116604.00	349,812	583,020	839,107	1,134,396	
381	Plant Sewer	378,484	5.00%	8358.00	25074.00	41789.00	59150.00	77614.00	
382	Outfall Sewer Lines		3.33%	0.00	0.00	0.00	0.00	0.00	
389	Other Plant and Misc. Equip.	201,295	6.67%	6713.00	20139.00	33565.00	46991.00	60418.00	
390	Office Furniture and Equip.	11,880	6.67%	396.00	1189.00	1981.00	2773.00	3566.00	
391	Transportation Equipment		20.00%	0.00	0.00	0.00	0.00	0.00	
392	Stores Equipment		4.00%	0.00	0.00	0.00	0.00	0.00	
393	Tools, Shop and Garage Equip.		5.00%	0.00	0.00	0.00	0.00	0.00	
394	Lab Equipment	2,970	10.00%	149.00	446.00	743.00	1040.00	1337.00	
395	Power Operated Equipment		10.00%	0.00	0.00	0.00	0.00	0.00	
398	Other Tangible Plant		10.00%	0.00	0.00	0.00	0.00	0.00	
	Totals			<u>\$18,772,960</u>	<u>\$180,357</u>	<u>\$556,684</u>	<u>\$967,129</u>	<u>\$1,443,955</u>	<u>\$2,013,708</u>

**ADVANCES LESS REFUNDS WASTEWATER**

Year	Gross Advances	Cumm. Advances	Refund at 10%	Annual Refund	Advances Balance
1	\$ 1,716,000	\$ 1,716,000	0.10	\$ -	1,716,000
2	3,122,926	4,838,926	0.10	312,293	2,810,633
3	4,797,915	9,636,841	0.10	479,792	4,318,124
4	6,624,809	16,161,650	0.10	662,481	5,962,328
5	8,542,600	24,704,250	0.10	854,260	7,688,340

**RATE DESIGN-WASTEWATER**

	Company Proposed Rates	Staff Recommended Rates
<b><u>Minimum Monthly Flat Charge</u></b>		
5/8 x3/4 inch	\$70.00	\$70.00
3/4 inch	105.00	105.00
one inch	175.00	175.00
1-1/2 inch	350.00	350.00
two inch	560.00	560.00
three inch	1,120.00	1,050.00
four inch	1,750.00	1,750.00
six inch	3,500.00	3,500.00
Treated Effluent per 1,000 gallons	0.62	0.62
Teated Effluent per acre foot	202.00	202.00
<b><u>Service Line Charge</u></b>		
Service Line connection Charge	350.00	350.00
Establishment of Service	25.00	25.00
Establishment of Service (after hours) (collected only if customer is sewer only)	40.00	40.00
Re-establishment of Service (Within 12 months)	**	**
Reconnection (delinquent) after hours	30.00	30.00
After hours service charge per hour	50.00	40.00
Deposit	2x mo. Bill	*
NSF Check	15.00	15.00
Late Payment Charge (per month on unpaid balance)		***

\* Per Commission Rules (R14-2-403B).  
\*\* Per Commission Rules (R-14-2-409.G(6)).  
\*\*\* 1.50% per month on the unpaid balance monthly.

### Equity- Wastewater

	Year 1	Year 2	Year 3	Year 4	Year 5
Common Stock net of	\$7,502,266	\$7,502,288	\$7,502,660	\$7,502,719	\$7,503,113
Retained Earnings	-132,358	-144,521	60,790	488,899	1,193,514
Total Equity	<u>\$7,369,908</u>	<u>\$7,357,767</u>	<u>\$7,563,450</u>	<u>\$7,991,618</u>	<u>\$8,696,627</u>
Liabilities and Deferred Credits					
Advances in Aid of Construction	1,716,000	3,103,446	4,727,203	6,491,178	8,331,700
Contribution in Aid of Construction					
Less: Amortization					
Customer Deposits					
Long-Term Debt					
Total Liabilities and Deferred Credits					
Total Equity and Liability	<u>\$9,085,908</u>	<u>\$10,461,213</u>	<u>\$12,290,653</u>	<u>\$14,482,796</u>	<u>\$17,028,327</u>
Equity Percentage	51.07%				
Advances Percentage	<u>48.93%</u>				

**MEMORANDUM**

RECEIVED



APR 07 2006

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

TO: Linda Jaress  
Executive Consultant III  
Utilities Division

FROM: Barb Wells  
Information Technology Specialist  
Utilities Division

THRU: Del Smith  
Engineering Supervisor  
Utilities Division

DATE: December 8, 2005

RE: **BALTERRA SEWER CORPORATION (DOCKET NO. SW-20403A-05-0586)**  
**2ND AMENDED LEGAL DESCRIPTION**

I issued a memo on November 21, 2005, using an amended legal description. It has been brought to my attention that the description for the Ruth Fisher Elementary School, which was included in the original application, was inadvertently omitted from the amended application. In order to eliminate confusion, I am attaching the corrected legal description to this memo. This legal description should be used in place of the previously amended description.

Also attached are copies of the maps for your files.

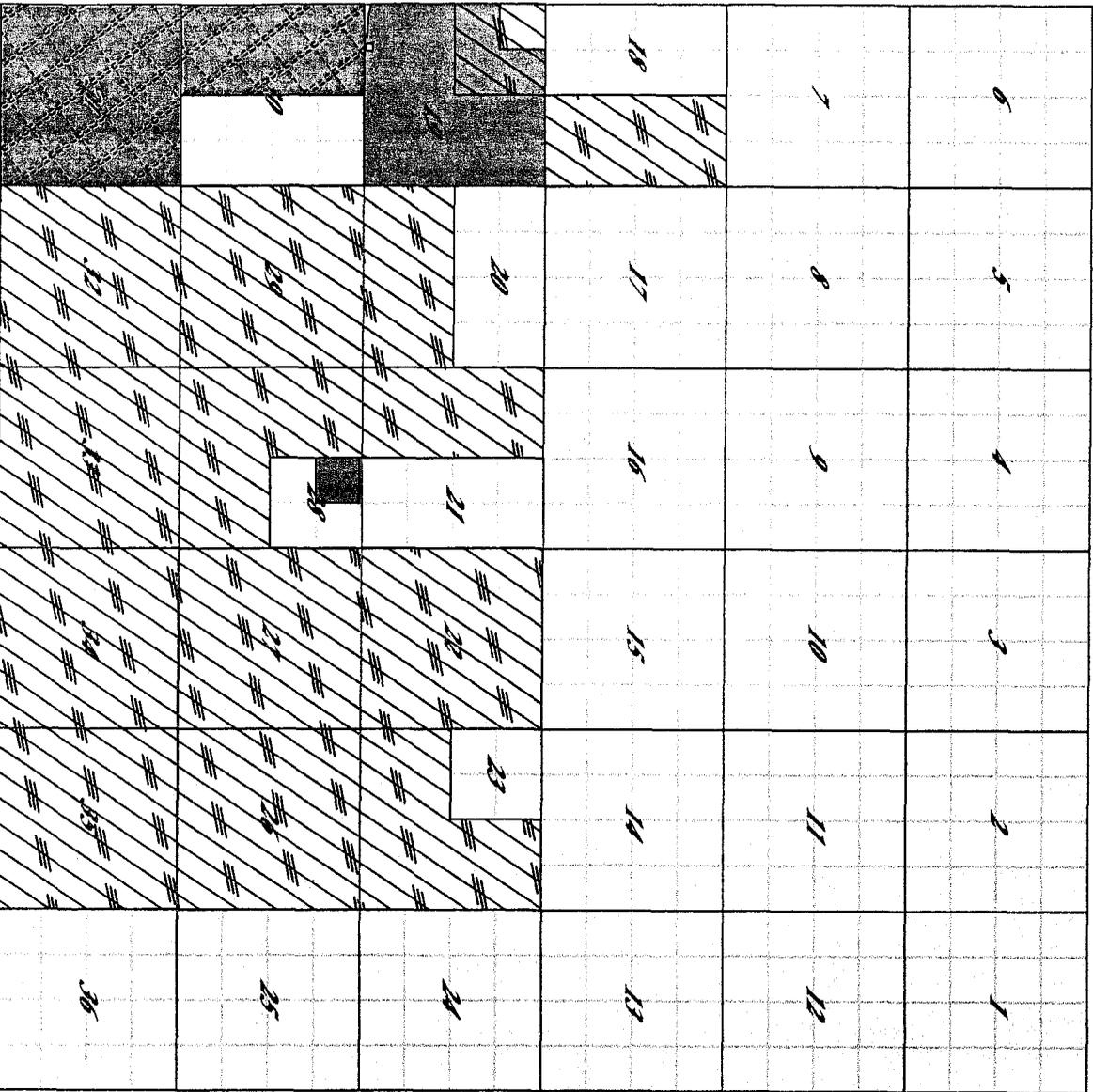
:bsw

Attachments

cc: Docket Control  
Mr. Jay Shapiro  
Ms. Deb Person (Hand Carried)  
File

# COCHISE COUNTY, Maricopa

## RANGE 6 West



## TOWNSHIP 2 North



W-2450 (11)

Water Utility of Greater Tonopah, Inc.  
(West Phoenix)



W-2067 (1)

West Phoenix Water Company



Water Utility of Greater Tonopah, Inc.  
Docket No. W-2450-05-430  
Application to Transfer from  
West Phoenix Water Company (W-2067)



(2)

Balterra Sewer Corporation  
Docket No. SW-20403A-05-0586  
Application for CC&N



## PROPERTY DESCRIPTION

### BALTERRA

THE DESCRIPTION FOR THAT PORTION OF THE PROPERTY DESCRIBED BELOW, LYING WITHIN SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, IS BASED ON AN ALTA/ACSM LAND TITLE SURVEY BY MORRISON MAJERLE, INCORPORATED, DATED SEPTEMBER 22, 2004.

THAT PORTION OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 6 WEST, AND SECTION 24, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19;

THENCE NORTH 89°28'08" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2,640.04 FEET TO A BRASS CAP AT THE SOUTH QUARTER CORNER OF SAID SECTION 19;

THENCE NORTH 89°28'43" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1,687.12 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 00°31'17" EAST, ALONG THE EAST LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 65.22 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 85°42'56" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 629.08 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°33'19" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND CONDEMNED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 7553, PAGE 749, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 308.20 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT A POINT ON THE WEST LINE OF SAID SECTION 19, ALSO BEING THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 74°32'33" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,142.11 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°32'55" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,300.16 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP;

THENCE NORTH 74°32'56" WEST, ALONG THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DEEDED FOR HIGHWAY AS RECORDED UNDER DOCKET NO. 6412, PAGE 55, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 294.08 FEET TO A ONE HALF INCH REBAR ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°32'56" EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 1751.55 FEET TO A ONE INCH REBAR AT THE CENTER OF SAID SECTION 24;

THENCE NORTH 89°27'44" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1321.24 FEET TO A FIVE EIGHTHS INCH REBAR AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'08" EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 132.00 FEET TO A HALF INCH REBAR ON THE NORTH LINE OF THE SOUTH 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 89°27'44" WEST, ALONG THE NORTH LINE OF THE SOUTH 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.61 FEET TO A HALF INCH REBAR MARKED "DON MILLER, LS 15335" AT THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'16" EAST, ALONG THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 528.12 FEET TO A HALF INCH REBAR MARKED "DON MILLER, LS 15335" AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 89°27'40" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.59 FEET TO A HALF INCH REBAR AND YELLOW CAP MARKED "DEA 40622" AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°33'24" EAST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 660.13 FEET TO A HALF INCH REBAR AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE SOUTH 89°27'36" EAST, ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 2642.28 FEET TO A FIVE EIGHTHS INCH REBAR AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH 00°32'53" EAST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, A DISTANCE OF 1320.15 FEET TO A HALF INCH REBAR AT THE NORTH QUARTER CORNER OF SAID SECTION 24;

THENCE SOUTH 89°31'19" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 2645.96 FEET TO A GLO BRASS CAP AT THE NORTHEAST CORNER OF SAID SECTION 24;

THENCE SOUTH 00°33'36" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR AT THE SOUTH LINE OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°29'19" EAST, ALONG THE SOUTH LINE OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR AT THE SOUTHEAST CORNER OF THE WEST 1320.00 FEET OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE NORTH 00°33'36" EAST, ALONG THE EAST LINE OF THE WEST 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1320.00 FEET TO A HALF INCH REBAR ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19, ALSO BEING THE NORTHEAST CORNER OF THE WEST 1320.00 FEET OF THE NORTH 1320.00 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°29'19" EAST, ALONG THE NORTH LINE OF THE OF THE NORTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1286.27 FEET TO A GLO BRASS CAP AT THE NORTH QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 89°29'54" EAST, ALONG THE NORTH LINE OF THE OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.72 FEET TO A REBAR WITH ALUMINUM CAP MARKED "LS 36563, 2004" AT THE NORTHEAST CORNER OF SAID SECTION 19;

THENCE SOUTH 00°32'10" WEST, ALONG THE EAST LINE OF THE OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.21 FEET TO A REBAR WITH ALUMINUM CAP MARKED "LS 36563, 2004" AT THE EAST QUARTER CORNER OF SAID SECTION 19;

THENCE SOUTH 00°32'12" WEST, ALONG THE EAST LINE OF THE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 2643.45 FEET TO AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19 AND THE POINT OF BEGINNING;

**TOGETHER WITH THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA,**

**BEING ALSO DESCRIBED AS FOLLOWS:**

**BEGINNING AT A HALF-INCH REBAR AT THE NORTHEAST CORNER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 7 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;**

THENCE SOUTH 00°33'24" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2640.55 FEET TO A GLO BRASS CAP AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE NORTH 89°26'32" WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2636.57 FEET TO A HALF INCH REBAR WITH TAG MARKED "L.S. 12218" AT THE CENTER OF SAID SECTION 23;

THENCE NORTH 00°35'09" EAST, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2641.17 FEET TO A GLO BRASS CAP AT THE NORTH QUARTER CORNER OF SAID SECTION 23;

THENCE SOUTH 89°25'44" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 2635.23 FEET TO A GLO BRASS CAP AT THE NORTHEAST CORNER OF SAID SECTION 23 AND THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF SAID SECTION 19 DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP FOUND AT THE SOUTH QUARTER CORNER OF SAID SECTION 19, FROM WHICH AN ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP AT THE SOUTHEAST CORNER OF SAID SECTION 19 BEARS SOUTH 89°28'08" EAST, A DISTANCE OF 2640.04 FEET; THENCE NORTH 89°28'43" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 1482.82 FEET; THENCE NORTH 00°31'17" EAST, A DISTANCE OF 40.00 FEET TO A HALF IN REBAR AT A POINT ON A LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19 AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°31'17" EAST, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT A POINT ON A LINE LYING 240.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTH 89°28'43" EAST, ALONG SAID LINE LYING 240.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR;

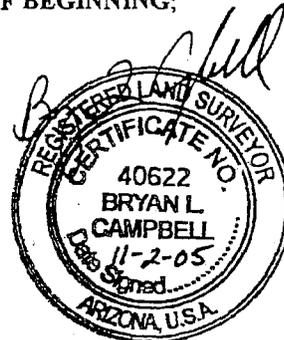
THENCE SOUTH 00°31'17" WEST, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT A POINT ON SAID LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE NORTH 89°28'43" WEST, ALONG SAID LINE LYING 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 19, A DISTANCE OF 200.00 FEET TO A HALF IN REBAR AT THE POINT OF BEGINNING;

SITUATE IN THE COUNTY OF MARICOPA, STATE OF ARIZONA.

CONTAINS 1,110.083 ACRES MORE OR LESS. (GROSS)

CONTAINS 1,082.750 ACRES MORE OR LESS. (NET)



ORDER NUMBER: 9F04866T-US

EXHIBIT 'A'

89 245589

A PORTION OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 NORTH, RANGE 6 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 28:

THENCE SOUTH 00 DEGREES 01 MINUTES 42 SECONDS EAST, 65.00 FEET, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, TO A POINT ON THE SOUTH LINE OF THE ROAD DECLARED AT DOCKET 3124, PAGE 573-575, MARICOPA COUNTY RECORDS, SAID POINT BEING THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 52 MINUTES 28 SECONDS EAST, 1321.30 FEET, ALONG SAID SOUTH LINE, SAID LINE BEING 65.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER;

THENCE SOUTH 00 DEGREES 01 MINUTES 51 SECONDS EAST, 1257.08 FEET, ALONG SAID EAST LINE, TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER;

THENCE SOUTH 89 DEGREES 55 MINUTES 17 SECONDS WEST, 1321.35 FEET, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER, TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER;

THENCE NORTH 00 DEGREES 01 MINUTES 42 SECONDS WEST, 1256.00 FEET, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER TO THE POINT OF BEGINNING.

RECEIVED  
MAR 14 2006  
By \_\_\_\_\_  
EXHIBIT 5-3  
ALL STATE LEGAL



BEFORE THE DIRECTOR OF THE  
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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In the Matter of: )  
Far West Water & Sewer, Inc. located at )  
13157 E. 44<sup>th</sup> Street, Yuma, Arizona )  
ADEQ Identification Number: 101816 )  
Docket No. P-18-06 )

To: Far West Water & Sewer, Inc. (Far West) in its capacity as owner and/or operator of two (2) Wastewater Treatment Plants at its Del Oro site located at 11717 Omega Lane, Yuma, Arizona.

RECITALS

Far West acknowledges that no promise of any kind or nature whatsoever was made to induce it to enter into this Consent Order, and Far West has done so voluntarily.

Far West acknowledges that by entering into this Consent Order, it does not resolve any liability it may have for civil penalties for violations of any State or Federal environmental law.

By entering into this Consent Order, Far West does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to Far West under applicable law. Further, Far West does not admit, and both the Arizona Department of Environmental Quality ("ADEQ") and Far West retain the right to controvert in any subsequent proceeding except a proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

The undersigned representative of Far West certifies that he is fully authorized to execute this Consent Order on behalf of Far West and to legally bind Far West to this Consent Order.

Far West admits to the jurisdiction of the Director of ADEQ.

Except as to the right to controvert the validity of any Findings of Fact or Conclusion of Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,

Initials PC

1 Far West consents to the terms and entry of this Consent Order and agrees not to contest the  
2 validity or terms of this Consent Order in any subsequent proceeding.

3 **THEREFORE, IT IS HEREBY ORDERED** as follows:

4 **I. JURISDICTION**

5 The Director of ADEQ has jurisdiction over the subject matter of this action and is  
6 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes ("A.R.S.") § §  
7 49-261, and 49-461.

8 **II. FINDINGS**

9 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
10 **CONCLUSIONS OF LAW:**

11 **A. Findings of Fact**

12 1. In May 2003, Far West submitted an Aquifer Protection Permit (APP)  
13 application for operation of a 150,000 gallon per day (gpd) Clear Solutions Wastewater  
14 Treatment Plant (150K-WWTP). ADEQ has not yet issued an APP based upon the application.

15 2. In March 2004, Far West installed and began operating the 150K-WWTP  
16 without first obtaining an individual APP, at the Del Oro site located in Yuma, Arizona. Nine  
17 hundred and fifty (950) sewer connections discharge domestic and commercial wastewater into  
18 this WWTP. Treated effluent is then discharged to a holding pond to irrigate the 18 Hole Mesa  
19 Del Sol Golf Course. During the winter months, when residential occupancy is at its peak,  
20 flows into this WWTP occasionally exceed 150,000 gpd.

21 3. a. Previously, and at the same site, Far West operated a 70,000 gpd  
22 Santec Wastewater Treatment Plant (70K-WWTP), obtained from Mesa Del Sol, Inc., in  
23 September 2001. Far West stopped using this WWTP because the hydraulic and organic  
24 loadings exceeded design capabilities.

b. On October 29, 1997 ADEQ issued a letter to Mesa Del Sol, Inc.  
authorizing the company to operate this 70K-WWTP under a general APP. At that time the  
WWTP had a flow under 20,000 gpd. In the same letter, ADEQ authorized operation of two  
other WWTPs, Villa Royale and Villa De Sol, also with flows under 20,000 gpd, under a  
general APP.

1 c. During February 1998, ADEQ issued to Mesa Del Sol, Inc. a  
2 Reuse permit authorizing the use of effluent from its Villa Royale, Villa Del Sol and Santec  
3 WWTPs to irrigate the Mesa Del Sol Golf Course. The Reuse Permit was transferred to Far  
4 West in October 2001, and expired February 6, 2003. Far West did not obtain approval to  
5 release the reclaimed water for direct reuse under an APP. Far West continues to provide  
6 effluent which is then used to irrigate the Mesa Del Sol golf course.

7 4. Far West owns and operates eight (8) WWTPs at seven locations in the  
8 Yuma area.

9 5. During January and February 2006, ADEQ received several complaints  
10 from residents regarding intense odors and effluent quality concerns from the 150K-WWTP at  
11 the Del Oro site. ADEQ inspected the site on February 9, 2006, and met with Far West staff  
12 and home owners living in close proximity to the WWTP. ADEQ also met with Far West  
13 executive officers, engineer, and chief plant operator, on February 10, 2006 to discuss the  
14 complaints and related issues.

15 6. During the February 9 and February 10, 2006 meetings, Far West  
16 acknowledged odor related issues at this WWTP, and assured ADEQ the company was prepared  
17 to implement short, medium, and long term measures to ensure all issues including operational,  
18 maintenance, capacity, and permitting were addressed.

19 A. To date, short-term measures implemented by Far West at the Clear  
20 Solutions WWTP include:

21 i. Retrofitting vents on the two (2) sub-surface fiber glass reactors into  
22 which raw sewage is piped, such that some vents are made air tight, while the main vents are  
23 piped to a granular activated carbon column for odor removal;

24 ii. Raising the decant arm in the reactors to allow longer residence times,  
which will facilitate oxidation processes, reduce odorous gas formation, and produce a higher  
quality effluent;

iii. Reactivated the 70K-WWTP which is currently treating approximately  
40,000 gpd of influent wastewater; and

iv. Meeting with residents to address their concerns regarding efficient and  
effective operation of the WWTP.

1 v. Discussions with developers in the Mesa del Sol subdivision regarding  
2 problems with the Del Oro WWTP and the need for additional wastewater capacity before  
3 service can be extended.

4 During subsequent meetings and via e-mail Far West has stated that, collectively,  
5 these measures have resulted in: 1) significant reduction in gaseous odors at and around the  
6 WWTP; 2) effluent quality that meets reclaimed water standards; and 3) tempering of residents'  
7 concerns. ADEQ conducted a follow up inspection on March 1, 2006 to verify Far West's  
8 representations regarding the implementation of short term measures.

9 B. To date, Far West has set in motion the following medium term measures:

10 i. Ordered a 50,000 gpd Biological Nutrient Removal (BNR) Wastewater  
11 Treatment Plant (50K-WWTP) into which some of the influent wastewater will be piped, thus  
12 reducing the hydraulic and organic load on the Clear Solution WWTP. This 50K-WWTP is  
13 scheduled to be installed and made operational by May 31, 2006;

14 ii. Ordered a filtration unit and UV disinfection system to be installed by  
15 May 31, 2006. These units will aid in producing higher quality effluent; and

16 iii. Developed plans to aerate flows at Lift Station #12, one of two lift  
17 stations that pumps influent to the treatment plants, such that dissolved oxygen concentrations  
18 are increased, and odorous gas formation is reduced.

19 C. As a long-term measure, Far West's objective is to install a 450,000 gpd  
20 wastewater treatment plant (450K-WWTP) at the Del Oro site, to be completed in phases. This  
21 450K-WWTP will replace all of the previously mentioned WWTPs. Far West plans to complete  
22 Phase I, which would involve construction and installation of facilities to treat a minimum of  
23 225,000 gpd of influent wastewater, by August 31, 2007.

24 B. Conclusions of Law

1. The 150K-WWTP and 70K-WWTP are each a "Facility" pursuant to  
A.R.S. § 49-201(17).

2. Far West is a "Person" pursuant to A.R.S. § 49-201(26).

3. By operating the 150K-WWTP without an APP, Far West violated A.R.S.  
§ 49-241, which requires that a person who discharges or who owns or operates a facility that  
discharges, first obtain an APP.



1 C. By no later than May 31, 2006, Far West shall install and commence operation of  
2 the new 50K-WWTP, filtration unit, and ultra violet (UV) disinfection system at the Del Oro  
3 site, to treat a maximum monthly daily average of 50,000 gpd of wastewater influent. Prior to  
4 operation of this WWTP, Far West shall submit to ADEQ an engineer's certificate of  
5 completion signed and sealed by an Arizona Registered Professional Engineer, verifying that  
6 this 50K-WWTP is constructed and installed in accordance with all applicable standards. Far  
7 West shall also implement the appropriate engineering and other appropriate measures to ensure  
8 that odorous or gaseous materials are not generated by and emitted from this 50K-WWTP in  
9 such a manner as to interfere with the comfortable enjoyment of life or property of members of  
10 the community, and submit to ADEQ a written description of such engineering and other  
11 appropriate measures.

12 D. By no later than October 31, 2007 Far West shall cease operation of this 50K-  
13 WWTP, and submit to ADEQ's Groundwater Section a complete APP application for its  
14 closure. Subsequently, should the Groundwater Section issue to Far West a deficiency letter(s),  
15 Far West shall satisfy the conditions of such a deficiency letter(s) within the deadline(s) stated  
16 in the letter(s). Far West shall complete all closure requirements associated this WWTP by no  
17 later than ninety (90) days after receipt of the APP for closure, or as otherwise provided in the  
18 APP.

19 E. Beginning May 1, 2006, Far West shall treat, at the 150K-WWTP, a maximum  
20 monthly daily average flow of 80,000 gpd. By no later than October 31, 2007 Far West shall  
21 cease operation of this WWTP, and submit to ADEQ's Groundwater Section a complete APP  
22 application for its closure. Subsequently, should the Groundwater Section issue to Far West a  
23 deficiency letter(s), Far West shall satisfy the conditions of such a deficiency letter(s) within the  
24 deadline(s) stated in the letter(s). Far West shall complete all closure requirements associated  
this WWTP by no later than ninety (90) days after receipt of the APP for closure, or as  
otherwise provided in the APP.

F. Beginning the effective date of this Consent Order, and until further notification  
by ADEQ, Far West shall:

i. Collect, on a weekly basis, influent wastewater samples from a location after the  
screens, and representative of influent flows. Far West shall have these samples analyzed by an  
Arizona state certified laboratory for pH (also to be determined on site), total suspended solids

1 (TSS), 5 day biological oxygen demand (BOD), nitrate –nitrite, alkalinity (also to be determined  
2 on site), ammonia, and total kjeldahl nitrogen (TKN);

3 ii. Collect, on a weekly basis, from each WWTP that is operational, representative  
4 effluent samples and have them analyzed by an Arizona state certified laboratory for pH (also to  
5 be determined on site), TSS, BOD, nitrate-nitrite, alkalinity (also to be determined on site),  
6 ammonia, TKN, and fecal coliform;

7 iii. Collect, on a weekly basis, mixed liquor samples from each WWTP that is  
8 operational, and determine the TSS and dissolved oxygen concentrations of each sample. Far  
9 West shall perform these determinations on site; and

10 iv. Submit copies of all analytical results to ADEQ within five (5) days of  
11 notification by the laboratory, or upon determination on site.

12 G. Beginning the effective date of this Consent Order, Far West shall operate each  
13 WWTP to meet Class B effluent standards, as follow:

14 i. Five-day BOD - less than 30 mg/l (30-day) average, and less than 45 mg/l (7-day  
15 average);

16 ii. TSS - less than 30 mg/l (30-day) average, and less than 45 mg/l (7-day average);

17 iii. pH - to be maintained between 6.0 and 9.0 standard units;

18 iv. A removal efficiency of 85% for BOD and TSS;

19 v. Fecal coliform - four of the last seven samples should show concentrations less  
20 than 200 coliform forming units (cfu)/100 ml; and

21 vi. Fecal coliform – a single sample maximum concentration should be less than 800  
22 cfu/100 ml.

23 H. By no later than thirty (30) days after the effective date of this Consent Order,  
24 Far West shall make available to Premier signs sufficient to be placed at one quarter mile spaced  
25 intervals around the golf course and clearly visible and legible in English and Spanish, at least  
26 two inches high, to be placed. The signs shall state, "Reclaimed Water in use, do not drink."

27 I. By no later than September 30, 2006, Far West Shall submit to ADEQ's  
28 Groundwater Section an administratively complete APP application for operation of the  
29 proposed new 450K-WWTP. Subsequently, should the Groundwater Section issue to Far West  
30 a deficiency letter(s), Far West shall satisfy the conditions of such deficiency letter(s) within the  
31 stated deadline(s).

1 J. By no later than August 31, 2007, Far West shall complete Phase I of this 450K-  
2 WWTP which shall constitute construction, and installation of facilities designed to treat a  
3 minimum of 225,000 gpd of influent wastewater in accordance with all applicable requirements  
4 and, obtaining all applicable approvals for operation, and commencing operation of this Phase.

5 K. Immediately upon the Effective Date of this Consent Order and until such time as  
6 Phase I of the 450K-WWTP is completed, Far West shall not allow additional sewer line  
7 connections from residential dwellings, or wastewater lines from commercial establishments, to  
8 any WWTP at the Del Oro site, unless Far West submits, and ADEQ approves in writing, a  
9 demonstration that there is sufficient wastewater treatment capacity for the additional  
10 connections.

#### 11 IV. STATUS REPORTS

12 A. Far West agrees to submit a written status report to ADEQ every ninety (90)  
13 calendar days from the effective date of this Consent Order, until termination of this Consent  
14 Order. Each written status report shall describe what measures have been taken under Section  
15 III of this Consent Order, and shall certify when compliance with the requirements of Section III  
16 of this Order has been achieved. Each report shall be accompanied by evidence of compliance  
17 including, as appropriate, submittal of documents, photographs or copies of any other  
18 supporting information that Far West deems necessary.

19 B. ADEQ will review the status reports and relay any disputes, in writing, to Far  
20 West. Far West shall incorporate all required modifications, changes or other alterations, as  
21 requested by ADEQ, within a reasonable time specified by ADEQ.

#### 22 V. VIOLATIONS OF ORDER/STIPULATED PENALTIES

23 A. Under A.R.S. § 49-262, violation of this Consent Order subjects Far West to civil  
24 penalties of up to \$25,000 per day per violation. ADEQ and Far West agree that the calculation  
of civil penalties for violation of this Consent Order would be very difficult.

B. ADEQ and Far West therefore agree that if Far West fails to comply with any  
requirement of this Consent Order, Far West shall pay a stipulated penalty pursuant to the  
schedule below:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Violation</u>
1 <sup>st</sup> to 30 <sup>th</sup> day	\$3,000 per day per violation
31 <sup>st</sup> to 60 <sup>th</sup> day	\$4,000 per day per violation
After 60 days	\$5,000 per day per violation

1 C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on  
2 the day that performance is due or that a violation of this Consent Order occurs and shall  
3 continue to accrue until correction of the act of noncompliance is completed. Neither issuance  
4 by ADEQ nor receipt by Far West of a Notice of Violation of the terms and conditions of this  
5 Consent Order are conditions precedent to the accrual of stipulated penalties.

6 D. Stipulated penalty payments shall be made pursuant to a civil settlement (e.g.,  
7 Consent Judgment) with ADEQ filed in a court of competent jurisdiction. If ADEQ and Far  
8 West are unable to reach agreement for payment of stipulated penalties under a civil settlement,  
9 or if Far West fails to make payment of stipulated penalties due under a civil settlement, ADEQ  
10 may file a civil action seeking the maximum civil penalty allowed under Federal or State law for  
11 violation of this Consent Order.

12 E. The stipulated penalties required by this Consent Order shall be in addition to  
13 other remedies or sanctions available to ADEQ by reason of any failure by Far West to comply  
14 with the requirements of Federal or State laws. The payment of stipulated penalties shall not  
15 relieve Far West from compliance with the terms and conditions of this Consent Order or  
16 Federal or State laws, nor limit the authority of the State to require compliance with the Consent  
17 Order or State law.

#### 18 **VI. COMPLIANCE WITH OTHER LAWS**

19 A. This Consent Order does not encompass issues regarding releases,  
20 contamination, sources, operations, facilities or processes not expressly covered by the terms of  
21 this Consent Order, and are without prejudice to the rights of the State of Arizona or Far West  
22 arising under any federal or Arizona environmental statutes and rules with regard to such issues.

23 B. Nothing in this Consent Order shall constitute a permit of any kind, or a  
24 modification of any permit of any kind, or an agreement to issue a permit of any kind under  
federal, state or local law, or relieve Far West in any manner of its obligation to apply for,  
obtain, and comply with all applicable permits. Nothing in this Consent Order shall in any way  
alter, modify or revoke federal, state, or local law, or relieve Far West in any manner of its  
obligation to comply with such laws. Compliance with the terms of this Consent Order shall not  
be a defense to any action to enforce any such permits or laws.

#### **VII. FORCE MAJEURE**

A. Far West shall perform all the requirements of this Consent Order according to  
the time limits set forth herein, unless performance is prevented or delayed by events which

1 constitute a *force majeure*. *Force majeure*, for the purposes of this Consent Order, is defined as  
2 any event arising from causes beyond the control of Far West or its authorized representatives  
3 which delays or prevents the performance of any obligation under this Consent Order and which  
4 could not have been overcome or prevented by Far West. The financial inability of Far West to  
5 comply with the terms of this Consent Order shall not constitute a *force majeure*.

6 B. In the event of a *force majeure*, the time for performance of the activity affected  
7 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the  
8 delay caused by the *force majeure*. The time for performance of any activity dependent on the  
9 delayed activity shall be similarly extended. In the event of a *force majeure*, Far West shall  
10 notify ADEQ in writing within five (5) calendar days after Far West or its agents become aware  
11 of the occurrence. The written notice provided to ADEQ shall describe in detail the event, the  
12 anticipated delay, the measures taken and to be taken by Far West to prevent or minimize delay,  
13 and a proposed timetable under which those measures will be implemented. Far West shall take  
14 all reasonable measures to prevent or minimize any delay caused by the *force majeure*. Failure  
15 of Far West to comply with any requirements of this paragraph for a particular event shall  
16 preclude Far West from asserting any claim of *force majeure* for that event.

#### 13 VIII. SITE ACCESS

14 ADEQ may at any time, upon presentation of credentials to authorized personnel on  
15 duty, enter upon the premises at the Facility for the purpose of observing and monitoring  
16 compliance with the provisions of this Consent Order. This right of entry shall be in addition to,  
17 and not in limitation of or substitution for, ADEQ's rights under applicable law.

#### 17 IX. CORRESPONDENCE

18 All documents, materials, plans, notices, or other items submitted as a result of this  
19 Consent Order shall be transmitted to the addresses specified below:

20 To ADEQ:

21 Arizona Department of Environmental Quality

22 Water Quality Division

23 Water Quality Enforcement Unit

24 Attention: Robert Casey, Manager

1110 West Washington Street

Phoenix, Arizona 85007-2935

Telephone: 602-771-4614

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Email: rc2@azdeq.gov

To Far West:

Paula Capestro, President  
Far West Water & Sewer, Inc.  
12486 Foothills Blvd.  
Yuma, Arizona 85367

and

Andrew J. Capestro  
P.O. Box 791  
Rancho Sante Fe, California 92067

Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

**X. RESERVATION OF RIGHTS**

A. This Consent Order is based solely upon currently available information. If additional information is discovered which indicates that the actions taken under this Consent Order are or will be inadequate to protect human health, safety, or the environment, or to conform with applicable federal or state laws, ADEQ shall have the right to require further action.

B. ADEQ shall have the right: to pursue civil penalties for violations of any and all violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring before entry of this Consent Order; to disapprove of work performed by Far West that fails to comply with this Consent Order; to take enforcement action for any and all violations of this Consent Order; and to take enforcement action for any and all violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring after the entry of this Consent Order.

**XI. SEVERABILITY**

The provisions of this Consent Order are severable. If any provision of this Consent Order is declared by a court of law to be invalid or unenforceable, all other provisions of this Consent Order shall remain in full force and effect.

**XII. MODIFICATIONS**

Any modifications of this Consent Order shall be in writing and must be approved by both Far West and ADEQ.

Initials 

1 **XIII. EFFECTIVE DATE**

2 The effective date of this Consent Order shall be the date this Consent Order is signed by  
3 ADEQ and Far West. If such signatures occur on different dates, the later date shall be the  
4 effective date of this Consent Order.

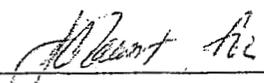
5 **XIV. PARTIES BOUND**

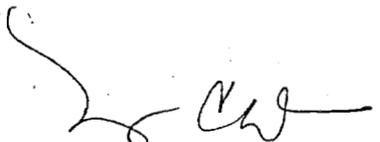
6 No change in ownership, corporate status, or partnership status relating to the subject of  
7 this Consent Order will in any way alter the responsibilities of Far West under this Consent  
8 Order. Far West will be responsible, and will remain responsible for carrying out all activities  
9 required under this Consent Order.

10 **XV. TERMINATION**

11 The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be  
12 terminated upon receipt of written notification from ADEQ that Far West has demonstrated, to  
13 the satisfaction of ADEQ, that all of the terms of this Consent Order have been completed. Any  
14 denial of a request for termination from Far West will be in writing and describe which terms of  
15 the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the  
16 right to terminate this Consent Order unilaterally at any time for any reason. Any termination  
17 will include a written explanation of the reason(s) for termination.

18 ISSUED this 13<sup>th</sup> day of March, 2006

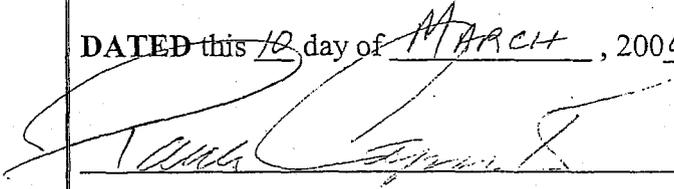
19   
20 \_\_\_\_\_  
21 Joan Card, Director  
22 Water Quality Division  
23 Arizona Department of Environmental Quality

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\_\_\_\_\_  
Nancy Wrona, Director  
Air Quality Division  
Arizona Department of Environmental Quality

**CONSENT TO ORDER**

The undersigned, on behalf of Far West, hereby acknowledges that she has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, and agrees that Far West will abide by the same and waive any right to appeal therefrom.

DATED this 10 day of MARCH, 2006



Paula Capestro, President  
Far West Water & Sewer, Inc.

Initials



**ORIGINAL** of the foregoing Consent Order was filed this 13 day of March, 2006  
with:

Judith Fought, Hearing Administrator  
Office of Administrative Counsel  
Arizona Department of Environmental Quality  
1110 West Washington Street  
Phoenix, Arizona 85007-2935

**COPY** of the foregoing Consent Order was sent certified mail, return receipt requested, this 13  
day of March, 2006 to:

Paula Capestro, President  
Far West Water & Sewer, Inc.  
12486 Foothills Blvd.  
Yuma, Arizona 85367

and

Andrew J. Capestro  
P.O. Box 791  
Rancho Santa Fe, California 92067

**COPIES** of the foregoing Consent Order were sent by regular/interdepartmental mail, this 13  
day of March, 2006, to the following:

Tamara Huddleston, Chief  
Environmental Enforcement Section  
Office of the Attorney General  
1275 West Washington Street  
Phoenix, Arizona 85007

Michele Robertson, Manager, Groundwater Section, ADEQ

Mike Traubert, Manager, WQCS, ADEQ

Robert Casey, Manager, WQEU, ADEQ

Asif Majeed, Manager, Wastewater, Recharge & Reuse Unit, Groundwater Section, ADEQ

Romann Diaz, Manager, WQFSU, ADEQ

Rick Stacks, Manager