

OPEN MEETING ITEM



0000016534

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: January 19, 2005
DOCKET NO: WS-02987A-04-0501
TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

JOHNSON UTILITIES COMPANY
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 28, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

FEBRUARY 8 AND 9, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

BRIAN C. McNEIL
EXECUTIVE SECRETARY

Arizona Corporation Commission
DOCKETED

JAN 19 2005

DOCKETED BY	
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 JOHNSON UTILITIES COMPANY FOR AN
10 EXTENSION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY FOR
12 PROVISION OF WASTEWATER.

DOCKET NO. WS-02987A-04-0501

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: January 5, 2005
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
13 APPEARANCES: Mr. Jay Shapiro, FENNEMORE CRAIG, P.C., on
14 behalf of Applicant; and
15 Mr. Timothy Sabo, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
17 Corporation Commission.

18 **BY THE COMMISSION:**

19 On July 9, 2004, Johnson Utilities Company filed with the Arizona Corporation Commission
20 ("Commission") an application for an extension of its Certificate of Convenience and Necessity
21 ("Certificate") to provide wastewater service.

22 On October 6, 2004, Staff filed a letter of sufficiency.

23 By Procedural Order issued October 7, 2004, this matter was scheduled for hearing on
24 January 5, 2005 and Johnson was ordered to notify all property owners in the affected area of the
25 application and the hearing date.

26 On November 16, 2004, the Company filed a Notice of Compliance with the Customer Notice
27 and Publication requirements set forth in the October 7, 2004 Procedural Order.

28 On December 3, 2004, Staff filed its Staff Report in this matter recommending approval of the
application.

1 No requests for intervention were received.

2 On January 5, 2005, a hearing was convened before a duly authorized Administrative Law
3 Judge of the Commission at its offices in Phoenix, Arizona. Johnson and Staff entered appearances
4 through counsel. A representative of the homebuilder in the CC&N extension area offered comments
5 in support of the extension application and urged expedited consideration. At the conclusion of the
6 hearing, the matter was taken under advisement pending submission of a late-filed amended legal
7 description and issuance of a Recommended Opinion and Order.

8 * * * * *

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

11 **FINDINGS OF FACT**

12 1. Johnson Utilities Company ("Johnson" or "Company") is a public service corporation
13 that provides water and wastewater service in Pinal County, Arizona pursuant to an original CC&N
14 granted in Decision No. 60223 (May 27, 1997). Subsequent CC&N extensions were granted to
15 Johnson in Decision Nos. 61069 (August 7, 1998); 62087 (November 19, 1999); 63960 (September
16 4, 2001); and 64062 (October 4, 2001).

17 2. On July 9, 2004, Johnson filed an application seeking to extend its CC&N to provide
18 wastewater service to an area adjacent to its existing CC&N. The requested extension area includes
19 approximately 276 acres that will be developed into 966 lots in a subdivision known as Laredo
20 Ranch. Water service for Laredo Ranch will be provided by Diversified Water Utilities, Inc., which
21 holds a CC&N for water service in the proposed wastewater extension area sought by Johnson.

22 3. By Procedural Order issued October 7, 2004, this matter was scheduled for hearing on
23 January 5, 2005 and Johnson was ordered to notify all property owners in the affected area of the
24 application and the hearing date.

25 4. On November 16, 2004, the Company filed a Notice of Compliance with the
26 Customer Notice and Publication requirements set forth in the October 7, 2004 Procedural Order.

27 5. No intervention requests or objections to the application were received.

28 6. On December 3, 2004, Staff recommended approval of the application. Staff stated

1 that on March 9, 2004, Laredo Ranch, LLC, requested that Johnson provide wastewater service to the
2 area to be developed. No other wastewater provider is willing or able to provide service to the
3 extension area.

4 7. A public hearing on the application was held as scheduled on January 5, 2005. A
5 representative of Taylor Woodrow Homes, the homebuilder that intends to develop the Laredo Ranch
6 property, appeared at the hearing and offered comments in support of the application. At the
7 conclusion of the hearing, Johnson and Staff were directed to submit a late-filed amended legal
8 description of the extension area to resolve a discrepancy between a map prepared by Staff (Ex. S-1,
9 Attach. A) and a map prepared by Johnson (Ex. J-2). On January 7, 2005, Johnson filed an amended
10 legal description of the CC&N extension area. On January 11, 2005, Staff filed an amended legal
11 description and revised map of the CC&N extension area, based on the Company's filing.

12 8. The Laredo Ranch development will be served by the newly constructed Pecan
13 Wastewater Reclamation Plant ("Pecan Plant"). Wastewater flows from the development will be
14 pumped 4,000 feet north to an existing 12-inch wastewater interceptor, and will then flow by gravity
15 to the Pecan Plant which is located approximately two miles to the west of Laredo Ranch.

16 9. The Pecan Plant was issued an Aquifer Protection Permit by the Arizona Department
17 of Environmental Quality ("ADEQ") on May 7, 2004. Johnson's executive vice-president, Brian
18 Tompsett, testified that the Pecan Plant is currently treating wastewater flows at 30 percent of its
19 approximately 1 million gallons per day ("gpd") capacity. At current growth projections, the Pecan
20 Plant is not expected to exceed its current capacity until 2010. However, the Company has filed an
21 application with ADEQ for authority to expand the plant to a capacity of 4 million gpd (Ex. S-1, at
22 4).

23 10. Pursuant to §208 of the federal Clean Water Act, each state is required to develop and
24 implement area-wide water quality management plans for pollution control purposes. The Central
25 Arizona Association of Governments ("CAAG") has been designated as the area-wide water quality
26 management planning agency for Pinal County. The extension area sought in this proceeding is
27 within the CAAG §208 planning area for Johnson, for service provided by the Pecan Plant, and
28 therefore conforms to the area-wide wastewater plans (*Id.* at 2-4).

1 11. Although the Pecan Plant is still in “start-up mode,” initial reports from Staff and
2 ADEQ inspections indicate that the plant is operating in conformance with its design and permit
3 conditions. Staff witness Jim Fisher testified that the wastewater system served by the Pecan Plant
4 can reasonably be expected to develop the necessary sewage treatment capacity to serve the proposed
5 extension area.

6 12. According to Staff, the wastewater utility facilities for Laredo Ranch will be financed
7 in accordance with A.A.C. R14-2-606, which establishes minimal acceptable criteria for main
8 extension agreements between wastewater utilities and private parties. Main extension agreements
9 generally require the developer of property to design, construct and install necessary backbone
10 facilities, which will then be conveyed to the utility company upon completion and acceptance by the
11 utility. In this case, Johnson and the developer (Laredo Ranch, LLC) have entered into a Line
12 Extension Agreement that sets forth detailed plans for construction of the system, as well as specific
13 terms and conditions governing installation, inspection and conveyance of the facilities (Ex. J-3).
14 The agreement also provides for an annual refund to the developer of five percent of total net
15 revenues from the development until the advance of funds for construction of the facilities is fully
16 refunded (*Id.* at 6). Staff witness Fisher testified that the main extension agreement is satisfactory.

17 13. Staff indicated that Johnson is in compliance with ADEQ rules for operation, reporting
18 and discharge limits for wastewater facilities; that Johnson has no outstanding compliance issues at
19 the Commission; and that Johnson has the requisite Pinal County franchise to serve the extension
20 area. Johnson will serve the extension area under its authorized rates and charges. Staff therefore
21 recommends approval of Johnson’s application to provide wastewater service to the requested
22 extension area (Ex. S-1, at 5).

23 14. Staff’s recommendation for approval of the application is reasonable and shall be
24 adopted.

CONCLUSIONS OF LAW

26 1. Johnson is a public service corporation within the meaning of Article XV of the
27 Arizona Constitution and A.R.S. §40-281 *et seq.*

28 2. The Commission has jurisdiction over Johnson and the subject matter of the

1 application.

2 3. Notice of the application was provided in accordance with law.

3 4. There is a public need and necessity for wastewater utility service in the proposed
4 extension area.

5 5. Johnson is a fit and proper entity to receive an extension of its wastewater CC&N to
6 include the service area more fully described in Exhibit A attached hereto.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Johnson Utilities Company for an
9 extension of the service area under its Certificate of Convenience and Necessity to include the area
10 described in Exhibit A attached hereto and incorporated herein by reference be, and is hereby
11 approved.

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1 IT IS FURTHER ORDERED that Johnson Utilities Company shall charge its existing rates
2 and charges in the approved extension area.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 CHAIRMAN COMMISSIONER COMMISSIONER

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12 COMMISSIONER COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Secretary of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2005.

18 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

19 DISSENT _____
20

21
22 DISSENT _____
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1 SERVICE LIST FOR: JOHNSON UTILITIES COMPANY

2 DOCKET NO.: WS-02987A-04-0501

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17 1200 West Washington Street
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Exhibit "A"

That portion of Section 27, Township 2 South, Range 8 East, Gila & Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

Beginning at the West Quarter Corner of said section 27 being a brass cap in hand hole;

thence North 00°14'20" West 1323.05 feet along the West line of said Section 27;

thence North 89°39'11" East 658.93 feet;

thence North 00°14'22" West 165.00 feet;

thence North 89°41'09" East 4117.85 feet;

thence South 80°46'33" East 450.45 feet;

thence North 82°18'54" East 49.95 feet to a point on the East line of said Section 27;

thence South 00°12'22" East 1414.64 feet along the East line of said Section 27 to the East Quarter Corner of said Section 27;

thence continuing along said East line South 00°17'25" East 825.76 feet;

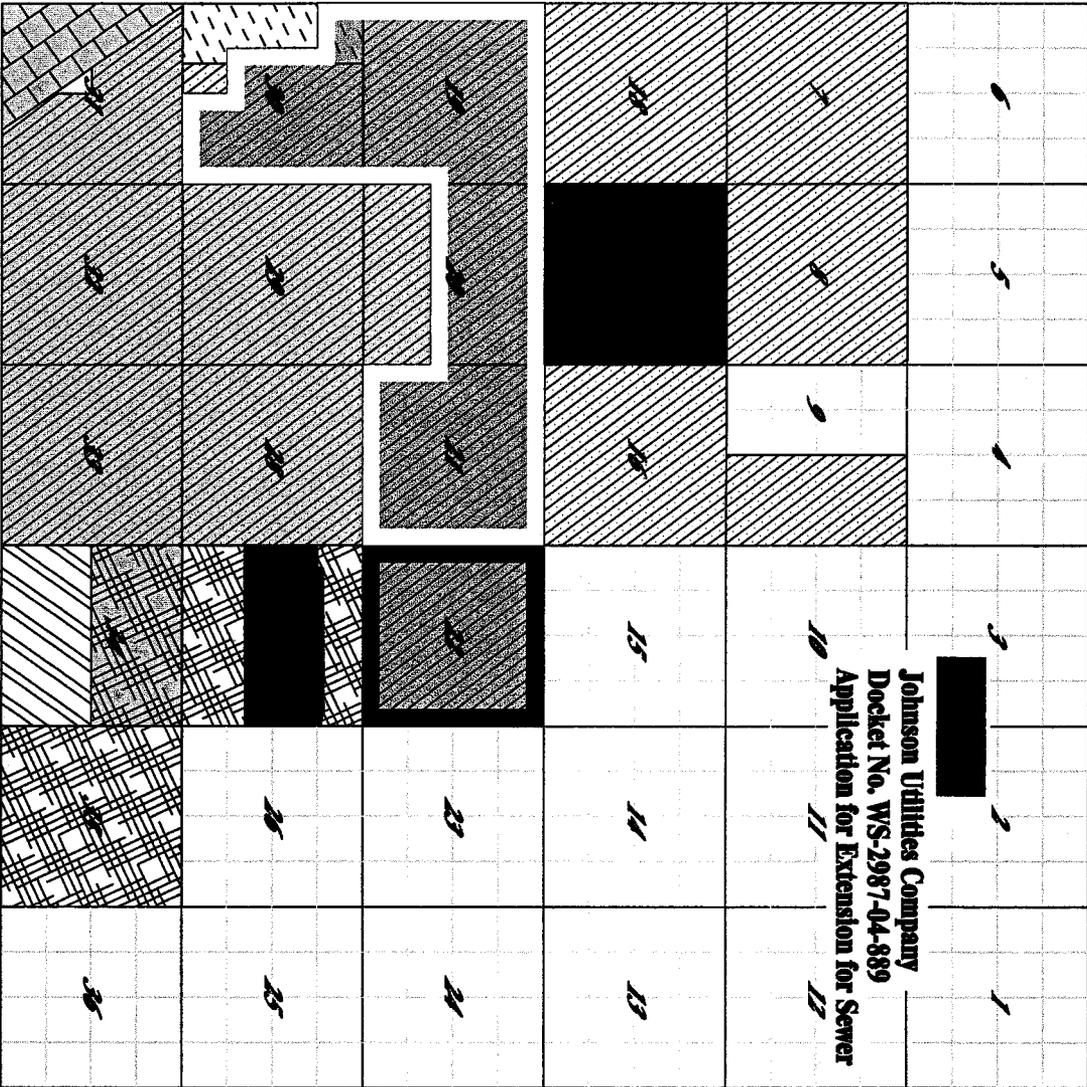
thence South 89°42'35" West 5270.67 feet to a point on the West line of said Section 27;

thence North 00°13'53" West 818.01 feet along the West line of said Section 27 to the West Quarter Corner of said Section 27 also being the POINT OF BEGINNING.

Containing 12032295 square feet or 276.223 acres, more or less.

COUNTY: Pinal

RANGE 8 East



TOWNSHIP 2 South

DECISION NO. 1



WS-2987 (6)

Johnson Utilities Company



Sewer



SW-4002 (1)

Arizona Utility Supply & Services, LLC



W-2859 (3)

Diversified Water Utilities, Inc.



W-2234 (2)

H₂O, Inc.



W-1395 (2)

Queen Creek Water Company



W-2425 (2)

Sun Valley Farms Unit VI Water Company



Arizona Utility Supply & Services

Docket No. SW-4002-02-837

Application to Transfer to Johnson Utilities

Docket No. WS-2987-02-837

Arizona Utility Supply & Services

Docket No. SW-4002-04-465

Application to Transfer to Johnson Utilities

Docket No. WS-2987-04-465



Johnson Utilities Company

Docket No. WS-2987-04-501

Application for Extension for Sewer