



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



ARIZONA CORPORATION COMMISSION

DATE: September 9, 2005
 DOCKET NO: WS-02987A-04-0288
 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, LLC
 (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:

SEPTEMBER 19, 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:

SEPTEMBER 27 AND 28, 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 Director's Office at (602) 542-3931

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 BRIAN C. McNEIL
 EXECUTIVE DIRECTOR

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, L.L.C. FOR
10 AN EXTENSION OF ITS EXISTING
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY FOR WATER AND WASTEWATER
13 SERVICE.

DOCKET NO. WS-02987A-04-0288

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING:

April 19, 2005; August 1, 2005

15 PLACE OF HEARING:

Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

17 APPEARANCES:

Mr. Jay Shapiro, FENNEMORE CRAIG, P.C.,
on behalf of Johnson Utilities Company¹;

Ms. Sheryl A. Sweeney, RYLEY, CARLOCK &
APPLEWHITE, on behalf of Intervenor, Pulte
Home Corporation; and

Mr. Timothy J. Sabo, Staff Attorney, on behalf
of the Utilities Division of the Arizona
Corporation Commission.

18 **BY THE COMMISSION:**

19 * * * * *

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

22 FINDINGS OF FACT

23 1. On April 14, 2004, Johnson Utilities Company, L.L.C. ("JUC" or "Company"), filed
24 an application for an extension of its Certificate of Convenience and Necessity ("CC&N") with the
25 Arizona Corporation Commission ("Commission") to provide public water and wastewater utility
26

27 _____
28 ¹ By Procedural Order issued June 21, 2005, Mr. Shapiro was authorized to withdraw as counsel for Johnson Utilities
Company and Richard Sallquist of the firm Sallquist and Drummond, P.C., was substituted as counsel.

1 service to various parts of Pinal County, Arizona, more fully described in Exhibit A hereto.

2 2. JUC is a public service corporation that provides water and wastewater service in
3 Pinal County, Arizona pursuant to an original CC&N granted in Decision No. 60223 (May 27, 1997).
4 A number of subsequent CC&N extensions for water and/or wastewater service have been approved
5 for JUC in subsequent years. JUC served approximately 11,500 customers as of the end of July,
6 2005, and its customer base is expanding at a pace of approximately 500 new service connections per
7 month.

8 3. On May 13, 2004, pursuant to A.A.C. R14-2-411(C), the Commission's Utilities
9 Division Staff ("Staff") issued a notice of insufficiency to JUC and requested that the application be
10 supplemented with additional specified information.

11 4. On November 5, 2004, JUC submitted additional documents in response to the May
12 13, 2004 Insufficiency Letter.

13 5. On January 5, 2005, Staff filed its Sufficiency Letter in this matter.

14 6. By Procedural Order issued January 12, 2005, a hearing was scheduled for March 24,
15 2005, and the Company was directed to publish notice of the application.

16 7. On January 21, 2005, Diversified Water Utilities, Inc. ("Diversified") filed an
17 application to intervene in the proceeding stating that it had a competing application pending in
18 Docket No. W-02859A-04-0844.

19 8. On January 25, 2005, JUC filed its opposition to Diversified's application to intervene
20 and stated that Diversified's application with respect to Docket No. W-02859A-04-0844 is for a
21 different area than that which JUC is seeking in this proceeding.

22 9. On January 27, 2005, Staff filed its response in opposition to Diversified's application
23 to intervene and stated that, after its review of the area sought to be certificated by JUC herein,
24 Diversified's application in Docket No. W-02859A-04-0844 did not involve the same area and
25 Diversified's application to intervene should be denied.

26 10. By Procedural Order issued February 2, 2005, Diversified's application to intervene
27 was denied. On February 3, 2005, Diversified filed a request to withdraw its application for
28 intervention.

1 11. On February 24, 2005, Staff filed a request to extend the due date for the filing of the
2 Staff Report from February 25, 2005, to March 4, 2005. JUC did not oppose the Motion.

3 12. Also on February 24, 2005, JUC filed its Certification of Publication with an attached
4 Affidavit of Publication from *The Tribune*.

5 13. On February 25, 2005, Pulte Home Corporation (“Pulte”) filed an application for
6 intervention based on its status as the largest homebuilder in the area encompassed by JUC’s
7 extension request in this matter. Pulte was granted intervention by Procedural Order issued March 9,
8 2005.

9 14. By Procedural Order issued February 28, 2005, Staff’s request for an extension of the
10 Staff Report due date was granted.

11 15. Staff filed its Staff Report on March 4, 2005, recommending approval of the
12 application subject to certain conditions.

13 16. On March 23, 2005, Staff and JUC filed what was captioned “Joint Stipulation to
14 Continue Evidentiary Proceeding” wherein the parties agreed that the hearing date of March 24,
15 2005, should be used for the taking of public comment only and that the evidentiary portion of the
16 proceeding should be continued to April 19, 2005. JUC further stipulated to waive the time-clock
17 rules due to the requested continuance.

18 17. By Procedural Order issued March 23, 2005, the extension request was granted and
19 the evidentiary hearing was rescheduled for April 19, 2005.

20 18. On March 24, 2005, the hearing was called in accordance with the published notice.
21 No members of the public appeared to offer public comment.

22 **Alleged Production Capacity Shortage**

23 19. On April 13, 2005, Staff filed an Amendment to Staff Report (Ex. S-2). The
24 Amendment stated that, based on water use data submitted by JUC in a January 21, 2005 data request
25 response, Staff had concluded that JUC had insufficient capacity to serve its existing Johnson Ranch
26 water system (PWS ID No. 11-128)². Based on this conclusion, Staff recommended that, pursuant to

27 _____
28 ² “PWS ID No.” refers to the public water systems identification number, which is a federal and state designation that is
unique to the specific water system for that area.

1 A.R.S. §40-282(D), the Commission should issue an "Order Preliminary" to a Final Order approving
2 the CC&N. Staff proposed that the Final Order should not be issued until JUC could demonstrate to
3 the Commission's satisfaction that it had sufficient capacity to serve PWS 11-128 and the ability to
4 develop water production resources sufficient to meet its needs for the foreseeable future (Ex. S-2, at
5 4).

6 20. The hearing in this matter was conducted on April 19, 2005. During the course of the
7 hearing, the issue of current and future production capacity and estimated growth on the JUC systems
8 were primary topics of discussion. JUC's executive vice-president, Brian Tompsett, testified
9 regarding several additional well sources that were expected to be approved in the near future and
10 that, once approved, should alleviate Staff's capacity concerns with the JUC systems. Mr. Tompsett
11 stated that the Morning Sun Farms well was expected to be approved by no later than early June,
12 2005. Under cross-examination, Staff's witness, Lyndon Hammon, stated that if JUC could submit
13 an approval of construction from the Arizona Department of Environmental Quality ("ADEQ") for
14 the estimated 890 gallons per minute Morning Sun Farms well in the near future, Staff's concern that
15 the Company lacked sufficient capacity to serve its existing customers would be satisfied (Tr. 223-
16 224).

17 21. By Procedural Order issued June 2, 2005, the Administrative Law Judge held the
18 record open for an additional 90 days to allow JUC additional time to submit the necessary approvals
19 associated with the Morning Sun Farms well. The Procedural Order also found that good cause
20 existed for extending the applicable time clock in this proceeding.

21 22. On June 9, 2005, JUC filed copies of the ADEQ Approval of Construction for the
22 Morning Sun Farms Well No. 1 and ADEQ approval issued June 3, 2005. The Company also
23 attached applications for Approval to Construct Crestfield Well Nos. 1 and 2, which were filed with
24 ADEQ on May 26, 2005.

25 23. By Procedural Order issued June 21, 2005, Staff was directed to file a response to the
26 Morning Sun Farms well data submitted by JUC.

27 24. On June 27, 2005, Staff filed a Response stating that, despite the addition of the
28 Morning Sun Farms Well No. 1, Staff believes that JUC lacks sufficient capacity "for the Company

1 to meet its immediate growth demands.”

2 25. On July 1, 2005, JUC filed a Response to Staff’s June 27, 2005 filing. JUC claimed
3 that, contrary to Staff’s assertions, data submitted to ADEQ on June 17, 2005 showed that the
4 Company has more than adequate capacity to meet future demand. JUC attached the ADEQ report to
5 its Response.

6 26. On July 5, 2005, a Procedural Order was issued setting a hearing for August 1, 2005 to
7 address the capacity and demand issue raised in the post-hearing filings. The Procedural Order also
8 directed Staff and JUC to file testimony in support of their respective positions.

9 27. On July 13, 2005, Staff filed the testimony of Utilities Engineer, John Chelus (Ex. S-
10 8). Mr. Chelus stated that, based on the additional information provided by JUC on July 1, 2005,
11 Staff determined that the Company has enough well capacity to provide for an annual peak day
12 demand through December 2005, and an average daily demand during the peak month through June
13 2006. Staff therefore concluded that JUC’s existing system has adequate production and storage
14 capacity.

15 28. On July 25, 2005, JUC filed the responsive testimony of Mr. Tompsett (Ex. A-6). Mr.
16 Tompsett agreed with Staff’s conclusion that the Company has adequate production and storage
17 capacity to serve existing and estimated customer for the foreseeable future. In addition to the
18 Morning Sun Farms Well No. 1, Mr. Tompsett cited to pending ADEQ applications for the Crestfield
19 I and II wells, and the Hardison and Ellsworth wells, all of which are expected to produce
20 approximately 1,000 gallons per minute (“gpm”).

21 29. The hearing on the capacity and demand issues was held as scheduled on August 1,
22 2005. As indicated above, Staff is now in agreement that JUC has sufficient production capacity to
23 serve its existing customers, and has several wells pending final ADEQ approval that will enable the
24 Company to serve its rapidly growing customer base for the near future. Subject to compliance with
25 the various Staff conditions described below, we believe that JUC’s capacity issues have been
26 resolved.

27 **Proposed Extension Area**

28 30. By its application, JUC seeks authority to extend its current CC&N to include two

1 separate planned area developments, Anthem at Merrill Ranch and Sonoran Villages. Sonoran
2 Villages is bounded by JUC's current CC&N on the southern and eastern boundaries of the property.
3 Anthem at Merrill Ranch is contiguous to JUC's current CC&N on its western and northern border.
4 The Sonoran Villages development is located in the Phoenix Active Management Area ("AMA") and
5 the Anthem at Merrill Ranch development is located in the Pinal AMA.

6 31. The Sonoran Villages property is comprised of approximately 402 acres northwest of
7 Florence, and will be developed into 1,608 residential lots. The Central Arizona Project Canal runs
8 through the middle of the property and the Magma railroad crosses the property diagonally. Sonoran
9 Villages is owned by General Hunt Properties. George Johnson is the principal shareholder of
10 General Hunt Properties (Ex. S-1, at 1-2).

11 32. Anthem at Merrill Ranch ("Merrill Ranch") is a planned area development that is
12 being developed by Pulte/Del Webb Development. Merrill Ranch is a 7,500 acre property north of
13 Florence that is expected to be developed into approximately 24,000 homes over a 30-year period. In
14 the application in this docket, JUC is seeking to extend its CC&N only to the first phase of the
15 development, which will consist of approximately 6,000 homes. Subsequent phases will be served by
16 either JUC or the Town of Florence. The first phase of Anthem at Merrill Ranch (*i.e.*, the extension
17 area sought in this proceeding) will be developed in four separate stages. The first stage will include
18 362 acres and 1,523 residential lots, along with a golf course and trails. The second stage will cover
19 425 acres with 1,703 residential lots plus an elementary school. The third stage is planned for 407
20 acres with 1,381 homes and a riparian area. The final stage will include 314 acres with 1,161 homes,
21 a high school, a park and trails (*Id.* at 2).

22 **Wastewater Treatment System**

23 33. 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.

27 34. JUC has obtained CAAG §208 Water Quality Plan approval to construct the Copper
28 Basin regional Wastewater Treatment Plant ("Copper Basin WWTP"), which will encompass the

1 Sonoran Villages development. JUC plans to construct the Copper Basin WWTP with an initial
2 capacity of 500,000 gallons per day (“gpd”), with expansion of the plant to 2.5 million gpd as
3 population increases. The Copper Basin WWTP will be constructed 2 miles east of Sonoran
4 Villages, on Judd Road, near the proposed Bella Vista Farms development. JUC expects to treat
5 effluent from the plant for irrigation of greenbelt areas and golf courses. According to Staff, the
6 proposed Copper Basin WWTP can reasonably be expected to develop the necessary sewage
7 treatment capacity to serve the proposed Sonoran Villages CC&N extension area, and the plant is
8 consistent with JUC’s approved CAAG §208 plan (*Id.* at 4-5).

9 35. The Staff Report indicated that for the Anthem at Merrill Ranch development, JUC
10 has completed an amendment to its CAAG §208 plan but has not received CAAG approval. The plan
11 amendment calls for Merrill Ranch Phase I and II wastewater to be treated at the Mystic Ranch
12 WWTP. The initial process capacity will be 1.4 million gpd, expandable to 5.6 million gpd in three
13 subsequent phases. Effluent disposal from the Mystic Ranch WWTP is intended to be used for
14 irrigation of golf courses and greenbelt areas, which are expected to take all effluent produced by the
15 plant. Additional effluent may be used for recharge purposes and, if necessary, may be disposed of in
16 accordance with an Arizona surface water discharge permit. Aquifer protection and reuse permits
17 from ADEQ are currently pending. Staff concluded that JUC can reasonably be expected to develop
18 the future wastewater collection, treatment, and disposal capacity necessary to serve the requested
19 CC&N extension area for the Merrill Ranch development (*Id.* at 5).

20 **Financing of Plant**

21 36. According to Staff, the required utility facilities for the extension area developments
22 will be financed in accordance with the Arizona Administrative Code rules, which establish minimal
23 acceptable criteria for main extension agreements between utilities and private parties. Main
24 extension agreements generally require the developer of property to design, construct and install
25 necessary backbone facilities, which will then be conveyed to the utility company upon completion
26 and acceptance by the utility. JUC will refund a portion of the annual water revenues associated with
27 the development for a period of at least 10 years. Although refunds for wastewater facilities are
28 discretionary, JUC and the developers of Sonoran Villages have entered into a Master Utility

1 Agreement that sets forth detailed plans for construction of the system, as well as specific terms and
2 conditions governing installation, inspection and conveyance of the facilities. The agreement also
3 provides for an annual refund to the developers of five percent of total net revenues from the
4 development until the advance of funds for construction of the facilities is fully refunded (*Id.* at 7).

5 37. Staff stated that JUC and Vanguard Properties are continuing negotiations to develop a
6 construction agreement for the Merrill Ranch development. Staff indicated that the developer will be
7 required to construct the on-site facilities consistent with ADEQ approved design plans and convey
8 those facilities to JUC pursuant to a warranty deed. Staff also expects that JUC will refund to the
9 developer a portion of the revenue from the development until the advances are fully refunded (*Id.*).

10 **Compliance Issues**

11 38. Staff stated that JUC has no outstanding compliance issues with the Commission.

12 39. With the exception of one well, JUC's current and planned production sources are in
13 full compliance with the new federal arsenic maximum contaminant levels ("mcl") that go into effect
14 January 23, 2006. The single non-compliance well will be taken out of service prior to the effective
15 date of the new rules (Tr. 75).

16 40. Staff also reported that JUC is in compliance with Arizona Department of Water
17 Resources ("ADWR") reporting and conservation rules. As set forth below, Staff recommends that
18 JUC be required to file with the Commission a copy of its updated or amended Designation of
19 Assured Supply to include the extension areas included in this application, within 24 months of the
20 effective date of this Decision.

21 41. According to the Staff Report, ADEQ informed Staff that JUC is in compliance with
22 the rules for operation, reporting and discharge limits for wastewater facilities. However, on January
23 3, 2005, ADEQ issued JUC a Notice of Violation ("NOV") for JUC's Section 11 WWTP effluent
24 quality due to excessive total nitrogen and fecal coliform levels. Staff indicated that, on January 19,
25 2005, JUC advised ADEQ of the intervention and preventative measures that demonstrated
26 compliance with ADEQ's technical criteria (Ex. S-1, at 7-8). In addition, Mr. Tompsett testified that
27 JUC had filed subsequent reports showing full compliance and ADEQ has indicated that the sampling
28 problem contained in the NOV has been corrected (Tr. 107-108).

1 42. The Staff Report also stated that, on December 15, 2004, ADEQ informed JUC that
2 the Company had failed to provide a calendar year 2003 consumer confidence report by July 1, 2004.
3 By letter dated December 28, 2004, JUC informed ADEQ that the 2003 consumer confidence
4 information was included in the June 30, 2004 customer billings and was available on the Company's
5 website. According to Staff, ADEQ has determined that JUC's system is currently delivering water
6 that does not exceed any mcl limits and meets water quality standards required under the Arizona
7 Administrative Code (Id. at 8).

8 **La Osa and Sonoran Litigation**

9 43. In the Staff Report, Staff pointed out that the Arizona Attorney General's Office
10 recently filed a civil lawsuit against the principal owner of Johnson Utilities Company, George
11 Johnson, and against various affiliates of Johnson Utilities³. The allegations against Mr. Johnson and
12 the Johnson affiliates include trespass, breach of a grazing lease, destruction of native plants on state
13 and private land, water quality discharge violations, and unlawful killing of bighorn sheep. Staff
14 states that the litigation is focused primarily on Mr. Johnson's actions as the owner of La Osa Ranch,
15 a 10,000 acre property in southern Pinal County which is adjacent to state trust land and the
16 Ironwood National Forest Monument. Johnson Utilities Company is not named in the lawsuit (Ex. S-
17 1, at 9).

18 44. Sonoran Utility Services, LLC, ("Sonoran"), which was previously owned by Mr.
19 Johnson or Johnson affiliates, is also named as a defendant in a civil lawsuit filed by Lennar
20 Communities Development, Inc. related to the formation and operation of the 387 Water
21 Improvement District and the 387 Wastewater Improvement District⁴. Although Mr. Johnson was
22 named personally as a defendant in the Sonoran litigation, Johnson Utilities Company is not a party
23 in the lawsuit.

24 45. Mr. Tompsett testified that the litigation will not have any detrimental impact on the
25 ability of Johnson Utilities Company to serve its customers because JUC has no financial interest in
26 any of the affiliates named in the lawsuits. Mr. Tompsett also stated that Mr. Johnson and the named

27 _____
28 ³ Maricopa County Superior Court Case No. CV2005-002692 ("La Osa litigation").

⁴ Maricopa County Superior Court Case No. CV2005-002548 ("Sonoran litigation").

1 affiliates have sufficient insurance protection and liquidity to insulate JUC in the event a judgment is
2 entered against Mr. Johnson or the other affiliates in either of the lawsuits (Tr. 67-70).

3 **Staff Recommendations**

4 46. Staff recommends approval of JUC's application subject to compliance with the
5 following conditions:

- 6 a. JUC must extend water and wastewater service to the requested
7 parcels under its currently authorized rates and charges;
- 8 b. JUC must file with Docket Control a copy of the ADEQ Approval
9 to Construct for the water system backbone facilities within 12
10 months of the Decision in this docket;
- 11 c. JUC must file with Docket Control, by January 1, 2006, a list of all
12 wells in service as an approved public water supply source, with
13 the corresponding arsenic concentration, and an arsenic plan which
14 will bring JUC into compliance with the new federal arsenic
15 maximum contaminant levels of 10 parts per billion ("ppb");
- 16 d. JUC must file with Docket Control a copy of the Company's
17 "Designation of Assured Supply" inclusive of the requested area,
18 within 24 months of the Decision in this docket;
- 19 e. JUC must file with Docket Control a curtailment tariff for all of its
20 water systems within 60 days of the effective date of the Decision
21 in this docket;
- 22 f. JUC must file with Docket Control a copy of the CAAG Section
23 208 Plan Amendment for Anthem at Merrill Ranch within 12
24 months of the Decision in this Docket;
- 25 g. JUC must file with Docket Control a copy of the Unified (Aquifer
26 Protection) Water Quality Permits by ADEQ for both the Merrill
27 Ranch Wastewater Treatment Facility and the Copper Basin
28 Regional Wastewater Treatment Facility, with 24 months of the
Decision in this docket;
- h. JUC must file with Docket Control a quarterly report on the status
of the pending La Osa litigation; and
- i. In accordance with the agreement between JUC and Staff (Ex. S-
3), the Company must file with Docket Control within 60 days of
the effective date of this Decision the following:
- i. The name, home office location and description of

1 any of the entities that are named as defendants in the La
2 Osa litigation, and their relationship to each other and to
3 Johnson Utilities Company;

4 ii. A brief description of the business activities
5 conducted by any entity in subsection i, above;

6 iii. A description of plans for the entities identified in
7 subsection i, above, to modify or change business activities,
8 enter into a new business venture or to acquire, merge or
9 otherwise establish a new business entity;

10 iv. An assessment of the effect of current and planned
11 affiliated activities by each entity identified in subsection i,
12 above, on Johnson Utilities Company's capital structure
13 and its ability to attract capital at fair and reasonable rates;

14 v. The dollar amount transferred between Johnson
15 Utilities Company and each of the entities identified in
16 subsection i, above, during the previous 12 months and the
17 purpose of each transfer. JUC shall prepare and submit to
18 Staff an update to this report every 6 months;

19 vi. Copies of contracts or agreements to receive, or
20 provide management, engineering, accounting, legal,
21 financial or other similar services between Johnson Utilities
22 Company and any of the entities identified in subsection i,
23 above. JUC shall prepare and submit to Staff an update to
24 this report every 6 months;

25 vii. Copies of contracts or agreements to purchase or
26 sell goods or real property between Johnson Utilities
27 Company and any of the entities identified in subsection i,
28 above; and

viii. Contracts or agreements to lease goods or real
property between Johnson Utilities Company and any of
the other entities identified in subsection i, above.

j. Johnson Utilities Company would also be bound by the following
conditions:

i. Any transactions between Johnson Utilities
Company and any of the defendants in the La Osa litigation
would be subject to Commission scrutiny, including
allowing Staff to see books and records of JUC and/or the
defendant with whom business was transacted;

1 ii. Johnson Utilities Company will not obtain a
2 financial interest in any of the defendants in the La Osa
3 litigation or make any loans to, or guarantees for, any of the
4 defendants without prior Commission approval; and

5 iii. Johnson Utilities Company will not make any
6 dividend payments if such payments would have the effect
7 of impairing its financial status, prevent it from attracting
8 capital at fair and reasonable terms or impair JUC's ability
9 to provide safe, reasonable and adequate service.

10 **Conclusion**

11 47. Staff's recommendation for approval of the application is reasonable and shall be
12 adopted, subject to compliance with the conditions discussed herein. In addition, we will require that
13 the reporting requirements and conditions described above for the La Osa litigation shall also be
14 required with respect to the Sonoran litigation.

15 48. In a prior water and wastewater CC&N extension proceeding involving Palo Verde
16 Utilities Company, LLC, and Santa Cruz Water Company, LLC, we required each company to
17 procure a \$500,000 performance bond due to a substantial judgment that had been entered by a court
18 in Oregon against the president of both companies⁵. The performance bond requirements were
19 imposed as a measure of protection for the companies' customers due to the possibility that the
20 utilities could be affected by the judgment, because of those companies' limited operating experience,
21 and because of rapidly expanding service areas. Although Johnson Utilities Company insists that its
22 operations are well insulated from any judgment that may be entered against Mr. Johnson and the
23 other non-utility affiliates named in the lawsuits, we believe it is prudent at this time to require JUC
24 to procure a \$1 million performance bond as a means of protection against any potential detrimental
25 impact on customers that may occur as a result of a judgment against Mr. Johnson and/or JUC
26 affiliates. Proof of the performance bond shall be filed in this docket prior to service being provided
27 to any customers in the CC&N extension area. The bonds shall remain in place until further Order of
28 the Commission.

 49. Given the rapid expansion of JUC's service area in the past several years and the fact

⁵ Decision No. 66394 (October 6, 2003), at 11-12. The performance bond requirements for Palo Verde and Santa Cruz were increased to \$750,000 per company in a subsequent CC&N extension proceeding. Decision No. 67240 (September 23, 2004), at 15.

1 that the Company has not filed a rate case since its rates were initially established in 1997, we also
2 believe JUC should be required to file a rate application for both water and wastewater in order to
3 allow Staff to perform a full audit of the Company's operations and to ensure that the established
4 rates are reasonable based on all plant, revenues and expenses. JUC shall therefore file, by no later
5 than June 1, 2006, a rate application based on a 2005 test year.

6 CONCLUSIONS OF LAW

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

9 2. The Commission has jurisdiction over JUC and the subject matter of the application.

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

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

13 5. JUC is a fit and proper entity to receive an extension of its water and wastewater
14 CC&N to include the service area more fully described in Exhibit A attached hereto, subject to
15 compliance with the conditions set forth herein.

16 ORDER

17 IT IS THEREFORE ORDERED that the application of Johnson Utilities Company for an
18 extension of the service area under its Certificate of Convenience and Necessity to include the area
19 described in Exhibit A attached hereto and incorporated herein by reference be, and is hereby
20 approved, subject to the conditions more fully described herein.

21 IT IS FURTHER ORDERED that the current rates and charges set forth in the tariffs of
22 Johnson Utilities Company shall be applied to all customers in the CC&N extension area approved
23 herein.

24 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control
25 within 365 days of the effective date of this Decision a copy of its Pinal County franchise including
26 the extension area.

27 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control a
28 copy of the ADEQ Approval to Construct for the water system backbone facilities within 12 months

1 of the effective date of this Decision.

2 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control,
3 by January 1, 2006, a list of all wells in service as an approved public water supply source, with the
4 corresponding arsenic concentration, and an arsenic plan showing that the Company is in full
5 compliance with the new federal arsenic maximum contaminant levels.

6 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control a
7 copy of the Company's "Designation of Assured Supply" inclusive of the requested area, within 24
8 months of the effective date of this Decision.

9 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control a
10 curtailment tariff for all of its water systems within 60 days of the effective date of this Decision.

11 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control a
12 copy of the CAAG Section 208 Plan Amendment for Anthem at Merrill Ranch within 12 months of
13 the effective date of this Decision.

14 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control a
15 a copy of the Unified (Aquifer Protection) Water Quality Permits by ADEQ for both the Merrill
16 Ranch Wastewater Treatment Facility and the Copper Basin Regional Wastewater Treatment Facility,
17 with 24 months of the effective date of this Decision.

18 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control,
19 beginning October 1, 2005, quarterly reports on the status of the pending La Osa and Sonoran
20 litigation.

21 IT IS FURTHER ORDERED that Johnson Utilities Company shall comply with affiliated
22 interest reporting requirements and conditions, pursuant to Hearing Exhibit S-3, as described in detail
23 above.

24 IT IS FURTHER ORDERED that in the event Johnson Utilities Company fails to comply
25 with the above-stated conditions within the times specified, the CC&N extension approved herein
26 shall be deemed null and void without further Order of the Commission.

27 IT IS FURTHER ORDERED that Johnson Utilities Company shall procure a \$1 million
28 performance bond, with proof of such performance bond filed in Docket Control prior to retail

1 service being provided to any customers in the CC&N extension area. The performance bond shall
2 remain in place until further Order of the Commission and maintenance of the required bond shall be
3 evidenced by a quarterly filing (by January 15, April 15, July 15, and October 15) of a letter of bond
4 confirmation.

5 IT IS FURTHER ORDERED that Johnson Utilities Company shall file a rate application by
6 no later than June 1, 2006, based on a 2005 test year.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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11 CHAIRMAN COMMISSIONER

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14 COMMISSIONER COMMISSIONER COMMISSIONER

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

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22 _____
23 BRIAN C. McNEIL
24 EXECUTIVE DIRECTOR

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1 SERVICE LIST FOR: JOHNSON UTILITIES COMPANY, L.L.C.

2 DOCKET NO.: WS-02987A-04-0288

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Utilities Division
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14 Phoenix, Arizona 85007

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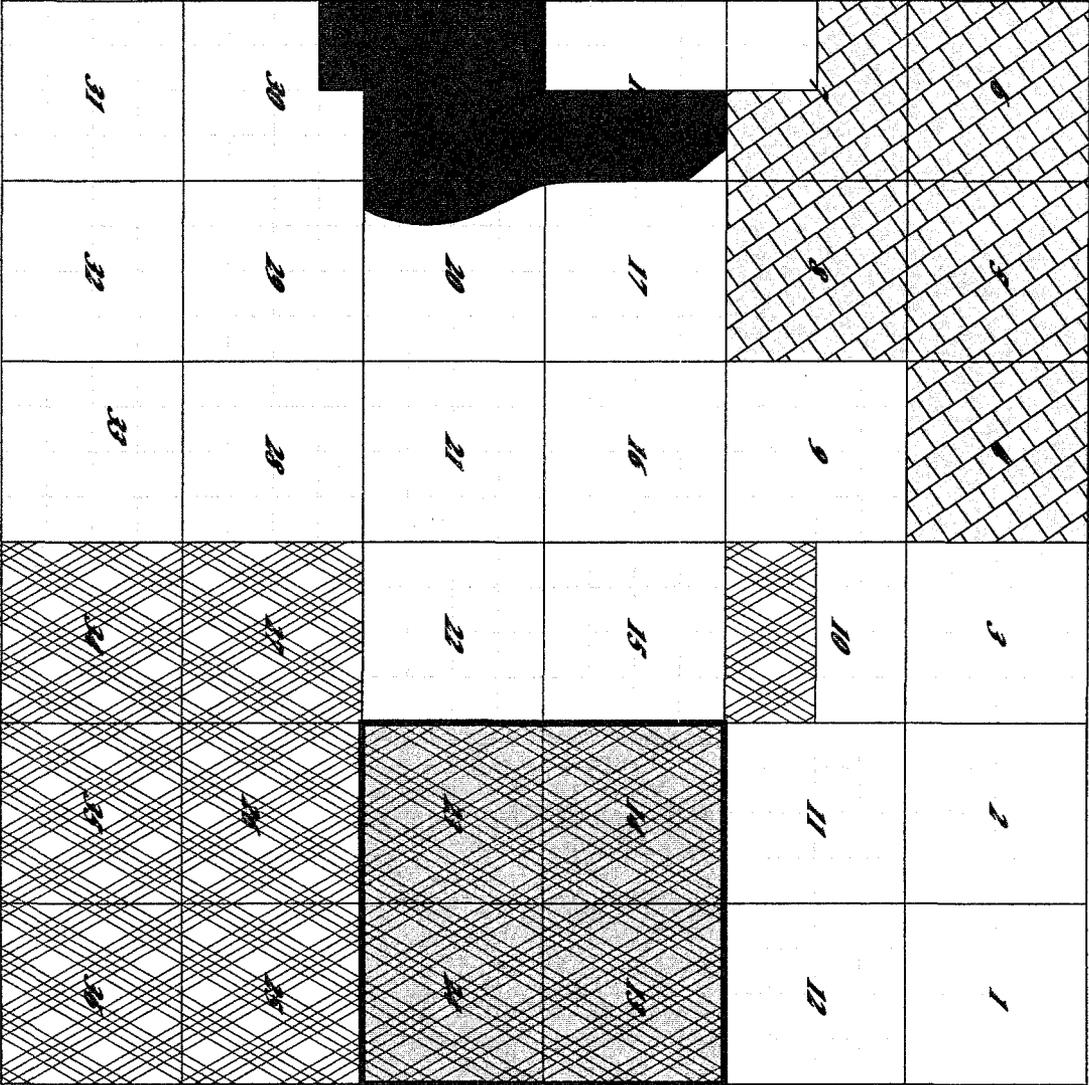
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COUNTY: Pinal

RANGE 9 East



TOWNSHIP 4 South

Map No. 12

DECISION NO. 1



C-0005 (4)



Sewer

City of Florence (Nonjurisdictional)



WS-2987 (6)



Sewer

Johnson Utilities Company



Johnson Utilities Company
Docket No. WS-2987-04-288

Application for Extension for Water & Sewer



JACK JOHNSON COMPANY
Designing World Destinations

PULTE-MERRILL RANCH
Legal Description
Johnson Utilities-Expanded 208 Area

August 30, 2004

A portion of land lying within Section 19, and portions of Sections 18, 20 and 30, Township 4 South, Range 9 East of the GILA and SALT RIVER MERIDIAN, County of Pinal, Arizona, more particularly described as follows:

Beginning at the found U.S. G.L.O. 2½" Brass Cap at the North Quarter Corner of said Section 18;

Thence South 89°56'54" East along the Northerly Section Line of said Section 18, a distance of 1705.71 Feet to a point on the Southeasterly Railroad right of way line.

Thence South 39°07'29" East along said right of way line a distance of 1480.55 to the Centerline intersection of Felix Road.

Thence along said Felix Road centerline the following (4) courses.

1. South 00°34'05" East 3478.49 Feet to the beginning of a tangent curve, concave to the left and having a radius of 3000.00 Feet.
2. Thence Southeasterly along the arc of said curve through a central angle of 27°13'48" 1425.76 Feet to a point of tangency.
3. Thence South 27°47'53" East 969.69 Feet to the beginning of a tangent curve concave to right and having a radius of 4000.00 Feet.
4. Thence Southerly along the arc of said curve through a central angle of 55°24'15" a distance of 3867.95 Feet to a point of non tangency also being the point of intersection of the centerline of Felix Road and the Northerly Line of said Section 29.

Y:\742MerrillRanch\04_Design\Survey\742 - Johnson Utilities 208 Expansion 8-30-04.doc

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EXHIBIT 5C

DECISION NO. _____



JACK JOHNSON COMPANY
Designing World Destinations

Thence South 89°54'02" West, along the Northerly Line of said Section 29, a distance of 775.03 Feet to a found 3" Pinal County Highway Department Aluminum Cap at the SOUTHEAST Section Corner of said Section 19;

Thence North 89°55'22" West along the Southerly Section Line of said Section 19, a distance of 2622.99 Feet to a found US GLO 2 ½" Brass Cap at the Quarter Corner point common to said Sections 30 and 19.

Thence South 00°03'30" West along the North-South Mid Section Line a distance of 1321.64 Feet

Thence North 89°55'37" West a distance of 2636.01 Feet to along the South Line of the North half of the Northwest Quarter of said Section 30.

Thence North 00°26'55" West along the West Section Line of said Section 30 a distance of 1322.38 Feet to a found US GLO 2 ½" Brass Cap at the Northwest Section Corner of said Section 30.

Thence North 00°26'07" West along the Westerly Section Line of said Section 19 a distance of 2646.78 Feet to a found 3" Aluminum Cap at the West Quarter Corner of said Section 19.

Thence continuing North 00°26'00" West along the Westerly Section Line of said Section 19 a distance of 2639.63 Feet to a found US GLO 2 ½" Brass Cap, This monument being disturbed and bent to the North, its position determined at the base of the monument, at the Northwest Section Corner of said Section 19.

Thence South 89°55'13" East along the Northerly Section Line of said Section 19 a distance of 2666.33 Feet to a found US GLO 2 ½" Brass Cap at the Quarter Corner common to said Sections 18 and 19.

Thence North 00°38'49" West along the North-South MID-Section Line of said Section 18 a distance of 2642.84 Feet to a Found 1 ½" Aluminum Cap being the center Quarter Corner of said Section 18.

Thence North 00°38'34" West a distance of 2643.23 Feet to a found US GLO 2 1/2" Brass Cap at the North Quarter Corner of said Section 18, and the Point of Beginning for the herein described tract.

Said description contains 1,134.78 acres, more or less.

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EXHIBIT 5C

DECISION NO. _____

COUNTY: Pinal

RANGE 9 East

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TOWNSHIP 3 South

Map No. 53

DECISION NO. _____



WS-2987 (6)
Johnson Utilities Company



W-2859 (3)
Diversified Water Utilities, Inc.



Johnson Utilities Company
Docket No. WS-2987-04-288
Application for Extension for Water & Sewer

EXHIBIT "A"**PARCEL NO. 1:**

The Southwest quarter of Section 19, Township 3 South, Range 9 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, lying South and East of the MAGMA RAILROAD right-of-way as set forth in Book 51 of Deeds, Pages 648 and 650;

EXCEPT BEGINNING at a point in the South boundary of said Section 19 that bears South 89 degrees, 24 minutes, 28 seconds East, a distance of 2598.58 feet from the Southwest corner of said Section 19;

thence leaving said POINT OF BEGINNING North 01 degrees, 41 minutes, 40 seconds West, a distance of 291.97 feet;

thence North 88 degrees, 18 minutes, 57 seconds East, a distance of 50.00 feet;

thence North 01 degrees, 41 minutes, 03 seconds West, a distance of 244.62 feet;

thence North 08 degrees, 51 minutes, 01 seconds West, a distance of 188.33 feet;

thence North 16 degrees, 01 minutes, 03 seconds West, a distance of 1306.42 feet to the Southeasterly boundary of that area described in the Patent to the MAGMA-ARIZONA RAILROAD COMPANY, an Arizona corporation, recorded as Book 51 of Deeds, Page 648, Pinal County, Arizona, said point bears North 48 degrees, 57 minutes, 32 seconds East, a distance of 2974.04 feet from said Southwest corner of said Section 19;

thence along said Southeasterly boundary North 52 degrees, 36 minutes, 47 seconds East, a distance of 1217.33 feet;

thence leaving said Southeasterly boundary South 37 degrees, 23 minutes, 13 seconds East, a distance of 45.00 feet;

thence South 42 degrees, 53 minutes, 58 seconds West, a distance of 759.02 feet;

thence South 39 degrees, 12 minutes, 50 seconds East, a distance of 1142.16 feet;

thence South 27 degrees, 31 minutes, 05 seconds East, a distance of 1417.99 feet to a point in said South boundary of said Section 19 that bears North 89 degrees, 24 minutes, 28 seconds West, a distance of 1321.01 feet from the Southeast corner of said Section 19;

thence along said South boundary North 89 degrees, 24 minutes, 28 seconds West, a distance of 1499.92 feet to said POINT OF BEGINNING.

DECISION NO. _____

PARCEL NO. 2:

The East half of Section 19, Township 3 South, Range 9 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, lying South and East of the MAGMA RAILROAD right-of-way as set forth as Book 51 of Deeds, Pages 648 and 650:

EXCEPT BEGINNING at a point in the South boundary of said Section 19 that bears South 89 degrees, 24 minutes, 28 seconds East, a distance of 2598.58 feet from the Southwest corner of said Section 19;

thence leaving said POINT OF BEGINNING North 01 degrees, 41 minutes, 40 seconds West, a distance of 291.97 feet;

thence North 88 degrees, 18 minutes, 57 seconds East, a distance of 50.00 feet;

thence North 01 degrees, 41 minutes, 03 seconds West, a distance of 244.62 feet;

thence North 08 degrees, 51 minutes, 01 seconds West, a distance of 188.33 feet;

thence North 16 degrees, 01 minutes, 03 seconds West, a distance of 1306.42 feet to the Southeasterly boundary of that area described in the Patent to the MAGMA-ARIZONA RAILROAD COMPANY, an Arizona corporation, recorded as Book 51 of Deeds, Page 648, Pinal County, Arizona, said point bears North 48 degrees, 57 minutes, 32 seconds East, a distance of 2974.04 feet from said Southwest corner of said Section 19;

thence along said Southeasterly boundary North 52 degrees, 36 minutes, 47 seconds East, a distance of 1217.33 feet;

thence leaving said Southeasterly boundary South 37 degrees, 23 minutes, 13 seconds East, a distance of 45.00 feet;

thence South 42 degrees, 53 minutes, 58 seconds West, a distance of 759.02 feet;

thence South 39 degrees, 12 minutes, 50 seconds East, a distance of 1142.16 feet;

thence South 27 degrees, 31 minutes, 05 seconds East, a distance of 1417.99 feet to a point in said South boundary of said Section 19 that bears North 89 degrees, 24 minutes, 28 seconds West, a distance of 1321.01 feet from the Southeast corner of said Section 19;

thence along said South boundary North 89 degrees, 24 minutes, 28 seconds West, a distance of 1499.92 feet to said POINT OF BEGINNING.

PARCEL NO. 3:

The West half of Section 19, Township 3 South, Range 9 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, lying North and West of the MAGMA RAILROAD right-of-way as set forth as Book 51 of Deeds, Pages 648 and 650;

EXCEPT BEGINNING at a point in the North boundary of said Section 19 that bears South 89 degrees, 42 minutes, 37 seconds East, a distance of 1393.64 feet from the Northwest corner of said Section 19;

thence along said North boundary South 89 degrees, 42 minutes, 37 seconds East, a distance of 4101.11 feet to the Northeast corner of said Section 19;

thence along the East boundary of said Section 19 South 00 degrees, 19 minutes, 58 seconds East, a distance of 650.81 feet to the Northwesterly boundary of that area described in the Patent to the MAGMA-ARIZONA RAILROAD COMPANY, an Arizona corporation, recorded as Book 51 of Deeds, Page 648, Pinal County, Arizona;

thence along said Northwesterly boundary South 52 degrees, 36 minutes, 47 seconds West, a distance of 4037.77 feet to a point that bears North 45 degrees, 19 minutes, 33 seconds East, a distance of 3071.05 feet from the Southwest corner of said Section 19;

thence North 16 degrees, 01 minutes, 03 seconds West, a distance of 794.87 feet;

thence South 73 degrees, 58 minutes, 57 seconds West, a distance of 74.97 feet;

thence North 16 degrees, 01 minutes, 03 seconds West, a distance of 199.97 feet;

thence North 73 degrees, 58 minutes, 57 seconds East, a distance of 74.97 feet;

thence North 16 degrees, 01 minutes, 03 seconds West, a distance of 2254.57 feet to the said POINT OF BEGINNING; and

EXCEPT BEGINNING at a point that bears South 37 degrees, 32 minutes, 44 seconds East, a distance of 3645.04 feet from the Northwest corner of said Section 19 which point lies in the Westerly right-of-way boundary of the CENTRAL ARIZONA PROJECT CANAL as described in Declaration of Taking recorded as Docket 1112, Page 634 of the Records of Pinal County, Arizona;

thence South 16 degrees, 01 minutes, 03 seconds East, along said Westerly right-of-way boundary, a distance of 110.00 feet;

thence Southwesterly and perpendicular to said Westerly right-of-way boundary, a distance of 80.00 feet;

thence Northwesterly and parallel to said Westerly right-of-way boundary, a distance of 110.00 feet;

thence Northeasterly and perpendicular to said Westerly right-of-way boundary, a distance of 80.00 feet to said POINT OF BEGINNING.

DECISION NO. _____