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**COMMISSIONERS**  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAR 26 2007

DATE: MARCH 26, 2007

DOCKET NO: WS-02987A-06-0663

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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

JOHNSON UTILITIES, L.L.C.  
(CC&N EXTENSION)

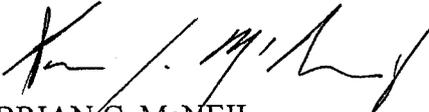
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 4, 2007

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

APRIL 11, 2007 and APRIL 12, 2007

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 DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 JOHNSON UTILITIES COMPANY FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

DOCKET NO. WS-02987A-06-0663

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: January 29, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

13 APPEARANCES: Mr. Richard L. Sallquist, SALLQUIST DRUMMOND  
14 & O'CONNOR, P.C., on behalf of Johnson Utilities  
Company;

15 Mr. Nathan Andersen, LeSueur Investments, on behalf  
16 of Skyview Farms;

17 Ms. Robin Mitchell, Staff Attorney, Legal Division, on  
18 behalf of the Legal Division of the Arizona Corporation  
Commission.

19 **BY THE COMMISSION:**

20 On October 16, 2006, Johnson Utilities Company ("Johnson" or "Company") filed with the  
21 Arizona Corporation Commission ("Commission") an application for an extension of its Certificate  
22 of Convenience and Necessity ("Certificate" or "CC&N").

23 On November 14, 2006, the Commission's Utilities Division ("Staff") filed a Sufficiency  
24 Letter in this docket indicating that the Applicant's application has met the sufficiency requirements  
25 as outlined in the Arizona Administrative Code ("A.A.C").

26 On December 8, 2006, a Procedural Order was issued, setting the hearing in this matter to  
27 commence on January 29, 2007 and setting other procedural deadlines.

28 On December 29, 2006, Staff filed its Staff Report in this matter, recommending approval of

1 the application with conditions.

2 On January 5, 2007, LeSueur Investments VIII, L.L.C., Landmark Property Holdings, LLC,  
3 Skyview OIO, LLC, Grant and Fern Ellsworth as trustees of the Ellsworth Revocable Living Trust  
4 dated May 22, 1984, MDM Farms, L.L.C., and Casa Grande Camp Farm L.L.C. (collectively  
5 "LeSueur") filed a Motion to Intervene.

6 On January 12, 2007, Johnson docketed its Notice of Filing Affidavit of Publication and Proof  
7 of Mailing.

8 On January 22, 2007, by Procedural Order, LeSueur was granted intervention in this matter.

9 On January 29, 2007, a full public hearing was held before a duly authorized Administrative  
10 Law Judge of the Commission at its offices in Phoenix, Arizona. Johnson and Staff appeared  
11 through counsel at the hearing and presented evidence and testimony. Nathan Anderson appeared on  
12 behalf of intervenor LeSueur. No members of the public appeared to give public comment. At the  
13 conclusion of the hearing, the matter was taken under advisement pending the submission of a  
14 Recommended Opinion and Order to the Commission.

15 \* \* \* \* \*

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

18 **FINDINGS OF FACT**

19 1. Pursuant to authority granted by the Commission, Johnson is an Arizona public  
20 service corporation providing water and wastewater utility service in portions of Pinal County,  
21 Arizona. Johnson was initially granted its Certificate in Commission Decision No. 60223 (May 27,  
22 1997).

23 2. Johnson currently serves approximately 16,500 wastewater customers and  
24 approximately 14,300 water utility customers in various portions of Pinal County.

25 3. Johnson is an Arizona corporation, in good standing with the Commission's  
26 Corporation Division.

27 4. On October 16, 2006, Johnson filed an application for approval to extend its CC&N to  
28 include three sections of land, contiguous to Johnson's current water and wastewater certificated area.

1           5.       The proposed extension area, which is more fully described in Exhibit A, attached  
2 hereto and incorporated herein by reference, encompasses a development known as Skyview Farms.  
3 Johnson expects to add approximately 1,200 water and wastewater customers in the proposed  
4 extension area within a five year period.

5           6.       According to Staff's Report, Johnson has received requests for service from both  
6 Skyview Farms and the City of Florence, which covers the vast majority of the proposed extension  
7 area. Staff noted that there is a small portion of land, approximately one quarter section, that Johnson  
8 has requested in its application that is not covered by a request for service.

9           7.       According to Staff's Report, Johnson is "requesting inclusion of the area as a matter  
10 of efficiency; to avoid the time and expense of requesting approval of a CC&N extension on a  
11 piecemeal basis for the very few potential customers." Staff stated it agrees "it may be inefficient to  
12 leave that area out of the proposed extension." Additionally, Staff noted that no other water company  
13 has expressed a desire to serve the area, no landowner has requested to be deleted from the proposed  
14 extension area and the closest water and sewer provider is located several miles away. Therefore, for  
15 the above stated reasons, Staff recommends that the area without a request for service be included in  
16 Johnson's CC&N.

17           8.       At hearing Johnson's witness<sup>1</sup> testified that its application covers three (3) sections of  
18 land, and all but approximately 40 acres of that is owned by Skyview Farms. He further testified that  
19 the 40 acres without a request for service have multiple landowners. (Tr. Pg. 18, lines 19-25).  
20 Additionally, he testified that Johnson's existing certificated area surrounds the area without a request  
21 for service, on four sides.

22           9.       Johnson's witness also testified that there are approximately 10 landowners in the 40  
23 acre area where there is no request for service. The witness stated that in addition to publishing  
24 notice of the pending application, Johnson mailed to each property owner a copy of the notice  
25 regarding Johnson's pending application to serve the area. The witness further clarified that the  
26 Company used the Pinal County website for the Assessor's office to identify the addresses of the 10  
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28 <sup>1</sup> Mr. Brian P. Tompsett, Executive Vice President for Johnson Utility Company.

1 property owners, and two of the notices were returned as undeliverable.

2 10. Based on the location of the property without a request for service, and on the facts  
3 that it is surrounded on four sides by Johnson's existing certificated territory, that no other provider  
4 has stepped forward to provide service to the area, no property owner expressed a desire to be  
5 excluded from Johnson's CC&N, and it is operationally efficient for Johnson to service the area, we  
6 find it reasonable to include the area without a request for service in Johnson's proposed extension of  
7 its CC&N.

8 11. At hearing, Johnson's witness testified that development for the extension area  
9 includes a master planned area which will consist of residential communities varying from low to  
10 high density homes, parks, and schools. (Tr. Pg. 9, lines 16-23)

11 12. Johnson's witness testified that he was not aware of any golf courses in the proposed  
12 plans for the development, and that he anticipated the developer would require water and wastewater  
13 service within the next 12 to 18 months. (Tr. Pg. 10, lines 1-8)

14 13. Mr. Nathan Anderson appeared at hearing on behalf of LeSueur Investments VIII,  
15 L.L.C., the property owners for Skyview Farms, and clarified that there are no proposed golf courses  
16 for the development, but there will be open spaces and parks within the development. Furthermore,  
17 he stated that the Master Utility Agreement with Johnson contemplates using reclaimed water to  
18 water the parks and open spaces. He further stated that given the current market, he believed 12 to  
19 18 months was optimistic in regards to when water and wastewater service would be required from  
20 Johnson.

21 14. According to Staff's Report, the facilities needed to expand the water system for the  
22 proposed extension area will be financed through advances in aid of construction and hook-up fees.

23 **Water System**

24 15. The requested extension area adds approximately three (3) square miles or 1,920 acres  
25 to Johnson's existing 63 square-miles of water-certificated and 76 square-miles of wastewater-  
26 certificated area.

27 16. At the end of five years, Johnson expects to serve approximately 1,200 water and  
28 wastewater customers in the proposed extension area.

1 17. Johnson's water system is comprised of three (3) of its systems that are  
2 interconnected: Johnson Public Water System ("PWS") #11-128, Sun Valley and Wildhorse.

3 18. According to Staff's Engineering Report, Johnson has 14 wells producing 7,245  
4 gallons per minute ("GPM"), 2.75 million gallons of storage capacity, and a distribution system  
5 serving approximately 15,850 service connections as of September 2006. Staff believes based on  
6 historical growth rates, the proposed extension area could grow to approximately 29,000 connections  
7 at the end of five years.

8 19. Based on the existing well production and storage capacity, Staff believes the current  
9 Johnson system can serve approximately 25,000 connections. Johnson has predicted an additional  
10 1,200 connections in the proposed extension area at the end of five years, resulting in a projected total  
11 customer base of approximately 30,200 for the same timeframe.

12 20. Staff concludes that the existing water system will have adequate source production  
13 and storage capacity to serve the existing customers in the proposed extension area within a  
14 conventional five year planning period, and that Johnson can be expected to develop additional  
15 production and storage capacity as needed in the future.

16 21. Johnson proposes water costs of \$7,371,640 and \$10,541,410 for off-site plant and on-  
17 site plant facilities, respectively, in the proposed extension area.

18 22. According to Staff's Report, the Arizona Department of Environmental Quality  
19 ("ADEQ") reported Johnson is currently delivering water that meets the water quality standards  
20 required by the A.A.C.

21 23. On January 23, 2006, the U.S. Environmental Protection Agency ("EPA") reduced the  
22 arsenic maximum containment level ("MCL") from 50 parts per billion ("ppb") to 10 ppb.  
23 According to Staff's Report, the arsenic MCLs in Johnson's wells range from 2 ppb to 8 ppb;  
24 therefore, Johnson is in compliance with the new EPA arsenic standard.

25 24. Staff's Report noted that Johnson has not filed its ADEQ Certificate of Approval to  
26 Construct ("ATC") for water facilities needed in the extension area; therefore, Staff recommends that  
27 Johnson file with Docket Control, as a compliance item in this docket, a copy of the ATC for water  
28 facilities needed to serve the extension area.

1           25.     Johnson is located with the Phoenix Active Management Area (“AMA”) and Johnson  
2 is in compliance with reporting and conservation requirements.

3           26.     Staff’s Report notes that because the extension area is located with the Phoenix AMA,  
4 the Arizona Department of Water Resources (“ADWR”) requires each developer to demonstrate an  
5 assured water supply for the entire development. Staff recommends Johnson update or amend its  
6 current Designation of Assured Water Supply to include the proposed extension area. Staff further  
7 recommends that Johnson file with Docket Control, as a compliance item in this docket, within two  
8 years of this Decision, a copy of the amended ADWR Designation of Assured Water Supply.

9     **Wastewater System**

10          27.     Johnson operates three wastewater systems which include: Section 11, Precision, and  
11 Pecan. According to Staff’s Engineering Report, the requested extension area will be served by  
12 Johnson’s Section 11 system, which consists of a 2.0 million GPD extended aeration and aerobic  
13 lagoon treatment plant currently serving approximately 9,200 service laterals.

14          28.     According to Staff’s Report, based on historical growth rates for Johnson, the existing  
15 Section 11 system could grow to 9,900 laterals within a five year period. Staff notes that in this  
16 application Johnson anticipates an additional 1,200 laterals for the proposed extension area within a  
17 five year period, resulting in 11,100 laterals for the same timeframe. Staff concludes that the current  
18 Section 11 treatment plant capacity is approximately 11,500 service laterals, which is larger than  
19 needed to serve the extension area along with serve current customers.

20          29.     Johnson proposes wastewater costs of \$10,000,000 for a 2.0 MGD Wastewater  
21 Treatment Plant (“WWTP”), \$1,524,460 for off-site plant and \$7,439,840 on-site plant facilities, in  
22 the proposed extension area.

23          30.     Staff’s Report stated that Johnson has an approved Aquifer Protection Permit (“APP”)  
24 for its 2.0 MGD Section 11 WWTP, and Johnson will be filing an amendment to increase the Section  
25 11 WWTP capacity to 4.0 MGD.

26          31.     Staff notes that since an APP and Section 208 Plan amendments represent  
27 fundamental authority for the designation of a wastewater service area and a wastewater provider;  
28 Staff recommends that Johnson file with Docket Control, as a compliance item in this docket, within

1 two years of the effective date of this Decision, a copy of the APP amendment that indicates approval  
2 of the expansion of the Section 11 WWTP to 4.0 MGD.

3 32. Staff's Report noted that Johnson has not submitted to the Commission the General  
4 Permit for wastewater facilities needed to serve the requested extension area. Therefore, Staff  
5 recommends that the Company file with Docket Control, as a compliance item in this docket, within  
6 two years of this Decision, the General Permit for the wastewater facilities needed in the extension  
7 area.

8 33. According to Staff's Report, ADEQ has reported that Johnson's Section 11  
9 wastewater system is in compliance with ADEQ regulations.

10 34. The total estimated costs for water and wastewater facilities needed in the extension  
11 area are \$36,877,350. Staff concluded that the costs are reasonable; however, no "used and useful"  
12 determination of the proposed water and wastewater plant facilities was made and no particular  
13 treatment should be inferred for rate making or rate base purposes.

14 35. Johnson has an approved curtailment tariff on file with the Commission.

15 36. Johnson has an approved backflow prevention tariff on file with the Commission.

16 37. According to Staff's Report, the Utilities Division Compliance Section found no  
17 outstanding compliance issues for Johnson.

18 38. Johnson will charge its existing rates and charges on file with the Commission in the  
19 proposed extension area.

20 39. Staff recommends approval of Johnson's application for an extension of its CC&N  
21 subject to the following conditions:

22 a. That Johnson file with Docket Control, as a compliance item in this docket,  
23 within two years of the effective date of this Decision, copies of the ATC for  
24 the water facilities and the General Permit for the wastewater facilities needed  
25 to serve the requested extension area.

26 b. That Johnson file with Docket Control, as a compliance item in this docket,  
27 within two years of the effective date of this Decision, a copy of the APP  
28 amendment that indicates approval of the expansion of the Section 11 WWTP

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to 4.0 MGD.

- c. That Johnson update or amend its Designation of Assured Water Supply to include the service areas in this CC&N extension application.
- d. That Johnson file with Docket Control, as a compliance item in this docket, within two years of the effective date of this Decision, a copy of the amended ADWR Designation of Assured Water Supply.
- e. That Johnson charge its approved rates and charges in the proposed extension area until further Order of the Commission.

40. Staff's recommendations are reasonable and should be adopted, except that a Commission Decision granting the requested CC&N extension to Johnson should be considered null and void, after due process, if Johnson fails to meet the conditions outlined above, within the specified timeframes.

41. Because an allowance for property tax expense is included in Johnson's rates and will be collected from its customers, the Commission seeks assurances from Johnson that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Johnson shall annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

42. In recent months, the Commission has become increasingly concerned about the prolonged drought in Central Arizona. Therefore, we believe Johnson should be required to conserve groundwater and that Johnson should be prohibited from selling groundwater for the purpose of irrigating any future golf courses within the certificated expansion areas or any ornamental lakes or water features located in the common areas of the proposed new developments within the certificated expansion areas.

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**CONCLUSIONS OF LAW**

1. Johnson is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-281.
2. The Commission has jurisdiction over Johnson and the subject matter of the application.
3. Notice of the application was provided in accordance with the law.
4. There is a public need and necessity for water and wastewater utility services in the proposed extension area, as set forth herein.
5. Johnson is a fit and proper entity to receive an extension of its water and wastewater Certificates for the extension area.
6. Staff's recommendations as set forth herein, and as amended are reasonable and should be adopted.

**ORDER**

IT IS THEREFORE ORDERED the application of Johnson Utilities Company for an extension of its Certificate of Convenience and Necessity to include the area described in Exhibit A, attached hereto and incorporated herein by reference, is hereby approved subject to Staff's conditions, as amended herein, and as outlined in the following Ordering Paragraphs.

IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control, as a compliance item in this docket within two years of the effective date of this Decision, copies of the Approval to Construct for water facilities and the General Permit for wastewater facilities needed to serve the extension area.

IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control, as a compliance item in this docket within two years of the effective date of this Decision, a copy of the Aquifer Protection Permit amendment indicating approval of the expansion of Johnson Utilities Company's Section 11 Wastewater Treatment Plant to 4.0 MGD.

IT IS FURTHER ORDERED that Johnson Utilities Company shall update or amend its Designation of Assured Water Supply to include the service areas in this CC&N extension

1 application and Johnson Utilities Company shall file with Docket Control, as a compliance item in  
2 this docket, within two years of the effective date of this Decision, a copy of the Amended Arizona  
3 Department of Water Resources Designation of Assured Water Supply.

4 IT IS FURTHER ORDERED that if Johnson Utilities Company fails to comply with the  
5 above conditions within the required time-frames the Certificate of Convenience and Necessity  
6 conditionally granted herein shall become null and void, after due process.

7 IT IS FURTHER ORDERED that Johnson Utilities Company shall charge its existing rates  
8 and charges on file with the Commission for the extension area granted herein, until further Order of  
9 the Commission.

10 IT IS FURTHER ORDERED that in light of the on-going drought conditions in  
11 central Arizona and the need to conserve groundwater, Johnson Utilities Company is prohibited from  
12 selling groundwater for the purpose of irrigating any future golf courses within the certificated  
13 expansion areas or any ornamental lakes or water features located in the common areas of the  
14 proposed new developments with the certificated expansion areas.

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1 IT IS FURTHER ORDERED that Johnson Utilities Company shall annually file as part of its  
2 annual report, an affidavit with the Utilities Division attesting that it is current on paying its property  
3 taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
6  
7

8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

9  
10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11  
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_ day of \_\_\_\_\_, 2007.

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18 \_\_\_\_\_  
19 BRIAN C. McNEIL  
20 EXECUTIVE DIRECTOR

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EXHIBIT A

Legal Description

ALL OF SECTIONS 33 AND 34, TOWNSHIP 3 SOUTH, RANGE 9 EAST; AND ALL OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 9 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.