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BEFORE THE ARIZONA CORPORATION COMMISSION

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

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY FOR AN INCREASE IN
ITS WATER AND WASTEWATER RATES FOR
CUSTOMERS WITHIN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-08-0180

**NOTICE OF FILING
DIRECT TESTIMONY OF DAVID ASHTON**

Please take notice that Swing First Golf LLC is filing the attached Direct Testimony of David Ashton in the above-captioned proceeding.

RESPECTFULLY SUBMITTED on February 3, 2008.

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Arizona Corporation Commission

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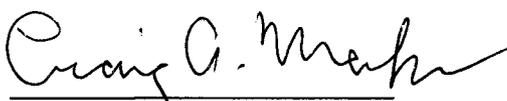
Copy of the foregoing mailed and e-mailed
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OF
DAVID ASHTON
ON BEHALF OF
SWING FIRST GOLF LLC
FEBRUARY 3, 2009**

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1 **EXECUTIVE SUMMARY**

2 Mr. Ashton testifies as follows:
3

4 **George Johnson and Utility have abused the public trust, ravaged the environment,**
5 **harassed customers, overcharged customers, and engaged in illegal affiliate transactions.**
6

- 7 • Utility is owned and run by George Johnson.
- 8
- 9 • George Johnson and other companies controlled by Mr. Johnson paid the largest civil
10 environmental settlement in Arizona history for bulldozing archeological sites, razing
11 protected vegetation, discharging pollutants into Arizona rivers, and conducting germ
12 warfare against protected bighorn sheep.
- 13
- 14 • George Johnson and his companies paid one of the largest settlements in federal history
15 for bulldozing the San Juan River.
- 16
- 17 • George Johnson has cheated and abused Swing First Golf.
- 18
- 19 • George Johnson's Utility discharged raw sewage into a neighborhood wash.
- 20
- 21 • George Johnson harassed other customers with frivolous defamation lawsuits.
- 22
- 23 • George Johnson's Utility illegally stored dangerous sewage sludge at its treatment plant.
- 24
- 25 • George Johnson's Utility has been previously subject to numerous environmental fines.
- 26
- 27 • George Johnson's Utility knowingly and illegally charges its customers for taxes.
- 28
- 29 • George Johnson's Utility delayed this rate filing so it could continue overcharging its
30 water customers millions of dollars per year.
- 31
- 32 • George Johnson's Utility has engaged in illegal affiliate transactions.
- 33

34 **The Commission needs to deal harshly with Johnson Utilities' blatant disregard for its**
35 **customers, the environment, and its public service obligations.**
36

- 37 • Johnson Utilities should not be allowed to increase its rates until its books and
38 management practices are thoroughly investigated.
- 39
- 40 • Johnson Utilities should be required to immediately reduce its water rates and refund its
41 overcharges for the last two years.
- 42
- 43 • Johnson Utilities should be required to refund its illegal Superfund tax collections.
- 44
- 45 • Johnson Utilities' Pecan Wastewater Treatment Plant should not be included in rate base.
- 46
- 47 • Johnson Utilities should be required to dismiss all pending defamation lawsuits against its
48 customers, pay all of their court costs and legal fees, and apologize to each customer.
- 49
- 50 • Johnson Utilities should be fined for its blatant disregard of its public service obligations,
51 environmental laws, and explicit Commission orders.
52

- 1 • Johnson Utilities should be penalized with a reduced return on equity.
- 2
- 3 • Following the completion of the independent management and financial audits, the
- 4 Commission should require Johnson Utilities to demonstrate why it should not surrender
- 5 its Certificate of Convenience and Necessity.
- 6
- 7 • The Commission should bifurcate this case into two phases.

1 **I INTRODUCTION AND QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME AND ADDRESS?**

3 A. My name is David Ashton. My business address is 7131 W Avenida Del Sol, Peoria,
4 Arizona 85383. I currently reside in Europe.

5 **Q. WHAT IS YOUR RECENT PROFESSIONAL EXPERIENCE?**

6 A. In addition to managing Swing First Golf, LLC, I am currently Vice President of
7 Business Development for KDS. KDS is based in Paris, France, and provides an on-line
8 software system to manage and reduce corporate travel and expense reporting costs.

9 From 2005 to 2006, I was employed by Reactivity, Inc of Belmont, California, as its Vice
10 President, Business Development. Reactivity provided XML security and acceleration
11 appliances to large corporations. Reactivity was acquired by Cisco Systems in 2007.

12 From 2000 to 2004 I was employed by Cyclone Commerce, of Scottsdale, Arizona, as its
13 Vice President, Business Development. Cyclone provided B2B transaction management
14 software to the Global 2000. In 2005, Cyclone was acquired by Axway.

15 Before leaving to attend graduate school, I was employed from 1995 to 1998 by
16 Andersen Consulting (now "Accenture") as part of its Strategic Services Group. I was
17 based both in San Francisco and Beijing.

18 Besides English, I also speak Cantonese and French.

19 **Q. WHAT IS YOUR EDUCATIONAL EXPERIENCE?**

20 A. I graduated from Brigham Young University in 1995 with degrees in International
21 Relations and Chinese. In 2000, I was awarded a Masters in Business Administration
22 from Stanford University.

23 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

1 A. I am testifying on behalf of Swing First Golf, LLC, a customer of Johnson Utilities.

2 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

3 A. The purpose of my testimony is to bring to the Commission's attention certain activities
4 and practices by George Johnson and his Utility that the Commission should consider as
5 part of this rate case. I then recommend how the Commission should compensate the
6 victims—Utility's customers—and then make sure that Utility's behavior is never
7 repeated.

8 **II GEORGE JOHNSON – THE MAN BEHIND THE CURTAIN**

9 **A Who Is George Johnson?**

10 **Q. WHO IS GEORGE JOHNSON?**

11 A. George H. Johnson is the majority owner of Johnson Utilities and is its ultimate decision
12 maker. Mr. Johnson also controls several other companies that have been in the
13 headlines in recent years, including Johnson International, Inc. ("Johnson International");
14 and General Hunt Properties, Inc. ("General Hunt").

15 **B George Johnson and His Companies Paid the Largest Civil Environmental**
16 **Settlement in Arizona History for Bulldozing Archeological Sites, Razing**
17 **Protected Vegetation, Discharging Pollutants into Arizona Rivers, and**
18 **Conducting Germ Warfare against Protected Bighorn Sheep**

19 **Q. ARE YOU AWARE OF A RECENT CIVIL ENVIRONMENTAL SETTLEMENT**
20 **PAID BY GEORGE JOHNSON AND HIS COMPANIES?**

21 A. Yes. Exhibit DA-1 is a copy of a December 2007 press release from the Arizona
22 Department of Environmental Quality ("ADEQ") concerning its lawsuit against George
23 Johnson, his affiliate companies, and his contractors. ADEQ summarizes the lawsuit and
24 settlement as follows:

25 In 2005 the Arizona Attorney General brought a lawsuit on behalf of the
26 Arizona Department of Environmental Quality ("ADEQ"), the Arizona State
27 Land Department, the Department of Agriculture, the Arizona State Museum
28 and the Arizona Game and Fish Commission. The suit charged George

1 Johnson, Johnson International, General Hunt, and several Johnson
2 contractors with numerous violations of state law and destruction of natural
3 and archeological resources, including:

- 4 • Bulldozing and clearing of nearly 270 acres of State Trust Lands located
5 in and near the Ironwood National Monument and the Los Robles
6 Archeological District.
- 7 • Bulldozing and clearing an estimated 2,000 acres of private lands in the
8 Santa Cruz River Valley without obtaining permits required by state law.
- 9 • Destroying portions of seven major Hohokam archeological sites, circa
10 A.D. 750-1250.
- 11 • Destroying more than 40,000 protected native plants on State Trust Lands,
12 including Saguaro, Ironwood, Mesquite, Palo Verde and other protected
13 species.
- 14 • Violating the state's clean water laws by failing to secure required permits
15 and discharging pollutants into the Little Colorado River, the South Fork
16 of the Little Colorado River and tributaries of the Santa Cruz River.
- 17 • Negligently causing a disease epidemic that resulted in the death of at least
18 21 rare Arizona desert bighorn sheep and serious injury to numerous
19 others.

20 **Q. HOW MUCH DID ADEQ FINE GEORGE JOHNSON AND HIS AFFILIATE**
21 **COMPANIES?**

22 A. Ultimately, George Johnson and the other defendants agreed to pay a fine of 12.1 million
23 dollars—the largest civil environmental settlement in Arizona history—to settle these
24 charges.

25 **Q. CAN YOU PROVIDE THE COMMISSION ANY MORE INFORMATION**
26 **CONCERNING GEORGE JOHNSON'S ABUSE OF ARIZONA'S**
27 **ENVIRONMENT, HISTORICAL HERITAGE, AND WILDLIFE?**

28 A. Yes. Exhibit DA-2 is a copy of a February 2008 article from Phoenix Magazine. The
29 article, written by Jana Bommersbach, provides more detail about Mr. Johnson's
30 activities, including moonscaping pristine desert land, destroying archaeological sites,
31 clearing and filling desert rivers, and conducting germ warfare against endangered
32 bighorn sheep.

1 **C George Johnson and His Companies Paid One of the Largest Settlements in**
2 **Federal History for Bulldozing the San Juan River**

3 **Q. HAVE FEDERAL REGULATORS ALSO FINED GEORGE JOHNSON AND HIS**
4 **AFFILIATES?**

5 A. Yes. In a companion case to the ADEQ lawsuit, the United States Environmental
6 Protection Agency (“EPA”) sued George Johnson and affiliates illegally bulldozing,
7 filling, and diverting approximately five miles of the Santa Cruz River. In October 2008,
8 George Johnson and the other defendants agreed to pay a fine of \$1.25 million, the
9 largest penalty in the history of EPA’s Pacific Southwest Region, and one of the largest
10 in EPA’s history under Section 404 of the Clean Water Act. See Exhibit DA-3.

11 **III ABUSING THE PUBLIC TRUST - GEORGE JOHNSON RUNS HIS UTILITY**
12 **LIKE HIS OTHER COMPANIES**

13 **A George Johnson Has Cheated and Abused Swing First Golf**

14 **Q. WHAT IS SWING FIRST GOLF?**

15 A. Swing First Golf owns and operates the Johnson Ranch Golf Club in Queen Creek,
16 Arizona. This is within Johnson Utility’s certificated service territory.

17 **Q. WHAT HAS BEEN SWING FIRST’S EXPERIENCE WITH GEORGE JOHNSON**
18 **AND HIS UTILITY?**

19 A. It hasn’t been positive. Before I bought the golf course I was warned by several people
20 that Mr. Johnson was difficult to do business with because he was very powerful, and
21 unfortunately not very honest. Not knowing him, I assumed these people had been
22 colored by a couple of bad experiences and didn’t give it much thought. Unfortunately,
23 in the last four and a half years I have learned that I should have heeded these warnings.
24 Mr. Johnson has used his Utility to try to both overcharge Swing First and to cheat us out
25 of money he owes us. His Utility has failed to provide the effluent to irrigate our golf
26 course. Meter-reading has been erratic and billing has been a mess. Utility attempted to

1 illegally cut off my service. Utility has also experienced mysterious pipe failures that
2 allegedly prevented it from delivering irrigation water when it knew the water was
3 especially needed. During a rainy week in early 2008, Utility over-delivered effluent to
4 the course, causing our lake to overflow and damaging the golf course.

5 **Q. HOW LONG HAVE YOU BEEN A JOHNSON UTILITIES CUSTOMER?**

6 A. I bought the course in November of 2004, so Swing First became a customer at that time.
7 We received our first effluent bills in December 2005.

8 **Q. WHAT DO YOU UNDERSTAND TO BE ARIZONA AND COMMISSION**
9 **POLICY CONCERNING GOLF COURSE IRRIGATION?**

10 A. My understanding is that Arizona, Pinal County, and the Commission all encourage golf
11 courses to use treated effluent as much as possible to irrigate their golf courses.

12 **Q. HAS SWING FIRST ATTEMPTED TO COMPLY WITH THIS POLICY?**

13 A. Certainly. We wish to use nothing else but effluent for our irrigation needs. There is the
14 added benefit that effluent is less expensive than CAP water.

15 **Q. DOES SWING FIRST HAVE A CONTRACT TO RECEIVE EFFLUENT FROM**
16 **UTILITY?**

17 A. Yes. Swing First inherited a 1999 contract which provides us the first right to irrigate the
18 Johnson Ranch Golf Courses with any effluent generated by Utility within its service
19 territory. We are directly connected to Utility's treated effluent line. The contract also
20 gives Utility the right to deliver water from other sources (wells or CAP-water) but
21 provides that, if Utility exercises this right, it cannot charge more than the Commission-
22 approved effluent rate.

23 **Q. EVEN IF THE 1999 CONTRACT DID NOT EXIST, WOULD SWING FIRST**
24 **STILL BE ENTITLED TO RECEIVE TREATED EFFLUENT FROM UTILITY?**

1 A. Certainly. The Johnson Ranch Golf Course has been Utility's customer for many years.
2 We should be receiving as much effluent as Utility can deliver, up to our requirements.
3 This is in accordance with our rights as a tariffed effluent customer, and is wise public
4 policy.

5 **Q. HAS UTILITY GENERALLY DELIVERED EFFLUENT TO SWING FIRST?**

6 A. No. Despite Swing First's right to the first effluent generated in its certificated service
7 area, Utility has rarely delivered effluent the time the service was turned on, until the date
8 I filed a formal complaint with the Commission. Instead, it has delivered CAP-water to
9 Swing First and charged it \$0.83 per thousand gallons (or \$3.75 per thousand gallons,
10 depending on how Mr. Johnson felt about it). Further, on the occasions when Utility
11 delivered effluent before the formal complaint was filed, Utility almost always billed
12 Swing First at the CAP-water rate of \$0.83 per thousand gallons.

13 **Q. DOES SWING FIRST NEED CAP-WATER FOR IRRIGATION?**

14 A. No. We want to use effluent for all of our irrigation and it appears that Utility generates
15 sufficient effluent for all our irrigation needs. We have a lake on the course, which we
16 can use to store effluent. This allows us to take effluent at night to use during the day.

17 Further, it is not good public policy to irrigate a golf course with CAP water unless it is
18 absolutely necessary. With treatment, CAP water can be delivered to customers as
19 potable-water. Because it is a renewable resource and does not deplete groundwater
20 supplies, it should be the first choice for potable water service. In contrast, treated
21 effluent can normally be used directly only for irrigation.

22 **Q. WHAT IS UTILITY DOING WITH THE TREATED EFFLUENT IT PRODUCES**
23 **THAT IT IS NOT DELIVERING TO SWING FIRST?**

1 A. Utility is the only party that can really answer this question. Based on discovery
2 responses and my discussions with other customers, it appears that Utility is selling some
3 effluent to other irrigation customers (at illegal rates), but is pumping most of the effluent
4 it produces into the ground.

5 **Q. WHY WOULD UTILITY PRODUCE TREATED EFFLUENT AND THEN PUMP**
6 **IT INTO THE GROUND?**

7 A. I don't pretend to be an expert, which is why it took me so long to file a complaint
8 against the Utility in the first place. But it appears that Utility is trying to create long-
9 term storage credits. According to the Arizona Department of Water Resources
10 ("ADWR"):

11 When eligible water is stored underground for more than one year, long-
12 term storage credits may be issued. Long-term Storage Credits are credits
13 earned in the process of storing water. These credits can be recovered in
14 the future to be used for various reasons, including establishing an
15 Assured Water Supply or fulfilling replenishment obligations. ...

16 An entity that holds both long-term storage credits and the water storage
17 permit from which they were earned may always recover the stored water
18 from within the area of impact of the water storage. Anyone holding long-
19 term storage credits may recover stored water from anywhere within the
20 same AMA in which it was stored

21 See: http://www.azwater.gov/dwr/Content/Find_by_Program/Recharge/types_of_recharge_permits.htm

22 Essentially, for every gallon of effluent that Utility withholds from me, Utility appears to
23 be creating the right take well water from anywhere in Pinal County. Again, I am not a
24 water expert, but it would seem that this would be of great value to Utility.

25 **Q. HOW DO YOU FEEL ABOUT UTILITY KEEPING ITS EFFLUENT, PUMPING**
26 **IT INTO THE GROUND, AND THEN TRYING TO SELL YOU HIGHER**
27 **PRICED WATER?**

1 A. I'm disappointed and concerned because I couldn't get Utility to change its behavior
2 toward my business (i.e. giving me effluent) until I filed a formal complaint. And doing
3 that has brought a lot of negative consequences to me, my business and my family that I
4 never asked for or wanted to deal with. As I see it, Utility has been stealing money out of
5 Swing First's pocket. I always thought the cost of water to irrigate the course was pretty
6 high, but accepted it because – like all of its other customers – I assumed Utility was
7 following the law, as regulated by the Commission. When I realized Utility was in fact
8 not following the law, I didn't know where to turn until I found the Commission.

9 **Q. COULD UTILITY BE VIOLATING ANY ARIZONA LAWS?**

10 A. It could be. Again, I am not an expert on water law, but the ADWR web page I
11 referenced does state that storage credits are only available if “The water cannot
12 reasonably be used directly, per A.R.S. § 45-802.01(22).” Swing First has been ready,
13 willing, and able to directly use Utility's treated effluent for 100% of its irrigation needs.

14 **Q. HAS UTILITY REGULARLY READ YOUR METERS?**

15 A. Utility often fails to read our meters. During one six-month stretch in 2007, Utility did
16 not read our effluent meter even once.

17 **Q. HAS UTILITY RENDERED ACCURATE BILLS?**

18 A. No. Utility's bills are regularly inaccurate, and this is a problem experienced by other of
19 its business customers as well. Up until I filed the formal complaint, Utility had always
20 charged me the \$0.83/1000 gallon CAP-water rate for effluent instead of the \$0.62/1000
21 gallon effluent water rate. It's hard to believe that this changed for any reason other than
22 the fact that their behavior had fallen under scrutiny. In 2007 Utility refused to deliver
23 treated effluent and then charged me the \$3.75/1000 gallon potable water rate for the
24 CAP-water it delivered. This was six times more than it should have charged me. Utility
25 now claims that it has corrected its multiple billing errors, but it's hard to have

1 confidence in its calculations when you've had the experience I've had. But the thing
2 that concerns me most is that Utility's own employees have personally told me that they
3 don't bill according to the law, but according to what Mr. Johnson tells them to bill. In
4 2007, when I asked the Utility why it was billing me \$3.75 per thousand gallons for CAP
5 water, the response was "Because George told us to change the rate in our computers, and
6 when George tells you to do something you do it."

7 **Q. HOW HAS UTILITY TREATED YOUR BILLING INQUIRIES?**

8 A. Utility has generally treated me with rudeness and defiance. Mr. Tompsett has refused in
9 writing to provide us replacement copies of the original 2005 and 2006 bills, so I don't
10 have them. Instead it has provided us bills that it created at a later date.

11 As an example, Utility provided in discovery a "copy" of a September 30, 2006, bill
12 which showed a total outstanding balance of \$52,031.80. Then, the bill "copy" provided
13 by Utility dated December 31, 2006, showed no previous balance. We asked for an
14 explanation. Utility then explained that this balance reduction reflected credits for
15 payments made in January 2007, a billing credit applied in September 2007, and a billing
16 credit applied in December 2007, almost one year after the December 31, 2006, bill.

17 The bill supplied by Utility in response to our data request was obviously created long
18 after the original bill was sent to me, and it's very difficult to discern (from the various
19 sets of bills) what is real, what isn't, and how the charges and credits came about. This
20 naturally works to Utility's advantage. In my experience, Utility is more adept at
21 knowing how to defraud its customers than at most other activities. People are generally
22 good at things they've spent a lot of time practicing.

23 **Q. WHY HAVE YOU NOT RETAINED COPIES OF BILLS FROM 2005 AND 2006?**

1 A. Of course we should have. However, I was naïve and believed that Utility was following
2 the law, so we did not keep a file of paid utility bills.

3 **Q. WHAT DEGREE OF CONFIDENCE DO YOU HAVE IN THE BILL “COPIES”**
4 **THAT UTILITY HAS PROVIDED TO SWING FIRST?**

5 A. I have no confidence in the bills we received prior to my filing of the formal complaint.
6 Now that Mr. Johnson is aware that his actions will be reported to the Commission, I
7 have some confidence in his current bills. However, when the Commission is no longer
8 looking, I will again have little to no confidence. Utility has only sporadically read our
9 meters and has been recreating our bills after the fact. The only thing I have confidence
10 in regarding Mr. Johnson is that he does what he wants and that the law doesn't appear to
11 influence his behavior much. He shoots first and asks questions later. I understand and
12 respect that in certain contexts, but the problem is that his actions have been illegal.

13 **Q. HOW MUCH DOES UTILITY CLAIM THAT SWING FIRST OWES?**

14 A. Utility claims that Swing First currently has a balance of \$102,744.87. This is wildly
15 inflated. The balance is largely the result of two things:

- 16 1. Utility has largely refused to deliver treated effluent. Instead it delivered and
17 charged us for CAP-water.
- 18 2. At George Johnson's instructions, Utility originally provided Swing First a bill-
19 credit of approximately \$50,000 for service provided on behalf of another of
20 George Johnson company. After Swing First discontinued its service relationship
21 with George Johnson, Utility reversed the credit.

22 **Q. WHAT IS THE ACTUAL AMOUNT OWED BY SWING FIRST, IF ANY?**

23 A. Swing First does not owe Utility anything. More than a year ago I calculated that if
24 Utility had satisfied our irrigation needs with treated effluent, as our contract and public
25 policy require, and not renege on the billing credit, Swing First would have

1 cumulatively overpaid Utility more than \$70,000. Of course, this calculation is based on
2 Utility's meter reads, which are infrequent and hardly inspire confidence. I also lack bills
3 from 2004, 2005 and 2006, so I really can't calculate exactly how much they owe me,
4 and that is to their advantage. Utility and I both recognize that. But they owe me at least
5 \$70,000.

6 **Q. HAS SWING FIRST CONTINUED TO PAY ITS BILLS FROM UTILITY?**

7 A. For each bill we calculate the amount that should be paid at the effluent rate and pay that
8 amount. We ignore any claimed outstanding balance.

9 **Q. YOU MENTIONED THE BILLING CREDIT THAT GEORGE JOHNSON**
10 **PROMISED YOU; CAN YOU BRIEFLY DISCUSS THIS?**

11 A. Yes. In April 2006, Swing First agreed to manage the Golf Club at Oasis ("the Oasis"),
12 which was owned by another company controlled by George Johnson. Mr. Johnson said
13 that for business purposes, it would be advantageous for him to not pay us cash. Instead
14 he proposed that we work together using irrigation water credits as currency. We
15 ultimately agreed that Utility would provide Swing First with a water credit of 150
16 million gallons per year in exchange for us managing his course. As soon as we began
17 doing so, Mr. Johnson fired his employees that were managing the Oasis.

18 On May 1, 2006, Swing First began managing the Oasis. In turn, Utility provided the
19 agreed-upon water credit. But because of our difficulties in dealing with Mr. Johnson,
20 Swing First discontinued the Oasis management relationship on Nov 16, 2006,
21 retroactive to October 31, 2006.

22 **Q. WHAT IS THE VALUE OF THE BILL CREDIT THAT MR. JOHNSON**
23 **REVERSED?**

1 A. For six months, the earned water credit was 75 million gallons. At the commodity rate
2 for effluent (\$0.62/1000 gallons) the credit was worth \$46,500. At the commodity rate
3 for CAP-water (\$0.83/1000 gallons), the credit was worth \$62,250. At either rate, the
4 credit was actually worth more, because of monthly minimums, taxes, and other charges
5 for water. To be conservative, I am using a value of \$50,000.

6 **Q. YOU MENTIONED THAT IT WAS MR. JOHNSON'S IDEA TO PAY SWING**
7 **FIRST WITH A WATER CREDIT INSTEAD OF CASH. HOW DID THIS**
8 **BENEFIT HIM?**

9 A. First, he effectively had Utility paying for the services he was receiving from Swing First
10 at the Oasis. Second, if he had paid by cash or check, he could not have used Utility as
11 an accomplice to later reverse the payment. Finally, it is possible that there were tax
12 advantages for not paying by cash or tax.

13 **Q. HOW DID MR. JOHNSON REACT WHEN SWING FIRST STOPPED**
14 **MANAGING THE OASIS GOLF COURSE?**

15 I wasn't in his office when he was making decisions, but the following events transpired
16 – in obvious retaliation. First, Utility reversed Swing First's water credit, which was
17 valued at approximately \$50,000. Second, directly at Mr. Johnson's request Swing
18 First's price for irrigation water was manipulated in Utility's computers to be
19 \$3.75/thousand gallons instead of the \$0.62 effluent water rate or the \$0.83 CAP water
20 rate. Third, Mr. Johnson turned off the effluent tap. For seven months in 2007, Utility
21 delivered no effluent whatsoever, and very little in the remaining five months of the years

22 The combined effects of George Johnson's retaliation were to create the phony past-due
23 balance I previously discussed. Mr. Johnson's next steps were in November 2007.

24 Twice Utility illegally shut off our irrigation water, allegedly for failure to pay the phony
25 past-due balance.

1 **Q. YOU STATED THAT GEORGE JOHNSON TWICE ILLEGALLY SHUT OFF**
2 **SWING FIRST'S IRRIGATION WATER; WHAT DO YOU MEAN BY**
3 **"ILLEGALLY"?**

4 A. I mean two things. First, the past-due balance was phony, so there was no legal basis for
5 the shut-off. Second, Utility's shut-offs violated the Commission's rules. A utility
6 cannot terminate water service except upon five-days written notice. See R14-2-509(D -
7 E). Utility twice shut off Swing First's service without the required notice. This was
8 illegal.

9 **Q. WHAT DID YOU DO NEXT?**

10 A. To get Utility to comply with the Commission's rules, Swing First filed an informal
11 complaint, followed by a formal complaint with the Commission (Docket No. WS-
12 02987A-08-0049).

13 **Q. HOW DID GEORGE JOHNSON REACT TO SWING FIRST'S COMMISSION**
14 **COMPLAINT?**

15 A. The first thing Mr. Johnson did was to file a lawsuit in Superior Court to try to force
16 Swing First to pay the phony past-due balance. Currently, at our request, the Judge has
17 deferred to the Commission's jurisdiction and is continuing the case to allow the
18 Commission complaint case to be resolved.

19 **Q. DID GEORGE JOHNSON DO ANYTHING TO YOUR PERSONALLY?**

20 A. Yes. He amended the Court complaint to add counts of defamation and tortious
21 interference with a business relationship. This was because I spoke with another
22 irrigation customer to discuss our issues to see if they had also been defrauded by Utility
23 (they certainly felt that they had been, based solely on their own internal analysis of their
24 bills). These new counts are obviously designed to silence me and set an example of
25 what happens to those who stand up to Mr. Johnson.

1 If I had the money, I could have just paid the money that he claimed I owed him and
2 likely resolved the lawsuit, but how could I accede to such blatant intimidation tactics? I
3 just wanted to buy water for the golf course in accordance with my contracts and the law,
4 and at the tariffed price. I never understood why it is so hard for Mr. Johnson to just sell
5 us effluent at the tariffed price, read our meters, and bill us accurately. It seems like the
6 only reasonable explanations are that his organization is not competent, or that they are
7 violating the law with full knowledge of their actions. Perhaps both conclusions are true.

8 **Q. WAS THERE ANYTHING ELSE ABOUT THE AMENDMENTS THAT WAS**
9 **ESPECIALLY HURTFUL?**

10 A. Yes. George Johnson added my wife as a defendant. This has caused her extensive
11 anguish. I really didn't appreciate this. You can pick on a man, but when you pick on his
12 wife, that is really low.

13 **Q. HOW ELSE DID GEORGE JOHNSON RETALIATE?**

14 A. As I discussed above, Utility barely delivered any effluent to the Johnson Ranch Golf
15 Course in 2007. Swing First then filed its formal complaint on Friday, January 25, 2008.
16 George Johnson should have received a copy of the complaint on or about Monday,
17 January 28.

18 The week beginning on Sunday January 27 was extremely rainy. As a result, Swing First
19 needed no irrigation water. However, beginning on Friday February 1, 2008, Utility
20 began delivering significant amounts of effluent to Swing First, despite our requests that
21 they not do so. This caused the lake bordering the 18th hole to overflow, which damaged
22 the golf course. My employees asked the Utility several times to stop delivery, but they
23 ignored the requests. My employees then escalated the issue to me and I asked the Utility
24 several times in writing to stop the deliveries. Unfortunately, Mr. Tompsett was no more

1 cooperative. Then, after flooding the course, Utility actually billed us for the water we
2 never wanted.

3 **Q. HAVE THERE BEEN ANY MORE RECENT ISSUES WITH UTILITY?**

4 A. Sadly, yes. Golf courses in the Valley consume the greatest amount of water during
5 over-seeding, which usually occurs each year in October. At that time, we shave the
6 summer Bermuda-grass turf and stop watering so we can dry it out in preparation for
7 over-seeding. Then, when the summer turf is dry, we over-seed with a winter grass like
8 Rye. To ensure the new grass takes root as quickly as possible, we have to water heavily.
9 During over-seeding we use about 800,000 gallons per day, which exceeds the capacity
10 of Utility's closest water treatment plant. Although we can manage at the plant capacity
11 level, it is much easier with Utility's cooperation.

12 I met with Brian Tompsett on an unrelated matter (an Oasis liquor-license issue, which he
13 was responsible for) and asked if he would please store effluent for us for later delivery.
14 He said he could do that and we later exchanged emails about it. However, when we
15 asked to draw on the stored effluent, Mr. Tompsett said that they had no stored effluent
16 for us. He then tried to force us into signing a CAP delivery contract. Sadly, this is
17 typical behavior from George Johnson and his senior staff.

18 **Q. WHAT HAPPENED AFTER UTILITY REFUSED TO DELIVER STORED**
19 **EFFLUENT?**

20 A. Utility backed down on its demand that I sign a CAP-delivery contract and began
21 delivering effluent directly from the plant. But then Utility claimed that it had a broken
22 line and could not deliver any effluent for about a day. There have been other times
23 when they've claimed their line has broken, like during last summer, which is of course
24 the other time of year when we most need water. Mr. Johnson is well aware of when we
25 most need water.

1 **Q. WAS SWING FIRST ABLE TO SUCCESSFULLY OVER-SEED IN OCTOBER**
2 **2008?**

3 A. Ultimately, yes. Despite Utility, and thanks to our lake storage and a very competent
4 groundskeeper, we were able to provide enough water for over-seeding.

5 **Q. ARE YOU ASKING THE COMMISSION TO PROVIDE YOU SPECIFIC**
6 **RELIEF IN THIS CASE?**

7 A. No. The Commission will be able to provide me relief in the complaint case that I have
8 pending against Johnson Utilities in Docket No. WS-02987A-08-0049.

9 **B George Johnson's Utility Discharged Raw Sewage into a Neighborhood**
10 **Wash**

11 **Q. DID GEORGE JOHNSON'S UTILITY DISCHARGE RAW SEWAGE INTO A**
12 **NEIGHBORHOOD WASH?**

13 A. I have not personally been involved with this matter, but published reports are that it did.
14 Over several months in the spring of 2008, Utility dumped about 10,000 gallons of raw
15 sewage into the Queen Creek Wash and an adjoining neighborhood, allegedly as a result
16 of pump failures at its neighboring sewage-treatment plant. The 2008 discharges were
17 only months after a December 2007 discharge from the same plant and were the latest in
18 a long series of environmental violations and sewage spills.

19 **Q. WHAT IS THE STATUS OF THE WASH CLEANUP?**

20 A. According to published reports, George Johnson's Utility entered into a consent decree
21 with ADEQ to clean and disinfect the wash. Fines may still be imposed. Please see
22 Exhibit DA-4 for more details.

23 **Q. HAVE ANY COMMISSIONERS EXPRESSED CONCERN WITH THE SEWAGE**
24 **SPILL?**

1 A. Yes. Exhibit DA-5 to my testimony is a copy of a June 10, 2008, letter from then
2 Commissioner William Mundell to his colleagues. In his letter Commissioner Mundell
3 stated:

4 On page 2 of the NOV, the second alleged violation caught my attention.
5 According to the NOV, the lift station at the Pecan WRP was approved
6 based on an engineering design report that described the installation of
7 two 75 horsepower pumps. However, at the time of the SSOs, 35
8 horsepower pumps were operating at the lift station. I would like to know
9 why that was the case and if the difference in pumps was a contributing
10 factor to the SSOs.

11 ... It is my understanding that the Pecan WRP is not currently in the
12 Company's rate base. However, the discrepancy between ADEQ records
13 and the actual plant raises a red flag in my mind and may justify a higher
14 level of scrutiny of the Company's plant in the rate case. (Emphasis
15 added.)

16 **C George Johnson Harassed Other Customers with Frivolous Defamation**
17 **Lawsuits**

18 **Q. HAS GEORGE JOHNSON TREATED OTHER CUSTOMERS LIKE HE HAS**
19 **TREATED SWING FIRST AND YOU?**

20 A. Yes. Neighbors were justifiably concerned for their health and safety as a result of
21 George Johnson's Utility dumping raw sewage into their neighborhood. Two residents
22 organized a protest and posted pointed comments on a community web page. In
23 retaliation, Utility sued the two residents for defamation. As you can imagine, since that
24 time the residents have apparently not spoken out. Therefore it's hard to know if Utility
25 has improved the situation or simply succeeded in silencing its customers through
26 intimidation. Please see Exhibit DA-6 for more details.

27 If it wasn't so sad I would laugh about all of this. I actually have laughed on a number of
28 occasions, but mostly in a "gallows humor" sort of way. Utility's lawsuits are obviously
29 intended to chill protests by forcing defendants to endure the emotional burden of

1 defending a lawsuit and incur the expense of hiring attorneys to defend the lawsuits. I
2 know by experience, because he's doing it to me and to my wife.

3 Mr. Johnson also sued Arizona State Attorney General Terry Goddard and his wife
4 Monica for defamation, because Mr. Goddard was spearheading the State's case against
5 him for environmental violations. I also understand that Utility may now have sued other
6 customers as part of its current harassment campaign.

7 **D George Johnson's Utility Illegally Stored Dangerous Sewage Sludge at Its**
8 **Treatment Plant**

9 **Q. WERE THE RAW SEWAGE DISCHARGES INTO THE QUEEN CREEK WASH**
10 **THE ONLY ENVIRONMENTAL VIOLATIONS COMMITTED BY GEORGE**
11 **JOHNSON'S UTILITY IN 2008?**

12 A. It looks like there were more. Based on published reports, Utility had barely finished
13 contaminating the Queen Creek Wash when a surprise inspection by ADEQ caught
14 Utility storing dangerous sewage sludge in uncovered trenches. Utility dumped 34,713
15 gallons of the sludge in trenches mixed with construction debris. ADEQ issued two
16 violation notices with 15 separate infractions. Please see Exhibit DA-7 for more details.

17 **E The 2008 Environmental Infractions by George Johnson's Utility Were**
18 **Nothing New**

19 **Q. HAS GEORGE JOHNSON'S UTILITY PREVIOUSLY VIOLATED STATE**
20 **ENVIRONMENTAL LAWS?**

21 A. Apparently. In 2003, ADEQ fined Johnson Utilities \$80,000 for building and operating a
22 water treatment plant without obtaining the necessary permits. See:
23 <http://www.azdeq.gov/function/forms/download/2003/summary.pdf> (page 14). This
24 followed a \$6,000 fine in 2001 for modifying a water treatment plant without obtaining
25 construction approvals. See
26 <http://www.azdeq.gov/function/forms/download/2001/enforce.pdf> (page 4).

1 The Arizona Department of Water Resources has also had its issues with George Johnson
2 and his Utility. In 2003, it fined Johnson Utilities \$90,000 for using far more
3 groundwater than it was entitled to. See, Exhibit DA-2 at 2.

4 **Q. HAVE ALL THESE FINES CHANGED MR. JOHNSON'S BEHAVIOR?**

5 A. I certainly haven't seen any changes. Mr. Johnson acts like a professional athlete who
6 says "I don't care if I'm going to get fined, I make enough that I'm going to dance when I
7 score a touchdown." So he dances while we watch him. The fines from the Commission
8 and the State for \$6000, for \$90,000, or for \$12 million, whether paid by his insurance
9 company or not, don't seem to mean much to Mr. Johnson. Perhaps the only way to get
10 his attention will be for the Commission to really hit him hard in the pocketbook,
11 particularly if he doesn't have an insurance company paying his fines. Otherwise, he'll
12 just keep doing what he has been doing – laughing all the way to the bank.

13 **F George Johnson's Utility Knowingly and Illegally Charges Its Customers for**
14 **Taxes**

15 **Q. ARE YOU CHARGED A MONTHLY SUPERFUND TAX?**

16 A. Yes. Utility bills me, and I believe all of its water and effluent customers, each month for
17 a Superfund "Tax" at the rate of \$0.0065/1000 gallons. This is based on customer usage.
18 Yet, in Decision No. 64598, dated March 4, 2002, the Commission told George
19 Johnson's Utility that it could not pass another usage-based tax to its water customers.
20 The Commission should determine whether, by charging another usage-based tax to its
21 water customers, George Johnson knowingly disregarded this legal precedent.

22 **G George Johnson's Utility Delayed this Rate Filing So It Could Continue**
23 **Overcharging Its Water Customers Millions of Dollars Per Year**

24 **Q. WHEN WAS GEORGE JOHNSON'S UTILITY REQUIRED TO FILE THIS**
25 **RATE CASE?**

1 A. In Decision No. 68235, dated October 25, 2005, the Commission ordered Utility to file a
2 rate case for its water and wastewater divisions by May 1, 2007, using a 2006 test-year.

3 **Q. DID UTILITY COMPLY WITH THE COMMISSION'S ORDER?**

4 A. No. This rate case was filed on March 31, 2008, and was based on a 2007 test year.

5 **Q. DID THE COMMISSION RELIEVE UTILITY FROM ITS OBLIGATION TO**
6 **FILE ITS RATE CASE BY MAY 1, 2007, USING A 2006 TEST YEAR?**

7 A. Not to my knowledge.

8 **Q. DOES SWING FIRST HAVE OTHER WATER ACCOUNTS WITH GEORGE**
9 **JOHNSON'S UTILITY?**

10 A. Yes. Swing First has three potable water accounts.

11 **Q. WHAT DOES UTILITY'S APPLICATION SHOW CONCERNING WATER**
12 **RATES?**

13 A. Schedule A-1 shows that, even by Utility's own calculations, Utility overcharged its
14 water customers, including Swing First, by over \$2,000,000 in the 2007 test year.

15 **Q. DOES THIS CONCERN YOU?**

16 A. Very much. If Utility was overcharging its water customers by such a large amount in
17 2007, it was likely also overcharging its water customers in 2006. Based on my business
18 training and experience, it would be pretty unusual for earnings at a utility to swing
19 radically from year to year once the company's service is well-established. Swing First
20 asked Utility to provide a schedule in the form of Schedule A-1 for 2006, but Utility
21 refused to do so. If Utility was not over-earning in 2006, it should have jumped at the
22 chance to demonstrate that fact. Therefore, it seems more likely than not that Utility's
23 unauthorized delay in filing this case cost its water customers millions of dollars.

1 I've never really understood why Mr. Johnson needs to do business this way. Why is it
2 necessary to defraud the citizens of the state, your own customers, just to make a few
3 extra bucks? Do it legally and ethically or don't do it. It's not that hard.

4 **H George Johnson's Utility Has Engaged in Illegal Affiliate Transactions**

5 **Q. WHAT IS YOUR UNDERSTANDING CONCERNING TRANSACTIONS**
6 **BETWEEN A WATER UTILITY AND ITS AFFILIATES?**

7 A. My understanding is that a utility must report all such transactions and that the utility
8 cannot subsidize its affiliates. Further, A.R.S. 40-334(A) provides that:

9 A public service corporation shall not, as to rates, charges, service,
10 facilities or in any other respect, make or grant any preference or
11 advantage to any person or subject any person to any prejudice or
12 disadvantage.

13 **Q. HAS GEORGE JOHNSON'S UTILITY VIOLATED THESE REQUIREMENTS?**

14 A. Yes. I know of many occasions where Utility has favored other George Johnson
15 companies. First, Utility admits that it has been providing free irrigation water for the
16 Oasis Golf Course, owned by another George Johnson company. Second, Mr. Johnson
17 contracted in 2006 with Swing First to manage the Oasis Golf Course. As mentioned,
18 Mr. Johnson directed Utility to provide Swing First free irrigation water so that Mr.
19 Johnson would not have to actually pay cash to Swing First. Third, Swing First was
20 reimbursed for Oasis Golf Course expenses by checks drawn on Utility. Fourth, Utility
21 paid for the transfer of the Oasis Golf Course liquor license from Swing First. Fifth, Mr.
22 Tompsett, Utility's Executive Vice President, regularly acts on behalf of the Oasis Golf
23 Course, as does Gary Larsen, the manager of the Utility in Queen Creek.

24 **Q. DID UTILITY REPORT THESE AFFILIATED TRANSACTIONS IN ITS**
25 **AFFILIATED INTEREST REPORT TO THE COMMISSION?**

1 A. I don't know. Swing First asked for a copy of the report, but Utility refused to provide it.
2 I would expect that if Utility had properly reported and accounted for these transactions,
3 it would have been eager to provide the evidence.

4 **IV THE COMMISSION SHOULD SEND A STRONG MESSAGE TO GEORGE**
5 **JOHNSON'S UTILITY**

6 **A The Commission Needs to Deal Harshly with Johnson Utilities' Blatant**
7 **Disregard for its Customers, Public Safety, the Environment, and Its Public**
8 **Service Obligations**

9 **Q. HOW SHOULD THE COMMISSION DEAL WITH GEORGE JOHNSON'S**
10 **UTILITY IN THIS RATE CASE?**

11 A. I have nine recommendations to deal with Johnson Utilities' blatant disregard for its
12 customers, public safety, the environment, and its public service obligations:

- 13 1. Johnson Utilities should not be allowed to increase its rates until its management and
14 financial practices are investigated.
- 15 2. Johnson Utilities should be required to immediately reduce its water rates and refund
16 its overcharges for the last two years.
- 17 3. Johnson Utilities should be required to refund – in cash, not credits – its illegal
18 superfund tax collections.
- 19 4. Johnson Utilities' Pecan wastewater treatment plant should not be included in rate
20 base.
- 21 5. Johnson Utilities should be required to dismiss all pending defamation lawsuits
22 against its customers, pay all of their court costs and legal fees, and apologize to each
23 customer. I am a customer.
- 24 6. Johnson Utilities should be fined for its blatant disregard of its public service
25 obligations, environmental laws, and explicit commission orders.
- 26 7. Johnson Utilities should be penalized with a reduced return on equity.

1 8. Following the completion of the independent management and financial audits, the
2 commission should require Johnson Utilities to demonstrate why it should not
3 surrender its certificate of convenience and necessity. Mr. Johnson and Mr. Tompsett
4 have both consistently demonstrated that they lack the ethics and integrity necessary
5 to run a monopoly business regulated by the state. There is no one else at Johnson
6 Utilities that makes strategic decisions.

7 9. The Commission should bifurcate this case into two phases

8 I will discuss each of these recommendations in order.

9 **B Johnson Utilities Should Not Be Allowed to Increase Its Rates until Its Books**
10 **and Management Practices Have Been Thoroughly Investigated**

11 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY SHOULD NOT BE**
12 **ALLOWED TO INCREASE ITS RATES UNTIL ITS BOOKS AND**
13 **MANAGEMENT PRACTICES HAVE BEEN THOROUGHLY INVESTIGATED?**

14 **A.** It is likely that what I have so far discussed in this case is only the tip of the iceberg. I
15 am only one of Utility's many customers. I am also only one of hundreds or thousands of
16 companies that has dealt with Utility.

- 17 • If I am personally aware of five possible illegal affiliate transactions, there are likely
18 many more.
- 19 • If I am aware of George Johnson's abuse and intimidation of me and other customers
20 through defamation lawsuits, how many other similar actions has George Johnson
21 taken to intimidate and silence customers?
- 22 • If ADEQ has uncovered two serious environmental violations in just the last year, and
23 four in this decade, how many more threats to public health and safety have gone
24 undiscovered?
- 25 • Based on Mr. Johnson's apparent use of Utility to fund other activities and Utility's
26 delay in its rate filing, it does not appear that Utility's financial records can be relied

1 upon. During a conversation I had with Utility's CFO – December Davis – in
2 January of 2008, she basically acknowledged that she had been brought in to clean up
3 the mess. Of course she will only be allowed to clean up what Mr. Johnson allows
4 her to clean up.

5 **Q. WHAT ARE YOU SPECIFICALLY RECOMMENDING?**

6 A. I understand that the Commission's resources are strained, especially given the State's
7 current budget crisis. Therefore I am asking that the Commission order Staff to select a
8 firm or firms to perform independent management and financial audits on Utility. These
9 audits should be funded by Utility. The financial audit should not be limited to Utility,
10 but should also investigate any of George Johnson's companies that have had dealings
11 with Utility.

12 The management audit should also be conducted at Utility's expense to determine
13 whether Johnson Utilities is a fit and proper entity to continue to hold its certificate of
14 convenience and necessity.

15 As part of the audit process the management auditors should hold a series of well
16 publicized customer open houses, where customers can discuss their customer-service
17 experiences. Utility would not be allowed to attend these meetings to ensure that
18 customers are not intimidated. Utility should also be required to provide notice of these
19 open houses by direct mail or bill insert. The notice should also provide a phone number,
20 address, and e-mail address where customers could directly contact the auditors. The
21 auditors should also interview present and former utility employees, and Arizona
22 environmental regulators.

23 The management auditors should at least investigate:

- 24 • Prior activities and fines related to George Johnson and the Johnson Companies;

- 1 • Utility's continual discharges of raw sewage into the Queen Creek Wash;
- 2 • Utility's illegal storage of sewage sludge on site;
- 3 • Utility's harassment of customers through defamation lawsuits;
- 4 • Other customer service issues;
- 5 • Utility's disregard of Commission Orders;
- 6 • Utility's provision of free water to its affiliates; and
- 7 • Other illegal transactions, if any, between Utility and its affiliates.

8 **Q. WHAT SHOULD THE COMMISSION DO WITH UTILITY'S RATE INCREASE**
9 **REQUEST WHILE THE INVESTIGATIONS ARE PENDING?**

10 A. The Commission should not allow any rate increase until it has had the opportunity to
11 evaluate the results of the financial and management audits.

12 **C Johnson Utilities Should Be Required to Immediately Reduce Its Water**
13 **Rates and Refund Its Overcharges for the Last Two Years**

14 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY BE REQUIRED TO**
15 **IMMEDIATELY REDUCE ITS WATER RATES AND REFUND ITS**
16 **OVERCHARGES FOR THE LAST TWO YEARS?**

17 A. As I discussed above, Utility decided to ignore a Commission deadline to file a rate case
18 by May 1, 2007, using a 2006 test-year. When Utility finally filed this rate case with a
19 2007 test year, the reason became apparent. There is a Latin phrase "cui bono," or "who
20 benefits" that supplies the motive for the delay. Utility was overcharging its water
21 customers during the 2007 test year, even based on Utility's calculations. This would
22 have come to light much earlier, if Utility had filed is case when it was ordered to.
23 Utility benefited from the unauthorized delay to the detriment of its customers.

24 To remedy this, the Commission should require Utility to immediately reduce its water
25 rates to at least the levels it proposes in its direct testimony. If there is evidence, based on

1 other parties' filings, that the rates should be even lower, then the rates should be reduced
2 to those levels. Finally to compensate customers for Utility's delayed filing, the
3 Commission should order that Utility refund all charges made in excess of those levels,
4 retroactive to January 1, 2007.

5 **D Johnson Utilities Should Be Required to Refund Its Illegal Superfund Tax**
6 **Collections**

7 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY SHOULD BE REQUIRED**
8 **TO REFUND ITS ILLEGAL SUPERFUND TAX COLLECTIONS?**

9 A. As of March 4, 2002, Utility knew that it could not lawfully charge its customers for a tax
10 based on usage. Yet, it chose to ignore the Commission. Utility should be ordered to
11 calculate the amounts collected since March 4, 2002.

12 **E Johnson Utilities' Pecan Wastewater Treatment Plant Should Not Be**
13 **Included in Rate Base**

14 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY'S PECAN**
15 **WASTEWATER TREATMENT PLANT NOT BE INCLUDED IN RATE BASE?**

16 A. Commissioner Mundell recommended that the Commission closely scrutinize this plant.
17 It was clearly not operating properly, even one year after the test year. It should be
18 disallowed until Utility's next rate case, where it would have the opportunity to
19 demonstrate that the plant is no longer a threat to public safety.

20 **F Johnson Utilities Should Be Required to Dismiss All Pending Defamation**
21 **Lawsuits against Its Customers, Pay All of Their Court Costs and Legal Fees,**
22 **and Apologize to Each Customer**

23 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY BE REQUIRED TO**
24 **DISMISS ALL PENDING DEFAMATION LAWSUITS AGAINST ITS**
25 **CUSTOMERS, PAY ALL OF THEIR COURT COSTS AND LEGAL FEES, AND**
26 **APOLOGIZE TO EACH CUSTOMER?**

1 A. George Johnson uses the courts to intimidate his customers. I am not aware of any other
2 Arizona utility that has ever filed a defamation lawsuit against a customer. Yet Mr.
3 Johnson has sued at least three customers for defamation, as well as filing a defamation
4 lawsuit against the Arizona Attorney General.

5 This is really bad. I know from my own experience how painful it has been for me and
6 my wife to face a lawsuit, just for trying to gather more information about Utility's
7 billing practices. Yet, as a business owner, I may be more thick-skinned than a
8 residential customer sued just for speaking out against Utility's discharge of raw sewage
9 into a wash where children play. On top of this, it is a huge expense, both in time and
10 money, to defend against a lawsuit, even one that is unlikely to prevail. Mr. Tompsett
11 told me this himself on one occasion.

12 The Commission needs to stop any practice designed to intimidate customers from
13 speaking out against their monopoly utility provider. The Commission needs to hear
14 from any of Utility's customers who feel they have been wronged, and needs to order
15 Utility to dismiss all pending defamation lawsuits against its customers, pay all of their
16 court costs and legal fees, and apologize to each customer directly.

17 **G** **Johnson Utilities Should Be Fined for Its Blatant Disregard of Its Public**
18 **Service Obligations, Environmental Laws, and Explicit Commission Orders**

19 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY BE FINED FOR ITS**
20 **BLATANT DISREGARD OF ITS PUBLIC SERVICE OBLIGATIONS,**
21 **ENVIRONMENTAL LAWS, AND EXPLICIT COMMISSION ORDERS?**

22 A. Fines are clearly warranted for Utility. The Commission needs to send a clear message to
23 Utility that it cannot continue to abuse customers, ignore Commission orders, and
24 endanger the public health and safety. But I caution the Commission to remember that
25 Utility's behavior does not appear to be impacted by fines. It would be nice to fine the

1 Utility to help fund the Commission's operations and/or aid the customers of Utility that
2 have been defrauded. Fines may set an example for other utilities, but if the goal is to
3 change Mr. Johnson's behavior, the only action likely to make a difference is to take
4 away his authority.

5 **H Johnson Utilities Should Be Penalized with a Reduced Return on Equity**

6 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY BE PENALIZED WITH A**
7 **REDUCED RETURN ON EQUITY?**

8 A. In addition to imposing fines, I understand that the Commission can penalize a Utility by
9 reducing the allowed return on equity when new rates are set. This may be a rare penalty,
10 but then the Utility's behavior has been unprecedented.

11 **I Following Completion of the Independent Management and Financial**
12 **Audits, the Commission Should Require Johnson Utilities to Demonstrate**
13 **Why It Should Not Surrender Its Certificate of Convenience and Necessity**

14 **Q. WHY ARE YOU RECOMMENDING THAT, FOLLOWING THE COMPLETION**
15 **OF THE INDEPENDENT MANAGEMENT AND FINANCIAL AUDITS, THE**
16 **COMMISSION REQUIRE JOHNSON UTILITIES TO DEMONSTRATE WHY IT**
17 **SHOULD NOT SURRENDER ITS CERTIFICATE OF CONVENIENCE AND**
18 **NECESSITY?**

19 A. There seems to be enough evidence already that Utility's management should not be
20 allowed to continue running the Utility. However, before making this determination, the
21 Commission should be able to consider the findings of the financial and management
22 audits and Utility's responses. This could be done during a second phase for this case.

23 **J The Commission Should Bifurcate this Case into Two Phases**

24 **Q. HOW SHOULD THE COMMISSION HANDLE THE BALANCE OF THIS**
25 **CASE?**

1 A. Because it is grossly over-earning, Utility would clearly benefit from, and customers
2 would be harmed by, any delays in the case needed to allow the financial and
3 management audits to proceed. On the other hand, the Commission and Utility's
4 customers will just as clearly benefit if the auditors are provided as much time as
5 necessary to complete their tasks. To protect customers, I recommend a two-phase
6 procedure for the balance of this case.

7 **Q. HOW WOULD THE TWO-PHASE PROCEDURE WORK?**

8 A. In Phase I, the Commission would set water rates and determine the amount of refunds
9 due customers for Utility's water-rate overcharges, including the illegal Superfund
10 charges. The Commission would also order the financial and management audits.
11 Finally, the Commission would order Utility to dismiss all pending defamation lawsuits
12 against its customers, pay all of their court costs and legal fees, and apologize to each
13 customer directly.

14 In Phase II, the Commission would:

- 15 • Evaluate the results of the financial and management audits;
16 • Determine the amount of any fines to be paid by Utility;
17 • Determine whether to reduce Utility's allowed return on equity;
18 • Set new wastewater rates (and new water rates if the ROE is reduced); and
19 • Determine whether Utility is a fit and proper entity to continue holding a certificate of
20 convenience.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A. Yes.



News Release

1110 West Washington Street • Phoenix, Arizona 85007 • <http://azdeq.gov>

DATE: Dec. 20, 2007

CONTACT: Mark Shaffer, Director of Communications, (602) 771-2215

ADEQ Director Owens, Attorney General Goddard Announce Record \$12.1 Million Civil Environmental Settlement

PHOENIX (Dec. 20, 2007) – Arizona Department of Environmental Quality Director Steve Owens and Attorney General Terry Goddard today announced a \$12.1 million civil environmental settlement, the largest in state history.

The settlement resolves a 2005 lawsuit brought against land developer George H. Johnson, several of his companies, excavation contractor Jack McCall, 3F Contracting, Inc. and Preston Well Drilling. The defendants agreed that the State would be paid \$12,111,500 to resolve all claims in the case.

“This record-setting settlement reflects the importance of this case,” Director Owens said. “We felt strongly that serious violations of the law had occurred.”

Johnson and his companies have agreed that the state will be paid \$7 million; 3F Contracting, Inc. has agreed the state will be paid \$5.05 million; and Preston Well Drilling has agreed the State will be paid \$61,500.

The 2005 lawsuit -- which the Attorney General brought on behalf of ADEQ, the Arizona State Land Department, the Department of Agriculture, the Arizona State Museum and the Arizona Game and Fish Commission -- charged the defendants with numerous violations of state law and destruction of natural and archeological resources, including:

- Bulldozing and clearing of nearly 270 acres of State Trust Lands located in and near the Ironwood National Monument and the Los Robles Archeological District.
- Bulldozing and clearing an estimated 2,000 acres of private lands in the Santa Cruz River Valley without obtaining permits required by state law.
- Destroying portions of seven major Hohokam archeological sites, circa A.D. 750-1250.
- Destroying more than 40,000 protected native plants on State Trust Lands, including Saguaro, Ironwood, Mesquite, Palo Verde and other protected species.
- Violating the state’s clean water laws by failing to secure required permits and discharging pollutants into the Little Colorado River, the South Fork of the Little Colorado River and tributaries of the Santa Cruz River.
- Negligently causing a disease epidemic that resulted in the death of at least 21 rare Arizona desert bighorn sheep and serious injury to numerous others.

“We are committed to enforcing our environmental and heritage protection laws to preserve the priceless resources that make this state unique,” Attorney General Goddard said. “This resolution sends a strong message to anyone who would despoil our heritage.”

DISSECTING ARIZONA

Author: Jana Bommersbach

Issue: February, 2008, Page 130

**THOUSANDS OF SAGUAROS UPROOTED.
DOZENS OF BIGHORN SHEEP KILLED.
RIVERS RAVAGED.
GEORGE H. JOHNSON HOLDS THREE
STATE RECORDS
THAT BEG THE SAME QUESTION:
IS HE THE WORST DEVELOPER IN
ARIZONA?**

If it's three strikes, you're out, then Scottsdale developer George H. Johnson has struck out, leading the league with the dubious distinction of one of Arizona's most rogue developers.

It's a pretty outrageous title in a state known for bad developers, but both state and federal officials say he stands above them all. In December, the State of Arizona – where an unprecedented five state agencies were suing him – settled with Johnson for a record repayment for despoiling state land, damaging a southern Arizona river and creating havoc in one of America's newest national monuments.

Although the settlement includes the caveat that Johnson makes no admission of liability, it also provides that he repay the state agencies \$7 million. Earlier, the bulldozer company he hired, 3F Contracting Inc., agreed to settle for \$5.05 million, making this \$12.05 million settlement the largest civil environmental recovery by state agencies in the history of Arizona, officials say. But this wasn't the first time, or even the second, but the third time Johnson has made state history by paying the largest fines ever assessed against a developer. And his troubles aren't over yet. The Environmental Protection Agency has a massive lawsuit against him that stands out for the enormity of what it charges he did to the Santa Cruz River.

Just what in the world did this developer do to bring such heavy weights down on his head?

In a blog he's been writing for two years called The Johnson Report, Johnson asserts his innocence and contends officials have targeted him unfairly. He says Arizona media have portrayed him in a bad light, making him out to be a monster that he's not. It's "as if Atilla (sic) the Hun were let loose upon Arizona," he writes.

Officials say developer George Johnson has done the most dastardly things to Arizona. They say he trespassed on state and federal land – including land in one of America's newest national monuments – and bulldozed some 270 acres without permission. They call it "moonscaping," saying his work "resembles the aftermath of a nuclear blast" or "looks like an unpaved parking lot."

They say that without any of the required permits, he did the same thing to another 2,000 acres, which he first claimed to be "ranching" then said he was using it to build the state's eighth largest city with some 67,000 homes for 175,000 people.

They say he caused "irreparable damage" to seven archeological sites on state trust lands owned by the people of Arizona, including more than one-third of a 110-acre Hohokam Village that was active from 750 to 1250 A.D.

They say he polluted and diverted the Santa Cruz River, wiping out a wetland area for the endangered pigmy owl and causing flooding on Indian land downstream.

They say he caused the injuries and deaths of at least 21 protected Arizona desert bighorn sheep in a bizarre attempt at farming that proved he didn't know the difference between cattle pens and pens for much smaller goats (the sick animals escaped and invaded a national preserve, causing havoc in Arizona's largest bighorn herd).

All of this happened in southern Arizona near the small town of Marana. But no matter how small the town, it happened in a state where few people – especially a developer who's been in business more than 30 years – can claim ignorance of Arizona's efforts to protect the desert. The state says Johnson may have bulldozed thousands of saguaro cactuses without acquiring a single permit to move the plants (each saguaro carries a \$10,000 fine per plant for being uprooted).

Even a popular children's book, *Deserts*, by Nancy Castaldo, notes spells out that this is a no-no: "Efforts to protect saguaro cacti and other native plants from collecting and damage have led to laws in Arizona that require individuals to obtain a permit from the state to remove or relocate any native plant on their property. This even holds true for property owners who want to move a cactus from one end of their property to the other."

The land, called La Osa Ranch, is part of a national plan to preserve habitat while accommodating development called the Sonoran Desert Conservation Plan.

Officials for several Arizona oversight agencies were so disgusted with what they say Johnson did, that in February 2005, Attorney General Terry Goddard filed an unprecedented suit against him on behalf of five state agencies: the Department of Environmental Quality, the Land Department, the Game and Fish Commission, the Agriculture Department and the Board of Regents on behalf of the Arizona State Museum.



Illustrations by Gilbert Ford

"I don't think we've ever had a case [against a developer] involving multiple agencies," Goddard says.

But Arizona isn't alone in accusing Johnson of breathtakingly bad acts. The Environmental Protection Agency is also suing him in a case that could mean tens of millions of dollars in fines and the demand that he restore the Santa Cruz River to its original state.

"This is a big clean water case for us," says Jessica Kao, an attorney for the EPA's regional office in San Francisco, which monitors activity in Arizona. "This type of lawsuit is not unusual, but the scope and seriousness of the case makes this stand out."

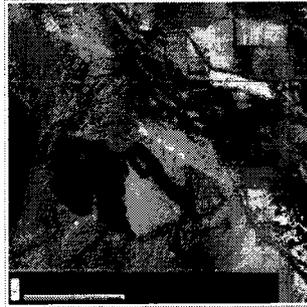
What else stands out is that this isn't the first time Arizona officials have been enraged about Johnson's approach to development. Before he ever touched La Osa Ranch, Johnson had already made Arizona history for unsavory development with his "Johnson Ranch" project in the southeast Valley.

For that project, Johnson received the largest fines ever imposed by two different state agencies. In 2003, the Department of Environmental Quality fined him \$80,000 after finding that he had drilled three illegal wells and pumped water without any groundwater rights – an activity that is strictly governed and requires permits from the State of Arizona.

At the same time, the Department of Water Resources fined him \$90,000 for what they've called a "massive discrepancy" on the groundwater used for Johnson Ranch. Johnson is supposed to replace all the groundwater he uses at the ranch, but the reports don't add up, and it appears he's using far more than he's replacing, according to the department. Company officials say the problems were simply oversights or paperwork errors and promised to fix everything.



Left: May 2002
Right: June 2004



May
2002

George Johnson turned down an interview request from PHOENIX magazine, but his side of the story is available on The Johnson Report, the blog he's been keeping since 2006 (thejohnsonreport.com).

In thousands of words, he rails against Arizona's "fabricated case" against him and claims he is being singled out.

He also believes his Johnson Report is a potent force and that it is scaring state officials into realizing "they made a grave mistake in starting this fight."

Johnson maintains he did nothing wrong. For instance, when accused of destroying native plants, he writes, "The state is under the impression that every rancher and entity in Arizona asks permission to trim trees and clear brush on private land."

When accused of blading over thousands of acres, he writes, "The state is still having trouble accepting the fact that clearing pastures is standard ranching practice."

And when told that Arizona has 250 witnesses ready to testify against him, he chides that the state is looking for more "dirt" on him and wonders why they'd need more if they already had so much.

"Sounds like desperation to me," he writes.

Johnson originally responded to the state lawsuits by countersuing Arizona. He demanded it drop the suits and sought \$33 million in damages, claiming the charges were nothing but a "get George Johnson campaign." His complaint stated: "The individual defendants have intentionally denied Mr. Johnson equal protection under the law by treating him as a class of one and subjecting him and his business entities to a punitive enforcement scheme not endured by other persons or entities in Arizona."

The countersuit was ultimately dismissed in December as part of the settlement. So was a suit Johnson filed against Attorney General Terry Goddard and his wife Monica, claiming Goddard "defamed" him when he announced the lawsuit as "wanton destruction of Arizona's heritage resources."

Goddard claimed he had "absolute immunity" from such suits in carrying out the duties of his office. The Arizona Republic's editorial page weighed in on Johnson's counterattack, arguing the state's top lawyer has "an absolute need to speak freely" about suits he files.

Johnson said in his blog that he has been mostly misunderstood. "I have lived in Arizona all my life," he said in his first blog entry on July 1, 2006. "I love this state as my father before me loved this great state. I have been in business here all my life and have made many contributions to this state, some of which I am proud to say bear our family name."

But he bemoans that the Arizona lawsuit has left nothing but a negative impression of him. "My business activities have come under scrutiny for a number of reasons, and the papers write about these events as if Atilla (sic) the Hun were let loose upon Arizona."

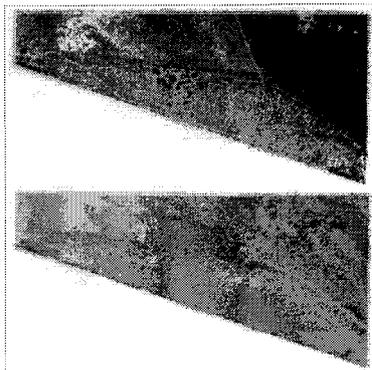
Mention the La Osa Ranch story to anyone and you'll find they're speechless about the enormity of the destruction there. Some say they still can't believe this could have happened – not in this day and age, not in broad daylight, not even in a state that has a sordid history of development.

For a long time, it seems Arizona developers didn't much care how the state grew, just that it grew – that they could overcome an unforgiving desert and turn millions of acres of real estate into something of value.

The development boom came after air-conditioning was developed around World War II. Soldiers who had trained at air bases that once book-ended the Valley made good on their vows to return if war didn't claim them. Construction became Arizona's sixth "C" - joining the legendary five staples of Arizona's economy (copper, cattle, cotton, climate and citrus) - and entire towns were built.

Phoenix went from a small town of 48,000 in the 1930s to the nation's fifth-largest city today. Communities throughout the state grew and grew.

By the 1970s, Arizona scandalized the nation with sweeping incidents of land fraud. Thousands of "investors" found they hadn't bought a piece of paradise but a chunk of raw desert without water, roads, power or the possibility of habitation. It was painfully obvious that this kind of rip-off reputation wasn't good for business, and there was a growing outcry - both from outside the state and from within - that careless development was going to soil the sandbox for everyone.



Above: May 2002
Below: June 2004

So Arizona began the serious task of passing laws and regulations - grading, drainage, land-use planning, hillside ordinances, water assurances, master plans - to overcome the negative image.

Development - a major economic engine in the state - can be found in all forms today. Some developers build look-alike houses mile upon mile while some attempt to create more unique "neighborhoods" that attempt to stand out among the crowd. One or two are even building sterling reputations as sensitive, environmentally friendly developers.

By any measure, Johnson's La Osa Ranch ranked at the bottom of Arizona development. His land sat near the small town of Marana, just north of Tucson in southern Arizona, close to the Pinal and Pima county lines. It also was near the Ironwood Forest National Monument and the Los Robles Archaeological District - both protected, restricted areas meant to be kept in pristine condition.

In addition, it was within striking distance of military flight patterns and helicopter training facilities of the Western Army National Guard Aviation Training Site.

This open desert north of Tucson is one of the ripest spots in the state for development. A dozen massive subdivisions have been approved, promising to bring nearly 200,000 housing units with a half-million new residents to an area that's currently considered rural.

The Town of Marana pays incredible attention to all this development, watching through satellite imagery just how its land is changing. The town even employs a satellite analyst, Chris Mack, and it was he who first noticed what was going on at La Osa Ranch.

As he told Government Technology magazine in 2005: "We started hearing in December 2003 through various environmental groups of this proposed La Osa Ranch development and some of the allegations of illegal land clearing. I looked to see if our imagery covered the area and, at that time, we had two dates of imagery - May 2002 and May 2003. I spotted the site in question fairly readily because there was a start of land clearing activities, and you could see bulldozer tracks in the area of interest."

By 2004, the extent of the damage could clearly be seen from space, Mack adds, and as the magazine described, the images resembled "a lunar landscape or the aftermath of a nuclear blast."

In the pictures he gets from space, Mack knows that vegetation shows up as red while dirt shows up as gray. In the first pictures he had, La Osa Ranch was awash in red. By 2004, there wasn't a bit of red to be seen on the entire 2,270 acres. The land had been "scraped clean" of some 40,000 native plants, including thousands of state-protected saguaros, the state's lawsuit says. The state trust lands - held in trust for the benefit of the state's public school system - along the western border of Johnson's property are within the boundaries of the Ironwood Forest National Monument, established in 2000. The suit notes President Bill Clinton's observations about this land when he gave it federal status:

"The landscape of the Ironwood Forest National Monument is swathed with the rich, drought-adapted vegetation of the Sonoran Desert. The monument contains objects of scientific interest throughout its desert environment. Stands of ironwood, palo verde and saguaro blanket the mountain floor beneath the rugged mountain ranges, including the Silver Bell Mountains.... The desert bighorn sheep in the monument may be the last viable population indigenous to the Tucson basin."

In addition, the state notes that portions of the land "are so rich archaeologically that they have been designated on the National Register of Historic Places as within the 'Los Robles Archaeological District.'"

In all, this district includes 119 sites that once represented "a large and successful hub of trade, manufacture, agriculture and ritual/political life" of the Hohokams. While most Hohokam sites around Arizona have disappeared, this area "has survived almost intact, and thus offers a unique opportunity to study all the levels and components of Hohokam community life," the state notes. When Johnson bought the land for his company, it was designated in Pinal County's comprehensive plan as "development sensitive" and "rural." He soon asked that its zoning be changed to "transitional," and on October 15, 2003, he submitted a detailed plan for a Planned Area Development (PAD), which included 67,000 homes, a resort, golf courses and businesses. Basically, it was supposed to be a city twice the size of Flagstaff.

Some saw it not as a planned community but as a "sprawl city" that would damage the area and eventually force the closure of the military installations nearby. When Johnson was confronted with this opposition, he argued that Pinal County would be "illegally" taking his property without compensation if it denied him the zoned he wanted.

Not so fast, the state's largest newspaper said, with an editorial titled, "Sorry, George, That One Won't Fly." The Arizona Republic reminded him that he didn't have a right to new zoning. "That's

why the whole procedure is called a zoning 'request,' not a zoning 'guarantee,'" the editorial chided.

None of the opposition seemed to stop Johnson, according to the state.

"Johnson International's requests to Pinal County generated considerable public concern and/or opposition," the suit contends, "including concerns about the impact that the proposed development may have on the adjacent Ironwood Forest National Monument, the archeological sites within the Los Robles Archeological District, the Santa Cruz River, the area's riparian habitat, the bighorn sheep in the Silver Bell Mountains, areas of religious and cultural significance to native Americans, and endangered species such as the Pygmy Owl.

"Nevertheless... even as Johnson International's requests were being considered, Defendants already had bulldozers and other earth moving equipment clearing and leveling substantial portions... of the proposed development, trespassing on State Trust Lands, destroying protected native plants, filling in water courses, discharging pollutants, irreparably damaging ancient and historic archeological sites, and otherwise ignoring numerous laws applicable to developers in their position."

"I haven't seen a lot of George Johnson types," says attorney Mike Smith of the National Trust for Historic Preservation. "He is one of the more prolific bad actors." Smith, speaking from his office in Washington, D.C., says his national group got involved in the controversy because Johnson's land was so close to a national monument. "There's something more universal about George Johnson and what he represents, especially in an area like Arizona where there are a tremendous number of unidentified cultural resources," Smith says. "It seems his approach as a developer is, he just does it and deals with the repercussions later. That usually means fines. That approach is unacceptable."

It's not uncommon for development and protected sites to clash, he notes, but there's a way to deal with that, and that's by acquiring permits needed to make major changes on land.

"Usually a developer is going through the permit process, and that's how we discover problems," Smith says. The permits spell out the intended changes on the land, and that's when officials can debate with developers about what's acceptable.

This case was so different because, although Smith says the law is clear that Johnson needed permits, he not only didn't have them, he didn't even apply for them.

Johnson first contends in his reply to the state lawsuits that he didn't need permits to do his "ranching and farming" activities – noting this property has been ranchland for hundreds of years – but he also maintains the grading was a "mistake" by a subcontractor and not his fault.

Carolyn Campbell is one of the environmental leaders of southern Arizona that sounded an alarm about George Johnson. She heads the Coalition for Sonoran Desert Protection and has worked for years to hammer out a compromise with developers in southern Arizona to respect the land. The landmark Sonoran Desert Conservation Plan, adopted in 1998, has been recognized nationally as a smart and effective way to preserve both habitat and threatened species while accommodating new development.

Campbell also was instrumental in getting the federal government to create the Ironwood National Monument. "It was a big deal to us getting 129,000 acres as a national monument," she notes.

So she took particular interest in what Johnson was doing.

"It wasn't much fun working with him," she says in a telephone interview. "After seeing some of the things George Johnson did on the land, it is hard for me to see any of them as accidental. Who bulldozes a river by accident? Without a permit? Who puts in a concrete culvert by accident? How can you not know? I watched him in public meetings and how he treated everyone – my mouth was wide open that anybody could be that insensitive. He wouldn't meet with us. We tried, but he dismissed any environmental concern."

Campbell adds, "I've worked with a lot of developers in Pima County. From small to big, the whole gambit. And I haven't worked with someone like him. Maybe that's how they grow them in Phoenix. Hopefully, I'll not have to deal with someone like him again."



Photo courtesy of Arizona Desert Bighorn Sheep Society, Dave Pence

Then there's what George Johnson did to Arizona's largest herd of bighorn sheep – owned by the citizens of Arizona – and the horrible suspicion that it wasn't an "oops" mistake.

The state's lawsuit lays it out in dry, legal terms: "Upon information and belief, during August–December 2003, Defendants caused between four and five thousand domestic goats to be located on the La Osa Project... At all times relevant hereto, Defendants knew or should have known that there was a herd of desert bighorn sheep that ranged in or around the Silver Bell Mountains, southwest of the La Osa range. Defendants further knew or should have known that domestic goats can directly transfer certain diseases to desert bighorn sheep."

Johnson knew all of this, the suit contends, because the grazing lease he had with the state of Arizona specifically states: "To protect desert bighorn sheep: No domestic sheep or goat grazing will be authorized on public lands within nine miles surrounding desert bighorn sheep habitat." The La Osa range is within nine miles of the Silver Bell Herd, the suit notes.

Brian Dolan, the president of the Arizona Desert Bighorn Sheep Society, remembers a more horrifying version of what happened when George Johnson decided to "raise goats" on the "ranch"

he was trying to develop into thousands of houses.

"He brought in several hundred diseased domestic goats from Texas and put them in a private pasture near Ironwood," Dolan recalls. He says Johnson had barbed-wire fence that was inadequate – it was meant for cattle, not goats. Several hundred diseased goats escaped and trespassed into lands managed by the state and federal Bureau of Land Management. "They infected the bighorn with two diseases," he says. "One caused temporary or permanent blindness. The other was a viral disease that creates open sores. A number of bighorns died, probably one-fourth or one-third of the herd [an estimate of 75 to 100 animals overall]. I saw some pretty disturbing video of blinded sheep running head-on into saguaro cactus. It was like watching sheep commit hari-kari."

Dolan says it took two months of complaining about the goats getting out of the flimsy pens before anything was done. Johnson told him he was sending out "cowboys" to round up the goats, but they weren't getting rounded up. Dolan says he regularly called the BLM, Game and Fish, and Johnson with his concerns.

"It was so frustrating to me," Dolan says. "The whole time everybody thought it would go away. Finally, even Johnson himself realized the problem and said, 'go out and shoot them.' It took six to eight weeks to kill all the goats."

By then, the infections had set in and sheep were dying. "It was just unbelievable," Dolan says. Game and Fish officials arrived in helicopters, trying to land on the rugged mountains to get vaccines to the sick bighorns. "It was at great expense and a great difficulty," Dolan adds. "One guy broke his hand. They had to jump out of the helicopters to get to the sheep. It was pretty difficult."

In all, the state charges, despite their efforts to provide medical care, at least 49 sheep suffered "serious symptoms" including blindness, scabbing and bleeding of the mouth. At least 21 died "from malnutrition, falling from the steep terrain or the inability to evade predators." Environmentalist Carolyn Campbell says she got very suspicious about those goats when Johnson was warned that the bighorn sheep herd near his land was "an issue" in considering his proposed development. She remembers this: "Mr. Johnson said, 'Don't worry about the bighorn sheep, they will not be an issue.' What does that mean? I have to think this wasn't a whole series of accidental 'oops.'"

Dolan verbally recoils at the thought: "God, I hope it wasn't on purpose – that would be too diabolical. But it wouldn't surprise me that the reason the goats were out there was not for legitimate reasons. Maybe for a tax scheme. Johnson isn't a livestock owner, he's a developer." Dolan says he has never seen anything like this and hopes he never will again.

"This is the first time we've had problems with such carelessness," he says. "The goats were put there in such a careless fashion, and when they escaped there was a reckless response. If it occurred again, I'd be more tenacious in demanding a more expedient response."

Dolan had already been deposed and was ready to testify had the state's lawsuits gone to trial. He says he'll always remember this as "a real mess."

Also ready to take the stand – in fact, the first witnesses the attorney general's office intended to call – was Bruce Babbitt, the former governor of Arizona and a former secretary of the interior. He counts getting the National Monument status for Ironwood as one of his proudest achievements.

Meanwhile, Johnson was denied his rezoning request on La Osa Ranch and has since sold the land.

The civil suit didn't seek a specific amount of damages but asked the court to impose fines as required by law – sometimes seeking triple damages and punitive damages. For the water-quality issues alone, the state was asking for \$25,000 per day for violations that spanned a couple of years.

The suit had gotten strong editorial support from The Republic. "We hope the state prevails and that the final tab is hefty," it said in a February 20, 2005 editorial. "Not just to penalize Johnson and his associates, although the actions described in the lawsuit richly deserve punishment. But in a state where growth is king, this legal action sends an important message that developers can't flout the rules without consequence."

"They can't write off environmental damage as a cost of doing business. And they can't violate our heritage."

Now, in an entirely separate situation, the Environmental Protection Agency (EPA) wants tens of millions of dollars from Johnson.

In November 2005, it filed a massive suit charging that Johnson and two of his companies violated the federal Clean Water Act by filling more than 100 acres of the Santa Cruz River and its tributaries with dirt and debris during 2003 and 2004.

The EPA says he stripped stretches of the riverfront, including one of the river's last mesquite bosquets in one of the Sonoran Desert's wettest riparian forests.

It was devastating destruction, the agency says, so it sued to force Johnson not only to "restore" the area – a job that would cost millions – but also fined him up to \$32,500 for every day the law was broken and the damage lasted.

If the courts find a single violation that lasted a year, the fine would top \$10 million. But the EPA is not charging there was just one violation. Its officials tallied violations for each time a bulldozer dumped dirt in the river. They say the damage could have spanned nearly two years.

Johnson has called the suit "baseless" and denies the claims, saying whatever grading was done was in an isolated wash, not in the river or a tributary. He also contends the wash fails to meet federal standards as a navigable stream that would bring it under the reaches of the Clean Water Act.

A prepared statement in response to the suit reads: "It is preposterous to say that a small wash in the middle of the Sonoran Desert is a navigable water."

Kao, the EPA attorney in San Francisco, says the suit is in the discovery stage and no court date has been set as of press time. It could be years before the case ever gets to court.

These days, the land called La Osa Ranch lies silent, looking like a swath of dirt from outer space. Native grasses and plants are attempting to grow back along the Santa Cruz River, as desert plants have done for centuries in a climate where weaker varieties wouldn't even try.

Will the record \$12.05 million settlement against Johnson alert other developers that the State of Arizona is serious about reining in outrageous behavior and protecting its land?

Terry Goddard would tell you he certainly hopes so.



Department of Justice

FOR IMMEDIATE RELEASE
Tuesday, October 7, 2008
WWW.USDOJ.GOV

ENRD
(202) 514-2007
TDD (202) 514-1888

Arizona Developer Agrees to Settle Clean Water Act Violations Along the Santa Cruz River

WASHINGTON — An Arizona land developer and a contractor have agreed to settle alleged violations of the Clean Water Act for bulldozing, filling, and diverting approximately five miles of the Santa Cruz River, a major waterway in Arizona, the Justice Department and U.S. Environmental Protection Agency announced today.

According to the settlement, Scottsdale, Ariz.-based developer George H. Johnson, his companies Johnson International, Inc.; and General Hunt Properties, Inc.; and land-clearing contractor, 3-F Contracting, Inc. will pay a combined \$1.25 million civil penalty. The penalty is the largest obtained in the history of EPA's Pacific Southwest Region, and one of the largest in EPA's history, under Section 404 of the Clean Water Act, which protects against the unauthorized filling of federally protected waterways through a permit program administered jointly by EPA and the U.S. Army Corps of Engineers.

The settlement resolves a Clean Water Act complaint filed in 2005 by the Justice Department and EPA against Johnson and his companies for clearing and filling an extensive stretch of the lower Santa Cruz River and a major tributary, the Los Robles Wash, without a permit from the Corps of Engineers.

"A seven-figure penalty in this type of enforcement case is virtually unprecedented," said Ronald J. Tenpas, Assistant Attorney General for the Justice Department's Environment and Natural Resources Division. "It underscores the Justice Department's commitment to enforce the nation's laws that protect valuable water resources in Arizona and other arid western states, and to hold violators of those laws accountable."

"The Santa Cruz River is a gem in Arizona's crown, as it flows from Arizona to Mexico back into Arizona, sustaining life, habitat for animals and plants, and providing so many benefits for residents of southern Arizona," said Alexis Strauss, director of EPA's Water Division for the Pacific Southwest Region. "This settlement reflects both the strong emphasis EPA places on protecting this important watershed and the seriousness of the alleged violations."

"Today's action contributes to EPA's record-shattering enforcement results," said Granta Nakayama, assistant administrator for EPA's Office of Enforcement and Compliance Assurance. "To date, EPA has concluded enforcement actions requiring polluters to spend an estimated \$11 billion on pollution controls, clean-up and environmental projects, an all time record for EPA. After these activities are completed, EPA expects annual pollution reductions of more than three billion pounds."

The alleged violations occurred in 2003 and early 2004, when defendants bulldozed 2000 acres of the historic King Ranch and La Osa Ranch in Pinal County, Ariz. The bulldozed areas lie within the largest active floodplain of the lower Santa Cruz River, which meanders through the two ranches in natural braids, a rarity for this heavily channelized waterway. Prior to defendants' land-clearing activities, this stretch of the Santa Cruz River supported a rich variety of vegetation, including one of the few extensive mesquite forests remaining in Arizona's Sonoran Desert region. These areas form a critical corridor for wildlife to move along the Santa Cruz River and from Picacho Peak State Park to the Ironwood Forest National Monument.

The case was referred to EPA by the Corps of Engineers after concerned citizens, tribes, and local, state and federal agencies complained about the serious flooding dangers and ecological impacts in connection with defendants' land-clearing activities. The Johnson defendants sold the ranches in 2004.

The proposed consent decree, lodged in the U.S. District Court in Phoenix, is subject to a 30-day comment period and final court approval. A copy of the proposed consent decree is available on the Justice Department Web site at www.usdoj.gov/enrd/Consent_Decrees.html.

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08-902

Exhibit DA-4

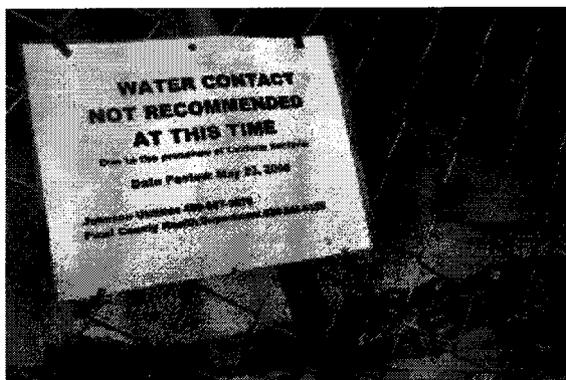
Tribune

EAST VALLEY • SCOTTSDALE

June 11, 2008

ACC members pursue probe into Q.C. sewage spills

By Sarah Boggan
Tribune



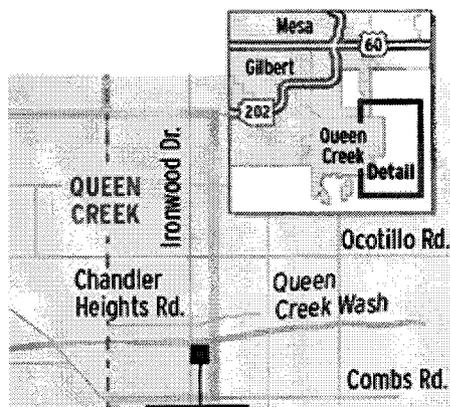
A sign posted on a fence blocking access to the Queen Creek Wash warns of the presence of E. coli in the water in the wash in Pinal County near Queen Creek.

Tribune

Some Arizona Corporation commissioners are calling for a prompt and thorough investigation of Johnson Utilities after state environmental officials said the company is operating a water reclamation plant at half the capacity it should be.

Probe cites Johnson Utilities in sewage spill [<http://www.eastvalleytribune.com/story/117978>]
Johnson Utilities must post warnings near spill [<http://www.eastvalleytribune.com/story/117230>]
Raw sewage spill irks Pinal residents [<http://www.eastvalleytribune.com/story/116767>]

Commissioner William Mundell said in a letter to other commissioners Tuesday that he is "deeply troubled" by actions at the plant that led to two sewage spills, sending more than 10,000 gallons of raw sewage into Queen Creek Wash and an adjacent neighborhood. He is worried the spills could lead to health and safety issues for residents.



"The company has a lot of explaining to do," he said.

Calls to Johnson Utilities went unreturned Wednesday. Employees said Vice President Brian Tompsett was on vacation and unavailable.

Mundell, who wants to schedule a special open meeting on the matter, said the capacity issue cited last week in an Arizona Department of Environmental Quality violation notice for the two May spills, "raised red flags."

Last week's DEQ notice said several state laws were violated, but one stood out to Mundell. The violation showed Johnson Utilities did

not abide by the 2004 state-approved engineering design that requires two 75 horsepower pumps to be used at the company's Pecan Water Reclamation Plant. At the time of the spills, the company only had two 35 horsepower pumps operating at the station. Just two years prior to that, the company only had two 20 or 25 horsepower pumps in place.

"There's a big difference between 75 horsepower pumps and 35 horsepower pumps," Mundell said. "That could have been the major cause of the overflows. I'm deeply concerned about the discrepancy between the (existing) pump size and the pump size listed in the engineering report."

The DEQ notice centered on the company's Pecan Water Reclamation Plant. But the DEQ's file on Johnson Utilities also reveals a long history of environmental violations and systemwide sewage spills, including one in December at the same plant where more than 5,000 gallons of raw sewage was discharged into the wash and Pecan Creek neighborhood. The Scottsdale company, owned by developer George Johnson, serves thousands of customers in the Johnson Ranch area, unincorporated areas of Pinal County to the south and east of Queen Creek and a portion of Florence.

DEQ and county health officials have warned people to stay away from standing water in the wash because E. coli levels found there could be harmful to people. DEQ also requires the company to monitor the E. coli levels.

Commissioner Jeff Hatch-Miller said he was concerned when he initially learned about the sewage spills and continues to worry about the health and safety of nearby residents. He also questions the company's practices.

"I'm asking that an engineer of our own be sent out to verify every aspect of the plant," he said.

Hatch-Miller said once the report is done, commissioners will decide whether a special meeting on the case is necessary.

DEQ officials have also said they plan a thorough look at the plant's operations, saying "the pumps were the most apparent thing."

The notice gives Johnson Utilities until July 5 to install and provide written and photographic evidence of the installation of two 75 horsepower pumps.

Mundell said the company will soon be before the commission for a rate case. He said rate cases can take months and the information the company provided in March was "deemed insufficient" because Johnson Utilities officials did not provide enough details in required reports.

In light of recent events, Mundell said he wants Johnson Utilities to face more scrutiny and has asked for a special open meeting if a rate case cannot be completed quickly.

"A rate case can take months because it's like a trial," he said. "I didn't want the company to control the pace of our investigation. I didn't want to tie the public health and safety issue to the rate case - I want to deal with it immediately so it doesn't happen again."

Mundell said a special meeting would allow the public to speak before the commission, express concerns and ask questions of the company so the commission can get to the bottom of the sewer issues.

Adam Stafford with Mundell's office said the company was ordered to file the rate case because it had never filed one. Records show Johnson Utilities began operations in Pinal County in 1997.

"The commission and the staff want to see what they're up to," Stafford said.

Mundell said the commission would also decide on what, if any, sanctions would be imposed on Johnson Utilities, including restricting the company from being a sewer provider in the future.



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ORIGINAL

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



Exhibit DA-5

0600

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL June 10, 2008

Arizona Corporation Commission
DOCKETED

JUN 10 2008

Chairman Gleason
Commissioner Hatch-Miller
Commissioner Mayes
Commissioner Pierce

DOCKETED BY nr

Re: Application of Johnson Utilities, LLC for an increase in its water and wastewater rates for customers within Pinal County; Docket No. WS-02987A-08-0180

ADEQ Notice of Violation to Johnson Utilities, LLC

Dear Colleagues:

As you know, the Arizona Department of Environmental Quality ("ADEQ") issued a Notice of Violation ("NOV") to Johnson Utilities, LLC on Friday, June 5, 2008. The NOV was issued for the sanitary sewer overflows ("SSOs") from the Pecan Water Reclamation Plant ("WRP") during the weekend of May 17-18.

On page 2 of the NOV, the second alleged violation caught my attention. According to the NOV, the lift station at the Pecan WRP was approved based on an engineering design report that described the installation of two 75 horsepower pumps. However, at the time of the SSOs, 35 horsepower pumps were operating at the lift station. I would like to know why that was the case and if the difference in pumps was a contributing factor to the SSOs.

Johnson Utilities has filed a rate case as ordered by this Commission. While the filing has not yet been found sufficient by Staff, I think that ADEQ's NOV and the Company's response should both be filed in that docket¹, as well as any subsequent documentation regarding the NOV. It is my understanding that the Pecan WRP is not currently in the Company's rate base. However, the discrepancy between ADEQ records and the actual plant raises a red flag in my mind and may justify a higher level of scrutiny of the Company's plant in the rate case.

¹ Docket No. WS-02987A-08-0180.

ACC Commissioners
June 10, 2008
Page 2

Depending upon the pace at which the rate case progresses, it may become necessary for the Company to provide answers to this Commission at a Special Open Meeting.

Thank you for your attention to this matter.

Sincerely,



William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Brian McNeil
Rebecca Wilder
Ernest Johnson
Lyn Farmer
Janice Alward
Johnson Utilities, LLC
Steve Owens, ADEQ

Exhibit DA-6

Tribune

EAST VALLEY · SCOTTSDALE

June 27, 2008

Johnson sues 2 San Tan women for defamation

By Sarah Boggan
Tribune



UNSAFE WATER: Water sits at the bottom of Queen Creek Wash outside the Johnson Utilities water reclamation plant on June 17. A sign posted on a fence blocking access to the wash warns of the presence of *E. coli* in the water in the wash in Pinal County near Queen Creek.

Santan-area residents who have challenged developer George Johnson on the safety of their water and sewer are being sued by his company for defamation.

Residents to protest Johnson Utilities event [<http://www.eastvalleytribune.com/story/118801>]
Raw sewage spill irks Pinal residents [<http://www.eastvalleytribune.com/story/116767>]

Pinal County residents Bambi Sandquist and Kristi Fisher were named in a lawsuit filed by Johnson Utilities this week in Pinal County Superior Court. They are accused in the lawsuit of posting defamatory statements about Johnson Utilities on www.newszap.com [<http://www.newszap.com>]. The Web forum is run by Independent Newspapers of Arizona, which publishes the Queen Creek Independent newspaper.

Their postings were in regard to recent sewage spills from a Johnson Utilities facility that health officials say pose a public health hazard. State environmental and regulatory agencies are investigating the spills.

Sandquist posted that Johnson should pay restitution to people in the spill area, lower his water rates, which are some of the highest in the state, and require his utility to be regularly audited.

The lawsuit alleges Sandquist and Fisher posted pointed comments on the community Web site forum and helped organize a protest of a company "customer appreciation" event by carrying water bottles containing mock contaminated water, hoisting protest signs and distributing fliers to attendees.

The lawsuit says that the women used the Web site to "publicize that they intended to protest (Johnson Utilities) at the event, to disseminate water bottles bearing false and misleading labels, to wear gas masks and to carry baby dolls dyed blue."

Sandquist is also accused in the lawsuit of slandering the company during a recent local news broadcast about the spills that spewed more than 10,000 gallons of raw sewage into Queen Creek Wash and the nearby Pecan Creek development. To illustrate her concern for potential harm to the company's more than

20,000 customers, Sandquist placed a gas mask on a baby doll for the cameras.

"Is this so bad that we have to put gas masks on our children?" Sandquist asked in an interview Friday.

Sandquist said she was surprised by the lawsuit. She didn't think company owner Johnson would "go after the little guy."

Fisher could not be reached for comment Friday.

Arizona State University journalism professor Stephen Doig said the lawsuit treads on new territory.

"What can be said on blogs and boards hasn't been litigated heavily," Doig said. "There's a world of trouble for people who don't understand that when they make potentially libelous utterances on the Internet they can be held liable."

As a public figure, Scottsdale developer Johnson would have a high burden of proof that his reputation has been stained by an effort to deliberately spread untruths on the Internet, he said.

The lawsuit could affect the willingness of residents to publicly talk about the issue, Doig said.

"All it takes is a hundred dollars to file a lawsuit," he said. "All of a sudden that can be a chilling effect when a process server hits a (citizen) with a lawsuit."

Sandquist said her comments on the Internet forum and the television news segment are protected under the First Amendment, and after recent problems with the utilities, residents have rallied to get answers.

Sandquist is encouraging her neighbors to attend an Arizona Corporation Commission meeting next week where commissioners are reviewing an application to expand the area where Johnson Utilities provides water and wastewater service.

Johnson has come under fire from ACC members who have expressed concern that the utility has spilled sewage and that it failed to build certain parts of its infrastructure to state environmental specifications.

Commissioner Bill Mundell said they will take public comments on the issue.

Johnson Utilities Vice President Brian Tompsett could not be reached for comment Friday.



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Exhibit DA-7

Tribune

EAST VALLEY • SCOTTSDALE

October 28, 2008

State: Utility violating rules on sewage sludge

By Jason Massad
Tribune

Johnson Utilities has been burying potentially dangerous sewage sludge near one of its wastewater treatment plants in violation of state rules, according to environmental regulators.

Johnson Utilities works on disinfecting wash [<http://www.eastvalleytribune.com/story/125918>]
Johnson Utilities loses in land dispute ruling [<http://www.eastvalleytribune.com/story/124789>]
Johnson Utilities ordered to clean up wash [<http://www.eastvalleytribune.com/story/120975>]

Officials with the Arizona Department of Environmental Quality showed up at a Johnson Utilities sewage plant nine miles southeast of Queen Creek in late September on an unannounced inspection that was launched after an anonymous complaint, according to DEQ records.

They found sewage sludge that would fill half a backyard swimming pool. About 34,713 gallons of the sludge was dumped in various trenches that also held construction debris.

Pictures taken at the scene show houses near uncovered trenches that contain sludge at Johnson Utilities Site 11 sewage plant.

The Department of Environmental Quality last week issued two violation notices and listed 15 separate infractions.

The infractions included failure to ensure that the sludge did not contaminate underground water supplies and failure to test the sludge - also called biosolids - for contaminants.

It's not the only time Johnson has run afoul of DEQ this year. The utility spilled raw sewage in May in a portion of Queen Creek Wash, polluting it for several months before it was disinfected.

"Biosolids are a potential human health hazard when not properly managed," wrote Mark Shaffer, spokesman for DEQ in an e-mail. "They are also very high in nutrients that might pollute drinking water supplies."

Sewage sludge is the byproduct of treating sewage and can contain infectious germs, toxins, heavy metals and nitrogen, according to the federal Environmental Protection Agency.

Johnson Utilities has been disposing of the sludge in landfills under a permit issued by DEQ and is not allowed to dispose or bury sludge at the site it was found.

However, in this instance, Johnson Utilities was simply storing sludge from some of the utility's other wastewater treatment plants at the Section 11 facility, said Lee Stein, an attorney with Perkins, Coie, Brown and Bain, which is representing Johnson.

Johnson Utilities was considering an agreement with another company to transport the sludge to be used as fertilizer on low-value crops - a growing, yet controversial trend in the waste management industry, Stein said.

The business venture didn't end up happening, however. Stein said that since the sludge came from other sewage plants and not the Site 11 facility, it didn't violate any state permitting rules.

Federal guidelines define "temporary storage" of sludge as less than two years, Stein's firm wrote in response to DEQ. "The biosolids in question were stored only for a few months earlier this year," says the response.

"I think ADEQ misunderstands ... they were not biosolids that were produced at the facility," Stein said. "There's a distinction between storing solids from this facility and storing solids from other facilities."

The Department of Environmental Quality's first visit to the sewage plant, however, indicated something different.

Gary Larsen, a representative of the utility, showed ADEQ officials where the sewage sludge had been temporarily stored on the site. However, there were no indications that sludge had been stored there, according to ADEQ documents.

ADEQ inspectors asked to be shown an area where sludge seemed to be scattered on the 640-acre property. They found a large trench where concrete and plastic debris as well as sewage sludge had been dumped, the report says.

Inspectors also found a 6-foot-deep pit where they were standing on biosolids that had already been buried with 2 inches to 3 inches of soil.

After Larsen told the inspectors that a utility backhoe was not in service, the inspectors dug six soil samples and could smell the strong odor of sewage.

The samples will be tested for a host of contaminants, although the department's report says they already know the material is sludge.

Inspectors returned to the sewage plant in early October. Larsen told inspectors that Johnson Utilities had retained an attorney and that he couldn't answer any questions.

Stein said that all of the sludge was moved from the facility after the surprise inspection. He said there was no health risk associated with storing the sludge at the site.



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