

ORIGINAL

OPEN MEETING ITEM



0000093780

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



RECEIVED

MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION: 21
FEB 17 2009

DATE: FEBRUARY 17, 2009

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO.: WS-02987A-07-0487

TO ALL PARTIES:

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

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

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

FEBRUARY 26, 2009

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

MARCH 3, 2009 and MARCH 4, 2009

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

Arizona Corporation Commission

DOCKETED

FEB 17 2009

DOCKETED BY

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

7 IN THE MATTER OF JOHNSON UTILITIES,
8 L.L.C. FOR AN EXTENSION OF ITS SEWER
9 CERTIFICATE OF CONVENIENCE AND
NECESSITY IN PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-07-0487

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: August 7, 2008
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
13 APPEARANCES: Mr. Jeffrey W. Crockett, SNELL & WILMER, L.L.P.,
14 on behalf of Applicant; and
15 Mr. Kevin O. Torrey, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
Corporation Commission.

17 **BY THE COMMISSION:**

18 On August 21, 2007, Johnson Utilities, L.L.C. ("Applicant," "Johnson" or "Company") filed
19 with the Arizona Corporation Commission ("Commission") an application for an extension of its
20 sewer Certificate of Convenience and Necessity ("CC&N") to include the developments known as
21 Skyline Estates, Quail Run Estates, and the J.O. Combs Educational Village located in Pinal County,
22 Arizona.

23 On September 21, 2007, the Commission's Utilities Division Staff ("Staff") issued an
24 Insufficiency Letter in this matter stating Johnson's application had not met the sufficiency
25 requirements as outlined in Arizona Administrative Code ("A.A.C.") and requesting additional data.

26 On April 25, 2008, Staff docketed a copy of a letter sent to Johnson stating that the
27 deficiencies in Johnson's application had not been corrected and that Staff would recommend that the
28 docket be administratively closed, if Johnson did not file additional information in support of its

1 application by May 9, 2008.

2 On May 9, 2008, Johnson filed its response to Staff's Insufficiency Letter.

3 On June 3, 2008, Staff filed a Sufficiency Letter in this docket indicating that Johnson's
4 application had met the sufficiency requirements as outlined in the A.A.C.

5 On June 6, 2008, by Procedural Order, a hearing was set to commence on August 7, 2008, and
6 other procedural deadlines were established.

7 On July 7, 2008, Johnson docketed a Notice of Mailing, certifying that notice was provided to
8 all property owners in the proposed extension area.

9 On July 18, 2008, Johnson filed a Notice of Substitution of Counsel.

10 On July 21, 2008, Johnson filed an Affidavit of Publication showing notice of the application
11 and hearing date had been published in two newspapers of general circulation in the proposed
12 extension area, the *Florence Reminder* and *Blade-Tribune*, on July 3, 2008.

13 On August 7, 2008, a full public hearing was convened before a duly authorized
14 Administrative Law Judge ("ALJ") of the Commission at its offices in Phoenix, Arizona. The
15 Applicant and Staff appeared through counsel and presented evidence and testimony. No members of
16 the public appeared to give public comments. At the conclusion of the hearing, the ALJ informed the
17 parties that late-filed exhibits may be needed after a review of the transcript because the developers in
18 the proposed extension area did not provide testimony or comments at the hearing related to
19 development timeframes.

20 Based on the testimony, evidence presented, and the docketed filings, by Procedural Order
21 issued on October 6, 2008, Johnson was directed to file, by November 14, 2008, late-filed exhibits
22 related to the development timeframes, the status of developers' progress in meeting State and
23 County requirements, and any conservation mechanisms to be used in the proposed extension area.
24 Further, Staff was directed to file its response to the late-filed exhibits by December 5, 2008, and the
25 time clock was suspended.

26 On November 14, 2008, Johnson docketed a Notice of Filing Compliance Items Per
27 Procedural Order dated October 6, 2008.

28 On December 5, 2008, Staff filed a Supplemental Staff Report addressing Johnson's late-filed

1 exhibits.

2 After reviewing the late-filed exhibits, the matter was taken under advisement, pending
3 submission of a Recommended Opinion and Order to the Commission.

4 * * * * *

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

7 **FINDINGS OF FACT**

8 1. Johnson is an Arizona public service corporation engaged in the business of providing
9 water and wastewater utility services in portions of Pinal County, Arizona.

10 2. Johnson received its initial CC&N in Commission Decision No. 60223 (May 27,
11 1997), and the Company's CC&N has been extended in various subsequent dockets.

12 3. Johnson's service area includes communities between Queen Creek and Florence in
13 Pinal County.

14 4. Johnson's service area consists of 79 square-miles, where Johnson serves
15 approximately 16,000 water customers and 24,000 wastewater customers.

16 5. Johnson is in good standing with the Corporations Division of the Commission.

17 6. On August 21, 2007, Johnson filed an application with the Commission to extend its
18 wastewater CC&N to include approximately 1.2 square miles or 779 acres. Specifically, Johnson's
19 application seeks authority to extend its wastewater CC&N to serve two developments, Skyline
20 Estates (291 acres), and Quail Run Estates (152 acres), and an educational facility known as the J.O.
21 Combs Educational Village ("Educational Village") (336 acres).

22 7. The proposed extension area is more fully described in Exhibit A, attached hereto and
23 incorporated herein by reference.

24 8. According to the Company's application, Johnson expects to serve 1,335 new
25 customers in the first five years of service in the extension area.¹

26 9. Johnson has received requests for service from the developers and the school district
27

28 ¹ Application at Attachment 5.

1 which covers the entire proposed extension area.²

2 10. Johnson estimates it will generate operating revenues of \$547,239 and incur operating
3 expenses of \$437,791 in the first five years of service in the extension area. (App. Attachment 5)

4 11. Staff is recommending the Commission conditionally approve Johnson's application,
5 subject to the following conditions:

6
7 1) That Johnson file with Docket Control, as a compliance item in this docket,
8 within three years of the effective date of an Order in this proceeding, a copy
9 of the Arizona Department of Environmental Quality ("ADEQ") Certificate of
Approval to Construct ("ATC") for the wastewater facilities needed to serve
each of the developments in the requested extension area.

10 2) That any Commission Order approving Johnson's request to extend its
11 wastewater CC&N be deemed null and void, after due process, if Johnson does
12 not comply with the above requirement within the time ordered.

13 3) That any Commission Decision approving the extension of Johnson's
14 wastewater CC&N in this proceeding become effective on the first day of the
15 month following Johnson submitting to Docket Control documentation from
ADEQ demonstrating that the Pecan Water Reclamation Plant ("WRP"), is in
16 full compliance with ADEQ and Staff has submitted confirmation of such
17 compliance to Docket Control.

18 4) That Johnson will charge its authorized rates and charges in the proposed
19 extension area.

20 **Existing/Proposed Wastewater System**

21 12. Johnson proposes serving the entire extension area with its Pecan WRP. The Pecan
22 WRP has a current Aquifer Protection Permit ("APP") for 4.0 million gallons per day ("MGD").
23 Johnson is currently using 2.8 MGD of its 4.0 MGD capacity at the Pecan WRP.

24 13. According to the Staff Report, 877 service connections would be added in the
25 proposed extension area to meet wastewater needs of 303,000 gallons per day by the year 2014.

26 14. Staff concluded that Johnson's existing and proposed wastewater system will have
27 adequate wastewater treatment capacity to serve Johnson's existing customers and customers in the
28 proposed CC&N extension area within a conventional five year planning period and Johnson can
reasonably be expected to develop additional wastewater treatment capacity as required in the future.

² Skyline & Quail, L.L.C. is the developer for Skyline Estates. (App. Attachment 1)

1 15. Johnson also provided as a part of its application the estimated cost for wastewater
2 facilities needed to serve the proposed extension area.

3 16. Johnson estimates on-site sewer facilities for Quail Run Estates will cost \$866,677,
4 and off-site facilities will cost \$527,504. Facilities for the J.O. Combs Educational Village will cost
5 \$416,328 and off-site facilities for Skyline Estates will cost \$611,290. The total cost of facilities
6 needed to serve the proposed extension area will be approximately \$2.42 million.³

7 17. Johnson proposes to pay for the on-site facilities needed through advances in aid of
8 construction, while off-site facilities will be financed through hook up fees.⁴

9 18. Staff reviewed Johnson's estimated costs for facilities needed in the proposed
10 extension area and concluded that the costs are reasonable. However, Staff made no "used and
11 useful" determination for the proposed wastewater plant facilities and no particular treatment should
12 be inferred for rate making or rate base purposes.

13 19. Johnson will charge its existing wastewater rates in the proposed extension area.

14 20. According to Johnson's witness, H2O Water will provide water utility service to the
15 J.O. Combs Educational Village and Diversified Water will provide water utility service to Quail Run
16 Estates and Skyline Estates.

17 **Development Timeframes**

18 21. By Procedural Order issued post hearing, Johnson was directed to file as a late-filed
19 exhibit, a sworn and notarized document from the developers in the proposed extension area,
20 discussing the developers' timeframes for meeting State and County requirements, timeframes for
21 building in the proposed developments, a detailed description of the developers' plans for the various
22 phases of development, including the timing and size of each proposed phase. In addition, the late-
23 filed exhibit was to include details on any conservation mechanisms that will be employed within the
24 proposed developments.⁵

25 22. Johnson filed as a late-filed exhibit, a sworn and notarized document from United
26 Engineering Group ("United") on behalf of the developer for Skyline Estates regarding development

27 ³ Staff Report, Engineering Memorandum at 2.

28 ⁴ Id.

⁵ Procedural Order dated October 6, 2008.

1 timeframes in the extension area. United submitted a map to illustrate the proposed development
 2 phases, which is attached hereto and incorporated herein as Exhibit B by reference.

3 23. Skyline Estates is purported to be a 290 acre site, which will include 1,017 single
 4 family residential lots.⁶

5 24. United's document provided a summary of tasks completed for the Skyline
 6 development:

- 7 • Planned Area Development Zoning approved by Pinal County in June 2005.
- 8 • Tentative Plat approved in April 2006 and is valid through August 2009.
- 9 • Significant steps to finalize Final Plat, Onsite Improvement Plans, and Offsite
 10 Infrastructure Plans for the development have been made but cannot receive
 11 County approval until the development is located within the wastewater
 12 CC&N.

13 25. Based on the Commission's approval of Johnson's request to extend its wastewater
 14 CC&N by May 2009, United's estimated timeline for completion of the Skyline Estates development
 15 is as follows:

- 16 • Parcel 1.1- final approvals December 2009
 17 Construction to begin –April 2010
 18 Build out – November 2012 (242 lots)
- 19 • Parcel 1.2- construction to begin August 2012
 20 Build out- August 2013 (102 lots)
- 21 • Parcel 1.3- construction to begin April 2013
 22 Build out-April 2014 (109 lots)
- 23 • Parcel 2.1- construction to begin January 2014
 24 Build out- January 2015 (108 lots)
- 25 • Parcel 2.2-construction to begin September 2014
 26 Build out- August 2015 (86 lots)
- 27 • Parcel 2.3-construction to begin May 2015
 28 Build out-November 2016 (178 lots)
- Parcel 2.4 construction to begin July 2016
 Build out- January 2018 (192 lots)
- Final build out – January 2018 (1,017 lots)

29 26. United's letter stated that the development is located within the service area of
 30 Diversified Water Company and Diversified has agreed to provide water service in the area. United's
 31 letter also notes that a Certificate of Assured Water Supply has been obtained from ADEQ for the
 32 Skyline Estates development, and that no golf courses, lakes, significant water features or the use of
 33

34 ⁶ Johnson's late-filed exhibit, Exhibit B.

1 reclaimed water is planned for the development area.

2 27. United's letter stated that the key factor to moving forward with the Skyline Estates
3 project is to have the development included in a wastewater provider's CC&N.

4 28. Johnson also provided a notarized letter from the Educational Village discussing the
5 proposed development timeframes. According to the letter, the Educational Village is a part of the
6 J.O. Combs Unified School District ("District") and the District received the ADEQ General Permit
7 on January 22, 2007, to construct a lift station and force main sewer system within the Educational
8 Village.

9 29. The Educational Village will be comprised of three (3) campuses, which will include
10 the Ranch Elementary School, serving 750 students; Combs High School, serving 1,700 students; and
11 a new middle school, expected to serve an estimated 1,000 students. According to the notarized
12 letter, the Ranch Elementary School opened in August 2008, and the Combs High School is expected
13 to open August 2009, and the new middle school is scheduled to open August 2011.

14 30. On June 25, 2008, the District received the ADEQ Discharge Authorization, after
15 completing construction of the lift station and force main sewer system. The Educational Village is
16 currently operating the lift station and is discharging to the Pecan WRP under the terms of a Bulk
17 Wastewater Agreement executed by the District and Johnson on October 2, 2007.⁷

18 31. According to the Educational Village's document, the District is using groundwater
19 provided by H2O Water to irrigate the athletic or play fields located within the Educational Village.

20 32. Johnson's late-filed exhibit stated that the developer for Quail Run Estates did not
21 provide a sworn and notarized document regarding development timeframes. According to Johnson,
22 the developer has stated that no golf courses, lakes or ornamental water features will be included in
23 the development and construction has not yet begun. Johnson also reported that no effluent will be
24 used within the Quail Run Estates development.⁸

25 **ADEQ Compliance**

26 33. According to the Staff Report, ADEQ issued Notices of Violation ("NOVs") to
27

28 ⁷ Johnson's Notice of Filing Compliance Items Per Procedural Order dated October 6, 2008.
⁸ Johnson's Exhibit at 2.

1 Johnson on March 4, 2008 and June 5, 2008, related to two separate sanitary sewer overflows
2 (“SSO”).

3 34. On December 24, 2007, Johnson had a SSO from a manhole located in the Pecan
4 Creek North subdivision, which was upgradient from Johnson’s Pecan WRP. In March 2008, ADEQ
5 issued a NOV to Johnson related to the December 24, 2007, spill. According to Johnson’s witness,
6 the SSO was caused by excess debris flowing through the system, which caused the lift station pumps
7 to stop working and the gravity sewer system to back up. (Tr. at 19) The witness testified that the
8 Company found towels, mop heads, and fabric inside the pump. (Tr. at 37)

9 35. Johnson’s witness testified that when ADEQ inspected the Pecan WRP after the SSO,
10 it was discovered that Johnson’s SCADA⁹ system was not operational. (Tr. at 28) The SCADA
11 system is designed to trigger an alarm when water levels reach a certain point within the Pecan WRP
12 lift station pumps, but it is not designed to automatically shut down the pumps. (Tr. at 42) The
13 witness further testified that problems with the SCADA system arose when overhead power lines
14 began to interfere with the SCADA system’s wireless transmission of information. According to the
15 witness, the SCADA system works like a radio wireless transmission, but because of the proximity of
16 the Pecan WRP to the power lines, the power lines were interfering with the system transmitting
17 information when the water levels within the lift station pumps reached an alarm level. Johnson’s
18 witness stated that eventually the Company had to hard wire its SCADA system to make it
19 operational and that work on the SCADA system was completed in July 2008. (Tr. at 29, 43)
20 Johnson’s witness also testified that Johnson has added personnel 24 hours/seven days a week at the
21 Pecan WRP facility. (Tr. at 21)

22 36. Johnson’s late-filed exhibit states that on July 11, 2008, Johnson submitted
23 documentation, required by ADEQ, demonstrating that the SCADA system is functioning, but ADEQ
24 has not closed the March NOV. (Tr. at 29) According to Johnson, it has fully addressed the
25 requirements of the March NOV and is awaiting written confirmation from ADEQ confirming full
26

27 _____
28 ⁹ SCADA is an acronym that stands for Supervisory Control and Data Acquisition. SCADA refers to a system that
collects data from various sensors at a plant, factory, or in other remote locations and then sends data to a central
computer that manages and controls the data.

1 compliance.¹⁰

2 37. On May 17, and 18, 2008, Johnson experienced a second SSO in the same location.
3 ADEQ issued a second NOV related to the May 2008 SSO on June 5, 2008. Johnson's witness
4 testified that when the SSO occurred, wastewater came out of the manhole and flowed downstream
5 and into a concrete lined storm channel, and into a distribution box located in the Pecan Creek North
6 subdivision. (Tr. at 41) The witness testified that homeowners adjacent to the channel could see the
7 sewage from their homes, but that the sewage was not running down the street and was contained in
8 the concrete channel. (Tr. at 41)

9 38. As a result of the SSOs, ADEQ ordered Johnson not to pump storm water from the
10 Queen Creek wash, to another location, and ADEQ required Johnson to test the standing storm water
11 for E. coli and fecal coliform. (Tr. at 21, 43) Johnson's witness testified that originally ADEQ
12 required testing five times per week and that ADEQ has reduced the testing frequency to twice per
13 week. (Tr. at 21) The witness testified that the storm water has tested positive for both E. coli and
14 fecal coliform, and that he believes animal feces travels downstream with the storm water and ends
15 up in the wash. (Tr. at 35)

16 39. A lawsuit has been filed against Johnson by the Pecan Creek North Homeowners
17 Association ("Association") regarding Johnson's lease of the Queen Creek wash area. (Tr. at 46) The
18 Association alleges, among other things, that the SSOs were a violation of the lease agreement it has
19 with Johnson. (Tr. at 52) The Association lawsuit was filed on or about July 2008, and the Superior
20 Court of Pinal County has ruled in favor of the Association and has terminated Johnson's lease
21 agreement to the property for the purpose of operating an underground recharge facility.¹¹ According
22 to Johnson, the Superior Court order allowed Johnson to remain in possession of the lease property,
23 subject to certain conditions, while Johnson appeals the judgment in that matter.¹² Subsequent to the
24 Superior Court order, Johnson filed a condemnation action against the Association requesting an
25 easement to the property for operation of the underground recharge facility.¹³

26 _____
27 ¹⁰ Johnson's late-filed exhibit at pg. 2.

¹¹ Id. at 3.

¹² Id. at 3.

¹³ Id.

1 40. According to Johnson's late-filed exhibit, Johnson appealed the ADEQ order requiring
2 it to test for E. coli and fecal coliform in the Queen Creek wash, and after various meetings were held
3 with ADEQ, ADEQ and Johnson entered into a Consent Order. According to Johnson's late-filed
4 exhibit, Johnson has complied with all items raised in the Consent Order and the Company is
5 awaiting ADEQ's written response regarding compliance.

6 41. Johnson testified that since the SSOs, Johnson has taken preventive measures to
7 educate the community on the proper use and disposal of items, to protect the wastewater system.
8 The witness stated that Johnson has published and distributed educational brochures within the
9 community, and the Company has recently been experiencing less debris in the wastewater system.
10 (Tr. at 38) The witness also testified that the Company has installed additional screening devices to
11 prevent debris from getting into the pumps. (Tr. at 20)

12 42. Johnson's witness denied that Johnson's decision to install a 35-horse power pump
13 when it constructed the Pecan WRP, instead of the 75-horse power pump suggested in the design, has
14 contributed to the SSOs Johnson has experienced. (Tr. at 38) Johnson's witness testified that prior to
15 the Pecan WRP lift station being built, wastewater was being treated ten miles away and the stronger
16 pump was needed to force the wastewater that far. (Tr. at 40) He testified that once the Pecan WRP
17 lift station was built, the wastewater only had to be pumped 30 feet to be treated and the larger pump
18 was not necessary. (Tr. at 40) Under cross examination, Johnson's witness testified that subsequent
19 to the SSOs, Johnson has installed two-100 horse power pumps. (Tr. at 40) According to the witness,
20 Johnson has not experienced any further SSO incidents. (Tr. at 21)

21 43. To date, Johnson has not docketed proof that ADEQ has closed either of the two
22 NOVs.

23 44. Staff has expressed concern regarding Johnson's ability to continue to serve its current
24 and prospective customers until Johnson rectifies its sanitation issues with ADEQ.¹⁴ Staff
25 recommends that any Order granting Johnson an extension of its wastewater CC&N should be
26 contingent on Johnson's successful resolution of the June 5, 2008 NOV.¹⁵

27 _____
¹⁴ Staff Report at 2.

28 ¹⁵ Supplemental Staff Report at 3.

1 45. Based on the sworn and notarized documents submitted by the Educational Village
2 and Skyline Estates, there appears to be a continuing need for service in the proposed extension area.
3 The sworn documents show that significant steps have been taken to move development forward.
4 Although the developer for Quail Run Estates did not provide a proposed timeframe for development,
5 the developer has requested service from Johnson.

6 46. According to the Company's testimony, Johnson has taken steps to help ensure that
7 future SSOs do not occur. Johnson has implemented around-the-clock personnel at the Pecan WRP,
8 installed enhanced screening devices on the pumps and installed two 100-horse power pumps on the
9 system. In addition, Johnson has published and distributed educational information to homeowners
10 on the proper use of sewer systems.

11 47. However, Johnson's two recent SSOs raise serious concerns regarding public safety.
12 The Company experienced two SSOs in the same location within a short time span. The
13 homeowners in the Pecan Creek North subdivision, living adjacent to the concrete channel where the
14 sewage from the SSOs was contained, were subjected to viewing sewage from their homes and test
15 results of the storm water in the Queen Creek wash adjacent to where the SSOs occurred continue to
16 test positive for the presence of E. coli and coliform. Further, even though Johnson has entered into a
17 Consent Order with ADEQ, ADEQ has not released Johnson from the twice weekly requirement to
18 test the storm water in the Queen Creek wash and has not closed the March 2008 NOV.

19 48. In the instant docket, Staff is recommending that the Order conditionally granting
20 Johnson an extension of its wastewater CC&N should not become effective until Johnson achieves
21 compliance with all ADEQ requirements. We agree with Staff's recommendations, but we believe
22 that Johnson should also be required to achieve full compliance with ADEQ on both the March and
23 June 2008, NOVs by December 31, 2009. If Johnson fails to meet the December 31, 2009, deadline,
24 Staff should file an appropriate pleading requesting that the Commission order Johnson to show
25 cause why the conditional extension of its wastewater CC&N in this docket should not be considered
26 null and void.

27 **ACC Compliance**

28 49. The Staff Report also stated that Johnson failed to meet prior compliance requirements

1 set forth in Commission Decision No. 68235 (October 25, 2006). The Decision required Johnson to
2 file with Docket Control, "the United (Aquifer Protection) Water Quality Permits issued by ADEQ
3 for the Copper Basin Regional Wastewater Treatment Facility within 365 days of the decision."

4 50. On September 19, 2006, Johnson filed a request for extension of time, until October
5 25, 2007, to file the Aquifer Protection Permits ("APP") in accordance with Decision No. 68235.

6 51. On September 25, 2006, Staff filed a Staff Report recommending approval of the
7 extension of time for Johnson to file the Copper Basin APPs.

8 52. On October 4, 2007, Johnson docketed a request to further extend the date to comply
9 with filing the APPs, until October 25, 2009, stating that Johnson's application with ADEQ had been
10 significantly delayed because the plant site had been illegally conveyed by the previous land owner to
11 a third party.

12 53. On December 20, 2007, Staff filed a Memorandum recommending approval of
13 Johnson's request until October 25, 2009, to file the Copper Basin APPs.

14 54. On July 3, 2008, the Commission granted Johnson's request to extend the deadline to
15 comply with Decision No. 68235 until October 25, 2009.¹⁶

16 **Complaints**

17 55. The Staff Report states that, as of July 2008, Johnson has had 18 complaints filed
18 against it regarding billing, quality of service, disconnection/termination, and other issues. The Staff
19 Report further states that all but two of those complaints have been resolved and closed.

20 56. Staff's witness testified that the two open complaints involve customers of the Pecan
21 WRP facility. One complaint alleges that the SSOs caused damage, in the amount of \$325, to the
22 customer's sewer system. Staff testified that the customer's complaint is not one handled by the
23 Commission. The other complaint involved another customer of the Pecan WRP facility requesting
24 that the Commission order Johnson to fix the problems at the facility. Staff's witness further testified
25 that the two open complaints do not affect Staff's belief that Johnson is fit and proper entity to
26 receive an extension of its wastewater CC&N, subject to conditions. (Tr. at 63, 64)

27
28 ¹⁶ See Commission Decision No. 70411 (July 8, 2008) at 12.

1 57. Johnson is current on its property taxes in Arizona.

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

10 59. Staff's recommendations, as modified herein, are reasonable and should be adopted.

11 **CONCLUSIONS OF LAW**

12 1. Johnson is an Arizona public service corporation within the meaning of Article XV of
13 the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

14 2. The Commission has jurisdiction over Johnson and the subject matter of the
15 Application.

16 3. Notice of the Application was provided in accordance with the law.

17 4. There is a public need and necessity for wastewater utility service in the proposed
18 extension area described herein in Exhibit A.

19 5. Johnson should receive a conditional extension of its wastewater CC&N.

20 6. Staff's recommendations, as modified herein, are reasonable and should be adopted.

21 **ORDER**

22 IT IS THEREFORE ORDERED that Johnson Utility L.L.C.'s application for an extension of
23 its wastewater Certificate of Convenience and Necessity to include the area described in Exhibit A,
24 attached hereto, is hereby conditionally granted subject to the following Ordering Paragraphs.

25 IT IS FURTHER ORDERED that Johnson Utility L.L.C., shall file by December 31, 2009,
26 with Docket Control, as a compliance item in this docket, documentation from the Arizona
27 Department of Environmental Quality demonstrating that Johnson Utility L.L.C.'s Pecan Water
28 Reclamation Plant (ADEQ Inventory #105324) is in full compliance and that the Notice of Violations

1 issued on March 4, 2008, and June 5, 2008, have been closed.

2 IT IS FURTHER ORDERED that if Johnson Utility L.L.C. fails to meet the above timeframe,
3 the Utilities Division Staff shall file a pleading requesting the Commission to order Johnson Utility
4 L.L.C. to appear and show cause why the conditional extension of its wastewater Certificate of
5 Convenience and Necessity granted herein, should not be considered null and void.

6 IT IS FURTHER ORDERED that if Johnson Utility L.L.C. achieves full compliance with the
7 Arizona Department of Environmental Quality for its Pecan Water Reclamation Plant (ADEQ
8 Inventory #105324) on or before December 31, 2009, the extension of Johnson Utility L.L.C.'s
9 wastewater Certificate of Convenience and Necessity shall become effective on the first day of the
10 month following Johnson Utility L.L.C.'s filing with Docket Control proof of its compliance and the
11 Utilities Division Staff's confirmation of such compliance with Docket Control.

12 IT IS FURTHER ORDERED that Johnson Utility L.L.C. shall file with Docket Control, as a
13 compliance item in this docket, a copy of the Arizona Department of Environmental Quality
14 Certificate of Approval to Construct for the wastewater facilities needed to serve each of the
15 developments in the requested extension areas, within three years of the effective date of this
16 Decision.

17 IT IS FURTHER ORDERED that if Johnson Utility L.L.C. fails to comply with the above
18 Ordering Paragraph, the Certificate of Convenience and Necessity conditionally granted herein, shall
19 be deemed null and void, after due process.

20 IT IS FURTHER ORDERED that Johnson Utility L.L.C. shall charge its authorized rates and
21 charges in the extension area until further Order of the Commission.

22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

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

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____
9

10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____
11

12 IN WITNESS WHEREOF, I, MICHAEL P. KERNS, Interim
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____, 2009.

17 _____
18 MICHAEL P. KERNS
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT _____
21

22 DISSENT _____
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1 SERVICE LIST FOR: JOHNSON UTILITIES, L.L.C.

2 DOCKET NO.: SW-02987A-07-0487

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Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

EXHIBIT "A"

Legal Description

Skyline Estates

August 18, 2005

Assessor Parcel Number: 210-11-00101

Legally described as the north half of Section 11, Township 3 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPT the northwest quarter of the northwest quarter of Section 11, Township 3 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.



EXHIBIT "A"

PARCEL NO. 1:

That part of the Northeast quarter of Section 2, Township 3 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, being more particularly described as follows:

Commencing at the Northeast corner of said Section 2, being marked by a ½" bar 2.14 feet Northerly of a General Land Office Brass marking the closing corner of the Northeast corner of said Section 2;

Thence South 1 degree 05 minutes 41 seconds East (basis of bearings) along the Easterly line of the Northeast quarter of said Section 2, a distance of 1588.50 feet to a point on the Westerly right-of-way line of the Central Arizona Project Canal, being marked by 1/2" bar. LS 32778, said point also being the TRUE POINT OF BEGINNING;

Thence continuing South 1 degree 05 minutes 41 seconds East, 1057.56 feet to the East quarter corner of said Section 2, being marked by a 5/8" bar, LS 32778;

Thence South 89 degrees 30 minutes 28 seconds West, along the East-West Mid-Section line of said Section 2, a distance of 1372.23 feet to the Southwest corner of the East half of the Northeast quarter (also being the Southeast corner of the West half of the Northeast quarter) of said Section 2, being marked by a 1/2" bar, LS 5068 and from which point the center quarter corner of said Section 2, being marked by a 2" aluminum cap on a 1/2" bar, LS 5068 bears South 89 degrees 30 minutes 28 seconds West, 1372.23 feet distant therefrom;

Thence North 1 degree 11 minutes 11 seconds West, 2646.06 feet to the Northwest corner of the East half of the Northeast quarter (also being the Northeast corner of the West half of the Northeast quarter) of said Section 2, being marked by a 1/2" bar, LS 5068 and from which point the North quarter corner of said Section 2 being marked by a 2" aluminum cap on a 1/2" bar, LS 5068 bears South 89 degrees 22 minutes 31 seconds West, 1376.43 feet distant therefrom;

Thence North 89 degrees 22 minutes 31 seconds East, along the Northerly line of the Northeast quarter of Section 2, a distance of 787.54 feet to a point on the said Westerly right-of-way line of the Central Arizona Project Canal, being marked by a 1/2" bar, LS 5068

Thence South 21 degrees 20 minutes 30 seconds East along said Westerly right-of-way line of the Central Arizona Project Canal, a distance of 1701.61 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "A"

PARCEL NO. 2:

A portion of the North half of Section 2, Township 3 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows;

Commencing at the East quarter corner of said Section 2;

Thence West, (assumed bearing) along the East-West mid-section line of Section 2, a distance of 1372.23 feet to the Southeast corner of the West half of the Northeast quarter (also being the Southwest corner of the East half of the Northeast quarter) of said Section 2, said point also being the TRUE POINT OF BEGINNING:

Thence continuing West, along the East-West mid-section line of said Section 2, a distance of 1317.83 feet to a point from which the center quarter corner of said Section 2, bears West, 60.74 feet, distance therefrom;

Thence North 0 degrees 33 minutes 24 seconds West, being parallel with the Easterly line of said West half of the Northeast quarter of Section 2, a distance of 2,642.94 feet to a point on the Northerly line of said Section 2, and from which point the North quarter corner of said Section 2, bears South 89 degrees 52 minutes 03 seconds West, 58.62 feet distance therefrom;

Thence North 89 degrees 52 minutes 03 seconds East, along the said Northerly line of Section 2, a distance of 1317.81 feet to the Northeast corner of the said West half of the Northeast quarter (also being the Northwest corner of the East half of the Northeast quarter) of Section 2;

Thence South 0 degrees 33 minutes 24 seconds East, along the said Easterly line of the West half of the Northeast quarter of Section 2, a distance of 2,645.99 feet to the TRUE POIN

EXHIBIT "A"

Legal Description

WEST HALF OF SECTION 9, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE
GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXHIBIT B

SKYLINE ESTATES PHASING EXHIBIT

PINAL COUNTY, ARIZONA

PARCEL SUMMARY - 1017 Lots

- Parcel 1.1 (60.4 net acres)
109 55' x 120'
133 50' x 120'
- Parcel 1.2 (31.3 net acres)
102 60' x 120'
- Parcel 1.3 (27.1 net acres)
109 50' x 120'
- Parcel 2.1 (29.9 net acres)
108 60' x 120'
- Parcel 2.2 (29.9 net acres)
86 60' x 120'
- Parcel 2.3 (43.5 net acres)
93 50' x 120'
85 50' x 120'
- Parcel 2.4 (43.6 net acres)
89 55' x 120'
103 50' x 120'



EXHIBIT "B"

DECISION NO. _____